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# federal register

Monday
May 11, 1987

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Vol. 52 No. 90
Pages 17537-17746

# Federal Register

Monday
May 11, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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**How To Cite This Publication:** Use the volume number and the page number. Example: 52 FR 12345.

## THE FEDERAL REGISTER
## WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** June 9, at 9 a.m.
**WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
**RESERVATIONS:** Gertrude E. Belton, 202–523–5237

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Federal Register
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Monday, May 11, 1987

# Presidential Documents

Title 3—

The President

## Executive Order 12596 of May 7, 1987

## Noncompetitive Conversion to Career Status of Certain Employees in Professional and Administrative Career Positions

By the authority vested in me as President by the Constitution and laws of the United States of America, including sections 3301 and 3302 of title 5 of the United States Code, it is hereby ordered as follows:

**Section 1.** An individual who is employed in a Professional or Administrative Career position under Schedule B under the authority of 5 C.F.R. 213.3202(l) may be converted noncompetitively to a career or career-conditional appointment at GS–9, provided the individual meets the qualifications and other requirements established by the Director of the Office of Personnel Management, and further provided the individual's performance is determined by the employing agency, in a careful and formal evaluation, to warrant such conversion at GS–9.

**Sec. 2.** The Director of the Office of Personnel Management shall prescribe such regulations as may be necessary to implement this Order.

Ronald Reagan

THE WHITE HOUSE,
*May 7, 1987.*

[FR Doc. 87–10883
Filed 5–8–87; 11:23 am]
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# Rules and Regulations

Federal Register
Vol. 52, No. 90
Monday, May 11, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

### Revision of Delegations of Authority

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to delegate, within the Department of Agriculture, the authority to administer sections 12 through 14 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Siegler, Deputy Assistant General Counsel, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6035.

**SUPPLEMENTARY INFORMATION:** The delegations of authority of the Department of Agriculture are amended to delegate to the Assistant Secretary for Science and Education, the Assistant Secretary for Natural Resources and Environment, the Administrator, Agricultural Research Service, and the Chief, Forest Service, authority to enter into cooperative research agreements, make cash awards, and retain and use royalty income under the Stevenson-Wydler Technology Innovation Act of 1980 (Pub. L. 96-480) as amended by the Federal Technology Transfer Act of 1986 (Pub. L. 99-502). In addition, the Assistant Secretary for Science and Education is delegated authority to coordinate the above activities on behalf of the Department, and to disapprove or require the modification of any cooperative research and development agreement.

Public Law 96-480, as amended by Pub. L. 99-502, authorizes cooperative research and development agreements with private industry, other units of Government, universities, or other persons. These cooperative research and development agreements may be used where there is a mutual interest between the missions of the Federal laboratory and other levels of government or private sector organizations. Pursuant to these agreements, a Federal laboratory provides resources, but not funds if not otherwise authorized, along with a cooperating party towards the conduct of a specifically authorized research or development program or project. A Federal laboratory may: (a) Accept and retain funds, services, and property from the cooperator; (b) agree to grant in advance licenses to patents on inventions made by Federal employees; (c) waive the Government's right of ownership in inventions made by an employee of a cooperating party; and (d) permit employees or former employees to help a private sector cooperator commercialize their inventions.

Further, the Act, as amended, requires a Federal laboratory to establish a cash awards system to reward scientists and technicians for inventions, innovations, and other outstanding contributions. A direct payment of at least 15 percent of royalties received is authorized for payment to Federal employee-inventor(s) for use of Government-owned inventions.

Finally, the Act, as amended, permits Federal laboratories to retain a certain portion of royalty income rather than return it to the U.S. Department of the Treasury. The balance of royalties, after paying inventors, is retained by the agency.

While the Act, as amended, provides authority for Federal laboratories to carry out the above-stated functions, the term laboratory is defined as "a facility or *group of facilities* owned, leased, or otherwise used by the Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government." (Emphasis added.) In view of such definition of the term laboratory, the Department has determined that both the Agricultural Research Service and the Forest Service, which have many laboratories, qualify respectively as a laboratory.

Accordingly, the delegations to administer the activities in question are made to the Agricultural Research Service and the Forest Service rather than to the laboratories of which they are comprised.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register.

Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and, thus, is exempt from the provisions of that Act.

### List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

## PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

**Authority:** 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.19 is amended by adding a new paragraph (d)(23) to read as follows:

**§ 2.19 Delegations of authority to the Assistant Secretary for Natural Resources and Environment.**

* * * * *

(d) * * *

(23) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash awards program to reward scientific, engineering, and technical personnel; award royalties to

inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

* * * * *

3. Section 2.30 is amended by adding new paragraphs (a)(83) through (a)(85) to read as follows:

**§ 2.30 Delegations of authority to the Assistant Secretary for Science and Education.**

* * * * *

(a) * * *

(83) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a through 3710c).

(84) Coordinate USDA activities delegated under 15 U.S.C. 3710a through 3710c.

(85) Review cooperative research and development agreements entered into pursuant to 15 U.S.C. 3710a, with authority to disapprove or require the modification of any such agreement.

* * * * *

**Subpart G—Delegations of authority by the Assistant Secretary for Natural Resources and Environment.**

4. Section 2.60 is amended by adding a new paragraph (a) (25) to read as follows:

**§ 2.60 Chief, Forest Service**

(a) * * *

(25) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a through 3710c).

* * * * *

**Subpart N—Delegations of Authority by the Assistant Secretary for Science and Education.**

5. Section 2.106 is amended by adding a new paragraph (a)(34) to read as follows:

**§ 2.106 Administrator, Agricultural Research Service.**

(a) * * *

(34) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a through 3710c).

* * * * *

For Subpart C.
Dated: May 5, 1987.

**Peter C. Myers,**
*Secretary of Agriculture.*

For Subpart G.
Dated: May 5, 1987.

**George S. Dunlop,**
*Assistant Secretary for Natural Resources and Environment.*

For Subpart N.
Dated: May 5, 1987.

**Orville G. Bently,**
*Assistant Secretary for Science and Education.*

[FR Doc. 87–10537 Filed 5–8–87; 8:45 am]
BILLING CODE 3410–03–M

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## Federal Crop Insurance Corporation

**7 CFR Part 400**

**[Docket No. 4214S]**

## General Administrative Regulations-Standards for Approval; Standard Reinsurance Agreement

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby issues a new Subpart L in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) to contain the Standards for Approval; Reinsurance Agreement Regulations combining the standards for financial approval (7 CFR Part 400, Subpart G) with the provisions for operational standards (7 CFR Part 400, Subpart I). The intended effect of this rule is to: (1) Modify financial standards and financial reporting requirements applicable to commercial insurance companies applying for a Standard Reinsurance Agreement with the Federal Crop Insurance Corporation, effective for the 1988 contract year (beginning July 1, 1987); (2) provide for the mandatory assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement; (3) provide that no assessment for any State guaranty fund may be computed or levied against companies for, or on account of, any premiums payable on policies of Multiple Peril Crop Insurance reinsured by FCIC; and (4) provide that all regulations with respect to the Standards for Approval—Standard Reinsurance Agreement be under one subpart of the CFR. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** May 11, 1987. Removal of subparts G and I effective July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, Telephone (202) 447–3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Standards for Approval in regard to procedures for insurance company eligibility, 7 CFR Part 400, Subpart I, were published as a final rule in the Federal Register on Tuesday, June 11, 1985, at 50 FR 24503.

The Standards for Approval with respect to financial standards and

financial reporting requirements for participation in an FCIC Standard Reinsurance Agreement were published as a final rule in the Federal Register on Friday, June 1, 1984, at 49 FR 22758. These regulations are currently contained in 7 CFR Part 400, Subpart G.

On Tuesday, July 1, 1986, FCIC published a notice of proposed rulemaking (NPRM) in the Federal Register at 51 FR 23782, proposing to issue a new Subpart L in Chapter IV of Title 7 of the Code of Federal Regulations (CFR) to contain the Standards for Approval; Reinsurance Agreement Regulations combining the standards for financial approval (7 CFR Part 400, Supart G), as modified by the proposed rule, with the provisions for operational standards (7 CFR Part 400, Subpart I).

The intended effect of the proposed rule was to modify financial standards and financial reporting requirements applicable to commercial insurance companies applying for a Standard Reinsurance Agreement with the Federal Crop Insurance Corporation, effective for the 1988 contract year (beginning July 1, 1987), and to provide that all regulations with respect to the standards for Approval—Standard Reinsurance Agreement be included in one subpart of the CFR.

The principal changes in the financial standards as outlined in 51 FR 23782 are:

1. Increase the minimum Investment Yield (IRIS) Ratio from 5 to 6 percent. The National Association of Insurance Commissioners (NAIC) recommended this change based on its 1984 review of insurer investments.

2. Decrease the ratio of surplus to an underwriting loss at a 400 loss ratio for insurers writing in one state. Previously, the ratio was 10 to 1 for one-state companies; the maximum is now 6 to 1.

3. Permit substitution of certain other financial information when the commercial company is not required to file an annual statement with a State Insurance Commission. Some insurance companies are exempt by their State Insurance Departments from filing annual statements. The annual statements provide basic information used by FCIC in the review and approval of potential and current reinsureds.

The Insurance Regulatory Information System (IRIS) Ratios in this rule were development by the NAIC. Their primary use is to assist State Insurance Departments to oversee the financial condition of insurers. FCIC uses them to evaluate the financial strength of applicants for reinsurance.

The public was given 60 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from National Ag' Underwriters, Inc. (NAUI), listing five suggested amendments to the rule.

Listed below are the NAUI comments and the sections of the rule affected:

1. *Section 400.141(f)* The comment states that smaller insurers do not use an independent public accountant and that to require them to do so would involve unnecessary expense. FCIC is of the opinion that the majority of Companies *do* use such accountants and finds no justification for amending this section.

2. *Section 400.149* NAUI takes issue with the determination that the Manager's decision is final in matters arising under this Subpart and the Reinsurance Agreement between the Company and takes the position that FCC is denying a Company redress in the courts. FCIC, by this determination, does not abrogate the rights of any Company to seek redress in litigation, it merely exercises it rights under the Agreement and will not change this section.

3. *Section 400.150(c)* The proposed rule requires that a Company must have 5 percent of its policies in a state to issue policies in that state. NAUI considers this figure to be too high because of the aberrant statistical nature of this standard and that a limit of 2 and one-half percent (2½%) is more appropriate. FCIC agrees with this and has changed the final rule accordingly.

4. *Section 400.150(c)* FCIC agrees with the NAUI comment that this section is at odds with § 400.141(h) which uses a "maximum possible" concept while actually defining a "maximum probable" concept and makes the change in § 400.141(h) accordingly. NAUI also comments that this section ignores outside reinsurance which is included in § 400.141(h). FCIC makes the recommended changes and makes further changes in § 400.141(h) and other sections of the rule to define "MPUL" as meaning "maximum probable underwriting loss."

This section is further amended to change the term "values" to "factors" as specified in the Minimum Surplus Table and to change 5 percent to 2½ percent as indicated in item 3 above.

5. *Section 400.152* FCIC agrees with NAUI's comment that any one of the sub-items (a) through 3(c) is sufficient to qualify a Company that failed to qualify because it had less than 8 IRIS results in the normal range at the last year-end examinations, therefore, all items are of equal weight and importance. FCIC accepts the recommendation made to redesignate § 400.152(c) (1), (2), and (3) as § 400.152 (c), (d), and (e), as contained herein.

On Thursday, February 26, 1987, FCIC published a notice of additional proposed rulemaking and extension of comment period in the Federal Register at 52 FR 5773, to: (1) Provide for the assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement in the event that a company reinsured under such Agreement is unable to falfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by FCIC by reason of a directive or order issued by a State Department of Insurance or by a court of competent jurisdiction; and (2) provide that no policy of insurance reinsured by FCIC, nor any claim, settlement, or adjustment action under such policy will provide a basis for a claim for damages, that the Corporation would not be liable for, against reinsured companies or their agents or employees, unless the claimant establishes that the basis of its claim for such damages was the result of the reinsured Company's or its agents' or employees' actions which were beyond the scope of their authority or was the result of their failure to substantially comply with FCIC's procedures in the handling of the claim or in servicing the insured's policy.

## Background

Most State laws regulating insurance provide for a guaranty fund assessment whereby the State obtains funds from regulated insurance companies licensed to operate within that State. The funds are used by the state to discharge any unfunded obligations of any such regulated insurahce company.

Standard Reinsurance Agreement between FCIC and a reinsured Company provides that, whenever a Company reinsured by FCIC is unable to fulfill its obligations to any policyholder reinsured under the Agreement, by virtue of an order or directive issued by a State Department of Insurance, or a court of competent jurisdiction, all such policies affected by such order or directive are immediately transferred to FCIC along with the obligations for all unpaid losses whether they occurred before or after such transfer. In addition, FCIC collects all funds with respect to all policies transferred and assumes from the Company the right to all uncollected premiums.

Since FCIC guarantees fulfillment of the Reinsured Company's obligations to insureds, the guarantee fund will not be required to pay on such policies. Any requirement by a State Department of

Insurance for guaranty fund assessment against insurance companies licensed to operate in a state who participate in the Standard Reinsurance Agreement with FCIC on policies reinsured by FCIC is unnecessary because, in reality, such obligations to insureds are and have been guaranteed by FCIC as a part of its reinsurance agreement.

Under the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (the Act), State and local laws or rules are not applicable to contracts or agreements of FCIC, or the parties thereto, to the extent that such contracts or agreements provide that such State or local laws or rules shall not apply, or that such laws or rules are inconsistent with such contracts or agreements (7 U.S.C. 1506(k)).

The Act further precludes recovery of assessments for the purpose of discharging unfunded obligations through additions to premium rates as provided by some of the state laws with respect to licensed insurance companies.

Rates charged by FCIC and the Reinsured Companies for insurance under the requirements of the Act must cover only anticipated indemnities and establish a reasonable reserve against unforeseen losses (7 U.S.C. 1506(b)(1)).

FCIC has determined that State laws or rules providing for guaranty fund assessment for the purpose of discharging unfunded obligations of insurance companies should be preempted because the Standard Reinsurance Agreement provides adequate assurance that, with respect to Multiple Peril Crop Insurance reinsured by FCIC, any such State requirements will be properly met.

It is therefore determined that no such unfunded obligations, as are provided for and required by some State laws of insurance practice, will arise under any FCIC reinsured multiple peril crop insurance business conducted in any State and that such business should not be subject to any guaranty fund assessment.

For this purpose, FCIC exercises the preemptive authority contained in 7 U.S.C. 1506(k) by: (1) Providing for the mandatory assumption by FCIC of all obligations for unpaid losses on policies reinsured under the Standard Reinsurance Agreement; and, (2) asserting that no assessment for any State guaranty fund may be computed or levied against companies for, or on account of, any premiums payable on policies of Multiple Peril Crop Insurance reinsured by FCIC.

In addition, FCIC more clearly defines the obligations of the Corporation, with respect to damages, by providing that no policy of insurance reinsured by FCIC will be the basis of a claim for damages which the FCIC would not be liable for unless the claimant establishes that the claim is based on the failure of the reinsured Company or its agents to properly follow FCIC procedures and instructions in the handling of the claim or servicing the insured's policy, or unless the Reinsured Company or its agents were acting outside the scope of their authority.

The losses paid by a reinsured Company, including the sum paid by the Company under any crop insurance contract reinsured by FCIC in settlement of any claim and in satisfaction of any judgment rendered on account of such claim, are computed in the ultimate net loss of the Company. Such ultimate net loss computation may also include interest and insured's court costs contained in a final judgment against the Company in a court of competent jurisdiction.

In order to assure that the portion of the liability for ultimate net losses which the Company cedes to FCIC as reinsurance is correct and justified, FCIC has determined that no policy of insurance reinsured by FCIC will be the basis for a claim for damages unless the claimant establishes in court, or in the case of a settlement, satisfies FCIC, that the reinsured Company failed to comply with FCIC procedures with respect to the claim, or in servicing the insured, or that the Company or its agents were acting beyond the scope of their authority.

Further, for the purpose of notice to the insureds, all Multi Peril crop insurance policies reinsured by the Corporation must be clearly identified as such.

In order for the reader to refer to provisions contained in 7 CFR Part 400, Subparts G and I, FCIC herewith provides a re-designation table to indicate the relocation of such previous provisions in 7 CFR Part 400, Subpart L:

| Old | New |
|---|---|
| *7 CFR Part 400, Subpart G:* | |
| 400.50 Applicability of Standards for Approval. | 400.143. |
| 400.51 Definitions | 400.141 and 142. |
| 400.52 Certification of submissions. | 400.150. |
| 400.53 Notification of deviation from Financial Standards. | 400.154. |
| 400.54 Revocation and non-acceptance. | 400.155. |
| 400.55 Qualifications for acceptability. | 400.150. |
| 400.56 Qualifications for less than acceptable; waiver. | 400.151 and 153. |
| 400.57 Reinsurance agreements. | 400.144. |
| 400.58 Eligibility for reinsurance agreements. | 400.145. |
| 400.59 Obligations of the Corporation. | 400.146. |
| 400.60 Limitations on Corporation's obligations. | 400.147. |
| 400.61 Obligations of participating insurance companies. | 400.148. |
| 400.62 Disputes | 400.149. |
| 400.63 OMB control numbers. | 400.157. |

The public was given an additional 30 days in which to submit written comments, data, and opinions on both the original proposed rule published in the **Federal Register** at 51 FR 23782, and the additional proposed rulemaking and extension of comment published in the **Federal Register** at 52 FR 5773. No further comments were received on the original proposed rule, and no comments were received on the notice of additional proposed rulemaking.

Accordingly, the proposed rule at 51 FR 23782, as amended by the additional rulemaking proposed at 52 FR 5773, is hereby adopted as final.

The Standard Reinsurance Agreement for the 1988 contract year will be issued to commercial insurance companies on July 1, 1987. In order for these commercial insurance company contractors to have sufficient time to study and be in compliance with these financial and operational requirements before entering into an agreement with FCIC, it is necessary that these Standards for Approval be made effective as soon as possible. Therefore, good cause is shown for making this rule effective in less than 30 days.

**List of Subjects in 7 CFR Part 400**

Crop insurance, Reinsurance agreement, Standards for approval.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), the Federal Crop Insurance Corporation (FCIC) hereby removes and reserves Subparts G and I and adds a new Subpart L to be known as 7 CFR Part 400, Subpart L, General Administrative Regulations—Reinsurance Agreement-Standards for Approval, effective for the 1988 and subsequent contract years (beginning July 1, 1987), as follows:

**§§ 400.50—400.56 (Subpart G) [Removed and reserved]**

1. Subpart G consisting of §§ 400.50 through 400.56 is removed and reserved.

**§§ 400.75—400.81 (Subpart I) [Removed and reserved]**

2. Subpart I consisting of §§ 400.75 through 400.81 is removed and reserved.

3. Subpart L consisting of § 400.141 through 400.157 is added to read as follows:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

### Subpart L—Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract Years

Sec.


400.141 Definitions.
400.142 Definitions, IRIS Ratios.
400.143 Applicability.
400.144 Availability of the Standard Reinsurance Agreement.
400.145 Eligibility for Standard Reinsurance Agreements.
400.146 Obligations of the Corporation.
400.147 Limitations on the Corporation's obligations.
400.148 Obligations of participating insurance company.
400.149 Disputes.
400.150 General qualifications.
400.151 Qualifying when a State does not require that a financial statement be filed.
400.152 Qualifying with less than eight IRIS Ratios in the usual range.
400.153 Qualifying by waiver.
400.154 Notification of deviation from financial standards.
400.155 Revocation and non-acceptance.
400.156 State action preemptions.
400.157 OMB control numbers.


### Subpart L—Reinsurance Agreement—Standards for Approval—Regulations for the 1988 and Subsequent Contract years

**Authority:** Secs 501–520, Pub. L. 75–430, 52 Stat. 72–77 (7 U.S.C. 1501–1520), as amended.

**§ 400.141 Definitions.**

In addition to the terms defined in the Standard Reinsurance Agreement, the following terms as used in this rule are defined to mean:

(a) "Company" means the company reinsured by FCIC or apply to FCIC for a Standard Reinsurance Agreement.

(b) "Corporation" means the Federal Crop Insurance Corporation.

(c) "Current Assets" mean assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business, or within one year. if the operating cycle is less than one year.

(d) "Current Liabilities" mean liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time.

(e) "FCIC" means the Federal crop Insurance Corporation.

(f) "Financial statement" means the audited financial statement of an insurer seeking FCIC reinsurance prepared annually by an independent public accountant in accordance with generally accepted accounting principles; together with related exhibits, schedules, and explanations. This is the financial statement of an insurer submitted to the State Insurance Department if required by any state in which the insurer does business.

(g) "Guaranty fund assessments" means the state administered program utilized by some state insurance regulatory agencies to obtain funds with which to discharge unfunded obligations of insurance companies licensed to do business in that state.

(h) "Insurer" means an insurance company that is licensed or admitted as such in any State, Territory, or Possession of the United States.

(i) "MPUL" means the maximum probable underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

(j) "Nonaffiliated company" means an insurer (1) that is not owned or controlled by the reinsured, (2) which does not own or control the reinsured, or (3) which is not jointly owned or controlled with the reinsured by any person or entity.

(k) "Obligations" mean crop or indemnity for crop loss on policies reinsured under the Standard Reinsurance Agreement.

(l) "Plan of Operation" means a statment submitted to FCIC each year in which a reinsured or a prospective reinsured specifies the reinsurance options it wishes to use, its marketing plan, and similar information as required by the Corporation.

(m) "Reinsurance agreement" means an agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

(n) "Reinsured" means the insurer which is a party to the Standard Reinsurance Agreement with FCIC.

(o) "Standard Reinsurance Agreement" (Agreement) means the reinsurance agreement between the reinsured and FCIC.

**§ 400.142 Definitions, IRIS Ratios.**

As used in this rule, with respect to the IRIS Ratios, the following terms are defined to mean:

(a) "Agents' Balances to Surplus Ration" means premiums and agents' balances in the course of collection, divided by surplus.

(b) "Change in Surplus Ratio" means the increase or decrease in surplus, divided by the prior year-end surplus, with surplus adjusted for deferred acquisition expenses.

(c) "Change in Writings Ratio" means the increase or decrease in net premiums written, divided by the prior year's net premiums written.

(d) "Estimated Current Reserve Deficiency to Surplus Ratio" means the estimated current deficiency or redundancy in the liabilities for losses and loss adjustment expenses, divided by surplus. The estimated deficiency or redundancy is the net earned premium, times the average of the developed loss ratios from the one-year and the two-year reserve development to surplus ratios, minus the liabilities for losses and loss adjustment expenses reflected in the Company's annual or financial statement.

(e) "Investment Yield Ratio" means the net investment income divided by the average invested assets. Invested assets are: investments, cash, and investment income due and accrued, less borrowed money.

(f) "IRIS Ratios" mean the eleven financial ratios contained in the National Association of Insurance Commissioner's Insurance Regulatory Information System (IRIS). They are calculated using data from an insurer's annual statement for the accounting period ending the previous December 31st, and are expressed as percentages.

(g) "Liabilities to Liquid Assets Ratio" means liabilities divided by liquid assets. Liquid assets are cash, investments, investment income due and accrued, and agents' balances or uncollected premiums deffered and not yet due, less investments in affiliates and real estate in excess of 5% of liabilities.

(h) "One-Year Reserve Development to Surplus Ratio" means the one-year development of losses and loss adjustment expenses, divided by the prior year-end surplus, The one-year reserve development is the net payments during the current year for losses incurred more than one year prior, plus current liabilities for such losses, minus the liabilities on such losses at the prior year end.

(i) "Premium to Surplus Ratio" means net premiums written, divided by surplus.

(j) "Surplus Aid to Surplus Ratio" means surplus aid from reinsurance, divided by surplus. Surplus aid is estimated by multiplying the ratio of ceded commissions to ceded premiums by the unearned premiums on reinsurance ceded to nonaffiliated companies.

(k) "Two-Year Overall Operating Ratio" means the sum of the following two ratios: losses and loss expenses incurred, dividends to policyholders, and net investment income, all divided by net premiums earned; and other underwriting expenses, less income, divided by net premiums written.

(l) "Two-Year Reserve Development to Surplus Ratio" means a ratio calculated the same as the one-year reserve development to surplus ratio, except that a two-year base period is used.

(m) "Usual Range" means the range of IRIS Ratio results that has been established by the National Association of Insurance Commissioners as usually indicative of financially sound insurers.

**§ 400.143 Applicability.**

The standards contained herein shall be applicable to insurers who apply for or enter into a Standard Reinsurance Agreement effective for the 1988 and subsequent contract years.

**§ 400.144 Availability of the Standard Reinsurance Agreement.**

Federal Crop Insurance Corporation will offer Standard Reinsurance Agreements to eligible Companies under which the Corporation will reinsure policies which the Companies issue to producers of agricultural commodities. The Standard Reinsurance Agreement will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and provisions of the regulations of the Corporation found at Chapter IV of Title 7 of the Code of Federal Regulations.

**§ 400.145 Eligibility for Standard Reinsurance Agreements.**

A Company will be eligible to participate in an Agreement if the Corporation determines the Company meets the standards and reporting requirements of this subpart.

**§ 400.146 Obligations of the Corporation.**

The Agreement will include the following among the obligations of the Corporation.

(a) The Corporation will reinsure policies written on terms, including premium rates, approved by the Corporation, on crops and in areas approved by the Corporation, and in accordance with the provisions of the Federal Crop Insurance Act, as amended, and the provisions of these regulations.

(b) The Corporation will pay a portion of each producer's premium on the policies reinsured under the Agreement, as authorized by the Federal Crop Insurance Act, as amended.

(c) The Corporation will assume alll obligations for unpaid losses on policies reinsured under the Agreement in the event any company reinsured under the Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by the Corporation by reason of a directive or order issued by any State Department of Insurance, State Commissioner of Insurance, any court of law having competent jurisdiction or any other similar authority of any jurisdiction to which the Company is subject.

(d) Each policy reinsured by the Corporation must be clearly identified by including in bold face or large type the following statement as item number 1 in its General Provisions:

**This insurance policy is reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended (the Act) (7 U.S.C. 1501 *et seq.*), and all terms of the policy and rights and responsibilities of the parties are specifically subject to the Act and the regulations under the Act published in Chapter IV of 7 CFR.**

**§ 400.147 Limitations on Corporation's obligations.**

The Agreement will include the following among the limitations on the obligations of the Corporation.

(a) The Corporation may, at any time, suspend its obligation to accept additional liability from the Company by providing written notice to that effect.

(b) The obligations of the Corporation under the Agreement are contingent upon the availability of appropriations.

(c) The Corporation will not reinsure any policy sold by the Company to a producer after the date Company receives notice that the Corporation has determined that the producer is ineligible to receive Federal Crop Insurance.

**§ 400.148 Obligations of participating insurance company.**

The Agreement will include the following among the obligations of the Company.

(a) The Company shall follow all applicable Corporation procedures in its administration of the crop insurance policies reinsured.

(b) The Company shall make available to all eligible producers crop insurance for the crops and in the areas which are stated in its plan of operation as approved by the Corporation.

(c) The Company shall provide the Corporation, on forms approved by the Corporation, all information that the Corporation may deem relevant in the administration of the Agreement, including a list of all applicants refused coverage and all insured producers cancelled from insurance, along with the reason for such action, the crop program and the amount of coverage for each.

(d) The Company shall utilize only loss adjustment procedures and methods that are approved by the Corporation.

(e) The Company shall sell the policies covered under the Agreement through licensed agents or brokers who have successfully completed a training course approved by the Corporation.

(f) The Company shall not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex age, handicap, or national origin.

**§ 400.149 Disputes.**

All disputes arising under this subpart and the Standard Reinsurance Agreement entered into by the Company and the Corporation must be submitted for decision to the Manager of the Corporation. The decision of the Manager shall be final unless the Company requests reconsideration in writing within 45 days of the receipt of the decision. Any hearing provided by the Corporation will be of an informal nature and the rules of evidence will not apply. Pending final decision of the dispute, the Company will proceed diligently with the performance of the Agreement, as required by the Corporation.

**§ 400.150 General qualifications.**

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be a licensed or admitted insurer in any State, Territory, or Possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent financial statement, that is at least equal to the MPUL for the gross premium proposed to be reinsured times the appropriate Minimum Surplus Factor, found in the Minimum Surplus

Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least 2 and one-half percent (2½%) of all its reinsured gross premium is written in that state;

MINIMUM SURPLUS TABLE

| Number of States in which a company issues FCIC-reinsured policies: | Minimum surplus factor (multiply by underwriting loss at a 400 loss ratio) |
|---|---|
| 1 | 8 |
| 2 through 10 | 5 |
| 11 or more | 4 |

(d) Have at least eight of its eleven IRIS ratios, based on its most recent financial statement, fall within the usual ranges stipulated in the Usual Ranges of IRIS Ratios Table:

USUAL RANGES OF IRIS RATIOS TABLE

| IRIS ratio | Usual range (percent) | |
|---|---|---|
| | From | To |
| Premium to Surplus | | +300 |
| Change in Writings | −33 | +33 |
| Surplus Aid to Surplus | | +25 |
| Two-Year Overall Operating Ratio | | +100 |
| Investment Yield | | +6 and up |
| Change in Surplus | −10 | +50 |
| Liabilities to Liquid Assets | | +105 |
| Agent's Balances to Surplus | | +40 |
| One-Year Reserve Development to Surplus | | +25 |
| Two-Year Reserve Development to Surplus | | +25 |
| Estimated Current Reserve Deficiency to Surplus | | +25 |

(e) Submit to FCIC with its Plan of Operation each year a copy of the latest financial statement, certified to by the President and another officer of the insurer, and filed with the Insurance Department of any state in which the Company does business; and

(f) Submit to FCIC any insurance department examination report, loss reserve certification, independent auditor's letter relating to the adequacy of the Company's internal control, and any other appropriate financial information, as requested by FCIC.

**§ 400.151 Qualifying when a State does not require that a financial statement be filed.**

An insurer which is exempt by the Insurance Department of the state from submitting a financial statement to the state must, in addition to the requirements of § 400.150 (a), (b), (d), and (f):

(a) Submit to FCIC with its Plan of Operation each year a copy of the latest financial statement certified to by the President and another officer of the insurer, which, if not exempted, would have been filed with the Insurance Department of any state in which it does business;

(b) Have a ratio of current assets to current liabilities of at least 1.2 to 1; and

(c) Have surplus at least equal to the factor specified in the Minimum Surplus Table, times its MPUL from the policies to be reinsured by FCIC.

**§ 400.152 Qualifying with less than eight IRIS ratios in the usual range.**

An insurer with less than eight of the IRIS ratios in the usual range (required by § 400.150(d)) may qualify if, in addition to the requirements of § 400.150 (a), (b), (c), (e), and (f), the insurer:

(a) Submits a plan, acceptable to FCIC, to eliminate the financial deficiency indicated by the IRIS ratios;

(b) Has a B+ rating or higher in the latest edition of "Best's Insurance Reports," is listed in the latest edition of "Surety Companies Acceptable on Federal Bonds," or is currently approved under the provisions of Treasury Department Circular No. 570; and

(c) Has a ratio of current assets to current liabilities of at least 1.2 to 1, and a surplus at least equal to the factors specified in the Minimum Surplus Table times its MPUL from the policies to be reinsured by FCIC;

(d) Has an irrevocable source of surplus such that conditions in paragraph (c) of this section are met; or

(e) Has a binding agreement with another insurer that qualifies such insurer under this Part 400 to assume financial responsibility in the event of the reinsured's failure to meet its obligations on FCIC reinsured policies.

**§ 400.153 Qualifying by waiver.**

If an insurer does not qualify under any of the above methods because of unique circumstances and FCIC determines that the insurer is otherwise financially sound, FCIC may enter into a reinsurance agreement with the insurer.

**§ 400.154 Notification of deviation from financial standards.**

An insurer must immediately advise FCIC if it deviates from compliance with any of the requirements of this chapter. FCIC may require the insurer to update its financial statement during the year. FCIC may terminate the reinsurance agreement if the Company is out of compliance with the requirements of this chapter.

**§ 400.155 Revocation and non-acceptance.**

(a) FCIC will deny reinsurance to any insurer or will terminate any existing reinsurance agreement if any false or misleading statement is made in the financial statement or any other document submitted by the insurer in connection with its qualification for FCIC reinsurance.

(b) No policy issued by an insurer subsequent to revocation of a reinsurance agreement will be reinsured by FCIC. Policies in effect at the time of revocation will continue to be reinsured by FCIC for the balance of the crop year then in effect for the applicable crop. However, if materially false information is made to the Corporation and that information directly affects the ability of the Company to perform under the Agreement, or if the Company commits any fraudulent or criminal act in relation to the Standard Reinsurance Agreement or any policy reinsured under the Agreement, FCIC may require that the Company transfer the servicing and contractual right to all business in effect and reinsured by the Corporation to the Corporation.

**§ 400.156 State action preemptions.**

(a) No policyholder shall have recourse to any state guaranty fund or similar state administered program for crop or premium losses reinsured under such Standard Reinsurance Agreement. No assessments for such State funds or programs shall be computed or levied on companies for or on account of any premiums payable on policies of Multiple Peril Crop Insurance reinsured by the Corporation.

(b) No policy of insurance reinsured by the Corporation and no claim, settlement, or adjustment action with respect to any such policy shall provide a basis for a claim of damages against the Company issuing such policy, other than damages to which the Corporation would be liable under federal law if the Corporation had issued the policy of insurance under its direct writing program, unless the claimant establishes in a court of competent jurisdiction, or to the satisfaction of the Corporation in the event of a settlement, that such damages were caused by the culpable failure of the Company to substantially comply with the Corporation's procedures or instructions in the handling of the claim or in servicing the insured' policy, or unless the Company or its agents were acting outside the scope of their authority (apparent or implied) in performing or omitting the actions claimed as a basis for the damage action.

**§ 400.157 OMB control numbers.**

OMB control numbers are contained in Subpart H to Part 400 in Title 7 CFR.

Done in Washington, DC, on April 16, 1987.

David W. Gabriel,

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 87-10485 Filed 5-8-87; 8:45 am]

BILLING CODE 3410-08-M

## 7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449

[Docket No. 42965]

## General Amendment; Various Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby amends the Grain Sorghum, Rice, Peanut, Sunflower, Sugar Beet, Soybean, Corn, Dry Bean, Fresh Market Tomato, Pepper, Popcorn, and Fresh Market Sweet Corn Corp Insurance Regulations (7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449, respectively), effective for the 1988 and succeeding crop years. The intended effect of this rule is to: (1) Provide that premium may be deducted from a replant payment; (2) provide that the original liability is reinstated on the replanted crop when such crop is replanted in accordance with the requirements of the original planting; and (3) provide that, in cases where seasonal conditions dictate a method different from the requirements of the original planting, the liability will be reduced by the amount of the replant payment. The authority for the promulgation of this rule is contained in the Federal Corp Insurance Act, as amended.

**EFFECTIVE DATE:** April 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review dates established for the regulations affected by this action remain unchanged.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 25, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Background

Beginning with the 1981 crop year, replant payment provisions were initiated by the Corporation on several crops to be limited to the actual cost of replanting. The replant payment was considered by the Corporation to be an indemnity payment and the amount of premium owed was deducted from the replant payment in the same manner as if was deducted from an indemnity payment.

Some persons questioned the appropriateness of applying the replant payment against premium owed. They contended that deducting the replant payment from any subsequent indemnity is unfair in that there were extra expenses incurred for replanting, and that such actions did, in most cases, result in lower losses for FCIC. It was generally agreed that a replant payment should not increase the total liability under the contract.

Effective with the 1985 crop year, the Corporation amended the replant payment provisions to provide that premiums owed may be deducted from the replant payment only if the billing date had passed, and that replant payments continue to be regarded as part of the total liability of the contract but not be deducted from subsequent indemnities until the sum equals the total liability.

It was determined that the deduction of premium owed only after the billing date had passed hampered the Corporation's obligation to collect premium in a timely and businesslike manner.

The present provisions in the subject policies provide that premium owed may be deducted from a replant payment and reads as follows:

> Any unpaid amount due us may be deducted from any indemnity payable to you or from a replant payment if the billing date has passed on the date you are paid the replant payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

The insurance contracts provide that the premium is due and payable when insurance attaches, usually at the time of planting. The Corporation has determined, as a matter of policy, that payment will not be demanded until approximately the time of harvest or the time of loss whichever is earlier.

Therefore, the Corporation delays billing until approximately harvest time so that the insured may pay the premium from the proceeds of the crop or from any indemnity which may be due.

If there is a substantial loss during the period before the final planting date, it is to the benefit of both the insured and the Corporation that the crop be replanted. The contracts require that replanting be done if time permits. For this purpose the Corporation pays a set amount not to exceed the actual cost of replanting. However, since the premium is due and owing to the Corporation before the time of replanting, good business practices require that the replanting payment be set off against the outstanding debt owed to the Corporation. The replanting payment is in the nature of an indemnity.

Since the premium is due and owing at the time insurance attaches, the insured's replanting payment is used to reduce the amount of premium outstanding, thereby reducing the amount the insured must pay to the Corporation at the time of harvest. Application of the payment to premium due will increase the collection of accounts due to the Corporation in accordance with sound business practices and will reduce the confusion caused by making payments to insureds and shortly thereafter billing them for premium due on the same contract.

In exchange for replanting, the Corporation pays a replanting payment. The full guarantee will be applicable to the replanted crop and the basis upon which any subsequent loss will be paid,

as provided in the contract. No deduction will be made in the amount of loss for the replant payment. As a further consideration in exchange for replanting, the insured's premium determined for the full crop guarantee is not increased when a replant payment is made.

By this means, the Corporation provides incentive to the policyholder to do all possible to replant to the insured crop by defraying most of the cost involved in replanting and by absorbing any premiums increased normally associated with assumption of increased liability. Taken together, the replant payment and absorption of premium increase are considered jointly beneficial to the insured producer and cost effective to the Corporation in lieu of full indemnity payment under the terms of insurance.

On Friday, January 30, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 3013 to amend the Grain Sorghum, Rice, Peanut, Sunflower, Sugar Beet, Soybean, Corn, Dry Bean, Fresh Market Tomato, Pepper, Popcorn, and Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449, respectively), effective for the 1988 and succeeding crop years, to allow the Corporation to: (1) Deduct premium from a replant payment without regard to billing dates; and (2) reinstate full liability on the replanted crop.

The public was given 60 days in which to submit written comments, data, and opinions, on the proposed rule. One comment was received from the Crop Hail Actuarial Association (CHIAA). CHIAA recommended that FCIC review the requirement that the crop must be planted in accordance with the requirements of the initial planting.

The provision referred to by CHIAA was contained in both the preamble to the proposed rule published at 52 FR 3013, and in the amendatory language. The preamble stated: "The full guarantee will be reinstated only if the crop is replanted in accordance with the requirements for planting the initial crop. For example, if the initial crop was required to be planted in rows far enough apart to be cultivated, replanting by broadcast will not result in reinstatement of the full guarantee. In that example, replanting would result in the guarantee being reduced by the amount of the replanting payment."

The amendatory language in the proposed amendment to section 9 of the policies stated: "To be eligible for transfer of liability without reduction, the crop must be planted in accordance with the requirements of the initial planting."

Citing sunflowers as an example of several crops which must be initially planted in rows far enough apart to permit cultivating, CHIAA indicated the sunflower crop could feasibly be, and in many counties is, replanted by broadcast method in keeping with local farming practices.

In reviewing the scope of the rule, FCIC agrees in principle with the comment by CHIAA and has determined that, requiring the crop to be replanted in accordance with the requirements of the initial planting in order to be eligible for transfer of full liability, in all counties and without exception, imposes an unnecessary restriction on the policyholder in counties where seasonal conditions dictate replanting by broadcast method if replanting is to be accomplished timely.

However, in those circumstances where a producer may elect to replant by a broadcast method in order to complete planting timely, a full crop may not be produced. This would have the effect of reinstating full liability on a crop that would not reach 100% productivity because of difficulty in conducting a good cultivation program.

If full reinstatement of liability were to be made on such a crop, the net result would be that the Corporation would be overinsuring.

In order to provide sound actuarial insurance coverage on a crop replanted by a broadcast method when the original planting pattern was by a different method, it would be necessary to reduce the liability by the amount of the replant payment because of the inherent risk involved.

For this reason, FCIC amends the rule to provide that, if because of seasonal conditions it is an accepted practice in an area that a crop may be replanted by a broadcast method, and the insured replants by such method in order for the crop to be planted timely, the Corporation will transfer to the replanted crop the original amount of liability reduced by the amount of the replant payment.

However, in areas where the seasonal conditions do not prescribe broadcast as a means of replanting an insured crop, FCIC will require that the crop be replanted in accordance with the requirements of the initial planting in order to be eligible for a replanting payment. In such cases, the Corporation will transfer the original liability to the replanted crop with no reduction of liability by the amount of the replant payment and no increase in the original premium charged for insurance coverage.

FCIC has further determined that, since the modification of the eligibility requirement for transfer of liability with respect to replanting is in the nature of removing a restriction on those policyholders who replant by broadcast method in accordance with seasonal conditions, further notice and public comment is unnecessary.

Therefore, with the exception of the amendment outlined above, the proposed rule, as published at 52 FR 3013, is hereby adopted as a final rule.

In order to provide all producers sufficient notice of the replant payment provisions contained herein, it is found necessary that these provisions be made available as soon as possible. For this reason, good cause is shown for making this rule effective April 30, 1987.

**List of Subjects in 7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449**

Crop insurance, Grain sorghum, Rice, Peanut, Sunflower, Sugar beet, Soybean, Corn, Dry bean, Fresh market tomato, Pepper, Popcorn, Fresh market sweet corn.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Grain sorghum, Rice, Peanut, Sunflower, Sugar beet, Soybean, Corn, Dry bean, Fresh market tomato, Pepper, Popcorn, and Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449, respectively), effective for the 1988 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Parts 420, 424, 425, 428, 430, 431, 432, 433, 444, 445, 447, and 449 continues to read as follows:

**Authority:** Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. In §§ 420.7(d), 424.7(d), 425.7(d), 428.7(d), 430.7(d), 431.7(d) 432.7(d), 433.7(d), 444.7(d), 445.7(d), 447.7(d), and 449.7(d), section 6 of the FCIC Policy is revised in its entirety to read as follows:

**§§ 420.7, 424.7, 425.7, 428.7, 430.7, 431.7 432.7, 433.7, 444.7, 445.7, 447.7, and 449.7 The application and policy.**

* * * * *

(d) * * *

6. Deduction for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from any replant payment, or from any loan or payment due you under any Act of Congress or program administered by the

United States Department of Agriculture or its Agencies.

* * * * *

3. In §§ 420.7(d), 424.7(d), 428.7(d), 430.7(d), 444.7(d), 445.7(d), and 449.7(d), section 9 of the FCIC Policy is amended by adding subsections 9.f.(3) and (4) to read as follows:

**§§ 420.7, 424.7, 428.7, 430.7, 444.7, 445.7, and 449.7 The application and policy.**

* * * * *

(d) * * *

9. Claim for indemnity.

* * * * *

f. * * *

(3) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(4) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premuim charged for insurance coverage.

* * * * *

4. In § 447.7(d), section 9 of the FCIC Policy is amended by adding subsections 9.f.(4) and (5) to read as follows:

**§ 447.7 The application and policy.**

* * * * *

(d) * * *

9. Claim for indemnity.

* * * * *

f. * * *

(4) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(5) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premuim charged for insurance coverage.

* * * * *

5. In §§ 425.7(d), 432.7(d), and 433.7(d), section 9 of the FCIC Policy is amended by adding subsections 9.g.(3) and (4) to read as follows:

**§§ 425.7, 432.7, and 433.7 The application and policy.**

* * * * *

(d) * * *

9. Claim for indemnity.

* * * * *

g. * * *

(3) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(4) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premium charged for insurance coverage.

* * * * *

6. In § 447.7(d), section 17 of the FCIC Policy is amended by redesignating present subsections j. through l. as k. through m. respectively, and by adding a new subsection 17.j. to read as follows:

**§ 447.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

j. "Replant payment" that means payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

7. In § 432.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections k. through n. as l. through o. respectively, and by adding a new subsection 17.k. to read as follows:

**§ 432.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

k. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.g. of this policy which payment is subject to offset for premium owed.

* * * * *

8. In §§ 420.7(d), 428.7(d), and 431.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections k. through m. as l. through n. respectively, and by adding a new subsection 17.k. to read as follows:

**§§ 420.7, 428.7, and 431.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

k. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

9. In § 424.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections k. through o. as l. through p. respectively, and by adding a new subsection 17.k. to read as follows:

**§ 424.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

k. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

10. In § 430.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections l. through n. as m. through o. respectively, and by adding a new subsection 17.l to read as follows:

**§ 430.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

l. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

11. In § 433.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections l. through n. as m. through o. respectively, and by adding a new subsection 17.l to read as follows:

**§ 433.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

l. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.g. of this policy which payment is subject to offset for premium owed.

* * * * *

12. In § 425.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections l. through o. as m. through p. respectively, and by adding a new subsection 17.l. to read as follows:

**§ 425.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

l. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.g. of this policy which payment is subject to offset for premium owed.

* * * * *

13. In § 449.7(d), section 17 of the FCIC Policy is amended by redesignating the

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present subsections p. through u. as q. through v. respectively, and by adding a new subsection 17.p. to read as follows:

**§ 449.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

p. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

14. In § 444.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections s. through w. as t. through x. respectively, and by adding a new subsection 17.s. to read as follows:

**§ 444.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

s. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

15. In § 445.7(d), section 17 of the FCIC Policy is amended by redesignating the present subsections t. through w. as u. through x. respectively, and by adding a new subsection 17.t. to read as follows:

**§ 445.7 The application and policy.**

* * * * *

(d) * * *

17. Meaning of Terms.

* * * * *

t. "Replant payment" means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

* * * * *

Done in Washington, DC, on April 20, 1987.

**David W. Gabriel,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 87-10484 Filed 5-8-87; 8:45 am]

BILLING CODE 3410-08-M

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**Commodity Credit Corporation**

**7 CFR Part 1493**

**[Amdt. 3]**

**Export Credit Guarantee Program (GSM-102) and Intermediate Export Credit Guarantee Program (GSM-103); Coverage of Freight Costs and Marine War Risk Insurance**

**AGENCY:** Commodity Credit Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103) regulations to permit freight costs and marine and war risk insurance to be covered by the payment guarantees issued under these programs for all U.S. agricultural commodities. Prior to this rule change, freight costs could only be covered by payment guarantees on export sales of breeding animals. This rule will help promote the export of other U.S. agricultural commodities since a U.S. exporter would be able to offer credit to the foreign buyer for the costs of freight and marine and war risk insurance as well as the commodity cost, if the commodity is sold to the foreign buyer on c&f or c.i.f. basis.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** L.T. McElvain, Director, CCC Operations Division, Export Credits, Foreign Agricultural Service, USDA, Washington, DC 20250, Telephone: (202) 447-0225.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

This action has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulations 1512-1 and has been classified as "not major" since the rule would not have any of the effects specified in those documents.

To the extent that the provisions of the Regulatory Flexibility Act apply, if any, the General Sales Manager, Foreign Agricultural Service (FAS), certifies that this rule will not have a significant economic impact on a substantial number of small entities since there will not be a substantial number of such entities affected by this rule. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

An assessment of the impact of the rule on the environment was made, and based on this evaluation, it has been determined that this action is not a major federal action and will have no foreseeable significant effect on the quality of the human environment. Consequently, no environmental impact statement is necessary for this rule. The environmental assessment is available for review in Room 4503, South Building, USDA, during normal business hours.

**Proposed Rule**

On March 19, 1987, CCC published in the **Federal Register** (52 FR 8605) a notice of proposed rule making, setting forth a proposal to amend the CCC Export Credit Guarantee Program (GSM-102) and the CCC Intermediate Export Credit Guarantee Program (GSM-103) regulations (7 CFR Part 1493) to allow, upon CCC's approval, GSM-102 and GSM-103 coverage for freight and marine and war risk insurance if the commodity is sold to the foreign buyer on c&f or c.i.f. basis. This proposal would apply to all U.S. agricultural commodities and would permit the freight and marine and war risk insurance to be included in the port value of the commodity. Thus, the exporter or the exporter's assignee would be protected against loss on the commodity cost including the freight and marine and war risk insurance cost from defaults in payment by foreign banks due to commercial or noncommercial reasons when commodities are sold on deferred payment terms. The proposed rule proposed amendments to 7 CFR 1493.2 (f) and (o) to redefine "exported value" and "port value" to include on CCC's approval, freight and insurance for all agricultural commodities.

**Comments**

Sixty six Written comments were received from (a) various organizations and associations that promote exports of U.S. agricultural commodities, (b) exporters of various U.S. agricultural commodities, (c) financial institutions that finance export sales of U.S. agricultural commodities, (d) U.S. ports that handle exports of agricultural commodities, (e) State legislators and U.S. Senators and U.S. Representatives, (f) individuals interested in the promotion of agricultural commodities, and (g) a trade association that represents over 100 U.S. firms that underwrite marine and war risk insurance. In addition two comments were received by phone from the offices of two U.S. Representatives.

All of the above commentators, with one exception, fully supported the proposal and recommended that the proposal be implemented without qualification. The trade association representing U.S. underwriters of marine and war risk insurance suggested that the definition of "exported value" and "port value" should be redefined to make clear that marine and war risk insurance would only be covered if the sale was made on a c.i.f. basis. Without such clarification, this commentator felt the proposal could be interpreted to

mean that CCC would cover insurance even if the commodity was sold on a c&f basis. This commentator also urged that in order to avoid discrimination against American marine insurers by our trading partners that have imposed restrictions that prohibit American marine insurers from competing, CCC should require that the insurance be placed with only a company authorized to do business in one of the States of the United States. As an alternative, this commentator felt that CCC could adopt the policies employed by the Agency for International Development (AID). According to the commentator, AID requires that if the country receiving the aid from the United States discriminated against any marine insurance company authorized in the United States, then any AID financed commodity shipped to that country must be insured with a company in the United States.

CCC agrees that the definition of "exported value" and "port value" should be changed to make clear that marine and war risk insurance will only be covered on sales that are made on a c.i.f. basis. Accordingly, these changes are reflected in § 1493.2 (f) and (o). With respect to responding to restrictions on insurance from U.S. underwriters, it is CCC's position that this is more of a policy matter rather than a regulatory matter. The rule requires CCC's approval to include either freight or insurance costs in the port or exported value. Therefore, if CCC determines it appropriate in light of these concerns, CCC could require that GSM–102 or GSM–103 coverage would only cover sales made on f.a.s., f.o.b., or c & f basis.

**List of Subjects in 7 CFR Part 1493**

Agricultural commodities, Credit, Exports, Financing, Guarantees.

**PART 1493—[AMENDED]**

Accordingly, Part 1493, Subpart A, of Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart A of Part 1493 is revised to read as follows:

**Authority:** Sec. 5(f), Pub. L. 80–66, 62 Stat. 1072, as amended by Sec. 405(a), Pub. L. 98–623, 98 Stat. 3409 (15 U.S.C. 714c(f)); Sec. 4(b), Pub. L. 89–808, 80 Stat. 1537, as amended by Sec. 101, Pub. L. 95–501, 92 Stat. 1685 and Sec. 1131, Pub. L. 99–198, 99 Stat. 1486 (7 U.S.C. 1707a(b)); 15 U.S.C. 714b(d).

2. Section 1493.2 is amended by revising paragraphs (f) and (o) to read as follows:

**§ 1493.2 Definition of terms.**

* * * * *

(f) "Exported value" means the value of the commodity exported under the payment guarantee, f.a.s. or f.o.b. basis point of export, except that "exported value" may, upon approval by CCC, include freight costs for the commodity if the commodity is sold on c&f basis, and freight and marine and war risk insurance cost for the commodity if the commodity is sold on c.i.f. basis.

* * * * *

(o) "Port value" means the total value of the export credit sale, less any discounts or allowances, f.a.s. or f.o.b. basis at U.S. points of export. Port value may, upon approval by CCC, include freight costs for the commodity if the export credit sale is made c&f basis, less any discounts or allowances, and freight and marine and war risk insurance for the commodity if the commodity is sold on c.i.f. basis, less any discounts or allowances. Such values shall include the amount of the upward loading tolerance, if any, as provided for by the export credit sales contract.

* * * * *

Dated: May 1, 1987.

**George J. Pope,**

*Acting General Sales Manager and Associate Administrator, FAS and Vice President, Commodity Credit Corporation.*

[FR Doc. 87–10638 Filed 5–8–87; 8:45 am]

BILLING CODE 3410–10–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 87–ANE–13; Amdt. 39–5609]**

### Airworthiness Directives; Hamilton Standard Model 14SF–5 and 14SF–7 Propellers

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires an initial and repetitive visual inspections for cracks, and replacement when needed, of the plastic "Rynite" blade retaining rings on Hamilton Standard 14SF–5 and 14SF–7 propellers. The AD is needed to prevent failure of the blade retaining rings, which could result in loss of the ring and severe damage to the blade retention system, with possible propeller unbalance.

**DATES:** Effective—May 21, 1987.

Compliance—As required in the body of the AD.

Comments for inclusion in the docket must be received on or before June 10, 1987.

Incorporation by Reference—Approved by the Director of the Federal Register on May 21, 1987.

**ADDRESSES:** Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87–ANE–13, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 87–ANE–13".

Comments may be inspected at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable alert service bulletin (ASB) may be obtained from Hamilton Standard Division of United Technologies Corporation, Windsor Locks, Connecticut 06096. A copy of the ASB is contained in Rules Docket Number 87–ANE–13, at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Martin Buckman, Aerospace Engineer, ANE–110, Engine and Propeller Standards Staff, Federal Aviation Administration, New England Region, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273–7079.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that the plastic "Rynite" blade retaining rings on Hamilton Standard Model 14SF–5 and 14SF–7 propellers installed on, but not limited to, DeHavilland Dash 8 and Aerospatiale/Aeritalia ATR–42 aircraft are susceptible to cracks, which can result in loss of the retaining ring and possible damage to the blade retention system leading to severe vibration. There have been reports of at least 21 cracked or broken retaining rings. Since this condition is likely to exist or develop on other propellers of the same type design, an AD is being issued which requires an initial and repetitive visual inspections for cracks, with replacement when needed, of the plastic "Rynite" blade retaining rings on

Hamilton Standard 14SF–5 and 14SF–7 propellers.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87–ANE–13". The postcard will be date/time stamped and returned to the commenter.

*Conclusion:* The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

## List of Subjects in 14 CFR Part 39

Propellers, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

## PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to Section 39.13, the following new airworthiness directive (AD):

**Hamilton Standard:** Applies to Hamilton Standard Model 14SF–5 and 14SF–7 propellers installed on, but not limited to, DeHavilland Dash 8 and Aerospatiale/Aeritalia ATR–42 aircraft.

Compliance is required within the next 50 hours time in service after the effective date of this AD unless already accomplished, and thereafter at intervals not to exceed 200 hours time in service.

To prevent loss of the plastic "Rynite" blade retaining rings, P/N 785540–1, and severe damage to the blade retention system with propeller unbalance, accomplish the following:

(a) Inspect the plastic "Rynite" blade retaining rings, P/N 785540–1, on all four blades in accordance with Hamilton Standard Alert Service Bulletin (ASB) 14SF–61–A21, Revision 2, dated March 27, 1987.

(b) Blade retaining rings with evidence of cracks require removal of both halves from service, prior to further flight, and replacement with new or serviceable retaining ring halves installed in accordance with Hamilton Standard ASB 14SF–61–A21, Revision 2, dated March 27, 1987.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine and Propeller Standards Staff, ANE–110, Federal Aviation Administration, New England Region, Aircraft Certification Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine and Propeller Standards Staff, ANE–110, may adjust the compliance time specified in this AD.

United Technologies, Hamilton Standard ASB 14SF–61–A21, Revision 2, dated March 27, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. All persons affected by this directive, who have not already received this document from the manufacturer, may obtain copies upon request to Hamilton Standard Division of United Technologies Corporation, Windsor Locks, Connecticut 06096. This document also may be examined at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 87–ANE–13, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on May 21, 1987.

Issued in Burlington, Massachusetts, on April 14, 1987.

**Clyde DeHart, Jr.,**

*Acting Director, New England Region.*

[FR Doc. 87–10802 Filed 5–8–87; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 71

**[Airspace Docket No. 86–AWA–15]**

## Alteration of VOR Federal Airways; Nebraska

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule alters the descriptions of V–15, V–138, V–159 and V–172 located in the vicinity of Omaha, NE. The Neola, IA, very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) is being decommissioned and all airways that have Neola in their descriptions will require amendment. This action is due to the planned decommissioning of the Neola VORTAC as part of the Central Region's Networking Plan.

**EFFECTIVE DATE:** 0901 UTC, July 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lewis Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

**SUPPLEMENTARY INFORMATION:**

### History

On April 28, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter

VOR Federal Airways V-15, V-138, V-159 and V-172 located in the vicinity of Omaha, NE. (51 FR 15789). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations alters VOR Federal Airways V-15, V-138, V-159 and V-172 located in the vicinity of Omaha, NE. The Neola, IA, VORTAC is being decommissioned and all airways that have Neola in their descriptions are being realigned.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR Federal airways.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

*V-15 [Amended]*

By removing the words "From St. Joseph, MO, via INT St. Joseph 343° and Neola, IA, 157° radials; Neola, INT Neola 322° and Sioux City, IA, 159° radials; Sioux City;" and substituting the words "From Sioux City, IA;"

*V-138 [Amended]*

By removing the words "; 1,200 feet AGL INT of Lincoln 040° and Neola, IA, 253° radials; Neola;" and substituting the words ". From Omaha, NE; INT Omaha 032° and Fort Dodge, IA, 222° radials;"

*V-159 [Amended]*

By removing the words "INT St Joseph 328° and Omaha, NE, 155° radials; Omaha;" and by substituting the words "Omaha, NE;"

*V-172 [Amended]*

By removing the words "Neola, IA; Newton, IA;" and substituting the words "Omaha, NE, INT Omaha 066° and Newton, IA, 262° radials; Newton;"

Issued in Washington, DC, on April 30, 1987.

**Shelomo Wugalter,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87-10604 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 87-ASW-4]**

## Amendment of Transition Area: Winters, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment will revise the transition area at Winters, TX. The intended effect of the amendment is to provide necessary controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Winters Municipal Airport, Winters, TX. This amendment is necessary since the Winters Nondirectional Radio Beacon (NDB) is being relocated and an amendment to the existing transition area is needed. This action will not significantly alter the existing controlled airspace at and above 700 feet above the ground, but will realign it to conform with the new SIAP.

**EFFECTIVE DATE:** 0901 UTC, June 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Wheeler, Airspace and Procedures Branch (ASW-534), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-5561.

**SUPPLEMENTARY INFORMATION:**

**History**

On February 25, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Winters, TX, Transition Area (52 FR 6988).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations revises the Winters, TX, Transition Area to provide necessary controlled airspace at and above 700 feet above ground level for a new SIAP to the Winters Municipal Airport. This action is necessary due to the relocation of the Winters NDB. The intended effect of this action is to ensure segregation of aircraft using the new SIAP under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR).

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation Safety, Transition Areas

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

*Winters, TX [Revised]*

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Winters Municipal Airport, (latitude 31°56'45" N, longitude 99°59'08" W), and within 3.5 miles each side of the 174° bearing from the Winters NDB (latitude 31°56'45" N, longitude 99°59'13" W), extending from the 6.5-mile radius area to 8.5 miles south of the airport.

Issued in Fort Worth, TX, on April 23, 1987.

Larry L. Craig,

*Assistant Manager, Air Traffic Division Southwest Region.*

[FR Doc. 87-10803 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 176**

**[Docket No. 84F-0416]**

## Indirect Food Additives; Paper and Paperboard Components

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(diallyldimethylammonium chloride) in coatings for paper and paperboard used in contact with food. This action responds to a petition filed by Calgon Corp.

**DATES:** Effective May 11, 1987; objections by June 10, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of February 25, 1985 (50 FR 7657), FDA announced that a petition (FAP 5B3833) had been filed by Calgon Corp., Calgon Center, Box 1346, Pittsburgh, PA 15230, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended in paragraph (a)(5) to provide for the safe use of poly(diallyldimethylammonium chloride) in coatings for paper and paperboard used in contact with food.

FDA has evaluated data in the petition and other relevant materials. The agency concludes that the proposed food additive use of poly(diallyldimethylammonium chloride) is safe, and that 21 CFR 176.170(a)(5) should be amended as set forth below. The agency is also making minor editorial changes in the regulation to clarify its intent.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday throug Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before June 10, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 176**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

**PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS**

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 176.170(a)(5) by revising the entry for "Poly(diallyldimethylammonium chloride)" to read as follows:

**§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.**

* * * * *

(a) * * *

(5) * * *

| List of substances | Limitations |
|---|---|
| * * * * * | |
| Poly(diallyldimethylammonium chloride) (CAS Reg. No. 26062-79-3) produced by the polymerization of (diallyldimethylammonium chloride) so that the finished resin has a nitrogen content of 8.66±0.4 percent on a dry weight basis and a minimum viscosity in a 40 percent by weight aqueous solution of 1,000 centipoises at 25 °C (77 °F), determined by LVF Model Brookfield Viscometer using a No. 3 spindle at 30 r.p.m. (or equivalent method). The level of residual monomer is not to exceed 1 percent by weight of the polymer (dry basis). | For use only: 1. As a pigment dispersant and/or retention aid prior to the sheet-forming operation in the manufacture of paper and paperboard, and used at a level not to exceed 10 pounds of active polymer per ton of finished paper and paperboard.<br>2. As a pigment dispersant in coatings at a level not to exceed 3.5 pounds of active polymer per ton of finished paper and paperboard. |
| * * * * * | |

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Dated: May 1, 1987.

Richard J. Rouk,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-10616 Filed 5-8-87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 1

[CGD87-006a]

### Civil Penalty Procedures

May 6, 1987.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the procedures followed in processing civil penalty cases for violations of the various laws enforced by the Coast Guard. The revisions were made necessary by the realignment of the Coast Guard districts and internal reorganization. Incident to the revisions required by organizational changes, the requirement for a second copy of a petition to reopen a hearing is eliminated and the timeframe for action on appeals is modified. These changes conform the rules to the reorganized Coast Guard structure.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** LCDR Michael S. Macie at the Marine Safety Council Staff, Commandant (G-CMC), U.S. Coast Guard, Washington, DC 20593-0001, telephone 202-267-1477.

**SUPPLEMENTARY INFORMATION:** Subpart 1.07 of Title 33, Code of Federal Regulations, describes the procedures for assessing a civil penalty in the case of a reported violation of law enforced by the Coast Guard. Under a recently announced realignment of Coast Guard districts and consolidation of Coast Guard support functions, the Civil Penalty Hearing Officer function for the Coast Guard districts within the Pacific Area is to be regionalized and made part of the Pacific Area Commander's staff. This amendment conforms the rules at Subpart 1.07 to reflect this internal realignment and consolidation.

Included in this amendment is new wording, replacing the first sentence to 33 CFR, § 1.07-10(b), to describe the internal processing of reports of violation investigations. Also changed is § 1.07-15(a), which presently refers specifically to the District Commander in the designation of Hearing Officers. With the reorganization, Civil Penalty Hearing Officers will be designated by both Area Commanders and District Commanders. Since the method of designation is an internal matter the first sentence to that section is unnecessary and it has been deleted.

Section 1.07-45 ("Location of hearings and change of venue.") has been amended by specifying that a change in venue can be initiated by the Hearing Officer or the party to a case.

To permit sufficient time for providing a copy of an appeal to the relevant District Commander, the time period under § 1.07-75 ("Action on appeals.") for review and comment has been increased from 20 to 30 days.

Section 1.07-80(b) has been changed to remove the requirement that a party submit a second copy of a petition to reopen a hearing. The opportunity for the District Commander to file comments in opposition has not been affected.

The statement of the delegation of authority for the collection of civil penalties previously found at § 1.07-85(a) has been removed. This delegation is made under 33 CFR 25.133. The remainder of § 1.07-85 has been renumbered, an inconsistency with § 1.07-70 has been corrected, and a statutory reference has been updated.

In addition, minor wording adjustments have been made to remove references to gender. None of the changes have any substantive effect.

A notice of proposed rulemaking has not been published and this rulemaking is being made effective in less than 30 days. The rulemaking simply conforms the procedures for processing civil penalties to agency organizational changes that are being made. Therefore, it is exempt from notice and comment under 5 U.S.C. 553(b). Since it is not a substantive rule, the provisions of 5 U.S.C. 553(d) do not apply and the rule may be effective on publication.

*Regulatory Evaluation:* This final rule is considered non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (49 FR 11034; February 26, 1979). As the revision has no substantive effect, the economic impact is so minimal that further evaluation is unnecessary. Since the economic impact of this final rule is minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 1

Administrative Practices and Procedures, Authority Delegations, Coast Guard, Freedom of Information, Penalties.

### PART 1—[AMENDED]

In consideration of the foregoing, Subpart 1.07 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart 1.07 is revised to read as follows:

**Authority:** 14 U.S.C. 633; 49 CFR 1.46.

2. In § 1.07-10, paragraph (b) is revised to read as follows:

**§ 1.07-10 Reporting and investigation.**

* * * * *

(b) Reports of any investigation conducted by the Coast Guard or received from any other agency which indicate that a violation may have occurred are forwarded to a District Commander for action. This is normally the District Commander of the District in which the violation is believed to have occurred, or the District in which the reporting unit or agency is found. The District Commander reviews the reports to determine if there is sufficient evidence to establish a *prima facie* case. If there is insufficient evidence, the case is either returned for further investigation or closed if further action is unwarranted. The case is closed in situations in which the investigation has established that a violation did not occur, the violator is unknown, or there is little likelihood of discovering additional relevant facts. If it is determined that a *prima facie* case does exist, a case file is prepared and forwarded to the Hearing Officer, with a recommended action. A record of any prior violations by the same person or entity, is forwarded with the case file.

3. In § 1.07-15, paragraph (a) is revised to read as follows:

**§ 1.07-15 Hearing Officer.**

(a) The Hearing Officer has no other responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties. The hearing officer may take action on a case referred by any District Commander.

* * * * *

4. Section 1.07-45 is revised to read as follows:

**§ 1.07-45 Location of hearings and change of venue.**

(a) The hearing is normally held at the office of the Hearing Officer.

(b) The Hearing Officer may transfer a case to another Hearing Officer on request or on the Hearing Officer's own motion.

(c) A request for change of location of a hearing or transfer to another Hearing Officer must be in writing and state the reasons why the requested action is

necessary or desirable. Action on the request is at the discretion of the Hearing Officer.

5. In § 1.07–75, paragraph (a) is revised to read as follows:

**§ 1.07–75 Action on appeals.**

(a) Upon receipt, the Hearing Officer provides a copy of the appeal and any supporting brief to the District Commander who referred the case. Any comments which the District Commander desires to submit must be received by the Hearing Officer within 30 days. The Hearing Officer includes the District Commander's comments, or not later than 30 days after receipt of the appeal if no comments are submitted by the District Commander, the Hearing Officer forwards all materials in the case to the Commandant.

* * * * *

6. In § 1.07–80, paragraph (b) is revised to read as follows:

**§ 1.07–80 Reopening of hearings.**

* * * * *

(b) Petitions to reopen must be in writing describing the newly found evidence and must state why the evidence would probably produce a different result favorable to the petitioner, whether the evidence was known to the petitioner at the time of the hearing and, if not, why the newly found evidence could not have been discovered in the exercise of due diligence. The party must submit the petition to the Hearing Officer.

* * * * *

7. Section 1.07–85 is revised to read as follows:

**§ 1.07–85 Collection of civil penalties.**

(a) Payment of a civil penalty may be made by check or postal money order payable to the U.S. Coast Guard.

(b) Within 30 days after receipt of the Commandant's decision on appeal, or the Hearing Officer's decision in a case in which no appeal has been filed, the party must submit payment of any assessed penalty to the office specified in the assessment notice. Failure to make timely payment will result in the insititution of appropriate action under the Federal Claims Collection Act and the regulations issued thereunder.

(c) When a penalty of not more than $200 has been assessed under Chapter 43 or 123 of Title 46 U.S.C., the matter may be referred for collection of the penalty directly to the Federal Magistrate of the jurisdiction wherein the person liable may be found, for the institution of collection procedures under supervision of the district court, if the court has issued an order delegating such authority under section 636(b) of Title 28, United States Code.

Dated: May 5, 1987.

**J.E. Vorbach,**

*Rear Admiral, U.S. Coast Guard, Chairman, Marine Safety Council.*

[FR Doc. 87–10850 Filed 5–8–87; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

### Standards of Performance for New Stationary Sources; Correction

[AD–FRL–3195–6]

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** A final rule amending the opacity provisions of 40 CFR Part 60, Subpart A, was published in the Federal Register (52 FR 9778) on March 26, 1987. As part of that amendment, paragraph (c) of § 60.13 was revised. However, the revision should have followed a redesignation of portions of the former § 60.13(c) as a new paragraph (j). Without this redesignation, portions of the former paragraph (c) were inadvertently deleted from § 60.13. Today's action corrects this error by adding the information that was deleted as a new paragraph (j) of § 60.13. The deleted information was orginally added to § 60.13 on June 16, 1986 (51 FR 21762).

Also, as a result of today's redesignation, reference to § 61.13(c) in Appendix B, Performance Specification 2, are being revised to refer to § 61.13(j).

This action is necessary to correct an inadvertent deletion of a paragraph from 40 CFR Part 60, Subpart A that resulted from a final amendment to Subpart A that was published in the Federal Register on March 26, 1987 (52 FR 9778).

**EFFECTIVE DATE:** March 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Doug Bell, Standards Development Branch, ESED (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5568.

Dated: April 30, 1987

**Don R. Clay,**

*Assistant Administrator for Air and Radiation.*

### PART 60—[AMENDED]

For reasons set out in the preamble, 40 CFR Part 60, § 60.13, and Appendix B, Performance Specification 2, are amended as follows:

1. The authority citation for Part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.13 is amended by adding paragraph (j) to read as follows:

**§ 60.13 Monitoring requirements.**

* * * * *

(j) An alternative to the relative accuracy test specified in Performance Specification 2 of Appendix B may be requested as follows:

(1) An alternative to the reference method tests for determining relative accuracy is available for sources with emission rates demonstrated to be less than 50 percent of the applicable standard. A source owner or operator may petition the Administrator to waive the relative accuracy test in section 7 of Performance Specification 2 and substitute the procedures in section 10 if the results of a performance test conducted according to the requirements in § 60.8 of this subpart or other tests performed following the criteria in § 60.8 demonstrate that the emission rate of the pollutant of interest in the units of the applicable standard is less than 50 percent of the applicable standard. For sources subject to standards expressed as control efficiency levels, a source owner or operator may petition the Administrator to waive the relative accurancy test and substitute the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the continuous emission monitoring system is used to determine compliance continuously with the applicable standard. The petition to waive the relative accurancy test shall include a detailed description of the procedures to be applied. Included shall be location and procedure for conducting the alternative, the concentration or response levels of the alternative RA materials, and the other equipment checks included in the alternative procedure. The Administrator will review the petition for completeness and applicability. The determination to grant

a waiver will depend on the intended use of the CEMS data (e.g., data collection purposes other than NSPS) and may require specifications more stringent than in Performance Specification 2 (e.g., the applicable emission limit is more stringent than NSPS).

(2) The waiver of a CEMS relative accuracy test will be reviewed and may be rescinded at such time following successful completion of the alternative RA procedure that the CEMS data indicate the source emissions approaching the level of the applicable standard. The criterion for reviewing the waiver is the collection of CEMS data showing that emissions have exceeded 70 percent of the applicable standard for seven, consecutive, averaging periods as specified by the applicable regulation(s). For sources subject to standards expressed as control efficiency levels, the criterion for reviewing the waiver is the collection of CEMS data showing that exhaust emissons have exceeded 70 percent of the level needed to meet the control efficiency requirement for seven, consecutive, averaging periods as specified by the applicable regulation(s) [e.g., §§ 60.45(g)(2) and (3), § 60.73(e), and § 60.84(e)]. It is the responsibility of the source operator to maintain records and determine the level of emissions relative to the criterion on the waiver of relative accuracy testing. If this criterion is exceeded, the owner or operator must notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increasing emissions. The Administrator will review the notification and may rescind the waiver and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

*Appendix B [Amended]*

3. Section 10.1 of Performance Specification 2 of Appendix B is revised to read as follows:

Performance Specification 2—Specifications and Test Procedures for $SO_2$ and $NO_x$ Continuous Emission Monitoring Systems in Stationary Sources.

* * * * *

10 Alternative Procedures

10.1 Alternative to Relative Accuracy Procedure in section 7. Paragraphs 60.13(j) (1) and (2) contain criteria for which the reference method relative accuracy may be waived and the following procedure substituted.

* * * * *

[FR Doc. 87-10512 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

## FOREIGN CLAIMS SETTLEMENT COMMISSION

### 45 CFR Ch. V

### Revision of Agency Regulations

**AGENCY:** Foreign Claims Settlement Commission of the United States.

**ACTION:** Revision of regulations.

**SUMMARY:** The Foreign Claims Settlement Commission of the United States ("the Commission") herewith publishes a revision of its regulations, which appear as Parts 500 through 581 in Chapter V of Title 45 of the Code of Federal Regulations. These set forth the Commission's rules of practice, its organization, management and personnel regulations, and its rules governing receipt, administration and payment of claims. This revision is required to reflect changes which have occurred in the Commission's organization and adjudicatory authority, and to implement changes mandated by the Freedom of Information Reform Act of 1986. In addition, a number of provisions have been deleted as obsolete, others have been rewritten, and Part 500 has been expanded to include express rules for enforcement of the Ethics in Government Act.

**EFFECTIVE DATE:** June 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** David E. Bradley, 202-653-5883.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Impact Analysis

The Commission has determined that these rules are exempt from the requirements of E.O. 12291, as they consist solely of "[r]egulations related to agency organization, management [and] personnel," within the meaning of subsection 1.(a)(3) of that Order.

### Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities, as those terms are used in the Act. The activities and operations of the Commission do not affect or involve any appreciable segment of the community which small entities comprise.

### List of Subjects

*45 CFR Part 500*

Administrative practice and procedure, Foreign claims.

*45 CFR Part 501*

Administrative practice and procedure, Foreign claims.

*45 CFR Part 502*

Conflict of interests.

*45 CFR Part 503*

Freedom of information.

*45 CFR Part 504*

Privacy, Sunshine Act.

*45 CFR Part 505*

War claims.

*45 CFR Part 506*

War claims.

*45 CFR Part 507*

Military personnel, Prisoners of war, Vietnam, War claims.

*45 CFR Part 508*

War claims.

*45 CFR Part 509*

Administrative practice and procedure, War claims.

*45 CFR Part 531*

Administrative practice and procedure, Foreign claims.

For the reasons set out in the preamble, the regulations of the Foreign Claims Settlement Commission, which are published as Chapter V of Title 45 of the Code of Federal Regulations are revised as follows:

### CHAPTER V—FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES, DEPARTMENT OF JUSTICE

### SUBCHAPTER A—RULES OF PRACTICE

*Part*

500 Appearance and practice
501 Subpoenas, depositions, and oaths
502 Employee responsibilities and conduct
503 Public information
504 Privacy Act and Government in the Sunshine regulations

### SUBCHAPTER B—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER TITLE I OF THE WAR CLAIMS ACT OF 1948, AS AMENDED BY PUB. L. 91-289, APPROVED JUNE 24, 1970

505 Filing of claims and procedures therefor
506 Provisions of general application
507 Eligibility requirements for compensation
508 Payment
509 Hearings

### SUBCHAPTER C—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED

531 Filing of claims and procedures therefor

SUBCHAPTER A—RULES OF PRACTICE

## PART 500—APPEARANCE AND PRACTICE

Sec.
500.1 Appearance and representation.
500.2 Notice of entry or withdrawal of counsel in claims.
500.3 Fees.
500.4 Suspension of attorneys.
500.5 Disqualification of former employees; disqualification of partners of current employees.
500.6 Disciplinary proceedings against former employees.

Authority: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001); Sec. 3, Pub. L. 81-455, 64 Stat. 12, as amended (22 U.S.C. 1622); 18 U.S.C. 207.

### § 500.1 Appearance and representation.

(a) An individual may appear in his or her own behalf; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; an officer or employee of the United States Department of Justice, when designated by the Attorney General of the United States, may represent the United States in a claim proceeding.

(b) A person may be represented by an attorney at law admitted to practice in any State or Territory of the United States, or the District of Columbia.

(c) In cases falling within the purview of Subchapter B of this chapter, persons designated by veterans', service, and other organizations to appear before the Commission in a representative capacity on behalf of claimants shall be deemed duly authorized to practice before the Commission when the designating organization shall have been issued a letter of accreditation by the Commission. Petitions for accreditation shall be in writing, executed by duly authorized officer or officers, and addressed to the Foreign Claims Settlement Commission of the United States, Washington, DC 20579. Upon receipt of a petition setting forth pertinent facts as to the organization's history, purpose, number of posts or chapters and their locations, approximate number of paid-up memberships, statements that the organization will not charge any fee for services rendered by its designees in behalf of claimants and that it will not refuse on the grounds of non-membership to represent any claimant who applies for such representation if such claimant has an apparently valid claim, accompanied by a copy of the organization's constitution, or charter, by-laws, and its latest financial statement, the Commission in its discretion will consider and in appropriate cases issue or deny letters of accreditation.

(d) A person may not be represented before the Commission except as authorized in paragraphs (a), (b), and (c) of this section.

### § 500.2 Notice of entry or withdrawal of counsel in claims.

(a) Counsel entering an appearance in a claim originally filed by a claimant in the claimant's behalf, or upon request for a substitution of attorneys, shall be required to file an authorization by such claimant.

(b) When counsel seeks to withdraw from the prosecution of a claim, it must appear that the client (claimant) has been duly notified.

(c) When a claimant advises the Commission that counsel no longer represents such claimant, a copy of the Commission's acknowledgement shall be forwarded to such counsel.

### § 500.3 Fees.

(a) No remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within the purview of Subchapter B of this chapter shall exceed ten per centum of the amount allowed on account of such claim, except that the Commission in its discretion may fix a lesser per centum with respect to any claim filed thereunder.

(b) The total remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim falling within title I of the International Claims Settlement Act of 1949, as amended, shall not exceed ten per centum of the total amount paid on account of such claim.

### § 500.4 Suspension of attorneys.

(a) The Commission may disqualify, or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found after a hearing in the matter—

(1) Not to possess the requisite qualifications to represent others before the Commission; or

(2) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(3) To have violated sections 10 and 214 of the War Claims Act of 1948, as amended, or section 4(f) of the International Claims Settlement Act of 1949, as amended, or § 500.3 of Part 500 of these regulations.

(b) Contemptuous or contumacious conduct at any hearing shall be ground for exclusion from said hearing and for summary suspension without a hearing for the duration of the hearing.

### § 500.5 Disqualification of former employees; disqualification of partners of current employees.

(a) No member, officer or employee of the Commission, including a special Government employee shall, after employment has ceased, knowingly act as an agent or attorney for, or otherwise represent, any person or party (other than the United States) in any formal or informal appearance before, or, with the intent to influence, make any oral or written communication on behalf of any person or party (other than the United States) (1) to the Commission or any other department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, (2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and (3) in which such member, officer, employee, or special Government employee, participated personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed.

(b) No member, officer, or employee of the Commission, including a special Government employee, shall, within two years after employment has ceased, knowingly act as agent or attorney for, or otherwise represent, any person or party (other than the United States) in any formal or informal appearance before, or with intent to influence, make any oral or written communication on behalf of any person or party (other than the United States) (1) to an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and (3) which was actually pending under his or her official responsibility as an employee within a period of one year prior to the termination of such responsibility.

(c) No member, officer, or employee of the Commission, including a special Government employee, in an executive level position, in a position with a comparable or greater rate of pay, or in a position that involved significant decision making or supervisory

responsibility as designated by the Director of the Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within two years after employment has ceased, knowingly represent or aid, counsel, advise, consult or assist in representing any person or party (other than the United States) by personal presence at any formal or informal appearance before (1) an organization enumerated in paragraph (a)(1) of this section, or an officer or employee thereof, (2) in connection with any matter enumerated and described in paragraph (a)(2) of this section, and (3) in which he or she participated personally or substantially as an employee (18 U.S.C. 207(b)(ii)).

(d) No member, officer, or employee of the Commission other than a special Government employee with service of less than sixty days in a given calendar year, who has been an employee in an executive level position or a position with a comparable or greater rate of pay, or in a position which involved significant decision making or supervisory responsibility as designated by the Director of Office of Government Ethics under 18 U.S.C. 207(d)(1)(C), shall, within one year after such employment has ceased, knowingly engage in conduct described in the next sentence. The prohibited knowing conduct is that of acting as attorney or agent for, or otherwise representing anyone other than the United States, in any formal or informal appearance before, or with the intent to influence, making any oral or written communication on behalf of anyone other than the United States (1) to the Commission, or any employee thereof, (2) in connection with any rulemaking or any matter enumerated and described in paragraph (a)(2) of this section and (3) which is pending before the Commission or in which it has a direct and substantial interest.

(e) No partner of an employee shall act as agent or attorney for anyone other than the United States before an organization enumerated in paragraph (a)(1) of this section, or any officer or employee thereof, in connection with any matter enumerated and described in paragraph (a)(2) of this section in which such Government employee is participating or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his or her official responsibility.

**§ 500.6 Disciplinary proceedings against former employees.**

(a) Upon a determination by the Commission's Designated Ethics Officer, after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, has violated 18 U.S.C. 207 (a), (b) or (c), the Designated Ethics Officer shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending before the Commission, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. The notice to show cause shall include:

(1) A statement of allegations, and their basis, sufficiently detailed to enable the former employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

(b) If a former employee who submits an answer to the notice to show cause does not request a hearing or if the Designated Ethics Officer does not receive an answer within five days after the expiration of the time prescribed by the notice, the Designated Ethics Officer shall forward the record, including the report(s) of investigation, to the Chairman. In the case of a failure to answer, such failure shall constitute a waiver of defense.

(c) Upon receipt of a former employee's request for a hearing, the Designated Ethics Officer shall notify him or her of the time and place thereof, giving due regard both to such person's need for an adequate period to prepare a suitable defense and an expeditious resolution of allegations that may be damaging to his or her reputation.

(d) The presiding officer at the hearing and any related proceedings shall be a federal administrative law judge or other federal official with comparable duties. The presiding officer shall insure that the former employee has, among others, the rights:

(1) To self-representation or representation by counsel;

(2) To introduce and examine witnesses and submit physical evidence;

(3) To confront and cross-examine adverse witnesses;

(4) To present oral argument; and

(5) To a transcript or recording of the proceedings, upon request.

(e) The Designated Ethics Officer shall designate one or more officers or employees of the Commission to present the evidence against the former employee and perform other functions incident to the proceedings.

(f) A decision adverse to the former employee must be sustained by substantial evidence that he or she violated 18 U.S.C. 207 (a), (b) or (c).

(g) The presiding officer shall issue an initial decision based exclusively on the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, and shall set forth in the decision findings and conclusions, supported by reasons, on the material issues of fact and law presented on the record.

(h) Within 30 days after issuance of the initial decision, either party may appeal to the Chairman, who in that event shall issue the final decision based on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the final decision modifies or reverses the initial decision, the Chairman shall specify the findings of fact and conclusions of law that vary from those of the presiding officer.

(i) If a former employee fails to appeal from an adverse initial decision within the prescribed period of time, the presiding officer shall forward the record of the proceedings to the Chairman.

(j) In case of a former employee who filed an answer to the notice to show cause but did not request a hearing, the Chairman shall make the final decison on the record submitted by the Designated Ethics Officer pursuant to subsection (b) of this section.

(k) The Chairman, in a case where:

(1) The defense has been waived;

(2) The former employee has failed to appeal from an adverse initial decision; or

(3) The Chairman has issued a final decision that the former employee violated 18 U.S.C. 207 (a), (b) or (c) may issue an order:

(i) Prohibiting the former employee from making on behalf of any person or party (other than the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on a pending matter of business for a period not to exceed five years, or

(ii) Prescribing other appropriate disciplinary action.

## PART 501—SUBPOENAS, DEPOSITIONS, AND OATHS

Sec.
501.1 Extent of authority.
501.2 Subpoenas.
501.3 Service of process.
501.4 Witnesses.
501.5 Depositions.
501.6 Documentary evidence.
501.7 Time.

**Authority:** Sec. 2, Pub. L. 80–896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001); sec. 3, Pub. L. 81–455, 64 Stat. 12, as amended (22 U.S.C. 1622).

### § 501.1 Extent of authority.

(a) *Subpoenas, oaths and affirmations.* The Commission or any member thereof may issue subpoenas, administer oaths and affirmations, take affidavits, conduct investigations and examine witnesses in connection with any hearing, examination, or investigation within its jurisdiction.

(b) *Certification.* The Commission or any member thereof may, for the purpose of any such hearing, examination, or investigation, certify the correctness of any papers, documents, and other matters pertaining to the administration of any laws relating to the functions of the Commission.

### § 501.2 Subpoenas.

(a) *Issuance.* A member of the Commission or a designated employee may, on such member or employee's own volition of upon written application by any party and upon a showing of general relevance and reasonable scope of the evidence sought, issue subpoenas requiring persons to appear and testify or to appear and produce documents. Applications for issuance of subpoenas duces tecum shall specify the books, records, correspondence, or other documents sought. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) *Deposit for costs.* The Commission or designated employee, before issuing any subpoena in response to any application by an interested party, may require a deposit in an amount adequate to cover fees and mileage involved.

(c) *Motion to quash.* If any person subpoenaed does not intend to comply with the subpoena, such person shall, within 15 days after the date of service of the subpoena, petition in writing to quash the subpoena. The basis for the motion must be stated in detail. Any party desiring to file an answer to a motion to quash must file such answer not later than 15 days after the filing of the motion. The Commission shall rule on the motion to quash, duly recognizing any answer thereto filed. The motion, answer, and any ruling thereon shall become part of the official record.

(d) *Appeal from interlocutory order.* An appeal may be taken to the Commission by the interested parties from the denial of a motion to quash or from the refusal to issue a subpoena for the production of documentary evidence.

(e) *Order of court upon failure to comply.* Upon the failure or refusal of any person to comply with a subpoena, the Commission may invoke the aid of the United States District Court within the jurisdiction of which the hearing, examination or investigation is being conducted, or wherein such person resides or transacts business. Such court, pursuant to the provisions of Pub. L. 81–696, approved August 10, 1950 (50 U.S.C. App. 2001(d)), may issue an order requiring such person to appear at the designated place of hearing, examination or investigation, then and there to give or produce testimony or documentary evidence concerning the matter in question. Any failure to obey such an order may be punished by the court as a contempt thereof. All processes in any such case may be served in the judicial district wherein such person resides or transacts business or wherever such person may be found.

### § 501.3 Service of process.

(a) *By whom served.* The Commission shall serve all orders, notices and other papers issued by it, together with any other papers which it is required by law to serve.

(b) *Kinds of service.* Subpoenas, orders, rulings, and other processes of the Commission may be served by delivering in person, by first class or registered mail, or by telegraph or by publication.

(c) *Personal service.* Service by delivering in person may be accomplished by:

(1) Delivering a copy of the document to the person to be served, to a member of the partnership to be served, to an executive officer or a director of the corporation to be served, or to a person competent to accept service; or

(2) By leaving a copy thereof at the residence, principal office or place of business of such person, partnership, or corporation.

(3) Proof of service. The return receipt for said order, other process or supporting papers, or the verification by the person serving, setting forth the manner of said service, shall be proof of the service of the document.

(4) Service upon attorney or agent. When any party has appeared by an authorized attorney or agent, service upon such attorney or agent shall be deemed service upon the party.

(d) *Service by first class mail.* Service by first class mail shall be regarded as complete upon deposit in the United States mail properly stamped and addressed.

(e) *Service by registered mail.* Service by registered mail shall be regarded as complete on the date the return post office registered receipt for said orders, notices and other papers is received by the Commission.

(f) *Service by telegraph.* Service by telegraph shall be regarded as complete when deposited with a telegraph company properly addressed and with charges prepaid.

(g) *Service by publication.* Service by publication is completed when due notice shall have been given in the publication for the time and in the manner provided by law or rule.

(h) *Date of service.* The date of service shall be the day upon which the document is deposited in the United States mail or delivered in person, as the case may be.

(i) *Filing with Commission.* Papers required to be filed with the agency shall be deemed filed upon actual receipt by the Commission accompanied by proof of service upon parties required to be served. Upon such actual receipt the filing shall be deemed complete as of the date of deposit in the mail or with the telegraph company as provided in paragraphs (e) and (f) of this section.

### § 501.4 Witnesses.

(a) *Examination of witnesses.* Witnesses shall appear in person and be examined orally under oath, except that for good cause shown, testimony may be taken by deposition.

(b) *Witness fees and mileage.* Witnesses summoned by the Commission on its own behalf or on behalf of a claimant or interested party shall be paid the same fees and mileage that are allowed and paid witnesses in the District Courts of the United States. Witness fees and mileage shall be paid by the Commission or by the party at whose request the witness appears.

(c) *Transcript of testimony.* Every person required to attend and testify or to submit documents or other evidence shall be entitled to retain or, on payment of prescribed costs, procure a copy of the transcript of the testimony or the documents produced.

### § 501.5 Depositions.

(a) *Application to take.* (1) An application to take a deposition shall be in writing setting forth the reason why such deposition should be taken, the

name and address of the witness, the matters concerning which it is expected the witness will testify, and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken. If such deposition is being offered in connection with a hearing or examination, the application for deposition shall be made to the Commission at least 15 days prior to the proposed date of such hearing or examination.

(2) Application to take a deposition may be made during a hearing or examination, or subsequent to a hearing or examination, only where it is shown for good cause that the facts as set forth in the application to take the deposition were not within the knowledge of the person signing the application prior to the time of the hearing or examination.

(3) The Commission or its representative shall, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before entative shall, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before whom the witness is to testify. Such officer may or may not be the one specified in the application. The order shall be served upon all parties at least 10 days prior to the date of the taking of the deposition.

(b) *Who may take.* Such deposition may be taken before the designated officer or, if none is designated, before any officer authorized to administer oaths by the laws of the United States. If the examination is held in a foreign country, it may be taken before a secretary of an embassy or legislation, consul-general, consul, vice consul, or consular agent of the United States.

(c) *Examination and certification of testimony.* At the time and place specified in said order the officer taking such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony shall be reduced to writing by, or under the direction of, the presiding officer. All objections to questions or evidence shall be deemed waived unless made in accordance with paragraph (d) of this section. The officer shall not have power to rule upon any objections but shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach a certificate stating that the witness was duly sworn, that the deposition is a true record of the testimony and exhibits given by the witness and that said officer is not counsel or attorney to any of the interested parties. The officer shall immediately seal and deliver an original and two copies of said transcript, together with the officer's certificate, by registered mail to the Foreign Claims Settlement Commission, Washington, DC 20579 or to the field office designated.

(d) *Admissibility in evidence.* The deposition shall be admissible in evidence, subject to such objections to the questions and answers as were noted at the time of taking the deposition, or within ten (10) days after the return thereof, and would be valid were the witness personally present at the hearing.

(e) *Errors and irregularities.* All errors or irregularities occurring shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(f) *Scope of use.* The deposition of a witness, if relevant, may be used if the Commission finds:

(1) That the witness has died since the deposition was taken; or

(2) that the witness is at a distance greater than 100 miles radius of Washington, DC, the designated field office or the designated place of the hearing; or

(3) that the witness is unable to attend because of other good cause shown.

(g) *Interrogatories and cross-interrogatories.* Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examinations. When a deposition is taken upon interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, such person's representative or attorney, a stenographic reporter and the presiding officer, shall be present at the examination of the witness, which fact shall be certified by such officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

(h) *Fees.* A witness whose deposition is taken pursuant to the regulations in this Part, and the officer taking the deposition, shall be entitled to the same fees and mileage allowed and paid for like service in the United States District Court for the district in which the deposition is taken. Such fees shall be paid by the Commission or by the party at whose request the deposition is being taken.

### § 501.6 Documentary evidence.

Documentary evidence may consist of books, records, correspondence or other documents pertinent to any hearing, examination, or investigation within the jurisdiction of the Commission. The application for the issuance of subpoenas duces tecum shall specify the books, records, correspondence or other documents sought. The production of documentary evidence shall not be required at any place other than the witness' place of business. The production of such documents shall not be required at any place if, prior to the return date specified in the subpoena, such person either has furnished the issuer of the subpoena with a properly certified copy of such documents or has entered into a stipulation as to the information contained in such documents.

### § 501.7 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the regulations, by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

(b) *Enlargement.* When by the regulations in this chapter or by a notice given thereunder or by order of the Commission an act is required or allowed to be done at or within a specific time, the Commission for good cause shown may, at any time in its discretion (1) with or without motion, notice, or previous order or (2) upon motion, permit the act to be done after the expiration of the specified period.

## PART 502—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.

502.1 Adoption of regulations.
502.2 Review of statements of employment and financial interests.
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Authority: E.O. 11222 of May 8, 1965, 3 CFR, 1965, Supp., p. 130; 5 CFR 735.101 et seq.

**§ 502.1 Adoption of regulations.**

Pursuant to 5 CFR 735.104(f), the Foreign Claims Settlement Commission of the United States (referred to hereinafter as "the Commission") hereby adopts the following sections of Part 735 of Title 5, Code of Federal Regulations: §§ 735.101–102, 735.201a, 735.202 (a), (d), (e), (f) through 735.210, 735.303(a), 735.304, 735.305(a), 735.403(a), 735.404, 735.405, 735.407 through 735.411, 735.412 (b) and (d). These adopted sections are modified and supplemented as set forth in this part.

**§ 502.2 Review of statements of employment and financial interests.**

Each statement of employment and financial interests submitted under this Part shall be reviewed by the Commission's Designated Ethics Officer. When this review indicates a conflict between the interests of an employee or special Government employee of the Commission and the performance of such employee's services for the Government, the Designated Ethics Officer shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve the indicated conflict. If the indicated conflict cannot be resolved, the Designated Ethics Officer shall forward a written report on the indicated conflict to the Chairman of the Commission through the counselor for the agency designated under 5 CFR 735.105(a).

**§ 502.3 Disciplinary and other remedial action.**

An employee or special Government employee of the Commission who violates any of the regulations in this part or adopted under § 502.1 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of the employee's conflicting interest; or

(c) Disqualification for a particular assignment.

**§ 502.4 Gifts, entertainment, and favors.**

The Commission authorizes the exceptions to 5 CFR 735.202(a) set forth in 5 CFR 735.202(b) (1)–(4).

**§ 502.5 Outside employment and other activity.**

An employee of the Commission may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of such employee's Government employment; *Provided, however,* That no professional officer or employee of the Commission shall engage in the private practice of such officer or employee's profession, and no officer or employee, regardless of the nature of his or her duties with the Commission, shall engage in the private practice of law, except upon the prior approval in writing by the Chairman of the Commission.

**§ 502.6 Specific provisions of agency regulations governing special Government employees.**

(a) Special Government employees of the Commission shall adhere to the standards of conduct applicable to employees as set forth in this part and adopted under § 502.1, except 5 CFR 735.203(b).

(b) Special Government employees of the Commission may teach, lecture, or write in a manner not inconsistent with 5 CFR 735.203(c).

(c) Pursuant to 5 CFR 735.305(b), the Commission authorizes the same exceptions concerning gifts, entertainment, and favors for special Government employees as are authorized for employees by § 502.4.

**§ 502.7 Statements of employment and financial interests.**

(a) In addition to the employees required to submit statements of employment and financial interests under 5 CFR 735.403(a), attorneys in charge of divisions shall submit statements of employment and financial interests.

(b) Each statement of employment and financial interests required by this section shall be submitted to the Chairman of the Commission.

(c) An employee who believes that his or her position has been improperly included in this section as one requiring the submission of a statment of employment and financial interests may obtain a review thereof under the Commission's grievance procedure.

**§ 502.8 Supplementary statements.**

Notwithstanding the filing of the annual supplementary statement required by 5 CFR 735.406, each employee shall at all times avoid acquiring a financial interst that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of Title 18, United States Code, or the regulations in this part or adopted under § 502.1.

## PART 503—PUBLIC INFORMATION

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Authority: 5 U.S.C. 552.

**§ 503.1 Organization and authority—Foreign Claims Settlement Commission.**

(a) The Foreign Claims Settlement Commission of the United States ("the Commission") is an independent agency of the Federal Government created by Reorganization Plan No. 1 of 1954 (68 Stat. 1279) effective July 1, 1954. The Commission was transferred to the Department of Justice as an independent agency within that Department as of October 1, 1980, under the terms of Pub. L. 96–209, approved March 14, 1980 (94 Stat. 98, 22 U.S.C. 1622c). Its duties and authority are defined in the International Claims Settlement Act of 1949, as amended (64 Stat. 12, 22 U.S.C. 1621–1645o) and the War Claims Act of 1948 (62 Stat. 1240, 50 U.S.C. App. 2001–2017p).

(b) The Commission has jurisdiction to determine claims of United States nationals against foreign governments for compensation for losses and injuries sustained by such nationals, pursuant to programs which may be authorized under either of said Acts. Available funds have their sources in international settlements or liquidation of foreign assets in this country by the Department of Justice or Treasury, and from public funds when provided by the Congress.

(c) The Chairman and the two part-time members of the Commission are

appointed by the President with the advice and consent of the Senate to serve for 3-year terms of office as provided by Pub. L. 96–209, *supra*.

(d) All functions of the Commission are vested in the Chairman with respect to the internal management of the affairs of the Commission, including but not limited to:

(1) The appointment of personnel employed under the Commission;

(2) The direction of employees of the Commission and the supervision of their official duties;

(3) The distribution of business among employees and organizational units under the Commission;

(4) The preparation of budget estimates; and

(5) The use and expenditures of funds of the Commission available for expenses of administration.

(e) Requests for records shall be made in writing by mail or presented in person to the Administrative Officer, Foreign Claims Settlement Commission, Washington, DC, 20579.

(f) The offices of the Commission are located at 1111 20th Street NW. (Vanguard Building), 4th Floor, Washington, DC.

**§ 503.2 Material to be published in the Federal Register pursuant to Pub. L. 89–487.**

The Commission shall separately state and concurrently publish the following materials in the Federal Register for the guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions.

(b) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

(e) Every amendment, revision, or repeal of the foregoing.

**§ 503.3 Effect of nonpublication.**

Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by, any matter required to be published in the Federal Register and not so published.

**§ 503.4 Incorporation by reference.**

For purposes of this Part, matter which is reasonably available to the class of persons affected thereby shall be deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

**§ 503.5 Records generally available.**

The Commission will make promptly available to any member of the public the following documents:

(a) Proposed and Final Decisions (including dissenting opinions) and all orders made with respect thereto;

(b) Statements of policy and interpretations which have been adopted by the Commission which have not been published in the Federal Register; and

(c) A current index, which shall be updated at least quarterly, covering the foregoing material adopted, issued or promulgated after July 4, 1967. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available upon request for a fee of the direct cost of duplication.

**§ 503.6 Current index.**

The Commission shall maintain and make available for public inspection and copying, current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, as required by 5 U.S.C. 552(a)(2).

**§ 503.7 Additional documents and records generally available for inspection and copying.**

The following kinds of documents are also available for inspection and copying in the offices of the Commission:

(a) Rules of practice and procedure.

(b) Annual report of the Commission to the Congress of the United States.

(c) Bound volumes of Commission decisions.

(d) International Claims Settlement Act of 1949, with amendments; the War Claims Act of 1948, with amendments; and related Acts.

(e) Claims agreements with foreign governments effecting the settlement of claims under the jurisdiction of the Commission.

(f) Press releases and other miscellaneous material concerning Commission operations.

(g) Indexes of claims filed under the various claims programs administered by the Commission.

**§ 503.8 Effect of noncompliance.**

No decision, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by the Commission against any private party unless it has been indexed and either made available or published as provided by this Part, or unless that private party shall have actual and timely notice of the terms thereof.

**§ 503.9 Availability of records.**

(a) Each person desiring access to a record covered by this Part must comply with the following provisions:

(1) A written request must be made for the record.

(2) Such request must indicate that it is being made under the Freedom of Information Act.

(3) The envelope in which the request is sent must be prominently marked with the letters "FOIA".

(4) The request must be addressed to the appropriate official or employee of the Commission as set forth in paragraph (c) of this section.

(5) The foregoing requirements must be complied with whether the request is mailed or hand-delivered to the Commission.

(b) If the requirements of paragraph (a) of this section are not met, the ten day time limit described in § 503.10(a) will not begin to run until the request has been identified by an official or employee of the Commission as a request under the Freedom of Information Act and has been received by the appropriate official or employee of the Commission.

(c) Each person desiring access to a record covered in this Part that is located in the Commission, or to obtain a copy of such a record, must make a written request to the Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

(d) Each request should reasonably describe the particular record requested. The request should specify the subject matter, the date when it was made and the person or office that made it. If the description is insufficient, the official or employee handling the request may notify the person making the request and, to the extent possible, indicate the additional data required.

(e) Each record made available under this section is available for inspection and copying during regular working hours. Original documents may be copied but may not be released from custody.

(f) Authority to administer this part in connection with Commission records is delegated to the Administrative Officer or the Commission employee acting in that official's capacity.

**§ 503.10 Actions on requests.**

(a) The Administrative Officer or any employee acting in that official's capacity shall determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request. Upon receipt of a request for a Commission record which is available, the Administrative Officer or other employee shall notify the requester as to the time the record is available, and shall promptly make the record available after advising such requester of the applicable fees under § 503.13. The person making such request shall be notified immediately after any adverse determination, the reasons for making such adverse determination and the right of such person to appeal.

(b) Any denial of a request for a record shall be written and signed by the Administrative Officer or other employee, including a statement of the reason for denial. Such statement shall contain, as applicable:

(1) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of a record, and to the extent consistent with the purpose of the exemption, an explanation of how the exemption applies to the record withheld.

(2) If a record requested does not exist or has been legally disposed of, the requester shall be so notified.

(c) In unusual circumstances, the time limit prescribed in paragraph (a) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request——

(1) The need to search for and collect the requested records from other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) With respect to determinations on appeals, such determinations shall be made within twenty days (excepting Saturdays, Sundays, and legal holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is in whole or in part upheld, the person making such request shall be notified of the provisions for judicial review of that determination under section 552(a)(4) of Title 5, United States Code.

**§ 503.11 Appeals.**

(a) Any person to whom a record has not been made available within the time limits established by paragraph (d) of § 503.10, and any person who has been given an adverse determination pursuant to paragraph (b) of § 503.10, that a requested record will not be disclosed, may apply to the Chairman of the Commission, or in the Chairman's absence an officer or employee designated by the Chairman, for reconsideration of the request. A determination that a record will not be disclosed is not administratively final for the purpose of judicial review unless it was made by the Chairman or Chairman's designee, unless the applicable time limit has passed without a determination of the appeal having been made.

(b) Each application for reconsideration must be made in writing within thirty days from the date of receipt of the original denial and must include all information and arguments relied upon by the person making the request. Such application must indicate that it is an appeal from a denial of a request made under the Freedom of Information Act. The envelope in which the application is sent must be prominently marked with the letters "FOIA". If these requirements are not met, the twenty day limit described in § 503.10 will not begin to run until the application has been identified as an application under the Freedom of Information Act and has been received by the appropriate office.

(c) Whenever it is to be determined necessary, the person making the request may be required to furnish additional information, or proof of factual allegations and other proceedings appropriate in the circumstances may be ordered. The decision of the Chairman or Chairman's designee as to the availability of the record is administratively final.

(d) The decision not to disclose a record under this Part is considered to be a withholding for the purposes of section 552(a)(3) of Title 5, United States Code.

**§ 503.12 Exemptions.**

In the event any document or record requested hereunder shall contain material which is exempt from disclosure under this section, any reasonably segregable portion of such record shall, notwithstanding such fact, and to the extent feasible, be provided to any person requesting same, after deletion of the portions which are exempt under this section. Documents or records determined to be exempt from disclosure hereunder may nonetheless be provided upon request in the event it is determined that the provision of such document would not violate the public interest or the right of any person to whom such information may pertain, and the disclosure is not prohibited by law or Executive Order. The following categories of records are exempt from disclosure under the provisions of 5 U.S.C. 552(b):

(a) Records which are specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order. This exception may apply to records in the custody of the Commission which have been transmitted to the Commission by another agency which has designated the record as nonpublic under Executive Order.

(b) Records related solely to the internal personnel rules and practices of the Commission.

(c) Records specifically exempted from disclosure by statute.

(d) Information given in confidence. This includes information obtained by or given to the Commission which constitutes confidential commercial or financial information, privileged information, or other information which was given to the Commission in confidence or would not customarily be released by the person from whom it was obtained.

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with the Commission. Such communications include inter-agency memoranda, drafts, staff memoranda transmitted to the Commission, written communications between the Commission and its staff regarding the preparation of Commission decisions, other documents received or generated in the process of issuing a decision or

regulation, and reports and other work papers of staff attorneys, accountants, and investigators.

(f) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

### § 503.13 Fees for services.

The following provisions shall apply in the assessment and collection of fees for services rendered in processing requests for disclosure of Commission records under this part.

(a) *Fee for duplication of records.* $0.15 per page.

(b) *Search and review fees.* (1) Searches for records by clerical personnel—$2.00 per quarter hour, including time spent searching for and copying any record.

(2) Search for and review of records by professional and supervisory personnel—$5.50 per quarter hour spent searching for any record or reviewing a record to determine whether it may be disclosed, including time spent in copying any record.

(c) *Certification and validation fee.* $1.00 for each certification, validation or authentication of a copy of any record.

(d) *Imposition of fees.* (1) Commercial use requests—Where a request appears to seek disclosure of records for a commercial use, the requester shall be charged for the time spent by Commission personnel in searching for the requested record and in reviewing the record to determine whether it should be disclosed, and for the cost of each page of duplication. "Commercial use" is defined as a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The request also must reasonably identify the records sought.

(2) Requests from representatives of news media—Where a request seeks disclosure of records to a representative of the news media, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought, and it must appear that the records are for use by the requester in such person's capacity as a news media representative. "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. A "freelance" journalist not actually employed by a news organization shall be eligible for inclusion under this category is such person can demonstrate a solid basis for expecting publication by a news organization.

(3) Requests from educational and non-commercial scientific institutions—Where a request seeks disclosure of records to an educational or non-commercial scientific institution, the requester shall be charged only for the actual duplication cost of the records and only to the extent that the number of duplications exceeds 100 pages; provided, however, that the request must reasonably describe the records sought and it must appear that the records are to be used by the requester in furtherance of its educational or non-commercial scientific research programs. "Educational institution" refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate, graduate, professional or vocational education, which operates a program or programs of scholarly research. "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis, within the meaning of paragraph (d)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(4) All other requests—Where a request seeks disclosure of records to a person or entity other than one coming within paragraphs (d) (1), (2) and (3) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time and the first 100 pages of duplication shall be furnished without charge.

(e) *Aggregating of requests.* If there exists a solid basis for concluding that a requester or group of requesters has submitted a series of partial requests for disclosure of records in an attempt to evade assessment of fees, the requests may be aggregated so as to constitute a single request, with fees charged accordingly.

(f) *Unsuccessful searches.* Except as provided in paragraph (d) above, the cost of searching for a requested record shall be charged even if the search fails to locate such record or it is determined that the record is exempt from disclosure.

(g) *Interest.* In the event a requester fails to remit payment of fees charged for processing a request under this part within 30 days from the date such fees were billed, interest on such fees may be assessed beginning on the 31st day after the billing date, to be calculated at the rate prescribed in section 3717 of Title 31, United States Code.

(h) *Advance payments.* (1) If, but only if, it is estimated or determined that processing of a request for disclosure of records will result in a charge of fees of more than $250.00, the requester may be required to pay the fees in advance in order to obtain completion of such processing.

(2) If a requester has previously failed to make timely payment (i.e.; within 30 days of billing date) of fees charged under this part, the requester may be required to pay such fees and interest accrued thereon, and to make an advance payment of the full amount of estimated fees chargeable in connection with any pending or new request, in order to obtain processing of such pending or new request.

(3) With regard to any request coming within paragraphs (h) (1) and (2) of this section, the administrative time limits set forth in §§ 503.10 and 503.11 above will begin to run only after the requisite fee payments have been received.

(i) *Non-payment.* In the event of non-payment of billed charges for disclosure of records, the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365), including disclosure to consumer credit reporting agencies and referral to

collection agencies, may be utilized to obtain payment.

(j) *Waiver or reduction of charges.* Fees otherwise chargeable in connection with a request for disclosure of a record shall be waived or reduced where—

(1) It is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or

(2) It is determined that the cost of collection would be equal to or exceed the amount of such fees. No charges shall be assessed if such fees amount to $8.00 or less.

## PART 504—PRIVACY ACT AND GOVERNMENT IN THE SUNSHINE REGULATIONS

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504.29 Requests for information.

### Subpart A—Privacy Act Regulations

**Authority:** 5 U.S.C. 552a(f).

#### § 504.1 Definitions—Privacy Act.

For the purpose of this part:

"Agency" includes any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President) or any independent regulatory agency. The Foreign Claims Settlement Commission ("Commission") is an "agency" within the meaning of the term.

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain" includes maintain, collect, use or disseminate.

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, an individual's education, financial transactions, medical history, and criminal or employment history, and that contains an individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

"Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

"Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of Title 13, United States Code.

"System of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

#### § 504.2 General policies—Privacy Act.

The Commission will protect the privacy of an individual identified in any information or record systems which it maintains. Accordingly, its officials and employees, except as otherwise provided by law or regulation, will:

(a) Permit an individual to determine what records pertaining to such individual are collected, maintained, used or disseminated by the Commission.

(b) Permit an individual to prevent a record pertaining to such individual obtained by the Commission for a particular purpose from being used or made available for another purpose without the individual's consent.

(c) Permit an individual to gain access to information pertaining to such individual in Commission records, to have a copy made of all or any portion thereof, and to correct or amend such records.

(d) Collect, maintain, use, or disseminate any record of indentifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(e) Permit exemptions from record requirements provided under the Privacy Act only where an important public policy use for such exemption has been determined in accordance with specific statutory authority.

#### § 504.3 Conditions of disclosure.

The Commission will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless such disclosure is:

(a) To those officers and employees of the Commission who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use;

(d) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity under the provisions of Title 13, United States Code;

(e) To a recipient who has provided the Commission with adequate advance assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government or for evaluation to determine whether the record has such value;

(g) To another agency or to an instrumentality of any government jurisdiction within or under control of the United States for a civil or ciminal law enforcement activity authorized by law, provided the head of the agency or instrumentality has made a prior written request to the Commission, specifying the particular record and the law enforcement activity for which it is sought;

(h) To a person purusant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure, notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of that official's authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

**§ 504.4 Accounting of certain disclosures.**

(a) Except for disclosures under § 504.3 (a) and (b) of this Part, the Administrative Officer shall keep an accurate accounting of each disclosure of a record to any person or to another agency made under § 504.3 (c), (d), (e), (f), (g), (h), (i), (j), and (k) of this part.

(b) Except for a disclosure made to another agency or to an instrumentality of any governmental jurisdiction under § 504.3(g) of this part, the Administrative Officer shall make the accounting as required under paragraph (a) of this section available to any individual upon written request made in accordance with § 504.5.

(c) The administrative Officer shall inform any person or other agency about any correction or notation of dispute made in accordance with § 504.7 of this part of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) An accounting of disclosures of records within this section shall consist of the date, nature, the purpose of each disclosure of a record to any person or to another agency, and the name and address of the person or agency to whom the disclosure is made.

(e) Such accounting shall be retained for 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

**§ 504.5 Access to records or information**

(a) Upon request in person or by mail, any individual shall be informed whether or not a system of records maintained by the Commission contains a record or information pertaining to such individual.

(b) Any individual requesting access to such record or information in person shall appear in person at the offices of the Foreign Claims Settlement Commission, 1111 20th Street, NW., Room 400, Washington, DC., between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, and

(1) Provide information sufficient to identify the record, e.g., the individual's own name, claim and decision number, date and place of birth, etc.;

(2) Provide identification to verify the individual's identity, e.g., driver's licensee, identification or Medicare card; and

(3) Any individual requesting access to records or information pertaining to such individual may be accompanied by a person of the individual's owa choosing while reviewing the record thereof. If an individual elects to be so accompanied, advance notification of the election shall be required along with a written statement authorizing disclosure and discussion of the record in the presence of the accompanying person at any time, including the time access is granted.

(c) Any individual making a request for access to records or information pertaining to such individual by mail shall address such request to the Administrative Officer (Privacy Officer), Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579, and shall provide information acceptable to the Administrative Officer to verify the individual's identity.

(d) Responses to requests under this section normally will be made within ten (10) days of receipt (excluding Saturdays, Sundays, and legal holidays). If it is not possible to respond to requests within such period, an acknowledgement will be sent to the individual within ten (10) days of receipt of the request (excluding Saturdays, Sundays, and legal holidays).

**§ 504.6 Determination of requests for access to records.**

(a) Upon request made in accordance with § 504.5, the Administrative Officer shall:

(1) Determine whether or not such request will be granted;

(2) Make such determination and provide notification within a reasonable period of time after receipt of such request.

(b) If access to a record is denied because information has been compiled by the Commission in reasonable anticipation of a civil or criminal action or proceeding, the Administrative Officer shall notify the individual of such determination and the reason therefor.

(c) If access to the record is granted, the individual making such request shall notify the Administrative Officer whether the records requested are to be copied and mailed to the individual.

(d) If records are to be made available for personal inspection, the individual shall arrange with the Administrative Officer a mutually agreeable time and place for inspection of the record.

**§ 504.7 Amendment of a record.**

(a) Any individual may request amendment of a record pertaining to such individual according to the procedure in paragraph (b) of this section except those records described under paragraph (d) of this section.

(b) After inspection by an individual of a record pertaining to such individual, he or she may file a written request, presented in person or by mail, with the Administrative Officer, for an amendment to a record. Such request shall specify the particular portions of the record to be amended, the desired amendments and the reasons therefor.

(c) Not later than 10 days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request made in accordance with this section to amend a record in whole or in part, the Administrative Officer shall:

(1) Make any correction of any portion of the record which the individual believes is not accurate, relevant, timely or complete and thereafter inform the individual of such correction; or

(2) Inform the individual, by certified mail return receipt requested, of the refusal to amend such record, setting forth the reasons therefor, and notify the individual of the right to appeal that determination as provided under § 504.8 of this part.

(d) The provisions for amending records do not permit the alteration of evidence presented in the course of Commission proceedings in the adjudication of claims, nor do they permit collateral attack upon what has already been subject to final agency action in the adjudication of claims in programs previously completed by the Commission pursuant to statutory time limitations.

**§ 504.8 Appeals from denial of requests for amendment to records.**

(a) An individual whose request for amendment of a record pertaining to such individual is denied may request a review of such determination. Such request shall be addressed to the Chairman of the Commission, and shall specify the reasons for which the refusal to amend is challenged.

(b) If on appeal the refusal to amend the record is upheld, the Commission shall permit the individual to file a statement setting forth the reasons for disagreement with the determination. The statement must also be submitted within 30 days of receipt of the denial. The statement shall be included in the system of records in which the disputed record is maintained and shall be marked so as to indicate (1) that a statement of disagreement has been filed, and (2) where in the system of records the statement may be found.

**§ 504.9 Fees.**

Fees to be charged, if any, to any individual for making copies of such individual's record excluding the cost of

any search for and review of the record shall be as follows:

(a) Photocopy reproductions, each copy $0.15.

(b) Where the Commission undertakes to perform for a requester, or any other person, services which are clearly not required to be performed under the Privacy Act, either voluntarily or because such services are required by some other law, the question of charging fees for such services shall be determined by the official or designee authorized to release the information, under the Federal user charge statute, 31 U.S.C. 583a, any other applicable law, and the provisions of § 503.13 of Part 503 of the Commission's regulations.

**§ 504.10 Exemptions.**

No system of records maintained by the Foreign Claims Settlement Commission is exempt from the provisions of 5 U.S.C. 552a as permitted under certain conditions by 5 U.S.C. 552a (j) and (k). However, the Chairman of the Commission reserves the right to promulgate rules in accordance with the requirements of 5 U.S.C. 553(b) (1), (2) and (3), (c) and (e) to exempt any system of records maintained by the Commission in accordance with the provisions of 5 U.S.C. 552a(k).

**§ 504.11 Reports.**

(a) The Administrative Officer or designee shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any Commission system of records, as required by 5 U.S.C. 552a(o).

(b) If at any time a system of records maintained by the Commission is determined to be exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a (j) and (k), the number of records contained in such system shall be separately listed and reported to the Office of Management and Budget.

**§ 504.12 Notices.**

The Commission shall publish in the **Federal Register** at least annually a notice of the existence and character of the systems of records which it maintains. Such notice shall include:

(a) The name and location of each system;

(b) The categories of individuals on whom the records are maintained in each system;

(c) The categories of records maintained in each system;

(d) Each routine use of the records contained in each system including the categories of users and the purpose of each use;

(e) The policies and practices of the Commission regarding storage, retrievability, access controls, retention, and disposal of the records;

(f) The title and business address of the agency official who is responsible for each system of records;

(g) Commission procedures whereby an individual can be notified if a system of records contains a record pertaining to such individual;

(h) Commission procedures whereby an individual can be notified how to gain access to any record pertaining to such individual contained in a system of records, and how to contest its content, and

(i) The categories of sources of records in each system.

## Subpart B—Government in the Sunshine Regulations

**Authority:** 5 U.S.C. 552b.

**§ 504.20 Definitions.**

For purposes of this part: "Agency" means any agency, as defined in 5 U.S.C. 552b(e), which includes the Foreign Claims Settlement Commission, headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;

"Closed meeting" and "closed portion of a meeting" mean, respectively, a meeting or that part of a meeting designated as provided in § 504.27 as closed to the public by reason of one or more of the closure provisions listed in § 504.24.

"Commission" means the Foreign Claims Settlement Commission, which is a collegial body that functions as a unit composed of three individual members, appointed by the President with the advice and consent of the Senate.

"Meeting" means the deliberations of at least two (quorum) members of the Commission where such deliberations determine or result in joint conduct or disposition of official Commission business.

"Member" means any one of the three members of the Commission.

"Open meeting" means a meeting or portion of a meeting which is not a closed meeting or a closed portion of a meeting.

"Public observation" means the right of any member of the public to attend and observe, but not participate or interfere in any way, in an open meeting of the Commission within the limits of reasonable and comfortable accommodations made available for such purpose by the Commission.

**§ 504.21 Notice of public observation.**

(a) A member of the public is not required to give advance notice of an intention to exercise the right of public observation of an open meeting of the Commission. However, in order to permit the Commission to determine the amount of space and number of seats which must be made available to accommodate individuals who desire to exercise the right of public observation, such individuals are requested to give notice to the Commission at least two business days before the start of the open meeting of the intention to exercise such right.

(b) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official designated in § 504.28.

(c) Individuals who have not given advance notice of intention to exercise the right of public observation will not be permitted to attend and observe the open meeting of the Commission if the available space and seating are necessary to accommodate individuals who gave advance notice of such intention.

**§ 504.22 Scope of application.**

The provisions of this Part 504, §§ 504.20 through 504.29, apply to meetings of the Commission, and do not apply to conferences or other gatherings of employees of the Commission who meet or join with others, except at meetings of the Commission to deliberate on or conduct official agency business.

**§ 504.23 Open meetings.**

Every meeting of the Commission shall be open to public observation except as provided in § 504.24.

**§ 504.24 Grounds for closing a meeting.**

(a) Except in a case where the Commission determines otherwise, a meeting or portion of a meeting may be closed to public observation where the Commission determines that the meeting or portion of the meeting is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552) provided that

such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Commission, provided the Commission has not already disclosed to the public the content or nature of its proposed action, or is not required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5, United States Code, or otherwise involve a determination on the record after opportunity for a hearing.

(b) If the Commission determines that the public interest would require that a meeting to be open, it may nevertheless so hold.

### § 504.25 Announcement of meetings.

(a) The Commission meets in its offices at 1111 20th Street, NW., Washington, DC, from time to time as announced by timely notice published in the Federal Register.

(b) At the earliest practicable time, which is estimated to be not later than eight days before the beginning of a meeting of the Commission, the Commission shall make available for public inspection in its offices, and, if requested, shall furnish by telephone or in writing, a notice of the subject matter of the meeting, except to the extent that such information is exempt from disclosure under the provisions of § 504.24.

### § 504.26 Procedures for closing of meetings.

(a) The closing of a meeting shall occur when:

(1) A majority of the membership of the Commission votes to take such action. A separate vote of the Commission members shall be taken with respect to each Commission meeting a portion or portions of which are proposed to be closed to the public pursuant to § 504.24, or with respect to any information which is proposed withheld under § 504.24. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series. The vote of each Commission member participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in § 504.24 (e), (f) or (g), the Commission upon request of any one of its Commission members, shall take a recorded vote, whether to close such portion of the meeting.

(b) Within one day of any vote taken, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question and a full written explanation of its action closing the entire or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation.

(c) The Commission shall announce the time, place and subject matter of the meeting at least 8 days before the meeting.

(d) For every closed meeting, before such meeting is closed, the Commission's Chairman shall publicly certify that, the meeting may be closed to the public, and shall state each relevant closure provision. A copy of such certification, together with a statement setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission.

### § 504.27 Reconsideration of opening or closing, or rescheduling a meeting.

The time or place of a Commission meeting may be changed following the public announcement only if the Commission publicly announces such changes at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement only if a majority of the Commission members determines by a recorded vote that Commission business so requires and that no earlier announcement of the changes was possible, and the Commission publicly announces such changes and the vote of each member upon such change at the earliest practicable time.

### § 504.28 Record of closed meetings, or closed portion of a meeting.

(a) The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting or closed portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public pursuant to § 504.24 (d), (h), or (j), the Commission shall maintain either such transcript, recording, or a detailed set of minutes.

(b) Any minutes so maintained shall fully and clearly described all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-all vote. All documents considering in connection with any action shall be identified in the minutes.

(c) The Commission shall promptly make available to the public, in its offices, the transcript, electronic recording, or minutes, of the discussion of any item on the agenda of a closed meeting, or closed portion of a meeting, except for such item or items of discussion which the Commission

determines to contain information which may be withheld under § 504.24. Copies of such transcript or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting or closed portion of a meeting for a period of two years after the date of such closed meeting or closed portion of a meeting.

(e) All actions required or permitted by this section to be undertaken by the Commission shall be by or under the authority of the Chairman of the Commission.

**§ 504.20 Requests for information.**

Requests to the Commission for information about the time, place, and subject matter of a meeting, whether it or any portions thereof are closed to the public, and any requests for copies of the transcript or minutes or of a transcript of an electronic recording of a closed meeting, or closed portion of a meeting, to the extent not exempt from disclosure by the provisions of § 504.24, shall be addressed to the Administrative Officer, Foreign Claims Settlement Commission, 1111 20th Street, NW., Washington, DC 20579, telephone 202/653-6155.

## SUBCHAPTER B—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER TITLE I OF THE WAR CLAIMS ACT OF 1948, AS AMENDED BY PUB. L. 91-289, APPROVED JUNE 24, 1970

## PART 505—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.

505.1 Claim defined.
505.2 Time within which claims may be filed.
505.3 Official claim forms.
505.4 Place of filing claims.
505.5 Documents to accompany forms.
505.6 Receipt of claims.

Authority: Sec. 2, Pub. L. 80-896, 62 Stat. 1240 as amended by Pub. L. 91-289, 84 Stat. 324 (50 U.S.C. App. 2001).

**§ 505.1 Claim defined.**

(a) A properly completed and executed application made on an official form provided by the Foreign Claims Settlement Commission for such purpose constitutes a claim and will be processed under the laws administered by the Commission.

(b) Any communication, letter, note, or memorandum from a claimant, or the claimant's duly authorized representative, or a person acting as next friend of a claimant who is not sui juris, setting forth sufficient facts to apprise the Commission of an interest to apply under the provisions of sections 5(i) and 6(f) of the Act, shall be deemed to be an informal claim. Where an informal claim is received and an official form is forwarded for completion and execution by the applicant, such official form shall be considered as evidence necessary to complete the initial claim, and unless such official form is received within thirty (30) days from the date it was transmitted for execution, if the claimant resides in the continental United States, or forty-five (45) days if outside the continental United States, the claim may be disallowed.

**§ 505.2 Time within which claims may be filed.**

(a) Claims of individuals entitled to benefits under section 5(i) of the War Claims Act of 1948, as added by Pub. L. 91-289, will be accepted by the Commission during the period beginning June 24, 1970 and ending (1) June 24, 1973, inclusive; (2) 3 years from the date the civilian American citizen by whom the claim is filed returned to the jurisdiction of the United States; or (3) 3 years from the date upon which the Commission, at the request of a potentially eligible survivor, makes a determination that the civilian American citizen has actually died or may be presumed to be dead, in the case of any civilian American citizen who has not returned to the jurisdiction of the United States, whichever of the preceding dates last occurs.

(b) Claims of individuals entitled to benefits under section 6(f) of the War Claims Act of 1948, as added by Pub. L. 91-289, will be accepted by the Commission during the period beginning June 24, 1970 and ending (1) June 24, 1973, inclusive; (2) 3 years from the date the prisoner of war by whom the claim is filed returned to the jurisdiction of the Armed Forces of the United States; or (3) 3 years from the date the Department of Defense makes a determination that the prisoner of war has actually died or is presumed to be dead, in the case of any prisoner of war who has not returned to the jurisdiction of the Armed Forces of the United States, whichever of the preceding dates last occurs.

**§ 505.3 Official claim forms.**

Official forms are provided for use in the preparation of claims for submission to the Commission for processing. Claim forms are available at the Washington offices of the Commission and through other offices as the Commission may designate. The official claim form for all claims under section 5(i) and 6(f) has been designated, FCSC Form 289, "Application for Compensation for Members of the Armed Forces of the United States Held as Prisoner of War in Vietnam; for Persons Assigned to Duty on board the 'U.S.S. Pueblo' Captured by Military Forces of North Korea; for Civilian American Citizens Captured or Who Went into Hiding to Avoid Capture or Internment in Southeast Asia During the Vietnam Conflict and, in Case of Death of any Such Person, for Their Survivors."

**§ 505.4 Place of filing claims.**

Claims must be mailed or delivered in person to the Foreign Claims Settlement Commission, 1111 20th Street NW., Washington, DC 20579.

**§ 505.5 Documents to accompany forms.**

All claims filed pursuant to sections 5(a) and 6(f) of the Act must be accompanied by evidentiary documents, instruments, and records as outlined in the instruction sheet attached to the claim form.

**§ 505.6 Receipt of claims.**

(a) *Claims deemed received.* A claim shall be deemed to have been received by the Commission on the date postmarked, if mailed, or if delivery is made in person, on the date of delivery at the offices of the Commission in Washington, DC.

(b) *claims developed.* In the event that a claim has been so prepared as to preclude processing thereof, the Commission may request the claimant to furnish whatever supplemental evidence, including the completion and execution of an official claim form, as may be essential to the processing thereof. In case the evidence or official claim form requested is not returned within the time which may be designated by the Commission, the claim may be deemed to have been abandoned and may be disallowed.

## PART 506—PROVISIONS OF GENERAL APPLICATION

Sec.

506.1 Persons eligible to file claims.
506.2 Persons under legal disability.
506.3 Definitions applicable under the Act.

Authority: Sec. 2, Pub. L. 80-896, 62 Stat. 1240, as amended by Pub. L. 91-289, 84 Stat. 324 (50 U.S.C. App. 2001).

**§ 506.1 Persons eligible to file claims.**

Persons eligible to file claims with the Commission under the provisions of

section 5(i) and 6(f) of the War Claims Act of 1948, as amended, are:

(a) Civilian American citizens captured and held in Southeast Asia or their eligible survivors, under the provisions of section 5(i) of the Act; and

(b) Members of the Armed Forces of the United States held as prisoners of war during the Vietnam conflict or their eligible survivors, under section 6(f) of the Act.

**§ 506.2 Persons under legal disability.**

(a) Claims may be submitted on behalf of persons who, being otherwise eligible to make claims under the provisions of sections 5(i) and 6(f), are incompetent or otherwise under any legal disability, by the natural or legal guardian, committee, conservator, curator, or any other person, including the spouse of such claimant, whom the Commission determines is charged with the care of the claimant.

(b) Upon the death of any individual for whom an award has been made, the Commission may consider the initial application filed by or in behalf of the decedent as a formal claim for the purpose of reissuing the award to the next eligible survivor in the order of preference as set forth under sections 5(i) and 6(d)(4) of the Act.

**§ 506.3 Definitions applicable under the Act.**

"Child" means:

(1) A natural or adopted son or daughter of a deceased prisoner of war or a deceased civilian prisoner of war or a deceased American citizen including any posthumous son or daughter of such deceased person.

(2) Any son or daughter of such deceased person born out of wedlock will be deemed to be a child of such deceased for the purpose of this Act, if, (i) legitimated by a subsequent marriage of the parents, (ii) recognized as a child of the deceased by his or her admission, or (iii) so declared by an order or decree of any court of competent jurisdiction.

"Husband" means the surviving male spouse of a deceased prisoner of war or of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place entered into.

"Natural guardian" means father and mother who shall be deemed to be the natural guardians of the persons of their minor children. If either dies or is incapable of action, the natural guardianship of the person shall devolve upon the other. In the event of death or incapacity of both parents, then such blood relative, paternal or maternal, standing in loco parentis to the minor shall be deemed the natural guardian.

"Parent" means:

(1)(i) The natural or adoptive father or mother of a decreased prisoner of war, or any person standing in loco parentis to such decease person, for a period of not less than 1 year immediately preceding the date of such person's entry into active service and during at least 1 year of such person's minority. Not more than one mother and/or father as defined shall be recognized in any case. A person will not be recognized as standing in loco parentis if the natural parents or adoptive parents are living, unless there is affirmative evidence of abandonment and renunciation of parential duties and obligations by the natural or adoptive parent or parents prior to entry into active service by the deceased prisoner or war;

(ii) An award in the full amount allowable had the deceased prisoner of war survived may be made to only one parent when it is shown that the other parent has died or if there is affirmative evidence of abandonment and renunciation of parental duties and obligations by the other parent.

(2) The father of an illegitimate child will not be recognized as such for purposes of the Act unless evidence establishes that (i) he has legitimated the child by subsequent marriage with the mother; (ii) recognized the child as his by written admission prior to enlistment of the deceased in the armed forces or entry into an overseas duty status; or (iii) prior to death of the child he has been declared by decree of a court of competent jurisdiction to be the father.

"Widow" means the surviving female spouse of a deceased prisoner of war or a deceased civilian American citizen who was married to the deceased at the time of his death by marriage valid under the applicable law of the place where entered into.

## PART 507—ELIGIBILITY REQUIREMENTS FOR COMPENSATION

### Subpart A—Civilian American Citizen

Sec.


507.1 "Civilian American citizen" defined.
507.2 Other definitions.
507.3 Rate of benefits payable.
507.4 Survivors entitled to award of detention benefits.
507.5 Persons not eligible to award of civilian detention benefits.

Subpart B—Prisoners of War

507.10 Vietnam conflict.
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**Authority:** Sec. 2, Pub. L. 80–896, 62 Stat. 1240, as amended by Pub. L. 91–288, 84 Stat. 324 (50 U.S.C. App. 2001).

### Subpart A—Civilian American Citizens

**§ 507.1 "Civilian American citizen" defined.**

"Civilian American Citizen" means any person who, being then a citizen of the United States, was captured in Southeast Asia during the Vietnam conflict by any force hostile to the United States, or who went into hiding in Southeast Asia in order to avoid capture or internment by any such hostile force.

**§ 507.2 Other definitions.**

"Calendar month" means the period of time between a designated day of any given month and the date peceding a similarly designated day of the following month.

"Citizen of the United States" means a person who under applicable law acquired citizenship of the United States by birth, by naturalization, or by derivation.

"Dependent husband" means the surviving male spouse of a deceased civilian American citizen who was married to the deceased at the time of her death by a marriage valid under the applicable law of the place where entered into.

"Force hostile to the United States" means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

"Southeast Asia" means but is not necessarily restricted to, the areas of North and South Vietnam, Laos, and Cambodia.

"Went into hiding" means the action taken by a civilian American citizen when such person initiated a course of conduct consistent with an intention to

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evade capture or detention by a hostile force in Southeast Asia.

**§ 507.3 Rate of benefits payable.**

Detention benefits awarded to a civilian American citizen will be paid at the rate of $150 for each calendar month of internment or during the period such civilian American citizen went into hiding to avoid capture and internment by a hostile force. Awards shall take account of fractional parts of a calendar month.

**§ 507.4 Survivors entitled to award of detention benefits.**

In case of death of a civilian American citizen who would have been entitled to detention benefits under the War Claims Act of 1948, as amended, such benefits shall be awarded, if claim is made, only ot the following persons:

(a) Widow or husband if there is no child or children of the deceased;

(b) Widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children in equal shares;

(c) The child or children of the deceased in equal shares if there is no widow or dependent husband, if otherwise qualified.

**§ 507.5 Persons not eligible to award of civilian detention benefits.**

An individual is disqualified as a "civilian American citizen" under the Act, and thus is precluded from receiving an award of detention benefits, if such person:

(a) Voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any such hostile force; or

(b) While detained, was a regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States.

## Subpart B—Prisoners of War

**§ 507.10 Vietnam conflict.**

"Vietnam conflict" refers to the period beginning February 28, 1961, and ending on a date to be determined by Presidential proclamation or concurrent resolution of the Congress.

**§ 507.11 "Prisoner of war" defined.**

"Prisoner of war" means any regularly appointed, enrolled, enlisted or inducted member of the Armed Forces of the United States who was held by any force hostile to the United States for any period of time during the Vietnam conflict.

**§ 507.12 Membership in the Armed Forces of the United States; establishment of.**

Regular appointment, enrollment, enlistment or induction in the Armed Forces of the United States shall be established by certification of the Department of Defense.

**§ 507.13 "Armed Forces of the United States" defined.**

"Armed Forces of the United States" means the United States Air Force, Army, Navy, Marine Corps and Coast Guard, and commissioned officers of the U.S. Public Health Service who were detailed for active duty with the Armed Forces of the United States.

**§ 507.14 "Force hostile to the United States" defined.**

"Force hostile to the United States" means any organization or force in Southeast Asia, or any agent or employee thereof, engaged in any military or civil activities designed to further the prosecution of its armed conflict against the Armed Forces of the United States during the Vietnam conflict.

**§ 507.15 Geneva Convention of August 12, 1949.**

The Geneva Convention of August 12, 1949, as identified in section 6(f) of the War Claims Act of 1948, as amended, is the "Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949" which is included under the "Geneva Convention of August 12, 1949 For the Protection of War Victims", entered into by the United States and other governments, including the Government in North Vietnam which acceded to it on June 28, 1957.

**§ 507.16 Failure to meet the conditions and requirements prescribed under the Geneva Convention of August 12, 1949.**

For the purpose of this part, obligations under the Geneva Convention of August 12, 1949, consist of the responsibility assumed by the contracting parties thereto with respect to prisoners of war within the meaning of the Convention, to comply with and to fully observe the provisions of the Convention, and particularly those articles relating to food rations of prisoners of war, humane treatment, protection, and labor of prisoners of war, and the failure to abide by the conditions and requirements established in such Convention by any hostile force with which the Armed Forces of the United States were engaged in armed conflict.

**§ 507.17 Rate of and basis for award of compensation.**

(a) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(2) of the War Claims Act of 1948, as amended, will be paid at the rate of $2 per day for each day such person was held as prisoner of war on which the hostile force, or its agents, failed to furnish the quantity and quality of food prescribed for prisoners of war under the Geneva Convention of August 12, 1949.

(b) Compensation allowed a prisoner of war during the Vietnam conflict under section 6(f)(3) of the Act, will be paid at the rate of $3 per day for each day such person was held as a prisoner of war on which the hostile force failed to meet the conditions and requirements under the provisions of the Geneva Convention of August 12, 1949 relating to labor of prisoners of war or for inhumane treatment by the hostile force by which such person was held.

(c) Compensation under paragraphs (a) and (b) of this section will be paid to the prisoner of war or qualified applicant on a lump-sum basis at a total rate of $5 per day for each day the prisoner of war was entitled to compensation.

**§ 507.18 Entitlement of survivors to award in case of death of prisoner of war.**

In case of death of a prisoner of war who would have been entitled to an award of compensation under section 6(f) (2) and (3) of the War Claims Act of 1948, as amended, such compensation shall be awarded, if claim is made, only ot the following person:

(a) Widow or husband if there is no child or children of the deceased;

(b) Widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;

(c) child or children of the deceased (in equal shares) if there is no widow or husband; and

(d) Parents (in equal shares) if there is no widow, husband or child.

**§ 507.19 Members of the Armed Forces of the United States precluded from receiving award of compensation.**

Any member of the Armed Forces of the United States, who at any time, voluntarily, knowingly, and without duress gave aid to or collaborated with, or in any manner served any force hostile to the United States, is precluded from receiving an award of compensation based on such member's capture and internment.

## PART 508—PAYMENT

Sec.
508.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91–289.
508.2 Payments to persons under legal disability.
508.3 Reissuance of awards.

Authority: Sec. 2, Pub. L. 80–896, 62 Stat. 1240, as amended (50 U.S.C. App. 2001).

### § 508.1 Payments under the War Claims Act of 1948, as amended by Pub. L. 91–289.

(a) Upon a determination by the Commission as to the amount and validity of each claim filed pursuant to section 5(i) and 6(f) of the War Claims Act of 1948, as amended, any award made thereunder will be certified by the Commission to the Secretary of the Treasury for payment out of funds appropriated for this purpose, in favor of the civilian internee or prisoner of war found entitled thereto.

(b) Awards made to survivors of deceased civilian internees or prisoners of war will be certified to the Secretary of the Treasury for payment to the individual member or members of the class or classes of survivors entitled to receive compensation in the full amount of the share to which each survivor is entitled, and if applicable, under the procedure set forth in § 508.3, except that as to persons under legal disability, payment will be made as specified in § 508.2.

### § 508.2 Payments to persons under legal disability.

Any awards or any part of an award payable under sections 5(i) and 6(f) of the Act to any person under legal disability may, in the discretion of the Commission, be certified for payment for the use of the claimant, to the natural or legal guardian, committee, conservator or curator, or if there is no such natural or legal guardian, committee, conservator or curator, then, in the discretion of the Commission, to any person, including the spouse of such person, or the Chief Officer of the hospital in which the claimant may be a patient, whom the Commission may determine is charged with the care of the claimant. In the case of a minor, any part of the amount payable may, in the discretion of the Commission, be certified for payment to such minor.

### § 508.3 Reissuance of awards.

Upon the death of any claimant entitled to payment of an award, the Commission will cause the award to be cancelled and the amount of such award will be redistributed to the survivors of the same class or to members of the next class of eligible survivors, if appropriate, in the order of preference as set forth under the Act.

## PART 509—HEARINGS

Sec.
509.1 Basis for hearing.
509.2 Request for hearing.
509.3 Notification to claimant.
509.4 Failure to file request for hearing.
509.5 Purpose of hearing.
509.6 Résumé of hearing, preparation of.
509.7 Action by Commission.
509.8 Application of other regulations.

Authority: Sec. 2, Pub. L. 80–896, 62 Stat. 1240, as amended by Pub. L. 91–289, 84 Stat. 324 (50 U.S.C. App. 2001).

### § 509.1 Basis for hearing.

Any claimant whose application is denied or is approved for less than the full allowable amount of such claim, shall be entitled to a hearing before the Commission or its representative with respect to such claim. Hearings may also be held on the Commission's own motion.

### § 509.2 Request for hearing.

Within 30 days after the Commission's notice of denial of a claim, or approval for a lesser amount than claimed, has been posted by the Commission, the claimant, if a hearing is desired, shall notify the Commission in writing, and shall set forth in such request the reasons in full for requesting the hearing, including any statement of law or facts upon which the claimant relies.

### § 509.3 Notification to claimant.

Upon receipt of such a request the Commission shall schedule a hearing and notify the claimant as to the date and place such hearing is to be held. No later than 10 days prior to the scheduled hearing date, the claimant shall submit all documents, briefs, or other additional evidence relative to an appeal from the award.

### § 509.4 Failure to file request for hearing.

The failure to file a request for a hearing within the period specified in § 509.2 will be deemed to constitute a waiver of right to such hearing and the decision of the Commission shall constitute a full and final disposition of the case.

### § 509.5 Purpose of hearing.

(a) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practice, may be offered in evidence on claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of an unjust or unfounded claim or portion thereof, and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(b) Such hearings may be stenographically recorded either at the request of the claimant or at the discretion of the Commission. A claimant making such a request shall notify the Commission at least 10 days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to the claimant.

(c) Such hearings shall be open to the public.

### § 509.6 Résumé of hearing, preparation of.

Upon such hearing, the hearing officer shall prepare a résumé of the hearing, specifying the issues on which the hearing was based, and including a list of documents and contents and other items relative to such issues which were introduced as evidence. A brief analysis of oral testimony shall also be prepared and included in such résumé of the hearing not stenographically reported.

### § 509.7 Action by the Commission.

After the conclusion of such hearing and a review of the resume, the Commission may affirm, modify, or reverse its former action with respect to such claim, including a denial or reduction in the amount of the award theretofore approved. All findings of the Commission concerning the persons to whom compensation is payable, and the amounts thereof, are conclusive and not reviewable by any court.

### § 509.8 Application of other regulations.

To the extent they are not inconsistent with the regulations set forth under provisions of this subchapter, the other regulations of the Commission shall also be applicable to the claims filed hereunder.

## SUBCHAPTER C—RECEIPT, ADMINISTRATION, AND PAYMENT OF CLAIMS UNDER THE INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED

## PART 531—FILING OF CLAIMS AND PROCEDURES THEREFOR

Sec.
531.1 Time for filing.
531.2 Form, content and filing of claims.
531.3 Exhibits and documents in support of claim.
531.4 Acknowledgement and numbering.
531.5 Procedure for determination of claims.
531.6 Hearings.

Sec.
531.7 Presettlement conference.

Authority: Sec. 3, Pub. L. 81-455, 64 Stat. 12, as amended (22 U.S.C. 1622).

**§ 531.1 Time for filing.**

Claims shall be filed as specified by the Commission by duly promulgated notice published in the Federal Register, or as specified in legislation passed by Congress, as applicable.

**§ 531.2 Form, content and filing of claims.**

(a) Unless otherwise specified by law, or by regulations published in the Federal Register, Cliams shall be filed on official forms provided by the Commission upon request in writing addressed to the Commission at its office at 1111 20th Street, NW., Washington, DC 20579; shall include all of the information called for in the appropriate form; and shall be completed and signed in accordance with the instructions accompanying the form.

(b) Notice to the Foreign Claim Settlement Commission, the Department of State, or any other governmental office or agency, prior to the enactment of the statute authorizing a claims program or the effective date of a lump-sum claims setlement agreement, of an intention to file a claim against a foreign country, shall *not* be considered as a timely filing of a claim under the statute or agreement.

(c) Any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period.

**§ 531.3 Exhibits and documents in support of claim.**

(a) If available, all exhibits and documents shall be filed with and at the same time as the claim, and shall, wherever possible, be in the form of original documents, or copies or originals certified as such by their public or other official custodian.

(b) *Documents in a foreign language.* Each copy of a document, exhibit or paper filed, which is written or printed in a language other than English, shall be accompanied by an English translation thereof duly verified under oath by its translator to be a true and accurate translation thereof, together with the name and address of the translator.

(c) *Preparation of papers.* All claims, briefs, and memoranda filed shall be typewritten or printed and, if typewritten, shall be on legal size paper.

**§ 531.4 Acknowledgement and numbering.**

The Commission will acknowledge the receipt of a claim in writing and will notify the claimant of the claim number assigned to it, which number shall be used on all further correspondence and papers filed with regard to the claim.

**§ 531.5 Procedure for determination of claims.**

(a) The Commission may on its own motion order a hearing upon any claim, specifying the questions to which the hearing shall be limited.

(b) Without previous hearing, the Commission or a designated member of the staff may issue a Proposed Decision in determination of a claim.

(c) Such Proposed Decision shall be delivered to the claimant or the claimant's attorney of record in person or by mail. Delivery by mail shall be deemed completed 5 days after the mailing of such Proposed Decision addressed to the last known address of the claimant or the claimant's attorney of record. A copy of the Proposed Decision shall be available for public inspection at the offices of the Commission.

(d) It shall be the policy of the Commission to post on a bulletin board any information of general interest to claimants before the Commission.

(e) When the Proposed Decision denies a claim in whole or in part, the claimant may within 15 days of service thereof file objections to such denial, assigning the errors relied upon, with accompanying brief in support thereof, and may request a hearing on the claim, specifying whether for the taking of evidence or only for the hearing of oral argument upon the errors assigned.

(f) Copies of objections to or requests for hearings on Proposed Decisions shall be available for public inspection at the Commission's offices.

(g) Upon the expiration of 30 days after service or receipt of notice, if no objection under this section has in the meantime been filed, a staff Proposed Decision, upon approval by the Commission, shall become the Commission's final determination and decision on the claim. A Proposed Decision issued by the Commission may become final after 30 days without further order or decision by the Commission.

(h) If an objection has in the meantime been filed, but no hearing requested, the Commission may, after due consideration thereof, (1) issue a Final Decision affirming or modifying its Proposed Decision, (2) issue an Amended Proposed Decision, or (3) on its own motion order order hearing thereon, indicating whether for the taking of evidence on specified questions or only for the hearing of oral arguments.

(i) After the conclusion of a hearing, upon the expiration of any time allowed by the commission for further submissions, the Commission may proceed to issue a Final Decision in determination of the claim.

(j)(1) In case an individual claimant dies prior to the issuance of the Final Decision, such person's legal representative shall be substituted as party claimant. However, upon failure of a representative to qualify for substitution, the Commission may issue its decision in the name of the estate of the deceased and, in case of an award, certify the award in the same manner to the Secretary of the Treasury for payment, if the payment of such award is provided for by statute.

(2) Notice of the Commission's action under this paragraph shall be forwarded to the claimant's attorney of record, or if the claimant is not represented by an attorney, such notice shall be addressed to the estate of the claimant at the last known place of residence.

(3) The term "legal representative" as applied in this paragraph means, in general, the administrator or executor, heir(s), next of kin, or descendant(s).

(k) after the date of filing with the Commission no claim shall be amended to reflect the assignment thereof by the claimant to any other person or entity except as otherwise provided by statute.

(l) At any time after a final Decision has been issued on a claim, or a Proposed Decision has been entered as the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with the program under which such claim is filed, a petition to reopen on the ground of newly discovered evidence may be filed. No such petition shall be entertained unless it appears therein that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of issuance of the Final Decision or the date on which the Proposed Decision was entered as the Final Decision; that it was not for want of due diligence that such evidence did not come sooner to the claimant's knowledge;' and that the evidence is material, and not merely cumulative, and that reconsideration of the matter on the basis of such evidence would produce a different decision. Such petition shall include a statement of the facts which the petitioner expects to prove, the name and address of each witness, the identity of documents, and

the reasons for failure to make earlier submission of the evidence.

**§ 531.6 Hearings.**

(a) Hearings, whether upon the Commission's own motion or upon request of claimant, shall be held upon not less than fifteen days' notice of the time and place thereof.

(b) Such hearings shall be open to the public unless otherwise requested by claimant and ordered by the Commission.

(c) Such hearings shall be conducted by the Commission, its designee or designees. Oral testimony and documentary evidence, including depositions that may have been taken as provided by statute and the rules of practices, may be offered in evidence on the claimant's behalf or by counsel for the Commission designated by it to represent the public interest opposed to the allowance of any unjust or unfounded claim or portion thereof; and either may cross-examine as to evidence offered through witnesses on behalf of the other. Objections to the admission of any such evidence shall be ruled upon by the presiding officer.

(d) The claimant shall be the moving party, and shall have the burden of proof on all issues involved in the determination of his or her claim.

(e) Hearings may be stenographically reported either at the request of the claimant or upon the discretion of the Commission. A claimant making such a request shall notify the Commission at least ten (10) days prior to the hearing date. When a stenographic record of a hearing is ordered at the claimant's request, the cost of such reporting and transcription may be charged to the claimant.

**§ 531.7 Presettlement conference.**

The Commission on its own motion or initiative, or upon the application of a claimant for good cause shown, may direct that a presettlement conference be held with respect to any issue involved in a claim.

**Bohdan A. Futey,**

*Chairman.*

[FR Doc. 87-10199 Filed 5-6-87; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 76**

**[MM Docket No. 85-349; FCC 87-105]**

## Cable Television; Amendment of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for reconsideration.

**SUMMARY:** This action preserves the essential elements of the two-part regulatory program adopted by *Report and Order* on August 7, 1986, to resolve the cable mandatory signal carriage matter. It retains the input selector switch and consumer education requirements and interim must carry rules with a firm five-year sunset date. However, it modifies the input selector switch rules to reduce the burden imposed on cable operators and to provide both cable operators and subscribers with more discretion in the choice of switch options. The rules will be modified to allow cable operators to charge for purchase or lease of switches and to specify that subscribers may decline the installation of a switch. Also adopted are several refinements to the rules to eliminate unnecessary burdens, particularly to exempt cable systems located in areas where no off-the-air signals are available from the switch and consumer education requirements, and to tailor the rules more closely to the federal objectives stated in the *Report and Order*. The Commission reaffirmed its belief that this program provides a constitutionally acceptable balance between the need to protect the federal interest in maximizing consumers' program choices and cable operators' and programmers' First Amendment rights.

**EFFECTIVE DATE:** June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Alan Stillwell, Mass Media Bureau (202) 632-6302.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in MM Docket No. 85-349, adopted March 26, 1987, and released May 1, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

### Summary of the Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order*, the Commission addresses thirty petitions for reconsideration of its *Report and Order* in MM Docket No. 85-349, 51 FR 44606, released November 28, 1987. The petitions, filed on behalf of broadcast and cable interests as well as other parties, requested modifications to both the basic approach and the specific provisions of the two-part regulatory program adopted in the cable signal carriage proceeding. This decision preserves the essential elements of the two-part regulatory program, that is, the input selector switch and consumer education requirements and the interim must carry rules with a five-year sunset remain. It also provides for modifications to the input selector switch requirements that will reduce the burden imposed on cable operators and will provide both cable operators and subscribers with more discretion in their choice of switch options.

2. A number of petitioners opposed the two-part program. Several cable parties claimed that the interim must carry rules should be eliminated on the grounds that they unconstitutionally intrude on the First Amendment rights of cable operators, programmers and subscribers. Many petitioners requested clarification and modification of the specific provisions of the new rules including technical standards for input selector switches, the consumer education program requirements and the interim must carry rules.

3. In the *Memorandum Opinion and Order*, the Commission finds there is no credible evidence in the petitions demonstrating that the input selector switch is not a feasible means for alternating between access to cable and off-the-air program services. It also rejects petitioners' arguments that the interim must carry rules are unconstitutional or that continuing must carry rules are necessary. However, the Commission recognizes that the rules, as adopted in the *Report and Order*, would impose substantial costs on cable operators and in some cases would require switches to be provided in areas with no available off-the-air signals. It also expresses concern that the input selector switch rules, as adopted, might reduce the flexibility of both cable operators and consumers with respect to the choice of switches that would be most suitable for individual needs or preferences.

4. In view of these considerations, the Commission is adopting modifications to certain features of its regulatory program. Under the revised rules, cable systems will be required only to affirmatively offer switches to new and existing subscribers and will be permitted to charge for them. Cable systems also will be permitted to charge for installation of switches for existing

subscribers. However, they will not be permitted to impose an additional charge strictly for installation of switches for new subscribers. The rules also will include language to clarify that subscribers may decline the switch offer and are not obligated otherwise to install or maintain off-the-air reception capability and may install and use switches and associated hardware obtained from sources other than their cable system if they so desire. In addition, the Commission finds that there is no need to require input selector switches or consumer education in areas where there are no broadcast signals available off-the-air. It therefore exempts cable systems located in such areas from the switch and consumer education requirements. The requirement for offering switches to new subscribers is delayed for six months in the same manner as the requirement for offering switches to existing subscribers. However, cable operators will be required to inform new subscribers of the need to maintain off-the-air reception capability and to provide them other information required by the consumer education requirements immediately upon the effective date of the rules, as originally planned.

5. In the *Memorandum Opinion and Order,* the Commission adopts a number of revisions and refinements to the specific provisions of the consumer education and interim must carry rules.

6. The Commission directed the staff to prepare a separate Notice of Proposed Rule Making to consider requiring input selector switches used to alternate between and cable and broadcast service comply with the § 15.606(a) technical standards for TV interface device transfer switches. The Commission recognized the concerns expressed by some parties with respect to the need to ensure that input selector switches provide adequate isolation of the two signal paths to prevent radiation of cable signals through the antenna. It concluded that in view of the importance of this issue, it is desirable to provide interested parties with an additional opportunity for comment.

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), it is certified that the modifications to the specific requirements of this program will reduce the economic burden it imposes on the regulated parties, particularly the cable industry. Cable systems now are free to set a price for purchase or lease of input selector switches, including associated hardware and installation for existing subscribers. In addition, cable systems located in areas where there are no available off-the-air signals will be completely exempt from the rules. The consumer education requirements now are stated as a series of general rather than specific requirements, and, thus, will provide cable operators with additional flexibility to tailor this information to suit their subscribers' particular needs.

8. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget as prescribed by the Act.

9. The Secretary shall cause a copy of this *Memorandum Opinion and Order* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

10. Accordingly, pursuant to the authority contained in sections 4(i) and 303 of the Communications Act and § 1.106 of the Commission's rules, *It Is Ordered* That the petitions for reconsideration of the *Report and Order* filed by parties named herein *are granted* to the extent indicated above, and *are denied* in all other respects. In addition, *It Is Ordered* That Part 76 of the Commission's rules *Is Amended* as set forth in Appendix B, effective June 10, 1987. *It Is Further Ordered* That the "Motion to Vacate Report and Order and for Termination of Proceeding" filed by Century Communications Corp., *et al. Is Denied.*

**List of Subjects in 47 CFR Part 76**

Cable television.

**Rule Changes**

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 76 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, and 521.

2. Section 76.5 is amended by revising paragraphs (d)(1), (d)(1)(ii), and (d)(2) and by adding a new paragraph (d)(3) to read as follows:

**§ 76.5 Definitions.**

* * * * *

(d) *Qualified station.* (1) Any television broadcast station, as defined in § 76.5(b), except where such station would result in payment by the cable system of distant signal copyright fees, that with respect to a particular cable system:

* * * * *

(ii) If a commercial station, receives an average share of total viewing hours of at least two percent and a net weekly circulation of at least five percent, as defined in § 76.5(k), in noncable households in the county served by the cable system or has been operational less than one full year. For purposes of this section, a station is considered operational as of the date it initially commences operation under program test authority. Changes in station operations, for example, upgrade of facilities, transfer or assignment of license, or recommencement after operations have ceased, are not considered initial commencement of operations under this paragraph. The viewing standards of this paragraph shall not apply for one full year from June 10, 1987, to otherwise qualified stations that commenced operation after July 19, 1985, but before June 10, 1987 (the effective date of these rules). Once a commerical station has demonstrated that, on the basis of a full one-year survey season, it meets the viewing standard, it will be considered to have satisfied this standard for the remainder of the period until June 10, 1992; Provided, however, that at any time after one year from the date a commercial station demonstrates that it meets the viewing standard, a cable system may nullify the station's mandatory signal carriage eligibility if it demonstrates, using the methodology specified in § 76.55 of this part, that the station no longer meets the viewing standard.

(2) Any noncommerical educational television station's translator with 5 watts or higher power serving the cable community.

(3) A full service station or translator qualifies as a noncommerial educational station for purposes of these rules if it is licensed to a channel reserved for noncommerical educational use pursuant to § 73.606 of this chapter. The Commission also will consider whether stations operating on nonreserved channels qualify as noncommerical educational stations on a case-by-case basis.

* * * * *

3. Section 76.55 is amended by revising the introductory paragraph to read as follows:

**§ 76.55 Qualified television station; method to be followed for showings.**

A commercial television station shall demonstrate that, for the previous survey season, it meets the viewing standard specified in § 76.5(d)(1)(ii) on the basis of an independent professional

survey of noncable homes conducted according to the following provisions:

* * * * *

4. Section 76.56 is amended by removing paragraph (c)(2), redesignating paragraph (c)(3) as (c)(2) and retaining the Note following redesignated (c)(2), adding new paragraph (c)(3), and by revising paragraph (d), to read as follows:

**§ 76.56 Mandatory carriage of television stations.**

* * * * *

(c) * * *

(3) Is duplicated by another station that is carried; including where both a commercial parent station and its satellite station(s) qualify, and, in the case of noncommercial stations, where a parent station and its satellite and/or translator station(s) qualify.

(d) A cable system shall not accept direct (monetary) payment or other indirect (nonmonetary) consideration in exchange for carriage of the signal of any qualified television station carried in fulfillment of mandatory signal carriage obligations, *except that* any such station may bear any costs associated with delivering a good quality signal, as defined in paragraph (c)(2) of this section, to the cable system.

* * * * *

5. Section 76.60 is amended by revising paragraph (a) to read as follows:

**§ 76.60 Carriage of other television signals.**

(a) In addition to the qualified television station(s) carried pursuant to § 76.56, a cable system may carry the signals of any other television stations, and also may carry low power television stations, television translator stations, foreign television stations, satellite distributed program services, direct broadcast satellite stations and programming from any other sources.

* * * * *

6. Section 76.62 is amended by revising paragraph (a)(2), redesignating paragraph (b) as paragraph (d) and adding new paragraphs (b) and (c), to read as follows:

**§76.62 Manner of carriage.**

(a) * * *

(2) The signal shall be carried without material degradation.

(b) Where a broadcast television station carried in fulfillment of the mandatory signal carriage obligations is carried on a tier of service, all signals carried in fulfillment of those obligations must be carried on that tier; *Provided, however,* that a signal carried in fulfillment of mandatory signal carriage obligations may be placed on a tier of service, reception of which requires separate terminal device, if such devices are provided free of charge to all subscribers.

(c) All broadcast television stations carried in fullfillment of mandatory carriage obligations must be included on the lowest-priced tier of service separately available to each cable subscriber. The tier of service on which such stations are carried also must be accessible on additional receiver connections which the subscriber may purchase.

* * * * *

7. Section 76.66 is revised in its entirety to read as follows:

**§ 76.66 Input selector switches and consumer education.**

(a) A cable system operator shall offer to supply to each new subscriber and each existing subscriber an input selector switch for each separate television receiver for which cable service is provided by the cable operator. The operator shall comply with the following in offering the switch and installing cable service:

(1) Offer to supply and install a switch for all new and existing subscribers within six months of June 10, 1987, and thereafter on an annual basis until June 10, 1992, unless the subscriber already has an input selector switching device or his/her television receiver has such a device built-in;

(2) A cable operator may charge for the purchase or lease of switches and associated hardware and may separately charge for installation of switches for existing subscribers. However, a cable operator may not charge new subscribers a separate fee for switch installation.

(3) A cable system operator is not required to provide a switch to any subscriber who declines the required offer, but is not thereby relieved from making the offer to any such subscriber thereafter on an annual basis;

(4) The switch offer shall be made using text chosen by the cable operator that includes the following points:

(i) An offer to supply an input selector switch for each separate television receiver to which cable service is provided;

(ii) The switch connects both to the cable service and an antenna, and enables selection between cable service and off-the-air broadcast television signals;

(iii) If the subscriber already has switching capability, either in a separate device or as a built-in feature of his/her television receiver, an additional switch may not be needed;

(iv) If the subscriber desires switching capability, he/she may have the cable system install a switch or may obtain a switch from it with written self-installation instructions;

(v) Switching capability may be obtained from other from other suppliers; and,

(vi) For the subscriber's convenience, attach an offer response form to be returned to the cable system's business office.

(5) Comply with the following requirements with respect to antennas:

(i) If an antenna is present, the operator shall not recommend that the antenna be removed;

(ii) If an antenna is not present, the operator shall inform the subscriber that the switch will be operational only if it is connected to an antenna;

(iii) Where the operator installs a switch and an antenna is present, it shall connect the switch to that existing antenna.

(b) Individual cable subscribers are not required to purchase or lease input selector switches from their cable system. Subscribers may obtain such switches from suppliers other than their cable systems. Although cable subscribers are encouraged to established and maintain independent access to off-the-air broadcast signals, they are not required to do so.

(c) The cable system operator shall provide the following information to each subscriber at the time of installation of cable service and to existing subscribers, in writing, within six months after June 10, 1987, and annually thereafter to all subscribers, using whatever language the operator deems appropriate to convey the following:

(1) Until June 10, 1992, the cable system may not be required to carry all broadcast signals available off-the-air in the community; and that,

(2) After June 10, 1992, the cable system will no longer be required to carry any broadcast signals; and thus,

(3) It may be necessary to use an antenna, in conjunction with an input selector switch, to access broadcast signals available off-the-air and not carried by the cable system;

(4) A description of the function of an input selector switch and state that its purpose is to aid the viewer in preserving independent access to off-the-air television service;

(5) The input selector switches may be obtained from suppliers other than the cable system and that there may be a range of switch options available, such as simple manual cable/broadcast switches, multiple input source

switches, electronic switches, remote control switches, and receivers with built-in switches;

(6) Identify for their subscribers, by call sign and channel number, any full service broadcast signals not carried on the cable system whose predicted Grade B contour covers any portion of the cable community or that are "significantly viewed" in the cable community, as defined in § 76.5(k) of the rules (the list of stations must be current to within one month of the distribution of the information required pursuant to this paragraph);

(7) Indicate that questions related to input selector switches should be directed to a specified individual at the cable system and provide a telephone number at which that person can be reached.

8. Section 76.67 is amended by revising paragraph (a) to read as follows:

**§ 76.67 Sports broadcasts.**

(a) No community unit located in whole or in part within the specified zone of a television broadcast station licensed to a community in which a sports event is taking place, shall, on request of the holder of the broadcast rights to that event, or its agent, carry the live television broadcast of that event if the event is not available live on a television broadcast signal carried by the community unit meeting the criteria specified in §§ 76.5(ii)(1) through 76.5(ii)(3) of this part. For purposes of this section, if there is no television station licensed to the community in which the sports event is taking place, the applicable specified zone shall be that of the television station licensed to the community with which the sports event or local team is identified, or, if the event or local team is not identified with any particular community, the nearest community to which a television station is licensed.

* * * * *

9. New § 76.70 is added to Subpart D to read as follows:

**§ 76.70 Exemption from input selector switch and mandatory signal carriage rules.**

(a) Cable systems serving communities where no portion of the community is covered by the predicted Grade B contour of at least one full service broadcast television station or noncommercial educational television translator station operating with 5 or more watts output power and where the signals of no such broadcast stations are "significantly viewed" in the county where the cable community is located shall be exempt from the provisions of §§ 76.56, 76.58, 76.60, 76.62, and 76.66 of this chapter. Cable systems may be eligible for this exemption where they demonstrate with engineering studies prepared in accordance with § 73.686 of this Chapter and other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

(b) Where, prior to June 10, 1992, a new full service broadcast television station, or a new noncommercial educational television translator station with 5 or more watts, or an existing such station of either type with newly upgraded facilities provides predicted Grade B service to a community served by a cable system previously exempt under paragraph (a) of this section, or the signal of any such broadcast station is newly determined to be "significantly viewed" in the county where such a cable system is located, the cable system at that time is required to comply fully with the provisions of § 76.66 of this chapter. Cable systems may retain their exemption under paragraph (a) of this section where they demonstrate with engineering studies prepared in accordance with § 73.686 of this Chapter and other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

(c) Where the changed circumstances described in paragraph (b) of this section occur after June 10, 1992, the cable system at that time will be required to comply only with the provisions of § 76.66(d) remaining in effect.

10. Section 76.617 is revised to read as follows:

**§ 76.617 Responsibility for interference.**

(a) Interference generated by a radio or television receiver shall be the responsibility of the receiver operator in accordance with the provisions of Part 15, Subpart A of this chapter: Provided, however, That the operator of a cable television system to which the receiver is connected shall be responsible for the suppression of receiver-generated interference that is distributed by the system when the interfering signals are introduced into the system at the receiver.

(b) Interference resulting from use of an input selector switch shall be the responsibility of the switch operator in accordance with the transfer switch provisions of Part 15 of this chapter: Provided, however, That the operator of a cable television system to which the switch is connected shall be responsible for suppression of emissions of RF energy resulting from use of input selector switches that are in excess of the signal leakage and radiation limits of Part 76 of this chapter.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-10737 Filed 5-8-87; 8:45 am]

BILLING CODE 6712-01-M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 671

[Docket No. 61092-7089]

### Tanner Crab off Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule implementing a Secretarial Amendment to repeal the North Pacific Fishery Management Council's (Council) Fishery Management Plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP) and its implementing regulations. The Council is preparing a new FMP to replace this plan. This action is necessary because the Tanner crab FMP and its implementing regulations failed to provide for timely coordination with the State of Alaska's management actions and may have resulted in violation of several national standards of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

**EFFECTIVE DATE:** April 29, 1987.

**ADDRESS:** Copies of the Secretarial Amendment are available from Robert W. McVey, Regional Director, NMFS, P.O. Box 21668, Juneau, Alaska 99802.

**FOR FURTHER INFORMATION CONTACT:** Raymond E. Baglin, Fishery Management Biologist, 907-586-7229.

**SUPPLEMENTARY INFORMATION:**

### Background

The FMP was adopted by the Council and approved by the Assistant Administrator for Fisheries on behalf of the Secretary and published on May 16, 1978 (43 FR 21170). The FMP has been amended nine times, most recently on September 12, 1984 (49 FR 35779).

The objective of the FMP is to establish management measures necessary to conserve and manage Tanner crab stocks as a unit throughout their range in compliance with the national standards of the Magnuson Act and other applicable Federal law (FMP section 6.3.1). In order to achieve this

objective and effectively coordinate management with the State of Alaska, the FMP adopted a management system similar to that employed by the State (FMP section 3.3.3.2).

The management measures adopted by the FMP are characteristic of plans developed shortly after the Magnuson Act was enacted. Optimum yield (OY) is specified rigidly as a fixed range of the amounts of Tanner crab that may be taken in specified areas each year. Maximum sustainable yield (MSY), and season opening and closing dates, are similarly specified for each area. Therefore, a relatively long time is required to alter the various fishing areas and the OYs assigned to them to reflect the changing condition of the Tanner crab stocks because such changes must be made by plan amendment. The FMP does attempt to provide some flexibility by authorizing the NMFS Regional Director to adjust season dates and fishing areas by field order in the course of a season (FMP section 8.3.1.2.). Under the FMP and its implementing regulations at 50 CFR Part 671, the Regional Director may issue such a field order when he determines in the course of the fishing year that the condition of the Tanner crab stocks within a given management area is substantially different from the condition anticipated at the beginning of the fishing year, and that such differences support the need for inseason conservation measures to protect those stocks.

Because the FMP, to a great extent, adopts the present State management regime, effective management of the Tanner crab fishery depends on close and timely cooperation between NMFS and the State of Alaska. However, problems with the cooperative management system have become apparent. Because fishing areas and the OYs and season dates assigned to them are rigidly fixed in the FMP, NMFS may not, during the course of a season, impose the State's annual harvest guidelines and closures in the 3–200 mile exclusive economic zone (EEZ) unless implemented through plan amendment, promulgation of an emergency interim rule, or issuance of a field order.

Generally, only a field order can be carried out in the short time available to coordinate State and Federal management. Practice has shown, however, that in many instances the present field order authority is too narrowly prescribed to allow NMFS to coordinate Federal actions with State inseason management decisions. For example, State managers make estimates of stock abundance before the beginning of the fishing year which are published as annual harvest guidelines and often subsequently verified by information provided in the course of the fishery. Under these circumstances, a field order based on a State closure decision is not authorized by the FMP because the stock's condition is not different than the condition anticipated at the beginning of the year. Thus, the fishery must be allowed to continue in the EEZ until either an FMP amendment or emergency interim rule is implemented, or until the resulting continued fishing of the stock causes its condition to differ substantially from that anticipated at the beginning of the fishing year.

Other situations arise in the fishery when State managers determine that a season date in an area should be advanced in response to social or economic considerations. NMFS may not advance a season opening or closure in this case by field order since the field order authority permits inseason adjustments only to protect Tanner crab stocks. For the same reason NMFS may not allow extension of a season if a Tanner crab stock should prove more abundant than was anticipated before the beginning of the fishing year.

In certain situations the failure to provide for timely coordination with the State's management actions may result in violations of national standard 1 of Magnuson Act section 301(a) by failing to prevent overfishing. The FMP may also violate national standard 2 in that conservation and management measures may not be based upon the best scientific information available. Compliance with national standards 5, 6, and 7 is also called into question as the FMP fails, where practicable, to promote efficiency in the utilization of fishery resources; fails to account for variations and contingencies in fisheries; and fails, where practicable, to minimize costs and avoid unnecessary duplication. The abundance of Tanner crab off the coast of Alaska varies greatly from year to year and the *C. bairdi* Tanner crab stock currently is in a state of severe decline.

As a result of these large fluctuations in stock abundance, the rigid specification of OYs and MSYs in terms of specific annual quantities of Tanner crab that can be changed only by FMP amendment may violate the requirement of Magnuson Act section 303(a)(3) that a plan specify MSY and OY. Finally, the problems just described call into question conformance of the FMP's regulations with Executive Order 12291.

On November 1, 1986, NOAA promulgated an emergency interim rule at the request of the Council, to repeal the regulations implementing the Tanner crab FMP for a period of 90 days (November 1, 1986, through January 29, 1987; 51 FR 40027).

At its December 1986 meeting, the Council voted to extend the emergency interim rule for a second 90-day period (January 30 through April 29, 1987). When the second 90-day period expires, the current regulations will come back into effect unless permanently amended or repealed. At the December meeting, the Council also decided to begin preparation of a new FMP. However, the Council also determined that the 180 days' duration of the two emergency interim rules was insufficient to complete a study of management options, prepare a new FMP, and complete the Secretarial review process. Thus, the Council requested the Secretary to prepare and implement a Secretarial Amendment to repeal the FMP and its implementing regulations until such time as the Council prepares and the Secretary approves and implements a new FMP.

The Secretarial Amendment, which this rule implements, is intended to ensure that the Council has adequate time to study management alternatives and to develop a new FMP. In the interim, management authority will rest with the State of Alaska.

For the reasons stated above, this Secretarial Amendment repeals the Tanner crab FMP and its implementing regulations.

## Public Comments Received

Comments were received from the U.S. Coast Guard, and from members of the fishing industry. Each comment has been summarized and is responded to as follows:

*Comment 1:* The Coast Guard believes that the Tanner crab regulations were not workable or enforceable and encourages a complete rewrite of the Tanner crab FMP.

*Response:* NOAA concurs with the comment.

*Comment 2:* There is a need for the repeal of the Federal Tanner crab FMP. The FMP has not provided the necessary flexibility for effective management. The respondent recommends that the State of Alaska manage the resource.

*Response:* NOAA concurs with the respondent that the Federal Tanner crab FMP needs to be repealed. However, NOAA has recommended that the North Pacific Fishery Management Council develop a new Federal crab FMP, which is now being developed.

*Comment 3:* The proposed rulemaking and supporting analyses failed to

discuss one alternative to the proposed action, namely a Secretarial Amendment to the existing FMP that corrects the perceived difficulties.

*Response:* Amending the current Tanner crab FMP was considered as an alternative in the environmental assessment prepared for the emergency rule repealing the regulations implementing the Tanner Crab FMP and again in the environmental assessment prepared for this Secretarial amendment. However, this alternative was found to be inferior to the proposed action, which is to repeal the current FMP and develop a new combined king and Tanner crab FMP, because neither a Council-developed amendment nor a Secretarial Amendment of the required scope could be undertaken with the limited administrative resources and the limited time available before the beginning of the 1986–87 fishing year in November 1986. Because management could not continue for another year under the current defective FMP, the only logical alternative is the proposed action. Further, amendment of the Tanner crab FMP would have expended resources which can be better used in developing a new FMP which properly manages both King and Tanner crab.

*Comment 4:* Repeal of the FMP constitutes abandonment of the Federal Government's responsibility. State management is not an adequate or proper substitute for Federal management. Transferring jurisdiction to the State would violate National Standard 4.

*Response:* This Secretarial Amendment does not totally abandon Tanner crab management to the State, but crab management simply reverts to the State of Alaska while the new FMP is being developed. The Tanner crab FMP, as written, cannot continue in force because it would violate the Magnuson Act, so management would revert to the State, in any case. The reversion to State management would occur during development of either an amendment to the Tanner crab FMP or a new king and Tanner crab FMP. There is no difference in the result.

*Comment 5:* Potential discrimination against non-Alaskans cannot be effectively cured on a real-time basis.

*Response:* If nonresidents feel that they are being discriminated against by any preseason or inseason action of the State, they may seek a temporary restraining order from a court and petition NOAA to implement an emergency rule under Magnuson Act section 305(e).

*Comment 6:* The draft crab plan now under consideration would cover only the Bering Sea/Aleutian Islands crab fishery and leave most management decisions to the State of Alaska.

*Response:* This is presently not a subject for comment. There will be ample opportunity for comments on the new FMP being developed by the Council during the formal review process.

## Classification

The Administrator of NOAA determined that this Secretarial Amendment to repeal the Tanner crab FMP and implementing regulations is necessary for the conservation and management of the Tanner crab stocks off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator prepared an environmental assessment (EA) for this Secretarial Amendment and concluded that there will be no significant impact on the human environment as a result of this action. A copy of the EA is available (see ADDRESSES).

The Administrator of NOAA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291 on the basis of an analysis by the Assistant Administrator for Fisheries conducted for this action. A copy of this analysis is available (see ADDRESSES).

The General Counsel for the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because State of Alaska Tanner crab management regulations impose essentially the same requirements as the Federal Tanner crab regulations. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator has determined that this action will be consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination was submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. No adverse reaction was received from those State agencies within the time allowed.

The Assistant Administrator also finds, to avoid disruption within the fishery and possible violation of national standards of the Magnuson Act, that it is impractical and contrary to public interest to delay for 30 days the effective date of the final rule as required under section 553 (b) and (d) of the Administrative Procedure Act.

This rule would temporarily repeal collection of information requirements previously approved under Office of Management and Budget (OMB) Control Numbers 0648–0018, 0648–0097 and 0648–0114. Because NOAA expects to reinstate the collection of information requirements under a new FMP, no request to withdraw the OMB approval of the information requirements will be submitted to OMB at this time.

## List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

## PART 671—[REMOVED AND RESERVED]

For the reasons set forth in the preamble, 50 CFR Part 671 is removed and reserved.

Dated: May 6, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator For Fisheries Resource Management National Marine Fisheries Service.*

[FR Doc. 87–10642 Filed 5–8–87; 2:42 pm]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 52, No. 90
Monday, May 11, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 273

[Amt. No. 290]

### Food Stamp Program; Alien Verification

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposed to broaden current food stamp regulations which preclude State agencies from contacting the Immigration and Naturalization Service (INS) to obtain information about an alien's status without written consent of the alien. The proposal is being made to give States more flexibility to verify alien status through use of the INS Systematic Alien Vertification for Entitlements (SAVE) system or any other system which protects the individual's privacy to the maximum degree possible. This rule does not implement the provision pertaining to the SAVE system contained in the recently enacted Immigration Reform and Control Act of 1986 (Pub. L. 99–603). Regulations to implement the changes contained in the Immigration Reform and Control Act (IRCA) will be issued at a later date.

**DATE:** Comments on this proposed rulemaking must be received on or before July 10, 1987 to be assured of consideration.

**ADDRESS:** Comments should be submitted to Judith Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 706, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this proposed rulemaking should be directed to Ms. Seymour at the above address or by telephone at (703) 756–3429.

**SUPPLEMENTARY INFORMATION:**

### Classification

*Executive Order 12291 and Secretary's Memorandum 1512–1*

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1. The rule will not result in an annual economic impact of more than $100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment, productivity, investment, or foreign trade. Further, the rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the rule has been classified as "nonmajor."

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related Notice to 7 CFR 3015 Subparst V (48 FR 29115), this program is exclcuded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action does not have a significant economic impact on a substantial number of small entities. This action would affect certain Food Stamp Program applicants and the State and local agencies which administer the Program.

*Paperwork Reduction Act*

This rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

### Background

Section 6(f) of the Food Stamp Act (7 U.S.C. 2015(f)) effectively states that those individuals who are determined to be illegal aliens are not eligible to participate in the Food Stamp Program. Since, under the Food Stamp Act, a person's exact alien classification is critical to that person's Food Stamp Program eligibility, the program eligibility worker is required to ask the alien to present the appropriate INS documentation as verification of such classification. Under current food stamp regulations at 7 CFR 273.2(f)(1)(ii), when an alien produces an INS document that does not clearly indicate alien status, the State agency advises the alien that he or she may contact INS to obtain the necessary verification or, if the alien wishes, that the State agency will, with the alien's written consent, contact the INS on the alien's behalf.

Reports from some States with large alien populations, indicate that the problem of verification of INS alien status card (I–94) is critical in some areas. Many cards are either out of date, have been altered or are counterfeit. However, eligibility workers do not possess the expertise to question the accuracy or authenticity of the documents. It has become apparent that further steps should be taken to help ensure that benefits are not erroneously issued to aliens with inaccurate or fraudulent documentation. In order to accomplish this objective, States will be given the authority to access verification systems such as the SAVE system.

The Immigration and Naturalization Service developed the SAVE system to prevent aliens who are in the United States unlawfully from obtaining various program benefits, such as food stamps, to which they are not entitled. Several State agencies have expressed interest in being able to use such a system to verify applicant aliens' documents during the Food Stamp Program application process. The current regulations' limitation on contacting INS only when the verification documents provided by the alien are questionable, and only with the alien's written consent, makes the use of a verification system very difficult. Some States are already actively engaged in alien status verification initiatives with INS for the Unemployment Compensation, AFDC and Medicaid Programs. In examining

the policy of the Department of Health and Human Services (HHS) in preparation for the planned AFDC/Food Stamp Program conformity rule, it was apparent that HHS is not restricted to contacting INS only with the alien's written consent. Consistency with HHS policy, as well as integration with anticipated regulations which will implement IRCA (which mandates the use of the INS SAVE system for verification of alien status) provide additional impetus for the proposed changes in this rule.

The proposed rule would change current regulations to allow State agencies to access SAVE or a similar system. Specifically, these proposed rules would: continue to mandate that an alien Food Stamp Program applicant verify his or her alien status via an INS document; remove the requirement that State agencies find questionable the INS document and obtain prior written consent from applicant-aliens before contacting INS for verification of the applicant-alien's documents; offer State agencies the option of using the SAVE system, or a similar system established with INS, to validate the INS document either for all aliens or for only those aliens whose status is questionable; and retain the State agency option of allowing aliens of questionable status to themselves obtain validation of their questionable document from INS. As in current regulations, failure to provide acceptable verification at the time of application would result in no benefits being issued to the alien until such verification is obtained. However, all of his/her resources and a prorated amount of his/her income would continue to be considered available to the remainder of the household as specified in 7 CFR 273.4(c) of the current regulations. Certification workers would still be precluded from reporting aliens to INS unless the certification worker has determined that the household member is an illegal alien. Further, INS would not, under any circumstances, review food stamp case records. State agencies may only access the SAVE system, or any other system, as a validation tool for assessing Food Stamp Program eligibility.

Section 121(b)(5) of IRCA amended section 16 of the Food Stamp Act (7 U.S.C. 2025) by providing that the Secretary, effective October 1987, has the authority to pay 100 percent of the costs incurred by State agencies in implementing and operating the SAVE system. The Department wants to make it clear that this rule does not implement the SAVE system provision of IRCA. The IRCA SAVE system will be implemented in a rule to be promulgated in the future. The costs incurred by State agencies in implementing the provisions in this proposed action will be paid, as are all other State agency administrative costs, on an equally shared, 50–50 Federal/State basis.

The proposed changes are consistent with the Deficit Reduction Act of 1984 (DEFRA) final rules on collateral contacts published in the Federal Register on February 28, 1986 (51 FR 7178). The DEFRA rules removed the household consent requirement from the general verification regulations for third-party contacts made for verification purposes based upon an interpretation of section 11(e)(8) of the Food Stamp Act as amended, (7 U.S.C. 2020(e)(8)). Section 11(e)(8) of the Food Stamp Act prohibits disclosure of applicant information to all but a limited few. INS personnel are not among the limited categories of persons to whom disclosure is permitted. Section 11(e)(2) of the Food Stamp Act requires that applicants for food stamps be informed of verification procedures upon application for program benefits (7 U.S.C. 2020(e)(2)). FNS believes that the notice required by section 11(e)(2) of the Act provides for adequate notification to applicant aliens of the possibility of verification of alien status with INS. Moreover, the privacy protections provided in section 11(e)(8) of the Act are not violated by a request for verification of information provided by applicant aliens as long as no information supplied by the applicant alien is provided to INS during the verification process. The Department, however, does expect that, when a State agency opts to use the SAVE system to verify aliens' documentation, the eligibility worker will explain this process to the alien applicant.

**Implementation**

Since the provisions of this rule are optional, it is proposed that they may be implemented by State agencies on the effective date of this rule, which is the first day of the month following the 30th day after publication of the final rule.

**List of Subjects in 7 CFR Part 273**

Administrative practice and procedure, Aliens, Claims, Food stamp, Fraud, Grant programs-Social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

Accordingly, 7 CFR Part 273 is proposed to be amended as follows:

1. The authority citation for Part 273 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2029.

2. In § 273.2: A. Paragraph (f)(1)(ii)(C) is amended by removing the sixth and seventh sentences and by adding five new sentences in their place.

B. In paragraph (f)(1)(ii)(D), the third sentence is removed.

The addition reads as follows:

**§ 273.2 Application processing.**

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(ii) *Alien status.* * * *

(C) * * * The alien shall also be advised that classification under sections 207, 208, 212(d)(5), or 243(h) of the Immigration and Nationality Act shall result in eligible status and that the alien may be eligible if acceptable verification is obtained. The State agency is required to verify questionable documentation of status. The State agency may allow aliens of questionable status to themselves contact INS, or the State agency may itself verify the questionable document. The State agency may also verify all INS documents presented by aliens, including, but not limited to, those listed in sub-paragraph (f)(1)(ii)(B) above, using the Systematic Alien Verification for Entitlements (SAVE) system or any other system acceptable to INS. If the alien does not wish to contact INS, or does not want the State agency to exercise its option to contact INS, the household shall be given the option of withdrawing its application or participating without that member.

* * * * *

Dated: May 5, 1987.

S. Anna Kondratas,

*Acting Administrator.*

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**Agricultural Marketing Service**

**7 CFR Part 933**

**[Docket No. AO F&V 87–1]**

**Proposed Florida Strawberry Marketing Agreement and Order; Hearing**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of hearing on proposed marketing agreement and order.

**SUMMARY:** Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement and

order to cover fresh strawberries grown in Florida. The proposed program would authorize production and market research and development including development of improved varieties of strawberries to promote the marketing, distribution and consumption of strawberries. The proposal was submitted by the Florida Strawberry Growers Association which represents a substantial portion of the Florida strawberry producers and handlers. The program would be financed by assessments levied on Florida strawberry handlers. The assessment rate would be established by the Secretary of Agriculture, based on the recommendation of a committee that would administer the program. The committee would be composed of 12 Florida strawberry producers.

**DATES:** The hearing will be held in Valrico, Florida, beginning on May 27, 1987 at 9:00 a.m. Additional sessions, if necessary, will be held on May 28 and 29, beginning at 9:00 a.m. at the same location.

**ADDRESS:** The hearing will be held in the auditorium of the Hillsborough County Farm Bureau Building, 100 South Mulrennan Road, Valrico, Florida 33594.

**FOR FURTHER INFORMATION:** Copies of this Notice of Hearing may be obtained from:

(1) John Toth, Officer-in-Charge, Southeastern Marketing Field Office, USDA, 500 33rd Street NW., Winter Haven, Florida, 33883; telephone (813) 299–4770; or

(2) James Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2523–S, AMS, USDA, Washington, DC 20250; telephone (202)— 447–5698.

**SUPPLEMENTARY INFORMATION:** This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12291. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 ("Act"), as amended (7 U.S.C. 601 et. seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The Regulatory Flexibility Act (Pub. L. 96–354), effective January 1, 1981, applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and reporting requirements of the program are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the reporting requirements and probable economic impact of the proposal on small businesses.

The proposed agreement and order contain no provision for quality control, volume control, or any provisions limiting the right of individual Florida strawberry producers to produce strawberries. Proponents of the order believe that varietal research will result in the development of a new strawberry variety, or varieties, that will be better suited to Florida growing conditions than varieties now used. Proponents also contend that market research and development will improve the efficiency of production and distribution and increase the consumption of Florida strawberries. The proponents believe that mandatory assessments on handlers are the only way to fairly and equitably raise the funds needed to administer the needed research and development activities.

This proposal has been widely discussed within the Florida strawberry industry but has not yet received approval by the Secretary of Agriculture.

The hearing will be held for the purposes of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of fresh strawberries in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects interstate or foreign commerce.

(c) Determining the need for such a marketing agreement and order that would be implemented for fresh strawberries in the production area.

(d) Determining the economic impact of the proposed marketing agreement and order on the industry in the production area and on the public affected by such a program.

(e) Determining whether the proposal or an appropriate modification of it will tend to effectuate the declared policy of the Act.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Fruit and Vegetable Division, Agricultural Marketing Service

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and are proposed by the Agricultural Marketing Service.

**List of Subjects in 7 CFR Part 933**

Marketing agreements and orders, Strawberries, Florida.

The marketing agreement and order proposed on behalf of the Florida strawberry producers would add a new Part 933 to read as follows:

## PART—933 STRAWBERRIES GROWN IN FLORIDA

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933.05 Strawberries.
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**Administrative Body**

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Marketing Agreement

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Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

## Definitions

### § 933.01 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

### § 933.02 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended: 7 U.S.C. 601 *et seq.* 68 Stat. 906, 1047).

### § 933.03 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

### § 933.04 Production area.

"Production area" means the State of Florida. Within the confines of this document, the terms "production area" and "district" are synonymous.

### § 933.05 Strawberries.

"Strawberries" means all varieties of the edible fruit belonging to the roseaceous genus "Fragaria" commonly known as strawberries and grown within the production area.

### § 933.06 Varieties.

"Varieties" means and includes all classifications or subdivisions of strawberries according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

### § 933.07 Fiscal period.

"Fiscal period" means the period beginning January 1 and ending the following December 31, or such other period as the committee, with the approval of the Secretary, may prescribe.

### § 933.08 Committee.

"Committee" means the Florida Strawberry Committee, established pursuant to § 20.

### § 933.09 Grower.

"Grower" is synonymous with "producer" and means any person engaged in a proprietary capacity in the production of fresh strawberries for market.

### § 933.10 Handler.

"Handler" is synonymous with "shipper" and means any person who sells or handles fresh strawberries or causes fresh strawberries to be handled.

### § 933.11 Handle.

"Handle" or "Ship" means to sell, consign, transport, deliver, or in any other way to place fresh strawberries within the production area or between the production area and any point outside thereof: Provided, That the term "handle" shall not include the transportation within the production area of strawberries from the field where grown to a handling facility located within such area for preparation for market.

## Administrative Body

### § 933.20 Establishment and membership.

(a) The Florida Strawberry Committee, consisting of 12 producer members, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) Each person selected as a committee member or alternate shall be an individual who is a producer, or an officer or an employee of a corporate producer, and a resident of the production area.

(c) The composition of the committee, as much as is feasible, will represent the industry it serves. Handler representation through grower members on the committee will be a consideration for nomination.

### § 933.21 Term of office.

The term of office of committee members, and their respective alternates, shall be four (4) years, beginning on January 1 and ending on December 31 four years later, *Provided,* That (a) The term for one fourth of the initial members shall be for one (1) year; the term for the second fourth of the initial members shall be two (2) years; the term for the third fourth of the initial members shall be three (3) years; and the term for the final fourth of the intitial members shall be four (4) years.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified.

(c) Any member serving on the Florida Stawberry Committtee will not be eligilble for renomination to the committee for a period of one (1) year. Alternates to the committee will be eligible for renomination at the end of their respective terms.

### § 933.22 Nomination.

The Secretary shall select the members of the committee and alternates from nominations which shall be made in the following manner:

(a) A meeting or meetings of producers shall be held in the production district to nominate members and alternates for the committee. The committee shall hold such meeting or cause them to be held prior to November 15 of each year preceding the beginning of a new term of office or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(b) At each such meeting at least one nominee shall be designated for each committee member and alternative whose term expires December 31 of the same year.

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as may be prescribed, not later than December 1 of each year preceding the beginning of a new term of office, or by such other date as may be approved by the Secretary pursuant to recommendation of the committee.

(d) Only producers may participate in the nomination process.

### § 933.23 Selection.

The Secretary shall select all members of the commitee and their respective alternates, from nominations made pursuant to § 933.22, or from other qualified persons.

### § 933.24 Failure to nominate.

If nominations are not made within the time and in the manner specified in § 933.22, the Secretary may, without regard to nominations, select the committee members and alternates, which selection shall be on the basis of the representation provided for in § 933.20.

### § 933.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

**§ 933.26 Vacancies.**

To fill any vacancy, occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in a manner specified in §§ 933.22 and 933.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in § 933.20.

**§ 933.27 Alternate members.**

(a) An alternate member of the committee shall act in the place and stead of the member for whom tha individual is an alternate, during the member's absence. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act until a successor of such member is selected and has qualified.

(b) If both a member and a respective alternate are unable to attend a committee meeting, the committee may designate any other alternate present to serve in place of the absent member.

**§ 933.28 Powers.**

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

**§ 933.29 Duties.**

It shall be, among other things, the duty of the committee:

(a) At the beginning of each fiscal year, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping and marketing conditions with respect to strawberries;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books and records shall be subject to examination at any time by the Secretary or his authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(g) At the beginning of each fiscal period and as may be necessary thereafter, to prepare an estimated budget of income and expenditures necessary for the administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget to the Secretary with an accompaying report showing the basis for its calculations;

(h) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(i) To consult, cooperate, and exchange information with other marketing agreement committees and other individuals or agencies in connection with all proper committee activities and objectives under this part.

**§ 933.30 Procedure.**

(a) Seven members of the committee, including alternatives acting for members, shall be necessary to constitute a quorum and the same number of concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for meeting by telephone, telegraph, or other means of communication, and any vote cast at such a meeting shall be promptly confirmed in writing: Provided, That if any assembled meeting is held, all votes shall be cast in person.

(c) The committee shall give the Secretary the same notice of meetings as is given to the members thereof.

**§ 933.31 Expenses and compensation.**

Members of the Committee, their alternatives, subcommittees including any special subcommittees, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of duties and in the exercise of powers under this part.

**Expenses and Assessments**

**§ 933.40 Expenses.**

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal period. The funds to cover such expenses shall be acquired by the levying of assessments as described in § 933.41.

**§ 933.41 Assessments.**

(a) The funds to cover the committee's expenses shall be acquired by levying assessments upon handlers as provided in this subpart. The means for collecting said assessments shall be as follows: Each handler who first handles strawberries shall, on demand, pay to the committee such handler's pro rata share of the expenses which the Secretary finds will be incurred by the committee.

(b) Assessments shall be levied at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations and other available information.

(c) At any time during, or subsequent to, a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all strawberries which were regulated under this part.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay said assessment within the time prescribed by the committee, the unpaid assessment may be subject to an interest charge at rates prescribed by the committee with the approval of the Secretary.

(e) In order to provide funds for the administration for the provisions of this

part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance and may also borrow money for such purpose.

(f) The committee may accept voluntary contributions, but these shall only be used to pay expenses pursuant to § 933.50. Furthermore, such contributions shall be free from any encumbrances by the donor, and the committee shall retain complete control of their use. The committee may not receive contributions from any person whose contributions would constitute a conflict of interest.

**§ 933.42 Accounting.**

(a) All funds received by the committee pursuant to the provisions of this subpart shall be used solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternatives, employees, agents and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member of the committee or alternate, such person shall account to his/her successor, the committee, or to the person designated by the Secretary, for all receipts, disbursements, funds and property (including but not being limited to books and other records) pertaining to the committee's activities for which such person is responsible, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor, the committee, or designated person, the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, if the Secretary determines such action appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for the committee.

**§ 933.43 Excess funds.**

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, to the extent practical it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established; Provided, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used (i) to defray any expenses authorized under this part, (ii) to defray expenses during any fiscal period prior to the time assessment income is sufficient to cover such expenses, (iii) to cover deficits incurred during any fiscal period when assessment income is less than expenses, (iv) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative, and (v) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation, and after reasonable effort by the committee it is found impracticable to return such funds on a prorata basis to the persons from whom such funds were collected, these funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

**Research and Development**

**§ 933.50 Research and development.**

The committee, with the approval of the Secretary, may establish or provide for the establishment of projects, including production research, varietal research, and marketing research to promote efficient production of strawberries, as well as development projects and marketing promotion, designed to assist, improve, or promote the marketing, distribution, and consumption of fresh strawberries. The expenses of such projects shall be paid from funds collected pursuant to § 933.41. Upon conclusion of each program, but at least annually, the committee shall summarize and report on the program status and accomplishments to its members and the Secretary. A similar report to the committee shall be required of any contracting party on any such project.

**Reports and Records**

**§ 933.60 Reports.**

Upon request of the committee, made with approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the quantities of strawberries received by a handler and the quantities disposed of by such handler.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to prohibition of disclosure of individual handlers' identities or operations.

**§ 933.61 Records.**

Each handler shall maintain for at least two succeeding years such records of the strawberries received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

**Miscellaneous Provisions**

**§ 933.70 Compliance.**

Except as provided in this part, no handler shall handle strawberries except in conformity to the provisions of this part.

**§ 933.71 Right of the Secretary.**

The members of the committee (including successors and alternates), and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

**§ 933.72 Effective time.**

The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

**§ 933.73 Termination.**

(a) The Secretary may, at any time, terminate this subpart.

(b) The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart whenever

it is found that such operation obstructs or does not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever it is found that such termination is favored by a majority of the growers of strawberries, who, during such fiscal period, have been engaged in the area in the production of strawberries for market: *Provided*, That such majority have produced for market during such period more than 50 percent of the volume of strawberriers produced for market in the area; but such termination shall be effective only if announced on or before December 31 of that fiscal period.

(d) The committee shall recommend to the Secretary within ten years of the effective date hereof that a referendum be conducted to ascertain whether continuance of this subpart is favored by the members. Subsequent referenda to ascertain whether continuance of this subpart is favored by the members are to be conducted every six years after the date of the preceding referendum.

(e) The provisions of this subpart shall terminate, in any event, whenever the provisions of the act authorizing the same cease to be in effect.

**§ 933.74 Proceedings after termination.**

(a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary my direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

**§ 933.75 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termintion of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

**§ 933.76 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

**§ 933.77 Agents.**

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States Government, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this subpart.

**§ 933.78 Derogation.**

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

**§ 933.79 Personal liability.**

No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any grower, handler, or to any person for errors in judgment, mistakes, or other acts, either of commission or ommission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct, or gross negligence.

**§ 933.80 Separability.**

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstances, or thing is held invalid, the validity of the remainder of this part, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

**§ 933.81 Amendments.**

Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

**Marketing Agreement**

***§ 933.90 Counterparts**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 933.91 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 933.92 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of fresh Florida strawberries in the same manner as is provided for in this agreement.

Dated: May 6, 1987.

William T. Manley,

*Deputy Administrator, Marketing Programs.*

[FR Doc. 87-10663 Filed 5-8-87; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Parts 1033, 1036, and 1040**

**[Docket Nos. AO-166-A56, AO-179-A51, AO-225-A38]**

**Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan Marketing Areas; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This decision recommends certain changes in the classification

provisions of the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan milk orders based on industry proposals considered at a public hearing held October 28, 1986. Several changes recommended would eliminate raw product cost differences for certain uses of milk between regulated handlers in the three markets under consideration and, particularly, handlers in the nearby Indiana and Chicago Regional markets. The result of these changes will provide the same classified price structure for skim milk and butterfat used in the production of ice cream and other related products, eggnog, and buttermilk biscuit mixes throughout the region.

The decision also recommends several changes in the Southern Michigan order only that would make it easier to qualify milk for pool status. In this regard, the pooling standards for cooperative plants and units are relaxed. Also, less-restrictive diversion provisions are adopted. These changes reflect current marketing conditions and will facilitate the orderly marketing of the market's reserve milk supplies.

**DATE:** Comments are due on or before May 26, 1987.

**ADDRESS:** Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

Several of the proposed amendments would modify the classification provisions of the three orders in order to eliminate raw product cost differences for certain uses of milk among handlers regulated by these and nearby orders of the region. The principal changed marketing condition involves an overlap in distribution due to fewer but larger pool plants that operate over much larger areas. Correcting for the cost discrepancy between orders through amendments proposed herein will not result in a significant added price impact on regulated handlers. In fact, only about 7 percent of the producer milk in these three markets will be reclassified and priced slightly higher.

Other proposed amendments herein would modify the pooling standards and the diversion provisions of the Southern Michigan milk order to make it conform more closely to current economic conditions that exist in the marketplace. In this regard, the principal changed marketing condition involves the market's supply-demand relationship for milk, exemplified in a 26 percentage point decrease in the market's Class I utilization percentage since the present provisions were adopted. Reflection of this changed marketing condition through amendments made herein should lessen the regulatory impact of the order on regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued October 14, 1986; published October 17, 1986 (51 FR 37037).

## Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington DC 20250 by the 15th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Romulus, Michigan, on October 28, 1986, pursuant to a notice of hearing issued October 14, 1986 (51 FR 37037).

The material issues on the record of hearing relate to:

1. Classification changes.
2. Class II price.
3. Pooling standards.
4. Diversion of producer milk.
5. Expedited action.

## Findings and Conclusions

1. *Classification changes.* (a) *Classification of ice cream and related products under the Ohio Valley, Eastern Ohio-Western Pennsylvania and Southern Michigan orders.* Skim milk and butterfat in ice cream and related products should be reclassified from Class III to Class II in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan milk orders (i.e., Federal Orders 33, 36, and 40). The products involved would specifically include frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product. Reclassification to Class II of skim milk and butterfat used in ice cream and related products will provide for more orderly marketing conditions for regulated handlers.

Two cooperative associations, Milk Marketing, Inc. (MMI) and Michigan Milk Producers Association (MMPA), proposed the reclassification of ice cream and related products from Class III to Class II in Federal orders 33, 36 and 40. The proposals were supported by another cooperative association, Independent Cooperative Milk Producers (ICMP) of Grand Rapids, Michigan, and by three proprietary handlers regulated under Federal order 49 (the Indiana milk order), namely, Miller Corporation, New Paris Creamery Company, Inc., and Wayne Dairy Products, Inc. Although at the hearing there was no direct opposition to the reclassification proposals, a proprietary handler, Dean Foods, Company (Dean), and a federation of cooperatives, Central Milk Producers Cooperative (CMPC), suggested modifications to the original proposals. Opposition to MMI's reclassification proposal for Order 36 was expressed in the brief of R. Bruce Fike & Sons Dairy, Inc. (Fike).

The spokesman for MMI also testified on behalf of Farmers, Union, Scioto County Co-operative, Huntington Interstate Milk Producers Association, and Dairymen Incorporated. Together they represent over half of the producers whose milk is pooled under Federal orders 33, 36, and 49. MMI's spokesman stated that handlers regulated under Federal orders 11 ( Tennessee Valley), 46 (Louisville-Lexington-Evansville), and 49 (Indiana), whose marketing areas are contiguous to the Ohio Valley marketing area, have complained that the Order 33 handlers have a competitive advantage

in the sale of ice cream and related products. The witness attributed this advantage to a difference in the classification and price of milk used to produce these products under the orders (i.e., Class III in Order 33 and Class II in Orders 11, 46, and 49) and to an overlap in the sales areas. Proponent referred to an exhibit which he had requested for the hearing to show the inter-market movement of fluid milk. Working under the assumption that ice cream and related products have distribution networks similar to those for fluid milk, if not broader, he stated that the Order 33 handlers have a clear advantage in terms of raw costs for milk used in such products over their neighbors. He further stated that the same reasoning holds for the Order 36 situation and applies to similar proposals for Order 40.

The MMI spokesman also pointed out that the price difference between Class II and Class III can at times go beyond the ten cent differential value because of the operation of the advance Class II pricing formula. However, he added that reclassifying to Class II ice cream and related products would not impact greatly on the blend price to producers.

The opposition brief filed on behalf of Fike concurred with MMI that reclassification of ice cream and related products in Order 36 should not have a significant impact on the market. However, Fike alleged that such action would have a significant impact on individual ice cream manufacturers regulated under Order 36, and thus, questioned whether reclassification should take place. Furthermore, it is Fike's opinion that such action is discriminatory towards ice cream manufacturers in that their product was selected for up-classification and cheese was not even though cheese plants compete for the same milk supply. It was Fike's belief that if reclassification is the outcome of this proceeding, then the use of cheaper ingredients, (i.e., butter, powder) instead of producer milk will be on the rise. Lastly, Fike stated that permanent changes should not be made to accommodate temporary imbalances between markets with differences in classification for the same uses of milk.

The witness for MMPA testified that the Order 40 handlers enjoy a competitive advantage over their competitors regulated under neighboring orders because frozen desert type products are given a lower Class III classification and price under Order 40 as opposed to a Class II classification and price under Orders 30 (Chicago Regional) and 49. He stated that MMPA, like MMI, has received complaints from ice cream processors regulated under nearby orders about the price differences. He pointed out that since the implementation of advance Class II pricing, the difference between the Class II and Class III prices, instead of being approximately ten cents, has become much wider. The difference in class prices and thus the difference between the orders in the cost of milk going into those products, he claimed, results in disorderly marketing. Therefore, he rationalized that the same classification should apply to milk used to produce frozen products as is now in effect in adjacent markets in order to properly align the price that regulated handlers pay for milk. MMPA indicated in its brief that this rationalization also applies when considering the MMI proposals.

Furthermore, MMPA's witness pointed out that one can make the same claim today for the reclassification of frozen dessert type products as was made for cottage cheese in 1968 and for sour cream, eggnog, and yogurt in 1973; and that is, that handlers rely upon producers for a regular supply of high quality milk for making these products. Therefore, he also believes that these products should be reclassified in order to reflect the added value associated with milk used to produce them.

The MMPA spokesman added that a reclassification of these products from Class III to the higher priced Class II should not impact the Order 40 blend price by any significant amount because of MMPA's proposal to simultaneously reduce the Class II price by five cents, (this issue will be addressed later in this decision).

The basic issue developed on the record for consideration is whether certain regulated handlers have a competitive advantage over other regulated handlers that requires certain products to be reclassified in order to eliminate this advantage.

Under Orders 33, 36, and 40, a Class III classification and price applies to milk used to produce ice cream and related products while under the nearby orders of Indiana (Order 49), Chicago Regional (Order 30), Louisville-Lexington-Evansville (Order 46), and Tennessee Valley (Order 11), milk for the same uses is Class II. From January 1984 through September 1986, the cost to handlers who paid the Class II price for milk used in the production of ice cream and related products was on the average 12.5 cents per hundredweight greater than the cost to handlers who paid the Class III price for such milk uses, ranging from 0 cents to 55 cents higher throughout the 33 month period. This difference would not cause a problem if each order were isolated and there were no overlap in distribution. However, the record establishes that presently there are fewer, larger plants where ice cream and related products are produced that operate over much larger areas. Therefore, substantial inter-market competition occurs between handlers regulated under different orders. Because a difference in classification and price exists, some handlers have a distinct advantage over others. Reclassification, as adopted herein, will take away any competitive advantage in raw milk costs that ice cream manufacturers under Orders 33, 36, and 40 now have over other order handlers and will place them on a par with these competitors.

Data introduced into the record established that there is an overlap in sales areas for fluid milk. One exhibit showed that handlers regulated under five other orders (i.e., Federal orders 11, 36, 40, 46, and 49) have packaged Class I disposition in the Order 33 marketing area while Order 33 handlers have disposition in these same five marketing areas. Also, the witness for MMPA testified that there is substantial competition between Order 40, 49, and 30 handlers. Both proponents testified that distribution patterns for ice cream are similar to packaged Class I disposition. In fact, they claimed that the sales territory of an ice cream processor tends to be larger than the sales territory of a fluid milk processor. Such evidence clearly shows there is a need for uniform classification and pricing of milk used in ice cream and related products under the orders of the region.

Other data introduced into the record showed that for the 33-month period of January 1984 through September 1986, the Class II price in competing orders (i.e., Federal orders 11, 30, 46 and 49) exceeded the Class III price in 23 months. Such data is contrary to Fike's contention that the imbalance between orders is only temporary. Furthermore, during that same 33 month period, the difference in class prices went beyond 10 cents in 17 months, ranging from 11 cents to 55 cents over.

The frequent disparity between Class II and Class III prices can be attributed to the use of the advance Class II formula pricing which is presently used in 39 Federal orders, including all of the orders cited in this decision. The Class II price reflects the Minnesota-Wisconsin (M-W) price for the second preceding month adjusted for subsequent changes in product market prices. Ideally, such calculations should yield a Class II price

that is ten cents greater than the current month's Minnesota-Wisconsin price (i.e., the Class III price). However, in times of rapid downward change in the M-W price, a wide difference between the Class II and Class III prices can occur due to the lag which is built into the formula. For instance, in July 1985 the difference between the Class II price in orders 11, 30, 46 and 49 and the Class III price was 55 cents, due to virtually no change in product market prices in early May and June 1985 and a drop in the M-W price of 36 cents from May to July. (Official Notice is taken of Dairy Market News Vol. 52 Report Nos. 18, 19, 20, 23, 24, and 30.) Such occurrences further enhance the advantage that Order 33, 36, and 40 handlers already have over other order handlers with whom they compete in common sales areas.

As the witness for MMPA pointed out in his testimony, the rationale set forth in decisions providing for a Class II classification for cottage cheese, yogurt, sour cream, etc., also applies when considering the frozen dessert products herein proposed to be reclassified. In the findings and conclusions of the Assistant Secretary's decision of February 19, 1974 (39 FR 8712 concerning uniform classification for 39 markets, official notice of which is taken, he concluded that,

> The demand for producer milk used in these products is related closely to the current consumer demand for such products. Thus, handlers normally want adequate supplies of producer milk made available at their plants in the quantities and at the times needed for these uses. This is in contrast to the more storable residual "hard" products. Also the processing of such products often takes place at the market center, which entails a greater hauling expense for producers than when reserve milk is processed in the production area.

This rationale is equally applicable to the reclassification of ice cream and related products in the three markets in question.

At the hearing, Dean and CMPC suggested that the classification provisions of the orders under consideration be amended to make them identical with those orders which were involved in the uniform classification decision. To do so, it would make the classification provisions of Orders 33, 36, and 40 identical with Orders 30 and 49 in particular. This would involve reclassifying, in addition to those products proposed, infant and dietary formulas packaged in hermetically sealed glass or metal containers, plastic cream, anhydrous milk fat, custards, puddings, and pancake mixes (Order 40 market only).

The spokesman for CMPC alleged that, in part, the purpose for which the hearing was called was to insure uniformity. His belief was that the MMI and MMPA proposals did not go far enough, that is, they were not all inclusive, and therefore, fell short of the uniformity goal. Likewise, Dean's spokesman testified in favor of classification uniformity between the three orders under consideration and the orders that were involved in the uniform classification decision as a matter of principle.

There were no proposals submitted for inclusion in the hearing notice in response to the Department's invitation that dealt with adopting the uniform classification scheme referred to previously for the three markets herein considered. Thus, the requests of Dean and CMPC to adopt uniform classification provision in the three markets was not within the scope of the proceeding. The Administrative Procedure Act (5 U.S.C. 553(b)) requires that the notice of hearing contain the "terms or substance of the proposed rule or a description of the subjects and issues involved." Accordingly, CMPC's and Dean's requests are denied.

It must be noted that in addition to the classification changes for the three markets, a change has also been made in the composition standard for determining the classification of milk shake and ice milk mixes under Order 36. As provided herein, the classification of skim milk and butterfat in milk shake and ice milk mixes should be determined on the basis of the total solids content of the product. A Class I classification should apply to milk shake and ice milk mixes containing less than 20 percent total solids. Conversely, and as already stated, milk shake and ice milk mixes with 29 percent or more total solids should be Class II.

Presently under Order 36, milk shake and ice milk mixes containing less than 12 percent total milk solids are Class I and those with 12 percent or more total milk solids are Class III. MMI proposed the change from "12 percent total milk solids" to "20 percent total solids". There was no opposition to the proposal. Under Federal orders 33 and 40, the other orders under consideration, milk shake and ice milk mixes containing less than 20 percent total solids are Class I. Therefore, this change comports with the reclassification of ice cream and related products adopted herein.

Statistics and testimony presented at the hearing indicated that the change in the classification of ice cream and related products adopted herein will not significantly impact the blend prices paid to producers. In all three orders it was estimated that reclassification would have had only a one or two cent impact on the blend price if it had any impact at all. Even in July 1985, when the Class II price exceeded the Class III price by 55 cents, the effect on the blend price in Orders 3 and 40 would have only been six cents and two cents respectively. Therefore, such change is not expected to result in any measureable impact on the level of milk production in these markets.

(b) *Classification of eggnog under the Eastern Ohio-Western Pennsylvania order.* Under Order 36, skim milk and butterfat used to produce eggnog should be Class II. Under the present order, eggnog is Class III.

MMI's proposal to reclassify eggnog from Class III to Class II was unopposed at the hearing. Proponent testified that including eggnog in Class II is appropriate because it is given this classification in Federal orders 33 and 40. Proponent added that marketing conditions are about the same for eggnog as for frozen dessert type products.

Eggnog is distributed on an intermarket basis similar to the marketing of ice cream and related products which are proposed to be reclassified herein. Therefore, eggnog should be given a Class II classification for the reasons already cited in connection with frozen products.

(c) *Classification of buttermilk biscuit mixes under the Ohio Valley and Southern Michigan orders.* Under orders 33 and 40, a Class III classification should apply to skim milk and butterfat used to produce a product labled "buttermilk biscuit mixes". Presently, this product is not designated in the classification provisions of the two orders.

Kroger proposed that this product be given a Class II classification in Order 33 and a Class III classification in Order 40. At the hearing, the Kroger spokesman stated that its proposal simply classifies the new product buttermilk biscuit mixes the same as each order now classifies pancake mixes. He added that Kroger would not opposed a decision by the Department to place buttermilk biscuit mixes in Class II in the Southern Michigan order. However, he declined to modify his proposal.

The Kroger proposal was basically supported by three Indiana handlers and was opposed by Dean. Although CMPC supported the proposal, it suggested that it be modified to provide a Class II classification for buttermilk biscuit mixes in all three orders under

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consideration. CMPC also requested a Class II classification for all new nonfluid milk products that should come onto the markets in the future.

The Kroger spokesman indicated that its development of a new buttermilk biscuit mix product to be used in the making of biscuits prompted them to make such a proposal. The mixture, proponent stated, would contain fluid buttermilk with two percent or more added flour which meets the standards of identity for a food product rather than a fluid milk product as issued by the Food and Drug Administration, U.S. Department of Health and Human Services. Proponent further stated that the product is planned to be distributed to Kentucky Fried Chicken distribution centers from Chicago to New Jersey. He claimed that a classification other than Class I should apply to the mixture so that it will provide more equitable pricing in relation to substitute dried products that can be used in making buttermilk biscuits.

Since the new product was not intended to be distributed for use as a beverage and because the record shows that its basic composition is a nonfluid milk product, it is appropriate to classify the product in question in a lower priced class. It would appear that, if it were not for other overriding considerations, buttermilk biscuit mixes should be included, as proponent proposed, in the same class as pancake mixes since both products have about the same utility value and must be made from quality milk available on a regular basis. However, other factors must be considered including the fact that pancake mix is classified differently between Orders 33 and 40, Class II in the former order and Class III in the latter order. Beyond this, if a new product other than a fluid milk product, like buttermilk biscuit mix, was marketed by a handler regulated by most any other order, including the nearby orders, a Class III classification would apply. This is because most orders specify that milk used to produce a product, such a buttermilk biscuit mix, which is not a designated or listed product under the order's classification provisions, is Class III. In view of these considerations, a Class III classification for buttermilk biscuit mixes in the two markets is appropriate. Such classification will place Order 33 and Order 40 handlers on a comparable basis with handlers in other regulated markets as to their costs under the orders for skim milk and butterfat used in buttermilk biscuit mixes.

While several Order 49 handlers supported establishing a lower classification for buttermilk biscuit mixes, they did express concern that such lower classification could jeopardize their ability to meet the requirements for pool qualification. As adopted herein, only milk and butterfat used to produce buttermilk biscuit mixes is given a Class III classification. Buttermilk as fluid milk product sold to restaurants and subsequently used in biscuits will continue to be Class I. Thus, only if handlers choose to make and distribute buttermilk biscuit mixes will they reduce their Class I utilization. Even so, their concern is a pooling rather than a classification problem and is not a compelling factor in considering the proper classification for the product buttermilk biscuit mix.

In opposing Kroger's proposal, Dean's witness testified that the proposal, if adopted, will result in lower monetary returns to producers.

This, however, does not provide an adequate basis for not adopting a lower classification for the product in question. It is not anticipated that classifying buttermilk biscuit mixes in Class III will have any significant impact on returns to producers in the two markets involved.

The CMPC suggestion to place all new nonfluid milk products that should come onto the markets in the future into Class II rather than Class III should not be adopted. It would not be appropriate to consider such a modification except on a regional or national basis if orderly marketing is to be maintained.

2. *Class II price under Order 40.* The Class II price for the month should be the basic Class II formula price for the month plus a differential that would be the amount by which a 12-month moving average of the basic formula price plus 10 cents exceeds a 12-month moving average of the basic Class II formula prices. This should result in a Class II price that an average exceeds the Class III price by 10 cents. Presently, such pricing applies in Orders 33 and 36, whereas in Order 40, the Class II price is determined by adjusting the Class II formula price by a differential that adds 15 cents to the basic formula price.

MMPA proposed that the Class II differential be revised from 15 cents to 10 cents per hundredweight in conjunction with its request to reclassify ice cream and related products as Class II. The spokesman for MMPA stated that the Order 40 Class II price often exceeds nearby orders' class II prices by five cents due to differences in the orders' Class II differentials. The witness held that this is a corollary change needed to achieve uniformity in the classification and pricing of ice cream and related products in the region.

In light of the decision made herein to reclassify certain products from Class III to Class II in order to eliminate raw product cost differences in the region, the Order 40 Class II price should also be aligned. Otherwise, handlers regulated under Order 40 who process ice cream and related products would incur a 5 cent higher raw milk price than would be the case for nearby and adjacent other-order handlers. The effect on the blend price of reducing the Class II differential by 5 cents will be negligible when coupled with the reclassification of the frozen dessert type products. Statistics presented at the hearing revealed that the impact of this change in Class II pricing coupled with the classification changes adopted herein will result in an insignificant impact on the blend price (1 or 2 cents if any).

Accordingly, the Class II price should be based on the average of the M–W price plus 10 cents.

3. *Pooling standards for plants other than distributing plants under the Southern Michigan order.* (a) *Supply plants (other than cooperative balancing plants).* The period during which supply plants or a unit of supply plants must ship milk to pool distributing plants to be eligible for automatic pooling status in a later period should be changed from October through March to September through February. Presently, a supply plant or a unit of supply plants that met the pooling standards for each of the months of October through March is automatically qualified for pool status during the following months of April through September without having to meet any shipping requirements.

The principal supplier of fluid milk to the market's pool distributing plants, MMPA, proposed that the months of September through March rather than October through March, should be used as the qualifying period in which a supply plant may earn automatic pooling status for the following months of April through August. Proponent testified that the cooperative's proposal was one of several designed to update the pooling standards for plants other than distributing plants. The proponent's witness stated that including September as a qualifying month for supply plants comports with current marketing conditions in which this is the beginning of the period when there is greater demand for supply plant milk.

Another producer group associated with the market, National Farmers Organization (NFO), supported adding

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September as the first month in the qualifying period. However, the organization proposed that March be eliminated as a qualifying month for automatic pooling. A spokesman for NFO testified that the Class I utilization during March is more related to the automatic pooling spring and summer months than to the higher utilization months in the fall and winter. He indicated that there is no need to increase the number of months included in the qualifying period as MMPA proposed since additional supply plant milk is not needed.

The months of September-February rather than October-March should be used as the qualifying period in which a supply plant may earn automatic pooling status for the following months of March-August when there is less demand for supply plant milk. This change would more nearly reflect the current seasonal supply-demand pattern for the market. The six months of September-February is the period when milk production is lower relative to demand than in the following six months. For example, during the most recent such six-month period (September 1985 through February 1986) for which data were available at the hearing, Class I utilization of producer milk was 44 percent. In the following six months (March through August 1986) the comparable Class I utilization was 40 percent.

As noted previously, March should be replaced with September as a month in which supply plants are required to make shipments to pool distributing plants. March is the beginning month when production starts its seasonal climb and Class I utilization percentage decline. For example, average daily deliveries by producers serving the Southern Michigan market in March were higher than in February during the entire 1983 through 1986 period. During the same period, Class I utilization of producer milk in March was a lesser percentage than in February except for 1984. This relationship indicates that the supply-demand pattern for March is more comparable with that for the current months of automatic pooling than with that for the months when supply plants are now required to ship milk.

In contrast, September marks the beginning of the period when supply plants should be encouraged to make shipments to distributing plants. This month is now a month of strong demand relative to production. Except for 1986, average daily deliveries in September were lower than in August during the 1983-86 period. For the years 1983, 1984, 1985 and 1986, the Class I utilization of producer milk in September was 43, 42, 41 and 47 percent, respectively. These percentages for September are essentially at the same level or higher than for most months with greater Class I sales. In this circumstance, it is appropriate to use September rather than March as a qualifying month.

By using September as the starting month of the qualifying period, the Southern Michigan order will be better coordinated with neighboring orders, such as the Chicago Regional order, Indiana order and Ohio Valley order since these orders also use September as the starting month of the qualifying period. Such coordination will assist in planning by handlers and cooperatives concerning which plants and producers to associate with which markets during the qualifying period.

The record, however, does not support MMPA's proposal to expand the number of months included in the qualifying period. Rather, supply plant shipments should be required only when supply plant milk is likely to be needed to meet fluid milk sales. Deleting March as a qualifying month for supply plants and replacing it with September will promote more orderly marketing conditions in that shipments to distributing plants will not be required at a time when supply plants normally are not needed to supplement their fluid milk needs.

(b) *Cooperative balancing plants.* Several modifications should be made in the pooling standards for supply plants operated by a cooperative association.

*First*, a cooperative operated supply plant or a unit of such plants should continue to acquire pool status on the basis of the cooperative's or unit's overall marketwide performance as evidenced by its total milk movements to distributing plants either by transfer or directly from member producers' farms. However, the quantity of such deliveries needed to qualify this type of plant or unit should be for each month based on a ratio of the market's Class I sales to producer receipts during the same month of the previous year. Changes up or down in this ratio would have to exceed 5 percentage points before the delivery requirement for such plants would change.

*Second*, any such plant or unit that acquires pool plant status during each of the months of September-February should automatically retain pool plant status for each of the following months of March-August without having to meet any delivery requirement.

*Third*, a cooperative association(s) should be permitted to include in a balancing plant pooling unit a supply plant(s) operated by a proprietary handler in addition to any plant(s) operated by a cooperative(s). Under this revision, such pooling unit would have to collectively meet the standards herein adopted for a cooperative balancing plant without each individual plant in the unit required to meet a minimum delivery standard.

*Fourth*, supply plants to be eligible to qualify for pool status as part of a cooperative balancing plant pooling unit should be located within the state of Michigan.

Presently, the order provides separate pooling requirements for supply plants operated by a cooperative association. As provided, a supply plant operated by a cooperative association may qualify as a pool plant if the cooperative delivers at least 50 percent of its members' producer milk, either directly from farms or by transfer from the supply plant to distributing plants. If the cooperative, however, does not meet this 50 percent delivery requirement for the month, the balancing plant can retain its pool plant status for the month if it qualified in each of the preceding 13 months and at least one-half of its members' milk was delivered to distributing plants during the second through the 13th preceding months. Additionally, a cooperative operated plant that is located in the marketing area that has been a pool plant for 12 consecutive months, but which otherwise does not qualify, can acquire pool plant status for the plant if the cooperative has a marketing agreement with another cooperative association whose members deliver at least 50 percent of their milk during the month directly to pool distributing plants. Their total deliveries of member milk to distributing plant, either directly from farms or by transfer from the plant, must not be less than 50 percent of the cooperatives combined member producer milk.

MMPA, who at the time of the hearing operated six pool supply plants under the order, proposed essentially the changes adopted herein that would ease the requirements for pooling a cooperative balancing plant or a unit of such plants. Proponent's witness testified that the changes proposed were designed to correct a long-standing problem encountered by the proponent cooperative in maintaining pool status for all of the milk of its member producers who have been historically associated with the market. The cooperative's witness claimed that the current pooling requirements for the market's principal balancer of supplies

for the market are "too inflexible and do not reflect current market conditions." He indicted that MMPA, in order to avoid unnecessary and uneconomic movements of reserve milk supplies, has frequently requested the Department to suspend to suspend the pooling requirements for a cooperative balancing plant. On the basis of these requests, such pooling requirements have been suspended during most months since May 1982.

Basically, MMPA testified that its pooling problem stems from two developments that have occurred in the market which were not prevalent when the present pooling requirements for cooperative balancing plants were established in 1968, namely, (1) changes in the relationship of producer milk supplies to Class I sales, and (2) decline in the daily and seasonal demand for supply plant milk. Proponent contended that performance standards should not be established at a level that milk regularly associated with the market can maintain pool status only if uneconomical movements are made for the purpose of qualifying a cooperative balancing plant.

NFO similarly proposed and supported at the hearing relaxing the requirements for pooling a cooperative balancing plant. The organization cited generally the same marketing conditions in support of lower pooling standards for cooperative balancing plants as did MMPA. In this regard, NFO's witness testified that the present qualification requirements for such plants are too inflexible and do not reflect present supply-demand conditions. There was no opposition to any of the proposed changes.

A review of marketing conditions shows that significant changes have occurred since the pooling requirements for cooperative balancing plants were established in 1968. The primary factors affecting the pooling of balancing plants operated by cooperative associations in the increase in producer milk on the market without a corresponding increase in the proportion of such milk used in Class I.

To illustrate, total producer milk on the market increased from 4,609 million pounds in 1981 to 4,970 million pounds in 1985, up nearly eight percent. (Official notice is taken of the 1982 annual summarly of "Federal Milk Order Market Statistics," Statistical Bulletin No. 698, published by the Dairy Division, AMS, USDA.) While in 1986, total producer milk in the first nine months was slightly less (1.2 percent) than a year before, the record evidence indicates that this is only a temporary situation and the normal trend in producer receipts is expected to continue upward.

Conversely, during the five-year period of 1981 through 1985, producer milk utilized in Class I outlets decreased from 2,109 million pounds in 1981 to 2,074, down nearly two percent. For the first nine months of 1986, there was no change in the percentage of producer milk used in Class I compared to the same period in 1985. Also, record data indicate that the Class I use of the market's producer milk averaged 66 percent in 1968, which was the year when the performance requirements for balancing plants were last considered at a hearing. In contrast, Class I use of producer milk in 1985 declined to an average of 42 percent (26 percentage points lower than 1968).

As noted previously, because of these change in supply-demand relationships, MMPA on a number of occasions since 1982 requested a suspension of the 50 percent delivery requirement for balancing plants. Based on the cooperative's requests, this delivery requirement was suspended for 30 months during the period of May 1982 through September 1986. Proponent cooperative testified that without such suspensions, it would have had to deliver substantially more milk to distributing plants than they needed and then backhaul the excess milk to manufacturing plants solely to maintain pool status for its balancing plants. Thus, the suspensions permitted the proponent cooperative to pool all of its members' milk without incurring unnecessary handling and transportation expenses.

Suspensions, however, are only temporary solutions and are not designed as a solution to an on-going marketing problem. Performance standards for a balancing plant must be changed as conditions in the market change. Under the present conditions existing in the market, it would not be in the interest of orderly marketing to continue the present pooling standards for cooperative balancing plants since they do not accomodate the continued pool status for some of such plants and some producers who have been and continue to be regular suppliers of the market's fluid milk needs.

In view of current supply-demand conditions and in recognition of the additional reserve milk supplies that must be handled through balancing plants in supplying the current fluid needs of the market, the delivery requirement to pool balancing plants should be reduced. This can best be accomplished by providing that the delivery requirement for each month be based on the market's Class I utilization percentage in the same month of the prior year. Changes up or down in this percentage would have to exceed 5 percentage points before the delivery requirement for such plants would be adjusted. This will provide a degree of adjusting automatically such delivery requirements to reflect seasonal and long-term changes in the relationship of producer milk supplies to Class I sales. Use of Class I utilization data for the same month of the preceding year should be entirely appropriate as a measure of the market's Class I needs since for any particular month the Class I utilization percentage for the market does not materially change from one year to the next.

MMPA proposed that only Class I route sales rather than total Class I sales be used as measure of the market's Class I needs. The cooperative believed that this measure was essential in eliminating the influence of variations in Class I transfer to other markets from one year to the next. The record evidence, however, does not indicate this is a problem warranting the adoption of Class I route sales data as a measure of the market's demand.

Under the scheme adopted herein, the applicable delivery percentages for each month of 1985 would have been 35 percent for the period of May-August, 40 percent for March, April, September, October and December and 45 percent for the remaining three months, averaging 40 percent for the year. This requests an average reduction of 10 percentage points for the year. This lower delivery standard should be adequate to assure that milk associated with balancing plants will continue to be available to distributing plants when needed. It also should reduce to a minimum the need for uneconomic movements of reserve milk supplies which otherwise might be made solely to maintain pool status for a balancing plant.

The order should be modified to provide that a balancing plant or unit of balancing plants that have met the pool performance delivery standards for each of the months of September through February is automatically qualified for pool status during the following months of March through August regardless of the volume of deliveries to distributing plants. Under the present terms of the order, the delivery requirement for a balancing plant is 50 percent for each month.

This modification was a companion balancing plant pooling proposal of MMPA which was supported at the hearing by NFO. Proponent stated that this proposal was made for the purpose

of insuring that a balancing plant would not lose its pool status during the months when producer receipts were high in relation to Class I sales. Proponent contended that the automatic pool plant status provision for a balancing plant was needed to accomodate the handling of reserve milk supplies on an efficient basis.

Permitting automatic pool plant status for a balancing plant during the months of March through August on the basis of performance during the preceding September through February period is appropriate in view of the seasonal patterns of milk supplies and sales. A cooperative which serves the majority of the market's fluid needs and has the burden of disposing of the market's reserve milk supplies should be provided the opportunity to pool its balancing plants on a basis which promotes efficiency in operations. Allowing for automatic pooling will assist in accomplishing this and should reduce to a minimum the circumstances of uneconomic handling and movements of reserve milk supplies solely for the purpose of qualifying a cooperative's balancing plants.

The order should also be amended to allow a cooperative association operating a balancing plant(s) to form a balancing plant unit with one or more supply plants operated by a proprietary handler. A proposal to do so was made by MMPA. It was a corollary proposal to the cooperative's series of proposals to update the requirements for pooling a cooperative balancing plant in line with current marketing conditions.

The purpose of the proposasl, as stated by proponent, is to enable the cooperative in supplying a large portion of the market's fluid milk needs to perform this function more efficiently. As indicated by the witness, this modification, which is optional, would allow a cooperative to supply the fluid milk needs of the market according to the availability of milk supplies in relation to the location of the distributing plant needing fluid milk rather than requiring a unit of individual plants to ship milk to distributing plants simply to qualify the unit for pooling purposes.

It is concluded that this modification, which allows supply plants operated by a proprietary handler to be included in a cooperative balancing plant pooling unit, is desirable and reasonable under current marketing conditions. This pooling arrangement, in combination with other changes adopted herein which respect to the requirements for pooling a cooperative balancing plant, is expected to accommodate this situation for which the proponent cooperative requested the modification. Permitting a balancing plant pooling unit to include a supply plant(s) of a proprietary handler will promote the efficient handling of milk supplies and eliminate the hauling of producer milk first to a supply plant an then to a distributing plant solely to aid the supply plant or unit of supply plants in meeting the order's pooling requirements.

The order should be modified to provide that supply plants to be eligible to qualify for pool status as part of a cooperative balancing plant pooling unit be located within the state of Michigan. Presently, plants that qualify for pool status as part of a balancing unit must be located within the Southern Michigan order's marketing area.

As part of its package of proposed changes to ease the pooling requirements for a cooperative balancing plant, MMPA proposed that no geographical restriction apply to where a plant that qualifies for pool status as part of a balancing plant pooling unit is located. Proponent testified that removal of the geographical restriction will promote a more economical and efficient handling of the reserve milk supplies of the market. The witness for the proponent stated that the historical supply area and the location of balancing plant regularly associated with the market extend beyond the present geographical restricted area. This situation results in inefficiency and lower returns to producers because it does not permit multi-plant operators to supply the market's fluid milk needs from plants located closest to distributing plants.

With the rather far-reaching changes adopted herein for qualifying cooperative balancing plants, a geographical restriction should continue to apply to all plants qualifying as part of a pooling unit of balancing plants. This is essential to insure that adequate supplies of supply plant milk will continue to be made available when needed by the market's distributing plants. Otherwise, if no geographical limitation were provided, situations could arise where milk associated with a plant in a unit would not be available for the fluid segment of the market. This could undermine the effectiveness of the order in insuring an adequate supply of milk for fluid use within the market.

On the basis of this record, however, the present geographical restricted area should be modified to include the entire state of Michigan. This area is a reasonable one in which to restrict the location of plants qualifying as part of a unit since it would include all of the historical supply area for the market.

NFO's proposal that would modify the order's alternative performance requirement for a cooperative balancing plant based on a cooperative's deliveries to pool distributing plants during the preceding 12-month period ending with the current month should not be adopted. The present order provides also for an alternative performance standard for a cooperative balancing plant based on a cooperative's performance in supplying distributing plants over a 123-month period. However, the 12-month period used presently is based on the average proportion of deliveries to distributing plant during the second through the thirteenth preceding months.

The purpose of this alternative performance standard is to offset the potentially disruptive impact of short-run changes in marketing conditions that would adversely affect the pooling status of a cooperative balancing plant. Allowing a cooperative association this pooling flexibility adds stability to the market wherein it permits a cooperative significantly associated with the market to make adjustments in its operations so as to maintain pool status.

NFO's witness did not offer any substantive reasons for the modification in the 12-month moving average. Moreover, the record does not indicate that the present 12-month moving average is not serving its inended purpose. In the absence of any specific reason given for adopting the proposal and in view that there is no indication on the record that there currently exists a marketing problem with using the order's present 12-month moving average based on a cooperative's deliveries to distributing plants during the second through the thirteenth preceding month period, it is concluded that the proposal should not be adopted on the basis of this record.

4. *Diversion of producer milk.* (a) *Producer delivery requirement.* The producer delivery requirement (i.e. the "touch-base" requirement) of Order 40 should be relaxed. In this regard, one day's instead of two day's milk production of an individual producer should be required to be physically received at a pool plant during the month to qualify such producer's milk for diversion to nonpool plants. Also, this requirement should apply only during the six months of September through February instead of for each month as the order now provides.

NFO proposed that the order be revised in this manner and no one opposed these changes. NFO's witness stated that this change is needed because presently, many of NFO's

producers are delivering to pool plants more milk than is required solely to insure that all producers meet the minimum touch-base requirement for the month. He indicated that the milk of many of NFO's producers who are on an every-other-day pickup schedule is picked up on routes with the milk of producers who are on an everyday pickup schedule. This, he said, results in many producers delivering four day's production to pool plants, which is two days more production than is required. He stressed that this practice should be avoided. He added that adoption of NFO's proposal should reduce the administrative burden of the touch-base requirement in that a simple check of pool plant weight slips would verify whether or not producers have made their qualifying shipment.

In addition, NFO's witness testified that requiring a producer's milk to be physically received at a pool plant only in each of six months when the market's fluid needs are the greatest promotes a more efficient handling of the market's reserve milk supplies. He pointed out that presently, producers must touch-base even in months when no other delivery requirements apply merely to qualify. Therefore, he believes that the deliveries during non/critical months should cease.

The basic issue developed on the record is whether the present touch-base requirement causes reduced marketing efficiencies that necessitates its relaxation. The record evidence indicates that requiring two days' production of a producer to be physically delivered to pool plants in each month of the year does interfere with efficient milk marketing.

Presently, to comply with the touch-base requirement under Order 40 approximately 6.67 percent of each producer's milk, regardless of where they are located, is physically delivered to pool plants each month whether or not it is needed there. As stated on the record, many producers deliver four days' production or 13.13 percent of their milk simply so that other producers can meet the two days' or 6.67 percent delivery requirement. This scenario goes on during the milk-short months and during the flush months. Obviously, unnecessary shipments are being made.

The purpose of requiring individual producers to touch-base is to insure that they are genuinely associated with the fluid market. Thus, it is known that those producers with milk pooled on this market are capable of delivering approved Grade A milk to pool plants. This practice should be carried out without interferring with efficient marketing, yet, it should maintain the integrity of the order.

Therefore, the order, as amended herein, requires that at least one day's production of a producer be physically received at a pool plant during each of the months of September through February in order for any of that producer's milk to be eligible to be diverted to nonpool plants and remain pool milk. One day's production during each of the milk-short months is sufficient to demonstrate an association between producers and the market.

Relaxing the touch-base requirement also promotes a more efficient handling of reserve supplies by minimizing the number of necessary milk deliveries of individual producers. Therefore, during the September-February period the most milk any one producer would deliver due to the touch-base requirement would 6.67 percent (i.e. those on an every-other-day pickup schedule). This is an overshipment of only 3.33 percent of a producer's milk rather than 6.67 percent. In the flush months the reduction in deliveries resulting from the change in the touch-base requirement could be 13.33 percent of a producer's production (again, referring to those on an every-other-day pickup schedule).

In addition, with the number of required deliveries per producer minimized throughout the year, handlers who divert on an aggregate basis are afforded greater flexibility in pooling the milk of their producers. Because the changes adopted herein reduce the per producer deliveries in volume (from two to one day's production) and in frequency (from twelve to six months), handlers are able to develop more efficient shipping schedules. Therefore, the milk of those producers that can be most economically diverted, i.e. that of producers located closer to nonpool manufacturing outlets, will be diverted (in total during the flush months), while the milk of those producers located nearer to the market's center will be delivered to pool plants where needed.

(b) *Limitation on diversions to nonpool plants.* The period when there is a limitation of 60 percent on the amount of a handler's producer milk that may be diverted to nonpool plants should be changed from October through March to September through February. The milk base to which the limit applies should not be altered. Thus, for both cooperatives and operators of pool plants the milk base should continue to consist of the total quantity of producer milk for which they are the handler.

NFO proposed that the limitation on diversions of producer milk to nonpool plants apply during the September-February period rather than the October-March period. NFO also proposed that the quantity of milk to which the limit applies be restricted to only the physical receipts of a pool plant operator. Such a change was not proposed for cooperatives. In its brief, Kraft opposed NFO's proposed unequal treatment of proprietary handlers and cooperative handlers concerning the base to which the diversion percentage applies. In its own brief, NFP withdrew its support of this proposed change.

The proposal to change the period during which diversion limits apply should be adopted. It conforms with the changes previously adopted in this decision which would add September and delete March from the period for qualifying supply plants. The reasons stated in support of that change, i.e., the market's seasonal production patterns and variations in Class I utilization, and the fact that Class I demand begins to increase in September, are equally valid for permitting unlimited diversions during the March-August period.

The record, however, is void of any reason as to why the base to which the diversion limit applies should be larger for cooperatives than for pool plant operators. Proponent itself withdrew its support for this change. Therefore, in computing a pool plant operator's or a cooperative's diversion allowance, the based to which the diversion percentage applies for both handlers will still include the amount of producer milk physically received plus the amount diverted therefrom. Hence, both handlers will still be treated equally with respect to the percentage of their producer milk that they may divert to nonpool plants under the order.

(c) *Excess diversions to nonpool plants.* Producer milk status should not be forfeited with respect to all milk diverted to nonpool plants by a handler if that handler fails to designate the dairy farmer deliveries which are ineligible to be producer milk due to milk being diverted in excess of the limit set forth in the order. Rather, the present order provisions which prescribe a specific procedure for excluding overdiverted milk from producer milk when a diverting handler does not designate whose milk shall not be producer milk should remain intact. Such procedure excludes milk diverted on the last day of the month first, then, in sequence, milk diverted on the second-to-last day and so on in daily allotments until all of the overdiverted milk is accounted for.

NFO proposed this revision and was the sole voice heard concerning this

issue. NFO's witness implied that this proposal would provide for similar application of such excess diversions among and between orders operating in the region.

No basis was given as to why this particular proposal should be adopted. In addition, neither at the hearing nor in post-hearing briefs was any indication given that the present method of treating nondesignated overdiversions was causing a problem in the market. Therefore, it is appropriate that the order still provide a procedure for determining with diversions shall not be considered producer milk when milk diverted to nonpool plants exceeds the diversion limits prescribed by the order. This procedure was adopted in order to clarify how to exclude nondesignated overdiverted milk. Simply excluding all milk diverted to nonpool plants when a handler fails to designate whose milk is ineligible as producer milk in case of overdiversion , as NFO proposed, would place a greater burden of financial risk on handler who diverts milk. For these reasons, NFO's proposal is denied.

5. *Expedited action.* The record evidence does not support the omisson of a recommended decision on those issues concerning classification and polling standards for supply plants.

On the record, and without prior notice, the Milk Foundation of Indiana requested that expedited action be taken on proposals 1, 2, and 3 as noted in the hearing notice involving the reclassification of skim milk and butterfat used to produce ice cream and related products for the three markets herein under consideration. Additionally, at the hearing MMPA requested that its proposal with respect to pooling standards for supply plants (issue 3) be, likewise, handled on an expedited basis.

The record evidence, however, with respect to issue 1 and 3 does not support omitting a recommended decision and the opportunity for interested persons to file comments and exceptions thereto. Therefore, all such requests for expedited action are denied.

**Rulings on Proposed Findings and Conclusions**

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decisions.

**General Findings**

The findings and determinations hereinafter set forth supplement those that were made when the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas and the minimum prices specified in the tentative marketing agreements and orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and orders, as hereby proposed to the be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

**Recommended Marketing Agreements and Order**

**Amending the Orders**

The recommended marketing agreements for the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan marketing areas are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders for such marketing areas. The following order amending the orders, as amended, regulate the handling of milk in such marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

**List of Subjects in 7 CFR Parts 1033, 1036, and 1040**

Milk marketing orders, Milk, Dairy Products.

1. The authority citation for Parts 1033, 1036, and 1040 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

## PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

2. Section 1033.41 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

**§ 1033.41 Classes of utilization**

* * * * *

(b) * * *

(3) Used to produce yogurt, sour cream, sour mixtures (such as dips and dressings), cottage cheese, cottage cheese curd, pancake mixes, puddings, frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product; and

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, buttermilk biscuit mixes, casein, cheese (except cottage cheese and cottage cheese curd), dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

* * * * *

## PART 1036—MILK IN THE EASTERN OHIO–WESTERN PENNSYLVANIA MARKETING AREA

3. Section 1036.15 is revised to read as follows:

**§ 1036.15 Fluid milk product.**

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 20 percent total solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include those products and mixtures

listed in § 1036.40(b) (1) and (3), and (c)(1).

4. Section 1036.40 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

**§ 1036.40 Classes of utilization.**

* * * * *

(b) * * *

(3) Used to produce eggnog, yogurt, sour cream, sour cream products (e.g., dips), cottage cheese, cottage cheese curd, frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product; and

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, any product containing six percent or more nonmilk fat (or oil), and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

* * * * *

## PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

5. Section 1040.40 is amended by revising paragraphs (b)(3), (c)(1)(ii), (c)(1)(iv), (c)(1)(v) and (c)(1)(vii) to read as follows:

**§ 1040.40 Classes of utilization.**

* * * * *

(b) * * *

(3) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts (including frozen yogurt), and frozen dessert mixes (including frozen yogurt mixes);

(iii) Any concentrated milk product in bulk, fluid form other than that used to produce a Class III product;

(c) * * *

(1) * * *

(ii) Butter, plastic cream, and anhydrous milkfat;

* * * * *

(iv) Any concentrated milk product in bulk, fluid form used to produce Class III products;

(v) Custards, puddings, pancake mixes, and buttermilk biscuit mixes;

* * * * *

(vii) Evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package;

* * * * *

6. In § 1040.7, the introductory text of paragraph (b) and paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) are revised, and a new paragraph (b)(6) is added to read as follows:

**§ 1040.7 Pool plant.**

* * * * *

(b) A supply plant which during the month meets one of the performance requirements specified in paragraph (b)(1), (2), (3) or (4) of this section. All supply plants which are operated by one handler, or all the supply plants for which a handler is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by both parties, may be considered as a unit for the purpose of meeting the performance requirements of paragraph (b)(1), (2), (3) or (4) of this section upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice and notice of any change in designation, shall be furnished on or before the fifth working day following the month to which the notice applies. In any months of March through August a unit shall not contain any plant which was not qualified under this paragraph either individually or as a member of a unit during the previous September through February.

(1) A supply plant from which each month not less than 30 percent of the total quantity of Grade A milk received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant, is transferred to plants described in paragraph (b)(5) of this section. Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of producer milk from the supply plant to pool distributing plants.

(2) A plant operated by a cooperative association which supplies distributing plants qualified under paragraph (a) of this section, if the amount of producer milk of members of the association delivered by transfer from such association's plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section is as follows:

(i) During the month, is not less than that percentage which is designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; or

(ii) During the second through thirteenth preceding months, was not less than that percentage which was designated by the market administrator for the second through thirteenth preceding months pursuant (b)6) of this section, if such plant was qualified under this paragraph in each of the preceding 13 months.

(3) A plant located in the State of Michigan which has been a pool plant for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(i) The Aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than that percentage designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; and

(ii) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (b)(5) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(4) A supply plant that qualifies as a pool plant pursuant to paragraph (b)(1), (2), or (3) of this section in each of the months of September through February shall be a pool plant for the following months of March through August. The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (b)(1) of this section on the basis of actual shipments therefrom. To requalify as a pool plant under paragraph (b)(2) or (3) of this section or on a unit basis, such plant must first have met the shipping

requirements of paragraph (b)(1) of this section for 6 consecutive months.

* * * * *

(6) The shipping percentage that applies to a handler described in paragraphs (b)(2) and (b)(3) of this section shall be determined in the following manner:

(i) The market administrator shall calculate the percentage that producer deliveries used in Class I represent of the total producer milk in that months' pool.

(ii) The following table shall be used in determining a cooperative's delivery requirement in qualifying its balancing plant or a unit of such plants as pool plants for the same month of the following year:

| Producer deliveries used in Class I as a % of total producer milk | Applicable delivery percentage |
|---|---|
| Below 34.99 | 30 |
| 35–39.99 | 35 |
| 40–44.99 | 40 |
| 45–49.99 | 45 |
| 50 + | 50 |

* * * * *

7. Section 1040.13 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

**§ 1040.13 Producer milk.**

* * * * *

(d) * * *

(1) During each of the months of September through February, not less than one day's production of a producer must be physically received at a pool plant;

(2) The total quantity of producer milk diverted by a cooperative association or by the operator of a pool plant may not exceed 60 percent during each of the months of September through February of the total quantity of producer milk for which it is the handler;

* * * * *

Signed at Washington, DC, on May 1, 1987.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 87–10637 Filed 5–8–87; 8:45 am]

BILLING CODE 3410-02-M

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## Animal and Plant Health Inspection Service

### 9 CFR Part 91

**[Docket No. 87–017]**

## Ports Designated for Exportation of Animals; Deletion of Alex Nichols Agency

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are amending the regulations on Inspection and Handling of Livestock for Exportation by deleting the Alex Nichols Agency, Glen Head, New York, from the list of ports that have export inspection facilities and are designated as ports of embarkation. This action is necessary because the facility is no longer in existence.

**DATE:** We will consider your comments if we receive them on or before July 10, 1987.

**ADDRESSES:** Submit comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that comments refer to Docket No. 87–017. Written responses may be inspected at Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** William Parham, Staff Veterinarian, Import-Export Emergency Planning Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8695.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations) prescribe conditions for exporting animals from the United States. Section 91.14(a) of the regulations lists ports having export inspection facilities that are designated as ports of embarkation. We are proposing to remove the Alex Nichols Agency, P.O. Box 283, Glen Head, New York, from this list because the facility no longer exists.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because the Alex Nichols Agency facility at Glen Head, New York, does not exist, removing it from the list of ports of embarkation would have no effect on the exporters. Alternate ports of embarkation are available throughout other areas in New York.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

### List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

### PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 would be amended as follows:

1. The authority citation for Part 91 would continue to read as follows:

**Authority:** 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

**§ 91.14 [Amended]**

2. In § 91.14, paragraph (a)(6)(ii)(B) of this section would be removed.

Done in Washington, DC, this 6th day of May, 1987.

**William W. Buisch,**

*Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87–10661 Filed 5–8–87; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-41-AD]

Airworthiness Directives; Boeing Model 767 Airplanes Equipped With General Electric CF6 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with General Electric CF6 engines, which would require replacement of aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line. This proposal is prompted by reports of cracks extending through the width of the bracket, allowing the bracket flange and clamp to contact and wear the adjacent fuel line. This condition, if not corrected, could lead to penetration of the fuel line wall, creating a fuel leak.

DATE: Comments must be received no later than June 26, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-41-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Donald L. Kurle, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

## Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-41-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

*Discussion:*

There have been approximately ten reports of hydraulic line bracket cracks in the engine struts of Model 767 airplanes equipped with General Electric CF6 engines. The cracks have found in the radius of the flange upon which the aluminum clamp is mounted. There have been two additional reports of cracks extending through the width of the bracket, allowing the flange and clamp to migrate and wear the adjacent fuel line. One line was sufficiently worn to penetrate the wall of the fuel line, creating a leak.

The FAA has reviewed and approved Boeing Service Bulletin 767-29-0032, dated January 15, 1987, which describes the replacement of aluminum brackets with inconel brackets, which are less susceptible to cracking, at three locations in each engine strut area.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the installation of inconel brackets in each engine strut area on certain Boeing Model 767 airplanes in accordance with the service bulletin previously mentioned.

It is estimated that 30 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 767 airplanes are operated by small entities. A copy of a craft regulatory evaluation prepared for this action is contained in the regulatory docket.

## List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

## The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing:

Applies to Model 767 series airplanes, equipped with General Electric CF6 engines, listed in Boeing Service Bulletin 767-29-0032, dated January 15, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent cracking of the hydraulic pressure line aluminum support brackets in the engine strut, and possible fuel line penetration, accomplish the following:

A. Within the next 3,000 hours time in service after the effective date of this AD, replace aluminum brackets with inconel brackets at three locations in each engine strut area to support the hydraulic pressure line in accordance with Boeing Service Bulletin 757-29-0032, dated January 15, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company. P.O. Box 3707, Seattle, Washington 98124–2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 1, 1987.

Frederick M. Isaac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87–10805 Filed 5–8–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–28–AD]

## Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, which would require remarking the green band on the elevator trim control indicator on airplanes equipped with Pratt and Whitney PT6A–65R and PT6A–65AR engines, and rerigging the elevator tab on airplanes equipped with the PT6A–65AR engines. This proposal is prompted by reports of operational experience and further test flying that indicate that excessive control column force is required during takeoff. This condition, if not corrected, could lead to an unsafe out-of-trim condition.

DATE: Comments must be received no later than July 1, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–28–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–28–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

*Discussion:* The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe out-of-trim condition which exists on certain Short Brothers Model SD3–60 airplanes. Operational experience and additional flight tests indicate that Short Brothers Model SD3–60 airplanes equipped with Pratt and Whitney PT6A–65R and PT6A–65AR engines may require excessive control column force on takeoff.

Short Brothers issued Service Bulletin SD360–27–10, Revision 1, dated May 1986, which describes changes to the elevator trim green band on airplanes equipped with PT6A–65R engines, and Service Bulletin SD360–27–11, Revision 1, dated March 1986, which describes changes to the elevator trim green band and elevator tab rigging for airplanes equipped with PT6A–65AR engines. The CAA has classified both service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require remarking the green band on the elevator trim control indicator on Shorts Model SD3–60 airplanes equipped with Pratt and Whitney PT6A–65R and PT6A–65AR engines, and rerigging the elevator tab on airplanes equipped with the PT6A–65AR engines, in accordance with the service bulletins previously mentioned.

It is estimated that 53 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $12,720.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($240). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Secton 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**Short Brothers PLC:** Applies to Model SD3-60 airplanes with Pratt and Whitney PT6A-65R and PT6A-65AR engines installed, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent an unsafe out-of-trim condition accomplish the following within 90 days after the effective date of this AD:

A. For airplanes equipped with Pratt and Whitney PT6A-65R engines, remark the green band on the elevator trim control indicator in accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD360-27-10, Revision 1, dated May 1986.

B. For airplanes equipped with Pratt and Whitney PT6A-65AR engines, remark the green band on the elevator trim control indicator and rerig the elevator tab in accordance with Accomplishment Instructions, of Shorts Service Bulletin No. SD360-27-11, Revision 1, dated March 1986.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 4, 1987.

Frederick M. Isaac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-10806 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 87-NM-29-AD]**

## Airworthiness Directives; Short Brothers PLC Model SD3-60 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3-60 series airplanes, that would require sealing the fuselage to skin. This action is needed to prevent fuel leaks, should they occur in certain areas, from entering the main fuselage cabin.

**DATE:** Comments must be received no later than July 1, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-29-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained form Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report sumarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-29-Ad, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Shorts Model SD3-60 airplanes. Following an incident of a fuel purge valve failure on a Shorts Model SD3-30 airplane, investigation revealed that, to safeguard against the potential for fuel ingress into the main cabin, an improvement in the sealing of the fuselage tip skin was necessary. The Shorts Model SD3-60 airplaines are of similar design and would also require an improved seal of the fuselage top skin to prevent fuel ingress into the main cabin.

Short Brothers issued Service Bulletin SD360-53-22, Revision 1, dated April 1986, which describes procedures for sealing the fuselage top skin on the Model SD3-60 airplanes. The CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdon and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require application of sealant to fuselage top skin in accordance with the previously mentioned service bulletin.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 30 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $39,600.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26,

1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($1200). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects: 14 CFR Part 39.**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of the Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**Short Brothers PLC**

Applies to Model SD3-60 airplanes, serial numbers SH3601 through SH3678, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure that failure of the fuel purge valve cannot result in the fuel ingress into the main cabin, accomplish the following:

A. Within 90 days after the effective date of this AD, apply sealant to the fuselage top skin in accordance with the "Accomplishment Instructions," of Shorts Service Bulletin SD360-53-22, Revision 1, dated April 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 4, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-10607 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 87-NM-33-AD]**

## Airworthiness Directives; Short Brothers PLC Model SD3-60 Series Airplanes.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers PLC Model SD3-60 series airplanes, that would require the installation of a new locking bolt for the nose landing gear shock absorber lower pin. This action is prompted by a recent report of a shock absorber lower pin working loose. This condition, if not corrected, could result in the loss of structural integrity of the nose landing gear.

**DATE:** Comments must be received no later than June 29, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-33-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specific above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-33-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an incident where the nose landing gear shock absorber lower pin worked loose on a Shorts Model SD3-60 airplane. This condition, if not corrected, could result in the loss of structural integrity of the nose landing gear.

Short Brothers issued Service Bulletin SD360-32-20, dated May 1985, which describes a modification to the nose landing gear, to ensure retention of the shock absorber lower pin. The CAA classified the service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the nost landing gear in accordance with the previously mentioned service bulletin.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour.

Based on these figures, the total cost impact of this Ad to U.S. operators is estimated to be $1,320.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**Short Brothers PLC:** Applies to Short Brothers PLC Model SD3-60 series airplanes, equipped with Dowty Rotol nose under carriage type nos. 200921001 or 200921003, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of structural integrity of the nose landing gear, as a result of a loose shock absorber lower pin, accomplish the following:

A. Within 90 days after the effective date of this AD, install a new locking bolt for the nose landing gear shock absorber pin accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD360-32-20, dated May 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this proposal who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Short Brothers PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 1, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-10608 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL TRADE COMMISSION

**16 CFR Part 13**

**[Docket No. 9190]**

### Ticor Title Insurance Co. et al; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, Santa Ana, Calif.-based respondent, First American Title Insurance Co. from setting any rates for title search and examination and settlement services through any rating bureau in six states. Additionally, respondent has agreed to withdraw from the law suit filed by the title insurance companies named in the 1985 complaint. However, the respondent is also allowed to accept any final order or judgement which may be entered against any of the other insurance companies, instead of the consent agreement.

**DATE:** Comments must be received on or before July 10, 1987.

**ADDRESS:** Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** FTC/S-2308, James C. Egan, Jr., Washington, DC 20580 (202) 326-2682.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act; 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b) (14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

**List of Subjects in 16 CFR Part 13**

Title insurance, Trade practices.

**Agreement Containing Consent Order To Cease and Desist**

In the Matter of: Ticor Title Insurance Co. a corporation, Chicago Title Insurance Co., a corporation, Safeco Title Insurance Co., a corporation, First American Title Insurance Co., a corporation, Lawyers Title Insurance Co., a corporation, and Stewart Title Guaranty Co., a corporation.

The agreement herein, by and between the signatory respondent hereto, hereinafter sometimes referred to as respondent, by its respective duty authorized officers, and its respective attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondent First American Title Insurance Company is a corporation organized under the laws of the State of California, with its principal place of business at 114 East 5th Street, Santa Ana, California 92701.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violating section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charge.

3. Respondent admits all jurisdictional facts alleged in the complaint.

4. Respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto

publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the agreement may be used to vary or contradict the terms of the Order.

8. Respondent has read the complaint and Order contemplated hereby. It understands that once the terms of the Order become final, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Respondent further understands that it may be liable for civil penalties in the amount provided by the law for each violation of the Order after it becomes final.

9. In the event the Commission obtains a final order to cease and desist, resulting from litigation or consent, against any of the other respondents, or if the Commission or any court enters an order or judgment dismissing the complaint against any of the other respondents or which otherwise operates to permit the conduct to be enjoined hereunder, and that order or judgment becomes final, First American Title Insurance Company shall have the option to accept such order or judgment in lieu of the order contained in this consent agreement, provided that if the Commission serves upon respondent a copy of such order or judgment, respondents option to accept such order or judgment shall last only for a period of thirty (30) days thereafter. Delivery by the U.S. Postal Service of such order or judgment to respondent's address as stated in this agreement shall constitute service. If respondent exercises its option to accept such other order or judgment, it shall so notify the Commission within thirty (30) days. An order shall be considered final either by operation of law or by failure of any of the above companies to seek court review, or if court review is had as to said companies, at such time as court review is final as to all said companies.

10. As of the date this Order becomes final, respondent agrees to withdraw as one of the named parties in the proceeding entitled *Ticor Title Insurance Company, et al.* v. *Federal Trade Commission, et al.*, No. 86-5078, now pending before the United States Court of Appeals for the District of Columbia.

**Order**

*I*

For purposes of this Order, the following definition shall apply:

"Affected States" means the states of Arizona, Connecticut, Idaho, Montana, Ohio and Wisconsin.

*II*

It is ordered that respondent, its successors and assigns, and its officers, representatives, and employees, directly or indirectly, through any corporation, subsidiary, division or other device shall not discuss, propose, set, or file any rates for title search and examination services or settlement services through any rating bureau in any of the Affected States, unless respondent can establish that such state has clearly articulated and affirmatively expressed a policy permitting collective rate filing through rating bureaus, and actively supervises this conduct.

*III*

It is further ordered that respondent shall within thirty days after service of this Order deliver a copy of this Order to all its present officers, directors, and personnel having any responsibility in determining rates as well as to the commissioner of insurance in each of the Affected States.

*IV*

It is further ordered that respondent notify the Coammission at least thrity days prior to any change in the corporate respondent such as dissolutin, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of this order.

*V*

It is further ordered that respondent shall, within ninety days after the Order becomes final, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from First American Title Insurance Company [hereinafter "First American"] which prohibits First American from setting any rates for title search and examination services or for settlement services through any rating bureau in six states. These states include Arizona, Connecticut, Idaho, Montana, Ohio and Wisconsin. This prohibition against price fixing through rating bureaus will not apply where First American can establish a state action defense.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

First American is a title insurance company that conducts business in forty-nine states and the District of Columbia through branch offices and title insurance agents. In January of 1985, the Federal Trade Commission issued a Complaint alleging that The First American and five other title insurance companies had agreed on the prices to be charged for title search and examination services and for settlement services through rating brueaus in various states, thereby restraining competiton in the sale of these services. The complaint defined "title search and examination services" as all activities which are designed to identify and describe the ownership of a particular parcel of real property as well as any other actual or potential rights to, encumbrances on, or interests in the property. The Complaint defined "settlement services" as those services

related to the closing of a real estate transaction, including but not limited to those services performed in connection with or in supervision of the execution, delivery or recording of transfer and lien documents, or the disbursement of funds. The Complaint alleged that title search and examination services and settlement services do not constitute the "business of insurance" within the meaning of the McCarran-Ferguson Act (15 U.S.C 1012(b)). The Complaint thus alleged that the respondent title insurance companies had violated section 5 of the Federal Trade Commission Act, as amemded (15 U.S.C. 45).

In the "Agreement Containing Consent Order To Cease And Desist," First American admits all jurisdictional facts alleged in the Complaint, including the Complaint's allegations that title search and examination services and settlement services are not the "business of insurance." The agreement permits First American in the future to accept any final order or judgment entered against any of the other respondent title insurance companies named in the Complaint instead of the proposed order contained in this agreement. First American also agrees to withdraw as a named party from the proceeding entitled *Ticor Title Insurance Company, et al.* v. *Federal Trade Commission, et al.*, No. 86–5078, as of the date the proposed order becomes final.

Paragraphs I and II of the proposed order prohibit First American from setting any rates for title search and examination services and settlement services through any rating bureau in Arizona, Connecticut, Idaho, Montana, Ohio and Wisconsin. This prohibition will not apply in a given state if First American can establish that such state has clearly articulated and affirmatively expressed a policy permitting collective rate filing through rating bureaus, and actively supervises this conduct.

Paragraph III of the proposed order requires First American to deliver a copy of the order to various company officials as well as to state commissiners of insurance.

Paragraphs IV and V require First American to notify the Commission if it changes its corporate structure and to file a written report with the Commission ninety (90) days after the proposed order becomes final.

This agreement is for purposes of settlement only and does not constitute an admission by First American that the law has been violated as alleged in the Complaint.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,
*Secretary.*

[FR Doc. 87–10632 Filed 5–8–87; 8:45 am]
BILLING CODE 6750-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 946

### Abandoned Mine Land Reclamation Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** On February 3, 1987, the Commonwealth of Virginia submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Virginia Plan). The amendment pertains to implementation of new regulations, a reorganization in State government and agency structure, and changes in the procedures for reclamation project ranking and selection and for public participation. In addition, Virginia is proposing to assume responsibility for administering an emergency reclamation program and has submitted an amendment to the Virginia Plan outlining the procedures for administration of such a program. This notice sets forth the times and locations that the Virginia Plan and proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding a public hearing.

**DATES:**

*Written comments*: OSMRE will accept written comments on the proposed rule until 4:00 p.m. on June 10, 1987. Comments received after that date will not necessarily be considered in the decision process.

*Public hearing*: A public hearing on the proposed Virginia Plan amendments has been scheduled for 1:00 p.m. on June 1, 1987. Any person interested in making an oral or written presentation at the hearing should contact Mr. William Thomas at the OSMRE Big Stone Gap Field Office by 4:00 p.m. on May 26, 1987. If no one has so contacted Mr. Thomas, a meeting rather than a hearing may be held. A summary report of the meeting will be included in the Administrative Record.

**ADDRESSES:** The hearing will be held in the conference room of the Big Stone Gap Field Office of the OSMRE, 2nd floor, Powell Valley Square Shopping Center, Big Stone Gap, Virginia.

Written comments and requests for a hearing should be mailed to: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219.

Copies of the Virginia Plan, the proposed changes to the plan, and the administrative record of the Virginia Plan are available for public review and copying at the OSMRE Offices and the State regulatory authority office listed below Monday through Friday, 9:00 a.m. to 4:00 p.m. excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

Office of Surface Mining Reclamation and Enforcement, Division of Abandoned Mine Lands, 1100 L Street NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343–7910.

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone: (703) 523–2925.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Discussion of Proposed Amendment
III. Procedural Matters

## I. Background

The Secretary of the Interior approved the Virginia AMLR program on December 15, 1981. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the December 15, 1981 **Federal Register** Notice (46 FR 61085–61115).

Information concerning the previously approved plan and the proposed amendments may be obtained from the

agency offices listed under "ADDRESSES."

The Secretary has adopted regulations that specify the content requirements of a State reclamation plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision.

## II. Discussion of Proposed Amendment

By letter dated February 3, 1987, Virginia submitted a reclamation plan amendment to OSMRE (Administrative Record No. VA 593). The proposed amendment consists of revised narratives to replace several sections of the approved Virginia Plan as provided for by 30 CFR 884.13. Specifically, the following areas of the plan are being revised.

(1) Organization (30 CFR 884.13(d) (1) & (2)): Virginia is proposing to update certain portions of its AMLR plan to reflect changes that have occurred in the State government and agency structure. The State has also submitted additional material that outlines the administration of a proposed State emergency reclamation program and the procedures for coordinating with OSMRE.

(2) Project selection (30 CFR 884.13(c)(2)): Virginia has submitted revised project scoring criteria to insure that projects involving threats to the public health and safety are addressed before lower priority problems. Section 403 of the Surface Mining Act, 30 U.S.C. 1233, provides that expenditures from the AML fund on eligible lands and waters reflect certain stated priorities. The first two priorities concern the protection of the public health, safety and general welfare.

(3) Reclamation on private land (30 CFR 884.13(c)(5)): Virginia has submitted revised procedures for conducting appraisals on eligible AML lands. These changes reflect similar changes made in the Federal (47 FR 28574–28604) requirements. In addition the State has submitted updated procedures and forms for implementing the lien requirements in 30 CFR 882.13.

(4) Rights of entry (30 CFR 884.13(c)(6)): The State has submitted new right of entry forms to be used during its reclamation efforts and has provided additional material concerning the non-consensual entry notice requirements specified in 30 CFR 877.13(c).

(5) Public participation (30 CFR 884.13(c)(7)): The State has proposed amending its public participation procedures by requiring a public hearing on proposed State AML grants at the State's Division of Abandoned Mine Lands office in Big Stone Gap, Virginia, rather than at every "A–95" clearinghouse agency location. The State has also proposed deleting requirements regarding specific meeting dates for its Abandoned Mine Land Advisory Committee in favor of a more flexible and workable schedule.

(6) State emergency reclamation activities: On September 19, 1983, OSMRE informed the States and Tribes of the opportunity to amend their reclamation plans to include responsibility for administering emergency response reclamation activities (47 FR 42729–42730). For a State to undertake such activities as part of its reclamation program, it must demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors. The Commonwealth of Virginia has submitted material demonstrating compliance with these requirements.

OSMRE is seeking comments on the adequacy of the Virginia proposed amendments as set forth in 30 CFR 884.15, and whether the criteria for assumption of emergency response activities specified in 47 FR 42729–42730 (September 19, 1983), have been satisfied. If approved, the amendments would become part of the Virginia Abandoned Mine Land Reclamation Plan.

## III. Procedural Matters

1. Federal Paperwork Reduction Act: This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

2. Executive Order No. 12291 and the Regulatory Flexibility Act: On October 4, 1985, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State reclamation plans or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No burden would be imposed upon entities operating in compliance with the Act.

3. Compliance with the National Environmental Policy Act: Approval of State AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 2, p. B–1.

4. **Author:** The principal author of this rule is Mr. Fred Sherby, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

**List of Subjects in 30 CFR Part 948**

Abandoned mine land reclamation plan amendments.

Dated: April 27, 1987.

**James W. Workman,**

*Deputy Director, Operations and Technical Services.*

[FR Doc. 87–10597 Filed 5–8–87; 8:45 am]

BILLING CODE 4310-05-M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 226

[DoD Instruction 4165.65]

### Shelter for the Homeless Program; Proposed Implementation

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Defense proposes to issue rules to implement the Department of Defense Shelter for the Homeless Program authorized by section 2546 of title 10, United States Code. The intended effect of this rule is to provide specific guidance to the heads of Department of Defense Components and Installation Commanders as to the actions they may take to provide shelter and incidental services to persons without adequate shelter.

**DATE:** Comments should be received on or before June 10, 1987.

**ADDRESS:** Written comments and opinions on this proposed rule should be sent to Steve Kleiman, Assistant to the Director for Installation Assistance, Office of the Deputy Assistant Secretary of Defense (Installations), Room 3D812, The Pentagon, Washington, DC 20301–8000.

**FOR FURTHER INFORMATION CONTACT:** Steve Kleiman, Assistant to the Director for Installation Assistance, Office of the Deputy Assistant Secretary of Defense (Installations), Room 3D812, The Pentagon, Washington, DC 20301–800, Telephone (202) 697–7475.

**List of Subjects in 32 CFR Part 226**

Housing, Military installations.

Accordingly, Part 226 of Title 32 is proposed to be added to read as follows:

## PART 226—SHELTER FOR THE HOMELESS PROGRAM

Sec.
226.1 Purpose.
226.2 Applicability and scope.
226.3 Policy.
226.4 Responsibilities.
226.5 Procedures.
226.6 Implementation.

Authority: 10 U.S.C. 2546.

### § 226.1 Purpose.

This Part implements 10 U.S.C. 2546 by establishing Department of Defense policy for the Department of Defense Shelter for the Homeless Program.

### § 226.2 Applicability and scope.

The provisions of this part apply to the Office of the Secretary of Defense (OSD) and its field activities, the Military Departments (including their National Guard and reserve components), the Unified and Specified Commands, and the Defense Agencies (hereafter called "Department of Defense Components").

### § 226.3 Policy.

(a) By Memorandum for the Secretaries of the Military Departments dated October 29, 1984, and entitled: "Shelter for the Homeless", the Secretary of Defense stated that it is Department of Defense policy to provide shelter for the homeless on military installations when the provision of such shelter does not interfere with military preparedness or ongoing military operations.

(b) The Secretary of a Military Department may make facilities at military installations under his jurisdiction available for the furnishing of shelter to persons without adequate shelter in accordance with 10 U.S.C. 2546 and this part.

(c) Shelters for the Homeless shall be developed in cooperation with appropriate State or local governmental entities and charitable organizations. The State or local government entity, either separately or in conjunction with a charitable organization, shall be responsible for operating and staffing any shelter established under the Shelter for the Homeless Program.

(d) Services that may be provided by a Military Department incident to the furnishing of shelter under 10 U.S.C. 2546 are the following:

(1) Utilities.
(2) Bedding.
(3) Security.
(4) Transportation.
(5) Renovation of facilities.
(6) Minor repairs undertaken specifically to make suitable space available for shelter to be provided under this part.
(7) Property liability insurance.

(e) Shelter and incidental services may only be provided under this part to the extent that the Secretary of a Military Department, or the Senior Manager appointed under § 226.4(b)(2) of this part, determine that the establishment of a shelter on a military installation will not interfere with military preparedness or ongoing military functions.

(f) To preclude interference with military preparedness or ongoing military functions, shelters for the homeless shall not be established adjacent to, or in close proximity to the following:

(1) Family Housing areas.
(2) Troop Billeting areas.
(3) Service Facilities such as Commissaries, Exchanges, Dining Facilities, Hospitals, Clinics, Recreation Centers, etc.
(4) Firing Ranges and Impact Areas.
(5) Frequently used Training areas.

(g) Shelters for the homeless will normally be established in only those facilities where the homeless will have exclusive use at all times. Shelters for the homeless will normally not be established in facilities "shared" with military functions.

(h) In addition to providing shelter and incidental services, Department of Defense Components may provide bedding for support of shelters for the homeless that are located on other than Department of Defense real property. Bedding may be provided without reimbursement, but may only be provided to the extent that the provision of such bedding will not interfere with military requirements.

### § 226.4 Responsibilities.

(a) *The Deputy Assistant Secretary of Defense (Installations)* shall:

(1) Administer the Shelter for the Homeless program and issue such supplemental guidance as is necessary.

(2) Appoint an individual (Assistant to the Director, Installation Assistance) who shall be the Department of Defense program manager responsible for monitoring the Shelter for the Homeless program and answering all inquiries.

(b) *The Secretaries of the Military Departments* shall:

(1) Implement the Shelter for the Homeless program.

(2) Appoint a senior manager to monitor the Shelter for the Homeless program within that Department and to provide any assistance that may be required to the Deputy Assistant Secretary of Defense (Installations). Such official, after consultation with the Assistant to the Director, Installation Assistance ODASD(I), shall approve or disapprove all requests to establish a Shelter for the Homeless under 10 U.S.C. 2546 and this part.

(3) Ensure that each Installation Commander is informed about the program and the types of assistance that they may provide as authorized by 10 U.S.C. 2546 and this part.

(c) *Department of Defense Installation Commanders* shall:

(1) Respond to all requests for assistance.

(2) Upon receipt of a request, initiate such action as is necessary to determine the availability of facilities at that installation for use as a shelter for the homeless.

(3) Forward each request, through the chain of command, to the Service Senior Manager with a copy to the DASD(I). The Installation Commander's recommendation will accompany each request.

### § 226.5 Procedures.

(a) When a Department of Defense Component receives a request for assistance, that request shall be transmitted to the Deputy Assistant Secretary of Defense (Installations).

(b) The Head of a Department of Defense Component, or his designee, will in coordination with the Deputy Assistant Secretary of Defense (Installations), determine the extent of assistance that may be provided consistent with 10 U.S.C. 2546 and this part.

### § 226.6 Implementation.

Forward one copy of implementing documents to the Deputy Assistant Secretary of Defense (Installations) within 60 days.

Linda M. Lawson,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
May 1, 1987.

[FR Doc. 87–10817 Filed 5–8–87; 8:45 am]
BILLING CODE 3810–01–M

**VETERANS ADMINISTRATION**

**38 CFR Part 4**

**Evaluation of Hearing Loss**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Veterans Administration (VA) is proposing to amend the Schedule for Rating Disabilities (38 CFR Part 4) to implement a new method for evaluating the degree of disability attributable to hearing loss. These amendments are necessary because of new testing methods which place greater emphasis on decibel loss and speech discrimination in higher frequency ranges. The effect of these amendments will be to provide more accurate measurement of hearing impairment and increased compensation to hearing disabled veterans.

**DATES:** Comments must be received on or before July 9, 1987. This amendment is proposed to be effective 30 days after publication of the final rule.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** The current hearing impairment segment of the Schedule for Rating Disabilities (39 CFR 4.85 through 4.87a) and the current examination procedure for measuring hearing loss have been in existence for the past 30 years with no substantive change. Under the current systems two alternative methods are used to evaluate hearing loss.

*Puretone averaging.* Tone bursts at 500, 1000 and 2000 Hz are currently used to measure the decibel loss at each of those three frequencies in each ear. The average decibel loss for each ear becomes the basis of the assignable evaluation. The greater the average decibel loss, the higher the evaluation.

*Speech discrimination.* A list of two-syllable words presented through earphones is used to determine the ability of the veteran to distinguish spoken words. The number of words that can be identified as compared to the total number of words listed is referred to as the percentage of discrimination. The more words unidentified (the lower the percentage of discrimination), the higher the evaluation.

During a routine VA hearing loss examination, the examiner normally conducts both tests. The Chief of the Audiology clinic will certify on the examination report which of the two tests more accurately reflects the true hearing loss.

Acknowledging the many advances in hearing loss testing and improvement in hearing aid devices and further realizing that very little change was made to the rating and examination protocols by the VA during the past 30 years, Congress requested that the VA conduct a study on testing methods and assistive devices for hearing impairment. On January 6, 1986, the VA issued its "Report on Hearing Loss Study."

Among other things, the study report made two recommendations concerning testing methods that required significant changes in the Schedule for Rating Disabilities. In order to recognize the impact of hearing loss in higher frequencies and provide a more accurate picture of true hearing impairment, the report recommended that puretone averaging be accomplished using tone bursts at 1000, 2000, 3000 and 4000 Hz. It also recommended that speech discrimination be measured using the Maryland CNC word lists which contain words with sounds in the 3000 and 4000 Hz range. These two significant changes in testing parameters required complete revision of the current method for evaluating degree of disability.

The Department of Veterans Benefits, in consultation with the Department of Medicine and Surgery, has developed amendments to 38 CFR 4.85, 4.86a, 4.87a and Tables VI and VII of 4.87 to implement a revised schedule for rating hearing impairments based on the recommended changes in testing methods. The new schedule provides for evaluating hearing loss based on a combination of puretone averages and speech discrimination. This provides for a more accurate representation of actual hearing impairment by recognizing that individuals with slight to moderate decibel loss as determined by puretone averaging may have significant impairment in speech discrimination and vice versa. For cases in which there are language difficulties or other factors such as education, social background and medical conditions which produce inconsistent speech audiometry scores, a separate evaluation table based solely on puretone averages is provided.

The new rating schedule for hearing loss also provides for eleven separate evaluations in 10% increments from 0% to 100%. This provides a logicly graduated scale for disability evaluation and recognizes that profound deafness may be totally disabling. Conforming amendments are also being made to Appendices, A, B and C of 38 CFR Part 4.

The Administrator hereby certifies that this regulatory amendment will not have a significant ecomonic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprices in domestic or export markets.

**List of Subjects in 38 CFR Part 4**

Handicapped, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.)

Approved: September 12, 1986.

**Thomas K. Turnage,**

*Administrator.*

**PART 4—[AMENDED]**

38 CFR, Part 4, Schedule for Rating Disabilities, is proposed to be amended as follows:

1. Section 4.85 is revised to read as follows:

**§ 4.85 Evaluation of hearing impairment.**

(a) Examinations are conducted using the controlled speech discrimination tests together with the results of the puretone audiometry test. The horizontal lines in table VI represent nine categories of prercent of discrimination based on the controlled

speech discrimination test. The vertical columns in table VI represent nine categories of decibel loss based on the puretone audiometry test. The numeric designation of impaired efficiency (I through XI) will be determined for each ear by intersecting the horizontal row appropriate for the percentage of discrimination and the vertical column appropriate to puretone decibel loss; thus with percent of discrimination of 70 and average puretone decibel loss of 64, the numeric designation is V for one ear. The same procedure will be followed for the other ear.

(b) The percentage evaluation will be found from table VII by intersecting the horizontal row appropriate for the numeric designation for the ear having the better hearing and the vertical column appropriate to the numeric designation for the ear having the poorer hearing. For example, if the better ear has a numeric designation of "V" and the poorer ear has a numeric designation of "VII," the percentage evaluation is 30 percent and the diagnostic code is 6103.

(c) Table VIa provides numeric designations based solely on puretone averages an is for application *only* when the Chief of the Audiology Clinic certifies that language difficulties or inconsistent speech audiometry scores make the use of both puretone average and speech discrimination inappropriate. (38 U.S.C. 355)

2. Section 4.86a is revised to read as follows:

**§ 4.86a Evidence other than puretone audiometry and controlled speech.**

When claims are encountered in which the medical evidence necessary to establish service-connection for hearing loss predates the use of puretone audiometry and controlled speech, service-connection will be determined under the provisions of 38 CFR 4.85 through 4.87a as in effect on (the day preceding the effective date of this change). (38 U.S.C. 355)

3. Part 4 is amended by revising table VI and table VII and by adding table VIa to read as follows:

* * * * *

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PERCENT OF DISCRIMINATION

TABLE VI

Numeric Designation of Hearing Impairment

| PERCENT OF DISCRIMINATION | Average Puretone Decibel Loss | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 0-41 | 42-49 | 50-57 | 58-65 | 66-73 | 74-81 | 82-89 | 90-97 | 98+ |
| 92-100 | I | I | I | II | II | II | III | III | IV |
| 84-90 | II | II | II | III | III | III | IV | IV | IV |
| 76-82 | III | III | IV | IV | IV | V | V | V | V |
| 68-74 | IV | IV | V | V | VI | VI | VII | VII | VII |
| 60-66 | V | V | VI | VI | VII | VII | VIII | VIII | VIII |
| 52-58 | VI | VI | VII | VII | VIII | VIII | VIII | VIII | IX |
| 44-50 | VII | VII | VIII | VIII | VIII | IX | IX | IX | X |
| 36-42 | VIII | VIII | VIII | IX | IX | IX | X | X | X |
| 0-34 | IX | X | XI | XI | XI | XI | XI | XI | XI |

TABLE VIa*

Average Puretone Decibel Loss

| 0-41 | 42-48 | 49-55 | 56-62 | 63-69 | 70-76 | 77-83 | 84-90 | 91-97 | 98-104 | 105+ |
|---|---|---|---|---|---|---|---|---|---|---|
| I | II | III | IV | V | VI | VII | VIII | IX | X | XI |

Numeric Designation

* This table is for use only as specified in 4.85(c).

TABLE VII

Percentage Evaluations for Hearing Impairment
(with diagnostic codes)

| BETTER EAR | XI | X | IX | VIII | VII | VI | V | IV | III | II | I |
|---|---|---|---|---|---|---|---|---|---|---|---|
| XI | 100* (6110) | | | | | | | | | | |
| X | 90 (6109) | 80 (6108) | | | | | | | | | |
| IX | 80 (6108) | 70 (6107) | 60 (6106) | | | | | | | | |
| VIII | 70 (6107) | 60 (6106) | 50 (6105) | 50 (6105) | | | | | | | |
| VII | 60 (6106) | 60 (6106) | 50 (6105) | 40 (6104) | 40 (6104) | | | | | | |
| VI | 50 (6105) | 50 (6105) | 40 (6104) | 40 (6104) | 30 (6103) | 30 (6103) | | | | | |
| V | 40 (6104) | 40 (6104) | 40 (6104) | 30 (6103) | 30 (6103) | 20 (6102) | 20 (6102) | | | | |
| IV | 30 (6103) | 30 (6103) | 30 (6103) | 20 (6102) | 20 (6102) | 20 (6102) | 10 (6101) | 10 (6101) | | | |
| III | 20 (6102) | 20 (6102) | 20 (6102) | 20 (6102) | 20 (6102) | 10 (6101) | 10 (6101) | 10 (6101) | 0 (6100) | | |
| II | 10 (6101) | 10 (6101) | 10 (6101) | 10 (6101) | 10 (6101) | 10 (6101) | 10 (6101) | 0 (6100) | 0 (6100) | 0 (6100) | |
| I | 10 (6101) | 10 (6101) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) | 0 (6100) |

POORER EAR

* Entitled to special monthly compensation under 38 CFR 3.350(a) (38 U.S.C. 314(k)).

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BEST COPY AVAILABLE

**§ 4.87a [Removed]**

4. Section 4.87a is removed.

5. Appendix A—Table of Amendments and Effective Dates Since 1946 is revised to read as follows:

APPENDIX A—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

| Sec. | |
|---|---|
| | Diagnostic Code 5055; September 9, 1975. |
| | Diagnostic Code 5056; |
| | Diagnostic Code 5164—60 percent; June 9, 1952. |
| | Diagnostic Code 5172; July 6, 1950. |
| | Diagnostic Code 5173; June 9, 1952. |
| | Diagnostic Code 5255 "or hip"; July 6, 1950. |
| | Diagnostic Code 5257—Evaluation; July 6, 1950. |
| | Diagnostic Code 5297—(Removal of one rib) "or resection of 2 or more"; August 23, 1948. |
| | Diagnostic Code 5297—NOTE (2): Reference to lobectomy; pneumonectomy and graduated ratings; February 1, 1962. |
| | Diagnostic Code 5298; August 23, 1948. |
| 4.73 | Diagnostic Code 5324; February 1, 1962. |
| | Diagnostic Code 5327; March 10, 1976. |
| | Diagnostic Code 5328; March 10, 1976. |
| 4.78 | Last sentence; December 1, 1963. |
| 4.84a | Diagnostic Code 6029—Note; August 23, 1948. |
| | Diagnostic Code 6035; September 9, 1975. |
| | Diagnostic Code 6076—60%: Vision 1 eye 15/200 and other eye 20/100; August 23, 1948. |
| | Diagnostic Code 6080—Note—"as to 38 U.S.C. 314(L)"; July 6, 1950. |
| | Diagnostic Code 6081—Words "unilateral", "minimal" and all of Note; March 10,1976. |
| 4.84b | Diagnostic Code 6260—As to tinnitus due to arteriosclerosis. |
| | DC 6046; October 1, 1961. |
| | 10% Evaluation and Criterion; March 10, 1976. |
| 4.85 | March 23, 1956. (Effective date of this change.) |
| 4.86 | March 23, 1956. |
| 4.86a | March 23, 1956. (Effective date of this change.) |
| 4.87 | Tables VI and VII replaced by new Tables VI, VIa and VII (Effective date of this change.) |
| 4.87a | Diagnostic Codes 6277 through 6297; March 23, 1956. Deleted (effective date of this change.) |
| 4.88a | Diagnostic Code 6304—Notes (1) and (2); August 23, 1948. |
| | Diagnostic Code 6309; March 1, 1963. |
| | Diagnostic Code 6350; 60% Evaluation and Criterion for 60% and 30% Evaluations; March 10, 1976. Other Evaluations and Note; March 1, 1963. |
| 4.89 | Ratings for nonpulmonary TB; December 1, 1949. |
| 4.97 | Diagnostic Code 6600—100% Evaluations and Criteria for 60%; September 9, 1975. |
| | Diagnostic Code 6602—Criteria for all Evaluations and Note; September 9, 1975. |
| | Diagnostic Code 6603; September 9, 1975. |
| | Second note following Diagnostic Code 6724; December 1, 1949. |
| | Diagnostic Code 6802—Criteria for all Evaluations; September 9, 1975. |
| | Diagnostic Code 6819—Note; March 10, 1976. |
| | Diagnostic Code 6821—Evaluations and Note; August 23, 1948. |
| 4.104 | Diagnostic Code 7000—30 percent; July 6, 1950. |
| | Diagnostic Code 7000—100 percent inactive "with signs of congestive failure upon any exertion beyond rest in bed" revoked; |
| | Diagnostic Code 7005—60 percent revoked; |
| | Diagnostic Code 7007—60 percent revoked; |
| | Diagnostic Code 7015—100 percent Evaluations. Criteria for All Evaluations and Notes (1) and (2); September 9, 1975 |
| | Diagnostic Code 7017; |
| | Diagnostic Code 7100—20 percent; July 6, 1950. |
| | Diagnostic Code 7101—"or more"; September 1, 1960. |
| | Diagnostic Code 7101—Note (2); September 9, 1975. |
| | Diagnostic Code 7110—Criteria for 100 percent, Note and 60 percent and 20 percent Evaluations; September 9, 1975. |
| | Diagnostic Code 7111—Note; September 9, 1975. |
| | Diagnostic Code 7114, 7115, 7116, and Note; June 9, 1952. |
| | Diagnostic Code 7117 and Note; June 9, 1952. |
| | Note following Diagnostic Code 7120; July 6, 1950. |

APPENDIX A—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

| Sec. | |
|---|---|
| | Diagnostic Code 7121—100 percent Criterion and Evaluation and 60 percent Criterion; March 10, 1976. Criteria for 30 percent and 10 percent and Note: July 6, 1950. |
| | Last sentence of Note following Diagnostic Code 7122; July 6, 1950. |
| 4.114 | Diagnostic Code 7304 and 7305—Evaluations; November 1, 1962. |
| | Diagnostic Code 7306—Evaluations; April 8, 1959. |
| | Diagnostic Code 7312—70% Evaluation and 50% Evaluation and Criterion; March 10, 1976. |
| | Diagnostic Code 7313—20% Evaluation; March 10, 1976. |
| | Diagnostic Code 7319—Evaluations; November 1, 1962. |
| | Diagnostic Code 7321—Evaluations and Note; July 6, 1950. |
| | Diagnostic Code 7328—Evaluations and Note; November 1, 1962. |
| | Diagnostic Code 7329—Evaluations and Note; November 1, 1962. |
| | Diagnostic Code 7330—60% Evaluation; November 1, 1962. |
| | Diagnostic Code 7332—60% Evaluation; November 1, 1962. |
| | Diagnostic Code 7334—60% and 30% Evaluations; July 6, 1950. |
| | Diagnostic Code 7334—10% Evaluation; November 1, 1962. |
| | Diagnostic Code 7339—Criterion for 20% Evaluation; March 10, 1976. |
| | Diagnostic Code 7343—Note; March 10, 1976. |
| | Diagnostic Code 7345—100%, 60% and 30% Evaluations; August 23, 1948. |
| | Diagnostic Code 7345—10% Evaluation; February 17, 1955. |
| | Diagnostic Code 7345—10% Evaluation; February 17, 1955. |
| | Diagnostic Code 7346—Evaluations; February 1, 1962. |
| | Diagnostic Code 7347; September 9, 1975 |
| | Diagnostic Code 7348; March 10, 1976. |
| | Diagnostic Code 7500—Note; July 6, 1950. |
| | Diagnostic Code 7519—20%, 40% and 60% Evaluations; March 10, 1976. |
| | Diagnostic Code 7524—Note; July 6, 1950. |
| | Diagnostic Code 7528—Note; March 10, 1976 |
| | Diagnostic Code 7530; September 9, 1975. |
| | Diagnostic Code 7531; September 9, 1975. |
| | Diagnostic Code 7627—Note; March 10, 1976 |
| | Diagnostic Code 7703—Evaluations; August 23, 1948. |
| | Diagnostic Code 7709—Note; March 10, 1976. Evaluations; June 9, 1952. |
| | Diagnostic Code 7714; September 9, 1975. |
| | Diagnostic Code 7801—Note (2); July 6, 1950. |
| | Diagnostic Code 7804—Note; July 6, 1950. |

6. Appendix B—Numerical Index of Disabilities is revised to read as follows:

APPENDIX B—NUMERICAL INDEX OF DISABILITIES

[Acute, subacute, or chronic diseases]

| Diagnostic Code No. | |
|---|---|
| 5079 | One eye only. |
| 6080 | Field vision, impairment of. |
| 6081 | Scotoma, pathological. |
| 6090 | Muscle function, ocular, impairment of. |
| 6091 | Symblepharon. |
| 6092 | Diplopia, due to limited muscle function. |
| | IMPAIRMENT OF AUDITORY ACUITY |
| 6100 | 0% evaluation based on Table VII. |
| 6101 | 10% evaluation based on Table VII. |
| 6102 | 20% evaluation based on Table VII. |
| 6103 | 30% evaluation based on Table VII. |
| 6104 | 40% evaluation based on Table VII. |
| 6105 | 50% evaluation based on Table VII. |
| 6106 | 60% evaluation based on Table VII. |
| 6107 | 70% evaluation based on Table VII. |
| 6108 | 80% evaluation based on Table VII. |
| 6109 | 90% evaluation based on Table VII. |
| 6110 | 100% evaluation based on Table VII. |

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[Acute, subacute, or chronic diseases]

| Diagnostic Code No. | |
|---|---|
| | DISEASES OF THE EAR |
| 6200 | Otitis media, suppurative, chronic. |
| 6201 | Otitis media, catarrhal, chronic. |
| 6202 | Otosclerosis. |
| 6203 | Otitis interna. |
| 6204 | Labyrinthitis. |
| 6205 | Meniere's syndrome. |
| 6206 | Mastoiditis. |
| 6207 | Auricle, loss or deformity. |
| 6208 | New growths, malignant, ear. |
| 6209 | New growths, benign, ear. |
| 6210 | Auditory canal, disease of. |
| 6211 | Tympanic membrane, perforation of. |
| 6260 | Tinnitus. |
| | OTHER SENSE ORGANS |
| 6275 | Smell, loss of sense of. |
| 6276 | Taste, loss of sense of. |
| | SYSTEMIC DISEASES |
| 6300 | Cholera, Asiatic. |
| 6301 | Kala-azar (visceral leishmaniasis). |
| 6302 | Leprosy. |
| 6304 | Malaria. |
| 6305 | Filariasis. |
| 6306 | Oroya fever. |
| 6307 | Plague. |
| 6308 | Relapsing fever. |
| 6309 | Rheumatic fever. |
| 6310 | Syphilis, unspecified. |
| 6311 | Tuberculosis, miliary. |
| 6313 | Avitaminosis. |
| 6314 | Beriberi. |
| 6315 | Pellagra. |
| 6316 | Brucellosis (Malta or undulant fever). |
| 6317 | Typhus, scrub. |
| 6350 | Lupus Erythematosus, systemic. |
| | RESPIRATORY SYSTEM |
| | THE NOSE AND THROAT |
| 6501 | Rhinitis, atrophic, chronic. |
| 6502 | Septum, nasal, deflection of. |
| 6504 | Nose, loss of part of, or scars. |
| 6510 | Sinusitis, pansinusitis, chronic. |
| 6511 | Sinusitis, ethmoid, chronic. |
| 6512 | Sinusitis, frontal, chronic. |
| 6513 | Sinusitis, maxillary, chronic. |
| 6514 | Sinusitis, sphenoid, chronic. |
| 6515 | Laryngitis, tuberculous. |
| 6516 | Laryngitis, chronic. |
| 6517 | Larynx, injuries of, healed. |
| 6518 | Laryngectomy. |
| 6519 | Aphonia, organic. |
| 6520 | Larynx, stenosis of. |
| | THE TRACHEA AND BRONCHI |
| 6600 | Bronchitis, chronic. |
| 6601 | Bronchiectasis. |
| 6602 | Asthma, bronchial. |
| | THE LUNGS AND PLEURA |
| 6701 | Tuberculosis, pulmonary, chronic, far advanced, active. |
| 6702 | Tuberculosis, pulmonary, chronic, moderately advanced, active. |
| 6703 | Tuberculosis, pulmonary, chronic, minimal, active. |
| 6704 | Tuberculosis, pulmonary, chronic, active, advancement unspecified. |
| 6707 | Tuberculosis, pulmonary, chronic, far advanced, active. |
| 6708 | Tuberculosis, pulmonary, chronic, moderately advanced, active. |
| 6709 | Tuberculosis, pulmonary, chronic, minimal, active. |

[FR Doc. 87-10514 Filed 5-8-87; 8:45 am]

BILLING CODE 8320-01-M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 15**

**[Gen. Docket No. 87-107; FCC 87-117]**

## Radio Frequency Devices; Amendment of Commission Rules Concerning Input Selector Switches Used In Conjunction With Cable Television Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This action initiates a rule making proceeding to consider requiring input selector switches used to alternate between cable and broadcast service to comply with the technical performance standards in § 15.606(a) of the Commission's rules.

**DATES:** Comments are due June 10, 1987; reply comments are due June 25, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** May Farber, Mass Media Bureau, (202) 632-6302.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making* in Gen. Docket No. 87-107, adopted April 8, 1987, and released May 11, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### Summary of the Notice of Proposed Rulemaking

1. In the *Memorandum Opinion and Order* in the cable must carry proceeding, MM Docket No. 85-349 *(Memorandum Opinion and Order)*, adopted March 26, 1987, FCC 87-105, the Commission considered petitions for reconsideration of the two-part regulatory program adopted to resolve the cable signal carriage matter. In that decision, the Commission indicated that several parties requested reconsideration of its decision in the *Report and Order* in MM Docket No. 85-349 (51 FR 44606, December 11, 1986) to require that all input selector devices installed to provide switching between a cable television system and an antenna for reception of off-the-air broadcast television signals comply with the technical standards for TV interface device internal transfer switches in § 15.606(a) of the rules. The petitioners claimed that the technical standards in § 15.606(a) are inadequate to prevent significant signal reradiation which is incompatible with the maintenance of a clean RF environment for off-the-air TV reception and with the Commission's policy of protecting aeronautical navigation and communications frequencies.

2. In the *Memorandum Opinion and Order*, the Commission recognized petitioners' concerns and, based on the record of the must carry proceeding, stated its belief that the important nature of this issue warrants the provision of additional opportunity for interested parties to comment. It therefore vacated the requirement that input selector switches used to alternate between cable and broadcast service comply with § 15.606(a) of its Rules and directed its staff to prepare a *Notice of Proposed Rule Making (Notice)* to consider the issue of technical standards for such devices.

3. In the *Notice*, the Commission proposes to amend § 15.606 of its Rules to provide that an external, stand-alone transfer switch used with a TV receiver or TV interface device and in conjunction with cable service shall comply with the technical requirements of paragraph (a) of that section. If adopted, the rules also would provide that compliance of stand-alone devices with these standards shall be considered satisfactory if it is demonstrated that the switch isolation exceeds 60 dB. Since such switches will be employed with a variety of different signal sources, comment is invited on the frequency range over which the proper isolation standard should be applied. In addition, the radio receiver rules would be amended to provide that switches built-in to television receivers would be required to comply with similar technical performance standards. The Commission also proposes to subject all stand-alone input selector switches used to alternate between off-the-air and cable service to the self-testing equipment verification procedures of Part 2, Subpart J of the Rules. Finally, it proposes to require all cable/broadcast input selector switches to comply with the technical performance standards and the verification procedures, as proposed in the *Notice*, 30 days after publication in the **Federal Register** of the Report and Order in this proceeding. In this regard, comment is invited on the issue of application of any technical standards that may be adopted to switches for alternating between cable and broadcast service that have already been manufactured or are already in use. Of particular concern to the Commission is the possible situation where the newly adopted standards may exceed the technical performance of existing switches. The Commission intends to complete action on this issue in an expeditious manner in order that manufacturers may supply switches in accordance with the scheduled implementation of the new input selector switch rules adopted in the *Memorandum Opinion and Order* in the must carry proceeding.

4. The Commission seeks comment on these proposals and invites interested parties to submit alternative proposals for input selector switch technical standards. Any alternative proposals submitted should be accompanied by supporting information and technical data. The Commission emphasized that the scope of this proceeding is limited solely to the issues of technical standards and verification procedures for input selector switches used in conjunction with cable services.

5. This is a nonrestricted notice and comment rule making proceeding. *See* § 1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rule amendments would have a minimal impact on input selector switch manufacturers as most switches now meet or exceed the proposed technical standards. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

7. The Secretary shall cause a copy of this *Notice* to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new

or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 10, 1987, and reply comments on or before June 25, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

10. This Notice of Proposed Rule Making is adopted pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

**List of Subjects in 47 CFR Part 15**

Radio frequency devices.

**Rule Changes**

**PART 15—[AMENDED]**

Part 15 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 15 would continue to read as follows:

**Authority:** 47 U.S.C. 154 and 303.

2. Part 15 is proposed to be amended by adding a new § 15.64 as follows:

**§ 15.64 Television receiver transfer switch.**

Where a television receiver is equipped with a transfer switch for selectively connecting the receiver either to an antenna or cable service, in either position of the receiver transfer switch, the maximum voltage in microvolts at the receiving antenna input terminals of the switch when terminated with a resistance (R ohms) matching the rated impedance of the antenna input of the switch, shall not exceed a value equal to the product of 0.346 and the square root of R. The maximum voltage shall correspond to peak envelope power of the video modulated signal during maximum amplitude peaks.

3. Section 15.606 is proposed to be amended by adding a new paragraph (c) to read as follows:

**§ 15.606 Transfer switch.**

* * * * *

(c) An external transfer switch used with a TV receiver or TV interface device and in conjunction with cable service shall comply with the technical requirements in paragraph (a) of this section. Compliance of external devices with these standards shall be considered satisfactory if it is demonstrated that the switch isolation exceeds 60 dB.

4. Section 15.616 is proposed to be amended by adding a new paragraph (d) and revising the title to read as follows:

**§ 15.616 Equipment authorization requirements for the TV receiver transfer switch, the TV interface device and attachments thereto.**

* * * * *

(d) An external transfer switch as specified in § 15.606(c) shall be verified pursuant to Subpart J of Part 2 to show compliance with the technical specification indicated.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-10738 Filed 5-8-87; 8:45 am]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1330**

**[Ex Parte No. 346 (Sub-No. 23)]**

## Railroad Exemption; Filing of Quotations Under Section 10721

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Extension of time and changes in procedure to notice of proposed rulemaking.

**SUMMARY:** On March 25, 1987, the Commission published a notice which proposed to exempt from regulation the filing of quotations for rail shipment of government traffic under section 10721. 52 FR 9513. Comments were due May 8, 1987. The Commission is extending the comment period to June 8, 1987. Reply comments will also be accepted. To allow for service of comments and replies, parties intending to participate shall file a notice of intent by May 15, 1987. A service list will be issued prior to the June 8th date for the initial comments. Replies will be due on June 28, 1987.

**DATES:** Notices of intent to participate are due May 15, 1987. Comments are due June 8, 1987. Replies are due June 28, 1987.

**ADDRESSES:** Send pleadings (original and 15 copies of any comment or reply) referring to Ex Parte No. 346 (Sub-No. 23), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7246.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: May 1, 1987.

By the Commission, Heather J. Gradison, Chairman.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-10631 Filed 5-8-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF THE INTERIOR

**Fish and Wildlife Service**

**50 CFR Part 25**

## Revision of the General Provisions for Fees and Charges To Include Criteria for Establishing and Collecting Entrance Fees on National Wildlife Refuges

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to amend Subpart E of 50 CFR Part 25 by setting forth criteria to provide for the establishment and collection of entrance fees on designated national wildlife refuges (NWR), and to provide that failure to pay the established entrance fees shall constitute a violation of refuge rules and regulations. The purpose of this rulemaking is to establish regulations concerning entrance fee collection as authorized by the Emergency Wetlands Resources Act (the Act) of 1986, and to initiate the process of notifying the public as required by the Administrative Procedure Act.

**DATE:** Comments must be received on or before June 10, 1987.

**ADDRESSES:** Address comments to: Assistant Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Room 3248, 18th and C Streets, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Nancy Marx, Division of Refuges, U.S. Fish and Wildlife Service, Room 2343, 18th and C Streets, NW., Washington, DC 20240; Telephone (202) 343-3922.

**SUPPLEMENTARY INFORMATION:** The Emergency Wetlands Resources Act (Pub. L. 99-645) authorizes the Secretary of the Interior (Secretary) to charge entrance fees at designated NWRs (except in Alaska) provided that: (1) The

level of visitation for recreational purposes is high enough to justify the collection of fees for admission permits for economic reasons, (2) there is a practical mechanism in existence for implementing and operating a system of collecting fees for admission permits and (3) imposition of a fee for admission permits is not likely to result in undue economic hardship for a significant number of visitors to the refuge. These criteria will be applied with regard to the local area within which a particular refuge is located. The collection of entrance fees will shift a portion of the economic burden for use of these refuges from the general public to the direct user, consistent with the intent of the Act.

In determining the ability of certain refuges to implement and operate a fee collection system for admission permits, practical considerations include the Service's capability to construct and staff entrance facilities and to control access. Considering the criteria for establishing fees as stipulated in section 201 of the Act, refuges that have levels of visitation for recreational purposes high enough to justify the collection of fees for admission permits will not charge more than $3 per person or $7.50 per noncommercial vehicle at designated refuges. A valid Golden Eagle, Age, or Access Passport or a valid Federal Duck Stamp will allow the holder and those accompanying the holder in a noncommercial vehicle or in other than a noncommercial vehicle the holder's spouse, children or parents entry onto a designated refuge without further charge. Local notification, as provided in 50 CFR 25.31, will be given regarding seasons during which entrance fees will be charged and the rates for daily entrance.

Department of the Interior policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding the criteria for establishment of entrance fees. Accordingly, written comments concerning this proposal may be submitted to the Assistant Director-Refuges and Wildlife, (address above) by the end of the comment period. All relevant comments will be considered by the Department prior to issuance of a final rule. Following adoption of the final rulemaking, the actual selection of individual refuges for entrance fee collection will be accomplished at the refuge level with public notification given through posting of signs and distribution of refuge publications as set forth in 50 CFR 25.31. Prior to implementation of entrance fees on designated refuges, there will be opportunity for public comment.

### Conformance With Statutory and Regulatory Authorities

The Emergency Wetlands Resources Act of 1986 authorizes the Secretary to charge fees for admission permits at designated units of the National Wildlife Refuge System provided certain criteria are met. The purpose of this rulemaking is to set forth the criteria for designating refuges as entrance fee areas, to establish a process through which actual entrance fee areas will be identified, and to provide for penalties for evasion of the entrance fee regulations.

### Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more, or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The purpose of the Act is to provide additional revenues for the conservation of wetland resources of the Nation and for the operation and maintenance of refuges.

The Determination of Effects has been completed and analyzes the economic impacts. Based on this determination, the Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

### Environmental Considerations

This rulemaking, consistent with the intent of the Act, will set forth the criteria used to establish entrance fees which will generate revenue for the conservation of wetland resources of the Nation and for the operation and maintenance of refuges, thereby adding to the protection and management of the environment. No NEPA compliance is required because "the issuance of special regulation for public use of FWS-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse environmental effects" is a categorical exclusion.

Nancy A. Marx, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this proposed rulemaking document.

### List of Subjects in 50 CFR Part 25

Administrative practice and procedures, Concessions, National Wildlife Refuge System, Safety, Wildlife refuges.

Accordingly, it is proposed to amend Part 25 of Chapter I of Title 50 of the Code of Federal Regulations as set forth below:

## PART 25—[AMENDED]

1. The authority citation for Part 25 would be revised to read as follows:

**Authority: 16 U.S.C. 460k, 664, 668dd, 715i, and 3901 *et seq.*]**

Subpart E would be revised to read as follows:

### Subpart E—Fees and Charges

Sec.
25.51 General provisions.
25.52 Designation.
25.53 Establishment of single visit entrance fees.
25.54 Posting and public notification.
25.55 Refuge admission permits.
25.56 Enforcement.
25.57 Exceptions and exemptions.

### Subpart E—Fees and charges

#### § 25.51 General provisions.

Reasonable charges and fees may be established for public recreational use of and except in Alaska, entrance onto national wildlife rufuges. Regulations regarding recreational use fees are contained in 36 CFR Part 71. Regulations regarding entrance fees are contained in this Subpart E.

#### § 25.52 Designation.

To be designated as an "Entrance Fee Area", a unit of the National Wildlife Refuge System must be found to demonstrate that:

(a) The level of visitation for recreational purposes is high enough to justify the collection of fees for admission permits for economic reasons;

(b) There is a practical mechanism in existence for implementing and operating a system of collecting fees for admission permits; and

(c) Imposition of a fee for admission permits is not likely to result in undue economic hardship for a significant number of visitors to the unit.

#### § 25.53 Establishment of single visit entrance fees.

Entrance fees established for single visit permits shall consider the following

criteria with regard to the local area within which the refuge is located:

(a) The direct and indirect cost to the Government

(b) The benefits to the permit holder.

(c) The public policy or interest served.

(d) The comparable fees charged by non-Federal public agencies.

(e) The economic and administrative feasibility of fee collection.

**§ 25.54 Posting and public notification.**

The public shall be notified that an entrance fee is charged through refuge publications and posted designation signs in accordance with § 25.31 of this part.

**§ 25.55 Refuge admission permits.**

(a) Unless otherwise provided, persons entering an Entrance Fee Area shall obtain and be in possession of a valid admission permit.

(b) The following five types of permits allowing entrance onto an Entrance Fee Area will be available for issue or purchase at such area and, except for refuge-specific permits, at Fish and Wildlife Service Regional Offices and Washington Headquarters, and at other locations as may be designated.

(1) Single visit permits with a charge not to exceed $3 per person or $7.50 per noncommercial vehicle (single visit can be defined as 1–15 days, dependent upon a determination of the period of time reasonably and ordinarily necessary for such a visit at a particular refuge unit).

(2) Golden Eagle Passport.

(3) Golden Age Passport.

(4) Golden Access Passport.

(5) Federal Migratory Bird Hunting and Conservation (Duck) Stamp. To be valid, the Duck Stamp must be current and bear the signature of the holder on the front.

**§ 25.56 Enforcement.**

Permits issued or used for entrance onto Entrance Fee Areas are nontransferable. Failure to pay the entrance fee, to display upon request of an authorized official a valid permit, or to comply with other entrance fee provisions, rules or regulations, will be subject to the penalties prescribed in 50 CFR 28.31.

**§ 25.57 Exceptions and exemptions.**

At Entrance Fee Areas:

(a) Special admission permits for uses, such as group activities, may be issued.

(b) No entrance fee shall be charged for persons under 16 years of age.

(c) No entrance fee shall be charged for travel by private noncommercial vehicle over any road or highway established as part of the National Federal Aid System, which is commonly used by the public as a means of travel between two places which are outside the Entrance Fee Area.

(d) No entrance fee shall be charged for travel by private noncommercial vehicle over any road or highway to any land in which such person has a property interest if such land is within any Entrance Fee Area.

(e) Persons accompanying the holder of a valid Federal Duck Stamp or Golden Eagle, Age, or Access Passport in a single, private, noncommercial vehicle shall be entitled to general entrance.

(f) Where entry is by any means other than single, private, noncommercial vehicle, spouse, children, or parents accompanying the holder of a valid Federal Duck Stamp or Golden Eagle, Age, or Access Passport shall be entitled to general entrance.

Dated: April 14, 1987.

**Susan Recce,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–10599 Filed 5–8–87; 8:45 am]

BILLING CODE 4310-55-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 217, 222 and 227**

**Sea Turtle Conservation; Shrimp Trawl Requirements; Reopening of Comment Period**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The comment period on the proposed rule that would require certain shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the Southeastern United States to use qualified gear to reduce the incidental catch and mortality of sea turtles (published at 52 FR 6179–6199 Mar. 2, 1987) is reopened until Friday, May 15, 1987 to enable agency representatives to attend a meeting of interested parties being held by U.S. Senator John Breaux (LA).

**DATE:** Written comments will be accepted until May 15, 1987.

**ADDRESS:** Comments on the proposed rules should be addressed to the Regional Director, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz (813) 893–3366 or David Cottingham (202) 377–5181.

Dated: May 6, 1987.

**Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87–10622 Filed 5–8–87; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Pretest of the Survey of Manufacturing Technology
Form number: Agency - SMT-1, SMT-2; OMB - NA
Type of request: New collection
Burden: 200 respondents; 100 reporting hours
Needs and uses: Policymakers in Government and industry have expressed a need for information on the patterns of use and diffusion of advanced manufacturing technologies. Approximately 200 manufacturing firms will be contacted in this pretest.
Affected public: Businesses or other for-profit institutions
Frequency: One time
Respondent's obligation:Voluntary
OMB desk officer: Don Arbuckle, 395–7340

Agency: Bureau of the Census
Title: 1987 Economic/Agriculture Censuses of Outlaying Areas
Form number: Agency - various; OMB - NA
Type of request: New collection
Burden: 365,810 respondents; 73,162 reporting hours
Needs and uses: The economic and agriculture censuses provide the only source of periodic, comparable, detailed data of the structure of outlying areas production, distribution, and service sectors. The five-year Economic/Agriculture censuses provide benchmarks for indexes of industrial production, business activities, sales, and various agricultural programs, all of which are essential for understanding current economic and agricultural developments.
Affected public: Farms, businesses or other for-profit institutions
Frequency: Quinquennial
Respondent's obligation: Mandatory
OMB desk officer: Don Arbuckle, 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: May 5, 1987.

*Edward Michals,*

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–10688 Filed 5–8–87; 8:45 am]

BILLING CODE 3510-07-M

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency
Title: Business Development Report
Form number: Agency—MBDA 115 OMB—0640–0005
Type of Request: Extension of a currently approved collection
Burden: 100 respondents; 1,600 reporting hours
Needs and uses: This collection identifies minority business clients receiving Agency-sponsored management and technical assistance and the kind of assistance each receives. Respondents are MBDA-funded client services organizations.
Affected public: Individuals or households, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: Quarterly
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Don Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: May 5, 1987.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–10689 Filed 5–8–87; 8:45 am]

BILLING CODE 3510-CW-M

## International Trade Administration

[A–475–401]

### Preliminary Results of Antidumping Duty Administration Review, Certain Values and Connections, of Brass, for Use in Fire Protection Systems from Italy

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of Preliminary results of antidumping duty administration reivew.

**SUMMARY:** In response to a request by the petitioner and respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain values and connections, of brass, for use in fire protection systems from Italy. The review covers one manufacturer/exporter and one third-country reseller of this merchandise to the United States and the period July 10, 1984 through February 28, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to asses dumping duties equal to the calculated differences between United States price and foreign market value. Interested parties are

invited to comment on these preliminary results.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Chip Hayes or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/5255.

**SUPPLEMENTARY INFORMATION:** .

**Background**

On March 1, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 8354) the antidumping duty order on certain brass fire protection equipment from Italy. On May 158, 1986 the Department published a second amendment to the final determination of sales at less than fair value (49 FR 47066, November 30, 1984). The petitioner and respondent requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review for the period July 10, 1984 through February 28, 1986. We published a notice of initiation of the antidumping duty administrative review on April 18, 1986 (51 FR 13273). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of certain valves and connections, of brass, suitable for use in interior fire protection systems from Italy. This merchandise consists of single and double clapper siamese fire department connections and pressure restricting valves currently classifiable under items 680.1420 and 680.1440, respectively, of the Tariff Schedules of the United States Annotated.

**United States Price**

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed delivered price to unrelated purchasers in the United States and on the packed delivered price to an unrelated reseller. We made adjustments, where applicable, for U.S. and foreign inland freight, ocean freight, marine insurance, and brokerage and handling charges. No other adjustments were claimed or allowed.

**Foreign Market Value**

There were no home market sales of such or similar merchandise. Therefore, in calculating foreign market value, the Department used the price to unrelated purchasers in a third country (Canada) when there were sufficient sales of such or similar merchandise at or above the cost of production, or constructed value of such merchandise when there were no third country sales of such or similar merchandise, both as defined in section 773 of the Tariff Act. All Canadian sales were made at or above the cost of production. Third country price was based on the packed delivered price to unrelated customers in Canada.

Where applicable, we made adjustments for inland freight, brokerage and handling charges, commissions to unrelated parties, credit, packing, and differences in the physical characteristics of the merchandise. No other adjustments were claimed or allowed.

We calculated constructed value as the sum of materials and fabrication costs, general expenses, profit, and the cost of packing. For general expenses the Department used actual general expenses for the same class or kind of merchandise sold to third country because such expenses were greater than the statutory minimum of ten percent of the sum of materials and fabrication costs. We also used the actual profit rates for third country sales of the same class or kind of merchandise because those rates were higher than the statutory minimum of eight percent of general expenses and cost.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

| Manufacturer/exporter or reseller | Time period | Margin (percent) |
|---|---|---|
| Rubinetterie A. Giacomini S.p.A. | 7/10/84–02/28/86 | 0.00 |
| Giacomini/Ganbrook Ltd. | 7/10/84–02/28/86 | 85.54 |

Interested parties may submit written comments on these preliminary results within 20 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 8 days of the date of publication. Any hearing, if requested, will be held 20 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for Giacomini and Ganbrook.

For any future entries of this merchandise from a new exporter not covered in this administrative review, whose first shipments occurred after February 28, 1986 and who is unrelated to either reviewed party, a cash deposit of 85.54 percent shall be required on shipments of certain valves and connections, of brass, for use in fire protection systems from Italy. These deposit requirements are effective for all shipments of certain Italian valves and connections, of brass for use in fire protection systems, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: May 2, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87–10871 Filed 5–8–87; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–580–008]**

## Preliminary Results of Antidumping Duty Administrative Review; Color Television Receivers From Korea

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests by the petitioners, another domestic interested party, and the respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers from Korea. The review covers the four known manufacturers and/or exporters of color television receivers to the United States currently covered by the order, and generally the period April 1, 1985 through March 31, 1986. The review

indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Laura Merchant, Americo Tadeu or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601/ 1130/2923.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 14, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 41365) the final results of its last administrative review of the antidumping duty order on color television receivers from Korea (49 FR 18336, April 30, 1984). In April, 1986, the petitioners, another domestic interested party, and respondents requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We therefore published a notice of initiation of the review on May 20, 1986 (51 FR 18475).

## Scope of the Review

Imports covered by the review are sales of color television receivers, complete or incomplete, from Korea. The order covers all color television receivers regardless of tariff classification. The merchandise is currently classifiable under item numbers 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, 684.9663, 684.9664, 684.9666, 687.3512, 687.3513, 687.3514, 687.3516, 687.3518, 687.3520 of the Tariff Schedules of the United States Annotated. The results of this review cover complete color television receivers and incomplete color televisions, the components of which are imported together. The results do not include imports of incomplete color television receivers, (i.e. color picture tubes or printed circuit boards). We have postponed review of these items until the next administrative review. The review covers four known manufacturers and/or exporters of Korean color television receivers to the United States currently covered by the order, and generally the period April 1, 1985 through March 31, 1986.

## United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price and exporter's sales price were based on the packed f.o.b., c.i.f. or delivered price to unrelated purchasers in the United States.

When the product was sold by the exporter to an unrelated importer, and this sale occurred prior to the date of importation, the price of this sale was used to determine the purchase price.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the more appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We made adjustments, where applicable, for ocean freight, marine insurance, U.S. and Korean brokereage fees, Korean customs clearing fees, wharfage, export license fees, forwarding and handling charges, discounts, royalties, rebates, commissions to unrelated parties, and the U.S. subsidiary's selling expenses. Where applicable, we made an addition for import duties collected and rebated on imported raw materials used to produce subsequently exported merchandise, in accordance with § 353.10(d)(1)(ii) of the Commerce Regulations. No other adjustments were claimed or allowed.

## Foreign Market Value

In calculating foreign market value the Department used home market price or constructed value, as defined in section 773 of the Tariff Act. Home market price were used where sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis for comparison. Home market price was based on the packed delivered price to unrelated purchasers in the home market. We accounted for those taxes imposed in Korea, either rebated or not collected by reason of the exportation of the merchandise to the United States, by subtracting them from the home market price. Where applicable, we made adjustments for inland freight, forwarding, rebates, credit expenses, discounts,warranty, advertising and sales promotion, royalties, differences in the physical characteristics of the merchandise, and packing. We also made adjustments, where applicable, for indirect selling expenses to offset commissions and U.S. selling expenses deducted in ESP calculations.

Constructed value consisted of the sum of the costs of materials, fabrication, general expenses, profit, and the cost of packing. The amount added for general expenses was 10 percent of the sum of materials and fabrication costs. The amount added for profit was 8 percent of the sum of the costs of materials, fabrication, and general expenses. Actual costs for general expenses and for profit fell below the statutory minimums of 10 and 8 percent respectively.

We disallowed a claim for a level of trade adjustment because the information the respondent provided did

not demonstrate that distinct trade levels exist in the home and U.S. markets. Moreover, we again denied as a direct expense a claim for a cash discount because of inconsistencies in the recording of the expense found during the verification in the previous administrative review. No other adjustments were claimed or allowed.

Zenith alleged that Samsung, Daewoo, and Gold Star sold color televisions in the home market at prices below their costs of production, and that the Department must, therefore, require the submission of cost information. Zenith supported its allegation by referring back to the Department's finding of sales below cost in the last administrative review and asserting that this finding created a presumption that sales below cost were still occurring. On the basis of Zenith's allegation, we have conducted an analysis of Gold Star's costs of production. In the case of Samsung, we found less than 10% of its sales to have been made below cost in the last review, and therefore, absent additional evidence, we do not believe that another cost analysis is warranted. In the case of Daewoo, we found below cost sales during the first administrative review. We did not receive a timely allegation of sales below cost during the second administrative review and, therefore, did not require the submission of cost information for that period. Nevertheless, we have required Daewoo to submit cost information in this review, based upon the finding of below cost sales in the first review. We have not yet conducted a cost test on Daewoo. For Gold Star, we compared the home market sales price to the cost of production and we eliminated from our calculations any below cost sales of models when those sales constituted more than 10% of total sales of those models.

### Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Daewoo Electronic Co., Ltd | 04/01/85-03/31/86 | 3.76 |
| Gold Star Co., Ltd | 04/01/85-03/31/86 | 1.20 |
| Cuantronics Manufacturing Korea, Ltd | 04/01/85-03/31/86 | 1.74 |
| Samsung Electronics Co., Ltd | 04/01/85-03/31/86 | 4.49 |

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm, a cash deposit of 4.49 percent shall be required. These deposit requirements are effective for all shipments of Korean color television receivers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556 August 13, 1985).

Dated: May 2, 1987.

Gilbert B. Kaplan,

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-10672 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-DS-M

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[A-588-029]

## Preliminary Results of Antidumping Duty Administrative Review, Tentative Determination to Revoke in Part, and Intent to Revoke in Part; Fishnetting of Man-made Fibers From Japan

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review, tentative determination to revoke in part, and intent to revoke in part.

**SUMMARY:** In response to requests by the petitioners, seventeen respondents and eleven importers, the Deaprtment of Commerce has conducted an administrative review of the antidumping finding on fishnetting of man-made fibers from Japan. The review covers twenty manufacturers and/or exporters and one third-country reseller of this merchandise and generally the period June 1, 1980 through May 31, 1986. The review indicates the existence of dumping margins for some of the firms during certain periods.

As a result of the review, the Department has tentatively determined to revoke the finding with respect to Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten, and intends to revoke the finding with respect to Amikan and Hakodate.

When no information was received in response to our questionnaire, we used the best information available for assessment and estimated antidumping duties cash deposit purposes.

Interested parties are invited to comment on these preliminary results, tentative determination to revoke in part, and intent to revoke in part.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sheila Forbes, or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 1 and May 8, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 4026, 19558) a tentative determination to revoke in part the antidumping finding on fishnetting of man-made fibers from Japan (37 FR 11560, June 9, 1972). On April 30, 1984, the Department published in the Federal Register (49 FR 18339) the final results of its last administrative review of the antidumping finding. We began this review of the finding under our old regulations. After the promulgation of our new regulations, the petitioners, 17 respondents, and 11 importers requested in accordance with § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published notices of initiation on February 12, 1986 (51 FR 5219), March 14, 1986 (51 FR 8862), July 9, 1986 (51 FR 24883), and July 17, 1986 (51 FR 25293), as required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has

now conducted that administrative review.

**Scope of the Review**

Imports covered by the review are shipments of fishnetting of man-made fibers, currently classifiable under items 355.4520 and 355.4530 of the Tariff Schedules of the United States Annotated.

The review covers twenty manufacturers and/or exporters and one third-country reseller of Japanese fishnetting of man-made fibers and generally the period June 1, 1980 through May 31, 1986.

On December 12, 1986, the International Trade Commission ("ITC") determined that an industry in the United States would not be materially injured or threatened with material injury nor would the establishment of an industry in the United States be materially retarded by reason of imports of salmon gill fishnetting of man-made fibers from Japan covered by the antidumping finding if that portion of the finding concerning salmon gill fishnetting were to be revoked. The ITC found that the U.S. industry consisted of two companies, one of which ceased production of salmon gill fishnetting in November 1984. For purposes of this preliminary determination we have determined that the effective date of the revocation of the portion of the finding applicable to salmon gill fishnetting is December 12, 1986—the date of the ITC determination.

Various importers have requested that the Department make this revocation retroactive as of November 1984, since significant domestic production of salmon gill fishnetting had ended by that date. We will include our decision on this issue in the final results of this administrative review.

Puretic Supplies and Sanyo Enterprises failed to respond to the Department's antidumping questionnaire. We therefore used the best information available for assessment and estimated antidumping duties cash deposit purposes for these firms. The best information available is each firm's rate from the last review.

The tentative revocations currently in effect for any of the firms covered by this review will cease to be effective with respect to any firm for which a dumping margin is finally determined to exist for this review period.

**United States Price**

In calculating United States price, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. Purchase price and ESP were based on the packed f.o.b., c.i.f., or delivered price to either the first unrelated purchaser in the United States or to unrelated Japanese trading companies for export to the United States. Where applicable, we made adjustments for U.S. and foreign inland freight, ocean freight, marine insurance, forwarding fees, shipping charges, and brokerage/handling charges. No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value the Department used home market price or third-country price, both as defined in section 773 of the Tariff Act, as appropriate. When insufficient quantities of such or similar merchandise were sold in the home market during the period to provide a basis for comparison, we used third-country price.

Home market price was based on the packed delivered price to unrelated purchasers in the home market, with adjustments, where applicable, for inland freight, insurance, interest, and differences in packing.

Third-country price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in various third countries. We made adjustments, where applicable, for ocean freight, marine insurance, inland freight, forwarding fees, shipping charges, dyeing, interest, and commissions to unrelated parties. No other adjustments were claimed or allowed.

**Preliminary Results of the Review, Tentative Determination to Revoke in Part, and Intent to Revoke in Part**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Amikan | 06/01/82-05/31/86 | 0 |
| Fukui | 06/01/82-05/31/83 | 0.12 |
| | 06/01/83-05/31/86 | 0 |
| Hakodate | 06/01/82-04/30/86 | 0 |
| Hakodate/ Mitsui | 06/01/82-05/31/83 | 12.41 |
| Hirata Spinning | 10/01/83-05/31/85 | 9.83* |
| Inagaki/ Moribun Shoten | 06/01/82-04/30/84 | 0 |
| Inagaki/ Nichimen | 06/01/82-09/30/83 | 0* |
| Maruhei | 06/01/82-05/31/83 | 0.79 |
| | 06/01/83-05/31/84 | 0.42 |
| | 06/01/84-05/31/85 | 0 |
| Momoi | 10/01/83-05/31/84 | 0.21 |
| | 06/01/84-05/31/86 | 0 |
| Morimi | 06/01/82-05/31/83 | 0 |
| | 06/01/83-05/31/85 | 0* |
| Morishita | 10/01/83-05/31/85 | 12.66 |
| | 06/01/85-05/31/86 | 12.66* |
| Morishita/ Mitsui | 10/01/83-05/31/86 | 18.30* |
| Nippon Kenmo | 06/01/82-05/31/86 | 0 |
| Osada/ Moribun Shoten | 06/01/82-04/30/84 | 0 |
| Osada/ Nichimen | 06/01/82-05/31/83 | 0.005 |
| | 06/01/83-04/30/84 | 0.004 |
| Sanyo Enterprises | 04/01/81-06/30/82 | 18.30 |
| Taito Seiko | 05/31/84-05/31/85 | 18.30* |
| Taito Seiko/ Nakamura Suisan | 06/01/82-05/31/85 | 18.30* |
| Toyama | 06/01/80-05/31/81 | 7.17 |
| | 06/01/81-05/31/82 | 4.95 |
| | 06/01/82-05/31/83 | 4.05 |
| Yamaji | 06/01/82-05/31/84 | 0 |
| *Third Country Reseller (Country):* | | |
| Puretic Fishing Gear/ (Canada) | 06/01/82-05/31/86 | 18.30 |

*No shipments during the period.

Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten requested that we revoke the antidumping finding with respect to these firms. Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten have made all sales of Japanese fishnetting of man-made fibers to the United States at not less than fair value for four years. As provided for in § 353.54(e) of the Commerce Regulations, Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten have agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that Japanese fishnetting of man-made fibers exported to the United States by them are being sold at less than fair value.

Therefore, we tentatively determine to revoke the antidumping finding on Japanese fishnetting of man-made fibers with respect to Nippon Kenmo, Inagaki/Moribun Shoten, and Osada/Moribun Shoten. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Nippon Kenmo, Inagaki/Moribun Shoten, or Osada/Moribun Shoten and entered, or withdrawn from warehouse, for

consumption on or after the date of publication of this notice.

As a result of our review, the Department also intends to revoke the antidumping finding with respect to Amikan Fishing Net Mfg. Co., Ltd. and Hakodate Seimo Sengu Co., Ltd. Amikan and Hakodate made all sales at not less than fair value to the United States for 6 years. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise manufactured and exported by Amikan and Hakodate and entered, or withdrawn from warehouse, for consumption on or after February 1, 1984 and May 8, 1984, respectively.

Interested parties may submit written comments on these preliminary results, tentative determination to revoke in part, and intent to revoke in part within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter.

Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the most recent margin for Osada/Nichimen is less than 0.5 percent and therefore *de minimus* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for Osada/Nichimen. For any future shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms (49 FR 18339, April 30, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative review, whose first shipments occurred after May 31, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements and waiver are effective for all shipments of Japanese fishnetting of man-made fibers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, intent to revoke in part, and notice are in accordance with section 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.52a, 35354).

Dated: May 2, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87-10674 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-DS-M

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or § 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity to Request a Review

Not later than May 31, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May, for the following periods:

| | Period |
|---|---|
| **Antidumping Duty Proceeding** | |
| Portland Cement from the Dominican Republic | 05/01/86-04/30/87 |
| Circular Pipes and Tubes from Taiwan | 05/01/86-04/30/87 |
| Portable Electric Typewriters from Japan | 05/01/86-04/30/87 |
| Construction Castings from Brazil | 10/21/85-04/30/87 |
| Construction Castings from India | 10/28/85-04/30/87 |
| Construction Castings from the People's Republic of China | 10/28/86-04/30/87 |
| Pipes and Tubes from India | 12/31/85-04/30/87 |
| Pipes and Tubes from Turkey | 01/03/86-04/30/87 |
| Nails from the People's Republic of China | 01/09/86-04/30/87 |
| Pipe Fittings from Brazil | 01/14/86-04/30/87 |
| Impression Fabric from Japan | 05/01/86-04/30/87 |
| Offshore Platform Jackets and Piles from Japan | 11/15/85-04/30/87 |
| Offshore Platform Jackets and Piles from South Korea | 11/19/85-04/30/87 |
| Pipe Fittings from South Korea | 01/14/86-04/30/87 |
| Pipe Fittings from Taiwan | 01/14/86-04/30/87 |
| **Countervailing Duty Proceeding** | |
| Bricks from Mexico | 01/01/86-12/31/86 |
| Ceramic Tile from Mexico | 01/01/86-12/31/86 |
| Viscose Rayon Staple Fiber from Sweden | 01/01/86-12/31/86 |
| Certain Heavy Iron Construction Castings from Brazil | 05/12/86-12/31/86 |
| Fresh Atlantic Groundfish from Canada | 01/09/86-12/31/86 |
| Offshore Platform Jackets and Piles from South Korea | 07/09/86-12/31/86 |

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by May 31, 1987.

If the Department does not receive by May 31, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

May 1, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-10673 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-DS-M

[Application #87-00003]

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of issuance of an Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an export trade certificate of review to Eximark

Corporation ("Eximark"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct**

*Export Trade*

(a) Products

All products, including high technology products related to data processing and telecommunications.

(b) Services

Consulting; training; market research; advertising; promotion; marketing; transportation; trade documentation; communications; order processing; warehousing; foreign exchange; financing; insurance; product research, design and assembly for export; and providing advice regarding compliance with Export Administration regulations or other government controls.

(c) Export Trade Facilitation Services (As They Relate to the Export of Products)

Market research; location of overseas distribution channels; development of agreements for business partner relationships; providing assistance regarding compliance with Export Administration regulations or other government controls; providing advice on foreign business practices; freight management; customs clearance; communications; export-import documentation; acquiring necessary foreign regulatory approvals; consulting; training; advertising; promotion; marketing; transportation; order processing; warehousing; foreign exchange; financing; insurance; and product research, design and assembly for export.

*Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Definitions*

(a) "Export Intermediary" means a person who acts as a broker, distributor, sales representative, or sales or marketing agent, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services, for sales in the Export Markets.

(b) "Supplier" means a person who produces, provides, or sells Products or Services for sale in the Export Markets.

*Export Trade Activities and Methods of Operation*

Eximark may: 1. Enter into exclusive and nonexclusive agreements with individual Suppliers of Products and Services to act as an Export Intermediary and/or consultant for sales in the Export Markets wherein:

(a) Eximark agrees not to represent any competitors of a Supplier in any Export Market unless authorized by the Supplier; and/or

(b) The Supplier agrees not to sell, directly or indirectly through any other intermediary, into the Export Markets in which Eximark represents the Supplier as an Export Intermediary.

For itself or on behalf of any Supplier, Eximark may establish the prices, terms of sale and quantities at which Products and Services shall be sold in the Export Markets and may also allocate the Products or Services to be sold to any party in the Export Markets.

2. Enter into agreements with individual Suppliers for the sale of Products and Services in any Export Market wherein the Supplier agrees to compensate Eximark if sales occur in that Export Market.

3. Enter into exclusive and nonexclusive agreements with individual customers, distributors, sales agents, sales representatives or other persons located in foreign countries or in the United States for the sale of Products and Services in the Export Markets wherein Eximark grants that person or those persons the exclusive right to sell particular Products and Services within particular Export Markets.

4. Refuse to deal with any person for the sale of Products and Services in the Export Markets.

5. Enter into exclusive or nonexclusive agreements with individual Suppliers to act as a procuring agent with respect to the sale of Suppliers' Products and Services in the Export Markets.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 5, 1987.

**George Muller,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87–10690 Filed 5–8–87; 8:45 am]

BILLING CODE 3510-DR-M

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## National Oceanic and Atmospheric Administration

**[Docket No. 70484–7084]**

## Commercial Fisheries Research and Development

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of determination of a commercial fishery failure due to a resource disaster.

**SUMMARY:** NOAA issues this notice that Maryland and Virginia have submitted resource in the Chesapeake Bay. Each State has determined that a natural disaster has occurred to its oyster fishery. The Secretary of Commerce, after a technical review of the States' documents, announces his finding that a natural resource disaster has occurred in Chesapeake Bay, and authorizes appropriated funds to be used for resource recovery projects in Chesapeake Bay.

**FOR FURTHER INFORMATION CONTACT:** Austin R. Magill, Office of Fisheries Management, NMFS, Washington, DC 20235, 202–673–5272.

**SUPPLEMENTARY INFORMATION:** The Chesapeake Bay oyster population has been plagued by the recurring problem of MSX (*Haplosporidium nelsoni*) since the late 1950s when the protozoan organism was first detected. High mortalities from MSX are associated with salinity values greater than 15 parts per thousand (ppt). As prevalence of MSX subsided somewhat in the late 1960s–early 1970s, Maryland and

Virginia were able to sustain a substantial fishery through cooperative State/Federal programs of shell cultch planting and seed transplanting.

The drought conditions experienced by the mid-Atlantic States beginning in the early 1980s have reduced freshwater runoff, resulting in increased salinity in many portions of Chesapeake Bay. Autumn 1986 oyster bar survey information demonstrated that MSX disease has spread through most oyster bars, with MSX levels comparable to those observed in 1981 and 1982, when significant mortalities occurred. Mortalities on beds in the Nanticoke River have been as high as 86 percent. Overall, reductions of over 40 percent in yield of marketable oysters have occurred in Maryland and, depending upon future salinity regimes in the upper bay, these conditions could continue through 1990.

As population levels of oysters have decreased, reproduction has become increasingly irregular in both quantity and geographical distribution of spat set. Further, if high salinity values continue (considered likely for 1987), disease successful spat set from the past several years will suffer mortality.

The Chesapeake Bay oyster resources needs several good years of reproductive success, followed by low disease mortality and high levels of favorable recruitment to the fishery in order to begin rebuilding the population to former levels of abundance. Maryland and Virginia have initiated comprehensive oyster management and restoration programs to aid this effort with an eventual goal of rebuilding the oyster resources to their former abundance. As part of this effort, each State has submitted a proposal for funding under subsection 4(b) of Pub. L. 88–309 which would continue, expand, and complement efforts already underway or contemplated with State funding. Activities contemplated by both states include dredging and planting of oyster shell and distributing seed oystes. Additionally, Maryland plans to plant surf clam shell and fresh oyster shell recovered from shucking houses. These activities would assist in stabilizing and restoring the oyster resource.

A technical review of the State proposals by NMFS staff from the Northeast Region and the Northeast Fisheries Center indicates that a resource disaster has occurred in Chesapeake Bay as defined under the terms of subsection 779b of the Commercial Fisheries Research and Development Act of 1964, as amended (Pub. L. 88–309, subsection 4(b)). Therefore, as the authorized representative of the Secretary of Commerce, I hereby determine that funds appropriated by Pub. L. 99–500 and Pub. L. 99–591 may be used for the purpose of subsection 4(b) of Pub. L. 88–309 to restore and return to production the damaged oyster resources of the Chesapeake Bay.

**Authority:** 16 U.S.C. 779 *et seq.*

**Dated:** May 5, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries.*

[FR Doc. 87–10621 Filed 5–8–87; 8:45 am]

BILLING CODE 3510–22–M

[P 349]

## Marine Mammals; Proposed Permit Modification Request by West Coast Whale Research Foundation

Notice is hereby given that the West Coast Whale Research Foundation, c/o Elizabeth A. Mathews, Applied Sciences 273, Center for Marine Studies, University of California at Santa Cruz, Santa Cruz, California 95064, has requested a modification of Permit No. 493 issued on February 28, 1985 (50 FR 9481), as modified on October 4, 1985 (50 FR 41550), and March 6, 1987 (52 FR 7007), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the regulations governing endangered species permits (50 CFR Part 217–222).

The Permit Holder is requesting to include the Kona coast of the Big Island of Hawaii in the study of humpback whales (*Megaptera novaeangliae*) and authorization to observe and photographically identify all cetacean species that are encountered during the research.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the Modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this Modification should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Serivce, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular Modification would be appropriate. The holding of such hearing is at the discretaion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this Modification are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above Modification are available for review by interested persons in the following offices: Office of the Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

**Dr. Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

**May 4, 1987.**

[FR Doc. 87–10649 Filed 5–8–87; 8:45 am]

BILLING CODE 3510–22–M

## National Technical Information Service

## Intent To Grant Exclusive Patent License; Roberts Laboratories, Inc.

The National Technical Infomation Service (NTIS), U.S. Department of Commerce, intends to grant to Roberts Laboratories, Inc., having a place of business in Eatontown, NJ, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Substituted N-Methyl Derivatives of Mitindomide," U.S. Patent Application Serial Number 6–804, 136. The patent rights in this invention has been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent

Licensing, NTIS, Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.*

[FR Doc. 87-10679 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Revisions in Officials Authorized to Issue Export Licenses/Commercial Invoices for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products From the People's Republic of China

May 5, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and the export licensing system of February 16, 1984, as amended, the People's Republic of China has notified the United States Government that the following additional authorities have been named to issue export licenses/commercial invoices for textile and apparel products subject to the terms of the bilateral agreement: Guangzhou Foreign Economic Relations and Trade Commission, Fu Gian Road, Guangzhou, China; Xi'an Foreign Economic Relations and Trade Bureau, 159, Bei Yuan Men, Xi'an, China

The purpose of this notice is to advise the public of this change.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-10667 Filed 5-8-87; 8:45 am]

BILLING CODE 3510-10-M

## COMMODITY FUTURES TRADING COMMISSION

### Applications of the Chicago Board of Trade and the Commodity Exchange, Inc., for Designation as Contract Markets in Futures Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed futures contracts.

**SUMMARY:** The Chicago Board of Trade ("CBT") has applied to the Commodity Futures Trading Commission ("Commission") for designation as a contract market in Corporate Bond Index futures. In addition, the Commodity Exchange, Inc. ("COMEX"), has applied for designation as a contract market in futures on the Moody's Investment Grade Corporate Bond Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATE:** Comments on the CBT's Corporate Bond Index futures contract and the COMEX's Moody's Investment Grade Corporate Bond Index futures contract must be received on or before July 10, 1987.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the specific futures contract being addressed.

**FOR FURTHER INFORMATION CONTACT:** Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT and the COMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the CBT or COMEX in support of their applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC, on May 5, 1987.

**Paula A. Tosini,**

*Director, Division of Economic Analysis.*

[FR Doc. 87-10620 Filed 5-8-87; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance; Meeting

May 2, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance will meet at the Anser Corporation, 1215 Jefferson Davis Highway, Arlington, VA, on June 4 and June 5, 1987.

The purpose of this meeting is to receive briefings on and to discuss air base operability, survivability, and basing posture and to investigate the application of advanced technology to the enhancement of air base operability.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-10680 Filed 5-8-87; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board Ad Hoc Committee on Airships; Meeting

May 4, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Airships will meet on May 27th and 28th, 1987, at the Pentagon, room 5D982, from 8:00 am to 5:00 pm each day. The purpose of the meeting is to review, discuss and evaluate the suitability of airships to perform certain Air Force roles and missions.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202 697–4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–10678 Filed 5–8–87; 8:45 am]

BILLING CODE 3910–01–M

## Department of the Army

### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 1–3 June 1987

Time: 0900–1600, 1 June 1987, Fort Carson, CO, 0900–1200, 2 June 1987, Fort Carson, CO, 0800–1200, 3 June 1987, Fort Ord, CA.

**Agenda:**

The Army Science Board's Ad Hoc Subgroup on Water Supply and Management on Western Installations will meet. This will be the third meeting. The group will study missions and planning processes of Fort Carson and Fort Ord in light of the current and projected water supplies. The group will also meet with state and local water officials. This meeting is open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87–10613 Filed 5–8–87; 8:45 am]

BILLING CODE 3710–08–M

### Armed Forces Institute of Pathology, Scientific Advisory Board; Meeting

In order to comply with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board, June 11–12, 1987, at 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, DC 20306–6000. This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consultation, education and research. The Executive Secretary from whom substantive program information may be obtained is Colonel William R. Tuten, III, Executive Officer, Armed Forces Institute of Pathology, Washington, DC 20306–6000, telephone 202–576–2900.

For the Director:

**William R. Tuten, III,**

*Colonel, MS, USA, Executive Officer.*

[FR Doc. 87–10746 Filed 5–8–87; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Navy

### Public Information Collection Requirement Submitted to OMB for review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

**Extension**

Application for Commission or Warrant Rank, USN or USNR, 0703–0029

NAVCRUIT 1100/11

Information is provided by the applicant and utilized by a Selection Board to determine applicant's qualifications for a commission. Information can be provided by the applicant only.

Individuals or Households

Responses 20,000

Burden hours 10,000

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

**FOR FURTHER INFORMATION CONTACT:** A copy of the information collection proposal may be obtained from P. Hannam, Assistant Director, Officer Programs Divisions, U.S. Navy Recruiting Command, Arlington, Virginia, telephone (212) 696–4775.

May 6, 1987.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87–10696 Filed 5–8–87; 8:45 am]

BILLING CODE 3810–01–M

### Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) title of information collection and form number if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; (8) the point of contact from whom a copy of the information proposal may be obtained.

**Extension**

Drug Statement for NROTC Application, 0703–0024

NAVCRUIT 1131/5

Information is provided by the NROTC applicant as part of the application process. The information is used by Headquarters, Navy Recruiting Command to determine applicant's need and eligibility for a waiver.

Individuals or Households

Responses 15,000

Burden hours 3,000

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

**FOR FURTHER INFORMATION CONTACT:** A copy of the information collection proposal may be obtained from Commander J.M. Thomas, College Program Branch, U.S. Navy Recruiting

Command, Arlington, Virginia, telephone (202) 696–4581.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

May 6, 1987.

[FR Doc. 87–10697 Filed 5–8–87; 8:45 am]

BILLING CODE 3810–01–M

## Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on the Navy's Role in the Air Defense Initiative will meet on May 27, 1987. The meeting will be held at the Science Applications International Corporation, 1710 Goodridge Drive, McLean, Virginia. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on May 27, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to identify appropriate research efforts, management techniques, and interservice cooperative efforts related to the air defense initiative. The agenda will include technical briefings and discussions related to service policies, perspectives, concepts of operations, and the intelligence threat. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 4, 1987.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87–10618 Filed 5–8–87; 8:45 am]

BILLING CODE 3810–AE–M

## Performance of Commercial Activities; Announcement of Program Cost Studies

Department of the Navy, Headquarters Marine Corps, intends to conduct OMB Circular A–76 (48 FR 37110, August 16, 1983) cost studies of various functions at listed activities commencing June 11, 1987. Cost study process is a rigorous, time-consuming procedure and, depending upon size of functions involved, can take several months to several years to complete. When bids/proposals are desired, appropriate advertisements will be placed. No consolidated bidders' list is being maintained since solicitations will be processed by various contracting offices throughout the United States.

**Marine Corps Air Ground Combat Center, Twentynine Palms, CA**

Training Devices and Simulators.

**Marine Corps Air Station, Beaufort, SC**

Custodial Services.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, USN, Federal Register Liaison Officer.*

May 5, 1987.

[FR Doc. 87–10619 Filed 5–8–87; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. GP87–35–000]

## Walter S. Fees, Jr., Complainant v. Northwest Pipeline Corp., Respondent; Filing of Complaint

May 6, 1987.

Take notice that on March 9, 1987, Walter S. Fees, Jr., (Complainant) filed with the Commission pursuant to Rule 206 of the Commission's rules of practice and procedure a complaint against Northwest Pipeline Corporation (Northwest), requesting the Commission to find that Northwest has incorrectly calculated price adjustments for Btu content for gas sold by Complainant to Northwest. According to Complainant, Northwest utilizes a "wet Btu" adjustment method whereas the applicable contracts provide for adjustments based on the actual Btu content of gas as delivered.

Complainant states that Commission Order No. 356 provides that the maximum lawful prices prescribed by the NGPA shall apply to Btu's contained in a standard cubic foot of gas saturated with water vapor at 60 degrees F. under a pressure equal to 30 inches of mercury, but that the Commission has stated that it would allow contractually authorized Btu adjustments so long as the adjustments do not raise the price above the maximum lawful price. Complainant claims that when the price of its gas has fallen below the NGPA maximum lawful price, Northwest has incorrectly calculated Btu adjustments based on the "wet Btu" adjustment method instead of a "dry Btu" method provided under its contracts.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection. Answers to the complaint are due within the same time period.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–10661 Filed 5–8–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–531–000]

## FMP Operating Co., A Limited Partnership; Filing of Application

May 6, 1987.

Take notice that on April 23, 1987, FMP Operating Company (FMP) of P.O. Box 60004, New Orleans, Louisiana, 70160–0004, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) 15 U.S.C. 717c and 717f, and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR Parts 154 and 157 (1986) for blanket limited-term abandonment authorizaion for all jurisdictional categories of gas to the extent the gas is released by the purchaser and a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of such abandoned gas produced by Applicant, and its joint interest owners, with pregranted abandonment of such sales, all to be effective for a three-year term

commencing with the effective date of the requested authorizations. This application is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 19, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 87-10862 Filed 5-8-87; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. GP87-38-000]**

## Fuel Resources Development Co., Complaint v. Northwest Pipeline Corp., Respondent; Filing of Complaint

May 6, 1987.

Take notice that March 9, 1987, Fuel Resources Development Co. (Complainant) filed with the Commission pursuant to Rule 206 of the Commission's rules of practice and procedure a complaint against Northwest Pipeline Corporation (Northwest). Complainant requests the Commission to find that Northwest has improperly calculated an amount attributable to Btu content adjustments for gas sold by Complainant to Northwest. According to Complainant, Northwest utilizes a "wet Btu" adjustment method whereas the contract provides for adjustment based on the actual Btu contract of gas as delivered.

Complainant states that Commission Order No. 356 provides that the maximum lawful prices prescribed by the NGPA shall apply to Btu's contained in a standard cubic foot of gas saturated with water vapor at 60 degrees F. under a pressure equal to 30 inches of mercury, but that the Commission has stated that it will allow contractually authorized Btu adjustments so long as the adjustments do not raise the price above the maximum lawful price. Complainant claims that when the price of its gas has fallen below the NGPA maximum lawful price, Northwest has incorrectly calculated Btu adjustments based on the "wet Btu" adjustment method instead of a "dry Btu" method provided under its contract.

Any person desiring to be heard or to protest this complaint should file a motion to intervene or protest in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days after publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection. Answers to the complaint are due within the same time period.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 87-10863 Filed 5-8-87; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. CP87-304-000]**

## Hadson Gas Systems, Inc., Complainant and Pacific Gas Transmission Co., Respondent; Filing Complaint

May 1, 1987.

Take notice that on March 25, 1987, Hadson Gas Systems, Inc. (Complainant) filed a complaint against Pacific Gas Transmission Company (Respondent) for failing to properly record the time at which Complainant made its request on January 13, 1987 for blanket certificate transportation service, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.[1]

On January 13, 1987, Respondent filed with the Commission an application in Docket No. CP87-159-000 for a blanket certificate of public convenience and necessity pursuant to § 284.221 of the Commission's regulations. Once the filing was made with the Commission, Respondent began accepting requests for blanket certificate transportation service.

Complainant states that it submitted a transportation service request to Respondent at 9:10 a.m. on January 13, 1987. Complainant believes its request for transportation service was the second request received by respondent that morning. Complainant states that Respondent asserts that the transportation request was not received until 9:00 a.m., and that Complainant's request was the fourth request received that morning.

Complainant requests that the Commission require Respondent to file copies of its logging-in forms for transportation service requests, time-stamped pages of each service request, and telecopied service requests. Complainant further requests that the Commission (1) find and declare that Complainant's transportation service request was the second request received by Respondent on January 13, 1987, (2) order Respondent, if and when it commences Order No. 436 transportation service, to execute contracts and to accept nominations for service in accordnace with the sequence in which transportation service requests were received, and (3) grant such other relief as may be appropriate.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before May 15, 1987 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

[1] Complainant filed its pleading in Docket No. CP87-159-000, Respondent's blanket certificate application proceeding, pursuant to Rule 212, 18 CFR 385.212, of the Commission's Rules of Practice and Procedure. Rule 212 permits the filing of a motion seeking specific relief or a ruling in a Commission proceeding. Rule 206, 18 CFR 385.206, permits any person to file a complaint seeking Commission action against any other person alleged to be in contravention or violation of any statute, rules order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction. In view of the nature of Complainant's pleading, we have determined to treat it as a complaint filed pursuant to Rule 206.

motion to intervene in accordance with the Commission's Rules.[2]

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10664 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI85-53-001, et al.]**

## Texaco Producing Inc.; Filing of Application

May 5, 1987

Take notice that on April 17, 1987, Texaco Producing Inc. (TPI), of P.O. Box 52332, Houston, Texas 77052, filed an application pursuant to the provisions of the Natural Gas Act for Certificates of Public Convenience and Necessity to continue sales being made under permanent certificates issued to Texaco Oils Inc. in each of the dockets listed in the attached Exhibit "A" by substituting Texaco Producing Inc., in lieu of Texaco Oils Inc., as certificate holder and for the redesignation of all Texaco Oils Inc.'s Rate Schedules as those of Texaco Producing Inc., all as more fully shown on the attached Exhibit "A". This application is on file with the Commission and open to public inspection.

Applicant acquired by merger executed December 22, 1986, effective December 31, 1986, the interest of Texaco Oils Inc. in certain properties.

Any person desiring to be heard or or to make any protest with reference to said application should on or before May 18, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[2] Persons that filed responses to Complainant's pleading in Docket No. CP87-159-000 do not need to refile their responses. The Commission will reassign the responses to Docket No. CP87-304-000. However, any person, other than Respondent, wishing to become a party in this proceeding must file a motion to intervene in Docket No. CP87-304-000.

EXHIBIT "A"

| | Former Texaco Oils Inc FERC gas rate schedule No. | Redesignated Texaco Producing Inc FERC gas rate schedule No. | Certificate docket No. | Purchaser | Field | County, State |
|---|---|---|---|---|---|---|
| 1 | | | CI85-53-000 | Arkansas Louisiana | Kinta | Pittsburg, OK. |
| 2 | | | CI85-54-000 | Arkansas Louisiana | Winchenville, Area | Sebastian, AR. |
| 3 | | | CI85-55-000 | Ringwood | Ringwood | Major, OK. |
| 4 | | | CI85-56-000 | Northern Natural | Hugton, (Evelyn-Cordit) | Seward, KS. |
| 5 | | | CI85-57-000 | Arkansas Louisiana | Kinta | La Flore, OK. |
| 6 | | | CI85-58-000 | Arkansas Louisiana | Rose | Crawford, AR. |
| 7 | | | CI85-59-000 | Arkansas Louisiana | Wilburton | Latimer, OK. |
| 8 | | | CI85-60-000 | El Paso | Blanco, Pictured Cliffs | Rio Arriba, NM. |
| 9 | | | CI85-61-000 | Arkansas Louisiana | Marlow | Stephens, OK. |
| 10 | | | CI85-62-000 | Panhandle | Gage | Ellis, OK. |
| 11 | | | CI85-63-000 | Lone Star | Cruce | Stephens, OK. |
| 12 | | | CI85-64-000 | ANR | Cedarville | Major, OK. |
| 13 | | | CI85-65-000 | Panhandle | Mocane-Laverne | Beaver, OK. |
| 14 | | | CI85-66-000 | Northern Natural | Cedardale, Northeast | Woodward, OK. |
| 15 | | | CI85-67-000 | ANR | No. Weatherford | Custer, OK. |
| 16 | | | CI85-68-000 | Northwest Pipeline | Ignacio Blanco | La Plata, CO. |
| 17 | | | CI85-69-000 | Northwest Pipeline | Ignacio Blanco | La Plata, CO. |
| 18 | | | CI85-70-000 | Northwest Pipeline | Ignacio Blanco | La Plata, CO. |
| 19 | | | CI85-71-000 | Northwest Pipeline | Ignacio Blanco | La Plata, CO. |
| 20 | | | CI85-72-000 | Northwest Pipeline | Ignacio Blanco | La Plata, CO. |
| 21 | | | CI85-73-000 | Northwest Pipeline | Ignacio Blanco | La Plata, CO. |
| 22 | | | CI85-74-000 | Northwest Pipeline | Ignacio Blanco | La Plata, CO. |
| 23 | | | CI85-75-000 | ANR | Otsego Northwest | Major, OK. |
| 24 | | | CI85-76-000 | ANR | Otsego Northwest | Major, OK. |
| 25 | | | CI85-77-000 | ANR | Otsego Northwest | Major, OK. |
| 26 | | | CI85-78-000 | Colorado Interstate | Greenwood | Morton, KS. |
| 27 | | | CI85-79-000 | Northwest Pipeline | Bird Canyon | Sublette, WY. |
| 28 | | | CI85-80-000 | El Paso | Aztec Fruitland | Rio Arriba, NM. |
| 29 | | | CI85-81-000 | Williams Natural Gas Co | Hugoton | Seward, KS. |
| 30 | | | CI85-82-000 | Northwest Pipeline | San Juan, Basin Area | San Juan NM. |
| 31 | | | CI85-83-000 | El Paso | Undesignated, Gallup | Rio Arriba, NM. |
| 32 | | | CI85-84-000 | Williston Basin Interstate | Boysen | Fremont, WY. |
| 33 | | | CI85-85-000 | El Paso | WAW Pictured, Cliffs | San Juan, NM. |
| 34 | | | CI85-86-000 | El Paso | WAW Pictured, Cliffs | San Juan, NM. |
| 35 | | | CI85-87-000 | Panhandle | Borthero N.W. | Meade, KS. |
| 36 | | | CI85-88-000 | Northern Natural | Harper Ranch | Clark, KS. |
| 37 | | | CI85-89-000 | Northern Natural | Harper Ranch | Clark, KS. |
| 38 | | | CI85-90-000 | Northwest Pipeline | Ignacio Blanco | La Plata, CO. |
| 39 | | | CI85-91-000 | El Paso | Winchester | Eddy, NM. |
| 40 | | | CI85-92-000 | Northwest Pipeline | Ignacio Blanco | La Plata, CO. |
| 41 | | | CI85-807-000 | Lone Star Gas | Sho-Vel-Tum | Stephens, OK. |
| 42 | | | CI85-906-000 | Sun Exploration | Mustang | Canadian, OK. |

[FR Doc. 87-10665 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-408-000, et al.]

## Boston Edison Co., et al.; Electric Rate and Corporate Regulation Filings

May 6, 1987.

Take notice that the following filings have been made with the Commission:

### 1. Boston Edison Co.

[Docket No. ER87-408-000]

Take notice that Boston Edison Company of Boston, Massachusetts ("Edison") on April 29, 1987 tendered for filing an agreement for the exchange of power between itself and Montaup Electric Company of Boston, Massachusetts ("Buyer").

Under the agreement, the parties may negotiate daily power exchanges involving Edison units and entitlements and Buyer's facilities. The parties state that the purpose of the power exchanges is to attain greater efficiencies of operation.

Edison requests waiver of the Commission's notice requirements to permit the Agreement to become effective on August 29, 1983.

Copies of the filing have been served upon Buyer and on the Department of Public Utilities of the Commonwealth of Massachusetts.

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 2. Cambridge Electric Light Co.

[Docket No. ER86-692-001]

Take notice that on April 30, 1987 Cambridge Electric Light Company ("Cambridge") submitted for filing its compliance refund report and revised affected rate schedule pursuant to the Commission's order issued February 26, 1987.

Copies of the tendered filing have been served by Cambridge upon the Town of Belmont, Massachusetts, the Commission's Staff and the Massachusetts Department of Public Utilities.

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 3. Idaho Power Co.

[Docket No. ER87-414-000]

Take notice that on April 30, 1987 the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during March 1987, along with cost justification for the rate charged. This filing includes the following supplements:

| | |
|---|---|
| Utah Power & Light Company. | Supplement No. 65 |
| Montana Power Company. | Supplement No. 49 |
| Sierra Pacific Power Company. | Supplement No. 62 |
| Los Angeles Dept of Water & Power. | Supplement No. 36 |

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this document.

### 4. Florida Power & Light Co.

[Docket No. ER87-413-000]

Take notice that Florida Power & Light Company (FPL) on April 30, 1987, tendered for filing revised Cost Support Schedules C, F and G (together with Cost Support Schedule F Supplement) that support the revised daily capacity charge for sales under Service Schedule B (Short-Term Firm Intechange Service) of FPL's Contracts for Interchange Service with Florida Municipal Power Agency, Florida Power Corporation, Fort Pierce Utilities Authority, City of Gainesville, City of Homestead, Jacksonville Electric Authority, City of Key West, Kissimmee Utility Authority, City of Lakeland, Utilities Commission, City of New Smyrna Beach, Orlando Utilities Commission, City of St. Cloud, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., City of Starke, Tampa Electric Company, and City of Vero Beach; and revised Cost Support Schedules C-S, F-S, and G-S (together with Cost Support Schedule F-S Supplements) that support the revised daily capacity charge for sales under Service Schedule B-S (Short-Term Firm Interchange Service) of FPL's Supplementary Agreement Number One to the Contract for Interchange Service with Seminole Electric Cooperative, Inc. FPL states that the revised capacity charges have been calculated in accordance with the provisions of Service Schedule B and Service Schedule B-S and represent an updating of the currently effective capacity charges to reflect more current costs.

FPL requests an effective date of May 1, 1987, and therefore requests waiver of the Commission's notice requirements.

According to FPL, a copy of this filing was served upon all of the above named parties and the Florida Public Service Commission.

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 5. The Montana Power Co.

[Docket No. ER87-411-000]

Take notice that on April 30, 1987, The Montana Power Company (Montana Power) tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Regulations under the Federal Power Act its proposed Rate Schedule REC-87, applicable for sales of electricity by MPC for resale to Central Montana Generation and Transmission Cooperative, Inc. (Central Montana) (Rate Schedule FPC No. 39) and Bighorn County Electric Cooperative, Inc. (Bighorn) (Rate Schedule FPC No. 40). This filing has been served upon Bighorn and Central Montana.

Montana Power states that Rate Schedule REC-87 will provide it with an increase in revenues from sales to these customers of $1,995,705 (14%) during the year ending June 30, 1988, and implements the second annual rate increase pursuant to a Settlement Agreement approved in Docket No. ER84-359-000, 31 FERC ¶ 61,060 (1985).

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 6. Public Service Electric and Gas Co.

[Docket No. ER87-409-000]

*Take Notice That* on April 30, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to EF Kenilworth, Inc. (EF Kenilworth). The Rate Schedule provides for a monthly transmission service charge of $1.54 per kilowatt plus $.00042 per kilowatthour for the delivey of the net electric power output of EF Kenilworth's qualifying cogeneration facility to be located in the Borough of Kenilworth, Union County, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon customer and the New Jersey Board of Public Utilities.

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**7. Public Service Electric and Gas Co.**

[Docket No. ER87-410-000]

*Take Notice That* on April 30, 1987, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to Cogen Technologies NJ Venture (Cogen). The Rate Schedule provides for a monthly transmission service charge of $.73 per kilowatt plus $.00028 per kilowatthour for the delivery of the net electric power output of Cogen's qualifying cogeneration facility to be located in the City of Bayonne, Hudson County, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) days of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon customer and the New Jersey Board of Public Utilities.

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**8. South Carolina Electric & Gas Co.**

[Docket No. ER87-415-000]

Take notice that South Carolina Electric & Gas Company on April 30, 1987 tendered for filing proposed cancellation of Rate Schedule T1.S1.8(FPC) between South Carolina Electric & Gas Company and Central Electric Power Cooperative, Inc.

Under the proposed cancellation, Central Electric Power Cooperative, Inc. has ceased to receive service at its John's Island Delivery Point effective May 15, 1986.

Copies of this filing were served upon Central Electric Power Cooperative, Inc.

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**9. Applachian Power Co., et al.**

[Docket Nos. ER84-579-006 ER86-10-001]

Take notice that, in accordance with ordering Paragraphs (E)(1) and (E)(2) of Opinion No. 266 of the Commission issued March 12, 1987 in Docket Nos. ER84-579-006 and EL86-10-001, American Electric Power Service Corporation (AEPSC) on behalf of its affiliates, Appalachian Power Company (APCO), Columbus and Southern Ohio Electric Company (CSOE), Indiana & Michigan Electric Company (I&ME), Kentucky Power Company (KPCO), and Ohio Power Company (OPCO) tendered for filing on April 27, 1987 a Compliance Filing to the Interconnection Agreement dated July 1, 1951, as amended, (*1951 Agreement*) among APCO, CSOE, I&ME, KPCO, OPCO, and AEPSC. The Commission has previously designated the 1951 Agreement as APCO Rate Schedule FERC No. 20, CSOE Rate Schedule FERC No. 30, I&ME Rate Schedule FERC No. 17, KPCO Rate Schedule FERC No. 11, and OPCO Rate Schedule FERC No. 23.

The purpose of the Compliance Filing is to incorporate changes ordered by the Commission in its Opinion No. 266 issued March 12, 1987, regarding the term "affiliate" and a statement that each member shall, to the extent practicable, install or have available to it under contract such capacity as is necessary to supply all of the requirements of its own customers.

Copies of the filing were served upon the public service commissions in the states of Ohio, Kentucky, Indiana, Michigan, Virginia, and West Virginia and all parties.

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10659 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-695-002, et al.]

**River Delta Cogeneration, Ltd., et al. a California Limited Partnership; Small power production and cogeneration facilities; qualifying status; certificate applications, etc.**

Comment date: June 10, 1987 in accordance with Standard Paragraph E at the end of this notice.

May 1, 1987.

Take notice that the following filings have been made with the Commission.

**1. River Delta Cogeneration, Ltd., a California Limited Partnership**

[Docket No. QF85-695-002]

On April 13, 1987, River Delta Cogeneration, Ltd., a California Limited Partnership (Applicant), of P.O. Box 1425, Sonoma, California Limited Partnership (Applicant), of P.O. Box 1425, Sonoma, California 95476, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility was originally certified on August 27, 1986 (Docket Nol. QF85-695-000, 36 FERC ¶ 62,229 (1986)) as a qualifying cogeneration facility providing thermal energy in the form of a heated water/glycol mixture for heating greenhouses owned by Delta Green Ltd.

The application for recertification requests that the above order by amended to include, in addiiton to hot water sales to Delta Green, Ltd., sales solely to Wellhead Electric Company, Inc., or concurrently to both. Wellhead Electric Company, Inc., will use the hot water to operate a brine water concentrator and a salt dryer.

**Beechwood Energy Inc.—Reading Anthracite Co.—Beechwood Project**

[Docket No. QF86-230-000]

On April 13, 1987 Beechwood Energy, Inc. (Applicant), of 200 Mahantongo Street, Pottsville, Pennsylvania 17901 filed an amendment to the application for certification of facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near the Village of Dunoott, Cass Township, Schuylkill

BEST COPY AVAILABLE

County, Pennsylvania. Applicant originally filed the application for certification of the facility as a qualifying cogeneration facility on November 1, 1985. The thermal energy output of the facility was originally proposed to be utilized in an anthracite silt drying process and for space heating. The amendment of the application proposes that the thermal energy output of the facility will instead be utilized in an affiliated lumber drying kiln. All other details regarding the facility are unchanged.

**Northumberland Energy, Inc.—Reading Anthracite Co.—Northumberland Project**

[Docket No. QF86-225-000]

On April 13, 1987, Northumberland Energy, Inc. (Applicant), of 200 Mahantongo Street, Pottsville, Pennsylvania 17901 filed an amendment to the application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near the Village of Treverton, Zerby Township, Northumberland County, Pennsylvania. Applicant originally filed the application for certification of the facility as a qualifying cogeneration facility on November 1, 1985. The thermal energy output of the facility was originally proposed to be utilized in an anthracite silt drying process and for space heating. The amendment of the application proposes that the thermal energy output of the facility will instead be utilized in an affiliated eight acre greenhouse. All other details regarding the facility are unchanged.

**Standard Paragraph:**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10660 Filed 5-8-87; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-36143; FRL-3198-3]**

### Pesticide Docket Indices; Inclusion on Mailing Lists

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of docket indices for pesticide Registration Standards under development and pesticide Special Reviews, and provides information on how interested persons may request inclusion on an Agency mailing list to receive such indices. Persons may request to be included on the mailing lists for pesticide docket indices at any time.

**ADDRESS:** Persons wishing to be included on a mailing list to receive docket indices should direct their requests to:

By mail: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, requests may be delivered to: Rm. 246, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Interested persons may contact Franklin D. Rubis (703-557-3262), of the Information Services Section, in Rm., 246 at the above address, for further information on the public dockets, their availability, and the docket indices.

**SUPPLEMENTARY INFORMATION:** The Agency promulgated final regulations on its Registration Standards and Special Review procedures, which were published in the **Federal Register** of November 27, 1985 (50 FR 48998). Those regulations became effective May 14, 1986. The regulations included provisions for the establishment of a public docket for Registration Standards under development and pending Special Review actions, the maintenance of docket indices, and the establishment of a mailing list of persons wishing to receive the docket indices on a regular basis.

In accordance with § 155.32(d)(2) of the Registration Standard regulations and § 154.15(f)(3) of the Special Review regulations, the Agency has established a mailing list for docket indices. Separate mailing lists are maintained for Registration Standards and Special Reviews. Persons on each mailing list will receive automatically the docket indices (or update to previous indices) for Registration Standards under development or pending Special Reviews. These will be distributed on a monthly or quarterly basis, as required by the regulations. Persons on each mailing list will receive docket indices for all open dockets. Persons will be required to renew their requests for inclusion on the mailing list annually.

Any persons wishing to be included on either mailing list should submit his or her name, affiliation (if any), and mailing address to the address given earlier in this notice. Organizations, groups, and companies are requested not to submit multiple requests under different names, but to desiganate a primary recipient within the organization. This will reduce mailing cost and Agency time in administering the mailing lists.

Dated: May 4, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

[FR Doc. 87-10646 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

**[OPTS-59815; (FRL-3195-4]**

### Rosin Modified Alkyd Resin; Premanufacture Notice

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of

one such PMN and provides the summary.

**DATE:** Close of Review Period: Y 87–143—May 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**Y 87–143**

*Manufacturer.* Confidential.

*Chemical.* (G) Rosin modified alkyd resin.

*Use/Production.* (S) Industrial component for industrial primers. Prod. range: 17,400 to 34,900 kg/yr.

Dated: April 24, 1987.

**Linda K. Smith,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87–10136 Filed 5–8–87; 8:45 am]

BILLING CODE 6560–50–M

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**[OPTS–51673; (FRL–3195–6)]**

## Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-three such PMNs and provides a summary of each.

**DATES:** Close of Review Period:

P 87–992, 87–993, 87–994, 87–995, and 87–996—July 16, 1987

P 87–997, 87–998, and 87–999—July 19, 1987

P 87–1000, 87–1001, 87–1002, 87–1003, 87–1004, 87–1005, 87–1006, 87–1007, 87–1008, 87–1009, 87–1010, 87–1011, and 87–1012—July 20, 1987

P 87–1013, 87–1014, 87–1015, and 87–1016—July 21, 1987

P 87–1017, 87–1018, 87–1019, 87–1020, 87–1021, 87–1022, 87–1023, and 87–1024—July 22, 1987.

Written comments by:

P 87–992, 87–993, 87–994, 87–995, and 87–996—June 15, 1987

P 87–997, 87–998 and 87–999—June 18, 1987

P 87–1000, 87–1001, 87–1002, 87–1003, 87–1004, 87–1005, 87–1006, 87–1007, 87–1008, 87–1009, 87–1010, 87–1011, and 87–1012—June 19, 1987

P 87–1013, 87–1014, 87–1015, and 87–1016—June 20, 1987

P 87–1017, 87–1018, 87–1019, 87–1020, 87–1021, 87–1022, 87–1023, and 87–1024—June 21, 1987.

**ADDRESS:** Written comments, identified by the document control number "[OPTS–51673]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**P 87–992**

*Manufacturer.* Confidential.

*Chemical.* (G) Monosubstituted phenyl azo disubstituted naphthalenesulfonic acid, salt.

*Use/Production.* (G) Open, non-dispersive use; destructive use. Prod. range: Confidential.

**P 87–993**

*Manufacturer.* Confidential.

*Chemical.* (G) Heteromonocycle sulfonyl aniline, salt.

*Use/Production.* (S) Site-limited intermediate. Prod. range: Confidential.

**P 87–994**

*Manufacturer.* Confidential.

*Chemical.* (G) Monosubstituted phenylazo disubstituted naphthalene sulfonic acid, salt.

*Use/Production.* (S) Site-limited isolated intermediate. Prod. range: Confidential.

**P 87–995**

*Manufacturer.* Confidential.

*Chemical.* (G) Monosubstituted phenyl azo disubstituted naphthalenesulfonic acid, substituted alkylamine salt.

*Use/Production.* (G) Open, non-dispersive use. Prod. range: Confidential.

**P 87–996**

*Importer.* Confidential.

*Chemical.* (G) Modified rapeseed oil.

*Use/Import.* (S) Industrial dimensional stability providing plasticizer for rubber mixtures. Import range: Confidential.

**P 87–997**

*Manufacturer.* Uniroyal Chemical Company, Incorporated.

*Chemical.* (G) Polyether prepolymer, TDI terminated.

*Use/Production.* (G) Contained use. Prod. range: Confidential.

**P 87–998**

*Manufacturer.* Confidential.

*Chemical.* (G) Mixed alkylmetallic mercaptoester sulfides.

*Use/Production.* (G) Open, non-dispersive use. Prod. range: Confidential.

**P 87–999**

*Manufacturer.* Confidential.

*Chemical.* (G) Saturated polyester resin.

*Use/Production.* (S) Industrial component for baking enamels on metal. Prod. range: 44,000 to 87,000 kg/yr.

**P 87–1000**

*Manufacturer.* Confidential.

*Chemical.* (G) Urethane acrylate with pendant carboxy groups.

*Use/Production.* (G) U.V. curable conformal coatings. Prod. range: Confidential.

**P 87–1001**

*Manfacturer.* Southland Corporation.

*Chemical.* (G) Vegetable oil, sulfated, neutralized.

*Use/Production.* (S) Industrial emulsifier—wetting agent. Prod. range: 5,000 to 20,000 kg/yr.

**P 87–1002**

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (G) Polyether polyurethane polymer.

*Use/Production.* (S) Industrial polyurethane elastomers. Prod. range: Confidential.

**P 87-1003**

*Manufacturer.* Reichhold Chemicals Incorporated.

*Chemical.* (G) Tall oil fatty acid alkyd resin.

*Use/Production.* (S) Industrial coating vehicle. Prod. range: Confidential.

**P 87-1004**

*Importer.* Confidential.

*Chemical.* (G) Sulfonated aromatic polymer.

*Use/Import.* (S) Industrial dispersing agent for disperse-dyestuffs. Import range: Confidential.

**P 87-1005**

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (G) Polyether polyurethane polymer.

*Use/Production.* (S) Industrial polyurethane elastomers. Prod. range: Confidential.

**P 87-1006**

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (G) Polyether polyurethane polymer.

*Use/Production.* (S) Industrial polyurethane foams. Prod. range: Confidential.

**P 87-1007**

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (G) Polyether polyurethane polymer.

*Use/Production.* (S) Industrial polyurethane elastomers. Prod. range: Confidential.

**P 87-1008**

*Importer.* Sherex Chemical Company, Inc.

*Chemical.* (G) Branched fatty alcohols.

*Use/Import.* (S) Industrial ingredient in personal care formulations and lubricants. Prod. range: Confidential.

**P 87-1009**

*Manufacturer.* Hoechst Celanese Corporation.

*Chemical.* (S) 2-Pyrazole, 3-(p-chlorophenyl)-1-[p-(N,N-dimethyltauryl) phenyl]-formate salt.

*Use/Production.* (S) Industrial optical brightening agent for acrylic fibers. Prod. range: 8,000 to 15,000 kg/yr.

**P 87-1010**

*Importer.* Hoechst Celanese Corporation.

*Chemical.* (S) 2-Pyrazoline, 3-(p-chlorophenyl)-1-[p-(N,N-dimethyltauryl)phenyl]-.

*Use/Import.* (S) Industrial optical brightening agent for acrylic fibers. Import range: 1,500 to 2,500 kg/yr.

**P 87-1011**

*Manufacturer.* Mazer Chemicals, Incorporated.

*Chemical.* (G) Organic esters.

*Use/Production.* (G) Metal working lubricant/coolant component. Prod. range: Confidential.

**P 87-1012**

*Manufacturer.* Confidential.

*Chemical.* (S) Carbamic acid, [1-methyl-1-(3-(1-methyl ethenyl) phenyl)ethyl) -2,2,2-trifluoroethylester.

*Use/Production.* (S) Used in the polymer form for industrial coating. Prod. range: 10,000 to 150,000 kg/yr.

**P 87-1013**

*Manufacturer.* Surfactant Technologies Corporation.

*Chemical.* (G) Poly carboxamide.

*Use/Production.* (S) Industrial function: corrosion inhibitor and paint adhesion promoter; application: to replace chromate ion in phosphatizing. Function: rust inhibitor; application: in metal working fluids and coolants. Prod. range: Confidential.

**P 87-1014**

*Manufacturer.* PPG Industries, Incorporated.

*Chemical.* (G) Styrenated acrylate methacrylate acrylic polymer.

*Use/Production.* (G) Industrially used coating with a dispersive use. Prod. range: 25,900 to 75,000 kg/yr.

**P 87-1015**

*Manufacturer.* Mazer Chemicals, Incorporated.

*Chemical.* (G) Organic esters.

*Use/Production.* (G) Metalworking lubricant/coolant component. Prod. range: Confidential.

**P 87-1016**

*Manufacturer.* Confidential.

*Chemical.* (G) Partial metal complex of aminoethylene phosphonic acid, reaction products with potassium hydroxide.

*Use/Production.* (G) Industrial cooling water treatment, open dispersive use. Prod. range: Confidential.

**P 87-1017**

*Manufacturer.* Lilly Industrial Coatings, Incorporated.

*Chemical.* (G) Polymer of benzenedicarboxylic acid, cycloaliphatic diol, alkanedioic acid, alkane diol, alkane triol, and fatty acids.

*Use/Production.* (G) Industrial liquid paints. Prod. range: 700,000 to 1,000,000 kg/yr.

**P 87-1018**

*Manufacturer.* Lilly Industrial Coatings, Incorporated.

*Chemical.* (G) Polymer of benzenedicarboxylic acid cycloaliphatic diol, hexanedioc acid, alkane diols, aromatic anhydride.

*Use/Production.* (G) Industrial liquid paints. Prod. range: 600,000 to 900,000 kg/yr.

**P 87-1019**

*Importer.* Confidential.

*Chemical.* (G) Modified polyurethane polyacrylate.

*Use/Import.* (G) Industrial coating polymer. Import range: 67,000 to 400,000 kg/yr.

**P 87-1020**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyurethane polyurea.

*Use/Production.* (G) Dispersively used industrial coating. Prod. range: 10,000 to 189,000 kg/yr.

**P 87-1021**

*Importer.* Confidential.

*Chemical.* (G) Styrenated methacrylate polymer.

*Use/Import.* (S) Site-limited chemical intermediate. Import range: 64,650 to 386,000 kg/yr.

**P 87-1022**

*Manufacturer.* Confidential.

*Chemical.* (G) Alicyclic aliphatic polyester.

*Use/Production.* (G) Industrially used coating with a dispersive use. Prod. range: 10,000 to 150,000 kg/yr.

**P 87-1023**

*Manufacturer.* Confidential.

*Chemical.* (G) Epoxy modified chlorinated hydrocarbon.

*Use/Production.* (G) Dispersively used industrial coating. Prod. range: 14,000 to 27,000 kg/yr.

**P 87-1024**

*Manufacturer.* Confidential.

*Chemical.* (G) Hydroxy functional acrylate methacrylate.

*Use/Production.* (G) Dispersively used automotive coatings. Prod. range: 95,000 to 270,000 kg/yr.

Dated: April 27, 1987.

Linda K. Smith,

*Acting Division Director, Information Management Division.*

[FR Doc. 87-10137 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51672; (FRL-3195-5)]

## Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-nine such PMNs and provides a summary of each.

**DATES:** Close of Review Period:

P 87-962, 87-963, 87-964, and 87-965—July 9, 1987

P 87-966, 87-967, 87-968, 87-969, 87-971, 87-972, 87-973, 87-974, and 87-975—July 12, 1987

P 87-976, 87-977, 87-978, 87-979, 87-980, 87-981, 87-982, 87-983, 87-984, 87-985, and 87-986—July 14, 1987

P 87-987, 87-988, 87-989, 87-990, and 87-991—July 15, 1987.

Written comments by:

P 87-962, 87-963, 87-964, and 87-965—June 8, 1987

P 87-966, 87-967, 87-968, 87-969, 87-971, 87-972, 87-973, 87-974, and 87-975—June 11, 1987

P 87-976, 87-977, 87-978, 87-979, 87-980, 87-981, 87-982, 87-983, 87-984, 87-985, and 87-986—June 13, 1987

P 87-987, 87-988, 87-989, 87-990, and 87-991—June 14, 1987.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-51672]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**P 87-962**

*Importer.* Toyo Soda USA Incorporated.

*Chemical.* (G) Piperazine derivative containing a hydroxyl group.

*Use/Import.* (S) Industrial tertiary amine catalyst for the production of polyurethane foam. Import range: 1,000 to 5,000 kg/yr.

**P 87-963**

*Manufacturer.* Dynamit Nobel Chemicals.

*Chemical.* (S) Methacryloxypropyltris(trimethylsiloxy) silane.

*Use/Production.* (S) Industrial reactive monomer for coatings, films and membranes. Prod. range: Confidential.

**P 87-964**

*Manufacturer.* Dynamit Nobel Chemicals.

*Chemical.* (S) (2,2-dimethylbutyl)dimethylchlorosilane.

*Use/Production.* (S) Industrial synthetic chemical intermediate for sales to chemical and pharmaceutical industries. Prod. range: Confidential.

**P 87-965**

*Importer.* Confidential.

*Chemical.* (G) Substituted phosphonic acid derivative.

*Use/Import.* (G) Open, non-dispersive use. Import range: Confidential.

*Toxicity Data.* Acute oral: .72 g/kg; Irritation: Skin—Irritant; Eye—Irritant.

**P 87-966**

*Manufacturer.* Confidential.

*Chemical.* (G) Polymethylene polyphenyl isocyanate prepolymer.

*Use/Production.* (S) Industrial component for foam seating. Prod. range: 45,455 to 136,364 kg/yr.

**P 87-967**

*Manufacturer.* Dynamit Nobel Chemicals.

*Chemical.* (S) Aminopropyldimethyl terminated polydimethylsiloxane

*Use/Production.* (G) Contained use in an article. Prod. range: Confidential.

**P 87-968**

*Manufacturer.* NL Industries, Incorporated.

*Chemical.* (G) Water-dispersible polyamide resin.

*Use/Production.* (G) Open, non-dispersive manner. Prod. range: Confidential.

**P 87-969**

*Manufacturer.* NL Industries, Incorporated.

*Chemical.* (G) Water-dispersible polyamide resin.

*Use/Production.* (G) Open, non-dispersive manner. Prod. range: Confidential.

**P 87-971**

*Importer.* Hoechst Celanese Corporation.

*Chemical.* (S) Fatty acid-N-methyl taurine, sodium salt.

*Use/Import.* (S) Industrial dispersing agent in textile dying. Import range: 4,000 to 8,000 kg/yr.

**P 87-972**

*Manufacturer.* Confidential.

*Chemical.* (G) Waterborne urethane-acrylic copolymer.

*Use/Production.* (S) Industrial, commercial and consumer general purpose coating and modifier for coatings, inks and adhesives. Prod. range: Confidential.

**P 87-973**

*Importer.* Confidential.

*Chemical.* (G) Substituted-substituted-naphthalenedisulfonic acid, salts.

*Use/Import.* (S) Industrial textile colorant. Import range: Confidential.

*Toxicity Data.* Acute oral >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Ames test: Non-mutagenic.

**P 87-974**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyisocyanate(aliphatic) and a polyamine(aliphatic) condensate.

*Use/Production.* (G) Open, non-dispersive use. Prod. range: Confidential.

**P 87-975**

*Manufacturer.* Owens-Corning Fiberglas Corporation.

*Chemical.* (G) Amine modified polyester polyol.

*Use/Production.* (S) Industrial molding resin. Prod. range: Confidential.

**P 87-976**

*Importer.* Confidential.

*Chemical.* (G) Dihydroxyalkane.

*Use/Import.* (G) Additive for colorants. Import range: Confidential.

*Toxicity Data.* Acute oral: >4,640 mg/kg; Irritation: Skin—Non- irritant, Eye—Moderate.

P 87-877

*Importer.* Confidential.
*Chemical.* (G) Modified acrylic acid-styrene copolymer.
*Use/Import.* (G) Surfactant. Import range: Confidential.

P 87-878

*Manufacturer.* Reichhold Chemicals, Incorporated.
*Chemical.* (G) Tall oil fatty acid alkyd resin.
*Use/Production.* (S) Industrial coating vehicle. Prod. range: Confidential.

P 87-879

*Manufacturer.* Confidential.
*Chemical.* (S) 2-(hexadecylthio)-3-methylbutanoic acid.
*Use/Production.* (G) Chemical intermediate. Prod. range: 1,500 to 48,000 kg/yr.

P 87-880

*Manufacturer.* Confidential.
*Chemical.* (G) Substituted thioxotetrazole.
*Use/Production.* (G) Chemical intermediate. Prod. range: 2,200 to 4,500 kg/yr.

P 87-881

*Manufacturer.* Confidential.
*Chemical.* (G) 2-hexadecylsulfonyl-3-methylbutanoic acid.
*Use/Production.* (G) Chemical intermediate. Prod. range: 1,500 to 48,000 kg/yr.

P 87-882

*Importer.* Sherex Chemical Company, Inc.
*Chemical.* (G) Branched fatty alcohols.
*Use/Import.* (S) Industrial ingredients in personal care formulations and lubricants. Import range: Confidential.

P 87-883

*Manufacturer.* NL Industries Incorporated.
*Chemical.* (G) Water-dispersible polyamide resin.
*Use/Production.* (G) Open, non-dispersive manner. Prod. range: Confidential.

P 87-884

*Manufacturer.* CIBA-GEIGY Corporation.
*Chemical.* (G) Bisphenol a epoxy resin.
*Use/Production.* (S) Industrial maintenance coatings; container and coil coating resins; automotive coatings resin; and resin for product finishing applications.

P 87-885

*Manufacturer.* Confidential.
*Chemical.* (G) Saturated polyester platicizer.
*Use/Production.* (G) Plasticer for protective coatings. Prod. range: Confidential.

P 87-886

*Manufacturer.* NL Industries Incorporated.
*Chemical.* (G) Water-dispersible polyamide resin.
*Use/Production.* (G) Open, non-dispersive manner. Prod. range: Confidential.

P 87-887

*Manufacturer.* Confidential.
*Chemical.* (G) N-12-propyl/styrylnitrone.
*Use/Production.* (G) Destructive use-material will be used in semiconductor manufacturing. Prod. range: Confidential.
*Toxicity Data.* Acute oral: 1,184 mg/kg; Acute dermal: >2,000; Irritation: Skin—Non-irritant, Eye—Moderate; Ames test: Non-mutagenic.

P 87-888

*Manufacturer.* Confidential.
*Chemical.* (G) Neutralized phosphate ester.
*Use/Production.* (S) Industrial surfactant. Prod. range: Confidential.

P 87-889

*Manufacturer.* Biddle Sawyer Corporation.
*Chemical.* (G) Cuprate, [[hydroxy-[[hydroxy-substituted-[[(sulfooxy) ethyl]sulfonyl]phenyl]azo]substituted-naphthenyl]azo]-oxo-(sulfophenyl)-1H-pyrazole-carboxylato]-, sodium salt.
*Use/Production.* (S) Reactive dye for textiles. Prod. range: 40,000 kg/yr.

P 87-890

*Manufacturer.* Confidential.
*Chemical.* (G) Chain stopped short oil soya alkyd.
*Use/Production.* (S) Industrial high solids protective coating. Prod. range: 45,000 to 60,000 kg/yr.

P 87-891

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.
*Chemical.* (G) Amine epoxy adduct salt.
*Use/Production.* (G) Open, non-dispersive use. Prod. range: Confidential.

Dated: April 22, 1987.

Denise Devoe,

*Acting Division Director, Information Management Division.*

[FR Doc. 87-10138 Filed 5-8-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Information Collection; Submission to OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of information collection: Securities of Insured State Nonmember Banks (OMB No. 3064-0030).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35,), the FDIC hereby gives notice that it has submitted to the Office of Mangement and Budget a request for OMB review for the information collection system identified above.

Address: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

**SUMMARY:** The FDIC is requesting OMB approval for a three-year extension of the expiration date of the reporting requirements for insured State nonmember banks and certain bank securities shareholders that are subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended. The reporting requirements are fully described in FDIC regulation 12 CFR Part 335. The periodic reporting from each bank consists of narrative comments, financial statements and other financial data that provide an ongoing, publicly available record of a bank's activities and results of operations. Other individual respondents provide information related

to their transactions in and ownership of the bank's own securities. The information required to be reported and disclosed by respondents is deemed necessary for actual and potential investors making investment decisions concerning securities issued by respondent banks. It is estimated that these requirements impose an annual reporting burden of 53,276 hours, collectively, on the respondents.

Dated: May 6, 1987.

Federal Deposit Insurance Corporation.

**Margaret M. Olsen,**

*Deputy Executive Secretary.*

[FR Doc. 87-10639 Filed 5-8-87; 8:45 am]

BILLING CODE 6714-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-003829-002.

Title: New Orleans Terminal Agreement.

Parties: Board of Commissioners of the Port of New Orleans, Baton Rouge Marine Contractors, Inc.

Synopsis: The proposed amendment would change the rental basis on which the parties have been fucntioning.

Filing Party: J. Michael Orlesh, Jr., Director of Port Operations, Port of New Orleans, Post Office Box 60046, New Orleans, LA 70160.

By order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: May 6, 1987.

[FR Doc. 87-10676 Filed 5-8-87; 8:45 am]

BILLING CODE 6730-01

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.:206-010694-005.

Title: Trans-Atlantic Conferences.

Parties: North Europe-U.S. Atlantic Conference; U.S. Atlantic-North Europe Conference.

Synopsis: The proposed amendment would republish the agreement in its entirety and make certain nonsubstantive changes to the language of the agreement.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

Dated: May 6, 1987.

[FR Doc. 87-10675 Filed 5-8-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms under Review

May 5, 1987.

### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

**DATES:** Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

**ADDRESS:** Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form, the request for clearance (SF 83), supporting statement instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

### Proposal To Approve Under OMB Delegated Authority the Extension With Revision of the Following Report

1. Report title: Reports of Financial Condition of Primary Dealers in U.S. Government Securities

Agency form number: FR 2002–3
OMB Docket number: 7100–0010
Frequency: monthly and annual
Reporters: Primary Dealers in U.S. Government Securities
Annual reporting hours: 3076 hours
Small businesses are not affected.

General description of report:

The reporting framework for primary dealers in U.S. Government Securities is proposed to be revised. Under this proposal, two existing reporting forms filed by bank dealers (FR 2002) and nonbank dealers (FR 2003) would be discontinued and replaced with a requirement that dealers file: (1) a Primary Dealer Profit Center (PDPC) Report numbered FR 2002 and (2) copies of specified reports prepared by dealers for other purposes, i.e., for regulatory, internal management, or audit purposes. The PDPC report collects income and expense data, by profit center unit, from bank and nonbank primary dealers in U.S. Government Securities, to provide information on the firm's activities in the markets for Treasury and agency securities, mortgage-backed securities, private money-market instruments, and related arbitrage and financing activities. These data and the supplementary reports to be filed are required to assist the Federal Reserve in connection with its reposibilities for the conduct of monetary policy and in evaluating the Government Securities market.

This information collection is mandatory [12 U.S.C. 248(a)(2), 353–359a, and 391] and is given confidential treatment [5 U.S.C. 552(b)(4)(4)].

**Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report**

2. Report title: Mortgage Loan Disclosure Statement
Agency form number: FR HMDA–1
OMB Docket Number: 7100–0090
Frequency: annual
Reporters: State member banks
Annual reporting hours: 8790 hours
Small businesses are not affected.

General description of report:

This form collects data from state member banks under the Home Mortgage Disclosure Act, 12 U.S.C. 2801–2811 (HMDA), as implemented by the Board's Regulation C, 12 CFR 203. The Act requires depository institutions to make annual disclosures that show a geographic breakdown of their mortgage loans for the purchase or improvement of residential property.

This information collection is mandatory [12 U.S.C. 2801–2811], and is not given confidential treatment.

Board of Governors of the Federal Reserve System, May 5, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87–10625 Filed 5–8–87; 8:45 am]

BILLING CODE 6210–01–M

## Capitalbanc Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and section 225.14 of the Board's Regulations Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in secion 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written pesentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 1, 1987.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *CapitalBanc Corporation*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Capital National Bank, New York, New York. Comments on this application must be received by June 4, 1987.

**B. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Trustcorp, Inc.*, Toledo, Ohio; to acquire 100 percent of the voting shares of The Citizens Bancorp, Inc., Hartford City, Indiana, and thereby indirectly acquire The Citizens State Bank of Hartford City, Hartford City, Indiana.

2. *Trustcorp, Inc.*, Toledo, Ohio; to acquire 100 percent of the voting shares of First State Bancorp, Dunkirk, Indiana, and thereby indirectly acquire First State Bank of Dunkirk, Dunkirk, Indiana.

3. *Trustcorp, Inc.*, Toledo, Ohio; to acquire 100 percent of the voting shares of Midwest Bancorp, Inc., Columbus, Indiana, and thereby indirectly acquire First National Bank of Columbus, Columbus, Indiana.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Shelard Bancshares, Inc., St. Louis Park, Minnesota, and thereby indirectly acquire Shelard National Bank, St. Louis Park, Minnesota, and Shelard National Bank of Eagan, Eagan, Minnesota.

**D. Federal Reserve Bank of of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Dodge City Bancshares, Inc.*, Dodge City, Kansas; to acquire 96 percent of the voting shares of Metro Bancshares, Inc., Broken Arrow, Oklahoma, and thereby indirectly acquire metro Bank of Broken Arrow, Broken Arrow, Oklahoma. Comments on this application must be received by May 26, 1987.

**E. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Alvarado Bancshares, Inc.*, Alvarado, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Alvarado National Bank, Alvarado, Texas. Comments on this application must be received by June 4, 1987.

Board of Governors of the Federal Reserve System, May 5, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–10626 Filed 5–8–87; 8:45 am]

BILLING CODE 6210–01–M

## Illini Community Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1987.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, Illini & Associates, Inc., Springfield, Illinois, in management consulting advice, auditing, accounting, and tax services to nonaffiliated and nonbank depository organizations pursuant to § 225.25(b)(11) of the Board's Regulation Y.

2. *Valley Bancorporation*, Appleton, Wisconsin; to engage *de novo* in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 5, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-10624 Filed 5-8-87; 8:45 am]
BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 82D-0350]**

### General Principles of Process Validation; Availability of Current Good Manufacturing Practice Final Guideline

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a final guideline entitled "Guideline on General Principles of Process Validation," which outlines general principles of process validation the agency views as acceptable elements of a process validation program for preparing human and animal drug products and medical devices. The final guideline is intended to inform interested persons of these acceptable principles to facilitate compliance with the current good manufacturing practice (CGMP) regulations and to help assure the quality of human and animal drug products and medical devices.

**ADDRESS:** Written requests for single copies of the final guidelines and written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

**FOR FURTHER INFORMATION CONTACT:**

For Human and Animal Drug Products: Paul J. Motise, Center for Drugs and Biologics (HFN-323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8089.

For Medical Devices: Edward J. McDonnell, Center for Devices and Radiological Health (HFZ-330), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7122.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 29, 1983 (48 FR 13096), FDA issued a notice announcing the availability of a draft guideline entitled "Guideline on General Principles of Process Validation" (March 1983). The draft guideline was intended to inform interested persons of acceptable principles to facilitate compliance with the CGMP regulations. The draft guideline was made available for public comment to provide the agency with views to be considered in its development of a final guideline. Interested persons were given until May 31, 1983, to comment on the draft guideline.

Based on a request for a general extension of the comment period by a foreign drug manufacturer, FDA issued a notice in the **Federal Register** of June 10, 1983 (48 FR 26889), extending the comment period for the draft guideline until July 31, 1983.

In a notice published in the **Federal Register** of February 22, 1984 (49 FR 6572), FDA announced that an open public meeting of the Device Good Manufacturing Practice Advisory Committee would be held on March 29 and 30, 1984, in Washington, DC. This notice also announced that the meeting agenda would include an open discussion of the March 1983 draft guideline. On March 29, 1984, during the open committee discussion portion of the meeting, an FDA speaker discussed the comments received on the March 1983 draft guideline and proposed revisions under consideration by the agency. Copies of a working draft of the March 1983 guideline that reflected the proposed revisions under consideration by the agency were provided to interested persons attending the public meeting.

To assure that the full range of issues related to the March 1983 draft guideline were addressed, FDA issued a notice in the **Federal Register** of July 19, 1984 (49 FR 29272), corrected in the **Federal Register** of August 6, 1984 (49 FR 31341), announcing the availability of the working draft of the 1983 draft guideline entitled: "Guideline on General Principles of Process Validation" (March 1984). FDA notified that the working draft guideline did not supersede the March 1983 draft guideline and that additional comments to the March 1983 draft guideline could be submitted, if desired. Interested persons were given until October 17, 1984, to comment on the working draft guideline.

A total of 66 comments were received in response to all notices. The comments came from domestic and foreign drug and medical device manufacturers, industry trade associations, the National Aeronautics and Space Administration, and a drug industry consultant. The draft guideline has been revised as a result of these comments. The comments are on file with the Dockets Management Branch (address above) under Docket No. 82D-0350.

This notice and the final guideline are issued under 21 CFR 10.90(b), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but are acceptable to the agency. The agency advises that this

final guideline complies with the requirements of the CGMP regulations and may be relied upon by manufacturers of human and animal drug products and medical devices to meet those regulations. A person may also choose to use alternate procedures even though they are not provided for in the guideline. If a person chooses to depart from the practices and procedures set forth in the final guideline, that person may discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable by FDA.

Interested persons may submit written comments on the final guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining the future need for amending the final guideline. Two copies of comments should be submitted, exceptr that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The final guideline and received comments may be seen in the Dockets Management Branch, between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of the final guidelines should be sent to the Dockets Management Branch.

Dated: May 1, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-10617 Filed 5-8-87; 8:45 am]

BILLING CODE 4160-01-M

## Health Care Financing Administration

### Statement of Organization, Functions and Delegations of Authority; Amendment

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register** Vol. 51, No. 138, pg. 26062, dated Friday, July 18, 1986) is amended to update the functional statement for the Division of Methods and Procedures, Office of Financial Management within the Office of Prepaid Health Care.

The specific change to Part F. is as follows:

- FC.20.D.1., Division of Methods and Procedures (FCC1), is deleted in its entirety and replaced by an updated functional statement to read as follows:

1. Division of Methods and Procedures (FCC1)

Responsible for establishing national operational policies, procedures, operating instructions, systems specifications, data exchange, and reimbursement mechanisms which define and systematize the Medicare prepaid health plan enrollment, disenrollment, and payment processes. Responsibilities include developing, implementing, and maintaining the methods and procedures for interfacing prepaid health plan operations (including health maintenance organizations (HMOs)/competitive medical plans (CMPs), health care prepayment plans (HCPPs), and any capitation demonstration projects) with the non-prepaid Medicare health insurance systems. Formulates systems requirements, defines data base files, and develops procedures for prepaid health care data exchange and reimbursement mechanisms. Develops and maintains instructions in various national manuals used by the prepaid plans, regional offices, intermediaries, and carriers regarding the prepaid health care information system. Evaluates the effectiveness of the prepaid plan information system, and recommends changes and improvements. Renders technical assistance to prepaid health plans and regional offices concerning methods and procedures. Serves as HCFA's focal point for prepaid health plan enrollment/disenrollment, and payment operational issues and interim reimbursement.

Dated: April 28, 1987.

**Bartlett S. Fleming,**

*Associate Administrator for Management and Support Services.*

[FR Doc. 87-10684 Filed 5-8-87; 8:45 am]

BILLING CODE 4120-03-M

## Health Resources and Services Administration

### Acquired Immune Deficiency Syndrome (AIDS); Regional Education and Training Centers; Extension of Application Due Date

**AGENCY:** Health Resources and Services Administration, Public Health Service, Department of Health and Human Services.

**ACTION:** Notice of extension of application due date.

**SUMMARY:** This notice extends the application due date for AIDS Regional Education and Training Centers previously published in the **Federal Register** April 20, 1987 (52 FR 12979). The application due date is extended to July 6, 1987. The application deadline is being extended because of a delay in the availability of application materials. The address where completed applications are to be mailed remains the same as the address published in the April 20, 1987 **Federal Register** (52 FR 12979).

**David N. Sundwall,**

*Administrator, Assistant Surgeon General.*

[FR Doc. 87-10648 Filed 5-8-87; 8:45 am]

BILLING CODE 4160-15-M

## Public Health Service

### Acquired Immune Deficiency Syndrome; Service Demonstration Program Grants

**AGENCY:** Health Resources and Services Administration, PHS, DHHS.

**ACTION:** Notice of availability of funds.

**SUMMARY:** The Bureau of Resources Development (BRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1987 funds are available for Service Demonstration grants to develop projects demonstrating a comprehensive, cost effective, ambulatory and community-based health and support system for persons with Acquired Immune Deficiency Syndrome (AIDS), AIDS-related conditions/complex (ARC), and Human Immunodeficiency Virus (HIV) infection. Applicants will be expected to demonstrate a thorough understanding of the incidence of AIDS, ARC, and HIV infection, the need and demand for services, and a realistic plan for providing the most needed services, including public education and prevention services.

Supplemental grant applications from the four current AIDS Service Demonstration Program grantees in the New York, Los Angeles, Miami, and San Francisco, Standard Statistical Areas (SMSAs) are now being accepted. Additionally, new grant applicants from the next 21 SMSAs with the greatest number of AIDS cases as reported by the Centers for Disease Control (CDC) as of March 9, 1987, are eligible to compete for up to eight new grants. (See Appendix A).

Funds were approved by Pub. L. 99-591 for this purpose under the authority of Section 301 of the Public Health Service (PHS) Act (432 U.S.C. 241).

**DATE:** To receive consideration, supplemental grant applications from the current grantees must be received by the close of business June 10, 1987 by the

Grants Management Officer at the address below. Applications for new grants must be received by the Grants Management Officer by the close of business July 10, 1987. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

**FOR FURTHER INFORMATION CONTACT:** Requests for technical or programmatic information should be directed to Mr. Joseph Baldi, Chief, AIDS Service Demonstration Program, Office of AIDS Services Program, Room 9–21, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443–6745). Grant application kits (Standard Form 424 approved under OMB Number 0342–0006) and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from Mr. Donald C. Parks, Grants Management Officer, Bureau of Resources Development, Parklawn Building, Room 9–03, 5600 Fishers Lane, Rockville, Maryland 20857 (301 443–2630). The original and two copies of the application must be submitted to Mr. Parks.

**SUPPLEMENTARY INFORMATION:**

**Program Objectives**

The AIDS Service Demonstration Program is intended to support the development and demonstration of systems of care which provide the spectrum of needed services for people with HIV infection and its complications, and provide appropriate alternatives to inpatient hospital care.

Such systems must be developed in response to a careful assessment of the community's needs and must assure the coordination of the community's health care resources. Projects should propose innovative, cost effective means of providing services, and should contain specific mechanisms to reduce the need for inpatient hospital care and to link together community health resources.

Because of the demonstration nature of the program, emphasis should be placed on how the program can operate self sufficiently 3 years after initial Federal funding and on how the proposed project might serve as a model for other communities with significant numbers of persons with HIV infection and AIDS. Since a disproportionate number of persons with AIDS and HIV infection are from minority populations, particular attention should be placed on developing appropriate outreach, information and education strategies, and arranging for services so that cultural and language differences are taken into consideration.

**Availability of Funds**

A total of $10,000,000 is available in FY for the AIDS Service Demonstration Program. Up to $3,500,000 is available to the four grantees funded in FY 1986 in the New York, San Francisco, Los Angeles and Miami SMSAs for expenditure over a three year period. This requires submission of a budget for each of the three years. These funds will be competitively awarded to the grantees who best demonstrate the need for additional program services or other comprehensive programmatic objectives in keeping with the goals of the AIDS Service Demonstration Program.

A minimum of $6,250,000 is available for new competitive grant awards to applicants from 21 additional SMSAs who reported 160 or more cases of AIDS to the Centers for Disease Control as of March 9, 1987 (1986 grantees are not eligible for these funds). Not more than one grant award will be made in any one SMSA. The project period will be for three years. The FY 1987 grants will be available for expenditure over a three year period. This requires submission of a budget for each of the three years.

Up to $250,000 will be set aside to conduct an evaluation of the AIDS Service Demonstration Program.

**Eligible Applicants**

Existing grantees in the first four SMSAs listed in Appendix B are eligible to apply for supplemental grants. All public and private entities, non-profit and for-profit, located in and providing services to the additional 21 SMSAs described earlier in this text and listed in Appendix B are eligible to apply for new grants. Eligible entities may include, but are not limited to, State or local health departments; public or private hospitals; and consortia of health care and community organizations which can develop a comprehensive ambulatory, community and home-based AIDS support program offering appropriate, compassionate care at reduced costs.

**Collaboration/Coordination With Other AIDS Programs**

To the maximum extent possible, the grantees will be expected to work closely with the Robert Wood Johnson Foundation AIDS Health Services Program grantees; the AIDS Community Outreach Demonstration Project supported by the National Institute on Drug Abuse; information, public education/prevention and testing programs supported by the Centers for Disease Control; the drug clinical trial studies and other research programs conducted by the National Institutes of Health, and the Community Health Centers and Migrant Health Centers supported by HRSA.

**Review and Evaluation Criteria for New SMSA Applicants**

Applications for the new FY 1987 grants will be reviewed and rated by an objective review committee according to the applicant's ability to demonstrate a thorough understanding of AIDS and the HIV epidemic, the need and demand for ambulatory, community and home-based services, including education and prevention services for individuals with high risk behavior, and the experience and potential to provide treatment and support to the largest number of AIDS, ARC, and HIV infected patients within the eligible SMSAs at the least cost. Specific attention must be given to assuring comprehensiveness and appropriateness of services, and access to all segments of the affected population. Where appropriate, contiguous communities should undertake cooperative regional systems of care in order that duplication of services can be avoided. More detailed information on the review and evaluation criteria may be found in the grant application kit.

**Review and Evaluation Criteria for FY 1986 Grantees**

Grantees from the SMSAs of New York, San Francisco, Los Angeles, and Miami will compete for available funds through a limited application and review process. Grantees must submit an abbreviated application, not to exceed 20 pages, identifying additional priority services, including education and prevention services for individuals with high risk behavior, and/or other geographic area to be served within the SMSA. Instructions on the abbreviated application will be included in the grant application kit.

**Allowable Costs**

A successful applicant under this notice must spend funds it receives according to the approved application and budget; the authorizing legislation; terms and conditions of the grant award; the regulations of the Department and the PHS applicable to grants; the cost principles specified in 45 CFR 74, Subpart Q; the applicable Office of

Management and Budget (OMB) circular for non-profit grantees; and Appendix VI of the PHS grants policy statement applicable to for-profit organizations.

**Other Award Information**

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR Part 74, Subpart J, Monitoring and Reporting of Program Performance.

**Excecutive Order 12372**

The AIDS Service Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs, as implemented by 45 CFR Part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalogue of Federal Domestic Assistance number for the AIDS Service Demonstration Program is 13.333.

Dated: March 24, 1987.

**David N. Sundwall,**

*Administrator.*

APPENDIX A.—STANDARD METROPOLITAN STATISTICAL AREAS (SMSAs) ELIGIBLE TO COMPETE FOR FY 1987 AIDS SERVICE DEMONSTRATION PROGRAM FUNDS

| SMSAs [1] | Population [1] (in millions) | Number of AIDS cases [2] |
|---|---|---|
| *Supplemental:* | | |
| 1. New York, NY-NJ | 9.1 | 9,046 |
| 2. San Francisco-Oakland, CA | 3.3 | 3,140 |
| 3. Los Angeles-Long Beach, CA | 7.5 | 2,722 |
| 4. Miami, FL | 1.6 | 952 |
| *New:* | | |
| 5. Houston, TX | 2.9 | 1,036 |
| 6. Washington, D.C.-MD-VA | 3.1 | 923 |
| 7. Newark, NJ | 2.0 | 775 |
| 8. Chicago, IL | 7.1 | 682 |
| 9. Philadelphia, PA-NJ | 4.7 | 577 |
| 10. Atlanta, GA | 2.0 | 503 |
| 11. Dallas-Fort Worth, TX | 3.0 | 588 |
| 12. Boston, MA | 2.8 | 476 |
| 13. Nassau-Suffolk, NY | 2.6 | 384 |
| 14. Ft. Lauderdale-Hollywood, FL | 1.0 | 359 |
| 15. Jersey City, NJ | .6 | 348 |
| 16. Seattle-Everett, WA | 1.6 | 304 |
| 17. San Diego, CA | 1.9 | 298 |
| 18. Denver-Boulder, CO | 1.6 | 283 |
| 19. New Orleans, LA | 1.2 | 261 |
| 20. Baltimore, MD | 2.2 | 262 |
| 21. West Palm Beach-Boca Raton, FL | .6 | 233 |
| 22. San Juan, PR | 1.1 | 200 |
| 23. Detroit, MI | 4.4 | 194 |
| 24. Anaheim-Santa Ana-Garden Grove, CA | 1.9 | 189 |
| 25. Patterson-Clifton-Passaic, NJ | .5 | 160 |

[1] Characteristics of the Population, Number of Inhabitants, 1980 Census of Population, U.S. Department of Commerce, Bureau of the Census.

[2] Number of cases of AIDS reported to the Centers for Disease Control as of 3/9/87.

**Appendix B—Standard Metropolitan Statistical Areas Eligible for Funding Under the AIDS Service Demonstration Program**

| SMSA | Cities and Counties included in the SMSA |
|---|---|
| 1. New York, NY-NJ | NY<br>New York City<br>Bronx County<br>Kings County<br>New York County<br>Putnam County<br>Queens County<br>Richmond County<br>Rockland County<br>Westchester County<br>NJ<br>Bergen County |
| 2. San Francisco-Oakland, CA. | San Francisco City<br><br>Oakland City<br>Alameda County<br>Contra Costa County<br>Marin County<br>San Francisco County<br>San Mateo County |
| 3. Los Angeles-Long Beach, CA. | Los Angeles City<br><br>Long Beach City<br>Los Angeles County |
| 4. Miami, FL | Miami City<br>Dade County |
| 5. Houston, TX | Houston City<br>Brazoria County<br>Fort Bend County<br>Harris County<br>Liberty County<br>Montgomery County<br>Waller County |
| 6. Washington, DC-MD-VA | Washington, DC<br>MD<br><br>Charles County<br>Montgomery County<br>Prince Georges County<br>VA<br>Arlington County<br>Fairfax County<br>Loudon County<br>Prince William County<br>Alexandria City<br>Fairfax City<br>Falls Church City<br>Manassas City<br>Manassas Park City |
| 7. Newark, NJ | Newark City<br>Essex County<br>Morris County<br>Somerset County<br>Union County |
| 8. Chicago, IL | Chicago City<br>Cook County<br>DuPage County<br>Kane County<br>Lake County<br>McHenry County<br>Will County |
| 9. Philadelphia, PA-NJ | PA<br>Philadelphia<br><br>Bucks County<br>Chester County<br>Delaware County<br>Montgomery County<br>Philadelphia County<br>NJ<br>Burlington County<br>Camden County<br>Gloucester County |
| 10. Atlanta, GA | Atlanta City<br>Butts County<br>Cherokee County<br>Clayton County<br>Cobb County<br>DeKalb County<br>Douglas County<br>Fayette County<br>Forsyth County<br>Fulton County<br>Gwinnett County<br>Henry County<br>Newton County<br>Paulding County<br>Rockdale County<br>Walton County |
| 11. Dallas-Fort Worth, TX | Dallas City<br>Fort Worth City<br>Collin County<br>Dallas County<br>Denton County<br>Ellis County<br>Hood County<br>Johnson County<br>Kaufman County<br>Parker County<br>Rockwall County<br>Tarrant County<br>Wise County |
| 12. Boston, MA | Boston City<br>Essex County<br>Beverly City<br>Boxford Town<br>Danvers Town<br>Hamilton Town<br>Lynn City<br>Lynnfield Town<br>Manchester Town<br>Marblehead Town<br>MiddletonTown<br>Nahant Town<br>Peabody City<br>Salem City<br>Saugus Town<br>Swampscott Town<br>Topsfield Town<br>Wenham Town<br>Middlesex County<br>Acton Town<br>Arlington Town<br>Ashland Town<br>Bedford Town<br>Belmont Town |

| SMSA | Cities and Counties included in the SMSA |
|---|---|
| | Boxborough Town |
| | Burlington Town |
| | Cambridge City |
| | Carlisle Town |
| | Concord Town |
| | Everett City |
| | Framingham Town |
| | Holliston Town |
| | Lexington Town |
| | Lincoln Town |
| | Malden City |
| | Medford City |
| | Melrose City |
| | Natick Town |
| | Newton City |
| | North Reading Town |
| | Reading Town |
| | Sherborn Town |
| | Somerville City |
| | Stoneham Town |
| | Sudbury Town |
| | Wakefield Town |
| | Waltham City |
| | Watertown Town |
| | Wayland Town |
| | Weston Town |
| | Wilmington Town |
| | Winchester Town |
| | Woburn City |
| | Norfolk County |
| | Bellingham Town |
| | Braintree Town |
| | Brookline Town |
| | Canton Town |
| | Cohasset Town |
| | Dedham Town |
| | Dover Town |
| | Foxborough Town |
| | Franklin Town |
| | Holbrook Town |
| | Medfield Town |
| | Medway Town |
| | Milis Town |
| | Milton Town |
| | Needham Town |
| | Norfolk Town |
| | Norwood Town |
| | Quincy City |
| | Randolph Town |
| | Sharon Town |
| | Stoughton Town |
| | Walpole Town |
| | Wellesley Town |
| | Westwood Town |
| | Weymouth Town |
| | Wrentham Town |
| | Plymouth County |
| | Abington Town |
| | Duxbury Town |
| | Hanover Town |
| | Hanson town |
| | Hingham Town |
| | Hull Town |
| | Kingston, Town |
| | Marshfield Town |
| | Norwell Town |
| | Pembroke Town |
| | Rockland Town |
| | Scituate Town |
| | Suffolk County |
| | Boston City |
| | Chelsea City |
| | Revere City |
| | Winthrop Town |
| 13. Nassau-Suffolk, NY | Nassau County |
| | Suffolk County |
| 14. Fort Lauderdale-Hollywood, FL | Fort Lauderdale City |
| | Hollywood City |
| | Broward County |
| 15. Jersey City, NJ | Jersey City |
| | Hudson County |
| 16. Seattle-Everett, WA | Everett City |
| | Seattle City |
| | King County |
| | Snohomish County |
| 17. San Diego, CA | San Diego City |
| | San Diego County |
| 18. Denver-Boulder, CO | Boulder City |
| | Denver City |
| | Adams County |
| | Arapahoe County |
| | Boulder County |
| | Denver County |
| | Douglas County |
| | Gilpin County |
| | Jefferson County |
| 19. New Orleans, LA | New Orleans City |
| | Jefferson Parish |
| | Orleans Parish |
| | St. Bernard Parish |
| | St. Tammany Parish |
| 20. Baltimore, MD | Baltimore city |
| | Anne Arundel County |
| | Baltimore County |
| | Carroll County |
| | Harford County |
| | Howard County |
| | Baltimore City |
| 21. West Palm Beach-Boca Raton, FL | Boca Raton City |
| | West Palm Beach City |
| | Palm Beach County |
| 22. San Juan, PR | Rural |
| | Urban |
| 23. Detroit, MI | Detroit City |
| | Lapeer County |
| | Livingston County |
| | Macomb County |
| | Oakland County |
| | St. Clair County |
| | Wayne County |
| 24. Anaheim-Santa Ana-Garden Grove, CA. | Anaheim City |
| | Garden Grove City |
| | Santa Ana City |
| | Orange County |
| 25. Patterson-Clifton-Passaic, NJ. | Clifton City |
| | Passaic City |
| | Paterson City |
| | Passaic County |

[FR Doc. 87-9862 Filed 5-8-87; 8:45 am]
BILLING CODE 4160-15

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Availability of the Record of Decision for the Land Tenure Adjustment Portion of the Lower Gila South Resource Management Plan, Arizona

**AGENCY:** Bureau of Land Management, Department of Interior.

**ACTION:** Notice of availability of the Record of Decision for a portion of the Lower Gila South Resource Management Plan (RMP).

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Record of Decision (ROD) for the land tenure adjustment portion of the Lower Gila South RMP. This Record of Decision documents the approval of the land use plan that will guide the Lands program in the Lower Gila South planning area for the next 15 to 20 years. The land tenure adjustment decision identifies lands for acquisition, disposal and retention within the planning area. The planning area contains 2,009,232 acres of public land surface and 1,946,485 acres of subsurface minerals in southwestern Arizona.

**SUPPLEMENTARY INFORMATION:** Copies of the Record of Decision are available from BLM's Phoenix District office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. William T. Childress, Lower Gila Resource Area Manager, may be telephoned at 602-863-4464 for further information. Reading copies may be reviewed at BLM's Arizona State Office, 3707 N. 7th Street, Phoenix, Arizona 85011, phone 602-241-5504.

Dated: May 1, 1987.

**Henri Bisson,**

*District Manager.*

[FR Doc. 87-10614 Filed 5-8-87; 8:45 am]
BILLING CODE 4310-32-M

## Fish and Wildlife Service

### Public Hearing on Environmental Impact of Shore-Based Facilities for Commercial Fishing; Section 304(d) of Alaska National Interest Lands Conservation Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of public hearing.

**SUMMARY:** The U.S. Fish and Wildlife Service (FWS) has prepared, for public review, a final Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Kodiak National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. In accordance with section 304(d) of ANILCA the FWS proposes, as a part of the CCP, to not allow new permits, cabins, and campsites incident to commercial fishing rights. A public hearing will be held to receive testimony on this proposed action and a 30-day comment period will follow.

**DATES:** A public hearing will be held at 7:00 p.m. on May 13, 1987. Written comments on the proposal must be submitted on or before June 12, 1987, to receive consideration by the Regional Director prior to the signing of the Record of Decision.

**ADDRESS:** The public hearing will be at the Kodiak Junior High School cafeteria. Remarks should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

**FOR FURTHER INFORMATION CONTACT:** William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E.

Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

A final CCP/EIS (including the proposal for commercial fishing facilities) has been prepared for general distribution. Those wishing to review the document may obtain a copy by contacting Mr. Knauer.

Copies of the final CCP/EIS are available for public review at the above location and at the Kodiak National Wildlife Refuge Office, 1390 Buskin River Road, Kodiak, Alaska.

**SUPPLEMENTARY INFORMATION:** The final CCP/EIS for the Kodiak National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(a) of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include management of fish and wildlife populations and habitats; *commercial fishing facilities,* subsistence use on the refuge; oil and gas development; recreational use of the refuge; and wilderness management.

Based on the number of commercial fishing sites and facilities, the FWS believes that the level of commercial fishing activity on refuge lands may have significantly expanded past the 1979 level of activity, and that further expansion may be inconsistent with refuge purposes. Permitting additional sites, when combined with other potential developments and public use on the refuge, would increase long-term human presence on the refuge, which would not be consistent with refuge purposes. Documented information has shown that the cumulative effects of increasing human activity in brown bear habitat ultimately lead to significant reductions in the brown bear population.

The CCP states that existing permanent commercial fishing sites with permanent facilities will continue to be permitted on refuge lands. The FWS will also allow conversion of existing temporary living facilities (i.e., tent platforms) to permanent facilities. Under the mandates of section 304(d) of ANILCA, however, the Service is proposing that no new commercial fishing sites (onshore facilities) be permitted on Kodiak Refuge. No aquaculture support facilities will be permitted on refuge lands. On existing commercial fishing sites, the Service will study the minimum size and type of support facilities required to conduct the fishery and then develop guidelines for the size and type of facilities that will be permitted.

After considering the public's comments and the compatibility analysis, the Service will include a final compatibility determination in the record of decision.

Dated: May 1, 1987.

**Walter O. Stieglitz,**

*Regional Director.*

[FR Doc. 87–10677 Filed 5–8–87; 8:45 am]

BILLING CODE 4310-55-M

## Receipt of Applications for Permits; San Diego Zoo, et al.

The following applicant have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

**PRT–717880**

Applicant: San Diego Zoo, San Diego, CA

The applicant requests a permit to import two male and four female captive born Cuvier's gazelle (Gazella cuvieri) from Munchener Tierpark Hellabrunn, Federal Republic of Germany for the purpose of breeding. These gazelles are to be added to the curent population at San Diego Zoo to add additional bloodlines to the group.

**PRT–717790**

Applicant: John L. Schwabland, Seattle, WA

The applicant requests a permit to import a trophy of a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

**PRT–717813**

Applicant: San Antonio Zoological Gardens & Aquarium, San Antonio, TX

The applicant requests a permit to import one male black-footed cat (*Felis nigripes*) born at the Rotterdam Zoo, Rotterdam, the Netherlands for the purpose of enhancement of propagation.

**PRT–717905**

Applicant: Zoological Society of Cincinnati, Cincinnati, OH 45220

The applicant requests a permit to import one male captive born black-footed cat (*Felis nigripes*) from the Frankfurt Zoo, West Germany, for the purpose of enhancement of propagation.

**PRT–717784**

Applicant: Vargas Production, North Hollywood, CA

The applicant requests a permit to export and re-import one female Asian elephant (*Elephas maximus*) that has been held in captivity in the United States since 1970 and one male Asian elephant (*Elephas maximus*) captive born in the United States January 18, 1985, for the purpose of conservation education.

**PRT–717838**

Applicant: Gregg Miller of Environmental Science Associates, San Francisco, CA

The applicant requests a permit to take (capture & release) salt marsh harvest mice (*Reithrodontomys raviventris*) in the Palo Alto Bayland area, California, for the purpose of a status survey. The work would be done under contract to the city of Palo Alto.

**PRT–717878**

Applicant: John Massey, Dallas, TX

The applicant requests a permit to import a trophy of a bontebok (*Damaliscus dorcas dorca*) which was a member of a captive herd maintained by V. Pringle, Bedford, Cape Province, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import this trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: May 6, 1987.

**R.K. Robinson,**

*Chief, Branch of Permits, Federal Wildlife Permits Office.*

[FR Doc. 87–10667 Filed 5–8–87; 8:45 am]

BILLING CODE 4310-55-M

## Receipt of Application for Permit; The Cousteau Society, Inc.

The public is invited to comment on the following application for permits to

conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, and the regulations governing marine mammals (50 CFR Part 18).

File No. PRT–716284

*Applicant:* Name: The Cousteau Society, Inc., 8440 Santa Monica Blvd., Los Angeles, CA 90069

*Type of Permit:* Public Display.

*Name and number of animals:* polar bears (*Ursus maritimus*) -12-, walrus (*Odobenus rosmarus*) -75- Alaskan sea otter (*Enhydra lutris*) -50-

*Summary of Activity to be Authorized:* The applicant proposes to photograph walrus, sea otters and polar bears in their natural habitats within the State of Alaska, for purposes of filming a television documentary.

*Source of Marine Mammals for Display:* Bering Sea, Bering Strait, coastal Alaska, Aleutian Islands, Gulf of Alaska, Cape Pierce, Bristol Bay, St. Lawrence Island, Little Diomede Islands.

*Period of Activity:* May 8 through September 15, 1987.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601, N. Glebe Road, Arlington, Virginia.

Dated: May 6, 1987.

R.K. Robi[illegible],

*Chief, Branch of Permits, Federal Wildlife Permit Office.*

[FR Doc. 87–10668 Filed 5–8–87; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### Intention to Negotiate Concession Permit

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession permit with Moser's Food Market authorizing it to continue to provide grocery and gasoline sales and services for the public at C&O Canal National Historical Park, Maryland, for a period of five (5) years from January 1, 1987, through December 31, 1991.

This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, C&O Canal National Historical Park, Sharpsburg, Maryland 21782, for information as to the requirements of the proposed permit.

Dated: March 31, 1987.

**Manus J. Fish, Jr.,**

*Regional Director, National Capital Region.*

[FR Doc. 87–10633 Filed 5–8–87; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

### Change in Revocation Procedures

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of a procedural change.

**SUMMARY:** The Commission is revising its internal automated system for the processing of the revocation of operating authorities of all motor carriers, freight forwarders and property brokers subject to ICC regulation that fail to meet its financial responsibility requirements. The objective of the revised system is to encourage greater compliance with the Commission's financial responsibility requirements, and to reduce the administrative time period for revoking operating authorities for failure to comply with our financial responsibility regulations.

This change is our internal revocation processing practice is strictly procedural, and does not involve any change of the Commission's regulations. Therefore, comments are not being sought.

**EFFECTIVE DATE:** May 14, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Alice K. Ramsay (202) 275–0854
Heber P. Hardy (202) 275–7148

**SUPPLEMENTARY INFORMATION:** The regulations prescribed in subsections (b) and (c) of 49 U.S.C. 10925 provide for the revocation of operating authoritiy, on the Commission's own initiative, within a period of not less than 30 days from the issuance of an order compelling compliance, where it is found that regulated transportation entity has willfully failed to comply with a regulation or order of the Commission. The revised automated procedure will implement 40 U.S.C. 10925 (b) and (c). Yet, this procedure will not alter any substantive carrier rights or Commission responsibilities. The revisions in our automated procedure will simply provide for a more orderly and expeditious method of revoking the operating authority of uninsured motor carriers, freight forwarders, and property brokers that fail to meet our financial responsibility requirements.

The Commission's insurance compliance program currently consists of enforcement features which involve a combination of letter notices, administrative consent agreements, and court issued restraining orders, where necessary, to prohibit uninsured operations after certificates of insurance have been cancelled.

The revisions in our procedures, which we are now implementing, will further provide for an ensure that a carrier's, forwarders' or broker's operating authority is revoked within approximately 135 days after the effective date of cancellation of the entity's insurance, surety bond or other evidence of security, thereby reducing the time that a transportation entity subject to Commission regulation, although not operating, can hold authority after having insurance or other evidence of security cancelled. The Commission's involuntary revocation procedures now allow regulated entities up to 120 days after insurance cancellations are effective before their operating authorities are revoked.

However, because of the administrative delay involved in processing individual cases, the time period in achieving actual revocation is often significantly longer than 120 days.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-10698 Filed 5-8-87; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 31036]

## Illinois Central Gulf Railroad Co.; Trackage Rights in Massac County, IL; Notice of Exemption

Burlington Northern Railroad Company (BN) has agreed to grant local trackage rights to Illinois Central Gulf Railroad Company (ICG). ICG will have the right to use rail lines in Massac County, IL, from BN's junction with the Paducah & Illinois Railroad (P&I) near Metropolis, IL, to a point approximately five miles northwest of Metropolis near Cook, IL, a distance of 5.33 miles. Both ICG and BN operate over P&I's tracks in Massac County. The trackage rights are effective on April 28, 1987.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 4, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-10630 Filed 5-8-87; 8:45 am]

BILLING CODE 7035-01-M

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Herbert Berger, M.D.; Revocation of Registration

On December 18, 1986, the Deputy Assistant Adminstrator, Office of Division Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Herbert Berger, M.D. (Respondent) at 7440 Amboy Road, Staten Island, New York 10307, proposing to revoke his DEA Certificate of Registration PB0122731 as a narcotic treatment program, maintenance/detoxification. The statutory basis for the Order to Show Cause under 21 U.S.C. 823(g) was that Respondent has consistently failed to maintain complete and accurate records concerning the inventory, receipt and dispensing of methadone. The Order to Show Cause was sent to Dr. Berger by registered mail. In a letter dated December 30, 1986, Respondent gave a statement regarding allegations in the Order to Show Cause and stated, "If in addition to this leeter [sic] you require a hearing please let me know and I will be present." In a letter dated January 8, 1987, the Hearing Clerk in the Office of the Administrative Law Judge acknowledged receipt of Dr. Berger's December 30, 1986, response to the Order to Show Cause and reiterated the various procedures available. The Hearing Clerk advised Dr. Berger that he would have to specifically request a hearing if he desired one and that he would be given until January 30, 1987, to request a hearing. Dr. Berger did not respond to the Hearing Clerk's letter. Since Dr. Berger has not requested a hearing, the Administrator now enters his final order in this matter without a hearing and based on the investigative file and the written statement submitted by Dr. Berger. 21 CFR 1301.57.

The Administrator finds that Dr. Berger obtained a registration with the Drug Enforcement Administration as a narcotic treatment program in 1975. He has been registered with DEA since that time. Dr. Berger's program has been the subject of four DEA investigations. These occurred in May 1976, May 1979, March 1982, and July 1986. In May 1976, Investigators conducted an investigation of Respondent's program. At this time the Investigators noted no recordkeeping violations, but advised the Respondent of the requirement to take a biennial inventory. During the May 1979, investigation DEA Investigators noted that Respondent failed to take any physical inventories of methadone, and that there was no biennial inventory as required by law and regulation. Furthermore, Respondent kept his methadone dispensing records in patients' medical files, in violation of the recordkeeping requirements of the Controlled Substances Act. Respondent was advised of these deficiencies and was provided with copies of the applicable regulations. Respondent was also advised of these violations in a letter dated May 21, 1979 from the Special Agent in Charge of the DEA New York Division. Dr. Berger responded to the letter indicating that he had instituted a new method of recordkeeping separate from the patient records.

In May of 1982, DEA Investigator once again conducted an investigation of Respondent's narcotic treatment program. Investigators again found that Respondent failed to take the required biennial inventory of methadone, having taken no physical inventory of methadone since the previous DEA investigation. Investigators noted that the receiving records, which were DEA triplicate order forms, were incomplete. Although Respondent kept separate dispensing records, these were not an accurate record of methadone dispensed. In addition, an accountability revealed an overage of 37 grams of methadone which Respondent was not able to reconcile. As a result of this investigation Respondent was sent a Notice of Hearing pursuant to 21 U.S.C. 883. In response to this Notice of Hearing Respondent submitted a letter dated June 21, 1982, responding to the violations cited, and indicating that the program would comply with requirements, and also indicating that the accountability was inaccurate because he rounded the figures off when he reported them to New York State.

In July 1986, Diversion Investigators from DEA's New York office conducted an investigation at Respondent's clinic. Respondent had again failed to take the required biennial inventory. The dispensing records were inaccurate, and did not correctly reflect the methadone dispensed to the patients. It was also noted that the monthly summaries submitted to the State of New York were incorrect, in that the totals of methadone dispensed were not added properly. The violations were discussed with Dr. Berger and he was given a copy of the Code of Federal Regulations.

The Respondent stated in his December 30, 1986, letter in response to the Order to Show Cause that he has a small private methadone treatment program which rarely treats more than three patients at a time. He also indicated that he has treated narcotic addicts since 1946. Respondent states that he has sent monthly forms to the DEA in Albany, New York, and that he had not been criticized in the past about his records. The Administrator finds Respondent's statement to be unpersuasive, and in conflict with the evidence in the investigative file.

The Administrator finds that Respondent has consistently failed to maintain complete and accurate records concerning the dispensing of methadone. Respondent has been given every opportunity by DEA to comply with the regulations, and has consistently failed

to do so. Although Respondent does not dispense large quantities of methadone, he has been unable to accurately account for the small quantities of methadone which he does dispense. The Narcotic Addict Treatment Act of 1974 and implementing regulations provide that all persons registered to maintain and/or detoxify controlled substance users in a narcotic treatment program must keep accurate records of inventory, receipt and dispensing of the narcotic controlled substance dispensed at the program. One of the requirements for registration of a narcotic treatment program is that the program, "comply with standards established by the Attorney General respecting * * * the maintenance of records (in accordance with section 827 of this title) on such drugs." 21 U.S.C. 823(g)(2). Respondent has not complied with the recordkeeping requirements of the Act. Respondent's registration as a narcotic treatment program is, therefore, subject to revocation for failure to maintain complete and accurate records to account for methadone dispensed by the program. The Administrator finds that Respondent's consistent failure to keep complete and accurate records warrants revocation of the registration.

Having concluded that there is a lawful basis for the revocation of Respondent's DEA Certificate of Registration, PB0122731 as a narcotic treatment program and having further concluded that the registration should be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration PB0122731 previously issued to Herbert Berger, M.D. as a narcotic treatment program, be, and it hereby is revoked effective June 11, 1987. Any outstanding applications for renewal of the registration are denied.

Dated: May 5, 1987.

John C. Lawn,

*Administrator.*

[FR Doc. 87-10653 Filed 5-8-87; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Notice of Registration; Ganes Chemicals Inc.

By Notice dated March 13, 1987, and published in the Federal Register on March 20, 1987; (52 FR 8987), Ganes Chemicals Inc., Lessee of Siegfried Chemical, Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Methadone (9250) | II |
| Methadone-Intermediate, 4-cyano-dimethylamino-4,4-Diphenyl butane (9254) | II |
| Bulk dextropropoxyphene (non-dosage forms) (9273) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 6, 1987.

Gene R. Haislip,

*Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.*

[FR Doc. 87-10654 Filed 5-8-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-84]

## Robert E. Hales, M.D.; Denial of Application

On October 14, 1986, the Administrator of the Drug Enforcement Administration (DEA) directed an Order to Show Cause to Robert E. Hales, M.D. (Respondent), of 2301 West Walnut Street, Rogers, Arkansas 72256 seeking to deny an application executed on May 23, 1986, and to revoke Certificate of Registration AH9637161. Simultaneous with the issuance of the Order to Show Cause, the Administrator immediately suspended Certificate of Registration AH9637161 previously issued to Respondent at an address in Odessa, Missouri. The statutory ground for the Order to Show Cause under 21 U.S.C. 823(f) was the inconsistency of Respondent's registration with the public interest. This was shown by, but not limited to, the voluntary surrender of Respondent's Missouri Bureau of Narcotics and Dangerous Drugs registration on April 2, 1986, terminating his authority to handle controlled substances in Missouri; and the emergency suspension of his medical license by the Arkansas State Medical Board on September 10, 1986, thereby terminating his authority to handle controlled substances in Arkansas.

Respondent, through counsel, requested an expedited hearing on the matters raised in the Order to Show Cause and immediate suspension of registration. The matter was docketed before Administrative Law Judge Francis L. Young, and subsequently docketed before Administrative Law Judge Mary Ellen Bittner. As ordered by Judge Young, both sides filed prehearing statements, the agency on December 27, 1986, and Respondent on December 30, 1986.

Agency counsel, on March 4, 1987, filed a motion for summary disposition, based on Respondent's lack of State authorization to possess, dispense, administer, prescribe or otherwise handle controlled substances in Missouri and Arkansas, the State in which he was registered, and the State in which he sought to be registered, respectively. By letter dated March 19, 1987, counsel for Respondent stated that he did not oppose the agency's motion for summary disposition. Accordingly, Judge Bittner terminated the proceedings before her in order for the Administrator to enter a final order in accordance with 21 CFR 1301.54(e). The Administrator enters this final order on the record as it appears.

The Administrator finds that Respondent held DEA Certificate of Registration AH9637161 at an address in Odessa, Missouri. The Administrator finds that on April 2, 1986, Respondent voluntarily surrendered his Missouri Bureau of Narcotics and Dangerous Drugs registration, thereby terminating his authority to handle controlled substances in Missouri. Respondent applied for DEA registration at an address in Rogers, Arkansas, on May 23, 1986, but Respondent was not registered with DEA in Arkansas. The Administrator finds that the Arkansas State Medical Board immediately suspended Respondent's Arkansas medical lincnse on September 10, 1986, thereby terminating his authority, under State law, to handle controlled substances in Arkansas.

This agency has consistently held that it does not have statutory authority to register a physician unless the physician is a "practitioner" authorized by the State in which he practices to handle controlled substances. See 21 U.S.C. 802(21) and 823(f). See *Donald Y. Stewart, M.D.*, Dk. No. 86-68, 52 FR 7672 (March 17, 1987); *Emerson Emory, M.D.*, Dk. No. 85-46, 51 FR 9543 (1986); *Agostino Carlucci, M. D.*, Dk. No. 82-20, 49 FR 33184 (1984). Since Respondent is not authorized to handle controlled substances in Missouri and Arkansas, the States in which he was registered

and in which he sought registration, respectively, DEA cannot register him in either State.

This agency has also consistently held that in instances where a physician is not authorized to handle controlled substances in the State in which he practices, a motion for summary disposition is properly entertained and must be granted. Where no fact question is involved, or when the facts are agreed, a plenary, adversary administrative proceeding involving evidence and cross-examination is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, Congress does not intend administrative agencies to perform meaningless tasks. *United States* v. *Consolidated Mines and Smelting Co. Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *Philip E. Kirk, M.D.*, Dk. No. 82–36, 48 FR 32877 (1983), aff'd *sub nom. Kirk* v. *Mullen*, 749 F.2d 247 (6th Cir. 1984). Since Dr. Hales lacks authority to handle controlled substances in both Missouri and Arkansas, the Administrator cannot authorize a DEA registration in either State. In light of Respondent's lack of opposition to the motion for summary disposition, and of Repondent's lack of State authorization in Missouri and Arkansas, there is no need for a hearing in this matter.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AH9637161 prevously issued to Robert E. Hales, M.D., be, and hereby is, revoked; it is further ordered that the application executed by Dr. Hales on May 23, 1986, be, and hereby is, denied.

Dated: May 5, 1987.

**John C. Lawn,**

*Administrator.*

[FR Doc. 87–10855 Filed 5–8–87; 8:45 am]

BILLING CODE 4410–09–M

## Manufacturer of Controlled Substances; Registration; Mallinckrodt, Inc.

By Notice dated March 13, 1987, and published in the **Federal Register** on March 20, 1987; (52 FR 8987), Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cocaine (9041) | [illegible] |
| Codeine (9050) | II |
| Diprenorphine (9058) | II |
| Etorphine hydrochloride (9059) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Diphenoxylate (9170) | II |
| Hydrocodone (9193) | II |
| Levorphanol (9220) | II |
| Methadone [illegible] | II |
| Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane (9254) | II |
| Bulk dextropropoxyphene [non-dosage forms] (9273) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Opium extracts (9610) | II |
| Opium fluid extracts (9620) | II |
| Tincture of opium (9630) | II |
| Powdered opium (9639) | II |
| Granulated opium (9640) | II |
| Oxymorphone (9652) | II |
| Fentanyl (9801) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 6, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–10856 Filed 5–8–87; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 87–3]

## Jerel N. Owens, D.M.D.; Revocation of Registration

On December 10, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an Order to Show Cause to Jerel N. Owens. D.M.D., (Respondent) 15344 W. McNichols, Detroit Michigan 48235. The Order to Show Cause sought to revoke DEA Certificate of Registration AO9087695 issued to Dr. Owens. The statutory predicate for the Order to Show Cause was that the continued registration of Dr. Owens with DEA was inconsistent with the public interest as evidenced by the fact that he prescribed the Schedule II narcotic drug Dilaudid to individuals for no legitimate medical purpose and outside the scope of professional practice, and that he wrote fradulent presecriptions for controlled substances. Respondent, through counsel, requested a hearing based on the issues raised in the Order to Show Cause by a letter dated December 30, 1986. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Prehearing documents were filed by agency counsel, and after requesting an extension of time, Respondent filed a waiver of hearing and statement dated March 17, 1987. Accordingly, the Administrator finds that Respondent has waived his right to a hearing pursuant to 21 CFR 1316.49 and now enters his final order in this matter based upon the investigtive file and the written statement filed by the Respondent. (21 CFR 1301.54(c))

The Administrator finds that Jerel N. Owens is a dentist with a practice in Detroit, Michigan. In 1982 DEA learned from a confidential source of information that he was purchasing prescriptions for Dilaudid, a potent Schedule II narcotic controlled substance, from Respondent for $150 per prescription. The confidential source indicated that he was purchasing several prescriptions for 30 tables of Dilaudid during each visit to Respondent. The confidential source further indicated that the prescriptions that he received from the Respondent had the names of actual patients on them.

On March 15, 1982, the confidential source went to Respondent's office under the direction and supervision of a DEA Special Agent. The confidential source was provided with $900, and was wearing a recording device. The confidential source told Respondent that he had saved money from the last prescriptions, and needed four more. Respondent gave the confidential source four prescriptions, each for 30 tablets of Dilaudid 4 mg. The confidential source left the money on Respondent's desk. Respondent called him back, said "Merry Christmas," and returned the $900 to the confidential source. On June 30, 1982, the confidential source returned to Respondent's office under the supervision and direction of DEA Investigators. Respondent asked the confidential source about his tooth, to which the source replied he was not there about his tooth, he needed Percodan. The confidential source further told Respondent that he was going to sell the Percodan in order to get money to get a girl out of jail. The confidential source indicated that he would bring Respondent $250 after selling the Percodan. Respondent left the room and returned with two prescriptions for Percodan, each for 50 tablets, which he gave the confidential source. One was written in the name of

the source the other was in a different name.

In September 1986, DEA Investigators reviewed prescription files in a Detroit area pharmacy. They found numberous Schedule II prescriptions written by Respondent. The Michigan Boad of Pharmacy had removed several of Respondent's prescriptions from the same pharmacy. For the period October 1, 1984, through September 25, 1986, there were over 850 Schedule II prescriptions written by Respondent in this one pharmacy. Prescriptions for Dilaudid accounted for 613 of these prescriptions. Attempts were made by DEA Investigators to contact the individuals whose names appeared on the prescriptions. For the first nineteen names, there was no listing in Detroit telephone directories or in the city index. In a further effort to verify the validity of the prescriptions, Investigator attempted to go to the address ilisted on the prescriptions. They found these addresses to be vacant lots, or nonexistent.

Respondent's waiver of hearing and statement dated March 17, 1987, do not respond to the matters at issue in this proceeding. This proceeding concerns Respondent's prescribing of controlled substances. Respondent's statement describes his background, education and community activities. While it appears that Respondent is involved in many professional and community organizations, these facts do not mitigate Respondent's prescribing of potent Schedule II narcotic drugs for no legitimate medical purpose. The facts in the investigative file clearly show Respondent was prescribing Dilaudid and Percodan to an individual, knowing that the drugs wer not for that individual's medical use. In addition. Respondent has continued to prescribe a large volume of narcotics to individuals that apparently do not exist. Respondent's continued registration with the Drug Enforcement Administration is inconsistent with the public interest. His DEA Certificate of Registration should be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AO09087695, previously issued to Jerel N. Ownes, D.M.D., be, and it hereby is revoked. Any pending applications for removal of such registration are hereby denied. This order is effective June 10, 1987.

Dated: May 5, 1987.

John C. Lawn

*Administrator*

[FR Doc. 87-10657 Filed 5-8-87; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Registration of Sterling Drug Inc.

By Notice dated March 13, 1987, and published in the **Federal Register** on March 20, 1987 (52 FR 8990), Sterling Drug Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pethidine (meperidine) (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: May 6, 1987.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-10658 Filed 5-8-87; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 4,4'-Methylenedianiline Mediated Rulemaking Advisory Committee; Meeting

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Notice of meeting.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a Committee meeting to be held from May 18-21, 1987.

**DATES:** The meeting is scheduled to begin on May 18, 1987 at 9:30 a.m. in Room C2318, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Status: These meetings will be open to the public.

**AGENDA:** The committee will review and edit its final recommendations to OSHA regarding a proposed standard on MDA.

**ADDRESS:** Submissions presented in response to this notice should be sent in quadruplicate to the Docket Officer, Docket No. H-040, Room N3670, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523-7894. Written comments received, as well as other information in Docket H-040, will be available for inspection and copying at this address, Monday through Friday, 8:15 a.m. to 4:45 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523-8615.

**SUPPLEMENTARY INFORMATION:** On October 22, 1985, OSHA announced its intent to make use of negotiated rulemaking in developing a proposed standard for MDA (50 FR 42790-42793). The notice also set forth the basic concepts of negotiated rulemaking and outlined the participant selection criteria which OSHA expected to use in establishing an MDA Advisory Committee.

OSHA established the committee in accordance with the Federal Advisory Committee Act (FACA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to mediate issues associated with the development of a Notice of Proposed Rulemaking on MDA.

Appointees to the committee include representatives from labor, industry, health and safety groups, and government agencies.

Members of the public wishing to submit written statements to the Committee that are germane to the agenda may do so. Such statements should be in reproducible form and should be submitted to the OSHA Division of Consumer Affairs at least 5 days before the meeting. In addition, the Mediator or Chairman of the Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting.

Minutes of these meetings will be available for public inspection at the OSHA Docket Office, U.S. Department of Labor, Rm. N-3670, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 523-7894.

Signed in Washington, DC, this 5th day of May 1987.

John A. Pendergrass,

*Assistant Secretary of Labor.*

[FR Doc. 87-10851 Filed 5-8-87; 8:45 am]

BILLING CODE 4510-23-M

## LEGAL SERVICES CORPORATION

### Funding Availability for Law School Civil Clinical Programs

**AGENCY:** Legal Services Corporation.

**ACTION:** Announcement of funding.

**SUMMARY:** The Legal Services Corporation (LSC) announces that grant funds are available for improving the quality of law school civil clinical programs. The Corporation will distribute up to twenty (20) one-time non-recurring grants to geographically dispersed law schools of varying sizes. Each grant will be for 12 months. Applicants may request funding of up to $50,000 per grant. All grants will be awarded pursuant to authority conferred by section 1006(a)(1)(B) and section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. Grantees are required to guarantee that more than 50 per centum of the funds required shall come from non-Federal sources and that federally funded assets and projects will not be included in in-kind services.

Proposals for the grants will be solicited from all law schools which are currently accredited by the American Bar Association, or accredited for purposes of bar admission by the state bar association of the state in which the law school is located. Proposals may be submitted by either a single law school or a consortium of law schools. Each applicant must submit appropriate documentation of eligibility.

Copies of the solicitation package are available from the LSC Office of Field Services.

**DATE:** All grant proposals must either be postmarked or received by the Office of Field Services on or before June 10, 1987. Grant awards will be announced by June 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles T. Moses, Legal Services Corporation, Office of Field Services, Program Development and Substantive Support Division, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1837.

**SUPPLEMENTARY INFORMATION:** In 1984, LSC initiated a nationwide research project by providing fourteen (14) law school clinics with one-time, non-recurring grants. In return for these funds, the clinics employed clinical legal education as a means for rendering legal assistance to eligible clients. In 1985, this effort was supplemented as a result of a special Congressional appropriation that enabled LSC to fund twenty (20) law school clinics. And, in 1986, fifteen (15) law school clinics joined in the effort. To date, a total of forty-nine (49) law school clinics have received one-time, non-recurring funding from LSC.

Congress has recognized this necessary support of clinical education. Consequently, the Corproation is pleased to announce the fourth year of its cooperative effort with the law school clinics by continuing its annual grant competition.

LSC recently completed a formal assessment of the research project and found that the law school clinics offer a unique opportunity for augmenting the services provided by existing legal services programs. Competent, efficient services can be provided by involving supervised law students in the direct delivery of legal services to low-income clients. Furthermore, the students' clinical experience acquaints them with the unique needs of LSC's eligible clients in an environment that is intended to increase further reduced fee or *pro bono* involvement. Consequently, the law school clinic project meets the immediate needs of indigent persons and also promotes the expansion of future delivery of legal services to eligible clients by lawyers in public service and private practice.

This grant program is designed to provide monetary assistance for expansion or development of law school clinical programs which address the civil legal needs of poor persons. This expansion could include increasing the number of supervising attorneys and participating students, developing new areas of clinical coverage, providing legal services to LSC-eligible clients who are not otherwise receiving legal assistance, developing projects which provide services to underserved segments of the population (e.g., Native American, handicapped, homebound, isolated, and rural residents) or filling in the gaps in existing services and resources.

A variety of methods could be used to provide these services including but not limited to: (1) An independent university sponsored clinic; (2) a joint clinic in which existing faculty provide legal instruction while LSC field attorneys provide the necessary clinical supervision; (3) a law school clinic concentrating on a previously underserved, specific client population (e.g., Native American); (4) a law school clinic concentrating totally in one field of law (e.g., Social Security Disability, SSI); and (5) a joint model in which an attorney becomes appointed as an adjunct professor at the law school thereby becoming responsible for both the law education and the clinical supervision of law students.

#### Selection Criteria

All proposals submitted to LSC/OFS will be reviewed to insure that each is responsive to the minimum requirements set forth in this solicitation. Final selection of grantees will be made by the President of LSC in consultation with the Director of the Office of Field Services (OFS), following submission of non-binding recommendations from an advisory committee comprised of outside private experts and LSC staff. The following criteria, which have been grouped into four basic categories, will be used to assess each proposal:

*1. Effective Management/Ability to Meet Project Needs*

(a) The provision of a clear description of clinic activities intended to increase legal services to the local LSC client eligible population, and an effective plan for management of the clinic.

(b) The provision of a budget which is adequate to support clinic activities, and which cites costs that are reasonable in relation to the duration and objectives of the proposed clinic.

*2. Quality Supervision and Training*

(a) Evidence that the clinic director and key clinic staff have the necessary qualifications and experience to effectively administer the proposed clinic and will be able to allocate an adequate amount of time and resources to the clinic. This is especially so with regard to the provision of appropriate levels of student supervision by faculty members, clinic staff attorneys, LSC attorneys or private *pro bono* practitioners.

(b) Evidence that the proposed clinic provides for the high quality education and training of students in the necessary areas of the law and is equipped to deliver high quality legal services in a cost effective manner.

*3. Community Cooperation*

The extent to which a cooperative effort is shown between an area's legal services provider and the corresponding area's law school clinics. Letters or other evidence of support by this provider for the proposed clinic may be

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attached where appropriate. Support and participation from the private bar which result in increased attorney participation is also encouraged by LSC and should be specifically encouraged by each applicant.

*4. University Commitment*

(a) The degree to which the institution's regular budget is currently allocated to its clinical education program, and to its clinical activities. Evidence that such budgetary support levels will be *maintained* during and beyond the term of the grant. The viability of the civil clinic beyond the term of the grant must be specifically addressed.

(b) Demonstration that the applicant plans to make an adequate in-kind contribution. In order to maximize service delivery, indirect administrative costs will not be allowed to be deducted from LSC grant funds.

Note.—Federally funded assets and projects cannot be counted as an in-kind contribution.

To ensure nationwide participation and geographic distribution, OFS has created seven administrative regions to be used strictly for the purposes of this project. The boundaries of these regions were drawn based upon the need for geographic dispersion combined with the desire that each region contain a generally proportionate number of states as well as eligible law schools. Depending upon the availability of qualified applicants, at least one grantee will be selected in each of the seven regions.

The seven LSC/OFS Law School Civil Clinical Program regions containing all areas in which LSC provides legal services are listed below:

Region No. 1: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont
Region No. 2: Delaware, District of Columbia, Kentucky, Maryland, North Carolina, Virginia, West Virginia
Region No. 3: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Tennessee, Puerto Rico, South Carolina, U.S. Virgin Islands
Region No. 4: Illinois, Indiana, Michigan, Ohio, Pennsylvania
Region No. 5: Colorado, Kansas, Missouri, New Mexico, Oklahoma, Texas
Region No. 6: Alaska, Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, Wisconsin, Wyoming
Region No. 7: Arizona, California, Hawaii, Nevada, Utah, Micronesia, Guam

**John H. Bayly Jr.,**
*President Legal Services Corporation.*
[FR Doc. 87-10643 Filed 5-8-87; 8:45am]
BILLING CODE 6820-35-M

[Dockets Nos. 50-325 and 50-324]

## Nuclear Regulatory Commission Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Carolina Power & Light Company (the licensee), for the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant an exemption from the Type C testing requirements of Appendix J to 10 CFR Part 50 for certain isolation valves associated with the hydrogen/oxygen monitoring system

*The Need for the Proposed Action*

The licensee has started that the application of the Type C testing requirements is not necessary to ensure the leak-tight integrity of the hydrogen/oxygen monitoring system. Since the system is designed to be open to primary containment after a postulated accident, the licensee states that testing of the valves is not required. However, to ensure that the system piping will not leak when the system function is required (valves open), the licensee has proposed to supplement the ongoing periodic Type A tests with soap bubble testing of the system pipe fittings. The alternative tests will result in lower personnel radiation exposure and a lower financial burden to the licensee.

*Environmental Impact of the Proposed Action*

The proposed exemption only affects components which are within the site boundaries and actually within reactor secondary containment. There is no anticipated decrease in the reliability of these components to operate as designed in the event of an accident. Post-accident radiological releases will not differ from those determined previously and the proposed exemption does not otherwise adversely affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the test procedures for Type C components required in Appendix J. Such action would not enhance the protection of the environment.

*Alternative Use of Resources*

The action does not involve the use of resources not considered previously in the Final Environmental Statement for the Brunswick Steam Electric Plant, Units 1 and 2.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For futher details with respect to this proposed action, see the licensee's letters dated October 25, and December 20, 1985, March 20, September 4 and December 11, 1986 and February 27 and March 17, 1987. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Dated at Bethesda, Maryland, this 5th day of May 1987.

For the Nuclear Regulatory Commission.

**Elinor G. Adensam,**
*Director, Project Directorate II-1, Division of Reactor Projects-I/II.*
[FR Doc. 87-10694 Filed 5-8-87; 8:45 am]
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[Docket No. 50-412]

**Duquesne Light Co., et al.; Environmental Assessment and Finding of No Significant Impact**

In the matter of Duquesne Light Co., Ohio Edison Co., Cleveland Electric Illuminating Co. and Toledo Edison Co.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of (1) 10 CFR 50.55a(h), and (2) Appendix J to 10 CFR Part 50, to Duquesne Light Company, et. al. (the applicants), for the Beaver Valley Power Station, Unit 2, located in Shippingport, Pennsylvania.

*Environmental Assessment*

*Identification of Proposed Actions*

Duquesne Light Company, on behalf of all the applicants, filed letters to identify the need for these exemptions. These are described as follows:

(1) 10 CFR 50.55a(h) codifies the requirements of IEEE Standard 279. Currently, the design of the feedwater isolation actuation circuitry does not meet the requirements prescribed in paragraph 4.7 of IEEE 279. Several options are available to satisfy the subject requirements and the applicants, by letter dated March 4, 1987, committed to install a device called a median selector. This is an acceptable option but the device cannot be installed prior to fuel load. The applicants requested a schedular exemption to permit operation without the subject device during the first fuel cycle.

(2) Section III.D.2(b)(ii) of Appendix J, 10 CFR 50, states that "Air locks opened during periods when containment integrity is not required by the plant Technical Specifications shall be tested at the end of such periods at not less than $P_a$." By letter dated March 6, 1987, the applicants requested that the Beaver Valley Unit No. 2 Technical Specifications be written to require an overall air lock leak rate test at $P_a$ (44.7 psig) to be performed "Upon completion of maintenance which has been performed on the air lock that could affect the air lock sealing capability." This requested exemption is consistent with the staff's position on the acceptable testing frequency necessary to demonstrate air lock sealing capability intended in Appendix J. The staff's current position is shown in the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (NUREG-0452 Rev. 4). Until Commission Rulemaking changes the current requirement in Appendix J, and exemption to the present regulation must be granted before the licensee can adopt the requested regulation.

*The Need for Proposed Actions.*

The proposed exemptions are needed because:

(1) A steam generator overfill event that happens as a result of the current design is extremely unlikely. In addition, operators are trained to immediately identify potential overfill events and take remedial actions. Literal compliance with IEEE-279 at this time would cause a delay to startup of the unit. The requested schedular exemption would be granted on the basis of the staff's analysis of compensatory measures.

(2) Based on experience at various plants, the staff found that literal compliance with Section III.D.2(b)(ii) of Appendix J is not necessary to assure containment leaktightnes. The requested exemption is in compliance with the staff's technical position and has been granted to many plants, including Beaver Valley Unit I. Literal compliance with the regulation would lead to increased costs and occupational exposure.

*Environmental Impacts of the Proposed Actions.*

(1) The proposed exemption to 10 CFR 50.55a(h) is based on compensatory measures that would insure the same degree of safety as that provided by the requirements of IEEE 279. Therefore, this exemption will not increase the probability of accidents and the post-accident radiological releases to greater than previously determined, nor otherwise affect radiological plant effluents.

(2) Similarly, the proposed exemption to 10 CFR Part 50, Appendix J, Section II.D.2(D)(ii) will assure air lock sealing capability and containment integrity; therefore, this exemption will not increase the probability of accidents and the post-accident radiological releases to greater than previously determined, nor otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no signfiicant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

*Alternatives to the Proposed Actions.*

The principal alternative to the proposed actions would be to deny the requested exemptions. This would cause an unnecessary delay to startup of the unit, resulting in increased costs for each exemption) and occupational exposure (for the second exemption).

*Alternative Use of Resources*

These actions involve no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Beaver Valley Power Station, Unit No. 2.

*Agencies and Persons Consulted*

The NRC staff reviewed the applicants' requests and did not consult other agencies or persons.

*Finding of Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed actions will not have a significant affect on the quality of the human environment.

For further details with respect to these actions, see the applicants for exemptions dated March 4 and 6, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland this 30th day of April, 1987.

For the Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I-4, Division of Reactor Projects I/II.*

[FR Doc. 87-10596 Filed 5-8-87; 8:45 am]

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[Docket No. 50-029]

**Yankee Atomic Electric Co., Yankee Nuclear Power Station Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Appendix J to 10 CFR Part 50 to Yankee Atomic Electric Company (the licensee) for the Yankee Nuclear Power Station (Yankee)

located at the licensee's site near Rowe, Massachusetts.

**Environmental Assessment**

*Identification of Proposed Action*

The licensee is requesting an exemption from Paragraph III.A.3 of 10 CFR Part 50 Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." In 1973, Appendix J was issued to establish requirements for primary containment leakage testing and incorporated by reference, ANSI N45.4–1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." This Standard requires that containment leakage calculations be performed by using either the point-to-point method or the total time method. The total time method was used the most by the nuclear industry until about 1976.

As noted in N45.4, the point-to-point method is suited to uninsulated containments where atmospheric stability is affected by outside diurnal changes, while the total time method is appropriate for insulated containments that are relatively unaffected by diurnal changes. In 1976, an article "Containment Leak Testing: Why the Mass-Plot Analysis Method is Preferred," Power Engineering, February 1976, was written which compared the results of test analyses that were performed using point-to-point, total time and mass-plot techniques. Subsequently, the mass-plot method received the Commission's endorsement and a conforming change to Appendix J was proposed. A revision to the Standard (reference: ANSI/ANS 56.8–1981, "Containment System Leakage Testing") specifies the use of mass-plot, to the exclusion of the two older methods. However, at this time, licensees who wish to use mass-plot must submit an application for exemption from the Appendix J requirement that containment integrated leak rate tests will conform to N45.4. The exemption proposed by the licensee would be granted until pending changes to Appendix J become effective. The exemption applies only to the method of calculating leakage by use of mass-plot and not to any other aspect of the tests. The mass-plot method is a newer and more accurate means of calculating containment leakage. In the mass-plot method, the mass of air in containment is calculated and plotted as a function of time. Leakage is calculated from the slope of the Linear Least Squares.

The Commission's staff believes that the mass-plot method was not specified in ANSI N45.4–1972 because the other more conservative methods (point-to-point and total time) were adequate and suitable for the sensitivity levels of the instrumentation in use at that time. However, with the present developments in technology, the mass-plot method has gained recognition as the proper one to use. The superiority of the mass-plot method becomes apparent when it is compared with the two other methods. In the total time method, a series of leakage rates are calculated on the basis of air mass differences between an initial data point and each individual data point thereafter. If for any reason (such as instrument error, lack of temperature equilibrium, ingassing or outgassing) the initial data point is not accurate, the results of the test will be affected. In the point-to-point method, the leak rates are based on the mass difference between each pair of consecutive points which are then averaged to yield a single leakage rate estimate. Mathematically, this can be shown to be the difference between the air mass at the beginning of the test and the air mass at the end of the test expressed as a percentage of the containment air mass. It follows from the above that the point-to-point method ignores any mass readings during the test and thus the leakage rate is calculated on the basis of the difference in mass between two measurements taken at the beginning and at the end of the test, which are 24 hours apart.

The licensee's request for exemption and the bases therefore are contained in a letter dated April 17, 1987.

*The Need for the Proposed Action*

The exemption is needed to allow continued use of the mass-plot analysis method at Yankee.

*Environmental Impact of the Proposed Action*

The proposed exemption will have no incremental environmental impact relative to current practice because the exemption will allow testing to be conducted in the same manner as it is currently performed.

The erraticism of the total time method creates a higher probability of unnecessarily failing a containment integrated leakage rate test (note that the calculational procedure is independent of containment tightness) possibly resulting in increased test frequency, critical path outage time, and exposure to test personnel.

Thus, radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, and has not other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

It has been concluded that there is no measurable impact associated with the proposed exemption; any alternatives to the exemption will have either no environmental impact or greater environmental impact.

*Alternative Use of Resources*

This action does not involve the use of resources beyond the scope of resources used during normal plant operation.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request that supports the proposed exemption. The staff did not consult other agencies or persons.

**Finding of No Significant Impact**

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the request for exemption submittal dated April 17, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Bethesda, Maryland, this 5th day of May 1987.

For the Nuclear Regulatory Commission.

Victor Nerses,

*Acting Project Director, Project Directorate I–3, Division of Reactor Projects I–II*

[FR Doc. 87–10695 Filed 5–8–87; 8:45am]

BILLING CODE 7590–01–M

## POSTAL SERVICE

### Implementation of Change in the Domestic Mail Classification Schedule Provision Regarding Maximum Size Limits for Third-Class Mail

**AGENCY:** Postal Service.

**ACTION:** Notice of implementation of a change in the Domestic Mail Classification Schedule regarding maximum size limits for third-class mail.

**SUMMARY:** This gives notice of the implementation of a change in the Domestic Mail Classification Schedule

to increase the maximum size limits for mail qualifying for carrier route presort third-class mail rates by 0.50 inch in length and 0.25 inch in width.

**EFFECTIVE DATE:** 12:01 a.m., May 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Robinson, (202) 268–2983.

**SUPPLEMENTARY INFORMATION:** On October 31, 1986, the United States Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on amending of the Domestic Mail Classification Schedule, a set of mail classification rules established pursuant to 39 U.S.C. 3623. The Postal Service proposed that the maximum size limit for mail qualifying for carrier route presort rates be enlarged by 0.50 inch in length and 0.25 inch in width.

Notice of the Postal Service Request and its proposal was published by the Postal Rate Commission in the **Federal Register** on October 15, 1986. 51 FR 36764 (1986).

On April 1, 1987, the Postal Rate Commission issued its Recommended Decision on the Request, recommending the change the Postal Service had requested.

On May 5, 1987, the Governors of the postal Service, pursuant to 39 U.S.C. 3625(b), approved the Commission's Recommended Decision and ordered the classification change into effect. As amended, section 300.030(b) of the Domestic Mail Classification Schedule reads as follows:

> Except as provided in section 300.030(c), the maximum size for mail qualifying for the carrier route presort level is 14 inches in length, 11.75 inches in width and 0.75 inch in thickness.

By a separate resolution adopted the same day, the Board of Governors of the Postal Service, pursuant to 39 U.S.C. 3625(f), set the effective date of the change at 12:01 a.m., May 31, 1987. Board of Governors Resolution No. 87–4 (May 5, 1987).

Fred Eggleston,

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87–10666 Filed 5–8–87; 8:45 am]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–15717; 812–6075]**

May 4, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption from the Investment Company Act of 1940 ("1940 Act").

*Applicant:* Cillicothe Industrial Development Corporation.

Relevant 1940 Act Sections: Exemption requested under sections 6(c) and 6(e) from all provisions of the 1940 Act and its rules, other than: (i) Sections 9, 17(a)-(e), 31, 36(a) and 37 and the rules thereunder; (ii) all sections of the 1940 Act and its rules necessary to implement the foregoing; and (iii) all administrative, procedural and jurisdictional sections of the 1940 Act.

*Summary of Application:* Applicant, whose purpose is to promote the development of small business concerns in the Chillicothe, Missouri area ("Area"), seeks an SEC order conditionally exempting it from all provisions of the 1940 Act, with certain exceptions. Applicant submits that the requested exemption is appropriate in light of, among other things, its public purpose.

*Filing Date:* The application was filed on March 15, 1985, and amended on April 8 and 30, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on May 28, 1987. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary, SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549; Applicant, P.O. Box 416, 715 Washington, Chillicothe, MO 64601.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Meryl Dewey (202)272–3038 or Special Counsel H.R. Hallock, Jr. (202)272–3030 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commerical copier (800)231–3282 (in Maryland (301)258–4300).

### Applicant's Statements and Representations

1. Applicant, a Missouri corporation organized in 1955, was formed for the purpose of facilitating small business development in the Area. During the 1950's, Applicant made two offerings of its common stock, at a price of $25.00 per share which raised a total of $185,000. The stock was purchased almost exclusively (99.6%) by Area residents, 77% of whom still reside therein. Applicant now has approximately 700 shareholders holding 7,400 shares. There is no market nor is there expected to be a market for the shares and resales between existing shareholders are infrequent.

2. Applicant's assets, totalling approximately $1,000,000 consist of: (i) Real estate leases to two Area employers; (ii) a 50% ownership interest (purchased in 1967) in the first nursing home established in the Area; and (iii) long-term certificates of deposit. As far as management of Applicant is aware, Applicant has never invested any funds, leased properties, or provided similar financial assistance to any business venture in which any of its officers or directors or other affiliated persons has had a financial interest. Applicant's net earnings for the year ended December 31, 1986 were approximately $15,000. Applicant seeks the requested order because it might be deemed an investment company under section 3(a)(3) of the 1940 Act as the value of its investment securities exceed 40% of its total assets (excluding Government securities and cash).

3. Harden, Cummings, Moss & Miller, a local accounting firm of which one of Applicant's officers is a partner, compiles Applicant's unaudited financial statements.

4. Applicant was precluded from investing the cash generated by its nursing home interest in Area businesses because a moratorium on new gas hook-ups and the discontinuance of railroad freight services to the Area inhibited Applicant's effort to attract new manufacturing concerns.

5. Applicant believes that its activities are essential to Area business development. For example, Applicant recently expended $20,000 to promote passage of local bond issues to upgrade electric and sewage treatment facilities and invested $100,000 in a new non-profit railroad intended to renew freight service to the Area. Further, Applicant works closely with Chillicothe's Chamber of Commerce ("Chamber") and contributes approximately 50% ($15,000)

of its annual operating budget. The Chamber's two employees represent the Chamber, Applicant and the Chillicothe Fine Arts Counsel. (None of Applicant's other officers or directors receive any compensation.)

6. Applicant is a small, locally owned and managed entity dedicated to the development of the employment base in the Area. Although Applicant is organized as a profit corporation and may make successful investments, its investors recognize that the main benefit to them is a productive Area business climate. Applicant has and will continue to invest its funds with the objective of developing the Area economy, and not with a view to making profits through investments in securities. According to Applicant, the investors in its common stock were not motivated by an expectation of profit, but a desire to contribute to an important community effort. Applicant has paid dividends on its common stock only once (in the 1950's) and management does not intend to pay dividends in the foreseeable future. Thus, Applicant submits that granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

**Conditions to order**

Applicant agrees that any order granting the requested relief may be expressly subject to the following conditions:

(1) Applicant will be subject to all administrative, procedural and jurisdictional provisions of the 1940 Act and section 9, 17(a)–(e), 31, 36(a) and 37 and the rules promulgated thereunder, as well as all sections of the 1940 Act and the rules promulgated thereunder necessary to implement and enforce the above sections of the 1940 Act, as if it were a registered investment company;

(2) Harden, Cummins, Moss & Miller may continue to be engaged for preparation of Applicant's unaudited financial statements only if Applicant's Board of Directors determines in good faith that the rates charged for the company's services are reasonable and proper and do not exceed those which Applicant could otherwise obtain from third parties.

(3) Regarding any future offerings of its securities, Applicant will—

(a) not make such offerings unless they are only to promote the growth of Area small businesses consistent with its Articles of Incorporation; (b) make such offerings only to residents of or businesses having a substantial presence in the Area; (c) require purchasers to represent that: (i) They are purchasing for investment and not with a view to resale and (ii) with respect to any person purchasing in excess of $10,000 of the securities being offered, the amount purchased does not exceed 20% of such purchaser's net worth; (d) require purchasers to enter into a shareholders' agreement whereby shareholders and Applicant will have the right to purchase a selling shareholder's securities for the same price initially paid by such selling shareholder to Applicant for the shares to be sold; and (e) provide disclosure to investors prior to purchase of the conditions imposed by this Condition (3) and the restriction on the payment of dividends imposed by Condition (4);

(4) Dividends will not be paid to Applicant's shareholders without Applicant either registering under the 1940 Act or obtaining the prior approval of the SEC.

(5) Applicant will hold regular meetings of its shareholders for the purpose of electing directors and transacting whatever other business may come before the meeting.

(6) Applicant will submit for shareholder ratification or approval at each annual shareholders' meeting the appointment of an independent certified public accountant engaged by Applicant.

(7) Applicant will make available to shareholders its annual audited financial statements.

(8) Applicant will not repurchase any of its shares for a purchase price greater than it received upon the original issuance of such shares.

(9) Applicant will continue to invest its funds with a view towards promoting the growth of small business, and thus development of a productive economic climate in the Area, and not to making profits through investment in securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–10634 Filed 5–8–87; 8:45 am]

BILLING CODE 8010–01–M

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[Release No. IC–15718; 812–6318]

## Mackay-Shields Mainstay Series Fund et al.; Application for Contingent Deferred Sales Charge and Exchange Privileges

May 5, 1987.

**AGENCY:** Securities and exchange Commission ("SEC").

**ACTION:** Notice of Application for an Order to Amend an Existing Order under the Investment Company Act of 1940 ("1940 Act").

*Applicants:* MacKay-Shields MainStay Series Fund ("Series Fund"), MacKay-Shields MainStay Tax Free Bond Fund ("Bond Fund"), (collectively, the "Funds") and NYLIFE Securities Inc. (formerly, New York Life Securities Corp.) ("NYLIFE") on behalf of all existing and subsequently created series of the Funds and any other investment company or series which will be distributed by NYLIFE on substantially the same basis as the Funds' shares ("Other NYLIFE-Distributed Funds").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisons of sections 2(a) (32), 2(a) (35), 22(c) and 22(d), and Rule 22c–1 thereunder, and approval of exchange offers requested under section 11(a).

*Summary of Application:* Applicants seek an order amending an existing order (Investment Company Act Release No. IC–15078, April 30, 1986) ("Existing Order") permitting the Funds and Other NYLIFE-Distributed Funds: (1) To assess and waive a contingent deferred sales charge ("CDSL") imposed on their shares in certain circumstances; (2) to waive the CDSL on redemptions of their accounts established with a substantial initial purchase; and (3) to offer certain exchange privileges.

*Filing Date:* The application was filed on April 17, 1987, and amended on May 4, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 28, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESS:** Secretary, SEC, 450 5th Street, NW., Washington DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney (202) 272–3037 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be

contacted at (800) 231–3282 (in Maryland (301) 258–4300).

**Applicant's Representations**

1. The Funds are each registered under the 1940 Act as an open-end, diversified, management investment company. It is expected that Bond Fund will be reorganized as the MacKay-Shields Tax Free Bond Fund on May 29, 1987. The Funds' shares are offered for sale to the public through broker-dealers pursuant to a distribution agreement with NYLIFE, the Funds' administrator, principal underwriter and distributor. NYLIFE is a broker-dealer registered under the Securities Exchange Act of 1934. MacKay-shields Financial Corporation ("Adviser") is the Funds' investment adviser. Both NYLIFE and the Adviser are indirect, wholly-owned subsidiaries of New York Life Insurance Company.

2. The Existing Order permits the Funds and Other NYLIFE-Distributed Funds to assess and waive a CDSL on certain redemptions of the shares. In addition to the CDSL, the Funds pay an annual fee to NYLIFE for services rendered in connection with the offering of the Funds' shares pursuant to plans of distribution adopted under Rule 12b-1 under the 1940 Act ("Plan"). The MacKay-Shields Money Market Fund series of the Series Fund ("Money Market Fund") has not adopted and does not currently intend to adopt a Plan. In their review of the respective Plans, the Trustees of the Funds and Other NYLIFE-Distributed Funds will consider the effect of the CDSL, including the use by NYLIFE of revenues derived therefrom.

3. Applicants wish to amend the Existing Order to permit the Funds and Other NYLIFE-Distributed Funds to assess and waive the CDSL on certain redemptions of their shares. In addition, Applicants request relief to permit the CDSL to be waived for redemptions by shareholders who open an account with the Funds or Other NYLIFE-Distributed Funds with an initial investment of $1,000,000 or more. In connection with the waivers, Applicants have undertaken to take the steps necessary to ensure that holders of shares for which the CDSL is waived will not resell such shares to any persons other than Applicants.

4. Applicants further request approval of certain offers of exchange among the Funds and Other NYLIFE-Distributed Funds. Under the Existing Order, the Funds offer their shares without an initial sales charge, but impose a CDSL upon certain redemptions of shares that are removed from the MacKayShields family of funds, with the exception of the Money Market Fund which is sold without a front-end sales charge or CDSL. However, if the redemption proceeds are reinvested in another series of the Funds or Other NYLIFE-Distributed Funds (an exchange based on relative net asset value of the securities to be exchanged, subject to a $5 transaction fee for each exchange in excess of five during any twelve month period), the CDSL will be postponed.

5. In addition, the length of time a shareholder will be deemed to have owned his shares for the purpose of determining the appropriate rate of the CDSL will be calculated from the date of purchase of the shares of a Fund or Other NYLIFE-Distributed Fund that imposes a CDSL. Thus, the holding period will be tacked during exchanges among the Funds and Other NYLIFE-Distributed Funds, resulting in the lowest applicable CDSL. However, with respect to exchanges from the Money Market Fund into any other series of the Funds, initial investments therein will not be counted toward the holding period for purposes of computing the CDSL charge. In any case, the amount of such CDSL will never exceed 5% of the aggregate purchase payments made by the investor.

6. Applicants submit that the imposition and waiver of the CDSL is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Furthermore, waiver of the CDSL for redemptions made by substantial shareholders as described above is fair because such redemptions involve the redemption of shares that were sold at little or no expense to NYLIFE, and the existence of relatively large shareholder accounts will realize economies of scale and, thus, reduce the proportion and amount of expenses borne by each shareholder. Furthermore, such waiver will not dilute the value of the shares owned by the remaining shareholders. Finally, it is fair and equitable to permit the tacking of the holding period of an investor who purchased shares of the Money Fund through an exchange of shares of another Fund or other NYLIFE-Distributed Fund held by the investor, but not to permit the tacking of the holding period of an investor's initial investment in the Money Fund because at that time no sales charge is a contingent liability.

**Applicants' Conditions**

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of Rule 22d-1 under the 1940 Act.

2. Applicants will comply with the provisions of proposed Rule 11a-3 under the 1940 Act if and when it is adopted by the Commission.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**
*Secretary.*

[FR Doc. 87–10666 Filed 5–8–87; 8:45am]
BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

**[Docket No. 44843]**

### U.S.-Venezuela Route Proceeding, Notice of Prehearing Conference

**Served: May 4, 1987.**

Notice is hereby given that a prehearing conference in the above-titled proceeding will be held on May 28, 1987, at 10 a.m. (local time), in Room 9230, Nassif Building, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

The parties are directed to submit one copy to each other and four copies to the Judge of: (1) Any proposals for changes in the evidence request contained in the Appendix to Order 87–4–65, (2) proposed procedural dates, (3) proposed stipulations and (4) a statement of position. This material shall be submitted on or before May 26, 1987.

Dated at Washington, DC, May 4, 1987.

**William A. Kane, Jr.,**
*Administrative Law Judge.*

[FR Doc. 87–10647 Filed 5–8–87; 8:45 am]
BILLING CODE 4910-62-M

## Federal Aviation Administration

### Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review; Gainsville, Regional Airport, FL

**AGENCY:** Federal Aviation Administration, DOT

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Gainesville for Gainesville Regional Airport (GNV) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR

Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for GNV under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 30, 1987.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is April 30, 1987. The public comment period ends June 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary Maher, Airport Planning Specialist, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812, (305) 648–6583.

Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for GNV are in compliance with applicable requirements of Part 150, effective April 30, 1987. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before October 30, 1987. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Gainsville submitted to the FAA on January 27, 1986, with September 29, 1986 supplement, noise exposure maps, descriptions and other documentation which were produced during FAA Part 150 Study conducted at GNV from June 18, 1984 to January 27, 1986. It was requested that the FAA review this material as the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the City of Gainsville. The specific maps under consideration are depicted as "Figure 7, Current (1985) Ldn Contours and Land Use" and Figure 8, Fifth Year (1990) Ldn Countours and Land Use" in the submissions. The FAA has determined that these maps for GNV are in compliance with applicable requirements. This determination is effective on April 30, 1987. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for GNV, also effective on April 30, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 30, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32812

Gainesville Regional Airport, 3400 NE. 39th Avenue, Suite A, Gainsville, FL 32601

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTRACT:**

Issued in Orlando, Florida April 30, 1987.

**James E. Sheppard**
*Manager, Orlando Airports District Office.*

[FR Doc. 87–10609 Filed 5–8–87; 8:45 am]
BILLING CODE 4910–13–M

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## Groton-New London Airport, Groton, CT; Approval of Noise Compatibility Program

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Connecticut Department of Transportation (CT DOT) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On July 1, 1986, the FAA determined that the noise exposure maps, submitted by the CT DOT under Part 150, were in compliance with applicable requirements. On December 19, 1986, the Administrator approved the Groton-New London Airport (GON) noise compatibility program. Out of the 16 proposed program elements, 15 were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the GON noise compatibility program is December 19, 1986.

**FOR FURTHER INFORMATION CONTACT:** M. Ashraf Jan, Federal Aviation Administration, New England Region, Airports Division, ANE–610, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 273–7090.

Documents reflecting this FAA action may be obtained from the same individual.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the GON noise compatibility program, effective December 19, 1986.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recomendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

(c) Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

(d) Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The CT DOT submitted to the FAA, on February 11, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 1984 through February 1986. The GON noise exposure maps were determined by FAA to be in compliance with applicable requirements on July 1, 1986. Notice of this determination was published in the Federal Register on July 11, 1986.

The GON study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began it review of the program on July 1, 1986, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disappove such a program within the 180 day period shall be deemed to be an approval of such a program.

The submitted program contained 16 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective December 19, 1986.

Approval was granted for 15 specific program elements. Program Element No. 2, "Adopt Noise Based Surcharge," has been disapproved pending submission to FAA for additional analysis. This measure was disapproved because it was not described in sufficient detail to allow an informed analysis by the FAA, under section 104(b) of the Act. This disapproval does not reflect an FAA determination with respect to the substance of the proposal. The measure may be reconsidered by the FAA if developed in greater detail and resubmitted by the CT DOT to the FAA under FAR Part 150. It was also determined that Element No. 6, "Implement Noise Abatement Flight Tracks," Element No. 7, "Lower Traffic Pattern Altitude," and Element No. 8, "Establish Helicopter Flight Corridors," will involve further FAA action to implement.

The approved program for GON contains the following: Airport operations related measures, including airport physical changes, airport management mesures, and airport and airspace procedural changes; land use control measures; and program implementation, monitoring, and review measures.

Specifically, the program include: An informal preferential runway use program to minimize flying over noise sensitive areas; restriction of touch and

go operations to reduce single event noise exposure during evening and nighttime; closing runway 10–28 to prevent low altitude flight over homes immediately west of the airport (this measure will not adversely affect the airport capacity and is consistent with the Airport Master Plan recommendations); construction of a noise barrier for maintenance runups; voluntary use restrictions on nighttime maintenance runups; implementation of noise abatement flight tracks to minimize noise exposure over residential areas; lowering traffic pattern altitude to achieve a modest reduction in the single event noise exposure to the outlying residences; establishing helicopter flight tracks; promoting "quiet flying" procedures through publicizing and information dissemination measures; publishing a noise abatement procedures manual; reviewing noise exposure annually; voluntary purchase of easement and rights of first refusal for five residences located within the Ldn 65 contour; installing airport signing as an informational/educational tool for pilots to comply with the noise abatement measures; encouraging compatible use zoning by the Town of Groton to prevent future incompatible uses; and upgrading noise complaint review procedure so that the CT DOT could obtain a better appreciation for the extent and causes of noise complaints.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 19, 1986. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the offices of the CT DOT, Bureau of Planning, 24 Wolcott Hill Road, Wethersfield, Connecticut 06109.

Issued in Burlington, Massachusetts, on April 17, 1987.

Clyde DeHart, Jr.,

*Acting Director, New England Region.*

[FR Doc. 87–10610 Filed 5–8–87; 8:45 am]

BILLING CODE 4910-13-M

## Huntsville-Madison County Airport; Approval of Noise Compatibility Program

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Huntsville-Madison County Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On September 12, 1986, the FAA determined that the noise exposure maps submitted by the Huntsville-Madison County Airport under Part 150 were in compliance with applicable requirements. On March 11, 1987, the Administrator approved the Huntsville-Madison County Airport Noise Compatibility Program. Four of the five recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Huntsville-Madison County Airport Noise Compatibility Program is March 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Elton E. Jay, FAA/Airports District Office, FAA Building, Jackson Municipal Airport, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208–2306, telephone no. (601) 965–4628. Documents reflecting this FAA action may be obtained from the same individual.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Huntsville-Madison County Airport effective March 11, 1987.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties, including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government;

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Jackson, Mississippi.

Huntsville-Madison County Airport Authority submitted to the FAA on May 5, 1986, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from July 1983 through May 1986. The Huntsville-Madison County Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on September 12, 1986. Notice of this determination was

published in the Federal Register on October 6, 1986.

These determinations are set forth in detail in a Record of Approval signed by the Administrator on March 11, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Huntsville-Madison County Airport Authority.

Issued in Jackson, Mississippi, on April 30, 1987.

Wayne Atkinson,

*Acting Manager, Airports District Office, Southern Region, Jackson, Mississippi.*

[FR Doc. 87-10611 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-13-M

## Lambert-St. Louis International Airport; St. Louis, Mo.; Noise Exposure Map; Notice of Receipt of Noise Compatibility Program and Request for Review

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of St. Louis for the Lambert-St. Louis International Airport (STL) under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for STL under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before October 26, 1987.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is April 29, 1987. The public comment period ends June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Ornes, FAA, Airports Division, ACE-615, 601 East 12th Street, Kansas City, MO 64106.

Comments on the proposed noise compatibility program should also be submitted on the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for STL are in compliance with applicable requirements of Part 150, effective April 29, 1987. Further, FAA is reviewing proposed noise compatibility program for that airport which will be approved or disapproved on or before October 26, 1987. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of the Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

St. Louis submitted to the FAA on February 17, 1987, noise exposure maps, descriptions, and other documentation which were produced during an airport noise compatibility planning study. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by St. Louis. The specific maps under consideration are identified as "Exhibit F, 1986 Ldn Contours" and "Exhibit G, 1991 Ldn Contours" in the submission. The FAA has determined that these maps for STL are in compliance with applicable requirements. This determination is effective on April 29, 1987. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for STL, also effective on April 29, 1987. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 26, 1987.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise

exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC;

Federal Aviation Administration, Airports Division, ACE-600, 601 East 12th Street, Kansas City, MO 64106;

Lambert-St. Louis International Airport, Airport/Community Programs Office, 11101 Natural Bridge, Bridgeton, MO 63044.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri, on April 29, 1987.

**Jerold M. Chavkin,**
*Acting Director, Central Region.*

[FR Doc. 87-10612 Filed 5-8-87; 8:45 am]
BILLING CODE 4910-13-M

## Federal Highway Administration

### Intent To Prepare Environmental Impact Statement, Will, DuPage, and Cook Counties, IL

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a multi-lane (four or six) highway from Interstate Route 55 east of Bolingbrook extending southerly approximately 12 miles to Interstate Route 80 northwest of New Lenox, Illinois. The proposed project, which generally follows the previously recorded centerline for the Lake-Will Freeway (F.A.P. Route 61) in Will, DuPage, and Cook Counties, will be designated Federal-Aid Primary Route 431 (FAP 431).

**FOR FURTHER INFORMATION CONTACT:** James C. Partlow, District Engineer, Federal Highway Administration, 320 West Washington Street, 7th Floor, Springfield, Illinois 62701, Telephone (217) 492-4622. Cesar Nepomuceno, Chief, Bureau of Programming, Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois 61096-1096, Telephone (312) 705-4393.

**SUPPLEMENTARY INFORMATION:** The Lake-Will Freeway was initially studied in the late 1960's and early 1970's. Presently, a section of the freeway from Army Trail Road south to Interstate Route 55 is under construction as a toll highway facility designated the North-South Tollway. The section under consideration is multi-lane access controlled facility. Dominant features along the route of the proposed facility include agricultural land, wetlands, stream crossings, the crossing of the Chicago Sanitary and Ship Canal, Des Plaines River, the Illinois Michigan Canal, and use of forest preserve district lands. Various options of profile, alignment, cross section, grade separations, possible interchange/intersection locations and access to adjacent existing and planned facilities by means of access roads of frontage roads will be studied.

Coordination meetings and a public hearing (November 19, 1969) were conducted as part of the earlier corridor study, which was printed in March 1970 as the Design Report. Coordination during that study was conducted with federal, state, regional, county, and local agencies, community organization, private industry, and the general public. Contacts, comments and input have been made made through a public involvement process of correspondence, telephone conversations, meetings, and public hearing.

Coordination meetings and a public hearing will be conducted as part of this study. Coordination will be undertaken with Federal, State, regional, metropolitan and local agencies, community organizations, public utilities and private industry.

Due to the ongoing nature of the coordination process, a formal scoping meeting is not anticipated. If new information indicates a need to define issues attendant to the proposed action, scoping activities will be conducted with specific resource agencies. To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects apply to this program)

**James C. Partlow,**
*District Engineer, Springfield, IL.*

[FR Doc. 87-10615 Filed 5-8-87; 8:45 am]
BILLING CODE 4910-22-M

## Research and Special Programs Administration

### Notice of Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for renewal or modification of exemptions or Application to Become a Party to an Exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATE:** Comment period closes May 27, 1987.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION CONTACT:** Copies of the application are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW, Washington, DC.

| Application No. | Applicant | Renewal of exemption |
|---|---|---|
| 2582-X | Ozark-Mahoning Co., Tulsa, OK | 2582 |
| 3600-X | U.S. Department of Defense, Falls Church, VA | 3600 |

| Application No. | Applicant | Renewal of exemption |
|---|---|---|
| 4453-X | ECONEXPRESS, Inc. Wheaton, IL | 4453 |
| 5206-X | Austin Powder Co., Cleveland, OH | 5206 |
| 6712-X | Air Products and Chemicals, Inc., Allentown, PA | 6712 |
| 6752-X | ATOCHEM, Paris, France | 6752 |
| 6902-X | Halocarbon, Products, Corp., North Augusta, SC | 6902 |
| 6974-X | U.S. Department of Defense, Falls Church, VA | 6974 |
| 7023-X | Texas Instruments, Inc., Dallas, TX | 7023 |
| 7051-X | Ozark-Mahoning Company, Tulsa, OK | 7051 |
| 7052-X | U.S. Department of Defense, Fort Monmouth, NJ [1] | 7052 |
| 7052-X | Cubic Corp., San Diego, CA | 7052 |
| 7052-X | Moli Energy, Limited, Burnaby, B.C., Canada [2] | 7052 |
| 7482-X | Monsanto Co., Saint Louis, MO | 7482 |
| 7555-X | Provost Cartage, Inc., Ville d'Anjou, Quebec | 7555 |
| 7605-X | U.S. Department of Defense, Falls Church, VA | 7605 |
| 7607-X | Ecology and Environment, Inc., Buffalo, NY | 7607 |
| 7835-X | Lincoln Big Three, Inc., Baton Rouge, LA | 7835 |
| 7835-X | Scott Specialty Gases, Plumsteadville, PA | 7835 |
| 7951-X | Beatrice Cheese, Inc., New Berlin, WI | 7951 |
| 8168-X | Container Corp. of America, Wilmington, DE | 8168 |
| 8184-X | Austin Powder Co., Cleveland, OH | 8184 |
| 8195-X | McDonnell Douglas Corp., Saint Louis, MO | 8195 |
| 8214-X | Morton Thiokol, Inc., Ogden, UT | 8214 |
| 8215-X | Olin Corp., East Alton, IL | 8215 |
| 8225-X | Hoover Group, Inc., Beatrice, NE | 8225 |
| 8232-X | GCS Container Service, SA, Chiasso, Switzerland | 8232 |
| 8255-X | Applied Companies, San Fernando, CA | 8255 |
| 8256-X | E.I. de Pont de Nemours & Co., Inc., Wilmington, DE | 8256 |
| 8453-X | PACCO, Inc., Tenino, WA [3] | 8453 |
| 8539-X | Aero Taxi-Rockford, Inc., Rockford, IL [4] | 8539 |
| 8547-X | Natico, Inc., Chicago, IL | 8547 |
| 8573-X | All Pure Chemical Co., Inc., Tracy, CA | 8573 |
| 8609-X | Natico, Inc., Chicago, IL | 8609 |
| 8614-X | Arrowhead Airways, Inc., Minneapolis, MN | 8614 |
| 8667-X | Federal Emergency Management Agency, Washington, DC | 8667 |
| 8678-X | E.I. du Pont de Nemours & Co., Inc., Wilmington, DE [5] | 8678 |
| 8684-X | Great Lakes Chemicals Corp., El Dorado, AR | 8684 |
| 8693-X | CAN-TRO, Inc., Kansas City, MO | 8693 |
| 8988-X | GOEX, Inc., Cleburne, TX | 8988 |
| 8992-X | General Dynamics/ Pomona Division Aviation Dept., Pomona, CA | 8992 |
| 8998-X | Oil-Air Industries, Inc., Brookshire, TX | 8998 |
| 9004-X | Metric Corp., Tulsa, OK | 9004 |
| 9010-X | United Technologies Corp., San Jose, CA | 9010 |
| 9026-X | Continental Fibre Drum, Inc., Lombard, IL | 9026 |
| 9027-X | McGean-Rohco, Inc., Cleveland, OH | 9027 |
| 9034-X | Union Carbide Corp., Danbury, CT | 9034 |
| 9040-X | Continental Fibre Drum, Inc., Lombard, IL | 9040 |
| 9041-X | IRECO Inc., Salt Lake City, UT | 9041 |
| 9048-X | Brooks Instrument Div./ Emerson Electric Co., Statesboro, GA [6] | 9048 |
| 9061-X | SSI Group, Ltd., Fairfield, KY [7] | 9061 |
| 9064-X | J.T. Baker Chemical Co., Phillipsburg, NJ | 9064 |
| 9066-X | Bayern-Chemie GMBH [8] | 9066 |
| 9072-X | Morton Thiokol, Inc., Brigham City, UT [9] | 9072 |
| 9079-X | E.I. du Pont de Nemours & Co., Inc., Wilmington, DE | 9079 |
| 9108-X | Austin Powder Co., Cleveland, OH | 9108 |
| 9192-X | Air Products and Chemicals, Inc., Allentown, PA | 9192 |
| 9275-X | Carter-Wallace, Inc., Cranbury, NJ | 9275 |
| 9275-X | A.H. Robins Co., Richmond, VA | 9275 |
| 9275-X | Noxell Corp., Hunt Valley, MD | 9275 |
| 9275-X | Avon Products, Inc., New York, NY | 9275 |
| 9275-X | DuPont Critical Care, Inc., Waukegan, IL | 9275 |
| 9275-X | Universal Fragrance Corp., South Plainfield, NJ | 9275 |
| 9275-X | Liz Claiborne Cosmetics, North Bergen, NJ | 9275 |
| 9275-X | Max Factor & Co., Oxford, NC | 9275 |
| 9275-X | Halston Fragrances, Oxford, NC | 9275 |
| 9275-X | Mary Kay Cosmetics, Dallas, TX | 9275 |
| 9275-X | Firmenich, Inc., Princeton, NJ | 9275 |
| 9275-X | Amway Corp., Ada, MI | 9275 |
| 9275-X | Ortho Pharmaceutical Corp., Raritan, NJ | 9275 |
| 9275-X | The Proctor & Gamble Distribution Co., Cincinnati, OH | 9275 |
| 9275-X | Merrell Dow Pharmaceuticals, Inc., Cincinnati, OH | 9275 |
| 9275-X | Warner-Lambert Co., Morris Plains, NJ | 9275 |
| 9275-X | The Upjohn Co., Kalamazoo, MI | 9275 |
| 9275-X | Sterling Drug, Inc., New York, NY | 9275 |
| 9275-X | Fritzsche, Dodge & Olcott, Inc., New York, NY | 9275 |
| 9370-X | NI Industries, Inc., Longview, TX | 9370 |
| 9416-X | CIBA-GEIGY Corp., Ardsley, NY | 9416 |
| 9537-X | Liquid Air Corp., Walnut Creek, CA [10] | 9537 |
| 9632-X | Eurotainer S.A., Paris, France [11] | 9632 |
| 9681-X | Space Ordnance Systems, Canyon Country, CA [12] | 9681 |

[1] To authorize shipment of secondary (rechargeable) lithium batteries containing cells and series of cells connected in parallel without diodes.

[2] To authorize shipment of secondary (rechargeable) lithium batteries containing cells and series of cells connected in parallel without diodes.

[3] To authorize cargo vessel as an additional mode of transportation for shipment of certain blasting agents in bulk.

[4] To authorize pentaerythrite tetranitrate, Class A explosive, as an additional explosive for shipment in accordance with the provisions of DOT-E 6658.

[5] To renew and change six month shipping experience report requirement to two years to correspond with renewal application.

[6] To renew and to authorize flow tubes on mechanical displacement meters to be manufactured with type 304 and 17-4 PH stainless steel used for shipping flammable liquid or gas, n.o.s.

[7] To authorize shipment of up to six cans of calcium carbide, each container not exceeding two pounds net weight of material, within the prescribed shipping box.

[8] To authorize an additional airbag gas generator containing a flammable solid, n.o.s.

[9] To authorize shipment of additional rocket motors, Class B explosives, in an alternative non-DOT packaging design.

[10] To authorize an alternate outer shell on non-DOT specification portable tanks for shipment of helium refrigerated liquid classed as nonflammable gas.

[11] To exclude use of a rupture disk on portable tanks when the lading does not require a combination relief device.

[12] To authorize shipment of additional high explosives, Class A, in specially designed packaging.

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 4453-P | Quick Supply Co., Des Moines, IA | 4453 |
| 6267-P | Grow Group, Inc., Montebello, CA | 6267 |
| 6691-P | Jacksonville Welding Supply, Inc., Jacksonville, FL | 6691 |
| 6824-P | Grow Group, Inc., Montebello, CA | 6824 |
| 7051-P | Aldrich Chemical Co., Inc., Milwaukee, WI | 7051 |
| 7495-P | Ethyl Corp., Baton Rouge, LA | 7495 |
| 7943-P | Grow Group, Inc., Montebello, CA | 7943 |
| 8451-P | Honeywell, Inc., Hopkins, MN | 8451 |
| 8451-P | Quantic Industries, Inc., San Carlos, CA | 8451 |
| 8451-P | Lockheed Missiles & Spaces Co., Inc., Palo Alto, CA | 8451 |
| 8554-P | Quick Supply Co., Des Moines, IA | 8554 |
| 8723-P | Explosives Supply Co., Inc., Shirley, MA | 8723 |
| 8723-P | A.E. Sibley, Inc., Middletown, CT | 8723 |
| 8723-P | Falconi Construction, Inc., dba Alpha Explosives Lincoln, CA | 8723 |
| 8845-P | NL McCullough, Houston, TX | 8845 |
| 8978-P | Yardney Electric Corp., Pawcatuck, CT | 8978 |
| 9222-P | Clean Harbors of Kingston, Inc., Braintree, MA | 9222 |
| 9275-P | DuPont Pharmaceuticals, Inc., Waukegan, IL | 9275 |
| 9571-P | United State Department of Interior, Pittsburgh, PA | 9571 |

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 4, 1987.

J. Suzanne Hedgepeth,
*Chief, Exemptions Branch, Office of Hazardous Materials Transportation.*

[FR Doc. 87-10627 Filed 5-8-87; 8:45 am]
BILLING CODE 4910-60-M

## Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

**DATE:** Comment period closes June 10, 1987.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW, Washington, DC.

### New Exemptions

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 9762-N | Aqua-Tech, Inc., Port Washington, WI | 49 CFR Part 173, Subpart D, E, F, H, Subpart K, L, O. | To authorize shipment of empty containers (5 gallon capacity or less) which contain residual amounts of various hazardous materials to be loaded, based on compatibility, in a bulk fiberboard box, lined with 0.006 inch polyethylene film, for disposal. (Mode 1) |
| 9763-N | Air Products and Chemicals, Inc., Allentown, PA | 49 CFR 173.247, 173.302(a) | To authorize shipment of certain nonflammable gas(es), corrosive material and flammable gas in DOT Specification 3BN cylinders. (Modes 1, 2.) |
| 9764-N | United Technologies Corporation-Pratt & Whitney, West Palm Beach, FL. | 49 CFR 173.245(b) | To authorize a one time shipment of sodium hydroxide (a solid block weighing approximately 34,000 pounds), corrosive material, within a non-DOT specification steel tank affixed to a flatbed truck. (Mode 1.) |
| 9765-N | 3M, St. Paul, MN | 49 CFR 173.124a | To authorize shipment of ethylene oxide, flammable liquid, contained in aluminum cartridges cushioned in specially molded expanded polystyrene foam trays overpacked in a fiberboard box. (Modes 1, 2, 3, 4.) |
| 9766-N | Hercules Incorporated, Wilmington, DE | 49 CFR 173.92(b) 175.3 | To authorize shipment of rocket motors (TOW Launch Motors), Class B explosives, with igniter(s) installed. (Modes 1, 3, 4.) |
| 9767-N | Tri-Wall, Division of Weyerhaeuser Company, Louisville, KY. | 49 CFR 173.60, 173.64, 173.65, 173.93 | To authorize shipment of certain Class A and B explosives in non-DOT specification triple-wall corrugated boxes containing a anti-static plastic bag. (Modes 1, 2.) |
| 9768-N | Defence Technology and Procurement Agency, Berne, Switzerland. | 49 CFR 172.101 column 8(b), 175.30 | To authorize shipment of rocket ammunition with explosive projectile, Class A explosive by cargo aircraft only. (Mode 4.) |
| 9769-N | Rollins Environmental Services (FS), Inc., Wilmington, DE. | 49 CFR 173.12, 176.83 | To authorize shipment of small quantities of various compatible hazardous materials (waste materials) contained in one overpack (lab pack) to be shipped by water without separation or segregation of material. (Mode 3.) |
| 9770-N | AMSPEC Chemical Corporation, Gloucester City, NJ. | 49 CFR 173.154(a) (2), 178.118 | To authorize reusing DOT Specification 17H drums for multiple shipments of Sodium Methylate, dry, a flammable solid. (Mode 1.) |
| 9771-N | Honeywell Inc., Defense Systems Division, Hopkins, MN | 49 CFR 173.86 | To authorize shipment, for disposal, of unclassified waste, scrap explosives, classed as Class C explosives, n.o.s. packaged in wood, metal or cardboard boxes, overpacked in a specially designed steel overpack. (Mode 1.) |

NEW EXEMPTIONS—Continued

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 9772-N | Tavco, Inc., Chatsworth, CA | 49 CFR 173.302(a)(4), 175.3 | To manufacture, mark and sell non-DOT specification cylinders comparable to DOT Specification 39 for shipment of argon or nitrogen, classed as nonflammable gas. (Modes 1, 2, 4.) |
| 9774-N | Harcotar Limited, Hyde Park Holdings, Inc., Stamford, CT. | 49 CFR 173.240b(a)(6), 173.365, 173.373(a) | To manufacture, mark and sell non-DOT specification open-head polyethylene drums of 55 gallon capacity for shipment of corrosive solids and poisons B solids authorized in DOT Specification 21C drums. (Modes 1, 2, 3.) |

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on May 4, 1987.

J. Suzanne Hedgepeth, Chief,

*Exemptions Branch Office of Hazardous Materials Transportation.*

[FR Doc. 87-10628 Filed 5-8-87; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

[Department Circular—Public Debt Series—No. 13-87]

### Treasury Bonds of 2017

Washington, April 30, 1987.

**1. Invitation for Tenders**

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Bonds of 2017 (CUSIP No. 912810 DY 1), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

**2. Description of Securities**

2.1. The Bonds will be dated May 15, 1987, and will accrue interest from that date, payable on a semiannual basis on November 15, 1987, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 2017, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other non-business day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

**3. Sale Procedure**

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, May 7, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, May 6, 1987, and received no later than Friday, May 15, 1987.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A signle bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds;

international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be acepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment,which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the averge yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Bonds allotted must be at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, May 5, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, May 13, 1987. In addition. Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, May 15, 1987. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the imformation required thereon, or the TREASURY DIRECT account number previously obtained.

**6. Separability or Principal and Interest**

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Bonds. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates. Separation of Bonds into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.3. The Principal Component will be payable on May 15, 2017.

6.4. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.6. Once a Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the

retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations govering United States securities apply to the Bonds separated into their components.

**7. Reconstitution of STRIPS Components**

7.1. On and after May 1, 1987, the Interest and Principal Components of securities separated and held under the Treasury's STRIPS program pursuant to Section 6 hereof may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks.

7.2. The Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amount previously announced, must be submitted together for reconstitution. Detached interest coupons, coupons held under the CUBES program (Coupons Under Book-Entry Safekeeping), or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS Components, in the appropriate amounts, will not be accepted.

7.3. The book-entry transfer of each Interest Component and its Principal Component will be subject to the fee schedule generally applicable to transfers to book-entry Treasury securities.

**8. General Provisions**

8.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

8.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplement or amendments to not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promply provided.

8.3. The Boards issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

8.4. Attachments A and B are incorporated as part of this circular.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

BILLING CODE 4810-40-M

ATTACHMENT A

CUSIP NUMBERS AND DESIGNATIONS FOR THE
PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF
TREASURY BONDS OF MAY 15, 2017, CUSIP NO. 912810 DY 1

The Principal Component is designated
(Interest Rate) Treasury Principal (TPRN) 2017
due May 15, 2017, CUSIP No. 912803 AL 7

INTEREST COMPONENTS

| DESIGNATION | CUSIP NUMBER 912833 | DESIGNATION | CUSIP NUMBER 912833 |
|---|---|---|---|
| Treasury Interest (TINT) due | | Treasury Interest (TINT) due | |
| November 15, 1987 | EK 2 | November 15, 2002 | FR 6 |
| May 15, 1988 | EL 0 | May 15, 2003 | FS 4 |
| November 15, 1988 | EM 8 | November 15, 2003 | FT 2 |
| May 15, 1989 | EN 6 | May 15, 2004 | FU 9 |
| November 15, 1989 | EP 1 | November 15, 2004 | FV 7 |
| May 15, 1990 | EQ 9 | May 15, 2005 | FW 5 |
| November 15, 1990 | ER 7 | November 15, 2005 | FX 3 |
| May 15, 1991 | ES 5 | May 15, 2006 | FY 1 |
| November 15, 1991 | ET 3 | November 15, 2006 | FZ 8 |
| May 15, 1992 | EU 0 | May 15, 2007 | GA 2 |
| November 15, 1992 | EV 8 | November 15, 2007 | GB 0 |
| May 15, 1993 | EW 6 | May 15, 2008 | GC 8 |
| November 15, 1993 | EX 4 | November 15, 2008 | GD 6 |
| May 15, 1994 | EY 2 | May 15, 2009 | GE 4 |
| November 15, 1994 | EZ 9 | November 15, 2009 | GF 1 |
| May 15, 1995 | FA 3 | May 15, 2010 | JU 5 |
| November 15, 1995 | FB 1 | November 15, 2010 | JV 3 |
| May 15, 1996 | FC 9 | May 15, 2011 | JW 1 |
| November 15, 1996 | FD 7 | November 15, 2011 | JX 9 |
| May 15, 1997 | FE 5 | May 15, 2012 | JY 7 |
| November 15, 1997 | FF 2 | November 15, 2012 | JZ 4 |
| May 15, 1998 | FG 0 | May 15, 2013 | KA 7 |
| November 15, 1998 | FH 8 | November 15, 2013 | KB 5 |
| May 15, 1999 | FJ 4 | May 15, 2014 | KC 3 |
| November 15, 1999 | FK 1 | November 15, 2014 | KD 1 |
| May 15, 2000 | FL 9 | May 15, 2015 | KE 9 |
| November 15, 2000 | FM 7 | November 15, 2015 | KF 6 |
| May 15, 2001 | FN 5 | May 15, 2016 | KH 2 |
| November 15, 2001 | FP 0 | November 15, 2016 | KK 5 |
| May 15, 2002 | FQ 8 | May 15, 2017 | KM 1 |

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

| COUPON ($) | MINIMUM FACE ($) | INTEREST PAYMENT ($) | COUPON ($) | MINIMUM FACE ($) | INTEREST PAYMENT ($) | COUPON ($) | MINIMUM FACE ($) | INTEREST PAYMENT ($) |
|---|---|---|---|---|---|---|---|---|
| 5.000 | 40000.00 | 1000.00 | 10.125 | 1600000.00 | 81000.00 | 15.250 | 800000.00 | 61000.00 |
| 5.125 | 1600000.00 | 41000.00 | 10.250 | 800000.00 | 41000.00 | 15.375 | 1600000.00 | 123000.00 |
| 5.250 | 800000.00 | 21000.00 | 10.375 | 1600000.00 | 83000.00 | 15.500 | 400000.00 | 31000.00 |
| 5.375 | 1600000.00 | 43000.00 | 10.500 | 400000.00 | 21000.00 | 15.625 | 64000.00 | 5000.00 |
| 5.500 | 400000.00 | 11000.00 | 10.625 | 320000.00 | 17000.00 | 15.750 | 800000.00 | 63000.00 |
| 5.625 | 320000.00 | 9000.00 | 10.750 | 800000.00 | 43000.00 | 15.875 | 1600000.00 | 127000.00 |
| 5.750 | 800000.00 | 23000.00 | 10.875 | 1600000.00 | 87000.00 | 16.000 | 25000.00 | 2000.00 |
| 5.875 | 1600000.00 | 47000.00 | 11.000 | 200000.00 | 11000.00 | 16.125 | 1600000.00 | 129000.00 |
| 6.000 | 100000.00 | 3000.00 | 11.125 | 1600000.00 | 89000.00 | 16.250 | 160000.00 | 13000.00 |
| 6.125 | 1600000.00 | 49000.00 | 11.250 | 160000.00 | 9000.00 | 16.375 | 1600000.00 | 131000.00 |
| 6.250 | 32000.00 | 1000.00 | 11.375 | 1600000.00 | 91000.00 | 16.500 | 400000.00 | 33000.00 |
| 6.375 | 1600000.00 | 51000.00 | 11.500 | 400000.00 | 23000.00 | 16.625 | 1600000.00 | 133000.00 |
| 6.500 | 400000.00 | 13000.00 | 11.625 | 1600000.00 | 93000.00 | 16.750 | 800000.00 | 67000.00 |
| 6.625 | 1600000.00 | 53000.00 | 11.750 | 800000.00 | 47000.00 | 16.875 | 320000.00 | 27000.00 |
| 6.750 | 800000.00 | 27000.00 | 11.875 | 320000.00 | 19000.00 | 17.000 | 200000.00 | 17000.00 |
| 6.875 | 320000.00 | 11000.00 | 12.000 | 50000.00 | 3000.00 | 17.125 | 1600000.00 | 137000.00 |
| 7.000 | 200000.00 | 7000.00 | 12.125 | 1600000.00 | 97000.00 | 17.250 | 800000.00 | 69000.00 |
| 7.125 | 1600000.00 | 57000.00 | 12.250 | 800000.00 | 49000.00 | 17.375 | 1600000.00 | 139000.00 |
| 7.250 | 800000.00 | 29000.00 | 12.375 | 1600000.00 | 99000.00 | 17.500 | 80000.00 | 7000.00 |
| 7.375 | 1600000.00 | 59000.00 | 12.500 | 16000.00 | 1000.00 | 17.625 | 1600000.00 | 141000.00 |
| 7.500 | 80000.00 | 3000.00 | 12.625 | 1600000.00 | 101000.00 | 17.750 | 800000.00 | 71000.00 |
| 7.625 | 1600000.00 | 61000.00 | 12.750 | 800000.00 | 51000.00 | 17.875 | 1600000.00 | 143000.00 |
| 7.750 | 800000.00 | 31000.00 | 12.875 | 1600000.00 | 103000.00 | 18.000 | 100000.00 | 9000.00 |
| 7.875 | 1600000.00 | 63000.00 | 13.000 | 200000.00 | 13000.00 | 18.125 | 320000.00 | 29000.00 |
| 8.000 | 25000.00 | 1000.00 | 13.125 | 320000.00 | 21000.00 | 18.250 | 800000.00 | 73000.00 |
| 8.125 | 320000.00 | 13000.00 | 13.250 | 800000.00 | 53000.00 | 18.375 | 1600000.00 | 147000.00 |
| 8.250 | 800000.00 | 33000.00 | 13.375 | 1600000.00 | 107000.00 | 18.500 | 400000.00 | 37000.00 |
| 8.375 | 1600000.00 | 67000.00 | 13.500 | 400000.00 | 27000.00 | 18.625 | 1600000.00 | 149000.00 |
| 8.500 | 400000.00 | 17000.00 | 13.625 | 1600000.00 | 109000.00 | 18.750 | 32000.00 | 3000.00 |
| 8.625 | 1600000.00 | 69000.00 | 13.750 | 160000.00 | 11000.00 | 18.875 | 1600000.00 | 151000.00 |
| 8.750 | 160000.00 | 7000.00 | 13.875 | 1600000.00 | 111000.00 | 19.000 | 200000.00 | 19000.00 |
| 8.875 | 1600000.00 | 71000.00 | 14.000 | 100000.00 | 7000.00 | 19.125 | 1600000.00 | 153000.00 |
| 9.000 | 200000.00 | 9000.00 | 14.125 | 1600000.00 | 113000.00 | 19.250 | 800000.00 | 77000.00 |
| 9.125 | 1600000.00 | 73000.00 | 14.250 | 800000.00 | 57000.00 | 19.375 | 320000.00 | 31000.00 |
| 9.250 | 800000.00 | 37000.00 | 14.375 | 320000.00 | 23000.00 | 19.500 | 400000.00 | 39000.00 |
| 9.375 | 64000.00 | 3000.00 | 14.500 | 400000.00 | 29000.00 | 19.625 | 1600000.00 | 157000.00 |
| 9.500 | 400000.00 | 19000.00 | 14.625 | 1600000.00 | 117000.00 | 19.750 | 800000.00 | 79000.00 |
| 9.625 | 1600000.00 | 77000.00 | 14.750 | 800000.00 | 59000.00 | 19.875 | 1600000.00 | 159000.00 |
| 9.750 | 800000.00 | 39000.00 | 14.875 | 1600000.00 | 119000.00 | 20.000 | 10000.00 | 1000.00 |
| 9.875 | 1600000.00 | 79000.00 | 15.000 | 40000.00 | 3000.00 | 20.125 | 1600000.00 | 161000.00 |
| 10.000 | 20000.00 | 1000.00 | 15.125 | 1600000.00 | 121000.00 | 20.250 | 800000.00 | 81000.00 |

[FR Doc. 87-10706 Filed 5-7-87; 10:42 am]
BILLING CODE 4810-45-C

[Department Circular—Public Debt Series—No. 13-87]

## Treasury Notes of May 15, 1997, Series A-1997

Washington, April 30, 1987.

### 1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of May 15, 1997, Series A–1997 (CUSIP No. 912827 UW O), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

### 2. Description of Securities

2.1. The Notes will be dated May 15, 1987, and will accrue interest from that date, payable on a semiannual basis on November 15, 1987, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1997, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 6, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 5, 1987, and received no later than Friday, May 15, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be

accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, May 15, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, May 13, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, May 15, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

**6. Separability of Principal and Interest**

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Note are: each future semiannual interest payment (hereafter referred to as an Interest Component); and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering will be provided in the public announcement of the amount and yield range of accepted bids for the Notes. The chart in Attachment B hereto provides the minimum and multiple par amounts required to separate a security into components at various stated interest rates. Separation of Notes into their components may be effected at any time from the issue date until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the Notes. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is recieved.

6.3. The Principal Component will be payable on May 15, 1987.

6.4. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.5. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additinal interest) on the next-succeeding business day.

6.6. Once a Note has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.7. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Note will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.8. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

**7. Reconstitution of STRIPS Components**

7.1. On and after May 1, 1987, the Interest and Principal Components of securties separated and held under the Treasury's STRIPS program pursuant to Section 6 hereof may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks.

7.2. The Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amount previously announced, must be submitted together for reconstitution. Detached interest coupons, coupons held under the CUBES program (Coupons Under Book-Entry Safekeeping), or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS Components, in the appropriate amounts, will not be accepted.

7.3. The book-entry transfer of each Interest Component and its Principal Component will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

**8. General Provisions**

8.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

8.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

8.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fuly constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

8.4. Attachment A and B are incorporated as part of this circular.

Gerald Murphy,

*Fiscal Assistant Secretary.*

BILLING CODE 4810-40-M

BEST COPY AVAILABLE

ATTACHMENT A

CUSIP NUMBERS AND DESIGNATIONS FOR THE
PRINCIPAL COMPONENT AND INTEREST COMPONENTS OF
TREASURY NOTES OF MAY 15, 1997,
SERIES A-1997, CUSIP NO. 912827 UW 0

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series A-1997 due May 15, 1997, CUSIP No. 912820 AJ 6.

INTEREST COMPONENTS

| DESIGNATION | CUSIP NUMBER 912833 | DESIGNATION | CUSIP NUMBER 912833 |
|---|---|---|---|
| Treasury Interest (TINT) due | | Treasury Interest (TINT) due | |
| November 15, 1987 | EK 2 | November 15, 1992 | EV 8 |
| May 15, 1988 | EL 0 | May 15, 1993 | EW 6 |
| November 15, 1988 | EM 8 | November 15, 1993 | EX 4 |
| May 15, 1989 | EN 6 | May 15, 1994 | EY 2 |
| November 15, 1989 | EP 1 | November 15, 1994 | EZ 9 |
| May 15, 1990 | EQ 9 | May 15, 1995 | FA 3 |
| November 15, 1990 | ER 7 | November 15, 1995 | FB 1 |
| May 15, 1991 | ES 5 | May 15, 1996 | FC 9 |
| November 15, 1991 | ET 3 | November 15, 1996 | FD 7 |
| May 15, 1992 | EU 0 | May 15, 1997 | FE 5 |

ATTACHMENT B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

| COUPON ($) | MINIMUM FACE ($) | INTEREST PAYMENT ($) | COUPON ($) | MINIMUM FACE ($) | INTEREST PAYMENT ($) | COUPON ($) | MINIMUM FACE ($) | INTEREST PAYMENT ($) |
|---|---|---|---|---|---|---|---|---|
| 5.000 | 40000.00 | 1000.00 | 10.125 | 1600000.00 | 81000.00 | 15.250 | 800000.00 | 61000.00 |
| 5.125 | 1600000.00 | 41000.00 | 10.250 | 800000.00 | 41000.00 | 15.375 | 1600000.00 | 123000.00 |
| 5.250 | 800000.00 | 21000.00 | 10.375 | 1600000.00 | 83000.00 | 15.500 | 400000.00 | 31000.00 |
| 5.375 | 1600000.00 | 43000.00 | 10.500 | 400000.00 | 21000.00 | 15.625 | 64000.00 | 5000.00 |
| 5.500 | 400000.00 | 11000.00 | 10.625 | 320000.00 | 17000.00 | 15.750 | 800000.00 | 63000.00 |
| 5.625 | 320000.00 | 9000.00 | 10.750 | 800000.00 | 43000.00 | 15.875 | 1600000.00 | 127000.00 |
| 5.750 | 800000.00 | 23000.00 | 10.875 | 1600000.00 | 87000.00 | 16.000 | 25000.00 | 2000.00 |
| 5.875 | 1600000.00 | 47000.00 | 11.000 | 200000.00 | 11000.00 | 16.125 | 1600000.00 | 129000.00 |
| 6.000 | 100000.00 | 3000.00 | 11.125 | 1600000.00 | 89000.00 | 16.250 | 160000.00 | 13000.00 |
| 6.125 | 1600000.00 | 49000.00 | 11.250 | 160000.00 | 9000.00 | 16.375 | 1600000.00 | 131000.00 |
| 6.250 | 32000.00 | 1000.00 | 11.375 | 1600000.00 | 91000.00 | 16.500 | 400000.00 | 33000.00 |
| 6.375 | 1600000.00 | 51000.00 | 11.500 | 400000.00 | 23000.00 | 16.625 | 1600000.00 | 133000.00 |
| 6.500 | 400000.00 | 13000.00 | 11.625 | 1600000.00 | 93000.00 | 16.750 | 800000.00 | 67000.00 |
| 6.625 | 1600000.00 | 53000.00 | 11.750 | 800000.00 | 47000.00 | 16.875 | 320000.00 | 27000.00 |
| 6.750 | 800000.00 | 27000.00 | 11.875 | 320000.00 | 19000.00 | 17.000 | 200000.00 | 17000.00 |
| 6.875 | 320000.00 | 11000.00 | 12.000 | 50000.00 | 3000.00 | 17.125 | 1600000.00 | 137000.00 |
| 7.000 | 200000.00 | 7000.00 | 12.125 | 1600000.00 | 97000.00 | 17.250 | 800000.00 | 69000.00 |
| 7.125 | 1600000.00 | 57000.00 | 12.250 | 800000.00 | 49000.00 | 17.375 | 1600000.00 | 139000.00 |
| 7.250 | 800000.00 | 29000.00 | 12.375 | 1600000.00 | 99000.00 | 17.500 | 80000.00 | 7000.00 |
| 7.375 | 1600000.00 | 59000.00 | 12.500 | 16000.00 | 1000.00 | 17.625 | 1600000.00 | 141000.00 |
| 7.500 | 80000.00 | 3000.00 | 12.625 | 1600000.00 | 101000.00 | 17.750 | 800000.00 | 71000.00 |
| 7.625 | 1600000.00 | 61000.00 | 12.750 | 800000.00 | 51000.00 | 17.875 | 1600000.00 | 143000.00 |
| 7.750 | 800000.00 | 31000.00 | 12.875 | 1600000.00 | 103000.00 | 18.000 | 100000.00 | 9000.00 |
| 7.875 | 1600000.00 | 63000.00 | 13.000 | 200000.00 | 13000.00 | 18.125 | 320000.00 | 29000.00 |
| 8.000 | 25000.00 | 1000.00 | 13.125 | 320000.00 | 21000.00 | 18.250 | 800000.00 | 73000.00 |
| 8.125 | 320000.00 | 13000.00 | 13.250 | 800000.00 | 53000.00 | 18.375 | 1600000.00 | 147000.00 |
| 8.250 | 800000.00 | 33000.00 | 13.375 | 1600000.00 | 107000.00 | 18.500 | 400000.00 | 37000.00 |
| 8.375 | 1600000.00 | 67000.00 | 13.500 | 400000.00 | 27000.00 | 18.625 | 1600000.00 | 149000.00 |
| 8.500 | 400000.00 | 17000.00 | 13.625 | 1600000.00 | 109000.00 | 18.750 | 32000.00 | 3000.00 |
| 8.625 | 1600000.00 | 69000.00 | 13.750 | 160000.00 | 11000.00 | 18.875 | 1600000.00 | 151000.00 |
| 8.750 | 160000.00 | 7000.00 | 13.875 | 1600000.00 | 111000.00 | 19.000 | 200000.00 | 19000.00 |
| 8.875 | 1600000.00 | 71000.00 | 14.000 | 100000.00 | 7000.00 | 19.125 | 1600000.00 | 153000.00 |
| 9.000 | 200000.00 | 9000.00 | 14.125 | 1600000.00 | 113000.00 | 19.250 | 800000.00 | 77000.00 |
| 9.125 | 1600000.00 | 73000.00 | 14.250 | 800000.00 | 57000.00 | 19.375 | 320000.00 | 31000.00 |
| 9.250 | 800000.00 | 37000.00 | 14.375 | 320000.00 | 23000.00 | 19.500 | 400000.00 | 39000.00 |
| 9.375 | 64000.00 | 3000.00 | 14.500 | 400000.00 | 29000.00 | 19.625 | 1600000.00 | 157000.00 |
| 9.500 | 400000.00 | 19000.00 | 14.625 | 1600000.00 | 117000.00 | 19.750 | 800000.00 | 79000.00 |
| 9.625 | 1600000.00 | 77000.00 | 14.750 | 800000.00 | 59000.00 | 19.875 | 1600000.00 | 159000.00 |
| 9.750 | 800000.00 | 39000.00 | 14.875 | 1600000.00 | 119000.00 | 20.000 | 10000.00 | 1000.00 |
| 9.875 | 1600000.00 | 79000.00 | 15.000 | 40000.00 | 3000.00 | 20.125 | 1600000.00 | 161000.00 |
| 10.000 | 20000.00 | 1000.00 | 15.125 | 1600000.00 | 121000.00 | 20.250 | 800000.00 | 81000.00 |

[FR Doc. 87-10707 Filed 5-7-87; 10:42 am]
BILLING CODE 4810-40-C

[Department Circular—Public Debt Series—No. 11-87]

## Treasury Notes of May 15, 1990, Series T-1990

Washington, April 30, 1987.

### 1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $10,000,000,000 of United States securities, designated Treasury Notes of May 15, 1990, Series T-1990 (CUSIP No. 912827 UV 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

### 2. Description of Securities

2.1. The Notes will be dated May 15, 1987, and will accrue interest from that date payable on a semiannual basis on November 15, 1987, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, May 5, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, May 4, 1987, and received no later than Friday, May 15, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline of receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amounts for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, started with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

### 4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or

reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, May 15, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, May 13, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, May 15, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an account of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forefeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

**6. General Provisions.**

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplement or amendments do not adversely affect existing righs of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 87-10708 Filed 5-7-87; 10:42 am]

BILLING CODE 4810-40-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 90
Monday, May 11, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, May 14, 1987.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

*FY '89 Priorities*

The staff will brief the Commission on Fiscal year 1989 priorities.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301 492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,
*Deputy Secretary.*
May 5, 1987.

[FR Doc. 87-10699 Filed 5-6-87; 4:56 p.m.]
BILLING CODE 6355-01-M

**FEDERAL ENERGY REGULATORY COMMISSION**

May 6, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

**TIME AND DATE:** May 13, 1987, 10:00 a.m.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20424.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

**Consent Power Agenda, 858th Meeting—May 13, 1987, Regular Meeting (10:00 a.m.)**

CAP-1.
Project No. 10227-001, City of Manassas, Virginia
CAP-2.
Project Nos. 9851-001 and 9852-001, Long Lake Energy Corporation
CAP-3.
Project No. 9756-001, Edward T. Navickis
CAP-4.
Omitted
CAP-5.
Omitted
CAP-6.
Project No. 3228-005, Atlantic Power Development Corporation
CAP-7.
Project Nos. 2934-008, 009 an 011, New York State Electric and Gas Corporation
Project Nos. 4684-004 and 005, Long Lake Energy Corporation
CAP-8.
Project No. 1930-008, Southern California Edison Company
CAP-9.
Project Nos. 2890-017, 019 and 020, Kings River Conservation District
CAP-10
Project No. 7719-003, Myron Jones, Nola Jones, Larry Oja and Christie Oja
CAP-11.
Omitted
CAP-12.
Project No. 2349-007, Briar-Hydro Associates and New Hampshire Water Resources Board.
CAP-13.
Docket No. ER87-327-000, Pacific Gas Electric Company
CAP-14.
Docket No. ER87-232-002, Boston Edison Company
CAP-15.
Docket Nos. ER84-579-008 and 009, AEP Generating Company
Docket Nos. EL86-10-002 and 003, Kentucky Power Company
CAP-16.
Docket Nos. ER87-115-002 and ER87-223-002, Southwestern Electric Power Company
CAP-17.
Docket No. ER86-884-003, Jersey Central Power and Light Company, Pennsylvania Electric Company, Metropolitan Edison Company, GPU Service Corporation and Niagara Mohawk Power Corporation
CAP-18.
Docket No. EL86-34-001, San Diego Gas & Electric Company v. Alamito Company, Osceola Energy, Inc., and Alamito Holdings, Inc.
Docket No. EL-86-001,Alamito Company Shareholder v. Alamito Company
CAP-19.
Docket No. EL87-23-001, Connecticut Yankee Atomic Power Company
CAP-20.
Docket No. QF83-196-002, Big Horn Energy Partners
CAP-21.
Docket Nos. ER87-88-002 and ER87-70-002, Southern California Edison Company
CAP-22.
Docket No. ER80-108-002, Idaho Power Company
Docket Nos. ER86-570-000 and 001, The Washington Water Power Company
CAP-23.
Docket No. ER86-450-001, Union Electric Company
CAP-24.
Docket No. EL87-16-000, Sierra Pacific Power Company
CAP-25.
Docket No. IR-000-1111, The City of Longmont, Colorado
Docket No. IR-000-772, The City of Loveland, Colorado
Docket No. IR-000-151, The Town of Estes Park, Colorado
Docket No. IR-000-433, The City of Fort Collins, Colorado
CAP-26.
Docket No. QF87-59-000, Panther Creek Energy, Inc.
CAP-27.
Docket No. QF86-864-001, First American Energy Company/Culmtech Ltd.

*Consent Miscellaneous Agenda*

CAM-1.
Docket No. FA84-15-000, Minnesota Power & Light Company
CAM-2.
Docket No. GP82-38-000, Railroad Commission of Texas, Section 108 NGPA Determination, Conoco, Inc., Lucie Mae Wilson No. 21 Well, FERC No. JD81-09042
CAM-3.
Docket No. GP87-12-000, ANR Pipeline Company
CAM-4.
Docket No. GP86-2-001, Southern Union Company
CAM-5.
Docket No. RO86-29-000, Barkett Oil Company, *et al.*

*Consent Gas Agenda*

CAG-1.
Docket No. RP87-47-001, Phillips Gas Pipeline Company
CAG-2.
Docket Nos. RP86-52-009, 010, RP86-129-005 and 006, Kentucky West Virginia Gas Company
CAG-3.
Docket No. RP86-45-017, El Paso Natural Gas Company
CAG-4.
Docket No. TA86-5-29-006, Transcontinental Gas Pipe Line Corporation
CAG-5.
Docket No. TA86-5-29-005, Transcontinental Gas Pipe Line Corporation
CAG-6.

Docket No. RP87-7-007, Transcontinental Gas Pipe Line Corporation
CAG-7.
Docket No. RP86-157-000, El Paso Natural Gas Company
CAG-8.
Docket No. TA87-1-8-000, South Georgia Natural Gas Company
CAG-9.
Docket No. TA87-2-26-000 and 001, Natural Gas Pipeline Company of America
CAG-10.
Docket No. TA87-2-18-000, Texas Gas Transmission Corporation
CAG-11.
Omitted
CAG-12.
Docket Nos. TA86-3-22-000 and TA87-2-22-000, Consolidated Gas Transmission Corporation
CAG-13.
Docket Nos. RP81-82-000 and RP81-83-000, Columbia Gulf Transmission Company and Columbia Gas Transmission Corporation
CAG-14.
Docket Nos. RP81-49-024 and GT84-14-000, Natural Gas Pipeline Company of America
CAG-15.
Docket No. TA81-2-17-002, Texas Eastern Transmission Corporation
CAG-16.
Docket Nos. RP86-33-001 and RP86-91-001, Midwestern Gas Transmission Company
CAG-17.
Docket Nos. ST86-2681-000, ST86-1589-000, ST86-1597-000, ST86-1602-000, ST86-1934-000, ST86-2318-000, ST86-2321-000, ST86-2682-000, ST86-2684-000, ST86-2688-000, ST86-2693-000, ST86-2694-000, ST86-2695-000, ST86-2696-000, ST86-2697-000, ST86-2700-000, ST86-2702-000, ST86-2703-000, ST86-2704-000, ST87-14-000, ST87-15-000, ST87-29-000, ST87-112-000, ST87-113-000, ST87-121-000, ST87-122-000, ST87-486-000 and ST87-475-000, Delhi Gas Pipeline Corporation
CAG-18.
Docket Nos. ST87-844-000 and ST84-803-000, *et al.*, Delhi Gas Pipeline Corporation
CAG-19.
Docket No. ST87-887-000, Southern Gas Pipeline Company
CAG-20.
Docket No. ST87-892-000, Pentex Pipeline Company, Inc.
CAG-21.
Docket Nos. RI87-1-001 and 002, Exxon Corporation
CAG-22.
Docket No. CI86-138-001, Chevron U.S.A., Inc.
Docket No. CI86-295-001, Tenneco Oil Company
CAG-23.
Docket No. CP86-571-001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-24.
Docket No. CP85-808-009 and 010, National Fuel Gas Supply Corporation
CAG-25.
Docket No. CP86-505-001, East Tennessee Natural Gas Company
CAG-26.
Docket No. CP86-714-000, United Gas Pipe Line Company
CAG-27.
Docket Nos. CP86-621-000, CP86-632-000, CP86-667-000 and CP86-676-000, Natural Gas Pipeline Company of America
CAG-28.
Docket No. CP87-60-000, Lone Star Gas Company, a Division of ENSERCH Corporation
CAG-29.
Docket No. CP86-289-000, Northwest Pipeline Corporation

**I. Licensed Project Matters**

P-1.
Docket No. EL84-11-000, Aquenergy Systems, Inc. Petition requesting a finding of no jurisdiction over Coneross Project in South Carolina.

**II. Electric Rate Matters**

ER-1.
Docket No. QF86-512-001, Nelson Industrial Steam Company. Order on rehearing regarding application for certification as a small power production facility.

**Miscellaneous Agenda**

M-1.
Reserved
M-2.
Reserved
M-3.
Docket No. RM87-15-000, Regulations Implementing the National Environmental Policy Act of 1969. Notice of proposed rulemaking.
M-4.
Docket No. RM87-18-000, Waste Gas. Interpretative rule.
M-5.
Docket Nos. RM86-14-000 and RM84-12-000, Revisions to the Purchased Gas Adjustment Regulations. Notice of proposed rulemaking.
M-6.
Docket No. RM87-17-000, Natural Gas Data Collections System. Notice of proposed rulemaking.

**I. Pipeline Rate Matters**

RP-1.
(A) Docket No. RM87-5-000, Notice of Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines. Notice of proposed rulemaking (tentative).
(B) Docket Nos. CP86-232-000, CP86-486-000, CP86-504-000, CP86-551-000, CP86-573-000, CP86-596-000, CP86-645-000, CP86-655-000, CP86-660-000, CP86-669-000 CP86-670-000 and CP86-671-000, Panhandle Eastern Pipe Line Company
Docket No. CP86-584-000, Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Company
Docket No. CP86-663-000, Independent Petroleum Association of Mountain States v. Colorado Interestate Gas Company. Opinion on initial decision regarding transportation policies and practices.
(C) Docket Nos. CI86-168-001 and 002, Tenngasco Coproration and Tenngasco Exchange Corporation. Order on rehearing and reconsideration.
RP-2.
Docket Nos. RP82-71-017, TA83-1-59-006, TA84-1-59-005 and TA85-1-59-005, Northern Natural Gas Company, a Division of Enron Corporation. Opinion on initial decision concerning prudence of Northern's purchasing practice.
RP-3.
Docket No. TA81-1-21-022, Columbia Gas Transmission Corporation. Order on remand concerning Columbia's gas acquisition practices and cutback policy.
RP-4.
Docket Nos. TA85-1-29-011, TA85-3-29-027, TA86-1-29-009, TA86-5-29-010, TA87-1-29-004 and TA87-4-29-002, Transcontinental Gas Pipe Line Corporation. Order on contested settlement.

**II. Producer Matters**

CI-1.
Docket Nos. CP73-184-002 and CI73-485-002, Colorado Interstate Gas Company, a Division of Colorado Interstate Company and CIG Exploration, Inc. Order on initial decision concerning NGPA pricing.
CI-2.
Docket Nos. CI77-337-001 and G-14227-000, Union Texas Petroleum Corporation. Order on initial decision concerning abandonment.

**III. Pipeline Certificate Matters**

CP-1.
Docket No. CP86-275-000, East Tennessee Natural Gas Company. Request for section 7(c) authorization to construct pipeline facilities to serve Atlanta Gas Light.

Kenneth F. Plumb,
*Secretary.*
[FR Doc. 87-10774 Filed 5-7-87; 12:57 pm]
BILLING CODE 6717-01-M

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**NATIONAL SCIENCE FOUNDATION**

**National Science Board Meeting**

**DATE AND TIME:** May 22, 1987
8:30 a.m. Closed Session
8:45 a.m. Open Session
**PLACE:** National Science Foundation Washington, DC.
**STATUS:**
Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.
**MATTERS TO BE CONSIDERED MAY 22:**
*Closed Session (8:30-8:45 a.m.)*
1. Minutes—March 1987 Meeting
2. NSB and NSF Staff Nominees
3. Election of Executive Committee Members
4. Grants, Contracts, and Programs

*Open Session (8:45–11:30 a.m.)*

5. Grants, Contracts and Programs
6. Chairman's Report
7. Minutes—March 1987 Meeting
8. NSB Meeting Schedule for Calendar Year 1988
9. Director's Report
10. Annual Report of the Executive Committee
11. Discussion of Developments in Superconductivity
12. Interim Report of Committee on Centers and Individual Investigator Awards
13. Interim Report of Committee on NSF Role in Polar Regions
14. Other Business

**Thomas Ubois,**

*Executive Officer.*

[FR Doc. 87–10784 Filed 5–7–87; 2:06 pm]

BILLING CODE 7555-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 11, 1987:

An open meeting will be held on Wednesday, May 13, 1987, at 3:00 p.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meetng scheduled for Wednesday, May 13, 1987, at 3:00 p.m., will be:

1. Consideration of whether to give delegated authority to the Director of the Division of Investment Management to issue notices of filing of applications for temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 ("Act") where the Director has determined it is appropriate to exempt Applicants from the automatic bar of section 9(a) of the Act, for periods of time up to 60 days. For further information, please contact Curtis Hilliard at (202) 272–3026.
2. Consideration of whether to publish for comment proposed Rule 10b–21 under the Securities Exchange Act of 1934 pursuant to a petition for rulemaking by the National Association of Securities Dealers, Inc. The rule would prohibit covering short sales of an equity security effected during the period between the filing of a registration statement relating to the same class of equity securities and the commencement of the distribution of such equity securities with securities purchased from an underwriter or other broker or dealer participating in the offering of such securities. For further information, please contact Nancy J. Burke at (202) 272–2848.

The subject matter of the closed meeting scheduled for Wednesday, May 13, 1987, following the 3:00 p.m. open meeting, will be:

Institution of injunctive actions.
Subpoena enforcement action.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Litigation matter.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272–2149.

**Jonathan G. Katz,**

*Secretary.*

May 5, 1987.

[FR Doc. 87–10885 Filed 5–6–87; 4:14 pm]

BILLING CODE 8010-01-M

# Corrections

Federal Register
Vol. 52, No. 90
Monday, May 11, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## THE PRESIDENT

### 3 CFR

### Proclamation 5646 of May 4, 1987

### To Modify Duty-Free Treatment Under the Generalized System of Preferences, the Caribbean Basin Economic Recovery Act, and the United States-Israel Free Trade Implementation Act, To Enable the Monitoring of Textile Agreements and for Other Purposes

*Correction*

In Presidential Proclamation 5646 beginning on page 16805 in the issue of Wednesday, May 6, 1987, make the following correction:

On page 16813, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 87-10435 Filed 5-4-87; 4:22 pm]

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 1007, 1011, 1046, 1093, 1094, 1096, and 1098

[Docket Nos. AO-366-A28, et al.]

### Milk in the Georgia and Certain Other Marketing Areas; Decision and Order To Terminate Processing on Proposed Amendments to Tentative Marketing Agreements and Orders

*Correction*

In proposed rule document 87-9882 beginning on page 15951 in the issue of Friday, May 1, 1987, make the following correction:

On page 15959, in the third column, in the seventh line from the bottom, insert "relevant evidence within his control raises a presumption against that" after "produce".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[BERC-274-FN]

### Medicare Program; List of Covered Surgical Procedures for Ambulatory Surgical Centers

*Correction*

In notice document 87-8930 beginning on page 13176 in the issue of Tuesday, April 21, 1987, make the following corrections:

1. On page 13176, in the second column, in paragraph 1., the the last line, "417.65 (a)(1)" should read "416.65 (a)(1)".

2. On page 13179, in the first column, in the 26th line, "21400" should read "21040".

3. On the same page, in the first column, in the 20th line from the bottom, after "body" insert "metatarsophalangeal joint".

4. On page 13188, under the heading "Payment group", in the eighth line, "4" should read "3".

5. On page 13191, under the heading "CPT-4 code", in the eighth line under "Incision", "27075" should read "26075".

6. On page 13197, under the heading "Payment group", in the first line, insert "4".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Meetings

*Correction*

In notice document 87-9845, appearing on page 15992, in the issue of Friday, May 1, 1987, make the following corrections:

In the second column, in the fourth line, "Open" should read "Closed" and in the 12th line from the bottom, "Open" should read "Closed".

BILLING CODE 1505-01-D

Federal Register

Monday
May 11, 1987

Part II

# Environmental Protection Agency

40 CFR Part 147

Underground Injection Control Programs on Indian Lands in Direct Implementation States; Technical Amendment; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 147**

**[FRL 3150-3]**

## Underground Injection Control Programs on Indian Lands in Direct Implementation States; Technical Amendment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Environmental Protection Agency (EPA) is today clarifying the applicability of Federally-administered Underground Injection Control (UIC) programs prescribed previously. This action will have no substantive effect, but will eliminate an unintended ambiguity in the codified regulations. Elsewhere in today's **Federal Register**, the Agency is proposing new Underground Injection Control programs for all Indian lands not covered by an applicable UIC program.

**DATES:** Effective May 11, 1987. In accordance with 40 CFR Part 23, these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. eastern time on May 26, 1987.

**ADDRESS:** The supporting information for these technical amendments will be available for inspection and copying at Room 1143 ET, 401 M Street, SW., Washington DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Donald M. Olson, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, EPA (WH-550E), 401 M Street, SW., Washington, DC 20460. (202) 382-5550.

**SUPPLEMENTARY INFORMATION:** The Safe Drinking Water Act (SDWA) authorizes and obligates EPA to regulate underground injection activity on all lands in the United States, including Indian lands. Underground Injection Control (UIC) programs were proposed and promulgated for Indian lands in the following eleven States:

Alaska
Arizona (except Navajo's)
California
Colorado (except Class II wells on Ute Mountain Ute)
Idaho
Iowa
Michigan
Montana
Nebraska
Nevada
South Dakota

Explanatory language in the preambles to those proposed rules clearly indicated EPA's intent to include Indian lands in each Federal UIC program. 48 FR 40100 (September 2, 1983); 49 FR 20239 (May 11, 1984). The final rules confirmed that intent for the States listed above. 49 FR 20138 (May 11, 1984); 49 FR 45292 Nov. 15, 1984). In fact, the Regions have been implementing the Federal UIC program in these States where there are wells on Indian lands. However, the codification of the Federal program in 40 CFR Part 147 was not uniform concerning coverage of Indian lands. Today's notice will remove any ambiguity from the regulations by inserting into each program description a statement that it includes Indian lands.

EPA believes that this technical clarification need not be independently proposed before promulgation. It is eligible for the "good cause" exception to the Administrative Procedure Act (APA) requirement for prior notice and opportunity to comment. This may be waived "When the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553 (b)(B). "Unnecessary" means "Unnecessary so far as the public is concerned, as would be the case if a minor or merely technical amendment in which the public is not particularly interested were involved." S. Doc. No. 248, 79th Cong., 2nd Sess. at 200, 258 (1946). This amendment is technical in the sense that it merely repeats in each of eleven subparts of Part 147, what the Agency has already proposed, promulgated and implemented. It will not change any legal rights or responsibilities.

EPA is today promulgating technical amendments to show explicitly that the Federal UIC programs in the above States include Indian lands in those States.

### Office of Management and Budget Review

The Administrator has determined that this is not a major regulation under the terms of E.O. 12291 and does not require a regulatory impact analysis.

It has no independent legal effect and thus will impose no additional costs. Likewise, there are no impacts on small entities as defined under the Regulatory Flexibility Act.

As required by the Paperwork Reduction Act, all wells on these Indian lands were included in the original ICR approval by OMB. However, the original approval is due to expire soon. A request for approval of the information collection provisions contained in this rule will shortly be submitted to OMB as a part of a comprehensive ICR package covering all UIC information requests. The submission to OMB will be announced in the **Federal Register** and interested citizens will have an opportunity to comment at that time.

### List of Subjects in 40 CFR Part 147

Indian lands, Underground injection.

Dated April 24, 1987.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

## PART 147—[AMENDED]

1. The authority citation for Part 147 is revised to read as follows:

**Authority:** Safe Drinking Water Act (42 U.S.C. 300h) as amended; and the Resource Conservation and Recovery Act as amended (42 U.S.C. 6901 *et seq.*) unless otherwise noted.

2. In 40 CFR Part 147, Subpart C—*Alaska*, § 147.101 is revised to read as follows:

### § 147.101 EPA-administered program.

(a) *Contents.* The UIC program in the State of Alaska for Classes I, III, IV and V wells, and for all classes of wells on Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts

124, 144, and 146, and additional requirements set forth in the remainder of this subpart. Injection wells owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for all non-Class II wells in Alaska and for all wells on Indian lands, is June 25, 1984.

3. Subpart D—*Arizona* is amended by revising § 147.151 as follows:

**§ 147.151 EPA-administered program.**

The UIC program for the State of Arizona is administered by EPA.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on all Indian lands, is administered by EPA. The program for all injection activity, except that on Navajo Indian lands, consists of the UIC program requirements of 40 CFR Parts 124, 144 and 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program in Arizona, except for the lands of the Navajo Indians, is June 25, 1984.

4. Subpart F—*California* is amended by revising § 147.250 introductory text, and § 147.251 to read as follows:

**§ 147.250 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of California, except those on Indian lands, is the program administered by the California Division of Oil and Gas, approved by EPA pursuant to SDWA section 1425.

* * * * *

**§ 147.251 EPA-administered program—Class I, III, IV and V wells and Indian lands.**

(a) *Contents.* The UIC program for the State of California for Class I, III, IV and V wells, and for all classes of wells on Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for all lands in California, including Indian lands, is June 25, 1984.

5. Subpart G—*Colorado,* § 147.301 is revised to read as follows:

**§ 147.301 EPA-administered program—Class I, III, IV, V wells and Indian lands.**

(a) *Contents.* The UIC program for Class I, III, IV, and V wells on all lands in Colorado, including Indian lands, and for Class II wells on Indian lands, is administered by EPA. The program for all EPA-administered wells in Colorado other than Class II wells on lands of the Ute Mountain Ute consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on all lands in Colorado, including Indian lands, except for Class II wells on lands of the Ute Mountain Ute, is June 25, 1984.

6. In Subpart N—*Idaho,* § 147.651 is revised to read as follows:

**§ 147.651 EPA-administered program.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Idaho is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Idaho is June 11, 1984.

7. In Subpart Q—*Iowa,* § 147.801 is revised to read as follows:

**§ 147.801 EPA-administered program.**

(a) *Contents.* The UIC program for the State of Iowa, including Indian lands, is administered by EPA. This program consists of the requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for all lands in Iowa, including Indian lands, is June 25, 1984.

8. In Subpart X—*Michigan,* § 147.1151 is revised to read as follows:

**§ 147.1151 EPA-administered program.**

(a) *Contents.* The UIC program for the State of Michigan, including all Indian lands, is administered by EPA. This program consists of the program requirements of 40 CFR Parts 124, 144 and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for all lands in Michigan, including Indian lands, is June 25, 1984.

9. In Subpart BB—*Montana,* § 147.1351 is revised to read as follows:

**§ 147.1351 EPA-administered program.**

(a) *Contents.* The UIC program for the State of Montana, including all Indian lands, is administered by EPA. This program consists of the program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on all lands in Montana, including all Indian lands, is June 25, 1984.

10. Subpart CC—*Nebraska* is amended by revising § 147.1400 introductory text, and § 147.1401 introductory text, and by adding a new § 147.1403 to read as follows:

**§ 147.1400 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of Nebraska, except those on Indian lands, is the program administered by the Nebraska Oil and Gas Conservation Commission, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

**§ 147.1401 State administered program—Class I, III, IV and V wells.**

The UIC program for Class I, III, IV, and V wells in the State of Nebraska, except those on Indian lands, is the program administered by the Nebraska Department of Environmental Control, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.1403 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Nebraska is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian Lands in Nebraska is June 25, 1984.

11. In Subpart DD—*Nevada,* § 147.1451 is revised to read as follows:

**§ 147.1451 EPA-administered program.**

(a) *Contents.* The UIC program for the State of Nevada, including Indian lands, is administered by EPA. This program consists of the requirements of 40 CFR

Parts 124, 144, 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on all lands in Nevada, including Indian lands, is June 25, 1984.

12. In Subpart QQ—*South Dakota,* § 147.2101 is revised to read as follows:

**§ 147.2101 EPA-administered program.**

(a) *Contents.* The UIC program for all Class I, III, IV and V wells, including those on Indian lands, and for Class II wells on Indian lands in the State of South Dakota is administered by EPA. This program consists of 40 CFR Parts 124, 144 and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Class I, III, IV and V wells on all lands in South Dakota, including Indian lands, and for Class II wells on Indian lands only, is December 30, 1984.

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Monday
May 11, 1987

Part III

# Environmental Protection Agency

## 40 CFR Part 147

## Water Pollution Control; Underground Injection Control Programs on Indian Lands; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL 3150-1]

## Water Pollution Control; Underground Injection Control Programs on Indian Lands

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is today proposing to extend the Federal Underground Injection Control (UIC) program to most Indian lands not currently regulated under the authority of the Safe Drinking Water Act (SDWA) as mandated by the SDWA amendments of 1986. EPA proposes to bring the relatively few injection wells on these Indian lands under the standards for construction, operation, and plugging contained in the generic Federal program. Elsewhere in today's **Federal Register**, EPA is making technical amendments to clarify the applicability of the UIC program to Indian lands in certain other States, and proposing different programs for the lands of the Navajo, Ute Mountain Ute and other Tribes in New Mexico and Oklahoma.

Today's notice does not propose procedures by which Indian Tribes may apply for primary enforcement responsibility. That issue will be addressed later.

**DATES:** Comments must be submitted on or before June 25, 1987. Public hearing will be held June 2, 1987, 9:00 a.m.; requests to testify must be received on or before May 27, 1987.

**ADDRESSES:** Comments and requests to testify may be mailed to Judy Long, Comment Clerk, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, EPA (WH-550E) 401 M Street, SW, Washington, D.C. 20460. The supporting information for this proposal is available for inspection and copying in Room 1143 ET, 401 M Street, SW, Washington, D.C. 20460. The hearing will be held in Conference Room 3 of the Washington Information Center, 401 M Street, SW, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Donald M. Olson, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, (202) 382-5558, at the above address.

**SUPPLEMENTARY INFORMATION:**

### Background

The Safe Drinking Water Act (SDWA) authorizes and obligates EPA to regulate underground injection activity on all lands in the United States, including Indian lands. (EPA has adopted the definition of Indian country in 18 U.S.C. 1151, set forth in full at 40 CFR 144.3 for the Underground Injection Control (UIC) program.)

The SDWA directs EPA to set minimum standards and criteria for approval of State-developed programs. (§ 1421 SDWA). States may develop programs regulating their injection wells, and EPA reviews and approves them pursuant to § 1422 or § 1425 of the SDWA if they meet the standards. This is called granting primary enforcement responsibility. If a State does not submit a program or if a submitted program does not meet statutory and regulatory standards, the EPA directly administers the program for the State under the regulations codified in 40 CFR Parts 124, 144, and 146. This is referred to as "direct implementation". At the moment there are 33 full and 6 partial programs for which a State has primary enforcement responsibility. EPA promulgated the Federal program for the direct implementation jurisdictions in May and November of 1984.

Indian lands did not fit neatly into the system of approved and directly implemented programs. For the reasons outlined below, many Indian lands, particularly those in States with primary enforcement responsibility are not currently covered by an Underground Injection Control program under the authority of the SDWA. The SDWA Amendments of 1986 require EPA to promulgate a UIC program within 270 days of enactment for all Indian lands in which there is no currently applicable UIC program. Today's proposal to extend the Federal program set forth in 40 CFR Parts 124, 144, and 146 is one step in fulfilling that mandate.

### Indian lands in States with Primary Enforcement Responsibility

A gap developed in States with primary enforcement responsibilities because of the special legal and policy problems presented by Indian lands. Most States could not or did not assert jurisdiction over Indian lands, and thus could not administer a UIC program on those lands. The Indian Tribes themselves could not administer a UIC program under the jurisdiction of the SDWA because the SDWA did not give them the authority to do so until the 1986 Amendments. (However, it was and is Agency policy to accommodate the wishes of the Tribal governments as far as possible, to deal with them on a government-to-government basis, and to assist them in developing the capability to manage their own environmental programs. See the EPA Indian Policy statement of November 8, 1984). The Federal government could not administer the State-developed programs on Indian lands because in many cases they contained provisions inconsistent with Federal powers. (For example, reliance on administrative orders or pipeline severance to enforce the program.) Some members of the underground injection industry were very interested in having the programs on Indian lands match those in the surrounding State, and not be either special programs reflecting local Tribal conditions and needs or the Federal program.

It appeared that no single approach would work in all cases so EPA announced four possibilities for promulgation of programs on Indian lands and solicited comments on them. The four options were:

1. The current Federal UIC minimum requirements;
2. Requirements patterned after the approved State program, to the extent consistent with EPA's authority under the SDWA;
3. A combination of the first two; or
4. A different program containing requirements that respond to the concerns of the affected Tribal government.

The options were discussed in detail in **Federal Register** notices on September 2, 1983 (48 FR 40100) and May 11, 1984 (49 FR 20340). For the reasons discussed below, EPA is adopting Option 1 in this proposed rule. Accordingly, EPA would extend the Federal UIC requirements to Indian lands in the following States which have primary enforcement responsibility for non-Indian lands:

Alabama
Arkansas
Connecticut
Delaware
Florida
Georgia
Illinois
Louisiana
Maine
Maryland
Massachusetts
Mississippi
Missouri
New Hampshire
New Jersey
North Carolina
North Dakota
Ohio
Oregon
Rhode Island
South Carolina
Texas
Utah
Vermont
Washington
West Virginia
Wyoming
Guam
Commonwealth of the Northern Mariana Islands

Many comments responding to the 1983 notice indicated a preference for a program consistent with the relevant State program or a program tailored to tribal concerns. However, a State's legislative authority in its UIC program

is often broader than EPA's authority under the SDWA and, therefore, many State provisions could not be adapted by EPA. A hybrid program combining aspects of the State and Federal program would not provide consistency. The permittee would have to contend with provisions different from the State program and EPA would have to administer provisions not found in the generic Federal program. On balance, EPA prefers to maintain consistency within the Federal programs unless specific deviations are necessitated by local conditions or Tribal concerns. Tailoring a program requires a great deal of work with the Tribe, State, and other affected parties. EPA is open to future proposals for such tailoring. However, given the mandate of the 1986 SDWA Amendments to promulgate UIC programs on all Indian lands 270 days from the Amendments, EPA believes extending the generic Federal program is the appropriate course of action at this time for most Indian lands.

Most Tribes have not actively sought special programs for the regulation of their wells and thus are not expected to object to the proposal to extend the Federal program to their lands. However, the Navajo, Ute Mountain Ute, and some other Indian Tribes in New Mexico and Oklahoma continually pursued special UIC programs. EPA has been working with those Tribes to develop programs based upon the Federal UIC program, but containing some modifications and additions. Tailored programs for these Indian Tribes are proposed elsewhere in today's **Federal Register** (and conforming amendments to descriptions of their State programs are included in this proposal). Modified programs may be developed for other Indian lands in the future at the request of the Tribe.

The SDWA Amendments allow Indian Tribes to apply for and assume primary enforcement responsibility once EPA has promulgated regulations governing that process. The status of primary enforcement authority will give Indian Tribes additional opportunity for control and modification of the UIC program on their lands. Today's action does not preclude Tribes from applying for primary enforcement responsibility.

**Indian Programs for Direct Implementation States**

EPA is also proposing to extend the Federal UIC program to Indian lands in the Direct Implementation State of New York to the lands of the Seneca Indian Tribe. The Seneca Indian lands were not covered by the UIC program administered by EPA for New York because the Seneca Tribe had expressed interest in having special regulations developed. However, recent contacts with the Tribe indicate that special UIC regulations are not currently a priority of the Tribe. Therefore, the Federal UIC program is being proposed for the Seneca lands. In eleven other Direct Implementation jurisdictions, no UIC program was previously promulgated because there did not appear to be any wells on the Indian lands, and in some cases, no Indian lands at all:

| | |
|---|---|
| District of Columbia | Virginia |
| Hawaii | Puerto Rico |
| Indiana | Virgin Islands |
| Kentucky | American Samoa |
| Pennsylvania | Trust Territory of the Pacific Islands |
| Tennessee | |

(Note the difference in treatment of these States in the May 11, 1984 and November 15, 1984 preambles and those for which EPA clearly intended to include Indian lands.)

EPA is today proposing UIC programs for any Indian lands which now exist or may exist in the future in these States. Indian Tribes are seeking to acquire lands in some of these States. In the interests of consistency and to provide for future contingencies, it is appropriate to enact the programs covering all lands now.

**Washington**

EPA is today proposing to administer the generic Federal program on Indian lands in the State of Washington, although the State of Washington submitted an application for primary enforcement authority over Indian lands within the State as a part of its original application for primary enforcement authority. EPA will make a final decision on the portion of the application concerning Indian lands in the near future and will thereafter make any necessary changes in this proposal. It may be noted that one Tribe in Washington, the Colville, has requested a ban on all injection wells except Class V.

**Aquifer Exemptions for Wind River Reservation in Wyoming**

The SDWA protects all underground sources of drinking water, whether or not specifically designated as such. The regulations define "underground source of drinking water" very broadly as: an aquifer which supplies or has sufficient capacity to supply a public water system; and either currently supplies drinking water for human consumption, or contains less than 10,000 mg/1 TDS; and is not an exempted aquifer. Under existing regulations, EPA may exempt from the UIC program aquifers which have the capacity to supply public water systems and contain less than 10,000 mg/l TDS if they do not now and could not in the future serve as a source for a public water supply for one of the reasons recognized in the regulations (40 CFR 146.4). Owners and operators of injection wells may inject into an exempted aquifer.

EPA has information that some two hundred Class II wells, mostly enhanced recovery wells, are currently injecting into aquifers with less than 10,000 TDS on the Wind River Reservation in Wyoming. Most of these aquifers will probably qualify for exempted aquifer status. However, unless the Agency designates them as exempted aquifers, injection into them becomes illegal on the day the UIC program takes effect. It is EPA's intent to exempt the appropriate portions of some aquifers at the time of promulgation of the UIC program so that appropriate injection operations may continue without disruption.

There are currently eight separate oil and gas fields where injection is practiced on the Wind River Indian Reservation. The formations receiving injections are: the Darwin Sandstone (part of the Amsden); the Tensleep; the Crow Mountain (part of the Chugwater Group); the Phosphoria (also known as the Park City); the Muddy; the Nugget Sandstone; and the Frontier. The Tensleep, Phosphoria, Nugget and Frontier are the major aquifers associated with injection activity, while the Darwin, Muddy and Crow Mountain are relatively minor water-bearing zones. Available data indicates that all of these aquifers contain water with less than 10,000 milligrams per liter of total dissolved solids and therefore meet the definition of underground sources of drinking water (USDW's).

Most of the aquifers in question serve as the injection zone for enhanced recovery wells, and by their nature, are hydrocarbon producing zones. To the best of our knowledge, the formations are not now used as sources of drinking water, and because of their hydrocarbon content are not expected to be used for these purposes in the future.

Exemptions are being made for the entire oil and gas fields affected. This will allow for construction of additional Class II injection wells within the exempted areas without the need for future exemptions (although other program requirements, including permitting, must be adhered to). However, the exemptions are limited to the intended injection formations, and to Class II injection.

These exemptions will become effective 30 days after publication of the final rule in the **Federal Register**. Public comment is invited, particularly if

information is available to show that any of the formations being exempted are currently serving as sources of drinking water, or if there is other current injection activity into underground sources of drinking water where exemptions are not proposed.

**Request for Comment**

EPA requests comment on its proposal to extend the Federal UIC program to currently unregulated Indian lands. Please note that while comments on the applicability of the generic Federal regulations to these Indian lands are timely, comments on the generic provisions themselves will not be accepted. EPA is particularly interested in knowing which other Indian Tribes may need special programs, and which are contemplating applying for primary enforcement responsibility. If Tribes request additional special programs during the comment period, EPA intends nevertheless, to promulgate the generic Federal program for their lands, to provide regulation while such programs are researched and developed.

**Office of Management and Budget Review**

The Administrator has determined that this is not a major regulation under the terms of E.O. 12291 and does not require a regulatory impact analysis. This proposal would extend to a very small number of wells the Federal regulations already judged not to be major, even when applied to all injection wells in the country. However, this regulations was submitted to OMB for review as required by Executive Order 12291.

The original proposal for the generic Federal program concluded that the Federal UIC program would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 605(b)). The extension of those generic regulations to a very few owners and operators, of whom only some are "small entities", will not change the original assessment.

All wells on Indian lands were included in the original approval by OMB of information collection provisions in the generic regulations. However, the original approval will expire soon. The wells covered by this proposal are included in a new, comprehensive ICR package that is being prepared. Submission of that package to OMB will be announced in the **Federal Register** and interested parties will have an opportunity to comment on it at that time. Comment will be discussed in the preamble to the final UIC Indian lands regulations.

**List of Subjects in 40 CFR Part 147**

Indian lands, Underground Injection.

Dated: April 24, 1987.

**Lee M. Thomas,**

*Administrator.*

For these reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 147 is proposed to be revised to read as follows:

**Authority:** Safe Drinking Water Act (42 U.S.C. 300h) as amended; and the Resource Conservation and Recovery Act as amended (42 U.S.C. 6901 *et seq.*) unless otherwise noted.

2. 40 CFR Part 147, Subpart B—*Alabama*, is proposed to be amended by revising §§ 147.50 introductory text, and 147.51 introductory text and by adding § 147.60 to read as follows:

**§ 147.50 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of Alabama, except those on Indian lands, is the program administered by the State Oil and Gas Board of Alabama, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

**§ 147.51 State-administered program—Class I, III, IV and V wells.**

The UIC program for Class I, III, IV and V wells in the State of Alabama, except those on Indian lands, is the program administered by the Alabama Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.60 EPA-administered program—Indian land.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Alabama is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Alabama is (30 days after publication of the final rule in the **Federal Register**).

3. Subpart D—Arizona is proposed to be amended by revising § 147.151 to read as follows:

**§ 147.151 EPA-administered program.**

The UIC program for the State of Arizona is administered by EPA.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on all Indian lands, is administered by EPA. The UIC program for Navajo lands consists of the requirements contained in Subpart HHH of this Part. The program for all injection activity, except that on Navajo Indian lands, consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective Dates.* The effective date for the UIC program in Arizona, except for the lands of the Navajo Indians, is June 25, 1984. The effective date for the UIC program on the lands of the Navajo is (30 days after publication of the final rule in the **Federal Register**).

4. Subpart E—Arkansas is proposed to be amended by revising § 147.200 introductory text, and by adding § 147.205 to read as follows:

**§ 147.200 State-administered program—Class I, III, IV and V wells.**

The UIC program for Class I, III, IV and V wells in the State of Arkansas, except those wells on Indian lands, is the program administered by the Arkansas Department of Pollution Control and Ecology approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.205 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Arkansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Arkansas is (30 days after publication of the final rule in the **Federal Register**).

5. Subpart H—Connecticut is proposed to be amended by adding a new § 147.353 to read as follows:

**§ 147.353 EPA-administered program.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Connecticut is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners

and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Connecticut is (30 days after publication of the final rule in the **Federal Register**).

6. Subpart I—Delaware is proposed to be amended by adding a new § 147.403 to read as follows:

**§ 147.403 EPA-administered program.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Delaware is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Delaware is (30 days after publication of the final rule in the **Federal Register**).

7. In Subpart J—District of Columbia, § 147.451 is proposed to be revised to read as follows:

**§ 147.451 EPA-administered program.**

(a) *Contents.* The UIC program for the District of Columbia including any Indian lands in the District, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in the District of Columbia is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program in the rest of the District is June 25, 1984.

8. In Subpart K—Florida, § 147.500 introductory text, and § 147.501 are proposed to be revised to read as follows:

**§ 147.500 State-administered program—Class, I, III, IV and V wells.**

The UIC program for Class I, III, IV, and V wells in the State of Florida, except those on Indian lands, is the program administered by the Florida Department of Environmental Regulations, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.501 EPA-administered program—Class II wells and Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the State of Florida is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Florida is (30 days after publication of the final rule in the **Federal Register**). The effective date for Class II wells on non-Indian lands is December 30, 1984.

9. Subpart L—Georgia is proposed to be amended by adding a new § 147.553 to read as follows:

**§ 147.553 EPA-administered program.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Georgia is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Georgia is (30 days after publication of the final rule in the **Federal Register**).

10. In Subpart M—Hawaii, § 147.601 is proposed to be revised to read as follows:

**§ 147.601 EPA-administered program.**

(a) *Contents.* The UIC program for the State of Hawaii,including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Hawaii is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program for all other lands in Hawaii is December 30, 1984.

11. In Subpart O—Illinois, §§ 147.700 introductory text, and 147.701 introductory text, are proposed to be revised and § 147.703 is proposed to be added to read as follows:

**§ 147.700 State-administered program—Class I, III, IV and V Wells.**

The UIC program for Class I, III, IV and V wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to Section 1422 of the SDWA.

* * * * *

**§ 147.701 State-administered program—Class II Wells.**

The UIC program for Class II wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to Section 1425 of the SDWA.

* * * * *

**§ 147.703 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for the State of Illinois on Indian lands in Illinois is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for Indian lands is (30 days after publication of the final rule in the **Federal Register**).

12. In Subpart P—Indiana, § 147.751 is proposed to be revised to read as follows:

**§ 147.751 EPA-administered program.**

(a) *Contents.* The UIC program for the State of Indiana, including all Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**). The effective date of the UIC program for the rest of Indiana is June 25, 1984.

13. In Subpart S—Kentucky, § 147.901 is proposed to be revised to read as follows:

**§ 147.901 EPA-administered program.**

(a) *Contents.* The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program in the remainder of Kentucky is June 25, 1984.

14. Subpart T—Louisiana is proposed to be amended by adding a new § 147.951 to read as follows:

**§ 147.951 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Louisiana is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Louisiana is (30 days after publication of the final rule in the **Federal Register**).

15. Subpart U—Maine is proposed to be amended by revising the introductory text of § 147.1000 and by adding a new § 147.1001 to read as follows:

**§ 147.1000 State-administered program.**

The UIC program for Class I, II, III, IV and V wells in the State of Maine, except those on Indian lands, is the program administered by the Maine Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.1001 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Maine is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Maine is (30 days after publication of the final rule in the **Federal Register**).

16. Subpart V—Maryland is proposed to be amended by adding a new § 147.1053 as follows:

**§ 147.1053 EPA-administered program.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Maryland is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Maryland is (30 days after publication of the final rule in the **Federal Register**).

17. Subpart W—Massachusetts is proposed to be amended by revising the introductory text of § 147.1100 and by adding a new § 147.1101 to read as follows:

**§ 147.1100 State-administered program.**

The UIC program for Class I, II, III, IV and V wells in the State of Massachusetts, except those on Indian lands, is the program adminjstered by the Massachusetts Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.1101 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Massachusetts is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Massachusetts is (30 days after publication of the final rule in the **Federal Register**).

18. Subpart Z—Mississippi is proposed to be amended by revising § 147.1250 introductory text, and § 147.1251 to read as follows:

**§ 147.1250 State-administered program—Class I, III, IV and V wells.**

The UIC program for Class I, III, IV and V wells in the State of Mississippi, except those on Indian lands, is the program administered by the Mississippi Department of Natural Resources, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.1251 EPA-administered program—Class II wells and Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on all lands in Mississippi is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Class II wells in Mississippi is December 30, 1984. The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**).

19. Subpart AA—Missouri is proposed to be amended by revising the introductory text of § 147.1300 and by adding a new § 147.1303 to read as follows:

**§ 147.1300 State-administered program.**

The UIC program for all classes of wells in the State of Missouri, except those on Indian lands, is administered by the Missouri Department of Natural Resources, approved by EPA pursuant to section 1422 and 1425 of the SDWA.

* * * * *

**§ 147.1303 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for the State of Missouri for all classes of wells on Indian lands is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for Indian lands is (30 days after publication of the final rule in the **Federal Register**).

20. Subpart EE—New Hampshire is proposed to be amended by revising the introductory text of § 147.1500 and by adding a new §147.1501 to read as follows:

**§ 147.1500 State-administered program.**

The UIC program for Class I, II, III, IV and V wells in the State of New Hampshire, except those on Indian lands, is the program administered by the New Hampshire Water Supply and Pollution Control Commission, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.1501 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Hampshire is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and

EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Hampshire is (30 days after publication of the final rule in the Federal Register).

21. Subpart FF—New Jersey is proposed to be amended by revising the introductory text of § 147.1550 and by adding a new § 147.1551 to read as follows:

**§ 147.1550 State-administered program.**

The UIC program for Class I, II, III, IV and V wells in the State of New Jersey, except those on Indian lands, is the program administered by the New Jersey Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.1551 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Jersey is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Jersey is (30 days after publication of the final rule in the Federal Register).

22. Subpart GG—New Mexico is proposed to be amended by revising the introductory text of §§ 147.1600 and 147.1601 and by adding a new § 147.1603 to read as follows:

**.§ 147.1600 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Energy and Minerals Department, Oil Conservation Division, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

**§ 147.1601 State administered program—Class I, III, IV and V wells.**

The UIC program for Class I, III, IV and V injection wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Water Quality Control Commission, the Environmental Improvement Division, and the Oil Conservation Division, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.1603 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Mexico is administered by EPA. The program consists of the requirements set forth at Subpart HHH of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in New Mexico is (30 days after publication of the final rule in the Federal Register).

23. Subpart HH—New York is proposed to be amended by revising § 147.1651 and removing § 147.1660 as follows:

**§ 147.1651 EPA-administered program.**

The UIC program for the State of New York, including all Indian lands, is administered by EPA.

(a) *Contents.* The UIC program that applies to all injection activities in New York, including Indian lands, consists of the UIC program requirements in 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for New York for all injection activities except those on lands of the Seneca Indian Tribe is June 25, 1984. The effective date for the UIC program for the lands of the Seneca Indian Tribe is (30 days after publication of the final rule in the Federal Register).

**§147.1660 [Removed]**

24. Subpart II—North Carolina is proposed to be amended by adding a new §147.1703 to read as follows:

**§ 147.1703 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in North Carolina is administered by EPA. This program consists of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in North Carolina is (30 days after publication of the final rule in the Federal Register).

25. Subpart JJ—North Dakota is proposed to be amended by revising the introductory text of §147.1750 and by adding to §147.1752 as follows:

**§ 147.1750 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Industrial Commission, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

**§ 147.1752 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in North Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and opertors and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in North Dakota is (30 days after publication of the final rule in the Federal Register).

26. Subpart KK—Ohio is proposed to be amended by revising the introductory text of § 147.1800 and by adding a new § 147.1805 to read as follows:

**§ 147.1800 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of Ohio, except for those on Indian lands, is the program administered by the Ohio Department of Natural Resources, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

**§ 147.1805 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Ohio is adminstered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Ohio is (30 days after publication of the final rule in the Federal Register).

27. Subpart LL—Oklahoma is proposed to be amended by revising §§ 147.1850 introductory text, 147.1851 introductory text, and § 147.1852 to read as follows:

**§ 147.1850 State-administered program—Class I, III, IV and V wells.**

The UIC program for Class I, III, IV, and V wells in the State of Oklahoma, except those on Indian lands, is the program administered by the Oklahoma State Department of Health, approved by EPA pursuant to SDWA section 1422.

* * * * *

**§ 147.1851 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of Oklahoma, including the lands of the Five Civilized Tribes, but not including those on other Indian lands, is the program administered by the Oklahoma Corporation Commission approved by EPA pursuant to SDWA section 1425.

* * * * *

**§ 147.1852 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the lands of the Five Civilized Tribes, is administered by EPA. The UIC program for Class II wells on the Osage Mineral Reserve consists of the requirements set forth in Subpart GGG of this part. The UIC program for all other wells on Indian lands consists of the requirements set forth in Subpart III of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for UIC program for Class II wells on the Osage Mineral Reserve is December 30, 1984. The effective date for the UIC program for all other wells on Indian lands is (30 days after publication of the final rule in the **Federal Register**).

28. Subpart MM—Oregon is proposed to be amended by revising the introductory text of § 147.1900 and by adding a new § 147.1901 to read as follows:

**§ 147.1900 State-administered program—Class I, II, III, IV and V wells.**

The UIC program for Class I, II, III, IV, and V wells in Oregon, except those on Indian lands, is administered by the Oregon Department of Environmental Quality, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.1901 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Oregon is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Oregon is (30 days after publication of the final rule in the **Federal Register**).

29. In Subpart NN—Pennsylvania, § 147.1951 is proposed to be revised to read as follow:

**§ 147.1951 EPA-administered program.**

(a) *Contents.* The UIC program for the State of Pennsylvania, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program for the rest of Pennsylvania is June 25, 1984.

30. Subpart OO—Rhode Island is proposed to be amended by revising the introductory text of § 147.2000 and by adding a new § 147.2001 to read as follows:

**§ 147.2000 State-administered program—Class I, II, III, IV, and V wells.**

The UIC program for Class I, II, III, IV and V wells in Rhode Island, except those on Indian lands, is the program administered by the Rhode Island Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.2001 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Rhode Island is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Rhode Island is (30 days after publication of the final rule in the **Federal Register**).

31. Subpart PP—South Carolina is proposed to be amended by revising the introductory text of § 147.2050 and by adding a new § 147.2051 to read as follows:

**§ 147.2050 State-administered program—Class I, II, III, IV and V wells.**

The UIC program for Class I, II, III, IV, and V wells in the State of South Carolina, except for those on Indian lands, is the program administered by the South Carolina Department of Health and Environmental Control, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.2051 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in South Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in South Carolina is (30 days after publication of the final rule in the **Federal Register**).

32. In Subpart RR—Tennessee, § 147.2151 is proposed to be revised to read as follows:

**§ 147.2151 EPA-Administered program.**

(a) *Contents.* The UIC program for the State of Tennessee, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and the additonal requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* Effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the **Federal Register**). The effective date for the UIC program for the rest of Tennessee is June 25, 1984.

33. Subpart SS—Texas is proposed to be amended by revising § 147.2200 introductory text and § 147.2201 introductory text, and by adding a new § 147.2205 to read as follows:

**§ 147.2200 State-administered program—Class I, III, IV and V wells.**

*Requirements for Class I, III, IV, and V wells.* The UIC program for Class I, III, IV and V wells in the State of Texas, except for those wells on Indian lands, is the State-administered program approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

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**§ 147.2201 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of Texas, except for those wells on Indian lands, is the program administered by the Railroad Commission of Texas, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

**§ 147.2205 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Texas is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the Indian lands program for the State of Texas is (30 days after publication of the final rule in the Federal Register).

34. Subpart TT—Utah is proposed to be amended by revising § 147.2250 introductory text, and § 147.2251 introductory text, and by adding a new § 147.2253 to read as follows:

**§ 147.2250 State-administered program—Class I, III, IV, and V wells.**

The UIC program for Class I, III, IV and V wells in the State of Utah, except those on Indian lands, are administered by the Utah Department of Health, Division of Environmental Health, approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.2251 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of Utah, except those on Indian lands, is the program administered by the Utah Department of Natural Resources, Division of Oil, Gas, and Mining, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

**§ 147.2253 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Utah is administered by EPA. The program for wells on the lands of the Navajo and Ute Mountain Ute consists of the requirements set forth at Subpart HHH of this part. The program for all other wells on Indian lands consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the program of the Navajo and Ute Mountain Ute is (30 days after publication of the final rule in the Federal Register). The effective date for the UIC program on other Indian lands is (30 days after publication of the final rule in the Federal Register).

35. Subpart UU—Vermont is proposed to be amended by revising the introductory text § 147.2300 and by adding a new § 147.2303 to read as follows:

**§147.2300 State-administered program.**

The UIC program for Class I, II, III, IV, and V wells for the State of Vermont, except for those on Indian lands, is the program administered by the Vermont Department of Water Resources and Environmental Engineering approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§147.2303 EPA-Administered program—Indian lands.**

(a) *Contents.* The UIC program for Indian lands in Vermont is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Vermont is (30 days after publication of the final rule in the Federal Register.

36. In Subpart VV—Virginia, § 147.2351 is proposed to be revised to read as follows:

**§147.2351 EPA-administered program.**

(a) *Contents.* The UIC program for the State of Virginia, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is (30 days after publication of the final rule in the Federal Register). The effective date for the UIC program for the remainder of Virginia is June 25, 1984.

37. Subpart WW—Washington is proposed to be amended by adding new §§ 147.2403 and 147.2404 as follows:

**§147.2403 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Washington is administered by EPA. This program, for all Indian lands except those of the Colville Tribe, consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for Indian lands in Washington is (30 days after publication of the final rule in the Federal Register).

**§147.2404 EPA-administered program—Colville Reservation.**

The UIC program for the Colville Indian Reservation consists of a prohibition of all Class I, II, III and IV injection wells and of a program administered by EPA for Class V wells. This program consists of the UIC program requirements of 40 CFR Part 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements. The prohibition on Class I–IV wells is effective (30 days after publication of the final rule in the Federal Register). No owner or operator shall construct, operate, maintain, convert, or conduct any other injection activity thereafter using Class I–IV wells.

(b) Owners and operators of Class I, II, III, or IV wells in existance on the effective date of the program shall cease injection immediately. Within 60 days of the effective date of the program the owner or operator shall submit, for the Director's approval, a plan and schedule for plugging and abandoning the well. The owner or operator shall plug and abandon the well according to the approved plan and schedule.

38. Subpart XX—West Virginia is proposed to be amended by adding a new § 147.2453 as follows:

**§147.2453 EPA-administered program.**

(a) *Contents.* The UIC program for all classes of wells on Indian lands in West Virginia is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in

West Virginia is (30 days after publication of the final rule in the Federal Register).

39. Subpart ZZ—Wyoming is proposed to be amended by revising the introductory text of sections 147.2550 and 147.2551 and by adding a new § 147.2553 and § 147.2554 to read as follows:

**§ 147.2550 State-administered program—Class I, III, IV and V wells.**

The UIC program for Class I, III, IV and V wells in the State of Wyoming, except those on Indian lands, is the program administered by the Wyoming Department of Environmental Quality approved by EPA pursuant to section 1422 of the SDWA.

* * * * *

**§ 147.2551 State-administered program—Class II wells.**

The UIC program for Class II wells in the State of Wyoming, except those on Indian lands, is the program administered by the Wyoming Oil and Gas Conservation Commission, approved by EPA pursuant to section 1425 of the SDWA.

* * * * *

**§ 147.2553 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for Indian lands in Wyoming is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in Wyoming is (30 days after publication of the final rule in the Federal Register).

**§ 147.2554 Aquifer Exemptions.**

In accordance with § 144.7(b) and § 146.4 of this chapter, those portions of aquifers currently being used for injection in connection with Class II (oil and gas) injection operations on the Wind River Reservation, which are described below, are hereby exempted for the purpose of Class II injection activity. This exemption applies only to the aquifers tabulated below, and includes those portions of the aquifers defined on the surface by an outer boundary of those quarter-quarter sections dissected by a line drawn parallel to, but one-quarter mile outside, the field boundary, and is restricted to extend no further than one-quarter mile outside the Reservation boundary. Maps showing the exact boundaries of the fields may be consulted at the EPA's Region 8 Office, and at the EPA Headquarters in Washington, D.C.

| Oil or gas field | Associated reservoirs |
|---|---|
| Circle Ridge | Phosphoria, Tensleep, and Darwin Sandstone. |
| Lander | Phosphoria. |
| Maverick Springs | Phosphoria. |
| East Riverton Dome | Nugget and Frontier. |
| Steamboat Butte | Nugget, Phosphoria, and Tensleep. |
| Winkleman Dome | Nugget, Phosphoria and Tensleep. |
| Sheldon Dome (New Sheldon) | Crow Mountain, Cloverly. |
| Rolff Lake | Crow Mountain. |

40. Subpart AAA—Guam is proposed to be amended by revising the introductory text of § 147.2600 and by adding a new § 147.2601 to read as follows:

**§ 147.2600 State-administered program.**

The UIC program for Class I, II, III, IV, and V wells in the territory of Guam, except those on Indian lands, is the program administered by the Guam Environmental Protection Agency, approved by EPA pursuant to SDWA section 1422.

* * * * *

**§ 147.2601 EPA-administered program—Indian lands.**

(a) *Contents.* The UIC program for Indian lands in the territory of Guam is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in the territory of Guam is (30 days after publication of the final rule in the Federal Register).

41. Subpart BBB—Puerto Rico is proposed to be amended by revising § 147.2651 to read as follows:

**§ 147.2651 EPA-administered program.**

(a) *Contents.* The UIC program for Puerto Rico, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date of the UIC program for non-Indian lands in Puerto Rico is December 30, 1984. The effective date of the UIC program on Indian lands in Puerto Rico is (30 days after publication of the final rule in the Federal Register).

42. Subpart CCC—Virgin Islands is proposed to be amended by revising § 147.2701 to read as follows:

**§ 147.2701 EPA-administered program.**

(a) Contents. The UIC program for the Virgin Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective date.* The effective date of the UIC program for non-Indian lands in the Virgin Islands is December 30, 1984. The effective date for Indian lands in the Virgin Islands is (30 days after publication of the final rule in the Federal Register).

43. Subpart DDD—American Samoa is proposed to be amended by revising § 147.2751 to read as follows:

**§ 147.2751 EPA-administered program.**

(a) *Contents.* The UIC program for American Samoa, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date for the UIC program on non-Indian lands is June 25, 1984. The effective date of the UIC program on Indian lands is (30 days after publication of the final rule in the Federal Register).

44. Subpart EEE—Commonwealth of the Northern Mariana Islands is proposed to be amended by revising § 147.2801 to read as follows:

**§ 147.2801 EPA-administered program.**

(a) *Contents.* The UIC program for the Commonwealth of the Northern Mariana Islands, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date of the UIC program for the non-Indian lands in the Commonwealth of the Northern Mariana Islands is June 25, 1984. The effective date for Indian lands is (30 days after publication of the final rule in the Federal Register).

45. Subpart FFF—Trust Territory of the Pacific Islands is proposed to be amended by revising § 147.2851 to read as follows:

**§ 147.2851 EPA-administered program.**

(a) *Contents.* The UIC program for the Trust Territory of the Pacific Islands, including Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands of the Trust Territory of the Pacific Islands is June 25, 1984. The effective date for the Indian lands is [30 days after publication of the final rule in the Federal Register].

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Part IV

# Environmental Protection Agency

**40 CFR Part 147**

**Underground Injection Control Programs for Certain Indian Lands; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL 3150-2]

## Underground Injection Control Programs for Certain Indian Lands

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing federally-administered Underground Injection Control (UIC) programs for the Navajo Indian lands, Ute Mountain Ute Indian lands, and other Indian lands in New Mexico and Oklahoma as part of its mandate to regulate all underground injection activity in the United States. These programs are based on the Federal program, but contain some additions and modifications. Elsewhere in today's **Federal Register**, the Agency is proposing Underground Injection Control programs for all other Indian lands not already covered by an applicable UIC program. Together these actions propose to regulate all injection wells on Indian lands in order to protect underground sources of drinking water. Today's notice does not propose procedures by which Indian Tribes may apply for primary enforcement responsibility. That issue will be addressed later.

**DATES:** Comments must be submitted on or before (July 10, 1987). Five public hearings will be held:

1. June 17, 1987, 7:00 p.m., Oklahoma City, Oklahoma.
2. June 18, 1987, 7:00 p.m., Tulsa, Oklahoma.
3. June 23, 1987, 7:00 p.m., Farmington, New Mexico.
4. June 24, 1987, 1:00 p.m., Window Rock, Arizona.
5. June 25, 1987, 7:00 p.m., Albuquerque, New Mexico.

**ADDRESSES:** Comments may be mailed to Judy Long, Comment Clerk, Underground Injection Control Branch, State Programs Division, Office of Drinking Water (WH-550E) EPA, 401 M Street SW., Washington, DC 20460. (202) 382-5594. The record is available for inspection and copying in Room 1143ET at the same address.

The hearings will be held at the following locations:

1. Oklahoma City—Jim Thorpe Office Building, Room 301, 2101 N. Lincoln Boulevard.
2. Tulsa, Oklahoma—State Office Building, Auditorium, 440 South Houston Street.
3. Farmington—Farmington Civic Center, Room C.
4. Window Rock—Navajo Training Center.
5. Albuquerque—Albuquerque Convention Center, Acoma Room.

**FOR FURTHER INFORMATION CONTACT:** Donald M. Olson, Underground Injection Control Branch, State Programs Division, Office of Drinking Water, EPA. (WH-550E) 401 M Street SW., Washington, DC 20460. (202) 382-5558.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Safe Drinking Water Act (SDWA) authorizes EPA to regulate underground injection activity on all lands in the United States, including Indian lands. (EPA has adopted the definition of Indian country in 18 U.S.C. 1151, as the definition of Indian lands for the UIC program. It is set forth in full at 40 CFR 144.3). The 1986 Amendments to the SDWA specifically directed EPA to promulgate by March 1987 a Federal UIC program for all Indian lands not already covered by an applicable UIC program.

EPA has promulgated or proposed the "generic" Federal program contained in 40 CFR Parts 124, 144 and 146 for most Indian lands. This is the same program that EPA administers on non-Indian lands in many States.

A few Indian Tribes expressed interest in requirements that differ somewhat from the generic Federal ones, and development of the provisions has advanced sufficiently to propose them today as part of the program for these Indian lands.

The SDWA and its regulations allow flexibility to respond to the unique conditions and needs of Indian Tribes, and EPA policy encourages such accommodation. The SDWA sets forth only very general criteria for establishing UIC programs. The criteria apply equally to Federally-administered and State-administered programs (42 U.S.C. 300h-1(c)). In prescribing a program for Indian lands, as for any UIC program, the Administrator must:

(1) Effectively prevent endangerment of drinking water sources;

(2) Prohibit unauthorized injection;

(3) Require the applicant for a permit to prove it will not endanger underground drinking water sources and not authorize by rule any injection which endangers underground drinking water sources;

(4) Include in the program provisions for inspection, monitoring, recordkeeping, and reporting;

(5) Apply the program to Federal agencies and to all persons; and

(6) Not interfere with or impede oil or natural gas production unless essential to assure protection of underground sources of drinking water.

The SDWA encourage "consideration of varying geologic, hydrologic, or historical conditions in different States and in different areas within a State."

The regulations containing criteria for State programs (at 40 CFR Part 145) allow provisions in State programs to differ from the generic Federal provisions, so long as they are at least as stringent. The 1986 amendments to the SDWA authorize the Administrator to treat Indian Tribes as States (section 1451 SDWA). EPA believes that the Administrator has authority to enact UIC programs for Indian lands which differ from, but are not less stringent than the Federal program.

The EPA Indian Policy, issued November 8, 1984, committed the Agency to deal with Indian Tribes on a government-to-government basis, and to assist them in developing the capability to manage their own environmental programs. Application of this policy to the UIC program has been discussed in preambles to several regulations and partially codified at 40 CFR 144.2.

### II. Development of this proposal

In **Federal Register** notices on September 2, 1983 and May 11, 1984, EPA discussed four options for developing Federally-administered programs on Indian lands. There were:

(1) EPA would implement a program consisting of the current Underground Injection Control (UIC) minimum requirements (40 CFR Parts 124, 144, and 146), with perhaps a few requirements tailored to the specific jurisdiction;

(2) EPA would implement a program essentially consisting of the requirements currently in place in the State-administered program approved by EPA for the State in which the Indian lands were located (as long as such requirements did not conflict with or go beyond EPA authority under the SDWA or other Federal law);

(3) EPA would implement a program consisting of a combination of requirements from the Federal UIC regulations and requirements of the approved program of the State in which the Indian lands are located; or

(4) EPA would implement a program different from both the Federal UIC regulations and the approved State program, containing requirements that responded to concerns and wishes of the affected tribal government. If the program to be implemented on Indian lands were substantially different from both the approved State program and

the Federal regulations, a supplemental proposal would be published.

In the fall of 1983, EPA conducted public hearings on these four options. Industry responded in favor of option 2 as did the Bureau of Indian Affairs (BIA) for the Navajo Nation. There was particular concern about the regulatory problems which might arise if differing State and Federal regulations were applied in areas of mixed Indian and non-Indian ownership of small parcels of land (referred to as "checkerboard"). The Navajo Nation requested a single program for the entire reservation dealing with its special needs, including some requirements from the New Mexico State program. The Ute Mountain Utes requested a program for Class II injection wells similar to the Navajos because of an enhanced recovery project spanning the two reservations. Several of the Oklahoma Tribes were mainly concerned about being informed about permit issuance and other actions affecting their lands. Today's proposal incorporates requirements from both the Federal program and the New Mexico and Oklahoma programs with a few additional provisions responding to the concerns of the Indians.

The Agency conducted meetings in the fall of 1985 with affected tribes, the Bureau of Land Management (BLM), the Bureau of Indian Affairs (BIA), and the States of New Mexico and Oklahoma to solicit preliminary comments. EPA held a followup meeting with the Navajo during the summer of 1986.

## III. Scope

Today's proposal consists of two tailored programs. One covers all wells on the Navajo Indian lands, Class II wells on the Ute Mountain Ute Indian lands in Colorado, and all wells on Ute Mountain Ute lands in Utah and all wells on the Ute Mountain Ute and other Indian lands in New Mexico. The lands of the Navajo extend into the States of New Mexico, Utah, and Arizona, areas covered by EPA Regions VI, VIII and IX. The lastest inventory of wells on Navajo Indian lands indicates there is a total of 604 Class II wells (374 in Utah, 226 in New Mexico, and four in Arizona), 90 Class III wells (all in New Mexico) and two Class V wells (both in New Mexico).

The Ute Mountain Ute lands extend into the States of New Mexico, Colorado and Utah, EPA Regions VI and VIII. There are 15 Class II wells on Ute Mountain Ute lands (12 in New Mexico and three in Colorado). EPA is currently administering the generic Federal program for non-Class II wells on the lands of the Ute Mountain Ute in Colorado.

The remainder of the existing injection wells in New Mexico on Indian lands are three Class II wells on the Jicarilla Indian Reservation and three Class V wells on the Laguna Indian Reservation.

The second tailored program applies to all classes of wells on all Indian lands in Oklahoma, except for Class II wells on the Osage Mineral Reserve in Osage County and Class II wells on the lands of the Five Civilized Tribes (Choctaw, Cherokee, and Chickasaw, Creek and Seminole). The Class II program for the Osage Mineral Reserve was promulgated on November 15, 1984, and may be found at 40 CFR 147 Subpart GGG. The Class II program on the lands of the Five Civilized Tribes was promulgated on December 2, 1981, as part of the State-administered program. (40 CFR 147, Subpart LL).

The lastest inventory indicates that there are one Class I well and 194 Class II wells on the Indian lands in Oklahoma covered by this proposal. The wells are located on lands of 13 of the 33 tribes.

## IV. Request for Comment

Today, EPA seeks comments not only on those provisions which deviate from the generic Federal program but also on whether other requirements might better suit the needs of the Indian tribes and reflect the local geological, hydrologic and historic conditions on these lands. Please note that EPA is requesting comment only on the applicability of the Federal generic provisions to these Indian lands. Discussion of the Federal generic provisions themselves are no longer timely.

## V. Program Contents—Provisions of the Navajo, Ute Mountain Ute, and New Mexico Indian Lands Program

The program for the Navajo, Ute Mountain Ute, and New Mexico Indian lands incorporates the Federal UIC program codified at 40 CFR Parts 124, 144 and 146 with certain additional requirements described below. Many of these additions fall within the discretionary authority contained in the generic Federal regulations and thus do not expand the scope of generic regulations. Some additions are requirements that have been included in other Direct Implementation programs or in EPA-approved State programs.

### *A. Public Notice of Permit Actions (§ 147.3002)*

This proposal would require actual, individual notification of an owner or operator's intent to apply for a UIC permit to landowners, tenants and lease operators within one-half mile of the well and to the affected Tribal Government. A permit applicant would be required to give the notice and would submit a detailed description of the way he gave notice with his application. In addition, EPA is proposing to provide to affected Tribal governments all notices given to "affected States" under § 124.10(c) of this chapter.

The generic Federal program does not require notice of intent to apply for a permit, but the State of New Mexico and other State and Federally-administered programs include similar notice provisions because they have been found to be effective in soliciting public comment in rural areas. EPA is contemplating incorporating the additional notice to Tribal Governments into the generic regulations because it is in keeping with the 1986 Amendments (new § 1451 of the SDWA) and will help foster meaningful participation by the Tribes.

### *B. Aquifer Exemptions (§ 147.3003(a))*

The SDWA protects all underground sources of drinking water, whether or not specifically designated as such. The regulations define "underground source of drinking water" very broadly as: an aquifer which supplies or has sufficient capacity to supply a public water system; and either currently supplies drinking water for human consumption, or contains less than 10,000 mg/1 TDS; and is not an exempted aquifer. Under existing regulations, EPA may exempt from the UIC program aquifers which have the capacity to supply public water systems and contain less than 10,000 mg/1 TDS if they do not now and could not in the future serve as a source for a public water supply for one of the reasons recognized in the regulations (40 CFR 146.4). Owners and operators of injection wells may inject into an exempted aquifer.

EPA has information that some Class II wells, particularly enhanced recovery wells, are currently injecting into aquifers with less than 10,000 TDS water. Most of these aquifers will probably qualify for exempted aquifer status. However, unless the Agency designates them as exempted aquifers, injection into them becomes illegal on the day the UIC program takes effect. It is EPA's intent to exempt the appropriate portions of some aquifers at the time of promulgation of the UIC program so that appropriate injection operations may continue without disruption.

As in any UIC program, aquifer exemptions may be obtained in one of the following ways:

(1) The Agency is proposing exemptions for portions of some aquifers as part of this rulemaking;

(2) Operators may request additional exemptions during the comment period on this proposal which will be considered under the criteria contained in 40 CFR 146.4;

(3) New wells may necessitate additional aquifer exemptions appropriate after program promulgation. Owners and operators may apply for them using established Agency procedures.

The proposed exemptions are limited to the injection formation only and for Class II purposes only. Some of the aquifer exemptions that EPA is proposing are at a great depth, an average of 5,400 feet. The aquifers in question serve as the injection zone for enhanced recovery wells, and by their nature, are hydrocarbon producing zones. To the best of our knowledge, the formations are not now used as sources of drinking water, and because of their hydrocarbon content are not expected to be used for these purposes in the future.

EPA is proposing to exempt qualified portions of aquifers within one-quarter mile of known active Class II wells. If a well owner or operator wishes EPA to exempt an entire field, he must submit a justification for such an exemption during the comment period on this proposal. Alternatively, he may submit such data in the future when a permit application is submitted for new wells in that field. A complete listing of the exemptions and their locations is available for review at the EPA Regional offices in Denver, Dallas, and San Francisco; at the Bureau of Land Management Offices in Farmington and Albuquerque, New Mexico; and at the Navajo Division of Water Resources Office in Window Rock, Arizona. Owners and operators are encouraged to check the maps and lists to be sure that all of their existing wells are shown. EPA requests any information indicating that portions of these aquifers do not qualify for exemptions or that the formations listed are not USDWs, and thus, do not need exemptions.

*C. Aquifer Cleanup (§ 147.3003(b) and § 147.3011)*

The generic Federal program requires owners and operators of Class III wells which are in or under an exempted aquifer to demonstrate that the plugging and abandonment plan will protect underground sources of drinking water (USDWs). The Director of a UIC program must prescribe "aquifer clean-up and monitoring where he deems it necessary and feasible to insure adequate protection of USDWs." (§ 146.10(d)). This means that the mined area must be cleaned up after cessation of mining to the point that contaminants from mining operations will not endanger the surrounding USDWs.

Under today's proposed program, EPA would require clean-up and monitoring for every Class III project located in or under an exempted aquifer of 5,000 milligrams per liter (mg/1) total dissolved solids (TDS) or less as needed to protect surrounding USDWs. The Director would continue to be able to use the discretion granted in § 146.10(d) in deciding whether to require clean-up and monitoring for Class III projects in or under aquifers of 5,000—10,000 mg/1 TDS.

The scarce water in this arid region is very valuable and justifies this higher level of protection, which has been specifically requested by the affected Tribes. All of the existing Class III projects covered by the proposed program are located on Indian lands in New Mexico and New Mexico is the most likely location for new Class III wells. The New Mexico State UIC program requires levels of protection equivalent to those in the proposed program. The feasibility of such clean-up has recently been demonstrated for the types of mining and geology likely to be covered by the program in projects in New Mexico and Texas.

EPA would prepare guidance on implementing this provision and solicits comments on both types of contaminants requiring cleanup and the extent of cleanup. EPA intends that pre-injection formation water quality would be measured by the applicant and used as the goal for the clean-up. The level of clean-up for each contaminant would be set in the permit, based as close to pre-injection formation water quality measurements as is feasible. The following list of contaminants, from New Mexico's program would be measured as appropriate in specific cases.

Arsenic (As)
Barium (Ba)
Cadmium (Cd)
Chromium (Cr)
Fluoride (F)
Lead (Pb)
Total Mercury (Hg)
Nitrate ($NO_3$ as N)
Selenium (Se)
Silver (Ag)
Carbon Tetrachloride
1,2-dichloroethane (EDC)
Nickel (Ni)
Uranium (U)
Radioactivity: Combined Radium-226 and Radium-228
Benzene
Polychlorinated Biphenyls (PCB's)
Toluene
1,1-dichloroethylene (1,1-DCE)
1,1, 2-2-tetrachloroethylene (PCE)
1,1, 2-trichloroethylene (TCE)
Chloride (Cl)
Copper (Cu)
Iron (Fe)
Manganese (Mn)
Phenols
Sulfate ($SO_4$)
Total Dissolved Solids (TDS)
Zinc (Zn)
pH
Aluminum (Al)
Boron (B)
Cobalt (Co)
Molybdenum (Mo)

If a permittee finds, after reasonable attempts, that an approved clean-up plan has proved to be infeasible to achieve in practice, he could document for the Director the attempt and failure to achieve contaminant levels set in the permit standards and request a modification of the clean-up standards through the procedures in 40 CFR 144.39 and 124.5.

In terms of procedures, EPA intends that the permittee would be required to submit a proposed schedule for clean-up to the Director for his approval at the time the permittee requests permission to plug and abandon the well (see § 146.34(c)). The owner or operator would continue clean-up and monitoring activity according to the clean-up schedule until notified by the Director that the conditions of his permit had been satisfied. The Director would base his decision on reports submitted by the operator and the results of water quality analyses. The permittee would have to notify the Director at least two weeks in advance of sampling dates and provide the opportunity for splitting samples with the Director.

After three consecutive sample sets (a "sample set" is one sample from each well designated in the permit) taken at a minimum of 30-day intervals, show that all constituents are at concentrations equal to or less than that required by the permit, the Director would allow the permittee to cease clean-up efforts. The permittee would be required to file with the Director a written report of the results of the analyses and a summary of clean-up efforts. After filing the report, sampling for all constituents listed in the permit would again be conducted at 30-day intervals for a minimum of three more sample sets and reported to the Director. (This makes a total of six sample sets). The Director

would determine within 120 days of receiving the sixth sample analysis whether or not clean-up has been achieved. Upon acknowledgement in writing by the Director of final clean-up, the permittee may cease all monitoring and clean-up activities in the affected area. EPA solicits comment on whether these procedures are appropriate.

*D. Duration of Rule Authorization for Class I and III Wells. (§ 147.3004, 3007(a))*

EPA is proposing that owners and operators of existing Class I and III wells submit permit applications no later than 90 days after the program becomes effective.

The generic Federal program contains a one-year deadline. The longer period was established for administrative reasons, as it was clearly impossible to process all of the Class I and III permits in direct implementation programs in a shorter time. However, there are no existing Class I wells covered by this proposed program, and only three Class III projects. In addition, owners and operators have already gathered most of the information for related submissions to State agencies. Therefore, the shorter period for permit application should not be a burden to owners and operators or to EPA.

*E. Additional Requirements for Wells Injecting Radioactive Waste (§ 147.3005 and § 147.3016)*

Under EPA's Federal program, wells which inject radioactive waste below the lower-most USDW in an area are Class V wells and we not currently subject to specific technical standards (40 CFR 146.51). The proposed provisions would continue to classify wells which inject radioactive waste as Class V, but would require them to comply with all requirements pertaining to Class I hazardous waste wells (under the authority of § 144.25(a)(3)). Among other things, this proposal would require owners and operators to obtain a permit before constructing a radioactive waste disposal well and to comply with Class I construction and operating standards and requirements. This addition is in accordance with Tribal desire for increased stringency in this area, and will maintain consistency with surrounding State UIC programs.

The definition of "radioactive waste" contained in 40 CFR 144.3 is unchanged, and refers to any waste which contains radioactive materials in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2. However, wells which inject high level and transuranic waste and spent nuclear fuel covered by 40 CFR Part 191 are excluded from these additional requirements. This proposed regulation in no way modifies or affects the application of 40 CFR 191 or otherwise affects the relationship of the SDWA and the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 *et seq.*) as they are being litigated in *National Resources Defense Council* v. *U.S. EPA*, No. 85–1915 and Cons. Case Nos. 86–1096, 86–1097, 86–1098 (1st Cir.). That case is still pending.

EPA is not aware of any existing wells injecting radioactive wastes beneath the Indian lands covered by this proposal. Any future radioactive waste disposal wells on Indian lands are expected to be associated with uranium mine sites.

*F. Maximum Injection Pressure Limit for Rule-Authorized Class II Salt Water Disposal Wells (§ 147.3006(a))*

Under the generic Federal regulations at 40 CFR 144.28(f)(3)(ii) and 40 CFR 146.23(a), the owner or operator is generally directed not to exceed whatever maximum pressure at the wellhead would assure that injection will not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDW.

EPA is proposing for this program a specific maximum surface injection pressure of 0.2 pounds per square inch (psi) for each foot of depth to the top of the injection zone for rule-authorized Class II salt water disposal wells on these Indian lands. This limit has been used for several years by the State of New Mexico and is considered by EPA to be a very conservative formula to prevent fracturing of the injection zone. For Class II wells in Utah, the maximum injection pressure allowed under the State-administered program is determined by the following equation: Maximum injection pressure = (.733 − .433 × specific gravity of injection fluid) × depth of injection. The equation proposed for use on Indian lands would require lower maximum injection pressures than the Utah program except where the TDS of the injected fluids exceed approximately 300,000 mg/l.This should not have a significant impact on operators. Use of the proposed formula will assure that maximum injection pressures do not exceed those currently in effect in the area, and because there is no necessity for calculation of fluid density or tubing frictional loss, it is easily administered by the regulatory agency and easily understood by the regulated community. Higher injection pressures may be granted under a permit, provided that the conditions of § 144.52(a)(3) are met.

*G. Maximum Injection Pressure for Enhanced Recovery and Hydrocarbon Storage Wells (§ 147.3006(b))*

For owners or operators of enhanced recovery and hydrocarbon storage wells, EPA proposed to require submission of formation-specific maximum injectin pressure values on a field or project basis as it has done for other Direct Implementation programs (see for example, § 147.1353 (Montana) or § 147.1654 (New York)). The Agency would then establish appropriate limits for formations or units based on this and other data. The establishment of such "field rules" for maximum injection pressure has been favored by EPA because fracture gradients may vary considerably within relatively small areas and usually cannot be accurately described by a single formula. Operators who wish to inject a higher pressure than those set for the formation and field must demonstrate in writing to the Director that the higher pressure will not initiate new fractures, propagate existing fractures or cause the movement of fluid into a USDW. After an opportunity for a public hearing and public comment, the Director may grant the request for higher pressure.

*H. Information to be Considered in Permit Applications (§ 147.3007(b), § 147.3013, and § 147.3015)*

The proposal specifies that certain information would have to be submitted with permit applications in addition to that in the minimum Federal requirements listed at 40 CFR 146.14(a) and 146.34(a). These additional requirements, which include information on expected pressure and fluid changes and sampling methodology, are consistent with the program of the State of New Mexico and they allow for a more thorough evaluation of permit applications. A portion of this additional information, required for Class III wells, is a direct result of the proposed aquifer clean-up requirement discussed above.

*I. Criteria for Aquifer Exemptions (§ 147.3006)*

Several criteria for granting aquifer exemptions under the generic Federal program are set forth in 40 CFR 146.4. Under this proposed Indian lands program an aquifer could not be exempted solely on the grounds that "the total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system." This criterion, contained in § 146.4(c), would not apply for the proposed program, although aquifers

could still be exempted on the other grounds in § 146.4.

In most parts of the country, waters above 3,000 mg/l TDS might not reasonably be expected to supply a public water system. However, in the arid and rural Southwest lands for which this program is proposed such water is used and needed. The higher level of protection is consistent with the New Mexico State program and is desired by the Indian Tribes.

*J. Area of Review (§ 147.3009)*

The Federal minimum requirements, at 40 CFR 146.6, specify that the Director may establish the area of review around an injection well either by setting a fixed radius, not less than one-quarter mile, or through the use of an appropriate formula to calculate the zone of endangering influence.

EPA is proposing to adopt the area of review requirements currently used in the Utah and New Mexico programs for this Indian land program. For Class II wells, the proposed area of review is a fixed radius of one-half mile. For Class I and III wells, the proposed area of review is a fixed radius of two and one-half miles. Alternatively, the proposal allows an applicant for a Class I or III permit to make either one of two demonstrations. First, in suitable cases, he may present technical information to show that production from the injection zone exceeds injection and results in a net withdrawal from the injection horizon at all times. Second, with the approval of the Director, he may use a mathematical equation, such as the modified form of the Theis equation (set out in 40 CFR 146.6) to calculate a zone of endangering influence. If the applicant chooses to make one of the alternative demonstrations, he should also propose a specific area of review not less than one-quarter mile for the Director's consideration.

It might appear that the minimum one-quarter mile area of review for Class I and III wells affords less protection than the fixed radius of one-half mile for Class II wells. However, the smaller area of review for Class I and III wells will be approved only where both the net volume of injected fluids and the maximum injection pressures anticipated (which together define the zone of endangering influence) is much less than would be allowed under a one-half mile fixed radius. It is desirable to limit the zone of endangering influence because this reduces the land area in which there is potential for movement of fluids through unplugged wells.

The States of New Mexico and Utah use these area of review calculations because they are believed to be suitable to the local geologic and environmental conditions. EPA proposes to adopt them to satisfy the strong public desire to follow the surrounding State programs as closely as possible, and to give additional protection to the groundwater in this arid region.

*K. Mechanical Integrity Tests (§ 147.3010)*

Consistent with national guidance, all annulus monitoring must be preceded by a pressure test in this proposed program. In a change from the current Federal regulations, radioactive tracer surveys would be used to evaluate the absence of significant leaks under § 146.8(a)(1). In addition, radioactive tracer surveys would be regarded as an acceptable method of determining the absence of significant fluid movement through vertical channels adjacent to the well bore (§ 146.8(a)(2)). For this purpose, the Director must approve the use of the radioactive tracer in each case and it must be used in conjunction with at least one of the other approved methods. (For example, a temperature or noise log.) Radioactive tracer surveys are accepted by the industry. They are faster than other methods, and can be as reliable, when properly conducted. EPA intends to add radioactive tracer surveys to the list of acceptable methods under paragraph (c) and to the paragraph (b) list for all Federal programs, and has already approved their use for many State programs.

Finally, EPA is proposing that the operator submit a detailed description of whatever testing methodology he chooses to the Director for approval prior to conducting any test.

*L. Construction Requirements (§ 147.3012, 147.3014)*

Section 146.12(b) of the generic regulations requires all Class I wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. As in other direct implementation programs, EPA is implementing the broad directive of the regulation by proposing specific cementing requirements appropriate to the local geologic conditions. This program proposes (in § 147.3012) that the entire casing-borehole annulus of Class I wells be cemented from bottom to surface, as the New Mexico State UIC program requires.

Class III operators will also have to provide a description of the radiological characteristics of the formation fluids, a necessary part of the plugging and abandonment plan that includes aquifer cleanup. Monitoring wells may be required by the Director (under authority of § 144.52(a)(9)) for USDW's below the injection zone of Class III projects, in addition to those above the injection zone already required by EPA Federal regulations, if these USDWs may be affected by mining operations (§ 147.3014).

**VI. Program Contents—Provisions of the Program for Lands of Certain Oklahoma Indians**

*A. Introduction*

EPA is today also proposing a tailored UIC program covering lands of most Oklahoma Indian Tribes. Currently, the State of Oklahoma administers the approved UIC program for non-Indian lands and for Class II wells on the lands of the Five Civilized Tribes. 40 CFR § 147.1850–147.1851 and 46 FR 58489 (Dec. 2, 1981). EPA administers the UIC program for Class II wells on the Osage Mineral Reserves. 40 CFR § 147.1852. Today's proposal would provide for an EPA-administered program for all other Indian lands in Oklahoma including non-Class II wells on the lands of the Five Civilized Tribes and the Osage Mineral Reserve.

There are at least 30 tribes in Oklahoma and currently over 200 wells not regulated under a UIC program on the lands of 13 tribes. Some well owners and operators have initially expressed interest in having a UIC program for these Indian lands which incorporates significant substantive requirements similar to those in the State of Oklahoma's program. This approach would minimize any disruption from having regulations which are significantly different from the State's for the small percentage of wells interspersed among these Indian lands. Several Indian tribes are also concerned that the program on their land not be substantively less stringent than the Oklahoma State program.

This proposal is the culmination of a previous notice and comment period, a hearing held in September 1983, and meetings with the Bureau of Indian Affairs, Bureau of Land Management and representatives of several tribes held in the summer of 1985. After the 1983 notice, discussed above, two representatives of the industry made comments while Indian tribes provided four written comments and one oral comment. The two industrial commenters wanted a program as near as possible to the existing State program in adjacent jurisdictions. The Comanche Tribe requested a program more stringent than minimum requirements. The Sac and Fox Tribe requested a program with provisions tailored to their

needs, but also requested that the provisions not cause an undue burden on operators who also had wells in other jurisdictions. The Sac and Fox Tribe and the Comanche Tribe specifically requested that the tribal government receive notification of permit applications and action on permits. These provisions have been included in this proposal. The Otoe-Missouri Tribe reserved comments until Federal Register publication of this proposal.

Like the proposed program for the lands of the Navajo, Ute Mountain Ute, and New Mexico Tribes, this proposal for Indian lands in Oklahoma, uses the generic Federal standards (40 CFR 124, 144 and 146) as a base and adds a few provisions which are similar to the State program. The technical provisions proposed here reflect current practice in Oklahoma and respond to some of the initial comments received by EPA.

The scope and rationale for those proposed requirements which add to the generic Federal program are discussed below. However, EPA seeks comments not only on those provisions which deviate from the generic Federal program but also on whether other tailored requirements might also better suit the needs of the Indian tribes or better reflect the local geological, hydrologic and historic conditions on these lands.

*B. Notice (§ 147.3101)*

Under this proposal, owners and operators and the Director of the program would have public notice responsibilities beyond those in 40 CFR 124.10. This proposal requires an applicant to give notice of an intent to apply for a permit to landowners, tenants and the appropriate tribal government and, for Class II wells, to the operator of a producing lease within one-half mile of the proposed well. Evidence of this prior notice must be part of the application to the EPA. Under this proposal, EPA would also provide additional notice through newspaper publication and radio broadcast. These provisions are similar to the existing State program. This additional notice has been found very helpful in encouraging public participation in rural sparsely populated areas and should help foster meaningful participation by Indian tribes.

*C. Plugging and abandonment (§ 147.3102, § 147.3104, § 147.3105 and § 147.3106)*

EPA proposes to adopt the Oklahoma approach for plugging and abandonment and associated reporting. The generic Federal standards do not specify detailed plugging requirements, but set forth the basic principle that plugging shall prevent movement of fluids either into or between underground sources of drinking water (40 CFR 146.10). However, the Class II wells in Oklahoma all have similar construction and are completed into a few similarly characterized strata, and EPA believes it is expedient to prescribe detailed plugging requirements in the regulations. This is consistent with the State program and the EPA-regulated program in Osage county, thereby maintaining consistency within Oklahoma. The similarity of the wells will allow EPA to set financial responsibility requirements without detailed plugging plans. The abbreviated individual plugging and abandonment plans would not be required of Class II operators until a notice of abandonment is given to the EPA. The notice of abandonment is due 45 days before planned abandonment.

The setting of cement plugs is detailed in this proposal. Cement plugs are required to seal and isolate the injection zone and the lowermost USDW. The space between the cement plugs must be filled with mud, and a cement plug is required at the surface. The cement plugs so placed will prevent any movement of fluid into or between USDW's. The plugging requirements will be made a permit condition in any permit. Finally, the 45-day notice of abandonment should be sufficient for EPA review and evaluation because the detailed plugging specifications in the regulations restrict the amount of variation in the types of plans EPA will review.

*D. Fluid seals (§ 147.3103)*

The EPA is proposing that fluid seals not be allowed as an alternative to packers for Class I wells. This prohibition is already a requirement in the Oklahoma State program and is more stringent than the minimum Federal standards. Currently, there is only one Class I well on Indian lands in Oklahoma.

*E. Mechanical Integrity Tests (§ 147.3107)*

Under this proposal, any monitoring of annulus pressure pursuant to § 146.8(b)(1) must be preceeded by a pressure test. A positive guage pressure must be maintained upon an annulus filled with liquid during such annulus pressure monitoring. Experience in Oklahoma and elsewhere shows that unless a positive pressure is continuously maintained on the annulus, the continued integrity of the well cannot be assumed from monitoring. Both initial pressure test and continued positive gauge pressure are current Agency guidance.

In addition, EPA is proposing that any pressure test conducted pursuant to § 146.8(b)(2) be performed with a pressure on the casing/annulus tubing of at least 200 pounds per square inch (psi) unless otherwise specified by the Director. When such tests are conducted during well operation, EPA proposes that a differential between the injection and annulus pressure of at least 100 psi be maintained throughout the tubing length.

For monitoring of the relationship of injection pressure and injection flow rate in enhanced recovery wells pursuant to § 146.8(b)(3), EPA also proposes that the monitoring must be preceeded by a pressure test conducted not more than 90 days prior to commencement of the monitoring. A pressure test prior to monitoring for the flowrate-volume relationship is consistent with current Agency guidance and with practice in the Osage UIC program.

Under this proposal, radioactive tracer surveys would be an approved test to evaluate the absence of significant leaks under § 146.8(a)(1). Radioactive tracer surveys are also effective in determining the absence of significant fluid movement through vertical channels adjacent to the well bore (§ 146.8(a)(2)) in certain circumstances. Accordingly, this proposal would allow the Director to approve the use of the radioactive tracer in conjunction with at least one of the other approved methods. Tracer surveys are run during operation of the well, and provide reliable means of determining mechanical integrity under actual operating conditions. EPA intends to add them to the list of acceptable methods under paragraph § 146.8(c) and to the paragraph § 146.8(b) list for all Federal programs in a future proposal.

Finally, for existing Class I wells, EPA is proposing a requirement that a test demonstrating mechanical integrity must have been run within 90 days of the date of required application for a permit. EPA believes that a test should be run as close to application as possible. The operator will be required to give the Director at least seven days prior notice of the test so that an observer can be present. The seven days is less than the period currently in the Federal minimum standards because there is only one existing Class I well.

**Office of Management and Budget Review**

Under Executive Order 12291, EPA must judge whether a regulation is

"major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major" rule because it will not have an effect on the economy of $100 million or more, nor will it have a significant effect on competition, costs, or prices. For the most part this proposal would extend to a relatively small number of wells the Federal regulations already judged not to be major even when applied to all injection wells in the country.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

The original proposal for the generic Federal program concluded that the Federal program would not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 605(b)). The extension of a program basically consisting of the Federal requirements to a limited number of owners and operators, of whom only some are "small entities," will not change the original assessment.

As required by the Paperwork Reduction Act, a request for approval of the information collection provisions contained in this rule will be submitted to OMB as a part of a comprehensive ICR package in the near future. The submission to OMB will be announced in the **Federal Register** and interested parties will have an opportunity to comment at that time. Comments will be discussed in the preamble to the final UIC Indian land regulations.

**List of Subjects in 40 CFR Part 147**

Indian lands, Underground injection.

Dated: April 24, 1987.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 147 is proposed to be revised to read as follows:

**Authority:** Safe Drinking Water Act (42 U.S.C. 300h) as amended, and the Resource Conservation and Recovery Act as amended, (42 U.S.C. 6901 *et seq.*) unless otherwise noted.

2. Part 147 is proposed to be amended by adding a new Subpart HHH to read as follows:

**Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes**

Sec.


147.3000 EPA-administered program.
147.3001 Definition.
147.3002 Public notice of permit actions.
147.3003 Aquifer exemptions.
147.3004 Duration of rule authorization for existing Class I and III wells.
147.3005 Radioactive waste injection wells.
147.3006 Injection pressure for existing Class II wells authorized by rule.
147.3007 Application for a permit.
147.3008 Criteria for exempted aquifers.
147.3009 Area of review.
147.3010 Mechanical integrity tests.
147.3011 Plugging and abandonment of Class III wells.
147.3012 Construction requirements for Class I wells.
147.3013 Information to be considered for Class I wells.
147.3014 Construction requirements for Class III wells.
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147.3016 Criteria and standards applicable to Class V wells.


**Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes**

**§ 147.3000 EPA-administered program.**

(a) *Contents.* This UIC program for the Indian lands of the Navajo, Ute Mountain Ute (all classes of wells in New Mexico and Utah and Class II wells only in Colorado), and other Indian Tribes in New Mexico is administered by EPA. (The term "Indian lands" is defined at 40 CFR 144.3.) The Navajo Indian lands are in the States of Arizona, New Mexico and Utah; and the Ute Mountain Ute lands are in Colorado, New Mexico and Utah. This program consists of the UIC program requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. The additions and modifications of this subpart apply only to the Indian lands described above. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on these lands is June 10, 1987.

**§ 147.3001 Definition.**

*Area of Review.* For the purposes of this subpart, area of review means the area surrounding an injection well or project area described according to the criteria set forth in § 147.3009 of this subpart.

**§ 147.3002 Public notice of permit actions.**

An applicant shall give public notice of his intention to apply for a permit as follows:

(a) Prior to submitting an application to the Director, the applicant shall give notice to each landowner, tenant and operator of a producing lease within one-half mile of the well location and to the affected Tribal Government. The notice shall include:

(1) Name and address of applicant;

(2) A brief description of the planned injection activities including well location, name and depth of the injection zone, maximum injection pressure and volume, and source and description of the fluid to be injected;

(3) Name, address, and phone number of the EPA contact person;

(4) A statement that opportunity to comment will be announced to the public after EPA prepares a draft permit.

(b) In addition to the requirements of 144.31(e), a permit applicant shall submit a description of the way the notice was given and the names and addresses of those to whom it was given.

(c) Upon written request and supporting documentation, the Director may waive the requirement in paragraph (a) of this section to give individual notice of intent to apply for a permit where it would be impractical. However, notice to the affected Tribal government shall not be waived.

(d) The Director shall provide to the affected Tribal government all notices given to State governments under § 124.10(c) of this chapter.

**§ 147.3003 Aquifer exemptions.**

(a) *Aquifer exemptions in connection with Class II wells.* In accordance with § 144.7(b) and § 146.4 of this chapter, the portions of authorized injection zones into which existing Class II wells are currently injecting which are described in the Record of Exempted Aquifers in the Administrative EPA Regional Offices 6, 8, and 9 are hereby exempted. The exempted aquifers are defined by a one-quarter mile radius from the existing injection well. The exemption includes the intended injection zone only and is solely for the purpose of Class II injection.

(b) *Class III wells.* In addition to the requirements of § 144.7(c)(1) of this chapter, an appliant for a permit which necessitates an aquifer exemption shall submit a plugging and abandonment plan containing an aquifer cleanup plan, acceptable to the Director, describing the methods or techniques that will be used to meet the standards of § 147.3011. The cleanup plan shall include an analysis of pre-injection water quality for the constituents required by the Director. The Director shall consider the cleanup plan in addition to the other information required for permit

applications under §§ 144.31(e) and 146.34 of this chapter.

**§ 147.3004 Duration of rule authorization for existing Class I and III wells.**

Notwithstanding § 144.21(a)(3)(i)(B) of this chapter, authorization by rule for existing Class I and III wells will expire 90 days after the effective date of this UIC program unless a complete permit application has been submitted to the Director.

**§ 147.3005 Radioactive waste injection wells.**

Notwithstanding §§ 144.24 and 146.51(b) of this chapter, owners and operators of wells used to dispose of radioactive waste (as defined in 10 CFR Part 20, Appendix B, Table II, but not including high level and transuranic waste and spent nuclear fuel covered by 40 CFR Part 191) shall comply with all of the requirements pertaining to Class I hazardous waste wells in Parts 124, 144 and 146 of this chapter, as modified and supplemented by this subpart.

**§ 147.3006 Injection pressure for existing Class II wells authorized by rule.**

(a) *Rule-authorized Class II saltwater disposal wells.* In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall, except during well stimulation, use an injection pressure measured at the wellhead that is not greater than the pressure calculated by using the following formula:

$Pm = 0.2d$

where:

Pm = injection pressure at the wellhead in pounds per square inch d = depth in feet to the top of the injection zone.

Owners and operators shall comply with this requirement no later than one year after the effective date of this program.

(b) *Rule authorized Class II enhanced recovery and hydrocarbon storage wells.* (1) In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, owners and operators shall use an injection pressure no greater than the pressure established by the Director for the field or formation in which the well is located. The Director shall establish such maximum pressure after notice, opportunity for comment, and opportunity for public hearing according to the provisions of Part 124, Subpart A, of this chapter, and shall inform owners and operators in writing of the applicable maximum pressure or;

(2) An owner or operator may inject at a pressure greater than that specified in paragraph (b)(1) of this section of the field or formation in which he is operating after demonstrating in writing to the satisfaction of the Director that such injection pressure will not violate the requirements of § 144.28(f)(3)(ii) of this chapter. The Director may grant such a request after notice, opportunity for comment and opportunity for a public hearing according to the provisions of Part 124, Subpart A of this chapter.

(3) Prior to the time that the Director establishes rules for maximum injection pressure under paragraph (b)(1) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Director which defines the fracture pressure of the formation in which injection is taking place. A single submission may be made on behalf of two or more operators conducting operations in the same field and formation, if the Director approves. The data shall be submitted to the Director within one year of the effective date of this program.

**§ 147.3007 Application for a permit.**

(a) Notwithstanding the requirements of § 144.31(c)(1) of this chapter, the owner or operator of an existing Class I or III well shall submit a complete permit application no later than 90 days after the effective date of the program.

(b) The topographic map (or other map if a topographic map is unavailable) required by § 144.31(e)(7) of this chapter, shall extend two miles from Class II wells, and 2½ miles from Class I and III wells. These maps will show all the information listed in § 144.31(e)(7) within ½ mile for Class II wells and 2½ miles for Class I and III wells.

**§ 147.3008 Criteria for exempted aquifers.**

The aquifer exempted criterion in § 146.4(c) shall not be available for this program.

**§ 147.3009 Area of review.**

The area of review shall be defined as follows:

(a) *Class II wells.* The area of review for Class II permits and area permits shall be defined by a fixed radius as described in § 146.6(b)(1) and (2) of this chapter except that the radius shall be one-half mile.

(b) *Class I and III wells.* The area of review for Class I and III wells or well fields may be either:

(1) an area defined by a radius two and one-half miles from the well or well field; or

(2) an area one-quarter mile from the well or well field where the well field production at all times exceeds injection to produce a net withdrawal; or

(3) a suitable distance, not less than one-quarter mile, proposed by the owner or operator and approved by the Director based upon a mathematical calculation such as that found in § 146.6(a)(2) of this chapter.

**§ 147.3010 Mechanical integrity tests.**

(a) The monitoring of annulus pressure listed in § 146.8(b)(1) of this chapter will only be acceptable if preceded by a pressure test, using liquid or gas that clearly demonstrates that mechanical integrity exists at the time of the pressure test.

(b) A radioactive tracer survey may be used to evaluate the absence of significant leaks pursuant to § 146.8(b).

(c) In addition to the methods specified in § 146.8(c)(1) of this chapter, the Director may approve the use of radioactive tracer surveys in appropriate hydrogeologic settings for use in conjunction with at least one of the other alternatives listed in § 146.(c)(1).

(d) In addition to the requirements of § 146.8(b) and (c), and prior to conducting any tests, owners and operators must submit a detailed description of the proposed testing methodology to the Director and receive approval.

**§ 147.3011 Plugging and abandonment of Class III wells.**

To meet the requirements of paragraph § 146.10(d) of this chapter, owners and operators of Class III projects underlying or in aquifers containing up to 5,000 mg/1 TDS which have been exempted under § 146.4 of this chapter shall:

(a) Include in the required plugging and abandonment plan a plan for aquifer clean-up and monitoring which demonstrates adequate protection of USDWs.

(1) The Director shall include in each such permit for a Class III project the concentrations of contaminants to which aquifers must be cleaned up in order to protect surrounding USDWs.

(2) The concentrations will be based on pre-injection formation water quality and on feasibility of clean-up.

(b) In addition to the information required by § 146.34(c) prior to approval of plugging a Class III well, owners and operators shall submit to the Director for approval, a schedule for the proposed aquifer cleanup.

(c) Cleanup and monitoring shall be continued until the owner or operator certifies that the cleanup has returned all constituents listed in the permit to the concentrations required by the permit, and the Director notifies the

permitee in writing that cleanup activity may be terminated.

**§ 147.3012 Construction requirements for Class I wells.**

In addition to the cementing requirement of § 146.12(b) of this chapter, owners and operators of Class I wells shall, through circulation, cement all casing to the surface.

**§ 147.3013 Information to be considered for Class I wells.**

(a) In addition to the information listed in § 146.14(a) of this chapter, the Director shall consider the following prior to issuing any Class I permit:

(1) Expected pressure changes, native fluid displacement, and direction of movement of the injected fluid; and

(2) Methods to be used for sampling, and for measurement and calculation of flow.

(b) In addition to the information listed in § 146.14(b) of this chapter, the Director shall consider any information required under § 146.14(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

**§ 147.3014 Construction requirements for Class III wells.**

(a) In addition to the requirements of § 146.32(c)(3) of this chapter, radiological characteristics of the formation fluids shall be provided to the Director.

(b) In addition to the requirements of § 146.32(e) of this chapter, the Director may require monitoring wells to be completed into USDWs below the injection zone if those USDWs may be affected by mining operations.

**§ 147.3015 Information to be considered for Class III wells.**

(a) In addition to the requirements of § 146.34(a) of this chapter, the following information shall be considered by the Director:

(1) Proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing and coring program.

(2) Depth to the proposed injection zone, and a chemical, physical and radiological analysis of the ground water in the proposed injection zone sufficient to define pre-injection water quality as required for aquifer cleanup by § 147.3011 of this subpart.

(3) An aquifer cleanup plan if required by § 147.3003(b) of this subpart.

(4) Any additional information that may be necessary to demonstrate that cleanup will not result in contaminants in excess of pre-injection water quality levels.

(b) In addition to the requirements of § 146.34(b) of this chapter, the Director shall consider any information required under § 146.34(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

**§ 147.3016 Criteria and standards applicable to Class V wells.**

In addition to the criteria and standards applicable to Class V wells set forth in Subpart F of Part 146 of this chapter, owners and operators of wells that do not fall within the Class IV category but that are used to dispose of radioactive wastes (as defined in 10 CFR Part 20, Appendix B, Table II, Column 2, but not including high level and transuranic wastes and spent nuclear fuel covered by 40 CFR Part 191) shall comply with all of the requirements applicable to Class I hazardous waste injection wells in 40 CFR Parts 124, 144 and 146 as supplemented by this subpart.

3. Part 147 is proposed to be amended by adding a new Subpart III as follows:

**Subpart III—Lands of Certain Oklahoma Indian Tribes**

Sec.

147.3100 EPA-administered program.
147.3101 Public notice of permit actions.
147.3102 Plugging and abandonment plans.
147.3103 Fluid seals.
147.3104 Notice of abandonment.
147.3105 Plugging and abandonment report.
147.3106 Area of review.
147.3107 Mechanical integrity.
147.3108 Plugging Class I, II and III wells.
147.3109 Mechanical integrity test.

## Subpart III—Lands of Certain Oklahoma Indian Tribes

**§ 147.3100 EPA-administered program.**

(a) *Contents.* The UIC program for the Indian lands in Oklahoma, except for that covering the Class II wells of the Five Civilized Tribes, is administered by EPA. The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the Osage Mineral Reserve (found at 40 CFR Part 147, Subpart GGG) and the Class II program for the Five Civilized Tribes, consists of the requirements of 40 CFR Parts 124, 144, and 146 and additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for all wells on Indian lands except Class II wells on the Osage Mineral Reserve and Class II wells on the lands of the Five Civilized Tribes is (June 10, 1987).

**§ 147.3101 Public notice of permit actions.**

(a) In addition to the notice requirements of § 124.10 of this chapter, the Director shall provide to the affected Tribal government all notices given to an affected State government under § 124.10(c) of this chapter.

(b) *Class I and III wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class I and III wells shall notify each land owner and tenant within one-half mile of the well and the affected Tribal government prior to submitting an application for a permit, shall publish such notice in at least two newspapers of general circulation in the area of the proposed well, and shall broadcast notice over at least one local radio station. The permit applicant shall submit with his application a description of the way notice was given and the addresses to those to whom it was given.

(2) The Director shall publish a notice of availability of a draft permit in at least two newspapers of general circulation in the area of the proposed well, and broadcast notice over at least one local radio station. The public notice shall allow at least 45 days for public comment.

(c) *Class II wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class II wells shall give notice of application for a permit to each landowner, tenant and operator of a producing lease within one-half mile of the well or project and to the affected Tribal government prior to submitting the application to the Director. The permit applicant shall include with the application a description of the way the notice was given and the addresses of those to whom it was given.

(2) In addition to the public notice required for each action listed in § 124.10(a) of this chapter, the Director shall also publish notice in a daily or weekly newspaper of general circulation in the affected area for actions concerning Class II wells.

(d) The Director may waive the requirement in paragraphs (b)(1) and (c)(1) of this section to give individual notice of intent to apply for a permit where it would be impractical, but notice to the affected Tribal government shall not be waived.

**§ 147.3102 Plugging and abandonment plans.**

In lieu of the requirements of § 144.28(c)(1) and (2)(i) through (iii) of this chapter, owners and operators of

Class II wells shall comply with the plugging and abandonment provisions of § 147.3108 of this subpart.

**§ 147.3103 Fluid seals.**

Notwithstanding § 144.28(f)(2) and § 146.12(c) of this chapter, owners and operators shall not use a fluid seal as an alternative to a packer.

**§ 147.3104 Notice of abandonment.**

(a) In addition to the notice required by § 144.28(j)(2) of this chapter, the owner or operator shall at the same time submit plugging information in conformance with § 147.3108 of this subpart including:

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

(b) In addition to the permit conditions specified in §§ 144.51 and 144.52 of this chapter, each owner and operator shall submit and each permit shall contain the following information (in conformance with § 146.3108 of this subpart):

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

**§ 147.3105 Plugging and abandonment report.**

(a) In lieu of the time periods for submitting a plugging report in § 144.28(k) of this chapter, owners and operators of Class I and III wells shall submit the report within 15 days of plugging the well and owners or operators of Class II wells within 30 days of plugging, or at the time of the next required operational report (whichever is less.) If the required operational report is due less than 15 days following completion of plugging, then the plugging report shall be submitted within 30 days for Class II wells and 15 days for Class I and III wells.

(b) In addition to the requirement of § 144.28(k)(1) of this chapter, owners and operators of Class II wells shall include a certification that the well was plugged in accordance with § 146.10 of this chapter and § 147.3109 of this subpart, and, if the actual plugging differed, specify the actual procedures used.

(c) The schedule upon which reports of plugging must be submitted are changed from those in § 144.51(o) to those specified in paragraph (a) of this section.

**§ 147.3106 Area of review.**

(a) When determining the area of review under § 146.6(b) of this chapter, the fixed radius shall be no less than one mile for Class I wells and one-half mile for Class II and III wells. In the case of an application for an area permit, determination of the area of review under § 146.6(b) shall be a fixed width of not less than one mile for the circumscribing area of Class I projects and one-half mile for the circumscribing area of Class II and III projects.

(b) However, in lieu of § 146.6(c) of this chapter, if the area of review is determined by a mathematical model pursuant to paragraph § 146.6(a) of this chapter, the permissible radius is the result of such calculation even if it is less than one mile for Class I wells and one-half mile for Class II and III wells.

**§ 147.3107 Mechanical integrity.**

(a) Monitoring of annulus pressure conducted pursuant to § 146.8(b)(1) shall be preceeded by an initial pressure test. A positive gauge pressure on the casing/tubing annulus (filled with liquid) shall be maintained continuously. The pressure shall be monitored monthly.

(b) Pressure tests conducted pursuant to § 146.8(b)(2) of this chapter shall be performed with a pressure of the casing/tubing annulus of at least 200 p.s.i. unless otherwise specified by the Director. In addition, pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 p.s.i. throughout the tubing length.

(c) Monitoring of enhanced recovery wells conducted pursuant to § 146.8(b)(3), must be preceeded by an initial pressure test that was conducted no more than 90 days prior to the commencement of monitoring.

(d) Radioactive tracer surveys shall be deemed acceptable methods of evaluating the absence of significant leaks under § 146.8(a)(1) of this chapter.

(e) Radioactive tracer surveys may be used to determine the absence of significant fluid movement under § 146.8(a)(2) of this chapter in appropriate hydrogeologic settings and in conjunction with at least one of the other alternatives in § 146.8(c) of this chapter.

**§ 147.3108 Plugging Class I, II, and III wells.**

In addition to the requirements of § 146.10 of this chapter, owners and operators shall comply with the following when plugging a well:

(a) For Class I and III wells:

(1) The well shall be filled with mud from the bottom of the well to a point one hundred (100) feet below the top of the highest disposal or injection zone and then with a cement plug from there to one hundred (100) feet above the top of the disposal or injection zone.

(2) A cement plug shall also be set from a point fifty (50) feet below the shoe of the surface casing to a point five (5) feet above the top of the lower USDW.

(3) A final cement plug shall extend from a point thirty feet below the ground surface to a point five (5) feet below the ground surface.

(4) All intervals between plugs shall be filled with mud.

(5) The top plug shall clearly show by permanent markings inscribed in the cement or on a steel plate embedded in the cement the well permit number and date of plugging.

(b) For Class II wells:

(1) The well shall be kept full of mud as casing is removed. No surface casing shall be removed without written approval from the Director.

(2) If surface casing is adequately set and cemented through all USDWs (set to at least 50 feet below the base of the lowest USDW), a plug shall be set at least 50 feet below the shoe of the casing and extending at least 50 feet above the shoe of the casing; or

(3) If the surface casing and cementing is inadequate, the well bore shall be filled with cement from a point 50 feet below the base of the USDW to a point 50 feet above the shoe of the surface casing, and any additional plugs as required by the Director.

(4) In all cases, the top 20 feet of the well bore below 3 feet of ground surface shall be filled with cement. Surface casing shall be cut off 3 feet below ground surface and covered with a secure steel cap on top of the surface pipe. The remaining 3 feet shall be filled with dirt.

(5) Except as provided in paragraph (b)(6) of this section, each producing or receiving formation shall be sealed off with a 50-foot cement plug placed at the base of the formation and a 50-foot cement plug placed at the top of the formation.

(6) The requirement in paragraph (b)(5) of this section does not apply if the producing/receiving formation is already sealed off from the well bore with adequate casing and cementing behind casing, and casing is not to be removed, or the only openings from the producing/receiving formation into the well bore are perforations in the casing, and the annulus between the casing and the outer walls of the well is filled with cement for a distance of 50 feet above the top of the formation. When such conditions exist, a bridge plug capped

with 10 feet of cement set at the top of the producing formation may be used.

(7) When specified by the Director, any incased hole below the shoe of any casing to be left in the well shall be filled with cement to a depth of at least 50 feet below the casing shoe, or the bottom of the hole, and the casing above the shoe shall be filled with cement to at least 50 feet above the shoe of the casing. If the well has a screen or liner which is not to be removed, the well bore shall be filled with cement from the base of the screen or liner to at least 50 feet above the top of the screen or liner.

(8) All intervals between cement plugs in the well bore must be filled with mud.

**§ 147.3109 Mechanical integrity test.**

The demonstrations of mechanical integrity required by § 146.14(b)(2) of this chapter prior to approval for the operation of a Class I well shall, for an existing well, be conducted no more than 90 days prior to application for the permit and the results included in the permit application. The owner or operator shall notify the Director at least seven days in advance of the time and date of the test so that EPA observers may be present.

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May 11, 1987

# federal register

## Part V

## State Justice Institute

Grant Guideline; Notice

## STATE JUSTICE INSTITUTE

### Grant Guideline

**AGENCY:** State Justice Institute.

**ACTION:** Proposed Grant Guideline.

**SUMMARY:** This guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 1987 State Justice Institute grants, cooperative agreements, and contracts.

**DATES:** The Institute invites public comment on the guideline until June 12, 1987.

**ADDRESS:** Comments should be sent to: State Justice Institute, 120 S. Fairfax St., Alexandria, VA. 22314.

**FOR FURTHER INFORMATION CONTACT:** David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, at the above address, or at (703) 684–6100.

**SUPPLEMENTARY INFORMATION:** Pursuant to the State Justice Institute Act of 1984, Pub. L. 98–620, 42 U.S.C. 10701, et seq., the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States. On March 9, 1987, the Institute published its FY 1987 Program Guideline in the **Federal Register**. 52 FR 7249. The Grant Guideline published for comment today implements the Act and the Program Guideline by setting forth the rules regarding the application for, and use of Institute funds.

Because the Institute is a non-profit private corporation and, except for very limited purposes, not an agency or instrumentality of the United States (42 U.S.C. 10704(c)(1)), many of the laws affecting the granting of appropriated Federal funds do not apply to Institute grants. As a matter of policy, however, the Institute has proposed to apply a number of Federal guidelines and requirements to the use of its funds. The Institute has, for example, proposed to adopt several Office of Management and Budget Circulars governing the use of Federal grant funds. See Section IX. A. Comment is specifically invited on this issue as well as those set forth below:

*Administrative Role of the State Supreme Court or its Designated Agency or Council.* Under the Act, applications for funding from a State or local court must be approved by the State's Supreme Court or its designated agency or council, which shall receive, administer and be accountable for all funds awarded to such courts. Form B (in Appendix 1) is a Certificate of State Approval that must be signed by the appropriate authority for each application submitted by a State or local court. The proposed grant supervision and monitoring responsibilities of the State Supreme Court, or its designee, are presented for comment in section IX B2.

*Method of Payment.* The Institute intends to establish as simple and expeditious a method of payment to grantees as possible, consistent with sound accounting and financial practices. At the present time, it appears that the relatively small number and size of anticipated Institute grants will preclude the Institute from using the new "Letter of Credit" system established by the Department of the Treasury. As a result, as specified in section IX G1., the Institute simply proposes at this time to use an efficient request for advance or reimbursement procedure. The Institute is exploring Electronic Fund Transfer systems and invites suggestions on those or other possible payment methods.

*Audits.* The Act requires the Institute to conduct, or require each recipient to provide for an annual fiscal audit. 42 U.S.C. 10711(c)(1). Comment is specifically invited on the nature of the audit to be required of Institute grantees (and subgrantees, in the case of State and local courts receiving Institute funds through their State Supreme Courts, or designees). The Institute would like to receive comment on whether it should (1) require an audit of the grantee's overall operations, as might be conducted by a Federal agency pursuant to the Single Audit Act, (2) require a more limited audit of the project actually supported by Institute and matching funds, or (3) permit the grantee to choose either method of audit.

*Procurement.* The draft guideline proposes to impose the same administrative requirements, conditions, and selection criteria on applicants seeking contracts for programmatic purposes, e.g., technical assistance contracts, as it would impose on applicants seeking grants. Comment is invited on whether separate procedures should be established for such contracts than are established for grants and cooperative agreements.

*Application Form.* The Institute invites comment on the clarity of the application form (Appendix 1, Form A), the nature of the information requested, and the need for any additional information.

Prospective applicants are encouraged to note the explanation of the matching requirements for Institute grants (sections VI C. and IX D1.), and to review the list of required assurances proposed in Form D (Appendix 1).

Finally, readers should note that only Appendix 1 is being published with the guideline. Applicants and other affected parties will be advised of the specific contents of the remaining appendices.

### State Justice Institute Grant Guideline

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### Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; and national nonprofit organizations providing for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute may also award funds to other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements.

Approximately $6.7 million is available for grants, contracts, and cooperative agreements from FY 1987 appropriations. The Institute may also provide financial assistance in the form of interagency agreements with other grantors. The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation; however, the Board of Directors of the Institute has

designated certain program areas as being of special interest.

The Institute has established two rounds of competition for FY 1987 funds, with concept paper submission deadlines of April 17 and September 18, 1987, respectively. This Guideline applies to formal applications submitted for the first round of funding.

The awards made by the State Justice Institute are governed by the requirements of this guideline and the authority conferred by Pub. L. 98–620, Title II, 42 U.S.C. 10701, *et seq.*

## I. Background

The State Justice Institute ("Institute") was established by Pub. L. 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a state court administrator and four members of the public, no more than two of whom can be of the same political party.

The Institute's program budget for Fiscal Year 1987 is approximately $6.7 million. Through the award of grants, contracts and cooperative agreements, the Institute is authorized to perform the following activities:

1. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

2. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

3. Participate in joint projects with other agencies;

4. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

5. Encourage and assist in furthering judicial education;

6. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

7. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

## II. Scope of the Program

During its first year of operation, the Institute is considering applications for funding support that address any of the areas specified in its enabling legislation. The Board has, however, designated certain program areas as being of "special interest". The experience of the Board in reviewing concept papers and applications during the first year, and other information received from the applicants, other interested parties, and the general public will shape the Board's priorities in future years.

### *A. Authorized Program Areas*

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel, for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms

for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will *not* be made available for ordinary, routine operation of court systems in any of these areas.

*B. Special Interest Program Areas*

1. General Description

Although applications in any of the foregoing areas are eligible for funding in FY 1987, the Institute is especially interested in funding those proposals that: (1) Go beyond existing arrangements to improve the judiciary; (2) address aspects of the State judicial systems that are in special need of serious attention; and (3) have national significance in terms of their impact or capability of being transferred to and adopted by other courts and jurisdictions.

A project will be identified as a "special interest" project if it meets the three criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below or (2) information coming to the attention of the Institute demonstrates that the project responds to another special need or interest of the State courts.

2. Specific Categories

The Board has designated the areas set forth below as "special interest" program categories. The order of listing does not imply any ordering of priorities among the program areas. The Board is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions.

The "special interest" program areas are:

a. The development and implementation of innovative measures to encourage and enhance judicial careers, other than direct increases in salary;

b. Education and training for judges and other key court personnel, including the development of innovative training materials and curricula, the improvement of existing court education programs, and the preparation of State court education plans to ensure a comprehensive training program and the effective allocation of limited court education resources;

c. The implementation and evaluation of dispute resolution methods that have a substantial likelihood of resolving disputes more fairly, more expeditiously, and less expensively than the traditional judicial process;

d. The application of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels, including the development of materials to assist judges and court managers in selecting technology appropriate to a court's needs;

e. The implementation and testing of legal and administrative procedures relating to jurors, including those with a substantial likelihood of improving juror use and jury system management, clarifying juror orientation and instructions, and otherwise simplifying, making fairer, expediting and reducing the cost of the jury process;

f. The implementation and evaluation of programs and procedures designed to substantially reduce expense and delay in litigation at the trial or the appellate level or both, including the use of differentiated case processing and other innovative techniques, and the collection, compilation, and analysis of statistical data necessary for determining the causes of unnecessary expense and delay, isolating areas of concern, and evaluating the efficacy of "solutions";

g. The implementation and evaluation of procedures for effectively imposing, collecting, and enforcing orders to pay fines, restitution, assessments, and other monetary penalties or obligations;

h. The implementation and testing of innovative court procedures for handling domestic violence cases effectively and expeditiously;

i. The implementation and testing of court-based programs and procedures providing fairer treatment for victims of crimes and witnesses in both civil and criminal cases;

j. Research to develop creative ideas and procedures that could improve the administration of justice in the State courts and at the same time reduce the work burdens of the Federal courts. Such research projects might address innovative State court procedures for:

- Processing complex multistate litigation in State courts;
- Reducing the burdens attendant to Federal habeas corpus cases involving State convictions;
- Facilitating the adjudication of Federal law questions by State courts with appropriate opportunities for review; and
- Otherwise allocating judicial burdens between and among Federal and State courts.

Other areas of research would include studies examining the likely impact of the elimination or restriction of Federal diversity jurisdiction on the State courts, and the factors that motivate litigants to select the Federal or State courts in cases where there is joint jurisdiction; and

k. Technical assistance programs to transfer effective programs and procedures in any of the foregoing "special interest" categories to other jurisdictions.

Applications which address one or more "special interest" program areas will be accorded a preference in the rating process. (See the selection criteria listed in section VI, Application Review Procedures.)

III. Definitions

The following definitions apply for the purposes of this Guideline:

A. *Institute:* The State Justice Institute.

B. *State Supreme Court:* The court of last resort in a state. For the purposes of the financial requirements and reporting forms set forth in this Guideline, *State Supreme Court* includes the agency or council it designates to perform the financial functions described in this Guideline.

C. *Designated Agency or Council:* The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. *Grantor Agency:* The State Justice Institute.

E. *Grantee:* The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, *grantee* refers to the State Supreme Court.

F. *Subgrantee:* A State or local court which receives Institute funds through the State Supreme Court.

G. *Match:* The portion of project costs not borne by the Institute. *Match* includes both cash and in-kind contributions.

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments;

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and national nonprofit organizations providing for the education and training of judges and support personnel of the judicial branch of State governments.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fee.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Applicants other than State or local courts are expected to specify in their applications whether they are entitled to funding priority and, in the case of applicants who are not entitled to the priority established by section 10705(b)(2), to discuss how their projects will serve the objectives of the relevant program area(s) set forth in section II above. Governmental applicants other than courts must also explain why the proposed program cannot be adequately provided through nongovernmental organizations.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section IX.B.2 of this guideline.

## V. Types of Projects and Amounts of Awards

The Institute has placed no limitation on the overall number of awards or the number of awards in each area of interest. The general types of projects are:

A. Education and training;
B. Research and evaluation;
C. Demonstration; and
D. Technical assistance.

The Board will give serious consideration to applications seeking funding in amounts up to $500,000. Awards in excess of $500,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally. Proposed project periods should not exceed 24 months.

The Institute desires to reserve some funds for small awards (up to $50,000) to support research, studies, and project designs, particularly with respect to the subjects noted in special interest program area (j).

## VI. Application Review Procedures

### *A. Preliminary Inquiries*

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

### *B. Selection Criteria*

All applications will be rated on the basis of the criteria set forth below. To facilitate the review process, the Institute staff will use a point system to score all applications; the staff's scores, however, will not be binding on the Board's funding decisions.

The Institute will accord the greatest weight to the following criteria:

—The soundness of the methodology described;
—The qualifications of the project's staff;
—The applicant's management plan and capabilities; and
—The reasonableness of the proposed budget.

Substantial weight will also be accorded to:

—Whether the application proposes a project in a "special interest" area as discussed in section II.B above;
—The demonstration of need for the project;
—The demonstration of the project's replicability in other jurisdictions;
—The demonstration of the benefits to be derived from the project; and
—The demonstration of cooperation and support of other organizations and agencies that may be affected by the project.

In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section III above; the availability of financial assistance from other sources for the project; the anticipated distribution of funding for other projects by subject matter and geographical location; the amount and nature (cash or non-cash) of the applicant's anticipated match; and the degree of commitment demonstrated by those responsible for providing the match (i.e., immediate availability of match versus a verbal commitment to secure match).

### *C. Review and Approval Process*

Applications will be competitively reviewed by the Board of Directors of the Institute. Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute. All applications considered by the Board will first be reviewed by the Institute staff. When necessary, applications may be reviewed by outside experts.

### *D. Return Policy*

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

### *E. Notification of Intention to Award*

The State Justice Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective concept papers and applications.

## VII. Compliance Requirements

The State Justice Institute Act (Pub. L. 98-620) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. *State and Local Court Systems.* Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). Appendix 2 to this Guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. *Priority Recipients.* Applicants other than State or local courts are expected to specify in their applications whether they are entitled to funding priority as described in section III above, or, in the case of applicants who are not entitled to the priority established by section 10705(b)(2), to discuss how their projects will serve the objectives of the relevant program area(s) set forth in section II above. Governmental applicants other than courts must also explain why the proposed program cannot be adequately provided through nongovernmental organizations.

C. *Matching Requirements.* All awards to State or local judicial systems require a match from private or public sources of not less than 50 percent of the total cost of the award. A cash match, non-cash match, or both, may be provided, but the Institute will give preference to those applicants who provide a cash match to the Institute's award. The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d).

Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project (see section VI.B above).

D. *Conflict of Interest.* Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No officials or employees of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, officials or employees of recipient courts or organizations shall avoid any action which might result in or create the appearance of:

(a) Using his or her official position for private gain;

(b) Giving preferential treatment to any person;

(c) Losing complete independence or impartiality;

(d) Making an official decision outside official channels; or

(e) Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposal or invitations for bid issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding or submitting a proposal to compete for the award of such procurement.

E. *Lobbying.* Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

F. *Political Activities.* No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

G. *Advocacy.* No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

H. *Supplantation and Construction.* To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. To solely purchase equipment for a court system.

I. *Refunding of Applications.* Unless the terms of an award expressly obligate the Institute to approve refunding a project in a subsequent time period, no application submitted by a recipient that seeks further funding from the Institute for the same or another project shall be entitled to treatment as an application for refunding for the purposes of 42 U.S.C. 10706(a)(3) or 42 U.S.C. 10706.

J. *Reporting Requirements.* Recipients of Institute funds shall submit Quarterly Progress Reports within 30 days of the close of each calendar quarter. These reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section X.G.2 of this guideline.

K. *Audit.* The Institute shall conduct, or require each recipient to provide for, an annual fiscal audit. [See section IX.] of this Guideline for additional details.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

L. *Suspension of Funding.* The Institute may, after providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, terminate or suspend funding of a project that fails to conform to the requirements or statutory objectives of the State Justice Institute Act or that fails to conform substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(1).

M. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

N. *Disclaimer.* Recipients of Institute funds shall prominently display the following disclaimer on all project-related products developed with Institute funds:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

O. *Copyrights.* Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

## VIII. Application Requirements

An application for Institute funding support must include an application form, budget forms (with appropriate documentation), a project abstract and program narrative, and certain certifications and assurances. These documents are described below. Appendix 1 contains a set of the financial and administrative forms with detailed explanations and instructions.

### *A. Forms*

1. *Application Form* (FORM A)—The application form requests basic information regarding the proposed project, the applicant, and the amount of funding support requested. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and correct, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. *Certificate of State Approval* (FORM B)—An application from a State or local court must include a copy of FORM B signed by the State's Chief Judge or Chief Justice, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further, that if funding for the project is approved by the Institute, that court, or designated agency or council, will receive, administer, and be accountable for the awarded funds.

3. *Budget Forms* (FORM C1 & C2)—Applicants may submit the proposed project budget either in the tabular format of FORM C1 or in the spreadsheet format of FORM C2. Applicants requesting more than $150,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for the portion of the project extending beyond month 12.

In addition to FORM C1 or C2, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. *Assurances* (FORM D)—This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

### *B. Project Abstract*

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one, single space page on 8½ by 11 inch paper.

### *C. Program Narrative*

The program narrative should not exceed 25 double space pages on 8½ x 11 inch paper. Margins should not be less than 1 inch. The page limit does not include appendices containing résumés and letters of cooperation or endorsement. Additional background material may be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics.

1. *Project Objectives*—A clear concise statement of what the proposed project is intended to accomplish.

2. *Program Areas to be Covered*—A discussion of the relationship of the proposed work to the Program Areas listed in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest Program Areas.

3. *Need for the Project*—If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs cannot be met through the use of existing materials, programs, procedures, services or other resources. (For example, if the project proposes development of a training program or a court management information system, there should be an explanation of why the training curricula or systems being used by other jurisdictions or providers do not provide a satisfactory solution.)

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

4. *Tasks and Methods*—A delineation of the tasks to be performed and the methods to be used for accomplishing each task including:

- For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results.
- For education and training projects, the instructional methods to be used; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; the audience anticipated and how it will be obtained; the cost to participants; and the methods to be used for evaluating the usefulness and effectiveness of the training.
- For demonstration projects, how the sites will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored; and how the results of the demonstration will be determined and assessed.
- For technical assistance projects, the types of assistance that will be provided; the particular program area(s) for which assistance will be provided, how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; what will be the cost to recipients; and how the usefulness and impact of the technical assistance will be determined and assessed.

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should be attached as an appendix.

5. *Project Management*—A detailed management plan including the starting and completion date for each task, the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter.

6. *Products*—A description of the products to be developed by the project

(e.g., monographs, training curricula and materials, videotapes, articles, handbooks) including when they will be submitted and how they will be disseminated. The products of research and evaluation projects should normally include an executive summary of the final report.

7. *Applicant Status*—A statement demonstrating that the applicant (if the applicant is not a State or local court) qualifies as either a national nonprofit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national nonprofit organization providing for the education and training of State court judges and support personnel. If the applicant is neither such an organization nor a State court, this section must demonstrate how it will serve the objectives of the relevant program area(s) in terms of replicability and other appropriate factors. Applicants that are units of Federal, State, or local government must demonstrate that the proposed services are not available from nongovernmental sources.

8. *Staff Capability*—A summary of the training and experience of the key staff members that qualify them for conducting and managing the proposed project. If one or more key staff members are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. *Organizational Capacity*—A statement describing the capacity of the applicant to administer the grant funds including the financial systems used to monitor project expenditures and income (if any), and a summary of the grantee's past experience in administering grants, as well as any resources or capabilities that the grantee has that will particularly assist in the successful completion of the project.

## IX. Submission Requirements

One copy of the application package containing an original signature on FORM A (and FORM B, if the application is from a State or local court) and 13 photocopies of the application package must be provided to the State Justice Institute. All applications must be received by the State Justice Institute on or before 5:30 p.m. Eastern Daylight Time on July 24, 1987. Applications should be sent to: State Justice Institute, 120 S. Fairfax Street, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

For additional information, contact: Richard Van Duizend, Deputy Director, State Justice Institute, (703) 684–6100.

## X. Financial Requirements

### *A. Accounting Systems and Financial Records*

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, state and local matching shares, and any other fund sources included in the approved project budget.

#### 1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

#### 2. References

Except where inconsistent with specific provisions of this guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised),* Indirect Cost Rates, Audit and Audit Followup at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128,* Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Nonprofit Organizations.

### *B. Supervision and Monitoring Responsibilities*

#### 1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include the accounting of receipts and expenditures, the maintaining of adequate financial records and the refunding of expenditures disallowed by audits.

#### 2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

a. *Reviewing Financial Operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records, system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording Financial Activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and Budget Review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget on which its award commitment will be based. The detail of each project

budget should be maintained on file by the State Supreme Court.

d. *Accounting for Non-Institute Contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds that the requirements and limitations of this Guideline are applied to such funds.

e. *Audit Requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see section IX.J).

f. *Reporting Irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

*Accounting System*

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt and disposition of all funds (including matching contributions and project income);
2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;
3. Presents and classifies projected historical costs of the grant as required for budgetary and evaluation purposes;
4. Provides cost and property controls to assure optimal use of grant funds;
5. Controls funds and other resources to assure that the expenditure of funds and use of property are in conformance with any general or special conditions of the grant;
6. Meets the prescribed requirements for periodic financial reporting of operations; and
7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

For an outline of recommended elements to be considered when establishing an accounting system, refer to Appendix 4.

*D. Total Cost Budgeting and Accounting*

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of, or in proportion to the obligation of Institute funds. However, the full matching share must be obligated by the end of the period for which the Institute funds have been made available for obligation under an approved project.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of them in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section.

*E. Maintenance and Retention of Records*

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand and ready access should be assured.

*F. Project-Related Income*

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts. Local units of government that are direct grantees and nonprofit organizations must refund any interest earned.

2. Other Project Income

a. *Royalties.* The grantee/subgrantee shall retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

b. *Registration/Tuition Fees and Other.* These types of project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

*G. Payments and Financial Reporting Requirements*

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for Advance or Reimbursement of Funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs and submitted at least monthly. All checks drawn for the payment of fund requests are prepared and disbursed by the Institute. The Request for Advance or Reimbursement, along with the instructions for its preparation, is contained in Appendix 5.

b. *Termination of Advance Funding.* When a grantee organization receiving cash advances from the Institute—

(i) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(ii) Engages in the improper award and administration of subgrants or contracts; or

(iii) Is unable to submit reliable and/or timely reports,

the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient the Institute reserves the right to suspend payments until the deficiencies are corrected.

c. *Principle of Minimum Cash on Hand.* Whatever payment method is used, recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

The Financial Status Report is required from all grantees for each active quarter on a calendar-quarter basis. It is designed to reflect financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with detailed instructions for its preparation and reporting due dates are contained in Appendix 6.

3. Continuation Support

Failure of the grantee organization to submit the required financial and program reports may result in a suspension of the grant payments. These procedures are also applicable to audit reports of grantee organizations that are unresolved.

*H. Allowability of Costs*

1. Generally

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in OMB Circulars A–87, *Cost Principles for State and Local Governments;* A–21, *Cost Principles Applicable to Grants and Contracts with Educational Institutions;* and A–122, *Cost Principles for Non-Profit Organizations.*

2. Costs Requiring Prior Approval

a. *Preagreement Costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the starting date of the grant period.

b. *Automatic Data Processing (ADP) Equipment and Software.* The written prior approval of the Institute is required where the amount of the equipment and software to be purchased exceeds $50,000.

c. *Consultants.* The written prior approval of the Institute is required where the rate of compensation to be paid a consultant exceeds $200 a day.

3. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved as set forth below, the Institute will accept that rate.

a. *Approved Plan Available.* (1) The Institute will accept any indirect cost rate or allocation plan previously approved for a grantee by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that subcontracts are excluded from the base for overhead recovery. The term subcontract means any contract awarded under the grant.

b. *Establishment of Indirect Cost Rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No Approved Plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

*I. Procurement and Property Management Standards*

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of OMB Circular A–102. Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of OMB Circular A–110.

2. Property Management Standards

The property management standards as prescribed in Attachment N of both OMB Circulars A–102 and A–110 shall be applicable to all grantees and subgrantees of Institute funds except as provided in subsection b. below.

a. *Acquisition.* All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

b. *Title to Property.* At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not received, or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

*J. Audit Requirements*

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities.

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles.

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures.

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements, or on the awards tested.

2. Implementation

Each grantee (including State or local courts receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute.

If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. The grantee, in turn, shall promptly notify the Institute of the illegal acts or irregularities and of proposed and actual actions, if any.

Failure to have audits performed as required may result in the withholding of new awards and/or suspension of funds or change in the method of payment on active grants.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: followup, maintaining a record of the action taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and action taken.

It should be noted that it is the general policy of the State Justice Institute not to make new grant awards to applicants having an unresolved audit report involving Institute awards.

*K. Close-Out of Grants*

1. Definition

Close-out is a process in which the Institute determines that all applicable administrative actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date) the following documents must be submitted by the grantee to the Institute.

a. *Financial Status Report.* The FINAL report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award amount by the Institute. Grantees on a check-issued basis, who have drawn down funds in excess of their obligation/expenditures, shall return unused funds to the Institute at the same time they submit the final report.

b. *Final Progress Report.* This report should be prepared in accordance with instructions provided by the Institute.

**XI. Future Funding**

A second round of funding by the State Justice Institute will begin with the submission of concept papers by September 18, 1987. The Institute will invite parties submitting approved Round 2 concept papers to submit formal applications by December 18, 1987. The Institute anticipates that awards for Round 2 will be approved in January 1988.

Parties interested in submitting concept papers for Round 2 should refer to the Institute's Program Guideline published in the March 9, 1987 **Federal Register** (52 FR 7249), for instructions on the preparation of concept papers. Copies of the Guideline are available from the Institute.

BILLING CODE 6820-SC-M

APPENDIX 1

FORM A

STATE JUSTICE INSTITUTE APPLICATION

1. APPLICANT
   a. Applicant Name _____
   b. Organization Unit _____
   c. Street/P.O. Box _____
   d. City _____ e. State _____
   f. Zip Code _____
   g. Contact Person (telephone number & name) _____

2. TYPE OF APPLICANT (circle appropriate letter)
   a. State or local court
   b. National organization controlled by State judicial board
   c. National state court, education/training organization
   d. College or University
   e. Other non-profit organization or agency
   f. Individual
   g. Corporation or partnership
   h. Unit of executive or legislative branch of government
   i. Other _____ (specify)

3. EMPLOYER IDENTIFICATION NUMBER (EIN) _____

4. ENTITY RESPONSIBLE FOR FUNDS (if different from applicant)
   a. Name of Responsible Entity _____
   b. Street/P.O. Box _____
   c. City _____
   d. State _____ e. Zip Code _____
   f. Title, Name and Telephone Number of Responsible Person _____

5. CONGRESSIONAL DISTRICT OF: _____ Applicant _____ Project

6. TITLE OF PROPOSED PROJECT _____

7. TYPE OF PROJECT (circle appropriate letter)
   a. Education/Training
   b. Research/Evaluation
   c. Demonstration
   d. Technical Assistance
   e. Other _____ (specify)

8. PROPOSED START DATE _____

9. PROJECT DURATION (Months) _____

10. AMOUNT REQUESTED $ _____

11. TYPE OF APPLICATION (circle appropriate letter)
   a. New
   b. Continuation
   c. Supplemental

12. AMOUNT OF MATCH $ _____
   a. Cash match $ _____
   b. Non-cash match $ _____

13. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
   Source _____
   Date Submitted _____ Amount Sought _____
   Disposition (if any) or Current Status _____

14. CERTIFICATION

ON BEHALF OF THE APPLICANT, I HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE THE INFORMATION IN THIS APPLICATION IS TRUE AND CORRECT. I HAVE READ THE ATTACHED (FORM D) ASSURANCES AND UNDERSTAND THAT IF THIS APPLICATION IS APPROVED FOR FUNDING THE AWARD WILL BE SUBJECT TO THESE ASSURANCES. I CERTIFY THAT THE APPLICANT WILL COMPLY WITH THESE ASSURANCES IF THE APPLICATION IS APPROVED THAT I AM LAWFULLY AUTHORIZED TO MAKE THESE REPRESENTATIONS ON BEHALF OF THE APPLICANT.

15. _____ _____
SIGNATURE OF RESPONSIBLE OFFICIAL OF APPLICANT (for application from State and local courts, must include Form B, Certificate of State Approval) DATE

FOR INSTITUTE USE ONLY

16. APPLICATION NUMBER
   A _____

17. DATE RECEIVED _____

18. ACTION TAKEN
   a. Awarded d. Deferred
   b. Rejected e. Withdrawn
   c. Returned for Modification f. Other _____

19. ACTION DATE _____

20. TYPE OF AWARD:
   a. Grant
   b. Cooperative Agreement
   c. Contract

21. AMOUNT OF AWARD $ _____

BILLING CODE 6820-SC-C

**Instructions for SJI Application—Form A**

*Applicant Information*

1. (a–g) Legal Name Of Applicant court, entity or individual; Name Of The Organizational Unit, if any, that will conduct the project; Complete Address of applicant; Name and telephone number of a Contact Person who can provide further information about this application.

2. (a) State And Local Courts include all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts supported primarily by State, County, municipal, or other non-federal funds. Agencies of state and local courts include all governmental offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge, or his or her designee.

(b) National Organizations Controlled By The State Judicial Branch include national non-profit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments.

(c) National State Court Education/ Training Organizations include national non-profit organizations for the education and training of judges and support personnel of the judicial branch of State government.

(d) College Or University includes all institutions of higher education.

(e) Other Non-profit Organization or Agency includes those non-profit organizations and private agencies with expertise in judicial administration not included in sub-paragraphs (b)–(d).

(f) Individual means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

(g) Corporation Or Partnership includes for-profit and not-for-profit entities not falling within one of the other categories.

(h) Unit Of Executive Or Legislative Branch Of Government includes offices, programs, commissions, committees, or other entities that are supervised by or report for administrative purposes to the chief executive or the head of an executive branch agency or his or her designee, or to any legislative officer, chairperson or official.

3. Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

4. Entity Responsible For Funds is the court or organization that will receive, administer, and account for any moneys awarded. For example, if the applicant is a State or local court, the responsible entity would be the State's supreme court or its designated agency or council in accordance with 42 U.S.C. 10705(b)(4). If the applicant is a special university program, the responsible entity may be the program, the university itself, or the university's grant office depending on the university's structure. Applicants should complete this block only if the entity that will be responsible for the funds is different from the applicant.

5. Enter the applicant's Congressional District and the Congressional District(s) in which most of the project activities will take place. If the project activities are not site-specific, for example a series of training workshops that will bring together participants from around the State, the country, or from a particular region, enter statewide, national, or regional, as appropriate in the space provided.

6. The Title Of the Proposed Project should reflect the objectives of the activities to be conducted.

7. (a–e) Insert the letter of the Type of activities that best characterizes the project. If project funds will be substantially divided among two or more types of activities, insert the letters for each of those activities.

8. The Proposed Start Date of the project should be the earliest feasible date on which the applicant will be able to begin project activities following the date of award. An explanation should be provided in the Program Narrative if the proposed start date is more than 90 days after the estimate award date set forth in the Application Review Procedures section of the current Grant Application Guidelines.

9. Project Duration refers to the number of months the applicant estimated will be needed to complete all project tasks after the proposed start date.

10. Insert the Amount Requested from the State Justice Institute to conduct the project.

11. (a–c) New refers to the first award of State Justice Institute funds for a particular project, whether or not the applicant has received previous awards from the Institute.

Continuation refers to an extension for an additional funding period.

Supplemental refers to the award of additional funds to permit an existing project to complete the tasks originally proposed or to augment the scope of the project.

12. (a–b) The Amount Of Match is the amount, if any, to be contributed to the project by the applicant, by a unit of State or local government, by a Federal agency, or by private sources. See 42 U.S.C. 10705(d).

The Amount Of Cash Match refers to funds directly contributed by the applicant, a unit of State or local government, a Federal agency, or private sources to support the project.

The Amount Of Non-cash Match refers to in-kind contributions by the applicant, a unit of State or local government, or private sources to support the project. The applicant should describe, in detail, both the value it assigns to in-kind contributions and the basis for determining that value.

13. If this application or an application requesting support for the same project or an essentially similar project has been Previously Submitted to another funding source (Federal or private), the name of the source, the date of the previous submission, the amount of funding sought, and disposition (if any) should be entered.

**Form B**

**State Justice Institute**

**Certificate of State Approval**

The _____
Name of State Supreme Court or Designated Agency or Council
has reviewed the application entitled _____
prepared by _____
Name of Applicant
approves its submission to the State Justice Institute, and agrees to receive, administer and be accountable for all funds awarded by the Institute pursuant to the application.

_____
Signature

_____
Name

_____
Title

_____
Date

*Instructions—Form B*

The State Justice Institute Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

Form B or its equivalent must therefore be included in applications submitted by all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts supported primarily by State, county, municipal, or other non-federal funds, and by all agencies and offices that are supervised by or report for administrative purposes to the chief or presiding justice or judge of such a court, or his or her designee.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or

by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in Appendix 2 of the State Justice Institute Application Guideline, evidence of the new or additional designation should be attached.

Form C1 STATE JUSTICE INSTITUTE

Applicant: _____
Project Title: _____
For Project Activity from _____ to _____
Total Amount Requested for Project from SJI $_____

| ITEM | SJI FUNDS | STATE FUNDS | FEDERAL FUNDS | APPLICANT FUNDS | OTHER FUNDS | IN-KIND SUPPORT | TOTAL |
|---|---|---|---|---|---|---|---|
| Personnel | | | | | | | |
| Fringe Benefits | | | | | | | |
| Consultant Contractual | | | | | | | |
| Travel | | | | | | | |
| Equipment | | | | | | | |
| Supplies | | | | | | | |
| Telephone | | | | | | | |
| Postage | | | | | | | |
| Printing/Photocopying | | | | | | | |
| Audit | | | | | | | |
| Other Specify | | | | | | | |
| Direct Costs | | | | | | | |
| Indirect Costs | | | | | | | |
| Total | | | | | | | |

Form C2 STATE JUSTICE INSTITUTE

Applicant: _____
Project Title: _____
For Project Activity from _____ to _____
Total Amount Requested for Project from SJI $_____

| ITEM | TASK 1 | TASK 2 | TASK 3 | TASK 4 | TASK 5 | TASK 6 | TASK 7 | TOTAL |
|---|---|---|---|---|---|---|---|---|
| Personnel | | | | | | | | |
| Fringe Benefits | | | | | | | | |
| Consultant Contractual | | | | | | | | |
| Travel | | | | | | | | |
| Equipment | | | | | | | | |
| Supplies | | | | | | | | |
| Telephone | | | | | | | | |
| Postage | | | | | | | | |
| Printing/ Photocopying | | | | | | | | |
| Audit | | | | | | | | |
| Other Specify | | | | | | | | |
| Direct Costs | | | | | | | | |
| Indirect Costs | | | | | | | | |
| SJI TOTAL | | | | | | | | |
| STATE | | | | | | | | |
| FEDERAL | | | | | | | | |
| APPLICANT | | | | | | | | |
| OTHER | | | | | | | | |
| IN-KIND | | | | | | | | |
| Total | | | | | | | | |

Application Budget

Applicants may submit the proposed project budgets either in the tabular format of Form C1 or in a spreadsheet format similar to Form C2. Applicants requesting more than $150,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than 12 months, a separate form should be submitted for each succeeding twelve-month period or a portion thereof beyond month 12.

In addition to Form C1 or C2, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. If the applicant is requesting indirect costs

and has an indirect cost rate that has been approved by a Federal agency, the basis for that rate together with a copy of the letter or other official document stating that it has been approved should be attached.

If funds from other sources have been requested either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

Form D

State Justice Institute

Assurances

The applicant hereby assures and certifies that it possesses legal authority to apply for the award, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of the Institute as they relate to the acceptance and use of Institute funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds; and that the applicant will immediately take any measures necessary to effectuate this assurance;

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by the Institute will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by Federal, State or local agencies; to influence the passage or defeat of any legislation or constitutional amendment by any Federal, State or local legislative body;

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

a. It will not contribute or make available Institute funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

b. No officer or employee of the applicant will intentionally identify the Institute or the applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the Institute;

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by the Institute will be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by the Institute will be used to supplant State or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give the Institute, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. Research or statistical information that is furnished during the course of the project and that is identifiable to any specific private person, will not be used or revealed for any purpose other than the purpose for which it was obtained, nor will such information or copies thereof be offered as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award document; and that material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

10. The following statement will be prominently displayed on all products prepared as a result of the project:

This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmakers, etc.] and do not necessarily represent the official position or policies of the State Justice Institute.

11. Except as otherwise provided in the terms and conditions of an Institute award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

12. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period; that progress reports will include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period; and that financial reports will contain the information requested on the financial report form included in the award documents.

13. At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

14. The person signing this application is authorized to do so on behalf of the applicant and to obligate the applicant to comply with the assurances enumerated above.

David I. Tevelin,

*Executive Director.*

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Part VI

# Department of the Interior

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 700, 701, 785, and 827**
**Permanent Regulatory Programs; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants: Performance Standards; Final Rule**

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 785, and 827

Permanent Regulatory Programs; Definitions; Requirements for Permits for Special Categories of Mining; Coal Preparation Plants: Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its regulations applicable to coal preparation plants. This action is taken in compliance with the District Court for the District of Columbia's July 6, 1984, ruling in *In Re: Permanent Surface Mining Regulation Litigation (II)* and supersedes an interim final rulemaking from July 10, 1985. The revised regulations (1) bring additional coal preparation plants under the permanent program regulations of the Surface Mining Control and Reclamation Act of 1977 (the Act); (2) allow persons operating coal preparation plants not previously subject to OSMRE rules a certain period of time to obtain the permit required as a result of the Court ruling; and (3) establish performance standards for such plants or facilities.

DATE: This rule is effective on June 10, 1987.

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## I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, sets forth general regulatory requirements governing certain activities associated with coal mining. One of those activities is the preparation and processing of coal.

In September 1977, OSMRE proposed interim program regulations which defined "Coal preparation" in very narrow terms, which meant the treatment of coal to improve its quality and refers to the removal of impurities and the sizing of coal to meet market specifications (42 FR 44956).

In December of 1977, OSMRE published the final interim program which, in response to numerous comments, added a definition of "waste" which included materials wasted or otherwise separated from the product coal and retained separation of impurities as a key element in the definition of preparation. (42 FR 62646).

The proposed permanent program rules published in September 1978 included a definition of the term "coal processing waste" which superseded the definition of "waste" above. It was intended to differentiate spoil, overburden and solid waste from the materials subject to the standards found at 30 CFR 816.81–88/817.81–88, "coal mine waste" (43 FR 41688). These rules also proposed a definition of "coal processing plant" which contained separation of impurities as an integral part of the definition (43 FR 41804).

In March 1979, the final permanent program preamble, in a discussion explaining the authority of OSMRE and the states, included ". . . . coal processing plants no matter where located." (44 FR 15095) OSMRE regulated these facilities because associated with coal processing plants are coal wastes, waste piles, disposal sites, and other features which can seriously damage the environment which OSMRE is authorized under the Act to protect (44 FR 15292–3).

In this regulation the OSMRE declined to add the phrase "crushing and screening" to the final definition of "surface coal mining operations" at 30 CFR 700.5, because both the proposed and final definition contained phrases which are readily interpreted to include crushing and screening (44 FR 14914). However, neither the preamble nor the regulations addressing coal preparation plants at 30 CFR Part 827 mention "crushing or screening" and the phrase "and separates coal from its impurities" was retained in the final definition of coal preparation without preamble discussion.

In June 1980, OSMRE proposed to amend the definition of coal processing plants by changing the phrase" . . . *and* separated from its impurities" to ". . . *or* separated from its impurities". This was done to "clarify that chemical or physical processing is included within the scope regardless of whether processing is accomplished by separation of coal from its impurities" (45 FR 42335). However there had been no previous preamble discussions of this definition implying such an interpretation. The proposed rule was never promulgated.

Under proposed revisions in June 1982, OSMRE would regulate . . . coal processing plants and associated coal waste disposal areas so long as they are used "in connection with a coal mining activity" (47 FR 27688). As with the 1979 rules, coal processing plants at the point of ultimate coal use were not regulated since these activities would not be considered to be "in connection with" a coal mine.

Within the 1982 proposed revisions (47 FR 27690), a new definition for coal processing was proposed. The language was similar to the 1979 final rule and included this phrase "and separating coal from its impurities". However, in contrast to the 1980 proposed change, the preamble clarified that this proposed definition did not include coal facilities that do not result in the production of a coal processing waste product. By clarifying that coal processing includes only those activities where coal is separated from its impurities, the definition closely followed the common usage of the term in industry and provided for the regulation of those coal processing activities most likely to be associated with the potential for adverse environmental impacts on the land surface as discussed in the 1979 rule.

On May 5, 1983, OSMRE promulgated a final rule establishing regulations for the control of offsite coal preparation plants and support facilities, 48 FR 20392 (1983). In order to clarify OSMRE's jurisdiction, OSMRE adopted new definitions of "coal preparation or coal processing," "coal preparation plant," and "support facilities" and provided new preamble discussions of those rules. In part, the rules adopted in 1983 included a definition of "coal processing or coal preparation" which required that coal be separated from its impurities. The 1983 definition of "support facilities" included proximity as one factor to be considered in making the determination whether a facility was a support facility.

These definitions were challenged in *In Re: Permanent Surface Mining Regulation Litigation (II)*, Civil Action No. 79-1144 (D.D.C. 1984). In a July 6, 1984, opinion in that case, the District Court for the District of Columbia determined that OSMRE's rule was improperly narrow in contrast to the regulatory scope of the Act. Specifically, the Court held that facilities which in any way leach, chemically process, or physically process coal should be regulated as coal preparation plants even if they do not separate coal from its impurities. The Court also held that the Act did not support the

consideration of proximity in determining whether a facility was a support facility. As a result of this ruling, the definitions of "surface coal mining operations," "coal preparation or coal processing," and "coal preparation plant" were remanded to the Secretary. Although the definition of "support facility" was not remanded, the Court's Memorandum Opinion indicated that it also could not stand.

In order to implement the District Court's Order concerning offsite coal preparation plants, OSMRE adopted an interim final rule, which became effective September 10, 1985 (50 FR 28180, July 10, 1985). The interim final rule revised the definition of "surface coal mining operations" in order to clarify that chemical or physical processing of coal would be regulated whenever they were in connection with coal mining. The revision made clear that OSMRE no longer considers the phrase "chemical or physical processing" to be modified by "in situ."

The rule also removed the definition of "coal processing or coal preparation" and adopted new definitions of "coal preparation" and "coal preparation plants" which include crushing, screening and sizing operations as well as other coal processing. The interim final rule also suspended the definition of "support facilities" and adopted performance standards for coal preparation plants.

At the same time as the interim final rule, OSMRE proposed the same language, in order to allow public comment on the rule (50 FR 28180, July 10, 1985). This notice finalizes the rules proposed on July 10, 1985.

## II. Discussion of Comments Received and Rules Adopted

### *A. Amendment to Definition of "Surface Coal Mining Operations"*

The statutory authority for the regulation of offsite coal preparation plants originates from the definition of "surface coal mining operations" in section 701(28)(A) of the Act. That definition reads as follows:

"[S]urface coal mining operations" means—[A] activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of section 516 surface operations and surface impacts incident to an underground coal mine, the a products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site: *Provided, however,* that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to section 512 of this Act; and [B] the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

OSMRE's 1983 regulatory definition of "surface coal mining operations" at 30 CFR 700.5 tracked its statutory counterpart very closely. However, it differed from the statutory definition because several grammatical and punctuation changes had been made to clarify the statutory language. The regulatory definition also reflects clarified language with regard to extraction of coal form coal refuse piles. A complete discussion of the 1983 rule appears at 48 FR 20392, May 5, 1983.

This final rule revises the first paragraph of the 1983 definition in accordance with the District Court's interpretation of the statutory definition. Specifically, the comma between distillation and retorting will be replaced by an "or" and a semicolon will be placed after the phrase "in situ distillation or retorting." This change will mean that "leaching, chemical or physical processing" will no longer be modified by the phrase "in situ." Thus, these activities will be regulated wherever they occur in connection with coal mining.

The new definition revises paragraph (A) to read as follows:

Surface coal mining operations means—(A) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 516 of the Act, surface operations and subject to the requirements of section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 512 of the Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles.

Several commenters requested the Secretary to respond to questions with respect to the changes in this definition. Specifically, many commenters wanted to know whether the definition includes coal crushing, screening and sizing activities which do not separate coal from its impurities. Apparently, some commenters were unsure whether the Secretary considers coal crushing, screening and sizing operations to be surface coal mining operations. Under the definition adopted, "leaching, chemical or physical processing of coal" are surface coal mining operations when they are conducted in connection with a coal mine without regard to whether a waste product is produced. Plainly coal crushing, screening and sizing activities involve the physical processing of coal. Under the definition of "coal preparation" adopted today (see below), facilities in connection with a coal mine which do not separate coal from its impurities but which otherwise engage in physical or chemical processing (i.e.: crushing, screening, and sizing facilities) will be regulated as coal preparation plants.

Several commenters also asked whether the phrase "cleaning, concentrating, or other processing or preparation" includes crushing, screening and sizing activities which do not separate coal from its impurities. Merely changing the size of coal is not

cleaning or concentrating it. Furthermore, since crushing, screening and sizing are physical processing, it would be redundant to treat them as other processing. Nonetheless, these activities when in connection with a coal mine are included in the definition of surface coal mining operations. Several commenters asked whether the Secretary places any other restriction on the regulation of facilities which crush, screen and size coal and do not separate coal from its impurities. Under the rule adopted, these operations will be treated like all other coal preparation plants. Thus, they will be regulated wherever they occur, unless they are operated in connection with the end user of the coal. For a discussion of OSMRE's interpretation of the phrase, "in connection with" a coal mine and "in connection with" an end user see 48 FR 20392, 20393, May 5, 1983.

Some commenters felt that the definition of surface coal mining operations should include an explanation of when "power plant" processing operations were "surface coal mining operations." Treatment of facilities located at the point of coal use was discussed in the preamble to the May 5, 1983 rulemaking (48 FR 20392). That discussion is entirely relevant, and contains the following paragraph:

> OSM does not believe that its jurisdiction extends to facilities which are operated solely in connecitos with the end user of the coal product. A facility will not be deemed to be operated in connection with a mine if it is located at the point of ultimate coal use unless it is also located at the site of the mine. OSM will treat all facilities which handle coal as either "in connection with" a mine or "in connection with" an end user (48 FR 20393, May 5, 1983).

This statement was issued in the context of a regulatory scheme that did not regulate as processing plants, facilities which solely crushed or sized coal. Now that such facilities are considered surface coal mining operations, the 1983 interpretation may be viewed as expansive. In order to allow for a full discussion of this issue, OSMRE intends to commence rulemaking with respect to the phrase "in connection with" in the near future.

Commenters requested clarification of what types of facilities are covered by the definitions discussed in A and B above. For instance, one commenter was unsure whether a coal slurry fuel manufacturing plant would have to be regulated. In such a situation, the regulatory authority would have to evaluate whether the facility processed coal as opposed to producing a different product as an end user of coal. However, OSMRE's future rulemaking on "in connection with" may further clarify this issue.

OSMRE received several comments on the applicability of the definition to loading facilities. The statutory definition restricts OSMRE's regulation of loading facilities to "loading of coal at or near a mine site." OSMRE intends to regulate all loading facilities which are at or near a mine site, and believes it may not regulate loading facilities which are not so located, unless other regulated activities are also conducted such as crushing or sizing which would make the facility a coal preparation plant. One commenter asserted that OSMRE should regulate unloading facilities; OSMRE lacks such jurisdiction, unless such facilities are part of or are resulting from or incidental to a coal processing plant or some other regulated facility.

Some commenters felt that once coal had entered interstate commerce, OSMRE had no jurisdiction over coal preparation plants processing such coal. Under the District Court opinion, the Secretary must regulate coal processing even if it is quite distant from a mine, if it is in conneciton with a mine. The issue of "in connection with" will be explored in further rulemaking as noted above.

Some commenters felt that the proposed definition failed to clearly define "surface coal mining operations" to ensure that leaching, physical processing and chemical processing are within the coverage of the definition whether or not conducted in situ and whether or not they separate coal from its impurities. The Secretary has reexamined the proposed language and believes the punctuation changes clearly delineate that the phrase "in situ" modifies the words "distillation or retorting" *only* and that chemical or physical processing and leaching activities are now clearly identified as a separate category of regulable activities. No further ambiguity is anticipated.

### *B. Definitions at § 701.5*

#### 1. Coal Preparation

This rule will replace the 1983 definition of "coal preparation or coal processing" which was formulated on the basis of OSMRE's previous interpretation of section 701(28)(A) of the Act. In its place, the Department adopts a new definition of the term "coal preparation." Under the new definition "coal preparation" means the chemical or physical processing and the cleaning, concentrating or other processing or preparation of coal. Facilities which do not separate coal from its impurities will be included in this definition.

Several commenters raised questions as to the coverage of the term "coal preparation" and requested that the Secretary clarify whether facilities engaging solely in coal crushing, screening or sizing which do not separate coal from its impurities are included under the definition of "coal preparation." As stated above in response to comments on the "surface coal mining operations" definition, the Secretary will treat coal processing operations which do not separate coal from its impurities as coal preparation, and the facilities involved will be treated as coal preparation plants.

Commenters felt that the proposed definition was too broad, and would reach too many coal processing facilities, including "noncaptive coal processing plants." They also felt that it would be an excessive regulatory burden for OSMRE.

The District Court ruled that OSMRE's definition was too narrow. OSMRE is now regulating those facilities within the reach of the Court's decision. Some commenters felt that the proposed definition should clarify that coal preparation and coal preparation plants associated with the end use of coal should not be regulated. As discussed above, coal preparation plants associated with the ultimate use or consumption of coal, are not in connection with a mine, and are not regulated surface coal mining operations.

#### 2. Coal Preparation Plant

The Department is revising the definition of "coal preparation plant" in order to track the revised definition of coal preparation discussed above.

Several commenters requested that the Secretary clarify that crushing, screening and sizing were conducted at a coal preparation plant. Since these activities fall within the definition of coal preparation, by definition they are conducted at coal preparation plants.

One commenter suggested modifying the opening sentence of this definition by replacing the phrase ". . . facilities associated with coal preparation activities . . .", with the phrase ". . . facilities at the site where coal preparation activities occur. . .". The Secretary accepts this suggestion. It is logical to specify that facilities must be located at the site of coal preparation activities to be considered part of the coal preparation plant. However, not considering such facilities as being part of the preparation plant does not mean they will be unregulated. Usually, facilities "associated with" coal preparation activities are operated in

support thereof. Typically, such facilities will be resulting from or incident to the coal preparation and will be properly regulated as support facilities; but these facilities should not be considered part of the preparation plant itself. Finally, OSMRE wishes to emphasize that this regulatory change is not intended to require preparation plants to be at or near a mine site to be regulated under this rule.

One commenter stated that coal loadouts should not be considered to be coal preparation plants. A loading facility which is not associated with any other coal processing or preparation operation would not be part of a coal preparation plant. However, loading facilities which are operated as part of coal preparation operations would be part of a coal preparation plant, and thus, be regulated under the Act.

3. Support Facilities

In the interim final rule the Secretary suspended the definition of "support facilities" in order to implement the July 6, 1984 Court decision in *In Re: Permanent Surface Mining Regulation Litigation II*, No. 79-1144 (D.D.C. 1984). The Court ruled that the determination of whether a facility was subject to the Act could not include an element of proximity.

OSMRE received numerous comments on the definition of "support facilities." Nearly every commenter felt that OSMRE should adopt a new definition of that term.

The Secretary, based on these comments, has decided not to finalize the proposed removal of the definition of "support facilities" and to propose a revised definition in a new rulemaking. The suspension of the definition of "support facilities" will continue until a new definition is adopted.

*C. Amendment to 30 CFR 785.21: Schedule for Permitting Coal Preparation Plants*

Section 785.21 establishes the permitting requirements for coal preparation plants. As proposed, and as promulgated in the interim final rule, it requires any person who operates or intends to operate a coal preparation plant outside the permit area for a specific mine, other than those located at the site of ultimate use, to obtain a permit. To obtain a permit, an applicant must submit a permit application which demonstrates that the plant will comply with 30 CFR Part 827 and must describe the construction, operation, maintenance, and planned removal of such facilities.

The coal preparation plants that are subject to OSMRE's regulations under the District Court's July 6, 1984, opinion and by the amendments contained herein will be required to obtain a permit. In the interim final rule, OSMRE recognized that considerable time may be involved in applying for and obtaining a permit. In this rule, OSMRE has amended § 785.21 by finalizing the addition of new paragraphs (d) and (e) to set out a reasonable schedule for the permitting of such facilities.

Section 785.21(d)(1) imposed an obligation to apply for a permit. Under paragraph (d)(1) any person who planned to operate a coal preparation plant after May 10, 1986 which was not subject to the regulations of 30 CFR Chapter VII prior to July 6, 1984, had to apply for a permit no later than November 10, 1985.

New paragraph (d)(2) contains an important exception to the requirements of paragraph (d)(1). It provides that those States with State programs that have statutory or regulatory prohibitions precluding the issuance of permits to facilities covered by paragraph (d)(1) had to notify OSMRE by December 9, 1985 that a program change is necessary. Nine states notified OSMRE that they needed to change their programs. These States each established a timetable, which has been approved by OSMRE, of the action to be taken in order to adopt appropriate measures and undertake permitting actions for all of the coal preparation plants located within their jurisdiction. Operators in those States must apply for permits in accordance with these timetables.

New paragraph (e) of § 785.21 provides that any person operating a coal preparation plant subject to regulation under the July 6, 1984, decision and not subject to prohibition by 30 CFR 761.11 will be allowed to continue to operate without a permit until May 10, 1986. Such persons will be allowed to operate past the May 10, 1986 if (1) they have timely filed a permit application pursuant to paragraph (d)(1) or pursuant to a State imposed schedule specified in paragraph (d)(2); (2) the regulatory authority has yet to issue or deny the permit; and (3) the person complies with the applicable performance standards of § 827.13 of 30 CFR Chapter VII.

Several commenters asserted that the time frame for implementation of permitting in states with legal impediments to regulating coal processing operations was too lax. These commenters contended that the Secretary must set aside any State law that is determined to be inconsistent with and therefore superseded by the Federal Act. It is unnecessary to do so. OSMRE or the State will enforce interim standards until the State issues or denies permanent program permits for coal preparation plants. Thus, untimely action by a State will not unduly delay the protections of the Act. To speed the amendment of state programs where necessary, the Secretary adopted an approach of notifying all states of the possible requirement to amend their programs through the July 10, 1985 **Federal Register** notice rather than the normal notification process of 30 CFR 732.17. This eased notification and allowed the States the first opportunity to review and revise their programs.

For those states where state law remains inconsistent with these regulations, OSMRE will take necessary action to implement these regulations in a timely manner.

*D. Permitting and Performance Standards for Support Facilities*

One commenter felt that the time frames were far too short for industry to comply with the interim final regulations as they apply to support facilities previously excluded from permitting requirements. Section 701(28)(A) of the Act identifies those activities which handle coal and are considered "surface coal mining operations." The following paragraph, 701(28)(B), identifies many activities or facilities which, while not handling coal, are resultant from or incident to those identified in paragraph (A) above.

Most activities or facilities covered by paragraph (B) should have been permitted under the previous definition of support facilities. OSMRE or the State Regulatory Authority will determine on a case-by-case basis whether particular facilities, not previously regulated, are support facilities and the time frames for obtaining permits.

*E. Amendments to Part 827*

Part 827 of 30 CFR sets forth the permanent program performance standards for coal preparation plants not within the permit area for a specific mine. Where permanent program standards are not already applicable to the coal preparation plants subject to regulation under the District Court's decision, Part 827 requires interim performance standards until the permanent program permit for such plant is issued. Such a provision is reasonable because the permanent program performance standards are tied to the issuance of a permit. The interim program performance standards are keyed to direct enforcement not based upon the existence of a permit.

A change has been made from the proposed and interim final rules to

clarify when a facility had to be operating to be subject to the preparation plant performance standards. Section 827.13(a) of the proposed and interim final rule was applicable to "[p]ersons operating coal preparation plants not subject to [30 CFR Chapter VII] before July 6, 1984. . . ." From this language, it was not entirely clear whether the performance standards applied to persons operating preparation plants after September 10, 1985 (the effective date of the interim final rule), after July 6, 1984 (the date of the district court decision in *In Re Permanent II, supra*), after August 3, 1977 (the date of SMCRA enactment), or after some other date. In this final rule, OSMRE modified the language of § 827.13(a) to make it clear that for these facilities not subject to the 30 CFR Chapter VII before July 6, 1984, the applicable performance standards apply to all such preparation plants that operated after July 6, 1984. Under the court decision, any person operating a preparation plant after July 6, 1984 was conducting a surface coal mining operation and subject to SMCRA. Notwithstanding that a plant may have ceased operations prior to September 10, 1985, the person operating the facility subsequent to July 6, 1984 must reclaim the site in accordance with the applicable performance standards.

Because 30 CFR Part 827 is cross referenced in all Federal programs, OSMRE will apply these standards to all coal preparation plants in a Federal program states or on Indian lands, operated after July 6, 1984.

OSMRE considered applying the rule retroactively to facilities which ceased operating before July 6, 1984. OSMRE has concluded that doing so would not further public policy in light of the nature both of the Surface Mining Act and its application prior to the District Court decision. *See Linkletter v. Walker*, 381 U.S. 618, 627 (1964). From an environmental standpoint, the question of retroactivity relates solely to the reclamation of non-waste-generating facilities which ceased operating prior to July 6, 1984. Generally, such reclamation would involve the removal of abandoned structures that likely are not currently causing large amounts of pollution.

In considering whether to assert enforcement authority over all facilities which ever crushed, screened, sized, or otherwise handled coal since the enactment of the Act, OSMRE has carefully examined the regulatory history of this issue. Until the District Court's decision in 1984, operators could have believed that OSMRE's jurisdiction over such facilities was unresolved and a matter in dispute. A number of operators challenged OSMRE's jurisdiction in this regard. For example, during the initial regulatory program, the Interior Board of Surface Mining Appeals ruled that OSMRE's regulations could not be applied to coal processing plants not located "at or near" a mine site. The interpretation of the "at or near" language was not clarified until March 1979, when OSMRE first promulgated its permanent program rules. Still, the Board did not apply the interpretation retroactively. *Western Engineering* 1 IBSMA 202, 211n.9; *Thoroughfare Coal Company*, 3 IBSMA 72 (1981); *Drummond Coal Co.*, 2 IBSMA 96 (1980); *Falcon Coal Company*, 2 IBSMA 406 (1980); *Wolverine Coal Company*, 2 IBSMA 325 (1980); *Roberts Brothers Coal Company*, 2 IBSMA 284 (1980).

Under the first set of permanent regulatory program rules in effect from March 1979 until May 1983, the confusion continued to exist. As mentioned earlier, the 1979 preamble contained a statement that the term "surface coal mining operations" was readily interpreted to include crushing and screening and there was no need to expressly include those activities in the definition. However, there were no provisions in the regulations under which only crushing and screening away from the mine site were clearly regulated. For instance, OSMRE's definition of coal processing plant in that same rule required that such plants separate coal from its impurities. A reader could have concluded that crushing or screening operations away from the mine site were not surface coal mining operations because they were not processing.

The only other regulations that logically would have applied to crushers and screeners would have been the rules governing support facilities (30 CFR 785.21, 816.181 and 817.181 (1979)). In the 1979 preamble, in the same sentence that stated that coal processing plants were regulated no matter where located, OSMRE also stated that all facilities incident to a mine would be regulated when *at or near* the site, 44 FR 15095 (1979). Because the support facility rules were applied on a case-by-case basis (45 FR 14915), not all crushers, screeners and sizers would have been regulated. Thus, the 1979 rules did not clearly require the regulation of off-site crushers and screeners.

Recognizing these problems, OSMRE proposed to clarify its rules and amend the definition of coal processing on June 24, 1980 (45 FR 42334) to remove the requirement for separation of waste. However, that proposal was never finalized. Lastly, during the period from May 5, 1983 until July 6, 1984, OSMRE's rules provided expressly that coal handling facilities which did not separate coal form its impurities would not be regulated.

Based upon this regulatory history, OSMRE has concluded that, although it has jurisdiction to cover facilities operating prior to July 6, 1984, it would be inequitable to do so. Prior to the district court decision, operators of such facilities could have reasonably believed that the program did not apply to them during their period of operation and they could have made business decisions in reliance upon those beliefs. In addition, retroactive application of the rule to facilities that ceased operations prior to July 6, 1984, would require regulatory authorities to locate all such facilities, find the persons responsible for the operations of such facilities, and attempt to compel reclamation at those sites. Requiring such efforts in the face of the settled expectation of persons who have concluded their operations is not warranted in this instance.

### III. Related Issues: Applications of Prohibitions in Section 522(e)

One commenter questioned how a facility which, in its view, was not subject to SMCRA prior to July 6, 1984, could be required to have had valid existing rights (VER) of section 522 (e) effective August 3, 1977. OSMRE sympathizes with the commenter's concern. Although section 522(e) of SMCRA became effective August 3, 1977, the date of enactment of the Act, those facilities which were affected by the July 6, 1984, court decision became clearly subject to the section 522(e) prohibitions on July 6, 1984. Prior to that date, a person in good faith could have begun and have expected to operate such a facility without complying with the section 522(e) prohibitions or the need to establish VER. Based upon such settled expectations, OSMRE will not apply the prohibitions to such facilities which existed on or before July 6, 1984.

If a person began operating such a facility in a section 552(e) area after July 6, 1984, or intends to operate there in the future, a VER must be established. For those facilities in section 522(e) areas which ceased operating after July 6, 1984, the existence of VER during their period of operation is largely academic. As discussed in the preceding section such sites must be reclaimed. The reclamation obligation would not be affected by whether VER existed.

If OSMRE receives an inappropriate response to a "ten day notice" regarding such a facility operating within a section 522(e) area, OSMRE will issue a Notice of Violation which would provide an abatement period of approximately 30 days. In that time, an operator must obtain necessary waivers, provide documentation to demonstrate valid existing rights, demonstrate that the operation was existing on the date of enactment or cease operations and initiate reclamation of the site. Any determination of "valid existing rights" made by OSMRE will be consistent with the March 22, 1985, District Court ruling in *In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. 1985) and the Notice of Suspension published November 10, 1986 (51 FR 41952, 41954).

A commenter asserted that the thirty day period allowed to obtain the necessary waivers or demonstrate Valid Existing Rights (VER) was unduly short. OSMRE rejects this assertion. Operators have been on notice of the need to have VER since July 6, 1984, the date of the court decision and unquestionably since July 10, 1985, the publication date of the interim final rule. Thus no further delay is warranted.

## IV. Procedural Matters

*Federal Paperwork Reduction Act*

The information collection requirements in § 785.21 have been submitted to the Office of Management and Budget for approval. This final rule contains no information collection requirements that were not covered by the previous approval, however additional respondents will have to collect the information as a result of this rule.

*Executive Order 12291*

The Department of the Interior (DOI) has examined the final rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis. This rule will impose only minor costs to the coal industry since relatively few operations will be affected. Likewise, the impact upon the consumers of coal will be negligible.

*Regulatory Flexibility Act*

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that the final rule will not have a significant economic impact on a substantial number of small entities. This rule will impact a relatively small number of coal operators the majority of which would not be small entities.

*National Environmental Policy Act*

OSMRE has prepared an environmental assessment (EA) of the impacts and the cumulative impacts on the human environment of this rulemaking and related rulemakings under the Act. Based on this EA, OSMRE has made a finding that this rule will not significantly adversely affect the quality of the human environment.

Commenters raised questions as to the requirements of NEPA with regard to deletion of the 'support facilities' definition. These commenters contended that the previous EIS's did not discuss the proposed action.

No definition of support facilities was adopted in 1979. Thus, among the alternatives considered in the 1979 EIS, (OSM–EIS–1) and the supplement thereto, was the option of not defining that term. Since the same facilities will be subject to regulation, regardless of definition, there should be no significant environmental impact from this action. However, an environmental assessment has been prepared, and is available from the OSMRE Administrative Record Room, located at Room 5315A, 1100 L Street NW., Washington, DC.

**List of Subjects**

*30 CFR Part 700*

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 701*

Law enforcement, Surface mining, Underground mining.

*30 CFR Part 785*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 827*

Coal, Environmental protection, Surface mining, Underground mining.

Accordingly, 30 CFR Parts 700, 701, 785, and 827 are amended as follows:

Dated: April 7, 1987.

**J. Steven Griles,**

*Assistant Secretary for Land and Minerals Management.*

## PART 700—GENERAL

1. The authority citation for Part 700 continues to read as follows:

**Authority:** Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

2. Section 700.5 is amended by revising paragraph (a) of the definition of "surface coal mining operations" to read as follows:

**§ 700.5 Definitions.**

* * * * *

*Surface coal mining operations* mean—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountain top removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. *Provided*, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Act; and *Provided further*, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

* * * * *

## PART 701—PERMANENT REGULATORY PROGRAM

3. The authority citation for Part 701 continues to read as follows:

**Authority:** Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

4. Section 701.5 is amended by revising the definitions of "coal preparation" and "coal preparation plant" to read as follows:

**§ 701.5 Definitions.**

* * * * *

*Coal preparation* means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

*Coal preparation plant* means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not

limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

* * * * *

## PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

5. The authority citation for Part 785 continues to read as follows:

**Authority:** Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

6. Section 785.21 is amended by revising paragraphs (d) and (e) to read as follows:

### § 785.21 Coal preparation plants not located within the permit area of a mine.

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, any person who operates a coal preparation plant beyond May 10, 1986, that was not subject to this chapter before July 6, 1984, shall have applied for a permit no later than November 11, 1985.

(2)(i) State programs that have a statutory or regulatory bar precluding issuance of permits to facilities covered by paragraph (d)(1) of this section shall notify OSMRE not later than November 7, 1985, and shall establish a schedule for actions necessary to allow the permitting of such facilities as soon as practicable. Not later than December 9, 1985, this schedule shall be submitted to OSMRE for approval.

(ii) Any person who operates a coal preparation plant that was not subject to this chapter before July 6, 1984, in a state which submits a schedule in accordance with paragraph (d)(2)(i) of this section shall apply for a permit in accordance with the schedule approved by OSMRE.

(e) Notwithstanding § 773.11 of this chapter and except as prohibited by § 761.11 of this chapter, any person operating a coal preparation plant that was not subject to this chapter before July 6, 1984, may continue to operate without a permit until May 10, 1986, and may continue to operate beyond that date if: (1) A permit application has been timely filed under paragraph (d)(1) of this section or under a State imposed schedule specified in paragraph (d)(2) of this section, (2) the regulatory authority has yet to either issue or deny the permit, and (3) the person complies with the applicable performance standards of Section 827.13 of this chapter.

## PART 827—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE

7. The authority citation for Part 827 continues to read as follows:

**Authority:** Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

8. The introductory language of § 827.12 is revised to read as follows:

### § 827.12 Coal preparation plants: Performance standards.

Except as provided in § 827.13 of this part, the construction, operation, maintenance, modification, reclamation, and removal activities at coal preparation plants shall comply with the following:

* * * * *

9. Section 827.13 is revised to read as follows:

### § 827.13 Coal preparation plants: Interim performance standards.

(a) Persons operating or who have operated coal preparation plants after July 6, 1984, which were not subject to this chapter before July 6, 1984, shall comply with the applicable interim or permanent program performance standards of the State in which such plants are located, as follows:

(1) If located in a State in which either interim or permanent program performance standards apply to such plants, the applicable program standards of the State program shall apply;

(2) If located in a State with a State program which must be amended in order to regulate such plants, the interim program performance standards in Subchapter B of this chapter shall apply; and

(3) If located in a State with a Federal program, all such plants shall be subject to the interim program performance standards in Subchapter B of this chapter.

(b) After a person described in paragraph (a) of this section obtains a permit to operate a coal preparation plant, the performance standards specified in § 827.12 shall be applicable to the operation of that plant instead of those specified in paragraph (a) of this section.

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May 11, 1987

Part VII

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890**

**Medical Devices; Clarifications of Effective Dates of Requirement for Premarket Approval for Class III Devices; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86N-0317]

21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890

# Medical Devices; Clarifications of Effective Dates of Requirement for Premarket Approval for Class III Devices

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is clarifying its device classification regulations by codifying a statement on whether FDA has established an effective date by which manufacturers must submit to FDA applications for premarket approval (PMA's) or notices of completion of product development protocols (PDP's) for certain devices already classified into class III (premarket approval). The rule does not contain any new requirements, but only clarifies the applicable statutory requirements that were described in the preambles to the device classification regulations.

**EFFECTIVE DATE:** June 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–80), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

**SUPPLEMENTARY INFORMATION:** Classification of medical devices in commercial distribution is required by the Medical Device Amendments of 1976 (the amendments) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.). Depending upon the levels of regulatory control necessary to assure the safety and effectiveness of devices, under section 513 of the act (21 U.S.C. 360c), FDA classifies devices into one or more of three regulatory categories: class I (general controls), class II (performance standards), or class III (premarket approval).

FDA's classifications of preamendments devices that were promulgated in regulations published in the **Federal Register** before 1986 are in 21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890. Although FDA provided sufficient explanations in the preambles to these classification regulations when it promulgated them, the agency did not specify in the codified language for a device being classified into class III the effective date, if any, by which a manufacturer must submit to FDA an application for premarket approval for the device or a notice of completion of a PDP for the device. FDA now is clarifying the regulations by inserting in the codified language information regarding whether FDA has established, for each class III device, an effective date of the requirement for premarket approval for class III devices. In most cases, the agency has not established such a requirement. Further, FDA is correcting certain language inconsistencies in several of the general provisions sections of the classification regulations.

This rule does not contain any new requirements, but merely clarifies the applicable statutory requirements that were described in the preambles to certain proposed and final device classification regulations. Because these amendments do not alter the rights and interests of parties and because, for good cause, FDA finds that public procedures are unnecessary, the rule is exempt from the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)).

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this rule and has determined that it does not require a regulatory impact analysis, as specified in Executive Order 12291, because the rule does not impose any new requirements. Therefore, the agency concludes that the rule is not a major rule as defined in Executive Order 12291. This final rule, published without a proposed rule, is exempt from the Regulatory Flexibility Act (Pub. L. 96–354). The rule does not impose any paperwork requirements.

## List of Subjects

*21 CFR Part 864*

Blood, Medical devices, Packaging and containers.

*21 CFR Part 866*

Biologics, Laboratories, Medical devices.

*21 CFR Part 868*

Medical devices.

*21 CFR Part 870*

Medical devices.

*21 CFR Part 876*

Medical devices.

*21 CFR Part 880*

Medical devices.

*21 CFR Part 882*

Medical devices.

*21 CFR Part 884*

Medical devices.

*21 CFR Part 890*

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890 are amended as follows:

## PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citations under the sections in 21 CFR Part 864 are removed and the authority citation for 21 CFR Part 864 is revised to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 864.1 is revised to read as follows:

### § 864.1 Scope.

(a) This part sets forth the classification of hematology and pathology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

3. By adding new § 864.3 to subpart A to read as follows:

### § 864.3 Effective dates of requirement for premarket approval.

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under

section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

4. Section 864.5220 is amended by adding new paragraph (c) to read as follows:

**§ 864.5220 Automated differential cell counter.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

5. Section 864.5680 is amended by adding new paragraph (c) to read as follows:

**§ 864.5680 Automated heparin analyzer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

6. Section 864.7250 is amended by adding new paragraph (c) to read as follows:

**§ 864.7250 Erythropoietin assay.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

7. Section 864.7300 is amended by adding new paragraph (c) to read as follows:

**§ 864.7300 Fibrin monomer paracoagulation test.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

8. Section 864.9205 is amended by adding new paragraph (c) to read as follows:

**§ 864.9205 Blood and plasma warming device.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 864.3.

9. Section 864.9245 is amended by adding new paragraph (c) to read as follows:

**§ 864.9245 Automated blood cell separator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 864.3.

## PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

10. The authority citations under the sections in 21 CFR Part 866 are removed and the authority citation for 21 CFR Part 866 is revised to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

11. By revising § 866.1 to read as follows:

**§ 866.1 Scope.**

(a) This part sets forth the classification of immunology and microbiology devices intended for human use that are in commercial distribution.

(b) The indentification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an immunology and microbiology device that has two or more types of uses (e.g., used both as a diagnostic device and as a microbiology device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

12. By adding new § 866.3 to Subpart A to read as follows:

**§ 866.3 Effective dates of requirement for premarket approval.**

A device included in this part that is classified into class III (Premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraphs (b) and (c) of this section. Such a regulation under section 515(b) of

the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been sutstantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

(c) A device identified in a regulation in this part that is classified into class III and that is subject to the transitional provisions of section 520(1) of the act is automatically classified by statute into class III and must have an approval under section 515 of the act before being commercially distributed. Accordingly, the regulation for such a class III transitional device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

13. Section 868.2420 is amended by adding new paragraph (c) to read as follows:

**§ 868.2420 Oxidase screening test for gonorrhea.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 868.3.

14. Section 868.3290 is amended by adding new paragraph (c) to read as follows:

**§ 868.3290 Gonococcal antibody test (GAT).**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 868.3.

15. Section 868.3305 is amended by adding new paragraph (c) to read as follows:

**§ 868.3305 Herpes simplex virus serological reagents.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

16. Section 868.3510 is amended by adding new paragraph (c) to read as follows:

**§ 868.3510 Rubella virus serological reagents.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

17. Section 868.6010 is amended by adding new paragraph (c) to read as follows:

**§ 868.6010 Carcinoembryonic antigen (CEA) immunological test system as an aid in the detection and management of cancer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* As of May 28, 1976, an approval under section 515 of the act is required before this device may be commercially distributed. See § 868.3.

## PART 868—ANESTHESIOLOGY DEVICES

18. The authority citations under the sections in 21 CFR Part 868 are removed and the authority citation for 21 CFR Part 868 is revised to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

19. By revising § 868.1 to read as follows:

**§ 868.1 Scope.**

(a) This part sets forth the classification of anesthesiology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, an anesthesiology device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

20. By adding new § 868.3 to subpart A to read as follows:

**§ 868.3 Effective dates of requirement for premarket approval.**

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order

approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

21. Section 868.1120 is amended by adding new paragraph (c) to read as follows:

**§ 868.1120 Indwelling blood oxyhemoglobin concentration analyzer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

22. Section 868.1150 is amended by adding new paragraph (c) to read as follows:

**§ 868.1150 Indwelling blood carbon dioxide partial pressure ($P_{CO}2$) analyzer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

23. Section 868.1170 is amended by adding new paragraph (c) to read as follows:

**§ 868.1170 Indwelling blood hydrogen ion concentration (pH) analyzer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

24. Section 868.1200 is amended by adding new paragraph (c) to read as follows:

**§ 868.1200 Indwelling blood oxygen partial pressure ($P_o2$) analyzer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

25. Section 868.2450 is amended by adding new paragraph (c) to read as follows:

**§ 868.2450 Lung water monitor.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

26. Section 868.2500 is amended by adding new paragraph (c) to read as follows:

**§ 868.2500 Cutaneous oxygen monitor.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 868.3.

27. Section 868.5400 is amended by adding new paragraph (c) to read as follows:

**§ 868.5400 Electroanesthesia apparatus.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

28. Section 868.5610 is amended by adding new paragraph (c) to read as follows:

**§ 868.5610 Membrane lung for long-term pulmonary support.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 868.3.

## PART 870—CARDIOVASCULAR DEVICES

29. The authority citations under the sections in 21 CFR Part 870 are removed and the authority citation for 21 CFR part 870 is revised to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

30. By revising § 870.1 to read as follows:

**§ 870.1 Scope.**

(a) This part sets forth the classification of cardiovascular devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a cardiovascular device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

31. By adding new § 870.3 to subpart A to read as follows:

**§ 870.3 Effective dates of requirement for premarket approval.**

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order

approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

32. Section 870.1025 is amended by adding new paragraph (c) to read as follows:

**§ 870.1025 Arrhythmia detector and alarm.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

33. Section 870.1350 is amended by adding new paragraph (c) to read as follows:

**§ 870.1350 Catheter balloon repair kit.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

34. Section 870.1360 is amended by adding new paragraph (c) to read as follows:

**§ 870.1360 Trace microsphere.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

35. Section 870.3300 is amended by adding new paragraph (c) to read as follows:

**§ 870.3300 Arterial embolization device.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

36. Section 870.3375 is amended by adding new paragraph (c) to read as follows:

**§ 870.3375 Cardiovascular intravascular filter.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

37. Section 870.3450 is amended by adding new paragraph (c) to read as follows:

**§ 870.3450 Vascular graft prosthesis of less than 6 millimeters diameter.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

38. Section 870.3535 is amended by adding new paragraph (c) to read as follows:

**§ 870.3535 Intra-aortic balloon and control system.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

39. Section 870.3545 is amended by adding new paragraph (c) to read as follows:

**§ 870.3545 Ventricular bypass (assist) device.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

40. Section 870.3600 is amended by adding new paragraph (c) to read as follows:

**§ 870.3600 External pacemaker pulse generator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

41. Section 870.3610 is amended by adding new paragraph (c) to read as follows:

**§ 870.3610 Implantable pacemaker pulse generator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

42. Section 870.3620 is amended by adding new paragraph (c) to read as follows:

**§ 870.3620 Pacemaker lead adaptor.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

43. Section 870.3680 is amended by adding new paragraph (c) to read as follows:

**§ 870.3680 Cardiovascular permanent or temporary pacemaker electrode.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 870.3.

44. Section 870.3700 is amended by adding new paragraph (c) to read as follows:

**§ 870.3700 Pacemaker programmers.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

45. Section 870.3710 is amended by adding new paragraph (c) to read as follows:

**§ 870.3710 Pacemaker repair or replacement material.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

46. Section 870.3800 is amended by adding new paragraph (c) to read as follows:

**§ 870.3800 Annuloplasty ring.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

47. Section 870.3850 is amended by adding new paragraph (c) to read as follows:

**§ 870.3850 Carotid sinus nerve stimulator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

48. Section 870.3925 is amended by adding new paragraph (c) to read as follows:

**§ 870.3925 Replacement heart valve.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

49. Section 870.4230 is amended by adding new paragraph (c) to read as follows:

**§ 870.4230 Cardiopulmonary bypass defoamer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

50. Section 870.4260 is amended by adding new paragraph (c) to read as follows:

**§ 870.4260 Cardiopulmonary bypass arterial line blood filter.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

51. Section 870.4320 is amended by adding new paragraph (c) to read as follows:

**§ 870.4320 Cardiopulmonary bypass pulsatile flow generator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

52. Section 870.4350 is amended by adding new paragraph (c) to read as follows:

**§ 870.4350 Cardiopulmonary bypass oxygenator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

53. Section 870.4360 is amended by adding new paragraph (c) to read as follows:

**§ 870.4360 Nonroller-type cardiopulmonary bypass blood pump.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

54. Section 870.5200 is amended by adding new paragraph (c) to read as follows:

**§ 870.5200 External cardiac compressor.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

55. Section 870.5225 is amended by adding new paragraph (c) to read as follows:

**§ 870.5225 External counter-pulsating device.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 870.3.

56. Section 870.5300 is amended by adding new paragraph (c) to read as follows:

**§ 870.5300 DC-defibrillator (including paddles).**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 870.3.

57. Section 870.5550 is amended by adding new paragraph (c) to read as follows:

**§ 870.5550 External transcutaneous cardiac pacemaker (noninvasive).**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 870.3.

## PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

58. The authority citations under the sections in 21 CFR Part 876 are removed and the authority citation for Part 876 is revised to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 89 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

59. By revising § 876.1 to read as follows:

**§ 876.1 Scope.**

(a) This part sets forth the classification of gastroenterology-urology devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a gastroenterology-urology device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I to Title 21, unless otherwise noted.

60. By adding new § 876.3 to Subpart A to read as follows:

**§ 876.3 Effective dates of requirement for premarket approval.**

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into

commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

61. Section 876.3350 is amended by adding new paragraph (c) to read as follows:

**§ 876.3350 Penile inflatable implant.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

62. Section 876.3630 is amended by adding new paragraph (c) to read as follows:

**§ 876.3630 Penile rigidity implant.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

63. Section 876.3750 is amended by adding new paragraph (c) to read as follows:

**§ 876.3750 Testicular prosthesis.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

64. Section 876.4480 is amended by adding new paragraph (c) to read as follows:

**§ 876.4480 Electrohydraulic lithotriptor.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

65. Section 876.5220 is amended by adding new paragraph (c) to read as follows:

**§ 876.5220 Colonic irrigation system.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device intended for the uses described in paragraph (b)(2). See § 876.3.

66. Section 876.5270 is amended by adding new paragraph (c) to read as follows:

**§ 876.5270 Implanted electrical urinary continence device.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

67. Section 876.5280 is amended by adding new paragraph (c) to read as follows:

**§ 876.5280 Implanted mechanical/hydraulic urinary continence device.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

68. Section 876.5540 is amended by adding new paragraph (c) to read as follows:

**§ 876.5540 Blood access device and accessories.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 876.3.

69. Section 876.5860 is amended by adding new paragraph (c) to read as follows:

**§ 876.5860 High permeability hemodialysis system.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

70. Section 876.5870 is amended by adding new paragraph (c) to read as follows:

**§ 876.5870 Sorbent hemoperfusion system.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

71. Section 876.5955 is amended by adding new paragraph (c) to read as follows:

**§ 876.5955 Peritoneo-venous shunt.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 876.3.

## PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

72. The authority citations under the sections in 21 CFR Part 880 are removed and the authority citation for Part 880 is revised to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

73. By revising § 880.1 to read as follows:

**§ 880.1 Scope.**

(a) This part sets forth the classification of general hospital and personal use devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a general hospital and personal use device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

74. By adding new § 880.3 to Subpart A to read as follows:

**§ 880.3 Effective dates of requirement for premarket approval.**

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring

completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" devices defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

75. Section 880.5130 is amended by adding new paragraph (c) to read as follows:

**§ 880.5130 Infant radiant warmer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 880.3.

76. Section 880.5700 is amended by adding new paragraph (c) to read as follows:

**§ 880.5700 Chemical coldpack anesthetic kit.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 880.3.

## PART 882—NEUROLOGICAL DEVICES

77. The authority citations under 21 CFR Part 882 are removed and the authority citation for 21 CFR Part 882 is revised to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

78. By revising § 882.1 to read as follows:

**§ 882.1 Scope.**

(a) This part sets forth the classification of neurological devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a neurological device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

79. By adding new § 882.3 to subpart A to read as follows:

**§ 882.3 Effective dates of requirement for premarket approval.**

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section, 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

80. Section 882.1790 is amended by adding new paragraph (c) to read as follows:

**§ 882.1790 Ocular plethysmograph.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No efective date

has been established of the requirement for premarket approval. See § 882.3.

81. Section 882.1825 is amended by adding new paragraph (c) to read as follows:

**§ 882.1825 Rheoencephalograph.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 882.3.

82. Section 882.5150 is amended by adding new paragraph (c) to read as follows:

**§ 882.5150 Intravascular occluding catheter.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

83. Section 882.5800 is amended by adding new paragraph (c) to read as follows:

**§ 882.5800 Cranial electrotherapy stimulator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

84. Section 882.5840 is amended by adding new paragraph (c) to read as follows:

**§ 882.5840 Implanted intracerebral/subcortical stimulator for pain relief.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

85. Section 882.5850 is amended by adding new paragraph (c) to read as follows:

**§ 882.5850 Implanted spinal cord stimulator for bladder evacuation.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 882.3.

86. Section 882.5860 is amended by adding new paragraph (c) to read as follows:

**§ 882.5860 Implanted neuromuscular stimulator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

87. Section 882.5940 is amended by adding new paragraph (c) to read as follows:

**§ 882.5940 Electroconvulsive therapy device.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirements for premarket approval. See § 882.3.

88. Section 882.5950 is amended by adding new paragraph (c) to read as follows:

**§ 882.5950 Artificial embolization device.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 882.3.

## PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

89. The authority citations under the sections in 21 CFR Part 884 are removed and the authority citation for Part 884 is revised to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

90. By revising § 884.1 to read as follows:

**§ 884.1 Scope.**

(a) This part sets forth the classification of obstetrical and gynecological devices intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a obstetrical and gynecological device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

91. By adding new § 884.3 to Subpart A to read as follows:

**§ 884.3 Effective dates of requirement for premarket approval.**

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application for premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commercially distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device

states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

92. Section 884.1060 is amended by adding new paragraph (c) to read as follows:

**§ 884.1060 Endometrial aspirator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

93. Section 884.1100 is amended by adding new paragraph (c) to read as follows:

**§ 884.1100 Endometrial brush.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

94. Section 884.1185 is amended by adding new paragraph (c) to read as follows:

**§ 884.1185 Endometrial washer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

95. Section 884.2050 is amended by adding new paragraph (c) to read as follows:

**§ 884.2050 Obstetric data analyzer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

96. Section 884.2620 is amended by adding new paragraph (c) to read as follows:

**§ 884.2620 Fetal electroencephalographic monitor.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

97. Section 884.2685 is amended by adding new paragraph (c) to read as follows:

**§ 884.2685 Fetal scalp clip electrode and applicator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

98. Section 884.4100 is amended by adding new paragraph (c) to read as follows:

**§ 884.4100 Endoscopic electrocautery and accessories.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

99. Section 884.4150 is amended by adding new paragraph (c) to read as follows:

**§ 884.4150 Bipolar endoscopic coagulator-cutter and accessories.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

100. Section 884.4250 is amended by adding new paragraph (c) to read as follows:

**§ 884.4250 Expandable cervical dilator.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

101. Section 884.4270 is amended by adding new paragraph (c) to read as follows:

**§ 884.4270 Vibratory cervical dilators.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

102. Section 884.5050 is amended by adding new paragraph (c) to read as follows:

**§ 884.5050 Metreurynter-balloon abortion system.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

103. Section 884.5225 is amended by adding new paragraph (c) to read as follows:

**§ 884.5225 Abdominal decompression chamber.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

104. Section 884.5380 is amended by adding new paragraph (c) to read as follows:

**§ 884.5380 Contraceptive tubal occlusion device (TOD) and introducer.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

105. Section 884.5940 is amended by adding new paragraph (c) to read as follows:

**§ 884.5940 Powered vaginal muscle stimulator for therapeutic use.**

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 884.3.

## PART 890—PHYSICAL MEDICINE DEVICES

106. The authority citations under the sections in 21 CFR Part 890 are removed and the authority citation for 21 CFR Part 890 is revised to read as follows:

**Authority:** Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

107. By revising § 890.1 to read as follows:

**§ 890.1 Scope.**

(a) This part sets forth the classification of physical medicine device intended for human use that are in commercial distribution.

(b) The identification of a device in a regulation in this part is not a precise description of every device that is, or will be, subject to the regulation. A manufacturer who submits a premarket notification submission for a device under Part 807 may not show merely that the device is accurately described by the section title and identification provisions of a regulation in this part, but shall state why the device is substantially equivalent to other devices, as required by § 807.87.

(c) To avoid duplicative listings, a physical medicine device that has two or more types of uses (e.g., used both as a diagnostic device and as a therapeutic device) is listed only in one subpart.

(d) References in this part to regulatory sections of the Code of Federal Regulations are the Chapter I of Title 21, unless otherwise noted.

108. By adding new § 890.3 to Subpart A to read as follows:

**§ 890.3 Effective dates of requirement for premarket approval.**

A device included in this part that is classified into class III (premarket approval) shall not be commercially distributed after the date shown in the regulation classifying the device unless the manufacturer has an approval under section 515 of the act (unless an exemption has been granted under

section 520(g)(2) of the act). An approval under section 515 of the act consists of FDA's issuance of an order approving an application of premarket approval (PMA) for the device or declaring completed a product development protocol (PDP) for the device.

(a) Before FDA requires that a device commercially distributed before the enactment date of the amendments, or a device that has been found substantially equivalent to such a device, has an approval under section 515 of the act FDA must promulgate a regulation under section 515(b) of the act requiring such approval, except as provided in paragraph (b) of this section. Such a regulation under section 515(b) of the act shall not be effective during the grace period ending on the 90th day after its promulgation or on the last day of the 30th full calendar month after the regulation that classifies the device into class III is effective, whichever is later. See section 501(f)(2)(B) of the act. Accordingly, unless an effective date of the requirement for premarket approval is shown in the regulation for a device classified into class III in this part, the device may be commercially distributed without FDA's issuance of an order approving a PMA or declaring completed a PDP for the device. If FDA promulgates a regulation under section 515(b) of the act requiring premarket approval for a device, section 501(f)(1)(A) of the act applies to the device.

(b) Any new, not substantially equivalent, device introduced into commercial distribution on or after May 28, 1976, including a device formerly marketed that has been substantially altered, is classified by statute (section 513(f) of the act) into class III without any grace period and FDA must have issued an order approving a PMA or declaring completed a PDP for the device before the device is commercially distributed unless it is reclassified. If FDA knows that a device being commerically distributed may be a "new" device as defined in this section because of any new intended use or other reasons, FDA may codify the statutory classification of the device into class III for such new use. Accordingly, the regulation for such a class III device states that as of the enactment date of the amendments, May 28, 1976, the device must have an approval under section 515 of the act before commercial distribution.

109. Section 890.3610 is amended by adding new paragraph (c) to read as follows:

§ 890.3610 Rigid pneumatic structure orthosis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 890.3.

110. Section 890.3890 is amended by adding new paragraph (c) to read as follows:

§ 890.3890 Stair-climbing wheelchair.

* * * * *

(c) *Date PMA or notice or completion of a PDP is required.* No effective date has been established of the requirement for premarket approval. See § 890.3.

111. Section 890.5275 is amended by adding new paragraph (c) to read as follows:

§ 890.5275 Microwave diathermy.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragrah (b)(1). See § 890.3.

112. Section 890.5290 is amended by adding new paragraph (c) to read as follows:

§ 890.5290 Shortwave diathermy.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 890.3.

113. Section 890.5300 is amended by adding new paragraph (c) to read as follows:

§ 890.5300 Ultrasonic diathermy.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 890.3.

114. Section 890.5525 is amended by adding new paragraph (c) to read as follows:

§ 890.5525 Iontophoresis device.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 890.3.

115. Section 890.5860 is amended by adding new paragraph (c) to read as follows:

§ 890.5860 Ultrasound and muscle stimulator.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* No effecttive date has been established of the requirement for premarket approval for the device described in paragraph (b)(1). See § 890.3.

Dated: April 17, 1987.

Frank E. Young,

*Commissioner of Food and Drugs.*

[FR Doc. 87-10472 Filed 5-8-87; 8:45 am]

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Federal Register

Monday
May 11, 1987

Part VIII

# Department of Education

34 CFR Part 315

Program for Severely Handicapped Children; Proposed Rulemaking

**DEPARTMENT OF EDUCATION**

**34 CFR Part 315**

**Program for Severely Handicapped Children**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations under the former Auxiliary Activities program to conform to the changes made in section 624 of the Education of the Handicapped Act (EHA) by Pub. L. 99–457. As a result of these changes, the program now only applies to severely handicapped children and youth and no longer applies to all handicapped children covered under Part C of the Act. In addition, new weighted criteria have been added for use in evaluation of applications.

**DATES:** Comments must be received on or before June 25, 1987.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to: Dr. Thomas R. Behrens, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4605), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** R. Paul Thompson. Telephone: (202) 732–1161.

**SUPPLEMENTARY INFORMATION:** Previously, section 624 contained the general research, development or demonstration, training, and dissemination authority for all programs covered by Part C of the EHA. Programs covered under Part C included Regional Resource Centers, Services for Deaf-Blind Children and Youth, Early Education for Handicapped Children, Postsecondary Education Programs, and Secondary Education and Transitional Services for Handicapped Youth. Pub. L. 99–457 limits the authority under section 624 solely to programs for severely handicapped children. The regulations have been amended to reflect this change.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The application procedures and other requirements in the proposed regulations are minimal and will not place undue burdens on small entities. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

**Paperwork Reduction Act of 1980**

Section 315.32 contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4615, Switzer Building, 330 C Street, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 315**

Education,
Education of handicapped,
Education—research,
Grants program—education,
Teachers.

(Catalog of Federal Domestic Assistance Number 84.086, Program for Severely Handicapped Children)

Dated: April 13, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Part 315 of Title 34 of the Code of Federal Regulations as follows:

The authority citation for Part 315 is revised to read as follows:

**Authority:** 20 U.S.C. 1424.

1. The title of Part 315 is revised to read as follows:

**PART 315—PROGRAM FOR SEVERELY HANDICAPPED CHILDREN**

2. The heading for § 315.1 is revised to read as follows:

**§ 315.1 What is the Program for Severely Handicapped Children?**

* * * * *

3. Section 315.1 is further amended by removing "including those who are severely handicapped".

**§§ 315.1, 315.10, 315.11, 315.12 and 315.13 [Amended]**

4. In §§ 315.1, 315.10, 315.11, 315.12, and 315.13, the word "severely" is added preceding the words "handicapped children and youth".

5. Section 315.12(a) is amended by adding "to meet the needs of severely handicapped children and youth" following the word "activities".

6. In § 315.12(a)(4), "particiate" is corrected to read "participate".

7. In § 315.12(b)(2), "excepted" is corrected to read "expected".

8. Section 315.13 is amended by revising paragraph (a), redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c), to read as follows:

**§ 315.13 What types of training activities are considered for support by the Secretary under this part?**

* * * * *

(a) *Training.* Training of professional and allied personnel may include staff meetings, seminars, workshops, demonstrations, and related activities.

* * * * *

(c) *Stipends.* The Secretary, on a case-by-case basis, may authorize the payment of stipends for inservice training in an amount the Secretary determines appropriate for a particular training activity.

* * * * *

**§ 315.14 [Amended]**

9. In § 315.14, the word "severely" is added preceding the word "handicapped".

**§ 315.30 [Amended]**

10. Section 315.30(a) is amended by removing "in conjunction with one of the authorities in Part C".

11. Section 315.31 is redesignated as § 315.32 and revised, and a new § 315.31 is added to read as follows:

**§ 315.31 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application on the basis of the criteria in §§ 315.32 or 315.33.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1424)

**§ 315.32 What are the selection criteria used to award a research grant?**

The Secretary uses the following criteria to evaluate an application for a research project described in § 315.11:

(a) *Importance and expected impact of the research.* (20 points) The Secretary reviews each application to determine the extent to which the project will develop new knowledge in understanding and effectively meeting the needs of severely handicapped children and youth, including the extent to which—

(1) The programmatic research areas proposed by the applicant represent critical areas of investigation, or problems whose solution would have greatest impact on improving services to severely handicapped children and youth; and

(2) The Specific questions to be addressed in the project are likely to generate knowledge needed for bringing about a major change in understanding of the topical area.'

(b) *Technical soundness of the project.* (15 points)

(1) The Secretary reviews each application to determine the technical soundness of the research plan, including—

(i) The design;

(ii) The proposed sample;

(iii) Instrumentation; and

(iv) Data analysis procedures.

(2) The Secretary also reviews each application for the relevance of its proposed training efforts, including—

(i) Strategies for provision of training; and

(ii) Relationships between the applicant, other organizations or agencies providing training in coordination with the applicant, and trainees receiving training from the applicant.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(2) How the objectives of the project relate to the purpose of the program;

(3) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (20 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director or principal investigator;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in conducting, documenting, and applying research pertaining to severely handicapped children and youth;

(ii) Awareness of relevant research findings and demonstration project results pertaining to other handicapped children and youth and the potential for use of the findings and results with severely handicapped children and youth; and

(iii) Experience in communicating research findings to service providers of severely handicapped children and youth and in assisting these providers with effective application of the findings.

(e) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (10 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(h) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Provides a clear description of the content, intended audiences, and timelines for production of all project documents and other products that the applicant will disseminate.

(Authority: 20 U.S.C. 1424)

12. A new § 315.33 is added to read as follows:

**§ 315.33 What are the selection criteria used to award a grant for a demonstration, training, or dissemination project?**

The Secretary uses the following criteria to evaluate an application for a demonstration project under § 315.12 and a training project under § 315.13. The Secretary also uses these criteria to evaluate a dissemination project under § 315.14, except that a maximum of 30 points may be given for criterion (b) (plan of operation) and no points are provided for criterion (g) (dissemination plan).

(a) *Extent of need and expected impact of the project.* (25 points) The Secretary reviews each application to determine the extent to which the project is consistent with national needs in the provision of innovative services to severely handicapped children and youth, including consideration of—

(1) The needs addressed by the project;

(2) The impact and benefits to be gained by meeting the educational and

related service needs of severely handicapped children and youth served by the project, their parents and service providers; and

(3) The national significance of the project in terms of potential benefits to severely handicapped children and youth who are not directly involved in the project.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its non-discriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost-effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including the extent to which the applicant's plan—

(1) Ensures proper and efficient dissemination of project information within the State in which the project is located and throughout the Nation; and

(2) Adequately includes the content, intended audiences, and timeliness for production of all project documents and other products which the applicant will disseminate.

(Authority: 20 U.S.C. 1424)

13. A new § 315.34 is added to read as follows:

**§ 315.34 What other factors are considered by the Secretary in making a grant?**

To the extent feasible, the Secretary supports activities that are geographically dispersed throughout the Nation in urban and rural areas.

(Authority: 20 U.S.C. 1424)

[FR Doc. 87-10644 Filed 5-8-87; 8:45 am]

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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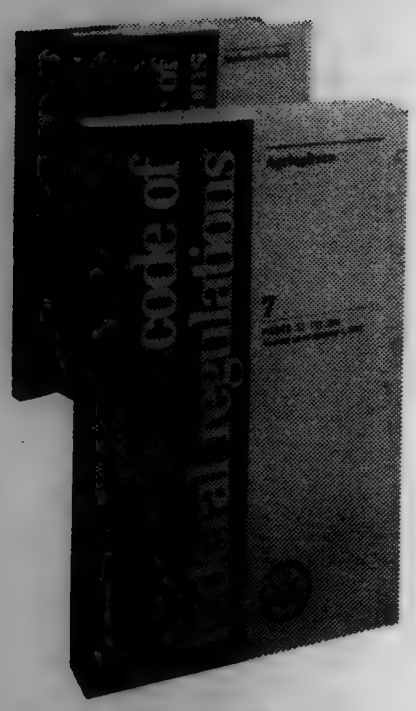


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## THE FEDERAL REGISTER

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**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** June 9, at 9 a.m.
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
**RESERVATIONS:** Gertrude E. Belton, 202-523-5237

### CHICAGO, IL

**WHEN:** July 8, at 9 a.m.
**WHERE:** Rom 204A, Everett McKinley Dirksen Federal Building, 219 S. Dearborn Street, Chicago, IL.
**RESERVATIONS:** Call the Chicago Federal Information Center, 312-353-6339.

### BOSTON, MA

**WHEN:** July 15, at 9 a.m
**WHERE:** Main Auditorium, Federal Building, 10 Causeway Street, Boston, MA.
**RESERVATIONS:** Call the Boston Federal Information Center, 617-565-6129

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# Rules and Regulations

Federal Register
Vol. 52, No. 91
Tuesday, May 12, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1046

## Milk in the Louisville-Lexington-Evansville Marketing Area; Order Terminating a Provision of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Termination of rule.

**SUMMARY:** This action permits a cooperative association to be the responsible handler for milk of nonmembers that is delivered for the cooperative's account to pool plants of other handlers under the Louisville-Lexington-Evansville order. The action was requested by Dairymen, Inc., a cooperative association that represents a large number of producers supplying plants in the market. Interested parties were invited to comment on the proposed action. Three other handlers in the market responded and supported the proposed termination. The termination order adapts the order to a recent change in milk assembly practices in the market whereby a cooperative is handling the milk of some nonmember producers.

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 9, 1987 (52 FR 11475) concerning this termination of a provision of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon. Three handlers in the market responded and supported the proposed action.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that the following provision of the order does not tend to effectuate the declared policy of the Act:

1. In § 1046.9(c), the provision "of its producer members".

### Statement of Consideration

This action allows a cooperative association to be the responsible handler on milk of producers who are not members of the cooperative when such milk is delivered to pool plants of other handlers for the account of the cooperative association. The order now limits the cooperative to being the responsible handler on milk of its producer members.

The request for termination action was submitted by Dairymen, Inc., a cooperative association representing producers who deliver milk to pool plants in the market. The cooperative requested that the termination action be effective March 1987.

Interested parties were invited to submit comments on the proposed termination. Three handlers in the market submitted comments in support of the proposed action: Bel Cheese, Inc., Southeastern Dairies, Inc., and Kraft, Inc. Each of the handlers indicated that the termination action would facilitate the handling of milk at their plant operations. In addition, they indicated that this action would eliminate the need for the plant operators to make duplicate reports involving nonmember milk that is commingled with member milk on farm-to-market routes and is delivered for the account of the cooperative association.

The termination action is warranted and should be made effective upon publication in the **Federal Register**. The termination order would apply to milk marketed after March 1987. Although the cooperative requesting the action asked that the termination order be effective for the month of March, there was not sufficient time to ask for comments from interested parties and complete the amendatory procedure in time to include milk marketed during March 1987. The termination order will result in the bulk-tank handler provision of the Louisville-Lexington-Evansville order conforming with such provision in most other Federal milk orders. The action will facilitate the handling of milk of nonmembers in those instances in which the nonmembers elect to have a cooperative association market their milk. One of the advantages of the change in the handler definition is that the milk of members and nonmembers can be commingled on the same farm-to-market routes, thereby resulting in greater efficiency in the farm-to-market delivery of milk. The action also eliminates the need for the duplicate reports now required of plants for nonmember milk that is delivered for the account of a cooperative association. In addition, the change will facilitate the pooling of nonmember milk that has been associated with this market for some time.

It is hereby found and determined that thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will tend to lessen the reporting requirements of certain handlers who operate plants under the Louisville-Lexington-Evansville order and to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

(b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination. Three responses in support of the proposed action and no comments in opposition were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register** for milk marketed under the Louisville-Lexington-Evansville order after March 1987.

**List of Subjects in 7 CFR Part 1046**

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provision in § 1046.9(c) of the Louisville-Lexington-Evansville order is hereby terminated.

## PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. The authority citation for 7 CFR Part 1046 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1046.9 [Amended]**

2. In § 1046.9(c), the provision "of its producer members" is terminated.

Signed at Washington, DC, on: May 7, 1987.

Kenneth A. Gilles,

*Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 87–10822 Filed 5–11–87; 8:45 am]

BILLING CODE 3410–02–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 87–ANE–10; Amdt. 39–5803]**

## Airworthiness Directives; Alexander Schleicher Model ASK 21

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to Alexander Schleicher Model ASK 21 gliders which requires an initial visual inspection and replacement of the rudder pedal support fitting. This action was prompted by the determination that the rudder pedal support fitting can fail from cracks caused by fatigue damage. This condition, if not corrected, could result in the glider becoming uncontrollable.

**DATE:** Effective May 13, 1987.

Compliance schedule—As prescribed in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on May 13, 1987.

**ADDRESSES:** The technical information and modification parts specified in this AD may be obtained from Eastern Sailplane, Heath Stage Route, Shelburne Falls, Massachusetts 01370; telephone number 413–625–6059. A copy of the technical note is contained in Rules Docket Number 87–ANE–10, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B–1040 Brussels, Belgium; telephone 513.38.30, ext. 2710, or John Maher, New York Aircraft Certification Office, Federal Aviation Administration, Aircraft Certification Division, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone number 516–791–6221.

**SUPPLEMENTARY INFORMATION:** Alexander Schleicher has determined that failure may occur in the rudder pedal support fitting from cracks caused by fatigue damage. The manufacturer has issued ASK 21 Technical Note No. 19, dated October 22, 1986, which requires inspection and replacement of the rudder pedal support fitting. The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of ASK 21 Technical Note No. 19 on gliders operated under Federal Republic of Germany registration. The FAA relies upon the certification of the LBA, combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Alexander Schleicher ASK 21 Technical Note No. 19 and the issuance of AD 86–236 Schleicher by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Alexander Schleicher ASK 21 Technical Note No. 19 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Applicability information is provided because not all aircraft serial numbers of the named model are affected by the AD.

Therefore, an AD is being issued to require an initial visual inspection and replacement of the rudder pedal support fitting on certain serial numbered Alexander Schleicher Model ASK 21 gliders. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

*Conclusion:* The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding to Part 39 the following new airworthiness directive (AD):

**Alexander Schleicher:** Applies to Model ASK 21 gliders serial numbers 21001 through 21312 certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent the failure of the rudder pedal support fitting P/N 99.000.2173 which could result in the glider becoming uncontrollable, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD unless compliance with paragraph (c) has been accomplished, visually inspect the rudder pedal support fitting P/N 99.000.2173 using a 10 power or greater magnifying glass, for cracks.

(b) If a cracked fitting is found during the inspection required by paragraph (a) of this AD, before further flight, replace the rudder pedal support fitting with a serviceable fitting, P/N 99.000.2174, in accordance with the action instructions of Alexander Schleicher ASK 21 Technical Note No. 19, dated October 22, 1986.

(c) Prior to July 15, 1987, replace any rudder pedal support fitting not replaced in accordance with paragraph (b) of this AD, with a serviceable fitting, P/N 99.000.2174, in accordance with Alexander Schleicher ASK 21 Technical Note No. 19, dated October 22, 1986.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone number 513.38.30 ext. 2710 or the Manager, New York Aircraft Certification Office, Federal Aviation Administration, New England Region, Aircraft Certification Division, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone number 516-791-5690.

Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office or Manager, New York Aircraft Certification Office may adjust the compliance time specified in this AD.

Alexander Schleicher ASK 21 Technical Note No. 19, dated October 22, 1986, identified and described in this document is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. All persons affected by this directive who have not already received this document from the manufacturer may obtain a copy upon request to Eastern Sailplanes, Heath Stage Route, Shelburne Falls, Massachusetts 01370.

This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective May 13, 1987.

Issued in Burlington, Massachusetts on April 6, 1987.

**Clyde DeHart, Jr.,**

*Acting Director, New England Region.*

[FR Doc. 87-10800 Filed 5-11-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 86-ANE-48; Amdt. 39-5694]**

## Airworthiness Directives; AVCO Lycoming Textron

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires inspection for, and rework or replacement of, defective rocker arm assemblies. It has been found that a number of rocker arm assemblies were improperly manufactured and are susceptible to fatigue failures. This AD is necessary to prevent failure and consequent loss of engine power.

**DATES:** Effective May 13, 1987.

Compliance schedule—As indicated in the body of the AD.

Comments for inclusion in the docket must be received on or before July 13, 1987.

Incorporation by Reference—Approved by the Director of the Federal Register on May 13, 1987.

**ADDRESSES:** Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 86-ANE-48, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: Docket Number 86-ANE-48.

Comments may be inspected at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service bulletin may be obtained from AVCO Lycoming Textron, 652 Oliver Street, Williamsport, Pennsylvania 17701, Attention: Customer Support. A copy of the service bulletin is contained in Rules Docket Number 86-ANE-48 at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Roy Hettenbach, ANE-174, Federal Aviation Administration, Aircraft Certification Division, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-7421.

**SUPPLEMENTARY INFORMATION:** Recent reports have been received involving failure of the exhaust position rocker arm, P/N LW-18790. In several instances, the aircraft experienced roughness and loss of engine power. There have been at least 10 occurrences of failures, some of which resulted in incidents involving emergency landings.

The failure has generally occurred through the bushings area as the result of fatigue cracks which originate and progress from the lubricating oil port. Investigation revealed the conditions contributing to the failure are that the oil hole in the rocker arm casting was drilled slightly off-center and was not deburred. The number of defective rocker arms in service is unknown although the period of time in which these defective rocker arms were manufactured is known to be between July 1985 and October 1986.

Since this condition is likely to exist or develop on other engine models incorporating the same type design rocker arm assembly, an AD is being issued which will require inspection for, and rework or replacement of, defective rocker arm assemblies.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted

will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 86-ANE-48." The postcard will be date/time stamped and returned to the commenter.

**Conclusion**

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

**List of Subjects in 14 CFR Part 39**

Engines, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding to § 39.13 the following new airworthiness directive (AD):

**Avco Lycoming Textron:** Applies to AVCO Lycoming Textron reciprocating engine series having serial numbers as listed herein; parallel valve-type engines remanufactured or overhauled between July 1, 1985, and October 8, 1986, inclusive; any engine that had an AVCO Lycoming Textron P/N LW-18790 rocker arm assembly installed during this same time period, and any P/N LW-18790 rocker arm assembly that was shipped from AVCO Lycoming Textron during this same time period but not already installed in an engine. O-320-A and -E Series engines with serial numbers L-50164-27A thru L-50175-27A, L-50177-27A thru L-50188-27A.

O-320-B and D Series engines with serial numbers L-13971-39A, L-13972-39A, L-13975-39A, L-13976-39A, L-13980-39A, L-13983-39A thru L-14045-39A, L-14048-39A thru L-14053-39A, L-14055-39A thru L-14067-39A, L-14080-39A thru L-14087-39A, L-14089-39A thru L-14235-39A, L-14242-39A, L-14243-39A, L-14249-39A thru L-14415-39A, L-14421-39A, L-14428-39A.

IO-320 Series engines with serial numbers L-5890-55A thru L-5897-55A. O-360 Series engines with serial numbers L-31144-36A thru L-31146-36A, L-31150-36A thru L-31184-36A, L-31194-36A, L-31195-36A, L-31196-36A thru L-31357-36A, L-31363-36A thru L-31507-36A.

IO-360-B Series engines with serial numbers L-24162-51A, L-24163-51A, L-24170-51A, L-24248-51A, L-24337-51A thru L-24344-51A, L-24352-51A. AEIO-360-B Series engines with serial numbers L-24168-51A, L-24195-51A, L-24337-51A thru L-24344-51A, L-24357-51A.

The O-540 serial numbers that follow may or may not have the letter "A" as part of the suffix of the serial number on the engine dataplate

O-540 Series engines with serial numbers L-23946-40A, L-23949-40A thru L-24059-40, L-24061-40A.

IO-540-C4B5 engines with serial numbers L-22974-48A, L-22975-48A, L-23010-48A thru L-23016-48A, L-23038-48A, L-23039-48A, L-23050-48A thru L-23052-48A, L-23118-48A, L-23136-48A, L-23193-48A, L-23195-48A, L-23196-48A, L-23328-48A, L-23331-48A, L-23348-48A, L-23349-48A, L-23352-48A, L-23353-48A, L-23372-48A, L-23375-48A, L-23376-48A.

IO-540-C4D5D engines with serial numbers L-22920-48A thru L-22924-48A, L-22958-48A thru L-22963-48A, L-23022-48A thru L-23027-48A, L-23079-48A thru L-23082-48A, L-23088-48A, L-23095-48A thru L-23099-48A, L-23148-48A thru L-23153-48A, L-23165-48A thru L-23180-48A, L-23237-48A thru L-23239-48A, L-23264-48A thru L-23273-48A, L-23307-48A thru L-23316-48A, L-23358-48A, L-23359-48A.

IO-540-D4A5 engine with serial number L-23089-48.

IO-540-V4A5D engines with serial numbers L-22943-48A thru L-22945-48A, L-22953-48A thru L-22957-48A, L-23061-48A thru L-23063-48A.

IO-540-W1A5D engines serial numbers L-22964-48A, L-22965-48A, L-22976-48A thru L-22979-48A, L-23020-48A, L-23021-48A, L-23034-48A, L-23036-48A, L-23040-48A thru L-23042-48A, L-23056-48A, L-23057-48A, L-23067-48A, L-23074-48A, L-23090-48A thru L-23094-48A, L-23139-48A, L-23154-48A, L-23181-48A, L-23192-48A, L-23197-48A thru L-23199-48A, L-23223-48A, L-23326-48A, L-23327-48A, L-23346-48A, L-23347-48A.

IO-540-W3A5D engines with serial numbers L-22918-48A, L-22966-48A, L-22967-48A, L-23350-48A, L-23351-48A.

AEIO-540-D Series engines with serial numbers L-22927-48A, L-22994-48A, L-22994-48A, L-23035-48A, L-23037-48A, L-23043-48A, L-23044-48A, L-23065-48A, L-23066-48A, L-23075-48A thru L-23077-48A, L-23100-48A, L-23101-48A, L-23106-48A thru L-23110-48A, L-23114-48A, L-23127-48A, L-23135-48A, L-23143-48A thru L-23147-48A, L-23150-48 thru L-23164-48A, L-23189-48A thru L-23191-48A, L-23200-48A, L-23201-48A, L-23232-48A, L-23233-48A, L-23245-48A, L-23259-48A, L-23260-48A, L-23274-48A thru L-23284-48A, L-23329-48A, L-23330-48A, L-23343-48A, L-23344-48A, L-23368-48A, L-23369-48A, L-23373-48.

TIO-540-AA1AD engines with serial numbers L-8753-61A, L-8782-61A, L-8783-61A, L-8837-61A, L-8845-61A.

TIO-540-AB1AD engines with serial numbers L-8751-61A, L-8752-61A, L-8758-61A, L-8763-61A thru L-8765-61A, L-8777-61A thru L-8779-61A, L-8784-61A, L-8785-61A, L-8788-61A thru L-8790-61A, L-8798-61A thru L-8800-61A, L-8803-61A thru L-8806-61A, L-8813-61A thru L-8816-61A, L-8821-61A thru L-8824-61A, L-8833-61A thru L-8836-61A.

Any of the following parallel valve-type engines that were remanufactured or overhauled between July 1, 1985, and October 8, 1986, inclusive. Any applicable engine that has had a P/N LW-18790 rocker arm assembly installed if the assembly was shipped from AVCO Lycoming Textron Williamsport Division during this same time period.

Engine Models: O-320 Series except O-320-H; IO-320 Series; AIO-320 Series; AEIO-320 Series; LIO-320 Series; O-340 Series; O-360 Series except O-360-E; IO-360-B, -E, -F Series; AEIO-360-B, -H Series; HO-360 Series; HIO-360-B Series; VO-360 Series; IVO-360 Series; O-540 Series; IO-540-C, -D, -J, -N, -R, -T, -V, -W Series; AEIO-540-D Series; TIO-540-C, -E, -C, -H, -K, -AA, -AB Series, LTIO-540-K.

Compliance required (1) within the next 25 hours in service after the effective date of this AD for all applicable engines, and (2) prior to installation, for all P/N LW-18790 rocker arm assemblies not installed in engines, unless already accomplished.

Note.—Rocker arm assemblies complying with this AD are identified by a letter "B" per AVCO Lycoming Textron Service Bulletin (SB) No. 477A, page 4, paragraph 6. All new and remanufactured engines shipped from the AVCO Lycoming Textron Williamsport Division Factory, and all overhauled engines

shipped from the AVCO Lycoming Textron Service Center at Montoursville, Pennsylvania, after October 8, 1986, are in compliance with this AD.

To prevent possible rocker arm failure and loss of engine power, inspect and rework or replace rocker arm assembly P/N LW-16790, as necessary, in accordance with Sections 1 through 9 of AVCO Lycoming Textron SB No. 477A, dated February 16, 1987.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, New York Aircraft Certification Office, ANE-170, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

Upon submission of substantiating data by an owner or operator through a FAA maintenance inspector, the Manager of the New York Aircraft Certification Office, Valley Streams, New York, may adjust the compliance time specified in this AD.

AVCO Lycoming Textron SB No. 477A, dated February 16, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Customer Support, AVCO Lycoming Textron, 652 Oliver Street, Williamsport, Pennsylvania 17701.

This document also may be examined at the Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 86-ANE-48, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on May 13, 1987.

Issued in Burlington, Massachusetts, on April 6, 1987.

Clyde DeHart, Jr.,

*Acting Director, New England Region.*

[FR Doc. 87-10601 Filed 5-11-87; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Parts 232 and 235

**[Docket No. R-87-1335; FR-2358]**

### Mortgage Insurance; Changes in Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This change in the regulations increases the maximum allowable interest rate on certain section 232 (Mortgage Insurance for Nursing Homes) loans and on all section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

**EFFECTIVE DATE:** April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The following amendments to 24 CFR Chapter II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been raised from 8.50 percent to 9.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectivenes of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Polcy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

**List of Subjects**

*24 CFR Part 235*

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

*24 CFR Part 232*

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

## PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR Part 232 continues to read as follows:

**Authority:** Sections 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); Section 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

**§ 232.560 Maximum interest rate.**

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 9.50 percent per annum with respect to

mortgages insured on or after April 27, 1987.

* * * * *

## PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

**Authority:** Sections 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

**§ 235.9 Maximum interest rate.**

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum with respect to mortgages insured on or after April 27, 1987.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

**§ 235.540 Maximum interest rate.**

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 9.50 percent per annum with respect to mortgages insured after April 27, 1987.

* * * * *

Dated: April 30, 1987.

**Thomas T. Demery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 87-10736 Filed 5-11-87; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF JUSTICE

**28 CFR Part 17**

**[Order No. 1187-87]**

### Membership of the Department Review Committee

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This Order revises Part 17 of Title 28, Code of Federal Regulations, to change the security regulations of the Department of Justice for the purpose of providing a Civil Division representative to the Department Review Committee.

**EFFECTIVE DATE:** April 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** D. Jerry Rubino, Department Security Officer, Department of Justice, Washington, DC 20530 (202) (633-2094). This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** This regulation is exempt from the requirements of Executive Order 12291 as a regulation related to agency organization and management. Furthermore, this regulation will not have a significant impact on a substantial number of small entities because its effect is internal to the Department of Justice and is therefore exempt from the Regulatory Flexibility Act.

**List of Subjects in 28 CFR Part 17**

Classified information, Foreign relations.

By virtue of the authority vested in me by E.O. 12356, 5 U.S.C. 301 and 28 U.S.C. 509, 510, § 17.135 of Part 17 of Title 28, Code of Federal Regulations is revised as set forth below.

**PART 17—[AMENDED]**

1. The authority citatation for Part 17 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510; E.O. 12356

**§ 17.135 [Amended]**

2. Section 17.135 is amended by redesignating paragraphs (b) (4), (5), and (6) as paragraphs (b) (5), (6), and (7), and by adding a new paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4) Civil Division

* * * * *

Dated: April 24, 1987.

**Edwin Meese III,**

*Attorney General.*

[FR Doc. 87-10756 Filed 5-11-87; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

**Occupational Safety and Health Administration**

**29 CFR Parts 1910 and 1926**

### Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Corrections and Information Collection Requirements Approval

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Final rules; corrections, technical amendments and information collection requirements approval.

**SUMMARY:** This document makes corrections to the preamble of the final rules for Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite which appeared in the Federal Register on June 20, 1986 (51 FR 22612) and technical amendments to 29 CFR Parts 1910 and 1926.

**EFFECTIVE DATES:** May 12, 1987. 29 CFR 1910.1001 (d)(2), (d)(3), (d)(5), (d)(7), (f)(2), (g)(3)(i), (j)(5), (l), and (m) became effective on October 2, 1986. 29 CFR 1926.58 (f)(2), (f)(3), (f)(6), (h)(3)(i), (k)(3), (k)(4), (m), and (n) became effective on November 14, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, OSHA Office of Information and Consumer Affairs, Room N3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8148.

**SUPPLEMENTARY INFORMATION:** On June 20, 1986 (51 FR 22612) OSHA published a document titled "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite; Final Rules". At the time of publication the information collection requirements of those rules had not been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

On October 2, 1986, the Office of Management and Budget approved the information collection requirements for 29 CFR 1910.1001 and has assigned them Control No. 1218-0133. Accordingly, the information collection requirements of the asbestos, tremolite, anthophyllite, and actinolite final rule (§ 1910.1001) published June 20, 1986 became effective on October 2, 1986.

On November 14, 1986, the Office of Management and Budget approved the information collection requirements for 29 CFR 1926.58 and has assigned them Control No. 1218-0134. Accordingly, the information collection requirements of the construction industry standard for asbestos, tremolite, anthophyllite, and actinolite (§ 1926.58) published June 20, 1986 became effective on November 14, 1986.

There were a number of typographic errors in the June 20, 1986 document preamble as well as in the codified standards 29 CFR 1910.1001 and 29 CFR 1926.58. This document amends and corrects all the substantive and typographic errors in the regulatory text and those in the preamble where correction is needed to make the meaning clearer.

One of the amendments being made is to the respirator selection tables codified at 29 CFR 1910.1001, Table 1, and § 1926.58, Table D-4. These tables are being amended by adding the phrase "other than a disposable respirator" to the description of the class of respirator allowed to be worn in airborne

concentrations not in excess of 2 f/cc. While this explicit prohibition on the use of disposable respirators was not included in the regulatory text issued on June 20, 1986.

OSHA intended to prohibit their use. OSHA indicated in the preamble to the standards that disposable respirators were not allowed (51 FR 22718), and had stated in the appendices to the standards that "disposable respirators or dust masks are not permitted to be used for asbestos, tremolite, anthophyllite and actinolite work." (App. G. (III)A, 51 FR 22754, App. H. (III)A, 51 FR 22788).

OSHA omitted the clarifying phrase, "other than a disposable respirator," from the tables because the purpose of the respirator selection tables is primarily to state which respirators are permitted in specific air concentrations, not to list explicitly those which are not allowed. As explained above, the **Federal Register** document, read as a whole, clearly indicated OSHA's decision to prohibit disposable respirators. However, to ensure that the respirator selection tables, when read alone, are clear, they are being amended to specifically state that disposable respirators are not permitted. Since these technical amendments do not substantively change the requirements of the standards, they were made effective immediately and without opportunity for advance notice and comment which OSHA finds "unnecessary and impracticable" within the meaning of 5 U.S.C. 553(b).

**PART 1910—[CORRECTED]**

**PART 1926—[CORRECTED]**

Accordingly, the preamble to FR Doc. 86–13674 published in 51 FR 22612–22790, June 20, 1986, is corrected to read as follows:

Corrections to the preamble:

1. On page 22629, column 1, line 5, "[Platek et al., Ex. 84–240]" is corrected to read "[Platek et al., Ex. 84–230]".

2. On page 22631, column 1, last paragraph, line 12, "or" is corrected to read "of".

3. On page 22651, Table 7, line entry for A/C pipe under column 5, "0.01–1.21" is corrected to read "0.01–1.81".

4. On page 22655, Table 12, line entry for total under column 2, "764,228" is corrected to read "746,228".

5. On page 22666, column 1, Table 24, is corrected to read:

| Industry | Total cancer deaths |
|---|---|
| Primary Manufacturing: | |
| A/C Pipe | 0.06 |
| A/C Sheet | 0.14 |
| Friction Materials | 3.39 |
| Textiles | 0.16 |
| Floor Tile | <0.01 |
| Gaskets and Packings | 0.12 |
| Paper | 0.04 |
| Coatings and Sealants | 0.39 |
| Plastics | 0.09 |
| Secondary Manufacturing: | |
| A/C Sheet | 0.16 |
| Friction Materials | 0.48 |
| Gaskets and Packings | 0.70 |
| Textiles | 0.11 |
| Plastics | 0.17 |
| Automotive Remanufacturing | 0.74 |
| Services: | |
| Automotive Repair | 30.15 |
| Ship Repair | 4.28 |
| Construction: | |
| New Construction | 0.36 |
| Asbestos Abatement | 0.66 |
| Demolition | 0.22 |
| Building Renovation | 22.15 |
| Routine Maintenance in Commercial and Residential Buildings | 9.80 |
| Routine Maintenance in General Industry | 0.34 |
| Total | 74.72 |

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

6. On page 22666, column 2, Table 25, is corrected to read:

| Industry | Total cancer deaths avoided |
|---|---|
| Primary Manufacturing: | |
| A/C Pipe | 0.07 |
| A/C Sheet | 0.16 |
| Friction Materials | 4.00 |
| Textiles | 0.16 |
| Floor Tile | 0.02 |
| Gaskets and Packings | 0.13 |
| Paper | 0.06 |
| Coatings and Sealants | 0.48 |
| Plastics | 0.11 |
| Secondary Manufacturing: | |
| A/C Sheet | 0.16 |
| Friction Materials | 0.65 |
| Gaskets and Packings | 0.88 |
| Textiles | 0.12 |
| Plastics | 0.20 |
| Automotive Remanufacturing | 0.90 |
| Services: | |
| Automotive Repair | 38.25 |
| Ship Repair | 4.61 |
| Construction: | |
| New Construction | 0.61 |
| Asbestos Abatement | 0.76 |
| Demolition | 0.23 |
| Building Renovation | 22.49 |
| Routine Maintenance in Commercial and Residential Buildings | 11.23 |
| Routine Maintenance in General Industry | 0.39 |
| Total | 87.80 |

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

7. On page 22668, Table 27, line entry for A/C sheet under column 2, "1,260.6" is corrected to read "1,260.0".

8. On page 22668, Table 28, line entry for ship repair under column 2, "3918.5" is corrected to read "3.919".

9. On page 22676, column 2, second complete paragraph, lines 16 and 17, delete "disposable protective clothing".

10. On page 22685, column 3, line 1, "50 mm—long cowl extension" is corrected to read "50 mm electrically conductive extension cowl".

11. On Page 22685, column 3, lines 5 and 6, "1pm" signifying liters per minute, is corrected to read "lpm".

12. On page 22686, column 1, third paragraph, lines 4 and 5, "50 mm extension cowl" is corrected to read "50mm electrically conductive extension cowl".

13. On page 22686, column 1, fourth paragraph, lines 4, 7, 10 and 18, "1pm" signifying liters per minute is corrected to read "lpm".

14. On page 22688, column 2, line 25, "importane" is corrected to read "importance".

15. On page 22702, column 3, line 17, "felf" is corrected to read "felt".

16. On page 22706, column 2, second complete paragraph, lines 13 and 14, "[e.g., paragraphs (e)(6), (i)(4), and (j)(1)(i)" is corrected to read "[e.g., paragraphs (e)(6), (j)(1)(i), and (j)(2)(i)]".

17. On page 22706, column 3, second complete paragraph, the last sentence is corrected to read "These employers are also required to ensure that these employees observe strict decontamination procedures before they leave the worksite".

18. On page 22713, column 3, line 8 from bottom of page, "quarterly" is corrected to read "semi-annual".

19. On page 22715, column 2, line 12, "paragraph (g)(l)(i)" is corrected to read "paragraph (g)(1)(i)".

20. On page 22715, column 2, line 18, "Paragraph (g)(l)(i)(G)" is corrected to read "Paragraph (g)(1)(i)(G)".

21. On page 22715, column 2, second complete paragraph, line 1, "paragraph

(g)(l)(ii)" is corrected to read "paragraph (g)(1)(ii)".

22. On page 22717, column 1, line 13, "paragarph" is corrected to read "paragraph".

23. On page 22717, column 1, second complete paragraph, lines 2 and 3, "Respiratory Protection" is corrected to read "respiratory protection".

24. On page 22721, column 1, first complete paragraph, line 1, "Primary" is corrected to read "primary".

25. On page 22725, column 3, line 14, "paragraph (1)(i)" is corrected to read "paragraph (l)(1)".

26. On page 22725, column 3, second complete paragraph, line 2, "paragraph (1)(2)" is corrected to read "paragraph (l)(2)".

27. On page 22726, column 1, line 5, "paragraph (1)(2)" is corrected to read "paragraph (l)(2)".

28. On page 22726, column 2, line 18, "appropriations" is corrected to read "appropriateness".

29. On page 22726, column 3, first complete paragraph, line 1, "Paragraph (m)(l)(i)" is corrected to read "Paragraph (m)(1)(i)".

30. On page 22730, column 3, third complete paragraph, lines 1 through 5, are corrected to read "The time period required for retention of exposure records is 30 years and for medical records, duration of employment plus 30 years. These retention periods are consistent with those in the OSHA records access rule § 1910.20 (m)(1)(iii) and (m)(2)(iii)".

Accordingly, Parts 1910 and 1926 are amended as set forth below:

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Part 1910 continues to read as follows:

**Authority:** Secs. 4, 6, and 8 of the Occupational Safety and Health Act. 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 et seq.; Service Contract Act of 1965, 41 U.S.C. 351 et seq.; Pub. L. 91–54, 40 U.S.C. 333; Pub. L. 85–742, 33 U.S.C. 941; National Foundation on Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736); and 29 CFR Part 1911.

2. 29 CFR 1910.1001 is amended as follows:

a. In paragraph (g)(2)(ii)(B), Table 1, the first entry in the right hand column which reads, "Half-mask air-purifying respirator equipped with high-efficiency filters.". is revised to read "Half-mask air-purifying respirator, other than a disposable respirator, equipped with high-efficiency filters.".

b. In paragraph (j)(5)(i), the language following the last comma is revised to read "or a combination of these minerals at or above the action level and ensure their participation in the program.".

c. In paragraph (j)(5)(iii)(G), "paragraph (1)" is revised to read "paragraph (l)".

d. In paragraph (j)(5)(iii)(H), "A review" is revised to read "The content".

e. In paragraph (o)(2)(vi), "paragraph (1)" is revised to read "paragraph (l)".

**Appendix A to § 1910.1001—[Amended]**

f. In Appendix A, in the first paragraph, "paragraph (f)" is revised to read "paragraph (d)".

g. In Appendix A, under "*Sampling and Analytical Procedure*", item 2., "50-mm extension cowl" is revised to read "50-mm electrically conductive extension cowl".

h. In Appendix A, under "*Sampling and Analytical Procedure*", item 13.b., "Count all particles as asbestos, tremolite," is revised to read "In the absence of other information, count all particles as asbestos, tremolite,".

**Appendix B to § 1910.1001—[Amended]**

i. In Appendix B, under "*Asbestos, Tremolite, Anthophyllite, and Actinolite Sampling and Analysis Method*", in the "Flow rate" paragraph, "l/min" signifying liters per minute, is revised to read "L/min", the four times it appears.

j. In Appendix B, under "*Asbestos, Tremolite, Anthophyllite, and Actinolite Sampling and Analysis Method*", in the "Equipment" section, item 1., "50-mm extension cowl" is revised to read "50-mm electrically conductive extension cowl".

k. In Appendix B, under "*Sampling*", item 4., the left side of the equation "$t_{min}$" is revised to read "$t_{minimum}$".

l. In Appendix B, under "*Sampling*", in the *Note*, "sampler" is revised to read "sample".

m. In Appendix B, under "*Calculations*", item 21., the equation is revised to read:

$$E = \frac{(F/n_f) - (B/n_b)}{A_f} \text{ fibers/mm}^2$$

where:
$n_f$ = number of fields in submission sample
$n_b$ = number of fields in blank sample

**Appendix C to § 1910.1001—[Amended]**

n. In Appendix C, under "I. *Isoamyl Acetate Protocol*", item I.C.15., remove the last two sentences.

o. In Appendix C, under "II. *Saccharin Solution Aerosol Protocol*", item II.C.10.v., "loudly" is revised to read "aloud".

p. In Appendix C, under "II. *Saccharin Solution Areosol Protocol*", item II.C.14., "IAA" is revised to read "saccharin solution aerosol".

q. In Appendix C, under "III. *Irritant Fume Protocol*", item III.A., "combination of high-efficiency and acid-gas cartridges" is revised to read "high-efficiency cartridge".

r. In Appendix C, under "III. *Irritant Fume Protocol*", item III.B.8.v., "Reading it" is revised to read "Repeating it after the test conductor (keeping eyes closed)".

s. In Appendix C, under "III. *Irritant Fume Protocol*", item III.B.12., "IAA" is revised to read "irritant fume".

t. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.3.c., "particular" is revised to read "particulate".

u. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.4.a., "Norton" is revised to read "North".

v. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.5.e., is revised to read "*Reading (R).* The test subject (keeping eyes closed) shall repeat after the test conductor the 'rainbow passage' at the end of this section. The subject shall talk slowly and aloud so as to be heard clearly by the test conductor or monitor.".

w. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.6., delete "(See paragraph 4.h.)".

x. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.11., in the first sentence, delete "in".

**Appendix E to § 1910.1001—[Amended]**

y. In Appendix E, under "Interpretation and Classification of Chest Roentgenograms—Mandatory", item (a) is revised to read "(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted Classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH.".

**Appendix F to § 1910.1001—[Amended]**

z. In Appendix F, under "A. *Enclosed Cylinder/HEPA Vacuum System Method*", second paragraph, third sentence, "The brake assembly isolation cylinder is available from Nilfisk Company and comes", is revised to read

"One company manufactures the brake assembly isolation cylinder".

aa. In Appendix F, under "A. *Enclosed Cylinder/HEPA Vacuum System Method*", footnote 1, is deleted.

bb. In Appendix F, under "C. *Information on the Effectiveness of Various Control Measures*", in the preferred methods" section, first paragraph, the word "below" which ends the second sentence, is revised to read "above".

**Appendix G to § 1910.1001—[Amended]**

cc. In Appendix G, under "IV. *Disposal Procedures and Cleanup*", item IV.A., the word "is" after actinolite is revised to read "are".

dd. In Appendix G, under "IV. *Disposal Procedures and Cleanup*", item IV.C., "logs" is revised to read "bags".

**Appendix H to § 1910.1001—[Amended]**

ee. In Appendix H, under "IV. *Surveillance and Preventive Considerations*", the first sentence in the second paragraph, is revised to read "The employer is required to institute a medical surveillance program for all employees who are or will be exposed to asbestos, tremolite, anthophyllite, actinolite or a combination of these minerals at or above the action level (0.1 fiber per cubic centimeter of air).".

**§ 1910.1001 [Amended]**

ff. The OMB Control Number is added at end of § 1910.1001 to read as follows:

(Information collection requirements contained in paragraphs § 1910.1001 (d)(2), (d)(3), (d)(5), (d)(7), (f)(2), (g)(3) (i), (j)(5), (l), and (m) were approved by the Office of Management and Budget under Control No. 1218–0133)

## PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

3. The authority citation for Part 1926 continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333, and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable. Sections 1926.55(c) and 1926.58 also issued under 29 CFR 1911.

4. 29 CFR 1926.58 is amended as follows:

a. In paragraph (b), under "Renovation", insert "or" after "anthophyllite,".

b. In paragraph (e)(6)(iv), add "(Refer to Appendix G.)" after the last sentence.

c. In paragraph (f)(2)(i), insert "or" after the first time "anthophyllite," appears.

d. In paragraph (h)(2)(iii)(B), Table D–4, the first entry in the right hand column which reads "Half-mask air-purifying respirator equipped with high-efficiency filters." is revised to read "Half-mask air-purifying respirator, other than a disposable respirator, equipped with high efficiency filters.".

e. In paragraph (h)(4)(ii), "Table 1" is revised to read "Table D–4".

f. In paragraph (k)(3)(i), "minerals in excess of the action level" is revised to read "minerals at or above the action level".

g. Paragraph (k)(3)(ii) is revised to read "Training shall be provided prior to or at the time of initial assignment [unless the employee has received equivalent training within the previous 12 months] and at least annually thereafter".

h. In paragraph (k)(3)(iii)(F), delete "and".

i. In paragraph (k)(3)(iii)(G), "requirements." is revised to read "requirements; and".

j. In paragraph (k)(3)(iii)(H), "A review" is revised to read "The content".

k. In paragraph (o)(1), change "[insert date 30 days from publication in the **Federal Register** ]" to "July 21, 1986".

l. In paragraph (o)(2)(i), change "[insert date 210 days from publication in the **Federal Register**]" to "January 16, 1987".

**Appendix A to § 1926.58—[Amended]**

m. In Appendix A, under *"Sampling and Analytical Procedure"*, item 2., "50-mm extension cowl" is revised to read "50-mm electrically conductive extension cowl".

n. In Appendix A, under *"Sampling and Analytical Procedure"*, item 13.b., "Count all particles as asbestos, tremolite," is revised to read, "In the absence of other information, count all particles as asbestos, tremolite,".

o. In Appendix A, under *"Quality Control Procedures"*, item 2., in the first sentence, "that as a minimum includes participation of" is revised to read "that, as a minimum, includes participation of".

**Appendix B to § 1926.58—[Amended]**

p. In Appendix B, under *"Asbestos, Tremolite, Anthophyllite, and Actinolite Sampling and Analysis Method"*, in the "Flow rate" paragraph "l/min" signifying liters per minute , is revised to read "L/min" the four times it appears.

q. In Appendix B, under *Asbestos, Temolite, Anthophyllite, and Actinolite Sampling and Analysis Method"*, in the "Equipment" section, item 1., "50-mm extension cowl" is revised to read "50-mm electrically conductive extension cowl".

r. In Appendix B, under *"Sampling"*, item 4., the left side of the equation "$t_{min}$" is revised to read "$t_{minimum}$".

s. In Appendix B, under *"Sampling"*, item 6., "sampler" is revised to read "sample".

t. In Appendix B, under *"Sample Preparation"*, item 10.d., "in unsufficient" is revised to read "is insufficient".

u. In Appendix B, under *"Calculations"*, item 21., the equation is revised to read:

$$E = \frac{(F/n_f)-(B/n_b)}{A_f} \text{ fibers/mm}^2$$

where:
$n_f$=number of fields in submission sample
$n_b$=number of fields in blank sample

**Appendix C to § 1926.58—[Amended]**

v. In Appendix C, under "I. *Isoamy [Acetate Protocol]*", item I.C.15., remove the last two sentences.

w. In Appendix C, under "II. *Saccharin Solution Aerosol Protocol,*" item II.C.14., "IAA" is revised to read "saccharin solution aerosol".

x. In Appendix C, under "III. *Irritant Fume Protocol*", item III.A., "combination of high-efficiency and acid-gas cartridges", is revised to read "high-efficiency cartridge".

y. In Appendix C, under "III. *Irritant Fume Protocol*", item III.B.8.v., "Reading it" is revised to read "Repeating it after the test conductor (keeping eyes closed)".

z. In Appendix C, under "III. *Irritant Fume Protocol*", item III.B.12., "IAA" is revised to read "irritant fume".

aa. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.3.c., "particular" is revised to read particulate".

bb. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.4.a., "Norton" is revised to read "North".

cc. In Appendix C, under "III. *Irritant Fume Protocol*", item III. C.4.a.(2), insert "of" after "pressure".

dd. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.5.e., are revised to read "Reading (R). The test subject (keeping eyes closed) shall repeat after the test conductor the 'rainbow passage' at the end of this section. The subject shall talk slowly and aloud so as to be heard clearly by the test conductor or monitor.".

ee. In Appendix C, under "III. *Irritant Fume Protocol*", item III.C.6., delete "(See paragraph 4.h.)".

**Appendix E to § 1926.58—[Amended]**

ff. In Appendix E, under *"Interpretation and Classification of Chest Roentgenograms—Mandatory"*, item (a) is revised to read "(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 through 4) shall be included. This form is not be submitted to NIOSH.".

gg. In Appendix F, under *"HEPA-Filtered Vacuum"*, fourth sentence, delete "Nilfisk of America, Inc. * ," and the corresponding footnote.

hh. In Appendix F, under *"Exhaust Air Filtration System"*, fourth sentence, delete "Micro Trap, Inc., * ".

ii. In Appendix F, under *"Exhaust Air Filtration System"*, fifth sentence, "Micro-Trap * " is revised to read "these".

**Appendix G to § 1926.58—[Amended]**

jj. In Appendix G, in the first paragraph, reference to "paragraphs (e)(6) and (f)(2)(ii)(B) of § 1926.58" is revised to read "paragraphs (e)(6), (j)(1)(i) and (j)(2)(i) of § 1926.58".

kk. In Appendix G, under *"Glove Bag Equipment and Supplies"*, item 7, delete "dust".

**Appendix H to § 1926.58—[Amended]**

ll. In Appendix H, under "IV. *Disposal Procedures and Cleanup*", item IV.C., "logs" is revised to read "bags".

**§ 1926.58 [Amended]**

mm. The OMB Control Number is added at the end of § 1926.58 to read as follows:

(Information collection requirements contained in paragraphs § 1926.58 (f)(2), (f)(3), (f)(6), (h)(3)(i), (k)(3), (k)(4), (m), and (n) were approved by the Office of Management and Budget under Control No. 1218–0134)

Signed at Washington, DC, this 5th day of May, 1987.

**John A. Pendergrass,**

*Assistant Secretary of Labor, Occupational Safety and Health.*

[FR Doc. 87–10852 Filed 5–11–87; 8:45 am]

BILLING CODE 4510-26-M

**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**32 CFR Part 818a**

**Personal Commercial Affairs**

**AGENCY:** Department of the Air Force, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force has revised its rule on Personal Commercial Affairs to implement Department of Defense (DOD) Directive 1344.7, February 13, 1986 (32 CFR Part 43). This revision updates DOD policies covering the conduct of private commercial solicitation and sales on Air Force installations.

**EFFECTIVE DATE:** June 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** MSgt Richard R. Hollett, HQ AFMPC/DPMASC, Randolph AFB, TX 78150–6001, telephone (512) 652–3996.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force published a notice of proposed rulemaking on personal commercial affairs in the **Federal Register** on March 25, 1987 (52 FR 9499). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

**List of Subjects in 32 CFR Part 818a**

Federal buildings and facilities, Life insurance, Military personnel.

Therefore, 32 CFR Part 818a is revised to read as follows:

## PART 818A—PERSONAL COMMERCIAL AFFAIRS

**Subpart A—Introduction**

Sec.
818a.0 Purpose.
818a.1 References.
818a.2 Terms explained.

**Subpart B—Life Insurance Products and Securities**

818a.3 Life insurance.
818a.4 Securities.
818a.5 The accreditation program.
818a.6 Use of the allotment system for paying life insurance premiums.

**Subpart C—Private Commercial Solicitation on Air Force Installation**

818a.7 Policy on soliciting.
818a.8 Solicitation practices that are prohibited.
818a.9 Denial, suspension, and revocation of on-base solicitation privileges.
818a.10 Action by the installation commander to suspend or revoke privileges.

**Subpart D—Personal Commercial Affairs Training**

818a.11 Training provided by Air Training Command (ATC).
818a.12 Training provided by installation commanders.

**Authority:** 10 U.S.C. 8012.

**Note.**—This part is derived from Air Force Regulation 211–16.

**Subpart A—Introduction**

**§ 818a.0 Purpose.**

This part sets policy for private commercial solicitation and sales on Air Force installations. It is designed to safeguard and promote the welfare and interests of military personnel as consumers. It requires commanders to be sure that all commercial soliciting and selling of all types of insurance, securities, and other goods, services, and commodities are monitored and controlled. This rule applies to all Air Force installations. It does not apply to the USAF Reserve or the Air National Guard. It implements 32 CFR Part 43 (Department of Defense (DOD) Directive 1344.7, February 13, 1986).

**§ 818a.1 References.**

(a) Part 808 of this chapter.
(b) AFR 34–4, Morale, Welfare, and Recreation (MWR) Basic Responsibilities, Policies, and Practices-Private Organizations.
(c) Part 818 of this chapter.
(d) AFR 40–735, Civilian Conduct and Responsibility.
(e) Part 818b of this chapter.
(f) AFR 110–27, Preventive Law Program.
(g) AFR 145–15, Air Force Commissary Store Regulation.
(h) AFR 147–7, Army and Air Force Exchange Service (AAFES) General Policies.
(i) AFR 170–32, Personal Financial Management Program (PFMP).
(j) Federal Reserve Board Regulation Z.
(k) Federal Personnel Manual.

**Note.**—Part 808 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

**§ 818a.2 Terms explained.**

(a) *Agent.* An individual who receives pay as a salesperson or whose pay is dependent on volume of sales of a product or products.

(b) *Association.* Any organization, whether or not the word "association" appears in its title, composed of and serving exclusively members of the military services on active duty, in a Reserve status, in a retired status, and their dependents, that offers its members life insurance coverage, either as part of the membership dues, or as a separately purchased plan made available through an insurance carrier or the association as a self-insurer, or a combination of both.

(c) *DOD installation.* Any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which DOD personnel are assigned for duty, including barracks, transient housing, and family quarters.

(d) *DOD personnel.* All active duty officers (commissioned and warrant) and enlisted members of the military services and all civilian employees, including nonappropriated fund employees and special government employees of all offices, agencies, and departments carrying on functions on DOD installations.

(e) *General agent.* A person who has a legal contract to represent a company solely and exclusively.

(f) *Insurance carrier.* An insurance company issuing insurance through an association or reinsuring or coinsuring such insurance.

(g) *Insurance product.* A policy, annuity, or certificate of insurance issued by an insurer or evidence of insurance coverage issued by a self-insured association.

(h) *Insurer.* Any company or association engaged in the business of selling insurance policies.

(i) *Normal home enterprises.* Sales or services that are customarily conducted in a domestic setting and do not compete with an installation's officially sanctioned commerce.

(j) *Securities.* Mutual funds, stocks, bonds, or any product registered with the Securities and Exchange Commission except for any insurance or annuity product issued by a corporation subject to supervision by state insurance authorities.

(k) *Solicitation.* The conduct of any private business, including the offering and sale of insurance, securities, and other goods, services and commodities on a military installation. Solicitation on installations is a privilege as distinguished from a right, and its control is a responsibility of the installation commander.

## Subpart B—Life Insurance Products and Securities

### § 818a.3 Life insurance.

(a) Life insurance products, other than certificates or other evidence of insurance issued by a self-insured association, offered and sold worldwide to personnel on Air Force installations, must:

(1) Comply with the insurance laws of the state or country in which the installation is located.

(2) Contain no restrictions by reason of military service or military occupational specialty of the insured, unless such restrictions are clearly indicated on the face of the contract.

(3) Plainly indicate any extra premium charges imposed by reason of military service or military occupational specialty.

(4) Contain no variation in the amount of death benefit or premium based on the length of time the contract has been in force, unless all such variations are clearly described in the content.

(b) To comply with paragraph (a) of this section, an appropriate reference stamped on the face of the contract shall draw the attention of the policyholder to any extra premium charges and any variations in the amount of death benefit or premium based on the length of time the contract has been in force.

(c) Variable life insurance products may be offered if they meet the criteria of the appropriate insurance regulatory agency and the Securities and Exchange Commission.

(d) Premiums shall reflect only the actual premiums payable for the life insurance product.

### § 818a.4 Securities.

(a) The following information pertains to the sale of securities:

(1) All securities must be registered with the Securities and Exchange Commission.

(2) All sales of securities must comply with existing and appropriate Securities and Exchange Commission regulations.

(3) All securities representatives must apply directly to the commander of the installation on which they desire to solicit the sale of securities.

(b) Where the accredited insurer's policy permits, an oversea accredited life insurance agent—if duly qualified to engage in security activities either as a registered representative of the National Association of Securities and Exchange Commission may offer life insurance and securities for sale simultaneously. In cases of commingled sales, the allotment of pay for the purchase of securities cannot be made to the insurer.

### § 818a.5 The accreditation program.

(a) Any life insurance company is automatically accredited in the state if it is licensed under the laws of the state where the installation is located.

(b) The recent growth and general acceptability of quasi-military associations offering various insurance plans to military personnel is acknowledged. Some associations are not organized within the supervision of insurance laws of either a state or the federal government. While some are organized for profit, others function as nonprofit associations under Internal Revenue Service (IRS) regulations. Regardless of the manner in which insurance plans are offered to members, the management of the association is responsible for complying fully with the instructions contained in this rule.

### § 818a.6 Use of the allotment system for paying life insurance premiums.

(a) Allotments of military pay for life insurance products shall be made according to AFM 177–373, Volume I, Joint Uniform Pay System-JUMPS AFO Procedures. Allotments are not made out to an insurer for a commingled sale such as retirement plans or securities.

(b) For personnel in pay grades E–1, E–2, and E–3, at least 7 days shall elapse for counseling between the signing of a life insurance application and the certification of an allotment. The purchaser's commanding officer may grant a waiver of this requirement for good cause, such as the purchaser's imminent permanent change of station (PCS). Subpart C—Private Commercial Solicitation on an Air Force Installation.

## Subpart C—Private Commercial Solicitation on Air Force Installation

### § 818a.7 Policy on soliciting.

(a) No person has authority to enter an Air Force installation and transact personal commercial solicitation as a matter of right. Personal commercial solicitation will be permitted only if the following requirements are met:

(1) The solicitor is duly licensed under applicable federal, state, or municipal laws and has complied with this rule.

(2) Personal commercial solicitation is permitted by the local installation commander.

(3) A specific appointment has been made with the invididual concerned and conducted in family quarters or in other areas designated by the installation commander.

(b) Those seeking to transact personal commercial solicitation on oversea installations shall be required to observe, in addition to the above, the applicable laws of the host country and, on demand, present documentary evidence to the installation commander,

or designee, that the company they represent, and its agents, meet the licensing requirements of the host country.

(c) Organizations involved in sales are permitted to display literature on Air Force installations in locations selected by the commander.

(d) All pertinent installation regulations shall be posted in a place easily accessible to those conducting personal solicitation activities on the installation.

(e) When practicable, as determined by the installation commander, a copy of the applicable regulations shall be given to those conducting on-base commercial activities with the warning that any infractions of the regulations will result in the withdrawal of solicitation privileges.

(f) Canvassing, soliciting, and peddling to Air Force civilian employees is governed by AFR 40–735.

(g) Nothing in this rule should be construed to preclude private, nonprofit, tax-exempt organizations composed of active and retired members of military services from holding membership meetings that do not involve commercial solicitation on Air Force installations. Attendance at these meetings shall be voluntary and the time and place of such meetings are subject to the discretion of the installation commander.

(h) Insurers and their agents are authorized to solicit on Air Force installations if they are licensed under the insurance laws of the state in which the installation is located. In oversea areas, installations shall limit this authorization to those insurers accredited under regulations issued by the unified or specified command having authority in the area.

(i) The conduct of all insurance and securities business on Air Force installations shall be by specific appointment. When establishing the appointment, agents must identify themselves to the prospective purchaser as an agent for a specific company.

(j) Installation commanders shall designate areas where insurance and securities interviews by appointment may be conducted. Invitations to conduct interviews shall be extended to all agents on an equitable basis. Where space and other considerations limit the number of agents using the interviewing area, the installation commander may develop and publish local policy.

(k) Installation commanders shall make disinterested third-party counseling available to Air Force personnel desiring counseling.

(l) In addition to the solicitation prohibition in § 818a.8, the following prohibitions also apply to insurance and securities sales:

(1) DOD personnel from representing any insurer or broker, or dealing directly or indirectly with any insurer or broker, or any recognized representative of any insurer or broker on the installation, as an agent or in any official or business capacity with or without compensation.

(2) The use of an agent as a participant in any military services-sponsored insurance education or orientation program.

(3) The designation of any agent or the use by any agent of titles such as Unit Insurance Advisor, Servicemen's Group Life Insurance Conversion Consultant, and so forth.

(4) The assignment of desk space for interviews for other than a specific prearranged appointment. During such appointment, the agent shall not be permitted to display desk or other signs announcing his or her name or company affiliation.

(5) The use of the base bulletin or any other notice, official or unofficial, announcing the presence of an agent and this agent's availability.

**§ 818a.9 Solicitation practices that are prohibited.**

(a) Solicitation of recruits, trainees, and transient personnel in a mass or captive audience.

(b) Making appointments with or soliciting military personnel who are in an on-duty status.

(c) Soliciting without appointment in areas utilized for the housing or processing of transient personnel, in barracks areas, in family quarters areas, in open mess facilities, in cafeterias, and in areas provided by installation commanders for interviews by appointment.

(d) Use of official identification cards by retired or Reserve members of the military services to gain access to Air Force installations for the purpose of soliciting.

(e) Procuring, or attempting to procure, or supplying roster lists of DOD personnel for purposes of commercial solicitation, except for releases granted according to Part 806 of this chapter.

(f) Offering unfair, improper, and deceptive inducements to purchase or trade.

(g) Using rebates to facilitate transactions or to eliminate competition.

(h) Using manipulative, deceptive, or fraudulent devices, schemes, or artifices, including misleading advertising and sales literature.

(i) Using oral or written representations to suggest or give the appearance that the Department of Defense sponsors or endorses any particular company, its agents, or the goods, services, and commodities it sells.

(j) Full-time DOD personnel making personal commercial solicitations or sales to DOD personnel who are junior in grade.

(k) Entering into any unauthorized or restricted area.

(l) Using any portion of installation facilities, including quarters, as a showroom or store for the sale of goods or services, except as specifically authorized by:

(1) AFR 34–4.

(2) AFR 145–15.

(3) AFR 147–7.

Note.—This is not intended to preclude normal home enterprises, providing applicable state and local laws are complied with.

(m) Soliciting door to door.

(n) Advertising addresses or telephone number of commercial sales activities conducted on the installation. EXCEPTION: Authorized activities conducted by members of military families residing in family housing.

**§ 818a.9 Denial, suspension, and revocation of on-base solicitation privileges.**

(a) The installation commander shall deny, suspend, or revoke permission to a company and its agents to conduct commercial activities on the base if such action is in the best interests of the Air Force. The grounds for taking this action shall include, but not be limited to, the following:

(1) Failure to meet the licensing and other regulatory requirements that are prescribed.

(2) Commission of any solicitation practices that are prohibited.

(3) Substantiated complaints or adverse reports regarding quality of goods, services, and commodities and the manner in which they are offered for sale.

(4) Knowing and willful violations of Pub. L. 90–321, the Truth in Lending Act.

(5) Personal misconduct by a company's agent or representative while on the installation.

(6) The possession of or any attempt to obtain supplies of allotment forms used by the military departments, or possession or use of their facsimiles.

(7) Failure to incorporate and abide by the Standards of Fairness Act in sales contracts as required by Part 818 of this chapter.

(b) Individuals having any information that might be grounds for suspending or revoking soliciting privileges should report it to the consolidated base personnel office (CBPO/DPMAP), who

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will notify the base commander through personnel channels. (If there is no CBPO, the base commander will designate an office or officer to do this.)

**§ 818a.10 Action by the installation commander to suspend or revoke privileges.**

(a) The installation commander may, if circumstances dictate, immediately suspend solicitation privileges for up to 30 days while an investigation is conducted. Requests for extension beyond 30 days, up to a limit of 90 days, are forwarded through major command (MAJCOM) to Headquarters Air Force Military Personnel Center, Directorate of Personnel Program Management, Personal Programs Branch (HQ AFMPC/DPMASC), Randolph AFB TX 78150-6001, for approval. Upon suspending solicitation privileges, the installation commander shall promptly inform the agent and the company the agent represents, in writing.

(b) In denying or revoking solicitation privileges, the installation commander shall determine whether to limit the action to the agent alone or extend it to the company the agent represents. This decision shall be communicated to the agent and to the company the agent represents, in writing, and shall be based on the circumstances of the particular case, including, among others, the nature of the violations, frequency of violations, the extent to which other agents of the company have engaged in such practices, and any other matters tending to show the company's culpability.

(1) If the grounds for the action involve the eligibility of the agent or company to hold a state license or to meet other regulatory requirements, the appropriate authorities will be notified.

(2) The installation commander shall afford the individual or company an opportunity to show cause why the action should not be taken. To show cause means an opportunity must be given for the grieved party to present facts on his or her behalf on an informal basis for the consideration of the installation commander. If the alleged offender fails to respond, rebut, or mitigate the alleged violation, the installation commander will advise the agent, in writing, that his or her privilege to solicit on the installation has been revoked.

(3) All denials or revocation of privileges will be for a minimum of 6 months and a maximum of 12 months, at the end of which the individual may reapply for permission to solicit. Denial or revocation of privileges may or may not be continued, as warranted.

(4) Notices of revocation of solicitation privileges are published in the base bulletin periodically during the revocation period.

(5) If the installation commander believes the offender may be soliciting on other military installations, the commander should notify MAJCOM and recommend that the action taken be extended to other installations. If warranted, the MAJCOM recommends to HQ AFMPC/DPMASC that the action be extended to additional Air Force installations. If appropriate, the order may be extended to the other military departments by the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)).

**Subpart D—Personal Commercial Affairs Training**

**§ 818a.11 Training provided by Air Training Command (ATC).**

HQ ATC, and those other activities that provide initial active duty indoctrination (for example, USAF Academy, AF Reserve Officer Training Corps and so forth), will make sure that a comprehensive block of instruction on personal commercial affairs is included in their teaching guides or course curriculums, as appropriate.

**§ 818a.12 Training provided by installation commanders.**

Installation commanders must provide education and information programs to help members conduct their personal commercial matters.

(a) These programs should include information about the protection and remedies offered under the Truth in Lending Act and the Federal Reserve Board Regulation Z. They may be incorporated into training covering savings, budgeting, commercial insurance, personal financial responsibilities, legal assistance, and similar subjects.

(b) At the request of the installation commander, representatives of the following agencies may be used to help set up the program.

(1) Base credit unions.

(2) Base banks.

(3) Nonprofit military associations that are:

(i) Not underwritten by a commercial life insurance company, and

(ii) Are approved by HQ AFMPC/DPMASC.

(c) Under no circumstances may the services of commercial agents, including loan, finance, insurance, or investment companies, be used for this purpose. Educational materials prepared or presented by outside organizations may be adapted or used if they: are solely educational (free of advertising, applications, contracts, and so forth) and are approved by HQ AFMPC/DPMASC.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-10719 Filed 5-11-87; 8:45 am]

BILLING CODE 3910-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 65**

**[A-7-FRL-3198-5]**

## Approval of a Delayed Compliance Order Issued by the Missouri Air Conservation Commission to the American Can Co., St. Louis, MO

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Administrator of EPA hereby *approves* a Delayed Compliance Order issued by The Missouri Air Conservation Commission to the American Can Company. The Order requires the company to bring air emissions from its three-piece can coating and end seal operations in St. Louis, Missouri, into compliance with certain regulations contained in the federally approved Missouri State Implementation Plan (SIP). Because of the Administrator's approval, the American Can Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

**EFFECTIVE DATE:** This rule takes effect on May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Anne W. Rowland at 913-236-2853 (FTS 757-2853) or Anthony P. Wayne At 913-236-2896 (FTS 757-2896), Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas, 66101.

**ADDRESSES:** A copy of the delayed Compliance Order, any supporting material, and any comments received in response to the prior **Federal Register** notice proposing *approval* of the Order are available for public inspection and copying during normal business hours at: U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**SUPPLEMENTARY INFORMATION:** On January 7, 1987, the Regional Administrator of EPA's Region VII Office published in the **Federal Register**,

Vol. 52, No 4, pgs 562 through 563, Wednesday, January 7, 1987, a notice proposing *approval* of a delayed compliance order issued by the Missouri Air Conservation Commission to the American Can Company. The notice notified the source that approval of the Missouri Order does not preclude assessment of compliance penalties under section 120 of the Act, and asked for public comments by February 6, 1987, on EPA's proposed *approval* of the Order. No comments were received during the comment period.

Therefore, the delayed compliance order issued to the American Can Company is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the American Can Company on a schedule to bring its three-piece can coating and end seal operations in St. Louis, Missouri, into compliance as expeditiously as practicable with Missouri Regulation 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, a part of the federally-approved Missouri State Implementation Plan. The Order also imposes increments of progress which must be achieved for the installation of control equipment and reporting on compliance progress. If the conditions of the Order are met, it will permit the American Can Company to delay compliance with the SIP regulations covered by the Order until December 31, 1986, for installation of low solvent technology or November 15, 1987, for installation of control equipment. The company is unable to immediately comply with these regulations.

EPA has determined that its *approval* of the Order shall be effective upon publication of this notice because of the need to immediately place the American Can Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Missouri State Implementation Plan.

**List of Subjects in 40 CFR Part 65**

Air pollution control.

Dated: May 5, 1987.

**Lee Thomas,**

*Administrator.*

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

**PART 65—DELAYED COMPLIANCE ORDERS**

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7413, 7601.

2. Section 65.301 is amended by adding the following entry to the table to read as follows:

**§ 65.301 EPA Approval of State delayed compliance orders issued to major stationary sources.**

* * * * *

| Source | Location | Order Number | SIP regulation(s) involved | Date of FR proposal | Final compliance date |
|---|---|---|---|---|---|
| American Can Co. | St. Louis, MO | DCO-V11-026 | 10CSR10-5.330 | Jan. 7, 1987 | Dec. 31, 1986, Nov. 15, 1987. |

[FR Doc. 87-10782 Filed 5-11-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 64**

**[Gen. Docket No. 83-989; FCC 87-143]**

## Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials

**AGENCY:** Federal Communications Commission.

**ACTION:** Third Report and Order.

**SUMMARY:** The Commission has amended § 64.201 of the Commission's rules, 47 CFR 64.201, to provide that as an alternative to requiring prepayment by credit card, or, establishing an access code system, persons may restrict access by minors to adult message services provided by telephone by scrambling the message. Use of one of these methods to restrict access by minors to adult message services will establish the defense to prosecution created under section 223(b), 47 U.S.C. 223(b), which makes it unlawful to transmit to minors by telephone obscene or indecent communications. The Commission additionally required that in order to obtain the defense to prosecution of section 223(b) adult message providers on public announcement services tariffed at the Commission must request from the carrier offering the service that calls to their service be subject to billing notification as an adult message service.

**EFFECTIVE DATE:** June 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patrick Donovan, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1832.

**SUPPLEMENTARY INFORMATION:**

This is a summary of the Commission's Third Report and Order adopted April 16, 1987, and released May 4, 1987, Gen Docket 83–989 amending § 64.201 of the Commission's rules.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Summary of Commission Decision**

In *Carlin Communications v. FCC*, 787 F.2d 846 (2d Cir. 1986) the court invalidated § 64.201 of the Commission's rules, 47 CFR 64.201, insofar as it applied to areas served by the New York Telephone Company. Section 64.201 provided that requiring prepayment by credit card or use of an access code system were acceptable methods by which telephone adult message services may restrict access by minors. Compliance with § 64.201 by adult message providers establishes a defense to prosecution under section 223(b) of the Communications Act, 47 U.S.C. 223(b), regarding transmission of obscene or indecent materials to minors. The court found that the public announcement service offered by the New York Telephone Company was non-interactive in that it was not possible for message providers to transmit access codes to the message provider. The court additionally found that the Commission had not adequately explored whether use of customer premises equipment by parents might not be a less burdensome method for adult message sponsors to restrict access by minors.

In its *Third Report and Order*, summarized here, the Commission reestablished access codes as an acceptable method to restrict access by minors to adult message services in areas served by the New York Telephone Company. The Commission clarified that with purchase of additional communications services from the telephone company the message provider could obtain an

interactive capability enabling it to implement an access code system. The Commission additionally identified scrambling as an acceptable method to restrict access by minors to adult message services. Under this approach the message would be scrambled so that it would be unintelligible without use of a descrambler by adult callers. The Commission stated that it would consider exercising its authority if necessary to prohibit sale of descramblers to minors. As a result of the Commission's decision in the *Third Report and Order* adult message providers, in areas served by the New York Telephone Company as well as all other parts of the country, may comply with § 64.201 by either requiring prepayment by credit card, establishing an access code system, or scrambling the message.

The Commission further found that billing notification would be a significant enhancement to the effectiveness of access codes or scrambling where a minor is able to obtain an access code or a descrambler. Under billing notification, calls to adult message numbers would be labeled as such on telephone bills. The Commission requested that AT&T amend its tariff within 30 days to provide such notification for calls to adult message services on its Dial-It 900 service. In order to comply with § 64.201 adult message providers on public announcement services tariffed at the Commission, such as AT&T's Dial-It 900 service, are required to request from the carrier that calls to their services be subject to billing notification. This latter requirement, applicable only to message sponsors on public announcement services tariffed at the Commission, applies in addition to the requirement that such message sponsors use either prepayment by credit card, access codes or scrambling in order to restrict access by minors. However, the Commission declined to order billing notification for interstate calls to locally tariffed adult message services, because it was not clear on the present record this would be economically feasible. With respect to the issue of using customer premises equipment as a method of restricting access by minors to adult message services, the Commission found that use of such devices would be ineffective in that they can be easily disabled by minors, and could be prohibitively expensive if message providers were required to pay for some of the cost of providing such equipment to parents.

### Ordering clauses

50. Accordingly, it is ordered, that Part 64 of the Commission's rules and regulations is amended as set forth in the attached Appendix effective June 15, 1987.

51. It is further ordered, that the American Telephone and Telegraph Co. shall submit to the Commission within fifteen days from the release date of this item complete technical specifications on the scrambling techniques described by it in this proceedings.

52. It is further ordered, that the Secretary shall cause a summary of this decision to be printed in the **Federal Register** and shall send a copy to the Chief Counsel for the Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a) (1980).

53. Authority for this action is contained in section 8(c) of the Federal Communications Authorization Act of 1983, Pub. L. No. 98–214, December 8, 1983.

### List of Subjects in 47 CFR Part 64

Communications common carriers, Communications equipment, Telephone, Obscene or indecent communications.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

## PART 64—[AMENDED]

Part 64, Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation from Part 64 continues to read:

**Authority:** Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

2. Section 64.201 is revised in its entirety as follows:

**§ 64.201 Restrictions on obscene or indecent telephone message services.**

It is a defense to prosecution under section 223(b) of the Communications Act of 1934, as amended, 47 U.S.C. 223(b), that the defendant has taken one of the actions set forth in paragraph (a), (b), or (c) of this section to restrict access to prohibited communications to persons eighteen years of age or older, and has additionally complied with paragraph (d) of this section, where applicable:

(a) Requires payment by credit card before transmission of the message; or

(b) Requires an authorized access or identification code before transmission of the message, and where the defendant has:

(1) Issued the code by mailing it to the applicant after reasonably ascertaining through receipt of a written application that the applicant is not under eighteen years of age; and

(2) Established a procedure to cancel immediately the code of any person upon written, telephonic or other notice to the defendant's business office that such code has been lost, stolen, or used by a person or persons under the age of eighteen, or that such code is no longer desired; or

(c) Scrambles the message using frequency inversion techniques so that it is unintelligible and incomprehensible to the calling party without use of a descrambler by the calling party; and

(d) Where the defendant is a message sponsor or subscriber to mass announcement services tariffed at this Commission and such defendant prior to the transmission of the message has requested in writing to the carrier providing the public announcement service that calls to his message service be subject to billing notification as an adult telephone message service.

[FR Doc. 87–10739 Filed 5–11–87; 8:45 am]

BILLING CODE 6712–01–M

# Proposed Rules

Federal Register
Vol. 52, No. 91
Tuesday, May 12, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 550

### Pay Administraton (General)

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to revise its regulations for computing overtime pay. This change is necessary to clarify language in our regulations that has been subject to differing interpretations. The proposed revision would prevent inconsistent application of Government-wide pay administration policies with respect to employees on certain unusual work schedules.

**DATE:** Comments must be submitted on or before July 13, 1987.

**ADDRESS:** Send or deliver written comments to Barry E. Shapiro, Deputy Assistant Director for Pay Programs, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 3353, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Edward I. Magee, (202) 632–5056.

**SUPPLEMENTARY INFORMATION:** A recent opinion of the Comptroller General of the United States (*John Nyberg, et al.* (B–212699, February 10, 1986)), has raised some technical questions about the computation of overtime pay for employees on certain unusual work schedules. The employees in the *Nyberg* case had a work schedule that consisted of four 10-hour shifts in 3 days and an additional 8 hours of work on a fourth day. (This work schedule was not established under the Alternative Work Schedules authority, and the employees are entitled to overtime pay for work in excess of 8 hours in a day *or* 40 hours in a week under 5 U.S.C. 5542(a).)

The problem that has surfaced as a result of the recent Comptroller General opinion is that there are two distinct types of overtime work that are performed on a daily basis: (1) Overtime work in excess of 8 hours in a day *outside* the basic 40-hour workweek; and (2) overtime work in excess of 8 hours in a day *within* the basic 40-hour workweek. For employees on normal work schedules (five 8-hour days), daily overtime work is outside the basic 8-hour workday and also outside the basic 40-hour workweek and is paid at the overtime rates specified in 5 U.S.C. 5542(a)—normally, one and one-half times the hourly rate of basic pay. Furthermore, OPM regulations provide that hours of work over 8 in a day will *not* be counted in calculating hours of work over 40 in the administrative workweek. (See 5 CFR 550.111.) The purpose of this regulation is to avoid paying an employee twice for overtime work that is outside the basic workday and also outside the basic workweek.

For employees on the unusual work schedule in the *Nyberg* case (four 10-hour shifts in 3 days and 8 hours of work on a fourth day), the daily overtime work is within the basic 40-hour workweek. In addition to basic pay for these basic work hours, the Comptroller General held that such employees normally must be paid at an overtime rate of one-half times the hourly rate of basic pay. OPM concurs with this overtime rate for overtime work within the basic 40-hour workweek. However, the Comptroller General cites the same OPM regulation (5 CFR 550.111) as the basis to exclude the daily overtime hours in calculating hours of work in excess of 40 in the administrative workweek. OPM does not concur with this latter determination.

Employees who work certain unusual schedules, in which daily overtime hours are within the basic 40-hour workweek, are first entitled to basic pay for the hours that are a part of their basic 40-hour workweek. Further, if these basic hours are also in excess of the daily overtime standard established by law, the employees are entitled to additional overtime pay computed at "one-half" again for these same hours. It follows that the hours that constitute the basic 40-hour workweek (whether basic hours or overtime hours) should be included in calculating hours of work in excess of the basic 40-hour workweek. The payment of "one-half" overtime pay for these basic hours should not exclude them from being counted in the determination of an employee's entitlement to overtime pay on a weekly basis at one and one-half times the hourly rate of basic pay. To exclude these hours from the determination of an employee's entitlement to overtime pay is contrary to the result intended by 5 CFR 550.111.

The proposed regulations would clearly distinguish between the two types of overtime work identified above and would provide that only the daily overtime hours that are outside the basic workweek are to be excluded in the calculation of weekly overtime hours.

Finally, we note that the Comptroller General has recommended that we revise the regulations on the computation of overtime pay under the Fair Labor Standards Act (FLSA) to provide that the comparison of overtime pay entitlements under title 5, United States Code, and the FLSA must be made on a total pay to total pay basis, rather than on an overtime pay to overtime pay basis, as required by 5 CFR 551.513. For the reasons explained above, we have determined that it would be more appropriate to revise our regulations in Part 550 of Title 5, Code of Federal Regulations, to ensure consistent application of the rules for calculating overtime pay in this unusual situation.

### E.O. 12291, Federal Regulation

I certify that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices that affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director,*

Accordingly, OPM proposes to amend 5 CFR Part 550 as follows:

## PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for Subpart A of Part 550 is revised as set forth below

and the authority citations following all the sections in Subpart A are removed:

Authority: 5 U.S.C. 5546 and 6101(c).

2. In § 550.111, paragraph (a) is revised as set forth below; paragraphs (b) through (e) are redesignated as paragraphs (c) through (f), respectively; a new paragraph (b) is added to read as set forth below; and the newly redesignated paragraph (f) is revised as set forth below:

**§ 550.111 Authorization of overtime pay.**

(a) Except as provided in paragraph (e) of this section, overtime work means work in excess of 8 hours in a day or in excess of 40 hours in an administrative workweek that is—

(1) Officially ordered or approved; and

(2) Performed by an employee.

(b) Except as provided in paragraph (f) of this section, hours of work in excess of 8 in a day are not included in computing hours of work in excess of 40 in an administrative workweek.

* * * * *

(f) Notwithstanding paragraphs (a) and (e) of this section, when an employee's basic workweek includes a daily tour of duty of more than 8 hours, the department shall pay the employee at the houly rate of basic pay, plus the difference between the overtime rate and hourly rate of basic pay, for each overtime hour of the daily tour of duty within the basic workweek. These overtime hours are included in calculating hours of work in excess of 40 in an administrative workweek.

[FR Doc. 87-10735 Filed 5-11-87; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 59

### Importation of Egg Products

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is proposing to amend the regulations for the mandatory inspection of eggs and egg products to add The Netherlands to the list of countries from which egg products are eligible to be imported into the United States. Reviews of the Netherlands' laws, regulations, and other materials, and onsite reviews of its inspection system indicate that the system is acceptable pursuant to the Egg Products Inspection Act (EPIA) and regulations thereunder. This action will enable egg products from approved plants in The Netherlands to be imported into the United States.

**DATE:** Comments must be received on or before July 13, 1987.

**ADDRESS:** Written comments may be mailed to D.M. Holbrook, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, Room 3944, South Agriculture Building, Washington, DC 20250. (For further information regarding comments, see "Comments" under Supplementary Information.)

**FOR FURTHER INFORMATION CONTACT:** Howard M. Magwire, Assistant Chief, Grading Branch (202/447-3272).

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291

An initial determination has been made that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This proposed regulation has been reviewed for cost effectiveness under U.S. Department of Agriculture (USDA) Secretary's procedures established in Departmental Regulation 1512-1 implementing Executive Order 12291. The proposal would add The Netherlands as a country from which egg products are eligible to be imported into the United States. However, it is estimated that only a small volume of egg products in comparison with domestic production will be imported annually.

#### Effect on Small Entities

The Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the amount of egg products estimated to be imported would represent a relatively small volume compared to domestic production, based on fiscal year 1986 data.

#### Comments

Interested persons are invited to submit written comments concerning these proposed revisions. Comments must be sent in duplicate to the Standardization Branch and should bear a reference to the date and page number of this issue of the Federal Register. Comments submitted on these proposed revisions will be made available for public inspection in the Washington, DC, Standardization Branch office during regular business hours.

#### Background

Section 17 of the EPIA (21 U.S.C. 1046) prohibits the importation into the United States of egg products, unless they are processed under an approved continuous inspection system of the government of the foreign country of origin and are labeled and packaged in accordance with the standards of the Act and regulations issued thereunder. The regulations addressing imported egg products are contained in 7 CFR Part 59. In these regulations, the Administrator has established procedures by which foreign countries desiring to export egg products to the United States may become eligible to do so.

Section 59.910 of the egg products inspection regulations (7 CFR 59.910) provides that an egg products inspection system maintained by a foreign country, with respect to plants preparing products in that country for export to the United States, must ensure compliance of such plants and their egg products with requirements meeting the applicable provisions of the EPIA and the regulations that are applied to official plants in the United States and their egg products.

Before eligibility is granted, a complete evaluation of the country's inspection system is made by USDA personnel. This evaluation consists of two processes—document reviews and onsite reviews of system operations. The document review process involves a review of the laws, regulations, and other written materials used by the country to operate the inspection program. Each point of the country's laws, regulations, and other material is compared with United States requirements.

If the document review proves to be satisfactory, onsite reviews are scheduled to evaluate applicable aspects of the country's program. When all requirements of the EPIA and regulations thereunder are satisfied, the country is considered eligible to import products into the United States.

#### The Netherlands—Review Results

After reviewing all of the documents submitted by The Netherlands and evaluating the findings of the onsite

reviews, the egg products inspection system of The Netherlands has been judged by AMS to be adequate to assure, with respect to plants within The Netherlands preparing product for export to the United States, compliance with requirements applicable to official plants within the United States which prepare egg products.

**Proposed Revisions**

The Agency is proposing to amend the Regulations Governing the Inspection of Eggs and Egg Products in 7 CFR Part 59 to provide for the eligibility of egg products produced in certain approved Dutch plants to be imported into the United States.

Accordingly, AMS is proposing to amend § 59.910 of the egg products inspection regulations (7 CFR 59.910(b)) to add The Netherlands to the list of countries from which egg products may be eligible for import into the United States.

**Paperwork Reduction Act**

This proposed rule would not change or require any additional collection of information from the public under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Existing information collection requirements in 7 CFR Part 59 have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and assigned OMB Control Number 0581–0113.

**List of Subjects in 7 CFR Part 59**

Shell eggs, Egg products, Mandatory inspection service.

For reasons set out in the preamble and under authority contained in the EPIA (21 U.S.C. 1031–1056), it is proposed to amend Title 7, Part 59 of the Code of Federal Regulations as follows:

**PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)**

1. The authority citation of Part 59 continues to read as follows:

**Authority:** Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056).

**§ 59.910 [Amended]**

2. Paragraph (b) of § 59.910 (7 CFR 59.910(b)) is amended by adding alphabetically the following country to the list of countries from which egg products are eligible to be imported into the United States: The Netherlands.

Done at Washington, DC, on: April 22, 1987.

J. Patrick Boyle,

*Administrator.*

[FR Doc. 87–10821 Filed 5–11–87; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Parts 907 and 908**

## Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Withdrawal of Proposed Amendment Specifying Requirements Regarding Continuance Referendum Petitions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This document withdraws a proposed rule to amend the administrative rules and regulations under the marketing orders covering California-Arizona navel and Valencia oranges specifying requirements for continuance referendum petitions. After a review of the comments received on the proposal, it has been determined that there is an inadequate basis for the requirements proposed regarding continuance referendum petitions.

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C., 20250 (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This action withdraws a proposed rule to amend the administrative rules and regulations established under Marketing Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and a designated part of California and Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and a designated part of California. The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Marketing Orders Nos. 907 and 908 were amended effective January 11, 1985, to revise §§ 907.83(d) and 908.83(d), respectively, to specify that continuance referenda be conducted when recommended by the Navel Orange Administrative Committee or the Valencia Orange Administrative Committee (hereinafter referred to as the "committees"). These committees administer their respective marketing orders locally.

Section 907.83(d) and 908.83(d) further specify that the committees should develop such rules and regulations as are necessary to establish the basis for recommendations to conduct such referenda. The committees recommended requirements for continuance referendum petitions, and a proposed rule was published in the July 19, 1985, issue of the **Federal Register** (50 FR 29405) to add new §§ 907.183 and 908.183 entitled "Referenda" to the administrative rules and regulations established under the orders.

The July 19, 1985, proposal contained the following recommendations: (1) A continuance referendum should be requested whenever the committee is petitioned, in writing, by at least 25 percent of the producers who produced navel or Valencia oranges for market within the production area during the previous year; (2) the petitioning producers must have produced for market at least 22 percent of the volume of oranges produced during that fiscal year within the production area; and (3) all signatures shall be inscribed on the petition during a six-week period.

A comment on that proposal was submitted on behalf of Sequoia Orange Company, Inc., in opposition to several aspects of the proposed rule. The commenter's objections included the following: (1) The 25 percent signature requirement was too high; (2) the six-week signature period was too short; and (3) the producers' volume of production is irrelevant.

It is the Department's view that the committee's recommendation requiring 25 percent participation for producer petitions significantly exceeds the level of producer support reasonably necessary for the Secretary to consider holding a continuance referendum. In fact, given that producer participation in such referenda averages only 50–60 percent of all eligible producers, 25 percent of all producers would represent 40–50 percent of the total number of producers expected to vote in a referendum. The Department also felt that the six-week period proposed for inscribing signatures on the petition was too short.

As a result of further USDA review and evaluation of the original proposal and the comment received from Sequoia Oranges Company, Inc., the proposed rule for continuance referendum petitions was revised and published in the **Federal Register** on April 8, 1986 (51 FR 11931). This proposal recommended the following revisions to the July 19, 1985, proposed rule: (1) The prerequisite percentage of producers needed to sign a petition requesting a continuance referendum was reduced from 25 percent to 10 percent; (2) a requirement that petitioning orange producers

represent a specified percentage of the volume of oranges produced under the appropriate marketing order was eliminated; and (3) the six-week period proposed for gathering signatures on the petition was revised to specify a 12-week or three-month period to ensure that producers would be provided ample opportunity to sign such a petition.

A total of 48 comments were received on the revised proposal. Forty-seven comments opposing the proposed requirements regarding continuance referendum petitions were received from growers and handlers of California-Arizona navel and Valencia oranges and other industry members. One comment supporting the proposal was received from Sequoia Orange Company, Inc.

The principal argument advanced in opposition to the modified proposal was that the 10 percent grower requirement was too low and could enable a small minority of growers to keep the navel and Valencia orange industries involved in one continuance referendum after another. The commenters stated that this would be time-consuming, expensive, and could seriously reduce the effectiveness of the marketing orders. The commenters were also opposed to the 12-week petition period and the deletion of the original volume requirement. The commenters opposed to the proposed modified recommendations fully supported the initial recommendations published in the July 19, 1985 issue of the **Federal Register** (50 FR 29405).

The lone proponent of the modified proposal supported the recommendations with some modifications, including lowering the 10 percent requirement to 5 percent and extending the petition period to one year.

It is the Department's position, based upon a thorough review of the comments received on the two proposals and other available information that the record does not at this time support establishing the proposed requirements for petitioning the Navel Orange Administrative Committee and Valencia Orange Administrative Committee to recommend that the Secretary conduct a continuance referendum because: (1) The committees' proposed requirements for the percentage of petitioning producers and the volume of production they should represent significantly exceeds the levels reasonably necessary to indicate producer support for a continuance referendum; and (2) the April 8, 1986, proposal, which contained less rigorous requirements for petitioners, was not supported by the majority of the industry.

Therefore, the proposed amendment published in the **Federal Register** on April 8, 1986, (51 FR 11931) is hereby withdrawn.

**List of Subjects in 7 CFR Parts 907 and 908**

Marketing agreements and orders, California, Arizona, Oranges (Navel and Valencia).

Dated: May 6, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 87-10820 Filed 5-11-87; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF ENERGY

### Office of General Counsel

### 10 CFR Part 1010

### Conduct of Employees; Statements of Employment and Financial Interest, and Interests in Energy Concerns

**AGENCY:** General Counsel Office, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Energy proposes to amend the Department's Conduct of Employees regulations (10 CFR Part 1010) by revising the provisions on exemption of Department of Energy employees at or below GS–12 from the financial reporting requirements of section 603 of the Department of Energy Organization Act (Pub. L. 95–91).

**DATES:** Comments must be received not later than June 11, 1987.

**ADDRESS:** Address comments to the Office of Assistant General Counsel for General Law, GC–43, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The envelope must also display the following designation: "Revision of Appendix I—Conduct of Employees Regulations."

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Buchanan, Attorney-Advisor, Office of Assistant General Counsel for General Law, GC–43, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1522.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 603(a) of the Department of Energy Organization Act (Pub. L. 95–91) requires all employees of the Department of Energy to file a report disclosing their energy concern interests with the Secretary of Energy not later than May 15 of each year. Such reports are also required to be filed within 30 days of commencement and termination of employment with the Department. Section 603(c) of the Act requires the Secretary to identify, by rule, specific positions, or classes thereof, which are of a nonregulatory or nonpolicymaking nature at or below grade GS–12, and to exempt such positions and the individuals occupying those positions from the filing requirements.

The requirement for identification of exempt positions is implemented by § 1010.403(a) of the Department of Energy Conduct of Employees regulations (10 CFR Part 1010), which provides for a listing of exempt positions in Appendix I of the regulations. Currently, such exempt positions are listed in Appendix I by position title, series, and grade, and there is a different listing for each Departmental element. This has proved to be an inefficient method of identification.

The proposed rule would amend § 1010.403(a) and Appendix I to provide for identification of exempt positions on a Department-wide basis, rather than by Departmental element, and by series and grade only, rather than by individual position titles. In addition, the proposed rule would permit the Counsel (defined in § 1010.103(f) of the Conduct of Employees regulations to mean the General Counsel of the Department or the General Counsel of the Federal Energy Regulatory Commission, as appropriate, or their delegates) to identify, from time to time, specific positions with duties and responsibilities substantially similar to those already covered by Appendix I, and to exempt such specific positions from the filing requirements. A list of such exempt positions will be maintained by the Counselor. The list of specific positions will be published at intervals established by the Counselor.

### II. Opportunity for Public Comment

Section 501 of the Department of Energy Organization Act provides that if the Secretary determines that a substantial issue of fact or law exists or that a proposed rule is likely to have a substantial impact on the Nation's economy or on large numbers of individuals or businesses, an opportunity for oral presentation of views, data and arguments shall be provided. The Department of Energy has concluded that this proposed regulation does not involve a substantial issue of fact or law and that it will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, the Department does not plan to hold a

public hearing. Interested persons are invited to submit written comments with respect to the proposed regulation set forth in this notice. Three copies of written comments should be submitted by June 11, 1987, as indicated in the "Address" section of this preamble.

### III. Review Under Executive Order 12291

It has been determined that the proposed regulation is not a "major rule" within the meaning of Executive Order 12291 (February 17, 1981) because the amendment will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

### IV. Review Under the Regulatory Flexibility Act

Pursuant to section 605 of the Regulatory Flexibility Act (Pub. L. 96–354), it is hereby certified that the proposed regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. It is related solely to internal agency organization, management, or personnel.

### V. Review Under the National Environmental Policy Act

DOE has determined that this proposal does not constitute a major Federal action significantly affecting the quality of the human environment.

### VI. Review Under the Paperwork Reduction Act

This proposal does not impose a "collection of information" requirement, as defined in 44 U.S.C. 3502(4).

### List of Subjects in 10 CFR Part 1010

Conflict of interest; Conduct of employees.

In consideration of the foregoing, it is proposed to amend Part 1010 of Title 10 of the *Code of Federal Regulations*, as set for below:

Issued in Washington, DC., on April 30, 1987.

**John S. Herrington,**
*Secretary of Energy.*

## PART 1010—CONDUCT OF EMPLOYEES

1. The authority citation for Part 1010 is revised to read as follows:

**Authority:** Sec. 601–608, 644, Pub. L. 95–91, 91 Stat. 591–596, 599 (42 U.S.C. 7211–7218, 7254); Sec. 522, Pub. L. 94–163, 89 Stat. 961 (42 U.S.C. 6392); Sec. 308 Pub. L. 95–39, 91 Stat. 189 (42 U.S.C. 5816a); 5 U.S.C. (app. 4) 207(a); 18 U.S.C. 201–209; E.O. 11222, as amended by E.O. 12565.

2. Section 1010.403 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

**§ 1010.403 Statement of employment and financial interest, and interests in energy concerns.**

(a) (Applicable to FERC) The filing requirements of this section are applicable to all DOE employees, except those whose positions are exempt pursuant to paragraph (f) of this section.

* * * * *

(f) (Applicable to FERC) (1) Section 603(c) of Pub. L. 95–91 (42 U.S.C. 7213) requires the Secretary to identify specific positions, or classes thereof, within the Department which are of a nonregulatory or nonpolicymaking nature at or below GS–12 of the General Schedule, and to exempt such positions or classes and the individuals occupying those positions from the reporting requirements of section 603 of the Act. Pursuant to section 603(c), the following positions are exempt from the filing requirements of this section:

(i) All positions in the classes, identified by series and grade, listed in Appendix I, except those occupied by individuals described in paragraph (f)(2) of this section; and

(ii) Any specific position at or below GS–12 of the General Schedule, or the equivalent, the duties and responsibilities of which are found by the Counselor to be substantially similar to those included in the classes listed in Appendix I to this part. A list of specific positions that have been exempted from the filing requirements of this section pursuant to this paragraph shall be maintained by the Counselor. The list shall be published at intervals established by the Counselor.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, an individual who is a supervisory employee (see § 1010.103(t) for definition of "supervisory employee"), a member of an award fee board, or a contracting officer's technical representative, is not exempt from the reporting requirements of section 603 of Pub. L. 95–91.

3. Appendix I to Part 1010 is revised to read as follows:

**Note.**—Appendix I, as originally published at 44 FR 24769 *et seq.* (April 6, 1979), did not appear in the Code of Federal Regulations. The revised Appendix I will appear in the Code of Federal Regulations.

### Appendix I—List of Classes of Positions Exempt From the Disclosure Requirements of Section 603 of the DOE Organization Act

The following is a list of classes of DOE positions (identified by series and grade) within the Department of Energy that are of a nonregulatory or nonpolicymaking nature at or below GS–12 of the General Schedule or the equivalent. The individuals who occupy positions that are within these classes (except individuals described in § 1010.403(f)(2)) have been exempted from the financial disclosure requirements of section 603 of the Department of Energy Organization Act (Pub. L. 95–91). (Individuals in certain confidential positions in the excepted service who fall within these classes may, nevertheless, be required to file a financial disclosure report under the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended).)

All positions at GS–12 or below in the following occupational series:

| | | |
|---|---|---|
| 018 | 346 | 1016 |
| 019 | 350 | 1020 |
| 020 | 351 | 1035 |
| 023 | 356 | 1060 |
| 028 | 361 | 1071 |
| 080 | 385 | 1082 |
| 081 | 388 | 1083 |
| 084 | 390 | 1084 |
| 085 | 391 | 1087 |
| 090 | 392 | [1]1101 |
| 099 | 393 | 1103 |
| 110 | 394 | 1104 |
| 130 | 401 | 1105 |
| 131 | 403 | 1106 |
| 132 | 404 | 1107 |
| 134 | 406 | 1150 |
| 140 | 430 | 1160 |
| 150 | 460 | 1202 |
| 160 | 462 | 1301 |
| 170 | 482 | 1306 |
| 180 | 486 | 1410 |
| 199 | 499 | 1311 |
| 201 | 501 | 1320 |
| 203 | 503 | 1321 |
| 212 | 525 | 1340 |
| 221 | 530 | 1341 |
| 230 | 540 | 1350 |
| 233 | 544 | 1370 |
| 235 | 560 | 1371 |
| 246 | 561 | 1372 |
| 260 | 590 | 1373 |
| 301 | 599 | 1374 |
| 302 | 602 | 1399 |
| 303 | 610 | 1410 |
| 304 | 690 | 1411 |
| 305 | 802 | 1412 |
| 309 | 806 | 1421 |
| 312 | 807 | 1510 |
| 313 | 808 | 1515 |
| 318 | 809 | 1520 |

| | | |
|---|---|---|
| 322 | 817 | 1521 |
| 332 | 818 | 1529 |
| 334 | 856 | 1530 |
| 335 | 899 | 1531 |
| 341 | 904 | 1550 |
| 342 | 950 | 1599 |
| 343 | 963 | 1601 |
| 344 | 986 | |
| 345 | 1001 | |

[1] Except Office of Hearings and Appeals.—For Office of Hearings and Appeals, exemption for series 1101 positions is at GS–9 and below.

All positions at GS–12 or below in the following occupational series:

| | |
|---|---|
| 1640 | 2030 |
| 1654 | 2050 |
| 1670 | 2101 |
| 1701 | 2102 |
| 1712 | 2130 |
| 1910 | 2131 |
| 2001 | 2132 |
| 2003 | 2134 |
| 2005 | 2151 |
| 2010 | 2181 |

All positions at GS–11 or below in the following occupational series:

510

All positions at GS–9 or below in the following occupational series:

| | |
|---|---|
| 801 | 693 |
| 803 | [2]696 |
| 804 | 1101 |
| 810 | 1102 |
| 819 | 1130 |
| 830 | 1170 |
| 840 | 1171 |
| 850 | 1220 |
| 855 | 1221 |
| 890 | 1222 |
| 811 | |

[2] Office of Hearings and Appeals.—For all other, exemption for series 1101 is at GS–12 and below.

[FR Doc. 87–10796 Filed 5–11–87; 8:45 am]
BILLING CODE 6450–01

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1015

### Freedom of Information Act Regulations; Proposed Amendments on Fees

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed amendments.

**SUMMARY:** When members of the public are provided documents under the Freedom of Information Act, the Commission may impose fees for such services as duplication and searching. The Commission is proposing to amend its regulations so that (1) the fees will reflect more accurately the Commission's direct (actual) costs of providing the services and (2) the fees will conform to the Freedom of Information Reform Act of 1986.

**DATES:** Comments on the proposals are due no later than June 11, 1987. The amendments are proposed to become effective 30 days after they are issued in final form.

**ADDRESS:** Comments should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Alan Shakin, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6980.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The Commission's existing regulations on Freedom of Information Act (FOIA) fees appear at 16 CFR 1015.9. They provide, in essence, that fees will be charged for FOIA services, but "certain information provided routinely in the normal course of doing business will be provided at no charge" (§ 1015.9(a)); that the Commission's Secretary determines and levies fees and may waive or reduce them "when the furnishing of the information can be considered as primarily benefiting the general public or when special circumstances warrant" (§ 1015.9(b)); that the Secretary's determination of fees may be appealed to the Commission (§ 1015.9(b)); that the first $25 of fees will be waived (§ 1015.9(c)); and that fees are not levied where the requested documents are not provided or made available (§ 1015.9(d)).

The existing regulations also direct that payment should be by check or money order payable to the Consumer Product Safety Commission (§ 1015.9(e)). Finally, they set forth the schedule of charges for FOIA services: Searches, computer time, reproduction, postage, microfiche, and microfilm (§ 1015.9(f)).

In October 1986 the Commission voted to propose certain changes to these FOIA fee regulations. Before it did so, however, the Freedom of Information Reform Act of 1986 ("Reform Act," at sections 1802–04 of Pub. L. 99–570, the Anti-Drug Abuse Act of 1986) was enacted.

The Commission's reasons for wanting to amend its FOIA fee provisions were to make the fees better reflect the direct (actual) costs of responding to FOIA requests and to clarify some provisions. The Reform Act addresses the direct-costs issue and other issues that require changes to the Commission's fee provisions.

On March 27, 1987 the Office of Management and Budget issued its final Fee Schedule and Guidelines ("OMB Guidelines") which the Reform Act required OMB to issue. 52 FR 10011. On April 2, 1987 the Department of Justice's Office of Legal Policy issued a memorandum on New FOIA Fee Waiver Policy Guidance ("DOJ Memorandum"). In preparing its proposed amendments, the Commission has closely followed the guidance provided in these two documents.

### B. Proposed amendments

The following paragraphs summarize the proposed amendments and discuss the rationales for them (the citations are to the provisions proposed below, not to the existing provisions):

1. The Commission would provide certain routine information at no charge; otherwise, the Secretary would determine and levy FOIA fees in accordance with the regulations (§ 1015.9(a)). This provision shortens, but does not change, existing provisions.

2. Checks and money orders would be payable to the Treasury of the United States, instead of to the CPSC, but would continue to be sent to the CPSC (§ 1015.9(b)). This would make fee collection administratively easier because the U.S. Treasury eventually receives funds collected for FOIA responses.

3. Under the Reform Act and OMB Guidelines, different categories of requesters are to be charged differently for costs. The four types of requesters are: (a) Commercial use requesters; (b) educational and non-commercial scientific institution requesters; (c) requesters who are representatives of the news media; and (d) all other requesters. The three types of costs are duplication, search, and review.

The Commission's proposed amendments adopt the specific definitions contained in the OMB Guidelines for the terms "commercial use request," "educational institution," "non-commercial scientific institution," "representative of the news media," "duplication," "search," and "review," as well as "direct costs" (§ 1015.9(c)).

4. Commercial use requesters may be charged for duplication, search, and review costs; educational institution and non-commercial scientific institution requesters and representatives of the news media may be charged for duplication costs; and all other requesters may be charged for duplication and search costs (§ 1015.9(d)). In addition, the following discussion illustrates how the Commission would impose fees under the proposed amendments:

Section 6(b) of the Consumer Product Safety Act (15 U.S.C. 2055(b)) requires the Commission to give manufacturing and private labeling firms the opportunity to comment on documents in which they are identified. The Commission then reviews those comments and decides whether to withhold the documents. If so, the documents are often withheld because of a specific statutory provision, section 6(b), which makes them exempt from disclosure under Exemption 3 of the FOIA (5 U.S.C. 552(b)(3)).

The time spent processing documents under section 6(b) of the CPSA would be a "review" cost under the proposed amendments, since "review" is defined to include the examination of documents to determine whether they are permitted to be withheld. Depending on the nature and length of the firms' comments, such review time is sometimes considerable.

The Commission's experience is that the vast majority of FOIA requests from law firms are seeking information for use in product liability matters. Although product liability lawsuits are designed to reimburse victims for injuries suffered, requests from the lawyers who represent them may fall within the proposed definition of "commercial use requests." The Commission is especially interested in receiving public comments on the question of whether such requests should generally be treated as commercial ones, or under the category of "other."

5. Some changes would be made to the fee structure (§ 1015.9(e)), to make fees reflect direct (actual) costs more closely than the existing fees do:

(a) The cost of a search does not now depend on what type of employee conducted it. Under the proposed amendments, clerical personnel would be "billed out" at one rate ($3.00 for each 15-minute period), while non-clerical and professional and managerial personnel would be billed out at a higher rate ($4.90 for each 15-minute period). In addition, any special costs of sending records from field locations to headquarters for review would be included in search fees, at the clerical rate.

(b) Computer time rates would be revised. Postage would be charged, on a direct-cost basis, only for special handling. The rates for materials and services not specified in the regulations would be on direct-cost bases, as determined by the Secretary.

(c) The costs of review, which are not currently charged, would be billed at $4.90 for each 15-minute period, since lawyers and other professionals perform this work.

6. The Reform Act, OMB Guidelines, and DOJ Memorandum address the circumstances under which agencies must waive FOIA fees. First, 100 pages of duplication and two hours of search time must be waived, except for commercial users. Second, fees must be waived (or, in rare cases, reduced) if disclosure of the requested information is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

The Commission currently waives the first $25 of fees for all requests. It also directs the Secretary to waive or reduce fees when the disclosure would primarily benefit the general public or when special circumstances warrant. These provisions must be amended, and the proposed amendments would do so as follows:

For commercial use requests, there would be no automatic waiver (§ 1015.9(f)(1)). For educational institutions, non-commercial scientific institutions, and representatives of the media (for which the Commission only imposes duplication costs), there would be a $10 waiver for duplication costs (at $.10/page, 100 pages of duplication would cost $10) (§ 1015.9(f)(2)). For any other requester (for which the Commission imposes duplication and search costs), the waiver would be $10 for duplication costs and $40 for search costs (§ 1015.9(f)(3)). The cost of a two-hour search would vary, depending on the status of the employee searcher, from $24.00 to $39.20 (computer searches are excluded). For administrative convenience, the Commission would waive the highest possible figure for a two-hour search, $39.20, rounded off to $40.

Under the proposed amendments, the Secretary would consider all "public interest" waiver requests under the six factors outlined in the DOJ Memorandum (§ 1015.9(f) (4) and (5)). The Secretary's decisions on waivers would be appealable to the General Counsel (§ 1015.9(f)(6)).

7. Other proposed amendments concerning the assessment and collection of fees follow the OMB Guidelines:

(a) The Commission would assess interest charges on an unpaid bill, starting on the 31st day on which the billing was sent (§ 1015.9(g)(1).

(b) The Commission would assess charges for time spent searching, even if responsive documents are not located or located documents are exempt from disclosure (§ 1015.9(g)(2)). Such charges shall not exceed $25, unless the requester has authorized a higher amount.

(c) The Commission would require advance payment if (1) charges are estimated to exceed $250 and the requester has no history of payment and cannot provide satisfactory assurance of payment, or if (2) a requester has previously failed to pay within 30 days of the billing date (§ 1015.9(g)(3).

(d) The Commission would aggregate requests for billing purposes when it reasonably believes that one request has been "broken down" into a series of requests for the purpose of evading fees (§ 1015.9(g)(4).

(e) The OMB Guidelines prohibit agencies from charging a fee if the cost of collecting the fee would be equal to or greater than the fee itself. Therefore, the Commission will not charge for any request in which the total bill is less than $9.00 (§ 1015.9(g)(5)), an amount that the Commission estimates would be the average cost of processing one fee collection.

The Commission proposes to make the amendments effective 30 days after they are issued in the **Federal Register** in final form. Please note that the proposals are not Commission action within the categories listed at 16 CFR 1021.5(b) having a potential for producing environmental effects; therefore, neither an environmental assessment nor an environmental impact statement is required. In addition, because any changes in the numbers of firms affected or the amounts of fees collected under the FOIA are not expected to be substantial, the Commission certifies that the proposed amendments, if issued in final form, would not have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act. 5 U.S.C. 603(3).

**List of Subjects in 16 CFR Part 1015**

Freedom of information.

Pursuant to 5 U.S.C. 552(a)(4)(A), as amended, the Commission hereby proposes to amend 16 CFR Part 1015 as follows:

1. The authority citation for Part 1015 continues to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(i), as amended.

2. Section 1015.9 is revised to read as follows:

**§ 1015.9 Fees for production of records.**

(a) The Commission will provide, at no charge, certain routine information. For other Commission responses to information requests, the Secretary shall determine and levy fees for duplication,

search, review, and other services, in accordance with this section.

(b) Fees shall be paid by check or money order, payable to the Treasury of the United States and sent to the Commission.

(c) The following definitions shall apply under this section:

(1) "Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request.

(4) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis (see paragraph (c)(5) of this section) and which is operated solely for the purpose conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(d) A commercial use request may incur charges for duplication, search, and review. A request from an educational institution, a non-commercial scientific institution, or a representative of the news media may incur charges only for duplication. Any other request may incur charges for duplication and research.

(e) The following fee schedule will apply:

(1) Copies of documents reproduced on a standard photocopying machine: $0.10 per page.

(2) File searches conducted by clerical personnel: $3.00 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour). Any special costs of sending records from field locations to headquarters for review will be included in search fees, billed at the clerical personnel rate.

(3) File searches conducted by non-clerical or professional or managerial personnel: $4.90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(4) Review of records: $4.90 for each one-quarter hour (a fraction thereof to be counted as one-quarter hour).

(5) Computerized records: for central processing, $0.32 per second of central processing unit (CPU) time; for printer, $10.00 per 1,000 lines; and for computer magnetic tapes or discs, direct costs.

(6) Postage: direct-cost basis for mailing requested materials, if the requester wants special handling or if the volume or dimensions of the materials requires special handling.

(7) Microfiche: $0.35 for each frame.

(8) Other charges for materials requiring special reproducing or handling, such as photographs, slides, blueprints, video and audio tape recordings, or other unusual materials: direct-cost basis.

(9) Any other service: an appropriate fee established by the Secretary, based on direct costs.

(f) Fee shall be waived as follows:

(1) No automatic fee waiver shall apply to commerical use requests.

(2) The first $10.00 of duplication costs shall be waived for requests from educational institutions, non-commercial scientific institutions, and representatives of the news media.

(3) For all other requests, the first $10.00 of duplication costs and the firsts $40 of search costs shall be waived.

(4) The Secretary shall waive or reduce fees whenever disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and disclosure of the requested information is not primarily in the commercial interest of the requester.

(5) In making a determination under paragraph (f)(4) of this section, the Secretary shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations of activities of the government.

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(v) The existence and magnitude of a commerical interest: Whether the requester has a commerical interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commerical interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commerical interest of the requester.

(6) Any determination may by the Secretary concerning fee waivers may be appealed by the requester to the Commission's General Counsel in the manner described at § 1015.7.

(g) Collection of fees shall be in accordance with the following:

(1) Interest will be charged on amounts billed, starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) Search fees wil be imposed (on requesters charged for search time) even if no responsive documents are located or if the search leads to responsive documents that are withheld under an exemption to the Freedom of Information Act. Such fees shall not exceed $25.00, unless the requester has authorized a higher amount.

(3) Before the Commission begins processing a request or discloses any information, it will require advance payment if:

(i) charges are estimated to exceed $250.00 and the requester has no history of payment and cannot provide satisfactory assurance that payment will be made; or

(ii) a requester failed to pay the Commission for a previous Freedom of Information Act request within 30 days of the billing date.

(4) The Commission will aggregate requests, for the purposes of billing, whenever it reasonably believes that a requester or group of requesters is attempting to separate a request into

more than one request for the purpose of evading fees.

(5) If a requester's total bill is less than $9.00, the Commission will not request payment.

Written comments on these proposed amendments should be submitted, preferably with four copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments are due on June 11, 1987, but late comments will be considered to the extent practicable. Received comments may be seen in the Office of the Secretary during normal business hours, in room 520, 5401 Westbard Avenue, Bethesda, Maryland.

Dated: May 6, 1987.

Sadye E. Dunn,

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 87-10755 filed 5-11-87; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 101

### Proposed Amendment Relating to the Customs Service Field Organization—Port Huron, MI; Correction

**AGENCY:** Customs Service, Treasury.

**ACTION:** Proposed rule; solicitation of comments; correction.

**SUMMARY:** In Federal Register Document 87-9121, published on April 23, 1987 (52 FR 13473), it was proposed to amend the Customs Regulations to change the Customs field organization by extending the georgraphic limits of the port of entry of Port Huron, Michigan.

Before adopting the proposal, written comments were invited. It has now come to our attention that the description of the proposed expanded port limits would leave eight mile gaps between St. Clair and Marine City and between Marine City and Algonac, Michigan. The description of the corrected proposed expanded port limits is as follows:

All of the territory encompassing the cities of Port Huron, Marysville, St. Clair, Marine City and Algonac and the Townships of Port Huron, Fort Gratiot, Kimball, St. Clair, East China and the portion of Cottrellville and Clay Townships east of and including Highway M-29, all in the State of Michigan.

**DATE:** Comments must be received on or before June 22, 1987.

**ADDRESS:** Comments (perferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Richard Coleman, Office of Inspection and Control, (202-566-9425).

Dated: May 5, 1987.

Marvin M. Amernick,

*Acting Director, Regulations Control and Disclosure Law Division.*

[FR Doc. 87-10712 Filed 5-11-87; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 271

### Nondiscrimination in Employment in the Outer Continental Shelf

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement section 604 of the Outer Continental Shelf Lands Act Amendments (OCSLAA) of 1978 by prohibiting unlawful discrimination in employment in the OCS. This proposed rule addresses discrimination which is not otherwise prohibited by existing law and regulations.

**DATE:** Comments must be hand-delivered or postmarked no later than June 11, 1987.

**ADDRESS:** Written comments must be mailed or hand-delivered to the Department of the Interior; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646, Room 6A110; Reston, Virginia 22091; Attention: John V. Mirabella.

**FOR FURTHER INFORMATION CONTACT:** John V. Mirabella or Mary McDonald, Telephone (703) 648-7816 or FTS 959-7816.

**SUPPLEMENTARY INFORMATION:** This proposed rule implements the policy of the Minerals Management Service (MMS) to ensure that no activity conducted pursuant to the provisions of the OCS Land Act (OCSLA) or the OCSLAA is excluded from regulations prohibiting discrimination in employment on the grounds of race, creed, color, national origin, or sex. In the OCSLAA, Congress specifically addressed the matter of discrimination in section 604 (43 U.S.C. 1863) which provides that the Secretary "shall take such affirmative action as deemed necessary . . . to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of . . . the Outer Continental Shelf Lands Act."

Subsequently, MMS initiated a rulemaking to prohibit unlawful discrimination in the award of contracts and subcontracts in activities related to the exploration for or development and production of oil, gas, or other minerals in the OCS. In response to this rule, proposed in October 1984 (49 FR 41077), comments were received from the Equal Employment Opportunity Commission (EEOC) recommending that the scope of the rule be broadened to include the prohibition of unlawful discrimination in employment by contractors and subcontractors in their contract activities related to the OCS. The MMS had previously addressed the matter of employment discrimination by incorporating into its lease certain provisions of section 202 of Executive Order 11246, as amended, and the implementing regulations of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). This Executive Order and the implementing regulations at 41 CFR 60-1 prohibit unlawful discrimination in employment in work performed under contracts with the Federal Government. The EEOC's comments were prompted by the Department of Labor's determination in a Decision on Appeal issued in 1984 that not all contractors and subcontractors of OCS lessees are subject to the OFCCP regulations because some may not meet certain criteria to qualify as contractors and subcontractors as these terms are defined in the OFCCP regulations.

After fully considering the EEOC recommendation and the pertinent laws and regulations, MMS decided to go forward with the final rule concerning discrimination in the award of contracts and subcontracts essentially as proposed and to undertake a separate rulemaking prohibiting discrimination in employment. The final rule prohibiting discrimination in the award of contracts and subcontracts at 30 CFR Part 270 was issued on May 22, 1985 (50 FR 21048).

In its review of existing legal instruments pertaining to discrimination in employment, MMS has reassessed their relevance to the mandates of the OCSLAA on this matter. The basic legislation generally prohibiting discrimination in employment in the United States on the grounds of race, creed, color, national origin, or sex is the Civil Rights Act of 1964 and its amendments. The implementing

regulations for this law are issued and enforced by the EEOC and are found at 20 CFR Chapter XIV. Executive Order 11246, as amended, incorporates the substantive legal standards of the Civil Rights Act of 1964 and pertains to matters involving the Federal Government. Regulations implementing this Order are found at 41 CFR Part 60–1 and are the responsiblity of the Department of Labor's OFCCP. In addition, many States and localities have similar laws prohibiting unlawful discrimination. In view of the numerous existing means for addressing cases of possible unlawful discrimination in employment, MMS believes that the great majority of potential instances of such discrimination involving OCS activities would be within the scope and jurisdicition of presently existing laws and regulations. We believe that replicating these is unwarranted and would create unnecesary and redundant regulations and procedures. We are, however, committed to assuring that MMS regulations are consistent with the requirement of the OCSLAA, cited above, that no person be excluded from participating in employment relative to OCS activities on the grounds of race, creed, color, national origin, or sex. After considering all aspects of the issue, we have concluded that the most appropriate and effective means of implementing our policy to bar unlawful discrimination in the OCS without exception is to develop a rule which would apply to only those circumstances and situations which are not otherwise covered.

As described above, OFCCP regulations at 41 CFR 60–1, although incorporated by reference in the MMS lease, may not apply to all contractors and subcontractors in the OCS at all times. Furthermore, contracts and subcontracts of $10,000 or less are exempt from the requirements of section 60–1. The Civil Rights Act of 1964 and the implementing EEOC regulations do not present the same type of limitations. Under the Civil Rights Act (42 U.S.C. 2000e–2), unlawful employment practices are prohibited as follows:

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

The definition in § 2000e of the term "employer" contains some limitations which are likely to be of relevance to work in the OCS. The limitaitons on the term "employer" could exclude some persons employed in activities pursuant to the OCSLA from coverage under the Civil Rights Act. The pertinent definition is as follows:

For the purposes of this subchapter—

* * * * *

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such terms does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

The limitation contained in the definition on the number of employees required to bring an employer under the jurisdiction of the Civil Rights Act is the only limitation preventing complete coverage of OCS-related employment activities under existing nondiscrimination rules of the EEOC.

The MMS has determined that it is appropriate to issue a further rule prohibiting unlawful discrimination in employment in the OCS. The proposed rule would apply only to those employers with fewer than 15 employees who are engaged in an industry affecting commerce. The rule would also be limited to employment-related activities conducted pursuant to the provisions of the OCSLA or the OCSLAA. In this way, the rule would not duplicate the already adequate protection provided to minority groups and women by the EEOC regulations.

The Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291 as the total cost is not expected to exceed $5,000 per year. The DOI has also determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The capital requirements and technical complexity of hydrocarbon and other mineral activities in the OCS are so great that small entities generally do not have these capabilities and do not conduct business in the OCS.

This proposed rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

**Author:** This document was prepared by Mary McDonald, Offshore Rules and Operations Division, Minerals Management Service.

**List of Subjects in 30 CFR Part 271**

Civil rights, Continental shelf, Government contracts, Investigations, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources.

Dated: December 8, 1986.

**William D. Bettenberg,**

*Director Minerals Management Service.*

For the reasons set forth above, Title 30 of the Code of Federal Regulations is proposed to be amended by adding Part 271 as follows:

## PART 271—NONDISCRIMINATION IN EMPLOYMENT IN THE OUTER CONTINENTAL SHELF (OCS)

Sec.

271.1 Purpose.
271.2 Application of this part.
271.3 Definitions.
271.4 Discrimination prohibited.
271.5 Complaint.
271.6 Process.
271.7 Remedies.

**Authority:** Sec. 604, Pub. L. 95–372, 92 Stat. 695 (43 U.S.C. 1863).

### § 271.1 Purpose.

The purpose of this part is to implement the provisions of section 604 of the OSCLAA which provide that "no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving or participating in any activity, sale, or employment, conducted pursuant to the provisions of . . . the Outer Continental Shelf Land Act."

### § 271.2 Application of this part.

This part applies to all employment and employment-related practices of employers as defined in § 271.3 which are concerned with any aspect of the exploration for or development and production of oil, gas, or other minerals or materials in the OCS under the OCSLA or OCSLAA.

### § 271.3 Definitions.

As used in this part, the following terms shall have the meanings given below:

"Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between a State and any place outside thereof or between points in the same State but through a point outside thereof.

"Employee" means an individual employed by an employer, except that the term employee shall not include any person elected to public office in any State or political subdivision of any State.

"Employer" means a person engaged in an industry affecting commerce who does not have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of such a person.

"Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.).

"OCSLA" means the Outer Continental Shelf Act, as amended (43 U.S.C. 1331 et seq).

"OCSLAA" means the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1801 et seq.).

"Person" means a person or company, including but not limited to a corporation, partnership, association, joint stock venture, trust, mutual fund, or any receiver, trustee in bankruptcy, or other official acting in a similar capacity for such company.

**§ 271.4 Discrimination prohibited.**

No employer shall fail or refuse to hire any individual, discharge any individual, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such an individual's race, color, religion, national origin, or sex. No employer shall limit, segregate, or classify the employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such an individual's race, color, religion, national origin, or sex.

**§ 271.5 Complaint.**

Whenever any person believes that he or she has been discriminated against by an employer on the grounds of race, creed, color, national origin, or sex with respect to a circumstance of employment to which this part applies, such a person may complain of such discrimination to the Regional Director of the OCS Region in which such discrimination is alleged to have occurred. Any complaint filed under this part must be submitted in writing to the appropriate Regional Director not later than 180 days after the date of the alleged unlawful discrimination in employment which is the basis of the complaint.

**§ 271.6 Process.**

Whenever a Regional Director determines on the basis of any information, including that which may be obtained under § 271.5 of this title, that a violation of or failure to comply with any provision of this part probably occurred, the Regional Director shall undertake to afford the complainant and the person(s) alleged to have violated the provisions of this part an opportunity to engage in informal consultations, meetings, or any other form of communications for the purpose of resolving the complaint. In the event such communications or consultations result in a mutually satisfactory resolution of the complaint, the complainant and all persons cited in the complaint shall notify the Regional Director in writing of their agreement to such resolution. If either the complainant or the person(s) alleged to have wrongfully discriminated fail to provide such written notice within a reasonable period of time, the Regional Director shall proceed in accordance with the provisions of §§ 250.70, 250.71, 250.72, and 250.80 of this title.

**§ 271.7 Remedies.**

In addition to the penalties available under §§ 250.81–1 and 250.80–2 of this title, the Director may invoke any other remedies available to him or her for the employer's failure to comply with the provisions of this part.

[FR Doc. 87–10783 Filed 5–11–87; 8:45 am]
BILLING CODE 4310–MR–M

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## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 902

## Public Comment Period and Opportunity for Public Hearing on an Amendment to the Alaska Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing procedures for a public comment period and for a public hearing on the adequacy of an amendment submitted by the State of Alaska to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of modifications to eight Articles (chapters) of the Alaska regulations addressing Environmental Resource Information, Reclamation and Operation Plan, Performance Standards, Inspection and Enforcement, Conflict of Interest, Training, Examination and Certification of Blasters, Abandoned Mines and General Provisions.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment, and information pertinent to the public hearing, if one is held.

**DATES:** Written comments not received on or before 4:00 p.m. on June 11, 1987 will not necessarily be considered. If requested, a public hearing on the proposed program amendment will be on June 8, 1987, at the address listed below under "ADDRESSES". Any person interested in making an oral or written presentation at the hearing should contact Mr. Jerry R. Ennis at the OSMRE Casper Field Office by 4:00 p.m. on May 27, 1987. If no one has contacted Mr. Ennis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Ennis, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

**ADDRESSES:** Written comments should be mailed or hand-delivered to Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918.

The public hearing, if requested, will be held at the following location: Alaska Department of Natural Resources, 2601 C Street, Frontier Building, P.O. Box 107–016, Anchorage, Alaska 99510–7106.

See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the proposed Alaska program amendment, the approved Alaska program, and the administrative record on the Alaska program are available. Each requester may receive, free of charge, one single copy of the proposed program

amendment by contacting the OSMRE Casper Field Office listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry R. Ennis, Director, Casper Field Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

**SUPPLEMENTARY INFORMATION:** Copies of the proposed Alaska program amendment, the approved Alaska program, and the administrative record on the Alaska program are available for public review and copying at the OSMRE office and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 "L" Street NW., Room 5124, Washington DC 20240

Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Room 2128, Casper Wyoming 82601–1918

Alaska Department of Natural Resources, Division of Mining, 3601 C Street, Frontier Building, P.O. Box 107–016, Anchorage Alaska 99510–7106

## Background

Information concerning the general background on the permanent program, general background on the State program approval process, general background on the Alaska program submission, Secretary's findings, disposition of public comments, and Secretary's decision of approval can be found in the March 23, 1983 **Federal Register** (48 FR 12274).

On May 28, 1985, Alaska submitted to OSMRE, for informal review, a draft blaster certification program amendment. On August 1, 1985, Alaska notified OSMRE that the draft submission was to be considered a formal program amendment intended to implement the provisions of 30 CFR Part 850 relating to the training examination and certification of blasters.

On August 28, 1985, OSMRE acknowledged in the **Federal Register** (50 FR 34863) receipt of the program amendment and announced procedures for a public comment period. The comment period closed September 27, 1985.

On November 24, 1986, Alaska submitted modifications to its proposed blaster certification program amendment. The modifications addressed a cooperative agreement being developed between the Alaska Department of Natural Resources and the University of Alaska. Comments on the modifications were invited in the February 13, 1987 **Federal Register** (52 FR 4630). The comment period closed March 2, 1987.

Alaska submitted, as part of the March 2, 1987 program amendment, a revised Article 15 which addresses the training, examination and certification of blasters.

As a result, OSMRE has stopped processing the original blaster certification amendment and all related modifications to the original submission.

OSMRE has decided to substitute, for the sake of clarity, the revised blaster certification program amendment submitted March 2, 1987 for the original May 28, 1985 blaster certification program amendment.

OSMRE is opening the comment period on the March 2, 1987 blaster certification submission for 30 days. OSMRE will consider all comments received on the previous blaster certification submission and modification, as well as the signed cooperative agreement between the University of Alaska and the Department of Natural Resources regarding the blaster certification program submitted on November 24, 1986.

## Proposed Amendment

On March 2, 1987, OSMRE received from the State of Alaska an amendment to its permanent regulatory program. The amendment consists of revisions to the approved Alaska regulations. The amended portion of the regulations and a brief description of the subject area is as follows: Article 4—Environmental Resource Information Requirements, Section 11 AAC 90.065—cross sections, maps, and plan views; Article 5—Reclamation and Operation Plan, Section 11 AAC 90.077—operations maps, plan views, and cross sections; Article 11—Performance Standards, Sections 11 AAC 90.331—sedimentation ponds and 11 AAC 90.461—subsidence control; Article 12—Inspection and Enforcement, Sections 11 AAC 90.601—inspections, 11 AAC 90.625—penalty assessment and computation and 11 AAC 90.627—procedures for assessment; Article 14—Conflict of Interest, Section 11 AAC 90.751—report of financial interest; Article 15—Training, Examination, and Certification of Blasters; Article 16—Abandoned Mines; Article 17—General Provisions, section 11 AAC 90.907—public participation.

OSMRE is seeking comment on whether Alaska's proposed revisions to its regulations are no less stringent than the requirements of SMCRA and no less effective than the requirements of the revised Federal regulations and satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17.

The full text of the proposed program modifications submitted by Alaska for OSMRE's consideration is available for public review at the addresses listed under "**SUPPLEMENTARY INFORMATION.**"

## Additional Determinations

1. *Compliance with the National Environmental Policy Act.* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no evironmental impact statement need be prepared on this rulemaking.

2. *Executive Order 12291 and the Regulatory Flexibility Act.* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, therefore this action is exempt from preparation of a Regulatory Impact Analysis review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule will not impose any new requirements; rather it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State of Alaska.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under U.S.C. 3507.

## List of Subjects in 30 CFR Part 902

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 1, 1987.

**Raymond L. Lowrie,**

*Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87–10791 Filed 5–11–87; 8:45 am]

BILLING CODE 4310–05–M

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**VETERANS ADMINISTRATION**

**38 CFR Part 3**

**Removal of Monetary Rates**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendments.

**SUMMARY:** The Veterans Administration (VA) is proposing to amend its adjudication regulations to remove references to monetary benefit rates and income limitations and to replace them with the statutory citations or methods of computation that are the basis for those monetary rates and income limitations. The amendments are necessary to eliminate the cost of annual regulatory amendments based solely on legislative rate changes or changes made by standardized computation methods. The effect of these amendments will be to reduce unnecessary regulatory burdens and publication costs while maintaining an adequate method of advising the public of periodic changes in benefit rates and income limitations through publication in the "Notices" section of the **Federal Register**.

**DATES:** Comments must be received on or before June 9, 1987. It is proposed to make these amendments effective 30 days after publication in final form.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to: Administrator of Veterans Affairs (271A), Veterans Administration, 8109 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** Many of the regulations in 38 CFR Part 3 contain actual monetary benefit rates and income limitation amounts that are delivered directly from changes in law and through standardized computation methods. Currently the VA must publish new regulations each time these rates or income limitations are changed by law or by a change in a computation variable such as the Consumer Price Index. By amending the regulations to provide the statutory citations or the standarized computation method for benefit rates and income limitations, the VA can avoid unnecessary regulatory amendments in the future. Actual changes in monetary rates and income limitations will continue to be published in the **Federal Register** in notice format. In this manner the VA will reduce regulatory costs, eliminate duplication of effort, and continue to provide the necessary public notice of changes in benefit rates and income limitations. The benefit rates and income limitations affected by these changes are the section 306 and old-law disability and death pension rates and income limitations (including the spouse income exclusions for section 306 disability pension), the maximum annual rates of improved pension, the monthly rates and income limitations applicable to parents' dependency and indemnity compensation, the Medal of Honor pension, the burial alowance, the plot or interment allowance, and the headstone or marker allowance. An editorial change is also being made to 38 CFR 3.1600(c) to clarify that certain transportation expenses are payable when a veteran who is properly hospitalized by the VA dies of service-connected causes.

The Administrator hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulatory amendments impose no regulatory burdens on small entities, and there will be no direct affect on claimant for VA benefits.

In accordance with Executive Order 12291, Federal Regulation, the Administrator has determined that these proposed regulations are non-major for the following reasons:

(1) They will not have an effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

The Catalog of Federal Domestic Assistance program numbers are: 64.101, 64.104, 64.105, and 64.110.

Approved: November 14, 1986.

**Thomas K. Turnage,**

*Administrator.*

**PART 3—[AMENDED]**

38 CFR Part 3, Adjudication, is proposed to be amended as follows:

1. In § 3.23, the heading and paragraphs (a) and (c) are revised to read as follows:

**§ 3.23 Improved pension rates—veterans and surviving spouses.**

(a) *Maximum annual rates of improved pension.* The maximum annual rates of improved pension for the following categories of beneficiaries shall be the amounts specified in 38 U.S.C. 521 and 541, as increased from time to time under 38 U.S.C. 3112. Each time there is an increase under 38 U.S.C. 3112, the actual rates will be published in the "Notice" section of the **Federal Register.**

(1) Veterans who are permanently and totally disabled. (38 U.S.C. 521 (b) or (c))

(2) Veterans in need of aid and attendance. (38 U.S.C. 521(d))

(3) Veterans who are housebound. (38 U.S.C. 521(e))

(4) Two veterans married to one another—combined rates. (38 U.S.C. 521(f))

(5) Surviving spouse alone or with a child or children of the deceased veteran in the custody of the surviving spouse. (38 U.S.C. 541 (b) or (c))

(6) Surviving spouses in need of aid and attendance. (38 U.S.C. 541(d))

(7) Surviving spouses who are housebound. (38 U.S.C. 541 (e))

* * * * *

(c) *Mexican border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by the amount specified in 38 U.S.C. 521(g), as increased from time to time under 38 U.S.C. 3112. Each time there is an increase under 38 U.S.C. 3112, the actual rate will be published in the "Notices" section of the **Federal Register.** (38 U.S.C. 521(g))

2. In § 3.24 paragraphs (b) and (c) are revised to read as follows:

**§ 3.24 Improved pension rates—surviving children.**

* * * * *

(b) *Child with no personal custodian or in the custody of an institution.* In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (see § 3.57(d)), or the child is in the custody of an institution, pension

shall be paid to the child at the annual rate specified in 38 U.S.C. 542, as increased from time to time under 38 U.S.C. 3112, reduced by the amount of the child's countable annual income. Each time there is an increase under 38 U.S.C. 3112, the actual rate will be published in the "Notices" section of the **Federal Register.**

(c) *Child in the custody of person legally responsible for support.*—(1) *Single child.* Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5), and the sum of the annual income of such child and the annual income of such person or, the maximum annual pension rate under paragraph (b) of this section, whichever is less.

(2) *More than one child.* Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than the maximum annual pension rate under paragraph (b) of this section) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than the maximum annual pension rate under paragraph (b) of this section, or the maximum annual pension rate under paragraph (b) of this section times the number of eligible children, whichever is less). (38 U.S.C. 542)

3. Section 3.25 is revised to read as follows:

**§ 3.25 Parents' dependency and indemnity compensation (DIC)—method of payment computation.**

Monthly payments of parents' DIC shall be computed in accordance with the following formulas:

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent, the monthly rate specified in 38 U.S.C. 415(b)(1), as increased from time to time under 38 U.S.C. 3112, reduced by $.08 for each dollar of such parent's countable annual income in excess of $800. No payments of DIC may be made under this paragraph, however, if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 415(b)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 a month.

(b) *One parent who has remarried.* If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under paragraph (a) or paragraph (d) of this section, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined countable annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(c) *Two parents not living together.* The rate computation method in this paragraph applies to two parents who are not living together, or an unremarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 415(c)(1), as increased from time to time under 38 U.S.C. 3112, reduced by an amount no greater than $.08 for each dollar of such parent's countable annual income in excess of $800, except that no payments of DIC may be made under this paragraph if such parent's countable annual income exceeds the amount specified in 38 U.S.C. 415(c)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 3112, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the **Federal Register** as provided in paragraph (f) of this section.

(d) *Two parents living together or remarried parents living with spouse.* The rate computation method in this paragraph applies to each parent living with another parent and to each remarried parent when both parents are alive. The monthly rate of DIC paid to such parents shall be the rate specified in 38 U.S.C. 415(d)(1), as increased from time to time under 38 U.S.C. 3112, reduced to an amount no greater than $.08 for each dollar of such parent's and spouse's combined countable annual income in excess of $1,000, except that no payments of DIC may be made under this paragraph if such parent's and spouse's combined countable annual income exceeds the amount specified in 38 U.S.C. 415(d)(3), as increased from time to time under 38 U.S.C. 3112, and no payment of DIC to a parent under this paragraph may be less than $5 monthly. Each time there is a rate increase under 38 U.S.C. 3112, the amount of the reduction under this paragraph shall be recomputed to provide, as nearly as possible, for an equitable distribution of the rate increase. The results of this computation method shall be published in schedular format in the "Notices" section of the **Federal Register** as provided in paragraph (f) of this section.

(e) *Aid and attendance.* The monthly rate of DIC payable to a parent under this section shall be increased by the amount specified in 38 U.S.C. 415(g), as increased from time to time under 38 U.S.C. 3112, if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(f) *Rate publication.* Each time there is an increase under 38 U.S.C. 3112, the actual rates will be published in the "Notices" section of the **Federal Register.** (38 U.S.C. 210(c))

4. Section 3.26 is revised to read as follows:

**§ 3.26 Section 306 and old law pension annual income limitations.**

(a) The annual income limitations for section 306 pension shall be the amounts specified in section 306(a)(2)(A) of Pub. L. 95–588, as increased from time to time under section 306(a)(3) of Pub. L. 95–588.

(b) If a beneficiary under section 306 pension is in need of aid and attendance, the annual income limitation under paragraph (a) of this section shall be increased in accordance with 38 U.S.C. 521(d), as in effect on December 31, 1978.

(c) The annual income limitations for old-law pension shall be the amounts specified in section 306(b)(3) of Pub. L. 95–588, as increased from time to time under section 306(b)(4) of Pub. L. 95–588.

(d) Each time there is an increase under section 306(a)(3) or (b)(4) of Pub. L. 95–588, the actual income limitations will be published in the "Notices" section of the **Federal Register.** (38 U.S.C. 210(c))

5. In § 3.27 paragraphs (a) and (b) are revised to read as follows:

**§ 3.27 Automatic adjustment of benefit rates.**

(a) *Improved pension.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of title II of the Social Security Act, the VA shall, effective on the dates such increases become effective, increase by the same percentage each maximum annual rate of improved pension. (38 U.S.C. 3112(a))

(b) *Parent's dependency and indemnity compensation—maximum*

*annual income limitation and maximum monthly rates.* Whenever there is a cost-of-living increase in amounts payable under section 215(i) of title II of the Social Security Act, the VA shall, effective on the dates such increase become effective, increase by the same percentage the annual income limitations and the maximum monthly rates of dependency and indemnity compensation for parents. (38 U.S.C. 3112(b)(1))

* * * * *

6. Section 3.28 is revised to read as follows:

**§ 3.28 Automatic adjustment of section 306 and old-law pension income limitations.**

Whenever the maximum annual rates of imporved pension are increased by reason of the provisions of 38 U.S.C. 3112, the following will be increased by the same percentage effective the same date:

(a) The maximum annual income limitations applicable to continued receipt of section 306 and old-law pension; and

(b) The dollar amount of a veteran's spouse's income that is excludable in determining the income of a veteran for section 306 persion purposes. (See § 3.262(b)(2))

These increases shall be published in the **Federal Register** at the same time that increases under § 3.27 are published. (Sec. 306, Pub. L. 95–588)

7. In § 3.262 paragraph (b)(2) is revised to read as follows:

**§ 3.262 Evaluation of income.**

* * * * *

(b) * * *

(1) * * *

(2) *Veterans.* The separeate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95–588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, the amount of the spouse income exclusion specified in section 306(a)(2)(B) of Pub. L. 95–588 as increased from time to time under section 306(a)(3) of Pub. L. 95–588 or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. Each time there is an increase in the spouse income exclusion pursuant to section 306(a)(3) of Pub. L. 95–588, the actual amount of the exclusion will be published in the "Notices" section of the **Federal Register**. The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavilability or of expenses beyond the usual family requirements. (38 U.S.C. 521(f); sec. 306(a)(2)(B) of Pub. L. 95–588)

* * * * *

8. In § 3.802 the first sentence of paragraph (b) is revised to read as follows:

**§ 3.802 Medal of Honor.**

* * * * *

(b) An award of special pension at the monthly rate specified in 38 U.S.C. 562 will be made as of the date of filing of the application with the Secretary concerned. * * *

9. In § 3.1600 the first sentence of paragraphs (a) and (g); the first sentence of the introductory text of paragraphs (b) and (f); and paragraph (c) are revised to read as follows:

**§ 3.1600 Payment of burial expenses of deceased veterans.**

* * * * *

(a) *Service-connected death and burial allowance.* If a veteran dies as a result of a service-connected disability or disabilities, an amount not to exceed the amount specified in 38 U.S.C. 907 (or if entitlement is under § 3.8(c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. * * *

(b) *Nonservice-connected death and burial allowance.* If a veteran's death is not service-connected, an amount not to exceed the amount specified in 38 U.S.C. 902 (or if entitlement is under § 3.8(c) or (d), an amount in Philippine pesos compued in accordance with the provisions of § 3.8(c)) may be paid toward the veteran's funeral and burial expenses including the cost of transporting the body to the place of burial. * * *

* * * * *

(c) *Death while properly hospitalized.* If person dies from nonservice-connected causes while properly hospitalized by the VA, there is payable an allowance not to exceed the amount specified in 38 U.S.C. 903(a) for the actual cost of the person's funeral and burial, and an additional amount for transportation of the body to the place of burial. For burial allowance purposes, the term "hospitalized by the VA" means admission to a VA facility (as defined in 38 U.S.C. 601(4)) for hospital, nursing home, or domicilary care under the authority of 38 U.S.C. 610 or 611(a), or admission (transfer) to a nursing home under the authority of 38 U.S.C. 620 for nursing home care at the expense of the United States. (If the hospitalized person's death is service-connected, entitlement to the burial allowance and transportation expenses fall under paragraphs (a) and (g) of this section instead of this paragraph.) (38 U.S.C. 903(a))

* * * * *

(f) *Plot or interment allowance.* When a veteran dies from nonservice-connected causes, an amount not to exceed the amount specified in 38 U.S.C. 903(b) (or if the entitlement is under § 3.8(c) or (d), an amount in Philippine pesos computed in accordance with the provisions of § 3.8(c) may be paid as a plot or interment allowance. * * *

* * * * *

(g) *Transportation expenses for burial in national cemetery.* Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or nonservice-connected disability pension would have been entitled to disability compensation at time of death), there is payable, in addition to the burial allowance (either the amount specified in 38 U.S.C. 902 or the amount specified in 38 U.S.C. 907 if the cause of death was service-connected), an additional amount for payment of the cost of transporting the body to the national cemetery for burial. * * *

10. In § 3.1601 paragraphs (a)(1)(i) and (a)(2)(i) and the last sentence of paragraph (a)(2)(iii) are revised to read as follows:

**§ 3.1601 Claims and evidence.**

(a) * * *

(1) * * *

(i) The funeral director, if the entire bill or any balance is unpaid (if the unpaid bill or the unpaid balance is less than the applicable statutory burial allowance, only the unpaid amount may be claimed by the funeral director); or

* * * * *

(2) * * *

(i) The funeral director, if he or she provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if the unpaid bill or the unpaid balance is less than the statutory plot or interment allowance, only the unpaid amount may be claimed by the funeral director); or

* * * * *

(iii) * * * Any remaining balance of the plot or interment allowance may then be applied to interment expenses; or

* * * * *

11. In § 3.1604 the introductory text of paragraph (a), the last sentence of paragraph (b)(2), and paragraphs (c) and (d)(3) are revised to read as follows:

**§ 3.1604 Payments from non-VA sources.**

(a) *Contributions or payments by public or private organizations.* When contributions or payments on the burial expenses have been made by a State, any agency or political subdivision of the United States or of a State, or the employer of the deceased veteran only the difference between the entire burial expenses and the amount paid thereon by any of these agencies or organizations, not to exceed the applicable statutory burial allowance, will be authorized. Contributions or payments by any other public or private organization such as a lodge, union, fraternal or beneficial organization, society, burial association or insurance company, will bar payment of the burial allowance if such allowance would revert to the funds of such organization or would discharge such organization's obligation without payment. (38 U.S.C. 902; 907)

* * * * *

(b) * * *

(1) * * *

(2) * * * In such cases only the difference between the total burial expense and the amount paid thereon under such provision, not to exceed the amount specified in 38 U.S.C. 902, will be authorized. (38 U.S.C. 902(b))

* * * * *

(c) *Payment of plot or interment allowance by public or private organization except as provided for by § 3.1604(d).* Where any part of the plot or interment expenses has been paid or assumed by a State, any agency or political subdivision of a State, or the employer of the deceased veteran, only the difference between the total amount of such expenses and the amount paid or assumed by any of these agencies or organizations, not to exceed the statutory plot or interment allowance, will be authorized (38 U.S.C. 903(b))

(d) * * *

* * * * *

(3) *Amount of the allowance.* A State or an agency or political subdivision of a State entitled to payment under this paragraph shall be paid the maximum statutory amount as a plot or interment allowance without regard to the actual cost of the plot or interment. (38 U.S.C. 903(b))

* * * * *

12. In § 3.1612 paragraph (e)(2)(ii) is revised and paragraph (e)(2)(iii) is added to read as follows:

**§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.**

* * * * *

(e) * * *

(2) * * *

(ii) The average actual cost, as determined by the VA, or headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased.

(iii) The average actual cost of Government-furnished headstones and markers during any fiscal year is determined by dividing the sum of the VA's costs during that fiscal year for procurement, transportation, Monument Service and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by the VA during that fiscal year and rounding to the nearest whole dollar amount. The resulting average actual cost is published at the end of each fiscal year in the "Notices" section of the **Federal Register**. (38 U.S.C. 906(d))

* * * * *

[FR Doc. 87-10709 Filed 5-11-87; 8:45 am]

BILLING CODE 6320-01-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 405**

**[HSQ-137-P]**

## Medicare Program—End Stage Renal Disease Program; Responsibilities of Network Organizations

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise final regulations published on August 28, 1986 (51 FR 30356) pertaining to the End Stage Renal Disease (ESRD) networks and organizations to reflect certain provisions of the ESRD program amendments contained in sections 9335(d) through (h) of the Omnibus Budget Reconciliation Act of 1986. These regulations would revise the responsibilities of network organizations.

**DATE:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 13, 1987.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-137-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-137-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

If you wish to submit comments on the information collection requirements contained in this final rule, you may submit comments to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION, CONTACT:** Spencer Colburn, (301) 594-3413.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Social Security Amendments of 1972 (Pub. L. 92-603) extended Medicare coverage to individuals with end stage renal disease (ESRD) who require dialysis or transplantation. At that time, the broad array of professionals and facilities involved in the treatment of persons with ESRD indicated the need for a system to promote effective coordination. We believed that the integration of hospitals and other health facilities into organized networks was the most effective way to assure the delivery of needed ESRD care. Therefore, on July 1, 1975, we established ESRD networks through final regulations published on June 3, 1976 (41 FR 22502).

Subsequently, the End-Stage Renal Disease Amendments of 1978 (Pub. L. 95-292) amended title XVIII of the Social Security Act (the Act) by adding section 1881. Section 1881(c) of the Act statutorily authorizes the establishment of ESRD network areas and network organizations, consistent with criteria the Secretary finds appropriate to assure the effective and efficient administration

of ESRD program benefits. The amendments made to section 1881(c) of the Act did not include all of the provisions related to networks which had been included in the final regulations published on June 3, 1976 (41 FR 22502). The regulations were more prescriptive than the statute.

On April 7, 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272) was enacted. Section 9214 of Pub. L. 99–272 requires the Secretary to maintain renal disease network organizations as authorized under section 1881(c) of the Act and not merge the network organizations into other organizations or entities. The statute permits the Secretary to consolidate network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist.

Consistent with section 9214 of Pub. L. 99–272, we published a notice of proposed rulemaking on April 15, 1986 (51 FR 12714), and final regulations on August 26, 1986 (51 FR 30356). These regulations permit the Secretary to redesignate and reorganize the existing 32 ESRD networks administratively. At the same time we published the final rule, we also published a final notice (51 FR 30434) that provided for 14 networks and set forth the geographic areas of the new network organizations (area designations) under the ESRD program.

For more detailed explanations of each of the above **Federal Register** documents, refer to the preambles to those documents.

On October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (OBRA) (Pub. L. 99–509) was enacted. Sections 9335 (d) through (h) of Pub. L. 99–509 amend, in several ways, section 1881(c) of the Act. The specific provisions that would be implemented by these regulations require ESRD network organizations to—

- Establish a network council of renal dialysis and transplant facilities located in each area and a medical review board (section 9335(d)(1)) with at least one patient representative as a member of each network council and each medical review board (section 9335(e));
- Encourage participation in vocational rehabilitation programs and develop criteria and standards relating to such encouragement (section 9335(f)(1), (2), and (4); and (h));
- Report to the Secretary on facilities and providers that are not providing appropriate medical care (section 9335(f)(3));
- Implement a procedure for evaluating and resolving patient grievances (section 9335(f)(5));
- Conduct onsite reviews of individuals ESRD facilities as directed by the Secretary or medical review board and utilize standards of care established by the network organization to assure proper medical care (section 9335(f)(5));
- Collect, validate, and analyze ESRD program data (section 9335(f)(5)); and
- Provide data to the national ESRD data registry established under section 1881(c)(7) of the Act (section 9335(f)(5)).

In addition, the statute requires that the medical review board include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and at least one patient representative (sections 9335(d)(1) and (e)). It also encourages facility cooperation with network organizations by requiring that ESRD facilities and providers follow the recommendations of the medical review board (section 9335(g)).

Section 9335(d) of Pub. L. 99–509 contains other provisions that amend section 1881(c) of the Act relating to the ESRD networks. We will implement these provisions through separate proposed and final notices in the **Federal Register**. Specifically, those provisions require the Secretary to—

- Establish at least 17 ESRD network areas not later than May 1, 1987.
- Designate, not later than July 1, 1987, a network administrative organization for each area that will establish a network council of renal dialysis and transplant facilities located in the area and a medical review board.
- Consult with professional and patient organizations regarding the redesignation of network areas and publish in the **Federal Register** a description of each network area and the criteria on the basis of which network determinations were made.
- Publish in the **Federal Register** the criteria, standards and procedures to evaluate an applicant organization's ability to perform or actual performance of required network functions.
- Evaluate each applicant network organization based on quality and scope of services and not accord more than 20 percent of the weight of the evaluation to the element of price.
- Terminate an agreement with a network administrative organization (network organization) only if he finds, after applying published standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If an agreement is to be terminated, the Secretary must select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

Additionally, if the Secretary designates a network organization for an area that was not previously designated for that area, the statute requires the Secretary to offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.

## II. Provisions of the Proposed Regulations

These proposed regulations would implement the provisions of section 9335 of Pub. L. 99–509 that are described in the "Background" section of this preamble. As a result of these statutory provisions, we would add the following requirements to the responsibilities of the network organizations:

- Relating to vocational rehabilitation programs, network organizations must encourage the participation of patients, providers of services, and renal disease facilities; develop criteria and standards relating to encouraging participation in vocational rehabilitation programs; and include in their reports to HCFA, the comparative performance of facilities regarding the placement of patients in appropriate settings for vocational rehabilitation programs.
- Network organizations must appoint a network council and a medical review board that each include at least one patient representative.
- Network organizations must conduct on-site reviews of facilities and providers as necessary, as determined by the medical review board or HCFA, using standards of care developed by the network organizations.
- Network organizations must identify in their annual reports to HCFA those facilities that consistently fail to follow the recommendations of the medical review board.
- Network organizations must collect, validate, and analyze all data needed to prepare their annual reports to HCFA, the Secretary's report to Congress on the ESRD program, and to assure the maintenance of the registry established under section 1881(c)(7) of the Act.

Also, these regulations would require that the medical review board, in addition to at least one patient representative, include physicians, nurses, and social workers engaged in treatment relating to end stage renal disease and qualified to evaluate the quality and appropriateness of care delivered to ESRD patients.

Section 405.2112(h) requires network organizations to appoint a network

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coordinating council, executive committee, and medical review board for each network area. Section 9335(d)(1) of Pub. L. 99–509 specifies that network organizations must establish a network coordinating council and medical review board for each network area. The statute does not require an executive committee; therefore, we would remove the requirement for establishing an executive committee from § 405.2112(h). Also, we would revise the reference to a "network coordinating council" that appears in § 405.2112(h) to conform with the statutory language that refers to a "network council".

### III. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any "major rule" that is likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices for consumers, any industries, government agencies or geographic regions, or meet other threshold criteria that are specified in that order. In addition, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601–612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant economic impact on a substantial number of small entities. Although the network areas and organizations are a creation of the government and are funded by us solely to fulfill the requirements of the law, they are small organizational entities under the Regulatory Flexibility Act.

The Secretary, in consultation with OMB, has determined that this rule is not a major rule under the terms of E.O. 12291, therefore, a regulatory impact analysis is not required. In addition, the Secretary has determined that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

### IV. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments received timely and respond to the major issues in the preamble to that rule.

### V. Information Collection Requirements

Sections 405.2112 (f) and (j) of this proposed rule contain information collection requirements that are subject to review by the Executive Office of Management and Budget (EOMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511). Accordingly, we have submitted this proposed rule to EOMB for review.

Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble and to the—

Allison Herron, Desk Officer for HCFA, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503.

### VI. List of Subjects

The list of subjects in 42 CFR Part 405 is Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Chapter IV would be amended as set forth below:

Part 405 is amended as follows:

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for Part 405 Subpart U is revised to read as follows:

**Authority:** Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. Section 405.2112 is revised to read as follows:

**§ 405.2112 ESRD network organizations.**

HCFA will designate an administrative governing body (network organization) for each network. The functions of a network organization include but are not limited to the following:

(a) Developing network goals for placing pateints in settings for self-care and transplantation.

(b) Encouraging the use of medically appropriate treatment settings most compatible with patient rehabilitation and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs.

(c) Developing criteria and standards relating to the quality and appropriateness of patient care and, with respect to working with patients, facilities, and providers of services, for encouraging participation in vocational rehabilitation programs.

(d) Evaluating the procedures used by facilities in the network in assessing patients for placement in appropriate treatment modalities.

(e) Making recommendations to member facilities as needed to achieve network goals.

(f) On or before July 1 of each year, submitting to HCFA an annual report that contains the following information:

(1) A statement of the network goals.

(2) The comparative performance of facilities regarding the placement of patients in appropriate settings for—

(i) Self-care;

(ii) Transplants; and

(iii) Vocational rehabilitation programs.

(3) Identification of those facilities that consistently fail to cooperate with the goals specified under paragraph (f)(1) of this section or to follow the recommendations of the medical review board.

(4) Identification of facilities and providers that are not providing appropriate medical care.

(5) Recommendations with respect to the need for additional or alternative services in the network including self-dialysis training, transplantation and organ procurement.

(g) Evaluating and resolving patient grievances.

(h) Appointing a network council and a medical review board (each including at least one patient representative) and supporting and coordinating the activities of each.

(i) Conducting on-site reviews of facilities and providers as necessary, as determined by the medical review board or HCFA, using standards of care as specified under paragraph (c) of this section.

(j) Collecting, validating, and analyzing such data as necessary to prepare the reports required under paragraph (f) of this section and the Secretary's report to Congress on the ESRD program and to assure the maintenance of the registry established under section 1881(c)(7) of the Act.

3. Section 405.2113 is amended by revising paragraph (a) to read as follows:

**§ 405.2113 Medical review board.**

(a) *General.* The medical review board must be composed of physicians, nurses, and social workers engaged in treatment relating to ESRD and qualified to evaluate the quality and appropriateness of care delivered to

ESRD patients, and at least one patient representative.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: March 2, 1987.

William L. Roper,

*Administrator, Health Care Financing Administration.*

Approved March 20, 1987.

Otis R. Bowen,

*Secretary.*

[FR Doc. 87-10810 Filed 5-11-87; 8:45 am]

BILLING CODE 4120-01-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 2

### Records and Testimony; Freedom of Information Act

**AGENCY:** Department of the Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Interior proposes to amend its Freedom of Information Act rules on fee charges, fee waivers and law enforcement records to reflect the Freedom of Information Reform Act of 1986. The Department also proposes to clarify its submitter notice procedures and to revise, update and simplify its procedures governing submission and consideration of FOIA requests.

**DATE:** Comments must be received on or before June 11, 1987.

**ADDRESS:** Comments are to be submitted to Director, Office of Information Resources Management, Mail Stop 7357-MIB, U.S. Department of the Interior, Washington, DC 20240. Comments received, as well as the rulemaking file, will be available for inspection during regular business hours in Room 7356 of the Main Interior Building, 18th and C Streets, NW., Washington, by telephoning the Division of Directives and Regulatory Management at 343-6191.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Stephan, Division of Directives and Regulatory Management, Office of Information Resources Management, (202) 343-6191, or John D. Trezise, Office of the Solicitor, (202) 343-5210.

**SUPPLEMENTARY INFORMATION:** The proposed amendments to 43 CFR Part 2 set forth below will, if adopted, make the following significant changes to the FOIA procedures of the Department of the Interior.

1. *Fee charges.* The Freedom of Information Reform Act of 1986 (Pub. L. 99-570 modifies the services for which user fees may be charged in processing FOIA requests. Requesters seeking records for commercial use may be now charged for the costs of reviewing records to determine whether they should be disclosed. On the other hand, requesters other than commercial requesters may no longer be charged for the first two hours spent searching for records or the first 100 pages of copies. Media requesters and representatives of educational and noncommercial scientific institutions may not be charged for any costs incurred in searching for documents. Limits are also placed on requiring the advance payment of fees. Proposed § 2.20 incorporates the Reform Act's fee changes. The section is based on the final Uniform Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987 (52 FR 10012-20).

2. *Fee levels.* The Reform Act mandates that agency fee schedules conform to guidelines promulgated by the Director of OMB. The Uniform Fee Schedule and Guidelines issued by OMB on March 27, 1987 contain criteria for establishing fee levels. The Department has carefully evaluated its current fee schedule against the OMB criteria and has concluded that no change is required in its fee levels for duplicating documents. The Department's fee schedule was thoroughly revised less than two years ago (50 FR 29230, July 18, 1985). The charge for photocopying reflects the reasonable direct cost of making copies, taking into account machine costs and the salary of machine operators. Charges for duplicating computerized records are based on direct costs, taking into account CPU time, operators' salaries and material costs. The fees for duplication are thus at levels consistent with the OMB guidance. Search fees are proposed to be increased from the level established in 1985 to reflect the 3 percent Federal pay increase effective in January, 1987. Appendix A to 43 CFR Part 2 is also proposed to be revised to include fees for costs incurred in reviewing documents. These fees are proposed at the same level as search fees. The revision to Appendix A incorporates OMB's definitions of "search" and "review."

3. *Fee waivers.* The Reform Act somewhat revised the language of the statutory "public interest" fee waiver provision contained in 5 U.S.C. 552(a)(4)(A) and required agencies to incorporate into their regulations guidelines for determining when fees should be waived or reduced under the statutory standard. Proposed § 2.21(a) incorporates the revised fee waiver standard and provides guidelines for its application. These guidelines are based on the language of the statute, the legislative history, the FOIA fee waiver policy guidance issued by the Department of Justice on April 2, 1987 and court decisions interpreting the former fee waiver standard that appear to have continued relevance.

The Department of Justice guidance identifies six factors relevant to the question of whether to waive fees. Four of these factors relate to whether disclosure of information "is likely to contribute significantly to public understanding of the operations or activities of the government." The other two consider whether disclosure "is primarily in the commercial interest of the requester." Proposed § 2.21(a) follows the outline of the Justice guidance. However, two of the first four factors have been combined as one for purposes of clarity. Additional discussion follows each factor in an attempt to define the terms used and to more clearly explicate the considerations that must go into a fee waiver determination.

Comment is specifically invited on the use made in § 2.21(a) of the Justice guidelines. Comment is also specifically sought on the supplementary discussion added by the Department. Does this discussion properly set out the range of relevant factors? Are inappropriate considerations included? Are relevant considerations omitted? If commenters have objections to some or all of § 2.21(a), they are asked, in addition to detailing their objections, to propose alternative language that they would include in § 2.21(a).

4. *Law enforcement records.* The Reform Act amended the FOIA's exemption from disclosure for law enforcement records and provided that certain law enforcement records may be considered as not subject to the FOIA in spcified situations. Proposed §§ 2.11(b) and 2.13(c)(7) incorporate these changes.

5. *Submitter notice.* Current 43 CFR 2.13(h) reflects a policy that persons or businesses submitting information to the Department should be notified if their records are requested under FOIA. It is also the practice of the Department to notify submitters when a decision has been made to disclose records in response to a FOIA request. However, the Department has not spelled out in detail its procedures for submitter notice. Proposed § 2.15(d) contains a

comprehensive procedure for notifying submitters of commercial information of FOIA requests seeking that information. It provides criteria defining when notice should be given and specifies what information should be requested of submitters. Proposed § 2.15(b)(2) contains an explanation of the notice to be provided to submitters when records are to be disclosed. These proposals are based on Departmental practice under the current rules, Administrative Conference Recommendation 82–1, and various legislative proposals for submitter notice, including S.774, 98th Cong., 1st Sess. (1983) and H.R. 4862, 99th Cong., 2d Sess. (1986).

6. *Other changes.* The current Department procedures governing submission and consideration of FOIA requests have been in effect without substantial change since February, 1975. Experience over the past twelve years has shown that provisions that seemed perfectly clear and workable in 1975 were not so when applied. Based on this experience, the Department proposes a number of modifications to clarify, update and simplify its procedures. Major modifications are the following:

a. Revised § 2.14(a) will more clearly specify where within the Department FOIA requests are to be submitted. New § 2.15(a) collects and clarifies provisions of the current rules that govern FOIA requests that are not submitted in accordance with § 2.14(a).

b. New § 2.14(b) will specify more clearly than current § 2.13(h) that FOIA requests may seek only records in existence on the date they are received. Requests may not seek records created after that date and may not ask that new records be compiled.

c. New § 2.15(b) will add procedures for intradepartmental consultation on FOIA requests. New § 2.15(c) will revise and clarify the procedures in current § 2.13(g) for consultation with other departments and agencies.

d. New § 2.16(c)(2) will revise and improve the notice that is required to be given when a request is denied for failure to reasonably describe requested records or for other procedural deficiences or because requested records can not be located. Proposed § 2.18(a) will make such denials subject to administrative appeal, codifying the practice that the Department has followed for many years. Proposed § 2.18(a) will also codify the Department's practice of accepting administrative appeals from fee waiver denials.

e. Proposed § 2.20(k) describes the notice of the Department's debt collection procedures that is to be included with FOIA fee billings.

f. To facilitate submission of FOIA requests, proposed § 2.11(b) suggests that requesters may find it useful to consult with the appropriate bureau public affairs or bureau FOIA officer. Current Appendix B to 43 CFR Part 2 contains a list of public affairs offices. When the proposed rule is published as a final rule, a list of bureau FOIA officers will be added to Appendix B.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

The principal author of this document is John D. Trezise, Office of the Solicitor.

**List of Subjects in 43 CFR Part 2**

Administrative practice and procedure, Classified information, Freedom of Information Act, Privacy Act.

**PART 2—[AMENDED]**

It is hereby proposed to amend 43 CFR Part 2 as set forth below.

1. The authority citation for 43 CFR Part 2 continues to read as follows:

**Authority:** 5 U.S.C 301, 552 and 552a; 31 U.S.C. 9701; and 43 U.S.C. 1460.

2. Subpart B of 43 CFR Part 2 is proposed to be revised by:

(a) Redesignating § 2.20 as § 2.22;

(b) Revising §§ 2.11 through 2.19; and

(c) Adding §§ 2.20 and 2.21.

As revised, Subpart B reads as follows:

**Subpart B—Requests for Records**

Sec.

2.11 Purpose and scope.
2.12 Definitions.
2.13 Records available.
2.14 Requests for records.
2.15 Preliminary processing of requests.
2.16 Action on initial requests.
2.17 Time limits for processing initial requests.
2.18 Appeals.
2.19 Action on appeals.
2.20 Fees.
2.21 Waiver of fees.
2.22 Special rules governing certain information concerning coal obtained under the Mineral Leasing Act.

## Subpart B—Requests for Records

### § 2.11 Purpose and scope.

(a) This subpart contains the procedures for submission to and consideration by the Department of the Interior of requests for records under the Freedom of Information Act.

(b) Before invoking the formal procedures set out below, persons seeking records from the Department may find it useful to consult with the appropriate bureau public affairs office or bureau FOIA officer. These offices are listed in Appendix B.

(c) The procedures in this subpart do not apply to:

(1) Records published in the **Federal Register** and opinions in the adjudication of cases, statements of policy and interpretations and administrative staff manuals that have been published or made available under Subpart A of this Part.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 2.13(c)(7) if (i) the investigation or proceeding involves a possible violation of criminal law; and (ii) there is reason to believe that (A) the subject of the investigation or proceeding is not aware of its pendency, and (B) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by a criminal law enforcement component of the Department under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

### § 2.12 Definitions.

(a) *Act* and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552.

(b) *Bureau* refers to all constituent bureaus of the Department of the Interior, the Office of the Secretary, and the other Departmental offices. A list of bureaus is contained in Appendix B.

(c) *Working day* means a regular Federal workday. It does not include Saturdays, Sundays or public legal holidays.

### § 2.13 Records available.

(a) *Department policy.* It is the policy of the Department of the Interior to make the records of the Department available to the public to the greatest extent possible, in keeping with the spirit of the Freedom of Information Act.

(b) *Statutory disclosure requirement.* The Act requires that the Department, on a request from a member of the public submitted in accordance with the procedures in this subpart, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from the Act's statutory disclosure requirement are matters that are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (ii) are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (i) could reasonably be expected to interfere with enforcement proceedings, (ii) would deprive a person of a right to a fair or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (v) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geographical and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Department to withhold information falling within an exemption only if: (1) Disclosure is prohibited by statute or Executive order or (2) sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this subpart to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released.

**§ 2.14 Requests for records.**

(a) *Submission of requests.* (1) A request to inspect or copy records shall be made to the installation where the records are located. If the records are located at more than one installation or if the specific location of the records is not known to the requester, he or she may direct a request to the head of the appropriate bureau or to the bureau's FOIA officer. Addresses for bureau heads and FOIA officers are contained in Appendix B.

(2) *Exceptions.* (i) A request for records located in the Office of the Secretary shall be submitted to: Director, Office of Administrative Services, U.S. Department of the Interior, Washington, DC 20240.

(ii) A request for records of the Office of Inspector General shall be submitted to: Inspector General, Office of the Inspector General, U.S. Department of the Interior, Washington, DC 20240.

(b) *Form of requests.* (1) Requests under this subpart shall be in writing and must specifically invoke the Act.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Department familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall (A) specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other) in which the requester claims the request to fall and the basis of this claim (see §§ 2.20(b)–(e) for definitions) and (B) state the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under §§ 2.20 (f) and (g), the time for responding to requests may be delayed (A) if a requester has not sufficiently identified the fee category applicable to the request, (B) if a requester has not stated a willingness to pay fees as high as anticipated by the Department or (C) if a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Department.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 2.21 are met.

(5) To ensure expeditious handling, requests should be prominently marked, both the envelope and on the face of the request, with the legend "FREEDOM OF INFORMATION REQUEST."

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not ask that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons.

**§ 2.15 Preliminary processing of requests.**

(a) *Scope of requests.* (1) Unless a request clearly specifies otherwise, requests to field installations of a bureau may be presumed to seek only records at that installation and requests to a bureau head or bureau FOIA officer may be presumed to seek only records of that bureau.

(2) If a request to a field installation of a bureau specifies that it seeks records located at other installations of the same bureau, the installation shall refer the request to the other installation(s) or the bureau FOIA officer for appropriate processing. The time limit provided in § 2.17(a) does not start until the request is received at the installation having the records or by the FOIA officer.

(3) If a request to a bureau specifies that it seeks records of another bureau, the bureau may return the request (or the relevant portion thereof) to the requester with instructions as to how the request may be resubmitted to the other bureau.

(b) *Intradepartmental consultation and referral.* (1) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that originated with or are of substantial concern to another bureau, it shall consult with that bureau before deciding whether to release or withhold the records.

(2) As an alternative to consultation, a bureau may refer the request (or the relevant portion thereof) to the bureau that originated or is substantially concerned with the records. Such referrals shall be made expeditiously and the requester shall be notified in writing that a referral has been made. A referral under this paragraph does not restart the time limit provided in § 2.17.

(c) *Records of other departments and agencies.* (1) If a requested record in the possession of the Department of the Interior originated with another Federal department or agency, the request shall be referred to that agency unless: (i) The record is of primary interest to the Department, (ii) the Department is in a better position than the originating agency to assess whether the record is exempt from disclosure, or (iii) the originating agency is not subject to the Act. The Department has primary interest in a record if it was developed or prepared pursuant to Department regulations, directives or request.

(2) In accordance with Executive Order 12356, a request for documents that were classified by another agency shall be referred to that agency.

(d) *Consultation with submitters of commercial and financial information.* (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the bureau processing the request shall provide the submitter with notice of the request whenever: (i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or (ii) the bureau has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

(2) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under the FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(3) If a submitter's statement cannot be obtained within the time limit for processing the request under § 2.17, the requester shall be notified of the delay as provided in § 2.17(f).

(4) Notification to submitter is not required if:

(i) The bureau determines, prior to giving notice, that the request should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than the FOIA) or regulation (other than this subpart);

(iv) Disclosure is clearly prohibited by a statute, as described in § 2.13(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, if the submitter was specifically afforded an opportunity to make such a designation;

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Department more than 10 years prior to the date of the request, unless the bureau has reason to believe that it continues to be confidential.

### § 2.16 Action on initial requests.

(a) *Authority.* (1) Requests to field installations shall be decided by the head of the installation or by such higher authority as the head of the bureau may designate in writing.

(2) Requests to the headquarters of a bureau shall be decided only by the head of the bureau or an official whom the head of the bureau has in writing designated.

(3) Requests to the Office of the Secretary may be decided by the Director of Administrative Services, an Assistant Secretary or Assistant Secretary's designee, and any official whom the Secretary has in writing designated.

(4) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the office of the appropriate associate, regional, or field solicitor.

(b) *Form of Grant.* (1) When a requested record has been determined to be available, the official processing the request shall notify the requester as to when an where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the official shall state the amount of fees due and the procedure for payment, as described in § 2.20.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(c) *Form of Denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A reference to the specific exemption or exemptions authorizing the withholding;

(ii) If neither a statute or an Executive order requires withholding, the sound ground for withholding;

(iii) A listing of the names and titles or positions of each person responsible for the denial; and

(iv) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed to the Assistant Secretary—Policy, Budget and Administration and description of the procedures in § 2.18 for appeal.

### § 2.17 Time limits for processing initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within one more

than 10 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basis time limit.* (1) The 10 working day time limit begins to run when a request meeting the requirements of § 2.14(b) is received at a field installation or bureau headquarters designated in § 2.14(a) to receive the request.

(2) The running of the basic time limit may be delayed or tolled as explained in §§ 2.20 (f), (g) and (h) if a requester (i) has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver, or (ii) has not made a required advance payment.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended for more than 10 working days:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the installation processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Department having substantial subject-matter interest therein.

(d) *Notice of extension.* A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made.

(e) *Treatment of delay as denial.* If no determination has been reached at the end of the 10 working day period for deciding an initial request, or an extension thereof under paragraph (c) of this section, the requester may deem the request denied and may exercise a right of appeal in accordance with § 2.18.

(f) *Notice of delay.* When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal to the Assistant Secretary—Policy, Budget and Administration, inlcuding a description of the procedures for filing an appeal in § 2.18.

**§ 2.18 Appeals.**

(a) *Right of appeal.* A requester may appeal to the Assistant Secretary—Policy, Budget and Administration when (1) records have been withheld, (2) a request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located, (3) a fee waiver has been denied, or (4) a request has not been decided within the time limits provided in § 2.17.

(b) *Time for appeal.* An appeal must be received no later than 20 working days after the date of the initial denial, in the case of denial of an entire request, or 20 working days after records have been made available, in the case of partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, DC 20240.

(3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend "FREEDOM OF INFORMATION APPEAL."

**§ 2.19 Action on appeals.**

(a) *Authority.* Appeals shall be decided by the Assistant Secretary—Policy, Budget and Administration, or the Assistant Secretary's designee, after consultation with the Solicitor, the Director of Public Affairs and the appropriate program Assistant Secretary.

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 2.18(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 2.17(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 2.17(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States, as specified in 5 U.S.C. 552(a)(4). When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched and of the right to seek judicial review.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Assistant Secretary—Policy, Budget and Administration shall immediately make the records available or instruct the appropriate bureau to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the United States District Court for the district in which the withheld records are located, or in which the requester resides or has his or her principal place of business or in the United States District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 2.15(d), the submitter shall be provided notice as described in § 2.16(b)(2).

**§ 2.20 Fees.**

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 2.21, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the

schedule of charges contained in Appendix A to this Part.

(2) Fees shall not be charged if the total amount chargeable does not exceed $15.00

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(b) *Commercial Use Requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search, duplication and review.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(3) A commercial use request is a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in futherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in (i) Searching for requested records, (ii) examining requested records to determine whether they are exempt from mandatory disclosure, (iii) deleting reasonably segregable exempt matter, (iv) monitoring the requesters' inspection of agency records, or (v) resolving legal and policy issues affecting access to requested records.

(3) An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(4) A "noncommercial scientific institution" is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(d) *News media requests.* (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in (i) Searching for requested records, (ii) examining requested records to determine whether thay are exempt from mandatory disclosure, (iii) deleting reasonably segregable exempt matter, (iv) monitoring the requester's inspection of agency records, or (v) resolving legal and policy issues affecting access to requested records.

(3)(i) A "representative of the news media" is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category.

(ii) Freelance journalists may be considered "representatives of the news media" if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication may indicate a solid base for expecting publication.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c) or (d) of this section shall be charged fees for document search and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in (i) Examining requested records to determine whether they are exempt from disclosure, (ii) deleting reasonably segregable exempt matter, (iii) monitoring the requester's inspection of agency records, or (iv) resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient informaion to determine whether it is covered by paragraph (b), (c), (d) or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes for the time limits established in § 217 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Department, and the requester has not sought and been granted a full waiver of fees under § 2.21, the request may be deemed to have not been received for purposes of the time limits established in § 2.17 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect the anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed $250.00 and the requester does not have a history of prompt payment of FOIA fees, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 calender days of the date of billing, processing of any new request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the new request.

(3) Advance payment of fees may not be required except as described in paragraphs (h)(1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 2.17 until receipt of payment.

(i) *Form of payment.* Payments of fees should be made by check or money order payable to the Department of the Interior or the bureau furnishing the information. The term United States or the initials "U.S." should not be included on the check or money order. Where appropriate, the offical responsible for handling a request may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection, Form DI–1040, shall be prepared for each request that requires collection of fees. The requester shall be provided the first sheet of the DI–1040. The Accounting copy of the Form shall be transmitted to the agency's finance office for entry into accounts receivable records. Upon receipt of payment from the requester, the recipient shall forward the payment along with a copy of the DI–1040 to the finance office.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 calendar days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of state or local governement. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fee (see 4 CFR Parts 101–105).

**§ 2.21 Waiver of fees.**

(a) *Statutory fee waiver.* (1) Documents shall be furnished without charge or at a charge reduced below the fees chargeable under § 2.20 and Appendix A if disclosure of the information is in the public interest because it (i) Is likely to contribute significantly to public understanding of the operations or activities of the government and (ii) is not primarily in the commercial interest of the requester.

(2) Factors to be considered in determining whether disclosure of information "is likely to contribute significantly to public understanding of the operations or activities of the government" are the following:

(i) Does the record concern *the operations or activities of the government?* Records concern the operations or activities of the government if they relate to or will illuminate the manner in which the Department or a bureau is carrying out identifiable operations or activities or the manner in which an operation or activity affects the public. The connection between the records and the operations and activities to which they are said to relate should be clear and direct, not remote and attenuated. Records developed outside of the government and submitted to or obtained by the Department may relate to the operations and activities of the government if they are informative on how an agency is carrying out its regulatory, enforcement, procurement or other activities that involve private entities.

(ii) If a record concerns the operations or activities of the government, is its disclosure *likely to contribute to public understanding* of these operations and activities? The likelihood of a contribution to public understanding will depend on consideration of the content of the record, the identity of the requester, and the interrelationship between the two. Is there a logical connection between the content of the requested record and the operations or activities in which the requester is interested? Are the disclosable contents of the record meaningfully informative on the operations or activities? Is the focus of the requester on contribution to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? Does the requester have expertise in the subject area and the ability and intention to disseminate the information to the general public or otherwise use the information in a manner that will contribute to public understanding of government operations or activities? Is the requested information sought by the requester because it may be informative on government operations or activities or because of the intrinsic value of the information independent of the light that it may shed on government operations or activities?

(iii) If there is likely to be a contribution to public understanding, will that contribution be *significant?* A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Department operations, including the quality of Department activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department. A contribution will not be significant if disclosure will not have a positive impact on the level of public understanding of the operations or activities involved that existed prior to the disclosure. In particular, a significant contribution is not likely to arise from disclosure of information already in the public domain because it has, for example, previously been published or is routinely available to the general public in a public reading room.

(3) Factors to be considered in determining whether disclosure "is primarily in the commercial interest of the requester" are the following:

(i) Does the requester have a *commercial interest* that would be furthered by the requested disclosure? A commercial interest is a commercial, trade or profit interest as these terms are commonly understood. An entity's status is not determinative. Not only profit-making corporations, but also individuals or other organizations, may have a commercial interest to be served by disclosure, depending on the circumstances involved.

(ii) If the requester has a commercial interest, will disclosure be *primarily* in that interest? The requester's commercial interest is the primary interest if the magnitude of that interest is greater than the public interest to be served by disclosure. Where a requester is a representative of a news media organization seeking information as part of the news gathering process, it may be presumed that the public interest outweighs the organization's commercial interest.

(4) *Notice of denial.* If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:

(i) A statement of the basis on which the waiver or reduction has been denied.

(ii) A listing of the names and titles or positions of each person responsible for the denial.

(iii) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration and a description of the procedures in § 2.18 for appeal.

(b) *Discretionary waivers.* Fees otherwise chargeable may be waived at the discretion of a bureau if a request involves:

(1) Furnishing unauthenticated copies of documents reproduced for gratuitous distribution;

(2) Furnishing one copy of a personal document (e.g., a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) Furnishing one copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held.

(4) Furnishing records to donors with respect to their gifts;

(5) Furnishing records to individuals or private non-profit organizations having an official voluntary or cooperative relationship with the Department to assist the individual or organization in its work with the Department;

(6) Furnishing records to state, local and foreign governments and public international organizations when to do so without charge is an appropriate courtesy, or when the recipient is carrying on a function related to that of

the Department and to do so will help to accomplish the work of the Department;

(7) Furnishing a record when to do so saves costs and yields income equal to the direct cost of providing the records (e.g., where the Department's fee for the service would be included in a billing against the Department);

(8) Furnishing records when to do so is in conformance with generally established business custom (e.g., furnishing personal reference data to prospective employers of former Department employees);

(9) Furnishing one copy of a record in order to assist the requester to obtain financial benefits to which he or she is entitled (e.g., veterans or their dependents, employees with Government employee compensation claims or persons insured by the Government).

**Appendix A—[Amended]**

4. The introductory statement to Appendix A of 43 CFR, Part 2 is proposed to be revised to read:

The following uniform fee schedule is applicable to all constituent units of the Department. It states the fees to be charged to members of the public for services performed in searching for, reviewing and duplicating requested records in connection with FOIA requests made under Subpart B of this Part and to services performed in making documents available for inspection and copying under Subpart A of this Part. The duplicating fees stated in the schedule are also applicable to duplicating of records in response to requests made under the Privacy Act. The schedule also states the fee to be charged for certification of documents.

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5. Paragraph (5) and (6) of Appendix A are proposed to be revised as follows:

* * * * *

(5) *Searches.* For each quarter hour, or portion thereof, spent by clerical personnel in manual searches to locate requested records: $2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in manual searches to locate requested records because the search cannot be performed by clerical personnel: $4.65.

Search time for which fees may be charged includes all time spent looking for material that is responsive to a request, including line-by-line or page-by-page search to determine whether a record is responsive, even if the search fails to locate records or the records located are determined to be exempt from disclosure. Searches will be conducted in the most efficient and least expensive manner, so as to minimize costs for both the agency and the requester. Line-by-line or page-by-page identification should not be necessary if it is clear on the face of a document that it is covered by a request.

(6) *Review of records.* For each quarter hour, or portion thereof, spent by clerical personnel in reviewing records: $2.30. For each quarter hour, or portion thereof, spent by professional or managerial personnel in reviewing records: $4.65.

Review is the examination of documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld and the subsequent processing of documents for disclosure by excising exempt material or otherwise preparing them for release. Review does not include time spent in resolving general legal or policy issues regarding the application of exemption.

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6. Paragraph (10) of Appendix A is proposed to be revised by addition of a new paragraph (e) as follows:

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(10) * * *

(e) Requesters entitled to free search time under 43 CFR § 2.20(e) shall not be charged for that portion of a computer search that equals two hours of the salary of the operator performing the search.

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7. Paragraph (11) of Appendix A is proposed to be revised as follows:

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(11) *Postage/mailing costs.* Mailing charges may be added for services (such as express mail) that exceed the cost of first class postage.

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**Joseph W. Gorrell,**

*Principal Deputy Assistant Secretary Policy, Budget and Administration.*

April 30, 1987.

[FR Doc. 87-10788 Filed 5-11-87; 8:45 am]

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## FEDERAL MARITIME COMMISSION

**46 CFR Ch. IV**

**[Docket No. 85-6]**

## Inquiry Concerning Interpretation of Section 8(a) and Section 8(c) of the Shipping Act of 1984

**AGENCY:** Federal Maritime Commission.

**ACTION:** Discontinuance of proceeding.

**SUMMARY:** The Federal Maritime Commission discontinues its inquiry concerning the interpretation of sections 8(a) and 8(c) of the Shipping Act of 1984 with regard to excepted commodities. The Commission determines that the issues raised are generally not subject to administrative resolution based on the record established in this proceeding. The Commission will include this record in the section 18 report to be submitted to Congress in 1989.

**DATE:** This proceeding is discontinued effective May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Commission initiated this proceeding by a Notice of Inquiry published in the **Federal Register** (50 FR 10807-10810, March 18, 1985) which solicited public comment on the interpretation to be given to section 8(a), 46 U.S.C. app. 1707(a), and section 8(c), 46 U.S.C. app. 1707(c), of the Shipping Act of 1984 (Act or 1984 Act) with regard to excepted commodities.[1] The purpose of this inquiry was to obtain the most complete information available regarding the proper interpretation of sections 8(a) and 8(c) of the 1984 Act, and to establish a record which would enable the Commission to determine whether the questions raised could be addressed administratively or whether they require legislative clarification.

Interested persons were invited to comment on the proper treatment of excepted commodities and to respond to the following specific questions:

A. Is it lawful for an ocean common carrier or a conference of such carriers voluntarily to file a tariff with the Federal Maritime Commission covering a commodity which is excepted from mandatory tariff filing under section 8(a) of the Shipping Act of 1984?

B. Is it lawful for a conference, whether or not it has express enabling authority in its agreement, to agree on a rate covering a commodity which is excepted from mandatory tariff filing under section 8(a) of the Shipping Act of 1984?

C. May the Federal Maritime Commission require that a conference, which has agreed to a rate and filed a tariff covering an excepted commodity, allow for a right of independent action as provided for under section 5(b)(8) of the Shipping Act of 1984?

D. Is it lawful for an ocean common carrier or a conference to voluntarily file a service contract which covers an excepted commodity?

A total of 20 comments were filed in response to this Notice of Inquiry.[2]

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[1] Those commodities which are excepted from mandatory filing of tariffs or service contracts are: bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste. 46 U.S.C. app. 1707(a)(1).

[2] The California Association of Port Authorities submitted a letter, dated April 15, 1985, that declined comment inasmuch as the subject matter of the inquiry did not include terminal tariffs. Subsequently, the Association inadvertently submitted a letter, dated May 15, 1985, that did make a substantive comment on the issues in this proceeding. On May 20, 1985, the Commission

Continued

Comments were received from the following persons: (1) United States Department of Justice (DOJ); (2) Chemical Manufacturers Association (CMA); (3) American Paper Institute, Inc. (API); (4) National Association of Recycling Industries, Inc. (NARI); (5) Western Shippers Group (WSG); (6) Great Southern Paper; (7) Central National-Gottesman, Inc.; (8) Tampa Port Authority (Tampa); (9) Terminal Operators Conference of Hampton Roads (TOCHR); (10) The Pacific and Arctic Railway and Navigation Company and Skagway Terminal Company (PARN/STC); (11) Journal of Commerce; (12) Sea-Land Service, Inc. (Sea-Land); (13) U.S.-Flag Far East Discussion Agreement (Agreement No. 10050); (14) Inter-American Freight Conference (IAFC); (15) Transpacific Westbound Rate Agreement (TWRA); (16) "8900" Lines, U.S. Atlantic & Gulf Ports/Italy, France & Spain Freight Conference, and U.S. Atlantic Ports/Eastern Mediterranean & North African Freight Conference (Mediterranean Conferences); (17) Trans-Pacific Freight Conference of Japan/Korea and Japan/Korea-Atlantic and Gulf Freight Conference (Japan/Korea Conferences); (18) Atlantic and Gulf/West Coast of South America Conference, United States Atlantic and Gulf/Colombia Conference, United States Atlantic and Gulf/Ecuador Conference, United States Atlantic and Gulf/Venezuela Freight Association, United States Atlantic and Gulf/Southeastern Caribbean Conference, and United States Atlantic and Gulf/Hispaniola Steamship Freight Association (Latin American Conferences); (19) North Europe-U.S. Pacific Freight Conference, Pacific-Australia/New Zealand Conference, and Pacific Coast European Conference (Pacific Conferences); and (20) United States-European Carrier Associations (USECA).[3] A summary of the comments is attached as an Appendix to this Notice of Discontinuance.[4]

received a telex from the Association stating that the May 15, 1985 letter had been mistakenly filed and requesting that it be withdrawn. Accordingly, the May 15, 1985 letter of the California Association of Port Authorities is not part of the record in this proceeding.

[3] USECA consists of the following conferences: North Europe-U.S. Gulf Freight Association, Gulf-European Freight Association, North Europe-U.S. Atlantic Conference, U.S. Atlantic-North Europe Conference, and Pan-Atlantic Carrier Trade Agreement.

[4] The appendix is not included in the Federal Register publication of this notice. For copies of this Appendix, contact the Secretary, Federal Maritime Commission, (202) 523-5725.

## II. Discussion

### *A. Voluntary Tariff Filing*

The first question raised in the Notice of Inquiry is whether a common carrier or conference may voluntarily file a tariff on an excepted commodity. Section 8(a) of the 1984 Act requires common carriers and conferences to file tariffs with the Commission showing their rates and charges. Certain commodities, however, are expressly excepted from this mandatory tariff filing requirement. As relevant to this Inquiry, section 8(a)(1) provides that:

> Except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste, each common carrier and conference shall file with the Commission, and keep open to public inspection, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established.

Section 8(a) basically continues the tariff filing requirement of section 18 of the Shipping Act, 1916, 46 U.S.C. app. 817. The class of excepted commodities first created by Congress in 1961 has been further expanded by the 1984 Act to include recycled metal scrap, waste paper and paper waste. Section 8(a), like its predecessor section 18, does not expressly address the question of whether a common carrier or conference may voluntarily file a tariff on an excepted commodity.

The conferences' comments generally contend that there is no need to go beyond the plain language of the statute for an answer to this question. They argue that the statute merely excepts certain commodities from mandatory tariff filing and that nothing in the language of section 8(a) or any other section of the 1984 Act prohibits voluntary filing. In the absence of an express prohibition, they argue that voluntary filing is lawful and should be permitted. The conferences point out that nowhere in the legislative history is voluntary filing prohibited. Moreover, they note that voluntary filing is a long standing practice of which Congress was aware and which it had several opportunities to change. They argue that in the face of Congressional knowledge and inaction, it can be presumed that Congress has endorsed this practice.

The shipper groups and the Department of Justice recognize that the Act does not prohibit voluntary filing. They do not agree, however, that the analysis should be terminated at that point. Rather, they proceed to the legislative history of the 1984 Act, as well as amendments to the 1916 Act, to determine the underlying purpose for excepting certain commodities from filing and how that purpose is affected by allowing filing. They find in the legislative history of the 1984 Act, especially in the legislative history of the debate over whether to retain a tariff filing system, a Congressional intent not to expand that system. In the legislative history of the amendments to section 18 of the 1916 Act, they see a purpose to preserve an unregulated market for excepted commodities.

In 1961, Congress passed an amendment to the 1916 Act, Pub. L. 87-346, 75 Stat. 764 (1961) (1961 Amendment), which for the first time provided for the mandatory filing of tariffs with the Federal Maritime Commission. This same legislation, however, excepted from mandatory tariff filing "cargo loaded and carried in bulk without mark or count." [5] The Notice of Inquiry noted the benefits to shippers of bulk cargo in terms of greater pricing flexibility afforded by the 1961 Amendment. In addition, the conference comments draw attention to the fact that carriers and conferences were also intended beneficiaries of the 1961 Amendment.

In 1963, Congress further amended the 1916 Act, Pub. L. 88-103, Stat. 129 (1963 Amendment), to exclude lumber from the mandatory tariff filing requirement. Again, both carriers' and shippers' interests were apparently served by this expansion of the list of excepted commodities. Carriers in the Northwest found themselves in intense competition with Canadian carriers and desired an exception from tariff filing for lumber in order to meet the competitive conditions in this market. Lumber exporters also supported the exception in order to meet the strong competition of Canadian lumber interests.

In 1965, Congress passed yet another amendment to the 1916 Act, Pub. L. 89-303, 79 Stat. 1124 (1965) (1965 Amendment), which cut back on the lumber exception. It distinguished

[5] The comment filed by USECA identifies an earlier instance in which bulk cargo was excepted from a tariff filing requirement. In 1935, the Shipping Board undertook an investigation pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), into certain rate-cutting practices in the export trades of the United States. This investigation ultimately led to a rule which required common carriers in the export trade to file tariffs with the Board. The rule, however, expressly excepted "cargo loaded and carried in bulk without mark or count." The purpose of the bulk cargo exception was to exclude tramp operators from the rule because" . . . the evidence of record in this investigation does not show that competitive methods employed by such carriers in our export trades have produced conditions unfavorable to shipping." *Section 19 Investigation, 1935*, 1 U.S.S.B.B. 470, 489 (1935).

between softwood and hardwood lumber and restored mandatory tariff filing for hardwood lumber. This legislation was intended primarily to benefit the hardwood lumber industry which sought the more stable ocean transportation rates that could be achieved by tariff filing.

As is well known, the entire tariff filing regulatory regime was intensely debated during the legislative process that led to the passage of the 1984 Act. A number of legislative proposals would have eliminated tariff filing and enforcement by the Commission. Although Congress continued tariff filing, it specifically directed the Commission to report on the continuing need for the statutory requirement that tariffs be filed with and enforced by the Commission. Congress also expanded the list of excepted commodities by adding recycled materials. The purpose of this change was to enable recycled materials to compete with virgin commodities.

Having reviewed the legislative history of the 1916 Act and 1984 Act with regard to excepted commodities, it is difficult to give a definitive answer to the first question posed in the Notice of Inquiry, namely, whether voluntary filing of a tariff covering an excepted commodity is lawful. A simple answer may be that there is nothing in the language of the Act or the relevant legislative history which expressly prohibits it. Nevertheless, there remains an apparent contradiction in allowing voluntary filing. The fundamental purpose of excepting certain commodities, beginning with the 1961 Amendment, was to remove those commodities from the requirements of the tariff system. That purpose would appear to be undermined, if not defeated, by voluntary filing.

Voluntary filing appears to run counter to the apparent purpose of allowing excepted commodities to be priced in a free market. There is no indication, however, that Congress directly considered the impact of voluntary filing on the underlying policy of excepting certain commodities. Therefore any further action on this question appears problematic. There simply does not appear to be an adequate basis for resolving this question administratively. This is particularly so in light of the fact that voluntary tariff filing has been permitted since 1961. There would need to be a clearer basis for reversing this policy at this time.

Such a basis does not appear in the record established in this Notice of Inquiry. Although shippers opposed voluntary filing on legal grounds, none suggested the presence of any existing problems brought about by allowing voluntary filing. Carrier interests, on the other hand, did point out areas in which business operations or carrier-shipper relationships would be disrupted by a change in policy. The Commission therefore will continue its current polucy and maintain the status quo by continuing to accept tariffs on excepted commodities that are voluntarily filed and subjecting such filings to the same tariff regulations as apply to non-excepted commodities.

*B. Collective Ratemaking*

The second question raised in the Notice of Inquiry is whether collective ratemaking on excepted commodities is lawful. Section 4(a)(1) of the 1984 Act, 46 U.S.C. app. 1703(a)(1), establishes jurisdiction over agreements by or among ocean common carriers to "discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of services." Section 4(b)(1) of the 1984 Act, 46 U.S.C. app. 1703(b)(1), applies to marine terminal operator agreements to "discuss, fix, or regulate rates or other conditions of service." These provisions essentially continue in te 1984 Act similar provisions from the 1916 Act. See 46 U.S.C. app. 814.

Conferences contend that the language of section 4(a) confers general ratemaking authority upon conferences and does not in any way limit that authority with regard to particular commodities. They argue that this grant of authority is so clear that there is no need to resort to legislative history. The conference argue further that the legislative history does not reveal any intent to exclude excepted commodities from their ratemaking authority. In fact, they contend one of the purposes of the 1961 and 1963 Amendments was to enable conferences and carriers to compete with tramps for bulk and other excepted cargoes. They contend that Congress was aware of conference ratemaking on excepted commodities and may be presumed to have endorsed it.

The Department of Justice and shipper groups argue that section 4 must be read in light of the purpose of be achieved by excepting certain commodities from tariff filing. They contend that the legislative history of the excepted commodity amendments to the 1916 Act reveals an intent to preserve an unregulated market for rates on excepted commodities. That purpose is undermined, they contend, if collective ratemaking on excepted commodities is permitted. Moreover, they point out that with mandatory independent action, regular tariffed commodities are subject to more flexible pricing than excepted commodities. From their perspective, this is an ironic and incongruous result.

Prior to the 1961 Amendment, it appears that conferences fixed rates on all commodities including those which later were expected by subsequent amendments. It also appears that during the consideration of the 1961, 1963, and 1965 Amendments, Congress was aware that conferences exercised ratemaking authority over excepted commodities. Moreover, in the 1984 Act, Congress did not remove such commodities from the Commission's jurisdiction.

With regard to the question of collective ratemaking, farther review and analysis of the legislative history clarifies a number of factors which support conference authority: (1) Both the 1916 Act and the 1984 Act in unambiguous and unqualified language provide for a grant of general ratemaking authority to conference; (2) the legislative history of the tariff filing amendments dealing with excepted commodities does not reveal any express intent to restrict conference ratemaking authority over those commodities; (3) the Commission in the past has not challenged conference ratemaking authority over excepted commodities; and (4) Congress was aware that conferences exercised collective ratemaking on excepted commodities prior to 1961 and expressed no intention to prohibit that practice. The record in this proceeding supports, rather than calls into question, the authority of a conference to fix rates covering a commodity that is excepted from mandatory tariff filing under section 8(a). Therefore, no change in current Commission policy, which recognizes that authority, is warranted.

*C. Independent Action*

The third question raised in the Notice of Inquiry is whether a conference, which has elected to agree upon a rate and file a tariff for an excepted commodity, may be required to allow its members a right of independent action on such a rate as provided for under section 5(b)(8) of the 1984 Act, 46 U.S.C. app. 1704(b)(8).

The conference comments argue that section 5(b)(8) of the 1984 Act mandates independent action only with respect to those commodities which are required to be filed in a tariff by section 8(a) of the Act. The conferences contend that the language of section 5(b)(8) is clear and that there is no need to examine legislative history. One conference argues that this construction of section 5(b)(8) does not lead to an illogical

result, but rather merely allows conferences to set rates on vital base cargo (*i.e.*, excepted commodities), but to provide for independent action on 8(a) tariff items.

Shipper comments generally dispute the premise assumed by this question, inasmuch as they argue that collective ratemaking is not permissible. Assuming *arguendo* that collective ratemaking is lawful, shippers contend that independent action should be permitted. Otherwise, according to the shipper comments, excepted commodities would enjoy less rate flexibility than commodities subject to mandatory tariff filing. These comments argue that the Commission could mandate a right of independent action on any tariff voluntarily filed for an excepted commodity. One comment states that the Commission could promulgate such a rule pursuant to its general rulemaking authority under section 17(a) of the Act, 46 U.S.C. app. 1716(a).

Section 5(b)(8) mandates that each conference agreement provide a right of independent action to its members with respect to any "rate or service item *required* to be filed in a tariff under section 8(a)." (Emphasis added). Section 5(b)(8) does not "require" independent action on rates on excepted commodities because such rates by definition are not subject to the section 8(a) tariff filing requirement. The introduction of a broad mandatory right of independent action into the scheme of the 1984 Act appears to have resulted in an anomaly with regard to the treatment of excepted commodities. A conference may fix rates and file tariffs covering these commodities but does not appear to be required by the act to allow members to take independent action. Thus, commodities subject to mandatory tariff filing may enjoy greater pricing flexibility than excepted commodities voluntarily filed in a tariff.

The Commission might attempt to address this dichotomy under its general rulemaking authority. However, given the unambiguous language of section 5(b)(8), the lack of legislative history indicating Congressional intent, the absence of a factual record upon which to base administrative action, and the unknown implications of any modification of the existing regulatory regime, it would appear at this time that the mattter is best left to resolution by Congress. Therefore, the Commission will continue the current policy which allows a conference to determine whether or not to allow its member lines to take independent action on excepted commodities.

*D. Service Contracts*

The fourth question raised in the Notice of Inquiry is whether an ocean common carrier or a conference may voluntarily file a service contract which covers an excepted commodity.

The conferences generally take the position that the Commission should continue to allow the voluntary filing of service contracts covering excepted commodities. A number of conferences point out that nothing in the 1984 Act prohibits such voluntary filing. One conference states that filing promotes competition by providing better information on market conditions to shippers. Other comments allege that certain adverse consequences would occur if voluntary filing were prohibited.

The Department of Justice and shipper groups oppose voluntary filing. One shipper group alleges that voluntary filing reduces rate flexibility on excepted commodities. Another argues that voluntary filing is contrary to the policy of the 1984 Act.

Voluntarily filing of service contracts covering excepted commodities does not appear to trigger the same concerns as arise in connection with the voluntary filing of tariffs. Service contracts are negotiated in an open maket between carrier and shipper. The stability established by the contract is mutually agreed to by both parties. Service contracts exist for an extended period of time. There is therefore less concern for speedy and flexible adjustments in terms. Moreover, the legislative history of the excepted commodity amendemnts to the 1916 Act does not have direct relevance to service contracts. Nevertheless, the question of service contracts on excepted commodities has been raised in Docket No. 86–6, *Service Contracts*, and appears to be more appropriately handled in that proceeding. *See* "Notice of Proposed Rulemaking," 51 FR 5734 (February 18, 1986).

## III. Conclusion

The Notice of Inquiry focused on certain issues which arise in conforming the concept and treatment of an excepted commodity with the tariff filing, concerted ratemaking, independent action and service contract provisions of the 1984 Act. A fundamental tension occurs in the statutory scheme when an excepted commodity, which apparently is intended to be governed only by free market forces, is subjected to the additional regulatory restraints associated with tariff filing or the collective control of concerted ratemaking. This inherent tension existed under the 1916 Act. It continued under the 1984 Act and was complicated further by the Act's inclusion of a mandatory right of independent action on rate or service items required to be filed in a traiff.

The purpose of the Notice of Inquiry was to reconcile, if possible, apparently conflicting provisions of the 1984 Act and to better define the parameters of the regulatory scheme envisioned by Congress. In particular, the Notice raised certain issues to determine if there were areas where the apparent conflict could be resolved through rulemaking. The key to this effort is determining Congressional intent.

The language of the 1984 Act, as well as that of the predecessor 1916 Act, and relevant legislative history, does not always clearly reveal that intent. Moreover, one limitation of the legislative history is that it is now 25 years old and addresses a different statutory scheme. It would appear, therefore, that the broad policy issues raised in the Notice of Inquiry require legislative attention because there does not appear to be a clear enough basis for an administrative resolution through rulemaking. In this posture, the best course appears to be to maintain the status quo.

In summary, the Commission will continue to accept tariffs on excepted commodities filed on a voluntary basis. The longstanding authority of conferences to collectively set rates on excepted commodities will continue to be recognized. A right of independent action on excepted commodity rate or service items will remain a matter of conference discretion. And the issue of filing service contracts covering excepted commodities will be resolved in Docket No. 86–6, *Service Contracts*.

Although no change is being made in current policy, the Commission believes that the issues raised in the Notice of Inquiry are significant and are of continuing concern and should be included in the reports required by section 18 of the 1984 Act, 46 U.S.C. app. 1717, which, among other things, requires that the Commission report to the Congress on mandatory tariff filing. The issues raised in the Notice of Inquiry relate to tariff filing and the implications and consequences thereof. The Commission therefore will make the record established in this proceeding a part of its section 18 report.

*Therefore, It Is Ordered,* That the record in this proceeding, consisting of the Notice of Inquiry, the comments received, and this Notice of Discontinuance and Appendix summarizing the comments, shall be

included in the report prepared by the Commission pursuant to section 18 of the Shipping Act of 1984; and

*It Is Further Ordered,* That this proceeding is hereby discontinued.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-10809 Filed 5-11-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 87-100; FCC 87-112]**

### Broadcast Services; Retention of Broadcasters' Public File Documents

**AGENCY:** Federal Communications Commissions.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to modify §§ 73.3526(e)(2) and 73.3527(e)(2) of the Commission's Rules, to reduce the retention period for public file documents of commercial and noncommercial broadcast stations receiving regular renewals. The proposed action would relax the administrative burden on licensees, while still providing the public with access to sufficient information to evaluate the licensees.

**DATES:** Comments are due June 22, 1987; Reply comments are due July 7, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Louis C. Whitsett, Policy and Rules Division, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a summary of Commission's *Notice of Proposed Rule Making*, MM Docket No. 87-100, adopted April 7, 1987, and released April 29, 1987.

The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased form the Commission's copy contractors, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037

#### Summary of Notice of Proposed Rule Making (NPRM)

1. This *NPRM* proposes to modify §§ 73.3526(e)(2) and 73.3527(e)(2) of the Commission's Rules. These rules currently require broadcast licensees to retain applications, ownership reports, and other supporting documents in its public files for two license terms or seven years, whichever is greater. This retention period was reasonable when license terms were only three years. However, in 1981, Congress extended the length of the license terms for television and radio station to five and seven years, respectively. As a result, licensees of television and radio stations who are receiving regular renewals are now required to keep such public file material for as long as ten and fourteen years, resepectively.

2. The proposed amendments would reduce that retention requirement to one license terms or the grant of renewal, whichever is greater. Thus, the proposed action would lessen the administrative burdens imposed on broadcast licensees by the current retention regulations. However, the public would still be provided with adequate access to licensee information.

#### Ex Parte Considerations

3. This is a non-restricted notice and comment rule making proceeding. *See* Section 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

#### Regulatory Flexibility Initial Analysis

4. Pursuant to the Regulatory Flexibiliy Act of 1980, 5 U.S.C. section 603, the amenements suggested in this proceeding would, if adopted, diminish the administrative burden on licensees by reducing the required public document retention requirement. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis.

5. The Secretary shall cause a copy of the *NPRM*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for advocacy of the Small Business Administration in accordance with section 603 (a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq., (1981)).*

#### Paperwork Reduction Act Statement

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. Implementation of any new or modified requirement will be suject to approval by the Office of Management and Budget as prescribed by the Act.

7. The Collection of information requirement contained in this proposed rule has been submitted to OMB of review under section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

#### Comment Information

8. Pursuant to application procedures set forth in §§ 1.415 and 1.419, of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 22, 1987, and reply comments on or before July 7, 1987. All relevent and timely comment will be considered by the Commission before final action is taken in this proceeding.

#### Authority

9. Authoirty for this proposed rule making is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-10741 Filed 5-11-87; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 86-1; Notice 2]**

### Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Termination of Rulemaking

**AGENCY:** National Highway Traffic Safety Admministration (NHTSA), DOT.

**ACTION:** Termination of rulemaking.

**SUMMARY:** On January 24, 1986, NHTSA proposed amending Federal Motor Vehicle Safety Standard No. 108 to require marking and identification of replacement lighting equipment as to function and manufacturer, as well as requiring, rather than allowing, such

equipment to be marked with the DOT symbol to certify compliance. On the basis of comments to the docket, which indicated that implementation of the proposal would impose significant cost increases or a number of manufacturers who already mark their equipment, without a resulting benefit to safety, the agency is terminating rulemaking on this subject.

**FOR FURTHER INFORMATION CONTACT:** Kevin Cavey, Office of Rulemaking, NHTSA, 400 Seventh St. SW., Washington, DC 20590 (202–366–5271).

**SUPPLEMENTARY INFORMATION:** Implementing the grant of a petition for rulemaking submitted by a manufacturer of motor vehicle lighting equipment, Peterson Manufacturing Co. of Grandview, Mo., NHTSA proposed amendments to Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* (51 FR 3227). Under the proposal, replacement lighting equipment would be marked and identified as to function in a manner similar to that of SAE Recommended Practice J579 *Lighting Indentification Code* May 1983. The code would also idenfity the manufacturer (and importer, where applicable). Finally, the proposal would require affirmation of the DOT symbol as a certification of compliance, rather than leaving it as a manufacturer's option.

In support of its petition, Perterson argued that adoption of the SAE code would identify off-shore manufacturers who had been exporting counterfeit and noncomplying products to the United States. In NHTSA's view, its code would also accomplish this purpose, and it would facilitate the identification of defective or noncomplying equipment that came into the country through more than one importer. Extension of the DOT symbol of certification to mandatory status would remove a regulatory anomaly, as this method of certification is mandatory with respect to all other equipment items covered by the Federal safety standards.

Comments supported the intent of the proposal, but not its implementation. The consensus was that the SAE code and others in general use by U.S. manufacturers, were adequate, and that deviation from them would be costly without a resulting safety benefit. Similarly, altering molds to incorporate DOT symbols would be costly, with no benefit provided over other alternative means of certification. Further, a marking requirement would not deter a counterfeiter from applying the code of a reputable concern. No comments or data were received that would allow the agency to quantify the numbers and types of possibly noncompliant or illegal replacement lighting equipment and hence to establish the dimensions of a significant problem. Thus, apart from a few examples uncovered by the petitioner and the agency's enforcement testing, which the agency has been able to pursue with some but not great difficulty, NHTSA has been unable to establish that any significant benefits would be derived to offset the costs that would be incurred by reputable manufacturers, if they were required to use the agency's proposed code. Therefore, NHTSA is terminating rulemaking under this proposal.

The engineer and lawyer primarily responsible for this notice are Kevin Cavey and Taylor Venson respectively.

**Authority:** 15 U.S.C. 1392, 1407, delegations of authority at 49 CFR 1.50 and 501.8.

Issued on May 6, 1987.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 87–10827 Filed 5–11–87; 8:45 am]

**BILLING CODE 4910–59–M**

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## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1201

**[EX Parte No. 393 (Sub-No. 2)]**

### Railroad Annual Report (Form P–1); Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to revise its reporting requirements for Class I railroads to incorporate the changes adopted in Ex Parte No. 393 (Sub-No. 1), *Standards for Railroad Revenue Adequacy*. Included among the changes are consolidation of information for Class I railroads and their subsidiaries which are over 50% controlled and are integral to rail operations. The Commission also proposes to combine information of Class I railroads under common control that form a unified, jointly managed system. Interest income on the working capital allowance will be added to net railway operating income (NROI) in the Return on Investment (ROI) calculation for revenue adequacy and income taxes on nonoperating income will be excluded. The Commission proposes to accomplish these changes by adding a new schedule to railroad Annual Report Form R–1.

**DATE:** Comments are due on June 26, 1987.

**ADDRESS:** An original and 10 copies, if possible, of any comments should be sent to: Ex Parte No. 393 (Sub-No. 2), Office of the Secretary, Case Control Branch, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Brian A. Holmes, (202) 275–7510.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, Interstate Commerce Commission Washington, DC 20423 or call (202) 275–7428.

This proposed rule will not have a significant economic impact on a substantial number of small entities. This proceeding relates to only the Class I Railroads. However, subsidiaries with rail related revenues may be required to include information in Class I railroad reports filed with the Commission. We request comments on this issue.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). Respondents may direct comments on any paperwork burden to OMB by addressing them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Interstate Commerce Commission.

### List of Subjects in 49 CFR Part 1201

Railroads, Uniform system of accounts.

Decided: May 5, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred with a separate expression. Commissioner Andre dissented in part with a separate expression.

**Noreta R. McGee,**

*Secretary.*

### Instructions Concerning Returns to be Made in Schedule 250

1. This schedule is to be filled out by all railroads unless a combined schedule is filed.

2. When a combined schedule is filed, the reporting carrier shall indicate which carriers are included in the combined schedule. Nonreporting carriers should

indicate which affiliated railroad is reporting the combined schedule.

3. In consolidating integral subsidiary operations for purposes of this schedule, companies should include railroads (i.e., switching and terminal and other than Class I railroads). Consolidation procedures followed under generally accepted accounting principles (GAAP) should be followed for purposes of this schedule (i.e. elimination of any intercompany profits).

4. Revenues from rail related subsidiaries should be excluded.

5. Subsidiary expenses should only reflect expenses directly associated with the rail related revenues as well as common expenses apportioned on the basis of the percentage of rail related revenues to total revenues.

6. Interest income on working capital allowance is computed by applying the average interest rate defined as the first and last published Treasury bill rates for the calendar year times the average balance of cash working capital allowed. The average balance of cash working capital allowed would be the addition of the preceding year and current year balance of cash working capital allowed derived from line 24 of Schedule 245 of the Annual Report Form R–1 divided by 2. Includable interest would be the product of multiplying the average interest rate times the average balance of cash working capital allowed.

7. Income taxes associated with significant non-rail income would include items such as the tax impact of the sale of property or income from non-rail sources.

8. Leased property from subsidiaries integral to rail operations which is included in schedule 352A should be eliminated in order to avoid duplication.

9. List all qualifying subsidiaries alone with the nature of subsidiaries at the bottom of this schedule.

250 CALCULATION OF RETURN ON INVESTMENT FOR REVENUE ADEQUACY PURPOSES

(dollars in thousands)

| Line No. | Item (a) | Amount (b) |
|---|---|---|
| | **Adjusted Net Railway Operating Income** | |
| 1 | Consolidated Net Railway Operating Income | |
| 2 | Add Interest Income from Working Capital Allowance | |
| 3 | Income Taxes Associated with Significant Non-Rail Income | |
| 4 | Adjusted Net Railway Operating Income | |
| | **Adjusted Investment in Railroad Property** | |
| 5 | Combined Investment in Railroad Property Used in Transportation Service (Schedule 352A, Line 31, column (d) less column (e)) | |
| 6 | Less: Interest During Construction (Schedule 330, Line 40) | |
| 7 | Other Elements of Investment (if debit balance) (Schedule 330, Line 41) | |
| 8 | Add: Net Rail Assets of Rail Related Subsidiaries | |
| 9 | Working Capital Allowance (Schedule 245, Line 28) | |
| 10 | Net Investment Base before Adjustment for Deferred Taxes | |
| 11 | Less: Accumulated Deferred Income Tax Credits | |
| 12 | Net Investment Base | |
| | **Return on Investment** | |
| 13 | Adjusted Net Railway Operating Income (Line 4) divided by Net Investment Base (Line 12) carried out two decimal places | |
| | List of qualifying subsidiaries and nature of business | |

Part 1201 of Title 49 of the Code of Federal Regulations would be amended as follows:

## PART 1201—RAILROAD COMPANIES

### Subpart A—Uniform System of Accounts

1. The authority citation for Part 1201 would continue to read as follows:

**Authority:** 49 U.S.C. 11166 and 5 U.S.C. 553, unless otherwise noted.

2. Instruction 1–9, *Transactions with affiliated companies,* is amended by adding paragraph (f) as follows:

*1–9 Transactions with affiliated companies.*

* * * * *

(f) Carriers reporting information on a consolidated or combined basis in railroad Annual Report Form R–1 shall maintain a file with appropriate records and supporting data. This should include work sheets showing revenues, expenses, earnings, investment in assets and accumulated depreciation for all affiliated companies which are over 50% controlled. The work sheets should also disclose any eliminations. Carriers need to disclose the methodology used to support segregation of rail related or other items as appropriate.

[FR Doc. 87–10751 Filed 5–11–87; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register
Vol. 52, No. 91
Tuesday, May 12, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Chinquapin Butte Multi-Timber Sale Project; Shasta-Trinity National Forests, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of a series of timber sales located 2 to 11 miles southeast of Forest Glen. The area is currently undeveloped and portions of these proposed sales are situated within the released Chinquapin Roadless Area on the Hayfork and Yolla Bolla Ranger Districts.

The environmental impact statement will be prepared in accordance with existing approved land and resource management plans. The analysis will set standards and guidelines for management activities, and provided a schedule of these activities. Alternative locations of timber harvest units and roads will be identified and evaluated.

A range of alternatives will be examined to deal with the significant issues developed during the scoping process. One alternative will be No Action. Other alternatives will consider various prescriptions for harvest and access.

Federal, State, and local agencies, potential purchasers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process between now and June 19, 1987. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues, those which have been covered by a previous environmental analysis, and those issues not within the scope of this decision.

Public meetings are scheduled for the first week in June. The date, time and location of these meetings follows:

June 1, 1987; 7:00 PM; Redding, Forest Headquarters, 2400 Washington Ave.
June 2, 1987; 7:00 PM; Hayfork, Fairgrounds, Dining Hall
June 4, 1987; 7:00 PM; Weaverville, Civil Defense Hall Auditorium, Civil Defense Loop

The purpose of these meetings is to provide interested groups and individuals information and answer questions regarding the proposed activities within the affected area.

The analysis is expected to be completed in twelve months or less. The DEIS is scheduled to be available for public comment and review by early 1988. The final environmental impact statement should be completed by late spring or early summer 1988.

Robert R. Tyrrel, Forest Supervisor, Shasta-Trinity National Forests, is the responsible official. Written comments and suggestions concerning the analysis should be sent to Robert R. Tyrrel, Forest Supervisor, Chinquapin Butte Multi-Timber Sale, 2400 Washington Avenue, Redding, California 96001, by June 19, 1987.

Questions about the proposed action and environmental impact statement should be directed to Ken Smith, EIS Team Leader, Yolla Bolla Ranger District, U.S. Forest Service, Platina, California, 96076, phone (916) 352–4211.

Dated: May 1, 1987.

**Robert R. Tyrrel,**
*Forest Supervisor.*

[FR Doc. 87–10717 Filed 5–11–87; 8:45 am]
BILLING CODE 3410-11-M

## COMMISSION ON CIVIL RIGHTS

### Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 3:00 p.m., on May 22, 1987, at the Pallas Suite Hotel, 1732 Canal Street, New Orleans, Louisiana. The purpose of the meeting is to conduct a community forum on the status of civil rights in Louisiana and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 374–5253 (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 1, 1987.

**Susan J. Prado,**
*Acting Staff Director.*

[FR Doc. 87–10718 Filed 5–11–87; 8:45 am]
BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget (OMB)

DOCO has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Request to Dispose of Commodities or Technical Data Previously Exported
Form Number: Agency—ITA–699P (EAR 376.12); OMB—0625–0009
Type of Request: Revision of currently approved collection
Burden: 17,137 respondents; 13,424, reporting/recordkeeping hours
Needs and Uses: In lieu of applying for a new validated export license, through this information collection U.S. exporters can request to reexport or sell their products to an ultimate consignee that was not named on the original export license request. The purpose of this form is to prevent shipments of commodities in violation of the Export Administration Act.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion/recordkeeping
Respondent's obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffin, 395–7340.

Agency: International Trade Administration

Title: Annual Report from Foreign Trade Zones

Form Number: Agency—ITA–359P; OMB—0625–0109

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 84 respondents; 5,136 reporting hours

Needs and Uses: Annual reports from foreign-trade zones are required by the Foreign Trade Zones Act. The reports summarize zone projects, operations and activities. The imformation provides the basis for the consolidated annual report to Congress as required by the Act.

Affected Public: State or local governments; businesses or other for-profit institutions; non-profit institutions; small businesses or organizations

Frequency: Annually

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffin, 395–7340.

Agency: International Trade Adminstration

Title: Project License Procedure

Form Number: Agency—EAR 373.2(c); OMB—0625–002

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 74 respondents; 223 reporting/recordkeepng hours

Needs and Uses: The Project License Procedure was established by the Department of Commerce to facilitate exports for substantial projects representing capital expansions. In lieu of requiring individual export licenses for each commodity shipped for such a project, one overall license is granted. The information provided is used to determine if a Project License should be approved.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion/recordkeeping

Respondent's obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffin, 395–7340.

Agency: Interntional Trade Adminstration

Title: Watch Duty Exemption Program

Form Number: Agency—ITA–321P, 360–P, 361–P (15 CFR 303.6–303.12); OMB—0625–0134

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 8 respondents; 203 reporting/recordkeeping hours

Needs and Uses: In january 1983 a law was passed (Pub. L. 97–446) to create production incentives for the territorial watch industry. The information gathered is for the administration and enforcement of this law.

Affected Public: Businesses or other-for profit institutions; small businesses or organizations

Frequency: On occasion, annually, recordkeeping

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: John Griffin, 395–7340.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6228, 14th and Constitution Avenue, NW., Washington, DC 20230.

Writen comments and recommendations for the proposed information collections should be sent to John Griffin, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: May 5, 1987.

**Edward Michals,**

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–10745 Filed 5–11–87; 8:45 am]

BILLING CODE 3510–CW–M

## International Trade Administration

**[A–122–605, A–588–609, A–580–605, and A–559–601]**

## Postponement of Preliminary Antidumping Duty Determinations; Color Picture Tubes From Canada, Japan, Korea, and Singapore

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that we have received an additional request from the petitioners in these investigations to postpone the preliminary determinations as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determinations of whether sales of color picture tubes from Canada, Japan, Korea, and Singapore have occurred at less than fair value until not later than June 24, 1987.

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230 (202) 377–3965.

**SUPPLEMENTARY INFORMATION:** On December 22, 1986 (51 FR 45785, Canada; 51 FR 45786, Japan; 51 FR 45787, Korea; and 51 FR 45787, Singapore) we published the notices of initiation of antidumping duty investigations to determine whether color picture tubes from Canada, Japan, Korea, and Singapore are being, or are likely to be, sold in the United States at less than fair value. The notices stated that we would issue our preliminary determinations by May 5, 1987.

As detailed in the notices, the petition alleged that imports of color picture tubes from Canada, Japan, Korea, and Singapore are being, or are likely to be sold in the United States at less than fair value. On March 23, 1987, counsel for petitioners, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Technical, Salaried and Machine Workers (AFL–CIO/CLC), the United Steelworkers of America (AFL–CIO), and the Industrial Union Department (AFL–CIO), requested that the Department extend the period for the preliminary determinations until not later than 180 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Act. On April 1, 1987 (52 FR 10394) we published a notice postponing the preliminary determinations for an additional 20 days. The notice stated that we would issue our prelimary determinations by May 26, 1987.

On April 30, 1987, counsel for petitioners requested that the Department extend the period for the preliminary determinations until not later than 210 days after the date of receipt of the petitions in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for determinations in these cases is hereby extended. We intend to issue preliminary determinations not later than June 24, 1987.

This notice is published pursuant to section 733(c)(2) of the Act.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

May 6, 1987.

[FR Doc. 87–10837 Filed 5–11–87; 8:45 am]

BILLING CODE 3510–DS–M

**National Oceanic and Atmospheric Administration**

**[Modification No. 2 To Permit No. 448]**

**Endangered Species; Permit Modification; Massachusetts Cooperative Fishery Research Unit**

Notice is hereby given that Pursuant to the provisions of § 220.24 of the Regulations on endangered species (50 CFR Parts 217–227), Scientific Research Permit No. 448 issued to the Massachusetts Cooperative Fishery Research Unit, University of Massachusetts Amherst, Massachusetts 01003, on January 30, 1984 (49 FR 4541) as modified on January 2, 1987 (52 FR 126), is further modified as follows:

Section A.1 is replaced by:

"1. An uspecified number of shortnose sturgeon (*Acipenser brevirostrum*) may be captured, weighed, measured, tagged and released as specified in the application and modification request."

Section B.1 is replaced by:

"2. The animals shall be taken by the means, in the areas, and for the purposes set forth in the application and the modification request."

Section B.4 is replaced by:

"4. If the level of mortality of juvenile and older fish exceeds twenty-five (25) in any river system, sampling shall be suspended and the Northeast Regional Office, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, notified and consulted as to appropriate modifications to the sampling program."

The modification becomes effective upon publication in the **Fedeal Register.**

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to Parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367), November 27, 1974.

Documents submnitted in connection with the above modification and Permit are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW Rm. 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: May 7, 1987.

**Dr. Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87–10838 Filed 5–11–87; 8:45 am]

BILLING CODE 3510-22-M

**[P77 28]**

**Marine Mammals; Application for Permit: NMFS, Northwest and Alaska Fisheries Center**

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Fur Seal Act of 1966 (16 U.S.C. 1151–1187), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

2. *Type of Permit:* Scientific Research.

3. *Species:* Northern fur seal (*Callorhinus ursinus*).

4. *Number and Type of Take:* To take annually for five (5) years up to 1,405 adult and/or juvenile females, 2400 adult and/or juvenile males and 32,500 pups of either sex. The proposed activities include marking using paint, bleach, shearing, branding, tattooing and injection of tetracycline; handling for weighing, examining, measuring, obtaining blood, milk, and swab samples, (e.g., vaginal smears, nasal swabs, and samples from wounds), identifing sex, and administering lavage and enema procedures. All animals will be released near the capture site. Capture will be by physical restraint. Capture and handling may occur up to five times per individual per year.

Of the above: Up to 215 may have instruments affixed which may include sensors, time-depth recorders, radio transmitters, satellite-linked instruments, and swim speed recorders. Take by instrumenting will involve a maximum of 5 recaptures per individual per year for instrument monitoring; up to 300 may be branded and tattooed using standard tatoo equipment, paste and ink. Tetracycline may be injected intramuscularly to mark hard tissue for future ageing and growth studies. This type of take will involve a maximum of 5 recaptures and processing per individual per year.

In addition, over a 5-year period, up to 590 animals may be taken by incidental killing associated with the research operations. An unspecified number may be taken by incidental harassment during ground surveys, aerial surveys, boat or ship surveys, and other activities supporting northern fur seal research. An unspecified amount of specimen materials will be collected from animals killed during harvest activities and found dead during the course of the research. The applicant is also requesting authorizatin to import specimen materials collected by official representatives of the governments of Canada, Japan, or the USSR for scientific research.

5. *Location of Activity:* Alaska, Pribilof Islands, Bering Sea, Bogoslof Island, Aleutian Islands; Channel Islands of California.

6. *Period of Activity:* 5 years.

Concurrent with the publication of this notice in the **Federal Register,** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publications of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resoruces and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805 Washington, DC 20235;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: May 7, 1987.

**Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87-10839 Filed 5-11-87; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of committee: Army Science Board (ASB)
Date of meeting: 28 May 1987
Time of meeting: 0900-1600 hours
Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Summer Study Panel for Army Force Cost Drivers will meet with personnel from the Harry Diamond Laboratories for briefings and discussions on evaluation of susceptibility to microwaves and hardening of night vision devices to lasers. Briefings and discussions will also be held with representatives from the Air Force Foreign Technologies Division on Soviet laser threat. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening and portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87-10720 Filed 5-11-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### National Advisory Board on International Education Programs; Meeting

**AGENCY:** National Advisory Board on International Education Programs.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

**DATE:** May 28, 1987—Orientation session for new members; May 29, 1987—A full board meeting.

**ADDRESS:** Rosslyn Westpark Hotel, The Club Room, 1900 N. Fort Myer Drive, Arlington, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Harry M. Gardner, Postsecondary Relations Staff, ROB-3, Room 4082, 7th & D Streets SW., Washington, DC 20202 (202-732-1862).

**SUPPLEMENTARY INFORMATION:** The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education amendments of 1980 (Pub. L. 96-374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Educatioan Programs is open to the public.

The agenda will include oath of office ceremonies. The Board will discuss (1) the status of the new regulations for the Education Amendments of 1986; (2) the FY 1987 budget and program operations for the Center for International Education; (3) priorities and Board business for FY 1987; and (4) the Board will review the Federal role in international education.

Records are kept on the Board's proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 to 4:00 p.m., ROB-3, 7th & D Streets SW., Room 3082, Washington, DC.

Signed at Washington, DC, on May 7, 1987.

**C. Ronald Kimberling,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 87-10795 Filed 5-11-87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Number 3 of Proposed Establishment of Federally Funded Research and Development Center (FFRDC)

**AGENCY:** Department of Energy.

**ACTION:** Notice Number 3 of Proposed Establishment of Federally Funded Research and Development Center (FFRDC).

**SUMMARY:** In accordance with paragraph 6.b.(2) of the Office of Federal Procurement Policy, Policy Letter No. 84-1, the Department of Energy (DOE) announces its intention to establish the Continuous Electron Beam Accelerator Facility (CEBAF) located in Newport News, Virginia, as a Federally Funded Research and Development Center (FFRDC). The facility will include a continuous beam recirculating linear accelerator of approximately one mile circumference. The accelerator will be capable of providing high-duty-factor electron beams throughout the energy range from 0.5 to 4.0 billion electron volts. The CEBAF laboratory will be a center for basic research and training related to nuclear structure and the accelerator techniques utilized to carry out that research. Related theoretical studies will be conducted, and institutional relationships will be developed to assure strong involvement of the scientific community. The unique capabilities of CEBAF will serve as a focus for research programs of the U.S. and the international scientific community for many years. The CEBAF laboratory and accelerator construction project is the highest priority new research facility in the U.S. nuclear physics program. CEBAF will have the only accelerator facility in the world capable of producing electron beams which meet the criteria of energy, duty factor, and beam intensity necessary to study minute details of nuclear structure, and thus provide new scientific knowledge about the underlying quark-gluon substructure in nuclear matter. Based upon the research plans and scope of this laboratory, the DOE has determined that the CEBAF laboratory should be designated as FFRDC.

**FOR FURTHER INFORMATION CONTACT:** Dr. David L. Hendrie, Director, Division of Nuclear Physics, Office of Energy Research, ER-23, U.S. Department of Energy, Washington, DC 20545.

**DATES:** Any comments on this proposed action must be received within 30 days of publication of this notice in the Federal Register.

**ADDRESSES:** Address comments to Dr. David L. Hendrie at the address listed above.

Issued in Washington, DC, on May 1, 1987.

**Ira M. Adler,**

*Deputy Director for Management, Office of Energy Research.*

[FR Doc. 87-10748 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

**Office of Assistant Secretary for International Affairs and Energy Emergencies**

**Proposed Subsequent Arrangement**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/EU (SW)–73, for the retransfer of 44 grams of uranium, enriched to 2.27 percent in the isotope uranium-235 from Sweden to the United Kingdom Atomic Energy Authority for analysis.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date publication of this notice.

Dated: May 6, 1987.

For the Department of Energy.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 87–10802 Filed 5–11–87; 8:45 am]

BILLING CODE 6450–01–M

**Proposed Subsequent Arrangement**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM), as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above-mentioned agreements for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: From Switzerland to France (Compagnie Generale des Matieres Nucleaires) for the purpose of reprocessing, 108 irradiated fuel assemblies, containing 42,500 kilograms of uranium enriched to 0.83% in U–235 and 440 kilograms of plutonium from the Gosgen-Daniken power station. This subsequent arrangement is designed as RTD/EU (SD)–61. The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored in France, and will not be transferred from France, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Dated: May 6, 1987.

For the Department of Energy.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 87–10801 Filed 5–11–87; 8:45 am]

BILLING CODE 6450–01–M

**Office of Conservation and Renewable Energy**

**[CAC–003]**

**Energy Conservation Program for Consumer Products; Granting of Interim Waiver of Central Air Conditioner Test Procedures From The Trane Co.**

**AGENCY:** Conservation and Renewable Energy Office, DOE.

**ACTION:** Granting of Interim Waiver.

**SUMMARY:** Today's notice publishes an "Interim Waiver" for The Trane Company (Trane) of Tyler, Texas, granting the company's application of March 17, 1987, to use an alternate test procedure for its TWS model variable-speed heat pump from the existing Department of Energy (DOE) test procedures for central air conditioners. This Interim Waiver is for 180 days from issuance, or until the Department makes a decision on the petition for waiver, or until a Final Rule is published, whichever occurs first. The Interim Waiver grants relief from the test procedure as applied to the heating mode of Trane's TWS variable-speed model series central air conditioners (heat pumps). Trane has also filed a petition for waiver, dated March 10, 1987, from the existing DOE procedures for central air conditioners.

In accordance with paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter was issued to The Trane Company.

Issued in Washington, DC, April 24, 1987.

**Donna R. Fitzpatrick,**

*Assistant Secretary, Conservation and Renewable Energy.*

April 24, 1987

Mr. L.E. Chaump,
*Dealer Products Group, The Trane Company, Troup Highway, Tyler, TX 75711.*

Dear Mr. Chaump: This is in response to your March 17, 1987, Application for an Interim Waiver from the Department of Energy (DOE) test procedures for the heating mode of The Trane Company's (Trane) model TWS heat pump.

Pursuant to the Energy Policy and Conservation Act, as amended, the Department has prescribed test procedures to measure the energy consumption of certain major household appliances, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear in the Code of Federal Regulations at 10 CFR Part 430, Subpart B.

DOE amended the test procedure waiver regulations on November 26, 1986, [51 FR 42823] by allowing an application for interim waiver. The amendments added provisions allowing the Assistant Secretary for Conservation to grant an interim waiver for a particular basic model when a petitioner demonstrates the likely success of the petition for waiver, if the applicant will experience economic hardship if the Application for Interim Waiver is denied, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Trane has demonstrated the likely success of its Application for Interim Waiver based upon the showing that DOE proposed amendments to existing test procedures to include variable-speed heat pumps on

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October 7, 1986 [51 FR 35736] and that the Carrier Corporation (Carrier) was granted a waiver from the Department's central air conditioner test procedures for its variable-speed heat pump on October 3, 1986 [51 FR 35403]. DOE concludes that Trane has demonstrated a likelihood of success of its petition for waiver from the Department's central air conditioner test procedure on the basis that its TWS model heat pump includes design characteristics that prevent testing of the unit according to the prescribed test procedure.

Trane's Application for Interim Waiver does not provide sufficient information for the Department to evaluate what, if any, economic impact or competitive disadvantage Trane will likely experience absent a favorable determination on the Application for Interim Waiver. Trane merely claims that it "cannot complete the design until a definitive test and rating procedure has been approved. Further delay of the program would cause undue economic hardship." DOE concludes that Trane has not demonstrated that it will experience economic hardship if the Application for Interim Waiver is denied.

The Department finds that it would be desirable for public policy reasons to grant Trane's Application for Interim Waiver. Specifically, in those instances where the likely success of the petition for waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis. Therefore, Trane's Application for An Interim Waiver requesting relief from the DOE test procedures for the heating mode of its TWS line central air conditioning heat pumps is granted.

The Trane Company is authorized to use the enclosed alternate test procedure proposed by Trane in its correspondence (Attachment I) of March 10, 1987, for the heating mode of the TWS variable-speed heat pump. According to Trane's Application for Interim Waiver, the company's Petition for Waiver, incuding the alternate test procedure, was sent to all known domestic manufacturers of central air conditioners on March 17, 1987. In accordance with section 430.27(c)(2), DOE will consider timely written comments on Trane's Application for Interim Waiver.

This Interim Waiver shall remain in effect for 180 days from the date of issuance or until the Department of Energy issues a determination on Trane's Petition for Waiver or the issuance of a final test procedure, whichever ocurs first.

This Interim Waiver is based upon the prescribed validity of statements, allegations, and documentary materials submitted by the applicant. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Your truly,

Donna R. Fitzpatrick,

*Assistant Secretary, Conservation and Renewable Energy.*

## Attachment I: Details of Rating Method for Variable Speed Products in the Heating Mode

This attachment is a revised version of DOE's Proposed Rulemaking for 10 CFR Part 430, published in the **Federal Register** October 7, 1986 and only addresses heating rating procedures for variable speed heat pumps. The changes herein are to adapt the proposed procedures to Trane's interim heating rating method until such time that a final ruling of DOE's procedures has been made.

*Air flow rates*

Proposed Rulemaking reference: Section 2.1.3, Appendix M1.

The air flow rate at fan speeds less than the maximum fan speed shall be determined by using the fan laws for a fixed resistance system. The air flow rate is then given by the ratio of the actual fan speed to the maximum fan speed multiplied by the air flow rate at the maximum fan speed. Minimum static pressure requirements only apply when the fam is running at the maximum speed.

**Test Procedures: Cycling**

Proposed Rulemaking reference: Section 3.1.1, Appendix M1.

Test procedures shall be as specified in section 5.0 of ARI Standard 210/240–84 and in section 8.1 ANSI/ASHRAE Standard 116–1983, with the inclusion of the following conditions.

Heating cyclic tests shall be conducted by cycling the compressor "on" for the greater of six (6) minutes or the minimum time allowed by the controls and "off" for four (4) times the "on" time. The method of test shall be the damper method, which is described in the current 10 CFR Part 430, Published December 27, 1979 in the **Federal Register.**

The indoor air moving equipment shall also cycle "off" as governed by any automatic controls normally installed with the unit. Both net capacity and power shall be integrated. The last requirement applies to units having an indoor fan time delay. Units not supplied with an indoor fan time delay shall have the indoor air moving equipment cycle "on" and "off" as the compressor cycles "on" and "off."

In lieu of conducting heating cyclic tests, an assigned value of 0.35 shall be used for the degradation coefficient.

*Test Procedures*

**Intermediate Speed**

Proposed Rulemaking Reference: Section 3.1.2.

The frost accumulation test shall be conducted at the temperature conditions in Appendix B of ARI 210/240–81.

The unit shall be operated at a constant, intermediate compressor speed (k=Vn). The intermediate compressor speed shall be within 5% of the intermediate speed measured during the intermediate speed test in the cooling mode.

**Heating Seasonal Performance Factor**

Proposed Rulemaking Reference: Section 4.2.

The heating seasonal performance factor (HSPF) shall be expressed in Btu per watt-hour. For each of the six regions specified in Table 2 of this appendix, a separate HSPF shall be determined for the standardized maximum DHR, the standardized minimum DHR and for all other standardized DHR's (See Table 3 of this Appendix) between the maximum and minimum values.

For air-source units that are equipped with "demand defrost control systems", the value for HSPF, as determined above shall be multiplied by an enhancement factor, $F_{def}$ to compensate for improved performance not measured in the Frost Accumulation Test.

The factor, $F_{def}$ depends on the number of defrost cycles in a 12-hour period (n) and should be calculated as follows:

The factor, $F_{def}$ depends on the length of the defrost cycle (t) from the frost accumulation test, and shall be calculated as follows:

$F_{def}=1.03+0.03*(90-t)/630$ for $5>90$ minutes
$FF_{def}=1.03$ for $t<90$ minutes
where t=lengh of the defrost accumulation period in minutes.

Reference Section 4.2.4

HSPF shall be defined as the heating seasonal performance factor (HSPF) as specified in 2.2 of Appendix B of ARI Standard 210/240–84 multiplied by 3.413 Btu/hr in which the number of hours in $J^{th}$ temperature bin ($n_j$) in the equations for HSPF and for supplementary resistance heat term (RH ($t_j$)) is defined in Table 2 of this appendix and in which the part-load factor (PLF) in the equation for power input (E($t_j$)) is defined in Section 2.2 of Appendix B of ARI 210/240–84.

The HSPF shall be determined by the method for two speed or two compressor units, as specified in ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84, and in accordance

with the following changes. The DHR shall be determined by heating capacity at 70–47/43, nominal compressor speed, using Table 6.2.6 in ARI 240–81 as defined in ARI 210/240–84 Appendix A. "Nominal" shall be defined as the lessor of the heating capacity at the maximum compresor speed allowed by the controls in the cooling mode or the maximum speed allowed by the controls in the heating mode.

The capacity for the unit modulating at the intermediate compressor speed (k=v) at any temperature ($t_j$) is determined by:

$$q^{k=v}(t_j) = q^{k=v}(35) + M_q (t_j - 35)$$

where: $q^{k=v}(35)$ = the capacity of the unit at 35°F determined at the intermediate compressor speed (k=v) in the frost accumulation test

$M_q$ = slope of the capacity curve for the intermediate compressor speed (k=v)

$$M_q = \frac{Q_{ss}^{k=1}(62) - Q_{ss}^{k=1}(47)}{62 - 47} * (1 - N_q) + N_q \frac{Q_{ss}^{k=2}(47) - Q_{ss}^{k=2}(17)}{47 - 17}$$

$$N_q = \frac{Q_{ss}^{k=v}(35) - Q_{ss}^{k=1}(35)}{Q_{ss}^{k=2}(35) - Q_{ss}^{k=1}(35)}$$

Once the equation for $q^{k=v}(t_j)$ has been determined, the temperature where $q^{k=v}(t_j)=BL(t_j)$ can be found. This temperature is designated as $t_{VH}$. A separate $t_{VH}$ shall be determined for each design heating requirement.

The electrical power for the unit operating at the intermediate compressor speed (k=v) and at the temperature ($t_{VH}$) is determined by:

$$E_{ss}^{k=v}(t_{VH}) = E_{ss}^{k=v}(35) + M_e (t_{VH} - 35)$$

where: $E_{ss}^{k=v}(35)$ = the electrical power input of the unit at 35°F determined at the intermediate compressor speed (k=v) in the frost accumulation test

$M_E$ = slope of the electrical power input curve for the intermediate compressor speed (k=v)

$$M_E = \frac{E_{ss}^{k=1}(62) - E_{ss}^{k=1}(47)}{62 - 47} * (1 - M_E) + M_E \frac{E_{ss}^{k=2}(47) - E_{ss}^{k=2}(17)}{47 - 17}$$

$$M_E = \frac{E_{ss}^{k=v}(35) - E_{ss}^{k=1}(35)}{E_{ss}^{k=2}(35) - E_{ss}^{k=1}(35)}$$

The following section replaces Case II in Section 2.2 of ARI 210/240-84.

Case II

When the compressor speed varies between maximum speed (k=2) and minimum speed (k=1) such that k=v to satisfy the building load at temperature $t_j$, evaluate the following equations:

$$q_{ss}^{k=v}(t_j) = BL(t_j)$$

where: $q_{ss}^{k=v}(t_j)$ = steady-state capacity delivered by the unit at any speed between the minimum and maximum compressor speeds at temperature $t_j$

when $t_j \geq t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=1}(t_3) - E_{ss}^{k=v}(t_{VH})}{t_3 - t_{VH}} * (t_j - t_{VH})$$

where: $E_{ss}^{k=v}(t_j)$ = the electrical power input required by the unit at temperature $t_j$ and at a variable compressor speed between the minimum and maximum compressor speeds

$E_{ss}^{k=v}(t_{VH})$ = the electrical power input required by the unit at temperature $t_{VH}$ and at the intermediate compressor speed (k=v), as determined above

$E_{ss}^{k=1}(t_3)$ = the electrical power input required by the unit at temperature $t_3$ and at the minimum compressor speed

$t_3$ = temperature at which $q_{ss}^{k=1}(t_3) = BL(t_3)$

when $t_j < t_{VH}$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(t_{VH}) + \frac{E_{ss}^{k=2}(t_4) - E_{ss}^{k=v}(t_{VH})}{t_{VH} - t_4} * (t_{VH} - t_j)$$

where: $E_{ss}^{k=2}(t_4)$ = the electrical power input required by the unit at temperature $t_4$ and at the maximum compressor speed

$t_4$ = temperature at which $q_{ss}^{k=2}(t_j) = BL(t_j)$

For units that are equipped with "demand defrost control systems," the value for HSPF, as determined above, shall be multiplied by an enhancement factor of $F_{def}$, as defined above, to compensate for improved performance not measured in the Frost Accumulation Test.

*Annual Performance Factor*

DOE Proposed Rulemaking: Section 4.5.

The annual performance factor (APF) shall be expressed in Btu per watt-hour. For each of the six regions in Table 2 of this appendix, a separate APF shall be determined for the standardized maximum DHR, the standardized minimum DHR and for all other standardized DHR's (See Table 3 of this appendix) between the maximum and minimum values, APF shall be defined as:

$$APF = \frac{[CLH * Q_{ss}(95)] + [HLH * DHR * C]}{\frac{CLH * Q_{ss}(95)}{SEER} + \frac{HLH * DHR * C}{HSPF}}$$

where:

CLH = cooling load hours for a specific location as reported in Figure 1 of this appendix

$Q_{ss}(95)$ = Steady state capacity as measured in Test A

HLH = heating load hours for a specific location as reported in Figure 2 of this appendix

DHR = standardized design heating requirement

C = adjustment factor which serves to adjust the calculated design heating load hours to the actual heating load hours experienced by a heating system and is 0.77

SEER = seasonal energy efficiency ratio as determined by 4.1 of this appendix

HSPF = heating seasonal performance factor as determined by 4.2 of this appendix

TABLE 2.—DISTRIBUTION OF TEMPERATURE BIN HOURS FOR COOLING

| Bin No. (i) | Representative bin temperature (Ti) | Temperature bin hours for each region | | | | | |
|---|---|---|---|---|---|---|---|
| | | I | II | III | IV | V | VI |
| 1 | [illegible] | 216 | 288 | 288 | 297 | 291 | [illegible] |
| 2 | 97 | 178 | 288 | 240 | 259 | 233 | 508 |
| 3 | 92 | 145 | 264 | 241 | 232 | 206 | [illegible] |
| 4 | 87 | 97 | 178 | 240 | 209 | 209 | 561 |
| 5 | 82 | 91 | 140 | 225 | 225 | 214 | 368 |
| 6 | 77 | 31 | 110 | 208 | 245 | 230 | 209 |
| 7 | 72 | 14 | 70 | 161 | 283 | [illegible] | [illegible] |
| 8 | 67 | 4 | 30 | 82 | 196 | 259 | 22 |
| 9 | 62 | 1 | 10 | 57 | 124 | 204 | 6 |
| 10 | 57 | 0 | 3 | 16 | 81 | 151 | 0 |
| 11 | 52 | 0 | 0 | 9 | 50 | 109 | 0 |
| 12 | 47 | 0 | 0 | 4 | 29 | 105 | 0 |
| 13 | [illegible] | 0 | 0 | 2 | 14 | 80 | 0 |
| 14 | -3 | 0 | 0 | 0 | 5 | 50 | 0 |
| 15 | -8 | 0 | 0 | 0 | 2 | 28 | 0 |
| 16 | -13 | 0 | 0 | 0 | 0 | 14 | 0 |
| 17 | -18 | 0 | 0 | 0 | 0 | 6 | 0 |
| 18 | -23 | 0 | 0 | 0 | 0 | 3 | 0 |

TABLE 4.—REGIONAL COOLING LOAD HOURS (CLH), HEATING LOAD HOURS (HLH), OUTDOOR DESIGN TEMPERATURE ($T_{OD}$) AND MEAN GROUND-WATER TEMPERATURE ($T_{TW}$)

| Region | CLH | HLH | $T_{OD}$ | $T_{TW}$ |
|---|---|---|---|---|
| I | 2,400 | 700 | 97 | 72 |
| II | 1,800 | 1,298 | 27 | 66 |
| III | 1,200 | 1,750 | 17 | 62 |
| IV | 800 | 2,250 | 5 | 53 |
| V | 400 | 2,750 | -10 | 45 |
| VI | 200 | 2,750 | 30 | 55 |

[FR Doc. 87-10377 Filed 5-11-87; 8:45 am]

BILLING CODE [illegible]

## Economic Regulatory Administration

[Docket No. ERA C&E-87-27; OFP Case No. 69031-9355-28, 21-24]

## Acceptance of Petition for Exemption and Availability of Certification by Gentex/TSG Joint Venture

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of acceptance.

**SUMMARY:** On January 29, 1987, Gentex/TSG Joint Venture (Gentex) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a combined cycle cogeneration facility, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). The facility will generate approximately 190 MW of electrical power.

Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503.

Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29208, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination of the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the "SUPPLEMENTARY INFORMATION" section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holiday.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

**DATES:** Written comments are due on or before June 26, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000

Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–6233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–6947.

**SUPPLEMENTARY INFORMATION:** Gentex proposes to construct a combined cycle cogeneration facility at Bayport, Harris County, Texas. This proposed cogeneration facility called the Bayport Congeneration Facility, will consist of two natural gas-fired General Electric Frame 6 turbines, two unfired heat recovery steam generators, two supplementary firing HRSC duct burners, and one automatic extraction, condensing steam turbine. All of the electricity produced by the facility will be sold to Texas Utilities Electric Company.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Gentex has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calaculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogeneration FUA permanent exemption is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Gentex has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by Gentex pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on Gentex's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that Gentex is entitled to the exemption requested. The determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 5, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–10805 Filed 5–11–87; 8:45 am]

BILLING CODE 6450–01–M

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**[Docket No. ERA C&E–87–45; OFP Case No. 64017–9385–20–24]**

## Acceptance of Petition for Exemption and Availability of Certification by L'Energia, Inc.

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of Acceptance.

**SUMMARY:** On March 20, 1987, L'Energia, Inc. (L'Energia or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for a combined-cycle, natural gas fired cogeneration plant to be located in Lowell, Massachusetts. Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any facility without the capability to use an alternate fuel as a primary energy sources. The exemption petition was based on cogeneration. Final rules containing the Criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **"SUPPLEMENTARY INFORMATION"** Section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 105.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

**DATES:** Written comments are due on or before June 26, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Program, Room GA–093, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585

Docket No. ERA C&E–87–45 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW. Room GA–093, Washington, DC 20585, Telephone (202) 586–6233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947

**SUPPLEMENTARY INFORMATION:** The congeneration equipment includes a gas turbine, a heat recovery boiler and a steam turbine. The unit will have a electrical generating capacity of 36.5 megawatts. Electricity will be sold to Boston Edison and steam will be used by the Prince Company in its manufacturing plant in Lowell, Massachusetts.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), the petitioner has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of cogeneration FUA permanent exemption, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioner has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Envoronment, in consultation with the Office of General Counsel, will review the completed envoronmental check-list submitted by the petitioner pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute the determination that the petitioner is entitled to the exemption requested. The determination will be based on the entire records of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 5, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-10804 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

## Final Consent Order With Pennzoil Company

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Final Action on Proposed Consent Order.

**SUMMARY:** The Administrator of the Economic Regulatory Administration ("ERA") has determined that a proposed consent order between the Department of Energy ("DOE") and Pennzoil Company ("Pennzoil") shall be made final as proposed. the Consent Order resolves matters relating to Pennzoil's compliance with the entitlements program of the federal price and allocation regulations regarding Pennzoil's transactions with small refiners during the period of July 1976 through December 1977. Pennzoil will pay to the DOE $1,335,000.00 plus interest from December 10, 1986, the date of execution of the proposed consent order. Any person claiming to have been harmed by Pennzoil's alleged violation will be afforded an opportunity to present a claim for a refund in an administrative claims proceeding before the Office of Hearings and Appeals ("OHA") of DOE. The decision to make the Pennzoil Consent Order final was made after a full review of the written comments submitted by the public.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Gibson, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8321.

**SUPPLEMENTARY INFORMATION:**

I. Introduction
II. Comments Received
III. Analysis of Comments
IV. Decision

### Introduction

On January 26, 1987, the ERA, by a notice published in the **Federal Register** at 52 FR 2756, announced a proposed consent order between DOE and Pennzoil, which would resolve matters relating to Pennzoil's compliance with the entitlements program of the federal petroleum price and allocation regulations regarding Pennzoil's transactions with small refiners during the period of July 1976 through December 1977. The proposed consent order, which requires Pennzoil to pay $1,335,000.00, resolves only the second exception to the January 16, 1981 consent order between DOE and Pennzoil in case number PPNA0001 and also settles the Proposed Remedial Order issued on July 29, 1986, in case number NPNG00301. In that enforcement action, the ERA alleged that Pennzoil failed to pay the entitlements obligations on certain crude oil that Pennzoil processed for J&W Refining, Inc. and P&O Falco during the period of September 1976 through May 1977 and ERA sought restitution of approximately $9 million plus approximately $15.6 million of interest that could be assessed on the violation amount, or a total of approximately $24.6 million. The January 26 notice provided the basis for ERA's preliminary determination that the proposed settlement served the public interest and solicited written comments from the public regarding whether the settlement should be made final as proposed, modified, or rejected.

### II. Comments Received

ERA received one written comment which was submitted jointly by the Attorneys General of the Commonwealth of Pennsylvania and the State of Texas. ERA considered this written comment in making the decision as to whether to make the proposed consent order final.

The written comment pertained to two subject areas: The first area is the comment that the January 26 notice did not contain sufficient details, particularly the ERA's assessment of the various issues involved in the single related enforcement action, to permit the commenting parties to assess the adequacy of the settlement amount. The second area is the comment that the proposed consent order does not acknowledge that the funds to be paid by Pennzoil are subject to the terms of DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Cases, 51 FR 27899 (August 4, 1986) promulgated pursuant to the settlement agreement in the *Department of Energy Stripper Well Exception Litigation*, MDL-378 (D. Kan.); also the commenting parties urged that ERA make a distribution of these funds directly and immediately to the States, rather than refer the distribution to OHA.

### III. Analysis of Comments

The January 28 notice solicited written comments, in order that the public provide to the ERA information relevant to the decision of whether the proposed consent order should be made final as proposed, modified, or rejected. To ensure public understanding of the proposed settlement and generate probative comments, the notice explicitly disclosed the narrow scope of the proposed settlement and included the text of the proposed consent order. Further, the notice supplemented the information that has been and presently is available in the public record of the related enforcement action and the Proposed Remedial Order therein, by summarizing the enforcement action against Pennzoil and the other factors that the ERA considered in preliminarily accepting the proposed settlement terms. The Proposed Remedial Order set forth clearly and in detail the legal and factual issues raised by the allegations, that two other firms primarily profited from the alleged violations, that Pennzoil's profit was marginal, and other unique facts and circumstances which provided Pennzoil with potential defenses. The proposed settlement required Pennzoil to pay restitution of the entire amount of its marginal profit from the transactions in question.

Despite the amount of information in the January 28 notice and the public record, the commenting parties urged that without disclosure of the ERA's detailed assessment of the likely adjudication of the issues in the related enforcement action, the commenting parties lacked sufficient information to make their own judgment regarding the litigation and also the adequacy of the amount of the proposed settlement. The comment however, did not provide any specific or additional information regarding the proposed settlement or the related enforcement action or advance any legal, policy, or other reason for modifying or rejecting the proposed consent order.

In the January 28 notice, the ERA disclosed the maximum information consistent with the public interest and statutory constraints. Further disclosure of the ERA's detailed assessment of the issues in litigation would hinder the agency's prosecution of other actions which also involve entitlements program issues and also impair the agency's ability to negotiate reasonable settlements in other cases. As well, statutory limits on the agency's release of proprietary data place constraints on the disclosure of such information obtained from the firm in the course of the ERA audit and negotiations.

After further review of the information disclosed in the January 28 notice, the ERA has concluded that the information in the notice, together with the information in the public record of the related enforcement action, were sufficient to enable the public to comment on the proposed settlement and, further, that the notice is consistent with the public interest.

Regarding the distribution of funds, the two States commenting jointly on the proposed consent order urged that this proposed settlement is subject to DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil cases, thereby assuring that these States will receive a portion of the funds paid by Pennzoil in settlement. The two commenting States, however, seek to avoid the procedures established by the Modified Policy for making such distribution, particularly ERA's referral of the distribution to OHA. Arguing that this procedure is slow and that to date the States have not received any distribution from other enforcement actions or settlements, the two States urged that ERA make a direct and immediate distribution of a portion of these funds to the States, rather than refer the distribution of these funds to OHA. This comment does not pertain to the basis or adequacy of the proposed settlement, but rather only to any distribution of the funds received in settlement.

Concurring in part with the comment, the ERA affirms that this proposed settlement and the funds are subject to the Modified Policy: This proposed settlement resolves an alleged violation of the entitlements program, which was implemented to equalize the price of crude oil.

This policy was modified to be consistent with the settlement agreement approved by the court in *In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan.) and particularly with Section IV.B.4 of that settlement agreement. In accordance with both the agency's Modified Policy and the Section IV.B.4 of the Stripper Well settlement, the ERA lacks authority to make a direct distribution of funds to the States or any other party, but rather, the ERA is required to petition OHA to implement refund procedures for all funds that come under the ERA's control. Further, both the Modified Policy and Section IV.B.6 of the Stripper Well settlement require that OHA reserve 20% of these funds for potential distribution to those parties who prove that the firm's conduct injured them and that OHA distribute the balance of the funds, 80%, on the basis of one-half to the States and one-half to the Federal Government.

Having confirmed that the proposed Pennzoil settlement is subject to the Modified Policy, assuring that a portion of the funds will be distributed to the States, the ERA is not free to disregard the procedures established by the Modified Policy for such distribution.

Also, the two commenting States are parties to the Stripper Well litigation; they are signatories to and bound by the settlement. They are aware of the distribution procedures, DOE's actions to implement the distribution procedures, and OHA's recent clarifications which are designed to accelerate the distribution of funds to the States, thereby addressing the concerns of the commenting parties.

After further review of the proposed settlement and the written comment, the ERA has concluded that the proposed consent order serves the public interest.

### IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the Consent Order between Pennzoil and DOE executed on December 19, 1986, is made a final order of the Department of Energy, effective the date of publication of this notice in the Federal Register.

Issued in Washington, DC, on April 15, 1987.

Marshall A. Staunton,

*Administrator, Economic Regulatory Administration.*

[FR Doc. 87-10668 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

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## Energy Information Administration

### Agency Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for clearance to the Office of Management and Budget.

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**SUMMARY:** The Department of Energy (DOE) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement

assistance requirements collected by DOE.

Each entry contains the following information: (1) The sponsor of the collection (DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) a brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed by June 11, 1987. Last notice issued Tuesday, April 21, 1987.

**ADDRESS:** Copies of the materials submitted to OMB may be obtained from Mr. Gross at the address below. Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. For comments relating to FERC data collections, send comments to the attention of Mr. Rick Otis. Comments on all other DOE data collections should be sent to the attention of Mr. Vartkes Broussalian. (Copies of your comments also should be addressed to Mr. Gross at the address below.)

**FOR FURTHER INFORMATION CONTACT:** John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2308.

**SUPPLEMENTARY INFORMATION:** If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB DOE desk officer of your intent as early as possible.

The energy information collection submitted to OMB for review was:

1. Economic Regulatory Administration,
2. ERA–424D,
3. 1903–0069,
4. Tertiary Incentive Annual Report of Prepaid Expenses,
5. Extension,
6. Annually,
7. Mandatory,
8. Businesses or other for profit,
9. 25 respondents,
10. 110 responses,
11. 330 hours,
12. ERA–424D collects data necessary for the Economic Regulatory Administration to review the use of prepaid goods or services previously reported as prepaid expenses. Data are used to monitor program participants. Respondents are operators of enhanced oil recovery projects.

**Statutory Authority:** Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC, May 6, 1987.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 87–10807 Filed 5–11–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket No. CI87–489–000]

## Citation Oil and Gas Corp.; Application for Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

May 6, 1987.

Take notice that on April 13, 1987, as supplemented April 23 and 24, 1987, Citation Oil & Gas Corp. (Citation), 168000 Greenspoint Park Drive, South Atrium, Suite 300, Houston, Texas 77060–2304, filed an application under section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules. Citation requests that the Commission issue an order granting abandonment of its sales of certain gas to El Paso Natural Gas Company with pregranted abandonment for a limited term of three years for any future sales of such gas under its small producer certificate in Docket No. CS86–92–000. The gas is produced from the Eunice North and Custer Fields, Lea County, New Mexico.

Citation states in support of its application that it is subject to sporadic and substantially reduced takes without payment. The deliverability involved is approximately 2,228 Mcf/d and the gas is NGPA section 106(a) gas. Citation proposes to sell instead of either the interstate or the intrastate market.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–10769 Filed 5–11–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–832–003]

## Cities Service Oil and Gas Corporation and CanadianOxy Offshore Production Co. and Oxy Cities Service NGL Inc.; Application

May 6, 1987.

Take notice that on April 27, 1987, Cities Service Oil and Gas Corporation, *et al.* (Cities), pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) Regulations promulgated thereunder, and in accordance with § 2.77(b) promulgated by Order No. 436, in Docket No. RM85–1–000, filed an application requesting that in Docket No. CI85–832–002, the Commission amend its Order Permitting and Approving Limited-Term Abandonments and Granting Certificates issued October 29, 1985, as extended by Order issued March 31, 1987, by further expanding the abandonment and sales authority granted in that order to include gas qualifying as section 104, 106(a), and 109 of the NGPA, all as more fully described in the application which is on file with the Commission and open to public inspection.

Cities states that it is experiencing substantially reduced takes from several sources without payment, with much of the shut -in gas qualifying for NGPA

section 104, 106(a) and 109 and Cites, its existing pipeline purchasers, the customers to these pipeline purchasers and alternative purchasers will receive increased benefits from expanding authorization to include the gas qualifying under section 104, 106(a), and 109 of the NGPA.

Any person desiring to be heard or to make any protests with reference to said application should on or before May 19, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-10770 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CI87-535-000]

## Diamond Shamrock Exploration Co.; Application for Abandonment

May 6, 1987.

Take notice that on April 27, 1987, Diamond Shamrock Exploration Company (referred to as "Diamond Shamrock") filed an Application pursuant to section 7 of the Natural Gas Act. Diamond Shamrock requests authorization to abandon sales to Transwestern Pipeline Company from Higgins North Atoka Formation, Lipscomb County, Texas.

The circumstances presented in the application meet the criteria for consideration on an expedited basis pursuant to § 2.77 of the Commission's rules as promulgated by Order 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, as more fully described in the application which is on file with the Commission and open to public inspection.

Diamond Shamrock states that the one well covered by the application has current daily deliverability of approximately 150 Mcf. Diamond Shamrock states that the well is a section 106(a) well (Post-1974 gas). It is further stated that upon receipt of abandonment authorization, Diamond Shamrock intends to use the gas internally for fuel. Diamond Shamrock finally states that the existing gas contract has been terminated by the parties effective April 30, 1987, and that upon such termination Diamond Shamrock will be subject to substantially reduced takes without payment.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-10771 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP87-62-000]

## Pacific Gas Transmission Co.; Proposed Changes

May 6, 1987.

Take notice that Pacific Gas Transmission Company (PGT), on April 30, 1987, tendered for filing a change in rates (and certain tariff provisions) for natural gas service rendered to jurisdictional customers pursuant to rate Schedules PL-1, T-1, T-2 and IT-1 contained in its First Revised Volume No. 1 of its FERC Gas Tariff.

These changes in rates are being filed pursuant to section 4 of the Natural Gas Act and § 154.4 of the regulation issued thereunder.

PGT is proposing a change in its currently authorized return from 14.5% to 12.75% on equity. Based on PGT's current capital structure, this change results in an overall rate of return of 11.56%. PGT is also proposing to change its depreciation methodology for its facilities from volumetric to straight-line remaining life. PGT has incorporated the new federal statutory tax rate of 34% in its rates.

PGT also tendered for filing, in conjunction with its initial Order No. 436 filing at Docket No. CP87-159-000, dated January 13, 1987, certain revised tariff sheets to its Original Volume No. 1-A for Rate Schedules ITS-1 and FTS-1, which sheets contain rates for Order No. 436 open access transportation which comport with the requirements set forth in § 284.7(d)(1) and (2) of the Commission's Regulations.

This filing is designed to bring PGT's rates for open access transportation into compliance with § 284.7(d) of the Commission's Regulations establishing rate criterial for Order No. 436 transportation.

PGT has requested that waiver be granted to all applicable rules and regulations of the Commission as may be necessary to implement this Notice of Change effective July 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Regulations. All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-10764 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP87-65-000]

## Raton Gas Transmission Co.; Change in Rates

May 6, 1987.

Take notice that Raton Gas Transmission Company (Raton) on April 30, 1987, tendered for filing, proposed changes in its FERC Gas Tariff, Original Volume No. 1, consisting of Eighth Revised Sheet No. 4. The change in rate is for jurisdictional sales and service.

Raton states that the instant filing is a restatement of rates as required by 18 CFR 154.38 (d)(4)((vi)(a) of the Regulations and reallocates cost of service between Demand and Commodity. In addition it provides for adjusted rates from supplier filed in January 1987, and proposed and become effective July 14, 1987. Minor reduction

in demand quantities are included therein.

Copies of Raton's filing are on file with the Commission and are available for public inspection. In addition, copies have been served on Raton's Jurisdictional Customer and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-10776 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CI87-435-000]

## D. Lyman Stubblefield; Application for Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

May 5, 1987.

Take notice that on April 7, as amended April 23, 1987, D. Lyman Stubblefield (Stubblefield) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules for abandonment of his sale of gas to El Paso Natural Gas Company from the Cheatwood #1 Well, Section 23, Block 13, H&GN RY Co. Survey, Panhandle East Field, Wheeler County, Texas, with pregranted abandonment for a limited-term of three years for sales of such gas under his small producer certificate in Docket No. CS72-233.

In support of his application Stubblefield states that no sales have been made for over two years and there is no prospect of any sales unless the gas is sold in the spot market. Stubblefield is subject to substantially reduced takes without payment. The estimated deliverability is 30 Mcf/d and the well produces NGPA section 108 gas.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to Section 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-10772 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA87-2-58-000, 001]

## Texas Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

May 6, 1987.

Take notice that on April 30, 1987, Texas Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective June 1, 1987:

Third Substitute Seventeenth Revised Sheet No. 4a
Third Revised Sheet No. 21

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Third Substitute Seventeenth Revised Sheet No. 4a reflects a net decrease in the Rate After Current Adjustment to 142.96¢ per Mcf and a change in the rate Surcharge Adjustment to 5.44¢/Mcf yielding a proposed Current Effective Rate of 163.30¢/Mcf (at 14.65 psia) to be effective June 1, 1987.

In addition, TGPL has submitted Third Revised Sheet No. 21 which reflects a revision of section 12.8 of the General Terms and Conditions of its Tariff pursuant to suggestions made by the Commission's staff at informal discussions during TGPL's last PGA cycle. Copies of the filing were served upon TGPL's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-10765 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP87-15-009]

## Trunkline Gas Co.; Proposed Change in FERC Gas Tariff

May 6, 1987.

Take notice that on May 1, 1987, Trunkline Gas Company (Trunkline) tendered for filing, pursuant to the Commission's order of November 28, 1986, substitute tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2. The effective date for these sheets is May 1, 1987.

Trunkline states that the substitute tariff sheets give effect to all compliance requirements of the Commission's November 28, 1986 order, and in addition, adjust all of Trunkline's rates for the effect of the Commission's action authorizing MRT to abandon its purchases from Trunkline. Such action was taken at the Commission's regular meeting on April 29, 1987.

Trunkline requests the granting of waiver of any provisions or regulations, in order that this revision can be implemented as soon as possible. Copies of this filing were mailed to Trunkline's customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington,

DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-1076 Filed 5-11-87; 8:45 am]
BILLING CODE 6717-01-M

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[Docket No. RP87-58-000]

## Truckline Gas Co.; Proposed Change

May 6, 1987.

Take notice that Trunkline Gas Company (Trunkline) on April 30, 1987, tendered for filing the revised tariff sheets listed below, which reflect a revision in the Availability provision of Trunkline's SG-1 and SG-2 Rate Schedules. Trunkline requests an effective date of June 1, 1987 for the traiff sheets.

*Original Volume No. 1*
Fifteenth Revised Sheet No. 7
Twelfth Revised Sheet No. 9-P

Trunkline states that the accompanying Statement of Nature, Reason and Basis for the Proposed Change explains the problem which has given rise to the proposed revision in the Availability provision of the Small General Service rate schedules. No change is proposed in rates or charges, nor in Trunkline's anticipated revenues or costs.

The purpose of the revision is to enable end users which are customers of Trunkline's SG-1 and SG-2 Buyers to have their gas transported by Trunkline under section 7(c) of the Natural Gas Act or section 311 of the Natural Gas Policy Act for delivery to such SG-1 and SG-2 Buyers without causing such Trunkline Buyers to shift to another rate schedule. This is accomplished by adding the words "or transported for customers of Buyer" to the definition of Availability in Rate Schedules SG-1 and SG-2.

Trunkline also states that it has agreed with Allied Corporation, an end user of natural gas that purchases from an SG-1 Buyer of Trunkline, that it will make the revision in order to facilitate availability of transportation to end users connected to Trunkline's SG Buyers.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-10766 Filed 5-11-87; 8:45 am]
BILLING CODE 6717-01-M

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## Union Texas Petroleum Corp., Application

May 6, 1987.

Take notice that on April 17, 1987, Union Texas Petroleum Corporation (Union Texas) of P.O. Box 2120, Houston, Texas 77052-2120, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), 15 U.S.C. 717c, 717f, and the provisions of 18 CFR 2.77 and Parts 154 and 157, for an order (1) issuing a blanket limited-term certificate of public convenience and necessity to Union Texas authorizing the sale for resale of natural gas from High Island Block 154 Field, Offshore Texas, in interstate commerce for three years or otherwise consistent with abandonment granted in Docket No. CI77-337-000; and (2) authorizing blanket pregranted abandonment of any sales of resale of natural gas made under the requested certificte. Unon Texas also requests a waiver of certain Commission regulations, including those in Parts 154 and 271 of the Commission's regulations, including those in Parts 154 and 271 of the Commission's regulation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-10773 Filed 5-11-87 8:45 am]
BILLING CODE 6717-01-M

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[Docket No. TA87-3-56-000, 001]

## Valero Interstate Transmission Co; Change in Rates Pursuant to Purchased Gas Cost Adjustment Provisions

May 6, 1987.

Take notice that on April 30, 1987, Valero Insterstate Transmission Company ("Vitco") tendered the following tariff sheets for filing containing changes in rates pursuant to purchased gas cost adjustment provisions:

9th Revised Sheet No. 6
Superseding 8th Revised Sheet No. 6
To FERC Gas Tariff,
Original Volume No. 2

4th Revised Sheet No. 14.2
Superseding 3rd Revised Sheet No. 14.2
To FERC Gas Tariff,
Original Volume No. 1

Vitco states that the rates stated on 9th Revised Sheet No. 6 and 4th Revised Sheet No. 14.2 reflect the change in purchased gas costs based on the six month ended February 28, 1987.

The change in rate of Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 2 includes an increase in purchased gas cost of 1.91¢ per MMBtu and a surcharge of 39.58¢ per MMBtu. The rate

for Rate Schedule S–2 includes an increase in purchased gas cost of 4.84¢ per MMBtu and no surcharge. The rate for Rate Schedule S–3 includes an increase in purchased gas cost of 11.77¢ per MMBtu and a negative surcharge of 59.05¢ per MMBtu. The surcharge in each Rate Schedule is designed to eliminate the balance in the deferred purchased gas cost account.

The proposed effective date for the above filings is June 1, 1987. Vitco requests a waiver of any Commission regulations or orders which would prohibit implementation by June 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–10777 Filed 5–11–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP87–63–000]

## Western Gas Interstate Co.; Restatement of Rates

May 6, 1987.

Take notice that on April 30, 1987, Western Gas Interstate Company ("Western"), whose mailing address is 9390 Research Blvd., Kaleido I, Suite 220, Austin, Texas 78759, tendered for filing, as part of its FERC Gas Tariff the following tariff sheet constituting a restatement of its sale for resale rates:

*First Revised Volume No. 1*
Seventh Revised Sheet No. 10

The proposed effective date for the tariff sheet is May 31, 1987.

Western states that its filing restates its sale for resale rates under its Rate Schedules G–N, G–R, and G–S pursuant to section 4 of the Natural Gas Act and § 154.38(d)(4)(vi)(a) of the Commission's Regulations.

Western further states that the restated rates are below-cost rates, thus constituting a continuation of the novel rate experiment adopted in Western's previous rate case in Docket No. RP84–77–000. The same economic and market factors which led to Western's acceptance of below cost rates in that case continue to exist. Western states that in order for it to remain competitive in its market area, it must continue to utilize the same methodology in setting its rates as was accepted by the Commission in Docket No. RP84–77–000.

Copies of the filing were served on Western's jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission , 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–10775 Filed 5–11–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TA87–2–57–001]

## Western Transmission Corp.; Proposed Changes

May 6, 1987.

Take notice that Western Transmission Corporation (Western), on April 30, 1987, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheet:

Twenty Ninth Revised Sheet No. 3–A, superseding Twenty Eighth Revised Sheet No. 3–A.

The proposed changes would reduce the monthly charges for purchased gas to Colorado Interstate Gas Company, Western's sole jurisdictional customer, pursuant to the provisions of Section 18 of Western's FPC Gas Tariff, Original Volume No. 1.

The proposed effective date of the above tariff sheet is June 1, 1987.

Copies of the filing have been served upon Colorado Interstate Gas Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–10768 Filed 5–11–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP87–61–000]

## Eastern Shore Natural Gas Co.; Tariff Filing

May 6, 1987.

Take notice that on April 23, 1987, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing the following revised tariff sheets for inclusion in its FERC Gas Tariff, Original Volume No. 1:

Thirty-Fourth Revised Sheet No. 5
Thirty-Fourth Revised Sheet No. 6
Thirty-Fourth Revised Sheet No. 10
Thirty-Fourth Revised Sheet No. 11
Thirty-Fourth Revised Sheet No. 12
Eleventh Revised Sheet No. 13
Fifth Revised Sheet No. 14

According § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until April 27, 1987.

Eastern Shore states that this filing reflects an increase in its rates to its jurisdictional customers. The increased rates are required to permit Eastern Shore to recoup its increased costs in operating and maintaining its pipeline system and to provide for an overall rate of return of 14.91 pervent and a return on equity of 15.00 percent.

The proposed effective date for the above-referenced tariff sheets is May 23, 1987. Copies of this filing have been mailed to each of Eastern Shore's jurisdictional customs and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of

Practice and Procedure. All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10780 Filed 5-11-87 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. GP87-37-000]**

## Phillips Petroleum Co. v. Natural Gas Pipeline Co. of America; Filing of Complaint

May 6, 1987.

On March 9, 1987, as completed on March 11, 1987, Phillips Petroleum Company (Phillips) filed a complaint with the Federal Energy Regulatory Commission (Commission) against Natural Gas Pipeline Company of America (Natural) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. Phillips alleges that Natural has not complied with § 271.1104 of the Commission's regulations and consequently has underpaid Phillips for production-related costs incurred by Phillips between July 1980 through the present. Phillips' complaint covers ten separate contracts with Natural.

Phillips states that all of the gas covered by its complaint is NGPA section 102(d) gas or is otherwise subject to the jurisdiction of the Commission under the Natural Ga. Act, and that the gas is sold and delivered to Natural on offshore platforms. Most of the gas is gas-well gas and to the extent that delivery allowances are sought as to casinghead or oil-well gas, the gas is commingled with other gas prior to the point of sale.

Phillips further states that it is seeking collection of delivery allowances applicable to delivery systems constructed prior to November 9, 1978, at the generic rate of five cents per MMBtu, through delivery systems constructed after November 9, 1978, at the generic rate of seven cents per MMBtu for the first mile or fraction thereof, and at twelve cents per MMBtu for the delivery through combined pre- and post-NGPA delivery systems of one mile or less.

According to Phillips, it has repeatedly billed Natural and requested payment at these rates, but Natural has paid Phillips only the five cent delivery rate for sales subject to this complaint. Phillips believes that Natural is refusing to pay any offshore platform delivery allowance in excess of five cents per MMBtu for post-NGPA wells on pre-NGPA platforms on the theory that the platform construction date controls in all cases.

Phillips seeks an order requiring Natural to pay the underpaid principal amount, which was $4,945,264.55 through December 31, 1986, plus applicable interest.

It is noted that the complaint requests that this matter not be referred to the Production-Related Costs Board (Board). The Board was established by the Commission under § 271.1105 to resolve disputes involving non-compliance with § 271.1104. Section 271.1105(d)(3) states "The Board will consider any complaint, filed by any party or person in accordance with § 385.206 of this chapter, * * *." This complaint was filed pursuant to § 385.206 alleging non-compliance with § 271.1104. Therefore, pursuant to the procedures established by the Commission, this complaint will be reviewed by the Board.

Under the Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Natural must file an answer to Phillips' complaint with the Commision unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Natural shall file its answer with the Commission not later than 15 days after publication of this notice in the **Federal Register**.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed not later than 15 days after publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Phillips' complaint are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10779 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-3-38-000, 001]**

## Ringwood Gathering Co.; Filing of Revised Tariff Sheets

May 6, 1987.

Take notice that on April 30, 1987, Ringwood Gathering Company (Ringwood) tendered for filing Fortieth Revised Sheet PGA-1 to its FERC Gas Tariff, Original Volume. Ringwood states that Fortieth Revised Sheet PGA-1 will become effective on June 1, 1987 and revise its Base Tariff Rate to reflect the decrease in the system cost of purchased gas and recover the balance accumulated in its unrecovered purchased gas cost account.

Ringwood further states that the projected cost of purchased gas, as computed in this filing, is based on the applicable NGPA rates that will be paid during the effective period of this PGA. In certain instances, Ringwood has renegotiated the price to be paid for certain gas at costs below the maximum lawful NGPA rates. In these cases the renegotiated prices have been used.

Ringwood states that copies of this filing were served upon Williams Natural Gas Company, Oklahoma Natural Gas Company and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10778 Filed 5-11-87; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Hearings and Appeals

## Issuance of Proposed Decisions and Orders; Week of March 9, Through March 13, 1987

During the week of March 9 through March 13, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy

with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

May 5, 1987.

*B&R Oil Company, Inc., South Bend, IN; KEE-0108, Reporting Requirements*

B&R Oil Company, Inc. filed for relief from the requirement to submit Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." B&R sought relief because it allegedly is understaffed and cannot obtain necessary data from its accounting firm in time to prepare the Form. The OHA found that the small size of B&R's staff is an insufficient basis for exception relief. In addition, the OHA found that B&R could eliminate the difficulties in obtaining its data by devising a careful method of estimating the necessary figures. Consequently, on March 13, 1987 the OHA issued a Proposed Decision and Order tentatively denying B&R's request for exception relief.

*State of Hawaii, Honolulu, Hawaii; KEE-0102 Reporting Requirements*

The State of Hawaii filed an Application for Exception from the requirements of 10 CFR Parts 450 and 455. In the Application, Hawaii requested that the State be excepted from the regulatory requirement that buildings eligible for grants under the DOE's Institutional Conservation Program (ICP) be heated or cooled by mechanical means. On March 12, 1987, the DOE issued a Proposed Decision and Order which tentatively determined that Hawaii's Application for Exception be granted.

[FR Doc. 87-10797 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders, Week of March 16 through March 20, 1987

During the week of March 16 through March 20, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeal**

*Fulbright & Jaworski, 3/1/87; KFA-0080*

Fulbright & Jawaorski filed an Appeal from a partial denial by the DOE Deputy Assistant Secretry for Petroleum Reserves of a Request for Information which the firm had submitted under the Freedom of Information Act. The Deputy had denied access to two documents which were generated in connection with the Secretary of Energy's May 22, 1986 decision to reduce the crude production rates at he Naval Petroleum Reserves Numbered 1. In considering the Appeal, the DOE determined that both documents were properly withheld pursuant to 5 U.S.C. 552(b)(5) because they were predecisional, deliberative documents. Accordingly, the Appeal was denied.

**Request for Modification and/or Rescission**

*Keystone Fuel Oil Co., 3/20/87; KER-0009*

This Decision and Order concerns a Motion for Reconsideration that Keystone Fuel Oil Company filed on April 1, 1986. In that Motion, Keystone requested reconsideration of a DOE determination issued on March 26, 1986, denying an exception request that Keystone previously filed. The exception request, if granted would have retroactively relieved Keystone of the obligation to refund overcharges that the firm obtained in its sales of covered petroleum products. Keystone, however, did not provide new information or arguments to demonstrate that it satisfied the retroactive exception relief standards. The firm's Motion for Reconsideration was therefore denied.

**Refund Applications**

*Aminoil U.S.A., Inc./Behm Family Corp., 3/19/87; RF139-67*

The DOE issued a Decision and Order concerning an Application for Refund filed by the Behm Family Corporation for a portion of the fund obtained by the DOE through a consent order entered into with Aminoil U.S.A. Inc. The DOE reviwed the firm's submissions and, where appropriate, revised both its "approximated" banks of unrecouped increased product costs and the prices used in determining the firms's competitive disadvantage. Using the approximated banks as a ceiling for the appropriate refund amount, the DOE used the competitive disadvantage methodology to determine the Behm refund. The refund granted totaled $571,469, representing $340,142 in principal and $231,327 in accrued interest.

*AMVOY American Voyager Travel and VIP Coaches, Ace Travels, 3/16/87; RF270-1131, RF270-1138*

The Department of Energy (DOE) issued a Decision and Order analyzing Applications for Surface Transporter Refunds filed by two travel agencies. Each company based its claim on the operation of chartered tour buses during the Settlement Period. One of the companies also based its claim on operation of a charter airplane. The DOE approved both companies for refunds based on the buses and disapproved the airplane portion of the one company's claim. The DOE determined that airplanes are not eligible Surface Transportation vehicles.

*Beacon Oil Co./Buford Oil Co. et al., 3/18/87; RF238-4 et al.*

The DOE issued a Decision and Order concerning 10 Applications for Refund filed by purcahsers of Beacon Oil Company petroleum products. Each firm applied for a refund based on the procedures outlined in *Beacon Oil Company*, 14 DOE ¶ 85,011 (1986), as modified by *Beacon Oil Company*, 14 DOE ¶ 85,509 (1986), governing the disbursement of settlement funds received from Beacon pursant to a December 17, 1979 Consent Order. Since all of the applicants were resellers who claimed refunds of $5,000 or less, they were presumed to have been injured by Beacon's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $43,649, representing $22,727 in principal and $20,922 in accrued interest.

*City Service Cab, Inc., RF 270-591; Mobile Cab & Baggage Co., Inc., RF270-607; City Economy Cab, Inc., 3/19/87; RF270-712*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by three taxicab companies and will use those gallonages as a basis for the refund that will ultimately be issued to the three firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the three firms' refunds will be determined at a later date.

*Dahlonega Equipment & Supply, Inc., 3/18/87; RF270-1083*

The Department of Energy (DOE) issued a Decision and Order approving a refund from the Surface Transporters Escrow for a company that sells and distributes egg cartons. The company's claim was based on

its fleet of trucks and company sales cars. The OHA concluded that company cars used for sales purposes qualify as private fleets within the meaning of the Surface Transporter Escrow.

*Farm Service Cooperative, 3/20/87; RF270–1060*

The Department of Energy (DOE) issued a Decision and Order analyzing an Application for Surface Transporter Refunds filed by an agricultural cooperative. The cooperative based its claim on purchases of propane which it resold to its members for home heating purposes. The DOE denied the cooperative's claim because Surface Transporters are eligible to receive refunds based only on petroleum products purchased for vehicle use.

*Getty Oil Co./Al's Auto Service Station, Inc. et al., 3/18/87; RF265–119 et al.*

The DOE issued a Decision and Order granting 56 Applications for Refund from the Getty Oil Company deposit escrow fund filed by 41 reseller-retailers of Getty refined petroleum products. Thirty refund applicants documented purchases of Getty products for the period August 19, 1973 through December 31, 1978, and were eligible for 100 percent of their volumetric share based upon the small claims presumption of injury. The 11 remaining applicants documented purchases which qualified them for refunds above the $5,000 threshold, but chose to limit their claims to either $5,000 or a percentage of their volumetrically-allocated share, whichever produced the higher refund amount. The total amount of refunds granted is $336,286, representing $173,253 in principal and $163,033 in accrued interest.

*Gulf Oil Corp./Laurens Glass et al., 3/17/87; RF3559 et al.*

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. All of the applicants were end-users of petroleum products purchased directly from Gulf. In its Decision, the DOE granted the seven applications under the standards specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted total $47,152, representing $38,324 in principal and $8,828 in interest.

*Gulf Oil Corp. Layton Oil & Fuel Oil, Ronald H. Royer, 3/20/87; RF40–2757, RF40–3618*

The DOE issued a Decision and Order concerning the Applications for Refund filed on behalf of Layton Oil & Fuel Oil and Ronald H. Royer in the Gulf Oil Corporation refund proceeding. Each firm was a reseller of Gulf refined petroleum products during the Gulf consent order period. Following the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), each applicant demonstrated that it purchased a certain volume of Gulf product and that it would not have been required to reduce its selling prices to pass through the amount of the refund claimed. Accordingly, refunds totaling $4,021 in principal and $772 in interest were approved for the two claimants.

*King and King Enterprises, Inc./Highway Oil, Inc., 3/19/87; RF256–3*

The DOE issued a Decision and Order concerning an Application for Refund filed by Highway Oil, Inc. (Highway), a purchaser of motor gasoline from King and King Enterprises, Inc. (K&K). Highway applied for a refund based on the procedures outlined in *King and King Enterprises, Inc.*, 14 DOE ¶ 85,305 (1986), governing the disbursement of settlement funds received from K&K pursuant to an August 31, 1981 Consent Order. Since Highway is a reseller and did not claim a refund greater than $5,000, it was presumed to have been injured by K&K's alleged overcharges. After examining the application and supporting documentation submitted by Highway, the DOE concluded that it should be granted a refund of $7,328, representing $5,000 in principal and $2,238 in accrued interest. However, since Highway is currently a respondent in a DOE enforcement proceeding (Highway Oil, Inc., Case No. HRO–0123), the DOE decided that the firm's refund should be transferred to a separate, interest-bearing escrow account. When the enforcement proceeding is resolved, the DOE will issue a Supplemental Order governing the disbursement of the escrowed funds.

*Little America Refining Company/Ed's Sinclair Service, 3/19/87; RF112–202*

The DOE issued a Decision and Order granting a refund from the Little America Refining Company (Larco) deposit escrow account to Ed's Sinclair Service, a retailer of Larco gasoline. Since the applicant is a reseller who sought a refund below the $5,000 small claims threshold, the DOE did not require a detailed injury showing. The applicant was granted a refund of $137, representing $89 in principal and $48 in interest from the Larco deposit escrow account.

*Lowe Oil Company/G.E. Stockton, Inc., 3/17/87; RF206–3*

The DOE issued a Decision and Order concerning an Application for Refund filed by G.E. Stockton, Inc. (Stockton), a retailer. The applicant had purchased refined petroleum products from Lowe Oil Company, and sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Lowe. The applicant, who was identified in the DOE audit files as having been overcharged, was eligible to apply for a refund of $18,721. However, the applicant did not make the showing of injury required for reseller or retailer claims in excess of $5,000. Therefore, its claim was limited to the $5,000 threshold, plus accrued interest. After examining the application submitted by the firm, the DOE granted the applicant a refund of $8,250, representing $5,000 in principal, and $3,250 in accrued interest.

*Marathon Petroluem Company/ Duke's Marathon, 3/16/87; RF250–2718*

The DOE issued a Supplemental Decision and Order concerning a refund granted to Duke's Marathon in a Decision and Order, *Marathon Petroleum Co./CSC Oil Co.*, 15 DOE ¶ 85,373 (1987), issued on March 4, 1987. An arithmetic error in the March 4 Decision and Order understated the total refund due to Duke's Marathon by $100. The March 4 Decision and Order was amended to correct the error.

*Mobile Oil Corporation/Alfred Community Enterprises et al., 3/20/87; RF255–8027, et al.*

The DOE issued a Decision granting 56 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $16,856 ($13,857 principal plus $2,999 interest).

*Mobil Oil Corporation/Alumax Extrusions et al., 3/17/87; RF225–1704 et al.*

The DOE granted 28 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $8,166, representing $6,727 in principal plus $1,439 in interest.

*Mobil Oil Corporation/Ames & Pickens Service Station, 3/17/87; RF225–9170 et al.*

The DOE issued a Decision and Order granting 33 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount granted was $18,086.

*Mobil Oil Corporation, Buford M. Musser et al., 3/18/87; RF225–10029 et al.*

The DOE issued a Decision granting 34 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $88,403 ($72,828 in principal plus $15,575 in interest).

*Panhandle Eastern Pipeline Co./Western Petroleum Company, 3/20/87; RR15–1*

The DOE issued a Decision concerning a Motion for Modification filed by Western Petroleum Co. (Western) in the Panhandle Eastern Pipeline [Panhandle] refund proceeding. In 1983 Western received a refund of $32,970 from Panhandle pursuant to the procedure set forth in *Office of Enforcement*, 9 DOE ¶ 82,569 (1982) (*Panhandle*). In its current submission, Western requests a supplemental refund. Although the DOE determined that Western did not meet the strict criteria for granting a Motion for Modification set forth in 10 CFR 205.135(b)(2), the DOE decided to exercise its discretion to consider the merits of the Motion.

The DOE determined that Western had failed to demonstrate injury greater than the volumetric amount set forth in *Panhandle*. In making that determination, the DOE also

rejected Western's arguments that Panhandle's prices to Western should be compared with the low prices rather than the average prices in *Platt's Oil Price Handbook and Oilmanac* or the average prices of its other suppliers. However, the DOE determined that Western's Motion should be granted in part so that the firm will receive an additional refund for June and July of 1974 when Panhandle's prices were greater than market average and Western maintained positive banks. Western had previously been denied a refund for those two months because its banks declined during that period. The total additional refund approved for Western was $12,661 ($8,832 in principal and $5,829 in interest).

*Plateau, Inc./Kar Kwik, Inc., Stimson's, Inc., 3/20/87; RF204–9, FR204–10*

The DOE issued a Decision and Order concerning Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Plateau, Inc. The two applicants in this case were resellers who were related by common ownership and operated from the same location. The applicants requested a combined refund of $10,000 in principal, on the basis of the purchases of each firm considered under the small claims presumption of injury. The DOE determined that the two claims should be considered together for the purposes of analysis, and therefore granted the two firms a combined refund of $5,000 in principal, plus $3,178 in interest.

*Union Texas Petroleum Corp./Midwestern Butane Gas Co., Johnston's LP Gas, Home Gas Inc., 3/19/87; RF140–51, RF140–52, and RF140–53*

The DOE issued a Decision and Order concerning Applications for Refund filed by three resellers of propane purchased from Union Texas Petroleum Corporation (UTP). In considering the applications, the DOE applied the volumetric and small-claims presumptions applicable to resellers of UTP products. Under those presumptions, the DOE determined that each of the applicants was entitled to receive a refund below the threshold amount of $5,000, plus a proportionate share of the interest accrue on the UTP consent order funds. The refunds approved in the Decision totalled $8,378.

**Dismissals**

The following submissions were dismissed:

*Name and Case No.*

Anderson Amoco Service; RF40–3645
Appling County Board of Education; RF40–1938
Archer's Bros. Garage; RF40–3665
Arnold Barfield Dist. Co.; RF40–3666
Bennett's Gulf; RF40–3664
Blue Flame Gas Co, Inc.; RF40–3661
Bob and Tom's Conoco; RF220–485
Bob Davis Gulf; RF40–3686
Butter Krust Bakery Division of Beatrice Foods; RF40–252
Cashion Gulf Service; RF40–3663
Eddie's Gulf; RF40–3227
Grosse Pte. Yacht Club; RF40–1278
Gulf Service Station; RF40–3667
Keltner Enterprises; RF206–2
Mellon Enterprises, Inc.; RF40–3251
Pride Oil Company; RF7–135
R & P Olson, Inc.; RF225–16564
Scott Fuel, Inc.; RF40–3660
Valamont Gulf Service; RF40–3662
Western Petroleum, Inc.; RF220–486

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
*Director, Office of Hearings and Appeals.*
May 5, 1987.

[FR Doc. 87–10796 Filed 5–11–87; 8:45 am]
BILLING CODE 6450–01–M

## Issuance of Decisions and Orders, Week of March 23 Through March 27, 1987

During the week of March 23 through March 27, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

*General Electric Calma Co., 3/27/87; KFA–0062*

General Electric Calma Company (Calma) filed an Appeal from a partial denial by the Director of the Classification and Technical Information Division of the DOE's Albuquerque Operations Office (Authorizing Official), of a Request for Information which Calma had submitted under the Freedom of Information Act (the FOIA). Calma's request sought materials relating to a Request for Quotation for the purchase of computer equipment. In considering the Appeal, the DOE found that the Authorizing Official had properly withheld pursuant to Exemption 4 of the FOIA, certain pricing information contained in the responsive documents. The DOE determined that release of this material could result in substantial competitive harm to the company that had submitted this information to the DOE. Accordingly, the Appeal was denied.

*Pierson, Ball & Dowd, 3/27/87; KFA–0061*

Pierson, Ball & Dowd filed an Appeal from denial by the Authorizing Offical of the DOE Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the Authorizing Official had properly withheld the documents under Exemption 5 of the FOIA. The DOE further found, however, that blank copies of certain forms that were withheld should be released to the public. Important issues that were considered in the Decision and Order were (i) the segregability of non-deliberative material in the withheld documents, and (ii) whether the withheld material should be released in the public interest.

**Remedial Orders**

*Pel-Star Energy, Inc., 3/27/87; HRO–0175*

Pel-Star Energy, Inc. (Pel-Star) objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on July 6, 1983. In the Proposed Remedial Order, the ERA found that from June 1978 through December 1980, Pel-Star charged prices in its crude oil sales in excess of those permitted by § 212.186 of the DOE Mandatory Petroleum Price Regulations (the layering regulations). The DOE concluded that the allegations of layering should be upheld and the Proposed Remedial Order was therefore issued as a final Order. The important issues discussed in the Decision and Order include: (i) The procedural and subtantive validity of § 212.186, (ii) whether Pel-Star performed traditional and historical services and functions in its crude oil sales, and (iii) whether Pel-Star's officers should be held jointly and severally liable for the firm's violations.

*Texaco Inc., 3/25/87; HRO–0275*

Texaco Inc. objected to a Proposed Remedial Order which was issued to the firm on July 22, 1985. In the Proposed Remedial Order the ERA found that Texaco, a refiner, had used excessive May 15, 1973 prices in computing its maximum allowable prices (MAPs) for sales of propane for certain customers who had purchased propane in May 1973 pursuant to written variable-priced contracts. ERA also found that Texaco impermissibly charged certain propane customers prices that consisted of the MAP that Texaco had computed plus its current delivery costs. Consistent with the analysis used in *Texaco Inc.*, 14 DOE ¶ 83,034 (1986), and *Texaco Inc.*, 14 DOE ¶ 83,047 (1986), the DOE found that Texaco's use of excessive May 15, 1973 prices was a violation of the regulations for which refunds equal to the difference between the correct and incorrect May 15, 1973 selling prices could be ordered. Accordingly, Texaco was ordered to remit $1.1 million on overcharges. With regard to Texaco's recovery of tis current delivery costs, the DOE found that Texaco's contracts with the customers in question required delivery, and therefore, that Texaco had impermissibly failed to report its recovery of delivery costs. The DOE then considered ERA's subtraction of May 15, 1973 delivery costs from current costs in order to determine the unreported costs. The DOE accepted ERA's rationale that, because Texaco had erroneously used an undelivered, rather than a delivered, May 15, 1973 price in computing its MAP, Texaco had not recovered its May 15, 1973 delivery costs through its MAP, although it was entitled to do so. The DOE found, however, that this rationale did not

apply to the four customers for which ERA had imputed a May 15 delivered price of $.085 pursuant to 10 CFR 212.164(a). Based on the foregoing, the DOE required that Texaco recompute its cost recoveries based on DOE's amended calculation of the unreported recoveries. Finally, consistent with the two Remedial Orders cited above, the DOE modified the PRO to exclude the requirements that Texaco: (i) perform a self-audit with respect to customers not identified in the PRO, (ii) provide data and calculations for those customers and, (iii) upon ERA's approval, make refunds to those customers.

**Request for Exception**

*Webb Oil Company, 3/27/87; KEE-0085*

Webb Oil Company filed an Application for Exception on November 6, 1986. The firm sought relief from the reporting requirements of Form EIA-782B pursuant to 10 CFR 205.55(b)(2). In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the reporting requirements that would warrant approval of exception relief. Accordingly, exception relief was denied.

**Refund Applications**

*Fairfield Transport, Inc., et al., 3/25/87; RF270-818 et al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by five trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the five firms. The DOE stated that because the size of a surfact transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the five firms' refunds will be determined at a later date.

*Gary Energy Corporation/Vangas, Inc., 3/23/87; RF47-16*

Vangas, Inc., a reseller of propane, filed an Application for Refund in connection with the Gary Energy Corporation refund proceeding. Vangas demonstrated the volume of its propane purchases from Gary, and submitted evidence of cost banks which substantially exceeded its refund claim. From price information submitted by the applicant, the DOE applied the three step competitive disadvantage methodology, and determined that Vangas should receive 100 percent of its allocable share for its purchases from Gary. Accordingly, Vangas was granted a refund of $23,306, representing $18,534 in principal and $4,772 in interest.

*La Gloria Oil & Gas Co./Thomas P. Reidy, Inc., Inland Energy, Inc., 3/26/87; RF263-25, RF263-34*

The DOE issued a Decision and Order concerning Applications for Refund filed by Thomas P. Reidy, Inc. and Inland Energy, Inc., resellers of La Gloria Oil & Gas Co. refined petroleum products. Both applicants purchased petroleum products only on a sporadic basis from La Gloria, and were therefore considered spot purchasers. In *La Gloria Oil & Gas Co.*, 14 DOE ¶ 85,501 (1986), the DOE established the rebutted presumption that spot purchasers were generally not injured by the alleged La Gloria overcharges. Since neither of the applicants rebuttle this presumption, their Applications for Refund were denied.

*La Gloria Oil & Gas Co./Value Oil Company, Mid-South Sales, Inc., 3/25/87; RF263-31, RF263-32*

The DOE issued a Decision and Order granting Applications for Refund filed by two resellers of refined petroleum production products covered by a consent order which the agency entered into with La Gloria Oil & Gas Co. Both of the applicants presented evidence that they purchased refined petroleum products from La Gloria during the consent order period, and claimed refunds below the $5,000 small claims threshold for resellers. According to the methodology set forth in *La Gloria Oil & Gas Co.*, 14 DOE ¶ 85,501 (1986), each applicant was found eligible for a refund from the La Gloria consent order fund based on the volume of its purchases times the volumetric refund amount. The refunds approved in this Decision totaled $10, 876.

*Marathon Petroleum Company/Frank Sales & Service, 3/23/87; RF250-111, RF250-112*

The DOE issued a Decision and Order granting an Application for Refund filed by Frank Sales & Service (Frank), an indirect purchaser of product covered by a consent order that the agency entered into with Marathon Petroleum Company. Frank provided evidence to demonstrate that the product for which it claimed a refund originated with Marathon. Since Frank did not request a refund greater than the $5,000 small claims refund amount, the DOE did not require a detailed demonstration of injury. Accordingly, the Applicant was granted a refund of $569 in principal and $48 in interest.

*Marathon Petroleum Company/H.C. Lewis Oil Co., 3/24/87; RF250-2714, RF 250-2715*

H.C. Lewis Oil Co. (Lewis), a reseller of petroleum products, filed two Applications for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). Lewis demonstrated that it purchased 5,659,109 gallons of refined petroleum covered products from Marathon during the consent order period. Using a volumetric methodology, the DOE determined that Lewis' claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Lewis a refund of $2,376.83 in principal and $162.16 in accrued interest for a total refund of $2,538.99.

*Marathon Petroleum Company/Hicks Oil and Hicksgas, Inc., 3/23/87; RF250-1238*

The DOE issued a Decision and Order concerning an Application for Refund filed by Hicks Oils and Hicksgas, Inc. (Hicks), a reseller of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Hicks established the volume of its Marathon purchases, and requested a refund of $5,000 in principal under the small claims presumption of injury. A subsidiary of Hicks had received a separate refund in the Marathon proceeding under the small claims presumption of injury. The DOE determined that Hicks and its subsidiary should be considered together in this proceeding, and therefore in calculating the amount of the refund to which Hicks was entitled, the DOE took into consideration the amount Hicks had already received on the basis of the purchases of its subsidiary. Although the applicant had failed to disclose that it had filed a refund claim on behalf of its subsidiary and that it was previously involved in an enforcement proceeding, the DOE determined that the applications had not been filed in bad faith. Hicks was granted a refund of $2,930, representing $2,705 in principal and $225 in interest.

*Marathon Petroleum Company/Hodges Development Corp. et al., 3/27/87; RF250-425 et al.*

The DOE issued a Decision and Order concerning 23 Applications for Refund filed by 13 resellers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant established the volume of its Marathon purchases, and each requested a refund of 35 percent of its allocable share under the medium range presumption of injury. The sum of the refunds approved in this Decision is $142,757 in principal and $12,239 in interest.

*Mobil Oil Corporation/Brentwood Union Free School et al., 3/27/87; RF225-9911 et al.*

The DOE granted 24 Applications for Refund from a fund obtained through a Consent Order that it entered into with Mobil Oil Corporation. All of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable shares based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The total amount of the refunds granted was $25,138, representing $20,710 in principal plus $4,428 in interest.

*Mobil Oil Corporation/Bethlehem Steel Corp. et al., 3/25/87; RF225-7511 et al.*

The DOE granted 28 Applications for Refund from a fund obtained through a Consent Order that the DOE entered into with Mobil Oil Corporation. Twenty-seven of the applicants were end-users who purchased directly from Mobil and therefore were eligible for refunds equivalent to their full allocable share based on the volumetric methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985) (*Mobil*). One applicant was a retailer who purchased directly from Mobil and therefore was eligible for a refund based on 30% of the volumetric refund amount. *See Mobil.* The total amount of the refunds granted was $35,683, representing $29,395 in principal plus $6,288 in interest.

*Vangas, Inc./Blu-Gas Service, Inc., 3/24/87; RF88-23*

The DOE issued a Decision and Order concerning an Application for Refund filed by

a reseller of Vangas propane who rented propane storage tanks from Vangas. The firm applied for a refund based on the procedures outlined in *Vangas, Inc.*, 12 DOE ¶ 85,125 (1984). Blu-Gas filed its Application more than a year after the established filing deadline for receipt of refund applications. Moreover, after all timely claims were processed, the funds remaining in the Vangas consent order escrow account were used to satisfy the requirements of the Further Continuing Appropriations Act of 1983 (Warner Amendment). Consequently, at the time Blu-Gas filed its application, all Vangas consent order funds had been transferred from the account, and no money was available for distribution to claimants in this proceeding. Accordingly, the Application for Refund was denied.

*Ridgefield Park Transport Co. Inc. et al. 3/26/87; RF270–282 et al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by six trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the six firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the six firms' refunds will be determined at a later date.

*Staten Island Bus Co. Inc., RF270–741; Lakes Region Transit Co., Inc., RF270–750; Villani Bus Company., RF270–760; School Bus Services, Inc., 3/25/87; RF270–852*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refind petroleum products claimed by four private bus companies and will use those gallonages as a basis for the refund that will ultimately be issued to the four firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be determined at a later date. The DOE also determined that anti-freeze was not a product upon which an applicant could base a Surface Transporter claim but trransmission fluid could be the basis for a claim.

*Tenneco Oil Company/Blu-Gas Service, Inc., 3/26/87; RF7–138*

The Department of Energy issued a Decision and Order granting a refund to Blu-Gas Service, Inc. from the Tenneco Oil Company deposit fund escrow account. Because the volume schedule submitted by Blu-Gas showed purchases that were above threshold level for small claims by resellers, the OHA requested that Blu-Gas submit additional documentation concerning its purchase volumes and make a showing of injury. Blu-Gas was unable to submit that type of information. Therefore, it was granted a refund based on the threshold volume. The refund granted to Blu-Gas totaled $1,965 including interest.

**Dismissals**

The following submissions were dismissed:

*Name and Case No.*

Chevron U.S.A. Inc.—RF157–2
E.H. Pechan & Associates, Inc.—RF225–838
Endicott Oil Service—RF40–3678
Mid-State Oil, Inc.—RF225–9229
Mobil Oil Corp.—RF257–1
Mojave Petroleum Co., Inc.—KEE–0131
United Oil Marketers—RF7–168

Copies of the full text of these decisions and others are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

May 5, 1987.

[FR Doc. 87–10790 Filed 5–11–87 8:45 am]

BILLING CODE 6450–01–M

## Issuance of Proposed Decisions and Orders, Week of April 20 Through April 24, 1987

During the week of April 20 through April 24, 1987, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

May 5, 1987.

*Fleming Bros. Oil Co., South Haven, MI; KEE–0130; Keneco, Littlestown, PA; KEE–0129*

Fleming Bros. Oil Co. & Keneco filed Applications for Exception with the Office of Hearings and Appeals of the Department of Energy. The exception requests, if granted, would remove the applicants from the list of firms that are required to file form EIA–782B. On April 20, 1987, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception requests be denied.

*Hy-Test Co., Inc., Johnston, RI; KEE–0114, Reporting Reqmts*

Hy-Test Co., Inc. filed for relief from the requirement to submit Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." Hy-Test argued that the monthly reporting requirement is burdensome because of the firm's personnel shortage. In evaluating the firm's request, the Department of Energy found that the cost to Hy-Test of filing the Form is no greater than the cost to other reporting firms. Consequently, on April 23, 1987, the DOE issued a Proposed Decision and Order which tentatively denied Hy-Test's request for exception relief.

*Keneco, Littlestown, PA; KEE–0001 Reporting Reqmts*

The DOE issued a Proposed Decision and Order concerning an Application for Exception filed by Keneco. Keneco requested relief from the requirement to submit Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering Keneco's request, the DOE found that the firm failed to demonstrate that it was affected in a particularly adverse manner by the filing requirement. Accordingly, on April 23, 1987 the DOE tentatively determined to deny the Application for Exception.

*Patton Oil Co., Ansted, WV KEE–0121 Reporting Reqmts*

Patton Oil Co. filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that

the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file the Form. On April 20, 1987, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

*Tex-Oil, Inc., Salem, IN; KEE-0115*

Tex-Oil, Inc. filed an Application for Exception in which the firm sought relief from its obligation to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering Sweley's request, the DOE found that the firm failed to demonstrate that it was particularly adversely affected by the requirement that it file the Form. On April 21, 1987, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request be denied.

[FR Doc. 87-10800 Filed 5-11-87; 8:45 am]

BILLING CODE 6450-01-M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $10,916,587.92 plus accrued interest, in alleged crude oil overcharge funds obtained from nine firms. The OHA has determined that the funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986).

**DATE AND ADDRESS:** Applications for refund must be filed by December 31, 1987, and should be addressed to: Subpart V Crude Oil Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the final procedures that the DOE has formulated to distribute crude oil overcharge funds obtained from nine firms, listed in the Appendix to the Decision, from judicial and administrative proceedings involving alleged crude oil violations. The funds are being held in an interest-bearing escrow account pending distribution by the DOE.

The OHA has decided to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986). Under the Modified Policy, crude oil overcharge monies are divided among the states, the federal government, and injured purchasers of refined products. Refunds to the states will be distributed in proportion to each state's consumption of petroleum products during the period of price controls. Refunds to eligible purchasers will be based on the number of gallons of petroleum products which they purchased and the extent to which they can demonstrate injury.

Applications for refund must be filed by December 31, 1987 and should be sent to the address set forth at the beginning of this notice. The information which claimants should include in their applications is explained in the Decision, which immediately follows.

Dated: May 4, 1987.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

## Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

May 4, 1987.

*Names of Firms:* O.B. Mobley, Jr. *et al.*
*Dates of Filing:* April 5, 1984 *et al.*
*Case Numbers:* HEF-0499 *et al.*

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. These procedures are used to refund monies to those injured by alleged violations of the DOE pricing regulations.

The ERA has filed nine Petitions for the Implementation of Special Refund Procedures with respect to funds obtained from the firms listed in the Appendix to this Decision and Order. To date, these firms have remitted to the DOE a total of $10,916,587.92 pursuant to DOE consent orders and, in the case of Marion Corporation (Case No. KEF-0030), pursuant to a Compromise Agreement approved by the United States Bankruptcy Court.[1] As of April 27, 1987, $1,287,296.09 in interest has accrued. This Decision and Order establishes final procedures by which the OHA will distribute those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or cannot ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, DOE ¶ 82,597 (1981).

We have considered the ERA's requests to implement Subpart V procedures with respect to the monies received from the nine firms and have determined that such procedures are appropriate.

In three separate Proposed Decisions and Orders (PDOs) issued on November 4, 1986, December 1, 1986, and December 17, 1986, respectively, the OHA established tentative procedures to distribute the funds involved in these nine cases.[2] Because the procedures proposed and the issues raised in each case are identical, we are combining all nine cases into the present final Decision and Order.

The OHA tentatively concluded in these proceedings that because the funds that the firms remitted to the DOE settle alleged crude oil overcharges, the funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, issued on July 28, 1986. 51 FR 27899 (August 4, 1986) (hereinafter referred to as the "MSRP"). The MSRP was issued in conjunction with the approval by the United States District Court for the District of Kansas of a settlement agreement in *In Re: The DOE Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. July 7, 1986).[3] On August 8, 1986, the OHA announced its intention to follow the MSRP. 51 FR 29686 (August 20, 1986).

The MSRP provides that the DOE will employ a refund process for restitution of alleged crude oil violation amounts

[1] One of the firms, Kalama Chemical, Inc., is making quarterly payments to the DOE with a final payment due on October 1, 1988. As noted in the Appendix, Kalama has an outstanding liability of $179,632.93 plus interest. These funds, when remitted to the DOE, will be disbursed pursuant to the procedures in this Decision. The DOE will give notice when such additional funds are received.

[2] The three PDOs were published in the Federal Register on November 12, 1986 (51 FR 41001), December 19, 1986 (51 FR 45537), and December 24, 1986 (51 FR 46709), respectively.

[3] For a detailed discussion of the events in the Stripper Well Litigation which brought about the MSRP, see *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,381 (1986).

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held in escrow by the DOE or received in the future, using the special refund procedures codified at 10 CFR Part 205, Subpart V. Under that process, the OHA will accept and process refund applications from persons who claim they were injured by alleged crude oil violations. Up to 20 percent of the alleged crude oil violation amounts may be reserved initially to satisfy claims from injured parties. The MSRP calls for the remaining 80 percent of the funds to be disbursed to the state and federal governments for indirect restitution. After all valid claims are paid, any remaining funds from the reserve will also be divided between the state and federal governments. The federal government's share of the funds will ultimately be deposited into the general fund of the Treasury of the United States.

In the PDOs, the OHA proposed to reserve initially the full 20 percent of the alleged crude oil violation amounts for direct restitution to claimants. We also proposed to require applicants for refund to document their purchase volumes of petroleum products during the period of price controls and to prove that they were injured by the alleged overcharges. The PDOs stated that end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges, and need only submit documentation of their purchase volumes of refined petroleum products during the control period in order to be eligible for a refund. Finally, we proposed to calculate refunds on the basis of a per gallon refund amount derived by dividing the total amount of crude oil overcharge funds received from the nine firms by the total consumption of petroleum products in the United States during the period of price controls. Comments were solicited regarding the tentative distribution process set forth in the three PDOs.

*Discussion of Comments Received*

In response to the PDOs, we received comments from the following: a group of States of the United States, a group of nine ocean carriers which sail under foreign flags, a group of 32 foreign flag air carriers, and Philip Kalodner, counsel for potential claimants. However, rather than raising issues specific to the nine cases in the instant proceeding, the commenters adopted by reference the comments that they had already filed in A. Tarricone, Inc., Case No. KEF-0049. Because these comments were discussed at length in a Decision and Order recently issued in *A. Tarricone, Inc.*, 15 DOE ¶ ———, No. KEF-0049 (April 15, 1987) (*Tarricone*), we need not address them in detail here.[4]

In *Tarricone*, we noted that the comments addressed issues in four general areas: (i) Whether 20 percent of the Subpart V crude oil funds was necessary to satisfy crude oil refund claims; (ii) the timing of refund payments; (iii) the calculation of refund amounts in crude oil proceedings; and (iv) standards for showing injury.

As an initial matter, we determined that we would not adjust downward the 20 percent reserve at this early stage.[5] We also stated that, in the face of our lack of experience in the crude oil refund area under the MSRP, it was inappropriate at this early stage to make determinations regarding the logistics of the actual payment of refund claims when approved. We therefore stated that we were unable to accept the suggestion that a claimant's single application, if approved, should be deemed a continuing claim against all funds involving alleged crude oil violations, without the submission of additional information. We stated that we would notify claimants whose volumes are approved of any additional information needed in order to be considered for future refunds.

With regard to the calculation of refund amounts and the standards of injury, we decided that, in general, it was appropriate to apply precedents from Subpart V proceedings involving refined products. Most notably, we determined that because the alleged crude oil violations were presumed to have been spread equally, the volumetric approach is the most equitable and efficient method of apportioning crude oil overcharge funds. *Tarricone, slip. op.* at 11.

In regard to injury standards, we adopted the presumption that end-users of petroleum products whose businesses were unrelated to the petroleum industry absorbed the crude oil overcharges and would only be required to establish the volume of petroleum products they purchased during the controls period in order to be eligible for a refund. *Id.* at 7. However, because *all* resellers and retailers, regardless of their suppliers, were affected by crude oil overcharges through the operation of the crude oil allocation program, we determined that no presumptions of injury would be available to individual reseller or retailer claimants. Accordingly, a reseller or retailer claimant must submit evidence to show the extent to which it absorbed crude oil overcharges.

*Crude Oil Refund Procedures*

We have concluded that the $10,916,587.92 received in these nine proceedings shall be distributed in accordance with the procedures discussed in the PDOs and in *Tarricone*. We will reserve initially the full 20 percent—$2,183,317.58—of the alleged crude oil violation amounts for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured persons.

The remaining 80 percent of the funds—$8,733,270.34—will be disbursed to the state and federal governments for indirect restitution. We will direct the DOE's Office of the Controller to segregate this amount and distribute $6,549,952.76 plus appropriate interest immediately to the federal government. The sum of $2,183,317.58 plus appropriate interest will be placed in an interest-bearing escrow account and will be distributed to the states pursuant to a future directive by the OHA.[6] Thus, including interest accrued as of April 27, 1987, the total refund to the federal government is $7,322,331.64 and the total amount to be placed in escrow for the states is $2,440,777.20. The share or ratio of the funds in the state account which each state will receive is based on each state's consumption of petroleum products during the period of petroleum price controls. These funds are subject to the same limitations and reporting requirements as all other crude oil moneys received by the states under the settlement.

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[4] These and other comments were also considered in a Notice recently published in the Federal Register. 52 FR 11737 (April 10, 1987)

[5] We also pointed out that the Settlement Agreement does not permit more than 20 percent to be set aside for individual claims.

[6] This distribution reflects a ratio of 25 percent to the state governments and 75 percent to the federal government. Under the terms of the Stripper Well Settlement Agreement, the states received an advance of $200 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for this advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. This arrangement shall continue until the OHA has distributed the next $400 million under the 75/25 arrangement. Settlement Agreement, Paragraph II.B.3.c.ii. The first transfer of funds to the states by the OHA occurred on August 7, 1986, when the OHA transferred $104,061,950.61 to the state and federal governments. *Stripper Well Exemption Litigation*, 14 DOE ¶ 85,382 (1986). The $4 million in excess of $100 million was disbursed 75 percent to the federal government and 25 percent to the states. Under the Agreement, the next $300 million, including the $316 million disbursed to the states and federal government in *Tarricone* and the $9,763,106.84 allocated in this Decision and Order, will be disbursed using the 75/25 percent formula.

Refunds will be calculated on the basis of a per gallon refund amount derived by dividing the crude oil overcharge monies received to date in these nine cases by the total U.S. consumption of petroleum products during the period of federal petroleum price controls.[7] *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 at 88,867–68 (1986) (*Mountain Fuel*). The total principal volumetric refund amount for these proceedings is $0.00000540. Interest accrued on the funds through March 31, 1987 increases this amount to $0.00000804. The OHA will evaluate claims to refunds based upon alleged crude oil violations using methods similar to those which the OHA has used to evaluate claims based on refined product overcharges pursuant to 10 CFR Part 205, Subpart V. *Mountain Fuel*, at 88,869. As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged overcharges (i.e., that they did not pass the overcharges on to their own customers). *Id.* However, end-users of petroleum products whose businesses are unrelated to the petroleum industry will be presumed to have absorbed the crude oil overcharges and need only document their refined petroleum product purchases to prove they were injured. *Greater Richmond Transit Company*, 15 DOE ¶ 85,028 (1986).[8] It is not necessary for applicants to identify their suppliers of petroleum products in order to receive a refund. *Id.*

Reseller and retailer claimants of petroleum products must submit detailed evidence of injury, and may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type used in the OHA Report, *In Re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507. Furthermore, as noted in *Tarricone*, spot purchasers will not be subject to the presumption of non-injury applicable in refined product refund cases. Finally, as we stated in *Tarricone*, parties to M.D.L. 378 who claim refunds from one of the escrows established in the settlement cannot receive refunds here because they have waived their rights to apply for Subpart V crude oil refunds.

*Applications for Refund*

In order to receive a refund from the crude oil funds involved in this Decision, a claimant will be required to file an application for refund. No application forms will be provided. Instead, applicants should submit the material outlined below in the form of a letter. The letter should be clearly labelled "Application for Crude Oil Refund" and should include the following information:

(1) Identifying information including: (a) The applicant's name, (b) the applicant's address, (c) the applicant's social security number or employer identification number, (d) an indication whether the applicant is a corporation, (e) the name and telephone number of a person to contact for additional information, and (f) the name and address of the person who should receive the refund check;

(2) A short description of the applicant's business and use of petroleum products. If the applicant did business under more than one name or a different name during the period of price controls, the applicant should list these names;

(3) A statement identifying the petroleum products which the applicant purchased during the period August 19, 1973 through January 27, 1981, the number of gallons of each product purchased, and the total number of gallons on which the applicant bases its claim;

(4) An explanation of how the applicant obtained the volume figures above, and an explanation of its method of estimation if the applicant used estimates to determine its purchase volumes;

(5) A statement that neither the applicant, its parents, subsidiaries, affiliates, successors nor assigns has waived any right it may have to receive a refund in these cases;

(6) If the applicant is not an end-user whose business is unrelated to the petroleum industry, a showing that the applicant was injured by the alleged overcharges (i.e., that the applicant did not pass the overcharges through to its own customers); and

(7) If the applicant is a regulated utility, a certification that it will notify the state utility commission of any refund received and that it will pass on the entirety of its refund to its customers.

The application should be typed or printed and mailed to the following address: Subpart V Crude Oil Overcharge Refunds, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Applicants may be required to submit additional information to document their refund claims. Any applicant that has already filed a refund application in crude oil refund proceedings need not file another application; that application will be deemed to be filed in these proceedings. The deadline for filing refund applications is December 31, 1987. Depending upon the type of refund applications received, we may establish a minimum refund amount for eligible claimants. *See Tarricone, slip op.* at 12.

It Is Therefore Ordered That:

(1) Applications for Refund from the crude oil overcharge funds remitted by the firms identified in the Appendix to this Decision and Order may now be filed.

(2) All applications submitted pursuant to Paragraph (1) above must be filed no later than December 31, 1987.

(3) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller, Department of Energy, shall take all steps necessary to transfer as provided in Paragraphs (4) and (6) below 80 percent of the total current net equity as of April 27, 1987, from each of the subaccounts (within the Deposit Fund Escrow Account maintained by the DOE at the Treasury of the United States) listed in the Appendix to this Decision and Order.

(4) The Director of Special Accounts and Payroll shall transfer $2,440,777.20 of the funds obtained pursuant to Paragraph (3) above into a subaccount denominated "Crude Tracking-States," Number 999DOE003W0. The Director of Special Accounts and Payroll shall disburse to each state, upon future directive by the OHA, its share of that amount, determined pursuant to the calculation of ratios for distribution to states and territories set forth in the Settlement Agreement, plus interest from April 27, 1987 to the date of disbursement. Those disbursements, when made, shall be accomplished pursuant to instructions previously received from each state in the Stripper Well Exemption Litigation refund proceeding.

(5) The funds distributed pursuant to Paragraph (4) above are subject to the same limitations and reporting requirements as are all other crude oil moneys received by the states under the Stripper Well Settlement Agreement.

(6) The Director of Special Accounts and Payroll shall transfer $7,322,331.64

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[7] It is estimated that 2,020,997,335,000 gallons of petroleum products were consumed in the United States during the period August 1973 through January 1981. *Mountain Fuel*, 14 DOE at 88,868 n.4. [illegible].

[8] A regulated utility applicant must submit documentation that it will notify the appropriate regulatory authority of any refund received, and must provide an explanation of how the refund, when received, will be passed on to its customers. *Tarricone slip op.* at 9.

of the funds obtained pursuant to Paragraph (3) above into a subaccount denominated "Crude Tracking-Federal," Number 999DOE002Wa.

(7) This is a final order of the Department of Energy.

Dated: May 4, 1987.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

APPENDIX

| OHA Cast No. | Name of firm | Consent order No. | Date of subpart V petition | Principal remitted |
|---|---|---|---|---|
| HEF-0499 | O.B. Mobley, Jr | 640C10000 | 4/5/84 | $1,085,882.15 |
| HEF-0507 | Kalama Chemical, Inc | NOOS90474 | 8/8/84 | 1 828,467.07 |
| HEF-0569 | Gulf Energy Development Corp | 610C00418 | 3/7/85 | 316,685.15 |
| HEF-0573 | Landsea Holding Company | 940X00220 | 3/18/85 | 55,000.00 |
| HEF-0585 | Amcole Energy Corp | 600C20060 | 5/31/85 | 244,874.29 |
| KEF-0030 | Marion Corp | NOOS98136 | 4/14/86 | 8,183,928.26 |
| KEF-0036 | Texas, Arkansas, Colorado & Oklahoma Purchasing Corp | 6A0X00250 | 5/6/86 | 40,000.00 |
| KEF-0046 | Petroleum Supply, Inc. and Donald L. Ragland | 640X00434 | 7/10/86 | 100,000.00 |
| KEF-0062 | Oil-Tex Petroleum Co., Inc./David E. Myres | 6A0X00312 | 11/19/86 | 60,000.00 |
| Total | | | | 10,916,587.92 |

1 Kalma's total consent order amount is $1,000,000.00. The amount still owed as of April 27, 1987 is $179,532.93 plus interest on the unpaid balances.

[FR Doc. 87-10908 Filed 5-11-87; 8:45 am]
BILLING CODE 6450-01-M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Notice of Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $135,000 (plus accrued interest) obtained from Thriftyman, Inc. The funds will be distributed in accordance with DOE's special refund procedures pursuant to 10 CFR Part 205, Subpart V.

**DATE AND ADDRESS:** Comments must be filed in duplicate within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to the applicable Case Number KEF-0018.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-2860.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. 10 CFR 205.282(b). The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies obtained from Thriftyman, Inc. The firm remitted monies to the DOE to settle possible allocation violations with respect to its sale of motor gasoline. The firm's payments are being held in an interest-bearing escrow account pending distribution by the DOE.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 5, 1987.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

## Proposed Decision and Order of the Department of Energy; Implementation of Special Refund Procedures

May 5, 1987.

*Name of Firm:* Thriftyman, Inc.

*Date of Filing:* March 23, 1986

*Case Number:* KEF-0018

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on March 25, 1986, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Thriftyman, Inc. (Thriftyman).

### I. Background

Thriftyman is a "wholesale purchaser-reseller" of motor gasoline as that term was defined in 10 CFR 211.51 and is located in Dallas, Texas. Under the authority of the Emergency Petroleum Allocation Act, as amended, 15 U.S.C. 751, *et seq.* (EPAA), the ERA conducted an audit of Thriftyman with respect to its compliance with the Mandatory Petroleum Allocation Regulations found in 10 CFR Part 211, Subparts A and F. As a result of that audit, the DOE alleged that during the period May through December 1979 (the audit period), Thriftyman violated the allocation regulations by failing to satisfy its motor gasoline supply obligations to its base period customers and by diverting motor

gasoline to non-base period purchasers on the spot market.[1]

On October 9, 1985, Thriftyman and the DOE entered into a consent order resolving all civil and administrative disputes concerning Thriftyman's compliance with the petroleum allocaton regulations. The consent order states that there was neither a formal finding by DOE nor an admission by Thriftyman that any violations of the regulations occurred. Under the terms of the consent order, Thriftyman was require to deposit $135,000 into an interest-bearing escrow account for ultimate distribution by the DOE.[2]

## II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged regulatory violations or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

This Decision and Order proposes procedures for considering claims from firms and individuals who may have been injured by Thriftyman's motor gasoline allocation practices during the consent order period May 1, 1979, through December 31, 1979.

### *A. Refunds to Indentifiable Purchasers*

From our analysis of the ERA audit material and information provided to us by Thriftyman, we have determined that the eligible claimants in this proceeding will be independently operated wholesale purchaser-resellers (e.g., retail sales outlets), and wholesale purchaser-consumers to which Thriftyman sold motor gasoline during the months of November and December 1977 and May–October 1978 (the base period months for May–December 1979). With the assistance of Thriftyman, we have identified some of those customers. They are listed in the Appendix to this Proposed Decision and Order.[3]

In order to assess claims in this proceeding, we propose to adopt certain presmuptions. The two presumptions we plan to adopt are used to enable OHA to consider refund applications in the most efficient and equitable way possible in view of the limited resources available. First, we plan to adopt a presumption that a claimant was not injured by the alleged allocation violations unless it took some contemporaneous action to mitigate its injury. In addition, we plan to adopt a presumption that an applicant was not injured it if purchase a quantity of motor gasoline equivalent to is base period allocation of that product during the consent order period.

The basis of the first presumption is that any firm that was injured by an alleged allocation violation would have been immediately aware of its injury. Therefore, we would expect that a party which was injured by a supply disruption of an allocated product would immediately seek redress by (1) filing a compliant or allocation request with or othrwise notifying the appropriate agency officials, *see* 10 CFR § 205.201(a)(d), or (2) filing a private lawsuit under Section 210 of the Economic Stablization Act, or (3) taking some other action to mitigate its injury. Thus, we have concluded that while imposing this limitation would tend to prevent spurious claims and promote speed and efficiency in processing applications for refund, it would present no impediment to parties who were actually injured by thriftyman's alleged allocation violations. Accordingly, we will presume that a party which had not taken some action to mitigate the effects of alleged allocation violations by Thriftyman does not have a meritorious claim. *See Tenneco*, 9 DOE at 85,202, and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,243 (1982) (*Pennzoil*).

Secondly, we propose to adopt a presumption that if, during the course of the entire consent order period, a claimant received aggregate volumes of motor gasoline at least equal to its adjusted base period allocation for that period, it was not injured by Thriftyman's alleged failure to supply correct volumes during certain months. We believe that this presumption is justified in order to limit eligibility for refunds to only those firms that were most adversely affected by Thriftyman's alleged allocation violation. *Aztex Energy Company*, 12 DOE ¶ 85,116 at 88,356 (1984).

Each applicant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. In assessing the extent of any such injury, we will consider a number of equitable factors such as, for example, whether the alleged violation had a significant deleterious impact on the claimant, and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action. *Tenneco*, 9 DOE at 85,207; *Pennzoil*, 9 DOE at 85,246. In accordance with our prior decisions, claimants who make a reasonable demonstration of an allocation violation may receive a refund based on the net profits lost as a result of the failure to receive the allocated products. *Aztex Energy Company*, 12 DOE at 88,356 (1984).

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies to the present situation.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

### *B. Applications for Refund*

Any purchaser claiming a portion of the consent order funds will be required to a file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include:

(1) A description of any contemporaneous actions taken during or immediately following the period May–December 1979 by which it attepted to mitigate the injury, resulting from Thriftyman's alleged allocation violations;

(2) Its adjusted base period allocation of motor gasoline from each of its suppliers for each month of the period May–December 1979 (its purchases during the months November and

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[1] According to a Proposed Remedial Order issued to Thriftyman on July 8, 1985, approximately 98 percent of Thriftyman's base period customers were retail sales outlets owned and/or operated by Thriftyman itself. PRO at 15. The remainder of its base period customers were independent retail outlets and wholesale purchaser-consumers.

[2] On November 7, 1985, Thriftyman paid $135,000 into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Thriftyman account stood at $147,784.06, including accrued interest as of March 31, 1987.

[3] We solicit information regarding the current addresses of these purchasers. Claimants which were retail outlets operated by Thriftyman will be ineligible for refunds. Such affiliated claimants are barred by the equitable doctrine of unclean hands from seeking restitution in a refund proceeding. *See, Cosby Oil Company/Yucca Valley Liquor Store*, 13 DOE ¶ 85,002 (1986) (citing *Citronelle-Mobile Gathering, Inc. v. Edwards*, 669 F.2d 717, 723 (Temp. Emer. Ct. App. 1982)).

December 1977 and May through October 1978);

(3) Its actual purchases of motor gasoline from each supplier during each month of the period May–December 1979;

(4) A description of its efforts to locate alternative supplies of motor gasoline; and

(5) A computation of lost net profits sustained as a result of Thriftyman's alleged allocations violations.

A claimant must also state:

(6) Whether it has previously received a refund, from any source, with respect to the alleged allocation violations underlying these proceedings;

(7) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund; and

(8) Whether it is or has been involved as a party in any DOE enforcement or private section 210 actions. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

*C. Distribution of Remaining Consent Order Funds*

If any funds remain after all meritorious claims have been paid, they will be distributed to the state and federal governments in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99–509, Title III, *reprinted in* Fed. Energy Guidelines ¶ 11,703.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Thriftyman, Inc. pursuant to the consent order executed on October 9, 1985 will be distributed in accordacne with the foregoing decision.

Appendix

| | |
|---|---|
| THRIFTYMAN, INC | ABEL VENDING |
| ABC AUTO PARTS | ABC AUTO PARTS |
| GUY BAGWELL | CHIP–CHRIST #3 |
| CHIP–CHRIST #4 | CHIP–CHRIS #5 |
| BASS CHEVROLET | BEN FRANKLIN #4822 |
| BEN FRANKLIN #4863–GILME. | BERRY–BARRNETT |
| BOBBY'S DISCOUNT AUTO. | GEORGE BRABUM |
| FARMERS LP GAS | BREAD BOX |
| BREAD BOX #1 | BREAD BOX #3 |
| SUSAN BURTON | CAPE OIL |
| CAPE–TYLER #2 | CLIFFS #1 |
| COLUMBUS CLUB OF ET. | CROW–BURLINGAME |
| LARRY CUMMINGS | ECONOMY SUPPERETTE INC. |
| EAST COTTON AUTO PARTS. | BEN FRANKLIN |
| BEN FRANKLIN | GIANT PETROLEUM CO. |
| GIANT #8 | GIANT #9 |
| GIANT #10 | GIANT #12 |
| GIANT #13 | GIANT #18 |
| GIANT #22 | GIANT #23 |
| GIANT #25 | GIANT #27 |
| GIANT #28 | GIBSON'S DISCOUNT #186 |
| GIBSON'S DISCOUNT #83. | GIBSON'S DISCOUNT #535 |
| GIBSON'S DISCOUNT #221. | GIBSON'S DISCOUNT #367 |
| GIBSON'S DISCOUNT #668. | GIBSON'S DISCOUNT #273 |
| GIBSON'S DISCOUNT #693. | GIBSON'S DISCOUNT |
| GIBSON'S DISCOUNT #706. | GIBSON'S #199 |
| GIBSON PRODUCTS–BAY CITY. | GIBSON PRODUCTS–EL CAMPO |
| DANCELAND USA | GREGG LIQUOR #3–ACE |
| HUEY HANCOCK TAW WARE. | JERRY HARRIS |
| HERITAGE TOOL AND SUPPLY. | JACKSON SELF–SERVE |
| JIM'S MINI–MART #1. | JIM'S MINI MART |
| BOBBY JOHNSON | KWIK PHIL GASOLINE CO. |
| LARRY'S ABC AUTO PARTS. | LONE STAR PETERBILT INC. |
| LONGVIEW ROLLERCADES. | LOVE LADDY OIL CO. |
| M W OIL CO | MARTIN AND SONS, INC. |
| MARTIN SON TYLER. | MARTIN AND SON #1 |
| MARTIN AND SON #2. | LOUIS MORGAN #2 |
| J C PENNEY CO INC | PINE TREE |
| PINE TREE HIGH SCHOOL. | R & R VENDING |
| ELAINE RAINEY | RELIABLE SALES CO. |
| ROADRUNNERS | JOAN ROUSE |
| RED RUSHING | RUSH–IN FOOD MART |
| SAM'S CANDY CO | LARRY SANDERS |
| SERVICE CENTER | SECURITY ALARM SYSTEM |
| SHOP AND SAVE | SAV–KO BULK PLANT |
| SHAMROCK–BAY CITY. | SHAMROCK–EL CAMPO |
| SHAMROCK–PALACIOS. | SHAMROCK–WEST COLUMBIA |
| TEI PANTRY NO. 6 | TEI STATION NO. 7 |
| TEI STATION NO. 8 | TEI STATION NO. 9 |
| TEI PANTRY NO. 10 | TEI STATION NO. 11 |
| TEI STATION NO. 12. | TEI STATION NO. 13 |
| TEI STATION NO. 14. | TEI STATION NO. 15 |
| TEI STATION NO. 16. | TEI STATION NO. 17 |
| TEI STATION NO. 18. | TEI STATION NO. 19 |
| TEI STATION NO. 21. | TEI STATION NO. 22 |
| TEI STATION NO. 23. | TEI STATION NO. 24 |
| TEI STATION NO. 25. | TEI STATION NO. 26 |
| TEI STATION NO. 27. | TEI STATION NO. 28 |
| TEI STATION NO. 29. | TEI STATION NO. 30 |
| TEI PANTRY NO. 32 | TEI STATION NO. 33 |
| TEI STATION NO. 34. | TEI PANTRY NO. 35 |
| TEI STATION #36 | TEI STATION NO. 37 |
| TEI STATION NO. 38. | TEI STATION NO. 39 |
| TEI STATION NO. 40. | SPEEDY PACK #3 |
| TEI STATION NO. 42. | TEI STATION NO. 43 |
| TEI STATION NO. 44. | TEI STATION NO. 45 |
| TEI STATION NO. 46. | TEI STATION NO. 47 |
| TEI STATION #64 | TEI PANTRY NO. 65 |
| TEI STATION NO. 66. | TEI STATION NO. 67 |
| TEI STATION NO. 68. | TEI STATION NO. 70 |
| TEI PANTRY NO. 72 | TEI PANTRY NO. 73 |
| TEI STATION #77 | TEI STATION NO. 86 |
| TEI STATION NO. 87. | TEI STATION NO. 88 |
| TEI STATION NO. 89. | TOLEDO AUTOMOTIVE SUPPLY |
| TOLEDO AUTOMOTIVE. | TRIANGLE T. CORPORATION |
| WALLS VENDING SERVICE. | WAL–MART STORES |
| WAL–MART STORE #146. | WAL–MART |
| WAL–MART | WILEY COLLEGE |
| ALICE WILLIAMS | YOUNGBLOOD AND ASSOCIATE |
| A/N WHOLESALE | ALEXANDER'S GROCERY |
| BAILEY SALMONS EXXON. | WEST LOOP QUICK STOP |
| B J'S 2–MIZE | B J'S #1 |
| B J'S #3 | B J'S #4 |
| BILL'S SELF SERVICE. | BEARCAT SELF–SERVICE |
| BECKVILLE MARKET. | BOB'S PANTRY |
| BREAD BOX #1 | BLUE TOP FOOD STORE |
| JO BOYD'S STATION. | BROADWAY GULF |
| BULLY OF THE WOODS. | BURN'S SELF–SERVE |

| | |
|---|---|
| CARTHAGE SKATE PALACE. | CLIFF'S FOOD MARKET #1 |
| COLLEGE LANES | COPELAND'S SELF-SERVICE |
| COUNTRY CACHE | DON'S 7-11 |
| DOUG'S AUTOMOTIVE. | GARY DOW VENDING |
| DOWNING TEXACO | DUGGER GROCERY |
| DUKE'S GULF | EAST ERWIN SELF-SERVICE |
| EDMOND'S VENDING CO. | EL PATIO RESTAURANT |
| RICK'S W MAIN MINI-MART. | THE FARM CLUB |
| HICKORY HUT | FIGLEY'S AUTO SERVICE |
| GREGG LIQUOR #3 | J-1 |
| HAL'S GROCERY | HALEY'S CUT RATE LIQUOR |
| HARLEY'S #5 | HARLEY'S LIQUORS |
| H L #2 | HARLEY'S #2 |
| BILL HARPHER'S GULF. | HARTLEY'S OIL |
| HOLIDAY GULF | HUGHES GROCERY AND GAS |
| HUTTO-ROBERTS STATION. | I-20 LIQUOR STORE |
| JERRY'S GROCERY | JIM'S AUTO PARTS |
| JIM'S CITGO | JIM'S LIQUOR |
| JIM'S MINI-MART #1. | JIM'S MINI MART |
| JERRY JONES | KWIK STOP |
| KIRBY OIL | AMES AUTOMOTICE SERVICE |
| LARRY'S COUNTRY BOY GRO. | LENARD'S SELF SERVICE |
| LEE GULF | LONDON'S SELF SERVICE |
| LONGVIEW CHRISTIAN ACAD. | LOUIS MORGAN #1 |
| LOUIS MORGAN #3. | LOVE'S PICK-N-PAY |
| JOE MALONEY | MARANTHA VENDING CO. |
| JERRY MARTIN EXXON. | MCKEA'S TEXACO |
| LEE MELTON | MIKE'S GROCERY #2 |
| MIKE'S QUIK STOP | RONALD MOORE'S SERVICE ST |
| MORGAS-CASH ONLY. | NADAR CANDY COMPANY |
| NATIONAL TRUCK STOP. | NIPPER'S GROCERY |
| KATHY NORRIS | N MAIN 66 |
| GRADY NUTT GULF SERVICE. | DOOM'S GROCERY |
| DILWELL CLUB | OLDHAM PHILLIPS 66 |
| OKE CITY SELF-SERVICE. | PAR-MAR OIL CO |
| PETTY CAFE | PIDDLIN PEELER'S |
| PIRTLE BAR-BQUE | POLLY'S GROCERY FEED |
| GRAND GULF STATION. | CYNTHIA PRUITT |
| QUICK ZIP | QUILLIN GARAGE |
| R AND M GROCERY | RAY'S LIQUOR |
| ROGER'S LIQUOR | RUSH-IN FOOD MART |
| SHS VENDING | SABINE VALLEY MHMPC |
| SALYARD'S ENTERPRISES. | SHAMROCK-BAY CITY |
| SIGMORE CORP. #510. | SIGMORE CORP. #513 |
| SIGMORE CORP. #519. | LAVERNE WALKER |
| SKATELAND OF LONGVIEW. | SITTON'S CAPE-LINDALE |
| SKYWAY REST | SMITH'S 7-11 |
| SLOGAN'S GROCERY. | SMITH'S SELF SERVICE |
| STAN-GAS #5 | STOCKYARD RESTAURANT |
| TEXAS CITY WAREHOUSE. | TEXSUN GAS |
| TEXSUN GAS #2 | TIME SAVER MINI MART |
| LYNN TIMMONS FINA. | TOMBALL STATION #20 |
| TRIANGLE GROCERY STAT. | TURNER'S THRIFTYMAN |
| UNITED WELDING SPEC. | WALKER'S FINA |

[FR Doc. 87-10806 Filed 5-11-87; 8:45 am]

BILLING CODE 6560-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3198-4]

### Privacy Act of 1974; System of Records

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Privacy Act of 1974; proposed new system of records.

**SUMMARY:** As required by the Privacy Act, 5 U.S.C. 552a, the U.S. Environmental Protection Agency is publishing for comment a system of records. This system is the "TSCA CBI Records Access System." The purpose of these records is to verify those persons with access to Toxic Substances Control Act Confidential Business Information (TSCA CBI).

**EFFECTIVE DATE:** The Environmental Protection Agency is requesting a waiver from the Office of Management and Budget of its sixty-day advance review period. If the Office of Management and Budget grants the waiver, this system shall become established formally thirty days after publication unless comments are received which would result in a contrary determination.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Linda Travers, Director, Information Management Division, Office of Toxic Substances (TS-793), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: April 29, 1987.

C. Morgan Kinghorn,

*Acting Assistant Administrator for Administration and Resources Management.*

**EPA-OTS-20**

**SYSTEM NAME:**

Toxic Substances Control Act Confidential Business Information Records Access System—EPA/OTS.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATIONS:**

Hard-copy files: Office of Toxic Substances, Information Management Division (TS-793), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Computer disks: EPA National Data Processing Division, Research Triangle Park, NC 27711.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

EPA and other Federal agency employees and Office of Toxic Substances (OTS) contractor employees who are or have ever been authorized for access to Toxic Substances Control Act Confidential Business Information (TSCA CBI).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system contains basic identification information such as name, social security number, EPA identification card number, date and place of birth, office of contractor for which the individual works and telephone number. In addition, the system contains information pertinent to TSCA CBI access such as security briefing date, date added to system, date deleted from system and type of access authorized.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

15 U.S.C. 2601 *et seq.* (Toxic Substances Control Act).

**PURPOSE(S):**

EPA uses this information to maintain a record of those persons cleared for access to TSCA CBI and to maintain the security of TSCA CBI.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Disclosure of information may be made:

1. To other Federal agencies when they possess TSCA CBI and need to verify clearance of EPA, other Federal agency and EPA contactor employees for access.

2. To EPA contractors who have been engaged to assist EPA in the performance of activities directly related to this system of records and who need to have access to the records in order to perform under the contract. Contractors are required to maintain the records in accordance with the requirements of the Privacy Act.

3. To a Member of Congress or a congressional office in response to an inquiry from that Member or office made at the request of the individual to whom the record pertains.

4. To a Federal agency which has requested information relevant to its decision in connection with the hiring or retention of an employee; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a security clearance, license, grant or other benefit.

5. To a Federal, State or local agency where necessary to enable EPA to obtain information relevant to an EPA decision concerning the hiring or retention of an employee; the letting of a contract; or the issuance of a security clearance, license, grant or other benefit.

6. To an appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where there is an indication of a violation or potential violation of the statute, rule, regulation or order and the information disclosed is relevant to the matter.

7. To the Department of Justice to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to litigation or anticipated litigation in which one of the following is a party or has an interest: (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency.

8. In a proceeding before the court, other adjudicative body or grand jury, or in an administrative or regulatory proceeding, to the extent that each disclosure is compatible with the purpose for which the record was collected and is relevant and necessary to the proceeding in which one of the following is a party or has an interest; (a) EPA or any of its components, (b) an EPA employee in his or her official capacity, (c) an EPA employee in his or her individual capacity where the Department of Justice is representing or considering representation of the employee, or (d) the United States where EPA determines that the litigation is likely to affect the Agency. Such disclosures include those made in the course of presenting evidence, conducting settlement negotiations, and responding to subpoenas and requests for discovery.

9. To representatives of the General Services Administration and the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Various portions of the system are maintained on computer disks and in hard copy files.

**RETRIEVABILITY:**

Information is retrieved from the computer database by addressing any type of data contained in the database, including individual names. An individual's name may be used to manually access materials in alphabetized hard copy files.

**SAFEGUARDS:**

Only authorized Federal and contractor employees have access to the system on a need-to-know basis. Records on the computer disks are protected from access by unique passwords and log-on procedures. Hard copy files are locked in Class 6 safes.

**RETENTION AND DISPOSAL:**

Information in this system is maintained and updated for so long as individuals identified in the system are authorized for access to TSCA CBI. Once authorization terminates, the information is maintained in accordance with EPA Records Control Schedules (pending).

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Information Management Division, Office of Toxic Substances (TS–793), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

**NOTIFICATION PROCEDURES:**

Inquiries should be addressed to the System Manager. Additioanl information and requirements will be provided.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. In addition, the record contents being sought should be specified.

**CONTESTING RECORD PROCEDURES:**

Same as notification procedures. The record and the specific information being contested should be identified. The corrective action sought and supporting justification for the correction should be provided by the individual. Additional information and requirements will be provided as necessary.

**RECORD SOURCE CATEGORIES:**

1. Records furnished by individuals identified in the system.

2. Records developed by U.S. EPA personnel concerning information pertinent to TSCA CBI access such as security briefing date, date added to system, date deleted from system and type of access authorized.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 87–10785 Filed 5–11–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Requirement Approval by Office of Management and Budget

April 30, 1987.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0062

Title: Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Station(s)

Form No.: FCC 330 (Formerly FCC 330–L and FCC 330–P) A revised combined application form FCC 330 has been approved for use through 12/31/89. (A previous approval was granted in November 1986 but the combined form was not implemented pending further revision.) The current editions of the 330–L and 330–P will remain in use until the new FCC 330 forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

Federal Communications Commission.
William J. Tricarico,
*Secretary.*
[FR Doc. 87-10743 Filed 5-11-87; 8:45 am]
BILLING CODE 6712-01-M

**Advisory Committee for the ITU World Administrative Radio Conference on the Use of the Geostationary Satellite Orbit and the Planning of the Space Services Utilizing It (Space WARC Advisory Committee); Working Group Meetings**

May 4, 1987.

*Working Group A:* Allotment Planning.
*Chairman:* Donald M. Jansky, (202) 467-6400.
*Vice Chairmen:* Jeffrey Binckes, (301) 428-4712; Michael W. Mitchell, (703) 920-0502.
*Date:* Monday, May 18, 1987.
*Time:* 1:30 p.m.
*Location:* Jansky Telecommunications, 1899 L Street NW., 10th Floor Conference Room, Washington, DC 20036.
*Agenda:* (1) Sharing Criteria; (2) Access to Orbit 2 Software; (3) Regulatory Proposals.

*Working Group B:* Improved Regulatory Procedures.
*Chairman:* R.A. Hedinger, (201) 949-5057.
*Vice Chairmen:* Hans J. Weiss, (301) 428-4777; Robert Mazer, (202) 289-3000.
*Date:* Friday, May 15, 1987.
*Time:* 9:30 a.m.
*Location:* Chadbourne and Parke, 1101 Vermont Avenue NW., Suite 900—Main Conference Room, Washington, DC 20005.
*Agenda:* Continue to Discuss Final Committee Report.

Federal Communications Commission.
William J. Tricarico,
*Secretary.*
[FR Doc. 87-10744 Filed 5-11-87; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-789-DR]

**New Hampshire; Amendment to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency.
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of New Hampshire (FEMA-789-DR), dated April 16, 1987 and related determinations.

**DATED:** May 6, 1987.
**FOR FURTHER INFORMATION CONTACT:** Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

**Notice**

The notice of a major disaster for the State of New Hampshire, dated April 16, 1987, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 16, 1987: Carroll County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,
*Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*
[FR Doc. 87-10752 Filed 5-11-87; 8:45 am]
BILLING CODE 6718-02-M

## FEDERAL HOME LOAN BANK BOARD

[No. 87-542]

**Notices of Inquiry Mortgage-Related Securities and Derivative Products**

Dated: May 6, 1987.
**AGENCY:** Federal Home Loan Bank Board.
**ACTION:** Notice of inquiry, Mortgage-related securities.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") staff is holding an open staff conference on mortgage-related securities and derivative products, as well as risk-controlled arbitrate transactions involving such products, to further the staff's understanding of these products and associated risks. The conference's participants will address a variety of legal and financial issues related to these products and their associated risks to institutions whose deposit accounts are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") ("insured institutions"), as well as any potential risk to the FSLIC fund itself. This conference is intended to provide solid background information for Baord staff on these issues.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. McKenzie, Director, Policy Analysis Division, (202) 377-6763, or Jane W. Katz, Senior Policy Analyst, (202) 377-6782, or Edward A. Hjerpe III, Financial Economist, (202) 377-6976, Office of Policy and Economic Research; or John F. Connolly, Deputy Director for Capital and Finance, Office of General Counsel (202) 377-6485, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Edward J. Taubert, Associate Director for Policy, (202) 778-2511, Michael P. Scott, Policy Analyst, (202) 778-2516, Office of Regulatory Policy, Oversight and Supervision, 900 Nineteenth Street, NW., Washington, DC 20006.

**DATES:** May 20-21, 1987, 9:00 A.M.-5:00 P.M. Board Room (6th Floor), Federal Home Loan Bank Board, 1700 G Street, NW, Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the staff of the Board is holding an open staff conference on May 20 and 21 (beginning at 9:00 AM and ending at or before 5:00 PM) to increase its understanding of certain legal, regulatory, and financial aspects of mortgage-related securities, particularly new derivative mortgage products. The purpose of the conference is to provide sound background information for future staff actions and pinions regarding mortgage-related securities and derivative products. Towards this goal, the staff will ask panels of participants representing varied disciplines to address the questions listed below.

Derivative mortgage-related securities are new types of securities created from traditional mortgage-backed securities. For purposes of discussion, the term mortgage-related securities is used to refer to guaranteed mortgage-backed pass-through securities. The term derivative mortgage-related securities, also referred to as derivative mortgage products, is used to refer to securities that are created as a result of the disaggregation and repackaging of the cash flows that are due as payments on mortgages or mortgage-backed securities. Thus, new derivative securities are created that entitle the holder to specific pre-defined cash flows from the underlying mortgages or mortgage-backed securities. Examples of derivative mortgage-backed securities are collateralized mortgage obligations ("CMOs") and real estate mortgage investment conduits ("REMICs"). These names refer to broad classes of derivative mortgage-related securities. Some of the specific securities that are created as derivatives of mortgage-related securities include owners trust residuals; floating rate, fixed rate, and inverse floating rate tranches of CMOs and REMICs, interest-only and principal-only stripped mortgage-related securities; and senior and subordinated interests in mortgage-related securities.

Some derivative mortgage-related securities can have less interest-rate risk

or less cash flow uncertainty than the underlying mortgages or mortgage-backed securities. In creating such securities, however, complementary securities are created that may have a greater amount of interest-rate risk or more cash flow uncertainty than the first group of derivative products. The total interest-rate, credit-risk, and cash flow uncertainty of all derivative mortgage-backed securities created from a single mortgage pool or mortgage-backed security pool cannot exceed the amount of these risks associated with the underlying mortgages or mortgage-backed securities. It is possible, however, that some of the specific derivative instruments created, when viewed individually, may have much riskier profiled than the underlying securities or mortgages. The staff recognizes that the use of these instruments must be viewed in a total portfolio context. The staff is concerned, however, that either the inherent risk characteristics of certain derivative mortgage-related securities or the potential lack of internal controls, excessive concentration, or inadequate hedging strategies that make use of these derivative securities potentially can be extremely dangerous for thrifts, depositors, and the FSLIC.

The staff does not seek to impede the development of such mortgage-related securities and derivative products or to inhibit thrifts' prudent participation in the markets for such securities. Rather, the staff merely seeks to identify the types of risk stemming from investment in or issuance of such securities. The staff is exploring means to facilitate the well conceived issuance of and investment in such mortgage-related securities and derivative mortgage products by well capitalized thrifts while protecting depositors and the FSLIC against undue risk stemming from the issuance of and investments in such securities by insured institutions.

**Procedure**

The conference will be conducted jointly by the staffs of the Board's Office of Policy and Economic Research ("OPER") and Office of General Counsel ("OGC"), and the Office of Regulatory Policy, Oversight and Supervision of the Federal Home Loan Bank System ("ORPOS"). The staff is seeking participation by four panels of individuals generally representing investment bankers, thrifts, legal counsel, accountants and regulators. Participants will choose which of the following topics to address in brief prepared remarks and will also participate in the general discussion of these issues at the conference.

The staff conference will be open to the public and a transcript of the meeting will be made available for public inspection. Furthermore, at the conclusion of each day's discussion, interested persons may make brief oral comments using an open microphone. Recognizing the short time frame and complexity of the issues raised below, the staff encourages any interested persons, as well as participants, to submit written comments to the staff before or within two weeks after the conference.

**Staff Inquiries**

The Board's staff seeks to elicit comment on the following substantive topics among others.

1. Federal associations are authorized by statute to invest in, sell, or otherwise deal with designated loans and investments, including interests in such loans or investments. What mortgage-related securities and derivative products constitute loans or investments authorized for federal associations under 12 U.S.C. 1464(c) or interests in such loans or investments pursuant to 12 U.S.C. 1464(c)(5)(B)? More specifically, what is the legal ownership interest or security interest of derivative product investors (*i.e.* residuals, strips) in the underlying assets (*i.e.* mortgages, guaranteed mortgage-backed securities)? What considerations support or disfavor characterization of such investments as investments made on the security of real estate? Do they meet the other requirements for real estate loans under 12 CFR 545.32?

2. How do such investors exercise, directly or through fiduciaries, their foreclosure and other rights in the underlying loans and assets? Do investors in such products have security interests enforceable separately from the legal actions of other parties? For example, do residual investors have an ownership or security interest in the underlying assets that can be enforced separately from similar action by CMO debtholders and their trustees? Is there a separate fiduciary responsibility on the part of trustees and paying agents to protect the residual interest holders' or other derivative interest holders' positions? What costs and obligations would derivative product investors have for servicing, collateral maintenance, and foreclosure actions with regard to the underlying assets? What liability could derivative product investors be subject to for fraud by third party participants or for trustee or paying agent negligence? What liability would thrifts issuing such securities jointly with other parties (perhaps unknown) have for the actions of such joint issuers or other third parties?

In the interest of the safety and soundness of insured institutions and the FSLIC, should the Board impose specific minimum legal safeguards that must be present for a derivative investment to be a permitted investment for insured institutions, perhaps restricting to investment grade securities? Are there certain types of derivative products whose legal characteristics pose such risk to insured institutions or to the FSLIC as receiver, that insured institutions should be prohibited from making such investments? For example, do residuals of owners trusts providing for partnership-type liability of residual investors and restrictions on the transferability of such interests, pose such risks to insured institutions and the FSLIC (when liquidating a thrift's assets) that such investments should be prohibited in the interest of safety and soundness?

3. How should the Board address the interest-rate and prepayment risk characteristics of various mortgage-related securities and derivative products? Should the Board require that institutions have documented analyses that examine the effect of a 300 basis point increase or decrease in interest rates on the value of each mortgage-backed security purchased. The concern here is the potential explosive price behavior of some mortgage-backed securities and derivative products. Should the analyses be based on even larger increases in interest rates? How could this provision be phrased to allow for rather generic information about standard mortgage-backed securities—GNMAs, FNMA PCs, and FHLMC PCs? How woud thrifts obtain this information when making secondary market purchases of mortgage-related securities and derivative products?

4. Is there any appropriate action for the Board to take to ensure that thirft investors receive full disclosure of interest-rate sensitivity, credit risk, and their legal rights and obligations when not otherwise required under the securities laws, such as in private placements of residual interests?

5. Should the Board's interest-rate risk management regulation, 12 CFR 571.3 (1986), be amended to require boards of directors to authorize investment programs in derivative mortgage-backed securities? Should such boards of directors be required to review periodically their investment programs and internal control systems for investment in mortgage related securities and derivative mortgage-

related securities? How should the Board ensure adequate internal control systems for portfolio risk management? What services should the Board or the FHLBank system offer to aid insured institutions in establishing such protective systems?

6. The low quality of some assets held by insured institutions is a major current concern of the FSLIC. How should the Board address the high credit-risk associated with certain derivative mortgage products, particularly those securities not eligible for investment pursuant to amendments to the Securities Exchange Act of 1934 made by the Secondary Mortgage Market Enhancement Act of 1984. 15 U.S.C. 78c(a)(41)(A) ("SMMEA")? Does an investment-grade regular interest reflect a higher credit quality residual? Should subordinated interests and other products with high credit risk be prohibited from investment by insured institutions or subject to special constraints. Should such investments be subject to higher capital requirements?

7. Although mortgage-relate securities and derivative products qualified as SMMEA securities or representing interests in real estate loans do not constitute equity securities for purposes of the direct investment regulation, should non-SMMEA securities be treated as equity risk investments. If treated in this manner, insured institutions' capital levels would determine (if the proposed regulation is adopted) the extent of their authorized investment in such assets under 12 CFR 563.9–8 with FHLBank approval needed for such investments by thrifts not meeting their capital requirements? Should insured institutions with less than 6 percent GAAP capital be prohibited from investing in non-SMMEA securities or using risk-controlled arbitrage strategies? Should an incremental capital requirement under the capital regulation be imposed on such non-SMMEA securities? Should the Board impose capital requirements and investsment limitations on insured institutions' consolidated, rather than unconsolidated, balance sheets to deal with highly leveraged risk posed by subsidiaries' transactions? Should the Board differentiate capital treatment among types of derivative mortgage products such as residual interests, subordinated interests, and interest-only and principal-only strips? Should the Board only impose an incremental capital requirement on unmatched or inadequately hedged positions in derivative mortgage products?

8. How should the Board treat mortgage-related securities and derivative mortgage products for purposes of its liquidity and loans-to-one borrower regulations? Diversification and liquidity enhance the safety and soundness of insured institutions investing in mortgage-related securities and derivative mortgage products. The lack of a broad, deep market for many new, and constantly changing, products is a major concern of the staff. The shallow, illiquid market could cause major problems if FSLIC seeks to liquidate such assets in a prompt manner and at a reasonable price. What protective measures can the Board enact to deal with the illiquidity of some derivative mortgage products? On the other hand, should highly liquid mortgage-related securities and derivative products be treated as liquid assets for liquidity purposes (regardless of their maturity dates)? What regulatory amendments are needed?

9. How should mortgage-related securities and derivative mortgage products that are not straight amortizing pass-throughs or straight coupon bonds be reported on Section H of the Bank Board's Quarterly Report?

10. A number of institutions are engaging in a strategy known as "controlled growth arbitrate" or "risk controlled arbitrate." Generally these strategies involve purchase of mortgage-backed securities funded by shorter-term wholesale funds and some form of hedging. Should the Board develop comprehensive regulations for such strategies? Should the Board adopt regulations on the leverage multiples used in such strategies? Should the Board require that such strategies be fully hedged?

11. With risk-controlled arbitrage generally being conducted through subsidiaries, what capital requirements should be imposed to counter the highly leveraged risk to a parent insured institution's portfolio? Should capital requirements be imposed on consolidated basis? What capital requirement should be imposed on residual interests of REMICS or owners trusts to compensate for the leveraged effects on thrifts' portfolios?

12. What type of evaluation measures should the Board's examiners adopt to examine the safety and soundness of derivative mortgage-backed securities in a portfolio context?

13. Should the finance subsidiary regulation be amended to facilitate issuance of mortgage-related securities and derivative products either directly by such subsidiaries or through trusts? Are finance subsidiaries still needed if, as anticipated, REMICs replace CMOs as the primary vehicles for the issuance of multi-class mortgage-backed securities? Should the third party intermediary language of the finance subsidiary regulation be interpreted or amended to include trusts and other affilitated structures? Are regulatory changes needed to deal with transactions by thrifts or their subsidiaries using REMICs, owners trusts, and similar vehicles in a holding company context?

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–10962 Filed 5–11–87; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agrement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–011095.

Title: Terminal Revenue Sharing Agreement

Parties:

San Francisco Port Commission (Port)
Canadian Tropic Line S.A. (Carrier)

Synopsis: The proposed agreement provides that Carrier will utilize San Francisco as its published regularly scheduled Northern California port of call. As consideration, Carrier pays less than 100% of port tariff charges for wharfage, dockage and demurrage. The agreement would have a ten year term. The parties have requested a shortened review period.

Dated: May 7, 1987.

By order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87-10806 Filed 5-11-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Commerce National Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may expess their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 1987.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Commerce National Corporation*, Winter Park, Florida; to engage *de novo* through its subsidiary, Commerce National Mortgage Company, Winter Park, Florida, in residential mortgage loan activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. This activity will be conducted in the State of Florida.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to engage *de novo* through its subsidiary, Illini Community Mortgage Co., Springfield, Illinois, in the origination of VA, FHA and conventional mortgage loans for resale to the secondary market; appraisal services; servicing of loans originated and sold; warehouse financing of mortgage loans; and other related services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-10715 Filed 5-11-87; 8:45 am]

BILLING CODE 6210-01-M

### Honat Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers, of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been acception for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 4, 1987.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Honat Bancorp, Inc.*, Honesdale, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Honesdale National Bank, Honesdale, Pennsylvania.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis Missouri 63166:

1. *Marrowbone Bancorp, Inc.*, Marrowbone, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Marrowbone, Marrowbone , Kentucky.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First National Corporation*, Grand Forks, North Dakota; to acquire 100 percent of the voting shares of West Fargo State Bank, West Fargo, North Dakota.

Board of Governors of the Federal Reserve System, May 6, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-10716 Filed 5-11-87; 8:45 am]

BILLING CODE 6210-01-M

### Marine Midland Banks, Inc.; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent

Marine Midland Banks, Inc., Buffalo, New York, and parent bank holding companies: The Hongkong and shanghai Banking Corporation, Hong Kong; Kellett N.V., Curacao, The Netherlands Antilles; and HSBC Holdings B.V., Amsterdam, Holland; have applied, ("Applicants") pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through Marine Midland Capital Markets Corporation ("Company"), New York, New York, in the activities of underwriting and dealing in, to a limited extent, the following securities which are eligible for purchase by member banks for their own account but not eligible for member banks to underwrite and deal in (hereinafter "ineligible securities"):

(1) Municipal revenue obligations (including certain industrial development bonds);

(2) Mortgage-related securities (obligations secured by, or representing interests in, residential real estate mortgages);

(3) Consumer-receivable-related securities (obligations secured by, or

representing an interest in, loans or receivables of a type generally made to or due from consumers) (hereinafter "CRRs");

(4) Commercial paper;

Applicants have also applied for approval under § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16)) to engage, *de novo*, through Company in underwriting and dealing in securities and money market instruments that state member banks are expressly authorized to underwrite and deal in under section 16 of the Glass-Steagall Act (12 U.S.C. 24 Seventh), including U.S. government obligations and general obligations of states and their political subdivisions. The foregoing activities are presently conducted by Applicants' principal banking subsidiary, Marine Midland Bank, N.A., and would be transferred to Company in connection with this proposal.

Upon approval of the proposal, Company would commence underwriting and dealing in ineligible securities through Company's offices in New York, New York, serving customers throughout the United States. Company may establish offices in other locations.

Section 4(c)(8) of the Bank Holding Company Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicants have applied to engage in the same activities with the same limitations as proposed in the applications of J.P. Morgan & Company Incorporated and Bankers Trust New York Corporation, previously approved conditionally by the Board on April 30, 1987. Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation (Order dated April 30, 1987). In its Order, the Board authorized Citicorp, J.P. Morgan & Co. Incorporated, and Bankers Trust New York Corporation to engage through subsidiaries in underwriting commercial paper, 1–4 family mortgage-backed securities and municipal revenue bonds within a prudential framework of conditions and subject to 5 percent gross revenue and market limitations.

The application presents issues under section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Marine Midland Bank, N.A., with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. Applicants state that Company would not be "engaged principally" in such activities on the basis of restrictions that would limit the amount of the proposed activity relative to the total business conducted by Company and relative to the total market in such activity.

Any request for a hearing on these questions must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 1, 1987.

Board of Governors of the Federal Reserve System, May 6, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–10714 Filed 5–11–87; 8:45 am]

BILLING CODE 6210–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Federal Advisory Committee, Interagency Committee on Smoking and Health; Availability of 1986 Annual Report

**ACTION:** Notice of availability.

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463 (5 U.S.C. Appendix 2), the Fiscal Year 1986 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress:

**Interagency Committee on Smoking and Health**

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue SE., Washington, DC (telephone 202/287–6310). Additionally, on weekdays between 9 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue SW., Washington, DC (telephone 202/245–6791).

Dated: May 5, 1987.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 87–10703 Filed 5–11–87; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

[FDA 225–86–8251]

### Memorandum of Understanding Between the Patent and Trademark Office and the Food and Drug Administration

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Patent and Trademark Office (PTO) and FDA. The MOU establishes procedures whereby FDA assists PTO in determining a product's eligibility for patent term restoration and procedures for exchanging information between FDA and PTO regarding regulatory review period determinations, due diligence petitions, and informal FDA hearings.

**DATE:** The memorandum of understanding became effective September 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20.108(c), which states that all agreements and memorandum of understanding between FDA and others shall be published in the Federal Register, the agency is publishing this memorandum of understanding.

Dated: May 5, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

**Memorandum of Understanding Between the Patent and Trademark Office and the Food and Drug Administration**

*I. Purpose*

This agreement establishes the procedures whereby the Food and Drug Administration (FDA) assists the Patent and Trademark Office (PTO) in determining a product's eligibility for patent term restoration under 35 U.S.C. 156. It also establishes procedures for exchanging information between FDA and PTO regarding regulatory review period

determinations, due diligence petitions and informal FDA hearings under the law.

*II. Background*

The patent term restoration portion of the Drug Price Competition and Patent Term Restoration Act of 1987 (Pub. L. 98-417) was designed to create new incentives for research and development of certain products which are subject to premarket government approval. These provisions enable the owners of patents on certain human drugs, medical devices, and food or color additives to attempt to restore to the terms of those patents some of the patent time lost while awaiting premarket government approval.

Under the patent term restoration sections of the Act, a patent which claims a human drug product, medical device, food or color additive first approved for marketing after September 24, 1984 may qualify for patent term extension. Regardless of whether the patent claims a product, a method of using a product, or a method of manufacturing a product, the applicant for a patent term extension must establish that:

(1) The patent has not expired (35 U.S.C. 156(a)(1)),

(2) The patent has never been extended (35 U.S.C. 156(a)(2)),

(3) The applicant for extension is submitted by the owner of record of the patent or its agent and includes details relating to the patent and regulatory review time spent in securing FDA approval (35 U.S.C. 156(a)(3)),

(4) The product has been subject to a regulatory review period within the meaning of 35 U.S.C. 156(g) before its commercial marketing or use (35 U.S.C. 156(a)(4)),

(5) The approval:

(A) Is the first permitted commerical marketing or use of the product, or

(B) In the case of products manufactured using recombinant DNA technology, it is the first permitted commercial marketing or use of a product manufactured under the process claimed in the patent (35 U.S.C. 156(a)(5)), and

(6) The application for extension of the term of the patent was submitted to PTO within 60 days of FDA approval of the commercial marketing application (35 U.S.C. 156(d)(1)).

While it is the responsibility of the Commissioner of Patents and Trademarks to decide whether an applicant has satisfied these six conditions, FDA possesses expertise and records regarding the last four and has certain direct responsibilities under 35 U.S.C. 156 for determining the length of the regulatory review period. Consequently, to facilitate eligiblity decisions and permit FDA and PTO to carry out their responsibilities under 35 U.S.C. 156, the FDA and PTO have entered into this agreement. This agreement is consistent with the authority contained in section 702(d) of the Federal Food, Drug, and Cosmetic Act.

Under this agreement, FDA, upon receipt of a written request from PTO, will convey to PTO the following information regarding eligibility for extension: (1) Whether a product has undergone a regulatory review period within the meaning of 35 U.S.C. 156(g) prior to commercialization, (2) whether the marketing permission was for the first permitted commercial marketing or use of that product, or, in the case of recombinant marketing or use of that product, or, in the case of recombinant DNA technology, whether such commercial marketing or use was the first permitted under the process claimed in the patent, and (3) whether the patent term extension application, as well as any other relevant information. Similarly, upon a request by PTO and the receipt of a copy of the application for patent term extension, FDA will determine the application for patent term extension, FDA will determine the length of the regulatory review period for the approved product.

The procedures covered by this agreement extend from the date of PTO's request for information on eligibility to the resolution of due diligence petitions and information hearings. The regulatory review period determination is not final until due diligence petitions and informal hearings, if any, have been resolved. A certificate for extension of the term of a patent may not issue from PTO until the regulatory review period determination is final unless an interim extension appears warranted under 35 U.S.C. 156(e)(2).

*III. Substance of the Agreement: Patent Term Extension Applications Under 35 U.S.C. 156*

A. Eligibility Determination Assistance:

1. Upon deciding that a patent term extension application is complete and meets basic formal requirements, the PTO will send a written request to FDA requesting that FDA:

a. verify whether the product:

(1) Was subject to a regulatory review period within the meaning of 35 U.S.C. 156(g) prior to its commercial marketing or use, and

(2) Represents either the first permitted commercial marketing or use of that product, or, in the case of recombinant DNA technology, the first permitted commercial marketing or use of the product manufactured under the process claimed in the patent.

b. Inform PTO whether the patent term restoration application was submitted within 60 days after the product was approved.

2. Additionally, PTO, in its written request, shall clearly state that it is not requesting determination of the product's regulatory review period at this time.

3. FDA will consult its records and experts and, through the Director of the Health Assessment Policy Staff, Office of Health Affairs, issue a written response to the Director of Patent Examining Group 120, PTO, on each of these questions.

4. FDA, consistent with the authority contained in section 702(d) of the Federal Food, Drug, and Cosmetic Act with respect to drugs, will provide PTO with any other information relevant to the product's eligibility.

5. FDA, upon written request, will also provide assistance to PTO in petitions before the Commissioner of Patents and Trademarks regarding eligibility determinations.

B. Regulatory Review Period Determinations:

1. Should the PTO decide that the product is eligible for patent term restoration, it will send FDA a copy of the application for patent term restoration and a written request to determine the length of the product's regulatory review period. The copy and request will be sent to FDA within 60 days of the application's receipt by PTO.

2. FDA will consult its records, determine the entire length of the regulatory review period, and, through the Associate Commissioner for Health Affairs, issue a written statement of that determination to the Commissioner of Patents and Trademarks. The determination will be made within 30 days after the receipt of the application and written request from PTO. Additionally, FDA will publish its determination in the Federal Register.

C. Due Diligence Petitions and Hearing Requests:

1. Due diligence petitions must be filed at FDA within 180 days of the publication of a product's regulatory review period in the Federal Register.

a. If no due diligence petition is received by FDA within the 180-day filing period, FDA will promptly notify PTO in writing that the regulatory review period determination is final.

b. If a due diligence petition which satisfies statutory and regulatory requirements is received by FDA,

(1) FDA will promptly notify PTO in writing of the receipt of the petition,

(2) PTO will refrain from issuing a certificate of extension pending a final determination of the regulatory review period unless an interim extension appears warranted under 35 U.S.C. 156(e)(2),

(3) FDA will determine whether the applicant acted with due diligence within 90 days after receipt of such a petition and will send written notification to the Commissioner of Patents and Trademarks as to any modification in the length of the regulatory review period, and

(4) FDA will also publish its due diligence determination, together with the full factual and legal bases for FDA's decision, in the Federal Register.

2. Requests for an informal hearing on FDA's due diligence determination must be received by FDA within 60 days of the publication of the due diligence determination in the Federal Register.

a. If FDA does not receive any request for an informal hearing within the 60 filing period, FDA will notify PTO in writing that the regulatory review period determination, as modified, if at all, by the due diligence determination, is final.

b. If FDA receives a request for an informal hearing within the 60 day filing period,

(1) FDA will notify PTO in writing of the hearing request,

(2) PTO will refrain from issuing a certificate of extension pending final determination of the regulatory review period unless an interim extension appears warranted under 35 U.S.C. 156(e)(2), and

(3) FDA will affirm or revise the determination that was the subject of the hearing within 30 days after completion of the hearing and will notify the Commissioner of Patents and Trademarks in writing of its decision and whether the determination of the regulatory review period is now final.

Additionally, FDA will publish its findings in the Federal Register.

D. Supplemental Information:

Should either agency receive information which is relevant to the patent term restoration of a patent during any stage of these eligibility or regulatory review period determinations, that agency will promptly notify the other and provide documentation as available.

E. Availability of Information:

Copies of all letters required by this agreement and exchanged between PTO and FDA will be placed in the file for each product subject to patent term restoration. These files are available for review at FDA's Dockets Management Branch (HFA–305), Room 4–62 5600 Fishers Lane, Rockville, Maryland 20857 and at the Patent and Trademark Office, Crystal Plaza Building 2–9A08, 2011 Jefferson Davis Highway, Arlington, Virginia 22202.

*IV Names and Addresses of Participating Parties*

A. Patent and Trademark Office, Washington, DC 20231.

B. Food and Drug Administration, 5600 Fishers Lane, Rockville Maryland 20857.

*V. Liaison Officers*

A. *Liaison Officer for the Patent and Trademark Office:* Director, Patent Examining Group 120, (currently Charles E. Van Horn, Esq.), Patent and Trademark Office, Washington, DC 20231, (703–557–3537).

B. *Liaison Officer for the Food and Drug Administration:* Director, Health Assessment Policy Staff (HFY–20), (currently Ronald L. Wilson), Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, (301–443–1382).

*VI. Period of Agreement*

This agreement, when accepted by both parties, will be effective indefinitely. It may be modified by mutual written consent or terminated by either party upon a thirty day advance written notice to the other party.

APPROVED AND ACCEPTED FOR THE PATENT AND TRADEMARK OFFICE.

By: Donald J. Quigg.

*Title: Assistant Secretary and Commissioner of Patents and Trademarks.*

Dated: September 17, 1986.

APPROVED AND ACCEPTED FOR FOOD AND DRUG ADMINISTRATION.

By: John M. Taylor.

*Title: Acting Associate Commissioner for Regulatory Affairs.*

Dated: September 3, 1986.

[FR Doc. 87–10713 Filed 5–11–87; 8:45 am]

BILLING CODE 4160–01–M

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## Health Care Financing Administration

## Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) Federal Register Vol. 51, No. 191, pp. 35288–35291, dated Thursday, October 2, 1986) is amended to reflect a reorganization within the Office of the Associate Administrator for Management and Support Services (OAAMSS). The reorganization of the Office of Health Program Systems in the Bureau of Data Management and Strategy will consolidate and centralize responsibility for the Group Health Plan System into one division, the Division of Capitation Systems, as well as provide a focus for development of systems in support of the private health plan option initiatives.

The specific changes to Part F. are as follows:

• Section FH.20.R.5., Office of Health Program Systems is deleted in its entirety and replaced by an updated functional statement to read as follows:

**8. Office of Health Program Systems (FHE8)**

Designs, develops, implements and maintains Automated Data Processing (ADP) and telecommunications systems and software, data files and formats, and manual procedures required to support the Agency's programmatic mission from operational, program management, and quality control aspects. Establishes and maintains a national file of eligible Medicare beneficiaries. Establishes and maintains a history of Medicare benefit utilization. Integrates entitlement data and information from other programs (e.g., Medicaid, Veterans Administration) into Medicare files. Receives and responds to queries regarding beneficiary entitlement and benefit and deductible status from a nationwide network of Medicare fiscal agents. Provides program data and related information to authorized requestors. Maintains systems that support certification of providers of service in the Medicare and Medicaid programs. Determines and reconciles payment liability for group health organizations. Maintains systems that support certification of health maintenance organizations and capitation demonstration projects. Prepares billings for and receives and processes ADP records for Medicare premium remittances from third party payors and beneficiaries. Prepares a variety of program management reports (e.g., workloads, processing times) for distribution throughout the Agency, Department, and Medicare fiscal agents. Provides ADP support to the Agency for quality control systems and beneficiary and provider overpayment systems. Consults with central and regional office components and other government agencies to define programmatic ADP system performance requirements. Negotiates, reviews, and approves systems designs. Consults with Bureau of Data Management and Strategy components to define ADP and teleprocessing resource requirements and provides input to the budget planning and procurement processes.

Insures awareness of and compliance with government-wide and local security and privacy requirements within the Office. Directs and coordinates implementation of PRISM Redesign Process for Office. Serves as Data Base Administrator for the Office. Provides technical support to Office programmers. Provides office focus for Systems Security, Standards and Documentation.

*A. PRISM/Redesign Staff (FHE8–1)*

Plans, organizes, coordinates, and controls the activities required to assure the timely, accurate, cost-effective, and successful completion of the Health Insurance/Supplementary Medical Insurance (HI/SMI) and Program Management (PM) Logical Application Groups (LAG) development, conversion and implementation under the Project to Redesign Information Systems Management (PRISM). Advises the Director, Office of Health Program Systems, and executives of various HCFA components in the preparation of short, intermediate and long-range plans for the improvement of the HCFA information systems. Keeps informed of organizational, legislative, administrative and technological changes that affect the PRISM LAG processes and impact upon future planning. Works continuously with the appropriate levels of management and with members of the staff in the Bureaus and Offices to provide liaison and assistance with respect to Agency-wide planning and participates in planning activities to ensure that the Agency's ADP systems meet the needs of the user community for high quality, reliable data. Develops and designs methods and processes which assure the quality of the enhancements to existing systems and the development of new systems for PRISM LAGs. Plans and conducts comprehensive analysis of complex and diversified areas such as system analysis and design methodologies, computer programming methods and techniques, software testing, validation and systems acceptance, configuration of HCFA ADP/TC resources, and data base security and integrity. Develops ADP systems quality assurance and software testing standards and

guidelines for the Agency's ADP systems which ensure that they meet the requirements of the Agency components and support Agency goals and objectives. Responsible for implementing, monitoring and enforcing appropriate security measures for the Office. Plans the integration and validation of the current and future development of all PRISM LAG systems. Formulates contracting strategies and prepares procurement packages for major contractual agreements to support the PRISM systems design, development and implementation. Coordinates project management for long-range system design plans. Serves as data base administrator for the HI/SMI and PM LAGs. Provides technical support to Office programmer and analyst staff. Provides an Office focus for ADP Systems standards and documentation.

*B. Division of Beneficiary and Utilization Systems (FHE82)*

Designs and implements Automated Data Processing (ADP) systems, manual processes and procedural instructions for: development and maintenance of a master file of all individuals eligible for Medicare benefits (including Railroad Retirement annuitants); enrollment of beneficiaries and issuance of identification cards; posting of benefit utilization data and responding to utilization queries from intermediaries and carriers; issuance of notices of benefit utilization; maintenance of controls for reconciliation and audit of providers and carriers; and determination, billing and collection of Medicare premium liability from third party entities and direct paying beneficiaries. Furnishes a variety of management data for review, appraisal, and planning purposes and assists other HCFA systems components in developing and interpreting the data. Provides systems support and technical expertise to the Office of Management and Budget in resolving electronic exceptions and processing correspondence.

*C. Division of Capitation Systems (FHE83)*

Designs and implements Automated Data Processing (ADP) systems and operating instructions for: Development and maintenance of a master file of all individuals enrolled in group health plans; preparation of beneficiary mailings for beneficiaries enrolling in "lock-in" Health Maintenance Organizations (HMO) and certain HMO solicitation projects; determination and reconciliation of payment liability for group health plans; development and maintenance of certification and financial systems for all HMOs; and development and maintenance of systems to support demonstration projects on Private Health Plan Options (PHPO). Furnishes a variety of management data for review, appraisal, and planning purposes and assists other HCFA systems components in developing and interpreting the data. Provides systems support and technical expertise to the Office of Prepaid Health Care in payment, audit, reconciliation, certification, and quality assurance of PHPO systems.

*D. Division of Program Management Systems (FHE84)*

Designs, develops and implements a wide variety of Automated Data Processing (ADP) and telecommunications systems in support of HCFA program management functions including: Workload and operating systems, Supplemental Medical Insurance physician and laboratory payment information systems, management support systems, beneficiary and provider overpayment systems, provider certification and billing data including an online query and reply subsystem, accounting controls for reconciliation and audit of providers and carriers, and Medicare Quality Control systems. Provides technical support to HCFA's Regional Offices in program management systems areas. Provides technical and state-of-the-art expertise in the use of current program data bases for the design and development of new systems which support HCFA's program management objectives.

Dated: April 27, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 87-10750 Filed 5-11-87; 8:45 am]

BILLING CODE 4120-03-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. N-87-1699]

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submission will be required; (7) an estimated of the total number of hours needed to prepare the information submission (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Managment Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

### Notice of Submission of Proposed Information Collection to OMB

Proposal: Rental Rehabilitation Program
Office: Community Planning and Development
Description of the Need for the Information and its Proposed Use: The Rental Rehabilitation Program requires the Department and grantees to collect data relating to properties rehabilitated and tenants assisted under the Program. The information collected will be used by HUD

personnel to account for program grant funds and to satisfy statutory reporting requirements
Form Number: HUD–40014, 40014–B, 40018, 40020, 40021, and 40022
Respondents: State or Local Governments
Frequency of Respondents: On Occasion and Annually
Estimated Burden Hours: 43,520
Status: Extension
Contact: Frances W. Buah, HUD, (202) 755–6296; John Allison, OMB, (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7 (d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Proposal: Criteria for Acceptability of Insured 10-Year Protection Plans
Office: housing
Description of the Need for the Information and its Proposed Use: This information is needed for HUD to identify criteria for acceptance of insured housing performance warranties. It is used to protect HUD and homeowners with HUD-insured financing against major dwelling defects
Form Number: None
Respondents: Businesses or Other For-Profit
Frequency of Response: Biennially
Estimated Burden Hours: 260
Status: Revision
Contact: D. Earl Jones, Jr., HUD, (202) 755–6720 John Allison, OMB, (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7 (d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Request for Insurance Endorsement under the Direct Endorsement Program
Office: Housing
Description of the Need for the Information and its Proposed Use: The Direct Endorsement Program permits mortgage lenders to underwrite the applications for mortgage insurance and close mortgage loans without prior HUD review. Lenders then submit the closing package to HUD with a request for insurance endorsement
Form Number: None
Respondents: Businesses or Other For-Profit
Frequency of Response: On Occasion
Estimated Burden Hours: 100,000
Status: New
Contact: Morris E. Carter, HUD, (202) 755–6720; John Allison, OMB, (202) 395–6880
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7 (d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: May 5, 1987.

John T. Murphy,
*Director, Information Policy and Management Division.*

[FR Doc. 87–10790 Filed 5–11–87; 8:45 am]
BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Office of Inspector General

### Organization, Functions, and Authority Delegations; Inspector General Office

**AGENCY:** Office of Inspector General, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is published in accordance with the provisions of 5 U.S.C. 552 (a)(1) and (a)(2). It provides a brief history of the Office of Inspector General (OIG), identifies primary responsibilities, describes the central and field organization, provides a source for obtaining specific information, and an index on the Office of Inspector General Manual in which the public may have an interest. This notice updates information previously published in the Federal Register by the Department of the Interior (50 FR 51455, December 17, 1985) regarding the OIG.

**History**

The OIG was established by the Inspector General Act of 1978 (the IG Act), 92 Stat. 1101, as amended. Pursuant to section 9(a)(1)(D) of the IG Act, the functions, powers, and duties of the former Office of Audit and Investigation were transferred to the OIG.

In addition to the authorities conferred upon the Inspection General of the Department of the Interior by the IG Act, the Inspector General was given statutory responsibilities pursuant to Pub. L. 97–357, dated October 19, 1982, (96 Stat. 1705) concerning the United States territories, including Guam, Palau, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

**Primary Responsibilities**

The OIG provided policy direction and conducts, supervises, and coordinates all Department of the Interior audits and investigations; recommends policies for and conducts, supervises, or coordinates other activities in the Department designed to promote economy and efficiency or prevent and detect fraud and abuse. The Inspector General recommends policies for and conducts, supervises, or coordinates relations between the Department and othe Federal, State and local government agencies concerning (a) promoting economy and efficiency, (b) preventing and detecting fraud and abuse, and (c) identifying and prosecuting people involved in fraud or abuse.

The OIG also reviews existing and proposed legislation and regulations and makes recommendations to the Secretary and Congress regarding the impact such initiatives will have on the economy and efficiency of the Department's programs and operations and the prevention and detection of fraud and abuse in such programs; keeps the Secretary and the Congress fully informed about fraud, abuses, and deficiencies in Department programs and operations, and other serious problems; recommends corrective action and reports on the progress made in correcting the problem.

**Description of Organization**

The headquarters office (Office of Inspector General, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240) provides overall direction to the OIG Regional offices listed below:

*Eastern Region.* States served: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Ohio, Pennsylvania, Tennessee, Vermont, Virginia, West Virginia and Wisconsin.

A. Audits: Region Audit Manager, Eastern Region, Office of Inspector General, Ballston Tower #1, Room 401, 800 North Quincy Street, Arlington, Virginia 22217.

B. Investigations: *Special Agent-in-Charge, Eastern Region, Office of Inspector General, Ballston Towers #3, Room 1105, 4015 Wilson Boulevard, Arlington, Virginia 22203.

*Central Region.* States served: Arkansas, Colorado, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming.

A. Audits: Region Audit Manager, Central Region, Office of Inspector General, 134 Union Boulevard, Suite 510, Lakewood, Colorado 80228.

*Also includes Puerto Rico and the Virgin Islands.

B. Investigations: Special Agent-in-Charge, Central Region, Office of Inspector General, 134 Union Boulevard, Suite 540, Lakewood, Colorado 80228.

*Western Region.* States served: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington and American Samoa.

A. Audits: Regional Audit Manager, Western Region, Office of Inspector General, Room W2400, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

B. Investigations: *Special Agent-in-Charge, Wesern Region, Office of Inspector General, Room W2326, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

*Caribbean Region.* Geographic area served: Virgin Islands and Puerto Rico.

Audits: Regional Audit Manager, Caribbean Region, Office of Inspector General, Federal Building, Room 207, St. Thomas, Virgin Islands 00801.

*North Pacific Region.* Geographic area served: Guam, Saipan, Marshall Islands, the Federated States of Micronesia, Palau, and the Northern Mariana Islands.

Audits: Regional Audit Manager, North Pacific Region, Office of Inspector General, 238 O'Hara Street, Suite 807, Agana, Guam 96910.

*Availability of Indexes*

By notice in the **Federal Register** (published simultaneously in today's **Federal Register**) the Office of Inspector General is exempt from the quarterly or more frequent publication and dissemination of indexes to its OIG Manual. Notice of the availability of the index of the OIG Manual is published in the **Federal Register's** "Availability of Agency Index Material."

**FOR FURTHER INFORMATION CONTACT:** The Assistant Inspector General for Administration, Department of the Interior, Washington, DC 20240. Phone: 202–343–8231.

**James R. Richards,**

*Inspector General.*

[FR Doc. 87–10787 Filed 5–11–87; 8:45 am]

BILLING CODE 4310-WS-M

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## Freedom of Information; Indexes of Administrative Staff Manuals Administrative Determination

**AGENCY:** Office of Inspector General, Interior.

**ACTION:** Notice Concerning Requirement to Publish Indexes of Administrative Staff Manuals.

**SUMMARY:** Under section (a)(2) of the public information section of the Administrative Procedure Act (5 U.S.C. 552), commonly known as the Freedom of Information Act, each agency is required to make available for public inspection and copying indexes to administrative staff manuals that affect any member of the public. Also, each agency is required to promptly publish, quarterly or more frequently, and distribute (by sale or otherwise), copies of the indexes or supplements thereto unless it determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable in which case the agency shall nonetheless provide copies of such indexes on request at a cost not to exceed the direct cost of duplication.

Upon examination of the index contained in the Office of Inspector General Manual it was determined that the majority of the directives prescribe policies and procedures that are primarily for internal use and do not affect the public. This manual provides guidelines or procedures necessary for the accomplishment of required day-to-day operations or detailed instructions on limited technical subjects. Additionally, the contents of the index change infrequently and requests for copies are extremely rate, reflecting negligible interest in the index.

It has been long standing policy of the Department of the Interior that any policies and procedures which affect the public must be promulgated and published in the **Federal Register** and incorporated in the Code of Federal Regulations, when appropriate. Both of these documents are offered for sale by Superintendent of Documents, Government Printing Office, Washington, DC 20402.

After full consideration of the provisions of 5 U.S.C. 552(a)(2)(C), for the foregoing reasons and in consideration of economy, it is determined administratively unnecessary and impractical to publish the manual index identified in the appendix of this Notice quarterly or more frequently and distribute (by sale or otherwise) copies of the index or supplements thereto. Copies of the index will nonetheless be provided upon request at a cost not to exceed the direct cost of duplication by contacting the Office of Inspector General at telephone number 202/343–4356 or addressing a written request to the Inspector General, U.S. Department of the Interior, 18th & C Streets, NW., Room 5346, Washington, DC 20240.

**James R. Richards,**

*Inspector General.*

[FR Doc. 87–10788 Filed 5–11–87; 8:45 am]

BILLING CODE 4310-RS-M

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## Bureau of Land Management

[CO–070–07–4212–13; C–43108]

## Exchange of Lands in Pitkin, Grand, Eagle, and Garfield Counties, Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Exchange of Lands.

**SUMMARY:** Pursuant to section 205, 206, 302(b) and 310 of the Federal Land Policy and Managemnt Act of 1976 (43 U.S.C. 1716), the Bureau of Land Managemnt, Glenwood Springs Resource Area has identified parcels of public and private land as preliminary suitable for exchange.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, Colorado 81602, or the Kremmling Resource Area Office, 116 Park Avenue, P.O. Box 68, Kremmling, Colorado 80459.

Comments should be submitted to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506, or to the District Manager, Craig District, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

**SUPPLEMENTARY INFORMATION:** The following-described lands have been determined to be preliminary suitable for exchange under section 205, 206, 302(b) and 310 of the Federal Land Policy and Management At of 1976, 43 U.S.C. 1716:

**Disposal Parcel 113—183.76 Acres—Eagle County**

T. 5 S., R. 83 W., 6th P.M.
Section 1: lots 5, 6, 7, 8, 12 and 13

**Disposal Parcel 112—17.19 Acres—Eagle County**

T 5 S., R. 83 W., 6th P.M.
Section 2: lots 10 and 11
Section 11: lot 1

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*Also includes Guam, Saipan, Marshall Islands, the Federated States of Micronesia, Palau, Northern Mariana Islands and American Somoa.

**Disposal Parcel 318—[illegible] Acres—Garfield County**

T 6 S., R. 97 W., 6th P.M.
Section 30: lots 3, 4, 5 and 6
T 6 S., R. 98 W., 6th P.M.
Section 25: SE¼NE¼, NW¼SE¼

**Disposal Parcel 93—7.88 Acres—Pitkin County**

T. 10 S., R. 85 W., 6th P.M.
Section 4: lot 19
Section 5: lot 29

**Tyler Mountain Disposal Parcel—80.00 Acres—Grand County**

T 3 N., R. 76 W., 6th P.M.
Section 22: NE¼SE¼
Section 17: SE¼NW¼

**Offered Private Lands:**

**Parcel A—80.00 Acres—Grand County**

T. 1 S., R. 82 W., 6th P.M.
Section 27: All that portion in the W½NE¼ and E½NW¼ as described by metes and bounds description

**Parcel B—639.64 Acres—Garfield County**

T 4 S., R. 92 W., 6th P.M.
Section 30: lots 5, 6, 7, 8, 9, 10, 11 and 12
Section 31: lots 3, 4, and the NW¼NE¼
T 4 S., R. 93 W., 6th P.M.
Section 25: SE¼SE¼

These 547.81 acres of public land under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and Shepard & Associates.

In the proposal, 639.64 acres of offered private land with public values would be exchanged for 547.81 acres of public land which have been identified for disposal. The exchange proposal has been made to facilitate the consolidation of public land holdings. The consolidation would increase managerial efficiency and provide public access to natural resources on public lands being managed by the Bureau.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values.

*Terms and Conditions*

The following reservations would be made in a patent issued for public land:

For All Parcels

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the United States of all mineral deposits of known value.

3. A reservation for all existing and valid land uses, including grazing leasaes, unless waived.

For Parcel 112

1. A reservation of rights-of-way for access road C–34055.

For Parcel 113

1. A reservation for state highway authorized under D–053471.

For Parcel 310

1. A reservation of rights-of-way for access road C–40251.

2. A reservation for water facilities GS–023441 and D–050714.

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, as provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

**Barry C. Cushing,**

*Acting, District Manager, Grand Junction District.*

[FR Doc. 87–10727 Filed 5–11–87; 8:45 am]
BILLING CODE 4310–JB–M

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**[ES–040–07–4520–13; ES–037341, Group 3]**

**Maine; Filing of Plat of Dependent Resurvey**

May 4, 1987.

1. The plat, in two sheets, of the dependent resurvey of the boundaries of the land held in trust for the Passamaquoddy Tribe in Township 5, Range 1, North of Bingham's Penobscot Purchase, Penobscot County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 18, 1987.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., June 18, 1987.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Lane J. Boumen,**

*Deputy State Director for Cadastral Survey and Support Services.*

[FR Doc. 87–10730 Filed 5–11–87; 8:45 am]
BILLING CODE 4310–GJ–M

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**[AZ–020–41–5410–10–ZADE; A–22652 A–22652]**

**Receipt of Conveyance of Mineral Interest Application; Gila and Salt River Meridian, AZ**

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Hunt Highway Property has applied to purchase the mineral estate described as follows:

**Gila and Salt River Meridian, AZ**

T. 3 S., R. 7 E.,
Sec. 3, Lot 1, N½SE¼, SW¼SE¼;
Sec. 11, All;
Sec. 12, Lots 3, 4, W½SE¼;
Sec. 13, Lots 1–6, NW¼;
Sec. 14, NE¼NE¼.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice is the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, March 19, 1987, whichever occurs first.

Dated April 30, 1987.

**Henri R. Bisson,**

*District Manager.*

[FR Doc. 87–10721 Filed 5–11–87; 8:45 am]
BILLING CODE 4310–32–M

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**[AZ–020–41–5410–10 ZADF; A–22657 A–22957]**

**Receipt of Conveyance of Mineral Interest Application; Gila and Salt River Meridian, AZ**

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, William and Susan Humphreys have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, AZ

T. 19 S., R. 7 E.,
Sec. 24, W½, SE¼;
Sec. 25, NW¼.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public lands laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, March 25, 1987, whichever occurs first.

Dated: May 4, 1987.

Henri R. Bisson,

*District Manager.*

[FR Doc. 87-10722 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-32-M

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[WY-920-07-4111-15; W-59941]

## Proposed Reinstatement of Terminated; Oil and Gas Lease; Campbell County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-59941 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-59941 effective September 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

*Chief, Leasing Section.*

[FR Doc. 87-10726 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-22-M

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[WY-920-07-4111-15; W-78137]

## Proposed Reinstatement of Terminated; Oil and Gas Lease; Natrona County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-78137 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-78137 effective September 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

*Chief, Leasing Section.*

[FR Doc. 87-10723 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-22-M

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[WY-920-07-4111-15; W-59552]

## Proposed Reinstatement of Terminated Oil and Gas Lease; Niobrara County, WY

May 5, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-59552 for lands in Niobrara County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-59552 effective August 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

*Chief, Leasing Section.*

[FR Doc. 87-10724 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-22-M

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[WY-920-07-4111-15; W-97355]

## Proposed Reinstatement of Terminated; Oil and Gas Lease; Natrona County, WY

May 5, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-97355 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-97355 effective November 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

*Chief, Leasing Section.*

[FR Doc. 87-10725 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-22-M

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[AZ-940-07-4212-12; PHX-080747]

## Reconveyed Land Opened to Entry in Mohave County, AZ

May 4, 1987.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of reconveyed land opened to entry in Mohave County, Arizona.

**SUMMARY:** This action will open 640.24 acres of reconveyed land in Mohave County to State Exchange Applications.

DATE: May 12, 1987.

FOR FURTHER INFORMATION CONTACT: Angela Henry, Arizona State Office, (602) 241–5534.

On December 21, 1948, as authorized under Section 8 of the Act of June 28, 1934 (48 Stat. 1269), as amended, the United States acquired the following land:

Gila and Salt River Meridian, AZ

T. 18 N., R. 13 W.,
Sec. 2, lots 1 thru 4, incl., S½N½, S½.
Containing 640.24 acres in Mohave County.

The land described above has been determined suitable for disposal by State exchange, as provided by section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716). The land will continue to be segregated from settlement, sale, location, or entries under the public land laws. The mineral estate was not reconveyed with the surface estate and, therefore, will not be subject to entry under the United States Mining or Mineral Leasing Laws.

John T. Mezes,
*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87–10728 Filed 5–11–87; 8:45 am]
BILLING CODE 4310-32-M

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[NV–030–07–3110–10–7050; N–48463]

## Realty Action; Exchange of Public and Private Lands in Clark County, NV

The following described Federal land in Clark County, Nevada has been determined to be potentially suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The lands will not be offered for exchange until 60 days after the date of publication of this Notice in the **Federal Register**.

The following described Federal lands will serve as a "pool" to consumate an exchange.

Mount Diablo Meridian

T. 21 S., R. 59 E.,
Section 11, lots 1, 2, N½, E½SW¼, SE¼.
Section 13; S½N½, S½.
Section 14; S½N½, S½.
Section 23; all.
Section 24; all.
Section 25; all.
Section 36; N½,SE¼.
Comprising 4.00 acres, more or less.

In exchange for the lands from the "pool" of Federal lands, the United States will acquire lands from a "pool" of private lands also in Clark County from Howard Hughes Properties (Summa Corporation). These private lands are described as follows:

Mount Diablo Meridian

T. 20 S., R. 59 E.,
Section 19; lots 3, 4, E½SW¼,SE¼.
Section 30; lots 1, 2, 3, 4, E½, E½W½.
Section 31; lots 1, 2, 3, 4, E½, E½, W½.
Section 32; S½ (within).
Section 33; SW¼ (within).
T. 21 S., R. 59 E.,
Section 4; lots 3, 4, S½NW¼, SW¼.
Section 5; lots 1, 2, 3, 4, S½N½, S½.
Section 6; lots 1, 2, S½NE¼, E½SE¼.
Section 7; E½.
Section 8; all.
Section 9; all.
Section 16; N½NW¼.
Section 17; N½N½.
Section 18 N½NE¼, NE¼NW¼.
Comprising 5,006 acres, more or less

The purpose of the exchange is to acquire private lands which are immediately adjacent to the Bureau of Land Management administered Red Rock Canyon Recreation Lands. These private lands countain the same significant geologic, floral, fauna and scenic features as the Recreation Lands. Acquisition of these lands would enable the Bureau to better manage the uses which occur within Red Rock Canyon as the lands contain the same ecological processes. The lands to be transferred from the United States to Howard Hughes Properties will help to meet the needs of community expansion. The public interest will be served by completing this exchange.

The pubic lands determined to be potentially suitable for disposal are not required for any Federal purpose. The exchange of these lands would not conflict with the land use plan.

The values of the land to be exchanged are approximately equal with the final determiaton to be made by appraisals of both parcels. Full equalization of values, if not equal, will be achieved by an adjustment in acres and/or payment to the United States by Howard Hughes properties of funds in an amount not to exceed 25% of the total value of the land to be transferred out of Federal ownership.

Patent, when issued, will contain reservations to the United States, will be subject to valid existing rights, and will be subject to reservations for future streets and public utilities.

Upon publication of this Notice of Realty Action in the **Federal Register**, the above described public land will be segregated from all forms of appropriation under the public land laws, and the general mining laws, except for land exchange and mineral leasing, for a period of two (2) years or upon issuance of patent whichever occurs first.

For a period of 45 days from the date of publication, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126. Any comments received will be utilized in the preparation of the Environmental Assessment/Land Report. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determintion of the Department of the Interior.

Dated: May 1, 1987.

Ben F. Collins,
*District Manager.*

[FR Doc. 87–10729 Filed 5–11–87; 8:45 am]
BILLING CODE 4310-HC-M

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[CO–942–06–4520–12]

## Colorado; Filing of Plats of Survey

April 30, 1987.

This plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., June 22, 1987.

The plat, in four sheets, representing the dependent resurvey of a portion of the Tenth Guide Meridian West (east boundary, T. 5 S., R. 81 W.), a portion of east boundary, and a portion of the subdivisional lines, the completion survey of section 12, and the survey of the subdivision of certain sections, T. 5 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 768, was accepted April 13, 1987.

This plat of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., April 30, 1987.

The plat, representing the dependent resurvey of a portion of the Twelfth Standard Parallel North (south boundary, T. 49 N., R. 11 W.), portions of the east boundary and subdivisional lines, and the survey of the subdivision of certain sections, T. 48 N., R. 12 W., New Mexico Principal Meridian, Colorado, Group No. 787, was accepted April 17, 1987.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850

BEST COPY AVAILABLE

Youngfield Street, Lakewood, Colorado 80215.

Jack A. Eaves,

*Chief, Cadastral Surveyor for Colorado.*

[FR Doc. 87-10731 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-JB-M

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[NM 940-07-4520-12-0851]

## New Mexico; Filing of Plat of Survey

April 30, 1987.

The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on April 30, 1987.

A survey representing the dependent resurvey of the north boundary of T. 30 N., R. 14 W., portions of the west boundaries of Tps. 31 and 32 N., R. 13 West, and the survey of the west and north boundaries and subdivisional lines, T. 31 N., R. 14 W., New Mexico Principal Meridian, New Mexico, under Group 851.

The survey was requested by the Bureau of Indian Affairs, Ute Mountain Agency, by memorandum dated January 21, 1985.

The plat will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

William S. DeGroot,

*Acting Chief, Branch of Cadastral Survey.*

[FR Doc. 87-10732 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-FB-M

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## Bureau of Reclamation

### Proposed Irrigation Ratesetting Policy Approval, Information Workshops, Public Hearing, and Availability of the Policy Document; Central Valley Project (CVP), California

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of Proposed CVP Ratesetting Policy Approval, Public Workshops and Hearing, and Availability of Policy Document.

**SUMMARY:** On May 4, 1987, the Department of the Interior proposed a new irrigation water ratesetting policy for the CVP. The proposed policy was developed pursuant to the Reclamation Act of 1902 (32 Stat. 388), as amended and supplemented, particularly by section 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196), as amended by the Act of July 2, 1956 (70 Stat. 483), the Reclamation Reform Act of 1982 (96 Stat. 1263), and by sections 105 and 106 of the Act of October 27, 1986 (Public Law 99-546).

The proposed CVP ratesetting policy will become final 120 calendar days following the date of this notice, unless public comment justifies reconsideration of the proposed policy. The final policy will be published in the Federal Register and will include responses to comments made during the public review and comment period.

Two informal public workshops are scheduled to provide interested parties with information about the provisions and the potential impacts of the proposed policy. The workshops will be followed by a public hearing to receive public comments on the proposed ratesetting policy. Copies of the policy document describing the options considered and the potential water service rates that could be expected in certain years under certain conditions for each contracting entity will be mailed to all CVP water users prior to the scheduled workshops. Also, copies may be obtained upon request.

*Workshops and Hearing Schedule:* The workshops will be held at the following locations on the specified dates:

Willows, CA—Monday, June 1, 1987, at the Memorial Hall, 525 W. Sycamore Street

Fresno, CA—Thursday, June 4, 1987, at the Fresno Hilton, 1055 Van Ness Street

The public hearing will be held on Tuesday, June 16, 1987, at the Sacramento Convention Center, 14th and K Streets, Sacramento, California. The workshops and public hearing will be held between 1:00 p.m. and 5:00 p.m.

*Hearing Rules:* Written comments for the record will be accepted for 60 days following the date of this notice. Requests to speak at the public hearing may be made at the workshops, or at the hearing. Those individuals or organizations that wish to speak at a specified time should send a written request to the address listed below. Oral comments will be limited to 10 minutes.

*Reclamation Contacts:* Written requests or comments should be addressed to the Regional Director, Bureau of Reclamation, Attention: Code MP-440 (IRP), 2800 Cottage Way, Sacramento, California 95825. Telephone inquiries may be made to Donna Tegleman at (916) 978-5035 in Sacramento, California, or to Donald Walker at (202) 343-5671 in Washington, DC.

Dated: May 4, 1987.

James M. Ziglar,

*Assistant Secretary—Water and Science.*

[FR Doc. 87-10896 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-09-M

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## Minerals Management Service

### Development Operations Coordination, Document; Corpus Christi Oil and Gas Co.

**AGENCY:** Minerals management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5293, Block 226, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and produciton of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 1, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton, Rouge, Louisiana (Office Hours: 8 a.m. to 4:40 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OSC Plans, Post Office Box 44487, Baton,Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Service/Louisana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executive of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 1, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-10733 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### National Register of Historic Places; Notice of Proposed NHL Boundaries

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, Attention: Chief of Registration (202) 343-9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from that same office.

**William B. Bushong,**

*Acting Chief of Registration, National Register of Historic Places, Interagency Resources Division.*

### City of Rocks National Historic Landmark, Cassia County, Idaho

*Verbal Boundary Description*

Commencing at a ¼ corner, Section 19, T16S, R24E, and Section 24, T16S, R23E; continuing due west ½ mile and north about ½ mile to a ¼ corner, Sections 13 and 24, T16S, R 23E; continuing east about ½ mile to section corner, 18 and 19, T16S, R24E and 13, 24, T16S, R23E; continuing due north ¾ mile, due east ¼ mile, and due north about 1¼ miles to a line between Section 6-7, T16S, R24E; continuing due east ½ mile, due south ¼ mile, due east ½ mile, and due north almost ½ mile to a township line between Section 32, T15S, R24E and 5, T16s, R24E; continuing about ¾ mile east to a section corner, 5-4, T16S, R24E, and 32-33, T15S, R24E; continuing north 2¼ miles along a section line, due east ¾ mile, due north ¼ mile, and west about ¼ mile to a ¼ corner, Sections 19-20, T15S, R24E; continuing north ¼ mile along a section line, due west ½ mile, and north about ¼ mile to a ¼ corner, Sections 18-19, T15S, R24E; continuing west about ½ mile to a section corner, 18-19, T15S, R24E, and 13, 24, T15S, R23E; continuing north about 1 mile to a section corner, 7, 18, T15S, R24E and 12-13, T15S, R23E; continuing east about 1 mile to a section corner, 7-8 and 17-18, T15S, R24E; continuing north about ½ mile to ¼ corner, Sections 7-8, T15S, R24E; continuing due east ½ mile, due south ¾ mile, due east about ½ mile to a section line, and north about 1¼ miles to a section corner, 4-5 and 8-9, T15S, R24E; continuing west about 3 miles to a section corner, 1-2 and 11-12, T15S, R23E; continuing south 1½ miles to a ¼ corner, Sections 13-14, T15S, R23E; continuing due west ½ mile and due south ½ mile to a ¼ corner, Sections 14, 23, T15S, R23E; continuing west about ½ mile to a section corner, 14-15 and 22-23, T15S, R23E; continuing south 3½ miles along a section line, due east ¼ mile and due south about ¾ mile to a section line, 11, 14, T16S, R23E; continuing about ¾ mile east to a section corner, 11, 12, 13, 14, T16S, R23E; continuing 1¾ miles south along a section line, about 1 mile due east to a township line, and north about ¼ mile to a ¼ corner Section 19, T16S, R24E and 24, T16S, R23E.

### Taos Pueblo National Historic Landmark, Taos (Taos County), New Mexico

The boundary of the Taos Pueblo National Historic Landmark encloses an irregular tear-drop shaped area which is approximately 2900 feet (883.9 m) long, southwest to northeast, and approximately 1200 feet (365.75 m) wide, southeast to northwest, at its widest part.

The boundary may be defined by six corner points. Point A is located just east of the fork in the road which follows the Rio Pueblo east of the village. Point B is located immediately southeast of the intersection of the road leading to the Pueblo School and the road which encircles the village, in the center of the former road. It is approximately 2240 feet (682.75 m), S49.5°W. of Point A. Point C is located approximately 700 feet (213.3 m), S86°W, of Point B and is approximately 500 feet (152.4 m), S29°E, of the Taos Pueblo Visitor Center. Point D is located immediately south of the intersection of the modern road to Taos and the road which encircles the village. It is approximately 400 feet (121.9 m), N29°W, of Point C and 100 feet (30.5 m), S29°E, of the Visitor Center. Point E is located immediately west of the ruin of the mission of San Geronimo de Taos between the road which encircles the village and an adjacent corral. It is approximately 450 feet (137.1 m), N2°E, of Point D. Point F is located immediately north of the westernmost of the two trash middens on the north side of the village. It is approximately 660 feet (201.1 m), N42°E, of Point E and approximately 2240 feet (682.75 m), S81.5°W, of Point A.

The Taos Pueblo National Historic Landmark is located predominantly in the south half of the southwest quarter of Section 34, Township 26 North, Range 13 East. The legal descriptions of the six boundary corner points are as follows:

Point A—T26N R13E SE¼, NW¼, SE¼, Section 34
Point B—T25N R13E NW¼, NE¼, NW¼, Section 3
Point C—T25N R13E NE¼, NW¼, NW¼, Section 3
Point D—T26N R13E SE¼, SW¼, SW¼, Section 34
Point E—T26N R13E SE¼, SW¼, SW¼, Section 34
Point F—T26N R13E NE¼, SW¼, SW¼, Section 34

### Manuelito Complex, McKinley County, New Mexico

The archeological district is delineated as a 7413 acre polygon.

drawn on the USGS 7.5 minute Manuelito, New Mexico, and Jones Ranch School, New Mexico, Quadrangles, near Manuelito Canyon. This geographic description is deliberately general in order to protect the integrity of the archeolgical resources, as required by law.

**Old Economy Historic District, Ambridge, (Beaver County) Pennsylvania**

Beginning on the west side of the district at the northeast corner of Route 65 and 13th Street, proceed east along the north side of 13th Street to a point opposite 98 13th Street. Crossing the street due south, follow the west and south property lines of 98 13th Street, continuing east in a straight line across Church Street to a point on the east side of the street. Proceed south to the southeast corner of 12th and Church Streets. Proceed due west across Church Street, and follow the south side of 12th Street to its intersection with Route 65. Follow the west and south property lines of 70 12th Street, and continue east along the south property lines of all the properties facing 12th Street, continuing to a point on the west side of Merchant Street. Proceed north along Merchant Street to a point opposite the south property line of 1198 Merchant Street. Crossing Merchant Street in a straight line, follow the south, east, and north property lines of 1198 Merchant Street, continuing west across Merchant Street to the northwest corner of Merchant and 12th Streets. Proceed north along the west side of Merchant Street to Wagner Street. Here the boundary crosses Wagner Street to include the Harmonist building at 1221 Merchant Street, and returns to the south side of Wagner Street. Proceed west along Wagner Street to a point opposite the east property line of 1216 Church Street. Crossing the street due north, follow the east property line of 1216 Church Street to the south property line of 272 13th Street. Proceed east along the south property lines of all the properties facing 13th Street, continuing east across Merchant Street, following the south property lines of all of the properties facing 13th Street to the southeast corner of the property of 336 13th Street. Follow the east side of this property north to 13th Street. Proceed west on the south side of 13th Street, crossing Merchant Street and then Church Street, to the southwest corner of 13th and Church Streets. Proceed north in a straight line across 13th Street, continuing north to a point opposite the north side of Creese Street. Here the boundary turns due east to include the property of St. John's Lutheran Church, with a jog to the south to include the Harmonist building at 273 13th Street. The boundary follows the east property line of the church to the south property line of 274 and 280 14th Street. Following their south and east property lines, continue north in a straight line across 14th Street to a point. Proceed east along the north side of 14th Street, crossing Merchant Street, to a point opposite 312 14th Street. Proceed due south across 14th Street and follow the west and south property lines of 312 14th Street, continuing east along the south property lines of those buildings facing 14th Street to the southeast corner of 324 14th Street. Follow the east and north property lines of this parcel, continuing west on 14th Street to a point opposite 317 14th Street. Proceed due north across 14th Street and follow the east and north property lines of 317 14th Street, continuing west along the south side of Boyleston Street, crossing Merchant and Church Streets, to the west side of Church Street. Proceed north along the west side of Church Street to a point opposite the south property line of 100 15th Street. Proceed east across Church Street in a straight line, continuing east along the south property lines of all the properties facing 15th Street to the southeast corner of 286 15th Street. Proceed north along its east property line, continuing north across 15th Street in a straight line to a point on the north side of the street. Proceed east along the north side of 15th Street, crossing Merchant Street, to the northeast corner of 15th and Merchant Streets. Proceed south across 15th Street in a straight line, continuing south along the east side of Merchant Street to the southwest corner of the property of 1412 Merchant Street. Follow the south and then the east property lines, continuing north along the east property lines of all of the properties facing Merchant Street, continuing across 15th Street in a straight line to the northeast corner of 1500 Merchant Street. Proceed due west, crossing Merchant Street, and follow the south side of Laughlin Street to a point opposite the west property line of 289 Laughlin Street. Proceed west in a straight line to the southwest corner of the property of 288 16th Street. Proceed east in a straight line along the south property lines of 288 and 298 16th Street to the west side of Merchant Street and proceed north to the corner of Merchant and 16th Streets. Here the boundary jogs north to include parcel #12–05–516 (no address), returns to the south side of 16th Street, and proceeds west along 16th Street across Church Street to the northwest corner of the property of 68 and 70 16th Street. Follow the west and south property lines of this parcel, continuing east along the south property lines of all of the properties facing 16th Street, crossing Church Street in a straight line to the east side of the street. Here the boundary follows the east side of Church Street to the southeast corner of Church and Laughlin Streets, with a jog to the west to include 1515 Church Street on the west side of the street. From the corner, proceed west across Church Street in a straight line, continuing west along the south side of Laughlin Street to the northwest corner of 75 15th Street. Follow the west property line south, continuing across 15th Street to a point on the south side of the street. Proceed west along 15th Street to the northwest corner of 70 15th Street. Follow the west property line to the north edge of the Old Economy Village property (parcel #12–01–301). Follow the property line west and then south to the point of origin.

**Haskell Institute, Lawrence, (Douglas County) Kansas**

*The district is composed of twelve noncontiguous parcels*

1. Pocahontas Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306840/4312350.

Located approximately 65 feet south of Creek Drive on the west side of the campus. The boundary comprises an area measuring 145 by 190 feet centered around the rectangular building which is 119 by 163 feet.

2. Pushmahata Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306720/4312480.

Located approximately 20 feet south of Indian Avenue and approximately 50 feet west of Barker Avenue. The boundary comprises an area measuring 70 by 90 feet centered around the rectangular building which is 44 by 67 feet.

3. Bandstand, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM References: 15/306830/4312540.

Located approximately 110 feet east of Barker Avenue in the center of a grassy open area. The boundary comprises an area measuring 50 by 50 feet centered around the square structure which is 25 by 25 feet.

4. Tecumseh Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306800/4312610.

Located approximately 25 feet west of Choctaw Avenue. The boundary comprises are area measuring 100 by 170 feet centered around the rectangular building which is 75 by 144 feet.

5. Hiawatha Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/308780/4312800.

Located approximately 38 feet west of Choctaw Avenue and adjacent to Tecumseh Hall and the Auditorium. The boundary comprises an area measuring 80 by 160 feet centered around the rectangular building which is 57 by 132 feet.

6. Auditorium, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/308710/4312800.

Located approximately 50 feet west of Choctaw Avenue and due north of Hiawatha Hall. The boundary comprises and area measuring 100 by 150 feet centered around the rectangular building which is 75 by 125 feet.

7. The Arch, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/308620/4312800.

Located approximately 200 feet north of Indian Avenue at the west end of the Haskell Stadium. The boundary comprises an area measuring 50 by 110 feet centered around the rectangular structure which is 25 by 82 feet.

8. Haskell Stadium, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/308640/4312700.

Located approximately 125 feet north of Indian Avenue and 325 feet west of East Perimeter Road on the north side of the campus. The boundary comprises an area measuring 315 by 675 feet centered around the stadium stands and playing field which measures 288 by 650 feet.

9. Indian Cemetery, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/308290/4311870.

Located approximately 18 feet south of Kiowa Avenue and 440 east of East Perimeter Road. The boundary comprises an area measuring 150 by 300 feet centered around the cemetery whcih is 100 by 250 feet.

10. Old Dairy, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306010/4311730.

Located approximately 44 feet east of East Mills Street and 150 feet north of North Mills Street. The boundary comprises an area measuring 110 by 150 feet centered around the rectangular building which is 82 by 125 feet.

11. Powhattan Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/306010/4311510.

Located approximately 25 feet south of Oneida Avenue and 38 feet east of Barker Avenue. The boundary comprises an area measuring 70 by 125 feet centered around by rectangular building which is 44 by 100 feet.

12. Kiva Hall, Lawrence East Quadrangle, Section 7, T13S, R20E—UTM Reference: 15/308910/4312420.

Located approximately 10 feet west of Chickasaw Avenue and 400 feet east of Massachusetts Avenue. The boundary comprises an area measuring 75 by 115 feet centered around the building which is 50 by 88 feet.

[FR Doc. 87-10692 Filed 5-11-87; 8:45 am]

BILLING CODE 4310-70-M

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 2, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 27, 1987.

Carol D. Shull,

*Chief of Registration, National Register.*

**ALABAMA**

*Mobile County*

Mobile, *Emmanuel AME Church*, 858 St. Michael St.

*Monroe County*

Beatrice, *Robbins Hotel*, AL 265

**ARIZONA**

*Gila County*

Globe, *Elks Building (Globe Commercial and Civic MRA)*, 155 W. Mesquite

Globe, *Gila Valley Bank & Trust Building (Globe Commercial and Civic MRA)*, 292 N. Broad St.

Globe, *Globe Downtown Historic District (Globe Commercial and Civic MRA)*, Broad St. between Cedar and Tebbs

**CONNECTICUT**

*Fairfield County*

Bridgeport, *Pequonnock River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Pequonnock River

Greenwich, *Mianus River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Mianus River

Milford-Stratford vicinity, *Housatonic River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Housatonic River

South Norwalk, *Norwalk River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Norwalk River

Westport, *Saugatuck River Railroad Bridge (Movable Railroad Bridges on the NE Corridor in Connecticut TR)*, AMTRAK Right-of-way at Saugatuck River

*Windham County*

Woodstock, *Bowen Matthew, Homestead*, Plaine Hill Rd.

**FLORIDA**

*Brevard County*

Palm Bay, *St. Joseph's Catholic Church*, Miller St., NE

**KENTUCKY**

*Jefferson County*

Louisville, *St. Francis of Assisi Complex*, 1960 Bardstown Rd.

*Marion County*

Lebanon, *Lebanon Historic Commercial District*, Main St. roughly between Proctor Knott and Spalding Aves.

**LOUISIANA**

*Lafourche Parish*

*Acadia Plantation*

*St. Mary Parish*

Franklin vicinity, *Dixie Plantation House*, LA 182, 1 mi. SE of Franklin.

**MARYLAND**

*Anne Arundel County*

Gambrills vicinity, *Rosehill*, 2403 Bell Branch Rd.

*Cecil County*

Rising Sun vicinity, *Brown, Mercer, House*, 1270 England Creamery Rd.

*Prince George's County*

Aquasco, *Sennyside*, 16005 Dr. Bowen Rd.

**MISSISSIPPI**

*Forrest County*

Hattiesburg, *Old Hattiesburg High School*, 946 Main St.

**NEW HAMPSHIRE**

*Merrimack County*

Concord, *Endicott Hotel*, 1–3 S. Main St.

*Sullivan County*

Charlestown, *Charlestown Main Street Historic District*, Main St.

**NEW JERSEY**

*Bergen County*

Waldwick, *Erie Railroad Signal Tower, Waldwick Yard*, NE end of Bohnert Pl., W side of RR Tracks

*Cape May County*

Dennisville, *Dennisville Historic District*, Petersburg Rd., Main St., Church Rd., Hall Ave., Fidler and Academy Rds., and NJ 47

*Essex County*

Newark, *Mount Pleasant Cemetery*, 375 Broadway.

*Hudson County*

Kearney, *Highland Hose No. 4*, 72–74 Halstead St.

NORTH CAROLINA

Macon County

Franklin, *St. Agnes Church*, 27 Franklin St.

Wake County

Raleigh, *North Carolina State Fair Commercial & Educational Buildings*, NW corner Jct. of Blue Ridge Rd. and Hillsborough St.

UTAH

Utah County

Pleasant Grove, *Adams, John Alma, House (Peasant Grove Soft-Rock Buildings TR)*, 625 E. Two Hundred S.
Pleasant Grove, *Goode, Charles T.H., House (Pleasant Grove Soft-Rock Buildings TR)*, 1215 E. Main
Pleasant Grove, *Green, Samuel, House (Pleasant Grove Soft-Rock Buildings TR)*, 284 E. Two Hundred S.
Pleasant Grove, *Harper, Alfred William, House (Pleasant Grove Soft-Rock Buildings TR)*, 125 W. Four Hundred N.
Pleasant Grove, *Larsen, Neils Peter, House (Pleasant Grove Soft-Rock Buildings TR)*, 1150 N. One Hundred E.
Pleasant Grove, *Lim, William, House (Pleasant Grove Soft-Rock Buildings TR)*, 695 N. Four Hundred E.
Pleasant Grove, *Richins, Thomas A., House (Pleasant Grove Soft-Rock Buildings TR)*, 405 N. Five Hundred E.
Pleasant Grove, *Wadley, Edward, House (Pleasant Grove Soft-Rock Buildings TR)*, 2445 N. Canyon Rd.
Pleasant Grove, *White, Jacob Hanmer, House (Pleasant Grove Soft-Rock Buildings TR)*, 599 E. One Hundred S.
Pleasant Grove, *Young, William Friend, House (Pleasant Grove Soft-Rock Buildings TR)*, 550 E. Five Hundred N.

VIRGINIA

*Lynchburg (Independent City)*
*Mountview*, Liberty University Campus between VA 670 and US 29

[FR Doc. 87-10891 Filed 5-11-87; 8:45 am]
BILLING CODE 4310-70-M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Coal Mining Reclamation Operations, Initial and Permanent Regulatory Programs, Excess Moisture Content Allowance—Reclamation Fees

Abstract: Section 402 of Pub. L. 95-87 require fees to be paid to the Abandoned Mine Reclamation fund by coal operators on the basis of coal tonnage produced. The information will be used by the regulatory authority during audits to verify that the amount of the excess moisture deduction taken by the operator is appropriate

Bureau Form Number: None
Frequency: On occassion
Description of Respondents: Coal Mine Operators
Annual Responses: None
Annual Burden Hours: 3573
Bureau clearance officer: Darlene Grose-Boyd (202) 343-5447

Dated: May 1, 1987.

Carson W. Culp,
*Assistant Director, Budget and Administration.*

[FR Doc. 87-10734 Filed 5-11-87; 8:45 am]
BILLING CODE 4310-05-M

## DEPARTMENT OF LABOR

## Office of the Secretary

### Senior Executive Service; Appointment of Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the Federal Register.

The following executive is hereby appointed to a three-year term effective April 20, 1987: Linda R. Anku.

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, DC 20210, Telephone Number 523-6551. Signed at Washington, DC, this 5th day of May, 1987.

William E. Brock,
*Secretary of Labor.*

[FR Doc. 87-10812 Filed 5-11-87; 8:45 am]
BILLING CODE 4510-23-M

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

#### Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

#### List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often recordkeeping/reporting requirement if needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, of applicable.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Office for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management

and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**Extension**

*Employment and Training Administration*

Job Corps Data Sheet
1205–0025; ETA 652
On occasion
State or local governments; businesses or other for-profit; non-profit institutions 103,000 respondents; 51,500 burden hours; 1 form

This form is used to obtain information for screening and enrollment purposes to determine eligibility for the Job Corps program. It is prepared by the screener for each applicant and has no further impact on the public.

*Employment and Training Administration*

Job Corps Health Questionnaire (ETA 6–53)
1205–0033; ETA 6–53
On Occasion
Individuals or households
97,500 respondents; 19,500 hours; 1 form

The Health Questionnaire is used to obtain the health history of applicants to the program to determine medical eligibility.

The applicant must not have a health condition which represents a potentially serious hazard to the youth or others, results in a significant interference in the normal performance of duties, or requires frequent, expensive, or prolonged treatment.

Signed at Washington, DC, this 7th day of May, 1987.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 87–10611 Filed 5–11–87; 8:45 am]

BILLING CODE 4510–30–M

## Employment and Training Administration

### Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Addition to List of Labor Surplus Areas

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**DATE:** The addition to the labor surplus area list is effective May 1, 1987.

**SUMMARY:** The purpose of this notice is to announce an addition to the list of labor surplus areas.

**FOR FURTHER INFORMATION CONTACT:** William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–535–0185.

**SUPPLEMENTARY INFORMATION:** Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the doemstic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981. (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on March 26, 1987 (52 FR 9727).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the list of labor surplus areas, effective May 1, 1987.

The following addition to the list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

**Addition to the Annual List of Labor Surplus Areas**

May 1, 1987.

Labor Surplus Area:
Kansas: Neosho County
Civil Jurisdiction Included:
Neosho County

Signed at Washington, DC, on May 5, 1987.

**Roberts T. Jones,**

*Deputy Assistant Secretary of Labor.*

[FR Doc. 87–10619 Filed 5–11–87; 8:45 am]

BILLING CODE 4510–30–M

### Job Training Partnership Act, Debt Collection; Guidance to States

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Employment and Training Administration of the Department of Labor announces its intention to issue instructions to the States on the recovery of misexpenditures under the Job Training Partnership Act. The notice is given to interested persons in order that they may familiarize themselves with the types of misexpenditures requiring repayment in non-Federal funds and the disposition of recoveries from other less serious misexpenditures. This guidance is being provided in a proposed Training and Employment Guidance Letter published at the end of this document.

**DATE:** Written comments must be received before June 11, 1987.

**ADDRESS:** Written comments on this notice shall be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Room N4671, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Mr. David O. Williams, Administrator, Office of Financial and Administrative Management. Commenters wishing acknowledgment of receipt of their comments must submit them by certified mail, return receipt requested.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda D. Kontnier, Chief, Division of Debt Management, Office of Grants and Contracts Management, Employment and Training Administration, Department of Labor, Room N4671, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535–0704.

**SUPPLEMENTARY INFORMATION:** The Employment and Training

Administration of the Department of Labor announces its intention to issue instructions to the States on the disposition of misexpended funds recovered under the Job Training Partnership Act. This guidance is being provided in a Training and Employment Guidance Letter published at the end of this document. Written comments are invited from the public.

Signed at Washington, DC, this 31st day of March 1987.

**Roger D. Semerad,**

*Assistant Secretary of Labor.*

**Training and Employment Guidance Letter**

From: Roger D. Semerad, Assistant Secretary for Employment and Training.

Subject: Debt Collection Under the Job Training Partnership Act (JTPA).

1. *Purpose:* To provide States with instructions on the method of repayment to recover misexpenditures under the Job Training Partnership Act.

2. *References:* Debt Collection Act of 1982 (31 U.S.C. 3701 *et seq.*); Federal Claims Collection Standards (4 CFR Chapter II); Training and Employment Guidance Letter (TEGL) No. 6–84; OMB Circular A–128; Training and Employment Information Notice (TEIN) No. 7–86.

3. *Background:* Training and Employment Information Notice (TEIN) No. 7–86 was issued on August 14, 1986, to address a very narrow concern: Insuring consistency in the Training and Employment Administration's (ETA) response to States' inquiries on how to handle misspent JTPA funds recovered from sub-recipients. Since the issuance of TEIN No. 7–86, further consideration has been given to two additional objectives: (1) The reinforcement of the Department of Labor's commitment to vigorous corrective action in relation to instances of serious violations or illegal acts, and (2) the conserving of funds for program use.

4. *Method of Repayment:* Section 164(e)(1) of the Job Training Partnersahip Act requires repayment from non-JTPA funds where the misexpenditure was due to "willful disregard of the requirements of the Act, gross negligence, or failure to observe accepted standards of administration."

For those misexpenditures where the liability arises from (1) "Willful disregard," "gross negligence," or "failure to observe accepted standards of administration," in Section 164(e)(1), or (2) incidents of fraud, malfeasance, or misapplication of funds as defined in TEGL No. 6–84, or (3) illegal acts or irregularities which are required to be reported in accordance with Paragraphs 11b.(4) and 12 of OMB Circular A–128, it is ETA policy that non-Federal funds must be remitted to the Department of Labor and will not be available for reprogramming; such funds will revert to the U.S. Treasury. This policy applies whether the misexpenditure occurs at the recipient or at any sub-recipient level. These funds are to be remitted to:

U.S. Department of Labor, Employment and Training Administration, Office of Financial and Administrative Management, Room N4671, 200 Constitution Ave., NW. Washington, DC 20210.

The letter of transmital should provide the following identifying information:

Governor/Secretary Agreement Number (Grant No.), Program Title, Program Year to which the repayment applies, Sub-recipient name, Sub-recipient grant or contract number.

For the remainder of misexpenditures, where the liability does not arise under the above categories, remitance of non-Federal funds to the Department of Labor is not required. Rather, the non-Federal funds shall be reprogrammed into the same JTPA program and title, provided this reprogramming takes place during the program year and funds were obligated by DOL, or the two succeeding program years. Any funds remitted to ETA because the three year availability period has expired, must be remitted to the Department of Labor at the above address. Such funds will not be available to the State for subsequent drawdown or expenditure.

In those cases where non-Federal funds are reprogrammed, documentation relating to the repayment of the liability and the reprogramming of the funds should be maintained and available for review during the compliance review process.

5. *Effective Date:* This Training and Employment Guidance Letter shall be effective as of the date of issuance.

6. *Inquiries:* Questions concerning this guidance letter should be directed to Linda Kontnier or James MacDonald on (202) 535–0704.

[FR Doc. 87–10617 Filed 5–11–87; 8:45 am]
BILLING CODE 4510-30-M

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## Job Training Partnership Act, Migrant and Seasonal Farmworker Program for Program Year 1987; Methodology for Setting Grantee Performance Standards

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of Method for setting performance standards.

**SUMMARY:** The Department of Labor adopts a methodology for setting performance standards for Job Training Partnership Act Migrant and Seasonal Farmworker grantees for Program Year 1987 (July 1, 1987–June 30, 1988).

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Clayton Johnson, Telephone: 202–535–0685.

**SUPPLEMENTARY INFORMATION:** On November 3, 1986, the Department of Labor published in the **Federal Register** a notice of a proposed methodology for setting performance standards for Job Training Partnership Act Migrant and Seasonal Farmworker program grantees. 51 FR 39923. Interested parties were invited to submit comments until November 17, 1986. This notice summarizes the comments received and announces the adoption of the modeling process for the purpose of setting performance standards for Program Year (PY) 1987 (July 1, 1987–June 30, 1988).

### Discussion of Comments

A total of 14 letters were received containing numerous comments in response to the previous notice. In their letters, the Farmworker grantees raised a variety of questions and expressed a number of concerns regarding the standard setting methodology and related performance standards issues.

Based on the Department's review of the comments received, the principal changes in the two statistical models are as follows:

- *Migrant* is deleted as a factor from the Entered Employment Rate (ERR) model.
- *Aged 14–21* (Youth), *Elementary School Dropouts*, and *Unemployment at Enrollment* are deleted as factors from the Cost per Entered Employment (CEE) model.
- *Average Weeks Participated* will be computed based on terminees later entering employment.
- *Non-Metropolitan Statistical Area* (Non-MSA/"balance of state") data will be used in calculating the local economic factors in both models (EER, CEE) instead of statewide data previously used.

These several changes are described in more detail along with other concerns and questions as grouped under the major topic headings shown below.

*1. Selection of Factors in the Models*

A large share of comments contained in the letters were in this category. Some commenters questioned why given factors were included in the models for

Entered Employment Rate (EER) or for Cost per Entered Employment (CEE). Other commenters expressed concern as to why certain factors were not included among the participant characteristics or local economic conditions in either of the two models.

- Including Migrant as a factor in the EER model was questioned since it appears to indicate that they are easier to place. This is a conclusion that runs counter to experience cited by grantees.
- The validity of including youth (Aged 14–21), Elementary School Drop-Outs, and Unemployed at Enrollment as factors in the CEE model was questioned since the apparent implication is that participants with these characteristics are less expensive to place. Again, this is a conclusion that is not consistent with grantees' experience.
- Excluding program activity mix as a factor was questioned since it seems to be a strong influence in determining participant outcomes and costs.
- The absence of some other special factors (e.g. exoffenders) was questioned.

Upon further consideration, the Labor Department concurs with the proposed deletion of the Migrant factor from the EER model and the deletion of the factors for Youth, Elementary School Drop-Outs, and Unemployed at Enrollment from the CEE model. However, the Department continues to regard program activity mix as an aspect that should be excluded from the models. Choosing program activity options is clearly an internal management decision within each grantee's control.

The Department recognizes that either model may not contain some participant characteristics that are significant to certain grantees. However, whether a factor should be included in the model must depend upon the degree to which it is applicable to all or most grantees. Also, some factors not presently included in the models may become more significant in future years once more data are accumulated.

*2. Factor Weights and Data Used in Models*

Questions were raised in some comments about the value of using program data reported for the nine month transition period (TY 1984—October 1, 1983 to June 30, 1984) in constructing the models for the two performance measures (EER, CEE). Grantees were concerned about that timeframe since it appeared to omit a full migrant season. However, a statistical analysis of TY 1984 data along with data from PY 1984 (July 1, 1984 to June 30, 1985) showed essentially the same patterns for both periods. In addition, the main consideration has been that the models be developed on the broadest available data base and that this should include TY 1984 as well as PY 1984.

Several commenters sugggsted that it would be more accurate to use balance of State data for the unemployment rate factor since it would more fully reflect the rural areas in which the grantees operate. The Department agrees with the desirability of this proposed change; thus, the local economic factors in the models will be calculated using balance of State data that exclude metropolitan statistical areas.

Other comments were directed at the data used in computing "Average Weeks Participated." The "Average Weeks Participated" factor will be calculated based on those terminees who later entered employment as reported on the Farmworker Annual Status Report.

The overall statistical significance of the proposed methodology was questioned since the models appear to account for only about 25 to 30 percent of whatever impacts on placement rates and their costs. It should be noted that the prediction power of the models could be increased by including program activity mix, but only with the key disadvantage of reducing flexibility in program planning (i.e., previous patterns of program activity would tend to drive the standards). Also, two other important aspects that cannot be included in the models are the quality of grantee management and certain intangible elements such as participant motivation, terminees relocating to other areas, etc. The correlations for the Farmworker performance standards models are in the same range as those for the JPTA II–A performance standards models and these meet acceptable statistical criteria.

In response to grantee comments, the Department will continue to study the possibility of utilizing a direct placement versus indirect placement ratio in future revisions of the models. Current problems in segregating this type of data on the reporting forms make it impractical at this time.

*3. Sub-state Data for California Grantees*

Concern was expressed by several California grantees about their being given statewide data for three of the local factors in the model (i.e., % of population living on farms, median family income, and state unemployment rate). In the case of the other States, there is only a single JTPA Section 402 program grantee within a given State. However, California has five JTPA Section 402 grantees with each being designated to serve a separate sub-state area. The Department agrees with the desirability of providing separate sub-state data that reflects each grantee's designated service area within California.

*4. Implementation of Model Based Standards*

Serveral commenters suggested that a "sanctionless" test period be set up for PY 1987. However, the Department does not regard such a step as being necessary or desirable. This is because the standards have already had a developmental phase extending over the past five program periods (FY 1983, TY 1984, PY 1984, PY 1985, PY 1986). Also, the existing Federal regulations at 20 CFR 633.321 limit the trial period to the end of PY 1986. Consequently, PY 1987 is the first year the results of performance standards will be considered officially effective.

Some other commenters expressed concern about the lack of final performance standards until year's end. This concern points up a key change from the previous approach which provided fixed numbers (i.e., "issued" standards) at the beginning of the year. The model-based approach utilizes a more flexible process in which actual program data reported by the grantee at the end of the year is used to calculate the standards for each measure (EER, CEE). If it turns out that the grantee has generally served easy to place terminees, then its standards will be tighter. If the grantee has generally served hard to place terminees, then its standards will be more lenient. By utilizing their current data in the models, grantees can compute and monitor where they stand at any point in time.

Another concern expressed in some grantee comments related to the matter of negotiating changes in their performance standards. This concern partially reflects the old system in which fixed standards were set at the beginning of the period and in which grantees sought to negotiate changes to account for certain anticipated problems or conditions. The new model-based approach offers greater flexibility since it provides for a broader range of acceptable performance and since final standards are not established until after the period ends. The Department expects that there may be some occasions where grantees that miss the final minimum standards can submit appropriate justification for missing their standards based on "acts of God

or other extenuating circumstances that may have radically affected their actual performance during the year.

The comments regarding how this methodology "leans" toward performance driven programming are dealt with in the following topic category ("5" below).

*5. "Negative" Impact of Performance Standards*

In their letters, grantees acknowledged the important role that performance standards can play in improving services to participants and enhancing public acceptance. However, they also emphasized their genuine concern that measurements tied solely to cost efficiency will drive their program toward a low cost/high placement rate imperative. As an example, they said that too much emphasis on reducing the Cost per Entered Employment might encourage shorter training and more direct palcement activities.

The Department has carefully considered the potential influence of the standards on types of participants served and the varieties of training and services provided. The manner in which the standards have been established is based on the expectation that 85% of the Farmworker grantees will exceed their minimally acceptable levels even if their performance is only comparable to PY 1984 experience. For this reason, the judgment of the Department is that the minimum standards are not excessively stringent.

*6. Impact of New Immigration Law*

The comments received on this topic reflected grantee apprehension as to how newly eligible participants will affect their programs. Specific concerns were expressed as to how the newly eligible population will impact on the reporting of participant characteristics during PY 1987. The speculation is that the PY 1987 data might be quite different in pattern from previous years and from future periods, particularly for certain states where there are many aliens in the farmworker population. It was suggested that additional reporting of the newly eligible participants duirng PY 1987 might avoid possible negative effects that the data might otherwise have on future standard setting efforts. Grantees are at liberty to maintain separate reporting if they desire for their own use.

*7. Rewards and Sanctions*

Several commenters expressed interest and concern regarding any plans that the Department may have regarding incentives or sanctions as a result of grantee performance against the performance standards in future years. This particular notice does not address the possible range of such rewards and sanctions to be adopted, aside from indicating that performance standards are one of fourteen (14) responsibility tests that grantees must meet to be considered for future designations.

The Department intends to develop appropriate sanctions for grantees. whose failures to meet the standards are substantial or persistent. Also, efforts will be made to formulate incentives for those grantees that meet or exceed their model based performance levels. The Department will continue to explore approaches for establishing rewards and sanctions in accordance with JTPA Section 402 regulations.

**Information on Methodology**

Job Training Partnership Act (JTPA) Section 402 authorizes programs to meet the training and employment needs of migrant and other seasonal farmworkers and their dependents. These programs and services are provided through grants made to public agencies and nonprofit organizations as determined by the Secretary of Labor (Secretary) to possess a demonstrated ability to effectively administer these activities within the given states. JTPA Section 402(c)(4) states, "Recipients of funds under this section shall establish performance goals, which shall, to the extent required by the Secretary, comply with performance standards established by the Secretary pursuant to section 106."

Performance standards for Migrant and Seasonal Farmworker (MSFW) programs were first introduced on a trial basis in the last year of the Comprehensive Employment and Training Act (CETA) (Fiscal Year (FY) 83 (October 1, 1982–September 30, 1983)). Performance standards have continued to be used in MSFW programs under JTPA during the following periods.

Transition Year (TY) 84, October 1, 1983–June 30, 1984
Program Year (PY) 84, July 1, 1984–June 30, 1985
Program Year (PY) 85, July 1, 1985–June 30, 1986
Program Year (PY) 86, July 1, 1986–June 30, 1987

It should be noted that Federal regulations for JTPA Section 402 programs State that "no grantee shall be penalized for not meeting performance standards for program years 1984–86" (20 CFR 633.321(c)). Therefore, PY 1987 (July 1, 1987–June 30, 1988) will be the first program period from which performance standards results will be used in assessing MSFW grantees for designation purposes for PY 1989/90. Performance standards are one of fourteen (14) responsibility tests that MSFW grantees are required to meet in being considered for final selection (20 CFR 633.204). By focusing on participant outcomes of the MSFW programs, performance standards complement the other criteria relating to various compliance aspects.

Two performance measures are used for MSFW programs:

- Entered Employment Rate.
- Cost Per Entered Employment.

In calculating these standards, participants in the "Services Only" programs and youths who obtain an employability enhancement outcome are excluded and the costs of "Services Only" activities and "Administration" costs are subtracted from the cost measure.

The Entered Employment Rate (EER) standard reflects the employment orientation of all JTPA programs. A Cost Per Entered Employment (CEE) standard holds grantees accountable for using their training funds in a cost effective manner.

**Revisions and the Reasons for Them**

Through PY 85, standards were adjusted based on the average performance in clusters of grantees, defined by whether more than 50% of the terminees were migrants and by categories of program size (based on allocation levels). Further adjustments were made to the entered employment rate for differences in the unemployment rate by using the adjustments from the JTPA Title II–A model. Adjustments for the unemployment rate were similarly made to the cost per entered employment standard and additional adjustments were also made for the proportion of indirect placements and the local consumer price index.

The use of the clusters to adjust standards created problems because the procedures were fairly ad hoc and thus lacked both statistical and face validity. For example, whether it was appropriate to use Title II–A unemployment rate adjustments for MSFW programs had not been verified. Further, the division of grantees into distinct groups meant that grantees serving 49% migrants were given substantially different standards than those serving 51%. Because of the problems with the clustering approach, an interim procedure was adopted for PY 1986 by which performance standards were set at 100% of each grantee's actual performance in PY 1984

with a 15% end of year variance allowed for both measures.

The rationale for performance standards is to motivate grantees to run well-managed, efficient programs. Setting standards based on how well the grantee actually performed in the previous year assumed that service levels and local economic conditions do not change from year-to-year, and that only management quality is reflected in these year-to-year changes in performance. Moreover, it holds grantees harmless for perpetuating poorly managed programs from one year to the next. For a given set of client characteristics and labor market conditions, a grantee who runs a well managed program and, thus, did better in the past year would be given a higher standard than a grantee who runs a poorly-managed program and thus performed poorly last year. Because performance standards are intended to encourage efficient management, standards should distinguish between well-managed and poorly-managed programs rather than holding the grantees harmless for management quality.

Since participant characteristics and local economic conditions may change from year to year, a grantee may have to meet the same standard with a more difficult to serve clientele or in a more difficult economy. The current approach assumes that each and every grantee can do as well as it did last year and does not account for random or chance events that may also influence how well a grantee performs. For example, a new firm may open in the area, creating a short-term need for new workers that wanes in the following year; participants in one year may, by chance, be easier placed in job openings than the typical participants; additional funding for related programs may be available in one year, but not the next. Consequently, under the current system, some MSFW grantees found that they could not expect to meet their issued PY 86 standards because of such random events and have had to negotiate with DOL for revised standards.

To mitigate problems associated with negotiations and other aspects of the standard-setting process, the Department of Labor is adopting a statistical modeling approach for setting PY 87 standards. Using historical (TY 84 and PY 84) data, the model identifies a set of factors that strongly influence the performance outcome. It then provides weights to convert differences among grantees on these factors into appropriate adjustments in expected performance levels. The adjustments raise or lower the expected performance level form the average performance of all grantees. The adjustment model has the following advantages over the current standard-setting approach:

- The model represents the average influence of factors across all grantees; well managed programs are expected to do better than the model indicates and poorly-managed programs are expected to do worse. Thus, grantees will not be held harmless for poorly-managed programs.
- It allows adjustments to be applied consistently and equitably to all grantees.
- It quantifies the size of adjustments so that, for exmaple, one knows not only that serving primarily a farming community is a justifiable reason for lowering performance standards but also that the standards should be lowered by a specific amount for each percentage point change in farming residents.
- It allows on to add up the adjustments for several factors to determine the net adjustments that should be made to the standards.

### Selection of Modeling Factors

The models are designed to adjust expected performance levels for selected participant characteristics and local economic conditions (called "local factors") that are not under the grantees' control and are known to have strong relationships to program outcomes.

Numerous factors reported on the Farmworker Program Annual Status Report (FASR) were examined for inclusion in the model. Economic conditions for non-metropolitan areas have been constructed from Census and Bureau of Labor Statistics data.

The following criteria were used when selecting the factors to be included in each model:

- Management practices are excluded because they are regarded as within the control of program managers, not beyond their control.
- There must be some variation on the factor, that is, in service levels or local economic conditions, among grantees.
- The relationship between the factor and the performance measures makes intuitive sense.
- The factor is strongly related to the performance outcomes.
- Measures of the factor are objective and easily quantifiable.
- For statewide economic conditions, published data is available nationwide.

The following 15 factors are included in the PY 87 MSFW models:

| Local factors | Model | |
|---|---|---|
| | EER | CSE |
| Percent Migrants | | x |
| Percent Females | | x |
| Percent Aged 14 to 21 | x | |
| Percent Elementary School Dropouts | x | |
| Percent Blacks | x | x |
| Percent Hispanic | x | |
| Percent Indian or Native Americans | | x |
| Percent Asian or Pacific Islanders | | x |
| Percent Limited English language proficiency | x | x |
| Percent Welfare recipient | x | x |
| Percent Unemployed at enrollment | x | |
| Average Weeks Participated by those who entered employment | | x |
| Unemployment rate in State (Non-MSA) | x | x |
| Percent of Population living on farms (Non-MSA) | | x |
| Median Family Income (000) (Non-MSA) | x | x |

Models are derived from the past average performance of grantees (e.g., TY 84 and PY 84 experience was used in estimating the PY 87 models). Such an approach is quite appropriate because the relationships between grantee performance and local factors remain fairly stable over time. The model weights represent the size and direction of each local factor's effect on the performance outcome when the other factors in the model are also taken into account. The following relationships between local factors and performance measures are identified in the PY 87 models:

- The cost per entered employment is somewhat higher for serving migrants.
- Youths under 21 have significantly lower entered employment rates than do older terminees.
- Similarly, dropouts with less than 8 grades of education have lower entered employment rates than do individuals with more education.
- Blacks and Hispanics have lower entered employment rates than do whites.
- Individuals with limited English-language proficiency have lower entered employment rates and are associated with higher costs per entered employment.
- Welfare recipients have lower entered employment rates and are associated with higher costs per entered employment.
- Individuals who were unemployed prior to entry have higher entered employment rates.
- Grantees in States with a greater proportion of the population living on farms have higher costs per entered employment.
- Grantees serving more females had somewhat higher cost per entered employment.
- Grantees serving more Blacks, Indian or Native American, and Asian or Pacific Islander had somewhat higher cost per entered employment.

- Grantees in States with higher unemployment rates have lower entered employment rates and higher costs per entered employment.
- Grantees in States with higher median family incomes, and presumably higher living costs, had higher costs per entered employment and lower entered employment rates.
- Grantees where the successful participants, on average, have longer training times have higher cost per entered employment.

Program mix has been excluded to hold grantees accountable for the program-activity mix they provide. Providing the appropriate mix of program activities to meet the changing needs of the clients is an important management responsibility.

Other factors are excluded from the models because grantees serve very similar (and usually very small) proportions of individuals with those characteristics. Participant characteristics excluded because of little variation are: single head of household and handicapped.

Some factors were included in a model for one of the outcomes but excluded from the other because their adjustments in the latter did not make sense from a programmatic perspective. Thus, migrants and females were excluded from the entered employment rate model because including them would have generated higher expected performance.

Several variables measuring local economic conditions were examined but were excluded from the recommended models because they did not have significant relationships with the performance measures. These variables include population density, average annual earnings in the State, percent employed in manufacturing, percent of land in farms and percent of farm revenues from crops. The lack of a strong relationship between many economic conditions and program performance is probably due to the use of statewide data.

The recommended performance goals are calculated as differences from the national average performance. The national average performance represents the outcome of serving participants with average characteristics in local areas with average conditions. Thus, a grantee's performance adjustments will depend on how different its service levels and economic conditions are from the national averages of these local factors.

The national average levels, excluding "Services Only", of the factors used in the models to calculate the PY'87 performance goals are:

| | |
|---|---|
| Percent Migrants | 21.2 |
| Percent Females | 32.7 |
| Percent Aged 14 to 21 | 31.6 |
| Percent Elementary School Dropouts | 23.7 |
| Percent Black | 19.4 |
| Percent Hispanic | 44.5 |
| Percent Indian or Native American | 3.2 |
| Percent Asian or Pacific Islander | 4.4 |
| Percent Limited English Proficiency | 17.7 |
| Percent Welfare recipients | 11.7 |
| Percent Unemployed at enrollment | 79.8 |
| Average Weeks Participated by those who entered employment | 17.1 |
| Unemployment rate in State (Non-MSA) | 8.6 |
| Percent of population living on Farms (Non-MSA) | 6.4 |
| Percent Median Family Income in 000's (Non-MSA) | 17.0 |

These national averages of service levels are not meant to indicate that grantees should strive to serve those proportions of participants. These average service levels are used only to determine whether a grantee is serving more hard-to-serve participants than average and thus should receive lower than average performance goals, or whether the grantee is serving fewer hard-to-serve participants than average and thus should receive somewhat higher than average performance goals.

Because the use of an adjustment model may yield substantially different standards for some grantees than they received from previous standards-setting approaches, the Department of Labor will include past performance in the setting of standards for the first year of model use in PY 87.

Under this weighted average approach, grantees' expected performance derived from the model and past performance would be weighted and combined to yield a new expected performance level that is a compromise between the two. A weight for past performance was statistically derived to best predict performance. Weights for past performance (PY 1985) are 45% for the EER standard and 49% for the CEE standard.

The adjustment model will provide:

- *A recommended performance goal for each outcome measure.* Each grantee's recommended goal is calculated to fall at an average performance level given the participant characteristics and local economic conditions of that grantee. At an average performance level, fifty per cent of grantees facing these same conditions can be expected to perform above their recommended goals.
- *A standard set below the recommended goal to reflect a minimally acceptable level of performance.* The standard identifies the performance a grantee must achieve to meet the responsibility test at 20 CFR 633.204(a)(5). Consistent with grantees' rate of failure to meet standards in the past, an individual performance standard is set for each grantee so that, unless the grantee improves their performance relating to the conditions they face, 15% will perform below the standard. No end of year variance will be allowed below this minimally acceptable standard, as was applied in the past. Thus, grantees should aim their planned performance at or above the recommended goal level calculated by the model. By planning and maintaining performance at the recommended goal level during the year, grantees can accommodate possible changes in actual service levels and local economic conditions during the year that may cause an overlooked increase in the grantee's minimum standard when it is recalculated at year end.
- *A level of exemplary performance* is designated separately for each grantee and this is a point above which only 15% of grantees would be expected to perform, unless they improve their performance relative to the conditions they face.

Minimally acceptable performance standards and exemplary levels of performance are uniquely established for each grantee taking into account the number of their terminees. Minimally acceptable standards will be set further below the recommended goal for smaller grantees than for larger grantees. Exemplary levels of performance will be set closer to the recommended goal for larger grantees than for smaller grantees.

Unlike the previous standard setting approaches, the model-based process does *not* produce a fixed set of numbers ("issued standards") at the beginning of the year to be targeted by grantees throughout the year. Rather, the models provide each grantee with a broader range of acceptable performance from the minimally acceptable level (standard) to the average expected level (recommended performance goal) to the exemplary level. The models are designed to generate varying goals, standards, and exemplary levels depending upon each grantee's participant characteristics and local economic conditions. Participant characteristics data and local conditions may be expected to change during the year; accordingly, grantees should monitor revised estimates of their

performance so that they will not be caught short when the final standards are calculated on the actual participant service levels shown in the Farmworker Annual Status Reports at the end of the year.

THe Department will provide each grantee with initial performance levels—recommended goal, minimally acceptable performance standard, and exemplary performance—calculated using the actual service levels reported on the PY 1985 Annual Status Reports. Worksheets, showing these initial calculations for planning purposes, will be provided for use in preparing the Grant Plans for PY 1987. These initial calculations are intended for preliminary planning and monitoring use. Grantee performance for PY 1987 will be judged by model results using the actual service levels reported at the end of PY 1987. At year end, grantees will submit their Farmworker Annual Status Reports showing actual service levels and will obtain their final performance levels once the Department recalculates the model-based results.

The Employment and Training Administration will provide worksheet computations for all grantees on both the initial calculations and the final calculations. However, individual grantees are required to familiarize themselves with the worksheets for each performance measure (EER, CEE) so that they can update the worksheets with more current service levels as the program year progresses. In this manner, the performance standards can serve as a continuing management tool in their internal operations.

Signed at Washington, DC, this 5th day of May, 1987.

**Roberts T. Jones,**

*Deputy Assistant Secretary of Labor.*

[FR Doc. 87-10618 Filed 5-11-87; 8:45 am]

BILLING CODE 4510-30-M

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[TA-W-18,704]

## Abex Corp., Railroad Products Group, Superior, WI; Negative Determination Regarding Application for Reconsideration

By an application dated March 19, 1987, the International Brotherhood of Boilermakers requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Abex Corporation, Railroad Products Group, Superior, Wisconsin. The denial notice was signed on January 22, 1987 and was published in the **Federal Register** on February 19, 1987 (52 FR 5211).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims unfair foreign competition because the Abex Corporation closed its Superior, Wisconsin plant instead of its Canadian plant which produced the same products. It is also claimed that Abex purchased Japanese rail and castings which adversely affected Abex plants in the United States.

Findings in the investigation show that the "contributed importantly" test of the increased import criterion of the Trade Act was not met in 1986 compared to 1985. This test is generally demonstrated through a Department of Labor survey of the subject firm's customers. The survey showed that increased trackwork imports by the customers of Abex accounting for the predominant portion of the Superior facility's 1985–1986 sales decline were not important in relation to that sales decline.

The union's claim concerning foreign competition from Abex's Canadian plant is not supported by the findings of the investigation. The Canadian plant served the Canadian market. If the Canadian plant were shut down and the Superior plant remained open, the additional production would have been for the export market which would not form a basis for certification.

The union's claim concerning Abex Corporation's purchase of Japanese castings is correct but this did not affect the Superior fabrication plant. The Department has determined that imported Japanese castings have adversely affected production and employment at Abex Corporation's foundry in Anderson, Indiana (TA–W–16,277).

According to company officials the railroad market is soft. Railroad companies are retrenching their capital expenditures and eliminating unused track. As a result of this situation, a domestic transfer of production occurred from the Superior, Wisconsin plant in 1986 to the Chicago Heights, Illinois and Pueblo, Colorado plants.

### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 1st day of May 1987.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87-10613 Filed 5-11-87; 8:45 am]

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[TA-W-18,064 et al.]

## Cities Service Oil and Gas Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of—

TA–W–18,064 Tulsa, Oklahoma
TA–W–18,064–A Oklahoma City, Oklahoma
TA–W–18,064–B Lindsay, Oklahoma
TA–W–18,064–C Houston, Texas
TA–W–18,064–D Midland, Texas
TA–W–18,064–E Bridgeport, Texas
TA–W–18,064–F Robstown, Texas
TA–W–18,064–G West Seminole, Texas
TA–W–18,064–H Odessa, Texas
TA–W–18,064–I Pratt, Kansas
TA–W–18,064–J El Dorado, Kansas
TA–W–18,064–K Bakersfield, California
TA–W–18,064–L Ingleside, California
TA–W–18,064–M Denver, Colorado
TA–W–18,064–N Jackson, Mississippi
TA–W–18,064–O Anchorage, Alaska
TA–W–18,064–P Charleston, South Carolina
TA–W–18,064–Q Niagara Falls, New York
TA–W–18,064–R Gillette, Wyoming
TA–W–18,064–S Lake Charles, Louisiana
TA–W–18,064–T Hobbs, New Mexico
TA–W–18,064–U Hutchinson, Kansas
TA–W–18,064–V Hackberry, Louisiana
TA–W–18,064–W Blackwell, Oklahoma
TA–W–18,064–X Waukomis, Oklahoma
TA–W–18,064–Y Longview, Texas
TA–W–18,064–Z Chico, Texas
TA–W–18,064AA Mont Belvieu, Texas
TA–W–18,064AB Liberal, Kansas
TA–W–18,064AC Wichita, Kansas

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 1986 applicable to all workers of the Exploration and Production of Division of Cities Service Oil and Gas Corporation, Tulsa, Oklahoma. The

Certification was published in the Federal Register on January 9, 1987 (52 FR 874). The Certification was amended on January 16, 1987 to reflect the correct worker group. The amended certification was published in the Federal Register on February 3, 1987 (52 FR 3359).

The company furnished new information to the Department which showed additional locations where worker separations occurred in early 1986 that were not included in the amended certification. Accordingly, the amended certification is changed to include the following locations where additional worker separations occurred: Hutchinson, Kansas; Hackberry, Louisiana; Blackwell, Oklahoma; Waukomis, Oklahoma; Longview, Texas; Chico, Texas; Mont Belvieu, Texas; Liberal, Kansas and Wichita, Kansas.

The intent of the certification is to cover all workers of Cities Service Oil and Gas Corporation headquartered in Tulsa, Oklahoma who were adversely affected by increased imports of crude oil. The amended notice applicable to TA-W-18,084 is hereby issued as follows:

All workers of Cities Service Oil and Gas Corporation in Tulsa, Oklahoma; Oklahoma City, Oklahoma; Lindsay, Oklahoma; Houston, Texas; Midland, Texas; Bridgeport, Texas; Robstown, Texas; West Seminole, Texas; Odessa, Texas; Pratt, Kansas; El Dorado, Kansas; Bakersfield, California; Ingleside, California; Denver, Colorado; Jackson, Mississippi; Anchorage, Alaska; Charleston, South Carolina; Niagara Falls, New York; Hobbs, New Mexico; Gillette, Wyoming; Lake Charles, Louisiana; Hutchinson, Kansas; Hackberry, Louisiana; Blackwell, Oklahoma; Waukomis, Oklahoma; Logview, Texas; Chico, Texas; Mont Belvieu, Texas; Liberal, Kansas and Wichita, Kansas who became totally or partially separated from employment on or after August 20, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of May 1987.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87-10814 Filed 5-11-87; 8:45 am]

BILLING CODE 4510-30-M

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## Pittsburgh Forgings et al.; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding elibility to apply for adjustment assistance issued during the period April 20-24, 1987 and April 27-May 1, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proporation of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-19,176; Pittsburg Forgings, Coraopolis, PA*

*TA-W-19,206; Cigtap Corp., USA, Carmichaels, PA*

*TA-W-19,257; Columbua Hardwood & Moulding Co., Tigard, OR*

*TA-W-19,227; Wisconsin Foundry & Machine Co., Madison, WI*

*TA-W-19,234; Lakeside Bridge & Steel Co., Milwaukee, WI*

*TA-W-19,150; Cooper Biomedical, Inc., Freehold, NJ*

*TA-W-19,199; Champion Spark Plug Co., Detroit, MI*

*TA-W-19,200; Champion Spark Plug Co., Cambridge, OH*

*TA-W-19,201; Champion Spark Plug Co., Toledo, OH*

*TA-W-19,202; Iowa Industries Division, Burlington, IA*

*TA-W-19,131; Dresser-Rand, Worthington Compressor Operation, Buffalo, NY*

*TA-W-19,189; Metzger Group, Inc., New York, NY*

*TA-W-19,195; Putnam Herzl Finished Co., Putnam, CT*

*TA-W-19,027; Western Gas Processor, Limited (Ecological Engineering Systems, Inc) Northglenn, CO*

*TA-W-19,185; Central Counter Co., St. Louis, MO*

*TA-W-19,190; Oklahloma Steel Castings Co., Tulsa, OK*

*TA-W-19,174; USX Corp., US Diversified Group, Waukesha, WI*

*TA-W-19,207; Smurfit Newsprint Corp. Tillamook, OR*

*TA-W-19,206; Smurfit Newsprint Corp., Toledo, OR*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

*TA-W-19,248; Crown Central Petroleum Corp., Midland, TX*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-19,183; Monsanto Chemical Co., W.G. Krummrick Plant, Sauget, IL*

U.S. imports of nitrate benzenes are negligible.

*TA-W-19,303; Johnson Control Battery Div., Atlanta, GA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-19,321; Texas Eastern Transmission Corp., Houston, TX*

U.S. imports of dry natural gas declined absolutely and relative to U.S. shipments in 1986 compared with 1985.

*TA-W-19,290; Control Data Corp., St. Louis Park, MN*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-19,550; Joy Manufacturing Co., Inc., Wichita Falls, TX*

U.S. imports of oilfield machinery are negligible.

*TA-W-19,320; Superior Blast Hole Bit Co., Inc., Virginia, MN*

U.S. imports of drill rock bits are negligible.

*TA-W-19,249; Island Creek Coal Co., Beatrice Mine, Oakwood, VA*

U.S. imports of metallurgical coal are negligible.

*TA-W-19,335; American Trading and Production Co. (ATAPCO), Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,251; Halliburton Service, Pittsburgh Division, Bradford, PA*

The workers's firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-19,483 and TA-W-19,503; Pittston Coal Group, Inc., Jewell Ridge Coal Corp., & Sea B Mining Co., Jewell Ridge, VA*

U.S. imports of bituminous steam coal, lignite and anthracite were negligible.

*TA-W-19,162; Oil Dynamics, Inc., Tulsa, OK*

U.S. imports of oilfield pumps are negligible.

*TA–W–19,139; McDaniel Mining Co., Siltix & Pax Mines, Mt Hope, WV*

U.S. imports of coal are negligible.

*TA–W–19,279; AKJ Industries, Provo, UT*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–19,184; USX Corp., U.S. Diversified Group, Chicago, IL*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,163; Southern Coal & Trucking, Inc., Cover Creek Mine, Bolt, WV*

U.S. imports of metallurgical and steam coal are negligible.

*TA–W–19,167; Crown Creative Industries, Greensburg, PA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,308; North American Philips Light Corp., Paris, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,284; Borg-Warner Automotive, Muncie, IN*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–19,289; Clover Mining, Inc., of West Virginia, Clover #1 Mine, Roderfield, WV*

U.S. imports of metallurgical coal are negligible.

*TA–W–19,136; CSX Oil & Gas Corp., (Formerly Texas Gas Exploration Corp), Oklahoma City District Office, Oklahoma City, OK*

U.S. imports of dry natural gas decreased absolutely and relative to domestic shipment in 1986 compared to 1985.

*TA–W–19,327 and TA–W–19,328; Virginia Crews Coal Co., Alpine #1 Mine and Blueco Mine, McDowell County, WV*

U.S. imports of metallurgical coal are negligible.

*TA–W–19,487; 3M Company, Newark, NJ*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,258; Best Packers, Inc., Ham Department, Hialeah, Fl*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,223; Cut Fabrics, Inc., Brooklyn, NY*

U.S. imports of apparel trimmings are negligible.

*TA–W–19,241; General Electric Supply Co., Abilene, TX*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,254; F.C. Stickney, Inc., Midland, TX*

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,145; Pennzoil Exploration & Production Co., Denver District Office, Denver, CO*

U.S. imports of motor gasoline lubricants, dry natural gas declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA–W–19,035; Western Division, Exploration & Production Group, Denver, CO*

U.S. imports of dry natural gas and gasoline declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA–W–19,134; Corporate Engineering, Borger, TX*

U.S. imports of dry natural gas and gasoline declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA–W–19,135; Refinery & Natural Gas Liquids, Center Borger, TX*

U.S. imports of dry natural gas and gasoline declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA–W–19,314; Eastern Division Exploration & Production Group, Bellaire, TX*

U.S. imports of dry natural gas and gasoline declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA–W–19,517; Central Appalachian Coal Co., Montgomery, WV*

Bituminous steam coal, lignite and anthracite were negligible.

*TA–W–19,210; Phoenix Steel Corp., Claymont, DE*

U.S. imports of carbon and alloy steel plate declined absolutely and relative to domestic shipment in 1986 compared with 1985.

*TA–W–19,551; Mustang Mud, Inc., Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,367; Cabot Oil and Gas Corp., of West Virginia, Charleston, WV*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,228; Thermex Energy Corp., Biwabik, MN*

Imports of explosives declined absolutely and relative to domestic shipments in 1986 compared to 1985.

*TA–W–19,311; Ohmeda, El Paso, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,518; Daniel Geophysical, Inc., Denver, CO*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,278; Burns International Security Service, Inc., Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,388; Kitt Energy Corp., Meadow Land, PA*

Workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,389; Kitt Energy Corp., Fredericktown, PA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,390; Kitt Energy Corp., Verona, PA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,391; Kitt Energy Corp., Russelton, PA*

Workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,542; City of Midland Midtran Department, Midland, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–19,274; Mobil Producing Texas and New Mexico, Midland Division, Midland, TX*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the

relevant period as required for certification.

*TA–W–19,236; Heckett Co., Division of Harsco, Geneva, UT*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,187; Amerada Hess Corp., Houston, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,214; Amerada Hess Corp., Woodbridge, NJ*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,272; Amerada Hess Corp., Southeast Production Region, Lafayette, LA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,273; Gulf Coast Exploration Div., Lafayette, LA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,219; Hammond Machinery, Inc., Kalamazoo and Otsego, MI*

U.S. imports of grinding, honing, buffing and polishing machines declined absolutely and relative to U.S. shipments in 1985 compared to 1984 and in January through September 1986 compared to the same period of 1985.

*TA–W–19,507; Toub Distributors, Thorofare, NJ*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

**Affirmative Determinations**

*TA–W–19,343; International Boiler Works, East Stroudsburg, PA*

A certification was issued covering all workers of the firm separated on or after February 24, 1986.

*TA–W–19,198; Marsh Instrument Co., Skokie, IL*

A certification was issued covering all workers of the firm separated on or after February 12, 1986.

*TA–W–19,221; W.R. Case & Sons Cutlery Co., Bradford, PA*

A certification was issued covering all workers of the firm separated on or after April 16, 1986.

*TA–W–19,216; Ristance Corp., Ready-Wired Div., Dallas, TX*

A certification was issued covering all workers of the firm separated on or after February 3, 1986.

*TA–W–19,233; MacGregor Sporting Goods, LaGrange, GA*

A certification was issued covering all workers of the firm separated on or after November 1, 1986.

*TA–W–19,242; The French Oil Mill Machinery Co., Piqua, OH*

A certification was issued covering all workers of the firm separated on or after February 11, 1986.

*TA–W–19,334; Alco Power, Inc., St. Louis, MO*

A certification was issued covering all workers of the firm separated on or after December 15, 1986.

*TA–W–19,422; Bedford Coat & Suit Co., Boston, MA*

A certification was issued covering all workers of the firm separated on or after March 11, 1986.

*TA–W–19,344; International Computers Limited, Cosby Manor Road Facility, Utica, NY*

A certification was issued covering all workers of the firm separated on or after April 1, 1987.

*TA–W–19,212; Marben Manufacturing, Jackson, MI*

A certification was issued covering all workers of the firm separated on or after February 6, 1986.

*TA–W–19,250; LTV Steel Co., Atlanta Sales Office, Atlanta, GA*

A certification was issued covering all workers of the firm separated on or after February 10, 1986.

*TA–W–19,211; J.I. Case Co., Terre Haute, IN*

A certification was issued covering all workers of the firm separated on or after February 11, 1986.

*TA–W–19,113; Avondale Industries, Inc., Danly Machine Div., Chicago, IL*

A certification was issued covering all workers of the firm separated on or after January 30, 1986.

*TA–W–19,305; Natalie Apparel, Inc., Windber, PA*

A certification was issued covering all workers of the firm separated on or after February 17, 1986.

*TA–W–19,203; Henry I Siegel Co., Trezevant, TN*

A certification was issued covering all workers of the firm separated on or after February 10, 1986.

*TA–W–19,204; Henry I. Siegel Co., Gleason, TN*

A certification was issued covering all workers of the firm separated on or after February 10, 1986.

*TA–W–19,340; Gates-Mills, Inc., Johnstown, NY*

A certification was issued covering all workers of the firm separated on or after March 6, 1986.

*TA–W–19,416; West Virginia Plastics, Inc., Grafton, WV*

A certification was issued covering all workers of the firm separated on or after March 4, 1986.

*TA–W–19,161; National Roll Co., Delmont, PA*

A certification was issued covering all workers of the firm separated on or after February 1, 1986.

*TA–W–19,193; Exxon Co., USA, Exploration Department—Western Div., Denver, CO*

A certification was issued covering all workers of the firm separated on or after February 6, 1986.

*TA–W–19,194; Exxon Co., USA, Upstream Controller Div., Houston, TX*

A certification was issued covering all workers of the firm separated on or after February 6, 1986.

*TA–W–19,159; The Lodge & Shipley Co., Cincinnati, OH*

A certification was issued covering all workers of the firm separated on or after February 4, 1986.

*TA–W–19,143; Sifco Industries, Inc., Forge Group Div., Cleveland, OH*

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

*TA–W–19,366; Calvert Manufacturing Co., Seattle, WA*

A certification was issued covering all workers of the firm separated on or after March 4, 1986.

*TA–W–19,130; Ada Oil Co., Flora, IL*

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

*TA–W–19,318; Speller Oil Corp., Oklahoma City, OK*

A certification was issued covering all workers of the firm separated on or after February 27, 1986.

*TA–W–19,157; Armira Company, Bolivar, TN*

A certification was issued covering all workers of the firm separated on or after February 5, 1986.

*TA–W–19,237; Walter Manufacturing Div., Ingleside, IL*

A certification was issued covering all workers of the firm separated on or after February 13, 1986.

*TA–W–19,168; Toledo Pressed Steel Co., Toledo, OH*

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

I hereby certify that the aforementioned determinations were issued during the period April 20–April 24, 1987 and April 27–May 1, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 4, 1987.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87–10615 Filed 5–11–87; 8:45 am]

BILLING CODE 4510-30-M

## U.S. Steel Mining Co., Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of U.S. Steel Mining Company, Inc., TA–W–17,700 Maple Creek Complex, New Eagle, Pennsylvania, TA–W–17,700A Everson Central Shop, Everson, Pennsylvania, TA–W–17,700B Filbert Central Shop, Filbert, Pennsylvania.

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 15, 1986 applicable to all workers of the Maple Creek Complex of U.S. Steel Mining Company, Incorporated, in and around New Eagle, Pennsylvania. The certification was published in the **Federal Register** on November 4, 1986 (51 FR 40091).

On the basis of additional information, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information from the company revealed that U.S. Steel Mining's Central Shops in Everson, Pennsylvania and Filbert, Pennsylvania were under Maple Creek management and control and provided services only for the Maple Creek Complex whose workers are certified for adjustment assistance. Accordingly, the Department is amending the subject petition (TA–W–17,700) to include workers at U.S. Steel Mining's Central Shops in Everson and Filbert, Pennsylvania and revoking the Department's negative determinations TA–W–18,998 and TA–W–18,998A issued on March 6, 1987 and published in the **Federal Register** on March 26, 1987 (52 FR 9725).

The intent of the certification is to cover all workers at U.S. Steel Mining Company, Inc., in and around New Eagle, Pennsylvania including all workers at U.S. Steel Mining Company's Central Shops in Everson, Pennsylvania and Filbert, Pennsylvania.

The amended notice applicable to TA–W–17,700 is hereby issued as follows:

All workers of the Maple Creek Complex of U.S. Steel Mining Company, Inc., in and around New Eagle, Pennsylvania including all workers at U.S. Steel Mining's Central Shops in Everson, Pennsylvania and Filbert, Pennsylvania who become totally or partially separated from employment on or after January 1, 1986 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of May, 1987.

Barbara Ann Farmer,

*Acting Director, Office of Program Management, UIS.*

[FR Doc. 87–10616 Filed 5–11–87; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[87–41]

## Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Agency Report Forms Under OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by May 22, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** Ray S. Mayfield, NASA Agency Clearance Officer, Code NM, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Shirley C. Peigare, NASA Reports Officer, (202) 453–1080.

**Reports**

Title: Patent License Report
OMB Number: 2700–0010
Type of Request: Extension
Frequency of Report: Annually
Type of Respondent: Businesses or other for-profit, small businesses or organizations
Annual Responses: 600
Annual Burden Hours: 300

Abstract-Need/Uses: NASA grants nonexclusive and exclusive licenses to private business firms for commercial use of NASA patented inventions. This report is required by each licensee and is obtained annually from each licensee to determine the extent of commercial use being made by each licensee of the patented inventors.

Titles: Report of Government-Owned/Contractor-Held Property
OMB Number: 2700–0017
Type of Request: Extension
Frequency of Report: Annually
Type of Respondent: Businesses or other for-profit, small businesses or organizations
Annual Responses: 2,750
Annual Burden Hours: 11,000

Abstract-Need/Uses: NASA is required to account for Government-owned/contractor-held property. The NASA Form 1018 submitted by contractors provides the data to reconcile NASA's property accounts, from which internal management and external information reports are derived.

Ray S. Mayfield,

*Director, Management Analysis Office.*

May 1, 1987.

[FR Doc. 87–10700 Filed 5–11–87; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

## Humanities Panel; Closed Meetings

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at

the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. Date: May 28, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

2. Date: May 29, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

3. Date: June 1, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

4. Date: June 3, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Philosophy and Religion, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

5. Date: June 4, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

6. Date: June 5, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Biennial Proposals submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1987.

7. Date: June 8, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review Biennial Proposals submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1987.

8. Date: June 2, 1987.
Time: 8:30 a.m. to 5:30 p.m.
Room: 316–2.
Program: This meeting will review the Summer Seminars for Secondary School Teachers applications in English Literature, submitted to the Division of Fellowships and Seminars Programs, for projects beginning after October 1, 1987.

9. Date: May 28–29, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Higher Education Program applications, submitted to the Division of Education Programs, for projects beginning after September 1, 1987.

10. Date: June 1–2, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review Higher Education Program applications, submitted to the Division of Education Programs, for projects beginning after September 1, 1987.

11. Date: June 1, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications in the fields of the humanities submitted to the Publication Subvention category of the Texts Program, submitted to the Division of Research Programs, for projects beginning after October 1, 1987.

12. Date: May 29, 1987.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications in the fields of the humanities submitted to the Publication Subvention category of the Texts Program, submitted to the Division of Research Programs, for projects beginning after October 1, 1987.

Stephen J. McCleary,
*Advisory Committee Management Officer.*

[FR Doc. 87–10781 Filed 5–11–87; 8:45 am]

BILLING CODE 7536–01–M

## NUCLEAR REGULATORY COMMISSION

### Abnormal Occurrences for Third Quarter CY 1986; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090, Vol. 9, No. 3 ("Report to Congress on Abnormal Occurrences: July–September, 1986"). This report will be available in the NRC's Public Document Room 1717 H Street NW., Washington DC. about three weeks after the publication data of this **Federal Register** Notice.

### Nuclear Power Plants

*AO 86–15 Differential Pressure Switch Problem in Safety Systems at LaSalle Facility*

One of the general AO criteria notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. In addition, one of the AO examples notes that incidents with implications for similar facilities (generic incidents), which create major safety concern, can be considered an AO.

*Date and place*—On June 1, 1986, LaSalle Unit 2 experienced a feedwater transient that resulted in low water level in the reactor vessel. The level reached a point where an automatic reactor scram would be expected; however, no such scram occurred. LaSalle County Nuclear Power Station consists of two Units, each utilizing a General Electric-

designed boiling water reactor. The Station is operated by Commonwealth Edison Company (the licensee) and is located in LaSalle County, Illinois.

Subsequent investigation found that the problem was caused primarily by inadequate calibration of mechanical differential pressure switches supplied by SOR, Incorporated (formerly Static "O" Ring Pressure Switch Company). Similar switches have been installed in safety systems at many nuclear power plants.

*Background*—10 CFR Part 50, Appendix A, General Design Criterion 21 ("Protectin System Reliability and Testability") requires that the reactor protection system be highly reliable. Recent experience with SOR mechanical differential pressure switches at LaSalle (as described below) and similar experience at Oyster Creek has strongly suggested that this may not be the case if the switches are not adequately calibrated.

Earlier concern for mechanical level indication equipment was expressed in NRC Generic Letter No. 84–23, issued on October 26, 1984, which addressed water level instrumentation for boiling water reactor (BWR) reactor vessels. The generic letter was based on NRC's evaluation of a report by S. Levey, Incorporated, which had been commissioned by a BWR Owner's Group. The generic letter addressed the need for BWR licensees to review plant experience related to mechanical level indication equipment, indicated that analog trip units have better reliability and greater accuracy than mechanical level indication equipment, and stated that BWR licensees should replace such equipment with analog transmitters unless operating experience indicates otherwise. Responses to Generic Letter No. 84–23 have shown that 80% of BWR licensees have replaced or plan to replace their mechanical level instrumentation with analog level transmitters.

SOR mechanical differential pressure switches have been installed by many licensees predominantly as environmentally qualified electrical equipment important to safety, as described in 10 CFR 50.49(b). The licensee for LaSalle Unit 2 installed SOR Series 103 differential pressure switches in mid 1985 as part of an environmental qualification modification which was performed after initial operation of the unit. Identical switches were also installed in LaSalle Unit 1. LaSalle Units 1 and 2 each have about 60 of these switches in various systems, including the reactor protection system and the emergency core cooling system.

*Nature and probable consequences*—At about 4:21 a.m. (CDT) on June 1, 1986, LaSalle Unit 2 was operating at 93% of full power. Both trubine-driven feedwater pumps were operating, with the "A" pump in manual control and the "B" pump in automatic control. The motor-driven feedwater pump was in standby. While a surveillance test was being conducted on feedwater pump "A", the turbine governor value unexpectedly opened further resulting in an increase in pump output and a corresponding rise in reactor water level. At about the same time, the automatic control systems for both turbine-driven pumps locked out. The reactor operator regained control of feedwater pump "A" and ran back the feedwater pump's speed in an attempt to restore the normal water level. A few seconds later when the "B" reactor feedwater pump's control system was reset, the "B" feedwater pump controler automatically ran back the pump speed to zero. Reactor water level started falling at about 2 inches/second.

Subsequently, separate reactor water level switches responded to the falling reactor water level by reducing recirculation flow to reduce power, and the operator started the motor-driven feedwater pump to increase level. The level continued to fall for a few more seconds before the flow from the motor-driven pump began to raise the water level. The minimum reactor scram setpoint required in the technical specification is 11 inches. (This point is 11 inches above a water level specified as "instrument zero," which is a measuring reference point. Instrument zero is approximately 13 feet above the top of the reactor core; all levels indicated here are above instrument zero.) There are four water level sensing switches, each normally set to trip at 13.5 inches above instrument zero, and reactor operators are trained to expect a reactor trip by the time the water level reaches 12.5 inches. The switches are in pairs (two each in two circuits, called channels), and one switch in each pair must trip in order for there to be a reactor scram signal generated.

As the water level was falling, one of the four switches tripped at approximately 10 inches; the other three did not actuate, and therefore no scram signal occurred. (With a switch tripped in just one channel, the condition is called a "half scram.")

The subsequent investigation indicated that the reactor water level fell briefly to a minimum level of 4.5 inches (above instrument zero, but more than 13 feet above the reactor fuel). The water level was below the scram setpoint for about two seconds before the increased feedwater flow increased the level.

During the incident, the reactor operators did not have sufficient data to evaluate the water level drop and the failure of the differential pressure switches to actuate. Shortly after the subsequent shift change, the oncoming shift engineer's review indicated that the reactor water level appeared to have fallen below the scram setpoint and the level switches may not have performed properly. After further review, the licensee believed that a malfunction of the scram system may have occurred. Based on this concern, the licensee declared an "Alert," started an orderly shutdown of the plant, and notified the NRC. The licensee subsequently notified SOR, Incorporated, of possible malfunctions involving its Series 103 mechanical differential switches. The Alert was terminated at 9:22 am., June 2, 1986, when all control rods were inserted.

On June 2, 1986, the NRC determined that the incident warranted a thorough investigation. The Administrator for NRC Region III sent an Augmented Inspection Team (AIT) to the site to investigate the root cause and significance of the feedwater transient, the performance of the differential pressure switches in the low level trip channels, the response of the reactor protection system, and related matters.

The licensee continued testing of the reactor scram water level switches; the additional data demonstrated continued erratic behavior of switch setpoints. As of June 9, 1986, the licensee had also tested SOR Series 103 switches in the reidual heat removal system and the high pressure core spray systems. Similar erratic results were found; therefore, all SOR Series 103 switches used in the plant became suspect. The licensee declared all emergency core cooling systems in both units to be inoperable. At the time of the incident, Unit 1 was shut down for its first refueling outage. Both units were kept in cold shutdown while the investigations continued.

Most of the tests performed at LaSalle Units 1 and 2 showed erratic set-points for the Series 103 switches and, in one case, the switch failed to operate at all. During the vessel water level drop tests at LaSalle 1 on June 2, one of two Series 103 switches used to provide a confirmatory water level input signal to the automatic depressurization system failed to function. On June 25, the switch was disassembled and inspected. Rust (severe corrosion) was found inside the switch assembly and probably caused a

cross shaft bearing, which is outboard of the O-rings, to seize.

The event at LaSalle was not the first indication of erratic behavior of SOR mechanical differential pressure switches. A precursor event had previously occurred at Oyster Creek Unit 1 on January 17, 1986, during monthly surveillance of four SOR differential pressure switches which detect low water level in the reactor vessel. The "as-found" setpoints for three of the switches had drifted downward as much as 6 inches. During the subsequent 11 weeks, the level switches continued to perform erratically; each switch was replaced one or more times; and modified switches were installed. On April 7, after a modified switch had nonconservative setpoint drift, the licensee performed daily surveillance until about April 12 when the reactor was shut down for a six month outage. Increased surveillance frequency did not resolve the problem. (At LaSalle, however, changing the setpoint and increasing the surveillance testing of the switches have resulted in acceptable performance.)

SOR, Incorporated also manufacturers Series 102 mechanical differential pressure switches. Therefore, all Series 102 and 103 switches installed in BWR and pressurized water reactor (PWR) plants were suspect. Use of such possibly erratic behavior switches in reactor scram systems and various engineered safety features raises serious concern regarding the safety and health of plant personnel and the public. Such systems are designed and installed in plants to prevent the occurrences, or ameliorate the effects, of serious accidents.

*Problem areas*—A review of the testing performed at LaSalle, and discussions with the manufacturer, show that there are several potential problems that could account for the erratic behavior of Series 102 and 103 switches. These problems include a shift of the setpoint caused by calibratin under atmospheric pressure instead of actual operation pressures; a shift in setpoint which occurs as the switch is subjected to constant pressure over a period of time; setpoint variation depending on whether the setpoint is approached from the high side or the low side; and a tendency, in some case, for the switches to "stick," i.e., to require a higher differential pressure to actuate the switch on the first actuation than on later actuations.

At LaSalle, the licensee has successfully compensated for these phenomena by setting the setpoint to account for the setpoint shift, which occur under actual operating conditions and, further, by checking the calibrations periodically.

The manufacturer is conducting long range tests with switches which have a more highly polished shaft to minimize the "stickiness" that may have affected the actuating setpoint. Also the LaSalle plant is using the first test of the switches after they have not been actuated for a period of time, rather than actuating the switches several times before performing the test, which had been the previous practice. This testing provides a more accurate determination that the switches would function as intended.

Although there is no evidence to suggest that it was involved in the LaSalle switch performance, another factor that is under review is the affect of aging and exposure to reactor water on the O-ring materials and other components of the differential pressure switches.

*Cause of causes*—The problems with the Series 103 switches at LaSalle appear to be associated with the licensee's procedures for testing them, and a possible design deficiency resulting in occasional "sticky operation."

*Actions Taken To Prevent Recurrence*

*Licensee*—Commonwealth Edison Company undertook an extensive testing program to evaluate the nature of the SOR switch problem at LaSalle. This testing determined that the switches, if properly calibrated to include the predicted setpoint shift, can continue to be used in their current applications. The licensee and the manufacturer are testing the switches on a more frequent basis over long time periods to assure their continued operability.

*NRC*—The licensee's investigation of the water level switch problem was initially monitored by the resident inspectors. As previously mentioned, an NRC AIT was later dispatched to the site on June 2, 1986, to evaluate the incident and the nature of the switch problem and corrective actions. The NRC's Office of Nuclear Reactor Regulatory reviewed the results of the tests performed by the licensee and the vendor and concluded that the SOR Series 102 and 103 differential pressure switches could remain in service until NRC reviewed the licensee's long-term plans.

The NRC AIT's report, Inspection Report No. 50–374/86–23, was issued on September 17, 1986.

On June 10, 1986, Inspection and Enforcement Information Notice No. 86–47 ("Erratic Behavior of Static 'O' Ring Differential Pressure Switches") was issued to inform licensees of the erratic behavior of SOR differential pressure switches during the incident at LaSalle 2 on June 1 and during subsequent testing. An attachment to the Notice listed licensees to which SOR had supplied Series 103 differential pressure switches. The information notice also announced a public meeting of representatives from NRC, General Electric Company, SOR, and interested licensees to discuss the application and performance of Series 102 and 103 switches in safety-related systems, which was held on June 12, 1986.

Since the SOR differential pressure switches were installed by many licensees predominantly as environmentally-qualified electrical equipment important-to-safety, Inspection and Enforcement Bulletins No. 86–02 ("Static 'O' Ring Differential Pressure Switches") was issued on July 18, 1986, to update the information provided is Notice No. 86–47 and to ensure that all licensees currently using the SOR switches in safety-related systems were taking appropriate remedial actions. Licensees with SOR switches installed were requested per the Bulletin to determine which of those switches are installed in systems which are subject to Limiting Conditions for Operations of the plant Technical Specifications. For SOR differential switches that are not in systems subject to Technical Specifications, licensees were expected to review the information in the Bulletin and consider actions, if appropriate, to preclude problems similar to those discussed in the Bulletin from occurring. For SOR differential pressure switches that were installed in systems subject to Technical Specifications, the Bulletin requested licensees to take certain action to assure that these switches and systems will be capable of performing acceptably, if called upon during an actual plant transient or accident.

First, the Bulletin requests that each licensed reactor operator (and senior reactor operator) on duty be made aware of the potential problem that may occur at their plant in terms of where SOR differential pressure switches are installed in their plant, how to detect a malfunction or failure of any of these switches, and the remedial actions that they should be prepared to take if a malfunction were to occur.

Second, the Bulletin requests licensees to conduct special operability tests of each system that is subject to Technical Specifications that involve SOR differential pressure switches. Special tests are necessary to determine the actual trippoint of the switches and

the operability of the systems since tests of the type typically conducted may not be adequate to reveal the type of problems that have been revealed at the LaSalle station.

Last, the Bulletin requests licensees to determine what long-term corrective actions may be appropriate and will be taken, including consideration of the potential effects of common mode failures. The NRC staff is currently reviewing reports made by licensees in response to the Bulletin.

*AO 86-16 Abnormal Cooldown and Depressurization Transient at Catawba Unit 2*

One of the AO examples notes that discovery of a major condition not specifically considered in the safety analyses report (SAR) or technical specifications that requires immediate remedial action action can be considered an AO.

*Date and place*—On June 27, 1986, while Duke Power Company (the licensee) was conducting a startup test at Catawba Unit 2 from remotely located control panels, athe reactor experienced an unexpected depressurization and cooldown. Catawba Unit 2 utilizes Westinghouse-designed pressurized water reactor and is located in York County, South Carolina.

*Background*—On February 24, 1986, the licensee was issued a fuel loading and low power (up to 5%) license for Catawba Unit 2. The Unit achieved initial criticality on May 8, 1986. A full power license was issued on May 15, 1986; however, some startup tests had to be completed before the plant could be taken to full power.

During the morning of June 27, 1986, the licensee planned to perform a Loss of Control Room Functional Test (procedure TP/2/A/2650/03) to fulfill one of the commitments for startup testing delineated in its Final Safety Analysis Report (FSAR).

The purposes of the test are to demonstrate:

a. That the plant can be brought to Hot Standby conditions from a moderate power level (10–25%) using Auxiliary Shutdown Panel (ASP) controls and following procedure AP/2/A/5500/17 (Loss of Control Room).

b. That the plant can be maintained at Hot Standby conditions for 30 minutes from the ASPs.

c. That the plant can be brought to Hot Standby and maintained in that condition with the minimum shift requirements of Technical Specifications (five people).

d. That the reactor coolant system (RCS) can be cooled down at least 50°F from a steady state Hot Standby condition while being operated from the ASPs.

The test would be performed by a crew of five (simulating the minimum shift crew available to Unit 2 operations) leaving the control room (since this was a test, the control room would remain fully staffed by the regular operations shift), tripping the reactor, and proceeding to remote shutdown panels. At these panels, the crew would switch reactor control to these panels and proceeds with the test.

*Nature and probable consequences*—At 9:41 a.m. on June 27, 1986, the test was initiated with the reactor at 24% power. The crew of five left the control room, tripped the reactor from the trip breaker panel, and proceeded to the two remotely located ASPs and the auxiliary feedwater pump turbine control panel (AFWPTCP).

At the ASPs and AFWPTCP, switches were activated transferring conttrol of vital functions from the control room to the auxiliary panels. By design, the transfer blocked automatic initiation of safety injection (SI). By error, the transfer of control of steam generator (S/G) power operated relief valves (PORV) to the AFWPTCP also commanded all four PORVs to open to 75% of full stroke. Reactor pressure and pressurizer level, which had been decreasing slowly as a result of the cooldown after the trip, fell rapidly. Within a minute of the transfer, pressurizer level indication was lost; and within two more minutes, pressure had dropped below 1845 psig generating an SI demand signal. After another 3½ minutes of unsuccessful attempts to manage the situation from the ASPs and AFWPTCP, control was returned to the control room which was staffed by the regular operations shift. The transfer, which automatically initiated a SI, occurred at a pressure of 702 psig. After approximately 5½ minutes, pressurizer level was restored to a level near 34% with a pressure of 1250 psig, and about 100°F subcooling. At this point the operators had full control of the stabilized plant.

The cooldown and depressurization transient did not result in any adverse thermo-hydraulic or nuclear effects on the plant; there were no actual consequences to public health or safety. However, if the decay heat load of the reactor core had been greater and if the use of the remote shutdown panels had been actually required during a plant emergency, a more servere transient could have occurred.

NRC Resident Inspectors were on site witnessing the test. The NRC Region II Office was notified and an Augmented Inspection Team (AIT), regional plus headquarters staff participants, was sent to this site from the Regional Office to investigate the event. The licensee began investigating the cause of the event and agreed not to restart the reactor without NRC concurrence; this was confirmed by a Region II Confirmation of Action Letter sent to the licensee on June 30, 1986. The AIT made their inspection from June 28 through July 2, 1986, and numerous deficiencies were identified in the areas of human factors, procedures, equipment labeling, retraining of personnel, and equipment repair. On July 3, 1986, Region II issued a Confirmation of Action Letter documenting the licensee's commitment to develop a detailed restart plan which deals with the corrective actions necessary to correct the deficiences.

In addition, the licensee agreed to rerun the Loss of Control Room Functional Test, after attaining the requisite power rating to adequately demonstrate that the plant can be safely shut down and cooled down from the auxiliary shutdown station following evacuation of the control room.

*Cause of causes*—The underlying cause of this event was the failure to specify in the Design Control documents that the mode of control of the S/G PORV controllers at the AFWPTCP had been changed. This, in turn, led to a failure by station personnel to change procedures and to train operators on this modification. The situation was further exacerbated by human engineering deficiences introduced by the modifications. As a consequence, the staff assigned to perform the test did not understand the function and interaction of controls on the shutdown panels. This lack of understanding led to a pretest setup of the panels that ensured that the PORVs would open on transfer and that attempts to shut them would be futile. Other human engineering factor failures led to reducing charging pump flow to the reactor coolant pump seals by the very attempts to increase flow.

Although the main control room PORV controllers had been replaced with safety-related controllers, the licensee chose not to replace or modify the AFWPTCP controllers. Also, no human engineering deficiency review was performed on the shutdown panels.

Other contributing factors to this event included inadequate training on the shutdown panel instuments and controls, inconsistencies in labeling of instruments and controls, lack of termination test criteria, and reluctance by the control room crew to assist the

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shutdown panel crew for fear of invalidating the test.

*Actions Taken, To Prevent Recurrence*

*Licensee*—In accordance with the restart plan, the licensee has taken the following corrective actions:

a. A review of all Design Changes and Construction Department Shutdown Requests implemented after hot functional testing and prior to fuel load was performed prior to Unit 2 re-entering Mode 2, Startup.

b. A review of both Units ASPs and AFWPTCPs was performed to identify all difference between Units and all human engineering deficiences. Numerous Unit differences and labeling problems were identified. Labeling problems were corrected.

c. Revisions were made to Operating and Abnormal Procedures to reflect changes required as a result of Corrective Action b above. Also instructions were added to manually initiate SI, Containment Spray, and Annulus Ventilation if required following a Loss of Control Room Incident. Test termination criteria were also clarified in the test procedure.

d. A new procedure was developed and performed, to verify proper function of various valves while controlling at the ASPs.

e. An existing procedure, Controlling Procedure for Power Escalation, was revised to include more thorough pre-transient test preparation and walk throughs. This will include reviews of previous test results, Operating Procedures, Abnormal Procedures, and Emergency Procedures.

f. Various problems were identified with Operator Aid Computer indication. The problems are being investigated.

g. Personnel had difficulty controlling reactor collant pump seal flow during the event. Additional labeling on the ASPs was added to clarify control requirements for 2NV–308, Seal Injection Flow Control Valve. The appropriate operations procedures were also revised to clarify use of the valve.

h. 2NV–148A, Letdown Pressure Control Valve, failed open during the event following transfer to the ASP. A poor electrical connection in the control circuitry was found and corrected. The control circuit for the valve had maintenance performed on it in January 1986. It is not certain if the poor connection was the result of this previous maintenance activity.

i. Difficulty was encountered during the event in resetting the main steam isolating bypass valves. The problem could not be recreated during investigation. The associated Monthly Surveillance Test was performed successfully.

Following the above, the plant was restarted. After reaching 20% power on July 11, 1986, the licensee satisfactorily reperformed the Loss of Control Room Functional Test. Subsequently, the plant reach 100% power and on August 19, 1986, the licensee declared the plant to be in commerical operation.

*NRC*—The NRC monitored the licensee's corrective actions to assure that they were responsive and satisfactory before permitting the plant to restart.

On November 12, 1986, the NRC forwarded to the licensee a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $50,000. The first violation pretained to a significant failure in the licensee's design control program. The second violation pertained to the licensee's failure to establish adequate procedures for the Loss of Control Room Test.

The NRC AIT's report was issued on July 25, 1986.

*AO 86–17 Significant Safeguards Deficiencies at Wolf Creek and Fort St. Vrain*

One of the AO examples notes that any substantial breakdown of physical security, such as access control, that significantly weakened the protection against theft, diversion, or sabotage, can be considered an AO.

*Date and place*—On July 7, 1986, NRC Region IV issued enforcement letters containing Severity Level II violations to the licensees of two nuclear power plant stations for serious deficiencies in plant physical barriers. The licensees are: (1) Kansas Gas and Electric Company (KG&E), operator of the Wolf Creek Generating Station, A Westinghouse - desinged pressurized water reactor located in Coffey County, Kansas; and (2) Public Service Company of Colorado (PSC), operator of Fort St. Vrain, a General Atomic Corporation-desinged high-temperature, gas-cooled reactor located in Weld County, Colorado.

*Nature and probable consequences*—The July 7, 1986 letters identified serious failures of the licensees to comply with NRC regulatory requirements pertaining to physical barriers. In the most serious example, it was determied at the Wolf Creek Generating Station that multiple uncontrolled access paths existed from the Owner Controlled Area (OCA) into the Protected Area (PA) and in two instances into Vital Areas (VAs). This condition was identified by the licensee as part of a quality assurance surveillance followup and confirmed by a Region IV safeguards specialist during reactive inspection No. 50–482/85–44. The inspection report was issued on April 24, 1986. At the Fort St. Vrain Nuclear Station, NRC inspectors identified during routine inspection No. 50–267/85–32 two uncontrolled access paths from the OCA to the PA and VA. In this situation, each access had a barrier installed, but each was evlauated to be inadequate and not capable of preventing an intruder from defeating it easily. This inspection report was issued on April 7, 1986.

In these examples, conditions existed whereby an intruder could have obtained unauthorized and undetected access into protected and/or vital areas from the OCA. It appeared from the inspection and review of licensee records that the conditions had existed at both plants for a minimum of six to seven months.

*Cause or causes*—The cause of these occurrences was a failure in management control, including design oversight during the system planning stages, construction deficiencies, and the failure of the startup testing/surveillance program to identifiy these deficiencies. Another related cause at the Wolf Creek Generating Station was the failure of, management to provide coordination among the various organizational entities which may affect facility security.

*Actions Taken To Prevent Recurrence*

*Licensees*—In each case identified, the licensee took immediate corrective action to post compensatory guards and install appropriate barriers. At Fort St. Vrain Nuclear Station, the affected piping was secured with adequate barriers and a routine surveillance was initiated to ensure that no degradation to these and similar barriers had occurred. The Wolf Creek Generating Station installed acceptable barriers where required and initiated a complete walkdown of the PA and VA to identify all possible points of vulnerability. This work is being conducted by a KG&E Security Passive Barrier Task Force that was formed to review all penetrations in passive barriers to assure that no further problems exist.

Both licensees have modified engineering/design change procedures to ensure that security system requirements are considered as part of any overall plant changes that could impact the safeguards program/systems.

*NRC*—On the date that the Wolf Creek Generating Station identified this condition, NRC Region IV initiated calls to all the Region IV licensees and to the other NRC Regional Offices to alert them to the possible generic implications of this finding.

On July 7, 1986, Region IV issued enforcement letters to the licensees involved as follows:

a. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of $40,000 to KG&E. The violation was categorized as Severity Level II (on a scale where Severity Levels I and V are considered the most significant and least significant severity levels).

b. A Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $65,000 to PSC. The Civil Penalty consisted of $40,000 for the Severity Level II violation and $25,000 for other less significant violations.

Enforcement conferences were held at the Region IV office on November 25, 1985, with KG&E and January 6, 1986, with PSC to discuss these issues and the corrective actions undertaken by the licensee. The specific corrective actions described by the licensees have been evlauated by the NRC.

The NRC has inspected both sites since the violations were identified and is continuing to review the licensees' corrective actions to assure that all of the issues are satisfactorily resolved.

*AO 86–18 Significant Deficiencies in Access Controls at River Bend Station*

One of the AO examples notes that any substantial breakdown of physical security, such as access control, that significantly weakened the protection against theft, diversion, or sabotage, can be considered an AO.

*Date and place*—By letter of August 7, 1986, the NRC issued to Gulf States Utilities (GSU), licensee for the River Bend Station, an enforcement letter containing a Severity Level II violation for serious deficiencies in the plant's safeguards program pertaining to access controls. River Bend Unit 1 is a General Electric-designed boiling water reactor located in West Feliciana Parish, Louisiana.

*Nature and probable consequences*—The Severity Level II violation involved four examples of failure to adequately control the access of personnel to vital areas. In the most serious example, the licensee incorrectly devitalized the plant auxiliary building access control system for over 17 hours. The other three examples included: (1) Improperly removing a hatch cover the allowed uncontrolled vital-island-to-vital-island access; (2) allowing a vital island door to be unsecured and uncompensated for about 30 minutes; and (3) improperly removing a large concrete floor plug which served as a vital-island-to-vital-island barrier. In all four examples, conditions existed whereby an intruder could have obtained unauthorized and undetected access into vital areas from either the protected area or other vital areas. It appeared from interviews with licensee personnel and a review of maintenance records that the floor plug had been removed for several months.

The August 7, 1986 letter also described a second violation of lesser significance involving two examples of inadequate vital area physical barriers. Details of the items that constitute the two violations described above are contained in NRC Inspection Reports 50–458/86–11 and 50–458/86–17, both of which were issued on June 4, 1986.

*Cause or causes*—The cause of these deficiencies was the failure of management to exercise effective personnel access control and to recognize and correct plant design deficiencies as they related to implementation of the security program.

*Actions Taken To Prevent Recurrence*

*Licensee*—In each example identified, the licensee took immediate corrective action to post compensatory guards where required. At the locations where uncontrolled access was identified, the licensee secured the area and conducted a search to confirm that no unauthorized activity has occurred, or conditions existed that would prevent safe plant operation. In the "devitalization incident," the licensee performance-tested all equipment essential for safe shutdown that was not operating during that period. The licensee has revised procedures and trained personnel to be aware of the safeguards implications of work performed by maintenance/operations personnel. Markings have been placed on all plugs, hatches, etc., that form part of the vital area barrier to alert personnel to notify Security before removal. The licensee implemented an engineering review and walkdown to identify any barrier openings that existed. Acceptable barriers have been installed to prevent unauthorized access through these openings.

*NRC*—An enforcement conference with GSU was held at the NRC Region IV office on June 10, 1986, to discuss these matters and the corrective actions undertaken by them. The August 7, 1986 enforcement letter forwarded a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of $65,000. The Civil Penalty consisted of $40,000 for the Severity Level II violation and $25,000 for the other less significant violation. The NRC has inspected the site since the violations were identified and is continuing to review the licensee's corrective action to ensure that the issues are resolved satisfactorily.

**Other NRC Licensees (Industrial Radiographers, Medical Institutions, Industrial Users, etc.)**

*AO 86–19 Therapeutic Medical Misadministration*

The general AO criterion notes that an event involving a moderate or more severe impact on public health or safety can be considered an AO.

*Date and place*—On September 4, 1984, NRC Region III was notified by the University of Cincinnati Medical Center, Cincinnati, Ohio, that an iodine-125 radiation source, which had been implanted in a patient had leaked, causing an unintended radiation exposure of 2,087 rad to the patient's thyroid. The leaking radioactive source was one of eight implanted in a patient August 27, 1984, for treatment of a brain tumor. The eight sources were removed on September 1, 1984.

The event has not been previously reported as an abnormal occurrence because at the time of the incident it was not classified as a medical misadministration as defined in 10 CFR 35.41–35.45. However, a recent reevaluation of the event by that NRC Staff concluded that the event should have properly been classified as a medical misadministration, and reportable as an abnormal occurrence, because the treatment was intended to irradiate only the patient's brain tumor, but because of the leaking source, also irradiated the thyroid. (In the body, iodine is deposited in the thyroid, and therefore, the radiation from the leaking iodine source would be concentrated there.)

*Nature and probable consequences*—On August 27, a total of eight seeds were placed in thin plastic catheter tubes and were temporarily implanted in the brain of a terminally ill patient. the next day, iodine-125 contamination was detected in the brachytherapy source storage room (BSR). Bioassay results showed that the technicians who had worked with the iodine-125 seeds had measurable uptakes of iodine. When the seeds were removed from the patient on September 1, a radiation survey of the patient's neck revealed a radiation level of 1.5 millirem per hour at two inches from the thyroid, which confirmed the seeds were leaking inside the patient. The patient was then discharged from the hospital with instructions to return for further bioassay analyses.

Subsequently bioassay testing of the patient's thyroid determined that there had been a deposition of 557 microcuries of iodine-125 thyroid. This level of deposition would result in a radiation dose to the thyroid of 2,087 rad. (A rad is

a standard measure of absorbed dose.) Such an exposure would be expected to result in some diminished thyroid function. Drugs are available to compensate for the reduced thyroid function.

The licensee found that the patient's friend and about 60 hospital personnel had received thyroid uptakes of 0.04 to 209 nanocuries; the NRC's maximum permissible thyroid burden for iodine-125 is 720 nanocuries. The 209 nanocuries was received by one of the technicians involved in preparing the iodine-125 seeds, and would result in a thyroid dose of about 0.8 rad. This dose would not be expected to result in any clinically detectable effects. The doses received by the other people were all considerably less than that received by this technician. Followup 24 hour urine bioassay testing of the two technicians involved in preparing the iodine-125 seeds showed a thyroid deposition of 29 nanocuries for one and no detectable activity for the other. The results of thyroid function testing of both individuals were normal.

The hospital personnel who received iodine uptakes included those who had handled or were in close vicinity of the leaking source, those involved in the control and cleanup of the contamination of the BSR, and those who frequented the areas outside of the BSR. In regard to the latter, the licensee found that a positive differential pressure between the BSR and the area outside it had exited for several days following the discovery of contamination in the BSR. This positive pressure contributed to the airborne migration of the iodine-125 into adjacent areas. (The licensee later changed the room to be under negative pressure.)

The licensee's investigation of the contamination incident determined that one of the iodine-125 seeds had been cut, apparently when it was being removed from a catheter tube from a previous patient implanted on August 13–17, 1984. Two technicians were involved in removing the seeds, and reported that after the tubes were removed from the previous patient, they were discolored and the seeds were difficult to see. One technician stated that he believed the damage most likely occurred when the ends of the catheter tubes were cut off with scissors.

The use of high activity iodine-125 seeds as removable brachytherapy sources was a new procedure at the University of Cincinnati. Previous uses (treatment protocols) involved the use of low activity iodine-125 seeds (0.1–1 millicurie) as permanent brachytherapy implants.

Although the contamination of the BSR was extensive, wipe surveys and air samples revealed that the contamination was essentially limited to the BSR. The room was decontaminated and then painted to fix any remaining contamination in place. Subsequent air samples in the room and in adjoining areas showed no detectable radioactivity. Some equipment (i.e., a sink, shelving, and storage safe) were found to have some residual contamination; they were covered in plastic to allow for radioactive decay prior to use.

*Cause or causes*—The cause of the misadministration was found to be an inadequate procedure used in removing the iodine-125 seeds from the catheter tubes for reuse. Further, there were inadequate radiation surveys performed in the work area where the source preparation was performed. Had adequate surveys been performed, the leaking seed might have been discovered prior to its being implanted in the patient.

*Actions Taken to Prevent Recurrence*

*License*—The licensee's Radioisotope Committee recommended that the use of high activity iodine-125 seeds be discontinued for this type of radiation therapy, pending a thorough review of the health physics aspects of their use. The hospital also contructed a new radiation source storage room with a greater distance between the storage area and the source preparation area. A fume hood was also installed in the room.

*NRC*—Region III conducted a special inspection at the hospital on October 10–12, 1984, to evaluate the circumstances of the source leakage and patient use. A Notice of Violation was issued on December 18, 1984 for two violations, i.e., opening a sealed source and failure to make an adequate survey for the source storage area following the preparation of the iodine-125 seeds for patient use.

Followup inspections have been conducted to determine the adequacy of the licensee's corrective actions.

On September 30, 1986, the NRC issued Inspection and Enforcement Information Notice No. 86–84 ("Rupture of a Nominal 40-Millicurie Iodine-125 Brachytherapy Seed Causing Significant Spread of Radioactive Contamination") to all NRC institution licensees to inform them of this event.

The NRC's Office of Nuclear Material Safety and Safeguards, and the NRC's Region Office, are evaluating what additional measures should be taken by the manufacturer and medical licensees to improve handling procedures for iodine seeds.

The NRC Office for Analysis and Evaluation of Operational Data undertook a review of the incident to determine if there was a generic problem associated with the reuse of high activity iodine-125 seeds in brachytherapy implant protocols, and to assess any associated health and safety problems. The findings and recommendations for action by various NRC offices, were issued in AEOD/C601 ("Rutpure of an Iodine-125 Brachytherapy Source at the University of Cincinnati Medical Center") during August 1986.

Dated In Washington, DC, this 6th day of May 1987.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 87–10823 Filed 5–11–87; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 40–8857]

## Everest Minerals Corp.; Draft Finding of No Significant Impact Regarding a New Source and Byproduct Material License

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of draft finding of no significant impact.

### 1. Proposed Action

The proposed administrative action is to issue a new source and byproduct material license authorizing Everest Minerals Corporation to operate the Highland in situ leach uranium recovery operation located in Converse County, Wyoming.

### 2. Reasons for Draft Finding of No Significant Impact

An environmental assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The environmental assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases that may occur during the course of the operation. Documents used in preparing the assessment included operational data from the research and development insitu leach operation, the licensee's application dated December 30, 1985, and the Final Environmental Statement for Exxon Corporation (Everest's Highland site) prepared by the Commission staff dated November 1978. Based on the review of these documents

the Commission has determined that no significant impact will result from the proposed action, and therefore, an addendum to the existing Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

A. The ground water monitoring program proposed for Everest Minerals Corporation's operation is sufficient to monitor the operations and will provide a warning system that will minimize any impact on ground water. Furthermore, additional aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

B. Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

C. The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

D. Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and State regulations.

E. Ground water, based upon previous testing, can be restored to baseline concentrations or applicable class of use standards.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**.

This finding, together with the environmental assessment setting forth the basis for the findings, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 4th day of May, 1987.

For the Nuclear Regulatory Commission.

**Edward F. Hawkins,**

*Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.*

[FR Doc. 87-10792 Filed 5-11-87; 8:45 am]

BILLING CODE 7590-01-M

## Advisory Committee on Reactor Safeguards Subcommittee on Severe Accidents; Meeting

The ACRS Subcommittee on Severe Accidents will hold a meeting on May 28, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Thursday, May 28, 1987—8:30 A.M. Until the Conclusion of Business*

The Subcommittee will continue the review of the proposed generic letter for Individual Plant Examinations (IPEs) as part of the NRC Implementation Plan for the Severe Accident Policy Statement.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, IDCOR representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 6, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87-10824 Filed 5-11-87; 8:45 am]

BILLING CODE 7590-01-M

## Transportation of Spent Fuel; Availability of Publication Concerning Research on Transportation Safety

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of a publication concerning the transportation of spent fuel. The publication reports results from research on the level of safety provided by NRC package standards under severe transportation accident conditions.

**ADDRESS:** Copies of NUREG/CR-4829 may be purchased by calling the U.S. Government Printing Office on (202) 275-2060 or 2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are available for inspection in the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** John R. Cook, Transportation Branch, Division of Safeguards and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 427-4240.

**SUPPLEMENTARY INFORMATION:** In the mid-1970's, staff conducted a reevaluation of the NRC transportation regulations to assess the adequacy of the regulations to protect the public health and safety. In the course of the reevaluation, a Final Environmental Statement (FES), designated NUREG-0170, was prepared. The FES included an examination of the transportation of radioactive material by all modes of transport. After considering the information developed, the public comments received on the FES, and the safety record associated with the transportation of radioactive materials, the Commission determined that its regulations provided a reasonable degree of safety and that no immediate changes were needed to improve safety (46 FR 21619; April 13, 1981).

The accident resistance of packages was identified as a subject for further study in NUREG-0170. It was recognized that for certain types of shipments, including spent fuel, the nature and quantity of material being transported was such that the consequences of release in an accident could be serious. Packages used for these types of shipments are required to be designed so that there is essentially no increase in radiological hazard when the package is subjected to the Hypothetical Accident

Condition tests specified in 10 CFR Part 71. The regulatory performance requirements are adequate to assure high integrity packaging when subjected to accidents and are generally recognized to be rigorous. The extent to which the regulatory performance requirements reflect real accidents, however, had not been fully developed. The adquacy of the performance requirements, particularly with respect to spent fuel packages, had also become a subject of public concern. To address these concerns, the Commission authorized a study to evaluate the safety of spent fuel shipments in terms of severe accidents which actually occurred in non-nuclear shipments in surface transport modes (i.e., Modal Study).

Lawrence Livermore National Laboratory has recently completed the final phase of the Modal Study, and presented their findings in a report entitled "Shipping Container Response to Severe Highway and Railway Accident Conditions" (NUREG/CR–4829). Among other results, the study concludes that the annual radiological risk from spent fuel shipment accidents is less than one third of that previously estimated in the "Final Environmental Statement (FES) on the Transportation of Radioactive Material by Air and Other Modes" (NUREG–0170). In April 1981, the Commission relied on the FES as a major basis for concluding that its transportation regulations provided a reasonable degree of safety, and that no immediate changes were needed. Results from the new study indicate that this earlier determination that transportation regualtions are adequate was based on a conservative evaluation.

For the Nuclear Regulatory Commission.

**Robert M. Bernero,**

*Acting Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 87–10793 Filed 5–11–87; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–133]

## Availability of the Final Environmental Statement for Decommissioning of Humboldt Bay Power Plan Unit No. 3

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Final Environmental Statement (FES) (NUREG–1166) has been prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed decommissioning of the Humboldt Bay Power Plant Unit No. 3 in Humboldt County, California. The FES Addresses the aquatic, terrestrial, radiological, social and economic impacts associated with decommissioning. A Draft Environmental Statement (DES) on this action was issued on April 23, 1986 to Federal, State and local agencies and to members of the public who requested copies. An extended public comment period was provided for the DES, beginning on April 28, 1986 and ending on August 15, 1986 for a total of 109 days. Comments on the DES, and NRC staff responses to those comments, are incorporated into the FES.

Copies of the FES are available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, DC 20555, and at the Eureka-Humboldt County Library, 421 I Street (County Courthouse), Eureka, California. Upon written request to the Division of Technical Information and Document Control, Publication Services Section, U.S. Nuclear Regulatory Commission, Washington DC 20555, and to the extent available, single copies of the FES will be made available to interested persons without charge.

Federal, State, and specified local agencies are being provided with copies of the FES, as well as all agencies and individuals that commented on the DES. Other local agencies may obtain the FES upon request.

Dated at Bethesda, Maryland, this 6th day of May 1987.

For the Nuclear Regulatory Commission.

**Herbert N. Berkow,**

*Director, Standardization and Non-Power Reactor Project Directorate Division of Reactor Projects III, IV, V and Special Projects Office of Nuclear Reactor Regulation.*

[FR Doc. 87–10794 Filed 5–11–87 8:45 am]

BILLING CODE 7590–01–M

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## Advisory Committee on Reactor Safeguards, Subcommittee on Generic Items; Meeting

The ACRS Subcommittee on Generic Items will hold a meeting on May 27, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, May 27, 1987—8:30 A.M. until the conclusion of business*

The Subcommittee will discuss the process involved in identifying, prioritizing, resolving, and implementing generic issues, and unresolved safety issues (USIs) so as to determine the effectiveness of this process.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 5, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87–10701 Filed 5–11–87; 8:45 am]

BILLING CODE 7590–01–M

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## Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on May 18 and 19, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Monday, May 18, 1987—8:30 A.M. until the conclusion of business*

*Tuesday, May 19, 1987—8:00 A.M. until 12:00 Noon*

The Subcommittee will review the following topics: A. *High-Level Waste:* (1) Impact of NMSS reorganization on waste management program, (2) Overview of QA program and activities, (3) Waste acceptance activities regarding the processing or radioactive wastes into glass, (4) Update on the National Bureau of Standard's waste form program, (5) Generic Technical Position (GTP) on Qualification of Existing Data for HLW Repositories, (6) GTP on Peer Review for HLW Repositories, and (7) Report on the Hanford, Washington (BWIP) hydrology meeting. B. *Waste Management Research:* (1) Demonstration of Performance Modeling of a LLW Shallow Land Burial Site—the nitrate disposal pit site at Chalk River, Canada, and (2) Control of Water Filtration into Near Surface LLW Disposal Units. C. *Low-Level Waste:* (1) Update on status of mixed wastes issue, and (2) Greater than Class C wastes.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Person desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634–1413) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 5, 1987.

Morton W. Libarkin,

*Assistant Executive Director for Project Review.*

[FR Doc. 87-10702 Filed 5-11-87; 8:45 am]

BILLING CODE 7590-01-M

## Pacific Gas and Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50-323]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-82 issued to Pacific Gas and Electric Company (the licensee), for operation of Diablo Canyon NUclear Power Plant, Unit 2, located in San Luis Obispo County, California. The request for amendment was submitted by letter dated March 17, 1987, as supplemented May 6, 1987.

The proposed amendment would revise the Diablo Canyon Unit 2 License Condition 2.C.(9) to allow the submittal of a plant-specific steam generator tube rupture (SGTR) analysis in April 1988, rather than prior to startup following the first refueling outage, to allow the use of the results and methodology of the Westinghouse Owners Group SGTR Subgroup (Subgroup).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because (a) based on the Subgroup's generic evaluation, the operators can respond to a design basis SGTR and perform the required actions to locate and terminate primary to secondary leakage before steam generator overfill occurs; (b) based on the Subgroup's generic evaluation, the offsite radiation doses for a design basis SGTR will be less than the allowable limits; and (c) the extension of time for submittal of the SGTR analysis is administrative in nature and has no effect on cause mechanisms.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed extension does not necessitate physicial alteration of the plant or changes in parameters governing normal plant operation.

(3) Involve a significant reduction in the margin of safety because the extension of time for submitting the SGTR analysis is an administrative change.

Accordingly, the licensee has determined that the proposed change to License Condition 2.C.(9) involves no significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that no significant hazards consideration is involved in the proposed amendment.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice.

By June 11, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by

the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.741, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120, attorneys for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amenement which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC., and at the California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California, 93407.

Dated at Bethesda, Maryland, this 7th day of May 1987.

For the Nuclear Regulatory Commission.

**Charles M. Trammell,**

*Project Manager, Project Directorate V, Division of Reactor Projects—III/IV/V and Special Projects.*

[FR Doc. 87–10957 Filed 5–11–87; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–24425; File No. SR–Amex–87–6]**

## Self-Regulatory Organizations; American Stock Exchange, Inc.; Increased Maximum Orders on PER and AMOS Systems

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 3, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested groups.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. has determined to expand its Post Execution Reporting (PER) system and its Amex Options Switching (AMOS) system to increase the size of eligible market and marketable limit orders from 1,000 to 2,000 shares for PER and from 10 to 20 contracts for AMOS.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The PER and AMOS systems provide member firms with the means to electronically transmit, for routing purposes, equity and option orders up to the volume limits specified by the Exchange directly to the post where the issue is traded for execution and reporting by a specialist. The systems were implemented in 1977 and 1979 to increase the capacity of the Floor to handle order flow by facilitating the transmission, execution, and reporting of small routine orders.

In response to the operational needs of member firms as a result of significant increases in volume in both equities and options trading, and in response to development of competitive automated systems, the order parameters for both PER and AMOS have been increased over the years. The current PER and AMOS eligibility levels, up to 1,000 shares and 10 contracts, respectively, for market and marketable limit orders (limit orders that are executable when received by the specialist), were approved in 1985.[1]

Since the last expansion of PER and AMOS, the average order size per trade has increased from 800 to 1,300 shares in equities and from 17 to 19 contracts in options. Average daily Amex equity volume has increased from 8,224,988 shares in 1983 to 14,892,249 as of January 29, 1987. In options, Amex's average daily volume increased over the same period from 153,722 contracts to 309,058 contracts.

At the same time, enhancements to the PER and AMOS systems have greatly improved the Exchange's ability to handle larger order flow and permit the reporting of executions on a more timely basis. Accordingly, the Exchange is proposing to increase the size of eligible market and marketable limit order from 1,000 to 2,000 for PER and from 10 to 20 contracts for AMOS.

[1] *See* Securities Exchange Act Release Nos. 21680 (January 23, 1985) 50 FR 4004 (AMOS); 21693 (January 25, 1985) 50 FR 3924 (PER).

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it will foster cooperation and coordination with persons engaged in facilitating transactions in securities, and will also result in more efficient and effective market operations, consistent with section 11A(a)(1)(B).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will create no burden on competition given that use of the PER and AMOS systems are optional, and those firms which use PER and AMOS can achieve more efficient handling of their respective order. The proposed rule change will also enhance the Exchange's competitive status in providing efficient, fast and accurate order-delivery systems.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 2, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 5, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-10691 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 6, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Cedar Fair L.P.
Depositary Receipts (File No. 7-9919)
H & O Health Fund
Shares of Beneficial Interest (File No. 7-9920)
B.F. Goodrich Co.
$3.50 Cumulative, Convertible, Preferred Series D Stock (File No. 7-9921)
Phelps Dodge Corp.
Depositary Shares (File No. 7-9922)
Southmark Corp.
9¼ Cumulative, Convertible, Series H Stock (File No. 7-9923)
A.T.& E Corp.
Common Stock, $0.01 Par Value (File No. 7-9924)
GCA Corporation
Common Stock, $0.01 Par Value (File No. 7-9925)
Nortek, Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7-9926)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 27, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written

comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-10828 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24423; File No. SR-MSE-87-6]

## Self-Regulatory Organizations; Midwest Stock Exchange; Exchange's Revised Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 5, 1987, the Midwest Stock Exchange filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submitted the revised fee schedule in connection with the rule filing.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to amend the Exchange's Transaction Fee Schedule. The current Item Charge based on the number of round lot trades/month is being eliminated. The current trade volume credit of 10¢/trade for trades exceeding 1000 trades/month is being changed to a credit of 15¢/trade for trades executed on the Exchange floor above 3000 trades/month.

A new Item Charge based on the number of shares per trade is being implemented as follows: A charge of 20¢/100 shares with a cap of $1.00 per trade. In addition to the new Item Charge the current Value Charge based on total gross dollar value/month will still apply with 2 modifications. First, the rate (per $1000) at the total gross dollar volume/month of $550.1 million and over is being reduced from 3¢ to 2.5¢. Second, the first 500 shares per trade will be excluded from valuation.

The new Item Charge coupled with the changes to the Value Charge should encourage member firms to send a higher number of smaller sized orders to the Exchange resulting in the Exchange being more competitive for trades of 100 to 1000 shares, while at the same time remaining competitive on larger orders.

In addition, the current credit of 0.15 per trade for round lot orders entered by a member firm through the MAX System will be increased to 0.20 per trade and will be expanded to include trades in over the counter stocks sent by the member firm to the MAX-OTC system operated by the Exchange's subsidiary, MSE Information Processing Corp. (MSE-IPC). This network utilization credit encourages member firms to take advantage of the efficiences inherent in the use of the order routing network developed by the Exchange and MSE-IPC for both listed and over the counter issues.

The proposed credit will pass on to the member firm utilizing both the MAX and MAX-OTC systems the benefits inuring to the Exchange of such utilization by such credit being applied against the member firm's total monthly Exchange bill.

The proposed fee increase is consistent with Section 6 of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSE's members.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments have neither been solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 2, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1987.
Jonathan G. Katz,
*Secretary.*
[FR Doc. 87-10832 Filed 5-11-87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-24424; File No. SR-MSE-87-2

## Self-Regulatory Organizations; Order Approving Proposed Rule Change of Midwest Stock Exchange; Trading of NMS Securities on the MSE

On February 10, 1987, the Midwest Stock Exchange ("MSE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal amends MSE's rules to accomodate trading of National Market System ("NMS") Securities on either a listed basis or pursuant to unlisted trading privileges ("UTP").[1] The Commission published notice of the Release on February 13, 1987,[2] and received no comments.

### I. Description of the Proposal

The proposal amends MSE's rules by adding a new Rule 40 to Article XX governing trading in NMS Securities. The proposal also amends MSE's rules to require MSE specialists to provide telephone access to NASD market makers and makes related conforming changes. MSE amended its Guaranteed Execution System Rule to accomodate OTC/UTP, as well as its Specialists Rule. Finally, some of the proposed rule changes are conforming changes that add references to NASDAQ/NMS securities whre appropriate.[3]

New Rule 40 defines "NASDAQ/NMS security" and "NASDAQ system." It also specifies that exchange specialists are required to provide NASDAQ system market makers direct telephone access to the specialists' posts. The Rule also clarifies that NASDAQ market makers are able to direct to MSE specialsists orders for execution on the exchange.[4] Further, Rule 40 clarifies that the same rules applicable to making bids and offers and to executing transactions on the floor will apply to telephone orders by NASDAQ market makers. Similarly, the proposal provides procedures for exchange specialists to route orders from the MSE floor to any NASDAQ market maker by telephone. Finally, new Rule 40 specifies that comparison of transactions effected with a NASDAQ market maker will be made under procedures to be established between the NASD and MSE.[5]

The propsal exempts specialists in NASDAQ/NMS securities from the mandatory posting provisions of MSE's Interpretation and Policy. The mandatory posting provisions set forth the conditions that may lead to a reallocation of a specialist's specialty stock.[6] The purpose of this change is to exempt specialists registered in NASDAQ/NMS securities from the mandatory posting provisions until the MSE and MSE specialists have gained greater experience in trading and in evaluating the specialists' performance in these issues.

The MSE amended Article XXXI, Rule 5 by adding a new Interpretations and Policies .01 to specify that the specialist for a NASDAQ/NMS security also will be the Odd-Lot Dealer for the security. MSE made a related change to Article XXXI, Rule 10, adding a new Interpretation and Policy stating that odd-lot orders to buy or sell NASDAQ/NMS securities received by the specialist will be executed on the basis of the best bid or offer. This change conforms MSE rules to the practice of the over-the-counter market.

NASDAQ/NMS securities trading on the MSE also necessitated changes to MSE's Guaranteed Execution System Rule (*i.e.*, Article XX, Rule 34). The changes to this Rule extend, in certain circumstances, the guarantees currently afforded Dual Trading System Issues to NASDAQ/NMS securities. The changes provide that agency market market orders in NASDAQ/NMS securities placed by exchange members will be guaranteed fills in substantially the same manner as Dual Trading System Issues.[7] Preopening orders in NASDAQ/NMS securities will be accepted and filled at the MSE opening price. After trading halts, orders will be executed at the MSE reopening price. In contrast, for Dual Trading System Issues, the primary market opening is used. This difference reflects the fact that there is no one "opening" price in the over-the-counter market, which generally will be the primary market for NASDAQ/NMS issues. Further, the MSE added a new "Interpretation and Policies" .01 to extend a guarantee to all automated agency market orders up to 1,099 shares in NASDAQ/NMS securities placed with a specialist but not to manually placed market orders placed with a specialist by a floor member (other than the first one placed at any given price). The MSE intended the change to decrease the likelihood of professional orders receiving the same guarantees afforded customer orders. Finally, no limit order guarantee will be provided with respect to quotes in other markets[8]

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[1] The Commission today approved MSE's application for UTP in 25 NMS Securities. *See* Securities Exchange Act Release No. 24405 (April 29, 1987). ("OTC/UTP Approval Order").

[2] Securities Exchange Act Release No. 24100 (February 13, 1987). 52 FR 5363 (February 20, 1987).

[3] MSE amended the proposed rule change. Letter from Patrick K. Conroy, Counsel, MSE, to Brandon Becker, Associate Director, Division of Market Regulation dated March 24, 1987. ("March 24 Letter"). In its original proposal, MSE amended it Interpretations and Policies to Article XX, Rule 8, to exempt MSE specialists from the requirement that they input their quotes into the quotation system during a NASD-called quotation halt. The MSE included this provision because the NASD's system cannot collect or disseminate MSE quotations when it has imposed a quotation halt on it own members. Rule 11Ac1-1 ("Quote Rule") requires, however, that the MSE make available to vendors quotes in reported securities communicated on the exchange floor whenever the exchange is open for trading. Thus, because the processor's (*i.e.*, the NASD) system cannot accept quotation from the MSE during a NASD quotation halt, the MSE will be in violation of the Quote Rule during such halts. The Commission believes, however, that it is more appropriate to provide the MSE with a no-action position under Rule 11Ac1-1 with the expectation that a processor will be developed with the capability to disseminate quotations selectively. *See* letter from Brandon Becker, Associate Director, Division of Market Regulation, to George T. Simon, Esq., Coffield, Ungaretti, Harris & Slavin, dated May 4, 1987.

[4] The MSE subsequentaly informed the Commission of the procedures it has developed to accomndate telephone access to its specialists. The MSE will peovide NASADAQ market makers telephone numbers for direct access to MSE specialists. In addition, secondary numbers will be available when they cannot reach the specialist on the primary telephone line. Further, these telehpone lines will have multiple search functions. Finally, if a market maker is unable to contact a specialist by the means described above, the market maker will be able to call a specific exchange staff person for assistance. *See* March 24 Letter.

[5] The MSE informed the Commission that all transactions in NASDAQ/NMS securities effected between exchange specialists and NASDAQ market makers will be compared, cleared and settled throught he Midwest Clearing Corporation's and National Securities Clearing Corporation's over-the-counter systems. *See* March 24 Letter.

[6] Article XXX, Rule 1, Interpretations and Policies .01. The mandatory posting provisions requires a semi-annual review of the MSE's market share, calculated as a percentage of the number of trades reported on the consolidated tape. If the MSE's market share, when compared with the market shares of other markets trading the security, is less than the third largest and is also less than the exchange's average market share for all issues for which there is a registered specialist, the MSE automatically will post the security for reallocation to a new specialist.

[7] These orders will be filled at the consolidated best bid or offer. Unlike Dual Trading System Issues, however, specialists will not be required to grant stops, if requested, if the execution will be outside the primary market range for the day.

[8] It bears emphasis that it is only the primary market limit order guarantee that is not extended to

Continued

on NASDAQ/NMS securities trading on the MSE until the MSE gains greater expertise in trading NASDAQ/NMS securities.[9]

As noted above, many of the proposed rule changes are intended to accomodate the Commission's requirement that MSE specialists provide OTC market makers telephone access to the floor of the exchange.[10] In effect, this requirement would allow a NASDAQ market maker to interact with the MSE specialist as if he were another NASDAQ market maker. For example, the MSE amended Interpretations and Policies. 01 of Article XX, Rule 5, which provides that transactions on the floor shall be made only with MSE members, to make clear that the Rule permits specialists to effect transactions while on the floor with NASDAQ market makers in NMS Securities. Similarly, Article XX, Rule 28, which prohibits transmitting from the floor the name of a bidder, offeror, buyer or seller, has been amended to exempt transactions with OTC market makers. The MSE also amended Article XX, Rule 31 to provide that telephone orders received on the exchange floor from NASDAQ market makers are exempt from the requirement that orders on behalf of another be in writing.

The MSE also amended section C(1)(a) of the Blue Book Rules (Rules and Practices for Trading on the Midwest Trading Floor). The amendment provides that NASDAQ/NMS Securities trading on an unlisted trading basis will be treated as local issues with the exception that, under certain circumstances where an unusual variation from the last transaction will occur if a trade is executed, the transaction may be completed without first securing the approval of a member of the Committee on Floor Procedure.

Finally, some of the MSE's proposed changes are administrative in nature. For example, the MSE amended Rule 3 of Article XX to clarify that orders transmitted from the exchange floor in NASDAQ/NMS securities will be subject to the MSE's rule prohibiting dealings on the exchange floor except during the hours the exchange is open for business.[11] The MSE also amended Article XX, Rule 8 to indicate that quotes from other market centers displayed on the exchange floor have not standing in the crowd.[12] Finally, MSE's rule governing the authority of the Committee on Floor Procedure has been amended to indicate that the Committee's authority extends to oversight and supervision of transactions on the exchange floor between MSE members and NASDAQ system market makers.

## II. Discussion

The Commission believes that the proposed rule changes are consistent with section 6(b)(5) of the Act. Generally, because the proposals enable the MSE to provide trading facilities for NMS securities, they facilitate transactions in securities and thus remove impediments to and perfect the mechanism of a free and open market and a national market system. Several of the proposed rule changes are designed to allow MSE to obtain eperience with NASDAQ/NMS stocks before MSE determines whether and how to permanently adapt its rules to OTC/UTP. The Commission thus requested and received assurances from the MSE that, at the end of a pilot period testing exchange trading of NMS securities on an unlisted basis, the MSE would re-examine the operation of its rules.[13] The MSE also assured the Commission that it would make any necessary revisions or modifications to its rules at that time.[14] For these reasons, the Commission believes it is appropriate to permit the exchange to gain additional experience in trading these types of securities before it considers any revisions or modifications to the Rules.

The Commission expects the MSE to monitor, in particular, its Guaranteed Executive System rules. The Commission believes that the MSE should consider whether it is appropriate to extend the same or other limit order protection to orders in NASDAQ/NMS securities. Similarly, the MSE should examine whether it is appropriate to amend Article XX, Rule 34, paragraph 6 to apply to trading in NASDAQ/NMS issues the requirement that specialists must grant a stop, if requested, if an agency market order will be executed outside the primary market range for the day. Finally, the Commission expects the MSE to monitor closely whether its new Interpretation and Policy to the Guaranteed Execution System Rule (*i.e.*, that only the first manually placed agency market order in NASDAQ/NMS securities at any given price must be guaranteed an execution) is necessary. The Commission has questions whether this interpretation will achieve the stated objective of preventing floor members from submitting professional orders as agency orders to secure the guarantee.

## III. Conclusion

For the reasons stated above, the Commission believes the proposed rule change is consistent with the Act and Section 6(b)(5), in particular.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that SR-MSE-87-2 be, and hereby is, approved. The Commission expects the MSE to re-examine its rules, however, at the end of the pilot period testing the trading of NMS securities on an unlisted basis, or earlier, if the Commission determines such earlier re-examination to be appropriate.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1987.

Jonathan G. Katz,

*Secretary.*

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NASDAQ/NMS Securities. Limit order "protection" within MSE's market is accorded NASDAQ/NMS under MSE Rule 2 of Article XXX, which requires specialists to fill limit orders in the book before trading for their own account at the limit price.

[9] The MSE's rules provide that all agency limit orders in Dual Trading System issues will be filled if one of the following conditions occur: (a) The bids or offering at the limit pricehas been exchausted in the primary market (as defined in the Consolidated Tape Association Plan), (b) there has been a price penetration of the limit price in the primary market, (c) the issue is trading at the limit price in the primry market unless it can be demonstrated that such order wouldnot hve been executed if it had been transmitted to the primary market or the broker and specialist agree to a spedific volume-related or other criteria for requiring a fill. As noted above, the MSE rules will not extend the same protections to NASDAQ/NMS

[10] The Commission conditioned a grant of OTC/UTP to an exchange on, among other things, the exchange requiring its specialists assigned to OTC securities trading on a UTP basis to provide telephone access to the OTC market makers in those securities. *See* Securities Exchange Act Release Nos. 24407 (April 28, 1987); and 22412 (September 16, 1985), 50 FR 38640.

[11] The MSE also amended its Interpretations and Policies .01 to that Rule, however, to provide that, under certain circumstances and with prior approval of two members of the Committee on Floor Procedure, a member may effect transactions at other times. This corresponds to the policy for Dual Trading System issues.

[12] MSE's rules contain a similar exemption for quotations from other market centers displayed in the Intermarket Trading System.

[13] *See* OTC/UTP Approval Order, *supra* n.1, at 4 n.8 for a discussion of the OTC/UTP pilot period.

[14] *See* March 27, 1987, letter.

[Release No. 34-24411; File No. SR-NYSE-86-37]

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by New York Stock Exchange, Inc., Relating to Review of Combinations Among Specialist Units

### I. Introduction and Summary

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on December 18, 1986, and amended on February 20, 1987, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to adopt, on a six month pilot basis, a policy for the review of certain proposed mergers, acquisitions, and other combinations ("combinations") between or among specialists units. The proposed rule change would authorize the Board of Directors' ("Board") Quality of Markets Committee ("QOMC") to review, under a two tier system, proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

Under the proposal, a tier I QOMC review would occur whenever a proposed combination would result in a specialist organization specializing in securities which exceed 5% of any one of four concentration measures.[1] Similarly, a tier II review would occur whenever a proposed combination would result in a specialist organization exceeding 10% of any concentration measure. In a tier II review, however, there would be a rebuttable presumption that the proposed combination would result in undue concentration within the specialist community. The constituent specialist units must then present clear and convincing evidence that the proposed combination would not result in unude concentration and would promote competition among specialist units.

The NYSE has requested that the Commission grant accelerated effectiveness to the proposal for a six month pilot period pursuant to section 19(b) of the Act.

### II. Background

The proposed policy is a consequence of a study of significant issues relating to the specialist system that the QOMC undertook early in 1986. The study, which included a review of consolidation in the specialist community, raised questions on whether undue concentration of specialist units currently exists or is developing, and, if so, what the effects of such undue concentration would be on internal competition between specialists units and on overall market quality.[2]

As a result of this study, the QOME recommended that the NYSE conduct an in-depth review of specialist concentration on the Exchange floor and declare a moratorium on proposed combinations pending completion of the study. On October 7, 1986, the NYSE announced the commencement of the moratorium and initiated the study.

As a part of its study, the Exchange solicited comments and suggestions from its membership and various constituent committees. In response the Exchange received comments from six constituent committees, one listed company, and six member organizations, including three specialist organizations.[3]

Those who favored some kind of limitation on specialist unit concentration commented that increased concentration among specialist units would harm the public's perception that there is a competitive, "free market" environment on the Exchange. These commentators also contended that fewer and larger specialist units would present a significant barrier to new entrants to the specialist business, and would reduce the incentives to maintain high levels of performance and market quality and the competition for the allocation of new listings. In addition, the commentators suggested that the Exchange's ability to ensure an orderly market in all its securities could be significantly imparied if a large specialist unit were to experience financial or operational problems.

Commentators who opposed a limitation on specialist unit concentration noted that consolidation in the specialist community is no different and, in fact, may be lesser in degree than the consolidation in the securities industry in general over the last 20 or 30 years. In these commentators' view, consolidation in the specialist community to date has had a healthy effect on the specialist system and the quality of Exchange markets, and has better enabled the specialist system to function effectively in an environment of high volume, high volatility, and high risk to capital. Finally, these commentators also observed that a limitation on specialist unit concentration might impair the ability of specialist units to raise and maintain adequate capital.

In the course of its study, the Exchange reviewed the current concentration level of the specialist business using the four concentration measures.[4] The Exchange collected and summarized data detailing the distribution of stocks and activity among specialist units.[5]

After reviewing the current distribution under the four concentration measures and the environmental factors affecting the specialist system, the Board concluded that although the specialist business was not yet unduly concentrated, further combinations among specialist units would occur as these units sought to acquire additional capital and resources. The Board believed that this increase in concentration could, at some point, result in undesirable concentration levels.

In order to strike an appropriate balance between the need for some specialist organizations to grow through

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[1] The concentration measures are:
(a) The common active listed on the Exchange;
(b) The 250 most active common stocks listed on the Exchange;
(c) The total share volume of trading in common stock on the Exchange; and
(d) The total dollar value of trading in common stock on the Exchange.

[2] In 1955, there were 136 specialist units with 354 individual specialists registered in a total of 1,077 common stocks. In contrast, there are currently 55 specialist units with more than 400 individual specialists registered in over 1,560 common stocks, a reduction of 60% in the number of specialist units and an increase from 7.9 to 28.4 in the average number of stocks per specialist unit.

[3] Of the thirteen comments received by the Exchange, eleven commentators agreed with the Exchange's position that some form of review of proposed combinations was necessary to prevent undue concentration within the specialist community. Of these eleven, six commentators favored adoption of a 5% and 10% threshold level of review, while the remaining five commentators favoring review of proposed combinations voiced concerns about setting specific limits on the size of specialist units. The two remaining commentators opposed any limitation on specialist expansions based solely upon the size of the units. *See* letters from Irwin Schloss, President, Marcus Schloss & Co., Inc., to Santo Famularo, Assistant Vice President, NYSE, dated November 6, 1986 (opposing in principle a limitation on specialist mergers based on the size of the unit); Harvey Silverman, Managing Partner, Spear, Leeds & Kellogg to Santo Famularo, dated November 7, 1986 (noting that statistically, there is no evidence of significant concentration within the specialist community that would require such a policy of review by the exchange). Copies of the comments are available from the Commission and the NYSE.

[4] *See* note 1, *supra*, for specification of the concentration measures.

[5] The cumulative distribution of stocks and activity among specialist units shows that, under each of the concentration measures, the top 5 units account for 20% or more of all stocks listed on the Exchange; the top 10 units account for 40% or more of all the stocks listed on the Exchange (40% of both the 250 most active common stocks listed on the Exchange and the total dollar value of trading in common stock); and the top 15 units account for over 50% of all stocks listed on the Exchange (50% of the 250 most active common stocks listed on the Exchange). The data was compiled for the 12-month period of November 1985 through October 1986.

combinations, on the one hand, and the need to maintain internal competition and the perception of a free and open market, on the other hand, the Board felt that the Exchange should adopt an orderly, structured approach for reviewing proposed organization combinations that could raise concentration-related issues. The NYSE has proposed therefore to adopt, on a pilot basis, a policy which it believes will provide the Exchange with a means for overseeing an orderly evolution of the specialist system. According to the NYSE, the policy is designed to avoid unnecessarily restricting proposed combinations that do not have an adverse impact on market quality or result in undue concentration.

### III. Description of Proposal

The NYSE proposal creates a mechanism whereby it can monitor the level of concentration within the Exchange specialist community. The proposal establishes a two tier system of review whereby the QOMC would be authorized to review proposed specialist combinations that raise concentration-related issues.[6]

A tier I QOMC review would be triggered whenever a proposed combination involves or would result in a specialist organization exceeding 5% of any concentration measure.[7] In a tier I review, the QOMC would review the proposed combination with the following considerations in mind:

(a) Specialist performance and market quality in the stocks subject to the proposed combination;

(b) The effects of the proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure, and the negative consequences of any such failure, on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(c) Commitment to the Exchange market; focusing on whether the constituent specialist organizations have worked (or in case of new applicants to the specialist community, will work) to support, strengthen and advance the Exchange, its agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specialist organizations.

There would be no presumption that a proposed combination might result in undue concentration in a tier I review. The QOMC would approve or disapprove a particular proposed specialist unit combination based on its assessment of the concentration and other considerations described above. Under the proposal, the QOMC also will have the ability to offer conditional approval based on the satisfaction of particular concerns.

The criterion relating to the "commitment to the Exchange market" under a tier I review[8] was further elaborated upon in Amendment No. 1 to the proposed rule change. In that filing, the NYSE indicated that the commitment criterion is designed to require the QOMC to look to a variety of factors that extend beyond compliance with the Exchange's requirements for providing sufficient capital, talent and order handling services. Specifically, the Committee would review and assess each constituent unit's past conduct on the Exchange relating to such items as:

- Participation upon request in the Exchange's FACTS program,[9] in its marketing seminars, in sales calls and in other of its marketing initiatives seeking to attract order flow and new listings.
- Acceptance of innovations in order-routing and other trade-support systems and willingness to make optimal use of the systems once they become fully operational.
- Willingness to apply for allocations of stocks that are less lucrative from the standpoint of profitability to the specialist.
- Assistance to other units by providing capital and personnel in unusual market situations, such as "breakouts" and difficult openings.
- Efforts at customer relations with both listed companies and order providers, as evidenced by personal contact, return of telephone calls, prompt resolution of complaints, assessment of customer needs and anticipation of customer problems.
- Efforts to streamline its own operations so as to reduce its own costs, enabling it to pass on savings to its customers.

When a combination involves an entity that is not an existing specialist unit (*e.g.*, if a third party's contemporaneous purchase of two or more units creates a combination exceeding the five percent threshold), the application of the "Exchange commitment" criterion to the non-specialist entity would be based upon an assessment of any relevant experience of the entity in its pre-combination activity and on its operational plans that would indicate its ability to operate a specialist unit that is consistent with the factors cited above.

A tier II QOMC review would be triggered whenever a proposed combination involves or would result in a specialist organization exceeding 10% of any of the concentration measures. In a tier II review, the QOMC will give primary weight to the effect of the proposed combination on the overall concentration of specialist organizations. The review would begin with a rebuttable presumption that the proposed combination would result in a level of concentration harmful to the specialist business. The Committee would disapprove the proposed combination unless the constituent specialist organizations:

(a) Present clear and convincing evidence that, if approved, the proposed combination:

(i) Would not create or foster concentration in the specialist business detrimental to the Exchange and its markets;

(ii) Would foster competition among specialist organizations; and

(iii) Would enhance the performance of the constituent specialist organizations and the quality of the markets in the stocks involved; and

(b) Demonstrate that, if approved, the proposed combination is otherwise in the public interest.

The proposed rule change defines a "proposed combination" subjected to the policy to include:

(a) A merger of specialist organizations or an acquisition of one organization by another;

(b) The formation of a joint account involving two or more existing organizations;

(c) The "split-up" of an existing organization (including an organization operating under a joint account) and recombination with another organization;

(d) An individual specialist leaving an existing organization and proposing to

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[6] Currently, the Exchange's Market Performance Committee ("MPC"), acting under delegated authority from the QOMC, reviews proposed combinations between specialist units to determine the effects of the proposed combination on market quality. If the MPC concludes that the proposed specialist combination will erode significantly market quality, it informs the constituent units of its concern. If the units persist in their plans, the MPC can inform them that some or all of the affected stocks will be put up for reallocation. Under the present scheme, a specialist unit may seek review of the MPC's decision through the Exchange's specialist allocation and reallocation rules relating to hearings and appeals. *See* NYSE Constitution, Article IV, Section 14.

[7] *See*, note 1, *supra*.

[8] *See* discussion, *supra*.

[9] The FACTS program is used to introduce member firms and other interested persons to the operations of the Exchange.

take stocks with him to join another existing organization; and

(e) Any other arrangement that would result in previously separate organizations operating under common control.

In discussions with Commisison staff, the NYSE also addressed three situations involving the purchase of specialist units by an entity other than a specialist firm, such as a so-called "upstairs firm" or full service broker-dealer.[10] First, when a non-specialist entity purchases a specialist unit that has a concentration level of 5% or more at the time of the purchase, the acquisition of the specialist unit would not be reviewable under the proposed rule. The proposal only applies to combinations of specialist units that involves or would result in a unit exceeding 5% or 10% of a concentration measure. Second, if an entity proposes to purchase several specialist units that, combined into one unit, account for more than 5% of 10% of a concentration measure, the acquisition would be reviewable under the proposed rule. Finally, a third party's contemporaneous purchase of two or more units which are kept operationally separate, but when viewed together would cross a 5% or 10% concentration measure, would be reviewable under the policy.[11]

The Exchange has stated in it filing with the Commission that the proposed rule change is designed to provide the Exchange with a mechanism for reviewing proposed mergers, acquisitions and other combinations between or among specialist units that may lead to a level of concentration within the specialist community that is detrimental to the Exchange and the quality of its markets. The Exchange believes that undue concentration may undermine its agency/auction process, accentuate specialist complacency, and damage the public's preception of the Exchange as a free market environment. The proposed policy seeks to strike an appropriate balance between the perceived harm from undue concentration and the need for some specialist organizations to grow and attract capital through combinations. The NYSE believes the policy offers a structured approach for reviewing proposed combinations that raise concentration-related issues. The NYSE asserts that when taken together with its existing policy for reviewing combinations, the new policy will establish a three-level approach for overseeing an orderly evolution of the specialist system without unnecessarily restricting combinations that do not result in undue concentration or otherwise have an adverse impact on market quality.[12]

In its filing, the NYSE has indicated that the basis under the Act for the proposed rule change is section 6(b)(5).[13] The NYSE notes that with the policy it will be able to monitor tendancies toward concentration in the specialist community and intervene to prevent undue concentration. In its filing, the Exchange also indicates that the proposed rule change will not impose any burden on competition inconsistent with Section 6(b)(8) of the Act and, in fact, create a mechanism that will help assure competition among specialist units. According to the NYSE, its principal concern from a concentration standpoint is that the transformation of the specialist community into fewer and larger units might vitiate the competition among existing specialist units and present a significant barrier to new entrants to the specialist business, all to the detriment of the competition for the allocation of new listings. Accordingly, the NYSE believes the proposal will serve to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest. Finally, the NYSE contends that the proposed rule change is consistent with section 11A(a)(1)(C), which states Congress' finding that fair competition among brokers and dealers serves and fosters the public interest, investor protection and fair and orderly markets.

## IV. Discussion

The Commission does not believe that consolidations among specialist units are inherently harmful and believes that in many situations they can, in fact, be beneficial, particularly for those units with limited capital.[14] Nevertheless, the Commission recognizes the NYSE's concern that undue concentration can have negative effects on market quality by, among other things, hampering competition among specialists and reducing incentives for specialists to provide better markets.[15]

Furthermore, we recognize that, as specialist concentration increases, the continued financial and operational vitality of any one unit will have increased importance on the overall quality of the NYSE's markets and the specialist systems as a whole. Accordingly, although the NYSE has indicated that its proposed policy does not derive from an assessment that the specialist business is unduly concentrated at the present time, the Commission believes it is appropriate for the NYSE to adopt a policy that authorizes it to monitor specialist combinations to determine their impact upon the competitive environment necessary to maintain an orderly market.[16]

We have carefully reviewed the NYSE's proposed policy. The Commission initially believes that the factors identified in the NYSE policy for reviewing specialist combinations are adequately designed to result in approval of proposed combinations which will not have an adverse impact on market quality or result in undue concentration. For example, under the policy, the Exchange will analyze, among other things, the combination's potential effect on market quality and overall concentration of specialists on

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[10] In this regard, the Commission notes that it recently approved a proposed rule change submitted by the NYSE that would amend NYSE Rule 98 to ease restrictions imposed on approved persons or member organizations affiliated with specialists or specialist units in order to facilitate entry into the specialist business by retail broker-dealers and other entities. Under the Rule, approved persons must establish an organizational separation or a "Chinese Wall," between itself and the associated specialist unit in conformity with certain guidelines to be exempt from various Exchange restrictions which would otherwise render such an acquisition impracticable. *See*, Securities Exchange Act Release No. 23788 (November 3, 1986), 51 FR 41183 (November 13, 1986).

[11] For example, if a full service broker-dealer bought two specialist units, one with 4% of all allocations and the other with 3%, this would constitute a combination subject to review. Likewise, if a full service broker-dealer that already owned one specialist unit with 7% of all allocations bought another unit having 2% of all allocations, this would be reviewable under the proposed policy because it is a combination of specialist units crossing the 5% threshold percentage. In contrast, if a full service broker-dealer that had no affiliated specialist units bought a unit having 11% of all allocations, this purchase would *not* be a combination reviewable under the proposed policy.

[12] The three levels consist of the NYSE's current review policy which would apply to those combinations that neither cross the 5% or 10% threshold, *see*, note 6, *supra*, and two proposed reviews for combinations exceeding the 5% and 10% thresholds.

[13] 15 U.S.C. 78f(b)(5).

[14] We agree, for example, with the NYSE's claim that consolidations can benefit the quality of markets because larger units, with greater capital, manpower, and back office resources may be better equipped to handle volatile stocks.

[15] In this regard, we note that the Commission has previously indicated that it would be concerned if a structural change in the market were likely to lead to increased concentration and it was reasonably foreseable that such concentration was likely to lead to reduced competition within the securities industry. *See*, order approved NYSE Amendments to Rule 98, *supra* note 10.

[16] We note that, in its filing, the NYSE expressed concern that several "environmental" factors make it likely that specialist organizations may choose to acquire additional capital and resources through further combinations in the future, and therefore a policy to take into account concentration effects should be developed at this time.

the Exchange floor, and whether the combination will strengthen the capital base for the resulting unit, minimize the potential for financial failure, and increase operational efficiencies. The Commission believes that these and the other factors in the policy will enable the NYSE to identify those combinations that can be potentially harmful to market quality and actually decrease competition.

In this regard, the Exchange has specified those criteria under the proposed policy which it believes focus on combinations harmful to market quality. Most notably, the criterion of whether constituent specialist units have demonstrated a "commitment to the Exchange market" has been amended to clarify its potential scope. Under this criterion, evaluation of proposed combinations will be limited to the constituent's past conduct involving Exchange related activity rather than conduct in another marketplace. In the case where the combination involves an organization that has not been a specialist unit, however, the NYSE's assessment of the organization's commitment to the Exchange market would be based upon an analysis of the organization's plans for operating the combined units to determine whether it intends to operate the new specialist unit in a manner consistent with the relevant criteria.[17] This will ensure that new entrants to the specialist community will not be penalized for their lack of experience in the specialist business.

Although the Commission believes that the proposal will provide the NYSE with a means to review combinations that would increase concentration among specialist units, the Commission believes that the 5% and 10% threshold percentages raise certain concerns. Because the NYSE would be permitted to disapprove proposed combinations based upon their potential concentration effects, it is important to determine whether the 5% and 10% thresholds are appropriate measurements of potentially harmful concentration. This concern is particularly applicable to those combinations exceeding the 10% threshold, where the constituent firms would have to overcome the presumption that the proposed combination would result in a level of business harmful to the specialist community.

Nevertheless, the NYSE has selected concentration levels which most of its specialist units do not reach by themselves.[18] Thus, many potential combinations might not reach the 5% threshold, while most probably would not reach the 10% level. Accordingly, in light of the legitimate concentration concerns the NYSE has identified, the Commission believes that it is consistent with the Act for the NYSE to implement the proposed review on a pilot basis.

As noted above, the NYSE has requested accelerated approval of the proposed rule, pursuant to section 19(b)(2) of the Act, for a six month pilot period. The Exchange has indicated that there is good cause for accelerated effectiveness because it is necessary to reconcile (a) the Exchange's determination that combinations between specialist units must be analyzed for their impact on concentration with (b) specialist units' desire for timely processing of proposed combinations. The NYSE lifted its moratorium in connection with the present rule filing so that proposed combinations could be reviewed under the new criteria. According to the Exchange, it could receive new proposals at any time which raise concentration concerns and, yet, must be considered expeditiously. A delay in action by the Commission in order to receive and consider additional comments on the proposed rule change could result in delays in the Exchange's processing of combination proposals that would be inimical to the proposed combination from a business standpoint. At the same time, accelerated effectiveness of the proposed rule change will not require the Commission to forego thorough consideration of, and public comment on, the proposed policy.

The Exchange anticipates that it will file a second proposed rule change requesting permanent approval of its six month pilot program in advance of the pilot's expiration date.[19] The NYSE states that the rule filing will include a discussion of any experience the Exchange has had in the application of its policy, which may aid the Commission in its consideration of whether to grant permanent approval to the proposal. The Commission expects that the NYSE filing will contain a thorough analysis of the basis for the chosen threshold levels and for the use of a presumption against a combination at the higher threshold level.

For the reasons discussed above, the Commission has determined to accelerate the approval of the NYSE's proposal. Because the NYSE intends to file for permanent approval prior to the conclusion of the pilot, the Commission will be able to fully analyze all aspects of the proposal, consider any comments received during the pilot period, and determine, pursuant ot the Act, whether the policy should be approved, disapproved or modified.[20] Accordingly, the Commission will have a full opportunity to analyze, among other things, the threshold concentration levels of 5% and 10% that trigger a QOMC review under the new policy. As the Exchange indicated above, its experience in implementing its specialist merger policy during the pilot period can be useful in the Commission's consideration of whether the pilot should be approved on a permanent basis or modified in some manner.

## IV. Solicitation of Comments

Because the NYSE proposal raises competitive, procedural, and substantive issues, the Commission is soliciting comments on all aspects of the proposal. In particular, commentators may wish to focus on some of the following questions:

(1) Does concentration within the specialist community pose a threat to the quality of the Exchange's markets and to the investing public? If so, is the level of concentration within the specialist community at the NYSE approaching a level where action must be taken to avoid such concentration?

(2) What effect will the proposed rule change have on (a) competition among specialist units and (b) new entrants to the specialist business?

(3) Are the threshold percentage of 5% and 10% adequate (too high or low) to meet the NYSE's needs to avoid undue concentration within the specialist community without unduly burdening specialist firms?

(4) Are the standards to be used by the QOMC in its review of proposed combinations adquate or, conversely, burdensome? Is the evidentiary standard required by proposed

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[17] *See*, Notes 8 and 9, *supra* and accompanying text. The Commission emphasizes that the NYSE's proposal would not permit the NYSE to weigh against a particular firm its activities in other markets. Thus, a firm's decision to route customer orders to another market or to make markets in NYSE listed securities on another exchange or in the over-the-counter market would be irrelevant to the NYSE's review.

[18] Indeed there are currently only three specialist units registered on the Exchange that specialize in more than 5% of the Exchange's 1,560 listed common stocks. One of the three firms specializes in 8.5% of all stocks listed on the Exchange.

[19] The Commission expects that this filing will be made at least 45 days prior to the expiration date so that no further extensions will be required prior to providing additional opportunity for public comments.

[20] The Commission's determination will be governed by the standards in the Act, its review of the comments received, and its evaluation of the experience of the Exchange and its members during the pilot period.

combinations that cross the 10% threshold too restrictive or is it appropriate in light of the higher concentration level?

(5) Does the proposed rule change cover an appropriate range of combinations between specialist organizations?

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the NYSE. All submissions should refer to the file number in the caption above and should be submitted by June 11, 1987.

## V. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6. In this regard, we believe that the proposal is consistent with section 6(b)(5) of the Act in that it identifies a special level of review for combinations that could impair market quality to the detriment of investors and the public interest.

As noted above, the Commission also finds good cause for approving the rule change prior to the thirtieth day after the date of publication of notice thereof, in that it will avoid undue delays in NYSE's consideration of specialist mergers, while at the same time providing the Commission with an opportunity to solicit full public comment and observe the policy in practice prior to making a determination on permanent approval.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referred to above be, and hereby is approved.

For the Commission, by the Division of Market Regualtion, pursuant to delegated authority.[21]

Dated: April 29, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-10421 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-24431; File No. SR-OCC-86-15]**

## Self-Regulatory Organizations; Options Clearning Corp.: Order Approving Proposed Rule Change

On July 31, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") concerning late submission of exercise notices. The proposal would enable specified senior officers of OCC to authorize certain late filings, revocations, or modifications of option exercise notices, for the purpose of correcting *bona fide* errors by OCC clearing members or their exchange-member customers. The Commission published notice of the proposal in the Federal Register on August 8, 1986.[1] No public comments have been received. On April 13, 1987, OCC amended the proposal to require, among other things, clearing members to explain, in writing, the reasons for late exercise notice submissions; to revise late exercise notice filing fees; and to clarify that late exercise notice filings, under certain circumstances, may be deemed to be violations of OCC's procedures. This order approves the proposal.

## I. Description

The proposal rule change would amend OCC Rule 801 to permit OCC, in its discretion, to allow clearing members to file, revoke, or modify exercise notices after the 7:00 p.m. deadline prescribed in OCC's rules, for the purposes of correcting *bona fide* errors. The proposed rule change would delegate authority to accept such exercise notices to OCC's Chairman of the Board of President (or, in their absence, any Executive Vice President). Whether to accept such exercise notices would be solely within the officials's discretion, subject to that official's judgment that notwithstanding the filing, OCC can complete its nightly processing cycle. Assuming OCC accepts the filing, the proposed rule change would require the requesting clearning member to pay a late filing fee[2] (which may be remitted in certain circumstances)[3] and to explain, in writing, within two business days, the reason for the late filing.[4] Finally, the proposed rule change would authorize OCC to discipline, in appropriate circumstances, clearing members who submit late exercise notices for purposes other than correcting *bona fide* errors.[5]

## II. OCC's Rationale

OCC believes that the proposal is consistent with Section 17A of the Act because it would further the public interest by adopting a more flexible system for correction of exercise notices, thereby reducing the potential for clearing member lossess due to errors and omissions in exercise activity. As stated in its filing OCC believes that it is appropriate to permit clearing members to correct *bona fide* errors after the 7:00 p.m. deadline, provided OCC can complete its nightly processing on a timely basis and clearing members do not abuse the opportunity affored under the proposal. OCC notes that the 7:00 p.m. deadline was established for operational considerations and that the first step in OCC's night processing cycle is to edit clearing member input. Indeed, OCC states that, as a practical matter, it ordinarily could process corrections received during the editing process, without substantial difficulty. Nevertheless, OCC's ability to accept a post-deadline correction would depend on: (1) Its volume of work scheduled for processing, (2) the presence or absence of operational problems, and (3) how late OCC receives corrected data.

Thus, while, as a general principle, OCC favors continued enforcement of its 7:00 p.m. filing deadline, OCC also believes that its officers should have the discretion to make exceptions to the 7:00 p.m. deadline, where practicable, on a case-by-case basis.

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[21] 17 CFR 200.30-3.

[1] Securities Exchange Act Rel. No. 23692 (August 1, 1986), 51 FR 28645.

[2] For notices submitted to OCC from 7:00 to 8:30 p.m. (Central Time), OCC would impose a late fee of $10 per options contract, subject to a minimum of $500 and a maximum of $2,500 per exercise notice. For exercise notices submitted from 8:31 to 10:00 p.m., the fee would be $5,000; from 10:01 to 11:00 p.m. the fee would be $7,500; and for the notices submitted after 11:01 p.m. the fee would be $10,000.

[3] *See* OCC Rule 801(e)(5). The proposal would authorize the OCC's Board of Directors to remit, in whole or part, any late fee imposed under subparagrah (e)(2), if the Board should determine, in its discretion, that: (1) Such late fee resulted from circumstances beyond the clearing member's control, or (2) equity requires remittance.

[4] *See* OCC Rule 801(e)(3). The clearing member must file its written explanation with OCC and each national securities exchange trading the affected option.

[5] See OCC Rule 801(e)(4).

OCC believes that the proposed fees for late filing are reasonable for three reasons. First, the proposed fees would compensate OCC for both the added costs of developing special systems to accommodate late filings and for the added expenses of the extra processing runs. Secondly, the proposed fees would limit the use of OCC's late filing procedures to cases involving substantial losses to its members. Finally, the proposed fees would encourage care by its members in filing the exercise notices.

OCC recognizes the potential for abuse of exercise notice filing procedures and, as explained in its filing, believes that requiring clearing members to file written explanations, with OCC and each affected exchange, will facilitate review of late filings to detect such abuse. OCC notes, for example, that because the exercise settlement amount for index options is based on the closing index value on the date of exercise, news developments after the 7:00 p.m. deadline could create an incentive for holders either to file late exercise notices or revoke notices previously filed. Accordingly, OCC believes it is appropriate to provide explicit authority to discipline clearing members who use the opportunity afforded by the proposal for purposes other than correcting *bona fide* errors.

## III. Discussion

The Commission believes that OCC's proposal is consistent with the Act. As discussed below, the Commission believes that the proposal is designed to ensure continued timely and accurate processing of exercise notices by OCC while adding flexibility to enable clearing members to submit exercise notices, corrections, or revocations after OCC's 7:00 p.m. deadline. Accordingly, the Commission is approving OCC's proposed rule change.

The Commission believes that clearing members and their options exchange-member customers [6] should be afforded some flexibility in filing exercise notices or correcting *bona fide* errors in appropriate circumstances. Indeed, as OCC notes in its filing, OCC's first step in processing exercise notices is to edit clearing member input, among other things, to ensure uniform record format and to reject unintelligible data.

The Commission notes that the proposal specifically makes completion of OCC's nightly processing the primary consideration when clearing members submit late exercise notices. The Commission agrees that completion of OCC's nightly processing schedule should remain its primary consideration and that OCC should accept corrections of exercise notices only where, in the judgement of its officers, the corrections would not unreasonably interfere with OCC's normal processing schedule.

The Commission believes that OCC's proposal appropriately is designed to require clearing members to document to OCC and interested exchanges are reasons for late exercise notice submission or corrections. The proposal requires any clearing member who submits a late correction notice to file with OCC and each exchange trading affected options a memorandum within two days explaining what caused the error. The Commission believes that this requirement would alert clearing members' management and, where appropriate, exchange examiners to potential operational or other problems related to options processing. Moreover, the absence of an adequate explanation of *bona fide* errors might justify OCC or exchange disciplinary action.[7] The files of such memoranda also would serve as useful records in future examinations of clearing members by self-regulatory organizations and Commission examination of these self-regulatory organizations.

The proposal provides that late exercise notice filings, in appropriate cases, may be deemed violations of OCC's procedures justifying disciplinary action under OCC's disciplinary rules. The Commission believes that such a provision is necessary in the event a clearing member abuses OCC's late filing procedures by, for example, repeated late filings or by using late filings to profit from changes in securities prices. The Commission agrees that, in the public interest, OCC should have the authority to bring disciplinary proceedings in such cases. Indeed, the Act requires OCC to discipline its members appropriately for violations of OCC's rules. Any disciplinary action taken by OCC would be subject to OCC's due process procedures.[8]

Finally, the Commission believes that the proposed late filing fees are consistent with the requirement that OCC's rules equitably allocate dues, fees and other charges. The Commission believes these fees are reasonable charges in that the fees are designed to: (1) Cover the capital costs of establishing the systems necessary to process late filings; (2) cover the operational expenses attributable to the additional use of personnel and equipment; (3) provide a disincentive to carelessness by clearing members and minimize the number of late filings; and (4) encourage the use of late filings only in instances involving substantial dollar amounts.

## IV. Conclusion

For the reason stated above, the Commission finds that the proposed rule change is consistent with the Act. In particular, the Commission finds that the proposed rule change is consistent with section 17A and the rules and regulations applicable to clearing agencies.

Accordingly, it is therefore Ordered, under section 19(b)(2) of the Act, that the proposed rule change be, (File No. SR–OCC–86–16) and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to obligated authority.

Dated: May 6, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–10830 Filed 5–11–87; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 6, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Hard Rock Cafe PLC
American Depositary Shares (File No. 7–0917)

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[6] The rules of options exchanges provide deadlines for their members' acceptance of customers' options exercise notices. Accordingly, the Commission believes that, under the proposed rule change, only OCC clearing members and their non-public customers (e.g. options market makers) would be able to modify exercise notices after 7:00 p.m.

[7] Although OCC would not have direct authority over options markets makers that are not OCC members, the requirement that the memorandum be sent to options exchanges would enable those exchanges to monitor their members use of OCC's late filing procedures.

[8] The Commission notes that the proposal authorizes OCC's Board to remit, in whole or in part, any late filings fee if the Board should find either that: (1) The filing was caused by circumstances beyond the member's control, or (2) equity requires the fee's remission. The Commission believes that this provision is consistent with the Act in that it would enable OCC to prevent the undue imposition of late charges.

Par Pharmaceutical, Inc.
Common Stock, $.01 Par Value (File No. 7–9918)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 27, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–10829 Filed 5–11–87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34–24432; File No. SR–PHILADEP 87–01]

## Self-Regulatory Organizations; Philadelphia Depository Trust Co.; By-Law Change Governing the Composition of the Board of Directors; Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 24, 1987, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change reflects the amendment of By-Law Article IV, section 2 of the Philadelphia Depository Trust Company governing composition of the PHILADEP Board of Directors.

The following is the full text of the proposed rule change. (New language is *underscored.*)

**Philadelphia Depository Trust Company By-laws**

* * * * *

*Composition of Board of Directors*

Sec. 2(a) * * *

(d) At least a majority of the number of directors authorized to serve shall be governors of the exchange. *Solely for the purpose of determining this majority, the President of the Corporation shall be counted as an exchange governor.* At least a majority of the number of directors authorized to serve shall be participants or general partners or officer of participants in the Corporation. There shall be included in the classification of directors who are associated with participants, persons who are not governors of the Exchange

* * * * *

### II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements:

*(A) Self-Regulatory Organizations's Statemetns of Purpose of, and Statutory Basis for, the Proposed Rule Change*

As a wholly owned subsidiary of the PHLX, PHILADEP traditionally has had close ties with its Exchange parent. One close tie has been that at least a majority of the number of directors authorized to serve on PHILADEP's Board shall be Board governors of the Exchange.

The rule change reflects the nationwide growth of PHILADEP and its increasing expansion to participants that do not necessarily have an affiliation with the Exchange. These new participants include, among others, major banks and trust companies.

The rule changes, therefore, provides the flexibility to more accurately reflect the changing composition of those who utilize PHILADEP's facilities while still ensuring an adequate PHLX voice in PHILADEP's goverance in light of the Exchange's continued close and substantial nexus with the Depository. Functionally, the rule change will authorize PHILADEP's President, who is not a PHLX Board governor, to be counted as an Exchange governor solely for satisfying the requirement that a majority of PHILADEP directors be Exchange governors. In this regard, the PHILADEP President will not have any position, voting or other functional authority with respect to the PHLX Board. The rule change would permit an additional person who is not an Exchange governor to be a director on the PHILADEP Board.

In fully registering PHILADEP as a clearing agency registered under the Exchange Act in 1983, the Commission carefully reviewed PHILADEP's By-Laws and rules to ensure their compliance with the Act. In particular, the Commission examined whether PHILADEP's By-Laws ensured fair representation of PHILADEP's participants in the selection of directors in accordance with section 17A(b)(3)(C) of the Act. Cognizant that many clearing agencies were directly affiliated with exchanges, the Commission was concerned that a meaningful opportunity exists for those other than Exchange members to be represented in the selection of the board of directors, particularly as more categories of participants join the clearing agency.

Accordingly, while the Commission permitted the PHILADEP By-Law requirement that a majority of PHILADEP's directors be PHLX governors, the Commission stressed the importance of PHILADEP's establishment of board of director nominating committees that consist of participants that are charged with the responsibility of assuring fair representation for a cross-section of participants.

In view of the above, the current By-Law amendment is consistent with the Fair Representation standards of the Act. The amendment, if approved, provides PHILADEP's director nominating committee the flexibility of adding representation to the Board from new categories of users and participants that are not necessarily members of, or affiliated with, the Exchange. Moreover, such representation is critical in order for the Depository to comply with its obligations under section 17A(b)(4)(F) of the Act which include, fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and avoiding unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PHILADEP does not believe that the rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.*

Comments on the proposed rule change have not been solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the propose rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submision, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at PHILADEP. All submissions should refer to File Number (SR–PHILADEP–87–01) and should be submitted within (21) days after the date of the publication in the **Federal Register.**

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 6, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–10834 Filed 5–11–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24422; File No. SR–SCCP–87–01]

**Self-Regulatory Organizations; Stock Clearing Corp. of Philadelphia; Filing and Order Granting Accelerated Approval of Proposed Rule Change**

On April 24, 1987, the Stock Clearing Corporation of Philadelphia ("SCCP") filed a proposed rule change with the Commission under Rule 19b–4, promulgated under the Securities Exchange Act of 1934 (the "Act"), to authorize SCCP's President to be counted as an Exchange governor solely for the purpose of satisfying the By-law requirement that a majority of SCCP's directors be Exchange governors. The Commission is publishing this Order to solicit comment on the proposed rule change. In its filing, SCCP requested approval of the proposal on or before May 4, 1987, in order to ensure its timely implementation by the May 4, 1987 election of the new SCCP Board of Directors. This Order approves the proposal on that basis.

**I. Description**

SCCP's By-laws require that a majority of is Board of Directors shall be governors of the Philadelphia Stock Exchange, Inc. ("PHLX").[1] The proposal would amend SCCP's By-laws to allow SCCP's President to be counted as an exchange governor for the purpose of determining this majority. This rule change would permit an additional person who is not an Exchange governor to be a director on the SCCP Board and still meet the requirement imposed by the By-laws that a majority of directors authorized to serve on SCCP's Board are Exchange Board governors.

**II. SCCP's Rationale**

SCCP states in is filing that the purpose of the proposal is to provide SCCP's Board of Directors with the flexibility to more accurately represent the changing composition of those who utilize SCCP's facilities while still ensuring an adequate PHLX voice in SCCP's governance. This amendment provides SCCP's director nominating committee with the flexibility to add a representative to the Board who is not affiliated with PHLX.

SCCP requested accelerated effectiveness pursuant to section 19(b)(2) to ensure its timely implementation with respect to the May 4, 1987 annual election of new SCCP Board of Directors.

**III. Solicitation of Comment**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to file number SR–SCCP–87–01 and should be submitted by May 12, 1987.

**IV. Discussion**

The Commission believes that the proposal is consistent with the Act and, in particular, the requirement that SCCP's rules generally provide fair representation of the interests of shareholders and of a cross-section of the community of participants.[2] The Commission is concerned that a meaningful opportunity exists for non-exchange members to be represented in the selection of a clearing agency's board of directors, particularly as more categories of participants join the clearing agency. The proposal achieves this goal by facilitating the addition of a participant who is not an Exchange governor to SCCP's Board.

The Commisson believes this proposed change in the By-laws may be granted accelerated approval pursuant to section 19(b)(2) of the Act because its purpose is to achieve fair representation of a cross-section of SCCP's participants, a stated goal of the Act. The Commission believes this proposal should be effective immediately to allow SCCP to implement this change in time for the May 4, 1987 SCCP Board of Directors election.

**V. Conclusion**

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

[1] Stock Clearing Corporation of Philadelphia By-laws, Article IV, Section 2.

[2] *See* Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983).

The Commission finds good cause for approving the proposed rule change on an accelerated basis before the thirty-fifth day after notice of the proposed rule change appeared in the Federal Register.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-SCCP-87-01) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 4, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-10835 Filed 5-11-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CSD 87-036]

### Chemical Transportation Advisory Committee Meeting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Chemical Transportation Advisory Committee (CTAC). The meeting will be held on Tuesday, June 16, 1987 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting is scheduled to begin at 9:00 a.m. and end at 4:00 p.m.

The agenda for the meeting follows:

1. Call to order.
2. Opening remarks.
3. Committee organization.
4. Nomination of Chairman.
5. Suggested Work Program:

a. Vessel and facility regulations implementing Annex II of MARPOL 73/78;

b. Vapor recovery systems employed in the transfer of volatile organic compounds to tank ships and tank barges;

c. Regulations for tank barges carrying dangerous liquid chemicals (46 CFR Part 151);

d. Carriage of coal in bulk;

e. Filling limit requirements for liquefied gas carriers;

f. Implementation of occupational health and safety study recommendations;

g. Regulations for handling of explosives or other dangerous cargoes within or contiguous to waterfront facilities (33 CFR Part 126); and

h. Safety and pollution aspects for the carriage of bulk chemicals on offshore support vessels.

5. Adjournment.

Attendance is open to the public. Members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

**FOR FURTHER INFORMATION CONTACT:** Commander R.W. Tanner or Mr. R.H. Trainor, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC, 20593, (202) 267-1577.

Dated: May 7, 1987.

J.W. Kime,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 87-10754 Filed 5-11-87; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

[Summary Notice No. PE-87-6]

### Petition for Exemption; Summary of Petitions Received and Dispoaltons of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before: June 1, 1987.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 6, 1987.

Leonard R. Smith,

*Manager, Program Management Staff.*

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25189 | Parachute Center | § 105.43(a) | To allow the jump masters, instructors, and pilots of the Parachute Center to make training jumps wearing a dual harness and dual parachute pack having at least one main parachute and one approved reserve parachute packed as required. |
| 25241 | Rolls-Royce plc | §§ 145.73(a) and 43.3(a) | To allow Rolls-Royce Repair and Overhaul Facilities in the United Kingdom to work on and approve products for return to service on U.S. registered aircraft regardless of base or area of operation. |
| 25186 | H & S Aviation Limited | § 145.73 | To allow H & S Aviation Limited to repair and overhaul Rolls Royce Dart engines, their accessories and associated units in Fokker F27 aircraft operated by Horizon Air. |

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PETITIONS FOR EXEMPTION—Continued

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25205 | Evergreen International Airlines INC (HOOVER) | 91.213(A)(2) | Would permit Mr. R.A. Hoover to perform certain single-pilot operations during Aerobatic Flight Demonstrations in North American Sabreliner, HA265–46, Serial number 282–027, Registration Number 81RH. |
| 23808 | Piedmont Airlines Inc. | § 121.371(a) and 121.378 | To allow Piedmont Airlines to purchase components and services from original equipment manufacturers in support of its Boeing 767–200ER aircraft. |
| 23800 | Simulator Training Inc | 61.63(d)(2) & (d)(3), 61.157(d)(1), 121.407(c)(1). | This amendment would allow certain practical test maneuvers and procedures to be performed in STI's Lockheed Electra L–188 training device in lieu of nonvisual simulator as stipulated in Appendix A Part 61, and extend the expiration date of Exemption No. 4295, as amended, to December 31, 1987. |
| 22690 | Boeing Commerical Airplane Company | § 61.57(c) | To allow certain pilots employed by Boeing to satisfy the general recent flight experience requirements of that section by alternate means. *Granted, April 17, 1987.* |

[FR Doc. 87–10705 Filed 5–11–87; 8:45 am]

BILLING CODE 4910–13–M

## Maritime Administration

**[Docket No. R–111]**

## Final Determination of Essential Trade Routes

**SUMMARY:** This Notice announces the consolidation of present essential trade routes and essential trade areas into eight essential trade routes (described below), in order to reflect more realistically the current pattern of vessel operations.

**FOR FURTHER INFORMATION CONTACT:** Edmond J. Fitzgerald, Director, Office of Trade Studies and Subsidy Contracts, Room 8117, 400 Seventh Street, SW., Washington, DC 20590, Tel. (220) 366–2400.

### Final Determination of Essential Trade Routes

Under section 211(a) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1121), "[t]he Secretary of Transportation is authorized and directed to investigate, determine, and keep current records of (a) The ocean services, routes, and lines from ports in the United States . . . to foreign markets, which are, or may be, determined by the Secretary of Transportation to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States, and in reaching his determination the Secretary of Transportation shall consider and give due weight to the cost of maintaining each of such steamship lines, the probability that any such line cannot be maintained except at a heavy loss, disproportionate to the benefit accruing to foreign trade, the number of sailings and types of vessels that should be employed in such lines, and any other facts and conditions that a prudent businessman would consider when dealing with his own business, with the added consideration, however, of the intangible benefit the maintenance of any such line may afford to the foreign commerce of the United States, to the national defense, and to other national requirements."

MARAD has considered these criteria. MARAD considers that the cost to the government of maintaining existing steamship lines (i.e., routes) is the cost of ODS. Total ODS accurals for FY 1984 were $288.5 million, to seven subsidized operators. U.S.-flag liners carried 21.5%, or 13.8 million tons, of the total liner trade. (Accruals for FY '85 were $295.2 million.) Several routes were abandonded during this time due to unprofitability of service.

In conjunction with this consideration, MARAD has also studied "the probability that any such line cannot be maintained except at a heavy loss disproportionate to the benefit accruing to foreign trade." This requires a balancing of the cost of maintaining service on certain routes against the benefit of having U.S.-flag service available to any such routes. MARAD beleives that FY '84 subsidies would have been used effectively if operators were allowed the freedom to serve broader trade routes, a possibility that would result from trade route redesignation.

The result of expanded service into the new routes would be to ensure maintenance of service on routes essential to foreign trade, while minimizing the loss resulting from operators serving less profitable or unprofitable narrow routes. Thus, more cargo would be carried per dollar of subsidy accrued. The benefits to the government would be an eventual reduction in subsidy outlays once operators were better able to operate on a competitive basis with non-subsidized U.S.-flag operators and with foreign-flag operators.

MARAD has attempted to examine "the number of sailings and the types of vessels that should be employed in such lines." Such an examination has proven to be problematic due to the inability to predict which operators might apply for expanded service, what types of expansion of service they might request, and what action the MSB will take on such applications. However, MARAD has examined: (1) Current U.S.-flag sailings under existing contracts; (2) and U.S. liner trade on the new routes versus U.S. liner trade under the existing routes; and (3) types of vessels deployed by U.S.-flag and major foreign-flag competitors in the U.S. liner trade (see Review). On the basis of this data, MARAD has concluded that consolidating existing trade routes would allow operators the opportunity to apply for expanded service on these routes, resulting in possibly increased numbers of sailings using existing types of vessels, and vessels planned to be produced.

This Notice announces and discusses the consolidation of existing essential trade routes and trade areas into eight essential trade routes (described below) in order to reflect more realistically the current pattern of vessel operations. A detailed discussion of the factors which led to the proposal to consolidate trade routes is contained in an agency September 1984 study "Reevaluation of U.S. Liner Trade Routes" ("Study"). This Study is available upon request. In addition, in compliance with MAO 560–9, MARAD has prepared a detailed economic review ("Review") of the sources and nature of the data used as the basis for this decision and the criteria to be applied in determining essentiality oil trade routes. The Review also is available upon request.

### *Summary of the Comments on the Notice of Intent To Redesignate Essential Trade Routes*

A Notice of Intent to Redesignate Essential Trade Routes was issued for comments on March 8, 1985 (50 FR 9532). It stated that the comment period was to close on April 22, 1985. However, due to requests from commenters, the comment period was extended to May 15, 1985. MARAD received ten comments.

including seven from U.S.-flag liner operators, two from trade unions, and one from an institute representing companies engaged in U.S.-flag marine transportation.

The commenters that supported the proposed redesignation asserted the benefits of increased flexibility for subsidized operators to serve broader trade routes that would allow them to compete more effectively with foreign competition. Such operational flexibility, these commenters argued, ultimately would help the troubled U.S.-flag merchant marine fleet by allowing it to respond to changing economic conditions and trade flows. One operator noted that deregulation of the trucking and airline industries sets a precedent for the proposed flexibility to be accorded carriers in serving routes.

One proponent of the proposed redesignation argued that the consolidation should move now toward the broadest goal of three trade areas. This commenter also suggested a separate rulemaking or policy statement on section 605(c) to define "existing service" as service anywhere within the new trade route in which the operator already provides service, limited only by minimum and maximum sailings. This commenter argued that section 605(c) is inoperative in any case since a broadened route description does not subsidize an additional vessel, but only broadens the area served by the same vessel.

Those opposing the proposed redesignation argued that it is contrary to the purposes and policies of the Merchant Marine Act of 1936 (46 U.S.C. 1101 *et seq.*) ("the Act".) One commenter contended that the result of the redesignation would be to concentrate ODS liner services in certain of the proposed trade routes, increase dependence or ODS, and reduce incentive for non-subsidized operations by subsidized operators. Those opposing also disputed MARAD's authority under section 211 of the Act (46 U.S.C. 1121) to redesignate trade routes by replacing trade routes with trade areas. They further contended that the trade study accompanying the Notice of Intent did not support that Notice, and that MARAD failed to undertake an adequate investigation as mandated by statute and a MARAD internal order (MAO) 560–9).

Most of the adverse commenters criticized MARAD for attempting to circumvent section 605(c) of the Act (46 U.S.C. 1175(c)). These commenters feared that the trade route redesignation would be effected without the procedural safeguards afforded by section 605(c), which requires a hearing to determine adequacy of existing service before allowing additional service on an existing route.

A more detailed discussion of the issues raised by the commenters follows, including MARAD's responses.

*Discussion of the Comments Received*

1. Purposes and Policies of the Act

Several commenters argued that the Notice of Intent to Redesignate was contrary to the purposes and policies of the Act. They asserted that while the purposes and policies of the Act are to "foster the development and encourage the maintenance of . . . a merchant marine" (46 U.S.C. 1101), the effect of a redesignation would be an overall weakening of the U.S.-flag service.

MARAD has considered these comments carefully. MARAD's responses are contained in the Review. On the basis of the Study and the Review, MARAD believes that the result of the redesignation will be to strengthen the U.S. merchant marine by promoting a more competitive and efficient merchant fleet. MARAD wishes to remind all operators that before any subsidized operator may expand its existing subsidized service into the new trade routes, it must submit an application to MARAD, for a contract amendment and such application must be processed under the Act, including section 605(c).

(a) *Concentration of ODS services.* In particular, one operator argued that a redesignation would: (a) Result in the concentration of ODS liner services in certain of the proposed trade areas, and a decrease in services in other areas; (b) increase dependence on ODS and, hence, increase ODS outlays; and (c) reduce incentive for non-subsidized operations by subsidized operators.

Initially, MARAD notes that ODS is not determined on the basis of the trade route determinations, but on the geographic parameters of the subsidized service as defined in the particular ODS contract. The service definition may encompass several trade routes, or less than a single trade route. MARAD is bound for the term of the contract by the service descriptions contained in the contract regardless of how essential trade routes are designated and defined. Contractual service descriptions may be changed only after section (605(c) requirements have been observed. Accepting the commenters' assumption that service would be allowed to expand into the new trade routes, MARAD has examined current operations of both subsidized and non-subsidized U.S.-flag operators, as well as services of foreign-flag competitors. A study contracted by one of the commenters opposing redesignating indicated that, due to redeployment of ships to the Atlantic Coast, service would shift at the expense of Gulf Coast. In addition, the study concluded that service would shift from the Eastern Mediterranean to Northern Europe. This study argued that, with redeployment, proposed trade areas two and five would be severely overtonnaged in the "heavy direction" (*i.e.*, where trade flow is heavier), and trade areas three, six, and eight would be severely undertonnaged in the "heavy direction." Further, the study contended that overall, U.S.-flag capacity would increase from 62 percent to 69 percent outbound and from 52 percent to 57 percent inbound.

MARAD believes that these figures are unsupported and overstated. Further, the figures are based on the assumption that operators will be allowed to expand their service into new trade routes. Such expansion of service is a matter for the MSB to decide under the Act, including section 605(c), and is not determined or prejudged by this Notice of redetermination of essentiality.

Nevertheless, MARAD will address these comments even though they area based on assumptions as to the outcome of future section 605(c) and other actions. Thus, MARAD believes that while there could be some redeployment into the routes with heavier trade, it is unlikely that established services would be totally abandoned. By maintaining several services, an operator may neutralize any sudden changes in trade in one geographical area. A good example of such diversified service is the one major non-subsidized U.S.-flag operator that does not concentrate its service on certain routes. This operator, unrestricted by existing trade routes, has the flexibility to concentrate its services, yet it continues to serve the Atlantic, Pacific, and Gulf coasts and many foreign trade areas (See Appended Market Data in Review). MARAD predicts that while some services could shift into higher-volume trade routes, the services would balance out as rates decreased in the high volume routes as a result of increased competition, and rates increased in low-volume routes and created incentive for operators to serve these routes. Of course, foreign-flag deployments, which are not controlled, also affect liner market rates.

In support of this prediction, MARAD cites the examples of the deregulation of the trucking and airline industries. Following the 1978 deregulation of the airline industry, the average price of an

airline ticket by 1981 showed an overall decrease of 12–33 percent in most of the largest interstate markets; whereas average market prices in low-density, short distance markets, had increased by 9–16 percent. Nor did airline deregulation result in wholesale abandonment at low traffic points. While some of these points have seen reduced numbers of flights, departures from large hubs increased 43 percent between October 1978 and Octobe 1985, while departures from medium hubs increased 37 percent, small hubs 26 percent, and non-hubs 9 percent.

Market share data for the airline industry also reflects a decline in concentration at a national level. However, there is some evidence that concentration at large hub airports increased, demonstrating that in a deregulated environment there are substantial service and cost advantages inherent in "hub-and-spoke" route networks.

In the trucking industry, deregulation has not resulting in withdrawal of service from small communities, as some critics had feared, and in many rural areas it has been found that service is better now than under regulation. (Alice E. Kidder, "Impact of Regulatory Reform on Shipper/Receiver Freight Service in Selected Rural Communities, 1982: A Second Followup Study", report prepared by Franklin Program In Transportation Management, Syracuse University, for U.S. DOT Office of University Research, March 1983.)

MARAD predicts that a similar trend will occur in the shipping industry. In addition, MARAD believes that redesignating the trade routes to allow for the possibility of more operational fexibility will permit the possibility of strengthening the subsidized operator's ability to compete more effectively with U.S. and foreign-flag operators. Ignoring outdated trade route designations with no possibility of updating will effectively deny ODS operators even the possibility of adapting to changing trade conditions, in sharp contrast to the unrestricted operations of non-subsidized U.S. and foreign-flag operators.

(b) *Increased dependence on ODS.* MARAD disagrees with the argument that redesignating the trade routes will increase dependence on ODS and increase ODS outlays. As MARAD stated in the Notice of Intent, "[i]n any amendment to the ODS contract implementing the trade area concept, the Government will not agree to any increase in ODS subsidy over the most recent baseline, updated as necessary, as a result of those amendments." (50 FR 9532, March 8, 1985). It remains MARAD's intent that there will be no increase in ODS subsidy over that which would otherwise accrue.

(c) *Reduced incentive for non-subsidized operations by subsidized operators.* MARAD recognizes that if subsidized operators are granted more operational flexibility by expanding their service routes, some incentive for non-subsidized operations may be reduced. However, this is a matter for the MSB to decide in amending particular ODS contracts.

In general answer to those comments complaining that the redesignation will reduce incentives for non-subsidized operations, MARAD believes that the eight trade route concept will continue to provide an incentive for non-subsidized operations. Certain subsidized opoerators may not be sufficiently financially secure to operate at present on a non-subsidized basis but with added operational flexibility if they are able to pass section 605(c) muster these operators may eventually be able to compete more effectively. At that point they may be able to expand their operations further, seeking to undertake non-subsidized voyages outside their service descriptions. Other subsidized operators are able to operate some services on a non-subsidized basis and in all likelihood will decide not to seek to operate a liner service on every essential trade route because of financial and operational constraints. They may nevertheless desire to operate a liner service as a spot service in the other essential trade routes they do not share on a subsidized basis.

MARAD wishes to reiterate that this section 211 redesignation will have no automatic effects on contractual subsidized operations. Operators seeking to expand their services must meet the requirements of the Act, including section 605(c) requirements.

2. MARAD's Authority to Redesignate Essential Trade Routes Under Section 211

(a) *MARAD's authority to consolidate existing trade routes.* Several commenters argued that section 211 of the Act (46 U.S.C. 1121) does not grant MARAD the authority to consolidate the existing trade routes into the "trade areas" proposed in the Notice of Intent. The term "trade areas" is not in the Act, and use of that term attracted undue attention in the comments. To accommodate this concern MARAD has decided to continue using the term "trade routes."

That MARAD has the delegated authority to determine trade routes is supported by the clear language of the statute. (See 46 U.S.C. 1121). As one commenter noted, MARAD has consolidated trade routes in the past. In 1961, the Administrator determined services on the then separate trade routes 5, 7, 8 and 9 to be essential as a single service under section 211 and consolidated those trade routes (26 FR 10191, Oct. 31, 1961). Further, in 1966, the Secretary determined that consolidating twelve existing Great Lakes trade routes into five separate and essential trade areas would allow operators greater operating flexibility, thus attracting new U.S.-flag subsidized operators. *Great Lakes Foreign Trade Routes,* Docket No. S–173, 2 MA 139 (MA 1966).

(b) *The trade route concept.* Some commenters believed that the proposed consolidation into trade areas obviated the Congressional intent that the trade route concept should be a basic element of the statutory scheme. One argument was that MARAD's proposal was contrary to section 211 in that it substitutes trade areas for "ocean services, routes and lines . . .," the entire United States for "ports in the United States, . . .," and continents for "foreign markets."

MARAD disagrees with the argument that the consolidated trade route concept is inconsistent with the statutory scheme. Nowhere in the statute or in regulation are the terms "services, routes and lines" defined. In the past, MARAD has defined "trade routes" to mean a channel through which trade flows between U.S. coastal areas and specific foreign areas (see "Essential United States Foreign Trade Routes," June 1975, p. 79 (MARAD publication)). Originally, determinations of essential trade routes in 1937 were based on port-to-port cargo movements (see Memorandum from Mr. S.D. Schell, Assistant to the Chairman, to Chairman Kennedy, July 26, 1937).

The existing route designations have undergone little change since 1936 despite major changes in shipping technology and trade patterns. Trade flows, methods of cargo movements and economic conditions have changed radically since that time. Container services grew from 15% in 1970 to 71% in 1983, becoming the dominant form of liner shipping transportation. Market changes have dictated the growth in container services. Such services are able to handle large volumes of general (*i.e.,* variety of consumer-type cargoes usually shipped on liner cargo vessels) cargo traffic more efficiently. They are not dependent solely on port-to-port routes, but can ship cargoes to major ports or transshipment centers, (*e.g.,* New York and Rotterdam) for further

shipment by feeder vessels, truck, or rail throughout the United States or foreign areas. The proposed geographic area concept largely reflects the growth in containerization in the liner trade, particularly the development of linehaul/feeder services. For example, Europe and the Mediterranean were combined because the Mediterranean is often served from Northern Europe by land and water feeder services.

Another factor that affects the existing trade route system is the decrease in the number of liner operators from nineteen in 1958 to eight today (excluding Central Gulf, and CCT which operate extensive foreign-flag services; PRMSA and Matson which are domestic trade operators). With fewer companies and fewer but more efficient vessels, the existing narrowly defined trade routes impede an operator's ability to adapt to changing trade patterns. One commenter argued that a redesignation was unnecessary because trade flows change slowly, and operators can adapt to such changes under the existing trade route system. However, an example of a rapid change in trade flow is one that occurred in 1976–77 due to the sharp increase in U.S. exports to the Middle East. Some ODS liner operators were unable to respond to the increase in trade in this area because of their narrowly defined trade routes.

Further, MARAD believes that the numerous former trade routes avoided recognition of the needed flexibility to serve ports on some routes that are now considered non-essential. The new trade route system would extend essential trade route status of several, presently non-subsidized trade routes. However, a majority of the currently non-essential routes are between the United States and Canada. These routes would still be considered non-essential. The U.S. shares a common land boundary with Canada and extensive, alternative modes of transportation are available to move liner-type cargoes between the two countries. Trade routes between Mexico and the U.S. are currently shared with other Central American countries and have both essential and non-essential status.

Pursuant to this Notice, the following non-essential trade routes would be embraced by the eight new trade routes:

U.S. Pacific/West Africa
U.S. Pacific/South and East Africa
U.S. Pacific/Mediterranean
U.S. Atlantic/W. Coast Central America and Mexico
U.S. Gulf/W. Coast Central America and Mexico
U.S. Great Lakes/W. Coast Central America and Mexico
Hawaii/Foreign
Puerto Rico/Foreign
Alaska/Foreign

While non-essential routes generally account for relatively small trade volumes by themselves, modern line haul feeder vessel operations are designed to maximize vessel utilization in trades where direct service may be too costly and, thus, impractical. Furthermore, as noted in the Study and the Review, the most successful U.S. and foreign-flag liner operators tend to deploy their vessels over a broad range of ports or markets. Even a seemingly insignificant trade can be an important part of an extensive line-haul feeder operation. Hapag Lloyd, for example, provided service, in 1984, from three U.S. West Coast ports and Puerto Rico to Guatemala, using ports in El Salvador, Costa Rica, Nicaragua and St. Thomas as transshipment centers. As another example in the same year, Sea-Land used the port of San Juan, Puerto Rico, to ship goods to the following countries: Costa Rica, Dominican Republic, El Salvador, Haiti, Guatemala, Honduras, Jamaica, Netherlands Antilles, Nicaragua, Panama and Trinidad. Under current trade route essentially designations, a U.S.-flag liner operator would not be able to serve the U.S. foreign trades from Puerto Rico and, at the same time, receive subsidy. In this second example, Puerto Rico has developed into a major shipping "hub" serving many Central American markets. In the first example, the operator serves one market through many different port areas.

MARAD recognizes that additional hub ports have developed and are likely to develop, even in port areas where trade volumes are currently low. Consequently, MARAD believes that it should be recognized under the section 211 redesignation that ODS operators need flexibility, to deploy their vessels to a broad range of ports. It is also important to recognize that not all cargoes moving through U.S. ports are of U.S. origin/destination. U.S. ports handle large amounts of foreign origin/destination cargoes which are increasingly important to U.S.-flag liner operators, that otherwise might depend solely on small volume and/or imbalanced trades.

Under the new trade route designation, U.S.-flag liner operators would be eligible to receive subsidy for "round-the-world" westbound and eastbound services by combining several of those routes. Again, the eight routes will exclude no U.S.-foreign trade, except as noted with Canada, as a liner essential service.

(c) *Elimination of U.S. coastal areas.* Some commenters contended that the elimination of U.S. coastal areas in the proposal would be inconsistent with section 809 of the Act which requires that contracts "shall be entered into so as to equitably serve . . . the foreign trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports . . ." (46 U.S.C. 1213). MARAD believes that this is not an issue in a section 211 determination, since section 809 applies to the consideration of the four coasts by the MSB in making contracts, while section 211 determinations are made by the Administrator. In addition, the eight trade routes would allow service from any of the four coastal areas without discriminating against any one area. While certain coasts may have more traffic than others, all coasts retain the same capability of carrying traffic under the consolidation.

Moreover, it should be noted that the one large non-subsidized operator, which is not restricted to serving certain coasts elects to serve the Gulf, Atlantic, and Pacific ports. MARAD believes that under the new trade route scheme, it is possible that fewer U.S. ports may be served, but that this is a result of allowing market forces to control. The development of major U.S. ports and complex inland transportation networks have made certain ports more attractive than others. Allowing operators the freedom to serve these ports would make both operators and ports more competitive and efficient.

(d) *Investigation supporting the proposed redesignation.* Several commenters expressed the view that MARAD did not undertake the type of detailed investigation mandated by section 211(a) of the Act, and by MAO 560–9, a MARAD internal order which sets forth the sources, nature of data required as a basis for and the criteria to be applied in determining the essentiality of trade routes. The smaller subsidized operators strongly criticized MARAD's failure to address the effect of the proposal on them.

MARAD believes it has fulfilled the mandate of section 211(a) by publishing its Study. The Study examined the existing trade routes and analyzed their inadequacy in light of changing conditions. It discussed a three-trade area alternative, and briefly addressed the competitive impact of consolidated trade areas on smaller subsidized operators (See study, p. 12). However, in response to comments, MARAD has prepared a more detailed analysis of the existing and proposed trade route systems in the form of the Review rather than revise the MARAD Study.

MAO 560-9, Manual of Procedures and Criteria for Determining the Essentiality of U.S. Foreign Trade Routes and Requirements for U.S. Flag Service, was issued by the Maritime Administration in March 1977 at the request of the Office of Audits, U.S. Department of Commerce.

In compliance with the MAO, the Review examines (among other factors) the following:

—U.S. as well af foreign-to-foreign trade patterns;
—U.S. flag participation in U.S. liner trades, and foreign to foreign trades;
—U.S. flag sailings under ODS contracts;
—U.S. liner trade on proposed routes vs. Existing routes (including U.S. flag participation);
—International economic conditions and projections, including impact of oil price decline, current account deficits and least developed country debt problems on liner trades;
—Preference trades (including military); and U.S. bilateral shipping agreements;
—Location of U.S. military installations overseas;
—Liner shipping markets including rates, capacity, demand, changes in fleet composition and shipping technology;
—U.S. liner trade on an origin and destination basis vs. port of loading and unloading, i.e., use of transshipment centers and feeder services by U.S. flag and major foreign flag operators; and
—Types of vessels deployed by U.S. flag and major foreign flag competitors in U.S. liner trade.

Among the alternatives to an eight trade route structure, a three trade route proposal is discussed in the NAO 560-9 Review and in the September 1984 study; Reevaluation of U.S. Liner Trade Routes (Section 211). In the September 1984 study, the three trade area scheme was presented in the context of liberalizing and deregulating subsidized vessel operations. The section 211 study noted that, as opposed to the three trade area scheme, the eight trade area scheme has the advantage of minimizing costs associated with adverse competition, protracted operator negotiations and hearings. Several of the shipping companies which responded to the **Federal Register** Notice of intent contended that the three trade area proposal was too broad and unrepresentative of trading patterns. Section 211 of the Merchant Marine Act, 1936, as amended (Act), begins: "The Secretary of Transportation is authorized and directed to investigate, determine, and keep current records of—(a) the ocean services, routes, and lines from ports in the United States, or in a territory, district, or possession thereof, to foreign markets, which are, or may be determined by the Secretary of Transportation to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States. . . ."

In the context of section 211, trade routes must reflect ocean services and routes. In considering the written comments and evaluating the operating patterns of the U.S.-flag and foreign-flag liner companies serving the United States ocean services, MARAD determined that the pattern of service for the liner companies did not conform to the three trade areas, Particularly Trade Area 3 which encompassed the East Coast of Central and South America, West Coast of Central and South America, South and East Africa, West Africa, and the Middle East and South Asia. However, MARAD determined that a consolidation to eight trade routes was valid and reflected the changes that had occurred in the liner services—mainly the extensive use of landbridge intermodal operations in the United States and the increasing use of line-haul/feeder/intermodal services in international trade. Moreover, based on the facts available and the overall comments MARAD believed that a consolidation to three broad trade areas did not reflect actual trade patterns with sufficient differentiation in accordance with the intent of section 211 of the Act. Thus, an eight trade route consolidation appear to meet the spirit and intent of section 211 better than the three trade route configuration.

The Review supports the determination that eight trade routes are essential to the promotion, development and expansion of the foreign commerce of the U.S.

### 3. Section 605(c) Issues

Most of the opponents expressed serious concern over the implications of section 605(c) of the Act (46 U.S.C. 1175(c)) on the proposed consolidation. Some believed that the Notice of Intent was unclear as to whether ODS contracts would be amended without section 605(c) proceedings. Section 605(c) states in relevant part:

> No contract shall be made . . . with respect to a vessel to be operated in an essential service . . . which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon . . . .

It is MARAD's understanding and it so states to all commenters that section 605(c) requirements will be observed before any amendment to any ODS contract to reflect the proposed trade routes. If any interested party requests a hearing under section 605(c) of the Act, and such hearing is appropriate, one will be scheduled. MARAD believes that it had made this clear in the Notice of Intent, which stated: "In order to accomplish these modifications [to ODS agreements], it is expected that the Board will rely upon the authority provided for in the Agreements which permit amendment by mutual consent, as well as its authority in sections 606(3), 204 and 605(c) of the Act, as may be applicable." (50 FR 9532, March 8, 1985). Past section 211 determinations uniformly indicated that any new services proposed due to a redesignation are subject to section 605(c) determinations.

One commenter suggested that MARAD redefine "existing service" to mean any prior operation allowed in its contract on a route now part of a trade area. MARAD believes that this cannot be done. MSB determinations regarding existing service are measured by actual experience and not contractual authority. *E.g., (Farrell Lines Inc.*, 19 SRR 1200 (MSB 1979).) On that basis, applications for expansion of service would be treated as requests for new service.

(a) *The Relationship between acequacy of existing service and a determination of essentiality.* Some commenters expressed confusion over how MARAD would determine adequacy of existing service in a section 605(c) proceeding. Opponents voiced concern that determinations of adequacy would be based on the expanded trade routes, rather than on existing trade routes, making it esier for applicants to prove inadequacy. Several commenters argued that certain trade routes are saturated already, but that expanding the base route into a larger trade route would absorb such a saturation. MARAD has analyzed the percentage participation on the former trade routes and on the new trade routes. For example, on Trade Routes 5–7–8–9 (U.S. Atlantic Coast/N. Europe), 27% of cargo carried is carried by U.S.-flag vessels. Allowing service to expand into new Trade Route (1) also results in 27% U.S.-flag service. In any case, determinations of adequacy are the province of the Maritime Subsidy Board in section 605(c) proceedings. As early as 1983 the Maritime Subsidy Board recognized the need to consider the concept of trade areas and flexibility of

service in determining adequacy of U.S.-flag service for the purpose of granting subsidy. In the American President Lines, Ltd—Atlantic/Straits Service proceeding (S–132 4 FMB 143, 166–7 (1963)), the Maritime Subsidy Board final opinion and order states:

It seems clear that this Board has the authority to look at a trade route or trade area as a whole or in parts as the circumstances of the application and the trade route indicate should be done. From our past decisions we have viewed a particular trade route in segments if the particular application indicated that was appropriate. In others we have viewed it as a whole. These differing approaches have been made when a realistic appraisal of the situation has demanded it. Consequently, we are of the opinion and so hold that in ascertaining the area by which to judge adequacy a realistic approach consonant with the surrounding circumstances must be the guiding standard.

World trade is changing and increasing. The nature of the foreign trade of the United States has changed very greatly indeed since the days in 1936 when our essential trade routes were first laid out. We review them annually but it is still in the context of the old patterns and perhaps without the full realization of the shift in nature and character of our overall foreign trade.

For these reasons the concept of a trade route as viewed by this Board and the staff of the Maritime Administration has been changing. We think more in terms of adequate service to a trade area than in terms of a rigid schedule to specific ports or a route. We are confident that the language of the Act and the legislative intent of the Congress permits this changing concept with the changing conditions. We also think in terms of greater flexibility of operations within a trade area based on the demands for cargo movement rather than on the basis of accumulated statistics which inevitably take time to gather.

It is our opinion that a concept of trade areas as opposed to tightly bound service descriptions provides needed flexibility in meeting the changing patterns of foreign trade and enables the subsidized operator not only to meet effectively the needs of U.S. exporters and importers but also to meet competition offered by foreign-flag steamship lines.

As long as the ship is serving an area and there is an absence of a showing that subsidy moneys are not being effectively and efficiently employed or that the subsidy moneys are not being unfairly used as between citizens of the United States, we are inclined to give that ship the privilege of calling where the trade requires. We have and will retain no more administrative safeguards than necessary to assure the wise and fair employment of the subsidy funds for the public purpose for which they were granted.

MARAD reiterates further that: (1) No amendment to a subsidy contract implementing the trade area concept shall increase (on a not present value basis) ODS payments over those that otherwise actually would be made under the existing contract taking into account all relevant factors (i.e., given current market conditions, actual payments would likely be less than the maximum allowable under the contract); and (2) this section 211 finding by the Administrator is limited to a determination of essentiality of trade routes, and does not address changes in contractual subsidized operations. It is not the intention of MARAD to increase the cost of existing contracts, as described above, by amending the operating authority of the existing ODS contracts. MARAD intends to adhere to the Administration's policy of not entering into new subsidy contracts, including the award of new contracts to operators not presently subsidized.

Pursuant to the authority granted in section 211 of the Act, the Maritime Administrator hereby determines the following trade routes to be essential to the foreign commerce of the United States: Between the United States (meaning the contiguous 48 United States, Alska, Hawaii, and U.S. territories and possessions (e.g. Puerto Rico, Virgin Islands, Guam, American Samoa) and:

| Trade route number: | Area served |
|---|---|
| (1) | Europe and Mediterranean. |
| (2) | Far East. |
| (3) | East Coast of Central and South America (including Caribbean). |
| (4) | West Coast of Central and South America. |
| (5) | South and East Africa. |
| (6) | West Coast of Africa. |
| (7) | Australasia (including Australia and Pacific Islands). |
| (8) | Middle East and South Asia. |

A detailed description of each area is set forth in the accompanying Appendix 1.

Dated: May 7, 1987.

By Order of the Maritime Administrator.

James E. Saarl,

*Secretary, Maritime Administration.*

[FR Doc. 87–10762 Filed 5–11–87; 8:45 am]

BILLING CODE 4910–61–M

[Docket No. R–112]

## Maritime Subsidy Board; Invitation to Subsidized Liner Operators To Apply for Amended Subsidized Service Descriptions

The Maritime Subsidy Board (MSB), in conjunction with the issuance of the Maritime Administrator's Notice of Final Determination of Essential Trade Routes, hereby invites parties to existing liner operating-differential subsidy agreements (ODSA) seeking to amend their subsidized service in view of the eight new essential trade routes to apply to the MSB for amendment of their ODSA. The MSB will agree to no amendment to an ODSA implementing the new trade routes that would increase ODS payments over the most recent baseline, updated as necessary, as a result of those amendments.

Upon application of any subsidized liner operator to amend such operator's ODSA so as to conform such agreement to these essential trade routes, the MSB will rely upon the authority provided for in the ODSA for modification, as well as its authority under the Merchant Marine Act of 1936, as amended (Act).

Applications of any subsidized liner operator to amend such operator's ODSA will be published promptly in the **Federal Register** for comment. If any interested party requests a hearing under section 605(c) of the Act, and such a hearing is appropriate, one will be scheduled. The MSB gives notice that one or more consolidated hearings on such requests may be ordered, if it is determined that any consolidated hearing is feasible and would expedite processing of such application.

Any subsidized liner operator seeking to amend its ODSA should file an application pursuant to the provisions of 46 CFR 251.21 with the Secretary of the Maritime Subsidy Board, Maritime Administration, U.S. Department of Transportation, Room 7300, 400 Seventh Street, SW., Washington, DC 20590.

Dated: May 7, 1987.

By Order of the Maritime Subsidy Board.

James E. Saarl,

*Secretary, Maritime Administration.*

[FR Doc. 87–10763 Filed 5–11–87; 8:45 am]

BILLING CODE 4910–61–M

## National Highway Traffic Safety Administration

## International Harmonization of Safety Standards; Calendar of Meetings

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of meetings.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) will continue its participation during this year in the international meetings to harmonize U.S. and foreign motor vehicle safety standards. These meetings are conducted by the Group of Experts on the Construction of Vehicles [WP29] under the Inland Transport Committee of the United Nations' Economic Commission for Europe (ECE) and the six groups of Rapporteurs of

WP29. The NHTSA currently represents the United States in all of the rapporteur meetings except those on Pollution and on Noise.

**DATES:** For a list of scheduled meetings, see the Supplementary Information section of this Notice. Inquiries or comments related to specific meetings should be made at least two weeks preceding that meeting.

**FOR FURTHER INFORMATION CONTACT:** Francis J. Turpin, Office of International Harmonization (NOA–05), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC. 20590 (202 366–2114).

**SUPPLEMENTARY INFORMATION:** The following calendar represents meetings scheduled by the United Nations' Economic Commission for Europe. The meetings will be conducted by the Group of Experts on the Construction of Vehicles (WP29) under the ECE's Inland Transport Committee and the six groups of Rapporteurs of WP29. This calendar is published for information and planning purposes; the meeting dates and places are subject to change. NHTSA attendance at these meetings will be affected by agenda content, priorities and availability of travel funds.

*May 25–27, 1987*

Group of Rapporteurs on Lighting and Light-Signalling(GRE), Seventeenth Session—Geneva, Switzerland.

*June 3–5, 1987*

Group of Rapporteurs on Noise(GRB), Fourteenth Session—Geneva, Switzerland.

*June 22, 1987*

Ad Hoc Meeting on the Program of Work of WP–29, Thirty-Fourth Session—Geneva, Switzerland.

*June 23–26, 1987*

Group of Experts on the Construction of Vehicles(WP–29), Eighty-Second Session—Geneva, Switzerland.

*August 31–September 4, 1987*

Group of Rapporteurs on Pollution and Energy(GRPE), Sixteenth Session—Geneva, Switzerland.

*September 7–9, 1987*

Group of Rapporteurs on Brakes and Running Gear(GRRF), Twentieth Session—Geneva, Switzerland.

*October 19, 1987*

Ad Hoc Meeting on the Program of Work of WP–29, Thirty-Fifth Session—Geneva, Switzerland.

*October 20–23, 1987*

Group of Experts on the Construction of Vehicles (WP–29), Eighty-Third Session—Geneva, Switzerland.

*November 16–20, 1987*

Group of Rapporteurs on General Safety Provisions (GRSG), Fifty-First Session—Geneva, Switzerland.

*December 7–11, 1987*

Group of Rapporteurs on Passive Safety (GRSP), Second Session—Geneva, Switzerland.

The following meetings took place earlier this year.

*January 12–16, 1987*

Group of Rapporteurs on Brakes and Running Gear (GRRF), Nineteenth Session—Geneva, Switzerland.

*January 26–27, 1987*

Group of Rapporteurs on Pollution and Energy (GRPE), Fifteenth Session—Geneva, Switzerland.

*March 9, 1987*

Ad Hoc Meeting on the Program of Work of WP–29, Thirty-Third Session—Geneva, Switzerland.

*March 10–13, 1987*

Group of Experts on the Construction of Vehicles (WP–29), Eighty-First Session—Geneva, Switzerland.

*April 13–15, 1987*

Group of Rapporteurs on General Safety Provisions (GRSG), Fiftieth Session—Geneva, Switzerland.

*April 27–30, 1987*

Group of Rapporteurs on Passive Safety (GRSP), First Session—Geneva, Switzerland. Note.—This Group is a combination of the former Groups on Crashworthiness and Protective Devices.

[FR Doc. 87–10626 Filed 5–11–87; 8:45 am]

BILLING CODE 4910–59–M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Bonds and Notes Eligible for Principal of Securities Program (STRIPS)

**AGENCY:** Bureau of the Public Debt, Fiscal service, Treasury.

**ACTION:** Amendments to offering circulars for Treasury bonds and notes eligible for STRIPS program to allow reconstitution.

**SUMMARY:** This notice is being published to announce that effective May 1, 1987, Principal and Interest Components of Treasury bonds and notes, eligible for, and held under, the Treasury's Separate Trading of Registered Interest and Principal of Securities program (STRIPS), may be reassembled into fully constituted securities.

**EFFECTIVE DATE:** May 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Rochelle F. Granat, Attorney-Adviser, Bureau of the Public Debt, Washington, DC (202) 447–9859.

**SUPPLEMENTARY INFORMATION:** The Department of the Treasury under authority of chapter 31 of title 31, United States Code, issued offering circulars for certain Treasury bonds and notes, which, by their terms and conditions, are eligible to be held in book-entry form as separate Principal and Interest Components. This notice amends the circulars to provide that securities previously or hereafter separated into their Principal and Interest Components may be reassembled into fully constituted securities, as set forth in this notice.

**Department of the Treasury, Office of the Secretary**

[Amdts. to Dept. Circs., Public Debt Series Nos.: 29–84 (11⅝% Bond 2004), 34–84 (11⅝% Note C–94), 35–84 (11¾% 2009/14), 3–85 (11¼% Note A–95), 4–85 (11¼% Bond 2015), 10–85 (12% Bond 2005), 13–85 (11¼% Note B–95), 21–85 (10¾% Bond 2005), 24–85 (10–½% Note C–95), 25–85 (10⅝% Bond 2015), 35–85 (9½% Note D–95), 36–85 (9⅞ Bond 2015), 4–86 (9⅜% Bond 2006), 7–86 (8⅞% Note A–96), 9–86 (9¼% Bond 2016), 17–86 (7⅜% note C–96), 18–86 (7¼ Bond 2016), 35–86 (7¼% Note D–96), and 36–86 (7½% Bond 2016)]

Washington, April 30, 1987.

Department of the Treasury Circulars, Public Debt Series Nos. 29–84, 34–84, 35–84, 3–85, 4–85, 10–85, 13–85, 21–85, 24–85, 25–85, 35–85, 36–85, 4–86, 7–86, 9–86, 17–86, 18–86, 35–86, and 36–86, are hereby amended, effective May 1, 1987, to redesignate in each circular Section 7 thereof as Section 8, with a new Section 7 added to read as follows:

*7. Reconstitution of Components Held in STRIPS*

7.1. Beginning on and after May 1, 1987, the Interest and Principal Components of securities separated and held under the Treasury's STRIPS program pursuant to Section 6 hereof may be restored to their fully constituted form.

7.2. The Principal Components and all related unmatured Interest Components of the securities must be submitted together for reconstitution.

7.3. Physical coupons, coupons held under the Coupons Under Book-Entry Safekeeping program (CUBES) and/or

cash payments may not be substituted for missing Interest Components or missing Principal Components.

7.4. The request for reconstitution of securities, accompanied by all the Components thereof, may be made on-line to the Federal Reserve Bank of New York by all depository institutions having that capability. Off-line requests should be transmitted through the Federal Reserve Bank of the district in which the depository institution is located. Following reconstitution, the securities will be transferred to the book-entry account of the depository institution from which the transaction request was received.

7.5. Any reconstitution request received by the Federal Reserve Bank of New York which is not complete, *e.g.*, it is not comprised of the necessary STRIPS components, will not be accepted.

7.6. The book-entry transfer of each Interest Component and its Principal Component will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

The foregoing amendments were effected under authority of Chapter 31, of title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,

*Fiscal Assistant Secretary.*

May 6, 1987.

[FR Doc. 87-10761 Filed 5-7-87; 3:52 pm]

BILLING CODE 4810-35-M

## VETERANS ADMINISTRATION

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

**SUMMARY:** The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

**DATE:** Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 6, 1987.

By direction of the Administrator,

David A. Cox,

*Associate Deputy Administrator for Management.*

**Reinstatement**

1. Department of Medicine and Surgery
2. Residency Application and Appointment Information
3. VA Form 10-2850b
4. The information is used to determine the qualifications and suitability of applicants for appointment as residents in VA medical care facilities
5. Non-Recurring
6. Individuals or households
7. 27,000 responses
8. 13,500 hours
9. Not applicable

[FR Doc. 87-10711 Filed 5-11-87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 91
Tuesday, May 12, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ENERGY REGULATORY COMMISSION**

May 8, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

**TIME AND DATE:** May 15, 1987—
10:00 a.m. to 12:00 noon
1:30 p.m. to 3:30 p.m.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** In the morning session, the Commission will hear comments from the Electric Committee of the National Association of Regulatory Utility Commissioners (NARUC) on electric issues. In the afternoon session, the Commission will hear comments from NARUC's Gas Committee on natural gas strategy.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 87-10933 Filed 5-8-87; 3:36 pm]
BILLING CODE 6717-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 12:00 Noon, Monday, May 18, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 8, 1987.

**James McAfee,**
*Association Secretary of the Board.*

[FR Doc. 87-10932 Filed 5-8-87; 3:36 pm]
BILLING CODE 6210-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Friday, May 15, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Proposals regarding fees for examinations of Edge Act corporations, inspections of bank holding companies, and processing applications for banks and bank holding companies. (Proposed earlier for public comment; Docket No. R-0584)

2. Publication for comment of proposed guidelines for financial institutions to implement the Bank Bribery Amendments Act of 1985.

3. Any items carried forward from a previously announced meeting.

**Note.**—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: May 8, 1987.

**James McAfee,**
*Associate Secretary of the Board.*

[FR Doc. 87-10877 Filed 5-8-87; 10:55 am]
BILLING CODE 6210-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** Approximately 11:00 a.m., Friday, May 15, 1987, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Request by the General Accounting Office for Board comment on a draft report regarding access to brokers services in the government securities market. (This item originally announced for a closed meeting on May 13, 1987.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 8, 1987.

**James McAfee,**
*Associate Secretary of the Board*

[FR Doc. 87-10878 Filed 5-8-87; 10:55 am]
BILLING CODE 6210-01-M

# Corrections

Federal Register
Vol. 52, No. 91
Tuesday, May 12, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DELAWARE RIVER BASIN COMMISSION

**18 CFR Part 410**

**Amendment of Comprehensive Plan and Water Code of the Delaware River Basin**

*Correction*

In rule document 87-10004 beginning on page 16238 in the issue of Monday, May 4, 1987, make the following corrections on page 16239:

1. In the first column, the part number in the heading above amendatory instruction 1 should read "410".

2. In 2.1.6, in the second column, in paragraph (4), in the 11th line, "to" should read "the".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 262**

**[SWH-FRL-3157-8]**

**Exception Reporting for Small Quantity Generators of Hazardous Waste**

*Correction*

In proposed rule document 87-9909 beginning on page 16158 in the issue of Friday, May 1, 1987, make the following correction:

On page 16159, in the third column, in the third complete paragraph, the first sentence should read, "The generators would be required to mail the manifest copy if the return copy is not received within 60 days."

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Health Care Financing Administration**

**[BERC-373-FN]**

**Medicare Program; Lowest Charge Levels**

*Correction*

In notice document 87-8803 beginning on page 12969 in the issue of Monday, April 20, 1987, make the following correction:

On page 12977, in the first column, in paragraph 63, "EO310" should read "EO305".

BILLING CODE 4120-01-D

federal register

Tuesday
May 12, 1987

Part II

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 25**

**Low Fuel Quantity Alerting System; Notice of Proposed Rulemaking**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 25263; Notice No. 87-3]

# Low Fuel Quantity Alerting System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the airworthiness standards for transport category airplanes by requiring a means to alert the flightcrew of potentially unsafe low fuel quantities. There have been several recent fuel depletion incidents involving loss of power or thrust on all engines that could have resulted in forced landings and injury or loss of life. Most of these incidents resulted from improper fuel management techniques. This proposal would require new transport category airplane designs to incorporate a low fuel quantity alert to the flightcrew that would allow either correction of certain fuel management errors or the opportunity to make a safe landing prior to engine fuel starvation.

DATE: Comments must be received on or before September 9, 1987.

ADDRESS: Comments on this proposal may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25263, 800 Independence Avenue SW., Washington, DC 20591, delivered in triplicate to: FAA Rules Docket, Room 915-G, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 25263. Comments may be examined in Room 915-G weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. In addition, the FAA is maintaining an information docket of comments in the Office of the Regional Counsel (ANM-7), FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Comments in the information docket may be examined in the Office of the Regional Counsel weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Neil Schalekamp, Regulations Branch (ANM-112), Transport Standards Staff, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2105.

SUPPLEMENTARY INFORMATION:

## Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25263." The postcard will be date/time stamped and mailed to the commenter.

## Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

## Background

Section 25.955(b) of the Federal Aviation Regulations (FAR) requires an airplane fuel system that is designed to prevent interruption of fuel flow to an engine without attention by the flightcrew, when any fuel tank supplying fuel to that engine is depleted of usable fuel during normal operation, and any other tank that normally supplies fuel to that engine contains usable fuel. Although this requirement ensures that a continuous fuel supply is available during normal operation, it does not ensure a continuous fuel supply in all fuel-feed configurations.

With the development of more complex aircraft fuel systems and fuel management techniques, the need for a low fuel quantity alerting system has become evident. A review of transport airplane operational problems has revealed a number of fuel feed system depletion incidents. Five recent incidents involved the loss of power or thrust on all engines, and each had the potential for a catastrophic result. The causes of these incidents have included fuel quantity indication system service difficulties, inadequate preflight preparation, and flightcrew inattention to fuel management. In several of these instances, a low fuel level alerting system could have provided the flightcrew with the opportunity to take appropriate corrective action prior to engine fuel starvation. Additionally, the advent of electronic instruments has made possible direct-reading digital displays which, while they provide an accurate quantitative reading, may not provide sensory cues to the flightcrew that are as effective as those provided by analog displays. For example, analog displays facilitate rapid cross-checking of the fuel quantities in several tanks. Furthermore, the flightcrew's capability to effectively monitor fuel quantity is diminished in cockpit designs where the fuel quantity displays are in the pilot's overhead panel.

Many airplane designers have recognized that a low fuel quantity alerting system is a proper and desirable fuel system design, and some recently certificated airplanes have incorporated such a system.

Section 25.1305 of the FAR specifies the required powerplant instruments for transport category airplanes. These include a fuel quantity indicator for each fuel tank; however, there is currently no additional requirement to annunciate a low fuel state to the flightcrew. The proposed amendment would add a requirement for a cautionary alert to indicate low fuel quantity.

To preclude unintentional engine power loss due to fuel depletion resulting from fuel mismanagement or other causes while substantial fuel remains in the airplane, a low fuel alerting system would be required for any tank that normally should not be depleted of usable fuel. The FAA considers this approach to be appropriate because in using approved fuel management procedures, certain fuel tanks are expected to be depleted of

usable fuel with no resultant interruption of fuel to the engine. A low fuel cautionary alert on these tanks would be unnecessary and considered a nuisance. For example, fuel tanks that do not feed directly to engines or tanks with boost pump pressure which overrides boost pump pressure from other tanks and are normally emptied first need not have a low fuel alerting system. Therefore, the proposed rule is not intended to require a low fuel alerting device for each fuel tank.

A low fuel alerting system based on total fuel remaining in the system, irrespective of which tank contains the fuel, is considered inadequate. While it would provide indication of impending total fuel depletion, no alert would occur if the fuel in a tank feeding an engine is depleted due to fuel-feed mismanagement while a significant amount of fuel remains available in another tank.

The proposed amendment would require the low fuel alerting system to be independent of the normal fuel quantity measurement system. There have been instances in which fuel quantity systems have provided inaccurate information due to wiring harnesses being inadvertently switched or the system becoming disabled. An effective low fuel quantity alerting system should be protected from these types of malfunctions. The alerting system would probably incorporate a test feature to ensure functional reliability. Therefore, as proposed, no malfunction or failure of the normal fuel quantity measuring system would prevent proper operation of the low fuel quantity alerting system.

As proposed, the alert must occur with no less fuel remaining in the tank than that required to operate the engine(s) which can be supplied by that tank for 30 minutes at normal cruising conditions. A low fuel alert would not occur under normal circumstances because fuel reserves are usually in excess of the fuel quantity specified by this requirement. If a low fuel alert occurs due to fuel mismanagement or other factors, the flightcrew would have at least 30 minutes to correct the situation or to land at a suitable airport.

## Economic Evaluation

This analysis estimates only the incremental costs associated with the low fuel alert proposal.

The three basic areas of compliance costs include: (1) Design and certification, including any testing that may be required; (2) manufacturing and parts; and (3) operating costs such as maintenance or weight penalties. Costs will vary according to the number, size, and shape of tanks that directly supply fuel to engines on an airplane. Therefore, this cost analysis incorporates a low and high end cost estimate based on the number and nature of those tanks.

The cost of type certification of the low fuel alerting system would be negligible because, for the most part, system components could be used that have already been tested and approved in other applications. Because the reliability and accuracy of such components would have been established previously, no further testing in these regards would be necessary. Calibration testing would be required; however, this could be performed concurrently with the calibration required for the fuel quantity indication system at no additional cost. Through the use of such previously approved components, the FAA estimates that there would be a one-time design or development cost ranging from $200 to $5,000 per tank. This estimate is based on the assumption that the system would include a self-test feature.

Material costs of the low fuel alerting system would range from $150 per tank for a simple float type system to $1,000 for a more sophisticated electronic system.

Labor costs are estimated at $70–$140 per airplane when the low fuel alerting system is installed during the manufacture of the airplane.

Low fuel alerting systems weigh from 1.0 to 2.0 pounds per tank. Each additional pound will result in an estimated average fuel consumption of 15 gallons per year per airplane. Therefore, two tanks at two pounds each will consume an estimated 60 additional gallons per year.

Calculating the actual fleet cost is infeasible since the requirements would apply only to airplanes for which future application for type certificate is made subsequent to the effective date of this regulatory amendment. In order to estimate a hypothetical maximum cost for a present base period, the estimated costs of compliance for a large air carrier airplane and for turbojet and turboprop business airplanes are each multiplied by their respective number in the present turbine-powered transport category fleet. The results are then totaled. Accordingly, the air carrier fleet protection cost would be $306 per airplane per year, as presented in Table 1.

TABLE 1.—MAXIMUM COST OF COMPLIANCE FOR A TURBINE POWERED AIR CARRIER AIRPLANE USING THE MOST COSTLY LOW FUEL QUANTITY INDICATOR SYSTEM [1]

| | Total cost | Annualized cost per airplane [2] |
|---|---|---|
| *Certification:* [3] | | |
| Certification Cost | | |
| Design Cost [4] | $25 | $3 |
| Testing Cost | | |
| *Manufacturing:* [3] | | |
| Materials | 2,000 | 235 |
| Labor: Installation | 140 | 16 |
| *Weight Penalty:* [5] | | |
| Fuel | 54 | 54 |
| | | $308 |

[1] The large turbine-powered airplane assumed for the purpose of estimating maximum cost is a two-engine, large body airplane directly fed by two fuel tanks, with a conservatively estimated useful life of 20 years. (Fuel tanks that do not feed directly to engines or tanks whose boost pump pressure overrides boost pump pressure from other tanks and are normally emptied first, do not require a low fuel alerting system.)

[2] One time costs.

[3] Using a 10 percent capital recovery factor for a period of 20 years (0.11746).

[4] Based on a one-time, $5,000 cost for adaptation to a specific airplane tank, and an assumed total production run of 200.

[5] Based on a fuel price of 90.4 cents per gallon. This average fuel usage value was obtained from data presented in a NASA study entitled Optimization of Aircraft Seat Cushion Fire Blocking Layers, March 1983 (Report #DOT/FAA/CT-82/132), p. 128.

The cost estimate for business jet fleet protection would be $70 per airplane per year, as presented in Table 2.

TABLE 2.—Estimated Cost of Compliance for a Turbine-Powered Airplane Using the Less Costly Low Fuel Quantity Indicator System [1]

| | Total cost | Annualized cost per airplane [2] |
|---|---|---|
| *Certification:* [3] | | |
| Certification Cost | | |
| Design Cost [4] | $1 | $0 |
| Testing Cost | | |
| *Manufacturing:* [3] | | |
| Materials | 300 | 35 |
| Labor: Installation | 70 | 8 |

TABLE 2.—Estimated Cost of Compliance for a Turbine-Powered Airplane Using the Less Costly Low Fuel Quantity Indicator System [1]—Continued

| | Total cost | Annualized cost per airplane [3] |
|---|---|---|
| *Weight Penalty:* [5] | | |
| Fuel | 27 | 27 |
| | | $70 |

[1] The turbine-powered airplane assumed for the purpose of estimating cost is a two-engine, business jet directly fed by two fuel tanks, with an estimated useful life of 20 years. (Fuel tanks that do not feed directly to engines or tanks whose boost pump pressure overrides boost pump pressure from other tanks and are normally emptied first, do not require a low fuel alerting system.)

[2] One time costs.

[3] Using a 10 percent capital recovery factor for a period of 20 years (0.11746).

[4] Based on a one-time, $200 cost for adaptation to a specific airplane tank, and an assumed total production run of 200.

[5] Based on a fuel price of 89.4 cents per gallon. This average fuel usage value was obtained from data presented in a NASA study entitled Optimization of Aircraft Seat Cushion Fire Blocking Layers, March 1983 (Report #DOT/FAA/CT-82/132), p. 128.

The maximum possible estimated annual cost for a hypothetical air carrier fleet protection would be $1.12 million, based on an estimated maximum cost per airplane per year of $308 multiplied by the 1984 U.S. air carrier fleet of 3,643 turbine-powered airplanes. This estimate includes all sizes of turbine-powered air carrier airplanes but is calculated as if all are the largest size and is therefore overstated.

The estimated cost per airplane per year for business jets is $70. The estimated annual cost for a hypothetical turbine-powered business airplane fleet would be $654,000 based on an estimated cost per airplane per year of $70 multiplied by the 1984 general aviation fleet of 9,351 turbine-powered airplanes, including 5,453 turboprop airplanes and 3,898 turbojet airplanes.

The estimated annual cost for full-fleet protection of the 12,994 turbine-powered airplanes, including general aviation (business airplanes) and the U.S. air carrier fleet, is $1.77 million.

A series of 13 recent incidents have been complicated by fuel exhaustion or the threat of fuel exhaustion. While not all of the incidents were directly attributable to fuel exhaustion or the threat of fuel exhaustion, in each case an alert to the flightcrew of low fuel might have contributed to improved conditions for fuel management and therefore a greater likelihood for a safe conclusion to the flight.

The FAA cannot easily estimate the prospective number of lives that might be saved or airplane crashes that might be avoided in the future by low fuel warning devices, but some insights into the potential benefits of these devices can be gained from the air carriers' recent experiences. Based on these experiences, while no monetary benefits can be calculated, the proposal would contribute an increment of safety that would assure that incidents like those that occurred will not become accidents in the future.

A benefit/cost ratio of unity for a full-fleet cost of $20.3 million over a 20 year fleet life cycle would require avoiding one air carrier and one general aviation crash with a total of 10 fatalities.

The FAA estimates the statistical value of a life at $1,000,000 in current dollars. Additionally, the FAA has estimated the replacement value of an air carrier airplane in current dollars at $8.3 million and of a general aviation airplane at $1.858 million. This estimate is based on data contained in "Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs," Report Number FAA-APO-81-3, September 1981 and report update, APO Bulletin APO-84-3, June 1984. (These values are developed based on ranges of replacement costs.) For further details on this estimate see the Regulatory Analysis in the Docket.

The ratio of the low fuel alerting system annualized cost to the weighted average air carrier airplane replacement cost is $308/$8,300,000=.000037, or $37 of system cost per $1,000,000 of airplane replacement cost in any future year. The same ratio to turbine-powered general aviation airplane replacement cost is $70/$1,858,000=.000038, or $38 of system cost per $1,000,000 of airplane replacement cost in any future year.

The estimated annualized cost for full-fleet protection of the 12,994 turbine-powered airplanes is $1.77 million. The total estimated annualized full-fleet protection cost is less than the weighted average replacement cost of either a single air carrier airplane or a single general aviation turbine-powered airplane. The cost for the increment in safety is a reasonable investment for the prospect of avoiding even one fatal airplane crash.

The FAA further notes that because of a trend in industry toward incorporation of a low fuel quantity alerting system in some new models of air carrier airplanes, the overall cost to society of the incremental regulatory cost for full-fleet protection will likely be significantly less than the FAA's estimate because approximately 80 percent of future, newly designed turbine-powered transport category airplanes would voluntarily incorporate a system similar to the one proposed.

**International Trade Impact Analysis**

The proposals will have no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S.

There will be no impact on the sale of foreign turbine powered transport airplanes in the U.S. and the sale of such U.S. airplanes in foreign countries. Since the certification rules are applicable to both foreign and domestic manufacturers that sell in the U.S., there will be no competitive advantage to either. Because of the large U.S. market, foreign manufacturers are likely to certify their airplanes to U.S. rules; and therefore, U.S. manufacturers would not suffer in foreign markets. Further, the cost of compliance is negligible compared to the total cost of an airplane.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (FRA) was enacted by Congress to insure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The proposal in this notice would directly affect those turbine-powered transport airplane manufacturers that certify their airplanes under Part 25 and are classified as small entities. The FAA has published a size threshold of 75 employees as a standard for an aircraft manufacturer to be considered a small entity. According to current FAA data, there are no turbine-powered airplane manufacturers that meet that standard. (Reference FAA Order 2100.14, Regulatory Flexibility Criteria and Guidance, dated July 15, 1983.)

Accordingly, this proposal is not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

**Conclusion:**

For the reasons discussed earlier in the preamble, the FAA has determined that this proposed regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the

Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities, since none would be affected. A preliminary evaluation has been prepared for this regulation, has been placed in the docket, and is summarized in the preamble of this notice in the section entitled "Economic Evaluation." A copy of the complete evaluation may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

**List of Subjects in 14 CFR Part 25**

Air transportation, Aircraft, Aviation safety.

**The Proposed Amendment**

Accordingly, the Federal Aviation Administration (FAA) proposes to amend Part 25 of the Federal Aviation Regulations (FAR), 14 CFR Part 25, as follows:

## PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(a).

2. By amending § 25.1305 by adding a new paragraph (a)(9) to read as follows:

**§ 25.1305 Powerplant instruments.**

* * * * *

(a) * * *

(9) A means to provide a cautionary alert to the flightcrew of a low fuel quantity in any fuel tank that normally should not be depleted of usable fuel. The alerting system shall operate independently of the fuel quantity measuring system. The alert shall commence at a time appropriate to the type of airplane and the intended operation, but shall be prior to that time when the remaining fuel reaches the quantity required to operate the engine(s) being supplied by that tank for 30 minutes at normal cruising conditions.

* * * * *

Issued in Seattle, Washington on May 1, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87–10704 Filed 5–11–87; 8:45 am]

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Part III

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 3280**

**Manufactured Home Construction and Safety Standards—Deregulation of Thermal Protection Standards; Proposed Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R-87-1329; FR-2260]

# Manufactured Home Construction and Safety Standards—Deregulation of Thermal Protection Standards

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** HUD proposes to remove the thermal protection requirements at 24 CFR Part 3280, Subpart F (with the exception of the condensation control standards in § 3280.504) from the Manufactured Home Construction and Safety Standards. The Department has determined that the thermal protection standards in current §§ 3280.505 through 3280.511 are no longer necessary to ensure adequate performance with respect to the energy efficiency of manufactured homes. In particular, HUD has determined that the thermal efficiency levels in manufactured homes currently produced in the United States generally provide stricter thermal protection than is required under HUD's maximum transmission heat loss coefficients in § 3280.506(a). Under this revision, § 3280.504 (condensation control) would be redesignated as § 3280.310.

**COMMENT DATE:** July 13, 1987.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Devlopment, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number. A copy of each communication will be available for public inspection and copying during regular hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mark W. Holman, Chief, Standards Branch, Manufactured Housing and Construction Standards Division, Office of Manufactured Housing and Regulatory Functions, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 755–6590. (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

*HUD Thermal Protection Regulations in Part 3280, Subpart F*

The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–26, directs the Department to establish standards for the construction, design and performance of manufactured homes. *See* 42 U.S.C. 5403(a), 5402(7). Accordingly, the Department issued standards for manufactured homes which became effective on June 15, 1976, (40 FR 58754, December 18, 1975). Among these standards are requirements controlling condensation, air infiltration, thermal insulation and certification for heating and comfort cooling. *See* 24 CFR Part 3280, Subpart F. With the exception of § 3280.504 (condensation control standards to ensure the durability of manufactured homes), Subpart F includes various sections designed to ensure thermal efficiency in manufactured homes.

With the exception of § 3280.504, all of the other sections of Part 3280, Subpart F depend on HUD's maximum overall transmission heat loss coefficients in § 3280.506(a) as the key measure for ensuring thermal efficiency in manufactured homes. (The maximum transmission coefficients in § 3280.506(a) have been established for three outdoor winter design temperature zones.) Sections 3280.510 (heat loss certificate) and 3280.511 (comfort cooling certificate and information) have been designed to implement HUD's transmission heat loss coefficient for the respective zones. Sections 3280.507 (comfort heat gain), 3280.508 (heat loss, heat gain and cooling gain calculations), and 3280.509 (criteria in absence of specific data) provide guidance for the calculation of HUD's transmission heat loss coefficient for the respective zones. Section 3280.505 provides general design criteria for manufactured homes to facilitate compliance with HUD's maximum transmission coefficient for the respective zones.

*Current Manufactured Housing Industry Performance and State Regulatory Developments*

Information available to the Department indicates that the thermal protection standards in current §§ 3280.505 through 3280.511 are no longer necessary to ensure adequate performance with respect to the energy efficiency of manufactured homes. HUD has determined that the thermal efficiency levels in manufactured homes currently produced in the United States generally provide stricter thermal protection than is required under current § 3280.506(a). An economic analysis prepared for the Department indicated that most of the manufactured homes studies incorporated insulation levels that are more strict than HUD's current thermal protection standards. *See* Steven Winter Associates, Economic Cost Benefit Analysis of Thermal Envelope Improvements for Manufactured Home Standards Revision 16–17, 21 (January 10, 1985). In the Steven Winter Associates report, for each of the outdoor winter design temperature zones referred to in HUD's thermal efficiency regulations (Zones I, II, and III), a typical insulation package for manufactured homes was estimated based on a representation sample of typical current manufacturing practices.

At least thirty-seven States have promulgated regulations for single family residential structures with maximum overall transmission heat loss coefficients stricter than HUD's standards in § 3280.506(a). Under § 3280.506(a), HUD's maximum overall transmission coefficients are: (1) for Zone I, .157 Btu/(hr.)(sq. ft.)(F); (2) for Zone II, .126 Btu/(hr.)(sq. ft.)(F); and (3) for Zone III, .104 Btu/(hr.)(sq. ft.)(F). (Of those thirty-seven States with stricter maximum overall transmission coefficients than in HUD's thermal protection standards, nine States are in Zone I, and twenty-eight are in Zone II.)

On the effective date of the final rule removing Part 3280, Subpart F, HUD's current thermal efficiency regulations would no longer preempt State or local regulations. With respect to the thirteen States without codified thermal efficiency regulations, HUD has determined that because the thermal efficiency levels in manufactured homes currently produced in the United States generally provide greater thermal protection than do the current Subpart F standards, consumers of manufactured homes would be able to purchase homes that meet the current Subpart F standards.

## II. Proposed Rule

The Department is proposing to remove Subpart F from the Manufactured Home Construction and Safety Standards at 24 CFR Part 3280. This proposed rule would also remove the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) from the list of organizations whose codes or standards are incoporated by reference at § 3280.4, because ASHRAE's Handbook of Fundamentals would no longer be incorporated by reference in the Standards. Section 3280.5(a)(5) would be amended to remove the reference to

heating and cooling information certificates, currently required to be affixed to manufactured homes under §§ 3280.510–.511. Finally, current § 3280.504 would be redesignated as § 3280.310.

### III. Miscellaneous

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. The rule would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

Consistent with the provisions of 5 U.S.C. 605 (the Regulatory Flexibility Act), the Secretary has determined that this rule would not have a significant economic impact on a substantial number of small entities, because the thermal efficiency levels in manufactured homes currently produced in the Untied States generally provide stricter thermal protection than is required under the current HUD standards in 24 CFR Part 3280, Subpart F.

There are no information collection requirements in this proposed rule that would require compliance with the Paperwork Reduction Act of 1980.

A Finding of No Significant Impact with respect to the environment was made for this proposed rule in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. A copy of this Finding of No Significant Impact has been placed in this rulemaking file and is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item 949 in the Department's Semiannual Agenda of Regulations published at 52 FR 14362, 14385 on April 27, 1987, under Executive Order 12291 and the Regulatory Flexibility Act.

### List of Subjects in 24 CFR Part 3280

Fire prevention, Housing standards, Mobile homes.

Accordingly, the Department proposes to amend 24 CFR Part 3280 as follows:

## PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for Part 3280 would continue to read as follows:

**Authority:** Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Title VI, Housing and Community Development Act of 1974, 42 U.S.C. 5401, unless otherwise noted.

### § 3280.4 [Amended]

2. Section 3280.4, paragraph (b) would be amended by removing the following entry: ASHRAE—American Society of Heating, Refrigeration and Air-conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.

3. Section 3280.5, paragraph (a)(5) would be revised to read as follows:

### § 3280.5 Data plate.

* * * * *

(a) * * *

(5) Reference to the structural zone and wind zone for which the home is designed and duplicates of the maps as set forth in § 3280.305(c)(4).

* * * * *

### § 3280.504 [Amended]

4. Section 3280.504 would be redesignated as § 3280.310 and placed in Subpart D of Part 3280.

### Subpart F—[Removed]

5. Subpart F of Part 3280 would be removed.

Dated: April 27, 1987.

**Thomas T. Demery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 87–10789 Filed 5–11–87; 8:45 am]

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Part IV

# Department of Education

34 CFR Part 673
Income Contingent Loan Program
Demonstration Project; Final Regulations

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DEPARTMENT OF EDUCATION

34 CFR Part 673

## Income Contingent Loan Program Demonstration Project

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Higher Education Amendments of 1986 authorize the Secretary to implement an Income Contingent Loan Program Demonstration Project (Demonstration Project) beginning with the 1987–88 award year. The Secretary is issuing regulations governing the selection and funding of Demonstration Project participants. The Demonstration Project will examine the feasibility of a direct loan program which uses the income contingent repayment method in order to increase the economic and full use of direct student loan funds.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ms. Carney McCullough or Mr. William L. Moran, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW., [Regional Office Building 3, Room 4100], Washington, DC 20202. Telephone number: (202) 732–4888.

SUPPLEMENTARY INFORMATION:

### Background

The Higher Education Amendments of 1986, Pub. L. 99–498, added part D to Title IV of the Higher Education Act of 1965, authorizing an Income Contingent Loan Program Demonstration Project.

During the past decade, higher education costs have escalated and, as a result, students are borrowing more. By the time of graduation, many students have incurred a larger debt burden. Repayment of such debt on a short-period, mortgage-type basis commencing shortly after graduation often forces students to pay substantial sums at a time when earnings are at their lowest. Income-sensitive loan repayment, on the other hand, is an equitable and reasonable approach to student debt manageability. The flexibility afforded by this type of repayment plan accommodates changes in the borrowers' financial circumstances.

The Income Contingent Loan Program Demonstration Project explores the feasibility of a direct loan program which uses an income contingent repayment plan. The Demonstration Project will be conducted for five years beginning with the 1987–88 academic year, and a maximum of ten institutions will be selected to participate in the Demonstration Project. In the fiscal year 1988 Budget, the Secretary has requested a major expansion of the Income Contingent Loan (ICL) Program.

### Revisions to the Notice of Proposed Rulemaking

On March 5, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register, 52 FR 6924–6939. In this document, the Secretary is publishing final regulations for Subpart B—Selection and Funding of Demonstration Projects. No significant changes have been made to Subpart B of the NPRM. However, to facilitate allocation of funds to institutions with immediate need for them, § 673.17 has been revised to permit the Secretary to direct an institution to return those funds from its allocation that it does not expect to use within the award year. The Secretary may then redistribute those funds as needed to other institutions. Final regulations of Subparts A, C, and D will be published as a separate document. The Secretary will publish an NPRM of Subpart E—Due Diligence after publishing the final due diligence requirements for the Perkins Loan Program.

### Comments and Responses

The following is a summary of the comments received on Subpart B and the Secretary's response to those comments. Comments received on the other subparts will be addressed in the appropriate document.

*General*

*Comment:* Many commenters felt that it was inappropriate for the Department to issue simultaneously the Notice of Proposed Rulemaking (NPRM) and the application notice. They expressed concern that the dual dealing would preclude institutions from commenting in a meaningful fashion and from making an informed decision about their participation in the Demonstration Project. Furthermore, they questioned whether the intent of the Department is to ignore any comments received from institution, relative to the NPRM. Several commenters objected to the brevity of a thirty-day comment period.

*Response:* No change has been made. The Higher Education Amendments of 1986 were enacted on October 17, 1986 and authorized the Secretary to conduct an ICL Demonstration Project beginning with the 1987–88 academic year. This date of enactment provided very little time for development of regulations and selection of Demonstration Project participants. Thus, in order to implement the Demonstration Project early enough to allow institutions to include ICLs in student aid packages for the 1987–88 award year, it was necessary to have a thirty-day comment period and a simultaneous application period. If, based on public comment, the Secretary had determined that significant changes were needed to the selection criteria, he would have extended the application period to allow additional applications and amendments to previously submitted applications.

*Comment:* One commenter opposed the Secretary's plan to seek a technical amendment to permit the participation of consortia in the Demonstration Project on the grounds that Congress had limited the number of participants to ten institutions, and the inclusion of consortia would expand the number of participants. Many commenters favored modification of legislation to permit more institutions to participate as a means of obtaining a greater variety of institutional settings to provide data to determine the viability of the program. Several commenters expressed concern that the limitation of ten institutional participants is insufficient to test the Demonstration Project.

*Response:* No change has been made. Although the Secretary did seek a technical amendment to allow consortia to participate in the Demonstration Project, statutory changes necessary to allow consortia to particpate have not yet been enacted. The Secretary agrees with the commenters that the ICL program should be available to more institutions and has requested a major expansion of the program and the elimination of the limit on the number of participating schools in the budget proposal for fiscal year 1988.

*Section 673.11 Eligible Applicants.*

*Comment:* Many commenters objected to the restrictions on institutions that wish to participate in the ICL Demonstration Project and indicated that any institution which participates in the Perkins Loan Program should be eligible for the Demonstration Project. The commenters felt that the restrictions exclude from the ICL Program entire categories of institutions which participate in the Perkins Loan Program and, therefore, will skew the results of the Demonstration Project. In particular, the commenters were concerned that proprietary schools would be excluded

by a requirement that in order to be considered an eligible applicant, an institution must offer at least one program of study leading to or acceptable for full credit toward a four-year undergraduate degree and have at least 500 students enrolled in such programs.

*Response:* No change has been made. Students who are enrolled in programs leading to an undergraduate degree generally incur higher student loan debt burdens than students enrolled in programs requiring less than four years to complete. Since the Demonstration Project is intended to assess the impact of an income contingent repayment plan for student loans, and since only ten schools may participate, the Secretary believes that it is necessary to limit participation to schools with borrowers who are likely to have incurred larger debt obligations. If more schools could participate, of course, as under the 1988 Budget proposal, the Secretary would revise the selection criteria to make more schools eligible.

*Comment:* Several commenters noted that students enrolled in graduate programs generally incur higher debt than students enrolled in undergraduate programs and requested that the Secretary expand the eligibility criteria to include these types of programs.

*Response:* No change has been made. Although the Secretary agrees that graduate students incur higher debt, the statute limits borrowing under the ICL program to undergraduate students only. Therefore, at the present time, the Secretary cannot revise the regulations to permit borrowing by graduate students. The Secretary is requesting a legislative change in 1988 to make graduate students eligible to receive ICLs.

*Comment:* Several commenters were opposed to limiting participation in the Demonstration Project to those schools with a default rate of less than 7.5% because it may eliminate institutions with a large population of higher-risk student borrowers. One commenter qustioned the December 31, 1986 date for calculation of default rate since no information is ordinarily submitted as of that date.

*Response:* No change has been made. The rule does not exclude automatically institutions with a large population of high-risk borrowers, since many institutions participating in the Perkins Loan Program with such students have managed to maintain a low default rate. The Secretary does consider institutions with a low default rate to have demonstrated the administrative capability to manage a loan program effectively.

The Secretary selected December 31, 1986 as the date for calculation of the default rate in order to take into account actions to reduce its default rate such an assignments which the institution may have made after it completed the Fiscal-Operations Report and Application to Participate (FISAP) in the National Direct Student Loan (NDSL), Supplemental Educational Opportunity Grant (SEOG) and College Work-Study (CWS) Programs which reports program activity through June 30. Institutions may appeal their funding under the Perkins Loan Program by demonstrating that their default rate has decreased between June 30 and December 31; for convenience, the Secretary provides that same option here. The Secretary has revised § 673.11(d) to clarify that the default rate on which ICL determinations are made is that used in determing funding for the Perkins Loan Program.

*Section 673.14 Selection Criteria—New Grants.*

*Comment:* Many commenters were in favor of the proposal to assign points. One commenter complained that the selection criteria target schools that will have the best chance to make a success of the program. Several comenters criticized the lack of details concerning the way the Secretary would apply the selection criteria concerning the findings of the latest ED program review, the results of the institutions' most recent audit report submitted to ED, and the institutions default rate under the Perkins Loan Program.

*Response:* The purpose of the Income Contingent Loan Demonstration Project is to examine the feasibility of administering an income contingent loan program. To identify, measure, and resolve the problems involved in the income contingent method of loan management, it was essential to select participants with a demonstrated ability to manage a traditional, fixed-term loan program effectively. Problems encountered by these instititions in using the income contingent method could reasonably be attributed to the method itself and not to shortcomings in the schools' own loan management techniques. The latter subject has been extensively studied by Congress, the Department, the General Accounting Office, and professional and trade associations, and remedies and incentives for correction are in place. Moreover, institutions with a demonstrated ability to manage traditional loan programs are, in the Secretary's judgment, more likely to have the expertise and imagination to devise and implement effective and replicable solutions to those problems encountered in an income contingent loan program.

The selection criteria used to evaluate applicants for the ICL Demonstration Project have been identified and developed through research by the Department of Education as valid measures of administrative capability.

*Comment:* One commenter noted that the NPRM stated that the Secretary would review the institution's full-time equivalent (FTE) enrollment as reported on the FISAP; however, the FISAP does not collect information on FTE.

*Response:* A change has been made. The Secretary has changed this selection criterion to reflect the undergraduate student enrollment which is reported on the FISAP and which includes all full-time and part-time students.

*Comment:* One commenter objected to the use of the institution's compliance with the Pell Grant Program reporting requirements as a selection criterion, since the persons responsible for Pell Grant reporting are usually not responsible for loan collections; the criterion therefore would not be helpful in assessing administrative capability for the ICL Demonstration Project.

*Response:* The Secretary disagrees with the commenter. At most institutions, the person responsible for complying with the Pell Grant reporting requirements is also responsible for determining student eligibility and awarding funds for all Title IV programs, including ICL. Therefore, the demonstrated level of capability to comply with Pell Grant reporting requirements, which is a valid measure of proper administration of the Pell Grant Program, is directly applicable to determining the capability to administer an ICL Demonstration Project effectively.

*Comment:* One commenter objected to the selection criterion related to the institution's plan of operation. The commenter felt that it is the Department's responsibility to establish standards for effective plans and acceptable objectives. Several commenters objected to the statement in the preamble indicating the Secretary was interested in the benefits an institution would expect to derive from participation in the Demonstration Project.

*Response:* No change has been made. The Secretary believes that institutions that wish to participate in the Demonstration Project should develop a plan of operation for the administration of the ICL Program which demonstrates the institution's administrative

capability. As a part of the Demonstration Project, the Secretary is interested in a variety of models and suggested methods of operation from which to establish standards for effective plans of operation. The Secretary expects institutions that apply to do so because they perceive a benefit to their institution and their students as a result of participation and that the perceived benefit is an important incentive for an effective plan of operation.

*Comment:* One commenter agreed with the Secretary that the quality of key personnel is an important selection criterion since the quality of key personnel has a direct bearing on the institution's desire and ability to administer any of the Title IV loan programs successfully. Many commenters were opposed to the inclusion of consideration of the quality of key personnel in the selection criteria because they felt that tenure and experience does not demonstrate capability or effectiveness of administration and that this item would be difficult to evaluate.

*Response:* No change has been made. The Secretary believes that the quality of key personnel is an important measure of the administrative capability demonstrated by an institution for a Demonstration Project and that experience and training provide an indication of an individual's capability to administer an ICL Demonstration Project.

*Comment:* Many commenters noted that the Department of Education is charged to report to Congress on the feasibility of an income contingent repayment concept and complained that applicants should not be required to propose a self-evaluation plan as part of the application process.

*Response:* No change has been made. The Secretary believes that it is important that institutions that wish to participate in the Demonstration Project provide input into the development of a cooperative and comprehensive evaluation plan for the entire Demonstration Project. The Secretary does intend to carry out both implementation and impact evaluations of the Demonstration Project.

*Comment:* Many commenters objected to the inclusion in the selection criteria of an institution's willingness to overmatch funds. They expressed concern that willingness to overmatch had little relevance to ability to participate successfully in the Demonstration Project and that this criterion could be seen as encouraging institutions to "buy" participation in the Demonstration Project. One commenter suggested that the criterion be used solely as a tie-breaker.

*Response:* No change has been made. A very limited amount of funds has been appropriated for the Demonstration Project, and institutions that overmatch the Federal Capital Contribution will have more money available to make ICLs to students. This, in turn, will result in a larger number of student loans that permits better evaluation of an income contingent repayment plan. Because the Secretary is seeking to obtain as much data as possible to evaluate the Demonstration Project, it is reasonable in ranking applicants to consider the extent to which an applicant can help achieve that goal by contributing a larger institutional share to each loan.

*Section 673.16 Determination of Need for ICL Demonstration Project Funds.*

*Comment:* Many commenters feared that institutions with large amounts of collections which, therefore, receive little or no new Perkins Loan FCC would not qualify for FCC under the ICL program.

*Response:* No change has been made. In determining need for ICL funds, the Secretary deducts from the institution's self/help need its Perkins Loan Level of Expenditures, rather than its anticipated collections, to determine the institution's unmet need. Institutions that have large collections would not be penalized under this formula.

*Section 673.17 Allocation of ICL Demonstration Project Funds.*

*Comment:* One commenter suggested that the Secretary assure each participant a "conditionally guaranteed" minimum annual funding level in an amount necessary to accommodate the purpose of the Demonstration Project and to ensure a valid test at each of the ten selected institutions.

*Response:* No change has been made. The Secretary agrees with the commenters that a minimum annual funding level is desirable; under the proposed and final rule the Secretary will, within the limits of the funding made available annually by Congress, allocate funds on the basis of both the ratio of each institution's unmet need to the aggregate unmet need of Demonstration Project institutions, and an individual determination of the amount of funds necessary to sustain or to create an ICL Demonstration Project (§ 673.17(b)).

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 673**

Education, Loan Programs—education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Number has not been assigned)

Dated: May 6, 1987.

William J. Bennett,

*Secretary of Education.*

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new Part 673 to read as follows:

## PART 673—INCOME CONTINGENT LOAN PROGRAM

Subpart A—[Reserved]

Subpart B—Selection and Funding of Demonstration Projects

673.11 Eligible applicants.
673.12 Application for grants.
673.13 Evaluation of an application.
673.14 Selection criteria—new grants.
673.15 Selection criteria—continuation grants.
673.16 Determination of need for ICL Demonstration Project funds.
673.17 Allocation of ICL Demonstration Project funds.

Authority: 20 U.S.C. 1087a–1087e, unless otherwise noted.

**Subpart A—[Reserved]**

**Subpart B—Selection and Funding of Demonstration Projects**

**§ 673.11 Eligible applicants.**

An institution is eligible to apply for a grant to carry out an Income Contingent Loan (ICL) Demonstration Project if the institution—

(a) Participates in the current award year in the Pell, campus-based [Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant], and Guaranteed Student Loan Programs;

(b) Offers at least one educational program—

(1) For which it awards a baccalaureate degree; or

(2) Which is at least a two-year program which is acceptable for full credit toward a baccalaureate degree;

(c) Has at least an aggregate of 500 students enrolled in the program(s) described in paragraph (b) of this section; and

(d) Has a Perkins Loan default rate, as defined in 34 CFR 674.6a(d) of no more than 7.5 percent as of December 31 of the calendar year preceding the award year for which the institution applies for a grant.

(Authority: 20 U.S.C. 1087a, 1087b)

**§ 673.12 Application for grants.**

(a) *New grants.* An institution applies for a new grant for an ICL Demonstration Project by submitting an application that—

(1) Includes information that addresses each of the selection criteria set forth in § 673.14 (g), (h) and (i);

(2) Describes in detail the institution's plans for a Demonstration Project as outlined in § 673.14(f); and

(3) Contains an assurance that the institution will comply with the requirements imposed under this part and will carry out a Demonstration Project for the five years for which the project is authorized.

(b) *Continuation grants.* An institution may apply for funds to continue an ICL Demonstration Project by submitting an application that reports the results of the institutional evaluation completed for the previous award year as set forth in the institution's original application and that requests additional funds.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087b)

**§ 673.13 Evaluation of an application.**

(a)(1) The Secretary uses the selection criteria in § 673.14 to evaluate applications for new grants.

(2) The Secretary awards up to 120 points for these criteria.

(3) The maximum possible score for each criterion is indicated in parentheses.

(b) The Secretary uses the selection criteria in § 673.15 to evaluate applications for continuation grants.

(c)(1) After evaluating applications for new grants according to the criteria in § 673.14, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation for each competition under this program. The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(2) The Secretary may select an application for funding to improve the diversity of activities or projects funded under a particular competition.

(Authority: 20 U.S.C. 1087b)

**§ 673.14 Selection criteria—new grants.**

(a) *Findings of the latest ED program review.* (15 points) The Secretary reviews the results of the latest ED program review in order to determine whether the applicant has demonstrated compliance with applicable statutes and regulations.

(b) *Results of the institution's most recent audit report submitted to ED.* (15 points) The Secretary reviews the results of the institution's most recent audit report submitted to ED to determine whether a significant misuse of Federal funds has been identified.

(c) *The institution's total number of undergraduate students.* (10 points) The Secretary reviews the total number of undergraduate students as reported by the institution on the Fiscal-Operations Report and Application to Participate (FISAP) in the National Direct Student Loan (NDSL), Supplemental Educational Opportunity Grant (SEOG) and College Work-Study (CWS) Programs for the previous award year to determine whether the institution has experience in administering student assistance programs for a large number of students.

(d) *Compliance with the Pell Grant Program reporting requirements.* (10 points) The Secretary reviews ED records of the institution's compliance with all the deadline dates set by ED for the receipt of institutional payment summary (IPS) documents for the Pell Grant program for the award year prior to the award year for which the institution is applying for a demonstration grant.

(e) *The institution's default rate under the Perkins Loan Program.* (10 points) The Secretary evaluates the information provided by the institution on the FISAP to determine the institution's default rate under the Perkins Loan Program as of June 30 of the calendar year preceding the award year for which the institution applies for a grant. If the institution's default rate has changed since submission of the FISAP, the institution must submit revised Sections A and C of the FISAP in order for the Secretary to determine the institution's default rate under the Perkins Loan Program as of December 31 of the calendar year preceding the award year for which the institution applies for a grant.

(f) *Plan of operation.* (20 points) (1) The Secretary reviews each application to evaluate the quality of the plan of operation for the project.

(2) The Secretary determines the extent to which the plan of operation shows—

(i) An effective plan of management that insures proper and efficient administration of the project;

(ii) How the objectives of the project relate to the mission of the institution;

(iii) An effective plan to use institutional resources and personnel to achieve each objective;

(iv) A documented process to be used in selecting ICL borrowers; and

(v) An effective plan for publicizing the ICL Program.

(g) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to evaluate the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary evaluates—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (g) (1) and (2) of this section will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training in student financial aid administration, particularly the Perkins Loan Program, related to the objectives of the project, as well as other qualifications relevant to the quality of the project.

(h) *Evaluation plan.* (20 points) (1) The Secretary reviews each application to evaluate the quality of the evaluation plan for the Demonstration Project.

(2) The Secretary determines whether the applicant proposes methods of evaluation that are appropriate for the project and, to the extent possible, produce procedures that may be replicated.

(i) *Willingness to overmatch.* (10 points) The Secretary reviews each application to determine whether the applicant is willing to contribute institutional capital contribution to the loan fund exceeding that required under § 673.21.

(Approved by the Office of Management and Budget under control number 1840-0589)

(Authority: 20 U.S.C. 1087b)

**§ 673.15 Selection criteria—continuation grants.**

(a) *Compliance with performance and reporting requirements.* The Secretary evaluates the FISAP to determine

whether the institution has demonstrated a high degree of compliance with the performance and reporting requirements of the Perkins Loan program as evidence of continuing ability to implement the repayment administration activities required by the ICL Program.

(b) *Evaluation.* The Secretary determines whether the evaluation submitted by the institution of its experience with the Demonstration Project is thorough and indicates a high level of administrative capability and institutional commitment to the ICL Demonstration Project.

(Authority 20 U.S.C. 1087b)

**§ 673.16 Determination of need for ICL Demonstration Project funds.**

(a) The Secretary determines an institution's need for ICL Demonstration Project fund Federal Capital Contributions (FCC) according to 34 CFR 674.8, 674.7, and 674.7a.

(b) The amount of Perkins Loan FCC allocated to the institution is considered in determining remaining institutional need for ICL funds.

(Authority: 20 U.S.C. 1087b)

**§ 673.17 Allocation of ICL Demonstration Project funds.**

(a) The Secretary allocates ICL Demonstration Project funds to institutions on the basis of the institution's need for ICL funds determined in accordance with § 673.16.

(b) If funds appropriated for the ICL Demonstration Project FCC are insufficient to fund the aggregate amount of unmet institutional need as determined in 34 CFR 674.6 for Demonstration Project Institutions, the Secretary allocates funds to institutions on the basis of—

(1) The ratio of each institution's unmet need to the aggregate amount of that need at all Demonstration Project institutions; and

(2) The Secretary's determination of the amount of funds needed to create or sustain an ICL Demonstration Project at the institution at a level consistent with the purpose of the ICL Demonstration Project.

(c)(1) If an institution anticipates not using all of its allocation for an award year for ICLs and for authorized expenses by the end of that award year, it must specify the expected unused amount to the Secretary and return those funds, if directed.

(2) The Secretary distributes funds returned in accordance with paragraph (c)(1) of this section in a manner that best carries out the purposes of the ICL program.

(Authority: 20 U.S.C. 1087b(c))

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Part V

# Department of Education

34 CFR Part 614

College Facilities Loan Program; Proposed Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 614

College Facilities Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes regulations for the College Facilities Loan Program. These proposed regulations would implement changes effected in the Higher Education Amendments of 1986. These regulations establish selection criteria and other requirements for the award of low interest loans to undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing, undergraduate academic facilities, and other educational facilities for students and faculty.

DATES: Comments must be received on or before June 11, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mr. Sumner Bravman, Program Manager, College Facilities Loan Program, Division of Higher Education Incentive Programs, Office of Higher Education Programs, Office of Postsecondary Education, Department of Education, (Room 3022 ROB–3), 400 Maryland Avenue, SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Sumner Bravman, (202) 732–4394.

SUPPLEMENTARY INFORMATION: The Higher Education Amendments of 1986 reauthorized and revised the college construction loan program that the Secretary previously administered under Title IV of the Housing Act of 1950, which has now been repealed. The program is now authorized by Title VII, Part F of the Higher Education Act of 1965, as amended. In view of the major statutory changes that were made to this program, previously known as the College Housing Program, the Secretary is proposing to rename the program as the College Facilities Loan Program and to revise existing regulations to conform to applicable statutory changes.

These changes are in the following areas:

*Eligible Facilities.* Assistance is provided for housing, undergraduate academic facilities, and other educational facilities for students and faculties. However, loans for undergraduate academic facilities may only be made in connection with facilities that will be used primarily for the instruction of students pursuing a baccalaureate degree or for the administration of the educational programs serving these students.

*Program Priorities.* The Secretary is required to give priority to loans for renovation or reconstruction of undergraduate academic facilities, and to loans for renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time.

*Selection Criteria.* New selection criteria have been proposed for: (1) Loans for housing facilities, (2) loans for undergraduate academic facilities, and (3) loans for other educational facilities.

*Interest Rate.* Loans shall bear interest at a rate not to exceed 5.5% per annum.

*Limitations on Loans.* The minimum loan amount is $250,000 and the maximum loan amount is $3,000,000.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant impact on a substantial number of small entities. The small entities affected by these regulations are small institutions of postsecondary education. These regulations describe the program and establish minimal application requirements. They will not have a significant economic impact on the institutions affected.

Paperwork Reduction Act of 1980

Sections 614.12, 614.20, 614.21, 614.22, 614.23, 614.27, 614.28, and 614.45 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3022, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 614

Colleges and universities, Education, Grant programs—housing and community development, Housing, Loan Programs—housing and communities development, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.142)

Dated: May 8, 1987.

William J. Bennett,

*Secretary of Education.*

The Secretary proposes to revise Part 614 of Title 34 of the Code of Federal Regulations to read as follows:

## PART 614—COLLEGE FACILITIES LOAN PROGRAM

### Subpart A—General

Sec.

614.1 What is the College Facilities Loan Program?
614.2 Who is eligible to receive a loan?
614.3 What types of projects may the Secretary fund?
614.4 What regulations apply?
614.5 What definitions apply?

### Subpart B—How Does One Apply for a Loan?

614.10 How does one submit an application?
614.11 What conditions of eligibility apply?
614.12 What evidence, assurances, and opinions of counsel are required of the applicant institution?
614.13 What application procedures apply to non-profit student housing cooperatives?
614.14 What application procedures apply to non-profit corporations?

### Subpart C—How Does the Secretary Make a Loan?

614.20 How does the Secretary evaluate applications?
614.21 What selection criteria are used to evaluate applications for loans for housing facilities?
614.22 What selection criteria are used to evaluate loans for undergraduate academic facilities?
614.23 What selection criteria are used to evaluate applications for loans for other educational facilities?
614.24 What apportionment requirements and other limitations apply?
614.25 What determination must be made by the Secretary regarding non-availability of equally favorable terms and conditions?
614.26 What is required in a loan agreement?
614.27 What kinds of security for the loan are required?
614.28 What evidence of an approved debt instrument is required?
614.29 When does loan closing take place?
614.30 What are the conditions for interim financing?

### Subpart D—What Conditions Must be Met After an Award?

614.40 What are the general rules for determining eligible development costs?
614.41 What are ineligible development costs?
614.42 What are the requirements with respect to a construction accounts?
614.43 What are the procedures for loan disbursement?
614.44 How shall the balance remaining in the construction fund be disposed of?
614.45 How is the determination of final approved construction costs made?
614.46 How must pledged revenues be applied?
614.47 What are the length and maturity of loans?
614.48 What are borrowers' non-financial obligations?

Authority: 20 U.S.C. 1132g–1132g–3, unless otherwise noted.

### Subpart A—General

#### § 614.1 What is the College Facilities Loan Program?

The College Facilities Loan Program provides low interest loans to assist undergraduate postsecondary educational institutions in the construction, reconstruction, or renovation of housing, undergraduate academic facilities, and other educational facilities for students and faculties.

(Authority: 20 U.S.C. 1132g)

#### § 614.2 Who is eligible to receive a loan?

Any of the following are eligible to receive a loan:

(a) Any public or private non-profit undergraduate postsecondary educational institution which offers, or provides satisfactory assurance to the Secretary that it will offer within a reasonable time after completion of the facility for which assistance is requested under this part, at least a two-year program acceptable for full credit toward a baccalaureate degree.

(b) Any public educational institution that—

(1) Is administered by a college or university which is accredited by a nationally recognized accrediting agency or association;

(2) Offers technical or vocational instruction; and

(3) Provides residential facilities for some or all of the students receiving that instruction.

(c) Any public or non-profit private hospital that—

(1) Operates a school of nursing beyond the level of high school and is approved by an appropriate State authority; or

(2) Is approved for internships by an accrediting agency or association recognized by the Secretary.

(d) Any non-profit corporation established for the sole purpose of providing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section if—

(1) The housing or facilities are not restricted to students or faculty on the basis of their membership in or affiliation with any social, fraternal, or honorary society or organization; and

(2) Upon dissolution of the non-profit corporation, all title to any property built or purchased with proceeds of the loan will go to the institutions or be used for some other non-profit educational purpose.

(e) Any agency, public authority, or other instrumentality of any State, established for the purpose of providing or financing housing or other educational facilities for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(f) Any non-profit student housing cooperative corporation established for the purpose of providing housing for students or for students and faculty of one or more institutions referred to in paragraph (a) or (b) of this section.

(Authority: 20 U.S.C. 1132g–3)

#### § 614.3 What types of projects may the Secretary fund?

(a) The Secretary approves loans for projects that enable undergraduate postsecondary educational institutions to construct, reconstruct, or renovate—

(1) Housing facilities for students and faculties;

(2) Undergraduate academic facilities; or

(3) Other educational facilities.

(b) The Secretary may announce from among those categories listed in paragraph (a) of this section funding priorities under this program in any given fiscal year through a Notice pubished in the **Federal Register** in accordance with the procedures in 34 CFR 75.105.

(c) In addition to the priorities that may be established under paragraph (b) of this section, the Secretary gives priority to loans for renovation or reconstruction of—

(1) Older undergraduate academic facilities; and

(2) Undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period.

(Authority: 20 U.S.C. 1132g–2)

#### § 614.4 What regulations apply?

The following regulations apply to the College Facilities Loan Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Subpart D and P, Part 75 (Direct Grant Programs) §§ 75.105, 75.600–75.616, Part 77, and Part 79.

(b) The regulations in this Part 614.

(Authority: 20 U.S.C. 1132g–1)

#### § 614.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR 34 Part 77.1:

| | |
|---|---|
| Applicant | Budget |
| Application | Department |
| Award | EDGAR |

| | |
|---|---|
| Facilities | Recipient |
| Fiscal year | Secretary |
| Nonprofit | State |
| Private | Supplies |
| Public | |

(b) *Revised EDGAR definitions.* The following terms defined in EDGAR, 34 CFR 77.1, are redefined for this part as follows:

"Acquisition" means taking ownership of property through purchase at fair market value.

"Equipment" means non-expendable personal property having a useful life of more than ten years, including machinery, fixtures, and other items necessary for maintenance and operation of a facility, except books, computer software, instructional materials, and other items involving current operating expenses such a fuel, supplies, and serviceable parts. Equipment may consist of—

(1) "Built-in equipment," which is a permanent part of a facility; and

(2) "Initial equipment," which includes furniture and other necessary and appropriate items for the functioning of a facility taking into account the specific purposes of the facility.

"Project" means the construction activity that is proposed for funding by an applicant under this program.

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Higher Education Act of 1965, as amended. Unless otherwise indicated, references to titles in this part are to titles of the Act.

"Assignable area" means the square footage of floor space in facilities which is designated and available for assignment to specific functional purposes, but does not include—

(1) Areas used for general circulation within a building;

(2) Areas for public washrooms;

(3) Areas for building maintenance or custodial services; or

(4) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures available for assignment to specific functional purposes.

"Construction" means—

(1) The erection of new or the expansion of existing structures, including acquisition of the land thereunder, and the acquisition and installation of initial equipment therefor; or

(2) The acquisition of existing structures, including the land thereunder, not owned by the institution involved.

"Design capacity", with respect to housing, means the number of occupants a building was originally designed to house, or if fewer, the maximum number of occupants permitted by State or local building codes.

"Development cost" means costs of the construction, reconstruction, or renovation of the housing, undergraduate academic facilities, or other educational facilities, including necessary site improvements to permit its use for housing, undergraduate academic facilities, or other educational facilities.

(20 U.S.C. 1132g–3(d))

"Facilities" means members of the faculty and their families.

"Full-time enrollment" means the number of full-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

"Gross area" means the total square footage of floor space within the outside faces of exterior walls in the facilities including common areas such as halls and stairways, public washrooms, and area for building maintenance and utilities.

"Housing" means—

(1) New or existing structures suitable for dwelling use by students or students and faculty and their families, including—(i) dormitories; and (ii) Apartments; and

(2) Dwelling facilities for students or faculty provided by rehabilitation, alteration, conversion, or improvement of existing structures that are otherwise inadequate for the proposed dwelling use.

(20 U.S.C. 1132g–3(a))

"Housing shortage" means an existing need for decent, safe, and sanitary housing for currently enrolled full-time undergraduate students and faculty.

"Other educational facilities" means—

(1) New or existing structures suitable for use as cafeterias or dining halls, student centers or student unions, infirmaries or other inpatient or outpatient health facilities, or for use as other essential service facilities; and

(2) Structures suitable for those uses provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for those uses.

(20 U.S.C. 1132g–3(f))

"Part-time enrollment" means the number of part-time undergraduate resident and non-resident students, as reported by the educational institution—for the fall semester of the academic year prior to that in which the application is filed—to the Center for Education Statistics of the Department of Education for its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

"Reconstruction or renovation" means rehabilitation, alteration, conversion or improvement (including the acquisition and installation of initial equipment, or modernization or replacement of that equipment) of existing structures. ("Major renovation" means reconstruction or renovation with a total development cost in excess of $100,000.)

(20 U.S.C. 1132i–1(1)(B))

"Substandard housing" means student housing, either on campus or off campus that—

(1) Is owned or leased by an institution eligible under § 614.2; and

(2) Fails to meet current applicable State or local building code requirements.

"Undergraduate academic facilities" means structures suitable for use as classrooms, laboratories, libraries, and related facilities, the primary purpose of which is the instruction of students pursuing a baccalaureate degree, or for administration of the educational programs serving those students, and maintenance, storage, or utility facilities essential to operation of these facilities, as well as infirmaries or other facilities designed to provide primarily outpatient care for students and instructional personnel. The term does not include facilities such as—

(1) Dormitories, residence halls, or similar facilities designed for residence or habitation;

(2) Facilities primarily intended for events for which admission is to be charged the general public;

(3) Gymnasiums, stadiums, swimming pools, student centers, or other similar facilities specially designed for athletic or recreational activities; or

(4) Facilities used for religious worship or sectarian activities, or used in connection with a program conducted by a school or department of divinity.

(Authority: 20 U.S.C. 1132g–1(c), 1132g–3(c))

## Subpart B—How Does One Apply for a Loan?

### § 614.10 How does one submit an application?

(a) An applicant for a reservation of funds for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information required by the Secretary.

(b) (1) An applicant may submit only one application for a reservation of

funds in any fiscal year for each category of project described in §614.3.

(2) For purposes of paragraph (b) (1) of this section, the Secretary considers as a separate applicant a branch campus of a multi-campus institution if that branch campus has its own Federal Interagency Committee on Education (FICE) identification number.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.11 What conditions of eligibility apply?**

(a) The Secretary considers a project eligible to receive assistance only if—

(1) The applicant has not contracted for construction before filing its application;

(2) The facility will not be used—

(i) For religious worship;

(ii) In connection with a school or department of divinity; or

(iii) For a school providing either training for religious purposes or principally sectarian instruction; and

(3) Construction will be undertaken in an economical manner, and the facilities are not or will not be of elaborate or extravagant design or materials.

(b) The Secretary does not approve a college facilities loan under this part for any facility on the campus of an undergraduate educational institution until ten years after the date on which a previous loan for another facility on that campus was made under this part.

(c) Except in cases where construction assistance is necessary to remove a threat to life or limb or to repair a facility affected by a natural disaster, the Secretary does not approve a loan for a project in a facility on which there is an outstanding loan made under this part or under Title IV of the Housing Act of 1950.

(d) The Secretary does not approve a loan to an institution that is—

(1) Delinquent on a loan previously made under the Act, or under Title IV of the Housing Act of 1950, whether or not the Secretary has agreed to any deferment; or

(2) In default of any other obligation made under any other Federal program.

(e) The Secretary does not approve a loan to an institution that is financially insolvent.

(Authority: 20 U.S.C. 1132g–(b), 1132g–1(c))

**§ 614.12 What evidence, assurances, and opinions of counsel are required of the applicant institution?**

An applicant shall submit to the Secretary, as part of its application, the following evidence, assurances, and opinions of counsel:

(a) Satisfactory evidence that the applicant has or will have—based on title or lease—an interest in the project site, including the right of access, that is sufficient to ensure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, reconstruct or renovate or maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the Secretary offers and the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The securitry may be one or a combination of procedures listed in § 614.27.

(e) Satisfactory assurance that the applicant will not, without consent of the Secretrary, sell, mortgage, encumber, or lease to others during the life of the loan, the facility constructed, reconstructed, or renovated with the aid of the loan.

(f) Legal opinions by bond counsel or legal counsel with respect to—

(1) The legal sufficiency of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legal sufficiency of the debt instrument and collateral on delivery.

(g) As used in this paragraph, "bond counsel" means a law firm or individual lawyer—

(1) Who is thoroughly experienced in the financing of construction, reconstruction, or renovation projects through the issuance of bonds;

(2) Whose approving opinions have been previously accepted by purchasers of bonds offered at public sales; and

(3) Who, if the borrower is a public institution or agency, is a recognized bond counsel in the municipal field.

(h) As used in this paragraph, "legal counsel" means a law firm or individual lawyer—

(1) Having experience in the financing of construction, reconstruction, or renovation projects; and

(2) Whose opinions with regard to that type of financing have been accepted previously by responsible lenders or lending institutions.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.13 What application procedures apply to non-profit student housing cooperatives?**

A nonprofit student housing cooperative, as described in § 614.2(f), that applies for a reservation of funds for a loan must assure the Secretary at the time of its application that—

(a) The institution the proposed project is intended to serve has agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution from cosigning the loan, the institution has approved the cooperative and the proposed project.

(Authority: 20 U.S.C. 1132g–3(b))

**§ 614.14 What application procedures apply to non-profit corporations?**

If a non-profit corporation described in § 614.2(d) that has not been established by the institution or institutions the proposed project is intended to serve applies for a reservation of funds for a loan, it shall assure the Secretary at the time of its application that—

(a) The educational institution or institutions the proposed project is intended to serve have agreed to cosign the loan as a borrower; or

(b) If State law in effect on September 7, 1964 prevents the institution or institutions from cosigning the loan, the institution or institutions have approved the corporation and the proposed project.

(Authority: 20 U.S.C. 1132g–3(b))

## Subpart C—How Does the Secretary Make a Loan?

**§ 614.20 How does the Secretary evaluate applications?**

The Secretary evaluates applications for loans to construct, reconstruct or renovate—

(a) Housing facilities according to the criteria in § 614.21;

(b) Undergraduate academic facilities according to the criteria in § 614.22; and

(c) Other educational facilities according to the criteria in § 614.23.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.21 What selection criteria are used to evaluate applications for loans for housing facilities?**

The Secretary evaluates each application for a loan for housing facilities on the basis of the following criteria:

(a) *Use of existing housing.* (10 points)

(1) The Secretary considers the extent to which the institution makes effective use of the undergraduate student

housing space that it owns or leases as measured by the number of assignable square feet per undergraduate student occupant.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of assignable square feet per undergraduate student occupant.

(b) *Housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a housing deficiency as measured by the number of accommodations required to—

(i) Eliminate overcrowding of undergraduate students, that is, occupancy in excess of design capacity;

(ii) Provide accommodations for undergraduate students living a substandard housing; and

(iii) Provide accommodations for undergraduate students denied housing but registered for classes for the opening fall semester preceding the date of application.

(2) The Secretary assigns the highest scores to institutions with the greatest housing deficiency.

(c) *Relative housing deficiency.* (20 points)

(1) The Secretary considers the extent to which the institution has a relative housing deficiency as measured in terms of a percentage obtained by dividing the total housing deficiency in § 614.21(b) by the institution's full-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the highest relative housing deficiency.

(d) *Cost effectiveness of project.* (30 points)

(1) The Secretary considers the cost effectiveness of the project as measured by the total development cost per gross square foot of the project, and the total development cost per undergraduate student accommodation.

(2) The Secretary assigns up to 15 points to institutions with the lowest cost per gross square foot, and up to 15 points to institutions with the lowest cost per undergraduate student accommodation.

(e) *Financial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student, as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per student.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.22 What selection criteria are used to evaluate loans for undergraduate academic facilities?**

(a) The Secretary evaluates each application for a loan for the construction of new undergraduate academic facilities according to the following criteria:

(1) *Increase in enrollment.* (25 points)

(i) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(2) *Relative increase in enrollment.* (25 points)

(i) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(ii) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

(b) The Secretary evaluates each application for a loan for the reconstruction or renovation of undergraduate academic facilities according to the following criteria:

(1) *Age of undergraduate academic facilities to be renovated or reconstructed.* (25 points)

(i) The Secretary considers the date of construction completion of the undergraduate academic facilities to be renovated or reconstructed.

(ii) The Secretary assigns the highest scores to the oldest facilities.

(2) *Deferred maintenance.* (25 points)

(i) The Secretary considers the extent to which the facilities have gone without major renovation or reconstruction.

(ii) The Secretary assigns the highest scores to the facilities that have gone the longest time without major renovation or reconstruction.

(3) *Use of existing undergraduate academic facilities.* (30 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate academic facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per student.

(4) *Financial need.* (20 points)

(i) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. The expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(ii) The Secretary assign the highest scores to institutions with the lowest expenditure per undergraduate student.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.23 What selection criteria are used to evaluate applications for loans for other educational facilities?**

The Secretary evaluates each application for a loan for other educational facilities according to the following criteria:

(a) *Increase in enrollment.* (25 points)

(1) The Secretary considers the numerical increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest increases in enrollment.

(b) *Relative increase in enrollment.* (25 points)

(1) The Secretary considers the percentage increase in undergraduate student enrollment at the institution or branch campus where the construction would occur, as calculated by the percentage increase in the sum of the full-time enrollment and one-third of the part-time enrollment, over a three-year period beginning with the fall semester that began three years preceding the most recent fall semester.

(2) The Secretary assigns the highest scores to institutions with the largest relative increases in enrollment.

(c) *Use of existing other educational facilities.* (30 points)

(1) The Secretary assesses the extent to which the institution makes use of its existing other educational facilities by considering the amount of assignable square feet in those facilities per undergraduate student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per undergraduate student.

(d) *Finacial need.* (20 points)

(1) The Secretary considers the basic education and general annual expenditures per undergraduate student as calculated by dividing the amount of expenditures by the sum of the full-time enrollment and one-third of the part-time enrollment. These expenditures must be based on data reported in the annual Center for Education Statistics Integrated Postsecondary Education Data Systems survey for the most recent year for which the data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest expenditure per undergraduate students.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.24 What apportionment requirements and other limitations apply?**

(a) The Secretary awards not more than 12.5 percent of the amount of the funds provided under this part to educational institutions within any one State.

(b) Subject to paragraph (a) of this section, the Secretary may, as necessary, deviate from the rank order of applications in each category of loans to ensure that not less than ten percent of the number of loans made or not less than ten percent of the amount of total funds available are reserved for applications from historically black colleges and universities.

(c) The maximum loan that the Secretary makes to an eligible applicant is $3,000,000.

(d) The minimum loan that the Secretary makes to an eligible applicant is $250,000.

(Authority: 20 U.S.C. 1132g–1(c), 1132g–2)

**§ 614.25 What determination must be made by the Secretary regarding non-availability of equally favorable terms and conditions?**

(a) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(b) In order to assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may require, including—if bonds are to be issued—public advertising for bids.

(Authority: 20 U.S.C. 1132g)

**§ 614.26 What is required in a loan agreement?**

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations in this part; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan including financial reporting requirements; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(Authority: 20 U.S.C. 1132–1(c))

**§ 614.27 What kinds of security are required for the loan?**

(a) A borrower shall evidence its loan by either notes or bonds issued by the borrower, secured by a mortgage, a trust indenture, project revenues, other revenue sources, or any combination thereof.

(b) If the Secretary determines that additional security is needed to assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds.

(2) A pledge of securities.

(3) A mortgage on other facilities or real property.

(4) A guarantee of the payment of principal and interest by a third party.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.28 What evidence of an approved debt instrument is required?**

After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary evidence of indebtedness in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.29 When does loan closing take place?**

Loan closing occurs at a time determined by the Secretary.

(Authority: 20 U.S.C. 1132–1g(c))

**§ 614.30 What are the conditions for interim financing?**

(a) A borrower may arrange for interim financing, subject to approval of the Secretary, to cover the cost of construction pending the loan closing.

(b) After the award of all prime construction contracts, if the Secretary finds that the borrower is unable to secure necessary interim financing on reasonable terms, the Secretary may provide for advances against the approved loan.

(Authority: 20 U.S.C. 1132g–1(c))

## Subpart D—What Conditions Must Be Met After an Award?

**§ 614.40 What are the general rules for determining eligible development costs?**

The Secretary determines eligible development costs by assessing the reasonableness and appropriateness of costs that would be incurred by the project taking into account—

(a) The timing of when certain costs would be incurred by the applicant; and

(b) The applicant's compliance with the regulations in this part.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.41 What are ineligible development costs?**

(a) The Secretary excludes from eligible development costs any costs for

construction, reconstruction, or renovation or for otherwise eligible equipment, if the construction, reconstruction, or renovation contract was entered into before the Secretary executed the loan agreement and before the Secretary concurred in the award of the contract, except in cases where there is a threat to life or limb or there is a natural disaster which is related to the construction project.

(b) In cases of threat to life or limb or a natural disaster, the Secretary, in determining the eligibility of costs incurred prior to execution of a loan agreement and the approval of a construction contract, requires that the applicant provide a certification from a licensed professional architect or engineer that construction is necessary and appropriate.

(c) The Secretary excludes from eligible development costs any costs for—

(1) Land incurred before the applicant files the application;

(2) The acquisition of a structure incurred before the applicant files the application;

(3) Equipment incurred before the date the applicant files the application; and

(4) Ineligible facilities included in the total development costs.

(Authority: 20 U.S.C. 1132g–3(d))

**§ 614.42 What are the requirements with respect to a construction account?**

(a) A borrower shall deposit in a separate account known as the Construction Account—

(1) The proceeds of the sale of the bonds or notes;

(2) Any interim advances against the approved loan; and

(3) All other money that the borrower will use in paying for the construction of the approved project.

(b) The borrower shall make all expenditures for construction, rehabilitation or acquisition from this account.

(c) Accounting for this account must be in accordance with generally accepted accounting principles.

(d) If the borrower chooses to invest the funds in this account, the borrower—unless otherwise prohibited by State or local law—shall invest those funds in—

(1) Direct obligations of the U.S. Government; or

(2) Obligations whose principal and interest are guaranteed by the U.S. Government.

(e) An investment made in accordance with paragraph (d) of this section must be in obligations that will mature not later than 18 months from the date of the investment.

(f) Any interest earned on the investment of idle funds in the Construction Account during the construction period must be deposited in the Construction Account. The interest must be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess must be used to reduce the outstanding principal amount of the loan.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.43 What are the procedures for loan disbursement?**

(a) The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(b) The Secretary charges interest on the advances at the same rate the Secretary charges interest on the loan.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.44 How shall the balance remaining in the construction fund be disposed of?**

Upon full settlement with all contractors, suppliers, and the other parties to whom it has incurred obligations under the project, a borrower shall dispose of any money remaining in the Construction Account in accordance with the provisions of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.45 How is the determination of final approved development costs made?**

(a) For the purpose of determining the final approved development costs, the Secretary may permit a borrower to use—in place of an audit by the Government—a certificate of project development costs prepared on forms prescribed by the Secretary and executed by the borrower.

(b)(1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include, but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, and other items of expense approved by the Secretary.

(Authority: 20 U.S.C. 1132g–1)

**§ 614.46 How must pledged revenues be applied?**

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues in a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.47 What are the length and maturity of loans?**

(a)(1) The maximum repayment period for a loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, reconstructed, renovated, or purchased with the proceeds.

(b) Loans must bear interest at a rate not to exceed 5.5 percent per annum.

(c) Unless the Secretary authorizes otherwise—

(1) The borrower must repay the loan semi-annually in substantially level total annual installments of principal and interest.

(2) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with a borrower's total financial planning.

(3) For a reasonable period of time—normally not exceeding two years following the closing of the loan—the Secretary may permit a borrower to make payments of interest only.

(Authority: 20 U.S.C. 1132g–1(c))

**§ 614.48 What are borrowers' non-financial obligations?**

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution, including its accreditation;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities;

(d) Repair and maintain the project facilities; and

(e) Never use the project facilities for religious worship or a sectarian activity or for a school or department of divinity.

(Authority: 20 U.S.C. 1132g–1(c))

[FR Doc. 87–10869 Filed 5–11–87; 8:45 am]
BILLING CODE 4000-01-M

**DEPARTMENT OF EDUCATION**

**[CDA No. 84.142]**

**Notice Inviting applications for New Awards Under the College Facilities Loan Program for Fiscal Year 1987**

*Purpose:* Provide low interest loans to eligible undergraduate postsecondary educational institutions for the construction, reconstruction, or renovation of housing facilities, undergraduate academic facilities, and other educational facilities.

*Deadline for Transmittal of Applications:* July 20, 1987.

*Applications Available:* June 1, 1987.

*Available Funds:* The Congress authorized $60,000,000 for this program in fiscal year 1987.

*Estimated Range of Awards:* $250,000 to $3,000,000.

*Estimated Average Size of Awards:* $1,500,000.

*Estimated Number of Awards:* 40.

*Project Period:* Until completion.

*Priorities:* In accordance with section 763(b) of the Higher Education Act, as amended, the Secretary gives priority to loans for renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time. In order to accomplish this objective, $31,000,000 will be reserved for loans for the renovation or reconstruction of older undergraduate academic facilities, and undergraduate academic facilities that have gone without major renovation or reconstruction for an extended period of time, and $29,000,000 will be reserved for loans for housing facilities.

*Deadline for Intergovernmental Review Comments:* September 18, 1987.

*Applicable Regulations:* Regulations governing the College Facilities Loan Program as proposed to be codified in 34 CFR Part 614. (Applications are being accepted based on the Notice of Proposed Rulemaking which is published in this issue of the **Federal Register**. If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

*Technical Assistance Workshops:* Applicants are invited to participate in technical assistance workshops to be held in five regional locations to assist applicants in application preparation. The workshops will take place in San Francisco on June 9, Dallas on June 11, Atlanta on June 16, Chicago on June 17, and Washington, DC on June 19. For specific information on these workshops, please contact the Division of Higher Education Incentive Programs on (202) 732-4394.

*For Applications or Information Contact:* Sumner Bravman, U.S. Department of Education, 400 Maryland Ave., SW., Room 3514, ROB-3, Washington, DC 20202. Telephone: (202) 732-4394.

*Program Authority:* 20 U.S.C. 1132g-1132g-3.

Dated: May 8, 1987.

C. Ronald Kimberling,

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 87-10893 Filed 5-11-87; 8:45 am]

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**H.R. 14/Pub. L. 100-33**

To designate certain river segments in New Jersey as study rivers for potential inclusion in the national wild and scenic river system. (May 7, 1987; 101 Stat. 299; 1 page) Price: $1.00

**H.R. 1963/Pub. L. 100-34**

To amend the Surface Mining Control and Reclamation Act of 1977 to permit States to set aside in a special trust fund up to 10 per centum of the annual State funds from the Abandoned Mine Land Reclamation Fund for expenditure in the future for purposes of abandoned mine reclamation, and for other purposes. (May 7, 1987; 101 Stat. 300; 2 pages) Price: $1.00

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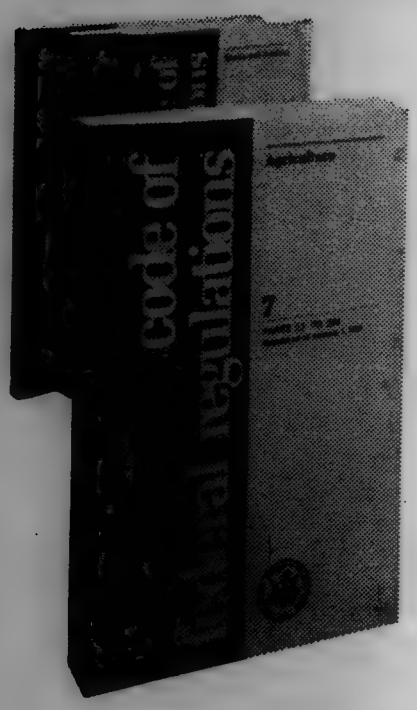


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# Presidential Documents

Title 3—

## The President

**Proclamation 5851 of May 8, 1987**

## National Digestive Diseases Awareness Month, 1987

**By the President of the United States of America**

**A Proclamation**

Digestive diseases represent one of our Nation's significant health problems. Each year digestive diseases affect roughly 20 million Americans. Their cost to Americans in terms of surgery, hospitalization, and time away from work is reckoned in tens of billions of dollars; but their cost in terms of suffering and mortality is incalculable.

Fortunately, private and public support has made continuing research into digestive diseases possible. In addition, concerned organizations—including the Digestive Diseases National Coalition, the National Digestive Diseases Advisory Board, the National Digestive Diseases Education and Information Clearinghouse, and the National Institute of Diabetes and Digestive and Kidney Diseases—have been conducting a national public awareness program about these serious diseases and their prevention.

In recognition of the importance of efforts to combat digestive diseases, the Congress, by Public Law 100–32, has designated the month of May 1987 as "National Digestive Diseases Awareness Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of May 1987 as National Digestive Diseases Awareness Month. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to participate in appropriate activities to encourage further research into the causes and cures of all types of digestive disorders.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87–11024
Filed 5–11–87; 2:49 pm]
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## Presidential Documents

**Proclamation 5652 of May 9, 1987**

# Jewish Heritage Week, 1987

**By the President of the United States of America**

**A Proclamation**

It is truly fitting that Americans pause each year to celebrate Jewish heritage, a tradition measured in millennia and one that has given much to our land. American Jews have helped build our Nation, enriching our ideals, fighting for our freedom, and making significant achievements in the arts, labor, business, academia, medicine, and every segment of American life.

This time of year calls us to reflection and remembrance about Jewish heritage. The observance of Passover tells the story of the passage from bondage to freedom and rekindles hope for mankind. The National Days of Remembrance of victims and survivors of the Holocaust and commemorations of the anniversary of the Warsaw Ghetto Uprising solemnly remind us that the shining glory and goodness of the spirit can arise from unutterable evil and tragedy—and that the words "Never Again" must always be our guide.

American Jews have given of their heart and soul for an America that has ever been a haven for the oppressed. That is reason for every American to rejoice and to remember.

The Congress, by House Joint Resolution 67, has designated the period of May 3 through May 10, 1987, as "Jewish Heritage Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period of May 3 through May 10, 1987, as Jewish Heritage Week. I call upon the people of the United States, interested organizations, and Federal, State, and local government officials to observe this week with appropriate activities and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-11025
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# Rules and Regulations

Federal Register
Vol. 52, No. 92
Wednesday, May 13, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## MERIT SYSTEMS PROTECTION BOARD

**5 CFR Part 1201**

### Practices and Procedures; Change in Approved Hearing Locations Based on Realignment of Regional Offices

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (the Board) announces a change in its approved hearing locations as a result of its realignment of the geographical jurisdiction of its regional offices. See 52 FR 10875, April 6, 1987. As a result of the jurisdictional changes, the City of Baltimore, Maryland is no longer a fixed hearing site for the Board's Philadelphia regional office but has been added as a hearing site for its Washington regional office. In addition, the City of Trenton, New Jersey has been added as a fixed hearing site for the Board's Philadelphia regional office. As a result of the jurisdictional changes and changes in approved hearing locations, the Board will be more responsive to the needs of appellant and agency clients.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Doheny (202) 653–7980.

**List of Subjects in 5 CFR Part 1201**

Government employees, Administrative practice and procedure, Civil rights.

Accordingly, 5 CFR Part 1201 is amended as set forth below:

## PART 1201—PRACTICES AND PROCEDURES

1. The authority for Part 1201 continues to read:

Authority: 5 U.S.C 1205 and 7701(j).

2. Appendix III to 5 CFR 1201 is amended by revising the approved hearing locations for the Philadelphia regional office and the Washington regional office to read as follows:

**Appendix III to Part 1201—Approved Hearing Locations**

* * * * *

**Philadelphia Region**

Philadelphia, Pennsylvania
Harrisburg, Pennsylvania
Pittsburgh, Pennsylvania
Wilkes-Barre, Pennsylvania
Trenton, New Jersey
Dover, Delaware
Norfolk, Virginia
Richmond, Virginia
Roanoke, Virginia
Charleston, West Virginia
Morgantown, West Virginia

* * * * *

**Washington Region**

Bailey's Crossroads, Virginia
Washington, DC
Baltimore, Maryland.

Dated: May 8, 1987.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 87–10699 Filed 5–12–87; 8:45 am]
BILLING CODE 7400-01-M

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

**5 CFR Part 1605**

### Error Correction Regulations

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. 99–335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986, 1986 U.S. Code Cong. & Ad. News (100 Stat. 514) (codified principally at 5 U.S.C. 8401–8479), as amended by Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, and Pub. L. 99–556, the Federal Employees' Retirement System Technical Corrections Act of 1986, to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600 through 1699. The Executive Director of the Board is publishing in Part 1605 interim regulations concerning procedures governing the correction of errors which occur during the administration of the Thrift Savings Plan.

**DATES:** Interim rules effective April 1, 1987; comments must be received by July 15, 1987.

**ADDRESS:** Comments may be sent to: John J. O'Meara, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** John J. O'Meara, (202) 653–2573.

**SUPPLEMENTARY INFORMATION:** These regulations govern procedures for correcting errors which may occur during the course of processing data on employee participation in the Thrift Savings Plan. These errors may occur as a consequence of action, or lack of action, on the part of an employee's or Member's agency or on the part of the Board. In addition, these regulations specify the action to be taken where an employee or Member fails to participate, or is delayed in participating, in the Thrift Savings Plan for reasons beyond his or her control and where there has not been an error on the part of the agency. The regulations are effective retroactive to April 1, 1987, the statutory commencement date of the Thrift Savings Plan.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal government procedures for correcting errors involving employee participation in the Thrift Savings Plan.

**Paperwork Reduction Act**

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

**Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date**

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These error correction procedures are being issued as interim regulations because the statutory commencement of

the Thrift Savings Plan was April 1, 1987, and it is necessary for the Board to have uniform procedures in place in order to correct errors relating to employee participation in this program.

**List of Subjects in 5 CFR Part 1605**

Administrative practice and procedure, Employee benefit plans, Government employees, Pensions, Retirement.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

*Executive Director.*

Title 5 of the Code of Federal Regulations is amended to add Part 1605 to Chapter VI to read as follows:

## PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

Sec.

1605.1 Definitions.
1605.2 Failure to participate or delay in participation.
1605.3 Insufficient deduction or contribution.
1605.4 Excess deduction or contribution.
1605.5 Delayed or erroneous posting of contributions or earnings.
1605.6 Agency allocation to incorrect account.
1605.7 Employees ineligible to receive government contributions or to participate.
1605.8 Claim procedure; agency or Board initiative; time limitation.

Authority: 5 U.S.C. 8351 and 8474.

### § 1605.1 Definitions.

Terms used in this part shall have the following meanings:

"Account" means an employee's account with the Thrift Savings Plan.

"Agency" means the organization which took an action or committed an error with respect to an employee's participation in the Thrift Savings Plan and the organization which is responsible for taking corrective action, but does not include the Thrift Savings Plan Recordkeeper (Recordkeeper).

"Board" means the Federal Retirement Thrift Investment Board.

"Employee" means "employee" as defined in 5 U.S.C. 8401(11) and 8331(1) and "Member" as defined in 5 U.S.C. 8401(20) and 8331(2).

"Executive Director" means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

"Recordkeeper" means the National Finance Center, U.S. Department of Agriculture, P.O. Box 61500, New Orleans, Louisiana 70161–1500.

### § 1605.2 Failure to participate or delay in participation.

(a) *Actions eligible for correction.* (1) If an employee fails to participate or is delayed in participating in the Thrift Savings Plan because of reasons beyond his or her control, but not because of action or lack of action by the agency, then prospective corrective action, at the employee's request, shall be taken in accordance with paragraph (b)(1) of this section.

(2) If an employee or Member fails to participate or is delayed in participating in the Thrift Savings Plan because of reasons that are attributable to his or her agency, the error will be corrected in accordance with paragraph (b)(2) of this section.

(b) *Correction procedures.* (1) A failure to participate or delay in participation pursuant to paragraph (a)(1) of this section shall be corrected effective not later than the first pay period beginning after the agency accepts the employee's election form.

(2) A failure to participate or delay in participation pursuant to paragraph (a)(2) of this section shall be corrected in the following manner:

(i) The agency shall correct the employee's payroll records immediately in order to assure accurate Thrift Savings Plan deductions in subsequent pay periods.

(ii) The agency shall, at the employee's election, deduct the amount attributable to the error from the employee's net payable salary according to an equal payment schedule agreed to by the employee. The agency may limit the number of pay periods over which the correction may be made; however, such limit may not be less than two times the number of pay periods over which the error occurred. The payment schedule must begin no later than the pay period following the date of the agreed upon schedule and it may not exceed four times the number of pay periods over which the error occurred.

(iii) A decision by the employee to contribute the retroactive amount shall be deemed irrevocable except where the employee or Member separates from Government service. In case of separation from Government service, the employee may terminate the retroactive contribution or accelerate the contribution by lump sum payment from the final salary payment. In case of death, the retroactive contribution of the deceased employee will be terminated as of the final salary payment.

(iv) In accordance with the payment schedule agreed to by the employee, the agency shall contribute to the employee's Thrift Savings Plan account the government matching amount which the agency would have been required to contribute had the error not occurred.

(v) The one percent basic government contribution, if due, will be contributed to the employee's Thrift Savings Plan account during the first pay period of the repayment schedule.

(vi) No earnings will be paid into an employee's Thrift Savings Plan account that would have accrued to such account but for the error causing the delay or failure of participation.

### § 1605.3 Insufficient deduction or contribution.

(a) *Errors eligible for correction.* An error of insufficient employee deduction shall be eligible for correction if an employee designated an amount or rate to be deducted from his or her net payable salary as an allotment to the Thrift Savings Plan on an election form that was accepted by the appropriate agency office and the amount or rate designated was not deducted, in whole or in part, and credited to the employee's account for the eligible pay periods because of agency error. An error of insufficient government contribution shall be corrected in accordance with this section.

(b) *Correction procedure.* In the event that there is an error eligible for correction pursuant to paragraph (a) of this section, the following procedure shall apply:

(1) The agency shall correct the employee's payroll records immediately in order to assure accurate Thrift Savings Plan deductions in subsequent pay periods.

(2) The agency shall, at the employee's election, deduct the amount attributable to the error from the employee's net payable salary according to an equal payment schedule agreed to by the employee. The agency may limit the number of pay periods over which the correction may be made; however, such limit may not be less than two times the number of pay periods over which the error occurred. This payment schedule must begin no later than the pay period following the date of the agreed upon schedule and it may not exceed four times the number of pay periods over which the error occurred.

(3) A decision by the employee to contribute the retroactive amount shall be deemed irrevocable except where the employee separates from Government service. In case of separation from Government service, the employee may terminate the retroactive contribution or accelerate the contribution by lump sum deduction from the final salary payment. In case of death, the retroactive contribution of the deceased employee

will be terminated as of the final salary payment.

(4) In accordance with the payment schedule agreed to by the employee, the agency shall contribute to the employee's Thrift Savings Plan account the Government matching contribution which the agency would have been required to contribute had the error not occurred.

(5) Any payment of the one percent contribution will be made to the employee's account not later than the first pay period beginning after the date on which the agency determines that an error occurred.

(6) No earnings will be paid into an employee's Thrift Savings Plan account that would have accrued to such account but for the error causing the underdeduction or failure to deduct.

**§ 1605.4 Excess deduction or contribution.**

(a) *Errors eligible for correction.* An error of overdeduction shall be eligible for correction if a participant designated an amount or rate to be deducted as an allotment to the Thrift Savings Plan on an election form that was accepted by the appropriate agency office and more than the amount designated was deducted and credited to the participant's account because of agency error. This section applies to deductions taken from the pay of an employee who did not elect to contribute. An error of excess government contribution shall also be corrected in accordance with this section.

(b) *Correction procedure.* On discovery of this error, the following actions shall take place no later than the pay period following the agency's discovery of the error:

(1) The agency shall correct the employee's payroll record immediately in order to assure accurate Thrift Savings Plan deductions in subsequent pay periods.

(2) The agency shall forward a summary adjustment record in the amount of the overdeduction of employee and Government contributions to the Recordkeeper to reduce the employee's account as appropriate. One summary adjustment record will be required for each tax year included in the adjustment period.

(3) Subject to paragraph (b)(5) of this section, the agency shall return the overdeducted employee contribution and credit the agency account with the overdeducted government contribution by appropriately crediting the routine transmittal of Plan funds to the Recordkeeper. The Thrift Savings Plan adjustment transaction will be used for this purpose. The Government's contribution must be returned within one year of the date of the mistake.

(4) Earnings attributable to both the overdeducted employee contribution and excess government contributions which have been paid into the employee's account will remain in the employee's account. In the event that the correction of this error liquidates an employee's account with respect to prinicipal, the earnings attributable to the overdeducted employee contribution and excess government contribution will be transferred to the appropriate undistributed earnings account.

(5) The amounts returned to the employer or the employee pursuant to paragraph (b)(3) of this section shall be reduced to reflect any applicable investment loss.

(6) The employee's agency shall correct its payroll records to reflect correct employee income information.

**§ 1605.5 Delayed or erroneous posting of contributions or earnings.**

If the Board fails to post accurately contributions or earnings to an employee's account, the error will be corrected. This correction shall adjust the employee's account to place the account in the position it would have been but for the Board's error.

**§ 1605.6 Agency allocation to incorrect account.**

(a) *Errors eligible for correction.* If an agency allocates the employee or government contribution of one employee to the account of another employee, the error shall be corrected in accordance with the procedures set forth in paragraph (b) of this section.

(b) *Correction procedures.* On discovery of this error, the following actions will take place no later than the pay period following the agency's discovery of the error.

(1) The agency shall correct the payroll records of the affected employees in order to assure accurate Thrift Savings Plan contributions and deductions in subsequent pay periods.

(2) The agency shall forward a summary adjustment record to the Recordkeeper which identifies the incorrect accounts and the amounts and types of funds which were incorrectly allocated.

(3) Subject to paragraph (b)(4) of this section the Record-keeper will transfer the appropriate amounts and related earnings from the incorrect account to the correct account.

(4) The amounts returned from the incorrect account to the correct account pursuant to paragraph (b)(3) of this section shall be reduced to reflect any applicable investment loss.

(5) The agency shall correct its payroll records to reflect correct income information for each account that was changed in order to correct the error.

**§ 1605.7 Employees ineligible to receive government contributions or to participate.**

(a) In the event that there is a credit of government contributions to an employee who is eligible to make employee contributions but who is ineligible to receive government contributions:

(1) The agency shall recover the government contributions with an appropriate Thrift Savings Plan adjustment transaction;

(2) The Board shall transfer any earnings on the government funds from the employee's account to the appropriate undistributed earnings account.

(b) In the event there is a credit of funds to an employee who is ineligible to participate in the Thrift Savings Plan:

(1) The agency shall return any employee contribution to the employee and recover any agency contribution with an appropriate Thrift Savings Plan adjustment transaction;

(2) The Board shall transfer any earnings on employee contributions and government funds to the appropriate undistributed earnings account.

**§ 1605.8 Claim procedure; agency or Board initiative; time limitation.**

(a) *Agency procedure.* Each agency responsible for processing employee elections to participate in the Thrift Savings Plan shall establish the following procedure which allows an employee to present a claim for correction under this part.

(1) The agency shall review all employee claims in order to determine whether they relate to an error which may have been made by the agency or by the Board. A claim which relates to possible Board errors shall be transmitted by the agency to the Board's Recordkeeper within 10 days of the agency's receipt of a written claim from the employee.

(2) The agency shall review a claim and provide the employee with a decision within 30 days of its receipt of the employee's written claim. The agency's decision shall be in writing and shall contain the following information—

(i) The agency's determination on the claim and the reasons therefor, including references to applicable statues or regulations;

(ii) In the case of a denial of the claim, in whole or in part, a description of any additional material or information

necessary for the employee to perfect the claim and an explanation of why such material or information is necessary, and

(iii) In the case of a denial of the claim, in whole or in part appropriate information as to the steps to be taken, as set forth below, if the employee wishes to appeal the agency decision on the claim.

(3) Within 30 days after receipt of an agency decision denying a claim, an employee may appeal the agency decision. An appeal shall be in writing and addressed to the agency official designated in the agency's decision. The employee's appeal may contain any document or comments the employee deems relevant to the claim.

(4) The agency shall make a decision on the employee's appeal not later than 30 days after its receipt of the appeal. The agency's decision on the appeal shall be written in an understandable manner and shall include the reasons therefor as well as references to applicable statutes and regulations. If the decision on the employee's appeal is not made within this 30 day time period, or if the decision on the appeal denies the employee's claim, in whole or in part, the employee shall have exhausted his or her administrative remedy and shall be eligible to file suit in the appropriate Federal district court pursuant to 5 U.S.C 8477. There is no administrative appeal of an agency final decision to the Board.

(b) *Board procedure.* The Board shall provide the following procedure for reviewing claims relating to possible errors on the part of the Board:

(1) On receipt of a claim transmitted by an agency in accordance with paragraph (a)(1) of this section, the Recordkeeper shall review the claim and provide the employee with a decision within 30 days of its receipt of the claim. This decision shall be in writing and shall contain the following information:

(i) The Recordkeeper's determination on the claim and the reasons therefor, including reference to applicable statutes or regulations;

(ii) In the case of a denial of the claim, in whole or in part, a description of any additional material or information necessary for the employee to perfect the claim and an explanation of why such material or information is necessary, and

(iii) In the case of a denial of the claim, in whole or in part, appropriate information as to the steps to be taken, as set forth below, if the employee wishes to appeal the Recordkeeper's decision on the claim.

(2) Within 30 days after the receipt of the Recordkeeper's decision denying a claim, an employee may appeal the decision. The appeal shall be in writing and addressed to the Executive Director, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, Post Office Box 511, Washington, DC 20044, and may contain any documents or comments the employee deems relevant to the claim.

(3) The Executive Director shall make a decision on the employee's appeal not later than 30 days after the Board's receipt of the appeal. This decision shall be written in an understandable manner and shall include the reasons therefor as well as references to applicable statutes and regulations. If the decision on the employee's appeal is not made within this 30 day time period, or if the decision denies the employee's claim, in whole or in part, the employee shall have exhausted his or her administrative remedy and shall be eligible to file suit in the appropriate Federal district court pursuant to 5 U.S.C. 8477.

(c) Agency or Board initiative. Errors or actions covered by this part may be corrected, in the manner and to the extent provided in this part, at the initiative of the agency or of the Board regardless of whether an employee submits a claim pursuant to this section.

(d) Time limitation. An error or action described in this Part shall only be eligible for correction pursuant to paragraphs (a) and (b) of this section for a period of three years from the date on which the employee discovered or should have discovered the error, whichever occurs first.

[FR Doc. 87-11020 Filed 5-12-87; 8:45 am]
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## 5 CFR Part 1631

## Disclosure of Records

**AGENCY:** Federal Retirement Thrift Investment Board.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. 99-335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986, 1986 U.S. Code Cong. & Ad. News (100 Stat. 514) (to be codified principally at 5 U.S.C. 8401 through 8479), as amended by Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986, and Pub. L. 99-556, the Federal Employees' Retirement System Technical Corrections Act of 1986, to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600 through 1699. The Executive Director of the Board is publishing in Part 1631 interim regulations governing procedures for handling requests for records under the Freedom of Information Act (5 U.S.C. 552) and other authorities.

**DATES:** Interim rules effective May 13, 1987; comments must be received on or before July 15, 1987.

**ADDRESS:** Comments may be sent to: John J. O'Meara, Federal Retirement Thrift Investment Board, Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** John J. O'Meara, (202) 653-2573.

**SUPPLEMENTARY INFORMATION:** The Board, as a new agency, is issuing interim regulations which implement the public information provisions of the Freedom of Information Act, as well as provide procedures for access to information and records under other authorities. The Board is an independent establishment located in Washington, DC and it has no field offices. However, the Board does have a recordkeeping responsibility which is performed by contract and the contractor may be located outside of the Washington, DC area. The records maintained for the Board by its contractor are subject to these disclosure regulations. At this time, the recordkeeping contract is held by the National Finance Center, Department of Agriculture, New Orleans, Louisiana.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures relating to the disclosure of records.

### Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

### Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Board wishes to have these procedures in existence at the earliest date in order to process requests for

records which are being maintained by the Board at this time.

**List of Subjects in 5 CFR Part 1631**

Administrative practice and procedure, Freedom of Information, and Records. Federal Retirement Thrift Investment Board.

**Francis X. Cavanaugh,**

*Executive Director.*

Title 5 CFR is amended by adding Part 1631 to Chapter VI to read as follows:

## PART 1631—AVAILABILITY OF RECORDS

### Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

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Authority: 5 U.S.C. 552, as amended by Pub. L. 93–502 and Pub. L. 99–570.

### Subpart A—Production or Disclosure of Records Under the Freedom of Information Act, 5 U.S.C. 552

#### § 1631.1 Definitions.

(a) "Board" means the Federal Retirement Thrift Investment Board.

(b) "Agency" means agency as defined in 5 U.S.C. 552(e).

(c) "Executive Director" means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

(d) "FOIA" means Freedom of Information Act, 5 U.S.C. 552, as amended.

(e) "General Counsel" means the General Counsel of the Federal Retirement Thrift Investment Board.

(f) "Workday" means those days when the Board is open for the conduct of government business, and does not include Saturdays, Sundays and legal public holidays.

#### § 1631.2 Purpose and scope.

This subpart contains the regulations of the Federal Retirement Thrift Investment Board, implementing 5 U.S.C. 552. The regulations of this subpart describe the procedures by which records may be obtained from all organizational units within the Board. Official records of the Board available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public only as prescribed by this subpart. To the extent that it is not prohibited by other laws the Board also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

#### § 1631.3 Organization and functions.

(a) The Federal Retirement Thrift Investment Board was established by the Federal Employees' Retirement System Act of 1986 (Pub. L. 99–335, 5 U.S.C. 8401 et seq). Its primary function is to manage and invest the Thrift Savings Fund for the benefit of participating Federal employees and Members of Congress. The Board is responsible for investment of the assets of the Thrift Savings Fund and managment of the Thrift Savings Plan. The Board consists of:

(1) The five part time members who serve on the Board;
(2) The Office of the Executive Director;
(3) The Office of Deputy Executive Director;
(4) The Office of the General Counsel; and
(5) Officials who are responsible for the following divisions—
  (i) Finance
  (ii) External Relations
  (iii) Employee Relations
  (iv) Automated Systems
  (v) Administration

(b) The Board has no field organization, however, it provides for its recordkeeping responsibility by contract and the contractor may be located outside of the Washington, D.C. area. Thrift Savings Plan records maintained for the Board by its contractor are Board records subject to these regulations. Offices are presently located at 1717 H Street NW., Washington, DC and the mailing address is Benjamin Franklin Station, P.O. Box 511, Washington, DC 20044. Regular office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday.

#### § 1631.4 Public reference facilities and current index.

(a) The Office maintains a public reading area located in Room 208, 1717 H Street NW., Washington, DC, and makes available for public inspection and copying a copy of all material required by 5 U.S.C. 552(a)(2), including all documents published by the Board in the Federal Register and currently in effect.

(b) The FOIA Officer or his or her designee shall maintain files containing all materials required to be retained by or furnished to the FOIA Officer under this subpart. The materials shall be filed by chronological number of request within each calendar year, indexed according to the exceptions asserted, and, to the extent feasible, indexed according to the type of records requested.

(c) The FOIA Officer shall also maintain a file open to the public, which shall contain copies of all grants or denials of appeals by the Board.

#### § 1631.5 Records of other agencies.

Requests for records that originated in another agency and are in the custody of the Board will be referred to that agency for processing, and the person submitting the request shall be so notified. The decision made by that agency with respect to such records will be honored by the Board.

#### § 1631.6 How to request records—form and content.

(a) A request made under the FOIA must be submitted in writing, addressed to: FOIA Officer, Federal Retirement Thrift Investment Board, Ben Franklin Station, P.O. Box 511, Washington, DC. 20044. The words "FOIA Request" should be clearly marked on both the letter and the envelope.

(b) Any Board employee or official who receives a FOIA request shall promptly forward it to the FOIA Officer, at the above address. Any Board employee or official who receives an oral request made under the FOIA shall inform the person making the request of the provisions of this subpart requiring a written request according to the procedures set out herein.

(c) Each request must reasonably describe the record(s) sought, including, when known: Entity/individual originating the record, date, subject matter, type of document, location, and

any other pertinent information which would assist in promptly locating the record(s).

(d) When a request is not considered reasonably descriptive, or requires the production of voluminous records, or places an extraordinary burden on the Board, seriously interfering with its normal functioning to the detriment of the business of the Government, the Board may require the person or agent making the FOIA request to confer with a Board representative in order to attempt to verify, and, if possible, narrow the scope of the request.

(e) Upon initial receipt of the FOIA request, the FOIA officer will determine which official or officials within the Board shall have the primary responsibility for collecting and reviewing the requested information and drafting a proposed response.

**§ 1631.7 Initial determination.**

The FOIA Officer or his or her designee shall have the authority to approve or deny requests received pursuant to these regulations. The decision of the FOIA Officer shall be final, subject only to administrative review as provided in § 1631.10.

**§ 1631.8 Prompt response.**

(a) The FOIA Officer or his or her designee shall either approve or deny a request for records within 10 working days after receipt of the request unless additional time is required for one of the following reasons:

(1) It is necessary to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(2) It is necessary to consult with another agency having a substantial interest in the determination of the request or to consult with two or more components of the Board having substantial subject matter interest therein.

(b) When additional time is required for one of the reasons stated in paragraph (a) of this section, the FOIA Officer or his or her designee shall acknowledge receipt of the request within the 10 workday period and include a brief explanation of the reason for the delay, indicating the date by which a determination will be forthcoming. An extended deadline adopted for one of the reasons set forth above may not exceed 10 additional workdays.

**§ 1631.9 Responses—form and content.**

(a) When a requested record has been identified and is available, the FOIA Officer or his or her designee shall notify the person making the request as to where and when the record is available for inspection or that copies will be made available. The notification shall also advise the person making the request of any fees assessed under § 1631.13 of this part.

(b) A denial or partial denial of a request of a record shall be in writing signed by the FOIA Officer or his or her designee and shall include:

(1) The name and title of the person making the determination;

(2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record, and a brief explanation of how the exemption applies to the record withheld; or

(3) A statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed by § 1631.8, and that the denial will be reconsidered as soon as the search or examination is complete; and

(4) A statement that the denial may be appealed to the General Counsel within 30 days of receipt of the denial or partial denial. If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the person making the request shall be so notified.

**§ 1631.10 Appeals to the General Counsel from initial denials.**

(a) When the FOIA Officer or his or her designee has denied a request for records in whole or in part, the person making the request may, within 30 calendar days of its receipt, appeal the denial to the General Counsel. The appeal must be in writing, addressed to the General Counsel, Federal Retirement Thrift Investment Board, Ben Franklin Station, P.O. Box 511, Washington, DC 20044 and clearly labeled as a Freedom of Information Act Appeal".

(b) The General Counsel will act upon the appeal within 20 workdays of its receipt. The General Counsel may extend the 20 day period of time by any number of workdays which could have been claimed and consumed by the FOIA Officer or his or her designee under § 1631.8 but which were not claimed and consumed in making the initial determination. The Board's action on any appeal shall be in writing, signed by the General Counsel.

(c) If the decision is in favor of the person making the request, the General Counsel shall order records promptly made available to the person making the request.

(d) A denial in whole or in part of a request on appeal shall set forth the exemption relied on and a brief explanation of how the exemption applied to the records withheld and the reasons for asserting it, if different from that described by the FOIA Officer or his or her designee under § 1631.9. The denial shall state that the person making the request may, if dissatisfied with the decision on appeal, file a civil action in the district in which the person resides or has his principal place of business, in the district where the records are located, or in the District of Columbia.

(e) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Board.

(f) On appeal, the General Counsel may reduce any fees previously assessed.

**§ 1631.11 Fees to be charged—categories of requesters.**

(a) There are four categories of FOIA requesters: Commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall only begin upon receipt of a proper request which reasonably identifies records being sought and which identifies the specific category of the requester. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of the Board is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents, nor waiver or reduction of fees, based on an assertion that disclosure would be in the public interest. The full allowable direct cost of searching for, and reviewing, records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, the Board will look to the use to which a requester will put the documents requested. Where a requester does not explain his/her purpose, or where his/her purpose is insufficient, the Board shall require the requester to provide information regarding the use to be made of the information prior to accepting the request for processing. The time limits for processing and

response shall not begin until such information is adequately received.

(2) When records are being requested by representatives of the news media, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. Representatives of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g. electronic dissemination of newspapers through telecommunications services) such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester must meet the criteria specified in this section and his or her request must not be made for a commercial use basis as that term is defined under paragraph (a)(1) of this section.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of the Board is to levy reproduction charges only, excluding charges for the first 100 pages. The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(4) For any other request which does not meet the criteria contained in paragraphs (a)(1) through (3) of this section, the fee policy of the Board is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. The first two hours of computer search time is based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, the Board shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in the Board's systems of records shall continue to be treated under the provisions of the Privacy Act of 1974, which permit fees only for reproduction.

(b) Except for requests that are for a commercial use, the Board may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requestor may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, the Board must have a solid basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, the Board must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may the Board aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, the Board shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commerical use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed $30.00, the Board shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and noncommercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed $30.00, the Board shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed $30.00, the Board shall not charge the requester any costs.

**§ 1631.12 Waiver or reduction of fees.**

(a) The Board may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(b) A fee waiver request shall indicate how the information will be used, to whom it will be provided, whether the requester intends to use the information for resale at a fee above actual cost, any personal or commercial benefits that the requester reasonably expects to receive by the disclosure, provide justification to support how release would benefit the general public, the requester's and/or intended user's identity and qualifications, expertise in the subject area and ability and intention to disseminate the information to the public.

**§ 1631.13 Prepayment of fees over $250.**

(a) When the Board estimates or determines that allowable charges that a requester may be required to pay are

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likely to exceed $250.00, the Board may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing, the Board may require the requester to pay the full amount owed plus any applicable interest as provided in § 1631.14(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When the Board acts under paragraph (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Board has received fee payments under paragraph (a) or (b) of this section.

**§ 1631.14 Fee schedule.**

(a) *Manual Searches for Records.* The Board will charge at the salary rate(s) (basic pay plus 16 percent) of the employee(s) conducting the search. The Board may assess charges for time spent searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure. The Board may assess charges for time spent searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure.

(b) *Computer Searches for Records.* The Board will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. The Board may assess charges for time spent searching, even if the Board fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication Costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charge will be $.15 per page.

(2) The fee for reproducing copies of records over 8½ x 14 inches, or whose physical characteristics do not permit reproduction by routine electrostatic copying, shall be the direct cost of reproducing the records through Government or commerical sources. If the Board estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester had indicated in advance his/her willingness to pay fees as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, the Board shall charge the actual cost, including operator time, of production of the tape or printout. If the Board estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, the Board shall charge the actual direct costs of producing the document(s). If the Board estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. The Board may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code, and it will accrue from the date of the billing.

(e) The Board shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Board may choose to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, the Board will inform requesters of the steps necessary to obtain records from those sources.

**§ 1631.15 Information to be disclosed.**

(a) In general, all records of the Board are available to the public, as required by the Freedom of Information Act. However, the Baord claims the right, where it is applicable, to withhold material under the provisions specified in the Freedom of Information Act as amended (5 U.S.C. 552(b)).

(b) *Records from Non-U.S. Government Source.* (1) Upon receipt of a request for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, including a contract proposal or contract material, the Board will contact the source of the requested record or information requesting advice as to whether the release of the record would adversely affect the source's competitive position or invade anyone's privacy. Subsequent to receipt of such advice, the Board will independently examine the requested document and will notify the requester of the final decision.

(2) Board personnel will generally consider two exemptions in the FOIA in deciding whether to withhold from disclosure material from a non-U.S. Government source. Exemption 4 permits withholding of "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Exemption 6 permits withholding certain information, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." The source whose material has been requested will be asked to supply convincing justification for any material it wishes withheld under the Act, in accordance with the following general guidelines.

(i) For consideration under exemption 4, the supplier of the record or information should identify material that would be likely to cause substantial harm to its present or future competitive position if it were released. If a contractor, the provider should assume that the material will be released to a competitor, even if that is not always the case. A contractor must provide detailed information on why release would be harmful, e.g., the general custom or usage in the business; the number and situation of the persons who have access to the information; the type and degree of risk of financial injury that release would cause; and the length of time the information will need to be kept confidential.

(A) In this respect, the Board will, as a general rule, look favorably upon recommendations for withholding information about ideas, methods, and

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processes that are unique; about equipment, materials, or systems that are potentially patentable; or about a unique use of equipment which is specifically outlined.

(B) The Board will not withhold information that is known through custom or usage in the relevant trade, business, or profession, or information that is generally known to any reasonably educated person. Self-evident statements or reviews of the general state of the art will not ordinarily be withheld.

(C) The Board will withhold all cost data submitted except the total estimated costs from each year of the contract. It will release these total estimated costs and ordinarily release explanatory material and headings associated with the cost data, withholding only the figure themselves. If a contractor believes some of the explanatory material should be withheld, that material must be identified and a justification be presented as to why it should not be released.

(ii) Exemption 6 is not a blanket exemption for all personal information. The Board will balance the need to keep a person's private affairs from unnecessary public scrutiny with protection to the public's right to information on Government records.

(A) As a general practice, the Board will release information about any person named in a contract itself or about any person who signed a contract as well as information given in a proposal about any officer of a corporation submitting that proposal. Except for names and other identifying details, the Board usually releases all information in resumes concerning employees, including education and experience. Efforts will be made to identify information that should be deleted and offerors are urged to point out such material for guidance. Any information in the proposal which might constitute an unwarranted invasion of personal privacy if released should be identified and a justification for non-release provided in order to receive proper identification.

(B) The Board can protect the names of, and identifying details about, other staff members who are described in a contract proposal if it is clear that identification of these employees would assist competitors in raiding and hiring them away. In this regard, names and other identifying details could be protected under Exemption 4 (harmful to competitive position) and also under Exemption 6 (it would be an unwarranted invasion of personal privacy to release them). In such a case, the Board would withhold names, home addresses, salaries, telephone numbers, social security numbers, marital status and, if these served to identify them, perhaps some details about past employment or professional activities of these persons.

**§ 1631.16 Exemptions.**

(a) 5 U.S.C. 522 exempts from all of its publication and disclosure requirements nine categories of records which are described in 552(b). These categories include such matters as national defense and foreign policy information, investigatory files, internal procedures and communications, materials exempted from disclosure by other statutes, information given in confidence and matters involving personal privacy.

(b) The records of the Board which are part of a system of records subject to the Privacy Act of 1974 are exempt from disclosure to the public except as provided by 5 CFR Part 1610.

**§ 1631.17 Deletion of exempted information.**

Where material records contain matters which are exempted under 5 U.S.C. 552(b) but which matters are reasonably segregable from the remainder of the records, they shall be disclosed by the Board with deletions. To each such record, the Board shall attach a written justification for making deletions. A single such justification shall suffice for deletions made in a group of similar or related records.

**§ 1631.18 Annual report.**

The Freedom of Information Officer shall annually on or before March 1, submit a Freedom of Information report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate. The report shall include those matters required by 5 U.S.C. 552(d).

## Subpart B—Production in Response or Subpoenas or Demands of Courts or Other Authorities

**§ 1631.30 Purpose and scope.**

This subpart contains the regulations of the Board concerning procedures to be followed when a subpoena, order, or other demand (hereinafter in this subpart referred to as a "demand") of a court or other authority is issued for the production or disclosure of:

(a) Any material contained in the files of the Board;

(b) Any information relating to materials contained in the files of the Board; or

(c) Any information or material acquired by an employee of the Board as a part of the performance of his or her official duties or because of his or her official status.

**§ 1631.31 Production prohibited unless approved by the Executive Director.**

No employee or former employee of the Board shall, in response to a demand of a court or other authority, produce any material contained in the files of the Board or disclose any information or produce any material acquired as part of the performance of his or her official status without the prior approval of the Executive Director or his or her designee.

**§ 1631.32 Procedure in the event of a demand for disclosure.**

(a) Whenever a demand is made upon an employee or former employee of the Board for the production of material or the disclosure of information described in § 1631.31, he or she shall immediately notify the Executive Director or his or her designee. If possible, the Executive Director or his or her designee shall be notified before the employee or former employee concerned replies to or appears before the court or other authority.

(b) If response to the demand is required before instructions from the Executive Director or his or her designee are received, an attorney designated for that purpose by the Board shall appear with the employee or former employee upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this part and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration by the Executive Director or his or her designee. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested instructions from the Executive Director.

**§ 1631.33 Procedure in the event of an adverse ruling.**

If the court or other authority declines to stay the effect of the demand in response to an request made in accordance with § 1631.32(b) pending receipt of instructions from the Executive Director, or his or her designee, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the Executive Director not to produce the material or disclose the information sought, the employee or former employee upon whom the demand has been made shall respectfuly decline to comply with the demand.

(United States ex. rel. Touhy v. Ragen, 340 U.S. 462 (1951)).

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

## Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction; Temporary Emergency Food Assistance Program for FY 1986 and 1987

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Temporary Emergency Food Assistance Program (7 CFR Part 251). This amendment will implement the discretionary provisions of Pub. L. 99-198 related to the transfer of section 32 commodities among eligible recipient agencies, the standards for commodity loss liability, and the procedures for determining each State's contribution toward meeting the required match of a portion of the Federal funds received under this program. Several technical revisions are also made to this part and to 7 CFR Part 250, Donation of Foods for Use in the United States, its Territories and Possessions and Areas under its Jurisdiction.

EFFECTIVE DATE: Provisions implementing the matching requirements contained in § 251.9 are effective October 1, 1987. All other provisions are effective April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, Park Office Center, Alexandria, Virginia 22302, Telephone (703) 756-3660.

SUPPLEMENTARY INFORMATION:

### Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in this rule will not have an annual effect on the economy of more than $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601-612). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities.

The effective dates of this rule are all set by statute. Section 1569(a) of Pub. L. 99-198 requires the matching requirements in § 251.9 of this rule to be effective October 1, 1987. The remaining provisions are subject to Section 1583 of Pub. L. 99-198 which mandates that the regulations implementing Title XV of Pub. L. 99-198 be issued no later than April 1, 1987. Since these provisions are necessary to implement Title XV Pub. L. 99-198, the rule (with the exception of the matching requirements) must be made effective not later than April 1, 1987. Thus, making all of the provisions except the matching requirements effective at least 30 days after publication is not required under 5 U.S.C. 553(d).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520), additional recordkeeping and reporting requirements contained in §§ 250.4(a), 251.4(a), 251.4(j), 251.9(e), and 251.9(f) of this final rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 251 were approved by OMB under Control Number 0584-0313 and 0584-0341.

This program is listed in the Catalog of Federal Domestic Assistance under 10.568 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and the final rule related notice published at 49 FR 22675, May 31, 1984).

### Legislative Background

Title II, of Pub. L. 98-8 was designated as the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c note), hereafter referred to as the "Act". It authorized the distribution of surplus agricultural commodities acquired through the Commodity Credit Corporation to various outlets for Fiscal Year 1983. It also authorized a $50 million appropriation for the cost of storage and distribution of commodities in that fiscal year. At least 20 percent of those funds was to be allocated by State agencies to emergency feeding organizations for costs incurred in providing commodities to needy households, including low-income and unemployed persons. The remaining funds could be used for States' storage and distribution costs.

The Act was subsequently amended, most recently by Pub. L. 99-198, the Food Security Act of 1985. Public Law 99-198 made a number of significant changes to the Act, foremost of which was the extension of the Temporary Emergency Food Assistance Program (TEFAP) through September 30, 1987.

### Regulatory Background

Interim regulations governing the TEFAP were published on December 16, 1983, (48 FR 55968-55993). The Department published proposed amendments to the interim rule on July 2, 1984, (49 FR 27159-27160) which were designed to strengthen the accountability and monitoring requirements of Part 251. A 60-day comment period was provided for the interim as well as for the proposed rule.

In order to finalize the provisions of both the interim and proposed rule and implement the nondiscretionary provisions of Pub. L. 99-198, the Department published a final rule on April 16, 1986, (51 FR 12819). The final rule set forth the TEFAP regulations in their entirety.

A proposed rule to address the discretionary provisions of Pub. L. 99-198 was published on July 15, 1986 (51 FR 25534-25539). Specifically, the proposed rule outlined procedures for effecting section 32 transfers among recipient agencies, dealing with commodity losses incurred by emergency feeding organizations, determining the amount of funding to be provided to emergency feeding organizations and identifying and monitoring a State's contribution toward the newly required match of a portion of Federal funds received.

### Analysis of Comments

Thirty days were afforded the general public for comment on the July 15, 1986, proposed rule. A total of 53 comment letters was received. Comment letters were received from various sources such as State agencies, emergency feeding organizations, members of Congress and public interest groups.

### Transfer of Section 32 Commodities

Section 1564(a) of Pub. L. 99-198 authorized the Secretary to use donated commodities made available under

section 32 of Pub. L. 74–320 (7 U.S.C. 612c) in the TEFAP. In addition, section 1561 of Pub. L. 99–198 amended section 32 to allow a public or private nonprofit organization that receives agricultural commodities under section 32 to transfer those commodities to another public or private nonprofit organization that agrees to use such commodities to provide, without cost or waste, nutrition assistance to individuals in low-income groups.

The proposed rule added a new paragraph (g) to § 251.4 which would allow emergency feeding organizations to transfer section 32 commodities to other emergency feeding organizations or to recipient agencies governed by 7 CFR Part 250. Consistent with provisions for commodity transfers among recipient agencies Part 250, such transfers could not be made without prior approval of the applicable State and/or distributing agency. In recognition of the fact that emergency feeding organizations are governed under Part 251 and recipient agencies are governed under Part 250, the proposed rule required that transfers between emergency feeding organizations and recipient agencies be documented on the form FNS–155, Receipt and Distribution of Donated Commodities. Corresponding changes were made to Part 250 to allow recipient agencies to transfer section 32 commodities to emergency feeding organizations under Part 251. As under Part 251, such transfers could not be effected without State/distributing agency approval. Further, cross-program transfers would have to be documented on the form FNS–155.

The proposed rule also moved the prohibition on the sale or other disposal of commodities in commercial channels from § 251.9 to proposed paragraph (g).

Thirteen comments were received concerning the transfer of section 32 commodities. Three of the commenters expressed concern about documenting cross program transfers of section 32 commodities on the form FNS–155 report since the current form does not lend itself to reporting donated foods in the possession of individual recipient agencies. Two commenters expressed concern relative to whether or not the distributing agency has final approval authority for the transfer of section 32 commodities which have been provided as a part of a State's authorized level of assistance since this is inconsistent with the proposed revision to the Food Distribution Program Regulations, Part 250.

While transfers of section 32 commodities could be documented and submitted as an attachment to the form FNS–155, upon reconsideration the Department has determined that documentation of transfers in any manner that provides an audit trail is sufficient. Thus, § 251.4(g) of this final rule has been revised to require that the transfer of section 32 commodities between emergency feeding organizataions and recipient agencies must be documented by the State/distributing agency and the documentation maintained in accordance with the recordkeeping requirements in § 251.10(a) and 250.6(r). Documentation of transfers will be subject to review during the management evaluation review. Corresponding changes have also been made to § 250.4.

The Department did not intend for the transfer procedures effectuating transfers under Part 251 to be inconsistent with the proposed Part 250 provisions. When the proposed change to Part 250 is made final, corresponding changes will be made to Part 251 if necessary.

Two commenters recommended that the rule clarify what commodities can be transferred from recipient agencies to emergency feeding organizations. Pub. L. 99–198 and the proposed rule limit the transfer of donated foods between emergency feeding organizations and recipient agencies to those which have been made available under section 32 of Pub. L. 74–320. The types of commodities made available under section 32 include meat, poultry, vegetables and fruits. The availability of section 32 commodities will vary depending on market conditions. In the event the distributing agency or TEFAP State agency is unable to determine if a particular food item was made available under section 32, the FNS Regional Office should be contacted for verification.

A few commenters raised concerns that such transfers could cause displacement of commercial food purchases and that the amounts which will be available for transfer will probably not be sufficient for a statewide distribution. The Department agrees that in most instances the amount of section 32 donated foods which will be available for transfer will not be sufficient for a statewide distribution to needy households and/or recipient agencies. However, the Department is confident that the distributing/State agencies will be able to provide for the equitable distribution of any section 32 commodities which become available for transfer. Furthermore, since the transfer of section 32 commodities is specifically authorized by Pub. L. 99–198, the Department does not have the discretionary authority to prohibit such transfers. With regard to the possibility of such transfers resulting in displacement of commercial sales, distributing/State agencies are currently required by §§ 250.6(1) and 251.4(b) to ensure that the distribution of donated food under Parts 250 and 251 does not diminish the normal expenditures for food by recipients and recipient agencies. These provisions apply to the use of transferred section 32 commodities as well. In addition, the Department is of the opinion that the quantities which will be made available by recipient agencies for transfer to emergency feeding organizations will not be significant enough to have a significant impact on commercial sales.

As stated in the proposed rule, the Department strongly encourages State and distributing agencies to consider factors such as the packaging size of the donated foods to be transferred and the transferee's method of distribution in an effort to avoid situations which pose potential health hazards.

One commenter asked if emergency feeding organizations can submit a claim for reimbursement for costs associated with the distribution of section 32 donated foods. Reimbursements for the costs of storage and distribution are allowable in accordance with § 251.8(d).

**Standards for Commodity Losses Liability**

Section 1570 of Pub. L. 99–198 requires the Secretary to "set standards with respect to liability for commodity losses * * * in situations in which there is no evidence of negligence or fraud, and conditions for payment to cover such losses". Further, the law requires that the special needs and circumstances of emergency feeding organizations be taken into consideration.

In order to implement this provision, a new paragraph (j) was added to § 251.4 of the proposed rule. Paragraph (j) outlined USDA policies for recovering commodity losses, taking into consideration the special needs and circumstances of emergency feeding organizations where no evidence of fraud or negligence exists.

Twenty-eight comment letters were received. Sixteen commenters opposed the provisions as outlined in paragraph (j) for various reasons. Five of the commenters oppose the claim provisions on the basis that emergency feeding organizations are supported through volunteer efforts and thus should not be held liable for losses. Three commenters recommended that a threshold, such as five percent, be established below which no claims action will be required.

In requiring that the special needs and circumstances of emergency feeding organizations must be taken into account, the statute did not provide that all claims of these organizations should be disregarded. In fact, the law provided that a limit on loss liability be set only when there is no evidence of fraud or negligence.

It is the opinion of the Department that the provisions contained in paragraph (j) of the proposed rule provide sufficient State agency discretion while ensuring that the integrity of the program is maintained. Therefore, the final rule retains the proposed requirement that in making final claim determinations for commodity losses incurred when there is no evidence of fraud or negligence, State agencies (and FNS Regional Offices when reviewing claim determinations) must consider the special needs and circumstances of the emergency feeding organization and make appropriate adjustments. With regard to the establishment of a threshold below which no claims action will be required, State agencies are not required to make claim determinations when the value of the lost commodities is $100 or less, unless there is evidence of fraud or a violation of Federal, State or local criminal law or when program operations would be adversely affected. However, in an effort to provide additional information on specific procedures for handling claims, paragraph (j) of the final rule has been revised to reference FNS Instruction 410–1, *Non Audit Claims—Food Distribution.* This instruction provides more specific information about claims collection and outlines the procedures which need to be followed in pursuing claims.

Paragraph (j) of the proposed rule also included clarification of an FNS policy relative to the use of funds derived from a claim due to the loss of foods. FNS policy requires that such funds be returned to the Department. One commenter objected to the requirement that funds derived from a claim due to the loss of TEFAP foods must be returned to the Department rather than being retained at the State or local level for replacement of the commodities or other program use. The Department believes that returning funds derived from claims to the Department is necessary to discourage improper use of commodities and to maintain program integrity. As discussed above, special needs of the EFOs will already have been taken into account in assessing a claim.

However, given the nature of this program, the Department may, in instances in which it has been determined by the Department that the collection of funds will have a significant adverse effect on the operation of the program, permit in-kind replacement of the foods in lieu of the requirement that payment be made to FNS. Repayment in kind can only be permitted under such terms and conditions as agreed to by the Secretary. Section 251.4(j) has been revised to incorporate the repayment in kind language.

**Funding for Distribution of Commodities**

In extending the Act through Fiscal Year 1987, Pub. L. 99–198 omitted a statutory requirement that funds given to emergency feeding organizations for payment of storage and distribution costs not exceed 5 percent of the value of commodities distributed by these organizations. This restriction was placed on all previous fiscal year's funding for section 204(b) of the Act. In discussing the deletion of the 5 percent restriction from Part 251 in the preamble of the final rule published on April 16, 1986, 51 FR 12819, the Department indicated that the issue would be further addressed in the proposed rulemaking. In § 251.8 of the proposed rule, the Department proposed to reestablish the 5 percent maximum.

Twenty seven comments were received concerning the 5 percent restriction. Twenty-five of the commenters opposed the provision. The majority of the commenters opposed the provision on the basis that: (1) States should have the flexibility to allocate funds based on their analysis of the activities of the emergency feeding organization; and (2) the 5 percent restriction will have an adverse effect on distribution in rural areas which is contradictory to the intent of the legislation.

While the Department agrees that States should have flexibility in allocating funds, the Department is also concerned that funds are allocated in a fair and equitable manner. In an effort to provide State agencies with flexibility, § 251.8 has been revised to eliminate the 5 percent restriction. However, to ensure that the State agency's allocation formula provides for the most effective use of the funds (e.g. funds are allocated based on the amount of food distributed), § 251.6 has been revised to require that State agencies describe the formula for allocating funds to emergency feeding organizations in the Distribution Plan submitted for approval by the FNS Regional Office. The Department plans to monitor States' allocation methods. If it appears that State procedures do not provide the appropriate degree of equity, we will reconsider the use of a mandated distribution formula.

**State Matching Requirements**

Section 1569(a) of Pub. L. 99–198 requires each State to match, in cash or in-kind, each Federal dollar retained by the State and used solely for State-level activities. Funds retained by the State to pay for the direct expenses of local distribution are excluded from the matching requirements. While funds may be allocated to the State before the matching requirements are satisfied, FNS is required to adjust the funding allocation to correct for overpayments and underpayments.

Paragraph (a) of § 251.9 of the proposed rule required that effective January 1, 1987, States would have to provide in cash or in-kind, a contribution equal to the difference between (1) the amount of funds received under § 251.8 and (2) any part of the amount allocated to the State and paid by the State to emergency feeding organizations or for the storage and distribution costs of such organizations.

Paragraph (b) reflected the provision in Pub. L. 99–198 which allows those States in which the legislature does not convene in regular session before January 1, 1987 to delay implementation until October 1, 1987. The preamble of the proposed rule (51 FR 25536) emphasized that this meant the match requirements would not be effective until October 1, 1987, in those States in which the legislature does not convene in regular session during the period between the effective date of the final rule (which would establish the Secretary's standards for in-kind contributions as required by section 1569(a) of Pub. L. 99–198) and January 1, 1987. Another exception recognized the provisions of 48 U.S.C. 1469a(d) which exempts American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands from matching requirements (including in-kind contributions) if their respective matching requirements are under $200,000. To date American Samoa and Guam have not participated in TEFAP, however, the Department set forth the exception to prevent confusion if, at some later date, American Samoa or Guam should wish to participate.

In accordance with section 1569(a) of Pub. L. 99–198, paragraph (c) specified that a State's contribution toward the matching requirement would have to be through cash or in-kind contributions from non-Federal sources. In order for an in-kind contribution to be considered

toward the matching requirements, it must meet the requirements set forth in 7 CFR Part 3015, Subpart G.

Thirty-five comments were received concerning the State matching requirements contained in § 251.9 of the proposed rule. Twenty-five of the commenters requested clarification concerning what in-kind and cash contributions can be counted toward meeting the matching requirement. Ten commenters recommended that the requirement be deleted.

As stated above, Pub. L. 99–198 requires each State to match, in cash or in-kind, each Federal dollar retained by the State and used solely for State level activities. Since the requirement is mandated by legislation, the Department does not have the authority to waive the matching requirement. Thus, paragraph (a) of the proposed rule has been retained in this final rule.

A few comments were received concerning the October 1, 1987, implementation date of the matching requirements for those States in which the legislature does not convene in regular session during the period between the effective date of the final rule and January 1, 1987. Since this rule is being published after January 1, the effective date of the matching requirements is October 1, 1987 for all States. Thus, § 251.9(b) of the final rule has been revised to eliminate the language relative to implementation dates. The October 1, 1987 implementation date for matching requirements is now contained at the beginning of § 251.9(a) and under the "Effective Dates" Section of this rule.

As pointed out by the commenters, the TEFAP legislative authority will expire on September 30, 1987. Even though the legislative authority for program operations will expire prior to the October 1, 1987, effective date, the Department encourages State to take the necessary action to implement the matching requirements since the Congress may extend the program.

With regard to what cash and in-kind contributions can be counted toward meeting the matching requirement, paragraph (c) of § 251.9 of the final rule has been revised to: (1) Include language which identifies allowable "cash contributions" as any cash outlay of the State agency specifically identifiable as State-level storage and distribution costs, including the outlay of money contributed to the State agency by other public agencies and institutions, and private organizations and individuals. Examples of cash contributions have also been included. Such examples include, but are not limited to, the purchase of office supplies, storage space, transportation, loading facilities and equipment, employees' salaries, and other goods and services for which there has been a cash outlay by the State agency; and (2) include language which identifies "in-kind contributions" as charges, which are non-cash outlays, for real property and non-expendable personal property and the value of goods and services specifically identifiable with State-level storage and distribution costs. Examples of in-kind contributions have also been added. Such examples may include, but are not limited to, the donation of office supplies, storage space, vehicles to transport the commodities, loading facilities and equipment such as pallets and forklifts, and other non-cash goods and services provided by the State agency. In accordance with 7 CFR 3015.52(a), the matching requirement shall not be met by costs supported by another Federal grant, except as provided by Federal statute.

These final regulations also clarify the extent to which EFO and/or other third party activities and expenditures count toward meeting the matching requirements. Cash donations by non-federal third parties and the value of third party in-kind goods and services are expressly permitted by 7 CFR 3015.51. The Department did not intend to modify this provision in these regulations.

However, the Department wishes to provide further clarification on the permissible source of contributions in the context of the TEFAP. 7 CFR 3015.51 limits matching contributions to allowable costs. In the case of the TEFAP, the only portion of the grant which must be matched is the amount of the grant retained at the State level and used for State-level storage and distribution costs. Therefore, the costs incurred by EFOs for local-level distribution and the value of volunteer services at the EFO level are not allowable costs with respect to this portion of the grant, and cannot be used to meet the matching requirement. On the other hand, if an EFO or other third party makes a cash or in-kind contribution to the State agency which is used by the State agency for State-level storage and distribution costs, the contribution may used to meet the match. For example, should an EFO offer the services of one of its employees to assist the State in its administration of the program, the employee's salary, for the period of time that the employee is working for the State, even though paid by the EFO, can be counted toward meeting the matching requirement.

Section 251.9(e) requires that the estimated amount of Federal funds to be retained at the State level for State level activities, the estimated dollar value of the State's contribution, and, if applicable, a description and valuation of in-kind contributions to be applied to the State's required match be identified in the State's Distribution Plan. Therefore, State-level activities for which State, EFO or other third party contributions may count toward meeting the match requirement will have already been identified in the State's Distribution Plan.

In addition, to permit States to count the value of services and expenditures for local-level storage and distribution to meet the matching requirement is contrary to the legislation. The statute expressly prohibits the States from passing on the cost of the matching requirement to any emergency feeding organization and requires the *States* to contribute the matching amount. Section 251.9(c) of the final rule has been issued to reinforce this application of 7 CFR 3015.51 to the TEFAP matching requirements.

The Department wishes to draw attention to the regulations concerning valuation of in-kind contributions found at 7 CFR 3015.53 through 3015.56. In general, the value of donated property is the fair market value or the cost of the property to the supplier, whichever is less.

Section 251.9(a) has also been revised to clarify that those funds which are retained by the State to pay for the direct storage and distribution costs of emergency feeding organizations are excluded from the matching requirement.

As required by section 1568(c) of Pub. L. 99–198, Paragraph (c) of § 251.9 of the proposed rule also prohibited State agencies from passing on the cost of the matching requirement to emergency feeding organizations. However, the proposed rule permitted the State to assess charges equal to its direct costs of storing and transporting the commodities less any amount the Secretary provides to the State for this purpose as specifically permitted in section 208 of the Act and 7 CFR 250.6(j)(2). The proposed rule did prohibit the State from counting the assessment fees toward the matching requirement.

Twenty-one comments were received concerning this provision. Twenty of the commenters objected to State agencies being permitted to assess charges against emergency feeding organizations for reasons such as: (1) It was the intent of Congress in section 1568(c)(5) of Pub. L. 99–198 to prohibit such charges; and

(2) it is not possible for EPO's to pay such fees.

Section 208 of the 1983 Temporary Emergency Food Assistance Act authorizes State agencies to assess charges to cover costs incurred by the States. However, section 1569 of the 1985 Act prohibits State agencies from assessing any fees. After reevaluating the legislation, including the statutory prohibition against charging for commodities, and reviewing comments on this provision, paragraph (d) of § 251.9 of the final rule has been revised to prohibit State agencies from assessing any charges for foods made available under TEFAP.

Paragraphs (d) and (e) of § 251.9 of the proposed rule outlined the Department's proposed implementation of the matching requirement. Under paragraph (d), the Department proposed to required State agencies to submit, as part of the Distribution Plan currently required in § 251.6 a plan, for FNS approval, which identifies the estimated amount of Federal funds to be retained at the State level for State level activities, the estimated dollar value of the State's contribution and, if applicable, a description and valuation of the in-kind contribution to be applied to the State's required match. The proposed rule also amended § 251.6 of the current TEFAP regulations to reflect these additional requirements. Submission of the expanded distribution plan would continue to be required no later than October 1 of each fiscal year. Paragraph (e) of the proposed rule required State agencies to identify the State's contribution toward the matching requirements on the SF–269, Financial Status Report.

Three comments were received concerning submission of the TEFAP Distribution Plan. Two commenters supported the provisions contained in paragraph (d) of the proposed rule. One commenter expressed concern about the October 1 date for submission since it does not appear that it will coincide with the effective date of the final rule. Submission of a revised Distribution Plan is no longer an issue since the matching requirements will not be effective until October 1, 1987.

With regard to paragraph (e) of the proposed rule, one commenter expressed concern about how in-kind contributions are to be reported on the SF–269, Financial Status Report. Guidance material for use in preparing the SF–269 report is being developed and will be provided to all State agencies.

Section 251.9(f) of the proposed rule provided that a State's failure to meet the required match would result in the suspension or disallowance of the appropriate portion of the States' allocation. The Department received no comments concerning the provisions contained in paragraph (f) of the proposed rule. This paragraph is being adopted as proposed as paragraph (g) of § 251.9 in the final rule.

**Agreements**

In an effort to clarify § 251.2(c) with regard to the frequency of written agreements, the proposed rule specifically required State agencies to enter into written agreements with EFO's which receive Federal funds of not more than one year's duration and which expire by September 30 of each year.

Six comments were received concerning the annual written agreement provision. Three of the commenters expressed concern relative to the agreement period. The commenters recommended that the agreement period should be determined by the State agency. As mentioned in the preamble of the proposed rule, until funds are appropriated to the Department, the Department is without authority to obligate funds to State agencies, and through the State agencies to the EFO's. Therefore, it is necessary to require State agencies to enter into agreements with EFO's which coincide with the Federal fiscal year. However, in an effort to limit the administrative burden on the State agencies and EFO's, § 251.2(c) of the final rule has been revised to permit State agencies to make up to two one-year renewals of EFO agreements.

All initial agreements and renewals must still be limited to one Federal fiscal year. At the time of renewal, instead of completing the entire initial application process, the EFO may limit its submission to any information which has changed from the initial application and updated caseload information. The renewals are limited to two so as to ensure that the State agency has current information on these EFO's. These restrictions on agreements and renewals apply only to EFO's which receive Federal funds.

**List of Subjects**

*7 CFR Part 250*

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

*7 CFR Part 251*

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Part 250 and 7 CFR Part 251 are amended as follows:

## PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 is revised to read as follows:

**Authority:** Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (42 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 965–031, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 nt); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304a, Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c nt); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 1561, Pub. L. 99–198, 99 Stat. 1589 (7 U.S.C. 612c); 5, U.S.C. 301, unless otherwise noted.

2. Section 250.4 paragraph (a) is revised to read as follows:

**§ 250.4 Availability of donated foods.**

(a) *Distribution and use of donated foods.* Commodities shall be available only for distribution and use in accordance with the provisions of this part, and with respect to distribution to households on or near an Indian reservation, of Part 253 of this chapter. Donated foods not so distributed or used (for any reasons) shall not be sold, exchanged or otherwise disposed of without the approval of the Department. However, donated foods may be transferred between recipient agencies with the authorization of the distributing agency if determined to be in the best interest of the distribution program. Food donated under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may also be transferred by recipient agencies to emergency feeding organizations which are distributing donated foods under 7 CFR Part 251. A transfer between recipient agencies and emergency

feeding organizations may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP. Transfers of donated foods between emergency feeding organizations and recipient agencies shall be documented. Such documentation shall be maintained in accordance with §§ 250.6(r) and 251.10(a) by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

* * * * *

## PART 251—TEMPORARY EMERGENCY FOOD ASSISTANCE PROGRAM FOR FISCAL YEARS 1986 AND 1987

1. The authority citation for Part 251 continues to read as follows:

**Authority:** Pub. L. 98–8, as amended: 7 U.S.C. 612c note.

2. Section 251.2 paragraph (c) is revised to read as follows:

**§ 251.2 Administration.**

* * * * *

(c) Each State agency which has been designated to make distributions of donated foods to emergency feeding organizations and to receive payments for storage and distribution costs in accordance with § 251.8 of this part shall perform those functions pursuant to an agreement entered into with the Department. Such State agencies shall enter into a written agreement with eligible emergency feeding organizations. This agreement shall provide that emergency feeding organizations agree to operate the program in accordance with the requirements of this part, and, as applicable, 7 CFR Part 250. In any case in which an emergency feeding organization will be receiving Federal funds, the agreement shall be effective no longer than one year and shall expire no later than September 30 of each year. The agreement may be renewed at the option of both parties for two additional one-year periods. As part of the renewal process, the emergency feeding organization shall provide any information which has changed since the initial application and updated caseload information.

3. Section 251.4 is amended by redesignating paragraphs (g) and (h) as (h) and (i), respectively. New paragraphs (g) and (j) are added to read as follows:

**§ 251.4 Availability of commodities.**

* * * * *

(g) *Availability and control of donated commodities:* Donated commodities shall be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in § 251.4(f), donated commodities not so distributed or used for any reason shall not be sold, exchanged, or otherwise disposed of without the approval of the Department. However, donated commodities made available under section 32 of Pub. L. 74–320 (7 U.S.C. 612c) may be transferred by emergency feeding organizations, as defined in § 251.3, or recipient agencies, as defined in § 250.3, to any other emergency feeding organization or recipient agency which agrees to use such donated foods to provide without cost or waste, nutrition assistance to individuals in low-income groups. Such transfers shall be effected only with prior authorization of the State agency and, as applicable, the distributing agency. Transfers of any donated commodities between emergency feeding organizations and recipient agencies shall be documented. Such documentation shall be maintained in accordance with §§ 251.10(a) and 250.6(r) by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

* * * * *

(j) *Commodity losses.* (1) the State agency shall be responsible for the loss of commodities:

(i) When the loss arises from the State agency's improper distribution or use of any commodities or failure to provide proper storage, care, or handling; and

(ii) When the State agency fails to pursue claims arising in its favor, fails to provide for the rights to assert such claims, or fails to require its emergency feeding organizations to provide for such rights.

Except as provided in paragraph (j)(4) of this section, the State agency shall begin claims action immediately upon receipt of information concerning the improper distribution, loss of or damage to commodities, and shall make a claim determination within 30 days of the receipt of information, as described in further detail in FNS Instruction 410–1, *Non-Audit Claims—Food Distribution.* The funds received from the collection of claims shall be returned to FNS. In instances in which it has been determined by the Department that the collection of funds will have a significant adverse effect on the operation of the program, the Department may permit in-kind replacement of the donated foods in lieu of payment to FNS. Replacement in kind will only be permitted under such terms and conditions as agreed to by the Secretary.

(2) If the State agency itself causes the loss of commodities and the value exceeds $250, the State agency shall immediately transmit the claim determination to the FNS Regional Office, fully documented as to facts and findings. Except as provided in paragraph (j)(4) of this section, if the State agency itself causes the loss of commodities, and the value does not exceed $250, the State agency shall immediately return funds equal to the claim amount to FNS.

(3) If the State agency determines that a claim exists against an emergency feeding organization, warehouseman, carrier or any other entity and the value of the lost commodities exceeds $2500, the State agency shall immediately transmit the claim determination to the appropriate FNS Regional Office, fully documented as to facts and findings. If FNS determines from its review of the claim determination that a claim exists, the State agency shall make demand for restitution upon the entity liable immediately upon receipt of notice from the FNS Regional Office. Except as provided in paragraph (j)(4) of this section, if the State agency determines that a claim exists in favor of the State agency against an emergency feeding organization, warehouseman, carrier or any other entity and the value of the lost commodities does not exceed $2500, the State agency shall immediately proceed to collect the claim.

(4) No claim determination shall be required where the value of the lost commodities is $100 or less. However, no such claim shall be disregarded where:

(i) There is evidence of fraud or a violation of Federal, State or local criminal law; or

(ii) Program operations would be adversely affected.

(5) The State agency shall maintain records and substantiating documents, on all claims actions and adjustments including documentation of those cases in which no claim was asserted because of the minimal amount involved.

(6) In making final claim determinations for commodity losses incurred by emergency feeding organizations when there is no evidence of fraud or negligence, State agencies and FNS Regional Offices, as applicable, shall consider the special needs and circumstances of the emergency feeding organizations, and adjust the claim and/or conditions for claim collection as appropriate. These special needs and circumstances include but are not limited to the emergency feeding organization's use of volunteers and limited financial resources and the

effect of the claim on the organization's ability to meet the food needs of low-income populations.

4. Section 251.6, paragraph (a) is revised to read as follows:

**§ 251.6 Distribution plan.**

(a) *Contents of the plan.* The State agency shall submit for approval by the appropriate FNS Regional Office a plan which contains:

(1) A description of the criteria established in accordance with § 251.5(b) for determining that applicant households are in need of food assistance under this part;

(2) The rates for distributing commodities to households in accordance with § 251.4(d)(3);

(3) A description of the program monitoring system including a detailed explanation of any factors which may contribute to the State requesting approval of exceptions to conducting the minimum number of reviews required by § 251.10(e);

(4) A description of the State's formula for allocating funds to emergency feeding organizations; and

(5) A description of the State's contribution toward the matching requirements as described under § 251.9(e)

* * * * *

**§ 251.9 [Redesignated as § 251.10]**

**§ 251.10 [Amended]**

5. Section 251.9 is redesignated as § 251.10. Paragraph (d) of newly redesignated § 251.10 is removed and paragraphs (e), (f), and (g) are redesignated (d), (e), and (f) respectively.

6. New § 251.9 is added to read as follows:

**§ 251.9 Matching of funds.**

(a) *State matching requirements.* Effective October 1, 1987, States shall provide in cash or in-kind, a contribution equal to the difference between—

(1) The amount of funds received under § 251.8 and

(2) Any part of the amount received by the State and paid by the State to emergency feeding organizations and any part of the amount retained by the State to pay for the direct storage and distribution costs of emergency feeding organizations.

(b) *Exceptions.* In accordance with the provisions of 48 U.S.C. 1469a, American Samoa, Guam, the Virgin Islands and the Northern Mariana Islands shall be exempt from the matching requirements of paragraph (a) of this section if their respective matching requirements are under $200,000.

(c) *Applicable contributions.* States shall meet the requirements of paragraph (a) of this section through cash or in-kind contributions from non-Federal sources. Such contributions shall meet the requirements set forth in 7 CFR Part 3015, Subpart G. Allowable contributions are only those contributions for costs which would otherwise be allowable as State-level storage and distribution costs. An allowable cash contribution is any cash outlay of the State agency specifically identifiable as a State-level storage and distribution cost, including the outlay of money contributed to the State agency by other public agencies and institutions, and private organizations and individuals.

Examples of cash contributions include, but are not limited to, the purchase of office supplies, storage space, transportation, loading facilities and equipment, employees salaries, and other goods and services specifically identifiable as State-level storage and distribution costs for which there has been a cash outlay by the State agency. Allowable in-kind contributions are any charges, which are non-cash outlays, for real property and non-expendable personal property and the value of goods and services specifically identifiable with State-level storage and distribution costs. Examples of in-kind contributions may include, but are not limited to, the donation of office supplies, storage space, vehicles to transport the commodities, loading facilities and equipment such as pallets and forklifts, and other non-cash goods or services specifically identifiable with State-level storage and distribution costs. In accordance with 7 CFR 3015.53 through 3015.56, the value of donated property shall be the fair market value or the cost of the property to the supplier, whichever is less. In accordance with 7 CFR 3015.52(a), the matching requirement shall not be met by costs supported by another Federal grant, except as provided by Federal statute.

(d) *Assessment fees.* States shall not assess any fees for the distribution of donated foods to emergency feeding organizations.

(e) *Plan requirements.* As a part of the State's Distribution Plan required under § 251.6, State agencies shall submit for FNS Regional office approval, the State's plan for meeting the match required under paragraph (a) of this section. Such plan shall identify the estimated amount of Federal funds to be retained at the State level for State level activities, the estimated dollar value of the State's contribution, and, if applicable, a description and valuation of in-kind contributions to be applied to the State's required match. This plan may be amended at any time during the fiscal year.

(f) *Reporting requirements.* State agencies shall identify their matching contribution on the SF–269, Financial Status Report, in accordance with § 251.10(d).

(g) *Failure to match.* If, during the course of the fiscal year, the quarterly SF–269 indicates that the State is or will be unable to meet the matching requirements in whole or in part, the Department shall suspend or disallow the unmatched portion of Federal funds subject to the provisions of paragraph (a) of this section. If, upon submission of the final SF–269 for the fiscal year, the Department determines that the State has not met the requirements of paragraph (a) of this section in whole or in part, the unmatched portion of Federal funds subject to the requirements of paragraph (a) of this section shall be subject to disallowance by FNS.

Dated: May 5, 1987.

S. Anna Kondratas,

*Acting Administrator.*

[FR Doc. 87–10898 Filed 5–12–87; 8:45 am]

BILLING CODE 3410-30-M

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## Agricultural Stabilization and Conservation Service

**7 CFR Part 760**

**Dairy Indemnity Payment Programs**

**AGENCY:** Agricultural Stabilization and Conservation Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to adopt as final the interim rule published at 51 FR 12986, which amended the Dairy Indemnity Payment Program regulations, with an amendment which would shorten the period for conduct of the program from September 30, 1990, to January 31, 1988.

**EFFECTIVE DATE:** This final rule shall become effective on May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Clarence Domire, Agricultural Program Specialist, Emergency Operations and Livestock Programs Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; Telephone (202) 447–7673.

**SUPPLEMENTARY INFORMATION:** Information collection requirements contained in this regulation (7 CFR Part 760) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44

U.S.C. Chapter 35 and have been assigned OMB Control No. 0560–0045.

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been classified as "not major" since it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this rule applies are: Title: Dairy Indemnity Payments; Number: 10.053, as found in the Catalog of Federal Domestic Assistance.

Milton Hertz, Administrator, ASCS, certifies that this action will not increase the federal paperwork burden for industry, small business, and other persons. Therefore the action is exempt from the provisions of the Regulatory Flexibility Act. Additionally, the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The Dairy Indemnity Payment Program was originally authorized by section 331 of the Economic Opportunity Act of 1964 (78 Stat. 508). The statutory authority for the program has been extended several times, most recently by section 152 of the Food Security Act of 1985 (99 Stat. 1337) which authorized the program to be carried out through September 30, 1990. The objective of the program is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products which are removed from commercial markets because such products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses with respect to milk which is required to be removed from commercial markets due to residues of chemicals or toxic substances or contamination by nuclear radiation or fallout.

An interim rule amending the Dairy Indemnity Payment Program was published in the **Federal Register** on April 17, 1986 (51 FR 12986). The interim rule extended the time period for conducting the program from September 30, 1985 to September 30, 1990. However, the Department estimates that Congressionally appropriated funds for the program will be exhausted by January 31, 1988. Therefore, an expiration date of January 31, 1988 is provided for at this time.

The interim rule also extended the final date by which applications for payment must be filed with the county ASCS office for the county where the farm headquarters are located to no later than December 31 following the fiscal year in which the loss occurred, or such later date as the Deputy Administrator may specify.

In addition, the interim rule amended the regulations to prevent manufacturers from receiving what is considered to be a "double indemnity," i.e., compensation for the same loss by the Department of Agriculture and the person (or the representative or successor in interest of such person) responsible for such loss. A similar provision was applied to producers in the 1979 revision of the regulations. If the manufacturer is compensated for the same loss by the person responsible for the loss, the manufacturer is required to refund to the Department of Agriculture the amount of the indemnity payment which is equal to the amount of the compensation which is received by the manufacturer.

The interim rule provided for a 30-day comment period; however, no comments were received. Therefore, it has been determined that the interim rule should be adopted as final with the expiration date for conduct of the program changed from September 30, 1990 to January 31, 1988.

**List of Subjects in 7 CFR Part 760**

Dairy producers, Indemnity payments, Pesticides, Pests.

Accordingly, the interim rule amending 7 CFR Part 760 which was published at 51 FR 12986 on April 17, 1986, is adopted as a final rule with the following change:

## PART 760—DAIRY INDEMNITY PAYMENT PROGRAM

1. The authority citations for 7 CFR Part 760 continues to read:

**Authority:** Secs. 1, 2, and 3, 99 Stat. 1337, as amended (7 U.S.C. 450j, k, and l).

**§ 760.2 [Amended]**

2. In § 760.2, paragraphs (k) (1) and (2), (l), and (o) are amended by striking out "September 30, 1990" and inserting in lieu thereof "January 31, 1988".

Signed at Washington, DC, on May 8, 1987.

**Milton J. Hertz,**

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 87–10922 Filed 5–12–87; 8:45 am]

BILLING CODE 3410–05–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 87–NM–37–AD; Amdt. 39–5621]**

## Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which requires inspection of the forward service doorway aft frame around the lower four door stop fittings and repair, if necessary. This action is prompted by recent reports of cracks in the lower door stop support structure. This condition, if not corrected, could result in loss of pressurization, substantial structural damage, and loss of the door.

**EFFECTIVE DATE:** June 1, 1987.

**ADDRESSES:** The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. James W. Hart, Jr., Airframe Branch, ANM–120S; telephone (206) 431–1920. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** Recent service experience has shown that cracks have developed in the forward service doorway aft frame on Boeing Model 737 series airplanes around the lower door stop fittings (Numbers 3 through 6), as well as in the backup structure for these door stops. Cracking

in these areas, if not detected and repaired, could compromise the structural integrity of the door support structure, which could lead to loss of pressurization, substantial structural damage, and possible loss of the door.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–53A1108, Revision 1, dated March 12, 1987, which describes procedures for inspection for cracks in the forward service doorway aft frame structure and repairs.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires repetitive inspections of the aft door frame around the lower four door stops, and repair, if necessary, in accordance with the service bulletin previously mentioned. If cracks are found in the frame, it is necessary to inspect the intercostals and stringers which back up the door stops. An optional terminating action is provided. [It should be noted that AD 87–01–06, Amendment 39–5509 (52 FR 517; January 7, 1987), requires inspections of the upper two door stop fittings of the forward service doorway aft frame.]

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Boeing:** Applies to Model 737 series airplanes, Line Numbers 1 through 1420, except the T43 series, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the forward galley door support structure, accomplish the following:

A. Prior to the accumulation of 25,000 landings or within the next 125 landings after the effective date of this AD, whichever occurs later, perform a close visual inspection of the forward service doorway aft frame around the lower four door stop fittings, in accordance with Boeing Alert Service Bulletin 737–53A1108, Revision 1, dated March 12, 1987, or later FAA-approved revision. Repeat the inspections at intervals not to exceed 250 landings. If cracks are found, prior to further flight, perform a visual inspection for cracks in the intercostals and stringers, which support the aft door stops. Parts found cracked must be repaired prior to further flight in accordance with Boeing Alert Service Bulletin 737–53A1108, Revision 1, or later FAA-approved revision.

B. The repetitive inspections required by paragraph A above, may be terminated after the intercostals and stringers have been repaired in accordance with Boeing Alert Service Bulletin 737–53A1108, Revision 1, dated March 12, 1987, or later FAA-approved revisions, or incorporation of a modification approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 1, 1987.

Issued in Seattle, Washington, on May 6, 1987.

Wayne J. Barlow,
*Director, Northwest Mountain Region.*

[FR Doc. 87–10881 Filed 5–12–87; 8:45 am]
BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 86–NM–169–AD; Amdt. 39–5622]**

## Airworthiness Directives; CASA Model C–212 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model C–212 series airplanes, which requires modification of the crew door to provide a protective cover for the internal door handle. Installation of the protective cover is necessary to preclude inadvertent opening of the door in flight.

**EFFECTIVE DATE:** June 19, 1987.

**ADDRESSES:** The service bulletin specified in this AD may be obtained upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM–113; telephone (206) 431–1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires the installation of a protective cover over the crew door internal handle on certain Construcciones Aeronauticas S.A. (CASA) Model C–212 series airplanes, was published in the Federal Register on September 26, 1986 (51 FR 33618).

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the two comments received.

Two commenters questioned the basis for the unsafe condition addressed in the proposal. Both commenters pointed out that the CASA C–212 is not a pressurized aircraft, and due to the design configuration, it would be improbable that passengers would be in the vicinity of the crew door internal handle; therefore, no hazardous condition would exist in this environment. While the FAA agrees that the CASA C–212 is an unpressurized airplane, it does not concur with the suggestion that an unsafe condition does not exist. The basis for and intent of the rule is to eliminate the hazard presented by an inadvertently opened door. The FAA has determined this unsafe condition can be eliminated by modifying the internal handle of the crew door on all configurations of the airplane so that it requires deliberate action to open, in flight or on the ground, and cannot be inadvertently opened by any person, crew member or passenger, who might lean or fall against the handle.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Modification parts are estimated at $316 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $13,952.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($436). A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C–212 series airplanes, serial numbers as listed in CASA Service Bulletin 212–52–16, dated October 23, 1985, certificated in any category. Compliance is required within 9 months after the effective date of this AD. To prevent inadvertent opening of the crew door, accomplish the following, unless previously accomplished:

A. Install a protective cover over the crew door internal handle in accordance with CASA Service Bulletin 212–52–16, dated October 23, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 19, 1987.

Issued in Seattle, Washington, on May 6, 1987.

**Wayne J. Barlow,**

*Director, Northwest Mountain Region.*

[FR Doc. 87–10859 Filed 5–12–87; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 87–AGL–3]**

**Establishment of Transition Area; Peru, IL**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to establish the Peru, Illinois, transition area to accommodate a new NDB Runway 18 Standard Instrument Approach Procedure (SIAP) to Illinois Valley Regional—Walter A. Duncan Field Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

**EFFECTIVE DATE:** 0901 UTC, July 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

**SUPPLEMENTARY INFORMATION:**

**History**

On Friday, February 27, 1987, the Federal Aviation Administration (FAA), at the request of the State of Illinois and the Illinois Valley Regional Airport Authority, proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Peru, Illinois, transition area (52 FR 6002).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments were received from nine individuals including Ms. Linda Hamer, and Messrs. Wilbur Hahn, Mel Forrester, Ivan E. Baver, Gerald J. Funfsinn, Billy R. Hall, Phillip Buland, Charles Keutzer, and Gerald Hamer. All commenters objected to the proposed action.

All letters received indicated a concern for potential conflict between visual flight rules (VFR) practice NDB approaches and routine VFR traffic in the area. Pilots, whether on a VFR or instrument flight rule (IFR) flight plan, when in visual meteorological conditions (VMC) are required to apply see-and-avoid procedures to separate themselves as necessary from other traffic. The establishment of the transitional airspace will increase the VFR weather visibility/cloud clearance requirements between 1200′ and 700′ above the surface and will enhance safety as it will afford a greater opportunity to apply the see-and-avoid concept.

Several letters indicated concern for the potential greater mix of aircraft, i.e., jet versus single engine piston, that would result from the new SIAP. The current situation in the area permits that mix and no significant increase in jet traffic is anticipated based on the publication of the instrument procedure. The primary function of the SIAP is to

provide access to the Peru area during weather conditions which now normally would preclude this from occurring. It was concluded that the VFR concerns expressed did not represent a problem generated by the designation of the transition area and procedural establishment but rather were associated with generic VFR and VMC aircraft operational safety considerations.

Three commenters expressed concern that an existing acrobatic area would be affected by this proposal. Study confirmed that the acrobatic area and the transition area would not be compatible. However, study also disclosed that a minor relocation of that acrobatic area could accommodate both the need for an acrobatic area and the need for airspace associated with an instrument approach procedure as well as providing for an efficient use of the available airspace in the area of concern. Action will be initiated by the FAA office responsible for the Certificate of Waiver in association with the FAA area controlling facility to accommodate both needs.

One commenter stated concern that the Minimum Descent Altitude (MDA) may be established below the 700' floor of controlled airspace. That is a routine practice when establishing an instrument procedure. The MDA is primarily associated with obstruction clearances and communication capabilities; does not involve the separation of aircraft; and, does not waiver any existing federal regulations for pilots when operating in either IFR or VFR in uncontrolled airspace.

One commenter requested a hearing while stating that the establishment of the transition area would require flight in icing conditions, would require the purchase of additional radio and deicing equipment, and would cause delay while awaiting an IFR clearance.

Informal hearings are held when deemed necessary by the FAA for the purpose of gathering additional facts and information relevant to the rulemaking under consideration. In this matter it was determined that the information already available was sufficient for the purpose intended and that a hearing was not required. Concerning equipment needs, it is to be noted that radio and/or deicing equipment not presently required would still not be required as a result of the proposed action. IFR clearances would be required to operate in the transition area only during periods when flight weather conditions were below three (3) miles visibility and/or 1000' ceiling.

Traffic pattern operations up to and including 700' above the surface would not be affected and flight to the south or west for a short distance to clear the area would eliminate any change in IFR clearance requirements. That commenter also questioned the statement in the Notice of Proposed Rulemaking that the intended action did not constitute a "major rule" under Executive Order 12291 or a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034). Because there would be no significant impact on the operation and use of the underlying airports, the FAA believes that the economic effects of this action will be minimal and certainly well below the criteria for determination as either a "major rule" or "significant rule".

There were other comments which were non-aeronautical in substance that should be settled between the individual area airport operators and which were not made part of this study.

In finalizing the procedural alignment it was found necessary to amend the reference Valley NDB bearing from 332° to 335° and that change is reflected in the rule.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Peru, Illinois, transition area to accommodate aircraft utilizing an NDB Runway 18 SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### Adoption of the Amendment

### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

**Peru, IL [New]**

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Illinois Valley Regional—Walter A. Duncan Field Airport (lat. 41°20'58" N., long. 89°08'14" W.); and within 3 miles either side of the Valley NDB (VYS) 335° bearing extending from the 5 mile radius to 8.5 miles northwest of the Valley NDB.

Issued in Des Plaines, Illinois, on April 28, 1987.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 87-10856 Filed 5-12-87; 8:45 am]

BILLING CODE 4910-13-M

## TENNESSEE VALLEY AUTHORITY

### 18 CFR Part 1301

### Freedom of Information Act; Schedule of Fees

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Final rule.

**SUMMARY:** This rule amends TVA's schedule of fees for processing requests for records which are made available for public inspection. The Freedom of Information Reform Act of 1986 requires agencies to issue final regulations in conformance with the Office of Management and Budget (OMB) guidelines and schedule of fees.

**EFFECTIVE DATE:** June 12, 1987.

**ADDRESS:** Comments should be sent to Craven Crowell, Director, Office of Information, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

**FOR FURTHER INFORMATION CONTACT:** Gilbert D. Francis, Jr., (615) 632-6000.

**SUPPLEMENTARY INFORMATION:** TVA published a proposed rule in the **Federal Register** on April 3, 1987 [52 FR 10772] on the revision of its schedule of fees for processing requests for records which

are made available for public inspection. No comments were received.

This final rule reflects changes in OMB's guidelines and schedule of fees. Revisions, including minor clarifications, were made by TVA to a number of definitions, the fees applicable to computer searches, and other aspects of its schedule of fees.

This rule is not a major rule for the purpose of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

**List of Subjects in 18 CFR Part 1301**

Administrative practice and procedures, Freedom of information, Privacy, Sunshine Acts.

For the reasons set forth in the preamble, Title 18, Chapter XIII of the Code of Federal Regulations is amended as follows:

## PART 1301—PROCEDURES

1. The authority for Part 1301, Subpart A, is revised to read as follows:

**Authority:** 16 U.S.C. 831–831dd, 5 U.S.C. 552, 18 U.S.C. 208(b).

2. Section 1301.2 is revised to read as follows:

**§ 1301.2 Schedule of fees.**

(a) *Basis.* Except as otherwise provided in paragraph (d) of this section, TVA records available for public inspection under § 1301.1 are made available upon payment of uniform fees which will approximately cover the direct costs to TVA of searching for, duplicating, and in the case of commercial requesters, reviewing the records.

(b) *Definitions.*—(1) *Search.* The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page and/or line-by-line identification of material within records, and computer searches using existing programming.

(2) *Duplication.* The term "duplication" refers to the process of making a copy of a record necessary to respond to a request. Such copies can take the form of paper copy, microform, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

(3) *Review.* The term "review" refers to them initial process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(4) *Commercial use request.* The term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether the requester properly belongs in this category, TVA will determine the use to which the requester will put the records sought. Where TVA has reasonable cause to doubt the use to which the requester will put the records sought, or where the use is not clear from the request itself, TVA may seek additional clarification.

(5) *Educational institution.* The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(6) *Noncommercial scientific institution.* The term "noncommercial scientific institution" refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(7) *Representative of the news media.* The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. News is any information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public, and publishers of periodicals who make their products available for purchase or subscription by the public. A free-lance journalist may be regarded as working for a news entity if that journalist can demonstrate a solid basis for expecting publication through that entity, even though not actually employed by it.

(c) *Fees.* The following fees are applicable:

(1) *Search time charges for other than computer searches.* For time spent by clerical employees in searching files, the charge is $8.35 per hour. For time spent by supervisory and professional employees, the charge is $19.75 per hour.

(2) *Duplication charges.* For photostatic reproduction of requested material which consists of sheets no larger than 8½ by 14 inches, the charge is 10 cents per page. For reproduction of other materials, the charge is the direct cost of photostat or other means necessarily used for duplication.

(3) *Review charges.* For initial review of documents in response to a commercial use request, the time spent reviewing them to determine whether they are exempt from mandatory disclosure is charged at the same rates as search time.

(4) *Charges for computer searches.* For computer searches, the charge is the direct cost of providing the service, including the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for responsive records, and operator/programmer salary apportionable to the search.

(5) *Other charges.* Where a response to a request requires services (including personnel) or materials other than the ones described in paragraphs (c)(1), (2), (3), and (4) of this section, the charge is the full cost of any such services and materials which TVA agrees to provide, but only if the requester has been notified of such cost before it is incurred, or if the request contains a statement accepting responsibility for the cost to be incurred. Such services or materials (provided at TVA's discretion) include:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(d) *Waiver of fees and services provided without charge.* (1) TVA waives or reduces fees otherwise chargeable under this section if TVA determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(2) Except for documents provided in response to a commercial use request, the first 100 pages of duplication and the first 4 hours of search time will be provided without charge. Educational and noncommercial scientific institution requesters who seek records for scholarly or scientific research and representatives of the news media are not charged search time.

(3) No fee is charged to any requester if the cost of collecting the fee would be equal to or greater than the fee itself.

(e) *Assessment and collection of fees.* (1) Interest may be charged to those requesters who fail to pay fees charged. Interest may begin to be assessed on the

amount billed on the 31st day following the day on which the billing was sent but any interest assessed will accrue from the date of the billing. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(2) If TVA reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees. TVA may aggregate any such requests and charge accordingly.

(3) If TVA determines that the allowable charges a requester may be required to pay are likely to exceed $250, TVA may require a requester to make an advance payment of an amount up to the full estimated charges if the requester has no history of prompt payment. If the requester has such a history, TVA may notify the requester of the estimated charges and if a satisfactory assurance of full payment is obtained, will not require an advance payment under this provision. The administrative time limits prescribed in § 1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(4) Where a requester has previously failed to pay a fee charged in a timely manner (within 30 days of the date of billing), TVA may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (e)(1) of this section and to make an advance payment of the full estimated charges before the agency begins to process a new request or a pending request from the requester. The administrative time limits prescribed in § 1301.1(c) of this part will begin to run only after TVA has received any payment required to be made in advance under this provision.

(5) TVA may assess charges for time spent searching, even if TVA fails to locate the records or if records located are determined to be exempt from disclosure.

W.F. Willis,

*General Manager.*

[FR Doc. 87-10840 Filed 5-12-87; 8:45 am]

BILLING CODE 8120-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 21 CFR Parts 193 and 561

[FAP 7H5529/R888; FRL 3196-5]

### 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The rules established food and feed additive regulations to permit the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (hereafter referred to in the preamble as "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on certain food and feed items. This regulation, to establish a maximum permissible level for combined residues of vinclozolin in or on commodities was requested in a petition submitted by BASF Wyandotte Corp.

**EFFECTIVE DATE:** Effective on May 13, 1987.

**ADDRESS:** Written objections may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By Mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1900).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of March 18, 1987 (52 FR 8526), which announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Road, Parsippany, New Jersey 07054 submitted a food/feed additive petition (FAP 7H5529) proposing to establish food/feed additive regulations for the combined residues of the fungicide vinclozolin and its metabolites in or on the raisins at 30 parts per million (ppm), and grape pomace (dry) at 42 ppm. These regulations will expire on May 13, 1988, unless processing data on raisins are submitted. In order for these regulations to remain in effect beyond this 1 year period, that data must indicate that residues do not concentrate to a level above 30 ppm in the raisins.

The data submitted in the petition and all other relevant material have been evaluated and discussed in a related document [PP 1E2457/R887], appearing elsewhere in this issue of the **Federal Register**, which establishes a tolerance for the combined residues of vinclozolin on grapes.

Residue data submitted in support of these regulations, and other available data, demonstrate that vinclozolin residues concentrate as the water content of the commodity decreases. The theoretical dry down factor for raisins is 4.7. Therefore, the regulations for residues of vinclozolin and its metabolites on raisins reflect a 5-fold theoretical dry down factor. If, after 1 year, residue data on raisins have not been submitted, these regulations will expire. In order for the regulations to continue to be in effect, the residue data must indicate that residues do not concentrate to a level above 30 ppm in the raisins.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography using an electron capture detector, is published in Vol. II of the Food and Drug Administration (FDA) Pesticide Analytical Manual for enforcement purposes. There is no reasonable expectation of residues in eggs, milk, meat, or poultry from the use on grapes.

The pesticide is considered useful for the purpose for which the food and feed additive regulations are sought, and it is concluded that the establishment of these regulations will protect the public health. Therefore, the regulations will protect the public health. Therefore, the regulations are established for one year as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this rule in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulations deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections.

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 through 612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

### List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 28, 1987.

Douglas D. Campt,

*Director, Office of Pesticide Programs.*

Therefore, Chapter I of 21 CFR is amended as follows:

## PART 193—[AMENDED]

1. In Part 193:

a. The authority citation for Part 193 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 193.137 is amended by designating the existing introductory paragraph and list of foods as paragraph (a) and adding paragraph (b) to read as follows:

### § 193.137 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione.

(a) * * *

(b) A food additive regulation is established until May 13, 1988, for the combined residues of the fungicide, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione, and its metabolites containing the 3,5-dichloroaniline moiety in or on the following processed foods when present therein as a result of application to grapes:

| Foods | Parts per million |
|---|---|
| Raisins | 30 |

## PART 561—[AMENDED]

2. In Part 561:

a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

b. Section 561.440 is added, to read as follows:

### § 561.440 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione.

A feed additive regulation is established until May 13, 1988, for the combined residues of the fungicide, 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety in or on the processed feeds when present therein as a result of application to grapes:

| Feeds | Parts per million |
|---|---|
| Grape, pomace, dry | 42.0 |

[FR Doc. 87-10980 Filed 5-12-87; 8:45 am]

BILLING CODE 6560-50-M

## 21 CFR Parts 193 and 561

[FAP 7H5518/R889; FRL 3200-9]

## Pesticides Tolerances in Foods; Avermectin $B_1$

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** These rules establish a food additive and a feed additive regulation to permit residues of the miticide/insecticide avermectin $B_1$ and its delta 8,9-geometric isomer in citrus oil and dried citrus pulp, respectively, in accordance with an experimental program. These regulations to establish a maximum permissible level of the miticide/insecticide in citrus oil and dried citrus pulp were requested by Merck and Co., Inc., Merck Sharp & Dohme Research Laboratories.

**EFFECTIVE DATE:** Effective on May 0, 1987.

**ADDRESS:** Written objections, identified by the document control number [FAP 7H5518/R889], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: George LaRocca, Product Manager (PM) 15, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2400.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of December 3, 1986 (51 FR 43663), which announced that Merck and Co., Inc., Merck Sharp & Dohme Research Laboratories, Hillsborough Rd., Three Bridges, NJ 08887, had submitted a feed additive petition proposing to amend 21 CFR Parts 193 and 561 by establishing regulations to permit residues of the miticide/insecticide avermectin $B_1$ [a mixture of avermectins containing >80 percent avermectin $B_{1a}$ (5-0 demethyl avermectin $A_{1a}$) and <20 percent avermectin $b_{1b}$ (5-0-demethyl-25-de-(1-methylpropyl)-25-(1-methylethyl) avermectin $A_{1a}$)] and its delta 8,9-geometric isomer in citrus oil at 0.10 part per million (ppm) an dried citrus pulp at 0.10 ppm in connection with an experimental use permit.

There were no comments received in response to the notice of filing.

The pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 751, 7 U.S.C. 135(a) *et seq.*). It has further been determined that since residues of the miticide/insecticide may result in citrus oil and dried citrus pulp from the agricultural use provided for in the experimental use permit the feed additive regulation should be established and should include a tolerance limitation.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include a 14-week rat gavage study with a no-observed-effect level (NOEL) of >0.4 milligram (mg)/kilogram (kg)/day, highest dose tested (HDT); an 18-week gavage study in dogs with a NOEL of 0.25 mg/kg/day; a rat teratology study (avermectin $B_1$) which was negative for terata up to 1.6 mg/kg/day (HDT); a rabbit teratology study (avermectin $B_1$) which was negative for terata up to 2.0 mg/kg/day (HDT); a mouse teratology study (avermectin $B_1$) with a teratogenic lowest effect level (LEL) of 0.4 mg/kg/day (cleft palate) and a teratogenic NOEL of 0.02 mg/kg/day; a mouse teratology study (delta-8,9-isomer) with a teratogenic LEL of 0.10 mg/kg/day (cleft palate) and a teratogenic NOEL of 0.06 mg/kg/day; a mouse maternotoxicity study (avermectin $B_1$) with a LEL of 0.075 mg/kg/day (lethality) and a NOEL of 0.05 mg/kg/day; a mouse maternotoxicity study (delta-8,9-isomer) with a LEL of 0.50 mg/kg/day (lethality) and a NOEL of 0.10 mg/kg/day; a two-generation rat reproduction study with a NOEL of 0.12 mg/kg/day and a rat metabolism study. Studies on mutagenicity demonstrated an overall negative potential.

The Provisional Acceptable Daily Intake (PADI) is based on the NOEL of 0.12 mg/kg/day in the two-generation rat reproduction study using a 1,000-fold safety factor to calculate the PADI. The proposed use would result in a theoretical maximum residue contribution (TMRC) for the U.S. population average of 0.000038 mg/kg/day, which would utilize 32 percent of the PADI. The most highly exposed subgroups would be nonnursing infants (88 percent of the PADI) and children 1 to 6 years of age (77 percent of the PADI).

The metabolism of avermectin $B_1$ and its delta 8,9-geometric isomer is adequately understood for this use. An adequate analytical method, liquid chromatography, is available for enforcement purposes.

Because of the long lead time from establishing this temporary tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from:

By mail: William Grosse, Chief, Information Service Branch (TS-767C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Registration Division, Room 223, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2613.

No actions are currently pending against the experimental use of this miticide/insecticide.

The scientific data reported and other relevant material have been evaluated, and the Agency concludes that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA, as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 135(a) *et seq.*) and is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 through 612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entitles. A certification statement to this effect was published in the **Federal Register** May 4, 1981 (46 FR 24945).

(Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1)))

**List of Subjects in 21 CFR Parts 193 and 561**

Food Additives, Feed additives, Pesticides and pests.

Dated: May 7, 1987.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

**PART 193—[AMENDED]**

Therefore, 21 CFR Chapter I is amended as follows:

1. In Part 193:

a. The authority citation continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. By adding new § 193.473, to read as follows:

**§ 193.473 Avermectin $B_1$ and its delta 8,9-geometric isomer.**

A temporary tolerance of 0.10 part per million is established for residues of the miticide/insecticide avermectin $B_1$ and its delta 8,9-geometric isomer in citrus oil resulting from application of the miticide/insecticide to the growing citrus crop. Such residues may be present therein only as a result of the application of the miticide/insecticide in accordance with the provisions of the experimental use permit number 618-EUP-12 that expires May 8, 1988.

**PART 561—[AMENDED]**

2. In Part 561:

a. The authority citation continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. New § 561.441 is added, to read as follows:

**§ 561.441 Avermectin $B_1$ and its delta 8,9-geometric isomer.**

A temporary tolerance of 0.10 part per million is established for residues of the insecticide/miticide avermectin $B_1$ and its delta 8,9-geometric isomer in or on dried citrus pulp resulting from application of the insecticide/miticide to citrus fruits. Such residues may be present therein only as a result of the application of the miticide-insecticide in accordance with the provisions of the experimental use permit number 618-EUP-12 that expires May 8, 1988.

[FR Doc. 87-11032 Filed 5-12-87; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF STATE

## 22 CFR Parts 41 and 42

[Department Regulation 108-858]

## Visas: Documentation of Nonimmigrants and Immigrants; Miscellaneous Amendments

**AGENCY:** Department of State.

**ACTION:** Interim rule.

**SUMMARY:** In order to conform with decisions made by the Board of Immigration Appeals in *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981) and *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981), the Department of State amends its regulations relating to certain classes of aliens which have been affected by those decisions. This rule adds new language to 22 CFR 41.91(a) (9) and (10) and 22 CFR 42.91(a) (9) and (10), which affects an alien's eligibility to receive a visa because of criminal offenses involving moral turpitude which the alien committed prior to the age of fifteen or between the ages of fifteen and eighteen. Affected by this rule are those aliens who have been convicted of a certain criminal offense during a certain period of their lives, and who are ineligible to receive a visa because of that conviction.

Current regulations consider all aliens who had been tried and treated as juveniles by a juvenile court for a turpitudinous offense committed while under the age of eighteen years not to be ineligible under section 212(a)(9) of the Immigration and Nationality Act. The new regulations set different standards for qualifying for juvenile treatment. This rule is based on decisions made by the Board of Immigration Appeals and by Pub. L. 98-473 affecting Titles 18 and 21 of the U.S. Code.

**EFFECTIVE DATE:** May 13, 1987. The Department, however, will consider written comments submitted on or before June 5, 1987, and reserves the right to make necessary modifications to this interim rule in the light of those comments.

**ADDRESS:** Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC 20520 (202) 663-1204.

**FOR FURTHER INFORMATION CONTACT:** Stephen K. Fischel or Guida Evans-Magher, Legislation and Regulations Division, Visa Services, Washington, DC 20520 (202) 663-1206.

**SUPPLEMENTARY INFORMATION:** In *Matter of Ramirez-Rivero*, 18 I&N Dec. 135 (BIA 1981) and *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981), the

Board of Immigration Appeals held that conduct underlying a foreign conviction which constitutes an act of juvenile delinquency under United States standards, however treated by a foreign court, is not a crime for purposes of section 212(a)(9) of the Immigration and Nationality Act. In the *Ramirez-Rivero* decision the BIA emphasized "the . . . desirability of a rule which provides national uniformity in the administration of a federal statute such as the (INA)." Standards established by Congress as embodied in the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. 5031 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93–415, 88 Stat. 1133, govern whether an offense is to be considered a delinquency or a crime by United States standards. The Comprehensive Crime Control Act of 1984, Pub. L. 98–473, 98 Stat. 2013, further amended the FJDA by lowering the minimum age from 16 to 15 years for prosecution of a juvenile as an adult, permitting trial of youths between the ages of 15 and 18 years as adults for felonies, *inter alia*, involving violence as defined in 18 U.S.C. 1 and 16. Having thoroughly reviewed the issue, the Department has decided it is necessary to adopt the basic position of the Board of Immigration Appeals in the above cited cases, with modifications to include subsequent amendments to the FJDA, pertaining to the age at which an individual could be prosecuted as an adult and to the description of the offense for which such an individual could be prosecuted. While the BIA decisions address convictions by foreign courts, the Department is of the view that the FJDA standard as to what conduct constitutes an act of juvenile delinquency should be applied to all conduct underlying all convictions, whether U.S. or foreign.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Compliance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553 relative to notice of proposed rulemaking and delayed effective date is impracticable and unnecessary in this instance because the amendments in this rule are necessary to bring Department regulations in compliance with United States standards on conduct constituting an act of juvenile delinquency as required by decisions of the Board of Immigration Appeals and amendments made by the Comprehensive Crime Control Act of October 12, 1984, Pub. L. 98–473. However, comments from the public have been solicited and will be given consideration prior to publication of the final rule.

**List of Subjects in 22 CFR Parts 41 and 42**

Visas, Aliens, Nonimmigrants, Immigrants, Ineligible classes.

In view of the foregoing, Parts 41 and 42 are amended to read as follows:

## PART 41—VISAS: INELIGIBLE CLASSES OF NONIMMIGRANTS

1. The authority citation for Part 41 continues to read as follows:

**Authority:** Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847.

2. Section 41.91(a)(9)(iii) is revised to read:

**§ 41.91 Aliens ineligible to receive visas.**

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(9) *Crime involving moral turpitude.* * * *

(iii) An alien shall not be ineligible to receive a visa under section 212(a)(9) of the Act by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under section 212(a)(9) of the Act by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien tried and convicted as an adult for one of the foregoing violent felony offenses committed after having attained the age of fifteen years shall be subject to the provisions of section 212(a)(9) of the Act regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

* * * * *

3. Section 41.91(a)(10)(i) is revised to read:

**§ 41.91 Aliens ineligible to receive visas.**

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(10) *Conviction of two or more offenses.* * * *

(i) An alien shall not be ineligible to receive a visa under section 212(a)(10) of the Act by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under section 212(a)(10) of the Act by reason of any offense committed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien, tried and convicted as an adult for one of the foregoing violent felony offenses committed after having attained the age of fifteen years and who has also been convicted of at least one other such offense or any other offense committed as an adult, shall be subject to the provisions of section 212(a)(10) of the act, regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

* * * * *

## PART 42—VISAS: INELIGIBLE CLASSES OF IMMIGRANTS

1. The authority citation for Part 42 continues to read as follows:

**Authority:** Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847.

2. Section 42.91(a)(9)(iv) is revised to read:

**§ 42.91 Aliens ineligible to receive visas.**

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(9) *Crime involving moral turpitude.* * * *

(iv) An alien shall not be ineligible to receive a visa under section 212(a)(9) of the Act by reason of any offense committed prior to the alien's fifteenth birthday. Nor shall an alien be ineligible to receive a visa under section 212(a)(9) of the Act by reason of any offense committeed between the alien's fifteenth and eighteenth birthdays unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien tried and convicted as a adult for one of the foregoing violent felony offenses committed after having attained the age of fifteen years shall be subject to the provisions of section 212(a)(9) of the Act regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

* * * * *

3. Section 42.91(a)(10)(ii) is revised to read:

**§ 42.91 Aliens ineligible to receive visas.**

(a) *Aliens ineligible under the provisions of section 212(a) of the Act.*

* * * * *

(10) *Conviction of two or more offenses.* * * *

(ii) An alien shall not be ineligible to receive a visa under section 212(a)(10) of the Act by reason of any offenses committed prior to the fifteenth birthday. Nor shall any alien be ineligible to receive a visa under section 212(a)(10) of the Act by reason of any offense committed between the alien's fifteenth and eighteenth birthday unless such alien was tried and convicted as an adult for a felony involving violence as defined in section 1(1) and section 16 of Title 18 of the United States Code. An alien, tried and convicted as an adult for one of the foregoing violent felony offenses committed after having attained the age of fifteen years, and who has also been convicted of at least one other such offense or any offense committed as an adult, shall be subject to the provisions of section 212(a)(10) of the Act, regardless of whether at that time juvenile courts existed within the jurisdiction of the conviction.

* * * * *

Dated: February 24, 1987.

Michael H. Newlin,

*Acting Assistant Secretary for Consular Affairs.*

[FR Doc. 87-10871 Filed 5-12-87; 8:45 am]

BILLING CODE 4710-06-M

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**22 CFR Part 43**

[Department Regulation 109.859]

**Visas: Documentation of Immigrants**

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes procedures for the implementation of the provisions of section 314 of the Immigration Reform and Control Act of 1986, Pub. L. 99-603. Those provisions were addressed in an Interim Rule published on January 14, 1987 (52 FR 1447-1451). This final rule adopts the procedures contained in the Interim Rule, with one clarifying amendment. The amendment modifies section 43.3(b) to make clear that "USPS Certified Mail" is a type of mail service excluded from being accepted for consideration.

Section 314 establishes a separate annual numerical limitation of 5,000 for FY 1987 and 1988. The total 10,000 immigrant visa numbers are not subject to the worldwide annual limitation of 270,000 under section 201 of the Immigration and Nationality Act and are made available to aliens entitled to compete for those numbers as nonpreference immigrants under the provisions of section 314. Entitlement to the numbers, which shall be made available strictly in the chronological order in which the applicants qualify after the effective date of section 314, applies to aliens natives of foreign states whose immigration to the U.S. was adversely affected by the enactment of Pub. L. 89-236.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Cornelius D. Scully, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, Department of State, Washington, D.C. 20520 (202) 663-1184.

**SUPPLEMENTARY INFORMATION:** On January 14, 1987, the Department published at 52 FR 1447-51 an Interim Rule establishing Part 43 of Title 22, Code of Federal Regulations, to implement section 314 of Pub. L. 99-603, the Immigration Reform and Control Act of 1986.

**Comments Received**

Interested persons were given the opportunity to submit written comments on the interim rule on or before February 18, 1987. A total of three comments were received. They have carefully been reviewed and considered in the issuance of this final rule.

**Analysis of Comments**

All three commenters challenged, in one way or another, the Department's establishment of the registration procedures set forth in Part 43. One commenter asserted that the Department had no authority to promulgate any regulations whatsoever to implement section 314 since section 314 contains no express authorization to do so. (That same commenter, however, partially contradicted his overall assertion by conceding that the determination of which countries were "adversely affected" by Pub. L. 89-236 required regulations.) The overall assertion of lack of authority to promulgate regulations is, in any event, plainly inconsistent with existing law.

Section 104(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1104(a), provides, in pertinent part, as follows:

> The Secretary of State shall be charged with the administration of the provisions of this Act *and all other immigration and nationality laws* relating to (1) the powers, duties and functions of diplomatic and consular officers of the United States, except those powers, duties and functions conferred upon the consular officers relating to the granting or refusal of visas; (2) the powers, duties and functions of the Bureau of Consular Affairs; . . . *He shall establish such regulations, prescribe such forms of reports, entries and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out such provisions . . .*" (Italics supplied).

Clearly, section 314 of Pub. L. 99-603 is not a part of the Immigration and Nationality Act, as amended. It is rather a separate legislative enactment apart from, and supplementary to, the Immigration and Nationality Act. On the other hand, it is equally as clear that section 314 of Pub. L. 99-603 is an "immigration law" and, as such is within the purview of the portions of section 104(a) of the Immigration and Nationality Act quoted and italicized above. Accordingly, the Secretary (and, by delegation of authority, the Assistant Secretary for Consular Affairs) has statutory authority to promulgate reasonable regulations, and to take other reasonable actions necessary to implement section 314. This conclusion was sustained by the United States District Court for the Central District of California on March 23, 1987, in the case of *Fakheri—Rad* v. *Shultz*, No. Cv. 87-393-IH.

In addition, Congress contemplated the need for implementing regulations. In the Conference Report on Pub. L. 99-603 (House Report 99-1000, October 14, 1986) at p. 98 it is stated that "(t)he Conferees direct the Secretary of State to establish an orderly mechanism for the distribution of visas under this provision."

All three commenters also asserted that the Department had a duty to implement section 314 immediately upon enactment under the existing immigrant visa regulations contained in Part 42 of Title 22, Code of Federal Regulations. Two of the three commenters supported this assertion by reference to initial instructions from the Department to consular offices abroad relative to section 314.

With respect to the possible applicability of the general immigrants visa regulations set forth in Part 42 of Title 22, it should be noted that those regulations are styled "Documentation of Immigrants Under the Immigration and Nationality Act, As Amended." As such, they are not automatically applicable to the documentation of immigrants under any other immigration law, except to the extent that such law specifies they are, or the Department makes them applicable by regulation. The commenters directed their comments particularly to those provisions of Part 42 relating to the chronological order of processing of preference and nonpreference immigrants, the establishment of preference and nonpreference priority dates and the establishment of waiting lists—22 CFR 42.61, 42.62 and 42.100.

It is precisely these provisions which cannot be applied to aliens applying for visas under section 314. As explained in the Supplementary Information set forth in the Interim Rule, for more than twenty years the immigrant visa processing system has been based upon section 212(a)(14) of the Act. All intending immigrants have had to take some affirmative step in order to qualify to compete for immigration to the United States. The pre-1965 system under which the mere submission of a letter expressing intent to immigrate sufficed to register an alien as a nonpreference immigrant and the date of receipt of the letter established the alien's nonpreference priority date was rendered obsolete by the 1965 amendments (Pub. L. 89–236) and the regulations concerning it were replaced by the current regulations. The Congress nullified this system as to applicants for visas under section 314 by providing in section 314(c) that section 212(a)(14) shall not apply in determining an alien's eligibility for a visa under that section. In effect, the Congress restored the pre-1965 situation as to such applicants, making it imperative that regulations be promulgated to provide an alternative system for qualifying to compete for immigration under section 314 and for determining the chronological order of competition. Because of the apparent intent of the Congress to allow these applicants to qualify on the pre-1965 basis, the Department modeled its implementing regulations concerning the method of registration and the determination of chronological order on the pre-1965 visa regulations which were contained at that time in 22 CFR 42.64.

Regulations were also clearly required to establish both a mechanism for determining which foreign states are "foreign states the immigration of whose natives to the United States was adversely affected by enactment of Pub. L. 89–236" and for making the authorized visa numbers available "first" to natives of such foreign states. The concept of distinguishing among foreign states on such a basis is altogether outside the contemplation of the Immigration and Nationality Act. The provision for making the authorized immigrant visa numbers available first to natives of specified foreign states as opposed to others is plainly inconsistent with the general provisions of section 203 (a) (7) of the Act and its implementing regulations.

These considerations led the Department to conclude that regulations would be required to implement the provisions of section 314. The decision to promulgate the implementing regulations as a separate Part 43 of Title 22 was based on an examination of prior precedent. There have been occasions in the past when the Congress has enacted immigration law which operated alongside the Immigration and Nationality Act. When such enactments established requirements and/or procedures different from those in the Act or in addition thereto, the Department promulgated implementing regulations as a separate part within Title 22. The most notable example of this practice is found in Part 44 of Title 22 which was published on December 3, 1953, at 18 FR 7783 in implementation of the provisions of the Refugee Relief Act of 1953, Pub. L. 203, 83rd Congress, the Act of August 7, 1953. The Refugee Relief Act of 1953 provided for the issuance of 205,000 special nonquota immigrant visas to certain defined classes of aliens. It was limited in time, having an expiration date of December 31, 1956. It was closely related to the Immigration and Nationality Act in that it incorporated by reference all provisions of the Immigration and Nationality Act except as specifically otherwise provided.

Considering the Refugee Relief Act of 1953 to be a useful and pertinent precedent, the Department decided to follow it in promulgating its regulations in implementation of section 314 as a new Part 43. This has the virtue of perpetuating in regulation the clear Congressional distinctions between aliens applying for visas under section 314 and those applying for visas under the Immigration and Nationality Act. It will also simplify the process of revoking the implementing regulations upon the expiration of section 314.

As noted, all of the commenters asserted that the Department had a duty to implement section 314 immediately upon enactment of Pub. L. 99–603—i.e., beginning on November 7, 1986, the day following signature by the President. Their assertion is presumably based upon their incorrect belief that the provisions of 22 CFR 42.61, 42.62 and 42.100 apply to the implementation of section 314. It is true that, as a preliminary stage, the Department initially considered that it might be possible to implement section 314 immediately upon enactment by publishing the necessary regulations as a Final Rule on an urgent basis and without notice and comment of any kind. An initial telegram to all diplomatic and consular offices alerting them to the existence of section 314 indicated as much. The responses to that initial telegram, all received well before the date of enactment, made it clear, however, that this would not be possible. A number of the responses reflected serious concerns and raised troubling questions. One Embassy reported, for example, that garbled reports about section 314 were already circulating in the local community, that it had been receiving up to 3,500 inquiries a day, and that local police authorities were concerned about crowd control around the Embassy premises. Another Embassy warned that a recent report about opportunities for emigration to a third country had led to riots in the city which lasted for three days and were broken up only by gunfire from local security forces. Other embassies and consulates reported the likelihood of administrative chaos in handling a sudden surge of mail and walk-in applications and a number voiced the fear that such chaotic conditions would heighten the possibility of fraudulent manipulation of the registration system.

Thus, even before the date of enactment it had become clear to the Department that extremely careful study, analysis, and planning would be critical in order to establish an application and registration system which was equitable, consistent with the provisions of section 314 and administratively feasible. Accordingly, all diplomatic and consular offices were instructed, prior to the date of enactment, that implementation would be delayed until these issues had been resolved and that no registrations were to be accepted until further instructed. The months of November and December were devoted to the required study, analysis and planning. On January 5, 1987, the details of the system decided upon were announced publicly. On January 14, 1987, the Interim Rule establishing the system was published in the **Federal Register** and the registration period was January 21 to January 27, 1987.

It is the Department's position that the delay in implementation described above was lawful, necessary and reasonable, given the complex nature of the issues which had to be resolved. In this connection, it is of interest to note that the regulations implementing the Refugee Relief Act of 1965 were not promulgated until four months after enactment.

One commenter asserted that the provisions in 22 CFR 43.4(b) establishing a limitation on the amount of immigrant numbers which can be made available to natives of any affected foreign state is not justified by the provisions of section 314. It is true that no such limitation is expressly provided for in section 314.

Nevertheless, the Department believes that it is consistent with the intent of the Congress that such legislation be imposed. Under the overall annual limitation of 270,000 on immigration in section 201(a) of the Immigration and Nationality Act there is a foreign state limitation of 20,000 which clearly was included by the Congress to prevent preemption of the entire litigation by natives of one or a few foreign states. The Department considered it to be reasonable to apply the same principle to the limitation established by section 314.

In this case, however, the Department believed it appropriate to establish a variable limitation based on the extent to which average annual immigration declined from the pre-1965 period to the post-1965 period for each foreign state. The variable limitation merely refines the basic principle of avoiding preemption by ensuring that natives of foreign states only marginally affected could not receive a disproportionally high percentage of the visas authorized under section 314 at the expense of natives of foreign states far more significantly affected. In any event, the issue of the appropriateness of this provision has become moot, as an operational reality. As will be apparent from the information set forth below, there is no case in which the number of registrants within the first 10,000 from any single foreign state or area exceeds the limitation for that foreign state or area.

One commenter asserted that the Department failed to comply with the provisions of the Administrative Procedure Act, 5 USC 553, presumbly for failure to publish Notice of Proposed Rulemaking. The Department believes that it has adequate justification for publishing an Interim Rule and that such justification is adequately set forth in the Supplementary Information contained in the Interim Rule. See *Fakheri-Rad* v. *Shultz, supra.*

The same commenter complained that the Department had failed to publish or otherwise provide access for the public to the statistical data relied upon in determining adversely affected countries. As explained in 22 CFR 43.2, the statistical information was taken from the publicly available Annual Statistical Yearbooks of the Immigration and Naturalization Service for the years in question and from publicly available compilations of such data prepared by INS.

The same commenter also questioned the use of July 1, 1953, as the beginning of the pre-1965 measuring period as the formula for determining adversely affected foreign states, contending that it failed to take into account the fact that prior to 1946 all citizens of the Philippines were citizens of the United States. There is no authority for the statement that, prior to 1946 all citizens of the Philippines were citizens of the United States, as is reflected in all of the pertinent statutes—the Act of July 1, 1902, the Act of March 23, 1912, the Act of August 29, 1916, and the Act of May 24, 1934. The Department fails to perceive the import of the assertion, even if it were true.

The Department chose July 1, 1953, as the beginning of the measuring period because it marks the beginning of the first full fiscal year in which the Immigration and Nationality Act was effective. The Department considered it appropriate to restrict consideration to the period covered by the Immigration and Nationality Act since (1) Pub. L. 89–236 was an amendment to the Immigration and Nationality Act not to any prior acts; and (2) prior legislation (the Immigration Act of 1924 and the Act of February 5, 1917), though similar was sufficiently different to warrant confining the period of consideration to that to which the Immigration and Nationality Act applied.

The same commenter asserts that the interpretation of section 314 also ignores United States treaty obligations not to discriminate against natives of various foreign nations, citing as an example the Treaty of Amity, Economic Relations and Consular Rights with Iran, June 27, 1957. The commenter does not, however, specify in what way and for what reason this is so, and it is hard to see how such agreements could have anything to do with section 314. *Cf., Sumitomo Shoji America, Inc.* v. *Avagliano* 457 U.S. 176 (1982). As the Department has been unable to hypothesize a colorable argument in support of the assertion, it is unable to comment further upon the assertion.

The same commenter challlenges the exclusion of Hong Kong from the list of adversely affected countries as being contrary to the definition of "foreign state" contained in section 101(a)(13) of the Immigration and Nationality Act. The Department believes that it had unambiguous Congressional authority to promulgate a definition of "foreign state" for the purposes of section 314, since the cited section of the Immigration and Nationality Act is, by its express terms, applicable only to the Immigration and Nationality Act and since the definition adopted is an appropriate one for the reasons set forth in the Interim Rule.

The same commenter alleged that the Department failed to consider the effects of Pub. L. 89–236 on independent countries of the Western Hemisphere. This allegation is untrue. As is expressly stated in the Interim Rule, the Department used annual total admissions of immigrants, as opposed to numerically limited admissions only, for the express purpose of being able to consider the possible adverse effects of Pub. L. 89–236 on immigration by natives of all countries. In fact, two independent countries of the Western Hemisphere—Argentina and Canada—were determined to have been adversely affected. For the others, the annual average rate of immigration was at least as high after enactment of Pub. L. 89–236 as it had been prior thereto.

The same commenter criticized the Department's decision to allow only applicants from adversely affected foreign states to register. As noted in the Interim Rule, the Department recognizes that section 314 contemplates that natives of all foreign states may compete for the authorized immigrant visa numbers. Section 314 also requires, however, that the authorized immigrant visa numbers be made available "first" to natives of adversely affected foreign states. The information available to the Department from the outset regarding the extent of worldwide interest in section 314 made it obvious that natives of adversely affected foreign states would register in such numbers that none of the authorized visa numbers could ever be made available to other aspiring applicants. Facing that certainty, the Department concluded that permitting applicants from non-adversely affected countries to register would both create an administrative nightmare and inevitably raise unwarranted expectations among those who had absolutely no chance of success.

Events have fully borne out the Department's expectations. The Department received over 1.5 million pieces of mail in response to the registration system announced on January 5 and set forth in the Interim Rule. Nearly one million pieces of mail were received during the one-week registration period. Had the Department permitted registration by natives of all foreign states there would undoubtedly have been many millions—perhaps tens of millions—more from applicants for whom no immigrant visa numbers will ever be available under section 314.

The same commenter asserted that the registration procedure was unfair, both inherently and because it was selectively advertised abroad. The Department made every reasonable effort to publicize the program both in the United States and abroad.

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Recognizing that, while publication in the Federal Register constitutes public notice as a matter of law, very few persons outside the United States have ever even heard of the Federal Register, much less ever seen a copy, the Department prepared a public announcement which was sent to all diplomatic and consular offices with instructions to make it public on January 5, 1987, and to give it as much distribution as was possible. As far as the Department is aware, all posts abroad complied with those instructions in good faith to the best of their ability. The Department also made a public announcement on that same day through its Press Office. The United States Information Agency (USIA) carried the public announcement on its international wireless file which is made available for use throughout the world by the media. Also, the Voice of America (VOA) broadcast information about the registration system.

The commenter's claim of inherent unfairness is based on the proposition that the mail-in registration system favored those who were wealthy enough to pay the postage for multiple applications, or to have a representative see to the mailing for them. The Department is aware that visa applicants do hire lawyers or other representatives to assist them in taking the steps necessary to qualify for and receive a visa to enter the United States. The Department neither approves nor disapproves of this practice and neither encourages it nor discourages it. Rather, the Department simply recognizes it as a fact and a matter to be decided by the individual visa applicant. It is sometimes said that the requirements under the general immigration law are so complex as to virtually force applicants to do so. While the Department does not propose to participate in any discussion of this issue generally, it does not believe that a registration procedure which consists of writing a letter identifying oneself, as is provided for in the Interim Rule, can fairly be subjected to that criticism.

The same commenter suggested that the Department conduct a drawing to pick 30,000 applications from among all those received and that those somehow be chronologized to form the waiting list. The Department did consider a procedure of this kind but concluded that the procedure adopted was more consistent with the requirement of section 314 that the authorized visa numbers be made available "strictly in the chronological order" in which the applicants qualified.

Finally, the same commenter impugned the motives of the proponents of section 314 and questioned the propriety of the legislative procedures which resulted in its enactment. The Department was not privy to the actions and deliberations which led to the enactment of section 314 and they are not germane to the issues at hand here.

Having discussed the comments received concerning the Interim Rule, the Department wishes to take the occasion also to make public certain information concerning the NP-5 program and to explain certain aspects of its operation.

First, the Department wishes to explain the mechanics of establishing the chronological order of receipt of individual pieces of mail. Mail received at the post box address during the application period was sorted by United States Postal Service employees and placed in containers of 500 pieces each. Each group of such containers was loaded onto a carrying rack and the carrying rack was delivered to representatives of the Visa Office and of the firm contracted to carry out the processing of the mail. It is the Department's understanding that this is a standard procedure followed by USPS in delivering incoming mail to the person or organization which has rented a post office box where the volume of mail is heavy.

Each carrying rack was labelled to indicate the order of its receipt from USPS. The racks were then transported to the office space of the contractor where they were kept under lock and key until ready for processing, the key being at all times in the possession of an officer of the Visa Office.

Employees of the contractor opened the mail, tray-by-tray, working each loading rack in the chronological order of its receipt from USPS and working each tray from a loading rack in the order it was loaded onto the rack. Other employees of the contractor then entered the information furnished by the applicants into a computer programmed for this purpose.

The computer was programmed to create a twelve digit number—the date/time group—consisting of the year, month, day, hour, minute and second of the data entry. The date/time group consitutes the registration date—and, therefore, the priority date— for future consideration of the application under section 314 and the implementing regulations.

Second, the Department wishes to emphasize that neither an early registration date nor even the scheduling of an appointment for final action (visa issuance or refusal) constitutes a guarantee that the applicant will receive a visa under section 314. Following the data entry procedure described above, the Department mailed computer printouts of the information to the immigrant visa issuing office designated by the applicant. Upon receipt of the printouts, the immigrant visa issuing offices initiated the standard immigrant visa processing procedures. The first 10,000 registrants have been informed that they may proceed with the normal administrative processing leading to the scheduling of an appointment for final action (visa issuance or refusal). The next 15,000 registrants are being informed that they are registered, but that visa numbers are not available for their use at this time.

Once the allocation of immigrant visa numbers commences, visa numbers will be allocated within the limits established by law and regulation to those among the first 10,000 registrants who have completed the administrative processing. If at some point it should appear that Packet 3 should be sent to some of the second group who initially received Packet 3A, in order to ensure that all of the authorized visa numbers are used in each fiscal year, that will be done.

In summary, as is provided both in section 314 itself and in the implementing regulations, all rules, requirements and procedures applicable to immigrant visa processing, issuance and refusal generally (except that section 212(a)(14)—the labor certification requirement—does not apply) will apply to the processing, issuance and refusal of visas under section 314. Under those generally applicable rules, requirements and procedures, no alien is guaranteed, or can expect to be guaranteed, a visa until the consular officer has determined that he or she is eligible in all respects to receive a visa.

Third, the Department wishes to point out that the provisions in 22 CFR 43.3(b) excluding from consideration hand-delivered applications, telegrams and certain forms of mail service requiring a return receipt of some kind includes USPS Certified Mail. 22 CFR 43.3(b) is being amended to clarify this point.

Fourth, it came to the Department's attention in processing the registration of applications that certain of the registrants were children under the age of 16 apparently unaccompanied by their parents. Those applications have been processed for registration just as the others but it will probably not be possible to issue immigrant visas to such registrants, because of section 203(a)(7)

of the Immigration and Nationality Act which provides, in pertinent part, that:

> No immigrant visa shall be issued under this paragraph to an adopted child or prospective adopted child of a United States citizen or lawfully resident alien unless (A) a valid home study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is based in the United States; and (B) the child has been irrevocably released for immigration and adoption: Provided, that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege or status under this Act. No immigrant visa shall otherwise be issued under this paragraph to an unmarried child under the age of sixteen except a child who is accompanying or following to join his natural parent.

Any registrant who is a minor child will be subject to this provision.

Fifth, the Department wishes to inform the public that it does not have the capability of responding to inquiries concerning the status of applications for registration under section 314. The names and other identifying data of the first 25,000 registrants have been sent to the immigrant visa issuing office designated by the registrant. Those offices are preparing the standard immigrant visa control card and mailing appropriate instructions to the registrant at the mailing address listed by the registrant. All other pieces of mail received at the post office box address are being retained pending a decision as to their ultimate disposition but it is not administratively feasible to search through the nearly 1.5 million pieces of mail for individual envelopes.

Sixth, the Department will not be able to return applications to the applicants. All applications for registration will be retained for an appropriate period of time pending destruction.

Seventh, the Department has communicated with the Immigration and Naturalization Service concerning the possibility that a successful NP–5 registrant who is in the United States may apply for adjustment of status to permanent resident under section 245 of the Immigration and Nationality Act, as amended. It is the Service's position that an NP–5 registrant who is in the United States may apply for adjustment of status on the same basis as any other alien in the United States. The alien must have been inspected and admitted or paroled and must not be within the prohibitions of section 245(c). In addition, an immigrant visa must be immediately available to the alien when the application is filed.

The visa availability requirement merits further explanation as it relates to NP–5 applicants. As is true for immigrant visa applicants generally, the Packet 3 or 3A letter sent to NP–5 registrants shows the registrant's priority date. INS procedure in determining visa availability for an adjustment of status applicant is to compare the applicant's priority date with the visa issuance cut-off date under the applicable classification as shown in the current month's Visa Office Bulletin on visa availability.

The Department has recently made the initial allocation of NP–5 immigrant visa numbers and has established a visa issuance cut-off date for NP–5 applicants which is being made public in the standard manner—i.e., it is being included in the next monthly Visa Office Bulletin on immigrant visa availability and is being included in the information given on the visa availability recording on the Visa Office's dedicated telephone line, (202) 663–1514. Accordingly, NP–5 applicants in the United States who meet all the generally applicable requirements for adjustment of status may apply to the appropriate District Office of the Immigration and Naturalization Service.

Eighth, the Department believes that the results of the registration period will be of interest. Roughly 400,000 pieces of mail were received prior to 12:01 a.m., January 21, 1987. These pieces of mail have been retained but, as provided in 22 CFR 43.3(a), have not been processed or given consideration under the NP–5 program. From 12:01 a.m., January 21, through midnight, January 27, the designated registration period, about 950,000 pieces of mail were received. These pieces of mail have been handled as previously described. Almost 125,000 pieces of mail have been received since the close of the registration period. These latter pieces of mail are also being temporarily retained but are not being processed or given consideration under the NP–5 program. The department intends to destroy all of the mail relating to the NP–5 program after a reasonable time as determined by the Department. But in any event no earlier than six months from the effective date of this final rule.

As has been previously described, the names and identifying information of the first 25,000 registrants have been sent to the visa issuing office designated by them. Those offices are preparing the standard immigrant visa control card and sending Packet 3 to the first 10,000 and Packet 3A to the next 15,000.

The distribution of the first 10,000 registrants by foreign state or area is as follows:

| | |
|---|---|
| Albania | 0 |
| Algeria | 15 |
| Argentina | 170 |
| Austria | 82 |
| Belgium | 63 |
| Bermuda | 0 |
| Canada | 2,078 |
| Czechoslovakia | 27 |
| Denmark | 54 |
| Estonia | 7 |
| Finland | 39 |
| France | 201 |
| German Democratic Republic | 20 |
| Federal Republic of Germany | 311 |
| Gibraltar | 1 |
| Great Britain | 1,161 |
| Guadeloupe | 0 |
| Hungary | 32 |
| Iceland | 4 |
| Indonesia | 810 |
| Ireland | 3,112 |
| Italy | 315 |
| Japan | 518 |
| Latvia | 1 |
| Liechtenstein | 0 |
| Lithuania | 3 |
| Luxembourg | 0 |
| Monaco | 0 |
| New Caledonia | 0 |
| Netherlands | 106 |
| Norway | 9 |
| Poland | 592 |
| San Marino | 0 |
| Sweden | 129 |
| Switzerland | 96 |
| Tunisia | 16 |
| Total | 10,000 |

Finally, the Department believes that some NP–5 registrants were already registered for immigration under one of the classifications in section 203(a) of the Immigration and Nationality Act. The Department believes it to be important that, since there is no guarantee that any NP–5 registrant will receive a visa, those who also have another entitlement do nothing to prejudice that other entitlement.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 22 CFR Part 43**

Aliens, Nonpreference immigrants, Visas.

**PART 43—[AMENDED]**

Accordingly, the interim rule (22 CFR Part 34) published at 52 FR 1447 is adopted as a final rule with the following amendment:

1. The authority citation for Part 43 continues to read:

> **Authority:** Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847. Also sec. 314, 100 Stat. 3359, 3439, 8 U.S.C. 1153 Note.

2. Section 43.3(b) is amended by the addition of "USPS Certified Mail" in the second sentence, as follows:

**§ 43.3 Registration of applicants and priority date.**

* * * * *

(b) *Place of registration.* * * * Hand-delivered applications, telegrams, envelopes sent by registered mail, Federal Express, USPS Certified Mail or other courier services will not be accepted. * * *

* * * * *

Dated: April 16, 1987.

**Joan M. Clark,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 87-10870 Filed 5-12-87; 8:45 am]

BILLING CODE 4710-06-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Parts 243, 511, 842 and 942

[Docket No. R-87-1152; FR-1936]

### Pet Ownership in Assisted Housing for Elderly or Handicapped; Correction

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule that appeared in the Federal Register on Monday, December 1, 1986 (51 FR 43207). It corrects the citation to the statutory authority for the rule in the rule text.

**FOR FURTHER INFORMATION CONTACT:** Grady J. Norris, Assistant General Counsel for Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20401. Telephone (202) 755-7055. (This is not a toll-free number.)

Accordingly, the Department is correcting FR Document 86-25747, published December 1, 1986 (51 FR 43270) as follows:

**PART 243—[CORRECTED]**

1. In the authority citation for Part 243 on page 43298, the citation to 12 U.S.C. 1701n-1 is corrected to read 12 U.S.C. 1701r-1.

**§ 243.1 [Corrected]**

2. In § 243.1(a) on page 43298, the citation to 12 U.S.C. 1701n-1 is corrected to read 12 U.S.C. 1701r-1.

**PART 842—[CORRECTED]**

3. In the authority citation for Part 842 on page 43302, the citation to 12 U.S.C. 1701n-1 is corrected to read 12 U.S.C. 1701r-1.

**§ 842.1 [Corrected]**

4. In § 842.1(a) on page 43302, the citation to 12 U.S.C. 1701n-1 is corrected to read 12 U.S.C. 1701r-1.

**PART 942—[CORRECTED]**

5. In the authority citation for Part 942 on page 43302, the citation to 12 U.S.C. 1701n-1 is corrected to read 12 U.S.C. 1701r-1.

**§ 942.1 [Corrected]**

6. In § 942.1(a) on page 43302, the citation to 12 U.S.C. 1701n-1 is corrected to read 12 U.S.C. 1701r-1.

Dated: May 8, 1987.

**Grady J. Norris,**

*Associate General Counsel for Regulations.*

[FR Doc. 87-10964 Filed 5-12-87; 8:45 am]

BILLING CODE 4210-32-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

[T.D. 8139]

### Procedure and Administration; Reduction of Tax Overpayments by Amount of Past-due Legally Enforceable Debt Owed to Federal Agency

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations which amend temporary regulations which were published in the Federal Register September 30, 1985 relating to the reduction of a taxpayer's overpayment (*i.e.*, tax refund) by the amount of any past-due legally enforceable debt owed to a Federal agency and referred by that agency to the Internal Revenue Service for offset. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register. Changes to the applicable law were made by the Spending Reduction Act of 1984. The regulations affect any taxpayer who owes a past-due legally enforceable debt to any Federal agency identified as eligible to participate in the tax refund offset program by the Commissioner of Internal Revenue and who has made an overpayment of taxes, and such Federal agency to which the past-due legally enforceable debt is owed.

**EFFECTIVE DATES:** The regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1988 and are effective May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T, 202-566-3288 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 30, 1985, temporary regulations under section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of Subchapter II of Chapter 37 of Title 31, United States Code were published in the Federal Register (50 FR 38713, Sept. 30, 1985). This document amends those temporary regulations, which provided guidance concerning which debts qualify for referral to the Service for the Federal tax refund offset program and concerning procedures relating to operation of the program.

**In General**

Section 6402(d) of the Internal Revenue Code requires the Internal Revenue Service (1) to reduce the amount of any overpayment (*i.e.*, tax refund) otherwise payable to a taxpayer by the amount of any past-due legally enforceable debt owed to a Federal agency of which the Service has been notified, (2) to pay the amount of the reduction to the agency to which the debt is owed, and (3) to notify the taxpayer that the overpayment has been reduced.

The temporary regulations require that prior to referral of a debt to the Service, an agency notify, or make a reasonable attempt to notify the debtor that the debt is past due and that unless repaid, it will be referred to the Service. The temporary regulations are amended to clarify that a reasonable attempt to notify the debtor must include using address information obtained from the Service pursuant to section 6103(m)(2) or 6103(m)(4). The temporary regulations require the Federal agency to give the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, consider any evidence presented, and determine that the debt is past-due and legally enforceable. These amendments to the regulations provide that the Federal agency itself must receive and

consider any evidence presented by the debtor. Evidence presented to or considered by any organization, governmental entity or person acting on the Federal agency's behalf does not satisfy this requirement, unless the debtor is accorded at least 30 days from the date of a determination by the entity or person acting on the Federal agency's behalf that the debt is past-due or legally enforceable to request review by an officer or employee of the Federal agency of any unresolved dispute and the Federal agency directly notifies the debtor of the agency's final determination.

The temporary regulations require debts to be offset after June 30, 1986, to be referred to a consumer reporting agency under 31 U.S.C. 3711(f). The temporary regulations are amended to waive the requirement that a debt be referred to a consumer reporting agency if the consumer reporting agency would be prohibited from making a consumer report regarding the debt under 15 U.S.C. 1681c or if the amount of the debt does not exceed $100.

These amendments to the regulations contain an additional requirement that agencies referring debts to the Service for offset after June 30, 1986, have regulations governing the Federal tax refund offset program, regulations governing administrative offset under 31 U.S.C. 3716 and regulations governing salary offset under 5 U.S.C. 5514(a) (unless the agency has certified that it will not refer to the Service any names of present or former Federal employees or other persons whose debts are subject to offset under the provisions of 5 U.S.C. 5514(a)(1)).

### Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and, therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

### Drafting Information

The principal author of these regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

### List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

### Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

## PART 301—[AMENDED]

**Paragraph 1.** The authority for Part 301 continues to read as follows:

**Authority:** 26 U.S.C. 7805. * * * Section 301.6402-6T also issued under 31 U.S.C. 3720A.

**Par. 2.** Section 301.6402–6T (b) is revised to read as follows:

**§ 301.6402–6T Offset of past-due legally enforceable debt against overpayment (temporary).**

* * * * *

(b) Past-due legally enforceable debt eligible for refund offset. For purposes of this section, a past-due legally enforceable debt which may be referred by a Federal agency to the Service for offset is a debt—

(1) Which, in the case of a debt to be referred to the Service after June 30, 1986, is owed to an agency that has promulgated temporary or final regulations under 31 U.S.C. 3720A, governing the operation of the Federal tax refund offset program in such agency, has promulgated temporary or final regulations under 31 U.S.C. 3716, governing the operation of the administrative offset program in such agency, and has promulgated temporary or final regulations under 5 U.S.C. 5514 (a), governing the operation of the salary offset program in such agency (unless the agency has certified that it will not refer to the Service any names of present or former Federal employees or other persons whose debts are subject to offset under the provisions of 5 U.S.C. 5514 (a) (1));

(2) Which, except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(3) Which cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514 (a) (1);

(4) Which is ineligible for administrative offset under 31 U.S.C. 3716 (a) by reason of 31 U.S.C. 3716 (c) (2), or cannot be currently collected by administrative offset under 31 U.S.C. 3716 (a) by the referring agency against amounts payable to the debtor by the referring agency;

(5) With respect to which the agency has given the taxpayer at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and determined that an amount of such debt is past-due and legally enforceable;

(6) Which, in the case of a debt to be referred to the Service after June 30, 1986, has been disclosed by such agency to a consumer reporting agency as authorized by 31 U.S.C. 3711 (f), unless the consumer reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c, or unless amount of the debt does not exceed $100;

(7) With respect to which that the agency has notified, or has made a reasonable attempt to notify, the taxpayer that the debt is past due, and unless repaid within 60 days thereafter, will be referred to the Service for offset against any overpayment of tax; and

(8) Which is at least $25.

For purposes of this paragraph, in order to make a reasonable attempt to notify the taxpayer the agency must use such address information as may be obtainable from the Service pursuant to section 6103 (m) (2) or (4) of the Code. Further, in the case of a debt to be referred to the Service after June 30, 1986, the taxpayer's evidence that the debt is not past-due or legally enforceable must be presented directly to and be considered directly by the Federal agency to which the debt is owed and not to other entities or persons acting on the Federal agency's behalf, unless the debtor is accorded at least 30 days from the date of a determination by the entity or person acting on the Federal agency's behalf that the debt is past-due or legally enforceable to request review by an officer or employee of the Federal agency of any unresolved dispute as to whether all or part of the debt is past-due or legally enforceable and the Federal agency directly notifies the debtor of the agency's final determination.

* * * * *

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedue under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective

date limitation of subsection (d) of that section.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: April 30, 1987.

**J. Roger Mentz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87-10917 Filed 5-12-87; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

### 28 CFR Part 0

[Order No. 1186-87]

### Delegation of Authority to the Director, Bureau of Prisons

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** Public Law 99-646, Criminal Law and Procedure Technical Amendments Act of 1986, provided the Attorney General with two specific authorities that are now being re-delegated to the Director, Bureau of Prisons. The first delegation will allow the Director, Bureau of Prisons to accept donations on behalf of the Bureau of Prisons, including Federal Prison Industries, under 18 U.S.C. 4044. The second delegation authorizes the Director, Bureau of Prisons to make available to the head of any law enforcement agency of a state or of a unit of local government information with respect to federal prisoners who have been convicted of felony offenses against the United States and who are confined at a facility which is a residential community treatment center located in the geographical area in which the requesting agency has jurisdiction. This authority presently resides with the Attorney General under 18 U.S.C. 4082(f). These re-delegations of authority are expected to allow for a more efficient and direct handling of these matters.

**EFFECTIVE DATE:** April 24, 1987.

**FOR FURTHER INFORMATION CONTACT:** Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272-6874.

**SUPPLEMENTARY INFORMATION:** This Order pertains to agency management. It is not subject to publication for notice and comment under 5 U.S.C. 553 and is not a rule within the meaning of either the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., or Executive Order No. 12291 ( 'Federal Regulation").

**List of Subjects in 28 CFR Part 0**

Authority delegation (Government agencies), Organization and functions (Government agencies).

Accordingly, by virtue of the authority vested in me by 28 U.S.C. 510 and 5 U.S.C. 301, 0.96 of Title 28, Code of Federal Regulations is amended as follows:

**PART 0—[AMENDED]**

1. The authority citation for Part 0 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 et seq., 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

2. In § 0.96, paragraphs (t) and (u) are added to read as follows:

**§ 0.96 [Amended]**

* * * * *

(t) Authority to accept donations on behalf of the Bureau of Prisons, including Federal Prison Industries, and to promulgate rules concerning these donations, in accordance with the provisions of section 4044 of Title 18 of the United States Code.

(u) Authority under the provisions of 18 U.S.C. 4082(f) to provide law enforcement representatives with information on federal prisoners who have been convicted of felony offenses and who are confined at a residential community treatment center located in the geographical area in which the requesting agency has jurisdiction.

Dated: April 24, 1987.

**Edwin Meese III,**

*Attorney General.*

[FR Doc. 87-10757 Filed 5-12-87; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 43

[DoD Directive 1344.7]

### Personal Commercial Solicitation on DoD Installations

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule amendment.

**SUMMARY:** This amendment would apply to the provisions reflected in Part 43 to Defense Agencies, since certain agencies are located on DoD installations and fall under the term "DoD Installation" as defined in Part 43. It would allow an exception to the prohibition on advertising addresses or telephone numbers of commercial sales activities for members of military families authorized to conduct such activities in family housing.

**EFFECTIVE DATE:** April 21, 1987.

**ADDRESS:** Office of the Assistant Secretary of Defense (Force Management and Personnel), ODASD(MM&PP), PA&S, Room 3C975, The Pentagon, Washington, DC 20301-4000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara E. Schoenberger, telephone (202) 697-9525.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** on October 6, 1986 (51 FR 35535) the Department of Defense published a proposed change to Part 43. Comments were received and considered.

**List of Subjects in 32 CFR Part 43**

Consumer protection, Military personnel, Federal building and facilities.

**PART 43—[AMENDED]**

Accordingly, 32 CFR Part 43 is amended as follows:

1. The authority citation for Part 43 continues to read as follows:

**Authority:** 5 U.S.C. 301.

**§ 43.2 [Amended]**

2. Section 43.2(a) is amended by removing the word "and" after "(OJCS)", changing the word "Commends" to "Commands,"and adding "and the Defense Agencies" after "Commands".

**§ 43.6 [Amended]**

3. Section 43.6(d)(14) is amended by removing the period at the end of the sentence and adding ", except for authorized activities conducted by members of military families residing in family housing."

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

May 7, 1987.

[FR Doc. 87-10885 Filed 5-12-87; 8:45 am]

BILLING CODE 3810-01-M

## VETERANS ADMINISTRATION

### 38 CFR Part 21

### Veterans Education; Approval of Programs Leading to High School Diplomas

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The law permits the Veterans Administration (VA) to pay educational assistance allowance under the Vietnam Era GI Bill and dependents' educational assistance under the Dependents' Educational Assistance Program to veterans and eligible spouses and surviving spouses who are pursuing a high school or an equivalency certificate. However, this assistance may not be paid if the veteran or eligible spouse or surviving spouse already has a high school diploma or equivalency certificate. Recently, some questions have arisen as to whether someone who has a secondary school diploma awarded by a school located in a foreign country may pursue another one in the United States. This regulatory amendment makes clear that the VA considers such a person to be already qualified for the objective of his or her program of education, i.e., successful completion of secondary level training. The VA may not pay educational assistance for the pursuit of another secondary school diploma or equivalency certificate in the United States.

**EFFECTIVE DATE:** April 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2092.

**SUPPLEMENTARY INFORMATION:** On page 26914 of the Federal Register of July 28, 1986, there was published a proposal to amend Part 21 to state that the VA considers all high school diplomas to be equal in determining whether educational assistance allowance may be paid for pursuit of another one. Interested people were given 30 days to submit comments, suggestions or objections.

The VA received two letters. One was from a university official. An official of an educational organization wrote the other one. One writer stated that he had no comments to make on the proposal. The other objected to the proposal. In his opinion, foreign high school diplomas are not always the equivalent of diplomas from U.S. high schools.

The VA recognizes that even at the same high school a diploma may not represent the same amount of learning for each student. However, the VA does not possess the expertise to determine whether a diploma which a veteran or eligible person has already earned represents more or less learning than the second diploma which he or she wishes to pursue. This is especially true when the first diploma is a foreign one. By considering all diplomas to be equal, the VA is applying the same principle that it does when, for example, it considers a veteran to be already qualified for the objective of bachelor's degree in history if he or she holds such a degree and wishes to obtain another one at a different college.

The VA will pay for refresher, remedial and deficiency courses if the holder of a high school diploma wishes to pursue training beyond the high school level and he or she needs those courses in order to pursue the new objective. The pertinent regulations provide that the VA will abide by determinations by experts outside the VA in determining whether these courses are needed. This ensures that those whose high school diploma represents less learning than the average are able to further their education. Hence, the VA is making the proposal final without change.

The VA has determined that this amended final regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprise to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this amended final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation concerns only the eligibility of individuals for educational assistance, and merely codifies present VA policy. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation are 64.111 and 64.117.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 20, 1987.

**Thomas K. Turnage,**

*Administrator*

**PART 21—[AMENDED]**

38 CFR Part 21, *Vocational Rehabilitation and Education,* is amended by revising § 21.4230 paragraphs (d) introductory text and (d)(1) to read as follows:

**§ 21.4230 Requirements.**

* * * * *

(d) *Selection—Chapter 34.* Except as provided in paragraphs (d) (1) and (2) of this section, the VA will approve a program of education under chapter 34 selected by an eligible veteran or serviceperson if it meets the requirements of paragraph (a) of this section; has an objective as described in paragraph (b) or (c) of this section; the courses or subjects in the program are approved for VA training; and the veteran or serviceperson is not already qualified for the objective of the program.

(1) A person who has previously received a secondary school diploma or an equivalency certificate from any jurisdiction shall be considered already qualified for those objectives, and, except as provided in § 21.4235(a)(2), may not pursue additional courses at the secondary school level which lead to another secondary school diploma or equivalency certificate.

(38 U.S.C. 1771)

* * * * *

[FR Doc. 87–10753 Filed 5–12–87; 8:45 am]

BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

**[A–4–FRL–3198–8; AL–017]**

**Designation of Areas for Air Quality Planning Purposes; Redesignation of Two Ozone Nonattainment Areas in Alabama**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is today granting the request by Alabama that Etowah County and Mobile County be redesignated from nonattainment to attainment for ozone. The redesignation of these counties to attainment is based on three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0 per year and on implementation of EPA-approved control strategies.

**DATE:** This action is effective June 12, 1987 for all items.

**ADDRESSES:** Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36130

**FOR FURTHER INFORMATION CONTACT:** Jill Thomas, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347–2864 or FTS 257–2864.

**SUPPLEMENTARY INFORMATION:** In March 3, 1978, **Federal Register** (43 FR 8962), EPA designated Mobile County, Alabama as nonattainment for ozone. This designation was based on ambient air quality monitoring data which revealed that Mobile County had experienced oxidant violations. Several areas in Alabama were designated nonattainment for ozone and the State was therefore required to revise their state implementation plan (SIP) for ozone. Alabama drafted and adopted statewide regulations for controlling volatile organic compound (VOC) emissions from stationary sources. Through the Federal Motor Vehicle Control Program (FMVCP) and through implementation of Group I and Group II VOC regulations, Alabama demonstrated attainment of the ozone standard. EPA approved Alabama's ozone SIP on November 26, 1979 (44 FR 67375).

In the August 31, 1982, **Federal Register** (47 FR 38322), EPA changed the designation of Etowah County, Alabama to nonattainment for ozone. This designation was based upon exceedances measured in Etowah County during 1980–1981. Alabama was not required at this time to adopt new control requirements since the State had previously adopted a statewide plan for control of VOC emissions.

Alabama has requested that EPA change the attainment status of Etowah County and Mobile County from nonattainment to attainment for ozone. In order to redesignate a nonattainment area, EPA policy requires that the most recent three years of ozone data show an expected exceedance calculation of less than or equal to 1.0 per year. In the event that three years of ozone data is not available, the most recent eight quarters of quality assured ambient air data may suffice provided that no exceedances have occurred. In addition, the data must be accompanied by a demonstration of implementation of an EPA-approved control strategy. Alabama has submitted ambient air quality data collected at the Attalla monitoring site located in Etowah County and at the Fort Everette and Salco monitoring sites located in Mobile County. The most recent three years of air quality data (1983, 1984, and 1985) for each county show the number of expected exceedances to be less than or equal to 1.0 per year. Furthermore, neither county has experienced any ozone exceedances during the 1986 ozone season.

Evidence reviewed by EPA indicates that the sources in Etowah and Mobile counties, to which the VOC regulations apply, are fully implementing the EPA approved control strategy.

For a more detailed discussion, please refer to the November 4, 1986, **Federal Register** (51 FR 40043) and to the Technical Support Document. Both documents are available for inspection at the EPA Region IV office.

On November 4, 1986 (51 FR 40043), EPA proposes to approve the request to redesignate Etowah County and Mobile County to attainment for ozone. At that time the public was invited to submit written comments on the proposed action. However, no comments were received.

### Final Action

Therefore, on the basis of three years of air quality data showing attainment and evidence of an implemented EPA-approved control strategy, EPA today redesignates Etowah County and Mobile County from ozone nonattainment to attainment.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### Control Strategy Implementation

Ozone SIP's are designed to satisfy the requirements of Part D of the Clean Air Act and to provide for attainment and maintenance of the ozone NAAQS. This redesignation today should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Moreover, relaxations, deletions, and changes, absent EPA approval, could result in a finding of nonimplementation of the existing approved SIP and a consequent imposition of sanctions under sections 173(4) and 176(B) of the Clean Air Act.

### List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: May 7, 1987.

**Lee M. Thomas,**

*Administrator.*

### PART 81—[AMENDED]

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

### Subpart C—Section 107 Attainment Status Designation

**§ 81.301 [Amended]**

2. Section 81.301 is amended by removing from the "Alabama—$O_3$" table the entries for Etowah County and Mobile County.

[FR Doc. 87–10907 Filed 5–12–87; 8:45 am]

BILLING CODE 6560–50–M

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### 40 CFR Part 81

**[A–4–FRL–3199–1; FL–017]**

### Designation of Areas for Air Quality Planning Purposes; Redesignating of an Ozone Nonattainment Area in Florida

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is today granting the request by Florida to redesignate Orange County from nonattainment to

attainment for ozone. The redesignation of Orange County to attainment is based on two years of quality assured monitoring data without an exceedance at one site, three years of ambient monitoring data showing a calculated expected exceedance of less than 1.0/year at a second site, and implementation of an EPA-approved control strategy.

**DATE:** This action is effective June 12, 1987.

**ADDRESSES:** Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301–8241

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Hansen, Air Programs Branch, EPA Region IV, at the above address and telephone number 404/347–4292 or FTS 257–4292.

**SUPPLEMENTARY INFORMATION:** On August 29, the FDER submitted a request to redesignate Orange County to attainment, along with technical support data detailing the volatile organic compound (VOC) emission reductions in Orange County. Florida has submitted ambient air quality data collected at two monitoring sites in Orlando, Florida. The basis for the redesignation request is two years of quality assured ozone monitoring data without an exceedance at the Seminole County site, and three years of quality assured ozone monitoring data with a calculated expected exceedance of less than 1.0/year at the Orange County site. These two monitoring locations represent the urbans area of Orlando, Florida.

Also, except for one source currently involved in a State-initiated legal proceeding relating to the source's compliance status, evidence reviewed by EPA indicates that Orange County has implemented an EPA-approved control strategy. This strategy consists of reasonably available control technology on various categories of existing sources as required by EPA, control of new sources to lowest achievable emission rate levels, and the Federal Motor Vehicle Control Program. Today's approval is issued with the expectation that Florida will continue to pursue the necessary course of action to ensure final compliance by the source, with the EPA-approved control strategy.

For a more detailed discussion, please refer to the July 9, 1986, Federal Register (51 FR 24855) and Technical Support Document. Both documents are available for inspection at the EPA Region IV office.

In the July 9, 1986, notice EPA proposed to approve the request to redesignate Orange County to attainment for ozone. At that time the public was invited to submit written comments on the proposed action. However, no comments were received.

## Final Action

Therefore, on the basis of two years of air quality data at the Seminole County site and three years of air quality data at the Orange County site showing attainment, and evidence of an implemented EPA-approved control strategy, EPA today redesignates Orange County from ozone nonattainment to attainment.

## Control Strategy Implementation

Ozone State Implementation Plans (SIP's) are designed to satisfy the requirements of Part D of the Clean Air Act and to provide for attainment and maintenance of the ozone NAAQS. This redesignation today should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA-approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the Clean Air Act) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Clean Air Act.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

## List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: May 7, 1987.

Lee M. Thomas,

*Administrator.*

## PART 81—[AMENDED]

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

## Subpart C—Section 107 Attainment Status Designations

### § 81.310 [Amended]

2. In § 81.310 the attainment status table titled "Florida—03" is amended by removing the entry for Orange County.

[FR Doc. 87–10908 Filed 5–12–87; 8:45 am]

BILLING CODE [illegible]

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## 40 CFR Part 180

[PP 1E2457/R967; FRL 3196–6]

## Pesticide Tolerance for 3-(3,5-Dichlorophenyl)-5-Ethenyl-5-Methyl-2,4-Oxazolidinedione

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes a tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (hereafter referred to in the preamble as "vinclozolin") and its metabolites containing the 3,5-dichloroaniline moiety in or on grapes at 6.0 parts per million (ppm). This regulation, to establish a maximum permissible level for residues of vinclozolin on grapes, was requested by BASF Wyandotte Corp.

**EFFECTIVE DATE:** Effective on May 13, 1987.

**ADDRESS:** Written objections may be submitted to the Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Lois A. Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of June 23, 1982 (47 FR 27126),

which announced that BASF Wyandotte Corp., Agricultural Chemical Division, 110 Cherry Hill Road, Parsippany, New Jersey 07054 submitted pesticide petition 1E2457 proposing the establishment of a tolerance for the combined residues of the fungicide vinclozolin and its metabolites in or on the raw agricultural commodity table grapes at 6.0 parts per million (ppm).

This tolerance will expire in one year from the date of publication of this final rule unless processing data on raisins are submitted. In order for the tolerance of 6.0 ppm on table grapes to remain in effect beyond one year from the date of publication of this rule, that data must indicate that residues do not concentrate to a level above 30 ppm in the raisins.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include the following:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 450 ppm (22.5 mg/kg/day) the highest dose tested.

2. A 90-day dog feeding study with a NOEL of 300 ppm (7.5 mg/kg/day).

3. A 6-month dog feeding study with a NOEL of 100 ppm (2.5 mg/kg/day).

4. A mouse teratology study with a NOEL for maternal toxicity of 6,000 ppm (900 mg/kg/day) highest dose tested, and a NOEL for developmental toxicity of 600 ppm (90 mg/kg/day).

5. A rabbit teratology study with a NOEL for maternal toxicity of >300 mg/kg/day (9,900 ppm) and a NOEL for developmental toxicity of 80 mg/kg/day (2,640 ppm) Levels tested: 0, 600, 6,000, and 60,000 ppm.

6. A chronic feeding/oncogenicity study in rats for 103 weeks, with a NOEL of 486 ppm (24 mg/kg), and no compound-related oncogenic effects under the conditions of the study at doses up to 4,374 ppm (219 mg/kg bw/day), the highest dose tested.

7. A chronic feeding/oncogenicity study in mice for 26 months, with a NOEL of 486 ppm (73 mg/kg) and no compound-related oncogenic effects under the conditions of the study at doses up to 4,374 ppm (503 mg/kg bw/day), the highest dose tested.

8. A dominant lethal assay in mice negative at 2,000 mg/kg (only level tested).

9. Sister chromatid exchange study in the bone marrow of the Chinese hamster was negative.

10. Reverse mutation test with and without a metabolic activation system which was negative for mutagenic effects.

A primary rate hepatocyte unscheduled DNA synthesis assay which showed negative mutagenic activity and a mouse lymphoma forward mutation assay which showed weak positive mutagenic activity only at concentrations exceeding solubility in the test medium. The studies satisfy requirements for DNA damage/repair assay in mammalian cells, and gene mutation cells in culture.

Based on the NOEL of 100 ppm in the 6-month dog feeding study, and using a hundred-fold uncertainty factor, the acceptable daily intake (ADI) for vinclozolin is calculated to be 0.025 mg/kg/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg diet is calculated to be 0.01199 mg/day. The proposed action would increase the TMRC to 0.0130 mg/day, utilize an additional 8.13 percent of the TMRC to bring the total percent of the ADI utilized to 51.84 percent, and result in a 3.9 percent increase of the ADI.

The nature of the residues is adequately understood and an adequate analytical method, gas chromatography using an electron capture detector, is published in Vol. II of the Food and Drug Administration (EDA) Pesticide Analytical Manual for enforcement purposes. There is no reasonable expectation of residues in eggs, milk, meat, or poultry from the use on table grapes.

Based on the data and information considered by the Agency, it is concluded that the pesticide is useful for the purpose for which the tolerance is sought, and it is concluded that the establishment of the tolerance will protect the public health. Therefore, the tolerance is established as set forth below for a period of one year from the date of publication of this rule unless processing data on raisins are submitted indicating that residues do not concentrate to a level above 30 ppm in the raisins.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 4 U.S.C. 601 through 612), the Administrator has determined that regulations establishing tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 28, 1987.

Douglas D. Campt,

*Director, Office of Pesticide Programs.*

**PART 180—[AMENDED]**

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.380 is amended by designating the existing introductory paragraph and list of commodities as paragraph (a) and adding paragraph (b) to read as follows:

**§ 180.380 3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2, 4-oxazolidinedione; tolerances for residues.**

(a) * * *

(b) A tolerance is established until May 13, 1988, for combined residues of the fungicide, 3-(3,5-dichlorophenyl)-5-ethnyl-5-methyl-2,4-oxazolidinedione and its metabolites containing the 3,5-dichloroaniline moiety, in or on the raw agricultural commodity grapes at 6.0 parts per million.

| Commodities | Parts per million |
|---|---|
| Grapes | 6.0 |

[FR Doc. 87–10359 Filed 5–12–87; 8:45 am]
BILLING CODE 6560–50–M

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 64**

**[Docket No. FEMA 6751]**

**Suspension of Community Eligibility**

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The third date ("Susp.") listed in the third column.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001 through 4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 *et. seq.*). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of the future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

**List of Subjects in 44 CFR Part 64**

Flood insurance—floodplains.

**PART 64—[AMENDED]**

The authority citation for Part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et. seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequences new entries to the table.

**§ 64.6 List of eligible communities.**

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date [1] |
|---|---|---|---|---|
| **Region I** | | | | |
| Maine: | | | | |
| Bowdoinham, town of, Sagadahoc County. | 230119 | Apr. 16, 1981, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp. | May 19, 1987 | June 19, 1987. |
| Dresden, town of, Lincoln County | 230084 | Mar. 28, 1978, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp. | do | Do. |
| Massachusetts: Malden, city of, Middlesex County. | 250202 | July 25, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp. | do | Do. |
| **Region II** | | | | |
| New York: | | | | |
| Chazy, town of, Clinton County | 361310 | Apr. 14, 1978, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp. | do | Do. |
| Highlands, town of, Orange County | 361251 | June 9, 1975, Emerg.; Nov. 30, 1979, Reg.; May 19, 1987, Susp. | do | Do. |
| Highland Falls, village of, Orange County. | 361453 | July 2, 1974, Emerg.; June 25, 1976, Reg.; May 19, 1987, Susp. | do | Do. |
| **Region III** | | | | |
| Pennsylvania: | | | | |
| Complanter, township of, Venango County. | 422533 | July 7, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp. | do | Do. |
| Ford City, borough of, Armstrong County. | 420084 | Dec. 3, 1974, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp. | do | Do. |

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date [1] |
|---|---|---|---|---|
| Frenchcreek, township of, Venango County. | 422110 | Feb. 17, 1977, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| Indiana, borough of, Indiana County | 420501 | Jan. 27, 1977, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| Manor, township of, Armstrong County | 421309 | July 7, 1985, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| Rouseville, borough of, Venango County. | 420839 | July 11, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| Sugarcreek, borough of, Venango County. | 420840 | July 7, 1975, Emerg.; May 19, 1987 Reg.; May 19, 1987, Susp | do | do. |
| Summit, township of, Crawford County | 422400 | June 27, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | do. |
| White, township of, Indiana County | 421725 | Feb. 26, 1976, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| **Region IV** | | | | |
| Georgia: | | | | |
| Chatham County, unincorporated areas. | 130030 | Sept. 18, 1970, Emerg.; Aug. 1, 1980, Reg.; May 19, 1987, Susp | do | Do. |
| Garden City, city of, Chatham County | 135162 | Oct. 8, 1971, Emerg.; Mar. 16, 1973, Reg.; May 19, 1987, Susp | do | Do. |
| Tennessee: | | | | |
| Graysville, city of, Rhea County | 470153 | July 9, 1975, Emerg.; Mar. 19, 1973, Reg.; May 19, 1987, Susp | do | Do. |
| Kimball, town of, Marion County | 470116 | July 1, 1976, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| Ripley, town of, Lauderdale County | 470100 | Jan. 23, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| **Region V** | | | | |
| Minnesota: Winona County, unincorporated areas. | 270525C | May 16, 1974, Emerg.; Jan. 18, 1984, Reg.; May 19, 1987, Susp | Jan. 18, 1984 | Do. |
| **Region VIII** | | | | |
| Colorado: Rio Grande County, unincorporated areas. | 080153 | June 25, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | May 19, 1987 | Do. |
| Montana: | | | | |
| Blaine County, unincorporated areas | 300144 | Mar. 7, 1978, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| Chinook, city of, Blaine County | 300003 | May 3, 1974, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| Harlem, city of, Blaine County | 300004 | June 20, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| Livingston, city of, Park County | 300051 | May 12, 1975, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| Phillips, city of, Phillips County | 300162 | Mar. 24, 1978, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |
| **Region IX** | | | | |
| Arizona: Cochise County, unincorporated areas. | 040012 | July 29, 1975, Emerg.; Dec. 4, 1984, Reg.; May 19, 1987, Susp | do | Do. |
| California: Siskiyou County, unincorporated areas. | 060362 | Feb. 23, 1973, Emerg.; May 17, 1982, Reg.; May 19, 1987, Susp | do | Do. |
| **Region I—Biennial Conversions** | | | | |
| New Hampshire: Brookline, town of, Hillsborough County. | 330180 | Aug. 12, 1985, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | May 19, 1987 |
| **Region II** | | | | |
| New York: Milford, town of, Otsego County | 361274 | Jan. 16, 1976, Emerg.; May 19, 1987, Reg.; May 19, 1987, Susp | do | Do. |

[1] Certain Federal assistance no longer available in special flood hazard areas.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

**Harold T. Duryee,**
*Administrator, Federal Insurance Administration.*

[FR Doc. 87-10876 Filed 5-12-87; 8:45 am]
BILLING CODE 6718-03-M

# Proposed Rules

Federal Register
Vol. 52, No. 92
Wednesday, May 13, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 86-NM-171-AD]

## Airworthiness Directives; CASA Model C-212 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes an airworthiness directive (AD), applicable to CASA Model C-212 series airplanes, that would require replacement of certain elevator, rudder, and aileron trim control system rods, levers, links, and tabs. The FAA has determined that, in the event of certain single failures in these trim control systems, the potential exists for damage to the airframe due to flutter. The replacement components would add fail-safe features to the trim control systems.

**DATE:** Comments must be received no later than July 3, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-171-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-171-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### *Discussion*

The FAA has determined that an unsafe condition may exist on Construcciones Aeronauticas S.A. (CASA) Model C-212 series airplanes. Certain elevator, rudder, and aileron trim control system rods, levers, links, and tabs installed on these airplanes have been determined not to have the fail-safe design features required by Federal Aviation Regulations (FAR) §§ 25.629(d)(4)(ii) and 25.671. These fail-safe tab requirements were developed after service experience in similarly-designed airplanes showed that a tab control system single failure was one of the most frequent causes of airframe damage due to flutter. CASA has developed new trim control system components with fail-safe design features to replace existing components, and has issued CASA Service Bulletin 212-27-25, Revision 2, dated October 23, 1985, which described the installations of the replacement elevator, rudder, and aileron trim control system components. The Spanish Dirección General de Aviación Civil (DGAC) has approved the CASA service bulletin and recommended the affected component replacement in accordance with the CASA service bulletin.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of the elevator, rudder, and aileron trim control system components in accordance with the previously mentioned service bulletin.

It is estimated that 41 airplanes of U.S. registry would be affected by this AD, that it would take approximately 180 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $28,254 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,453,614.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because a substantial number of small entities are not affected. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration

proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Casa:** Applies to CASA Model C-212 series airplanes as listed in CASA Service Bulletin 212-27-25, Revision 2, dated October 23, 1985, certificated in any category. Compliance is required within 18 months after the effective date of this AD, unless previously accomplished.

To prevent airframe damage due to flutter caused by certain single failure conditions of the trim control system, accomplish the following:

A. Replace elevator, rudder, and aileron trim control system components in accordance with CASA Service Bulletin 212-27-25, Revision 2, dated October 23, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 6, 1987.

**Wayne J. Barlow,**

*Director, Northwest Mountain Region.*

[FR Doc. 87-10858 Filed 5-12-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 87-NM-44-AD]**

## Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-120 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to EMBRAER Model EMB-120 series airplanes, which would require inspection of the main landing gear outboard wheel half for cracks and replacement, if necessary. This proposal is prompted by a report of cracking in the outboard wheel half. This condition, if not corrected, could lead to failure of the wheel halves, which could result in loss of control of the airplane.

**DATE:** Comments must be received no later than July 3, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-44-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from BFGoodrich, Aerospace and Defense Division, Aircraft Wheel and Brake Operations, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis A. Jackson, Aerospace Engineer, ACE-120A, FAA, Central Region, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-2910.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-44-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

*Discussion*

The FAA has received a report of a crack found on an EMBRAER Model EMB-120 airplane in a flange of the outboard wheel half, BFGoodrich part number 300-603. The cause of the cracking has been attributed to improper forging techniques used during manufacture of the wheel. This wheel is used only on EMBRAER Model EMB-120 series airplanes. A cracked wheel could lead to wheel failure and resultant loss of control of the airplane.

The FAA has reviewed and approved BFGoodrich Service Bulletin 467, dated March 9, 1987, which describes procedures for visual, eddy current, and ultrasonic inspections of the wheel to detect cracking.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the main landing gear outboard wheel halves and replacement, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 22 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,160.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($280). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

**The Proposed Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**§ 39.13 [Amended]**

**Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Applies to Model EMB-120 series airplanes, certificated in any category, equipped with outboard main landing gear wheel halves identified by serial numbers in BF Goodrich Service Bulletin 467, dated March 9, 1987. Compliance required as indicated, unless previously accomplished.

To prevent failure of the main landing gear outboard wheel half, accomplish the following:

A. Within the next 200 landings after the effective date of this AD, inspect the main landing gear outboard wheel halves, part number 300-603, for cracking, using visual and eddy current methods, in accordance with BFGoodrich Service Bulletin 467, dated March 9, 1987.

1. If a crack is found, prior to further flight replace the wheel half with an airworthy FAA-approved assembly.

2. If no cracks are found, repeat the visual and eddy current inspections at intervals not to exceed 300 landings, until such time as an ultrasonic inspection is accomplished and each affected wheel half is found free of defects and identified with the impression stamping in accordance with Figure 1 of BFGoodrich Service Bulletin 467, dated March 9, 1987. Any wheel found to be defective must be replaced prior to further flight with an airworthy FAA-approved assembly.

B. For the purposes of complying with this AD, the number of landings may be determined by substituting one landing for each ½ hour of flight, unless the operator substantiates a different flight hours-to-landing ratio. This substantiating must be submitted to and approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

C. Alternate means of compliance with provide an acceptable level of safety may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to BFGoodrich, Aerospace and Defense Division, Aircraft Wheel and Brake Operations, P.O. Box 340, Troy, Ohio 45373. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, Central Region, Atlanta Aircraft Certification Office, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia.

**Wayne J. Barlow,**
*Director, Northwest Mountain Region.*

[FR Doc. 87-10660 Filed 5-12-87; 8:45 am]
BILLING CODE 4910-13-M

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**FEDERAL TRADE COMMISSION**

**16 CFR Part 13**

**[Docket 9154]**

## Volkswagen of America, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Troy, Mich. automobile company to offer impartial third-party arbitration programs to owners of certain Volkswagens and Audis with faulty valve seals and other oil consumption-related problems or with any internal engine component problems. This proposed consent agreement was originally published in the Federal Register on Friday, April 17, 1987 but did not include the attachments to the proposed order.

**DATE:** Comments will be received until June 10, 1987.

**ADDRESS:** Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** FTC/H-238A, Robert M. Doyle, Washington, DC 20580. (202) 326-3114.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

**List of Subjects in 16 CFR Part 13**

Arbitration, Automobiles, Trade practices.

**Agreement Containing Consent Order to Cease and Desist**

In the Matter of Volkswagen of America, Inc., a Corporation, and Volkswagen AG, a Corporation, Respondents.

The Agreement herein, by and between Volkswagen of America, Inc., a corporation ("VWoA"), hereinafter sometimes referred to as respondent, by its duly authorized officer, and its attorneys, and Volkswagen AG, a corporation ("VWAG"), by its attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Volkswagen of America, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 888 West Big Beaver Road, in the City of Troy, State of Michigan.

Volkswagen AG is a corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany with its office and principal place of business located at 3180 Wolfsburg, Federal Republic of Germany.

2. Respondent Volkswagen of America and Volkswagen AG have each been served with a copy of the Complaint issued by the Federal Trade Commission charging them with violation of section 5(a) of the Federal Trade Commission Act, 15 U.S.C. 45 (a)(1980), and have each filed an answer to said complaint denying said charges.

3. This Agreement is for settlement purposes only and does not constitute an admission by respondent VWoA or by VWAG that the law has been violated as alleged in the said copy of the Complaint issued by the Commission.

4. Respondent Volkswagen of America, Inc. admits the jurisdictional facts set forth in the Commission's Complaint in this proceeding, except as set forth in Paragraph 3 of said Complaint.

5. Respondent Volkswagen of America, Inc. waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this Agreement.

6. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent VWoA: (1) Issue its decision containing the following Order to Cease and Desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to Cease and Desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed to Order to respondent's address as stated in this Agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint and Answer may be used in construing the terms of the Order not defined therein, and no agreement, understanding, representation, or interpretation not contained in the order or the Agreement may be used to vary or contradict the terms of the Order.

8. Respondent Volkswagen of America has read the Complaint and the Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

9. Volkswagen AG is a party to this agreement only for purposes of the dismissal of the complaint filed against it in Docket 9154.

## Order

*Definitions*

For the purposes of this Order, the following definitions shall apply:

A. "VWoA"—Volkswagen of America, Inc., and its successors and assigns, and their officers, representatives, agents, and employees.

B. "Covered Vehicle"—A 1974–1979 model year gasoline powered Volkswagen or Audi vehicle equipped with a water-cooled engine, that was:

(1) Distributed for sale in the United States by VWoA,

(2) Warranted in writing by VWoA, or

(3) Certified by the manufacturer to the National Highway Traffic Safety Administration and Environmental Protection Agency as meeting Federal safety and emissions standards.

C. "Specified Claims"—Claims made at any time prior to the expiration date of this Order by present or former owners or lessees (unless the lessor bore the cost of the claim) of covered vehicles concerning excessive oil consumption or engine damage due to lack of lubrication in covered vehicles other than claims for personal injury, damage to property other than the vehicle itself, or consequential damages such as lost value, profits, wages, or business opportunitites. Specified claims do not include claims for which the owner or lessee has executed a release in consideration of settlement of an individual lawsuit. Specified claims also do not include claims that are covered by a binding final judgment on the merits in an individual lawsuit.

D. "Dealer"—Any person, partnership, firm or corporation which, pursuant to a Volkswagen or Audi Dealer Agreement with VWoA or any of its independent distributors, purchases or receives on consignment from VWoA or its independent distributors vehicles for resale or lease to the public, including persons, partnerships, firms, or corporations owned or operated by VWoA or its independent distributors.

E. "Internal engine components"—All gasoline and diesel engine parts, components, and subassemblies included within the complete short block and cylinder head assemblies, including short blocks and cylinder heads, camshafts, valve train components, timing gears, flywheels, pistons, piston rings, crankshafts, connecting rods, and bearings, oil pumps, and associated fasteners, seals and gaskets.

F. "Product Service Publication" ("PSPs")—"Product Circulars," "Service Circulars," "Technical Bulletins," and other documents substantially the same in content and purpose issued from time to time by VWoA to dealers, to regional offices or to independent distributors, or individual articles, notices, entries or the like in such documents, which describe, or recommend or discuss:

(1) Diagnostic, repair, or maintenance procedures; or

(2) Additional parts or upgrades or different replacement parts; or

(3) Non-repair information regarding the use and care of vehicles.

If a publication contains more than one subject which is considered a PSP, then each such subject shall be considered to be an individual PSP.

PSPs do not include publicly available repair manuals, parts catalogs, price lists or supplements thereto.

G. "Product Condition"—The condition of a vehicle that gives rise to any repair, maintenance, use and care or diagnostic procedures or the use of additional, upgraded or different parts, that is or would be described in PSPs.

H. "PSP Index"—A document, clear and comprehensible to prospective purchasers and vehicle owners, which contains entries for all PSPs published during the term of this Order by VWoA. (1) Each index shall contain an introductory section, which shall include the following information clearly and conspicuously stated:

(a) An explanation of the PSP Index and the "PSP Highlights" section;

(b) How to obtain PSPs from VWoA and how to review PSPs at VWoA's dealers;

(c) How to locate the "PSP Highlights" section; and

(d) The PSP prepared and issued pursuant to Paragraph G(1) of Section V.

(2) For each entry in the PSP Index, the following information will be clearly and conspicuously stated:

(a) The particular models(s), model year(s), and Vehicle Identification Numbers (if the PSP does not apply to the entire model year) to which the entry applies or potentially applies;

(b) The subject of the PSP;

(c) The major component or system of components to which the PSP relates;

(d) The identifying number of the PSP to which the entry relates; and

(e) Whether there is an entry in the "PSP Highlights" Section of the PSP index for the PSP;

(3) The PSP Index shall contain a separate section, readily accessible, entitled "PSP Highlights."

I. "PSP Highlights"—Information related to a particular PSP, that includes all of the following items as applicable:

(1) A description of the product condition;

(2) A description of the principal symptoms of the product condition;

(3) The steps or possible steps that can be taken to minimize or avoid the product condition;

(4) A statement that additional, upgraded or different parts are called for to address the product condition;

(5) A statement that the diagnostic, repair or maintenance procedure discussed in the PSP has to be repeated;

(6) A statement of the immediate and long-range performance consequences of the product condition; and, if avoidance of repair costs is a reason for undertaking the procedure, a statement of the estimated repair costs, if known, or, if not known, a characterization of such costs of not performing the procedures in a timely manner;

(7) The following statement: "The estimated cost of repairing this condition is [less than $150] [approximately $150–$250] [approximately $250–$400] [approximately $400–$600] [more than $600]." The cost range included shall be based on the cost calculated according to the formula set forth in Definition J(2);

(8) A description of the underlying PSP(s) sufficient to permit an interested person to identify and order the PSP(s) from VWoA or review it at a dealer; and

(9) To the extent not apparent from the foregoing, a disclosure of the primary intended benefit(s) of this information.

J. "Costs"—

(1) "Reference cost" in Paragraph D of Section I means one hundred sixty-five dollars ($165), adjusted in the month when this order is served and annually thereafter, by a ratio, the numerator of which is the most recently published quarterly "Implicit Price Deflator" for the Gross National Product (IPD), and the denominator of which is the IPD for the second quarter of 1985, adjustments to be rounded to the nearest dollar. IPDs used in these annual adjustments shall have been computed using the same base year.

(2) "Cost(s)" other than "reference cost" in Paragraph D of Section I shall be calculated by adding the suggested retail price for parts which are or may be required and the applicable national average dealer warranty labor rate charges multiplied by the time required to effectuate the repair, replacement, diagnosis or maintenance as determined by the applicable Suggested Repair Times Manual or other labor time guide used by VWoA in the calculation of warranty reimbursement rates.

K. "Background Statements"—The documents attached hereto as Attachments A, and A100, B, and B100.

L. "Claimant"—Any person, partnership, corporation, or other entity, other than

(a) A dealer, or

(b) Any other entity which is engaged in the business of repairing, servicing, selling, leasing or trading motor vehicles or motor vehicle engines, or

(c) A commercial enterprise which operates a fleet of more than fifteen vehicles.

M. "United States"—The fifty states, the District of Columbia, and all commonwealths, territories, and possessions.

N. "Independent distributor"—Worldwide Volkswagen, Inc., Riviera Motors, Inc., Volkswagen Mid-America, Inc., and any other person, partnership, firm or corporation that distributes VWoA's vehicles to dealers on a regular basis.

O. "Engine damage due to lack of lubrication"—Claims of damage to internal engine components caused by insufficient lubrication.

P. "MQ Service Action Program"—The recall and reimbursement campaign initiated by VWoA beginning in February 1982 which included offers to replace valve stem seals and to reimburse prior valve stem seal replacement up to $125 in 1977 through 1979 Volkswagen Rabbit and Scirocco vehicles equipped with gasoline engines.

Q. "Arbitration agreement"—The form that sets out issues to be arbitrated concerning claims relating to internal engine components as described in Rule 4 of Attachment C.

I

*It is ordered* that respondent Volkswagen of America, Inc., its successors and assigns, and their officers, representatives, agents, and employees, acting directly or through any subsidiary, division, or other device in connection with the advertising, offering for sale, sale, or distribution of any vehicle in or affecting commerce in the United States, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Failing to continue VWoA's program of issuing PSPs in a manner comparable to the program as it existed in the years 1980 through the date of service of this Order, with such program to continue to take into account current criteria used for issuing PSPs, such as the frequency with which the product condition has occurred and is expected to occur, the repair costs to the consumer, and the significance to the consumer of the product condition; and failing to utilize information sources such as internal corporate testing and engineering programs, marketing and other surveys purchased or used by VWoA, information from the manufacturer(s) of affected vehicles or vehicle parts, and reports from customers, dealers, and independent distributors.

B. Within 30 days after the date of service of this Order, failing to prepare and issue PSP Indexes for the 1985 model year and thereafter failing to prepare and issue PSP Indexes for PSPs issued in each model year after the 1985 model year.

C. Failing to prepare and issue an entry in the PSP Index for each PSP issued, to include each such entry in an updated PSP Index, and to update cumulatively each quarter all PSP Index entries for all PSPs issued by VWoA, with each such updated PSP index to be forwarded to dealers and be available from VWoA within four months after issuance to dealers of any PSP that was not included in a prior index.

D. Failing to prepare and include an entry in the "PSP Highlights" section of the PSP Index, and reference it appropriately in the PSP Index, whenever:

(1) The PSP describes repair, maintenance, or diagnostic procedures not specifically covered in previously applicable repair manuals, either (i) where the cost of such procedures to a customer is reasonably expected to exceed the reference cost, or (ii) where the procedures are intended and designed to prevent future repair or replacement costs to a customer reasonably expected to exceed the reference cost; or

(2) The PSP describes revisions to repair, maintenance, or diagnostic procedures in an existing repair manual where the revisions are intended and designed either (i) to prevent future repair or replacement costs to a customer reasonably expected to exceed the reference cost, or (ii) to reduce such costs by an amount reasonably expected to exceed the reference cost; or

(3) The PSP describes modified (including additional, different, or upgraded) parts recommendations, where the modification is intended and designed (i) to prevent future repair or replacement costs to a customer reasonably expected to exceed the reference cost, or (ii) to reduce such costs by an amount reasonably expected to exceed the reference cost; or

(4) The PSP describes (i) information revising or updating information

contained in owner's manuals or maintenance schedules or (ii) non-repair information regarding the use and care of vehicles by vehicle owners or operators.

E. Beginning with the next model year commencing after the date of service of this Order, failing to disclose for each model year, in a clear and conspicuous manner, in each vehicle owner's manual or warranty booklet (where it shall be itemized in the Table of Contents and Index) for each of its vehicle lines,

(1) The following statement in the exact language set forth below:

**Updated Service Information You Can Obtain**

Volkswagen of America monitors product performance in the field and regularly sends to dealers the latest service information about [VW] [Audi] vehicles. Now, you too can get these bulletins.

Bulletins cover a wide variety of subjects: The proper use and care of your car; costly repairs; inexpensive repairs or adjustments which, if done early may avoid costly future repairs. Some bulletins describe repairs about new or unexpected conditions. Others describe improved repair procedures or parts improvements. All of this information can also help a qualified mechanic better service your vehicle.

Most bulletins apply to conditions affecting a small number of vehicles. Your dealer or a qualified mechanic may have to determine if a specific bulletin applies to your vehicle.

You can order any or all of these bulletins direct from Volkswagen of America or look at them at a [VW] [Audi] dealer. You can purchase a subscription to the bulletins which apply to a particular model and receive them as they are issued, or you can order an index which lists and identifies these bulletins and summarizes the most important ones. You also can order individual bulletins. However, the index is necessary to identify them.

(2) The above statement shall in addition provide at least the following information in clear and comprehensible language:

(a) Concerning indexes—(i) Indexes list each PSP, provide ordering information for individual PSPs, and are cumulatively updated quarterly.

(ii) Indexes contain plain-language highlights and summaries of PSPs describing costly repairs and designed to help prevent major repairs or containing owner use and care information.

(iii) If there is a charge for PSP indexes, it shall be credited against any charge for PSPs ordered.

(iv) When consumers order any index, they will receive the latest applicable index for the model year of the car unless they request an index for a different model year.

(b) Concerning PSPs—(i) The charge for individual PSPs, if any, and how to order them.

(c) Concerning subscriptions—(i) The charge for subscriptions and how to order them.

(ii) That subscribers are entitled to all PSPs published for a model and model year.

(3) The following statement in the exact language set forth below, which shall be made in conjunction with the statement described above, but which shall not precede disclosure of the information described in Paragraphs E (2)(a) (i) and (ii) of Section I:

**CAUTION:**

These bulletins are intended for qualified mechanics. They are not meant for the *casual* do-it-yourselfer.

Qualified mechanics have the equipment, tools, safety instructions, and know-how to do a job properly and safely. Improperly performed repairs or maintenance can adversely affect the safety of your vehicle, possibly leading to accident or injury. They may also impair the economy, durability or reliability of your vehicle and may void the warranty on your car. If you are not sure that you can perform a job properly and safely, you should not risk trying to do so.

F. Beginning with the next model year commencing after the date of service of this Order,

(1) Failing to include for each model year, in each vehicle owner's manual, warranty booklet, or similar literature provided with the vehicle at the time of delivery to the original retail customer a postage-paid ordering coupon to obtain a properly identified PSP index (including PSP Highlights), a PSP, or subscription; or

(2) Failing to maintain a toll-free telephone system, which number shall be clearly and conspicuously disclosed in close proximity to the information set out in Paragraph E of Section I, to enable members of the public to order PSP indexes (including PSP Highlights, PSPs, or a subscription to PSPs).

G. Failing to furnish each dealer with:

(1) Each PSP Index (including PSP Highlights) on paper or through such other medium as approved by designated representatives of the Federal Trade Commission, related to the vehicles represented by that dealership; and

(2) Each PSP; and

(3) An adequate supply of postage-paid ordering coupons for PSPs, PSP subscriptions and PSP indexes.

H. Beginning with the date of service of this Order, and once in each 6-month period thereafter, failing to recommend and urge, in writing, that each dealer shall:

(1) Provide information on how to order PSPs to anyone who requests such information;

(2) Provide members of the public with ready access to the PSPs and PSP Indexes (including PSP Highlights) furnished to such dealers, including any equipment needed to enable members of the public to read PSPs at dealerships; and

(3) Update PSP Indexes (including PSP Highlights) immediately upon receipt.

I. Beginning with the next model year after the date of service of this Order, failing to include the following statement, in the exact language set out below, clearly and conspicuously on the face of the label required by the "Automobile Information Disclosure Act," 15 U.S.C. 1231 *et seq.*, (1980)(as amended) on each vehicle distributed by VWoA in the United States:

"UPDATED SERVICE INFORMATION—NOW YOU CAN GET USEFUL BULLETINS AND EASY-TO-READ SUMMARIES TO SERVICE YOUR CAR BETTER AND HELP AVOID COSTLY REPAIRS. THESE ARE THE SAME BULLETINS WE SEND YOUR DEALER. SEE YOUR DEALER'S INDEX OF PRODUCT CIRCULARS FOR DETAILS."

J. Beginning with the next model year after the date of service of this Order, failing to include the following statement, in the exact language set out below, clearly and conspicuously, in each principal point of sale catalog distributed by Volkswagen of America for each of its vehicle lines:

*A Word About Updated Service Information*

[Volkswagen] [Audi] regularly sends its dealers useful service information about our products. [Volkswagen] [Audi] monitors product performance in the field. We then prepare bulletins for servicing our products better and helping to avoid costly repairs. Now you can get these bulletins, too. To get ordering information, see a local [VW][Audi] dealer.

K. Failing to include detailed information regarding the third-party arbitration program described in Sections III and IV, and the PSP program described in this section, in all ongoing and future training programs and in materials disseminated to dealers on subjects related to customer relations, beginning not later than one hundred eighty (180) days after service of this

Order and continuing for the duration of this Order.

II

It is further ordered, that:

A. Beginning with the date of service of this Order, upon written request by any person, VWoA shall mail or cause to be mailed, by first class mail, the following:

(1) Information describing PSPs, PSP Indexes, and PSP subscriptions, as well as how to obtain PSPs, PSP Indexes and PSP subscriptions;

(2) The most current PSP Index, *Provided That,* the "PSP Highlights" in the PSP Index may be limited to the particular vehicle make, model and model year identified in the request;

(3) Any specifically identified PSPs;

(4) Subscriptions to all PSPs.

B. Subject to the limitations of this section, VWoA may, at its option, impose a reasonable charge for PSPs, PSP Indexes and PSP subscriptions. Any charge for a PSP Index must be credited toward the initial purchase of PSPs themselves. The maximum charges shall be as follows:

(1) For PSP Indexes ordered:

(a) Model years prior to 1988, no charge;

(b) Through 1990, a charge not to exceed two dollars ($2.00) for any PSP Index;

(c) For years 1991 and thereafter, a charge not to exceed three dollars ($3.00) for any PSP Index.

(2) For individual PSPs, a charge not to exceed four dollars ($4.00) for the first PSP requested in each order and two dollars ($2.00) for each additional PSP requested in that order;

(3) For PSP subscriptions, a charge not to exceed the lower of the reasonable cost or the charge (if any) to dealers.

C. VWoA may offer subscriptions of any duration, *Provided That,* VWoA offers the option of a subscription with a one-year duration.

III

*It is further ordered* that:

A. VWoA shall make available in the United States to claimants an arbitration program, which shall be administered through an independent and impartial third party, to resolve expeditiously and fairly (1) each specified claim regardless of time in service, mileage, or whether the claimant still owns or leases the vehicle; and (2) each claim made or renewed after the date of service of this order by owners and lessees (unless the lessor bore the cost of the claim) of any Volkswagen or Audi vehicle distributed by VWoA, warranted in writing by VWoA, or certified by the manufacturer to the responsible Federal agencies as meeting applicable Federal safety and emission standards involving the claimed failure, malfunction, repair or replacement of internal engine components while the claimant owns or leases the vehicle, regardless of time in service or mileage.

*Provided, however,* that VWoA need not make the arbitration program described above available to claimants:

(1) For claims involving repairs required to place in operating condition an engine which was not operable when the vehicle was purchased or leased by an owner or lessee, other than the original retail purchaser or original lessee; or

(2) For claims involving internal engine components:

(a) Whose claims were the subject of a claim by a prior owner or lessee which was settled or resulted in an arbitration award which the prior owner or lessee accepted, or

(b) If the claimant sells the vehicle prior to sixty days after the claimant notified the independent and impartial third party administrator of the claim, unless the claimant does the following:

(i) Notifies VWoA in writing at least ten days before the vehicle is disposed of; and

(ii) Gives VWoA an opportunity to inspect the vehicle at a mutually convenient time and place.

B. The decision of the arbitrator shall be binding on VWoA, but non-binding on the claimant, unless the claimant elects to accept an arbitration award.

C. (1) With respect to specified claims, such third-party arbitration program shall be conducted in accordance with the Modified Rules for Arbitration published by the Council of Better Business Bureaus as specially modified and set forth in Attachment D, and

(2) With respect to claims relating to internal engine components, such third-party arbitration program shall be conducted in accordance with the Modified Rules for Arbitration published by the Council of Better Business Bureaus as specially modified and set forth in Attachment C,

*Provided, however,* the Rules for Arbitration may be modified only with the written approval of designated representatives of the Federal Trade Commission.

D. For two years after the date of service of this order, such third-party arbitration program shall be conducted at no charge to the claimant by VWoA or the independent and impartial third-party administrator. Thereafter, no charges shall be imposed on claimants by VWoA or the independent and impartial third-party administrator that exceeds charges specified in the Modified Rules for Arbitration published by the Council of Better Business Bureaus.

E. No settlement of or judgment on the merits in a class action lawsuit shall affect a claimant's right to request arbitration of a specified claim or claim relating to internal engine components under this Order, *Provided that,* a specified claim or claim relating to internal engine components is not eligible for arbitration if:

(1) The claimant received actual notice of the pendency or settlement of the class action; and

(2) The notice of pendency and, if applicable, settlement of such class action was approved by designated representatives of the Federal Trade Commission prior to submission of the notice to the court by VWoA, as fully, accurately, clearly and conspicuously disclosing the availability of the arbitration program described in Sections III and IV; and

(3) The claimant did not request exclusion from the class action or settlement, or the claimant received payment pursuant to the class action settlement or judgment on the merits;

*Provided, However,* that arbitration shall continue to be available during the pendency of the class action proceeding until settlement or judgment is entered on the merits, regardless of whether the claimant requested exclusion from the proceeding.

F. Such third-party arbitration program shall be fully operational pursuant to the terms of this order no later than forty-five (45) days after the date of service of this Order, and thereafter expanded as demands on the program may require to resolve consumer complaints expeditiously.

G. VWoA shall, by first class mail, mail or cause to be mailed Attachment G in response to any claimant with a claim relating to internal engine components, within thirty days after receipt of such claim, unless the claimant's request for repair or reimbursement or other compensation is fully met.

H. Notwithstanding any other provision of this Order, the mediation and arbitration program described in Sections III and IV shall be available to members of the armed forces stationed at military installations located outside the United States and their dependents, *Provided, however,* that only arbitration by mail must be available as long as such claimants are located outside the United States.

IV

*It Is Further Ordered* that:

A. Prior to sixty (60) days after the date of service of this Order, VWoA shall contact, by first-class mail, each attorney general's office (or such other office as may be appropriate) of the fifty states, the District of Columbia, commonwealths, territories and possessions, and shall:

(1) Provide each such office with a copy of this Order.

(2) Describe in such mailing VWoA's third-party arbitration program.

(3) Describe in such mailing the PSPs and PSP Indexes and explain how consumers can obtain them.

(4) Inform each such office that VWoA will, if the appropriate office wishes, within fifteen days after receipt from such office or sixty days after the date of service of this order, whichever is later, notify by first-class mail each person who has complained to that office about a specified claim, and that VWoA will provide that person in the same mailing envelope with:

(a) Information about the availability of VWoA's third-party arbitration program; and

(b) One or more of the appropriate Background Statements as required to be distributed pursuant to Paragraph B of Section IV in connection with any specified claim.

(5) Request that each such office provide VWoA with (a) a copy of each complaint that may include a specified claim; or, at the option of that office, (b) the owner's name and address, and the nature of the specified claim.

(6) Inform each such office that VWoA will also send, by first-class mail, a notice to any person who has complained to any other state or local law enforcement or consumer affairs office about a specified claim, and urge such office to encourage state and local law enforcement or consumer affairs offices to forward to VWoA either copies of such complaints, or, at the option of the forwarding office, a list of the names, and addresses of persons with specified claims and the amount and nature of each such claim, if known.

B. For purposes of Paragraph B of Section IV only:

—A "claim" has been made if, for any oral or written request for reimbursement or repair, a document was created or received by VWoA or any of its independent distributors, including, but not limited to, warranty records, consumer letters, dealer reports, or records of telephone complaints;

—"Open or unsatisfactorily resolved" claims are any claims for which the claimant did not receive all payments or free repairs claimed or requested.

VWoA shall send by first class mail Attachments A (or A100, if the vehicle was an Audi 100), B (or B100 if the vehicle was an Audi 100), E (2) and F, and a postage-paid return envelope, or, if VWoA wishes to make an initial settlement offer, Attachments A(or A100 if the vehicle was an Audi 100), B (or B100 if the vehicle was an Audi 100), E(1) and F, and a postage-paid return envelope to the following:

(1) Every claimant who, prior to the [date of service of this Order], had made a specified claim to VWoA that is open or unsatisfactorily resolved or who, prior to the [date of service of this Order] notified VWoA's independent distributors of such claim(s);

(2) every claimant who has received reimbursement of $125 under VWoA's MQ service action program, and who submitted repair orders or other documentation showing that one or more of the following repairs occurred at a total expense of more than $125.00 which has not been fully reimbursed as of the date of service of this Order:

(a) Cylinder head replacement;

(b) Any repair involving cylinder head removal and valve repair;

(c) Replacement of the engine short block;

(d) Replacement of any one or more of the following:

(i) Crankshaft;

(ii) Connecting rod(s);

(iii) Main bearing(s);

(iv) Connecting rod bearing(s);

(v) Pistons;

(vi) Piston rings.

(3) Every claimant with a specified claim whose name had been supplied to VWoA by the offices referred to in Paragraph A of Section IV, the Federal Trade Commission, or any other consumer affairs office or any third party, and whose specified claim remains open or unsatisfactorily resolved prior to the date of service of this Order.

(4) Every claimant with a specified claim which is open or unsatisfactorily resolved whose name will have been supplied to VWoA after the date of service of this Order by the offices referred to in Paragraph A of Section IV, the Federal Trade Commission, or any other consumer affairs office or any third party; and

(5) Every claimant with a specified claim which is open or unsatisfactorily resolved who, orally or in writing, contacts VWoA, any office of the independent and impartial third party administrator, or VWoA's independent distributors after [the date the Commission accepts this Order for comment].

*Provided, however,* that for any mailing made pursuant to this section which is returned to the sender as being undeliverable, VWoA shall make a reasonable attempt to obtain the claimant's current address, and shall send the mailing by first class mail to the claimant's current address; *Provided, further,* Attachments A and B or Attachments A100 and B100, as applicable), shall be fastened or otherwise physically attached with Attachment B (or Attachment B100) on top of Attachment A (or Attachment A100).

C. The following deadlines shall apply:

(1) For initially mailing the materials specified in Paragraph B of Section IV:

(a) With respect to claimants included in Paragraphs (B) (1), (2) and (3) of Section IV, all materials shall be mailed according to the following schedule:

(i) Not less than 25% of the total number shall be mailed within 15 days of the date of service of this order;

(ii) Not less than 50% of the total number shall be mailed within 45 days of the date of service of this order;

(iii) Not less than 75% of the total number shall be mailed within 75 days of the date of service of this Order; and

(iv) 100% of the total number shall be mailed within 90 days of the date of service of this Order.

(b) With respect to claimants included in Paragraphs (B) (4) and (5) of Section IV, whose claims are not included in Paragraph (B) (1), (2) or (3) of Section IV, all materials shall be mailed within fifteen days after receipt by VWoA, the independent and impartial third party administrator, or VWoA's independent distributors of the name and address of the claimant, or sixty days after the date of service of this order, whichever is later.

(2) For the handling of specified claims:

(a) (i) Claimants who accept settlement offers shall be sent the applicable monetary amount within forty-five (45) days after the settlement offer acceptance is received by VWoA;

(ii) Claimants who accept arbitration awards shall be sent the applicable monetary amount within forty-five (45) days after the arbitration award acceptance is received by the independent and impartial third party administrator.

(b) (i) Any applicable repair shall be performed within thirty (30) days after the settlement offer acceptance is received by VWoA;

(ii) Any applicable repair shall be performed within thirty (30) days after the arbitration award acceptance is received by the independent and impartial third party administrator, except as otherwise ordered by the arbitrator for good cause shown.

(c) Claimants who request to participate in the independent and impartial third party arbitration program by returning the "Response to Wolkswagen Mediation and Arbitration Program" form included with Attachment E (1) or (2), shall have an arbitration hearing completed within 60 days after the "Response to Volkswagen Mediation and Arbitration Program" form included in Attachment E (1) or (2) is received by VWoA, regardless of whether the claimant requests mediation services.

*Provided, however,* that delays attributable solely to the claimant shall not be included in the calculation of deadlines. The burden of proving that the delay is attributable solely to the claimant shall be on VWoA;

(3) For claims involving internal engine components that do not involve specified claims:

(a) An arbitration hearing shall be completed within sixty (60) days after the claimant provides the independent and impartial third party administrator with the model, model year, and Vehicle Identification Number of the vehicle and a statement describing the nature of the complaint, regardless of whether the claimant requests mediation services.

*Provided, however,* that delays attributable solely to the claimant shall not be included in the calculation of deadlines. The burden of proving that the delay is attributable solely to the claimant shall be on VWoA;

(b)(i)(1) Claimants who accept settlement offers shall be sent the applicable monetary amount within forty-five (45) days after the settlement offer acceptance is received by VWoA;

(2) Claimants who accept arbitration awards shall be sent the applicable monetary amount within forty-five (45) days after the arbitration award acceptance is received by the independent and impartial third party administrator;

(ii)(1) Any applicable repair shall be performed within thirty (30) days after the settlement offer acceptance is received by VWoA;

(2) Any applicable repair shall be performed within thirty (30) days after the arbitration award acceptance is received by the independent and impartial third party administrator, except as otherwise ordered by the arbitrator for good cause shown.

D. Claimants with specified claims may not be required to fill out any other form to request an arbitration hearing once they have checked Choice 2 or 3 on the form included with Attachment E(1) or Choice 1 or 2 on the form included with Attachment E(2).

E. VWoA may not request a claimant who accepts an offer to settle a specified claim to execute a statement releasing VWoA from further liability if the statement purports to release VWoA from liability that, at the time the claim was settled, would not have been subject to arbitration as described in Sections III and IV.

F. Within thirty (30) days of service of this Order, VWoA shall provide to its independent distributors and appropriate employees of VWoA, including employees who have responsibility for receiving and responding to consumer complaints, written instructions stating that all consumers who make a specified claim in any oral or written communication received after the date of service of this Order must be sent, by first-class mail, a letter providing the documents specified in Paragraph B of Section IV, above, within fifteen days, or sixty days after the date of service of this order, whichever is later.

G. VWoA may make an immediate binding settlement of a specified claim prior to the initiation of mediation or arbitration, *Provided that,* prior to the settlement, the claimant received all of the materials required to be sent to the claimant pursuant to Paragraph B of Section IV (either Attachments E(1) or E(2) (Cover letter) and Attachments A(or A100, as applicable), B (or B100, as applicable) (Background Statements), and F (BBB specified claim brochure)).

H. All envelopes sent pursuant to Paragraph B of Section IV shall bear no marking, other than the name and address of VWoA and the addressee, and the words "Important Reimbursement Information" disclosed conspicuously on the front.

I. VWoA shall offer to each claimant at the outset of each arbitration hearing all of the materials required to be sent to the claimant pursuant to Paragraph B of Section IV (either Attachments E(1) or E(2) (Cover letter) and Attachments A (or A 100, as applicable), B (or B100, as applicable) (Background Statements), and F (BBB specified claim brochure)).

J. VWoA shall obtain, maintain, and retain for a period of three (3) years from the date of resolution of each claim, records sufficient to show to the satisfaction of designated representatives of the Federal Trade Commission:

(1) For each specified claim:

(a) The following dates as applicable:

(i) The date VWoA received the claimant's name and address, if the specified claim was received by VWoA pursuant to Paragraph B (4) and B (5) of Section IV.

(ii) The date the materials described in Paragraph B of Section IV were mailed;

(iii) The date each written response was received by VWoA from the addressee of Attachment E(1) or E(2);

(iv) The date an arbitration hearing was scheduled;

(v) The date the arbitration hearing was completed;

(vi) The date the arbitrator's decision was received by the independent and impartial third-party administrator;

(vii) The date(s) VWoA made each offer to settle the claim;

(viii) The date the claimant accepted or rejected each settlement offer;

(ix) The date the claimant accepted or declined the arbitrator's award;

(x) The date a check was sent to satisfy an arbitration award or settlement agreement.

(xi) The date scheduled for any repair offered as a result of an arbitration award or settlement agreement.

(xii) The date any repair offered as a result of an arbitration award or settlement agreement was actually performed.

(b) The following documents and information, as applicable:

(i) The vehicle model;

(ii) The vehicle model year;

(iii) The vehicle identification number;

(iv) A brief description of the alleged problem, including whether the claimant included information suggesting that excessive oil consumption or engine damage due to lack of lubrication might be involved;

(v) The resolution(s) sought by the claimant: repair, cash reimbursement or vehicle repurchase;

(vi) The amount, if any, of cash reimbursement sought;

(vii) The terms of each offer, if any, made by VWoA to settle the claim;

(viii) The response of the claimant to each settlement offer;

(ix) A copy of each arbitrator's decision including the amount of any cash reimbursement;

(x) Whether the claimant accepted the arbitrator's award;

(xi) The name and address of each claimant who owned or leased a covered vehicle, and requested to participate in the mediation and arbitration program set forth in Section III and IV, and was refused the opportunity to participate in the mediation and arbitration program.

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(xii) The reason(s) each claimant described in Paragraph J(1)(a)(xi) of Section IV was determined not to have a specified claim.

(xiii) The reason(s) known to VWoA or the independent and impartial third party administrator for the failure to resolve a claim other than by settlement or an arbitration decision;

(xiv) If the claim is settled, whether a third-party mediator actively participated in settlement discussions.

(xv) A copy of the *"Response to Volkswagen Mediation and Arbitration Program"* form completed by the claimant;

(c) The name and address of each claimant who contacts orally VWoA, the independent and impartial third-party administrator, or VWoA's independent distributors and states facts that suggest that the claimant may have a specified claim.

(2) For each mediation or arbitration of a claim involving an internal engine component:

(a) The following dates, as applicable:

(i) The date VWoA mailed Attachment G, described in Paragraph G of Section III;

(ii) The date the claimant first contacted the independent and impartial third-party administrator;

(iii) The date the independent and impartial third-party administrator received from the claimant the model, model year, Vehicle Identification Number of the vehicle and a statement describing the nature of the claim;

(iv) The date VWoA was notified by the independent and impartial third-party administrator that a claim involving internal engine components had been lodged;

(v) The date the arbitration agreement was sent to the claimant;

(vi) The date the arbitration agreement was received from the claimant by the independent and impartial third-party administrator;

(vii) The date the initial arbitration hearing was scheduled;

(viii) The date the initial arbitration hearing was completed;

(ix) The date the arbitration decision was mailed to the claimant;

(x) The date the claimant accepted or rejected each settlement offer from VWoA;

(xi) The date the claimant accepted or rejected an arbitration award.

(b) The following information:

(i) The vehicle model;

(ii) The vehicle model year;

(iii) The vehicle identification number;

(iv) A brief description of the problem alleged;

(v) The resolution(s) sought by the claimant: repair, cash reimbursement or vehicle repurchase;

(vi) The amount, if any, of cash reimbursement sought;

(vii) The terms of each offer, if any, by VWoA to settle the claim before the claimant contacted the independent and impartial third-party administrator;

(viii) The terms of each offer, if any, by VWoA to settle the claim after the claimant contacted the independent and impartial third-party administrator;

(ix) The response of the claimant to each settlement offer;

(x) A copy of each arbitrator's decision including the amount of any cash reimbursement;

(xi) Whether the claimant accepted or rejected the arbitrator's award;

(xii) The reason(s) for the failure to resolve a claim other than by settlement or an arbitration decision;

(xiii) If the claim is settled, whether a third-party mediator actively participated in settlement discussions.

(xiv) A copy of the arbitration agreement.

(xv) The name and address of each claimant, who requested the opportunity to participate in the third-party mediation and arbitration program set forth in Sections III and IV, and was refused the opportunity to participate in said mediation and arbitration program.

(xvi) The reasons each claimant specified in Paragraph J(2)(b)(xv) was determined not to be eligible to participate in the mediation and arbitration program set forth in Sections III and IV.

(3) Computer disks, tapes or other computer-readable media created or maintained by VWoA, on behalf of VWoA, or by the independent and impartial third party administrator that contain any information specified in Paragraphs J(1) and J(2) of Section IV, and necessary relevant programming and other explanatory data sufficient to enable the Federal Trade Commission to read and analyze the data contained on such media.

## V

*It is further ordered* that:

A. At least two times, at least one month apart, within 120 days after the date of service of this order, VWoA shall place and cause to be disseminated the advertisement attached as Attachment H(1) in national magazines as full-page advertisements. At least two times, at least one month apart, within 120 days after the date of service of this order, VWoA shall place and cause to be disseminated the advertisement attached as Attachment H(2) in national magazines as full-page advertisements. Each time Attachment H(1) is placed and each time Attachment H(2) is placed, the magazines must have a combined total non-duplicated readership ("net reach") of at least seventy-five million adults as measured by an outside organization generally recognized as competent and experienced in this field and used by VWoA or its advertising agencies for other advertising research. The demographic characteristics for the combined total readership of the magazines selected for such advertisements must be generally representative of the demographic characteristics of the population of owners and potential purchasers of Volkswagen vehicles (for Attachment H(1)) and Audi vehicles (for Attachment H(2).

B. Beginning with the next model year commencing after the date of service of this Order, VWoA shall annually include in any edition of each proprietary magazine sent by VWoA to a primary target audience of VWoA's vehicle owners:

(1) The statements set forth in Paragraph J of Section I set forth clearly and conspicuously; and

(2) A full page reproduction of Attachment H(1) for Volkswagen owners, or Attachment H(2) for Audi owners, as applicable.

C. Within thirty days after the date of service of this Order, VWoA shall furnish to each of its dealers three display posters, with the form and content of Attachment I(1) (for Volkswagen dealers) or I(2) (for Audi dealers), each at least 24" x 36". Thereafter, VWoA shall furnish additional copies of these posters upon request by any dealer.

D. Beginning with the date of service of this Order, and once in each 6-month period thereafter, VWoA shall recommend and urge, in writing, that each dealer shall:

(1) Place the display poster, described in Paragraph C of Section V, in conspicuous and accessible locations within:

(a) Service waiting areas; and

(b) Parts departments; and

(c) Service payment areas.

E. (1) Within five (5) days after the date of service of this Order, VWoA shall establish and maintain a toll-free telephone system which will elicit information to enable current and former owners and current and former lessees to enter the independent and impartial third-party arbitration programs set forth in Sections III and IV. The toll-free telephone system shall have sufficient capacity to enable each

call made by owners and lessees to be answered reasonably promptly. Each caller shall be requested to furnish the the following information, which shall be documented:

(a) Name, address and telephone number of the caller;

(b) Model and model year of the vehicle;

(c) Nature of the claim, including sufficient information to ascertain whether a specified claim is alleged, and, if so, whether the specified claim includes an allegation of engine damage from lack of lubrication.

(d) The date of the call.

(2) Each caller to the toll-free number described in Paragraph E(1) of Section V shall also (a) be informed that, if the caller states facts suggesting that a specified claim may be involved, that VWoA will mail a letter describing the third-party arbitration program to the caller; or (b) if the caller states no facts suggesting that the claim may be a specified claim, the caller shall be informed of the toll-free telephone number (or "call collect" number, as applicable), of the local office of the independent and impartial third-party administrator.

F. Beginning with the next model year commencing after the date of service of this Order, VWoA shall include the following information, in a clear and conspicuous manner, in each vehicle owner's manual or warranty booklet (where it shall be itemized in the Table of Contents and Index):

(1) A description of the mediation and arbitration program for internal engine components required by Sections III and IV;

(2) An explanation of how the owner or lessee can enter the mediation and arbitration program;

(3) A description of applicable time deadlines as set forth in Paragraph C(3) of Section IV;

(4) The toll-free telephone number described in Paragraph E of Section V.

(5) A statement that there is no charge to the consumer for participating in the program, if such is the case, or a statement of any charges to the consumer for participating in the program; and

(6) A statement that the arbitration award is binding on VWoA, but is not binding on the consumer, unless the consumer elects to accept the arbitration award.

G. (1) Within 30 days after the date of service of this Order, VWoA shall prepare and issue a PSP which includes the following information:

(a) A description of the mediation and arbitration program for internal engine components required by Sections III and IV;

(b) An explanation of how the owner or lessee can enter the mediation and arbitration program;

(c) A description of applicable time deadlines as set forth in Paragraph C(3) of Section IV;

(d) The toll-free telephone number described in Paragraph E of Section V;

(e) A statement that there is no charge to the consumer for participating in the program, if such is the case, or a statement of any charges to the consumer for participating in the program; and

(f) A statement that the arbitration award is binding on VWoA, but is not binding on the consumer, unless the consumer elects to accept the arbitration award.

(2) The PSP referred to in Paragraph G(1) of Section V shall, during the term of this order, be included with each PSP index ordered.

VI

*It is further ordered* that Sections I, II, III, IV, and V of this Order shall expire eight years after the date of service hereof: *Provided*, That if at any time during which said sections remain in effect, the Commission issues a final trade regulation rule imposing obligations on the automobile industry comparable to those imposed under any such section(s), such section(s) shall terminate upon the effective date of such rule, and, in such event, VWoA shall advise the Commission of its intention to rely upon any such rule as having terminated and superseded such section(s) of this Order thirty (30) days in advance of reliance thereon: *Provided Further*, that if at any time during which such section(s) remain in effect the Commission issues a final guide under Sections 1.5 and 1.6 of the Commission's Rules of Practice imposing obligations on the automobile industry comparable to those imposed under any such section(s), then the Commission shall, upon VWoA motion or upon the Commission's own motion, reopen this proceeding within one hundred twenty (120) days of such motion, and, within a reasonable time thereafter, vacate any such section(s) of this Order, unless the Commission finds that such action is not required by changed conditions of law or fact or is not in the public interest; and *Provided Further*, that nothing herein shall preclude VWoA at any time from moving the Commission to alter, modify, or set aside this Order under the Commission's Rules of Practice.

VII

*It is further ordered* that:

A. VWoA shall, within one hundred twenty (120) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

B. VWoA shall, within one hundred twenty (120) days after the implementation of the PSP program described in Sections I and II of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which VWoA has complied with Sections I and II of Order.

C. VWoA shall, upon request of designated representatives of the Federal Trade Commission, but no more frequently than every one-hundred eighty days, while Sections III and IV of this Order are in effect, file with the Commission a report compiling and summarizing data describing settlements, mediations, and arbitrations and accompanying deadlines undertaken pursuant to Sections III and IV which have occurred since the previous such report had been completed. Such report shall include accurate summaries of the data required to be kept pursuant to Paragraph J of Section IV. VWoA shall also transmit to the Commission upon request the computer media and explanatory and programming information required by Paragraph J(3) of Section IV.

D. VWoA shall retain and transmit to the Commission upon reasonable request:

(1) A copy of each PSP Index required by Section I, and a copy of each PSP;

(2) A copy of each poster furnished to dealers pursuant to Paragraph C of Section V.

E. VWoA shall, on a bi-annual basis beginning 6 months after the date of service of this Order, monitor and document, based on the personal observations of VWoA or independent distributor employees, each dealer's compliance with the items set forth in Paragraph H of Section I above and Paragraph D of Section V above, *Provided, However*, that VWoA shall not be required to monitor and document the compliance with Paragraph H of Section I and Paragraph D of Section V by a dealer if no employee of VWoA or an independent distributor has visited that dealer within the previous six-month-period to review the dealer's sales, service, or customer relations activities.

F. VWoA shall retain records relative to the manner and form of its continuing compliance with Sections I, II, III, IV, V and VI for a period of three (3) years, and shall make said records available

for inspection upon reasonable notice by the Federal Trade Commission. If copies of any such records are requested, VWoA may, at its option, either make such records available for copying purposes or provide copies at either (1) rates the Commission charges for copies of records released pursuant to the Freedom of Information Act, or (2) VWoA's costs, whichever is lower.

G. Upon request by the Federal Trade Commission, VWoA shall obtain and make available to the Federal Trade Commission in the English language within forty-five days after the request any records relevant to Paragraph A of Section I in the possession of the manufacturer of any vehicles, engines or transmissions which VWoA imports or distributes; *Provided, However,* that submission of such records shall neither constitute nor be deemed an admission by any entity from which they are obtained of *in personam* jurisdiction of the Commission over such entity; *Provided Further,* that nothing in this section shall be construed to affect the Commission's access to any records, documents, or other information pursuant to compulsory process or other means.

H. VWoA shall take all necessary legal and equitable action to enforce promptly and in good faith its contractual or other rights to obtain records requested by the Federal Trade Commission pursuant to Paragraph G of Section VII.

I. During the time that Sections I, II, III, IV and V remain in effect, VWoA shall notify the Commission prior to any change in VWoA's corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

**VIII**

*It is further ordered* that the provisions of this Order shall be limited in their application to the United States.

**IX**

*It is further ordered* that the complaint against Volkswagen AG, a corporation, is hereby dismissed.

**Attachment A—Background Statement**

*Oil Usage*

Background

This case may involve an owner's complaint about excessive oil use in a gasoline-fueled 1974–1979 [Volkswagen water-cooled engine] [Audi Fox or 5000].

Since 1981, the Federal Trade Commission (FTC) and [Volkswagen (VW)] [Volkswagen of America, the importer of Audi vehicles (Audi)] have been involved in an administrative lawsuit about allegations of excessive oil use in 1974 to 1979 [VW cars with water-cooled gasoline engines] [Audi Fox and 500 vehicles]. The FTC has alleged that VW failed to tell consumers about an "abnormally high" number of engine problems related to excessive oil consumption in these vehicles. [VW] [Audi] has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. [VW] [Audi] and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, [VW] [Audi] and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this information sheet to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

Oil Usage

Like all automobile engines, the water-cooled engines in 1974–1979 [Volkswagen] [Audi] vehicles use lubricating oil to perform several vital functions. The rate of oil usage may vary widely, generally depending on several factors, including the design of the engine, its age and mechanical condition, the viscosity (or thickness) and quality of oil used, the maintenance and care given to the vehicle and the driving habits of the operator.

Internal oil consumption in gasoline-powered automobile engines usually occurs in one or more of three areas: Past the "valve stem seals," past the piston rings, or through the "crankcase breather system." Sometimes, internal oil burning is evidenced by smoke coming from the tailpipe, but at other times no smoke is visible. At other times, tailpipe smoke may result from causes unrelated to oil consumption.

Automobile engineers do not agree on what precise rate of oil consumption is acceptable. Usually, however, gasoline automobile engines use slightly more oil during the initial break-in period of 5,000 to 10,000 miles than they will later. Then, until at least 50,000 miles, engines in good condition should have a roughly even rate of oil consumption, which can increase gradually because of normal wear and tear on internal engine parts. A sudden increase in oil consumption, or a substantial increase when the car has been driven less than 50,000 miles, usually means that a component has failed, the operator's driving habits have changed, or that maintenance or care habits have been altered.

In controlled engineering tests conducted by [Volkswagen]-[Audi] and others on prototype and production engines and complete vehicles, mechanically sound engines, tested over 50,000 miles or more used one quart or less of oil every 1,000–2,000 miles. Nevertheless, some water-cooled engines in 1974–1979 [VW] [Audi] vehicles have experienced higher rates of oil consumption in actual customer use.

The FTC claims that "high rates of oil consumption" were abnormally frequent in water-cooled gasoline fueled 1974–1979 [VW] [Audi] vehicles and that in cases where substantially increased rates of oil use have occurred at less than 50,000 miles in such vehicles, the most common cause of such increase has been leakage past failed valve stem seals.

[VW] [Audi] denies this claim and states that these vehicles in customer hands have experienced, on a worst case basis, a fleet average oil consumption rate, from whatever causes, of several thousand miles per quart.

In mid-1979, [VW] [Audi] introduced a new valve stem seal using an improved material [in the Fox and 5000]. As is customary, the improved part was used for both original equipment and replacement parts.

The FTC contends that [VW's] [Audi's] 1979 valve stem seal change was made to alleviate the alleged excessive oil consumption in these vehicles.

[VW] [Audi] denies that this change was in any way different from the thousands of upgrades and improvements continually made to its vehicles on an ongoing basis.

If increased oil consumption in an individual vehicle does occur past the valve stem seals, replacement of the seals is the appropriate repair. Valve stem seals can be replaced alone. Valve stem seals are also replaced routinely, whenever a cylinder head is replaced or if a "valve job" is performed. Cylinder head replacement and valve jobs are more extensive repairs than valve stem seal replacement, alone. [Volkswagen] [Audi] dealers and independent mechanics have replaced cylinder heads and performed valve jobs in some cases in response to owner complaints of excessive oil usage on 1974–1979 [VW] [Audi Fox and 5000] vehicles.

The FTC claims that excessive oil consumption was abnormally frequent

on these vehicles, and most often resulted from failed valve stem seals, and that VW did not inform consumers and dealers of this problem. The FTC also contends that consumers and dealers were not told that valve stem seal replacement, alone, usually corrected the increased oil consumption. The FTC further claims that because mechanics had not been told this information, competent mechanics may have performed cylinder head replacements and valve jobs when valve stem seal replacement, alone, would have corrected the problem.

[VW] [Audi] denies that oil consumption or valve stem seal performance in its engines was in any way abnormal. VW further states that its owner's and service publications have at all times provided customers with specific guidelines for identifying potential problems and dealers with the latest and most cost-effective procedures to diagnose and repair them properly. [VW] [Audi] therefore denies that competent mechanics have ever either misdiagnosed or deliberately overrepaired minor and simple conditions such as valve stem seal replacement, except in isolated cases.

Normally, it is reasonable to expect valve stem seals in a properly maintained and used engine to provide reliable, durable service substantially beyond the warranty period. Claims of oil consumption related to alleged valve stem seal failure most often have occurred, in fact, after the expiration of the warranty.

Proper maintenance and use of a vehicle are important to the durability and reliability of all parts of an automobile engine, including valve stem seals. The manufacturer spells out in the owner's manual recommended maintenance procedures, and discloses driving habits which should be avoided. However, valve stem seals have failed prematurely on some 1974–1979 [VWs] [Audi Foxes and 5000s] even with proper maintenance and use.

[Volkswagen's] [Audi's] limit for maximum permissible oil consumption in these vehicles is [Volkswagen: 2.5 qts./1,000 miles] [Audi: 2.5 qts./1000 miles for the Audi Fox and 2.9 qts./1000 miles for the Audi 5000]. The owner's manuals for 1977–1979 model year water-cooled [VW vehicles stated that "oil consumption can be up to 2.5 U.S. quarts per 1000 miles."] [Audi Fox vehicles stated that "oil consumption can be up to 2.5 qts./1000 miles (2.9 qts./1000 miles for the 5000)." These figures, however, are not a statement of expected normal or average oil consumption in these vehicles.

[Volkswagen's] [Audi's] Warranty

[Volkswagen] [Audi] provides a limited warranty with each new [Volkswagen] [Audi] vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty. A manufacturer's warranty is not necessarily the manufacturer's only responsibility, and should not determine the outcome of this case. Likewise, [Volkswagen's] [Audi's] field guide for maximum permissible oil consumption need not dictate the outcome of this case.

**Attachment A100—Background Statement**

*Oil Usage*

Background

This case may involve an owner's complaint about excessive oil use in a gasoline-fueled 1974–1977 Audi 100LS vehicle.

Since 1981, the Federal Trade Commission (FTC) and Volkswagen of America, the importer of Audi vehicles, (Audi) have been involved in an administrative lawsuit about allegations of excessive oil use in 1974 to 1979 Audi cars with water-cooled gasoline engines. The FTC has alleged that Audi failed to tell consumers about an "abnormally high" number of engine problems related to excessive oil consumption in these vehicles. Audi has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. Audi and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, Audi and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this information sheet to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

Oil Usage

Like all automobile engines, the water-cooled engines in 1974–1977 Audi 100 vehicles use lubricating oil to perform several vital functions. The rate of oil usage may vary widely, generally depending on several factors, including the design of the engine, its age and mechanical condition, the viscosity (or thickness) and quality of oil used, the maintenance and care given to the vehicle and the driving habits of the operator.

Internal oil consumption in gasoline-powered automobile engines usually occurs in one or more of three areas: Past the valve guides and the "valve stem seals," past the piston rings, or through the "crankcase breather system." Sometimes, internal oil burning is evidenced by smoke coming from the tailpipe, but at other times no smoke is visible. At other times, tailpipe smoke may result from causes unrelated to oil consumption.

Automobile engineers do not agree on what precise rate of oil consumption is acceptable. Usually, however, gasoline automobile engines use slightly more oil during the initial break-in period of 5,000 to 10,000 miles than they will later. Then, until at least 50,000 miles, engines in good condition should have a roughly even rate of oil consumption, which can increase gradually because of normal wear and tear on internal engine parts. A sudden increase in oil consumption, or a substantial increase when the car has been driven less than 50,000 miles, usually means that a component has failed, the operator's driving habits have changed, or that maintenance or care habits have been altered.

In controlled engineering tests conducted by Audi and others on prototype and production engines and complete vehicles, mechanically sound engines, tested over 50,000 miles or more used one quart or less of oil every 1,000–2,000 miles. Nevertheless, some water-cooled engines in 1974–1977 Audi 100LS vehicles have experienced higher rates of oil consumption in actual customer use.

The FTC claims that "high rates of oil consumption" were abnormally frequent in water-cooled gasoline fueled 1974–1977 Audi 100LS vehicles, at less than 50,000 miles.

Audi denies this claim and states that these vehicles in customer hands have experienced, on a worst case basis, a fleet average oil consumption rate, from whatever causes, of several thousand miles per quart.

When increased oil consumption occurred in individual Audi 100LS vehicles, various different repair operations were performed depending on the precise cause of the problem and the skill and judgment of the mechanic. These repairs included replacement of the cylinder head, of valve stem seals, of piston rings or a "valve job".

The FTC claims that excessive oil consumption was abnormally frequent on these vehicles and that Audi did not inform consumers and dealers of this problem. The FTC also contends that

consumers and dealers were not told that repairs were available to respond to this problem.

Audi denies that oil consumption in Audi 100LS vehicles was in any way abnormal, or that consumers or mechanics required any special information to identify and address any oil usage issues arising with respect to any Audi 100LS vehicle. Audi further states that it has at all times provided specific guidelines for identifying potential problems with the latest and most cost-effective procedures to diagnose and repair them properly.

Proper maintenance and use of a vehicle are important to the durability and reliability of all parts of an automobile engine. The manufacturer spells out in the owner's manual recommended maintenance procedures, and discloses driving habits which should be avoided. However, high rates of oil consumption have been encountered on some 1974–1977 Audi 100LS vehicles even with proper maintenance and use.

Audi's limit for maximum permissible oil consumption in these vehicles is 2.9 qts./1000 miles for the Audi 100LS. The owner's manuals for 1977 model year water-cooled Audi 100LS vehicles stated that "oil consumption can be up to 2.9 qts./1000 miles." This figure, however, is not a statement of expected normal or average oil consumption in these vehicles.

Audi's Warranty

Audi provides a limited warranty with each new Audi vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty. A manufacturer's warranty is not necessarily the manufacturer's only responsibility, and should not determine the outcome of this case. Likewise, Audi's field guide for maximum permissible oil consumption need not dictate the outcome of this case.

**Attachment B—Background Statement**

*Engine Damage From Lack of Oil*

**Notice: Please read the attached "Oil Usage" Background Statement, if this case also involves a claim of excessive oil usage or consumption. It may contain useful facts for this case.**

Background

This case may involve an owner's complaint about engine damage from lack of oil in a gasoline-fueled 1974–1979 [Volkswagen] water-cooled engine] [Audi Fox or 5000].

Since 1981, the Federal Trade Commission (FTC) and [Volkswagen (VW)] [Volkswagen of America, Inc., the importer of Audi vehicles (Audi)] have been involved in an administrative lawsuit which includes allegations of excessive oil consumption and engine damage from lack of oil in 1974 to 1979 [VW cars with water-cooled gasoline engines] [Audi Fox and 5000 vehicles]. The FTC has alleged that [VW] [Audi] failed to tell consumers about an "abnormally high" number of engines damaged from lack of oil in these vehicles. [VW] [Audi] has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. [VW] [Audi] and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, [VW] [Audi] and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this statement and the attached statement to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

Engine Damage From Lack of Oil

Like other automobile engines, the [Volkswagen water-cooled] [Audi] engine will be severely damaged if it is run without sufficient lubricating oil circulating within the engine. Engine components which can be damaged in this manner include connecting rods, crankshaft, bearings and the engine block itself.

Whether a particular automobile engine is damaged from lack of oil depends on three factors: the engine's rate of oil consumption, its effective crankcase capacity, and the intervals at which its oil level is checked and replenished.

Over the life of the engine (100,000 miles or more), the amount of oil consumed by individual 1974–1979 [VW] [Audi] vehicles has varied widely at various times from less than one quart per 7,500 miles (the oil change interval), to more than one quart per 400 miles ([VW's] [Audi's] maximum usage figure (345 miles for the 5000), which was published in 1977–1979 model year vehicle owner's literature).

[Starting with a full crankcase, Rabbit and Scirocco engines can consume approximately three quarts of oil (Dasher—2.5 quarts) without checking and refilling the oil before engine damage becomes an immediate risk. The maximum cruising range of these vehicles per tankful of gasoline, based on EPA mileage estimates, is approximately 275 miles.]

[Starting with a full crankcase, the Audi vehicles can consume approximately the following amounts of oil without checking and refilling the oil before engine damage becomes an immediate risk:

| | |
|---|---|
| Fox | 2.5 quarts |
| 5000 | 4.1 quarts |

The approximate maximum distance which these vehicles can be driven per tankful of gasoline, based on EPA mileage estimates, is as follows:

| | |
|---|---|
| Fox | 335 miles |
| 5000 (1978) | 290 miles |
| (1979) | 380 miles |

During the period 1974–1979 and thereafter, [Volkswagen] [Audi] received reports that a number of engines in its vehicles had been damaged from insufficient oil.

Between 1974 and 1979, [Volkswagen] [Audi] modified the recommendations in its owner's literature that operators of its vehicles check the oil level at periodic intervals as follows:

—1974–76 owner's manuals stated "the engine oil level should be checked from time to time";

—1977–78 owner's manuals stated: "make it a habit to have the engine oil level checked with every second fuel filling";

—1979 owner's manuals stated: "make it a habit to have the engine oil level checked with every fuel filling";

—1978–1979 Warranty and Maintenance booklets repeated the above advice on oil checking intervals and included statements as to the consequences of lack of sufficient engine oil.

[Volkswagen only: Volkswagen sent a letter to owners of 1975–1979 Rabbits and Sciroccos (Dasher owners did not receive this letter) to remind them to check the oil level with every fuel filling. The letter was sent to owners of standard transmission cars in approximately August 1979 and to owners of automatic transmission cars in approximately June 1980. Dealers were also told in August 1979 to attach a sticker reading "Check Engine Oil" around the fuel filler neck under the gas cap of each vehicle they serviced.]

The FTC claims that the information contained in the owner's manuals, [and] maintenance booklets [,] [, letter to consumers, and sticker] was insufficient to alert owners to the risk of serious engine damage from lack of oil. The FTC says that oil consumption in 1974–1979 water-cooled gasoline engines could

unexpectedly increase because of deteriorating valve stem seals, and that [VW] [Audi] did not inform owners of this fact. The FTC also says that such an oil consumption increase, if undetected, could lead to severe engine damage from lack of oil, and the FTC claims that [VW] [Audi] did not tell consumers of these facts as well.

[VW] [Audi] says that the information and recommendations in its owner's literature [and communications] were significantly more detailed than those of any other manufacturer and were more than sufficient to prevent any engine damage. [VW] [Audi] denies that oil consumption or valve stem seal performance in its engines was in any way abnormal. [VW] [Audi] says that lubrication-related engine failures were not caused by oil consumption, but by insufficient oil level maintenance, compounded by a large increase in self-service gas stations in the 1970's.

The oil pressure warning light in automobiles is not specifically designed to measure oil level. Therefore, under some operating conditions, the engine may be damaged from low oil level before the oil pressure drops sufficiently to activate the dashboard light.

During the late 1970's, [Volkswagen] [Audi] received reports that some customers who complained of engine damage from lack of oil may have in fact been relying on their dashboard warning lights, rather than their oil dipsticks, to monitor the crankcase oil levels in their cars.

Prior to 1979, all [VW] [Audi] owner's manuals stated that, if the oil pressure warning light comes on while driving, the driver should stop at once, turn the engine off, check the oil level and replenish, if necessary, and not operate the vehicle if the warning light remains on while the engine is restarted. In the 1979 model year, Volkswagen first included additional language, which had not previously appeared in its owner's manuals. This new language stated specifically that the oil pressure warning light is not an oil level indicator and that the dipstick is the proper means of checking the oil level.

[Volkswagen's] [Audi's] Warranty

[Volkswagen] [Audi] provides a limited warranty with each new [Volkswagen] [Audi] vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the

**Attachment B100—Background Statement**

*Engine Damage From Lack of Oil*

**Notice: Please read the attached "Oil Usage" Background Statement, if this case also involves a claim of excessive oil usage or consumption. It may contain useful facts for this case.**

Background

This case may involve an owner's complaint about engine damage from lack of oil in a gasoline-fueled 1974–1977 Audi 100LS water-cooled engine.

Since 1981, the Federal Trade Commission (FTC) and Volkswagen of America, the importer of Audi vehicles (Audi) have been involved in an administrative lawsuit which includes allegations of excessive oil consumption and engine damage from lack of oil in 1974 to 1979 Audi cars with water-cooled gasoline engines. The FTC has alleged that Audi failed to tell consumers about an "abnormally high" number of engines damaged from lack of oil in these vehicles. Audi has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. Audi and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, Audi and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this statement and the attached statement to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

Engine Damage From Lack of Oil

Like other automobile engines, the Audi 100LS engine will be severely damaged if it is run without sufficient lubricating oil circulating within the engine. Engine components which can be damaged in this manner include connecting rods, crankshaft, bearings and the engine block itself.

Whether a particular automobile engine is damaged from lack of oil depends on three factors: the engine's rate of oil consumption, its effective crankcase capacity, and the intervals at which its oil level is checked and replenished.

Over the life of the engine (100,000 miles or more), the amount of oil consumed by individual 1974–1977 Audi 100LS vehicles has varied widely at various times from less than one quart per 7,500 miles (the oil change interval), to more than one quart per 345 miles (Audi's maximum usage figure, which was published in the 1977 model year vehicle owner's literature).

Starting with a full crankcase, the Audi 100LS engine can consume approximately 3.1 quarts of oil without checking and refilling the oil before engine damage becomes an immediate risk. The maximum cruising range of these vehicles per tankful of gasoline, based on EPA mileage estimates, is approximately 350 miles.

During the period 1974–1977 and thereafter, Audi received reports that a number of engines in its vehicles had been damaged from insufficient oil.

Between 1974 and 1977, Audi modified the recommendations in its owner's literature that operators of its vehicles check the oil level at periodic intervals as follows:

—1974–76 owner's manuals stated "the engine oil level should be checked from time to time";
—1977 owner's manuals stated: "make it a habit to have the engine oil level checked with every second fuel filling".

The FTC claims that the information contained in the owner's manuals was insufficient to alert owners to the risk of serious engine damage from lack of oil. The FTC says that oil consumption in 1974–1977 Audi 100 LS water-cooled gasoline engines could unexpectedly increase, and that Audi did not inform owners of this fact. The FTC also says that such an oil consumption increase, if undetected, could lead to severe engine damage from lack of oil, and the FTC claims that Audi did not tell consumers of these facts as well.

Audi says that the information and recommendations in its owner's literature were significantly more detailed than those of any other manufacturer and were more than sufficient to prevent any engine damage. Audi denies that oil consumption performance in its engines was in any way abnormal. Audi says that lubrication-related engine failures were not caused by oil consumption, but by insufficient oil level maintenance, compounded by a large increase in self-service gas stations in the 1970's.

The oil pressure warning light in automobiles is not specifically designed to measure oil level. Therefore, under some operating conditions, the engine may be damaged from low oil level before the oil pressure drops sufficiently to activate the dashboard light.

During the late 1970's, Audi received reports that some customers who complained of engine damage from lack of oil may have in fact been relying on

their dashboard warning lights, rather than their oil dipsticks, to monitor the crankcase oil levels in their cars.

Prior to 1979, all Audi owner's manuals stated that, if the oil pressure warning light comes on while driving, the driver should stop at once, turn the engine off, check the oil level and replenish, if necessary, and not operate the vehicle if the warning light remains on while the engine is restarted.

Audi's Warranty

Audi provides a limited warranty with each new Audi vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty, including complaints of engine damage from lack of oil. A manufacturer's warranty is not necessarily the manufacturer's only responsibility, and should not determine the outcome of this case.

**Attachment C—Special Modified Rules for the Arbitration of Volkswagen and Audi Internal Engine Component Claims**

*1—Definitions*

A. "Arbitration" is a process in which two or more persons agree to let an impartial person or panel decide their dispute. This decision may be legally binding when the customer accepts the decision and can be appealed to the courts only under specific and limited circumstances set by state law or by failure of Volkswagen to perform.

B. "You", as used in these rules, means one of the parties involved in the dispute being arbitrated.

C. "BBB" means the Better Business Bureau which is administering the arbitration. "CBBB" is the Council of Better Business Bureaus.

D. "Arbitrator" refers to the individual or panel selected to conduct the arbitration and make a decision in the dispute.

E. "Internal Engine Components" means all gasoline and diesel engine parts, components, and subassemblies included within the complete short block and cylinder head assemblies, including short blocks and cylinder heads, camshafts, valve train components, timing gears, flywheels, pistons, piston rings, crankshafts, connecting rods, and bearings, oil pumps, and associated fasteners, seals and gaskets.

F. "Disputes" that may be arbitrated under these special rules are limited to disagreements between Volkswagen of America, Inc., the manufacturer and a customer involving the claimed failure, malfunction, repair or replacement of internal engine components in a Volkswagen or Audi vehicle distributed by Volkswagen of America, warranted in writing by Volkswagen of America, or certified by the manufacturer as meeting applicable federal safety and emissions standards. These disputes do not include: (1) Reimbursement for such things as loss of wages, business income, depreciation or loss of value, permanent replacement transportation, or any other consequential damages, unless all the parties agree specifically in writing that the Arbitrator may consider such an item; (2) claims which exceed the cash purchase price of the product involved in the dispute (plus expenses for towing, storage fees, rental car costs, telephone and hotel bills) unless all parties agree specifically in writing that the Arbitrator may consider other costs of purchase; (3) claims involving cars or trucks which are no longer owned or leased by the consumer at the time the claim was referred to the BBB (*if you plan to sell the car before the hearing is held, you must follow the special procedures described in Rule 28*); (4) claims covered by insurance, punitive damages, or claims for mental anguish or personal injury. Expenses for towing, storage fees, rental car costs, telephone and hotel bills may be included in the claim to be arbitrated. The Arbitrator has no authority to decide that a party or parties violated any law or to consider matters which cannot be arbitrated under the law. In making any award for reimbursement, repair or repurchase, the Arbitrator may consider requests for deductions based on such factors as owner usage, mileage, overall condition of the product and optional equipment. The decision as to whether your dispute or any part of your dispute is arbitrable under these rules, or is within the scope of your Agreement to Arbitrate, rests with either BBB and CBBB, subject to the terms of the agreement between Volkswagen and the FTC under which this program is being conducted.

*2—Application of These Rules*

These special rules apply to any dispute described under the definition of "Disputes" which you agree to arbitrate through the BBB. You must accept these rules when you sign the "_____" form.

*3—The State Law*

The law of the state where your dispute is arbitrated shall apply, unless otherwise noted on your arbitration agreement.

*4—Beginning Arbitration*

• You may complete the "_____" form and indicate you wish to begin arbitration proceedings immediately; or

• You may complete the "—" form and indicate you wish to try mediation. The arbitration hearing must be completed within 60 days after receipt of all information necessary for the BBB to investigate your complaint, if no settlement is reached.

The "—" form will determine the issues to be arbitrated.

*5—Selecting Your Arbitrator*

The BBB will maintain a pool of volunteers who reflect, to the extent possible, the total community. Prior to going to arbitration, you will select an Arbitrator from this pool in the following manner:

A. The Single Arbitrator

The BBB will provide you and the other parties with an identical list of Arbitrators chosen from the volunteer pool, together with brief biographies of each. The biographies will also note whether the arbitrator has decided other cases with Volkswagen and how they have been decided. After receiving this list you will have five days to cross off any name with whom you have a business or personal relationship, and to assign priorities (#1, #2, #3, etc.) to those remaining. If you do not mail the list in five days, the BBB will assume all names are satisfactory to you. The BBB will select the Arbitrator on the basis of the highest priority common choice of the parties and availability.

B. Three-Person Panel

At the option of the BBB or where the state law requires, a panel of three Arbitrators may decide your dispute. To select a panel, you should cross off any name with whom you have a business or personal relationship and assign priorities to those remaining. Your first choice, if available, and the first choice of the other party, if available, will serve with a third Arbitrator whose name has not been crossed off. One person so selected will chair the hearing, and your dispute will be decided by a majority vote of the panel. If your first choice is the same person chosen first by the other parties, that individual will chair the panel and the second or third choices of the parties generally will constitute the other two panel members, subject to availability.

*6—Facilities and Costs of Arbitration*

The BBB will provide or arrange for facilities to hold your arbitration hearing and it will maintain records of your

arbitration proceeding. If our offices are very far from your home, we will arrange for a hearing facility as close to your home as is reasonably possible. If you want a transcript or tape recording of the proceedings, or if you bring your own lawyer or paid witnesses, you are responsible for these costs.

*7—Communicating With the Arbitrator*

Neither you nor Volkswagen may have any direct communication with the Arbitrator about your dispute unless all other parties are present or have given written permission for you to do so. Any communications to the Arbitrator must be sent through the BBB, which will relay them to the other parties to the dispute. Except for your notice of hearing or inspection which will be made by certified mail or by other methods permitted by state law, all BBB communication with you will be by regular mail or by other reasonable means, subject to state law requirements.

*8—The Arbitrator's Appointment and Oath*

The BBB will send the Arbitrator a Notice of Appointment, together with a copy of your agreement and these rules. The Arbitrator must sign a special oath and give this to the BBB together with a disclosure of relationships with any parties to the dispute.

*9—Disqualifying Arbitrators; Filling Vacancies*

Before signing the oath pledging to make a fair decision in your dispute, the Arbitrator must disclose any financial, competitive, professional, family or social relationship, however remote, with you or any other party to your dispute. If the relationship is such that a fair decision cannot be made, the Arbitrator will refuse to serve. All such disclosures should be given by the Arbitrator to the BBB which will let you know about them and give you an opportunity to accept or reject the Arbitrator, depending on how you believe the relationship might affect the Arbitrator's decision. The BBB, too, may reject an Arbitrator on this basis. If the Arbitrator is rejected, the selection process described in Rule 5 may be repeated, if necessary.

*10—Representation by a Lawyer*

In an arbitration hearing you may argue your own case or have someone represent you. If your representative is a lawyer, you must give the lawyer's name and address to the BBB at least eight days before the hearing so the BBB can inform other parties to the dispute and give them an opportunity to retain a lawyer if they wish.

*11—Inspection*

Before the hearing, either you or the Arbitrator may request an inspection of your car. The BBB will have the final decision on whether or not to conduct an inspection. Even if a hearing is to be conducted by telephone or written submissions, the BBB may require an inspection if a fair decision requires one. If any inspection is scheduled, the BBB will send you a Notice of Inspection at least eight (8) days in advance by certified mail (return receipt requested) or by other methods permitted under state law. If you or your representative cannot attend, you will be given an opportunity to comment on any of the observations made at the inspection.

*12—Technical Advisers*

At the request of the Arbitrator, the BBB will make every effort to obtain a neutral technical adviser to inspect your car. At the BBB's option, the adviser's findings will be presented in writing or in person either before, during or after the hearing. In any case, you will have an opportunity to evaluate and comment on the qualifications and findings of the adviser.

*13—Hearing Date: Notice of Hearing*

When the Arbitrator has agreed to serve, the BBB will set a time and place for your arbitration hearing, with due regard for your convenience and that of the Arbitrator. Notice of your hearing will be sent to you at least eight (3) days in advance by the BBB by certified mail (return receipt requested) or by other methods approved by state law. If you object to the time or place stated in your notice, contact the BBB immediately and let them know. If you do not object or if you come to the hearing, your acceptance of the notice will be assumed.

*14—Written or Telephone Hearings*

Although most arbitrations involve oral hearings, the BBB, at your request, may arrange to have your statement and evidence presented by telephone or in writing. If you appear in person, Volkswagen may present its case in person, by telephone, or in writing. If you present your case by telephone, Volkswagen may present its case by telephone or in writing. If you present your case in writing, Volkswagen must also present its case in writing. You always have the right to be present for any oral hearing of your case. Each side has the right to review and respond to any information submitted.

*15—Attendance at Hearings*

Unless the customer or Arbitrator objects, observers may attend arbitration hearings to the extent the BBB determines that reasonable accommodations are available. To conduct a proper hearing, the Arbitrator shall enforce appropriate rules of conduct for all observers. Media will be subject to the same limitations imposed by federal courts, unless all parties and the Arbitrator agree to other arrangements.

*16—Absence of a Party*

If you are unavailable for a hearing after receiving proper notice, the Arbitrator may decide to hold the hearing in your absence. Your absence does not mean the Arbitrator will automatically decide against you, and you will be given the opportunity to present your statement and any evidence in writing or by telephone within a time period set by the Arbitrator.

*17—Record and Transcript of Hearing*

The Arbitrator or the BBB will maintain a written record of the parties, witnesses and evidence presented in a hearing, and all such records will be provided to you upon request for a reasonable cost. If you pay all costs and give reasonable notice, the BBB will arrange to make a transcript of the hearing; however the other parties and the Arbitrator must be given access to or copies of this transcript. At the request of the Arbitrator and at no cost to you, the BBB may record the proceedings and provide a tape to the Arbitrator to assist in making a decision. Observers will not be permitted to make recordings.

*18—Interpreters*

If you need an interpreter for your arbitration and can not provide your own, contact the BBB and it will make every effort to find a volunteer interpreter.

*19—Oaths*

The Arbitrator will sign a special notarized oath before your hearing. You and your witnesses may be placed under oath at the hearing, except in instances where this procedure is not required by the BBB and state law.

*20—Hearing Procedures*

The Arbitrator will decide on the order and procedures for you to present your side of the dispute. You will be given an opportunity to make a personal presentation of your case, as well as present any witnesses and evidence in support of your case. You also may

question the other parties, their witnesses and their evidence. After everyone has given their presentation, you will be given an opportunity to make a closing statement. When the Arbitrator is satisfied that all testimony and evidence have been presented, your hearing will be closed. If you prepare your case or any part of your case in writing for the arbitration, the other party will have an opportunity to see your statement and submit a response to the BBB which will give both to the Arbitrator.

*21—Admission of Evidence*

You may present your case in person, by telephone, or in writing without being restricted by courtroom rules of evidence. You should be sure your evidence is true and relevant. The Arbitrator may restrict your oral presentation if it is repetitious or not related to the dispute.

*22—Incomplete Hearings*

If the Arbitrator considers it necessary for a fair decision, new or additional hearings may be scheduled in your dispute. After your hearing has been closed by the Arbitrator, you may request that it be reopened to consider newly discovered evidence that could not have been raised at the original hearing, if the Arbitrator has not yet made a decision. Your request must be sent to the BBB, and copies will be sent to any other parties. The Arbitrator will make the decision on whether to reopen the hearing or not.

*23—Subpoena Powers*

If you have a reason to believe the other side will not present certain witnesses or evidence which you consider important to a full and fair consideration or dispute, you may send the BBB a request that the Arbitrator subpoena these witnesses or evidence. If the Arbitrator agrees with your request, a subpoena will be sent according to state law.

*24—Affidavits*

If you have a witness who cannot come to the hearing, you may present that person's written statement (made under oath and notarized, at your option) to the Arbitrator. At your request, and before making a decision, the Arbitrator must give you a reasonable number of days to respond to an affidavit presented by the other party.

*25—Time Limits*

The BBB shall complete an arbitration hearing within 60 days after receipt of all information necessary for the BBB to investigate your complaint, regardless of whether you try mediation first. (For automotive complaints, "all information" is the make, model, year, vehicle identification number and description of the problem). These time deadlines may only be extended for delays caused by you.

*26—The Decision*

A. Time

The Arbitrator is required to write a final decision, together with the reasons for the decision, no later than ten days after your hearing is closed. If you have been asked to furnish additional materials related to your dispute, the Arbitrator will set a time for these materials to be sent to the BBB and a final decision will be made within ten days after they are received by the Arbitrator. The BBB will send you a copy of this decision and the reasons for it by certified mail or by other means permitted by State law.

B. Scope

The Arbitrator may make any decision, which the Arbitrator deems to be fair and equitable within the scope of your "—" form, provided that laws or regulations do not prohibit all or part of that decision. The decision may order an action to be performed, money to be paid, a combination of remedies or a choice of remedies for you to make. It may give you all, some or none of what you seek. Or it may be a decision in which the Arbitrator feels there should be no payment or performance at all.

C. Modifying the Decision

If you believe the final decision is impossible to perform, that it contains a mistake of fact or miscalculation, or that it is otherwise imperfect in form, you should notify the BBB immediately in writing. If your claim is valid, the BBB will share your observation with the other parties and forward it, together with their views, to the Arbitrator who may accept it in whole or in part or reject it altogether.

D. Settlement

If you and the other parties voluntarily decide to settle your dispute before the hearing, the settlement will end your dispute and no hearing will be held. You should be sure you are satisfied with the settlement. If Volkswagen agrees to pay you money as part of a voluntary settlement, it must send you a check within 45 days; any repair agreed to under a voluntary settlement must be completed within 30 days. Be sure to let the BBB know about it so the BBB can verify it was done within the time promised. If your voluntary settlement occurs during the hearing, you may ask the Arbitrator to reflect the settlement in the final decision. If your settlement occurs after the hearing but before the Arbitrator's final decision, be sure to notify the BBB at once.

E. Form and Filing

The Arbitrator will make the final decision in writing and it will be notarized before the BBB duplicates it and sends a copy together with reasons for the decision, to you and any other party. The BBB will not make any public disclosure of the decision unless either you and all other parties agree in writing or such disclosure is required by law or is pertinent to judicial or governmental administrative proceedings. The Federal Trade Commission may also receive records of arbitration proceedings.

F. Acceptance or Rejection of the Decision

The BBB will send the Arbitrator's decision to you, the consumer, for acceptance or rejection. If you accept the decision:

Volkswagen will be legally bound to abide by the decision; if Volkswagen is ordered to pay you money, it must send you a check within 45 days; any repair that is ordered must be completed within 30 days except that the arbitrator may modify the deadline for repair for good cause shown at the hearing; and

You, too, will be legally bound, which means you give up any right to sue Volkswagen in court on any claim that falls within the scope of your arbitration, unless Volkswagen fails to perform according to the Arbitrator's decision. (If this should happen, first notify the BBB; however, you may legally enforce the decision or pursue other legal remedies under State or federal law should such a failure occur.)

If you reject the decision:

You may pursue other legal remedies under State or Federal law;

Volkswagen will not be obligated to perform any part of the decision; and

Depending on Federal or State law the decision may be introduced as evidence by you or Volkswagen in any civil court action relating to any matter considered in your arbitration hearing.

Note.—Your failure to accept or reject the decision within 14 days will be considered a rejection.

G. Verification of Performance

If a decision is accepted, Volkswagen must do what the decision requires within the time limits stated. Unless otherwise stated in the decision, the

time for performance begins when the BBB receives your written notice of the acceptance. When this time limit is up, the BBB must contact you within two weeks of when VW was supposed to satisfy the award to be sure Volkswagen has performed.

*27—Interpretation of Rules*

The BBB will not advise the Arbitrator or make a statement on matters relating to the merits of your case or the reasonableness of the decision. The CBBB will decide procedural questions, the scope of the arbitration agreements, and other question concerning the application and interpretation of these rules, subject to the terms of the agreement between Volkswagen and the Federal Trade Commission under which this program is being conducted.

*28—Special Requirements if Vehicle Sold Before Hearing*

If you decide to sell your vehicle after you file your claim with the BBB, but before the hearing, the following special provisions apply:

A. You must notify Volkswagen at least ten days in advance of the sale that you intend to sell the vehicle;

B. You must give Volkswagen an opportunity to inspect the vehicle before it is sold;

C. If you sell the vehicle before the problem that prompted the claim is repaired, your recovery will be limited to the estimated repair costs (plus expenses for towing, storage fees, rental car costs, telephone and hotel bills);

D. If you arbitrate a claim for an unrepaired problem on a car that you sold, the party that bought the car is not eligible for arbitration for that problem; Likewise, you may not arbitrate a claim for which a previous owner has already accepted an arbitration award.

**Attachment D—Special Modified Rules for the Arbitration of Volkswagen and Audi Oil Related Claims**

*1—Definitions*

A. "Arbitration" is a process in which two or more persons agree to let an impartial person or panel decide their dispute. This decision may be legally binding when the customer accepts the decision and can be appealed to the courts only under specific and limited circumstances set by State law or by failure of Volkswagen to perform.

B. "You", as used in these rules, means one of the parties involved in the dispute being arbitrated.

C. "BBB" means the Better Business Bureau which is administering the arbitration. "CBBB" is the Council of Better Business Bureaus.

D. "Arbitrator" refers to the individual or panel selected to conduct the arbitration and make a decision in the dispute.

E. "Disputes" that may be arbitrated under these special rules are limited to disagreements between the manufacturer and a customer relating to complaints involving allegations of excessive oil consumption or engine damage due to lack of oil in a 1974–1979 Volkswagen or Audi vehicle with a water-cooled gasoline engine distributed by Volkswagen of America, warranted in writing by Volkswagen of America, or certified by the manufacturer as meeting applicable federal safety and emissions standards. These disputes do not include: (1) Reimbursement for such things as loss of wages, business income, depreciation or loss of value, permanent replacement transportation, or any other consequential damages, unless all the parties agree specifically in writing that the Arbitrator may consider such an item; (2) claims which exceed the cash purchase price of the product involved in the dispute (plus expenses for towing, storage fees, rental car costs, telephone and hotel bills) unless all parties agree specifically in writing that the Arbitrator may consider other costs of purchase; (3) claims covered by insurance, punitive damages, or claims for mental anguish or personal injury. The vehicle need not be currently owned or leased by the consumer. Expenses for towing, storage fees, rental car costs, telephone and hotel bills may be included in the claim to be arbitrated. The Arbitrator has no authority to decide that a party or parties violated any law or to consider matters which cannot be arbitrated under the law. In making any award for reimbursement, repair or repurchase, the Arbitrator may consider requests for deductions based on such factors as owner usage, mileage, overall condition of the product and optional equipment. The decision as to whether your dispute or any part of your dispute is arbitrable under these rules, or is within the scope of your Agreement to Arbitrate, rests with either BBB and CBBB, subject to the terms of the agreement between Volkswagen and the FTC under which this program is being conducted.

*2—Application of These Rules*

These special rules apply to any dispute described under the definition of "Disputes" which you agree to arbitrate through the BBB. You must accept these rules when you sign the "Response to Volkswagen Mediation and Arbitration Program" form.

*3—The State Law*

The law of the state where your dispute is arbitrated shall apply, unless otherwise noted on your arbitration agreement.

*4—Beginning Arbitration*

- You may complete the "Response to Volkswagen Mediation and Arbitration Program" form and indicate you wish to begin arbitration proceedings immediately; or
- You may complete the "Response to Volkswagen Mediation and Arbitration Program" form and indicate you wish to try mediation. If no settlement is reached, you will be notified of the date of the arbitration hearing at least 30 days in advance of the hearing.
- The answers to the questionnaire included with the "Response to Volkswagen Mediation and Arbitration Program" will determine the issues to be arbitrated.

*5—Selecting Your Arbitrator*

The BBB will maintain a pool of volunteers who reflect, to the extent possible, the total community. Prior to going to arbitration, you will select an Arbitrator from this pool in the following manner:

A. The Single Arbitrator

The BBB will provide you and the other parties with an identical list of Arbitrators chosen from the volunteer pool, together with brief biographies of each. The biographies will also note whether the arbitrator has decided other cases with Volkswagen oil-related claims and how they have been decided. After receiving this list you will have five days to cross off any name with whom you have a business or personal relationship, and to assign priorities (#1, #2, #3, etc.) to those remaining. If you do not mail the list in five days, the BBB will assume all names are satisfactory to you.

The BBB will select the Arbitrator on the basis of the highest priority common choice of the parties and availability.

B. Three-Person Panel

At the option of the BBB or where the state law requires, a panel of three Arbitrators may decide your dispute. To select a panel, you should cross off any name with whom you have a business or personal relationship and assign priorities to those remaining. Your first choice, if available, and the first choice of the other party, if available, will serve with a third Arbitrator whose name has not been crossed off. One person so selected will chair the hearing, and your dispute will be decided by a majority

vote of the panel. If your first choice is the same person chosen first by the other parties, that individual will chair the panel and the second or third choices of the parties generally will constitute the other two panel members, subject to availability.

*6—Facilities and Costs of Arbitration*

The BBB will provide or arrange for facilities to hold your arbitration hearing and it will maintain records of your arbitration proceeding. If our offices are very far from your home, we will arrange for a hearing facility as close to your home as is reasonably possible. If you want a transcript or tape recording of the proceedings, or if you bring your own lawyer or paid witnesses, you are responsible for these costs.

*7—Communicating With the Arbitrator*

Neither you nor Volkswagen may have any direct communication with the Arbitrator about your dispute unless all other parties are present or have given written permission for you to do so. Any communications to the Arbitrator must be sent through the BBB, which will relay them to the other parties to the dispute. Except for your notice of hearing or inspection which will be made by certified mail or by other methods permitted by state law, all BBB communication with you will be by regular mail or by other reasonable means, subject to state law requirements.

*8—The Arbitrator's Appointment and Oath*

The BBB will send the Arbitrator a Notice of Appointment, together with a copy of your agreement and these rules. The Arbitrator must sign a special oath and give this to the BBB together with a disclosure of relationships with any parties to the dispute.

*9—Disqualifying Arbitrators; Filling Vacancies*

Before signing the oath pledging to make a fair decision in your dispute, the Arbitrator must disclose any financial, competitive, professional, family or social relationship, however remote, with you or any other party to your dispute. If the relationship is such that a fair decision cannot be made, the Arbitrator will refuse to serve. All such disclosures should be given by the Arbitrator to the BBB which will let you know about them and give you an opportunity to accept or reject the Arbitrator, depending on how you believe the relationship might affect the Arbitrator's decision. The BBB, too, may reject an Arbitrator on this basis. If the Arbitrator is rejected, the selection process described in Rule 5 may be repeated, if necessary.

*10—Representation by a Lawyer*

In an arbitration hearing you may argue your own case or have someone represent you. If your representative is a lawyer, you must give the lawyer's name and address to the BBB at least eight days before the hearing so the BBB can inform other parties to the dispute and give them an opportunity to retain a lawyer if they wish.

*11—Inspection*

Before the hearing, either you or the Arbitrator may request an inspection of your car. The BBB will have the final decision on whether or not to conduct an inspection. Even if a hearing is to be conducted by telephone or written submissions, the BBB may require an inspection if a fair decision requires one. If any inspection is scheduled, the BBB will send you a Notice of Inspection at least eight (8) days in advance by certified mail (return receipt requested) or by other methods permitted under state law. If you or your representative cannot attend, you will be given an opportunity to comment on any of the observations made at the inspection.

*12—Technical Advisers*

At the request of the Arbitrator, the BBB will make every effort to obtain a neutral technical adviser to inspect your car. At the BBB's option, the adviser's findings will be presented in writing or in person either before, during or after the hearing. In any case, you will have an opportunity to evaluate and comment on the qualifications and findings of the adviser.

*13—Hearing Date: Notice of Hearing*

When the Arbitrator has agreed to serve, the BBB will set a time and place for your arbitration hearing, with due regard for your convenience and that of the Arbitrator. Notice of your hearing will be sent to you at least eight (8) days in advance by the BBB by certified mail (return receipt requested) or by other methods approved by state law. If you object to the time or place stated in your notice, contact the BBB immediately and let them know. If you do not object or if you come to the hearing, your acceptance of the notice will be assumed.

*14—Written or Telephone Hearings*

Although most arbitrations involve oral hearings, the BBB, at your request, may arrange to have your statement and evidence presented by telephone or in writing. If you appear in person, Volkswagen may present its case in person, by telephone, or in writing. If you present your case by telephone, Volkswagen may present its case by telephone or in writing. If you present your case in writing, Volkswagen must also present its case in writing. You always have the right to be present for any oral hearing of your case. You also have the right to review and respond to any information submitted by Volkswagen.

*15—Attendance at Hearings*

Unless the customer or Arbitrator objects, observers may attend arbitration hearings to the extent the BBB determines that reasonable accommodations are available. To conduct a proper hearing, the Arbitrator shall enforce appropriate rules of conduct for all observers. Media will be subject to the same limitations imposed by federal courts, unless all parties and the Arbitrator agree to other arrangements.

*16—Absence of a Party*

If you are unavailable for a hearing after receiving proper notice, the Arbitrator may decide to hold the hearing in your absence. Your absence does not mean the Arbitrator will automatically decide against you, and you will be given the opportunity to present your statement and any evidence in writing or by telephone within a time period set by the Arbitrator.

*17—Record and Transcript of Hearing*

The Arbitrator or the BBB will maintain a written record of the parties, witnesses and evidence presented in a hearing, and all such records will be provided to you upon request for a reasonable cost. If you pay all costs and give reasonable notice, the BBB will arrange to make a transcript of the hearing; however the other parties and the Arbitrator must be given access to or copies of this transcript. At the request of the Arbitrator and at no cost to you, the BBB may record the proceedings and provide a tape to the Arbitrator to assist in making a decision. Observers will not be permitted to make recordings.

*18—Interpreters*

If you need an interpreter for your arbitration and can not provide your own, contact the BBB and it will make every effort to find a volunteer interpreter.

*19—Oaths*

The Arbitrator will sign a special notarized oath before your hearing. You and your witnesses may be placed

under oath at the hearing, except in instances where this procedure is not required by the BBB and state law.

*20—Hearing Procedures*

The Arbitrator will decide on the order and procedures for you to present your side of the dispute. You will be given an opportunity to make a personal presentation of your case, as well as present any witnesses and evidence in support of your case. You also may question the other parties, their witnesses and their evidence. After everyone has given their presentation, you will be given an opportunity to make a closing statement. When the Arbitrator is satisfied that all testimony and evidence have been presented, your hearing will be closed. If you prepare your case or any part of your case in writing for the arbitration, the other party will have an opportunity to see your statement and submit a response to the BBB which will give both to the Arbitrator.

*21—Admission of Evidence*

You may present your case in person, by telephone, or in writing without being restricted by courtroom rules of evidence. You should be sure your evidence is true and relevant. The Arbitrator may restrict your oral presentation if it is repetitious or not related to the dispute.

*22—Incomplete Hearings*

If the Arbitrator considers it necessary for a fair decision, new or additional hearings may be scheduled in your dispute. After your hearing has been closed by the Arbitrator, you may request that it be reopened to consider newly discovered evidence that could not have been raised at the original hearing, if the Arbitrator has not yet made a decision. Your request must be sent to the BBB, and copies will be sent to any other parties. The Arbitrator will make the decision on whether to reopen the hearing or not.

*23—Subpoena Powers*

If you have a reason to believe the other side will not present certain witnesses or evidence which you consider important to a full and fair consideration or dispute, you may send the BBB a request that the Arbitrator subpoena these witnesses or evidence. If the Arbitrator agrees with your request, a subpoena will be sent according to state law.

*24—Affidavits*

If you have a witness who cannot come to the hearing, you may present that person's written statement (made under oath and notarized, at your option) to the Arbitrator. At your request, and before making a decision, the Arbitrator must give you a reasonable number of days to respond to an affidavit presented by the other party.

*26—Time Limits*

If you contact the BBB or Volkswagen about an oil consumption or engine damage from lack of oil complaint on an eligible 1974–1979 VW or Audi, you will be sent an information packet within fifteen days or before 60 days after the program goes into effect, whichever is later.

After you return the form indicating you wish to participate in the program, an arbitration hearing must be completed within 60 days after Volkswagen receives your form, regardless of whether you try mediation first. This time deadline may only be extended for delays caused by you.

*27—The Decision*

A. Time

The Arbitrator will write a final decision, together with the reasons for the decision, no later than ten days after your hearing is closed. If you have been asked to furnish additional materials related to your dispute, the Arbitrator will set a time for these materials to be sent to the BBB and a final decision will be made within ten days after they are received by the Arbitrator. The BBB will send you a copy of this decision and the reasons for it by certified mail or by other means permitted by state law.

B. Scope

The Arbitrator may make any decision which the Arbitrator deems to be fair and equitable within the scope of your "Response to Volkswagen Mediation and Arbitration" form, provided that laws or regulations do not prohibit all or part of that decision. The decision may order an action to be performed, money to be paid, a combination of remedies or a choice of remedies for you to make. It may give you all, some or none of what you seek. Or it may be a decision in which the Arbitrator feels there should be no payment or performance at all.

C. Modifying the Decision

If you believe the final decision is impossible to perform, that it contains a mistake of fact or miscalculation, or that it is otherwise imperfect in form, you should notify the BBB immediately in writing. If your claim is valid, the BBB will share your observation with the other parties and forward it, together with their views, to the Arbitrator who may accept it in whole or in part or reject it altogether.

D. Settlement

If you and the other parties voluntarily decide to settle your dispute before the hearing, the settlement will end your dispute and no hearing will be held. You should be sure you are satisfied with the settlement. If Volkswagen agrees to pay you money as part of a voluntary settlement, it must send you a check within 45 days; any repair agreed to under a voluntary settlement must be completed within 30 days. Be sure to let the BBB know about it so the BBB can verify it was done within the time promised. If your voluntary settlement occurs during the hearing, you may ask the Arbitrator to reflect the settlement in the final decision. If your settlement occurs after the hearing but before the Arbitrator's final decision, be sure to notify the BBB at once.

E. Form and Filing

The Arbitrator will make the final decision in writing and it will be notarized before the BBB duplicates it and sends a copy together with reasons for the decision, to you and any other party. The BBB will not make any public disclosure of the decision unless either you and all other parties agree in writing or such disclosure is required by law or is pertinent to judicial or governmental administrative proceedings. The Federal Trade Commission may also receive records of arbitration proceedings.

F. Acceptance or Rejection of the Decision

The BBB will send the Arbitrator's decision to you, the consumer, for acceptance or rejection. If you accept the decision:

Volkswagen will be legally bound to abide by the decision; if Volkswagen is ordered to pay you money, it must send you a check within 45 days; any repair that is ordered must be completed within 30 days, except that the arbitrator may modify the deadline for repair for good cause shown at the hearing; and

You, too, will be legally bound, which means you give up any right to sue Volkswagen in court on any claim that falls within the scope of your arbitration hearing, unless Volkswagen fails to perform according to the Arbitrator's decision. (If this should happen, first notify the BBB; however, you may legally enforce the decision or pursue other legal remedies under state or federal law should such a failure occur.)

If you reject the decision:

You may pursue other legal remedies under state or Federal law;

Volkswagen will not be obligated to perform any part of the decision; and

Depending on Federal or State law the decision may be introduced as evidence by you or Volkswagen in any civil court action relating to any matter considered in your arbitration hearing.

**Note.**—Your failure to accept or reject the decision within 14 days will be considered a rejection.

G. Verification of Performance

If a decision is accepted, Volkswagen must do what the decision requires within the time limits stated. Unless otherwise stated in the decision, the time for performance begins when the BBB received written notice of the acceptance. When this time limit is up, the BBB must contact the consumer within two weeks of when VW was supposed to perform to be sure Volkswagen has performed.

*28—Interpretation of Rules*

The BBB will not advise the Arbitrator or make a statement on matters relating to the merits of your case or the reasonableness of the decision. The CBBB will make the decision on procedural questions, the scope of the agreements, and other questions concerning the application and interpretation of these rules, subject to the terms of the agreement between Volkswagen and the Federal Trade Commission under which this program is being conducted.

**Attachment E1—[Settlement Offer]**

Dear [VW] [Audi] owner:

You have expressed concern about unsatisfactory oil consumption or engine damage from lack of oil on your gasoline-fueled [brand, model, model year, with VIN, if known].

We are writing to tell you about a *Free* claim settlement program which we are offering to you and other owners who may have experienced these conditions. The program may result in a *Refund, Free Repair,* or both. We are offering you this program under a settlement of a lawsuit with the Federal Trade Commission (FTC).

You do not still have to own or lease the car to be eligible. *But, you must fill out the enclosed form to take advantage of this free program.*

Under this program, we can resolve your problem in one of three ways:

1. If you agree, we will settle with you immediately, on the following basis:

[Statement of Offer]

2. If our settlement offer is not acceptable to you, you can use the mediation services of your local BBB office, before proceeding to arbitration.

3. Or, you may want to use the arbitration services of your local BBB, without trying mediation.

*If you want to resolve your complaint now,* check the first box on the enclosed form. We will settle your claim for the amount stated on the enclosed form. If you accept, you will receive a check within 45 days.

*If you want to use the BBB's mediation services before going to arbitration,* check the second box on the enclosed form and fill out the brief questionnaire on the back of the form. If mediation efforts are not successful, the BBB will arrange a date for arbitration within 60 days from when we receive this form. If the case is settled, or the arbitrator makes an award in your favor, you will then receive a check within 45 days, or your car will be repaired in most cases, within 30 days.

*If you want to use the BBB's arbitration services without trying mediation,* check the third box on the enclosed form and fill out the brief questionnaire on the back of the form. The BBB will set an arbitration hearing to be held within 60 days. If the arbitrator makes a decision in your favor, you will receive a check within 45 days, or your car will be repaired in most cases, within 30 days.

*If you want to use mediation or arbitration,* please include copies of as much documentation as you can with your claim form. This will expedite processing and may help us negotiate a settlement with you directly.

Under the mediation program, a BBB employee will try to help Volkswagen and you to agree on a settlement. With arbitration, a volunteer from the community will conduct an informal hearing where you and VW will present the facts. The volunteer arbitrator will then decide what relief to award you, if any. The arbitrator's decision is legally binding only if you decide to accept it. [A "legally binding" decision means that we must do what the arbitrator says and that you will be unable to pursue your claim in further legal proceedings]. If you reject the decision then you have the option of pursuing further legal proceedings that might be available to you under applicable laws. However, once you have rejected an arbitrator's decision, you will not be able to arbitrate your claim again or to reinstate the arbitrator's award.

We have enclosed a brochure which describes the BBB program and other special provisions in detail.

We also have enclosed "Background Statements," prepared jointly by the FTC and Volkswagen, to give you some useful facts about oil usage and engine damage from lack of oil. You should read these documents carefully before deciding whether to accept our settlement offer described in this letter or preparing your claim for the mediation and arbitration programs. If you take your case to the BBB, you may give the Background Statements to the mediator or arbitrator, or otherwise use them in preparing your arguments.

You are free to accept our offer, to reject it and take your complaint immediately to the Better Business Bureau program for mediation and then arbitration. Or, you can reject our offer and begin the arbitration process immediately, omitting further mediation efforts. Just fill out the enclosed form "Response to Volkswagen Mediation and Arbitration Program" and send it to us in the enclosed postage pre-paid envelope.

We look forward to hearing from you soon.

Sincerely,

Volkswagen of America.

**[Settlement Offer Made]**

*Response to Volkswagen Mediation and Arbitration Programs*

☐ 1. I accept Volkswagen of America's settlement offer in the amount of $____.00. Volkswagen of America will send me a check for this amount within 45 days of receipt of this response. I understand that by accepting this settlement I release Volkswagen [insert language specifying release that comports with Paragraph E of Section IV].

☐ 2. I want to use the BBB mediation and arbitration procedures. I understand that if mediation efforts are not successful, my local BBB will set an arbitration hearing date for less than 60 days after you receive this form. I have also read the enclosed brochure describing the BBB mediation and arbitration program, and the enclosed Background Statement(s)

☐ 3. I want to proceed to an arbitration hearing without using BBB's mediation services first. I understand that my local BBB will set an arbitration date for less than 60 days after you receive this form. I have also read the enclosed brochure describing the BBB mediation and arbitration program, and the enclosed Background Statement(s).

If you checked 2. or 3., please fill out the brief questionnaire on the back of this form. Be sure to fill out the form carefully. The arbitrator will not be able to decide any issues not set out in the form, and will be able to give you only what you asked for on the form.

_____

Signature.

Please print your name, address and telephone number where you can be reached during the day:

Name:_____

Address: _____

_____

City: _____

State: _____

ZIP: _____

Daytime Phone ( ) _____

Evening Phone ( ) _____

Be sure to fill out the form carefully, because it will determine what issues the arbitrator can decide.

Please Describe Briefly the Problem You Had With Your Car:_____

_____

_____

_____

_____

_____

_____

_____

*What Has This Problem Cost You?*
(You may include related expenses for rental cars, towing, storage fees, and telephone calls, as well as repairs and other direct costs, but do not include any costs from loss of business, wages, or personal injury.)

$_____.

Note.—The arbitrator will not be allowed to award you more than the amount stated here.

*Does the Car Still Need Repairs for Excessive Oil Consumption or for Engine Damage From Lack of Oil?*

Yes _____
No _____

If you know, what repairs does it need?

_____

_____

_____

What is the approximate current mileage, if you still own the car?

_____

Vehicle Identification No. (if known):

_____

Model:

_____

Model Year _____

Please send in copies of any records, if you have them, of the amount of your claim (bills, checks, receipts, etc.). This will expedite processing and possible settlement of your claim.

**Attachment E2—[No Settlement Offer]**

Dear [VW] [Audi] owner:

You have expressed concern about unsatisfactory oil consumption or engine damage from lack of oil on your gasoline-fueled [brand, model, model year, with VIN, if known].

We are writing to tell you about a FREE claim settlement program which we are offering to you and other owners who may have experienced these conditions. The program may result in a REFUND, FREE REPAIR, or both. We are offering you this program under a settlement of a lawsuit with the Federal Trade Commission (FTC).

You do not still have to own or lease the car to be eligible. *But, you must fill out the enclosed form to take advantage of this free program.*

Under this program, we can resolve your problem in one of two ways:

1. You can use the mediation services of your local Better Business Bureau (BBB) office, followed by arbitration, if necessary.

2. Or, you may want to use the arbitration services of your local BBB, without trying mediation.

*If you want to use the BBB's mediation service before going to arbitration,* check the first box on the front of the enclosed form, fill out the brief questionnaire on the back and mail it in. If mediation does not resolve the matter, the BBB will arrange a date for arbitration within 60 days from when we receive this form. If the case is settled, or the arbitrator makes an award in your favor which you accept, you will then receive a check within 45 days, or your car will be repaired in most cases within 30 days.

*If you want to use the BBB's arbitration services without trying mediation first,* check the second box on the enclosed form, and fill out the brief questionnaire on the back and mail it in. The BBB will set an arbitration hearing to be held within 60 days from when we receive this form. If the arbitrator makes a decision in your favor which you accept, you will receive a check within 45 days, or your car will be repaired in most cases within 30 days after your acceptance is received.

*If you want to use mediation or arbitration,* please include copies of as much documentation as you can with your claim form. This will expedite processing and may help us to negotiate a settlement with you directly.

Under the mediation program, a BBB employee will try to help Volkswagen and you to agree on a settlement. With arbitration, a volunteer from the community will conduct an informal hearing where you and VW will present the facts. The volunteer arbitrator will then decide what relief to award you, if any. The arbitrator's decision is legally binding only if you decide to accept it. [A "legally binding" decision means that we must do what the arbitrator says and that you will be unable to pursue your claim in further legal proceedings.] If you reject the decision then you have the option of pursuing further legal proceedings that might be available to you under applicable laws. However, once you have rejected an arbitrator's decision, you will not be able to arbitrate your claim again or to reinstate the arbitrator's award.

We have enclosed a brochure which describes the BBB program and other special provisions in detail.

We also have enclosed "Background Statements," prepared jointly by the FTC and Volkswagen, to give you some useful facts about oil usage and engine damage from lack of oil. You should read these documents carefully before preparing your claim for the mediation and arbitration programs. If you take your case to the BBB, you may give the Background Statements to the mediator or arbitrator, or otherwise use them in preparing your arguments.

You are free to take your complaint immediately to the Better Business Bureau program for mediation and then arbitration. Or, you can begin the arbitration process immediately, omitting further mediation efforts. Just fill out the enclosed form "Response to Volkswagen Mediation and Arbitration Program" and send it to us in the enclosed postage pre-paid envelope.

We look forward to hearing from you soon.

Sincerely,

Volkswagen of America.

**[No Settlement Offer Made]**

*Response to Volkswagen Mediation and Arbitration Program*

☐ 1. I want to use the BBB mediation and arbitration procedures. I understand that if mediation efforts are not successful, my local BBB will set an arbitration hearing date for less than 60 days after you receive this form. I have also read the enclosed brochure describing the BBB mediation and arbitration program, and the enclosed Background Statement(s).

☐ 2. I want to proceed to an arbitration hearing without using BBB's mediation services first. I understand that my local BBB will set an arbitration date for less than 60 days after you receive this form. I have also read the enclosed brochure describing the BBB mediation and arbitration program, and the enclosed Background Statement(s).

If you checked 1. or 2., please fill out the brief questionnaire on the back of this form. Be sure to fill out the form carefully. The arbitrator will not be able to decide any issues not set out in the form, and will be able to give you only what you asked for on the form.

_____

Signature.

Please print your name, address and telephone number where you can be reached during the day:

Name: _____
Address: _____
_____
City: _____
State: _____
Zip: _____
Daytime Phone (  ) _____
Evening Phone (  ) _____

Be sure to fill out the form carefully, because it will determine what issues the arbitrator can decide.

Please Describe Briefly the Problem You Had With Your Car: _____

_____

_____

_____

_____

_____

_____

_____

What Has This Problem Cost You?
(You may include related expenses for rental cars, towing, storage fees, and telephone calls, as well as repairs and other direct costs, but do not include any costs from loss of business, wages, or personal injury.)

$_____

Note.—The arbitrator will not be allowed to award you more than the amount stated here.

*Does the Car Still Need Repairs for Excessive Oil Consumption or for Engine Damage From Lack of Oil?*

Yes _____

No ____

If you know, what repairs does it need?

_____

_____

_____

What is the approximate current mileage, if you still own the car?

_____

Vehicle Identification No. (if known):

_____

Model:

_____

Model Year _____

Please send in copies of any records, if you have them, of the amount of your claim (bills, checks, receipts, etc.). This will expedite processing and possible settlement of your claim.

**Attachment F—Brochure for Claimants Describing the Auto Line Program for Oil-Related Claims on 1974–1979 Volkswagen and Audi Vehicles**

*What is Auto Line?*

*Auto Line* is an out-of-court program run by Better Business Bureaus to settle disputes between consumers and certain automobile manufacturers who agree to arbitrate complaints about their products and repairs. It includes a mediation service to settle claims voluntarily.

*Auto Line* is being used to implement a settlement of a 1981 lawsuit between Volkswagen of America and The Federal Trade Commission (FTC). Because some special provisions apply, this brochure only describes the AUTO LINE program for problems involving excessive oil consumption and engine damage from lack of oil in 1974 to 1979 Volkswagen and Audi vehicles equipped with water-cooled, gasoline-powered engines distributed by Volkswagen of America, warranted in writing by Volkswagen of America, or certified by the manufacturer as meeting applicable Federal safety and emissions standards. These vehicles were the subject of that lawsuit.

The FTC/Volkswagen/Audi settlement provides that any consumer who has a claim involving one of the oil-related problems noted above may use *Auto Line* to resolve it. This mediation and arbitration process is free of charge to the consumer. If efforts at mediation fail, or if the consumer elects to bypass the mediation phase, the BBB-appointed arbitrator will conduct a fact-finding hearing and make a decision in the matter. If the consumer accepts the decision, Volkswagen must do as the arbitrator directs.

This booklet describes the *BBB Auto Line* program and tells you how to participate in the arbitration process.

To participate in this *Auto Line* program, consumers are not required to presently own or lease their car. Volkswagen and the FTC have agreed that previous owners or consumers who leased these cars may seek to resolve oil problem claims through the *Auto Line* programs.

In addition, Volkswagen has agreed with the FTC to use *Auto Line* to resolve any complaint that involves an engine component on one of its previous, current, or future model year vehicles. Also, VW has voluntary programs that provide for arbitrating certain complaints for other parts of the car. However, if the dispute does not concern an oil-related problem with the 1974 to 1979 vehicles noted on page 1, you must write to Volkswagen or call your local Better Business Bureau to receive a different brochure about these programs.

The *Auto Line* Program offers:

- A mediated resolution of the dispute by BBB staff;
- Arbitration of claims if mediation has been unsuccessful or if the consumer elects to bypass mediation;
- A broad-based pool of trained volunteers from the local community who, as neutral arbitrators, decide the case;
- Arbitrators who are chosen by both the consumer and VW;
- Procedures that are informal and allow consumers to present their own cases.

Under the *Auto Line* Program:

- Mediation is voluntary;
- The arbitration hearing must be completed within 50 days after the consumer enters the program;
- Consumers can present their case in person, by telephone, or in writing;
- Hearings are private unless the consumer agrees to have public observers;
- An on-site vehicle inspection by an independent technical adviser to the arbitrator is available, if necessary;
- Consumers can pursue other available remedies if they do not accept the arbitrator's decision;
- Mediation and arbitration will be monitored by the Federal Trade Commission.

How Long Does Auto Line Take?

Volkswagen and the FTC have agreed that specific deadlines shall govern the mediation and arbitration process.

- Whether or not you elect to mediate your claim, mediation and the arbitration hearing, if necessary, shall be completed within 60 days from the day Volkswagen receives your request for arbitration and your completed forms. You will be notified in writing at least 8 days in advance of the date scheduled for the arbitration hearing.
- If the arbitrator orders Volkswagen to give you a money settlement, it must be paid within 45 days of the date you accept the decision.
- If the arbitrator orders Volkswagen to repair your car, the repair must be performed within 30 days of the date you accept the arbitrator's decision, unless the arbitrator shortens or lengthens the deadline for good cause shown. These 45- and 30-day deadlines also apply to any settlement you may reach with Volkswagen during the mediation process.

If any of these deadlines are missed, Volkswagen may have violated the agreement between it and the FTC. If this happens, you may inform the FTC (Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580). However, if a delay is caused by you (for example, if you request an extension of time in which to prepare for your hearing or if you ask that the hearing be rescheduled for a later, more convenient date), that time is not counted.

*Beginning the Auto Line Program*

When you receive the form entitled "Response to Volkswagen Mediation and Arbitration Program" from Volkswagen, decide whether you wish to enter the *Auto Line* program. If you have not received "Response to Volkswagen Mediation and Arbitration Program" from Volkswagen, contact the company. Volkswagen's toll-free number is (800–) 822–8987, or you can write to Volkswagen of America at 888 West Big Beaver Road, Troy, Michigan 48007. Tell Volkswagen your name, address, telephone number, the make and model year of your car, and whether your claim involves oil consumption, engine damage due to lack of oil or both.

When Volkswagen sends you the *Auto Line* program form, it may offer to settle your claim without requiring either mediation or arbitration. You must decide whether to take Volkswagen's initial settlement offer, or to proceed with participation in the arbitration program.

If you decide to enter the *Auto Line* program, complete the form from Volkswagen with as much information as possible and promptly return it to Volkswagen. Try to include the make, model, year and, the Vehicle Identification Number (VIN) of the car, together with a statement describing

your problem. These are the most critical pieces of information, but other parts of the form are also important, including what you want VW to do. This must be stated because the arbitrator's decision-making authority is limited to what you write on the form. (For example, if you request a refund of $100, the arbitrator cannot award you more than the amount you have requested.) Remember, also, to enclose *copies* of any documents you have that may help prove your case. If you no longer have copies of repair bills or cancelled checks, you might contact the repair shop or your bank or credit card company for copies.

*The Mediation Stage*

If you choose to participate in mediation, the BBB will review your claim and then review the position of Volkswagen. The BBB will try to achieve an informal resolution by serving as an intermediary between you and Volkswagen. If you negotiate a settlement with Volkswagen yourself, let the BBB know, so such a settlement can be verified.

Should the BBB mediation efforts fail, an arbitration hearing will be scheduled automatically within 30 days of Volkswagen's receipt of your request for mediation and arbitration.

If at any time, you decide that you do not want the BBB to continue seeking a mediated settlement of your complaint, or if you prefer not to try mediation, notify the BBB in writing. In either case, the agreement between the FTC and Volkswagen requires that the arbitration hearing be scheduled and held within 60 days of Volkswagen's receipt of your request for mediation or arbitration.

*The Arbitration Process*

It is important for you to know what issues Volkswagen will arbitrate and those which it need not arbitrate. Volkswagen must arbitrate your claims for the cost of completed repairs, of needed repairs and for expenses related to your complaint of oil consumption or engine damage from lack of oil. Such expenses also include the cost of towing, rental cars, telephone calls, storage fees for your car, and hotel bills, and any amount by which you claim that the resale price of your car was reduced because of oil consumption or engine damage which had not been repaired when the car was sold. The maximum amount you may claim is what you paid for the car plus related expenses.

Issues that may not be arbitrated in the BBB program include punitive damages, loss of business income, insurance claims, personal injury and property damage claims, and allegations of fraud or other violations of criminal law. Such issues are best dealt with in a court of law, and you are free to pursue such claims outside the context of arbitration.

Who Are The Arbitrators?

Thousands of volunteers from all walks of life serve the BBB as arbitrators—decision makers—in these cases. They include professionals, educators, retirees, lawyers, housewives, and others, who have gone through a special training program. Arbitrators are not employed by the BBB, nor are they paid for their services. They perform this duty as a public service. All arbitrators are required to disclose, as a condition of hearing a case, any financial, commercial, professional, social or familial relationship—no matter how remote—with any of the parties or their counsel. No more than one-third of the arbitrators on the selection list sent to you by the BBB may be persons at a supervisory level in a company that makes, services, or sells a product. In all cases, your dispute will be decided by someone who is completely independent and has no vested interest in the outcome.

*Choosing An Arbitrator*

Although state law and BBB policies offer various means of choosing arbitrators, normally you will be given a list of trained community volunteers together with a brief biography of each. You will be asked to cross off any arbitrator with whom you may have a business, financial, or social relationship, to select the arbitrator who is your first choice, and to indicate your priority preference ("2," "3," etc.) from the remaining names. The highest overlapping priority choices of both parties usually becomes the arbitrator. Where state law requires it, a panel of three arbitrators may decide your case. In this situation, your first choice and Volkswagen's first choice for an arbitrator will be appointed to the panel, along with a third arbitrator who was not crossed off by either party.

After you have returned your arbitrator choices to the BBB, along with an indication of the times when you will *not* be available to attend a hearing, the BBB will tell you when and where the hearing is to be held. If you have chosen to present your case in writing or by telephone, you also must make that choice known to the BBB.

What Does Arbitration Cost?

The agreement between Volkswagen and the FTC requires Volkswagen to pay the costs of *Auto Line*. You will have no costs unless you choose to bring your own paid witnesses or retain an attorney. Copies of records and documents that are a part of the hearing will be available to you at any time for a reasonable cost. Also, if you want a recording of the entire proceedings, you must pay recording expenses.

The Hearing

The actual hearing is an informal session. It is designed to ensure that you and Volkswagen's representative get a full opportunity to describe the dispute to the arbitrator.

Normally, arbitration hearings are held at the BBB during regular working hours; however, the BBB will schedule a time and place convenient to you and to the others involved.

The hearings usually feature in-person presentations, during which each side presents its case to an arbitrator and all have an opportunity to ask questions, including the arbitrator. Most consumers choose to have in-person hearings, and the BBB believes this is the best way of getting all the facts before the arbitrator. However, you also have the option of presenting your case by telephone or in writing.

A Volkswagen representative usually will attend the hearing to present its case. However, Volkswagen, at its option, also may present its case by telephone or mail (if you appear in person), or by mail (if you present your case by telephone). You always may present your case in person, even if Volkswagen does not.

You may be represented by an attorney or other spokesperson, bring witnesses and present documents, bills, and any other information to prove your case. If you are being represented by a lawyer, tell the BBB as soon as possible so that Volkswagen can be given an opportunity to get legal counsel.

At no time may you or your representative, or Volkswagen or its representative contact the arbitrator without the other party being present. All communications relating to the arbitration must be directed through the BBB. It will forward all information and make sure the other side gets copies when necessary.

When Are Inspections And Technical Advisers Involved?

Sometimes the arbitrator will want to see the car or the repair work to get a full understanding of the facts. The BBB will send you a notice of the inspection time and place. You should be present for such an inspection, and you have a right to bring your own expert if you

wish. Should the arbitrator request a technical adviser, the BBB will identify experts in the community who have no relationship with any party and are not potential competitors of Volkswagen.

If you no longer own or lease the car for which the claim is made, you will not be penalized in any way because the car is unavailable for inspection.

*How To Prepare for Arbitration?*

Before coming to the hearing, you should prepare an outline of your argument to help you in your presentation. In that way, you won't forget important points in your favor. To assist you in your preparation, a checklist is given at the end of this section.

Also, before coming to the hearing, you should prepare a list of questions you want to ask Volkswagen. A careful reading of the Background Statements provided to you by VW and the FTC with the letter informing you of the program's availability should assist you in your preparation. During the hearing, you can add to your list of questions. Include anything new that occurs to you when you hear what the other side has to say.

After you state the facts as you see them, Volkswagen has a right to ask you questions. After Volkswagen has stated the facts as they see them, you have the same right to ask them questions. To clarify uncertain areas and to gain a fuller understanding of the dispute, the arbitrator also is trained to ask questions.

After each side has presented its case and the questioning is completed, you should be prepared to give a summary of your position. Try to describe the weak points in Volkswagen's case, deal with any questions that have not otherwise been answered, and tell the arbitrator exactly what kind of decision you want and why.

Remember that the sole purpose of the hearing is to allow the arbitrator to gather and sort the facts and thus make a fair decision. You should be prepared to convince the arbitrator that your position is right and that your opponent's is wrong.

A friendly, sincere approach works best. You are there because you and Volkswagen have a disagreement, but keep that disagreement factual and within the bounds of normal courtesy and conventional language. Bombarding an arbitrator with technical jargon will not be productive, nor will rudeness, arguing with the arbitrator, or belittling your opponent. Put yourself in the arbitrator's position—a volunteer whose only purpose is to help you resolve your dispute. Use common sense about how to proceed.

An Arbitration Checklist

Given here is a checklist to help you prepare for your arbitration hearing. Use whatever items are appropriate to your case; some may not apply.

1. Collect and bring to the hearing all available written information relating to the car and your dispute, especially those noted below. Bring original documents, if possible, and copies for the arbitrator and for the Volkswagen representative. If you do not have documents, sometimes you can get copies from your repair shop, bank, or credit card company. Remember that, although documents are helpful, you are still eligible for a hearing even if you do not have them. Documents that might be useful include:

- Purchase contract/finance agreements; purchase date, price, etc.;
- Vehicle repair, service, or maintenance records;
- Warranties or service contracts which may be applicable;
- Proof of repair or maintenance payments;
- Correspondence between you and the dealer or manufacturer;
- Copies of the Background Statements which Volkswagen sent you regarding "Oil Usage" or "Engine Damage From Lack of Oil." You may find these fact sheets useful in preparing your presentation. If you have not received the appropriate Background Statements, be sure to get them before the hearing from Volkswagen or from the FTC. (Federal Trade Commission, Division of Enforcement, 6th and Pennsylvania Avenue, NW., Washington, DC 20580.)

2. List any witnesses who may have information about your complaint, such as mechanics or sales personnel. Try to contact them, if you want them to testify in person or to submit written information. You are responsible for your witnesses' submission of information. If you want them to testify in person, keep them informed about the time and place of the hearing.

3. List in chronological order the actions you took to resolve this dispute. Clearly state what the problem is, and why you think the company is responsible.

- To whom did you first speak?
- When did this happen?
- What did they tell you, and/or what action did they take?
- Were other business/service persons involved?

—Who?
—When?
—Why?
—What did they tell you and/or what action did they take? (Written statements or the presence of witnesses are preferable to your statements, if these are important to your case.)

*What Happens After the Arbitrator Makes a Decision?*

The arbitrator may take up to 10 days after the hearing to make a decision. The written decision and the arbitrator's reasons for the judgment will be sent to you. With that decision will be a form which asks you to accept or reject it.

If you accept it, Volkswagen is legally bound to comply. If the arbitrator's decision awards you money, Volkswagen must pay you that amount within 45 days of the date you accept the decision. If the arbitrator orders Volkswagen to repair your car, that repair must be performed within 30 days of the date you accept the arbitrator's decision, unless the arbitrator modifies the deadline for good cause shown.

If you do not think the manufacturer has complied with the decision, you first should contact the BBB or the FTC (Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580 (202) 376-____). However, you also may take the award to an appropriate court and have it enforced as if it were a judgment or order of the court—without a rehearing of the case.

If either party believes the final decision contains errors of fact or is unclear, the party may petition the BBB to request the arbitrator to modify or clarify the matter. This is done by making a written request to the BBB which, if it finds the request to have merit, will make a copy for the other party's response, and then will send both documents to the arbitrator. The arbitrator's response to such a request is final.

Of course, if you reject the arbitrator's decision, Volkswagen is not obligated to do anything. You then are free to pursue other legal courses of action.

*Confidentiality of Proceedings*

It is BBB policy that the mediation and arbitration process is private and confidential. The BBB will not release results of your case to the media or to any other group or organization. It may, however, release records when this is required by law, by the Federal Trade Commission, or by judicial or governmental administrative proceedings. Records are maintained by the BBB to comply with the audit and

record-keeping requirements of the FTC, which will monitor this program.

If you have any problems or complaints about the arbitration process, contact the Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580.

**Attachment G—Brochure for Claimants Describing the Auto Line Program for Internal Engine Component Claims on Volkswagen and Audi Vehicles**

*What is Auto Line?*

*Auto Line* is an out-of-court program run by Better Business Bureaus to settle disputes between consumers and certain automobile manufacturers who agree to arbitrate complaints about their products and repairs. It includes a mediation service to settle claims voluntarily.

*Auto Line* is being used to implement a settlement of a 1981 lawsuit between Volkswagen of America and The Federal Trade Commission (FTC). As part of that settlement, Volkswagen will mediate and arbitrate consumer complaints involving the failure, malfunction, repair or replacement of internal engine components on any Volkswagen or Audi vehicle, regardless of model year distributed by Volkswagen of America, warranted in writing by Volkswagen of America, or certified by the manufacturer as meeting applicable federal safety and emissions standards. The engine components subject to the AUTO LINE program consist of all gasoline and diesel engine parts, components, and subassemblies included within the complete short block and cylinder head assemblies, including the short block and cylinder head, camshafts, valve train components, timing gears, flywheels, pistons, piston rings, crankshafts, connecting rods, and bearings, oil pumps, and associated fasteners, seals and gaskets. Because some special provisions apply, this brochure only describes the *Auto Line* program for problems involving engine components on Volkswagen and Audi vehicles.

The FTC/Volkswagen/Audi settlement provides that anyone who owns or leases one of those vehicles at the time the claim is referred to the BBB who has a claim involving one or more of the engine components noted above may use AUTO LINE to resolve it. If the consumer sells the car before the hearing, though, some special procedures must be followed. SEE pages 6–7 for these important instructions. This mediation and arbitration process is free of charge to the consumer. If efforts at mediation fail, or if the consumer elects to bypass the mediation phase, the BBB-appointed arbitrator will conduct a fact-finding hearing and make a decision in the matter. If the consumer accepts the decision, Volkswagen must do as the arbitrator directs.

This booklet describes the BBB Autoline program and tells you how to participate in the arbitration process.

In addition, Volkswagen has agreed with the FTC to use *Auto Line* to resolve problems involving excessive oil consumption and engine damage due to lack of oil in 1974–1979 Volkswagen and Audi vehicles equipped with water-cooled, gasoline-powered engines. Also, VW has a voluntary program to arbitrate certain complaints for other parts of the car. If your dispute concerns an oil-related problem with the 1974 to 1979 vehicles or a problem with another component (such as the brakes), you must write to Volkswagen or call your local Better Business Bureau to receive a different brochure about these programs.

The *Auto Line* Program offers:

- A mediated resolution of the dispute by BBB staff;
- Arbitration of claims if mediation has been unsuccessful or if the consumer elects to bypass mediation;
- A broad-based pool of trained volunteers from the local community who, as neutral arbitrators, decide the case;
- Arbitrators who are chosen by both the consumer and VW;
- Procedures that are informal and allow consumers to present their own cases.

Under the *Auto Line* Program:

- Mediation is voluntary;
- The arbitration hearing must be completed within 60 days after the consumer enters the program;
- Consumers can present their case in person, by telephone, or in writing;
- Hearings are private unless the consumer agrees to have public observers;
- An on-site vehicle inspection by an independent technical adviser to the arbitrator is available, if necessary;
- Consumers can pursue other available remedies if they do not accept the arbitrator's decision;
- Mediation and arbitration will be monitored by the Federal Trade Commission.

**How Long Does Auto Line Take?**

Volkswagen and the FTC have agreed that specific deadlines shall govern the mediation and arbitration process.

If you elect to mediate your claim, mediation and arbitration, if necessary, shall be completed within 60 days from the day the BBB receives information stating your model, model year, Vehicle Identification Number and a statement describing the nature of your complaint.

- If the arbitrator orders Volkswagen to give you a money settlement, it must be paid within 45 days of the date you accept the decision.
- If the arbitrator orders Volkswagen to repair your car, the repair must be performed within 30 days of the date you accept the arbitrator's decision, except that the 30 day deadline for repair can be shortened or lengthened at the hearing for good cause shown. These 45- and 30-day deadlines also apply to any settlement you may reach with Volkswagen during the mediation process.

If any of these deadlines are missed, Volkswagen may have violated the agreement between it and the FTC. If this happens, you may inform the FTC (Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580). However, if a delay is caused by you (for example, if you request an extension of time in which to prepare for your hearing or if you ask that the hearing be rescheduled for a later, more convenient date), that time is not counted.

*Beginning the Auto Line Program*

To enter the *Auto Line* program you must obtain the form entitled "_____" from the BBB. To obtain the "_____" from the BBB, call the BBB's toll-free number, (800–)_____ _____, or write to the BBB at _____. Tell the BBB your name, address, telephone number, the make and model year of your car, and whether your claim involves an engine component. If you wish to enter the *Auto Line* program, complete the BBB form with as much information as possible and promptly return it to the BBB. Try to include the make, model, year and, the Vehicle Identification Number (VIN) of the car, together with a statement describing your problem. These are the most critical pieces of information, but other parts of the form are also important, including what you want VW to do. This must be stated because the arbitrator's authority is limited to what you write on the form. (For example, if you request a refund of $100, the arbitrator cannot award you more than the amount you have requested.) Remember, also, to enclose *copies* of any documents you have that may help prove your case. If you no longer have copies of repair bills or cancelled checks, you might contact the repair

shop or your bank or credit card company for copies.

*The Mediation Stage*

If you choose to participate in mediation, the BBB will review your claim and then review the position of Volkswagen. The BBB will try to achieve an informal resolution by serving as an intermediary between you and Volkswagen. If you negotiate a settlement with Volkswagen yourself, let the BBB know, so such a settlement can be verified.

Should the BBB mediation efforts fail, an arbitration hearing will be scheduled automatically.

If at any time, you decide that you do not want the BBB to continue seeking a mediated settlement of your complaint, or if you prefer not to try mediation, notify the BBB in writing. In either case, the agreement between the FTC and Volkswagen requires that the arbitration hearing be completed within 60 days of your request for mediation or arbitration.

*The Arbitration Process*

It is important for you to know what issues Volkswagen will arbitrate and those which it need not arbitrate. Volkswagen must arbitrate your claims for the cost of completed repairs—including the estimated cost for a repair involving internal engine components that had not been performed but that was still needed when you sold the car (BE SURE to follow the instructions on pages 6–7, if you decide to sell your car), and for expenses related to your complaint. Examples of such expenses include the cost of towing, rental cars, telephone calls, storage fees for your car, and hotel bills. The maximum amount you may claim is what you paid for the car plus related expenses.

Issues that may not be arbitrated in the BBB program include punitive damages, loss of business income, insurance claims, personal injury and property damage claims, and allegations of fraud or other violations of criminal law. Such issues are best dealt with in a court of law, and you are free to pursue such claims outside the context of arbitration.

Remember, this brochure only covers the program to resolve engine problems. If your complaint concerns another component, you may be eligible under VW's voluntary program. Call your local BBB office for details.

Who Are the Arbitrators?

Thousands of volunteers from all walks of life serve the BBB as arbitrators—decision makers—in these cases. They include professionals, educators, retirees, lawyers, housewives, and others, who have gone through a special training program. Arbitrators are not employed by the BBB, nor are they paid for their services. They perform this duty as a public service. All arbitrators are required to disclose, as a condition of hearing a case, any financial, commercial, professional, social or familial relationship—no matter how remote—with any of the parties or their counsel. No more than one-third of the arbitrators on the selection list sent to you by the BBB may be persons at a supervisory level in a company that makes, services, or sells a product. In all cases, your dispute will be decided by someone who is completely independent and has no vested interest in the outcome.

Choosing an Arbitrator

Although State law and BBB policies offer various means of choosing arbitrators, normally you will be given a list of trained community volunteers together with a brief biography of each. You will be asked to cross off any arbitrator with whom you may have a business, financial, or social relationship, to select the arbitrator who is your first choice, and to indicate your priority preference ("2," "3," etc.) for the remaining names. The highest overlapping priority choices of both parties usually becomes the arbitrator. Where State law requires it, a panel of three arbitrators may decide your case. In this situation, your first choice and Volkswagen's first choice for an arbitrator will be appointed to the panel, along with a third arbitrator who was not crossed off by either party.

After you have returned your arbitrator choices to the BBB, along with an indication of the times when you will *not* be available to attend a hearing, the BBB will tell you when and where the hearing is to be held. If you have chosen to present your case in writing or by telephone, you also must make that choice known to the BBB.

What Does Arbitration Cost?

The agreement between Volkswagen and the FTC requires Volkswagen to pay the costs of AUTO LINE. You will have no costs unless you choose to bring your own paid witnesses or retain an attorney. Copies of records and documents that are a part of the hearing will be available to you at any time for a reasonable cost. Also, if you want a recording of the entire proceedings, you must pay recording expenses.

The Hearing

The actual hearing is an informal session. It is designed to ensure that you and Volkswagen's representative get a full opportunity to describe the dispute to the arbitrator.

Normally, arbitration hearings are held at the BBB during regular working hours; however, the BBB will schedule a time and place convenient to you and to the others involved.

The hearings usually feature in-person presentations, during which each side presents its case to an arbitrator and all have an opportunity to ask questions, including the arbitrator. Most consumers choose to have in-person hearings, and the BBB believes this is the best way of getting all the facts before the arbitrator. However, you also have the option of presenting your case by telephone or in writing.

A Volkswagen representative usually will attend the hearing to present its case. However, Volkswagen, at its option, also may choose to present its case by telephone or mail (if you appear in person), or by mail (if you present your case by telephone). You always may present your case in person, even if Volkswagen does not.

You may be represented by an attorney or other spokesperson, bring witnesses and present documents, bills, and any other information to prove your case. If you are being represented by a lawyer, tell the BBB as soon as possible so that Volkswagen can be given an opportunity to get legal counsel.

At no time may you or your representative or Volkswagen or its representative contact the arbitrator without the other party being present. All communications relating to the arbitration must be directed through the BBB. It will forward all information and make sure the other side gets copies when necessary.

When Are Inspections and Technical Advisers Involved?

Sometimes the arbitrator will want to see the car or the repair work to get a full understanding of the facts. The BBB will send you a notice of the inspection time and place. You should be present for such an inspection, and you have a right to bring your own expert if you wish. Should the arbitrator request a technical adviser, the BBB will identify experts in the community who have no relationship with any party and are not potential competitors of Volkswagen.

*What To Do If You Want To Sell Your Car Right Away*

If you decide to sell your car after you notify the BBB, but before the arbitration

hearing, this is what you must do to remain eligible for the arbitration program:

1. You must notify Volkswagen at least ten days in advance that you intend to sell the vehicle; and

2. You must give Volkswagen an opportunity to inspect the vehicle before it is sold;

If you sell the vehicle before the problem that prompted the claim is repaired, your recovery will be limited to the estimated repair costs (plus expenses for towing, storage fees, rental car costs, telephone and hotel bills);

If you arbitrate a claim for an unrepaired problem on a car that you sold, the party that had the problem repaired is not eligible for arbitration for that problem; likewise, you may not arbitrate a claim for which a previous owner of the car had already accepted an arbitration award.

*How To Prepare For Arbitration?*

Before coming to the hearing, you should prepare an outline of your argument to help you in your presentation. In that way, you won't forget important points in your favor. To assist you in your preparation, a checklist is given at the end of this section.

Also, before coming to the hearing, you should prepare a list of questions you want to ask Volkswagen. During the hearing, you can add to your list of questions. Include anything new that occurs to you when you hear what the other side has to say.

After you state the facts as you see them, Volkswagen has a right to ask you questions. After Volkswagen has stated the facts as they see them, you have the same right to ask them questions. To clarify uncertain areas and to gain a fuller understanding of the dispute, the arbitrator also is trained to ask questions.

After each side has presented its case and the questioning is completed, you should be prepared to give a summary of your position. Try to describe the weak points in Volkswagen's case, deal with any questions that have not otherwise been answered, and tell the arbitrator exactly what kind of decision you want and why.

Remember that the sole purpose of the hearing is to allow the arbitrator to gather and sort the facts and thus make a fair decision. You should be prepared to convince the arbitrator that your position is right and that your opponent's is wrong.

A friendly, sincere approach works best. You are there because you and Volkswagen have a disagreement, but keep that disagreement factual and within the bounds of normal courtesy and conventional language. Bombarding an arbitrator with technical jargon will not be productive, nor will rudeness, arguing with the arbitrator, or belittling your opponent. Put yourself in the arbitrator's position—a volunteer whose only purpose is to help you resolve your dispute. Use common sense about how to proceed.

An Arbitration Checklist

Given here is a checklist to help you prepare for your arbitration hearing. Use whatever items are appropriate to your case; some may not apply.

1. Collect and bring to the hearing all available written information relating to the car and your dispute, especially those noted below. Bring original documents, if possible, and copies for the arbitrator and for the Volkswagen representative. If you do not have documents, sometimes you can get copies from your repair shop, bank, or credit card company. Remember that, although documents are helpful, you are still eligible for a hearing even if you do not have them. Documents that might be useful include:

- Purchase contract/finance agreements; purchase date, price, etc.;
- Warranty;
- Vehicle repair, service, or maintenance records;
- Proof of repair or maintenance payments;
- Correspondence between you and the dealer or manufacturer;

2. List any witnesses who may have information about your complaint, such as mechanics or sales personnel. Try to contact them, if you want them to testify in person or to submit written information. You are responsible for your witnesses' submission of information. If you want them to testify in person, keep them informed about the time and place of the hearing.

3. List in chronological order the actions you took to resolve this dispute. Clearly state what the problem is, and why you think the company is responsible.

- To whom did you first speak?
- When did this happen?
- What did they tell you, and/or what action did they take?
- Were other business/service persons involved?

—Who?
—When?
—Why?
—What did they tell you and/or what action did they take? (Written statements or the presence of witnesses are preferable to your statements, if these are important to your case.)

*What Happens After the Arbitrator Makes a Decision?*

The arbitrator may take up to 10 days after the hearing to make a decision. The written decision and the arbitrator's reasons for the judgment will be sent to you. With that decision will be a form which asks you to accept or reject it.

If you accept it, Volkswagen is legally bound to comply. If the arbitrator's decision awards you money, Volkswagen must pay you that amount within 45 days of the date you accept the decision. If the arbitrator orders Volkswagen to repair your car, that repair must be performed within 30 days of the date your acceptance of the arbitrator's decision is received by the BBB, unless the arbitrator rules, for good cause, that the 30 day deadline should be modified.

If you do not think the manufacturer has complied with the decision, you first should contact the BBB or the FTC (Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580 (202) 376-_____). However, you also may take the award to an appropriate court and have it enforced as if it were a judgment or order of the court—without a rehearing of the case.

If either party believes the final decision contains errors of fact or is unclear, the party may petition the BBB to request the arbitrator to modify or clarify the matter. This is done by making a written request to the BBB which, if it finds the request to have merit, will make a copy for the other party's response, and then will send both documents to the arbitrator. The arbitrator's response to such a request is final.

Of course, if you reject the arbitrator's decision, Volkswagen is not obligated to do anything. You then are free to pursue other legal courses of action.

*Confidentiality of Proceedings*

It is BBB policy that the mediation and arbitration process is private and confidential. The BBB will not release results of your case to the media or to any other group or organization. It may, however, release records when this is required by law, by the Federal Trade Commission, or by judicial or governmental administrative proceedings. Records are maintained by the BBB to comply with the audit and record-keeping requirements of the FTC, which will monitor this program.

If you have any problems or complaints about the arbitration process, contact the Federal Trade

BEST COPY AVAILABLE

Commission, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580.

**Attachment H(1)—Volkswagen Arbitration Program Advertisement**

*(Graphics Omitted)*

Now, every Volkswagen is even more responsive.

At Volkswagen, we're proud to produce automobiles that are known for performance as well as value. Performance is important to us as a company, too.

For example, in the unlikely event a Volkswagen doesn't perform up to your expectations, we've set up a program to make sure you get a prompt response. And a fair one. In cooperation with the Council of Better Business Bureaus, we have a free third-party arbitration program. The program benefits all current and, in some cases, *former Volkswagen owners.*

To resolve a problem quickly, first see your Volkswagen dealer. Or call 1-800-822-8987 to see if our problem-solving program can work for you.

We hope you'll never need this responsive program. But it's available if you do.

GOLF • GTI • JETTA • CABRIOLET • SCIROCCO • QUANTUM • VANAGON

**Attachment H(2)—Audi Arbitration Program Advertisement**

It comes with an option we don't think you'll ever ask for.

That option is a special third-party arbitration program that the people of Audi have arranged with the Better Business Bureau.

At Audi, we've been consistently producing technologically advanced automobiles of the highest quality for over fifty years. And we take great pride in our tradition of excellent service.

But, if for some reason, you should ever need an extra voice in solving any product related questions, all you have to do is call toll-free 1-800-822-8987.

The program benefits all current and, in some cases, *former Audi owners.* Of course, the program is free. Just ask your dealer for the complete details.

Naturally, the first step in solving any problem is your owner's manual, and then your dealer and your nearest Audi of America Regional Office.

But it never hurts to have an extra option even if you never choose to exercise it.

AUDI
The art of engineering.

(GRAPHICS OMITTED)

**Attachment I(1)—Volkswagen Arbitration Program Poster**

TEXT AND GRAPHICS OF ATTACHMENT H(1), WITH THE FOLLOWING MODIFICATION:

WITHIN TEXT, ASTERISK AT "former owners"*

BENEATH AD TEXT, ON PLAIN BACKGROUND, IN SAME TYPE SIZE AS TEXT OF PRINT AD: "*Previous owners of 1974–1979 watercooled VW vehicles with gasoline engines who have claims for unsatisfactory oil consumption or engine damage from lack of lubrication are also eligible for our program."

**Attachment I(2)—Audi Arbitration Program Poster**

TEXT AND GRAPHICS OF ATTACHMENT H(2), WITH THE FOLLOWING MODIFICATION:

WITHIN TEXT, ASTERISK AT "but once did."*

BENEATH AD TEXT, ON PLAIN BACKGROUND, IN SAME TYPE SIZE AS TEXT OF PRINT AD: "*Previous owners of 1974–1979 Audi vehicles with gasoline engines who have claims for unsatisfactory oil consumption or engine damage from lack of lubrication are also eligible for our program."

**Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from Volkswagen of America.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed consent order settles a complaint, issued by the Commission in April 1981, that charged Volkswagen of America and its parent firm, Volkswagen AG, with failing to disclose material product information about various oil-related engine problems to prospective purchasers and owners of 1974–1979 Volkswagen and Audi vehicles equipped with water-cooled gasoline engines. The complaint charged that Volkswagen knew or should have known of the conditions that led to the oil-related problems, but failed to disclose them. According to the complaint, the failure to disclose these conditions led to substantial consumer injury and was deceptive and unfair within the meaning of Section 5 of the Federal Trade Commission Act.

The proposed order contains two principal requirements. Volkswagen of America will be required to institute a system of broader and more effective disclosure of product information for its vehicles sold since the beginning in the 1984 model year. Volkswagen of America will also be required to offer arbitration to consumers through an impartial and independent third-party for the oil-related problems in 1974–79 vehicles described in the complaint and for internal engine components for any Volkswagen of Audi vehicle distributed by Volkswagen of America.

The principal requirements are based on similar provisions contained in a previous order the Commission accepted against General Motors Corp. in 1983. *General Motors*, D. 9145. There are substantial differences, however, between this order and the *GM* order to account for differences in the facts of the two cases, different corporate structures, and the experience the Commission has had in enforcing the *General Motors* order.

The product information disclosure program requires that Volkswagen of America make available to the public bulletins that it routinely sends to its dealers. In addition, VWoA must prepare and make available indexes of the bulletins and easy-to-understand summaries of the more significant bulletins.

Consumers will learn about existence of the program through a statement placed on the federally mandated retail price and gasoline mileage window sticker placed on each new car, a statement in each owner's manual, and references to the program in brochures and other promotional materials.

The product information program will assist prospective purchasers of new cars in making informed judgments about Volkswagen of America's vehicles. The indexes, bulletins, and summaries will also be useful to owners of vehicles who want to understand better any problems they are having with their vehicles and who want to use and maintain their cars according to the latest, most accurate recommendations.

The second principal requirement of the order is an arbitration program for resolving complaints concerning engines in Volkswagen of America's vehicles. The program must be administered by an independent and impartial third-party. Volkswagen presently contemplates that the Council of Better Business Bureaus, Inc. will be the administrator of the program.

There are two parts of the program. Owners and lessees of 1974–1979 VWs and Audis with water-cooled gasoline engines will be eligible to arbitrate their claims for repairs caused by excessive oil consumption and engine damage due to lack of lubrication. Consumers will be eligible regardless of whether they still own the car. Volkswagen will be required to notify consumers by first-class mail who have previously complained to the FTC, to Volkswagen or to other third-parties. In addition, there are two "Background Statements" which consumers will receive to assist in pressing their claims. The Background Statements describe in detail the oil-related problems and present opposing views of the FTC and Volkswagen on controverted issues. The Background Statements should prove useful in focusing the issues in arbitrations and in enabling consumers to make effective arguments to arbitrators. The Background Statements will also enable consumers to evaluate the strengths of their cases in deciding whether to accept settlement offers that Volkswagen may make to resolve claims prior to arbitrations.

The other part of the arbitration program permits owners and lessees of any make or model of Volkswagen or Audi vehicles to arbitrate claims involving internal engine components. Claims under this portion of the program will be handled in much the same way as the oil-related claims discussed above. However, there will not be any Background Statements and the consumer must still own or lease the vehicle at the time the claim is made to the third-party administrator.

For both parts of the arbitration program, the arbitration hearing must be completed within 60 days after the consumer enters the program. The arbitration award is binding on the consumer and Volkswagen only if the consumer decides to accept it. Moreover, the arbitration program is available even if warranty coverage has already expired.

In addition to the direct mail notices required to be sent to consumers for oil-related complaints, Volkswagen of America will be required to place advertisements in national magazines promoting the availability of arbitration, and specifically highlighting the availability of arbitration for certain past claims. VWoA will also be required to distribute posters to its dealers promoting the availability of arbitration. Owner's manuals for VWoA's vehicles must also state that arbitration is available to remedy past and future internal engine component complaints.

The arbitration program required by the order should be an effective mechanism for resolving complaints that are covered by the order. The order has been drafted so that the arbitration hearings will be completed expeditiously, simply and fairly. The arbitration program will be free of charge to the consumer for the first two years of the program. After that a charge may be imposed if the BBB's rules for arbitration are modified. The arbitration program will also save time and expense because consumers will not need a lawyer.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Emily H. Rock,**

*Secretary.*

**Concurring Statement of Chairman Daniel Oliver in Volkswagen of America, Inc.**

[Docket No. 9154]

The consent order negotiated by the staff contains a number of injunctive relief provisions, and provides consumer redress in the form of a Commission-supervised arbitration process administered by the Better Business Bureau. Although, I believe these provisions satisfy the Commission's concerns in this matter, the negotiated order is not one I would have chosen. However, I am reluctant to suggest order revisions, as they might throw this matter back into the costly litigation which has already consumed many years of Commission resources. Accordingly, I vote in favor of the staff's negotiated consent order.

I would have preferred an order without the prospective redress provisions provided in the order's arbitration mechanism. The negotiated mechanism resolves not only consumer disputes regarding the defects cited in the complaint, but also other internal engine component problems. Although this mechanism is similar to the relief obtained from another automobile manufacturer in a related matter (see *General Motors* consent order, D–9145), I do not favor its general application, for two reasons.

First, the arbitration mechanism is needlessly regulatory. If Volkswagen wants to negotiate consumer complaints through a Better Business Bureau arbitration scheme, it should certainly be free to do so. However, active government supervision of such a scheme forces government to maintain an active presence in the operation of a domestic auto seller for the next 8 years.

Second, to the extent the negotiated order provides prospective redress, it will provide relief primarily to consumers who were not injured by the violations alleged in the complaint. In future consent orders where consumer redress is warranted, I would find it preferable for staff to negotiate for redress that confers benefits on the injured parties.

Issued: March 31, 1987.

[FR Doc. 87–9982 Filed 5–12–87; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### 25 CFR Part 22

### Care of Indian Children in Contract Schools; Proposed Removal of Part

March 23, 1987.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Indian Affairs is proposing to remove Part 22 in its entirety from Chapter I, Title 25 of the Code of Federal Regulations. The Bureau of Indian Affairs no longer provides for the support of Indian children who require institutional care through the method described in this rule. Current procedures governing this program appear in 25 CFR Part 23; therefore, there is no further need for or applicability of the rule in this part.

**DATE:** Comments must be submitted on or before June 12, 1987.

**ADDRESS:** Written comments may be mailed or delivered to Ms. Hazel Elbert, Deputy to the Assistant Secretary-Indian Affairs (Tribal Services), Room 4600 Main Interior, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, DC 20245.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Blair, Division of Social Services, Bureau of Indian Affairs, telephone number (202) 343–6434.

**SUPPLEMENTARY INFORMATION:** This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Bureau of Indian Affairs is proposing to remove 25 CFR Part 22 in its entirety. The rule provides for contracts to missions and institutions to provide for the care of Indian children

who reside within the exterior boundaries of Indian reservations or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs. The Bureau no longer provides for the support of Indian childern who require institutional care through the method provided under this rule. Current procedures governing the care of Indian children appear in the implementing regulations for the Indian Child Welfare Act, 25 CFR Part 23, and Chapter 66 of the Bureau of Indian Affairs' Manual. Therefore, there is no further need for or applicability of the rule in Part 22.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the ruelemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the Addresses section of this preamble.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This proposed rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and no detailed statement is required pursuant to the National Environemental Policy Act of 1969.

This Part contains information collections, however, because this Part is being removed, the information collection requirements will not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*

**List of Subjects in 25 CFR Part 22**

Government contracts, Indians, Social welfare, Indians, Education, Schools.

For the reasons set out in the preamble, Part 22 of Title 25, Chapter I of the Code of the Federal Regulations is proposed for removal as set forth below:

## PART 22—[REMOVED AND RESERVED]

1. The authority citation for 25 CFR Part 22 continues to read as follows:

**Authority:** 5 U.S.C. 301.

2. Part 22 is proposed for removal in its entirety and reserved.

**Ross O. Swimmer,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. 87–10884 Filed 5–12–87; 8:45 am]

BILLING CODE 4310-02-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

[LR-72-86]

### Procedure and Administration; Reduction of Tax Overpayments by Amount of Past-Due Legally Enforceable Debt Owed to Federal Agency

**AGENCY:** Internal Revenue Srvice, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations which amend temporary regulations which were published in the **Federal Register** September 30, 1985 relating to the reduction of a taxpayer's overpayment (*i.e.*, tax refund) by the amount of any past-due legally enforceable debt owed to a Federal agency by the taxpayer and referred by that agency to the Internal Revenue Service for offset. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by July 13, 1987. The regulations are proposed to apply to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1988 and are effective upon publication.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–291–84), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566–3288 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend temporary Procedure and Administration Regulations (26 CFR Part 301) under section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of title 31, United States Code. This document proposes to adopt the amendments to those temporary regulations as amendents to the final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary amendments. For the text of the temporary regulations, see FR Doc. 87–10917 (T.D. 8139) published in the Rules and Regulations section of this issue of the **Federal Register**.

**Special Analyses**

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and, therefore, a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

**Drafting Information**

The principal author of these proposed regulations is Sharon L. Hall of the Legislation and Regulations Division of the Officeof Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

**List of Subjects in 26 CFR Part 301**

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law

enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Lawrence B. Gibbs,

*Commissioner of Internal Revenue.*

[FR Doc. 87-10918 Filed 5-12-87; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

### 33 CFR Part 334

### Danger Zone, James and Warwick Rivers, VA

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Corps of Engineers proposes to establish a danger zone to protect the public from dangers associated with firing range use at Ft. Eustis, VA.

**DATE:** Comments must be submitted on or before June 12, 1987.

**ADDRESS:** HQDA, DAEN-CWO-N, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Harrell at (804) 441-3653 or Mr. Ralph Eppard at (202) 272-1783.

**SUPPLEMENTARY INFORMATION:**

The Commander, U.S. Army Transportation Center and Ft. Eustis, VA, has requested the Corps of Engineers establish a danger zone in the James River and Warwick River adjacent to Mulberry Island, Ft. Eustis, VA. The intent of this proposed danger zone is to provide a safety buffer zone around the existing firing ranges where the impact area of the firing range cross the James and Warwick Rivers.

The area will remain open for the passage of vessels. Commercial fisherman will not be prohibited from working within the area.

**Notes**

1. The Corps of Engineers has determined that this rule is not a major rule within the meaning of Executive Order 12291 and is exempt from the general requirements of Executive Order 12291 in accordance with the exemption provided military functions.

2. I hereby certify that this rule will not have a significant economic effect impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 33 CFR Part 334**

Navigation, Waterways, Transportation.

For the reasons set out in the preamble, Title 33, Chapter II, Part 334 is amended as follows:

## PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.281 is proposed to be added as follows:

**§ 334.281 James and Warwick Rivers, off Mulberry Island, Ft. Eustis, VA; danger zone.**

(a) *The area.* All the water area channelward of the mean high water shoreline within an area beginning on shore at latitude 37°06'43" N, Longitude 76°34'09" W; thence southeasterly to latitude 37°05' N, longitude 76°32'50" W; thence southerly to latitude 37°04'32" N, longitude 76°32'55" W; thence southwesterly to latitude 37°04'24" N, longitude 76°33'19" W; thence westerly to latitude 37°04'27" N, longitude 76°33'58" W, thence northwesterly to latitude 37°07'33" N, longitude 76°37'44" W ending at Mulberry Point.

(b) *The regulations.* (1) During periods when firing is in progress, red flags will be displayed at conspicuous locations on shore. Observers will be on duty and firing will be suspended as long as any vessel is within the danger zone.

(2) Passage of vessels through the area will not be prohibited at any time, nor will commercial fishermen be prohibited from working within the area. No loitering or anchoring for other purposes will be permitted during announced firing periods.

(3) No firing will be done during hours of low visibility or darkness.

(4) The Commander, Ft. Eustis, VA, is responsible for furnishing the firing schedule to the Commander (oan), 5th Coast Guard District, for publication in the "Local Notice to Mariners" and to the local press at Newport News, and Isle of Wight County, VA, in advance of firing range use.

(5) The regulations in this section shall be enforced, by the Commander, U.S. Army Transportation Center and Ft. Eustis, VA, or such agencies as he/she may designate.

Dated: March 20, 1987.

Approved:

Joseph T. Larremore,

*Colonel, Corps of Engineers, Executive Director of Civil Works.*

[FR Doc. 87-10863 Filed 5-12-87; 8:45 am]

BILLING CODE 3710-92-M

## DEPARTMENT OF DEFENSE

## VETERANS ADMINISTRATION

### 38 CFR Part 21

### Veterans Education; Entitlement Charges for Overpayments Under VEAP

**AGENCY:** Veterans Administration and Department of Defense.

**ACTION:** Proposed regulations.

**SUMMARY:** Interest, administrative costs of collection, court costs, and marshal fees are not being charged on overpayments of educational assistance allowance. At times a veteran will discharge such a debt in bankruptcy, or the debt will be waived or compromised. This proposal would amend the pertinent section of the Code of Federal Regulations to provide that when any of these actions occurs with regard to a debt incurred under VEAP (the Post-Vietnam Era Veterans Educational Assistance Program), an unrecovered portion of interest, administrative costs of collection, court costs or marshal fees will not result in a charge against a veteran's entitlement to educational assistance allowance.

**DATE:** Comments must be received on or before June 9, 1987.

**ADDRESSES:** Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** 38 CFR 21.5076 is amended to show how the Veterans Administration (VA) will calculate the charge against entitlement when a veteran's overpayment of educational assistance allowance under VEAP is discharged in bankruptcy, or is waived or is compromised.

The VA has determined that this proposed amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The proposed amended regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no

significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that this proposed amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the proposed amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the proposed amended regulation affects only individuals. It will have no significant ecomomic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this proposed amended regulation is 64.120.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 15, 1987.

**Thomas K. Turnage,**

*Administrator.*

Approved: March 9, 1987.

**A. Lukeman,**

*Deputy Assistant Secretary of Defense.*

**PART 21—[AMENDED]**

In 38 CFR Part 21, *Vocational Rehabilitation and Education,* § 21.5076 is proposed to be revised as follows:

**§ 21.5076 Entitlement charge—overpayment cases.**

(a) *Overpayment cases.* The VA will make a charge against an individual's entitlement of an overpayment of educational assistance allowance only if:

(1) The overpayment is discharged in bankruptcy; or

(2) The VA waives the overpayment and does not recover it; or

(3) The overpayment is compromised. (38 U.S.C. 1631)

(b) *Debt discharged in bankruptcy or is waived.* If the overpayment is discharged in bankruptcy or is waived and is not recovered, the entitlement charge will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees). (38 U.S.C. 1631; Pub. L. 94–502)

(c) *Overpayment is compromised.* (1) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and compromise offer is equal to or greater than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees.

(ii) Substracting the remaining amount of the overpayment balance determined in paragraph (c)(2)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(2)(ii) of this section by the amount of the original debt (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(2)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment. (38 U.S.C. 1631)

[FR Doc. 87–10710 Filed 5–12–87; 8:45 am]

BILLING CODE 8320–01–M

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL–3199–7]**

**The National Priorities List-Listing Policy for Federal Facilities**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed policy.

**SUMMARY:** The Environmental Protection Agency ("EPA") is proposing a policy relating to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982 pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, and contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List (NPL), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list and meets those requirements.

This notice solicits comments on a proposed policy for placing on the NPL sites located on Federally-owned facilities that are subject to the corrective action authorities of the Resource Conservation and Recovery Act (RCRA). These NPL sites may encompass the entire Federal facility or portions of it depending on the size and characteristics of the facility.

**DATE:** Comments may be submitted on or before June 12, 1987.

**ADDRESSES:** Comments may be mailed to Stephen Lingle, Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Emergency and Remedial Response (WH–548E), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** C. Scott Parrish, Hazardous Site Evaluation Division, Office of Emergency and Remedial Response (WH–548E), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone (800) 424–9346 (or 382–3000 in the Washington, DC, metropolitan area).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. Contents of This Proposed Policy

**I. Introduction**

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. sections 9601–9657 ("CERCLA or the Act"), and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, on July

16, 1982 (47 FR 31180). EPA promulgated further revisions to the NCP on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912). These amendments to the NCP implemented responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, and contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial or removal action. Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). The Agency developed the Hazard Ranking System (HRS) to implement section 105(8)(A). The HRS was codified as Appendix A of the NCP.

Section 105(8)(B) of CERCLA requires that the statutory criteria described in the HRS be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List (NPL). Section 105(8)(B) also requires that the NPL be revised at least annually. An initial NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been amended several times since then. Currently, there are 703 sites on, and 248 sites proposed for, the NPL.

Under section 300.66(a) of the NCP, a site must be on the NPL if a remedial action is to be financed by the Hazardous Substances Superfund set up under the Superfund Amendments and Reauthorization Act of 1986 (SARA) (this supersedes the Hazardous Response Trust Fund originally set up under CERCLA). CERCLA section 111(e)(3) prohibits the use of the Fund for remedial actions at Federal facilities. However, pursuant to section 300.66(e)(2) of the NCP, the Agency can place Federal facility sites on the NPL. The Agency decided to place Federal facility sites on the NPL in order to inform the public about responses undertaken at facilities (50 FR 47931, November 20, 1985). Currently, 48 Federal facility sites have been proposed for the NPL.

## II. Contents of This Proposed Policy

Today's proposal would allow including on the NPL Federal facility sites that may be subject to the corrective action authorities of the Resource Conservation and Recovery Act (RCRA).

When the initial NPL was promulgated, the Agency announced certain eligibility policies relating to sites that might qualify for the NPL. One of these policies was that RCRA "regulated units"—i.e., land disposal units that received hazardous waste after the effective date of the RCRA land disposal regulations (48 FR 40662, September 8, 1983)—would not be included on the NPL. On April 10, 1985 the Agency proposed a revision of that policy based upon expanded RCRA authorities enacted as part of the Hazardous and Solid Waste Amendments of 1984 (50 FR 14117, April 10, 1985).

On June 10, 1986 (51 FR 21057), EPA announced several components of a final policy for placing non-Federal RCRA-related sites on the NPL. In general, a listing of non-Federal sites with releases that can be addressed under the expanded RCRA Subtitle C corrective action authorities will be deferred. The Agency stated, however, that certain sites subject to Subtitle C corrective action requirements should be listed if they have an HRS score of 28.50 or greater and meet at least one of the following criteria: (1) Facilities owned by persons who are bankrupt; (2) facilities that have lost RCRA interim status and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action; and (3) sites, analyzed on a case-by-case basis, whose owners or operators have shown an unwillingness to undertake corrective action.

At that time, EPA also announced that it would consider, at a later date, whether this revised policy should apply to Federal facilities (51 FR 21059, June 10, 1986). Subsequently, the Agency has analyzed the appropriateness of deferring the listing of Federal facility sites which may be subject to RCRA corrective action. In its deliberations, EPA considered the policy announced on March 5, 1986 (51 FR 7722) concerning RCRA corrective action at Federal facilities with RCRA operating units. Specifically, the policy stated that: (1) RCRA section 3004(u) subjects Federal facilities to corrective action requirements to the same extent as privately owned or operated facilities and (2) the definition of a Federal facility boundary is equivalent to the property-wide definition of facility at privately owned or operated facilities.

The Agency has determined that the vast majority of Federal facility sites that could be placed on the NPL have RCRA regulated units within the Federal facility property boundary. Therefore, strict application of the March 5, 1986 boundary policy and the June 10, 1986 deferred listing policy would result in placing very few Federal facility sites on the NPL. The Agency believes that this would be inconsistent with the spirit and intent of Section 120 of SARA. The Statute and its legislative history indicate that Congress intended the Agency to place Federal facility sites on the NPL and to effect cleanup at those sites. Section 120(a) provides that:

> [a]ll guidelines, rules, regulations, and criteria which are applicable to * * * inclusion on the National Priorities List * * * shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities.

Section 120 of SARA also contains requirements for assessing releases at Federal facilities, placing them on the NPL, and effecting remedial actions at those sites that qualify for the NPL. In the floor debates, Senator Robert T. Stafford explained section 120 as follows:

> Second, the amendments require a comprehensive nationwide effort to identify and assess all Federal hazardous waste sites that warrant attention * * *. The legislation * * * requires that any Federal facility that meets the criteria applied to private sites listed on the national priorities list [NPL] must be placed on the NPL. _____ Cong. Rec. S. 14902 (daily ed., Oct 3, 1986).

If the revised RCRA policy that is applicable to non-Federal sites were applied to Federal facility sites, the purposes of section 120 would be frustrated.

Given that Congress clearly contemplated that Federal facility sites would be placed on the NPL, the Agency interprets these provisons of section 120 to mean that the criteria to list Federal facility sites should not be more exclusionary than the criteria to list non-Federal sites on the NPL. Key elements of the of the current policy for listing non-Federal sites subject to RCRA corrective action requirements include whether the owner or operator has filed bankruptcy or clearly demonstrated unwillingness to comply with applicable RCRA requirements or regulations. Since bankruptcy proceedings are not applicable to Federal agencies and unwillingess to comply with Federal laws is an unlikely occurrence, application of the non-Federal facilities policy for listing RCRA sites would result in listing very few Federal sites.

Thus, in order to treat Federal and non-Federal sites equally, as required by SARA section 120, the Agency believes that the RCRA status of the site should not be considered in the decision to place a Federal facility site on the NPL.

The Agency believes that placing RCRA-related Federal sites on the NPL will also serve the purpose originally intended by section 300.66(e)(2) of the NCP—to advise the public of the status of Federal government cleanup efforts. (50 FR 47931, November 20, 1985). In addition, listing on the NPL will help other Federal agencies set priorities and focus cleanup efforts on those sites which present the most serious problems.

The policy proposed today does not restrict the use of either RCRA corrective action or enforcement authorities to achieve cleanup at Federal facilities. EPA is in the process of developing regulations for corrective action under RCRA and for cleanup of Superfund sites under the National Contingency Plan. The cleanup goals established in those regulations will be consistent with each other, within the limits of each statute, and it is EPA's expectation that remedies selected and implemented under CERCLA will generally satisfy the RCRA corrective action requirements, and vice versa.

EPA solicits comments on the appropriateness of placing on the NPL Federal facilities that may be subject to RCRA corrective action authorities. Comments should be submitted to Stephen Lingle, Director, Hazardous Site Evaluation Division (Attn. NPL Staff), Office of Emergency and Remedial Response (WH–548E) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, not later than June 12, 1987.

Dated: May 6, 1987.

J.W. McGraw,

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 87–10910 Filed 5–12–87; 8:45 am]

BILLING CODE 6560–50–M

## 40 CFR Part 440

[OW–FRL–3199–8]

## Ore Mining and Dressing Point Source Category; Gold Placer Mining; Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Second Notice of New Information; Request for Comment and Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of comment period.

**SUMMARY:** On March 24, 1987 (52 FR 9414) EPA published a Notice of Availability of New Information and Request for Comment under the Clean Water Act to limit effluent discharges to waters of the United States from facilities engaged in placer gold mining operations (52 FR 9414). EPA is extending the period for comment on the proposed regulation from May 11, 1987 to June 25, 1987.

**DATE:** Comments on the Notice of Availability of New Information for the placer gold mining subcategory must be submitted to EPA by June 25, 1987.

**ADDRESSES:** Send comments to William A. Telliard, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention ITD Docket Clerk. Proposed Placer Gold Mining. The supporting information and all comments on this proposal are available for inspection and copying at the EPA Public Information Reference Unit in Washington, DC, Room 2404 (Rear) PM–213; at the EPA Library in Seattle; at the EPA Alaska office in Anchorage; and at the Alaska Department of Environmental Conservation office in Fairbanks, Alaska. The comments will be added to the record as they are received. The EPA Information Regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Willis E. Umholtz (202) 382–7191.

**SUPPLEMENTARY INFORMATION:** On March 24, 1987 EPA published a Notice of New Information which announced the availability for public review and comment of new technical and economic data and reports which EPA will utilize in promulgating final effluent limitations guidelines and standards for the placer gold mining industry (52 FR 9414). The notice stated that comments on the new information were to be submitted on or before May 8, 1987.

The Agency has received numerous requests from members of the placer gold mining industry, representatives of the State of Alaska, and others interested in this proposed regulation that additional comment time be granted to allow them to comment fully and to supply data to support their comments. Given the remote and sometimes inaccessible locations of many of those who wish to comment on the issues raised in the notice, the consequent difficulties they face in submitting comments, and the complexity of issues raised by this rulemaking, EPA has determined that it is necessary to extend the comment period 45 days to June 25, 1987. This will allow the public adequate time to review and comment on the issues raised by the notice.

Dated: May 7, 1987.

Lawrence J. Jensen,

*Assistant Administrator, Office of Water.*

[FR Doc. 87–10911 Filed 5–12–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

[MM Docket No. 87–25]

## Concerning Alternatives to the General Fairness Doctrine Obligations of Broadcast Licensees

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed Rule; extension of time for filing comments.

**SUMMARY:** The FCC gives notice that the Commission granted a motion for

extension of time for filing comments in response to the *Notice of Inquiry* ("*NOI*") in MM Docket No. 87–26 (Inquiry into § 73.1910 of the Commission's Rules and Regulations Concerning Alternatives to the General Fairness Doctrine Obligations of Broadcast Licensees) (52 FR 7626). The New York State Consumer Protection Board ("CPB") requested that the deadline for filing comments be extended from April 15, 1987, to April 30, 1987, because the summary of the *NOI* appeared in the **Federal Register** 30 days prior to the comment filing deadline rather than the 45 days which the Commission has been providing for notices that are not published in their entirety in the **Federal Register**. Since the short extension of time requested will provide commenters an opportunity to present a more extensive and wide-ranging analysis of the issues set forth in the NOI, the Commission was persuaded that grant of the extension of the comment period to April 30, 1987, was warranted. However, the May 13, 1987, deadline for filing reply comments remains unchanged.

**DATE:** The comment period was extended from April 15, 1987 to April 30, 1987. Reply comments are due by May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Eileen Huggard, Mass Media Bureau, (202) 632–7792.

**SUPPLEMENTARY INFORMATION:** The full text of this Commission decision is available for inspection copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

**James C. McKinney,**

*Chief, Mass Media Bureau.*

[FR Doc. 87–10515 Filed 5–12–87; 8:45 am]

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# Notices

Federal Register
Vol. 52, No. 92
Wednesday, May 13, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Governmental Process; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Governmental Process of the Administrative Conference of the United States, to be held at 10:00 a.m. on Tuesday, May 19, 1987, at the office of Covington and Burling, 1201 Pennsylvania Avenue, NW, 11th floor, Washington, DC.

The Committee will meet for further consideration of possible recommendations on federal agency use of private attorneys. This subject is currently under study for the Administrative Conference by Professor William V. Luneburg of the University of Pittsburgh School of Law and by Professor Ronald Rotunda of the University of Illinois College of Law. A draft recommendation was published for public comment on April 23, 1987. (See 54 FR 13448).

For further information concerning this meeting, contact David Pritzker, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW, Suite 500, Washington, DC. (Telephone 202-254-7065.)

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify Mr. Pritzker at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting.

Minutes of the meeting will be available on request.

**Jeffrey S. Lubbers,**
*Research Director.*
May 11, 1987.
[FR Doc. 87-11066 Filed 5-12-87; 8:45 am]
BILLING CODE 6110-01-M

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

May 8, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Office, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Extension**

- Animal and Plant Health Inspection Service

Viruses-Serums-Toxins Regulations
VS 14-1, 14-3, 14-5, 14-7, 14-8, 14-15, and 14-20
Recordkeeping. On occasion
Individuals or households; Businesses or other for-profit; Non-profit institutions; 17,149 responses; 40,303 hours; not applicable under 3504(h)
David A. Espeseth, (301) 436-8332

- Rural Electrification Administration

Prospective Large Power Service
REA 170
On occasion
Small businesses or organizations; 75 responses; 300 hours; not applicable under 3504(h)
David J. Lessels, (202) 382-0094

- Rural Electrification Administration

Financial Requirement Statement
REA 481
On occasion
Small businesses or organizations; 1,500 responses; 3,000 hours; not applicable under 3504(h)
F. Lamont Heppe, Jr., (202) 382-8530.

**New**

- Forest Service

Southeast Alaska Regional Resource Utilization Study
One Time Survey
Individuals or households; 1,308 responses; 981 hours; not applicable under 3504(h)
Dr. Robert M. Muth, (907) 586-8884.

**Revision**

- Farmers Home Administration

7 CFR Part 1980-Subpart G, Nonprofit National Corporations Loan and Grant Program
FmHA 1980-60, 1980-61, and 1980-63
Recordkeeping: On occasion; Annually
Businesses or other for-profit; Non-profit institutions; 2,234 responses; 6,674 hours; not applicable under 3504(h)
Jack Holston, (202) 382-9736.

**Jane A. Benoit,**
*Departmental Clearance Office.*
[FR Doc. 87-10897 Filed 5-12-87; 8:45 am]
BILLING CODE 3410-01-M

## Commodity Credit Corporation

### Commodity Certificates; Acceptance After Expiration Date; Upland Cotton

**AGENCY:** Commodity Credit Corporation (CCC), Department of Agriculture (USDA).

**ACTION:** Notice.

**SUMMARY:** In accordance with the terms and conditions of the 1986 price support and production adjustment programs, a portion of the payments made by the Commodity Credit Corporation (CCC) were made in the form of commodity certificates which could be used to acquire commodities owned by CCC. In order to provide greater flexibility to producers who receive such certificates, it has been determined that: (1) CCC will accept, for cash, certain generic commodity certificates presented after the expiration date stated on the certificates which are in the possession of the first holder of such certificates and (2) the expiration dates of cotton commodity certificates issued under the 1986 upland cotton program are being extended. This action is being taken pursuant to the regulations governing Commodity Certificates, In Kind Payments and Other Forms of Payment (7 CFR Part 770). Section 770.4(d)6 provides that CCC may, at its option, discount or refuse to accept any commodity certificate presented after the expiration date stated on the certificate.

**DATE:** May 12, 1987.

**ADDRESS:** Director, Cotton, Grain and Rice Price Support Division, USDA–ASCS, Room 3630, South Building, P.O. Box 2415, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Beverly Pritts, Program Specialist, Cotton, Grain and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013 or call (202) 447–8374.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "non-major". It has been determined that these program provisions will not result in an annual effect on the ecomony of $100 million or more.

The notice is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

#### Generic Commodity Certificates

Some original holders of generic commodity certificates were unaware of the importance of using such certificates in their possession before the expiration date stated on the certificates. Therefore, it has been determined that original holders of generic commodity certificates with expiration dates of December 31, 1986, through March 31, 1987, may present such certificates for cash.

Original holders may apply for payment by returning such certificates, by June 1, 1987, to the Agricultural Stabilization and Conservation Service (ASCS) office where such certificates were issued. A written request that payment be made for cash must be presented with the certificates. County Agricultural Stabilization and Conservation (ASC) Committies will review all requests and, upon approval, will authorize payments equal to the face value of the certificate minus a 15 percent discount and the 4.3 percent reduction required by the Balanced Budget and Emergency Deficit Control Act of 1985.

#### Upland Cotton Commodity Certificates

Currently, there is a shortage of CCC cotton inventory for acquisition by the use of commodity certificates. Therefore, in order to maintain the effectiveness of the use of commodity certificates by CCC, it has been determined that the expiration date of upland cotton commodity certificates issued under the 1986 upland cotton program should be extended until upland cotton becomes available for acquisition by use of commodity certificates in accordance with the 1987 upland cotton program.

Accordingly, notwithstanding the expiration date set forth on an upland cotton commodity certificate issued under the 1986 upland cotton program, the expiration date of all current outstanding and all new upland cotton commodity certificates issued under the 1986 upland cotton program shall be considered to be the later of February 29, 1988, or nine months from the end of the month in which the certificate is issued. Any person holding an upland cotton certificate should contact their local county ASCS office for additional information.

**Authority:** Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c); secs. 103A and 107E of the Agricultural Act of 1949, as amended, 99 Stat. 1047, as amended, 1448 (7 U.S.C. 1444–1 and 1445b–4).

Signed at Washington, DC, May 7, 1987.

**Milton J. Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87–10844 Filed 5–12–87; 8:45 am]

BILLING CODE 3410–05–M

## CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

### Meeting

*Time and date:* 2:00 p.m., Thursday, June 11, 1987; 2:00 p.m., Friday, June 12, 1987.

*Place:* Governor's Ballroom, Hyatt on Capitol Square, 75 East State Street, Columbus, Ohio.

*Status:* Partly open, partly closed.

*Matters to be considered:*

*Portions Open to the Public:* June 11, 1987, internal management, legislative status, quincentenary planning in states and cities; June 12, 1987, discussion of Report to Congress, committee reports.

*Portions Closed to the Public:* June 12, 1987, discussion of preliminary budget proposal.

*Contact Person for More Information:* John Alexander Williams, 632–1992.

**John Alexander Williams,**

*Director.*

[FR Doc. 87–10862 Filed 5–12–87; 8:45 am]

BILLING CODE 6820–RD–M

## DEPARTMENT OF COMMERCE

### Economic Development Administration

[Docket No. 70480–7060]

### Duluth Steam District No. 2; Finding of No Significant Impact

**AGENCY:** Economic Development Administration (EDA) Department of Commerce.

**ACTION:** Issuance of finding of no significant impact (FONSI): EDA's Duluth Steam District No. 2 Project.

**SUMMARY:** This Notice advises the public of the availability of EDA's Environmental Assessment and Finding of No Significant Impact (FONSI) for its Duluth Steam District No. 2/Lake Superior Paper Industries paper mill project. This FONSI is released as a supplement to a related Environmental Impact Statement (EIS) prepared by the Department of Housing and Urban Development (HUD).

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION AND ACCESS TO THE FONSI, CONTACT:**

David Maney, Director, Office of Environment, U.S. Department of Commerce, Economic Development Administration, 14th & Constitution Avenue NW., Washington, DC 20230, (202) 377-4208

For the EIS, Contact: Robert B. Lindholm, Minnesota Power, 30 W. Superior Street, Duluth, Minnesota 55802.

**Notice**

EDA is hereby giving Notice that on March 2, 1987, it issued a FONSI for its Duluth Steam District No. 2 Project. The Environmental Assessment and FONSI are available for public review. A copy may be obtained by contacting the Director, Office of Environment at the address listed above. EDA issued the FONSI in connection with a grant application for construction of a steamline associated with the Duluth Steam District No. 2/Lake Superior Paper Industries paper mill project, Duluth, Minnesota. EDA completed the environmental review, in conformance with the National Environmental Policy Act (NEPA.)

The General Counsel of the Office of Environmental Quality, Executive Office of the President, has determined that EDA's FONSI on this project can be treated procedurally at variance from the usual notice requirements since it is a supplement, and there are ample justifications for alternative arrangements as provided for in 40 CFR 1502.9. The approval of the alternative was made by the General Counsel for the Office of Environmental Quality, (General Counsel) by letter to EDA's Director, Office of the Environment dated March 3, 1987. In this letter, the General Counsel viewed EDA's Environmental Assessment and subsequent FONSI as supplementing an EIS prepared under HUD's NEPA procedures for a larger related HUD project. The General Counsel's letter also sets forth a summary of the usual procedure which includes *inter-alia*, circulation of the EIS and related documents to applicable agencies and the public. The General Counsel's letter to EDA's Director, Office of the Environment, March 3, 1987, stated as reasons for the variance:

- The fact that the entire project (absent EDA's portion) has been through two environmental assessment review procedures, with opportunity for public review and comment;
- The fact that the project is extremely noncontroversial, as demonstrated by the extremely unusual low number of letters (seven) received on the EIS which examined the paper mill project;
- The fact that the Environmental Protection Agency stated, in a letter dated December 12, 1986, that their concerns regarding the Duluth Paper Mill project had been resolved;
- The fact that the 404 permit issued by the U.S. Army Corps of Engineers under the Clean Water Act directs the applicant to avoid fill of wetlands, in this case resulting in the necessity to commence site work before the ground thaws (in fact, the permit expires on April 30, 1987);
- The fact that adoption procedures, as normally implemented, would make it difficult, if not impossible, to commence construction in the most environmentally protective manner possible.

In short, we see this procedural variance in this case as promoting protection of wetlands (and thus, fulfilling the substantive goals of NEPA), for a project which is noncontroversial and which has no apparent significant adverse environmental impacts (per EPA's letter)."

Dated: May 7, 1987.

**Orson G. Swindle III,**

*Assistant Secretary for Economic Development.*

[FR Doc. 87-10850 Filed 5-12-87; 8:45 am]

BILLING CODE 3510-24-M

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**International Trade Administration**

**[A-588-807]**

## Amorphous Silica Filament Fabric From Japan; Preliminary Determination of Sales at Less Than Fair Value

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that certain amorphous silica filament fabric from Japan is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise. We have determined that "critical circumstances" exist in this case. Therefore, this suspension of liquidation applies to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by July 20, 1987.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles Wilson (202-377-5288), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination**

We have preliminarily determined that amorphous silica filament fabric from Japan is being, or is likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). We made fair value comparisons on sales of the class or kind of merchandise to the United States during the period of investigation, November 1, 1985 through October 31, 1986. Comparisons were based on United States price and foreign market value, based on home market sales of the merchandise provided by the respondent. The weighted-average margin is shown in the "Suspension of Liquidation" section of this notice.

**Case History**

On October 27, 1986, we received a petition in proper form filed by Ametek, Inc. (Haveg Division), and by HITCO, on behalf of the U.S. industry producing certain silica filament fabric. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on November 17, 1986 (51 FR 42121, November 21, 1986) and notified the ITC of our action.

On December 11, 1986, the ITC determined that there is a reasonable indication that imports of amorphous silica filament fabric from Japan are materially injuring a U.S. industry (52 FR 870, January 9, 1987).

On January 22, 1987, we presented an antidumping duty questionnaire to Nippon Muki Co., Ltd., the only known exporter of the subject merchandise from Japan to the United States. We requested a response in 30 days. On March 2, 1987, we received the questionnaire response. On March 6,

1987 and on April 1, 1987, we requested additional information. We received additional information from Nippon Muki on March 16, March 18, and on April 15, 1987. On March 18, 1987, at the request of the petitioners, we extended the date of the preliminary determination to May 6, 1987 (52 FR 9324, March 24, 1987).

**Scope of Investigation**

The product covered by this investigation is certain commercial grade woven fabric, of glass (silica filaments), whether or not colored, containing not over 17 percent of wool by weight, as currently provided for in items 338.2500 and 338.2700 of the *Tariff Schedules of the United States Annotated* (TSUSA).

**Fair Value Comparisons**

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value using data provided in the response. We investigated sales of amorphous silica filament fabric sold during the period November 1, 1985 through October 31, 1986.

**United States Price**

Nippon Muki's sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation. As provided in section 772(b) of the Act, we based the United States price on purchase price. In reaching the conclusion that purchase price was the appropriate indicator of United States price we considered the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transaction. The related sales agent merely facilitates a transaction such as occurs in a direct shipment to an unrelated purchaser. (See *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished from Japan: Preliminary Determination of Sales at Less Than Fair Value*, 59 FR 9905, 9906, March 27, 1987)

We made deductions from the c.i.f. duty paid, delivered, packed prices for ocean freight, marine insurance, brokerage and handling, U.S. inland freight, U.S. duty and foreign inland freight.

**Foreign Market Value**

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value on sales in the home market. We made adjustments, where appropriate, for differences in credit costs and for differences in the physical characteristics of the merchandise, in accordance with §§ 353.15 and 353.16 of the Commerce Regulations. Respondent claims circumstance of sale adjustments to home market prices for advertising and technical services expenses. Information submitted indicates that the amounts claimed for these expenses include expenses not directly related to the sales under investigation. Therefore, we have not allowed these adjustments in our calculations. If the appropriateness of these claims can be established at verification, we will consider these in our final determination.

Pursuant to § 353.56 of the Commerce regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

**Critical Circumstances**

In the petition, filed October 27, 1986, petitioners alleged that "critical circumstances" exist within the meaning of section 733(e) of the Act with respect to amorphous silica filament fabric from Japan. In determining whether critical circumstances exist, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

A review of all available data shows no history of dumping in the United States or elsewhere.

In determining whether the importer knew, or should have known, that the exporter was selling the merchandise at less than fair value, we find that the level of margins calculated indicate imputed knowledge on the part of the importer.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM–146 trade statistics on imports of this merchandise for equal periods immediately preceeding and following the filing of the petition, from July through December 1986. Although these statistics include merchandise other than that under investigation, they are the only relevant publicly available statistics. These statistics showed a significant increase in imports in the post-filing period over the pre-filing period. Further, information submitted to the International Trade Commission, which is limited to the product under investigation, indicates significant increases in market penetration in 1986 compared to 1985. Since imports of the merchandise did not begin until 1983, we have not included the start up years of 1983 and 1984 in our import pattern analysis.

For the above reasons, we preliminarily conclude that critical circumstances do exist with respect to amorphous silica filament fabric from Japan.

**Verification**

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of amorphous silica filament fabric from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before the date of publication of this notice in the **Federal Register.**

The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 193.94%. The suspension of liquidation will remain in effect until further notice.

**ITC Notification**

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are

making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or are threatening material injury to, a U.S. industry before the later of 120 days after the date of our preliminary affirmative determination or 45 days after we make our final affirmative determination.

### Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:30 p.m. on June 5, 1987, at the U.S. Department of Commerce, Room 3708, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 29, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

*Deputy Assistant Secretary for Import Administration.*

May 6, 1987.

[FR Doc. 87-10836 Filed 5-12-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-805]

## Preliminary Determination of Sales at Not Less Than Fair Value: Certain Forged Steel Crankshafts From Japan

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that certain forged steel crankshafts (CFSC) from Japan are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. If this investigation proceeds normally, we will make a final determination by July 21, 1987.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Rick Herring, Ellie Shea, or Tom Bombelles, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0167, 377-0184, or 377-3174.

**SUPPLEMENTARY INFORMATION:**

### Preliminary Determination

We preliminarily determine that imports of CFSC from Japan are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). We have found that the weighted-average margin for the company being investigated is *de minimis*.

### Case History

On October 9, 1986, we received a petition filed in proper form by Wyman-Gordon Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of CFSC from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on October 29, 1986 (51 FR 40347, November 6, 1986), and notified the ITC of our action.

On November 18, 1986, the ITC determined that there is a reasonable indication that imports of CFSC from Japan are materially injuring a U.S. industry (51 FR 44537, December 10, 1986).

On January 6, 1987, an antidumping duty questionnaire was presented to Sumitomo Metal Industries, Ltd. (SMI), which accounts for at least 65 percent of the exports of CFSC from Japan to the United States during the period of investigation, May 1, 1985 through October 31, 1986. On January 30, 1987, we granted a request for an extension in which to submit the questionnaire response until February 17, 1987. On February 17 and 26, 1987, we received questionnaire responses from SMI. A deficiency questionnaire was sent to SMI on March 6, 1987, and a supplemental questionnaire was sent on April 13, 1987. Responses to these questionnaires, as well as other supplemental information, have been submitted by SMI prior to this determination.

On February 20, 1987, petitioner filed a request for extension of the deadline date for the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On February 26, 1987, we extended the deadline date for the preliminary determination by 50 days, to not later than May 7, 1987 (52 FR 7286, March 10, 1987).

### Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

### Period of Investigation

CFSC are normally sold to the United States on the basis of long-term requirements contracts. Therefore, in order to capture the most recent sales of CFSC to the United States, we extended the period of investigation to encompass the 18 months from May 1, 1985 to October 31, 1986, instead of using the six-month period defined by § 353.38(a) of our regulations.

### Fair Value Comparisons

To determine whether sales of CFSC in the United States were made at less than fair value, we compared the United States price to the foreign market value

for SMI, using data provided in the responses.

We made comparisons on all sales of CFSC during the period of investigation, May 1, 1985 through October 31, 1986. We divided the 18-month review period into three six-month periods for purposes of making price-to-price comparisons.

**United States Price**

As provided in section 772(b) of the Act, we used the purchase price of CFSC to represent the United States price for sales by SMI, because the merchandise was sold to unrelated purchasers prior to its importation into the United States. In response to our questionnaire, the respondent has stated that the first sale of CFSC destined for the United States to an unrelated party is between SMI and Sumitomo Corporation. The respondent has also stated that SMI and Sumitomo Corporation are not related within the meaning of section 771(13) of the Act.

In accordance with our longstanding position, we have accepted this response for purposes of our preliminary determination. However, we have sought additional information from respondent and will obtain information during verification on the issue of whether SMI and Sumitomo Corporation are related within the meaning of the antidumping law.

We calculated the purchase price based on the packed FOB (free on board), CFS (container freight station), CY (container yard), or FAS (free alongside ship) price to unrelated purchasers. All U.S. sales, as well as all such or similar home market sales, were made to Sumitomo Corporation, a Japanese trading company.

From the price charged between Sumitomo Corporation and SMI, we made deductions for inland freight and, where appropriate, other delivery charges. In the response, SMI deducted after-sale warehousing expenses from the gross price that it received from Sumitomo Corporation. We consider this to be a circumstance of sale adjustment. Therefore, we have added this charge back into the gross price and made the appropriate adjustment to the foreign market value.

**Foreign Market Value**

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for CFSC on sales in the home market. When comparing foreign market value to purchase price sales, we made deductions, where appropriate, from the home market price for inland freight. We added U.S. packing costs. We made adjustments under § 353.15 of the Commerce Regulations for differences in circumstances of sale for credit expenses, after-sale warehousing, and sales commissions in the United States and home markets. Pursuant to § 353.16 of our regulations, we made adjustments, where appropriate, to account for differences in physical characteristics of the merchandise.

**Currency Conversion**

When calculating foreign market value, we made currency conversions from Japanese yen to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

**Verification**

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will follow standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

**Preliminary Results**

The preliminary results of our investigation are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Sumitomo Metal Industries, Ltd. | .05 |

**ITC Notification**

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry within 75 days after our final determination.

**Public Comment**

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on June 23, 1987, at the U.S. Department of Commerce, Room 1414, 14th and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by June 16, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within seven days after the hearing transcript is available, at the above address in at least ten copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

May 7, 1987.

[FR Doc. 87–10951 Filed 5–12–87; 8:45 am]

BILLING CODE 3510-DS-M

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[A–412–602]

## Preliminary Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts From the United Kingdom

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that certain forged steel crankshafts (CFSC) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CFSC from the United Kingdom that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated weighted-average dumping margin as described in the "Suspension of

Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by July 21, 1987.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION:** Contact Loc Nguyen, Lori Cooper, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–0167, 377 8320, or 377–0161.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination**

We preliminarily determine that imports of CFSC from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average dumping margin is shown in the "Suspension of Liquidation" section of this notice.

**Case History**

On October 9, 1986, we received a petition filed in proper form by Wyman-Gordon Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of CFSC from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on October 29, 1986 (51 FR 40348, November 6, 1986), and notified the ITC of our action.

On November 18, 1986, the ITC determined that there is a reasonable indication that imports of CFSC from the United Kingdom are materially injuring a U.S. industry (51 FR 44537, December 10, 1986).

On December 12, 1986, an antidumping duty questionnaire was presented to United Engineering & Forging (UEF). UEF accounted for all exports of CFSC from the United Kingdom to the United States during the period of investigation, October 1, 1985, through October 31, 1986. On January 15, 1987, we granted a request for an extension of the time in which to submit the questionnaire response until January 30, 1987. On February 4, 1987, we received the questionnaire response of UEF. A deficiency questionnaire was sent to UEF on March 5, 1987. A response to that questionnaire, as well as other supplemental information, has been submitted by UEF prior to this determination.

On February 20, 1987, petitioner filed a request for extension of the deadline date for the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On February 26, 1987, we extended the deadline date for the preliminary determination by 50 days, to not later than May 7, 1987 (52 FR 7286, March 10, 1987).

**Scope of Investigation**

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject to this investigation.

**Period of Investigation**

CFSC are normally sold to U.S. customers on the basis of long-term requirements contracts. Therefore, in order to capture the most recent sales of CFSC to U.S. customers, we extended the period of investigation to encompass the 13 months from October 1, 1985 to October 31, 1986, instead of using the six-month period defined by § 353.38(a) of our regulations.

**Fair Value Comparisons**

To determine whether sales of CFSC in the United States were made at less than fair value, we compared the United States price to the foreign market value for the company under investigation, using data provided in the response.

**United States Price**

As provided in section 772(b) of the Act, we used the purchase price of CFSC to represent the United States price for sales by UEF, because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on c.i.f., delivered prices to unrelated purchasers. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. inland freight, brokerage and handling, and U.S. customs duties.

**Foreign Market Value**

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for CFSC on delivered prices in the home market. We made deductions for foreign inland freight and added packing costs in the U.S. market. We made circumstance of sale adjustments for credit expenses, warranty expenses, and after-sale warehousing expenses, in accordance with § 353.15(a) of our regulations. Pursuant to § 353.16 of our regulations, we made adjustments, where appropriate, to account for differences in the physical characteristics of the merchandise.

UEF reported what it deemed to be technical services expenses; however, we made no adjustment for these expenses, because we do not consider them to be directly related expenses within the meaning of section 353.15 of our regulations. We will look further into this issue during verification.

**Currency Conversion**

When calculating foreign market value, we made currency conversions from British pounds sterling to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

**Verification**

We will verify information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CFSC from the United Kingdom that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of CFSC from the United Kingdom exceeds the United States price, as shown in the table below. This suspension of liquidation will remain in effect until further notice.

| Manufacturer/producer/exporter | Estimated weighted-average margin percentage |
|---|---|
| United Engineering & Forging | 24.53 |
| All others | 24.53 |

## ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

## Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on June 23, 1987, at the U.S. Department of Commerce, Room 1413, 14th and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by June 16, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within seven days after the hearing transcript is available, at the above address in at least ten copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Administration.*

May 7, 1987.

[FR Doc. 87-10952 Filed 5-12-87; 8:45 am]

BILLING CODE 3510-DS-M

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**[A-428-804]**

# Preliminary Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts From the Federal Republic of Germany

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We preliminarily determine that certain forged steel crankshafts (CFSC) from the Federal Republic of Germany (FRG) are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of CFSC, except for entires from Gerlach-Werke GmbH, that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated weighted-average dumping margins as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by July 21, 1987.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Steve Morrison, Roy Van Buskirk or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-0189, 377-0631, or 377-0161.

**SUPPLEMENTARY INFORMATION:**

## Preliminary Determination

We preliminarily determine that imports of CFSC from the FRG are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice.

## Case History

On October 9, 1986, we received a petition filed in proper form by Wyman-Gordon Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of CFSC from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to inititate an antidumping duty investigation. We initiated the investigation on October 29, 1986 (51 FR 40349, November 6, 1986), and notified the ITC of our action.

On November 18, 1986, the ITC determined that there is a reasonable indication that imports of CFSC from the FRG are materially injuring a U.S. industry (51 FR 44537 December 10, 1986).

On December 16, 1986, antidumping duty questionnaires were presented to Gerlack-Werke GmbH (Gerlach) and Thyssen Umformtechnik (Tyssen), the two FRG producers that account for virtually all of the exports to the United States during the period of investigation. We received the questionnaire responses from Thyssen on February 5 and from Gerlach on February 6, 1987. Deficiency questionnaires were sent to Thyssen and Gerlach on February 6, 1987. In addition, we sent constructed value questionnaires to Gerlach and Thyssen on March 18 and April 14, 1987, respectively. Responses to our questionnaires as well as additional supplemental information, were submitted prior to this determination.

On February 20, 1987, petitioner filed a request for extension of the deadline date for the preliminary determination pursuant to section 773(c)(1)(A) of the Act. On February 26, 1987, we extended the deadline date for the preliminary determination by 50 days, to not later than May 7, 1987 (52 FR 7286, March 10, 1987).

## Scope of Investigation

The products covered by this investigation are forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classified under items 660.6713, 660.6727, 660.6747, 660.7113, 660.7127 and 660.7147 of the *Tariff Schedules of the United States Annotated* (TSUSA). Neither cast

crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or greater than 750 pounds are subject ot this investigation.

**Period of Investigation**

CFSC are normally sold to the United States on the basis of long-term requirements contracts. Therefore, in order to capture the most recent sales of CFSC to the United States, we extended the period of investigation to encompass the 20 months from March 1, 1985, to October 31, 1986, instead of using the six-month period defined by § 353.38(a) of our regulations.

**Date of Sale Issue**

Over the course of this investigation, comments were submitted by both petitioner and counsel for Thyssen stating their positions on what each considers to constitute the appropriate date of Thyssen's U.S. sales. Petitioner contends that certain sales reported by Thyssen were actually made before the period of investigation and that certain other sales took place during the period of investigation, but were not reported. Thyssen contends that it has properly reported all U.S. sales that were confirmed during the period of investigation.

In considering this issue we have reviewed documents filed by both parties. Counsel for Thyssen has submitted various documents including requests for quotation, memoranda between companies concerning negotiations, offers, acceptances, revisions and purchase orders. Likewise, counsel for petitioner has submitted documentation also purporting to support its allegation. We examined all documents received for evidence of written confirmation of sales quantity and price. Based on our review, we have excluded Thyssen's 1985 shipments from our calculations because we believe the price and quantity were confirmed prior to the period of investigation. We included certain shipments made subsquent to the period of investigation because documentation submitted by Thyssen indicates that that sale on which the shipments were based actually occurred during the period of investigation. We will carefully examine this issue at verification.

**Fair Value Comparisons**

To determine whether sales of CFSC in the United States were made at less than fair value, we compared the United States price to the foreign market value for the companies under investigation, using data provided in the responses.

**United States Price**

As provided in section 772(b) of the Act, we used the purchase price of CFSC to represent the United States price for sales by Gerlach and Thyssen because the merchandise was sold directly to unrelated purchasers prior to its importation into the United States.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the department determined that purchase price was the more appropriate indicator of the United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;

2. This was the customary commercial channel for sales of this merchandise between the parties involved; and

3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

We calculated the purchase price based on the c.i.f. delivered, duty paid price to unrelated purchasers. We made deductions, where appropriate, for foreign inland freight, ocean freight, U.S. inland freight, inland and marine insurance, U.S. customs duty and brokerage and handling.

Thyssen requested that we increase the purchase price to account for tooling cost which were paid by its U.S. customer separately from the crankshaft invoice price. We have disallowed this claim because such expenses do not qualify as an addition to purchase price pursuant to section 772(d)(1) of the Act. We have requested information on tooling costs associated with home market sales and will consider making a circumstance of sale adjustment if the information is provided on a timely basis and verified.

**Foreign Market Value**

In accordance with section 773(a)(1)(A) of the Act, we calculated froeign market value based on home market sales and, where appropriate, constructed value. For both Gerlach and Thyssen, a constructed value comparison was used for all but one sale in the United States during the period of investigation.

For Gerlach, we based our calculations of foreign market value on the ex-works, packed prices to unrelated purchasers in the home market. Pursuant to § 353.15 of our regulations, we made circumstance of sale adjustments for differences in warranty expenses and credit expenses. We allowed an offset for indirect selling expenses in the home market up to the amount of the commissions for certain shipments in the U.S. market in accordance with § 353.15(c) of the Commerce Regulations. We made an adjustment to account for differences in physical characteristics of the merchandise in accordance with § 353.16 of our regulations. We deducted home market packing and added U.S. packing expenses. We have disallowed an offset of indirect selling expenses for 1986 shipments by Gerlach because its information indicates that the commission may have been paid to a U.S. selling agent who is related to Gerlach through ownership by a common holding company. We will carefully examine this issue during verification.

For Thyssen, we based our calculations on delivered, packed prices to unrelated purchasers in the home market. We deducted home market inland freight and made a circumstance of sale adjustment for credit expenses. We made an adjustment to account for differences in physical characteristics of the merchandise in accordance with § 353.16 of our regulations. We deducted home market packing and added U.S. packing expenses.

**Constructed Value**

We used constructed value as the basis for calculating foreign market value where there were no sales of such or similar merchandise as defined in section 771(16) of the Act. The constructed values were based on the respondents' information, using actual material and fabrication costs. We made the following adjustments to the data submitted by the respondents:

*1. Gerlach*

a. Material cost was adjusted upward by subtracting the claim for special rebates and other credits.

b. Labor cost was adjusted to compensate for a reported increase in input units during the fabrication process.

c. Factory overhead was adjusted to compensate for a reported increase in input units during the fabrication process.

d. Machining costs used were those reported in the original response as machining adjustments.

e. SG&A, as reported, exceeded the statutory minimum of ten percent; therefore actual costs were used.

f. Profit, as reported, did not meet the statutory minimum; therefore eight percent was used.

We made a circumstance of sale adjustment to the constructed value to account for warranty expenses.

*2. Thyssen*

a. SG&A, as reported, exceeded the statutory minimum of ten percent; therefore actual costs were used.

b. Profit, as reported, exceeded the statutory minimum; therefore actual profit was used.

**Currency Conversion**

When calculating foreign market value, we made currency conversions from French francs and German marks to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

**Verification**

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will follow standard verification procedures, including examination of relevant sales and financial records of the companies under investigation.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of CFSC, from the FRG, except Gerlach-Werke GmbH that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average dumping amount by which the foreign market value of CFSC from the FRG, except from Gerlach-Werke GmbH, exceeds the United States price, as shown in the table below. This suspension of liquidation will remain in effect until further notice.

| Manufacturer/producer/exporter | Estimated weighted-average margin percentage |
|---|---|
| Gerlach-Werke GmbH | De minimis. |
| Thyssen Umformtechnik | 1.69. |
| All others | .78. |

**ITC Notification**

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry no later than 120 days after the date of this preliminary determination or 45 days after our final affirmative determination.

**Public Comment**

In accordance with section 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties on opportunity to comment on this preliminary determination on June 25, 1987, at 1 p.m., at the U.S. Department of Commerce, Room B841, 14th and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by June 18, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within seven days after the hearing transcript is available, at the above address in at least ten copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

May 7, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87–10953 Filed 5–12–87; 8:45am]

BILLING CODE 3510-DS-M

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**[A–588–028]**

## Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On December 5, 1986 the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan. The review covers 18 manufacturers and/or exporters of this merchandise to the United States and generally the period April 1, 1981 through March 31, 1983. The review indicates the existence of margins for some of the firms during the period.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the final results from those presented in our preliminary results of review for Nissan Motor Co., Ltd. and we also intend to publish separately a tentative determination to revoke in part for several firms.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Bruno or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 5, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 48943) the preliminary results of its administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9926, April 12, 1973). The Department has now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle" as used in this review includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmission and/or conveyance. Such chain consists of a series of alternately assembled roller links and pinlinks in which the pins articulate inside the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain, other than bicycle, is currently classifiable under various provisions of the Tariff Schedules of the United States Annotated, from item numbers 652.1400 through 652.3800.

The review covers eighteen manufacturers and/or exporters of Japanese roller chain, other than bicycle, to the United States, and generally the period April 1, 1981 through March 31, 1983.

**Analysis of Comments Received**

We invited interested parties to comment on the preliminary results. We recieved a comment from a respondent concerning a currency conversion error. We have corrected this error. We received one additional comment from three related respondents, Daido Kogyo Co., Ltd. (Daido Kogyo), Enuma Chain Manufacturing Co., Ltd. (Enuma), and Meisei Trading Co., Ltd., now called Daido Corporation (Meisei).

*Comment:* Daido Kogyo, Enuma, and Meisei argue that a tentative revocation for each company should have accompanied the preliminary results since they have had three consecutive years of no dumping margins. The companies have previously submitted requests for revocation and have done everything necessary to qualify for a tentative revocation.

*Department's Position:* We agree. The Department will publish a tentative determination to revoke in part for various firms in a separate notice.

**Final Results of the Review**

Based on our analysis of the comments received and correction of certain clerical errors, we have revised our preliminary results for Nissan Motor Co., Ltd., and we determine that the following weighted-average margins exist:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Daido Kogyo Co., Ltd./Daido Corp. | 4/01/81–3/31/83 | 0 |
| Daido Kogyo/Meisei Trading Co. | 4/01/81–3/31/83 | 0 |
| Deer Island | 4/01/81–3/31/83 | [1] 15.92 |
| Enuma Chain Mfg. Co., Ltd./Daido Corp. | 4/01/81–3/31/83 | 0 |
| Enuma Chain/Meisei Trading | 4/01/81–3/31/83 | 0 |
| Izumi Chain Mfg. Co., Ltd./Rocky Asia Co. | 10/01/80–9/30/82 | 0 |
| Izumi Chain/Shima Trading Co., Ltd. | 10/01/80–9/30/81 | 0 |
| | 10/01/81–9/30/82 | 0.14 |
| Izumi Chain/All others | 10/01/80–9/30/82 | 0 |
| Katayama Chain Co., Ltd. | 4/01/81–3/31/82 | 0 |
| | 4/01/82–3/31/83 | [1] 0 |
| Mitsubishi Motors Corp. | 4/01/81–3/31/83 | 0 |
| Naniwa Kogyo Co., Ltd. | 4/01/79–3/31/80 | 43.29 |
| | 4/01/80–3/31/81 | 0.90 |
| | 4/01/81–3/31/83 | 0 |
| Nissan Motor Co., Ltd. | 4/01/81–7/31/82 | 0 |
| Suzuki Motor Co., Ltd. | 4/01/81–3/31/83 | 0 |
| Takasago Chain Co., Ltd./Central Industries Inc. | 4/01/81–3/31/83 | 0 |
| Takasago Chain/Royal Industries Ltd. | 4/01/81–3/31/82 | 15.92 |
| | 4/01/82–3/31/83 | [1] 15.92 |
| Takasago Chain/Hitachi Metals Ltd. | 4/01/81–3/31/82 | 0.35 |
| | 4/01/82–3/31/83 | 0.36 |
| Yamakyu Chain Co., Ltd. | 4/01/81–3/31/82 | 0 |
| | 4/01/82–3/31/83 | [1] 0 |

[1] No shipments during the period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States prices and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for these firms. Since the margins for Izumi Chain/Shima Trading and Takasago Chain/Hitachi Metals are less than 0.5 percent and, therefore, de minimis for cash deposit purposes, the Department shall not require a cash deposit for these firms. For any shipments from the remaining known manufacturers and/or exporters not covered by this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of those firms (48 FR 51801, November 14, 1983). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1983 and who is unrelated to any reviewed firm or any other previously reviewed firm no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese roller chain, other than bicycle, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: May 2, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87–10954 Filed 5–12–87; 8:45 am]
BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Financial Assistance Applications; Nevada

**AGENCY:** Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118 for the project performance period of October 1, 1987 to September 30, 1988. The MBDC will operate in the Las Vegas Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I. D. Number for this project will be 09–10–87008–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf or minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistnace. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105.

May 28, 1987 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

*Closing Date:* The closing date for applications is June 22, 1987. Applications must be postmarked by midnight June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development).

Xavier Mena,

*Regional Director, San Francisco Regional Office.*

[FR Doc. 87–10845 Filed 5–12–87; 8:45 am]

BILLING CODE 3510-21-M

## National Telecommunications and Information Administration

### Frequency Management Advisory Council; Recharter

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of recharter for the Frequency Management Advisory Council.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and General Services Administration (GSA) Interim Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, as amended, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Frequency Management Advisory Council is in the public interest in connection with the performance of duties imposed on the Department by law. Effective April 28, 1987, the Frequency Management Advisory Council has been rechartered.

The Council was first established on July 19, 1965, and was terminated on April 11, 1987. It provided advice to the Director of the Office of Telecommunications Policy (OTP), Executive Office of the President, until that office was merged by Executive Order 12046 of March 27, 1978, into the Department of Commerce, National Telecommunications and Information Administration.

In reviewing the need for the Council, the Secretary has reaffirmed its original purpose of providing advice on radiofrequency spectrum allocation and assignment matters and means by which the effectiveness of Federal Government frequency management may be enhanced. Research indicates that the Council's function cannot be accomplished by any organizational element or other committee of the Department.

The Council shall continue with a balanced representation of 15 members, chaired by the Assistant Secretary of Commerce for Communications and Information or designee, and will operate in compliance with the provision of the Federal Advisory Committee Act.

Copies of the Council's renewed Charter has been filed with appropriate committees of Congress and with the Library of Congress.

FOR FURTHER INFORMATION CONTACT: Inquiries or comments may be addressed to the Committee Control Officer, Mr. Michael W. Allen, National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4706, Washington, DC 20230; telephone: (202) 377–0805, or Suzette Kern, the Department Committee Management Analyst, telephone: (202) 377–4217.

Dated: April 28, 1987.

Michael W. Allen,

*Executive Secretary, Frequency Management Advisory Council, National Telecommunications and Information Administration.*

[FR Doc. 87–10904 Filed 5–12–87; 8:45 am]

BILLING CODE 3510-60-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

May 8, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive

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published below to the Commissioner of Customs to be effective on May 8, 1987. For further information contact Janet Heinzen, International Trade Specialist (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 682–3075. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

A CITA directive dated August 7, 1985 (50 FR 32468), as amended, established an import limit for cotton textile products in Category 336, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1985 and extended through May 31, 1986.

A further directive dated May 22, 1986 (51 FR 19249), as amended, established an import limit for Category 336, among others, for the twelve-month period which began on June 1, 1986 and extends through May 31, 1987.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka provides, among other things, for the carryover of shortfalls in certain categories from the previous agreement year. Carryover is being applied to the current year limit for Category 336. The 1985–1986 limit for Category 336 is being reduced accordingly.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 8, 1987.

**Committee for the Implementation of Textile Agreements**

May 8, 1987

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on August 7, 1985 and May 22, 1986 by the Chairman of the Committee for the Implementation of Textile Agreements concerning certain cotton, wool, and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month periods which began on June 1, 1985 and June 1, 1986.

Effective on May 8, 1987, the directives of August 7, 1985 and May 22, 1986 are hereby amended to adjust the previously established restraint limits for Category 336 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983[1]:

| Category | Adjusted 12-mo. limit |
|---|---|
| June 1, 1985—May 31, 1986: | |
| 336 | 60,416 doz.[2] |
| June 1, 1986—May 31, 1987: | |
| 336 | 77,910 doz.[3] |

[2] The limit has not been adjusted to account for imports exported after May 31, 1984.
[3] The limit has not been adjusted to account for imports exported after May 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–10948 Filed 5–12–87; 8:45 am]

BILLING CODE 3510–DR–M

## Amending Export Visa and Exempt Certification Requirements for Certain Textiles and Textile Products From India

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 14, 1987. For further information contact Ann Fields, International Trade Specialist (202) 377–4212.

**Background**

A CITA directive dated November 26, 1979, as amended (44 FR 66504), established visa and exempt certification requirements for certain cotton, wool and man-made fiber textile products, produced or manufactured in India.

Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blends and Other Vegetable Fiber Textile Agreement of February 6, 1987, the Governments of the United States and India have agreed to further amend the export visa and exempt certification systems.

Merchandise in TSUSA numbers 360.0600, 360.1015, 360.1200, 360.7600, 360.7800, 361.4500, 361.5420 and 361.5426, as well as properly marked commercial samples, which are valued at U.S. $250 or less, and items for the personal use of the importer, which accompany the traveler, do not require a visa or certification for entry and shall not be charged to agreement levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (19 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 8, 1987.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 26, 1979, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which established export visa and exempt certification requirements for certain cotton, wool and man-made fiber textile products, produced or manufactured in India.

Effective on May 14, 1987, a visa or certification shall not be required for entry of merchandise in TSUSA numbers 360.0600, 360.1015, 360.1200, 360.7600, 360.7800, 361.4500, 361.5420 and 361.5426, as well as properly marked commercial samples, which are valued at U.S. $250 or less, and items for the personal use of the importer, which accompany the traveler.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–10949 Filed 5–12–87; 8:45 am]

BILLING CODE 3510–DR–M

[1] The agreement provides, in part, that (1) specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits may also be increased for carryover and carryforward.

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: June 2–3, 1987.

Time of meeting: 0830–1600 hours each day.

Place: Center for Night Vision and Electro-Optics, Fort Belvoir Virginia.

Agenda: The ASB Ad Hoc Subgroup on U.S. Army CECOM RD&E Center Effectiveness Review will visit the Center for Night Vision and Electro-Optics, Fort Belvoir, for the purpose of gathering data for the effectiveness review of the CECOM facility. Briefings will be presented by each division covering their work program. The Commander, LABCOM, will interact with the panel to discuss the relationship of LABCOM to the RD&E Centers. In addition, representatives from several TRADOC schools will meet with the panel to discuss their relationship the CECOM RD&E Center. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d).

The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 of 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87–10862 Filed 5–12–87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reducation Act of 1980.

**DATE:** Interested persons are invited to submit comments on or before June 12, 1987.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 732–3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consulation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to preform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requsted, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 7, 1987.

**Carlos U. Rice,**

*Director for Information Technology Services.*

### Office of Educational Research and Improvement

*Type of review:* New.
*Title:* Final Financial Status and Performance Report for the Library Literacy Program.
*Agency form number:* G50–34P.
*Frequency:* Annually.
*Affected Public:* State or local Governments.
*Reporting burden:* Responses: 250. Burden hours: 1,000.
Recordkeeping burden: Recordkeepers: 250. Burden hours: 250.

*Abstract:* This form will be used by state and local public libraries to report to the Department on the use of grant funds awarded under the Library Literacy Program, Title VI of Library Services and Construction Act, as amended. The Department uses this information to monitor performance and financial data.

### Office of Elementary and Secondary Education

Type of review: Revision.
Title: Project Performance Reports for the Indian Education Programs.
Agency form number: ED 354–1.
Frequency: Annually.
Affected public: State or local governments.
Reporting burden: Responses: 1200. Burden hours: 2400.
Recordkeeping burden: Recordkeepers: 1200. Burden hours: 1200.

Abstract: The project performance report requests information from formula grantees to be used for program assessment, planning and reporting purposes, as well as determine compliance with program regulations.

### Office of Special Education and Rehabilitative Services

Type of review: Extension.
Title: State Agency Project And Local Educational Agency Recordkeeping.
Agency form number: B20–19P.
Frequency: NA
Affected public: State or local governments.
Reporting burden: Responses: 0. Burden hours: 0.
Recordkeeping burden: Recordkeepers: 158. Burden hours: 500.

Abstract: In order to receive a sub-grant under Pub. L. 89–313, State Operated Programs and Local Educational Agencies for Handicapped children must submit an application for a sub-grant to the State Education Agency.

[FR Doc. 87–10891 Filed 5–12–87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.195]

### Applications for New Awards under the Drug-Free Schools and Communities—Hawaiian Natives Program

*Purpose:* Provides grants to organizations primarily serving and representing Hawaiian Natives which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer alcohol and drug abuse

education and prevention programs for the benefit of Hawaiian Natives.

*Deadline for transmittal of applications:* June 30, 1987.

*Applications available:* May 15, 1987.

*Available funds:* $389,000.

*Estimated range of awards:* $43,000–$389,000.

*Estimated average size of awards:* Unknown.

*Estimated number of awards:* 1–9.

*Project period:* Up to 36 months.

*Applicable Regulations:*

(a) Regulations governing the Hawaiian Natives Program as proposed to be codified in 34 CFR Part 230. (A notice of proposed rulemaking for proposed Part 230 was published in the Federal Register on April 21, 1987 at 52 13212. Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resubmit their applications); and

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

*For Applications or Information Contact:* Mr. Allen King, OESE Drug-Free Schools Task Force, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2135, Washington, DC 20202. Telephone: (202) 732–4599.

*Program Authority:* 20 U.S.C. 4645.

Dated: May 7, 1987.

**Lois A. Bowman,**

*Acting Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 87–10894 Filed 5–12–87; 8:45 am]

BILLING CODE 4000–01–M

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[CFDA No. 84.003Q]

## Notice Inviting Applications for New Awards Under the Bilingual Education Program: State Educational Agency Program for Fiscal Year 1987

*Action:* Deadline Date for Intergovernmental Review Comments. On April 23, 1987, the Department published a notice in the Federal Register (52 FR 13498) inviting applications for new awards under Bilingual Education: State Educational Agency Program for fiscal year 1987. In the notice, the deadline date was omitted for the receipt of intergovernmental review comments.

This notice establishes the deadline date for the intergovernmental review comments as July 25, 1987.

*For further information contact:* Luis A. Catarineau at (202) 245–2922.

Dated: May 7, 1987.

**Carol Pendas Whitten,**

*Director, Office of Bilingual Education and Minority Language Affairs.*

[FR Doc. 87–10892 Filed 5–12–87; 8:45 am]

BILLING CODE 4000–01–M

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[CFDA No.: 84.023X]

## Invitation for Applications for New Awards Under the Research in Education of the Handicapped Program for Fiscal Year 1987

**AGENCY:** Department of Education.

**ACTION:** Correction notice.

**SUMMARY:** On May 5, 1987 at 52 FR 16767, a notice establishing a closing date for the Early Childhood Research Institute—Policy under the Research in Education of the Handicapped Program was published in the Federal Register. On page 16767, in the first column, the deadline for intergovernmental review comments should be deleted. In the second column, under applicable regulations, item (b) should read: "(b) the Educational Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78, and".

Dated: May 8, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–10946 Filed 5–12–87; 8:45 am]

BILLING CODE 4000–01–M

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## National Advisory Council on Educational Research and Improvement; Meeting

**AGENCY:** National Advisory Council on Educational Research and Improvement.

**ACTION:** Full Council Meeting on the National Advisory Council on Educational Research and Improvement.

**SUMMARY:** This notice sets forth the schedule and agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

**DATE:** June 4 and 5, 1987.

**ADDRESS:** The Council will meet on June 4 from 9:30 a.m. to 4:30 p.m. at the North Carolina School of Science and Math, 1219 Broad Street, Durham, NC 27705. The Council will meet on June 5 from 9:00 a.m. to 1:30 p.m. at the Sheraton University Center, 2800 Middleton Avenue at Morreene Road and 15–501, Durham, NC 27705.

**FOR FURTHER INFORMATION CONTACT:** Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 2000 L Street, NW., Suite 617–B, Washington, DC 20036, (202) 254–7490.

**SUPPLEMENTARY INFORMATION:** The National Advisory Council on Educational Research and Improvement is established under section 405 of the General Education Provisions Act (20 USC 1221 e); Department of Education organization plan implemented pursuant to section 413 of Pub. L. 96–88 and notice to Congress dated July 2, 1985. The Council is established to advise the Secretary of Education on policies and priorities for the Office of Educational Research and Improvement (OERI), and to review the conduct of OERI and to advise the Secretary of Education and the Assistant Secretary for OERI on the development of programs to be carried out by OERI.

Meetings of the Council are open to the public. The agenda for June 4 includes a tour of the North Carolina School of Science and Math; a briefing on the residential secondary school program, outreach programs, and admissions process; a working luncheon with the teachers at the school; and presentations by representatives of regional educational laboratories. The agenda for June 5 includes reports from three Council Members and one staff member, and discussion of the proposed expansion of the National Assessment of Educational Progress.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 2000 L Street, NW., Suite 617–B, Washington, DC 20036, from the hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.

Dated: May 8, 1987.

**Mary Grace Lucier,**

*Executive Director.*

[FR Doc. 87–10930 Filed 5–12–87; 8:45 am]

BILLING CODE 4000–01–M

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# DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Project Nos. 9193–001 et al.]

## Hydroelectric Applications (Riverdale Hydro Associates et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory

Commission and are available for public inspection:

1 a. Type of Application: License (under 5MW).

b. Project No.: 9193–001.

c. Date Filed: March 24, 1986.

d. Applicant: Riverdale Hydro Associates.

e. Name of Project: Davis-Weber Canal Hydro Project.

f. Location: On Davis-Weber Canal in Weber County, Utah: Section 19, 29, 33, 34, 35, 36, T5N, R1W; Section 30, T5N, R1E: SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Michael J. Graham, P.O. Box N, Manti, UT 84642.

i. Comment Date: June 8, 1987.

j. Description of Project: The proposed project would utilize an abandoned project site of the Utah Power & Light Company and would consist of: (1) A concrete diversion structure, about 15 feet high and 180 feet long; (2) a concrete lined canal about 42,462 feet long; (3) an intake structure and a 72-inch-diameter steel penstock, about 1,405 feet long; (4) a powerhouse with an installed capacity of 3,750 kW under a head of 200 feet; (5) a tailrace canal, 2,500 feet long, returning flow to the Weber River; (6) a 46-kV transmission line, 30 feet long, connecting to an existing substation; and (7) appurtenant facilities. The applicant estimates that the average annual energy output would be 19,115,640 kWh.

k. Purpose of Project: Project energy would be sold to the Utah Power & Light Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 10204–000.

c. Date Filed: December 9, 1986.

d. Applicant: Northern Wasco County People's Utility District.

e. Name of Project: McNary Dam Fish Attraction Hydroelectric.

f. Location: At the Corps of Engineers NcNary Dam on the Columbia River near Umatilla in Benton County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Harold E. Haake, Manager, Northern Wasco County People's Utility District, P.O. Box 621, The Dalles, OR 97058, (503) 296–2947.

i. Comment Date: June 8, 1987.

j. Description of Project: The proposed project would consist of: (1) A power plant with an installed capacity of 8.5 MW to be installed on two existing conduits of the auxiliary fish-water supply system; and (2) an 1,800-foot-long transmission line connecting to an existing Bonneville Power Administration power line. The average annual energy production is estimated to be 70 GWh and the estimated cost of permit activities is $162,000.

k. Purpose of Project: Power would be used in the Applicant's service area.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3 a. Type of Application: Exemption (less than 5 MW).

b. Project No: 10087–000.

c. Date Filed: September 18, 1986.

d. Applicant: Reed Hydro-Electric Corporation.

e. Name of Project: Savage River.

f. Location: Savage River, Garrett County, Maryland.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708.

h. Contact Person: Mr. John L. Reed, President, Reed Hydro-Electric Corporation, 5437 Morris Avenue, Number 1, Suitland, MD 20746, (301) 899–8960.

i. Comment Date:

j. Competing Application: Project No. 9697–000, Date Filed: 12/18/85.

k. Description of Project: The proposed project would consist of: (1) An existing earth and rockfill dam 184 feet high and 1,050 feet long, with a 10–feet–diameter outlet tunnel 1,170 feet long and an uncontrolled 320-foot-long spillway with crest elevation of 1,468.5 feet msl; (2) an existing impoundment with 360 acres surface area and 20,000 acre-feet storage capacity at a normal maximum surface elevation of 1,468.5 feet msl; (3) a proposed 9.5-foot-diameter steel penstock 820 feet long, to be installed within the existing outlet tunnel; (4) a proposed concrete powerhouse 40 feet long, 38 feet high, and 15 feet wide, enclosing two turbine-generator units of 3.2 MW combined capcity; (5) a proposed 7.2-kV transmission line ⅛ mile long; and (6) appurtenant facilities.

The existing facilities are owned and operated by the Upper Potomac River Commission. The estimated annual energy production would be 9.5 GWh. The hydraulic head would be 148 feet. Project power would be sold to Potomac Edison Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

4 a. Type of Application: Exemption (5 MW or less).

b. Project No.: 9785–000.

c. Date Filed: December 30, 1985.

4 d. Applicant: Dobbs Seed and Grain Company, Inc.

e. Name of Project: Falls of Rough Hydroelectric.

f. Location: On Rough River near Falls of Rough, Breckenridge and Grayson Counties, Kentucky.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. Daniel R. Swan, Power Development Systems, 1712 Deerwood #3, Louisville, KY 40205–1053, (502) 451–1848.

i. Comment Date: June 8, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing masonry gravity dam 10 feet high and approximately 150 feet long; (2) an existing 5-acre reservoir with a gross storage capacity of 25 acre-feet and a normal surface elevation of 440 feet MSL; (3) rebuilding an existing flume located at the east end of the dam to house two vertical turbines and two generators with a combined output of 110 kW; (4) restoring an existing tailrace; (5) a proposed transmission line 200 feet long; and (6) appurtenant facilities. The applicant estimates that the average annual energy generation would be 334 MWh.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

a. Type of Application: Preliminary Permit.

b. Project No.: 10278–000.

c. Date Filed: January 28, 1987.

d. Applicant: Cascade River Hydro.

e. Name of Project: Kindy Creek.

f. Location: On Kindy Creek within the Snoqualmie-Mt. Baker National Forest in T34N, and T35N, R12E, near Marblemount in Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, 12122—196th Avenue, NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: June 18, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 3–foot-high concrete diversion structure at elevation 1,500 feet; (2) a 7,630-foot-long, 60-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capcity of 2.44 MW; and (4) an 11-mile-long

transmission line. Applicant estimates the average annual energy production to be 10.9 GWh and a cost of $40,000 for the work to be performed uner the preliminary permit.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 10292–000.

c. Date Filed: January 30, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Silver Creek.

f. Location: On Silver Creek, tributary of Baker Lake, within Snoqualmie-Mt. Baker National Forest in Whatcom County, Washington near the town of Concrete. T.37n., R.9E., sec. 3, SW¼, S½NW¼; sec. 10, W½; sec. 1, 2, 3, 4, 8, 9, 17, 20, 29, 30, 31, 32.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, President, Washington Hydro Development Company, 12122 196th Avenue NW., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: June 18, 1987.

j. Description of Project: The proposed project would consist of: (1) A 36-inch-wide diversion-intake structure at elevation 2,500 feet; (2) an 18-inch-diameter, 6,000-foot-long penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 2,067 kW, producing an average annual energy output of 9.06 GWh; (4) a tailrace; and (5) a 6-mile-long, 115-kV transmission line typing into an existing Puget Sound Power and Light Company line. No new roads will be needed to conduct the studies.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $40,000.

k. Purpose of Project: Project power would be sold to Puget Sound Power & Light Company.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. Type of Application: Preliminary Permit.

b. Project No: 10340–000.

c. Date Filed: March 6, 1987.

d. Applicant: Trenton Falls Hydroelectric Company.

e. Name of Project: Downer Hill Road.

f. Location: Hinckley-Utica Water Transmission System in Oneida County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. Contact Person: Mr. Fred T. Samel, P.O. Box 109, Prospect, NY 13435, (315) 733–8478.

i. Comment Date: June 17, 1987.

j. Description of Project: The proposed project would consist of: (1) Two existing adjacent water transmission pipes, 36 inches in diameter of ductile iron pipe and 24 inches in diameter of cast iron pipe approximately 64,000 feet long; (2) a proposed 32–foot-wide and 44-foot-long powerhouse to contain one turbine/generator with an installed capacity of 486 kW; (3) a proposed switchyard approximately 15 feet long and 15 feet wide; (4) a new three phase 13.2-kV transmission line approximately 2,100 feet long; and (5) appurtenant facilities. The existing facilities are owned by the City of Utica Board of Water Supply. The estimated average annual energy produced by the project would be 3.5 million kWh operating under a net hydraulic head of 160 feet. The applicant estimates that the cost of work to be performed under the preliminary permit would be $49,500.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No: 10355–000.

c. Date Filed: March 18, 1987.

d. Applicant: WV Hydro, Inc.

e. Name of Project: Hildebrand.

f. Location: Monongahela River, Monongalia County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. Contact Person: Mr. James B. Price, WV Hydro, Inc., 120 Calumet Ct., Aiken, SC 29801, (803) 624–2749.

i. Comment Date: June 18, 1987.

j. Description of Project: The proposed project would use the existing Corps of Engineers' Hildebrand Lock and Dam and would consist of: (1) A powerhouse and integral intake structure 50 feet wide and 120 feet long housing one turbine-generator with a capacity of 10 MW and an average annual output of 32 GWh; (2) a switchyard located near the powerhouse; (3) a 600-foot-long, 138-kV transmission line; and (4) appurtenant facilities. Project power would be sold to Monongahela Power Company. The net hydraulic head would be 20 feet. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No: 10234–000.

c. Date Filed: January 7, 1987.

d. Applicant: Bryant Mountain Hydroelectric Company.

e. Name of Project: Bryant Mountain Pumped Storage.

f. Location: On U.S. Bureau of Reclamation irrigation canal in Klamath County, Oregon near the town of Malin. T.40S., R.13E., sections 30, 31, 35, 36; section 25, SE¼ of SE¼; T.41S., R.12E., section 1, N½ of NE¼; section 6; section 7, NE¼ of NW¼, E½; section 8, SW¼ of SW¼; section 17, SE¼ of SW¼; section 18, NE¼ of NE¼.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Bart M. O'Keeffe, Mutual Energy Co., Inc., P.O. Box 606565, Sacramento, CA 95860, (916) 971–3717.

i. Comment Date: June 19, 1987.

j. Description of Project: The proposed project would consist of: (1) A 100-foot-high, 1,600-foot-long earth dam; (2) the Worlow Meadows Reservoir enlarged to have a surface area of 210 acres, a storage capacity of 11,000 acre-feet at elevation 5,640 feet m.s.l.; (3) an intake structure; (4) an 18-foot-diameter power tunnel consisting of a 1,360-foot-high vertical section from the intake to elevation 4,250 feet and a 13,000-foot-long horizontal section extending to the powerhouse; (5) a powerhouse containing four generating units with a total installed capacity of 200 MW, producing approximately an average annual energy output of 600,000 MWh; (6) a 90-foot-high, 6,000-foot-long earth dam creating; (7) a 210-acre Lower Reservoir at Bryant Mountain with a storage capacity of 10,500 acre-feet at elevation 4,200 feet m.s.l.; (8) a 36-inch-diameter, 2.5-mile-long, pipeline extending from the pumping plant to the Lower Reservoir; (9) a pumping plant located on the "D" Canal; (10) a 4-mile-long transmission line tying into a Pacific Southwest Intertie at the Malin substation. No new access road will be needed to conduct the studies.

The Applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $1,000,000. The proposed project would be located on lands under the administration of the U.S. Bureau of Land Management and Oregon State Department of Forestry.

k. Purpose of Project: Project power would be sold to California private utility companies.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10. a. Type of Application: Preliminary Permit.

b. Project No.: 10290–000.

c. Date Filed: January 30, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Sandy & Dillard Creeks.

f. Location: On Sandy and Dillard Creeks within the Snoqualmie-Mt. Baker National Forest in Whatcom County, Washington near the town of Concrete. T.37N., R8E., sec. 3, S½; sec. 4, SE¼SE¼; sec. 9, E½; sec. 10; sec. 11, SW¼; sec. 14, W½; sec. 15, sec. 16, E½; sec. 23, N½NW¼.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, President, Washington Hydro Development Company, 12122 196th Avenue NE., Redmond, WA 98052, (206) 885–3686.

i. Comment Date: June 19, 1987.

j. Description of Project: The proposed project would consist of developments on Sandy Creek and Dillard Creek. Both developments would consist of: (1) A 36-inch-wide diversion-intake structure at elevation 2,500 feet; (2) a 36-inch-diameter, 10,000-foot-long penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 3,787 kW, producing an average annual energy output of 16.59 GWh; (4) a tailrace; (5) a 4-mile-long, 115-kV buried transmission line tying into an existing Puget Sound Power and Light Company line. No new access road will be needed to conduct the studies.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $40,000.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11. a. Type of Application: Preliminary Permit.

b. Project No.: 10327–000.

c. Date Filed: February 17, 1987.

d. Applicant: BAF Enterprises, Inc.

e. Name of Project: Old Columbia Dam.

f. Location: On Duck River at mile 133.53 near Columbia, Maury County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Anthony J. Fant, P.O. Box 67, Crossville, AL 35962, (205) 528–7136.

i. Comment Date: June 19, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam 22 feet high and 572 long: (2) an existing 16-acre reservoir with a storage capacity of 20 acre-feet at a surface elevation of 673 msl; (3) an existing reinforced concrete powerhouse 46 feet long, 31 feet wide, and 65 feet high housing two proposed 500-kW hydropower units for a total capacity of 1.0 MW; (4) an existing tailrace 90 feet wide, 15 feet deep, and 30 feet long; (5) a proposed 12.5-kV transmission line 400 feet long; and (6) appurtenant facilities. The applicant estimates that the average annual energy generation would be 3.2 GWh, and that the cost of the work to be performed under the permit would be $25,000. The project would be sold to the City of Columbia or the Tennessee Valley Authority. The dam is owned by the City of Columbia, Tennessee.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12. a. Type of Application: Preliminary Permit.

b. Project No.: 10338–000.

c. Date Filed: March 4, 1987.

d. Applicant: Longhill Associates.

e. Name of Project: West Groton Water Power.

f. Location: On Squannacook River, near Town of Groton, in Middlesex County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. Paul H. Kirshen, Longhill Associates, 94 Farmers Row, Groton, MA 01450, (617) 448–6570.

i. Comment Date: June 19, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 18-foot-high, 1500-foot-long concerte dam owned by Helmer Nielsen; (2) an existing reservoir with a storage capacity of 110 acre-feet and surface area of 9 acres at normal maximum surface elevation of 230 feet (msl); (3) an existing intake structure located on the east side of the dam; (4) an existing 150-foot-long, 7-foot-diameter steel penstock; (5) an existing powerhouse, to be modified, containing a single generating unit with installed capacity of 210 kW at a design head of 18 feet; and (6) a proposed 100-foot-long transmission line connecting to an existing Groton Electric Light Department line.

The estimated average annual energy production is 9 million kWh. The project power would be sold to Groton Electric Light Department or to a nearby utility company. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13. a. Type of Application: Preliminary Permit.

b. Project No.: 10339–000.

c. Date Filed: March 5, 1987.

d. Applicant: Hydro Energy Development Corporation.

e. Name of Project: Emerald City Power Plant.

f. Location: On the Carbon River in T18N, R6E, near Carbonado in Pierce County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) through 825(r).

h. Contact Person: Mr. James P. Carrington, 80–116th Avenue, SE., Bellevue, WA 98004, (206) 454–6200.

i. Comment Date: June 19, 1987.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 36-inch-wide concrete intake structure buried in the stream at elevation 1,420 feet; (2) a 21,800-foot-long, 84-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 15,500 kW; (4) a 1-mile-long transmission line. Applicant estimates the average annual energy production to be 72.80 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

k. Purpose of Project: The power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

*Standard Paragraphs*

*A3. Development Application*

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

*A5. Preliminary Permit*

Anyone desiring to file a competing application for preliminary permit for the proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

*A7. Preliminary Permit*

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

*A9. Notice of Intent*

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

*A10. Proposed Scope of Studies Under Permit*

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

*B. Comments, Protests, or Motions to Intervene*

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*C. Filing and Service of Responsive Documents*

Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred L. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*D1. Agency Comments*

States, agencies established pursuant to Federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, Federal and State agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in Section 313(b) of the Federal Power Act, 16 U.S.C. 8251 (b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not response to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

*D2. Agency Comments*

Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

*D3a. Agency Comments*

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 8, 1987.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–10934 Filed 5–12–87 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP87-295-000 et al.]

## Florida Gas Transmission Company et al, Natural Gas Certificate Filings

May 6, 1987.

Take notice that the followings filings have been made with the Commission:

### 1. Florida Gas Transmission Co.

[Docket No. CP87-295-000]

Take notice that on April 17, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251, filed in Docket No. CP87-295-000 a request pursuant to §§ 157.205, 157.211(b) and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211(b) and 157.216) for authorization to abandon part of an existing sales lateral serving a municipal power plant belonging to Vero Beach, Florida, and to construct two new sales taps necessary to expand hourly deliveries of natural gas to the power plant, all under authorization issued in Docket No. CP82-553-000 and as more fully set forth in the request which is on file with the Commisson and open to public inspection.

FGT states that it is currently making a direct sale of natural gas to Vero Beach for use in that city's municipal power plant in Indian River County, Florida. FGT explains that the plant is currently served by FGT's sales lateral that was constructed under the Commission's June 14, 1962, order in Docket No. G-18615 (28 FPC 318). FGT further states that the existing sales lateral consists of 9.3 miles of 4.5-inch pipeline and that the underlying sales agreement between FGT and Vero Beach provides for a maximum annual contract quantity of 3,690,000 dekatherms per year. It is asserted that Vero Beach and FGT have agreed to have FGT (1) install a second sales lateral with increased capacity for service to Vero Beach, (2) relocate a 350-foot section of the existing 4.5-inch sales lateral, (3) abandon in place a 1,570-foot section of the existing 4.5-inch sales lateral and, (4) construct two sales tapes and related meters. In order to implement this agreement, FGT requests authorization under the prior-notice procedure to construct the two new seles taps, including metering facilities and to abandon in place the 1,570-foot section. FGT asserts that the second lateral would consist of 11.3 miles of 8-inch lateral line, would qualify as an eligible facility defined in § 157.202(b)(2)(i) of the Commission's Regulations, and would be constructed under the authorization in § 157.208 (a)(2) of the Commission's Regulations.

FGT projects that the new facilities would permit Vero Beach to increase its maximum hourly takes to approximately 1,600 Mcf per hour. Further, FGT estimates that Vero Beach would take an additional 600,000 dekatherms per year reaching a total annual purchases level of 4,540,482 dekatherms per year.

FGT states that Vero Beach has agreed to reimburse FGT an initial amount of $2,000,000 for the new facilities; and in the event total cost to construct the subject facilities exceeds $2,068,000 then Vero Beach has agreed to reimburse to FGT any excess over that amount. Conversly, FGT would not refund to Vero Beach any amounts if the total cost of the project is less than $2,000,000.

*Comment date*: June 22, 1987, in accordance with Standard Paragraph G at the end of this notice.

### 2. Northern Natural Gas Co. Division of Enron Corp.

[Docket No. CP87-299-000]

Take notice that on April 22, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87-299-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to provide a compressor service for Williston Basin Interstate Pipeline Company (Williston), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to compress, at its Ft. Buford Compressor Station in McKenzie County, North Dakota, up to 48,000 Mcf of natural gas per day on behalf of Williston and amounts in excess of the 48,000 Mcf daily provided Northern has sufficient capacity. Northern would deliver these volumes of natural gas to Northern Border Pipeline Company in accordance with the provisions of a gas compression agreement dated April 10, 1987.

Northern states that the proposed compression would relieve a capacity problem on Williston's system during low periods of system sales. It is explained that the majority of gas produced in this area is gas associated with oil production. If compression is not available for such gas, it would necessitate the curtailment of oil production or the flaring of natural gas, according to Williston.

Northern proposes to charge Williston 10.79 cents per Mcf of natural gas compressed at Ft. Buford. Northern states that it proposes to render compression service to Williston for an initial term of two years upon receipt of a certificate herein with an option to extend the term upon mutual written agreeement.

*Comment date*: May 27, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 2. Northwest Alabama Gas District

[Docket No. CP87-281-000]

Take notice that on April 8, 1987, Northwest Alabama Gas District (NWA), P.O. Box 129, 201 S.W. Second Street, Hamilton, Alabama 35570,. filed in Docket No. CP87-281-000 pursuant to § 385.207 of the Commision's Rules of Practice and Procedure a petition for declaratory order finding that NWA, as a municipally-owned distribution system, is not an intrastate pipeline under the Natural Gas Policy Act of 1978 (NGPA) and therefore certain transportation services it renders for Southern Natural Gas Company (Southern) are not subject to the Commission's orders and regulations implementing section 311 of the NGPA, all as more fully set forth in the petition of file with the Commission and open to public inspection.

NWA states that it is a municipally-owned utility district organized under laws of the State of Alabama for the purpose of constructing and operatng natural gas systems in a number of Alabama municipalities. NWA states that it serves other Alabama towns under franchise agreements and rural customers located along its transmission lines, and that is sells gas at wholesale to six municipally-owned systems. NWA indicates that it operates approximately 250 miles of intrastate pipeline and obtains its gas supplies from Southern, Tennessee Gas Pipeline Company, and local natural gas fields in Lamar County, Alabama.

NWA explains that it performs a transportation service for Southern, an interstate pipeline, which was initiated in 1981. NWA explains that although it did not believe that the service for Southern fell within the scope of section 311, NWA acceded to the Commission staff's request that it seek rate approval and comply with the Commission's reporting requirements under section 311. NWA states that it received its rate approval in Docket No. ST81-194.

NWA notes that Order No. 436 permits grandfathered section 311 transportation to continue until the earlier of the expiration of the term or October 9, 1987. NWA further notes that its existing section 311 authorization for its service for Southern expired April 10, 1987. NWA states that if it elects to extend the service for Southern, it would

become subject to the open access provisions of Order No. 436.

NWA does not believe that a municipal distribution system was intended to be subjected to the provisions of section 311 of the NGPA. In addition, NWA asserts that it does not believe it is appropriate to operate its municipal system as an open access system. NWA states that it will be compelled to suspend its transportation for Southern until the Commission grants its petition for a declaratory order. Accordingly, NWA seeks a declaratory order which finds that NWA, as a municipally-owned distribution system, is not an intrastate pipeline under the NGPA. NWA states that a literal reading of the NGPA might suggest that municipal systems meet the definition of intrastate pipeline. However, NWA believes a consistent reading of Order No. 319 and section 2(17) of the NGPA indicates that a municipally-owned distribution system is a local distribution company and not an intrastate pipeline.

Comment date: May 27, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**4. Southern Natural Gas Co.**

[Docket No. CP86-460-002]

Take notice that on April 10, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-460-002 a petition to amend the order issued June 20, 1986, as amended, pursuant to the Natural Gas Act so as to authorize Southern to increase the daily transportation quantity for the end-user, Bickerstaff Clay Products Company, Inc. (Bickerstaff), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Southern states that by its order issued June 20, 1986, as amended, in this proceeding, the Commission authorized Southern to perform limited-term transportation service on behalf of the Utilities Board of the City of Phenix City, Alabama (Phenix City), acting as agent for Bickerstaff. It is stated that the certificate authorizes Southern to transport up to 1,500 MMBtu equivalent of natural gas per day for a term expiring June 20, 1987, and that the gas is used in Bickerstaff's plant in Phenix City, Alabama.

Southern states that it has received a request from Phenix City to continue the transportation service after the expiration of the existing certificate authorization. It is further stated that in a revision to its statement of policy which was filed with the Commission in Docket Nos. CP86-277-000, et al., on February 17, 1987, Southern stated that it is willing to seek limited-term certificate authorization to transport gas for either a new shipper or an existing shipper through October 31, 1988. Southern indicates that accordingly, Southern and Phenix City have agreed to extend their term of their transportation agreement so that Southern may continue to serve Phenix City through October 31, 1988.

In addition to the extension of term proposed herein, Southern proposes to increase the transportation quantity from 1,500 MMBtu equivalent of natural gas per day to 3,900 MMBtu equivalent of gas per day. It is stated that Southern has been advised by Phenix City that Bickerstaff has arranged to obtain additional gas supplies in order to provide for increased requirements at its plant in Phenix City, Alabama. No other changes are proposed herein. No construction of facilities is proposed.

Comment date: May 27, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**5. United Gas Pipe Line Company**

[Docket No. CP87-298-000]

Take notice that on April 21, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-14778, filed in Docket No. CP87-298-000 an application pursuant to section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing an increase in the Maximum Daily Quantity (MDQ) of natural gas from 2,032 Mcf to 2,320 Mcf, at the Town Border Station servicing Simmesport/Moreauville, Avoyelles Parish, Louisiana and the construction and operation of a sales metering station to establish an independent delivery point to exclusively serve Simmesport, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

United States that Simmesport/Moreauville T. B. Station increase in MDQ is needed in order to meet current and future market demands and to achieve adequate service at both locations. Further, United States that it has supplies available to meet the proposed requirements and that the requested MDQ increase will not result in a net increase in demand on United's system but rather, will replace a small portion of the substantial attrition losses sustained in a week market, which United is experiencing.

United further states that Simmesport has experienced severe pressure problems on its system during peak periods and that Simmesport has received a Federal grant to construct pipeline facilities to bypass Moreauville and to connect directly to the proposed sales metering station, which would correct the pressure problems. Moreauville would continue to be served through the existing metering station, it is stated. United estimates the cost of the facilities would be $47,100, which would be reimbursed by Simmesport.

Comment date: May 17, 1987, in accordance with Standard Paragraph F at the end of this notice.

**6. Southern Natural Gas Co.**

[Docket No. CP87-291-000]

Take notice that on April 16, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-291-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport up to 5,000 MMBtu of natural gas per day on an interruptible basis on behalf of the City of Dublin, Georgia (Dublin). Southern proposes to render the service for a limited term ending on October 31, 1988.

It is stated that Dublin has arranged to purchase natural gas from SNG Trading Inc., Texican Natural Gas Company, and Panhandle Trading Company. Dublin would cause gas to be delivered to Southern for transportation at existing points on Southern's system as specified in the transportation agreement between the parties, it is explained. It is further explained that Southern would redeliver natural gas to Dublin at the Dublin Meter Stations Nos. 1 and 2 in Baldwin and Laurens Counties, Georgia, an equivalent quantity of gas less 3.25 per cent for compressor fuel and company use gas; less any and all shrinkage, fuel or loss resulting from processing the gas; and less Dublin's pro-rata share of any gas delivered for Dublin's account which is lost or vented for any reason.

Southern states that Dublin would pay the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Dublin under any and all transportation agreements with Southern, when added to the volumes of gas delivered under

Southern's Rate Schedule OCD on such day to Dublin do not exceed the daily contract demand of Dublin, the transportation rate would be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Dublin under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Dublin exceed the daily contract demand of Dublin, the transportation rate for the excess volumes would be 77.6 cents per MMBtu.

Dubin would also pay the GRI surcharge of 1.52 cents per Mcf, it is explained.

Comment date: May 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-10915 Filed 5-12-87; 8:45 am]
BILLING CODE 6717-01-M

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[Docket No. CP87-46-001]

## Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 7, 1987.

Take notice that on April 30, 1987 Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing Original Volume No. 2 to its FERC Gas Tariff, Original Sheet Nos. 1 through 15, with a proposed effective date of March 16, 1987.

Alabama-Tennessee states that the purpose of the instant filing is to file a new Rate Schedule IT-1 to reflect the transportation service for the Tennessee Valley Authority authorized by the Commission in an order issued on March 16, 1987 in Docket No. CP87-46-000. Alabama-Tennessee requests that any necessary waiver of the Commission's Regulations be granted to permit it to become effective on March 16, 1987.

Alabama-Tennessee further states that copies of this filing were served upon its customers and interested state commissions and to all parties in Docket No. CP87-46-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-10936 Filed 5-12-87; 8:45 am]
BILLING CODE 6717-01-M

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[Docket No. RP87-14-003

## Algonquin Gas Transmission Co.; Motion To Place Proposed Rates Into Effect

May 7, 1987.

Take notice that on April 30, 1987, Algonquin Gas Transmission Company (Algonquin) tendered for filing with the Federal Energy Regulatory Commission (Commission) a motion to place into effect on May 1, 1987, revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2. The sheets are identified on Appendix A to the filing.

Algonquin states that on November 28, 1986, the Commission issued its "Order Accepting for Filing and Suspending Tariff Sheets Subject to Refund and Conditions" in the above-referenced proceeding. *Algonquin Gas Transmission Company*, 37 FERC 61,196 (1986). By such order the Commission suspended the rates, but permitted them to take effect May 1, 1987. The purpose of the instant filing is to place into effect on May 1, 1987 the rates filed herein on October 31, 1986, except the rates for service under Rate Schedule F-4, as adjusted (1) to reflect intervening tracking filings, subsequent to the October 31, 1986 filing in this docket; (2) to eliminate section 9, Reimbursement of Contingent Gas Supply, from Rate Schedule WS-1, as required by the Commission's November 28, 1986 order; (3) to comply with Ordering Paragraph C of the Commission's November 28, 1986 order in this proceeding by eliminating the interim cost of gas adjustment provision, references to excess sales under Rate Schedule F-1, and references to Rate Schedule I; and (4) to comply with Ordering Paragraph (D) of the Commission's November 28, 1986 order by reflecting the Federal income tax rate of 46% currently in effect.

Algonquin is not moving to place in effect the revised rates set forth in the October 31, 1986, filing for F-4 service. Algonquin will continue in effect the lower initial rate for the F-4 service that

became effective on November 1, 1986. No costs are being shifted to other rate schedules by virtue of continuing the current F–4 rate filed in this docket. Based on these facts and Commission precedent, Algonquin believes it does not need a waiver of § 154.66 of the Commission's Regulations in order to continue in effect the current F–4 rate. In any event good cause exists for the granting of a waiver under § 154.66, if such is required. In this regard, Algonquin also requests waiver of the requirements of § 154.22 of the Commission's regulations if such is required. Additionally, Algonquin requests waiver of any and all other Commission regulations to the extent necessary to permit the revised tariff sheets to become effective May 1, 1987, subject to refund.

Algonquin has served a copy of this filing upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–10935 Filed 5–12–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket Nos. RP86–33–002 and RP86–91–002]

## Midwestern Gas Transmission Co.; Filing of Changes in Rates

May 7, 1987.

Take Notice that on May 1, 1987, Midwestern Gas Transmission Company (Midwestern) filed the following revised tariff sheets to its FERC Gas Tariff to be effective June 1, 1987:

**Original Volume No. 1**

Twenty-fourth Revised Sheet No. 5
Twenty-fifth Revised Sheet No. 6
Fourth Revised Sheet No. 21
Second Revised Sheet No. 28
Seventh Revised Sheet No. 84
Second Revised Sheet Nos. 88, 92, 161, 162
Fourth Revised Sheet No. 163
Third Revised Sheet No. 164
Original Sheet No. 164A
First Revised Sheet No. 165A
Second Revised Sheet No. 166
Original Sheet No. 166A
Fifth Revised Sheet No. 168
Second Revised Sheet No. 169A
First Revised Sheet No. 191
Original Sheet Nos. 293, 294

**Original Volume No. 2**

Fourteenth Revised Sheet No. 37
Eighth Revised Sheet No. 62K
Seventh Revised Sheet No. 62L
Second Revised Sheet No. 62M
Fourth Revised Sheet No. 68D
Third Revised Sheet No. 68E

Midwestern states that the purpose of this filing is to place into effect Midwestern's Settlement Rates (with the exception of Rate Schedule T–5) and the $D_1$–$D_2$ billing procedures for Midwestern's Northern System and Southern System set forth in a Stipulation and Agreement (the Stipulation) filed on September 15, 1986 in Docket Nos. RP86–33 and RP86–91 and certified to the Commission by the Administrative Law Judge on October 6, 1986. Midwestern proposes to implement the Settlement Rates and $D_1$–$D_2$ billing procedures in advance of the Commission's expected approval of the Stipulation in order to provide its customers with the benefit of a net revenue decrease from its current non-gas rates of $3.1 million annually on the Southern System and $2.8 million annually on the Northern System, based on the settlement billing determinants set forth in the Stipulation.

Midwestern also states that revenues collected under the Settlement Rates and tariff provisions filed herein shall be subject to refund pending a final Commission order approving the Stipulation to the extent that Midwestern has any refund liability under the Natural Gas Act and the Commission's regulations.

Midwestern states further that it is not seeking surcharge protection and is taking the full risk, in the event the Stipulation is not approved or is approved with modifications unacceptable to Midwestern, that the revenues collected under the Settlement Rates and tariff provisions will be less than the revenues that would have been collected under the rates and tariff sheets otherwise in effect. However, in the event that the Commission disapproves the Stipulation or approves it with changes or modifications that are not acceptable to Midwestern, Midwestern requests the authority to reinstate prospectively without suspension by the Commission the non-gas rates in effect on May 31, 1987, subject to the terms and conditions of the Commission's order of January 29, 1986, accepting Midwestern's rate filing in Docket No. RP86–33 for effectiveness as of January 1, 1986, subject to refund and other conditions. 34 FERC ¶ 61,110 (1986).

Midwestern states that copies of this filing have been served upon all parties to the referenced proceedings, all jurisdictional customers, and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–10937 Filed 5–12–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TA87–3–59–000, 001]

## Northern Natural Gas Co.; Division of Enron Corp.; Alaskan Natural Gas Transportation System (ANGTS) Semi-Annual Rate Adjustment

May 7, 1987.

Take notice that on April 30, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Federal Energy Regulatory Commission (Commission) its regularly scheduled semi-annual ANGTS rate adjustment to be effective July 1, 1987 pursuant to Northern's F.E.R.C. Gas Tariff.

Since preparation of the last ANGTS transportation rate adjustment, Northern Border Pipeline's estimated transportation costs for 1987 have changed by such an insignificant amount that the impact of Northern's rates would be less than one mill per Mcf, it is stated. Therefore, Northern is not required to change its rates pursuant to paragraph 21.4 of Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1

and Paragraph 4.4 of Northern's F.E.R.C. Gas Tariff, Original Volume No. 2. Accordingly, Northern is proposing to continue to bill and collect, effective July 1, 1987, the currently effective ANGTS rate component as authorized by the Commission in Docket No. TA87–1–59.

The Company states that copies of the filing have been mailed to each of its Gas Utilities customers and to interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 15, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–10838 Filed 5–12–87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. EL87-31-000]

## Connecticut Municipal Electric Energy Cooperative vs. The Connecticut Light and Power Co. and its Affiliates, Northeast Utilities, Holyoke Water Power Co., Holyoke Power and Electric Co., Western Massachusetts Electric Co., Northeast Nuclear Energy Co., and Northeast Utilities Service Co.; Filing of Complaint and Extension of Time

April 30, 1987.

Take notice that on April 14, 1987, Connecticut Municipal Electric Energy Cooperative (CMEEC), tendered for filing a Complaint and Motion for partial Summary Disposition against Connecticut Light and Power Company (CL&P), concerning the terms, conditions and charges for service rendered under certain electric rate schedules.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this motion are on file with the Commission and are available for public inspection.

On April 22, 1987, CL&P filed a motion for extension of time so that it can answer both the Complaint and Motion for Summary Disposition within the same time frame. CMEEC filed an answer on April 28, 1987 stating it does not oppose such an extension.

Notice is also given that CL&P may answer both the Complaint and Motion for Summary Disposition on or before May 14, 1987.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–10910 Filed 5–13–87; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP-50657; FRL 3196-8]

## Issuance of Experimental Use Permits; Duphar B.V. et al.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, NW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit.

**SUPPLEMENTARY INFORMATION:** EPA has issued the following experimental use permits.

*37100-EUP-7.* Issuance. Duphar B.V., c/o John W. Kennedy Consultants, Inc., 9101 Cherry Lane, Suite 113, Laurel, MD 20708–1133. This experimental use permit allows the use of 1,140 pounds of the insecticide diflubenzuron on oranges and grapefruits to evaluate the control of citrus rust mites. A total of 1,140 acres are involved; the program is authorized only in the States of Florida and Texas. The experimental use permit is effective from September 15, 1986 to December 31, 1987. A temporary tolerance for residues of the active ingredient in or on oranges and grapefruits has been established. (Arturo Castillo, PM 32, Rm. 207, CM# 2, (703–557–2690))

*352-EUP-130.* Extension. E.I. duPont de Nemours & Company Inc., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 108.26 pounds of the herbicides methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate and methyl 2-[[[[*N*-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)methyl-amino]carbonyl]amino]sulfonyl]benzoate on barley and wheat to evaluate the control of weeds. A total of 4,000 acres are involved; the experimental use permit is authorized in the States of Arizona, California, Colorado, Idaho, Illinois, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Washington, Wisconsin, and Wyoming. The experimental use permit is effective from March 6, 1987 to July 15, 1988. A temporary tolerance for residues of the active ingredients in or on barley and wheat has been established. (Richard Mountfort, PM 23, Rm. 237, CM# 2, (703–557–1830)).

*352-EUP-136.* Extension. E.I. duPont de Nemours & Company, Inc., Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 105.6 pounds of the herbicides methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-2-thiophenecarboxylate and methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]-amino]sulfonyl]benzoate on barley and wheat to evaluate the control of weeds. A total of 4,000 acres are involved; the program is authorized in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, Washington, and West Virginia. The experimental use permit is effective from February 10, 1987 to February 10, 1988. Temporary tolerances for residues of the active ingredients in or on barley and wheat have been established. (Robert Taylor, PM 25, CM# 2, Rm. 245, CM# 2, (703–557–1800))

*748–EUP–23.* Extension. PPG Industries, Inc., One PPG Place, Pittsburgh, PA 15272. This experimental use permit allows the use of 364 pounds of the herbicide lactofen on conifer seedbeds to evaluate the control of various weeds. A total of 308 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from March 16, 1987 to April 15, 1988. (Richard Mountfort, PM 23, Rm. 237, CM# 2, (703–557–1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**Authority:** 7 U.S.C. 136c.

Dated: April 28, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–10363 Filed 5–12–87; 8:45 am]

BILLING CODE 6560–50–M

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**[PF–480; FRL 3196–7]**

## Pesticide Tolerance Petitions; Union Carbide Agricultural Products Co. et al.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the filing of pesticide and food/feed additive petitions by companies proposing tolerances and/or regulations for residues of certain pesticide chemicals in or on various commodities and the withdrawal of petitions previously published in the **Federal Register.**

**ADDRESS:** By mail, submit written comments identified by the control number [PF–480] to:

Information Services Section, (Attn: Product Manager (PM) named in each petition), Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person, bring comments to:

Room 236, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail:

Registration Division (TS–767C), Attn: PM named in the petition, Environmental Protection Agency, Office of Pesticide Programs, 401 M Street, SW., Washington, DC 20460.

In person, contact the PM named in each petition at the following office location/telephone number:

| Product manager | Office location/ telephone number | Address |
|---|---|---|
| Dennis Edwards (PM–12). | Room 202, CM# 2, 703–557–2386. | EPA, 1921 Jefferson Davis Hwy, Arlington, VA 22202. |
| George LaRocca (PM–15). | Room 204, CM# 2, 703–557–2400. | Do. |
| Lois Rossi (PM–21). | Room 227, CM# 2, 703–557–1900. | Do. |
| Richard Mountfort (PM–23). | Room 237, CM# 2, 703–557–1830. | Do. |
| Mr. Robert Taylor (PM–25). | Room 245, CM# 2, 703–557–1800. | Do. |

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide (PP) and/or food and feed additive (FAP) petitions as follows proposing tolerances or regulations for residues of certain pesticide chemicals in or on various agricultural commodities. Two pesticide petitions, previously published in the **Federal Register** had been withdrawn.

### 1. PP 7F3516

Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T. W. Alexander Drive, Research Triangle Park, NC 27709. Proposes amending 40 CFR 180.407 by establishing a tolerance for the combined residues of the insecticide thiodicarb (dimethyl *N,N*-(thiobis[[(methylamino) carbonyl]oxy] bis[ethanimidothioate]) and its metabolite methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy]-thioacetimidate) in or on leafy vegetables at 30 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM–12)

### 2. FAP 7H5333

Nor-Am Chemical Co., 3509 Silverside Road, P.O. Box 7495, Wilmington DE 19803. Proposes amending 21 CFR 561.195 by establishing a regulation to permit the combined residues of the insecticide amitraz (*N'*-(2,4-dimethylphenyl)-*N*-[[(2,4-dimethylphenyl]imino]methyl]-*N*-methylmethanimidamide) and its metabolites containing the 2,4-dimethylaniline moiety in or on dried citrus pulp at 14.0 ppm and citrus molasses at 14.0 ppm. (PM–12).

### 3. PP 7F3499

FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180.418 by establishing a tolerance for the combined residues of the insecticide cypermethrin (±)a-cyano-(3-phenoxyphenyl) methyl (±)*cis, trans*-3(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate) and its metabolites dichlorovinyl acid, *m*-phenoxybenzoic acid and cyperamide in or on bulb onions at 0.1 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM–15)

### 4. PP 7F3500

Merck and Co., Inc., Merck Sharp and Dohme Research Laboratories, Hillsborough Road, Three Bridges, NJ 08887. Proposes amending 40 CFR Part 180 by establishing a tolerance for the combined residues of the insecticide avermectin B1 and the delta 8,9-isomer in or on cottonseed at 0.005 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM–15)

### 5. PP 7F3514

FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180.378 by establishing tolerances for the combined residues of the insecticide permethrin, (3-phenoxyphenyl) methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate and its metabolites, *cis* and *trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, and 3-phenoxybenzyl alcohol in or on wheat grain at 0.05 ppm, wheat hay at 2.0 ppm and wheat straw at 2.0 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM–15)

**6. PP 7F3481**

Rhone-Poulenc, Inc., Agrochemical Division, P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.399 by establishing a tolerance for the combined residues of the fungicide iprodione [3-(3,5-dichlorophenyl)-*N*-(methylethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer 3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide in or on leaf lettuce at 25.0 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM–21).

**7. PP 7F3491**

E. I. Du Pont De Nemours & Co., Inc., Agricultural Products Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. Proposes amending 40 CFR Part 180 by establishing tolerances for the combined residues of the fungicide 1-[bis(4-fluorophenyl) (methyl)-silylmethyl]-1*H*-1,2,4-triazole and its metabolites [bis(4-fluorophenyl) methyl]silanol and [bis(4,fluorophenyl)-methylsilyl]methanol in or on applies at 0.3 ppm and grapes at 0.3 ppm. The proposed analytical method for determining residues is liquid gas chromatography. (PM–21)

**8. PP 7F3507**

Elanco Products Co., Plant Science Projects Development and Registration Division, P.O. Box 708 Greenfield, IN 46140. Proposes amending 40 CFR 180.421 by establishing tolerances for the residues of the fungicide fenarimol, (alpha[2-chlorophenyl]-alpha-[4-chlorophenyl]-5-pyrimidinemethanol) in or on apples at 0.1 ppm and residues of fenarimol, (alpha[2-chlorophenyl]-alpha-[4-chlorophenyl]-5-pyrimidinemethanol) and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)-methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol, 2,4'-dichlorobenzophenone (DCBP and 5-[(2-chlorophenyl) (4-chlorophenyl)methyl]pyrimidine (DHF) in or on grapes at 0.3 ppm. The proposed analytical method for determining residues is gas chromatography. (PM–21)

**9. PP 7F3510**

Rhone-Poulenc Inc., Agrochemical Division P.O. Box 125, Black Horse Lane, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.399 by establishing a tolerance for the combined residues of the fungicide iprodione (3-(3,5-dichlorophenyl)-*N*-(methylethyl)-2,4-dioxo-1-imidazolidinecarboximide) and its isomer 3-(1-methylethyl)-N-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide, and its metabolite 3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide in or on strawberries at 15.0 ppm. The proposed analytical method for determining residues is gas liquid chromatography. (PM–21)

**10. PP 7F3515**

E. I. du Pont De Nemours & Co., Inc. Agricultural Products Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. Proposes amending 40 CFR Part 180 by establishing a tolerance for residues of the fungicide 1-[bis(4-fluorophenyl) (methylsilyl)methyl]-1*H*-1,2,4-triazole in or on bananas at 0.1 ppm. The proposed analytical method for determining residues in AMR–115–83. (PM–21).

**11. FAP 7H5530**

E. I. Du Pont De Nemours & Co., Inc., Agricultural Products Department, Walker's Mill Building, Barley Mill Plaza, Wilmington, DE 19898. Proposes amending Chapter I of 21 CFR by establishing regulations to permit the combined residues of the fungicide 1-[bis(4-fluorophenyl)-(methyl)silylmethyl]-1*H*-1,2,4-triazole and its metabolites [bis(4-fluorophenyl)methyl]silanol and [bis(4-fluorophenyl)-methylsilyl]methanol as follows:

a. In 21 CFR Part 193—in or on raisins at 2.0 ppm.

b. In 21 CFR Part 561—in or on apple pomace at 3.0 ppm, grape pomace at 4.0 ppm, and raisin waste at 2.0 ppm. (PM–21)

**12. FAP 7H5534**

Elanco Products Co., Plant Science Projects Development and Registration Division, P.O. Box 708 Greenfield, IN 46140. Proposes amending 21 CFR Part 561 by establishing a regulation to permit the residues of the fungicide fenarimol, (alpha-[2-chlorophenyl]-alpha-4-chlorophenyl]-5-pyrimidinemethanol) in or on apple pomace (wet and dry at 2.0 ppm and residues of the fungicide fenarimol, (alpha-[2-chlorophenyl]-alpha-[4-chlorophenyl]-5-pyrimidinemethanol) and its metabolites, alpha-(2-chlorophenyl)-alpha-(4-chlorophenyl)-1,4-dihydro-5-pyrimidinemethanol and 5-[(2-chlorophenyl) (4-chlorophenyl)-methyl]-3,4-dihydro-4-pyrimidinol measured as the total of fenarimol, 2,4'-dichlorobenzophenon (DCBP) and 5-[(2chlorophenyl) (4-chlorophenyl]methyl]pyrimidine (DHF) in or on grape pomace (wet & dry) at 3.0 ppm and raisin waste at 3.0 ppm. (PM–21)

**13. PP 7F3500**

E. I. du Pont de Nemours & Co., Inc. Agricultural Products Department, Walker's Mill Building Barley Mill Plaza, Wilmington, DE 19898. Proposes amending 40 CFR Part 180 by establishing a regulation to permit the residues of the herbicide methyl-2[[[[[[(4,6-dimethoxy-pyrimidin-2-yl)amino] carbonyl]amino]sulfonyl] methyl]benzoate in or on rice at 0.02 ppm. The proposed analytical method for determining residues is high pressure liquid chromatography using a photoconductivity detector. (PM–23)

**14. PP 7F3508**

Union Chemical Division, Unocal Corp. c/o Delta Management Group, Fenwick Professional Park, 1414 Fenwick Lane, Silver Spring, MD 20910. Proposes amending 40 CFR 180.1084 by establishing an exemption from the requirement of a tolerance for monourea sulfuric acid adduct when used as a herbicide or desiccant in or on all raw agricultural commodities. The proposed analytical method for determining residues is pH titration and use of calibration curves. (PM–25)

**15. PP 7F3509**

ICI Americas Inc. Agricultural Chemical Division, Concord Pike & New Murphy Road, Wilmington, DE 19897. Proposes amending 40 CFR 180.205 by establishing tolerances to permit residues of the herbicide paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion in or on peanuts 0.05 ppm, peanut hulls at 0.2 ppm, peanut vines at 0.5 ppm and peanut hay at 0.5 ppm. The proposed analytical method for determining residues is R–M–8–10. (PM–25)

**16.**

*a. PP 1F2144*

In the Federal Register of December 4, 1978, (43 FR 54830), EPA announced that Monsanto Agricultural Products Co., 800 N Lindberg Blvd., St. Louis, MO 63166, filed PP 9F2144 proposing a tolerance for the combined residues of the herbicide alachlor (2-chloro-2',6'-diethyl-*N*-methoxy-ethyl)acetanilide) and its metabolites (calculated as alachlor) in or on the raw agricultural commodities sugarcane fodder and forage at 0.2 ppm.

*b. PP 1F2551*

In the Federal Register of October 27, 1981, (46 FR 52417), EPA announced that Monsanto Agricultural Products Co.,

filed PP 1F2551 proposing a tolerance for the combined residues of the herbicide alachlor and its metabolites (calculated as alachlor) in or on the raw agricultural commodity potatoes at 1.0 ppm.

Monsanto has withdrawn the petitions without prejudice to future filing in accordance with § 180.8. (PM–25).

Dated: April 29, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–10361 Filed 5–12–87; 8:45 am]

BILLING CODE 6560–50–M

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**[OPP–30279; FRL 3196–4]**

## Certain Companies Applications To Register Pesticide Products; Rhom and Haas Co. et al.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATE:** Comment by June 12, 1987.

**ADDRESS:** By mail submit comments identified by the document control number [OPP–30279] and the file symbol to:

Information Services Section (TS–757C), Program Management and Support Division, Attn: Product Manager (PM) 23, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460,

In person, bring comments to: Room 236, CM #2, Attn: PM 23, Registration Division (TS–767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Mountfort, PM 23, Room 237, CM#2, (703–557–1830).

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

### I. Products Containing an Active Ingredient not Included in any Previously Registered Product

*1. File Symbol: 707–ENN.*

Applicant: Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105. Product name: RH–0265 2E Herbicide. Herbicide. Active ingredient: Fluoroglycofen: 2-ethoxy-2-oxoethy 5-[2-chloro-4-(trifluoromethyl) phenoxyl]-2-nitrobenzoate 23.8%. Proposed classification/Use: General. For post postemergence application to soybeans to control suspectible broadleaf annual weeds. (PM 23)

*2. File Symbol: 352–LNA.*

Applicant E.I. du Pont de Nemours and Co, Inc., Agricultural Products Dept., Barley Plaza, Wilmington, DE 19898. Product name: Du Pont "Londax" Herbicide. Herbicide. Active ingredient: Methyl 2-[[[[[[(4-6-dimethoxy pyrimidin-2-yl)amino]carbonyl]amino]s ulfony]methyl]benzoate 10%. Proposed classification/Use: General. For use on rice in the State of Calfornia only. (PM 23)

*3. File Symbol: 1471–RLI.*

Applicant: Elanco Products., Co., Lilly Research Lab., PO Box 708, Greenfield, IN 46140. Product name: Isoxaben Technical. Herbicide. Active ingredient: *N*[3-(1-Ethyl-1-methylpropyl)-5-isoxazolyl]2,6-dimethoxybenzamide and isomers 91%. Proposed classification/Use: General. For manufacturing use only in formulating herbicides. (PM 23)

*4. File Symbol: 1471–RLO.*

Applicant: Elanco Products Co., Lilly Research Lab., PB Box 708, Greenfield, IN 46140. Product name: Prola • 75 Dry Flowable. Herbicide. Active ingredient: *N*[3-(1-Ethyl-1-methylpropyl)-5-isoxazoly1]-2,6-dimethoxybenzamide and isomers 75%. Proposed classification/Use: General. For control of certain broadleaf weeds and annual grasses in established turf, landscape ornamentals, noncropland, and other areas. (PM 23)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit..

**Authority:** 7 U.S.C. 136.

Dated: April 23, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division Office of Pesticide Programs.*

[FR Doc. 87–10362 Filed 5–12–87; 8:45 am]

BILLING CODE 6560–50–M

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**[FRL–3199–9]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Patricia Minami, (202) 382–2712 (FTS 382–2712) or Jackie Rivers, (202) 382–2740 (FTS 382–2740).

### Office of Pesticides and Toxic Substances

*Title:* Premanufacture Notification (PMN) Rule #0574). (This extends a currently approved collection without change.)

*Abstract:* TSCA requires businesses to notify EPA 90 days prior to (a) the manufacture or import of a new chemical substance or (b) a significant new use of an existing chemical substance. EPA evaluates the effects of the chemical on human health and the environment as reported in the notification. If the Agency takes no regulatory action within 90 days of receipt of the notification, the applicant may manufacture or import the chemical. Respondents may apply for various exemptions that have shorter review times.

*Respondents:* Businesses manufacturing or importing new chemicals or using existing chemicals in a significant new way.

*Estimated Annual Burden:* 293,600 hours.

**Office of Solid Waste and Emergency Response**

*Title:* Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities (EPA ICR #1364). (This is a new collection.)

*Abstract:* EPA will conduct a survey designed to develop a comprehensive data base on facilities that manage hazardous waste. The Agency will use the information in implementing regulations mandated by the Hazardous and Solid Waste Amendments (particularly the land disposal restrictions).

*Respondents:* Owners and operators of hazardous waste facilities.

*Estimated Annual Burden:* 92,000 hours.

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**Agency PRA Clearance Requests Completed by OMB**

*EPA ICR #0229,* NPDES Discharge Monitoring Report, was approved 4/10/87 (OMB #2040–0004; expires 3/31/88).

*EPA ICR #0270,* State Drinking Water Supply Program Information, was extended 4/28/87 (OMB #2040'0090; expires 7/31/87).

*EPA ICR #0370,* Underground Injection Control Permit Application and Permittee Reporting, was extended 4/17/87 (OMB #2040–0042; expires 7/31/87).

*EPA ICR #0909,* Information Requirements for Construction Grants Delegation to States, was approved 4/10/87 (OMB #2040–0095; expires 4/30/90).

*EPA ICR #0916,* Annual Updates to National Emission Data System and Hazardous and Trace Emission System, was approved 4/15/87 (OMB #2060–0068; expires 10/31/89).

*EPA ICR #1037* Oral and Written Purchase Orders, was approved 4/9/87 (OMB #2030–0007; expires 4/30/90).

*EPA ICR #1055,* NSPS for Kraft Pulp Mills, was approved 4/15/87 (OMB #2060–0021; expires 4/30/90).

*EPA ICR #1131,* Standards of Performance for New Stationary Sources—Glass Manufacturing Plants, was approved 4/15/87 (OMB #2060–0054; expires 4/30/90).

*EPA ICR #1156,* NSPS for Synthetic Fiber Prodution Facilities, was approved 4/21/87 (OMB #2060–0059; expires 4/30/90).

*EPA ICR #1167,* NSPS for Lime Manufacturing Plants, was extended 4/17/87 (OMB #2060–0063; expires 7/31/87).

*EPA ICR #1168,* Rights in Data and Contract Requirements for Delivery of Additional Data, was extended 4/29/87 (OMB #2030–0012; expires 6/30/87).

*EPA ICR #1354,* Survey of UNAMAP Users, was approved 4/15/87 (OMB #2060–0028; expires 2/29/88).

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Comments on the abstracts in this notice may be sent to:

Patricia Minami,
U.S. Environmental Protection Agency,
Office of Standards and Regulations (PM–223),
Information and Regulatory Systems Division,
401 M Street, SW.,
Washington, DC 20460
and
Carlos Tellez,
Office of Management and Budget,
Office of Information and Regulatory Affairs,
New Executive Office Building,
726 Jackson Place, N.W.,
Washington, DC 20503

Dated: May 7, 1987.

**Odelia Funke,**

*Acting Director, Information and Regulatory Systems Division.*

[FR Doc. 87–10912 Filed 5–12–87; 8:45 am]

BILLING CODE 6560–50–M

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**[PP 4G3031/T540; FRL–3200–3]**

**Metalaxyl; Extension of Temporary Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has extended a temporary tolerance for the combined residues of the fungicide metalaxyl and its metabolites in or on the raw agricultural commodity grapes.

**DATE:** This temporary tolerance expires September 30, 1987.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Lois Rossi, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1900).

**SUPPLEMENTARY INFORMATION:** Ciba-Geigy Corp., Agricultural Products Divison, P.O. Box 18300, Greensboro, NC 27419, has requested in pesticide petition PP 4G3031 the extension of temporary tolerance for the combined residues of the fungicide metalaxyl (*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester) and its metabolites containing the 2,6-dimethylaniline moiety and *N*-(2-hydroxymethyl-6-methylphenyl)-*N*-(methoxyacetyl)alanine methyl ester, each expressed as metalaxyl in or on the raw agricultural commodity grapes at 2.0 parts per million (ppm).

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 100–EUP–81, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions.

1. The total amount of the active fungicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires September 30, 1987. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered

actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scentific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 through 612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**Authority:** 21 U.S.C. 346a(j).

Dated: May 4, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–10913 Filed 5–12–87; 8:45 am]

BILLING CODE 6560–50–M

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**[FRL 3201–2]**

## Science Advisory Board; Hazard Ranking System Review Subcommittee; Meeting

Notice is hereby given in accordance with Pub. L. 92–463 of a change in location of the Science Advisory Board's Hazard Ranking System Review Subcommittee (HRS) meeting to be held on May 19–20, 1987. Publication of the original agenda appeared in the **Federal Register** on Thursday, April 30, 1987, page 15763. The amended notice is to inform the public that the new location is: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC, Potomac Conference Room, Lobby Level. For further information, contact Kathleen W. Conway, Deputy Director, or Dorothy Clark, Staff Secretary, Science Advisory Board (202) 382–2552.

Dated: May 7, 1987.

**Terry F. Yosie,**

*Director, Science Advisory Board.*

[FR Doc. 87–11033 Filed 5–12–87; 8:45 am]

BILLING CODE 6560–50–M

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## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–010638–01.

*Title:* Port of Milwaukee Terminal Agreement.

*Parties:*

City of Milwaukee
Cal-Western Packaging Corporation

*Synopsis:*

The proposed amendment would provide that Cal-Western relinquish leased office space back to the City of Milwaukee, and reduce Cal-Western's rent in consideration of the relinquished office space.

Dated: May 8, 1987.

By order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–10900 Filed 5–12–87; 8:45 am]

BILLING CODE 6730–01–M

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## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

May 7, 1987.

### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

**DATE:** Comments must be received by May 26, 1987.

**ADDRESS:** Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet heen assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below: Federal Reserve Board Clearance Officer Nancy Steele, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

### Proposal To Approve Under OMB-Delegated Authority the Extension, With Revision, of the Following Reports

*1. Report Title: Weekly Report of Assets and Liabilities for Large Banks and Weekly Report of Selected Assets*

Agency form numbers: FR 2416 and FR 2644.

OMB Docket number: 7100–0075.

Frequency: Weekly.

Reporters: U.S. commercial banks.

Annual reporting hours: 48,932.

Small businesses are not affected.

General description of reports:

These reports are voluntary [12 U.S.C. 225(a) and 248(a)] and are given confidential treatment [5 U.S.C. 552(b)(4) and (8)] . The FR 2416 collects balance sheet information from a sample of large U.S. commercial banks and the FR 2644 collects information on selected assets from a stratified sample of smaller U.S. commercial banks. The Federal Reserve proposes to add an item to each report to obtain information on home equity loans. An additional minor change to the FR 2644—the inclusion of an "all other loan" category as a subcategory under total loans and leases—is also being proposed.

Board of Governors of the Federal Reserve System, May 7, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87-10847 Filed 5-12-87; 8:45 am]

BILLING CODE 6210-01-M

## Beverly Bancorporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1987.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Beverly Bancorporation,* Chicago, Illinois; to engage *de novo* through its subsidiary, Beverly Trust Company, Chicago, Illinois, in accepted, executing, administering, and handling of trust and estates of any and all kinds pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. *Capital One Corp.,* Brown Deer, Wisconsin; to engage *de novo* through its subsidiary, Cap Funds, Inc., Brown Deer, Wisconsin, in loans or other extensions of credit such as made by banking, commercial, finance, mortgage and consumer finance companies pursuant to § 225.25(b)(1) of the Board's Regulation Y.

3. *Edville Bankcorp, Inc.,* Villa Park, Illinois; to engage de novo in the design and marketing computer software, associated materials, documentation and manuals pursuant to § 225.25(b)(7)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 7, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-10848 Filed 5-12-87; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Gene Bihlmajer et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 28, 1987.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gene Bihlmajer,* Lloyd C. Bloomer, Leslie Kaser, and Eugene A. Mick, all of Osborne, Kansas; to acquire 20 percent of the voting shares of Osborne Investments, Inc., Osborne, Kansas, and thereby indirectly acquire The Farmers National Bank of Gaylord, Gaylord, Kansas, and Farmers National Bank, Osborne, Kansas.

**B. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *S.A. Camp Companies,* Shafter, California; to acquire 14.08 percent of the voting shares of Cal Rep Bancorp, Inc., Bakersfield, California, and thereby indirectly acquire California Republic Bank, Bakersfield, California.

Board of Governors of the Federal Reserve System, May 7, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-10849 Filed 5-12-87; 8:45 am]

BILLING CODE 6210-01-M

## Formation of, Acquisition by, or Merger of Bank Holding Companies; Eagle Fidelity, Inc.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 27, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Eagle Fidelity, Inc.*, Williamstown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Williamstown, Williamstown, Kentucky.

Board of Governors of the Federal Reserve System, May 7, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-10850 Filed 5-12-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Methods for Rating Job Stress/Strain; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: May 29, 1987.

Time: 9 a.m.–3 p.m.

Place: Auditorium, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review and discuss the validation of two methodologies for assessing job stress/strain. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Joseph J. Hurrell, Jr. Ph.D., Division of Biomedical and Behavioral Sciences, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684–8293; Commercial: 513/533–8293.

Dated: May 6, 1987.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 87-10846 Filed 5-12-87; 8:45 am]

BILLING CODE 4160-18-M

## Food and Drug Administration

[Docket No. 87N-0052]

### Action Levels for Residues of Aldrin and Dieldrin, Chlordane, and DDT, TDE, and DDE, in Food and Feed

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that on February 13, 1987, the agency established new action levels and revised a number of its existing action levels for residues of the cancelled pesticides aldrin and dieldrin, chlordane, and DDT and TDE and their degradation product (DDE) in food and feed. FDA has taken this action in response to the Environmental Protection Agency's (EPA) recommendation that FDA establish action levels to replace tolerance and the food additive regulations for these pesticides that were revoked by EPA. The EPA action level recommendations are intended for unavoidable residues of these environmentally persistent pesticides in the food and feed commodities affected by the revocation of the tolerances and food additive regulations. Additionally, based upon EPA's recommendations, FDA has revised or reaffirmed the previously established FDA action levels for unavoidable residues of these pesticides in orther food and feed commodities that had not been subject to EPA tolerances or food additive regulations. Attachments A, B.1, B.3, and B.5 of FDA's Compliance Policy Guide 7141.01 have been revised to reflect these changes.

**DATE:** Written comments by July 13, 1987.

**ADDRESS:** Written comments concerning the new and revised action levels for residues of aldrin and dieldrin, chlordane, and DDT, TDE, and DDE, and requests for single copies of FDA Compliance Policy Guide 7141.01, Attachments A, B.1, B.3, and B.5, should be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 3–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John R. Wessel, Office of Regulatory Affairs (HFC–205), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1815.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 24, 1987, EPA issued final rules that revoked: (1) The tolerances in 40 CFR 180.135 and 180.137 for the pesticides aldrin and dieldrin in raw agricultural commodities (51 FR 46662); (2) the tolerances in 40 CFR 180.122 and interim tolerances in 40 CFR 180.319 for the pesticide chlordane in raw agricultural commodities (51 FR 46665); (3) the tolerances in 40 CFR 180.147 and 180.147b for the pesticide DDT and its degradation products TDE and DDE in raw agricultural commodities (51 FR 46658); (4) the tolerances in 40 CFR 180.187 for the pesticide TDE in raw agricultural commodities (51 FR 46658); (5) the food additive regulations in 21 CFR 193.110, 193.120, and 561.120 for DDT and its degradation products TDE and DDE in processed food and feed (51 FR 46616); and (6) the food additive regulation in 21 CFR 561.370 for TDE in processed feed (51 FR 46616). Additionally, in the final rules concerning DDT and TDE (51 FR 46658 and 46616), EPA revised the tolerance in 40 CFR 180.136 and food additive regulation in 21 CFR 193.450 to delete the permissible limits for DDT in combination with the pesticide toxaphene in soybeans and crude soybean oil, respectively. EPA revoked these tolerances and food additives regulations because all registered food uses of the pesticides had previously been cancelled.

EPA recommended in the preamble to its final rules and in letters dated December 15, 1986, from the Assistant Administrator for Pesticides and Toxic Substances, EPA, to the Associate Commissioner for Regulatory Affairs, FDA, that FDA establish specified action levels to replace the tolerances and food additives regulations. These action levels are necessary to regulate unavoidable residues of these environmentally persistent pesticides in the food and feed commodities that had previously been covered by tolerances and food additives regulations. They were recommended in accordance with EPA's policy statement on the revocation of tolerances for cancelled pesticides, which was published in the **Federal Register** of September 29, 1982 (47 FR 42956). Additionally, in the preamble of its final rules and its letters, EPA recommended revision or reaffirmation of FDA's previously established action levels for unavoidable residues of aldrin and dieldrin, chlordane, and DDT, TDE, and DDE in food and feed commodities that were not subject to EPA tolerances for food additives regulations. EPA did not, however, make any recommendations for FDA's action levels for these pesticides in fish. EPA indicated that these action levels require further assessment, and until this assessment is completed, EPA will defer making recommendations on them to FDA.

In considering EPA's action level recommendations, FDA combined a number of individual commodities subject to action levels into crop groups,

as specified in 40 CFR 180.34(f). For example, the crop group "stone fruits" includes apricots, cherries, nectarines, and plums.

For the action levels listed for crops groups, exceptions are noted for those commodities in the group that were not subject to an action level recommendation or that were subject to a different action level recommendation than the other commodities in that group.

FDA also combined some individual commodities into a single commodity type, as specified in 40 CFR 180.1(h). For example, pumpkins and summer squash are included in the listings for squash.

FDA found some discrepancies between the action level listing in the letters dated December 15, 1986, from the Assistant Administrator of EPA and EPA's **Federal Register** notices. Peppers and sweet potatoes were omitted from the list of commodities in the table of recommended action levels for aldrin and dieldrin and the recommended action level for peanuts is incorrect (i.e., 0.5 part per million is listed rather than 0.05 part per million). Oat grain (one of the cereal grains) is not listed in the table of recommended action levels for DDT, TDE, and DDE and although milk is listed, no recommended action level is given. EPA will correct these discrepancies in the future **Federal Register** publication. They have assured us that the recommended action levels contained in the referenced letters from EPA are correct. In this notice, FDA has listed the correct action levels.

On February 13, 1987, FDA established the new and revised action levels for unavoidable residues of aldrin and dieldrin, chlordane, and DDT, TDE, and DDE based on the recommendations by EPA. Attachments B.1, B.3, and B.5 of FDA Compliance Policy Guide 7141.01, which listed the aldrin and dieldrin, chlordance, and DDT, TDE, and DDE action levels previously established by FDA, have been revised to reflect these changes. In Tables, I, II, and III below, action levels for crop groups cover all commodities specified in 40 CFR 180.34(f), except where an exception is noted.

The following action levels are for residues of the pesticides aldrin and dieldrin individually or in combination.

TABLE I—ALDRIN AND DIELDRIN

| Commodities | Action level (parts per million) |
|---|---|
| Alfalfa | 0.03 |
| Animal feed, processed | 0.03 |
| Artichokes | 0.05 |
| Asparagus | 0.03 |
| Bananas | 0.02 |
| Beets (garden and sugar) | 0.1 |
| Beet tops (garden and sugar) | 0.05 |
| Broccoli | 0.03 |
| Brussels sprouts | 0.03 |
| Bulb vegetables | 0.1 |
| Cabbage | 0.03 |
| Carrots | 0.1 |
| Cauliflower | 0.03 |
| Cereal grains (except buckwheat, millet, teosinte, and wild rice) | 0.02 |
| Celery | 0.03 |
| Clover | 0.03 |
| Collards | 0.05 |
| Cowpea hay | 0.03 |
| Cucumbers | 0.1 |
| Eggplant | 0.05 |
| Eggs | 0.03 |
| Endive (escarole) | 0.05 |
| Fats and oils (animal feed) | 0.3 |
| Figs | 0.05 |
| Fish | [1] 0.3 |
| Forage, fodder, and straw of cereal grains (except those of buckwheat, millet, teosinte, and wild rice) | 0.03 |
| Grapefruit | 0.02 |
| Hay | 0.03 |
| Horseradish | 0.1 |
| Kale | 0.05 |
| Kohlrabi | 0.05 |
| Legume vegetables (except guar, jackbeans, lablab beans, and lentils) | 0.05 |
| Lemons | 0.02 |
| Lespedeza | 0.03 |
| Lettuce | 0.03 |
| Limes | 0.02 |
| Mangoes | 0.03 |
| Melons | 0.1 |
| Milk | [2] 0.3 |
| Mustard greens | 0.05 |
| Oranges | 0.02 |
| Parsnips | 0.1 |
| Peas, hay | 0.03 |
| Peaches | 0.02 |
| Peanuts | 0.05 |
| Peanut hay | 0.03 |
| Peppers | 0.05 |
| Pimentos | 0.05 |
| Pineapple | 0.03 |
| Pome fruits (except crabapples and loquats) | 0.03 |
| Potatoes | 0.1 |
| Radishes | 0.1 |
| Radish tops | 0.03 |
| Rutabagas | 0.1 |
| Salsify roots | 0.1 |
| Salsify tops | 0.05 |
| Small fruits and berries | 0.05 |
| Soybean hay | 0.03 |
| Spinach | 0.05 |
| Squash | 0.1 |
| Stone fruits (except Chickasaw, Damson, and Japanese plums, and peaches) | 0.03 |
| Sugarbeet pulp (animal feed) | 0.1 |
| Sweet potatoes | 0.1 |
| Swiss chard | 0.05 |
| Tangerines | 0.02 |
| Tomatoes | 0.05 |
| Turnips | 0.1 |
| Turnip tops | 0.05 |

[1] Edible portion.
[2] Fat basis.

The following action levels are for residues of chlordane, including heptachlor and its epoxide, *cis* and *trans* chlordane, *cis* and *trans* nonachlor, oxychlordane (octachlor epoxide), *alpha*, *beta*, and *gamma* chlordene, and chlordene.

TABLE II—CHLORDANE

| Commodities | Action level (parts per million) |
|---|---|
| Animal fat, rendered | 0.3 |
| Animal feed, processed | 0.1 |
| Asparagus | 0.1 |
| Bananas | .01 |
| Beans | 0.1 |
| Beets (with or without tops) | 0.1 |
| Beet greens | 0.1 |
| Brassica (cole) leafy vegetables (except broccoli raab, Chinese mustard cabbage, and rape greens) | 0.1 |
| Carrots | 0.1 |
| Celery | 0.1 |
| Citrus fruits | 0.1 |
| Corn | 0.1 |
| Cucumbers | 0.1 |
| Eggplant | 0.1 |
| Fish | [1] 0.3 |
| Lettuce | 0.1 |
| Melons | 0.1 |
| Okra | 0.1 |
| Onions | 0.1 |
| Papayas | 0.1 |
| Parsnips | 0.1 |
| Peanuts | 0.1 |
| Peas | 0.1 |
| Peppers | 0.1 |
| Pineapple | 0.1 |
| Pome fruits (except crabapples and loquats) | 0.1 |
| Potatoes | 0.1 |
| Radishes (with or without tops) | 0.1 |
| Radish tops | 0.1 |
| Rutabagas (with or without tops) | 0.1 |
| Rutabaga tops | 0.1 |
| Small fruits and berries (except cranberries, currants, elderberries, gooseberries, and olallie berries) | 0.1 |
| Spinach | 0.1 |
| Squash | 0.1 |
| Stone fruits (except Chickasaw, Damson, and Japanese plums) | 0.1 |
| Sweet potatoes | 0.1 |
| Swiss chard | 0.1 |
| Tomatoes | 0.1 |
| Turnips (with or without tops) | 0.1 |
| Turnip greens | 0.1 |

[1] Edible portion.

The following action levels are for residues of the pesticides DDT, TDE, and DDE individually or in combination.

TABLE III—DDT, TDE, AND DDE

| Commodities | Action level (parts per million) |
|---|---|
| Animal feed processed | 0.5 |
| Artichokes | 0.5 |
| Asparagus | 0.5 |
| Avocados | 0.2 |
| Beets (roots and tops) | 0.2 |
| Brassica (cole) leafy vegetables (except broccoli raab, Chinese mustard cabbage, and rape greens) | 0.5 |
| Carrots | 3 |
| Cereal grains (except buckwheat, fresh sweet corn, millet, popcorn, teosinte, and wild rice) | 0.5 |
| Celery | 0.5 |
| Citrus fruits | 0.1 |
| Cocos beans | 1 |
| Corn, fresh sweet | 0.1 |
| Cottonseed | 0.1 |
| Cucumbers | 0.1 |
| Eggplant | 0.1 |
| Eggs | 0.5 |
| Endive (escarole) | 0.5 |
| Fish | [1] 5 |
| Grapes | 0.05 |
| Guavas | 0.2 |
| Hay | 0.5 |
| Hops | 0.1 |
| Legume vegetables (except guar, jackbeans, lablab beans, and lentils) | 0.2 |

BEST COPY AVAILABLE

TABLE III.—DDT, TDE, AND DDE—Continued

| Commodities | Action level (parts per million) |
|---|---|
| Lettuce | 0.5 |
| Mangoes | 0.2 |
| Melons | 0.1 |
| Milk | [2] 1.25 |
| Mushrooms | 0.5 |
| Okra | 0.2 |
| Onions (dry bulb) | 0.2 |
| Papayas | 0.2 |
| Parsnips (roots and tops) | 0.2 |
| Peanuts | 0.2 |
| Peppermint hay | 0.5 |
| Peppermint oil | 1 |
| Peppers | 0.1 |
| Pineapples | 0.2 |
| Pome fruits (except crabapples and loquats) | 0.1 |
| Potatoes | 1 |
| Radishes (roots and tops) | 0.2 |
| Rutabagas (roots and tops) | 0.2 |
| Small fruits and berries (except elderberries, grapes, and olallie berries) | 0.1 |
| Soybean oil (crude) | 1 |
| Spearmint hay | 0.5 |
| Spearmint oil | 1 |
| Spinach | 0.5 |
| Squash | 0.1 |
| Stone fruits (except Chickasaw, Damson, and Japanese plums) | 0.2 |
| Sweet potatoes | 1 |
| Swiss chard | 0.5 |
| Tomatoes | 0.05 |
| Tomato pomace | 0.5 |
| Turnips (roots and tops) | 0.2 |

[1] Edible portion.
[2] Fat basis.

FDA's acceptance of EPA's recommended action levels to replace the zero tolerances that were revoked for aldrin and dieldrin also necessitated amending Attachment A of Compliance Policy Guide 7141.01. This Attachment specifies the enforcement levels FDA uses for pesticides that have EPA tolerances established at zero. The enforcement levels for aldrin and dieldrin have been deleted from Attachment A.

Copies of the EPA correspondence recommending the new and revised action levels of revised Attachments A, B.1, B.3, and B.5 of Compliance Policy Guide 7141.01, and the memorandum to FDA Field Offices notifying them of the establishment of the action levels are on file in the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this document.

Interested persons may on or before July 13, 1987 submit to the Dockets Management Branch (address above) written comments, data, and information regarding these action levels. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 5, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-10853 Filed 5-12-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87M-0138]

## Carl Zeiss, Inc.; Premarket Approval of Zeiss Visulas ND: YAG Ophthalmic Laser for Iridectomy

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Carl Zeiss, Inc., for premarket approval, under the Medical Device Amendments of 1976, of the Zeiss Visulas Nd: YAG Ophthalmic Laser for performing an iridectomy (hole in the iris). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by June 12, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8221.

**SUPPLEMENTARY INFORMATION:** On January 12, 1987, Carl Zeiss, Inc., Thornwood, NY 10594, submitted to CDRH a supplemental application for premarket approval of the Zeiss Visuals Nd: YAG Ophthalmic Laser. The Zeiss Visualas Nd: YAG Ophthalmic Laser is a neodymium:yttrium-aluminum-garnet (Nd:-YAG) ophthalmic laser that is indicated for performing an iridectomy (hole in the iris).

On February 26, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 31, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ-460), address above.

### Opportunity For Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioner may, at any time on or before June 12, 1987, file with the Docket Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 6, 1987.

James S. Benson,

*Acting Director, Center for Devices and Radiological Health.*

[FR Doc. 87-10852 Filed 5-12-87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-060-07-4212-17; CA-060-5-448]

### California: Emergency Area Closure; San Diego County, CA

The following order, affecting Lot 4, Section 22, T. 10S., R. 4W., SBM., was issued on May 4, 1987.

I have determined that current use of this area is causing environmental degradation and is a serious threat to public health. This problem is the result of a number of people living in unauthorized sub-standard housing without sanitary facilities or a potable water supply.

In order to rectify this situation, I hereby order the above captioned public land closed to entry pursuant to 43 CFR 8364.1. Persons exempt from this order shall include those persons engaged in retrieving personal property from the site, or those with other specific authorization. Any person who knowingly and willfully violates this closure may be subject to $1000 fine and/or one year imprisonment.

This order shall remain in effect until further notice.

Dated: May 4, 1987.

Leslie Cone,

*Area Manager.*

[FR Doc. 87-10887 Filed 5-12-87; 8:45 am]

BILLING CODE 4310-40-M

[AK-867-4213-15; A-060995]

### Alaska; Notice for Publication

A portion of Japonski Island near Sitka, Alaska is being patented to the State of Alaska for the Mount Edgecumbe School Facility. In accordance with Public Law 98-396 of August 22, 1984, notice is hereby given of the lands to be retained by the Alaska Area Native Health Service on Japonski Island near Sitka, Alaska.

Lots 3 through 7, 9, 10 and 11, U.S. Survey No. 1498, Alaska, situated on Japonski Island near Sitka, Alaska.

Containing 29.94 acres, as shown on the plant of survey filed December 11, 1985.

Iniquiries should be directed to the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Attn: Terry R. Hassett, Anchorage, Alaska 99513.

Terry R. Hassett,

*Chief, Branch of KCS Adjudication.*

[FR Doc. 87-10865 Filed 5-12-87; 8:45 am]

BILLING CODE 4310-JA-M

[NM-030-07-4212-14; NM 64743]

### Realty Action; Sierra County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described parcel of public land has been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value of $200 per acre. The land will not be offered for sale until July 13, 1987.

T. 12 S., R. 4 W., NMPM,
Sec. 17, S½W¼SW¼, SW¼SE¼SW¼,
Containing approximately 30 acres.

The lands are proposed to be offered to the City of Truth or Consequences, New Mexico. The City plans to use the land to operate a sanitary landfill. The sale is not in conflict with the Bureau's planning system, and the land is not critical to any resource program and has been found suitable for use as a sanitary landfill. It has been determined that sale of this parcel of land to the City of Truth or Consequences will serve important public objectives. The patent, when issued, will be subject to all valid and existing rights and will contain the following reservations:

1. LC0954809—Right of Way—New Mexico State Highway Department.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

3. All mineral deposits in the land so patented. Such minerals shall be subject to the right to explore, prospect for, mine and remove under applicable law and such regulations as the Secretary may prescribe (Federal Land Policy and Management Act of 1976, 90 Stat. 2757; 43 U.S.C. 1719).

4. All the geothermal steam and associated geothermal resources as to land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits upon compliance with the conditions and subject to the provisions and limitations of the Act of December 24, 1970 (84 Stat. 1566).

DATE: Comments should be submitted on or before June 29, 1987.

ADDRESSES: Interested parties may submit comments to the Las Cruces District Manager, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: P. Robert Alexander, Area Manager, White Sands Resource Area at 505-525-8228 (FTS 571-8351).

SUPPLEMENTARY INFORMATION: Publication of this notice in the Federal Register segregates the public land from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

Objections will be reviewed by the BLM State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

H. James Fox,

*District Manager.*

[FR Doc. 87-10867 Filed 5-12-87; 8:45 am]

BILLING CODE 4310-FB-M

### Realty Action; in Jackson County, OR

The following described land is suitable for sale under section 203 (and 209) of the Federal Land Policy and Management Act of 1976, 43 U.S.C.1713 (and 1719), at no less than the appraised fair market value.

Willamette Meridian:

T. 34 S., R. 1 W., Sec. 17, Lot 1,
Jackson County, Oregon.

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

No significant resource values will be affected by this disposal. The sale is consistent with BLM'S planning for the land involved and the public interest will be served by offering this land for sale.

Direct sale procedures are being used since a competitive sale is not appropriate and the public interest would best be served by the direct sale because it would resolve a nonwillful unauthorized occupancy. Direct sale would recognize the existing improvement and avoid any unnecessary hardship on the owner. The parcel identified by Serial No. OR 41039 is being offered to Wesely and Helene Kercher using direct sale procedures authorized under 43 CFR 2711.3-3. The land will be sold at fair market value to Wesely and Helene Kercher without competitive bidding. The prospective

purchaser is required to render a minimum deposit of twenty percent (20%) of the purchase price sixty (60) days after establishment of the value and the balance within 180 days of the sale date. If the deposit is not submitted or the full purchase price not rendered within 180 days of the sale date, the preference right is cancelled, the deposit will be forfeited, and the parcel will not be sold.

**Terms and Conditions of the Sale**

The terms, conditions, and reservations applicable to the sale are as follows:

1. The United States reserves all right to oil and gas.

2. The remaining mineral interests being offered for conveyance have no known mineral value. The sale will also constitute an application for conveyance of the remaining mineral estate in accordance with Section 209 of the Federal Land Policy and Management Act, 43 U.S.C. 1719. The purshasers must include with their bid deposit a non refundable $50.00 filing fee for the conveyance of the mineral estate.

3. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

4. Patents will be issued subject to all valid existing rights and reservations of records.

5. The BLM may accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

**Comments**

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Buruea of Land Management, Medford District. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: April 30, 1987.

**James P. Clason,**

*Acting District Manager.*

[FR Doc. 87-10901 Filed 5-12-87; 8:45 am]

BILLING CODE 4310-33-M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance office and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

*Title:* Exemption for Coal Extraction Incidental to Extraction of other Minerals—30 CFR 702.

*Abstract:* This part implements the requirements in section 701 (28), Pub. L. 95-87 which requires the regulatory authority to make a determination of exemption to the Act of operators extracting less than 16⅔ tonnage of coal incidental to other minerals. This information will be used by the regulatory authority to make that determination.

*Bureau form number:* None.

*Frequency:* Every 4 Years.

*Description of respondents:* Coal Mining Operators.

*Annual responses:* 100.

*Annual burden hours:* 500.

*Bureau clearance officer:* Darlene Grose-Boyd (202) 343-5447.

Dated: April 30, 1987.

**Carson W. Culp,**

*Assistant Director, Budget and Administration.*

[FR Doc. 87-10903 Filed 5-12-87; 8:45 am]

BILLING CODE 4310-05-M

## INTERNATIONAL TRADE COMMISSION

### Agency Form Submitted for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with investigation No. 332-229, U.S. Global Competitiveness: Textile Mill Industry, Instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332).

**SUMMARY OF PROPOSAL:**

(1) Number of forms submitted: Two.

(2) Title of form: U.S. Global Competitiveness: Textile Mill Industry—Questionnaires for U.S. Producers and Purchasers.

(3) Type of request: New.

(4) Frequency of use: Nonrecurring.

(5) Description of respondents: Firms which produce or purchase textile mill products.

(6) Estimated number of respondents: 225.

(7) Estimated total number of hours to complete the forms: 9,000.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed form and supporting documents may be obtained from Joseph Williams, (USITC tel. no. 202-523-5702). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S. International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of Comments: Comments should be submitted to OMB within two weeks of the date this notice appears in the **Federal Register**. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms Picoult's telephone number is 202-359-7340. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street, NW., Washington DC 20436).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: May 8, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-10923 Filed 5-12-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-259]

## Certain Battery-Powered Smoke Detectors; Termination of Investigation as to Two Respondents on the Basis of Settlement Agreements

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Nonreview of two initial determinations granting joint motions to terminate the investigation as to two respondents on the basis of settlement agreements.

**SUMMARY:** On March 11, 1987, complainants Pittway Corporation and BRK/Colorado Inc. and respondent Gateway Scientific, Inc. (Gateway) filed a joint motion to terminate this investigation as to Gateway on the basis of a settlement agreement. On March 24, 1987, complainants and respondent Pyrotector, Inc. filed a similar motion. On April 7, 1987, the presiding administrative law judge issued two initial determinations (IDs) granting the joint motions to terminate the investigation. The Commission determined not to review the IDs.

**FOR FURTHER INFORMATION CONTACT:** Jean H. Jackson Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202-523-1693.

**SUPPLEMENTARY INFORMATION:** This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington DC 20436, telephone 202-523-0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202-724-002

Issued: May 4, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-10925 Filed 5-12-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-242]

## Certain Dynamic Random Access Memories, Components Thereof, and Products Containing Same; Commission Decision To Review and Remand Initial Determination to the Administrative Law Judge

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Review and remand of initial determination.

**SUMMARY:** The Commission has determined to review and remand to the presiding administrative law judge (ALJ) an initial determination (ID) terminating a portion of the above-captioned investigation as to respondents Hitachi, Ltd. and Hitachi American, Ltd. (collectively referred to as Hitachi).

**FOR FURTHER INFORMATION CONTACT:** Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0480.

**SUPPLEMENTARY INFORMATION:** On March 12, 1986, the Commission instituted this investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337 and 19 U.S.C. 1337a) in the unlawful importation into and sale in the United States of certain dynamic random access memories (DRAMs) by reason of alleged infringement of ten U.S. patents owned by complainant Texas Instruments Incorporated (TI). TI alleged, *inter alia,* that DRAMs imported and sold by Hitachi infringed certain claims of U.S. Letters Patent 4,543,500 (the '500 patent), U.S. Letters Patent 4,533,843 (the '843 patent), and U.S. Letters Patent 4,495,376 (the '376 patent), all owned by TI.

On March 20, 1987, respondent Hitachi filed a motion (Motion No. 242-472) pursuant to Commission rule 210.51(a) requesting termination of the investigation as to Hitachi. Hitachi argued that it should be terminated from the investigation because it is impliedly licensed under the '500 and '843 patents and that the evidence does not establish that Hitachi's DRAMs have a tendency to injure the domestic industry because Hitachi has discontinued making and selling the only DRAMs that TI charged with infringement of the '376 patent. On April 2, 1987, the presiding ALJ issued an ID granting Hitachi's motion in part on the basis that Hitachi is impliedly licensed under the '500 and '843 patents. The ALJ denied Hitachi's motion with respect to the '376 patent. Complainant TI and the Commission investigative attorneys filed petitions for review of the ID. Respondent Hitachi filed a reply to the petitions. No government agency comments were received.

Copies of the nonconfidential version of the ALJ's ID, the Commission's Action and Order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-523-0002.

Issued: May 5, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87-10926 Filed 5-12-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-255]

## Certain Garment Hangers; Commission Determination Not To Review Initial Determination Finding Respondents in Default

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Nonreview of initial determination (ID) finding respondents in default and imposing procedural sanctions.

**SUMMARY:** Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) ID finding respondents Pasargarda and Hangers Unlimited (Milwaukee) in default in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1626..

**SUPPLEMENTARY INFORMATION:** On March 5, 1987, the ALJ ordered respondents Pasargarda and Hangers Unlimited (Milwaukee) to show cause why each should be half in default for failure to properly respond to the complaint and notice of investigation (Orders Nos. 29 and 31). Neither respondent replied to its respective show cause order.

On April 7, 1987, the ALJ issued an ID (Order No. 40) finding respondents Pasargarda and Hangers Unlimited (Milwaukee) in default pursuant to Commission rule 210.25 (19 CFR 210.25). The ALJ ruled that the respondents had waived: (1) Their right to appear in the

investigation; (2) their right to be served with documents by any party; and (3) their right to contest the allegations at issue. No petitions for review of the ID were received nor were any agency comments received.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: May 6, 1987.

Ordered of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–10927 Filed 5–12–87; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigations Nos 701–TA–285, and 286 (Final)]**

## Industrial Phosphoric Acid From Belgium and Israel

**AGENCY:** United States International Trade Commission.

**ACTION:** Schedule for the subject investigation.

**FOR FURTHER INFORMATION CONTACT:** Ilene Hersher (202–523–4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by assessing the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

**SUPPLEMENTARY INFORMATION:** Effective February 5, 1987, the Commission instituted the subject investigations and gave notice that a schedule for their conduct would be announced at a later date (52 FR 6631, March 4, 1987). Subsequently, the Department of Commerce extended the date for its final determinations in the investigations from April 14, 1987, to June 29, 1987 (52 FR 5324, February 20, 1987). The Commission, therefore, is establishing its schedule in the investigations to conform with Commerce's new schedule.

The Commission's schedule for the investigations is as follows: A public version of the prehearing staff report will be placed on the public record on June 17, 1987; requests to appear at the hearing must be filed with the Secretary of the Commission not later than June 29, 1987; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on June 30, 1987; the deadline for filing prehearing briefs is June 30, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 9:30 a.m. on July 7, 1987; the deadline for filing all other written submissions, including posthearing briefs, is July 14, 1987; and the Commission will make its final injury determinations by August 12, 1987.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201 Subpart A through E (19 CFR Part 201).

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

Issued: May 4, 1987.

[FR Doc. 87–10928 Filed 5–12–87; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337–TA–244]**

## Certain Insulated Security Chests; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: EP Industrial Co., Ltd.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date if its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 7, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E. Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

### Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–523–0176.

Issued: May 7, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–10929 Filed 5–12–87; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337–TA–267]**

## Certain Minoxidil Power, Salts and Compositions for Use in Hair Treatment; Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 7, 1987, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C 1337), on behalf of the Upjohn Company, Kalamazoo, Michigan 49001. A supplement to the complaint as filed on April 28, 1987. The complaint as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain minoxidil powder, minoxidil salts and compositions and concentrates containing minoxidil or its salts into the United States, and in their sale, by reason of alleged direct, contributory and induced infringement of (1) all nine claims of U.S. Letters Patent 4,139,619; and (2) at least claims 1, 8, 9, 11, 13, and 14 of U.S. Letters Patent 4,596,812. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure as industry, efficiently and eonomically operated, in the United State, or prevent the establishment of such an industry in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Gertler, Esq., and Cheri M. Taylor, Esq., office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–0115 and 202–523–0440, respectively.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in §210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

**Scope of Investigation**

Having considered the complaint, the U.S. Inernational Trade Commission, on May 7, 1987, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain minoxidil powder, salts and compositions for use in hair treatment into the United States, or in their sale, by reason of alleged direct, contributory and induced infrinement of (1) all nine claims of U.S. Letters patent 4,139,619, and (2) claims 1, 8, 9, 11, 13, and 14 of U.S. Letters Patent 4,596,812, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, and to prevent the establishment of an industry in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: The Upjohn Company, Kalamazoo, Michigan 49001.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ACIC Limited, 66 ST. Clair Avenue, East, Suite 304, Toronto, Ontario, Canada M4T 1M5
Alchymarz, 20020 Ceriano, Laghette, Via Delle Industria 6, Milan, Italy
Bernhoff Laboratories, Inc., P.O. Box 4526, CH–6304 Zug, Switzerland
Farmos Group, P.O Box 425, SF–20101, Turku 10, Finland
Hair-Gro, APDO. Postal No. 176, Playas De Tijuana, Mexico.
Hauptmann Institute, Heitzinger Hauptstr. 37, A-1130 Vienna, Austria
Kemyos Bio Medical Research S.r.l., 54 Via Binasco, Casarile 20080, Milan, Italy
Ocean Chemicals, P.O. Box 86622, North Vancouver B. C., Canada V7L 41LZ
Societa Italiana Chimici, Via Luigi Pulci 25—27, Rome 00162, Italy
TOPCHEM s.r.L., Viale Andrea Dore 17, Milan 20124, Italy
Brainerd Chemical Company, Inc., P.O. Box 47001D, 6507 East 42nd Street, Tulsa, Oklahoma 74147
Chem Tri State, Inc., 1933 No. Marianna, Los Angeles, California 90023
Future Marketing & Assosicates, Inc., 6736 Eton Avenue, Canoga Park, California 91303
Health Inernational, Suite 242, 19528 Ventura Boulevard, Tarzana, California 91356
Life Essentials, Suite 550, 8306 Wilshire Boulevard, Beverly Hills, California 90211
Mastey Distributors, Inc., 24645 W. Warren, Dearborn, Michigan 48127
Professional Compounding Centers of America, Inc., Suite 620 10925 Kingburst, Houston, Texas 77099
Riahom Corporation, 900 E. Excutive, Indiantown Road, Jupiter, Florida 33458
S.S.T. Corporation, 1373 Broad Street, P.O. Box 1649, Clifton, New Jersey 07015
Tulsa Intertrade, Box 4461, Tulsa, Oklahoma 74159.

(c) Jeffrey L. Gertler, Esq., and Cheri M. Taylor, Esq., Office of Unfair Import Investigatons, U.S. International Trade Commission, 701 E Street NW., Room 125, Washington, DC 20436, shall be the attorneys for the Commission investigative staff party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administratve law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 201.16(d) and 210.21(a)), such responses will be considered by the commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notices to the respondent to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint except for any confidential business information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202/523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: May 8, 1987.

By order of the Commission.

Kenneth R. Mason,
*Secretary.*

[FR Doc. 87–10924 Filed 5–12–87; 8:45]

BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–19 (Sub–131X)]**

**The Baltimore & Ohio Railroad Co. Exemption Abandonment in Montgomery County, OH**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts The Baltimore &

Ohio Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon a 1.71-mile line of railroad in Montgomery County, OH, subject to standard employee protective conditions.

**DATES:** This exemption will be effective on June 12, 1987. Petitions to stay must be filed by May 28, 1987, and petitions for reconsideration must be filed by June 8, 1987.

**ADDRESS:** Send pleadings referring to Docket No. AB–19 (Sub-No. 131X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives:

Lawrence H. Richmond, Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201

Patricia Vail, Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

Decided: May 4, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–10966 Filed 5–12–87; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Proposed Termination of Amended Final Judgment; EKCO/GLACO INC.

Notice is hereby given that EKCO/GLACO INC. ("EKCO") has filed with the United States District Court for the Nothern District of California a motion to terminate the Amended Final Judgment in *United States* v. *EKCO/GLACO Inc.*, Civil Action No. 36584; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on June 29, 1957) alleged that EKCO and its wholly owned subsidiaries had conspired to monopolize the reglazing of used commercial baking pans throughout the United States. The Amended Final Judgment (entered on May 9, 1966) enjoined the defendant from dual pricing, deviating from published price lists except to meet competition, and selling at low prices which have the purpose or effect of eliminating a competitor.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and Amended Final Judgment, defendant's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the court in connection with this motion will be available for inspection at Room 7233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Northern District of California, Federal Building, 450 Golden Gate Avenue, San Francisco, California 94102. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within the sixty day period established by court order, and will be filed with the court. Comments should be addressed to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, CA 94102 (telephone: 415–556–6300).

Dated: May 4, 1987.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 87–10868 Filed 5–12–87; 8:45 am]

BILLING CODE 4410–01–M

### Drug Enforcement Administration

[Docket No. 86–71]

### Charles D. Pearce, M.D., Louisville, KY; Hearing

Notice is hereby given that on August 20, 1986, the Drug Enforcement Administration, Department of Justice, issued to Charles E. Pearce, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AP5441530 and any pending applications for renewal of such registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, May 12, 1987, in Courtroom 9, First Floor, Jefferson Trial Courts, 600 West Jefferson Street, Louisville, Kentucky.

Dated: May 6, 1987.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87–10920 Filed 5–12–87; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 86–78]

### Clifton Orson Timanus, D.D.S., Memphis, TN; Hearing

Notice is hereby given that on September 25, 1986, the Drug Enforcement Administration, Department of Justice, issued to Clifton Orson Timanus, D.D.S. an Order to Show Cause as to why the Drug Enforcement Administration should not deny his application for registration dated April 22, 1986.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Wednesday, May 13, 1987, in Courtroom 9, First Floor, Jefferson Trial Courts, 600 West Jefferson Street, Louisville, Kentucky.

Dated: May 6, 1987.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87–10921 Filed 5–12–87; 8:45 am]

BILLING CODE 4410–09–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–42]

### NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with Federal Advisory Committee Act, Pub. L. 92–463,

as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

Date and time: May 27, 1987, 9:30 a.m.–5:45 p.m., May 28, 1987, 8:30 a.m.–5:30 p.m., May 29, 1987, 8:30 a.m.–3:30 p.m.

ADDRESS: NASA Headquarters, Room 226A, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosenolhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–1656).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee will meet to review the Office of Space Science and Applications (OSSA) propsective budget for 1989, augmentations and other initiatives for FY 1989, and program technical issues for New Start candidates. The Committee is chaired by Dr. Louis Lanzerotti and is composed of 32 members The meeting will be closed Thursday, May 28, at 4:30 p.m. to allow for a dicsussion on membership. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 80).

Type of meeting: Open except for a closed session as noted in the agenda below.

Agenda: May 27, 1987:

9:30 a.m.—Introduction, Review of Agenda and Purpose of Meeting, Announcements, etc.

9:45 a.m—Status of Office of Space Science and Applications (OSSA) Prospects for the FY 1989 Budget.

Review of New Start Candidates

12:45 p.m.—Introductory Remarks.

1 p.m.—Advance X-Ray Astrophysics Facility.

2 p.m.—Comet Rendezvous-Asteroid Flyby.

3:15 p.m.—Round Table Discussion to Clarify Program Technical Issues for New Start Candidates.

4:15 p.m.—Subgroup Discussions.

5:45 p.m.—Adjourn.

May 28, 1987:

8:30 a.m.—Continuation and Completion of Subgroups Discussions on New Starts.

Discussion by Division Directors of Augmentations and Other Initiatives for FY 1989

9:30 a.m.—Solar System Exploration.

10:30 a.m.—Astrophysics.

11:30 a.m.—Earth Science and Applications.

1:30 p.m.—Round Table Discussion with Division Directors on Augmentations and other Initiatives.

2:30 p.m.—Subgroup Discussion of Augmentations and Other Initiatives.

4:30 p.m.—Closed Session.

5:30 p.m.—Adjourn.

May 29, 1987:

8:30 a.m.—Reports from Subgroups on New Starts/Committee Discussion.

10:15 a.m.—Report from Subgroups on Augmentations and Other Initiatives/ Committee Discussion.

11:15 a.m.—General Discussion/ Formulations of Committee Recommendations.

1:30 p.m.—Completion of Formulation of Committee Recommendations/ Presentations of Summary Recommendations/Discussion.

2:30 p.m.—Future Committee Activities.

3:30 p.m.—Adjourn.

Richard L. Daniels,

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

May 7, 1987.

[FR Doc. 87–10886 Filed 5–12–87; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Forms Submitted to the Office of Management and Budget for Clearance

The following package is being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Subject:* Participating Credit Union (PCU) Sample, NCUA 5301–(3133–0001).

*Abstract:* Credit Union Monthly Survey provides financial data that serves as a basis for estimating consumer savings and credit, growth in assets, savings, investments and to monitor trends and developments at all U.S. credit unions. The information is also used for supervisory program planning, management and publication of industry statistics.

*Frequency:* Respondents provide financial information on a monthly basis.

*Burden:* The average time required to comply with this information collection is 15 minutes per submittal.

*Respondents:* A sample of federally insured credit unions.

*OMB Desk Officer:* Robert Fishman.

Copies of the above information collection clearance package may be obtained by calling the National Credit Union Administration, Administrative Office on (202) 357–1055.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: April 30, 1987.

Rebecca Baker,

*Acting Secretary of the NCUA Board.*

[FR Doc. 87–10885 Filed 5–12–87; 8:45 am]

BILLING CODE 7535–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Arts Education Research Center Project; Notification of Request for Qualifications Statement

AGENCY: National Endowment for the Arts.

ACTION: Notice of request for statement of qualifications.

SUMMARY: The Department of Education and the National Endowment for the Arts are planning jointly to fund a project on arts education research for public and private schools in kindergarten through twelfth grades. Statement of qualifications are requested from interested not-for-profit institutions of higher education. This notice sets forth a description of the project and necessary contents of a statement for qualifications.

DATE: Statement of qualifications must be submitted by June 14, 1987.

ADDRESS: Contracts Office, Room 217, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contract Specialist, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506 (202/682–5482).

SUPPLEMENTARY INFORMATION: Support will be provided for focused research efforts dealing with one or several of the following areas: Standards or goals for student achievement in the arts; determination of kinds of curricula that

should be used; how the arts should be taught; and, what kinds of student testing and evaluation and program evaluation should and do occur. The term "arts" in this context includes visual and design arts (e.g., painting, sculpture, crafts arts, printmaking, architecture and design), the media arts; and the performing arts, including music, dance, and theater. An awardee under this program will be known as a Center for Research on Learning and Teaching in the Arts. The initial award will be made by September 30, 1987. Funding may continue up to three years. The statement of qualifications should include a description of the institution, experience in art education research, and current staff qualifications. Attachments to the statement should include copies of papers, articles, and research reports prepared by the staff which are relevant to research in arts education, as well as two self addressed mailing labels. Closing date for submission of responses is June 14, 1987. Failure to submit a statement of qualifications does not preclude an institution from submitting a proposal in response to a solicitation for this project, in the event that such a solicitation occurs.

Peter J. Basso,

*Deputy Chairman for Management, National Endowment for the Arts.*

[FR Doc. 87-11086 Filed 5-12-87; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-338]

## Virginia Electric and Power Co. and Old Dominion Electric Cooperative, North Anna Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering the issuance of an exemption from the requirements of 10 CFR 50.46 to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee) for the North Anna Power Station, Unit No. 1, located in Louisa County, Virginia.

### Environmental Assessment

*Identification of Proposed Action and Need for Proposed Action*

The licensee proposes to use two lead test assemblies in the North Anna facilities. These assemblies are clad with an advanced cladding material, a zirconium based alloy. Although the new zirconium based alloy is very similar in composition to "Zircalloy," it is not clear that the new alloy falls within the scope of 10 CFR 50.46 which applies to "Zircalloy" clad fuel. Resolution of this question will involve a substantial effort in checking into the rulemaking record on which §50.46 was based. In the absence of such resolution, an exemption from the provision of §50.46 limiting its application to "Zircalloy" clad fuel is needed to permit authorization of the use of the new fuel. Test experience with a limited number of assemblies for design development purposes provides important data to determine whether new designs can provide performance improvement while maintaining a high standard of safety performance.

*Environmental Impact of the Proposed Action*

Operation with the new cladding will not be significantly affected. The composition of the zirconium based alloy is very similar to "Zircalloy" in all significant respects; moreover, the test assemblies are not located in the portions of the core expected to experience highest burnup and highest power density. The safety assessments performed by the licensee and the NRC staff demonstrate that performance of these assemblies in the event of a LOCA will be bounded by the performance previously calculated for the other zircalloy clad assemblies in the core, which was based on accepted ECCS evaluation models.

Further, the staff has concluded that use of two test assemblies containing the new alloy in the North Anna 1 reactor would conform to all current fuel design bases, would not change the existing reload design and safety analysis limits, and would satisfy the guidelines for lead test assemblies.

As a result, the use of the 2 lead test assemblies would not affect the probability or consequences of potential reactor accidents; nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no signficant radiological impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other significant non-radiological environmental impact associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since we have concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impact associated with the provisions of 50.46 limiting application of fuel assemblies to "Zircalloy" clad fuel and compliance with the rule would negate design development purposes which provide important data to determine whether new fuel assemblies with advanced cladding material (zirconium base alloy) can provide performance improvement while maintaining a high standard of safety performance.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement (as amended) for the North Anna Power Station, Units No. 1 and No. 2.

*Agencies and Persons Contacted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

### Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assesament, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for using two lead test assemblies with advanced cladding material dated Feburay 20, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 7th day of May, 1987.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

*Director, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 87-10956 Filed 5-12-87; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards Subcommittee on Nuclear Plant Chemistry; Meeting

The ACRS Subcommittee on Nuclear Plant Chemistry will hold a meeting on May 19, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

*Tuesday, May 19, 1987—1:00 P.M. until the conclusion of business*

The Subcommittee will review SRP section 6.5.2, "Containment Spray as a Fission Product Cleanup System," and SRP section 6.5.5, "Suppression Pools as Fission Product Cleanup Systems."

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff members as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 8, 1987.

Morton W. Libarkin,

*Assistant Executive Director for Project Review.*

[FR Doc. 87–10960 Filed 5–12–87; 8:45 am]

BILLING CODE 7590–01–M

### Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on May 26, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Tuesday, May 26, 1987—8:30 a.m. until the conclusion of business*

The Subcommittee will continue its current review of the nuclear plant regulatory process.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hold discussions with past and present representatives of the NRC regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Gary Quittschreiber (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attent this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 7, 1987.

Morton W. Libarkin

*Assistant Executive Director of Project Review.*

[FR Doc. 87–10961 Filed 5–12–87; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–24430; File No. SR–CBOE–87–08]**

### Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Liability for Payment of Debts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1987, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Text of the Proposed Rule Change

Additions are italicized; there are no deletions.

*Liability for Payment*

*Rule 2.23.* A member that does not pay any dues, fees, assessments, charges, *fines* or other amounts due to the Exchange within 30 days after the same has become payable shall be reported to the Chairman of the Executive Committee, who may, after giving reasonable notice to the member of such arrearages, suspend the member until payment is made. Should payment not be made within 6 months after payment is due, a regular membership may be disposed of by the Exchange or a special membership may be disposed of or cancelled by the Exchange, in accordance with Rule 3.14(b). *A person association with a member who fails to pay any fine or other amounts due to the Exchange within 30 days after such amount has become payable and after reasonable notice of such arrearages, may be suspended by the Chairman of the Executive Committee from associated with a member until payment is made.*

*. . . Interpretations and Policies:*

*.01 Reasonable notice under Rule 2.23 shall include, but is not limited to, service on a member or associated person's address as it appears on the books and records of the Exchange*

*either by (1) hand delivery or (2) deposit in the United States post office, postage prepaid via registered or certified mail.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to assure that Exchange members and associated persons pay debts owed to the Exchange in a timely manner and to discipline those who fail to comply with the rule. The proposed change gives the Chairman of the Executive Committee the authority to suspend associated persons for violations of this rule. The suspension is only effective until the fine is paid.

The proposed rule change also clarifies the "reasonable notice" a member or associated person must be given of any debts owed to the Exchange.

The proposed rule change is consistent with the purposes of the Securities and Exchange Act of 1934 and, in particular, section 6(b)(5) thereof, in that the proposed rule change promotes just and equitable principles of trade.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that this proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 3, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 6, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10947 Filed 5-12-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

**[Public Notice CM-8/1078]**

### Integrated Services Digital Network (ISDN); Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 9, 1987 at 9:30 a.m. in Room 1205, Department of State, 2201 C Street, NW., Washington, DC.

The proposed agenda will be:

1. Report on CCITT Study Group XI Working Parties Meeting, Phoenix, March 23-April 10, 1987.
2. Consideration of Contributions to the Study Group XVIII Meeting, Hamburg, June 29–July 17, 1987.
3. Consideration of other relevant contributions.
4. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

Dated: April 23, 1987.

**Earl S. Barbely,**

*Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.*

[FR Doc. 87-10872 Filed 5-12-87; 8:45 am]

BILLING CODE 4710-07-M

**[Public Notice 1010]**

### Certain Foreign Passports Validity

Jordan is added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of at least six months beyond the expiration date specified in the passport. This notice amends Public Notice 954 of February 26, 1986 (51 FR 6853).

Dated: May 4, 1987.

**Joan M. Clark,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 87-10873 Filed 5-12-87; 8:45 am]

BILLING CODE 4710-06-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ending May 1, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

**Docket No. 44849 R-1—R-10**

*Parties:* Members of International Air Transport Association.
*Date Filed:* April 27, 1987.
*Subject:* Passenger Agency Conference Resolutions.
*Proposed Effective Date:* October 1, 1987.

**Docket No. 44853 R-1—R-3**

*Parties:* Members of International Air Transport Association.
*Date Filed:* May 1, 1987.
*Subject:* Filing Procedures for Proportional Fares.
*Proposed Effective Date:* May 15, 1987.

**Docket No. 44854 R-1—R-7**

*Parties:* Members of International Air Transport Association.
*Date Filed: May 1, 1987.*
*Subject:* TC31 North and Central Pacific Resolutions.
*Proposed Effective Date:* July 1, 1987; September 1, 1987.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 87-10879 Filed 5-12-87; 8:45 am]
BILLING CODE 4910-62-M

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## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 1, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process and the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

**Docket No. 44834**

*Date Filed:* April 28, 1987.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 26, 1987.
*Description:* Application of Brian Thompson Air Service, pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity for a indefinite term to perform scheduled interstate air transportation of persons, property of mail between the terminal point Fairbanks, the intermediate points Ambler and Kobuk, and the terminal point Shungnak, Alaska.

**Docket No. 44850**

*Date Filed:* April 30, 1987.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 28, 1987.
*Description:* Application of Trans World Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for an amendment of its certificate of public convenience and necessity for Route 147 to authorize TWA to carry local passengers, property and mail on its London-Frankfurt flights authorized by such certificate during the off-peak season, namely, from October 29 through May 14 of each year, commencing October 29, 1987.

**Docket No. 44852**

*Date Filed:* May 1, 1987.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 29, 1987.
*Description:* Application of Yutana Airlines pursuant to Section 401 of the Act and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity for an indefinite term to perform scheduled interstate air transportation of persons, property of mail between the terminal point Fairbanks, and the terminal point Tanana, Alaska.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 87-10880 Filed 5-12-87; 8:45 am]
BILLING CODE 4910-62-M

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**[Order 87-5-17; Docket 44525]**

## MGM Grand Air, Inc. for Certificate Authority; Application

**AGENCY:** Department of Transportation.
**ACTION:** Notice of Order to Show Cause, (Order 87-5-17) Docket 44525.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding MGM Grand Air, Inc., fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

**DATES:** Persons wishing to file objections should do so no later than May 18, 1987.

**ADDRESSES:** Responses should be filed in Docket 44525 and addressed to the Documentary Service Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen H. Davis, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366-1049.

Dated: May 6, 1987.

**Mathew V. Scocozza,**
*Assistant Secretary for Policy and International Affairs.*
[FR Doc. 87-10881 Filed 5-12-87; 8:45 am]
BILLING CODE 4910-62-M

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## Federal Aviation Administration

## Radio Technical Commission for Aeronautics (RTCA); Special Committee 160, 406 MHz Emergency Locator Transmitters (ELT); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on June 8-10, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the Minutes of the Third Meeting; (3) review and discuss EUROCAE WG-29 activities; (4) report on potential problems of frequency interference in the 406 MHz band; (5) review NOAA data base procedures; (6) review of task assignments from last meeting; (7) review the first draft of the MOPS; (8) task assignments; and (9) other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued at Washington, DC., on May 5, 1987.

**Wendie F. Chapman,**
*Designated Officer.*
[FR Doc. 87-10854 Filed 5-12-87; 8:45 am]
BILLING CODE 4910-13-M

### Radio Technical Commission for Aeronautics (RTCA); Special Committee 159, Minimum Aviation System Performance Standards for Global Positioning System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 159 on Minimum Aviation System Performance Standards for Global Positioning System to be held on June 3–5, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC., commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of minutes of the fifth meeting; (3) briefing and discussion on development of standards for a GPS/LORAN C hybrid system; (4) report of integrity working group activities; (5) review of task assignments; (6) assignment of tasks; and (7) other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC., on May 5, 1987.

**Wendie F. Chapman,**

*Designated Officer.*

[FR Doc. 87–10855 Filed 5–12–87; 8:45 am]

BILLING CODE 4910-13-M

### Saint Lawrence Seaway Development Corporation

#### Advisory Board Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 2:00 p.m., June 16, 1987, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh St. SW., Washington, DC. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business; Closing Remarks.

Attendance at meeting is open to the interested public but limited to space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June 12, 1987, Joan C. Hall, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590; 202/366–0118.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on May 4, 1987.

**Joan C. Hall,**

*Advisory Board Liaison.*

[FR Doc. 87–10874 Filed 5–12–87; 8:45 am]

BILLING CODE 4910-61-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: May, 1987.

The Department of Treasury has Submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treaury Bureau Clearance Office listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

*OMB Number:* 1512–0020
*Form Number:* ATF Form 9 (5320.9)
*Type of Review:* Extension
*Title:* Application and Permit for Permanent Exportation of Firearms
*Description:* This form is used to move National Firearms Act weapons legally into export channels and serves as a vehicle to allow either the removal of the weapon from the National Firearms Registration and Transfer Record or to the collection of an excise tax. It is used by firearms manufacturers, exporters and others to obtain a benefit and by the Treasury Department to determine/collect taxes
*Respondents:* Individuals, Businesses
*Estimated Burden:* 595 hours

*OMB Number:* 1512–0141
*Form Number:* ATF F 2635 (5620.8)
*Type of Review:* Revision
*Title:* Claim-Alcohol, Tobacco and Firearms Taxes
*Description:* ATF F 2635 (5620.8) is used by a taxpayer to show the basis for a credit remission and allowance of tax on a loss of taxable articles (distilled spirits, wine, beer, tobacco products and firearms). ATF F 2635 (5620.8) is submitted along with supporting documentation to indicate why a credit of Federal tax should be made to the claimant
*Respondents:* Individuals, Businesses
*Estimated Burden:* 63,950 hours
Clearance Officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

U.S. Customs Service

*OMB Number:* 1515–0121
*Form Number:* None
*Type of Review:* Extension
*Title:* Establishment of a Bonded Warehouse
*Description:* Owners or lessees desiring to establish a bonded warehouse must make written application to the district director where the warehouse is located, along with other documents pursuant to 19 CFR 19.2
*Respondents:* Businesses
*Estimated Burden:* 135 hours
Clearance Officer: B. J. Simpson, (202) 566–7529, U.S. Customs Service Room 6426, 1301 Constitution Avenue NW. Washington, DC. 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 87–10931 Filed 5–12–87; 8:45 am]

BILLING CODE 4810-25-M

### Customs Service

[T.D. 87–67]

### Recordation of Trade Name; Snyder Laboratories, Inc.

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of recordation.

**SUMMARY:** On February 23, 1987, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Snyder Laboratories, Inc." was published in the Federal Register

(52 FR 5517). The notice advised that before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than April 24, 1987. No responses were received in opposition to the notice.

Accordingly, as provided in section 133.14, Customs Regulations (19 CFR 133.14), the name "Snyder Laboratories, Inc." is recorded as the trade name used by Snyder Laboratories, Inc., a corporation organized under the laws of the State of Delaware, located at 200 West Ohio Avenue, Dover, Ohio 44622. The trade name is used in connection with the developing and marketing of medical devices and equipment, including wound drainage devices and any parts, developments, extensions and accessories, including tubing, sterile needles and sterile connectors, manufactured in the United States.

**DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–5765).

Dated: May 7, 1987.

**Steven Pinter,**

*Chief, Entry, Licensing and Restricted Merchandise Branch.*

[FR Doc. 87–10963 Filed 5–12–87; 8:45 am]

BILLING CODE 4820–02–M

## UNITED STATES INFORMATION AGENCY

### Central American University Partnership Program; Request for Concept Papers

**Summary**

The Bureau of Educational and Cultural Affairs of the United States Information Agency invites concept papers for a pilot program of support for institutional partnerships between U.S. and Central American universities. In conjuction with other regional initiatives resulting from the recommendations of the National Bipartisan Commission on Central America (Kissinger Commission), these partnerships are intended to strengthen Central American universities. One-time grants-in-aid will be made available to selected U.S. partner institutions for a period of up to three years. Total funding for each grant will not exceed $200,000.

The focus of the Central American Universities Partnership Program is on the development of the Central American academic department, hence the majority of grantees will be faculty members from Central America engaged in graduate degree programs and non-degree academic and professional development activities. A smaller but no less important component will be the participation of U.S. faculty members in the academic programs of the Central American department or equivalent unit.

**Program Parameters**

*Countries and Disciplines*

Participating Central American countries and the academic discipline identified for each are as follows:

Costa Rica—Education
El Salvador—Education
Guatemala—Political science
Honduras—Education
Panama—Education

*Grant Characteristics:*

A. Approximately $165,000 of each grant would be used for travel, tuition, maintenance, and related expenses to bring Central American faculty members to the United States for degree and non-degree study, i.e. combinations of graduate degree programs, English language training and programs of shorter duration such as special seminars or research exchanges for professional development and research.

B. The balance of grant funds (approximately $35,000) will be available for travel and per diem only for 1) U.S. faculty to lecture at the Central American institution, 2) U.S. administrators to resolve curricular and organizational issues, and 3) U.S. faculty to conduct seminars and collaborative research.

*Time Frame*

The partnership program will start by January 1, 1988 and should extend from approximately 30 to no longer than 36 months thereafter.

**Request for Concept Papers**

U.S. academic institutions are invited to submit concept papers describing institutional capacity, interests, strengths and capabilities with regard to the partnership program described above. An institution may submit a statement for either political science or education. Institutions interested in applying for both subject areas must submit separate statements for each area. If the area of interest is education, a university should indicate in priority order the countries in which it would prefer to work.

Concept papers should not be devoted to a partnership with a specific Central American University or department.

*Statements should include, but not be limited to:*

1. Description of the university's plan for administering the program, including staffing, interdepartmental support, etc.;
2. Departmental characteristics and resources that support the partnership; facility specialities and Spanish language skills (in all specialties in which the institution proposes to work), student programs, research projects, opportunities for graduate degree and non-degree study and professional development;
3. Student support services, intensive English language training capabilities, experience with Central American students, and ability to facilitate grantee graduate admission consistent with program needs;
4. Description of current affiliations with universities in the developing world, especially in Latin America;
5. Country-specific interests which the university (or department) is pursuing or wishes to develop;
6. Indications of the university's willingness to contribute to the project's cost, by providing tuition reductions, in-kind contributions, personnel time, or other measures of overall cost-effectiveness;
7. Proposals for follow-up activities beyond the period of the grant.

**The Selection Process**

USIA will use concept papers to select a short list of finalists, based upon:

1. Demonstration of the university's administrative capability and the department's relevant strengths, program offerings, faculty experience and language skills;
2. Demonstrable quality of the university's student support services and ESL program;
3. Evidence of institutional interest and experience in the region;
4. Indications of cost effectiveness;
5. Potential for continued impact following the grant period;

Finalists will be invited to submit a final proposal by August 7, 1987. The letter of invitation will name the particular Central American partner department, elaborate in greater detail the area of project focus, and describe the goals, strengths, and needs to be addressed in the partnership.

*Calendar*

June 8: Concept papers due.
August 7: Finalists invited to submit final partnership proposals.
September 11: Finalists' proposals due.
November 1: Awards announced.

**Format**

The concept paper, including summary bio-data, should consist of no more than ten pages, the first page of which should be a summary. The number of attachments and other supportive documentation (such as catalogs, departmental publications, brochures, etc.) should be kept to a manageable size. Please submit ten copies of the concept paper and its attachments.

A separate RFP will be issued to finalists concerning proposals.

Requests for further information should be directed to: Amy K. Levine, Tel. 202/485–7389, USIA, E/AEL, Room 242, 301 Fourth Street, SW., Washington, DC 20547.

Concept papers should be received no later than 5 p.m. on June 8, 1987.

Dated: May 6, 1987.

**Dr. Mark Blitz,**

*Associate Director, Bureau of Educational and Cultural Affairs.*

[FR Doc. 87–10895 Filed 5–12–87; 8:45 am]

BILLING CODE 8230-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 92
Wednesday, May 13, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of May 11, 18, 25, and June 1, 1987.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED**

**Week of May 11**

*Wednesday, May 13*

10:00 a.m.
Briefing on NRC/DOE Comparability Study (Closed—Ex. 1)
2:00 p.m.
Periodic Briefing by INPO (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Proposed Agreement Between State of Illinois and NRC (Proposed Order to Allied Chemical) (Tentative)

**Week of May 18—Tentative**

*Wednesday, May 20*

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

*Thursday, May 21*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of May 25—Tentative**

*Friday, May 29*

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of June 1—Tentative**

*Friday, June 5*

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Braidwood (Public Meeting) (Tentative)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (202) 634–1498.

**CONTACT PERSON FOR MORE INFORMATION:** Robert McOsker (202) 634–1410.

Andrew L. Bates,
*Office of the Secretary.*
May 7, 1987.

[FR Doc. 87–10859 Filed 5–8–87; 4:55 pm]
BILLING CODE 7590-01-M

# Corrections

Federal Register
Vol. 52, No. 92
Wednesday, May 13, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 266**

**[FRL-3153-5]**

### Burning of Hazardous Waste in Boilers and Industrial Furnaces

*Correction*

In proposed rule document 87-9769 beginning on page 16982 in the issue of Wednesday, May 6, 1987, make the following correction:

**§ 266.34-4 [Corrected]**

On page 17041, in § 266.34-4(c)(1), in the second column, the last two lines were incorrectly placed and should appear immediately following the 16th line in the third column.

BILLING CODE 1505-01-D

## FEDERAL HOME LOAN BANK BOARD

**12 CFR Part 563**

**[No. 87-517]**

### Bank Secrecy Act Compliance Procedures

*Correction*

In proposed rule document 87-10578 beginning on page 17406 in the issue of Friday, May 8, 1987, make the following correction:

On page 17406, in the first column, insert the following name and title preceding the FR document line:

*Jeff Sconyers,*

Secretary.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committees; Meetings

*Correction*

In notice document 87-8234 beginning on page 12078 in the issue of Tuesday, April 14, 1987, make the following correction:

On page 12078, in the third column, in the fifth complete paragraph, in the last line, the U.S.C. cite should read "(5 U.S.C. 552b(c)(4))".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Farmer's Union Grain Terminal Association; Withdrawal of Approval of NADA

*Correction*

In notice document 87-8232 appearing on page 12081 in the issue of Tuesday, April 14, 1987, make the following correction:

In the first column, in the last line, the U.S.C. cite should read "(21 U.S.C. 360b(e))".

BILLING CODE 1505-01-D

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federal register

Wednesday
May 13, 1987

Part II

# United States Sentencing Commission

## Sentencing Guidelines for United States Courts; Notice

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of Sentencing Guidelines and Policy Statements for the United States Courts as submitted to Congress, together with Certain Technical, Conforming, and Clarifying Amendments.

**SUMMARY:** These guidelines and policy statements are promulgated for use by the federal courts in determining the sentences to be imposed in criminal cases. The sentencing reform provisions of the Comprehensive Crime Control Act of 1984 created the U.S. Sentencing Commission and charged it with the duty of promulgating sentencing guidelines. The guidelines are designed to provide certainty and fairness in meeting the purposes of sentencing. The objective is to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct, while maintaining sufficient flexibility to permit individualized sentencing when warranted by mitigating or aggravating factors not taken into account in the guidelines.

**SUMMARY:** The law provides for a six-calendar-month period of Congressional review and examination, commencing with submission of the guidelines to Congress on April 13, 1987. The law further provides that unless by law Congress modifies, postpones, or rejects them, the guidelines become effective November 1, 1987. Subsequent to submission of the initial guidelines, the Commission, on May 1, 1987, has submitted to Congress a list of technical, conforming, and clarifying amendments to the initial guidelines. Amendments to guidelines are subject to a 180-day Congressional review period before they take effect.

**ADDRESSES:** Comments on the guidelines submitted to Congress are properly directed to Congress at this point. Those wishing to comment may write a particular member of Congress; or the Chairman of the Senate Committee on the Judiciary, Senator Joseph R. Biden, Jr., U.S. Senate, Washington, DC 20510; or the Chairman of the House Committee on the Judiciary, Representative Peter W. Rodino, Jr., U.S. House of Representatives, Washington, DC 20515.

The Commission would appreciate receiving a copy of any comments sent to Congress with respect to the guidelines and policy statements. Comments may be mailed to: United States Sentencing Commission, 1331 Pennsylvania Avenue NW., Suite 1400, Washington, DC 20004, Attention: Sentencing Guidelines Comment.

**FOR FURTHER INFORMATION CONTACT:** Paul K. Martin, Communications Director for the Commission, telephone (202) 662-8800.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Ordinarily, the Administrative Procedure Act rulemaking requirements (including publication in the **Federal Register**, public comment and public hearing procedures) are not applicable to judicial branch agencies. However, 28 U.S.C. 994(x) makes the Administrative Procedure Act rulemaking provisions of 5 U.S.C. 553 applicable to the promulgation of sentencing guidelines by the Sentencing Commission. Pursuant to this requirement, the Commission has published two previous drafts of sentencing guidelines in the **Federal Register** for public comment, held public hearings on each of them, and is now publishing these guidelines as promulgated by the Commission and submitted to Congress, including certain technical, conforming, and clarifying amendments.

In order to facilitate public input at an early stage of its guidelines development process, the Commission published a preliminary draft of guidelines and policy statements in the October 1, 1986, **Federal Register** [51 FR 35079]. Additionally, the Commission disseminated more than 6000 copies of that preliminary draft to a variety of interested groups and individuals and held six regional public hearings.

Based upon the public comment received on the preliminary draft, as well as additional analysis of research data and further deliberations, the Commission prepared and published a substantially revised draft of proposed guidelines and policy statements in the February 6, 1987, **Federal Register** [52 FR 3919]. The Commission distributed approximately 6000 copies of this revised draft to the public and held public hearings in Washington, DC on March 11 and 12, 1987.

After considering public comment on the revised draft, reviewing additional analyses of the research data which the Commission has continued to develop and refine, and consulting with a variety of experts on sentencing issues, the Commission further revised the guidelines and submitted them to Congress as required. The vote of the Commission by which the guidelines were approved was 6 to 1, as follows: "Aye"—Commissioners William W. Wilkins, Jr., Michael K. Block, Stephen G. Breyer, Helen G. Corrothers, George E. MacKinnon, Ilene H. Nagel; "Nay"—Commissioner Paul H. Robinson.*

The initial guidelines, policy statements, and commentary submitted to Congress on April 13, 1987, are published here. Following those materials are the technical, conforming, and clarifying amendments, including the statutory index, submitted to Congress on May 1, 1987, along with a brief explanation of the amendments. The vote of the Commission by which the technical, conforming and clarifying amendments were approved was 6 to 0, as follows: "Aye"—Commissioners Wilkins, Block, Breyer, Corrothers, MacKinnon, Nagel; "Abstain"—Commissioner Robinson.

The Commission is in the process of printing and binding the guidelines and policy statements as submitted to Congress that incorporate the technical, conforming, and clarifying amendments. The Commission will distribute copies to all Members of Congress, Federal Judges, U.S. Magistrates, U.S. Attorneys, Federal Public Defenders, and U.S. Probation Offices. Other persons may purchase the document through the Government Printing Office.

**Authority:** Section 217(a) of the Comprehensive Crime Control Act of 1984 (28 U.S.C. 994 (a), (p), (x)).

**William W. Wilkins, Jr.,**
*Chairman.*

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*Commissioner Ronald L. Gainer, one of the two non-voting, ex officio members, stated that if he were a voting Commissioner, as a personal matter, he would not have voted to support the guidelines in their current form.

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## CHAPTER ONE—INTRODUCTION AND OVERVIEW

### 1. Authority

The United States Sentencing Commission ("Commission") is an independent agency in the judicial branch composed of seven voting and two non-voting, ex officio members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.

The guidelines and policy statements promulgated by the Commission are issued pursuant to section 994(a) of Title 28, United States Code.

### 2. The Statutory Mission

The Comprehensive Crime Control Act of 1984 foresees guidelines that will further the basic purposes of criminal punishment by deterring crime, incapacitating the offender, providing just punishment, and rehabilitating the offender. It delegates to the Commission broad authority to review and rationalize the federal sentencing process.

The statute contains many detailed instructions as to how this determination should be made, but the most important of them instructs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of "bank robbery/committed with a gun/$2,500 taken." An offender characteristic category might be "offender with one prior conviction who was not sentenced to imprisonment." The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons, to be determined by coordinating the offense behavior categories with the offender characteristic categories. The statute contemplates the guidelines will establish a range of sentences for every coordination of categories. Where the guidelines call for imprisonment, the range must be narrow: The maximum imprisonment cannot exceed the minimum by more than the greater of 25 percent or 6 months. 28 U.S.C. 994(b)(2).

The sentencing judge must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the judge to depart from the guidelines and sentence outside the range. In that case, the judge must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to see if the guideline was correctly applied. If the judge departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act requires the offender to serve virtually all of any prison sentence imposed, for it abolishes parole and substantially restructures good behavior adjustments.

The law requires the Commission to send its initial guidelines to Congress by April 13, 1987, and under the present statute they take effect automatically on November 1, 1987. Pub. L. 98–473, section 235, reprinted at 18 U.S.C. 3551. The Commission may submit guideline amendments each year to Congress between the beginning of a regular session and May 1. The amendments will take effect automatically 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. 994(p).

The Commission, with the aid of its legal and research staff, considerable public testimony and written

commentary, has developed an initial set of guidelines which it now transmits to Congress. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines by submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts throughout the nation.

**3. The Basic Approach**

To understand these guidelines and the rationale that underlies them, one must begin with the three objectives that Congress, in enacting the new sentencing law, sought to achieve. Its basic objective was to enhance the ability of the criminal justice system to reduce crime through an effective, fair sentencing system. To achieve this objective, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arises out of the present sentencing system which requires a judge to impose an indeterminate sentence that is automatically reduced in most cases by "good time" credits. In addition, the parole commission is permitted to determine how much of the remainder of any prison sentence an offender actually will serve. This usually results in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence handed down by the court.

Second, Congress sought uniformity in sentencing by narrowing the wide disparity in sentences imposed by different federal courts for similar criminal conduct by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of different severity.

Honesty is easy to achieve: The abolition of parole makes the sentence imposed by the court the sentence the offender will serve. There is a tension, however, between the mandate of uniformity (treat similar cases alike) and the mandate of proportionality (treat different cases differently) which, like the historical tension between law and equity, makes it difficult to achieve both goals simultaneously. Perfect uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that lumps together armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, is far too broad.

At the same time, a sentencing system tailored to fit every conceivable wrinkle of each case can become unworkable and seriously compromise the certainty of punishment and its deterrent effect. A bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, a teller or a customer, at night (or at noon), for a bad (or arguably less bad) motive, in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time that day, while sober (or under the influence of drugs or alcohol), and so forth.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected (and therefore may already be counted, to a different degree, in the punishment for the underlying offense); and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies, depending on how much other harm has occurred. (Thus, one cannot easily assign points for each kind of harm and simply add them up, irrespective of context and total amounts.)

The larger the number of subcategories, the greater the complexity that is created and the less workable the system. Moreover, the subcategories themselves, sometimes too broad and sometimes too narrow, will apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system of subcategories, would have to make a host of decisions about whether the underlying facts are sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different judges will apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to eliminate.

In view of the arguments, it is tempting to retreat to the simple, broad-category approach and to grant judges the discretion to select the proper point along a broad sentencing range. Obviously, however, granting such broad discretion risks correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. That is to say, such an approach risks a return to the wide disparity that Congress established the Commission to limit.

In the end, there is no completely satisfying solution to this practical stalemate. The Commission has had to simply balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any ultimate system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the moral principle of "just deserts." Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Thus, if a defendant is less culpable, the defendant deserves less punishment. Others argue that punishment should be imposed primarily on the basis of practical "crime control" considerations. Defendants sentenced under this scheme should receive the punishment that most effectively lessens the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of these points of view have urged the Commission to choose between them, to accord one primacy

over the other. Such a choice would be profoundly difficult. The relevant literature is vast, the arguments deep, and each point of view has much to be said in its favor. A clear-cut Commission decision in favor of one of these approaches would diminish the chance that the guidelines would find the widespread acceptance they need for effective implementation. As a practical matter, in most sentencing decisions both philosophies may prove consistent with the same result.

For now, the Commission has sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that uses data estimating the existing sentencing system as a starting point. It has analyzed data drawn from 10,000 presentence investigations, crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and resulting statistics, and data from other relevant sources, in order to determine which distinctions are important in present practice. After examination, the Commission has accepted, modified, or rationalized the more important of these distinctions.

This empirical approach has helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, is short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit many distinctions that some may believe important, yet they include most of the major distinctions that statutes and presentence data suggest make a significant difference in sentencing decisions. Important distinctions that are ignored in existing practice probably occur rarely. A sentencing judge may take this unusual case into account by departing from the guidelines.

The Commission's empirical approach has also helped resolve its philosophical dilemma. Those who adhere to a just deserts philosophy may concede that the lack of moral consensus might make it difficult to say exactly what punishment is deserved for a particular crime, specified in minute detail. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient, readily available data might make it difficult to say exactly what punishment will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have in fact made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a moral or crime-control perspective.

The Commission has not simply copied estimates of existing practice as revealed by the data (even though establishing offense values on this basis would help eliminate disparity, for the data represent averages). Rather, it has departed from the data at different points for various important reasons. Congressional statutes, for example, may suggest or require departure, as in the case of the new drug law that imposes increased and mandatory minimum sentences. In addition, the data may reveal inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from present practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these initial guidelines are but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission has developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, and therefore effective, sentencing system.

**4. The Guidelines' Resolution of Major Issues**

The guideline-writing process has required the Commission to resolve a host of important policy questions, typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction will briefly discuss several of those issues. Commentary in the guidelines explains others.

*(a) Real Offense vs. Charge Offense Sentencing*

One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ("real offense" sentencing), or upon the conduct that constitutes the elements of the offense with which the defendant was charged and of which he was convicted ("charge offense" sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken $50,000, injured a teller, refused to stop when ordered, and raced away damaging property during escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the offenses of which the defendant was convicted.

The Commission initially sought to develop a real offense system. After all, the present sentencing system is, in a sense, a real offense system. The sentencing court (and the parole commission) take account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process, given the potential existence of hosts of adjudicated "real harm" facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable, and, in the Commission's view, risked return to wide disparity in practice.

The Commission therefore abandoned the effort to devise a "pure" real offense system and instead experimented with a "modified real offense system", which it published for public comment in a September 1986 preliminary draft.

This version also foundered in several major respects on the rock of practicality. It was highly complex and its mechanical rules for adding harms (e.g., bodily injury added the same punishment irrespective of context) threatened to work considerable

unfairness. Ultimately, the Commission decided that it could not find a practical or fair and efficient way to implement either a pure or modified real offense system of the sort it originally wanted, and it abandoned that approach.

The Commission, in its January 1987 Revised Draft and the present guidelines, has moved closer to a "charge offense" system. The system is not, however, pure; it has a number of real elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law have forced the Commission to write guidelines that are descriptive of generic conduct rather than tracking purely statutory language. For another, the guidelines, both through specific offense characteristics and adjustments, take account of a number of important, commonly occurring real offense element such as role in the offense, the presence of a gun, or the amount of money actually taken.

Finally, it is important not to overstate the difference in practice between a real and a charge offense system. The federal criminal system, in practice, deals mostly with drug offenses, bank robberies and white collar crimes (such as fraud, embezzlement, and bribery). For the most part, the conduct that an indictment charges approximates the real and relevant conduct in which the offender actually engaged.

The Commission recognizes its system will not completely cure the problems of a real offense system. It may still be necessary, for example, for a court to determine some particular real facts that will make a difference to the sentence. Yet, the Commission believes that the instances of controversial facts will be far fewer; indeed, there will be few enough so that the court system will be able to devise fair procedures for their determination. See *United States* v. *Fatico*, 579 F.2d 707 (2d Cir.1978) (permitting introduction of hearsay evidence at sentencing hearing under certain conditions), on remand, 458 F. Supp. 388 (E.D.N.Y. 1978), aff'd, 603 F.2d 1053 (2d Cir. 1979) (holding that the government need not prove facts at sentencing hearing beyond a reasonable doubt), cert. denied, 444 U.S. 1073 (1980).

The Commission also recognizes that a charge offense system has drawbacks of its own. One of the most important is its potential to turn over to the prosecutor the power to determine the sentence by increasing or decreasing the number (or content) of the counts in an indictment. Of course, the defendant's actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor's ability to increase a defendant's sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin, or theft of $10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of $30,000. Further, a sentencing court may control any inappropriate manipulation of the indictment through use of its power to depart from the specific guideline sentence. Finally, the Commission will closely monitor problems arising out of count manipulation and will make appropriate adjustments should they become necessary.

*(b) Departures.*

The new sentencing statute permits a court to depart from a guideline-specified sentence only when it finds "an aggravating or mitigating circumstance . . . that was not adequately taken into consideration by the Sentencing Commission . . .". 18 U.S.C. 3553(b). Thus, in principle, the Commission, by specifying that it had adequately considered a particular factor, could prevent a court from using it as grounds for departure. In this initial set of guidelines, however, the Commission does not so limit the courts' departure powers. The Commission intends the sentencing courts to treat each guideline as carving out a "heartland," a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. Section 5H1.10 (Race, Sex, National Origin, Creed, Religion, Socio-Economic Status), the third sentence of § 5H1.4, and the last sentence of § 5K2.12, list a few factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors (whether or not mentioned anywhere else in the guidelines) that could constitute grounds for departure in an unusual case.

The Commission has adopted this departure policy for two basic reasons. First is the difficulty of foreseeing and capturing a single set of guidelines that encompasses the vast range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that in the initial set of guidelines it need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so, the Commission, over time, will be able to create more accurate guidelines that specify precisely where departures should and should not be permitted.

Second, the Commission believes that despite the courts legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission's sentencing data indicate make a significant difference in sentencing at the present time. Thus, for example, where the presence of actual physical injury currently makes an important difference in final sentences, as in the case of robbery, assault, or arson, the guidelines specifically instruct the judge to use this factor to augment the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data do not permit the Commission, at this time, to conclude that the factor is empirically important in relation to the particular offense. Of course, a factor (say physical injury) may nonetheless sometimes occur in connection with a crime (such as fraud) where it does not often occur. If, however, as the data indicate, such occurrences are rare, they are precisely the type of events that the court's departure powers were designed to cover—unusual cases outside the range of the more typical offenses for which the guidelines were designed. Of course, the Commission recognizes that even its collection and analysis of 10,000 presentence reports are an imperfect source of data sentencing estimates. Rather than rely heavily at this time upon impressionistic accounts, however, the Commission believes it wiser to wait and collect additional data from our continuing monitoring process that may demonstrate how the guidelines work in practice before further modification.

It is important to note that the guidelines refer to three different kinds of departure. The first kind, which will most frequently be used, is in effect an interpolation between two adjacent, numerically oriented guideline rules. A specific offense characteristic, for example, might require an increase of four levels for serious bodily injury but two levels for bodily injury. Rather than requiring a court to force middle instances into either the "serious" or the "simple" category, the guideline commentary suggests that the court may

interpolate and select a midpoint increase of three levels. The Commission has decided to call such an interpolation a "departure" in light of the legal views that a guideline providing for a range of increases in offense levels may violate the statute's 25 percent rule (though others have presented contrary legal arguments). Since interpolations are technically departures, the courts will have to provide reasons for their selection, and it will be subject to review for "reasonableness" on appeal. The Commission believes, however, that a simple reference by the court to the "mid-category" nature of the facts will typically provide sufficient reason. It does not foresee serious practical problems arising out of the application of the appeal provisions to this form of departure.

The second kind involves instances in which the guidelines provide specific guidance for departure, by analogy or by other numerical or non-numerical suggestions. For example, the commentary to § 2G1.1 (Transportation for Prostitution), recommends a downward adjustment of eight levels where commercial purpose was not involved. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions, and that the courts of appeals may prove more likely to find departures "unreasonable" where they fall outside suggested levels.

A third kind of departure will remain unguided. It may rest upon grounds referred to in Chapter 5, Part H, or on grounds not mentioned in the guidelines. While Chapter 5, Part H lists factors that the Commission believes may constitute grounds for departure, those suggested grounds are not exhaustive. The Commission recognizes that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly unusual.

*(c) Plea Agreements*

Nearly ninety percent of all federal criminal cases involve guilty pleas, and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts have urged the Commission not to attempt any major reforms of the agreement process, on the grounds that any set of guidelines that threatens to radically change present practice also threatens to make the federal system unmanageable. Others, starting with the same facts, have argued that guidelines which fail to control and limit plea agreements would leave untouched a "loophole" large enough to undo the good that sentencing guidelines may bring. Still other commentators make both sets of arguments.

The Commission has decided that these initial guidelines will not, in general, make significant changes in current plea agreement practices. The court will accept or reject any such agreements primarily in accordance with the rules set forth in Fed.R.Crim.P. 11(e). The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate.

The Commission nonetheless expects the initial set of guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place. Insofar as a prosecutor and defense attorney seek to agree about a likely sentence or range of sentences, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which judges will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation. Since they will have before them the norm, the relevant factors (as disclosed in the plea agreement), and the reason for the agreement, they will find it easier than at present to determine whether there is sufficient reason to accept a plea agreement that departs from the norm.

*(d) Probation and Split Sentences.*

The statute provides that the guidelines are to "reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense . . ." 28 U.S.C. 994(j). Under present sentencing practice, courts sentence to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are "serious." If the guidelines were to permit courts to impose probation instead of prison in many or all such cases, the present sentences would continue to be ineffective.

The Commission's solution to this problem has been to write guidelines that classify as "serious" (and therefore subject to mandatory prison sentences) many offenses for which probation is now frequently given. At the same time, the guidelines will permit the sentencing court to impose short prison terms in many such cases. The Commission's view is that the definite prospect of prison, though the term is short, will act as a significant deterrent to many of these crimes, particularly when compared with the status quo where probation, not prison, is the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through six, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels seven through ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement or intermittent confinement). For offense levels eleven and twelve, the court must impose at least one half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement. The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.

*(e) Multi-Count Convictions*

The Commission, like other sentencing commissions, has found it particularly difficult to develop rules for sentencing defendants convicted of multiple violations of law, each of which makes up a separate count in an indictment. The reason it is difficult is that when an defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the simplest offenses, for reasons that are often fortuitous, would lead to life sentences of imprisonment—sentences that neither "just deserts" nor "crime control" theories of punishment would find justified.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment when multiple offenses that are the subjects of separate counts take place.

These rules are set out in Chapter Three, Part D. They essentially provide: (1) When the conduct involves fungible items, e.g., separate drug transactions or thefts of money, the amounts are added and the guidelines apply to the total amount. (2) When nonfungible harms are involved, the offense level for the most serious count is increased (according to a somewhat diminishing scale) to reflect the existence of other counts of conviction.

The rules have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence. In addition, the sentencing court will have adequate power to prevent such a result through departures where necessary to produce a mitigated sentence.

*(f) Regulatory Offenses*

Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These criminal statutes pose two problems. First, which criminal regulatory provisions should the Commission initially consider, and second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it cannot comprehensively treat all regulatory violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission has sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses are particularly important in light of the need for enforcement of the general regulatory scheme. The Commission has sought to treat these offenses in these initial guidelines. It will address the less common regulatory offenses in the future.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses, dividing them into four categories.

First, in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper treatment of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense is as follows:

(1) The guideline provides a low base offense level (6) aimed at the first type of recordkeeping or reporting offense. It gives the court the legal authority to impose a punishment ranging from probation up to six months of imprisonment.

(2) Specific offense characteristics designed to reflect substantive offenses that do occur (in respect to some regulatory offenses), or that are likely to occur, increase the offense level.

(3) A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will be treated like the substantive offense.

The Commission views this structure as an initial effort. It may revise its approach in light of further experience and analysis of regulatory crimes.

*(g) Sentencing Ranges*

In determining the appropriate sentencing ranges for each offense, the Commission began by estimating the average sentences now being served within each category. It also examined the sentence specified in congressional statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's forthcoming detailed report will contain a comparison between estimates of existing sentencing practices and sentences under the guidelines.

While the Commission has not considered itself bound by existing sentencing practice, it has not tried to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences in many instances will approximate existing practice, but adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons now receive probation, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who now receive probation from those who receive more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a current sentencing practice of very wide variability in which some defendants receive probation while others receive several years in prison for the same offense. Moreover, insofar as many who currently plead guilty often receive lesser sentences, so the guidelines also provide potential discounts for those defendants who accept responsibility and those who cooperate with the government.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the new drug law and the career offender provisions of the sentencing law, require the Commission to promulgate rules that will lead to substantial prison population increases. These increases will occur irrespective of any guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum, or career offender, sentences), will lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons, estimate at approximately 10 percent.

*(h) The Sentencing Table*

The Commission has established a sentencing table. For technical and practical reasons it has 43 levels. Each row in the table contains levels that overlap with the levels in the preceding and succeeding rows. By overlapping the levels, the table should discourage unnecessary litigation. Both prosecutor and defendant will realize that the difference between one level and another will not necessarily make a difference in the sentence that the judge imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether $10,000 or $11,000 was obtained as a result of a fraud. At the same time, the rows work

to increase a sentence proportionately. A change of 6 levels roughly doubles the sentence irrespective of the level at which one starts. The Commission, aware of the legal requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months, also wishes to permit courts the greatest possible range for exercising discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the judge within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many, rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation as to which category an offender fell within would become more likely. Where a table has many smaller monetary distinctions, it minimizes the likelihood of litigation, for the importance of the precise amount of money involved is considerably less.

### 5. A Concluding Note

The Commission emphasizes that its approach in this initial set of guidelines is one of caution. It has examined the many hundreds of criminal statutes in the United States Code. It has begun with those that are the basis for a significant number of prosecutions. It has sought to place them in a rational order. It has developed additional distinctions relevant to the application of these provisions, and it has applied sentencing ranges to each resulting category. In doing so, it has relied upon estimates of existing sentencing practices as revealed by its own statistical analyses, based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from existing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are imperfect, experience with these guidelines will lead to additional information and provide a firm empirical basis for revision.

Finally, the guidelines will apply to approximately 90 percent of all cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in this initial set of guidelines. They will, however, be addressed in the near future. Their exclusion from this initial submission does not reflect any judgment about their seriousness. The Commission has also deferred promulgation of guidelines pertaining to fines, probation and other sanctions for organizational defendants, with the exception of antitrust violations. The Commission also expects to address this area in the near future.

### 6. Application Instructions

In applying the guidelines, the user starts with the statute which the defendant was convicted of violating. An index containing the various statutes directs the user to the applicable guideline. That guideline specifies a base offense level. It may also list specific characteristics that, if applicable, adjust the offense level. Other adjustments are then made to the offense level based on certain general features of the offense and offender, such as role in the offense or the presence of a vulnerable victim. This leads to a total offense level. The defendant's criminal history category is then established. Using the total offense level and criminal history category, a table provides a sentencing range within which a sentence is to be imposed.

The Commission will provide each court with worksheets containing detailed instructions on how to apply the guidelines. In general, they will instruct the user to:

1. Apply the Statutory Index, Appendix A, to determine the guideline section in Chapter Two that is applicable to the statute violated. If more than one guideline is referenced for the particular statute, select the guideline most appropriate to the conduct involved in the count of conviction.

2. Apply the base offense level and any appropriate specific offense characteristics contained in the particular guideline in Chapter Two.

3. Apply the adjustments as appropriate related to victim, role, and obstruction of justice from Parts A, B, and C of Chapter Three.

4. If there are multiple counts of conviction, repeat steps one through three for each count. Apply Part D of Chapter Three to group the various counts and adjust the offense level accordingly.

5. Apply the adjustment as appropriate for the defendant's acceptance of responsibility from Part E of Chapter Three. The resulting offense level is the total offense level.

6. Compute the defendant's criminal history category using Part A of Chapter Four.

7. Using the Sentencing Table in Part A of Chapter Five, apply the total offense level and criminal history category to obtain the guideline range.

8. For the particular guideline range, determine from Parts B through G of Chapter Five the sentencing requirements and options related to probation, imprisonment, supervision conditions, fines, and restitution.

9. Refer to Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and to any other policy statements or commentary in the guidelines that might warrant consideration in imposing sentence.

## CHAPTER TWO—OFFENSE CONDUCT

### Overview

Chapter Two pertains to offense conduct. The chapter is organized by offenses and divided into parts and related sections that may cover one statute or many. Each offense has a corresponding base offense level. When a particular offense warrants a more individualized sentence, specific offense characteristics are provided within the guidelines. Certain factors relevant to criminal conduct that are not provided in specific guidelines are set forth in Chapter Three, Part A (Victim-Related Adjustments) and Chapter Five, Part K (Departures). The statutes appearing at the beginning of each part are illustrative and do not necessarily include all the statutes covered by the guidelines in that part.

### General Principles Governing Chapter Two

#### § 201. Applicable Guidelines

(a) The court shall apply, within the statutory maximum for the offense of conviction, the guideline in this chapter most applicable to the offense of conviction. Provided, however, in the case of conviction by a plea of guilty or nolo contendere containing a stipulation that specifically establishes a more serious offense than the offense of conviction, the court shall apply the guideline in this chapter most applicable to the stipulated offense.

(b) The court shall determine any applicable specific offense characteristic, victim-related adjustment, or departure from the guidelines attributable to offense conduct, according to the principles in § 202, Relevant Conduct.

**COMMENTARY**

Section 201 provides the basic rules for determining the guidelines applicable to the offense conduct under this chapter. As a general rule, the court is to apply the guideline covering the offense conduct most applicable to the offense of conviction. Where a particular statute proscribes a variety of conduct which might constitute the subject of different guidelines, the court will decide which guideline applies based upon the nature of the offense conduct charged.

However, there is a limited exception to this general rule. Where a stipulation as part of a plea of guilty or nolo contendere specifically establishes facts that prove a more serious crime than the crime of conviction, the court is to apply the guideline most applicable to the more serious crime established. The sentence that may be imposed is limited, however, by the statute governing the offense of conviction. See Chapter Five, § 5H6.1 (Statutory Maximum and Minimum Sentences). For example, if the defendant pleads guilty to theft, but admits the elements of robbery as part of the plea agreement, the robbery guideline is to be applied. The sentence, however, may not exceed the maximum sentence for theft. See H. REP. 98–1017, 98th Cong., 2d Sess. 99 (1984).

The exception to the general rule has a practical basis. In cases where the elements of an offense more serious than the offense of conviction are established by the plea, it is of no real benefit to the defendant and may unduly complicate the sentencing process if the applicable guideline does not reflect the seriousness of the defendant's actual conduct. Without this exception, the court would be forced to use an artificial guideline and then depart from it to the degree the court found necessary based upon the more serious conduct established by the plea. The probation officer would be required to calculate a guideline (for the offense of conviction) which might contain characteristics difficult to establish in the context of the actual offense conduct. For example, the guideline in Chapter Two, § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft), contains monetary distinctions which are different in content and effect from the monetary distinctions in the guideline applicable to robbery, § 2B3.1. Yet, without the exception, the probation officer might also need to apply the robbery guideline to assist the court in determining the appropriate degree of departure. This cumbersome, artificial procedure is avoided by using the exception rule in guilty or nolo contendere plea cases where it is applicable.

As with any plea agreement, the court must first determine that the agreement is acceptable, in accordance with the policies stated in Chapter Six, Part B (Plea Agreements). The limited exception provided here applies only after the court has determined that a plea, otherwise fitting the exception, is acceptable.

Section 201(b) directs the court, once it has determined applicable guideline under § 201(a), to determine any applicable specific offense characteristics (under that guideline), any applicable victim-related adjustment from Chapter Three, Part A, and any guideline departures attributable to the offense conduct Chapter Five, Part K, using a "relevant conduct" standard, as that standard is defined in § 202. In many instances, it will be appropriate that the court consider the actual conduct of the offender, even when such conduct does not constitute an element of the offense. As described above, this may occur when an offender stipulates certain facts in a plea agreement. It is more typically so when the court considers the applicability of specific offense characteristics within individual guidelines, when it considers various adjustments, and when it considers whether or not to depart from the guidelines for reasons relating to offense conduct. In such instances, the court should consider all conduct, circumstances, and injury relevant to the offense (as well as all relevant offender characteristics). See § 202 (Relevant Conduct).

**§ 202. Relevant Conduct**

To determine the seriousness of the offense conduct, all conduct, circumstances, and injuries relevant to the offense of conviction shall be taken into account.

(a) Unless otherwise specified under the guidelines, conduct and circumstances relevant to the offense of conviction means:

Acts or omissions committed or aided and abetted by the defendant, or by a person for whose conduct the defendant is legally accountable, that (1) are part of the same course of conduct, or a common scheme or plan, as the offense of conviction, or (2) are relevant to the defendant's state of mind or motive in committing the offense of conviction, or (3) indicate the defendant's degree of dependence upon criminal activity for a livelihood.

(b) Injury relevant to the offense of conviction means harm which is caused intentionally, recklessly or by criminal negligence in the course of conduct relevant to the offense of conviction.

**COMMENTARY**

Prior to sentencing, a judge should consider all relevant offense and offender characteristics. Relevant offense characteristics are determined in the present chapter; relevant offender characteristics, which may include other similar misconduct, are determined under Chapter Three (Adjustments), and Chapter Four (Criminal History). For purposes of Chapter Two, relevant defendant conduct is restricted to the following:

1. Conduct directed toward preparation for or commission of the offense of conviction, and efforts to avoid detection and responsibility for the offense of conviction;

2. Conduct indicating that the offense of conviction was to some degree part of a broader purpose, scheme, or plan;

3. Conduct that is relevant to the state of mind or motive of the defendant in committing the crime;

4. Conduct that is relevant to the defendant's involvement in crime as a livelihood.

The first three criteria are derived from two sources, Rule 8(a) of the Federal Rules of Criminal Procedure, governing joinder of similar or related offenses, and Rule 404(b) of the Federal Rules of Evidence, permitting admission of evidence of other crimes to establish motive, intent, plan, and common scheme. These rules provide standards that govern consideration at trial of crimes "of the same or similar character," and utilize concepts and terminology familiar to judges, prosecutors, and defenders. The governing standard should be liberally construed in favor of considering information generally appropriate to sentencing. When other crimes are inadmissible under the Rule 404(b) standard, such crimes may not be "relevant to the offense of conviction" under the criteria that determine this question for purposes of Chapter Two; such crimes would, however, be considered in determining the relevant offender characteristics to the extent authorized by Chapter Three (Adjustments), and Chapter Four (Criminal History) and Chapter Five, Part K (Departures). This construction is consistent with the existing rule that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense . . . for the purpose of imposing an appropriate sentence," 18 U.S.C. 3577, so long as the information "has sufficient indicia of reliability to support its probable accuracy." United States v. Marshall, 519 F.Supp.751 (D. Wis. 1981), aff'd, 719 F.2d 887 (7th Cir. 1983).

The last of these criteria is intended to ensure that a judge may consider at sentencing, information that, although not specifically within other criteria of relevance, indicates that the defendant engages in crime for a living. Inclusion of this information in sentencing considerations is consistent with 28 U.S.C. 994(d)(11).

**§ 203. Determining the Offense Level**

In determining the offense level prescribed by this chapter:

(a) Determine the base offense level;

(b) Make any applicable adjustments for specific offense characteristics in the order listed;

(c) Make any applicable adjustments from Chapter Three, Part A (Victim-Related Adjustments);

(d) Make any applicable adjustments from Chapter Three, Part B (Role in the Offense);

(e) Make any applicable adjustments from Chapter Three or Chapter Four.

**COMMENTARY**

Application of the guidelines for offense conduct is intended to be simple and straightforward. Once the appropriate base offense level is determined, all specific offense characteristics are to be applied in the order listed to determine the applicable offense level.

Where a guideline calls for a specific number plus the offense level applicable to

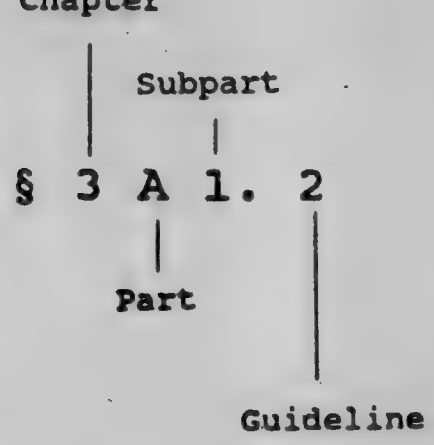
some other offense (e.g., "2 plus the offense level applicable to any underlying offense"), the offense level for the underlying offense should be determined as prescribed in this section, adding the base offense level and the applicable specific offense characteristics for the underlying offense. The additional offense levels would be added to this number.

*Structure of the Guidelines*

The guidelines are presented in numbered chapters divided into alphabetical parts. The parts are divided into sections and individual guidelines. Each guideline is identified by three numbers and a letter corresponding to the chapter, part, section and individual guideline.

The first number is the chapter, the letter represents the part of the chapter, the second number is the section, and the final number is the guideline. Section 2B1.1, for example, is the first guideline in the first section in Part B of Chapter Two. Or, § 3A1.2 is the second guideline in the first section in Part A of Chapter Three. Policy statements are similarly identified.

To illustrate:




A commentary is provided within sections to explain the guideline in greater detail or to inform the reader of statutory provisions governing the subject matter. Commentary also explains policy decisions made by the Commission in formulating the guidelines.

## CHAPTER TWO—OFFENSE CONDUCT

### Part A—Offenses Against the Person

*1. Homicide*

18 U.S.C. 113(a)
18 U.S.C. 115
18 U.S.C. 351
18 U.S.C. 1111–1112
18 U.S.C. 1114
18 U.S.C. 1116
18 U.S.C. 1153
18 U.S.C. 1751
18 U.S.C. 1952A

**§ 2A1.1. First Degree Murder**

(a) Base Offense Level: 43.

**§ 2A1.2. Second Degree Murder**

(a) Base Offense Level: 33.

**§ 2A1.3. Voluntary Manslaughter**

(a) Base Offense Level: 25.

**§ 2A1.4. Involuntary Manslaughter**

(a) Base Offense Level:
(1) 10, if the conduct was criminally negligent; or
(2) 14, if the conduct was reckless.

**COMMENTARY**

§ 2A1.1 (18 U.S.C. 1111). The Commission has concluded that, in the absence of capital punishment, life imprisonment is the appropriate punishment for the "willful, deliberate, malicious, and premeditated killing" to which 18 U.S.C. 1111 applies.

The same statute also applies when death results from certain enumerated felonies—arson, escape, murder, kidnapping, treason, espionage, sabotage, rape, burglary or robbery. Life imprisonment is not necessarily appropriate in all such situations. For example, if in robbing a bank, the defendant merely passed a note to the teller, as a result of which she had a heart attack and died, a sentence of life imprisonment clearly would be inappropriate. If the defendant did not cause death intentionally or knowingly, the court may depart. The extent of the departure should be based upon the defendant's state of mind (e.g., recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct. However, the Commission does not envision that departure below that specified in § 2A1.2 (Second Degree Murder) is likely to be appropriate. Also, because death obviously is an aggravating factor, it necessarily would be inappropriate to impose a sentence at a level below that which the guideline for the underlying offense requires in the absence of death.

§ 2A1.2 (18 U.S.C. 1111). Second degree murder is subject to a penalty of imprisonment for any term of years or for life.

§ 2A1.3 (18 U.S.C. 1112). The statutory recognition that voluntary manslaughter should not be punished as severely as murder is reflected in the lower base offense level. The maximum penalty for voluntary manslaughter is ten years' imprisonment.

§ 2A1.4 (18 U.S.C. 1112). The federal statute for involuntary manslaughter provides no distinction between reckless and criminally (i.e., grossly) negligent homicide. Recognizing the difference in conduct, the guideline sets the offense level for criminally negligent homicide at 10 and reckless homicide at 14. The Commission recommends a sentence at level 14 when a homicide results from driving while intoxicated.

*2. Assault*

18 U.S.C. 111–115
18 U.S.C. 351
18 U.S.C. 1113–1114
18 U.S.C. 1116–1117
18 U.S.C. 1153
18 U.S.C. 1751

**§ 2A2.1. Assault With Intent To Commit Murder; Conspiracy or Solicitation to Commit Murder; Attempted Murder**

(a) Base Offense Level: 20.
(b) Specific Offense Characteristics.
(1) If an assault involved more than minimal planning, increase by 2 levels.
(2) (A) If a firearm was discharged, increase by 5 levels; (B) if a firearm or a dangerous weapon was otherwise used, increase by 4 levels; (C) if a firearm or other dangerous weapon was brandished or its use was threatened, increase by 3 levels.
(3) If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

| Degree of bodily injury | Increase in level |
|---|---|
| (A) Bodily Injury | Add 2. |
| (B) Serious Bodily Injury | Add 4. |
| (C) Permanent or Life-Threatening Bodily Injury. | Add 6. |

Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed 9 levels.
(4) If a conspiracy or assault was motivated by a payment or offer of money or other thing of value, increase by 2 levels.

**§ 2A2.2. Aggravated Assault**

(a) Base Offense Level: 15.
(b) Specific Offense Characteristics.
(1) If the assault involved more than minimal planning, increase by 2 levels.
(2) (A) If a firearm was discharged, increase by 5 levels; (B) if a firearm or a dangerous weapon was otherwise used, increase by 4 levels; (C) if a firearm or other dangerous weapon was brandished or its use was threatened, increase by 3 levels.
(3) If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

| Degree of bodily injury | Increase in level |
|---|---|
| (A) Bodily Injury | Add 2. |
| (B) Serious Bodily Injury | Add 4. |
| (C) Permanent or Life-Threatening Bodily Injury. | Add 6. |

Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed 9 levels.

(4) If the assault was motivated by a payment or offer of money or other thing of value, increase by 2 levels.

**§ 2A2.3. Minor Assault**

(a) Base Offense Level:
(1) 6, if the conduct involved striking, beating, or wounding; or
(2) 3, otherwise.

**COMMENTARY**

There are a number of federal provisions that address varying degrees of assault and battery. The punishments under these statutes differ considerably, even among provisions directed to substantially similar defendant conduct. For example, if the assault is upon certain federal officers "while engaged in or on account of . . . official duties," the maximum term of imprisonment under 18 U.S.C. 111 is three years. If a dangerous weapon is used in the assault on a federal officer, the maximum sentence is ten years. However, if the same weapon is used to assault a person not otherwise specifically protected, the maximum sentence under 18 U.S.C. 113(c) is five years. If the assault results in serious bodily injury, the maximum sentence under 18 U.S.C. 113(f) is ten years, unless the injury constitutes maiming by scalding, corrosive, or caustic substances under 18 U.S.C. 114, in which case the maximum term of imprisonment is twenty years. Assault with intent to commit murder carries various maximum penalties and is covered by § 2A2.1. Assault with intent to commit rape is covered under § 2A3.1.

Definitions applicable to the assault section are found at 18 U.S.C. 111, 113, 115, and 2245, except definitions for bodily injury. For convictions under the Assimilative Crimes Act, it is the nature of the conduct that is relevant. The federal code provides broad descriptions that encompass the variety of terms different jurisdictions use to describe similar conduct. Definitions of various degrees of bodily injury are found in different parts of the federal code, see 18 U.S.C. 1365(g) (3), (4); 18 U.S.C. 1515(5); 21 U.S.C. 802(25), as amended, as well as under the parole guidelines. For sentencing purposes the levels of bodily injury are:

**1. Permanent or Life-Threatening Bodily Injury.** Permanent or life-threatening bodily injury means injury causing a substantial risk of death, major disability, impairment, loss of a bodily function or significant disfigurement that is likely to be permanent.

**2. Serious Bodily Injury.** Serious bodily injury means injury causing extreme pain, substantial impairment of a bodily function or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.

**3. Bodily Injury.** Bodily injury means any other significant physical injury.

**§ 2A2.1** (18 U.S.C. 113(a), 351 (c), (d), 373, 1113, 1116(a), 1117, 1751 (c), (d), 1952A(a)). This section applies to the offenses of assault with intent to commit murder, conspiracy to commit murder, solicitation to commit murder, and attempted murder.

Conspiratorial conduct proscribed by 18 U.S.C. 1117 allows for a statutory maximum sentence of life imprisonment. Solicitation to commit murder is proscribed by 18 U.S.C. 373, a provision that generally punishes solicitation to commit a crime of violence, defined as "conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against the person or property of another in violation of the laws of the United States." The maximum sentence of imprisonment under this statute is one-half the maximum term for the crime solicited; or twenty years if the punishment for the crime solicited is death.

The statutes that prohibit attempted murder, or assaults with intent to commit murder, vary widely in the punishment they impose. Assault with intent to commit murder, 18 U.S.C. 113(a), carries a maximum sentence of twenty years' imprisonment. An attempted assassination of certain essential government officials, 18 U.S.C. 351(c), carries a maximum sentence of life. An attempted murder of foreign officials, 18 U.S.C. 1116(a), carries a maximum sentence of twenty years. An attempt to commit murder, absent an assault, 18 U.S.C. 113(a), carries a maximum sentence of three years' imprisonment. 18 U.S.C. 1113.

The aggravating factors are planning, weapon use, injury, and commission of the crime for hire. All of the factors can apply in the case of an assault; only the last can apply in the case of a conspiracy that does not include an assault; and none can apply in the case of a mere solicitation.

**§ 2A2.2** (18 U.S.C. 111, 112, 113 (b), (c), (f), 114, 115 (a), (b)(1), 351(e), 1751(e)). This section applies to serious (aggravated) assaults where there is no intent to kill. Although rare, such offenses may involve planning or be committed for hire. Consequently, the structure follows § 2A2.1.

**§ 2A2.3** (18 U.S.C. 111, 112, 113(d), 113(e), 115 (a), (b)(1), 351(e), 1751(e)). Simple assault and simple battery are considered under this section. The base offense level for simple assault is the statutory maximum penalty for the least serious assault. 18 U.S.C. 113(e). The additional penalty for striking, beating, or wounding reflects a statutory distinction that provides a maximum six-month term of imprisonment. 18 U.S.C. 113(d).

*3. Criminal Sexual Abuse*

18 U.S.C. 113(a)
18 U.S.C. 1153
18 U.S.C. 2031–2032
18 U.S.C. 2241–2245

**§ 2A3.1. Criminal Sexual Abuse; Attempt or Assault With the Intent To Commit Criminal Sexual Abuse**

(a) Base Offense Level: 27.
(b) Specific Offense Characteristics.
(1) If the criminal sexual abuse was accomplished as defined in 18 U.S.C. 2241 (including, but not limited to, the use or display of any dangerous weapon), increase by 4 levels.
(2)(A) If the victim had not attained the age of twelve years, increase by 4 levels; otherwise, (B) if the victim was under the age of sixteen, increase by 2 levels.
(3) If the victim was in the custody, care, or supervisory control of the defendant, was a corrections employee, or a person held in the custody of a correctional facility, increase by 2 levels.
(4)(A) If the victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if the victim sustained serious bodily injury, increase by 2 levels.
(5) If the victim was abducted, increase by 4 levels.

**§ 2A3.2. Criminal Sexual Abuse of a Minor (Statutory Rape) or Attempt To Commit Such Acts**

(a) Base Offense Level: 15.
(b) Specific Offense Characteristic.
(1) If the victim was in the custody, care, or supervisory control of the defendant, increase by 1 level.

**§ 2A3.3. Criminal Sexual Abuse of a Ward (Statutory Rape) or Attempt To Commit Such Acts**

(a) Base Offense Level: 9.

**§ 2A3.4. Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact**

(a) Base Offense Level: 6.
(b) Specific Offense Characteristics.
(1) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2241, increase by 9 levels.
(2) If the abusive sexual contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels.

**COMMENTARY**

This section of the guidelines is modeled after recent federal legislation dealing with criminal sexual abuse, 18 U.S.C. 2241 to 2245. Definitions of terms applicable to this section are set forth under 18 U.S.C. 2245. Apply §§ 2A3.2, 2A3.3, or 2A3.4 only if § 2A3.1 is not applicable.

**§ 2A3.1** (18 U.S.C. 2241–2242). Sexual offenses addressed in this section are crimes of violence. Because of their dangerousness, attempts are treated the same as completed acts of criminal sexual abuse. The statutory maximum penalty is any term of years or life imprisonment. The base offense level represents sexual abuse as set forth in 18 U.S.C. 2242. The enhancement for use of force, threat of death, serious bodily injury, kidnapping, or criminal sexual abuse by other means is defined in 18 U.S.C. 2241. This is intended to include any use or threatened use of a dangerous weapon.

One of the important distinctions Congress has made under the new legislation involves the victimization of children under age twelve. 18 U.S.C. 2241. Any criminal sexual abuse, including statutory rape, with children under twelve is punished more seriously than in the past and for sentencing purposes is governed by § 2A3.1. An enhancement for this age distinction is provided.

An enhancement for a custodial relationship between defendant and victim is warranted in cases of criminal sexual abuse. Whether the custodial relationship is temporary or permanent, the defendant in such a case is a person the victim trusts or to whom the victim is entrusted. This sentencing aggravation represents the potential for greater and prolonged psychological damage. An enhancement is also provided for physical injury.

§ 2A3.2 (18 U.S.C. 2243). This section applies to statutory rape, i.e., sexual acts that would be lawful but for the victim's incapacity to give lawful consent. It is assumed that a four-year age difference exists between the victim and the defendant, as is specified by statute. 18 U.S.C. 2243. The statutory maximum penalty is five years' imprisonment. An enhancement is provided for defendants who victimize minors under their supervision or care.

If the defendant committed the criminal sexual act in furtherance of a commercial sex scheme such as pandering, transporting prostitutes, or pornographic materials, the court may depart from the guideline and impose a higher sentence.

§ 2A3.3 (18 U.S.C. 2243). Under the new legislation, wards have been placed in the category of persons unable to consent to sexual acts. A ward is a person in official detention under the custodial, supervisory, or disciplinary authority of the defendant. The statutory maximum penalty is one year imprisonment.

§ 2A3.4 (18 U.S.C. 2244–2245). The distinction between sexual act and sexual contact is provided by statute. 18 U.S.C. 2245. The base offense level includes abusive sexual contact with a minor or ward and any abusive sexual contact with other adults not included under 18 U.S.C. 2244(a)(1) and 2244(a)(2). The maximum penalty for these offenses is six months' imprisonment. The enhancement for force, threat, or other means defined in 18 U.S.C. 2241 results from a five-year increase in the statutory maximum penalty. The enhancement for victims who are incapable of appraising the nature of their conduct or who are physically incapable of resisting is provided through statutory increase of the maximum penalty to three years.

*4. Kidnapping, Abduction, or Unlawful Restraint*

18 U.S.C. 115
18 U.S.C. 351
18 U.S.C. 876–877
18 U.S.C. 1201–1203
18 U.S.C. 1751

**§ 2A4.1. Kidnapping, Abduction, Unlawful Restraint**

(a) Base Offense Level: 24.

(b) Specific Offense Characteristics.

(1) If a ransom demand or a demand upon government was made, increase by 6 levels.

(2)(A) If the victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if the victim sustained serious bodily injury, increase by 2 levels.

(3) If a dangerous weapon was used, increase by 2 levels.

(4)(A) If the victim was not released voluntarily before thirty days had elapsed, increase by 2 levels.

(B) If the victim was not released voluntarily before seven days had elapsed, increase by 1 level.

(C) If the victim was released voluntarily before twenty-four hours had elapsed, decrease by 1 level.

(5) If the victim was kidnapped, abducted, or unlawfully restrained to facilitate the commission of another offense: (A) Increase by 4 levels; or (B) if the result of applying this guideline is less than that resulting from application of the guideline for such other offense, apply the guideline for such other offense.

**§ 2A4.2. Demanding or Receiving Ransom Money**

(a) Base Offense Level: 23.

COMMENTARY

§ 2A4.1 (18 U.S.C. 115(b)(2), 351 (b), (d), 1201, 1203, 1751(b)). Federal kidnapping cases generally encompass three categories of conduct: limited duration kidnapping where the victim is released unharmed; kidnapping that occurs as part of or to facilitate the commission of another offense (often, sexual assault); and kidnapping for ransom or political demand. The base offense level reflects the limited duration kidnappings and enhancements provide for the other two.

An enhancement is provided when the offense is committed for ransom or to facilitate the commission of another offense. Should the application of this guideline result in a penalty less than the result achieved by applying the guideline for the underlying offense, apply the guideline for the underlying offense (e.g., § 2A3.1, Criminal Sexual Abuse).

§ 2A4.2 (18 U.S.C. 876–877, 1202). This section specifically includes conduct prohibited by 18 U.S.C. 1202, requiring that ransom money be received, possessed, or disposed of with knowledge of its criminal origins. The actual demand for ransom under these circumstances is reflected in § 2A4.1. The statutory maximum for this offense is ten years. This section additionally includes extortionate demands through the use of the United States Postal Service, behavior proscribed by 18 U.S.C. 876–877, where the statutory maximum penalty is twenty years.

*5. Air Piracy*

49 U.S.C. 1472 (c), (i), (j), (l), (n)

**§ 2A5.1. Aircraft Piracy or Attempted Aircraft Piracy**

(a) Base Offense Level: 38.

(b) Specific Offense Characteristic.

(1) If death resulted, increase by 5 levels.

**§ 2A5.2. Interference With Flight Crew Member or Flight Attendant**

(a) Base Offense Level (Apply the greatest):

(1) 30, if the defendant intentionally endangered the safety of the aircraft and passengers; or

(2) 18, if the defendant recklessly endangered the safety of the aircraft and passengers; or

(3) If an assault occurred, the offense level from the most analogous assault guideline, §§ 2A2.1–2A2.4; or

(4) 9.

COMMENTARY

§ 2A5.1 (49 U.S.C. 1472 (i), (n)). This section covers aircraft piracy both within the special aircraft jurisdiction of the United States, 49 U.S.C. 1472(i), and aircraft piracy outside that jurisdiction when the defendant is later found in the United States, 49 U.S.C. 1472(n). Both of these offenses carry a mandatory minimum sentence of twenty years' imprisonment. Seizure of control of an aircraft may be by force or violence, or threat of force or violence, or by any other form of intimidation. The presence of a weapon is considered in the base offense level.

§ 2A5.2 (49 U.S.C. 1472 (c), (j)). Endangerment to the aircraft and passengers represents behavior deserving of greater penalty. If an assault occurs, the most analogous assault guideline applies. The statutory maximum of twenty years' imprisonment allows for a wide range of conduct.

Carrying a weapon or explosive aboard an aircraft is behavior proscribed by 49 U.S.C. 1472(l). This offense is covered in § 2K1.5 (Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft).

*6. Threatening Communications*

**§ 2A6.1. Threatening Communications**

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics.

(1) If the defendant engaged in any conduct evidencing an intent to carry out such threat, increase by 6 levels.

(2) If specific offense characteristic § 2A6.1(b)(1) does not apply, and the defendant's conduct involved a single instance evidencing little or no deliberation, decrease by 4 levels.

COMMENTARY

§ 2A6.1 (18 U.S.C. 871, 876, 877, 878(a), 879). These statutes cover a wide range of conduct from an offhand threat to injure the President made while under the influence of alcohol, to a deliberate effort to instill fear, to a threat associated with other conduct evidencing an intent to carry out such threat. The specific offense characteristics are intended to distinguish the cases described above. The Commission recognizes that it is not possible to cover all of the characteristics associated with this offense. For example, the background and mental condition of the defendant, and the nature of any objective conduct associated with the threat is likely to

be of particular significance. The Commission intends that such factors be considered by the court in determining whether a departure from the guidelines is warranted.

**Part B—Offenses Involving Property**

*1. Theft, Embezzlement, Receipt of Stolen Property, and Property Destruction*

18 U.S.C. 553(a)(1)
18 U.S.C. 641
18 U.S.C. 656–657
18 U.S.C. 659
18 U.S.C. 661
18 U.S.C. 1361–1363
18 U.S.C. 1700–1701
18 U.S.C. 1703
18 U.S.C. 1705–1706
18 U.S.C. 2113(b)
18 U.S.C. 2312–2317

**§ 2B1.1. Larceny, Embezzlement, and Other Forms of Theft**

(a) Base Offense Level: 4.

(b) Specific Offense Characteristics.

(1) If the value of the property taken exceeded $100, increase the offense level as follows:

| Loss | Increase in level |
|---|---|
| (A) $100 or less | No increase. |
| (B) $101 to $1,000 | add 1. |
| (C) $1,001 to $2,000 | add 2. |
| (D) $2,001 to $5,000 | add 3. |
| (E) $5,001 to $10,000 | add 4. |
| (F) $10,001 to $20,000 | add 5. |
| (G) $20,001 to $50,000 | add 6. |
| (H) $50,001 to $100,000 | add 7. |
| (I) $100,001 to $200,000 | add 8. |
| (J) $200,001 to $500,000 | add 9. |
| (K) $500,001 to $1,000,000 | add 10. |
| (L) $1,000,001 to $2,000,000 | add 11. |
| (M) $2,000,001 to $5,000,000 | add 12. |
| (N) over $5,000,000 | add 13. |

(2) If a firearm, destructive device, or controlled substance was taken, increase by 1 level; but if the resulting offense level is less than 7, increase to level 7.

(3) If the theft was from the person of another, increase by 2 levels.

(4) If the offense involved more than minimal planning, increase by 2 levels.

(5) If undelivered United States mail was taken, and the offense level as determined above is less than level 6, increase to level 6.

(6) If the offense involved organized criminal activity, and the offense level as determined above is less than level 14, increase to level 14.

**§ 2B1.2. Receiving Stolen Property**

(a) Base Offense Level: 4.

(b) Specific Offense Characteristics.

(1) If the value of the property taken exceeded $100, increase by the corresponding number of levels from the table in § 2B1.1.

(2)(A) If the offense was committed by a person in the business of selling stolen property, increase by 4 levels; or

(B) If the offense involved more than minimal planning, increase by 2 levels.

(3) If the property included a firearm, destructive device, or controlled substance, increase by 1 level; but if the resulting offense level is less than 7, increase to 7.

(4) If the offense involved organized criminal activity, and the offense level as determined above is less than level 14, increase to level 14.

**§ 2B1.3. Property Damage or Destruction (Other than by Arson or Explosives)**

(a) Base Offense Level: 4.

(b) Specific Offense Characteristics.

(1) If the amount of the property damage or destruction, or the cost of restoration, exceeded $100, increase by the corresponding number of levels from the table in § 2B1.1.

(2) If the offense involved more than minimal planning, increase by 2 levels.

(3) If undelivered United States mail was destroyed, and the offense level as determined above is less than level 6, increase to level 6.

**COMMENTARY**

These sections address the most basic forms of property offenses: Theft, embezzlement, transactions in stolen goods, and simple property damage or destruction. (Arson is dealt with separately in Part K, Offenses Involving Public Order and Safety.) These guidelines apply to offenses prosecuted under a wide variety of federal statutes, as well as offenses that arise under the Assimilated Crimes Act.

**§ 2B1.1.** This section applies to theft and embezzlement offenses in violation of 18 U.S.C. §§ 641, 656, 657, 659, 1702, 1708, 2113(b), and 2312 through 2317. Larceny and embezzlement are both forms of theft and are often covered by the same statutes.

The value of property taken plays an important role in determining sentences for theft and embezzlement offenses, since it is an indicator of both the harm to the victim and the gain to the defendant. The property table provides an enhancement based on the loss from theft. Value is determined by the replacement cost to the victim, or the market value of the property, whichever is greater. The loss includes any unauthorized charges made with stolen credit cards, but in no event less than $100 per card. Controlled substances are to be valued at their street value. The loss need not be determined with precision, and may be inferred from any reliable information, available including the apparent scope of the operation.

Consistent with statutory distinctions, the minimum offense level is provided for the theft of undelivered mail. Theft of undelivered mail interferes with a governmental function, and the scope of the theft may be difficult to ascertain.

An enhancement is also included for planning. This denotes actions that distinguish an impulse crime from one that involves more than the minimal amount of planning that is usual for the type of offense committed. Any series of thefts that are part of a scheme or pattern is deemed to involve more than minimal planning. Planning and repeated acts are indicative of an intention and potential to do considerable harm. Also, planning is often related to increased difficulties of detection and proof. This adjustment is not intended to apply to simple efforts to cover up or conceal commission of the offense.

Studies show that stolen firearms are used disproportionately in the commission of crimes. The guideline provides an enhancement for theft of a firearm to ensure that some amount of imprisonment is required. An enhancement is provided when controlled substances are taken. Such thefts may involve a greater risk of violence, as well as a likelihood that the substance will be abused.

Theft from the person of another (including thefts from the immediate presence of the victim), such as pickpocketing or nonforcible purse-snatching, receive an enhanced sentence because of the increased risk. This guideline does not include an enhancement for thefts from the person by means of force or fear; such crimes are robberies.

A minimum offense level of 14 is provided for organized criminal activity. This is designed for operations such as organized car theft rings, or "chop shops," where the scope of the activity is clearly significant but difficult to estimate. Of course, if reliable information enables the court to estimate a volume of property loss that would result in a higher offense level, the court should employ the higher offense level.

**§ 2B1.2.** This guideline applies to 18 U.S.C. 553(a)(1), 659, 662, 1708, and 2312 through 2317. Receiving stolen property is treated much like theft. Receiving stolen property for resale receives an enhancement because the amount of property is likely to underrepresent the scope of the offense. If the defendant is convicted of transporting stolen property, either § 2B1.1 or this guideline would apply, depending on whether the defendant actually stole the property.

**§ 2B1.3.** This section addresses violations of 18 U.S.C. §§ 1361 through 1363, 1702, and 1703, involving vandalism or malicious mischief, as well as destruction of mail. Arson is treated in Part K, Offenses Involving Public Order and Safety.

In some cases involving property damage, the monetary value of the property damaged or destroyed may not adequately reflect the extent of the harm caused. For example, the destruction of a $500 telephone line may cause an interruption in service to thousands of people for several hours. In such instances, departure would be warranted.

*2. Burglary and Trespass*

18 U.S.C. 1382
18 U.S.C. 1854
18 U.S.C. 2113(a)
18 U.S.C. 2115
18 U.S.C. 2117

18 U.S.C. 2118(b)

**§ 2B2.1. Burglary of a Residence**

(a) Base Offense Level: 17.

(b) Specific Offense Characteristics.

(1) If the offense involved more than minimal planning, increase by 2 levels.

(2) If the value of the property taken or destroyed exceeded $2,500, increase the offense level as follows:

| Loss | Increase in level |
|---|---|
| (A) $2,500 or less | No increase. |
| (B) $2,501 to $10,000 | Add 1. |
| (C) $10,001 to $50,000 | Add 2. |
| (D) $50,001 to $250,000 | Add 3. |
| (E) $250,001 to $1,000,000 | Add 4. |
| (F) $1,000,001 to $5,000,000 | Add 5. |
| (G) More than $5,000,000 | Add 6. |

(3) If obtaining a firearm, destructive device, or controlled substance was an object of the offense, increase by 1 level.

(4) If a firearm or other dangerous weapon was possessed, increase by 2 levels.

**§ 2B2.2. Burglary of Other Structures**

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics.

(1) If the offense involved more than minimal planning, increase by 2 levels.

(2) If the value of the property taken or destroyed exceeded $2,500, increase by the corresponding number of levels from the table in § 2B2.1.

(3) If obtaining a firearm, destructive device, or controlled substance was an object of the offense, increase by 1 level.

(4) If a firearm or other dangerous weapon was possessed, increase by 2 levels.

**§ 2B2.3. Trespass**

(a) Base Offense Level: 4.

(b) Specific Offense Characteristic.

(1) If the trespass occurred at a secured government facility, a nuclear energy facility, or a residence, increase by 2 levels.

(2) If a firearm or other dangerous weapon was possessed, increase by 2 levels.

**COMMENTARY**

**§§ 2B2.1 and 2B2.2.** These sections apply to violations of 18 U.S.C. §§ 2113(a), 2115, 2117, and 2118(b). Burglary often occurs in connection with other offenses. The risk of crimes is included in the base offense level for burglary. Section 2B2.1 applies to residential burglary, where the risk of physical and psychological injury is highest. Section 2B2.2 applies to bank burglary as well as burglaries of other structures. Obtaining a weapon or controlled substance is considered to be an object of the offense if such an item was taken.

**§ 2B2.3.** This section applies to violations of 18 U.S.C. §§ 1382 and 1854. Most trespasses punishable under federal law involve federal lands or property. The trespass section provides an enhancement for offenses involving trespass on secured government installations, such as nuclear facilities, to protect a significant federal interest. Additionally, an enhancement is provided for trespass at a residence.

*3. Robbery, Extortion, and Blackmail*

18 U.S.C. 873
18 U.S.C. 875–877
18 U.S.C. 1951
18 U.S.C. 2113–2114
18 U.S.C. 2118(a)

**§ 2B3.1. Robbery**

(a) Base Offense Level: 18.

(b) Specific Offense Characteristics.

(1) If the value of the property taken or destroyed exceeded $2,500, increase the offense level as follows:

| Loss | Increase in level |
|---|---|
| (A) $2,500 or less | No increase. |
| (B) $2,501 to $10,000 | Add 1. |
| (C) $10,001 to $50,000 | Add 2. |
| (D) $50,001 to $250,000 | Add 3. |
| (E) $250,001 to $1,000,000 | Add 4. |
| (F) $1,000,000 to $5,000,000 | Add 5. |
| (G) More than $5,000,000 | Add 6. |

Treat the loss for a financial institution or post office as at least $5,000.

(2)(A) If a firearm was discharged increase by 5 levels; (B) if a firearm or a dangerous weapon was otherwise used, increase by 4 levels; (C) if a firearm or other dangerous weapon was possessed, increase by 3 levels.

(3) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

| Degree of bodily injury | Increase in level |
|---|---|
| (A) Bodily injury | Add 2. |
| (B) Serious bodily injury | Add 4. |
| (C) Permanent or life-threatening bodily injury. | Add 6. |

Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed 9 levels.

(4)(A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

(5) If obtaining a firearm, destructive device, or controlled substance was the object of the offense, increase by 1 level.

**COMMENTARY**

**§ 2B3.1.** This section applies to violations of 18 U.S.C. §§ 1951, 2113, 2114, and 2118(a). Possession or use of a weapon, physical injury, and unlawful restraint sometimes occur during a robbery. The guideline provides for a range of enhancements where these factors are present. Banks and post offices carry a minimum 1 level enhancement for property loss because such institutions generally have more cash readily available, and whether the defendant obtains more or less than $2,500 is largely fortuitous.

Obtaining drugs or other controlled substances is often the motive for robberies of a Veterans Administration Hospital, a pharmacy on a military base, or a similar facility. A specific offense characteristic is added for robberies where drugs or weapons were the object of the offense to take account of the dangers and security problems involved when such items are taken.

Although in current practice the amount of money taken in robbery cases appears to affect sentence length, its importance is small compared to that of the other harm involved. Moreover, because of the relatively high base offense level for robbery, an increase of 1 or 2 levels brings about a considerable increase in sentence length in absolute terms. Accordingly, a separate property table, which increases more slowly than that used in theft offenses, is utilized.

The enhancements for physical injury are meant to be suggestive only. If the degree of injury lies between permanent and serious, or between serious and bodily injury, the sentencing judge may interpolate to find the appropriate enhancement amount. The guideline provides an enhancement for robberies where a victim (A) was forced to accompany the defendant to another location; or (B) was forcibly restrained by being tied, bound, or locked up.

If the defendant was convicted under 18 U.S.C. § 2113(e) and in committing the offense or attempting to flee or escape, a participant killed any person, apply § 2A1.1 (First Degree Murder). Otherwise, if death results, see Chapter Five, Part K (Departures).

The adjustments for weapon use and injury assume that, as is typical in a robbery, the defendant did not actually intend to murder the victim. If there was such intent, see § 2A2.1, (Assault With Intent to Commit Murder).

**§ 2B3.2. Extortion by Force or Threat of Injury or Serious Damage**

(a) Base Offense Level: 18.

(b) Specific Offense Characteristics.

(1) If the greater of the amount obtained or demanded exceeded $2,500, increase by the corresponding number of levels from the table in § 2B3.1.

(2)(A) If a firearm was discharged, increase by 5 levels; (B) if a firearm or a dangerous weapon was otherwise used, increase by 4 levels; (C) if a firearm or other dangerous weapon was possessed, increase by 3 levels.

(3) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

| Degree of bodily injury | Increase in level |
|---|---|
| (A) Bodily injury | Add 2. |
| (B) Serious bodily injury | Add 4. |
| (C) Permanent or life-threatening bodily injury. | Add 6. |

Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed 9 levels.

(4)(A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by 4 levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

**§ 2B3.3. Blackmail and Similar Forms of Extortion**

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics.

(1) If the greater of the amount obtained or demanded exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1.

COMMENTARY

§ 2B3.2. This section applies to extortion involving express or implied threats to kill, kidnap, or physically injure a person, or to seriously damage a property interest, in violation of 18 U.S.C. 873, 875(b), 876, 877, and 1951 (the Hobbs Act). The Hobbs Act prohibits extortion, attempted extortion, and conspiracy to extort, and provides for up to twenty years' imprisonment for violations.

This guideline applies if there was any threat, express or implied, that reasonably could be interpreted as one to injure a person or physically damage property, or any comparably serious threat, such as to drive an enterprise out of business. Even if the threat does not in itself imply violence, the possibility of violence or serious adverse consequences may be inferred from the circumstances of the threat or the reputation of the person making it. An ambiguous threat, such as "pay up or else," or a threat to cause labor problems, ordinarily should be treated under this section.

Violations of 18 U.S.C. 875–877 are distinguished only by the method of communication of the extortionate demand. The maximum penalty under each statute varies from two to twenty years. Violations of 18 U.S.C. 875 involve threats or demands transmitted by interstate commerce. Violations of 18 U.S.C. 876 involve the use of the United States mails to communicate threats, while violations of § 877 involve mailing threatening communications from foreign countries.

Guidelines for extortion and bribery involving public officials are found in Part C, Offenses Involving Public Officials. Extortion under color of official right is covered under § 2C1.1 unless there is use of force or a threat that qualifies for treatment under this section. Certain other extortion offenses are covered under the provisions of Part E, Offenses Involving Criminal Enterprise.

§ 2B3.3. This section applies only to blackmail and similar forms of extortion where there clearly is no threat of violence to person or property. "Blackmail" is defined as a threat to disclose a violation of United States law unless money or some other item of value is given. It is proscribed by 18 U.S.C. 873, which provides for a maximum one-year term of imprisonment. Extortionate threats to injure a reputation, or other threats that are less serious than those covered by § 2B3.2, may also be prosecuted under 18 U.S.C. 875–877.

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*4. Commercial Bribery and Kickbacks*

15 U.S.C. 78dd–1, 78dd–2
15 U.S.C. 78ff
18 U.S.C. 215
18 U.S.C. 224
18 U.S.C. 1954
26 U.S.C. 9012(e)
26 U.S.C. 9042(d)
41 U.S.C. 51–54
42 U.S.C. 1395nn(b) (1), (2)
42 U.S.C. 1396h(b) (1), (2)
49 U.S.C. 11904
49 U.S.C. 11907 (a), (b)

**§ 2B4.1. Bribery in Procurement of Bank Loan and Other Commercial Bribery**

(a) Base Offense Level: 8.

(b) Specific Offense Characteristic.

(1) If the greater of the value of the bribe or the improper benefit to be conferred exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1.

COMMENTARY

§ 2B4.1. This section applies to violations of 15 U.S.C. 78dd–1, 78dd–2; 18 U.S.C. 215, 224, and 1954; 26 U.S.C. 9012(e), 9042(d); 41 U.S.C. 51–54; 42 U.S.C. 1395nn(b) (1), (2), 1396h(b) (1), (2); 49 U.S.C. 11904, and 49 U.S.C. 11907 (a), (b). This guideline covers commercial bribery offenses and kickbacks that do not involve officials of federal, state, or local government. See Part C, Offenses Involving Public Officials.

The guideline directs the use of the property table at § 2F1.1 to aggravate the offense level. The amount to be used is the greater of the value of the bribe, or the improper benefit of the action to be taken or effected in return for the bribe, if the value can reasonably be ascertained. If the amount of the benefit cannot be ascertained, the court should apply at least the amount of the bribe. For example, if a bank officer agreed to the offer of a $25,000 bribe to approve a $250,000 loan under terms for which the applicant would not otherwise qualify, aggravation of the base offense level from the property table would provide for imposing a sentence based on the greater of the $25,000 bribe, or the savings in interest over the life of the loan compared with alternative loan terms. If, in another instance, a gambler paid a player $5,000 to shave points in a nationally televised basketball game, the value of the action to the gambler is the amount the gambler and the gambler's confederates won or stood to gain. If that amount cannot be estimated, the amount of the bribe is used to determine the appropriate increase in offense level from the property table.

Section 2B4.1 applies to violations of various federal bribery statutes, most of which authorize a maximum term of imprisonment of five years. 18 U.S.C. 215 prohibits the offer or acceptance of a fee in connection with the procurement of a loan from a financial institution. The base offense level is to be enhanced by application of the property table, based upon the value of the unlawful payment or the value of the action to be taken or effected in return for the unlawful payment, whichever is greater.

Congress recently increased the maximum term of imprisonment for making prohibited payments to induce the award of subcontracts on federal projects from two to ten years. 41 U.S.C. 51–54. Violations of 42 U.S.C. 1395nn (b)(1) and (b)(2), involve the offer or acceptance of a payment to refer an individual for services or items paid for under the Medicare program. Similar provisions in 42 U.S.C. 1396h (b)(1) and (b)(2) cover the offer or acceptance of a payment for referral to the Medicaid program.

The guideline also relates to violations of law involving bribes and kickbacks in expenses incurred for a presidential nominating convention or presidential election campaign. These offenses are prohibited under 26 U.S.C. 9012(e) and 9042(d), which apply to candidates for President and Vice President whose campaigns are eligible for federal matching funds.

This section also applies to violations of the Foreign Corrupt Practices Act, 15 U.S.C. 77d–1 and 77d–2, and to violations of 18 U.S.C. 224, sports bribery, as well as certain violations of the Interstate Commerce Act that carry a maximum of two years' imprisonment.

*5. Counterfeiting*

17 U.S.C. 506(a)
18 U.S.C. 471–473
18 U.S.C. 485
18 U.S.C. 500–501
18 U.S.C. 510
18 U.S.C. 1003
18 U.S.C. 2314–2315
18 U.S.C. 2318–2320

**§ 2B5.1. Offenses Involving Counterfeit Obligations of the United States**

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics.

(1) If the face value of the counterfeit items exceeded $2,000, increase by the corresponding number of levels from the table at § 2F1.1.

(2) If the defendant manufactured or produced any counterfeit obligation or security of the United States, or possessed or had custody of or control over a counterfeiting device or materials used for counterfeiting, and the offense level as determined above is less than 15, increase to 15.

**§ 2B5.2. Forgery; Offenses Involving Counterfeit Instruments Other Than Obligations of the United States**

Apply § 2F1.1.

**§ 2B5.3. Criminal Infringement of Copyright**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the retail value of the infringing items exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1.

**§ 2B5.4. Criminal Infringement of Trademark**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the retail value of the infringing items exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1.

COMMENTARY

§ 2B5.1. This section applies to violations of 18 U.S.C. 471–473, 500, 501, 510, 1003, 2314, and 2315. These offenses involve counterfeiting or passing of counterfeit items. Federal law protects a variety of items from counterfeiting, including United States currency and coins, food stamps, postage stamps, foreign bank notes, labels for phonograph records, and military discharge papers.

Possession of counterfeiting devices to copy obligations and securities of the United States is treated as an aggravated form of counterfeiting because of the sophistication and planning involved in manufacturing counterfeit obligations or securities and the public policy interest in protecting the integrity of government obligations. Similarly, an enhancement is provided for a defendant who produces, rather than merely passes, the counterfeit items. The enhancement, however, is not intended to apply to someone who merely connects pieces of different notes.

§ 2B5.2. Forgery and fraudulent endorsement in violation of 18 U.S.C. 495 is covered in § 2F1.1.

§ 2B5.3. This section applies to violations of 17 U.S.C. 506(a) punished under 18 U.S.C. 2319, as well as certain violations of 118 U.S.C. 2511 as amended by the Electronic Communications Act of 1986. The amendments provide for a maximum term of imprisonment of five years for violations involving the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are essentially property offenses.

§ 2B5.4. This section applies to criminal infringement of trademarks in violation of 18 U.S.C. 2318 and 2320.

*6. Motor Vehicle Identification Numbers*

18 U.S.C. 511
18 U.S.C. 553(a)(2)
18 U.S.C. 2320

**§ 2B6.1. Altering or Removing Motor Vehicle Identification Numbers, or Trafficking in Motor Vehicles or Parts With Altered or Obliterated Identification Numbers**

(a) Base Offense Level: 8.

(b) Specific Offense Characteristic.

(1) If the retail value of the motor vehicles or parts involved exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1.

(2) If the offense involved organized criminal activity, and the offense level as determined above is less than level 14, increase to level 14.

COMMENTARY

§ 2B6.1. This section applies to violations of 18 U.S.C. 511, 553(a)(2), and 2320. The statutes prohibit altering or removing motor vehicle identification numbers, importing or exporting, or trafficking in motor vehicles or parts knowing that the identification numbers have been removed, altered, tampered with, or obliterated. Violations of 18 U.S.C. 511 and 553(a)(2) carry a maximum of five years' imprisonment. Violations of 18 U.S.C. 2320 carry a maximum of ten years' imprisonment.

See Commentary to § 2B1.1 regarding the adjustment for organized criminal activity, such as car theft rings and "chop shop" operations.

**Part C—Offenses Involving Public Officials**

18 U.S.C. 201 (b), (c), (f), (g)
18 U.S.C. 203
18 U.S.C. 205
18 U.S.C. 207–214
18 U.S.C. 217
18 U.S.C. 872
18 U.S.C. 1909
18 U.S.C. 1951

**§ 2C1.1. Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right**

(a) Base Offense Level: 10.

(b) Specific Offense Characteristics.

(1) Apply the greater:

(A) If the value of the bribe or the action received in return for the bribe exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).

(B) If the offense involved a bribe for the purpose of influencing an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.

(c) Cross References.

(1) If the bribe was for the purpose of concealing or facilitating another criminal offense, or for obstructing justice in respect to another criminal offense, apply § 2X3.1 (Accessory After the Fact) in respect to such other criminal offense if the resulting offense level is greater than that determined above.

(2) If the offense involved a threat of physical injury or property destruction, apply § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) if the resulting offense level is greater than that determined above.

**§ 2C1.2. Offering, Giving, Soliciting, or Receiving a Gratuity**

(a) Base Offense Level: 7.

(b) Specific Offense Characteristics Apply the greater:

(1) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).

(2) If the gratuity was given, or to be given, to an elected official or any official holding a high level decision-making or sensitive position, increase by 8 levels.

**§ 2C1.3. Conflict of Interest**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the offense involved actual or planned harm to the government, increase by 4 levels.

**§ 2C1.4. Payment or Receipt of Unauthorized Compensation**

(a) Base Offense Level: 6.

**§ 2C1.5. Payments to Obtain Public Office**

(a) Base Offense Level: 8.

**§ 2C1.6. Loan or Gratuity to Bank Examiner, or Gratuity for Adjustment of Farm Indebtedness, or Procuring Bank Loan, or Discount of Commercial Paper**

(a) Base Offense Level: 8.

(b) Specific Offense Characteristic.

(1) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).

COMMENTARY

The Commission believes that current sentencing practices do not adequately reflect the seriousness of public corruption offenses. Therefore, these guidelines provide for sentences that are considerably higher than average current practice.

The provisions of § 3B1.3 (Abuse of Position of Trust or Special Skill) do not apply to offenses under this Part, except under § 2C1.1(c)(1). This enhancement is incorporated into the base offense level. However, other sections of Chapter Three, Part B (Role in the Offense) may apply.

Although these guidelines incorporate the amount of the bribe or gratuity as a factor, that is not the primary consideration. Consequently, when multiple counts are involved, the dollar values are not to be aggregated. Instead, each is to be treated as a separate offense subject to the rules for multiple counts in Chapter Three, Part D. Substantially higher offense levels will thus

result when there is a pattern of repeated corruption.

A conspiracy to defraud the United States, in violation of 18 U.S.C. 371, may involve corrupt activities by a public official. Corrupt activities prosecuted under the mail and wire fraud statutes, 18 U.S.C. 1341 and 1343, may involve either federal or local officials in schemes to defraud the public of its right to honest government. When the offense of conviction is the general conspiracy statute, or the mail or wire fraud statute, the court shall apply the guideline that most accurately describes the underlying offense conduct.

§ 2C1.1 (18 U.S.C. 201 (b) and (c); 18 U.S.C. 872, 1951). This section applies to a person who offers or gives a bribe for a corrupt purpose, such as inducing a public official to participate in a fraud or to influence his official actions, in violation of 18 U.S.C. 201(b), or to a public official who solicits or accepts such a bribe in violation of 18 U.S.C. 201(c). These offenses carry a maximum penalty of fifteen years. Conspiracies, solicitations, and attempts carry the same fifteen-year maximum penalty.

The object of a bribe may vary widely from case to case. In some cases, the object may be commercial advantage (e.g., preferential treatment in the award of a government contract). In others, the object may be issuance of a license to which the recipient is not entitled. In still others, the object may be the obstruction of justice.

Under § 2C1.1(b)(1)(A), the offense level is increased if the value of the bribe or the action received in return can be determined and is greater than $2,000. For example, if a person paid a customs official $2,000 to evade $10,000 in duties, the value of the action received is $10,000. The amount of the bribe is included not because it directly measures harm to society, but because it is improbable that a large bribe would be given for a favor of little consequence. Moreover, for deterrence purposes, the larger the gain, the larger the punishment must be.

Under § 2C2.1(b)(1)(B), if the bribe is for the purpose of influencing an official act by certain officials, the offense level is increased by 8 levels if this increase is greater than that provided under § 2C1.1(b)(1)(A). The term "other official holding a high level decision-making or sensitive position" includes, for example, judges, prosecuting attorneys, agency administrators, supervisory police officers, and other governmental officials with similar levels of responsibility.

Under § 2C1.1(c)(1), if the purpose of the bribe involved the facilitation of another criminal offense or the obstruction of justice in respect to another criminal offense, the guideline for § 2X3.1 (Accessory After the Fact) in respect to that criminal offense will be applied, if the result is greater than that determined above. For example, if a bribe was given for the purpose of facilitating or covering up the offense of espionage, the guideline for accessory after the fact to espionage would be applied. Note that, when applying § 2X3.1, adjustments from Chapter Three, Part B (Role in the Offense) must be applied. This normally will result in an increase of at least 2 levels.

Finally, under § 2C1.1(c)(2), if the offense involved forcible extortion, the guideline from § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) will apply if the result is greater than that determined above.

The Commission recognizes that in many cases the monetary value of the bribe may not be known or may not adequately reflect the seriousness of the offense. For example, a small payment may be made in exchange for the falsification of inspection records for a shipment of defective parachutes, the obstruction of justice in a major narcotics case, or a systematic or pervasive pattern of corruption of a governmental institution or office that may cause loss of public confidence in government. In part, this problem is dealt with under § 2C1.1(b)(1)(B), and §§ 2C1.1(c) (1) and (2). Where the seriousness of the offense still is not adequately reflected, a departure from the guidelines is appropriate. Furthermore, where the court finds the defendant's conduct was part of a systematic or pervasive corruption of a government function, process or office, departure from the guidelines is appropriate.

Section 2C1.1 also applies to extortion by officers or employees of the United States in violation of 18 U.S.C. 872, and Hobbs Act extortions, conspiracies, and attempts under color of official right, in violation of 18 U.S.C. 1951. The Hobbs Act, 18 U.S.C. 1951(b)(2), applies in part to any person who acts "under color of official right." This statute applies to extortionate conduct by, among others, officials and employees of state and local governments. The panoply of conduct that may be prosecuted under the Hobbs Act varies from a city building inspector who demands a small amount of money from the owner of an apartment building to ignore code violations, to a state court judge who extracts substantial interest-free loans from attorneys who have cases pending in his court. Violations of 18 U.S.C. 872 carry a three-year statutory maximum, while violations of 18 U.S.C. 1951 carry a statutory maximum of twenty years' imprisonment. The Hobbs Act treats extortion, conspiracies and attempts in the same manner. The reason these offenses are often not completed is that the victim complains to authorities or is acting in an undercover capacity. Lack of completion is not a measure of the defendant's culpability in attempting to use a public position for personal gain. The guidelines treat these offenses as equivalent to bribery.

§ 2C1.2 (18 U.S.C. 201 (f) and (g)). This section applies to a person who gives a gratuity to a public official for performing an official act, in violation of 18 U.S.C. 201(f) or to a public official who accepts or solicits a gratuity in violation of 18 U.S.C. 201(g). A corrupt purpose is not an element of these offenses, which carry a two-year maximum penalty. If the gratuity was given, or to be given, to an elected official or other official holding a high level decision-making or sensitive position, the offense level is increased. The term "official holding a high level decision-making or sensitive position" is defined in the Commentary to § 2C1.1. In some cases the public official is the instigator. In others, the private citizen who is attempting to ingratiate himself or his business with the public official may be the initiator. These factors may be considered by the court in determining the sentence within the applicable guideline range.

§ 2C1.3 (18 U.S.C. 203, 205, 207–208). This section applies to present and former federal officers and employees who act in the face of financial and non-financial conflicts of interest proscribed by 18 U.S.C. 207 and 208. This section also applies to violations of 18 U.S.C. 203, which prohibits the offer or receipt of unlawful compensation by an appointed or elected official, or official-elect of the federal government, and is intended to ensure that government officials do not exert undue influence on government matters in response to the receipt of unlawful compensation. The above statutes provide a two-year maximum penalty.

§ 2C1.4 (18 U.S.C. 209, 1909). This section applies to violations of 18 U.S.C. 209 and 1909. 18 U.S.C. 209 provides a maximum term of imprisonment of one year for the receipt or payment of salary, or supplementation of salary of an officer or employee of the executive branch or an independent agency of the federal government, or an employee of the District of Columbia. 18 U.S.C. 1909 prohibits bank examiners from performing any service for compensation, for banks or bank officials.

§ 2C1.5 (18 U.S.C. 210–211). This section applies to offenses involving the offer or acceptance of payment in return for appointment to government office, in violation of 18 U.S.C. 210 and 211. Under 18 U.S.C. 210, it is illegal to pay, offer, or promise something of value to a person, firm, or corporation in consideration of procuring appointive office, while 18 U.S.C. 211 applies to the solicitation or acceptance of something of value in consideration of a promise of the use of influence in obtaining appointive federal office. Both statutes carry a maximum of one year of imprisonment.

§ 2C1.6 (18 U.S.C. 212–214, 217). This section applies to violations of 18 U.S.C. 212–214, and 217 involving the offer or acceptance of payments and gratuities by federal banking officials. These statutes carry a maximum of one year of imprisonment. Violations of 18 U.S.C. 212 and 213 involve the offer and acceptance of loans or gratuities to bank examiners. Violations of 18 U.S.C. 214 entail the offer or receipt of something of value for procuring a loan, or discount of commercial paper from a Federal Reserve bank. 18 U.S.C. 217 prohibits the acceptance of a fee or other consideration by a federal employee for adjusting or cancelling a farm debt.

Guidelines for offenses involving unlawful payments to bank officials in violation of 18 U.S.C. 215 appear in Part B (Offenses Involving Property).

## Part D—Offenses Involving Drugs

*1. Unlawful Manufacturing, Importing, Exporting, Trafficking, or Possession; Continuing Criminal Enterprise*

21 U.S.C. 841
21 U.S.C. 843
21 U.S.C. 845
21 U.S.C. 845a, 845b
21 U.S.C. 846
21 U.S.C. 848

21 U.S.C. 856–857
21 U.S.C. 952–953
21 U.S.C. 955
21 U.S.C. 957
21 U.S.C. 959
21 U.S.C. 960–963
46 U.S.C. App. § 1903

**§ 2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession With Intent To Commit These Offenses)**

(a) Base Offense Level:

(1) 43, for an offense that results in death or serious bodily injury with a prior conviction for a similar drug offense; or

(2) 38, for an offense that results in death or serious bodily injury and involved controlled substances (except Schedule III, IV, and V controlled substances and less than: (A) fifty kilograms of marihuana, (B) ten kilograms of hashish, and (C) one kilogram of hashish oil); or

(3) For any other offense, the base offense level is the level specified in the Drug Quantity. Table below.

(b) Specific Offense Characteristic.

(1) If a firearm or other dangerous weapon was possessed during commission of the offense, increase by 2 levels.

**DRUG QUANTITY TABLE**

| Controlled substances and quantity* | Base offense level |
|---|---|
| 10 KG Heroin or equivalent Schedule I or II Opiates, 50 KG Cocaine or equivalent Schedule I or II Stimulants, 500 G Cocaine Base, 10 KG PCP or 1 KG Pure PCP, 100 G LSD or equivalent Schedule I or II Hallucinogens, 4 KG Propanamide or 1 KG Propanamide Analogue (or more of any of the above), 10,000 KG+ Marihuana. | Level 36. |
| 3–9.9 KG Heroin or equivalent Schedule I or II Opiates, 15–49.9 KG Cocaine or equivalent Schedule I or II Stimulants, 150–499 G Cocaine Base, 3–9.9 KG PCP or 300–999 G Pure PCP, 30–99 G LSD or equivalent Schedule I or II Hallucinogens, 1.2–3.9 KG Propanamide or 300–999 G Propanamide Analogue, 3000–9999 KG Marihuana. | Level 34. |
| 1–2.9 KG Heroin or equivalent Schedule I or II Opiates, 5–14.9 KG Cocaine or equivalent Schedule I or II Stimulants, 50–149 G Cocaine Base, 1–2.9 KG PCP or 100–299 G Pure PCP, 10–29 G LSD or equivalent Schedule I or II Hallucinogens, .4–1.1 KG Propanamide or 100–299 G Propanamide Analogue, 1000–2999 KG Marihuana. | Level 32.** |
| 700–999 G Heroin or equivalent Schedule I or II Opiates, 3.5–4.9 KG Cocaine or equivalent Schedule I or II Stimulants, 35–49 G Cocaine Base, 700–999 G PCP or 70–99 G Pure PCP, 7–9.9 LSD or equivalent Schedule I or II Hallucinogens, 280–399 G Propanamide or 70–99 G Propanamide Analogue, 700–999 KG Marihuana. | Level 30. |
| 400–699 G Heroin or equivalent Schedule I or II Opiates, 2–3.4 KG Cocaine or equivalent Schedule I or II Stimulants, 20–34.9 G Cocaine Base, 400–699 G PCP or 40–69 G Pure PCP, 4–6.9 G LSD or equivalent Schedule I or II Hallucinogens, 160–279 G Propanamide or 40–69 G Propanamide Analogue, 400–699 KG Marihuana. | Level 28. |
| 100–399 G Heroin or equivalent Schedule I or II Opiates, 5–1.9 Cocaine or equivalent Schedule I or II Stimulants, 5–19 G Cocaine Base, 100–399 G PCP or 10–39 G Pure PCP, 1–3.9 G LSD or equivalent Schedule I or II Hallucinogens, 40–159 G Propanamide or 10–39 G Propanamide Analogue, 100–399 KG Marihuana. | Level 26.** |
| 80–99 G Heroin or equivalent Schedule I or II Opiates, 400–499 G Cocaine or equivalent Schedule I or II Stimulants, 4–4.9 G Cocaine Base, 80–99 G PCP or 8–9.9 G Pure PCP, 800–999 MG LSD or equivalent Schedule I or II Hallucinogens, 32–39 G Propanamide or 8–9.9 G Propanamide Analogue, 80–99 KG Marihuana. | Level 24. |
| 60–79 G Heroin or equivalent Schedule I or II Opiates, 300–399 G Cocaine or equivalent Schedule I or II Stimulants, 3–3.9 G Cocaine Base, 60–79 G PCP or 6–7.9 G Pure PCP, 600–799 MG LSD or equivalent Schedule I or II Hallucinogens, 24–31.9 G Propanamide or 6–7.9 G Propanamide Analogue, 60–79 KG Marihuana, 600 + Marihuana Plants, 12 KG+ Hashish, 1.2 KG+ Hashish Oil. | Level 22. |
| 40–59 G Heroin or equivalent Schedule I or II Opiates, 200–299 G Cocaine or equivalent Schedule I or II Stimulants, 2–2.9 G Cocaine Base, 40–59 G PCP or 4–5.9 G Pure PCP, 400–599 MG LSD or equivalent Schedule I or II Hallucinogens, 16–23.9 G Propanamide or 4–5.9 G Propanamide Analogue, 40–59 KG Marihuana, 400–599 Marihuana Plants, 8–11.9 KG Hashish, .8–1.1 KG Hashish Oil, 20 KG+ Schedule III or other Schedule I or II controlled substances. | Level 20. |
| 20–39 G Heroin or equivalent Schedule I or II Opiates, 100–199 G Cocaine or equivalent Schedule I or II Stimulants, 1–1.9 G Cocaine Base, 20–39 G PCP or 2–3.9 G Pure PCP, 200–399 MG LSD or equivalent Schedule I or II Hallucinogens, 8–15.9 G Propanamide or 2–3.9 G Propanamide Analogue, 20–39 KG Marihuana, 200–399 Marihuana Plants, 5–7.9 KG Hashish, 500–799 G Hashish Oil, 10–19 KG Schedule III or other Schedule I or II controlled substances. | Level 18. |
| 10–19 G Heroin or equivalent Schedule I or II Opiates, 50–99 G Cocaine or equivalent Schedule I or II Stimulants, 500–999 MG Cocaine Base, 10–19.9 G PCP or 1–1.9 G Pure PCP, 100–199 MG LSD or equivalent Schedule I or II Hallucinogens, 4–7.9 G Propanamide or 1–1.9 G Propanamide Analogue, 10–19 KG Marihuana, 100–199 Marihuana Plants, 2–4.9 KG Hashish, 200–499 G Hashish Oil, 5–9.9 KG Schedule III or other Schedule I or II controlled substances. | Level 16. |
| 5–9.9 G Heroin or equivalent Schedule I or II Opiates, 25–49 G Cocaine or equivalent Schedule I or II Stimulants, 250–499 MG Cocaine Base, 5–9.9 G PCP or 500–999 MG Pure PCP, 50–99 MG LSD or equivalent Schedule I or II Hallucinogens, 2–3.9 G Propanamide or .5–.9 G Propanamide Analogue, 5–9.9 KG Marihuana, 50–99 Marihuana Plants, 1–1.9 KG Hashish, 100–199 G Hashish Oil, 2.5–4.9 KG Schedule III or other Schedule I or II controlled substances. | Level 14. |
| Less than the following: 5 G Heroin or equivalent Schedule I or II Opiates, 25 G Cocaine or equivalent Schedule I or II Stimulants, 250 MG Cocaine Base, 5 G PCP or 500 MG Pure PCP, 50 MG LSD or equivalent Schedule I or II Hallucinogens, 2 G Propanamide or 500 MG Propanamide Analogue; 2.5–4.9 KG Marihuana, 25–49 Marihuana Plants, 500–999 G Hashish, 50–99 G Hashish Oil, 1.25–2.4 KG Schedule III or other Schedule I or II controlled substances, 20 KG+ Schedule IV. | Level 12. |
| 1–2.4 KG Marihuana, 10–24 Marihuana Plants, 200–499 G Hashish, 20–49 G Hashish Oil, 50–1.24 KG Schedule III or other Schedule I or II controlled substances, 8–19 KG Schedule IV. | Level 10. |
| 250–999 G Marihuana, 3–9 Marihuana Plants, 50–199 G Hashish, 10–19 G Hashish Oil, 125–449 G Schedule III or other Schedule I or II controlled substances, 2–7.9 KG Schedule IV, 20 KG+ Schedule V. | Level 8. |
| Less than the following: 250 G Marihuana, 3 Marihuana Plants, 50 G Hashish, 10 G Hashish Oil, 125 G Schedule III or other Schedule I or II controlled substances, 2 KG Schedule IV, 20 KG Schedule V. | Level 6. |

*The scale amounts for all controlled substances refer to the total weight of the controlled substance. Consistent with the provisions of the Anti-Drug Abuse Act, if any mixture of a compound contains any detectable amount of a controlled substance, the entire amount of the mixture or

compound shall be considered in measuring the quantity. If a mixture or compound contains a detectable amount of more than one controlled substance, the most serious controlled substance shall determine the categorization of the entire quantity.

**Statute specifies a mandatory minimum sentence.

**COMMENTARY**

§ 2D1.1 (21 U.S.C. 841, 960). Offenses under 21 U.S.C. 841 and 960 receive identical punishment based upon the quantity of the controlled substance involved, the defendant's criminal history, and whether death or serious bodily injury resulted from the offense. Although the statutes require minimum penalties at certain weights for prior convictions, the enhanced penalty is reflected in the criminal history adjustment in Chapter Four. In determining criminal history, use of the phrase, "similar drug offense," in § 2D1.1(a)(1) refers to a prior conviction as described in 21 U.S.C. 841(b) or 960(b).

When there are multiple offenses, or multiple drug types, the quantities are to be added. Tables for making the necessary conversions are provided later in the Commentary.

The base offense levels in § 2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute, and apply to all unlawful trafficking. Levels 32 and 26 in the Drug Quantity Table are the distinctions provided by the Anti-Drug Abuse Act; however, further refinement of drug amounts is essential to provide a logical sentencing structure for drug offenses. To determine these finer distinctions, the Commission consulted numerous experts and practitioners, including authorities at the Drug Enforcement Administration, chemists, attorneys, probation officers, and members of the Organized Crime Drug Enforcement Task Force, who also advocate the necessity of these distinctions.

The base offense levels with asterisks represent mandatory minimum sentences established by the Anti-Drug Abuse Act of 1986. These levels reflect sentences with a lower limit as close to the statutory requirement as possible; e.g., level 32 ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months. If it is uncertain whether the quantity of drugs involved falls into one category in the table or an adjacent category, the court may use the intermediate level for sentencing purposes. For example, sale of 700–999 grams of heroin is at level 30, while sale of 400–699 grams is at level 28. If the exact quantity is uncertain, but near 700 grams (or is an amount that would be between the two levels), use of level 29 would be permissible.

For each offense level in the Drug Quantity Table, a term of supervised release to follow imprisonment is required. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, §§ 5D3.1–5D3.3.

While the new legislation provides mandatory minimum sentences for many offenses, it also provides the means by which sentences lower than the statutory minimum may be imposed. 28 U.S.C. 994(n). A lower sentence may be imposed by reason of a defendant's "substantial assistance in the investigation or prosecution of another person who has committed an offense." See § 5K1.1 (Substantial Assistance to Authorities).

Trafficking in controlled substances, compounds, or mixtures of unusually high purity constitutes a basis to increase a sentence above the applicable guideline range. The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs.

Congress provides an exception to purity considerations in the case of phencyclidine (PCP). 21 U.S.C. 841(b)(1)(A). The legislation designates amounts of pure PCP and mixtures in establishing mandatory sentences. Row 1 of the table illustrates this distinction as one kilogram of PCP or 100 grams of pure PCP. Allowance for higher sentences based on purity is not appropriate for PCP.

Any reference to a particular controlled substance in these guidelines is also meant to include all salts, isomers, and all salts of isomers. Any reference to cocaine includes ecgonine and coca leaves, except extracts of coca leaves from which cocaine and ecgonine have been removed.

Within generic categories, e.g. heroin, there are various levels of potency among the applicable controlled substances. While the Commission bases its general sentencing structure for drug offenses upon the degree of dangerousness as set forth by statute (21 U.S.C. 841(b)(1)), the following equivalency tables are provided for ease of application should multiple drugs be present.

In the event different categories of drugs are involved, conversions to both heroin and marihuana are provided. The equivalencies are first determined and then added. The result is then determined from the Drug Quantity Table.

When drug types result in penalties at the lower end of the Drug Quantity Table, an equivalency to heroin may not be appropriate, unless heroin, cocaine, cocaine base, PCP, or LSD are present. In those cases, the conversion should be to heroin and the base offense level may not be less than level 12. Otherwise, the conversion should be to marihuana.

**DRUG EQUIVALENCY TABLE**

*Schedule I Substances with Heroin Like Effects*

1 gm of Alpha-Methylfentayn=100 gm of heroin
1 gm of Dextromoramide=0.66 gm of heroin
1 gm of Dipipanone=0.25 gm of heroin
1 gm of 3-Methylfentanyl=125 gm of heroin
1 gm of 1-Methyl-4-phenyl-4-propionoxypiperidine/MPPP=5 gm of heroin
1 gm of 1-(2-Phenylethyl)-4=phenyl-4-acetyloxypiperidine/PEPAP=5 gm of heroin

*Schedule II Substances with Heroin Like Effects*

1 gm of Alphaprodine=0.1 gm of heroin
1 gm of Fentanyl=31.25 gm of heroin
1 gm of Hydromorphone/Dihydromorphinone=2.5 gm of heroin
1 gm of Levorphanol=2.5 gm of heroin
1 gm of Meperidine/Pethidine=0.05 gm of heroin
1 gm of Methadone=0.5 gm of heroin
1 gm of 6-Monoacetylmorphine=1 gm of heroin
1 gm of Morphine=0.5 gm of heroin
1 gm of Oxycodone=1 gm of heroin
1 gm of Oxymorphone=5 gm of heroin
1 gm of Racemorphan=1.66 gm of heroin

*Cocaine and Other Schedule I and II Stimulants*

1 gm of Cocaine=0.2 gm of heroin
1 gm of N-Ethylamphetamine=0.08 gm of heroin
1 gm of Fenethyline=0.04 gm of heroin
1 gm of Amphetamine=0.2 gm of heroin
1 gm of Dextroamphetamine=0.2 gm of heroin
1 gm of Methamphetamine=0.4 gm of heroin
1 gm of L-Methamphetamine/Levo-methamphetamine/L=Desoxyephedrine=0.04 gm of heroin
1 gm of Phenmetrazine=0.08 gm of heroin
1 gm of Phenylacetone/$P_2P$ (amphetamine precursor)=0.075 gm of heroin
1 gm of Phenylacebone/$P_2P$ (methamphetamine precursor)=0.166 gm of heroin

*LSD, PCP, and Other Schedule I and II Hallucinogens*

1 gm of Bufotenine=0.07 gm of heroin
1 gm of D-Lysergic Acid Diethylamide/Lysergide/LSD=100 gm of heroin
1 gm of Diethyltryptamine/DET =0.08 gm of heroin
1 gm of Dimethyltryptamine/DMT=0.1 gm of heroin
1 gm of Mescaline=0.01 gm of heroin
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Dry)=0.001 gm of heroin
1 gm of Mushrooms containing Psilocin and/or Psilocybin (Wet)=0.0001 gm of heroin
1 gm of Peyote (Dry)=0.0005 gm of heroin
1 gm of Peyote (Wet)=0.00005 gm of heroin
1 gm of Phencyclidine/PCP=1 gm of heroin
1 gm of Phencyclidine (Pure PCP)=10 gm of heroin
1 gm of Liquid Phencyclidine=0.1 gm of heroin
1 gm of Psilocin =0.5 gm of heroin
1 gm of Psilocybin=0.5 gm of heroin
1 gm of Pyrrolidine Analog of Phencyclidine/PHP=1 gm of heroin
1 gm of Thiophene Analog of Phencyclidine/TCP=1 gm of heroin
1 gm of 4-Bromo-2,5-Dimethoxyamphetamine/DOB=2.5 gm of heroin

1 gm of 2,5-Dimethoxy-4-methylamphetamine/DOM=1.66 gm of heroin
1 gm of 3,4-Methylenedioxyamphetamine/MDA=0.05 gm of heroin
1 gm of 3,4-Methylenedioxymethamphetamine/MDMA=0.035 gm of heroin
1 gm of 1-Piperidinocyclohexanecarbonitrile/PCC=0.68 gm of heroin

*Schedule I Marihuana*

1 gm of Marihuana/Cannabis=1 mg of heroin
1 Marihuana/Cannabis Plant=0.1 gm of heroin/100 gm of marihuana
1 gm of Marihuana/Cannabis, granulated, powdered, etc.=1 mg of heroin/1 gm of marihuana
1 gm of Hash/Hashish Oil=0.05 gm of heroin/50 gm of marihuana
1 gm of Cannabis Resin or Hashish=5 mg of heroin/5 gm of marihuana
1 gm of Tetrahydrocannabinol, Organic=0.167 gm of heroin/167 gm of marihuana
1 gm of Tetrahydrocannabinol, Synthetic=0.167 gm of heroin/167 gm of marihuana

*Schedule I or II Depressants and Schedule II Narcotics*

1 gm of Codeine=0.08 gm of heroin/80 gm of marihuana
1 gm of Dextropropoxyphene/Propoxyphene-Bulk=0.05 gm of heroin/50 gm of marihuana
1 gm of Ethylmorphine=0.165 gm of heroin/165 gm of marihuana
1 gm of Hydrocodone/Dihydrocodeinone=1 gm of heroin/1 kg of marihuana
1 gm of Mixed Alkaloids of Opium/Papaveretum=0.25 gm of heroin/250 gm of marihuana
1 gm of Opium=0.05 gm of heroin/50 gm of marihuana
1 gm of Opium Extract=0.1 gm of heroin/100 gm of marihuana
1 gm of Opium Fluid Extract=0.004 gm of heroin/4 gm of marihuana
1 gm of Opium Granulated=0.05 gm of heroin/50 gm of marihuana
1 gm of Opium Plant Form=0.05 gm of heroin/50 gm of marihuana
1 gm of Opium Powdered=0.05 gm of heroin/50 gm of marihuana
1 gm of Opium Tincture=0.005 gm of heroin/5 gm of marihuana
1 gm of Methaqualone=0.7 mg of heroin/700 mg of marihuana
1 gm of Amobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Pentobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Secobarbital=2 mg of heroin/2 gm of marihuana

*Schedule III Substances*

1 gm of Allobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Aprobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Barbiturate=2 mg of heroin/2 gm of marihuana
1 gm of Butabarbital=2 mg of heroin/2 gm of marihuana
1 gm of Butalbital=2 mg of heroin/2 gm of marihuana
1 gm of Butobarbital/butethal=2 mg of heroin/2 gm of marihuana
1 gm of Cyclobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Cyclopentobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Guletethimide=0.4 mg of heroin/400 gm of marihuana
1 gm of Heptabarbital=2 mg of heroin/2 gm of marihuana
1 gm of Hexethal=2 mg of heroin/2 gm of marihuana
1 gm of Hexobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Metharbital=2 mg of heroin/2 gm of marihuana
1 gm of Talbutal=2 mg of heroin/2 gm of marihuana
1 gm of Thialbarbital=2 mg of heroin/2 gm of marihuana
1 gm of Thiamylal=2 mg of heroin/2 gm of marihuana
1 gm of Thiobarbital=2 mg of heroin/2 gm of marihuana
1 gm of Thiohexethal=2 mg of heroin/2 gm of marihuana
1 gm of Thiopental=2 mg of heroin/2 gm of marihuana
1 gm of Vinbarbital=2 mg of heroin/2 gm of marihuana
1 gm of Vinylbital=2 mg of heroin/2 gm of marihuana
1 gm of Phendimetrazine=2 mg of heroin/2 gm of marihuana
1 gm of Paregoric=0.01 mg of heroin/10 mg of marihuana
1 gm of Hydrocodone Cough Syrups=0.01 mg of heroin/10 mg of marihuana

*Schedule IV and V Substances*

1 gm of Phentermine=0.02 mg of heroin/20 mg of marihuana
1 gm of Pentazocine=0.01 mg of heroin/10 mg of marihuana
1 gm of Codeine Cough Syrups=0.00002 mg of heroin/0.02 mg of marihuana
1 gm of Barbital=0.006 mg of heroin/6 mg of marihuana
1 gm of Diazepam=0.063 mg of heroin/63 mg of marihuana
1 gm of Phenobarbital=0.006 mg of heroin/6 mg of marihuana
1 gm of Mephobarbital=0.006 mg of heroin/6 mg of marihuana
1 gm of Methohexital=0.006 mg of heroin/6 mg of marihuana
1 gm of Methylphenobarbital/Mephobarbital=0.006 mg of heroin/6 mg of marihuana
1 gm of Nitrazepam=0.063 mg of heroin/63 mg of marihuana

To facilitate conversions to drug equivalencies, the following table is provided:

**DRUG CONVERSION TABLE**

1oz=28.35 gm
1lb=453.6 gm
1lb=.45 kg
1kg=2.2 lbs
1gal=3.8 liters
1qt=.95 liters
1gm=1 ml (liquid)
1liter=1,000 ml
1kg=1,000 gm
1gm=1,000 mg
1grain=64.8 mg

Sentences under the Anti-Drug Abuse Act are guided by standardized amounts of drugs involved in the offense. The following dosage equivalents for certain common drugs are provided by the Drug Enforcement Administration to facilitate the application of § 2D1.1 of the guidelines.

**DOSAGE EQUIVALENCY TABLE**

*Hallucinogens*

| | |
|---|---|
| Anhalamine | 300 mg |
| Anhalonide | 300 mg |
| Anhalonine | 300 mg |
| Bufotenine | 1 mg |
| Diethyltryptamine | 60 mg |
| Dimethyltryptamine | 50 mg |
| Lophophorine | 300 mg |
| LSD (Lysergic acid diethylamide) | 0.1 mg |
| LSD tartrate | 0.05 mg |
| MDA | 100 mg |
| Mescaline | 500 mg |
| PCP | 5 mg |
| Pellotine | 300 mg |
| Peyote | 12 mg |
| Psilocin | 10 mg |
| Psilocybin | 10 mg |
| STP (DOM) Dimethoxyamphetamine | 3 mg |

*Depressants*

| | |
|---|---|
| Barbiturates | 100 mg |
| Brallobarbital | 30 mg |
| Eldoral | 100 mg |
| Eunarcon | 100 mg |
| Hexethel | 100 mg |
| Methaqualone | 300 mg |
| Thiobarbital | 50 mg |
| Thiohexethal | 60 mg |

*Stimulants*

| | |
|---|---|
| Amphetamines | 10 mg |
| Ethylamphetamine HCL | 12 mg |
| Ethylamphetamine SO4 | 12 mg |
| Methoamphetamine combinations | 5 mg |
| Methamphetamines | 5 mg |
| Preludin | 25 mg |

The dosage equivalents provided in these tables reflect the amount of the pure drug contained in an average dose.

A defendant who used special skills in the commission of the offense may be subject to an enhancement for role in the offense. See § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). Certain professionals often occupy essential positions in drug trafficking schemes. These professionals include doctors, pilots, boat captains, financiers, bankers, attorneys, chemists, accountants, and others whose special skill, trade, profession, or position may be used to significantly facilitate the commission of a drug offense.

The statutory maximum penalty for trafficking in less than fifty kilograms of marihuana, ten kilograms of hashish, one kilogram of hashish oil, or any amount of Schedule III, IV, or V controlled substances is five years' imprisonment. With a prior conviction for similar drug related offenses the statutory maximum penalty is ten years. It should be noted that although the Drug Quantity Table applies to trafficking in small amounts of marihuana, under 21 U.S.C.

§ 841(b)(4), distribution of "a small amount of marihuana for no remuneration" is treated as simple possession, to which § 2D2.1 applies.

The enhancement for weapon possession reflects the increased danger of violence when drug traffickers possess weapons. The adjustment should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. For example, the enhancement would not be applied if the defendant, arrested at his residence, had an unloaded hunting rifle in the closet. The enhancement also applies to offenses that reference § 2D1.1, i.e., §§ 2D1.2–2D1.4. The adjustment is to be applied even if several counts are involved and the weapon was present in any of them.

**§ 2D1.2. Involving Juveniles in the Trafficking of Controlled Substances**

(a) Base Offense Level:

(1) Level from § 2D1.1, corresponding to triple the drug amount involved, but in no event less than level 13, for involving an individual less than fourteen years of age; or

(2) Level from § 2D1.1, corresponding to double the drug amount involved, for involving an individual at least fourteen years of age and less than eighteen years of age.

**§ 2D1.3. Distributing Controlled Substances to Individuals Younger Than Twenty-One Years, To Pregnant Women, or Within 1,000 Feet of a School or College**

(a) Base Offense Level:

(1) Level from § 2D1.1, corresponding to double the drug amount involved, but in no event less than level 13, for distributing a controlled substance to a pregnant woman;

(2)(A) Level from § 2D1.1, corresponding to double the drug amount involved, but in no event less than level 13, for distributing a controlled substance other than five grams or less of marihuana to an individual under the age of twenty-one years; or

(B) Level from § 2D1.1, corresponding to double the drug amount involved, but in no event less than level 13, for distributing or manufacturing a controlled substance other than five grams or less of marihuana within 1,000 feet of a schoolyard.

**§ 2D1.4. Attempts and Conspiracies**

(a) Base Offense Level: If a defendant is convicted of participating in an incomplete conspiracy or an attempt to commit any offense involving a controlled substance, the offense level shall be the same as if the object of the conspiracy or attempt had been completed.

**§ 2D1.5. Continuing Criminal Enterprise**

(a) Base Offense Level:

(1) 32, for the first conviction of engaging in a continuing criminal enterprise; or

(2) 36, for the second or any subsequent conviction of engaging in a continuing criminal enterprise; or

(3) 43, for engaging in a continuing criminal enterprise as the principal administrator, leader, or organizer, if either the amount of drugs involved was 300 times that specified in Row 1 of the Drug Quantity Table or the principal received $10 millon in gross receipts for any twelve-month period.

**§ 2D1.6. Use of Communication Facility in Committing Drug Offense**

(a) Base Offense Level: 12.

**§ 2D1.7. Unlawful Interstate Sale and Transporting of Drug Paraphernalia**

(a) Base Offense Level: 12.

**§ 2D1.8. Renting or Managing a Drug Establishment**

(a) Base Offense Level: 16.

(b) Specific Offense Characteristic:

(1) If a firearm or other dangerous weapon was possessed during commission of the offense, increase by 2 levels.

**§ 2D1.9. Placing or Maintaining Dangerous Devices on Federal Property to Protect the Unlawful Production of Controlled Substances**

(a) Base Offense Level: 23.

**COMMENTARY**

§ 2D1.2 (21 U.S.C. 845b). The statute addressed by this section punishes any person eighteen years of age or older who knowingly employs or uses any person younger than eighteen to violate or to conceal any violation of any provision of Title 21. Section 845b provides a minimum mandatory period of imprisonment of one year (provided for by the minimum base offense level of 13) in addition to the punishment imposed for the applicable crime in which the defendant involved a juvenile. An increased penalty for the employment or use of persons under age fourteen is statutorily directed by 21 U.S.C. 845b(d).

If multiple drugs or offenses occur and the entire amount does not involve juveniles, double or triple the drug amounts for those offenses involving juveniles before totalling the amounts. For example, if there are three drug offenses of conviction and only one involves juveniles in trafficking, add the amount from the first and second offense, double the amount for the offense involving juveniles, and total. Use that total to determine the base offense level.

The reference to the level from § 2D1.1 includes the base offense level plus the specific offense characteristic dealing with a weapon. Under § 2D1.1(b)(1) there is a two level increase for possession of a firearm or other dangerous weapon during commission of the offense.

§ 2D1.3 (21 U.S.C. 845, 845a). The provisions addressed by this section contain a mandatory minimum period of imprisonment of one year. The base offense level is determined as in § 2D1.2. If more than one enhancement provision is applicable in a particular case, the punishment imposed under the separate enhancement provisions should be added together in calculating the appropriate guideline sentence. However, only one of the enhancements in § 2D1.3(a)(2) shall apply in a given case.

The guideline sentences for distribution of controlled substances to individuals under twenty-one years of age or within 1000 feet of a school or college treat the distribution of less than five grams of marihuana less harshly than other controlled substances. This distinction is based on the statutory provisions that specifically exempt convictions for the distribution of less than five grams of marihuana from the mandatory minimum one-year imprisonment requirement.

If multiple drugs or offenses occur, determine the offense level as described in the Commentary to § 2D1.2.

The reference to the level from § 2D1.1 includes the base offense level plus the specific offense characteristic dealing with a weapon. Under § 2D1.1(b)(1) there is a 2 level increase for possession of a firearm, or other dangerous weapon during the commission of the offense.

§ 2D1.4 (21 U.S.C. 846, 963). Although attempts and conspiracies are not subject to the mandatory minimums under the Anti-Drug Abuse Act, the Commission has elected to treat them the same as the underlying offense. If the defendant is convicted of a conspiracy that includes transactions in controlled substances in addition to those that are the subject of substantive counts of conviction, each conspiracy transaction shall be included with those of the substantive counts of conviction to determine scale. If the defendant is convicted of an offense involving negotiation to traffic in a controlled substance, the weight under negotiation in an uncompleted distribution shall be used to calculate the applicable amount. Where the defendant was not reasonably capable of producing the negotiated amount the court may depart and impose a sentence lower than the sentence that would otherwise result. If the defendant is convicted of conspiracy, the sentence should be imposed only on the basis of the defendant's conduct or the conduct of co-conspirators that was reasonably foreseeable and in furtherance of the conspiracy.

Where there is no drug seizure or the amount seized does not reflect the scale of the offense, the sentencing judge shall approximate the quantity of the controlled substance. In making this determination, the judge may consider, for example, the price generally obtained for the controlled substance, financial or other records, similar transactions in controlled substances by the defendant, and the size or capability of any laboratory involved.

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See Commentary to § 2D1.1 regarding weapon possession.

§ 2D1.5 (21 U.S.C. 848). The base offense levels for continuing criminal enterprise are mandatory minimum sentences provided by the statute that mandate imprisonment for leaders of large scale drug enterprises. When sentencing for convictions under 21 U.S.C. 848, § 2D1.5 reflects the defendant's role in the enterprise. A conviction establishes that the defendant controlled and exercised decision-making authority over one of the most serious forms of ongoing criminal activity. Therefore, an adjustment for role in the offense in Chapter Three, Part B, is not applicable to convictions under 21 U.S.C. 848.

§ 2D1.6 (21 U.S.C. 843(b)). A communication facility includes any public or private instrument used in the transmission of writing, signs, signals, pictures, and sound; e.g., telephone, wire, radio. The statutory maximum penalty is four years' imprisonment except where a prior conviction provides for a maximum sentence of eight years.

§ 2D1.7 (21 U.S.C. 857). Subtitle O of the Anti-Drug Abuse Act creates the new offense of interstate sale or transportation of drug paraphernalia. The statutory maximum penalty is three years' imprisonment.

§ 2D1.8 (21 U.S.C. 856). Subtitle P of the Anti-Drug Abuse Act adds a new category to the drug-related offenses set out at 21 U.S.C. 856. This provision makes it unlawful to knowingly open or maintain, manage, or control any building, room, or enclosure for the purpose of manufacturing, distributing, storing, or using a controlled substance contrary to law (e.g., "crackhouses"). A maximum period of twenty years' imprisonment may be imposed for violation of this statute.

Under § 2D1.8(b)(1) there is a 2-level increase for possession of a firearm or other dangerous weapon during commission of the offense.

§ 2D1.9 (21 U.S.C. 841(e)(1)). This provision refers to offenses under 21 U.S.C. 841(e)(1), making it unlawful to assemble, place or cause to be placed, or to maintain a "boobytrap" on federal property where a controlled substance is being manufactured or distributed. A maximum period of ten years' imprisonment may be imposed under this statute, except where a prior conviction provides for a maximum sentence of twenty years.

*2. Unlawful Possession*

18 U.S.C. 342
21 U.S.C. 843(a)(3)
21 U.S.C. 844

**§ 2D2.1. Unlawful Possession**

(a) Base Offense Level:

(1) 8, if the substance is heroin or any Schedule I–II opiate, or LSD, or an analogue of these; or

(2) 6, if the substance is cocaine or PCP; or

(3) 4, if the substance is any other controlled substance.

**§ 2D2.2. Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge**

(a) Base Offense Level: 8.

**§ 2D2.3. Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs**

(a) Base Offense Level: 8.

COMMENTARY

§ 2D2.1 (21 U.S.C. 844(a)). The statutory maximum penalty for simple possession is one year imprisonment. With a single prior drug related conviction, a minimum fifteen days and maximum two years' imprisonment is authorized. For two or more convictions, a minimum ninety days and maximum three years' imprisonment is authorized.

§ 2D2.2 (21 U.S.C. 843(a)(3)). The maximum penalty for this offense is four years' imprisonment. With a prior drug related felony offense, a maximum eight-year prison term is permitted.

§ 2D2.3 (18 U.S.C. 342). The statutory maximum for this offense is five years' imprisonment.

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*3. Regulatory Violations*

21 U.S.C. 842
21 U.S.C. 843(a)
21 U.S.C. 954
21 U.S.C. 961(2)

**§ 2D3.1. Illegal Use of Registration Number to Manufacture, Distribute, Acquire, or Dispense a Controlled Substance**

(a) Base Offense Level: 6.

**§ 2D3.2. Manufacture of Controlled Substance in Excess of or Unauthorized by Registration Quota**

(a) Base Offense Level: 4.

**§ 2D3.3. Illegal Use of Registration Number to Distribute or Dispense a Controlled Substance to Another Registrant or Authorized Person**

(a) Base Offense Level: 4.

**§ 2D3.4. Illegal Transfer or Transshipment of a Controlled Substance**

(a) Base Offense Level: 4.

COMMENTARY

§ 2D3.1 (21 U.S.C. 843(a)). The statutory maximum penalty is four years' imprisonment. With a prior drug related felony offense, a maximum eight years' imprisonment is authorized.

§§ 2D3.2 and 2D3.3 (21 U.S.C. 842). The statutory maximum for these offenses is one year imprisonment.

§ 2D3.4 (21 U.S.C. 954). The statutory maximum penalty for this offense is one year imprisonment.

**Part E—Offenses Involving Criminal Enterprises and Racketeering**

*1. Racketeering*

18 U.S.C. 1951–1952
18 U.S.C. 1952A–1952B
18 U.S.C. 1962–1963

**§ 2E1.1. Unlawful Conduct Relating to Racketeer Influenced and Corrupt Organizations**

(a) Base Offense Level (Apply the greater):

(1) 19; or

(2) The offense level applicable to the underlying racketeering activity.

**§ 2E1.2. Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise**

(a) Base Offense Level (Apply the greater):

(1) 6; or

(2) The offense level applicable to the underlying crime of violence or other unlawful activity in respect to which the travel or transportation was undertaken.

**§ 2E1.3. Violent Crimes in Aid of Racketeering Activity**

(a) Base Offense Level (Apply the greater):

(1) 12; or

(2) The offense level applicable to the underlying crime or racketeering activity.

**§ 2E1.4. Use of Interstate Commerce Facilities in the Commission of Murder-For-Hire**

(a) Base Offense Level (Apply the greater):

(1) 23; or

(2) The offense level applicable to the underlying unlawful conduct.

**§ 2E1.5. Hobbs Act Extortion or Robbery**

Apply the guideline provision for extortion or robbery, as applicable.

COMMENTARY

When sentencing for racketeering offenses, it is especially important that the sentence reflect the defendant's role in the racketeering scheme. Attention is specifically directed to Chapter Three, Part B (Role in the Offense) for the appropriate adjustment to the offense level.

Because of the jurisdictional nature of the offenses included in this section, a variety of criminal offenses fall under these provisions. As the primary concern rests with the underlying conduct, the offense level usually will be determined by the offense level of the underlying conduct. However, because of the seriousness of these offenses, alternative minimum offense levels are provided in order to ensure adequate sentences.

§ 2E1.1 (18 U.S.C. 1962–1963). This section applies to conduct proscribed by the Racketeer Influenced and Corrupt

Organizations Act (RICO). To determine the base offense level, the offense level for each underlying offense should first be determined. The underlying offense with the highest offense level will be considered the primary RICO offense. The primary RICO offense is then adjusted according to the guidelines for multiple counts, treating each underlying offense as a separate count.

If the underlying racketeering activity involves violations of state law, the offense level should be computed by using the offense level applicable to the corresponding or most analogous federal statute. If a base offense level cannot be determined in this manner or is less than 19, the alternative level of 19 will apply.

§ 2E1.2 (18 U.S.C. 1952). This jurisdictional statute is directed to a variety of unlawful conduct. The base level is 6, or the offense level for the underlying crime of violence or other unlawful activity, whichever is greater.

§ 2E1.3 (18 U.S.C. 1952B). The base offense level is 12, or the offense level for the underlying conduct, whichever is greater. The proscribed activities range from threats to murder, with the statutory maximum sentences ranging from three years to life imprisonment.

§ 2E1.4 (18 U.S.C. 1952A). This statute is jurisdictional, reaching the underlying conduct of murder or intended murder committed for pecuniary gain, with the requisite nexus provided by interstate or foreign travel, or the use of facilities in interstate commerce. The maximum authorized imprisonment sentence under this statute is five years if no personal injury resulted, twenty years if personal injury resulted, and life imprisonment if death resulted.

§ 2E1.5 (18 U.S.C. 1951). This section covers two different aspects of the Hobbs Act, which proscribes interference with interstate commerce by robbery or extortion. The guidelines at § 2B3.1 (Robbery) or § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) normally will apply. In some cases, § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right) or § 2B3.3 (Blackmail and Similar Forms of Extortion) may apply. See Commentary to § 2B3.2.

*2. Extortionate Extension of Credit*

18 U.S.C. 892–894

**§ 2E2.1. Making, Financing, or Collecting an Extortionate Extension of Credit**

(a) Base Offense Level: 20.

(b) Specific Offense Characteristics.

(1)(A) If a firearm was discharged increase by 5 levels; or

(B) If a firearm or a dangerous weapon was otherwise used, increase by 4 levels; or

(C) If a firearm or other dangerous weapon was possessed, increase by 3 levels.

(2) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

| Degree of bodily injury | Increase in level |
|---|---|
| (A) Bodily injury | Add 2. |
| (B) Serious bodily injury | Add 4. |
| (C) Permanent or Life-Threatening Bodily Injury | add 6 |

Provided, however, that the combined increase from (1) and (2) shall not exceed 9 levels.

(3)(A) If any person was abducted to facilitate the commission of the offense or an escape from the scene of the crime, increase by 4 levels;

(B) If any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels.

COMMENTARY

§ 2E2.1 (18 U.S.C. 892–894). This section refers to offenses involving the making or financing of extortionate extensions of credit, or the collection of loans by extortionate means. These "loan-sharking" offenses typically involve threats of violence and provide economic support for organized crime. The base offense level for these offenses is higher than the offense level for extortion because loan sharking is in most cases a continuing activity. In addition, the guideline does not include the amount of money involved because the amount of money in such cases is often difficult to compute. Other enhancements parallel those in § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).

*3. Gambling*

15 U.S.C. 1172–1176
18 U.S.C. 1082
18 U.S.C. 1084
18 U.S.C. 1301–1304
18 U.S.C. 1306
18 U.S.C. 1511
18 U.S.C. 1953
18 U.S.C. 1955

**§ 2E3.1. Engaging in a Gambling Business**

(a) Base Offense Level: 12.

**§ 2E3.2. Transmission of Wagering Information**

(a) Base Offense Level: 12.

**§ 2E3.3. Other Gambling Offenses**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the offense is committed as part of, or to facilitate, a commercial gambling operation, increase by 6 levels.

COMMENTARY

§ 2E3.1 (18 U.S.C. 1955). See Chapter Three, Part B (Role in the Offense) for adjustments to the offense level based on the scope of the defendant's participation.

§ 2E3.2 (18 U.S.C. 1084). See Chapter Three, Part B (Role in the Offense) for adjustments to the offense level based on the scope of the defendant's participation.

§ 2E3.3 (15 U.S.C. 1172–1175, 18 U.S.C. 1082, 1301–1304, 1306, 1511, 1953). This section includes conduct proscribed by various statutes. A specific offense characteristic has been included to distinguish commercial from non-commercial gambling offenses. See Chapter Three, Part B (Role in the Offense) for adjustments to the offense level based on the scope of the defendant's participation.

*4. Trafficking in Contraband Cigarettes*

18 U.S.C. 2342(a)
18 U.S.C. 2344(a)

**§ 2E4.1. Unlawful Conduct Relating to Contraband Cigarettes**

(a) Base Offense Level (Apply the greater):

(1) 9; or

(2) The offense level from the table in § 2T4.1 (Tax Table) corresponding to the amount of the tax evaded.

COMMENTARY

§ 2E4.1 (18 U.S.C. 2342(a)). The offense covered by this section generally involves evasion of state excise taxes and becomes a federal matter only upon the establishment of minimum quantities transported in interstate commerce or by use of interstate communications. Because this offense is basically a tax matter, the tax table under § 2T4.1 (Tax Table) is used to determine the appropriate offense level.8

*5. Labor Racketeering*

18 U.S.C. 664
18 U.S.C. 1027
18 U.S.C. 1231
18 U.S.C. 1954
29 U.S.C. 162
29 U.S.C. 186
29 U.S.C. 431–439
29 U.S.C. 461
29 U.S.C. 501(c)
29 U.S.C. 504
29 U.S.C. 530
29 U.S.C. 1111
29 U.S.C. 1141

**§ 2E5.1. Bribery or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan**

(a) Base Offense Level:

(1) 10, if a bribe; or

(2) 6, if a gratuity.

(b) Specific Offense Characteristics.

(1) If the defendant was a fiduciary of the benefit plan, increase by 2 levels.

(2) Increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater.

**§ 2E5.2. Theft or Embezzlement from Employee Pension and Welfare Benefit Plans**

(a) Base Offense Level: 4.
(b) Specific Offense Characteristics.
(1) If the offense involved more than minimal planning, increase by 2 levels.
(2) If the defendant had a fiduciary obligation under the Employee Retirement Income Security Act, increase by 2 levels.
(3) Increase by corresponding number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) according to the value of the property stolen.

**§ 2E5.3. False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act**

(a) Base Offense Level (Apply the greater):
(1) 6; or
(2) If false records were used for criminal conversion of plan funds or a scheme involving a bribe or a gratuity relating to the operation of an employee benefit plan, apply § 2E5.2 or § 2E5.1, as applicable.

**§ 2E5.4. Embezzlement or Theft from Labor Unions in the Private Sector**

(a) Base Offense Level: 4.
(b) Specific Offense Characteristics.
(1) If the offense involved more than minimal planning, increase by 2 levels.
(2) If the defendant was a union officer or occupied a position of trust in the union, as set forth in 29 U.S.C. § 501(a), increase by 2 levels.
(3) Increase by the number of levels from the table in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) corresponding to the value of the property stolen.

**§ 2E5.5. Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act**

(a) Base Offense Level (Apply the greater):
(1) 6; or
(2) If false records were used for criminal conversion of funds or a scheme involving a bribe or gratuity, apply § 2E5.4 or § 2E5.6, as applicable.

**§ 2E5.6. Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations**

(a) Base Offense Level:
(1) 10, if a bribe; or
(2) 6, if a gratuity.
(b) Specific Offense Characteristic.
(1) Increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater.

**COMMENTARY**

The base offense levels for many of these provisions have been determined by reference to analogous sections of the guidelines. Thus, the base offense levels for bribery, theft, and fraud in this subpart generally correspond to similar conduct under other parts of the guidelines. The base offense levels for bribery and graft have been set higher than commercial bribery due to the particular vulnerability of the organizations covered by this subpart to exploitation.

The statutes included in this subpart protect the rights of employees under the Taft-Hartley Act, of members of labor organizations under the Labor-Management Reporting and Disclosure Act of 1959, and participants of employee pension and welfare benefit plans covered under the Employee Retirement Income Security Act.

**§ 2E5.1 (18 U.S.C. § 1954).** This section covers the giving or receipt of bribes and other illegal gratuities involving employee welfare or pension benefit plans. This offense may involve persons who have a fiduciary duty to the benefit plan. If the enhancement for a fiduciary duty is applied, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). The seriousness of the offense is determined by several factors, including the value of the gratuity and the magnitude of the loss resulting from the transaction. A more severe penalty is warranted in a bribery where the payment is the primary motivation for an action to be taken, as opposed to graft, where the prohibited payment is given because of a person's actions, duties, or decisions without a prior understanding that the recipient's performance will be directly influenced by the gift.

**§ 2E5.2 (18 U.S.C. § 664).** This section covers theft or conversion from employee benefit plans by fiduciaries, or by any person, including borrowers to whom loans are disbursed based upon materially defective loan applications, service providers who are paid on inflated billings, and beneficiaries paid as the result of fraudulent claims. The base offense level corresponds to the base offense level for other forms of theft. Specific offense characteristics address whether a defendant has a fiduciary relationship to the benefit plan, the sophistication of the offense, and the scale of the offense. If the enhancement for a fiduciary relationship is applied, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skills).

**§ 2E5.3 (18 U.S.C. § 1027).** This section covers the falsification of documents or records relating to a benefit plan covered by ERISA. Such violations sometimes occur in connection with the criminal conversion of plan funds or schemes involving bribery or graft. Where a violation of this section occurs in connection with another offense, the defendant should be sentenced according to the guideline for the offense that was facilitated by the false statements or documents.

**§ 2E5.4 (29 U.S.C. 501(c)).** This section includes embezzlement or theft from a labor organization. It is directed at union officers and persons employed by a union. The seriousness of this offense is determined by the amount of money taken, the sophistication of the offense, and the nature of the defendant's position in the union. If the enhancement for the nature of the defendant's position in the union is applied, do not apply § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

**§ 2E5.5 (29 U.S.C. §§ 439 and 461).** This section covers failure to maintain proper documents required by the LMRDA or falsification of such documents. This offense is a misdemeanor.

**§ 2E5.6 (29 U.S.C. § 186).** This section covers bribery and other prohibited transactions by employers, labor relations consultants, and their agents, with respect to labor officials in industries governed by the Taft-Hartley Act. The statute contains misdemeanor and felony provisions, depending upon whether the prohibited payment exceeds $100. Where the prohibited payment is made with an intent to influence the actions, duties, or decisions of the employee representative or union official, or is received with knowledge of such an intent, a more severe penalty is warranted.

**Part F—Offenses Involving Fraud or Deceit**

7 U.S.C. 6, 6b, 6c, 6h, 6o
7 U.S.C. 13
7 U.S.C. 23
15 U.S.C. 77a–80b–17.
15 U.S.C. 1644
18 U.S.C. 285–291
18 U.S.C. 371
18 U.S.C. 656
18 U.S.C. 659
18 U.S.C. 1001–1030
18 U.S.C. 1341–1344

**§ 2F1.1. Fraud and Deceit**

(a) Base Offense Level: 6.
(b) Specific Offense Characteristics.
(1) If the estimated, probable or intended loss exceeded $2,000, increase the offense level as follows:

| Loss | Increase in level |
|---|---|
| (A) $2,000 or less | No increase. |
| (B) $2,001 to $5,000 | Add 1. |
| (C) $5,001 to $10,000 | Add 2. |
| (D) $10,001 to $20,000 | Add 3. |
| (E) $20,001 to $50,000 | Add 4. |
| (F) $50,001 to $100,000 | Add 5. |
| (G) $100,001 to $200,000 | Add 6. |
| (H) $200,001 to $500,000 | Add 7. |
| (I) $500,001 to $1,000,000 | Add 8. |
| (J) $1,000,001 to $2,000,000 | Add 9. |
| (K) $2,000,001 to $5,000,000 | Add 10. |
| (L) Over $5,000,000 | Add 11. |

(2) If the offense involved (A) more than minimal planning; (B) a scheme to defraud more than one victim; (C) a misrepresentation that the defendant was acting on behalf of a charitable,

educational, religious or political organization, or a government agency; or (D) violation of any judicial or administrative order, injunction, decree or process; increase by 2 levels, but if the result is less than level 10, increase to level 10.

(3) If the offense involved the use of foreign bank accounts or transactions to conceal the true nature or extent of the fraudulent conduct, and the offense level as determined above is less than level 12, increase to level 12.

**§ 2F1.2. Insider Trading**

(a) Base Offense Level: 8.

(b) Specific Offense Characteristic.

(1) Increase by the number of levels from the table in § 2F1.1 corresponding to the gain resulting from the defendant's conduct.

**COMMENTARY**

**§ 2F1.1.** This guideline is designed to apply to a wide variety of fraud cases. The statutory maximum term of imprisonment for most such offenses is five years.

The guideline does not link offense characteristics to specific code sections. Because federal fraud statutes are so broadly written, a single pattern of offense conduct usually can be prosecuted under several code sections, as a result of which the offense of conviction is somewhat arbitrary. Furthermore, most fraud statutes cover a broad range of conduct with extreme variation in severity.

Empirical analyses of current practices show that the most important factors that determine sentence length are the amount of loss and whether the offense is an isolated crime of opportunity or is sophisticated or compound. Those are the primary factors upon which the guideline has been based.

The extent to which an offense is planned or sophisticated is important in assessing its potential harmfulness and the dangerousness of the offender, independent of the actual harm. A complex scheme or repeated incidents of fraud is indicative of an intention and potential to do considerable harm. In current practice, this factor has a significant impact, especially in frauds involving small losses. Accordingly, the guideline not only specifies a 2–3 level enhancement when this factor is present, but also specifies that the minimum offense level in such cases shall be 10. A number of special cases are specifically broken out under subdivision (b)(2) to ensure that defendants in such cases are adequately punished.

False pretenses involving charitable causes and government agencies enhances the sentences of defendants who take advantage of victims' trust in government or law enforcement agencies or their generosity and charitable motives. Taking advantage of a victim's self-interest does not mitigate the seriousness of fraudulent conduct. However, defendants who exploit victims' charitable impulses or trust in government create particular social harm. Examples of conduct to which this factor applies would include a group of defendants who solicit contributions to a non-existent famine relief organization by mail, a defendant who diverts donations for a religiously affiliated school by mail solicitations to church members in which the defendant falsely claims to be a fundraiser for the school, or a defendant who poses as a federal debt collection agent in order to fraudulently collect a delinquent student loan.

A defendant who has been subject to civil or administrative proceedings for the same or similar fraudulent conduct demonstrates aggravated criminal intent and is deserving of additional punishment for not conforming with the requirements of judicial process or orders issued by federal, state, or local administrative agencies. If it is established that an entity the defendant controlled was a party to the prior proceeding, and the defendant had knowledge of the prior decree or order, this provision applies even if the defendant was not a specifically-named party in that prior case. For example, a defendant whose business was previously enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, would be subject to this provision.

Ongoing frauds usually result in multiple-count indictments. The cumulative loss produced by a common scheme or course of conduct should be used in determining the offense level.

Albeit imperfect, dollar loss is a direct, objective measure of harm; it is therefore the primary factor appearing in the guideline. In keeping with the Commission's policy on attempts, if a probable or intended loss that the defendant was attempting to inflict can be determined, that larger figure would be used as the loss. For example, if the fraud consisted of attempting to sell $40,000 in worthless securities, or representing that a forged check for $40,000 was genuine, the "loss" would be treated as $40,000 for purposes of this guideline.

The amount of loss need not be precise. The court is not expected to identify each victim and total his loss to arrive at a precise figure. It need only make an estimate of the range of loss that is reasonable given the available information. The estimate may be based on the approximate number of victims and an estimate of the average loss to each victim, or on more general factors, such as the nature and duration of the fraud and the revenues generated by similar operations. Estimates based upon aggregate "market loss" (e.g., the aggregate decline in market value of a stock resulting from disclosure of information that was wrongfully withheld or misrepresented) are especially appropriate for securities cases. The offender's gross gain from committing the fraud is an alternative minimum estimate of the loss.

Dollar loss often does not fully capture the harmfulness and seriousness of the conduct. In such instances, departure may be appropriate. Examples may include the following:

(a) The primary objective of the fraud was non-monetary;

(b) False statements were made for the purpose of facilitating some other crime;

(c) The offense caused or risked physical or psychological harm;

(d) The offense endangered national security or military readiness;

(e) The offense caused a loss of confidence in an important institution;

(f) Completion of the offense was prevented, or the offense was interrupted before it caused serious harm.

The adjustments for loss do not distinguish frauds involving losses greater than $5,000,000. Departure above the applicable guideline may be appropriate in these unusual cases.

In a few instances, the total dollar loss that results from the offense may overstate its seriousness. Such situations occur most frequently when a misrepresentation is of limited materiality or is not the sole cause of the loss. Examples would include making a minor misrepresentation of fact in order to obtain a loan which the defendant expected, but was unable, to repay; attempting to negotiate an instrument that was so obviously fraudulent that no one would seriously consider honoring it; and making a misrepresentation in a securities offering that enabled the securities to be sold at inflated prices where the value of the securities subsequently declined in substantial part for other reasons. In such instances, the court may consider downward departure.

This factor is quite significant in current practice. Defendants who intentionally exploit vulnerable victims demonstrate a high degree of moral culpability. For example, a defendant who sells bogus "cures" for cancer to terminally ill victims or who solicits advance employment fees from unemployed victims for non-existent jobs would be subject to this provision.

Offenses that involve the use of transactions or accounts outside the United States in an effort to conceal illicit profits and criminal conduct involve a particularly high level of sophistication and complexity. These offenses are difficult to detect, and require costly investigations and prosecutions. Diplomatic processes often must be used to secure testimony and evidence beyond the jurisdiction of United States courts. Consequently, a minimum level of 12 is provided for these offenses.

Offenses involving fraudulent identification documents and access devices, in violation of 18 U.S.C. 1028 and 1029, are also covered by this guideline. The statutes provide for increased maximum terms of imprisonment for the use or possession of device-making equipment and the production or transfer of more than five identification documents or fifteen access devices. The court may wish to enhance the sentence for violations of these statutes in a manner similar to the treatment of analogous counterfeiting offenses under Part B.

**§ 2F1.2.** This guideline applies to certain violations of Rule 10b–5 that are commonly referred to as "insider trading." Insider trading is treated essentially as a sophisticated fraud. Because the victims and the victims' losses are difficult if not impossible to identify, the gain, i.e., the total increase in value realized by the defendant or tippees through trading in securities based upon inside information, is employed in its place.

**Part G—Offenses Involving Prostitution, Sexual Exploitation of Minors, and Obscenity**

*1. Prostitution*

8 U.S.C. 1328
18 U.S.C. 2421–2423

**§ 2G1.1. Transportation for the Purpose of Prostitution or Prohibited Sexual Conduct**

(a) Base Offense Level: 14.
(b) Specific Offense Characteristic.
(1) If the defendant used physical force, or coercion by drugs or otherwise, increase by 4 levels.

**§ 2G1.2. Transportation of a Minor for the Purpose of Prostitution or Prohibited Sexual Conduct**

(a) Base Offense Level: 16.
(b) Specific Offense Characteristics.
(1) If the offense involved the use of physical force, or coercion by drugs or otherwise, increase by 4 levels.
(2) If the conduct involved the transportation of a minor under the age of twelve years, increase by 4 levels.
(3) If the conduct involved the transportation of a minor at least twelve years of age but under the age of sixteen years, increase by 2 levels.

COMMENTARY

§ 2G1.1 (8 U.S.C. 1328, 18 U.S.C. 2422–2422). This section applies to offenses listed under the white slave traffic statutes. Transportation for the purpose of prostitution or any other immoral purpose carries a statutory maximum penalty of five years' imprisonment. The enhancement for physical force or coercion anticipates no injury. In the infrequent case where the defendant did not commit the offense for commercial advantage and the offense did not involve physical force or coercion, the court may depart. The Commission recommends a downward departure of 8 levels.

§ 2G1.2 (8 U.S.C. 1328, 18 U.S.C. 2423). This section applies to conduct that involves the transportation of minors for immoral purposes. The statutory maximum penalty is ten years' imprisonment.

*2. Sexual Exploitation of a Minor*

8 U.S.C. 1328
18 U.S.C. 2251–2252

**§ 2G2.1. Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material**

(a) Base Offense Level: 25.
(b) Specific Offense Characteristic.
(1) If the minor was under the age of twelve years, increase by 2 levels.

**§ 2G2.2. Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor**

(a) Base Offense Level: 13.
(b) Specific Offense Characteristics.
(1) If the material involved a minor under the age of twelve years, increase by 2 levels.
(2) If the offense involved distribution, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event less than 5 levels.

COMMENTARY

§ 2G2.1 (8 U.S.C. 1328, 18 U.S.C. 2251). This offense commonly involves the production source of a child pornography enterprise. Because the offense directly involves the exploitation of minors, the base offense level is higher than for the distribution of the sexually explicit material after production. An enhancement is provided when the conduct involves the exploitation of a minor under age twelve to reflect the more serious nature of exploiting young children. Each minor child exploited shall be considered a separate offense.

§ 2G2.2 (18 U.S.C. 2252). This section refers to the distribution of materials that visually depict a minor or minors engaging in sexually explicit conduct. Distribution, here, is included within the broader term of "trafficking." The base offense level is substantially higher than that applicable to the distribution of obscene materials not involving minors (§ 2G3.1).

An enhancement is provided if the material depicted minors under age twelve. The enhancement for distribution provides significant punishment for defendants involved in large-scale operations.

*3. Obscenity*

18 U.S.C. 1461–1465
47 U.S.C. 223

**§ 2G3.1. Importing, Mailing, or Transporting Obscene Matter**

(a) Base Offense Level: 6.
(b) Specific Offense Characteristics.
(1) If the offense involved an act related to distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.
(2) If the offense involved material that portrays sadomasochistic conduct or other depictions of violence, increase by 4 levels.
(c) Cross Reference.
(1) If the offense involved a criminal enterprise, apply the appropriate guideline from Chapter Two, Part E (Offenses Involving Criminal Enterprises and Racketeering) if the resulting offense level is greater than that determined above.

**§ 2G3.2. Obscene or Indecent Telephone Communications**

(a) Base Offense Level: 6.

COMMENTARY

§ 2G3.1 (18 U.S.C. 1461–1465). This section applies to offenses involving the mailing, importation, and interstate transportation for sale or distribution of obscene materials. Because most federal prosecution is directed to acts related to distribution, the base offense level should usually be 11. The maximum penalty for these offenses is five years. When the obscenity distribution offense is part of a for-profit enterprise, the penalty is enhanced according to the retail value of the material involved, or by 5 levels, whichever is larger. As used in this guideline, the term "an act related to distribution" is to be broadly construed and includes production, transportation or possession for the purpose of distribution.

§ 2G3.2 (47 U.S.C. 223). The maximum statutory penalty is six months.

**Part H—Offenses Involving Individual Rights**

*1. Civil Rights*

18 U.S.C. 241–242
18 U.S.C. 245–246
42 U.S.C. 3631

**§ 2H1.1. Going in Disguise to Deprive of Rights**

(a) Base Offense Level (Apply the greater):
(1) 15; or
(2) 2 plus the offense level applicable to any underlying offense.
(b) Specific Offense Characteristic.
(1) If the defendant was a public official at the time of the offense, increase by 4 levels.

**§ 2H1.2. Conspiracy to Interfere With Civil Rights**

(a) Base Offense Level (Apply the greater):
(1) 13; or
(2) 2 plus the offense level applicable to any underlying offense.
(b) Specific Offense Characteristic.
(1) If the defendant was a public official at the time of the offense, increase by 4 levels.

**§ 2H1.3. Use of Force or Threat of Force to Deny Benefits or Rights in Furtherance of Discrimination**

(a) Base Offense Level (Apply the greatest):
(1) 10, if no injury occurred; or
(2) 15, if injury occurred; or
(3) 2 plus the offense level applicable to any underlying offense.
(b) Specific Offense Characteristic
(1) If the defendant was a public official at the time of the offense, increase by 4 levels.

**§ 2H1.4. Interference with Civil Rights Under Color of Law**

(a) Base Offense Level (Apply the greater):
(1) 10; or

(2) 2 plus the offense level applicable to any underlying offense.

**§ 2H1.5. Other Deprivations of Rights or Benefits in Furtherance of Discrimination**

(a) Base Offense Level (Apply the greater):

(1) 6; or

(2) 2 plus the offense level applicable to any underlying offense.

(b) Specific Offense Characteristic.

(1) If the defendant was a public official at the time of the offense, increase by 4 levels.

**COMMENTARY**

Guidelines in Part H refer to violations of civil rights statutes that typically penalize conduct involving force or violence more heavily than discriminatory or intimidating conduct not involving force or bodily injury.

§§ 2H1.1, 2H1.2. Section 2H1.1 applies to intimidating activity by formally and informally organized groups as well as hate groups. Section 2H1.2 applies to conspiracies. These activities are proscribed by 18 U.S.C. § 241. The statutory maximum for violations of this statute is ten year's imprisonment unless death results. In each instance, the base offense level assumes threatening or otherwise serious conduct. The alternative offense level in § 2H1.1(a)(2) and § 2H1.2(a)(2) refers to the offense level for any underlying criminal conduct. For example, if the underlying offense involved a homicide, the alternative offense level would be the offense level from the guideline for the most comparable homicide offense in §§ 2A1.1–2A1.4 (Homicide) plus 2 levels. If the offense involved assault, criminal sexual conduct, kidnapping, abduction or unlawful restraint, the alternative offense level would be the offense level from the guideline for the most comparable offense in §§ 2A2.1–2A4.2 (Assault, Criminal Sexual Abuse, and Kidnapping, Abduction, or Unlawful Restraint) plus 2 levels, or if the offense involved attempt, conspiracy, or solicitation to commit such offenses, the offense level for such offense plus 2 levels. If the offense involved destruction of, or damage to property by means of arson or an explosive device, the alternative offense level would be the offense level from § 2K1.4 (Arson; Property Damage By Use of Explosives) plus 2 levels. If the offense involved property damage by other means, the alternative offense level would be the offense level from § 2B1.3 (Property Damage or Destruction (Other than by Arson or Explosives)) plus 2 levels. The addition of two levels reflects the fact that the harm involved both the underlying criminal conduct and activity intended to deprive a person of his civil rights. An added penalty is imposed on an offender who is a public official to reflect the likely damage to public confidence in the integrity and fairness of government, and the added likely force of the threat because of the official's involvement. Because it is included as a specific offense characteristic, the adjustment for abuse of position under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) does not apply. Other adjustments for role in the offense may be applicable, however.

§ 2H1.3. This section applies to violations of 18 U.S.C. 245, and to violations of 42 U.S.C. 3631 involving the threat or use of force. The maximum term of imprisonment for violations of these statutes is one year if no bodily injury occurs, ten years if bodily injury occurs, and life imprisonment if death results. The statutes provide federal protection for the exercise of civil rights in a variety of contexts (e.g., voting, employment, public accommodations, etc.). The base offense level reflects that force or threat of force is likely to be involved. It is established by analogy to similar crimes against the political process. An alternative offense level is provided in § 2H1.3(a)(3). See Commentary to § 2H1.1. Because it is included as a specific offense characteristic, the adjustment for abuse of position under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) does not apply. Other adjustments for role in the offense may be applicable.

§ 2H1.4. This section applies to violations of 18 U.S.C. 242, which carries a statutory maximum of one year unless death results, in which case a sentence of life imprisonment is authorized. Given this one-year statutory maximum a base offense level of 10 is prescribed; however, the Commission intends to recommend that the maximum authorized penalty for offenses other than those where death results be increased. A guideline sentence near the statutory maximum is provided for cases not resulting in death because of the compelling public interest in deterring and adequately punishing those who violate civil rights under color of law. An alternative offense level is provided in § 2H1.4(a)(2). See Commentary to § 2H1.1. Being a public official is an element of this offense; an enhancement for public position under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) therefore does not apply. Other adjustments for role in the offense may be applicable.

§ 2H1.5. This section applies to violations of 18 U.S.C. 246 and 42 U.S.C. 3631. Violations of these statutes need not involve the use or threat of force and can vary in the harm caused. Accordingly, the guideline contains an alternative offense level in § 2H1.5(a)(2). See Commentary to § 2H1.1. Because it is included as a specific offense characteristic, the adjustment for abuse of position under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) does not apply. Other adjustments for role in the offense may be applicable.

*2. Political Rights*

2 U.S.C. 437g(d)
18 U.S.C. 241–242
18 U.S.C. 245(b)(1)(A)
18 U.S.C. 592–594
18 U.S.C. 597
18 U.S.C. 1341
18 U.S.C. 1343
42 U.S.C. 1973i, j

**§ 2H2.1. Obstructing an Election or Registration**

(a) Base Offense Level (Apply the greatest):

(1) 18, if the obstruction occurred by use of force or threat of force against persons or property; or

(2) 12, if the obstruction occurred by forgery, fraud, theft, bribery, deceit, or other means, except as provided in (3) below; or

(3) 6, if the defendant (A) solicited, demanded, accepted, or agreed to accept anything of value to vote, refrain from voting, vote for or against a particular candidate, or register to vote, (B) gave false information to establish eligibility to vote, or (C) voted more than once in a federal election.

**COMMENTARY**

§ 2H2.1. This section applies to violations of political rights, under 2 U.S.C. 437g(d), 18 U.S.C. 241, 242, 245(b)(1)(A), 592, 593, 594, 597, 1341, and 1343, and 42 U.S.C. 1973i and 1973j. Aggravating factors are provided for three major ways of obstructing an election distinguished in the various statutes: By force, by deceptive or dishonest conduct, or by bribery. If the use of force results in personal injury or property damage, or if the scheme to obstruct an election or registration involves corrupting a public official, e.g., a poll official, the sentence may be enhanced by applying the relevant provisions of Chapter Five, Part K (Departures). A defendant who is a public official or who directs others to engage in criminal conduct may have a sentence enhanced by reference to the provisions in Chapter Three, Part B (Role in the Offense).

*3. Privacy and Eavesdropping*

18 U.S.C. 1702
18 U.S.C. 1905
18 U.S.C. 2511–2512
21 U.S.C. 842(a)(8)
47 U.S.C. 605

**§ 2H3.1. Interception of Communications or Eavesdropping**

(a) Base Offense Level (Apply the greater):

(1) 9; or

(2) If the purpose of the conduct was to facilitate another offense, apply the guideline applicable to an attempt to commit that offense.

(b) Specific Offense Characteristic.

(1) If the purpose of the conduct was to obtain direct or indirect commercial advantage or economic gain not covered by § 2H3.1(a)(2) above, increase by 3 levels.

**§ 2H3.2. Manufacturing, Distributing, Advertising, or Possessing an Eavesdropping Device**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the offense was committed for pecuniary gain, increase by 3 levels.

**§ 2H3.3. Obstructing Correspondence**

(a) Base Offense Level:

(1) 6; or

(2) If the conduct was theft of mail, apply § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft);

(3) If the conduct was destruction of mail, apply § 2B1.3 (Property Damage or Destruction (Other than by Arson or Explosives))

COMMENTARY

§ 2H3.1. This section refers to conduct proscribed by 47 U.S.C. 605, and the Electronic Communications Privacy Act of 1986, which amends 18 U.S.C. 2511 and other sections of Title 18 dealing with unlawful interception and disclosure of communications. These statutes proscribe the interception and divulging of wire, oral, radio, and electronic communications. The Electronic Communications Privacy Act of 1986 provides for a maximum term of imprisonment of five years for violations involving most types of communication. The interception of oral communications is punishable by a maximum of five years' imprisonment, while the interception of radio communications carries a maximum term of imprisonment of one year for the first conviction and a maximum term of imprisonment of two years for any subsequent conviction. The base offense level is 9, or if the offense was to facilitate the commission of another offense, the offense level that resulted from applying the guideline relevant to the underlying offense, whichever is greater. The base offense level of 9 is increased if the purpose of the conduct is commercial or economic gain. Offenses involving the interception of satellite cable transmissions for purposes of direct or indirect commercial advantage or private financial gain are covered under § 2B5.3 (Criminal Infringement of Copyright).

§ 2H3.2. This section applies to conduct proscribed by 18 U.S.C. 2512 covering eavesdropping devices. The offense level is enhanced if the conduct was engaged in for pecuniary gain.

§ 2H3.3. This section applies to violations of 18 U.S.C. 1702 involving the unlawful interception of correspondence. The same statute is sometimes used to prosecute cases more accurately described as theft or destruction of mail. In such cases, apply §§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft) or 2B1.3 (Property Damage or Destruction Other than by Arson or Explosives), respectively.

*4. Peonage, Involuntary Servitude, and Slave Trade*

18 U.S.C. 1581–1588

**§ 2H4.1. Peonage, Involuntary Servitude, and Slave Trade**

(a) Base Offense Level (Apply the greater):

(1) 15; or

(2) 2 plus the offense level applicable to any underlying offense.

COMMENTARY

This section applies to conduct proscribed by 18 U.S.C. 1581 through 1588. These statutes prohibit peonage, involuntary servitude, and slave trade. For purposes of deterrence and just punishment, the base offense level for these offenses is sufficiently high to ensure that a term of imprisonment will be imposed. However, these offenses frequently involve other serious offenses, in which event the offense level will be increased. See Commentary to § 2H1.1.

**Part J—Offenses Involving the Administration of Justice**

18 U.S.C. 201
18 U.S.C. 401–402
18 U.S.C. 912–913
18 U.S.C. 1073
18 U.S.C. 1503–1513
18 U.S.C. 1581(a)
18 U.S.C. 1621–1623
18 U.S.C. 3146–3147

**§ 2J1.1. Contempt**

If the defendant was adjudged guilty of contempt, the court shall impose a sentence based on stated reasons and the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2).

**§ 2J1.2. Obstruction of Justice**

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics:

(1) If the defendant obstructed or attempted to obstruct the administration of justice by causing or threatening to cause physical injury to a person or property, increase by 8 levels.

(2) If the defendant substantially interfered with the administration of justice, increase by 3 levels.

(c) Cross Reference:

(1) If the conduct was obstructing the investigation or prosecution of a criminal offense, apply § 2X3.1 (Accessory After the Fact) in respect to such criminal offense, if the resulting offense level is greater than that determined above.

**§ 2J1.3. Perjury**

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics:

(1) If the defendant suborned perjury by causing or threatening to cause physical injury to a person or property, increase by 8 levels.

(2) If the defendant's perjury or subornation of perjury substantially interfered with the administration of justice, increase by 3 levels.

(c) Cross Reference:

(1) If the conduct was perjury in respect to a criminal offense, apply § 2X3.1 (Accessory After the Fact) in respect to such criminal offense, if the resulting offense level is greater than that determined above.

**§ 2J1.4. Impersonation**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic:

(1) If the defendant falsely represented himself as a federal officer, agent or employee to demand or obtain any money, paper, document, or other thing of value or to conduct an unlawful arrest or search, increase by 6 levels.

**§ 2J1.5. Failure to Appear by Material Witness**

(a) Base Offense Level:

(1) 6, if in respect to a felony; or

(2) 4, if in respect to a misdemeanor.

(b) Specific Offense Characteristic:

(1) If the offense substantially interfered with the administration of justice, increase by 3 levels.

**§ 2J1.6. Failure to Appear by Defendant**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics:

(1) If the underlying offense is punishable by death or imprisonment for a term of fifteen years or more, increase by 9 levels.

(2) If the underlying offense is punishable by a term of imprisonment of five or more years, but less than fifteen years, increase by 6 levels.

(3) If the underlying offense is a felony punishable by a maximum term of less than five years, increase by 3 levels.

**§ 2J1.7. Commission of Offense While on Release**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics:

(1) If the underlying offense is punishable by death or imprisonment for a term of fifteen years or more, increase by 6 levels.

(2) If the underlying offense is punishable by a term of imprisonment of five or more years, but less than fifteen years, increase by 4 levels.

(3) If the underlying offense is a felony punishable by a maximum term of less than five years, increase by 2 levels.

**§ 2J1.8. Bribery of Witness**

(a) Base Offense Level: 12.

(b) Specific Offense Characteristic:

(1) If the offense substantially interfered with the administration of justice, increase by 3 levels.

(c) Note:

(1) If the conduct was perjury in respect to a criminal offense, apply § 2X3.1 (Accessory After the Fact) in respect to such criminal offense, if the resulting offense level is greater than that determined above.

**§ 2J1.9. Payment to Witness**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic:

(1) If the payment was for refusing to testify, increase by 4 levels.

COMMENTARY

§ 2J1.1 (18 U.S.C. 401, 402). Misconduct constituting contempt varies significantly. The nature of the contemptuous conduct, the circumstances under which the contempt was committed, the effect the misconduct had on the administration of justice, and the need to vindicate the authority of the court are context specific variables. Because the seriousness of a contempt violation can only be determined within the context of the often unique circumstances of the offense, the Commission leaves punishment to the discretion of the sentencing judge. Explicit factual findings must be made if the contempt occurred in the presence of the court and is summarily punished. Rule 42(a), Fed.R.Crim.P.

§ 2J1.2 (18 U.S.C. 1503–1513). This section addresses offenses involving obstruction of justice generally prosecuted under the referenced statutes. This guideline only applies to independent prosecutions and convictions for obstruction offenses. However, conduct constituting obstruction in connection with the investigation or prosecution of another offense may be a relevant sentencing consideration as post-offense conduct. See Chapter Three, Part C (Obstruction).

Numerous offenses of varying seriousness may constitute obstruction of justice: using threats or force to intimidate or influence a juror or federal officer (five-year statutory maximum); obstructing a civil or administrative proceeding (five-year maximum); stealing or altering court records (five-year maximum); unlawfully intercepting grand jury deliberations (one-year maximum); obstructing a criminal investigation (five-year maximum); obstructing a state or local investigation of illegal gambling (five-year maximum); using intimidation or force to influence testimony, alter evidence, evade legal process, or obstruct the communication of a judge or law enforcement officer (ten-year maximum); or causing a witness bodily injury or property damage in retaliation for providing testimony, information or evidence in a federal proceeding (ten-year maximum). The conduct that gives rise to the violation may therefore range from a mere threat to an act of extreme violence.

The specific offense characteristics reflect the more serious forms of obstruction. Substantial interference with the administration of justice results when there is a premature or improper termination of a felony investigation or where an indictment or a verdict is based upon perjury or false testimony or other false evidence, or where substantial governmental or court resources are unnecessarily expended as a result of the offense. Because the conduct covered by this guideline is frequently part of an effort to assist another person to escape punishment for a crime he has committed, an alternative reference to the guideline for accessory after the fact is made.

If a weapon was used or physical or psychological injury or property damage resulted from the commission of the offense, a departure may be called for. See Chapter Five, Part K (Departures).

§ 2J1.3 (18 U.S.C. 1621–1623). This section applies to perjury and subornation of perjury, generally prosecuted under the referenced statutes. Under these provisions, the maximum statutory punishment is five years. This guideline only applies to independent prosecutions and convictions for perjury. Perjury and suborning perjury may be considered as an aggravating factor in sentencing for other offenses. See Chapter Three, Part C (Obstruction). The guidelines provide a higher penalty for perjury than the current practice estimate of ten-months imprisonment. The Commission believes that perjury should be treated similarly to obstruction of justice. Therefore, the same considerations for enhancing a sentence are applied in the specific offense characteristics, and an alternative reference to the guideline for accessory after the fact is made.

§ 2J1.4 (18 U.S.C. 912, 913). This section applies to impersonation of a federal officer, agent, or employee; and impersonation to unlawfully conduct a search or arrest. The statutory maximum for both offenses is three years.

§ 2J1.5 (18 U.S.C. 3146(b)(2)). This section applies to a failure to appear by a material witness. A term of imprisonment imposed for this offense runs consecutively to any other term of imprisonment imposed. The statutory maximum for a material witness failing to appear is one year. Substantial interference with the administration of justice is defined in the commentary to § 2J1.2.

§ 2J1.6 (18 U.S.C. 3146(b)(1)). This section applies to a failure to appear by a defendant who was released pending trial, sentencing, appeal, or surrender for service. The statutory maximum for the violation increases in relation to the statutory maximum punishment for the underlying offense. A sentence imposed for failure to appear runs consecutively to a sentence of imprisonment for any other offense. Id.

§ 2J1.7 (18 U.S.C. 3147). Section 2J1.7 implements a statutory sentencing enhancement for any offense committed by a defendant while on release. 18 U.S.C. § 3147. A mandatory minimum of two years' imprisonment is added to the sentence prescribed for the offense if it was a felony; a mandatory minimum of ninety-days imprisonment is added if the offense was a misdemeanor. If a sentence is enhanced under § 2J1.7, the adjustment for offenses committed by defendants in custody in § 4A1.2(d), (Criminal History Category), shall not apply.

§§ 2J1.8 and 2J1.9 (18 U.S.C. 201 (d), (e), (h), (i)). These sections apply to bribes and gratuities involving witnesses in federal proceedings. The offense levels correspond to those for bribing federal officials and approximate current practice estimates. Substantial interference with the administration of justice is defined in the commentary to § 2J1.2.

## Part K—Offenses Involving Public Safety

18 U.S.C. 32–33
18 U.S.C. 81
18 U.S.C. 842 (a), (h), (i), (j), (k)
18 U.S.C. 844 (a), (b), (d), (f), (h), (i)
18 U.S.C. 1153
18 U.S.C. 1855
18 U.S.C. 2275
26 U.S.C. 5685
49 U.S.C. 1472(l)

*1. Explosives and Arson*

**§ 2K1.1. Failure to Report Theft of Explosives**

(a) Base Offense Level: 6.

**§ 2K1.2. Improper Storage of Explosives**

(a) Base Offense Level: 6.

**§ 2K1.3. Unlawfully Trafficking In, Receiving, or Transporting Explosives**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If any of the following applies, use the greatest:

(A) If the defendant's conduct involved any written or oral false or fictitious statement, false record, or misrepresented identification, increase by 4 levels.

(B) If the offense involved explosives that the defendant knew or had reason to believe were stolen, increase by 6 levels.

(C) If the defendant knowingly distributed explosives to a person under twenty-one years of age, to a person prohibited by state law or ordinance from receiving such explosives at the place of distribution, or to a person the defendant had reason to believe intended to transport such materials into a state in violation of the law of that state, increase by 4 levels.

(D) If the defendant was a person prohibited from receiving explosives under 18 U.S.C. 842(i), or if the defendant knowingly distributed explosives to a person prohibited from receiving explosives under 18 U.S.C. 842(i), increase by 10 levels.

(E) If a recordkeeping offense reflected an effort to conceal a substantive firearm offense, apply the guideline for the substantive offense.

**§ 2K1.4. Arson; Property Damage By Use of Explosives**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If any of the following applies, use the greatest:

(A) If the defendant knowingly created a substantial risk of death or serious bodily injury, increase by 18 levels.

(B) If the defendant recklessly endangered the safety of another, increase by 14 levels.

(C) If the offense involved destruction or attempted destruction of a residence, increase by 12 levels.

(D) If the defendant used fire or an explosive to commit another offense that is a felony under federal law, or carried explosives during the commission of any offense that is a felony under federal law (i.e., the defendant is convicted under 18 U.S.C. 844(h)), increase by 7 levels.

(E) If the defendant endangered the safety of another person, increase by 4 levels.

(F) If a destructive device was used, increase by 2 levels.

(c) Cross References.

(1) If the defendant caused death, or intended to cause bodily injury, apply the most analogous guideline from Chapter Two, Part A, Offenses Against the Person, if the resulting offense level is higher than that determined above.

(2) Apply § 2B1.3 (Property Damage or Destruction), if the resulting offense level is higher than that determined above.

**§ 2K1.5. Possessing Dangerous Weapons or Materials While Boarding or Aboard an Aircraft**

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics.

(1) If any of the following applies, use the greatest:

(A) If the defendant acted willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life (i.e., the defendant is convicted under 49 U.S.C. 1472(1)(2)), increase by 15 levels.

(B) If the defendant was prohibited by another federal law from possessing the weapon or material, increase by 2 levels.

(C) If the defendant's possession of the weapon or material would have been lawful but for 49 U.S.C. 1472(1) and he acted with mere negligence, decrease by 3 levels.

(2) If the defendant used the weapon or material in committing or attempting another offense, apply the guideline in respect to such other offense, or § 2X1.1 (Attempt or Conspiracy) if the resulting offense level is higher than that determined above.

**§ 2K1.6. Shipping, Transporting, or Receiving Explosives With Felonious Intent or Knowledge; Using or Carrying Explosives in Certain Crimes**

(a) Base Offense Level (Apply the greater):

(1) 18; or

(2) If the defendant committed the offense with intent to commit another offense against a person or property, apply § 2X1.1 (Attempt or Conspiracy) in respect to such other offense.

**COMMENTARY**

**§§ 2K1.1 and 2K1.2** (18 U.S.C. 842 (k), (j), 844(b)). The conduct covered is generally a regulatory violation, punishable by a maximum term of one year imprisonment. A review of current sentencing practices under 18 U.S.C. 842(j) indicates that the majority of defendants receive probation.

**§ 2K1.3** (18 U.S.C. 842 (a), (h), (i), 844(b)). This section applies to various forms of conduct proscribed by 18 U.S.C. 842, ranging from violations of a regulatory nature pertaining to licensees or persons otherwise lawfully involved in explosives commerce, to more serious violations that involve substantial danger to public safety. The majority of prosecutions are under 18 U.S.C. 842(a) and 18 U.S.C. 842(h).

**§ 2K1.4** (18 U.S.C. 32, 33, 81, 844 (f), (h), (i), 1153, 1855, 2275). Review of arson presentence investigation reports indicates that many arson cases involve "malicious mischief," i.e., minor property damage under circumstances that do not present an appreciable danger. Many of these defendants receive probationary sentences. A low base offense level is therefore provided for these cases. Aggravating factors are provided where a defendant knowingly or recklessly endangered others, destroyed or attempted to destroy a residence, used fire or an explosive in the commission of a felony, used a destructive device, or otherwise endangered others.

**§ 2K1.5** (49 U.S.C. 1472(1)). The applicable statute is a misdemeanor, except in the circumstances specified in 49 U.S.C. 1472(1)(2). An enhancement to ensure a maximum sentence is provided where the defendant was a person prohibited by federal law from possession of the weapon or material. A decrease is provided for simple negligence where the defendant was otherwise authorized to possess the weapon or material.

**§ 2K1.6** (18 U.S.C. 844(d); 26 U.S.C. 5685). The base offense level is consistent with the time specified in the current parole guidelines.

*2. Firearms*

18 U.S.C. 922
18 U.S.C. 924
18 U.S.C. 929
26 U.S.C. 5861

**§ 2K2.1. Receipt, Possession, or Transportation of Firearms and Other Weapons by Prohibited Persons**

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics.

(1) If the firearm was stolen or had an altered or obliterated serial number, increase by 1 level.

(2) If the defendant obtained or possessed the firearm solely for sport or recreation, decrease by 4 levels.

(c) Cross Reference.

(1) If the defendant used the firearm in committing or attempting another offense, apply the guideline in respect to such other offense, or § 2X1.1 (Attempt or Conspiracy) if the resulting offense level is higher than that determined above.

**§ 2K2.2. Receipt, Possession, or Transportation of Firearms and Other Weapons in Violation of National Firearms Act**

(a) Base Offense Level: 12.

(b) Specific Offense Characteristics.

(1) If the firearm was stolen or had an altered or obliterated serial number, increase by 1 level.

(2) If the firearm was a silencer, increase by 4 levels.

(3) If the defendant obtained or possessed the firearm solely for sport, recreation or collection, decrease by 6 levels.

(c) Cross Reference.

(1) If the defendant used the firearm in committing or attempting another offense, apply the guideline for such other offense or § 2X1.1 (Attempt or Conspiracy), if the resulting offense level is higher than that determined above.

**§ 2K2.3. Prohibited Transactions in or Shipment of Firearms and Other Weapons**

(a) Base Offense Level:

(1) 12, if convicted under 26 U.S.C. 5861; or

(2) 6, otherwise.

(b) Specific Offense Characteristics.

(1) If the number of firearms unlawfully dealt in exceeded 5, increase as follows:

| Number of firearms | Increase in level |
|---|---|
| (A) 6 to 10 | Add 1. |
| (B) 11 to 20 | Add 2. |
| (C) 21 to 50 | Add 3. |
| (D) 51 to 100 | Add 4. |
| (E) 101 to 200 | Add 5. |
| (F) more than 200 | Add 6. |

(2) If any of the following applies, use the greatest:

(A) If the defendant knew or had reason to believe that a purchaser was a person prohibited by federal law from owning the firearm, increase by 2 levels.

(B) If the defendant knew or had reason to believe that a purchaser resided in another state in which he was prohibited from owning the firearm, increase by 1 level.

(C) If the defendant knew or had reason to believe that a firearm was stolen or had an altered or obliterated serial number, increase by 1 level.

(c) Cross Reference.

(1) If the defendant provided the firearm to another for the purpose of

committing another offense, or knowing that he planned to use it in committing another offense, apply § 2X1.1 (Attempt or Conspiracy) in respect to such other offense, if the resulting offense level is higher.

**§ 2K2.4. Use of Firearms or Armor-Piercing Ammunition During or in Relation to Certain Crimes**

If the defendant, whether or not convicted of another crime, was convicted under 18 U.S.C. 924(c) or 929(a), the penalties are those required by statute.

**COMMENTARY**

§ 2K2.1 (18 U.S.C. 922 (a)(6), (g), (h)). 18 U.S.C. 922(g) and 922(h) prohibit certain persons from receiving or possessing firearms and certain other Weapons; 18 U.S.C. 922(a)(6), prohibits false statements concerning disqualification of the defendant from possessing them.

Under current sentencing practices, there is substantial sentencing variation for these crimes. From the Commission's investigations, it appears that the variation is attributable primarily to the wide variety of circumstances under which these offenses occur. Apart from the nature of the defendant's criminal history, his actual or intended use of the firearm is probably the most important factor in determining the sentence.

Statistics show that sentences average two to three months lower if the firearm involved is a rifle or an unaltered shotgun. This may reflect the fact that these weapons tend to be more suitable than others for recreational activities. However, some. rifles or shotguns may be possessed for criminal purposes, while some handguns may be suitable primarily for recreation. Therefore, the guideline is not based upon the type of firearm.

Intended lawful use, as determined by the surrounding circumstances, is a mitigating factor. These circumstances include, among others, the number and type of firearms (sawed-off shotguns, for example, have few legitimate uses) and ammunition, the location and circumstances of possession, the defendant's criminal history (e.g., violent or non-violent), and the extent to which possession is limited by local law.

Available data are not sufficient to determine the effect a stolen firearm has on the average sentence. However, reviews of actual cases suggest that this is a factor that tends to result in more severe sentences. Independent studies show that stolen firearms are used disproportionately in the commission of crimes.

The firearm statutes often are used as a device to enable the federal court to exercise jurisdiction over offenses that otherwise could be prosecuted only under state law. For example, a convicted felon may be prosecuted for possessing a firearm if he used the firearm to rob a gasoline station. Such prosecutions result in high sentences because of the true nature of the underlying conduct. The cross reference deals with such cases.

§ 2K2.2 (26 U.S.C. 5861(b)–(1)). 26 U.S.C. 5861 prohibits the unlicensed receipt, possession, transportation, or manufacture of certain firearms, such as machine guns, silencers, rifles and shotguns with shortened barrels, and destructive devices. The offense is a felony with a maximum prison of ten years. For violations of 26 U.S.C. 5861(a), involving sales of such weapons, refer to § 2K2.3.

As with § 2K2.1, there is considerable variation in the sentences currently given for this offense. Some violations may be relatively technical. Sentences frequently are probationary. The most important consideration appears to be the defendant's intended use of or reason for possessing the firearm.

§ 2K2.3 (18 U.S.C. 922(a)(1), (a)(5), (b)(2), (b)(3), (d), (i), (j), (k), (1); 26 U.S.C. 5861(a)). This applies to a variety of offenses involving prohibited transactions in or transportation of firearms and certain other weapons. Considerable variation in sentencing for these offenses currently exists. Current practices identify the specific offense characteristics as likely sources of that variation.

§ 2K2.4. If the defendant was convicted under 18 U.S.C. 924(c) or 929(a), the penalties are mandatory and shall be imposed pursuant to the statute. Note, however, that many of the offense guidelines (e.g., § 2B3.1, Robbery) contain enhancements applicable solely to weapon use. If the defendant is sentenced under 18 U.S.C. 924(c), such enhancements should not be applied.

*3. Transportation of Hazardous Materials*

49 U.S.C. 1809(b)

**§ 2K3.1. Unlawfully Transporting Hazardous Materials in Commerce**

Apply the guideline provision for § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification).

**COMMENTARY**

§ 2K3.1 (49 U.S.C. 1809(b)). The conduct covered under this section is punishable by imprisonment for up to five years. It involves the same risks as the conduct covered under § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification). Accordingly, that guideline applies.

**Part L—Offenses Involving Immigration, Naturalization, and Passports**

*1. Immigration*

8 U.S.C. 1182(a)
8 U.S.C. 1324–1328

**§ 2L1.1. Smuggling, Transporting, or Harboring an Unlawful Alien**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the defendant committed the offense for profit or with knowledge that the alien was excludable under 8 U.S.C. 1182(a)(27), (28), (29), increase by 3 levels.

(2) If the defendant previously has been convicted of bringing illegal aliens into the United States, increase by 2 levels.

**§ 2L1.2. Unlawfully Entering or Remaining in the United States**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic.

(1) If the defendant previously has unlawfully entered or remained in the United States, increase by 2 levels.

**§ 2L1.3. Engaging in a Pattern of Unlawful Employment of Aliens**

(a) Base Offense Level: 6.

**COMMENTARY**

§ 2L1.1 (8 U.S.C. 1324 (a)(1), (2), (4), 1327, and 1328, Section 112 of The Immigration Reform and Control Act of 1986).

This section concerns the most serious immigration offenses covered under The Immigration Reform and Control Act of 1986. By statute, a five-year maximum term of imprisonment is provided for smuggling or harboring illegal aliens in the case of a second or subsequent offense, an offense committed for commercial advantage, or any offense in which the alien is not presented to an immigration officer immediately upon arrival. In all other cases, the maximum term is one year. 8 U.S.C. 1324.

The offense level is increased if the defendant committed the offense for profit. This enhancement does not apply to defendants who are themselves being unlawfully transported and receive transportation costs in lieu of payment. Defendants assisting entry of aliens who intend to engage in unlawful activities or who are otherwise specifically excludable under 8 U.S.C. 1182(a) (27), (28), or (29), receive an enhanced penalty.

The enhancement for a prior conviction is in addition to any adjustment made for criminal history in Chapter Four.

If the alien was smuggled, transported, or harbored for immoral purposes (8 U.S.C. 1328), apply § 2G1.1, § 2G1.2, § 2G2.1, or § 2G2.2 as applicable. See Statutory Index.

§ 2L1.2 (8 U.S.C. 1325 and 1326). Repeated instances of deportation without criminal conviction may warrant a sentence at or near the maximum for the applicable guideline range.

§ 2L1.3 (Section 101 of The Immigration Reform and Control Act of 1986). This offense is specifically directed at defendants who engage in a pattern of unlawful employment of aliens. The statutory maximum penalty is six months' imprisonment.

*2. Naturalization and Passports*

18 U.S.C. 1423–1429
18 U.S.C. 1542–1544
18 U.S.C. 1546

**§ 2L2.1. Trafficking in Evidence of Citizenship or Documents Authorizing Entry**

(a) Base Offense Level: 6.
(b) Specific Offense Characteristic.
(1) If the defendant committed the offense for profit, increase by 3 levels.

**§ 2L2.2. Fraudulently Acquiring Evidence of Citizenship or Documents Authorizing Entry for Own Use**

(a) Base Offense Level: 6.

**§ 2L2.3. Trafficking in a United States Passport**

(a) Base Offense Level: 6.
(b) Specific Offense Characteristic.
(1) If the defendant committed the offense for profit, increase by 3 levels.

**§ 2L2.4. Fraudulently Acquiring or Improperly Using a United States Passport**

(a) Base Offense Level: 6.

**§ 2L2.5. Failure to Surrender Canceled Naturalization Certificate**

(a) Base Offense Level: 6.

**COMMENTARY**

**§ 2L2.1** (18 U.S.C. 1425–1427, 1546, and Section 103 of The Immigration Reform and Control Act of 1986). The statutory maximum penalty is five years.

**§ 2L2.2** (18 U.S.C. 1423, 1425, and 1546). The statutory maximum penalty is five years.

**§ 2L2.3** (18 U.S.C. 1542, 1544). The statutory maximum penalty is five years.

**§ 2L2.4** (18 U.S.C. 1543 and 1544). The statutory maximum penalty is five years.

**§ 2L2.5** (18 U.S.C. 1428). The statutory maximum penalty is five years.

## Part M—Offenses Involving National Defense

*1. Treason*

18 U.S.C. 2381

**§ 2M1.1. Treason**

(a) Base Offense Level (Apply the greatest):
(1) 43, if the conduct is tantamount to waging war against the United States; or
(2) The offense level applicable to the most analogous offense; or
(3) 24.

**COMMENTARY**

**§ 2M1.1.** This section sets forth the punishment for violations of 18 U.S.C. 2381. Treason carries a statutorily-mandated minimum sentence of five years' imprisonment; the maximum is death. Treason is a rarely-prosecuted offense encompassing a broad range of conduct. The guideline contemplates imposition of the maximum penalty in the most serious cases, with reference made to the most analogous guideline in lesser cases. However, in view of the mandatory minimum, the offense level must not be less than 24.

*2. Sabotage*

18 U.S.C. 2153–2156
42 U.S.C. 2284

**§ 2M2.1. Destruction of War Material, Premises, or Utilities**

(a) Base Offense Level: 32.

**§ 2M2.2. Production of Defective War Material, Premises, or Utilities**

(a) Base Offense Level: 32.

**§ 2M2.3. Destruction of National Defense Material, Premises, or Utilities**

(a) Base Offense Level: 26.

**§ 2M2.4. Production of Defective National Defense Material, Premises, or Utilities**

(a) Base Offense Level: 26.

**COMMENTARY**

Sections 2M2.1 and 2M2.2 apply to violations of 18 U.S.C. 2153 and 2154, respectively. These offenses represent extreme conduct. Both the high statutory maximum (thirty years) and the base offense level reflect this. Violations of these statutes are treated as the substantial equivalent of second degree murder.

Sections 2M2.3 and 2M2.4 apply to violations of 18 U.S.C. 2155 and 2156, respectively. The statutes carry a maximum term of imprisonment of ten years. The guidelines treat these offenses equally because they pose the same danger.

The guidelines for sabotage also apply to conduct prohibited under 42 U.S.C. 2284, i.e., sabotage of a nuclear production or utilization facility, nuclear waste storage facility, or nuclear fuel. While the statute does not make a wartime/peacetime distinction, it includes a provision for increasing the maximum term of imprisonment from five to ten years when the offense involves the intent to injure the United States or aid a foreign nation. Thus, these provisions are consistent with the wartime/peacetime distinctions that apply to war material, premises, and utilities.

*3. Espionage and Related Offenses*

18 U.S.C. 793–794
42 U.S.C. 2274 (a), (b)
42 U.S.C. 2275–2276

**§ 2M3.1. Gathering or Transmitting National Defense Information to Aid a Foreign Government**

(a) Base Offense Level:
(1) 42, if top secret information was gathered or transmitted; or
(2) 37, otherwise.

**§ 2M3.2. Gathering National Defense Information**

(a) Base Offense Level:
(1) 35, if top secret information was gathered; or
(2) 30, otherwise.

**§ 2M3.3. Transmitting National Defense Information**

(a) Base Offense Level:
(1) 29, if top secret information was transmitted; or
(2) 24, otherwise.

**§ 2M3.4. Losing National Defense Information**

(a) Base Offense Level:
(1) 16, if top secret information was lost; or
(2) 13, otherwise.

**§ 2M3.5. Tampering with Restricted Data Concerning Atomic Energy**

(a) Base Offense Level: 24.

**§ 2M3.6. Disclosure of Classified Cryptographic Information**

(a) Base Offense Level:
(1) 29, if top secret information was disclosed; or
(2) 24, otherwise.

**§ 2M3.7. Unauthorized Disclosure to Foreign Government or a Communist Organization of Classified Information by Government Employee**

(a) Base Offense Level:
(1) 29, if top secret information was disclosed; or
(2) 24, otherwise.

**§ 2M3.8. Receipt of Classified Information**

(a) Base Offense Level:
(1) 29, if top secret information was received; or
(2) 24, otherwise.

**§ 2M3.9. Disclosure of Information Identifying a Covert Agent**

(a) Base Offense Level:
(1) 30, if the information was disclosed by a person with, or who had authorized access to classified information identifying a covert agent; or
(2) 25, if the information was disclosed by a person with authorized access only to other classified information.

**COMMENTARY**

The Commission has set base offense levels in this section on the assumption that the information at issue bears a significant relation to the nation's security, and that the revelation will significantly and adversely affect security interests. When revelation is likely to cause little or no harm, the court may impose a sentence below the applicable guideline range.

The court may depart from the guidelines upon representation by the President or his duly authorized designee that the imposition of a sanction other than that authorized under the guidelines for espionage and related offenses is necessary to protect national security or further the objectives of the nation's foreign policy.

§ 2M3.1. This section applies to violations of 18 U.S.C. 794, the general espionage statute, and 42 U.S.C. 2274(a), 2274(b), and 2275 (that address communication of restricted data pertaining to nuclear material, weapons production, and use with reason to believe or intent that the data will be used to injure the United States or aid a foreign nation). Although life imprisonment may be imposed under any of these statutes, the death penalty also may be imposed for violations of 18 U.S.C. 794. Attempts and conspiracies to violate 18 U.S.C. 794 and 42 U.S.C. 2274(a), (b) and 2275 are subject to the same punishment as the completed offenses proscribed by those sections.

Offense level distinctions in this section are based on the classification of the information gathered or transmitted. The classifications in turn reflect the importance of the information to national security. Pursuant to Executive Order 12356, "Top Secret" information is information that, if disclosed, "reasonably could be expected to cause exceptionally grave damage to the national security." "Secret" information is information that, if disclosed, "reasonably could be expected to cause serious damage to the national security." "Confidential" information is information that, if disclosed, could reasonably be expected to cause damage to the national security.

§ 2M3.2. This section applies to violations of 18 U.S.C. 793 (a), (b), (c), and (g), which proscribe diverse forms of obtaining and transmitting national defense information with intent or reason to believe the information would injure the United States or be used to the advantage of a foreign government. Violations are subject to a maximum term of ten years' imprisonment.

§ 2M3.3. This section applies to violations of 18 U.S.C. 793 (d), (e), and (g). An offense is committed under those subsections whenever a "document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense" is willfully transmitted or communicated to a person not entitled to receive it. It need not be proven that the item was communicated with reason to believe that it could be used to the injury of the United States or the advantage of a foreign nation. The statute only requires such intent when intangible information is communicated under subsections (d) and (e).

The base offense level for § 2M3.3 is substantially lower than the base offense level for § 2M3.2 primarily because prosecutions under subsections (d) and (e) often do not involve defendants who have the intent or reason to believe the information could be used to injure the United States or aid a foreign nation. When such intent or reason to believe is present in a violation of subsection (d) or (e), § 2M3.2 applies.

§ 2M3.4. This section applies to violations of 18 U.S.C. 793(f). Offenses generally prosecuted under this statute do not involve subversive conduct on behalf of a foreign power, but rather the loss of classified information by a grossly negligent employee of the federal government or a federal contractor. The base offense level is higher if the information was classified top secret to reflect the likely importance of such information to national security.

§ 2M3.5. This section applies to violations of 42 U.S.C. 2276.

§ 2M3.6. This section applies to violations of 18 U.S.C. 798, which proscribes the disclosure of classified information concerning cryptographic or communication intelligence to the detriment of the United States or for the benefit of a foreign government. The statutory maximum for violations of 18 U.S.C. 798 is ten years.

§ 2M3.7. This section applies to violations of 50 U.S.C. 783(b).

§ 2M3.8. This section applies to violations of 50 U.S.C. 783(c).

§ 2M3.9. This section applies to violations of 50 U.S.C. 421. The offense level distinctions in § 2M3.9 are based on distinctions in the underlying statute. Subsections (a) and (b) carry maximum terms of imprisonment of ten years and five years, respectively. Violations of subsection (c) carry a statutory maximum of three years imprisonment. The statute provides higher maximum punishments for those persons with higher security classifications and correspondingly higher obligations to maintain confidentiality. Accordingly, the guideline establishes the highest penalties for officials with authorized access to classified information identifying covert agents, and a lower penalty for officials with authorized access to classified information generally. Following the statutory language, the highest base offense level applies to persons who have access to classified information identifying a covert agent, as well as to those who previously had access. The guideline does not apply to violations of 50 U.S.C. 421 by defendants who disclosed such information without having or having had authorized access to classified information, including journalists; it only applies to violations by persons who have or previously had authorized access. Such disclosures may vary in the degree of harm they inflict, and the court should impose a sentence that reflects the harm.

*4. Evasion of Military Service*

50 U.S.C. App. 462

**§ 2M4.1. Failure to Register and Evasion of Military Service**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristic:

(1) If the offense occurred while persons were being inducted into the armed services, other than in time of war or armed conflict, increase by 6 levels.

COMMENTARY

§ 2M4.1. The Commission has not considered the appropriate sanction for this offense when persons are being inducted during time of war or armed conflict.

*5. Prohibited Financial Transactions and Exports*

22 U.S.C. 2778
50 U.S.C. App. 2401–2420

**§ 2M5.1. Evasion of Export Controls**

(a) Base Offense Level: (Apply the greater):

(1) 22, if national security or nuclear proliferation controls were evaded; or

(2) 14.

**§ 2M5.2. Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License**

(a) Base Offense Level (Apply the greater):

(1) 22, if sophisticated weaponry was involved; or

(2) 14.

COMMENTARY

In determining whether to depart from the base offense levels for export violations, the court may consider: whether the violation occurred during wartime; the degree to which the violation threatened a security interest; the volume of commerce involved; the extent of planning and sophistication; and whether there were multiple occurrences or transactions.

§ 2M5.1. This section applies to knowing or willful evasion of export controls in violation of 50 U.S.C. 2401–2420, the Export Administration Act. The statute provides for up to ten years imprisonment for willfully violating or conspiring to or attempting to violate the act with respect to controls as to the country of destination, and five years otherwise. 50 U.S.C. 2410 (a) and (b).

In addition to the provisions for imprisonment, 50 U.S.C. App. § 2410 contains provisions for criminal fines and forfeiture as well as civil penalties. The maximum fine for individual defendants is $250,000. In the case of corporations, the maximum fine is five times the value of the exports involved or $1 million, whichever is greater. When national security controls are violated, in addition to any other sanction, the defendant is subject to forfeiture of any interest in, security of, or claim against any goods or tangible items that were the subject of the violation; property used to export or attempt to export that was the subject of the violation; and any proceeds obtained directly or indirectly as a result of the violation.

§ 2M5.2. This section applies to exports and imports of military arms, equipment, and services in violation of 22 U.S.C. 2778, the Arms Export Control Act. The statute requires that exports of military goods, equipment, and services be licensed by the Department of State's Office of Munitions Control.

*6. Atomic Energy*

42 U.S.C. 2077
42 U.S.C. 2122
42 U.S.C. 2131
42 U.S.C. 2138
42 U.S.C. 2273

**§ 2M6.1. Unlawful Acquisition, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities**

(a) Base Offense Level: 30.

(b) Specific Offense Characteristic.

(1) If the offense was committed with intent to injure the United States or to aid a foreign nation, increase by 12 levels.

**§ 2M6.2. Violation of Other Federal Atomic Energy Agency Statutes, Rules, and Regulations**

(a) Base Offense Level (Apply the greater):

(1) 30, if the offense was committed with intent to injure the United States or to aid a foreign nation; or

(2) 6.

**COMMENTARY**

While relatively few prosecutions occur for offenses under this section, the conduct covered often involves potential threats to the nation's public health, safety, and security. Most of the prosecutions that occur under this section are for trespass on federal installations, and often involve protest or civil disobedience.

**§ 2M6.1.** This section deals with the acquisition of nuclear weapons and materials prohibited by 42 U.S.C. 2077(b), 2122, and 2131. It also applies to those violations of 18 U.S.C. 831 that involve similar conduct. These statutes make it unlawful to manufacture, obtain, transfer, deal in, or possess nuclear materials, devices, or facilities, or to conspire to or attempt to do so. The statutes provide a maximum life sentence for offenses intended to injure the United States or aid a foreign nation, and a maximum ten year sentence otherwise.

**§ 2M6.2.** This section applies to offenses related to nuclear energy not specifically addressed elsewhere. This provision covers violations of statutes as well as rules and regulations, license conditions, and orders of the Nuclear Regulatory Commission and the Department of Energy, including accidental discharge of radioactive materials. The maximum term of imprisonment for violations of some of these provisions may be up to twenty years if the offense was intended to injure the United States or aid a foreign government.

**Part N—Offenses Involving Food, Drugs, Agricultural Products, and Odometer Laws**

*1. Tampering*

18 U.S.C. 1365

**§ 2N1.1. Tampering or Attempting To Tamper With Consumer Products**

(a) Base Offense Level: 25.

**§ 2N1.2. Providing False Information or Threatening To Tamper With Consumer Products**

(a) Base Offense Level (Apply the greater):

(1) 16;

(2) If the offense involved extortion, apply § 2B3.2.

**§ 2N3.3. Tampering With Intent To Injure Business**

(a) Base Offense Level: 12.

**COMMENTARY**

The term "consumer product" means any food, drug, device, or cosmetic as defined in 21 U.S.C. 321 or any article, product, or commodity produced or distributed for consumption by individuals.

Section 2N1.1 applies to 18 U.S.C. 1365 (a) and (e). The base offense level under this section reflects the risk of death or serious injury posed to significant numbers of people by this type of product tampering. It is slightly lower than, but consistent with, attempted murder, which may pose a danger to only a single person.

Section 2N1.2 applies to 18 U.S.C. 1365 (c) and (d). The base offense level assumes extortion was not involved. If the offense involves extortion, apply the guideline for extortion, § 2B3.2 (Extortion by Force or Threat of Injury or Serious Damage).

Section 2N1.3 covers 18 U.S.C. 1365(b).

If death or physical or psychological injury results from product tampering, or if the target of a tampering suffers property damage or monetary losses, a departure may be appropriate. See Chapter Five, Part K (Departures).

*2. Food, Drugs, and Agricultural Products*

7 U.S.C. 150bb, 150gg
21 U.S.C. 115
21 U.S.C. 117
21 U.S.C. 122
2l U.S.C. 134–134e
21 U.S.C. 151–158
21 U.S.C. 331
21 U.S.C. 333
21 U.S.C. 458–461
21 U.S.C. 463
21 U.S.C. 466
21 U.S.C. 610–611
21 U.S.C. 614
21 U.S.C. 617
21 U.S.C. 619–620
21 U.S.C. 642–644
21 U.S.C. 676
42 U.S.C. 262

**§ 2N2.1. Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product**

(a) Base Offense Level: 6.

**COMMENTARY**

Section 2N2.1 applies to most regulatory crimes involving food, drugs, biological products, devices, cosmetics, and agricultural products. The guideline assumes a typical regulatory offense involving knowing conduct. Where only negligence is involved, a less serious penalty is appropriate. Regulatory violations that amount to fraud, bribery, revealing trade secrets, theft, and destruction of property are more appropriately treated under other guidelines, such as fraud.

If there was a serious risk of death, serious injury, property damage, or other significant harm, the court should sentence at or near the statutory maximum.

*3. Odometer Laws and Regulations*

15 U.S.C. 1983–1988
15 U.S.C. 1990c

**§ 2N3.1. Odometer Laws and Regulations**

(a) Base Offense Level: 6.

(b) If more than one vehicle was involved, apply § 2F1.1 (Offenses Involving Fraud or Deceit).

**COMMENTARY**

This section applies to 15 U.S.C. 1983–1988 and 1990c as amended by Pub. L. 99–579, Oct. 28, 1986. The base offense level takes into account the deceptive aspect of the offense assuming only a single vehicle was involved. If the defendant's conduct reflected a pattern or practice, apply the guideline for fraud and deception, § 2F1.1.

**Part P—Offenses Involving Prisons and Correctional Facilities**

18 U.S.C. 751–752
18 U.S.C. 755
18 U.S.C. 1791–1793
28 U.S.C. 1826

**§ 2P1.1. Escape, Instigating or Assisting Escape**

(a) Base Offense Level:

(1) 13, if from lawful custody resulting from a conviction or as a result of a lawful arrest for a felony;

(2) 8, if from lawful custody awaiting extradition, pursuant to designation as a recalcitrant witness or as a result of a lawful arrest for a misdemeanor.

(b) Specific Offense Characteristics:

(1) If the use or the threat of force against any person was involved, increase by 5 levels.

(2) If the defendant escaped from non-secure custody and returned voluntarily within ninety-six hours, decrease the offense level under § 2P1.1(a)(1) by 7 levels or the offense level under § 2P1.1(a)(2) by 4 levels.

(3) If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.

**§ 2P1.2. Providing or Possessing Contraband in Prison**

(a) Base Offense Level:

(1) 23, if the object was a firearm or destructive device.

(2) 13, if the object was a weapon (other than a firearm or a destructive device), any object that might be used as a weapon or as a means of facilitating

escape, ammunition, LSD, PCP, or a narcotic drug.

(3) 6, if the object was an alcoholic beverage, United States or foreign currency, or a controlled substance (other than LSD, PCP, or a narcotic drug).

(4) 4, if the object was any other object that threatened the order, discipline, or security of the institution or the life, health, or safety of an individual.

(b) Specific Offense Characteristic.

(1) If the defendant committed the offense while a correctional officer or other employee of the Department of Justice, increase by 2 levels.

**§ 2P1.3. Engaging In, Inciting or Attempting to Incite a Riot Involving Persons in a Facility for Official Detention**

(a) Base Offense Level:

(1) 22, if the offense was committed under circumstances creating a substantial risk of death or serious bodily injury to any person.

(2) 16, if the offense involved a major disruption to the operation of an institution.

(3) 10, otherwise.

**§ 2P1.4. Trespass on Bureau of Prisons Facilities**

(a) Base Offense Level: 6.

COMMENTARY

§ 2P1.1. This section applies to conduct proscribed by 18 U.S.C. 751 and 752 and 28 U.S.C. 1826. If actual injury occurred during an escape, see Chapter Five, Part K (Departures). Non-secure custody refers to custody with no significant physical restraint (e.g., where a defendant walked away from a work detail outside the security perimeter of an institution; where a defendant failed to return to any institution from a pass or unescorted furlough; or where a defendant escaped from an institution with no physical perimeter barrier). Voluntary return is defined as returning voluntarily to the facility or voluntarily turning one's self in to a law enforcement authority as an escapee (not in connection with an arrest on other charges). § 2P1.1(b)(3) applies to conduct prescribed by 18 U.S.C. 755. If this subsection is used, no adjustment is made for § 3B1.3, Role in the Offense (Abuse of Position of Trust or Use of Special Skill).

§ 2P1.2. This section applies to conduct proscribed by 18 U.S.C. 1791. If § 2P1.2(b)(1) applies, no adjustment is made for § 3B1.3, Role in the Offense (Abuse of Position of Trust or Use of Special Skill).

§ 2P1.3. This section applies to conduct prescribed by 18 U.S.C. 1792. Three reference base offense levels are provided. If death or bodily injury resulted, see Chapter Five, Part K (Departures). In circumstances falling between the three offense level reference points, intermediate offense levels may be used depending upon the amount of injury or property damage, and the extent of disruption to the correctional facility that resulted.

§ 2P1.4. This section applies to conduct proscribed by 18 U.S.C. 1793.

**Part Q—Offenses Involving the Environment**

*1. Environment*

7 U.S.C. 136j, 1361
15 U.S.C. 2614–2615
33 U.S.C. 403
33 U.S.C. 406–407
33 U.S.C. 411
33 U.S.C. 1319
33 U.S.C. 1321
33 U.S.C. 1342
33 U.S.C. 1415
33 U.S.C. 1517(b)
33 U.S.C. 1907–1908
42 U.S.C. 300h–2, 300i–1
42 U.S.C. 4912
42 U.S.C. 6928(d), (e)
42 U.S.C. 7413
42 U.S.C. 9603
43 U.S.C. 1816(a)
43 U.S.C. 1822(b)

**§ 2Q1.1. Knowing Endangerment Resulting From Mishandling Hazardous or Toxic Substances, Pesticides or Other Pollutants**

(a) Base Offense Level: 24.

COMMENTARY

§ 2Q1.1. (33 U.S.C. 1319(c)(3) and 42 U.S.C. 6928(e)). This section applies to offenses committed with knowledge that the violation placed another person in imminent danger of death or serious bodily injury. If death or serious bodily injury results, a departure may be appropriate. See Chapter Five, Part K (Departures).

**§ 2Q1.2. Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification**

(a) Base Offense Level: 8.

(b) Specific Offense Characteristics.

(1)(A) If the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a hazardous or toxic substance or pesticide into the environment, increase by 6 levels; or

(B) if the offense otherwise involved a discharge, release, or emission of a hazardous or toxic substance or pesticide, increase by 4 levels.

(2) If the offense resulted in a substantial likelihood of death or serious bodily injury, increase by 9 levels.

(3) If the offense resulted in disruption of public utilities or evacuation of a community, or if cleanup required a substantial expenditure, increase by 4 levels.

(4) If the offense involved transportation, treatment, storage, or disposal without a permit or in violation of a permit, increase by 4 levels.

(5) If a recordkeeping offense reflected an effort to conceal a substantive environmental offense, use the offense level for the substantive offense.

(6) If the offense involved a simple recordkeeping or reporting violation only, decrease by 2 levels.

**§ 2Q1.3. Mishandling of Other Environmental Pollutants; Recordkeeping, Tampering, and Falsification**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1)(A) If the offense resulted in an ongoing, continuous, or repetitive discharge, release, or emission of a pollutant into the environment, increase by 6 levels; or

(B) if the offense otherwise involved a discharge, release, or emission of a pollutant, increase by 4 levels.

(2) If the offense resulted in a substantial likelihood of death or serious bodily injury, increase by 11 levels.

(3) If the offense resulted in disruption of public utilities or evacuation of a community, or if cleanup required a substantial expenditure, increase by 4 levels.

(4) If the offense involved a discharge without a permit or in violation of a permit, increase by 4 levels.

(5) If a recordkeeping offense reflected an effort to conceal a substantive environmental offense, use the offense level for the substantive offense.

COMMENTARY

§ 2Q1.2. This section applies both to substantive violations of the statutes and regulations governing the handling of pesticides and toxic and hazardous substances and to recordkeeping offenses. 7 U.S.C. 136j–136l; 15 U.S.C. 2614, 2615; 33 U.S.C. 1319 (c)(1) and (c)(2); 42 U.S.C. 300h–2, 6928(d), 7413 and 9603 (c) and (d); and 43 U.S.C. 1350. The first four specific offense characteristics provide augmentations applicable when the offense involved a substantive violation. The last two specific offense characteristics pertain to recordkeeping offenses. The term "recordkeeping offense" as used in this guideline, and in § 2Q1.3, covers both recordkeeping and reporting offenses. It is to be broadly construed as including, without limitation, failure to report discharges, releases or emissions where required (e.g., 33 U.S.C. 1517(b), 1321(b)(5), 42 U.S.C. 9603(b), and 43 U.S.C. 1816(a) and 1822(b)), the giving of false information, failure to file other required reports or provide necessary information as well as failure to prepare, maintain or provide records as prescribed. Although recordkeeping or "regulatory" offenses throughout the remainder of the guidelines have a base offense level of 6,

§ 2Q1.2 prescribes a base offense level of 8 because of the inherently dangerous nature of hazardous and toxic substances and pesticides. A decrease in the base offense level, however, is provided by § 2Q1.2(b)(6) for a "simple recordkeeping or reporting violation" to cover those situations where there was no reason to believe that the recordkeeping offense would result in substantive environmental or related harm. This offense characteristic is applicable only where, although the defendant knew of the recordkeeping offense, he neither knew nor had reason to believe that any environmental or other substantive harm was likely.

A listing of hazardous and toxic substances in the guidelines would be impractical. Several federal statutes (or regulations promulgated thereunder) list toxics, hazardous wastes and substances, and pesticides. These lists, such as those of toxic pollutants for which effluent standards are published under the Federal Water Pollution Control Act (e.g., 33 U.S.C. 1317) as well as the designation of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (e.g., 42 U.S.C. 9601(14)), are revised from time to time. "Toxic" and "hazardous" are defined differently in various statutes, but the common dictionary meanings of the words are not significantly different. Section 2Q1.2 applies to pesticides and to substances designated toxic or hazardous at the time of the offense.

§ 2Q1.3. This section parallels § 2Q1.2 but applies to offenses concerning substances which are not pesticides and are not designated hazardous or toxic, usually punished under 33 U.S.C. 403, 406, 407, 411, 1319 (c)(1) and (c)(2), 1415(b), 1907, and 1908; and 42 U.S.C. §§ 4912 and 7413. Section 2Q1.2 has a higher base offense level than § 2Q1.3 because of the more dangerous nature of the substances involved. The term "recordkeeping offense" has the same broad meaning discussed in the commentary to § 2Q1.2, above. If the offense involved a pesticide or a hazardous or toxic substance, § 2Q1.2 applies.

The base offense levels for §§ 2Q1.2 and 2Q1.3 assume violations resulting from knowing conduct. If the violation resulted from mere negligence, a departure may be warranted. The specific offense characteristics in § 2Q1.3 are similar to those in § 2Q1.2 because similar environmental results can occur even if the contaminants are not specifically designated as hazardous. Therefore, the relevant factors in selecting the offense level are basically those described under § 2Q1.2.

These two sections of the guidelines apply to a wide range of conduct. The offense may involve large quantities of extremely hazardous or toxic materials or small quantities of far less dangerous pollutants. Therefore, depending upon the circumstances of the particular offense in question, the Commission recognizes that a departure from the prescribed guideline, as outlined in the applicable commentary, may be appropriate.

Subsections 2Q1.2(b)(1) and 2Q1.3(b)(1) assume a discharge or emission into the environment resulting in actual environmental contamination and attach higher penalties to violations. Because of the wide range of potential conduct arising out of the handling of different quantities of materials with widely differing propensities, a departure either upward or downward may be warranted. Depending upon the resulting harm from the emission, release or discharge, the quality and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction from the offense levels prescribed in these offense characteristics may be appropriate.

Subsections 2Q1.2(b)(2) and 2Q1.3(b)(2) apply to offenses where the public health is seriously endangered. Depending upon the nature of the risk created and the number of people placed at risk, a departure of up to three levels upward or downward may be appropriate. If death or serious bodily injury results, a departure would be called for. See Chapter Five, Part K (Departures).

Subsections 2Q1.2(b)(3) and 2Q1.3(b)(3) provide an enhancement where a public disruption, evacuation or cleanup at substantial expense has been required. Depending upon the nature of the contamination involved, a departure of up to two levels either up or down could be necessary.

Subsections 2Q1.2(b)(4) and 2Q1.3(b)(4) apply where the offense involved violation of a permit, or where there was a failure to obtain a permit when one was required. (33 U.S.C. 1342; and 42 U.S.C. 6928(d) (1) and (2)). Where a violation of a permit has occurred or where the violation involved a failure to obtain a required permit, depending upon the nature and quantity of the substance involved and the risk associated with the offense, a departure of up to two levels up or down from the base offense level prescribed may be appropriate.

In order to deter such conduct, §§ 2Q1.2(b)(5) and 2Q1.3(b)(5) set the offense level for a recordkeeping offense reflecting an effort to conceal a substantive environmental offense at the same level as the substantive offense.

Section 2Q1.2(b)(6) provides for a decrease in the base offense level prescribed by § 2Q1.2 for a "simple recordkeeping or reporting violation" as discussed above.

If the offense involved mishandling of nuclear material, apply § 2M6.2 (Violation of Other Federal Atomic Energy Statutes, Rules, and Regulations).

Where a defendant in an action involving an environmental offense has previously engaged in similar misconduct as established by a civil adjudication, or has failed to comply with an administrative order, and his criminal history category does not adequately reflect the seriousness of his past criminal conduct or the likelihood that he will commit further crimes, the court may consider such misconduct in imposing a sentence that departs from the applicable guideline range for the offense. Chapter Four, § 4A1.3 (Adequacy of Criminal History Category (Policy Statement)).

**§ 2Q1.4. Tampering or Attempted Tampering with Public Water System**

(a) Base Offense Level: 16.

(b) Specific Offense Characteristics.

(1) If a risk of death or serious injury was created, increase by 6 levels.

(2) If the offense resulted in disruption of a public water system or evacuation of a community, or if cleanup required a substantial expenditure, increase by 4 levels.

(3) If the offense resulted in an ongoing, continuous, or repetitive release of a contaminant into a public water system or lasted for a substantial period of time, increase by 2 levels.

(4) If the purpose of the offense was to influence government action or to extort money, increase by 6 levels.

**§ 2Q1.5. Threatened Tampering with Public Water System**

(a) Base Offense Level: 10.

(b) Specific Offense Characteristics:

(1) If the threat or attempt resulted in disruption of a public water system or evacuation of a community or a substantial public expenditure, increase by 4 levels.

(2) If the purpose of the offense was to influence government action or to extort money, increase by 8 levels.

**COMMENTARY**

§§ 2Q1.4, 2Q1.5. These sections apply to the new 1986 tampering section codified at 42 U.S.C. 300i–1. Since intent to harm persons is an element of the tampering and attempted tampering offenses, it is included in the base offense levels. The statutory maximum sentence for tampering is five years, while the maximum sentence for attempted tampering is three years. Tampering or interference with a public water supply system has the potential for widespread and serious public health effects, justifying substantial base offense levels. Given the similarity between tampering and the offenses covered by § 2Q1.2, the specific offense characteristics and the factors to be taken into account in choosing among offense levels are similar.

Sections 2Q1.4(b)(4) and 2Q1.5(b)(2) take into account the fact that public water supplies are vulnerable targets for terrorists and extortionists.

*2. Conservation and Wildlife*

16 U.S.C. 668(a)
16 U.S.C. 707
16 U.S.C. 1029
16 U.S.C. 1030(b)
16 U.S.C. 1174(a)
16 U.S.C. 1338(a)
16 U.S.C. 1375(b)
16 U.S.C. 1540(b)
16 U.S.C. 2435
16 U.S.C. 2438
16 U.S.C. 3373(d)
18 U.S.C. 545

**§ 2Q2.1. Specially Protected Fish, Wildlife, and Plants**

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics:

(1) If the offense involved a commercial purpose, increase by 2 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 2 levels.

(3) Apply the greater:

(A) If the market value of the specially protected fish, wildlife, or plants exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or

(B) If the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 4 levels.

**§ 2Q2.2. Lacey Act; Smuggling and Otherwise Unlawfully Dealing in Fish, Wildlife, and Plants**

(a) Base Offense Level:

(1) 6, if the defendant knowingly imported or exported fish, wildlife, or plants, or knowingly engaged in conduct involving the sale or purchase of fish, wildlife, or plants with a market value greater than $350; or

(2) 4.

(b) Specific Offense Characteristics:

(1) If the offense involved a commercial purpose, increase by 2 levels.

(2) If the offense involved fish, wildlife, or plants that were not quarantined as required by law, increase by 2 levels.

(3) Apply the greater:

(A) If the market value of the fish, wildlife, or plants exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or

(B) If the offense involved a quantity of fish, wildlife, or plants that was substantial in relation either to the overall population of the species or to a discrete subpopulation, increase by 4 levels.

COMMENTARY

§ 2Q2.1. This section applies to violations of the Endangered Species Act, 16 U.S.C. 1540(b); the Bald Eagle Protection Act, 16 U.S.C. 668(a); the Migratory Bird Treaty Act, 16 U.S.C. 707; the Marine Mammal Protection Act, 16 U.S.C. 1375(b); the Wild Free-Roaming Horses and Burros Act, 16 U.S.C. 1338(a); and the Fur Seal Act, 16 U.S.C. 1174(a). These statutes provide special protection to particular species of fish, wildlife, or plants. The base offense level for these statutes is low. However, enhanced punishment is warranted where the offense involved a commercial purpose, the species were not quarantined as required by law, or the market value of the protected species was substantial. The Commission recognizes that an offense may have a serious impact upon protected species, even though the market value is negligible. In such circumstances if the species is either endangered or threatened, the greater enhancement of §§ 2Q2.1(3)(A) and (3)(B) should be applied.

§ 2Q2.2. This section applies to violations of the Lacey Act Amendments of 1981, 16 U.S.C. 3373(d), and to violations of 18 U.S.C. 545 where the smuggling activity involved fish, wildlife, or plants. These are the principal enforcement statutes utilized to combat interstate and foreign commerce in illegally taken fish, wildlife, and plants. The Lacey Act distinguishes between knowing violations and those where the offender "should have known;" the guidelines retain that distinction. The offense level for violations is enhanced if the market value of the fish, wildlife, or plants exceeds $2,000 or if the species is either endangered or threatened.

## Part R—Antitrust Offenses

15 U.S.C. 1

**§ 2R1.1. Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors**

(a) Base Offense Level: 9.

(b) Specific Offense Characteristics.

(1) If the conduct involved participation in an agreement to submit non-competitive bids, increase by 1 level.

(2) If the volume of commerce attributable to the defendant was less than $1,000,000 or more than $4,000,000, adjust the offense level as follows:

| Volume of commerce | Adjustment to offense level |
|---|---|
| (A) Less than $1,000,000 | Substract 1. |
| (B) $1,000,000 to $4,000,000 | No adjustment. |
| (C) $4,000,001 to $15,000,000. | Add 1. |
| (D) $15,000,001 to $50,000,000. | Add 2. |
| (E) Over $50,000,000 | Add 3. |

For purposes of this guideline, the volume of commerce attributable to an individual participant in a conspiracy is the volume of commerce done by him or his principal in goods or services that were affected by the violation. When multiple counts or conspiracies are involved, the volume of commerce should be treated cumulatively to determine a single, combined offense level.

(c) Fines.

A fine shall be imposed in addition to any term of imprisonment. The guideline fine range for an individual conspirator is from 4 to 10 percent of the volume of commerce, but not less than $20,000. The fine range for an organization is from 20 to 50 percent of the volume of commerce, but not less than $100,000.

COMMENTARY

These guidelines apply to violations of the antitrust laws. Although they are not unlawful in all countries, there is near universal agreement that restrictive agreements among competitors such as horizontal price-fixing (including bid rigging) and horizontal market-allocation can cause serious economic harm. There is no consensus, however, about the harmfulness of other types of antitrust offenses, which furthermore are rarely prosecuted and may involve unsettled issues of law. Consequently, only one guideline, which deals with horizontal agreements in restraint of trade, has been promulgated. The controlling consideration is general deterrence.

§ 2R1.1 (15 U.S.C. 1). The agreements among competitors covered by this section—such as horizontal price-fixing and bid-rigging—are almost invariably covert conspiracies that are intended to and serve no purpose other than to restrict output and raise prices, and that are so plainly anticompetitive that they have been recognized as illegal per se, i.e., without any inquiry in individual cases as to their actual competitive effect. The Commission believes that the most effective method to deter individuals from committing this crime is through imposing short prison sentences coupled with large fines. The guideline is designed with that purpose in mind.

Under the guidelines prison terms should be much more common, and usually longer, than is currently typical. Absent adjustments, the guidelines require confinement of four months or longer in the great majority of cases that are prosecuted, including all bid-rigging cases. The court will have the discretion to impose considerably longer sentences within the guideline ranges. It is the intent of the Commission that alternatives to imprisonment such as community confinement and home confinement not be available for antitrust offenders. Adjustments from Chapter Three, Part E (Acceptance of Responsibility) and, in rare instances, Chapter Three, Part B (Role in the Offense), may decrease these minimum sentences; nonetheless, in very few cases will the guidelines not require that some confinement be imposed. Adjustments will not affect the level of fines.

The guideline imprisonment terms represent a substantial change from present practice. Currently, approximately 39 percent of all individuals convicted of antitrust violations are imprisoned. Considering all defendants sentenced, the average time served is only forty-five days. The guideline prison terms are, however, consistent with the parole guidelines. The fines specified in the guideline represent substantial increases over existing practice. The current average fine for individuals is only approximately $27,000; for corporations, it is approximately $160,000.

Tying the offense level to the scale or scope of the offense is important in order to ensure that the sanction is in fact punitive and that there is an incentive to desist from a violation once it has begun. The offense levels are not based directly on the damage caused or profit made by the defendant because damages are difficult and time consuming to establish. The volume of commerce is an acceptable and more readily measurable substitute. The limited empirical data currently available show that fines increase with the volume of commerce and the term of imprisonment probably does so also.

The Commission believes that the volume of commerce is liable to be an understated measure of seriousness in some bid-rigging cases. For this reason, and consistent with current practice, the Commission has specified a 1 level increase for bid-rigging. Understatement of seriousness is especially likely in cases involving complementary bids. If, for example, the defendant participated in an agreement not to submit a bid, or to submit an unreasonably high bid, on one occasion, in exchange for his being allowed to win a subsequent bid that he did not in fact win, his volume of commerce would be zero, although he would have contributed to harm that possibly was quite substantial. The court should consider sentences near the top of the guideline range in such cases.

Substantial fines are an essential part of the sanction. It is estimated that the average additional profit attributable to price fixing is 10 percent of the selling price. The Commission has specified that a fine from two to five times that amount be imposed on organizational defendants as a deterrent because of the difficulty in identifying violators. Additional monetary penalties can be provided through private treble damage actions. A lower fine is specified for individuals. The statutory maximum fine is $250,000 for individuals and $1,000,000 for organizations, but is increased when there are convictions on multiple counts.

In setting the fine for individuals, the court should consider the extent of the defendant's participation in the offense, his role, and the degree to which he personally profited from the offense (including salary, bonuses, and career enhancement). The Commission believes that most antitrust defendants have the resources and earning capacity to pay these fines, at least over time, and will monitor the level of fines that are imposed and actually paid. If the court concludes that the defendant lacks the ability to pay the guideline fine, it should impose community service in lieu of a portion of the fine. The community service should be equally burdensome as a fine.

In setting the fine for an organization, the court should consider whether the organization encouraged or took steps to prevent the violation, whether high-level management was aware of the violation, and whether the organization previously engaged in antitrust violations. In addition, the court should consider that the average level of mark-up due to price-fixing may tend to decline with the volume of commerce involved.

Because the guideline sentences depend on the volume of commerce done by each firm, role in the offense is implicitly taken into account. Thus, an increase for role under § 3B1.1 might be appropriate only where a defendant coerced others into participating in a conspiracy from which his firm did not profit significantly—an unlikely circumstance. Conversely, a decrease for role under § 3B1.2 would not be appropriate merely because a defendant's firm did not profit substantially. An individual should be considered for a downward adjustment for a mitigating role in the offense only if he was responsible merely for a small portion of his firm's participation in the conspiracy. For example, a complementary bidder who did not win a bid would not qualify for a downward adjustment.

Sentences at or even above the guideline maximum may be appropriate for individuals with previous antitrust convictions.

## Part S—Money Laundering and Monetary Transaction Reporting

18 U.S.C. 371, 1001, 1005–1008, 1014
18 U.S.C. 1956, 1957
31 U.S.C. 5313, 5314, 5316, 5322, 5324

### § 2S1.1. Laundering of Monetary Instruments

(a) Base Offense Level:

(1) 23, if convicted under 18 U.S.C. 1956(a)(1)(A) or (a)(2)(A);

(2) 20, otherwise.

(b) Specific Offense Characteristics.

(1) If the defendant knew that the funds were the proceeds of an unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances, increase by 3 levels.

(2) If the value of the funds exceeded $100,000, increase the offense level as follows:

| Value | Increase in level |
|---|---|
| (A) $100,000 or less | No increase. |
| (B) $100,001 to $200,000 | Add 1. |
| (C) $200,001 to $350,000 | Add 2. |
| (D) $350,001 to $800,000 | Add 3. |
| (E) $800,001 to $1,000,000 | Add 4. |
| (F) $1,000,001 to $2,000,000 | Add 5. |
| (G) $2,000,001 to $3,500,000 | Add 6. |
| (H) $3,500,001 to $6,000,000 | Add 7. |
| (I) $6,000,001 to $10,000,000 | Add 8. |
| (J) $10,000,001 to $20,000,000 | Add 9. |
| (K) $20,000,001 to $35,000,000 | Add 10. |
| (L) $35,000,001 to $60,000,000 | Add 11. |
| (M) $60,000,001 to $100,000,000. | Add 12. |
| (N) more than $100,000,000 | Add 13. |

### § 2S1.2. Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity

(a) Base Offense Level: 17.

(b) Specific Offense Characteristics.

(1) If the defendant knew that the funds were the proceeds of:

(A) An unlawful activity involving the manufacture, importation, or distribution of narcotics or other controlled substances, increase by 5 levels;

(B) Any other specified unlawful activity (see 18 U.S.C. 1956(c)(7)), increase by 2 levels.

(2) If the value of the funds exceeded $100,000, increase the offense level as specified in § 2S1.1(b)(2).

### § 2S1.3. Failure To Report Monetary Transactions; Structuring Transactions To Evade Reporting Requirements

(a) Base Offense Level:

(1) 13, if the defendant:

(A) Structured transactions to evade reporting requirements;

(B) Made false statements to conceal or disguise the activity; or

(C) Reasonably should have believed that the funds were the proceeds of criminal activity;

(2) 5, otherwise.

(b) Specific Offense Characteristics.

(1) If the defendant reasonably believed that the funds were criminally derived, increase by 5 levels.

(2) If the base offense level is from (a)(1) above and the value of the funds exceeded $100,000, increase the offense level as specified in § 2S1.1(b)(2).

COMMENTARY

Money laundering activities are essential to the operation of organized crime. Congress has recently increased the maximum penalties for these offenses. The guidelines provide substantial punishments for these offenses. In fiscal year 1985, the time served by defendants convicted of felonies involving monetary transaction reporting under 31 U.S.C. §§ 5313, 5316, and 5322 averaged about ten months, and only a few defendants served as much as four to five years. However, courts have been imposing higher sentences as they come to appreciate the seriousness of this activity, and sentences as long as thirty-five years have been reported. Congress has demonstrated its intent to increase the sanctions for money laundering offenses by making all reporting violations felonies in 1984, and by enacting the Money Laundering Control Act of 1986 (18 U.S.C. 1956, 1957), which creates new offenses and provides higher maximum sentences for similar conduct when knowledge, facilitation or concealment of serious criminal activity is proved.

§ 2S1.1. This section applies to violations of 18 U.S.C. 1956. That statute is a part of the Anti-Drug Abuse Act of 1986 that prohibits financial transactions involving funds that are the proceeds of "specified unlawful activity." If such transactions are intended to facilitate that activity, or conceal the nature of the proceeds or avoid a transaction reporting requirement. The maximum term of imprisonment specified is twenty years.

In keeping with the clear intent of the legislation, this guideline provides for

substantial punishment. The punishment is higher than that specified in § 2S1.2 and § 2S1.3 because of the higher statutory maximum, and the added elements as to source of funds, knowledge and intent.

A higher base offense level is specified if the defendant is convicted under 18 U.S.C. 1956(a)(1)(A) or (a)(2)(A) because those subsections apply to defendants who did not merely conceal a serious crime that had already taken place, but encouraged or facilitated the commission of further crimes.

The amount of money involved is included as a factor because it is an indicator of the scope of the criminal enterprise as well as the degree of the defendant's involvement. Narcotics trafficking is included as a factor because of the clearly expressed Congressional intent to adequately punish persons involved in that activity.

**§ 2S1.2.** This section applies to violations of 18 U.S.C. 1957. That statute is a part of the Anti-Drug Abuse Act of 1986 prohibiting monetary transactions that exceed $10,000 and involve the proceeds of "specified unlawful activity" (as defined in 18 U.S.C. 1956), knowing that the funds were "criminally derived property." The maximum term of imprisonment specified is ten years.

The statute is similar to 18 U.S.C. 1956, but does not require that the recipient exchange or "launder" the funds, that he have knowledge that the funds were proceeds of a specified unlawful activity, nor that he have any intent to further or conceal such an activity. In keeping with the intent of the legislation, this guideline provides for substantial punishment. The offense levels are higher than in § 2S1.3 because of the higher statutory maximum and the added element of knowing that the funds were criminally derived property.

The 2-level increase in subsection (b)(1) applies if the defendant knew that the funds were not merely criminally-derived, but were in fact the proceeds of a specified unlawful activity. Such a distinction is not made in § 2S1.1, because the level of intent required in that section effectively precludes an inference that the defendant was unaware of the nature of the activity.

**§ 2S1.3.** This section applies to violations of 31 U.S.C. 5313, 5314, 5316, 5322, and 5324, which relate to records and reports of certain transactions involving currency and monetary instruments. The maximum prison sentence for these offenses is ten years if there is any pattern of unlawful activity. These offenses sometimes are prosecuted as conspiracies, frauds, or false statements under 18 U.S.C. 371, 1001, 1005–1008, or 1014.

The base offense level is set at 13 for the great majority of cases. However, the base offense level is set at 5 for those cases in which these offenses may be committed with innocent motives and the defendant reasonably believed that the funds were from legitimate sources. The higher base offense level applies in all other cases. The offense level is increased by 5 levels if the defendant knew that the funds were criminally derived.

The dollar value of the transactions not reported is an important sentencing factor, except in rare cases. It is an indicator of several factors that are pertinent to the sentence, including the size of the criminal enterprise and the extent to which the defendant aided the enterprise.

## Part T—Offenses Involving Taxation

*1. Income Taxes*

26 U.S.C. 7201–7207
26 U.S.C. 7215

### § 2T1.1. Tax Evasion

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax loss.

For purposes of this guideline, the "tax loss" is the greater of: (A) The total amount of tax that the taxpayer evaded or attempted to evade, including interest to the date of filing of an indictment or information; and (B) the "tax loss" defined in § 2T1.3. When more than one year is involved, the tax losses are to be added.

(b) Specific Offense Characteristics.

(1) If (A) the defendant failed to report income exceeding $10,000 per year from criminal activity, or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(2) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

### § 2T1.2. Willful Failure To File Return, Supply Information, or Pay Tax

(a) Base Offense Level:

(1) 1 level less than the level from § 2T4.1 (Tax Table) corresponding to the tax loss; or

(2) 5, if there is no tax loss.

For purposes of this guideline, "tax loss" means the total amount of tax that the taxpayer owed and did not pay, but, in the event of a failure to file in any year, not less than 10 percent of the amount by which the taxpayer's gross income for that year exceeded $20,000.

(b) Specific Offense Characteristics

(1) If (A) the defendant failed to report income exceeding $10,000 per year from criminal activity, or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(2) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

### § 2T1.3. Fraud and False Statements Under Penalty of Perjury

(a) Base Offense Level:

(1) Level from § 2T4.1 (Tax Table) corresponding to the tax loss, if the offense was committed in order to facilitate evasion of a tax; or

(2) 6, otherwise.

For purposes of this guideline, the "tax loss" is 28 percent of the amount by which the greater of gross income and taxable income was understated, plus 100 percent of the total amount of any false credits claimed against tax. If the taxpayer is a corporation, use 34 percent in lieu of 28 percent.

(b) Specific Offense Characteristics.

(1) If (A) the defendant failed to report income exceeding $10,000 per year from criminal activity, or (B) the offense concealed or furthered criminal activity from which the defendant derived a substantial portion of his income, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(2) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

### § 2T1.4. Aiding, Assisting, Procuring, Counseling, or Advising Tax Fraud

(a) Base Offense Level:

(1) Level from § 2T4.1 (Tax Table) corresponding to the resulting tax loss, if any; or

(2) 6, otherwise.

For purposes of this guideline, the "tax loss" is the tax loss, as defined in § 2T1.3, resulting from the defendant's aid, assistance, procurance or advice.

(b) Specific Offense Characteristics

(1) If the defendant committed the offense as part of a pattern or scheme from which he derived a substantial portion of his income, increase by 2 levels.

(2) If sophisticated means were used to impede discovery of the nature or extent of the offense, increase by 2 levels.

(3) If the defendant was in the business of preparing or assisting in the preparation of tax returns, increase by 2 levels.

### § 2T1.5. Fraudulent Returns, Statements, or Other Documents

(a) Base Offense Level: 6.

### § 2T1.6. Failing to Collect or Truthfully Account for and Pay Over Tax

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax not collected or accounted for and paid over, plus interest.

**§ 2T1.7. Failing to Deposit Collected Taxes in Trust Account as Required After Notice**

(a) Base Offense Level (Apply the greater):

(1) 4; or

(2) 5 less than the level from § 2T4.1 (Tax Table) corresponding to the amount not deposited.

**§ 2T1.8. Offenses Relating to Withholding Statements**

(a) Base Offense Level: 4.

**§ 2T1.9. Conspiracy to Impair, Impede or Defeat Tax**

(a) Base Offense Level (Apply the greater):

(1) Offense level determined from § 2T1.1 or § 2T1.3, as applicable; or

(2) 10.

(b) Specific Offense Characteristics.

If either of the following adjustments applies, use the greater:

(1) If the offense involved the planned or threatened use of violence, increase by 4 levels.

(2) If the conduct was intended to encourage persons other than or in addition to coconspirators to violate the internal revenue laws or impede or impair the Internal Revenue Service in the assessment and collection of revenue, increase by 2 levels.

* * * * *

*2. Alcohol and Tobacco Taxes*

26 U.S.C. 5601–5605, 5607, 5608
26 U.S.C. 5661, 5671, 5687, 5762

**§ 2T2.1. Non-Payment of Taxes**

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax loss.

For purposes of this guideline, the "tax loss" is the amount of taxes that the taxpayer failed to pay or attempted not to pay.

**§ 2T2.2. Regulatory Offenses**

(a) Base Offense Level: 4.

*3. Customs Taxes*

18 U.S.C. 496
18 U.S.C. 541–545, 547, 548, 550, 551
18 U.S.C. 1851
19 U.S.C. 283, 1436, 1484, 1485, 1586(e), 1706(b)

**§ 2T3.1. Evading Import Duties or Restrictions (Smuggling)**

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax loss.

For purposes of this guideline, the "tax loss" is the amount of the duty.

**§ 2T3.2. Receiving or Trafficking in Smuggled Property**

(a) Base Offense Level: Level from § 2T4.1 (Tax Table) corresponding to the tax loss.

For purposes of this guideline, the "tax loss" is the amount of the duty.

* * * * *

*4. Tax Table*

**§ 2T4.1. Tax Table**

| Tax loss | Offense level |
|---|---|
| (A) Less than $2,000 | 6 |
| (B) $2,000 to $5,000 | 7 |
| (C) $5,001 to $10,000 | 8 |
| (D) $10,001 to $20,000 | 9 |
| (E) $20,001 to $40,000 | 10 |
| (F) $40,001 to $80,000 | 11 |
| (G) $80,001 to $150,000 | 12 |
| (H) $150,001 to $300,000 | 13 |
| (I) $300,001 to $500,000 | 14 |
| (J) $500,001 to $1,000,000 | 15 |
| (K) $1,000,001 to $2,000,000 | 16 |
| (L) $2,000,001 to $5,000,000 | 17 |
| (M) More than $5,000,000 | 18 |

**COMMENTARY**

The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Especially in light of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations, however, deterring others from violating the tax laws is the primary consideration underlying these guidelines. Recognition that the sentence for a criminal tax case will be commensurate with the gravity of the offense should act as a deterrent to would-be violators.

1. Offenses Involving Income Taxes

This part deals with criminal violations of the internal revenue laws. The offense levels have been set independently of those for offenses such as fraud or theft because the collection of taxes involves a unique governmental interest and estimates of the level of evasion are extremely high.

§ 2T1.1. This section applies to convictions under 26 U.S.C. 7201. False statements in furtherance of the evasion (see §§ 2T1.2, 2T1.5, and 2T1.8) are considered part of the offense for purposes of this guideline.

This guideline relies most heavily on the amount of tax evaded because the chief interest protected by the statute is the collection of taxes. A greater evasion is obviously more harmful to the treasury, and more serious than a smaller one with otherwise similar characteristics. Furthermore, as the potential benefit from tax evasion increases, the sanction necessary to deter also increases.

For purposes of the guideline, the tax loss is the amount of tax that the taxpayer evaded or attempted to evade, plus interest to the date of the filing of an indictment or information. The tax loss does not include penalties. The court is to determine this amount as it would any other guideline factor. In some instances, such as when indirect methods of proof are used, the amount of the tax loss may be uncertain; the guidelines contemplate that the court will simply make a reasonable estimate based on the available facts.

While the definition of tax loss corresponds to the "criminal deficiency," its amount is to be determined by the same rules applicable in determining any other sentencing factor. In accordance with the "relevant conduct" approach adopted by the guidelines, tax losses resulting from more than one year are to be added regardless of whether the defendant is convicted of multiple counts.

By reference to § 2T1.3, the guideline adopts as an alternative minimum standard a tax loss based on a percentage of the dollar amounts of certain misstatements made in returns filed by the taxpayer. The purpose of this alternative standard is to limit disputes, especially those regarding whether the taxpayer was entitled to offset adjustments that he failed to claim.

The overlapping imprisonment ranges in the Tax Table should also result in minimizing the significance of disputes. The consequence of an inexact estimate of the tax loss is never severe, even when the tax loss is near the boundary of a range. For example, although the difference between $39,999 and $40,001 results in a change from level 10 to level 11, any sentence of eight to twelve months would be within the guidelines regardless of the offense level determination made by the court. Indeed, any sentence between ten and twelve months would be within the guidelines for a tax loss ranging from $30,000 to $150,000. As a consequence, for all dollar amounts, the Tax Table affords the court considerable latitude in evaluating other factors, even when the amount of the tax loss is uncertain.

Roughly half of all tax evaders are now sentenced to probation without imprisonment, while the other half receives sentences that require them to serve an average prison term of twelve months. This guideline is intended to reduce disparity in sentencing for tax evasion and to somewhat increase average sentence length. As a result, the number of purely probationary sentences will be reduced. The Commission believes that any additional costs of imprisonment that may be incurred as a result of the increase in the average term of imprisonment for tax evasion are inconsequential in relation to the potential increase in revenue. Current estimates are that income taxes are underpaid by approximately $80 billion annually.

Although currently some large-scale evaders serve as much as five years in prison, in practice the average sentence length for defendants sentenced to a term of imprisonment does not increase rapidly with the amount of tax evaded. Thus, the average time served by those sentenced to a term of imprisonment for evading less than $10,000 in taxes is about nine months, while the corresponding figure for those evading over

$100,000 in taxes is about sixteen months. Guideline sentences should result in small increases in the average length of imprisonment for most tax cases that involve less than $100,000 in tax evaded. The increase is expected to be somewhat larger for cases involving more taxes.

Failure to report criminally-derived income is included as a factor for deterrence purposes. This factor is intended to apply to all racketeering activities as defined in 18 U.S.C. 1961. Criminally-derived income is generally difficult to establish, so that the tax loss in such cases will tend to be substantially understated. An enhancement for offenders who violate the tax laws as part of a pattern of criminal activity from which they derive a substantial portion of their income also serves to implement the mandate of 28 U.S.C. 994(n). Current-practice estimates are that, on average, the presence of this factor increases time served by the equivalent of 2 levels.

Although tax evasion always involves some planning, unusually sophisticated efforts to conceal the evasion decrease the likelihood of detection and therefore warrant an additional sanction for deterrence purposes. An enhancement would be applied, for example, where the defendant used offshore bank accounts, or transactions through corporate shells. Analyses of data for other frauds and property crimes show that careful planning or sophistication generally results in an average increase of at least 2 levels.

The Commission has not made a less severe distinction for an employee who prepares fraudulent returns on behalf of his employer. The adjustments in Chapter Three, Part B (Role in the Offense) should suffice for this purpose.

**§ 2T1.2.** This section applies to violations of 26 U.S.C. 7203. Such violations are usually serious misdemeanors that are similar to tax evasion, except that there need be no affirmative act in support of the offense. They are rarely prosecuted unless the defendant also owed taxes that he failed to pay.

Because the conduct generally is tantamount to tax evasion, the guideline is similar to § 2T1.1. Because the offense is a misdemeanor, the offense level has been set at one below the level corresponding to evasion of the same amount of taxes. The commentary to § 2T1.1 regarding aggravating and mitigating factors also applies to this offense.

An alternative measure of the tax loss, 10 percent of gross income in excess of $20,000, has been provided because of the difficulty of computing the tax loss, which may become the subject of protracted civil litigation. It is expected that the measure used will generally understate the tax due, and will not call for a sentence approaching the maximum unless very large incomes are involved. Thus, the burden will remain on the prosecution to provide a more accurate estimate of the tax loss if it seeks enhanced punishment.

The intended impact of this guideline is to increase the average time served for this offense, and to increase significantly the number of violators who receive a term of imprisonment. Currently, the average time served for this offense is approximately 2.5 months, including those who are not sentenced to prison. Considering only those who do serve a term of imprisonment, the average term is about six to seven months. (5). § 2T1.4 applies to violations of 26 U.S.C. 7206(2). Together, these guidelines cover a wide variety of conduct that is usually equivalent to actual or attempted tax evasion (subsection 1), or aiding or abetting tax evasion (subsection 2). Accordingly, the guidelines treat the offenses much like tax evasion.

Existence of a tax loss is not an element of these offenses. Furthermore, in instances where the defendant is setting the groundwork for evasion of a tax that is expected to become due in the future, he may make false statements that underreport income that as of the time of conviction, may not yet have resulted in a tax loss. In order to gauge the seriousness of these offenses, the guidelines establish a rule for determining a "tax loss" based on the nature and magnitude of the false statements made. Use of this approach also avoids complex problems of proof and invasion of privacy when returns of persons other than the defendant and co-defendants are involved.

In certain instances, such as promotion of a tax shelter scheme, the defendant may advise other persons to violate their tax obligations through filing returns that find no support in the tax laws. If this type of conduct can be shown to have resulted in the filing of false returns (regardless of whether the principals were aware of their falsity), the misstatements in all such returns will contribute to one aggregate "tax loss."

The first specific offense characteristic in § 2T1.3 is the same as that in § 2T1.1. The first specific offense characteristic in § 2T1.4, however, applies to persons who derive substantial income through fraudulent tax schemes, rather than through other forms of crime. It serves, for example, to enhance the sentence for promoters of fraudulent tax shelters.

An increased offense level is specified for tax preparers and advisers because their misconduct poses a greater risk of revenue loss and is more clearly willful. Do not also employ § 3B1.3 (Abuse of Position of Trust or Special Skill) if this adjustment applies. If the defendant earns his living through promoting fraudulent tax schemes, § 2T1.4(b)(1) will increase the offense level further.

**§ 2T1.5.** This section applies to conduct proscribed by 26 U.S.C. § 7207, which is a misdemeanor. It is to be distinguished from 26 U.S.C. 7206(1) (§ 2T1.3), which is a felony that requires a false statement under penalty of perjury. The offense level has been set at 6 in order to give the sentencing judge considerable latitude because the conduct may be similar to tax evasion.

**§ 2T1.6.** This section applies to conduct proscribed by 26 U.S.C. § 7202, a felony that is infrequently prosecuted. The failure to collect or truthfully account for the tax must be willful, as must the failure to pay. Where no effort is made to defraud the employee, the offense is a form of tax evasion, and is treated as such in the guidelines. In the event that the employer not only failed to account to the Internal Revenue Service and pay over the tax, but also collected the tax from employees and did not account to them for it, it is both tax evasion and a form of embezzlement. In such instances, the court may wish to consider whether a sentence above the guideline is warranted.

**§ 2T1.7.** This section applies to conduct proscribed by 26 U.S.C. 7215 and 7512(b). This offense is a misdemeanor that does not require any intent to evade taxes, nor even that taxes have not been paid. The more serious offense is 26 U.S.C. 7202 (see § 2T1.6).

This offense should be relatively easy to detect and fines may be feasible. Accordingly, it has been graded considerably lower than tax evasion, although some effort has been made to tie the offense level to the level of taxes that were not deposited. The tax loss is the amount of tax that was not deposited. If funds are deposited and withdrawn without being paid to the Internal Revenue Service, they should be treated as never having been deposited. Basing the fine on the total amount of funds not deposited is suggested.

**§ 2T1.8.** This section applies to violations of 26 U.S.C. 7204 and 7205, misdemeanors that rarely result in substantial terms of imprisonment. If the defendant was attempting to evade, rather than merely delay, payment of taxes, a sentence above the guidelines may be warranted.

**§ 2T1.9.** This section applies to conspiracies to "defraud the United States by impeding, impairing, obstructing and defeating . . . the collection of revenue." *United States* v. *Carruth*, 699 F.2d 1017, 1021 (9th Cir. 1983), cert. denied, 104 S. Ct. 698 (1984). See also United States v. *Browning*, 723 F.2d 1544 (11th Cir. 1984); United States v. *Klein*, 247 F.2d 908, 915 (2d Cir. 1957), cert. denied, 355 U.S. 924 (1958). It does not apply to taxpayers, such as a husband and wife, who merely evade taxes jointly or file a fraudulent return.

This type of conspiracy generally involves substantial sums of income. It also typically is complex and may be far-reaching, making it quite difficult to evaluate the extent of the revenue loss caused. Accordingly, a minimum base offense level of 10 has been specified. If, given the nature of the underlying conduct, a larger resulting tax loss can be established using either the definition in § 2T1.1, or § 2T1.3 such loss would determine the base offense level.

The specific offense characteristics are in addition to those specified in § 2T1.1 and § 2T1.3. These are included because of the potential for such conspiracies to subvert the revenue system, and the danger to law enforcement agents and the public that some of these conspiracies involve. Since the offense is a conspiracy, adjustments from Chapter Three, Part B (Role in the Offense) usually will apply.

### 2. Offenses Involving Alcohol and Tobacco Taxes

This section deals with offenses contained in Parts I–IV of Subchapter J of Title 26, chiefly 26 U.S.C. 5601–5605, 5607, 5608, 5661, 5671, 5697, and 5762, where the essence of the conduct is tax evasion or a regulatory

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violation. Because these offenses are no longer a major enforcement priority, no effort has been made to provide a section-by-section set of guidelines. Rather, the conduct is dealt with by dividing offenses into two broad categories: tax evasion offenses and regulatory offenses.

§ 2T2.1. The most frequently prosecuted conduct violating this section is operating an illegal still. 26 U.S.C. 5601(a)(1). Offenses in this subsection are treated as equivalent to income tax evasion offenses. The tax loss is the total amount of unpaid taxes that were due on the alcohol and/or tobacco.

Offense conduct directed at more than tax evasion (e.g., theft or fraud) may warrant departure above the guideline.

§ 2T2.2. For offenses where there is no effort to evade taxes, such as recordkeeping violations, the offense level is set at 5. Prosecution of these offenses is rare.

### 3. Offenses Involving Customs

This part deals with violations of 18 U.S.C. 496, 541–545, 547, 548, 550, 551, 1915 and 19 U.S.C. 283, 1436, 1464, 1465, 1586(e), 1706(b). These guidelines are primarily aimed at revenue collection or trade regulation. They are not intended to deal with the importation of contraband, such as drugs, or other items such as obscene material, firearms or pelts of endangered species, the importation of which is prohibited or restricted for non-economic reasons. Other, more specific legislation generally applies to most of these offenses. Importation of contraband or stolen goods would be a reason for referring to another, more specific guideline, or for imposing a sentence above that specified in these guidelines.

§ 2T3.1. This offense is treated as equivalent to tax evasion. A lower offense level, or a point near the minimum of the range, might be appropriate for cases involving tourists who bring in items for their own use. Such conduct generally poses a lesser threat to revenue collection.

Particular attention should be given to those items for which entry is prohibited, limited, or restricted. Especially when such items are harmful or protective quotas are in effect, the duties evaded on such items may not adequately reflect the harm to society or protected industries resulting from their importation. In such instances, the court should impose a sentence above the guideline. A sentence based upon an alternative measure of the "duty" evaded, such as the increase in market value due to importation, or 25 percent of the items' fair market value in the United States, might be considered.

§ 2T3.2. This offense, encompassed by 18 U.S.C. 545, is treated as equivalent to smuggling without payment of any duty.

## Part X—Other Offenses

### *1. Conspiracies, Attempts, Solicitations*

18 U.S.C. 286
18 U.S.C. 371–373
18 U.S.C. 2271

**§ 2X1.1. Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline**

(a) Base Offense Level: The base offense level from the guideline for the object offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty.

(b) Specific Offense Characteristics.

(1) If an attempt or solicitation, decrease by 3 levels, unless the defendant completed all the acts the defendant believed necessary for successful completion of the offense or the circumstances demonstrate that the defendant was about to complete all such acts but for apprehension or interruption by some similar event beyond the defendant's control.

(2) If a conspiracy, decrease by 3 levels, unless the defendant or a co-conspirator completed all the acts the conspirators believed necessary on their part for the successful completion of the offense or the circumstances demonstrate that the conspirators were about to complete all such acts but for apprehension or interruption by some similar event beyond their control.

(3) If a solicitation, and the statute treats solicitation identically with the object of the offense, do not apply § 2X1.1(b)(1), if the offense level for solicitation is the same as that for the object offense.

**COMMENTARY**

§ 2X1.1 (18 U.S.C. 286, 371–372, 2271). Many types of attempts or conspiracies are covered by specific guidelines, e.g., § 2A2.1 (Attempt or Conspiracy to Commit Murder); § 2A3.1 (Attempted Criminal Sexual Abuse). This section applies only in the absence of a more specific guideline.

Under the principle adopted in this section, in many cases the offense level will be the same as that for the substantive offense which the defendant conspired or attempted to commit. However, speculative specific offense characteristics will not be applied. Specific offense characteristics apply only to the conduct that the government demonstrates was specifically intended or actually occurred. For example, if two defendants are arrested during the conspiratorial stage of planning an armed bank robbery, the offense level ordinarily would not include speculative aggravating factors such as possible injury to others, hostage taking, discharge of a weapon, or obtaining a large sum of money. The offense level would simply reflect the level applicable to robbery of a financial institution with a weapon. On the other hand in an attempt, if it could be established that the defendants actually intended to physically restrain the tellers, that factor would be considered. In an attempted theft, the value of the items that the defendant intended to steal would be considered.

In most prosecutions for conspiracies or attempts, the object offense was substantially completed, or the offense was interrupted or prevented on the verge of completion by the intercession of law enforcement authorities or the victim. In such cases, no reduction of the offense level is warranted. Sometimes, however, the arrest occurs well before the defendant or any co-conspirator has completed the necessary acts of the substantive offense. Because it appears likely that a defendant would commit the substantive offense if not apprehended, a substantial sentence is warranted, but punishment should take account of the dangerousness and culpability of the conduct that has actually occurred, not solely the conduct which is predicted. Under such circumstances, a reduction of 2 levels is appropriate.

If the object offense is not covered by a specific guideline, see § 2X5.1 (Other Offenses).

If the defendant was convicted of conspiracy or solicitation and also for the completed offense, the sentence for the conspiracy or solicitation shall be imposed to run concurrently with the sentence for the object offense, except in cases where it is otherwise specifically provided for by the guidelines or by law. 28 U.S.C. 994(l)(2).

### *2. Aiding and Abetting*

**§ 2X2.1. Aiding and Abetting**

The offense level is the same level as that for the underlying offense.

**COMMENTARY**

§ 2X2.1 (18 U.S.C. 2, 752–753, 755–757, 2383). A defendant convicted of aiding and abetting is punishable as a principal. 18 U.S.C. § 2. This section provides that aiding and abetting the commission of an offense has the same offense level as that for the underlying offense, i.e., the offense that the defendant aided or abetted. Adjustments for role in the offense may apply, however. See Chapter Three, Part B.

### *3. Accessory After the Fact*

**§ 2X3.1. Accessory After the Fact**

(a) Base Offense Level: 6 levels lower than the offense level for the underlying offense, but in no event less than 5, or more than 30.

**COMMENTARY**

§ 2X3.1 (18 U.S.C. 3, 757, 1071–1072, 1381, 2388(c)). An accessory after the fact may receive up to one-half the punishment prescribed for the principal offender, or if the principal is punishable by death, not more than ten years. 18 U.S.C. 3. The underlying offense is the offense as to which the defendant was an accessory.

### *4. Misprision of Felony*

**§ 2X4.1. Misprision of Felony**

(a) Base Offense Level: 9 levels lower than the offense level for the underlying offense, but in no event less than 4, or more than 19.

**COMMENTARY**

**§ 2X4.1 (18 U.S.C. 4). The maximum penalty for misprision of felony (18 U.S.C. 4) is three years' imprisonment. The underlying offense is the offense as to which the misprision was committed.**

*5. All Other Offenses*

**§ 2X5.1. Other Offenses (Policy Statement)**

**If the offense was one for which no specific guideline is written, apply the most analogous guideline.**

**COMMENTARY**

**§ 2X5.1 (18 U.S.C. 3553(a)(2)). This section addresses cases in which a defendant has been convicted of an offense for which there is no specific guideline. If no sufficiently analogous guideline exists, the court may impose any sentence that is reasonable and consistent with the purposes of sentencing. 18 U.S.C. 3553(a)(2).**

**CHAPTER THREE—ADJUSTMENTS**

**Part A—Victim-Related Adjustments**

*1. Victim-Related Adjustments*

**The following adjustments are included in this Part because they may apply to a wide variety of offenses. They are to be treated as specific offense characteristics. Do not apply these adjustments if the offense guideline incorporates these factors either in the base offense level or as a specific offense characteristic.**

**§ 3A1.1. Vulnerable Victim**

**If the defendant selected or targeted the victim of the offense because of the victim's unusual vulnerability due to age, physical or mental condition, or because the victim was particularly susceptible to the criminal conduct, increase by 2 levels.**

**COMMENTARY**

**This adjustment applies to all offenses where the victim's vulnerability played any substantial part in the defendant's decision to commit the offense. The adjustment would apply, for example, in a fraud case where the defendant marketed an ineffective cancer cure, but not in a case where the defendant sold fraudulent securities to the general public and one of the purchasers happened to be senile. Similarly, it would apply in a robbery case where the defendant selected a handicapped victim, but not in an assault case where an elderly wife assaulted her husband.**

**§ 3A1.2. Official Victim**

**If the victim was any law-enforcement or corrections officer, any other official as defined in 18 U.S.C. 1114, or a member of the immediate family thereof, and the crime was motivated by such status, increase by 3 levels.**

**COMMENTARY**

**This adjustment applies to all offenses where the defendant knew that the victim was in the performance of the victim's official duties, or the offense was committed because of the official status.**

**§ 3A1.3. Restraint of Victim**

**If the victim of a crime was physically restrained in the course of the offense, increase by 2 levels.**

**COMMENTARY**

**This adjustment applies to offenses in Chapter Two, Part A (Offenses Against the Person) and Part H (Offenses Involving Individual Rights) where the victim was physically restrained, as by being tied, bound or locked up.**

**Part B—Role in the Offense**

**Sections 3B1.1 and 3B1.2 address relative responsibility in cases involving more than one participant. Section 3B1.3 applies regardless of the number of participants.**

**§ 3B1.1. Aggravating Role**

**Based on the defendant's role in the offense, increase the offense level as follows:**

**(a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.**

**(b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels.**

**(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by 2 levels.**

**§ 3B1.2. Mitigating Role**

**Based on the defendant's role in the offense, decrease the offense level as follows:**

**(a) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels.**

**(b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels.**

**In cases falling between (a) and (b), decrease by 3 levels.**

**§ 3B1.3. Abuse of Position of Trust or Use of Special Skill**

**If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels. This adjustment may not be employed in addition to that provided for in § 3B1.1, nor may it be employed if an abuse of trust or skill is included in the base offense level or specific offense characteristic.**

**§ 3B1.4. In Any Other Case, No Adjustment Is Made For Role in the Offense**

**COMMENTARY**

**In offenses involving more than one participant, the number of persons involved is often suggestive of a criminal organization or structure within which the defendant's role or relative responsibility can be defined in fact and for purposes of sentencing. The size of the organization or activity may also be indicative of the degree of success the participants may enjoy and the potential duration or permanency (and long-term effects) of the scheme. Where the offense involves more than one participant, the sentencing judge shall select the most appropriate category in §§ 3B1.1–3B1.2, or § 3B1.4, to reflect the defendant's role in the offense and relative culpability. In selecting the appropriate category, all persons involved during the course of the entire offense shall be included in determining the size of the association or conspiracy.**

**Section 3B1.1 distinguishes relative responsibility for purposes of sentencing. The extent of the activity is suggestive of the scope of the undertaking, its harms or its effects. A fraud or scheme that only involves three participants but involves the unknowing services of many outsiders could be considered extensive. In distinguishing leadership and organizational role from one of mere management or supervision, titles such as "kingpin" or "boss" are not controlling. Factors the court should consider include the exercise of decision-making authority, the degree of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the planning or organization of the offense, the scope of the illegal activity, the nature and seriousness of the criminal activity, and the degree of control and authority exercised over others. There can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy.**

**In relatively small criminal enterprises that are not otherwise to be considered as extensive in scope or in planning or preparation, the distinction between organization and leadership, and that of management or supervision is of less significance than in larger enterprises that tend to have clearly delineated divisions of responsibility. This is reflected in the inclusiveness of § 3B1.1(c).**

**Section 3B1.2(a) applies to a defendant who plays a minimal role in concerted activity. It is intended to apply to defendants who are plainly among the least culpable of those involved in the conduct of a group of individuals. Under this provision, the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant. It is intended that the downward adjustment for a minimal participant will be used**

infrequently. It would be appropriate, for example, for someone who played no other role in a very large drug smuggling operation than to offload part of a single marijuana shipment, or in a case where an individual was recruited as a courier for a single smuggling transaction involving a small amount of drugs.

For purposes of § 3B1.2(b), a minor participant means any participant who is less culpable than most others in the scheme but who has more than a minimal role.

The adjustment in § 3B1.3 applies to persons who abuse their positions of trust, or their special skills, to significantly facilitate the commission or concealment of a crime. The position of trust must have contributed in some substantial way, and not merely have provided an opportunity that could have as easily been afforded to other persons.

"Special skill" refers to a skill not possessed by members of the general public, and usually requiring substantial education, training or licensing. Examples would include pilots, lawyers, doctors, accountants, chemists and demolition experts.

**Part C—Obstruction**

**§ 3C1.1. Willfully Obstructing or Impeding Proceedings**

If the defendant willfully impeded or obstructed, or attempted to impede or obstruct the administration of justice during the investigation or prosecution of the instant offense, increase the offense level from Chapter Two by 2 levels.

**COMMENTARY**

This section provides a sentence enhancement for a defendant who engages in conduct calculated to mislead or deceive authorities or those involved in a judicial proceeding, or to otherwise willfully interfere with the disposition of criminal charges. The following conduct, while not exclusive, may provide a basis for applying this adjustment:

(1) Destroying or concealing material evidence, or attempting to do so;

(2) Directing or procuring another person to destroy or conceal material evidence, or attempting to do so;

(3) Testifying untruthfully or suborning untruthful testimony concerning a material fact, or producing or attempting to produce an altered, forged, or counterfeit document or record during a preliminary or grand jury proceeding, trial, a sentencing proceeding, or any other judicial proceeding;

(4) Threatening, intimidating, or otherwise unlawfully attempting to influence a codefendant, witness or juror, directly or indirectly;

(5) Furnishing material falsehoods to a probation officer in the course of a presentence or other investigation for the court.

In applying this provision, a sentencing judge should evaluate suspect testimony and statements in a light most favorable to the defendant.

This provision is not intended to punish a defendant for the exercise of a Constitutional right. A defendant's denial of guilt is not a basis for application of this provision.

Sentences imposed after an independent prosecution for perjury or obstruction of justice are governed by Chapter Two, Part J (Offenses Involving the Administration of Justice).

**Part D—Multiple Counts**

*Introduction.* This section provides rules for determining the combined offense level when the defendant is convicted of multiple counts. Implementation of the resulting sentence is dealt with in Chapter Five, Determining the Sentence.

The provisions of this section are necessarily detailed. In essence, they call for a three-step procedure. First, the court will group the various counts of conviction into Count Groups, each group consisting of counts representing closely-related conduct. Second, the court will determine the guideline offense level applicable to each Count Group. Third, the court will identify the Count Group carrying the highest offense level and determine the extent to which that offense level must be increased to produce the combined offense level.

The basic idea underlying this section is to add up commensurable items, such as money and drugs, contained in separate counts, and treat the result as if it were a conviction on a single count for the total amount and total offense behavior. In situations where a person is convicted of several independent offenses embodied in several different counts, the punishment will be aggravated for each additional offense, but on a diminishing scale. Where the other offenses are closely interrelated, they are grouped together and treated as a single count. The reason the section is complicated is that there must be rules for determining whether separate counts really do in fact embody distinct offenses that should result in added punishment.

**§ 3D1.1. Procedure for Determination of Offense Level on Multiple Counts**

When a defendant has been convicted of more than one count, the court shall:

(a) Group the counts resulting in conviction into distinct Count Groups by applying the rules specified in § 3D1.2.

(b) Determine the offense level applicable to each Count Group by applying the rules specified in § 3D1.3.

(c) Determine the combined offense level applicable to all Count Groups taken together by applying the rules specified in § 3D1.4.

**§ 3D1.2. Count Groups**

All counts involving substantially the same harm shall be grouped together into a single Count Group. A count for which the statute mandates imposition of a consecutive sentence is excluded from such groups for purposes of §§ 3D1.2–3D1.5. Counts involve the same harm within the meaning of this rule:

(a) When counts involve the same victim and the same act or transaction.

(b) When counts involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan, including, but not limited to:

(1) A count charging conspiracy or solicitation and a count charging any substantive offense that was the sole object of the conspiracy or solicitation. 28 U.S.C. 994(1)(2).

(2) A count charging an attempt to commit an offense and a count charging the commission of the offense. 18 U.S.C. 3584(a).

(3) A count charging an offense based on a general prohibition and a count charging violation of a specific prohibition encompassed in the general prohibition. 28 U.S.C. 994(u).

(c) When one of the counts embodies conduct that is treated as a specific offense characteristic in or other adjustment to the guideline applicable to another of the counts.

(d) When counts involve the same general type of offense and the guidelines for that type of offense determine the offense level primarily on the basis of the total amount of harm or loss, the quantity of a substance involved, or some other measure of aggregate harm. Offenses of this kind are found in Chapter Two, Part B (except §§ 2B2.1–2B3.3), Part D (except §§ 2D1.6 2D3.4), Part E (except §§ 2E1.1 2E2.1), Part: F, Part G (§§ 2G2.2–2G3.1), Part K (§ 2K3.3), Part L (§ 2L1.3), Part N (§§ 2N2.1, 2N3.1), Part Q (§§ 2Q2.1, 2Q2.2), Part R, Part S, and Part T. This rule also applies where the guidelines deal with offenses that are continuing, e.g., § 2Q1.3(b)(1)(A).

**§ 3D1.3. Offense Level Applicable to Each Count Group**

Determine the offense level applicable to the Count Groups as follows:

(a) In the case of counts grouped together pursuant to § 3D1.2(a)–(c), the offense level applicable to a Count Group is the offense level, determined in accordance with all provisions of Chapters Two and Three, for the most serious of the counts comprising the Group, i.e., the highest offense level of the counts in the Group.

(b) In the case of counts grouped together pursuant to § 3D1.2(d), the offense level applicable to a Count

Group is the offense level corresponding to the aggregated quantity, determined in accordance with Chapters Two and Parts A, B and C of Chapter Three. When different counts involve varying offenses, apply the offense guideline that produces the highest offense level.

(c) The "most serious" Count Group is that with the highest offense level.

**§ 3D1.4. Combined Offense Level**

The combined offense level is determined by taking the offense level applicable to the most serious Count Group and increasing that offense level by the amount indicated in the following table:

| Number of units | Increase in offense level |
|---|---|
| 1 | None. |
| 1½ | Add 1 level. |
| 2 | Add 2 levels. |
| 3 | Add 3 levels. |
| 4 or 5 | Add 4 levels. |
| More than 5 | Add 5 levels. |

In determining the number of Units for purposes of this section:

(a) Count as one Unit the most serious Count Group. Also count one Unit for each Count Group that is equally serious or 1 to 4 levels less serious.

(b) Count as one-half Unit any Count Group that is 5 to 8 levels less serious than the most serious Count Group.

(c) Disregard any Count Group that is 9 or more levels less serious than the most serious Count Group. Such Count Groups will not increase the applicable offense level but may provide a reason for sentencing at the higher end of the sentencing range for the applicable offense level.

(d) Except when the total number of Units is 1½, round up to the next largest whole number.

**§ 3D1.5. Total Punishment**

The total punishment to be imposed is the punishment that the court determines to be appropriate for the defendant's criminal history category and the combined offense level, in accordance with the rules specified in Chapter Five.

**COMMENTARY**

**§ 3D1.1.** This section summarizes the procedure to be used for determining a combined offense level for use in determining and implementing the sentence pursuant to Chapter Five.

**§ 3D2.2.** The first step in determining the appropriate punishment in a case involving multiple counts is to combine counts that involve the same harm, or harms that are closely related because they arise out of the same transaction or a common scheme. This section specifies, however, that when the defendant has been convicted on a count for which the statute mandates imposition of a consecutive sentence, such as 18 U.S.C. § 924(c) (use of firearm in commission of a crime of violence), that count is excluded from the punishment calculations under §§ 3D1.2–3D1.4. Note that for convictions under 18 U.S.C. § 924(c), the offense level for other counts will be affected, however, because the specific offense characteristics for weapon use are ignored. See Commentary to § 2K2.4.

To group counts as required by this section, the court must determine whether the counts involve the same victim and the same or closely related transactions. For example, if a defendant, in the course of a single attack, inflicted two stab wounds on one victim, and if each wound were the subject of a separate assault count, the two counts would be grouped together because they involve harm inflicted on the same victim in the same transaction. In the abstract, infliction of two wounds is more serious than infliction of one, but the number of blows is less significant than the overall seriousness of the injuries, which will determine the offense level regardless of the manner in which counts are formally drafted.

The Commission also concluded that the same principle should apply even when different kinds of harm are inflicted on the victim, provided that such harms arise out of the same or closely related transactions. For example, a defendant who commits a forcible sexual offense, inflicts stab wounds, and then takes the victim's purse may be convicted in separate counts of rape, aggravated assault and robbery. Under § 3D1.2(b), the three counts would be grouped together and their seriousness (determined under § 3D1.3) would be determined by the offense level applicable to the most serious of the counts (rape), as adjusted to reflect the circumstances of its occurrence. Although rape accompanied by robbery is somewhat more serious than rape alone, it is in no way comparable, in danger or in victim suffering, to a rape followed two days later by robbery of the same or a different victim. The Commission concluded that guidelines treating counts as distinct whenever they involved any distinguishable harms would be unacceptable because doing so would overcount and would not capture the essential distinction between contemporaneous harms to the same victim and harms to separate victims in distinct transactions. The offense guideline for rape includes the most common aggravating factors, including injury; the additional factor of property loss from the robbery ordinarily can be considered adequately within the guideline range, which is fairly wide.

A related issue concerns the treatment of the defendant who harms several victims in the course of a single transaction. A defendant may shoot three F.B.I. agents in a single gun fight. Some would argue that all counts arising out of a single transaction or occurrence should be grouped together even when there are distinct victims. However, the Commission concluded that cases involving injury to distinct victims are roughly comparable, whether or not the injuries are inflicted in distinct transactions, and each such count should be treated separately. In general, counts are grouped together only when they involve both the same victim and the same or closely related transactions, except as provided in § 3D1.2(d).

Section 3D1.2(c) provides that when a factor that represents a separate count, e.g., weapon possession or obstruction of justice, is also a specific offense characteristic in or other adjustment to another count, the count represented by that factor is to be grouped with the count as to which it constitutes an aggravating factor. Note that sometimes there may be several counts, each of which could be treated as an aggravating factor to another, more serious count, but the more serious count allows an adjustment only for one occurrence of that factor. In such cases, only the count representing the most serious of those factors is to be grouped with the other count. For example, if in a bank robbery on a federal enclave two tellers are assaulted and one of them is injured seriously, the assault with serious bodily injury would be grouped with the robbery count, while the remaining assault would be treated separately.

Section 3D1.2(d) requires grouping of offenses for which the guidelines use some measure of aggregate harm as the primary criterion for determining the offense level. When a teller embezzles funds from a bank, the seriousness of the offense depends primarily on the total amount taken; punishment should not be influenced significantly by whether one or several distinct acts are charged. Similarly, in a mail fraud case, the seriousness of the offense depends on the scope and sophistication of the fraud, not on the number of mailings.

Note that a Count Group often will include only one count.

**§ 3D1.3.** This section provides rules for determining the offense level associated with each set of counts grouped together as a single Count Group. When applying § 3D.3(c), note that guidelines for similar offenses have been coordinated to produce identical offense levels, at least when large sums are involved.

**§ 3D1.4.** This section provides a rule for calculating the combined offense level applicable to all counts taken together. The court should first identify the offense level applicable to the most serious Count Group and then increase that offense level by the number of offense levels indicated in the table. However, when the most serious Count Group carries an offense level substantially higher than that applicable to the other Count Groups, counting those Groups fully for purposes of the table could add more punishment than such offenses would carry if prosecuted separately. To avoid this anomalous result the Commission determined that Count Groups 9 or more levels less serious than the most serious Count Group should not be counted for purposes of the table and that Groups 5 to 8 levels less serious should be treated as equal to one-half of a Group. Thus, if the most serious Count Group is at offense level 15 and if two other Count Groups are at level 10, there would be a total of two Units for purposes of the table (one plus one-half plus one-half) and the combined offense level would be 17. When this approach produces a fraction in the total

Units, other than 1½, it is rounded up to the nearest whole number.

An alternative method for ensuring that offense level increases reflect the potentially much lower seriousness of other Count Groups would be to determine the appropriate offense level adjustment through a more complex mathematical formula. The Commission concluded that any gain in precision achieved by such an approach would be more than offset by its complexity. Since the problem arises only when the most serious offense is much more serious than all of the others, the judge ordinarily will have room to impose added punishment by sentencing toward the upper end of the range authorized for the most serious offense. Situations in which this approach will leave inadequate scope for ensuring some additional punishment for the additional crimes are likely to be unusual and can be handled, if they arise, by departure from the guidelines.

Another problem can arise when all Count Groups carry very low offense levels, as for example when the defendant trespasses on two distinct pieces of property in the course of a single transaction. The first trespass count would carry an offense level of 4 and the second count would increase the offense level to 6, raising the maximum authorized term of imprisonment by 50%. Again, this problem could be avoided by relying on precise mathematical formulae, but the Commission concluded that such an approach was unnecessary since the authorized ranges at the lower offense levels are broad enough to permit courts to avoid any excessive punishment increases for counts of minor significance. Once again situations in which this approach will be inadequate to avoid injustice are likely to be rare and can be handled by departure from the guidelines.

§ 3D1.5. This section refers the court to Chapter Five in order to determine the total punishment to be imposed based upon the combined offense level.

**Illustrations.** The following examples, drawn from presentence reports in the Commission's files, illustrate the operation of the guidelines on consecutive and concurrent sentences:

1. Defendant A was convicted on four counts each charging robbery of a different bank. Because each count involved a different victim, each would represent a distinct Count Group. § 3D1.2. In each of the first three robberies, the offense level was 19 (18 plus a 1-level increase because a financial institution was robbed) (§ 2B2.1). In the fourth robbery $12,000 was taken and a gun was discharged; the offense level was therefore 25. As the first three counts are 6 levels lower than the fourth, each of the first three represents one-half a unit for purposes of § 3D1.4. Altogether there are 2½ units (rounded up to 3), and the offense level for the most serious (25) is therefore increased by 3 levels under the table. The combined offense level is 28.

2. Defendant B, a housing inspector, was convicted on four counts, each charging receipt of a bribe. Counts one and two charged receiving payments of $3,000 and $2,000 from Landlord X in return for a single action with respect to a single property. Count three charged receipt of $9,500 from Landlord X for taking action with respect to another property, and count four charged receipt of $1,000 from Landlord Y for taking action with respect to a third property. Counts one and two, arising out of the same transaction, are combined into a single Count Group involving a $5,000 bribe and hence an offense level of 11 (§ 2C1.1(a)(1); § 2F1.1). Each of the two remaining counts represents a distinct Count Group, at offense level 13. As there are altogether three Count Units, the offense level for the most serious (11) is increased by 3 levels. The combined offense level is 14.

3. Defendant C was convicted on the following seven counts: (1) theft of a $2,000 check; (2) uttering the same $2,000 check; (3) possession of a stolen $1,200 check; (4) forgery of a $500 check; (5) possession of a stolen $3,000 check; (6) forgery of the same $1,800 check; (7) uttering the same $3,000 check.

Counts 1, 3 and 5 involve offenses under Part B (Theft), while Counts 2, 4, 6 and 7 involve offenses under part F (Fraud and Deceit). For purposes of § 2D1.2(c), fraud and theft are treated as offenses of the same kind, and therefore all counts are grouped into a single Count Group, for which the offense level depends on the aggregate harm. The total value of the checks is $4,000. The fraud guideline is applied, because it produces results that are at least as large as the theft guideline. The base offense level is 6, and there is an aggravator of 1 level for property value. However, because the conduct involved repeated acts, the offense level is raised to 10 (§ 2F1.1(b)(1)(B)). The combined offense level therefore is 10.

4. Defendant D was convicted on four counts: (1) distribution of 230 grams of cocaine; (2) distribution of 150 grams of cocaine; (3) distribution of seventy-five grams of heroin; (4) offering a DEA agent $20,000 to avoid prosecution. The combined offense level for drug offenses is determined by the total quantity of drugs, converted to heroin equivalents. Count 1 translates into forty-six grams of heroin; Count 2 translates into thirty grams of heroin. The total is 151 grams of heroin. Under § 2D1.1, the combined offense level for the drug offenses is 26. In addition, because of the attempted bribe of the DEA agent, this offense level is increased by 2 levels to 28 under § 3C1.1 (Obstruction). Because the bribery is accounted for by § 3C1.1, it becomes part of the drug Count Group and would not otherwise increase the offense level of the drug Count Group. § 3D1.2(c).

5. Defendant E was convicted of four counts arising out of a scheme pursuant to which he received kickbacks from subcontractors. The counts were as follows: (1) The defendant received $27,000 from subcontractor A relating to contract X (Mail Fraud). (2) The defendant received $12,000 from subcontractor A relating to contract X (Commercial Bribery). (3) The defendant received $15,000 from subcontractor A relating to contract Y (Mail Fraud). (4) The defendant received $20,000 from subcontractor B relating to contract Z (Commercial Bribery). The mail fraud counts are covered by § 2F1.1 (Fraud and Deceit). The bribery counts are covered by § 2B4.1 (Commercial Bribery), which treats the offense as a sophisticated fraud. The total money involved is $74,000, which results in an offense level of 13 under either § 2B4.1 or § 2F1.1. Consequently, the combined offense level is 13.

## Part E—Acceptance of Responsibility

### § 3E1.1. Acceptance of Responsibility

(a) If the defendant clearly demonstrates a recognition and affirmative acceptance of personal responsibility for the offense of conviction, reduce the offense level by 2 levels.

(b) A defendant may be given consideration under this section without regard to whether his conviction is based upon a guilty plea or a finding of guilt by the court or jury or the practical certainty of conviction at trial.

(c) A defendant who enters a guilty plea is not entitled to a sentencing reduction under this section as a matter of right.

**COMMENTARY**

The reduction of sentence available under § 3E2.1 recognizes a number of societal interests. The defendant who affirmatively accepts personal responsibility for the offense, who takes affirmative steps to dissociate himself from criminal conduct, and who attempts to rectify the harm caused by the conduct may be entitled to receive recognition for these socially desirable actions. In determining whether the defendant qualifies for this provision, the timeliness of the defendant's conduct in manifesting an acceptance of responsibility for the offense is particularly important. Other appropriate considerations include, but are not limited to, the following:

(1) Voluntary termination or withdrawal from criminal activity or associations;

(2) Voluntary payment of restitution to a victim prior to adjudication of guilt;

(3) Voluntary and truthful admission to authorities of involvement in the offense and related conduct;

(4) Voluntary surrender to authorities before charges are filed or an arrest warrant is executed;

(5) Voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense;

(6) Voluntary resignation from the office or position held during the commission of the offense.

The sentencing judge is in a unique position to evaluate the defendant's acceptance of responsibility. For this reason, the determination of the sentencing judge is entitled to great deference on review and should not be disturbed unless without foundation.

Subdivisions (b) and (c) provide that the availability of a reduction under § 3E2.1 is not governed by the plea entered. A defendant may manifest sincere contrition and take steps toward reparation and

rehabilitation even if he exercises his constitutional right to a trial. This may occur when a defendant decides to go to trial to assert and preserve issues that do not relate to factual guilt, to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct, or to raise evidentiary issues that may result in the acquittal. Conversely, a defendant who perjures himself, suborns perjury or otherwise obstructs the trial or the administration of justice, cf. § 3E1.1, is not entitled to an adjustment for acceptance of responsibility.

Although a guilty plea may be some evidence of the defendant's acceptance of responsibility, it does not automatically entitle him to a sentencing adjustment.

## CHAPTER FOUR—CRIMINAL HISTORY

### Part A—Criminal History

*Introduction.* The Comprehensive Crime Control Act sets forth four purposes of sentencing. (See 18 U.S.C. 3553(a)(2).) A defendant's record of past criminal conduct is directly relevant to those purposes. A defendant with a record of prior criminal behavior is more culpable than a first offender and thus deserving of greater punishment. General deterrence of criminal conduct dictates that a clear message be sent to society that repeated criminal behavior will aggravate the need for punishment with each recurrence. To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered. Repeated criminal behavior is an indicator of a limited likelihood of successful rehabilitation.

The specific factors included in § 4A1.1 and § 4A1.3 are consistent with the extant empirical research assessing correlates of recidivism, and patterns of career criminal behavior. While empirical research has shown that other factors are correlated highly with likely recidivism, e.g., age, for policy reasons they were not here included at this time. The Commission has made no definitive judgment in respect to the reliability of the presently existing data. However, the Commission will review further data insofar as it becomes available in the future.

### § 4A1.1. Criminal History Category

The total points from items (a) through (e) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

(a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.

(b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

(c) Add 1 point for each prior sentence not included in (a) or (b), up to a total of 4 points for this item.

(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

(e) Add 2 points if the defendant committed the instant offense less than two years after release from imprisonment on a sentence counted under (a) or (b). If 2 points are added for item (d), add only 1 point for this item.

### § 4A1.2. Definitions and Instructions for Computing Criminal History

(a) Prior Sentence Defined:

(1) The term "prior sentence" means any sentence previously imposed upon adjudication of guilt, whether by guilty plea, trial, or plea of nolo contendere, for conduct not part of the instant offense.

(2) Prior sentences imposed in unrelated cases are to be counted separately. Prior sentences imposed in related cases are to be treated as one sentence for purposes of the criminal history. Use the longest sentence of imprisonment if concurrent sentences were imposed and the aggregate sentence of imprisonment imposed in the case of consecutive sentences.

(3) A conviction for which the imposition of sentence was totally suspended or stayed shall be counted as a prior sentence under § 4A1.1(c).

(b) Sentence of Imprisonment Defined:

(1) The term "sentence of imprisonment" means a sentence of incarceration and refers to the maximum sentence imposed.

(2) If part of a sentence of imprisonment was suspended, "sentence of imprisonment" refers only to the portion that was not suspended.

(c) Sentences Counted and Excluded:

Sentences for all felony offenses are counted. Sentences for misdemeanor and petty offenses are counted, except as follows:

(1) Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are counted only if (A) the sentence was a term of probation of at least one year or a term of imprisonment of at least thirty days, or (B) the prior offense was similar to an instant offense:

Contempt of court
Disorderly conduct or disturbing the peace
Driving without a license or with a revoked or suspended license
False information to a police officer
Fish and game violations
Gambling
Hindering or failure to obey a police officer
Leaving the scene of an accident
Local ordinance violations
Non-support
Prostitution
Resisting arrest
Trespassing

(2) Sentences for the following prior offenses and offenses similar to them, by whatever name they are known, are never counted:

Hitchhiking
Juvenile status offenses and truancy
Loitering
Minor traffic infractions
Public intoxication
Vagrancy

(d) Offenses Committed Prior to Age Eighteen:

(1) If the defendant was convicted as an adult and received a sentence of imprisonment exceeding one year and one month, add 3 points under § 4A1.1(a) for each such sentence.

(2) In any other case,

(A) Add 2 points under § 4A1.1(b) for each adult or juvenile sentence to confinement of at least sixty days if the defendant was released from such confinement within five years of his commencement of the instant offense;

(B) Add 1 point under § 4A1.1(c) for each adult or juvenile sentence imposed within five years of the defendant's commencement of the instant offense not covered in (A).

(e) Applicable Time Period:

(1) Any prior sentence of imprisonment exceeding one year and one month that was imposed within fifteen years of the defendant's commencement of the instant offense is counted. Also count any prior sentence of imprisonment exceeding one year and one month that resulted in the defendant's incarceration during any part of such fifteen-year period.

(2) Any other prior sentence that was imposed within ten years of the defendant's commencement of the instant offense is counted.

(3) Any prior sentence not within the time periods specified above is not counted.

(f) Diversionary Dispositions:

Diversion from the judicial process without a finding of guilt (e.g., deferred prosecution) is not counted. A diversionary disposition resulting from a finding or admission of guilt in a judicial proceeding is counted as a sentence under § 4A1.1(c) even if a conviction is not formally entered, except that diversion from juvenile court is not counted.

(g) Military Sentences:

Sentences resulting from military offenses are counted if imposed by a general or special court martial. Sentences imposed by a summary court martial or Article 15 proceeding are not counted.

(h) Foreign Sentences:

Sentences resulting from foreign convictions are not counted, but may be considered under § 4A2.3 (Adequacy of Criminal History Category).

(i) Tribal Court Sentences:

Sentences resulting from tribal court convictions are not counted, but may be considered under § 4A1.3 (Adequacy of Criminal History Category).

(j) Expunged Convictions:

Sentences for expunged convictions are not counted, but may be considered under § 4A1.3 (Adequacy of Criminal History Category).

(k) Revocations of Probation, Parole, Mandatory Release, or Supervised Release:

(1) In the case of a prior revocation of probation, parole, supervised release, special parole, or mandatory release, add the original term of imprisonment to any term of imprisonment imposed upon revocation. The resulting total is used to compute the criminal history points for § 4A1.1(a), (b), or (c), as applicable.

(2) Revocation of probation, parole, supervised release, special parole, or mandatory release may affect the points for § 4A1.1(e) in respect to the recency of last release from confinement. It may also affect the time period under which certain sentences are counted as provided in § 4A1.2(e)(1).

## COMMENTARY

Sections 4A1.1 and 4A1.2 provide instructions for calculation of criminal history. The total criminal history points determine a defendant's criminal history category for the Sentencing Table in Chapter Five.

Criminal History Points. Three points are added for each sentence counted under § 4A1.1(a). There is no limit to the number of points countable under this item. Two points are added for each sentence counted under § 4A1.1(b). There is no limit to the number of points countable under this item. One point is added for each sentence counted under § 4A1.1(c), up to a maximum of four points for this item. If the defendant was under any form of criminal justice control at the time of the instant offense as specified in § 4A1.1(d), two points are added. If the defendant committed the instant offense less than two years after release from imprisonment, as specified in § 4A1.1(e), two points are added, except that the total number of points for both (d) and (e) is limited to three.

Prior Sentences. Prior convictions may represent convictions in the federal system, fifty state systems, the District of Columbia, territories, and foreign, tribal and military courts. There are jurisdictional variations in offense definitions, sentencing structures, and manner of sentence pronouncement. To minimize problems with imperfect measures of past crime seriousness, criminal history categories are based on the maximum term imposed in previous sentences rather than on other measures, such as whether the conviction was designated a felony or misdemeanor. Imposition of a sentence exceeding a year and one month of imprisonment generally reflects a judicial assessment that the underlying criminal conduct was serious. In recognition of the imperfection of this measure however, § 4A1.3 permits information about the significance or similarity of past conduct underlying prior convictions to be used as a basis for imposing a sentence outside the applicable guideline range.

Subdivisions (a), (b), and (c) of § 4A1.1 distinguish confinement sentences longer than one year and one month, shorter confinement sentences of at least sixty days, and all other sentences, such as confinement sentences of less than sixty days, probation, fines, and residency in a halfway house. To be considered a confinement sentence, time must have been served (or, if the defendant escaped, would have been served). For purposes of applying § 4A1.1 (a), (b), or (c), a sentence of imprisonment is the stated maximum. That is, criminal history points are based on the sentence pronounced, not the time actually served. A sentence of probation is to be treated as a sentence under § 4A1.1(c) unless a condition of probation requiring imprisonment of at least sixty days was imposed.

Section 4A1.1(d) implements one measure of recency by adding two points if the defendant was under criminal justice control during the commission of the instant offense.

Section 4A1.1(e) implements another measure of recency by adding two points if the defendant committed any part of the instant offense less than two years immediately following his release from confinement on a sentence counted under § 4A1.1(a) or (b). This also applies if the defendant committed the instant offense while still in confinement on such a sentence. Because of the potential overlap of (d) and (e), their combined impact is limited to three points. However, a defendant who falls within both (d) and (e) is more likely to commit additional crimes; thus, (d) and (e) are not completely combined.

Sentences Imposed in the Alternative. Sentences which specify a fine as an alternative to a term of imprisonment (e.g., $1,000 fine or ninety days' imprisonment), should be treated as a sentence under § 4A1.1(c).

Related Cases. Cases are considered related if they (1) occurred on a single occasion, (2) were part of a single common scheme or plan, or (3) were consolidated for trial or sentencing. The court should be aware that there may be instances in which this definition is overly broad and will result in a criminal history score that underrepresents the seriousness of the defendant's criminal history and the danger that he presents to the public. For example, if the defendant commits a number of offenses on independent occasions separated by arrests, and the resulting criminal cases are consolidated and result in a combined sentence of eight years, counting merely three points for this factor will not adequately reflect either the seriousness of the defendant's criminal history or the frequency with which he commits crimes. In such circumstances, the court should consider whether departure is warranted. See § 4A1.3.

Invalid Convictions. Sentences resulting from convictions that have been reversed or vacated because of errors of law, or because of subsequently-discovered evidence exonerating the defendant, are not to be counted. Any other sentence resulting in a valid conviction is to be counted in the criminal history score. Convictions which the defendant shows to have been constitutionally invalid may not be counted in the criminal history score. Also, if to count an uncounseled misdemeanor conviction would result in the imposition of a sentence of imprisonment under circumstances that would violate the United States Constitution, then such conviction shall not be counted in the criminal history score. Nonetheless, any conviction that is not counted in the criminal history score may be considered pursuant to § 4A1.3 if it provides reliable evidence of past criminal activity.

Convictions Set Aside or Defendant Pardoned. A number of jurisdictions have various procedures pursuant to which previous convictions may be set aside or the defendant may be pardoned for reasons unrelated to innocence or errors of law, e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction. Sentences resulting from such convictions are to be counted. However, expunged convictions are not counted. § 4A1.2(j).

Offenses Committed Prior to Age Eighteen. Section 4A1.2 (d) covers offenses committed prior to age eighteen. Attempting to count every juvenile adjudication would have the potential for creating large disparities due to the differential availability of records. Therefore, for offenses committed prior to age eighteen, only those that resulted in adult sentences of imprisonment exceeding one year and one month, or resulted in imposition of an adult or juvenile sentence or release from confinement on that sentence within five years of the defendant's commencement of the instant offense are counted. To avoid disparities from jurisdiction to jurisdiction in the age at which a defendant is considered a "juvenile," this provision applies to all offenses committed prior to age eighteen.

Applicable Time Period. Section 4A1.2(e) establishes the time period within which prior sentences are counted. If the government is able to show that a sentence imposed outside this time period is evidence of similar misconduct or the defendant's receipt of a substantial portion of income from criminal livelihood, the court may consider this information in determining whether to depart and sentence above the applicable guideline range.

Diversionary Dispositions. Section 4A1.2(f) requires counting prior adult diversionary dispositions if they involved a judicial determination of guilt or an admission in open court of guilt. This reflects a policy that

defendants who receive the benefit of a rehabilitory sentence and continue to commit crimes should not be treated with further leniency.

Revocations to be Considered. Section 4A1.2(j) covers revocations of probation and other conditional sentences where the original term of imprisonment imposed, if any, did not exceed one year and one month. Rather than count the original sentence and the resentence after revocation as separate sentences, the sentence given upon revocation should be added to the original sentence of imprisonment, if any, and the total should be counted as if it were one sentence. By this approach, no more than three points will be assessed for a single conviction, even if probation or conditional release was subsequently revoked. If the sentence originally imposed, the sentence imposed upon revocation, or the total of both sentences exceeded one year and one month, the maximum three points would be assigned. If, however, at the time of revocation another sentence was imposed for a new criminal conviction, that conviction would be computed separately from the sentence imposed for the revocation.

### § 4A1.3. Adequacy of Criminal History Category (Policy Statement)

If reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes, the court may consider imposing a sentence departing from the otherwise applicable guideline range. Such information may include, but is not limited to, information concerning:

(a) Prior sentence(s) not used in computing the criminal history category (e.g., sentences for foreign and tribal offenses);

(b) Prior sentence(s) of substantially more than one year imposed as a result of independent crimes committed on different occasions;

(c) Prior similar misconduct established by a civil adjudication or by a failure to comply with an administrative order;

(d) Whether the defendant was pending trial, sentencing, or appeal on another charge at the time of the instant offense;

(e) Prior similar adult criminal conduct not resulting in a criminal conviction.

A departure under this provision generally will occur when the criminal history category significantly underrepresents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit further crimes. Examples might include the case of a defendant who (1) had several previous foreign sentences for serious offenses, (2) had received a prior consolidated sentence of ten years for a series of serious assaults, (3) had a similar instance of large scale fraudulent misconduct established by an adjudication in a Security Exchange Commission enforcement proceeding, (4) committed the instant offense while on bail or pretrial release for another serious offense or (5) for appropriate reasons, such as cooperation in the prosecution of other defendants, had previously received an extremely lenient sentence for a serious offense. The court may, after a review of all the relevant information, conclude that the defendant's criminal history was significantly more serious than that of most defendants in the same criminal history category, and therefore consider an upward departure from the guidelines. However, a prior arrest record itself shall not be considered under § 4A1.3.

There may be cases where the court concludes that a defendant's criminal history category significantly over-represents the seriousness of a defendant's criminal history or the likelihood that the defendant will commit further crimes. An example might include the case of a defendant with two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period. The court may conclude that the defendant's criminal history was significantly less serious than that of most defendants in the same criminal history category (Category II), and therefore consider a downward departure from the guidelines.

In considering a departure under this provision, the Commission intends that the court use, as a reference, the guideline range for a defendant with a higher or lower criminal history category, as applicable. For example, if the court concludes that the defendant's criminal history category of III significantly underrepresents the seriousness of the defendant's criminal history, and that the seriousness of the defendant's criminal history most closely resembles that of most defendants with a Category IV criminal history, the court should look to the guideline range specified for a defendant with a Category IV criminal history to guide its departure. The Commission contemplates that there may, on occasion, be a case of an egregious, serious criminal record in which even the guideline range for a Category VI criminal is not adequate to reflect the seriousness of the defendant's criminal history. In such a case, a decision above the guideline range for a defendant with a Category VI criminal history may be warranted. However, this provision is not symmetrical. The lower limit of the range for a Category I criminal history is set for a first offender with the lowest risk of recidivism. Therefore, a departure below the lower limit of the guideline range for a Category I criminal history on the basis of the adequacy of criminal history cannot be appropriate.

#### COMMENTARY

§ 4A1.3. This policy statement recognizes that the criminal history score is unlikely to take into account all the variations in the seriousness of criminal history that may occur. For example, a defendant with an extensive record of serious, assaultive conduct who had received what might now be considered extremely lenient treatment in the past might have the same criminal history category as a defendant who had a record of less serious conduct. Yet, the first defendant's criminal history clearly may be more serious. This may be particularly true in the case of younger defendants (e.g., defendants in their early twenties or younger) who are more likely to have received repeated lenient treatment, yet who may actually pose a greater risk of serious recidivism than older defendants. This policy statement authorizes the consideration of a departure from the guidelines in the limited circumstances where reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant's criminal history or likelihood of recidivism, and provides guidance for the consideration of such departures.

## Part B—Career Offenders and Criminal Livelihood

28 U.S.C. 994(h)
28 U.S.C. 994(i)(2)

### § 4B1.1. Career Offender

A defendant is a career offender if (1) the defendant was at least eighteen years old at the time of the instant offense, (2) the instant offense is a crime of violence or trafficking in a controlled substance, and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. If the offense level for a career criminal from the table below is greater than the offense level otherwise applicable, the offense level from the table below shall apply. A career offender's criminal history category in every case shall be Category VI.

| Offense statutory maximum | Offense level |
|---|---|
| (A) Life | 37 |
| (B) 20 years or more | 34 |
| (C) 10 years, but less than 20 years | 26 |
| (D) 5 years, but less than 10 years | 19 |

| Offense statutory maximum | Offense level |
|---|---|
| (E) 1 year & 1 day, but less than 5 years | 12 |
| (F) 1 year or less | 4 |

**§ 4B1.2. Definitions**

(1) The term "crime of violence" as used in this provision is defined under 18 U.S.C. § 16.

(2) The term "controlled substance offense" as used in this provision means an offense identified in 21 U.S.C. 841, 952(a), 955, 955a, 959; 405B and 416 of the Controlled Substance Act as amended in 1986, and similar offenses.

(3) The term "two prior felony convictions" means (A) the defendant committed the instant offense subsequent to sustaining at least two felony convictions for either a crime of violence or a controlled substance offense (i.e., two crimes of violence, two controlled substance offenses, or one crime of violence and one controlled substance offense), and (B) the sentences for at least two of the aforementioned felony convictions are counted separately under the provisions of Part A of this Chapter. The date that a defendant sustained a conviction shall be the date the judgment of conviction was entered.

**§ 4B1.3. Criminal Livelihood**

If the defendant committed an offense as part of a pattern of criminal conduct from which he derived a substantial portion of his income, his offense level shall be not less than 13. In no such case will the defendant be eligible for a sentence of probation.

**COMMENTARY**

28 U.S.C. 994(h) mandates that the Commission assure that certain "career" or special offenders, as defined in the statute, receive a sentence of imprisonment "at or near the maximum term authorized." Section 4B1.1 implements this mandate. The legislative history of this provision suggests that the phrase "maximum term authorized" should be construed as the maximum term authorized by statute. See S. Rep. 98-225, 98th Cong., 1st Sess. 175 (1983), 128 Cong. Rec. 12792, 97th Cong., 2d Sess. (1982) ("Career Criminals" amendment No. 13 by Senator Kennedy), 12796 (explanation of amendment), and 12796 (remarks by Senator Kennedy).

The guideline levels for career criminals were established by using the statutory maximum for the offense of conviction to determine the class of felony provided in 18 U.S.C. 3559. Then the maximum authorized sentence of imprisonment for each class of felony was determined as provided by 18 U.S.C. 3581. A guideline range for each class of felony was then chosen so that the maximum of the guideline range was at or near the maximum provided in 18 U.S.C. 3581.

Section 4B1.2 provides the definitions for § 4B1.1. The definition of the term "crime of violence", as that term is used in 28 U.S.C. 994(h), is taken from Section 1001 of the Comprehensive Crime Control Act of 1984, which defined the term for purposes of all of Title 18, United States Code. See S. Rep. 98-225, 98th Cong., 1st Sess. 307 (1983).

The term "controlled substance offense" is defined to include the offenses described in 28 U.S.C. 994(h), as these offenses have been modified by amendments to the Controlled Substances Act made by the Anti-Drug Abuse Act of 1986, Pub. L. 99-570.

Section 4B1.3 implements 28 U.S.C. 994(i)(2), which directs the Commission to construct guidelines that specify a "substantial term of imprisonment" for a defendant who committed the offense as part of a pattern of criminal conduct from which he derived a substantial portion of his income. Under this guideline provision, the offense level is to be increased to level 13 if it is not already level 13 or greater. Probation shall not be a sentencing alternative for these offenders.

## CHAPTER FIVE—DETERMINING THE SENTENCE

*Introduction.* For certain categories of offenses and offenders, the guidelines permit the court to impose either imprisonment or some other sanction or combination of sanctions. In determining the type of sentence to impose, the sentencing judge should consider the nature and seriousness of the conduct, the statutory purposes of sentencing, and the pertinent offender characteristics. A sentence is within the guidelines if it complies with each applicable section of this chapter. The court should impose a sentence sufficient, but not greater than necessary to comply with the statutory purposes of sentencing. 18 U.S.C. § 3553(a).

**Part A—Sentencing Table**

The Sentencing Table used to determine the guideline range follows:

SENTENCING TABLE

*Criminal History Category*

| Offense level | I | II | III | IV | V | VI |
|---|---|---|---|---|---|---|
| | 0 or 1 | 2 or 3 | 4, 5, 6 | 7, 8, 9 | 10, 11, 12 | 13 or more |
| 1 | 0-1 | 0-2 | 0-3 | 0-4 | 0-5 | 0-6 |
| 2 | 0-2 | 0-3 | 0-4 | 0-5 | 0-6 | 1-7 |
| 3 | 0-3 | 0-4 | 0-5 | 0-6 | 2-8 | 3-9 |
| 4 | 0-4 | 0-5 | 0-6 | 2-8 | 4-10 | 6-12 |
| 5 | 0-5 | 0-6 | 1-7 | 4-10 | 6-12 | 9-15 |
| 6 | 0-6 | 1-7 | 2-8 | 6-12 | 9-15 | 12-18 |
| 7 | 1-7 | 2-8 | 4-10 | 8-14 | 12-18 | 15-21 |
| 8 | 2-8 | 4-10 | 6-12 | 10-16 | 15-21 | 18-24 |
| 9 | 4-10 | 6-12 | 8-14 | 12-18 | 18-24 | 21-27 |
| 10 | 6-12 | 8-14 | 10-16 | 15-21 | 21-27 | 24-30 |
| 11 | 8-14 | 10-16 | 12-18 | 18-24 | 24-30 | 27-33 |
| 12 | 10-16 | 12-18 | 15-21 | 21-27 | 27-33 | 30-37 |
| 13 | 12-18 | 15-21 | 18-24 | 24-30 | 30-37 | 33-41 |
| 14 | 15-21 | 18-24 | 21-27 | 27-33 | 33-41 | 37-46 |
| 15 | 18-24 | 21-27 | 24-30 | 30-37 | 37-46 | 41-51 |
| 16 | 21-27 | 24-30 | 27-33 | 33-41 | 41-51 | 46-57 |
| 17 | 24-30 | 27-33 | 30-37 | 37-46 | 46-57 | 51-63 |
| 18 | 27-33 | 30-37 | 33-41 | 41-51 | 51-63 | 57-71 |
| 19 | 30-37 | 33-41 | 37-46 | 46-57 | 57-71 | 63-78 |
| 20 | 33-41 | 37-46 | 41-51 | 51-63 | 63-78 | 70-87 |
| 21 | 37-46 | 41-51 | 46-57 | 57-71 | 70-87 | 77-96 |
| 22 | 41-51 | 46-57 | 51-63 | 63-78 | 77-96 | 84-105 |
| 23 | 46-57 | 51-63 | 57-71 | 70-87 | 84-105 | 92-115 |
| 24 | 51-63 | 57-71 | 63-78 | 77-96 | 92-115 | 100-125 |
| 25 | 57-71 | 63-78 | 70-87 | 84-105 | 100-125 | 110-137 |
| 26 | 63-78 | 70-87 | 78-97 | 92-115 | 110-137 | 120-150 |
| 27 | 70-87 | 78-97 | 87-108 | 100-125 | 120-150 | 130-162 |
| 28 | 78-97 | 87-108 | 97-121 | 110-137 | 130-162 | 140-175 |
| 29 | 87-108 | 97-121 | 108-135 | 121-151 | 140-175 | 151-188 |
| 30 | 97-121 | 108-135 | 121-151 | 135-168 | 151-188 | 168-210 |
| 31 | 108-135 | 121-151 | 135-168 | 151-188 | 168-210 | 188-235 |
| 32 | 121-151 | 135-168 | 151-188 | 168-210 | 188-235 | 210-262 |
| 33 | 135-168 | 151-188 | 168-210 | 188-235 | 210-262 | 235-293 |
| 34 | 151-188 | 168-210 | 188-235 | 210-262 | 235-293 | 262-327 |
| 35 | 168-210 | 188-235 | 210-262 | 235-293 | 262-327 | 292-365 |
| 36 | 188-235 | 210-262 | 235-293 | 262-327 | 292-365 | 324-405 |
| 37 | 210-262 | 235-293 | 262-327 | 292-365 | 324-405 | 360-life |

SENTENCING TABLE—Continued

*Criminal History Category*

| Offense level | I | II | III | IV | V | VI |
|---|---|---|---|---|---|---|
| | 0 or 1 | 2 or 3 | 4, 5, 6 | 7, 8, 9 | 10, 11, 12 | 13 or more |
| 38 | 235–293 | 262–327 | 292–365 | 324–405 | 360–life | 360–life |
| 39 | 262–327 | 292–365 | 324–405 | 360–life | 360–life | 360–life |
| 40 | 292–365 | 324–405 | 360–life | 360–life | 360–life | 360–life |
| 41 | 324–405 | 360–life | 360–life | 360–life | 360–life | 360–life |
| 42 | 360–life | 360–life | 360–life | 360–life | 360–life | 360–life |
| 43 | life | life | life | life | life | life |

**Part B—Probation**

18 U.S.C. 3561
18 U.S.C. 3563

**§ 5B1.1. Imposition of a Term of Probation**

(a) Subject to the statutory restrictions in subsection (b) below, sentence of probation is authorized:

(1) If the minimum term of imprisonment in the range specified by the Sentencing Table in Part A, is zero months;

(2) If the minimum term of imprisonment specified by the Sentencing Table is at least one but not more than six months, provided that the court imposes a condition or combination of conditions requiring intermittent confinement or community confinement as provided in § 5C2.1(c)(2) (Imposition of a Term of Imprisonment).

(b) A sentence of probation may not be imposed in the event:

(1) The offense of conviction is a Class A or B felony, 18 U.S.C. 3561(a)(1);

(2) The offense of conviction expressly precludes probation as a sentence, 18 U.S.C. 3561(a)(2);

(3) The defendant is sentenced at the same time to a sentence of imprisonment for the same or a different offense, 18 U.S.C. 3561(a)(3).

**§ 5B1.2. Term of Probation**

(a) When probation is imposed, the term shall be:

(1) At least one year but not more than five years if the offense level is 6 or greater;

(2) No more than three years in any other case.

**§ 5B1.3. Conditions of Probation**

(a) If a term of probation is imposed, the court shall impose a condition that the defendant shall not commit another federal, state, or local crime during the term of probation. 18 U.S.C. 3563(a)(1).

(b) The court may impose other conditions that (1) are reasonably related to the nature and circumstances of the offense, the history and characteristics of the defendant, and the purposes of sentencing and (2) involve only such deprivations of liberty or property as are reasonably necessary to effect the purposes of sentencing. 18 U.S.C. 3563(b). Recommended conditions are set forth in § 5B1.4.

(c) If a term of probation is imposed for a felony, the court shall impose at least one of the following as a condition of probation: a fine, an order of restitution, or community service. 18 U.S.C. 3563(a)(2).

(d) Intermittent confinement (custody for intervals of time) may be ordered as a condition of probation during the first year of probation. 18 U.S.C. 3563(b)(11). Intermittent confinement shall be credited toward the guideline term of imprisonment at § 5C2.1 as provided in the schedule at § 5C2.1(e).

**COMMENTARY**

The Comprehensive Crime Control Act of 1984 makes probation a sanction in and of itself. 18 U.S.C. 3561. Probation may be used as an alternative to incarceration provided that the terms of probation can be fashioned so as to meet fully the statutory purposes of sentencing, including promoting respect for law, providing just punishment for the offense, achieving general deterrence, and protecting the public from further crimes by the defendant.

Section 5C1.1 provides for the imposition of a sentence of probation. The court may sentence a defendant to a term of probation in any case unless prohibited by statute or inconsistent with the requirements of the guideline for the imposition of a term of imprisonment, § 5C2.1 (Imposition of a Term of Imprisonment). Given these restraints, the court may impose a sentence of probation where the minimum term of imprisonment in the range is zero months and may not impose probation where the minimum term in the range is more than six months. Subsection 5B1.1(a)(2) provides a transition between those offenses where a probationary term is allowed and those where probation is prohibited. Where the guidelines call for a minimum term of imprisonment of at least one but not more than six months, the court may impose a sentence of probation provided that it includes, as a condition of that probation, an incarceration alternative requiring intermittent confinement, community confinement, or a combination thereof.

Subsection 5B1.2(b)(3) reflects Congressional intent that split sentences of imprisonment and probation be abolished. S. Rep. No. 225, 98th Cong., 1st Sess. 89.

Section 5B1.2 governs the length of a term of probation. Subject to statutory restrictions, the guidelines provide that a term of probation may not exceed three years if the offense level is less than 6. If a defendant has an offense level of 6 or greater, the guidelines provide that a term of probation be at least one year but not more than five years. Although some distinction in the length of a term of probation is warranted based on the circumstances of the case, a term of probation may also be used to enforce conditions such as fine or restitution payments, or attendance in a program of treatment such as drug rehabilitation. Often, it may not be possible to determine the amount of time required for the satisfaction of such payments or programs in advance. This issue has been resolved by setting forth two broad ranges for the duration of a term of probation depending upon the offense level. Within the guidelines set forth in this section, the determination of the length of a term of probation is within the discretion of the sentencing judge.

Section 5B1.3 describes mandatory and discretionary conditions of probation.

**§ 5B1.4. Recommended Conditions of Probation and Supervised Release (Policy Statement)**

(a) The following "standard" conditions (1–13) are those that are generally recommended for both probation and supervised release:

(1) The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;

(2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

(3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

(4) The defendant shall support his dependents and meet other family responsibilities;

(5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

(6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;

(7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or

administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;

(8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;

(9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

(10) The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

(11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

(12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

(13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

(b) The following "special" conditions of probation and supervised release (14–24) are those that are either recommended or required by law under the circumstances described:

(14) Possession of Weapons. If the instant conviction is for a felony, or if the defendant was previously convicted of a felony or used a firearm or other dangerous weapon in the course of the instant offense, it is recommended that the court impose a condition prohibiting the defendant from possessing a firearm or other dangerous weapon.

(15) Restitution. If the court imposes an order of restitution, it is recommended that the court impose a condition requiring the defendant to make payment of restitution or adhere to a court ordered installment schedule for payment of restitution. See § 5E4.1 (Restitution).

(16) Fines. If the court imposes a fine, it is recommended that the court impose a condition requiring the defendant to pay the fine or adhere to a court ordered installment schedule for payment of the fine.

(17) If an installment schedule of payment of restitution or fines is imposed, it is recommended that the court impose a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit without approval of the probation officer unless the defendant is in compliance with the payment schedule.

(18) Access to Financial Information. If the court imposes an order of restitution, forfeiture, or notice to victims, or orders the defendant to pay a fine, it is recommended that the court impose a condition requiring the defendant to provide the probation officer access to any requested financial information.

(19) Community Confinement. Residence in a community treatment center, halfway house or similar facility may be imposed as a condition of probation or supervised release. See § 5F5.1 (Community Confinement).

(20) Home Detention. Home detention may be imposed as a condition of probation or supervised release. See § 5F5.2 (Home Detention).

(21) Community Service. Community service may be imposed as a condition of probation or supervised release. See § 5F5.3 (Community Service).

(22) Occupational Restrictions. Occupational restrictions may be imposed as a condition of probation or supervised release. See § 5F5.5 (Occupational Restrictions).

(23) Substance Abuse Program Participation. If the court has reason to believe that the defendant is an abuser of narcotics, other controlled substances or alcohol, it is recommended that the court impose a condition requiring the defendant to participate in a program approved by the United States Probation Office for substance abuse, which program may include testing to determine whether the defendant has reverted to the use of drugs or alcohol.

(24) Mental Health Program Participation. If the court has reason to believe that the defendant is in need of psychological or psychiatric treatment, it is recommended that the court impose a condition requiring that the defendant participate in a mental health program approved by the United States Probation Office.

**Part C—Imprisonment**

18 U.S.C. 3581
18 U.S.C. 3582

**§ 5C2.1. Imposition of a Term of Imprisonment**

(a) A sentence conforms with the guidelines for imprisonment if it is within the minimum and maximum terms of the guideline range.

(b) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is zero months, a sentence of imprisonment is not required, unless the applicable guideline in Chapter Two expressly requires such a term.

(c) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is at least one but not more than six months, the minimum term may be satisfied by (1) a sentence of imprisonment; (2) a sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement or community confinement for imprisonment according to the schedule in § 5C2.1(e); or (3) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement according to the schedule in § 5C2.1(e), provided that at least one-half of the minimum term, but in no event less than one month, is satisfied by imprisonment.

(d) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than six months but not more than ten months, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement according to the schedule in § 5C2.1(e), provided that at least one-half of the minimum term is satisfied by imprisonment.

(e) Schedule of Substitute Punishments:

(1) Thirty days of intermittent confinement in prison or jail for one month of imprisonment (for purposes of this provision, each twenty-four hours of confinement is credited as a day of intermittent confinement);

(2) One month of community confinement (residence in a community treatment center, halfway house, or similar residential facility) for one month of imprisonment.

(f) If the minimum term of imprisonment in the applicable guideline range in the Sentencing Table is more than ten months, the guidelines require that the minimum term be satisfied by a sentence of imprisonment.

**COMMENTARY**

The court shall determine the appropriate sentence within the applicable guideline range. For example, if the offense level is 20, Criminal History Category I, a sentence of imprisonment of at least thirty-three months, but not more than forty-one months, is within the applicable guideline range.

Subsection 5C2.1(b) provides that if the minimum term of imprisonment set forth in the Sentencing Table is zero months, the court is permitted, but not required, to impose a sentence of probation unless a sentence of imprisonment or its equivalent is specifically required by the guideline applicable to the offense.

Subsection 5C2.1(c) provides that if the minimum term of imprisonment set forth in the Sentencing Table of at least one but not more than six months, the minimum term may be satisfied by a sentence of imprisonment, a sentence of probation with a condition requiring a period of intermittent confinement or community confinement; or a sentence of imprisonment that includes a term of supervised release with a condition requiring a period of community confinement, provided that at least one-half of the minimum term, but in no event less than one month, is satisfied by imprisonment.

Subsection 5C2.1(d) provides that if the minimum term of imprisonment set forth in the Sentencing Table of more than six but not more than ten months, the minimum term may be satisfied by a sentence of imprisonment; or a sentence of imprisonment that includes a term of supervised release with a condition requiring a period of community confinement, provided that at least one-half of the minimum term is satisfied by imprisonment. For example, if the guideline calls for eight months of imprisonment, the court may decide to impose a four-month term of imprisonment to be followed by four months in a halfway house.

As noted previously, 18 U.S.C. 3561(a)(3) prohibits the imposition of a sentence of probation where the defendant is sentenced at the same time to a sentence of imprisonment for the same or a different offense. While this provision has effectively abolished the use of 'split sentences' imposable pursuant to the former 18 U.S.C. 3561, the drafters of the Sentencing Reform Act noted that the functional equivalent of the split sentence could be "achieved by a more direct and logically consistent route" by providing that a defendant serve a term of imprisonment followed by a period of supervised release. (S. Rep. No. 225, 98th Cong., 1st Sess. 89).

There may be cases in which a departure from the guidelines by substitution of a longer period of community confinement than otherwise authorized for an equivalent number of months of imprisonment is warranted to accomplish a specific treatment purpose (e.g., substitution of twelve months in an approved residential drug treatment program for twelve months of imprisonment). Such a substitution should be considered only in cases where the defendant's criminality is related to the treatment problem to be addressed and there is a reasonable likelihood that successful completion of the treatment program will eliminate that problem.

Subsection 5C2.1(e) sets forth a schedule of imprisonment substitutes. Home detention may not be substituted for imprisonment.

The use of substitutes for imprisonment as provided in § 5C2.1 (c) and (d) is generally not warranted in the case of a defendant with a criminal history category greater than Category II. Such defendants have generally not benefited from previous application of such alternatives.

Subsection 5C2.1(f) provides that, if the minimum term of imprisonment set forth in the Sentencing Table is more than ten months, the minimum term must be satisfied by a sentence of imprisonment without the use of any of the incarceration alternatives in § 5C2.1(e).

## Part D—Supervised Release

18 U.S.C. 3583

### § 5D3.1. Imposition of a Term of Supervised Release

(a) The court shall order a term of supervised release to follow imprisonment when a sentence of imprisonment of more than one year is imposed, or when required by statute.

(b) The court may order a term of supervised release to follow imprisonment in any other case.

### § 5D3.2. Term of Supervised Release

(a) If a defendant is convicted under a statute that requires a term of supervised release, the term shall be at least three years but not more than five years, or the minimum period required by statute, whichever is greater.

(b) Otherwise, when a term of supervised release is ordered, the length of the term shall be:

(1) Three years for a defendant convicted of a Class A or B felony;

(2) Two years for a defendant convicted of a Class C or D felony;

(3) One year for a defendant convicted of a Class E felony or a misdemeanor.

### § 5D3.3. Conditions of Supervised Release

(a) If a term of supervised release is imposed, the court shall impose a condition that the defendant not commit another federal, state, or local crime. 18 U.S.C. 3583(d).

(b) In order to fulfill any authorized purposes of sentencing, the court may impose other conditions reasonably related to (1) the nature and circumstances of the offense, and (2) the history and characteristics of the defendant. 18 U.S.C. 3583(d).

(c) Recommended conditions of supervised release are set forth in § 5B1.4.

### COMMENTARY

Subsection 5D3.1(a) requires imposition of supervised release following any sentence of imprisonment for a term of more than one year or if required by a specific statute. While there may be cases within this category that do not require post release supervision, these cases are the exception and may be handled by departure from the guideline requiring post release supervision.

Under § 5D3.1(b), the court may impose a term of supervised release in cases involving imprisonment for a term of one year or less. The court may consider the need for a term of supervised release to facilitate the reintegration of the defendant into the community; to enforce a fine, restitution order, or other condition; or to fulfill any other purpose authorized by statute.

Section 5D3.2 specifies the length of a term of supervised release that is to be imposed. Subsection (a) applies to statutes, such as the Anti-Drug Abuse Act of 1986, that require imposition of a specific minimum term of supervised release. Subsection (b) applies to all other statutes, and specifies terms that are the maximum permitted by law.

Section 5D3.3 applies to conditions of supervised release. The conditions generally recommended for supervised release are those recommended for probation. See § 5B1.4.

## Part E—Restitution, Fines, Assessments, Forfeitures

18 U.S.C. 1956–1957
18 U.S.C. 1963
18 U.S.C. 3013
18 U.S.C. 3553–3554
18 U.S.C. 3556
18 U.S.C. 3571–3572
18 U.S.C. 3579
18 U.S.C. 3614
18 U.S.C. 3663–3664
18 U.S.C. 3681–3682
21 U.S.C. 881
21 U.S.C. 848
21 U.S.C. 853
21 U.S.C. 960

### § 5E4.1. Restitution

(a) Restitution shall be ordered for convictions under Title 18 of the United States Code or under 49 U.S.C. 1472 (h), (i), (j) or (n) in accordance with 18 U.S.C. § 3663(d).

(b) If a defendant is ordered to make restitution and to pay a fine, the court shall order that any money paid by the defendant shall first be applied to satisfy the order of restitution.

### COMMENTARY

Section 3553(a)(7) of Title 18 requires the court, "in determining the particular sentence to be imposed," to consider "the need to provide restitution to any victims of the offense." Section 3556 of Title 18 authorizes the court to impose restitution in accordance with 18 U.S.C. 3663 and 3664 for violations of Title 18 and of designated subdivisions of 49 U.S.C. 1472. Restitution is not precluded, however, as a condition of probation or supervised release for other offenses. See S. Rep. No. 225, 98th Cong., 1st Sess. 85–86. An order of restitution may be appropriate in offenses not specifically referenced in 18 U.S.C. 3663 where victims require relief more promptly than the civil justice system provides.

Section 3663(d) requires the court to "impose an order of restitution to the extent

that such order is as fair as possible to the victim and the imposition of such order will not unduly complicate or prolong sentencing." If the court does not order restitution, or orders only partial restitution, it must state its reasons for doing so. 18 U.S.C. 3663(a)(2).

In determining whether to impose an order of restitution, and the amount of restitution, the court shall consider the amount of loss the victim suffered as a result of the offense, the financial resources of the defendant, the financial needs of the defendant and his dependents, and other factors the court deems appropriate. 18 U.S.C. 3664(a).

Pursuant to Rule 32(c)(2)(D), Federal Rules of Criminal Procedure, the probation officer's presentence investigation report must contain a victim impact statement. That report must contain information about the financial impact on the victim and the defendant's financial condition. The sentencing judge may base findings on the presentence report or other testimony or evidence supported by a preponderance of evidence. 18 U.S.C. 3664(d).

A court's authority to deny restitution is limited. Even "in those unusual cases where the precise amount owed is difficult to determine, section 3579(d) [the identical predecessor of section 3663(d)] authorizes the court to reach an expeditious, reasonable determination of appropriate restitution by resolving uncertainties with a view toward achieving fairness to the victim." S. Rep. No. 532, 97th Cong., 2d Sess. 31, reprinted in 1982 U.S. Code Cong. & Ad. News 2515, 2537.

Unless the court orders otherwise, restitution must be made immediately. 18 U.S.C. 3663(f)(3). The court may permit the defendant to make restitution within a specified period or in specified installments, provided that the last installment is paid not later than the expiration of probation, five years after the end of the defendant's term of imprisonment, or in any other case five years after the date of sentencing. 18 U.S.C. 3663(f)(1) and (2). The restitution order should specify how and to whom payment is to be made.

### § 5E4.2. Fines for Individual Defendants

(a) Except as provided in subsection (f) below, the court shall impose a fine in all cases. If the guideline for the offense in Chapter Two prescribes a different rule for imposing fines, that rule takes precedence over this subsection.

(b) The generally applicable minimum and maximum fine for each offense level is shown in the Fine Table in subsection (c) below. Unless a statute expressly authorizes a greater amount, no fine may exceed $250,000 for a felony or a misdemeanor resulting in the loss of human life; $25,000 for any other misdemeanor; or $1,000 for an infraction. 18 U.S.C. 3571(b)(1).

(c)(1) The minimum fine range is the greater of:

(A) The amount shown in column A of the table below; or

(B) Any monetary gain to the defendant, less any restitution made or ordered.

(2) Except as specified in (4) below, the maximum fine is the greater of:

(A) The amount shown in column B of the table below;

(B) Twice the estimated loss caused by the offense; or

(C) Three times the estimated gain to the defendant.

(3)

FINE TABLE

| Offense level | A Minimum | B Maximum |
|---|---|---|
| 1 | $25 | $250 |
| 2–3 | 100 | 1,000 |
| 4–5 | 250 | 2,500 |
| 6–7 | 500 | 5,000 |
| 8–9 | 1,000 | 10,000 |
| 10–11 | 2,000 | 20,000 |
| 12–13 | 3,000 | 30,000 |
| 14–15 | 4,000 | 40,000 |
| 16–17 | 5,000 | 50,000 |
| 18–19 | 6,000 | 60,000 |
| 20–22 | 7,500 | 75,000 |
| 23–25 | 10,000 | 100,000 |
| 26–28 | 12,500 | 125,000 |
| 29–31 | 15,000 | 150,000 |
| 32–34 | 17,500 | 175,000 |
| 35–37 | 20,000 | 200,000 |
| 38 and above | 25,000 | 250,000 |

(4) Subsection (c)(2), limiting the maximum fine, does not apply if the defendant is convicted under a statute authorizing (A) a maximum fine greater than $250,000, or (B) a fine for each day of violation. In such cases, the court may impose a fine up to the maximum authorized by the statute.

(d) In determining the amount of the fine, the court shall consider:

(1) The need for the combined sentence to reflect the seriousness of the offense (including the harm or loss to the victim and the gain to the defendant), to promote respect for the law, to provide just punishment and to afford adequate deterrence;

(2) The ability of the defendant to pay the fine (including the ability to pay over a period of time) in light of his earning capacity and financial resources;

(3) The burden that the fine places on the defendant and his dependents relative to alternative punishments;

(4) Any restitution or reparation that the defendant has made or is obligated to make;

(5) Any collateral consequences of conviction, including civil obligations arising from the defendant's conduct;

(6) Whether the defendant previously has been fined for a similar offense; and

(7) Any other pertinent equitable considerations.

(e) The amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive.

(f) If the defendant establishes that (1) he is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay all or part of the fine required by the preceding provisions, or (2) imposition of a fine would unduly burden the defendant's dependents, the court may impose a lesser fine or waive the fine. In these circumstances, the court shall consider alternative sanctions in lieu of all or a portion of the fine, and must still impose a total combined sanction that is punitive. Although any additional sanction not proscribed by the guidelines is permissible, community service is the generally preferable alternative in such instances.

(g) If the defendant establishes that payment of the fine in a lump sum would have an unduly severe impact on him or his dependents, the court should establish an installment schedule for payment of the fine. The length of the installment schedule generally should not exceed twelve months, and shall not exceed the maximum term of probation authorized for the offense. The defendant should be required to pay a substantial installment at the time of sentencing. If the court authorizes a defendant sentenced to probation or supervised release to pay a fine on an installment schedule, the court shall require as a condition of probation or supervised release that the defendant pay the fine according to the schedule. The court also may impose a condition prohibiting the defendant from incurring new credit charges or opening additional lines of credit unless he is in compliance with the payment schedule.

(h) If the defendant knowingly fails to pay a delinquent fine, the court shall resentence him in accordance with 18 U.S.C. 3614.

(i) Notwithstanding of the provisions of subsection (c) of this section, but subject to the provisions of subsection (f) herein, the court shall impose an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered.

#### COMMENTARY

These guidelines permit a relatively wide range of fines. The Commission may promulgate more detailed guidelines for the imposition of fines after analyzing practice under these initial guidelines. Recent legislation provides for substantial increases

in fines. 18 U.S.C. 3571(b). With few restrictions, 42 U.S.C. 10601 (b), and (c) authorize fine payments up to $100 million to be deposited in the Crime Victims Fund in the United States Treasury. With vigorous enforcement by the Department of Justice and United States Probation Officers, higher fines will be effective punitive and deterrent sanctions.

Subsection 5E4.2(c)(2) provides for alternative calculations of the maximum fine as three times the gain or twice the loss. These alternatives are, of course, subject to the applicable statutory maximums. Different multiples were chosen to reflect the fact that most offenses result in losses to society that are larger than the provable gain to defendants. When only the gain can be estimated, it is likely that the court will be unable to require restitution. Hence, a higher multiple of the gain is needed to approximate a fine based on the loss involved. It is intended that these alternatives will not require precise calculation.

Subsection 5E4.2(c)(4) applies to statutes that contain special provisions permitting larger fines. These statutes include, among others: 21 U.S.C. 841(b) and 960(b), which authorize fines up to $8 million in offenses involving the manufacture, distribution, or importation of certain controlled substances; 21 U.S.C. 848(a), which authorizes fines up to $4 million in offenses involving the manufacture or distribution of controlled substances by a continuing criminal enterprise; 18 U.S.C. 1956(a), which authorizes a fine equal to the greater of $500,000 or two times the value of the monetary instruments or funds involved in offenses involving money laundering of financial instruments; 18 U.S.C. 1957(b)(2), which authorizes a fine equal to two times the amount of any criminally derived property involved in a money laundering transaction; 33 U.S.C. 1319(c), which authorizes a fine of up to $50,000 per day for violations of the Water Pollution Control Act; 42 U.S.C. 6928(d), which authorizes a fine of up to $50,000 per day for violations of the Resource Conservation Act; and 42 U.S.C. 7413(c), which authorizes a fine of up to $25,000 per day for violations of the Clean Air Act.

The existence of income or assets that the defendant failed to disclose may justify a larger fine than that which otherwise would be warranted under § 5E4.2. The court may base its conclusion as to this factor on information revealing significant unexplained expenditures by the defendant or unexplained possession of assets that do not comport with the defendant's reported income. If the court concludes that the defendant willfully misrepresented all or part of his income or assets, it may aggravate his sentence in accordance with Chapter Three, Part C (Obstruction).

If no term of imprisonment is imposed and the fine is not paid in full at the time of sentencing, it is recommended that the court sentence the defendant to a term of probation, and that payment of the fine be a condition of probation. If a fine is imposed in addition to a term of imprisonment, it is recommended that the court impose a term of supervised release following imprisonment as a means of enforcing payment of the fine.

Subsection 5E4.2(i) provides for an additional fine sufficient to pay the costs of any imprisonment, probation, or supervised release ordered, subject to the defendant's ability to pay as prescribed in subsection 5E4.2(f). In making a determination as to the amount of any fine to be imposed under this provision, the court may be guided by reports published by the Bureau of Prisons and the Administrative Office of the United States Courts concerning such costs.

### § 5E4.3. Special Assessments

A special assessment must be imposed on a convicted defendant in the amount prescribed by statute.

**COMMENTARY**

The Victims of Crime Act of 1984, Pub. L. No. 98-473, Title II, Chap. XIV, requires the courts to impose special assessments on convicted defendants for the purpose of funding the Crime Victims Fund established by the same legislation. Monies deposited in the fund are awarded to the states by the Attorney General for victim assistance and compensation programs.

The Act requires the court to impose assessments in the following amounts:

$25, if the defendant is an individual convicted of a misdemeanor;

$50, if the defendant is an individual convicted of a felony;

$100, if the defendant is an organization convicted of a misdemeanor; and

$200, if the defendant is an organization convicted of a felony. 18 U.S.C. 3013.

The Act does not authorize the court to waive imposition of the assessment.

### § 5E4.4. Forfeiture

Forfeiture is to be imposed upon a convicted defendant as provided by statute.

**COMMENTARY**

Forfeiture generally. Forfeiture provisions exist in various statutes. For example, 18 U.S.C. 3554 requires a court imposing a sentence under 18 U.S.C. 1962 (proscribing the use of the proceeds of racketeering activities in the operation of an enterprise engaged in interstate commerce) or Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (proscribing the manufacture and distribution of controlled substances) to order the forfeiture of property in accordance with 18 U.S.C. 1963 and 21 U.S.C. 853, respectively. Those provisions require the automatic forfeiture of certain property upon conviction of their respective underlying offenses.

Special Forfeiture of Collateral Profits of Crime. The provisions of 18 U.S.C. 3681–3682 authorize a court, in certain circumstances, to order the forfeiture of a violent criminal's proceeds from the depiction of his crime in a book, movie, or other medium. Those sections authorize the deposit of proceeds in an escrow account in the Crime Victims Fund of the United States Treasury. The money is to remain available in the account for five years to satisfy claims brought against the defendant by the victim(s) of his offenses. At the end of the five-year period, the court may require that any proceeds remaining in the account be released from escrow and paid into the Fund. 18 U.S.C. 3681(c)(2).

## Part F—Sentencing Options

18 U.S.C. 3553
18 U.S.C. 3555
18 U.S.C. 3563
18 U.S.C. 3583
18 U.S.C. 3663
18 U.S.C. 3742

### § 5F5.1. Community Confinement

Community confinement may be imposed as a condition of probation or supervised release.

**COMMENTARY**

"Community confinement" means residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community facility, and community service, gainful employment, or treatment during non-residential hours.

Community confinement generally should not be imposed for a period in excess of six months. A longer period may be imposed to accomplish the objectives of a specific rehabilitative program, such as drug rehabilitation. The sentencing judge may impose other discretionary conditions of probation or supervised release appropriate to effectuate community confinement.

### § 5F5.2. Home Detention

Home detention may be imposed as a condition of probation or supervised release.

**COMMENTARY**

"Home detention" means a program of confinement and supervision that restricts the defendant to his place of residence continuously, or during specified hours, enforced by appropriate means of surveillance by the probation office. The judge may also impose other conditions of probation or supervised release appropriate to effectuate home detention. If the confinement is only during specified hours, the defendant shall engage exclusively in gainful employment, community service or treatment during the non-residential hours.

Home detention generally should not be imposed for a period in excess of six months. However, a longer term may be appropriate for disabled, elderly or extremely ill defendants who would otherwise be imprisoned.

### § 5F5.3. Community Service

(a) Community service may be ordered as a condition of probation or supervised release. If the defendant was convicted of a felony, the court must order one or more of the following sanctions: a fine, restitution, or community service. 18 U.S.C. 3563(a)(2).

(b) With the consent of the victim of the offense, the court may order a defendant to perform services for the

benefit of the victim in lieu of monetary restitution. 18 U.S.C. 3663(b)(4).

COMMENTARY

Community service generally should not be imposed in excess of 400 hours. Longer terms of community service impose heavy administrative burdens relating to the selection of suitable placements and the monitoring of attendance.

§ 5F5.4. Order of Notice to Victims

The court may order the defendant to pay the cost of giving notice to victims pursuant to 18 U.S.C. 3555. This cost may be set off against any fine imposed if the court determines that the imposition of both sanctions would be excessive.

COMMENTARY

In cases where a defendant has been convicted of an offense involving fraud or "other intentionally deceptive practices," the court may order the defendant to "give reasonable notice and explanation of the conviction, in such form as the court may approve" to the victims of the offense. 18 U.S.C. 3555. The court may order the notice to be given by mail, by advertising in specific areas or through specific media, or by other appropriate means. In determining whether a notice is appropriate, the court must consider the generally applicable sentencing factors listed in 18 U.S.C. 3553(a) and the cost involved in giving the notice as it relates to the loss caused by the crime. The court may not require the defendant to pay more than $20,000 to give notice.

If an order of notice to victims is under consideration, the court must notify the government and the defendant. 18 U.S.C. 3553(d). Upon motion of either party, or on its own motion, the court must: (1) permit the parties to submit affidavits and memoranda relevant to the imposition of such an order; (2) provide counsel for both parties the opportunity to address orally, in open court, the appropriateness of such an order; and (3) if it issues such an order, state its reasons for doing so. The court may also order any additional procedures that will not unduly complicate or prolong the sentencing process.

The legislative history indicates that, although the sanction was designed to provide actual notice to victims, a court might properly limit notice to only those victims who could be most readily identified, if to do otherwise would unduly prolong or complicate the sentencing process.

§ 5F5.5. Occupational Restrictions

(a) The court may impose a condition of probation or supervised release prohibiting the defendant from engaging in a specified occupation, business, or profession, or limiting the terms on which the defendant may do so, only if it determines that:

(1) A reasonably direct relationship existed between the defendant's occupation, business, or profession and the conduct relevant to the offense of conviction;

(2) There is a risk that, absent such restriction, the defendant will continue to engage in unlawful conduct similar to that for which the defendant was convicted; and

(3) Imposition of such a restriction is reasonably necessary to protect the public.

(b) If the court decides to impose a condition of probation or supervised release restricting a defendant's engagement in a specified occupation, business, or profession, the court shall impose the condition for the minimum time and to the minimum extent necessary to protect the public.

COMMENTARY

The Comprehensive Crime Control Act authorizes the imposition of occupational restrictions as a condition of probation, 18 U.S.C. 3563(b)(6), or supervised release, 18 U.S.C. 3583(d). Pursuant to section 3563(b)(6), a court may require a defendant to:

[R]efrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances.

Section 3583(d) incorporates this section by reference. The Senate Judiciary Committee Report on the Comprehensive Crime Control Act explains that the provision was "intended to be used to preclude the continuation or repetition of illegal activities while avoiding a bar from employment that exceeds that needed to achieve that result." S. Rep. No. 225, 98th Cong., 1st Sess. 96–97. The condition "should only be used as reasonably necessary to protect the public. It should not be used as a means of punishing the convicted person." Id. at 96. Section 5A5.5 accordingly limits the use of the condition and, if imposed, limits its scope, to the minimum reasonably necessary to protect the public.

The appellate review provisions permit a defendant to challenge the imposition of a probation condition under 18 U.S.C. 3563(b)(6) if "the sentence includes . . . a more limiting condition of probation or supervised release under section 3563(b)(6) . . . than the maximum established in the guideline." 18 U.S.C. 3742(a)(3)(A). The government may appeal if the sentence includes a "less limiting" condition of probation than the minimum established in the guideline. 18 U.S.C. 3742(b)(3)(A).

The Comprehensive Crime Control Act expressly authorizes promulgation of policy statements regarding the appropriate use of conditions of probation and supervised release. 28 U.S.C. 994(a)(2)(B). The Act does not expressly grant the authority to issue guidelines on the subject. The appellate review provisions of the Act, however, authorize appeals of occupational restrictions that deviate from the minimum and maximum limitations "established in the guideline" (emphasis added).

Part G—Implementing the Total Sentence of Imprisonment

§ 5G1.1. Sentencing on a Single Count of Conviction

(a) If application of the guidelines results in a sentence above the maximum authorized by statute for the offense of conviction, the statutory maximum shall be the guideline sentence.

(b) If application of the guidelines results in a sentence below the minimum sentence required by statute, the statutory minimum shall be the guideline sentence.

(c) In any other case, the sentence imposed shall be the sentence as determined from application of the guidelines.

§ 5G1.2. Sentencing on Multiple Counts of Conviction

(a) The sentence to be imposed on a count for which the statute mandates a consecutive sentence shall be determined and imposed independently.

(b) Except as otherwise required by law (see § 5G1.1 (a), (b)), the sentence imposed on each other count shall be the total punishment as determined in accordance with Part D of Chapter Three, and Part C of this Chapter.

(c) If the sentence imposed on the count carrying the highest statutory maximum is adequate to achieve the total punishment, then the sentences on all counts shall run concurrently, except to the extent otherwise required by law.

(d) If the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined sentence equal to the total punishment. In all other respects sentences on all counts shall run concurrently, except to the extent otherwise required by law.

§ 5G1.3. Convictions on Counts Related to Unexpired Sentences

If at the time of sentencing, the defendant is already serving one or more unexpired sentences, then the sentences for the instant offense(s) shall run consecutively to such unexpired sentences, unless one or more of the instant offense(s) arose out of the same transactions or occurrences as the unexpired sentences. In the latter case, such instant sentences and the unexpired sentences shall run concurrently, except to the extent otherwise required by law.

COMMENTARY

§ 5G1.1. This section simply states that if the statute requires imposition of a sentence other than that required by the guidelines, the statute shall control.

§ 5G1.2. This section specifies the procedure for determining the sentence that will be formally imposed on each count in order to produce the total punishment that is appropriate under the circumstances of a multiple count case. When one of the counts carries a statutory maximum adequate to permit imposition of the total punishment, the total punishment can be imposed on that count and the punishment on all other counts (equal to the lesser of the total punishment or the applicable statutory maximum) can run concurrently. When no count carries an adequate statutory maximum, consecutive sentences are imposed but only to the extent necessary to produce the total punishment, as determined in accordance with § 3D1.5.

Counts for which the statute mandates a consecutive sentence, such as counts charging the use of a firearm in a violent crime (18 U.S.C. 924(c)) are treated separately. The sentence imposed on such a count is the sentence indicated for the offense of conviction, determined in accordance with Chapter Two. That sentence then runs consecutively to the sentences imposed on the other counts. See Commentary to § 2K2.4 regarding determination of the offense levels for related counts when a conviction under 18 U.S.C. 924(c) is involved.

§ 5G1.3. This section reflects the statutory presumption that sentences imposed at different times ordinarily run consecutively. See 18 U.S.C. 3584(a). This presumption does not apply when the new counts arise out of the same transaction or occurrence as a prior conviction.

## Part H—Specific Offender Characteristics

*Introduction.* Congress has directed the Commission to consider whether certain specific offender characteristics "have any relevance to the nature, extent, place of service, or other incidents of an appropriate sentence" and to take them into account only to the extent they are determined relevant by the Commission. 28 U.S.C. 994(d).

### § 5H1.1. Age (Policy Statement)

Age is not ordinarily relevant in determining whether a sentence should be outside the guidelines. Neither is it ordinarily relevant in determining the type of sentence to be imposed when the guidelines provide sentencing options. Age may be a reason to go below the guidelines when the offender is elderly and infirm and where a form of punishment (e.g., home confinement) might be equally efficient as and less costly than incarceration. If, independent of the consideration of age, a defendant is sentenced to probation or supervised release, age may be relevant in the determination of the length and conditions of supervision.

### § 5H1.2. Education and Vocational Skills (Policy Statement)

Education and vocational skills are not ordinarily relevant in determining whether a sentence should be outside the guidelines, but the extent to which a defendant may have misused special training or education to facilitate criminal activity is an express guideline factor. See § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) Neither are education and vocational skills relevant in determining the type of sentence to be imposed when the guidelines provide sentencing options. If, independent of consideration of education and vocational skills, a defendant is sentenced to probation or supervised release, these considerations may be relevant in the determination of the length and conditions of supervision for rehabilitative purposes, for public protection by restricting activities that allow for the utilization of a certain skill, or in determining the type or length of community service.

### § 5H1.3. Mental and Emotional Conditions (Policy Statement)

Mental and emotional conditions are not ordinarily relevant in determining whether a sentence should be outside the guidelines, except as provided in the general provisions in Chapter Five. Mental and emotional conditions, whether mitigating or aggravating, may be relevant in determining the length and conditions of probation or supervised release.

### § 5H1.4. Physical Condition, Including Drug Dependence and Alcohol Abuse (Policy Statement)

Physical condition is not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall. However, an extraordinary physical impairment may be a reason to impose a sentence other than imprisonment.

Drug dependence or alcohol abuse is not a reason for imposing a sentence below the guidelines. Substance abuse is highly correlated to an increased propensity to commit crime. Due to this increased risk, it is highly recommended that a defendant who is incarcerated also be sentenced to supervised release with a requirement that the defendant participate in an appropriate substance abuse program. If participation in a substance abuse program is required, the length of supervised release should take into account the length of time necessary for the supervisory body to judge the success of the program.

This provision would also apply in cases where the defendant received a sentence of probation. The substance abuse condition is strongly recommended and the length of probation should be adjusted accordingly. Failure to comply would normally result in revocation of probation.

### § 5H1.5. Previous Employment Record (Policy Statement)

Employment record is not ordinarily relevant in determining whether a sentence should be outside the guidelines or where within the guidelines a sentence should fall. Employment record may be relevant in determining the type of sentence to be imposed when the guidelines provide for sentencing options. If, independent of the consideration of employment record, a defendant is sentenced to probation or supervised release, considerations of employment record may be relevant in the determination of the length and conditions of supervision.

### § 5H1.6. Family Ties and Responsibilities, and Community Ties (Policy Statement)

Family ties and responsibilities and community ties are not ordinarily relevant in determining whether a sentence should be outside the guidelines. Family responsibilities that are complied with are relevant in determining whether to impose restitution and fines. Where the guidelines provide probation as an option, these factors may be relevant in this determination. If a defendant is sentenced to probation or supervised release, family ties and responsibilities that are met may be relevant in the determination of the length and conditions of supervision.

### § 5H1.7. Role in the Offense (Policy Statement)

A defendant's role in the offense is relevant in determining the appropriate sentence. See Chapter Three, Part B, (Role in the Offense).

### § 5H1.8. Criminal History (Policy Statement)

A defendant's criminal history is relevant in determining the appropriate sentence. See Chapter Four, (Criminal History).

**§ 5H1.9. Dependence Upon Criminal Activity for a Livelihood (Policy Statement)**

The degree to which a defendant depends upon criminal activity for a livelihood is relevant in determining the appropriate sentence. See Chapter Four, Part B (Career Offenders and Criminal Livelihood).

**§ 5H1.10. Race, Sex, National Origin, Creed, Religion and Socio-Economic Status (Policy Statement)**

These factors are not relevant in the determination of a sentence.

**Part J—Relief From Disability Pertaining to Certain Employment**

**§ 5J1.1. Relief From Disability Pertaining to Certain Employment (Policy Statement)**

With regard to labor racketeering offenses, a part of the punishment imposed by 29 U.S.C. 504 and 511 is the prohibition of convicted persons from service in labor unions, employer associations, employee benefit plans, and as labor relations consultants. Violations of these provisions are felony offenses. Persons convicted after October 12, 1984, may petition the sentencing court to reduce the statutory disability (thirteen years after sentence or imprisonment, whichever is later) to a lesser period (not less than three years after entry of judgment in the trial court). After November 1, 1987, petitions for exemption from the disability that were formerly administered by the United States Parole Commission will be transferred to the courts. Relief shall not be given in such cases to aid rehabilitation, but may be granted only following a clear demonstration by the convicted person that he has been rehabilitated since commission of the crime.

**Part K—Departures**

*1. Substantial Assistance to Authorities*

**§ 5K1.1. Substantial Assistance to Authorities (Policy Statement)**

Upon motion of the government stating that the defendant has made a good faith effort to provide substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the guidelines.

(a) The appropriate reduction shall be determined by the court for reasons stated that may include, but are not limited to, consideration of the following conduct:

(1) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;

(2) The truthfulness, completeness, and reliability of any information or testimony provided by the defendant;

(3) The nature and extent of the defendant's assistance;

(4) Any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance;

(5) The timeliness of the defendant's assistance.

**§ 5K1.2. Refusal to Assist (Policy Statement)**

A defendant's refusal to assist authorities in the investigation of other persons may not be considered as an aggravating sentencing factor.

**COMMENTARY**

Under circumstances set forth in 28 U.S.C. 994(n), as amended, substantial assistance in the investigation or prosecution of another person who has committed an offense may justify a sentence below a statutorily required minimum mandatory sentence.

A defendant's assistance to authorities in the investigation of criminal activities has been recognized in practice and by statute as a mitigating sentencing factor. The nature, extent, and significance of assistance can involve a broad spectrum of conduct that must be evaluated by the court on an individual basis. Latitude is, therefore, afforded the sentencing judge to reduce a sentence based upon variable relevant factors, including those listed above. The sentencing judge must, however, state the reasons for reducing a sentence under this section. 18 U.S.C. 3553(c). The court may elect to provide its reasons to the defendant in camera and in writing under seal for the safety of the defendant or to avoid disclosure of an ongoing investigation.

The sentencing reduction for assistance to authorities shall be considered independently of any reduction for acceptance of responsibility. Substantial assistance is directed to the investigation and prosecution of criminal activities by persons other than the defendant, while acceptance of responsibility is directed to the defendant's affirmative recognition of responsibility for his own conduct.

Substantial weight should be given to the government's evaluation of the extent of the defendant's assistance, particularly where the extent and value of the assistance are difficult to ascertain.

The Commission considered and rejected the use of a defendant's refusal to assist authorities as an aggravating sentencing factor. Refusal to assist authorities based upon continued involvement in criminal activities and association with accomplices may be considered, however, in evaluating a defendant's sincerity in claiming acceptance of responsibility.

*2. General Provisions: (Policy Statement)*

Under 18 U.S.C. 3553(b) the sentencing court may impose a sentence outside the range established by the applicable guideline, if the court finds "that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines." Circumstances that may warrant departure from the guidelines pursuant to this provision cannot, by their very nature, be comprehensively listed and analyzed in advance. The controlling decision as to whether and to what extent departure is warranted can only be made by the court at the time of sentencing. Nonetheless, the present section seeks to aid the court by identifying some of the factors that the Commission has not been able to fully take into account in formulating precise guidelines. Any case may involve factors in addition to those identified that have not been given adequate consideration by the Commission. Presence of any such factor may warrant departure from the guidelines, under some circumstances, in the discretion of the sentencing judge. Similarly, the court may depart from the guidelines, even though the reason for departure is listed elsewhere in the guidelines (e.g., as an adjustment or specific offense characteristic), if the court determines that, in light of unusual circumstances, the guideline level attached to that factor is inadequate.

Where the applicable guidelines, specific offense characteristics, and adjustments do take into consideration a factor listed in this part, departure from the guideline is warranted only if the factor is present to a degree substantially in excess of that which ordinarily is involved in the offense of conviction. Thus, disruption of a governmental function, § 5K2.7, would have to be quite serious to warrant departure from the guidelines when the offense of conviction is bribery or obstruction of justice. When the offense of conviction is theft, however, and when the theft caused disruption of a governmental function, departure from the applicable guideline more readily would be appropriate. Similarly, physical injury would not warrant departure from the guidelines when the offense of conviction is robbery because the robbery guideline includes a specific sentence adjustment based on the extent of any injury. However, because the robbery guideline does not deal with injury to more than one victim, departure would be warranted if several persons were injured.

Also, a factor may be listed as a specific offense characteristic under one guideline but not under all guidelines. Simply because it was not listed does

not mean that there may not be circumstances when that factor would be relevant to sentencing. For example, the use of a weapon has been listed as a specific offense characteristic under many guidelines, but not under immigration violations. Therefore, if a weapon is a relevant factor to sentencing for an immigration violation, the court may depart for this reason.

Harms identified as a possible basis for departure from the guidelines should be taken into account only when they are relevant to the offense of conviction, within the limitations set forth in the Overview to Chapter Two.

**§ 5K2.1. Death (Policy Statement)**

If death resulted, the court may increase the sentence above the authorized guideline range.

Loss of life does not automatically suggest a sentence at or near the statutory maximum. The sentencing judge must give consideration to matters that would normally distinguish among levels of homicide, such as the defendant's state of mind and the degree of planning or preparation. Other appropriate factors are whether multiple deaths resulted, and the means by which life was taken. The extent of the increase should depend on the dangerousness of the defendant's conduct, the extent to which death or serious injury was intended or knowingly risked, and the extent to which the offense level for the offense of conviction, as determined by the other Chapter Two guidelines, already reflects the risk of personal injury. For example, a substantial increase may be appropriate if the death was intended or knowingly risked or if the underlying offense was one for which base offense levels do not reflect an allowance for the risk of personal injury, such as fraud.

**§ 5K2.2. Physical Injury (Policy Statement)**

If significant physical injury resulted, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the extent of the injury, the degree to which it may prove permanent, and the extent to which the injury was intended or knowingly risked. When the victim suffers a major, permanent disability and when such injury was intentionally inflicted, a substantial departure may be appropriate. If the injury is less serious or if the defendant (though criminally negligent) did not knowingly create the risk of harm, a less substantial departure would be indicated. In general, the same considerations apply as in § 5K2.1.

**§ 5K2.3. Extreme Psychological Injury (Policy Statement)**

If a victim or victims suffered psychological injury much more serious than that normally resulting from commission of the offense, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the severity of the psychological injury and the extent to which the injury was intended or knowingly risked. Normally, psychological injury would be sufficiently severe to warrant application of this adjustment only when there is a substantial impairment of the intellectual, psychological, emotional, or behavioral functioning of a victim, when the impairment is likely to be of an extended or continuous duration, and when the impairment manifests itself by physical or psychological symptoms or by changes in behavior patterns. The court should consider the extent to which such harm was likely, given the nature of the defendant's conduct.

**§ 5K2.4. Abduction or Unlawful Restraint (Policy Statement)**

If a person was abducted, taken hostage, or unlawfully restrained to facilitate commission of the offense or to facilitate the escape from the scene of the crime, the court may increase the sentence above the authorized guideline range.

**§ 5K2.5. Property Damage or Loss (Policy Statement)**

If the offense caused property damage or loss not taken into account within the guidelines, the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the extent to which the harm was intended or knowingly risked and on the extent to which the harm to property is more serious than other harm caused or risked by the conduct relevant to the offense of conviction.

**§ 5K2.6. Weapons and Dangerous Instrumentalities (Policy Statement)**

If a weapon or dangerous instrumentality was used or possessed in the commission of the offense the court may increase the sentence above the authorized guideline range. The extent of the increase ordinarily should depend on the dangerousness of the weapon, the manner in which it was used, and the extent to which its use endangered others. The discharge of a firearm might warrant a substantial sentence increase.

**§ 5K2.7. Disruption of Governmental Function (Policy Statement)**

If the defendant's conduct resulted in a significant disruption of a governmental function, the court may increase the sentence above the authorized guideline range to reflect the nature and extent of the disruption and the importance of the governmental function affected. Departure from the guidelines ordinarily would not be justified when the offense of conviction is an offense such as bribery or obstruction of justice; in such cases interference with a governmental function is inherent in the offense, and unless the circumstances are unusual the guidelines will reflect the appropriate punishment for such interference.

**§ 5K2.8. Extreme Conduct (Policy Statement)**

If the defendant's conduct was unusually heinous, cruel, brutal, or degrading to the victim, the court may increase the sentence above the guideline range to reflect the nature of the conduct. Examples of extreme conduct include torture of a victim, gratuitous infliction of injury, or prolonging of pain or humiliation.

**§ 5K2.9. Criminal Purpose (Policy Statement)**

If the defendant committed the offense in order to facilitate or conceal the commission of another offense, the court may increase the sentence above the guideline range to reflect the actual seriousness of the defendant's conduct.

**§ 5K2.10. Victim's Conduct (Policy Statement)**

If the victim's wrongful conduct contributed significantly to provoking the offense behavior, the court may reduce the sentence below the guideline range to reflect the nature and circumstances of the offense. In deciding the extent of a sentence reduction, the court should consider:

(a) The size and strength of the victim, or other relevant physical characteristics, in comparison with those of the defendant;

(b) The persistence of the victim's conduct and any efforts by the defendant to prevent confrontation;

(c) The danger reasonably perceived by the defendant, including the victim's reputation for violence;

(d) The danger actually presented to the defendant by the victim; and

(e) Any other relevant conduct by the victim that substantially contributed to the danger presented.

Victim misconduct ordinarily would not be sufficient to warrant application of this provision in the context of offenses under Chapter Two, Part A.3 (Criminal Sexual Abuse). In addition, this provision usually would not be relevant in the context of non-violent offenses. There may, however, be unusual circumstances in which substantial victim misconduct would warrant a reduced penalty in the case of a non-violent offense. For example, an extended course of provocation and harassment might lead a defendant to steal or destroy property in retaliation.

**§ 5K2.11. Lesser Harms (Policy Statement)**

Sometimes, a defendant may commit a crime in order to avoid a perceived greater harm. In such instances, a reduced sentence may be appropriate, provided that the circumstances significantly diminish society's interest in punishing the conduct, for example, in the case of a mercy killing. Where the interest in punishment or deterrence is not reduced, a reduction in sentence is not warranted. For example, providing defense secrets to a hostile power should receive no lesser punishment simply because the defendant believed that the government's policies were misdirected.

In other instances, conduct may not cause or threaten the harm or evil sought to be prevented by the law proscribing the offense at issue. For example, where a war veteran possessed a machine gun or grenade as a trophy, or a school teacher possessed controlled substances for display in a drug education program, a reduced sentence might be warranted.

**§ 5K2.12. Coercion and Duress (Policy Statement)**

If the defendant committed the offense because of serious coercion, blackmail or duress, under circumstances not amounting to a complete defense, the court may decrease the sentence below the applicable guideline range. The extent of the decrease ordinarily should depend on the reasonableness of the defendant's actions and on the extent to which the conduct would have been less harmful under the circumstances as the defendant believed them to be. Ordinarily coercion will be sufficiently serious to warrant departure only when it involves a threat of physical injury, substantial damage to property or similar injury resulting from the unlawful action of a third party or from a natural emergency. The Commission considered the relevance of economic hardship and determined that personal financial difficulties and economic pressures upon a trade or business do not warrant a decrease in sentence.

**§ 5K2.13. Diminished Capacity (Policy Statement)**

If the defendant committed a non-violent offense while suffering from significantly reduced mental capacity not resulting from voluntary use of drugs or other intoxicants, a lower sentence may be warranted to reflect the extent to which reduced mental capacity contributed to the commission of the offense, provided that the defendant's criminal history does not indicate a need for incarceration to protect the public.

**§ 5K2.14. Public Welfare (Policy Statement)**

If national security, public health, or safety was significantly endangered, the court may increase the sentence above the guideline range to reflect the nature and circumstances of the offense.

## CHAPTER SIX—SENTENCING PROCEDURES AND PLEA AGREEMENTS

### Part A—Sentencing Procedures

*Introduction.* This Part addresses sentencing procedures that are applicable in all cases, including those in which guilty or nolo contendere pleas are entered with or without a plea agreement between the parties, and convictions based upon judicial findings or verdicts.

**§ 6A1.1. Presentence Report**

(a) A probation officer shall conduct a presentence investigation and report to the court before the imposition of sentence unless the court finds that there is information in the record sufficient to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. 3553, and the court explains this finding on the record. Rule 32(c)(1), Fed.R.Crim.P. The defendant may not waive preparation of the presentence report.

(b) The presentence report shall be disclosed to the defendant, counsel for the defendant and the attorney for the government, to the maximum extent permitted by Rule 32(c), Fed.R.Crim.P. Disclosure shall be made at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant. 18 U.S.C. 3552(d).

**§ 6A1.2. Position of Parties With Respect to Sentencing Factors**

(a) After receipt of the presentence report and within a reasonable time before sentencing, the attorney for the government and the attorney for the defendant, or the pro se defendant, shall each file with the court a written statement of the sentencing factors to be relied upon at sentencing. The parties are not precluded from asserting additional sentencing factors if notice of the intention to rely upon another factor is filed with the court within a reasonable time before sentencing.

(b) Copies of all sentencing statements filed with the court shall be contemporaneously served upon all other parties and submitted to the probation officer assigned to the case.

(c) In lieu of the written statement required by § 6A1.2(a), any party may file:

(1) A written statement adopting the findings of the presentence report;

(2) A written statement adopting such findings subject to certain exceptions or additions; or

(3) A written stipulation in which the parties agree to adopt the findings of the presentence report or to adopt such findings subject to certain exceptions or additions.

(d) A district court may, by local rule, identify categories of cases for which the parties are authorized to make oral statements at or before sentencing, in lieu of the written statement required by this section.

(e) Except to the extent that a party may be privileged not to disclose certain information, all statements filed with the court or made orally to the court pursuant to this section shall:

(1) Set forth, directly or by reference to the presentence report, the relevant facts and circumstances of the actual offense conduct and offender characteristics; and

(2) Not contain misleading facts.

**§ 6A1.3. Resolution of Disputed Factors**

(a) When any factor important to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to present information to the court regarding that factor. In resolving any reasonable dispute concerning a factor important to the sentencing determination, the court may consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy.

(b) The court shall resolve disputed sentencing factors in accordance with Rule 32(a)(1), Fed.R.Crim.P. (effective Nov. 1, 1987), notify the parties of its tentative findings and provide a reasonable opportunity for the submission of oral or written objections before imposition of sentence.

COMMENTARY

Part A sets forth the procedures for establishing the facts upon which the sentence will be based. Reliable fact-finding is essential to procedural due process and to the accuracy and uniformity of sentencing.

§ 6A1.1. A thorough presentence investigation is essential in determining the facts relevant to sentencing. In order to ensure that the sentencing judge will have information sufficient to determine the appropriate sentence, Congress deleted provisions of Rule 32(c), Fed.R.Crim.P., which previously permitted the defendant to waive the presentence report. Rule 32(c)(1) permits the judge to dispense with a presentence report, but only after explaining, on the record, why sufficient information is already available.

§ 6A1.2. In order to focus the issues prior to sentencing, the parties are required to respond to the presentence report and to identify any issues in dispute. The potential complexity of factors important to the sentencing determination normally requires that the position of the parties be presented in writing. However, because courts differ greatly with respect to their reliance on written plea agreements and with respect to the feasibility of written statements under guidelines, district courts are encouraged to consider the approach that is most appropriate under local conditions. The Commission intends to reexamine this issue in light of experience under the guidelines.

§ 6A1.3. In current practice, factors relevant to sentencing are often determined in an informal fashion. The informality is to some extent explained by the fact that particular offense and offender characteristics rarely have a highly specific or required sentencing consequence. This situation will no longer exist under sentencing guidelines. The court's resolution of disputed sentencing factors will usually have a measurable effect on the applicable punishment. More formality is therefore unavoidable if the sentencing process is to be accurate and fair. Although lengthy sentencing hearings should seldom be necessary, disputes about sentencing factors must be resolved with care. When a reasonable dispute exists about any factor important to the sentencing determination, the court must ensure that the parties have an adequate opportunity to present relevant information. Written statements of counsel or affidavits of witnesses may be adequate under many circumstances. An evidentiary hearing may sometimes be the only reliable way to resolve disputed issues. See United States v. Fatico, 603 F.2d 1053, 1057 n.9 (2d Cir. 1979). The sentencing court must determine the appropriate procedure in light of the nature of the dispute, its relevance to the sentencing determination, and applicable case law.

In determining the relevant facts, sentencing judges are not restricted to information that would be admissible at trial. 18 U.S.C. 3661. Any information may be considered, so long as it has "sufficient indicia of reliability to support its probable accuracy." United States v. Marshall, 519 F.Supp. 751 (D.C. Wis. 1981), aff'd, 719 F.2d 887 (7th Cir. 1983); United States v. Fatico, 579 F.2d 707 (2d Cir. 1978). Reliable hearsay evidence may be considered. Out-of-court declarations by an unidentified informant may be considered "where there is good cause for the nondisclosure of his identity and there is sufficient corroboration by other means." United States v. Fatico, 579 F.2d at 713. Unreliable allegations shall not be considered. United States v. Weston, 448 F.2d 626 (9th Cir. 1971).

If sentencing factors are the subject of reasonable dispute, the court should, where appropriate, notify the parties of its tentative findings and afford an opportunity for correction of oversight or error before sentence is imposed.

### Part B—Plea Agreements

*Introduction.* Policy statements governing the acceptance of plea agreements under Rule 11(e)(1), Federal Rules of Criminal Procedure, are intended to ensure that plea negotiation practices

(1) Promote the statutory purposes of sentencing prescribed in 18 U.S.C. 3553(a); and

(2) Do not perpetuate unwarranted sentencing disparity.

### § 6B1.1. Plea Agreement Procedure

(a) If the parties have reached a plea agreement, the court shall, on the record, require disclosure of the agreement in open court or, on a showing of good cause, in camera. Rule 11(e)(2), Fed.R.Crim.P.

(b) If the plea agreement includes a nonbinding recommendation pursuant to Rule 11(e)(1)(B), the court shall advise the defendant that the court is not bound by the sentencing recommendation, and that the defendant has no right to withdraw the defendant's guilty plea if the court decides not to accept the sentencing recommendation set forth in the plea agreement.

(c) The court shall defer its decision to accept or reject any nonbinding recommendation pursuant to Rule 11(e)(1)(B), and the court's decision to accept or reject any plea agreement pursuant to Rules 11(e)(1)(A) and 11(e)(1)(C) until there has been an opportunity to consider the presentence report, unless a report is not required under § 6A1.1.

### § 6B1.2. Standards for Acceptance of Plea Agreements

(a) In the case of a plea agreement that includes the dismissal of any charges or an agreement not to pursue potential charges [Rule 11(e)(1)(A)], the court may accept the agreement if the court determines, for reasons stated on the record, that the remaining charges adequately reflect the seriousness of the actual offense behavior and that accepting the agreement will not undermine the statutory purposes of sentencing.

(b) In the case of a plea agreement that includes a nonbinding recommendation [Rule 11(e)(1)(B)], the court may accept the recommendation if the court is satisfied either that:

(1) The recommended sentence is within the applicable guideline range; or

(2) the recommended sentence departs from the applicable guideline range for justifiable reasons.

(c) In the case of a plea agreement that includes a specific sentence [Rule 11(e)(1)(C)], the court may accept the agreement if the court is satisfied either that:

(1) the agreed sentence is within the applicable guideline range; or

(2) the agreed sentence departs from the applicable guideline range for justifiable reasons.

### § 6B1.3. Procedure Upon Rejection of a Plea Agreement

If a plea agreement pursuant to Rule 11(e)(1)(A) or Rule 11(e)(1)(C) is rejected, the court shall afford the defendant an opportunity to withdraw the defendant's guilty plea. Rule 11(e)(4), Fed.R.Crim.P.

### § 6B1.4. Stipulations

(a) A plea agreement may be accompanied by a written stipulation of facts relevant to sentencing. Except to the extent that a party may be privileged not to disclose certain information, stipulations shall:

(1) Set forth the relevant facts and circumstances of the actual offense conduct and offender characteristics;

(2) Not contain misleading facts; and

(3) Set forth with meaningful specificity the reasons why the sentencing range resulting from the proposed agreement is appropriate.

(b) To the extent that the parties disagree about any facts relevant to sentencing, the stipulation shall identify the facts that are in dispute.

(c) A district court may, by local rule, identify categories of cases for which the parties are authorized to make the required stipulation orally, on the record, at the time the plea agreement is offered.

(d) The court is not bound by the stipulation, but may with the aid of the

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presentence report, determine the facts relevant to sentencing.

COMMENTARY

These policy statements are a first step toward implementing 28 U.S.C. 994(a)(2)(E). Congress indicated that it expects judges "to examine plea agreements to make certain that prosecutors have not used plea bargaining to undermine the sentencing guidelines." S. REP. 98-225, 98th Cong., 1st Sess. 63,167 (1983). In pursuit of this goal, the Commission shall study plea agreement practice under the guidelines and ultimately develop standards for judges to use in determining whether to accept plea agreements. Because of the difficulty in anticipating problems in this area, and because the sentencing guidelines are themselves to some degree experimental, substantive restrictions on judicial discretion would be premature at this stage of the Commission's work.

The present policy statements move in the desired direction in two ways. First, the policy statements make clear that sentencing is a judicial function and that the appropriate sentence in a guilty plea case is to be determined by the judge. This is a reaffirmation of current practice. Second, the policy statements ensure that the basis for any judicial decision to depart from the guidelines will be explained on the record. Explanations will be carefully analyzed by the Commission and will pave the way for more detailed policy statements presenting substantive criteria to achieve consistency in this aspect of the sentencing process.

§ 6B1.1. This provision parallels the procedural requirements of Rule 11(e), Fed.R.Crim.P. Plea agreements must be fully disclosed and a defendant whose plea agreement includes a nonbinding recommendation must be advised that the court's refusal to accept the sentencing recommendation will not entitle the defendant to withdraw the plea.

Section 6B1.1(c) deals with the timing of the court's decision whether to accept the plea agreement. Rule 11(e)(2) gives the court discretion to accept the plea agreement immediately or defer acceptance pending consideration of the presentence report. Prior to the guidelines, an immediate decision was permissible because, under Rule 32(c), Fed.R.Crim.P., the defendant could waive preparation of the presentence report. Section 6B1.1(c) reflects the changes in practice required by § 6A1.1 and amended Rule 32(c)(1). Since a presentence report normally will be prepared, the court must defer acceptance of the plea agreement until the court has had an opportunity to consider the presentence report.

§ 6B1.2. This section makes clear that a court may accept a plea agreement provided that the judge complies with the obligations imposed by Rule 11(e), Fed.R.Crim.P. A judge may accept an agreement calling for dismissal of charges or an agreement not to pursue potential charges if the remaining charges reflect the seriousness of the actual offense behavior. This requirement does not authorize judges to intrude upon the charging discretion of the prosecutor. If the government's motion to dismiss charges or statement that potential charges will not be pursued is not contingent on the disposition of the remaining charges, the judge should defer to the government's position except under extraordinary circumstances. Rule 48(a), Fed.R.Crim.P. However, when the dismissal of charges or agreement not to pursue potential charges is contingent on acceptance of a plea agreement, the court's authority to adjudicate guilt and impose sentence is implicated, and the court may determine whether or not dismissal of charges will undermine the sentencing guidelines.

Similarly, the court will accept a recommended sentence or a plea agreement requiring imposition of a specific sentence only if the court is satisfied either that the contemplated sentence is within the guidelines or, if not, that the recommended sentence or agreement departs from the applicable guideline range for justifiable reasons and does not undermine the basic purposes of sentencing.

§ 6B1.3. This provision implements the requirements of Rule 11(e)(4). It assures the defendant an opportunity to withdraw the defendant's plea when the court has rejected a plea agreement that would require dismissal of charges or imposition of a specific sentence.

§ 6B1.4. This provision requires that when a plea agreement includes a stipulation of fact, the stipulation must fully and accurately disclose all factors relevant to the determination of sentence. This provision does not obligate the parties to reach agreement on issues that remain in dispute or to present the court with an appearance of agreement in areas where agreement does not exist. Rather, the overriding principle is full disclosure of the circumstances of the actual offense and the agreement of the parties. The stipulation should identify all areas of agreement, disagreement and uncertainty that may be relevant to the determination of sentence. Similarly, it is not appropriate for the parties to stipulate to misleading or non-existent facts, even when both parties are willing to assume the existence of such "facts" for purposes of the litigation. Rather, the parties should fully disclose the actual facts and then explain to the court the reasons why the disposition of the case should differ from that which such facts ordinarily would require under the guidelines.

Because of the importance of the stipulations and the potential complexity of the factors that can affect the determination of sentences, stipulations ordinarily should be in writing. However, exceptions to this practice may be allowed by local rule. The Commission intends to give particular attention to this aspect of plea agreement procedure as experience under the guidelines develops. See Commentary to § 6A1.2.

Section 6B1.4(d) makes clear that the court is not obliged to accept the stipulation of the parties. Even though stipulations are expected to be accurate and complete, the court cannot rely exclusively upon stipulations in ascertaining the factors relevant to determination of the sentence. Rather, in determining the factual basis for the sentence, the court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information.

## CHAPTER SEVEN—VIOLATIONS OF PROBATION AND SUPERVISED RELEASE

### § 7A1.1. Classes of Violations

(a) Class I: Violations of any condition of probation or supervised release that constitutes new criminal conduct (except as noted in (c) below);

(b) Class II: Violations of any special condition of probation or supervised release;

(c) Class III: Violations of any standard condition of probation or supervised release and new criminal conduct consisting of misdemeanors or petty offenses otherwise excludable pursuant to § 4A1.2(c) (1) and (2) [Definitions and Instructions for Computing Criminal History].

### § 7A1.2. Reporting Violations

(a) Classes I and II: The United States Probation Officer shall report to the court all included violations of probation or supervised release;

(b) Class III: The United States Probation Officer shall report to the court all included violations of probation or supervised release unless he determines that non-reporting:

(1) Will not present an undue risk to the public;

(2) Will not depreciate either the defendant's or the public's respect for the justice system;

(3) Is consistent with the sentencing court's intention for placing the defendant on supervision; and

(4) Is otherwise appropriate considering the purposes of sentencing, the nature and circumstances of the violation and the criminal history and other characteristics of the defendant.

### § 7A1.3. Warrants and Violation Hearings

(a) Class I: The court shall issue a violator's warrant and conduct a violation hearing in accordance with Rule 32.1, Federal Rules of Criminal Procedure, for all included violations of probation or supervised release;

(b) Classes II and III: The court shall assess the purposes of sentencing, the nature and circumstances of the violations, and the criminal history and other characteristics of the defendant in determining whether to issue a violator's warrant and conduct a violation hearing in accordance with Rule 32.1, Federal Rules of Criminal Procedure, for all included violations of probation and supervised release.

**§ 7A1.4. Sanctions Imposable for Violations**

(a) Violations of Probation

(1) Class I.

(A) If the new criminal conduct involves a crime of violence, trafficking in a controlled substance, or conduct similar to the original offense of conviction, upon a finding that a violation has occurred, the court shall revoke probation and impose a new sentence within the guideline range that is 3 offense levels above the range that was determined when the defendant was sentenced to the term of probation.

(B) If the new criminal conduct involves any crime other than those listed in paragraph (A) above, upon a finding that a violation has occurred, the court shall revoke probation and impose a new sentence within the guideline range that is 2 offense levels above the range that was determined when the defendant was sentenced to the term of probation.

(C) If the new criminal conduct involves only the use of a controlled substance, upon a finding that a violation has occurred, the court either shall:

(1) Revoke probation and impose a new sentence pursuant to paragraph (B) above, or

(2) Continue or extend the term of probation and modify the conditions to include the defendant's participation in an approved drug treatment program.

(2) Classes II and III.

(A) Upon a finding that a violation has occurred, the court either shall:

(1) Revoke probation and impose any other sentence available within the guideline range that was determined when the defendant was sentenced to the term of probation, or

(2) Continue or extend the term of probation and modify the conditions to afford more intensive supervision.

(b) Violations of Supervised Release.

(1) Class I.

(A) If the new criminal conduct involves a crime of violence, trafficking in a controlled substance, or conduct similar to the original offense of conviction, upon a finding that a violation has occurred, the court shall revoke the supervised release and impose a new sentence of incarceration according to the following schedule:

| Original term of supervised release | Incarceration (months) |
|---|---|
| 3 or more years | 18–24 |
| More than 1 but less than 3 years | 12–18 |
| 1 year or less | 6–12 |

Additionally, the court shall include a new term of supervised release of a length equal to the original term of supervised release minus any term of incarceration imposed for the revocation.

(B) If the new criminal conduct involves any crime other than those listed in paragraph (A) above, upon a finding that a violation has occurred, the court shall revoke the supervised release and impose a new sentence of incarceration according to the following schedule:

| Original term of supervised release | Incarceration (months) |
|---|---|
| 3 or more years | 12–16 |
| More than 1 but less than 3 years | 6–12 |
| 1 year or less | 3–6 |

Additionally, the court shall include a new term of supervised release of a length equal to the original term of supervised release minus any term of incarceration imposed for the revocation.

(C) If the new criminal conduct involves only the use of a controlled substance, upon a finding that a violation has occurred, the court either shall:

(1) Revoke supervised release and impose a new sentence pursuant to paragraph (B) above, or

(2) Continue or extend the term of supervised release and modify the conditions to include the defendant's participation in an approved drug treatment program.

(2) Classes II and III.

(A) Upon a finding that a violation has occurred, the court either shall:

(1) Revoke supervised release and impose a new sentence of incarceration of not less than three but not more than nine months and a new term of supervised release of a length equal to the original term of supervised release minus any term of incarceration imposed for the revocation, or

(2) Continue or extend the term of supervised release and modify the conditions to afford more intensive supervision.

(c) Violations Generally:

(1) Upon revocation, the court shall give no credit for time served under probation or supervised release imposed for the original sentence nor shall it give credit for any time served under probation or supervised release in intermittent or community confinement or home detention imposed for the original sentence.

(2) If the defendant is serving a period of custody whether or not that custody is related to the same conduct that is the basis for the violation of probation or supervised release, the court shall order that the incarceration imposed upon revocation run consecutively to that period of custody.

**COMMENTARY**

Regardless of the purposes for which a term of probation or supervised release is imposed, compliance with the imposed conditions of supervision is essential to effectuate those purposes. Only if an offender understands that failure to comply will result in a prompt and certain response from the court will the conditions be adhered to in a meaningful and conscientious manner. The drafters of the Comprehensive Crime Control Act, recognizing that consistency and certainty are necessary in sanctioning violations of such conditions, directed the Commission to develop guidelines and policy statements regarding the revocation of both probation and supervised release. 28 U.S.C. 994(a)(3).

To facilitate that directive, the guidelines divide violations of probation and supervised release into three distinct classes. § 7A1.1. Class I violations include any conduct that consists of new criminal behavior, excluding those misdemeanors and petty offenses addressed in § 4A1.2(c) (1) and (2) (Definitions and Instructions for Computing Criminal History). Class II includes violations of the special conditions of probation or supervised release set forth in § 5B1.4(b) ((Recommended Conditions of Probation and Supervised Release) (Policy Statement)). Class III includes violations of the standard conditions set forth in § 5B1.4(a) ((Recommended Conditions of Probation and Supervised Release) (Policy Statement)). Additionally, those misdemeanors and petty offenses otherwise excludable pursuant to § 4A1.2(c) (1) and (2) are to be considered Class III violations. The remaining sections of this chapter contain guidelines geared toward these three classes of violations.

Section 7A1.2 provides guidelines for the reporting of violations of the conditions of probation and supervised release. All Class I and II violations are to be reported to the court by the United States Probation Officer. All Class III violations are to be reported unless the probation officer determines that the four factors noted in § 7A1.2(b) dictate otherwise. The Commission realizes that it might be counterproductive to have the courts and probation service burdened with reporting every incident of non-compliance with the standard conditions. While the development of uniform compliance standards for these conditions is an advisable alternative in this regard, that task must be placed on a future Commission agenda. In the interim, individual courts may wish to develop such compliance standards as models for subsequent adoption by the Commission. Probation officers should continue to document all violations in the chronological record in the case file and report to the court those particularly serious, repetitious or flagrant violations of the standard conditions.

Section 7A1.3 provides the guidelines for the court's issuance of a violator's warrant (or summons) and for when it should conduct a violation hearing pursuant to that warrant.

While a warrant is to be issued and a hearing conducted for all Class I violations of probation and supervised release, the court has discretion in regard to Class II and III violations. The Commission plans to revisit this issue. Detailed guidance might be included in the compliance standards alluded to above.

The guidelines for the sanctions imposable for violations of the conditions of supervision are included in § 7A1.4. Separate subsections are provided for probation and supervised release and three categories of Class I violations are contained within each of these subsections.

If the violation of the probation condition includes new criminal conduct involving a crime of violence, trafficking in a controlled substance or conduct similar to the original offense of conviction, the court shall revoke probation and impose a new sentence 3 offense levels above the range determined for the original offense. If the new criminal conduct involves any other Class I crime, the court shall revoke probation and impose a new sentence 2 offense levels above the range determined for the original offense. Except as provided in § 7A1.4(a)(1)(C), a determination not to revoke probation for a Class I crime constitutes a departure from the guidelines. In those circumstances where the court concludes that revocation is not appropriate, the court should extend the term of probation and modify the conditions to afford more intensive supervision.

While use or possession of a controlled substance constitutes a violation of one of the standard conditions (Class III), such a violation also constitutes new criminal conduct (Class I). Section 7A1.4(a)(1)(C) affords the court discretion as to how to proceed. When the court determines, for instance, that the defendant's drug possession was for personal use only and no new criminal charges have resulted, the court may choose to continue the defendant on probation in an approved drug treatment program. If, however, there is continued drug use after placement in a treatment program or if it appears that the defendant's drug use is associated with other criminal activity, the court may revoke probation and impose a new sentence 2 offense levels above the range determined for the original offense.

The guidelines provide the court with discretion as to how to sanction Class II and III violations of probation. Compliance standards to be developed should address the various special and standard conditions of supervision and provide more specific guidance as to the appropriate response for their violation.

Upon revocation of probation, the new sentence to be imposed relates to the sentencing range originally determined for the defendant. If the original offense level was decreased for acceptance of responsibility, for example, the resulting range would still govern the revocation term determination despite the fact that the defendant might have later failed to demonstrate such acceptance (e.g., failure to pay restitution to a victim). Additionally, the criminal history score originally computed for the defendant would remain unchanged for purposes of sentencing on revocation. In those instances, however, where the defendant was placed on probation because of the court's departure from an otherwise applicable guideline range, the sentence imposed upon revocation is to be determined in relation to the normally applicable guideline range and not to the range chosen for the departure.

For Class I violations of supervised release, three categories of sanctions are provided mirroring those for probation. A schedule is included for both Class I (A) and (B) type violations. The guidelines for new criminal conduct that involve only the personal use of a controlled substance affords the court with an option as to how to proceed. Additionally, upon revocation of a term of supervised release, the court shall impose a new term of supervision to commence upon release from the re-incarceration. The length of this new period of supervised release is equal to the original term minus any term of incarceration imposed by the court for the revocation. For example, if the defendant was serving a three-year period of supervised release and the court imposed a sixteen-month term of incarceration for a Class I violation, the new term of supervised release would be twenty months.

For Class II and III violations of supervised release, the court has discretion either to revoke and impose a new term of incarceration and a new term of supervised release or to modify both the term and conditions of the previously ordered supervised release.

Section 7A1.4(c) contains some general provisions for sanctioning violations of probation and supervised release. In determining the new sentence, the court shall give no credit for time served under supervision or time served under one of the incarceration alternatives available pursuant to § 5C2.1 (Imposition of a Term of Imprisonment). If the defendant is serving a period of custody related to the same conduct that formed the basis for the revocation, the new sentence imposed upon revocation shall run consecutively to that period of custody.

The guidelines herein have been developed to address the initial instances of violation behavior meriting court intervention. While the Commission recognizes that defendants often repeat violations after re-release from incarceration, guidelines for such behavior must also await further Commission action. This is a subject that could be included in the compliance standards that courts may be developing in the interim.

## Technical, Conforming, and Clarifying Amendments to Initial Sentencing Guidelines

Pursuant to Section 994(p) of Title 28, United States Code, the United States Sentencing Commission reports to the Congress the following technical, conforming, and clarifying amendments to the initial sentencing guidelines which were submitted to the Congress on April 13, 1987, pursuant to Section 235(a)(1) of the Comprehensive Crime Control Act of 1984:

*Amendments to Chapter One*

1. Amend the chapter heading to read "Chapter One—Introduction and General Application Principles".

2. Following the chapter heading, insert "Part A—Introduction".

3. In the first paragraph following the heading "The Statutory Mission", strike the word "by" and insert in lieu thereof ", i.e.,".

4. In the first paragraph following the heading "Multi-Count Convictions", strike "an" the second time it appears and insert in lieu thereof "a".

5. Amend the second paragraph following the heading "Sentencing Ranges"—

(a) By striking "insofar as many" and inserting in lieu thereof "inasmuch as those"; and

(b) By striking "so the guidelines also provide potential discounts for" and inserting in lieu thereof "the guidelines also permit the court to impose lesser sentences on".

6. Amend the third paragraph following the heading "Sentencing Ranges" by inserting before the period at the end of said paragraph the words "over a period of ten years".

7. Preceding subpart 6 (Application Instructions), insert "Part B—General Application Principles".

8. Redesignate the numeral 6 preceding "Application Instructions" as § 1B1.1.

9. Strike the first two paragraphs following the heading "Application Instructions".

10. In the subpart titled "Application Instructions", redesignate paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9 as subsections (a), (b), (c), (d), (e), (f), (g), (h), and (i), respectively, and strike the period after each numeral.

11. In the subpart titled "Application Instructions", amend the first numbered paragraph, redesignated as subsection (a), to read:

"(a) Determine the guideline section in Chapter Two most applicable to the statute of conviction. See § 1B1.2 (Applicable Guidelines). The statutory index (Appendix A) provides a listing to assist in this determination. If more than one guideline is referenced for the particular statute, select the guideline most appropriate for the conduct of which the defendant was convicted."

12. In the subpart titled "Application Instructions", amend the second numbered paragraph, redesignated as subsection (b), by—

(a) Striking the word "Apply" and inserting in lieu thereof "Determine"; and

(b) Inserting the word "apply" following the word "and".

13. In the subpart titled "Application Instructions", amend the sixth numbered paragraph, redesignated as subsection (f), to read:

"(f) Determine the defendant's criminal history category as specified in Part A of Chapter Four. Determine from Part B of Chapter Four any other applicable adjustments.".

14. In the subpart titled "Application Instructions", amend the seventh numbered paragraph, redesignated as subsection (g), to read:

"(g) Determine the guideline range in Part A of Chapter Five that corresponds to the total offense level and criminal history category.".

*Amendments to Chapter Two*

1. Strike the chapter title and all that follows through the heading "General Principles Governing Chapter Two".

2. Amend § 201 (Applicable Guidelines)—

(a) By redesignating § 201 as § 1B1.2;

(b) In subsection (a) by—

(1) Striking all after the word "apply" the first time such word appears in that subsection through the word "chapter" the first time such word appears and inserting in lieu thereof "the guideline in Chapter Two (Offense Conduct)"; and

(2) Striking the word "this" the last time it appears in such subsection and inserting in lieu thereof "such"; and

(c) In subsection (b) by redesignating § 202, Relevant Conduct, as § 1B1.3 (Relevant Conduct).

3. Amend the first paragraph of commentary to § 201 (redesignated as § 1B1.2)—

(a) By striking "Section 201" and inserting in lieu thereof "§ 1B1.2. This section "; and

(b) By striking "this chapter" and inserting in lieu thereof "Chapter Two (Offense Conduct)".

4. Amend the second paragraph of commentary to § 201 (redesignated as § 1B1.2), by—

(a) Striking the word "crime" wherever it appears and inserting in lieu thereof "offense or offenses"; and

(b) Inserting at the end of the paragraph the following:

"Similarly, if the defendant pleads guilty to one robbery but admits the elements of two additional robberies as part of a plea agreement, the guideline applicable to three robberies is to be applied."

5. In the second paragraph of commentary to § 201 (redesignated as § 1B1.2), strike all after the comma following the word "Five" through the word "Sentences" and insert in lieu thereof "Part G (Implementing the Total Sentence of Imprisonment".

6. Amend the fifth paragraph of commentary to § 201 (redesignated as § 1B1.2)—

(a) By redesignating 201(b) as 1B1.2(b);

(b) By redesignating § 201(a) as § 1B1.2(a); and

(c) By redesignating § 202 as § 1B1.3.

7. In the guideline section titled "Relevant Conduct", redesignate § 202 as § 1B1.3.

8. Strike the first paragraph of commentary to § 202 (redesignated as § 1B1.3), and insert in lieu thereof "A judge should consider all relevant offense and offender characteristics. Conduct and circumstances of the offense of conviction are restricted to:".

9. In the second paragraph of commentary to § 202 (redesignated as § 1B1.3), insert "and Criminal Livelihood" after the word "History".

10. In the second paragraph of commentary to § 202 (redesignated as § 1B1.3), strike "K (Departures)" and insert in lieu thereof "H (Specific Offender Characteristics)".

11. Amend § 203—

(a) By redesignating such guideline as § 1B1.4;

(b) In the text following the guideline section title, by striking "prescribed by this chapter";

(c) In subsection (a) by inserting before the semicolon: "from Chapter Two";

(d) In subsection (b) by inserting "from Chapter Two" immediately following the word "characteristics";

(e) In subsection (c) by striking ", Part A (Victim-Related Adjustments)";

(f) In subsection (d) by striking all after the word "Chapter" through the semicolon and inserting in lieu thereof "Four, Part B (Career Offenders and Criminal Livelihood)."; and

(g) By striking subsection (e).

12. Strike the second paragraph of commentary to § 203 (redesignated as § 1B1.4), and insert in lieu thereof the following:

"The adjustments in Chapter Three that may apply include Part A (Victim-Related Adjustments), Part B (Role in the Offense), Part C (Obstruction), Part D (Multiple Counts), and Part E (Acceptance of Responsibility). Chapter Four, Part B (Career Offenders and Criminal Livelihood), if applicable, is also to be treated as an adjustment to the offense level.".

13. Following the commentary to § 203 (redesignated as § 1B1.4), add a new guideline section and commentary as follows:

"§ 1B1.5. Interpretation of References to Other Offense Guidelines.

Unless otherwise expressly indicated, a reference to another guideline, or an instruction to apply another guideline, refers to the entire guideline, i.e., the base offense level plus all applicable adjustments for specific offense characteristics.

COMMENTARY

References to other offense guidelines are most frequently designated "Cross References," but may also appear in the portions of the guideline entitled "Base Offense Level" (e.g., §§ 2D1.2(a)(1), 2H1.2(a)(2)), or "Specific Offense Characteristics" (e.g., §§ 2A4.1(b)(5)(B), 2Q1.2(b)(5)). These references may be to a specific guideline, or may be more general (e.g., to the guideline for the "underlying offense"). Such references are to be construed to incorporate the specific offense characteristics as well as the base offense level. For example, if the guideline reads "2 plus the offense level from § 2A2.2 (Aggravated Assault)," the user would determine the offense level from § 2A2.2, including any applicable adjustments for planning, weapon use, degree of injury and motive, and then increase by 2 levels. If the victim was vulnerable, the adjustment from § 3A1.1 (Vulnerable Victim) also would apply.".

14. Before the heading "Structure of the Guidelines" insert "§ 1B1.6" and strike the colon following the heading.

15. Amend the text and illustration following the heading "Structure of the Guidelines"—

(a) In the first paragraph by striking the word "sections" and inserting in lieu thereof "subparts";

(b) In the first and second paragraphs by striking the word "section" wherever that word appears except where such word appears as the first word of the second sentence of the second paragraph, and inserting in lieu thereof "subpart"; and

(c) In the illustration by striking "Section" and inserting in lieu thereof "Subpart".

16. Strike the paragraph of text following the illustration of guidelines structure and insert in lieu thereof the following:

"§ 1B1.7. Significance of Commentary.

The Commentary that accompanies the guideline sections may serve a number of purposes. First, it may interpret the guideline or explain how it is to be applied. Failure to follow such commentary could constitute an incorrect application of the guidelines, subjecting the sentence to possible reversal on appeal. See 18 U.S.C. 3742. Second, the commentary may suggest circumstances which, in the view of the Commission, may warrant departure from the guidelines. Such commentary is to be treated as the legal equivalent of a policy statement. Finally, the commentary may provide background information, including factors considered in promulgating the guideline or reasons underlying promulgation of the guideline. As with a policy statement, such commentary may provide guidance in assessing the reasonableness of any departure from the guidelines.".

17. Following the chapter two title and preceding Part A, insert the following:

"OVERVIEW

Chapter Two pertains to offense conduct. The chapter is organized by offenses and divided into parts and related sections that may cover one statute or many. Each offense has a corresponding base offense level. When a particular offense warrants a more individualized sentence, specific offense characteristics are provided within the guidelines. Certain factors relevant to criminal conduct that are not provided in specific guidelines are set forth in Chapter Three, Part A (Victim-Related Adjustments) and Chapter Five, Part K (Departures). The statutes appearing at the beginning of each part are illustrative and do not necessarily include all the statutes covered by the guidelines in that part.".

18. In the commentary to § 2A1.4, strike the word "intoxicated" and insert in lieu thereof "under the influence of alcohol or drugs".

19. Amend § 2A3.4(b)(1) by inserting after "§ 2241" and before the comma the following: "(including, but not limited to, the use or display of any dangerous weapon)".

20. In the commentary to § 2A3.4, strike "provided through" and insert in lieu thereof "consistent with the".

21. Amend § 2A4.1(b)(4) by striking "voluntarily" wherever it appears.

22. Amend the commentary to § 2A4.1 by—

(a) Striking the last sentence in the first paragraph; and

(b) By inserting immediately following the first paragraph the following new paragraph:

"The guideline contains an adjustment for the length of time that the victim was detained. The adjustment recognizes the increased suffering involved in lengthy kidnappings, and provides an incentive to release the victim. A victim who is freed should be deemed to have been released unless the defendant attempted to recapture the victim or the victim was rescued by law enforcement authorities whom the defendant resisted.".

23. Amend § 2B3.1(b)(2)(C) by inserting "brandished, displayed or" immediately before the word "possessed".

24. Amend the first paragraph of commentary to § 2B3.2 by striking "673,".

25. Amend § 2B3.2(b)(2)(C) by inserting "brandished, displayed or" immediately before the word "possessed".

26. In the first paragraph of commentary to § 2B4.1—

(a) Strike ", 224, and 1954" and insert in lieu thereof: "and 224"; and

(b) Strike "41 U.S.C. 51–54" and insert in lieu thereof: "41 U.S.C. 51, 53–54".

27. In the fourth paragraph of commentary to § 2B4.1, strike "41 U.S.C. 51–54" and insert in lieu thereof: "41 U.S.C. 51, 53–54".

28. In subparts B5 and B6, insert "(Fraud and Deceit)" immediately following "§ 2F1.1" wherever it appears.

29. Amend the second paragraph of commentary to § 2B6.1 by inserting "(Larceny, Embezzlement, and Other Forms of Theft)" immediately following "§ 2B1.1".

30. Amend § 2C1.1(b) by striking "(1)" preceding the word "Apply" and by redesignating subparagraphs (A) and (B) as (1) and (2), respectively.

31. Amend § 2C1.6(a) by striking "6" and inserting in lieu thereof "7".

32. Amend the last sentence of the fourth paragraph of the commentary to § 2C1.1 by striking the word "police", and inserting in lieu thereof "law enforcement".

33. Amend the Drug Quantity Table by striking the word "Propanamide" wherever that word appears and inserting in lieu thereof "Fentanyl".

34. Amend the Drug Quantity Table—

(a) In the first paragraph (i.e., the text corresponding to Level 36), by striking all following the word "Analogue" and inserting in lieu thereof: ", 10,000 KG Marihuana, 100,000 Marihuana Plants, 2000 KG Hashish, 200 KG Hashish Oil (or more of any of the above)";

(b) By adding at the end of the second paragraph (i.e., the text corresponding to Level 34) ", 30,000–99,999 Marihuana Plants, 600–1999 KG Hashish, 60–199 KG Hashish Oil";

(c) By adding at the end of the third paragraph (i.e., the text corresponding to Level 32) ", 10,000–29,999 Marihuana Plants, 200–599 KG Hashish, 20–59.9 KG Hashish Oil";

(d) By adding at the end of the fourth paragraph (i.e., the text corresponding to Level 30) ", 7000–9999 Marihuana Plants, 140–199 KG Hashish, 14–19.9 KG Hashish Oil";

(e) By adding at the end of the fifth paragraph (i.e., the text corresponding to Level 28) ", 4000–6999 Marihuana Plants, 80–139 KG Hashish, 8.0–13.9 KG Hashish Oil";

(f) By adding at the end of the sixth paragraph (i.e., the text corresponding to Level 26) ", 1000–3999 Marihuana Plants, 20–79 KG Hashish, 2.0–7.9 KG Hashish Oil";

(g) By adding at the end of the seventh paragraph (i.e., the text corresponding to Level 24) ", 800–999 Marihuana Plants, 16–19.9 KG Hashish, 1.6–1.9 KG Hashish Oil"; and

(h) In the eighth paragraph (i.e., the text corresponding to Level 22), by striking all after "600" the second time such number appears and inserting in lieu thereof: "–799 Marihuana Plants, 12–15.9 KG Hashish, 1.2–1.5 KG Hashish Oil".

35. Amend the last sentence of the first paragraph of commentary to § 2D1.1 by striking "960(b)" and inserting in lieu thereof "962(b)".

36. Amend the last sentence of the third paragraph of commentary to § 2D1.1 by striking "Force" and inserting in lieu thereof "Forces".

37. Amend the first sentence of the fourth paragraph of commentary to § 2D1.1 by inserting the word "two" between the words "with" and "asterisks".

38. Strike the last three paragraphs of commentary to § 2D1.1 preceding the Drug Equivalency Table, and insert in lieu thereof the following:

"The Commission has used the sentences provided in, and equivalences derived from, the statute (21 U.S.C. 841(b)(1)), as the primary basis for the guideline sentences. The statute, however, provides direction only for the more common controlled substances, i.e., heroin, cocaine, PCP, LSD and marihuana. The Drug Equivalency Tables set forth below provide conversion factors for other substances, which the Drug Quantity Table refers to as "equivalents" of these drugs. For example, 1 gram of a substance containing methamphetamine, a Schedule I stimulant, is to be treated as the equivalent of 2 grams of a substance containing cocaine in applying the Drug Quantity Table.

The Drug Equivalency Tables also provide a means for combining differing controlled substances to obtain a single offense level. If all the drugs are "equivalents" of the same drug, e.g., stimulants that are grouped with cocaine, covert them to that drug. In other cases, convert each of the drugs to either the heroin or marihuana equivalents, add the quantities, and look up the total in the Drug Quantity Table to obtain the combined offense level. Use the marihuana equivalents when the only substances involved are "Schedule I Marihuana," "Schedule III Substances," "Schedule IV Substances," "Schedule V Substances" or "Other Schedule I or II Substances".

Note: Because of the statutory equivalences, the entries in the Drug Equivalency Tables do not necessarily correspond to the relative dosages of the drugs involved. Examples:

1. The defendant is convicted of selling 70 grams of a substance containing PCP (Level 22) and 250 milligrams of a substance containing LSD (Level 18). Both PCP and LSD are grouped together in the Drug Equivalency Tables under the heading "LSD, PCP and Other Schedule I and II Hallucinogens," which provides PCP equivalencies. The 250 milligrams of LSD is equivalent to 25 grams of PCP. The total is therefore 95 grams of PCP, for which the Drug Quantity Table provides an offense level of 24.

2. The defendant is convicted of selling 500 grams of marihuana (Level 8) and 5 kilograms of diazepam (Level 8). The diazepam, a Schedule IV drug, is equivalent to 625 grams

of marihuana. The total, 1.125 kilograms of marihuana, has an offense level of 10 in the Drug Quantity Table.

3. The defendant is convicted of selling 80 grams of cocaine (Level 18) and 5 kilograms of marihuana (Level 16). The cocaine is equivalent to 16 grams of heroin; the marihuana, to 5 grams of heroin. The total equivalent is 21 grams of heroin, which has an offense level of 18 in the Drug Quantity Table.".

39. Amend the Drug Equivalency Table:

(a) In the title by striking "Table" and inserting in lieu thereof "Tables";

(b) By amending the title of the first section to read: "Schedule I or II Opiates";

(c) In the second row of the first section by striking "0.66" and inserting in lieu thereof "0.67";

(d) In the fifth and sixth rows of the first section, by striking "5" and inserting in lieu thereof "0.7";

(e) By striking the title to the second section (i.e., striking "Schedule II Substances with Heroin Like Effects"), and by inserting after the word "Fentanyl" (in the eighth row of the renamed section "Schedule I or II Opiates") the organic chemical name "(N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide)";

(f) In the fifteenth row (of the renamed section "Schedule I or II Opiates") by striking "1 gm of heroin" and inserting in lieu thereof "0.5 gm of heroin";

(g) In the seventeenth row (of the renamed section "Schedule I or II Opiates") by striking "1.66" and inserting in lieu thereof "0.8";

(h) By inserting after the seventeenth row (of the re-named section "Schedule I or II opiates") the following:

"1 gm of Codeine=0.08 gm of heroin
1 gm of Dextropropoxyphene/
Propoxyphene-Bulk=0.05 gm of heroin
1 gm of Ethylmorphine=0.165 gm of heroin
1 gm of Hydrocodone/
Dihydrocodeinone=0.5 gm of heroin
1 gm of Mixed Alkaloids of Opium/
Papaveretum=0.25 gm of heroin
1 gm of Opium=0.05 gm of heroin";

(i) In the second row of the section titled "Cocaine and Other Schedule I and II Stimulants", by inserting in the right-hand column "0.4 gm of cocaine/" preceding "0.08 gm of heroin";

(j) In the third row of the section titled "Cocaine and Other Schedule I and II Stimulants" by inserting "0.2 gm of cocaine/" preceding "0.04";

(k) In the fourth and fifth rows of the section titled "Cocaine and Other Schedule I and II Stimulants" by inserting "1.0 gm of cocaine/" preceding "0.2";

(l) In the sixth row of the section titled "Cocaine and Other Schedule I and II Stimulants" by inserting "2.0 gm of cocaine/" preceding "0.4";

(m) In the seventh row of the section titled "Cocaine and Other Schedule I and II Stimulants" by inserting "0.2 gm of cocaine/" preceding "0.04";

(n) In the eighth row of the section titled "Cocaine and Other Schedule I and II Stimulants" by inserting "0.4 gm of cocaine/" preceding "0.08";

(o) In the ninth row of the section titled "Cocaine and Other Schedule I and II Stimulants" by inserting "0.375 gm of cocaine/" preceding "0.075"; and

(p) In the tenth row of the section titled "Cocaine and Other Schedule I and II Stimulants" by striking "0.166 gm of heroin" and inserting in lieu thereof "0.833 gm of cocaine/0.167 gm of heroin".

40. Amend the Drug Equivalency Table in the section titled "LSD, PCP and Other Schedule I or II Hallucinogens"—

(a) By inserting "or PCP" following the word "heroin" in each row except for the tenth row; and

(b) In the eighteenth row by striking "1.66" and inserting in lieu thereof "1.67".

41. Amend the Drug Equivalency Table in the section titled "Schedule I Marihuana" by striking "Hash/" in the fourth row.

42. Amend the Drug Equivalency Table—

(a) By striking the section title "Schedule I or II Depressants and Schedule II Narcotics" and inserting in lieu thereof "Other Schedule I or II Substances"; and

(b) By striking the first 12 rows in such section.

43. Amend the Drug Equivalency Title in the section titled "Schedule III Substances"—

(a) In the ninth row of such section, by striking "0.4 mg of heroin/400 mg of marihuana" and inserting in lieu thereof "2 mg of heroin/2 gm of marihuana"; and

(b) In the last two rows of such section, by striking "0.01 mg of heroin/10 mg of marihuana" and inserting in lieu thereof "2 mg of heroin/2 gm of marijuana" in each row.

44. Amend the Drug Equivalency Table in the section titled "Schedule IV and V Substances"—

(a) By amending the section title to read "Schedule IV Substances";

(b) By striking the third row of such section; and

(c) By amending the right-hand column of each remaining row in that section to read: "0.125 mg of heroin/0.125 gm of marihuana".

45. Amend the Drug Equivalency Table by inserting at the end (following the section retitled as "Schedule IV Substances") a new section as follows:

"Schedule V Substances
1 gm of codeine cough syrup=0.0125 mg of heroin; 12.5 mg of marihuana".

46. Amend the Dosage Equivalency Table under the subtitle "Stimulants"—

(a) By striking "HCL." and inserting in lieu thereof "HCl";

(b) By striking "SO4" and inserting in lieu thereof "$SO_4$".

47. Amend § 2D1.5(a)(3) by striking "300 times that specified in Row 1 of the Drug Quantity Table" and inserting in lieu thereof: "30 times the minimum in the first paragraph (i.e., the text corresponding to Level 36) of the Drug Quantity Table or 300 times the minimum in the third paragraph (i.e., the text corresponding to Level 32);".

48. Amend § 2E2.1(b)(1)(C) by inserting "brandished, displayed or" immediately before the word "possessed".

49. Amend § 2F1.2(b)(1) by striking "defendant's conduct" and inserting in lieu thereof "offense".

50. Strike the thirteenth paragraph of commentary to § 2F1.1 and insert in lieu thereof the following:

"If the fraud exploited vulnerable victims, an enhancement will apply. See § 3A1.1 (Vulnerable Victim)."

51. Amend the last sentence of the commentary to § 2F1.2 by striking all after "realized" and inserting in lieu thereof "through trading in securities based upon such information, by the defendant and persons acting in concert with him or to whom he provided inside information, as employed instead of the victims' losses.".

52. Strike "2 U.S.C. § 437g(d)," from the commentary to § 2H2.1.

53. In the commentary to § 2H2.1, strike "1341, and 1343,".

54. Amend § 2J1.7(b) by striking "underlying offense" each place it appears and inserting in lieu thereof "offense committed while on release".

55. Amend § 2J1.8(c) by redesignating "Note:" as "Cross Reference".

56. Strike the commentary to § 2J1.7 and insert in lieu thereof the following:

"§ 2J1.7 (18 U.S.C. 3147). The statute specifies that "any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment." Because a defendant convicted under this section necessarily will have a prior criminal record, the guideline sentences are higher than otherwise might appear. This guideline presumes, however,

that the sentence imposed for the offense committed while on release, which may have been imposed by a state court, is reasonably consistent in effective length with the sentence that these guidelines require for a similar federal offense. If not, departure may be warranted."

57. Amend § 2K1.3(b) by striking "(1)" immediately preceding "If" and redesignating subparagraphs (A), (B), (C), (D), and (E) as paragraphs (1), (2), (3), (4), and (5), respectively.

58. Amend § 2K1.4(b) by striking "(1)" immediately preceding "If" and redesignating subparagraphs (A), (B), (C), (D), (E), and (F) as paragraphs (1), (2), (3), (4), (5), and (6), respectively.

59. Amend § 2K1.5(b) by—

(a) Striking "(1)" immediately preceding "If" and redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively;

(b) Inserting following the redesignated paragraph (3) a new subsection title as follows: "(c) Cross Reference";

(c) Redesignating the last paragraph in that guideline section as paragraph (1) under subsection (c); and

(d) Striking "in respect to" in the redesignated paragraph (c)(1), and inserting in lieu thereof "for".

60. Amend § 2M1.1—

(a) In subsection (a) by striking "(Apply the greatest):";

(b) In paragraph (1) by striking the word "or";

(c) In paragraph (2) by striking "; or" and inserting in lieu thereof ", otherwise."; and

(d) By striking paragraph (3).

61. Amend the commentary to § 2M1.1—

(a) By striking "encompassing a" and inserting in lieu thereof "that could encompass a relatively";

(b) By inserting immediately after the word "conduct" and before the period the following: ", including many of the more specific offenses in this Part"; and

(c) By striking the last sentence.

62. Amend the first paragraph of commentary pertaining to § 2M5.1 by inserting "App." following "U.S.C." each place the latter appears.

63. Amend the title of the first subpart under Part N to read: "Tampering With Consumer Products".

64. Amend the title of § 2N1.1 to read: "Tampering or Attempting to Tamper Involving Risk of Death or Serious Injury".

65. Amend the commentary to subpart 1 of Part N by—

(a) Striking "Section 2N1.1" and inserting in lieu thereof "§ 2N1.1. This section";

(b) Striking "Section 2N1.2" and inserting in lieu thereof "§ 2N1.2. This section"; and

(c) Striking "Section 2N1.3" and inserting in lieu thereof "§ 2N1.3. This section".

66. Amend the commentary to subpart 1 of Part N by striking the fourth paragraph and inserting the material stricken as the second sentence of the first paragraph.

67. Amend the commentary to § 2N2.1 by striking "Section 2N2.1" and inserting in lieu thereof "§ 2N2.1. This section".

68. Amend the commentary to § 2N3.1 by inserting "§ 2N3.1." preceding "This section".

69. Amend § 2P1.1(b)(2) by striking "voluntary" and inserting in lieu thereof "voluntarily".

70. Amend § 2S1.3(b)(1) by striking "reasonably" and inserting in lieu thereof "knew or".

71. Under the heading "Offenses Involving Alcohol and Tobacco Taxes", amend the commentary pertaining to § 2T2.2 by striking "5" and inserting in lieu thereof "4".

72. Amend the first paragraph of commentary to subpart 2 (Offenses Involving Alcohol and Tobacco Taxes) by striking "5697" and inserting in lieu thereof "5691".

73. Amend the first paragraph of commentary to subpart 3 (Offenses Involving Customs) by striking "1568(e)" and inserting in lieu thereof "1586(e)".

74. Amend the commentary to § 2X1.1, by striking "286,".

75. Amend the commentary to § 2X2.1, by striking "752–753".

76. Amend the commentary to § 2X2.1, by striking ", 2383".

77. Amend § 2X3.1(a) by striking "5," and inserting in lieu thereof "4".

78. In the commentary to § 2X3.1, strike ", 1381, 2388(c)".

*Amendments to Chapter Three*

1. Strike the text of § 3A1.1 (Vulnerable Victim) through the word "because" the second time such word appears and insert in lieu thereof:

"If the defendant knew or should have known that the victim of the offense was unusually vulnerable due to age, physical or mental condition, or that".

2. Amend the commentary pertaining to § 3A1.1 (Vulnerable Victim) by striking the word "substantial".

3. Amend the Introduction to Part D—

(a) By striking the word "section" wherever it appears and inserting in lieu thereof "Part";

(b) In paragraph one by striking "Implementation of" and inserting in lieu thereof "Determining and implementing";

(c) In paragraph two by striking the word "Count" wherever that word appears immediately preceding the word "Group" or "Groups"; and

(d) In paragraph two by inserting "of Closely-Related Counts" after the word "Groups".

4. Amend § 3D1.1 (Procedure for Determination of Offense Level on Multiple Counts)—

(a) In the title by striking "Determination of" and inserting in lieu thereof "Determining";

(b) By striking the word "Count" wherever it appears in that guideline section immediately preceding the word "Group" or "Groups"; and

(c) In subsection (a) by inserting "of Closely-Related Counts ("Groups")" after the word "Groups".

5. Amend § 3D1.2 (Count Groups)—

(a) By amending the title to read: "Groups of Closely-Related Counts";

(b) In the first paragraph of text, by striking the word "Count" preceding the word "Group"; and

(c) In the first paragraph of text, by inserting the word "substantially" immediately following the word "involve".

6. Amend § 3D1.2—

(a) In subsection (c) by inserting a comma after the word "in" and a comma after the word "to" the first time the latter word appears;

(b) In subsection (d) by striking "Part L (§ 2L1.3)," ; and

(c) In subsection (d) by striking "§ 2Q1.3(b)(1)(A)" and inserting in lieu thereof "§§ 2L1.3 and 2Q1.3(b)(1)(A)".

7. Amend § 3D1.3—

(a) In subsection (a) by striking "all provisions of Chapters Two and" and inserting in lieu thereof "Chapter Two and Parts A, B and C of Chapter"; and

(b) In subsection (b) by striking "Chapters" and inserting in lieu thereof "Chapter".

8. Amend § 3D1.3 (Offense Level Applicable to Each Count Group)—

(a) By amending the title to read: "Offense Level Applicable to Each Group of Closely-Related Counts";

(b) In the first sentence of text under the title by striking "the Count" and inserting in lieu thereof "each of the";

(c) In subsections (a) and (b) by striking the word "Count" wherever that word immediately precedes the word "Group";

(d) In subsection (b) by striking the word "different" and inserting in lieu thereof "the"; and

(e) By striking subsection (c).

9. Amend § 3D1.4 (Combined Offense Level)—

(a) By amending the title to read: "Determining the Combined Offense Level";

(b) By striking "most serious Count Group" wherever that phrase appears and inserting in lieu thereof "Group with the highest offense level";

(c) By striking the word "Count" wherever that word appears immediately preceding the word "Group" or "Groups";

(d) In subsection (a) by striking "Also count one" and inserting in lieu thereof "Count one additional"; and

(e) In subsection (a) by inserting the word "from" immediately following the word "or".

10. Amend § 3D1.5 (Total Punishment) to read as follows:

"§ 3D1.5. Determining the Total Punishment

Use the combined offense level to determine the appropriate sentence in accordance with the provisions of Chapter Five.".

11. Amend the commentary to Part D—

(a) By striking the word "Count" wherever that word appears immediately preceding the word "Group" or "Groups";

(b) In the paragraph pertaining to § 3D1.3, by inserting "of Closely-Related Counts" immediately following the word "Group";

(c) In the paragraph pertaining to § 3D1.3 by striking "§ 3D.3(c)" and inserting in lieu thereof "subsection (b)"; and

(d) By adding at the end of the first paragraph pertaining to § 3D1.4 the following new sentence: "Inasmuch as the maximum increase provided in the guideline is 5 levels, departure would be warranted in the unusual case where the additional offenses resulted in a total of substantially more than 5 Units.".

12. Amend the third illustration in the commentary to Part D by striking "§ 2F1.1(b)(1)(B)" and inserting in lieu thereof "§ 2F1.1(b)(2)(B)".

*Amendments to Chapter Four*

1. Amend the second paragraph of the Introduction by—

(a) Striking the word "likely" and inserting in lieu thereof "the likelihood of";

(b) Inserting ", drug abuse" immediately after "age";

(c) Striking "in respect to" and inserting in lieu thereof "as to";

(d) Striking the word "presently"; and

(e) Striking "it becomes" and inserting in lieu thereof "they become".

2. In the second paragraph of text to § 4A1.3, strike "generally will occur" and insert in lieu thereof "is warranted".

3. Amend the table in § 4B1.1 under the column heading "Offense Statutory Maximum"—

(a) In (C) and (D) by inserting "or more" immediately following the word "years" the first time that word is used; and

(b) In (E) by striking "1 year & 1 day" and inserting in lieu thereof "More than 1 year".

*Amendments to Chapter Five*

1. Amend the second paragraph of the commentary to § 5B1.3 by redesignating 5C1.1 as 5B1.1.

2. Amend § 5B2.4(a) by striking "are those that".

3. Amend § 5B1.4(b)—

(a) By striking "are those that";

(b) By inserting ", or may be appropriate in a particular case" immediately after the word "described"; and

(c) In paragraph (17) by inserting a paragraph title as follows: "Debt Obligations".

4. Amend § 5C2.1(e)(1) by striking the parenthetical phrase and inserting in lieu thereof:

"(each 24 hours of confinement is credited as one day of intermittent confinement, provided, however, that one day shall be credited for any calendar day during which the defendant is employed in the community and confined during all remaining hours)".

5. Amend the title of § 5G1.1 by striking "On" and inserting in lieu thereof "on".

*Amendments to Chapter Six*

1. Amend each section title in Part B (Plea Agreements) by inserting immediately following the title: "(Policy Statement)".

2. Amend the first paragraph of commentary relating to § 6B1.2 by striking the word "may" the last time such word appears and inserting in lieu thereof "is to".

*Amendments to Chapter Seven*

1. Strike §§ 7A1.1 and 7A1.2 and insert in lieu thereof the following:

"§ 7A1.1. Reporting of Violations of Probation and Supervised Release (Policy Statement)

(a) The Probation Officer shall promptly report to the court any alleged violation of a condition of probation or supervised release that constitutes new criminal conduct, other than conduct that would constitute a petty offense.

(b) The Probation Officer shall promptly report to the court any other alleged violation of a condition of probation or supervised release, unless the officer determines: (1) That such violation is minor, not part of a continuing pattern of violation, and not indicative of a serious adjustment problem; and (2) that non-reporting will not present an undue risk to the public or be inconsistent with any directive of the court relative to the reporting of violations.".

2. Beginning with § 7A1.3, strike all that follows through the end of § 7A1.4(b)(2), and insert in lieu thereof the following:

"§ 7A1.2. Revocation of Probation (Policy Statement)

(a) Upon a finding of a violation of probation involving new criminal conduct, other than criminal conduct constituting a petty offense, the court shall revoke probation.

(b) Upon a finding of a violation of probation involving conduct other than conduct under subsection (a), the court may: (1) Revoke probation; or (2) extend the term of probation and/or modify the conditions of probation.

§ 7A1.3. Revocation of Supervised Release (Policy Statement)

(a) Upon a finding of a violation of supervised release involving new criminal conduct, other than criminal conduct constituting a petty offense, the court shall revoke supervised release.

(b) Upon a finding of a violation of supervised release involving conduct other than conduct under subsection (a), the court may: (1) Revoke supervised release; or (2) extend the term of supervised release and/or modify the conditions of supervised release.".

3. Beginning with § 7A1.4(c), strike all through the commentary to the end of the chapter, and insert in lieu thereof the following:

§ 7A1.4. No Credit for Time Under Supervision (Policy Statement)

(a) Upon revocation of probation, no credit shall be given (toward any sentence of imprisonment imposed) for any portion of the term of probation served prior to revocation.

(b) Upon revocation of supervised release, no credit shall be given (toward any term of imprisonment ordered) for time previously served on post-release supervision.

COMMENTARY

§ 7A1.1. This policy statement addresses the reporting of violations of probation and supervised release. It is the Commission's intent that significant violations be promptly reported to the court. At the same time, the Commission realizes that it would neither be practical nor desirable to require such reporting for every minor violation.

§§ 7A1.2 and 7A1.3. These policy statements express a presumption that probation and supervised release are to be revoked in the case of new criminal conduct other than a petty offense. For lesser violations, the policy statements provide that the court may revoke probation or supervised release; or may extend the term of supervision or modify the conditions of supervision.

§ 7A1.4. This policy statement provides that time spent on probation or supervised release is not to be credited in the determination of any term of imprisonment imposed upon revocation.".

*Amendments of General Application*

1. Amend the title to Chapter Four wherever that chapter is referred to in its entirety, to read: "Criminal History and Criminal Livelihood".

2. Amend the Table of Contents by—

(a) Amending the title of Chapter One to read: "Chapter One: Introduction and General Application Principles";

(b) Inserting "Part A—Introduction" following the Chapter One title;

(c) Striking "8. Application Instructions";

(d) Inserting "Part B—General Application Principles" following the subparts to Part A of Chapter One and preceding Chapter Two;

(e) Amending the title of Chapter Four to read: "Chapter Four: Criminal History and Criminal Livelihood";

(f) Striking "(Forthcoming)" following the heading "Statutory Index"; and

(g) Conforming the page numbers.

*Amendments to Statutory Listings in Chapter Two*

1. In the listing of statutes following the heading "Homicide", strike "18 U.S.C. § 113(a)".

2. In the listing of statutes following the heading "Criminal Sexual Abuse", strike "18 U.S.C. §§ 2031–2032".

3. In the statutory listing following the title to subpart 3 (Criminal Sexual Abuse), strike "2245" and insert in lieu thereof "2244".

4. In the statutory listing following the title to subpart 5 (Air Piracy), strike "(c),".

5. In the listing of statutes following the heading "Theft, Embezzlement, Receipt of Stolen Property, and Property Destruction", strike "§§ 1700–1701" and insert in lieu thereof "1701".

6. In the listing of statutes following the heading "Commercial Bribery and Kickbacks"—

(a) Strike "18 U.S.C. § 1954"; and

(b) Strike "41 U.S.C. §§ 51–54" and insert in lieu thereof:

"41 U.S.C. 51
41 U.S.C. 53–54".

7. In the listing of statutes following the heading "Counterfeiting", strike "18 U.S.C. § 495".

8. In the listing of statutes following the heading "Labor Racketeering"—

(a) Strike "18 U.S.C. § 1231";

(b) Strike "29 U.S.C. §§ 431–439" and insert in lieu thereof:

"29 U.S.C. 431–433
29 U.S.C. § 439"; and

(c) Strike "29 U.S.C. § 162", "29 U.S.C. § 504", "29 U.S.C. § 530", "29 U.S.C. § 1111", and "29 U.S.C. § 1141".

9. In the listing of statutes following the heading "Part F—Offenses Involving Fraud or Deceit"—

(a) Insert after "7 U.S.C. § 23" the following:

"15 U.S.C. 50
15 U.S.C. 77e
15 U.S.C. 77q
15 U.S.C. 77x
15 U.S.C. 78d
15 U.S.C. 78j
15 U.S.C. § 78ff
15 U.S.C. § 80b–6";

(b) Strike "15 U.S.C. 77a–80b–17", "18 U.S.C. § 371" and "18 U.S.C. § 656"; and

(c) Strike "18 U.S.C. §§ 1001–1030" and insert in lieu thereof:

"18 U.S.C. 1001–1008
18 U.S.C. 1010–1014
18 U.S.C. 1016–1022
18 U.S.C. 1025–1026
18 U.S.C. 1028–1029".

10. In the statutory listing following the title to subpart 2 (Political Rights), strike "2 U.S.C. § 437g(d)".

11. In the statutory listing following the title to subpart 3 (Privacy and Eavesdropping), strike "21 U.S.C. § 842(a)(8)".

12. In the listing of statutes following the heading "Part J—Offenses Involving the Administration of Justice", strike "18 U.S.C. § 1073" and "18 U.S.C. § 1561(a)".

13. In the listing of statutes following the heading "Naturalization and Passports", strike "1429" and insert in lieu thereof "1428".

14. In the listing of statutes following the heading "Prohibited Financial Transactions and Exports", strike "50 U.S.C. App. § 2401–2420" and insert in lieu thereof: "50 U.S.C. App. 2410".

15. In the statutory listing following the title to subpart 6 (Atomic Energy), strike "42 U.S.C. § 2138".

16. In the statutory listing following the title to Part S (Money Laundering and Monetary Transaction Reporting), strike "371, 1001,".

17. In the statutory listing following the title to subpart 2 (Alcohol and Tobacco Taxes), strike "5687" and insert in lieu thereof "5691".

18. In the statutory listing following the title to subpart 3 (Customs Taxes), strike "1586(e)" and insert in lieu thereof "1586(e)".

19. In the listing of statutes following the heading "Conspiracies, Attempts, Solicitations", strike "18 U.S.C. § 286".

20. In the listing of statutes following the heading "Customs Taxes", strike "1951" and insert in lieu thereof "1915".

21. In the listing of statutes following the heading "Political Rights", strike "18 U.S.C. § 1341" and "18 U.S.C. § 1343".

*Amendment Inserting the Statutory Index*

1. Following Chapter Seven, strike "APPENDIX A: STATUTORY INDEX (Forthcoming)" and insert in lieu thereof the Statutory Index.

**Appendix A—Statutory Index**

*Introduction*

This index specifies the guideline section or sections ordinarily applicable to the statute of conviction. If more than one guideline section is referenced for the particular statute, select the guideline most appropriate for the conduct of which the defendant was convicted. If, in an atypical case, the guideline section indicated for the statute of conviction is inappropriate because of the particular conduct involved, the court is to apply the guideline section which is most applicable to the conduct for which the defendant was convicted. (See § 1B1.2.)

If the offense involved a conspiracy or an attempt, refer to § 2X1.1 as well as the guideline for the substantive offense.

For those offenses not listed in this index, the most analogous guideline is to be applied. (See § 2X5.1.)

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**Explanation of Technical, Conforming, and Clarifying Amendments to Initial Sentencing Guidelines**

*Amendments to Chapter One*

Amendment 1 conforms the title of Chapter One to a reorganization of parts of Chapters One and Two. The Commission has decided to combine the Application Instructions at the end of Chapter One with the General Principles at the beginning of Chapter Two (some of which apply to determinations beyond Chapter Two). The newly combined sections will become Part B of Chapter one.

Amendment 2 relabels the initial five sections of Chapter One as the Introduction to the guidelines. Together with the commentary accompanying and explaining the guidelines, this Introduction may be considered the Commission's "report stating the reasons for the Commission's recommendations." See Section 235(a)(1)(B)(ii) of the Comprehensive Crime Control Act of 1984. A Supplemental Report containing additional supporting information, including an analysis and discussion of the impact of the guidelines on correctional resources, will be submitted to Congress in the near future.

Amendment 3 is a simple wording clarification.

Amendment 4 corrects a typographical error.

Amendment 5 clarifies the discussion with respect to court discretion to impose less severe sentences on defendants who accept responsibility for their criminal actions and/or cooperate with the government.

Amendment 6 clarifies that the Commission's estimate of prison population increase attributable directly to the sentencing guidelines is approximately 10 percent over a period of 10 years.

Amendment 7 inserts a new chapter part heading to conform with the reorganization discussed in the explanation of amendment one above.

Amendment 8 conforms the section on "Application Instructions" with the stated reorganization and redesignates it as a guideline.

Amendment 9 strikes superfluous text.

Amendments 10 through 14 restate more clearly the Application Instructions and conform them to the guideline chapters, parts and sections to which they apply.

*Amendments to Chapter Two*

Amendments 1 through 12, 14, and 17 implement a reorganization pursuant to which the Overview in Chapter Two is moved to Part B of Chapter One. In addition, the instructions for applying the guidelines and their scope are clarified.

Amendment 13 inserts a new section which clarifies the interpretation of cross references to other guidelines.

Amendment 15 conforms the terminology to that used elsewhere in the guidelines.

Amendment 16 inserts a new section which clarifies the force to be given to the official commentary to the guidelines.

Amendment 18 clarifies the intended meaning of the guidelines.

Amendment 19 conforms § 2A3.4(b)(1) to § 2A3.1(b)(1).

Amendment 20 clarifies the commentary.

Amendments 21 and 22 clarify the intended meaning of the guidelines.

Amendments 23 and 25 clarify the intended meaning of the guidelines and conform the language to that used in other sections.

Amendments 24, 26, and 27 delete inapt statutory references.

Amendments 28 and 29 conform references to other guidelines.

Amendment 30 conforms the numbering of the guideline subsections to the style used elsewhere.

Amendment 31 corrects a typographical error and makes the guideline consistent with § 2C1.2.

Amendment 32 clarifies the intended meaning of the guidelines.

Amendment 33 clarifies the chemical reference by substituting the more commonly-used name of the substance.

Amendment 34 conforms entries in the table to make it clear that the offense levels applicable to larger quantities also apply to equivalent quantities of marihuana plants, hashish, and hashish oil.

Amendment 35 corrects a statutory reference.

Amendment 36 corrects a typographical error.

Amendment 37 conforms the commentary to the text of the guideline.

Amendment 38 clarifies the commentary to § 2D1.1 insofar as it relates to drug equivalencies and multiple drugs.

Amendments 39 through 46 clarify the Drug Equivalency Tables and correct numerical errors contained therein.

Amendment 47 conforms the guideline to the statute.

Amendment 48 clarifies the intended meaning of the guidelines and conforms the language to that used in other sections.

Amendments 49 through 51 clarify the intended meaning of the guidelines.

Amendments 52 and 53 delete inapt statutory references.

Amendments 54 and 56 clarify the intended meaning of the guideline and replace commentary that was mistakenly inserted.

Amendment 55 conforms the guideline style to that used elsewhere.

Amendments 57 through 59 conform the numbering of the guideline subsections to that used elsewhere.

Amendments 60 and 61 clarify the intended meaning of the guidelines.

Amendment 62 corrects an omission in certain statutory references.

Amendments 63 and 64 clarify the headings.

Amendments 65, 67, and 68 conform the commentary to the style used elsewhere.

Amendment 66 clarifies the scope of certain commentary.

Amendment 69 corrects a typographical error.

Amendment 70 clarifies the intended meaning of the guideline.

Amendment 71 conforms the commentary to the guideline text.

Amendments 72 and 73 correct typographical errors.

Amendments 74 through 76 delete inapt statutory references.

Amendment 77 corrects a numerical error.

Amendment 78 deletes inapt statutory references.

*Amendments to Chapter Three*

Amendments 1 and 2 clarify the intended meaning of the guidelines.

Amendments 3 through 11 clarify the intended meaning of Part D of Chapter Three and make conforming wording changes.

Amendment 12 corrects a typographical error.

*Amendments to Chapter Four*

The amendments clarify the intended meaning of the provisions.

*Amendments to Chapter Five*

Amendments 1 through 4 clarify the intended meaning of the provisions.

Amendment 5 corrects a typographical error.

*Amendments to Chapter Six*

Amendment 1 conforms the style to that used elsewhere.

Amendment 2 conforms the commentary to the policy statement.

*Amendments to Chapter Seven*

The amendments to Chapter Seven delete the guidelines pertaining to violations of probation and supervised release and replace them with policy statements. Subsequent to the Commission's approval of the guidelines

in Chapter Seven, it became apparent that several provisions in this Chapter, as written, might produce unintended results. Inasmuch as the statute provides that the Commission may issue either guidelines or policy statements covering these provisions, the Commission has elected to delete for the present the promulgated guidelines pertaining to violations of probation and supervised release and re-issue policy statements covering these areas. The Commission intends to devote further study to this subject and may promulgate guidelines covering it at a future date.

*Amendments of General Application*

The amendments conform the headings and Table of Contents to changes made elsewhere.

*Amendments to Statutory Listings*

Amendments 1, 2, 4 through 12, 14 through 16, 19 and 21 delete inapt statutory references or limit broader statutory references.

Amendments 3, 13, 17, 18, and 20 correct typographical errors.

*Amendment Inserting Statutory Index*

The amendment adds the Statutory Index at the end of the guidelines following Chapter Seven.

## DISSENTING VIEW OF COMMISSIONER PAUL H. ROBINSON* ON THE PROMULGATION OF SENTENCING GUIDELINES BY THE UNITED STATES SENTENCING COMMISSION

May 1, 1987

*Commissioner Ronald L. Gainer, the ex-officio Commissioner from the United States Department of Justice, has argued strongly for the principles advanced here, particularly those noted in Sections 1 and 2. Because, in his view, the Commission's guidelines reject these principles, he asked the Commission to note in its publication of the guidelines that "if he were a voting Commissioner, as a personal matter, he would not have voted to support the guidelines in their current form." Transmittal Letter to Congress from the United States Sentencing Commission, April 13, 1987.

[Note.—A Summary of Commissioner Robinson's points appears on the last three pages.]

Dissenting View Of Commissioner Paul H. Robinson:

When it passed the Sentencing Reform Act of 1984, by a vote of 91 to 1 in the Senate and 316 to 91 in the House, the United States Congress committed the federal system to rationality and consistency in criminal sentencing. The Act built upon a decade of state experience in sentencing reform, but devoted resources on a greater scale and called for sentencing guidelines of a higher order of sophistication than any existing system. With that Act, Congress announced its inspired vision for modern American sentencing.

The vision was rationality in criminal sentencing. Rather than simply continuing past practices, the newly-created United States Sentencing Commission was directed to devise and articulate a sentencing policy. That sentencing policy was, in turn, to direct the decisions necessary for guidelines that would further the statutorily-defined purposes of sentencing— the imposition of just punishment, the deterrence of potential offenders, the incapacitation of dangerous offenders, and, where possible, rehabilitation. The ultimate goal was a rational sentencing system and a system that would be perceived as rational.

The vision was consistency in criminal sentencing. Instead of 1,042 federal judges and magistrates imposing discretionary sentences in more than 102,000 cases annually,[1] the new Commission was to devise comprehensive and binding sentencing guidelines. Judges were to be bound by the guidelines unless there existed in a case an unusual factor that "was not adequately taken into consideration" by the Commission in drafting the guidelines.[2] This would be a rare case because the guidelines were to take account of "every important factor relevant to sentencing."[3] The guideline imprisonment range for each combination of offense and offender characteristic was to be narrow—not more than 25%.

The Congressional vision of sentencing reform also showed wisdom and self-restraint; Congress chose to forego the opportunities for posturing that come with crime and punishment issues. It took the high road, delegating the task of rational sentencing reform to what was to be an independent, nonpolitical Commission of experts, giving the Commission the power to promulgate the new sentencing system without further action by Congress.

Such invitations to visionary reform are the sort of rare events that inspire men and women to their greatest accomplishments. With the guidelines promulgated today, however, the vision dims.

[1] Last year, federal district court judges (575 authorized) sentenced 40,740 offenders; 467 active magistrates sentenced 61,839, for a total of 102,579. Administrative Office of the United States Courts, 1986 Annual Report of the Director, Appendix I at 56–57, 102–103 (1986) [hereinafter cited as 1986 Annual Report].

[2] 18 U.S.C. 3553(b).

[3] S. Rep. No. 225, 98th Cong., 1st Sess. 169 (1983) [hereinafter cited as S. Rep. No. 225].

### 1. The Failure to Provide a Rational and Coherent Sentencing System

Of all of the goals of the Sentencing Reform Act, it is most unfortunate that the goal of rationality has been abandoned and even frustrated by these guidelines.

**The Failure to Define a Rational and Coherent Policy and to Provide Sentences Calculated to Achieve the Statutory Purposes of Sentencing.** The Act requires the Commission to establish guidelines designed to "assure the meeting of the purposes of sentencing [i.e., just punishment, deterrence, incapacitation of the dangerous, and rehabilitation]."[4] Instead of calculating sentences to achieve such statutory purposes, however, the guidelines simply mimic the mathematical averages of past sentences.[5]

To improve its ability to further the statutory purposes, the Commission was expected to "develo[p] and coordinat[e] research studies [including, for example, basic research on sentencing theories as well as applied research on the effectiveness of certain policies)."[6] In contrast, the Commission neither undertook studies nor gave serious consideration to existing studies on the means of achieving deterrence and incapacitation. Nor did the Commission undertake studies or systematically consider existing studies on public perceptions of relevant sentencing factors and their appropriate weight for punitive purposes. While the guidelines'

[4] 28 U.S.C. 991(b)(1)(A).

[5] See Final Draft at 1.4 [hereinafter "F.D."]:

For now, the Commission has sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that uses data estimating the existing sentencing system as a starting point. . . . The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. . . .

The Revised Draft [hereinafter "R.D."] collected all known sentencing platitudes and called them the "Principles of Sentencing" of the guidelines. R.D. at 2. Admirably, the final guidelines drop this pretense, but such honesty is no substitute for the Act's requirement that the guidelines "assure the meeting of the [statutory] purposes of sentencing."

[6] S. Rep. No. 225 at 160. 28 U.S.C. 995(a)(12)–(16) outlines the extensive research and data collection and dissemination authority of the Commission. "These functions are essential to the ability of the Sentencing Commission to carry out two of its purposes: the development of a means of measuring the degree to which various sentencing, penal, and correctional practices are effective in meeting the [statutory purposes of sentencing] [28 U.S.C. 991(b)(2)] and the establishment (and refinement) of sentencing guidelines and policy statements that reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process. [28 U.S.C. 991(b)(1)(C)]." S. Rep. No. 225 at 182.

commentary sometimes gives reasons for the adoption of a particular policy, neither the guidelines nor the commentary cite a single empirical research study.

Rather than being guided by the statutory purposes of sentencing, the guideline drafting reflected simply a haphazard "fiddling with the numbers" that established the guideline sentences. The lack of a credible basis for the numbers became painfully obvious, however, and in the last few weeks, the intuitive approach was abandoned in favor of "past sentencing averages" as the primary basis for establishing guideline sentences. Because they simply continue what judges do, some will argue, the effects of these guidelines need not be explained or defended.

In addition to the criticisms that are detailed below, the guideline's claimed past-practice "principle" of drafting may be challenged on the grounds that it is not followed. Offenders under current practice receive sanctions other than imprisonment (e.g., fines, conditions of probation) in approximately 50% of the cases,[7] yet the guidelines provide for imprisonment in all but the most minor cases. If the "theory" of the guidelines is that they simply follow past practices, how can the effect of the guidelines so dramatically deviate from past practice? My own view is that, in many cases, reducing the availability of probation or, at very least, making probation more punitive, would further the statutory purposes of sentencing. But the guideline drafters have rejected this sort of principled approach—i.e., devising sentences to meet the statutory goals.

**The Impropriety of Basing Guidelines on Mathematical Averages of Past Sentences.** Attempting to use mathematical averages of past sentences as a means of drafting guidelines is, in my view, unacceptable for four reasons. The first and most serious is that a sentence based on a mathematical average of past sentences is likely to be an irrational sentence. Two judges may each follow a rational sentencing philosophy designed to achieve legitimate sentencing purposes yet, because their philosophies differ, as they commonly do, the sentences that they impose may differ. (As shall be discussed later, this is a major source of sentencing disparity.)[8] Because each of the two sentences rationally serves its purpose, however, it does not follow that a mathematical average of the judges' sentences will be rational. Consider, for example, the case of a young addict who sells drugs to acquaintances to support his own habit. One judge may impose a long term of imprisonment in order to send a strong deterrent message to drug sellers. Another judge may impose a very short term of incarceration followed by supervised release conditioned upon the offender's participation in a community drug treatment program in the belief that curing the offender's addiction is more likely to remove him from the roll of drug dealers.

The guidelines might rationally embody either of such alternative policies. But by adopting no policy, and relying upon a mathematical average of sentences, the guidelines provide "bastardized" sentences that will serve neither of the two purposes. For the young addict, the "averaged" sentence will be too short to send the strong deterrent message, and will not provide the treatment necessary for rehabilitation.

A second reason to avoid sentences based on past sentencing averages is that Congress, in the Sentencing Reform Act, disapproved that method. The Commission is to ascertain past sentencing averages, but, in the language of the statute, "[t]he Commission shall not be bound by such average sentences, and *shall independently develop a sentencing range that is consistent with the purposes of sentencing* described in section 3553(a)(2) of title 18, United States Code."[9]

The elusive contours of past practice provide a third reason to avoid reliance on such past practice. Precise time-served information is often unavailable until many years after an offender is sentenced (because it is the Parole Commission that determines his actual release date). Estimates of time served may be developed by projecting the probable effects of parole guidelines and good-time accrual, but these projections are ultimately "time-served speculations." In addition, there is little available data on many of the factors that are clearly relevant to sentencing. Thus, gross averages of sentences for a given offense may have limited relevance to the particular circumstances of the offense before the judge. For example, the average sentence for armed bank robberies generally would be an inappropriate basis for setting the sentence for armed bank robbery involving gratuitous violence against a vulnerable victim.

The consultant hired by the Commission to review its current sentencing data and analysis methods concluded as follows:

> To summarize, the Commission will be guilty of misusing [the Research Director's] results if the "typical" sentences produced by his models are taken literally as accurately characterizing the past. His results provide a picture of the past in very broad brush strokes; they should be used to stimulate thought and discussion and could be very useful if put to these ends.[10]

Yet this warning was ignored when guideline sentences were set according to the data's mathematical averages of past sentences for the offense.

Even if precise and reliable *time-served* speculations could be attained, it is inaccurate to treat the averages of time-served as representative of past *sentencing practice generally*, as the guidelines do.[11] The time-served data reflects only the sentences for those offenders sent to prison, presumably the worst cases. By eliminating all past nonincarcerative sentences from the "averages" calculations, the guidelines seriously distort their claimed replication of past practice.

My own view is that there are very frequently good reasons to impose longer terms of imprisonment than have been imposed in the past. But guidelines for such longer sentences, as with guidelines for all sentences, ought to be based on a rational policy decision that the particular sentence will achieve the statutory purposes of sentencing. It ought not be the accidental (or intentional) result of manipulation of pastpractices data.

A fourth reason to disagree with the guideline's claimed reliance on past practice is that it would be difficult if not impossible to embody past practice in a sentencing system as ambiguous and discretionary as this one. With such broad discretion, judges will give the sentences they feel are appropriate. If told to exercise their discretion, they have no reason to adhere to the

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[7] 1986 Annual Report at 58–61.

[8] See notes 71–72 and accompanying text infra.

[9] 28 U.S.C. 994(m) (emphasis added). The statutory purposes of sentencing are set out in the text accompanying note 4 supra.

[10] Letter from Dr. Richard Berk, Professor of Sociology and Director, Social Process Institute, University of California—Santa Barbara, to Suzanne Conlon, Executive Director of the Commission (January 14, 1987).

[11] The Research Director tells me that he believes that the average-sentence figures were sometimes discounted in situations in which the percentage of probation cases was high. How and when this was done is unclear. But one may ask, if averages of past sentences are to be the theory of the guidelines, why were probation cases not calculated into that average? If past practice is not to be followed, what are the principles that the guidelines have followed?

mathematical averages of past practices of other judges.

I believe that the real value of past-practice data is as a point of comparison after guidelines are, as the statute requires, "independently developed" to further the statutory purposes of sentencing. Significant differences between guideline and past-practice sentences can then identify points of potential controversy, which may merit closer analysis to assure the soundness of the underlying rationale. Such comparisons might also be utilized to project changes in needed prison capacity and probation services. Past practice cannot be properly or legally used, as the guidelines use it, as a "theory" or "principle" for guideline drafting.

For many of these reasons, several Commissions, including Minnesota and Washington, have rejected such a "descriptive" past-practices approach in favor of a "prescriptive" approach in which sentences are calculated to achieve one or more specified sentencing purposes.[12]

**The Failure To Rank Systematically Offenses According to Seriousness.** Perhaps the most basic and the most obvious initial step in constructing rational guidelines is to systematically rank offenses according to their relative seriousness. Deterrence and just punishment both call for more serious offenses to be sanctioned more seriously, as does the Sentencing Reform Act.[13] Unfortunately, the guidelines do not reflect a systematic ranking of offenses determined after analysis of existing research studies on relative societal harm and on public perceptions of relative seriousness.

As one might predict, the guidelines create significant anomalies. Under the guidelines, the judge could give the same sentence for abusive sexual contact that puts the child in fear[14] as for unlawfully entering or remaining in the United States.[15] Similarly, the guidelines permit equivalent sentences for the following pairs of offenses: Drug trafficking[16] and a violation of the Wild Free-Roaming Horses and Burros Act;[17] arson with a destructive device[18] and failure to surrender a cancelled naturalization certificate;[19] operation of a common carrier under the influence of drugs that causes injury[20] and alteration of one motor vehicle identification number;[21] illegal trafficking in explosives[22] and trespass;[23] interference with a flight attendant[24] and unlawful conduct relating to contraband cigarettes;[25] aggravated assault[26] and smuggling $11,000 worth of fish.[27]

**The Failure to Provide Different Sentences for Cases that are Very Different in Seriousness: Promoting "Free" Harms and Ignoring Relevant Mitigations.** The most basic function of any rational sentencing system is to provide appropriately different sentences for cases that are meaningfully different. Taking account of relevant aggravating and mitigating factors assures that additional harms will not go unpunished—that there are no "free" harms—and that significant mitigations will be reflected in an appropriately reduced sanction. These guidelines, however, systematically promote "free" harms and ignore relevant mitigations.

First, despite a "Relevant Conduct" provision that seems to suggest that the guidelines take account of most aspects of the offender's conduct,[28] the only conduct or factors that the judge is permitted to take into account under the guidelines are those specifically listed in the applicable guideline section.[29] For example, because the burglary guideline does not specifically aggravate the guideline sentence where the offender causes physical injury, the burglar who beats a homeowner will be treated the same as the burglar who does not. That is, the beating of the homeowner is "free" in burglary, as it is in a host of other offenses.[30] Section 2, below, gives many other examples of highly relevant factors that are omitted from the guidelines,[31] thus treating very different cases the same.

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[12] See, e.g., M. Tonry, Sentencing Reform Impacts (1987).

[13] See, e.g., 28 U.S.C. 991(b)(1)(A) (the Commission shall promulgate guidelines that assure the meeting of the statutory purposes of sentencing, including the need for an offender's sentence "to reflect the seriousness of his offense").

[14] See F.D. 2A3.4 (base offense level 8), 2A3.4(b)(2) (+4 levels) (Total = offense level 10, 6–12 months).

[15] See F.D. 2L1.2 (base offense level 6), 2L1.2(b)(2) (+2 levels) (Total = offense level 8, 2–8 months).

[16] See F.D. 2D1.1(a)(3) (base offense level 8, 6–8 months).

[17] See F.D. 2Q2.1 (base offense level 8, 0–6 months).

[18] See F.D. 2K1.4 (base offense level 6), 2K1.4(b)(F) (+2 levels) (Total = offense level 8, 2–8 months).

[19] See F.D. 2L2.5 (base offense level 8, 6–8 months).

[20] See F.D. 2D2.3 (base offense level 8, 2–8 months).

[21] See F.D. 2B6.1 (base offense level 8, 2–8 months).

[22] See F.D. 2K1.3 (base offense level 6, 0–6 months).

[23] See F.D. 2B2.3 (base offense level 4, 0–6 months).

[24] See F.D. 2A5.2(4) (base offense level 9, 4–10 months).

[25] See F.D. 2E4.1(a)(1) (base offense level 9, 4–10 months).

[26] See F.D. 2A2.2 (base offense level 15, 18–24 months).

[27] See F.D. 2Q2.2(a)(1) (base offense level 6), 2Q2.2(b)(1) (+2 levels), 2Q2.2(b)(2) (+2 levels), 2Q2.2(b)(3)(A) (+3 levels) (Total = offense level 13, 12–18 months).

Similarly, the guidelines provide equivalent punishments for the following: shipping 50 weapons to a prohibited person (see F.D. 2K2.1, base offense level 9, 4–10 months) and embezzling $100 from an employee pension plan (see F.D. 2E5.2, base offense level 4), 2E5.2(b)(2) (+2 levels), 2E5.2(b)(3) (+1 level) (Total = offense level 7, 1–7 months); involving a minor in drug trafficking (see F.D. 2D1.2(a)(1), base offense level 13, 12–18 months) and attempting to break into a warehouse (see F.D. 2B2.2, base offense level 12, 10–16 months); reckless homicide (see F.D. 2A1.4(a)(2), base offense level 14, 15–21 months) and transmitting wagering information (see F.D. 2E3.2, base offense level 12, 10–16 months); firebombing a residence (see F.D. 2K1.4, base offense level 6), 2K1.4(b)(1)(A) (+18 levels) (Total = offense level 24, 51–63 months) and threatening to tamper with consumer products (see F.D. 2N1.1, base offense level 25, 57–71 months); forcibly extorting $50,000 by causing bodily injury (see F.D. 2B3.2, base offense level 18), 2B3.2 (b)(1) (+2 levels), 2B3.2(b)(3) (+2 levels) (Total = offense level 22, 41–51 months) and spray-painting a house in retaliation for testimony (see F.D. 2J1.2, base offense level 12), 2J1.2(b)(1) (+8 levels) (Total = offense level 20, 33–41 months).

[28] F.D. 1B1.3(a), entitled "Relevant Conduct," provides:

Unless otherwise specified under the guidelines, conduct and circumstances relevant to the offense of conviction means: acts or omissions committed or aided and abetted by the defendant, or by a person for whose conduct the defendant is legally accountable, that (1) are part of the same course of conduct, or a common scheme or plan, as the offense of conviction, or (2) are relevant to the defendant's state of mind or motive in committing the offense of conviction, or (3) indicate the defendant's degree of dependence upon criminal activity for a livelihood.

[29] See F.D. at 1.12 ("Application Instructions," steps 1–3).

[30] See text accompanying note 48 infra.

[31] For many offenses, the guidelines ignore most of the relevant factors, thus inviting possibilities for cumulative irrationality. Consider the cases of offender *A* who slips something into his girlfriend's drink and attempts to have sexual intercourse with her, but is stopped, and offender *B* who stalks his intended rape victim for two weeks, rapes her at knifepoint in her apartment, knocks her unconscious, and sets fire to her apartment before leaving (but she is rescued unharmed). Because none of the aggravating factors in the second case are recognized by the rape guideline, both offenders could receive the same guideline sentence. See F.D. 2A3.2 (criminal sexual abuse, base offense level 27), 2A3.1(b)(1) (+4 levels) (Total = offense level 31, 108–235 months).

Similarly, the father who returns from a hunting trip and sees his child run over and killed by a drunk driver and who immediately shoots and kills the driver with his hunting gun, will be punished the same as the offender who repeatedly stalks and kills a person who punched *him* in a barroom brawl. For both offenders, see F.D. 2A1.3 (voluntary manslaughter, base offense level 25, 57–71 months). The offender who routinely employs scores of aliens on his tomato farm will receive the same sentence as one of the illegal aliens he employs. See F.D. 2L1.2 (unlawfully entering or remaining in the United States) and F.D. 2L1.3 (engaging in a pattern of employment of aliens) (both have base offense level 6, 0–6 months).

The guidelines routinely ignore the difference between a completed offense and an unsuccessful attempt or a mere threat.[32] Thus, the offender who telephones a witness in a trial and threatens to throw eggs at her car is treated the same as he would be if he had firebombed her car, seriously burning her.[33] Indeed, under the guidelines, one judge can frequently give a higher sentence to an offender who unsuccessfully attempts or threatens an offense than another judge gives to an offender who successfully completes the same offense under the same circumstances.[34]

[32] For example, the Final Draft provides the same sentence for rape and attempted rape (2A3.1), tampering with a public water system and an attempt to tamper (2Q1.4), and inciting a prison riot and attempting to incite a prison riot (2P1.3). See also F.D. 2X1.1(a) (the general attempt provision).

[33] See F.D. 2J1.2 (obstruction of justice, base offense level 12), 2J1.2(b)(1) (+8 levels) (Total=offense level 20, 33–41 months). Similarly, the offender who injects halloween candy with LSD and thereby injures many children, is treated the same as he would be if he had abandoned his attempt before he injected the drug. See F.D. 2N1.1 (tampering or attempting to tamper with consumer products, base offense level 25, 57–71 months).

[34] For example, under F.D. 2N1.1, note 33 supra, the latter offender could get 5 years, 11 months; the former could get 4 years, 9 months.

Even where a factor is included in the guidelines, one or another structural device may well cause it to be ignored. For example, the guidelines' common cross-references, which refer the judge from one offense guideline to another, instruct that only the more serious of the multiple offenses be taken into account. Thus, if the defendant assaults a passenger while interfering with a flight crew, the cross-reference to assault makes the endangerment of the aircraft and the passengers free, and the offender is treated the same as an assaulter who does not endanger an aircraft and its passengers. See F.D. 2A5.2(a)(3). If the defendant causes death or intends to cause physical injury while committing arson, the reference to the homicide guideline makes the arson free. See F.D. 2K1.4(c)(1). If the defendant wiretaps to facilitate another offense, the reference to the other offense makes the wiretapping free. See F.D. 2H3.1(a)(2). Similarly, if the defendant interferes with interstate commerce by robbery or extortion, the reference to those offenses makes the disruption of commerce free. See F.D. 2E1.5.

The guideline direction to "use the greatest" aggravator when multiple aggravators apply is another structural mechanism that systematically creates "free" harms and ignores important differences between cases. All aggravators but the most serious are consequently ignored. Consider the case of two Ku Klux Klan members who attempt to murder a black family by burning their $100,000 home at 3 a.m., but the family escapes unharmed. If convicted of arson, only the greatest aggravator—creating a substantial risk of death or serious bodily injury—applies. Aggravators for destruction of a residence, deprivation of civil rights, and $100,000 of property damage are ignored. See F.D. 2K1.4(b)(1)(C) (12 levels), (b)(1)(D) (7 levels), and (c)(2) (7 levels lost by the cross-referencing technique).

The guidelines' treatment of multiple offenses is yet another source of systematically ignoring additional factors and additional offenses. The guidelines provide no additional sanction for additional offenses against the same victim during the same "transaction."[35] Thus, upon convictions for transportation for the purposes of prostitution and for aggravated assault of one of the prostitutes, the court can only sanction the offender for the more serious offense; the other is "free." Nor is there additional sanction where multiple offenses are part of the same "common scheme or plan" against the same victim.[36] Thus, after robbing the local postmaster once, all subsequent robberies of the postmaster as part of the same scheme are "free."

Even where offenses are unrelated and against different victims, frequently only the most serious offense is punished; the others are "free."[37] Thus, if one assault victim suffers serious bodily injury, the wounding of two other victims on two other occasions will go unsanctioned under the guidelines. Still further, because amounts are often accumulated, multiple offenses of a similar nature are often treated as a single offense. Thus, an offender who defrauds two widows of $100,000 is treated the same as he would be if he had defrauded 40 widows of $5,000 each.[38]

The guidelines' multiple-offenses provision appears to be in direct violation of the Sentencing Reform Act's requirement that the guidelines provide "an incremental penalty for each offense in a case in which a defendant is convicted of (A) multiple offenses committed in the same course of conduct that result in the exercise of ancillary jurisdiction over one or more of the offenses; and (B) multiple offenses committed at different times. . . ."[39]

[35] See F.D. 3D1.2(a).

[36] See F.D. 3D1.2(b).

[37] See F.D. 3D1.2(c).

[38] See F.D. 2F1.1(b)(2)(B). Likewise, theft of one $10,000 ring is sanctioned the same as ten thefts, on different occasions, each of a $1,000 ring (see F.D. 2B1.1). A defendant who evades $10,000 in taxes for five years is treated similarly to the defendant who evades $50,000 in taxes in one year. The pattern of evasion would be ignored (see F.D. 2T1.1). Similarly, since the number of victims is irrelevant under the guidelines, the drug dealer who sells ten grams of heroin drugs to five different people is treated the same as the dealer who sells fifty grams of heroin to one person (see F.D. 2D1.1). For each example, see also F.D. 3D1.2(d).

[39] 28 U.S.C. 994(1). "If no such incremental penalty were provided . . . an offender who commits one offense would be faced with no deterrent to the commission of another during the interval before he is called to account for the first." S. Rep. No. 225 at 176–177.

**The Failure to Address the Problems of Fragmented and Overlapping Offenses.** A serious structural flaw of the guidelines is their reliance upon the specific code provisions of federal law, which Congress itself has described as being archaic, fragmented, and overlapping.[40] Arson, for example, may be punished under a host of different code sections. Because the guidelines correspond to these sections, the same fragmentation is reproduced in the guidelines. The identical arson conduct might fall under any number of guideline sections, each with different values of seriousness and different aggravating factors.[41] What is needed is a

[40] The Senate Report for S. 1437, the Criminal Code Reform Act of 1977, which passed the Senate 72 to 15 in the 95th Congress, describes it as follows:

> Present statutory criminal law on the Federal level is often a hodgepodge of conflicting, contradictory, and imprecise laws with little relevance to each other or to the state of the criminal law as a whole. . . . Unlike several of the States, and unlike most of the other countries of the world, the United States has never enacted a true "criminal code." . . . As a result, the Federal criminal law has always remained a consolidation—a body of law drafted by different groups to deal with diverse problems on an ad hoc basis—rather than a uniformly drafted, consistently organized code.
>
> Like a prism, present law . . . diffracts one offense into a spectrum of offenses, one distinguished from another only by different jurisdictional qualities, and then scatters them throughout the various provisions of Federal law. Thus, theft is currently split into theft of government property, theft of the mails, theft from interstate commerce, etc. The interpretation and application of multiple statutes inevitably result in inconsistencies, loopholes, and hypertechnicalities.
>
> Not surprisingly, the absence of a general substantive reform has left us with complex, confusing and even conflicting laws and procedures that, all too frequently, have aggravated problems associated with rendering justice to the individual as well as to society. . . . Because of its lack of clarity, consistency, and comprehensiveness, [federal penal law] tends to undermine the very system of justice of which it is the foundation.

S. Rep. No. 605, 95th Cong., 1st Sess. 3, 4, 5, 6 (1977) (footnotes omitted). A similar criminal code reform bill was submitted by the current Administration, see Criminal Code Reform Act of 1981, S. 1630, 97th Cong., 1st Sess. (1981), and was favorably reported by the Senate Judiciary Committee with much the same introductory language. See S. Rep. No. 307, 97th Cong., 1st Sess. (1981).

[41] If the arson is to intimidate a witness, for example, 2J1.2(b)(1) applies (base offense level 12+8 levels for property destruction); if the same arson is to defraud an insurer, 2F1.1 applies (base offense level 6, with several specific aggravators); if the same arson is simply to destroy a building, 2K1.4 applies (base offense level 6, with several specific aggravators, all of which are different from the aggravators in 2F1.1).

Kidnapping, which is also punished under many different United States Code sections, is likewise covered under a number of different guidelines. If the kidnapping was for ransom, F.D. 2A4.1 applies (base offense level 24 with several specific aggravators); if the kidnapping occurred during a robbery, F.D. 2B3.1(b)(4) applies (base offense level

Continued

consolidation of offenses and reliance upon generic offense categories.

Overlapping sections are also common. Because of the overlap, consecutive sentences for multiple offenses by an offender are likely to punish an offender twice for some aspects of the criminal conduct, while concurrent sentences for the offender are likely to let some aspects—i.e., the unique portion of each overlapping offense—go unpunished. As long as the archaic federal criminal code provides the structural foundation for the guidelines, the problem of sentencing for multiple offenses will remain insoluble.[42]

**2. The Failure to Reduce (and the Potential for Increasing) Unwarranted Sentencing Disparity**

The Act seeks to promote greater consistency in sentencing by requiring comprehensive and binding guidelines. These guidelines, in contrast, are neither comprehensive nor binding. The guidelines ignore many factors important to sentencing, fail to provide a guideline for many offenses (including all offenses committed by organizations), frequently fail to provide definitions of terms and criteria for sentencing factors, and provide extensive invitations—indeed, directions—to judges to depart from the guidelines.[43] As a result, there may be as much disparity under these guidelines as there was without guidelines.[44]

Perhaps the most sobering fact is that even if sentencing disparity under the guidelines is no worse than the unacceptable level of the past, the result will be a net *increase* in actual disparity. The United States Parole Commission—the one source of consistency in the system today, albeit an inadequate one—will no longer be available to review and adjust the disparate sentences of the 1,042 judges and magistrates.

**Requiring Departures, and Thus Inviting Disparity, by Adopting Skeletal Rather than Comprehensive Guidelines.** The Sentencing Reform Act permits judges to depart from the guidelines only if the case contains a factor that was not adequately considered in drafting the guidelines. Thus, where a relevant factor is omitted, it creates the opportunity (indeed, the need) to depart from the guidelines. In other words, the less comprehensive the guidelines are, the less binding they are. For this reason, Congress mandated comprehensive guidelines.[45]

It specifically provided that the Sentencing Commission guidelines were to be more detailed than the existing Parole Commission guidelines,[46] yet they are not.[47] Skeletal guidelines that omit many relevant and commonplace factors violate the direction for binding guidelines as effectively as would the illegal 600% guideline ranges used in the Revised Draft.

Physical injury caused during the offense and the use of a weapon are just

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18+4 levels for kidnapping); if the kidnapping occurred during the transportation of prostitutes, F.D. 2G1.1(b)(1) (base offense level 14) or F.D. 2G1.2(b)(1) applies (base offense level 12) (+4 levels for use of physical force or coercion by drugs); if the kidnapping occurs during a seamen riot, no guideline applies.

[42] One solution to the multiple offense problem is to base guidelines on the American Law Institute's Model Penal Code. Three weeks from today the country will celebrate the first quarter of a century of the Code, which generally consolidates and organizes offenses into generic, non-overlapping definitions. The Code represents a decade of work by the country's most distinguished judges, lawyers, and professors, as well as professionals from related criminal justice fields. Since its completion in 1962, the Code has been the basis for recodification of the criminal codes in over two-thirds of the states, yet these guidelines ignore the Code and the last twenty-five years of state experience in defining, refining, debating, and revising definitions of criminal conduct.

[43] Commissioner/Judge Stephen Breyer has championed what he calls the "minimalist" approach to guideline development. "You have to start slowly. One has to see how judges react to a system that doesn't limit discretion too closely but that gives guidance." Washington Post, Jan. 28, 1987, Section A, at 4, col. 1.

[44] Judge Gerald Heaney of the Eighth Circuit Court of Appeals had four of his chief probation officers test the Commission's previous draft. Based on their results, he concluded that "there will be as much disparity under the proposed guidelines as under the present [system]." Letter from Judge Heaney to Mike Murphy of the General Accounting Office (March 19, 1987) (encouraging the GAO to undertake extensive field-testing). The Probation Office in the Central District of California conducted a similar field-test on the Revised Guidelines. They concluded that:

[A]pplication of the guideline rules by different scorers result in markedly different sentencing ranges. Many key variables affecting the final offense level are open to subjective assessments that inevitably create this disparity. While the Courts need some room for discretion, the purpose of the guidelines are defeated when they allow for such wide interpretive differences.

Public comment letter on the Revised Draft from Nancy Reims, U.S. Probation Officer (March 18, 1987). [Copies of all public comment letters are available for inspection at the United States Sentencing Commission offices.] A similar conclusion was reached by probation officers in the Eastern District of Pennsylvania after their field-testing:

[T]he [Revised] guidelines are *extremely* flexible, and I could easily have come up with other sentence ranges by simply changing my subjective interpretation of certain key variables. . . .

[We] are concerned that [the Revised Draft] is not really a guideline system at all.

. . . [I]t appears to be a format we will henceforth apply to justify whatever sentence Judges wish to impose.

Letter from Thomas Maher, Program Development Coordinator, to The Honorable Edward Becker, Third Circuit Court of Appeals (March 2, 1987).

The structure of the guidelines has changed significantly since the Revised Draft, but the sources of disparity have not. Since that draft, the wide ranges have been taken out, which avoids some disparity, but, in addition, many sentencing factors have been deleted, guidelines for many offenses have been deleted, the lack of definitions and criteria continues, the ambiguous provisions continue, and more frequent directions that departure is appropriate have been added [and departures are worse than wide ranges because they provide no limit on how far a judge can deviate from the guidelines].

[45] The guidelines are to "cove[r] in one manner or another all important variations that commonly may be expected in criminal cases." S. Rep. No. 225 at 168. To accomplish this end, the Act specifically directs the Commission to consider the relevancy of an extensive but non-exclusive list of characteristics. Offense characteristics to be considered include: (1) The grade of the offense; (2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense; (3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust; (4) the community view of the gravity of the offense; (5) the public concern generated by the offense; (6) the deterrent effect a particular sentence may have on the commission of the offense by others; and (7) the current incidence of the offense in the community and in the Nation as a whole. 28 U.S.C. 994(c). Offender characteristics to be considered include: (1) age; (2) education; (3) vocational skills; (4) mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant; (5) physical condition, including drug dependence; (6) previous employment record; (7) family ties and responsibilities; (8) community ties; (9) role in the offense; (10) criminal history; and (11) degree of dependence upon criminal activity for a livelihood. 28 U.S.C. 994(d).

One federal judge observed that the above-listed factors gave the Commission "what appeared to me to be an exhaustive list of things to consider. I couldn't think of anything, myself, that wasn't on that list." Judge Mark Wolf, Testimony before the United States Sentencing Commission, Public Hearing, New York, New York, p. 45 [Oct. 21, 1986] [transcript available for inspection at the United States Sentencing Commission offices].

[46] The Senate Report directs that the guidelines "should contain recommendations of appropriate sentences for more detailed combinations of offense and offender characteristics than do the [United States Parole Commission] guidelines." S. Rep. No. 225 at 52 note 71. "[T]he result [of the Commission's work] will be sets of guidelines considerably more detailed than the existing parole guidelines." S. Rep. No. 225 at 166.

[47] In burglary offenses, for example, the Parole Commission's guidelines account for bodily injury caused; these guidelines do not. [Cf. 28 C.F.R. 2.20, section 211 to F.D. 2B2.1, 2B2.2.] In property damage offenses, the Parole Commission's guidelines consider injury to a victim and any significant interruption of a governmental function or public utility; these guidelines do not. [Cf. 28 C.F.R. 2.20, sections 303 (a) and (g) to F.D. 2B1.3.] In government bribery offenses, the Parole Commission's guidelines will reflect whether there is a pattern of corruption and whether there is injury beyond that describable by monetary gain; these guidelines do not. [Cf. 28 C.F.R. 2.20, sections 621 (b) and (d)(2) to F.D. 2C1.1.] In environmental offenses, the Parole Commission's guidelines take account of physical injury and death that result; these guidelines do not. [Cf. 28 C.F.R. 2.20, sections 1171 (a) and (b), 1172 (a)–(c) to F.D. Part Q.]

two examples of the many highly relevant and commonplace factors that are omitted from a majority of the offenses in which they occur, even though such factors were specifically recognized as relevant in earlier guideline drafts. Thus, where a burglar beats a homeowner or uses a gun during the burglary, for example, the court must depart from the guidelines to take account of these commonplace factors.[48]

Also commonly ignored is an offender's level of culpable state of mind—e.g., intentional, reckless, or negligent. The statutory definition of an offense generally requires a minimum level of culpability—recklessness (or negligence), for example—and the guidelines generally assume this level of culpability. Because the guidelines do not adjust for a higher level of culpability, the court must depart from the guidelines to account for an offender who intentionally commits the offense. Thus, the offender who intentionally burns a lumber-producing forest is treated the same as the camper who negligently fails to extinguish his campfire,[49] unless the court departs. An offender who knowingly sells misbranded poultry is treated the same as a brand manufacturer who negligently breaches a label regulation,[50] unless the court departs.

Besides general factors that are relevant to many offenses—e.g., physical injury, use of a weapon, or level of culpable state of mind—the judge must depart from the guidelines to take account of scores of more specific factors that are both highly relevant and commonplace, many of which were specifically recognized in earlier guideline drafts[51] or were recognized by Congress in the definition of the offense.[52]

Also contrary to the legislative direction[53] and also likely to breed disparity is the guidelines' failure to provide a sentence for many significant offenses.[54] With no applicable guidelines, judges are free to give any sentence that they feel is appropriate, with no limitation on their exercise of discretion other than the statutory maximum.[55]

**Fostering Departures, and Thereby Disparity, by Using Value and Ambiguous Standards.** Even where a guideline is provided and relevant factors are included, criteria for application of the factor is frequently missing, key terms are commonly left undefined, and ambiguous provisions frequently leave judges to guess at their meaning. This fosters disparity. For example, where there is no guideline for an offense the court is told to apply the "most analogous" guideline;[56] and "[i]f

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[48] The court must depart from the guidelines to take account of physical injury caused during such offenses as burglary, see F.D. 2B2.1 (burglary of a residence), F.D. 2B2.2 (burglary of other structures), escape (see F.D. 2P1.1), prison riot (see F.D. 2P1.3), tampering with consumer products (see F.D. 2N1.1), aircraft piracy (see F.D. 2A5.1), transportation of a minor for purposes of prostitution (see F.D. 2G1.2), sexual exploitation of a minor (see F.D. 2G2.1), mishandling of toxic substances (see F.D. 2Q1.2), abusive sexual contact (see F.D. 2A3.4), and operation of a common carrier under the influence of drugs (see F.D. 2D2.3). Similarly, the court must depart from the guidelines if the use of a weapon is to be taken into account when used in the course of interference with a flight crew (see F.D. 2A5.2), obstruction of justice (see F.D. 2J1.2), inciting a prison riot (see F.D. 2P1.3), burglary (see F.D. 2B2.1(b)(4) (burglary of a residence), F.D. 2B2.2(b)(4) (burglary of other structures) (*Possession* of a weapon will aggravate the burglary in both guidelines by two levels, but use of the weapon is given no greater aggravation than the simple possession), smuggling an alien (see F.D. 2L1.1), or conspiracy to interfere with civil rights (see F.D. 2H1.2) (no aggravation unless the guideline for the underlying offense contained a specific aggravation for use of a weapon).

[49] For both offenders, see F.D. 2K1.4 (arson, base offense level 6, 0–6 months).

[50] For both offenders, see F.D. 2N2.1 (violations of statutes and regulations dealing with any food product, base offense level 6, 0–6 months).

[51] The guidelines fail to aggravate a kidnapping when the offender risks his victim's death (cf. F.D. 2A4.1 to Tentative Draft Chapter 3, Section (1) (July 10, 1987) (unpublished) [hereinafter cited at "T.D."]); fail to aggravate a fraud offense when it endangers public health or safety (e.g., kickbacks for approving faulty bridge construction) (cf. F.D. 2P1.1 to Preliminary Draft F211a.6 [hereinafter cited as "P.D."]); fail to consistently adjust the seriousness of drug offenses according to the level of purity (cf. F.D. 2D1.1 to T.D. Chapter 2, Section (4), Subsection D); and fail to aggravate a sentence for child pornography when violence is depicted, when force or a drug is employed to exploit the child, when the child is sexually abused (cf. F.D. 2G2.1 to P.D. E261a.4); or when committed for a commercial purpose (cf. F.D.2G2.1 to P.D. E241a.1). Each of these factors was recognized as relevant in a previous draft.

Similarly, the guidelines fail to aggravate a rape committed in the victim's home, committed by multiple perpetrators (cf. F.D. 2A3.1 to R.D. A231(4)), involving acts of perversion (cf. F.D. 2A3.1 to R.D. A231(5)), or causing extreme psychological injury (cf. F.D. 5K2.3 to R.D. Y222); fail to aggravate property offenses when the significance of the property is other than its monetary value (cf. F.D. 2B1.1 to T.D. Chapter 2, Section (3), Subsection (H) (e.g., minor damage to telephone lines that cause an extended loss of service); fail to aggravate a loansharking offense when the property of the victim is destroyed or damaged (cf. F.D. 2E2.1 to P.D. E221b.3); fail to aggravate the sentence for possession of a serious drug when the offender possesses a weapon (cf. F.D. 5K2.6 to R.D. Y228).

[52] From the Final Draft, cf. 2N1.1 (tampering or attempting to tamper with consumer products) to 18 U.S.C. 1365(a); 2B2.1 (burglary of a residence) and 2B2.2 (burglary of other structures) to 18 U.S.C. 2118(b); 2B1.3 (property damage or destruction other than by arson or explosives) to 18 U.S.C. 1362, 1363; 2A5.2 (interference with flight crew member or attendant) to 49 U.S.C. 1472(j); 2M6.1 (unlawful acquisition, alteration, use, transfer, or possession of nuclear material, weapons or facilities) to 18 U.S.C. 831(b)(1)(B)(i); and 2P1.1 (instigating or assisting escape) to 18 U.S.C. 755.

[53] The legislative history specifically notes the two instances in which there might not be a guideline for an offense: "where there is a new law for which no guideline has yet been developed and where an appellate court had invalidated the established guideline and no replacement had yet been determined." S. Rep. No. 225 at 153. Thus, except for these two instances, the Sentencing Reform Act appears to contemplate guidelines for all federal offenses.

[54] The final guidelines dropped many offenses from the previous Revised Draft, including, for example, such offenses as unsafe consumer products (N232); violent rebellion or insurrection (M213); failure to register as an agent of a foreign principal or government (M262); engaging in prostitution (G212); unlawfully possessing an explosive in a government building (K215); prohibited financial transactions with foreign governments during a national emergency (M252); misbranding or mislabeling consumer products (N231); and interference with the recapture of special nuclear material, entry, or operation orders during time of war or national emergency (M273).

Other examples of offenses found in the Revised Draft that have been omitted from the guidelines include: interstate transportation of strikebreakers (E250); failure to register of a person who has knowledge of or has received instruction or assignment in espionage, counter-espionage, or sabotage services or tactics of a foreign government (M265); interfering with a federal benefit for a political purpose (H222); neglect or refusal to answer subpoena for naturalization hearing (L220); conduct impairing military effectiveness (M241); prohibited financial transactions with foreign governments (M251); United States government officers and employees acting as agents of foreign principals (M261); possession of property in aid of a foreign government (M263); failure to register of an organization subject to foreign control and engaged in political activity or civilian military activity (M264); and failure to file political propaganda (M266).

[55] It has been suggested that guidelines for these and other offenses are not now necessary because such offenses are infrequently prosecuted. But the less-frequent offenses may be the offenses for which judges have the greatest need for sentencing guidance. The less frequently an offense occurs, the less likely it is that the judge will be familiar with any special sentencing considerations of the offense, and the less likely it is that the judge will know what sentence other judges commonly give. The potential for the disparity may increase dramatically with decrease in frequency.

Further, many of the omitted offenses have not been prosecuted because the prosecutor has not been assured that upon conviction the resulting sanction would justify the costs and time needed for the prosecution. See, e.g., Letter from Henry Habicht, Department of Justice, to Commission Chairman William Wilkins (April 7, 1987) (urging the Commission not to delete guidelines for two offenses in the environmental section). Promulgating a guideline for an offense frequently may provide the certainty of sanction that will justify increased prosecution of the offense.

Still further, the failure to provide a guideline for offenses—thereby creating "guideline-free" offenses—provides another ready mechanism by which parties can avoid the guidelines' sentences, i.e., by pleading to one of the guideline-free offenses. For example, offenders charged with tampering with consumer products can avoid the guidelines by pleading to misbranding consumer products; those charged with transporting for purposes of prostitution can avoid the guidelines by pleading to engaging in prostitution; a corrections official charged with instigating or assisting escape can plead to negligently permitting escape; and so on. "Statute shopping" may replace "judge shopping."

[56] See F.D. 2X5.1.

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no sufficiently analogous guideline exists, the court may impose any sentence that is reasonable . . . ." [57] The court may accept a plea-bargained sentence that is outside of the guidelines if it has "justifiable reasons." [58] Multiple offenses are treated as a single offense, with a sanction equal to that for the most serious of the offenses, if they constitute part of a "common scheme or plan." [59] Each instance creates the opportunity for different judges to supply their own criteria, definitions, and interpretations of key provisions, and thus generate different sentences for similar cases.[60]

This systemic vagueness is particularly troublesome in the absence of a sentencing policy. Without an articulated policy, each judge is left to use his or her own personal sentencing philosophy in interpreting and applying these vague terms. The effects of differing philosophies are a major source of disparity today; [61] there seems little reason to think that disparity will not continue.

**Fostering Disparity by Inviting (and Directing) Extensive Departures Without Providing the Guidance of an Articulated Sentencing Policy.** As if the skeletal and vague nature of the system were not enough, in over a hundred instances the guidelines specifically invite (and in some cases direct) the court to depart.[62] This not only invites disparity but also contravenes the Act. The conditions triggering each departure were obviously foreseen and fully "considered" by the Commission, thus the only lawful ground for departure—that the factor was *not* adequately considered by the Commission—is inapplicable.

For some offenses, the conditions for departure are so numerous and broad that one is hard-pressed to think of a case that would not fall under at least one of the conditions described in the commentary.[63] In other instances, the guidelines describe entire classes of cases where departure is invited, including cases where the offense involves, but the guideline for the offense does not specifically address, for example, the disruption of a governmental function,[64] the endangering of public welfare,[65] the commission of the offense to facilitate another offense,[66] extreme psychological injury,[67] or property damage or loss.[68] A judge is similarly invited to depart when, after calculating an offender's criminal history category, he concludes that the category does not "adequately reflect" the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit other crimes.[69]

Once a judge is invited or directed to depart from the guidelines, there is no legal limit, other than the statutory maximum, to the sentence the judge may give. Thus, in each of the departure instances described above, one judge may choose not to depart, another may choose to exceed the guideline slightly, and another may choose to exceed it dramatically. A sentencing system premised upon such broad departure conditions was never contemplated by the Sentencing Reform Act.[70] Departure from the guidelines was intended only for rare or unforeseeable cases. Instead, these guidelines invite departure for the predictable and the commonplace.

The likelihood of unwarranted disparity under such a "departure system" of sentencing is dramatically increased by the guidelines' lack of a coherent sentencing policy. As Senator Edward Kennedy has noted, one of the major sources of unwarranted sentencing disparity is that, "[o]ne judge may sentence in order to rehabilitate, another to deter the offender or the potential offender from committing a similar crime, a third to incapacitate, while a fourth may sentence simply to 'punish.' " [71] By refusing to resolve the issue of competing sentencing policies, and yet providing broad judicial discretion to depart, the guidelines continue and enhance the existing conditions that lead to the unwarranted disparity that Senator Kennedy and others have warned against.[72]

### 3. The Failure To Prevent Plea-Bargaining From Subverting the Goals of the Guideline System

In addition to the guidelines' numerous directions to depart and the broad categories of departures, the judges are told that they need not follow the guidelines whenever the sentence is pursuant to a plea bargain, not an uncommon occurrence. This single invitation to depart, as a practical matter, may swallow the entire guidelines. It gives the judge and the counsel a ready means to routinely avoid the guideline sentences. Because 87% of all criminal cases in the federal system last year were disposed of through a plea bargain,[73] it is likely that

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[57] See commentary to F.D. 2X5.1.

[58] See F.D. 6B1.2(b)(2).

[59] See F.D. 3D1.2(b).

[60] Other examples of ambiguous and undefined terms and phrases in the Final Draft include: "more than minimal planning" (2A2.2(b)(1), 2B2.1(b)(1), 2B2.2(b)(1), 2E5.2(b)(1), 2E5.4(b)(1), 2F1.1(b)(2)(A)); "actual or planned harm to the government" (2C1.3(b)(1)); "substantial expenditure" (2Q1.2(b)(3)); "sophisticated means" (2T1.1(b)(2)); "commercial" vs. "non-commercial gambling offenses" (commentary to 2E3.3(b)(1)); "intentionally" and "recklessly endangered" (2A5.2 (a)(1) and (a)(2)); "victim's unusual vulnerability" (3A1.1); "mere negligence" (2K1.5(b)(1)(C)); and " 'booby trap' " (commentary to 2D1.9).

[61] See notes 71–72 and accompanying text infra.

[62] A complete list of departures is available upon request.

[63] See, e.g., commentary to F.D. 2Q1.2(b)(1) and F.D. 2Q1.3(b)(1): "Because of the wide range of potential conduct arising out of the handling of different quantities of materials with widely differing propensities, a departure either upward or downward may be warranted. Depending upon the resulting harm from the emission, release or discharge, the quality and nature of the substance or pollutant, the duration of the offense and the risk associated with the violation, a departure of up to two levels in either direction . . . may be appropriate."

[64] See F.D. 5K2.7.

[65] See F.D. 5K2.14.

[66] See F.D. 5K2.9.

[67] See F.D. 5K2.3.

[68] See F.D. 5K2.5.

[69] See F.D. 4A1.3.

[70] The legislative history notes, for example, that "[t]he United States Parole Commission currently sets prison release dates outside its guidelines in about 20 percent of the cases in its jurisdiction. It is anticipated that judges will impose sentences outside the sentencing guidelines at about the same rate or possibly at a somewhat lower rate since the sentencing guidelines should contain recommendations of appropriate sentences for more detailed combinations of offense and offender characteristics than do the parole guidelines." S. Rep. No. 225 at 52 note 71 (citation omitted).

[71] Kennedy, Foreword to P. O'Donnell, M. Churgin, D. Curtis, Toward a Just and Effective Sentencing System at viii (1977). The Canadian Sentencing Commission makes the same point:

[J]udges approach similar cases in different ways. These different approaches to cases—based on different views of what [sentencing] principles should be paramount—lead to different sentences being handed down for similar offences committed by similar offenders in similar circumstances.

Report of the Canadian Sentencing Commission, Sentencing Reform: A Canadian Approach xxiii (February 1987) [hereinafter cited as Report of the Canadian Sentencing Commission].

[72] The literature on sentencing reform is replete with references to the relationship between sentencing purposes and disparity. For example, in discussing the development of its guidelines, the Minnesota Sentencing Commission describes the effects of having no articulated sentencing policy:

[T]he same case, heard in two different courts, could receive very different sentences simply because each court emphasized different sentencing goals. The pursuit of multiple goals contributed significantly to the problem of sentencing variation. The outcome of the sentencing system often appeared irrational, in that an emphasis on one goal, such as rehabilitation, might lead to a sentence that was indefensible on retributive grounds, and with limited standards to determine which goal to emphasize, sentences appeared to be highly inequitable.

Minnesota Sentencing Guidelines Commission, The Impact of the Minnesota Sentencing Guidelines: Three Year Evaluation 11 (September, 1984).

[73] See note 1 supra. If the parties can avoid the guideline sentence by a plea bargain that includes a specific sentence recommendation, there will be great pressure to bargain for just such recommendations.

this provision will be the only "guideline" applicable to the overwhelming majority of sentences.

But this departure provision, like many of the invitations to depart in the guidelines, may be illegal. The statute simply does not permit judges to depart from the guidelines for "justifiable reasons" if the sentence is pursuant to a plea-bargain. The Act is explicit on this point:

> The court *shall* impose a sentence of the kind, and within the range, referred to in [the guidelines] *unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines. . . .*[74]

It is not enough that the court feels that there are "justifiable reasons" to depart.

**4. Impeding Future Refinement**

These skeletal non-binding guidelines will not provide a basis for future refinement. In fact, in most respects, the guidelines seem calculated to frustrate any meaningful improvement over time.

**The Failure to Provide an Adequate Foundation for Refinement.** I have described above the lack of sentencing policy and principled rationales, the unwieldy and illogical structure of the guidelines, and the reliance on the fragmented and overlapping offense definitions of the antiquated federal code. Each of these fundamental flaws will remain, no matter how long the current guidelines are in effect. They each render the current guidelines inadequate as a foundation for future refinement.

**The Impropriety of Relying on the Courts to Develop the Guidelines.** These guidelines leave to the courts the task of providing the substance and direction that the guidelines lack. The courts will be called upon to provide the missing criteria, the missing definitions, the guidelines for missing offenses, and the standards for determining when and how much of a departure from the guidelines is appropriate.[75] Many of the judges who appeared before the Commission, as well as judges on the Commission, appear to prefer just such a process, in which the courts would effectively be left to write the sentencing guidelines.[76]

Why do I oppose having the courts write the guidelines? It is certainly not because I doubt the abilities of federal judges. On the contrary, the judges who sit on the Commission, appeared before the Commission, or otherwise offered comments on the problems of criminal sentencing, have been knowledgeable and sincere. Most have a certain sentencing "wisdom" that comes with experience. I remain opposed to judicial guideline development, however, for three primary reasons.

First, the judiciary as an institution has a limited ability to properly perform the task. The nature of the judicial process would necessarily compel a piece-meal approach; a court can create or alter the sentencing system only through deciding the case immediately before it. An effective and rational system requires a systemic perspective. Different parts of the system necessarily interact: a change here has implications there and there, and may require an adjustment there and elsewhere. A proper ranking of offense seriousness, for example, must necessarily be done by a single body and requires a comparison to all offenses. Delegating guideline decision-making to judges, who operate of necessity on a case-by-case basis, precludes systematic ranking. Nor can policy decision-making by courts be guided by empirical studies and analysis, for these are not within the authority or means of a judge in deciding the individual case before the court.[77]

As a recent Canadian report notes:

> Courts are primarily a reactive institution. They cannot initiate policy and must solve problems as they arise. Other policy-making bodies like Commissions are not hampered by this inherent constraint. They can make policy with a view to the future, not only in response to the past.

The Report adds:

> To expect that a uniform approach to sentencing can be developed with clarity and consistency by ten different courts is to over-simplify the complexity of the task of sentencing.[78]

A second reason to oppose judicial development of guidelines is that the judiciary as an institution does not appear to have the desire to reduce the sentencing discretion of judges; yet, reducing discretion is the linchpin upon which greater sentencing consistency hinges. The history of federal sentencing shows a strong judicial tendency to maximize judicial discretion. It was not the Judicial Conference but Congress that finally stepped in to address the problem of unwarranted disparity among judges; indeed, the judiciary generally opposed the Sentencing Reform Act.[79] And, as was apparent from testimony before the Commission, many judges continue to oppose the Act today.[80]

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[74] 18 U.S.C. 3553(b) (emphasis added).

[75] On the other hand, some people argue that the lack of criteria in the guidelines makes it difficult for an appellate court to review (and overturn) the sentence of a lower court. Similarly, this same lack of standards will make it difficult to monitor the application of the guidelines. Both of these considerations, if true, increase the likelihood that the current guidelines will not be improved.

[76] As one judge envisions:

> The courts of appeals are going to pass on these guidelines, and they're going to write them and rewrite them, just as they've done [in] every state, and we're not going to have to correct all the problems. They can work out a lot of the constitutional problems, or anything else.
>
> Meeting of the United States Sentencing Commission of April 28, 1987, transcript of tape 1, side B.

[77] The drafting of the final guidelines may well manifest the normal "judicial method" decision-making in which other parties have the responsibility for developing the relevant information and arguments. The court's role is to make decisions, not to organize the decision-making process.

[78] Report of the Canadian Sentencing Commission at 85.

[79] See, e.g., Comprehensive Crime Control Act of 1983: Hearings on S. 829 Before the Subcomm. on Criminal Law of the Senate Comm. on the Judiciary, 98th Cong., 1st Sess. 638, 640 (1983) (testimony of the Honorable Gerald Tjoflat, U.S. Circuit Judge, Eleventh Circuit, and Chairman, Committee on the Administration of the Probation System, Judicial Conference of the United States), id. at 1151, 1155 (statement of the Honorable Jean Dwyer, United States Magistrate, and Chairman, Standing Committee on Sentencing, National Council of the United States Magistrates); Bazelon, Missed Opportunities in Sentencing Reform, 7 Hofstra L. Rev. 57 (1978) (U.S. Circuit Judge, District of Columbia). There were and are, however, some notable exceptions to the judicial opposition to sentencing guidelines that reduce judicial discretion. See, e.g., Frankel, Criminal Sentences (1973) (former district judge, Southern District of New York); Lasker, Presumption Against Incarceration, 7 Hofstra L. Rev. 407 (1979) (district judge, Southern District of New York); Tyler, Sentencing Guidelines: Control of Discretion in Federal Sentencing, 7 Hofstra L. Rev. 11 (1978) (former district judge, Southern District of New York); Newman, A Better Way to Sentence Criminals, 63 A.B.A.J. 1562 (1977) (U.S. Circuit Judge, Second Circuit).

[80] See, e.g., Judge Jack Weinstein, Testimony before the United States Sentencing Commission, Public Hearing, New York, New York, pp. 34–35 (Oct. 21, 1986) (transcript available for inspection at the United States Sentencing Commission offices):

> I see no objection to telling Congress in a preliminary report: "Ladies and gentlemen, we [the Sentencing Commission] cannot [draft sentencing guidelines] until we have a rational scheme of statutes and until you give us a certain degree of play. Congress may well have made a mistake, and [our attempting the task gives] us the wisdom to make a suggestion for the modification of the statute."
>
> You know, I found that in World War II that when a soldier is ordered to shoot somebody that should not be shot, there is the possibility, in extreme circumstances, of turning around and saying, "Don't you think you ought to think about it, Lieutenant, before you order me in there to shoot?" I think maybe you ought to do that to Congress.

See also Testimony of Judge Mark Wolf, id. at 62 ("I think Congress had goals and they thought this [the Sentencing Reform Act of 1984] would be a means to achieve those goals. But if the intense

Continued

A final reason to oppose judicial development of guidelines is that Congress has provided that the task is to be performed by this Commission. It could have provided for judicial guideline-development but did not.[81] Congress may have recognized that the judiciary does not possess the resources to address successfully the problem of disparity, that its decentralized structure makes concerted reform difficult, or that the natural tendency to preserve judicial discretion is particularly strong in an area with such a history of unfettered discretion. Whatever the reasons, the courts cannot and should not be allowed to do what Congress has directed this Commission to do.

**The Failure to Permit Adequate Appellate Review.** The guideline drafters assume that appellate review of departures will, over time, permit the courts to develop a "common law" of sentencing that will provide the substance and direction that the guidelines currently lack. Even if this were desirable, which I argue above it is not, it is not practical. The commentary rarely describes with sufficient detail the factors that have been assumed when a base offense seriousness level was set. Thus, judges have little basis for judging whether the case at hand was intended to come within the guideline or whether it was intended as an appropriate case for departure. Does the base offense level for kidnapping assume that some bodily injury was caused? What size of operation is assumed in the base offense level for engaging in a gambling business? What size operation is assumed for loansharking? Because the commentary gives no answers to these questions,[82] and most other questions like them,[83] neither the sentencing judge nor an appellate court can divine what was intended to be inside the guidelines and what outside.

More importantly, because the guidelines fail to articulate a coherent sentencing policy on how the statutory purposes of sentencing are to be achieved, the appellate courts have no touchstone from which they can rationally and consistently interpret vague guideline provisions, provide missing criteria for application, or review whether a sentencing judge's departure was appropriate.

A further serious limitation on the effectiveness of appellate review arises from these guidelines' treatment of plea-bargained sentences. Because there is typically no appeal in plea-bargain cases,[84] there will be *no* appellate review of what may represent the vast majority of departures—sentences pursuant to a plea-bargain.

The sixty years of Canadian experience with appellate review of criminal sentences is instructive. The recent official Canadian report concludes that the appellate courts have had little impact in reducing unwarranted sentencing disparity:

> Since appellate review of the fairness of sentences began in 1921, volumes have been filled with case law on sentencing, but by and large the principles that have been established are general in nature and have neither served as a structure for, nor limit upon, the vast discretion bestowed upon the sentencing judge.
>
> It is not that Courts of Appeal, or trial courts, never state the principles underlying their approach to sentencing, it is that they do it infrequently and when they state these aims, the practice of blending and balancing results more in obscuring their approach than in developing a uniform approach to sentencing aims. . . .
>
> The individual judge's approach to the aims of sentencing thus has far-reaching implications for the sentence he or she will impose. To date, the Courts of Appeal have not issued judgments resulting in any kind of uniformity of approach to the general principles of sentencing in Canada. . . .[85]

**5. The Failure to Provide an Impact Assessment**

Responsible decision-making requires that, before the guidelines are promulgated, one should consider reliable projections as to the most significant aspects of the operation and effects of the guidelines. Unfortunately, these guidelines were drafted and promulgated with little knowledge of their likely operation and effect.

What percentage of cases are appropriately departures from these guidelines? At what rate will judges depart? How often will judges fail to depart (i.e., will they follow the guidelines) when the guidelines invite, direct, or expect them to depart?

How often will sentencing hearings be required? How time-consuming is a sentencing hearing likely to be? What additional investigative resources will be required? How much more time for application of the guidelines will be required of probation officers, of judges, of prosecutors and defense counsel? What will be the effect on the rate of plea bargains and thus the rate of jury trials? What will be the effect on requirements for prison capacity and probation services?

Will the guideline sentences correspond to the community's views of the relative seriousness of offenses? Will the guidelines provide greater, or as much, deterrence of potential offenders as current practice? Will they be more effective, or as effective, in identifying dangerous offenders?

Will similar offenders committing similar offenses receive similar sentences regardless of the identity of the judge or counsel? How much disparity will continue to exist under the guidelines because of differences in judges' sentencing philosophy, because of differences in the interpretation of guideline provisions, because of the lack of guidelines for some offenses, because of the lack of definitions or criteria in the guidelines?

Careful decision-making and field-testing could have provided an informed estimate on each of these important issues.

To add to the uncertainties, and the potentially damaging consequences, is the likelihood that one or another aspect of the guidelines will be held illegal. For example, are the frequent "invited" departures appearing throughout the guidelines lawful under the Sentencing Reform Act? Are "directed" departures permitted?[86] If a judge follows an

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scrutiny, and really in many respects, I think, brilliant analysis, indicates that in effect mandatory sentencing is not the right way, the best way, to approach those goals, but an effective presumptive sentencing would be, I myself would think that the sponsors of the original legislation would be quite responsive to you [the Commission] and that their colleagues, too, would be responsive.")

[81] As the legislative history notes:

> It is clearly intended that judges will confine their exercise of discretion to choosing a point within the range (if any) specified in the applicable guideline. Thus, the Sentencing Reform Act really vests most of the sentencing discretion in the United States Sentencing Commission, the body responsible for drafting the sentencing guidelines.

H.R. Rep. No. 614, 99th Cong., 2d Sess. 2–3 (1986) (footnotes omitted)

[82] See commentary to F.D. 2A4.1 (kidnapping), 2E3.1 (engaging in a gambling business), and 2E2.1 (loansharking).

[83] One need only skim the commentary to see that there *is* rarely guidance to what is included in the base offense levels.

[84] A defendant generally will agree to a plea-bargain that contains a specific sentence or sentence recommendation only if the sentence is below the guideline range—in which case, the government has waived its right to appeal the sentence by entering into the plea-bargain—or within the guideline range—where neither party has a right to appeal.

[85] Report of the Canadian Sentencing Commission at 79–81.

[86] Examples of "directed" departures in the Final Draft are found in the commentary to 2B1.3

Continued

invitation or direction to depart, is the sentence subject to appellate review because it is a deviation from the guidelines? Or, is the sentence free from appellate review because the sentence is precisely what the guidelines invite or direct?

The status of the "guidelines to go outside the guidelines" is further complicated by the attempt to regulate judges after they accept the invitation to depart. The *extent* of the permissible "departure" may be limited, for example, to "not more than four levels."[87] One may wonder how such a "departure range" is different from a "guideline range" of four levels, which is illegal.[88] By calling a guideline directive a "departure" (a term that does not appear in the Sentencing Reform Act), can the guidelines escape the 25% statutory limitation on the permissible width of their ranges?

Other potential illegalities already discussed include, for example, the multiple-offenses provision, which fails to provide the incremental penalty that the Sentencing Reform Act requires, and the attempt to authorize guideline departures for sentences pursuant to a plea-bargain if the judge feels there is a "justifiable reason."

Whether or not the guidelines are ultimately upheld against most challenges, consider the consequences if any one of these illegalities is found to exist. Will the sentences under the guidelines to date be held invalid? Will those offenders sentenced to date have to be released pending resentencing? Will the resentencing have to await Commission revision of the guidelines in light of the illegality? Will this revision require the normal delay for "public-notice and comment"? Will the effective date of the revision be subject to the normal six month delay period to allow Congressional review? Will the Parole Commission have to be judicially reinstated to cover the offenders for which the guidelines are held invalid? If invalidated in one court, will the guidelines remain applicable in another court in the same district? If invalidated in one district, will they remain applicable to other districts in the same circuit?

Even if the likelihood of invalidation of the sentences under the guidelines were small (which I do not believe it is), the potential consequences of such a finding, even by a single judge, should be sufficiently troublesome that it would seem prudent to avoid the provisions of most questionable validity, such as those providing broad invitations to depart. Letting these guidelines go into effect is a jump into the unknown, where what we do not know can hurt us.

### 6. The Fundamental Failure of the Process

Many of the policy and drafting difficulties noted here stem from a flawed policy-making process. A process of informed policy-making and thoughtful drafting might have taken the following course: isolation of the significant issues, staff preparation of background research papers on each of the issues, discussion and debate of each background paper to identify the most likely resolutions of each issue, staff preparation of option papers on the advantages and disadvantages of each possible resolution, discussion and debate of each option, a vote and tentative resolution of each issue, drafting a guideline system that embodies each of the options tentatively selected, re-evaluation of the tentative resolutions after their integration into a single guideline system, clinical testing of the revised document, revision in light of the clinical testing, limited field-testing of the revised document, revision in light of the limited field-testing, full field-testing during a period when the guidelines would be only advisory (including orientation and training programs for judges, probation officers, prosecutors, and defense counsel), and final revision in light of the full field-testing. Except for the field-testing, which can be time-consuming, each of these steps could have been feasibly accomplished in a month or two.

Unfortunately, neither this nor any other long-range working agenda was adopted. Early attempts to isolate critical issues, to prepare issue background papers, to draw from the available empirical literature on deterrence and incapacitation, to assess public perceptions of offense seriousness, and to rank offense seriousness, were quickly abandoned. In their place was substituted what many like to call an "evolutionary" process of guideline drafting. Too often, this process meant that a draft section would be produced by a staff member with little information about what other staff members were drafting and without policy guidance. These sections would then be collected, pressed into a common format, and called "draft guidelines." Then, without a background briefing or memorandum on the relevant issues, and without hearing from and frequently without knowing the identity of the author, the Commissioners would be asked if they wanted to suggest specific changes to the "draft guidelines." The process was thus a purely reactive one— reacting to a proposed draft, or to criticisms of another Commissioner or to criticisms made by individuals or organizations during a "public comment period." Unfortunately, there was never a "guideline planning period" or a "policy development period."

It was to avoid this sort of reactive drafting—which is sometimes more sensitive to the political influence of complaining parties than to the merits of their objections— that Congress chose to have the guidelines drafted by an independent commission in the Judicial Branch rather than by one of its own committees. If the process were to have been purely reactive and political, it would not have required an independent Commission.

With regard to field-testing, the record is equally troubling. Despite general agreement that field-testing is necessary,[89] these guidelines have never been tested in the field or elsewhere.

The result of the flawed policy-making process became painfully obvious to those who followed the stages of guideline drafting. Without defensible bases for a particular structure, approach, or position, the successive drafts lurched from one extreme to another as each was criticized for its obvious shortcomings. The Preliminary

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(property damage or destruction other than by arson or explosives), 2D1.1 (drug trafficking), and 2C1.1 (offering, giving, soliciting, or receiving a bribe). Indeed, there is some suggestion that all specific invitations to depart are in fact "directed" departures. Judges are told, as one of the steps in applying the guidelines in each case, that "[t]he court shall determine any applicable . . . departure from the guidelines." F.D. 1B1.2(b).

[87] Examples of "limited" departures in the Final Draft are found in the commentary to 2A1.1 (−10 levels), 2G1.1 (−8 levels), 2Q1.2(b)(2) and 2Q1.3(b)(2) (+ or − 3 levels), 2Q1.2(b)(3) and 2Q1.3(b)(3) (+ or − 2 levels), 2Q1.2(b)(4) and 2Q1.3(b)(4) (+ or − 2 levels), 4A1.3 (+ or − one criminal history category); 4B1.3 (increase to level 13 if not already greater); 3E1.1(a)(2) (−2 levels).

[88] See 28 U.S.C. 994(b)(2). Subsequent legislation amended 28 U.S.C. 994(b) to allow for a range of "the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprisonment." Sentencing Guidelines Act of 1986, Pub. L. No. 99-363, section 2, 100 Stat. 770 (1986).

[89] Many observers have suggested that field-testing its guidelines is one of the most important exercises the Commission could conduct. Most of the public comment letters on the Revised Draft collected at note 91 infra propose a delay in the submission and/or the effective date of the guidelines and also urge field-testing. See also Letter from Judge Jon Newman, Second Circuit Court of Appeals, to Commission Chairman William Wilkins (Oct. 16, 1986); additional public comment letters on the Revised Draft from Judge George Arcenesux, Jr.; Judge Elizabeth Kovachevich; William Graves, Chief Probation Officer, District of Colorado; Professor Daniel Freed; and Tommaso Rendino, President, Federal Probation Officers Association.

Draft provided great detail within each specific offense guideline and little discretion; the Revised Draft represented the other extreme by providing general principles to adjust the seriousness value of an offense and extremely broad discretion. Within the last few weeks, the guidelines were redrafted along yet another approach—using narrow guidelines without general principles of adjustment but with broad invitations to depart.

An "evolutionary" style of drafting can, I fear, be a euphemism for haphazard and unsystematic drafting. In this instance, unfortunately, it has resulted in guidelines of a similar character.[90]

[90] One may wonder, for example, why a *prior* offense should aggravate an offender's current sentence more than if the same offense were committed as part of the *current* offense. Or, one may wonder why the same use of a weapon should be treated differently in each of the many guidelines in which it appears.

As to the effect of prior vs. current offenses, if a defendant served 14 months for robbery 14 years ago, it can increase his sentence for his present offense (rape causing serious bodily injury) by 24 months. See F.D. 2A3.1 (base offense level 27), 2A3.1(b)(4)(B) (+2 levels) (Total=offense level 29), 4A1.1(a) (+3 points for sentence exceeding one year and one month=Criminal History Category II, 87–121 months vs. a Criminal History Category I sentence of 87–108 months). If he had committed the robbery during the current offense, however, it would not increase his sentence at all under the guidelines. See F.D. 3D1.2(a) and 3D1.3(a), which provide that the offense level applicable to the most serious of the counts in the group is the applicable offense level. If three years ago, a defendant was sentenced to 14 months for counterfeiting $25,000, it could increase his current sentence (counterfeiting $25,000) by an additional 9 months. See F.D. 2B5.1 (base offense level 9), 2B5.1(b)(1) (+4 levels) (Total=offense level 13), 4A1.1(a) (+3 points for sentence exceeding one year and one month=Criminal History Category II, 15–21 months vs. a Criminal History Category I sentence of 12–18 months). If his present offense includes two counts of counterfeiting $50,000 on two different occasions, his sentence would not be increased at all. See F.D. 3D1.2(d), which provides that the amounts be aggregated.

As to the erratic treatment of use of a weapon, note that, for example, in the two most serious assault offenses, the discharge of a gun will increase the offender's sentence by five levels (see F.D. 2A2.1(b)(2) (assault with intent to commit murder), F.D. 2A2.2(b)(2) (aggravated assault)), while the same discharge of a weapon in a kidnapping offense will increase the offender's sentence by only two levels (see F.D. 2A4.1(b)(3)). In a burglary offense, in contrast, the offender's sentence will be increased by two levels for the mere possession of a gun (see F.D. 2B2.1(b)(4)). Other offenses provide no aggravation for the use of a gun. See text accompanying notes 48–52 supra. Thus, the judge may ignore the use of a weapon, or the judge may depart from the guidelines and aggravate the sentence by any number of levels. Similarly, in a robbery offense, causing permanent bodily injury counts 6 levels (see F.D. 2B3.1(b)(3)(C)), unless caused by discharge of a gun when it counts only 4 levels (see F.D. 2B3.1(b)(2)(B)). Thus, serious bodily injury and permanent bodily injury during a robbery count the same if a gun is used. If a gun is not used, permanent bodily injury counts more.

## Conclusion: What Should We Do Now?

I urge Congress to disapprove these guidelines and to direct the Commission to restart its work.[91] In addition, Congress should resolve the lingering questions of unconstitutionality,[92] even if that means reconstituting the Commission. It should resist the temptation to tinker with the provisions of the sentencing Reform Act, which, I still believe, are the most effective means of bringing about an enlightened reform of federal criminal sentencing.

When restarting its work, the seven most important matters for the Commission are to:

**(1) Adopt and Follow a Long-Range Program of Policy Development Before Drafting Guidelines.** The Commission could, for example, follow the outline for serious and informed policy-making described above, including the preparation of issue, background, and option papers, full debate on all relevant issues, and extensive field-testing.

**(2) Adopt and Articulate a Governing Sentencing Policy to Further the Statutory Purposes of Sentencing.** Thus, when a departure is necessary, when a vague or ambiguous term must be interpreted, or when a judge must otherwise exercise discretion in the sentencing process, all judges would be guided by the same sentencing policy.

**(3) Set Sentences to Further the Governing Sentencing Policy and Statutory Purposes Rather than to Mimic Mathematical Averages of Past Sentences.** This would bring rationality and would more effectively further the statutory goals of just punishment, deterrence, incapacitation of the dangerous, and rehabilitation.

**(4) Hire a Staff of Professionals with National Reputations, Including Guideline Experts with Experience in State Guideline Systems.** The current staff has worked extremely hard and will remain invaluable to the Commission. But because the Commission is a national Commission, it also merits professionals with national reputations in criminal law and guideline-policy development.

**(5) Add Back Into the Guidelines, as Adjustments of General Application Wherever Possible, the Commonplace Sentencing Factors Now Omitted.** At least the most commonplace sentencing factors that were recognized in earlier drafts should be added back into the guidelines. The guidelines can be considerably shortened and made less complex if the most common factors—such as causing injury, use of a weapon, and reduced culpable state of mind—are included as general adjustments applicable to any offense in which they are present. The addition of at least commonplace factors will make the

[91] The Commission has voted unanimously to ask Congress for a nine-month extension. I applaud the Commission for its action, and urge Congress to pay due deference to those in a position to know whether these guidelines are ready to go into effect. I have some concern, however, that the nine months requested by the Commission is not enough time. As noted above, I believe the basic structure of these guidelines is sufficiently flawed that it cannot provide an adequate foundation for future "refinement;" it must be redone. And, I believe that a thoughtful and systematic process of policy development should be undertaken. I urge the Congress to give the Commission more than nine months to reattempt its historic, visionary task.

Many observers, for many different reasons, support the idea of delaying the submission or the effective date of the guidelines. See, e.g., public comment letters from Daniel Van Ness, President, Justice Fellowship; Judge John Sprizzo; Judge Barbara Crabb; John Kramer, Executive Director, Pennsylvania Commission on Sentencing; Judge Alan Nevas; Joint Statement of the District Judges of the Second Circuit; Judge Jack Weinstein; Randolph Stone, Deputy Director, Public Defender Service for the District of Columbia; Judge Gerald Heaney; Professor Stephen Schulhofer; Eugene Thomas, President, American Bar Association; Reverend William Yolton, Executive Director, National Interreligious Service Board for Conscientious Objectors.

[92] Some have argued that the Commission itself is unconstitutional. See, e.g., Morrison, A Fatal Flaw, Nat'l L.J., January 26, 1987 at 15 ("Congress is not respecting separation of powers, it is shifting responsibilities that belong in one branch to another, and it is mixing the branches in carrying out the commission's very complex and very important duties"); Note, The Constitutional Infirmities of the United States Sentencing Commission, 96 Yale L.J. 1363, 1388 (1987) ("The federal Sentencing Commission is constitutionally infirm. The Sentencing Reform Act vests more legislative authority than the separation of powers permits in an administrative agency composed of seven presidential appointees. The confounding of the separate functions of the different branches is aggravated by the requirement that judges be appointed to the Commission and subject to possible removal by the President.") Letter from then Chief Justice Warren Burger to President Ronald Reagan (Dec. 13, 1984) (objecting to the idea of full-time membership of three judges in active service on the Commission); Strasser, Sentencing Panel May Start Soon, Nat'l L.J., July 8, 1985 at 5 (Supreme Court's decision in *Bowsher* increased doubts about the Commission's constitutionality); Supreme Court Report: Gramm-Rudman Held Invalid, 72 A.B.A. J. 52, 61 (Oct. 1, 1986) (predicting a constitutional challenge to the Commission); Strasser, Is Sentencing Panel on the Rocks?, Nat'l L.J., Dec. 8, 1986, 3, 12; Wermeil, Commission on Criminal Sentencing is Tangled in Controversy About its Makeup and its Mission, Wall Street J., Jan. 27, 1987, at 60, col. 1; Judge Edward Becker, Testimony before the U.S. Sentencing Commission, Public Hearing, Washington, D.C., pp. 21–22 (Dec. 3, 1986) (transcript available from United States Sentencing Commission) (listing possible constitutional challenges). But see Memorandum from the United States Department of Justice to Commission Chairman William Wilkins (Jan. 8, 2987) (concluding that, despite the Sentencing Reform Act's designation of the Commission "as an independent commission in the judicial branch of the United States" (28 U.S.C. 991(a)), the Commission is actually in the Executive Branch, and that the service of individual judges in executive agencies is constitutionally permissible).

guidelines more comprehensive, and therefore more binding. This, in turn, will reduce unwarranted disparity.

**(6) Add Guidelines for All Federal Offenses; (7) Base the Guidelines on Consolidated, Non-Overlapping Offense Categories.** Comprehensive and binding guidelines require that all offenses be covered. This can be done with guidelines that are shorter and less complex than the present guidelines by using consolidated, non-overlapping generic offense categories, as are found in most state codes. This will also solve the present guidelines' significant problems in sentencing for multiple offenses.

In sum, the Commission should draft principled and binding guidelines that are structured to further the Sentencing Reform Act's visionary goals of rationality and consistency in criminal sentencing. If Congress accepts anything less, we will lose an historic opportunity for visionary reform that I fear may not come again in our lifetime.

I dissent.

## SUMMARY OF CONTENTS

**Introduction.** The Sentencing Reform Act was intended to implement Congress' inspired vision of modern criminal sentencing. Comprehensive and binding guidelines were to bring rationality and greater consistency to federal sentencing. With the guidelines promulgated today, however, that vision dims. These guidelines may well produce more irrationality and more unwarranted disparity than exists today.

**1. The Failure to Provide a Rational and Coherent Sentencing System.**

**The Failure to Define a Rational and Coherent Policy and to Provide Sentences Calculated to Achieve the Statutory Purposes of Sentencing.** In direct violation of the Act, the guidelines do not establish sentences calculated to "assure the meeting of the purposes of sentencing [i.e., just punishment, deterrence, incapacitation of the dangerous, and rehabilitation]." They offer no sentencing philosophy; they adopt no coherent system of sentencing policies; they do not reflect serious consideration of existing research studies on how best to further the statutory purposes. Instead, the guidelines claim to simply continue past sentencing practices. In fact, the guidelines dramatically alter past practice, yet have no principled basis or explanation for the changes.

**The Impropriety of Basing Guidelines on Mathematical Averages of Past Sentences.** Sentences based on mathematical averages of past sentences are contrary to the Act and are "bastardized" sentences that are not likely to achieve any of the statutory purposes of sentencing. Further, the guidelines incorporate inaccurate measures of past practice to determine future practice.

**The Failure to Rank Systematically Offenses According to Seriousness.** As a concomitant to its failure to adopt a principled and rational approach to drafting, the guidelines fail to reflect a systematic ranking of offenses according to their seriousness. The failure results in clearly inappropriate treatment of many offenses.

**The Failure to Provide Different Sentences for Cases that are Very Different in Seriousness:** Promoting "Free" Harms and Ignoring Relevant Mitigations. The most basic function of any sentencing system is to provide appropriately different sentences for meaningfully different cases. Taking account of relevant aggravating and mitigating factors assures that additional harms will not go unpunished—that there are no "free" harms—and that significant mitigations will be reflected in an appropriately reduced sanction. The guidelines, however, routinely allow "free" harms, and overlook relevant mitigations. They do this by ignoring highly relevant and commonplace factors (e.g., an offender's causing physical injury, use of a weapon, or reduced culpable state of mind), by taking into account only the most serious factor when multiple factors exist, and by failing to provide an incremental penalty for each of different multiple offenses.

**The Failure to Address the Problems of Fragmented and Overlapping Offenses.** The guidelines are based on specific federal code sections, rather than on consolidated, nonoverlapping generic offense categories like those used by most states. This makes it impossible to formulate an appropriate sentence where an offender's conduct violates more than one specific code provision, a common occurrence.

**2. The Failure to Reduce (and the Potential for Increasing) Unwarranted Sentencing Disparity.** The guidelines include so many invitations and directions to depart from the guidelines, in even commonplace cases, that the "guidelines" are little more than non-binding recommendations that are not likely to reduce disparity. Indeed, because the Parole Commission will no longer be adjusting the disparate sentences imposed by judges—as it does now, albeit in an inadequate way—it is very possible that unwarranted disparity will increase under these guidelines.

**Requiring Departures, and Thus Inviting Disparity, by Adopting Skeletal Rather than Comprehensive Guidelines.** The Act permits judges to depart from the guidelines only if there exists a factor not adequately considered in drafting the guidelines. Departure was intended to be rare, however, because the guidelines were to be detailed and comprehensive. In fact, highly relevant and commonplace factors are omitted from the guidelines—even factors identified as relevant in previous drafts by the Commission. Because of these omissions, a judge must either give a sentence that is inappropriate because it does not reflect the relevant factor, or must depart from the guidelines and thereby create the disparity that the guidelines were intended to reduce.

**Fostering Departures, and Thereby Disparity, by Using Vague and Ambiguous Standards.** By using vague and ambiguous terms, frequently in key provisions, the guidelines invite disparity in application as different judges follow different interpretations.

**Fostering Disparity by Inviting (and Directing) Extensive Departures Without the Guidance of an Articulated Sentencing Policy.** The guidelines specifically invite (and in some cases direct) the court to depart from the guidelines in predictable and commonplace cases that the Commission has fully considered. Because much disparity results from differences in sentencing philosophy among judges, the guideline's failure to reflect a coherent sentencing policy, will further exacerbate the problem of unwarranted disparity under such a discretionary "departure system" of sentencing.

**3. The Failure to Prevent Plea-Bargaining from Subverting the Goals of the Guideline System.** 87% of all cases in the federal system are disposed of through a plea bargain. The guidelines permit a judge to depart from the guidelines if the sentence is pursuant to a plea bargain and the judge feels there is a "justifiable reason" to depart. This guideline provision violates the Act, which does not allow departures simply because the judge feels there is a "justifiable reason." Further, by failing to prevent plea-bargaining from subverting the system, the provision assures that the irrationality and disparity of current federal sentencing will continue under the guidelines. Such plea-bargained sentences will not achieve the statutory purposes of sentencing and are not likely to provide similar sentences for similar offenders.

**4. Impeding Future Refinement.** The rationale for skeletal, non-binding

guidelines is that such will provide a basis for refinement over time by the courts. But shifting guideline development to the courts is unwise, is inconsistent with the Act, and, in any case, would be ineffective because the guidelines are structured in a manner that will not permit the meaningful appellate review necessary for refinement.

**The Failure to Provide an Adequate Foundation for Refinement.** The lack of an articulated sentencing policy, the unwieldy and illogical structure of the guidelines, and the reliance on the antiquated, fragmented, and overlapping offense definitions of the federal code (rather than the consolidated generic offenses used in most state codes), each make the guidelines an inadequate foundation for future refinement.

**The Impropriety of Relying on the Courts to Develop the Guidelines.** It is inappropriate to rely on the judiciary to develop the guidelines. First, the guidelines fail to provide adequate direction for such development. Courts must necessarily consider issues on a case-by-case basis rather than from the system-wide perspective that is required. Courts cannot inform the policy-making process with the research studies that are needed and statutorily directed. Courts have had the opportunity to reduce or guide judicial discretion to avoid sentencing disparity in the past but have shown no willingness to do so. Finally, Congress has directed the Commission, not the courts, to structure and guide sentencing decisions.

**The Failure to Permit Adequate Appellate Review.** The guidelines assume that appellate review of departures will, over time, permit the courts to develop a "common law" of sentencing that will provide the substance and direction that they currently lack. But the failure to provide meaningful criteria for application, the failure to specify what factors have been taken into account in setting a given offense value, and the failure to articulate a rational sentencing policy, leaves sentencing judges unable to determine whether departure is appropriate and appellate judges unable to provide a principled review of a decision to depart. Further, there will be no appellate review of most departures, since departure pursuant to a plea-bargain sentence will not be subject to appellate review.

**5. The Failure to Provide an Impact Assessment.** Before promulgating guidelines that will govern the sentencing of over 100,000 federal offenders each year and that are likely to change the practice of federal prosecutors, defense counsel, probation officers, prison officials, magistrates, and judges, it would seem appropriate (and it is feasible) to develop reliable estimates on how the guidelines will operate. Yet, the most basic effects of these guidelines have never been determined.

**6. The Fundamental Failure of the Process.** Many, if not most, of the guidelines' shortcomings have resulted from a lack of serious and informed deliberation and analysis. Because the guidelines do not embody a coherent policy-making process, the various drafts have lurched wildly from one extreme to the other, reacting to the criticisms of each previous draft. In the end, the final guidelines were drafted in three weeks and embody an approach significantly different from those previously considered—an approach that has been subject to little internal discussion or debate and no public comment or field-testing.

**Conclusion: What Should We Do Now?**

## PRELIMINARY OBSERVATIONS OF THE COMMISSION ON COMMISSIONER ROBINSON'S DISSENT

**May 1, 1987.**

The Commission, having just received today a fully detailed draft of Commissioner Robinson's dissent, but aware of his general views, makes the following preliminary observations.[1]

1. Professor Robinson has strongly urged the Commission to adopt a highly detailed, mechanical guideline system that would aggravate punishments for each and every harm an offender causes and presumably lessen punishment for each and every relevant mitigating background factor. The Commission spent several months following the professor's lead in an effort to turn that approach into a set of workable guidelines. Professor Robinson embodied his approach in a "July 10" (1986) draft, which the Commission circulated widely within the criminal law community.

Despite the many valuable insights that his draft contained, the reaction was strongly and uniformly negative. The comments received ranged from "overly ambitious" and "ill advised" to "totally impractical" and "fraught with danger." Judge Jon O. Newman, a longtime advocate of sentencing guidelines, wrote the Commission that the Robinson approach

will likely fail to survive a Congressional veto and, even if allowed to become effective, will lead to a generation of needless litigation, a series of invalidated sentences, opportunities for manipulation by prosecutors and defense counsel, and a source of such confusion among judges as to make likely a clamor for return to the old system.

Judge Harold Tyler, who as Deputy Attorney General (under President Ford) directed the government's efforts to create sentencing reform legislation, wrote that he "doubt[ed] the necessity or wisdom of a complicated scoring system, at least initially." He said that the July 10, 1986, draft would be "politically unacceptable to Congress"; that it would create "real resistance on the part of . . . many sentencing judges"; that it would create "substantial practical problems" for the courts; and that its many gradations were "overly refined" and "not . . . necessary." Judge Marvin Frankel, whose initial studies of sentencing disparity helped to launch the guideline movement, wrote that however splendid in their conception and execution the July 10 draft may be, it is "too far ahead of the times for the goal of acceptance by the legislative and judicial people who will be considering" it.

In brief, the Commission found no significant support for the July 10, 1986, approach. The Commission then decided not to promulgate the draft; it concluded that its descriptions bore little or no relation to the actual statutory elements of an offense and that it was excessively impractical, a kind of academic fantasy. The Commission will publish the draft, however, among its working papers; those interested in the views that Professor Robinson states in his dissent should study it with care.

2. The reason that Professor Robinson's approach drew so little support from any quarter (academics included) is that it did not provide a practical solution to the problems viewed as important by the different segments of the criminal justice community. Those particularly concerned with lessening disparity in sentencing saw in the complexity of the July 10, 1986, draft, in its need for elaborate new factfinding, and in its use of complex mathematical formulae involving multiplication of quartic roots, the likelihood that different judges would apply the system differently to similar cases, thereby aggravating the

[1] The six Commissioners who formed the majority concur in this observation. They are William W. Wilkins, Jr., Michael K. Block, Stephen G. Breyer, Helen G. Corrothers, George E. MacKinnon, and Ilene H. Nagel.

disparity problem. Those professionally concerned with crime control saw in its factfinding demands the need for lengthy new hearings, complex arguments and appeals, all of which would significantly lessen the likelihood that convicted criminals would, in fact, receive appropriate punishment. Those particularly sensitive to the need for special treatment of unusual cases saw in its rigid, mechanical rules and near total absence of discretion, the elimination of a court's ability to deviate when, for example, unusual facts in a specific case cried out for special treatment.

Of course, it may be that there is a practical method of responding to Professor Robinson's present criticisms by taking the approach he advocates and, within a reasonable period of time, translating it into a practical set of guidelines. But nothing in the July 10, 1986, draft, nor in his work that we have seen since that time, convinces us that this is so.

3. What Professor Robinson means by a "rational and coherent sentencing system" is a system (preferably his system) that would radically revise what he calls the "archaic, fragmented" criminal code of the United States. He urges a "visionary" approach that would base guidelines upon "modern American criminal code" descriptions of conduct, many of which descriptions are found in recently revised state codes. The problem with this view, however, is that Congress, which has considered reform of the Criminal Code for more than a decade, has not enacted that reform into law. Thus, the Commission must apply federal statutory law as it now stands, whether or not visionaries believe that the existing statutes ought to be repealed or replaced. To put the matter bluntly, the Commission does not have the political mandate or the institutional authority to rewrite the United States Criminal Code under the guise of writing sentencing guidelines. The job of revising the Criminal Code belongs to Congress, not the Commission.

4. In our view, the actual effect of any major change upon a human institution inevitably involves uncertainty and the risk of unforeseen consequences. Professor Robinson may be certain about what changes will actually come about as a result of the guidelines we propose; we are not. We, therefore, strongly believe that our proposed changes should evolve from, not represent a sharp break with, existing practice. What we do, after all, will significantly affect the entire criminal justice system of the United States. And, lacking a crystal ball capable of telling us with precision what will actually occur, we act now perhaps less aggressively or ambitiously than Professor Robinson would like. We believe it more responsible to proceed with caution, monitoring through data gathering and analysis the actual effects of our changes at each step, then revising, modifying, and advancing our work in light of what we learn.

5. We have read Professor Robinson's dissent with an awareness that our primary task is not to produce a perfect document, but rather to create a practical document in an area where every approach suffers some drawbacks. Thus, we have primarily been interested in the alternatives that Professor Robinson has been proposing. Viewing his dissent not in this light, however, but simply as a series of criticisms, our initial reaction is that the criticisms are wide of the mark. The dissent does not accurately characterize what the guidelines are trying to do; how, for example, they make use of the empirical data,[2] or how and why they create some distinctions but not others.[3] The dissent's use of guideline examples is misleading or mistaken.[4]

The dissent, in our view, misunderstands both the statute and the guidelines.[5] Regardless, the issue is not whether the Commission's present draft has some anomalies or disparities; some will be found. Nor is it whether the Commission has created the theoretically or academically "best" set of guidelines. The issue is whether we wish to perpetuate the current system, a system that creates anomalies and disparities daily by allowing each of hundreds of federal judges to sentence entirely on the basis of his or her own views. It is whether, with these initial guidelines, the Commission has laid a solid groundwork for further improvement and reform. The

[2] The Commission, as the dissent points out, used past practice as a starting point in its guideline drafting process. But the "averages" were neither as simplistic nor their use as mathematical as the dissent strongly implies. Empirical data were used to estimate averages of time served. The "averages," however, were not based on data relevant merely to the offense. By using advanced statistical techniques, we were able to estimate the average time served for offense/offender combinations. To illustrate, the average time served was estimated for typically occurring variations of burglary offenses, including the value of the property taken, the degree of planning, the possession of a weapon, and whether the case was adjudicated through a plea of guilty or by a trial. The results of these analyses were then used as a starting point for the guidelines.

[3] The Commission is fully aware of the problems inherent in writing simple guidelines that might omit relevant factors—a problem that permeates the discussion in the dissent. Given the vast number of factors potentially relevant to a sentencing decision, ever greater detail is always possible. Guidelines might not only separately consider "knives," but then go on to consider whether or not a knife is a switchblade, drawn or concealed, opened or closed, large or small, used in connection with a car theft (where victim confrontation is rare), a burglary (where confrontation is unintended) or a robbery (where confrontation is intentional). There is no inherently "correct" level of detail. There are no empirical studies that tell us whether the administrative costs of making the system complex are offset by advantages of, say, increased certainty, fairness, or deterrence.

The Commission's approach to the problem of "level of detail" (as Professor Robinson is fully aware) was to use its review of 10,000 actual cases in order to identify the major factors that courts have in fact taken into account in sentencing. These 10,000 cases in the Commission's database include, for example, 1,110 instances of robbery; 40 of those 1,110 involved physical injury to a victim; 3 involved death. The Commission guideline for robbery, therefore, includes, as a specific aggravating factor, "injury to a victim". It does not include "death" because death occurs only rarely in connection with a prosecuted robbery charge. In the Commission's view, a guideline should not give specific and direct instruction in respect to a factor that occurs only 3 times in 1,110 instances. Rather that factor, when it does occur, provides grounds for departure or a separate charge. It is these factors which empirically speaking rarely occur, and which the guidelines urge as grounds for departure, that the dissent characterizes as "free harms".

[4] The dissent provides numerous examples of instances designed to show that the guidelines treat in a similar way different crimes that (in the dissent's view) "obviously" should be treated differently. These examples are, at best, misleading; that becomes apparent once one looks beyond the *general* descriptions of the crimes at issue to the *specific* instances to which the cited guideline provisions apply. The dissent to the contrary notwithstanding, there is nothing odd, anomalous, or "obviously wrong", for example, about treating a minor drug offense, such as the possession of three marijuana plants, the same as an environmental offense that threatens the safety of, say, wild horses. Nor is there any inherent anomaly in assigning the same offense level to a *regulatory* violation of an explosive statute (an offense which typically does *not* pose any immediate safety risk but is characterized by the dissent as "trafficking in explosives") and altering a single motor vehicle identification number.

These matters are all explained in guideline commentary, which also makes clear that even such supposedly horrific examples, as similar offense levels for "abusive sexual contact" and "unlawfully remaining or entering in the United States" are mistaken. That example loses its probative force once one reads the commentary and finds that "abusive sexual contact" refers to a specific statutory offense (involving neither force nor threat of force) that the statute classifies as a misdemeanor and for violations of which the statute imposes a maximum penalty of six months in prison.

In fact, the Commission spent considerable time and effort developing ways to treat property and other crimes consistently. An explanation of its treatment of regulatory offenses is contained in the guidelines. *See* Chapter One, (Introduction and Overview). Our preliminary examination of the dissent's use of examples convinces us that our methods were reasonable.

[5] Compare, for example, the dissent's discussion of the us 28 U.S.C. 994(m), sentence 2. To determine the accuracy of the history, one must read through the relevant statutes and reports closer to that of Judge Harold Tyler, who wrote that "the original to eradicate all disparity in federal sentencing but rather to 'am which are gross or distorted."

Commission is a permanent body that need not (and should not) try to complete its entire task in a single year. These initial guidelines begin a process that will create gradually but inevitably an ever fairer and more effective criminal justice system.

**SUPPLEMENTAL STATEMENT OF COMMISSIONERS ILENE H. NAGEL AND MICHAEL K. BLOCK**

May 1, 1987.

We join in the preceding Commission response to the dissent. As Chair and Co-Chair of the Commission's Research Committee, we submit this statement to elaborate on the views expressed therein.

**1. A Rational and Coherent Approach.**

The dissent attacks the Commission for not adopting a single, coherent rationale for all sentences—i.e., a complete theory of sentencing. Despite years, indeed centuries of study, however, scholars have been unable to agree upon such a single rationale. Moreover, the Sentencing Reform Act expressly rejected the notion that the Commission should follow a single rationale. Instead, the Act instructed the Commission to devise a system that would further all of the statutorily-enumerated purposes of sentencing—just punishment, deterrence, incapacitation and, to a lesser extent, rehabilitation. Such a system inevitably involves compromises and some degree of conflict.[1]

In view of the statute's mixed and at times conflicting directions, the Commission began where the statute instructed us to begin—with an analysis of current sentencing practices. See 28 U.S.C. 994(m). Using the results of those analyses as a guide, but without blindly following them, we developed a structure under which the resulting sentences are more rational, consistent and uniform, and, we believe, better serve the purposes of sentencing set forth in the Act.

To start, we did not, as the dissent asserts, "simply mimic the mathematical averages of past sentences." First, the Commission did not begin with mere "averages." The Commission analyzed 10,000 detailed reports of actual cases using sophisticated, multivariate statistical techniques that enabled us to discern the significance of numerous sentencing factors in varying contexts. These analyses were supplemented through reading presentence investigation reports to determine what the cases prosecuted actually involved and to assess which factors appeared to be important. The Commission also collected and utilized, albeit to a lesser extent, less detailed data on over 40,000 actual convictions. As a result, we did not simply estimate an average sentence for robbery. Rather, we estimated how long a term of imprisonment would be served depending upon a number of factors—amount of money, weapon use, careful planning, taking of hostages, infliction of injury, degree of participation in the crime, and whether there was a trial or a guilty plea. These empirical analyses, eschewed by the dissent, ensured that the guidelines would be based upon reality and would "cover[ ] in one manner or another all important variations that commonly may be expected in criminal cases."[2] S. Rep. No. 98–225, at 168 (1983).

The results of these detailed analyses provided the starting point for the guidelines that ultimately were adopted. The Commission did not, however, blindly adopt or "simply mimic" the none-too-simple mathematical averages, although we did use them to provide guidance as to judges' perceptions of the seriousness of the various offenses, and which factors they considered important as a basis for distinguishing sentences in different cases. We reviewed the results of these analyses to determine whether the structure and degree of significance were logical and reasonable, and made changes where they were not.[3] We compared empirically-derived results for similar offenses and incorporated the significant factors into the guidelines for those offenses.[4] When compelling arguments could be made for the inclusion of factors where little data were available, we included them, albeit cautiously.[5] Heeding the instructions in the legislative history,[6] we raised sentences for white-collar offenses, treatingg them essentially the same as non-white-collar offenses of equal seriousness.[7] Similarly, we were careful to ensure that sentences for violent crimes at least equaled current averages, and raised them when they were clearly inadequate.[8] And, of course, in areas such as drug offenses, where the Congress recently has given clear direction, we followed and implemented that direction, regardless of current sentencing practice.[9]

Even had the Commission "simply mimic[ked] the mathematical averages of past sentences," however, a substantial step toward achieving both fairer and more effective sentences would have been made. Clearly, averaging out the extremes, and irregularities of past sentences promotes more equal treatment for offenders.[10] Perhaps more importantly, it furthers the crime-control goal of deterrence. Rational individuals consider the likelihood as well as the severity of punishment. Merely setting the guideline sentences at the average current sentence levels would increase the certainty of imprisonment while decreasing the length of the term —more offenders would go to prison, although some would go for a shorter time. Few experts would deny that this change in the manner of distributing punishment would increase the level of deterrence, thus enhancing one of the most important purposes of the institution of punishment.[11]

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[1] For example, some views of just punishment (primarily Professor Robinson's) require an extremely detailed ranking of seriousness, including an incremental punishment for each harm caused by the offense. Incapacitation, on the other hand, calls for incarcerating offenders primarily on the basis of predictions of the likelihood that they will commit future crimes. To the extent that a sentencing system seeks to protect the public from future crimes by the defendant—indeed, a very real and important objective—the sentences that would result purely from harm rankings might not be appropriate. The same may be true when deterrence is the primary rationale for sentending; some crimes that are less harmful may require greater sentences to provide adequate deterrence.

[2] This language, which Professor Robinson quotes, implicitly recognizes that, especially initially, Congress expected uncommon cases to be dealt with through departure. This is made explicit elsewhere in the Senate report. See Part 2, *infra*.

[3] For example, our results showed that the average sentences for robbery of an individual were considerably lower than those for the much more common (in the federal system) offense of bank robbery, even adjusting for other relevant factors. Since we could find no rationale for this, we treated the offenses essentially the same.

[4] Compare § 2B3.1 (Robbery) with § 2B3.2 (Extortion) and § 2E2.1 (Extortionate Extension of Credit).

[5] See § 2A4.1(b)(4) (adjustment for duration of kidnapping offense); § 2B1.1(b)(2) (adjustment for theft of firearm).

[6] See S. Rep. No. 98–225, at 177–78.

[7] Thus, embezzlement was combined with theft into § 2B1.1, and § 2F1.1 (Fraud and Deceit) is quite similar to § 2B1.1.

[8] Sentences for murder (§§ 2A1.1, 2A1.2), assault (§§ 2A2.1, 2A2.2), and rape (§ 2A3.1) Were raised substantially.

[9] Professor Robinson apparently is of the view that we should ignore Congressional directives. Thus, he criticizes the Commission's decision to ignore drug purity, even though this was the approach adopted by Congress only last year. Similarly, he implies that the Commission should have set a higher sentencing range for engaging in a practice of hiring illegal aliens than for illegally entering the United States, even though Congress only last year prescribed a lower statutory maximum for the former than for the latter.

[10] This smoothing or leveling process necessarily results in a reduction of the amount of probation. Just as there must be *fewer* extremely long sentences, there must be fewer extremely short ones, i.e., less probation.

[11] We suspect that more uniform sentences may also further the goal of protecting the public from

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The dissent provides numerous examples of instances where the approach we have followed produced supposedly anomalous or irrational results. Because these examples were provided to us only recently[12] and are subject to constant change, it is pointless to attempt to address each of them directly.[13] Rather, we ask the reader to examine carefully each example along with the relevant guidelines and commentary, and then pose certain questions. Is the example provided one which is actually likely to occur in the federal system, or is it more appropriate for a law-school classroom?[14] Does the language employed in the dissent fairly represent the conduct and the provisions of the guidelines involved, or is it calculated to mislead as to the nature or scope of the supposed flaw?[15] Is it clear that the factor cited should result in a different guideline range?[16] Can the conduct adequately be dealt with within the guideline range?[17] Should the offense of which the defendant is convicted be irrelevant?[18] Is the guideline sentence per se unreasonable?[19] Can the sentencing judge not be expected to deal with a truly anomalous result through departure?[20] And, finally, if the problem is real, how can the guidelines be modified to deal with it? Suggested improvements will be welcomed.

### 2. A Comprehensive Approach That Will Reduce Disparity

Although the dissent incorrectly describes the use the Commission made of past practice data, it is correct that the guidelines leave the cases that are unusual in the federal system for departure, sometimes expressly inviting the judge to depart in accordance with commentary or a separate policy statement. That is precisely what Congress expected. See S. Rep. No. 98–225, at 166 ("policy statements could also address . . . the appropriateness of sentences outside the guidelines where there exists a particular aggravating or mitigating factor which does not occur often enough to be incorporated in the sentencing guidelines themselves"). Not only is this approach sufficiently comprehensive as a starting point, but it readily can be expanded.[21]

The dissent indicts the Commission for promulgating guidelines which, it is asserted, will fail to reduce and will perhaps increase disparity. Unlike Professor Robinson, however, we have worked at modeling and testing the guidelines that were adopted. While the results are necessarily preliminary, the analyses thus far show that the guidelines will indeed make a substantial stride toward reducing the disparity inherent in current sentencing practices.

On the other hand, the Commission's experience with the system that Professor Robinson advocated showed that his system would in fact increase disparity. Disparity would be rampant under his approach because of the innumerable opportunities for variation, and insistence on including in every sentencing decision every conceivable unproved "harm" (actual, risked or threatened) as an aggravator and every imaginable failed defense as a mitigator. Each was assigned a precise numerical value. Consistent with his views, Professor Robinson presented a proposed guideline system containing an endless array of factors by which to distinguish offenses. Many of these would have required a subjective decision by the judge with an uncertain outcome.[22] The cumulative effect of such decisions would have been to destroy any uniformity: different judges would have treated identical cases quite differently.[23] The impact on the criminal

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dangerous offenders, because an individual's propensity to commit crime decreases with age. Thus, incarceration tends to prevent more crimes in the earlier years than in later years.

[12] Had the examples been presented sooner, the Commission could have made use of them to the extent appropriate to revise guidelines that produced unintended results or to clarify language that was subject to misinterpretation.

[13] Indeed, as a result of their constant change, even this limited discussion of the dissent's examples may be inapt.

[14] For example, would someone really be charged with and convicted of obstruction of justice for merely threatening to "throw eggs" at a witness' car? How many of such cases are there?

[15] For example, by referring solely to the short title of "abusive sexual contact," the dissent suggests that consensual touching of a ward (statutory maximum 6 months) must receive a much higher sentence than illegal immigration (statutory maximum 6 months to 2 years). By characterizing an offense as "aggravated assault" although it involves no use of a weapon and no injury, the dissent suggests that such conduct is much more serious than smuggling $21,000 of unquarantined and possibly infected fish of a type for which importation is prohibited.

The dissent's discussion of plea agreements appears equally disingenuous. The guidelines do not tell judges "that they need not follow the guidelines whenever the sentence is pursuant to a plea bargain." Rather, policy statements accept the inevitable fact that there is no way to prevent a judge from sentencing pursuant to a sentence agreement, but asks him to accept such an agreement only if there is a justifiable reason for departure. Currently, explicit sentencing agreements are rare. In view of the immunity of agreed-upon sentences from appeal, the Commission could not adopt any policy that was meaningfully different in effect, even if doing so were advisable at this early stage.

[16] Should the fact, for example, that a robbery or extortion "interfered with interstate commerce" (*e.g.*, a shipment of tomatoes across state lines) rather than local commerce (e.g., a shipment of tomatoes elsewhere in the state) significantly affect the sentence? Is the six-month or 25% guideline range inadequate to deal with the distinction between two defendants, one of whom defrauds each of two widows of $100,000 and the other of whom defrauds each of 40 widows of $5,000? Which sentence should be larger, and by how much?

[17] For example, is not the sentencing range in a rape with serious bodily injury—135 to 168 months—adequate to deal with the fact that the defendant also took property from (*i.e.*, robbed) the victim during the course of the offense?

The dissent also may mislead the reader as to the effect of the guidelines for dealing with multiple offenses, asserting that "where offenses are unrelated and against different victims, only the most serious offense is punished; the others are 'free'." Yet the guideline cited provides that an additional offense does not increase the guideline offense level only in the unusual case where it is much less serious than the primary offense. In such instances, there is ordinarily a wide guideline range within which the judge is expected to consider the additional offense. The dissent's discussion of multiple property offenses ignores the fact that the property guidelines themselves contain aggravators for repeated misconduct that is part of a pattern. See, *e.g.*, commentary to § 2B1.1.

[18] For example, if the defendant is convicted solely of arson, should he be punished as for an attempted civil-rights murder of which he was acquitted or which was uncharged? In many of the "free" harm examples posited by Professor Robinson, the guidelines will result in a higher sentence if the defendant is convicted of the offense that such harm represents.

[19] The bulk of the dissent's criticisms go not to the absolute sentences, but to the relative rankings of different factual patterns. While not unconcerned about the latter, we believe that the former are more important at this stage.

[20] In fact, because the guidelines have been designed to cover the vast majority of cases that do occur in practice, and incorporate those commonly-occurring factors that were determined to be important to judges, we expect the rate of departure to be low, even initially. Frequent departures will alert the Commission to modify the guidelines.

[21] Through its empirical work, the Commission ensured that its guidelines would be sufficiently comprehensive to satisfy the legislative mandate. All offenses that are prosecuted with any significant degree of frequency, and many that are not, are covered. We estimate that the guidelines cover about 95% of all federal convictions. The Commission chose to delay issuance of guidelines for uncommon offenses and factual patterns about which it had limited information.

[22] For example, the judge would have to assess whether the conduct risked any number of harms that might have been presented, and take a percentage of the corresponding "harm value" that depended on the degree of risk. The same was true for threats. Thus, for example, the precise nature of the threat to injure the victim of a robbery would govern the sentence. Not only are the results of such an approach problematic even when the nature of the threat is clear, but any number of results is possible when there is any ambiguity. Furthermore, many of the adjustments represented attempts to place precise numerical values on factors such as provocation and cooperation, which are necessarily matters of degree and therefore must involve flexibility.

[23] A major difficulty with Professor Robinson's approach is that simply by making subjective factual determinations that are virtually insulated from review on appeal, different judges may treat like cases differently *within the guidelines*. Any appearance that such guidelines would be binding

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justice system would have been drastic and intolerable. See Preliminary Observations of the Commission on the Dissent, Part 1.

At the opposite extreme of a Robinson-like approach is a system of extreme simplicity. Such an approach also had its advocates, primarily those who thought the Commission could meet its responsibilities by slight modification of existing state guideline models. Like the approach advocated by Professor Robinson, those systems also produce disparity, but of a different sort. Whereas his approach gives rise to potential disparity primarily because like cases may be treated in dissimilar fashion, an approach with extremely few distinctions gives rise to potential disparity primarily because very unlike cases may be treated alike.[24]

After months of deliberation, the Commission opted for a more balanced intermediate approach. It is far more comprehensive and detailed than existing state systems,[25] but not as rigid and intrusive as the system advocated by Professor Robinson.[26] No guideline system can totally eliminate disparity, but the one that the Commission adopted will significantly improve upon current practice and can be improved upon as experience is gained.[27]

### 3. The Vision of Reform

With the guidelines promulgated by the Commission comes not the death of the vision of reform embodied in the Sentencing Reform Act, but its first breath. While not all that potentially may be achieved through the guideline process will have been achieved by this first set of guidelines, much has been accomplished, and more will follow.

We disagree with the dissent regarding the scope of the statutory mandate and the speed with which reform was expected to progress. That Congress intended an iterative, evolutionary process is clear from the fact that one and one-half years were allotted for promulgation of the initial guidelines, but at least six subsequent years of full-time Commission effort were allotted to revise, refine and modify the guidelines.

As scientists who have studied sentencing issues empirically as well as theoretically, we agree with the dissent that empirical studies, for example, of deterrence, recidivism and incapacitation should be conducted. Consistent with the dictates of the Sentencing Reform Act, we intend to make every effort to ensure that such empirical research is conducted and that its results influence future modifications of the guidelines. We hope that in the future we will have Commissioner Robinson's support in this endeavor.[28]

The Commission's eighteen months of deliberation on the numerous complicated issues surrounding sentencing has indeed led us to proceed with some degree of caution. Revamping the entire system of federal criminal sentencing is an herculean task, and the changes wrought by the new system can have an enormous impact on the federal criminal justice system. In this first of many iterations, the Commission rightfully rejected the wholly revolutionary stance that Professor Robinson advocates. Absent perfect knowledge and the confidence that we possess Solomonic wisdom, we are unwilling to unleash summarily a radical overhaul of the manner in which decisions are made that will affect both the public safety of the American people and individual liberty. If caution in such matters be our sin, then let the President and the Congress be the ones to tell us to throw caution to the wind.

### SUPPLEMENTAL STATEMENT OF COMMISSIONER GEORGE E. MACKINNON

My colleague's overly critical dissenting views are based on a plethora of highly stated principles which are allegedly ignored in the Guidelines. In the same breath that he alleges a lack of "rationality" he deplores the Commission's reliance on "experience." Yet as Justice Holmes wrote, "the life of the law . . . has been experience."

One of my colleague's most critical comments has to do with the alleged relationship of "average sentences" to the Commission's deliberations. He ignores that our statute does "require the Commission to ascertain the average sentences imposed." 28 U.S.C. 994(m). That we did—10,000 recent sentences. And we followed the Congressional direction "not to be bound by such average sentences" . . . [but to] independently develop a sentencing range that is consistent with the "statutory purposes." Id. We complied with this direction to the best of our ability. We provided ranges, not always based on the "averages." The proof of this is implicit in the actual guideline for each offense—and in the conflicting comments we receive that the guidelines are at the same time too severe and too lenient. The Commission has in accordance with its collective judgment increased some sentences and reduced others. White collar crime and drug offenses are dealt with more severely and probation is tightened.

My colleague, while generally ignoring the completely new statutory jurisdiction of the United States Courts of Appeal to review all sentences, does refer to my comment with respect to the obligation that will be cast upon them by these Guidelines but does not consider how this will work in actual practice. No analysis of the Guidelines can ignore the fact that the statute authorizes both the defendant and the government to appeal every sentence. This is a revolutionary innovation in federal criminal jurisprudence of overwhelming magnitude.

The court of appeals on review of the sentence may, after considering the record . . . affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed or remand for further sentencing proceedings and imposition of sentence, except that a

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and reduce disparity is illusory. By limiting the number of factors and concentrating on those that are most important in actual practice, the system adopted by the Commission ensures that judges will be forced to *depart* from the guidelines when they believe that the sentence specified by the guidelines is inappropriate. The consequence is more stringent appellate review with a likelihood of greater uniformity.

[24] Systems such as those now in effect in Minnesota and Washington suffer from this flaw, resulting in frequent departures.

[25] One of the most striking misrepresentations in the dissent is the allegation that the Commission failed to comply with the statutory directive that the guidelines be more comprehensive and detailed than the current parole guidelines. The parole guidelines are much shorter than the sentencing guidelines; even a cursory review of the parole guidelines shows that they omit hundreds of offenses and numerous factors—such as weapon possession and injury in many crimes—that are expressly incorporated into the sentencing guidelines.

[26] Contrary to the discussion in the dissent, the guidelines adopted by the Commission do group offenses into generic categories; they simply do not, as would Professor Robinson, totally ignore the offense of which the defendant is convicted.

[27] By way of contrast, because of its extremely rigid structure and its insistence that every harm or factor must count the same, either additively or multiplicatively, in every factual context, the system advocated by Professor Robinson proved virtually impossible to modify without producing unanticipated and unwanted results.

[28] The role of empirical research is critical to the work of the Commission. For example, empirical research has shown that the revolutionary guideline structure espoused by Professor Robinson's July 10, 1986, draft is flawed even from a just deserts perspective: the seriousness of an offense cannot be derived by adding the seriousness of its component "harms"; two or three offenses are not twice or three times as serious as a single offense; and the seriousness rankings do not necessarily correspond with imprisonment rankings. See, *e.g.*, S. Gottfredson, K. Young & W. Laufer, *Additivity and Interactions in Seriousness Scales*, 17 J. Research in Crime & Delinquency 26 (1980); A. Blumstein & J. Cohen, *Sentencing of Convicted Offenders: An Analysis of the Public View*, 14 Law & Society Rev. 224, 236–37 (1980); H. Wagner & K. Pease, *On Adding Up Scores of Offence Seriousness*, 18 Brit. J. Criminology 175 (1978).

sentence may be made more severe only on review of the sentence taken by the United States and after hearing.

18 U.S.C. 3576.

To furnish a basis for this review every sentencing court is required to state "in open court the reasons for its imposition of the particular sentence." (Emphasis added.) If the sentence is within the range of the Guidelines, the judge must nevertheless give his "reason for imposing a sentence at a particular point within the range . . . [and if the sentence] is outside the range [the judge is required to state] the specific reason for the imposition of a sentence different from that described." 18 U.S.C. 3553(c). Appellate jurisdiction extends to every sentence—including sentences on guilty pleas. It is thus apparent that the courts of appeal on review are going to pass on the "reasons" that the sentencing judge gives for his every sentence. These will be reasons that are individual to that particular case and if the sentence was imposed upon a plea of guilty and no trial was held the court may have to pass upon constitutional questions implicit in the court's action. The breadth of this jurisdiction and the nature of the issues that might be reviewed was not fully explained in my colleague's dissent.

I completely disagree with my colleague's comments on plea bargaining. He nowhere mentions the great prosecutorial discretion of the United States Attorney recognized by the decision in *United States* v. *Cox*, 342 F.2d 167 (5th Cir.), cert denied, 381 U.S. 935 (1965). Moreover, sentences imposed pursuant to plea bargains are subject to appeal the same as any sentence and can be set aside the same as any other sentence if the stated reasons given by the judge are inadequate.

In one respect, I am somewhat sympathetic to my colleague's dissent because I recognize there are those who feel that sentencing, like some other things, can be reduced to a science. But in my opinion there is considerable difficulty in placing human conduct in neat pigeonholes. Courts must consider the human factors and a reasonable measure of discretion must be recognized. The statute does so. It authorizes ranges of 25% and departure for aggravating and mitigating circumstances. Courts must sentence both the criminal and the crime. Our direction from the Congress was to produce guidelines that take into account, inter alia, the relevance of

the community view of the gravity of the offense, . . . the public concern generated by the offense, . . . the deterrent effect a particular sentence may have on the commission of the offense by others; and . . . the current incidence of the offense in the community and in the Nation as a whole.

28 U.S.C. 994(b).

A sentence following conviction in a criminal case should do "justice" for the victim, the public and the offender. No absolutely fixed standard can be articulated as to what constitutes justice. Justice varies with the individual, with the crime and with the societal effect of the crime. Our governing statute recognizes all these factors. Justice in each case is generally an amalgam of what sentence is necessary to deter future crimes of the same sort, what is necessary to deter the particular individual from the commission of future crimes and what would be considered by reasonable people to be a fair sentence for the transgression by the particular offender. All of these factors vary according to the severity of the crime, the nature of the crime, the frequency of the crime and the individual characteristics of the offender as demonstrated by his participation in the crime and his past social and criminal history. No one factor will predominate in all sentences with respect to the same crime. The most important objective to be sought by a sentence will change with any given crime and with any particular individual. Any sentence can serve multiple objectives—and in most instances will. True justice is accomplished by a sentence that incorporates all sentencing objectives to the maximum extent possible. Individual judgments may vary on what constitutes a fair mix of objectives for a particular offense by a particular individual. That is the reason that 25% discretionary leeway is allowed, and that is the reason that mitigating and aggravating circumstances under the statute are authorized to justify varying sentences.

Contrary to my colleague's views I believe that the Guidelines will correct the wide unwarranted disparity that has existed in some instances in the past. The guideline sentences will assure this. Moreover, the Guidelines will assure honesty in sentencing, i.e., that the sentence imposed will be the sentence served. And that the sentences imposed will satisfy our objectives and be reasonably fair, uniform and proportional. See Guidelines, Chapter One (Introduction and Overview), p. 1.2.

In conclusion, it is my opinion that we should not support any sentencing system that fails to consider the statutory elements of the offense of which the accused was charged and convicted and I would not support any Commission action which in the nature of guidelines seeks to rewrite statutory criminal law on the ground that the particular acts of Congress were "archaic, fragmented and overlapping." Dissent at 9,E. We have no such jurisdiction.

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Wednesday
May 13, 1987

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 27, and 52
Federal Acquisition Regulation Regarding Patents, Data, and Copyrights; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 27 and 52

[Federal Acquisition Circular 84-27]

# Federal Acquisition Regulation Regarding Patents, Data, and Copyrights

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule with request for comment.

**SUMMARY:** Federal Acquisition Circular (FAC) 84-27 amends the Federal Acquisition Regulation (FAR) with respect to implementation of the policy regarding legitimate proprietary interests of the United States and contractors in data required by section 301 of Pub. L. 98-577, Technical Data Management, and section 1216(a) of Pub. L. 98-525, Rights in Technical Data. Note: With the exception of 27.402, which is applicable to DoD, this final rule applies only to the civilian agencies and NASA. DoD is issuing separate coverage in the DoD Federal Acquisition Regulation supplement and has published this coverage in the Federal Register of April 16, 1987 (52 FR 12390).

**EFFECTIVE DATE:** June 1, 1987.

**ADDRESSES:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, 18th & F Streets, NW., Washington, DC 20405. Telephone (202) 523-4755.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, telephone (202) 523-4755.

**SUPPLEMENTARY INFORMATION:**

## A. Public Comments

On August 15, 1985, a notice of proposed rule was published in the Federal Register (50 FR 32870). The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have considered the public comments solicited. Comments on this final rule will also be considered.

## B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., applies to this final rule and a Final Regulatory Flexibility Analysis has been performed. A copy of the Analysis may be obtained from the FAR Secretariat, ATTN: Margaret A. Willis, Room 4041, GS Building, 18th & F Streets, NW., Washington, DC 20405.

## C. Paperwork Reduction Act

A request for approval of the additional paperwork burden was submitted to the Office of Management and Budget and assigned OMB Clearance No. 9000-0090.

**List of Subject in 48 CFR Parts 1, 27, and 52**

Government procurement.

Dated: May 7, 1987.

**Harry S. Rosinski,**

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-27 is effective June 1, 1987.

**Eleanor R. Spector,**

*Deputy Assistant Secretary of Defense for Procurement.*

May 7, 1987.

**Terence C. Golden,**

*Administrator.*

**S.J. Evans,**

*Assistant Administrator for Procurement.*

Federal Acquisition Circular (FAC) 84-27 amends the Federal Acquisition Regulation (FAR) as specified below.

## Item I—Patents, Data, and Copyrights

A revision to FAR Subpart 27.4, Rights in Data and Copyrights, was issued as a proposed rule in the Federal Register on August 15, 1985 (50 FR 32870) for public comment. The Department of Defense (DOD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) hereby adopt a final rule for FAR Subpart 27.4, Rights in Data and Copyrights, after consideration of the public comments. Although this is a final rule, any additional comments on the subject will be considered.

The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) plan to develop a Federal Government policy beyond that stated in FAR 27.402 of the final rule. It is not possible in the near term to arrive at such a Federal policy in view of the major structural differences between the FAR and the Defense Federal Acquisition Regulation Supplement (DFARS) coverage. The CAAC and the DARC, therefore, believe it is best to continue with the separate FAR and DFARS coverage for the near term and to jointly develop a uniform Federal policy for publication in the FAR by September 30, 1988. Policies and procedures to be used after that date would be approved in advance by both councils.

Additionally, Subpart 27.4 now sets forth detailed implementation, policies, procedures, and instructions for all civilian agencies and NASA with respect to rights in data and copyrights and acquisition of data. The DOD shall issue its detailed implementation, procedures, and instructions regarding rights in data and copyrights and acquisition of data in the DOD FAR supplement because of DOD's specialized defense acquisition and logistics support needs for national security and the requirements of 10 U.S.C. 2320 (Pub. L. 98-525, Sec. 1216(a)). Therefore, 48 CFR Parts 1, 27, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 27, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

**1.105 [Amended]**

2. Section 1.105 is amended by adding, in numerical order, a FAR segment and a corresponding OMB Control Number to read as follows:

| | FAR segment | OMB control No. |
|---|---|---|
| . | . | . |
| 27.4 | | 9000-0090 |
| . | . | . |

## PART 27—PATENTS, DATA, AND COPYRIGHTS

2. Subpart 27.4, consisting of sections 27.400 thru 27.409 is revised to read as follows:

### Subpart 27.4—Rights in Data and Copyrights

Sec.

27.400 Scope of subpart.
27.401 Definitions.
27.402 Policy.
27.403 Data rights—General.
27.404 Basic rights in data clause.
27.405 Other data rights provisions.
27.406 Acquisition of data.
27.407 Rights to technical data in successful proposals.
27.408 Cosponsored research and development activities.
27.409 Solicitation provisions and contract clauses.

### Subpart 27.4—Rights in Data and Copyrights

**27.400 Scope of subpart.**

(a) The policy statement in 27.402 applies to all executive agencies. The remainder of the subpart sets forth civilian agency and National Aeronautics and Space Administration (NASA) policies, procedures, and

instructions with respect to (1) rights in data and copyrights and (2) acquisition of data. However, these policies, procedures, and instructions are not required to be applicable to NASA solicitations until December 31, 1987 (or until such other date as the NASA FAR Supplement is revised to accommodate the policies, procedures, and instructions contained in this subpart). Due to the special mission needs of the Department of Defense (DOD) and as required by 10 U.S.C. 2320, the remainder of the DOD policies, procedures, and instructions with respect to rights in data and copyrights and acquisition of data are contained in the DOD FAR Supplement (DFARS).

(b) The policies and procedures prescribed by this subpart and by DFARS, Subpart 227.4, shall be used by the respective agencies through September 30, 1988. Policies and procedures to be used after September 30, 1988, must be approved in advance by the Defense Acquisition Regulatory Council (DARC) and the Civilian Agency Acquisition Council (CAAC).

(c) Civilian agencies other than NASA shall implement section 203 of Public Law 96–577 pertaining to validation of proprietary data restrictions.

**27.401 Definitions.**

"Computer software," as used in this subpart, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this subpart, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

"Form, fit, and function data," as used in this subpart, means data relating to items, components, processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithm, process, formulas, and flow charts of the software.

"Limited rights," as used in this subpart, means the rights of the Government in limited rights data, as set forth in a Limited Rights Notice if included in a data rights clause of the contract.

"Limited rights data," as used in this subpart, means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition:

"Limited rights data," as used in this subpart, means data developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged (see 27.404(c).)

"Restricted computer software," as used in this subpart, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

"Restricted rights," as used in this subpart, means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice, if included in a data rights clause of the contract, or as otherwise may be included or incorporated in the contract.

"Technical data," as used in this subpart, means data other than computer software, which are of a scientific or technical nature.

"Unlimited rights," as used in this subpart, means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

**27.402 Policy.**

(a) It is necessary for the departments and agencies, in order to carry out their missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of their contracts. Agencies require such data to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of their activities; ensure appropriate utilization of the results of research, development, and demonstration activities including the dissemination of technical information to foster subsequent technological developments; and meet other programmatic and statutory requirements. Further, for defense purposes, such data are also required by agencies to meet specialized acquisition needs and ensure logistics support.

(b) At the same time, the Government recognizes that its contractors may have a legitimate proprietary interest (e.g., a property right or other valid economic interest) in data resulting from private investment. Protection of such data from unauthorized use and disclosure is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor's commercial position, and preclude impairment of the Government's ability to obtain access to or use of such data. The protection of such data by the Government is also necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. In light of the above considerations, in applying these policies, agencies shall strike a balance between the Government's need and the contractor's legitimate proprietary interest.

**27.403 Data rights—general.**

All contracts that require data to be produced, furnished, acquired or specifically used in meeting contract performance requirements, must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding or similar situations which require only existing data (other than limited rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule the data rights clause at 52.227–14, Rights in Data—General, including *Alternates I, II, III, IV, and V*, where determined to be appropriate as discussed in 27.404, is to be used for that purpose. However, in certain contracts either the particular subject matter of the contract or the intended use of the data may require the use of other prescribed clauses, or may not require the use of any prescribed clause, as discussed in 27.405 and 27.406. Also, in selecting a data rights clause, it is important to note that any such clause does not specify the data (in terms of type, quantity or quality) that is to be delivered, but only the respective rights of the Government and the contractor to use, disclose, or reproduce such data. Accordingly, the contract should also include appropriate terms to specify the data to be delivered.

**27.404 Basic rights in data clause.**

(a) *Unlimited rights data.* Under the clause at 52.227–14, Rights in Data—General, the Government acquires unlimited rights in the following data

(except as provided in paragraph (f) of this section for copyrighted data): (1) Data first produced in the performance of a contract (except to the extent such data constitute minor modifications to data that are limited rights data or restricted computer software); (2) form, fit, and function data delivered under contract; (3) data (except as may be included with restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under a contract; and (4) all other data delivered under the contract other than limited rights data or restricted computer software (see paragraph (b) of this section). If any of the foregoing data are published copyrighted data with the notice of 17 U.S.C. 401 or 402, the Government acquires them under a copyright license, as set forth in paragraph (f) of this section, rather than with unlimited rights.

(b) *Limited rights data and restricted computer software.* The clause at 52.227–14, Rights in Data—General, enables the contractor to protect qualifying limited rights data and restricted computer software by withholding such data from delivery to the Government and delivering form, fit, and function data in lieu thereof. However, when an agency has a need to obtain delivery of limited rights data or restricted computer software, the clause may be used with its *Alternates II or III,* as set forth in paragraphs (d) and (e) of this section. These alternatives enable a contracting officer to selectively request the delivery of such data with limited rights or restricted rights, either by specifying such delivery in the contract or by specific request.

(c) *Alternate definition of limited rights data.* In the clause at 52.227–14, Rights in Data—General, in order for data to qualify as limited rights data, in addition to being data that either embody a trade secret or are data that are commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, for contracts that do not require the development, use or delivery of items, components or processes that are intended to be acquired by or for the Government, an agency may adopt for general use or for use in specific circumstances the alternate definition of limited rights data set forth in *Alternate I.* The alternate definition does not require that such data pertain to items, components, or processes developed at private expense; but rather that such data were developed at private expense and embody a trade secret or are commercial or financial and confidential or privileged.

(d) *Protection of limited rights data specified for delivery.*

(1) Contracting officers are authorized to modify the clause at 52.227–14, Rights in Data—General, by use of *Alternate II,* which *Alternate* adds subparagraph (g)(2) to the clause to enable the Government to require delivery of limited rights data rather than allowing the contractor to withhold such data. To obtain such delivery, the contract may identify and specify data to be delivered, or the contracting officer may require, by written request during contract performance, the delivery of data that has been withheld or identified as withholdable under subparagraph (g)(1) of the clause at 52.227–14 Rights in Data—General. In addition, if agreed to during negotiations, the contract may specifically identify data that are not to be delivered under *Alternate II* or which, if delivered, will be delivered with limited rights. The limited rights obtained by the Government are set forth in the Limited Rights Notice contained in subparagraph (g)(2) (*Alternate II*). Such limited rights data will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain specific purposes as may be set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes which may be adopted by an agency in its supplement and added to the Limited Rights Notice of subparagraph (g)(2) of the clause (*Alternate II*):

(i) Use (except for manufacture) by support service contractors.

(ii) Evaluation by nongovernment evaluators.

(iii) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part, for information and use in connection with the work performed under each contract.

(iv) Emergency repair or overhaul work.

(v) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(2) As an aid in determining whether the clause at 52.227–14 should be used with its *Alternate II,* the provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 52.227–14, Rights in Data—General. This representation requests that an offeror state in response to a solicitation, to the extent feasible, whether limited rights data are likely to be used in meeting the data delivery requirements set forth in the solicitation. In addition, the need for *Alternate II* should be considered during negotiations or discussion with an offeror, particularly where negotiations are based on an unsolicited proposal. However, use of the clause at 52.227–14, Rights in Data—General, without *Alternate II* does not preclude this *Alternate* from being used subsequently by modification during contract performance, should the need arise for delivery of limited rights data that have been withheld or identified as withholdable.

(3) Whenever data that would qualify as limited rights data, if it were to be delivered in human readable form, is formatted as a computer data base for the purpose of delivery under a contract containing the clause at 52.227–14, Rights in Data—General, such data is to be treated as limited rights data, rather than restricted computer software, for the purposes of paragraph (g) of that clause.

(e) *Protection of restricted computer software specified for delivery.* (1) Contracting officers are authorized to modify the clause at 52.227–14, Rights in Data—General, by use of *Alternate III,* which *Alternate* adds subparagraph (g)(3) to the clause to enable the Government to require delivery of restricted computer software rather than allowing the contractor to withhold such restricted computer software. To obtain such delivery, the contract may identify and specify the computer software to be delivered, or the contracting officer may require by written request during contract performance, the delivery of computer software that has been withheld or identified as withholdable under subparagraph (g)(1) of the clause. In addition, if agreed to during negotiations, the contract may specifically identify computer software that are not to be delivered under *Alternate III* or which, if delivered, will be with restricted rights. In considering whether to use the clause at 52.227–14

with its *Alternate III*, it should be particularly noted that unlike other data, computer software is also an end item in itself, such that if withheld and form, fit, and function data provided in lieu thereof, an operational program will not be acquired. Thus, if delivery of restricted computer software is anticipated to be needed to meet contract performance requirements, the contracting officer should assure that the clause is used with its *Alternate III*. Unless otherwise agreed to (see paragraph (e)(2) of this section) the restricted rights obtained by the Government are set forth in the Restricted Rights Notice contained in subparagraph (g)(3) (*Alternate III*). Such restricted computer software will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be—

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Used or copied for use in or with a backup computer if any computer for which it was acquired becomes inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;

(v) Disclosed to and reproduced for use by support service contractors, subject to the same restriction under which the Government acquired the software;

(vi) Used or copied for use in or transferred to a replacement computer; and

(vii) Used in accordance with subdivisions (e)(1) (i) through (v) of this section, without disclosure prohibitions, if the computer software is published copyrighted computer software.

(2) The restricted rights set forth in subparagraph (e)(1) of this section are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of subparagraph (g)(3) (*Alternate III*) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified by the contracting officer in a particular contract or prescribed in agency regulations. For example, consideration should be given to any networking needs or any requirements for use of the computer software from remote terminals. Also, in addressing such needs, the scope of the restricted rights may be different for the documentation accompanying the computer software than for the programs and data bases. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause are to be expressly stated in the contract or in a collateral agreement incorporated in and made part of the contract, and the notice modified accordingly.

(3) As an aid in determining whether the clause should be used with its *Alternate III*, the provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 52.227–14, Rights in Data—General. This representation requests that an offeror state, in response to a solicitation, to the extent feasible, whether restricted computer software is likely to be used in meeting the data delivery requirements set forth in the solicitation. In addition, the need for *Alternate III* should be considered during negotiations or discussions with an offeror, particularly where negotiations are based on an unsolicited proposal. However, use of the clause at 52.227–14, Rights in Data—General, without *Alternate III* does not preclude this *Alternate* from being used subsequently by modification during contract performance, should the need arise for the delivery of restricted computer software that has been withheld or identified as withholdable.

(f) *Copyrighted data.*—(1) *Data first produced in the performance of a contract.* (i) In order to enhance the transfer or dissemination of information produced at Government expense, contractors are normally authorized, without prior approval of the contracting officer, to establish claim to copyright subsisting in technical or scientific articles based on or containing data first produced in the performance of work under a contract containing the clause at 52.227–14, Rights in Data—General and published in academic, technical or professional journals, symposia proceedings and similar works. Otherwise, the permission of the contracting officer is required in accordance with subdivision (f)(1)(ii) of this section or any applicable agency regulations, to establish claim to copyright subsisting in data first produced in the performance of a contract unless the clause is used with its *Alternate IV* in accordance with subdivision (f)(1)(iii) of this section. Agencies may, however, restrict copyright under certain circumstances in accordance with subparagraph (g)(3) of this section.

(ii) Usually, permission for a contractor to establish claim to copyright subsisting in data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data and the commercialization of products or processes to which it pertains. The request for permission must be made in writing, and may be made either prior to contract award or subsequently during contract performance. It should identify the data involved or furnish copies of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be granted unless—(A) the data consist of a report that represents the official views of the agency or that the agency is required by statute to prepare; (B) the data are intended primarily for internal use by the Government; (C) the data are of the type that the agency itself distributes to the public under an agency program; (D) the Government determines that limitation on distribution of the data is in the national interest; (E) the Government determines that the data should be disseminated without restriction.

(iii) An *Alternate IV* is provided for use with the clause at 52.227–14, Rights in Data—General, which *Alternate* provides a substitute subparagraph (c)(1) in the clause granting blanket permission for contractors to establish claim to copyright subsisting in all data first produced in the performance of the contract without further request being made by the contractor. *Alternate IV* shall be used in all contracts for basic or applied research (other than those for management or operation of Government facilities and in contracts and subcontracts in support of programs being conducted at such facilities or where international agreements require otherwise) to be performed solely by colleges and universities. *Alternate IV* will not be used in contracts with colleges and universities if a purpose of the contract is for development of computer software for distribution to the public (including use in solicitations) by or on behalf of the Government. In addition, *Alternate IV* may be used in other contracts if an agency determines to grant blanket permission for contractors to establish claim to

copyright subsisting in all data first produced in the performance of contract without further request being made by the contractor. In any contract where *Alternate IV* is used, the contract may exclude any data, items or categories of data from the blanket permission granted, either by express provisions in the contract or by the addition of a subparagraph (d)(3) to the clause, consistent with subparagraph (g)(3) of this section.

(iv) Whenever a contractor establishes claim to copyright subsisting in data (other than computer software) first produced in the performance of a contract, the Government is granted a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in subparagraph (c)(1) of the clause at 52.227–14, Rights in Data—General. For computer software the scope of the Government's license does not include the right to distribute to the public. Agencies may also, either on a case-by-case basis, or on a class basis if provided in implementing regulations, obtain a license of different scope than set forth in subparagraph (c)(1) of the clause if the agency determines that such different license will substantially enhance the transfer or dissemination of any data first produced under the contract, and will not interfere with the Government's use of the data as contemplated by the contract or if required for international agreements. If an agency obtains such a different license, the scope of that license shall be clearly stated in a conspicuous place on the medium on which the data is recorded. That is, if a report, the scope of the different license shall be put on the cover, or first page, of the report. If computer software, the scope of the different license shall be placed on the most conspicuous place available.

(v) Whenever a contractor establishes claim to copyright in data first produced in the performance of a contract, irrespective of which *Alternate* is used with the clause or the scope of the Government's license, the contractor is required to affix the applicable copyright notices of 17 U.S.C. 401 or 402, and acknowledgment of Government sponsorship (including the contract number) to the data whenever such data are delivered to the Government, published, or deposited for registration as a published work in the U.S. Copyright Office. Failure to do so could result in such data being treated as unlimited rights data (see paragraph (i) of this section).

(2) *Data not first produced in the performance of a contract.* (i) Contractors are not to incorporate in data delivered under a contract any data that is not first produced under the contract and that is marked with the copyright notice of 17 U.S.C. 401 or 402, without either (A) acquiring for or granting to the Government certain copyright license rights for the data, or (B) obtaining permission from the contracting officer to do otherwise. The copyright license the Government acquires for such data will normally be of the same scope as discussed in subdivision (f)(1)(iv) of this section, and is set forth in subparagraph (c)(2) of the clause at 52.227–14, Rights in Data—General. However, agencies may, on a case-by-case basis, or on a class basis if provided in implementing agency regulations, obtain a license of different scope if the agency determines that such different license will not be inconsistent with the purpose of acquiring the data. If a license of a different scope is acquired, it must be so stated in the contract and clearly set forth in a conspicuous place on the data when delivered to the Government. In addition, if computer software not first produced under a contract is delivered with the copyright notice of 17 U.S.C. 401, the Government's license will be as set forth in subparagraph (g)(3) (*Alternate III*) if included in the clause at 52.227–14, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(ii) Contractors delivering data with both an authorized limited rights or restricted rights notice and the copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws of the United States." If this statement is omitted, the contractor may be afforded an opportunity to correct it in accordance with paragraph (h) of this section. Otherwise, data delivered with a copyright notice of 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in subdivision (f)(2)(i) of this section, without disclosure limitations or restrictions.

(iii) If contractor action causes limited rights or restricted rights data to be published with the copyright notice of 17 U.S.C. 401 or 402 after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government, request that a copyright notice be placed on the copies of the data delivered to the Government and acknowledge that the applicable copyright license set forth in subdivision (f)(2)(i) of this section applies.

(g) *Release, publication, and use of data.* (1) In paragraph (d) of the clause at 52.227–14, Rights in Data—General, subparagraph (d)(1) recognizes the fact that normally the contractor has the right to use, release to others, reproduce, distribute, or publish data first produced in the performance of a contract, except to the extent such data may be subject to Federal export control or to national security laws or regulations. In addition, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract from or by the Government or others acting on behalf of the Government, and the data contains restrictive markings, subparagraph (d)(2) provides an agreement with the contractor to treat the data in accordance with the markings, unless otherwise specifically authorized by the contracting officer.

(2) In contracts for basic or applied research with universities or colleges, no restrictions may be placed upon the conduct of or reporting on the results of unclassified basic or applied research, except as provided in applicable U.S. Statutes. For the purposes of this subparagraph, agency restrictions on the release or disclosure of computer software that has been, readily can be, or is intended to be, developed to the point of practical application (including for agency distribution under established programs) are not considered restrictions on the reporting of the results of basic or applied research. Agencies may also restrict claim to copyright in any computer software for purposes of established agency distribution programs, or where required to accomplish the purpose for which the software is produced.

(3) Except for the results of basic or applied research under contracts with universities or colleges, agencies may, to the extent provided in their FAR supplements, place limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute, or publish any data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party, either by adding a subparagraph (d)(3) to the Rights in Data—General clause at 52.227–14, or by express limitations or restrictions in the contract. In the latter case, the

limitations or restrictions should be referenced in the Rights in Data—General clause. However, such regulatory restrictions or limitations are not to be imposed unless they are determined by the agency to be necessary in the furtherance of agency mission objectives, needed to support specific agency programs, or necessary to meet statutory requirements. Notwithstanding the provisions of this subparagraph, agencies may obtain, if provided in their FAR supplement, for information purposes only, advance copies of articles intended for publication in academic, scientific or technical journals or symposia proceedings or similar works.

(h) *Unauthorized marking of data.* Except for validation of restrictive markings on technical data under contracts for major systems, or for support of major systems, by agencies subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949, the Government has, in accordance with paragraph (e) of the clause at 52.227–14, Rights in Data—General, the right to either return to the contractor data containing markings not authorized by that clause, or to cancel or ignore such markings. However, markings will not be canceled or ignored without making written inquiry of the contractor and affording the contractor at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the contractor to respond, or failure to provide a written justification to substantiate the propriety of the markings within the time afforded, may result in the Government's action to cancel or ignore the markings. If the contractor provides a written justification to substantiate the propriety of the markings, it will be considered by the contracting officer and the contractor notified of any determination based thereon. If the contracting officer determines that the markings are authorized, the contractor will be so notified in writing. Further, if the contracting officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the contractor will be furnished a written determination which shall become the final agency decision regarding the appropriateness of the markings and the markings will be cancelled or ignored and the data will no longer be made subject to disclosure prohibitions, unless the contractor files suit within 90 days in a court of competent jurisdiction. In any event, the markings will not be cancelled or ignored unless the contractor fails to respond within the period provided, or, if the contractor does respond, until final resolution of the matter, either by the contracting officer's determination becoming the final agency decision or by final disposition of the matter by court decision if suit is filed. The foregoing procedures may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder. In addition, the contractor is not precluded from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract if applicable, that may arise as the result of the Government's action to remove or ignore any markings on data, unless such action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.

(i) *Omitted or incorrect notices.* (1) Data delivered under a contract containing the clause at 52.227–14, Rights in Data—General, without a limited rights notice or restricted rights notice, and without a copyright notice, will be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within 6 months (or a longer period approved by the contracting officer for good cause shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor (i) identifies the data for which a notice is to be added or corrected, (ii) demonstrates that the omission of the proposed notice was inadvertent, (iii) establishes that use of the proposed notice is authorized, and (iv) acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also (i) permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(j) *Inspection of data at the contractor's facility.* Contracting officers may obtain the right to inspect data at the contractor's facility by use of *Alternate V*, which adds paragraph (j) to provide that right in the clause at 52.227–14, Rights in Data—General. Agencies may also adopt *Alternate V* for general use. The data subject to inspection may be data withheld or withholdable under subparagraph (g)(1) of the clause. Such inspection may be made by the contracting officer or designee (including nongovernmental personnel under the same conditions as the contracting officer) for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised up to 3 years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) (*Alternate V*). If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

**27.405 Other data rights provisions.**

(a) *Production of special works.* (1) The clause at 52.227–17, Rights in Data—Special Works, is to be used in contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's own use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples are contracts for—

(i) The production of audiovisual works, including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translation, adaptation, and the like;

(ii) Histories of the respective agencies, departments, services, or units thereof;

(iii) Surveys of Government establishments;

(iv) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(v) The compilation of reports, books, studies, surveys, or similar documents that do not involve research, development, or experimental work;

(vi) The collection of data containing personally identifiable information such

that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(vii) Investigatory reports; or

(viii) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities or agency regulatory or enforcement activities.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(3) Subdivision (c)(1)(ii) of the clause at 52.227–17, Rights in Data—Special Works, which enables the Government to obtain assignment of copyright in any data first produced in the performance of the contract, may be deleted if the contracting officer determines that such assignment is not needed to further the objectives of the contract.

(4) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of data that are subject to the clause, may be deleted or limited in scope where the contracting officer determines that, because of the nature of the particular data involved, such liability will not arise.

(5) When the audiovisual or other special works are produced to accomplish a public purpose other than acquisition for the Government's own use (such as for production and distribution to the public of such works by other than a Federal agency) agencies are authorized to modify the Rights in Data—Special Works clause for use in such contracts, with rights in data provisions which meet agency mission needs yet protect free speech and freedom of expression, as well as the artistic license of the creator of the work.

(b) *Rights relating to existing data other than limited rights data*—(1) *Acquisition of existing audiovisual and similar works.* The clause at 52.227–18, Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are (i) means of exhibition or transmission, (ii) time, (iii) type of audience, and (iv) geographical location. If the contract requires that works of the type indicated in subparagraph (b)(1) of this section are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form) the clause at 52.227–17, Rights in Data—Special Works, is to be used. (See paragraph (a) of this section.)

(2) *Acquisition of existing computer software.* (i) When contracting other than from GSA's Multiple Award Schedule contracts for the acquisition of existing computer software (i.e., privately developed software normally vended commercially under a license or lease agreement restricting its use, disclosure, or reproduction), no specific contract clause prescribed in this subpart need be used, but the contract (or purchase order) must specifically address the Government's rights to use, disclose and reproduce the software, which rights must be sufficient for the Government to fulfill the need for which the software is being acquired. Such rights may be negotiated and set forth in the contract using the guidance concerning restricted rights as set forth in 27.404(e), or the clause at 52.227–19, Commercial Computer Software—Restricted Rights, may be used. Restricted computer software acquired under GSA Multiple Award Schedule contracts and orders are excluded from this requirement. The guidance concerning rights set forth in 27.404(e), as well as those in the clause at 52.227–19, are the minimum rights the Government usually should accept. Thus if greater rights than these minimum rights are needed, or lesser rights are to be acquired, they must be negotiated and set forth in the contract (or purchase order). This includes any additions to, or limitations on, the rights set forth in paragraph (b) of the clause at 52.227–19 when used. Examples of greater rights may be those necessary for networking purposes or use of the software from remote terminals communicating with a host computer where the software is located. If the computer software is to be acquired with unlimited rights, the contract must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disk pack, and the like), and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed.

(ii) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with subdivision (b)(2)(i) of this section. Caution should be exercised in accepting a vendor's terms and conditions, since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement. If the clause at 52.227–19, Commercial Computer Software—Restricted Rights, is used, inconsistencies in the vendor's standard commercial agreement regarding the Government's right to use, duplicate or disclose the computer software are reconciled by that clause.

(iii) If a prime contractor under a contract containing the clause at 52.227–14, Rights in Data—General, with subparagraph (g)(3) (*Alternate III*) in the clause, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to or for use on behalf of the Government, the contracting officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of subparagraph (g)(3) in a collateral agreement incorporated in and made part of the contract.

(3) *Other existing data and works.* Except for existing audiovisual and similar works pursuant to subparagraph (b)(1) of this section, and existing computer software pursuant to subparagraph (b)(2) of this section, no clause contained in this subpart is required to be included in (i) contracts solely for the acquisition of books, periodicals, and other printed items in the exact form in which such items are to be obtained unless reproduction rights are to be acquired; or (ii) other contracts (e.g., contracts resulting from sealed bidding) that require only existing data (other than limited rights data) to be delivered and such data are available without disclosure prohibitions, unless reproduction rights

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to the data are to be obtained. If the reproduction rights to the data are to be obtained in any contract of the type described in subdivision (b)(3) (i) or (ii) of this section, such rights must be specifically set forth in the contract. No clause contained in this subpart is required to be included in contracts substantially for on-line data base services in the same form as they are normally available to the general public.

(c) *Contracts awarded under Small Business Innovative Research (SBIR) Program.* The clause at 52.227–20, Rights in Data—SBIR Program, is for use in all Phase I and Phase II contracts awarded under the Small Business Innovative Research Program (SBIR) established pursuant to Pub. L. 97–219 (the Small Business Innovation Development Act of 1982). The clause is limited to use solely in contracts awarded under the SBIR Program, and is the only data rights clause to be used in such contracts.

**27.406 Acquisition of data.**

(a) *General.* (1) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements may be subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum, consistent with the purposes of the contract.

(2) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data, shall be specified in the contract. Further, and to the extent feasible, in major system acquisitions, data requirements shall be set out as separate contract line items. In establishing the contract data requirements and in specifying data items to be delivered by a contractor, agencies may, consistent with subparagraph (a)(1) of this section, develop their own contract schedule provisions in agency procedures (including data requirements lists) for listing, specifying, identifying source, assuring delivery, and handling any data required to be delivered, first produced, or specifically used in the performance of the contract.

(3) Data delivery requirements should normally not require that a contractor provide the Government, as a condition of the procurement, unlimited rights in data that qualify as limited rights data or restricted computer software. Rather, form, fit, and function data may be furnished with unlimited rights in lieu of the qualifying data, or the qualifying data may be furnished with limited rights or restricted rights if needed (see 27.404 (d) and (e)). If greater rights are needed such need should be clearly set forth in the solicitation and the contractor fairly compensated for such greater rights.

(b) *Additional data requirements.* (1) Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at the time of contracting, the clause at 52.227–16, Additional Data Requirements, may be used to enable the subsequent ordering by the contracting officer of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. The clause shall normally be used in solicitations and contracts involving experimental, developmental, research or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when the contract amount will be $500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. If the contract is for basic or applied research to be performed by a university or college, and the contracting officer believes the contract effort will in the future exceed $500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(2) Data may be ordered under the clause at 52.227–16, Additional Data Requirements, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. The contracting officer may permit the contractor to identify and specify in the contract data not to be ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used" in paragraph (a) thereof if delivery of such data is not necessary to meet the Government's requirements for data. Any data ordered under this clause will be subject to the Rights in Data—General clause (or other equivalent clause setting forth the respective rights of the Government and the contractor) in the contract, and data authorized to be withheld under such clause will not be required to be delivered under the Additional Data Requirements clause, except as provided in *Alternate II* or *Alternate III*, if included in the clause (see 27.404 (d) and (e)).

(3) Agencies not having an established program for dissemination of computer software shall give consideration to not ordering additional computer software under the clause at 52.227–16, Additional Data Requirements, for the sole purpose of disseminating or marketing of the software to the public especially if this will provide the contractor additional incentive to make improvements to the software at its own expense and disseminate or market it. This should not preclude an agency from including a summary description of computer software available from a contractor in any data dissemination programs which it operates, with a statement as to how the potential user can obtain it through the contractor, licensee, or assignee. In cases where the contracting officer orders software for internal purposes, consideration shall be given, consistent with the Government's needs, to not ordering particular source codes, algorithms, processes, formulae or flow charts of the software if the contractor shows that this aids its efforts to disseminate or market the software.

(c) *Acceptance of data.* Acceptability of technical data delivered under a contract shall be in accordance with the appropriate contract clause as required by Subpart 46.3, and the clause at 52.227–21, Technical Data Certification, Revision, and Withholding of Payment—Major Systems, when it is included in the contract. (See paragraph (d) of this section.)

(d) *Major system acquisition.* (1) In order to assure that technical data needed to support a major system acquisition are timely delivered and are complete, accurate, and satisfy the requirements of the contract concerning the data, the clause at 52.227–21, Technical Data Certification, Revision, and Withholding of Payment—Major Systems, is to be included in contracts for or in support of a major system (as the term "major system" is defined in section 4 of the Office of Federal Procurement Policy Act, as amended by Pub. L. 98–577), including every detailed design, development, or production contract for a major system acquisition

and contracts for any individual part, component, subassembly, assembly, or subsystem integral to the major system, and other property which may be replaced during the service life of the system, and including spare parts and replenishment spare parts.

(2) The clause at 52.227–21, Technical Data, Certification, Revision, and Withholding of Payment—Major Systems, requires the contractor, upon delivery of any technical data made subject to the clause in the contract, to certify that to the best of its knowledge and belief, such data are complete, accurate, and comply with contract requirements. It also provides for corrections of any deficiencies in the data, as well as for the ability of the contracting officer to request revisions of the data to reflect engineering design changes made during performance of the contract and affecting form, fit, and function of the items the data depict. Further included is the authority for the contracting officer to withhold payment under the contract to assure timely delivery of the technical data and/or assure correction if the technical data are not complete, accurate, and in compliance with contract requirements.

(3) When the clause at 52.227–21, Technical Data, Certification, Revision and Withholding of Payment—Major Systems, is used, the section of the contract specifying data delivery requirements (see subparagraph (a)(2) of this section) shall expressly identify those line items of technical data to which the clause applies. Upon delivery of such technical data, the contracting officer or designee shall review the technical data and the contractor's certification relating thereto to assure that the data are complete, accurate, and comply with contract requirements. If not, the contractor is to be requested to correct the deficiencies, and payment may be withheld until such is done. Final payment should not be made under the contract until it has been determined that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

(4) In a contract for or in support of a major system awarded by a civilian agency other than NASA or the U.S. Coast Guard the contracting officer shall include contractual provisions requiring, as an element of performance under the contract, the delivery of any technical data, other than computer software, relating to the major system or supplies for the major system procured or to be procured by the Government, which are to be developed exclusively with Federal funds in the performance of the contract if the delivery of such technical data is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future. The clause at 52.227–22, Major System—Minimum Rights, is to be included in such contracts in addition to the clause at 52.227–14, Rights in Data—General, and other required clauses, to ensure that the Government acquires at least those rights required by Pub. L. 98–577 in technical data developed exclusively with Federal funds. In any contract to which this subparagraph (d)(4) applies, technical data, other than computer software, relating to a major system or supplies for a major system, procured or to be procured by the Government and also relating to the design, development, or manufacture of products or processes offered or to be offered for sale to the public (except for such data as may be necessary for the Government to operate or maintain the product, or use the process if obtained by the United States as an element of performance under the contract), shall not be required to be provided to the Government from persons who have developed such products or processes as a condition for the procurement of such products or processes by the Government.

### 27.407 Rights to technical data in successful proposals.

(a) Contracting officers may, in consideration of contract award, desire to acquire unlimited rights in technical data (but not commercial or financial information) contained in a successful proposal upon which a contract award is based. However, before such unlimited rights are acquired, the prospective contractor must be afforded the opportunity either (1) to advise the contracting officer that the technical data, or portions thereof (to be identified by the prospective contractor), are covered by any restrictive notice regarding the disclosure and use of proposal information authorized by Subpart 15.4 or 15.5 (or any agency supplement thereto), and request that such protection be maintained by excluding the data from the Government's rights; or (2) to establish to the contracting officer's satisfaction that identified portions of the technical data do not relate directly to or will not be utilized in the work to be performed under the contract, and request that such portions be excluded from the Government's rights.

(b) If unlimited rights to technical data in successful proposals, as set forth in paragraph (a) of this section, are to be acquired, it shall be by use of the clause at 52.227–23, Rights to Proposal Data (Technical). Any excluded technical data will be identified by inserting appropriate proposal page numbers in the clause, which clause enables the identification of data to be excluded from the Government's rights, as discussed in paragraph (a) of this section. Such exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in Subpart 15.4 or 15.5 (or agency supplements thereto) relating to proposal information (i.e., will be used for evaluation purposes only). If the clause at 52.227–23, Rights to Proposal Data (Technical), is included in a contract, the prospective contractor must be specifically afforded the opportunity to exclude technical data as set forth in paragraph (a) of this section, and the contract file must reflect that fact. If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to their acquisition as limited rights data, if they so qualify, in accordance with 27.404(d).

### 27.408 Cosponsored research and development activities.

(a) In contracts involving cosponsored research and development wherein the contractor is required to make substantial contributions of funds or resources (i.e., by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software, developed or produced under the contract are not readily segregable, the contracting officer may limit the acquisition of or acquire less than unlimited rights to any data developed and delivered under such contract. Agencies may regulate the use of this authority in their supplements. Basically such rights should, at a minimum, assure use of the data for agreed-to Governmental purposes (including reprocurement rights as appropriate), and will address any disclosure limitations or restrictions to be imposed on the data. Also, consideration may be given to directed licensing provisions if needed to carry out the objectives of the contract. Since the purpose of the cosponsored research and development, the legitimate proprietary interests of the contractor, the needs of the Government, and the respective contributions of both parties may vary, no specific clauses are prescribed, but a clause providing less than unlimited

rights in the Government for data developed and delivered under the contract (such as license rights) may be tailored to the circumstances consistent with the foregoing and the policy set forth in 27.402. As a guide, such clause may be appropriate when the contractor contributes money or resources, or agrees to make repayment of nonrecurring costs, of a value of approximately 50 percent of the total cost of the contract (i.e., Government, contractor, and/or third party paid costs), and the respective contributions are not readily segregable for any work element to be performed under the contract. Such clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance, its use will be in addition to whatever other data rights clause is prescribed under this subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements. Further, such clause may not be appropriate where the purpose of the contract is to produce data for dissemination to the public, or to develop or demonstrate technologies which will be available, in any event, to the public for their direct use.

(b) Where the contractor's contributions are readily segregable (by performance requirements and the funding therefor) and so identified in the contract, any data resulting therefrom may be treated under such clause as limited rights data or restricted computer software in accordance with 27.404 (d) or (e), as applicable; or if such treatment is inconsistent with the purpose of the contract, rights to such data may, if so negotiated and stated in the contract, be treated in a manner consistent with paragraph (a) of this section.

**27.403 Solicitation provisions and contract clauses.**

(a)(1) The contracting officer shall insert the clause at 52.227–14, Rights in Data—General, including its use with *Alternate I* through *Alternate V* as may be required or authorized in accordance with paragraphs (b) through (f) of this section, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 27.405(a), but the clause at 52.227–14, Rights in Data—General, shall be included in the contract and made applicable to data other than special works, as appropriate;

(ii) For the acquisition of existing data works, as described in 27.405(b);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe different clauses (see paragraph (n) of this section);

(iv) For architect-engineer services or construction work, in which case agencies may utilize the clause at 52.227–17, Rights in Data—Special Works, or may prescribe different clauses;

(v) A Small Business Innovation Research contract (see paragraph (l) of this section);

(vi) For the management, operation, design, or construction of a Government-owned facility to perform research, development, or production work, in which case agencies may prescribe different clauses (see paragraph (p) of this section) or

(vii) A contract involving cosponsored research and development in which a clause providing for less than unlimited right has been authorized. (See 27.408).

(2) Subparagraph (e)(3) of the clause at 52.227–14, Rights in Data—General, may be deleted or reserved by an agency not subject to Title III of the Federal Property and Administrative Services Act.

(b) If an agency determines, in accordance with 27.404(c), to adopt the alternate definition of "Limited Rights Data" in paragraph (a) of the clause, the clause shall be used with its *Alternate I*.

(c) In accordance with 27.404(d), if a contracting officer determines it is necessary to obtain the delivery of limited rights data, the clause shall be used with its *Alternate II*. The contracting officer shall, when *Alternate II* is used, assure that the purposes, if any, for which limited rights data are to be disclosed outside the Government are included in the "Limited Rights Notice" of subparagraph (g)(2) of the clause.

(d) In accordance with 27.404(e), if a contracting officer determines it is necessary to obtain the delivery of restricted computer software, the clause shall be used with its *Alternate III*. Any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of subparagraph (g)(3) of the clause must be specified in the contract and the notice modified accordingly.

(e) The clause shall be used with its *Alternate IV* in contracts for basic or applied research (other than those for the management or operation of Government facilities or where international agreements require otherwise), to be performed solely by universities and colleges. The clause may be used with its *Alternate IV* in other contracts if in accordance with 27.404(f)(2) an agency determines to grant blanket permission for the contractor to establish claim to copyright subsisting in all data first produced without further request being made by the contractor. When *Alternate IV* is used, the contract may exclude items or categories of data from the blanket permission granted, either by express provisions in the contract or by the addition of a subparagraph (d)(3) to the clause (see 27.404(g)(2)).

(f) In accordance with 27.404(i), if a contracting officer needs to have the right to inspect certain data at a contractor's facility or if by an agency, generally the clause shall be used with its *Alternate V*.

(g) In accordance with 27.404(d)(2), if the contracting officer desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, the contracting officer shall insert in the solicitation the provision at 52.227–15, Representation of Limited Rights Data and Restricted Computer Software in any solicitation containing the clause at 52.227–14, Rights in Data—General. The contractor's response will provide an aid in determining whether the clause should be used with *Alternate II* and/or *Alternate III*.

(h) The contracting officer shall normally insert the clause at 52.227–16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. (See 27.406(b).) This clause may also be used in other contracts when considered appropriate.

(i) In accordance with 27.405(a), the contracting officer shall insert the clause at 52.227–17, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in 27.405(a). The contract may specify the purposes and conditions (including

time limitations) under which the data may be used, released or reproduced by the contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(j) The contracting officer shall insert the clause at 52.227–18, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 27.405(b)(1). The contract may set forth limitations consistent with the purposes for which the work is being acquired. The clause at 52.227–17, Rights in Data—Special Works, shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(k) In accordance with 27.405(b)(2), when contracting (other than from GSA's Multiple Award Schedule contracts) for the acquisition of existing computer software, the clause at 52.227–19, Commercial Computer Software-Restricted Rights, may be used in the solicitation and contract. In any event, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 27.405(b)(2).

(l) If the contract is a Small Business Innovation Research (SBIR) contract, the clause at 52.227–20, Rights in Data—SBIR Program shall be used in all Phase I and Phase II contracts awarded under the Small Business Innovation Research Program established pursuant to Pub. L. 97–219 (The Small Business Innovation Development Act of 1982).

(m) While no specific clause of this subpart is required to be included in contracts solely for the acquisition, without disclosure prohibitions, of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (i.e., the off-the-shelf purchase of such items), or in other contracts (e.g., contracts resulting from sealed bidding) where only existing data available without disclosure prohibitions is to be furnished, if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 27.405(b)(3).)

(n) Agencies may prescribe in their procedures, as appropriate, a clause consistent with the policy of 27.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(o) Agencies may prescribe in their procedures the clause at 52.227–17, Rights in Data—Special Works, or prescribe, as appropriate, clauses consistent with the policy in 27.402 in contracts for architect-engineer services and construction work.

(p) Agencies may prescribe in their procedures, as appropriate, a clause consistent with the policy of 27.402 in contracts for management, operation, design, or construction of Government-owned research, development, or production facilities, and in contracts and subcontracts in support of programs being conducted at such facilities.

(q) In accordance with 27.406(d), the contracting officer shall insert the clause at 52.227–21, Technical Data Certification, Revision, and Withholding of Payment—Major Systems, in contracts for major systems acquisitions or for support of major systems acquisitions. When used, this clause requires that the technical data to which it applies be specified in the contract. (See 27.406(d).)

(r) In the case of civilian agencies except NASA and the U.S. Coast Guard, the contracting officer shall insert the clause at 52.227–21, Major System—Minimum Rights, in contracts for major systems or contracts in support of major systems.

(s) In accordance with 27.407, if a contracting officer desires to acquire unlimited rights in technical data contained in a successful proposal upon which a contract award is based, the contracting officer shall insert the clause at 52.227–23, Rights to Proposed Data (Technical). Rights to technical data in a proposal are not acquired by mere incorporation by reference of the proposal in the contract, and if a proposal is incorporated by reference, § 27.404 must be followed to assure that such rights are appropriately addressed.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Sections 52.227–14 through 52.227–23 are added to read as follows:

**52.227–14 Rights in data—general.**

As prescribed in 27.409(a), insert the following clause with any appropriate alternates:

**Rights in Data—General (June 1987)**

(a) *Definitions.*

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights," as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

"Limited rights data," as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

"Restricted rights," as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

"Technical data," as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocations of rights.* (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items,

components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; *provided, however,* that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense

of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.*

(1) When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) [Reserved]

(3) [Reserved]

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

*Alternate I* (Jun 1987). As prescribed in 27.409(b), substitute the following definition for "Limited Rights Data" in paragraph (a) of the clause:

"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

*Alternate II* (Jun 1987). As prescribed in 27.409(c), insert the following subparagraph (g)(2) in the clause:

(g)(2) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

**Limited Rights Notice (Jun 1987)**

(a) These data are submitted with limited rights under Government contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [Agencies may list additional purposes as set forth in 27.404(d)(1) or if none, so state]

(b) This Notice shall be marked on any reproduction of these data, in whole or in part."

(End of notice)

*Alternate III* (Jun 1987). As prescribed in 27.409(d), insert the following subparagraph (g)(3) in the clause:

(g)(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

**Restricted Rights Notice (Jun 1987)**

(a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors in accordance with subparagraphs (b) (1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part."

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

**Restricted Rights Notice**

*Short Form (Jun 1987)*

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract _____, if appropriate) with _____ (name of Contractor and subcontractor)."

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 403, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States."

*Alternate IV* (Jun 1987). As prescribed in 27.409(e), substitute the following subparagraph (c)(1) in the clause:

(c) *Copyright.* (1) *Data First Produced in the Performance of the Contract.* Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

*Alternate V* (Jun 1987) As prescribed in 27.409(f), add the following paragraph (j) to the clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Contractor's facility any data withheld

pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

**52.227-15 Representation of limited rights data and restricted computer software.**

As prescribed in 27.409(g), insert the following provision in solicitations that include the clause at 52.227-14, Rights in Data—General:

**Representation of Limited Rights Data and Restricted Computer Software (Jun 1987)**

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in FAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227-16 of the FAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its *Alternates II and/or III* to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of *Alternate V* with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) As an aid in determining the Government's need to include any of the aforementioned *Alternates* in the clause at 52.227-14, Rights in Data—General, the offeror's response to this solicitation shall, to the extent feasible, complete the representation in paragraph (b) of this clause to either state that none of the data qualify as limited rights data or restricted computer software, or identify which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

**Representation Concerning Data Rights**

Offeror has reviewed the requirements for the delivery of data or software and states (offeror check appropriate block)—

☐ None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

☐ Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

_____

_____

_____

**Note:** "Limited rights data" and "Restricted computer software" are defined in the contract clause entitled "Rights In Data—General."

(End of provision)

**52.227-16 Additional data requirements.**

As prescribed in 27.409(h), insert the following clause:

**Additional Data Requirements (June 1987)**

(a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data—General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data—General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

**52.227-17 Rights in data—special works.**

As prescribed in 27.409(i), insert the following clause:

**Rights in Data—Special Works (June 1987)**

(a) *Definitions.*

"Data," as used in this clause, means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with subparagraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.*

(i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to such data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including

costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

**52.227-18 Rights in data—existing works.**

As prescribed in 27.409(j), insert the following clause:

**Rights in Data—Existing Works (June 1987)**

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

**52.227-19 Commercial computer software—restricted rights.**

As prescribed in 27.409(k), insert the following clause:

**Commercial Computer Software—Restricted Rights (June 1987)**

(a) As used in this clause, "restricted computer software" means any computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or—privileged, or is published and copyrighted.

(b) Notwithstanding any provisions to the contrary contained in any Contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this purchase order/contract, and irrespective of whether any such agreement has been proposed prior to or after issuance of this purchase order/contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, vendor agrees that the Government shall have the rights that are set forth in paragraph (c) of this clause to use, duplicate or disclose any restricted computer software delivered under this purchase order/contract. The terms and provisions of this contract, including any commercial lease or license agreement, shall be subject to paragraph (c) of this clause and shall comply with Federal laws and the Federal Acquisition Regulation.

(c)(1) The restricted computer software delivered under this contract may not be used, reproduced or disclosed by the Government except as provided in subparagraph (c)(2) of this clause or as expressly stated otherwise in this contract.

(2) The restricted computer software may be—

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this purchase order/contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this purchase order/contract; and

(vi) Used or copied for use in or transferred to a replacement computer.

(3) If the restricted computer software delivered under this purchase order/contract is published and copyrighted, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in subparagraph (c)(2) of this clause unless expressly stated otherwise in this purchase order/contract.

(4) To the extent feasible the Contractor shall affix a Notice substantially as follows to any restricted computer software delivered under this purchase order/contract; or, if the vendor does not, the Government has the right to do so: *"Notice*—Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract (or Purchase Order) No. ———.)

(d) If any restricted computer software is delivered under this contract with the copyright notice of 17 U.S.C. 401, it will be presumed to be published and copyrighted and licensed to the Government in accordance with subparagraph (c)(3) of this clause, unless a statement substantially as follows accompanies such copyright notice: "Unpublished—rights reserved under the copyright laws of the United States."

(End of clause)

**52.227-20 Rights in data—SBIR program.**

As prescribed in 27.409(l), insert the following clause:

**Rights in Data—SBIR Program (June 1987)**

(a) *Definitions.*

"Computer software," as used in this clause, means computer programs, computer data bases, and documentation thereof.

"Data," as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

"Form, fit, and function data," as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

"Restricted computer software," as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

"SBIR data," as used in this clause, means data first produced by a Contractor that is a small business firm in performance of a small business innovation research contract issued under the authority of 15 U.S.C. 638 (Pub. L. 97-219, Small Business Innovation Development Act of 1982), which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Contractor or are not already available to the Government.

"SBIR rights," as used in this clause, mean the rights in SBIR data set forth in the SBIR Rights Notice of paragraph (d) of this clause.

"Technical data," as used in this clause, means that data which are of a scientific or technical nature.

"Unlimited rights," as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add, or correct SBIR rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in subparagraph (c)(1) of this clause.

(c) *Copyright.* (1) *Data first produced in the performance of this contract.* Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. If claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that are not first produced in the performance of this contract and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause.

(3) *Removal of copyright notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Rights to SBIR data.* (1) The Contractor is authorized to affix the following "SBIR Rights Notice" to SBIR data delivered under this contract and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

**SBIR Rights Notice (Jun 1987)**

These SBIR data are furnished with SBIR rights under Contract No._____ (and subcontract _____ if appropriate). For a period of 2 years after acceptance of all items to be delivered under this contract, the Government agrees to use these data for Government purposes only, and they shall not be disclosed outside the Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support Contractors. After the aforesaid 2-year period the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data, in whole or in part.

(End of notice)

(2) The Government's sole obligation with respect to any SBIR data shall be as set forth in this paragraph (d).

(e) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause, and without a copyright notice, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data have not been disclosed without restriction outside the Government, the Contractor may request, within six months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction, at the Contractor's expense, of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(f) *Protection of limited rights data.* When data other than that listed in subdivisions (b)(1) (i), (ii), and (iii) of this clause are specified to be delivered under this contract and such data qualify as either limited rights data or restricted computer software, the Contractor, if the Contractor desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(g) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(h) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

**52.227-21 Technical data certification, revision, and withholding of payment—major systems.**

As prescribed in 27.409(q), insert the following clause:

**Technical Data Certification, Revision, and Withholding of Payment—Major Systems (Jun 1987)**

(a) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data—General clause included in this contract) that have been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data certification.* (1) All technical data that are subject to this clause shall be accompanied by the following certification upon delivery:

**Technical Data Certification (Jun 1987)**

The Contractor, _____, hereby certifies that to the best of its knowledge and belief the technical data delivered herewith under Government contract No._____ (and subcontract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of certification)

(2) The Government shall rely on the certification set out in subparagraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with contract requirements. Such corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also agrees, at the request of the Contracting Officer, to revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor may submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) *Withholding of payment.* (1) At any time before final payment under this contract the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding $100,000 or 5 percent of the amount of this contract, whichever is less, if in the Contracting Officer's opinion respecting any technical data that are subject to this clause, the Contractor fails to—

(i) Make timely delivery of such technical data as required by this contract;

(ii) Provide the certification required by subparagraph (b)(1) of this clause;

(iii) Make the corrections required by subparagraph (b)(2) of this clause; or

(iv) Make revisions requested under paragraph (c) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The Contracting Officer may decrease or increase the sums withheld up to the sums authorized in subparagraph (d)(1) of this clause. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Government rights.

(End of clause)

**52.227-22 Major system—minimum rights.**

As prescribed in 27.409(r), insert the following clause:

**Major System—Minimum Rights (Jun 1987)**

Notwithstanding any other provision of this contract, the Government shall have unlimited rights in any technical data, other than computer software, developed in the performance of this contract and relating to a major system or supplies for a major system procured or to be procured by the Government, to the extent that delivery of such technical data is required as an element of performance under this contract. The rights of the Government under this clause are in addition to and not in lieu of its rights under the other provisions of this contract.

(End of clause)

**52.227-23 Rights to proposal data (technical).**

As prescribed in 27.409(s), insert the following clause:

**Rights to Proposal Data (Technical) (Jun 1987)**

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data—General" clause contained in this contract) in and to the technical data contained in the proposal dated _____ upon which this contract is based.

(End of clause)

[FR Doc. 87-10843 Filed 5-12-87; 8:45 am]
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Federal Register

Wednesday
May 13, 1987

Part IV

# Department of Defense

# General Services Administration

# National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation (FAR); Trade, Business, Technical and Professional Activity Costs; Extraordinary Compensation and Certain Organization Costs in Connection With Mergers and Other Business Combinations (Golden Parachutes and Golden Handcuffs); Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

**Federal Acquisition Regulation (FAR); Trade, Business, Technical and Professional Activity Costs**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 31.205–43, Trade, business, technical and professional activity costs, that are intended to clarify allowability policy.

**DATE:** Comments should be submitted to the FAR Secretariat at the address shown below on or before July 13, 1987, to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–18 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

There has been a proliferation of non-Federal Government sponsored symposia resulting in possibly unreasonable costs being charged against Government contracts. In addition, Government contracting officers and auditors have found that the present cost principle does not address the attendance of company employees at such activities, it does not describe the circumstances in which the cost of attendance by noncontractor employees' costs might be allowable, and it does not distinguish between setting up or sponsoring meetings, conferences, symposia, and seminars and attending those events. This proposed rule was necessitated by a need to control costs, to clearly state the policy of the Government with respect to these costs, and to describe more specifically the nature of costs which are allowable. The proposed changes do not reflect or result from a change in allowability policy.

**B. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive fixed-price basis and cost principles do not apply. An initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR Case 87–610 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed change to FAR 31.205–43 provides clarifications as to the allowability of trade, business, technical and professional business activity costs, and does not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: May 1, 1987.

**Lawrence J. Rizzi,**

*Director, Office of Federal Acquisition and Regulatory Policy.*

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).

2. Section 31.205–43 is amended by revising paragraph (c) and the introductory text is republished to read as follows:

**31.205–43 Trade, business, technical and professional activity costs.**

The following types of costs are allowable:

* * * * *

(c) When the principal purpose of a meeting, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information, or the stimulation of production or improved productivity:

(1) Costs of organizing, setting up and sponsoring the meetings, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental and directly associated costs.

(2) Costs of attendance by contractor employees, including travel costs (see 31.205–46).

(3) Costs of attendance by noncontractor personnel provided (i) such costs are not also reimbursed to the individual by the employing company or organization, and (ii) the individual's attendance is essential to achieve the purpose of the conference, meeting, symposium, etc.

[FR Doc. 87–10642 Filed 5–12–87; 8:45 am]

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48 CFR Part 31

**Federal Acquisition Regulation (FAR); Extraordinary Compensation and Certain Organization Costs in Connection With Mergers and Other Business Combinations (Golden Parachutes and Golden Handcuffs)**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering revising FAR 31.205–6 and 31.205–27 to clarify the allowability of extraordinary compensation and certain organization costs incurred in connection with mergers and other business combinations.

**DATE:** Comments should be submitted to the FAR Secretariat at the address shown below on or before July 13, 1987, to be considered in the formulation of a final rule.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 87–19 in all correspondence related to this issue.

**FOR FURTHER INFORMATION CONTACT:** Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Defense Acquisition Regulatory and Civilian Agency Acquisition Councils have been reviewing for some time the subject of business combinations, and particularly the

appropriate Government contract costing resulting from such combinations. This review has been occasioned both by the increased pace and size of such events in recent years, and also by the Councils' perception that existing regulations on certain aspects of this subject are inadequate. Of special concern are the costs of "golden parachutes" and "golden handcuffs," which are extraordinary payments above and beyond ordinary, customary, and reasonable compensation payments to employees for services rendered. Also of concern is the fact that there is no explicit coverage on the allowability of the costs of resisting a corporate takeover. In the special circumstances of Government procurement, in which companies' recorded cost structures are often directly reflected in price, the Councils believe the Government should not be at risk of paying higher prices simply because of ownership changes at its suppliers. Instead, the Councils have concluded that additional coverage at FAR 31.205–6 and 31.205–27 is necessary to protect the Government from having to bear the costs of special compensation arrangements and various organization costs often attendant upon business combinations.

**B. Regulatory Flexibility Act**

The proposed changes to FAR 31.205–6 and 31.205–27 are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C., *et seq.*) because most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: May 4, 1987.

**Lawrence J. Rizzi,**

*Director, Office of Federal Acquisition and Regulatory Policy.*

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

1. The authority citation for Part 31 continues to read as follows:

**Authority: 40 U.S.C. 486(c); 10 U.S.C. Ch. 137; and 42 U.S.C. 2473(c).**

## PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 31.205–6 is amended by adding paragraph (l) to read as follows:

**31.205–6 Compensation for personal services.**

* * * * *

(l) *Compensation incidental to business acquisitions.* The following costs are unallowable:

(1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets. These arrangements are commonly known as "golden parachutes."

(2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, in addition to their normal pay, provided that they remain with the contractor for a specified period of time. These arrangements are commonly known as "golden handcuffs."

* * * * *

2. Section 31.205–27 is amended by revising paragraph (a) to read as follows:

**31.205–27 Organization costs.**

(a) Except as provided in paragraph (b) of this subsection, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, (2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

* * * * *

[FR Doc. 87–10841 Filed 5–12–87; 8:45 am]

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Part V

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 870**

**Cardiovascular Devices; Effective Date of Requirement for Premarket Approval; Replacement Heart Valve; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. 85N-0331]

## Cardiovascular Devices; Effective Date of Requirement for Premarket Approval; Replacement Heart Valve

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application or a notice of completion of a product development protocol for the replacement heart valve, a medical device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: December 9, 1987.

FOR FURTHER INFORMATION CONTACT: Arthur A. Ciarkowski, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 5, 1980 (45 FR 7948), FDA published a final rule (21 CFR 870.3925) classifying into class III (premarket approval) the replacement heart valve, a medical device. Section 870.3925 applies to (1) any replacement heart valve that was in commercial distribution before May 28, 1976, and (2) any device that FDA has found to be substantially equivalent to a replacement heart valve described in (1) and that has been marketed on or after May 28, 1976.

In the Federal Register of February 12, 1986 (51 FR 5296), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)) of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the replacement heart valve. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and the benefit to the public from use of the device (51 FR 5297). The agency also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings, and, under section 515(b)(2)(B) of the act, provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the replacement heart valve was required to be submitted by February 27, 1986. The comment period closed on April 14, 1986.

Although FDA did not receive any petitions requesting a change in the classification of the replacement heart valve, the agency received one comment in response to the proposal of February 12, 1986. The comment from a trade association did not relate to the proposal, but referred to FDA's guidance relating to replacement heart valves.

FDA has reexamined its proposed findings with respect to the degree or risk of illness or injury designed to be eliminated or reduced by requiring the replacement heart valve to meet the statute's approval requirements. The agency concludes that its proposed findings and its conclusion discussed in the preamble to the proposed rule are appropriate. Accordingly, FDA is promulgating a final rule requiring premarket approval for the replacement heart valve under section 515(b)(3) of the act and is summarizing its findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the replacement heart valve to have an approved PMA or declared completed PDP, and the benefits to the public from the use of the device.

### I. Findings With Respect to Risks and Benefits

#### A. Degree of Risk

1. *Mechanical failure of replacement heart valve.* Replacement heart valves tend to fail in characteristic ways. They may fail mechanically due to chemical or physical changes in portions of the valve, defects in materials, or faulty manufacturing processes. Failure mode may be slow or sudden. If the valve fails slowly, congestive heart failure may result and reoperation will be required. Rapid failure results in the need for urgent reoperation, or may result in death.

2. *Unacceptable hemodynamic performance.* A replacement heart valve may produce unacceptable hemodynamic performance, thus eliminating or reducing the benefits expected from surgery. Unacceptable hemodynamic performance usually requires reoperation for correction.

3. *Perivalvular leak.* The incidence of perivalvular leakage depends on the replacement heart valve design, the condition of heart tissue at the site of implantation, and surgical technique, and may result from infection around the valve. Perivalvular leaks may develop early or late after implantation, may be of mild to severe degree, and may be associated with hemolytic anemia or congestive heart failure of such severity as to require reoperation.

4. *Surgical procedure.* The operation required to implant a replacement heart valve is not without risk. The morbidity and mortality associated with heart valve replacement are comparable to other open heart cardiac surgical procedures.

5. *Thrombus (blood clot) formation on the device.* The incidence of valve thrombus formation varies with the replacement heart valve design and placement of the valve in the mitral, aortic, or tricuspid position. In addition, the amount and type of anticoagulation hemodynamics and indigenous patient factors affect the incidence of valve-related thrombus.

6. *Thromboembolism.* Clots formed in the heart may break off and travel to various other organs, which are then damaged by loss of blood supply. The greater the loss of blood supply, the greater the damage to the affected organ. The incidence of thromboembolism is affected by the valve design and position and is decreased by the use of anticoagulant drugs.

7. *Anticoagulant complications.* Although careful medical followup is required, anticoagulant drugs significantly reduce the incidence of thrombosis and thromboembolism after the implantation of replacement heart valves constructed entirely of prosthetic materials.

8. *Hemolytic anemia.* Because of exposure of blood to an artificial surface, turbulent blood flow, and shear forces, a replacement heart valve produces some hemolysis (breakdown of red blood cells).

9. *Infection.* A replacement heart valve may become the site of infection, either at the time of surgery or later, as a result of dental procedures, intravascular catheterization, or surgery elsewhere in the body. Infection can lead to a number of other injuries even in the presence of anticoagulants.

FDA concludes that these risks could be eliminated or reduced by requiring the replacement heart valve to undergo premarket approval.

#### B. Benefits of the Device

The benefits of implantation of the replacement heart valve are unquestioned in patients with valvular

heart disease. Without the device, many such patients have a poor prognosis characterized by congestive heart failure, chest pain, arrhythmias, loss of consciousness, embolic phenomena, and death. For some abnormalities of the natural heart valve, there is no satisfactory alternative to valve replacement (Ref. 1). Deformity of natural heart valves, when severe enough to produce significant stenosis or incompetence, is irreversible. The abnormal circulatory dynamics that result can be controlled by medication only to a limited degree. Following implantation of a replacement heart valve, many patients became asymptomatic and others experience a marked improvement in heart function and exercise tolerance.

## II. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the proposed findings as published in the preamble to the proposed rule and issuing this final rule to require premarket approval of the generic type of device, the replacement heart valve, by adding a new paragraph (c) to § 870.3925.

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before December 9, 1987, for any replacement heart valve that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before December 9, 1987. An approved PMA or a declared completed PDP is required to be in effect for any such device on or before June 8, 1988. (If FDA finds that continued availability of a replacement heart valve for which a PMA has been timely filed is necessary for the public health, FDA may, under section 515(D)(1)(B)(i) of the act, extend the 180-day period for taking action on the PMA). Any replacement heart valve that was not in commercial distribution before May 28, 1976, or that has not on or before December 9, 1987 been found by FDA to be substantially equivalent to a replacement heart valve that was in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for a replacement heart valve is not filed on or before December 9, 1987, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(F)(1)(A)), and commercial distribution of the device will be required to cease. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR Part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (2) will no longer apply to clinical investigations of the replacement heart valve. Further. FDA concludes that investigational replacement heart valves are significant risk devices as defined in § 812.3(m), and advises that as of the effective date of § 870.3925(c) the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of a replacement heart valve. For any such device, therefore, an IDE submitted to FDA, under § 812.20, is required to be in effect under § 812.30 before an investigation is initiated or continued on or after December 9, 1987. FDA advises all persons who intend to sponsor any clinical investigation involving the replacement heart valve to submit an IDE application to FDA no later than November 9, 1987 to avoid the interruption of ongoing investigations.

## III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) and (e) that this action is of a type that does not individually or cumulatively have significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Economic Impact

FDA has examined the economic consequences of this final rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule will not be a major rule as specified in the Order. The agency believes that eight firms will be affected by this rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of this final rule has been placed on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

## Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Wheeler, E. D., et al., *in* "The Practice of Cardiology," edited by R. A. Johnson, E. Haber, and W. G. Austen, pp. 435, 479, and 498, Boston, 1980, Little, Brown & Co.

## List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 870 is amended as follows:

## PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR Part 870 continues to read as follows:

**Authority:** Sec. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794–795 as amended, 90 Stat. 540–546, 552–559, 565–574, 576–577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. Section 870.3925 is amended by adding new paragraph (c), to read as follows:

**§ 870.3925 Replacement heart valve.**

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDA) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before December 9, 1987 for any replacement heart valve that was in commercial distribution before May 28, 1976, or that has on or before December 9, 1987 been found to be substantially equivalent to a replacement heart valve that was in commercial distribution before May 28, 1976. Any other replacement heart valve shall have an approved PMA or a declared completed PDP is effect before being placed in commercial distribution.

Dated: April 17, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87–10851 Filed 5–12–87; 8:45 am]

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Part VI

# Department of Education

**Office of Elementary and Secondary Education**

## Intent To Repay to the Robeson County, North Carolina Board of Education Funds Recovered as a Result of a Final Audit Determination; Notice of Intent To Award Grantback Funds

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

## Intent To Repay to the Robeson County, NC Board of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the Secretary of Education (Secretary) intends to repay under a grantback arrangement to the Robeson County Board of Education (local educational agency; LEA) an amount equal to 75 percent of funds recovered by the Department of Education as a result of a final audit determination. This notice describes the LEA's plan for the use of repaid funds and the terms and conditions under which the Secretary intends to make these funds available and invites comments on the proposed grantback.

DATE: All written comments must be received on or before June 12, 1987.

ADDRESS: All written comments should be submitted to Mr. Hakim Khan, Acting Director, Indian Education Programs, U.S. Department of Education (Room 2177, FOB #6), 400 Maryland Avenue, SW., Washington, DC 20202–6267.

FOR FURTHER INFORMATION CONTACT: Mr. Hakim Khan, (202) 732–1887.

SUPPLEMENTARY INFORMATION:

### A. Background

In May 1986, the Department of Education recovered $50,000 from the LEA in satisfaction of an audit, covering the period from July 1, 1973 to June 30, 1976. The auditors examined the accounting procedures, procurement practices, and system of internal controls to determine the adequacy of the LEA's management policies and decisions affecting costs.

The auditors found that funds awarded under Part A of the Indian Education Act of 1972 (the Act), Title IV, Part A of Pub. L. 92–318 (20 U.S.C. 241aa through 241ff) had been misspent in violation of the Act's requirements as follows:

(1) Federal funds were not used to supplement but rather to supplant funds that would have been made available by the LEA in the absence of Federal funds (20 U.S.C. 241dd(a)(5));

(2) Federal funds were used to purchase items and finance activities not provided for in the budget approved by the parent committee (20 U.S.C. 241dd(b)(2)(B)(ii);

(3) Federal funds were used for activities not specifically designed to meet the special educational or culturally related academic needs of Indian children (20 U.S.C. 241cc); and

(4) Federal funds were used for costs that were not adequately documented to demonstrate that the funds had benefitted Indian students (20 U.S.C. 241dd(a)(6)).

### B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that the—

(1) Practices and procedures of the LEA that resulted in the audit determination have been corrected, and that the LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) LEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the LEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

### C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the LEA has applied for a grantback of $37,500 and has submitted a plan to use the grantback funds consistently with the Act. The LEA proposes to use the grantback funds to expand the computer-assisted instruction laboratory services that provide remedial instruction in reading and mathematics. The LEA's plan is available on request from the Department of Education contact person listed above.

### D. The Secretary's Determination

The Secretary has carefully reviewed the plan and other information submitted by the LEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

### E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least thirty days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the Federal Register a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Robeson County, North Carolina Public Schools under a grantback arrangement. The grantback award would be in the amount of $37,500, which is 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the audit.

### F. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

The LEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements, and

(b) The plan that was submitted in conjunction with the LEA's request for a grantback dated May 20, 1986, and any amendments to that plan that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be expended not later than June 30, 1988, in accordance with the LEA's plan.

(3) The LEA must, not later than September 30, 1988, submit a report to the Secretary which—

(a) Indicates how the funds awarded under the grantback have been used;

BEST COPY AVAILABLE

(b) Shows that the funds awarded under the grantback have been liquidated; and

(c) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Dated: May 7, 1987.

(Catalog of Federal Domestic Assistance Number: 84.060, Indian Education—Formula Grants to Local Educational Agencies and Tribal Schools)

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87-10888 Filed 5-12-87; 8:45 am]

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Part VII

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 15**

**Administrative Claims Under the Federal Tort Claims Act; Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 15

[Docket No. 25264; Adoption of Part 15]

# Administrative Claims Under the Federal Tort Claims Act

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule sets forth a new part for the Federal Aviation Regulations which requires prospective claimants under the Federal Tort Claims Act to follow certain procedures for filing their claims with the Federal Aviation Administration. The rule is needed because the current absence of a published rule of procedure has caused problems due to lack of knowledge by some parties as to how or where to file claims, and the minimum information which must be provided. The rule ensures that these claims are channeled to the appropriate division and expedites their evaluation by the FAA.

DATE: Effective date of this amendment is May 13, 1987. Comments must be received on or before June 12, 1987.

ADDRESS: Send comments on this final rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25264, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments in duplicate to: Federal Aviation Administration Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 25264. Comments may be examined in the Rules Docket on weekdays except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel, Litigation Division, AGC-400, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-3561.

SUPPLEMENTARY INFORMATION:

## Comments Invited

This regulation is being adopted without notice and public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment, after issuance, for regulations issued without prior notice. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, Docket No. 25264, 800 Independence Avenue, SW., Washington, DC 20591. All comments received will be available in the Rules Docket for examination by interested persons. This amendment may be changed in the light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments on this final rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25264." The postcard will be date and time stamped and returned to the commenter.

## Background

The FAA evaluates a significant number of claims against the agency arising under the Federal Tort Claims Act (FTCA). Between calendar years 1980 and 1985, the FAA received an average of 321 claims per year, with a total average amount claimed of almost $7.0 billion per year. The largest number of claims were received in calendar year 1983 when 411 claims were presented. The highest dollar amount to be claimed in a single year occurred in 1984 when over $21.0 billion in claims was presented. Thus, the FAA must deal with a significant number of claims involving sizeable sums of money.

The FTCA requires claims be presented to the appropriate Federal agency. 28 U.S.C. 2675(a). Claims must be in writing. 28 U.S.C. 2401(b). The Attorney General can prescribe regulations concerning the consideration, ascertainment, adjustment, determination, compromise, and settlement of claims brought under the Federal Tort Claims Act. 28 U.S.C. 2672. Federal agencies are authorized to issue regulations and establish procedures consistent with the regulations prescribed by the Attorney General. 28 CFR 14.11. The Administrator of the FAA is authorized to exercise the authority of the Secretary of Transportation as executive head of a department under any statute, Executive Order, or regulation. 49 CFR 1.45(a)(2). Under 49 CFR 1.47(a), the Federal Aviation Administration is delegated authority to carry out the powers and duties transferred to the Secretary of Transportation by section 6(c)(1) of the Department of Transportation Act, 49 U.S.C. 1655(c)(1).

## The Final Rule

There is currently no published rule of procedure informing the public how or where to file claims against the FAA under the FTCA. Such a rule is necessary for three reasons. First, some parties bringing claims against the FAA do not know how or where to file a claim. Second, sometimes claims are presented at remote FAA locations and to FAA personnel who do not understand the nature of the claim, or the statutory and regulatory requirements involved. For these reasons, FAA evaluation of the merits of the claim is frequently delayed. To remedy this, the rule specifies where and with whom claims must be filed.

The third reason for the rule is that the FAA receives some claims which cannot be adjudicated because they are incomplete or otherwise defective. The rule stipulates the minimum information that claimants must provide the FAA before their claim is deemed presented to the agency. Also, the rule lists additional information which the FAA may require the claimant to provide so that the claim can be adequately evaluated.

## Reason for No Notice and Immediate Adoption

This amendment is needed to ensure that claimants know where to correctly file their claims against the agency and what information must be filed with their claims. It does not provide for any change in agency policy nor affect the substantive rights of the claimant. It merely provides notice of current agency practice.

For these reasons, notice and public procedure are unnecessary, and good cause exists for making this amendment effective in less than 30 days. Moreover, publication for prior comment would not reasonably be expected to result in the receipt of useful information on these procedural requirements. In accordance with DOT Regulatory Policies and Procedures, an opportunity for public comment after publication is being provided.

## Economic Assessment

The rule sets out procedures which prospective claimants must follow to have their claims evaluated by the agency. The rule imposes no greater burden than that already required by 28 CFR Part 14. However, 28 CFR Part 14 does not stipulate when, where, and with whom to file claims.

The rule does not affect the national economy, and it is unrelated to events which would produce a major increase in costs or prices for consumers, individual industries, governmental authorities or agencies, or geographic regions. Industry, government, and geographical regions are outside the scope of the rule. The effect of the rule on a prospective claimant is minimal since it merely states publicly that information which the agency would otherwise require of the claimant to substantiate the claim.

For those claimants who would have hand-delivered or mailed their claim to any FAA facility, the requirements may impose additional postage costs, but those costs are negligible. Finally, the new rule does not address matters which affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Since the impact of the rule is minimal, no full Regulatory Evaluation is necessary.

**Trade Impact Assessment**

The rule will have no impact on international trade. The subject of the rule is unrelated to the manufacture or distribution of aviation-related products and services either by United States-based manufacturers and air carriers or foreign-based manufacturers and air carriers.

**Regulatory Impact Determination**

The vast majority of claims filed against the FAA under the FTCA are filed by individuals. Small entities seldom file claims against the FAA. Accordingly, the number of small entities that will be affected by the new rule is not substantial.

Additionally, the rule will not have a significant economic impact on the transaction costs of those small entities filing claims against the FAA. Conceivably, those claimants who would have hand-delivered or mailed their claim to any FAA facility may be required by the new rule to pay additional postage costs in order to properly file their claim. These additional costs do not constitute a significant economic impact on prospective claimants. While the rule is expected to increase the efficiency with which the FAA processes these claims, no monetary benefits are expected to accrue to the claimant as a result. Therefore, the number of small entities who would be affected by the rule is not expected to be substantial and the rule is not expected to have a significant economic impact, positive or negative. Accordingly, a regulatory flexibility analysis is not required.

**Conclusion**

Because the rule inserts into 14 CFR requirements which are already in place in 28 CFR Part 14, the FAA has determined that the rule involves a regulation which is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since very few, if any, small entities would be affected by the rule, and only minimal postage costs are involved, it is certified that under the criteria of the Regulatory Flexibility Act the rule will not have a significant economic impact, positive or negative, on a substantial number of entities. Because of the absence of any costs attendant with the rule, the FAA has determined that the expected impact of the regulation is so minimal that it does not warrant a full regulatory evaluation.

**List of Subjects in 14 CFR Part 15**

Federal Tort Claims Act, Administrative claims, Air transportation, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports.

**The Amendment**

Accordingly, the Federal Aviation Administration amends Chapter I, Subchapter B, Procedural Rules, of Title 14 of the Code of Federal Regulations by adding a new Part 15 (14 CFR Part 15) to read as follows:

## PART 15—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Sec.
15.1 Scope of regulations.
15.3 Administrative claim, when presented; appropriate office.
15.5 Administrative claim, who may file.
15.7 Administrative claims; evidence and information to be submitted.
15.9 Investigation and examination.

Authority: 49 U.S.C. 1354; 5 U.S.C. 301; 28 U.S.C. 2672, 2675; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

**§ 15.1 Scope of regulations.**

(a) These regulations apply to claims asserted under the Federal Tort Claims Act, as amended, for money damages against the United States for injury to, or loss of property, or for personal injury or death, caused by the negligent or wrongful act or omission of an employee of the FAA acting within the scope of office or employment. The regulations in this part supplement the Attorney General's regulations in 28 CFR Part 14, as amended. The regulations in 28 CFR Part 14, as amended, and the regulations in this part apply to consideration by the FAA of administrative claims under the Federal Tort Claims Act.

**§ 15.3 Administrative claim, when presented; appropriate office.**

(a) A claim is deemed to have been presented when the FAA receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to, or loss of, property or for personal injury or death, alleged to have occurred by reason of the incident. A claim which should have been presented to the FAA but which was mistakenly filed with another Federal agency, is deemed presented to the FAA on the date the claim is received by the FAA at a place designated in paragraph (b) of this section. A claim addressed to, or filed with, the FAA by mistake will be transferred to the appropriate Federal agency, if that agency can be determined, or returned to the claimant.

(b) Claims shall be delivered or mailed to: Assistant Chief Counsel for Litigation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

Alternatively, claims may be delivered or mailed to: Office of the Regional Counsel, in any of the FAA Regional Offices.

(c) Claim forms are available at each location listed in paragraph (b) of this section.

(d) A claim presented in accordance with this section may be amended by the claimant at any time prior to final FAA action or prior to the exercise of the claimant's option, under 28 U.S.C. 2675(a), to deem the agency's failure to make a final disposition of his or her claim within 6 months after it was filed as a final denial. Each amendment to a claim shall be submitted in writing and signed by the claimant or the claimant's duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the FAA has 6 months thereafter in which to make a final disposition of the claim as amended, and the claimant's option under 28 U.S.C. 2675(a) does not accrue until 6 months after the filing of the amendment.

**§ 15.5 Administrative claim, who may file.**

(a) A claim for injury to, or loss of, property may be presented by the owner of the property interest which is the subject of the claim or by the owner's duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person or that person's duly authorized agent or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interest appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, it shall present with its claim appropriate evidence that it has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

**§ 15.7 Administrative claims; evidence and information to be submitted.**

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) The decedent's employment or occupation at time of death, including monthly or yearly salary or earnings (if any), and the duration of last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of death.

(4) Degree of support afforded by the decedent to each survivor dependent upon decedent for support at the time of death.

(5) Decedent's general, physical, and mental conditions before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injuries, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity.

(2) In addition to the report required by paragraph (b)(1) of this section, the claimant may be required to submit to a physical or mental examination by a physician employed by the FAA or another Federal agency. A copy of the report of the examining physician is made available to the claimant upon the claimant's written request if the claimant has, upon request, furnished the report required by paragraph (b)(1), and has made or agrees to make available to the FAA any other physician's reports previously or thereafter made on the physical or mental condition which is the subject matter of the claim.

(3) Itemized bills for medical, dental, and hospital expenses incurred or itemized receipts of payment for such expenses.

(4) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(5) If a claim is made for loss of time from employment, a written statement from the claimant's employer showing actual time lost from employment, whether the claimant is a full or part-time employee, and wages or salary actually lost.

(6) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(7) Any other evidence or information which may have a bearing on the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

**§ 15.9 Investigation and examination.**

The FAA may investigate a claim or conduct a physical examination of a claimant. The FAA may request any other Federal agency to investigate a claim or conduct a physical examination of a claimant and provide a report of the investigation or examination to the FAA.

Issued in Washington, DC, on May 5, 1987.

Donald D. Engen,

*Administrator.*

[FR Doc. 87-10857 Filed 5-12-87; 8:45 am]

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Part VIII

# Department of Education

**34 CFR Part 309**

**Handicapped Children's Early Education Program; Proposed Rule and Notices**

DEPARTMENT OF EDUCATION

34 CFR Part 309

Early Education for Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Handicapped Children's Early Education Program (HCEEP) authorized by section 623 of Part C of the Education of the Handicapped Act (EHA). These proposed regulations are needed to implement new requirements under the EHA amendments of 1986 (Pub. L. 99–457) and to revise selection criteria for awards under this program. The intended effect of these proposed regulations is to clarify statutory requirements and to improve the operation of the program.

DATE: Comments must be received on or before June 12, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Dr. Thomas R. Behrens, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4605), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ruth Ward. Telephone: (202) 732–1045.

SUPPLEMENTARY INFORMATION: The HCEEP provides Federal financial assistance for a variety of programs and activities designed to address the special problems of children with handicaps, birth through age eight—including demonstration and outreach projects, and other programs authorized under the EHA amendments of 1986 (e.g., research and training activities, research institutes, experimental programs, and a technical assistance development system.) The following are changes that have been made in the existing HCEEP regulations in order to implement the EHA amendments of 1986 (Pub. L. 99–457):

(1) Experimental programs have been added as a type of project, along with demonstration and outreach projects;

(2) Research and training activities (previously under section 624 of the EHA, but now authorized under section 623) have been added;

(3) Early childhood research institutes to carry on sustained research and to generate and disseminate new information on preschool and early intervention programs for young children with handicaps and their families have been added;

(4) The State planning, development, and implementation grant provisions for preschool and early intervention have been deleted. Under Pub. L. 99–457, States may conduct these authorities under (1) the preschool grant program (section 619 of the EHA), and (2) the new program for infants and toddlers with handicaps.

In addition to the changes required by the statute, the proposed regulations add new selection criteria for all of the programs and activities that are authorized under this Part. With regard to training projects, the Secretary may use selection criteria under this part or Part 318 (Training Personnel for the Education of the Handicapped program). It is expected that, in general, for preservice training, the selection criteria for Part 318 will be used if appropriate for the priority. These proposed regulations do not apply to contracts which are subject to Title 48 of the Code of Federal Regulations.

A technical assistance development system designed "to assist entities operating experimental, demonstration, and outreach programs, and to assist State agencies to expand and improve services provided to handicapped children" is now authorized under section 623 of the EHA. That system will be implemented through a Request for Proposal, (RFP), which will be published in the *Commerce Business Daily*.

## Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

## Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are small local educational agencies (LEAs) and public and private nonprofit organizations receiving Federal financial assistance under this program. However, the regulations would not have a significant economic impact on the small LEAs and organizations affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

## Paperwork Reduction Act of 1980

Sections 309.20 and 309.21 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to comment on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

## Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

## Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4605, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

## Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 309**

Education, Education of the handicapped, Education—research, Grants program—education, Preschool, Reporting and record keeping requirements, Teachers.

(Catalogue of Federal Domestic Assistance Number has not been assigned.)

Dated: April 20, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by revising Part 309 to read as follows:

## PART 309—HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM

### Subpart A—General

Sec.

309.1 What is the Handicapped Children's Early Education Program (HCEEP)?
309.2 Who is eligible for an award?
309.3 What activities may the Secretary fund?
309.4 What regulations apply to this program?
309.5 What definitions apply to this program?

### Subpart B—How Does One Apply for an Award?

309.10 What separate applications must an applicant submit?
309.11 How does the Secretary select and announce funding priorities under this program?

### Subpart C—How Does the Secretary Make an Award?

309.20 How does the Secretary evaluate an application?
309.21 What selection criteria does the Secretary use?
309.22 Are awards for experimental, demonstration, and outreach projects geographically dispersed?

### Subpart D—What Conditions Must Be Met After an Award?

309.30 What conditions must be met by recipients of experimental, demonstration, and outreach projects?
309.31 What are the matching requirements for experimental, demonstration, and outreach projects?

**Authority:** 20 U.S.C. 1423, unless otherwise noted.

### Subpart A—General

#### § 309.1 What is the Handicapped Children's Early Education Program (HCEEP)?

The HCEEP supports activities that are designed—

(a) To address the special problems of children with handicaps, birth through age eight; and

(b) To assist State and local entities in expanding and improving programs and services for these children and their families.

(Authority: 20 U.S.C. 1423)

#### § 309.2 Who is eligible for an award?

Public agencies and nonprofit private organizations are eligible for a grant or cooperative agreement under this part. In addition, profitmaking organizations are eligible under § 309.3(e) and (f).

(Authority: 20 U.S.C. 1423)

#### § 309.3 What activities may the Secretary fund?

The Secretary may provide financial assistance in the form of a grant or cooperative agreement under this part to support the following activities:

(a) *Experimental projects.* These projects support the design of investigative models that compare alternative and innovative educational practices related to early education services for children with handicaps.

(b) *Demonstration projects.* These projects assist in developing and implementing preschool and early intervention program practices that establish specific strategies and products worthy of dissemination and replication.

(c) *Outreach projects.* These projects support the replication of established practices to assist other agencies and organizations in expanding and improving services to children with handicaps.

(d) *Research institutes.* These institutes are designed to carry on sustained research to generate and disseminate new information on preschool and early intervention programs.

(e) *Research projects.* These projects are designed to identify and meet the full range of special needs of children covered under this part.

(f) *Training projects.* These projects support the training of personnel for programs specifically designed for children with handicaps.

(Authority: 20 U.S.C. 1423)

#### § 309.4 What regulations apply to this program?

The following regulations apply to grants and cooperative agreements under this program:

(a) The Education Department General Administrative Regulations (EDGAR) established in Title 34 of the Code of Federal Regulations in—

(1) Part 74 (Administration of Grants);

(2) Part 75 (Direct Grant Programs);

(3) Part 77 (Definitions that Apply to Department Regulations);

(4) Part 78 (Education Appeal Board); and

(5) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 309.

(Authority: 20 U.S.C. 1423)

#### § 309.5 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Contract
Department
EDGAR
Fiscal year
Grant
Local educational agency
Nonprofit
Nonpublic
Private
Project
Public
Secretary
State
State educational agency

(b) *Definitions in 34 CFR Part 300.* The following terms used in this part are defined in 34 CFR Part 300. The section of Part 300 that contains the definition is given in parentheses:

Handicapped children (§ 300.5)
Include (§ 300.6)
Parent (§ 300.10)
Related services (§ 300.13)
Special education (§ 300.14)

(c) *Other definitions.* As used in this part, "Act" means the Education of the Handicapped Act, as amended.

(Authority: 20 U.S.C. 1423)

### Subpart B—How Does One Apply for an Award?

#### § 309.10 What separate applications must an applicant submit?

Applicants for assistance under this part must submit a separate application for each activity in § 309.3 that is announced for competition.

(Authority: 20 U.S.C. 1423)

#### § 309.11 How does the Secretary select and announce funding priorities under this program?

The Secretary may establish as a priority any activity in § 309.3.

(Authority: 20 U.S.C. 1423)

## Subpart C—How Does the Secretary Make an Award?

### § 309.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under this part on the basis of the criteria in § 309.21.

(b) The Secretary awards up 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1423)

### § 309.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate applications unless, with regard to training projects, he determines that the selection criteria in 34 CFR Part 318 are more appropriate:

(a) *Importance.* (15 points)

(1) The Secretary reviews each application to determine the extent to which the proposed project addreses concerns in light of the purposes of this part.

(2) The Secretary considers—

(i) The significance of the problem or issue to be addressed;

(ii) The extent to which the project is based on previous research findings related to the problem or issue;

(iii) The numbers of individuals who will benefit; and

(iv) How the project will address the identified problem or issue.

(b) *Impact.* (15 points)

(1) The Secretary reviews each application to determine the probable impact of the proposed project in meeting the needs of children with handicaps, birth through age eight, and their families.

(2) The Secretary considers—

(i) The contribution that project findings or products will make to current knowledge and practice;

(ii) The methods used for dissemination of project findings or products to appropriate target audiences; and

(iii) The extent to which findings or products are replicable, if appropriate.

(c) *Technical soundness.* (35 points)

(1) The Secretary reviews each application to determine the technical soundness of the project plan.

(2) In reviewing applications under this part, the Secretary considers—

(i) The quality of the design of the project;

(ii) The proposed sample or target population, including the numbers of participants involved and methods that will be used by the applicant to ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(iii) The methods and procedures used to implement the design, including instrumentation and data analysis; and

(iv) The anticipated outcomes.

(3) With respect to training projects in applying the criterion in paragraph (c)(2)(iii) of this section, the Secretary considers the curriculum, course sequence, and practice leading to specific competencies;

(4) In addition to the criteria in paragraph (c)(2) of this section, the Secretary, in reviewing outreach projects, also considers—

(i) The agencies to be served through outreach activities;

(ii) The current services, their location, and anticipated impact of outreach assistance for each of those agencies;

(iii) The model demonstration project upon which the outreach project is based, including the effectiveness of the model program with childen, families, or other recipients of project services; and

(iv) The likelihood that the demonstration project will be continued and supported by funds other than those available through this part.

(d) *Plan of operation.* (10 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) Clarity in the goals and objectives of the project;

(iii) The quality of the activities proposed to accomplish the goals and objectives;

(iv) The adequacy of proposed timeliness for accomplishing those activities; and

(v) Effectiveness in the ways in which the applicant plans to use its resources and personnel to accomplish the goals and objectives.

(e) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application to determine the quality of the plan for evaluating project goals, objectives, and activities.

(2) The Secretary considers the extent to which the methods of evaluation are appropriate and produce objective and quantifiable data.

(f) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred to in paragraphs (f)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) The Secretary considers experience and training in areas related to project goals to determine qualifications of key personnel.

(g) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine adequacy of resources allocated to the project.

(2) The Secretary considers the adequacy of the facilities and the equipment and supplies that the applicant plans to use.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to undertake project activities; and

(ii) Costs are reasonable in relation to objectives of the project.

(Authority: 20 U.S.C. 1423)

### § 309.22 Are awards for experimental, demonstration, and outreach projects geographically dispersed?

To the extent feasible, the Secretary, in addition to using the selection criteria in § 309.21, geographically disperses awards for experimental, demonstration, and outreach projects throughout the Nation in urban as well as rural areas.

(Authority: 20 U.S.C. 1423(a)(3))

## Subpart D—What Conditions Must Be Met After an Award?

### § 309.30 What conditions must be met by recipients of experimental, demonstration, and outreach projects?

(a) Experimental, demonstration, and outreach projects must include services and activities that are designed to—

(1) Facilitate the intellectual, emotional, physical, mental, social, speech, language development, and self-help skills of children with handicaps, birth through age eight;

(2) Encourage the participation of the parents of those children in the

development and operation of projects under this part;

(3) Acquaint the community in which the project is located with the problems and potentialities of those children;

(4) Offer training about exemplary models and practices to State and local personnel who provide services to children with handicaps, birth through age eight; and

(5) Support the adoption of exemplary models and practices in States and local communities.

(b) Experimental, demonstration, and outreach projects must be coordinated with State and local educational agencies, and appropriate public and private health and social service agencies, in order to—

(1) Inform those agencies of the nature and purposes of the assisted project's activities or services; and

(2) Provide opportunities for the project staff to coordinate their activities with staff of other agencies.

(Authority: 20 U.S.C. 1423(a) (1), (2))

**§ 309.31 What are the matching requirements for experimental, demonstration, and outreach projects?**

(a) Federal financial participation for an experimental, demonstration, or outreach project may not exceed 90 percent of the total annual costs of development, operation, and evaluation of the project.

(b) The Secretary may waive the matching requirement in paragraph (a) of this section in the case of an arrangement entered into with governing bodies of Indian tribes located on Federal or State reservations and with consortia of those bodies if they are able to demonstrate that insufficient resources are available.

(Authority: 20 U.S.C. 1423(a)(4))

[FR Doc. 87-10939 Filed 5-12-87; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

[CFDA No: 84.024A]

### Invitation for Applications for New Awards Under the Handicapped Children's Early Education Program (HCEEP) for Fiscal Year 1987

*Purpose:* To provide Federal financial assistance for experimental or demonstration projects authorized under the Handicapped Children's Early Education Program.

*Deadline for Transmittal of Applications:* July 2, 1987.

*Deadline for Intergovernmental Review Comments:* September 2, 1987.

*Applications Available:* May 29, 1987.

*Estimated Range of Awards:* $75,000–$125,000.

*Estimated Average Size of Awards:* $100,000.

*Estimated Number of Awards:* 11.

*Project Period:* Up to 36 months.

*Priorities:* In accordance with 34 CFR 75.105(c)(3), the Secretary is establishing an absolute priority for the following categories: (1) Demonstration projects that assist in developing and implementing preschool and early intervention program practices that establish specific strategies and products worthy of dissemination and replication, and (2) experimental projects which support the design of investigative models that compare alternative and innovative educational practices related to early education services for children with handicaps. The Secretary particularly invites applications that address early intervention practices, service delivery strategies, or public policies, with the potential to improve early intervention for children with handicaps, birth through age two. However, in accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(1), an application submitted under this notice that meets this invitational priority will not be given a competitive or absolute preference over other applications.

*Applicable Regulations:* (a) When adopted in final form, the proposed regulations, Handicapped Children's Early Education Program, 34 CFR Part 309, published in this issue of the **Federal Register**. Applicants should base their applications on the proposed regulations. If substantive changes are made in the final regulations applicants will be given an opportunity to revise or resubmit their applications. (b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

*For Applications or Information Contact:* Thomas E. Finch, U.S. Department of Education, Office of Special Education Programs, 400 Maryland Avenue, SW., Room 4611, Switzer Building, Washington, DC 20202. Telephone: (202) 732–1084.

**Program Authority:** 20 U.S.C. 1423.

Dated: May 8, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–10940 Filed 5–12–87; 8:45 am]

BILLING CODE 4000-01-M

## Handicapped Children's Early Education Program; Final Annual Funding Priorities

**AGENCY:** Department of Education.

**ACTION:** Notice of final annual funding priorities.

**SUMMARY:** The Secretary announces annual funding priorities for the Handicapped Children's Early Education Program.

**EFFECTIVE DATE:** These final annual funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these final annual priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** The person listed on each individual proposed priority.

**SUPPLEMENTARY INFORMATION:** The Handicapped Children's Early Education Program (HCEEP) was established under Pub. L. 91–230 on April 13, 1970, and is currently authorized by section 623 of Part C of the Education of the Handicapped Act (EHA), as amended most recently by Pub. L. 99–457. The purpose of the program is to support experimental preschool and early childhood demonstration, outreach, training, and research projects. The focus of these competitions is on: (1) the development of model demonstration, replication, and dissemination projects to assist in developing and implementing innovative and experimental practices that establish specific strategies and products worthy of dissemination and replication; (2) the training of personnel to work with handicapped children through age two; and (3) research on program components for promoting language or social development of handicapped children within the age range of birth through five years.

A notice of proposed annual funding priorities for the Handicapped Children's Early Education Program (HCEEP) and a notice soliciting applications for those priorities was published in the **Federal Register** on August 27, 1986, at 51 FR 30622. That notice contained two proposed priorities for: (a) Community Involvement Demonstrations, and (b) Severely Handicapped Infants Demonstrations. Another notice of proposed annual funding priorities for Auxiliary Activities—Research and Training for the Handicapped Children's Early Education Program and a notice soliciting applications for the training priority was published in the **Federal Register** on September 23, 1986, at 51 FR 33850. That notice contained two proposed priorities for: (a) Research on Early Childhood Program Features, and (b) In-Service Training. These last two priorities were published under the authority of section 624 of the Education of the Handicapped Act to support early childhood activities, because section 624 authorized funding of in-service training and research. However, The Education of the Handicapped Act Amendments of 1986, Pub. L. 99–457, transferred the authority for training and research activities to the Handicapped Children's Early Education Program (section 623). Therefore, this notice combines the two previous notices of proposed annual funding priorities into one final notice of annual priorities.

As noted above, when Congress reauthorized the Education of the Handicapped Act, the authority to conduct training and research activities for early childhood programs was transferred from section 624 to section 623. However, the authority remains identical. Therefore, the eligibility requirements and selection criteria under the current regulations implementing section 624 at 34 CFR 315.2 and 315.31 will apply to the fiscal year 1987 training competition.

For the fiscal year 1987 research competition the Secretary is planning to use new proposed selection criteria for research projects under section 623. These criteria will be published in the Notice of Proposed Rulemaking for the Handicapped Children's Early Education Program. Therefore, the Secretary will publish an application notice soliciting applications for the research priority with that Notice of Proposed Rulemaking.

Application packages for all fiscal year 1987 competitions will reflect the statutory changes made by the Education of the Handicapped Act Amendments of 1986.

Finally, a change has been made as a result of the amendment to section 623, which no longer authorizes Early Childhood State Plan Grants. The reference to collaboration with the Early Childhood State Plan Grant in the priorities section has been deleted. The amendment to the Pre-school Incentive Grant Program permits States to use part of their funds for activities similar to the planning and development activities previously authorized under section 623. Therefore, applications submitted under priorities 1 and 2 now demonstrate collaboration with State-wide planning activities for early childhood programs such as planning and development activities funded under section 619(c) of the Education of the Handicapped Act.

Awards will be made in each priority area described below. The Secretary may award grants or cooperative agreements.

**Summary of Comments and Responses**

The public was given thirty days in which to comment on each of the notices of proposed priorities. Comments were received from two professional organizations, both of which supported the priorities. Therefore, no changes have been made.

**Priorities**

In accordance with the Education Department General Administrative Regulations at 34 CFR 75.105(c)(3) and subject to available funds, the Secretary will give an absolute preference to each application submitted in response to one of the following priorities. Applications submitted under Priorities 1 and 2 must demonstrate innovative and experimental approaches to the education of handicapped children and demonstrate collaboration with the State-wide planning activities for early childhood programs such as planning and development activities funded under section 619(c). Each application submitted under any of the four priorities must provide satisfactory assurance that the recipient will use funds made available to conduct one of the following activities:

*Priority 1—Community Involvement Demonstrations*

This priority would support projects which demonstrate innovative and experimental approaches to the delivery of effective, comprehensive services to handicapped children from birth through age five (0–5) and their families. Projects under this priority must demonstrate a team approach (such as special education, health and social service agencies) in the planning and delivery of comprehensive services. Projects must also demonstrate a commitment to train parents and family members to facilitate team efforts to deliver effective services.

**FOR FURTHER INFORMATION CONTACT:** Dr. Thomas E. Finch, Early Childhood Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1084.

*Priority 2—Severely Handicapped Infants Demonstrations*

This priority supports projects which demonstrate innovative and experimental methods of effectively serving handicapped infants from birth through two years (0–2) who have multiple handicaps or who are medically fragile. Projects must demonstrate provision of these services in the community and in the least restrictive environment with emphasis on home care models.

**FOR FURTHER INFORMATION CONTACT:** Dr. Thomas E. Finch, Early Childhood Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1084.

*Priority 3—In-Service Training*

This priority supports projects that demonstrate innovative and experimental in-service training programs that focus on meeting the need for qualified personnel to provide services to handicapped and children who are at risk of becoming handicapped from birth through age two. Personnel to be trained under this priority would include, but not be limited to: pediatricians and neonatal caregivers (nurses, social workers, physical therapists, occupational therapists, speech pathologists, public health personnel; and parents). Within this priority projects must focus on one or more of the following:

(a) Establishing an inservice training program which focuses on training personnel to work as a team with handicapped children from birth through age two;

(b) Ensuring the development of a curriculum which includes a multi-agency approach to service delivery for handicapped children from birth through age two; or

(c) Ensuring the development of a curriculum which includes a focus on the role of the family and skills the family needs to participate in the delivery of service as part of a team working with handicapped children from birth through age two.

**FOR FURTHER INFORMATION CONTACT:** Dr. Thomas E. Finch, Early Childhood Branch, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3094 M/S 2313), Washington, DC 20202. Telephone (202) 732–1084.

*Priority 4—Research on Early Childhood Program Features*

To provide effective and replicable services for handicapped infants and preschool aged children, there is a major need for research to identify the most effective methods and materials for promoting children's progress in different developmental domains (e.g., social, language, motor). Presently, much of the available information on the effectiveness of services is limited to entire programs; little information is available on the comparative effectiveness of different program components for promoting, for example, language development of handicapped children, yet many professionals who are planning to establish a service program prefer to review and assemble components from several programs rather than to adopt an entire program. Similarly, many professionals who are now operating a service program desire to replace certain components of their program with more effective ones.

There are currently available several well-defined program components for promoting language development of young handicapped children and several well-defined program components for promoting social development of handicapped children. These components vary significantly in such matters as conceptual/theoretical bases, instructional procedures, and instructional materials. Although much is known about these components, information is generally not available on their relative effectiveness as indexed by a variety of measures of child progress.

This priority supports projects that use a variety of measures of child progress to compare the effectiveness of several (minimum of 3) program components for promoting (1) language development, or (2) social development

of handicapped children within the age range of birth through five years. These components must be well-defined sets of instructional goals and procedures which can be incorporated within planned or existing preschool programs of varying types. The components selected for study must be compared in multiple studies and in different types of existing preschool programs. Applicants must fully describe the components that will be studied, the justification for their selection, and the existing preschool programs in which they will be studied. In conducting the studies, projects must monitor the amount and quality of implementation of the components, as well as the children's experiences in other components of the program. Included within the research activities should be a plan for conducting studies to determine whether the initial findings can be replicated, and a plan for documenting the costs and other resources necessary to incorporate the components in different kinds of preschool programs. The goal of these research projects would be to provide information about the relative effects of the components studied, and to provide to professionals replicable components that can be incorporated in new or existing infant or preschool programs.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3094—M/S

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local governmental coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(20 U.S.C. 1423)

(Catalog of Federal Domestic Assistance Number 84.024; Handicapped Children's Early Education Program)

Dated: April 3, 1987.

William J. Bennett,

*Secretary of Education.*

[FR Doc. 87-10941 Filed 5-12-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA 84.024W]

**Invitation for Applications for New Awards Under the Handicapped Children's Early Education Program for Fiscal Year 1987**

*Purpose:* To provide support for research activities that meet the unique early educational needs of handicapped children.

*Deadline for Transmittal of Applications:* June 30, 1987.

*Deadline for Intergovernmental Review Comments:* August 31, 1987.

*Applications Available:* May 20, 1987.

*Estimated Range of Awards:* $200,000–$300,000.

*Estimated Average Size of Awards:* $250,000.

*Estimated Number of Awards:* 4.

*Project Period:* Up to 48 months.

*Applicable Regulations:* (a) When adopted in final form, the Notice of Proposed Rulemaking for the Handicapped Children's Early Education Program published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed regulations. If the final regulations contain substantive changes, applicants will be given the opportunity to amend or resubmit their applications, (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, and (c) The Notice of Final Annual Funding Priorities published in this issue of the **Federal Register**.

*For Applications or Information Contact:* Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1099.

**Program Authority:** 20 U.S.C. 1423.

Dated: May 8, 1987.

**Madeleine Will,**

*Assistant Secretary Office of Special Education and Rehabilitative Service.*

[FR Doc. 87-10942 Filed 5-12-87; 8:45 am]

BILLING CODE 4000-01-M

## Office of Special Education and Rehabilitative Services

**Handicapped Children's Early Education Program**

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed annual funding priorities.

**SUMMARY:** The Secretary proposes annual funding priorities for the Handicapped Children's Early Education Program. These priorities would support early childhood research institutes required by the Education of the Handicapped Act, as amended by the Education of the Handicapped Act Amendments of 1986, Pub. L. 99–457.

**DATE:** Comments must be received on or before June 12, 1987.

**ADDRESS:** Comments should be addressed to: Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094—M/S 2313), Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Linda Glidewell, Telephone: (202) 732–1099.

**SUPPLEMENTARY INFORMATION:** The Handicapped Children's Early Education Program (HCEEP) was established under Pub. L. 91–230 on April 13, 1970, and is currently authorized by section 623 of Part C of the Education of the Handicapped Act, as amended. The purpose of the program is to support a variety of activities designed to address the special problems of handicapped children from birth through age eight including experimental, demonstration, and outreach projects, research and training activities, early childhood research institutes, and a technical assistance development system. These priorities would establish two early childhood research institutes. The first institute would be established to develop new or improved interventions for infants and toddlers with handicaps who, because of the nature of their disabilities, require extended medical care in hospital intensive care units and who may require life-supporting technologies and systems of health care. The second institute would be established to develop, evaluate, and disseminate new or improved curricula and materials (for preservice, inservice, and self-study use) for training special education and related service personnel to deliver intervention services to infants and toddlers with handicaps and their families.

**Proposed Priorities**

In accordance with the Education Department General Administrative Regulations at 34 CFR 75.105(c)(3), and subject to available funds, the Secretary proposes to give an absolute preference to each application submitted in response to one of the following priorities. Each application must provide satisfactory assurance that the recipient

will use funds made available to conduct one of the following activities:

*Priority 1: Early Childhood Research Institute—Intervention*

This proposed priority would establish an Early Childhood Research Institute to develop new or improved interventions for infants and toddlers with handicaps who, because of the nature of their disabilities, require extended medical care in hospital intensive care units and who may require life-supporting technologies and systems of health care. The institute's purpose would be to conduct a program of research and development designed to produce information and materials that can be used in concert with the provision of intensive health care and that promote the developmental progress of these children. The institute's research and development activities must produce information and materials that can be used within intensive care units and that facilitate the successful transition of the child to the home and to community-based services. The research and development activities must consist of two major areas of inquiry.

First, the institute must conduct a program of research to develop new or improved procedures related to the identification, referral, and intervention process. The institute's research must include, but need not be limited to, studies that: (1) Develop exemplary practices related to physician referral, initial family counseling, and tracking of the child's progress and services; (2) identify effective practices and procedures for forming and involving a multidisciplinary team to plan services for the child and family; (3) establish criteria and procedures for enlisting the services of different State agencies, including the State Protection and Advocacy agency or other child protection groups; (4) develop exemplary models for determining the point in the child's life when nonmedical interventions can be appropriately and safely implemented; (5) identify a variety of effective nonmedical interventions that are keyed to child developmental needs, child medical needs, family needs and characteristics, and the potential for delivering these services within a hospital intensive care unit; and (6) develop new or improved interventions that will facilitate the transition of the child to the home and to community-based services.

Second, the institute must conduct a program of research to develop new or improved organizational structures related to the identification, referral, and intervention process. The institute's research must include, but need not be limited to, studies that: (1) Identify the full range of services and personnel needed in a comprehensive hospital-based intensive care unit; (2) develop model organizational structures (including roles, responsibilities, lines of authority, communication, and coordination) for a comprehensive hospital-based intensive care unit; (3) identify exemplary models for involving parents, siblings, friends, and extended family with a multi-disciplinary team; (4) develop procedures to prevent or solve role conflicts among team members; and (5) identify alternative approaches to team composition and team member roles in providing intervention and transitional services.

In carrying out its research activities, the institute must provide research training and experience for at least 10 graduate students annually.

In addition to conducting the activities described above, the institute must commit approximately 20% of its budget to inservice training activities. These training activities must be designed to assist hospital intensive care unit staff to learn about new or improved procedures and organizational structures to serve infants and toddlers with handicaps and their families. The training activities must be based on the results of the institute's research findings, already published information, and existing exemplary procedures and organizational structures.

*Priority 2: Early Childhood Research Institute—Personnel*

This proposed priority would establish an Early Childhood Research Institute to develop, evaluate, and disseminate new or improved curricula and materials (for preservice, inservice, and self-study use) for the training of special education and related service personnel to deliver intervention services to infants and toddlers with handicaps and their families. The goal of the institute would be to produce validated, replicable training curricula that can be used across settings, disciplines, and disciplinary training programs to prepare personnel to deliver effective services and to work effectively within multi-disciplinary teams. The final materials must be developed for broad application, including their use by existing training programs that currently prepare no specialists for this age group.

In developing new or improved training curricula and materials, the institute is expected to work with institutions of higher education and other agencies that have nationally recognized training programs in one or more of the relevant disciplinary areas (special education, speech/language and audiology, occupational therapy, physical therapy, psychology, social work, nursing, or nutrition). To take advantage of current best practices, institute researchers shall examine the curricula and materials now being implemented in exemplary training programs and use these as a point of departure in the institute's research and development program. In developing a series of training modules for each special education and related service area, the institute must, where appropriate, take advantage of overlap and commonalities in training content. The institute must also develop the curricula and materials in a manner that is responsive to different training uses. For example, some potential trainers will view their trainees as specialists not generalists. In those instances, the curricula and materials must be sufficiently flexible to accommodate this training approach, but contain enough information about other disciplines to enable effective communication and coordination of services. In other instances, the training program may be aimed at producing trainees for more generalist roles, such as those that may be required in rural areas, in which more extensive knowledge of delivering different services is required. In either instance, however, the training curricula and materials must develop trainee skills in working with parents and families, interacting with professionals from other disciplines, determining when other specialists must be consulted, developing an individualized family service plan, and accessing emerging information and research findings in the trainee's own and related disciplinary areas.

For each disciplinary area the institute must conduct a series of evaluation studies of the different versions of the training materials. In addition to addressing other goals and objectives established for the evaluations, curricula and material must be evaluated with respect to their effectiveness in preservice, inservice, and self-study applications.

In carrying out its research and development activities, the institute must provide research training and experience for at least 10 graduate students annually.

In addition to conducting the activities described above, the institute must commit approximately 20% of its budget to inservice training activities. These training activities must be designed to assist personnel in institutions of higher education and other agencies in learning

about effective training curricula and materials for this population. The training activities must be based on the results of the institute's research and development activities, already published information about training programs, and existing exemplary training programs.

*Period of Award*

The Secretary will approve cooperative agreements with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the institute's second year, and will replace that year's annual evaluation which the recipient is required to perform under 34 CFR 75.590. During all other years of the project, the recipient must comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicant's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient of the cooperative agreement and its subgrantees; and

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and products.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to these priorities will be available for public inspection, during and after the comment period, in Room 3522, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1423)

(Catalog of Federal Domestic Assistance Number 84.024: Handicapped Children's Early Education Program)

Dated: April 13, 1987.

William J. Bennett,

*Secretary of Education.*

[FR Doc. 87-10943 Filed 5-12-87; 8:45 am]

BILLING CODE 4000-01-M

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[CFDA No.'s: 84.024XB, and XC]

## Invitation for Applications for New Awards Under the Handicapped Children's Early Education Program for Fiscal Year 1987

*Purpose:* To establish two early childhood research institutes.

*Deadline for Transmittal of Applications:* June 30, 1987.

*Deadline for Intergovernmental Review Comments:* August 31, 1987.

*Applications Available:* May 20, 1987.

*Available Funds:* $2.4 million for 24 mo.

*Estimated Range of Awards:* $550,000–$650,000 per year.

*Estimated Number of Awards:* 2 cooperative agreements.

*Project Period:* Up to 60 months.

*Applicable Regulations:* (a) When adopted in final form, the Notice of Proposed Rulemaking for the Handicapped Children's Early Education Program published in this issue of the Federal Register, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79, and (c) when adopted in final form, the Annual Funding Priorities for this program. A notice of proposed annual funding priorities is published in this issue of the Federal Register. Applicants should prepare their applications based on the proposed regulations and the proposed priorities. If there are substantive changes made when the final regulations and final annual funding priorities are published, applicants will be given the opportunity to amend or resubmit their applications.

*For Applications or Information Contact:* Linda Glidewell, Division of Innovation and Development, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094-M/S 2313), Washington, DC 20202. Telephone: (202) 732–1099.

Program Authority: 20 U.S.C. 1423.

Dated: May 8, 1987.

Madeleine Will,

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87-10944 Filed 5-12-87; 8:45 am]

BILLING CODE 4000-01-M

federal register

Wednesday
May 13, 1987

Part IX

# Department of Education

34 CFR Part 237

Christa McAuliffe Fellowship Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 237

Christa McAuliffe Fellowship Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue regulations governing the Christa McAuliffe Fellowship Program for outstanding teachers currently authorized by Title V, Part D, Subpart 2 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. These proposed regulations would specify the responsibilities of the Secretary in administering the program, the duties of State panels in selecting fellows, and the terms and conditions that apply to recipients of the fellowship awards.

DATE: Comments must be received on or before June 12, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Willi Webb, Director, Policy, Planning, and Executive Operations, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 2189, Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget (OMB) as follows: Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

FOR FURTHER INFORMATION CONTACT: Ms. Willi Webb, telephone (202) 732-4158.

SUPPLEMENTARY INFORMATION: The Christa McAuliffe Fellowship Program is authorized by Title V, Part D, Subpart 2 of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986. It establishes a national fellowship program for outstanding full-time public and private school teachers. These teachers may use awards for projects approved by the Secretary to improve their knowledge or skills and the education of their students, including (1) sabbaticals for study or research directly associated with the objectives of the statute, or their own academic improvement, (2) consultation with or assistance to other school districts or private school systems, (3) development of special innovative programs, of (4) model teacher programs and staff development.

### Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are local educational agencies (LEAs) which are required to comment on the proposals submitted to the statewide panel. However, the regulations would not have a significant economic impact on the LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

### Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2189, FOB-6, 400 Maryland Avenue SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

### Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

### List of Subjects in 34 CFR Part 237

College and universities, Education, Elementary and secondary education, Scholarships and fellowships, Reports and recordkeeping requirements, Teachers.

(Catalog of Federal Domestic Assistance Number 84.199, Christa McAuliffe Fellowship Program)

Dated: April 30, 1987.

William J. Bennett,

*Secretary of Education.*

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 237 to read as follows:

## PART 237—CHRISTA MCAULIFFE FELLOWSHIP PROGRAM

### Subpart A—General

Sec.

237.1 What is the Christa McAuliffe Fellowship Program?
237.2 Who is eligible to apply under the Christa McAuliffe Fellowship Program?
237.3 How are awards distributed?
237.4 In what amount are fellowships awarded?
237.5 For what purposes may a fellow use an award?
237.6 What priorities may the Secretary establish?
237.7 What regulations apply?
237.8 What definitions apply?

### Subpart B—How Does One Apply For An Award?

237.10 How does an individual apply for a fellowship?

### Subpart C—How Are Fellows Selected?

237.20 What are statewide panels?
237.21 What are the responsibilities of a statewide panel?

### Subpart D—What Conditions Must Be Met By Fellows?

237.30 What is the duration of a fellowship?
237.31 May a fellowship be awarded for two consecutive years?
237.32 What records and reports are required from fellows?
237.33 What is the service requirement for a fellowship?
237.34 What are the requirements for repayment of the fellowship?

Authority: 20 U.S.C. 1113-1113e, unless otherwise noted.

### Subpart A—General

#### § 237.1 What is the Christa McAuliffe Fellowship Program?

The Christa McAuliffe Fellowship Program (CMFP) is designed to reward excellence in teaching by encouraging outstanding teachers to continue their education, to develop innovative programs, to consult with or assist LEAs, private schools, or private school systems, and to engage in other

educational activities that will improve the knowledge and skills of teachers and the education of students.

(Authority: 20 U.S.C. 1113, 1113b)

**§ 237.2 Who is eligible to apply under the Christa McAuliffe Fellowship Program?**

An individual is eligible to apply for a Christa McAuliffe Fellowship if the individual at the time of application—

(a)(1) Is a citizen or national of the United States;

(2) Is a permanent resident of the United States;

(3) Provides evidence from the Immigration and Naturalization Service that the individual is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) Is a permanent resident of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; and

(b) Is a full-time teacher in a public or private elementary or secondary school.

(Authority: 20 U.S.C. 1113b, 1113d(a))

**§ 237.3 How are awards distributed?**

(a) Except as provided in section 563(a)(3) of the Act, the Secretary awards one national teacher fellowship under this part to an eligible teacher in each of the following:

(1) Each congressional district in each of the fifty States.

(2) The District of Columbia.

(3) The Commonwealth of Puerto Rico.

(4) Guam.

(5) The Virgin Islands.

(6) American Samoa.

(7) The Northern Mariana Islands.

(8) The Trust Territory of the Pacific Islands.

(b)(1) If the conditions stated in section 563(a)(3) of the Act apply, the Secretary publishes an alternative distribution of fellowships under this part that—

(i) Will permit fellowship awards at the level stated in § 237.4; and

(ii) Is geographically equitable as determined by the Secretary.

(2) The Secretary sends a notice of this distribution to each of the statewide panels established under § 237.20.

(Authority: 20 U.S.C. 1113b(a))

**§ 237.4 In what amount are fellowships awarded?**

A fellowship awarded under this part may not exceed the average national salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary.

(Authority: 20 U.S.C. 1113b(a)(2))

**§ 237.5 For what purposes may a fellow use an award?**

Christa McAuliffe fellows may use fellowships awarded under this part for projects to improve education including:

(a) Sabbaticals for study or research directly associated with objectives of this part, or academic improvement of the fellows.

(b) Consultation with or assistance to LEAs, private schools, or private school systems other than those with which the fellow is employed or associated.

(c) Development of special innovative programs.

(d) Model teacher programs and staff development.

(Authority: 20 U.S.C. 1113b(b))

**§ 237.6 What priorities may the Secretary establish?**

(a) The Secretary may annually establish, as a priority, one or more of the projects listed in § 237.5.

(b) The Secretary announces any annual priorities in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1113d(a))

**§ 237.7 What regulations apply?**

The following regulations apply to the Christa McAuliffe Fellowship Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 77 (Definitions That Apply to Department Regulations).

(b) The regulations in this Part 237.

(Authority: 20 U.S.C. 1113d(a))

**§ 237.8 What definitions apply?**

(a) The following definitions apply to terms used in this part:

"Act" means the Higher Education Act of 1965, as amended.

"Fellow" means a fellowship recipient under this part.

"Fellowship" means an award made to a person under this part.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

EDGAR
Elementary school
Private
Public
Secondary school
Local educational agency
State educational agency
Secretary
Department

(Authority: 20 U.S.C. 1113d(a))

## Subpart B—How Does One Apply For An Award?

**§ 237.10 How does an individual apply for a fellowship?**

(a) To apply for a fellowship under this part, an individual must submit an application containing a proposal for a fellowship project as described in § 237.5, indicating the extent to which the applicant wishes to continue current teaching duties.

(b) The applicant shall provide this application to the appropriate LEA for comment prior to submission to the statewide panel for the State within which the proposal project is to be conducted as described in § 237.20.

(c) The applicant shall submit the application to the statewide panel within the deadline established by the panel.

(Authority: 20 U.S.C. 1113c, 1113d(a))

## Subpart C—How Are Fellows Selected?

**§ 237.20 What are statewide panels?**

(a) Recipients of Christa McAuliffe Fellowships in each State are selected by a seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency (SEA), or by an existing panel designated by the chief State elected official and approved by the Secretary.

(b) The statewide panel must be representative of school administrators, teachers, parents, and institutions of higher education.

(Authority: 20 U.S.C. 1113c)

**§ 237.21 What are the responsibilities of a statewide panel?**

(a) Each statewide panel has the responsibility for—

(1) Establishing its own operating procedures regarding the fellowship selection process; and

(2) Disseminating information and application materials to the LEAs, private schools, and private school systems regarding the fellowship competition.

(b) Each panel may impose reasonable administrative requirements for the submission, handling, and processing of applications.

(c) Each statewide panel must consult with the appropriate LEA in evaluating proposals from applicants.

(d) In their applications to the statewide panel, individuals must include—

(1) Two recommendations from teaching peers;

(2) A recommendation from the principal; and

(3) A recommendation from the superintendent on the quality of the proposal and its educational benefit.

(3) A statewide panel may establish additional criteria, consistent with the

Act, for the award of fellowships in its area as it considers appropriate.

(f) A statewide panel shall submit to the Secretary its selections for recipients of fellowships under this part within the schedule established by the Secretary.

(Authority: 20 U.S.C. 1113d)

## Subpart D—What Conditions Must Be Met By Fellows?

### § 237.30 What is the duration of a fellowship?

An individual may receive a Christa McAuliffe Fellowship under this program for up to 12 months.

(Authority: 20 U.S.C. 1113d(a))

### § 237.31 May a fellowship be awarded for two consecutive years?

A Christa McAuliffe fellow may not receive an award for any two consecutive years.

(Authority: 20 U.S.C. 1113b(a)(2))

### § 237.32 What records and reports are required from fellows?

Each fellow shall keep any records and submit any reports that are required by the Secretary.

(Authority: 20 U.S.C. 1113d(a))

### § 237.33 What is the service requirement for a fellowship?

A fellow must return to a teaching position in the fellow's current LEA, private school, or private school system for at least two years following the completion of the fellowship.

(Authority: 20 U.S.C. 1113b(a)(2), 1113d)

### § 237.34 What are the requirements for repayment of the fellowship?

(a) If a fellow does not carry out the activities described in the approved application or does not comply with § 237.33, the fellow shall make repayment in accordance with this section.

(b) The Secretary prorates the amount a fellow is required to repay based on the length of time the fellow carried out the fellowship activities, and held a teaching position in accordance with § 237.33 compared to the length of time that would have been involved if the fellow had fully met these requirements.

(Authority: 20 U.S.C. 1113e)

[FR Doc. 87-10945 Filed 5-12-87; 8:45 am]

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**H.R. 240/Pub. L. 100-35**

To amend the National Trails System Act to designate the Santa Fe Trail as a National Historic Trail. (May 8, 1987; 101 Stat. 302; 1 page) Price: $1.00

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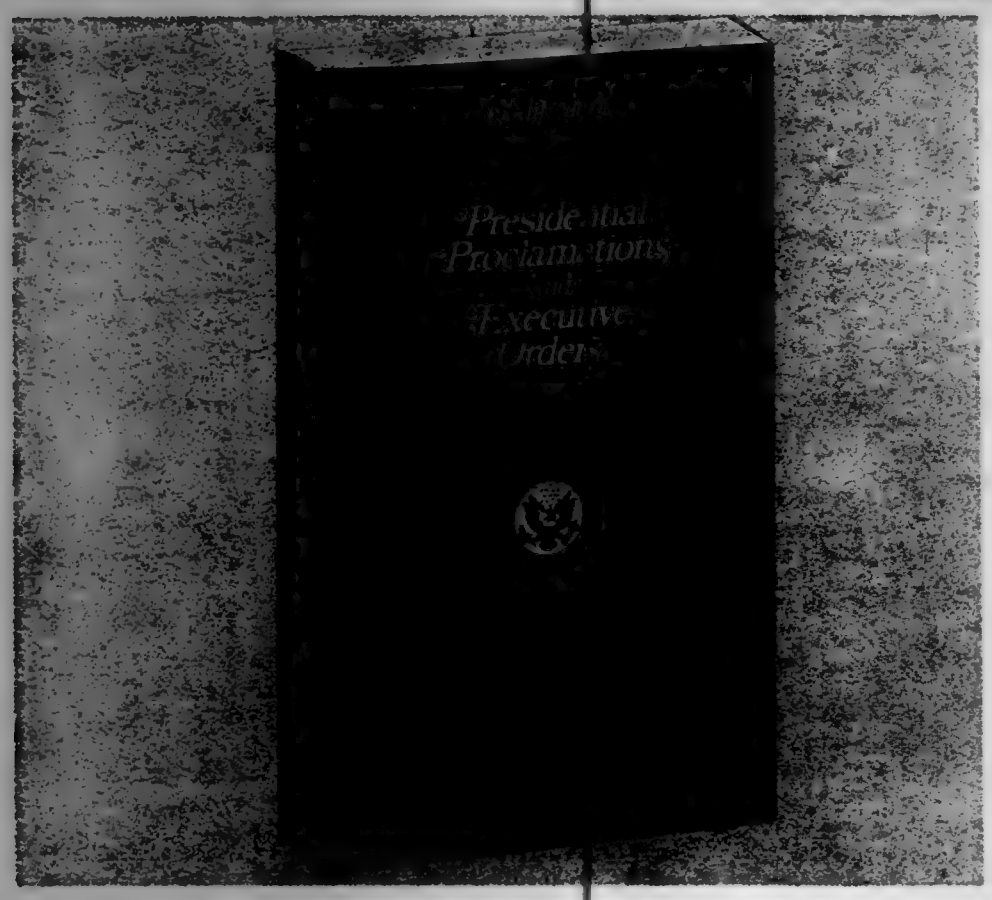


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# federal register

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**WHEN:** June 9, at 9 a.m.
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**RESERVATIONS:** Gertrude E. Belton, 202-523-5237

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**WHEN:** July 8, at 9 a.m.
**WHERE:** Room 204A, Everett McKinley Dirksen Federal Building, 219 S. Dearborn Street, Chicago, IL.
**RESERVATIONS:** Call the Chicago Federal Information Center, 312-353-0339.

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**WHEN:** July 15, at 9 a.m.
**WHERE:** Main Auditorium, Federal Building, 10 Causeway Street, Boston, MA.
**RESERVATIONS:** Call the Boston Federal Information Center, 617-565-8120

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# Presidential Documents

Title 3—

The President

**Proclamation 5653 of May 12, 1987**

## Just Say No to Drugs Week, 1987

By the President of the United States of America

A Proclamation

In recent years, the American people have begun to work together and make significant progress against the intolerable effects of illegal drugs on our way of life. The possibility of realizing our dream of a drug-free generation of American youth took a giant step forward when young people started to join together and organize around the battle cry of JUST SAY NO TO DRUGS.

Today, Just Say No Clubs are setting a new standard of leadership with young people who want to be drug-free. The clubs are an expression of the concerns and the responsibility of young Americans—a positive, constructive step against the tyranny of drugs in schools and communities. The demand to be drug-free is one all of us should heed in our homes and workplaces; our Nation has a commitment to the safety and well-being of young people, and much remains to be done if we are to have a drug-free society that refuses to tolerate the presence and use of illegal drugs. The heritage and the promise of America bid all of us to live up to our responsibility to say no to illegal drugs and alcohol abuse.

I salute the young people who demonstrate their common sense by saying no to drugs and who exhibit leadership by encouraging their friends to do the same. I urge every American to support and emulate the commendable actions of these young people who give us the hope that our next generation may be drug-free.

To recognize the contributions of these young Americans, the Congress, by Senate Joint Resolution 124, has designated the week of May 10 through May 16, 1987, as "Just Say No to Drugs Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 10 through May 16, 1987, as Just Say No to Drugs Week. I call upon officials at every level of government, civic groups, the clergy, educators, the media, and all citizens to support our youth in observing this week with appropriate programs, ceremonies, and activities. I also ask all Americans to make a personal commitment to Just Say No to illegal drugs and alcohol abuse as they participate in activities during this week.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-11225
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# Presidential Documents

**Proclamation 5654 of May 12, 1987**

## National Osteoporosis Awareness Week, 1987

**By the President of the United States**

**A Proclamation**

Every American should know the seriousness of osteoporosis and the need to find ways to cure and prevent it. This disease causes bone mass to decrease, which weakens bones and makes them susceptible to fracture. Osteoporosis afflicts 15 to 20 million Americans, most of them women. It affects half of the women in the United States age 45 or older, and 90 percent of women over 75—bringing pain, decreasing mobility, hampering daily functions, and sometimes ending independence. Every year more than a million Americans suffer fractures because of this disease, most often of the spine, wrists, and hips.

Because the number of elderly Americans continues to rise, so does the incidence of osteoporosis. Fortunately, private organizations and the Federal government are conducting research into this malady. Together they are making new research findings and developing new approaches to prevention, diagnosis, and treatment. In this way, working together, we can discover the causes and cure of this major public health problem and eliminate or diminish it.

The Congress, by Senate Joint Resolution 55, has designated the week of May 10 through May 16, 1987, as "National Osteoporosis Awareness Week," and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of May 10 through May 16, 1987, as National Osteoporosis Awareness Week. I urge the people of the United States and educational, philanthropic, scientific, medical and health care organizations, and professionals to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-11226
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# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 842**

## Federal Employees Retirement System—Basic Annuity; Credit for Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rulemaking with request for comment.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim rules implementing the provisions of the Federal Employees Retirement System (FERS) Act of 1986 governing creditable service and service credit deposits. These rules establish the conditions for allowing credit for both military and civilian service and for making deposits under FERS.

**DATES:** Interim rules effective January 1, 1987; comments must be received on or before July 13, 1987.

**ADDRESSES:** Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884; Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John E. Landers, (202) 632–5560.

**SUPPLEMENTARY INFORMATION:** The FERS Act of 1986, Pub. L. 99–335, effective January 1, 1987, created a new retirement system to supplement social security coverage for Federal employees who were hired after 1983 and for others who may elect to come under it.

These interim regulations implement 5 U.S.C. 8411 establishing the conditions under which OPM will grant credit for service under FERS, except as otherwise provided under title III of Pub. L. 99–335, which sets forth the rules for employees who are not automatically covered by FERS but elect to join the new system. These elections and the rights of electing individuals will be addressed in upcoming OPM regulations creating a new Part 846 (Elections by Employees Covered by Civil Service Retirement System) of Title 5, Code of Federal Regulations.

### I. General

The basic concept of service credit under FERS is that, with certain exceptions explained below, all Federal Government service (both civilian and military) may be credited. Generally, service cannot be credited unless it is covered by contributions to the system. Beginning in 1989, civilian service not subject to retirement deductions at the time it is performed is not creditable.

Refunds under FERS permanently extinguish service credit. Employees who leave Federal service before retirement are generally eligible for a refund of their retirement deductions and deposits. The FERS law states at 5 U.S.C. 842(a) that with regard to FERS basic annuity, disability, and survivor benefits, payment of the refund before retirement "voids all annuity rights" based on the service included in the refund. Under the Civil Service Retirement System (CSRS) (subchapter III of chapter 83 of title 5, United States Code) the law contains similar language at 5 U.S.C. 8342(a): the refund "voids all annuity rights . . . until the employee . . . is reemployed in the service subject to this subchapter." However, unlike CSRS, there is no provision in FERS permitting an employee to redeposit a refund upon reemployment. The FERS provision voiding "all annuity rights" when read in the context of the general structure of FERS (generally barring credit for a period of service unless it is covered by contributions to the system and not allowing redeposit of a FERS refund) requires that no credit be granted for any purpose under FERS basic benefit provisions if a refund of deductions and deposits has been paid under FERS.

Section 843.202(b) of Title 5, Code of Federal Regulations (52 FR 2075, January 16, 1987) states that a refund of deductions and prior deposits under 5 U.S.C. 8424(a) prevents the service involved from ever again becoming creditable for any purpose under FERS. The service cannot be used in computing an annuity nor for meeting the length of service requirements for entitlement to annuity. This bar to credit applies to refunded military service deposits as well as civilian service deposits, except as otherwise provided under title III of Pub. L. 99–335 (concerning employees who elect FERS coverage). Section 842.308 of these interim regulations provides special refund rules for employees who take a refund of deductions and deposits made before becoming subject to FERS. Under these rules, a partial refund can be paid (leaving unrefunded the amount equivalent to a FERS service credit deposit) so as to allow credit under FERS to be retained.

No service credit is allowed for a period of formal separation from service, except for a period of separation of less than 4 days and a period of separation during which an individual was receiving Federal workers' compensation benefits for on-the-job injury or disease, provided the individual returns to duty in the Government. Also, service credit cannot exceed calendar time, even if an employee has more than one Federal appointment.

Any period of time for which service credit under chapter 84 of title 5, United States Code, is specifically allowed by a provision of law may be credited even though the individual does not meet the FERS definition of an employee. This rule does not apply to provisions of law that provide that an individual who does not otherwise meet the definition of an "employee" under FERS (5 U.S.C. 8401(11)) may be covered under subchapter III of chapter 83 of title 5, United States Code. For example, section 205(d)(2) of Pub. L. 98–620 states that employees of the State Justice Institute will be considered employees of the United States "solely" for the purposes of the Federal Employees Compensation Act, the Civil Service Retirement System (subchapter III of chapter 83 of title 5, United States Code), and Federal employees health and life insurance laws. Statutes such as this do not grant coverage under 5 U.S.C. chapter 84; and accordingly, these "non-Federal employees," who are covered by CSRS, cannot be covered under FERS.

Other laws specifically address FERS retirement coverage for non-Federal employees. Employees of the U.S. Postal Service are covered by FERS under section 306 of Pub. L. 99–335. Two recent

provisions of law, title VI of Pub. L. 99–500, the Metropolitan Washington Airports Act of 1986, and section 111 of the same law specifically state that certain non-Federal employees may be covered by FERS. These provisions pertain to certain former Federal employees working for Washington National or Dulles airports at the time the airports are transferred to a newly created Airports Authority (a non-Federal entity) and certain former employees of the House of Representatives who lose their Federal jobs and are employed by a private contractor. Individuals benefiting under these provisions will have the opportunity to become covered by FERS. See § 842.303(b) of these interim regulations concerning another recent statute that provides service credit under FERS for certain service during World War II performed by individuals who were not Federal employees.

**II. Civilian Service**

FERS credit is granted under § 842.304 for the following categories of civilian service with the Federal Government and the U.S. Postal Service:

(1) Service performed after December 31, 1986, subject to FERS salary deductions (5 U.S.C. 8411(b)(1));

(2) Service performed before 1989 (other than service in paragraph (1) above) that would be creditable for an employee subject to CSRS, including service during 1984, 1985, or 1986 that was subject to 1.3 percent salary deductions under the Federal Employees Retirement Contributions Temporary Adjustment Act of 1983 (5 U.S.C. 8411(b)(2) and (3));

(3) Service creditable under the Foreign Service Pension System if the employee waives credit for the service under that System and makes a FERS deposit (5 U.S.C. 8411(b)(4));

(4) Periods of leave without pay, up to 6 months per calendar year. The 6-month limit does not apply to a period of leave without pay while performing military service or while receiving workers' compensation benefits under the Federal Employees Compensation Act (5 U.S.C. 8411(d));

(5) Certain other periods of leave without pay while serving as an officer or employee of an employee organization (5 U.S.C. 8411 (e)); and

(6) Certain periods while an employee is assigned on detail or leave without pay to a State or local government (5 U.S.C. 3373).

Under section 1 of Pub. L. 99–638, certain service performed for the Cadet Nurse Corps during World War II (not previously creditable) is made creditable. Section 842.304(b) of these interim regulations establishes the conditions under which this service may be credited.

**III. Military Service**

Military service is generally creditable under FERS. (See § 842.306 of these regulations.) "Military service" means honorable active service in the armed forces; the commissioned corps of the Public Health Service after June 30, 1960; the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961; and National Guard service when ordered to active duty in the service of the United States. Only service performed before the separation on which title to annuity is based is creditable.

Military service performed after 1956 cannot be credited unless the employee deposits 3 percent of military basic pay paid under 37 U.S.C. 204. The deposit will include interest if paid more than 3 years after the employee first becomes covered by FERS. (See § 842.307.) No deposit is required for military service performed before 1957.

No credit is allowed for any period of military service used in the computation of military retired pay (see exceptions to this rule below) unless the retiree waives receipt of the military retired pay. The retiree does not have to waive military retired pay if it is awarded —

(a) Based on a service-connected disability either (1) incurred in combat with an enemy of the United States; of (2) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by 38 U.S.C. 301; or

(b) Under 10 U.S.C. Chapter 67, relating to reservist service.

Section 502 of Pub. L. 99–556, approved October 27, 1986, amended 5 U.S.C. 8411(c) to allow OPM to credit military service in the computation of survivor annuity even though the employee, a military retiree, had not waived military retired pay. The survivor, however, may elect not to credit the military service. If the survivor's annuity includes military service credit, it is reduced by the amount of the survivor's benefits (other than a child's benefits) payable under the uniformed service retirement system that are based on the military service included in the FERS annuity. This amendment applies only in the event of a death in service. If the death occurs after the date of separation from service, military service that formed the basis for a military retired pay award cannot be included in the computation of a survivor annuity, if any, unless the former employee had waived the military retired pay effective before the date of death.

For cases involving a death in service before the 180th day after enactment of Pub. L. 99–556, subsection (c)(2) of section 502 of that law provides that the "recomputation" of an existing survivor annuity benefit to add military service credit will be delayed until 2 months after OPM receives the survivor's application to have the annuity recomputed. However, these interim regulations make no distinction between cases involving a death in service before the 180th day after enactment of Pub. L. 99–556 and those involving a later death. Because recomputation of an earlier benefit is not an issue for FERS cases, military service will be considered creditable from the date of death in FERS cases, rather than requiring an unintended 2-month delay. The distinction between the earlier and later deaths will be applicable only in CSRS cases.

**IV. Deposits**

Allowable deposits for civilian and military service are addressed in §§ 842.305 and 842.307. Deposits are generally allowed for nondeduction civilian service performed before 1989 (5 U.S.C. 8411(f)(2)) and service previously covered by deductions or deposits if a refund was paid before the employee became subject to FERS, that is, if the refund was paid under CSRS (5 U.S.C. 8342). If the refund is paid after the employee becomes subject to FERS, there is no provision allowing a redeposit because 5 U.S.C. 8411(f)(1), the provision of FERS that permits deposits for a period of service previously covered by CSRS, applies only if the refund was paid under CSRS.

All FERS deposits for civilian service equal 1.3 percent of basic pay, plus interest, and are paid to OPM directly by the employee. FERS deposits for military service performed after 1956 equal 3 percent of military basic pay and include interest if the deposit is not completed within 3 years from the date the employee first became subject to FERS. Military service deposits are paid to the employing agency and forwarded to OPM.

**V. Refunds of CSRS Deductions and Deposits**

Some employees in FERS have past civilian service covered by full (usually 7%) CSRS deductions, deposits, or redeposits. Others have made 7 percent deposits for military service performed after 1956. Unless these employees are eligible for a CSRS component of an eventual FERS annuity (that is, unless

they transfer to FERS having at least 5 years of civilian service, not counting service simultaneous covered by both CSRS and social security), their past civilian and military service is covered under FERS rules. These employees may receive a partial refund of the deductions, deposits, or redeposits paid at the higher CSRS rate.

Section 842.308 of these interim regulations governs the provisions granting refunds of deductions and deposits for civilian and military service that were made under CSRS rules or before the employee became subject to FERS. In the interest of efficiency, the regulations establish that, in the case of a current employee who is eligible to receive the refund, only the difference between the amount to the employee's credit and the amount of a FERS deposit for the service will be paid. Separated employees who apply for a refund of deductions and deposits for this service may elect to receive the full amount to their credit or take only the amount over and above the amount needed to receive FERS credit for the service. If the employee receives the full amount, the effect is to extinguish forever future credit for the service covered by the refund. Either OPM or the employing agency will pay these refunds, depending on the location of the necessary records at the time the refund application is filed.

*Waiver of notice of proposed rulemaking and 30-day Delay of Effective Date*

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. Publication of proposed rulemaking would be impractical. The provisions being implemented were effective January 1, 1987, and retirement and survivor benefits under FERS are already becoming payable. These regulations are needed to specify the amount of service that will be included for entitlement purposes and in the benefit computations.

*E.O. 12991, Federal Regulation*

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

*Regulatory Flexibility Act*

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees and retirees.

**List of Subjects in 5 CFR Part 842**

Administrative practice and procedure, Air traffic controllers, Claims, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is amending Part 842 of Title 5 of the Code of Federal Regulations to add Subpart C to read as follows:

## PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

* * * * *

### Subpart C—Credit for Service

Sec.

842.301 Purpose.
842.302 Definitions.
842.303 General.
842.304 Civilian service.
842.305 Deposits for civilian service.
842.306 Military service.
842.307 Deposits for military service.
842.308 Refunds of deductions and service credit deposits made before becoming subject to FERS.

### Subpart C—Credit for Service

**Authority:** 5 U.S.C. 8461(g).

**§ 842.301 Purpose.**

This subpart sets forth the provisions governing credit for service under the Federal Employees Retirement System (FERS), 5 U.S.C. 8411. Except as provided by section 302 of the Federal Employees' Retirement System Act of 1986, Pub. L. 99–335 (the special provisions for employees who elect to transfer to FERS), service not creditable under this subpart is not creditable either for the purposes of determining eligibility to an annuity or in computing the rate of an annuity benefit under subchapter II (basic annuity), IV (survivor annuity), or V (disability annuity) of chapter 84 of title 5 of the United States Code.

**§ 842.302 Definitions.**

"Cadet Nurse Corps" means any training as a student or graduate nurse under a plan approved under section 2 of the Act of June 15, 1943 (57 Stat. 153).

"Employee" means an employee as defined by 5 U.S.C. 8401(11).

"FERS" means the Federal Employees Retirement System as established under chapter 84 of title 5, United States Code.

"Government" means the Federal Government and Gallaudet College.

"Member" means a Member of Congress as defined by 5 U.S.C. 8401(20).

"Military service" means honorable active service in the armed forces of the United States; in the commissioned corps of the Public Health Service after June 30, 1960; or in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961. "Military service" does not include service in the National Guard except when ordered to active duty in the service of the United States.

"Survivor" means a current spouse, a child or a former spouse who is entitled to an annuity in accordance with Part 843 of this chapter.

**§ 842.303 General.**

(a)(1) Except as provided in paragraph (a)(2) of this section, no service credit is allowed for a period of separation from service.

(2) Service credit is allowed for a period of separation of less than 4 days and for a period of separation during which an individual was receiving benefits under subchapter I of chapter 81 of title 5, United States Code, provided the individual returns to duty in the Government subject to FERS.

(b) Service credit cannot be granted in excess of actual calendar time from the date of appointment to the date of separation from service.

(c) Any period of time for which service credit under chapter 84 of title 5, United States Code, is specifically allowed by a provision of law is creditable under this subpart subject to any applicable deposit requirements.

**§ 842.304 Civilian service.**

(a) Except as otherwise provided under title III of the Federal Employees' Retirement System Act of 1986, an employee or Member is entitled to credit for all purposes under FERS for a period of civilian service with the Government or the U.S. Postal Service—

(1) Performed after December 31, 1986, which is covered service under Subpart A of this part and for which deductions required under 5 U.S.C. 8422(a) have not been refunded;

(2) That, other than service under paragraph (a)(1) of this section—

(i) Was performed before 1989;

(ii) Would have been creditable under 5 U.S.C. 8332 if the employee or Member were subject to subchapter III of chapter 83 of title 5, United States Code, without regard to any deposit, redeposit, or coverage requirement under that subchapter; and

(iii) Is covered by deductions or a deposit required by § 842.305 and the deductions or deposit have not been refunded after the employee or Member first became subject to FERS;

(3) That was creditable under subchapter II of chapter 8 of title 1 of the Foreign Service Act of 1980 (Foreign Service Pension System), provided—

(i) The employee or Member waives credit for the service under the Foreign Service Pension System; and

(ii) The employee or Member makes the deposit required by § 842.305, and the deposit is not refunded;

(4) While on leave of absence without pay, subject to a limit of 6 months per calendar year, except that the 6-month limit does not apply while—

(i) Performing military service; or

(ii) Receiving benefits under subchapter I of chapter 81 of title 5, United States Code;

(5) While on approved leave without pay granted to serve as a full-time officer or employee of an organization composed primarily of employees, as defined by section 8331(1) or 8401(11) of title 5, United States Code, provided—

(i) The employee elects, within 60 days after the commencing date of leave without pay, to pay to the employing agency the retirement deductions and agency contributions that would be applicable if the employee were in a pay status;

(ii) Payments of the deductions and contributions begin on a regular basis within 60 days after the commencing date of leave without pay; and

(iii) Payments of the required deductions and contributions are completed and not refunded; and

(6) While assigned on detail or leave without pay to a State or local government under 5 U.S.C. 3373, provided—

(i) The normal cost percentage (under Subpart D of Part 841 of this chapter) for the employee (who is deemed to continue in the same normal cost percentage category as applicable on the date of the assignment) is remitted to OPM for each pay period during the assignment; and

(ii) The employee, or, if he or she dies without making an election, his or her survivor, does not elect to receive benefits under any State or local government retirement law or program, which OPM determines to be similar to FERS.

(b) *Cadet Nurse Corps.* (1) Service credit is allowed under Pub. L. 99-638 for a period of service performed with the Cadet Nurse Corps provided—

(i) The service totaled 2 years or more;

(ii) The individual submits an application for service credit to OPM no later than January 10, 1988;

(iii) The individual is employed by the Federal Government in a position subject to subchapter III of chapter 83 of title 5, United States Code (other than 5 U.S.C. 8344) or chapter 84 of that title (other than 5 U.S.C. 8468) at the time he or she applies to OPM for service credit under this provision; and

(iv) The individual makes a deposit for the service in accordance with § 842.305(g) before the date of separation from service on which the individual's entitlement to annuity is based.

**§ 842.305 Deposits for civilian service.**

(a) *Eligibility—current and former employees or Members.* An employee or Member subject to FERS and a former employee or Member who is entitled to an annuity may make a deposit for civilian service described under paragraphs (a)(2) and (a)(3) of section 842.304 upon application to OPM in a form prescribed by OPM. A deposit for civilian service cannot be made after adjudication of the employee's or Member's application for annuity becomes final under § 842.609.

(b) *Eligibility—survivors.* If an employee or Member was, at the time of death, eligible to make a deposit, the employee's survivor may make the deposit for civilian service. A deposit under this paragraph cannot be made after adjudication of the survivor's application for benefits becomes final, which is 30 days after the date of OPM's notice to the survivor of the annuity rates with and without making the deposit.

(c) *Distinct period of service.* A deposit is not considered to have been made for any distinct period of service unless the total amount due for the period is paid in full. A distinct period of civilian service for this purpose is a period of civilian service that is not interrupted by a break in service of more than 3 days.

(d) *Amount of deposits.* The amount of a deposit for a period of service under § 842.304(a)(2) equals 1.3 percent of the basic pay for the service, plus interest. The amount of a deposit for a period of service under § 842.304(a)(3) equals the amount that would have been deducted from pay under 5 U.S.C. 8422(a) had the employee been subject to FERS during the service, plus interest.

(e) *Interest.* (1) Interest is charged at the rate of 4 percent a year through December 31, 1947; 3 percent a year beginning January 1, 1948, through December 31, 1984; and thereafter at a rate as determined by the Secretary of the Treasury for each calendar year that equals the overall average yield to the Civil Service Retirement and Disability Fund (the Fund) during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under 5 U.S.C. 8348 (c), (d), and (e).

(2) The computation of interest is on the basis of 30 days to the month. Interest is computed for the actual calendar time involved in each case; but, whenever applicable, the rule of average applies.

(3) Interest is computed from the mid-point of each service period included in the computation or from the date of a refund. The interest accrues annually on the outstanding portion, and is compounded annually, until the portion is deposited. Interest is charged to the date of deposit or commencing date of annuity, whichever is earlier, but is not charged for a period of separation from the service that began before October 1, 1956.

(f) *Forms of deposit.* Deposits may be made in a single lump sum or in installments not smaller than $50 each.

(g) *Cadet Nurse Corps.* (1) Upon receiving an application for service credit with the Cadet Nurse Corps, OPM will determine whether all the conditions for creditability (§ 842.304(b)) have been met; compute the deposit, including interest; and advise the employing agency and the employee of the total amount of the deposit due. The rate of basic pay for this purpose is deemed to be $15 per month for the first 9 months of study; $20 per month for the 10th through the 21st months of study; and $30 per month for any month in excess of 21 months. Interest is computed in accordance with paragraph (e) of this section.

(2) The employing agency must establish a deposit account showing the total amount due and a payment schedule (unless deposit is made in one lump sum) to record the date and amount of each payment.

(3) If the individual cannot make payment in one lump sum, the employing agency must accept installment payments (by allotments or otherwise). The employing agency, however, is not required to accept individual checks in amounts less than $50.

(4) Payments received by the employing agency must be remitted to OPM immediately for deposit to the Civil Service Retirement and Disability Fund.

(5) Once the employee's deposit has been paid in full or closed out, the employing agency must submit the

documentation pertaining to the deposit to OPM in accordance with instructions issued by OPM.

**§ 842.306 Military service.**

(a) Except as provided in paragraph (b), and unless otherwise provided under Title III of the Federal Employees' Retirement System Act of 1986, an employee's or Member's military service is creditable if it was performed—

(1) Before January 1, 1957; or

(2) After December 31, 1956, subject to payment, before separation from service, of the deposit required by § 842.307.

(b) Credit for a period of military service is not allowed if the employee or Member is receiving military retired pay for such period awarded for reasons other than—

(1) Service-connected disability incurred in combat with an enemy of the United States;

(2) Service-connected disability caused by an instrumentality of war and incurred in the line of duty during a period of war (within the meaning of chapter 11 of Title 38, United States Code); or

(3) Retirement under chapter 67 of Title 10, United States Code.

(c) When adjudicating annuity claims, OPM will accept determinations made by the agency that authorized military retired pay concerning—

(1) The effective date of a waiver of military retired pay;

(2) Whether an individual's military retired pay was awarded for any of the reasons mentioned under paragraph (b) of this section; and

(3) Whether a period of military service forms the basis for military retired pay.

(d)(1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, the computation of a survivor's annuity includes credit for any military service allowable under paragraph (a) of this section.

(2) If the separated employee (as defined in § 843.102 of this chapter) was awarded military retired pay, died after the date of separation from civilian service, and did not waive military retired pay effective before the date of death, military service upon which the military retired pay was based is not creditable.

(3) If the survivor of a deceased employee who had been awarded military retired pay files, in a form prescribed by OPM, an election not to have a period of military service included in the computation of survivor benefits, that period of military service is not included in the computation of survivor benefits.

**§ 842.307 Deposits for military service.**

(a) *Eligibility to make a deposit.* (1) An employee or Member subject to FERS may make a deposit for any distinct period of military service by filing an application in a form prescribed by OPM.

(2) An application to make a deposit is filed with the appropriate office in the employing agency, or, for Members and Congressional employees, with the Secretary of the Senate, or the Clerk of the House of Representatives, as appropriate.

(3) An employee's or Member's deposit for military service must be completed before separation from service. If a deceased employee or Member was, at the time of death, eligible to make a deposit, the employee's or Member's survivor may make the deposit in one lump sum to the former employing agency, the Secretary of the Senate or the Clerk of the House of Representatives, before OPM completes adjudication of the survivor annuity application. A person who was eligible to make a deposit for military service but failed to complete the deposit within the time limits provided in this paragraph, may complete the deposit in a lump sum within the time limit set by OPM when it rules that an administrative error has been made.

(b) *Amount of deposit.* (1) The amount of a deposit for military service equals 3 percent of the basic pay for the service under 37 U.S.C. 207, or an estimate of the basic pay (see paragraph (c)(1)(iii) of this section), plus interest, unless interest is not required under paragraph (b)(4) of this section.

(2) Interest is charged at a rate as determined by the Secretary of the Treasury for each calendar year that equals the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary during such fiscal year under 5 U.S.C. 8348(c), (d), and (e).

(3) The computation of interest is on the basis of 30 days to the month. Interest is computed for the actual calendar time involved in each case; but whenever applicable, the rule of average applies.

(4) Interest is computed from the mid-point of each full period of service included in the computation. The interest accrues annual on the outstanding portion beginning on the second anniversary of the employee's or Member's beginning date of coverage under FERS, and is compounded annually, until the portion is deposited. Interest is charged to the date of deposit. No interest will be charged if the deposit is completed before the end of the year after interest begins. For example, if an employee becomes subject to FERS on March 1, 1988, interest begins to accrue on March 1, 1990; however, no interest would be included in the deposit due if the deposit is completed by February 28, 1991.

(c) *Processing deposit applications and payments.* (1) The agency, Clerk of the House of Representatives, or Secretary of the Senate will have the employee or Member—

(i) Complete an application to make deposit;

(ii) Provided a copy of his or her DD Form 214 or its equivalent to verify the period(s) of service; and

(iii) Provide copies of all official military pay documents, as identified in instructions issued by OPM, which show the exact basic pay he or she received for full period of service; or, if such evidence is not available, obtain a statement of estimated earnings from the appropriate branch of the military service and submit the statement.

(2) Upon receipt of the application, the DD Form 214, and either the evidence of exact basic pay or the statement of estimated earnings, the agency, Clerk of the House of Representatives, or Secretary of the Senate will establish a deposit account showing—

(i) The total amount due, including interest, if any;

(ii) A payment schedule (unless deposit is made in a lump sum); and

(iii) The date and amount of each payment.

(3) Deposits may be made in a single lump sum or in installments. The agency, Clerk of the House of Representatives, and Secretary of the Senate are not required to accept installment payments in amounts less than $50.

(4) Payments received by the employing agency, the Clerk of the House of Representatives, or the Secretary of the Senate will be remitted to OPM for deposit to the Fund in accordance with payroll office instructions issued by OPM.

(d) *Distinct periods of service.* A deposit is not considered to have been made for any distinct period of service unless the total amount due for the period is paid in full. A "distinct period" for this purpose is the total years, months, and days from the date of entry on active duty (or from January 1, 1957, if later) to the date of final discharge for enlisted military personnel, or to the date of final release from active duty for officers and reservists. A "distinct period" also includes consecutive periods of service where there is no break in service, but does not include any lost time.

**§ 842.309 Refunds of deductions and service credit deposits made before becoming subject to FERS.**

(a) An employee or Member who, while currently employed, is eligible under 5 U.S.C. 8342(a) for a refund of deductions or deposits (relating to civilian service performed before becoming subject to FERS and totaling less than 5 years, not counting service after 1983 that was covered simultaneously by both CSRS and social security) that were previously made for a period of service performed before becoming subject to FERS is eligible for a refund, upon proper application in a form prescribed by OPM. The amount of this refund is the difference between—

(1) The amount of deductions and deposits to his or her credit for such service, plus any interest computed in accordance with 5 U.S.C. 8331(8): and

(2) The amount of the deposit required for such service under § 842.305.

(b) A former employee or Member who is eligible under 5 U.S.C. 8342(a) for a refund of deductions or deposits covering civilian service of the types described in paragraph (a) of this section is eligible for a refund, upon proper application in a form prescribed by OPM. The individual may irrevocably elect a refund, with resepct to this service, of either—

(1) The amount provided under paragraph (a) of this section; or

(2) The full amount of deductions and deposits to his or her credit for such service, plus any interest computed in accordance with 5 U.S.C. 8331(8). If the full amount of deductions and deposits is elected by the former employee or Member, no future deposit for the service may be made.

(c) An employee or Member, who, before becoming subject to FERS, made a deposit for military service is eligible upon proper application in a form prescribed by OPM, while currently employed, for a refund of the amount deposited, excluding interest, to the extent that this amount exceeds the amount of the deposit required for such service under § 842.307.

(d) A former employee or Member who, before becoming subject to FERS, made a deposit for military service is eligible for a refund, upon proper application in a form prescribed by OPM. The former employee or Member may irrevocably elect to receive either—

(1) The amount provided under paragraph (c) of this section; or

(2) The full amount deposited and remaining to the individual's credit. If the full amount of the deposit is elected, no future deposit for the service may be made.

(e) If the current employing agency holds all necessary records pertaining to the amounts in question under paragraph (a) or (c) of this section, the current employing agency will pay the refund in accordance with OPM instructions. Otherwise, OPM will pay the refund.

[FR Doc. 87-10994 Filed 5-13-87; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 278

[Amdt. No. 272]

## Food Stamp Program, the Food Security Act of 1985; Fees for Coupon Redemption

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Security Act of 1985 (Pub. L. 99-198) includes numerous provisions which amend the Food Stamp Program. This rule finalizes the interim rule which implemented section 1523 of Pub. L. 99-198 prohibiting financial institutions from imposing fees for redemption of properly submitted food stamp coupons. The provision was enacted to foreclose the possibility that the practice of some financial institutions of charging fees for certain deposits of food stamp coupons could result in retail food stores withdrawing from and thus adversely affecting the Food Stamp Program.

**DATE:** This action is effective retroactive to April 11, 1986, with implementation by financial institutions no later than April 21, 1986.

**FOR FURTHER INFORMATION CONTACT:** Emory Rice, Supervisor, Retailer Participation and Program Litigation Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. Phone (703) 756-3427.

**SUPPLEMENTARY INFORMATION:**

### Classification

*Executive Order 12291*

The Department has reviewed this rule under Executive Order 12291 and Secretary's memorandum No. 1512-1. The rule will affect the economy by less than $100 million a year. The rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions.

There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets. Therefore, the Department has classified the rule as "nonmajor".

*Executive Order 12372*

The Food Stamp Program is listed in the Catolog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this proposal will not have a significant negative impact on a substantial number of small entities.

*Paperwork Reduction Act*

This final rulemaking does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paper Reduction Act of 1980 (44 U.S.C. 3507).

### Background

*Fees for Coupon Redemption—§ 278.5*

The Food Security Act of 1985 (Pub. L. 99-198, section 1523), enacted December 23, 1985, prohibits a financial institution from imposing or collecting a fee or charge for the redemption of food coupons properly presented by a retail grocery.

On April 11, 1986, an interim rule was published at 51 FR 12497 to implement this provision of law. The nondiscretionary of law cannot be affected by public comments. However, since the Department believed that an opportunity for public comment could result in improved and simplified administration of the rule, it was published as an interim rule effective upon publication with financial institutions required to implement its provisions on April 21, 1986. A sixty day comment period was provided.

A total of thirty-eight comment letters were received during the comment period. Two commenters stated that they agreed with the rule as written.

Many of the letters contained more than one comment.

Twenty-seven comments suggested that the rule is unfair to financial institutions. Eight commenters suggested that financial institutions be allowed to charge the same fee for coupon deposits that they charge for cash deposits. Since section 1523 of the Food Security Act specifically prohibits ". . . a fee or other charge . . ." it is the Department's position that such a suggestion cannot be implemented without specific authorizing legislation. Under a variation to this suggestion, a financial institution maintains that it directly exchanges cash for retailers' food stamps. The financial institution then charges the retailer for despositing the cash. The Department believes that the cash that depositors are charged a fee on is directly traceable to food coupons. Without the redemption of coupons there would be no deposit upon which to base a fee. To suggest that redemption by a grocer of coupons is a two stage process, *i.e.*, (1) the conversion of coupons into cash, and (2) the deposit of that cash into an account, is a fiction which ignores the realities of redemption. Financial institutions do not convert coupons presented for deposit by a grocer to cash before the funds are credited to the grocer's account. Rather the value of the coupons are credited directly to grocers' accounts. The practice of charging a fee on deposited food coupons is exactly that which Congress sought to eliminate with the enactment of section 1523 of the Food Security Act. While Congress realized this provision might visit some operational or fiscal hardship on financial institutions, it balanced that hardship against its strong interest in preserving the most widely available retail outlets for coupon recipients. (H.R. Rpt. No. 99–271, 99th Cong., 1st Sess., and S. Rpt. No. 99–145, 99th Cong., 1st Sess.).

Seven commenters noted that coupon cancellation is a nuisance job for financial institutions and could easily be incorporated into the retailers' endorsement function. The law and Congress' statement of intent (S. Rpt. No. 99–145, 99th Cong. 1st Sess. and H.R. Rpt. No. 99–271, 99th Cong. 1st Sess.) make it clear that cancellation of coupons prior to submission to Federal Reserve banks is not the responsibility of the retailers. However, we do wish to note that nothing in the rule is intended to discourage financial institutions and their customers from developing specific, *voluntary* deposit procedures that best meet their mutual needs. For example, financial institutions may arrange, if their customers agree, to have their customers precancel the coupons. Under such an arrangement, the retailer, in lieu of marking or stamping the back of each coupon, may voluntarily cancel the face of each coupon using a rubber stamp. The face of the rubber stamp cannot be larger than 1⅛ inches by 2 inches and must contain the following: (a) The Food Stamp Program Authorization Number or the name of the store; (b) The word "Paid" in letters approximately ¾ inch in height; and (c) The ABA number of the financial institution.

The April 11, 1986 rule was not intended to imply that financial institutions are required to print and distribute to all their customers information on Federal Reserve bank requirements for coupon redemption as two commenters thought. As in relations with any other customer, finanicial institutions are required to inform coupon depositors of the terms and procedures under which deposits are accepted. The financial institution may itself decide how to do this. However, the financial institution may not refuse to advise the retailer of the procedures which must be followed in order to not be charged for coupon deposits.

This Department will comply with two commenters who suggested that Federal Reserve Bank Districts be encouraged to reissue their coupon deposit requirements if there is evidence of confusion over of the appropriate procedures.

One commenter noted that the April 11 rule does not spell out the penalties for noncompliance by financial institutions. While specific penalties are not spelled out, the Food and Nutrition Service believes that avenues exist for obtaining compliance. Willful noncompliance by a financial institution would compel the Food and Nutrition Service to explore all enforcement options, including action to restrict the right of a financial institution to redeem food stamps for cash through the Federal Reserve.

Four commenters state that low volume retailers are not helped by the rule because of the general requirement of Federal Reserve Bank Districts that like denomination coupons be submitted for redemption in stacks of 100. All Federal Reserve Bank Districts require that like denomination coupons be in stacks of 100 although some reserve the right to consider under specific circumstances the acceptance of an occasional deposit of less than 100 coupons in a stack. The Department cannot, therefore, require local financial institutions to accept a stack of less than 100 like denomination coupons without charge. The law allows charges for redeeming a stack of less than 100 like denomination coupons, however, the law does not require such a charge. In situations where a retailer is suffering hardship, a local financial institution may waive its policy of imposing a charge.

Three commenters noted that the April 11 rule could have the unintended effect of causing financial institutions to stop taking food stamps since such institutions may no longer charge for redeeming property submitted coupons. The Department believes this will not prove to be the case and notes that since the provisions was implemented on April 21, 1986, it is aware of no financial institution which has chosen terminate its participation.

One commenter maintained that the rule should have been made effective upon enactment of Pub. L. 99–198 on December 23, 1985. Since the Food Security Act of 1985 states that section 1523 is to be implemented through regulation, we believe that Congress intended implementing regulations to be effective upon publication.

The Department hopes that the clarifications provided concerning this final rule will be helpful. For the reasons stated above, no changes are made in the regulatory language embodied in this final rule.

**Implementation**

For the reasons stated in the preamble to the interim rule published on April 11, 1986, (51 FR 12497) in the section entitled Justification for Publishing as an Interim Rule Effective Upon Publication, this action became effective when the interim rule was published with financial institutions to implement no later than April 21, 1986.

**List of Subjects in 7 CFR Part 278**

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries-retail, General line-wholesaler, Penalties.

Accordingly, 7 CFR Part 278 is amended as follows:

## PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND FINANCIAL INSTITUTIONS

1. The authority citation for Part 278 continues to read as follows:

**Authority:** (7 U.S.C. 2011–2029).

**§ 278.5 [Amended]**

2. In § 278.5:

a. The amendment to add a new sentence after the first sentence in paragraph (a)(1) is adopted as final without change.

b. The amendment to add a new sentance after the third sentance in paragraph (a)(3) is adopted as final without change.

§ 278.9 [Amended]

3. In § 278.9, the amendment to add a new paragraph (d) is adopted as final without changes.

Dated: May 7, 1987.

S. Anna Kondratas,

*Acting Administrator.*

[FR Doc. 87-10987 Filed 5-13-87; 8:45 am]

BILLING CODE 3410-35-M

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## Commodity Credit Corporation

### 7 CFR Part 1477

### Disaster Payment Program for 1986 Crops

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to adopt, as a final rule, an interim rule which was published in the **Federal Register** on February 10, 1987, (52 FR 4129). The interim rule amended the regulations at 7 CFR Part 1477 with respect to the definition of the eligible acreage for nonprogram crops for purposes of making disaster payments due to low yields as the result of drought, excessive heat, flood, hail or excessive moisture in certain eligible counties. Section 1477.3 was amended to provide that such acreage shall be the acreage planted to the crop for harvest in 1986 without regard to the acreage planted to harvest in prior years. The interim rule is hereby adopted as a final rule without change.

**EFFECTIVE DATES:** This final rule shall become effective on May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013 Telephone: (202) 447-5621.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

The title and number of the federal assistance program to which this final rule applies are: Title—Commodity Loans and Purchases; Number 10.051, as found in the Catalog of Federal Domestic Assistance.

An Environmental Evaluation with respect to the Disaster Payment Program is being completed. It has been determined that this action is not expected to have a significant impact on the quality of the human environment. In addition, it has been determined that this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

### Interim Rule

An interim rule was published in the **Federal Register** on November 19, 1986 (51 FR 41757) implementing the 1986 disaster payment program authorized by section 633(B) of the Agriculture, Rural Development and Related Agencies Appropriations Act, 1987, as included in Public Laws 99-500 and 99-951. The interim rule provided for a disaster payment program for eligible producers for losses of 1986 crop production due to drought, excessive heat, flood, hail or excessive moisture in 1986. The interim rule also established the criteria for eligibility of individual producers to receive a disaster payment. A final rule, which was published on December 24, 1986 (51 FR 46593), amended the interim rule with respect to provisions for determining the payment rate for sugar beets and sugar cane and the provisions for determining payments for producers of nonprogram crops.

Based upon a review of existing conditions in eligible counties, it was determined that producers of nonprogram crops who had actually incurred the costs and assumed the risk of planting such a crop in 1986 and are otherwise eligible for a 1986 disaster payment under this program should be eligible for disaster payments with respect to losses incurred on the acreage planted to the crop for harvest in 1986 without regard to prior year planting history. Accordingly, an interim rule amending the provisions of 7 CFR 1477.3(e) with respect to the eligible disaster acreage for nonprogram crops involving low yield losses in order to provide that such acreage shall be the 1986 acreage planted to harvest to such a crop, as determined by the county committee in accordance with instructions issued by the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service (ASCS) was published in the **Federal Register** on February 10, 1987, (52 FR 4129). The interim rule provided for a 10-day period. The Department of Agriculture received no comments with respect to the interim rule. Accordingly, it has been determined that the interim rule should be adopted as a final rule without change.

### List of Subjects in 7 CFR Part 1477

Crop insurance, Indemnity payments.

### Final Rule

Accordingly, the interim rule published at 52 FR 4129, which amended 7 CFR Part 1477 is hereby adopted as a final rule without change.

**Authority:** Section 633(B) of the Agriculture, Rural Development and Related Agencies Appropriations Act, 1987, as included in Pub. L. 99-500 and Pub. L. 99-591.

Signed at Washington, DC, on May 11, 1987.

Milton J. Hertz,

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87-11062 Filed 5-13-87; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-023]

## Importation of Cattle From Canada; Calfhood Vaccination Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal import regulations to reflect new Canadian calfhood vaccination requirements. Recently, the Canadian government changed its regulations to require a reduced dosage *Brucella* vaccine for calfhood vaccination, to be administered when the cattle (whether dairy or beef) are from 4 to 8 months of age. Our action is necessary to allow certain female cattle that have been given the reduced dosage vaccine to be imported from Canada without being tested for brucellosis.

EFFECTIVE DATE: June 15, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Jr., Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436-8695.

SUPPLEMENTARY INFORMATION:

### Background

We published in the Federal Register on December 22, 1986 (51 FR 45778-45779), a proposal to amend the regulations in 9 CFR Part 92 (referred to below as the regulations). We proposed that § 92.20(c)(5) be revised to reflect new Canadian calfhood vaccination requirements. Canada now requires use of a "reduced dosage" *Brucella* vaccine to be administered to cattle (whether dairy or beef) between the ages of 4 and 8 months. Before July 1, 1985, Canada required use of a "standard dosage" *Brucella abortus* Strain 19 vaccine. Test data indicate that cattle given the reduced dosage *Brucella* vaccine develop approximately the same level of resistance to brucellosis as cattle given the standard dosage. Therefore, we believe that the reduced dosage administered to female cattle between the ages of 4 and 8 months, will provide adequate immunization against brucellosis. We also proposed that § 92.20(d) be revised to require that, if cattle are to be imported in accordance with § 92.20(c)(5), the date of vaccination, dosage of vaccine used, and age of each animal on the date of vaccination be stated on the certificate accompanying the animal to the U.S. port of entry.

Our proposal of December 22, 1986, invited the submission of written comments on or before February 20, 1987. We received one comment, which supported the proposed rule. Based on the rationale set forth in the proposal, the proposed rule is adopted as a final rule.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a signifiant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effect of this action is to retain a provision in our regulations that allows certain female cattle under 18 months of age to be imported into the United States from Canada without being tested for brucellosis. We have determined that this rule will not have any effect on the number of cattle imported into the United States from Canada.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

### List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.20, paragraphs (c)(5) and (d) are revised and the OMB control number is added at the end of the section to read as follows:

### § 92.20 Cattle from Canada.

* * * * *

(c) * * *

(5) Female cattle under 18 months of age may be imported without being tested for brucellosis if they meet all of the following conditions: (i) They were born and remained prior to importation in a herd that meets the requirements of paragraph (c)(1), (c)(2), or (c)(3)(i) of this section; and (ii) They are accompanied by a certificate issued or endorsed by a salaried veterinarian of the Canadian government stating that they were vaccinated against brucellosis, according to Canadian regulations, as follows: (A) After June 30, 1985, while from 4–8 months of age, with a reduced dosage *Brucella* vaccine; or (B) Before January 1, 1986, while from 2–6 months of age if dairy cattle or from 2–10 months of age if beef cattle, with a standard dosage *Brucella* vaccine.

* * * * *

(d) The certificates prescribed in paragraphs (b) and (c) of this section shall state: (1) The names of the consignor and the consignee; (2) a description of the cattle to be imported, including the breed, ages, markings, and tattoo and eartag numbers of each animal; (3) the dates and places of each test required by paragraphs (b) and (c) of this section; and (4) the date of vaccination, dosage of vaccine used, and the age of each animal on the date of vaccination for each vaccination conducted in accordance with paragraph (c)(5) of this section.

(Approved by the Office of Management and Budget under control number 0579-0040)

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Done in Washington, DC, on this 11th day of May 1987.

J.K. Atwell,

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87-11061 Filed 5-13-87; 8:45 am]

BILLING CODE 3410-34-M

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 605

### Information Security

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** As required in Executive Order 12356 and Information Security Oversight Office (ISOO) Directive No. 1, the Farm Credit Administration (FCA) is publishing a revision to Part 605 regarding the handling of classified documents. This regulation is being revised to reflect FCA's current organization, changes which have occurred since 1984, the assignment of new responsibilities pursuant to agency policy and procedures, and the increase of granted access positions.

**EFFECTIVE DATE:** May 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Barringer, Information Security Officer, Office of Administration, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4007.

**SUPPLEMENTARY INFORMATION:** Part 605 defines the Information Security Program of the FCA for classified documents and outlines the basic requirements for obtaining access to classified documents. This program is under the administrative direction of the Information Security Officer, Records and Projects Division, and applies to those individuals who have been granted access to classified documents of the U.S. Government. The number of FCA officials authorized to have in their possession, to give consideration to, and to transmit classified information in the discharge of their respective official duties has been increased from the prior 4-6 employee limitation to over 30 employees. In preparation for the annual review by the ISOO of the FCA Information Security Program, this regulation has been revised to reflect FCA's current organization, changes which have occurred since 1984, the assignment of new reponsibilities pursuant to agency policy and procedure, and the increase of granted access positions.

**List of Subjects in 12 CFR Part 605**

Classified information.

Chapter VI of Title 12, Part 605 of the Code of Federal Regulations is amended to read as follows:

## PART 605—INFORMATION

1. The authority citation for Part 605 is revised to read as follows:

**Authority:** 12 U.S.C. 2243, 2246, and 2252.

2. Section 605.502 is amended by revising paragraphs (d), (f), and (j) to read as follows:

* * * * *

**§ 605.502 Program and procedures.**

* * * * *

(d) *Handling of classified documents.* All documents bearing the terms "Top Secret," "Secret," and "Confidential" shall be delivered to the Information Security Officer or his/her designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees. In the event that the Information Security Officer or his/her designee is not available to receive such documents, they shall be sent to the FCA mailroom and stored in the combination safe located in the Agency Services Branch and secured unopened until the Information Security Officer is available. Under no cirumstances shall classified materials that cannot be delivered be stored other than in the designated safe. All materials not immediately deliverable or able to be secured in the designated safe shall be returned to the sender, under appropriate cover, for redelivery to the FCA at the next earliest opportunity.

* * * * *

(f) *Storage.* In accordance with 32 CFR 2001.43, all classified documents shall be stored in combination safes located at the primary headquarters and/or Field Division, Office of Examination, Farm Credit Administration. The combinations shall be changed as required by directives issued by ISOO. The combinations shall be known only to the Information Security Officer and his/her designees who have appropriate security clearances.

* * * * *

(j) *Freedom of Information request.* All inquiries regarding requests for classified information under the Freedom of Information Act (5 U.S.C. 552), including those from the news media, shall be referred to the FCA FOI Officer, Office of Congressional and Public Affairs, Farm Credit Administration, and shall be handled in accordance with provisions of that statute and applicable regulations.

William A. Sanders, Jr.,

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87-10958 Filed 5-13-87; 8:45 am]

BILLING CODE 6705-01-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 211

**[Release No. SAB 69]**

### Staff Accounting Bulletin No. 69; Registrants' Disclosures Using Article 9 of Regulation S-X and Industry Guide 3, and Casino-Hotel Activities Income Statement Presentation

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Publication of Staff Accounting Bulletin.

**SUMMARY:** The interpretations in this staff accounting bulletin express certain views of the staff regarding: (a) The use of Article 9 of Regulation S-X and Industry Guide 3 as guidance for certain disclosures of registrants which are not bank holding companies, but which are engaged in similar lending and deposit activities; and (b) income statement presentation for casino-hotel activities.

**DATE:** May 8, 1987.

**FOR FURTHER INFORMATION CONTACT:** John M. Riley or John W. Albert, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr. Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal Securities laws.

Jonathan G. Katz,

*Secretary.*

May 8, 1987.

## PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 69 to the table found in Subpart B.

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**Staff Accounting Bulletin No. 69**

The staff hereby adds Sections K and L to Topic 11 of the staff accounting bulletin series. Section K discusses the staff's views on the use of Article 9 of regulation S–X ("Bank Holding Companies") and Industry Guide 3 ("Statistical disclosure by bank holding companies") as guidance for certain disclosures of registrants which are not bank holding companies, but which are engaged in similar lending and deposit activities. Section L discusses appropriate income statement presentation by casinos with hotel and restaurant operations.

*Topic 11: Miscellaneous Disclosure*

* * * * *

K. Applications of Article 9 and Guide 3

*Facts:* Article 9 of Regulations S–X specifies the form and content of and requirements for financial statements for bank holding companies filing with the Commission. Similarly, bank holding companies disclose supplemental statistical disclosures in filings, pursuant to Industry Guide 3. No specific guidance as to the form and content of financial statements or supplemental disclosures has been promulgated for registrants which are not bank holding companies but which are engaged in similar lending and deposit activities.[1]

*Question*: Should non-bank holding company registrants with material amounts of lending and deposit activities file financial statements and make disclosures called for by Article 9 of Regulation S–X and Industry Guide 3?

*Interpretive Response*: In the staff's view, Article 9 and Guide 3, while applying literally only to bank holding companies, provide useful guidance to certain other registrants, including savings and loan holding companies, on certain disclosures relevant to an understanding of the registrant's operations. Thus, to the extent particular guidance is relevant and material to the operations of an entity, the staff believes the specific information, or comparable data, should be provided.

For example, in accordance with Guide 3, bank holding companies disclose information about yields and costs of various assets and liabilities. Further, bank holding companies provide certain information about maturities and repricing characteristics of various assets and liabilities. Such companies also disclose risk elements, such as nonaccrual and past due items in the lending portfolio. The staff believes that this information and other relevant data would be material to a description of business of other registrants with material lending and deposit activities and accordingly, the specified information and/or comparable data (such as scheduled item disclosure for risk elements) should be provided.

In contrast, other requirements of Article 9 and Guide 3 may not be material or relevant to an understanding of the financial statements of some financial institutions. For example, bank holding companies present average balance sheet information, because period-end statements might not be representative of bank activity throughout the year. Some financial institutions other than bank holding companies may determine that average balance sheet disclosure does not provide significant additional information. Others may determine that assets and liabilities are subject to sufficient volatility that average balance information should be presented.

Pursuant to Article 9, the income statements of bank holding companies use a "net interest income" presentation. Similarly, bank holding companies present the aggregate market value, at the balance sheet date, of investment securities, on the face of the balance sheet. The staff believes that such disclosures and other relevant information should also be provided by other registrants with material lending and deposit activities.

L. Income Statement Presentation of Casino-Hotels

*Facts*: Registrants having casino-hotel operations present separately within the income statement amounts of revenue attributable to casino, hotel and restaurant operations, respectively.

*Question*: What is the appropriate income statement presentation of expenses attributable to casino-hotel activities?

*Interpretive Response*: The staff believes that the expenses attributable to each of the separate revenue producing activities of casino, hotel and restaurant operations should be separately presented on the face of the income statement. Such a presentation is consistent with the general reporting format for income statement presentation under Regulation S–X (Rules 5–03.1 and 5–03.2) which requires presentation of amounts of revenues and related costs and expenses applicable to major revenue providing activities. This detailed presentation affords an analysis of the relative contribution to operating profits of each of the revenue producing activities of a typical casino-hotel operation.

[FR Doc. 87–11063 Filed 5–13–87; 8:45 am]

BILLING CODE 8010–01–M

[1] The Commission staff has been considering the need for more specific guidance in the area but believes that the Financial Accounting Standards Board project on financial instruments, which as an initial step is expected to result in expanded disclosures across industry lines, may make Commission action in this area unnecessary. In the interim, this bulletin provides the staff's views with respect to filings by similar entities such as saving and loan holding companies.

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 11**

**[Docket No. RM86–2–000; Order No. 469]**

**Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges**

Issued May 8, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending Part 11 of its regulations under the Federal Power Act (Act) to revise the billing procedures for annual charges for administering Part I of the Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

By changing its billing procedures the Commission will bill licensees on a fiscal-year basis for annual charges. The date for filing the information used in assessing these charges will change from February 1 of each year to November 1. In addition, the Commission will bill for Federal land use charges in advance, and the charges will be based on the fee schedule for transmission line rights-of-way, published by the United States Forest Service.

**EFFECTIVE DATE:** July 28, 1987.

**FOR FURTHER INFORMATION CONTACT:** James R. Keegan, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8542.

**SUPPLEMENTARY INFORMATION:**

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending Part 11 of its regulations under the

Federal Power Act (Act) [1] to revise the billing procedures for annual charges for administering Part I of the Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

By changing its billing procedures the Commission will bill licensees on a fiscal-year basis for annual administrative charges, for charges for the use of government dams, and for charges for the use of Federal lands. In addition, the date for filing the information used in assessing these charges will change from February 1 of each year to November 1.

The Commission will also begin using the published index of United States Forest Service values of transmission line rights-of-way, as the basis for assessing Federal land use charges, and abandon its traditional method of multiplying a national average per-acre land value by a rate of return. The Commission will also bill Federal land use charges in advance. The change in the land use charges and the first year of advanced billing for land use charges will be phased in in order to minimize hardship on the licensees. The rule also makes other minor corrections to the billing procedures.

## II. Background

### *A. Billing Procedures*

The Commission is required by section 10(e) of the Act to collect annual charges for the cost of administering Part I of the Act, and for recompensing the United States for the use of Federal property.[2] Part 11 of the Commission's regulations provides the manner in which licensees are charged for such costs.[3] Prior to the adoption of the current regulations, administrative charges were not based on the actual costs of the government, but were set fees that were billed for a calendar year. Under the Current regulations, reimbursable costs are determined on a fiscal year basis, and licensees are required to submit the generation data used in this determination on a calendar-year basis. Although costs are determined on a fiscal year basis, the billings have continued to state that they cover the calendar year. Annual charges for land use and for Federal dam use are also *assessed* on a calendar-year basis, and the data used in determining all of these charges are required to be filed on the first of February of each year. The land use charges that are *assessed* each year represent compensation for use of the land for the preceeding year.

### *B. Federal Land Charges*

Beginning in 1938, annual charges for government land used by hydropower licensees were based on project-by-project appraisals. This practice often proved uneconomical because of the excessive cost of appraisal in comparison to the value of the land involved. In 1942, the Federal Power Commission developed a national average value of $50 per acre.[4] Because the Commission recognized that this Federal asset, public land, was being used rather than purchased, the Commission atempted to approximate the rental value by selecting an interest rate as a rate of return which could then be multiplied by the value of the land to determine a land use charge. The Commission selected 4 percent as the rate, thereby deriving an annual land use charge of $2.00 per acre. In 1962, when the Commission increased the national average land value to $60 per acre but retained the 4 percent interest rate, the annual land use charge was increased to $2.40 per acre.

When the current regulations were adopted in 1976 in Order No. 560, the national average land value was increased to $150 per acre.[5] In an effort to ensure that the rate of return used would remain current, the Commission adopted the fluctuating rate used by the United States Water Resources Council (WRC) which was based primarily upon the average yield of long-term (15 years or more to maturity) United States interest-bearing securities. Although this rate can be adjusted yearly to reflect changes in yield and the associated changing Federal borrowing costs, that rate is barred by statute form being changed more than one-quarter of a percent in any year. In selecting this index, the Commission concluded that the statutory restraint would ensure that the annual land use charge would remain reasonable year to year.

### *C. The Proposed Changes*

On December 30, 1985, the Commission issued a Notice of Proposed Rulemaking (NOPR) in which it proposed to revise its method of assessing Federal land use charges, and to revise its billing procedures of those charges.[6] By these revisions, the Commission intended to prevent the undercollection of interest by the United States Treasury,[7] by eliminating a delay in data collection. The Commission also intended to better approximate the fair market value of a licensee's use of Federal land.

On December 23, 1986, the Commission issued a notice requesting supplemental comments on issues that were not specifically raised in the original NOPR.[8] In the supplemental notice, the Commission sought comment on the billing for lands charges in advance, and proposed to bill for government dam use and Federal land use on a fiscal year basis in order to provide consistency in the Commission's billing procedures. The supplemental notice also sought comment on the use of the land valuation method of the U.S. Forest Service and the Bureau of Land Management as a method of assessing annual charges for the use of government land.

The Commission received over thirty public comments in response to both the NOPR and the supplemental notice. The Commenters comprise Federal agencies, public utilities, associations, and hydroelectric developers.[9]

## III. Discussion

### *A. Billing Procedure for Administrative Charges*

Licensees who are not states or municipalities, with projects of more than 1.5 megawatts of installed capacity (2000 horsepower), are assessed annual charges for the costs of administration of Part I of the Act on the basis of the amount of power generated and authorized, installed capacity.[10] Generally, state or municipal licensees of projects with capacity greater than 1.5 megawatts are assessed on the basis of authorized installed capacity only. They are not assessed a charge to the extent that they can demonstrate that: (1) The project was primarily designed for

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[1] 16 U.S.C. 791a–825r (1982).

[2] 16 U.S.C. 803(e) (1982).

[3] 18 CFR Part 11 (1986).

[4] Order No. 380, 56 F.P.C. 3069 (1976).

[5] *Id.* at 3064.

[6] Revisions of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges, 51 FR 211 (Jan. 3, 1986).

[7] Undercollection results from billing for charges on a calendar-year basis while computing administrative costs on a fiscal-year basis, and from not billing for lands charges in advance. The undercollection was identified by the Inspector General of the Department of Energy. *See* Assessment of Charges Under the Hydroelectric Program, DOE/IG Report No. 0219 (Sept. 3, 1985); and Accounts Receivable, Billings and Collection of FERC, DOE/IG Report No. 0224 (Feb. 3 1986).

[8] Notice requesting supplemental comments, 52 FR 62 (Jan. 2, 1987).

[9] A list of commenters is provided in the Appendix A.

[10] 18 CFR 11.8(a). Annual charges are assessed against each licensee on the basis of the proportion of its installed capacity and its annual generation to the total of the installed capacity and the annual generation of all projects.

navigational purposes; (2) the power produced by the project is used for state or municipal purposes; or (3) the power is sold to the public without profit.[11]

The reimbursable Commission costs are determined on a fiscal-year basis. However, licensees are currently required to submit their generation data [12] on a calendar-year basis.[13]

In recent reports, the Inspector General of the Department of Energy recommended that the Commission require its licensees to compute their generation data on the same fiscal-year basis that the Commission uses to calculate its administrative costs. The NOPR proposed to implement the Inspector General's recommendation by requiring that generation data be based on the fiscal year and be submitted shortly after the close of the fiscal year. This synchronization would provide the government with annual fees three months earlier than under the present system. The Inspector General found that since the Commission's assessments for administrative costs in 1983 were $23.4 million, the government lost approximately $200,000 a month in interest for each month until the Commission sent licensees bills for their annual charges. By requiring generation data to be filed by November 1 of each year, instead of February 1 of the next year, the government would be able to receive compensation for its administrative costs more expeditiously, thereby obtaining more precisely the benefits Congress intended.

The Commission adopts the proposed rule to require that the data used in determining charges for costs of administration [14] and for the use of government dams [15] to be submitted on a fiscal-year basis, with filings of such data due November 1 of each year. The Commission will then bill for all annual charges on a fiscal-year basis. In the first year of application of this rule, this data must be submitted for the first nine months of 1987 (January 1 through September 30). In each subsequent year, the data will cover the period from October 1 through September 30. The Commission will then bill for these charges on a fiscal year basis, with bills going out early the next year for all but land use charges, which will be billed as discussed below.

Most commenters do not anticipate that any significant problems would result from the billing changes proposed in this rulemaking, and in general find the proposals to be reasonable. In particular commenters (Ala.P., Id.P., Minn.) note that, if the Commission changes to fiscal-year billing for administrative charges, changing to fiscal year billing for government dam use charges and Federal land use charges as well will provide for needed consistency and will reduce the administrative burdens of the billings.

Some commenters oppose changing to a fiscal-year billing system for several reasons. Several commenters (EEI, Ala.P., Ga.P.) fear that the rule change would result in double billing for three months in its first year of application. This is not the case. By changing to fiscal year billing, the Commission is not double billing licensees. The Commission has always billed licensees for the Commission's fiscal year's costs.[16] However, it allocated the costs to each licensee on a calendar year basis. Therefore, there is no double billing, but only a change in the date on which bills will be assessed.

The Commission notes that since it used generation data for the last three months of the previous calendar year in order to calculate the annual charges for the last fiscal year, it would be inappropriate to do so in computing the annual charges for this fiscal year. Otherwise the Commission would be considering the same generation data twice for the purpose of allocating the annual charge.

The Commission emphasizes that, since the calendar year data was used solely for allocation purposes, licensees will not be overbilled as a result of the change to a fiscal year billing cycle, and over the course of a fifty-year license, will pay for only fifty years of annual charges.

One commenter (Ala.P.) suggests that, in order to avoid confusion during the transition, the reporting of data be for a nine month period. This rule adopts this suggestion as it will make the transition year data reporting coincide with transition year billing, and will prevent double reporting of data for the three month overlap.

One commenter (Snoho) questions the Inspector General's determination that a correction of the Commission's billing procedures are necessary to correct an undercollection of interest. This commenter claims that by changing to a fiscal-year billing cycle the Commission reaps only a one time benefit of an earlier payment, as interest is not "lost" until a bill is sent out. Therefore, claims the commenter, there is no undercollection and the benefits of one early payment do not justify the bookkeeping and cash flow problems that the commenter alleges the rule will create. There is no reason to believe that fiscal-year billing procedures will create the problems the commenter claims it will.[17] Moreover, there is not only a one time benefit to the Commission from earlier collection of charges. Annual charges are designed to reimburse the government for expenditures it has made during the fiscal year. The Commission is without the use of those funds each year until it is reimbursed by the licensee. Therefore, the Commission saves interest each year by billing for annual charges as soon after the expenditures are made as possible. By converting to a fiscal-year billing system the Commission can provide for uniformity, efficiency and cost effectiveness that outweighs the bookkeeping burdens, if any, to the licensees.

Other commenters (WUG, EEI, PGE) argue that the Commission should not change government dam use charges to a fiscal-year basis if the change would conflict with existing contracts between licensees and other government agencies for the use of such dams. No commenter alleges that any such conflict actually exists, and there is no other evidence of any such conflict.

Several commenters (PGE, WUG, EEI) favor billing on a calendar-year basis because the land value index of the U.S. Forest Service that this order is adopting as a basis for Federal land use charges is prepared on a calendar-year basis. The fact that the Forest Service index will be prepared on a calendar-year basis is not a hinderance to Commission billing on a fiscal-year basis. The information needed to prepare bills for land use charges (i.e. the Forest Service index and inflation adjustment factors) will be available in time to bill on a fiscal year basis. Only if the Forest Service updates their assessments in some future year, and the assessments are not prepared in time for the Commission to use them in the current year, would the Commission have to adjust the bill retroactively in the next year's bills. This reassessment is not

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[11] 16 U.S.C. 803(e) (1982). *See also* 18 CFR 11.00 (1986).

[12] Generation data are submitted for the purpose of calculating an annual charge for administrative costs for a licensee. The data consist of the gross amount of power generated by a licensee's project during the year and the amount of power used for pumped storage pumping.

[13] 18 CFR 11.01(a)(4), (b)(4) (1986).

[14] 18 CFR 11.01(a)(4), (b)(4) (1986).

[15] 18 CFR 11.03(c), 11.04(b) (1986).

[16] The Commission's records indicate that annual charges bills have historically covered the fiscal year. Annual statements note that the bill is intended to recover fiscal year costs.

[17] Many utilities keep monthly totals of generation data, and can therefore add them just as easily for a fiscal year as for a calendar year.

expected to occur often enough to create an undue administrative burden. Finally, one commenter (Seattle) urges staying on a calendar year basis because other energy data bases (*e.g.*, those of utilities and trade organizations) are compiled on a calendar-year basis. Although it may be true that, by collecting data on a fiscal-year basis while other energy data sources are compiled on a calendar-year basis, the Commission will make analysis of national energy data slightly more complex, any difficulties caused by the Commission's procedures should be insignificant when compared with the economic and administrative efficiency gained by a uniform system of accounting and billing. The Commission has considered the difficulties the commenters allege will result from fiscal-year billing, and find that the benefits of a uniform fiscal year billing system outweighs any such burdens. The Commission calculates its costs on a fiscal-year basis, and the administrative burdens of changing to a calendar-year basis while all other aspects of government accounting are done on a fiscal-year basis is too great to justify such a change. Therefore, the Commission will bill for all annual charges on a fiscal-year basis.

*B. Federal Lands Charges*

1. Overview

In the notices published in this rulemaking, the Commission proposed changing the methodology used in computing charges for the use of Federal lands to correct an under collection of charges, in response to recommendations of the Inspector General. The Inspector General recently concluded that neither the land value nor the interest rate employed by the Commission's current regulations are up to date. According to the Inspector General, the Commission has been undercharging licensees by approximately $15.2 million each year for the use of about 166,000 acres of Federal land. The Inspector General recommended revising the Commission's regulations to base these land use charges on the current fair market value of the land being used and the current long-term government borrowing rate. The Inspector General also recommended replacing the national average land value with state-by-state averages.[18]

The Commission originally proposed in the NOPR to remedy this undercollection of charges by revising the existing methodology to reflect a more current value of lands, and a more precise rate of return. The NOPR proposed to alter the Commission's traditional method of land valuation by abandoning its outdated national average value, and in its place substituting the regional farm values index as prepared by the U.S. Department of Agriculture. The NOPR also requested comment on several other methods of computing land use charges such as individual appraisals, or fees based on the licensed project's gross income or on its power generation. Finally, the Commission requested comment on whether it should continue to assess lands used for transmission line rights-of-way at one half the rate of other Federal lands. In the supplemental request for comments the Commission proposed to base the land use charges on the U.S. Forest Service's recently published index of values of linear rights-of-way.

For the reasons discussed below, the Commission is adopting the Forest Service's linear rights-of-way index as the most accurate representation of the fair market value of transmission line rights-of-way, and will continue to charge twice that value for other lands. The amended regulations also change the minimum lands charge for projects with installed capacity of 500 kW or less from $10 to $25 a year.

2. The Existing Methodology

Several commenters recommend retaining the existing methodology, claiming that it is a reasonable method of calculating land values (EEI, Idaho, Seattle). These commenters claim that the old value was intentionally set low to take into account the various benefits licensed projects provide the public (*e.g.*, recreational facilities), and because the land used for hydro projects is usually of little other value (Seattle). Commenters (EEI, Idaho) also note that in formulating the land use charges regulations now in effect the Commission stated that a national average value provided administrative economies that outweighed "speculative improvement in accuracy" that regional land values would provide.[19] The commenters state that no reasons have been offered for a departure from the national valuation method.

The Commission concludes that ample evidence exists that a departure from the existing method of valuation is warranted. The Inspector General's report of September 3, 1985, claimed that the present method results in an undercollection of over $15 million a year because it uses outdated land values. Also, the wide variation of land values across the country makes the use of the zone index preferable to a national average. Furthermore, when the Commission decided against the use of a regional index when the present rules were enacted in 1976, it considered the administrative burden of having to determine the values of Forest Service lands on its own.[20] An index now exists which relieves the Commission of this administrative duty. The Commission rejects the commenters' claim that land charges should intentionally be set low. The Federal Power Act states that "the licensee shall pay to the United States reasonable annual charges in an amount to be fixed by the Commission for the purpose of * * * recompensing it for the use, occupancy, and enjoyment of its lands * * *."[21] The purpose of this rule is to establish a fair market rate for the use of government land, as this is the must reasonable method of recompensing the government for the use of its lands. The public benefits provided by licensed projects are considered in the licensing decision and these benefits are the *quid pro quo* for the ability to operate the project in a manner consistent with needs of society.[22] Therefore, the existing method is no longer a reasonable method of assessing land use charges and is changed by this order.

3. Alternative Methodologies

a. *The Forest Service-Bureau of Land Management Index.* In the NOPR, the Commission requested comments on a methodology of land value assessment being prepared by the United States Forest Service (USFS) and the Bureau of the Land Management of the United States Department of the Interior (BLM). Most commenters note that, as the USFS methodology was still incomplete, it would be unreasonable to comment on so speculative a methodology. On December 5, 1986, the Forest Service issued a notice of adoption of the rental fee methodology,[23] and the Commission's supplemental notice requested comments on that methodology.

[18] Assessment of Charges Under the Hydroelectric Program, DOE/IG Report No. 0219 (Sept. 3, 1986); *See also* More Effort Needed to Recover Costs and Increase Hydropower Charges, U.S. General Accounting Office Report No. RCED-87-12 (Nov. 1986).

[19] Order No. 560, 56 F.P.C. 3860 (1976).

[20] *Id.* at 3864 n. 10.

[21] 16 U.S.C. 803(e) (1982).

[22] Order No. 560, 56 F.P.C. 3860 (1976).

[23] Department of Agriculture, Forest Service, Linear Rights of Way Fees, 51 FR 44014 (Dec. 5, 1986).

In brief, the USFS methodology is based upon a survey of market values for the various types of land that it has allowed to be occupied by linear rights-of-way. The schedule is divided into regional zones and provides per-acre rental fees by state and county. These fees are arrived at by multiplying the raw value of the land in each zone by the rate of return discussed below. The rates were adjusted downward to reflect the value difference between rights-of-way authorization granted by private landowners and those issued by the government. The result is an annual fee per-acre per-year for lands used for electric transmission lines that ranges from $2.24 for land in Nevada, to $44.87 a year for land in some counties in Florida.[24]

Most commenters (e.g. EEI, Minn., PSCC) find that the use of the USFS index would be more representative of the fair market value of the type of land most often used for hydroelectric projects than any of the other proposed methodologies. They find this methodology to be the simplest to administer, and one that produces a reasonable land charge. Some commenters (PGE, Birch, PE) seek assurance that they will not be assessed charges twice for use of the same land or for the same service. It is not the Commission's intent to assess charges twice for any costs or charges, and will ensure that such double billing does not occur.

Other commenters (WUG, Idaho) state that, although easy to use, the index needs to be adjusted downward to account for the relative encumbrances that licensees have for the use of the Federal land. Others (PGE, Idaho) claim an adjustment is needed to avoid what some licensees claim will be a drastic increase in fees in contravention of the statement in the Act that, in fixing such charges, the Commission must seek to avoid increasing the price to the consumers of power.[25]

The difference in level of encumbrance between Federal and private land was taken into account by the Forest Service, and results in the 70 percent of value differential adjustment for public land. The Commission also finds no merit to the claim that charging fair market value for Federal lands is prohibited by the Act.[26] All increases in charges will result in some impact on consumers.[27] The statutory provision bars the Commission from assessing unreasonable charges that would be passed along to consumers. Reasonable annual charges are those that are proportionate to the value of the benefit conferred.[28] Therefore, a fair market value approach is consistent with the dictates of the Act. Furthermore, as land values have not been adjusted in over ten years, an adjustment upwards is warranted and overdue.

The Forest Service comments that its methodology was intended for transmission line rights-of-way, and its market value figures reflect strips of lands used for limited purposes. The Service states that reservoirs, streambeds, and other typical hydropower sites should have a higher value. Other commenters, however, argue that hydropower project land is at times less valuable and that the use of the USFS index will result in charges that are too high. The Commission realizes that the USFS methodology is not precisely fitted to hydroelectric projects, but the zone values established by the Forest Service for linear rights-of-way are the best approximation available of the value of lands used for transmission line rights-of-way. Moreover, the zone rate method allows for differentiation by areas of the county and is thus fairer than a national average. For these reasons, the Commission will use the USFS index as its method of assessing charges for Federal land use for transmission line rights-of-way.

The NOPR proposed to eliminate the fifty percent discount for transmission line rights-of-way. Historically, the Commission has determined that fees for right-of-way usage of Federal lands would be less than those for other project uses, because land so used remained available for multiple uses. Thus, the Commission ruled that annual charges for the use of government lands for transmission line rights-of-way will be one-half the charge for the use of other government lands.[29] However, the NOPR noted that transmission lines and appurtenant structures may have a number of detrimental effects, such as damage to the aesthetic quality of land to the extent that market values would be lowered. Since these detriments may preclude a full range of multiple uses and may decrease the value of the adjacent land, the Commission proposed to eliminate the discount since the fair market value of all adjacent land was lowered for the purposes of calculating annual charges.

Commenters unanimously opposed the elimination of the practice of charging for lands used for transmission line rights-of-way one half of the charge for other project lands. The commenters (PE, EEI, NCWCD, Idaho) note that the detriments cited above were discussed in the Commission's revision of these regulations in 1970,[30] and that no evidence has been presented to justify a departure from the present rule. The commenters (Seattle, EEI) also claim that the limited use of rights-of-way allows for public access, resource sharing, and aids firefighting in remote areas. The commenters (e.g. Idaho) add that any detrimental effect is limited and offset by the benefits of limited use. Finally, the commenters (Idaho, EEI) note that, historically, appraisers have determined that the market value of transmission line rights-of-way is roughly half of the market value of other land.

The Commission agrees with the above statements and will continue to assess transmission line charges at one-half of the value of other Federal lands. This will be accomplished by using the USFS index as its methodology of assessing charges for transmission line rights-of-ways, and charging twice that amount for other lands. The USFS index was designed specifically for transmission line rights-of-way, and is the best available method for assessing those charges. As the commenters acknowledge, other project lands are worth twice as much as transmission line rights-of-way. For that reason, transmission line rights-of-way will be assessed at the Forest Service index rate and other project land will be assessed at twice that rate.

b. *Agricultural land values.* In the NOPR, the Commission outlined a new method of assessing land use charges which retained the existing formula of land value times a rate of return, but proposed to substitute a new land value and a new rate of return. The NOPR

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[24] Currently there are no licensed projects in the higher-rates zones. The highest rate for a currently-licensed project is $20.92. For projects located in zones for which the Forest Service has provided no fees (*e.g.*, Alaska) the Commission will continue to bill in accordance with the old regulations and will change to the new method after the Forest Service has set the fee in that zone. Licensees that have projects in more than one zone must provide a breakdown of the number of acres in each zone. Failure to do this will result in being billed according to the project's highest zone value.

[25] 16 U.S.C. 803(a) (1982).

[26] Staff has calculated the per acre land charge under the old Commission methodology ($150 × .06878) and found that licensees would pay $13.31 per acre in 1987 without the proposed rule change. The per-acre charge under the USFS–BLM methodology range from $2.24 to $20.92. Therefore, not only will any increase be within a zone of reasonableness, but in some cases the charges will decrease.

[27] Order 280, 56 F.P.C. 2080, 2082 (1976).

[28] *See* City of Vanceburg v. FERC, 571 F.2d 630 (D.C. Cir. 1977), *cert. denied*, 439 U.S. 818 (1978).

[29] Order 280, 56 F.P.C. 2080, 2080 (1976).

[30] *Id.*

proposed to substitute state-by-state average value per-acre of farm land and buildings as set out in the U.S. Department of Agriculture's annual publication "Agricultural Land Values and Markets Outlook and Situation Report." The proposal would also remove the limitation on adjustments of the rate of return of one quarter percent a year.

Commenters almost unanimously object to the use of the agricultural land value index, arguing that the use of farm land values would result in a drastic increase in charges related to the benefits of the projects. Farm land values vary greatly from state to state, the commenters argue, and are usually much higher than the values of the type of land involved in hydroelectric development. Many commenters suggest the Forest Service index be used as a index that is more representative of typical project land. The farm land index, they argue, will have to be adjusted to account for farm buildings, for the cleared, arable, level land it represents, and for the fact that it represents private and not Federal lands. The Commission agrees with these arguments. The agricultural index would require such major adjustments that it is not an efficient measure of land value for hydropower projects. Therefore, the agricultural land values index will not be used.

c. *The percentage of sales or rate per kW hour fee methodologies.* The NOPR also suggested, as an alternative basis for Federal land use charges, the use of a fee based upon a percentage of the project's gross sales or on a flat rate per kilowatt hour. Commenters unanimously find that these methods would be unsatisfactory. The commenters (EEI, Ga.P) note that the determination of gross income of a project would be difficult, since, for many projects, power is intermingled and sold through a multifaceted rate structure to various customers, making identification of an individual project's gross income speculative unless burdensome paperwork procedures are adopted. Furthermore, most argue, land use charges must be related to the value of the land, not the output of the projects, or projects with similar lands could pay greatly different rates. Such a fee system would be a royalty or tax rather than rent for the use of the land, and several commenters question whether such a system would be legal under section 10(e) of the Federal Power Act.

Only the Forest Service finds some value in the use of this type of a fee system, and then only for run-of-river projects (those using no reservoirs). The Forest Service suggested a three-tiered system where the type of land use charges would be based upon whether the land is used for run-of-river projects, non-run-of-river projects, or transmission lines. The Forest Service claims that the Commission must charge for the real value of the land, and that this value is the land's ability to produce power. Therefore, the Forest Service claims, a fee schedule as described above is appropriate for run-of-river projects.

The Commission agrees with most of the commenters that a percentage of gross sales fee or a flat rate per kilowatt hour fee is not a reasonable method of assessing land use charges. The tiered system suggested by the Forest Service is also unreasonable, as it would charge a royalty for run-of-river projects as though the Federal land being used was producing the power. This overlooks the fact that many projects use a combination of Federal and private lands, and that the power output is a result of many factors (water rights, head, project structure) and not just the acreage of Federal land involved. For these reasons the Commission decides not to adopt the above fee methodologies as a means of assessing land charges.

d. *Individual appraisals.* The NOPR also requested comments on the advisability of permitting licensees to submit independent appraisals to contest the accuracy of an annual land use charge, and whether an appraisal system could be the sole basis for determining fair market value of Federal land use. Commenters were also asked to identify the standards and criteria that should be used to make appraisals. Although no commenter submitted useful standards and criteria, other than the Department of Interior's recommendation that certified private appraisers be used, and that private appraisals be verified by a separate Federal appraisal, most express the opinion that appraisals are of some value. Several commenters (Grant, Eugene, Birch) claim that independent appraisals were the best method of land valuation, but most believe that appraisals should only be used to support an appeal to the use of the index of land values on the ground that it produces an unreasonable annual charge. The Forest Service advocates the use of an appraisal system (as did the Department of the Interior) claiming that appraisal techniques have improved since this method was abandoned as unworkable in the 1940s. Further, it argues, the costs were too burdensome when land values were $50 per acre, but when some Federal lands are worth $15,000 per acre the cost of appraisals would be insignificant. However, the Forest Service concedes that ongoing appraisals are often the subject of appeals and, in its experience, can become complex, controversial, and costly. Another commenter (Ala.P) supports this statement noting that the administrative burden of independent appraisals would be so overwhelming as to make any such approach administratively infeasible.

The Commission abandoned the appraisal method in 1942 because the cost of individual project appraisals was often excessive compared to the value of the Federal land and because, unless constantly updated, appraisals did not keep up with changes in land values. This method was reevaluated in 1976 and again rejected on the ground that it would lead to costly and time consuming litigation over values computed in individual cases. This decision is supported by the views of some commenters and by the experience of the Forest Service with its appraisal programs. The Commission still believes that independent appraisals would be too administratively burdensome and costly (costs which licensees would be responsible to reimburse under section 10(e) of the Act).

f. *Advanced billing for Federal land use charges.* In the supplemental notice the Commission requested comments on the Inspector General's recommendation that the Commission bill in advance for Federal land use charges. The Inspector General claimed that the Federal Land Policy and Management Act of 1976 (FLPMA),[31] requires the Commission to bill for land charges in advance, and not doing so is costing the Commission $270,000 a year.[32]

Most commenters objected to advance billing for land charges for various reasons. One (Seattle) claimed the change was unreasonable, as no other of the commenter's contracts, including its income tax, require advance payment. The commenter overlooks that most rent, and all charges under FLPMA, are paid in advance. Other commenters (Idaho, Ala.P) noted that the savings to the government would result in increased costs to the rate payers if the local public utility commission would allow it, and costs to the shareholder if it would not.[33] The Commission realizes

[31] 43 U.S.C. 1761(b)(1) (1982).

[32] *See* Report No. DOE/IG-0224 (Feb. 3, 1986).

[33] One commenter (Idaho) claims that its yearly charge, paid in advance in the transition year would be lost forever. This is not the case, as licenses are issued for set periods, and at the expiration of the

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that the savings to the Commission will be borne by the licensees, but the savings outlined by the Inspector General and conformity with other agency practice under FLPMA dictate a change to advance billing. Another commenter (Seattle) claimed that the USFS index will not be adjusted for inflation for each year until after the Commission's land use charges have gone out, and that the subsequent year's charges would need adjusting to prevent billing based on stale data. As noted above, the Forest Service index is the best approximation of reasonable land charges. Although not exact, the land charges index that is available at the time of billing, even if several months old, is the best available basis for assessing land use charges. Moreover, since the Forest Service index will be adopted and published each year by the Commission, the delay will provide the Commission with time to review and issue its own schedule of fees based on the most recent USFS index. For these reasons the Commission finds that using the last available USFS index will not cause a discrepancy in the assessment substantial enough to render the charges unreasonable.[34]

Other commenters (PGE, Idaho) argued that FLPMA does not specifically require advance billing for land charges for projects governed by licenses under the Federal Power Act. On its face FLPMA is directed at the Secretary of the Interior rather than the Commission, and requires that the Secretary bill for land use charges in advance.[35] Whether or not the Commission is required under FLPMA to bill in advance for land charges, it does so because of the savings involved, and also to be consistent with the intent of Congress in its passage of FLPMA which requires the billing of charges for the use of Federal land in advance.

Most commenters objected to the burden of being billed for two years in the transition year, and requested that the rule be phased in, as were the Forest Service charges. The Commission agrees that the burden of the first year will be onerous unless phased in. Therefore advanced billing will begin in fiscal year 1988 with bills for land use charges issued early in the fiscal year, and with payments due in January 1988. A nine month land charge for ¾ of 1987 will be calculated at that time. One third of this 1987 charge will be due with the land charge for each year from 1988 to 1990. This phase-in will prevent the advance charges from being due entirely in one year.

*C. Other Comments*

1. Administrative Costs of Other Federal Agencies

Several commenters (e.g. EEI, PE, PGE) noted that in 1986 the Commission began including in its annual charge bills the costs that other Federal agencies incur in administering Part 1 of the Act. Some commenters (WUG, EEI, PGE) complain that the collections for other agency costs began without notice, and continues without sufficient guidelines, standards, or regulations. The commenters request that the Commission institute a rulemaking in order to allow affected parties an opportunity to comment, and to allow the Commission to formalize the new procedures. The commenters ask that, in the alternative, the Commission enter into Memoranda of Understanding with those agencies to ensure the veracity of their claims for reimbursal. The Federal agencies that commented on this rule (USFS, Interior) supported the Commission's practice and asked that it be recognized in the final rule.

The Commission began this practice on the advice of the Inspector General, after it was noted that section 10(e) of the Federal Power Act required reimbursal of costs to the United States for administration on Part 1 of the Act, and not just costs to the Commission.[36] The practice, however, is not the subject of this rulemaking, and no provisions will be made here to change it until the Commission decides if the present implementation of the program requires more formal guidelines.

2. Municipal Exemptions

One commenter (PE) cited a Commission and Congressional policy against collecting fees from municipalities for services to the general public,[37] and claimed that by not exempting municipalities, the annual charges regulations were inconsistent with the rest of the Commission fee policies.

In the orders cited by this commenter, the Commission exempted states and municipalities from the payment of fees because of the administrative burdens of trying to sort out which services rendered to states and municipalities could be subject to fees. The Commission does agree that when a state or municipality uses a Commission service to serve the general public it may be exempted from all fees.[38] In addition, the Commission's regulations for annual charges already provide procedures for determining when a state or municipality should be exempt from annual charges. Furthermore, the statutes and regulations cited by the commenter, under which municipalities were exempted from the payment of fees, are not related to the Federal Power Act, and therefore are not directly applicable to the case at hand. Therefore, in cases other than those specified in 18 CFR 11.06, states and municipalities merit no further exclusion.

3. Rising Rates

Several commenters noted that annual charges are rising rapidly because of the large number of applications for small hydropower projects submitted in recent years. Many of these applications are for preliminary permits and exemptions, yet the Act places the burden of administrative costs solely on licensees. Existing licensees had little to do with the large increase in applications, argue the commenters, yet are now faced with subsidizing the boom in small hydropower development. The commenters note that the Commission has alluded to imposing filing fees on applicants for several years, and asks that the Commission act on those proposals.

The Commission is aware of the problems cited by the commenters, and is considering action to remedy the situation. However, the issue of filing fees lies outside the scope of this rulemaking.

*D. Other Changes*

The final rule also makes two minor technical corrections to the annual charges regulations. The NOPR stated that § 11.01(b) would be revised to refer to "state or municipal licensees of projects of more than 1.5 megawatts of installed capacity", in order to make the section consistent with changes made by the Commission previously. Specifically, in 1958 the Commission issued regulations whereby annual charges were assessed to licensees of projects of more than 100 horsepower of installed capacity.[39]

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license the charges for the last year would have already been paid.

[34] Similarly, municipalities seeking exemptions for advanced land charges under 18 CFR 11.06 will base their applications on the last available generation data.

[35] 43 U.S.C. 1761 (1982).

[36] 16 U.S.C. 803(e) (1982).

[37] *See* Independent Offices and Appropriations Act of 1952, 31 U.S.C. 9701 (1982). *See also*, Fees Applicable to Electric Utilities, 50 FR 40347 (Oct. 3, 1985) (Reg. Preambles 1982–1985) FERC Stat. Eg. No. 30.663 (1985) (Order No. 435).

[38] *See* Fees Applicable to General Activities, 49 FR 35348 (Sept. 7, 1984) (Reg. Preambles 1982–1985) FERC Stat. & Reg. No. 30.592 at 31.117 (1984) (Order No. 395).

[39] 18 CFR 11.01(b) (1986).

In 1963, the Commission, pursuant to section 10(i) of the Act,[40] amended § 11.01(a) (then 11.20(a)), but made no similar change with respect to state or municipal licensees.[41] This section should be changed from 100 to 2000 horsepower in order to be consistent with the rest of the section. The regulations are also amended by deleting § 11.01(b)(6),[42] which is a provision of the regulations that was intended to implement a transition to new rules promulgated in 1958. This provision expired 60 days after it was issued, and is therefore obsolete. While § 11.01(b)(6)(ii) has not expired, it merely codifies a right already set forth in the Act which does not need repetition. No comments were received on these proposed changes, and they are adopted by this final rule.

## VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) requires a description and analysis of final rules that will have a "significant economic impact on a substantial number of small entities."[43] An agency is not required to make an RFA analysis, however, if it certifies that a rule will not have such an impact.

This final rule will change Commission procedure in that annual charges will be based on data for the government fiscal year, rather than the calendar year, in order to synchronize the data used, and to eliminate the interest lost as a result of the three-month lag between the time the reimbursable. The rule also requires that the data used in assessing annual charges be submitted on a fiscal-year basis. The final rule also changes the methodology for computing the annual charges for the use of Federal property by licensees. These annual charges will be assessed based upon the fee index for linear rights-of-way prepared by the United States Forest Service. Finally, the rule increases the minimum annual charge for Federal land use by licensed projects of 500 kw or less from $10 to $25.

In the NOPR, the Commission certified, pursuant to section 605(b) of the RFA, that the revisions to the billing procedures for annual charges and to the methodology of computing land use charges would not, if adopted, have significant economic impact on a substantial number of small entities.

The Commission received no comments or rebuttals to the Commission's certification that a regulatory flexibility analysis was not required. The Commission has reviewed the final rule, and continues to find, for the reason expressed in the RFA certification in the NOPR, that the rule will not have an impact that will require the preparation of a RFA analysis. In particular, the Commission notes that few of the projects that would be affected by the increase in land use charges are small entities. Most small entities are usually licensees of small projects, and only 24 small projects (1.5 megawatts or less) are assessed Federal land use charges. These charges, as amended by this final rule, are not expected to significantly increase the total costs of these projects. The change to fiscal-year billing for all annual charges is not an increase, but a change in timing, and is not expected to have a significant impact. Finally, any impact will be minimized by being phased in. For these reasons, the Commission certifies under section 605(b) of the RFA that this rule will not have a significant economic effect on a substantial number of small entities.

## VII. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[44] and the Office of Management and Budget's (OMB) regulations[45] require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown (202) 357-8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

## VIII. Effective Date

The amendments of this final rule will be effective July 28, 1987. If OMB's approval and control number have not been received by this effective date, the Commission will issue a notice temporarily suspending the effective date.

[40] 16 U.S.C. 803(i) (1982).

[41] Amendment to Part 11, 19 F.P.C. 907 (1958) [Order No. 286].

[42] 18 CFR 11.01(b)(6).

[43] 5 U.S.C. 601-612 (1982).

[44] 44 U.S.C. 3501-3520 (1982).

[45] 5 CFR 1320.13 (1986).

Appendix A

| Commenter | Code |
|---|---|
| Alabama Power | Ala.P. |
| Birch Power | Birch. |
| Catalyst Energy Development Corp. | Cat. |
| Chelan County PUD No. 1 | Chelan. |
| Edison Electric Institute | EEI. |
| Eugene, Oregon Water and Electric Board. | Eugene. |
| Georgia Power | Ga.P. |
| Grant County PUD #2 | Grant. |
| Idaho Power Company | Idaho. |
| Minnesota Power | Minn. |
| Montana Power Company | Mont. |
| Northern Colorado Water Conservancy District. | NCWCD. |
| Pacific Gas and Electric | PGE. |
| Public Service Co. of Colorado | PSCC. |
| Sacramento Municipal Utility District, et al. (public entities). | PE. |
| Seattle City Light | Seattle. |
| Snohomish County PUD No. 1 | Snoho. |
| Southern California Edison Co. | SCE. |
| U.S. Department of the Interior | Interior. |
| U.S. Forest Service | USFS |
| Western Utility Group | WUG. |

## List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 11 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

*Secretary.*

## PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978), unless otherwise noted.

2. In § 11.1, paragraphs (a)(2), (a)(4), (b)(2), (b)(3), and (b)(4) are revised to read as follows:

**§ 11.1 Costs of administration.**

* * * * *

(a) For a licensee, other than State or municipal, of a project of more than 2,000 horsepower of installed capacity.

* * * * *

(2) For each fiscal year the costs of administration determined under paragraph (a)(1) of this section will be assessed against such licensee in the proportion that the annual charge factor for each such project bears to the total of the annual charge factors under all such outstanding licenses.

* * * * *

(4) To enable the Commission to determine such charges annually, each licensee must file with the Commission, on or before November 1 of each year, a statement under oath showing the gross amount of power generated (or produced by nonelectrical equipment) and the amount of power used for pumped storage pumping by the project during the preceding fiscal year, expressed in kilowatt hours. If any licensee does not report the gross energy output of its project within the time specified above, the Commission's staff will estimate the energy output and this estimate may be used in lieu of the filings required by this section made by such licensee after November 1.

* * * * *

(b) For a State or municipal licensee of a project of more than 2,000 horsepower of installed capacity.

* * * * *

(2) For each fiscal year such total actual cost of administration as determined under paragraph (b)(1) of this section will be assessed against each such licensee in the proportion that the authorized horsepower installed capacity of each such project bears to the total such capacity under all such outstanding licenses.

(3) After such assessment each fiscal year, an exemption will be granted to a licensee to the extent, if any, to which they may be entitled under section 10(e) of the Act provided the data is submitted as requested in paragraphs (b)(4) and (5) of this section.

(4) To enable the Commission to compute on the bill for annual charges the exemption to which such licensee is entitled because of the use of power by the licensee for State or municipal purposes, each such licensee must file with the Commission, on or before November 1 of each year, a statement under oath showing the following information with respect to the power generated by the project and the disposition thereof during the preceding fiscal year, expressed in kilowatt-hours:

* * * * *

3. Section 11.1(b)(6) is removed.

4. In § 11.2 paragraphs (b), (c), and (d) are revised to read as follows:

**§ 11.2 Use of Government Lands.**

* * * * *

(b) Pending further order of the Commission and subject to adjustments as conditions may warrant, annual charges for the use of government lands will be payable in advance, and will be set on the basis of the schedule of rental fees for linear rights-of-way as set out in Schedule A of this part. Annual charges for transmission line rights-of-way will be equal to the per-acre charges established by the above schedule. Annual charges for other project lands will be equal to twice the charges established by the schedule. The Commission, by its designee the Executive Director, will update its fees schedule to reflect changes in land values established by the Forest Service. The Executive Director will publish the updated fee schedule in the Federal Register.

(c)(1) The annual land use charge payable for the nine month transition year of the implementation of this rule (1987) will be payable in three equal installments, with an installment included in the land use charges bills for 1988, 1989, and 1990.

(2) The charge for one year will equal an amount as computed under the procedures outlined in this section, or twice the previous full normal year's bill (not including the installments described in paragraph (c)(1) of this section), whichever is less.

(d) The minimum annual charge for use of Government lands under any license will be $25.

* * * * *

5. Section 11.3(c) is revised to read as follows:

**§ 11.3 Use of Government dams, excluding pumped storage projects.**

* * * * *

(c) *Information reporting.* (1) Except as provided in paragraph (c)(2) of this section, each licensee must file with the Commission, on or before November 1 of each year, a sworn statement showing the gross amount of energy generated during the preceding fiscal year and the amount of energy provided free of charge to the Government. The determination of the annual charge will be based on the gross energy production less the energy provided free of charge to the Government.

(2) A licensee who has filed these data under another section of Part 11 or who has submitted identical data with FERC or the Energy Information Administration for the same fiscal year is not required to file the information described in paragraph (c)(1) of this section. Referenced filings should be identified by company name, date filed, docket or project number, and form, number.

* * * * *

6. Section 11.4(b) is revised to read as follows:

**§ 11.4 Use of Government dams for pumped storage projects, and use of tribal lands.**

* * * * *

(b) *Information reporting.* (1) Except as provided in paragraph (b)(2) of this section a Licensee whose project includes pumped storage facilities must file with the Commission, on or before November 1 of each year, a sworn statement showing the gross amount of energy generated during the preceding fiscal year, and the amount of energy provided free of charge to the Government, and the amount of energy used for pumped storage pumping.

(2) A licensee who has filed these data under another section of Part 11 or who has submitted identical data with FERC or the Energy Information Administration for the same fiscal year is not required to file the information required in paragraph (b)(1) of this section. Referenced filings should be identified by company name, date filed, docket or project number, and form number.

7. Part 11 is amended by adding Schedule A at the end of this part to read as follows:

* * * * *

BILLING CODE 6717-01-M

FEE SCHEDULE FOR LINEAR RIGHTS-OF-WAY RENTAL RATE/YEAR

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| ALABAMA | ALL COUNTIES | $17.95 |
| ARKANSAS | ALL COUNTIES | $13.46 |
| ARIZONA | APACHE<br>COCHISE<br>GILA<br>GRAHAM<br>LA PAZ<br>MOHAVE<br>NAVAJO<br>PIMA<br>YAVAPAI<br>YUMA<br>COCONINO NORTH OF COLORADO RIVER | $ 4.49 |
| | COCONINO SOUTH OF COLORADO RIVER<br>GREENLEE<br>MARICOPA<br>PINAL<br>SANTA CRUZ | $17.95 |
| CALIFORNIA | IMPERIAL<br>INYO<br>LASSEN<br>MODOC<br>RIVERSIDE<br>SAN BERNARDINO | $ 8.97 |
| | SISKIYOU | $13.46 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| CALIFORNIA (cont) | ALAMEDA | $22.44 |
| | ALPINE | |
| | AMADOR | |
| | BUTTE | |
| | CALAVERAS | |
| | COLUSA | |
| | CONTRA COSTA | |
| | DEL NORTE | |
| | EL DORADO | |
| | FRESNO | |
| | GLENN | |
| | HUMBOLDT | |
| | KERN | |
| | KINGS | |
| | LAKE | |
| | MADERA | |
| | MARIPOSA | |
| | MENDICINO | |
| | MERCED | |
| | MONO | |
| | NAPA | |
| | NEVADA | |
| | PLACER | |
| | PLUMAS | |
| | SACRAMENTO | |
| | SAN BENITO | |
| | SAN JOAQUIN | |
| | SANTA CLARA | |
| | SHASTA | |
| | SIERRA | |
| | SOLANO | |
| | SONOMA | |
| | STANISLAUS | |
| | SUTTER | |
| | TEHAMA | |
| | TRINITY | |
| | TULARE | |
| | TOULUMNE | |
| | YOLO | |
| | YUBA | |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| CALIFORNIA (cont) | LOS ANGELES<br>MARIN<br>MONTEREY<br>ORANGE<br>SAN DIEGO<br>SAN FRANCISCO<br>SAN LUIS OBISPO<br>SAN MATEO<br>SANTA BARBARA<br>SANTA CRUZ<br>VENTURA | $26.92 |
| COLORADO | ADAMS<br>ARAPAHOE<br>BENT<br>CHEYENNE<br>CROWLEY<br>ELBERT<br>EL PASO<br>HUERFANO<br>KIOWA<br>KIT CARSON<br>LINCOLN<br>LOGAN<br>MOFFAT<br>MONTEZUMA<br>MORGAN<br>PUEBLO<br>SEDGEWICK<br>WASHINGTON<br>WELD<br>YUMA | $ 4.49 |
| | BACA<br>DOLORES<br>GARFIELD<br>LAS ANIMAS<br>MESA | $ 8.97 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| COLORADO (cont) | MONTROSE<br>OTERO<br>PROWERS<br>RIO BLANCO<br>ROUTT<br>SAN MIGUEL | $ 8.97 |
| | ALAMOSA<br>ARCHULETA<br>BOULDER<br>CHAFFEE<br>CLEAR CREEK<br>CONEJOS<br>COSTILLA<br>CUSTER<br>DENVER<br>DELTA<br>DOUGLAS<br>EAGLE<br>FREMONT<br>GILPIN<br>GRAND<br>GUNNISON<br>HINSDALE<br>JACKSON<br>JEFFERSON<br>LAKE<br>LA PLATA<br>LARIMER<br>MINERAL<br>OURAY<br>PARK<br>PITKIN<br>RIO GRANDE<br>SAGUACHE<br>SAN JUAN<br>SUMMIT<br>TELLER | $17.95 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| CONNECTICUT | ALL COUNTIES | $ 4.49 |
| FLORIDA | BAKER<br>BAY<br>BRADFORD<br>CALHOUN<br>CLAY<br>COLUMBIA<br>DIXIE<br>DUVAL<br>ESCAMBIA<br>FRANKLIN<br>GADSDEN<br>GILCHRIST<br>GULF<br>HAMILTON<br>HOMES<br>JACKSON<br>JEFFERSON<br>LAFAYETTE<br>LEON<br>LIBERTY<br>MADISON<br>NASSAU<br>OKALOSSA<br>SANTA ROSA<br>SUWANNEE<br>TAYLOR<br>UNION<br>WAKULLA<br>WALTON<br>WASHINGTON | $26.92 |
| | ALL OTHER COUNTIES | $44.87 |
| GEORGIA | ALL COUNTIES | $26.92 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| IDAHO | CASSIA<br>GOODING<br>JEROME<br>LINCOLN<br>MINIDOKA<br>ONEIDA<br>OWYHEE<br>POWER<br>TWIN FALLS | $ 4.49 |
| | ADA<br>ADAMS<br>BANNOCK<br>BEAR LAKE<br>BENEWAH<br>BINGHAM<br>BLAINE<br>BOISE<br>BONNER<br>BONNEVILLE<br>BOUNDARY<br>BUTTE<br>CAMAS<br>CANYON<br>CARIBOU<br>CLARK<br>CLEARWATER<br>CUSTER<br>ELMORE<br>FRANKLIN<br>FREMONT<br>GEM<br>IDAHO<br>JEFFERSON<br>KOOTENAI<br>LATAH<br>LEMHI<br>LEWIS<br>MADISON<br>NEZ PERCE | $13.46 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| IDAHO (cont) | PAYETTE<br>SHOSHONE<br>TETON<br>VALLEY<br>WASINGTON | $13.46 |
| KANSAS | ALL OTHER COUNTIES | $ 4.49 |
| | MORTON | $ 8.97 |
| ILLINOIS | ALL COUNTIES | $13.46 |
| INDIANA | ALL COUNTIES | $22.44 |
| KENTUCKY | ALL COUNTIES | $13.46 |
| LOUISIANA | ALL COUNTIES | $26.92 |
| MAINE | ALL COUNTIES | $13.46 |
| MICHIGAN | ALGER<br>BARAGA<br>CHIPPEWA<br>DICKINSON<br>DELTA<br>GOGEBIC | $13.46 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| MICHIGAN (cont) | HOUGHTON<br>IRON<br>KEWEENAW<br>LUCE<br>MACKINAC<br>MARQUETTE<br>MENOMINEE<br>ONTONAGON<br>SCHOOLCRAFT | $13.46 |
| | ALL OTHER COUNTIES | $17.95 |
| MINNESOTA | ALL COUNTIES | $13.46 |
| MISSISSIPPI | ALL COUNTIES | $17.95 |
| MISSOURI | ALL COUNTIES | $13.46 |
| MONTANA | BIG HORN<br>BLAINE<br>CARTER<br>CASCADE<br>CHOUTEAU<br>CUSTER<br>DANIELS<br>McCONE<br>MEAGHER<br>DAWSON<br>FALLON<br>FERGUS<br>GARFIELD<br>GLACIER | $ 4.49 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| MONTANA (cont) | GOLDEN VALLEY<br>HILL<br>JUDITH BASIN<br>LIBERTY<br>MUSSELSHELL<br>PETROLEUM<br>PHILLIPS<br>PONDERA<br>POWDER RIVER<br>PRAIRIE<br>RICHLAND<br>ROOSEVELT<br>ROSEBUD<br>SHERIDAN<br>TETON<br>TOOLE<br>TREASURE<br>VALLEY<br>WHEATLAND<br>WIBAUX<br>YELLOWSTONE | $ 4.49 |
| | BEAVERHEAD<br>BROADWATER<br>CARBON<br>DEER LODGE<br>FLATHEAD<br>GALLATIN<br>GRANITE<br>JEFFERSON<br>LAKE<br>LEWIS & CLARK<br>LINCOLN<br>MADISON<br>MINERAL<br>MISSOULA<br>PARK<br>POWELL<br>RAVALLI<br>SANDERS<br>SILVER BOW | $13.46 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| MONTANA (cont) | STILLWATER<br>SWEET GRASS | $13.46 |
| NEBRASKA | ALL COUNTIES | $ 4.49 |
| NEVADA | CHURCHILL<br>CLARK<br>ELKO<br>ESMERALDA<br>EUREKA<br>HUMBOLDT<br>LANDER<br>LINCOLN<br>LYON<br>MINERAL<br>NYE<br>PERSHING<br>WASHOE<br>WHITE PINE | $ 2.24 |
| | CARSON CITY<br>DOUGLAS<br>STORY | $22.44 |
| NEW HAMPSHIRE | ALL COUNTIES | $13.46 |
| NEW MEXICO | CHAVES<br>CURRY<br>DE BACA<br>DONA ANA<br>EDDY<br>GRANT<br>GUADALUPE | $ 4.49 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| NEW MEXICO (cont) | HARDING<br>HIDALGO<br>LEA<br>LUNA<br>MCKINLEY<br>OTERO<br>QUAY<br>ROOSEVELT<br>SAN JUAN<br>SOCORRO<br>TORRENCE | $ 4.49 |
| | RIO ARRIBA<br>SANDOUAL<br>UNION | $ 8.97 |
| | BERNALILLO<br>CATRON<br>CIBOLA<br>COLFAX<br>LINCOLN<br>LOS ALAMOS<br>MORA<br>SAN MIGUEL<br>SANTA FE<br>SIERRA<br>TAOS<br>VALENCIA | $17.95 |
| NEW YORK | ALL COUNTIES | $17.95 |
| NORTH CAROLINA | ALL COUNTIES | $26.92 |



BEST COPY AVAILABLE

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| NORTH DAKOTA | ALL COUNTIES | $ 4.49 |
| OHIO | ALL COUNTIES | $17.95 |
| OKLAHOMA | ALL OTHER COUNTIES | $ 4.49 |
| | BEAVER<br>CIMARRON<br>ROGER MILLS<br>TEXAS | $ 8.97 |
| | LE FLORE<br>MC CURTAIN | $13.46 |
| OREGON | HARNEY<br>LAKE<br>MALHEUR | $ 4.49 |
| | BAKER<br>CROOK<br>DESCHUTES<br>GILLIAM<br>GRANT<br>JEFFERSON<br>KLAMATH<br>MORROW<br>SHERMAN<br>UMATILLA<br>UNION<br>WALLOWA | $ 8.97 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| OREGON (cont) | WASCO<br>WHEELER | $ 8.97 |
| | COOS<br>CURRY<br>DOUGLAS<br>JACKSON<br>JOSEPHINE | $13.46 |
| | BENTON<br>CLACKAMAS<br>CLATSOP<br>COLUMBIA<br>HOOD RIVER<br>LANE<br>LINCOLN<br>LINN<br>MARION<br>MULTNOMAH<br>POLK<br>TILLAMOOK<br>WASHINGTON<br>YAMHILL | $17.95 |
| PENNSYLVANIA | ALL COUNTIES | $17.95 |
| PUERTO RICO | ALL | $26.92 |
| SOUTH DAKOTA | BUTTE<br>CUSTER<br>FALL RIVER<br>LAWRENCE | $13.46 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| SOUTH DAKOTA (cont) | MEAD<br>PENNINGTON | $13.46 |
| | ALL OTHER COUNTIES | $ 4.49 |
| SOUTH CAROLINA | ALL COUNTIES | $26.92 |
| TENNESSEE | ALL COUNTIES | $17.95 |
| TEXAS | CULBERSON<br>EL PASO<br>HUDSPETH | $ 4.49 |
| | ALL OTHER COUNTIES | $26.92 |
| UTAH | BEAVER<br>BOX ELDER<br>CARBON<br>DUCHENSE<br>EMERY<br>GARFIELD<br>GRAND<br>IORN<br>JUAB<br>KANE<br>MILLARD<br>SAN JUAN<br>TOOELE<br>UINTAH<br>WAYNE | $ 4.49 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| UTAH (cont) | WASHINGTON | $ 8.97 |
| | CACHE<br>DAGGETT<br>DAVIS<br>MORGAN<br>PIUTE<br>RICH<br>SALT LAKE<br>SANPETE<br>SEVIER<br>SUMMIT<br>UTAH<br>WASATCH<br>WEBER | $13.46 |
| VERMONT | ALL COUNTIES | $17.95 |
| VIRGINIA | ALL COUNTIES | $17.95 |
| WASHINGTON | ADAMS<br>ASOTIN<br>BENTON<br>CHELAN<br>COLUMBIA<br>DOUGLAS<br>FRANKLIN<br>GARFIELD<br>GRANT<br>KITTITAS<br>KLICKITAT<br>LINCOLN<br>OKANAGAN<br>SPOKANE | $ 8.97 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| WASHINGTON (cont) | WALLA WALLA<br>WHITMAN<br>YAKIMA | $ 8.97 |
| | PERRY<br>PEND OREILLE<br>STEVENS | $13.46 |
| | CLALLAM<br>CLARK<br>COWLITZ<br>GRAYS HARBOR<br>ISLAND<br>JEFFERSON<br>KING<br>KITSAP<br>LEWIS<br>MASON<br>PACIFIC<br>PIERCE<br>SAN JUAN<br>SKAGIT<br>SKAMANIA<br>SNOHOMISH<br>THURSTON<br>WAHKIAKUM<br>WHATCOM | $17.95 |
| WEST VIRGINA | ALL COUNTIES | $17.95 |
| WISCONSIN | ALL COUNTIES | $13.46 |

| STATE | COUNTY | FEE PER-ACRE PER-YEAR |
|---|---|---|
| WYOMING | ALBANY<br>CAMPBELL<br>CARGON<br>CONVERSE<br>GOSHEN<br>HOT SPRINGS<br>JOHNSON<br>LARAMIE<br>LINCOLN<br>NATRONA<br>NIOBRARA<br>PLATTE<br>SHERIDAN<br>SWEETWATER<br>FREMONT<br>SUBLETTE<br>UINTA<br>WASHAKIE | $ 4.49 |
| | BIG HORN<br>CROOK<br>PARK<br>TETON<br>WESTON | $13.46 |
| ALL OTHER ZONES | | $ 6.66 |

[FR Doc. 87-11022 Filed 5-13-87; 8:45 am]

BILLING CODE 6717-01-C

18 CFR Parts 16 and 389

[Docket No. RM87-7-000]

## Information To Be Made Available by Hydroelectric Licensees Under Section 4(a) of the Electric Consumers Protection Act of 1986

Issued: May 7, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim Rule and Suspension of Effective Date.

SUMMARY: On March 30, 1987, the Federal Energy Regulatory Commission (Commission) issued an interim rule in Docket No. RM87-7-000, 52 FR 11035 (April 7, 1987), amending its regulations governing information to be made available by hydroelectric licensees under section 4(a) of the Electric Consumers Protection Act of 1986. The interim rule promulgated certain information collection provisions that were submitted to the Office of Management and Budget for its approval pursuant to the Paperwork Reduction Act, 44 U.S.C. 33 3501-3520 (1982). This interim rule (1) states the OMB control number for §§ 16.1, 16.14, 16.15, and 16.16 of Chapter 18 promulgated in this docket, (2) amends 18 CFR 16.16(c)(1) to remove the word "compile" and substitute the words "make available" and (3) stays the effective date of 18 CFR 16.16(d)(1) promulgated in the interim rule issued March 30, 1987.

EFFECTIVE DATE: May 7, 1987.

FOR FURTHER INFORMATION CONTACT: Robert C. Fallon, Rulemaking and Legislative Analysis Division, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8540.

SUPPLEMENTARY INFORMATION:

### Interim Rule and Stay

Issued: May 7, 1987.

Before Commission: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Information to be made Available by Hydroelectric Licensees Under Section 4(a) of Electric Consumers Protection Act of 1986; Docket No. RM87-7-000; Order No. 487-A.

### *I. Introduction*

The Federal Energy Regulatory Commission (Commission) is amending § 16.16(c)(1) of its regulations and suspending the effective date of § 16.16(d)(1) of its regulations, implementing section 4(a) of Electric Consumers Protection Act of 1986, Pub. L. No. 99-495. This amendment and stay are in response to a review by the Office of Management and Budget of the information collection requirements required by 18 CFR 16.16 (c)(1) and (d)(1).

### *II. Background*

The Commission promulgated §§ 16.16 (c)(1) and (d)(1) of its regulations by an interim rule issued on March 30, 1987,[1] to be effective on May 7, 1987. The interim rule prescribed the information that an existing hydroelectric licensee must make available to the public upon notifying the Commission of the intention to file for a new license. It also established new filing requirements in §§ 16.1, 16.14, 16.15, and 16.16. Comments on the interim rule are due on May 22, 1987. The revisions in this interim rule do not affect the date on which the comments are due.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) Regulations, 5 CFR Part 1320 (1986) require that OMB approve certain information collection requirements imposed by agency rule. On April 29, 1987, OMB approved all the information collection requirements except §§ 16.16 (c)(1) and (d)(1), and issued Control Numbers 19020050 and 19020115 for the sections approved.

### *III. Discussion*

#### A. Section 16.16(c)(1)

Section 16.16(c)(1) provides that a licensee must *compile* the information required to be available by the interim rule in a form that is readily accessible, reviewable and reproducible.

In disapproving this provision, OMB read the word "compile" to mean a licensee would be required to (1) review all of its files, (2) determine whether the information exists and is covered by the regulations, and (3) then catalog it in advance of any request by the public.

The Commission is clarifying that it did not intend that a licensee catalog the information to be made available in advance of any request by the public. The Commission only intended to require the licensee to organize the information so that it could be made available within a reasonable period of time after a request by a member of the public. Therefore, the Commission is amending § 16.16(c)(1) by replacing the word "compile" with the words "make available."

#### B. Section 16.16(d)(1)

Section 16.16(d)(1) requires an existing licensee to file with the Commission a statement on the information concerning the licensed project that is unavailable for public inspection and copying. This statement must describe the items that are unavailable and, to the extent known, why the items are unavailable.

In disapproving this provision, OMB said that the statutory intent of providing public access is satisfied by requiring licensees to provide information when requested. At that time, the licensee can determine the existence and availability of the document, within a reasonable period of time and provide it to the public. OMB said that if a member of the public believes the information is available but is being withheld, it can petition the Commission for assistance, as provided under § 16.16(d)(2) of the Commission's regulations.

The Commission said, in the interim rule, that it would suspend the effective date of the information collection requirements in the rule if the OMB did not approve those requirements. Therefore, the Commission suspends the effective date of § 16.16(d)(1), subject to further consideration.

### *Effective Date*

The effective date of § 16.16(d)(1) is suspended, subject to further consideration. This interim rule will become effective immediately, without prior notice and comment. Notice and comment procedures are not required under the Administrative Procedure Act when an agency for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest.[2] The Commission finds that public notice and comment before the issuance of this interim rule is unnecessary since it interprets and clarifies the existing interim rule.

### List of Subjects

*18 CFR Part 16*

Electric power.

*18 CFR Part 389*

Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 16 and 389,

[1] "Information to be Made Available by Hydroelectric Licensees Under section 4(a) of Electric Consumers Protection Act of 1986," 52 FR 11035 (April 7, 1987), Docket No. RM87-7-000.

[2] 5 U.S.C. 553(b)(B) (1982).

Title 16, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

*Secretary.*

**PART 16—[AMENDED]**

1. The authority citation for Part 16 continues to read as follows:

**Authority:** Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

2. Part 16 is amended by revising § 16.16(c)(1) to read as follows:

**§ 16.16 Information to be made available to the public under ECPA.**

* * * * *

(c) *Form, place of availability, hours of availability, and cost of reproduction.* (1) An existing licensee must make available the information specified in paragraph (b) of this section in a form that is readily accessible, reviewable, and reproducible.

* * * * *

3. Section 16.16(d)(1) is suspended.

**PART 389—[AMENDED]**

4. The authority citation for Part 389 continues to read as follows:

**Authority:** Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

**§ 389.101 [Amended]**

5. The table of OMB Control Numbers in § 389.101(b) is amended by inserting "§ 16.1," "§ 16.14," "§ 16.15" and "§ 16.16" in numerical order in the Section column, and "0058, 0115" in the corresponding position in the OMB Control Number column.

[FR Doc. 87–11084 Filed 5–13–87; 8:45 am]

BILLING CODE 6717–01–M

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Parts 232 and 235**

**[Docket No. R–87–1336; FR–2361]**

**Mortgage Insurance; Changes in Interest Rates**

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This change in the regulations increases the maximum allowable interest rate on certain section 232 (Mortgage Insurance for Nursing Homes) loans and on all section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755–7270. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The following amendments to 24 CFR Chapter II have been made to increase the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been raised from 9.50 percent to 10.00 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*l*) of § 50.20, the preparation of an Environmental Impact Statement of Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120)

**List of Subjects**

*24 CFR Part 235*

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

*24 CFR Part 232*

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

**PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES**

1. The authority citation for 24 CFR Part 232 continues to read as follows:

**Authority:** Sections 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); Section 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

**§ 232.560 Maximum interest rate.**

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 10 percent per annum with respect to

mortgages insured on or after May 11, 1987.

* * * * *

## PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

**Authority:** Sections 211, 235, National Housing Act (12 U.S.C. 1715b. 1715z); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

**§ 235.9 Maximum interest rate.**

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10 percent per annum with respect to mortgages insured on or after May 11, 1987.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

**§ 235.540 Maximum interest rate.**

(a) The mortgage shall bear interest at the rate agreed on by the mortgagee and the mortgagor, which rate shall not exceed 10 percent per annum with respect to mortgages insured after May 11, 1987.

* * * * *

Dated: May 8, 1987.

**Thomas T. Demery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 87-11070 Filed 5-13-87; 8:45 am]

BILLING CODE 4210-27-M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD5-87-013]**

### Drawbridge Operation Regulations; Kent Island Narrows, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** In order to evaluate a suggested change to the drawbridge opening requirements for the U.S. Route 50/301 bridge across Kent Island Narrows, Maryland, contained in CGD5-87-012 (52 FR 17413) dated May 8, 1987.

Temporary deviations from the regulations in 33 CFR 117.561 will be in effect on May 23, 24, and 25, 1987, May 30, 1987, June 13 and 14, 1987, and June 20, 1987. The results of the temporary deviations on the flow of vehicular traffic across the bridge and the impact on marine traffic through the bridge on those weekend days will be evaluated to determine whether the current regulations should be amended.

**EFFECTIVE DATE:** These regulations become effective on May 23, 24, and 25, 1987, May 30, 1987, June 13 and 14, 1987, and June 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, at Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or telephone number (804) 398-6222.

*Drafting Information:* The drafters of these regulations are Ann B. Deaton, project officer, and CDR Robert J. Reining, project attorney.

*Discussion of Temporary Regulations:* The Maryland Congressional Delegation, the Governor of Maryland, and the Maryland Department of Transportation have petitioned the Coast Guard to amend the regulations for this drawbridge by eliminating the 9 a.m. and 12 noon openings on Saturdays and the 8 p.m. opening on Sundays during the summer months to help ease highway congestion on U.S. Route 50/301.

In order to evaluate this suggested change, temporary deviations from the regulations contained in 33 CFR 117.561 will be in effect on May 23, 24, and 25, 1987, May 30, 1987, June 13 and 14, 1987, and June 20, 1987. These deviations will test the effectiveness of the requested change by eliminating the 9 a.m. and 12 noon openings on May 23 and June 13, 1987, and the 8 p.m. opening on May 24 and May 25, Memorial Day, and June 14, 1987.

On May 30 and June 20, only the 9 a.m. openings will be eliminated, and the other provisions of the current schedule will remain in effect.

On May 31 and June 6, 7, 21, 27, and 28 the current schedule will be in effect.

The results of these tests will be evaluated, and the impacts on highway and marine traffic on these four weekends will be weighed to determine if the requested change will result in a substantial improvement in vehicular traffic flow without unreasonably restricting marine traffic. This information will also be compared to vehicle and marine traffic counts from 1986.

During these test periods, the Maryland Department of Transportation will compile data on vehicle counts, boat counts, time of drawbridge openings, duration of openings, length of vehicle backups, and the reasons for the backups along U.S. Route 50/301 within fifteen miles of the bridge to determine whether the backups are, in fact, as a direct result of drawbridge openings or can be attributed to other causes.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Temporary Regulations**

In consideration of the foregoing, the Coast Guard is temporarily amending Part 117 of Title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 is revised to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g), 33 CFR 117.43.

2. Section 117.561 is temporarily amended by revising paragraphs (b)(3), (b)(4) and (c) to read as follows:

**§ 117.561 Kent Island Narrows.**

The draw of the U.S. Route 50/301 bridge, mile 1.0, at Kent Island Narrows, operates as follows:

(a) * * *

(b) From May 1 through October 31:

(1) * * *

(2) * * *

(3)(i) On Saturday, May 23, and Saturday, June 13, 1987, the draw shall open on signal at 6 a.m., and on the hour from 3 p.m. to 8 p.m., but need not be opened at any other time.

(ii) On Saturday, May 30, and Saturday, June 20, 1987, the draw shall open on signal at 6 a.m., 12 noon, and on the hour from 3 p.m. to 8 p.m., but need not be opened at any other time.

(4) On Sunday, May 24, Memorial Day, May 25, and Sunday, June 14, 1987, the draw shall open on signal on the hour from 6 a.m. to 1 p.m., but need not be opened at any other time.

(5) * * *

(6) * * *

(c) The draw shall open on signal for public vessels of the United States, State, or local government vessels used for public safety purposes, commercial vessels, and vessels in distress.

Dated: April 27, 1987.

**B.F. Hollingsworth,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 87-11041 Filed 5-13-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Diego Reg. 87-04]

## Security Zone Regulations; San Clemente Island, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a security zone in the vicinity of Wilson Cove, San Clemente Island, California, consisting generally of the water area within 1.5 nautical miles (1.73 statute miles, 2.8 kilometers) of the shoreline of San Clemente Island from Wilson Cove North End Light (LLNR 2565) to Spruce Pier, approximately 4.1 nautical miles (4.7 statute miles, 7.65 kilometers) southeast of Wilson Cove North End Light. This action is taken at the request of the United States Navy and is needed to safeguard U.S. naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port, San Diego.

EFFECTIVE DATE: June 15, 1987.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: On 19 March 1987, the Coast Guard published a Notice of Proposed Rulemaking in the Federal Register for these regulations (52 FR 8622). Interested persons were requested to submit comments, and no comments were received.

*Drafting Information.* The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LCDR Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

*Discussion of Comments:* No comments were received on the Notice of Proposed Rulemaking.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

*Economic Assessment and Certification:* These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. The only vessels normally using these waters are U.S. Naval vessels. There will be minimal effect on routine navigation.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

### Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

### PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1111 is added, to read as follows:

### § 165.1111 Security Zone: Wilson Cove, San Clemente Island, California.

(a) *Location.* The following area is a security zone: The water area adjacent to San Clemente Island, California within 1.5 nautical miles (1.73 statute miles, 2.8 kilometers) of the shoreline of San Clemente Island from Wilson Cove North End Light (LLNR 2565) to Spruce Pier, approximately 4.1 nautical miles (4.7 statute miles, 7.65 kilometers) southeast of Wilson Cove North End Light, described as follows:

Starting at a point on the shoreline of San Clemente Island, California, in position 33°01'25.0" N, 118°33'43.0" W, for a place of beginning (point A), thence northeasterly to 33°02'11.0" N, 118°32'13.5" W (point B), thence southeasterly to 32°58'40.5" N, 118°29'15.5" W (point C), thence southwesterly to 32°57'54.0" N, 118°31'17.2" W (point D), thence northwesterly along the shoreline of San Clemente Island to the place of beginning.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this Part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port, San Diego, California. Section 165.33 also contains other general requirements.

Dated: May 5, 1987.

W.L. Loveland,

*Lieutenant Commander, U.S. Coast Guard, Alternate Captain of the Port, San Diego, California.*

[FR Doc. 87-11043 Filed 5-13-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP San Diego Reg. 87-05]

## Safety Zone Regulations; San Clemente Island, CA, Pacific Ocean

May 11, 1987.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the vicinity of West Cove, San Clemente Island, California, consisting of the water area bounded by the following coordinates and the shoreline of San Clemente Island:

Point A—33°01'38.0" N, 118°36'18.0" W
Point B—33°01'11.0" N, 118°37'25.0" W
Point C—33°00'00.0" N, 118°36'51.0" W
Point D—33°00'00.0" N, 118°34'56.5" W

This action is taken at the request of the United States Navy and is needed to protect persons, vessels and property from hazards associated with naval equipment and operations located or conducted within the zone. Entry into this zone is authorized, but anchoring, fishing, or other similar activities is prohibited unless authorized by the Captain of the Port, San Diego. At certain times, entry into the zone will be prohibited unless authorized by the Captain of the Port, San Diego. Notice of these times will be provided by Coast Guard personnel in the zone.

EFFECTIVE DATE: June 15, 1987.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: On 19 March 1987, the Coast Guard published a Notice of Proposed Rulemaking in the Federal Register for these regulations (52 FR 8623). Interested persons were requested to submit comments, and no comments were received.

*Drafting Information:* The drafters of this notice are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LCDR Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

*Discussion of Comments:* No comments were received on the Notice of Proposed Rulemaking.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

*Economic Assessment and Certification:* These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; 26 February 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The area within the zone is a small area outside the normal shipping channels. A small number of private vessels use these waters occasionally. Entry to the zone will be prohibited infrequently. There will be minimal effect on routine navigation.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Final Regulation**

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C 1225 and 1231: 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 33 CFR 160.5.

2. In Part 165, a new § 165.1112 is added, to read as follows:

**§ 165.1112 Safety Zone: West Cove, San Clemente Island, California.**

(a) *Location.* The following area is a safety zone: The water area adjacent to San Clemente Island, California bounded by the following coordinates and the shoreline of San Clemente Island:

Point A—33°01'38.0" N, 118°36'18.0" W
Point B—33°01'11.0" N, 118°37'25.0" W
Point C—33°00'00.0" N, 118°36'51.0" W
Point D—33°00'00.0" N, 118°34'56.5" W.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this Part, entry into the area of this zone is permitted, but anchoring, fishing, and other similar activities are prohibited unless authorized by the Captain of the Port, San Diego, California.

(2) Entry into the area of this zone will be prohibited at certain times. U.S. Coast Guard personnel in the zone will provide notification to the public of the times when entry into the zone is prohibited.

(3) Section 165.33 also contains other general requirements.

Dated: May 5, 1987.

**W.L. Loveland,**

*Lieutenant Commander, U.S. Coast Guard, Alternate Captain of the Port, San Diego, California.*

[FR Doc. 87–11042 Filed 5–13–87; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 166**

**[CGD 85–062]**

## Shipping Safety Fairways; Gulf of Mexico

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a new shipping safety fairway in the vicinity of Heald Bank in the approach to Galveston, Texas. This action is necessary to permit deep draft vessels to navigate safely around the area off Heald Bank Shoals in the approach to Galveston, Texas. The intended effect of this rule is to enhance navigation safety by providing a corridor free from fixed offshore structures. This final rule implements the results of the port access route study as reported in the Federal Register on March 11, 1985 (50 FR 9682).

**EFFECTIVE DATE:** June 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (j.g.) Daphne Reese, Project Manager, Office of Navigation (G–NSS–2), room 1606, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593, (202) 267–0364.

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking (NPRM) concerning the shipping safety fairway in this final rule was published on March 6, 1986 (51 FR 7814). Interested parties were given until May 5, 1986, to submit comments. A public hearing was not held.

*Drafting Information:* The principal persons involved in drafting this rulemaking are: Lieutenant (j.g.) Daphne Reese, Project Manager, and Lieutenant Sandra Sylvester, Project Attorney, Office of Chief Counsel.

**Background**

The Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223) authorizes the Coast Guard to designate fairways to allow vessels an area free of fixed structures for safe access to U.S. ports. The regulations governing shipping safety fairways (33 CFR Part 166) provide that fixed offshore structures, temporary or permanent, are not permitted within designated safety fairways, and are only permitted within fairway anchorages if the structures are two miles apart. The Coast Guard has the authority, in accordance with the PWSA, to modify or relocate existing safety fairways to improve navigation safety or to accommodate offshore mineral exploitation and exploration.

The authority to create a fairway may be exercised by the Coast Guard only after a study of potential traffic density and use conflicts has been conducted to determine the need for designated safe access routes for vessels proceeding to and from U.S. ports. One such conflict can occur when vessels navigate in an area which is subject to offshore development. Shipping safety fairways can interfere with the direct exploration for and production of oil and gas on the Outer Continental Shelf (OCS). In conducting a port access route study, the Coast Guard attempts to recognize the minimize each identifiable cost impact as balanced against the needs of safe navigation. The studies which identified the need for this rulemaking were initiated by a notice in the Federal Register on March 19, 1984 (49 FR 10127, corrected on April 12, 1984 at 49 FR 14538) and on July 10, 1984 (49 FR 28074). The study results were published in the Federal Register on March 11, 1985 (50 FR 9682). The Coast Guard found vessels which would usually be expected to use the Northwest-Southeast leg of the Galveston Entrance Fairway deviated away from the fairway because of shoaling. As a result of this finding, a new deeper draft fairway through Heald Bank was recommended. On March 6, 1985, the Coast Guard published a notice of proposed rulemaking (51 FR 7814), with the specific proposal to establish the Heald Bank Cutoff Fairway.

This rulemaking establishes a new fairway around the area of the Heald Bank Shoals in the approach to Galveston. The fairway connects the Northwest-Southeast leg of the Galveston Entrance Fairway (33 CFR 166.200(d)(10)) with the North-South leg of the fairway. The new fairway will provide a corridor free from fixed structures for deep draft vessel traffic over 30 feet which cannot use the Northwest-Southeast leg of the fairway in the approach to Galveston. The Heald Bank Cutoff Fairway is approximately two miles wide, 125 miles long, approximately 40 miles offshore, and runs generally east-west. The fairway

totally or partially includes the following blocks as described by the Minerals Management Service (MMS): High Island Area Blocks A–40, to A–43, A–51 to A–59, A–61, A–67 to A–68, A–70 to A–80, A–212 to A–216, and A–219 to A–223.

When the NPRM for this rulemaking was drafted only one-eighth of one *leased* block (High Island Area Block A–45) was indentified as being directly affected by the fairway. High Island Area Block A–45 was leased after the notice of study (49 FR 10127) for this rulemaking was published on March 19, 1984. Subsequent to the publishing or the NPRM, the Coast Guard was notified of five additional *leased* blocks (High Island Blocks A–51, A–52, A–53, A–74, A–75) directly affected by the fairway. The five blocks were leased after the notice of study and also after the notice of study results (50 FR 9682) for this rulemaking were published on March 11, 1955.

The PWSA stipulates development of tracts leased after the announcement of a study be in accordance with future fairway restrictions (33 U.S.C. 1223(c)(2)).

## Discussion of Comments

Four comments were received in response to the NPRM. Two of the comments were strongly in favor of the proposal in the NPRM; one comment suggested changes in the geographical positions for the fairway as published in the NPRM; and one comment was strongly opposed to the fairway being established. The two comments in favor of the proposal in the NPRM were from maritime trade associations. Their comments stated, "The Heald Bank Cutoff Fairway would provide an access route free from fixed offshore structures, provide an increased level of navigation safety for deep draft vessels, and preserve future safe access into Galveston, Houston, and Texas City."

The comment suggesting changes in the geographical positions was from a land surveyor who furnishes lease developers with maps and plots for the actual physical location of rigs, platforms, and pipelines. The comment suggested changes in the positions given in the NPRM for the new fairway in order to give a more exact match up of where the new fairway meets the two existing fairways. Therefore, any future plotting of lease sites, pipeline, etc, would show the most precise boundaries of the fairway possible. The geographical positions suggested in the comments were in degrees and minutes, with the seconds expressed to the third decimal place.

Presently, all fairways in 33 CFR Part 166 are described only in degrees, minutes, and seconds. While the Coast Guard recognizes the values of a greater degree of refinement for the siting of structures and pipelelines, present descriptions have proved adequate for the charting of fairways by the National Ocean Service and for use by vessels. The Coast Guard is not aware of any significant conflicts resulting from the degree, minutes, seconds description. In situations where a potential conflict exists (fairway junctions), the Coast Guard has made an effort to use identical positions of latitude and longitude at the point where fairways join. Therefore, the Coast Guard will not change the geographical positions contained in the notice of proposed rulemaking.

The comment strongly opposed to the NPRM was from Mobile Producing Texas and New Mexico Inc., (MPTM). MPTM objected because they have five blocks, leased after the notice of study results for this rulemaking, which would be adversely affected by the Heald Bank Cutoff Fairway. MPTM comments state they have identified an exploration prospect on their leases which "would not be amenable to development by directional drilling." MPTM considers the economic impact of the rulemaking too great and the navigation safety interest too small to implement the proposed fairway. MPTM raised several questions with regard to projections for expected vessel use of the fairway. The questions include: (1) How many deep-draft vessels visit the Port of Houston/Galveston? (2) How many of the above deep-draft vessels use the Northwest-Southeast leg of the Galveston Entrance Fairway? (3) How much average time would be added to a ship's voyage using the North-South leg of the fairway instead of the Northwest-Southeast leg of the fairway and what would be the appropriate cost? (4) Who owns the vessels using the area? (5) What has been the forecast of the expected number of vessels that would require a deep-draft fairway? (6) Has the forecast been accurate, or has the recent recession caused a falloff in the number of such vessels using the Port of Galveston? (7) Should the estimate of ship visits be re-estimated in light of experience since the first study was made in 1984?

The Coast Guard considered the comments by MPTM and completely evaluated all issues and questions raised. The Coast Guard and the Minerals Management Service (MMS) issued adequate notices of the proposed fairway prior to lease sale 82, from which the MPTM's blocks were purchased. Under the PWSA (33 U.S.C. 1223) the Coast Guard cannot interfere with the effective exercise of a lease right granted prior to the time a part access route study is announced. MPTM obtained their blocks not only after the date of the study notice (49 FR 10127, March 1984 and 49 FR 28074, July 10, 1984), but also after the date of the notice of study results (50 FR 9682, March 11, 1985) which gave full disclosure of Coast Guard intentions to pursue rulemaking on the Heald Bank Cutoff Fairway. MPTM, as well as other potential bidders, were also given notice of the proposed fairway, its implications, and the specific blocks affected by it, in the MMS Notice of Sale and information to Bidders for lease sale 82 (50 FR 27798, July 5, 1985).

Based on the above sequence of events, MPTM would be presumed to have known of the proposed fairway at the time of the lease sale. Indeed, it is presumed that the amounts bid on the blocks were affected by the limited occupancy rights of the proposed fairway. It would therefore be unfair to others who bid under the presumption of possible fairway restrictions and limited occupancy rights to shift the fairway at this time. Given the lengthy and complex process involved in establishing a new fairway or fairway anchorage, it would be very difficult to complete the process if it was halted every time a lessee so requested. Such uncertainty in the rulemaking process would also affect future lease sales in areas in which the Coast Guard would be obligated to announce a study into the need for an alternate fairway. For the Coast Guard to operate in accordance with the PWSA and rulemaking process fairly without confusing the public and without making the process interminable, it must be able to rely on a status quo in leasing activity at the time a proposal is published. Reliance on the status quo and fairness also precludes the Coast Guard from shifting or altering a fairway so as to deprive other leaseholders of their rights. The Coast Guard must also rely on comments submitted during the study by the public and affected government agencies. Indeed, MPTM's comments on alternate configurations for a deep draft fairway during the initial study were influential in the development of the fairway proposal now being implemented.

The following are answers to MPTM's questions on expected vessel use of the fairway.

*a. How many deep-draft vessels visit the Port of Houston or Galveston?*

Selected 1985/1986 deep draft figures:

| | Over 30 feet | |
|---|---|---|
| | Inbound | Outbound |
| March 1985 | 115 | 130 |
| June 1985 | 92 | 112 |
| Sept 1985 | 89 | 108 |
| Dec 1985 | 110 | 126 |
| March 1986 | 96 | 114 |
| June 1986 | 112 | 110 |

Percentages were used in the notice of study results (50 FR 9683, March 11, 1985) for inbound/outbound vessels having a draft greater than 30 feet. The records of the Houston/Galveston Vessel Traffic Service (VTS) for years 1983 and 1984 reported 27% of the traffic to be deep draft inbound and 34% of the traffic to be deep draft outbound. In 1985 and in the first half of 1986, 30% of the inbound vessels and 39% of the outbound vessels in the approach to Galveston had drafts greater than 30 feet.

*b. How many of the above deep draft vessels use the Northwest-Southeast leg of the Galveston Entrance Fairway?*

Although no accurate number of deep-draft vessels using the fairway could be determined, Exxon and West Gulf Maritime report regular use the Northwest-Southeast leg of the fairway for their deep-draft and other vessels because it is the most direct route. In fact, some deep-draft, outbound vessels use the North-South leg of the fairway until they pass the Heald Bank Shoals and then cut across open water to continue their voyage using the Northwest-Southeast leg of the fairway. This substantiates earlier study results concluding the Heald Bank Cutoff Fairway is needed "to decrease the risk of environmental damage and provide deep-draft vessels with an established route where structures will not be permitted, allowing for safer maritime navigation."

*c. How much average time would be added to a ship's voyage using the North-South leg of the Galveston Entrance Fairway instead of the Northwest-Southeast leg of the fairway and what would be the approximate cost?*

Using the North-South leg of the fairway in lieu of the Northwest-Southeast leg of the fairway adds approximately 47 nautical miles, or about three hours to a voyage. Considering there are numerous variances to vessel operating costs including the vessel's size, draft, type of propulsion, whether operator owned or chartered, and tidal constraints (that is, a deep-draft vessel may only be able to moor at a dock during high tide), this cost difference could be anywhere between $1,250 and $7,500 per voyage. (Based on an estimated operating cost variance between $10,000 and $16,000 per day.)

*d. Who owns the vessels using the area?*

Ownership of these vessels and benefits derived are not a consideration of the study or the proposed rules. Ownership is of little consequence to the Houston/Galveston communities who are the ultimate benefactors of both vessel commerce and offshore mineral exploration and exploitation. What is at issue is the safe, unobstructed passage of vessels in the approach to Galveston.

*e. What has been the forecast of the expected number of vessels requiring a deep-draft fairway?*

Have such forecasts been accurate, or has the recent recession caused a falloff in the number of such vessels using the Post of Galveston? Should the estimate of ship visits be re-estimated in light of experience since the first study publication was made in 1984?

The forecast had been for an increase in the expected number and percentage of deep draft vessel traffic. The current trend of vessel owners and operators in and out of the Houston and Galveston complex is to continue to use the most direct and safest route. For statistical purposes the *total* number of inbound/outbound vessels decreased 9% and 18%, respectively, between the periods of survey in 1983/1984 and 1985/1986. The decline in the total number of deep draft vessels reflects the current depressed state of the oil/shipping industry. Yet, as noted in paragraph (a.) above, the percentage of deep-draft vessels increased. In keeping with the trend of an increase in the percentage of deep draft shipping and the economies it provides and based on VTS recent estimates, the forecast continues to be an increased percentage of deep-draft vessels through the Houston/Galveston complex. The Heald Bank Cutoff Fairway will, therefore, ensure an area free from fixed offshore structures for the safe passage of vessel traffic in anticipation of increased development as mandated by the PWSA.

The Heald Bank Cutoff Fairway is necessary to ensure safety of navigation. The Coast Guard examined the existing fairway in the approach to Galveston on the advice of the Houston/Galveston Navigation Safety Advisory Committee. In 1983, the Committee advised the Coast Guard there was a shoaling problem in the vicinity of Heald Bank, and the Eighth Coast Guard District conducted a study of the situation in 1984. The study included the four fairway approaches to Galveston. The northwest-southeast leg of the Galveston Entrance Fairway (33 CFR 166.200(d)(10)) is the most direct route for the majority of traffic using the Houston/Galveston port complex. Within this fairway there is an area of shallow water (approximately 34 feet). The Coast Guard estimates 27% of the inbound vessels and 34% of the outbound vessels on this route have drafts greater than 30 feet. Many of these vessels leave the fairway to avoid the shallow water and navigate where they have greater under-keel clearance. Upon leaving the fairway to avoid shoal water, vessels face the risk of collision with structures. Since the announcement of the study, MPTM and other companies have leased blocks in the area with the intent of development. As the area around Heald Bank is leased, explored, and developed, maneuvering among structures will become increasingly difficult. Therefore, the Heald Bank Cutoff Fairway is necessary to provide deep draft vessels with an established route where structures will not be permitted and to decrease the risk of environmental damage and to provide for safer maritime navigation.

Finally, MPTM stated in their comments, "the five affected leased blocks would not be amenable to development by directional drilling." MPTM also provided information in their comment on the potential value of the natural gas reserves, if they exist, and the expected royalty over the life of the leased blocks. The Coast Guard examined several alternative configurations during the study of the area involved and made every attempt to lessen the impact on lease blocks in the area and to anticipate areas of future development. Neither MMS nor MPTM indicated during the study any area which was particularly desirable for mineral exploitation; any mineral resources which would be inaccessible if the fairway was established; or any expected loss of revenue. MMS has not identified any area which could not be technically or financially exploited by directional drilling. MPTM's comment indicated their leases "would not be amenable to directional drilling." The Coast Guard is unable to substantially evaluate or verify MPTM's claim based solely on their comment or the information presently offered by MMS.

If MPTM determines resources exist within their leased blocks and are convinced their needs cannot be reasonably accommodated because of fairway restrictions, they may request the Coast Guard to consider an adjustment to the fairway after it has been established. Another port access

route study may be performed to determine whether the fairway is effectively fulfilling its purpose, and whether a modification to accommodate another use of the area is warranted. Further guidance and information on this situation was discussed in detail in the study results supporting this rulemaking (March 11, 1985, 50 FR 9682). Based on a thorough review of the need for our original proposal and an evaluation of all the comments to the NPRM, the Coast Guard believes the shipping safety fairway in the vicinity of Heald Bank is necessary and should be established as originally proposed.

**Regulatory Evaluation**

This rulemaking will not have adverse environmental impact. To the contrary, the risk of environmental damage will decrease if the rule is implemented because deep draft vessels will have an established access route where structures will not be permitted, allowing for safer maritime navigation. While there is potential energy impact for this rulemaking little verifiable impact can be determined from the available information.

The fairway was designed to have the least adverse impact upon future blocks and present leaseholders, as compared to several other alternatives considered during the study. The impact on future blocks leased was lessened by limiting the width of the fairway to two miles and by giving timely information to notify bidders of lease restrictions which would apply to blocks leased within the fairway. As indicated above, there is one leased block in the fairway which was leased after the date of the study notice and five leased blocks leased after the date of the study results. The new fairway may interfere with direct exploration and production of oil and gas in those portions of the leased blocks within the designated fairway area.

In circumstances where the Coast Guard is convinced fixed structures must be placed in an area designated as a fairway to gain access to significant quantities of oil or gas, and navigation safety would not be jeopardized by a modification of that fairway, a request for adjustment would be given appropriate consideration in accordance with the PWSA and rulemaking procedures. In most cases, a fairway modification will require a PWSA port access study before rulemaking can be commenced.

This regulation is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This designation will contribute to navigation safety without significantly interfering with development of the OCS. The economic impact of this regulation has been found to be minimal and further evaluation is unnecessary. Since the impact of this rulemaking has been found to be minimal, the Coast Guard certifies it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 166**

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shipping safety fairways.

In consideration of the foregoing, Part 166 of Title 33 Code of Federal Regulations is amended as follows:

## PART 166—SHIPPING SAFETY FAIRWAYS

1. The authority citation for Part 166 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n)(4).

2. Section 166.200 is amended by adding a new paragraph (d)(53) to read as follows:

**§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.**

* * * * *

(d) * * *

(53) Heald Bank Cutoff Safety Fairway. The area enclosed by rhumb lines, [North American Datum of 1927 (NAD–27)], joining points at:

| Latitude | Longitude |
|---|---|
| 28°57'15" N | 94°23'35" W |
| 28°51'39" N | 93°56'30" W |
| 28°48'30" N | 93°51'45" W |
| 28°55'15" N | 94°23'35" W |

Dated: April 14, 1987.

**A.B. Smith,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Navigation, By direction of the Commandant.*

[FR Doc. 87–11044 Filed 5–13–87; 8:45 am]

BILLING CODE 4910-14-M

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## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

### 33 CFR Part 207

### Ouachita and Black Rivers, Arkansas, and Louisiana

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers is amending the regulations in 33 CFR 207.249 and 207.250, which governs the use, administration, and navigation of the Ouachita and Black Rivers, Arkansas, and Louisiana. These revisions are necessary to:

a. Advise the waterway users that the 9-foot draft navigation channel is extended to Mile 338.0, Ouachita River;

b. Correct description of visual signals on lock structures;

c. Delete § 207.250 which is no longer applicable to the upper Ouachita River.

**EFFECTIVE DATE:** May 14, 1987.

**ADDRESS:** Hqusace (DAEN–CWO–M), Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harold Tohlen, phone number (202) 272–0245.

**SUPPLEMENTARY INFORMATION:** The Corps of Engineers Vicksburg District has recently completed impoundment of a 9-foot draft navigation project from Mile 237.0 to Mile 338.0, Ouachita River. This project involved replacement of the remaining wicket-type navigation structures on the river with modern high-lift locks and dams. The provisions of § 207.250 pertain to the use and operation of the wicket-type structures. The provisions of § 207.249 apply to the high-lift locks and dams. Since the Black-Ouachita River System now contains only the high-lift structures, the regulations within 33 CFR Part 207 should be consolidated by expanding the limits of § 207.249 through Ouachita River Mile 338.0 (Camden, Arkansas) and by deleting § 207.250. The Corps of Engineers Vicksburg District, by issuing written navigation notices, has informed waterway users that the wicket-type structures have been removed and the high-lift facilities have been placed into operation. Reference § 207.249, paragraph (b) (3) (iii). This paragraph indicates that the visual signals contain an amber light to indicate when the lock chamber is being made ready for use. Since the visual signals on the Black-Ouachita River System contain only red and green lights, subparagraph (b) (3) (iii) should be deleted. No other revisions are necessary regarding visual signals. Pursuant to the administration procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest because this amendment is nonsubstantive and imposes no new requirements. It merely removes obsolete regulations from 33

CFR Part 207. Through various navigation notices, the user public has been informed of the new navigation structures on the Ouachita River.

Note.—The Secretary of the Army has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices. The SA certifies that this rule will not have a significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

**Lists of Subjects in 33 CFR Part 207**

Navigation, Navigable waters, Waterways.

Dated: May 4, 1987.

John O. Roach, II,

*Army Liaison Officer with the Federal Register.*

33 CFR Part 207 is amended as follows:

**PART 207—[AMENDED]**

1. The authority citation for Part 207 continues to read as follows:

Authority: 40 Stat. 266; 3 U.S.C. 1.

2. In part 207, § 207.260 is amended by revising the heading to read as set out below and by removing (b) (3) (iii) and redesignating (b) (3) (iv) as (b) (3) (iii):

**§ 207.260 Ouachita and Black Rivers, Arkansas and Louisiana, Mile 0.0 to Mile 336.0 (Camden, Arkansas) above the mouth of the Black River; use, administration, and navigation.**

* * * * *

**§ 207.250 [Removed]**

3. Section 207.250 is removed.

[FR Doc. 87-10797 Filed 5-13-87; 8:45 am]

BILLING CODE 3710-92-M

# Proposed Rules

Federal Register
Vol. 52, No. 93
Thursday, May 14, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### 8 CFR Part 204

[INS Number: 1012–87]

### Petition To Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Filing of Occupational Preference Petitions

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed Rule.

**SUMMARY:** This rulemaking proposes to change the method by which a third preference or sixth preference priority date is established. Under regulations which have been in effect since June 20, 1986, a priority date established by the submission of a request for labor certification is lost if the immigrant visa petition seeking third or sixth preference classification is not filed within 60 days of the date of issuance of the certification, or if the petition is not resubmitted within 60 days of being returned to the petitioner for additional information. The current regulations were promulgated in order to prevent certain abuses which existed under the prior regulations. However, the enactment of the Immigration Reform and Control Act of 1986 (IRCA) on November 6, 1986 made the June 20 changes superfluous, since IRCA more effectively prevents the same abuses.

**DATE:** Written comments must be submitted on or before June 15, 1987.

**ADDRESS:** Please submit comments in duplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3946.

**SUPPLEMENTARY INFORMATION:** Under section 212(a)(14) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. 1182(a)(14), certain aliens may not obtain an immigrant visa for entry into the United States to engage in permanent employment unless the Secretary of Labor has issued a labor certification stating that there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform the skilled or unskilled labor, and that the employment of these aliens will not adversely affect the wages and working conditions of similarly employed workers in the United States.

There are three alien immigrant classifications which require a labor certification. These are the third and sixth preference, and under various circumstances, nonpreference classifications (sections 203(a)(3), 203(a)(6) and 203(a)(7) of the Act, 8 U.S.C. 1153)). For third and sixth preference applicants, labor certification applications are filed by employers with a state employment service office unless the alien's occupation is a Schedule A occupation (already certified by the Secretary of Labor as in short supply in the United States). If a labor certification is issued or the beneficiary's occupation is on Schedule A, the employer (prospective or current) submits an immigrant visa petition to a district office of the Service. Section 203(c) of the Act (8 U.S.C. 1153(c)) provides that visas will be issued under section 203(a) (1) through (6) to eligible immigrants in the order in which a petition is filed on behalf of each of these immigrants with the Attorney General as provided in section 204 of the Act, (8 U.S.C. 1154). If a preference immigrant visa number is immediately available when the petition is approved, the alien beneficiary may be issued an immigrant visa with which to enter the United States for permanent residence or, under certain circumstances, may be permitted to adjust status to that of a permanent resident. If a preference immigrant visa number is not available at the time the petition is approved, the alien's name is instead placed on a waiting list. Petitions are then processed for permanent residence status by date filed. Thus, the filing date has come to be known as the "priority date".

Over the years, the priority date has been computed in different ways at different times. Originally the priority date was based strictly on the date the visa petition was filed with the Service after issuance of the certification by the Department of Labor (DOL). However, because there were varying backlogs and processing times among the offices of the DOL's employment service system, some individuals were able to file the petition earlier than others. Accordingly, in order to eliminate what was seen as an unfair advantage enjoyed by some, the method of computation was changed so that the date that a labor certification request was filed with the local office of the state employment service became the priority date. This method created an opportunity for abuse by those employers and aliens who would obtain a labor certification but not file the I–140 petition until a visa number became available, thereby hiding the illegal alien from the attention of the Service. Accordingly, on June 20, 1986, the regulation was again changed to require that the petitioner file the petition within 60 days of the issuance of the labor certificate, or resubmit the petition within 60 days of the date it was returned for additional information or documentation, in order to retain the priority date. If the petition were not submitted or resubmitted within the allotted period, the date of submission or resubmission would be the new priority date.

On November 6, 1986 the Immigration Reform and Control Act of 1986 (IRCA) became law. By providing for sanctions to be imposed against employers who hire aliens who are not authorized to accept employment in the United States, IRCA removes the incentives for abuse which necessitated the regulatory change of June 20, 1986. With these incentives removed, requiring that petitions be submitted or resubmitted within 60 days becomes disadvantageous to both the Service and the public. Accordingly, the Service now proposes to restore the procedure which was in effect prior to June 20, 1986.

Additionally, the proposed rulemaking provides that a priority date shall only be established in the case of a third or sixth preference petition for an occupation listed in Schedule A (20 CFR 656.10) if the petition is approved. If the petition is denied, no priority date is established. The proposed rule thereby clarifies an issue which has caused

considerable confusion in the past as to whether a Schedule A labor certification could be established if the petition is denied. Because no separate adjudication is performed on the request for labor certification, and no separate notification is made to the petitioner or the beneficiary as to the decision on the request for labor certification, the certification cannot be considered to have been issued unless and until the petition is approved.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule would not, if promulgated, have a significant adverse economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

**List of Subjects in 8 CFR Part 204**

Administrative practice and procedure, Aliens, Petitions.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

**PART 204—[AMENDED]**

The authority citation for Part 204 continues to read as follows:

Authority: Secs. 101, 103, 201, 203, 204, 212, 245;; 66 Stat. 166, 173, 175, 178, 179, 182, 217; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255.

2. In § 204.1, paragraph (d)(2) is revised to read as follows:

**§ 204.1 Petition.**

* * * * *

(d) * * *

(2) *Filing date.* In the case of a third or sixth preference petition (except for an occupation listed in Schedule A), the filing date of the petition within the meaning of section 203(c) of the Act will be the date the request for certification was accepted for processing by any office within the employment service system of the Department of Labor. If a third or sixth preference petition for an occupation listed in Schedule A is approved, the filing date of the petition shall be the date it is properly filed with the appropriate Service office. If a third or sixth preference petition for an occupation listed in Schedule A is not approved, no priority date shall be established.

* * * * *

Dated: April 22, 1987.

Richard E. Norton,

*Associate Commissioner, Examinations, Immigration and Naturalization Service.*

[FR Doc. 87-10986 Filed 5-13-87; 8:45 am]

BILLING CODE 4410-10-M

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Part 240**

**[Release No. 34-24428; File No. S7-16-87]**

**Exemption of Certain Foreign Government Securities Under the Securities Exchange Act of 1934 for Purposes of Futures Trading**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule amendments and solicitation of public comments.

**SUMMARY:** The Commission proposes for comment a rule amendment that would designate securities issued by any country with outstanding long-term sovereign debt rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations as "exempted securities" for purposes of the marketing and trading in the United States of futures contracts on that government's securities. The release also proposes for comment an alternative amendment under which the government securities of Australia, France and New Zealand would be added to the list of exempted securities for purposes of futures trading.

**DATE:** Comments should be submitted by June 15, 1987.

**ADDRESSES:** All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Security, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 All comments should refer to File No. S7-16, and will be available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David L. Underhill, Esq., 202/272-2375, Division of Market Regulation, Securities and Exchange Commission, Room 5186 (Mail Stop 5-1), 450 Fifth Street, NW., Washington, DC. 20549.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Under the Commodity Exchange Act ("CEA"), futures trading on individual securities is prohibited unless the underlying security is an exempted security under the Securities Act of 1933 ("Securities Act") or the Securities Exchange Act of 1934 ("Exchange Act"). The Securities and Exchange Commission ("SEC" or "Commission"), however, adopted and later amended Rule 3a12-8 ("Rule") under the Exchange Act to designate British, Canadian and Japanese government debt obligations as exempted securities under the Exchange Act solely for purposes of marketing and trading futures on those securities in the United States.[1] In effect, the designation of those securities as "exempted securities" removes the CEA's prohibition against marketing or trading futures on those securities in the United States, so long as the other terms of the Rule are satisifed. The commission today purposes two amendments to the Rule.

The first purposed amendment would extend the class of securities exempted under the Rule, for purposes of permitting the sale and trading of futures contracts on those securities in this country, to securities issued by any country with outstanding long-term sovereign debt rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations ("NRSROs").[2] An alternative amendment would add the debt securities of Australia, France and New Zealand to the list of those countries the debt obligations of which are exempted by the Rule. Under either proposal, to quality for the exemption, futures contracts on a country's securities would have to meet all the other existing requirements of the Rule.

**II. Background**

The CEA, as amended by the Futures and Trading Act of 1982,[3] prohibits the trading of futures contracts on individual securities unless those securities qualify as exempted securities under section 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[4]

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[1] Under the Rule, trading in the U.S. of futures on government securities exempted by the Rule is permitted only on a board of trade.

[2] An NRSRO is a professional rating service that specializes in analyzing and assigning ratings from an established scale or range to a variety of corporate and sovereign debt issues. Those ratings are based on the rating organization's assessment of the issuer's capacity to pay interest and repay principal in accordance with the rated debt instrument's terms. The following organizations presently are considered NRSROs, as that term is used in the Exchange Act's net capital rule [17 CFR 240.15c3-1(c)(2)(vi)(F)]: Duff and Phelps, Inc.; Fitch Investors Services, Inc.; Moody's Investors Services, Inc. ("Moody's"); McCarthy, Crisanti & Maffei; and Standard and Poor's Corporation ("S&P").

[3] Pub. L. No. 97-444, 96 Stat. 2294, 7 U.S.C. 1 et seq (1984).

[4] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v) (1984), provides that "[n]o person shall offer to enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security, or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act . . . or section 3(a)(12) of the . . . Exchange Act. . . ."

Because foreign government securities are not exempted securities under either of these sections, the CEA prohibition against trading futures on individual securities prevents the marketing and trading of futures on such foreign government securities in this country. Section 3(a)(12) of the Exchange Act, however, provides that the term "exempted security" includes

> such other securities . . . as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

In March 1984 pursuant to section 3(a)(12) under the Exchange Act, the Commission promulgated Rule 3a12–8.[5] The Rule currently designates British, Canadian and Japanese government securities that meet certain conditions as "exempted securities" under the Exchange Act.[6] The purpose of the Rule is to permit certain foreign, exchange-traded futures contracts on the designated securities to be marketed and traded in the United States.[7] Under the Rule, British, Canadian Japanese government debt securities are considered exempted securities under the Exchange Act only with respect to futures trading on those securities and provided that: (1) The securities are not registered in the United States; (2) the futures contracts require delivery outside the United States; and (3) the futures contracts are traded on a board of trade.[8]

## III. Discussion

Rule 3a12–8 was promulgated in response to Congress' understanding, in approving the 1982 amendments to the CEA, that neither the SEC nor the Commodity Futures Trading Commission had intended to bar United States marketing of British gilt futures [9] and that administrative action would be taken to allow the sale of these futures contracts in this country.[10] By promulgating the Rule, the Commission implemented Congress' intent without abandoning the longstanding policy of subjecting foreign government securities marketed and traded in the United States, for most purposes, to the requirements of the federal securities laws. Accordingly, the conditions set forth in the Rule are designed to ensure that a domestic market in unregistered foreign government securities does not develop and that futures markets in these instruments are not used to avoid the registration requirements and other provisions of the federal securities laws.

At the time the Commission originally proposed Rule 3a12–8, it recognized that, should the securities of additional governments become subject to futures trading, it could become necessary to amend the Rule to include those securities.[11] Subsequently, the Commission amended the Rule to include Japanese government debt. Currently, the Sydney Futures Exchange is trading futures on Australian bonds, the Marche a Terme d'Instruments Financiers [12] is trading futures on French bond contracts, and New Zeland bond futures are being traded on the New Zealand Futures Exchange. The Commission has been informed that United States citizens, especially institutional investors, are interested in trading these new products and has received requests that Rule 3a12–8 be amended.[13]

As the world's securities markets become increasingly internationalized, the Commission expects to receive additional petitions for exemptive relief. As an alternative to continuing to amend the Rule on a country by country basis, the Commission today is proposing to amend subsection (a)(1) of Rule 3a12–8 by adding to the list of designated foreign government securities under the Rule the unregistered debt obligations of any government with outstanding long-term sovereign debt rated in one of the two highest rating categories (within which they may be sub-categories or gradations indicating relative standing) by at least two NRSROs.[14]

The two U.S. entities that currently rate foreign sovereign debt, Moody's and S&P, currently rate only "external" debt, *i.e.*, debt that is sold outside the issuing country and typically is denominated in a currency other than that of the issuing country. The Rule, as proposed, would exempt all debt issued by a country that meets the rating category test, whether internal or external and whether long- or short-term.

In proposing to extend to the debt securities of additional countries the exemption afforded by the Rule, the Commission believes initially that there are no major differences between the government securities of countries issuing sovereign debt rated in one of the two highest rating categories [15] by at least two NRSROs (including Australia, France and New Zealand) and the securities of Great Britain, Canada and Japan so as to justify a different regulatory response. Like the sovereign debt of Great Britain, Canada and Japan, debt securities of countries with debt rated in one of the two highest rating categories are more likely to have an active and liquid secondary trading market. Restricting the Rule to the two highest rating categories would ensure that futures on thinly-traded sovereign debt would not be used as a subterfuge to market or trade the unregistered foreign debt in the United States.[16]

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[5] *See* Securities Exchange Act Release Nos. 20708 ("Adopting Release"), March 2, 1984, 49 FR 8595 and 19611 ("Proposal Release"), May 25, 1983, 48 FR 24725.

[6] As originally adopted, the Rule applied only to British and Canadian government securities. *See* Adopting Release, *supra* note 5. The Rule was amended to include Japanese government securities. Securities Exchange Act Release No. 23423, July 11, 1986, 51 FR 25666.

[7] As discussed above, without this designation the trading of futures on these securities in the United States would be prohibited by section 2(a)(1)(B)(v) of the CEA.

[8] A requirement that the board of trade be located in the country that issued the underlying securities was eliminated. *See* Securities Exchange Act Release No. 24308, March 11, 1987, 52 FR 8575.

[9] *See* Proposal Release, *supra* note 5, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[10] In extending the exemption to futures on Canadian government bonds and bills and then to futures on Japanese yen bonds, the Commission noted that there did not appear to be any legal or regulatory reason for treating them differently from British gilt futures contracts.

[11] *See* Proposal Release, *supra* note 5, 48 FR at 24726–27.

[12] The Marche a Terme d'Instruments Financiers is a financial futures exchange established in Paris in February 1986.

[13] *See* letters from Philip McBride Johnson, Skadden, Arps, Slate, Meagher & Flom, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 20, 1986 (Australia), October 1, 1986 (New Zealand), and February 20, 1987 (France); and letter from Eugene W. Buehrieger, Managing Director, First Boston Corporation, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 1, 1986 (France).

[14] The Commission believes preliminarily that it is more appropriate to rely on long-term (*i.e.*, more than 365 days to maturity) sovereign debt ratings, because they are broken down into a greater range of rating categories and cover more debt issues. In addition, most of the foreign futures contracts that would be covered by the Rule amendment overlie long-term debt obligations.

[15] The two highest rating categories of Moody's (Aaa and Aa) and S&P (AAA and AA) comprise what generally are known as "high grade" bonds. S&P asserts that its two highest rating categories differ only to a small degree and that both categories represent debt with a very strong capacity to pay interest and repay principal. *See, e.g., S&P International Credit Week*, December 1986, at 55. According to Moody's, debt rated in its third highest category (A) is considered "upper-medium-grade." Such debt has a strong capacity to pay interest and repay principal, but factors may be present which suggest a susceptibility to impairment some time in the future. *See, e.g.*, Moody's, *Sovereign Ratings*, August 22, 1986.

[16] The use of a debt rating standard would not preclude countries other than those coming under

Continued

According to the most recent Moody's and S&P ratings, the countries that come under the two highest rating categories are Australia, Austria, Denmark, Finland, France, the Netherlands, New Zealand, Norway, Sweden, Switzerland, and West Germany, as well as Great Britain, Canada, and Japan.[17]

The Commission further proposes, however, an alternative amendment that would simply add the securities of Australia, France and New Zealand to the list of debt obligations exempted by the Rule. As noted above, the Commission has received requests on behalf of futures exchanges located in these countries to allow sales to U.S. investors of futures based on each country's sovereign debt. Again, the Commission believes that futures on debt obligations issued by these countries should be accorded the same regulatory treatment accorded futures on the government securities of Canada, Great Britain and Japan.

Under either proposal, the existing conditions set forth in the Rule (*i.e.*, that the underlying securities not be registered in the U.S., that the futures contracts require delivery outside the U.S., and that the contracts be traded on a board of trade) would continue to apply. This should ensure that a domestic market in unregistered foreign sovereign debt of newly-designated countries does not develop.

The Commission seeks comments on a number of issues related to its proposal. First, the Commission encourages comments on the feasibility of a rule based on sovereign debt ratings. In particular, the Commission requests comments on the proper functioning of the Rule in the event that a qualified government issuer's rating falls below the two highest rating categories.[18] In this connection, commentators are asked to consider whether all or just a portion of a government's rated debt issues should be required to meet the rating standard in order for that country to qualify under the Rule.[19] In addition, commentators should consider whether a standard other than sovereign debt ratings would be appropriate as a basis for designation as an exempted security. For example, would a standard based on the volume and depth of trading in the sovereign debt be an easier or more accurate standard to use than debt ratings? If so, what sources of information are readily available to obtain reliable measurements of such trading activity?

The Commission also solicits comments on the desirability of an alternative amendment adding Australia, France and New Zealand to the Rule's list of eligible countries. In addition, the Commission requests comments on whether, under either proposal, the information available in English regarding the newly-eligible futures contracts and underlying sovereign debt would be adequate to permit U.S. investors to make informed investment decisions.[20] Finally, commentators may wish to discuss whether there are any legal or policy reasons for determining that the sovereign debt futures that would qualify under the proposed amendments should not be accorded the same treatment in the United States as British, Canadian and Japanese sovereign debt futures under Rule 3a12–8.

## IV. Cost/Benefit Analysis

There are virtually no costs associated with the proposed amendment, which imposes no record-keeping or compliance burden in itself and merely provides an exemption under the federal securities laws. The principal benefit associated with the amendment is that it would allow U.S. boards of trade and investors to trade a greater range of futures contracts on foreign government debt. The Commission solicits comments on the costs and benefits of the proposed amendment to Rule 3a12–8.

## V. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

## List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

## VI. Text of the Proposed Amendment

The Commission is proposing to amend Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

**Authority:** Sec. 23, 49 Stat. 901, as amended; 5 U.S.C. 78w. * * * Section 240.3a12–8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12) and 23(a), 15 U.S.C. 78w(a). * * *

2. Alternative A:

Section 240.3a12–8 is amended by removing the word "or" from (a)(1)(ii), replacing the peirod with a semi-colon and adding the word "or" to (a)(1)(iii), and adding paragraph (a)(1)(iv) as follows:

**§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.**

(a) * * *

(1) * * *

(iv) Any country with outstanding long-term sovereign debt rated in one of the two highest rating categories (within which there may be sub-categories or gradations indicating relative standing) by at least two nationally recognized statistical rating organizations, so long as such debt remains so rated. For the purposes of this paragraph, the phrase "long-term" is defined as having an original maturity date more than 365 days from the date of issuance.

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the two highest rating categories from having their debt designated as an exempted security. If the Commission receives an application from an entity desiring to market or trade futures on the debt of a country that does not meet the rating standard, the Commission would consider that application in light of the regulatory concerns underlying the Rule and, if appropriate, publish a proposal to amend the Rule to include that country's debt.

[17] Portugal and South Korea are the only sovereign issuers rated in the third highest category (A). Italy's long-term debt is rated Aaa by Moody's, but is not rated by S&P.

[18] For example, at such time the marketing and trading in the U.S. of futures on any debt issues of the relevant government issuer not already the subject of futures trading could be prohibited or, in addition, any further increases in the open interest in futures on that country's debt could be prohibited.

[19] S&P recently adopted guidelines whereby it will issue a single, uniform rating for all long-term debt issues of a given foreign government. *S&P International CreditWeek*, December 1986, at 18. Moody's has no such policy.

[20] In adopting Rule 3a12–8 the Commission decided not to require, as a condition to the exemption, that such information be available. *See* Adopting Release, *supra* note 5, 49 FR at 8597–98. At the time Rule 3a12–8 was adopted both the United Kingdom and Canada had government debt issues registered in the United States. As a result, although those particular issues were not the subject of futures trading, United States investors had relevant disclosure materials concerning the issuers, *i.e.*, the governments of Canada and the United Kingdom. The Japanese government, however, had not registered any securities in the United States when it was added to the Rule's list of eligible issuers. Of the new countries that would become eligible under the rating standard proposal, only Australia, Denmark, Finland, New Zealand and Sweden currently have government debt issues registered in the U.S.

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**Alternative B:**

Section 240.3a12–8 is amended by removing the word "or" from (a)(1)(ii), replacing the period with a semi-colon at (a)(1)(iii), and adding paragraphs (a)(1)(iv) through (vi) as follows:

**§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.**

(a) * * *

(1) * * *

(iv) Australia;

(v) France; or

(vi) New Zealand.

* * * * *

Dated: May 5, 1987.

By the Commission.

Jonathan G. Katz,

*Secretary.*

**Regulatory Flexibility Act Certification**

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 3a12–8 set forth in Securities Exchange Act Release No. 24428, which would define government securities of (1) any country with outstanding long-term sovereign debt rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations or (2) Australia, France and New Zealand as exempted securities under the Securities Exchange Act of 1934 for purposes of futures trading on such securities, will not have a significant economic impact on a substantial number of small entities for the following reasons. First, the proposed amendment imposes no record-keeping or compliance burden in itself and merely allows, in effect, the marketing and trading in the United States of foreign futures contracts on government securities described above. Second, because futures contracts on British, Canadian and Japanese debt, which already can be traded and marketed in the U.S., still will be eligible for trading under the proposed amendment, the proposal will not affect any entity currently engaged in trading such futures contracts. Third, because the level of interest presently evident in this country in the futures trading covered by the proposed rule amendment is modest and those primarily interested are large, institutional investors, neither the availability nor the unavailability of these futures products will have a significant economic impact on a substantial number of small entities, as that term is defined for broker-dealers in 17 CFR 240.0–10 and to the extent that it is defined for futures market participants at 47 FR 18618.

Dated: May 5, 1987.

John Shad,

*Chairman.*

[FR Doc. 87–10969 Filed 5–13–87; 8:45 am]

BILLING CODE 8010-01-M

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[A–9–FRL–3206–6]**

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision—Tehama and Six Other Districts in California**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to approve revisions to the California State Implementation Plan (SIP) for the Bay Area, the South Coast, and Butte, Monterey, Placer, San Diego, and Tehama Counties. The revisions were submitted to EPA by the California Air Resources Board (CARB) on February 10, 1986. The submitted rules control emissions of nitrogen oxides, sulfur oxides, volatile organic compounds, and total suspended particulate matter. EPA has determined that the revisions are consistent with the Clean Air Act and EPA requirements, and is proposing that the rules be approved.

**DATE:** Comments may be submitted to EPA at the address below up to June 15, 1987.

**ADDRESSES:** Comments on this proposal should be sent to: Regional Administrator, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105. Attn: Air Management Division, State Implementation Plan Section (A–2–3).

Copies of the submitted rules are available during normal working hours at EPA's Region 9 office in San Francisco and at CARB's office in Sacramento. Rules of specific districts can also be found at the district offices. EPA's detailed evaluations of the rules are available at its Region 9 office. Below are listed the applicable addresses.

California Air Resources Board, Projects Section, Technical Support Division, 1131 "S" Street, Sacramento, CA 95812.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

Butte County Air Pollution Control District, 316 Nelson Avenue, Oroville, CA 95965.

Monterey Bay Unified Air Pollution Control District, 1164 Monroe Street, Suite 10, Salinas, CA 93906–3596.

Placer County Air Pollution Control District, 11582 B Avenue, Building 117A, Auburn, CA 95603.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080.

**FOR FURTHER INFORMATION CONTACT:** Patty Monahan, Environmental Protection Specialist, State Implementation Plan Section, A–2–3, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7638, FTS 454–7639.

**SUPPLEMENTARY INFORMATION:**

**Background**

This notice proposes to approve rules which were submitted as SIP revisions by the State of California on February 10, 1986. The amended rules control the emissions of volatile organic compounds (VOC), nitrogen oxides (NOx), sulfur oxides (SOx), and total suspended particulate matter (TSP). Below is a list of these rules, with the primary pollutants affected by each rule in parentheses. EPA's evaluation of these revisions, as well as EPA's intended action, follow the list of rules.

**Description of Rules and Regulations**

*Bay Area AQMD*

Regulation 8, Rule 5—Storage of Organic Liquids (VOC)

*Butte County APCD*

Rule 2A–3—Finding by County Health Officer [deletion] (TSP)
Rule 202—Visible Emissions (TSP)
Rule 203—Particulate Matter Concentration (TSP)
Rule 204—Exemptions to Rules 201, 202, and 203 (TSP)
Rule 205—Process Weight Limitation (TSP)
Rule 210—Gasoline Transfer into Stationary Storage Containers (VOC)
Rule 211—Exemptions to Rule 210 (VOC)
Rule 212—Gasoline Storage (VOC)
Rule 213—Bulk Facilities, Petition for Annual Exemption (VOC)
Rule 214—Vapor Collection and Disposal System at Loading Facilities (VOC)
Rule 215—Storage of Gasoline Products at Bulk Facilities (VOC)
Rule 220—Dry Cleaning (VOC)
Rule 225—Solvent Storage (VOC)
Rule 231—Sulfur Oxides Emission Standard (SOx)

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*Monterey Bay Unified APCD*

Rule 416—Organic Solvents (VOC)
Rule 418—Transfer of Gasoline Into Stationary Storage Containers (VOC)

*Placer County APCD*

Rule 213—Gasoline Transfer into Stationary Storage Containers (VOC)
Rule 307—Agricultural Burning Reports (TSP)
Rule 324—Residential Rubbish Burning (TSP)

*San Diego County APCD*

Rule 66—Organic Solvents (VOC)
Rule 67.8—Dry Cleaning Facilities using Halogenated Organic Solvents (VOC)
Rule 68—Fuel Burning Equipment (NOx)

*South Coast County AQMD*

Rule 1159—Nitric Acid Units—Oxides of Nitrogen (NOx)

*Tehama County APCD*

Rule 4.3—Particulate Matter (TSP)
Rule 4.8—Dust and Condensed Fumes (TSP)
Rule 4.9—Specific Contaminants (SOx)
Rule 4.10—Sulfur Content of Fuels (SOx)
Rule 4.13—Fuel Burning Equipment [deletion] (SOx, NOx)
Rule 4.14—Fuel Burning Equipment (NOx)

**EPA Evaluation**

EPA has evaluated these rules for consistency with the Clean Air Act, 40 CFR Part 51, and EPA policy. There are four revisions which represent relaxations of the current SIP. Three of the revisions pertain to agricultural burning rules and the fourth revision exempts turbine engines from NOx controls during certain modes of operation. All of the counties with these relaxed rules are in attainment with the standards for the applicable pollutants.

The first of these agricultural burn relaxations is a proposal to delete Butte County Rule 2A–2. Currently, both the Air Pollution Control Officer (APCO) and a health officer must approve all wood waste burning in Butte County. The deletion of Rule 2A–2 would remove the requirement that a health officer approve wood waste burning and would give the APCO total discretion. EPA is proposing approval of this deletion because the current rule is unnecessary, unenforceable, and not required by neighboring counties.

There are two rules for Placer County regarding agricultural burns which relax the current, federally-approved rules. Placer Rule 307 allows the APCO to determine reporting requirements during peak burn months. The approval of this rule would give the APCO increased flexibility during the agricultural burn season, and would not lead to an increase in TSP emissions.

The revision to Placer Rule 324 deletes the stacking requirements for residential burns. The current rule has not been enforced for residential burns. Further, Rule 308, which is applicable to residential burns, specifies that the burns must be prepared to minimize smoke; this implicitly regulates the stacking of materials. The Placer agricultural burn revisions are consistent with the federal rules for other California counties and EPA believes such revisions will not increase TSP emissions.

The fourth revision which is less stringent than the current SIP is San Diego Rule 68. This revision would exempt turbine engines from NOx requirements for thirty minutes each during start-up, shut down, and fuel switching. The current regulation is an unreasonable standard that cannot be complied with. EPA believes an emissions increase, if any, would be insignificant and would not adversely affect attainment status.

Of the remaining revisions, there are fourteen governing the emission of VOC's, two of which will reduce VOC emissions. These two revisions are: Bay Area Regulation 8, Rule 5, and San Diego Rule 66.

Bay Area Regulation 8, Rule 5, presents a new measure of vapor pressure, requires controls for certain smaller tanks, and provides more details on floating roofs and seals. The proposed revision will reduce VOC emissions and help the Bay Area achieve the ozone standard.

The second revision which would decrease VOC emissions is San Diego Rule 66. This rule would encourage the use of low VOC paints and clean-up compounds. Instead of reducing the amount of highly reactive compounds, revised Rule 66 reduces total VOC, and should aid in attainment of the ozone standard. All of the VOC revisions are approvable under Part D and section 110 of the Clean Air Act.

There are four revisions in this package which govern SOx emissions. Butte Rule 231, Sulfur Oxides Emission Standard, has been recodified. Tehama Rule 4.9 has changed the form of emissions limitations for sulfur compounds from .2% to 250 parts per million. Tehama Rule 4.10 eliminates all exemptions for sources burning natural gas. The rule has no effect on restrictions for sulfur content in liquid and solid fuel. Finally, Tehama Rule 4.13 was deleted since its requirements are included in the new portions of Rule 4.9.

EPA's review indicates that the deletion of Tehama Rule 4.13 and its replacement by Rules 4.9 and 4.14 should not impact emissions. With the exception of Tehama Rule 4.3, the rest of the rules do not have a net effect on emissions and do not impact the Air Quality Plan. The rest of the rules make minor administrative corrections, clarify procedures, and delete obsolete compliance schedules. Tehama Rule 4.3 reduces the particulate matter emission limit from 0.3 grains per cubic foot at standard conditions to 0.15 grains per cubic foot. It thus sets more stringent controls on particulate matter emissions, and is approvable under section 110 of the Clean Air Act.

EPA's detailed evaluation of the submitted rules is available at the EPA Region 9 office.

**EPA Proposed Actica**

These rules are consistent with the Clean Air Act, 40 CFR Part 51, and EPA policy. EPA thus proposes to approve all of these rules under section 110 and to approve the VOC rules under both section 110 and Part D of the Clean Air Act.

**Regulatory Process**

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Carbon monoxide, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: August 6, 1986.

John Wise,

*Acting Regional Administrotror.*

Editorial Note.—This document was received at the Office of the Federal Register on May 11, 1987.

[FR Doc. 87–11028 Filed 5–13–87; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 52**

**[A–4–FRL–3200–5; FL–010]**

**Approval and Promulgation of Implementation Plans, Florida; Waste Pesticide Container Burning Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On September 6, 1985, the State of Florida submitted a waste pesticide container burning rule for EPA review. The rule was adopted by the Florida Department of Environmental Regulation on July 10, 1985, and became State-effective on July 30, 1986. The rule allows for the supervised burning of certain waste pesticide containers on the site of application under supervision.

**DATE:** To be considered, comments must reach us on or before June 15, 1987.

**ADDRESSES:** Written comments should be addressed to Rosalyn Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

Environmental Protection Agency, Air Programs Branch—Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** Rosalyn Hughes, EPA Region IV, Air Programs Branch, at the address listed above, and phone (404) 347–2864 or FTS 257–2864.

**SUPPLEMENTARY INFORMATION:** The Florida Department of Environmental Regulation (DER), acting in response to the concerns of farmers, pesticide applicators, and other agricultural related parties regarding the disposal of waste pesticide containers, adopted a rule to allow controlled, limited open burning of specified groups of containers. The concerns about disposal of pesticide containers arose because many sanitary landfill operators either were reluctant or refused to accept the waste containers. The landfill operators associated the waste containers with hazardous waste. Problems also occurred in transporting waste containers from isolated fields to the often distant rural sanitary landfills. Essentially no practical alternative disposal method was available.

The DER investigated four possible alternative disposal methods other than sanitary landfilling. They were: (1) On-site burial of containers, (2) incineration, (3) recycling of used containers, and (4) open burning of limited quantities of containers. Three of the four methods were found to be impractical or unsound environmentally. Indiscriminately burying the containers could threaten the water table. No incinerators were in operation for the disposal of pesticide wastes. Recycling was not practical or economical under the present circumstances. After a thorough assessment of the impact of allowing open burning, the DER found that the open burning of properly cleaned waste pesticide containers could be accomplished in an environmentally sound manner.

The impact analysis was done through modelling and a general assessment of the background of the affected areas, which are rural and not heavily, if at all, industrialized.

**Proposed Action**

EPA has reviewed the submitted material and found it to meet present EPA requirements. Therefore, EPA is today proposing to approve Florida's rule for the open burning of waste pesticide containers and is soliciting public comment on it.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the technical justification, including modelling analysis, legal impact and the economic impact. This is available at the EPA address given above. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Intergovernmental relations.

**Authority:** 42 U.S.C. 7401–7642.

Dated: December 3, 1986.

**Jack E. Ravan,**

*Regional Administrator.*

[FR Doc. 87–11027 Filed 5–13–87; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 52**

**[A–8–FRL–3200–8]**

## Approval and Promulgation of State Implementation Plans, Montana; Butte TSP Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This notice proposes to modify the March 4, 1980 conditions in the Montana State Implementation Plan (SIP) for attainment of the primary particulate standard in the Butte nonattainment area. EPA is proposing approval of the measures that were developed to reduce emissions from unpaved roads and an open cooper mine owned by Washington Construction. These were the primary sources of the particulate emissions in the Butte nonattainment area at the time of the nonattainment designation. However, studies indicate that wood smoke is the probable cause of the recent violations. EPA is, therefore, requiring the State to address residential wood combusion as part of the Butte TSP Control Plan.

**DATE:** Comments due July 13, 1987.

**ADDRESSES:** Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405.

Copies of the submittals are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the follwing offices: Environmental Protection Agency, Region VIII, Air Programs Branch, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405.

**FOR FURTHER INFORMATION CONTACT:** Lee Hanley, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202–2405, (303) 293–1765.

**SUPPLEMENTARY INFORMATION:** In 1977, the Montana Air Quality Bureau (AQB) divided the State into various control regions and classified the air quality of each region as required by the 1977 Clean Air Act Amendments. One such region was the east portion of Butte which was classified nonattainment of the National Ambient Air Quality Stnadard (NAAQS) secondary particulate standard. (See 43 FR 8962, March 3, 1978.) Classification was made using October 1976 to September 1977 particulate data collected Greeley School which showed a geometric mean of 79 $\mu g/m^3$ as well as exceedances of the 24-hour secondary standard. The Butte nonattainment boundary was drawn by the AQB using air quality modeling information provided by the EPA and PEDCO (1977) and knowledge of the various sources of dust in Butte.

The AQB submitted the control region information to EPA on January 6, 1978. EPA reviewed the information and changed the designation from nonattainment of the secondary standard to nonattainment of both secondary and primary NAAQS

particulate standards based on data collected through the end of 1977. (See 44 FR 45420, August 2, 1979, and 45 FR 14036, March 3, 1980.

On April 24, 1979, the Butte SIP for attainment of the primary standard was submitted to EPA and included a request for delay in submission of the secondary standard plan for 18 months. The SIP identified fugitive emissions from paved roads and the open pit copper mine owned by the Anaconda Copper Company as the cause of the TSP problem. An analysis using the 1977 emission inventory and an acceptable diffusion model demonstrated that a strategy to control fugitive dust emissions would attain the annual primary standard by 1982. The State was proceeding to develop a regulation to control re-entrained dust from pave streets for an estimated reduction of 8 $\mu g/m^3$.

EPA gave conditional approval of the Arpil 24 submittal on March 4, 1980, 45 FR 14068, contingent upon the development and adoption of a revised airborne particulate rule and submission of a demonstration that the estimated reductions will be achieved. That rule was to be submitted to EPA by February 15, 1981; it was to be implemented so as to achieve the standard by December 1982.

In a separate action on March 4, 1980, 45 FR 14072, proposed approval of the 18 month extension for the submission of a revised particulate rule. That action was finalized on September 23, 1980, 45 FR 62982, in which EPA approved a schedule calling for the adoption and submission of an airborne particulate rule by February 15, 1981.

Studies which followed indicated that the airborne particulate rule was inappropriate. Therefore, the State proposed a new schedule specifying submittal of an effective plan by September 30, 1982. A plan was submitted on February 10, 1983, accompanied by a request for redesignation of the Butte TSP (primary and secondary) nonattainment area. The submittal included (1) a schedule for street sweeping and paving committed to by the Butte-Silver Bow local government and, (2) a commitment by the State to issue a permit to Anaconda limiting emissions from their mining operation. Internal EPA review of this submittal led to a requirement that the actual permit become part of the Plan.

On April 15, 1983, a permit was issued to Anaconda which specified emission controls and operating limits predicted to maintain compliance with the primary standard under all foreseen mining scenarios. A copy of the permit was submitted to EPA on April 18, 1983, and is part of the Butte TSP Plan. On June 7, 1983, the State submitted a document clarifying their authority to enforce conditions of the permit.

Mining operations at Anaconda ceased in April 1982. The mine (Berkeley Pit) was flooded with minimal plans for additional mining. The deterioration of the access roads and the poor economics of the mining industry made reopening of the mine highly improbable. Indefinite curtailment of all mining activities took place in June 1983. Anaconda continued to maintain the facility.

In addition to the conditions of the permit on the Anaconda operations, other parts of the February 1983 submittal were reviewed to determine the adequacy of the attainment demonstration. The review centered primarily on the State's choice to demonstrate compliance using the Industrial Source Complex Long Term (ISCLT) dispersion model. The model assumed mining would continue and included the conditions contained in the Anaconda air quality permit. Also, the model used meteorological data, temperature and wind data, from the Alpine site which is close to the mine.

Various future mining and control strategy scenarios were modeled. Two city activity levels (based on population) were evaluated and controls on the anticipated emissions defined as Level I and Level II. Level I is with no controls, and Level II is with 10% TSP controls achieved by street sweeping in the nonattainment area. The mine scenario evaluated three levels of controls on the mining activity: one consisted of 50% control on the active storage and crusher dump; the second assumed 70% control on haul roads; and the third assumed both controlling strategies together. Stripping ratio and total mining output were also varied so as to develop various options. (Stripping ratio is the volume of overburden to the volume of ore.)

Other permanent changes in mining activity include mining only in the East Pit and waste dumping only in the Hillcrest site. The East Pit is northeast of the nonattainment area. The change in the mining location from the previous site which was northwest of the Greeley site will have a significant effect on the nonattainment area. The wind direction in the Butte area is northwest to southeast. Mining originally was northwest of the Greeley School. Moving the mining activity to the east reduces the fugitive emission impact on the nonattainment area.

The result of the modeling analysis demonstrated that with the implementation of all permit conditions, the Butte nonattainment area would achieve the primary annual NAAQS for particulates.

The State concentrated its modeling efforts on the primary annual standard since it was the initial cause of the nonattainment designation. The primary 24-hour standard had not appeared to be a problem in the studies conducted or in the monitoring data.

After extensive study on the modeling analysis, the monitoring data and the Anaconda permit, EPA advised the State on May 30, 1985 of its conclusion that an attainment demonstration had only provided for the primary standards. The State responded on June 21, 1985, that it wished to revise its February 10, 1983 submittal by requesting approval of the primary TSP Plan and redesignation for attainment of the primary standards.

As EPA proceeded to process the State's request, EPA was informed that violations of the primary 24-hour standard had occurred for the first time. (The violation occurred in December 1985.)

The Anaconda permit, that is one of the primary control strategies to the Butte TSP Plan, had also undergone some changes. In October 1985, Washington Construction of Missoula, Montana purchased the Butte mining interest of Anaconda's partner company, Atlantic Richfield Corporation and announced intentions to resume mining activity. In December 1985, the Anaconda permit was transferred to Washington Construction, therefore binding them to the same operating permit conditions which were imposed on Anaconda. In July 1986, Washington Construction resumed mining operations in Butte.

At a meeting on May 20, 1986, EPA and the State agreed that the request for redesignation of the Butte nonattainment area could not be approved because of the violations in 1985.

On May 7, 1986, the State submitted a letter and a study indicating that the sources of the particulate emission have changed since the February 10, 1983 plan was developed. The 1986 study demonstrated that the violations occurred in the winter months, and that the primary source of the remaining particulate problem is from residential wood combustion. Based on the State's statistical analysis, EPA agrees that wood smoke is the most probable source of the winter violations. Since the violations that occurred were of the 24-hour primary TSP standard, the State is now required to do short-term modeling.

**EPA Action**

EPA is proposing approval of the control strategy submitted to meet the conditions in the March 4, 1980 conditional approval, as well as modifying the conditional approval to require the State to address the wood smoke problem. The controls that are being approved include sweeping and flushing of Continental Drive, paving and partial paving of 18 streets, and the permit to Washington construction Company (formally the Anaconda Minerals Company permit).

EPA is modifying the March 4, 1980 conditional approval by requiring the State to conclusively determine whether the recent violations are due to wood smoke emissions. Once a determination is made, a new control strategy will have to be incorporated into the Butte TSP Plan.

Under 5 U.S.C. 605(b), I certify that this SIP approval will not have a singnificant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air Pollution Control, Total suspended particulate matter.

**Authority:** 42 U.S.C. 7401–7642.

**Dated:** March 27, 1987.

**Irwin L. Dickstein,**

*Acting Regional Administrator.*

[FR Doc. 87–11030 Filed 5–13–87; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 52**

**[Region II Docket No. 75; FRL–3200–7]**

## Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Lead

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This notice announces that the Environmental Protection Agency is proposing approval of a revision to the New Jersey State Implementation Plan (SIP) for lead. This revision consists of material prepared by the New Jersey Department of Environmental Protection (NJDEP) pursuant to a SIP commitment to conduct studies and implement appropriate actions to maintain the ambient air quality standard for lead in the vicinity of two facilities: Delco Remy in New Brunswick and Heubach Inc. in Newark. Among the actions proposed are specific emission limitations for Delco Remy and Heubach.

**DATES:** Comments must be received by June 15, 1987. Public comments on this document are requested and will be considered before taking final actions on this SIP revision.

**ADDRESSES:** All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Envornmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

New Jersey Department of Environmental Protection, Division of Environmetal Quality, 401 East State Street, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:** Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 25, 1986 (51 FR 42565) the Environmental Protection Agency (EPA) approved the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards for lead. As a part of its control strategy, the State committed in its SIP to conduct studies of lead emissions in the vicinity of the Delco Remy (New Brunswick) and Heubach (Newark) facilities and to implement appropriate actions to maintain the standard in both areas. These studies, known as reasonably available control technology (RACT)-plus, were to determine what control measures in addition to RACT, if any, were needed to attain and maintain the ambient standard for lead.

### The State Submittal

On December 1, 1986 the State of New Jersey sent EPA a draft SIP revision for Delco Remy and Heubach. The primary purpose of this submittal was to fulfill requirements necessary to complete the State's lead SIP. Today's action only discusses the adequacy and approvability of revisions to the New Jersey lead SIP as they relate to commitments made in the SIP with respect to the Delco Remy and Heubach facilities. A public announcement requesting comments on this SIP submittal was made in the *New Jersey Register* on March 2, 1987. EPA is proposing this SIP revision in parallel with New Jersey and will only take our final action after New Jersey completes its review and adoption process.

The specific revision and the results of EPA's review of it are discussed as follows.

NJDEP submitted to EPA its "RACT-plus" study report on Heubach in February, 1986 and on Delco Remy in June, 1986. The reports conclude that stack test emission rates were less than the allowable emission rate under existing emission limitations, predicted concentrations from dispersion modeling of actual stack and fugitive emissions were below the lead standard, and monitored ambient lead concentrations near the facilities are below the ambient lead standard. However, for maintenance of the ambient standard for lead, NJDEP has revised the facilities' operating permits to reflect only the lower, current actual lead emission rates at these facilities. For the Delco Remy facility, the permits were revised to specify an overall allowable emission reduction of sixty percent, and, for the Heubach facility, and overall reduction of eighty percent, as follows:

TABLE I.—REVISED ALLOWABLE EMISSION LIMITS CONTAINED IN PERMITS

| Delco Remy | | Heubach | |
|---|---|---|---|
| NJ stack No. | Allowable lead emission rate (pounds per hour) | NJ stack No. | Allowable lead emission rate (pounds per hour) |
| 005 | 0.050 | 004 | 0.520 |
| 006 | .150 | 012 | .033 |
| 009 | .160 | 013 | .003 |
| 014 | .150 | 014 | .003 |
| 020 | .850 | 015 | .048 |
| 026 | .120 | 016 | .050 |
| 031 | .099 | 017 | .084 |
| 042 | .250 | 018 | .048 |
| 043 | .350 | 023 | .006 |
| 050 | .110 | 025 | .030 |
| 052 | .240 | 026 | .008 |
| 053 | .110 | 035 | .002 |
| 054 | .120 | 036 | .006 |
| 055 | .120 | | |
| 056 | .120 | | |
| 057 | .120 | | |
| 058 | .120 | | |
| 060 | .200 | | |
| 065/062 | .305 | | |

These permits are already in effect and both Delco Remy and Heubach are in compliance with the revised emission limits.

NJDEP will continue to monitor in the vicinity of the two facilities at least until the end of September 1988, or until such time that NJDEP and EPA mutually agree that ambient monitoring is no longer necessary.

### Finding

EPA finds that the lower allowable emissions limits for these two facilities will insure continued maintenance of the lead standard at these locations.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed, except as may be specified herein, EPA may request additional public comment. Otherwise, EPA proposes to take final rulemaking action as specified herein.

The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by New Jersey and submitted to EPA for incorporation into the SIP. Parallel processing will reduce the time necessary for final approval of these SIP revisions by 3 to 4 months.

### Conclusion

EPA is proposing to approve the revision pertaining to the Delco Remy and Heubach facilities as a part of the New Jersey SIP. EPA is proposing to incorporate expressly the emission limitations for lead in the state permits for Delco Remy and Heubach into the SIP for the State New Jersey at 40 CFR Part 52, Subpart FF, at which time such limitations shall be effective and may only be revised by appropriate procedures under the Clean Air Act. This revision has been found to fulfill the commitment made by New Jersey in its lead SIP to study the facilities and implement additional control measures, if necessary.

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Incorporation by reference.

**Authority:** 42 U.S.C. 7401–7642.

Dated: March 20, 1987.

**Christopher J. Daggett,**

*Regional Administrator, Environmental Protection Agency, Region II.*

[FR Doc. 87–11029 Filed 5–13–87; 8:45 am]

BILLING CODE 6560-50-M

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## 40 CFR Parts 712 and 716

**[OPTS–84024; FRL–3200–4]**

## Addition of Chemicals to Information Rules; Certain Pesticide Inert Ingredients

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to require the reporting of information on chemical substances listed in this proposed rule. Both the Office of Toxic Substances and the Office of Pesticide Programs are concerned about the potential adverse human and environmental effects of these substances, because they may have uses in industrial/commercial formulations, and are used as inert ingredients in pesticide formulations. These substance would be added to the lists of chemical substances and mixtures in the Preliminary Assessment Information Rule (PAIR) (40 CFR Part 712), and the Health and Safety Data Reporting Rule (40 CFR Part 716). Under these rules, EPA would require manufacturers, importers, and processors of these substances to provide the Agency with production, end use, and exposure data, plus lists and copies of unpublished health and safety studies on the substances.

**DATE:** Written comments should be submitted to EPA by June 15, 1987.

**ADDRESS:** All comments should be sent in triplicate to: TSCA Public Information Office (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Comments should include the docket control number OPTS–84024. Comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE–G004, at the address given above.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Telephone: (202) (554–1404).

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Authority

This rule is proposed under the authority of sections 8 (a) and (d) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2607 (a) and (d)).

### II. Regulatory Background

Under authority of section 8(a) of the TSCA, EPA promulgated PAIR (40 CFR Part 712). This model section 8(a) rule established standard reporting requirements for manufacturers and importers of the chemicals that the Agency lists in the rule. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710–35). EPA uses this model section 8(a) rule to quickly gather current information on substances of concern.

Under the authority of section 8(d) of the TSCA, EPA issued the model Health and Safety Data Reporting Rule in 1982 (40 CFR Part 716, hereinafter referred to as the section 8(d) model rule). An amendment to the section 8(d) model rule was published in the Federal Register of September 15, 1986 (51 FR 32720). The amendment lengthened the rule's sunset provision, added a provision for biennial review, limited three reporting exemptions, clarified the rule's confidentiality provisions, and made technical revisions. The model rule contains standard reporting requirements for persons who manufacture, import, or process (or propose to manufacture, import, or process) chemical substances and mixtures that are listed in the rule. The model rule requires these persons to provide EPA with copies and lists of health and safety studies pertaining to the listed substances and mixtures. EPA has the authority to amend the list of substances and mixtures in the section 8(d) model rule. Generally, the Agency may add substances and mixtures to the model rule listing by means of a chemical-specific amendment to the model rule, as EPA is doing with this proposed rule.

The reporting requirements of the model rule are applicable as of the date a substance or mixture is listed in the rule, and remain in effect after the listing date. The model rule also is applicable to persons who manufactured, imported, or processed a listed substance or mixture (or proposed to do so) during the 10 years prior to the listing date. Most persons subject to the rule are required to submit two types of data to EPA:

1. Copies of unpublished health and safety studies pertaining to substances and mixtures listed in the rule, provided that such studies are in the possession of the manufacturer, importer, or processor.

2. Lists of unpublished health and safety studies which are being conducted by (or for) the manufacturer, importer, or processor, or which are known to but not in the possession of the manufacturer, importer, or processor.

Potential respondents to this proposed rule should refer to 40 CFR Part 716 and its amendments (51 FR 32720) for complete information on section 8(d) reporting requirements.

## III. Summary of This Proposed Rule

EPA is proposing to add certain chemical substances suspected of having adverse effects on human health and the environment to the lists of chemical substances and mixtures in PAIR and the section 8(d) model rule. Through these amendments, EPA would trigger reporting of production, end use, exposure, and unpublished health and safety data.

Manufacturers and importers of the substances are subject to reporting under PAIR. Reporting under PAIR involves a one-time submission of the rule's reporting form for each listed chemical produced at a particular plant site. Complete details of the reporting requirements, including exemptions and a facsimile of the reporting form, are fully described in 40 CFR Part 712. Under the section 8(d) model rule, manufacturers, importers, and processors of the listed substances are subject to reporting. The section 8(d) reporting requirements for a substance remain in effect for 10 years after adding such substances to the rule. Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716 and its amendments (51 FR 32720). Reporting exemptions are also found in these references.

SUBSTANCES PROPOSED FOR ADDITION TO BOTH PAIR AND 8(d)

| CAS No. | Trivial/common chemical name | TSCA chemical substance inventory name |
|---|---|---|
| 68-12-2 | Dimethyl formamide | Formamide, *N,N*-dimethyl- |
| 75-37-6 | 1,1-Difluoroethane | Ethane, 1,1-difluoro- |
| 75-43-4 | Dichlorofluoromethane | Methane, dichlorofluoro- |
| 75-45-6 | Chlorodifluoromethane | Methane, chlorodifluoro- |
| 75-52-5 | Nitromethane | Methane, nitro- |
| 75-68-3 | 1-Chloro-1,1-difluoroethane | Ethane, 1-chloro-1,1-difluoro- |
| 79-24-3 | Nitroethane | Ethane, nitro- |
| 88-06-0 | *p*-Chloro-*m*-xylenol | Phenol, 4-chloro-3,5-dimethyl- |
| 95-14-7 | 1,2,3-Benzotriazole | 1*H*-Benzotriazole |
| 96-48-0 | Butyrolactone | 2(3*H*)-Furanone, dihydro- |
| 100-02-7 | *p*-Nitrophenol | Phenol, 4-nitro- |
| 101-84-8 | Diphenyl oxide | Benzene, 1,1'-oxybis- |
| 102-71-6 | Triethanolamine | Ethanol, 2,2',2''-nitrilotris- |
| 107-98-2 | 1-Methoxy-2-propanol | 2-Propanol, 1-methoxy- |
| 111-42-2 | Diethanolamine | Ethanol, 2,2'-iminobis- |
| 111-76-2 | 2-Butoxyethanol | Ethanol, 2-butoxy- |
| 111-77-3 | Diethylene glycol monomethyl ether | Ethanol, 2-(2-methoxyethoxy)- |
| 111-90-0 | Diethylene glycol monoethyl ether | Ethanol, 2-(2-ethoxyethoxy) |
| 120-32-1 | 2-Benzyl-4-chlorophenol | Phenol, 4-chloro-2-chlorophenol(phenylmethyl)- |
| 124-16-3 | 1-Butoxy ethoxy-2-propanol | 2-Propanol, 1-(2-butoxyethoxy)- |
| 131-17-9 | Diallyl phthalate | 1,2-Benzenedicarboxylic acid, di-2-propenyl ester |
| 577-11-7 | Dioctyl sodium sulfosuccinate | Butanedioic acid, sulfo-, 1,4-bis(2-ethylhexyl) ester, sodium salt |
| 5131-66-8 | 1-Butoxy-2-propanol | 2-Propanol, 1-butoxy- |
| 25168-06-3 | Isopropyl phenol | Phenol, (1-methylethyl)- |
| 25498-49-1 | Tripropylene glycol monomethyl ether | Propanol, [2-(2-methoxymethylethoxy)methylethoxy]- |
| [illegible] | Tolyl triazole | 1*H*-Benzotriazole, methyl- |
| 34590-94-8 | Dipropylene glycol monomethyl ether | Propanol, (2-methoxymethylethoxy)- |

SUBSTANCES PROPOSED FOR ADDITION TO PAIR ONLY

| CAS No. | Trivial/common chemical name | TSCA chemical substance inventory name |
|---|---|---|
| 74-83-9 | Methyl bromide | Methane, bromo- |
| 75-00-3 | Chloroethane | Ethane, chloro- |
| 79-00-5 | 1,1,2-Trichloroethane | Ethane, 1,1,2-trichloro- |
| 142-28-9 | 1,3-Dichloropropene | Propane, 1,3-dichloro- |

SUBSTANCES PROPOSED FOR ADDITION TO 8(d) ONLY

| CAS No. | Trivial/common chemical name | TSCA chemical substance inventory name |
|---|---|---|
| 76-13-1 | 1,1,2-Trichloro-1,2,2-trifluoroethane | Ethane, 1,1,2-trichloro-1,2,2-trifluoro- |
| 80-62-6 | Methyl methacrylate | 2-Propenoic acid, 2-methyl-, methyl ester |
| 97-86-1 | Butyl methacrylate | 2-Propenoic acid, 2-methyl-, butyl ester |
| 100-41-4 | Ethylbenzene | Benzene, ethyl- |
| 140-88-5 | Ethyl acrylate | 2-Propenoic acid, ethyl ester |

## IV. Background, Objectives, and Rationale For This Proposed Rule

EPA's Office of Toxic Substances (OTS) is conducting an evaluation of the potential hazards associated with certain chemical substances.

This proposed rule applies to certain suspect toxic substances used as "inert" pesticide ingredients. These substances are covered by TSCA because of various TSCA identified uses, and have not previously been added to PAIR and/or the section 8(d) model health and safety data rule.

A review of "inert" ingredients in pesticide formulations by the Office of Pesticide Programs (OPP) and OTS revealed that certain of these substances have similar chemical structures to other TSCA regulated substances that are known to demonstrate carcinogenicity.

teratogenicity, neurotoxic effects or reproductive effects in laboratory studies. Other TSCA regulated substances structurally similar to the substances used as pesticide inerts have demonstrated effects on humans, are known to bioaccumulate, or have other known adverse ecological effects such as toxicity to fish.

One major problem the Agency faced in attempting to evaluate these selected substances is that there was little or no available toxicity, use, production, or exposure data. The substances have not been extensively studied by the scientific community, and the Agency has limited data on their potential for adverse health and environmental effects. OTS is concerned that these TSCA-covered substances may have significant industrial/commercial applications in addition to their use in pesticide formulations.

Although EPA has conducted preliminary evaluations of the health and environmental risks posed by these substances, the Agency wants to ensure that it has all reasonably ascertainable production, end use, exposure, and unpublished health and safety data on the substances before undertaking in-depth risk assessment or further regulatory action. Therefore, OTS is proposing to gather current data under sections 8(a) and (d) of TSCA in order to perform risk identification and assessment activities to support EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9. Information to be gathered by this proposed rule would also prove useful to OPP, especially any significant new unpublished health and safety data.

## V. Economic Analysis

EPA's analysis of the reporting requirements of this proposed rule is contained in two documents, both of which are in the public record for this proposed rule (OPTS–84024).

Based on EPA's experience with section 8(a) and (d) reporting rules, the Agency estimates that the total reporting costs for establishing reporting requirements for the listed substances would be $291,087. In addition, the cost of this proposed rule would be low in comparison with its potential benefits. Production, end use, and exposure data and unpublished health and safety studies concerning these substances would substantially improve EPA's ability to identify and assess potential public health and environmental problems with regard to the substances.

The estimated reporting costs (for the chemical industry as a whole) are broken down as follows:

| | |
|---|---|
| *For PAIR* | |
| Initial corporate review to determine if subject to the rule and file search to identify manufacture and importation sites | $72,352 |
| Form completion photocopying, and managerial review | 86,688 |
| Subtotal | 159,040 |
| *For 8(d)* | |
| Cost of file search: | |
| Initial review | 45,900 |
| Site identification | 14,688 |
| File search at site | 28,512 |
| Listing ongoing studies | 1,824 |
| Copying studies | 5,933 |
| Managerial reveiw | 29,376 |
| Ongoing reporting | 5,814 |
| Subtotal | 132,047 |
| Total for both reporting activities | 291,087 |

## VI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–84024). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following:


1. *USEPA. 1978.* U.S. Environmental Protection Agency. Chemical Hazard Information Profile (CHIP) for Chloroethane (09/29/78). Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

2. *USEPA. 1980.* U.S. Environmental Protection Agency. Chemical Hazard Information Profile (CHIP). August 1978–August 1978. Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

3. *USEPA. 1981a.* U.S. Environmental Protection Agency. Chemical Hazard Information Profile (CHIP) for Chloroethane (03/02/81). Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

4. *USEPA. 1981b.* U.S. Environmental Protection Agency. Chemical Hazard Information Profile (CHIP) for Dichloropropane (05/08/81). Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

5. *USEPA. 1981c.* U.S. Environmental Protection Agency. Chemical Hazard Information Profile (CHIP) for Ethyl Acrylate (08/06/81). Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

6. *USEPA. 1981d.* U.S. Environmental Protection Agency. Chemical Hazard Information Profile (CHIP) for Dimethylformamide (09/18/81). Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

7. *USEPA. 1984.* U.S. Environmental Protection Agency. Chemical Hazard Information Profile (CHIP) for Diallyl Phthalate (09/04/84). Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

8. *USEPA. 1985.* U.S. Environmental Protection Agency. Chemical Hazard Information Profile (CHIP) for Methyl Bromide (02/20/85). Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

9. *USEPA. 1987.* U.S. Environmental Protection Agency. Economic Impact Analysis for adding Thirty-one Inert Pesticide Ingredients to the Preliminary Assessment Information Rule. Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.

10. *USEPA. 1987.* U.S. Environmental Protection Agency. Cost of Amending the Health and Safety Data Reporting Rule for 32 Inert Pesticide Ingredients. Washington, DC: U.S. Environmental Protection Agency, Office of Pesticides and Toxic Substances.


The Agency will accept additional materials for inclusion in the record at any time between the date of this proposed rule and EPA's designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record, containing sanitized copies of documents from which confidential business information has been removed, is available to the public in the OTS Public Information Office from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The OTS Public Information Office is located in Rm. NE–G004, 401 M. St., SW., Washington, DC.

## VII. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule is not a "major" rule because it does not have an effect on the ecomomy of $100 mill[illegible] or more. The Agency also anticipate[illegible] that this proposed rule would not h[illegible]

significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. The section 8(a) PAIR exempts "small" manufacturers and importers (as defined in 40 CFR 712.25) from reporting section 8(a) data on these substances. In a study of respondents to the section 8(d) model rule, EPA found that only 1 of 69 respondents had less than $100 million in sales. EPA does not expect this proposed amendment of the model rule to affect that distribution of burden within the chemical industry.

*C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0054 to the section 8(a) PAIR and OMB control number 2070–0004 to the 8(d) model rule and to subsequent amendments to these rules. Comments on these requirements should be submitted to the OMB Office of Information and Regulatory Affairs, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

**List of Subjects in 40 CFR Parts 712 and 716**

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting requirements.

Dated: May 4, 1987.

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR Parts 712 and 716 be amended as follows:

## PART 712—[AMENDED]

1. In Part 712.

a. The authority citation for Part 712 would continue to read as follows:

**Authority: 15 U.S.C. 2607(a).**

b. Section 712.30 would be amended by adding paragraph (v) to read as follows:

**§ 712.30 Chemical lists and reporting periods.**

* * * * *

(v) Manufacturers and importers of the substances listed below must submit a Preliminary Assessment Information Manufacturer's Report for each site at which they manufacture or import each substance by the reporting date shown in the table below. The substances are listed in Chemical Abstract Service Registry Number order. Typically EPA lists the trivial or common name first, then following the symbol "—", EPA lists the substance by its TSCA Substance Inventory name. Whenever EPA lists a single name, the name may be either a trivial name, a common name, or the TSCA Substance Inventory name.

| CAS No. | Substance | Effective date | Reporting date |
|---|---|---|---|
| 68-12-2 | Dimethyl formamide—Formamide, *N,N*-dimethyl- | ( / / ) | ( / / ) |
| 74-83-9 | Methyl bromide—Methane, bromo- | ( / / ) | ( / / ) |
| 75-00-3 | Chloroethane—Ethane, chloro- | ( / / ) | ( / / ) |
| 75-37-6 | 1,1-Difluoroethane—Ethane, 1,1-difluoro- | ( / / ) | ( / / ) |
| 75-43-4 | Dichloromonofluoromethane—Methane, dichlorofluoro- | ( / / ) | ( / / ) |
| 75-45-6 | Chlorodifluoromethane—Methane, chlorodifluoro- | ( / / ) | ( / / ) |
| 75-52-5 | Nitromethane—Ethane, nitro- | ( / / ) | ( / / ) |
| 75-68-3 | 1-Chloro-1,1-difluoroethane—Ethane, 1-chloro-1,1-difluoro- | ( / / ) | ( / / ) |
| 79-00-5 | 1,1-2-Trichloroethane—Ethane, 1,1,2-trichloro- | ( / / ) | ( / / ) |
| 79-24-3 | Nitroethane-Ethane, nitro- | ( / / ) | ( / / ) |
| 88-04-0 | *p*-Chloro-*m*-xylenol—Phenol 4-chloro-3,5-dimethyl- | ( / / ) | ( / / ) |
| 95-14-7 | 1,2,3-Benzotriazole—1*H*-Benzotriazole | ( / / ) | ( / / ) |
| 96-48-0 | Butyrolactone—2(3*H*)-Furanone, dihydro- | ( / / ) | ( / / ) |
| 100-02-7 | *p*-Nitrophenol—Phenol, 4-nitro- | ( / / ) | ( / / ) |
| 101-84-8 | Diphenyl oxide—Benzene, 1,1'-oxybis- | ( / / ) | ( / / ) |
| 102-71-6 | Triethanolamine—Ethanol, 2,2',2''-nitrilotris- | ( / / ) | ( / / ) |
| 107-98-2 | 1-Methoxy-2-propanol—2-Propanol, 1-methoxy- | ( / / ) | ( / / ) |
| 111-42-2 | Diethanolamine—Ethanol, 2,2'-iminobis- | ( / / ) | ( / / ) |
| 111-76-2 | 2-Butoxyethanol—Ethanol, 2-butoxy- | ( / / ) | ( / / ) |
| 111-77-3 | Diethylene glycol monomethyl ether—Ethanol, 2-(2-methoxyethoxy)- | ( / / ) | ( / / ) |
| 111-90-0 | Diethylene glycol monoethyl ether—Ethanol, 2-(2-ethoxy ethoxy)- | ( / / ) | ( / / ) |
| 120-32-1 | 2-Benzyl-4-chlorophenol—Phenol, 4-chloro-2-(phenylmethyl)- | ( / / ) | ( / / ) |
| 124-16-3 | Butoxyethoxy-2-propanol—2-Propanol, 1-(2-butoxyethoxy)- | ( / / ) | ( / / ) |
| 131-17-9 | Diallyl phthalate—1,2-Benzenedicarboxylicacid, di-2-propenylester | ( / / ) | ( / / ) |
| 142-28-9 | 1,3-Dichloropropane—Propene, 1,3-dichloro- | ( / / ) | ( / / ) |
| 577-11-7 | Dioctyl sodium sulfosuccinate—Butanedioic acid, sulfo-, 1,4-bis(2-ethylhexyl)ester, sodium salt | ( / / ) | ( / / ) |
| 5131-66-8 | 1-Butoxy-2-propanol—2-Propanol, 1-butoxy- | ( / / ) | ( / / ) |
| 25168-06-3 | Isopropyl phenol—Phenol, (1-methylethyl)- | ( / / ) | ( / / ) |
| 25498-49-1 | Tripropylene glycol monomethyl ether—Propanol, [2-(2-methoxymethylethoxy)methylethoxy]- | ( / / ) | ( / / ) |
| 29385-43-1 | Tolyl triazole—1*H*-Benzotriazole, methyl- | ( / / ) | ( / / ) |
| 34590-94-8 | Dipropylene glycol monomethyl ether—Propanol, (2-methoxymethylethoxy)- | ( / / ) | ( / / ) |

## PART 716—[AMENDED]

2. In Part 716:

a. The authority citation for Part 716 would continue to read as follows:

**Authority: 15 U.S.C. 2607(d).**

b. By adding substances to paragraph (a)(1) numerically by CAS Number and alphabetically to paragraph (a)(2) of § 716.120 to read as follows:

**§ 716.120 Substances and listed mixtures to which this subpart applies.**

(a) * * *

(1) * * *

| CAS No. | Substance | Special exemptions | Effective date | Sunset date |
|---|---|---|---|---|
| [redacted] | Dimethyl formamide—Formamide, *N,N*-dimethyl- | | ( / / ) | ( / / ) |

| CAS No. | Substance | Special exemptions | Effective date | Sunset date |
|---|---|---|---|---|
| 75-37-6 | 1,1-Difluoroethane—Ethane, 1,1-difluoro- | | ( / / ) | ( / / ) |
| 75-43-4 | Dichloromonofluoromethane—Methane, dichlorofluoro- | | ( / / ) | ( / / ) |
| 75-45-6 | Chlorodifluoromethane—Methane, chlorodifluoro- | | ( / / ) | ( / / ) |
| 75-52-5 | Nitromethane—Methane, nitro- | | ( / / ) | ( / / ) |
| 75-68-3 | 1-Chloro-1,1-difluoroethane—Ethane, 1-chloro-1,1-difluoro- | | ( / / ) | ( / / ) |
| 76-13-1 | 1,1,2-Trichloro-1,2,2-trifluoroethane—Ethane, 1,1,2-trichloro-1,2,2-trifluoro- | | ( / / ) | ( / / ) |
| 79-24-3 | Nitroethane—Ethane, nitro- | | ( / / ) | ( / / ) |
| 80-62-6 | Methyl methacrylate—2-Propenoic acid, 2-methyl-, methyl ester | | ( / / ) | ( / / ) |
| 88-04-0 | *p*-Chloro-*m*-xylenol—Phenol, 4-chloro-3,5-dimethyl- | | ( / / ) | ( / / ) |
| 95-14-7 | 1,2,3-Benzotriazole—1*H*-Benzotriazole | | ( / / ) | ( / / ) |
| 96-48-0 | Butyrolactone—2(3*H*)-Furanone, dihydro- | | ( / / ) | ( / / ) |
| 97-88-1 | Butyl methacrylate—2-Propenoic acid, 2-methyl-, butyl ester | | ( / / ) | ( / / ) |
| 100-02-7 | *p*-Nitrophenol—Phenol, 4-nitro- | | ( / / ) | ( / / ) |
| 100-41-4 | Ethylbenzene—Benzene, ethyl- | | ( / / ) | ( / / ) |
| 101-84-8 | Diphenyl oxide—Benzene, 1,1'-oxybis- | | ( / / ) | ( / / ) |
| 102-71-6 | Triethanolamine—Ethanol, 2,2',2''-nitrilotris- | | ( / / ) | ( / / ) |
| 107-98-2 | 1-Methoxy-2-propanol—2-Propanol, 1-methoxy- | | ( / / ) | ( / / ) |
| 111-42-2 | Diethanolamine—Ethanol, 2,2'-iminobis- | | ( / / ) | ( / / ) |
| 111-76-2 | 2-Butoxyethanol—Ethanol, 2-butoxy- | | ( / / ) | ( / / ) |
| 111-77-3 | Diethylene glycol monomethyl ether—Ethanol, 2-(2-methoxyethoxy)- | | ( / / ) | ( / / ) |
| 111-90-0 | Diethylene glycol monoethyl ether—Ethanol, 2-(2-ethoxyethoxy)- | | ( / / ) | ( / / ) |
| 120-32-1 | 2-Benzyl-4-chlorophenol—Phenol, 4-chloro-2-chlorophenol(phenyl methyl)- | | ( / / ) | ( / / ) |
| 124-16-3 | 1-Butoxyethoxy-2-propanol—2-Propanol, 1-(2-butoxyethoxy)- | | ( / / ) | ( / / ) |
| 131-17-9 | Diallyl phthalate—1,2-Benzenedi carboxylic acid, di-2-propenyl ester | | ( / / ) | ( / / ) |
| 140-88-5 | Ethyl acrylate—2-Propenoic acid, ethyl ester | | ( / / ) | ( / / ) |
| 577-11-7 | Dioctyl sodium sulfosuccinate—Butanedioic acid, sulfo-, 1,4-bis(2-ethylhexyl) ester, sodium salt | | ( / / ) | ( / / ) |
| 5131-66-8 | 1-Butoxy-2-propanol—2-Propanol, 1-butoxy- | | ( / / ) | ( / / ) |
| 25168-06-3 | Isopropyl phenol—Phenol, (1-methylethyl)- | | ( / / ) | ( / / ) |
| 25498-49-1 | Tripropylene glycol monomethyl ether—Propanol, [2-(2-methoxy methylethoxy)methylethoxy]- | | ( / / ) | ( / / ) |
| 29385-43-1 | Tolyl triazole—1*H*-Benzotriazole, methyl- | | ( / / ) | ( / / ) |
| 34590-94-8 | Dipropylene glycol monomethyl ether—Propanol, (2-methoxymethylethoxy)- | | ( / / ) | ( / / ) |

(2) * * *

| Substance | CAS No. | Special exemptions | Effective date | Sunset date |
|---|---|---|---|---|
| 1, 2, 3=Benzotriazole—*1H*-Benzotriazole | 95-14-7 | | ( / / ) | ( / / ) |
| 2-Benzyl-4-chlorophenol—Phenol, 4-chloro-2-chlorophenol (phenylmethyl)- | 120-32-1 | | ( / / ) | ( / / ) |
| 2-Butoxyethanol—Ethanol, 2-butoxy- | 111-76-2 | | ( / / ) | ( / / ) |
| 1-Butoxyethoxy-2-propanol—2-Propanol, 1-(2-butoxyethoxy)- | 124-16-3 | | ( / / ) | ( / / ) |
| 1-Butoxy-2-propanol—2-Propanol, 1-butoxy- | 5131-66-8 | | ( / / ) | ( / / ) |
| Butyl methacrylate—2-Propenoic acid, 2-methyl-, butyl ester | 97-88-1 | | ( / / ) | ( / / ) |
| Butyrolactone—2(3*H*)-Furanone, dihydro- | 96-48-0 | | ( / / ) | ( / / ) |
| 1-Chloro-1, 1-difluoroethane—Ethane, 1-chloro-1, 1-difluoro- | 75-68-3 | | ( / / ) | ( / / ) |
| Chlorodifluoromethane—Methane, chlorodifluoro- | 75-45-6 | | ( / / ) | ( / / ) |
| *p*-Chloro-*m*-xylenol—Phenol, 4-chloro-3,5-dimethyl- | 88-04-0 | | ( / / ) | ( / / ) |
| Diallyl phthalate—1,2-Benzenedi carboxylic acid, di-2-propenyl ester | 131-17-9 | | ( / / ) | ( / / ) |
| Dichloromonofluoromethane—Methane, dichlorofluoro- | 75-43-4 | | ( / / ) | ( / / ) |
| Diethanolamine—Ethanol, 2,2'-iminobis- | 111-42-2 | | ( / / ) | ( / / ) |
| Diethylene glycol monoethyl ether—Ethanol, 2-(2-ethoxyethoxy)- | 111-90-0 | | ( / / ) | ( / / ) |

| Substance | CAS No. | Special exemptions | Effective date | Sunset date |
|---|---|---|---|---|
| Diethylene glycol monomethyl ether—Ethanol, 2-(2-methoxyethoxy)- | 111-77-3 | • | ( / / ) | ( / / ) |
| 1, 1-Difluoroethane—Ethane, 1, 1-difluoro- | 75-37-6 | • | ( / / ) | ( / / ) |
| Dimethyl formamide—Formamide, *N, N*-Dimethyl- | 68-12-2 | | ( / / ) | ( / / ) |
| Dioctyl sodium sulfosuccinate—Butanedioic acid, sulfo-, 1,4-bis (2-ethylhexyl) ester, sodium salt | 577-11-7 | • | ( / / ) | ( / / ) |
| Diphenyl oxide—Benzene, 1,1'-oxybis- | 101-84-8 | | ( / / ) | ( / / ) |
| Dipropylene glycol monomethyl ether—Propanol, (2-methoxymethylethoxy)- | 34590-94-8 | • | ( / / ) | ( / / ) |
| Ethyl acrylate—2-Propenoic acid, ethyl ester | 140-88-5 | | ( / / ) | ( / / ) |
| Ethylbenzene—Benzene, ethyl- | 100-41-4 | • | ( / / ) | ( / / ) |
| Isopropyl phenol—Phenol, (1-methylethyl)- | 25168-06-3 | • | ( / / ) | ( / / ) |
| 1-Methoxy-2-propanol—2-Propanol, 1-methoxy- | 107-98-2 | • | ( / / ) | ( / / ) |
| Methyl methacrylate—2-propenoic acid, 2-methyl-, methyl ester | 80-62-6 | • | ( / / ) | ( / / ) |
| Nitroethane—Ethane, nitro- | 79-24-3 | | ( / / ) | ( / / ) |
| Nitromethane—Methane, nitro- | 75-52-5 | | ( / / ) | ( / / ) |
| *p*-Nitrophenol—Phenol, 4-nitro- | 100-02-7 | • | ( / / ) | ( / / ) |
| Tolyl triazole—1*H*-Benzotriazole, methyl- | 29385-43-1 | | ( / / ) | ( / / ) |
| 1, 1, 2-Trichloro-1, 2, 2-trifluoroethane—Ethane, 1, 1, 2-trichloro- 1, 2, 2-trifluoro- | 76-13-1 | | ( / / ) | ( / / ) |
| Triethanolamine—Ethanol, 2, 2', 2''-nitrilotris- | 102-71-6 | • | ( / / ) | ( / / ) |
| Tripropylene glycol monomethyl ether—Propanol, [2-(2-methoxymethylethoxy) methylethoxy]- | 25498-49-1 | • | ( / / ) | ( / / ) |

[FR Doc. 87-10905 Filed 5-13-87; 8:45 am]
BILLING CODE 6560-50-M

## 40 CFR Part 712

[OPTS-82030; FRL-3200-1]

## Chemical Information Rules; Addition of Chemicals

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to add 24 chemical substances to the list of substances identified in the Preliminary Assessment Information Rule (PAIR). Once EPA lists these substances in the PAIR, persons who manufacture or import the listed substances would be required to submit production volume, end use, and exposure data to EPA. The agency will use the reported data to evaluate risks associated with these substances.

**DATE:** Written comments on this proposed rule should be submitted by June 15, 1987.

**ADDRESS:** Comments, in triplicate, should bear the docket control number OPTS-82030 and should be submitted to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

All written comments on this proposed rule will be available for public inspection in Rm. NE-G004 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404.

**SUPPLEMENTARY INFORMATION:** EPA is proposing to add 24 chemical substances to the list of chemicals identified in PAIR. Once these substances are added to PAIR, manufacturers and importers of these substances would be required to provide EPA with a Preliminary Assessment Information Report for each plant site at which these substances are manufactured or imported.

### I. Authority

Pursuant to section 8(a) of the Toxic Substances Control Act (TSCA, 15 U.S.C. 2607(a)), EPA promulgated PAIR (40 CFR Part 712). This model section 8(a) rule established standard reporting requirements for manufacturers and importers of the chemical substances listed in the rule. These manufacturers and importers are required to submit a one-time report on production volume, end use, and exposure using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA uses this model section 8(a) rule to quickly gather current information on substances of concern.

### II. Summary of Proposed Reporting Requirements

Complete details of the reporting requirements, including exemptions and a facsimile of the reporting form, are fully described in 40 CFR Part 712.

TSCA section 8(a) reports must be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460, ATTN: PAIR Reporting

SUBSTANCES PROPOSED FOR ADDITION TO PAIR

[Listed alphabetically by TSCA inventory name]

| Substance | CAS number |
|---|---|
| Acetic acid, 2-phenylethyl ester | 103-45-7 |
| Barium chloride | 10361-37-2 |
| Benzeneethanol | 60-12-8 |
| Bromine | 7726-95-6 |
| Cyclohexene, 4-ethenyl- | 100-40-3 |
| Ferromanganese | 12604-53-4 |
| Hydrocyanic acid | 74-90-8 |
| Hydrofluoric acid | 7664-39-3 |
| Magnesium hydroxide | 1309-42-8 |
| Manganese oxide | 1313-13-9 |
| Mercury chloride | 7487-94-7 |
| Molybdenum oxide | 1313-27-5 |
| Nitric acid, silver (1+) salt | 7761-88-8 |
| Palladium chloride | 7647-10-1 |
| Phosphorus | 7723-14-0 |
| Selenium | 7782-49-2 |
| Silver | 7440-22-4 |
| Sodium fluoride | 7681-49-4 |
| Sodium hydroxide | 1310-73-2 |
| Sulfuric acid, cobalt (2+) salt (1:1) | 10124-43-3 |
| Sulfuric acid, manganese (2+) salt (1:1) | 7785-87-7 |
| Titanium dioxide | 13463-67-7 |
| Tungsten carbide | 12070-12-1 |
| Vanadium oxide | 1314-62-1 |

As part of an ongoing effort to coordinate information gathering requests from different offices in EPA, this proposed rule includes chemical substances nominated by the Office of Air Quality Planning and Standards (OAQPS), and the Office of Toxic Substances. This coordination will lead to efficient use of resources for both industry and the government by avoiding duplicative information

requests by multiple offices in EPA. This savings will be reflected in reduced Agency implementation costs and industry reporting costs.

The nominating office and the particular reasons for each office's information requests on the substances listed in this proposed rule are discussed in Unit III of this proposed rule.

## III. Agency Rationale and Objectives

### *A. Office of Air Quality Planning and Standards*

EPA's Office of Air Quality Planning and Standards (OAQPS) needs basic data on the production and emissions of 21 chemical substances and has requested that this information be gathered through adding these substances to the list of substances identified in the PAIR. Once EPA lists these substances in the PAIR, persons who manufacture or import the listed substances would be required to submit production volume, end use, and exposure data to EPA.

A necessary step in the regulatory program for addressing toxic air pollutants is a preliminary ranking and screening of substances that have been identified as potential air pollutants. The purpose of ranking and screening is to be able to select, from a large number of candidates, those substances most deserving of closer attention and further analysis by EPA. Ideally, a full range of toxicological and epidemiological information, coupled with detailed estimates of current emissions and human exposure, would be utilized to rank and screen the identified substances. However, such complete information is seldom, if ever, available. Furthermore, the number of candidates is potentially very large and the resources required to develop complete information prohibitive. For these reasons, early prioritization and screening must be based on limited, readily available data and an evaluation process subsequently used that provides opportunity for further refinement of the list of candidates.

Fourteen of the 21 chemical substances nominated by OAQPS are currently included in the prioritization and screening effort to determine which chemicals are to receive regulatory assessment. Several types of readily available information are used in making this determination. These include health effects information and estimates of the potential for population exposure. The potential for population exposure may be estimated for volatility information and from production volume such as that obtained under this rule. The 14 substances (listed here by the common name) which are being added to the PAIR are: Barium Chloride, Cobaltous Sulfate, Ferromanganese, Magnesium Hydroxide, Manganese Dioxide, Manganese (II) Sulfate (1:1), Molybdenum Trioxide, Palladium (II) Chloride, Silver, Silver Nitrate, Sodium Fluoride, Titanium Dioxide, Tungsten Carbide, and Vanadium Pentoxide.

The extent of the information need is similar to the data gathered through the TSCA Inventory Update Rule, published in the Federal Register of June 12, 1986 (51 FR 21438). However, the Inventory Update rule specifically exempts manufacturers and importers of most inorganic substances (including those substances nominated by OAQPS for this proposal rule) from reporting. This exemption was included to avoid unnecessary reporting on the many inorganic substances not currently of interest to EPA for risk assessment review. By using PAIR to selectively obtain needed production, end use, and exposure data on those inorganic substances identified by Agency programs for possible review, EPA can efficiently obtain the data it needs on those specific substances while minimizing overall reporting burdens.

The remaining seven chemical substances nominated by OAQPS have already been selected for regulatory assessment. These substances (again, listed by common name) are: Bromine, Hydrocyanic Acid, Hydrogen Fluoride, Mercuric Chloride, Phosphorus, Selenium, and Sodium Hydroxide. The information gathered on these substances will serve as part of the basis for decisions on the need to further assess the substances as toxic air pollutants under the Clean Air Act (42 U.S.C. 7401–7626.) Listing these substances under PAIR does not indicate that they are going to be regulated under the Clean Air Act, only that they are undergoing regulatory assessment.

### *B. Office of Toxic Substances*

The Office of Toxic Substances (OTS) needs up-to-date information on the manufacture and import of three chemical substances whose common names are: 2-phenylethanol, 2-phenylethyl acetate, and 4-vinylcyclohexene. The information obtained on these substances will be used by OTS in risk analysis. These substances are discussed in the paragraphs below.

#### 1. 2-Phenylethanol and 2-Phenylethyl Acetate

EPA is proposing to add 2-phenylethanol, CAS No. 60–12–8, and 2-phenylethyl acetate, CAS No. 103–45–7, to the PAIR list. EPA's primary concern for both 2-phenylethanol and 2-phenylethyl acetate is their use as a fragrance in detergents, and in air fresheners that are used in airplanes and in various public places. The chemical substance 2-phenylethanol imparts a rose odor, while 2-phenylethyl acetate has a peach-like fragrance. 2-Phenylethanol is also used as an intermediate in organic synthesis and has been patented recently for use as a solvent in gelled, nonpigmented wood stains and in hard surface cleaners.

Worker exposure to 2-phenylethanol during the chemical manufacturing process may be limited by the use of closed batch production processes. Consumers can be exposed to 2-phenylethanol and 2-phenylethyl acetate as a result of the use of detergents and air-fresheners. Consequently, consumer exposure can occur by inhalation and dermal contact. Since 2-phenylethanol has reported teratogenic activity, these exposures are of particular concern.

There is no up-to-date information on the import and manufacture volumes of 2-phenylethanol and 2-phenylethyl acetate. Because these data would be important for risk analysis on these two substances, EPA is proposing to add 2-phenylethanol and 2-phenylethyl acetate to the PAIR list.

#### 2. 4-Vinylcyclohexene

EPA is proposing to add 4-vinylcyclohexene, CAS No. 100–40–3, to the list of chemical substances identified in the PAIR. The primary use of 4-vinylcyclohexene is as a site-limited intermediate in the production of 4-vinylcyclohexene diepoxide, which is then used to make epoxy resins. 4-Vinylcyclohexene is also a byproduct of synthetic rubber production. Exposure could occur dermally or through inhalation. Studies on 4-vinylcyclohexene showed limited evidence of carcinogenicity. No data are available on worker exposure during manufacture and use in the United States. This information is necessary to determine if a risk assessment is required.

## IV. Release of Aggregate Data

The Agency may release aggregate statistics according to the procedures prescribed in a rule related notice published in the Federal Register of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be

received by EPA no later than 60 days after the effective date of the final rule.

## V. Economic Analysis

EPA estimates the total reporting cost of this proposed rule would be $596,400. To calculate this figure EPA used the non-CBI TSCA Inventory plus current information from other published sources to generate a list of manufacturers and importers of these chemical substances. After excluding firms which reported no production or importation, 324 companies were identified as possible manufacturers or importers of the substances. Since 45 of these companies may qualify as a small business as defined in 40 CFR 712.25(c), EPA expects 279 firms to report a total of 420 reports.

The estimated total reporting costs are as follows:

| | |
|---|---|
| 420 reports at $774/report | $325,080 |
| Plus 420 familiarization cases at $646 case | 271,320 |
| Total | 596,400 |
| Average cost per site equals | 1,420 |
| Average cost per firm equals | 2,138 |

## VI. Rulemaking Record

The following documents constitute the rulemaking record for this proposed rule (docket control number OPTS–82030). All of these documents are available to the public in the OTS Public Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC.

1. Preliminary Assessment Information Rule (40 CFR Part 712).

2. Economic analysis of this proposed rule.

3. A chemical hazard informaton profile for 4-Vinylcyclohexene.

4. A chemical hazard information profile for 2-Phenylethanol and 2-Phenylethyl Acetate.

5. Health effects and use information on the OAQPS chemical substances nominated for this rule.

EPA will identify the complete rulemaking record on or before the date of promulgation of the final rule, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between the date of this document and the designation of the complete record for this rule.

## VII. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a regulatory impact analysis. The Agency has determined that this proposed rule is not "major" because it would not have an effect of $100 million or more on the economy. EPA also anticipates that this proposed rule would not have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

### *B. Regulatory Flexibility Act*

Since this proposed rule would exempt "small" manufacturers and importers (as defined in 40 CFR 712.25(c)) from reporting on these substances, EPA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

### *C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and has assigned OMB Control Number 2070–0054. Comments on these requirements should be submitted to OMB's Office of Information and Regulatory Affairs, marked "Attention: Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

## List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Recordkeeping and reporting requirements.

Dated: May 4, 1987.

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR Part 712 be amended as follows:

## PART 712—[AMENDED]

1. The authority citation for Part 712 would continue to read as follows:

**Authority:** 15 U.S.C. 2607(a).

2. In § 712.30(v) by adding in CAS No. sequence certain chemical substances to read as follows:

**§ 712.30 Chemical lists and reporting periods.**

* * * * *

(v) * * *

| CAS No. | TSCA chemical substance inventory name | Effective date | Reporting date |
|---|---|---|---|
| * | * | * | * |
| 60-12-8 | Benzeneethanol | ( / /87) | ( / /87) |
| * | * | * | * |
| 74-90-8 | Hydrocyanic acid | ( / /87) | ( / /87) |
| * | * | * | * |
| 100-40-3 | Cyclohexene, 4-ethenyl- | ( / /87) | ( / /87) |
| * | * | * | * |
| 103-45-7 | Acetic acid, 2-phenylethyl ester | ( / /87) | ( / /87) |
| * | * | * | * |
| 1309-42-8 | Magnesium hydroxide | ( / /87) | ( / /87) |
| 1310-73-2 | Sodium hydroxide | ( / /87) | ( / /87) |
| 1313-13-9 | Manganese oxide | ( / /87) | ( / /87) |
| 1313-27-5 | Molybdenum oxide | ( / /87) | ( / /87) |
| 1314-62-1 | Vanadium oxide | ( / /87) | ( / /87) |
| * | * | * | * |
| 7440-22-4 | Silver | ( / /87) | ( / /87) |
| 7487-94-7 | Mercury chloride | ( / /87) | ( / /87) |
| 7647-10-1 | Palladium chloride | ( / /87) | ( / /87) |
| 7664-39-3 | Hydrofluoric acid | ( / /87) | ( / /87) |
| 7681-49-4 | Sodium fluoride | ( / /87) | ( / /87) |
| 7723-14-0 | Phosphorus | ( / /87) | ( / /87) |
| 7726-95-6 | Bromine | ( / /87) | ( / /87) |
| 7761-88-8 | Nitric acid, silver (1+) salt | ( / /87) | ( / /87) |
| 7782-49-2 | Selenium | ( / /87) | ( / /87) |
| 7785-87-7 | Sulfuric acid, manganese (2+) salt (1:1) | ( / /87) | ( / /87) |
| 10124-43-3 | Sulfuric acid, cobalt (2+) salt (1:1) | ( / /87) | ( / /87) |
| 10361-37-2 | Barium chloride | ( / /87) | ( / /87) |
| 12070-12-1 | Tungsten carbide | ( / /87) | ( / /87) |

| CAS No. | TSCA chemical substance inventory name | Effective date | Reporting date |
|---|---|---|---|
| 12604-53-4 | Ferromanganese | ( / /87) | ( / /87) |
| 13463-67-7 | Titanium oxide | ( / /87) | ( / /87) |

[FR Doc. 87-10906 Filed 5-13-87; 8:45 am]

BILLING CODE 6560-50

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 87-6]

## Amendment of Part 73 To Authorize the Use of Multiple Synchronous Transmitters by AM Broadcast Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry; extension of comment period.

**SUMMARY:** This order extends the time for filing comments in MM Docket No. 87-6, concerning use of multiple synchronous transmitters by AM broadcast stations (52 FR 8065, March 16, 1987), in response to a Motion for Extension of Time filed by the Association for Broadcast Engineering Standards, Inc.

**DATES:** Comments must be filed on or before July 7, 1987, and reply comments on or before August 6, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Bernard Gorden, Policy and Rules Division, Mass Media Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:**

### Order Granting Motion for Extension of Time for Filing Comments

In the matter of amendment of Part 73 to authorize the use of Multiple Synchronous Transmitters by AM Broadcast Stations; MM Docket No. 87-6.

Adopted: April 30, 1987.
Released: May 5, 1987.
By the Chief, Mass Media Bureau.

1. On January 15, 1987, the Commission adopted a *Notice of Inquiry* in MM Docket No. 87-6 to consider provision of standards for the use of multiple synchronous transmitters by AM broadcast stations. The *Inquiry* was released on March 3, 1987, with comments due by May 4, 1987 and reply comments due by June 3, 1987.

2. On April 28, 1987, the Association For Broadcast Engineering Standards, Inc. ("ABES"), by its attorneys, submitted a motion for extension of time for filing comments and reply comments to July 7, 1987 and August 7, 1987, respectively. ABES argues that the requested extension is necessary in order to allow for the filing by station KROL, Laughlin, Nevada of the first test data and reports from its developmental AM synchronous transmitter operations. ABES states that it has been anxiously awaiting this filing, particularly because the measurements and data from the KROL tests would enhance the record in the captioned proceeding and could form the basis of very useful comments. ABES anticipates that the initial reports from KROL would be filed very soon and that a 60 day extension would allow parties sufficient time to comment on these reports.

3. Keeping in mind that § 1.46(a) of the Commission's rules provides that extensions of time should not be routinely granted, we believe that the circumstances in this case warrant grant of an extension of 60 days for submission of comments. In granting the experimental (developmental) authorizations for station KROL and others, we set as a condition of those grants that licensees file comments to the *Inquiry* and make detailed progress reports on their operations. None of these licensees, however, have yet to commence operational testing. Therefore, in light of their delay in initiating these experimental operations and the critical role the results of these tests were to have played in this proceeding, an extension of time is appropriate. It will provide commenters to this proceeding an opportunity to prepare and present their views on data from actual operations of synchronous transmitters. The critical importance of these results to the ultimate success of this docket outweighs any resultant delay.

4. Accordingly, it is ordered that the Motion To Extend Comments filed by the Association For Broadcast Engineering Standards, Inc. is granted and that the dates for filing comments and reply comments are extended to July 7, 1987 and August 6, 1987, respectively.

5. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, 1.46 and 1.45 of the Commission's rules.

Federal Communications Commission.

**James C. McKinney,**
*Chief, Mass Media Bureau.*

[FR Doc. 87-10742 Filed 5-13-87; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 52, No. 93
Thursday, May 14, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### VISTA Region 6 Literacy Corps Project; Availability of Funds

**AGENCY:** ACTION.

**ACTION:** Notice of Availability of Funds; VISTA Region 6 Literacy Corps Project.

ACTION Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Kansas, Missouri) announces the availability of funds for fiscal year 1987 for a new VISTA Literacy Corps grant authorized by section 109 of the Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99–551). The VISTA Literacy Corps grant will be awarded for up to a twelve month period. No requests for renewals or continuations may be sought by the grantee under this announcement.

Application packages and technical assistance on grant preparation are available from: Region 6—Willard Labrie, ACTION, 626 Main Street, Suite 102, Baton Rouge, Louisiana 70801, 504–383–0471.

#### A. Background and Purpose

Congress created Volunteers In Service To America (VISTA) in 1964 to alleviate and eliminate poverty and its related problems in the United States. VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency. VISTA also enlists the commitment and support of the private sector toward attainment of this goal. Literacy training and education represent a longstanding and integral part of the VISTA mission. VISTA Volunteers have been involved in the mobilization of community efforts to combat illiteracy among disadvantaged populations since the inception of the VISTA program.

The Domestic Volunteer Service Act Amendments of 1986 directed the VISTA program to commit additional volunteers to the literacy challenge through the formation of the VISTA Literacy Corps.

The statutory purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of both public and private nonprofit organizations at the local, State, and Federal levels to mobilize local, State, Federal and private sector financial and volunteer resources in attacking the problem of illiteracy particularly within low-income areas throughout the United States. In addition, the VISTA Literacy Corps will encourage public/private partnerships; promote voluntarism; heighten the visibility of the literacy issue; and increase the capacity of low-income communities to address their respective literacy needs.

*Objectives*

ACTION will be awarding a grant for the placement of ten (10) VISTA Literacy Corps Volunteers in Region 6 in the following emphasis area:

Literacy projects that address the needs of low-income people who read below the fourth grade level. Priority consideration will be given to literacy programs affiliated with libraries; and to projects that focus on the overall concerns of low-income families in need.

#### B. Eligible Applicants

Eligible applicants for the VISTA Literacy Corps grant include: Public or private nonprofit agencies; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and State education agencies; local and State agencies administering adult basic education programs; educational institutions; libraries, anti-poverty organizations; and local, municipal and State governmental entities designated to administer job training plans under the Job Training Partnership Act.

#### C. Scope of Grant

The amount of the grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate to the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to VISTA Literacy Corps Volunteer upon completion of his/her service.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA Literacy Corps grant in the areas of transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Literacy Corps Program.

#### D. General Criteria for Grant Selection

The general criteria for the VISTA Literacy Corps projects are consistent with those established for the selection of VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission.

The project must:

- Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable published regulations, guidelines and ACTION policies
- Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government
- Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result
- Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project
- Outline specific plans for the continuation of program activities upon the termination of ACTION funds
- Have evidence of local public and private sector support (in the form of endorsement letters limited to those

organizations, government entities,and institutions that are aware of and will be involved in supporting the VISTA projects efforts.

- Have a permanent mechanism for self-evaluation
- Provide frequent and effective supervision of the volunteers
- Identify resources needed and make them available to volunteers to perfrom their tasks
- To have the management and technical capability to implement the project successfully.

In addition to the general criteria, the authorizing statute stipulates that priority consideration will be given to the following literacy programs and projects that apply for funding:

- Those that assist individuals in greatest need of literacy training who reside in unserved or underserved areas with the highest concentration of illiteracy and of low-income individuals and families;
- Those that serve individuals reading at the zero to fourth grade levels;
- Those that focus on providing services to high risk populations, e.g., school dropouts and minority youth
- Those that operate in areas with the highest concentration of individuals and families living at or below the poverty level;
- Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk, and
- Statewide progarms and projects that support the creation of new literacy efforts, encourage coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

**E. Application Review Process**

ACTION Region 6 will review and evaluate all eligible applcations prior to sumbission to the Director of VISTA and Service-Learning Program, ACTION, for the final selections. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

**F. Application Submission and Deadline**

One signed original and two copies of all completed applications must be submitted to the appropriate Regional Director as noted in paragraph 2 of this announcement. The deadline for receipt of applications in 5 pm local time July 15, 1987. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. Application for Federal Assistance (A–1017, Pages 1–9) and VISTA Project Application (Form A–1421) with a detailed budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation, or a letter of good standing from the Governor's Office.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Resume of potential VISTA Supervisor, if available, or the resume of the director of applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. The professional affiliations and/or literacy-related activities of Board of Director Members should be specified.

Signed at Washington, DC, this 8th day of May, 1987.

**Donna M. Alvarado,**

*Director.*

[FR Doc. 87–11046 Filed 5–13–87; 8:45 am]

BILLING CODE 6050-28-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### Commodity Credit Corporation

### 1987–88 National Marketing Quota and Price Support Level for Burley Tobacco

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

**ACTION:** Notice of determinations of 1987–88 marketing quota.

**SUMMARY:** The purpose of this notice is to affirm determination made by the Secretary of Agriculture with respect to the 1987 crop of burley tobacco in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended. In addition to other determinations, the Secretary of Agriculture determined the 1987 marketing quota for burley tobacco to be 464 million pounds, 6 percent below last year's quota, and that the price support level would be $1.488 per pound.

**EFFECTIVE DATE:** February 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Tarczy, Agricultual Economist, Commodity Analysis Division, ASCS, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This notice of determination is issued in accordance with the Agricultural Adjustment Act of 1938, as amended (the "1938 Act"), and the Agricultural Act of 1949, as amended (the "1949 Act"), in order to announce for the 1987 marketing year for burley tobacco the following:

1. The amount of domestic manufacturers' intentions;
2. The amount of the average exports for the 1984, 1985, and 1986 crop years;
3. The amount of the reserve stock level;
4. The amount of adjustment needed to maintain loan stocks at the reserve stock level;
5. The amount of the national marketing quota;
6. The national acreage reserve:

A. For establishing acreage allotments for new farms, and

B. For making corrections and adjusting inequities in old farms;

7. The national factor; and

8. The price support level.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government and after due consideration of data, views, and recommendations received from burley tobacco producers and others pursuant to a proposed Notice of Determination (52 FR 693) which was published on January 8, 1987.

**Discussion**

Thirteen written comments were received during the comment period. Most commentors requested that the 1987 burley tobacco marketing quota be maintained at the 1986 level. Reasons cited were prospects for an upswing in cigarette exports, particularly to the Far East, as well as the modest inventory of 1985 and 1986 crops held by the loan associations, the need to avoid a shortage that would prompt further imports, and the need to protect the livelihood of individual producers. The 1938 Act provides that the marketing quota must equal the sum of:

(1) Domestic manufacturers' intentions to purchase; (2) the 3-year average (1984–86) exports; and (3) an adjustment to maintain loan stocks at the reserve stock level—subject to a maximum reduction of 6 percent below the previous year's quota. Since the sum of these 3 components is significantly less than 94 percent of the previous year's quota, the use of the discretionary element in this determination would not affect the size of the 1987 burley tobacco marketing quota.

Six commentors were concerned that the quota formula did not project sufficient export sales and the cost estimates did not reflect certain cost increases experienced in the 1986 season. The formula for establishing the national marketing quota is set by statute and can only be estimated for the third year of the trailing three-year average rather than for the year for which the quota is being determined. The cost index has been revised to reflect these additional costs.

Six commentors emphasized the need to have the export estimate high enough to cover increased export sales in markets experiencing substantial sales growth. Due to under production in 1986, the final 1987 burley tobacco marketing quota results in a 6 percent increase in the effective marketing quota for 1987, which will provide an ample supply for increased export sales.

**Marketing Quotas**

Section 319 of the 1938 Act (7 U.S.C. 1314e) provides, in part, that the national marketing quota for a marketing year for burley tobacco is the quantity of such tobacco that is not more than 103 percent and not less than 97 percent of the total of: (1) The amount of burley tobacco that domestic manufacturers of cigarettes estimate they intend to purchase on U.S. auction markets or from producers, (2) the average quantity exported annually from the U.S. during the three marketing years immediately preceding the marketing year for which the determination is being made, and (3) the quantity, if any, necessary to adjust loan stocks to the reserve stock level. Section 319(a)(3)(B) further provides that, with respect to the 1986 through 1989 marketing years, any reduction in the national marketing quota being determined shall not exceed six percent of the previous year's national marketing quota. The "reserve stock level" is defined in section 301(b)(14)(D) of the 1938 Act as the greater of 50 million pounds or 15 percent of the national marketing quota for burley tobacco for the marketing year immediately preceding the marketing year for which the level is being determined.

Section 320A of the 1983 Act provides that all domestic manufacturers of cigarettes with more than 1 percent of U.S. cigarette production and sales shall submit to the Secretary a statement of purchase intentions for the 1987 crop of burley by January 15, 1987. Six such manufacturers were required to submit such a statement for the 1987 crop and the total of their intended purchases for the 1987 crop was 293.7 million pounds.

Burley tobacco exports, as recorded by the Bureau of Census, were 153.6 million pounds for the 1984–85 marketing year (October-September) and 150.6 million pounds for the 1985–86 year. World Agricultural Outlook Board, USDA, estimates the Census-recorded exports will total 150.0 million pounds for the 1986–87 marketing year, making the projected 3-year average 151.4 million pounds.

However, domestic cigarette manufacturers export a certain amount of processed tobacco (blends) declared as unmanufactured tobacco exports, but which are included in the domestic manufacturers' purchase intentions. Also, some leaf exporters may declare as burley tobacco certain blends containing foreign-grown tobaccos. Because of these conditions, the Secretary adjusted burley exports to more accurately reflect actual exports. Accordingly, the revised export totals are: 1984, 141.3 million pounds; 1985, 164.6 million pounds; and 1986, 150.8 million pounds. The 3-year average is 152.2 million pounds. This is the same as given in the proposed notice.

In accordance with section 301(b)(14)(D) of the 1938 Act, the reserve stock level is the greater of 50 million pounds or 15 percent of the 1986 marketing quota for burley tobacco. The national marketing quota for the 1986 crop year was 493.5 million pounds (51 FR 28849). Accordingly, the reserve stock level for use in determining the 1987 marketing quota for burley tobacco is 74 million pounds.

As of January 23, 1987 the two associations which hold loan tobacco had in their inventory 107.7 million pounds (excluding pre-1985 stocks committed to be purchased by manufacturers and covered by deferred sales). Accordingly, the adjustment in the quota to maintain loan stocks at the reserve supply level is a decrease of 33.7 million pounds.

The total of the three marketing quota components for the 1987–88 marketing year is 412.2 million pounds. This is over 16 percent below the previous year's quota. Since the 1938 Act further provides that the 1987 marketing quota cannot be reduced by more than 6 percent in a year the marketing quota for 1987 is 463.9 million pounds, 94 percent of 1986's national marketing quota.

In accordance with section 319(c) of the 1938 Act (7 U.S.C. 1314(e)), the Secretary is authorized to establish a national reserve from the national acreage allotment in an amount equivalent to not more than 3 percent of the national acreage allotment for the purpose of making corrections in farm acreage allotments, adjusting for inequities, and for establishing allotments for new farms. The Secretary has determined that a national reserve for the 1987 crop of burley tobacco of 250,000 pounds is adequate for these purposes.

**Price Support**

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect, or for which marketing quotas have not been disapproved by producers, at a level which is determined in accordance with a formula prescribed in section 106 of the 1949 Act. With respect to the 1987 crop of burley tobacco, the level of support is determined in accordance with sections 106 (d) and (f) of the 1949 Act.

Section 106(f)(4) of the 1949 Act provides that the level of support for the 1987 crop of burley tobacco shall be: (1) The level in cents per pound at which the 1986 crop of burley tobacco was

supported, plus or minus, respectively, (2) an adjustment of not less than 65 percent nor more than 100 percent of the total, as determined by the Secretary after taking into consideration the supply of the kind of tobacco involved in relation to demand, of:

(A) 66.7 percent of the amount by which:

(I) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, is greater or less than

(II) The average price received by producers for burley tobacco on the United States auction markets, as determined by the Secretary, during the 5 marketing years immediately preceding the marketing year prior to the marketing year for which the determination is being made, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period; and

(B) 33.3 percent of the change, expressed as a cost per pound of tobacco, in the index of prices paid by burley tobacco producers from January 1 to December 31 of the calendar year immediately preceding the year in which the determination is made.

For the purpose of calculating the market-price component of the support level, the 1949 Act provides that the average market price be reduced 3.9 cents per pound for the 1985 marketing year and 30 cents per pound for prior marketing years.

The difference between the two 5-year averages (between (A)(I) and (A)(II)) is 2.0 cents per pound, down 0.1 cent from what was estimated in the proposed notice. The difference in the cost index from January 1 to December 31, 1986 is −3.9 cents per pound, which is an increase from −4.4 cents per pound that was set forth in the proposed notice. The revised data are as follow:

*1. Prices Paid Adjustment.*

| Crop | Average auction prices (cents per pound) | | 5 year average (excluding high and low) | Change |
|---|---|---|---|---|
| | Actual | Adjusted | | |
| 1981 | 180.7 | 150.7 | | |
| 1982 | 181.0 | 151.0 | | |
| 1983 | 177.3 | 147.3 | | |
| 1984 | 187.6 | 157.6 | | |
| 1985 | 159.4 | 155.4 | 152.4 | |
| 1986 | 156.6 | 156.6 | 154.4 | +2.0 |

*2. Cost Index.**

| Cost item | Cost per acre | |
|---|---|---|
| | 1985 | 1986 |
| Variable: | | |
| Labor [1] | $1,167.42 | $1,125.01 |
| Plant bed materials [2] | 78.56 | 77.01 |
| Fertilizer and lime | 145.12 | 131.01 |
| Chemicals [3] | 82.08 | 80.76 |
| Fuel and lubrication [4] | 36.38 | 25.05 |
| Curing fuel and heating fuel [5] | 4.84 | 4.35 |
| Repairs [6] | 27.77 | 27.45 |
| Marketing fee | 179.10 | 168.33 |
| Inspection and grading fee | 12.96 | 10.99 |
| Other [7] | 15.30 | 15.30 |
| Interest | 26.34 | 24.13 |
| Total variable | 1,775.27 | 1,687.39 |
| Machinery and barn ownership [8] | 519.00 | 521.74 |
| Total, variable and ownership | 2,294.27 | 2,209.13 |
| Yield (pounds) | 2,247 | 1,998 |
| 10-year average yield (pounds) | 2,170 | 2,170 |
| Cost per pound (cents) | 105.7 | 101.8 |

[1] Includes operator, family, exchange, and hired labor value at prevailing wage rates.
[2] Includes seed, fertilizer, pesticides, and custom fumigation and canvas.
[3] Includes insecticides, herbicides, fungicides, and sucker control chemicals.
[4] Includes tractor and machinery fuel and lubrication.
[5] Supplemental heat and heat for stripping room.
[6] Includes machinery, equipment, and barn repairs.
[7] Includes cover crop seed and other miscellaneous expenses.
[8] Includes a reserve for replacement, interest, taxes and insurance for tractors, machinery, barns, and stripping room.

Applying these components to the price support formula (2.0 cents per pound, two-thirds weight; −3.9 cents per pound, one-third weight) result in no change in the level of price support from the previous year. Accordingly, the 1987 crop of burley tobacco will be supported at 148.8 cents per pound.

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*Costs are based on a 1985 survey of burley tobacco growers' 1984 operation. These estimates replace previous estimates that used 1976 data as a base.

**Determinations 1987–88 Marketing Year**

Accordingly, the following determinations have been made for burley tobacco for the marketing year beginning October 1, 1987;

(a) *Domestic manufacturers' intentions.* Manufacturers' intentions to puchase for the 1987 year totaled 293.7 million pounds.

(b) *3-year average exports.* The 3-year average of exports is 152.2 million pounds, based on exports of 141.3 million pounds, 164.6 million pounds and 150.8 million pounds for the 1984, 1985, and 1986 crop years, respectively.

(c) *Reserve stock level.* The reserve stock is 74 million pounds, based on 15 percent of 1988's national marketing quota of 493.5 million pounds.

(d) *Adjustment for the reserve stock level.* The adjustment for the reserve stock level is 33.7 million pounds, based on a reserve stock level of 74 million pounds and anticipated loan holdings of 107.7 million pounds.

(e) *National marketing quota.* The national marketing quota is 463.9 million pounds.

(f) *National reserve.* The national reserve for making corrections and adjusting inequities in old farm acreage allotments and for establishing allotments for new farms has been determined to 250,000 pounds.

(g) *National acreage factor.* The national factor is determined to be 0.94.

(h) *Price support level.* The level of support is 148.8 cents per pound based on a 1986 support level of 148.8 cents per pound with no adjustment. This is based on 2.0 cents per pound increase in the market price component (⅔ weight) and 3.9 cents per pound decrease in the cost component (⅓) weight.

(Secs. 301, 313, 317, 375, 52 Stat. 38, as amended 47, as amended, 79 Stat. 66, as amended, 52 Stat. 66, as amended (7 U.S.C. 1301, 1313, 1314c, 1375); Secs. 106, 401, 74 Stat. 6, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1445, 1421))

Signed at Washington, DC on May 8, 1987.

**Milton J. Hertz,**

*Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87–11060 Filed 5–13–87; 8:45 am]

BILLING CODE 3410-05-M

## Soil Conservation Service

**Tensed/Lolo Watershed, ID; Finding of No Significant Impact**

**AGENCY:** Soil Conservation Service, Agriculture.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tensed/Lolo Watershed, Benewah Country, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345 Boise, Idaho 83702, telephone (208) 334–1601.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns land treatment measures to be applied on critically eroding cropland to control sheet, rill and gully erosion and the subsequent off-site sedimentation problems.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 5, 1987.

**Rodney M. Alt,**

*Deputy State Conservationist.*

[FR Doc. 87–10988 Filed 5–13–87; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

## International Trade Administration

**[A–583–607]**

**Fabric and Expanded Neoprene Laminate From Taiwan; Preliminary Determination of Sales at Less Than Fair Value**

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that fabric and expanded neoprene laminate (FENL) from Taiwan is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend the liquidation of all entries of FENL from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimate dumping margins as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by July 22, 1987.

**EFFECTIVE DATE:** May 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Paul Tambakis or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S.. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–4136 or 377–5288.

SUPPLEMENTARY INFORMATION:

**Preliminary Determination**

We have preliminarily determined that FENL from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

On December 23, 1986, we received a petition filed in proper form from Rubatex Corporation of Bedford, Virginia, on behalf of domestic manufacturers of FENL. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated such an investigation on January 12, 1987 (52 FR 2133, January 20, 1987), and notified the ITC of our action. On February 6, 1987, the ITC determined that there is reasonable indication that imports of fabric and expanded neoprene laminate from Taiwan are materially injuring a U.S. industry (US ITC Pub. No. 19445).

On January 26, 1987, we presented an antidumping duty questionnaire to Shei Chung Hsin Industrial Co., Ltd. (SHEICO) and requested a response in 30 days. On February 11, 1987, respondent requested an extension of the due date for the questionnaire response. We granted the respondent at two-week extension. We received a response to the sales questionnaire on March 11, 1987. Between March 20 and April 8, 1987, the Department requested supplemental information. Supplemental responses were received on March 27 and April 15, 1987.

**Scope of Investigation**

The product covered by this investigation is fabric and expanded neoprene laminate, as provided for in items 355.8100, 355.8210, 355.8220, 359.50900 and 359.6000 of the *Tariff Schedules of the United States Annotated* (TSUSA). This material is used primarily in the manufacture of wet suits and similar products for the scuba diving and recreational markets.

**Fair Value Comparisons**

We made Comparisons on approximately 99 percent of the sales of FENL to the United States during the period of investigation, July 1 through December 31, 1986. Because SHEICO accounted for over 70 percent of all sales of this merchandise from Taiwan, we limited our investigation to this company.

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value for the company under investigation using data provided in the responses.

**United States Price**

For certain sales by SHEICO, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, since the sale to the first unrelated purchaser took place in the United States. For those sales by SHEICO made directly to unrelated parties in the United States prior to importation, we based the United States price on purchase price in accordance with section 772(b) of the Act.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determinig United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

1. The merchanise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as the processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met we regard the routine selling functions of the exporter as having been merely relocated geographically from the county of exportation to the United States, where the sales agency performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions of the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs of a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in this marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price and exporter's sales price based on the packed, f.o.b., c.&i., c.&f. duty unpaid, or c.i.f. duty paid prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean, freight, marine insurance, U.S. duty and U.S. inland freight. Where we used exporter's sales price, we made additional deductions for credit expenses, other U.S. selling expenses, and commissions. We made additions to both purchase price and exporter's sales price for duty drawback (i.e., import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States) pursuant to section 772(d)(1)(B) of the Act.

**Foreign Market Value**

In accordance with section 773(a)(1)(B) of the Act, we calculated foreign market value based on sales for export to a country other than the United States (a "third country"), since SHEICO had insufficient home market sales of FENL. We calculated foreign market value based on the packed, c.i.f., f.o.b., c.&f., or c.&i., duty unpaid prices to unrelated purchasers in Australia. We made deductions where appropriate for brokerage and handling, foreign inland freight marine insurance, and ocean freight.

When we compared foreign market value to purchase price sales, we made adjustments for differences in credit and warranty expenses, in accordance with § 353.15 of the regulations (19 CFR 353.15).

When we compared foreign market value with exporter's sales price, we treated credit and warranty expenses as deductiions, pursuant to section 772(e)(2) of the Act, instead of adjusting foreign market value for the differences. We made an additional deduction to

foreign market value for commissions. We also used indirect selling expenses in the Australian market to offset United States selling expenses, in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted Australian packing costs from foreign market value and added U.S. packing costs.

We established separate categories of "such or similar" merchandise, pursuant to section 771(16) of the Act, on the basis of thickness fabric type and foam type. Where there were no identical products in the Australian market with which to compare product sold to the United States, we made adjustments to similar merchandise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based of differences in the costs of materials, labor and directly related factory overhead.

**Currency Conversion**

We made currency conversions from new Taiwan dollars to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York. For exporter's sales price Comparisiona, we used the official exchange rate on the date of sale, since using the exchange rate as of the date of sale is consistent with section 615 of the Trade and Tariff Act of 1984 (the 1984 Act.) We followed section section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations, because the later law supersedes that section of the regulatons.

**Verification**

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of FENL from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| SHEICO | 1.02 |
| All Others | 1.02 |

**ITC Notification**

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or thereaten material injury to, a United States industry, before the later of 120 days after our preliminary affirmative determination or 45 days after our final determination.

**Public Comment**

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties and opportunity to comment on this preliminary determination at 1:00 p.m. on June 4, 1987, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 21, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration*

May 8, 1987.

[FR Doc. 87-11056 Filed 5-13-87; 8:45 am]

BILLING CODE 3510-DS-M

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**[Docket Nos. 6875-01, 6875-02]**

**Actions Affecting Export Privileges; Edward King et al.**

**Order**

On March 19, 1987, I issued and order in the above captioned proceeding. I hereby clarify that order as follows: Edward F. King, individually and doing business as Printemps Corporation, formely with an address at 5122 Grandview Avenue, Yorba Linda, California 92686, and presently with an address at 1613 Old Fashion Way, Anaheim, California 92804 is denied for a period of 10 years from the date of the original order dated March 19, 1987.

Dated: May 11, 1987.

**Paul Freedenberg,**

*Assistant Secretary for Trade Adminsitration.*

[FR Doc. 87-11057 Filed 5-13-87; 8:45 am]

BILLING CODE 3510-DT-M

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**Applications for Duty-Free Entry of Scientific Instruments; Lawrence Berkeley Laboratory et al.**

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washignton, DC.

Docket Number: 86-304R. Applicant: Lawrence Berkeley Laboratory, Division of Biology and Medicine, 1 Cyclotron Road, Berkeley, CA 94720. Instrument: Circular Dichroism Spectropolarimeter, Model J-600A. Manufacturer: JASCO,

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Japan. Original notice of this resubmitted application was published in the Federal Register of September 19, 1986.

Docket Number: 86-319R. Applicant: Yale University School of Medicine, 333 Cedar Street, New Haven CT 06510. Instrument: Inverted Microscope with Attachments. Manufacturer: Zeiss Optical, West Germany. Original notice of this resubmitted application was published in the Federal Register of October 5, 1986.

Docket Number: 87-023R. Applicant: University of Alaska, Geophysical Institute, Fairbanks, AK 99775-0800. Instrument: Image Photon Detector with Dual Ported Memory. Manufacturer: Hovemere Ltd., United Kingdom. Intended Use: Original notice of this resubmitted application was published in the Federal Register November 21, 1986.

Docket Number: 87-040. Applicant: St. John's Mercy Medical Center, 615 So. New Ballas, St. Louis, MO 63141. Instrument: Electron Microscope with Accessory, Model H-600-3 Manufacturer: Hitachi, Ltd., Japan. Intended Use: The instrument will be used for clinical pathologic correlation studies of human diseased tissue and training residents in electron microscopy for medical diagnosis. Application Received by Commissioner of Customs: November 14, 1986.

Docket Number: 87-041. Applicant: La Crosse Lutheran Hospital, Inc., 1910 South Avenue, La Crosse, WI 54601. Instrument: Electron Microscopy, Model JEM-100SX. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used for differential diagnosis of disease and the determination of appropriate treatment and identification of viral agents which cannot be identified by other methods. The instrument will also provide photographs of cellular ultrastructure which will be valuable teaching tools in a medical education program. Application Received by Commissioner of Customs: December 8, 1986.

Docket Number: 87-153. Applicant: University of California, Davis Department of Mechanical Engineering, Davis, CA 95616. Instrument: Electron Microscope, Model CM 12 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended Use: Studies of ceramics and metals to evaluate structure property relationships in materials. In addition, the instrument will be used to teach structure properties, relationships and other evaluation materials in graduate courses in Electron Microscopy and undergraduate courses in Properties of Materials and Structure. Application Received by Commissioner of Customs: April 2, 1987.

Docket Number: 87-154. Applicant: University of Miami School of Medicine, The Miami Project, 1600 NW., 10th Avenue (R-48), Miami, FL 33136. Instrument: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended Use: Studies of central nervous system tissue (the brain and spinal cord) of rats, cats, guinea pigs, mice and humans. The objectives of these studies is to examine normal spinal cord tissue and then compare these observations on the morpholoy, chemical distribution and synapse distribution to what is observed in spinal cord tissue following an injury in order to gain a better understanding of the mechanisms involved in spinal cord injury and paralysis, with the goal of discovering a cure for paralysis. These studies may also benefit those patients suffering from Parkinson's Disease, Alzheimer's Disease, head injury and other neurological disorders. The insturment will also be used to teach electron microscopy techniques. Application Received by Commissioner of Customs: April 2, 1987.

Docket Number: 87-155. Applicant: Rutgers University, Procurement and Contracting, P. O. Box 1089, Piscataway, NJ 08854. Electromechanical (Piezoelectric) Measurement Device. Manufacturer: Toyo Seiki Seisaku-Sho Ltd., Japan. Intended Use: Studies of high molecular weight materials such as polymers and rubbers to identify to useful materials with desirable properties. The instrument will also be used for educational purposes in a course in polymer science and materials. Application received by Commissioner of Customs: April 6, 1987.

Docket Number: 87-157. Applicant: Thomas Jefferson University, Jefferson Medical College, 1025 Walnut Street, Philadelphia, PA 19107. Instrument: Electron Microscope, Model JEM 100 CX. JEOL Co., Ltd., Japan. Intended Use: The instrument will be used for studies of biological materials and graduate training in cell physiology. Application Received by Commissioner of Customs: April 6, 1987.

Docket Number: 87-160. Applicant: EPA, EMSL-Las Vegas, 994 E. Harmon Avenue, Las Vegas, NV 89114. Instrument: Mass Spectrometer, Model VG 7070-EQ. Manufacturer: VG Analytical, United Kingdom. Intended Use: The instrument is intended to be used for studies of non-volatile compounds in experiments designed to fully characterize such compoumds in a variety of sample media. Application Received by Commissioner of Customs: April 9, 1987.

Docket Number: 87-162. Applicant: State University of New York, Stony Brook, NY 11794. Instrument: Stem System for Electron Microscope. Manufacturer: N.V Philips, The Netherlands. Intended Use: The instrument will be used to study metallic and ceramic materials, as well as light metal hydrides. Particular emphasis will be on hcp metals, refractory metals and binary alloys. Microscopic imaging and diffraction studies will be performed, in addition to in situ straining experiments These studies will be conducted to further the understanding of materials behavior and the development of new materials. In addition, the instrument will be used in the teaching of the following courses:

(1) ESM302 Techniques in Materials Science
(2) ESM605 Diffraction Techniques
(3) ESM607 Imperfections in Crystals
(4) ESM696 Problems in Materials Science
(5) ESM599 and 699 Research in Materials Science.

Application Received by Commissioner of Customs: April 10, 1987.

Docket Number: 87-165. Applicant: University of Virginia Medical School, Box 441 Jordan Hall, Charlottesville, VA 22908. Instrument: Spectropolarimeter, Model J-600. Manufacturer: JASCO, Japan. Intended Use: The article is intended to be used for studies of the structure and interaction of biomolecules with other biomolecules to better understand the nature of protein-protein and protein-DNA interactions. Application Received by Commissioner of Customs: April 13, 1987.

Docket Number: 87-166. Applicant: Miami University, Department of Purchasing, 213 Roudebush Hall, Oxford, OH 45056. Instrument: Micromanipulator, Canberra Type, Model EM-7. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended Use: Research associated with the examination of the properties of neuromuscular transmission. The broad objective of this research is to elucidate the factors that influence transmitter release from the motor nerve terminal. It is hoped that the project will lead to a better understanding of neuromuscular transmission and possibly a means of controlling the processes involved. Application Received by Commissioner of Customs: April 14, 1987.

Docket Number: 87-00167. Applicant: Miami University, Department of Purchasing, 213 Roudebush Hall, Oxford, OH 45056. Instrument: Portable Ultraviolet Radiometer, Model UV 103.

Manufacturer: Macam Photometrics, United Kingdom. Intended Use: Research on the photo-induced toxicity of polycyclic aromatic hydrocarbons to aquatic organisms. Experiments to be conducted include a variety of tests to examine the environmental significance of photo-induced toxicity in aquatic ecosystems. In addition, the instrument will be used for educational purposes in the course Limnology (Z00 463). Application Received by Commissioner of Customs: April 14, 1987.

Docket Number: 87–168.Applicant: University of Montana, Purchasing Department, Lodge 113, Missoula, MT 59812. Instrument: Portable Rock magnetometer and Rock Demagnitizer. Manufacturer: Molspin Ltd., United Kingdom. Intended Use: Studies of samples of rock from various regions in the western United States. The rock property being investigated is paleomagnetic directions and its changes with heating of the sample and alternating field demagnetization. These are general paleomagnetic techniques to determine the stability of measured magnetic moments over geologic time. The instrument will also be used to teach students the fundamentals of paleomagnetism, get them to a level where they can read the professional literature in paleomagnetism, and to teach them how to design scientific experiments. Application Received by Commissioner of Customs: April 15, 1987.

Docket Number: 87–169. Applicant: Wright State University, Department of Physiology and Biophysics, P.O. Box 927, Dayton, OH 45401–0927. Instrument: Multiparameter Fluvo II Flow Cytometric Transducer. Manufacturer: HEKA Elektronic, West Germany. Intended Use: The instrument is intended to be used for studies of biological cells, in suspension, such as red blood cells of various animal and human origin and cultured cells of vascular origin, such as endothelial cells. Investigations will be conducted to correlate the analysis of cellular steady state and out-of-steady state volume with the response of intracellular bivalent ions, cell pH and membrane potential in order to explain ion transport mechanisms initiated and work to maintain at or return the cell to steady state. Application Received by Commissioner of Customs: April 16, 1987.

Docket Number: 87–170. Applicant: University of Chicago, 5801 S. Ellis Avenue, Chicago IL 60637. Instrument: FTI Spectrometer, Model DA2. Manufacturer: Bomem, Canada. Intended Use: The instrument will be used for far-infrared, infrared and visible spectroscopy of molecular ions in gaseous liquid and solid plasma and mid infrared and near infrared astronomical observations. Application Received by Commissioner of Customs: April 21, 1987.

Docket Number: 87–171. Henry Ford Hospital, 2799 West Grand Boulevard, Detroit MI 48202. Instrument: Microcomputer Controlled Voltage/Current Clamp System. Manufacturer: F&P Datensysteme, GmbH, West Germany. Intended Use: The instrument is to be used for the study of electrolyte and water transport in epithelia. Voltage clamp techniques will be used to investigate short circuit current changes in potential difference and tissue permeability. These investigations will be conducted in order to define the mechanisms by which bile acids and fatty acids induce intestinal electrolyte and water secretion and thereby cause diarrhea in man. Application Received by Commissioner of Customs: April 21, 1987.

Docket Number: 87–172. Applicant: The Pennsylvania State University, 276 Materials Research Laboratory, University Park, PA 16802. Instrument: Spectroscopic Ellipsometer with Optical Multichannel Detection, Model ES2G. Manufacturer: SOPRA, France. Intended Use: The instrument will be used to carry out in situ spectroscopic ellipsometry measurements on the diamond films and diamond related films, in the UV-visible-IR spectral region and analyze the data using modeling procedures and regression analysis techniques with the help of computers. Application Received by Commissioner of Customs: April 22, 1987.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–11058 Filed 5–13–87; 8:45 am]

BILLING CODE 3510-DS-M

## Applications for Duty-Free Entry of Scientific Instruments; University of Nebraska et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87–163. Applicant: University of Nebraska—Lincoln, Lincoln NE 68588. Instrument: Circular Dichroism Spectropolarimeter, Model J–600C. Manufacturer: JASCO, Japan. Intended Use: The instrument is intended to be used in experiments which include light-induced conformational changes of both phytochrome and stentorin to elucidate the structural basis of the biological function, i.e. gene regulation and photoreception of these proteins. Educational purposes include training graduate students as competent scientists and educators in courses in graduate research in chemistry, physical biochemistry, molecular photochemistry and photobiology and doctoral dissertation. Application Received by Commissioner of Customs: April 10, 1987.

Docket Number: 87–164. Applicant: Mercy Hospital and Medical Center, Stevenson Expressway at King Drive, Chicago, IL 60616. Instrument: Electron Microscope, Model H–300. Manufacturer: Nissei Sangyo America, Ltd., Japan. Intended Use: Study of the abnormality of cellular structure of tumor cells. Educational purposes involving student and resident training in pathology. Application Received by Commissioner of Customs: April 13, 1987.

Docket Number: 87–173. Applicant: University of California, Santa Barbara, Purchasing Department, Building 451, Santa Barbara, CA 93106. Instrument: Electron Microscope, Model JEM 100CX. Manufacturer: Jeol, Ltd., Japan. Intended Use: Investigations of complex fluid and polymer systems. Specifically direct examination of microstructure of aqueous polyacrylamide gels, rod-coil transitions of polydiacetylene solutions, and the morphology of surfactant-oil-water emulsions using transmission electron microscopy. Application Received by Commissioner of Customs: April 27, 1987.

Docket Number: 87–174. Applicant: The Pennsylvania State University, Department of Chemistry, 152 Davey Laboratory, University Park, PA 16802. Instrument: Accessories for FT Spectrometer, Bomem, Inc., Canada. Intended Use: The instruments are accessories to an existing spectrometer which will be used for initial studies on a number of polyatomic molecules such as benzene, cyclopropane and

monosilane. Other projects will include studies of states which are both infrared and Raman inactive, expanded interest in high resolution spectroscopy and molecular physics of large molecules, the study of energy transfer processes in optically pumped far infrared lasers. Application Received by Commissioner of Customs: April 28, 1987.

Docket Number: 87–175. Applicant: Carnegie Mellon University, 4400 Fifth Avenue, Pittsburgh, PA 15213. Instrument: Interferometric Spectrometer, Model DA3.16 with Accessories. Manufacturer: Bomem, Canada. Intended Use: Detailed spectroscopic studies on the electronic structures of inorganic lattices and complexes. Far infrared applications will include development of a direct spectral probe of exchange interactions in transition ion cluster complexes, studies of the low lying spin-orbit components of the ground state in isolated ions, and electronic structure studies of shallow impurity sites in small band gap photodetectors. Spectoscipic studies in the mid IR region will relate to observation of ligand field excited states and development of virbrational MCD of inorganic complexes as a sensitive probe of metal-ligand covalency. Application Received by Commissioner of Customs: April 28, 1987.

Docket Number: 87–176. Applicant: University of Michigan, 503 Thompson Street, Ann Arbor, MI 48109. Instrument: Electron Microscope, Model JEM–400EX, JEOL Ltd., Japan. Intended Use: The instrument is intended to be used in varied research including but not limited to the following:

1. Mechanistic studies of pressure-assisted plasticity in ceramics
2. Phase equilibria studies in silicon nitride-metal oxide systems
3. Studies of ductility enchancement in materials with limited dislocation mobility
4. Investigation of MBE grown InGaAs on GaAs superlattices
5. Studies of magnesium oxide surfaces
6. Ultra-small electronic research
7. MBE growth of incommensurate heterostructures.

Application Received by Commissioner of Customs: April 28, 1987.

Docket Number: 87–178. Applicant: University of California, Irvine, CA 92717. Instrument: Langmuir-Blodgett System, Model KSV2200. Manufacturer: KSV Chemicals, Finland. Intended Use: The instrument is intended to be used for studies of biological membranes, monolayers, and bilayers during scientific research of the following:

1. Peptide-lipid bilayer interaction
2. Neurotransmitter receptor function
3. Structural relationship between bilayer systems
4. Chloride binding sites in halorhodospin
5. Pulmonary surfactant.

Application Received by Commissioner of Cutoms: April 29, 1987.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87–11059 Filed 5–13–87; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

[P161]

### Marine Mammals; Application for Permit: Gerald L. Kooyman

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as autorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Gerald L. Kooyman, Physiological Research Laboratory A–004, Scripps Institution of Oceanography, University of California, La Jolla, California 92093.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals: Weddell seals Leptonychotes weddelli*) 20.

4. *Type of Take:* Animals will be surgically radio tagged and blood samples will be taken.

5. *Location of Activity:* McMurdo Sound, Antarctica.

6. *Period of Activity:* 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: May 7, 1987.

**Dr. Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87–11037 Filed 5–13–87; 8:45 am]

BILLING CODE 3510-22-M

### National Marine Fisheries Service; Marine Fisheries Advisory Committee; Meeting That is Partially Closed to the Public

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

Time and Date: The meeting will convene at 8:30 a.m., June 3, 1987, and adjourn at approximately 4:00 p.m., June 4, 1987.

Place: Lord Baltimore Clarion Hotel, Baltimore and Hanover Streets, Baltimore, Maryland.

Status: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of a meeting of the Marine Fisheries Advisory Committee (MAFAC). Parts of this meeting will be open to the public. The remainder of the meeting will be closed to the public. MAFAC was established by the Secretary of Commerce on February 17, 1971, to advise the Secretary on all living marine resource matters which are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of this Nation are adequate to meet the needs of commercial and recreational fishermen, environmental, State, consumer, academia, and other national interests.

**Matters To Be Considered**

Portions Open to the Public: June 3, 1987, 8:45 a.m.–4:30 p.m., habitat research and management programs, marine recreational fisheries, Americanization of EEZ fisheries and fisheries trade issues. June 4, 1987, 8:30–

11:30 a.m., interjurisdictional fisheries management and fishery highlights.

Portion Closed to the Public: June 4, 1987, 1:15–4:30 p.m. (Executive Session), budget and program planning priorities.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration of the Department of Commerce, with concurrence of the General Counsel, formally determined on May 7, 1987, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda item to be covered during the Executive Session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because the item will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(9)(B) as information the premature disclosure of which will be likely to significantly frustrate the implementation of proposed agency action. (A copy of the determination is available for public inspection and duplication in the Central Reference and Records Inspection Facility, Room 6628, Department of Commerce.) All other portions of the meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Ann Smith, Executive Secretary, Marine Fisheries Advisory Committee, Constituent Affairs Staff, Office of Legislative Affairs, NOAA, Washington, DC 20235. Telephone: (202) 673–5429.

Dated: May 8, 1987.

James E. Douglas, Jr.,

*Acting Deputy Assistant Administrator, NMFS.*

[FR Doc. 87–11023 Filed 5–13–87; 8:45 am]

BILLING CODE 3510-08-M

## International Trade Administration

### President's Export Council, Executive Committee Meeting; Closed

A meeting of the President's Export Council Executive Committee will be held June 2, 1987, Noon-3:30 p.m. in Room 4830 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC. The Council's purpose is to advise the President on matters relating to United States export trade.

*Agenda:* Discussion of negotiating strategies with our trade partners, Japan, and pending trade legislation.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on October 17, 1985, in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 4102, U.S. Department of Commerce, (202) 377–3031.

For further information, or copies of the minutes, contact Laureen Daly (202) 377–1125, Room 3213, U.S. Department of Commerce, Washington, DC 20230.

Dated: May 11, 1987.

Wendy H. Smith,

*Director, President's Export Council.*

[FR Doc. 87–11239 Filed 5–13–87; 11:14 am]

BILLING CODE 3510-DR-M

## COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

### Meeting

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Notice of meeting.

SUMMARY: This Notice announces a forthcoming meeting of the Commission on the Bicentennial of the United States Constitution, to be held in Washington, DC, and chaired by the Commission's Chairman, Chief Justice (Retired) Warren E. Burger.

Time and date: Friday, May 15, 1987 at 2:00 p.m.; Saturday, May 16, 1987 at 10:15 a.m.

Place: On May 15, from 2:00 p.m. to 4:00 p.m., in the State Room of the Grand Promenade of the Mayflower Hotel, 1127 Connecticut Avenue NW., Washington DC, and on May 16, from 10:15 a.m. to 4:30 p.m., in the South Carolina Room of the Mayflower Hotel. On May 15, the meeting will be a public hearing in open session; on May 16, the meeting will be an executive session.

### Matters to be Considered

*Open Session.* The Commission will hear presentations from state and local officials regarding commemorative plans and programs for the bicentennial; there will also be testimony on regional, national and international bicentennial programs.

*Executive Session.* Evaluation of proposed bicentennial projects and programs; review of annual report and budget; status of personnel, employment and office space; pending appropriations, legislation and regulations; private funding proposals; and, negotiations involving Commission plans and programs.

### Statements

The Commission is interested in hearing from all persons and organizations with proposed plans, projects or programs which would enhance the bicentennial commemoration of the U.S. Constitution, the Bill of Rights or the founding of the Federal Government. Statements prepared should be filed on or before May 15, 1987, at 736 Jackson Place NW., Washington, DC 20503, and will be reviewed by the Commission and its staff.

### Presentations

At the public hearing on May 15, available time will permit only a few oral presentations. The Commission will notify in advance those witnesses who have been asked to appear and will limit oral presentations to those selected.

FOR FURTHER INFORMATION CONTACT: William Buckingham, Director, Planning and Review; Tel. (202) 653–5335.

SUPPLEMENTARY INFORMATION: This meeting is to give the Commission an opportunity to review the current status of its operations. It also provides an opportunity for witnesses to advise the Commission about proposed bicentennial plans and programs.

Dated: May 11, 1987.

Mark W. Cannon,

*Staff Director.*

[FR Doc. 87–11035 Filed 5–13–87; 8:45 am]

BILLING CODE 6820-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Agency Information Activities Under OMB Review

ACTION: Public information collection requirement submitted to OMB for review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

DoD FAR Supplement Part 205 and 252.205–7000.

Part 5 of the DoD FAR Supplement and the clause at 252.205–700, Release of Information to Cooperative Agreement Holders, requires defense contractors awarded a contract in excess of $500,000 to provide entities holding Cooperative Agreements with the Defense Logistics Agency (DLA), upon their request, a list of appropriate employees, their business address, telephone number, and area of responsibility, who have responsibility for awarding subcontracts under defense contracts. This coverage implements section 957 of Pub. L. 99–500.

Businesses or others for profit/small business or organizations.

Responses: 82,500.

Burden hours: 16,250.

**ADDRESS:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from Mr. Owen Green, DAR Council, ODASD(P)DARS, c/o OASD(A&L) (MRS), Room 3C841, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

May 8, 1987.

[FR Doc. 87–11000 Filed 5–13–87; 8:45 am]

BILLING CODE 3810–01–M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

**[Docket No. ERA C&E–87–53; OFP Case No. 61072–9370–20, 21–22]**

### Powerplant and Industrial Fuel Use; Acceptance of Petition for Exemption and Availability of Certification by Caterpillar Capital, Ltd.

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of acceptance.

**SUMMARY:** On April 27, 1987, Caterpillar Capital, Ltd. (Caterpillar or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" of "the Act") (42 U.S.C. 8301 *et seq.*) for its proposed York, Pennsylvania, cogeneration facility.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

**DATE:** Written comments are due on or before June 29, 1987. A request for a public hearing must be made within the same 45-day period.

**ADDRESS:** Fifteen copies of written comments or a request for a public hearing shall be submited to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Ave, SW., Washington, DC 20585.

Docket No. ERA C&E–87–53 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Ellen Russell, Coal and Electricity Division, Office of Fuels Progams, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington DC 20585, Telephone (202) 586–9624.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue, SW., Washington,. DC 20585, Telephone (202) 586–6947.

**SUPPLEMENTARY INFORMATION:** The proposed facility will be a 67 MW cogeneration facility consisting of six 8.6 MW gas-fired turbine generators with hear recovery steam generators, and two 7.5 MW steam turbine generators. The facility will supply approximately 50,000 lbs/hr steam to the Caterpillar Tractor Plant in York, Pennsylvania. In addition it will supply the entire electrical requirement of the plant with excess electricity being sold to Metropolitan Edison for resale.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

To qualify, the petitioner, pursuant to 120 CFR 503.32(a), must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to confrom with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternate sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of §503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications descibed above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the request exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comment received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 7, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-11007 Filed 5-13-87; 8:45 am]

BILLING CODE 6450-01-M

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[Docket No. ERA C&E-87-52; OFP Case No. 52026-5363-20, 21, 22, 23-24]

## Powerplant and Industrial Fuel Use; Acceptance of Petition for Exemption and Availability of Certification by Eagle Point Cogeneration Partnership

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of acceptance.

**SUMMARY:** On April 15, 1987, Eagle Point Cogeneration Partnership (Eagle Point or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for its proposed Eagle Point Cogeneration facility to be located in Westville, New Jersey on the site of the Coastal Eagle Point Oil Company refinery.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on or lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.32.

ERA had determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTAL INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

A public file containing a copy of this Notice of Acceptence and availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Readig Room, 1000 Independence Avenue, SW, Room 1E-190, Washington DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

EPA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

**DATE:** Written comments are due on or before June 29, 1987. A request for a public hearing must be made within the same 45-day period.

**ADDRESS:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Ave, SW., Washington, DC 20585.

Docket No. ERA C&E-87-52 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington DC 20585, Telephone (202) 586-4706.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington DC 20585, Telephone (202) 586-6947.

**SUPPLEMENTARY INFORMATION:** The proposed facility will be a combined topping cycle cogeneration facility consisting of four gas turbines with electric generators and four waste heat boilers.

The facility will produce 170 average net mw of electrical power which will be sold to Jersey Central Power and Light Company and Atlantic Power Company for distribution. The facility will also produce process steam which will be sold to the Coastal Refinery together with 15 MW of electrical power.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

To qualify, the petitioner, pursuant to 10 CFR 503.32(a), must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternate sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 5, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-11008 Filed 5-13-87; 8:45 am]

BILLING CODE 6450-01-M

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**[Docket No. ERA C&E-87-20; OFP Case No. 55119-8044-01, 03-12]**

## Powerplant and Industrial Fuel Use; Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to General Motors Corp.

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Order granting exemption.

**SUMMARY:** On January 21, 1987, General Motors Corporation (General Motors or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for two major fuel-burning installation (MFBI) boilers located at its Oklahoma City plant in Oklahoma City, Oklahoma.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant, and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.32.

Pursuant to section 212(g) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the SUPPLEMENTARY INFORMATION section below.

**DATE:** In accordance with section 702(a) of FUA, this order and its provisions shall take effect on July 13, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-4708.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

**SUPPLEMENTARY INFORMATION:** FUA prohibits the use of natural gas or petroleum in certain new MFBIs unless an exemption for such use has been granted by ERA. This petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facility located in Oklahoma City, Oklahoma.

### NEPA Compliance

After a review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

### Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the Federal Register on March 6, 1987 (52 FR 7009), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

A copy of the petition was provided to the Environmental Protection Agency as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on April 20, 1987; no comments were received and no hearing was requested.

### Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32, and pursuant to section 212(g) of FUA, ERA hereby grants the petitioner's permanent exemption for the unit to be installed at its facility in Oklahoma City, Oklahoma permitting the use of natural gas or oil as a primary energy source in each unit identified in this order.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, DC, on May 5, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-11009 Filed 5-13-87; 8:45 am]

BILLING CODE 6450-01-M

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**[Docket No. ERA C&E-87-51; OFP Case No. 55047-8388-20, 21, 22-24]**

## Powerplant and Industrial Fuel Use; Acceptance of Petition for Exemption and Availability of Certification by Midway-Sunset Cogeneration Co.

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of Acceptance.

**SUMMARY:** On April 13, 1987, Midway-Sunset Cogeneration Company (Midway or petitioner) filed a petition with the Economic Regulatory Administration

(ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for Midway to be located in Kern County, California.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on cogeneration. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition any any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

**DATES:** Written comments are due on or before June 29, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written commens or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Ave, SW., Washington, DC 20585. Docket No. ERA C&E-87-51 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW. Room GA-093, Washington DC 20585, Telephone (202) 586-4708.

Steven E Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202 586-6947.

**SUPPLEMENTARY INFORMATION:** The proposed Midway project is a 225 MW combined cycle unit consisting of three gas fired turbine generators and three heat recovery steam generators to generate steam and electricity. The electricity will be sold to Southern California Edison and the steam will be used in Sun EXP.'s enchanced oil recovery operation.

Section 212(c) of the Act and 10 CFR 503.37 provides for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), the petitioner has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a permanent cogeneration exemption from FUA is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioner has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by the petitioner pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. The determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 5, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-1010 Filed 5-13-87; 8:45 am]

BILLING CODE 6450-01-M

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**[Docket No. ERA C&E-87-50; OFP Case No. 50135-9353-20, 21-22]**

## Powerplant and Industrial Fuel Use; Acceptance of Petition for Exemption and Availability of Certification by the City of Austin, TX

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of acceptance.

**SUMMARY:** On March 31, 1987, the City of Austin, Texas (Austin or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for its proposed combined cycle baseload gas-fueled powerplant to be located in Travis County, Texas.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rule containing the criteria and procedures for petitioning

for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

**DATES:** Written comments are due on or before June 29, 1987. A request for a public hearing must be made within this same 45-day period.

**ADDRESSES:** Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–093, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

Docket No. ERA C&E–87–50 should be printed on the outside of the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:**

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone (202) 586–4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947.

**SUPPLEMENTARY INFORMATION:** The proposed facility will be a 215 MW combined cycle base-load powerplant using natural gas. It will be located at Austin's existing Decker powerplant facility about 7.5 miles northeast of downtown Austin.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

To qualify, the petitioner, pursuant to 10 CFR 503.32(a), must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternate sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of ths proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on May 5, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–11006 Filed 5–13–87; 8:45 am]

BILLING CODE 6450–01–M

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**[Docket No. ERA C&E–86–57; OFP Case No. 53146–3797–20–21–22]**

## Powerplant and Industrial Fuel Use; Order Granting an Exemption to Virginia Electric and Power Company

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Order granting exemption.

**SUMMARY:** On September 25, 1986, Virginia Electric and Power Company (VEPCO or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for two proposed 210 megawatt gas-fired combined cycle electric generating units at its Chesterfield Generating Station in Chesterfield County, Virginia.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant, and prohibits the construction of any such facility without the capability to use an altenate fuel as a primary energy source. The exemption petition was based on lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.32.

Pursuant to section 212(a) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the SUPPLEMENTARY INFORMATION section below.

**DATE:** In accordance with section 702(a) of FUA, this order and its provisions shall take effect on July 13, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Frank Duchaine, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington DC 20585, Telephone (202) 586–8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m. except Federal holidays.

**SUPPLEMENTARY INFORMATION:** FUA prohibits the use of natural gas or petroleum in certain new powerplant unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facilities located in Chesterfield County, Virginia.

**NEPA Compliance**

After a review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemptions does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

**Procedural Requirements**

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 12, 1986 (51 FR 40999), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

Copies of the petition were provided to the Federal Energy Regulatory Commission and the Environmental Protection Agency as required by sections 312(c) and 701(f). During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on December 29, 1986. On December 29, 1986, a public hearing was requested by the National Coal Association (NCA) and was held on February 17, 1987. NCA asserted that certain factors in the calculation of the cost comparisons required by the rules were outdated and inaccurate and that reliance on the comparisons would be arbitrary.

With respect to matters concerning the rules, 10 CFR 503.6, Appendix II, provides that the parameters for a specific petition for exemption will be the set in effect at the time the petition is submitted or the set in effect at the time the decision is rendered, whichever is more favorable to the petitioner. ERA has reviewed all relevant data contained in the petition and provided as a result of the hearing and comment period and concluded that VEPCO's petition satisfied the requirement of rules in existence at the time of the filing of the petition.

On March 21, 1987 NCA withdraw its opposition to the granting of the exemption sought by VEPCO but reserved its request that ERA review its regulations in a rulemaking proceeding. ERA has initiated a review of the pertinent rules and will determine whether the regulations should be revised.

**Order granting Permanent Exemption**

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32, and pursuant to section 212(a) of FUA, ERA hereby grants the petitioner's permanent exemption for the units to be installed at its facility in Chesterfield County Virginia permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC on May 6, 1987.

**Robert L. Davies,**

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–11011 Filed 5–13–87; 8:45 am]

BILLING CODE 6450–01–M

## Proposed Remedial Order to Kern Oil & Refining Co.

**AGENCY:** U.S. Department of Energy, Economic Regulatory Administration.

**ACTION:** Notice of proposed remedial order to Kern Oil & Refining Co.

**SUMMARY:** Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Kern Oil & Refining Company (Kern), Rt. 6, Box 336, Bakersfield, California 93307. This Proposed Remedial Order alleges violations in the amount of $32,055,191.09 resulting from Kern's circumvention of its obligations under the Department of Energy's Entitlements Program during the time period October 1979 through December 1980. The effect of the alleged violations is nationwide.

A copy of the Proposed Remedial Order, with confidential information (if any) deleted, may be obtained from: Office of Freedom of Information Reading Room, United States Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585.

Within fifteen (15) days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, United States Department of Energy, Forrestal Building, Room 6F–078, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with 10 CFR 205.193. The Notice shall be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the Proposed Remedial Order as a final order and shall state the person's intention to file a Statement of Objections. A person who fails to file a Notice of Objection shall be deemed to have admitted the findings of fact and conclusions of law stated in the PRO. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order by the Office of Hearings and Appeals.

Issued in Washington, DC, on the 4th day of May 1987.

**Marshall Staunton,**

*Administrator, Economic Regulatory Administration.*

[FR Doc. 87–10985 Filed 5–13–87; 8:45 am]

BILLING CODE 6450–01–M

## Office of Energy Research

**[Special Research Grant Program Notice 87–3]**

## Complex Carbohydrates; Extension of Receipt Date for Applications

**AGENCY:** Department of Energy.

**ACTION:** Extension of Receipt Date for Applications.

**SUMMARY:** The Office of Energy Research of the Department of Energy has determined that the originally published receipt date for submission of applications for Special Research Grants supporting a multi-disciplinary research, training and service program for characterization of chemical structures of complex carbohydrates did not provide adequate time for respondents to complete the required submission documentation. The original notice was published in the **Federal Register** dated January 26, 1987, Volume 52, No. 16, page 2762. Therefore, the submission date is now extended to June 1, 1987, and all applications for the activity must be received by the Acquisition and Assistance Management Division, ER–64, Washington, DC 20545, by that date.

Issued in Washington, DC, on April 20, 1987

**Ira M. Adler,**

*Deputy Director for Management, Office of Energy Research.*

[FR Doc. 87–10986 Filed 5–13–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ER87–214–000 et al.]**

### Electric Rate and Corporate Regulation Filings; The Washington Water Power Co. et al.

Take notice that the following filings have been made with the Commission:

**1. The Washington Water Power Co.**

[Docket No. ER87–214–000]

Take notice that no March 6, 1987, the Washington Water Power Company (Washington) tendered for filing copies of an Amendment to Filing relating to Docket No. ER87–214–000. This Amendment to Filing clarifies deficiencies in that filing.

A copy of the Amendment to Filing has been sent to Pacific Power & Light Company.

*Comment date:* May 19, 1987 in accordance with Standard Paragraph E at the end of this notice.

**2. United Illuminating Co.**

[Docket No. ER87–136–001]

Take notice that on April 20, 1987, the United Illuminating Company ("UI"), pursuant to a letter dated March 20, 1987 from Jerry R. Milbourn, Director, Division of Electric Power Application Review, tendered for filing its Second Amendment to its rate filing in Docket No. ER87–136–000.

*Comment date:* May 26, 1987, in accordance with Standard Paragraph E at the end of this document.

**3. Monongahela Power Co. et al.**

[Docket No. ER87–330–001]

May 7, 1987.

Take notice that on May 1, Allegheny Power Service Corporation submitted for filing additional data requested by the Commission's staff.

*Comment date:* May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

**4. Northern States Power Co. (Minnesota)**

[Docket No. ER87–407–000]

May 6, 1987.

Take notice that Northern States Power Company (Minnesota) (NSP) tendered for filing on April 29, 1987, settlement changes in FERC wholesale rates. On April 20, 1987, NSP and Municipals agreed to a rate reduction. NSP tendered for filing wholesale rate schedule revisions agreed to by the parties.

The ten affected firm power total requirements wholesale customers and their current FERC rate schedule designations of their contracts are as follows:

| Customer | FERC rate schedule No. |
|---|---|
| Firm Power Service | |
| Primary Distribution Voltage | |
| Arlington | 421 |
| Brownton | 422 |
| Chaska | 424 |
| Kasota | 426 |
| Kasson | 427 |
| North St. Paul | 429 |
| Shakopee | 431 |
| Winthrop | 433 |
| Firm Power Service | |
| Transmission Service | |
| Anoka | 420 |
| Buffalo | 423 |

The ten affected load pattern partial requirement wholesale customers and their current FERC rate schedule designation of their contracts are as follows:

| Customer | FERC rate Schedule No. |
|---|---|
| Load Pattern Service | |
| Primary Distribution Voltage | |
| Sauk Centre | [illegible] |
| Load Pattern Service | |
| Transmission Voltage | |
| ADa | 390 |
| East Grand Forks | 387 |
| Fairfax | 400 |
| Kenyon | 394 |
| LeSueur | 392 |
| Madelia | 397 |
| Melrose | [illegible] |
| Olivia | 388 |
| Sioux Falls | 412 |

Copies of the rate schedule change and comparative billing data were served upon NSP's customers affected by this filing. In addition, copies of the filing have been mailed to the Minnesota Public Utilities Commission, the North Dakota Public Service Commission and the South Dakota Public Utilities Commission. Additional copies are available from the Company.

*Comment date:* May 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to beecome a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

FR Doc. 87–11065 Filed 5–13–87; 8:45 am]

BILLING CODE 6717–01–M

**[Docket Nos. QF87–357–000 et al.]**

### Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; BASF Corporation et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

**1. BASF Corporation**

[Docket No. QF87–357–000]

May 7, 1987.

On April 7, 1987, BASF Corporation (Applicant), of 100 Cherry Hill Road, P.O. Box 181, Parsippany, New Jersey

07054, submittted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. On April 29, 1987, Applicant filed an amendment to the above application and requsted certification of the same facility as a qualifying small power production facility pursuant to §292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Kearny, New Jersey. The facility will consist of a condensing steam turbine generating unit. Excess steam produced (due to highly exothermic reaction of the mixture of air and o-xylene) in a phthalic anhydride production plant will be used to generate electric power for on-site use. The primary energy source will be excess (waste) steam from the phthalic anhydride process. The electric power production capacity of the facility will be 2.4 MW. Installation of the facility began on December 1, 1986.

**2. Baylor University c/o Stone & Webster Engineering Corporation**

[Docket No., QF87-481-000]

May 7, 1987.

On April 29, 1987, Baylor University, c/o Stone & Webster Engineering Corporation (Applicant), of P.O. Box 5200, Cherry Hill New Jersey submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Waco, Texas. The facility will consist of one combustion turbine generator and one heat recovery steam generator. Steam recovered from the facility will be used for production of domestic hot water, and space heating and cooling. The net electric power production facility will be 3,626 kilowatts. The primary energy source will be natural gas. Construction of the facility is expected to begin in the third quarter of 1987.

**3. O'Connell Engineering & Financial, Inc.**

[Docket No. QF87-381-000]

May 6, 1987.

On April 20, 1987, O'Connell Engineering & Financial, Inc. (Applicant), of P.O. Box 867, Holyoke, Massachusetts 01041-0867 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Morton Thiokol Inc.'s Ventron Division, in Danvers, Massachusetts. The facility will consist of a combustion turbine generator, a heat recovery steam generator equipped for supplementary firing, and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be utilized for process by the Ventron Division. The net electric power production capacity of the facility will be 26,022 kW. The primary energy source for the facility will be natural gas and No. 2 fuel oil. Installation of the facility is expected to be completed by July 1989.

**4. Sun Refining and Marketing Company**

[Docket No. QF87-398-000]

May 7, 1987.

On April 28, 1987, Sun Refining and Marketing Company of 1801 Market Street, Philadelphia, Pennsylvania 19103-1699 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed cogeneration facility will be located at the Marcus Hook Refinery, in Marcus Hook, Pennsylvania. The facility will consist of a combustion turbine generator and a heat recovery steam generator (HRSG). The steam from the HRSG will be used for thermal process applications in the refinery. The electric power production capacity of the facility will be 51.8 MW. The primary energy source will be natural gas. The installation of the facility commenced in April, 1987.

**Standard Paragraphs**

e. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules and practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11019 Filed 5-13-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. EL87-19-000]

## Florida Power & Light Co.; Granting Extension of Time

May 8, 1987.

On May 5, 1987, the National Association of Regulatory Utility Commissioners (NARUC) filed a petition for reconsideration of the notice of April 14, 1987, denying a request for additional time to file comments on the Petition for Declaratory Order filed in this proceeding. NARUC states that additional time is necessary because of the importance of the issues, NARUC's strong interest in the proceeding and the difficulty of filing substantive comments within the time period of the notice of the filing (published at 52 FR 9531, March 25, 1987).

Upon consideration, notice is hereby given that the date for filing interventions, protests and comments is extended to and including June 2, 1987.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11021 Filed 5-13-87; 8:45 am]

BILLING CODE 6717-01-M

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## Office of Hearings and Appeals

[Case No. KCF-0047]

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy has adopted final procedures to be followed in disbursing the remaining funds being held in escrow following the settlement of enforcement proceedings involving Pennzoil Company (Case No. KCF-0047).

**FOR FURTHER INFORMATION CONTACT:** Virginia A. Lipton, Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2400.

**SUPPLEMENTARY INFORMATION:** In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and

Order set out below. The Decision relates to a July 9, 1981 consent order between the Pennzoil Company and the Department of Energy. That consent order settled certain disputes between the firm and the DOE concerning Pennzoil's possible violations of DOE regulations in its sales of crude oil and refined petroleum products.

The Decision effectuates a remand order of the United States District Court for the Eastern District of Michigan. The remand order directed the OHA to either (1) evaluate whether Pennzoil refund recipients merited additional refunds based on six equitable factors set forth in the original Pennzoil implementation order or (2) establish, through appropriate procedures, new standards for evaluating additional claims for Pennzoil refunds. In the Order, the OHA elected the second option and decided that no additional refunds should be granted to Pennzoil refund claimants. Accordingly, as set forth in the Order, upon proper application the remaining Pennzoil escrow funds will be disbursed to the States in order to effect indirect restitution.

Dated: May 7, 1987.

George Breznay,

*Director, Office of Hearings and Appeals.*

May 7, 1987.

**Decision and Order of the Department of Energy**

*Special Refund Procudures*

Name of Case: Pennzoil Company
Date of Filing: July 17, 1986
Case Number: KCF-0047

This proceeding is before the Office of Hearings and Appeals (OHA) on remand from the United States District Court for the Eastern District of Michigan. The proceeding involves an appeal filed with that court by Oerther Brothers Sales and Service and Maybee Gas and Oil (Oerther and Maybee). Oerther and Maybee appealed refunds issued to them by the OHA from a consent order fund made available by Pennzoil Company. The facts leading to this remand are as follows.

On March 10, 1982, the OHA issued a Decision and Order instituting special refund proceedings for distribution of the Pennzoil consent order fund. *Office of Special Counsel*, 9 DOE ¶ 82,545 (1982) (hereinafter referred to as *Pennzoil*). The procedures under which this type of special refund proceeding is conducted are set forth at 10 CFR Part 205, Subpart V. Under the terms of the consent order, Pennzoil placed $3,000,000 into an escrow account to be distributed, together with interest, in accordance with the directives of the OHA pursuant to the Subpart V regulations governing special refund proceedings. In Pennzoil we decided to generally allocate refunds to claimants on a volumetric basis. That is, an applicant's allocable share of the total consent order fund would be calculated by multiplying the number of eligible gallons pruchased by the applicant by a factor using the consent order fund as the numerator and the total gallons of product covered by the consent order as the denominator. We also stated that we would consider at a future date granting refunds to successful claimants beyond the volumetric level, based upon our evaluation of six equitable factors.[1] Subsequently, in *Pennzoil Company/Paul L. Strycula*, 12 DOE ¶ 85,211 (1985) (*Strycula*) we found no justification for any additional *Pennzoil* refunds based on the equitable factors approach.

Oerther and Maybee, two claimants to which refunds were granted in the Pennzoil proceeding under the volumetric approach, appealed to the United States District Court for the Eastern District of Michigan our determination not to grant further refunds based on a consideration of the equitable factors.[2] *Oerther v. DOE*, No. 84-CV-7240-DT (E.D. Mich. 1986). By Order of June 30, 1986, the court remanded the Oerther proceeding to the OHA. The court stated that we may either evaluate the Plaintiffs' refund claims pursuant to the six equitable factors enumerated in *Pennzoil*, or, through appropriate proceedings, establish new standards for evaluating additional claims for Pennzoil refunds pursuant to our Subpart V regulations.

After reviewing the court's memorandum opinion, we decided to fulfill its directive by electing the latter option. Accordingly, on March 4, 1987, we issued a Proposed Decision and Order setting forth new standards for evaluation those additional claims.[3]

In the Proposed Order, we tentatively decided that no additional refunds should be issued to successful Pennzoil claimants based on the equitable factors approach. We pointed out that *Pennzoil* was one of our earliest Subpart V refund implementation orders. At the time *Pennzoil* was issued, we believed that it might be appropriate to grant classes of successful claimants refunds beyond volumetric levels, based on the six equitable factors. We gained considerable experience in formulating Subpart V procedures during the six-year period since *Pennzoil* was issued. We now believe that augmenting refunds to classes of applicants in that manner is not justified, is administratively difficult to implement and could well confer unwarranted benefits. As we indicated in the Proposed Order, we found no justification for providing additional disbursements from the contents of an escrow account on a class basis. In fact, in no Subpart V proceeding has the DOE made this kind of incremental distribution. Furthermore, as we have stated in the past, as a general rule, we are reluctant to distribute refunds beyond volumetric amounts to those applicants that simply happened to have filed applications. *E.g., Office of Special Counsel for Compliance, Economic Regulatory Administration: In the Matter of Standard Oil Company (Indiana) (Amoco)*, 10 DOE ¶ 85,048 (1982). We therefore tentatively decided that a general distribution above volumetric levels should not be made to claimants in the Pennzoil proceeding.

As we also pointed out in the Proposed Order, we have always been willing to consider claims of individual applicants that they were disproportionately overcharged and should therefore receive a refund greater than the volumetric amount. *E.g., Strycula*, 12 DOE at 88,669; *Amoco*, 10 DOE at 88,199. We specifically considered such a claim in the Pennzoil proceeding itself. *Pennzoil Co./Gulf Oil*

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[1] The equitable factors set forth in *Pennzoil* are (i) the amount of interest accumulated in the Pennzoil escrow account; (ii) the number of qualified applicants and their aggregate purchase volumes compared to the amount of Pennzoil product sales during the consent order period; (iii) the impact of the alleged violations on the claimant's business; (iv) market conditions during the consent order period; (v) the claimant's position in the distribution chain (reseller, retailer, consumer) and (vi) the manner in which the claimant's business is governed by regulatory agencies or contractual agreements, such as those affecting cooperatives. *Pennzoil*, 9 DOE at 85,248.

[2] In a memorandum opinion of November 21, 1984, the court granted Oerther and Maybee's Motion for Class Certification. The certified class included all those that had received refunds in our Pennzoil refund proceeding. In the appeal, Oerther and Maybee also argued that the volumetric approach was improper and that the entire Pennzoil fund must be distributed on a pro rata basis among all successful Pennzoil claimants. In this regard the firms maintained that the mere showing of banks of unrecouped product costs was a showing of injury sufficient to warrant such a distribution. The court rejected this aspect of the firms' appeal.

[3] Pursuant to 10 CFR 205.282(a), the OHA issues a Proposed Decision and Order setting forth standards and procedures that it intends to apply in evaluating refund claims. The Proposed Decision is to be published in the Federal Register and there must be at least a 30 day period in which any member of the public may file comments with respect to that tentative determination. 10 CFR 205.282(b). Pursuant to 10 CFR 205.282(c) the OHA considers comments received and issues a final Decision and Order governing the disposition of refunds. It is this process that governs the Pennzoil remand proceeding.

*Corp.*, 12 DOE ¶ 85,057 (1984).[4] Pennzoil applicants should therefore have been well aware that in order to receive a refund beyond the volumetric amount, they would have had to show that they experienced a disproportionate Pennzoil overcharge. No Pennzoil applicant made this type of showing, and refunds were approved in this proceeding on a volumetric, pro-rata basis. In view of these considerations, we tentatively determined in the Proposed Order that all Pennzoil consent order funds that the DOE has not disbursed to purchasers of Pennzoil products for purposes of direct restitution should be distributed to State governments in order to effect indirect restitution.[5]

As required by 10 CFR 205–282(b) we published in the Federal Register a Notice of the Proposed Decision and Order and provided a 30 day period for the public to provide comments on our tentative determination. That Notice was published on March 12, 1987. 52 FR 7685. The 30 day comment period has now elapsed. We are ready to consider the comments received on the Proposed Order and issue a final Decision and Order with respect to the Pennzoil refund procedures.

We received two comments regarding our Pennzoil Proposed Order. One comment was filed by Lyon Oil Company, a Pennzoil reseller. Lyon received a refund of $7,303 plus interest in the first stage of our Pennzoil refund proceeding. *Pennzoil Company/B & L Motor Freight, Inc., et al.*, 10 DOE ¶ 85,037 (1982). That refund was based on the volumetric approach discussed above. In its comments regarding our Proposed Order, Lyon claims that Pennzoil raised its prices by two cents per gallon in 1975 and that, as a result, Pennzoil's prices were higher than those of other product distributors in Lyon's market area. Lyon asserts that it was not able to recover that two-cent per gallon price increase on any Pennzoil product it sold during the four-month period from November 1975 through February 1976. The firm therefore requests a refund of $80,000 based on that alleged two-cent per gallon overcharge. Although Lyon alleges that it was overcharged by two cents per gallon by Pennzoil, it has failed to show that it was disproportionately overcharged as compared to other Pennzoil resellers. Therefore, we cannot find any basis for granting it a refund in an amount greater than the volumetric amount. As we stated above, Lyon has already received a refund in that amount. Accordingly, we see no basis for increasing Lyon's refund. The second comment was filed by the Attorneys General for the States of Alabama, Indiana and Ohio. In *Pennzoil Company* we determined that remaining Pennzoil funds should be disbursed to those three States, among others, to effect indirect restitution. Not surprisingly, these States support the procedures set forth in the Proposed Order.

We have received no comments recommending that we revise the procedures set forth in our Proposed Order and since we see no reason to alter any of those procedures, we shall adopt the proposed procedures as final procedures for disbursing the balance of the Pennzoil escrow account. Therefore, the remaining Pennzoil funds shall be disbursed to State governments as described in *Pennzoil Company* in order to effect indirect restitution.

It is therefore ordered that:

(1) The funds remaining in the Pennzoil Company escrow account shall be disbursed pursuant to the procedures set forth in *Pennzoil Company* on February 12, 1985 in Case Number HQF–0024.

(2) This is a final Order of the Department of Energy.

Dated: May 7, 1987.

George B. Breznay,

*Director Office of Hearings and Appeals.*

[FR Doc. 87–11074 Filed 5–13–87; 8:5 am]

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## Cases Filed; Week of April 17 Through April 24, 1987

During the Week of April 17 through April 24, 1987, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the applications within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

May 8, 1987

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 17 through April 24, 1987]

| Date | Name and Location of Applicant | Case No. | Type of Submission |
|---|---|---|---|
| Apr. 13, 1987 | South Dakota, Pierre, SD | KER-0023 | Request for modification/rescission. If granted: The February 27, 1987 Decision and Order issued to South Dakota (Case No. KEG-2004) would be modified regarding the state's plan for use of monies obtained through the Stripper Well Settlement Agreement. |
| Apr. 16, 1987 | Palo Pinto, Belridge & Amoco/ Kansas, Topeka, KS. | RM5-63, RM8-64, RM21-65 | Request for modification/rescission in the Palo Pinto Belridge & Amoco Second Stage Refund Proceedings. If granted: The December 10, 1986 Decision and Order (Case Nos. RM 5-54 RM8-53 & RM21-52) issued to Kansas would be modified regarding the state's application for refund submitted in the Palo Pinto, Belridge & Amoco Second Stage Refund Proceedings. |
| Apr. 17, 1987 | Aminoil/Wilhelm Enterprises, St. Louis, MO. | RF139-9 | Request for modification/rescission in the Aminoil Refund Proceeding. If granted: The March 9, 1987 Decision and Order (Case No. RF139-33) issued to Wilhelm Enterprises would be modified regarding the firm's application for refund submitted in the Aminoil refund proceeding. |

[4] In that proceeding, Gulf alleged that it was overcharged in its purchases of crude oil from Pennzoil. The measure of the overcharges alleged by Gulf was the difference between the price it paid Pennzoil and the correct ceiling price for the crude oil. After fully considering this claim of an overcharge in an amount greater than the volumetric amount, we rejected the application, finding that Gulf had not adequately established that the prices it paid Pennzoil exceed the correct ceiling prices.

[5] In order to effect this indirect restitution, a division of the remaining Pennzoil funds among eleven affected States (including the Commonwealth of Puerto Rico) was made pursuant to *Pennzoil Company*, 12 DOE ¶ 85,183 (1985) (*Pennzoil Company*). The States' rights to those funds were preserved under section 3003(c)(5) of the Petroleum Overcharge Distribution and Restitution Act of 1986. No funds have yet actually been disbursed to the States pending the outcome of the Oerther appeal. In order to receive its allotted funds, a State will be required to file with OHA an appropriate plan for use of the monies.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 17 through April 24, 1987]

| Date | Name and Location of Applicant | Case No. | Type of Submission |
|---|---|---|---|
| Apr. 17, 1987 | Texaco, Inc., Washington, DC | RCX-0052 | Federal Energy Regulatory Commission Remand. If granted: The September 5, 1986 Decision and Order (Case No. HRO-0273) issued to Texaco, Inc. by the Office of Hearings and Appeals would be modified in connection with April 15, 1987 order issued by Federal Energy Regulatory Commission. |
| Apr. 21, 1987 | Oil Marketing Co., Inc., Stilwell, OK. | KEE-0135 | Exception to the Reporting Requirements If granted: Oil Marketing Co., Inc. would not be required to file Form EIA-782B, Reseller/Retailer Monthly Petroleum Product Sales Report. |

REFUND APPLICATIONS RECEIVED

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 4/20/87 | PPG Industries, Inc | RF272-428 |
| 4/20/87 | Citrus World, Inc | RF272-429 |
| 4/20/87 | R.I. Public Transit Authority | RF272-430 |
| 4/20/87 | Clark County School District | RF272-431 |
| 4/20/87 | Romulus Sacococcio | RF276-159 |
| 4/20/87 | Josephine M. LeMay | RF276-160 |
| 4/20/87 | Marshall Famiglietti | RF276-161 |
| 4/20/87 | Nunziato Lindia | RF276-162 |
| 4/20/87 | Salvatore Coco | RF276-163 |
| 4/20/87 | Jeannette D'Arezzo | RF276-164 |
| 4/20/87 | Arthur Delino | RF276-165 |
| 4/20/87 | Bethlehem Steel Corp | RF225-10760 |
| 11/26/86 | Beaddy Oil Co | RF225-10761 |
| 7/14/86 | Mhm Oil Co | RF225-10762 |
| 4/20/87 | Stewie's Oil Service | RF225-10763 |
| 4/21/87 | Publicker Industries, Inc | RF272-432 |
| 4/21/87 | Albertsons, Inc | RF272-433 |
| 4/21/87 | Hexcel Corp | RF272-434 |
| 4/21/87 | Caroline A. Laudati | RF276-166 |
| 4/21/87 | Henry Moretti | RF276-167 |
| 3/03/87 | Kent Oil & Trading Co | RF245-15 |
| 4/23/87 | Federal Hoffman, Inc | RF272-435 |
| 4/23/87 | Ann McGowan | RF276-168 |
| 4/23/87 | Joseph Ruggieri | RF276-169 |
| 4/23/87 | Arthur N. Votolato, Jr | RF276-170 |
| 4/23/87 | John R. Cipalone | RF276-171 |
| 4/23/87 | Carlton A. Greene | RF276-172 |
| 4/23/87 | Altheimer Oil Co | RF108-30 |
| 4/23/87 | Daigle Butane & Applicance | RF140-55 |
| 4/23/87 | Ramey Co | RF253-12 |
| 4/23/87 | Ed's Mobil | RF225-10784 |
| 4/23/87 | Hood's Service Center, Inc | RF225-10785 |
| 4/23/87 | Hood's Service Center, Inc | RF225-10786 |
| 4/23/87 | Barbe's Friendly Service | RF225-10787 |
| 4/23/87 | Jack's Mobil | RF225-10788 |
| 4/23/87 | Jim's Mobil Service | RF225-10789 |
| 4/23/87 | Edward H. Felumbo | RF276-173 |
| 4/24/87 | Joseph Caruolo | RF276-175 |
| 4/23/87 | Dave's Husky | RF161-106 |
| 4/17/87 thru 4/24/87 | Getty Refund Applications | RF295-1079 thru RF295-1159 |

[FR Doc. 87-11071 Filed 5-13-87; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders; Week of March 9 Through March 13, 1987

During the week of March 9 through March 13, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

### Appeal

*Imhoff & Lynch, 3/12/87; KFA-0079*

Imhoff & Lynch filed an Appeal from a partial denial by the Idaho Operations Office of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the material requested was correctly withheld under Exemptions 5 and 6. Important issues that were considered in the Decision and Order were: (i) Whether, under Exemption 6, death of an individual extinguishes all privacy rights in personal information contained in agency files; and (ii) whether the notes of DOE officials recording information supplied by non-agency personnel are intra-agency communications within the meaning of Exemption 5

### Motion for Discovery

*Bayport Refining Company, Olene Crumpton, Malcolm Turner, Robert Houser, Harry Mason, 3/13/87; HRD-0270, HRH-0270, KRZ-0031, KRZ-0053, KRZ-0054, KRZ-0055, and KRZ-0058*

Bayport Refining Company, and four Bayport officers/employees filed a Motion for Discovery and Motion for Evidentiary Hearing in support of their objections to a Proposed Remedial Order issued to them. The PRO alleged that the Respondents engaged in the practice of layering. The DOE denied the Motion for Discovery, on the grounds that the Respondents had failed to provide a legal or factual basis for any of their requests. However, the DOE granted the Motion for Evidentiary Hearing, so that the Respondents could conform their position in the case to recent developments in agency law regarding: (i) The services they claim to have performed in connection with the sales cited in the PRO; and (ii) the extent to which they had control over and benefited from the firm's business activities. Each of the individual Respondents also filed a motion requesting dismissal from the proceeding. The DOE denied all but one of those motions, noting that if the ERA succeeded in proving its allegations, there was a sufficient legal basis for holding three of the four individual Respondents liable. In regard to the one individual which it did dismiss the DOE determined that the party in question had no authority at the company and had received only a salary for performance of secretarial duties.

### Interlocutory Order

*Leonard D. Rice d/b/a Rice Oil Company, Rice-Lindquist, Inc., 3/10/87; HRZ-0235, HRR-0069*

Leonard D. Rice d/b/a Rice Oil Company and Rice-Lindquist, Inc. (Rice) filed a Motion to Dismiss and Request for Reconsideration of a prior Decision denying a Motion for Discovery and Evidentiary Hearing. The submissions were filed in connection with a Proposed Remedial Order (PRO) issued to Rice. In the Motion to Dismiss, Rice argued that portions of the PRO alleging violations of the price regulations promulgated pursuant to the Economic Stabilization Act of 1970 (ESA) must be vacated, since the DOE is without statutory authority to allege violations under that Act. The DOE found that the legislative history clearly indicates that the DOE is authorized to issue remedial orders pursuant to the ESA. In considering Rice's Request for Reconsideration, the DOE determined that Rice had not demonstrated the existence of any factual dispute that would warrant discovery or an evidentiary hearing. Accordingly, the Motion to Dismiss and the Request for Reconsideration were denied.

### Refund Applications

*Aminoil U.S.A., Inc./Miller's LP Gas Service, Inc., et al., 3/9/87; RF139-6, et al.*

The DOE issued a Decision and Order granting refunds from the Aminoil U.S.A., Inc. consent order fund to 12 reseller-retailers of Aminoil natural gas liquid products (NGLPs). One applicant received its full volumetric share of the consent order fund based on the small claims presumption of injury. The remaining 11 firms were all eligible for refunds in excess of the $5,000 threshold, but were unable to provide the demonstration of injury necessary to receive such refunds. Therefore, each of the remaining firms' refunds was limited to the $5,000 small claims threshold amount. The refunds to these firms total $97,482, representing $58,025 in principal and $39,457 in interest.

*C.K. Smith & Company, Inc./Fairlawn Oil Service, Inc., 3/12/87; RF264-7*

The DOE issued a Decision and Order concerning an Application for Refund filed by Fairlawn Oil Service, Inc. from a consent order fund made available by C.K. Smith & Company, Inc. The DOE found that Fairlawn was a reseller of No. 2 heating oil purchased from Smith during the consent order period. Since the amount of the refund for which Fairlawn applied was less than the $5,000 small claims amount provided for in the Order implementing procedures for disbursing the Smith fund, the claimant was

not required to submit a detailed proof of injury. Accordingly, Fairlawn was granted a refund in the amount of its full volumetric share, $3,989, plus $3,355 in accrued interest.

*Cloyce K. Box/Conoco, Inc., 3/11/87; RF291–1*

The DOE issued a Decision and Order concerning an Application for Refund filed by Conoco, Inc., seeking a portion of the settlement fund obtained by the DOE through a consent order entered into with Cloyce K. Box. The Box consent order covered sales of OKC Corporation motor gasoline at illegal prices by J.R. Adams Oil Co. and Ritco, Inc., two brokers acting on Box's behalf. Using the standards established for disbursing the Box consent order fund, the DOE determined that Conoco was injured by Adams' pricing practices during the consent order period and was therefore eligible for a refund of $458,532 ($233,979 in principal and $224,553 in interest).

*Farstad Oil Company/Ahmann's Service Center Conrad Ziegler, 3/10/87; RF261–2, RF261–12*

The DOE issued a Decision and Order concerning two Applications for Refund filed by purchasers of motor gasoline from Farstad Oil Company. Each firm applied for a refund based on the procedures established for the disbursement of settlement funds received from Farstad pursuant to a Consent Order. Since both of the applicants claimed refunds of $5,000 or less, they were presumed to have been injured by Farstad's alleged overcharges. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive refunds totaling $713, representing $563 in principal and $150 in accrued interest.

*Florida Furniture Industries, Inc., Van de Kamp's Holland Dutch Bakers, Inc., 3/9/87; RF270–1106, RF270–1111*

The Department of Energy (DOE) issued a Decision and Order approving a manufacturing company and a bakery for refunds from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. Each company operates a private fleet of trucks and based its claim on purchases of diesel fuel between August 19, 1973 and January 27, 1981. The DOE's Decision approved each company's purchase volumes. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

*GCO Minerals Co./Enterprise Products Company, Inc., 3/13/87; RF254–1*

The DOE issued a Decision and Order concerning an Application for Refund filed by Enterprise Products Company, seeking a portion of the funds remitted by GCO Minerals Company pursuant to a consent order that GCO entered into with the DOE. Enterprise purchased 85,553,683 gallons of natural gas liquid products from GCO during the consent order period. The DOE found that in each quarter in which it purchased normal butane and isobutane from GCO, Enterprise experienced a competitive disadvantage. In addition, the DOE found that Enterprise suffered injury in its purchases of commercial butane and natural gasoline. Accordingly, DOE granted refunds equal to the volumetric refund amount for these four products. The DOE also found that for a portion of the propane that it purchased, Enterprise was charged prices below the average market price levels. As a result, Enterprise obtained a substantial cost benefit. Considering the competitive advantage that Enterprise enjoyed from purchases of propane from GCO, the DOE limited the propane refund to Enterprise to an amount equal to the gallons of propane that Enterprise purchased at above market prices multiplied by the per gallon refund rate. The refund granted totals $349,172, representing $295,698 in principal and $53,474 in interest.

*Getty Oil Company, All-American, Inc., et al., 3/11/87; RF265–123, et al.*

The DOE issued a Decision and Order concerning six Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Getty Oil Company. The Applications were evaluated in accordance with the procedures set forth in *Getty Oil Co.*, 15 DOE ¶ 85,034 (1986). The sum of the refunds approved in this Decision is $9,587, representing $4,994 in principal and $4,653 in interest.

*Getty Oil Company/Big River Oil Company, et al., 3/12/87; RF265–174, et al.*

The DOE issued a Decision and Order granting 74 Applications for Refunds from the Getty Oil Company consent order fund. The refund applicants, who were reseller-retailers of Getty refined petroleum products, documented purchases of Getty products for the consent order period and were eligible for 100 percent of their volumetric share, based upon the small claims presumption of injury. The refunds to these firms total $210,625, representing $108,515 in principal and $102,110 in accrued interest.

*Gulf Oil Corporation/City Gulf Service, et al., 3/12/87; RF40–2267, et al.*

The DOE issued a Decision granting seven Applications for Refund from the Gulf Oil Corporation consent order fund filed by retailers and resellers of Gulf refined products. In considering the applications, the DOE found that each of the claimants had demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds totaling $9,285, representing $7,501 in principal and $1,784 in interest.

*Gulf Oil Corporation, Hank's Service Center, Inc., et al., 3/10/87; RF40–3633, et al.*

The DOE issued a Decision and Order concerning eight Applications for Refund filed by resellers and retailers of Gulf Oil Corporation petroleum products. In accordance with procedures established for disbursing the Gulf consent order fund, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the amount of refund claimed. Accordingly, refunds were approved that totaled $25,249, representing $20,400 in principal and $4,849 in interest.

*Gulf Oil Corporation/Saunders Leasing System, 3/12/87; RF40–706*

The DOE denied a refund from the Gulf Oil Corporation deposit fund escrow account to Saunders Leasing System. Saunders was a truck leasing company that bought Gulf diesel fuel and resold it to its leasing customers. For this reason, Saunders was considered a reseller of petroleum products for the purposes of this proceeding and must provide evidence that it would not have been required to pass through to its customers a cost reduction equal to the refund amount claimed. Since Saunders could not make this showing, the DOE denied its refund application.

*Gull Industries, Inc./Al Bolser Tire Stores, Paramount Oil Co., 3/13/87; RF260–15, RF260–19*

The DOE issued a Decision and Order granting two Applications for Refund from the Gull Industries, Inc. consent order fund. Since each applicant was a reseller whose claim was for less than the $5,000 small claims refund amount, no further proof of injury was required. The refunds approved in the Decision totaled $8,419.45, representing $5,566.13 in principal and $2,853.32 in interest.

*Gull Industries, Inc./John M. Taylor, et al., 3/13/87; RF258–12, et al.*

The DOE issued a Decision and Order granting three Applications for Refund from the Gull Industries, Inc. consent order fund. Since each applicant was a reseller whose claim was for $5,000 or less, no further proof of injury was required. The refunds approved in the Decision totaled $16,524.84, representing $10,005.35 in principal and $6,519.49 in interest.

*Gull Industries, Inc./Perovich & Son Fuel, et al., 3/12/87; RF259–4, et al.*

The DOE issued a Decision and Order granting seven Applications for Refund from the Gull Industries, Inc. consent order fund. Each applicant was either a reseller of Gull product whose claim was for $5,000 or less or an end-user. Therefore, no further proof of injury was required. The refunds approved in the Decision totaled $33,046, representing $21,684 in principal and $11,362 in interest.

*Hanover Transfer Co., et al., 3/12/87; RF270–972, et al.*

The DOE issued a Decision and Order concerning four Applications for Refund from the $10.75 million Surface Transporters Escrow fund established pursuant to the settlement agreement in the DOE stripper well exemption litigation. None of the applicants purchased more than the 250,000 gallon minimum set forth in the Order establishing the Surface Transporters Escrow. Accordingly, all four Applications were denied.

*Heartland Express, Inc. of Iowa, Momsen Trucking, Inc., James Fleming Trucking, Inc., Sullivan's Trucking Co., Inc., 3/12/87; RF270–749, RF270–758, RF270–762, and RF270–780*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the

settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by four trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to each of the four firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be determined at a later date.

*La Gloria Oil & Gas Co./Toliver Oil Products, et al., 3/12/87; RF263-18, et al.*

The DOE issued a Decision and Order granting Applications for Refund filed by three resellers of refined petroleum products covered by a consent order which the agency entered into with La Gloria Oil & Gas Co. Each of the applicants presented evidence that it purchased refined petroleum products from La Gloria during the consent order period, and claimed refunds at or below the $5,000 small claims threshold for resellers. According to the methodology set forth in the order implementing procedures for disbursing the La Gloria fund, each applicant was found eligible for a refund based on the volume of its purchases times the volumetric refund amount. The refunds approved in this Decision totaled $10,325, including $5,729 in principal and $4,596 in interest.

*Marathon Petroleum Company/Acme Fuel Company, et al., 3/9/87; RF250-2329, et al.*

The DOE issued a Decision and Order concerning 83 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant submitted information indicating the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $93,269, representing $86,287 in principal and $6,982 in interest.

*Marathon Petroleum Company/Amoco Oil Company, 3/9/87; RF250-2216, RF250-2217, RF250-2218, and RF250-2219*

The DOE issued a Decision and Order concerning four Applications for Refund from the Marathon Petroleum Company consent order fund filed by Amoco Oil Company. Amoco, a reseller of Marathon propane, residual fuel oil, naphtha and middle distillates, elected to file its refund applications based upon the 35 percent presumption of injury set forth in the order implementing procedures for disbursing the Marathon consent order fund. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Amoco should receive a refund of $12,655.66 in principal and $816.91 in accrued interest for a total refund of $13,472.57.

*Marathon Petroleum Company/Cannon Oil Corporation, 3/11/87; RF250-2296, RF250-2297*

The DOE issued a Decision and Order concerning two Applications for Refund from the Marathon Petroleum Company consent order fund filed by Cannon Oil Corporation. Cannon, a reseller of Marathon middle distillates and motor gasoline, elected to file its refund applications based upon the 35 percent presumption of injury set forth in the order implementing procedures for disbursing the Marathon consent order fund. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Cannon should receive a refund of $15,592.22 in principal and $1,007.52 in accrued interest for a total refund of $16,599.74.

*Marathon Petroleum Company/ Ingram Corporation, 3/13/87; RF250-2300*

The DOE issued a Decision and Order concerning an Application for Refund from the Marathon Petroleum Company consent order fund filed by Ingram Corporation. Ingram, a reseller of Marathon covered products, elected to file its refund application based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Ingram should receive a refund of $17,496.19 in principal and $1,191.07 in accrued interest for a total refund of $18,687.26.

*Marathon Petroleum Company/ Park Oil Company, 3/9/87; RF250-1907*

The DOE issued a Decision and Order concerning an Application for Refund from the Marathon Petroleum Company consent order fund filed by Park Oil Company. Park, a reseller of Marathon motor gasoline elected to limit its refund claim to $5,000, the small claims injury presumption set forth in the decision implementing procedures for disbursing the Marathon consent order fund. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Park should receive a refund of $5,000 in principal and $322.68 in accrued interest for a total refund of $5,322.68.

*Marathon Petroleum Company/ Publix Oil Company, Inc., 3/11/87; RF250-2305, RF250-2306*

The DOE issued a Decision and Order concerning two Applications for Refund from the Marathon Petroleum Company consent order fund filed by Publix Oil Company, Inc. Publix, a reseller of Marathon diesel fuel and motor gasoline, elected to file its refund applications based upon the 35 percent presumption of injury outlined in the decision implementing procedures for disbursing the Marathon consent order fund. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Publix should receive a refund of $31,323.38 in principal and $2,023.22 in accrued interest for a total refund of $33,346.60.

*Marathon Petroleum Company/ Stauder Oil Sales Co., Inc./ Erickson Petroleum Corp., 3/13/87; RF250-2345*

The DOE issued a Decision and Order concerning an Application for Refund from the Marathon Petroleum Company consent order fund filed by Stauder Oil Sales Co., Inc./Erickson Petroleum Corp. Stauder/ Erickson, a reseller of Marathon diesel fuel and motor gasoline, elected to file its refund applications based upon the 35 percent presumption of injury outlined in the decision implementing procedures for disbursing the Marathon consent order fund. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Stauder/Erickson should receive a refund of $6,700.47 in principal and $562.31 in accrued interest for a total refund of $6,262.78.

*Marathon Petroleum Company/Star Service and Petroleum Company, 3/11/87; RF250-2303, RF250-2304*

The DOE issued a Decision and Order concerning two Applications for Refund from the Marathon Petroleum Company consent order fund filed by Star Service and Petroleum Company. Star, a reseller of Marathon middle distillates and motor gasoline, elected to file its refund applications in accordance with the procedures for filing claims under the 35 percent presumption method outlined in the decision implementing procedures for disbursing the Marathon consent order fund. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Star should receive a refund of $48,989.99 in principal and $3,229.52 in accrued interest for a total refund of $53,229.51.

*Mobil Oil Corporation/A-1 Service, et al., 3/11/87; RF225-6530, et al.*

The DOE issued a Decision granting 49 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $21,134, representing $17,406 in principal and $3,728 in interest.

*Mobil Oil Corporation/Abolhassan S. Razavi, et al., 3/12/87; RF225-1828, et al.*

The DOE issued a Decision granting 46 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $39,771, representing $32,765 in principal and $7,006 in interest.

*Mobil Oil Corporation/Bel-Pre Mobil, 3/10/87; RF225-10522*

The DOE issued a Decision in which it determined that the owner of Bel-Pre Mobil, Mr. Robert Headlee, had inadvertently been granted a refund for Bel-Pre Mobil's purchases from Mobil prior to the date on which the corporation he owns acquired the station. Accordingly, the DOE ordered Mr. Headlee to remit $598 to the Mobil consent order escrow account.

*Perta Oil Marketing Corporation/ Atlantic Richfield Company, Commonwealth Oil Refining Company Inc., 3/12/87; RF289-1, RF289-2*

The DOE issued a Decision and Order concerning two Applications for Refund filed by purchasers of refined petroleum products from Perta Oil Marketing Corporation (Perta).

Each firm applied for a refund based on the procedures outlined in *Perta Oil Marketing Corporation*, 15 DOE ¶ 85,106 (1986), governing the disbursement of settlement funds received from Perta pursuant to an August 31, 1981 Consent Order. Since both of the applicants claimed refunds of $5,000 or less, they were presumed to have been injured by Perta's alleged overcharges. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive refunds totaling $9,966, representing $6,197 in principal and $3,783 in accrued interest.

*Red Bird Cab, Inc., 55th Street Taxi Garage, Inc., Capitol Cab, 3/13/87, RF270-786, RF270-848, RF270-850*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by three taxicab companies and will use those gallonages as a basis for the refund that will ultimately be issued to the three firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the three firms' refunds will be determined at a later date.

*Union Texas Petroleum Corporation/ Blu-Gas of S.C. Inc., 3/10/87, RF140-50*

The DOE issued a Decision and Order concerning an Application for Refund filed by Blu-Gas of S.C. Inc., a reseller of propane purchased from Union Texas Petroleum Corporation. The firm elected to apply under the presumption of injury for small refund claims and the volumetric presumption, as set forth in *Union Texas Petroleum Corp.*, 12 DOE ¶ 85,166 (1985). The refund granted in this proceeding totals $6,559, representing $4,522 in principal and $2,037 in interest.

*Vickers Energy Corporation/ Wisconsin, 3/11/87; RQ1-360*

The Department of Energy issued a Supplemental Order to the State of Wisconsin correcting an error in the amount of a refund previously granted to the State. Wisconsin's refund was stated as $1,085,192 when it should have been $1,085,010. The Order also clarified the manner in which Wisconsin may utilize interest earned on the funds received.

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Acme Delivery Service, Inc. | RF270-2436 |
| Alfa Omega Equities, Inc. | RF270-2284 |
| American Service Center | RF270-2421 |
| Atlas Van Lines | RF270-2220 |
| B&B Cash Grocery Stores | RF270-2199 |
| Brunton Van & Storage Co., Inc. | RF270-2197 |
| Canadian American Transportation | RF270-2250 |
| Chevron U.S.A. Inc. | RF270-286 |
| Commercial Equipment Co., Inc. | RF270-2258 |
| Crawford's Mobile | RF270-10374 |
| D.W. Stacey, Inc. | RF270-2193 |
| Dick Jones Trucking | RF270-2201 |
| Donald R. Devine | RF270-2302 |
| Doren P. Groden | RF270-2303 |
| Earl A. Ludwig | RF270-2448 |
| Eastern Oregon Fast Freight | RF270-2191 |
| Engle Dorothy A | RF270-2200 |
| Farmers Union Central Exchange, Inc. | RF270-181 |
| Field View Farm Transportation | RF270-2213 |
| General Excavating, Inc. | RF270-2300 |
| H.V.&T.G. Thompson Co | RF270-2274 |
| Hartley's Auto Service | RF225-8070 |
| Henry Transportation, Inc. | RF270-2433 |
| Jeffery Marquardt | RF270-2304 |
| Kenosha Auto Transport Corp. | RF270-2269 |
| Kingsway Transport, Ltd. | RF270-2229 |
| KKW Trucking Inc. | RF270-2415 |
| Larry Ratliff | RF40-1436 |
| Lawrence Bruning | RF270-2301 |
| Lawrence Transportation Service | RF270-2254 |
| Leava Motor Express, Inc. | RF270-2251 |
| Lewis Gruber | RF270-2417 |
| Mid-America Farm Lines, Inc. | RF270-2253 |
| Minnesota, Dakota & Western Railway Co. | RF271-175 |
| Mobil Oil Corp. | RF220-154 |
| Newington Mobil | RF225-10282 |
| Newmans Oil Stop Gulf | RF40-3677 |
| Parker Leasing, Inc. | RF270-2203 |
| Provan Transport Corp. | RF270-2283 |
| Roadrunner Construction | RF270-2431 |
| Roger C. Snyder | RF270-2393 |
| Salt River Project, Agricultural Improvement and Power District | RF290-1 |
| Sayers Gulf Service | RF40-346 |
| Selker Brothers, Inc. | RF225-1923 |
| Sorensen Transportation Co. | RF270-2413 |
| The Coastal Corp. | RF220-257 |
| Three Forks Stores | RF201-2 |
| Three Forks Store | RF201-6 |
| Underwood Truck Lines, Inc. | RF270-2425 |
| Union Drilling, Inc. | RF270-2428 |
| Wenzel Tile Co. of Florida | RF270-2230 |
| Whitlock Trucking Inc. | RF270-2412 |
| Wiley's Express, Inc. | RF270-2225 |
| Williams & Dinaus Oil Co. | RF112-209 |
| Wisconsin General Cartage | RF270-2248 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

May 8, 1987.

[FR Doc. 87-11072 Filed 5-13-87; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders; Week of April 6 Through April 10, 1987

During the week of April 6 through April 10, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Requests for Exception**

*J. M. Sweeney Co., 4/9/87; KEE-0095*

J. M. Sweeney Company (Sweeney) filed an Application for Exception from the requirment that it file Form EIA-811, entitled "Monthly Bulk Terminal Reports." In considering the request, the DOE found that Sweeney's reporting burden was not significantly different from that of other firms participating in the EIA-811 survey. Accordingly, exception relief was denied.

*Spreeman Oil Co., 4/9/87; KEE-0080*

Spreeman Oil Company filed an Application for Exception from the requirement that it file Form EIA-782B. In considering the request, the DOE found that the firm was not experiencing any hardship, inequity or unfair distribution of burdens as a result of the reporting requirement. Accordingly, exception relief was denied.

*Torch Oil Co., 4/10/87; KEE-0079*

Torch Oil Company filed an Application for Exception from the requirement that it file Form EIA-782B. In considering the request, the DOE found that the firm was not experiencing any hardship, inequity or unfair distribution of burdens as a result of the reporting requirement. Accordingly, exception relief was denied.

**Interlocutory Order**

*Ball Marketing, Inc.; KRZ-0057; Economic Regulatory Administration, 4/7/87; KRZ-0002*

On June 25, 1986, the Economic Regulatory Administration (ERA) filed a Motion to join Charles Goss, Baker R. Littlefield and Robert L. McAdams as parties to the Proposed Remedial Order (PRO) issued to Ball Marketing, Inc. (Ball) on November 24, 1984. The Office of Hearings and Appeals (OHA) granted this motion, finding that the ERA had established a *prima facie* case of personal liability against the respondents. This finding was based upon a showing of the parties' involvement as partners in the joint venture, Ball Marketing Enterprise (BMI), which performed the violations alleged in the PRO. The OHA further concluded that joinder of these parties was not unduly prejudicial since the respondents would be afforded their full procedural rights and since the public interest in ensuring full restitution of any overcharges outweighs any inconvenience caused by the delay in the proceeding. In addition, a Motion to Dismiss the PRO which Ball filed on May 1, 1985, was denied. The OHA rejected Ball's argument that the PRO failed to establish a *prima facie* case for Ball's liability as BMI's successor in interest for the regulatory violations allegedly performed by BMI. The OHA also found that joinder of the partners of BMI did not constitute grounds for dismissing Ball as a party to the proceeding.

**Supplemental Order**

*Stoel, Rives, Boley, Fraser & Wyse, 4/10/87; KFX-0090*

The DOE issued a Supplemental Order to the law firm of Stoel, Rives, Boley, Fraser & Wyse (Stoel, Rives) regarding the DOE's January 28, 1987 determination that Stoel, Rives has submitted inaccurate information in a refund application filed on behalf of Moore Oil Company in the Wisconsin

Industrial Fuel Oil refund proceeding. *Wisconsin Industrial Fuel Oil, Inc./Moore Oil Co.*, 15 DOE ¶85,272 (1987) (*Moore Oil*). Specifically, the supplemental Order considered whether to impose sanctions on Stoel, Rives for the submission of false or misleading information, including suspension of Stoel, Rives' privilege of participating in the proceedings before the Office of Hearings and Appeals, pursuant to 10 CFR 206.3(b). After reviewing Stoel, Rives' comments in response to the *Moore Oil* Decision and other evidence in the proceeding, the OHA concluded that Stoel, Rives should retain the privilege of participating in proceedings before the OHA because Stoel, Rives had made some effort to insure that the information it submitted was accurate and because the erroneous information had been supplied to Stoel, Rives by Moore Oil Company.

**Refund Applications**

*Babbitt Bus Line, Inc., et al., 4/8/87; RF270–444 et al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the Settlement Agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined products claimed by six bus companies and will use those volumes as a basis for the refund that will ultimately be issued to the six firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the six firms' refunds will be determined at a later date.

*Beacon Oil Co./The Customer Co., 4/9/87; RF238–32*

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of the Customer Company (Customer), a retailer of Beacon Oil Company motor gasoline. Customer applied for a refund based on the procedures outlined in *Beacon Oil Co.*, 14 DOE ¶85,011 (1986), as modified by *Beacon Oil Co.*, 14 DOE ¶85,509 (1986), governing the disbursement of settlement funds received from Beacon pursuant to a December 17, 1979 Consent Order. Based on the principles established for evaluating refund applications in the Beacon special refund proceeding, the DOE concluded that Customer had been injured with respect to the 3,957,998 gallons of regular gasoline that it purchased from Beacon during the periods, August 19, 1973 through October 31, 1973, and September 1, 1974 through March 31, 1975. Accordingly, Customer was granted a refund of $116,314, representing $60,466 in principal and $55,848 in accrued interest.

*Cecio Bros. Inc., et al., 4/6/87; RF270–775 et al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by four companies which operated private fleets of trucks and will use those volumes as a basis for the refund that will ultimately be issued to the four firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be determined at a later date.

*Gary Energy Corp./R.M.T. Properties, Inc., 4/6/87; RF47–4*

The DOE issued a Decision and Order concerning an Application for Refund filed by R.M.T. Properties, Inc. (RMT) in connection with the Gary Energy Corporation special refund proceeding. RMT filed as the successor in interest to a firm which purchased product from Gary Energy Corporation for use in its refining operations. In support of its claim, RMT showed evidence that its predecessor maintained sizable cost banks. From price data submitted by RMT, the DOE applied the three-step competitive disadvantage methodology, and determined that the applicant was entitled to a refund of $14,309 in principal and $3,705 in interest from the Gary deposit escrow account.

*Getty Oil Co. Marathon Oil Co., RF265–897; Walker Oil Co., 4/7/87; RF265–898*

The DOE issued a Supplemental Order concering two Applications for Refunds from the Getty Oil Company deposit escrow fund filed by Marathon Oil Company (Marathon) and Walker Oil Company (Walker). Both applicant had previously received refunds as specified in *Getty Oil Co./Big River Oil Co.*, 15 DOE ¶——— (RF265–174, *et al.*) (March 12, 1987). After issuing the March 12 determination, it appeared that the purchase volume figures upon which the refunds had been calculated were less than those documented in the firms' applications. The Supplemental Order provided additional refunds of $343 to Marathon and $64 to Walker to correct the miscalculation.

*Getty Oil Co./Barone Bros. Auto Service, Inc., et al., 4/8/87; RF265–209 et al.*

The DOE issued a Decision and Order granting 56 Applications for Refunds from the Getty Oil Company deposit escrow fund filed by reseller-retailers of Getty refined petroleum products. All of the refund applicants documented purchases of Getty products for the period August 19, 1973 through December 31, 1978, and were eligible for 100 percent of their volumetric share based upon the small claims presumption of injury. The refunds to these firms total $168,640, representing $96,762 in principal and $91,878 in accrued interest.

*Gull Industries, Inc./Franko Oil Co., Inc., et al., 4/6/87; RF259–16 et al.*

The DOE issued a Decision and Order granting four Applications for Refund from the Gull Industries, Inc. escrow account under the provisions outlined in *Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). Each applicant was listed in the Appendix to that Decision as being eligible for a specified refund amount from the Gull consent order fund based upon the volume of petroleum products purchased from Gull during the consent order period. Each applicant was a reseller whose claim was for $5,000 or less; therefore no further proof of injury was required. The refunds approved in the Decision totaled $24,245, representing $25,880 in principal and $8,365 in interest.

*H.G. Toys; RF270–17; Blu-Gas Service Inc.; RF270–27; White Star Bus Line, 04/06/87; RF270–35*

The Department of Energy (DOE) issued a Decision and Order concerning three Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. All three applicants applied for refunds based on purchases of less than 250,000 gallons of petroleum products. The DOE determined the companies' applications should be denied because applicants which purchased less than 250,000 gallons of petroleum products are ineligible for Surface Transporters refunds under the terms of the Order Establishing Surface Transporters Escrow.

*Marathon Petroleum Co./Adee Butler, et al., 4/7/86; FR250–2845 et al.*

The DOE issued a Decision and Order concerning 31 Applications for Refund filed by resellers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant documented the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $24,910, representing $22,942 in principal and $1,968 in interest.

*Marathon Petroleum Co./Four Star Service Stations, Inc., 4/7/87; RF250–2396, RF250–2397*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Four Star Service Stations, Inc. (Four Star), a reseller of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Four Star elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Four Star should receive a total refund of $17,765.48, representing $16,633.24 in principal and $1,132.24 in accrued interest.

*Marathon Petroleum Co./Growmark, Inc., 4/7/87; RF250–2367, RF250–2370*

Growmark, Inc. filed Applications for Refund seeking a portion of the consent order funds remitted to the DOE by Marathon Petroleum Company. The DOE found that since Growmark is an agricultural cooperative that indicated that it would pass through any refund received to its members, Growmark would not be required to establish that it absorbed alleged Marathon overcharges. Therefore, Growmark was granted a refund in the full amount of its claim for Marathon product sold to cooperative members. However, the DOE did

not grant Grassmark a refund for those volumes of Marathon product that were resold to members of the public. The total refund granted in this proceeding was $169,957, representing $156,197 in principal and $13,760 in accrued interest.

*Marathon Petroleum Co./Little Champ Oil Co.; Fleet Supplies, Inc., 4/7/87; RF250-1650, RF250-1651, RD250-0402*

The DOE issued a Decision and Order concerning Applications for Refund filed by two purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant documented the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $2,347 in principal and $290 in interest.

*Marathon Petroleum Co./Ohio Fuel & Supply Co., Inc., 4/8/87; RF250-2630, RF250-2631*

The DOE issued a Decision and Order concerning Applications for Refund filed by Ohio Fuel & Supply Co., Inc. (Ohio Fuel), a reseller of Marathon covered products. Although the firm's purchase of middle distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Ohio Fuel elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Ohio Fuel should receive a refund of $8,043.28, representing $7,468.40 in principal and $524.88 in accrued interest.

*Marathon Petroleum Co./Robinson's Service Station, et al., 4/7/87; RF250-1602 et al.*

The DOE issued a Decision and Order concerning Applications for Refund filed by 11 purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant documented the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $55,000 in principal and $6,840 in interest.

*Mobil Oil Corp./Almoden Service Center, et al., 4/9/87; RF225-6538 et al.*

The DOE issued a Decision granting 49 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $21,600, representing $17,799 in principal and $3,801 in interest.

*Mobil Oil Corp./Chenango Valley, Central School, et al., 4/9/87; RF225-6940 et al.*

The DOE issued a Decision granting 26 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers, resellers, and end-users of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $8,365, representing $8,730 in principal and $1,635 in interest.

*Mombi's Trucking, et al., 4/8/87; RF270-631 et al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by nine trucking companies and will use those volumes as a basis for the refund that will ultimately be issued to the nine firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the nine firms' refunds will be determined at a later date.

*Warren Trucking Co., Inc., et al., 4/8/87; RF270-51 et al.*

The Department of Energy (DOE) issued a Decision and Order approving five Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The applicants, five "for hire" trucking companies, applied for refunds based on purchases of diesel fuel and motor gasoline between August 19, 1973 and January 27, 1981. The DOE's Decision approved four of the company's purchase volumes. However, the DOE found that one company overestimated its diesel fuel purchases. Since there was enough information in the record of the case for the DOE to arrive at a reasonably supported estimate, the DOE adjusted the company's volumes and approved it for a refund based on a smaller number of gallons. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

**Dismissals**

The following submissions were dismissed:

| Company name | Case No. |
|---|---|
| Ameron Pipe Group | RF225-7048 |
| | RF225-7049 |
| | RF225-7050 |
| Brook Ziegler Motor Company, Inc. | RF225-3249 |
| Federico L. Bunsen | RF225-1439 |
| Folding Carton Division | RF225-6144 |
| Gary E. Cooper | RF225-8205 |
| | RF225-8206 |
| Hunters Wood Gulf Service | RF40-3555 |
| James D. Ward | RF225-482 |
| | RF225-483 |
| John R. Kyle | RF225-4198 |
| John Rasmus | RF225-5070 |
| Joseph Clement | RF225-6307 |
| Joseph R. & Shirley Clement | RF225-8509 |
| M.A. Hanna Company | RF225-6800 |
| McDonnell Oil Heat, Inc. | RF225-1433 |
| Midwest Service | RF225-6572 |
| Nesenger Chevrolet, Inc. | RF225-134 |
| New England Trawler Equipment Company | RF225-1169 |
| R.S. Auto Parts | RF225-6837 |
| Rhode Island Public Transit Authority | RF270-759 |
| Richard Sellsworth | RF225-4685 |
| | RF225-4686 |
| Shell Oil Company | HRO-0273 |
| | HRO-0275 |
| | HRO-0279 |
| | HRO-0280 |
| | HRO-0281 |
| | HRO-0282 |
| | KRD-0003 |
| Shirley M. Clement | RF225-4586 |
| Torrance Oil Company | NES-0001 |
| Thomas A. Dodds | RF225-3954 |
| Truck Lease, Inc. | RF225-4317 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
*Director, Office of Hearings and Appeals.*
May 8, 1987.
[FR Doc. 87-11073 Filed 5-13-87; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[PF-481; FRL-3208-4]

**Abbott Laboratories; Pesticide Tolerance Petition**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition by Abbott Laboratories proposing an exemption from the requirement of a tolerance for thuringiensin or Beta-exotoxin [2-O-(4'-O-5-L-deoxyadenosine-5'-yl-beta-O-glucopyranosyl)-4-O-phospho-D-allaric acid]. The exemption from the requirement of a tolerance will be for all raw agricultural commodities.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all

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of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:**

By mail: Art Castillo (PM) 17, Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460,

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2690.

**SUPPLEMENTARY INFORMATION:** EPA gives notice that the Abbott Laboratories, 14th & Sheridan Rd., North Chicago, IL 60064, has submitted an initial filing of a pesticide petition (PP 6F3382) proposing to amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for thuringiensin (Beta-exotoxin) in or on all raw agricultural commodities. The proposed analytical method is liquid gas chromatography.

Dated: May 7, 1987.

**James W. Akerman,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–11123 Filed 5–13–87; 8:45 am]

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**[FRL 3201–3]**

## Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a subcommittee of the Environmental Engineering Committee of the Science Advisory Board will hold a two-day meeting on June 4–5, 1987 at the Environmental Protection Agency's Hazardous Waste Environmental Research Lab in Cincinnati, Ohio. The meeting will be held in Room 107 of the Andrew W. Briedenbach Research Center at 26 West St. Clair, Cincinnati, Ohio. The meeting will begin at 9:00 a.m. and last until 5:00 p.m. on June 4, and begin at 9:00 a.m. and last until 3:00 p.m. on June 5.

The purpose of the meeting is to review EPA's Land Disposal Research Program. This program is described in a "Briefing Document for Science Advisory Board Review of the Land Disposal Research Program." Copies of this document and further information on the research program are available from Mr. Bob Stenburg, HWERL, U.S. EPA, 26 West St. Clair, Cincinnati, OH 45268 (513/569–7490).

Anyone wishing to attend the meeting must contact Mr. Eric Males or Ms. Brenda Browne (202/382–2552) prior to close of business on May 29, 1987.

Dated: May 7, 1987.

**Terry F. Yosie,**

*Director, Science Advisory Board.*

[FR Doc. 87–11034 Filed 5–13–87; 8:45 am]

BILLING CODE [illegible]

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## FEDERAL COMMUNICATIONS COMMISSION

**[General Docket No. 80–741; FCC 87–151]**

## World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit (Space-WARC), Second Session; Geneva, 1988

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry

**SUMMARY:** The Commission seeks comments on preliminary views for policy positions to be considered by the United States concerning its participation in the Second Session of the International Telecommunication Union (ITU) World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Utilizing It (Space-WARC) to be held in Geneva in 1988. Issues to be addressed at the Second Session concern primarily the Fixed-Satellite Service (FSS) and the Broadcasting Satellite Service (BSS). Comments submitted in this proceeding will be part of the record upon which the Commission will rely in making recommendations to the Department of State for United States proposals for the Conference.

**DATES:** Comments must be filed on or before June 22, 1987 and reply comments on or before July 8, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Thomas S. Tycz, Common Carrier Bureau, Domestic Facilities Division, (202) 634–1860; Steven D. Selwyn (Broadcasting Issues), Mass Media Bureau, (202) 254–3394.

**SUPPLEMENTARY INFORMATION:** This is a summary of the the Commission's *Fifth Notice of Inquiry* in General Docket No. 80–741, FCC 87–151, adopted April 27, 1987 and released May 4, 1987.

The full text of this document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Summary of the Fifth Notice of Inquiry

The World Administrative Radio Conference on the Use of the Geostationary-Satellite Orbit and the Planning of Space Services Using It (Space-WARC) is being conducted in two sessions. The First Session of the Space-WARC was held in 1985 (WARC–ORB–85). It resulted in the adoption of the Final Acts incorporating the Region 2 Broadcasting Satellite Service (BSS) Plan into the international Radio Regulations and a Report to the Second Session that concerned planning of the Fixed-Satellite Service in certain frequency bands and several Broadcasting Satellite Service issues. The Second Session of the Conference will be held in Geneva in 1988 (WARC–ORB–88) and will attempt to conclude the work of the Space-WARC. The agenda for WARC–ORB–88 is comprised primarily of issues relating to the Fixed-Satellite Service (FSS) and the Broadcasting Satellite Service (BSS). This *Fifth Notice* seeks comments on Commission preliminary views concerning the various agenda issues.

The primary FSS issues concern planning methods for designated portions of the 6/4 GHz, 14/11–12 GHz and 30/20 GHz bands. WARC–ORB–85 adopted basic principles and methods for a dual planning approach comprised of: (1) An *a priori* allotment plan for the expansion frequency bands, and (2) improved regulatory procedures, possibly including a multilateral planning meeting (MPM) mechanism, for the currently operational frequency bands. The Conference objective of these planning methods is to guarantee in practice equitable access to the geostationary-satellite orbit and spectrum. WARC–ORB–88 is to establish the allotment plan and associated regulatory procedures and to establish improved regulatory procedures, possibly with an MPM mechanism. This *Fifth Notice* includes preliminary views on both FSS planning methods.

Several different broadcasting satellite issues will be addressed at WARC–ORB–88. One issue concerns action taken at WARC–ORB–85, whereby the BSS Region 2 Plan and Feeder Link Plan were incorporated into the international Radio Regulations, and involves possible correction of text and procedures dealing with interim systems. At WARC–ORB–88, the Regions 1 and 3 Feeder Link Plan is to be established and incorporated into the Radio Regulations. Toward that end, the U.S. is required to submit to the International Frequency Registration Board (IFRB) its feeder link requirements in connection with the Regions 1 and 3 plan by June 30, 1987. The Commission seeks comments on its proposed requirements submission within the 17.3–18.1 GHz band.

Additional broadcasting issues to be considered at WARC–ORB–88 relate to spectrum allocations for Satellite Sound Broadcasting (Sound BSS) and High Definition Television (HDTV). The Commission seeks suggestions for allocation proposals for a new Sound BSS service for portable and vehicle receivers within and also outside but near the range 0.5–2 GHz and also seeks comments on the compatibility of advanced digital technologies with existing services. Regarding HDTV, the Commission requests comments on the appropriateness of a worldwide allocation for HDTV and on the suitability of the 12 and/or 22 GHz bands for BSS accommodation of the service.

Another issue addressed by this *Fifth Notice* includes the simplification of regulatory procedures for other non–FSS satellite services. The Commission is recommending certain changes to Articles 11, 13 and 14 of the International Radio Regulations to address specific problems.

Finally, in this *Fifth Notice of Inquiry* the Commission presents its preliminary views on all additional issues comprising the agenda for the Second Session of Space-WARC. Also presented for comment are draft modifications to the International Radio Regulations that would be needed in order to implement the Commission's preliminary views on the various agenda items.

### Ordering Clause

Pursuant to sections 4(i), 303 and 404 of the Communications Act of 1934, as amended, this Notice of Inquiry is hereby adopted.

### List of Subjects in 47 CFR Part 1

Inquiries.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87–10748 Filed 5–13–87; 8:45 am]

BILLING CODE 6712–01–M

## National Security and Emergency Preparedness Advisory Committee; Meeting

Pursuant to the provisions of Pub. L. 92–463, announcement is made of a public meeting of the National Security and Emergency Preparedness Advisory Committee (NSEPAC) on May 27, 1987 from 9:30 a.m. until 4:00 p.m. The meeting will be held at AT&T, 1120 20th Street, NW., Washington, DC, 10th Floor, Conference Rooms D&E.

### Purpose

—To convene the Committee and introduce its mission

—To obtain comments and recommendations on the Telecommunications Service Priority (TSP) petition for rulemaking filed with the Commission by the Executive Agent for the National Communications System.

### Agenda

1. Welcome
2. Presentation on Committee Charter and Mission
3. Briefing on the TSP Petition
4. Discussion of the Petition
5. Recommendations for action
6. New Business
7. Adjournment

The public may attend the meeting or file a written statement with the Committee at any time. Anyone wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring additional information about the meeting may contact the NSEPAC Executive Secretariat, Claudette Pride, on (202) 632–3900.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87–11100 Filed 5–13–87; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

## Information Collection Submitted to OMB for Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of Information Collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Foreign Branch Report of Condition (OMB No. 3064–0011).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

**ADDRESS:** Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3810.

**SUMMARY:** The FDIC is requesting OMB approval to extend, for a three-year period, the expiration of the Foreign Branch Report of Condition, Form FFIEC 030, which is submitted annually by each overseas banking office of an insured state nonmember bank. The report contains asset and liability information for foreign branches of U.S. banks. The information is used by the FDIC to monitor the level of activity and growth of the overseas banking offices and for planning the examination of these offices. The report is required by FDIC regulation 12 CFR 347.6(b). The aggregate annual reporting burden for the thirty respondent banking offices is estimated to be 90 hours.

Dated: May 8, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

*Deputy Executive Secretary.*

[FR Doc. 87–10867 Filed 5–13–87; 8:45 am]

BILLING CODE 6714–01–M

## FEDERAL HOME LOAN BANK BOARD

### Capitol Federal Savings Bank, Mount Pleasant, IA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Capitol Federal Savings Bank, Mount Pleasant, Iowa on May 8, 1987.

Dated: May 11, 1987.

Jeff Sconyers,

*Secretary.*

FR Doc. 87-11036 Filed 5-13-87; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-009735-017.

Title: Steamship Operators Intermodal Committee.

Parties:

Associated Container Transportation (Australia Ltd.)
Barber Blue Sea Line
Companhia de Navegacao Maritime Netumar
Coordinated Caribbean Transport, Inc.
Evergreen Marine Corp., Ltd.
Farrell Lines, Inc.
Flota Mercante Grancolombiana
Hamburg-Suedamerikknische-Dampfschiffahrts-Gesellschaft
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Lykes Bros. Steamship Co., Inc.
A.P. Moller-Maersk Line
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha, Ltd.
Sea-Land Service, Inc.
South African Marine Corp.
United States Lines, Inc.
Venezuelan Line
Yamashita-Shinnihon Steamship Co. Ltd.
Yang Ming Line
Zim Israel Navigation Co. Ltd.
American President Lines, Ltd.
Mitsui O.S.K. Lines, Ltd.
Seapac Services, Inc.
Showa Line, Ltd.

Synopsis: The proposed amendment would admit Trans Freight Lines as a party to the agreement.

By Order of the Federal Maritime Commission.

Dated: May 11, 1987.

Joseph C. Polking,

*Secretary.*

FR Doc. 87-11017 Filed 5-13-87; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Acquired Immune Deficiency Syndrome; Regional Education and Training Centers (ETCs) Program

**AGENCY:** Health Resources and Services Administration, Public Health Service, Department of Health and Human Services.

**ACTION:** Notice of three ETCs technical assistance workshops.

**SUMMARY:** This notice announces three technical assistance workshops scheduled by the Acquired Immune Deficiency Syndrome (AIDS) regional Education and Training Centers Program staff for applicants who may have technical or program questions regarding preparation of applications for grants. These workshops are intended to provide technical assistance in relation to the Notice of Availability of Funds for the subject program which appeared in the **Federal Register** April 20, 1987, (52 FR 12979).

**DATES:** The workshops are scheduled as follows:

1. May 18, 1987, 1:00 p.m. to 4:00 p.m., San Francisco, California
2. May 20, 1987, 1:00 p.m. to 4:00 p.m., New Orleans, Louisiana
3. May 27, 1987, 8:30 a.m. to 11:30 a.m., Rockville, Maryland

**ADDRESSES:** The workshops will be held at the following locations:

1. California—United States Public Health Service Region IX, (Room 406), 50 United Nations Plaza, San Francisco, California 94102
2. New Orleans—Xavier University of Louisiana, College of Pharmacy (Auditorium), 7325 Palmetto, New Orleans 70125
3. Maryland—Parklawn Building (Conference Room G), 5600 Fishers Lane, Rockville, Maryland 20857

Applicants who plan to attend one of the technical assistance workshops should indicate the location of the workshop they will be attending and the names of the individuals in their party. This information is being requested because of security procedures in San Francisco and to provide program staff with some idea of room size requirements at all three locations. Notification should be made prior to the workshop date to: Mrs. June Horner, Chief, Education and Training Centers Program, Office of AIDS Services Program, (310) 443-6745.

Applicants should be aware that the due date for receipt of applications has been extended to July 6, 1987, because of a delay in receiving some application materials.

Dated: May 12, 1987.

David N. Sundwall,

*Administrator, Assistant Surgeon General.*

[FR Doc. 87-11140 Filed 5-13-87; 8:45 am]

BILLING CODE 4160-15-M

### Office of Refugee Resettlement

### Refugee Resettlement Program; Allocations to States of FY 1987 Funds for Social Services for Refugees and Cuban/Haitian Entrants

**AGENCY:** Office of Refugee Resettlement (ORR), Family Support Administration (FSA), HHS.

**ACTION:** Final notice.

**SUMMARY:** This notice establishes the allocations to States of FY 1987 funds for social services under the Refugee Resettlement Program (RRP).

**EFFECTIVE DATE:** May 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ellen M. McGovern (202) 245-1957.

**SUPPLEMENTARY INFORMATION:** Notice of the proposed allocations to States of FY 1987 social service funds was published in the **Federal Register** on January 12, 1987 (52 FR 1244). As a result of the comments received, the following changes have been made: (1) Refugees resettled under the matching grant program have been included in the population base for the formula; (2) a floor of $75,00 has been established for States with small refugee populations;

and (3) adjustments have been made in the estimated refugee populations of six States as a result of evidence submitted by those States.

**I. Amounts Available for Allocation**

The Office of Refugee Resettlement (ORR) expects to have available $68,617,000 in FY 1987 refugee/entrant social service funds. This determination is based upon the Continuing Resolution for FY 1987 (Pub. L. 99–591) which provides for funding for social services to be at the same level as in FY 1986.

Of the total of $68,617,000, the Director of ORR will make available to States during FY 1987 approximately $58,000,000 (85%) under the allocation formulas set out in this notice. These funds will be made available for the purpose of providing social services to refugees and entrants.

All allocation figures include both refugees and Cuban/Haitian entrants since both populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

Of the $58,224,410 covered by this notice, the Director will allocate funds directly to States in the following manner:

- $55,000,000, the same amount as in FY 1986, will be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. less than 3 years as of October 1, 1986.
- $327,418 will be allocated in order to provide a floor of $75,000 for States which have small refugee/entrant populations.
- $2,896,992 will be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (including a floor amount of $5,000 to States with small refugee/entrant populations) in order to provide an incentive for States to fund refugee/entrant mutual assistance associations (MAAs). The amount being allocated to MAAs, exclusive of the floor, is $2,871,000, the same amount as in FY 1986. A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 6(a)(3) the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605) which amended section 412(c) of the Immigration and Nationality Act to require that the "funds available for a fiscal year for grants and contracts [for social services] . . . shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

The $10,392,590 in remaining social service funds is expected to be used by ORR on a discretionaly basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program.

The discretionary funds will support specific program activities designed to improve the delivery of services to refugees. Announcements of the availability of funding and grant application procedures for some projects have been issued: Availability of Funding for Grants to States to Implement Favorable Alternate Sites Demonstration Projects, Memorandum to State Refugee Coordinators issued October 1, 1984; Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985; and Availability of FY 1987 Discretionary Social Services Grants to States to Implement Community Stability Projects for Refugees, Memorandum to State Refugee Coordinators issued March 26, 1987. ORR has also advised States which have a high rate of dependence of refugees on cash assistance of a discretionary Key States Initiative to develop projects to increase employment and self-support.

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's or entrant's length of residence.

ORR funds may not be used to provide services to United States citizens since they are not covered under the refugee and entrant legislation (except that services may be provided to a U.S.-born minor child in a family in which both parents are refugees or entrants or, if only one parent is present, in which that parent is a refugee or entrant).

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice for the basic and MAA incentive allocations are subject (as were FY 1985 and FY 1986 funds) to a requirement that at least 85% of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act, section 412(a)(1)(B).) As in previous years, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must meet either of the following two conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that two of the following three circumstances exist: The cash assistance rate for time-eligible/entrants in the State is below the national average for all time-eligible refugees/entrants in the U.S.; less than 85% of the State's social allocation is sufficient to meet all employment-related needs of the State's refugees/entrants; and/or there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. *Or*

2. In accordance with section 412(c)(1)(B) of the Immigration and Nationality Act, as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

States should also expect to use funds available under this notice to pay for social service which are provided to refugees/entrants who participate in alternative projects. The Continuing Resolution for FY 1985 (Pub. L. 98–473) amended the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects [50 FR 24583, June 11, 1985]. The

notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. This belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to State's in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official must provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

(1) That such funds will be used to fund refugee/entrant mutual assistance associations for the direct provision of services to refugee and entrant clients.

(2) That the MAA incentive allocations is subject to and included under ORR's requirement that 85% of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

(3) That the State agency will observe the following definition of a mutual assistance association:

(a) The organization must be legally incorporated as a nonprofit organization; *and*

(b) Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees/entrants or former refugees/entrants.

(4) That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee and entrant clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street, SW., Washington, DC 20201, with a duplicate copy to the appropriate ORR Regional Director. States must respond by 30 days from the date of publication of this notice in order to avail themselves of this special allocation.

## II. Discussion of Comments Received

Eight comments were received in response to the notice of the proposed allocation to States of FY 1987 funds for social services for refugees and Cuban/Haitian entrants. The comments are summarized below and are followed in each case by the Department's response.

*Comment:* One commenter objected to the use of a formula based on the population of refugees who have been in the U.S. less than 3 years and suggested that "time-expired" refugees be counted for purposes of the formula.

*Response:* As indicated in the notice, the formula required by statute mandates that the population be limited to refugees who have been in the United States for no more than 36 months.

*Comment:* Two commenters asserted that the Continuing Resolution for FY 1987 makes available for social services $71,700,000 rather than the $68,617,000 stated in the notice. The commenters said that the FY 1986 reduction of 4.3% under Pub. L. 99–177, the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) should not have been applied by ORR in determining the amount available for FY 1987.

*Response:* The Department does not agree with the commenters' reading of the FY 1987 Continuing Resolution; $68,617,000 is the amount which has been made available to ORR.

*Comment:* Two commenters, while recognizing that the formula is required, expressed concern about the effects of applying it: One commenter expressed the hope that ORR would have special projects that could provide additional funding to help address the needs of "time-expired" refugees who have been in the U.S. more than 3 years. This commenter also felt that use of the 3-year population-based formula for the mutual assistance association (MAA) incentive allocation could hamper the support for MAA activities in States with relatively small time-eligible refugee populations. A second commenter, from a State with a small refugee population, stated that the formula did not provide sufficient funds to meet basic service needs of refugees.

*Response:* While ORR has been using a 3-year formula for the allocation of social service funds during recent years, prior to the inclusion of the formula in the authorizing legislation, we have recognized its limitations in addressing special needs which may exist for particular refugee populations. Discretionary projects for which States are eligible to apply have provided a means for helping to meet such needs. ORR has developed two FY 1987 initiatives to help address these needs: For States which have been identified as having relatively high rates of refugee dependence on cash assistance, ORR is undertaking a Key States Initiative (KSI) to develop cooperatively with these States special efforts to increase self-support and reduce the need for assistance. For other States, ORR has issued to States an announcement of an FY 1987 discretionary grant program, termed Community Stability Projects (CSP).

*Comment:* Three comments were received on the proposal for floor amounts for States with very small refugee populations: Two commenters, from States affected by the floor, said that the floor proposed for FY 1987 was insufficient to meet their needs; that the proposal for the floor was made to late to enable them to plan for a reduction; and, in one case, that contracts had already been entered into in anticipation of a continuation of the $75,000 floor that was in effect in FY 1986. The third commenter, from a State with a large refugee population, asserted that there should be no floor and that the funds proposed for the floor should, instead, be allocated among all the States based on the 3-year formula.

*Response:* We disagree with the view that there should be no floor since certain basic costs must occur in order for a State to provide services to even a small number of refugees. We view the floor as a discretionary add-on of a modest amount of funds to an otherwise impractically small figure which the formula alone would yield for the seven States with very small refugee populations.

After consideration of the two comments from States affected by the floor, we have concluded that their arguments in favor of a continuation of the same floor provisions as in FY 1986 and earlier years have merit. Accordingly, in this final notice, we have adopted a $75,000 floor for the seven States with very small populations. The cost of the floor is $327,418, approximately one-half of one percent of the funds available for social services.

*Comment:* Three commenters objected to the $10.5 million proposed to be used for discretionary purposes. One of these commenters suggested that the amount should be $5 million. Another commenter stated that either there should be no set-aside of funds for discretionary purposes or, if there were, the funds would have to be distributed according to the 3-year formula under

law. The third commenter also expressed the view that any discretionary funds would be required to be distributed according to the statutory formula.

*Response:* Neither the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605) nor its legislative history prohibits the use of social service funds for discretionary purposes or requires that all of the funds must be distributed under the formula. In fact, the Senate report (S. Rept. No. 99–154, p. 6) included a recommendation that "a small portion of social service funds be reserved for certain groups of time-ineligible refugees who experience particular difficulty in achieving employment and self-sufficiency—such as the Hmong in California." This would be one example of needs which could be addressed through ORR's Key States Initiative, cited previously.

After careful consideration of these commenters' proposal that a smaller amount of funds, or no funds, be used for discretionary purposes, ORR has concluded that the importance of the Key States Initiative to reduce welfare dependence, the Community Stability Projects, and other potential discretionary projects to improve the effectiveness and efficiency of the refugee resettlement program fully merit the use of funds for these purposes to address particular needs in a more flexibile and productive manner than could be achieved by simply adding these funds to the formula allocation.

*Comment:* One commenter asserted that, under the law, ORR does not have the authority to exclude from the population figures used in the formula the refugees who are aided under the matching grant program. This commenter noted that the matching grants assure the provision of services for a maximum of only four months, after which the refugees may need to rely on services funded through the allocations to States.

*Response:* After review of this question, the Department agrees that the statutory language requires the inclusion of the matching grant refugees in the 3-year population base.

### III. Proposed Allocation Formula

Of the funds available for FY 1987 for social services, $55,000,000 will be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1986, adusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

### IV. Basis of Refugee and Entrant Population Estimates

The population estimates for the allocation of funds in FY 1987 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1986, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after September 30, 1983. Figures on the numbers of entrants resettled are maintained by the ORR Florida office.

For fiscal year 1987, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1984, 1985, and 1986. Therefore estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1983, and September 30, 1986, who are thought to be living in each State as of October 1, 1986. The population estimates for the FY 1987 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

All participating States submitted data on their secondary in-migration on Form ORR–11 for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the State's total arrival figure, resulting in a revised population estimate. Six States submitted evidence that their refugee populations were larger than the figure published by ORR on January 12, 1987. There States were given credit for the additional refugees which they documented, and where the original destinations of those refugees were established, their numbers were subtracted from other States' estimates accordingly. The resulting estimate was converted into a percentage of the total 3–year refugee population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in May 1986. Where a significant discrepancy between the two percentage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 15 States were adjusted in this manner. Finally, each State's population was deflated by approximately 0.84% to constrain the sum of the State figures to the known national total. Due to the adjustments made for population appeals and the inclusion of matching grant refugees, the population estimates for most States are changed slightly from the notice of January 12, 1987.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1986, of all refugees and entrants (col. 1); the formula amounts which the population estimates yield (col. 2); the total allocation amounts after allowing for the minimum amounts (col. 3); and the amounts available as an incentive to States to use MAAs as service providers (col. 4).

### V. Allocation Amounts

The following amounts are allocated for refugee social services in FY 1987:

TABLE 1.— ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1987.

| State | Total population (1) | Formula amount (2) | Allocation (3) | MAA incentive allocation (4) |
|---|---|---|---|---|
| Alabama | 997 | $272,306 | $272,306 | $14,215 |
| Arizona | 2,625 | 716,960 | 716,960 | 37,425 |
| Arkansas | 536 | 146,396 | 146,396 | 7,642 |
| California | 68,704 | 18,764,966 | 18,764,966 | 979,532 |
| Colorado | 2,373 | 648,132 | 648,132 | 33,833 |
| Connecticut | 2,304 | 629,286 | 629,286 | 32,849 |
| Delaware | 62 | 16,934 | 75,000 | 5,000 |
| District of Columbia | 506 | 138,203 | 138,203 | 7,214 |
| Florida | 4,326 | 1,181,580 | 1,181,580 | 61,677 |
| Georgia | 3,311 | 904,326 | 904,326 | 47,208 |
| Guam | 50 | 13,656 | 75,000 | 5,000 |
| Hawaii | 853 | 232,976 | 232,976 | 12,161 |
| Idaho | 965 | 263,566 | 263,566 | 13,758 |
| Illinois | 8,387 | 2,290,722 | 2,290,722 | 119,576 |
| Indiana | 767 | 209,489 | 209,489 | 10,935 |
| Iowa | 2,015 | 551,172 | 551,172 | 28,771 |
| Kansas | 2,480 | 677,357 | 677,357 | 35,358 |
| Kentucky | 759 | 207,304 | 207,304 | 10,821 |
| Louisiana | 2,544 | 694,837 | 694,837 | 36,270 |
| Maine | 872 | 238,167 | 238,167 | 12,432 |
| Maryland | 3,575 | 975,812 | 975,812 | 50,927 |
| Massachusetts | 8,908 | 2,433,022 | 2,433,022 | 127,004 |
| Michigan | 3,062 | 836,317 | 836,317 | 43,656 |
| Minnesota | 5,544 | 1,514,220 | 1,514,220 | 79,042 |
| Mississippi | 350 | 95,595 | 95,595 | 5,000 |
| Missouri | 2,178 | 594,872 | 594,872 | 31,052 |
| Montana | 86 | 23,489 | 75,000 | 5,000 |
| Nebraska | 482 | 131,648 | 131,648 | 6,872 |
| Nevada | 831 | 226,969 | 226,969 | 11,848 |
| New Hampshire | 262 | 71,559 | 75,000 | 5,000 |
| New Jersey | 2,800 | 764,756 | 764,756 | 39,920 |
| New Mexico | 427 | 116,626 | 116,626 | 6,088 |
| New York | 14,303 | 3,903,545 | 3,903,545 | 203,822 |
| North Carolina | 1,686 | 460,540 | 460,540 | 24,050 |
| North Dakota | 421 | 114,987 | 114,987 | 6,002 |
| Ohio | 2,763 | 754,652 | 754,652 | 39,393 |
| Oklahoma | 2,082 | 568,652 | 568,652 | 29,684 |
| Oregon | 2,683 | 732,802 | 732,802 | 38,252 |
| Pennsylvania | 5,942 | 1,622,925 | 1,622,925 | 84,717 |
| Rhode Island | 1,995 | 517,577 | 517,577 | 27,018 |
| South Carolina | 271 | 74,018 | 75,000 | 5,000 |
| South Dakota | 336 | 91,771 | 91,771 | 5,000 |
| Tennessee | 2,141 | 584,786 | 584,786 | 30,525 |
| Texas | 13,933 | 3,805,488 | 3,805,488 | 198,647 |
| Utah | 2,022 | 552,264 | 552,264 | 28,828 |
| Vermont | 178 | 48,617 | 75,000 | 5,000 |
| Virginia | 6,048 | 1,651,876 | 1,651,876 | 86,226 |
| Washington | 8,427 | 2,301,647 | 2,301,647 | 120,148 |
| West Virginia | 68 | 18,573 | 75,000 | 5,000 |
| Wisconsin | 2,208 | 603,086 | 603,086 | 31,483 |
| Wyoming | 21 | 5,736 | 75,000 | 5,000 |
| Total | 201,371 | $55,000,000 | $55,327,418 | $2,896,952 |

## VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federasl Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: May 1, 1987.

**Bill Gee,**

*Director, Office of Refugee Resettlement.*

[FR Doc. 87-10998 Filed 5-13-87; 8:45 am]

BILLING CODE 4190-11-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ-020-4212-13; A-22539]**

### Realty Action; Federal Land Exchange; Maricopa and Mohave Counties, AZ

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of realty action—exchange of public lands in Maricopa County for private lands in Mohave County, Arizona.

The following described public lands have been determined to be suitable for exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

**Gila and Salt River Meridian. Maricopa County, Arizona**

T. 1 S., R. 2 W.,
Secs. 12, 13, 24, 25, 31, 32, 36.

Comprising 2,008.74 acres more or less of public land.

In exchange for the above described public lands, the federal government will acquire private lands described below from American Continental Corporation, Inc., a California Corporation.

**Gila and Salt River Meridian, Mohave County, Arizona**

T. 30 N., R. 15 W.,
Secs. 19, 29, 31.
T. 30 N., R. 16 W.,
Secs. 9, 11, 15, 17, 19, 21, 27, 33, 35.
T. 29 N., R. 15 W.,
Secs. 5, 7, 9, 19.
T. 29 N., R. 16 W.,
Secs. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 35.
T. 28 N., R. 16 W.,
Secs. 3, 9.
T. 25 N., R. 22 W.,
Secs. 3, 11, 15, 23.
T. 25 N., R. 21 W.,
Secs. 1, 3, 11, 13, 19, 23.
T. 26 N., R. 21 W.,
Sec. 21.
T. 26 N., R. 20 W.,
Sec. 20.
T. 29 N., R. 17 W.,
Sec. 35.
T. 28 N., R. 17 W.,
Secs. 1, 11, 13, 15.
T. 22 N., R. 13 W.,
Secs. 1, 2, 3, 5, 7, 9, 11, 13, 15, 17.
T. 23 N., R. 13 W.,
Secs. 19, 21, 29, 31, 33.
T. 23 N., R. 14 W.,
Secs. 3, 5, 7, 9, 11, 15, 16, 17.
T. 23 N., R. 15 W.,
Secs. 1, 11, 13, 14.
T. 24 N., R. 14 W.,
Secs. 31, 32.

Total acreage of the offered private lands is 39,815.01 acres. The final number of acres to be exchanged will be determined by appraisal of the selected public lands and offered private lands.

A detailed list of legal descriptions for the offered and selected lands listed in this Notice as well as an Environmental Assessment of the proposed exchange is available at the Phoenix District Office.

The exchange proposal involves the exchange proponent's interest in the surface estate of the private lands. The mineral estate of the offered lands is owned by the Atchison, Topeka and Santa Fe Railroad Companies. The surface and mineral estates of the selected public lands will be exchanged except for the mineral estate on section 36 which is owned by the State of Arizona. The exchange is consistent with the Land Tenure Adjustment sections of the Lower Gila South Resource Management Plan.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Right-of-way A-7274 to Tucson Electric Power Company for electric transmission line and access road.

3. Right-of-way A–7872 to Tucson Electric Power Company for electric transmission line and access road.

4. Right-of-way A–10350 to Salt River Project for electric transmission line and access road.

5. Right-of-way A–22554 to Sam Cambron for access road.

This Notice of Realty Action for A–22539 replaces the applicable segregative effect provided by Notice of Realty Action for A–21963 published May 29, 1986.

The segregation of the described lands shall terminate upon issuance of a document conveying title to such lands or upon publication in the Federal Register of a notice of termination of the segregation, or the expiration of two years from date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be reviewed by the State Director, who may modify, vacate, or sustain this realty action.

Dated: May 6, 1987.

Henri R. Bisson,

*District Manager.*

[FR Doc. 87–10973 Filed 5–13–87; 8:45 am]

BILLING CODE 4310–32–M

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[CA–010–07–4212–11; CA 19925]

## Realty Action; Lease/Conveyance of Public Lands in Nevada County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Initiation of a 45 day public comment period on the proposed classification of public land within Empire Mine State Park for recreation and public purposes.

**SUMMARY:** Pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et. seq.), a 45 day public comment period is initiated on the following land proposed to be classified as suitable for lease or conveyance to the State of California for park purposes:

Mt. Diablo Meridian

T. 15N., R. 8E.
Sec. 1, Lot 38.
T. 16N., R. 8E.
Sec. 34, Lot 31;
Sec. 35, Lots 27, 28, and 30.
Containing 0.44 acre more or less.

**SUPPLEMENTARY INFORMATION:** The public lands are located within Empire Mine State Park. The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

**DATES:** For a period of 45 days from the date of publication of this notice, interested parties may submit comments.

**ADDRESS:** Written comments should be sent to: Folsom Resource Area Manager, Bureau of Land Management, 63 Natoma, Folsom, California 95630. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Kihm, District Realty Specialist, Bureau of Land Management, Bakersfield District, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301; (805) 861–4191.

Dated: May 4, 1987.

D.K. Swickard,

*Folsom Resource Area Manager.*

[FR Doc. 87–10974 Filed 5–13–87; 8:45 am]

BILLING CODE 4310–40–M

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[CA–940–07–4520–12; Group 845]

## Plat of Survey; Lassen County, CA

May 5, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Lassen County

T. 34 N., R. 10 E.

2. This plat (two sheets) representing the dependent resurvey of a portion of the south, east, and north boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of certain sections, Township 34 North, Range 10 East, Mount Diablo Meridian, California, under Group No. 845, California, was accepted April 7, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Lassen National Forest, Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

*Chief, Public Information Section.*

[FR Doc. 87–10976 Filed 5–13–87; 8:45 am]

BILLING CODE 4310–40–M

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[CA–940–07–4520–12; Group 915]

## Plat of Survey; Mono County, CA

May 5, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Mono County

T. 3 S., R. 29 E.

2. This plat representing the corrective dependent resurvey of a portion of the subdivisional lines, and a portion of the subdivision of section 17, Township 3 South, Range 29 East, Mount Diablo Meridian, California, under Group No. 915, California, was accepted April 21, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

*Chief, Public Information Section.*

[FR Doc. 87–10975 Filed 5–13–87; 8:45 am]

BILLING CODE 4310–40–M

[CA-940-07-4520-12; C-6-87]

## Plat of Survey Filing; Riverside County, CA

May 5, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 3 S., R. 6 E.

2. This supplemental plat of Section 24, Township 3 South, Range 6 East, San Bernardino Meridian, California, was accepted April 17, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

*Chief, Public Information Section.*

[FR Doc. 87-10976 Filed 5-13-87; 8:45 am]

BILLING CODE 4310-40-M

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[CA-940-07-4520-12; Group 812]

## Plat of Survey; Siskiyou County, CA

May 5, 1987.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Siskiyou County

T. 40 N., R. 3 W.

2. This plat (two sheets) representing the corrective dependent resurvey of the line between sections 8 and 9, Township 40 North, Range 3 West, Mount Diablo Meridian, California, under Group No. 812, California, was accepted April 21, 1987.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Shasta Trinity National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

*Chief, Public Information Section.*

[FR Doc. 87-10977 Filed 5-13-87; 8:45 am]

BILLING CODE 4310-40-M

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[CO-942-07-4520-12]

## Plats of Survey Filing; Colorado

May 4, 1987.

The plats of survey of the following described lands, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., May 4, 1987.

The plat, representing the dependent resurvey of a portion of the west boundary and subdivisional lines; and the survey of the subdivision of certain sections, T. 35 N., R. 15 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted April 21, 1987.

The plat, representing the dependent resurvey of a portion of the south and east boundaries, and subdivisional lines; and the survey of the subdivision of certain sections, T. 36 N., R. 16 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted April 21, 1987.

The plat, representing the dependent resurvey of a portion of the Ninth Standard Parallel North, (south boundary), T. 37 N., R. 15 W., portions of the south boundary and subdivisional lines, and the subdivision of certain sections, T. 36 N., R. 15 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted April 21, 1987.

The plat, in two sheets, representing the dependent resurvey of the west boundary, portions of the north boundary and subdivisional lines; and the survey of the subdivision of certain sections, T. 37 N., R. 15 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted April 21, 1987.

The plat, representing the dependent resurvey of portions of the Ninth Standard Parallel North (south boundary), Second Guide Meridian West (west boundary), and subdivisional lines; and the survey of the subdivision of certains sections, and a metes-and-bounds survey in sections 25 and 35, T. 37 N., R. 16 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted April 21, 1987.

The plat, representing the dependent resurvey of a portion of the west boundary of the Ute Ceded Lands, portions of the subdivisional lines, and certain tracts; the survey of the subdivision of certain sections, and a metes-and-bounds survey of lot 5, section 12, T. 37 N., R. 17 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted April 21, 1987.

The plat, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 21 and 28, and the survey of the subdivision of sections 21, 28, and 32, T. 38 N., R. 15 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted April 21, 1987.

The plat, representing the dependent resurvey of a portion of the Second Guide Meridian West (west boundary), east and north boundaries, and subdivisional lines; and the survey of the subdivision of sections 19 and 28, T. 39 N., R. 16 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted April 21, 1987.

The plat, representing the dependent resurvey of a portion of the west boundary of the Uted Ceded Lands, a portion of the Sectional Guide Meridian, a portion of the subdivisional lines and Tract 38; and a survey of the east 40 acres of the south 120 acres of Tract 38, designated as Parcel A, T. 39 N., R. 17 W., New Mexico Principal Meridian, Colorado, Group No. 717, was accepted April 21, 1987.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Duane E. Olsen,

*Acting Chief, Branch of Cadastral Survey.*

[FR Doc. 87-10979 Filed 5-13-87; 8:45 am]

BILLING CODE 4310-JB-M

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[CA-940-07-4220-10; CA 19965]

## California; Filing of Withdrawal Application

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of withdrawal application.

**SUMMARY:** On February 20, 1987, the Regional Forester, Pacific Southwest Region, Forest Service, U.S. Department of Agriculture, filed an application under the provisions of sec. 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) to withdraw the

following described national forest land from appropriation under the general mining laws (30 U.S.C., Ch. 2), subject to valid existing rights:

Mount Diablo Meridian, California

Siskiyou County; Shasta-Trinity National Forests

T. 37 N. R. 4 W.,
Sec. 17, S½SE¼SE¼NW¼SW¼, N½NE¼NE¼SW¼SW¼, S½N½NE¼SW¼SW¼, S½N½SW¼SW¼, and N½S½SW¼SW¼.

Containing 25 acres.

FOR FURTHER INFORMATION CONTACT: Viola A. Andrade, California State Office, (916) 978–4815.

The purpose of the withdrawal application is for a developed recreation site—the Sims Campground—located within the Mt. Shasta Ranger District. The said lands will continue to be managed as a developed recreation site during the segregation period.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections concerning the proposed withdrawal may present their views, in writing, to the undersigned officer, Bureau of Land Management, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

Notice is hereby given that all persons who desire that a public meeting be held must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. If the State Director, Bureau of Land Management, determines that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days prior to the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in Part 2300 of Title 43, Code of Federal Regulations.

The publication of this notice in the Federal Register shall segregate the lands described in the application to the extent that they shall not be subject to appropriation under the general mining laws (30 U.S.C., Ch. 2) for a period of 2 years from the date of publication in the Federal Register, unless the application is allowed or denied or cancelled, in whole or in part, prior to the expiration of the 2-year period. The 2-year segregative period does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

Inquiries concerning the land should be addressed to the Forest Supervisor, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, California 96001.

Dated: May 7, 1987.

Sharon N. Janis,
*Chief, Branch of Adjudication and Records.*

[FR Doc. 87–10980 Filed 5–13–87; 8:45 am]

BILLING CODE 4310–40–M

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[NV–943–07–4220–11; Nev–043493]

## Proposed Modification and Continuation of Withdrawal, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) proposes that 10 acres of withdrawn land for the Elko air navigation site be modified to establish a 20-year term. The land will remain closed to surface entry and mining. The BLM proposes to open the land to application under the mineral leasing laws.

DATE: Comments should be received by August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520, (702) 784–5481.

SUPPLEMENTARY INFORMATION: The FAA proposes that the existing land withdrawal made by Public Land Order No. 1905 of July 15, 1959, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian, Nevada

T. 33 N., R. 55 E.,
Sec. 20, NE¼NW¼SE¼.

The area described contains 10 acres in Elko County.

The purpose of the withdrawal is to provide the minimum essential acreage required to protect the construction, operation, and maintenance of this site from electronic or physical interference for flight safety purposes. The withdrawal segregates the land from operation of the public land laws, including the mining laws and the mineral leasing laws. No change is proposed in the purpose of the withdrawal; however, it is proposed to change the segregative effect of the withdrawal to allow for applications under the mineral leasing laws. Mineral leasing will be allowed only with FAA's concurrence.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations in the Nevada State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: May 8, 1987.

Robert G. Steele,
*Deputy State Director, Operations.*

[FR Doc. 87–10982 Filed 5–13–87; 8:45 am]

BILLING CODE 4310–HC–M

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[NV–943–07–4220–11; Nev–051782]

## Proposed Modification and Continuation of Withdrawal; NE

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) proposes that the two withdrawals aggregating 160 acres for the Wells Vortac air navigation site be modified to establish a 20-year term. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

DATE: Comments should be received by August 12, 1987.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520, (702) 784–5481.

SUPPLEMENTARY INFORMATION: The FAA proposes that the existing withdrawals made by Secretarial Order of March 7, 1947, and Public Land Order 3449 of September 23, 1964, be modified to establish a 20-year term. This action is taken pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714). The lands are described as follows:

Mount Diablo Meridian, Nevada

T. 38 N., R. 62 E.,
Sec. 28, SW¼.

The area described aggregates 160 acres in Elko County.

The purpose of the withdrawals is to provide the minimum essential acreage required to protect the construction, operation, and maintenance of this site from electronic or physical interference for flight safety purposes. The withdrawals segregate the land from operation of the public land laws, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or the segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: May 6, 1987.

Robert G. Steele,

*Deputy State Director, Operations.*

[FR Doc. 87-10981 Filed 5-13-87; 8:45 am]

BILLING CODE 4310-HC-M

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[NV-943-07-4220-11; Nev-054574, Nev-058756, Nev-054581]

## Proposed Continuation of Withdrawals; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service proposes that 51.4 acres of withdrawn land for three administrative sites be continued for an additional 25 years. The land will remain closed to surface entry and mining but has been and will remain open to mineral leasing.

**DATE:** Comments should be received by August 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520.

**SUPPLEMENTARY INFORMATION:** The Forest Service proposes that three existing land withdrawals made by Executive Order 2506 of January 3, 1917, Public Land Order 3144 of July 30, 1963, and Public Land Order 3844 of October 5, 1965, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Mount Diablo Meridian, Nevada

T. 13 N., R. 40 E.,
Sec. 15, SE¼NW¼.
T. 11 N., R 43 E.,
Sec. 30, that part of the NE¼NE¼ lying east of the Nevada State Highway right-of-way, Star Route 8-A, as it existed on July 30, 1963.
T. 2 N., R. 42 E.,
Sec. 2, a tract within the NE¼ described by metes and bounds as follows: Commencing at Corner No. 4 of Mining Patent Tonopah No. 4, Survey No. 2080, thence N. 30°50'E. along the east boundary of said mining patent, 312.41 feet to the true point of beginning; thence N. 35°50' E., 405.89 feet to corner No. 3 of said mining patent; thence N. 28°22' E. along the east boundary of said mining patent, 195.5 feet; thence S. 67°52' E., 299.2 feet to a point on the west boundary of Mining Patent California Lode, Survey No. 4729; thence S. 5°32' W. along the west boundary, 422.3 feet to corner No. 4 of the said mining patent; thence S. 5°32' W., 82.8 feet; thence N. 75°32' W., 571.0 feet to the point of beginning.

The area described aggregates 51.4 acres in Nye County.

The purpose of the withdrawals is to protect the construction, operation, and maintenance of three administrative sites. Two of the withdrawals segregate the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The site located in T. 13 N., R. 40 E., is segregated only from the location of nonmetalliferous mining. No change is proposed in the purpose or segregative effects of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations in the Nevada State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: May 7, 1987.

Robert G. Steele,

*Deputy State Director, Operations.*

[FR Doc. 87-11052 Filed 5-13-87; 8:45 am]

BILLING CODE 4310-HC-M

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[AZ-060-06-4830-02]

## Arizona; Yuma District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Yuma (Arizona) District Advisory Council Meeting.

**SUMMARY:** A meeting of the Yuma District Advisory Council will be held on Friday, June 12, beginning at 10 a.m. in the Lake Havasu City Council Chambers located at 1795 Civic Center Boulevard.

**DATE:** Friday, June 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Douglas B. Stockdale, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, 602-726-6300.

**SUPPLEMENTARY INFORMATION:** Discussions will center on District program updates, the wilderness review process, and other Council initiated topics. The public is invited to attend the meeting.

Written statements from the public may be filed for the Council's consideration. Statements must arrive at the District Office by June 8. Oral statements will also be accepted but, depending on the number of persons wishing to address the Council, a per-person time limit may be imposed.

Summary of minutes of the District Advisory Council meeting will be maintained in the Yuma District Office and will be available for inspection and reproduction during regular business hours (7:45 a.m. through 4:30 p.m.) within 30 days of the meeting.

Dated: May 8, 1987.

Robert V. Abbey,

*Acting District Manager.*

[FR Doc. 87-11001 Filed 5-13-87; 8:45 am]

BILLING CODE 4310-32-M

[OR120-6310-02; GP7-190]

## Coos Bay District Advisory Council Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Meeting of Coos Bay District Advisory Council.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR, Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Friday, June 12, 1987, beginning at 9:00 a.m. The meeting will be held in the conference room of the Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR.

**AGENDA:** The agenda for the meeting will include:

1. Updates on old business including the "Issues" portion of the planning process for the 1990s.
2. Discussion of the BLM Oregon/Washington Organizational Study.
3. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council from 10:00 a.m. to 10:30 a.m. on Friday, June 12, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Monday, June 8, 1987 (Telephone 503–269–5880).

**ADDRESS:** Bureau of Land Management, Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR 97420.

Minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Dated: May 4, 1987.

Herbert H. Boeshman,

*Acting District Manager.*

[FR Doc. 87–10971 Filed 5–13–87; 8:45 am]

BILLING CODE 4310-33-M

[NV-060-07-4321-12]

## Helicopters and Motorized Vehicle To Gather Wild Horses; Hearing; Battle Mountain District, NE

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Battle Mountain District: Public hearing to discuss the use of helicopters and motorized vehicles to remove excess wild horses in FY 87 and subsequent years.

**SUMMARY:** In accordance with Public Laws 92–195 and 94–579, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles to remove excess wild horses from the Battle Mountain District during FY 87 and subsequent years.

**DATE:** June 19, 1987–1:00 p.m.

**ADDRESS:** The hearing will take place in the Shoshone-Eureka Conference room, Battle Mountain District Office, North Second and Scott Streets, Battle Mountain, Nevada 89820. Telephone (702) 635–5181.

**SUPPLEMENTARY INFORMATION:** The use of helicopters and motorized vehicles to remove horses from the Callahan, Roberts Mountain, Fish Creek and Seven Mile Wild Horse Herd Management Areas during FY 87 and subsequent years will be discussed.

This hearing is open to the public. Interested persons may make oral or written statements. If you wish to make oral comments, please contact Terry L. Plummer by June 12, 1987. Written statements must be received by this date also.

**FOR FURTHER INFORMATION CONTACT:** Terry L. Plummer, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635–5181.

Dated: May 5, 1987.

Michael C. Mitchel,

*Acting District Manager, Battle Mountain, Nevada.*

[FR Doc. 87–10972 Filed 5–13–87; 8:45 am]

BILLING CODE 4310-HC-M

## Geological Survey

## IBM Corp.; Alpha Particle Emitter Concentration Determinations

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a collaborative effort between the U.S. Geological Survey and the IBM Corporation has been granted to determine very low concentrations of alpha particle emitters in various materials resulting in improvement of our capability to determine extremely small amounts of uranium and thorium in many types of extraterrestrial materials.

**DATES:** This action is effective as of February 9, 1987, for a duration of 12 months.

**ADDRESSES:** Copies of the Memorandum of Agreement are available for inspection upon request at the following location: U.S. Geological Survey, Branch of Isotope Geology, Box 25046, MS 963, Denver Federal Center, Denver, Colorado 80225.

**FOR FURTHER INFORMATION CONTACT:** Dr. John N. Rosholt, Jr. or Dr. Mitsunobu Tatsumoto of the U.S. Geological Survey, Branch of Isotope Geology at the address given above; telephone 303/236–7880, (FTS) 776–7880.

Benjamin A. Morgan,

*Acting Chief Geologist.*

[FR Doc. 87–10989 Filed 5–13–87; 8:45 am]

BILLING CODE 4310-31-M

## Minerals Management Service

## Development Operations Coordination Document; ODECO Oil and Gas Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 073, Block 19, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cocodrie and Houma, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 6, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and

procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 8, 1987.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-11002 Filed 5-13-87; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Taylor Energy Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Taylor Energy Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 3086, Block 619, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Connor, Texas.

**DATE:** The subject DOCD was deemed submitted on May 4, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information oontained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 4, 1987.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-10983 Filed 5-13-87; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Union Exploration Partners, Ltd.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Union Exploration Partners, Ltd. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0787, Block 49, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 5, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 8, 1987.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-11003 Filed 5-13-87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

## International Agreement for Installation of Data Collection Platforms on Mexican Tributaries to the Rio Grande; Finding of No Significant Impact

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico.

**ACTION:** Notice of Finding of No Significant Impact.

**SUMMARY:** Based on an environmental assessment, the U.S. Section finds that the proposed action to enter into an international agreement to provide additional weather data communications stations in Mexico to obtain rainfall and river stage data for the Rio Grande is not a major Federal action that would have a significant adverse affect on the quality of the human environment. Therefore, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500-1508); and the U.S. Section's Operational Procedures for Implementing section 102 of the National Environmental Policy Act (NEPA), published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that an environmental impact statement is not being prepared for the Government of the United States to enter into an agreement with the Government of Mexico through the International Boundary and Water Commission, to provide for installation and arrangements for maintenance of Data Collection Platforms (DCPs) at six sites on Mexican tributaries to the Rio Grande and at one site on the Rio Grande.

**FOR FURTHER INFORMATION CONTACT:** Mr. M. R. Ybarra, U.S. Section Secretary; International Boundary and Water Commission, United States and Mexico, United States Section; The Commons, C-310; 4171 North Mesa; El Paso, Texas 79902. Telephone: (915) 534-6698, FTS 570-6698.

**SUPPLEMENTARY INFORMATION:**

*Proposed Action*

It is proposed that the Government of the United States enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission (Commission), to provide for installation and arrangements for maintenance of Data Collection Platforms (DCPs) at six sites on Mexican tributaries to the Rio Grande and one site on the Rio Grande. The purpose of the DCPs on these streams is to provide advance warning of flood flows as well as timely information needed for joint flood operations of the international dams and reservoirs and the international flood control projects of the Commission.

*Alternatives Considered*

*Two alternatives were considered:*

The Proposed Action Alternative provides for the two governments to enter into an agreement recommending a joint Mexico-U.S. program for installation of DCPs at six sites on Mexican tributaries to the Rio Grande and at one site on the Rio Grande.

The U.S. National Weather Service (NWS), recognizing a need for a short-notice flood forecasting data collection network in the Lower Rio Grande Basin, will, as a part of this agreement, provide to Mexico, at the expense of the United States Government, equipment for the installation of the DCPs over the ensuing three to four years. Further, the NWS will provide expert advice on DCP siting and telecommunications requirements for data transmission, site installations, and surveys. Finally, the NWS will assist in initial maintenance visits, as feasible, and in training of maintenance personnel.

Mexico will obtain and prepare the sites for the installations, do the installation, provide security and maintenance of the installations, provide quality assurance for the data and make the data available. The U.S. Section will assist with the installation of compatible stream and precipitation gages. Construction, operation and maintenance of the installations will be under the supervision of the Commission.

Under the No Action Alternative, flood operations would continue as in the past without the advance data on possible flood inflows to the Rio Grande from these remote areas in Mexico. The forecasting of flood flows and more reliable operation of Commission international flood control projects will continue to be more difficult without the timely data DCPs on Mexican tributaries to the Rio Grande could provide.

*Environmental Assessment*

The U.S. Section completed the Draft Environmental Assessment on April 30, 1987.

*Findings of the Environmental Assessment*

*The Draft Environmental Assessment finds that:*

1. The proposed agreement would provide for the installation, wholly in Mexico, of DCPs at six existing stream gaging stations on Mexican tributaries to the Rio Grande and at one existing site on the Rio Grande.

2. The data collected by the DCPs would be transmitted along existing lines of communication, including GOES (Geo-synchronous Orbiting Environmental Satellite) and other direct telecommunications links.

3. Secondary beneficial effects of reduced flood damage to habitat and properties, including those on or proposed for nomination to the National Register of Historic Places and the National Registry of Natural Landmarks; and the saving of lives could result from the advance warning of precipitation and floodwaters and subsequent Commission operations of international dams and international flood control projects.

On the basis of the Draft Environmental Assessment, the U.S. Section determines that an environmental impact statement is not required for the Government of the United States to enter into an agreement with the Government of Mexico to provide for installation and arrangements for maintenance of DCPs on Mexican tributaries to the Rio Grande and hereby supplies notice of a finding of no significant impact.

An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within thirty (30) days of the date of this Notice.

The Draft Finding of No Significant Impact (FONSI) and Draft Environmental Assessment (EA) have been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the Draft FONSI and Draft EA are available to fill single copy requests at the above address.

Dated: May 1, 1987.

Susette Zaborosld,

*Staff Counsel.*

[FR Doc. 87-11051 Filed 5-13-87; 8:45 am]

BILLING CODE 4710-93-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31037]

### Carthage, Knightstown and Shirley Railroad; Acquisition and Operation; the Indiana Midland Railroad

Carthage, Knightstown & Shirley Railroad has filed a notice of exemption to acquire and operate certain properties of the Indiana Midland Railroad. The properties consist of: the line between Markleville, IN and Carthage, IN (milepost 173.95 to milepost 193.5) and the 1.75-mile branch line from Shirley, IN to Wilkinson, IN, a toatal distance of approximately 21 miles in Madison, Henry, Hancock, and Rush countries, IN. Any comments must be filed with the Commission and served upon Thomas L. Allison, Carthage, Knightstown & Shirley Railroad, 198 Railroad Street, P.O. Box 378, Shirley, IN 47384, telephone (317) 737-6561.[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 28, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11014 Filed 5-13-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31038]

### Chicago, Missouri and Western Railway Co.; Trackage Rights; Chicago South Shore and South Bend Railroad

Chicago, Missouri & Western Railway Company (CM&W) has filed a Notice of Exemption to operate over trackage rights granted by the Chicago South Shore and South Bend Railroad (South Shore), between Burnham Yard and Kensington Station in Chicago, IL, a distance of 5.3 miles. This will enable

[1] The Railway Labor Executive's Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. The United Transportation union desires to become a party to the protest. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied, because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C. 2d 810 (1985).

CM&W to interchange with South Shore at Burnham Yard.[1]

Comments must be filed with the Commission and served on: Paul A. Cunningham, Pepper, Hamilton & Scheetz, 1777 F Street, NW., Washington, DC 20006, (202) 842-8100, and Theodore E. Cornell III, Seyfarth, Shaw, Fairweather & Geraldson, 55 East Monroe Street, Chicago, IL, (312) 346-8000.[2]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[3] The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 4, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11013 Filed 5-13-87; 8:45 am]

BILLING CODE 7035-01-M

[1] CM&W states that interchange movements with South Shore were contemplated in the supporting statements submitted in Finance Docket No. 30911, *Chicago, Missouri & Western Railway Company—Exemption Acquisition and Operation—Illinois Central Gulf Railroad Company*, Notice of Exemption, (not printed), served October 23, 1986. The trackage rights agreement herein is claimed to be incidental to CM&W's exempted acquisition in Finance Docket No. 30911 and to promote the success of the acquisition by maintaining efficient connecting operations.

[2] The Railway Labor Executives' Association (RLEA) and United Transportation Union filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. However, the main line acquisition and related trackage rights agreements are governed by section 10901. Under section 10901(c), imposition of labor protective conditions is discretionary. Absent a specific showing of need, the Commission does not impose labor protective conditions on section 10901 transactions. Additionally, the Commission has a long standing and judicially approved policy of not imposing labor protective obligations upon newly formed acquiring carriers. There is no evidence in the record to support imposition of labor conditions, and none will be imposed. RLEA's request is denied.

[3] On April 27, 1987, a Petition to Reject, Revoke, and for Stay was filed by Francis C. Brewer and Patrick W. Simmons, United Transportation Union Legislative Directors for Indiana and Illinois, respectively. They urge rejection of the Notice in Finance Docket No. 31038 because the involved trackage rights are said not come within the class exemption promulgated at 49 CFR 1150.31 in *Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985). However, notices of exemption are rejected only if they are deficient on their face (*e.g.*, by failing to include all of the information required under 49 CFR 1150.33) As to the applicability to the transaction, these arguments will be considered in separate decisions relating to revocation and stay.

## Agency Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance—Extension
Bureau/Office—Office of Proceedings
Title of Form—Application for Motor or Water Carrier Certificate or Permit, Brokerage License, Freight Forwarder Permit, or Water Carrier Exemption.
OMB Form No.—3120-0047
Agency Form No.—OP-1
Frequency—As applicant desires initial or expanded authority.
Respondents—Persons desiring operating authority
No. of Respondents—10,000
Total Burden Hrs.—80,000
Brief Description of the need & proposed use—Data are used to determine whether applicant for motor, passenger, motor property, water carrier, property broker and household goods, freight forwarder authority should be granted entry into the surface transportation industry.

Type of Clearance—Extension
Bureau/Office—Bureau of Accounts
Title of Form—Annual Report of Railroad Employees, Services and Compensation Quarterly Report of Railroad Employees, Services and Compensation Monthly Report of Number of Employees Class I Railroad
OMB Form No.—3120-0074
Agency Form No.—Annual Wage A&B m300 monthly wage report of employees
Frequency—Annually, Quarterly, Monthly
Respondents—Class I Railroads
No. of Respondents—21
Total Burden Hrs.—14,637
Brief Description of the need & proposed use—Data are used to access growth, sudden changes in carrier employment service hours and compensation and to identify changes and trends that may effect the transportation system.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11015 Filed 5-13-87; 8:45 am]

BILLING CODE 7035-01-M

## Agency Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340

Type of Clearance—New Collection
Bureau/Office—Office of Compliance and Consumer Assistance
Title of Form—Household Goods Dispute Settlement Program Study-Carrier Questionnaire
OMB Form No.—None
Agency Form No.—OCCA 1937
Frequency—Non-Recurring
Respondents—Regulated Common Carriers of Household Goods
No. of Respondents—85
Total Burden Hrs.—21
Brief Description of the need & proposed use—This questionnaire will enable the Commission to determine the frequency of consumer use of approved dispute settlement programs participated in by a number of interstate movers and will be the basis of a study to determine the overall effectiveness of the programs.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11016 Filed 5-13-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Portland Cement Association ("PCA")

has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies became members of the Association effective on the dates indicated below:

| | |
|---|---|
| Tarmac-LoneStar, Inc. | Jan. 1, 1987 |
| Capitol Cement Corp. | Mar. 1, 1987 |
| Dundee Cement Co. | Mar. 1, 1987 |
| Continental Cement Co. | Apr. 1, 1987 |
| Davenport Cement Co. | Apr. 1, 1987 |
| Missouri Portland Cement Co. | Apr. 1, 1987 |
| Rinker Materials Corporation | Apr. 1, 1987 |

Accordingly, at present the members of the PCA are those companies listed below:

*United States*

Aetna Cement Corporation
Alaska Basic Industries
Ash Grove Cement Corporation
Ash Grove Cement West, Inc.
Ash Grove Foreman Cement Company
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West, Inc.
Calaveras Cement Company
CalMat Co.
Capitol Aggregates, Inc.
Capitol Cement Corporation
Continental Cement Company
Davenport Cement Company
Dragon Products Company
Dundee Cement Company
General Portland, Inc.
Hawaiian Cement
Ideal Basic Industries, Inc.
Independence Cement Corporation
Lehigh Portland Cement Company
Lone Star-Falcon
Lone Star Industries, Inc.
Medusa Cement Corporation
Missouri Portland Cement Company
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rinker Materials Corporation
Rochester Portland Cement Corporation
St. Marys Peerless Cement Company
St. Marys Wisconsin, Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Company
Tarmac-LoneStar, Inc.
Tilbury Cement Company

*Canada*

Canada Cement Lafarge Ltd.
Federal White Cement Ltd.
Inland Cement Limited
Lake Ontario Cement Limited
North Star Cement Limited
St. Lawrence Cement, Inc.
St. Marys Cement Corporation
Tilbury Cement Limited

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Company
Centennial Engineering, Inc.
Allis-Chalmers Corp.
F.L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, and February 3, 1987, PCA filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), respectively.

Joseph H. Widmar,
*Director of Operations, Antitrust Division.*

[FR Doc. 87-11069 Filed 5-13-87; 8:45 am]
BILLING CODE 4410-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

### Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Carolina Power & Light Company, (the licensee), for the H.B. Robison Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

**Environmental Assessment**

*Identification of Proposed Action*

The exemption would grant relief from 10 CFR Part 50, Appendix J, paragraph II.A.3, which requires that all Type A (Containment Integrated Leak Rate) tests be performed in accordance with ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." ANSI N45.4 requires that leakage calculations be performed using the Total Time method. The licensee would rely, instead, on the Mass-Plot method described in ANSI/ANS 56.8-1981, "Containment System Leakage Testing."

The licensee's request for exemption and the bases therefor are contained in a letter dated April 17, 1987.

*The Need for the Proposed Action*

The proposed exemption is from the Standard referenced in 10 CFR Part 50, Appendix J, which requires the containment leakage calculations be performed using either Point-to-Point or the Total Time method. The licensee has performed the calculations using the Mass-Plot method, a newer method which has been accepted by the NRC staff. Additionally, the revised Standard (ANSI/ANS 56.8-1981, "Containment Leakage Testing") specifies the use of the Mass-Plot method exclusively, and the new Standard is proposed to be incorporated into a planned revision of Appendix J.

*Environmental Impacts of Proposed Action*

The proposed exemption would permit the substitution of the Mass-Plot method for the Total Time method in performing leakage calculations. The Mass-Plot method has been accepted by the NRC staff as a more accurate technique that will increase confidence in the integrity of the containment. This exemption will not affect containment integrity and does not affect the risk of facility accidents. Thus, post-radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Because it has been concluded that there is no measurable impact associated with the proposed exemption, any alternatives to the exemption will have either no

environmental impact or greater environmental impact.

The principal alternative to the exemption would be to deny the requested exemption. Such action would not reduce environmental impacts of the Robinson Unit 2 operations and would result in reduced operational flexibility or unwarranted delays in power ascension.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the Operation of the H.B. Robinson Steam-Electric Plant Unit 2", dated April 1975.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, the staff concludes that the proposed action will not have significant effect on the quality of the human environment.

For further information with respect to this action, see the application for exemption previously listed, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Bethesda, Maryland, this 8th day of May 1987.

For the Nuclear Regulatory Commission.

**Jon B. Hopkins,**

*Acting Director, Project Directorate II–1, Division of Reactor Projects—I/II.*

[FR Doc. 87–11047 Filed 5–13–87; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–313]

**Arkansas Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–51 issued to Arkansas Power and Light Company (the licensee), for operation of the Arkansas Nuclear One, Unit 1, located in Pope County, Arkansas. The request for amendment was submitted by letter dated May 6, 1987.

The proposed amendment would revise ANO–1 Technical Specification (TS) to allow a one-time waiver from TS 3.8.15 and the related Basis to allow the Auxiliary Building crane to handle a spent fuel shipping cask. The waiver would allow the licensee to ship up to 16 spent fuel pins in a spent fuel shipping cask licensed by the U.S. Department of Energy (DOE) for hot cell examination as a part of the DOE Extended Burnup Program. TS 3.8.15 presently states that the spent fuel shipping cask shall not be carried by the Auxiliary Building crane pending the evaluation of the spent fuel cask drop accident and the crane design by Arkansas Power and Light (AP&L) and NRC review and approval.

TS 3.8.15 assures that the spent fuel cask drop accident cannot occur prior to completion of the NRC staff's review of this potential accident and the completion of any modifications that may be necessary to preclude the accident or mitigate the consequences. NRC review of this particular issue was incorporated into the staff's resolution of the generic issue (A–36) related to control of heavy loads near spent fuel. AP&L has completed all actions and submittals required by the issuance of NUREG-0612, "Control of Heavy Loads at Nuclear Power Plants", and a Safety Evaluation (SE) dated October 11, 1984 was issued by the staff.

The licensee states in its application while the licensee believes that sufficient justification exists for deletion of the TS restriction, a one-time waiver would permit the licensee to work with the DOE since the DOE has only one licensed spent fuel shipping cask available for a limited time (April 15 thru June 15) while allowing the NRC staff additional time to consider the licensee's request of April 7, 1987 to delete TS 3.8.15.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. A discussion of these standards as they relate to the proposed change follows:

**(1) Consideration of Probability and Consequences of Accident**

AP&L's procedures, load paths, crane equipment certification and operator training and other related heavy load handling topics were evaluated as part of the control of heavy loads issue and found acceptable. Further, the spent fuel cask handling is discussed in Section 9.6.2.6 of the ANO–1 FSAR, and that the cask will never travel over spent fuel. This restriction is not changed by the requested amendment which would permit the cask to be carried by the Auxiliary Building crane.

Although cask handling is presently prohibited by TS 3.8.15, ANO–1 FSAR Section 9.6.2.6 further evaluates the event of a cask drop accident. The analysis indicates that the consequences are acceptable. The cask drop evaluation in ANO–1 FSAR Section 9.6.2.6 assumes 15 full fuel assemblies, 100 days after shutdown, are involved. Although the DOE extended burnup fuel assemblies have longer operation than the three cycles assumed in the FSAR evaluation, they have been stored in the ANO–1 fuel pool much longer than the assumed 100 days, thus the iodine and noble gas inventory available for release has decreased substantially due to isotopic decay. The proposed amendment will allow shipment of at most 16 spent fuel pins, a very small fraction of the number of pins in 15 full assemblies. Each fuel assembly has 208 fuel pins, therefore, the offsite doses resulting from a cask drop would be much lower than those presented in the FSAR. Additionally, with a one-time waiver request only one-time movement of the cask coupled with the modifications made for conformance to NUREG–0612 would make the probability of a dropped cask very low. The proposed change, therefore, would not involve a significant increase in the probability or consequences of an accident previously evaluated.

**(2) Consideration of Possibility of a New or Different Kind of Accident**

The cask handling methods and cask drop accident are discussed and evaluated in ANO–1 FSAR Section 9.6.2.6 Additionally, the NRC performed an independent evaluation of the radiological consequences of a cask drop accident, as documented in the ANO–1 licensing SER dated June 6, 1973. The evaluations of the cask drop accident has concluded that the consequences would be within

acceptable bounds. No new accident scenarios have been identified related to the proposed amendment request, therefore, this change is bounded by the current analysis. The proposed amendment request will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Consideration of a Reduction in a Margin of Safety

The spent fuel cask has been issued and continues to hold an NRC Certificate of Compliance for radioactive materials packages, and the procedures, load paths and equipment to be used for cask handling have been reviewed and approved by the NRC with the resolution of the control of heavy loads issue. Further, the cask will contain only 16 fuel pins as opposed to the 15 assemblies assumed in the accident analysis. Therefore, the proposed amendment request will not involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 15, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Procedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo, Director, Project Directorate–IV, Division of Reactor Projects—III, IV, V and Special Projects: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC, 20036, an attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained

absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Tomlinson Library, Arkansas Tech. University, Russellville, Arkansas 72801.

Dated at Bethesda, Maryland, this 11th day of May 1987.

For the Nuclear Regulatory Commission.

George Dick,

*Project Manager, Project Directorate–IV, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 87–11048 Filed 5–13–87; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–440]

**Cleveland Electric Illuminating Co. et al; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–58 issued to the Cleveland Electric Illuminating Company (CEI), the Duquesne Light Company, the Ohio Edison Company, the Pennsylvania Power Company, and the Toledo Edison Company (the licensees) for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

The amendment would grant the licensees a one-time exception to technical Specification 4.6.1.2.f to extend the leak testing interval of the Main Steamline Isolation Valves (MSIVs) in steamline "A" until July 12, 1987. Technical Specification 4.6.1.2.f requires that MSIVs be leak tested at least once per 18 months, and the MSIVs in steamline "A" are due to be tested by May 31, 1987.

CEI was granted an earlier Technical Specification exception for the operability of the Reactor Core Isolation Cooling (RCIC) system, which expires on May 31, 1987. The basis for the May 31st date was that modifications to the water level instruments which had proved successful during RCIC system testing were to be installed on all reference legs. These modifications were to be installed during a planned May-June 1987 maintenance outage; and it was planned that the steamline "A" MSIVs would be leak tested in accordance with the Technical Specification 4.6.1.2.f test time interval at that time. However, during a recent unplanned forced outage, the RCIC system instrument modifications were completed. Therefore, the only item which would force the plant to enter into a planned outage on May 31, 1987, is the leak testing of the MSIVs in steamline "A". Since CEI only recently determined that the post-modification testing on all of the reactor vessel water level instrumentation was performed successfully prior to the planned maintenance outage, it would serve no safety function to require the plant to be shut down on May 31, 1987 to conduct the steamline "A" MSIV tests.

The one-time change to extend the time interval for leak testing of the steamline "A" MSIVs is in response to the licensees' application for amendment dated May 4, 1987, which requested that the amendment be processed under exigent circumstances in accordance with 10 CFR 50.91(a)(6) in light of the short time remaining to perform the required MSIV leak tests.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change does not increase the probability or consequences of an accident previously evaluated. CEI is proposing to perform leak testing of the MSIVs in steamline "A" six weeks later than presently required in the Plant Technical Specifications. The Commission's regulations in 10 CFR Part 50, Appendix J, "Primary Containment Leakage Testing for Water-Cooled Power Reactors," requires Type C tests to be conducted at intervals no greater than two years. The MSIVs in steamline "A" were last leak tested on July 13, 1986. Therefore, by postponing the leak tests until July 12, 1987, CEI will still be within the testing frequency interval required in 10 CFR Part 50, Appendix J.

The proposed change does not create a new or different kind of accident from any accident previously evaluated. CEI is proposing to postpone leak testing of the two MSIVs in steamline "A" from May 31, 1987, to July 12, 1987, and that by no later than July 12, 1987, CEI will perform all required testing on the MSIVs in accordance with the Commission's regulations. In addition, the change does not result in any modification to the plant design or systems operation.

The proposed change does not involve a significant reduction in a margin of safety. As is stated above, the two MSIVs in steamline "A" were leak tested on July 13, 1986, and the results of those tests were found to be well within the acceptance criteria established for each MSIV. CEI was issued a low power operating license (No. NPF–45) for Unit 1 on March 18, 1986, and commenced nuclear heatup in August 1986. As such, the MSIVs in question have only seen approximately nine months of service; and the MSIVs would only have been in service for one year since last being tested, with approval of the test interval extension proposed.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request, which will be effective only up to July 12, 1987, involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in an untimely and unnecessary shutdown of Unit 1 on May 31, 1987, with no enhancement of safety. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the Federal Register at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the Federal Register and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be

telephoned to Martin J. Virgilio, Acting Director, Project Directorate III–1, by collect call to (301) 492–4553, or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m.

All comments received by May 29, 1987, will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Bethesda, Maryland, this 11th day of May, 1987.

For the Nuclear Regulatory Commission.

**Timothy G. Colburn,**

*Project Manager, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.*

[FR Doc. 87–11050 Filed 5–13–87; 8:45 am]

BILLING CODE 7590–01–M

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[Docket Nos. 50–155 and 50–255]

## Consumers Power Co.; Applications

Notice is hereby given that the United States Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80 of the proposed corporate restructuring of Consumers Power Company (CPCo), the owner and licensee for the Big Rock Point and Palisades nuclear plants. By letter dated April 16, 1987, CPCo informed the Commission that the Board of Directors has proposed a corporate restructuring plan to be presented at the May 6, 1987 annual shareholders meeting. If a majority of CPCo shareholders approve the plan, CPCo will become a wholly-owned subsidiary of a new holding company, CMS Energy Corporation, effective on or about May 22, 1987. CPCo would remain as holder of the licenses for Big Rock Point and Palisades. If the plan is approved, the common stock of CPCo will be converted on a share-for-share basis into common stock of the holding company. The current CPCo Board of Directors will serve in the same capacity for the holding company, and there will be no significant change in ownership, management, or sources of funds for operation of the Big Rock Point or Palisades plants, according to the proposed plan.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the holder of the license following the transfer is qualified to have the control of the license and that the transfer of such control is otherwise consistent with applicable provisions of law, regulations and orders of the Commission.

Dated at Bethesda, Maryland, this 11th day of May, 1987.

**Martin J. Virgilio,**

*Acting Director, Project Directorate III–1, Division of Reactor Projects—III, IV, V & Special Projects.*

[FR Doc. 87–11049 Filed 5–13–87; 8:45 am]

BILLING CODE 7590–01–M

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## RAILROAD RETIREMENT BOARD

### Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1987, shall be at the rate of 24 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1987, 28.7 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 71.3 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 7, 1987.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 87–11004 Filed 5–13–87; 8:45 am]

BILLING CODE 7905–01–M

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## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

May 11, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Tandem Computers Incorporated
Common Stock, $.025 Par Value (File No. 7–9877)

On-Line Software International, Inc.
Common Stock, $.01 Par Value (File No. 7–9878)

First Boston Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–9879)

Navistar International Corporation
$5.00 Cumulative Convertible Preferred Stock Series G, $1.00 Par Value (File No. 7–9880)

Trinity Industries, Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7–9881)

Utilicorp United Inc. (Delaware)
Common Stock, $1.00 Par Value (File No. 7–9882)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 2, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–11054 Filed 5–13–87; 8:45 am]

BILLING CODE 8010–01–M

BEST COPY AVAILABLE

[Release No. 34-24435; File No. SR-NYSE-87-8]

**Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 20, 1987, the New York Stock Exchange, Inc. (the "Exchange"), filed with the Securities and Exchange Commission (the "Commission"), the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to revise Article IX Section 5, "Disciplinary Proceedings—Penalties and Review," of its Constitution and Rule 476, "Disciplinary Proceedings" to eliminate the limitations on the amount of fines that may be imposed in connection with an Exchange disciplinary action. The Exchange is also proposing to amend Rule 476 to require that, to the extent reasonably possible, at least one member of the Panel hearing a disciplinary proceeding must be engaged in similar activities as the respondent.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

*Elimination of Fine Limitations.* Constitution Article IX section 5 and Rule 476 currently set forth maximum per charge fines that may be imposed upon a finding of guilt in a disciplinary proceeding of $25,000 for a natural person and $100,000 for other than a natural person. These fine limitation amounts were last changed in 1988 when they were increased from $10,000 for members and allied members [and implicitly for member organizations] to $25,000 for members and allied members and $100,000 for member organizations. However, in 1978 the limitations were amended to apply on a per charge rather than a per disciplinary action basis, thereby increasing the potential maximum fine in multiple charge disciplinary actions.

For some time, the Exchange has been reviewing the adequacy of its disciplinary fining authority. It has been determined that the current fine structure is inadequate. First, the limitation amounts are generally too low in the context of the current securities industry environment. In particular, the elimination of the fine limitations is responsive to the rise in capitalization and the dollar amount of business conducted by member organizations, as well as the effect of inflation since the fine limitations were last revised.

Second, the current fine structure could render the Exchange unable to impose an appropriate penalty in a significant disciplinary action that does not involve a number of charges or to impose fines appropriate to the relative severity of each charge in a multiple charge disciplinary action. Elimination of the fine limitations will ensure adequate disciplinary authority for the Exchange in significant disciplinary actions while also permitting the tailoring of penalties to the relative severity of charges in an action, rather than relying on the number of charges, and the maximum fine per charge, to impose an appropriate sanction.

Finally, in addition to allowing for more appropriate treatment of violations, the Exchange believes elimination of the fine limitations would have a significant deterrent effect on prospective violators, and would encourage greater vigilance by its member organizations to prevent such violations.

*Amendment of Hearing Panel Composition Requirements.* Rule 476 currently sets forth procedures with respect to the composition of Panels hearing disciplinary actions, relating such composition to the nature of the respondent. The rule provides, in part, that if the respondent is a member, member organization, allied member, or approved person, the Hearing Panel shall be composed of members or allied members; if the respondent is an employee of a member or member organization (but not a member or allied member), the Panel shall be composed of employees of members or member organizations (but not members or allied members).

The Exchange currently attempts to include on the Hearing Panel judging the charges a person engaged in similar functions or activities as the respondent. The Exchange believes that the procedural safeguard of such representation on the Hearing Panel should be formalized in order to assure, to the extent feasible, that at least one member of the Panel would have the necessary knowledge and understanding of the activities generally engaged in by the respondent. It is therefore proposing an amendment of Rule 476 to provide that, to the extent reasonably possible, at least one of the persons serving on a Hearing Panel must be engaged in similar activities as the respondent. This new requirement would be in addition to the functional qualifications of Hearing Panel members (in relation to the nature of the respondent) currently required by Rule 476.

The proposed elimination of the fine limitations is consistent with the requirements of the Act in that it is designed to ensure, in accordance with section 6(b)(6) of the Act, that the Exchange's rules provide that its members and persons associated therewith are appropriately disciplined for violations of the Act or the rules and regulations thereunder, or the rules of the Exchange.

Furthermore, this proposed amendment to the Exchange's Constitution and rules is consistent with section 6(b)(5) of the Act in that it is designed to appropriately sanction such violations, and deter prospective violators, and thereby prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.

The proposed revision of the Exchange's Hearing Panel composition requirements is consistent with section 6(b)(7) of the Act in that it is designed to ensure that the Exchange's rules provide a fair procedure for the disciplining of members and persons associated with members by requiring that the Hearing Panel judging the charges against a respondent shall include, to the extent reasonably possible, at least one person engaged in similar activities as the respondent.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change from members, participants, or others.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 4, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 7, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10990 Filed 5-13-87; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.**

May 8, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

American President Companies, Ltd.
Common Stock, $0.01 Par Value (File No. 7-9327)

Avery International Corporation
Common Stock, $1.00 Par Value (File No. 7-9328)

Dennison Manufacturing Company
Common Stock, $1.00 Par Value (File No. 7-9329)

International Multifoods Corporation
Common Stock, $0.10 Par Value (File No. 7-9330)

Temple-Inland Inc.
Common Stock, $1.00 Par Value (File No. 7-9331)

Todd Shipyards Corporation
Common Stock, $1.00 Par Value (File No. 7-9332)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 29, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10993 Filed 5-13-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24384]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

May 7, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 1, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Columbus and Southern Ohio Electric Company (70-7386)**

Columbus and Southern Ohio Electric Company ("C&SOE"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Simco, Inc. ("SIMCO"), a subsidiary of C&SOE, both located at 215 North Front Street, Columbia, Ohio 43215, have filed an application pursuant to sections 9(a) and 10 of the Act.

C&SOE, SIMCO and Peabody Coal Company ("Peabody") propose to enter into a Sale and Dissolution Agreement, which will terminate and dissolve: (1) A joint venture ("Joint Venture") formed in 1959 between SIMCO and Peabody; (2) C&SOE's leases of its interests in coal lands to the Joint Venture; and (3) an existing coal supply agreement between C&SOE and the Joint Venture. In addition: (1) Interests in certain of C&SOE's coal lands will be sold and assigned to Peabody; (2) the equipment

and vehicles owned and/or leased by SIMCO and used by the Joint Venture will be sold or assigned to Peabody; (3) a new coal supply agreement will be executed between SIMCO and Peabody; (4) C&SOE, SIMCO and Peabody will enter into a Beltline Agreement, under which Peabody will be granted the right to use SIMCO's conveyor beltline which extends from the coal lands to C&SOE's Conesville generating station; and (5) C&SOE will grant access rights to certain of its real property.

C&SOE and SIMCO will acquire from Peabody, as partial consideration for the transaction, a note in the principal amount of $11,196,000, bearing interest at a rate of 9% per annum, payable in 69 consecutive monthly installments of $20,482.64 each, and secured by an irrevocable standby letter of credit.

**Jersey Central Power & Light (70-7395)**

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey, 07960, a subsidiary of General Public Utilities Corporation, a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 promulgated thereunder.

JCP&L proposes to sell to Riegel Products Corporation ("Riegel") for $4,050,000, a turbine, an electric generator, a computer, an electric substation and auxiliary equipment ("Property"), all located at Riegel's electric generating facility in Milford, New Jersey ("Milford Facility"). As of December 31, 1986, the Property had a net book value of $469,317. Riegel will use the Property to operate the Milford Facility as a cogeneration plant. JCP&L will purchase excess electricity produced by cogeneration at the Milford Facility.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-10991 Filed 5-13-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-15721; (812-6573)]**

## GMAC Mortgage Securities, Inc.; Application for Exemption

May 7, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

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*Applicants:* GMAC Mortgage Securities, Inc. ("Applicant") on behalf of itself and certain grantor trusts to be created by Applicant ("Trust Issuers").

*Relevant 1940 Act Sections:* Order requested under section 6(c).

*Summary of Application:* Applicant seeks a conditional order of exemption from all provisions of the 1940 Act in connection with the issuance and sale of mortgage-backed securities and Equity Interests.

*Filing Date:* The application was filed on December 23, 1986, and amended on May 4, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESS:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 3044 West Grand Boulevard, Detroit, Michigan 48202.

**FOR FURTHER INFORMATION CONTACT:** Joyce M. Pichholz, Staff Attorney, (202) 272-3046, or H.R. Hallock, Jr., Special Counsel, (202) 272-3030 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

### Applicant's Representations

1. Applicant, a Delaware corporation, is an indirect wholly-owned limited purpose finance subsidiary of GMAC Mortgage Corp., a Michigan corporation which is a wholly-owned indirect subsidiary of General Motors Corporation. Applicant was formed in 1986 to facilitate the financing of residential mortgages through the issuance of bonds collateralized by mortgages and mortgage-backed securities or funding agreements secured by mortgages and mortgage-backed securities.

2. Applicant also seeks relief on behalf of certain Trust Issuers which Applicant may create. All Trust Issuers will engage in activities substantially similar to activities engaged in by Applicant. The activities of such Trust Issuers will, however, be further restricted to the issuance of bonds collateralized by Federal Certificates [1] and funding agreements secured ty Federal Certificates.

3. Applicant and the Trust Issuers (together, "Issuers") will issue and sell bonds ("Bonds") in series ("Series") secured primarily by Mortgage Collateral as defined in Condition A (2) below. Each Series of Bonds will be issued pursuant to an indenture ("Indenture") between an Issuer and an independent trustee ("Bond Trustee"), as supplemented by one or more supplemental indentures. Each Series of Bonds will be sold to institutional or retail investors through one or more investment banking firms. Indentures for public offerings will be qualified under the provisions of the Trust Indenture Act of 1939. Each Series will consist of one or more classes ("Classes") which will have fixed (established at the time of issuance) or variable (adjusted periodically according to a fixed index set forth in the Indenture) interest rates.

4. The Mortgage Collateral securing each Series of Bonds will be owned either (i) by an Issuer or (ii) by limited purpose financing entities affiliated with homebuilders, thrifts, commercial banks, mortgage bankers and other entities engaged in mortgage finance and pledged to secure such Series of Bonds pursuant to funding agreements ("Funding Agreements"). Each Series of Bonds may also be secured by certain funds and accounts including proceeds accounts, debt service funds, reserve funds, servicing agreements and insurance policies and by other credit enhancement devices described in the prospectus supplement for such Series (any or all of the foregoing together with Mortgage Collateral, "Bond Collateral"). Each Issuer will assign to the Bond Trustee as security for the relevant Series of Bonds its entire right, title and interest in the Bond Collateral.

5. The Mortgage Collateral securing each Series of Bonds, together with cash available to be withdrawn from any debt service funds, reserve funds, or other funds, will have scheduled cash flow sufficient, when taken together with reinvestment income thereon at

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[1] "Federal Certificates" are fully-modified pass-through mortgage-backed certificates ("GNMA Certificates") guaranteed by the Government National Mortgage Association ("GNMA"), guaranteed mortgage pass-through securities ("FNMA Certificates") issued by the Federal National Mortgage Association ("FNMA"), and mortgage participation certificates ("FHLMC Certificates") issued by the Federal Home Loan Mortgage Corporation ("FHLMC").

assumed reinvestment rates acceptable to each rating agency rating the Bonds, to make timely payments of principal of and interest on the Bonds in accordance with their terms. The outstanding bond value of the Bond Collateral securing a Series will be at least equal to the initial principal amount of such Series on the issue date.

6. Subject to Condition C, below, an Issuer may sell some or all of the rights it retains in and to any Bond Collateral upon issuance of a Series of Bonds or beneficial interests in any Trust Issuer (collectively, an "Equity Interest") to one or more banks, savings and loan associations, pension funds, insurance companies or other investors which customarily engage in the purchase of mortgages or mortgage collateral ("Owners") in transactions not constituting a public offering under section 4(2) of the Securities Act of 1933 ("1933 Act").

7. There will not be a conflict of interest between the holders of the Bonds ("Bondholders") and Owners as: (a) The Bond Collateral will not be speculative in nature; (b) the Bonds will be issued only if an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; and (c) the relevant Indenture subjects the Bond Collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the bondholders. Further, neither the Owners nor the Bond Trustee will be able to impair the security afforded by the Mortgage Collateral because, without the consent of each affected Bondholder, neither the Owners nor the Bonds Trustee will be able to: (a) Change the stated maturity on any Bond; (b) reduce the principal or rate of interest on any Bond; (c) change the priority of repayment on any Class of any Series; (d) impair or adversely affect the Mortgage Collateral; or (e) permit the creation of a lien ranking prior to or on parity with the lien of the related Indenture with respect to the Mortgage Collateral or otherwise deprive the bondholders of the security afforded by the lien of the related Indenture.

8. The sale of Equity Interests will not alter the payment of cash flow under any Indenture, including the amounts to be deposited in the collection account or any reserve fund. Pricing efficiencies mandate that the Bond Collateral does not substantially exceed the amount of collateral required to be pledged in order to satisfy the standards of the rating agency. Thus, the excess cash flow from the Bond Collateral which is available to Owners always will be far less than the cash flow from the Bond Collateral that is used to make principal and interest payments to Bondholders. Further, except for the limited right to substitute Mortgage Collateral, it will not be possible for Owners to alter the Bond Collateral, and, in no event will such right of substitution result in a diminution in the value or quality of the Bond Collateral.

9. An election by an Issuer to be treated as a real estate mortgage investment conduit ("REMIC") will have no effect on the level of expenses that would be incurred by such Issuer. Administration fees and expenses will be paid or provided for in a manner satisfactory to the agency rating the Series and subject to Condition D below.

10. The proceeds from the sale of the Bonds will be used to facilitate the long-term financing of residential mortgage loans through the reinvestment of the proceeds in housing or housing-related assets. The relief requested is necessary and appropriate in the public interest because neither Applicant nor any Trust Issuer is the type of entity to which the provisions of the 1940 Act were intended to be applied, the safeguards afforded to bondholders fully protect investors, prospective purchasers of Equity Interests will be sophisticated in the area of mortgages and mortgage-backed assets and limited in number, and the proposed activities will promote the public interest by facilitating the financing of housing by supplying capital for reinvestment in the real estate and mortgage markets.

**Conditions to Order**

Applicant agrees that the requested order may be expressly conditioned upon the following:

*A. Conditions Relating to the Bond Collateral*

(1) Each Series will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, Mortgage Collateral collateralizing the Bonds issued by Applicant (and underlying Funding Agreements) will be limited to: (i) Mortgages that are first liens on single (one-to-four) family residences ("Mortgages"); (ii) mortgage certificates evidencing an undivided interest in pools of mortgages that are first liens on single (one-to-four) family residences ("Private Certificates"); and (iii) Federal Certificates (collectively with Private Certificates, "Mortgage Certificates"). The Mortgage- Collateral for Bonds issued by Trust Issuers and Funding Agreements securing Bonds issued by Trust Issuers will be limited to GNMA, FNMA, and FHLMC Certificates.

(3) If new Mortgage Collateral is substituted as security for a Series, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed at least to the same extent as the Mortgage Collateral replaced; and (iv) meet the criteria set forth in Conditions A(2), (4) and (6). New Mortgage Collateral may not be substituted for more than 20% of the aggregate face amount of the Mortgages initially pledged as Mortgage Collateral and new Mortgage Certificates may not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged. New Mortgages may be substituted for Mortgages initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. New Private Certificates may be substituted for Private Certificates initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral. New Funding Agreements ney be substituted for the initial Funding Agreements only if the substitution of the Mortgage Collateral securing such Funding Agreements would be permitted under this condition.

(4) All Bond Collateral will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. Neither the Bond Trustee nor custodian may be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405 ("Rule 405")) of any Issuer. The Bond Trustee for each Series will be granted a first priority perfected security or lien interest in and to all Bond Collateral securing such Series.

(5) Each Series will be rated in one of the two highest bond rating categories ty at least one nationally recognized statistical rating organization that is not affiliated with any Issuer. The Bonds will not be "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

(6) The master servicer of any Mortgages (including, for purposes of

this paragraph, mortgages underlying Private Certificates) that are pledged as mortgage collateral may not be an affiliate of the Bond Trustee. If there is no master servicer, no servicer of such Mortgages may be an affiliate of the Bond Trustee. Any naster servicer and servicer of any such Mortgage will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of such Mortgages shall obligate the servicer to provide substantially the same services with respect to those Mortgages as it is then currently required to provide in connection with the servicing of mortgages insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

(7) At least annually, an independent public accountant will audit the books and records of the Issuer and will report on whether the anticipated payments of principal and interest on the Bond Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

*B. Conditions Relating to Variable-rate Bonds*

(1) Each Series of adjustable or floating interest rate Bonds will have a set maximum interest rate.

(2) At the time of deposit of the Bond Collateral and during the life of the Bonds, the scheduled payments of principal and interest to be received by the Bond Trustee on all Mortgage Collateral plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the Application) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each Series of adjustable or floating interest rate Bonds. Such Bond Collateral will be paid down as the mortgages constituting or underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

*C. Conditions Relating to the Sale of Equity Interests*

(1) Issuers will only sell Equity Interests with respect to Series of Bonds collaterlized by Mortgage Collateral consisting of Federal Certificates or Funding Agreements secured by Federal Certificates. Trust Issuers will sell Equity Interests only after issuing all Series of Bonds to be issued by such Trust Issuers.

(2) Any Equity Interest will be offered and sold only to (i) institutions or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) of the 1933 Act ("Owners"). Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Equity Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to not more than 15 with respect to any Trust Issuer or Series of Bonds, will purchase at least $200,000 of such Equity Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing an Equity Interest and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, will be able to understand the volatility of interest rate fluctuations as they affect the value or mortgage-related securities and residual interests therein. Owners will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities.

(3) Each sale of an Equity Interest will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

(4) Each sale of an Equity Interest will prohibit the transfer of such Equity Interest if there would be more than 100 beneficial Owners of Equity Interests in any Trust Issuer or with respect to any Series of Bonds at any time.

(5) Each sale of an Equity Interest will require each purchaser thereof to represent that it is purchasing for investment and not for distribution and that it will hold such Equity Interest in its own name and not as nominee for undisclosed investors.

(6) Each sale of an Equity Interest will provide that (i) no Owner of such Equity Interest may be affiliated with the Bond Trustee for the relevant Issuer and (ii) no holders of a controlling (as that term is defined in Rule 405) Equity Interest in any Issuer may be affiliated with either the custodian of the Bond Collateral or the agency rating the Bonds of the relevant series.

(7) If the sale of the Equity Interests results in the transfer of control (as the term "Control" is defined in Rule 405) of any Issuer from the original owners of Applicant or auy Trust Issuer, the relief afforded by any Commission order granted on the application would not apply to subsequent Bond offerings by that Issuer.

*D. Condition Relating to REMICs*

An election to treat a Trust Issuer or one or more Series of Bonds as a REMIC will have no effect on the level of the expenses that would be incurred by any Issuer or Owner. In the event of any REMIC election, provision will be made for the payment of admininstrative fees and expenses as set forth in the application. Each Issuer will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

*E. Special Condition*

Applicant undertakes to secure from each Trust Issuer its consent to comply with all of the applicable representations and conditions set forth above and more apecifically described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonthan G. Katz,

*Secretary.*

[FR Doc. 87-10992 Filed 5-13-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. IC-15723; 812-6607]

## Sumitomo Bank Capital Markets, Inc.; Application for Order Permitting Foreign Bank Subsidiary To Issue United States or Foreign Currency Denominated Debt Securities

May 8, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

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*Applicant:* Sumitomo Bank Capital Markets, Inc.

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from all provisions.

*Summary of the Application:* Applicant seeks an order permitting it to issue and sell in the United States and in

the Euromarkets its debt securities denominated in United States dollars and foreign currency.

*Filing Dates:* The application was filed on January 29, 1987, and amended on April 24, May 1, and May 8, 1987.

*Hearing or Notification of Hearing.* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 2, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o John L. Carr, Jr., Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street NW., Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney (202) 272–3037 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

**Applicant's Representations**

1. Applicant, organized under the laws of the State of Delaware on December 4, 1986, is a wholly-owned subsidiary of The Sumitomo Bank, Limited ("Sumitomo"). Sumitomo undertakes to own all the capital stock of Applicant in the future. As of December 31, 1986, Applicant's total assets were $500 million with paid up capital and surplus of $500 million. Applicant holds Sumitomo's 12.5% limited partnership interest in the investment banking firm of Goldman, Sachs & Co. ("Goldman Sachs"), which is funded entirely by Sumitomo's equity in Applicant and is subject to specific conditions adopted by the Board of Governors of the Federal Reserve System ("FRB").

2. Sumitomo, ranked as the third largest bank in Japan in terms of deposits as of March 31, 1986, is presently engaged in the conduct of commercial banking business through a large number of banking offices in Japan and 29 other countries. Sumitomo also engages in banking activities in the United States through its branches in New York, Chicago and Seattle, and its banking subsidiaries based in San Francisco and Honolulu.

3. Sumitomo is extensively regulated under Japanese banking laws and regulations. Sumitomo is subject to examination, reporting requirements regarding its financial and business conditions, and supervision by the Japanese Ministry of Finance, as well as detailed examinations by The Bank of Japan, Japan's central bank. Applicant, being a wholly-owned subsidiary of Sumitomo, is also subject to oversight by Japanese regulatory authorities.

4. Sumitomo is a bank holding company by virtue of ownership of its California subsidiary bank and, thus, is subject to FRB regulation under the Bank Holding Company Act of 1956 ("BHCA"). In addition, the International Banking Act of 1978 subjects Sumitomo and its United States branches and agencies to federal examination, supervision, reporting, and regulatory requirements, including requirements to maintain reserves with the Federal Reserve System. Sumitomo's activities through its United States state-licensed offices are also subject to extensive regulation and examination under the laws of the states in which they are located. Sumitomo's New York branch (the "New York Branch") is subject to extensive regulation by the FRB and the New York State Banking Department, including reserve and reporting requirements and a pledge of assets to cover a fixed percentage of liabilities.

5. Applicant's activities also are subject to FRB regulation, supervision and examination under the BHCA because it is a nonbanking subsidiary of Sumitomo. As such, the Applicant is authorized to engage solely in those activities for which Sumitomo has obtained approval from the FRB under section 4(c)(8) of the BHCA or for which an exemption from the nonbanking prohibitions of section 4 of the BHCA is otherwise available. Sumitomo has obtained FRB approval to engage through Applicant in the following activities: (i) Making, acquiring, or servicing loans or other extensions of credit such as would be made by a commercial finance company, and (ii) leasing personal real property where such transactions are the functional equivalent of a loan. In addition, the FRB has determined that Applicant's investment in Goldman Sachs is consistent with section 4 of the BHCA. Applicant further represents that its proposed issuance of debt securities to fund its activities is permissible under the BHCA without prior FRB approval. Applicant will not engage, either directly or indirectly, in any activities that are impermissible under the BHCA.

6. Applicant intends to use the bulk of the proceeds from the sale of its debt securities to engage in commercial lending (on a secured and unsecured basis) and leasing transactions with unrelated parties. The balance of such proceeds, if any, may be deposited with or advanced to Sumitomo and its affiliates, but such proceeds shall not be advanced to or deposited with any affiliate of Sumitomo (i) which is engaged primarily in investing in securities, other than securities received in commercial lending transactions, trust company activities or other activities closely related to banking or otherwise permissible under the BHCA, and (ii) which is neither a banking affiliate nor a company in which Sumitomo's investment is subject to specific conditions adopted by the FRB.

7. Applicant proposes to issue and sell in the United States from time to time public and private offerings of its (i) unsecured prime quality commercial paper debt obligations with maturities of 270 days or less, (ii) medium term unsecured debt obligations with maturities ranging from 271 days to five years and (iii) long term unsecured debt obligations with maturities greater than five years (collectively, the "Debt Securities").

8. Applicant undertakes to ensure that the Debt Securities will be offered in the United States only pursuant to the registration requirements under the Securities Act of 1933 ("1933 Act"), or pursuant to an exemption from the registration requirements thereunder. In cases where Applicant intends to rely on an exemption from registration under the 1933 Act, Applicant undertakes that it will not issue or sell the Debt Securities until (i) it has received an opinion of United States legal counsel that the Debt Securities would be entitled to an exemption under the 1933 Act or (ii) the staff of the SEC shall have stated in writing that it will not recommend enforcement action to the SEC under the circumstances of the proposed offering. Applicant does not request SEC review or approval of this opinion.

9. Payment of the principal, interest, and premiums, if any, on Applicant's Debt Securities will be unconditionally guaranteed by the New York Branch or by Sumitomo ("Guarantee"). Applicant undertakes that it will not offer any Debt Securities to be unconditionally guaranteed by any Guarantee of the New York Branch unless it shall have

received an opinion of its United States and Japanese legal counsel to the effect that (i) the obligation of the New York Branch pursuant to the Guarantee constitutes the legal, valid and binding obligation of Sumitomo enforceable directly against Sumitomo in accordance with its terms and (ii) in the event of default by Applicant in the payment of principal, interest, or premiums, if any, on the Debt Securities, the holders of those Debt Securities will be able to institute legal proceedings to enforce the applicable Guarantee directly against Sumitomo without first proceeding against Applicant or the New York Branch. Applicant does not request SEC review or approval of this opinion.

10. The Debt Securities will be issued and sold in the United States in minimum denominations of $100,000, or the equivalent thereof at exchange rates prevailing as of a recent date at the time such securities are issued, with respect to Debt Securities denominated in foreign currency. The Debt Securities will be issued and sold through one or more dealers in the United States which will reoffer the Debt Securities as principal to institutional and other sophisticated investors in the United States. The Debt Securities will be direct liabilities of Applicant and (i) will rank *pari passu* among themselves, (ii) will rank equally with all other unsecured indebtedness of Applicant, and (iii) will be superior to the rights of shareholders. Any Guarantees issued by the New York Branch or by Sumitomo in support of Applicant's Debt Securities will rank (i) *pari passu* among themselves, (ii) equally with all other unsecured indebtedness of the New York Branch or of Sumitomo (except to the extent such indebtedness is preferred by operation of law), including deposit liabilities, and (iii) superior to the rights of shareholders of Sumitomo.

11. Applicant represents that any proposed issue of the Debt Securities will have received prior to issuance one of the three highest investment grade ratings from at least one nationally recognized statistical rating organization and that United States counsel shall have certified that such rating has been received. However, such a rating may not be obtained with respect to any such issue if in the opinion of United States counsel an exemption from registration is available under section 4(2) of the 1933 Act or Regulation D thereunder, such counsel having taken into account for the purpose thereof the doctrine of "integration"referred to in Rule 502 under the 1933 Act and various releases and relevant no-action letter made public by the SEC.

12. Applicant undertakes to ensure that the dealer will provide each offeree, prior to purchase of the Debt Securities, a memorandum describing the business of Applicant, the New York Branch (if the New York Branch issues a Guarantee) and Sumitomo, and containing Applicant's and Sumitomo's most recent publicly available audited year-end financial statements. Sumitomo's financial statements shall have been audited in accordance with Japanese accounting principles, and the memorandum will describe material differences, if any, between the accounting principles applied in the preparation of such financial statements and "generally accepted accounting principles" as employed by banks in the United States. The memorandum and financial statements will be at least as comprehensive as those customarily used by United States bank holding companies in offering debt securities in the United States and will be updated promptly to reflect material changes in the financial condition of Applicant or Sumitomo. Applicant undertakes, that in the event of an offering in the United States of its Debt Securities denominated in currency other than Unites States dollars, Applicant will set forth in the prospectus or memorandum relating to such offering (i) the rate of exchange between the currency in which the securities are denominated and United States dollars as of a recent date, and (ii) appropriate disclosure of the risks to investors regarding the potential for exchange rate fluctuations.

13. The Applicant and Sumitomo undertake to appoint a bank trust company or other financial institution in the United States to act as issuing and paying agent for the Debt Securities issued in the United States. In addition, Applicant and Sumitomo undertake to appoint an agent located in the City of New York to accept service of process in any action arising out of the sale of the Debt Securities. Applicant and Sumitomo undertake to consent to jurisdiction of any State or Federal court located in the City and State of New York in respect of any such action. Applicant and Sumitomo undertake that the appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the Debt Securities have been paid. Applicant and Sumitomo will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Debt Securities or otherwise in connection with the Debt Securities. Neither the issuing or paying agent, nor the agent for service of process, will be a trustee for the holders of the Debt Securities; nor will they have any responsibilities or duties to act for such holders as would a trustee.

14. Applicant also plans, from time to time, to make public offerings outside the United States of United States dollar or foreign currency-denominated short term, medium term and long term debt obligations (collectively, the "Foreign Debt Securities"). Payment of the principal, interest, and premiums, if any, on the Foreign Debt Securities will be unconditionally guaranteed by a non-U.S. office of Sumitomo.

15. Applicant undertakes that any offering of the Foreign Debt Securities will be made solely overseas and will use measures reasonably designed to preclude distribution and redistribution of the Foreign Debt Securities within the United States or to United States citizens or residents or entities organized or having their principal place of business in the United States (collectively, "United States Investors") as contemplated in Securities Act Rel. No. 33-4708 (July 9, 1964). Applicant undertakes that the Foreign Debt Securities will contain appropriate "lock up" provisions, such as a mechanism by which each issue of securities is represented by a single temporary global security until at least 90 days after the completion of the distribution at which time definitive securities may be obtained by persons entitled thereto upon certification that they are not United States Investors. The Foreign Debt Securities will not be registered under the 1933 Act.

16. The requested exemption is consistent with the protection of investors and purposes of the 1940 Act and is appropriate in the public interest. The types of abusive practices which led to adoption of the 1940 Act are not applicable to Applicant because they are either precluded by the regulations to which it is subject under BHCA or not possible in the context of its business. Applicant further asserts that, as a commercial lending subsidiary of a bank holding company, it is not the type of entity intended to be regulated by the 1940 Act.

**Applicant's Condition**

1. Applicant consents to the order sought herein being expressly conditioned upon its compliance with the undertakings summarized above and more fully set forth in the applications.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11055 Filed 5-13-87; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

[License No. 09/09-0237]

### Crocker Ventures, Inc.; Surrender of License

Notice is hereby given that Crocker Ventures, Inc., 420 Montgomery Street, San Francisco, California 94163 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Crocker Ventures, Inc. was licensed by the Small Business Administration on December 1, 1978.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on April 22, 1987, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 7, 1987.

Robert G. Lineberry,

*Deputy Associate Administrator for Investment.*

[FR Doc. 87-11076 Filed 5-13-87; 8:45 am]

BILLING CODE 8025-01-M

### Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 8.950% per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as amended by section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: May 6, 1987.

Robert G. Lineberry,

*Deputy Associate Administrator for Investment.*

[FR Doc. 87-11060 Filed 5-13-87; 8:45 am]

BILLING CODE 8025-01-M

### National Advisory Council; Meeting

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, DC, will hold its semiannual National Advisory Council meeting beginning at 8:00 a.m., Monday, May 18, 1987 thru 11:30 a.m., Tuesday, May 19, 1987, at the Washington Plaza Hotel, Massachusetts and Vermont Avenues NW., Washington, DC 20005, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, Office of Advisory Councils, 1441 L Street NW., Room 503-E, Washington, DC 20416 (202) 653-6748.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

May 8, 1987.

[FR Doc. 87-11077 Filed 5-13-87; 8:45 am]

BILLING CODE 8025-01-M

### National Advisory Council; Executive Committee Meeting

The U.S. Small Business Administration, Office of Advisory Councils, located in the geographical area of Washington, DC will hold a National Advisory Council Executive Committee meeting, 10:00 a.m. to 4:00 p.m., Sunday, May 17, 1987, at the Washington Plaza Hotel, Massachusetts and Vermont Avenues NW., Washington, DC 20005, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jean M. Nowak, Director, U.S. Small Business Administration, Office of Advisory Councils, 1441 L Street NW., Room 503-E, Washington, DC 20416, (202) 653-6748.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

May 8, 1987.

[FR Doc. 87-11078 Filed 5-13-87; 8:45 am]

BILLING CODE 8025-01-M

### Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet at the Nevada Economic Development Procurement Conference on Wednesday, May 27, 1987, at 3:00 p.m. until 5:00 p.m., at 3570 Las Vegas Boulevard South, Las Vegas, Nevada 39109. At the hearing, private sector executives, local officials, trade associations, small and minority business entrepreneurs, will present testimony regarding the challenges they face in the development of their businesses, along with proposed solutions to these problems for possible implementation.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Private Industry Programs, U.S. Small Business Administration, 1441 L Street NW., Room 602, Washington, DC 20416, telephone (202) 653-6526, no later than May 15, 1987.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

May 1, 1987.

[FR Doc. 87-11079 Filed 5-13-87; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 87-027]

### Equipment, Construction, and Materials; Termination of Approval Notice

**AGENCY:** Coast Guard, DOT.

**ACTION:** Termination of Approval Notice.

**SUMMARY:** This notice contains a listing of Coast Guard approvals terminated between 1 September 1985 and 31 March 1987, as well as approvals terminated prior to 1 September 1985 which have not been published previously. These terminated approvals were for safety equipment and materials required by regulation to be used on certain merchant vessels and recreational

boats, and also in Outer Continental Shelf activities. This listing updates the information published in the 1 September 1985 edition of the Coast Guard publication "Equipment Lists."

**FOR FURTHER INFORMATION CONTACT:** Ms. Valarie Williams, Office of Marine Safety, Security, and Environmental Protection (G–MVI–3), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001, (202) 267–1444. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

**ADDRESS:** The current edition of "Equipment Lists" (U.S. Coast Guard publication COMDTINST M16714.3B), is available for sale through the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402. The price is $8.00 per copy including mailing within the United States. Foreign mailing is available for an additional 25% ($10.00 total cost). The GPO order number is 050–012–00232–1, and orders may also be placed by calling the GPO Order Desk at (202) 783–3238. Visa and Mastercard are accepted for orders placed by mail or by telephone.

**SUPPLEMENTARY INFORMATION:** Certain regulations in Titles 33 and 46 of the Code of Federal Regulations require that various items of lifesaving, firefighting, pollution prevention, and other safety equipment and materials used on board merchant vessels and recreational boats, and in Outer Continental Shelf activities be approved by the Commandant, U.S. Coast Guard. The Coast Guard publishes a manual titled "Equipment Lists" dated 1 September 1985, which lists equipment currently approved, and also equipment previously approved which can continue to be used on ships and boats as long as it is in good and serviceable condition. "Equipment Lists" is available for sale from the Government Printing Office, as indicated in the **ADDRESSES** section of this notice.

This document updates the 1 September 1985 "Equipment Lists" by listing certain approvals terminated during the period from 1 September 1985 to 31 March 1987. This document also corrects the 1 September 1985 "Equipment Lists" by listing certain approvals terminated prior to 1 September 1985 which were inadvertently omitted from that document. The termination actions were taken under the procedures in 46 CFR 2.75–1 to 2.75–50.

The statutory authority for regulations governing this equipment is in sections 3306(a), 4102, and 4302(a)(2) of Title 46, United States Code, section 1333 of Title 43, United States Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b)).

Most of the items in this list were terminated because they are no longer produced. Unless otherwise stated in the list, terminated items may continue to be used on vessels as long as the equipment is in good and serviceable condition.

The following approvals have been terminated:

**Gas Mask**

160.011/47/0 dated 2 April 1981, expired 2 April 1986. Ammonia Gas Mask, approval held by Mine Safety Appliances Co., 201 North Braddock Ave., Pittsburgh, PA 15208.

160.011/48/0 dated 2 April 1981, expired 2 April 1986. MSA Gas Mask Type N, approval held by Mine Safety Appliances Co., 201 North Braddock Ave., Pittsburgh, PA 15208.

**Self-Contained Breathing Apparatus**

160.011/50/0 dated 22 October 1980, expired 22 October 1985. Scott Rescue Pak P/N 900050, approval held by Scott Aviation Division of A–T–O, Inc., 225 Erie St., Lancaster, NY 14086.

**Flame Safety Lamp**

160.016/2/3 dated 8 January 1981, expired 8 January 1986. Koehler Model 289–1A, approval held by Koehler Manufacturing Co., Marlboro, MA 01752.

**Emergency Signaling Mirror**

160.020/5/1 dated 9 April 1981, expired 9 April 1986. Model CG–2, approval held by Revere Glass Co., 583 Beach Street, Revere, MA 02151.

**Floating Orange Smoke Distress Signal**

160.022/5/1 dated 9 October 1980, expired 9 October 1985. Kilgore Model K–5, approval held by Kilgore Corporation, Toone, TN 38381.

160.022/2/2 dated 3 March 1981, expired 3 March 1986. Model OS–5, approval held by Superior Signal Company, Inc., W. Greystone Road, Spotswood, NJ 08884.

**Emergency Provisions (Lifeboats & Liferafts)**

160.026/37/1 dated 19 March 1981, expired 19 March 1986. Approval held by F & L Packing Corporation, 681 Main Street, Belleville, NJ 07109.

160.026/52/0 dated 18 August 1981, expired 18 August 1986. Approval held by Koninklijke Verkade Fabrieken B. V., Westzijde 103, P.O.B. 5, 1500 DA ZAANDAM, The Netherlands.

**Signal Pistol**

160.028/16/0 dated 17 March 1981, expired 17 March 1986. Mayday 25 mm, approval held by Firearms Import & Export Corporation, P.O. Box 4866, Hialeah Lakes, Hialeah, FL 33014.

**Lifeboat**

160.035/459/0 dated 11 April 1980, expired 11 April 1985. 26.0' x 9.0' x 3.83' fibrous glass reinforced plastic (FRP), oar-propelled, 53-person capacity, approval held by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

160.035/461/0 dated 11 April 1980, expired 11 April 1985. 26.0' x 9.0' x 3.83' fibrous glass reinforced plastic (FRP), hand-propelled, 53-person capacity, approval held by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

**Kapok Buoyant Vest**

160.047/342/0 dated 1 February 1963 termination effective 19 February 1986. Adult, Model AK–1, approval held Ero Industries, Inc., 308 South Williams Street, Hazelhurst, GA 31539.

160.047/343/0 dated 1 February 1963 termination effective 19 February 1986. Child Medium, Model CKM–1, approval held by Ero Industries, Inc., 308 South Williams Street, Hazelhurst, GA 31539.

160.047/344/0 dated 1 February 1963 termination effective 19 February 1986. Child Small, Model CKS–1, approval held by Ero Industries, Inc., 308 South Williams Street, Hazelhurst, GA 31539.

160.047/390/1 dated 8 November 1984 termination effective 2 December 1985. Model AK–1, approval held by Milco Marine Industries Corp., 400 Thatford Ave., Brooklyn, NY 11212.

160.047/391/1 dated 8 November 1984 termination effective 2 December 1985. Model CKM–1, approval held by Milco Marine Industries Corp., 400 Thatford Ave., Brooklyn, NY 11212.

160.047/392/1 dated 8 November 1984 termination effective 2 December 1985. Model CKS–1, approval held by Milco Marine Industries Corp., 400 Thatford Ave., Brooklyn, NY 11212.

160.047/663/0 dated 20 February 1981 termination effective 20 February 1986. Adult Model 212, approval held by Miltco Products Corp., 139 Emerson Place, Brooklyn, NY 11205.

**Unicellular Plastic Foam Ring Life Buoy**

160.050/110/0 dated 30 June 1981, expired 30 June 1986. Twenty-inch unicellular plastic foam ring life buoy, approval held by Datrex, Inc., 3770 NW. South River Dr., Miami, FL 33142.

**Work Vests, Unicellular Plastic Foam**

160.053/63/0 dated 20 June 1964, termination effective 19 February 1986. Adult Universal, Model WW–1A, cloth covered, unicellular plastic foam "Work Vest", approval held by Ero Industries, Inc., 5940 W. Touhy, Chicago, IL 60648.

**Cloth Covered Unicellular Plastic Foam Life Preserver**

160.055/138/0 dated 20 June 1964, termination effective 19 February 1986. Adult Universal, Model WW–1, approval held by Ero Industries, Inc., 5940 W. Touhy, Chicago, IL 60648.

**Marine Buoyant Device**

160.064/219/0 dated 22 February 1963, termination effective 12 February 1986. Adult Medium, Model 101, 101B, 101C, cloth covered, unicellular plastic foam "Yachting Vest" or "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/220/0 dated 22 February 1963, termination effective 12 February 1986. Adult Large, Model 101, 101B, 101C, cloth covered, unicellular plastic foam "Yachting Vest" or "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/308/0 dated 31 May 1978, expired 31 May 1983. Adult Small Model 6280, cloth covered PVC foam flotation jacket, approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Dr., Dallas, TX 75236.

160.064/309/0 dated 31 May 1978, expired 31 May 1983. Adult Medium Model 6280, cloth covered PVC foam flotation jacket, approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Dr., Dallas, TX 75236.

160.064/317/0 dated 31 May 1978, expired 31 May 1983. Adult X-Large Model 6280, cloth covered PVC foam flotation jacket, approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Dr., Dallas, TX 75236.

160.064/362/0 dated 1 April 1981, expired 1 April 1986. Child Medium Model 3H34A, vinyl dipped unicellular plastic foam "Water Ski Vest", approval held by Chrysler Outboard Corp., Hartford, WI 53027.

160.064/363/0 dated 1 April 1981, expired 1 April 1986. Adult Model 3H35A, vinyl dipped unicellular plastic foam "Water Ski Vest", approval held by Chrysler Outboard Corp., Hartford, WI 53027.

160.064/364/0 dated 1 April 1981, expired 1 April 1986. Adult Model 3H36A, vinyl dipped unicellular plastic foam "Water Ski Vest", approval held by Chrysler Outboard Corp., Hartford, WI 53027.

160.064/402/0 dated 22 February 1963, termination effective 12 February 1986. Adult Small, Model 101, 101B, 101C, cloth covered, unicellular plastic foam, "Yachting Vest" or "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/403/0 dated 22 February 1963, termination effective 12 February 1986. Adult X-Large, Model 101, 101B, 101C, cloth covered, unicellular plastic foam, "Yachting Vest" or "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/551/0 dated 10 August 1973, expired 10 August 1978. Adult X-Large Model 1200, vinyl dipped unicellular plastic foam "Water Ski Vest", approval held by Quality Built Products Co. Inc., 1832 Commercial Street, Springfield, MO 65803.

160.064/766/0 dated 9 June 1975, expired 9 June 1980. Child Medium, Model 531, cloth covered unicellular plastic foam "Ski or Fishing Vest", approval held by Himalayan Industries, Inc., P.O. Box 5668, Pine Bluff, AR 71601.

160.064/818/0 dated 2 April 1980, expired 2 April 1985. Child medium, Model 2M, vinyl dipped unicellular plastic foam "Boating and Ski Vest", approval held by Taylortec, Inc., 2549 Hickory Avenue, Metairie, LA 70003.

160.064/819/0 dated 2 April 1980, expired 2 April 1985. Child Small, Model 2C, vinyl dipped unicellular plastic foam "Boating and Ski Vest", approval held by Taylortec, Inc., 2549 Hickory Avenue, Metairie, LA 70003.

160.064/885/0 dated 12 May 1980, expired 12 May 1985. Adult, Model 705, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/886/0 dated 12 May 1980, expired 12 May 1985. Adult, Model 805, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/939/0 dated 1 April 1981, expired 1 April 1986. Youth, Model 173137, cloth covered unicellular plastic foam "Water Ski Vest", approval held by OMC Parts & Accessories, McClure Street, Galesburg, IL.

160.064/940/0 dated 1 April 1981, expired 1 April 1986. Adult Medium, Model 173139, cloth covered unicellular plastic foam "Water Ski Vest", approval held by OMC Parts & Accessories, McClure Street, Galesburg, IL.

160.064/941/0 dated 1 April 1981, expired 1 April 1986. Adult Large, Model 173141, cloth covered unicellular plastic foam "Water Ski Vest", approval held by OMC Parts & Accessories, McClure Street, Galesburg, IL.

160.064/942/0 dated 1 April 1981, expired 1 April 1986. Adult X-Large, Model 173143, cloth covered unicellular plastic foam "Water Ski Vest", approval held by OMC Parts & Accessories, McClure Street, Galesburg, IL.

160.064/943/0 dated 1 April 1981, expired 1 April 1986. Adult XX-Large, Model 173145, cloth covered unicellular plastic foam "Water Ski Vest", approval held by OMC Parts & Accessories, McClure Street, Galesburg, IL.

160.064/962/0 dated 1 June 1978, expired 1 June 1983. Child Small, Model BV–2, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/963/0 dated 1 June 1978, expired 1 June 1983. Child Medium, Model BV–2, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/964/0 dated 1 June 1978, expired 1 June 1983. Adult, Model BV–2, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/965/0 dated 1 June 1978, expired 1 June 1983. Adult, Model BV–2, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/966/0 dated 1 June 1978, expired 1 June 1983. Adult, Model BV–2, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/967/0 dated 1 June 1978, expired 1 June 1983. Adult, Model BV–2, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1069/0 dated 23 February 1981, termination effective 13 August 1981. Child Medium, Model NCSS–G, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Taperflex of America, 558 Library Street, San Fernando, CA 91341.

160.064/1070/0 dated 23 February 1981, termination effective 13 August 1981. Adult, Model NCMS–G, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Taperflex of America, 558 Library Street, San Fernando, CA 91341.

160.064/1064/1 dated 22 February 1977, expired 22 February 1982. Adult Large, Models 5738, 5728, 6218, and 7218, cloth covered unicellular plastic foam, "Hunt and Fish Buoyant Vest", approval held by Kent Sporting Goods, 710 Orange Street, Ashland, OH 44805.

160.064/1089/0 dated 7 May 1980, termination effective 15 August 1983. Adult-Large, Model CBVXL-103, cloth covered unicellular plastic foam "Boating Vest", approval held by Western Water Ski, 6077 S.W. Lakeview Blvd., Lake Oswego, OR 97034.

160.064/1333/0 dated 26 March 1980, expired 26 March 1985. Adult Universal, Model 750, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1334/0 dated 21 April 1980, termination effective 2 September 1982. Child Small (30 to 50 lb.), Model S9762, vinyl dipped unicellular plastic foam "Ski, Swim, and Jump Vest", approval held by World Team Mfg., 25 Parmaron Way, Novato, CA 94947.

160.064/1335/0 dated 21 April 1980, termination effective 2 September 1982. Adult Small, Model S9763, vinyl dipped unicellular plastic foam "Ski, Swim, and Jump Vest", approval held by World Team Mfg., 25 Parmaron Way, Novato, CA 94947.

160.064/1336/0 dated 21 April 1980, termination effective 2 September 1982. Adult Medium, Model S9764, vinyl dipped unicellular plastic foam "Ski, Swim, and Jump Vest", approval held by World Team Mfg., 25 Parmaron Way, Novato, CA 94947.

160.064/1337/0 dated 21 April 1980, termination effective 2 September 1982. Adult Large, Model S9765, vinyl dipped unicellular plastic foam "Ski, Swim, and Jump Vest", approval held by World Team Mfg., 25 Parmaron Way, Novato, CA 94947.

160.064/1338/0 dated 21 April 1980, termination effective 2 September 1982. Adult X-Large, Model S9766, vinyl dipped unicellular plastic foam "Ski, Swim, and Jump Vest", approval held by World Team Mfg., 25 Parmaron Way, Novato, CA 94947.

160.064/1372/0 dated 19 April 1984, termination effective 16 December 1986. Child Small (for persons 30 to 50 lb.), Models PW-307-N or PW-3507-N, cloth covered unicellular plastic foam "Beach 'N Boating Buoyant Vest" or "Buoyant Vest", approval held by Stearns Mfg. Co, P.O. Box 1498, St. Cloud, MN 56301.

160.064/1511/0 dated 9 February 1983, termination effective 12 February 1988. Adult Small or Medium, Model 201, 801, 805, 808, and 908, cloth covered, unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746-0009.

160.064/1512/0 dated 9 February 1983, termination effective 12 February 1988. Adult Large or X-Large, Model 201, 801, 805, 808, and 908, cloth covered, unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746-0009.

160.064/1513/0 dated 11 March 1980, expired 11 March 1985. Child, Model 505A, cloth covered unicellular plastic foam "Ski and Sports Vest", approval held by O'Brien International, Inc., Div. of the Coleman Company, 14615 NE. 91st Street, Redmond, WA 98052.

160.064/1514/0 dated 11 March 1980, expired 11 March 1985. Youth Medium, Model 505A, cloth covered unicellular plastic foam "Ski and Sports Vest", approval held by O'Brien International, Inc., Div. of the Coleman Company, 14615 NE. 91st Street, Redmond, WA 98052.

160.064/1515/0 dated 11 March 1980, expired 11 March 1985. Adult X-Small, Model 505A, cloth covered unicellular plastic foam "Ski and Sports Vest", approval held by O'Brien International, Inc., Div. of the Coleman Company, 14615 NE. 91st Street, Redmond, WA 98052.

160.064/1516/0 dated 11 March 1980, expired 11 March 1985. Adult Small, Model 505A, cloth covered unicellular plastic foam "Ski and Sports Vest" approval held by O'Brien International, Inc., Div. of the Coleman Company, 14615 NE. 91st Street, Redmond, WA 98052.

160.064/1517/0 dated 11 March 1980, expired 11 March 1985. Adult Medium, Model 505A, cloth covered unicellular plastic foam "Ski and Sports Vest", approval held by O'Brien International, Inc., Div. of the Coleman Company, 14615 NE. 91st Street, Redmond, WA 98052.

160.064/1518/0 dated 11 March 1980, expired 11 March 1985. Adult Large, Model 505A, cloth covered unicellular plastic foam "Ski and Sports Vest", approval held by O'Brien International, Inc., Div. of the Coleman Company, 14615 NE. 91st Street, Redmond, WA 98052.

160.064/1519/0 dated 11 March 1980, expired 11 March 1985. Adult X-Large, Model 505A, cloth covered unicellular plastic foam "Ski and Sports Vest", approval held by O'Brien International, Inc., Div. of the Coleman Company, 14615 NE. 91st Street, Redmond, WA 98052.

160.064/1521/0 dated 11 September 1978, expired 11 September 1983. Child Small, Model 800 Kiddy, cloth covered unicellular plastic foam "Water Safety Foam Vest", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/1620/0 dated 25 March 1980, expired 25 March 1985. Child Medium, Model 14030A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1621/0 dated 25 March 1980, expired 25 March 1985. Adult, Model 14031A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1622/0 dated 25 March 1980, expired 25 March 1985. Adult, Model 14032A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1623/0 dated 25 March 1980, expired 25 March 1985. Adult, Model 14033A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1624/0 dated 25 March 1980, expired 25 March 1985. Adult, Model 14034A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1625/0 dated 26 March 1980, expired 26 March 1985. Child Medium, Model 6754A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1626/0 dated 26 March 1980, expired 26 March 1985. Adult, Model 6755A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1627/0 dated 26 March 1980 expired 26 March 1985. Adult, Model 6756A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1628/0 dated 26 March 1980 expired 26 March 1985. Adult, Model 6757A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1629/0 dated 26 March 1980 expired 26 March 1985. Adult, Model 6758A, vinyl dipped unicellular plastic foam "Sailing & Water Ski Vest", approval held by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

160.064/1665/0 dated 25 March 1983, termination effective 9 September 1986. Adult Small, Model FV–1, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Paris Southern Corp., P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1666/0 dated 25 March 1983, termination effective 9 September 1986. Adult Medium, Model FV–1, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Paris Southern Corp., P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1667/0 dated 25 March 1983, termination effective 9 September 1986. Adult Large, Model FV–1, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Paris Southern Corp., P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1669/0 dated 25 March 1983, termination effective 9 September 1986. Adult X-Large, Model FV–1, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Paris Southern Corp., P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1676/0 dated 25 March 1983, termination effective 9 September 1986. Adult Small, Model FV–4, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Paris Southern Corp., P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1677/0 dated 25 March 1983, termination effective 9 September 1986. Adult Medium, Model FV–4, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Paris Southern Corp., P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1678/0 dated 25 March 1983, termination effective 9 September 1986. Adult Large, Model FV–4, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Paris Southern Corp., P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1679/0 dated 25 March 1983, termination effective 9 September 1986. Adult X-Large, Model FV–4, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Paris Southern Corp., P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1680/0 dated 9 November 1978, expired 9 November 1983. Tyke (30 to 50 lbs.), Model RA–20, cloth covered unicellular plastic foam "General Boating Vest", approval held by Riverside Associates, Francestown, NH 03043.

160.064/1681/0 dated 9 November 1978, expired 9 November 1983. Youth (50 to 90 lbs.), Model RA–30, cloth covered unicellular plastic foam "General Boating Vest", approval held by Riverside Associates, Francestown, NH 03043.

160.064/1682/0 dated 9 November 1978, expired 9 November 1983. Adult Small, Model RA–40, cloth covered unicellular plastic foam "General Boating Vest", approval held by Riverside Associates, Francestown, NH 03043.

160.064/1683/0 dated 9 November 1978, expired 9 November 1983. Adult Medium, Model RA–50, cloth covered unicellular plastic foam "General Boating Vest", approval held by Riverside Associates, Francestown, NH 03043.

160.064/1684/0 dated 9 November 1978, expired 9 November 1983. Adult Large, Model RA–60, cloth covered unicellular plastic foam "General Boating Vest", approval held by Riverside Associates, Francestown, NH 03043.

160.064/1685/0 dated 9 November 1978, expired 9 November 1983. Adult X-Large, Model RA–70, cloth covered unicellular plastic foam "General Boating Vest", approval held by Riverside Associates, Francestown, NH 03043.

160.064/1691/0 dated 9 February 1983, termination effective 12 February 1983. Youth, Model 908, cloth covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/1716/0 dated 6 August 1984, termination effective 20 February 1986. Tyke, Model 304, cloth covered unicellular plastic foam "Buoyant Sport Vest", approval held by Omega Corporation, 130 Condor Street, East Boston, MA 02128.

160.064/1719/0 dated 6 August 1984, termination effective 20 February 1986. Youth, Model 305, cloth covered unicellular plastic foam "Buoyant Sport Vest", approval held by Omega Corporation, 130 Condor Street, East Boston, MA 02128.

160.064/1720/0 dated 6 August 1984, termination effective 20 February 1986. Adult Small, Model 306, cloth covered unicellular plastic foam "Buoyant Sport Vest", approval held by Omega Corporation, 130 Condor Street, East Boston, MA 02128.

160.064/1721/0 dated 6 August 1984, termination effective 20 February 1986. Adult Medium, Model 307, cloth covered unicellular plastic foam "Buoyant Sport Vest", approval held by Omega Corporation, 130 Condor Street, East Boston, MA 02128.

160.064/1722/0 dated 6 August 1984, termination effective 20 February 1986. Adult Large, Model 308, cloth covered unicellular plastic foam "Buoyant Sport Vest", approval held by Omega Corporation, 130 Condor Street, East Boston, MA 02128.

160.064/1723/0 dated 6 August 1984, termination effective 20 February 1986. Adult X-Large, Model 309, cloth covered unicellular plastic foam "Buoyant Sport Vest", approval held by Omega Corporation, 130 Condor Street, East Boston, MA 02128.

160.064/1724/0 dated 6 August 1984, termination effective 20 February 1986. Adult XX-Large, Model 310, cloth covered unicellular plastic foam "Buoyant Sport Vest", approval held by Omega Corporation, 130 Condor Street, East Boston, MA 02128.

160.064/1776/0 dated 6 April 1981, expired 6 April 1986. Adult Small, Models IHV–501, FV–100, FV–105, or FJS–50, cloth covered unicellular plastic foam "Flotation Jacket", approval held by Stearns Mfg. Co, P.O. Box 1498, St. Cloud, MN 56301.

160.064/1777/0 dated 6 April 1981, expired 6 April 1986. Adult Medium, Models IHV–501, FV–100, FV–105, or FJS–50, cloth covered unicellular plastic foam "Flotation Jacket", approval held by Stearns Mfg. Co, P.O. Box 1498, St. Cloud, MN 56301.

160.064/1778/0 dated 6 April 1981, expired 6 April 1986. Adult Large, Models IHV–501, FV–100, FV–105, or FJS–50, cloth covered unicellular plastic foam "Flotation Jacket", approval held by Stearns Mfg. Co, P.O. Box 1498, St. Cloud, MN 56301.

160.064/1780/0 dated 6 April 1981, expired 6 April 1986. Adult XX-Large, Models IHV–501, FV–100, FV–105, or FJS–50, cloth covered unicellular plastic foam "Flotation Jacket", approval held by Stearns Mfg. Co, P.O. Box 1498, St. Cloud, MN 56301.

160.064/1833/0 dated 22 February 1983, termination effective 12 February 1986. Adult Small, Model 803B, cloth covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/1834/0 dated 22 February 1983, termination effective 12 February 1986. Adult Medium, Model 803B, cloth covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/1835/0 dated 22 February 1983, termination effective 12 February

1986. Adult Large, Model 803B, cloth covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/1836/0 dated 22 February 1983, termination effective 12 February 1986. Adult X-Large, Model 803B, clotn covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/1839/0 dated 25 March 1983, termination effective 9 September 1986. Adult Medium, Models FV–2, 180, 181, cloth covered unicellular plastic foam "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1840/0 dated 25 March 1983, termination effective 9 September 1986. Adult Large, Models FV–2, 180, 181, cloth covered unicellular plastic foam "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1841/0 dated 25 March 1983, termination effective 28 November 1986. Adult X-Large, Models FV–2, 180, 181, cloth covered unicellular plastic foam "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1842/0 dated 25 March 1983, termination effective 9 September 1986. Adult Small, Model 380, cloth covered unicellular plastic foam "Ski-Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1843/0 dated 25 March 1983, termination effective 9 September 1986. Adult Medium, Model 380, cloth covered unicellular plastic foam "Ski-Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1844/0 dated 25 March 1983, termination effective 9 September 1986. Adult Large, Model 380, cloth covered unicellular plastic foam "Ski-Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1845/0 dated 25 March 1983, termination effective 9 September 1986. Adult X-Large, Model 380, cloth covered unicellular plastic foam "Ski-Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1846/0 dated 25 March 1983, termination effective 9 September 1986. Adult Small, Model 280, cloth covered unicellular plastic foam "Ski-Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1847/0 dated 25 March 1983, termination effective 9 September 1986. Adult Medium, Model 280, cloth covered unicellular plastic foam "Ski-Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1848/0 dated 25 March 1983, termination effective 9 September 1986. Adult Large, Model 280, cloth covered unicellular plastic foam "Ski-Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1849/0 dated 25 March 1983, termination effective 9 September 1986. Adult X-Large, Model 280, cloth covered unicellular plastic foam "Ski-Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1897/0 dated 6 August 1981, termination effective 19 February 1986. Adult Small, Model AV3S, cloth covered unicellular plastic foam, "General Purpose", approval held by Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602.

160.064/1898/0 dated 6 August 1981, termination effective 19 February 1986. Adult Medium, Model AV3M, cloth covered unicellular plastic foam "General Purpose", approval held by Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602.

160.064/1899/0 dated 6 August 1981, termination effective 19 February 1986. Adult Large, Model AV3L, cloth covered unicellular plastic foam "General Purpose", approval held by Ero Industries, Inc., 189 West Madison Street, Chicago, IL 60602.

160.064/1904/0 dated 1 July 1981, termination effective 22 May 1986. Child, SSV–3010, fabric covered unicellular plastic foam "Buoyant Vest", approval held by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301.

160.064/1905/0 dated 1 July 1981, termination effective 22 May 1986. Youth, SSV–3020, fabric covered unicellular plastic foam "Buoyant Vest", approval held by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301.

160.064/1906/0 dated 1 July 1981, termination effective 22 May 1986. Adult Universal, SSV–3, fabric covered unicellular plastic foam "Buoyant Vest", approval held by Stearns Mfg. Co., P.O. Box 1498, St. Cloud, MN 56301.

160.064/1910/0 dated 22 February 1983, termination effective 23 August 1985. Child Small, Model 909, cloth covered unicellular plastic foam "Bucyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/1911/0 dated 22 February 1983, termination effective 23 August 1985. Youth, Model 909, cloth covered unicellular plastic foam "Buoyant Vest ; approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/1912/0 dated 22 February 1983, termination effective 23 August 1985. Adult Small/Medium, Model 909, cloth covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/1913/0 dated 22 February 1983, termination effective 23 August 1985. Adult Large/X-Large, Model 909, cloth covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746–0009.

160.064/1955/0 dated 25 March 1983, termination effective 9 September 1986. Adult Universal, Model FV–10, FV–3, FV–14, FV–17, cloth covered unicellular plastic foam "Buoyant Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1956/0 dated 25 March 1983, termination effective 9 September 1986. Adult X-Small, Model FV–11, cloth covered unicellular plastic foam "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Geeenville, SC 29604.

160.064/1957/0 dated 25 March 1983, termination effective 9 September 1986. Adult Small/Medium, Model FV–11, cloth covered unicellular plastic foam "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Geeenville, SC 29604.

160.064/1958/0 dated 25 March 1983, termination effective 9 September 1986. Adult Large/X-Large, Model FV–11, cloth covered unicellular plastic foam "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Geeenville, SC 29604.

160.064/1970/0 dated 25 March 1983, termination effective 9 September 1986. Junior, Model JR–1, cloth covered unicellular plastic foam "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer, 9038, Station A, Greenville, SC 29604.

160.064/1973/0 dated 25 March 1983, termination effective 9 September 1986. Adult Small/Medium, Model FV–12, FV–15, cloth covered unicellular plastic foam "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1974/0 dated 25 March 1983, termination effective 9 September 1986. Adult Large/X-Large, Model FV-12, FV-15, cloth covered unicellular plastic foam "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1975/0 dated 25 March 1983, termination effective 9 September 1986. Adult Universal, Model FV-13, cloth covered unicellular plastic foam "Canoeing and Kayaking Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/1976/0 dated 29 December 1981, termination effective 19 February 1986. Adult Small, Model SKI-S, fabric covered unicellular plastic foam "Ski Vest", approval held by Ero Industries Inc., 189 W. Madison Street, Chicago, IL 60602.

160.064/1977/0 dated 29 December 1981, termination effective 19 February 1986. Adult Medium, Model SKI-M, fabric covered unicellular plastic foam "Ski Veat", approval held by Ero Industries Inc., 189 W. Madison Street, Chicago, IL 60602.

160.064/1978/0 dated 29 December 1981, termination effective 19 February 1986. Adult Large, Model SKI-L, fabric covered unicellular plastic foam "Ski Vest", approval held by Ero Industries Inc., 189 W. Madison Street, Chicago, IL 60602.

160.064/2040/0 dated 16 March 1982, termination effective 19 February 1986. Adult Small, Model SKI-SX, cloth covered unicellular plastic foam "SKI-VEST", approval held by Ero Industries, Inc., 189 West Madison, Chicago, IL 60602.

160.064/2041/0 dated 16 March 1982, termination effective 19 February 1986. Adult Medium, Model SKI-MX, cloth covered unicellular plastic foam "Ski-Vest", approval held by Ero Industries, Inc., 189 West Madison, Chicago, IL 60602.

160.064/2042/0 dated 16 March 1982, termination effective 19 February 1986. Adult Large, Model SKI-LX, cloth covered unicellular plastic foam "Ski-Vest", approval held by Ero Industries, Inc., 189 West Madison, Chicago, IL 60602.

160.064/2044/0 dated 15 March 1982, termination effective 30 May 1986. Adult Small, Model SJV-S, vinyl coated material, unicellular plastic foam Sailing and/or Water Ski Vest", approval held by Fabrionics, P.O. Box 94, Rt. 130, South, Camargo, IL 61919.

160.064/2049/0 dated 31 August 1984, termination effective 20 November 1986. Youth, Model 300, cloth covered unicellular plastic foam "General Boating", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746-0009.

160.064/2050/0 dated 31 August 1984, termination effective 20 November 1986. Adult Small, Model 300, cloth covered unicellular plastic foam "General Boating", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746-0009.

160.064/2051/0 dated 31 August 1984, termination effective 20 November 1986. Adult Medium, Model 300, cloth covered unicellular plastic foam "General Boating", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746-0009.

160.064/2052/0 dated 31 August 1984, termination effective 20 November 1986. Adult Large, Model 300, cloth covered unicellular plastic foam "General Boating", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746-0009.

160.064/2053/0 dated 31 August 1984, termination effective 20 November 1986. Adult X-Large, Model 300, cloth covered unicellular plastic foam "General Boating", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746-0009.

160.064/2109/0 dated 9 February 1983, termination effective 12 February 1986. Adult XX-Large or Magnum, Model 201, 801, 805, 808, and 908, cloth covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746-0009.

160.064/2121/0 dated 20 June 1984, termination effective 19 February 1986. Adult Universal, Model WW-1, WW-1A, cloth covered unicellular plastic foam, "General Purpose", approval held by Ero Industries, Inc., 5940 West Touhy Avenue, Chicago, IL 60648.

160.064/2149/0 dated 7 September 1984, termination effective 23 August 1985. Adult Small/Medium, Models 901, 902, 903, cloth covered unicellular plastic foam, "Buoyant Vest", approval held by America's Cup, Inc., P.O. 2009, La Puenta, CA 91746-0009.

160.064/2150/0 dated 7 September 1984, termination effective 23 August 1985. Adult Large/X-Large, Models 901, 902, 903, cloth covered unicellular plastic foam, "Buoyant Vest", approval held by America's Cup, Inc., P.O. 2009, La Puenta, CA 91746-0009.

160.064/2167/0 dated 12 March 1985, termination effective 9 September 1986. Adult X-Small, Model FV-16, FV-16-10, cloth covered unicellular plastic foam, "Buoyant Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/2168/0 dated 12 March 1985, termination effective 9 September 1986. Adult Small, Model FV-16, FV-16-10, cloth covered unicellular plastic foam, "Buoyant Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/2169/0 dated 12 March 1985, termination effective 9 September 1986. Adult Medium, Model FV-16, FV-16-10, cloth covered unicellular plastic foam, "Buoyant Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/2170/0 dated 12 March 1985, termination effective 9 September 1986. Adult Large, Model FV-16, FV-16-10, cloth covered unicellular plastic foam, "Buoyant Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/2171/0 dated 12 March 1985, termination effective 9 September 1986. Adult X-Large, Model FV-16, FV-16-10, cloth covered unicellular plastic foam, "Buoyant Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/2186/0 dated 21 April 1983, termination effective 13 March 1987. 17" O.D. by 3 thick, Model 207, cloth covered unicellular plastic foam "Buoyant Cushion", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/2187/0 dated 19 January 1984, termination effective 13 March 1987. 20", Model 209, cloth covered unicellular plastic foam "Recreational Ring Cushion", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/2198/0 dated 20 May 1983, termination effective 13 March 1987. Child Small, Model 450, cloth covered unicellular plastic foam "Water Safety Foam Vest", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/2199/0 dated 20 May 1983, termination effective 13 March 1987. Child Medium, Model 451, cloth covered unicellular plastic foam "Water Safety Foam Vest", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/2200/0 dated 20 May 1983, termination effective 13 March 1987. Adult Universal, Model 452, cloth covered unicellular plastic foam "Water Safety Foam Vest", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/2215/0 dated 1 August 1983, termination effective 9 September 1986. Child Small, Model JR-2, cloth covered, unicellular plastic foam, "General Boating Vest", approval held by "Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/2216/0 dated 1 August 1983, termination effective 9 September 1986. Child Small, Model JR–3, cloth covered, unicellular plastic foam, "General Boating Vest", approval held by "Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/2217/0 dated 1 August 1983, termination effective 9 September 1986. Adult XX-Large, Models FV–3, 180, 181, cloth covered, unicellular plastic foam, "General Boating Vest", approval held by Paris Southern Corporation, P.O. Drawer 9038, Station A, Greenville, SC 29604.

160.064/2231/0 dated 6 March 1984, termination effective 13 March 1987. Tot, Model 100, cloth covered unicellular plastic foam, "General Boating Vest", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/2232/0 dated 6 March 1984, termination effective 13 March 1987. Child, Model 101, cloth covered unicellular plastic foam, "General Boating Vest", approval held by Miltco Products Corporation, 139 Emerson Place, Brooklyn, NY 11205.

160.064/2259/0 dated 13 December 1983, termination effective 19 February 1986. Adult Small, Model SKI–SPE, cloth covered unicellular plastic foam "Ski Vest", approval held by Ero Industries, Inc., 5940 W. Touhy Avenue, Chicago, IL 60648.

160.064/2260/0 dated 13 December 1983, termination effective 19 February 1986. Adult Medium, Model SKI–MPE, cloth covered unicellular plastic foam "Ski Vest", approval held by Ero Industries, Inc., 5940 W. Touhy Avenue, Chicago, IL 60648.

160.064/2261/0 dated 13 December 1983, termination effective 19 February 1986. Adult Large, Model SKI–LPE, cloth covered unicellular plastic foam "Ski Vest", approval held by Ero Industries, Inc., 5940 W. Touhy Avenue, Chicago, IL 60648.

160.064/2272/0 dated 7 September 1984, termination effective 23 August 1985. Adult Universal, Models 901, 902, 903, and 906, cloth covered, unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puenta, CA 91746–0009.

160.064/2295/0 dated 29 January 1985, termination effective 12 February 1986. Adult Small, Model 850L and 830L, cloth covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puenta, CA 91746–0009.

160.064/2296/0 dated 29 January 1985, termination effective 12 February 1986. Adult Small, Model 850M and 830M, cloth covered unicellular plastic foam "Buoyant Vest", approval held by America's Cup, Inc., P.O. Box 2009, La Puenta, CA 91746–0009.

**Automatic Disengaging Device for Liferafts**

160.070/1/0 dated 31 May 1978, expired 31 May 1983. Type 3RA 1158, approval held by B. F. Goodrich, Engineered System Company, Union, WV 24983.

**Fire Protective Systems**

161.002/8/1 dated 19 January 1979, expired 19 January 1984. Models D, FKDS, FKDL, DK, and SKL, approval held by Detex Corporation, 53 Park Place, New York, NY 10007.

**Safety Valve (Power Boilers)**

162.001/263/0 dated 8 April 1981, expired 8 April 1986. Crosby Style HN–MS–55, approval held by Crosby Valve and Gage Company, 43 Kendrick Street, Wrenitham, MA 02093.

162.001/264/0 dated 8 April 1981, expired 8 April 1986. Crosby Style HN–MS–56, approval held by Crosby Valve and Gage Company, 43 Kendrick Street, Wrentham, MA 02093.

162.001/265/0 dated 8 April 1981, expired 8 April 1986. Crosby Style HN–MS–65, approval held by Crosby Valve and Gage Company, 43 Kendrick Street, Wrentham, MA 02093.

162.001/266/0 dated 8 April 1981, expired 8 April 1986. Crosby Style HN–MS–66, approval held by Crosby Valve and Gage Company, 43 Kendrick Street, Wrentham, MA 02093.

162.001/268/0 dated 8 April 1981, expired 8 April 1986. Crosby Style HN–MS–66–9, approval held by Crosby Valve and Gage Company, 43 Kendrick Street, Wrentham, MA 02093.

162.001/269/0 dated 8 April 1981, expired 8 April 1986. Crosby Style HN–MS–55–9, approval held by Crosby Valve and Gage Company, 43 Kendrick Street, Wrentham, MA 02093.

162.001/270/0 dated 8 April 1981, expired 8 April 1986. Crosby Style HN–MS–56–9, approval held by Crosby Valve and Gage Company, 43 Kendrick Street, Wrentham, MA 02093.

**Safety Valve (Steam Heating Boilers)**

162.012/21/0 dated 8 April 1981, expired 8 April 1986. Type 1511, approval held by Dresser Industrial Valve Operations, P.O. Box 1430, Alexandria, LA 71301.

**Water Spray Type Fire Extinguishing Systems**

162.036/1/0 dated 2 May 1978, expired 2 May 1983. Akron Foghed Systems, approval held by Axron Brass Company, P.O. Box 86, Wooster, OH 44691.

**Backfire Flame Arrester for Gasoline Engines**

162.041/99/0 dated 25 January 1977, expired 25 January 1982. Onan Model 145B393, approval held by Onan Corporation, 1400 73rd Avenue, NE., Minneapolis, MN 55432.

162.041/100/0 dated 25 January 1977, expired 25 January 1982. Onan Model 145B393, approval held by Onan Corporation, 1400 73rd Avenue, NE., Minneapolis, MN 55432.

162.041/170/0 dated 2 June 1978, expired 2 June 1983. Kawasaki Model Y73, approval held by Kawasaki Motors Corporation, 1062 McGaw Ave., P.O. Box 11447, Santa Ana, CA 92711.

**Oily Water Separators**

162.050/1018/0 dated 30 July 1980, expired 30 July 1985. Model SPC 0.5 BW, approval held by Butterworth Systems/SEREP OWS, Butterworth Systems, Inc., 224 Park Ave., P.O. Box 352, Florham Park, NJ 07932.

**Cargo Monitors**

162.050/5001/0 dated 20 May 1980, expired 20 May 1985. Model 5E, Type OTM 1411C, approval held by Babcock-Bristol, Ltd., 218 Purley Way, Croydon, England.

162.050/5002/0 dated 17 May 1984, termination effective 9 September 1986. Salwico Oil Pollution Monitor, approval held by Salen & Wicander Akriebalag, P.O. Box 1122, S–171 22, Solna, Sweden.

162.050/5003/0 dated 9 January 1985, termination effective 9 September 1986. Model 5E, Type OTM 1411C, approval held by Sasakura Engineering Co., Ltd., 7–5 Mitejima 6-Chome, Nishikyodogawa-Ku, Osaka 555, Japan.

162.050/5004/1 dated 22 May 1985, termination effective 9 September 1986. OILCON MK III, approval held by STC International Marine, INTELCO House, 302 Commonside East, Mitcham, Surrey CR4 1YT, England.

162.050/5005/1 dated 4 December 1985, termination effective 9 September 1986. Facet Mark V Ballast Monitor, approval held by Facet Industrial Division, Facet Enterprises, Inc., P.O. Box 50099, Tulsa, OK 74150–0099.

162.050/5009/0 dated 30 March 1982, termination effective 9 September 1986. Type OTM–17–X tanker deballasting oil content monitor, approval held by Babcock-Bristol, Ltd., 218 Purley Way, Croydon, England.

162.050/5010/0 dated 2 April 1984, termination effective 9 September 1986. Model ODME–S.003, approval held by SERES, Rue Albert Einstein, Z.I. d'Aix-les Miles, les Milles Cedex 13763, France.

**Structural Insulation**

164.007/31/1 dated 14 May 1980, expired 14 May 1985. Cafco Blaze Shield Type D C/F, approval held by United States Mineral Products Co., Stanhope, NJ 07874.

164.007/46/0 dated 1 December 1981, termination effective 14 April 1986. Thermafiber Felt, approval held by United States Gypsum Co., 1000 East Northwest Highway, Des Plains, IL 60016.

164.007/47/0 dated 14 May 1980, expired 14 May 1985. Cafco Deck-Shield Type D C/F, approval held by United States Mineral Products Co., Stanhope, NJ 07874.

164.007/52/0 dated 14 October 1980, expired 14 October 1985. Type 1780X and Type 1760X, approval held by Holmes Insulations Limited, 561 Scott Rd., P.O. Box 2079, Sarnia, Ontario N7T 7L4, Canada.

**Bulkhead Panels**

164.008/95/0 dated 5 May 1985, termination effective 9 September 1986. Type 33A, approval held by Isolamin Ecomax, S–85184, Lulea, Sweden.

164.008/100/0 dated 25 September 1980, expired 25 September 1985. Joinlock 200, approval held by Intersystems Design and Technology Corp., 125 Industrial Rd., Summerville, SC 29483.

**Non-Combustible Materials**

164.009/124/0 dated 7 April 1983, termination effective 14 April 1988. Thermafiber mineral wool panels, approval held by United States Gypsum Co., 1000 East Northwest Highway, Des Plains, IL 60016.

164.009/211/0 dated 13 October 1981, termination effective 9 September 1986. Marine Board K–650, approval held by Nichias Corp., No. 1–26, 1-Chome, Shibadaimon, Minatu-Ku, Tokyo 105, Japan.

164.009/218/0 dated 31 July 1980, expired 31 July 1985. Elevated Temperature Service Board/Marine Board, approval held by Knauf Fiber Glass GmbH, 240 Elizabeth Street, Shelbyville, IN 46176.

164.009/219/0 dated 31 July 1980, expired 31 July 1985. Elevated Temperature Service Pipe/Marine Pipe, approval held by Knauf Fiber Glass GmbH, 240 Elizabeth Street, Shelbyville, IN 46176.

**Interior Finish**

164.012/40/0 dated 8 November 1984, termination effective 9 September 1986. "Melanitto NVA" and "NP", approval held by Nitto Boseki Co., Ltd., 6–1, Yaesu 2 Chome, Tokyo, Japan.

164.012/51/0 dated 23 July 1981, expired 23 July 1986. Glass cloth and aluminum foil facing, approval held by Jamestown Fiber Glass, Inc., c/o National Distributing Co., Inc., 58 Maple Street, Norwood, NJ 07648.

164.012/52/0 dated 28 August 1981, expired 28 August 1986. Aluminum foil facing, approval held by Jamestown Fiber Glass, Inc., c/o National Distributing Co., Inc., 58 Maple Street, Norwood, NJ 07648.

164.012/53/0 dated 14 December 1981, termination effective 9 September 1986. Fiberglass cloth facing, approval held by Jamestown Fiber Glass, Inc., c/o National Distributing Co., Inc., 58 Maple Street, Norwood, NJ 07648.

Dated: May 6, 1987.

J.W. Kime,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 87–11045 Filed 5–13–87; 8:45 am]

BILLING CODE 4910–14–M

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## Federal Railroad Administration

### Petitions for Exemption or Waiver; Corinth and Counce Railroad et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that nine railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with certain provisions of the Hours of Service Act.

Sections 2 and 3a of the Hours of Service Act make it unlawful for a railroad to require or permit (i) employees engaged in or connected with the movement of a train and (ii) employees engaged in installing, repairing, or maintaining signal systems to remain on duty for a period in excess of 12 hours (45 U.S.C. 62, 63a). Section 3 of the Hours of Service Act, which governs operators and dispatchers, establishes a maximum of (i) 9 hours duty in an office employing two or more shifts and (ii) 12 hours duty in an office employing one shift (45 U.S.C. 63). However, the Hours of Service Act contains a provision that permits a railroad which employs not more than 15 employees who are subject to the statute to seek an exemption from the limitations imposed by the statute. 45 U.S.C. 64a(e).

**Corinth and Counce Railroad (C&C)**

*FRA Waiver Petition Docket No. HS–86–30*

The C&C seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The C&C provides service over 16 miles of track extending from Corinth, Mississippi, to Counce, Tennessee.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Caroline Rail Service, Inc. (CRS)**

*FRA Waiver Petition Docket No. HS–86–31*

The CRS seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The CRS provides service over three miles of track at Morehead City, North Carolina.

The CRS states that it is not their intention to employ a train crew over 12 hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Chicago and Western Indiana Railroad Company (C&WI)**

*FRA Waiver Petition Docket No. HS–86–32*

The C&WI seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The C&WI provides trackage over which various carriers operate in order to interchange freight cars with other carriers in the Chicago Terminal area.

The C&WI does not employ any train or locomotive crews; however, it does employ 12 persons (4 train dispatchers, 6 towermen and 2 signalmen) covered by the Hours of Service Act. The C&WI states that it does not expect the consistent need to work these employees in excess of the present restrictions, but primarily only because of after-hours failures and unanticipated sickness.

The petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Wisconsin and Calumet Railroad (W&C)**

*FRA Waiver Petition Docket No. HS–86–33*

The W&C seeks a continuation of a previously issued exemption so that it

can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The W&C provides service on over 94 miles of track extending from Freeport, Illinois, to Madison, Wisconsin and from Jamesville, Wisconsin, to Monroe, Wisconsin.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Dakota Rail (DR)**

*FRA Waiver Petition Docket No. HS–86–34*

The DR seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The DR provides service over 82 miles of track in the States of South Dakota and Minnesota.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Maryland and Delaware Railroad (M&D)**

*FRA Waiver Petition Docket No. HS–87–1*

The M&D seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The M&D provides service over 119 miles of trackage on the Delmarva Peninsula, which is located on the eastern shore of States of Delaware, Maryland and Virginia.

The petition indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Winchester and Western Railroad (W&W)**

*FRA Waiver Petition Docket No. HS–87–2*

The W&W seeks a continuation of a previously issued exemption for its Virginia Division and seeks an exemption for its New Jersey Division so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The W&W provides service on over 16 miles of track in the State of Virginia and over 46 miles of track in the State of New Jersey.

The W&W states that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Hilledale Country Railway Company (HCRC)**

*FRA Waiver Petition Docket No. HS–87–3*

The HCRC seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The HCRC provides service over 84 miles of track extending from Hilledale, Michigan, to Montpelier, Ohio.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Texas North Western Railway (TNW)**

*FRA Waiver Petition Docket No. HS–87–4*

The TNW seeks this exemption so that it can permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The TNW provides service over 71 miles of track extending form Etter Junction to Bernstein, Texas, from Sheerin Junction to Sheerin, Texas, and from More Junction to Pringle, Texas.

The petitioner indicates that granting the exemption will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings submitting written views and comments. FRA has not scheduled a hearing or other opportunity for oral comment since the facts do not appear to warrant it. Communications concerning the proceedings should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before June 29, 1987, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on May 8, 1987.

J.W. Walsh,

*Associate Administration for Safety.*

[FR Doc. 87–10995 Filed 5–13–87; 8:45 am]

BILLING CODE 4910–06–M

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## National Highway Traffic Safety Administration

**[Docket No. IP 87–05]**

## BMW of North America; Receipt of Petition for Determination of Inconsequential Noncompliance

BMW of North America, Inc., BMW Plaza, Montvale, New Jersey, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et sec.), for an apparent noncompliance with 49 CFR 571.108, Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraphs S4.1.1.36(f)(4)(ii) and S4.1.1.36(c) of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, require that the lens of each upper beam headlamp be permanently marked with the letter "U" and the lens of each replaceable bulb headlamp using HB3 or HB4 light sources, or HB1 light sources in conjunction with HB3 or HB4 light sources within a headlamp system on a motor vehicle, permanently display the Type Designation(s) for that standardized replaceable light source on the lens in front of each light source. BMW of North America manufactured 1,400 735i passenger cars from January 10, 1987 to February 17, 1987, that do not comply with the above paragraphs. The lens of each upper beam headlamp was not permanently marked "U" and "HB3" as required by FMVSS No. 108.

BMW considers these noncompliances to be inconsequential as they relate to motor vehicle safety, because:

1. Mechanics will always be able to determine and obtain the correct replaceable bulbs and headlamps, and will install them correctly.

2. BMW replaceable bulb headlamps are vehicle-specific and left/right-specific. These provisions make incorrect positioning of the upper and lower beam headlamps physically impossible.

3. The HB3 bulbs only fit HB3 connectors and only HB3 bulbs fit into BMW upper beam headlamps. Also, the wires to the upper beam bulb are too short to reach the lower beam headlamp.

4. In view of low importation and lamp production, reduced by vehicle-specificity and left/right specificity, the small number of headlamps involved is likely to keep the BMW headlamp proprietary. BMW believes there will be no confusion regarding headlamp or bulb availability, identification or installation position.

5. FMVSS No. 108 does not require lenses or replaceable bulb headlamps using only HB1 bulbs to be so marked. BMW believes the BMW upper beam headlamps and their HB3 bulbs will be as easy to use as the HB1 bulbs and headlamps.

Interested persons are invited to submit written data, views and arguments on the petition of BMW of North America, Inc. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 15, 1987.

(Sec.102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: May 8, 1987.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 87-10999 Filed 5-13-87; 8:45 am]

BILLING CODE 4910-59-M

## Establishment of the Motor Vehicle Research Advisory Committee

Notice is hereby given of the establishment of the Motor Vehicle Safety Research Advisory Committee. The purpose of the Committee is to provide a forum for the development, consideration and communication of motor vehicle safety research except: (1) Those projects which were part of the Coordinated Research Program and the subject of the settlement agreement in *Claybrook v. National Highway Traffic Safety Administration*, including (i) Side impact test procedure development; (ii) steering assembly test procedure development; and (iii) biomechanics research performed by Task Force 3; and (2) any matter that is specifically the subject of an open rulemaking. The Committee will provide information, advice and recommendations to the Administrator, National Highway Traffic Safety Administration (NHTSA) on matters relating to motor vehicle safety research with the exception of those noted above.

The formation and use of the Committee is determined to be in the public interest in connection with the performance of duties imposed on NHTSA by law.

The Charter of the Committee is set forth below:

### Charter: Motor Vehicle Safety Research Advisory Committee

*I. Purpose*

This Charter establishes the Motor Vehicle Safety Research Advisory Committee (MVSRAC) and provides for its operation in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2 (the FACA), Federal regulation 49 CFR Part 95 and Department of Transportation Order 11120.3A.

*II. Sponsor And Office Providing Support Services*

The National Highway Traffic Safety Administration (NHTSA) will be the MVSRAC sponsor. Support services will be provided by the Office of the Associate Administrator for Research and Development and by the Executive Secretariat, NHTSA.

*III. Scope*

(a) The MVSRAC provides information, advice and recommendations to the Administration on matters relating to motor vehicle safety research, except: (1) Those projects which were part of the Coordinated Research Program and the subject of the settlement agreement in *Claybrook v. National Highway Traffic Safety Administration*, including: (i) Side impact test procedure development; (ii) steering assembly test procedure development; and (iii) biomechanics research performed by Task Force 3; and (2) any matter that is specifically the subject of an open rulemaking proceeding.

(b) The MVSRAC provides a forum for the development, consideration and communication of motor vehicle safety research, except in the areas specifically included in III(a), from a knowledgeable, independent perspective.

(c) The MVSRAC does not exercise program management responsibility or make decisions directly affecting the programs on which it provides advice.

*IV. Objectives and Duties*

Consistent with the scope of the activities described in paragraph III, the MVSRAC is authorized to:

(a) Review the current and planned motor vehicle safety research projects of the organizations represented by the members;

(b) Recommend research approaches and indicate the most efficient means to pursue such approaches;

(c) Review the progress of any research conducted pursuant to its recommendations; and

(d) Reort to the Administrator, NHTSA, on such vehicle safety research topics as the Administrator requests or the MVSRAC deems appropriate.

*V. Membership*

(a) In general: (1) the MVSRAC shall be composed of fifteen members, two non-voting members from the Department of Transportation and thirteen voting members from outside the Federal Government. Each member shall be appointed by the Secretary of Transportation after consultation with public and private organizations that have an established expertise in vehicle safety research. These organizations will recommend for membership those individuals who best represent their concerns. (2) Appointment shall be for a three year term, except that for the initial appointment of members, one-third shall be appointed for a one year term, one-third shall be appointed for a two year term, and one-third shall be appointed for a full three year term. A member may be reappointed at the expiration of his or her term and may continue to serve pending reappointment or until a successor is named. (3) A member may designate an alternate, representing the same interest as the member, to attend MVSRAC meetings and activities. The designation must be in writing and with the approval

of the MVSRAC Chairperson. (4) The membership wil be fairly balanced in terms of the points of view represented.

(b) Voting members: (1) Voting members shall be appointed by the Secretary from the public and private organizations that have an established expertise in vehicle safety research. (2) A voting member serves in a representative capacity and is not considered a "Special Government Employee" as defined in 18 U.S.C. § 202.

(c) Non-voting members: When a non-voting member speaks for or represents the Department, the non-voting member shall obtain coordination, review and approval from appropriate officials to ensure that such representation accurately reflects the position of the Department.

*VI. Officers*

The Chairperson and each Subcommittee chair shall be appointed by the Administrator, NHTSA. The Chairperson shall designate the Secretary for the MVSRAC and the Secretary of each subcommittee established.

*VII. Committee Structure*

The Chairperson may establish continuing subcommittees, short-term subcommittees and/or task forces as deemed necessary.

*VIII. Meeting*

(a) The MVSRAC and each subcommittee or task force shall meet not less than once a year, at the call of the MVSRAC Chairperson. Agendas will be reviewed and approved by the MVSRAC Chairperson.

(b) Each committee and subcommittee meetings shall be open to the public. A notice of each meeting shall be published in the **Federal Register** at least fifteen days in advance of the meeting. Shorter notice is permissible in cases of emergency, but the reason for the emergency must be reported in the notice.

(c) Detailed minutes of each meeting shall be kept and their accuracy certified to by the MVSRAC Chairperson. The minutes shall include the time and place of the meeting, a record of the persons present, a complete summary of matters discussed and conclusions reached and copies of all reports received, issued or approved by the committee or subcommittee.

*IX. Compensation for Non-Government Members*

Non-government members serve without compensation and will not be reimbursed for expenses.

*X. Estimated Annual Cost to the Government*

The Government does not expect to incur additional costs as a result of the Committee. Travel costs for each member will be borne by the organizations represented. However, the time of government members, their travel costs and other miscellaneous costs are listed below: Travel: $2,500; Salaries: $3,500 to $6,500; Misc.: $1,000; Staff Years: 1/5.

The total estimated annual cost is $7,000 to $10,000. No government staff positions are being allocated to the Committee on a full time basis.

*XI. Public Interest*

The formation and use of the MVSRAC is determined to be in the public interest in connection with the performance of duties imposed on NHTSA by law.

*XII. Effective Date*

This charter is effective 15 days after publication in the **Federal Register**, and terminates two years after this date unless, prior to that time, it is extended in accordance with the FACA and other applicable requirements.

Additional information may be obtained from the NHTSA Executive Secretariat, Room 5221, 400 Seventh Street SW., Washington, DC 20590, telephone 202–366–2870.

Sharon Goldstein,

*Director, Executive Secretariat.*

[FR Doc. 87–11067 Filed 5–13–87; 8:45 am]

BILLING CODE 4910-59-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 93
Thursday, May 14, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, May 20, 1987.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

*1. FY '89 Priorities*

The Commission will consider priorities for fiscal year 1989.

*2. FY '89 Planning Issues*

The staff will brief the Commission on fiscal year 1989 planning issues.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD. 20207 301-492-6800.

May 12, 1987.

Sheldon D. Butts,
*Deputy Secretary.*
[FR Doc. 87-11104 Filed 5-13-87; 11.38 am]
BILLING CODE 6355-01-M

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CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 10:00 a.m., Thursday, May 21, 1987.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

**STATUS:** *Closed to the Public.*

**MATTERS TO BE CONSIDERED:**

*Compliance Status Report*

The staff will brief the Commission on a Compliance Status Report.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

May 12, 1987.

Sheldon D. Butts,
*Deputy Secretary.*
[FR Doc. 87-11105 Filed 5-12-87; 11:38 am]
BILLING CODE 6355-01-M

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FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting Thursday May 14, 1987

May 7, 1987.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 14, 1987, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

*Agenda, Item No., and Subject*

General—1—Title: In the Matter of Petition for Reconsideration of *Second Report and Order* in "Underbrush" Proceeding (MM Docket 83-842). Summary: The Commission will consider whether to adopt a Memorandum Opinion and Order on Reconsideration of the *Second Report and Order* in this proceeding adopted on March 13, 1986.

Common Carrier—1—Title: In the Matter of Regulation of Small Telephone Companies, CC Docket No. 86-467. Summary: The Commission will consider adoption of a Report and Order concerning tariff filing requirements that apply to small telephone companies.

Common Carrier—2—Title: Amendment of Part I of the Commission's Rules to Revise Certain Hearing Procedures for Selection of Common Carrier Licensees. Summary: The Commission will consider revising its hearing procedures for common carrier applicants selected by lottery.

Mass Media—1—Title: Amendment of Parts 15 and 76 Relating to Terminal Devices Connected to Cable Television Systems. Summary: The Commission will consider a Report and Order concerning technical standards applicable to converters, decoders and other terminal devices intended for connection to cable systems.

Mass Media—2—Title: Notice of Inquiry to Reexamine the Commission's Cross-Interest Policy. Summary: The Commission will consider whether to issue a Notice of Inquiry concerning the Cross-Interest Policy.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, FCC Office of Congressional and Public Affairs. Telephone number (202) 632-5050.

Issued: May 7, 1987.
Federal Communications Commission.
William J. Tricarico,
*Secretary.*
[FR Doc. 87-11102 Filed 5-12-87; 11:38 am]
BILLING CODE 6712-01-M

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FEDERAL ELECTION COMMISSION

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, May 14, 1987, 10:00 a.m.

**CHANGE IN MEETING:** The open meeting scheduled for this date was cancelled.

* * * * *

**DATE AND TIME:** Tuesday, May 19, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**DATE AND TIME:** Thursday, May 21, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Public Financing of Presidential Candidates: Explanation and Justification of Final Rules.
Routine Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
*Secretary of the Commission.*
[FR Doc. 87-11146 Filed 5-12-87; 2:30 pm]
BILLING CODE 6715-01-M

BEST COPY AVAILABLE

**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 10:00 a.m., May 20, 1987.

**PLACE:** Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

**STATUS:** Closed.

**MATTER TO BE CONSIDERED:**

1. Docket No. 81-11—"50-Mile Container Rules" Implementation by Ocean Common Carriers Serving U.S. Atlantic and Gulf Coast Ports—Possible Violations of the Shipping Act, 1916—Consideration of the Record.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523-5725.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-11087 Filed 5-12-87; 10:04 am]

BILLING CODE 6730-01-M

**STATE JUSTICE INSTITUTE**

**TIME AND DATE:**

9:00 to 5:00, May 21, 1987
9:00 to 5:00, May 22, 1987

**PLACE:** State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia 22314.

**STATUS:** The meeting will be closed from 9:00 a.m. until 11:00 a.m. both days to discuss matters exempted from public discussion, pursuant to 5 U.S.C. 552b(c).

**MATTERS TO BE CONSIDERED:**

Portions Open to the Public

Consideration of concept papers submitted for Institute funding.

Portions Closed to the Public

Discussion of internal personnel practices and procedures.

**CONTACT PERSON FOR MORE INFORMATION:** David I. Tevelin, Executive Director, State Justice Institute, 120 South Fairfax Street, Alexandria, Virginia, 22314 (703) 684-6100.

**David I. Tevelin,**

*Executive Director.*

[FR Doc. 87-11159 Filed 5-12-87; 3:50 pm]

BILLING CODE [illegible]

# Corrections

Federal Register
Vol. 52, No. 93
Thursday, May 14, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-020-07-4212-13; I-22682]

### Realty Action; Exchange of Public and Private Lands in Cassia County, ID

*Correction*

In notice document 87-9312 appearing on page 13761 in the issue of Friday, April 24, 1987, make the following corrections:

1. The docket number in the heading should read as set forth above.

2. In the second column, in the **SUMMARY**, in the 14th line, "SE¼NE, E½SE¼" should read "SE¼NE¼, E½SE¼".

3. In the third column, the FR Doc. number should read "FR Doc. 87-9312".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Customs Service

19 CFR Part 101

[T.D. 87-66]

### Customs Regulations; Amendment Relating to Changes in the Customs Service Preclearance Offices in Foreign Countries

*Correction*

In rule document 87-10148 beginning on page 16373 in the issue of Tuesday, May 5, 1987, make the following correction on that page:

In the third column, under **EFFECTIVE DATE**, on the third line, "January 28, 1987" should read "January 18, 1987".

BILLING CODE 1505-01-D

federal register

Thursday
May 14, 1987

Part II

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**Housing Development Grant Program; Invitation, for Applications; Notice**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**[Docket No. N-87-1695; FR-2337]**

**Housing Development Grant Program; Invitation for Applications**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Invitation for applications.

**SUMMARY:** This Notice invites any unit of general local government, including cities, counties, towns or townships, parishes, villages, or other general purposes political subdivisions of a State, and any State acting on behalf, and with the concurrence, of units of general local government, to submit applications for grants under HUD's Housing Development Grant Program. The Grant funds awarded under the program will be used to support the construction or substantial rehabilitation of residential rental, cooperative or mutual housing in which at least 20 percent of the units will be occupied by lower income families for a minimum of 20 years. Manufactured home parks and manufactured homes are not eligible for this program.

Applicants that responded to the June 20, 1984, February 13, 1985, or June 5, 1986 Invitation for Applications must reapply to be considered for funding. A revised or a new proposal may be submitted that is consistent with the guidance provided in this Invitation for Applications, the revised (May 1987) Application Packet and the List of Designated Eligible Areas published in the **Federal Register** of April 1, 1987. Neither Fiscal Year 1987 funds, nor recaptured or cancelled funds from previously awarded grants will be set aside to fund projects that were submitted in response to previous Invitations for Applications.

**EFFECTIVE DATE:** May 14, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jessica Franklin, Director, Housing Development Grant Division, Room 6110, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-6142 (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The statutory authority for the Housing Development Grant Program is provided by section 17 of the U.S. Housing Act of 1937. Section 17 was added to the U.S. Housing Act of 1937 by section 301 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) which was enacted on November 30, 1983. On June 14, 1984, HUD published implementing regulations for the new program in a new 24 CFR Part 850 (see 49 FR 24634).

**Program Funds**

HUD has been authorized to provide $99,590,000 in Housing Development Grant funds during Fiscal Year 1987. Funds recaptured from projects awarded in previous years may be added to this new authorization. An estimate of these funds is not available at this time. HUD estimates that authorized Fiscal Year 1987 funds will be adequate to support applications for approximately 5,500 units of rental, cooperative, or mutual housing.

**Nature of and Limits on Program Assistance**

Under the Housing Development Grant Program, HUD provides grants to units of general local government, including cities, counties, towns, townships, parishes, villages, or any other general purpose political subdivision of a State, and to States acting on behalf, and with the concurrence, or units general local government. These grantees, in turn, may use the grant funds to provide either grants or loans that may be applied toward interest reduction payments, rental assistance payments, or other forms of assistance to promote the construction or substantial rehabilitation of residential rental, cooperative or mutual housing. The maximum grant that may be approved for a project is limited to an amount sufficient to produce decent rental housing of modest design that is affordable by families and individuals without other reasonable and affordable housing alternatives in the private market. Grant assistance may not exceed 50 percent of the total costs associated with the rehabilitation or construction of the project, normally excluding the cost of acquisition, debt service and operating deficit reserves, working capital, sponsor profit and risk allowance, and relocation costs in excess of an amount that HUD determines to be reasonable. Under certain limited circumstances, HUD may permit the cost of acquisition to be included in the base amount to which the 50 percent limitation is applied. The program regulations and the application packet to be distributed to prospective applicants provide guidance on the circumstances under which the inclusion of acquisition costs may be permitted.

**Eligible Applicants/Grants**

Any unit of general local government, or any State, acting on behalf, and with the concurrence, of units of general local government is eligible to apply for and receive grant assistance under the Housing Development Grant Program. For purposes of qualifying as an eligible applicant under this program, the term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; any Indian Tribe as defined in section 102(a)(17) of the Housing and Community Development Act of 1974; and the District of Columbia, Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States. Entities that qualify as "States" include each of the several States and the Commonwealth of Puerto Rico. Applications from "State" applicants must be signed by the Governor. Applications from units of local government must be signed by the Chief Executive Officer of the unit of local government. Housing Finance Agencies are not eligible to apply, but they may administer a HDG project pursuant to a delegation agreement with an applicant/grantee.

**Previously Submitted Applications**

Applications submitted under this program in response to the June 20, 1984, February 13, 1985, or June 5, 1986, Invitation for Applications will not be considered for funding. A revised or a new proposal may be submitted which is consistent with the guidance provided in this Invitation for Applications, the revised (May, 1987) Application Packet, and the List of Designated Eligible Areas published in the **Federal Register** of April 1, 1987 (52 FR 10442). Neither Fiscal Year 1987 funds nor recaptured or cancelled funds from previously awarded grants will be set aside to fund projects which were submitted in response to previous Invitations for Applications.

**Eligible Types of Applications**

There are three types of applications eligible for submission under this program:

(1) *Eligible Area Application*—This is an application for a project located in an area determined by HUD, on the basis of statutorily prescribed factors, to be experiencing a severe shortage of decent rental housing opportunities for families and individuals without other reasonable and affordable alternatives in the private market. Additional

statutorily prescribed factors included in the 1986 Continuing Resolution on Appropriations require that an eligible area have both an overall rental vacancy rate and a duration of vacancy rate (i.e., units vacant more than two months) that are less than the national average rates. (HUD's list of designated eligible areas was published in a Notice in the Federal Register of April 1, 1987 (52 FR 10442). That Notice also explains the derivation of the national rates.)

(2) *Special Housing Need Application.*—This is an application for a project that is not located in a designated eligible area, but is intended to meet a special housing need that cannot be met through the moderate rehabilitation of housing stock located in the project neighborhood. A special housing need application must address either a special renter group need (e.g., need for housing to accommodate large families); or a special need resulting from rapid population growth or dislocation, provided the current rental vacancy rate is 7 percent or below. See 24 CFR 850.15(a) and (b).

(3) *Neighborhood Preservation Purpose Application*—This is an application for a project that is not located in a designated eligible area, but is intended to advance a particular neighborhood preservation purpose that cannot be advanced through rehabilitation of housing stock located in the project neighborhood. The proposed project must be located in a neighborhood preservation area in which concentrated housing, physical development, and public service activities are being carried out in a coordinated manner pursuant to a locally developed strategy for neighborhood improvement, conservation, or preservation. See 24 CFR 850.15(c).

**Project Eligibility**

To be eligible for assistance under the Housing Development Grant Program, a project must involve new construction or substantial rehabilitation. For purposes of this program, "substantial rehabilitation" is defined as repairs, replacements, and improvements (a) the cost of which exceeds the greater of 15 percent of the property's value after rehabilitation or $8,500 per dwelling unit (adjusted by an appropriate supportable local high cost factor), or (b) that entail the replacement of more than one major building component (e.g., roof structure; ceiling, wall or floor structures; plumbing system; or electrical system).

Manufactured home parks and manufactured (mobile) homes are not eligible for the program. For the purpose of this program, "Manufactured Home Parks" are defined as rental communities of single-family manufactured (mobile) homes, where the occupants either own their manufactured home and rent the site on which the home is placed, or where both the home and the site are rented. For the purpose of this program, "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air condition, and electrical systems contained in the structure.

Projects must be designed primarily for residential rental use that is nontransient and that does not contain special purpose space (e.g., medical facilities) requiring specialized features which increase the cost of construction. Generally, not more than 10 percent of the gross floor area of a project may be utilized for commercial purposes. HUD may approve commercial space of up to 20 percent of the gross floor area if special conditions warrant exceeding the 10 percent limit. (This restriction applies to all functionally related facilities on the project site notwithstanding that the commercial space may be separated from the residential units by condominium ownership.) Cooperative and mutual housing projects are eligible under this program, but must be controlled to assure the continued availability and affordability of at least 20 percent of the units to lower income households. For a project with two or more sites, the sites must be located within the same neighborhood and within a three block radius of each other. Further, each site must contain both lower income and market rate units.

The lower income units must be of the same construction type, but need not contain the same amount of floor space or interior amenities as the market rate units. The exterior of the lower income units must be indistinguishable from the exterior of the market rate units. The estimated value of a project after construction or substantial rehabilitation may not exceed the amount of a mortgage that could be insured for the project under section 207 of the National Housing Act based on the sum of the statutory per-unit limits adjusted by the appropriate supportable local high-cost factor and an allowance determined by HUD for costs not attributable to dwelling use (including costs for commercial space).

Projects currently assisted (or for which assistance is anticipated) under any other Federal housing assistance program, e.g., UDAG, Section 312, FmHA, or that were formerly owned or held by HUD, are ineligible for assistance under this program.

**Minimum and Maximum Project Size Limitations**

Applications may not be submitted in response to this Invitation for Applications for projects containing fewer than 20 or more than 200 dwelling units.

**Applicability of Gautreaux Consent Decree**

Applications for projects to be developed within the Chicago, Illinois SMSA must comply with all applicable requirements of the *Gautreaux* consent decree. For further information on such requirements, prospective applicants should contact the HUD Chicago Regional Office (Attention: Ms. Mary Anderson) by calling (312) 353-5067. (This is not a toll-free number.)

**Other Program Requirements**

The following are additional requirements of the Housing Development Grant Program that are not mentioned elsewhere in this Notice:

(1) *Lower Income Units.* At least 20 percent of the units in any project assisted under the Housing Development Grant Program must be occupied, or available for occupancy, by lower income households (i.e., families or individuals whose incomes do not exceed 80 percent of the area median income, with adjustments determined by HUD) during the period beginning when the project is initially available for occupancy and ending 20 years from the date on which 50 percent of the project units are first occupied. Owners must reexamine the income of each household occupaying a lower income unit at least once a year.

(2) *Lower Income Unit Rents.* Rents (including utilities) charged for the units designated for lower income occupancy may not exceed 30 percent of the adjusted income for a family whose income equals 50 percent of the area median income, as determined by HUD, with adjustments for smaller and larger families. HUD will provide the median income data and standard income adjustments to be used by owners in establishing the maximum rents for lower income units.

(3) *Restriction on Conversions.* During the 20 year period starting when the project is initially available for occupancy, or during the Project Term, as defined in the HUD/Grantee Grant Agreement, whichever is longer, owners may not convert units to condominium

ownership or any form of cooperative ownership which would be ineligible for assistance under the Housing Development Grant Program.

(4) *Marketing and Tenant Selection.* In renting units, owners may not discriminate against prospective tenants because of their eligibility for, or receipt of, housing assistance under any Federal State, or local housing assistance program, or because they have children (unless the units in a project are designated for occupany only by the elderly). An owner must have a HUD-approved Affirmative Fair Housing Marketing Plan and must carry out all marketing activities in accordance with HUD's Affirmative Fair Housing Marketing Regulations at 24 CFR Part 200, Subpart M.

(5) *Displacement/Relocation.* A project may not be assisted under the Housing Development Grant Program if its development will cause the involuntary displacement of very low-income households from the project site by households which are not very low-income. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD's implementing regulations (24 CFR Part 42) apply to any displacement resulting from acquisition by a State agency, as defiend in 24 CFR 42.85. The revised Uniform Relocation Act regulations took effect on May 1, 1986. See 51 FR 7010, February 27, 1986. In any case where there will be project-related displacement or relocation and the Uniform Act is not applicable, the following requirements apply:

(a) The applicant (grantee) must have a written tenant assistance policy;

(b) No tenant may be required to move *permanently* unless provided adequate advance written notice and appropriate advisory services;

(c) Lower income tenants required to move permanently must receive adequate advance notice, appropriate advisory services, and financial assistance sufficient to obtain decent, safe, sanitary, and affordable replacement housing in accordance with HUD policy;

(d) Lower income tenants required to move *temporarily* must be provided with decent, safe, and sanitary temporary housing; financial assitance to cover reasonable moving expenses and any increase in monthly costs during the temporary relocation period; and for each household an opportunity to occupy a unit in the newly constructed or subetantially rehabilitated project at rent levels not to exceed the Total Tenant Payment as determiend by 24 CFR 813.107(a).

(6) *Construction and Design Standards.* The HUD Multifamily Minimum Property Standards will not apply to projects under the Housing Development Grant Program unless they are FHA-insured. All projects must, however, meet applicable State and local building codes.

(7) *Environmental Standards.* Projects are subject to section 104(f) of the Housing and Community Development Act of 1974; the National Environmental Policy Act of 1969; and HUD's implementing regulations at 24 CFR Part 58. Under this program, the applicant/grantee, not HUD, is responsible for performing an environmental assessment of the proposed project as necessary, in accordance with the requirements of 24 CFR Part 58. Certifications of compliance must be submitted with the application.

(8) *Labor Standards.* All HDG Projects are subject to the prevailing wage requirements of the Davis-Bacon Act and the provisions of the Contract Work Hours and Safety Standards Act. (These Acts apply since the minimum HDG project size is 20 units and by their terms these Acts apply to projects consisting of 12 or more units.)

(9) *HAP Consistency.* A proposed project must be consistent, at the time of submission of an application, with any applicable local Housing Assistance Plan approved by HUD. If a HAP amendment is required, such amendment must be filed with the local HUD Office before the application submission deadline date.

(10) *OMB Circulars.* The policies, guidelines and requirement of OMB Circulars A–102 Revised (Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments); A–122 (Cost Principles for Non-profit Organizations); A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments); and 24 CFR Part 44 implementing A–128 (Single Audit Act) apply to this program.

(11) *Intergovernmental Review.* The provisions of Executive Order 12372 and HUD's implementing regulations at 24 CFR Part 52 apply to this program. Applicants are required to submit applications directly to the reviewing body.

(12) *Debarred, Suspended, or Ineligible Contractors.* HUD's regulations at 24 CFR Part 24 relating to the use of debarred, suspended, or ineligible contractors or subcontractors apply to this program. Grantees will be responsible for assuring that such contractors or subcontractors are not used for projects assisted under this program during any period of debarment, suspension, or placement in ineligibility status.

(13) *Flood Insurance.* No site proposed for a project to be assisted under this program may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program, or less than a year has passed since FEMA notification regarding such hazards, and the applicant (grantee) can provide assurance that flood insurance on the structure will be obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973.

(14) *Nondiscrimination and Equal Opportunity.* Grantees and owners must comply with the requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 (Pub. L. 90–284) and the implementing regulations; Executive Order 11063 and the implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352) and the implemening regulations at 24 CFR Part 1. Under Title VI and 24 CFR Part 1, no determination regarding the selection of a site or location of a Federally assisted project may be made with the purpose or effect of excluding individuals from, or denying them the benefits of, or subjecting them to discrimination on the basis of race, color, or nation origin, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of Title VI or 24 CFR Part 1. Grantees and owners must also comply with prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and the prohibitions on discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the requirements of Executive Order 11246 and the regulations issued thereunder at 41 CFR Chapter 60; and the requirements of section 3 of the Housing and Urban Development Act of 1968.

(15) *Minority and Women's Business Enterprise Opportunity.* The grantee and owner must prepare, implement, and maintain a development plan for minority- and women-owned businesses that must contain specific and measurable goals and an affirmative strategy to promote awareness and participation by such businesses in the contracting and procurement activities generated by the project.

(16) *Administrative Costs.* Grant funds may not be used for

administrative costs incurred by an applicant/grantee in carrying out its responsibilities under the Housing Development Grant Program. Such administrative costs include, but are not limited to, staff and consultant salaries and operating expenses of the applicant/grantee. Program Income (24 CFR 850.71), however, may be used to support operating expenses incurred by the grantee.

(17) *Construction Start Deadline.* Project construction or rehabilitation must commence within 24 months of HUD's notice of application selection.

(18) *Owner-Grantee Agreement.* The owner and grantee must enter into an Agreement requiring the owner to comply with certain statutory and regulatory restrictions (e.g., items (1), (2), and (3) above). The grantee will be responsible for assuring that the owner complies with the Agreement even if the grantee delegates responsibility for administration of the project to another entity. Any Housing Development Grant Assistance provided to the owner will constitute a debt payable in the event of failure to comply with the Agreement. In the event of an uncorrected violation, the owner will be required to pay the grantee an amount equal to the total amount of the grant assistance (plus interest thereon at a rate determined by HUD based on the Federal Government's borrowing rate) less 10 percent for each year in excess of 10 years from the effective date of the agreement. The owner's contingent debt must be secured by a security instrument (e.g., a lien against the property). The owner(s) and lender(s) must agree that the requirements of 24 CFR 850.151(b), (c), (d) and (e) will be imposed as covenants running with land or deed restrictions with which they will comply for the Project Term, as defined in the Grant Agreement.

**Application Submission Requirements**

The application submission requirements are described in general terms in § 850.33 of the program regulations. The Application Packet that HUD will make available to prospective applicants will describe in much greater detail the required contents of an application and will contain detailed guidance to assist applicants in preparing acceptable applications.

**HUD Review and Selection of Applications**

Applications will be reviewed both by HUD Headquarters and by HUD Field Offices. Field Offices will be responsible for making review comments and recommendations, but all selections will be made by Headquarters. HUD may request clarification of information in the application after the deadline for submission has passed. Where there is no documentation or the documentation provided is clearly insufficient to make an appropriate determination with respect to the application, the application may be rejected.

To be considered eligible for ranking and possible selection, an application must meet all threshold requirements. The threshold requirements are specified in the program regulations at 24 CFR 850.37.

HUD will rate and rank applications on the basis of the following factors (the maximum number of points to be awarded for each factor is shown in parentheses):

(1) *Shortage of decent affordable housing (28 points).* HUD will consider two separate elements under this factor. More favorable consideration will be given to projects that are located in areas with (a) lower rental vacancy rates in the jurisdiction as a whole and (b) in all lower income census tracts in the jurisdiction (or where requested in the application and approved by HUD, in the market area).

(2) *Leveraging ratios (20 points).* HUD will consider two separate elements under this factor. More favorable consideration will be given to projects with (a) higher project leveraging ratios (i.e., total private and non-Federal public financial resources committed to the project divided by the requested grant amount) and (b) higher private project leveraging ratios (i.e., total private financial resources committed to the project divided by the requested grant amount).

(3) *Neighborhood development and mitigation of displacement (2 points).* HUD will consider two separate elements under this factor. More favorable consideration will be given to those projects that (a) have a more favorable effect on neighborhood development and (b) cause no displacement or provide for effective mitigation of displacement.

(4) *Demonstrated performance and capacity (2 points).* HUD will consider the applicant's record of performance in meeting its assisted housing needs and the applicant's capacity to commence and carry out the project in a timely manner. More favorable consideration will be given to those with the better record of performance in meeting annual and three-year Housing Assistance Plan goals and administering programs of federally assisted housing.

(5) *Efficient use of grant funds (10 points).* HUD will consider the extent to which the housing development grant requested will provide the maximum number of units for the least cost to the Federal government. More favorable consideration will be given to projects with the better performance in achieving this result, and where the grant is to be repaid to the Grantee under conditions specified in the Application Packet. HUD has developed least cost ratios to account for differences in unit size (number of bedrooms), types of tenants being served, financing alternatives, construction costs, and project type.

(6) *Rent affordability (3 points).* HUD will consider two elements under this factor. More favorable consideration will be given to projects that provide a more effective mechanism for assuring that rents for lower income units meet the rent requirements of § 850.151(e) of the program regulations, and that provide the greater amount of assistance, if any, to assure that rents are affordable for very low-income households.

(7) *Financial feasibility (10 points).* All projects must present adequate documentation of firm financial commitments for a minimum of 20 years. The strength of these commitments, e.g., the level of documentation and the absence of unacceptable qualifying conditions, will determine the points earned in this subcategory. Another subcategory of determination will be based upon project rents, costs, and expenses. Projects will be rated as to (a) feasibility of rents, reasonableness of costs and expenses and (b) financial feasibility for the Project Term.

(8) *Family housing (15 points).* More favorable consideration will be given to projects that provide the greater number of units for families and for large families with children. Assisted units with an average of three bedrooms or more and projects with the highest overall average bedroom size greater than two will receive the maximum points.

(9) *Minority and women's business enterprise (5 points).* Points will be awarded to applications that include a certification that controlling project ownership will be vested in, and exercised by, minority persons or women.

(10) *Promoting nondiscrimination and equal opportunity (5 points).* HUD will take into account the present pattern of assisted housing location and occupancy. Favorable consideration will be given to projects that are located (a) outside areas of minority concentration where the current pattern shows most assisted projects in minority areas, or (b) in areas where there is no other assisted housing, or (c) in areas undergoing revitalization through public

or private investment and in which rental opportunities for lower income households are declining.

**Priority Projects/Bonus Points**

In making selections, HUD will give priority (up to 15 bonus points) to projects located in areas where waiting lists for housing assistance are relatively long and where section 8 certificate-holders require an excessive length of time to find housing, provided that more than 25 percent of the units will be made available for occupancy by lower-income families.

More specific information on how HUD will rate applications on the selection criteria and apply selection priority will be provided to prospective applicants in the Application Packet.

**Where to Obtain Application Packets**

Beginning on May 18, 1987, Application Packets containing all required application forms and exhibits, detailed application instructions, and pertinent program guidance may be obtained from the HUD Field Offices listed in Appendix A of this Notice. Each prospective applicant should obtain and carefully review an application packet before attempting to prepare an application for submission to HUD.

**Deadline for Submission of Applications**

The deadline for application submission is close of business on July 7, 1987, for both Headquarters and the local HUD Office covering the jurisdiction in which the project is located. Only applications received in both places before the deadline will be eligible for consideration. Close of business for Headquarters in Washington, DC is 5:15 p.m. EDT. The addresses, locations and telephone numbers of each local HUD Office are included in Appendix A of this publication. Information on the time of official close of business for local HUD Offices should be obtained directly from the respective HUD Offices.

**Announcements and Awards**

Grant awards will be announced no later than September 30, 1987. Projects that are not selected will receive written notification.

**Other Information**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HuD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

(The collection of information requirements referenced in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2503-0033)

(The Catalog of Federal Domestic Assistance program number for this program is 14.174)

Authority: Sec. 17(d), United States Housing Act of 1937 (42 U.S.C. 1437(o)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: May 5, 1987

**Thomas T. Demery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

## Appendix A—HUD Offices

**Region I**

*Boston Regional Offical*

Boston Federal Office Building, 10 Causeway Street, Room 375, Boston, MA 02222-1092, (617) 565-5234

*Hartford Office*

330 Main Street, Hartford, CT 06103, 2943 Hartford, CT 06106-2943, (203) 722-3638

*Manchester Office*

Norris Cotton Federal Building, 275 Chesnut Street, Manchester, NH 03101-2487, (603) 666-7681

*Providence Office*

John O. Pastore Federal Building and U.S. Post Office-Kennedy Plaza Room 330, Providence, RI 02903, (401) 528-5351

**Region II**

*New York Regional Office*

26 Federal Plaza, Rm. 32130, New York, NY 10278-0068, (212) 264-8053

*Buffalo Office*

Statler Building Mezzanine, 107 Delaware Avenue, Buffalo, NY 14202-2986, (716) 846-5755

*Caribbean Office*

Federico Degetau Federal Building, U.S., Courthouse, Room 428, Carlos E. Chardon Avenue, Hato Rey, PR 00918-2276, (809) 753-4201

*Newark Office*

Military Park Building, 60 Park Place, Newark, NJ 07102-5504, (202) 877-1662

**Region III**

*Philadelphia Regional Office*

Liberty Square Building, 105 S. 7th Street, Philadelphia, PA 19106-3392, (215) 597-2560

*Baltimore Office*

The Equitable Building, 10 North Calvert Street 3rd Fl. Baltimore, MD 21202-1865, (301) 962-2121

*Charleston Office*

405 Capitol Street, Suite 708, Charleston, WV 25301-1795, (304) 347-7000

*Pittsburgh Office*

412-Old Post Office Courthouse Building, 7th Ave. & Grant St., Pittsburgh, PA 15219-1906

*Richmond Office*

701 East Franklin Street, Richmond, VA 23219-2591, (804) 771-2721

*Washington, DC Office*

HUD Building, 451 7th Street SW., Room 3156, Washington, DC 20410-4500, (202) 453-4534

**Region IV**

*Atlanta Regional Office*

Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, GA 30303-3388, (404) 331-5136

*Birmingham Office*

Daniel Building, 15 South 20th Street, Birmingham, AL 35233-2096, (205) 254-1617

*Columbia Office*

Strom Thurmond Federal Building, 1835-45 Assembly Street, Columbia, SC 29201-2480, (803) 765-5592

*Greenboro Office*

415 North Edgeworth Street, Greensboro, NC 27401-2107, (919) 333-5361

*Jackson Office*

Doctor A.H. McCoy, Federal Building, 100 W. Capitol Street, Suite 1096, Jackson, MS 39269-1096, (601) 965-4702

*Jacksonville Office*

325 West Adams Street, Jacksonville, FL 32202, (904) 791-2626

*Knoxville Office*

One Northshore Building, 1111 Northshore Drive, Knoxville, TN 37919-4099, (615) 558-1384

*Louisville Office*

601 West Broadway, P.O. Box 1044, Louisville, KY 40201–1044, (502) 582–5251

*Nashville Office*

One Commerce Place, Suite 1600, Nashville, TN 37239–1600, (615) 736–5213

**Region V**

*Chicago Regional Office*

300 South Wacker Drive, Chicago, IL 60606–6765, (312) 353–5680

*Cincinnati Office*

Federal Office Building, 550 Main Street, Rm. 9002, Cincinnati, OH 45202, (513) 684–2884

*Cleveland Office*

One Playhouse Square, 1375 Euclid Avenue, Rm. 420, Cleveland, OH 44114–1670, (216) 522–4065

*Columbus Office*

200 North High Street, Columbus, OH 43215–2499, (614) 469–7345

*Detroit Office*

McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, (313) 226–7900

*Grand Rapids*

2922 Fuller Avenue NE., Grand Rapids, MI 49505–3409, (616) 456–2216

*Indianapolis Office*

151 North Delaware Street, P.O. Box 7047, Indianapolis, IN 46204–2526, (317) 269–6303

*Milwaukee Office*

Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, WI 53203–2290, (414) 291–1493

*Minneapolis-St. Paul Office*

220 Second Street, South, Minneapolis, MN 55401–2195, (612) 349–3000

**Region VI**

*Fort Worth Regional Office*

221 West Lancaster, Post Office Box 2905, Fort Worth, TX 76113–2905, (817) 885–5401

*Houston Office*

National Bank of Texas Bldg., 2211 Norfolk, Suite 300, Houston, TX 77098–4096, (713) 229–3950

*Little Rock Office*

Savers Building, 320 West Capitol, Suite 700, Little Rock, AR 72201, (501) 378–5931

*New Orleans Office*

1661 Canal Street, P.O. Box 70288, New Orleans, LA 70172, (504) 589–2300

*Oklahoma City Office*

Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, OK 73102–3202, (405) 231–4181

*San Antonio Office*

Washington Square Building, 800 Dolorosa, P.O. Box 9163, San Antonio, TX 78207–4563, (512) 229–6781

**Region VII**

*Kansas City Regional Office*

Professional Building, 1103 Grand Avenue, Kansas City, MI 64106, (816) 374–2061

*Des Moines Office*

Federal Building, 210 Walnut Street, Room 259, Des Moines, IA 50309–2155, (515) 284–4512

*Omaha Office*

Braiker/Brandeis Building, 210 South 16th Street, Omaha, NE 68102–3703, (402) 221–3703

*St. Louis Office*

210 North Tucker Boulevard, St. Louis, MI 63101–1997, (314) 425–4761

**Region VIII**

*Denver Regional Office*

Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349, (303) 844–4513

**Region IX**

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300 Ala Moana Boulevard, Room 3318, Honolulu, HA 96850–4991, (808) 546–2136

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*Anchorage Office*

701 C Street, Box 64, Module C, Anchorage, AL 99513–0001, (907) 271–4170

*Portland Office*

Cascade Building, 520 Southwest Sixth Avenue, Portland, OR 97204–1596

[FR Doc. 87–11–12 Filed 5–13–87; 8:45 am]
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Part III

# Department of Education

**Office of Special Education and Rehabilitative Services**

## Rehabilitation Long-Term Training Program for Fiscal Year 1987; Applications for New Awards; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Rehabilitation Long-Term Training Program; Proposed Funding for Fiscal Year 1987

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priority for Fiscal Year 1987.

SUMMARY: The Secretary proposes a funding priority for long-term training grants in the field of Rehabilitation Counseling to ensure effective use of program funds and to direct funds to an area of identified training need during fiscal year 1987. The Secretary will reserve funds for applications meeting this priority.

DATE: Comments must be received on or before June 15, 1987.

ADDRESS: All written comments and suggestions should be sent to Ed Sontag, Office of Developmental Programs, Rehabilitation Services Administration, Office of Speical Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3042—M/S 2312), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Delores Watkins, Office of Developmental Programs, Rehabilitation Services Administration. Telephone: (202) 732–1349.

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-Term Training Program are established at 34 CFR Part 386. The purpose of the Rehabilitation Long-Term Program is to support projects designed to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational and independent living rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped.

*Eligible Applicants:* Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education.

*Funds Available:* The Congress appropriated $29,550,000 for the Rehabilitation Training Program in Fiscal Year 1987. Of this amount, it is estimated that $800,000 to $1,200,000 will be available for the support of new projects announced under this notice. An estimated 13 to 18 awards will be funded at an average project award of $65,000.

*Proposed Priority*

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3),the Secretary proposes to give an absolute preference to long-term training applications submitted in the field of Rehabilitation Counseling in fiscal year 1987 that respond to the priority described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priority.

Applications must be submitted in the long-term training field of Rehabilitation Counseling and must be designed to improve and strengthen the capacity of rehabilitation counselors to serve and place severely disabled individuals in employment, especially competitive employment. The training must directly involve students with business and industry in providing rehabilitation services, especially placement services, to severely physically and mentally disabled individuals. The coursework must be designed to provide students with skills and knowledge in: (1) Interpreting diagnositic, psychological, and educational background information to assess the functional capacities of, and do vocational planning for, disabled individuals, including traumatically brain injured individuals and learning disabled individuals; (2) planning effective rehabilitation programs for, and delivering rehabilitation services to, disabled individuals, including traumatically brain injured and learning disabled individuals; (3) job development, job modification, and job restructuring; (4) workers' compensation programs; (5) providing services to disabled individuals to facilitate their transition from school to employment; (6) providing supported employment services to disabled individuals; (7) the applicability of sections 501, 502, 503 and 504 of the Rehabilitation Act and their implications for placement of disabled individuals; and (8) consulting with employers and potential employers to identify employment opportunities for disabled individuals, to educate and train employers in identifying and removing barriers to the employment of disabled individuals, and to educate or train employers and potential employers about various disabilities and the vocational implications of those disabilities. Practicum training must involve students directly with business and industry in developing jobs for and placing disabled individuals in competitive employment. The practicum training may include actual student experiences in business and industry settings.

The proposed training must be pre-employment training and must be at the master's degree level.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final priority. All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3042, Mary E. Switzer Building, 330 C Street SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m. (Washington, DC time), Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)
(29 U.S.C. 774)

Dated: April 13, 1987.

William J. Bennett,
*Secretary of Education.*

[FR Doc. 87–11038 Filed 5–13–87; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No.: 84.129]

Inviting Applications for New Awards Under the Rehabilitation Long-Term Training Program for Fiscal Year 1987; Rehabilitation Counseling

*Purpose:* To provide grants to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education, for projects designed to increase the supply of trained personnel available for employment in public and private rehabilitation agencies and institutions involved in the vocational and independent living rehabilitation of individuals with disabilities and to maintain and upgrade the skills and knowledge of personnel employed as providers or administrators of vocational, medical, social, or psychological rehabilitation services to individuals with severe disabilities.

*Deadline for Transmittal of Applications:* June 30, 1987.

*Applications Available:* May 15, 1987.

*Range of Funds Available:* $800,000 to $1,200,000.

*Estimated Average Size of Awards:* $55,000.

*Estimated Number of Awards:* 13 to 18.

*Project Period:* Not to exceed 36 months.

*Applicable Regulations:* (a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); (b) Regulations governing the Rehabilitation Long-Term Training Program (34 CFR Parts 385 and 386); and (c) When adopted in final form, the Notice of Proposed Priority published in this issue of the Federal Register. Applicants should prepare their applications based on the proposed priority. If there are any changes made when the final priority is published, applicants will be given the opportunity to amend or resubmit their applications.

*Priority:* As described in the Notice of Proposed Priority, the Secretary proposes to give an absolute preference to applications that meet the described priority.

*For Applications or Information Contact:* Mary Vest, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3332–M/S 2312), Washington, DC 20202. Telephone: (202) 732–1343.

*Program Authority:* 29 U.S.C. 774

Dated: May 11, 1987.

Madeleine Will,

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–11039 Filed 5–13–87; 8:45 am]

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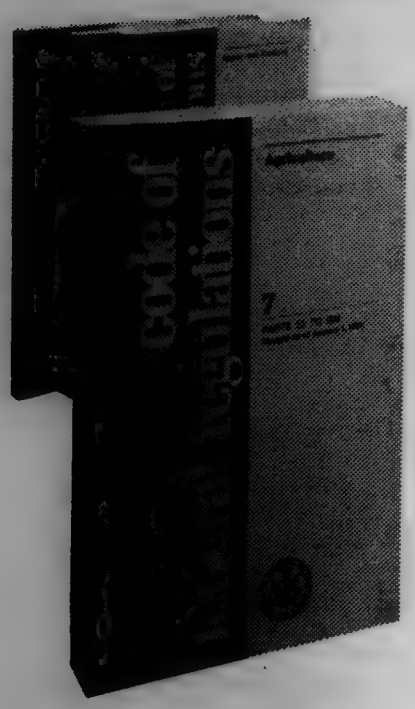

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# Federal Register

Friday
May 15, 1987

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# Presidential Documents

Title 3—

The President

## Executive Order 12597 of May 13, 1987

## Establishing Procedures for Facilitating Presidential Review of International Aviation Decisions by the Department of Transportation

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 801 of the Federal Aviation Act, as amended (49 U.S.C. app. § 1461), and in order to provide presidential guidance to department and agency heads and facilitate presidential review of decisions by the Department of Transportation pursuant to the Federal Aviation Act, it is hereby ordered as follows:

**Section 1.** Executive Order No. 12547 of February 6, 1986, is revoked.

**Sec. 2.** The Secretary of Transportation is designated and empowered to receive on behalf of the President any decision of the Department of Transportation (hereinafter referred to as the "DOT") subject to Section 801 of the Federal Aviation Act, as amended. The Secretary of Transportation is further designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under Section 801 of the Federal Aviation Act, as amended, to review and determine not to disapprove any such decision that is not the subject of any written recommendation for disapproval or for a statement of reasons submitted to the Department of Transportation in accordance with section 5(b) of this Order.

**Sec. 3.** (a) Except as otherwise provided in this section, decisions of the DOT subject to Section 801 of the Federal Aviation Act, as amended, may be made available by the DOT for public inspection and copying following transmission to Executive departments and agencies pursuant to section 3(c) of this Order.

(b) In the interests of national security, and in order to allow for consideration of appropriate action under Executive Order No. 12356, decisions of the DOT transmitted to Executive departments and agencies pursuant to section 3(c) of this Order shall be withheld from public disclosure for a period not to exceed 5 days after said transmission.

(c) At the same time that decisions of the DOT are received by the Secretary of Transportation pursuant to section 2 of this Order, the DOT shall transmit copies thereof to the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, the Attorney General, the Assistant to the President for National Security Affairs, the Director of the Office of Management and Budget, and any other Executive department or agency that the DOT deems appropriate.

(d) The Secretary of State and the Secretary of Defense, or their designees, shall review the decisions of the DOT transmitted pursuant to section 3(c) of this Order and shall promptly advise the Assistant to the President for National Security Affairs or his designee whether action pursuant to Executive Order No. 12356 is deemed appropriate. If, after considering these recommendations, the Assistant to the President for National Security Affairs determines that classification under Executive Order No. 12356 is appropriate, he shall take such action and immediately so inform the DOT. Action pursuant to this subsection shall be completed by the persons designated herein within 5 days of the transmission of the decision.

(e) On and after the 6th day following transmission of a DOT decision pursuant to section 3(c) of this Order, or upon earlier notification by the Assistant to the President for National Security Affairs or his designee, the DOT is authorized to disclose all unclassified portions of the text of such decision. Nothing in this section is intended to affect the ability to withhold material under any Executive order or statute other than Section 801.

**Sec. 4.** (a) Departments and agencies outside of the Executive Office of the President shall raise only matters of national defense or foreign relations in the course of the presidential review established by this Order. All other matters, including those related to regulatory policy, shall be presented to the DOT in accordance with the procedures of the DOT.

(b) Departments and agencies outside of the Executive Office of the President that identify matters of national defense or foreign relations while a decision is pending before the DOT shall, except as confidentiality is required for reasons of defense or foreign policy, make those matters known to the DOT in the course of its proceedings.

**Sec. 5.** (a) The DOT shall receive the recommendations, addressed to the President, of the departments and agencies referred to in section 3(c) of this Order.

(b) Departments or agencies outside of the Executive Office of the President making recommendations on matters of national defense or foreign relations with respect to any decision received by the Secretary of Transportation under section 2 of this Order shall submit their recommendations in writing to the DOT: (1) within 4 days of the DOT's issuance of a decision subject to a 10-day statutory review period under Section 801(b); and (2) within 21 days of the DOT's issuance of a decision subject to a 60-day statutory review period under Section 801(a); or (3) in exceptional cases, within the period specified by the DOT in its letter of transmittal.

(c) The DOT shall, as soon as practical after the deadlines specified in section 5(b) of this Order: (1) if no recommendations for disapproval or for a statement of reasons are received from the departments and agencies specified in section 3(c) of this Order, issue its decision to become effective according to its terms; or (2) if recommendations for disapproval or for a statement of reasons are received, transmit them to the Assistant to the President for National Security Affairs, who, upon review, shall transmit a memorandum to the President with a recommendation as to whether or not the President should disapprove the proposed decision.

**Sec. 6.** (a) In advising the President with respect to his review of a decision pursuant to Section 801, departments and agencies outside of the Executive Office of the President shall identify with particularity the defense or foreign policy implications of the DOT decision that are deemed appropriate for consideration.

(b) If any department or agency that made recommendations to the President pursuant to Section 801 believes that, if the President decides not to disapprove a decision, the letter so advising the DOT should include a statement that the decision not to disapprove was based on national defense or foreign relations reasons, it should so indicate separately and explain why.

**Sec. 7.** Individuals within the Executive Office of the President shall follow a policy of: (a) refusing to discuss matters relating to the disposition of a case subject to the review of the President under Section 801 with any interested private party, or an attorney or agent for any such party, prior to the decision by the President or his designee; and (b) referring any written communication from an interested private party, or an attorney or agent for any such party, to the appropriate department or agency outside of the Executive Office of the President. Exceptions to this policy may be made only when the head of an appropriate department or agency outside of the Executive Office of the President personally finds, on a nondelegable basis, that direct written or oral

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communication between a private party and a person within the Executive Office of the President is needed for reasons of defense or foreign policy.

**Sec. 8.** Departments and agencies outside of the Executive Office of the President that regularly make recommendations in connection with the presidential review pursuant to Section 801 shall, consistent with applicable law, including the provisions of Chapter 5 of Title 5 of the United States Code:

(a) establish public dockets for all written communications (other than those requiring confidential treatment for defense or foreign policy reasons) between their officers and employees and private parties in connection with the preparation of such recommendations; and

(b) prescribe such other procedures governing oral and written communications as they deem appropriate.

**Sec. 9.** This Order is intended solely for the internal guidance of the departments and agencies in order to facilitate the presidential review process. This Order does not confer rights on any private parties.

**Sec. 10.** None of the time deadlines specified in this Order shall be construed as a limitation on expedited presidential review of any decision under Section 801.

**Sec. 11.** The provisions of this Order shall become effective upon publication in the **Federal Register** and shall govern the review of any proposed decisions of the DOT that have not become final prior to that date under Executive Order No. 12547.

**Sec. 12.** References in any Executive order to any provision in Executive Order No. 12547 shall be deemed to refer to the corresponding provision in this Order.

Ronald Reagan

THE WHITE HOUSE,
*May 13, 1987.*

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# Rules and Regulations

Federal Register
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Friday, May 15, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 910

[Lemon Regulation 561]

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 561 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 375,000 cartons during the period May 17–23, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 561 (§ 910.861) is effective for the period May 17–23, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on May 12, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by an 11 to 1 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market continues to improve.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

**List of Subjects in 7 CFR 910**

Marketing agreements and orders, California, Arizona, and Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

**PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

1. The authority citation for 7 CFR Part 910 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.861 is added to read as follows:

**§ 910.861 Lemon Regulation 561.**

The quantity of lemons grown in California and Arizona which may be handled during the period May 17, 1987, through May 23, 1987, is established at 375,000 cartons.

Dated: May 13, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87–11282 Filed 5–14–87; 8:45 am]

BILLING CODE 3410-02-M

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### 7 CFR Part 1040

### Milk in the Southern Michigan Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action suspends for the months of May through August 1987 the requirement in the Southern Michigan Federal milk order that a cooperative association deliver to pool distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order. The suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The action is needed to avoid inefficient handling of milk and to ensure that dairy farmers historically associated with the Southern Michigan market will continue to share in the market's fluid milk sales.

**EFFECTIVE DATE:** May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4829.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 10, 1987; published April 17, 1987 (52 FR 12537).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the beneifts that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Service Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Southern Michigan marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on April 17, 1987 (52 FR 12537) concerning a proposed suspension of certain provisions of the order. Interested parties were afforded an opportunity to file data, views, and arguments thereon. No comments were received.

After consideration of all relevant material, including the proposal in the notice, and other available information, it is hereby found and determined that for the months of May through August 1987 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1040.7(b)(2), the words "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

2. In § 1040.7(b)(2), paragraphs (i) and (ii).

**Statement of Consideration**

This action makes inoperative for the months of May through August 1987 the provisions requiring a cooperative association to deliver at least 50 percent of its members' producer milk to pool distributing plants, either through its supply plants or directly from farms, in order to qualify the supply plants as pool plants. The suspension was requested by Michigan Milk Producers Association (MMPA), which represents producers supplying the market. MMPA had originally requested that April be included in the suspension period, but indicated later that it was not necessary to include April in the suspension period.

This action is needed because MMPA otherwise would be unable to efficiently pool approximately 55 million pounds of member milk during the period of May through August 1987. Approximately 48 percent of their members' production, which is pooled as part of a supply plant unit, is needed to satisfy the requirements of the distributing plants they supply during May through July. MMPA projects that 48 percent of that supply will be needed at distributing plants in August. For March 1987, at MMPA's request the Department suspended the pooling provision that required a supply plant operator to ship at least 30 percent of its receipts of Grade A milk to distributing plants. At that time, they indicated that their fluid milk sales had declined dramatically in February and no improvement was expected in March. That situation has not changed.

MMPA operates approximately 85 percent of the plant capacity for manufacturing butter and nonfat dry milk in the market. Thus, MMPA is the major handler of reserve milk supplies pooled on the Southern Michigan order.

Accordingly, it is appropriate to suspend the qualification requirement that a cooperative association must deliver to distributing plants at least 50 percent of its members' producer milk in order to qualify its supply plants as pool plants under the order.

If the provisions were not suspended for the months of May through August 1987, MMPA would encounter considerable difficulty in pooling certain supply plants and the milk of producers who historically have been associated with the Southern Michigan fluid market. Without the suspension, milk would be shipped in an inefficient and costly manner merely to assure its continued pooling under the order. This would disrupt the orderly marketing of milk in the Southern Michigan marketing area.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions in the marketing area in that substantial quantities of milk from producers who regularly supply the market otherwise could be excluded from the marketwide pool, or else the milk would have to be shipped in an inefficient and costly manner, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views, or arguments concerning this suspension. No comments were filed.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1040**

Milk marketing orders, Milk, Dairy products.

*It is therefore ordered,* That the following language in § 1040.7(b)(2) of the Southern Michigan order is suspended for the months of May through August 1987, as follows:

**PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA**

1. The authority citation for 7 CFR Part 1040 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1040.7 [Temporarily suspended in part]**

2. In 7 CFR Part 1040, the following words in § 1040.7(b)(2) are suspended: "if transfers from such supply plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section are:"

3. In 7 CFR Part 1040, paragraphs (i) and (ii) in § 1040.7(b)(2) are suspended.

Signed at Washington, DC, on: May 8, 1987.

**Kenneth A. Gilles,**

*Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 87–11107 Filed 5–14–87; 8:45 am]

BILLING CODE 3410-02-M

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**FEDERAL HOME LOAN BANK BOARD**

**12 CFR Parts 545, 561, 563, 563c and 570**

**[No. 87–529]**

**Definition of Regulatory Capital**

Dated: May 5, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Final rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations pertaining to the definition

of regulatory capital applicable to all institutions the accounts of which are insured by the FSLIC ("insured institutions" or "institutions"). First, the Board is requiring that all financial statements issued by insured institutions, including statements of condition required pursuant to 12 CFR 545.115, and all financial reports filed with the Board shall be prepared in accordance with generally accepted accounting principles ("GAAP"). Second, the term "regulatory capital" is defined to mean the sum of equity capital as determined in accordance with GAAP plus certain other items based on risk analysis reporting ("RAR"). These amendments are part of the Board's comprehensive revision of appropriate capital requirements for insured institutions. The Board adopted amendments to its regulatory capital requirements for insured institutions on August 15, 1986. Regulatory Capital Requirements of Insured Institutions, Board Res. No. 86–857, 51 FR 33565 (1986) (to be codified at 12 CFR 563.13). The rules are designed to operate in a complementary manner to further the Board's goals of more effectively monitoring the condition of insured institutions and the related risks to the Corporation.

In addition to adopting this final regulation, the Board today also is proposing a related rule that would revise its current regulation governing classification of assets, which would in certain cases require increased capital, and proposed a rule and policy statement relating to the appraisal policies and practices of insured institutions and service corporations. *See* Board Res. Nos. 87–527, 87–528, published in the Proposed Rules section of this issue.

**DATE:** The regulation is effective January 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Christina M. Gattuso, Attorney, Office of General Counsel, (202) 377–6649; Robert J. Pomeranz, Senior Policy Analyst, Office of Policy and Economic Research, (202) 377–6760, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Thomas R. Bloom, Chief Accountant, (202) 778–2532; or Barefoot Bankhead, Professional Accounting Fellow, (202) 778–2538, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** These amendments are adopted pursuant to the provisions of section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. 1726(b), as amended by the Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Pub. L. 97–320, 96 Stat. 1469, which gives the Corporation broad discretion to determine appropriate reserve requirements for insured institutions. Specifically, section 403(b) of the NHA requires all insured institutions to "provide adequate reserves in a form satisfactory to the Corporation, to be established in accordance with regulations made by the Corporation." Pursuant to its authority as operating head of the Corporation, the Board has established regulatory capital requirements for insured institutions and determined those components of capital includable in regulatory capital.

### A. Description of the Proposal

On April 24, 1986, the Board proposed to revise its regulation defining "regulatory net worth," 12 CFR 561.13, which includes components of net worth as determined in accordance with GAAP as well as other components the Board has determined constitute net worth in accordance with regulatory accounting practices. Board Res. No. 86–427, 51 FR 16542 (May 5, 1986). In the preamble to the proposed revision, the Board fully described the reasons for and history of the distinctions that exist between equity capital under GAAP and regulatory net worth under regulatory accounting practices.

The proposal would have required all insured institutions to file all financial statements, including statements of condition required pursuant to 12 CFR 545.115, and reports to the Board on a GAAP basis with a reconciliation to regulatory capital, a concept that the proposal would have substituted for regulatory net worth.

In conjunction with this GAAP reporting requirement, the proposal also would have restructured the definition of regulatory capital to reflect the concepts embodied in the proposed risk analysis reporting and to streamline and remove those procedures the Board no longer deemed appropriate for RAR. This feature of the proposal was intended to ensure comprehensive disclosure and to minimize any potential for confusion on behalf of the public.

The Board also proposed to substitute the term "regulatory capital" for the term "regulatory net worth" in section 561.13. This change recognizes that the term "regulatory net worth" does not precisely parallel "net worth" or "equity" as defined by accounting literature and reaffirms the Board's discretion to define the components of regulatory capital for purposes of its regulations in a manner most appropriately suited to the objectives and responsibilities of the Board. The proposal would also have amended 12 CFR Chapter V to clarify that all existing references in the Board's regulations to "regulatory net worth" and "net worth" should be construed to mean "regulatory capital." In Board Resolution 86–857, the Board amended 12 CFR Chapter V to substitute the term "regulatory capital" for "regulatory net worth." *See* 51 FR at 33584.

These structural changes, in the Board's view, best balanced the benefits of GAAP and RAR by revising the provisions of 12 CFR 561.13 to define "regulatory capital" as the sum of (1) equity capital as determined in accordance with GAAP ("equity capital"), (2) items that serve as the functional equivalents of capital for the FSLIC by providing a buffer against losses, as well as specific capital instruments created by congressional action and Board authority ("definitional capital"), (3) certain other components of capital as the Board determines to be consistent with its risk analysis conventions, and (4) risk analysis reporting forbearances. Regulatory capital so computed would be used to determine an institution's compliance with the Board's minimum regulatory capital requirements under § 563.13, as amended in Board Res. No. 86–857, 51 FR 33565 (Sept. 22, 1986).

The Board also proposed to substitute the term "risk analysis reporting" for "regulatory accounting practices" in describing the Board's modification of GAAP in determining the capital components considered appropriate for evaluating risk to the FSLIC.

### B. Discussion of the Comments

The Board received 184 public comments in response to the proposal. The majority of comments (138) were submitted by insured institutions. Of the remainder, 20 were submitted by national and commercial banks, 14 by industry trade associations, 4 by law firms representing insured institutions and investment companies, 1 by an economic consultant representing insured institutions, 1 by a state banking regulator, 3 by various entities representing insured institutions, 1 by the American Institute of Certified Public Accountants ("AICPA"), 1 by the Mortgage Securities Corporation of America, Inc., and 1 by the Financial Accounting Standards Board ("FASB").

Most commenters opposed the proposal, although other commenters generally supported the proposal. Both supporters and opponents suggested various substantive and technical modifications to the proposal. A few

commenters suggested alternatives to the proposal. Although the comment period ended on July 7, 1986, the Board has considered late-filed and late-received letters in its efforts to maximize public participation in the rulemaking. After carefully considering the issues raised by the commenters, which are more fully discussed below, the Board has determined to adopt the amendments substantially as proposed with certain modifications and clarifications.

*1. Reporting in Accordance With GAAP*

Although many commenters supported the GAAP reporting requirement, the majority of commenters opposed immediate implementation of the requirement, especially with respect to statements of condition made publicly available at the institution pursuant to 12 CFR 545.115 ("counter statements") and publicly available reports filed within the Board. The latter believed that an immediate return to GAAP reporting would cause a loss of public confidence in the thrift industry and the FSLIC because many insured institutions that currently report positive capital under RAR would report negative capital under GAAP.

A majority of commenters, both supporters and opponents, agreed with the Board's goal of moving the thrift industry closer to GAAP. They urged, however, that the Board gradually phase in GAAP reporting over a period of time ranging from 2 years to 15 years. They contended that many institutions would not have taken advantage of RAR had they known it would be eliminated over time. Thus, they argued that such a phase-in period would allow insured institutions to continue to restructure their balance sheets and would alleviate any adverse publicity that could thwart the ability of insured institutions to raise additional capital in the financial markets.

Similarly, commenters maintained that GAAP reporting would have a significant impact on an institution attempting to sell stock subscriptions in the local market because individual investors would be reluctant to invest in an institution that reports a low or negative GAAP equity capital. Moreover, several commenters contended that the thrift industry has made significant strides in improving earnings and net worth and that a return to GAAP reporting at this time would cause an unwarranted loss of public confidence in many insured institutions. Such a loss of confidence would in turn cause "disintermediation"—or loss of deposits—to other financial institutions and result in a far greater strain on the FSLIC.

The majority of commenters opposed GAAP reporting because of the accounting treatment of deferred loan losses under GAAP. These commenters noted that many insured institutions, with encouragement from the Board, restructured their portfolios in the early 1980s by selling substantial amounts of low-rate, fixed-rate mortgages and certain other securities at a significant discount and amortized the resulting losses into expense over the remaining contractual term of the asset sold pursuant to 12 CFR 563c.14. Because GAAP requires immediate recognition of the entire loss, many insured institutions would be forced to report a reduced or negative net worth on a GAAP financial statement. The commenters asserted that the long-term accounting treatment of these loan losses under RAR necessitates an extended phase-in period in order to measure fully the benefit of reinvestment and the annual amortization of deferred losses.

Similarly, several commenters opposed GAAP reporting because of the treatment of appraised equity capital under GAAP. Pursuant to 12 CFR 563.13(c), an insured institution may include in regulatory capital an amount that represents the unrecognized appreciation of selected eligible office land, buildings, and improvements used for an institution's own operations. Under GAAP, such unrecognized appreciation is not considered to be capital. Because the amount of capital represented by deferred loan losses and appraised equity capital is substantial in the thrift industry, several commenters suggested that the Board permit the inclusion of deferred loan losses and appraised equity capital in the regulatory capital section of their counter statements and publicly available reports.

One commenter voiced strong opposition to GAAP reporting, arguing that such a requirement will reverse the Board's policy regarding the accounting treatment of net worth certificates ("NWCs") and income capital certificates ("ICCs"). The commenter contended that the Board's reversal of this accounting treatment will violate the rights of those institutions that entered into contracts with the Board to rescue and acquire ailing thrifts and relied on the Board's representations concerning the accounting treatments of NWCs and ICCs. Further, the commenter alleged that the accounting profession is considering whether there should be changes in the accounting treatment of these instruments under GAAP and, therefore, that the Board should delay implementation of any final rule until the Financial Accounting Standards Board ("FASB") makes an authoritative pronouncement on this issue.

Similarly, one commenter opposed GAAP reporting because cash contributions and forbearances acquired in connection with assisted and unassisted mergers would not be included as equity in a GAAP financial statement. The commenter contended that many institutions that merged with troubled institutions did so primarily because of cash assistance and forbearances and because they relied on their continued ability to include these items in their financial statements.

Many commenters specifically opposed GAAP reporting requirements for mutual insured institutions, arguing that such a requirement discriminates against mutual institutions and creates a particular hardship on the large number of mutuals that made major restructuring decisions in the early 1980s based on RAR. Additionally, they contended that GAAP reporting for mutuals does not advance some of the Board's stated goals because mutuals do not have stockholders or investors that have an interest in the institution's GAAP capital position. Therefore, there is no compelling reason to provide investors with a basis on which to analyze and compare the financial statements of mutual institutions with those of stock institutions. Further, they argued that an institution's regulatory capital as reported under RAR is a better measure of risk to the Board and accountholders than that provided by GAAP.

In sum, opponents of GAAP reporting argued that many insured institutions acted in good faith reliance and entered into many transactions, including mergers, on the basis of their continued ability to use RAR in reporting their financial condition. Because many insured institutions devised their long range business plans and made significant financial decisions based on continued availability of RAR, commenters contended that the Board should gradually phase in GAAP reporting to allow the amortization of differentials between GAAP and RAR currently reported on the books of institutions.

In addition to a phase-in period for GAAP reporting, several commenters suggested other alternatives. One commenter suggested that publicly available financial statements be prepared on the basis of a RAR/GAAP dual presentation within the statement,

making specific line item adjustments to RAR to derive financial statements prepared in accordance with GAAP. Several commenters suggested that the Board permit preparation of counter statements and publicly available reports on a RAR basis, with a footnote reconciliation to GAAP. One commenter urged the Board to waive the GAAP reporting requirement for insured institutions with negative GAAP equity capital. Several commenters suggested that the Board exempt mutual institutions from reporting on a GAAP basis. Finally, one commenter suggested that counter statements and publicly available reports should reflect the total regulatory capital within the statement as follows: (1) Equity capital, with a footnote to designate it as equity capital as determined in accordance with GAAP; (2) "definitional capital"; and (3) those capital items recognized by RAR. This commenter contended that such a statement would be an acceptable alternative to a pure GAAP statement and would disclose fully and fairly the financial position of insured institutions.

Although the Board understands the concerns raised by the commenters, the Board continues to believe that GAAP reporting ultimately is in the best interests of the public. As discussed in the proposal, the Board believes that GAAP reporting for all insured institutions will provide the Board with a more consistent, comprehensive basis for analyzing and comparing the financial statements issued by insured institutions and that this method of reporting will also assist the Board in monitoring the performance and soundness of the thrift industry. Further, the Board believes that GAAP reporting will benefit readers and users of financial statements by providing recognized, comparable data and, consequently, will provide credibility for those institutions seeking access to the capital markets.

A number of concerns unique to the Board's regulatory role in evaluating risk to the FSLIC led it to permit insured institutions to depart from GAAP in certain instances. Although insured institutions, especially mutual institutions, claim that they made decisions in reliance on continued use of RAR, the Board does not believe that such reliance provides justification for continued departures from GAAP reporting. The Board emphasizes that even though certain RAR items are not included in GAAP equity capital, these items are included in regulatory capital, and the Board relies primarily upon regulatory capital in assessing an insured institution's financial condition. Further, the Board utilizes regulatory capital to determine an institution's compliance with the Board's regulatory capital requirements under § 563.13, as amended by Board Res. No. 86-857. Because the Board is continuing to allow insured institutions to include both definitional capital and certain RAR items in regulatory capital, the Board is not persuaded by the reliance argument expressed by commenters. Moreover, the Board disagrees that the GAAP reporting requirement will hinder the ability of insured institutions to sell stock subscriptions in the capital markets because institutions must comply with GAAP for such transactions under the federal securities laws and the Board's existing regulations. *See* 12 CFR Part 563c (1986).

The Board recognizes that many insured institutions are reluctant to move immediately to GAAP reporting because they fear that the public will react adversely to the less favorable GAAP financial condition of many insured institutions. The Board believes, however, that public confidence in the thrift industry will be enhanced by the use of consistent GAAP reporting and disclosure. In recent years, the Board and the thrift industry have been criticized for employing regulatory accounting techniques that are perceived to misrepresent the true financial condition of insured institutions. The Board believes that the negative press resulting from this criticism has caused an erosion of public confidence in the thrift industry. In the Board's experience, those insured institutions with low or negative GAAP capital positions have not suffered from severe deposit flights and consequently have not presented a serious threat to the FSLIC because of such flights. The Board generally believes that there is a high degree of public confidence in the FSLIC, and, in the Board's view, full and fair disclosure under GAAP by insured institutions, will better serve the public, the thrift industry, and the FSLIC.

Further, the Board notes that regulatory reports filed with the Board are currently prepared on an RAR basis. Under the Freedom of Information Act such reports are available to the public and, because items such as definitional capital, deferred loan losses, and appraised equity capital are segmented by the reporting system, an approximation of the GAAP equity capital position can be derived from such reports. Therefore, in effect, approximations of the GAAP equity position of individual institutions and the industry as a whole are currently available to the public.

Accordingly, the Board has determined that all financial statements and reports issued by insured institutions or filed with the Board for all periods beginning on or after January 1, 1988, shall be prepared in accordance with GAAP and shall include a footnote reconciliation of GAAP equity capital to regulatory capital. This includes all financial statements issued by insured institutions subject to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), all audited financial statements and reports filed pursuant to Bulletin PA-7a, all financial reports that must be filed with the Board, and all counter statements prepared by insured institutions. The Board wishes to emphasize, however, that additional disclosures may be necessary on a case-by-case basis for securities filings.

Moreover, the Board has determined that all counter statements prepared by insured institutions shall include in bold type on the body of the statement the following language: "The Federal Savings and Loan Insurance Corporation ("FSLIC") insures all depositors' savings up to $100,000 in accordance with the rules and regulations of the FSLIC." Additionally, the footnote reconciliation of equity capital to regulatory capital contained in the counter statement shall include the following language: "Regulatory capital is the basis by which the Federal Home Loan Bank Board determines whether an institution is insolvent, and whether an institution is meeting its regulatory capital requirement."

In the Board's view, the inclusion of this additional language in the counter statement prepared by insured institutions will assure depositors that their savings are insured by the FSLIC and will also serve to inform both investors and depositors of the amount of an institution's regulatory capital and that such regulatory capital is the basis by which the Board evaluates an institution's capital position.

*2. The Components of Regulatory Capital*

The majority of comments supported the proposed calculation of regulatory capital but suggested several modifications to the proposal. Several commenters, while acknowledging the need to revise the current definition of regulatory capital, advocated that the Board require institutions to maintain both a "primary" and "total" capital requirement, thereby adopting the structure employed by the commercial banking regulators. Under one commenter's specific proposal, components of an institution's "primary"

capital would include equity capital (consisting of permanent preferred stock and common stock, paid-in surplus, reserves, and retained earnings), as well as ICCs, mutual capital certificates, appraised equity capital, nonwithdrawable accounts, NWCs, unallocated loan loss reserves, minority interests in consolidated subsidiaries, deferred tax liabilities, deferred loan fees, goodwill and other intangible assets, and an amount of subordinated debt that equals no more than 50 percent of primary capital exclusive of such subordinated debt. Assets classified as loss would be subtracted from primary capital.

"Total" capital would consist of all the components of primary capital plus components of "secondary" capital, which would include all subordinated debt not included in primary capital, as well as nonpermanent preferred stock. Under this proposal, insured institutions would be required to meet a 5.5 percent primary capital ratio and a 6 percent total capital ratio.

The definition of regulatory capital suggested by the commenters included certain items not included in the Board's proposed definition and, in some cases, not included by the bank regulatory agencies. The Board will address most of those items separately below. With respect to the general suggestion that capital be defined as primary capital and total capital, the Board notes that, traditionally and historically, the Board's minimum regulatory capital requirements for insured institutions have been based upon total regulatory capital, as defined by the Board. The components previously included in "net worth" and which continue to be included as regulatory capital include those items that as a whole, in the Board's view, provide adequate protection to insured institutions and serve to buffer the FSLIC from loss. Consequently, the Board believes that the bank regulatory formula for capital is not an appropriate model to use in establishing adequate capital reserves for insured institutions.

Although the Board is revising its definition of regulatory capital and its regulatory capital requirements, the basic principles involved have not changed. The Board continues to believe that certain items do not provide the FSLIC with the same degree of protection as permanent capital items. The commenters' definition of total capital includes all subordinated debt and nonpermanent preferred stock. The Board does not believe that the total amount of these items should be included in computing regulatory capital and the minimal regulatory capital requirements of insured institutions. While the Board recognizes that subordinated debt affords protection to the FSLIC in the event of the insolvency of an insured institution, the Board believes that the use of an amortization schedule that reduces the amount of subordinated debt includable in regulatory capital as the subordinated debt approaches maturity appropriately recognizes that subordinated debt is a nonpermanent liability that must be repaid upon maturity. Similarly, the Board believes that nonpermanent preferred stock, in terms of the degree of protection it affords the FSLIC, should be treated in the same manner as subordinated debt. Accordingly, the Board does not agree that capital should be defined in the manner suggested by the commenters and, therefore, has determined that an insured institution's regulatory capital requirements should continue to be based on regulatory capital, as defined herein.

a. *Deferred loan fees and deferred income taxes.* Several commenters suggested that deferred loan fees and deferred income taxes be included as components of regulatory capital, contending that these items serve to buffer institutions and the FSLIC from losses and thus provide the FSLIC with protection analogous to traditional equity capital and definitional capital. Further, these commenters argued that under the proposed FASB treatment of deferred loan fees and deferred income taxes the true financial condition of an insured institution could be understated.

Since the issuance of the proposal, the FASB has issued Statement of Financial Accounting Standards No. 91, *Accounting for Nonrefundable Fees and Costs Associated With Originating or Acquiring Loans and Initial Direct Costs of Leases* (Dec. 1986) ("SFAS No. 91"). SFAS No. 91 generally requires an institution to defer all loan origination and commitment fees and recognize them by the interest method over the contractual life of the related loan as an adjustment to yield. Incremental direct costs (narrowly defined) of originating or acquiring a loan are capitalized and recognized by the interest method as a reduction of the loan's yield. With respect to deferred income taxes, the FASB proposal on income taxes would reject the indefinite reversal concepts of Accounting Principles Board ("APB") Opinion No. 23 and would require a deferred tax liability to be established for all previous deductions known as bad debt reserves, thereby significantly reducing the net worth of the thrift industry. *See* Proposed Statement of Financial Accounting Standards, *Accounting for Income Taxes Exposure*, Draft (Sept. 2, 1986).[1]

Although the Board recognizes the concerns raised by the commenters, it believes that such concerns are premature. The FASB's adoption of SFAS No. 91 for loan fees will not affect the computation of regulatory capital for insured institutions, because they may continue to include the RAR/GAAP differential for loan origination and commitment fees in computing their regulatory capital. The Board is of the view that deferred loan fees should not be included in regulatory capital because, by definition, any deferred fees have been deemed to be yield adjustments since the insured institution already has recognized the acquisition credits pursuant to 12 CFR 563.23–1. Accordingly, the Board is of the view that deferred loan fees should be recognized over the term of the asset as interest income and, therefore, should not be included as a component of regulatory capital. The Board notes, however, that it may determine at a future date to eliminate the RAR/GAAP differential for loan fees.

Under GAAP, an insured institution must provide amounts for deferred taxes for differences between income that is reflected in financial statements and income that is recognized in the institution's tax returns. These deferred taxes eventually will be used for future tax liabilities. Consequently, such taxes are a liability and as such do not provide additional protection to the FSLIC. Thus, the Board has determined not to include deferred taxes in regulatory capital. The Board notes, however, that if the FASB requires insured institutions to establish a deferred tax liability account for bad debt reserves, the Board will reconsider this issue and determine whether the amount of deferred taxes specifically set aside for bad-debt reserves should be added back into regulatory capital. The Board recognizes that amounts for deferred taxes set aside for bad debt reserves typically provide additional protection to the FSLIC because, in practice, such taxes are rarely paid.

b. *Minority interests in consolidated subsidiaries.* A few commenters suggested that the Board include minority interests in consolidated subsidiaries as a component of regulatory capital. They contended that

[1] On January 28, 1987, the FASB tentatively decided to depart from the proposal in the Exposure Draft and retain the indefinite reversal concept of APB Opinion No. 23. However, this issue may be readdressed by the FASB at a later date.

this item is included in the primary capital of commercial banks and, therefore, the Board should allow it as a component of regulatory capital for insured institutions.

The Board acknowledges that the banking regulators allow the inclusion of minority interests in equity accounts of consolidated subsidiaries as a component of primary capital. The Board notes, however, that the bank regulatory agencies allow inclusion of this item in primary capital because banks are required to report their holdings in majority owned subsidiaries on a consolidated basis. *See* 12 CFR 3.2(c)(1) (1986); 12 CFR 325.2(h) (1986); 12 CFR Part 225, App. A (1986). Therefore, the inclusion of such minority interests provides capital support to the risk in the consolidated assets. The Board previously has required and continues to require that insured institutions file their regulatory reports to the Board on an unconsolidated basis and report investments in majority owned subsidiaries by the "equity method of accounting," and as a result insured institutions are only including their pro rata interests in the net assets of the majority owned subsidiaries. Thus, minority interests in consolidated subsidiaries do not provide support to the risk in the institution's assets and may not be included as a component of regulatory capital.

Further, the Board stresses that interests that arise when an insured institution transfers unencumbered or overcollateralized assets to a subsidiary in exchange for common stock of that subsidiary may not be included in regulatory capital. In this type of transaction, the subsidiary then sells preferred stock to third parties. The preferred stock becomes a minority interest in a consolidated subsidiary but, in effect, fails to provide any capital support to the consolidated entity inasmuch as the security holders have a preferred claim on sufficient assets to mitigate their risk. Therefore, transactions of this nature may not be included in insured institutions' regulatory capital. The Board also notes that minority interests in these types of transactions are also excluded from capital by the bank regulatory agencies. *See e.g.*, 50 FR 11138, 11141 (Mar. 19, 1985).

c. *Goodwill and other intangibles.* Several commenters favored the inclusion of goodwill and other intangibles in the definition of regulatory capital. One such commenter advocated such consideration on the ground that goodwill accounting for savings institutions is in accordance with GAAP. This commenter also asserted that from the standpoint of precedent, institutions have operated under the assumption that these items would continue to be considered capital for regulatory purposes. Furthermore, because non-lead bank intangible assets count as capital at the commercial bank holding company level, a similar treatment of intangibles for savings institutions is possibly justified. One commenter opposed the inclusion of goodwill and other intangibles, arguing that if the industry is being encouraged to access the capital markets with GAAP financial statements, the definition of regulatory capital should be consistent for all financial institutions that access those capital markets.

The Board notes that the inclusion of goodwill is in accordance with the precepts of GAAP and therefore is properly includable in equity capital.

d. *Annual income payments on capital certificates.* Finally, in reviewing the proposed components of regulatory capital, the Board has determined that accumulated annual income payments on capital certificates not due and payable ("AIPs") should be included in regulatory capital. While this item is not always considered to be equity capital under GAAP, the Board believes that AIPs provide the FSLIC with protection analogous to traditional equity capital and, thus, is amending section 561.13(b)(1) to include this item in definitional capital. The Board notes that insured institutions must report AIPs on their financial statements and reports in accordance with GAAP, which would reduce retained earnings and net income available to common shareholders. However, such amounts would be included in regulatory capital until such time as the AIPs become due and payable. At that point, such amounts would be included in liabilities, thereby reducing regulatory capital.

*3. Pre-Final Rule Risk Analysis Reporting*

a. *Appraised equity capital.* The majority of the several commenters that addressed the Board's proposal regarding the treatment of appraised equity capital as a component of regulatory capital favored the continued inclusion of this item. One commenter argued that the inclusion of appraised equity capital is a significantly more economical and workable alternative to requiring insured institutions to sell and leaseback properties that have appreciated. Another commenter reasoned that if appraised equity capital was a reasonable component of capital during a limited recovery period, then it is equally useful at a time when the Board is raising minimum capital requirements. Concern was also expressed that the more conservative GAAP treatment fails to present a true picture of an institution's financial condition.

One commenter opposed the inclusion of appraised equity capital on the ground that this item does not genuinely aid in the assessment of protection afforded to insurers of the institution. Another commenter similarly opposed the inclusion of this item, citing the fact that the volatility of such appraisal values provide the insurer with less protection than commonly assumed. The latter commenter suggested that if the Board nevertheless continues to include appraised equity capital in regulatory capital the Board should require reappraisals every 3 years to ensure the maintenance of appraised equity.

As the Board noted in the proposal, it believes that the current expiration date for the use of the appraised equity capital rule is appropriate. In promulgating the rule authorizing the inclusion of appraised equity capital in regulatory net worth in 1982, the Board recognized that appraised equity capital represented a real, though unrealized, equity value that would serve to protect the interests of the FSLIC in case of merger or liquidation. The Board took this step in an effort to maintain public confidence in the thrift industry in an unfavorable economic climate. Although a minority of institutions continue to experience financial difficulty, the financial climate has improved dramatically. In 1986, more than 70 percent of all insured institutions were profitable. Consequently, because this rule was designed to bolster net worth during a limited recovery period, the Board allowed the rule to expire on December 31, 1986. Institutions that have included the amount of appraised equity capital in regulatory capital prior to the expiration of the rule may continue to include that appraised equity capital in their capital under the final rule.

b. *Deferral of loan gains and losses.* Several commenters favored the deferral of loan gains and losses in computing regulatory capital, arguing that the cutoff date should be extended beyond the effective date of the proposed regulation. The proposal would have authorized such gain and loss deferrals as a component of regulatory capital only if, and to the extent that, the insured institution had excluded such gains and included such losses prior to the effective date of the final rule.

The deferral and amortization of gains and losses from the sale of mortgage

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loans and mortgage-related securities was adopted at a time when the sharp rise in mortgage interest rates increased the need of institutions to dispose of such mortgages in economically advantageous ways. This deferral of such loan gains and losses in computing regulatory capital was intended to facilitate the restructuring of insured institutions' portfolios, which were characterized primarily by long-term, fixed-rate mortgage assets. In keeping with the clear intent of this proposal, the Board believes that institutions have had adequate time to reduce future interest-rate risk through well planned mortgage disposition programs. Additionally, in today's favorable interest rate environment, current recognition of gains and losses from asset sales should not significantly inhibit an institution's ability to restructure its portfolio. Accordingly, insured institutions may continue to exclude the unamortized amount of loan gains and to include the unamortized amount of loan losses that were deferred pursuant to 12 CFR 563c.14, provided that the institution has excluded such gains and included such losses in computing its regulatory capital prior to January 1, 1988.

*4. Post-Final Rule Risk Analysis Reporting*

a. *RAR/GAAP differential for loan origination and commitment fees.* Commenters were divided over the proposal permitting institutions to continue including in regulatory capital an amount representing the RAR/GAAP differential for loan origination and commitment fees. One commenter supporting the proposal asserted that the inclusion of the differential will assist the industry in recapitalizing at a faster pace and in meeting higher regulatory capital requirements. A majority of commenters advocated the continued use of the differential on the ground that the FASB had not yet rendered a final determination of appropriate GAAP treatment of loan origination and commitment fees. These commenters noted, however, that the differential should be used only until such a clearly defined GAAP treatment is enunciated and reviewed.

One commenter argued that the proposed treatment of loan fees does not result in either as conservative a measure of capital as produced under GAAP nor in as meaningful a measure of an institution's ability to absorb future losses, which should be primary objectives of the Board. Finally, one commenter suggested that the Board suspend consideration of this matter pending anticipated clarification from the FASB on the treatment of such fees under GAAP.

The Board recognizes the need to measure accurately both an institution's capital and its ability to absorb future losses. However, the Board is reluctant to abandon the application of RAR to loan origination and commitment fees at this time. As several commenters recognized, the Board would be ill advised to switch to a GAAP treatment for these fees in light of the recent changes adopted by the FASB in SFAS No. 91, specifically with respect to such fees. Until the Board can conduct a considered review of such changes to determine their breadth and likely effect, the Board must conclude that the inclusion of the RAR/GAAP differential in regulatory capital provides a more effective tool for analyzing risk of loss to the FSLIC.

b. *Allowance for loan losses.* Several commenters opposed the continued use of RAR with respect to allowance for loan losses pursuant to the Board's classification of assets rule, reevaluation of assets; adjustment of book value and adjustment charges. 12 CFR 561.16c, 571.1a, 563.17–2. A few commenters contended that the Board should accept GAAP as a unified whole and should not deviate from GAAP in those instances when RAR is more conservative. Some commenters argued that the Board's rationale in adopting its regulations on allowance for loan loses is no longer justified as a result of the Board's new minimum regulatory capital requirements for insured institutions.

Several commenters contended that the inclusion of assets classified Substandard in the definition of scheduled items requires an institution to increase its regulatory capital requirements by an amount equal to 20 percent of scheduled items and, consequently, the Board's regulations effectively require a specific loss reserve equal to 20 percent of substandard assets. They alleged that under GAAP and the accounting principles applied to commercial banks, Substandard assets do not warrant specific reserves and, therefore, do not affect the capital of other entities. Additionally, they argued that the Board's need to include Substandard assets as scheduled items is lessened by the Board's new increased minimal capital requirements.

Moreover, these commenters contended that assets classified Loss or Doubtful pursuant to the Board's regulations should not be deducted in computing regulatory capital. They maintained that such a requirement differs from the treatment of these items by commercial banks because commercial banks are permitted to add back loss reserves in calculating their primary capital.

Many commenters urged the Board to allow insured institutions to include unallocated (general) loan loss reserves as a component of regulatory capital. In Board Resolution 86–857, which was adopted on August 15, 1986, the Board amended § 561.13 to clarify that allowances for loan losses constitute a component of regulatory capital. The Board noted, however, that the allowance for loan losses does not include specific reserves of any kind, including those established pursuant to § 561.16c, § 563.17–2, or § 571.1a.

Several commenters urged the Board to adopt GAAP with respect to allowance for loan loses. Specifically, one trade association requested the Board's Office of Regulatory Policy, Oversight and Supervision to rewrite its Memorandum R–41b to conform with GAAP and allow insured institutions to carry a problem loan at the lower of (1) unpaid principal amount, (2) net realizable value, or (3) a carrying value determined in accordance with the provisions of FASB, Statement of Financial Accounting Standards No. 15, *Accounting by Debtors and Creditors for Troubled Debt Restructurings* (June 1977).

At the outset, the Board notes that in adopting its Classification of Assets Regulation, 12 CFR 561.1a, 561.16c, and 563.17–2(b) ("classification regulations"), the Board found that certain assets present an increased risk to insured institutions and the FSLIC and that the classification regulations were necessary to minimize losses to the FSLIC fund. Although the classification regulations became effective on January 30, 1986, the Board specifically solicited "further comments on the general scope of the classification system" and provided for "a 60-day comment period after which, if appropriate, the scope [of the regulations] may be modified, extended or otherwise addressed." 50 FR 53275, 53281 (Dec. 31, 1985).

Today the Board also has proposed a rule which would revise its current regulation governing classification of assets. Bd. Res. No. 87–527, published in the Proposed Rules section of this issue. Under the proposal, assets classified as substandard would no longer be treated as scheduled items and therefore an insured institution would not have to include twenty percent of substandard items in computing the contingency component of its minimum regulatory capital requirement. Additionally, under the proposal, institutions would no longer be required to establish specific

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allowances for loan losses for items classified as doubtful. The proposal would amend the regulation to require that institutions establish general loss allowances for those assets classified as Substandard and Doubtful. As is provided in the current regulation, the proposal would require institutions to establish specific allowances for assets classified as Loss. As proposed, the rule also provides that if an examiner concludes that the general valuation allowances established by the institution are inadequate, the examiner would determine whether an increase in the amount of general allowances is warranted, subject to PSA review. Further, the proposal would amend the regulatory capital regulation to permit the Supervisory Agent to impose an additional capital requirement on an insured institution based on the quality of its asset portfolio. Finally, the proposal would broaden the scope of the classification of assets regulation to include debt and equity securities and to require valuation allowances to be established for such securities in accordance with FASB Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies.*

The Board today also proposed a rule and policy statement relating to its appraisal policies and policies of insured institutions and service corporations. Board Res. No. 87–528, published in the Proposed Rules section of this issue. This proposal would codify the standards to be used by examiner and supervisory staff in determining compliance with the appraisal requirements of 12 CFR 563.17–1 and 563.17–2. Specifically, the proposal would clarify and simplify the current R–41c guidelines with respect to management policies, appraisal content, appraisal management and related consideration.

In the Board's view, these two proposals address many of the concerns raised by commenters with respect to the definition of regulatory capital. The comment period on the proposals is scheduled to end on July 14, 1987. At that time, the Board will determine what, if any, modifications should be made to its classification of assets regulation and its appraisal standards. Consequently, the Board has determined that it is both premature and inappropriate, at this time, to deviate from RAR with respect to allowances for loan losses pursuant to classification of assets and the Board's appraisal policies.

c. *Uncollected interest.* Several commenters suggested that, in defining regulatory capital, the Board should in no way deviate from GAAP, and should consider the elimination of other accounting principles that depart from GAAP in order to assure the integrity of financial statements and to assuage public perceptions that a piecemeal adoption is merely an accounting device serving to mask financial instability. In advocating strict adherence to GAAP, one commenter specifically urged the Board to employ GAAP to permit uncollected interest to be included as an asset, if it is collectible.

The Board concludes that it is prudent to continue to permit the use of RAR with respect to uncollected interest. Whereas Board regulations provide a time limit after which uncollected interest becomes classified uncollectible, and thus not includable in regulatory capital, GAAP relies heavily on managements' judgment as to the probability of collection of delinquent loans. The Board believes that the former approach represents a more objective, conservative accounting practice that provides insured institutions and the Board with uniform evaluation standards and that prevents the overstatement of income.

*5. Risk Analysis Reporting Forbearances*

Several commenters addressed the Board's proposal to include within regulatory capital RAR forbearances authorized by the Corporation, the Board, or the Principal Supervisory Agents. Some commenters supported the departure from GAAP in this instance because it affords the FSLIC with greater protection and permits the Board to retain needed flexibility to facilitate merger transactions. Other commenters opposed the inclusion of forbearances on the ground that such inclusion would hinder the Board's stated desire to assess risk properly. Two such commenters argued that such forbearances should not be considered as a component of regulatory capital, but should more appropriately be reflected as an adjustment to the minimum regulatory capital requirements set by the Board.

After thorough consideration of the effect such an inclusion of forbearances in regulatory capital may have on its ability to assess risk, the Board has decided to permit insured institutions to include such forbearances in their regulatory capital. Of overriding concern to the Board is the fact that such forbearances are required to facilitate the acquisition of failed institutions. Such a departure from GAAP is consistent with the Board's supervisory objectives and responsibility effectively to monitor risk to the FSLIC. Consequently, the Board's decision to continue to include forbearances as a component of regulatory capital will benefit both the FSLIC and the thrift industry as a whole.

*6. Elimination of Certain Risk Analysis Reporting Requirements*

As noted earier, several commenters suggested that the Board eliminate all RAR and require strict adherence to GAAP in order to assure the integrity of financial statements. While the Board has determined to permit continued adjustments to regulatory capital for certain items, it may determine at a later date to adjust regulatory capital to include or exclude certain other items that the Board determines to be appropriate or inappropriate for risk analysis.

A number of commenters expressed support for the Board's proposal that institutions determine gains or losses arising from futures transactions in accordance with GAAP. One such commenter noted that the elimination of RAR in this regard is an important step that will communicate to the capital markets and the investing public the Board's intent to follow prudent accounting practices.

Two commenters opposed the requirement that insured institutions record and carry marketable equity securities in accordance with GAAP because other assets and liabilities of insured institutions are not marked to market. One law firm requested that the Board permit insured institutions to deviate from GAAP and carry at cost investments in open-end management investment companies registered with the Securities and Exchange Commission ("mutual funds") the portfolio of which consists solely of debt obligations of the U.S. Government or its agencies with maximum remaining maturities at the time of purchase not in excess of 5 years. This commenter argues that if investments in such mutual funds are required to be carried in accordance with GAAP (the lower of aggregate cost or market value) the economics of the investment decision would force institutions to invest directly in liquid assets, thereby reducing protection to the FSLIC as well as thwarting Congressional intent.

The Board, as it stated in the proposal, believes that GAAP more accurately reflects the attendant risk to the FSLIC and that a variance from GAAP in this area does not result in increased protection to the FSLIC. GAAP considers investments in mutual funds to be investments in marketable equity securities and, therefore, such

investments must be carried at the lower of aggregate cost or market value. Although the Board recognizes the concerns raised by the commenters, it has concluded that there should be no deviations from GAAP unless such a deviation would more accurately assess the risk of loss to the FSLIC. Accordingly, insured institutions must report investments in marketable equity securities—including mutual funds—in accordance with GAAP.

*7. Procedural and Technical Comments*

Several commenters generally opposed the proposal due to the timing and overall complexity of the regulation in relation to other pending Board regulations and industry developments. More specifically, commenters urged the Board to delay consideration of the definition of regulatory capital proposal in light of ongoing tax code revisions in the United States Congress, pending accounting policy changes to be announced by the FASB, and current proposals to recapitalize the FSLIC. Commenters thought the proposal untimely in light of these pending developments, other recently proposed and final regulations of the Board, and the uncertain future movement of interest rates.

These commenters recommended that the Board delay further consideration of the proposal until the full impact and scope of these pending developments, and their interrelationship with the Board's proposal concerning regulatory capital requirements, could be properly assessed. Several commenters requested the Board to assemble a joint industry-agency committee or task force to analyze these accounting, legislative, and regulatory proposals prior to the implementation of new regulatory capital regulations.

The Board's role as operating head of the FSLIC is to develop a regulatory framework that balances the thrift industry's competitive need for operating flexibility with the FSLIC's continuing need for controlled risk exposure. Although the Board is mindful of pending legislative and policy developments, the Board is equally cognizant of its responsibility to maintain the solvency of the FSLIC fund.

In developing the proposal, the Board considered the potential impact of these pending legislative, regulatory, and industry developments. The Board's Office of Policy and Economic Research ("OPER") conducted a feasibility study to investigate the extent to which thrift institutions could satisfy the capital requirements set forth in the April 1986 Board proposal regarding regulatory capital requirements. *An Analysis of the Proposed Capital Requirements for Thrift Institutions: A Staff Economic Study* (Aug. 15, 1986) (*"Flexibility Study"*). Although any analysis of the future impact of legislative, regulatory or industry changes must rely on uncertain financial, economic, and legal developments, the *Feasibility Study* merits review.

A thrift's ability to raise capital depends on the long-run profitability of the institution. Staff analysis of the proposed plan to recapitalize the FSLIC fund concluded that such a plan will not have a significant, direct effect on thrift profitability. As proposed, the recapitalization plan will raise substantial funds through the use of public financing and FSLIC premium income. Thus, the plan levies no additional assessments on the industry that would not have been levied in the absence of the plan.

Similarly, staff analysis has concluded that other pending Board regulatory proposals will likely have only a small effect on profitability. Although the scope of pending FASB changes are not known at this time, the proposed amendments were drafted with such uncertainty in mind. With specific regard to loan origination and commitment fees, the Board noted that the FASB was defining GAAP for such fees, and thus the Board authorized the continued use of RAR until such time as the Board can effectively evaluate these accounting procedures in light of FASB changes.

Although continued study and evaluation of every conceivable legislative and industry development might shed some additional light on the effect this rule may have on thrift operating latitude and profitability, this cannot be the Board's sole concern. As the Board noted in the preamble to the proposed rule, the amendments will aid its supervisory efforts in evaluating the viability of insured institutions and the related risk to the FSLIC. The Board believes these amendments sufficiently provide the industry with necessary operating flexibility to meet the challenges of intensified competition, while simultaneously meeting the Board's responsibility to limit the risk exposure to the FSLIC. To the extent pending legislative, policy, or industry developments adversely affect or complicate these regulatory capital amendments, the Board could always reconsider such provisions if necessary.

One commenter voiced its concern over the potential effect of the regulation on small insured institutions, arguing that the Board must comply with the Regulatory Flexibility Act. The Board's regulatory flexibility analysis responding to this concern appears below.

**C. Description of the Final Rule**

The final rule requires that all financial statements issued by insured institutions, including counter statements, and all financial reports filed with the Board, for all periods beginning on or after January 1, 1988, shall be prepared in accordance with GAAP and shall include, in a footnote, a full and fair disclosure of the reconciliation of equity capital, as determined in accordance with GAAP, with regulatory capital.

The final rule defines regulatory capital as the sum of (1) equity capital as determined in accordance with GAAP ("equity capital"), (2) items that serve as the functional equivalents of capital for the FSLIC by providing a buffer against loss, as well as specific capital instruments created by congressional action and Board authority ("definitional capital"), (3) certain other components of capital as the Board determines to be consistent with its risk analysis conventions, and (4) risk analysis reporting forbearances.

*1. Equity Capital*

Equity capital is determined in accordance with GAAP. Equity capital represents the difference between the recorded values of an institution's assets and its liabilities, as determined under GAAP. *See* FASB *Statement of Financial Accounting Concepts No. 6* (Dec. 1985), which sets forth a detailed discussion of equity capital. The Board notes that institutions will continue to use "push-down" accounting as set forth in OES Memorandum No. R 55 and the Board's current accounting procedures for wash sale transactions as set forth in the OES Memorandum No. T 50–8.

*2. Definitional Capital*

Definitional capital includes qualified subordinated debt, qualified redeemable preferred stock, ICCs, mutual capital certificates, NWCs, AIPs, pledged certificates of deposit, allowances for loan losses except specific allowances (including those established pursuant to §§ 561.16c, 563.17–2 and 571.1a of this subchapter) and other nonwithdrawable accounts (excluding any treasury shares held by the insured institution) to the extent such nonwithdrawable accounts are not included in equity capital.

*3. Pre-Final Rule Risk Analysis Reporting*

This category of regulatory capital includes only the components of risk analysis reporting permitted prior to

January 1, 1988 for which further elections cannot be made, including appraised equity capital, the deferral of certain gains and losses pursuant to 12 CFR 563c.14, and certain other practices enumerated in detail below.

a. *Appraised equity capital.* Under this category, an insured institution may add to equity capital the amount of appraised equity capital as defined in 12 CFR 563.13(c), provided that the insured institution had included appraised equity capital as part of its regulatory capital prior to December 31, 1986.

b. *Deferral of asset gains and losses.* In computing its regulatory capital an insured institution may also continue to exclude the unamortized amount of asset gains and to include the unamortized amount of asset losses that were deferred pursuant to 12 CFR 563c.14, provided that the institution has excluded such gains and included such losses in computing its regulatory capital prior to January 1, 1988.

c. *Miscellaneous.* The rule also permits an insured institution to continue to include in regulatory capital amounts reflecting the RAR/GAAP differential for specific items, provided that the insured institution elected to use RAR for these items prior to January 1, 1988. An insured institution may include in its regulatory capital the amount representing the RAR/GAAP differential for the following items: accounting for the sale of real estate developed by the institution or its subsidiary (12 CFR 563.23–1(f)), futures transactions (12 CFR 563.17–4(g)), and accretion of discounts and amortization of premiums on securities (12 CFR 563.23–1(a),(b)).

*4. Post-Final Rule Risk Analysis Reporting*

Insured institutions may also continue to include in their regulatory capital an amount that represents the difference between the treatment of certain items under GAAP and the treatment of those same items under RAR. An insured institution may compute the items in this category under both RAR and GAAP for purposes of regulatory capital. The amount that represents the RAR/GAAP differential for a particular item would be added to or subtracted from equity capital to arrive at regulatory capital.

First, this category includes amounts reflecting the RAR/GAAP differential treatment of loan origination and commitment fees pursuant to newly redesignated 12 CFR 563.23–1(f)(3). The second item in this category is the amount of the RAR/GAAP differential in the treatment of gains or losses realized on options transactions pursuant to 12 CFR 563.17–5(g). Third, institutions shall continue to use RAR with respect to allowance for loan losses pursuant to the Board's classification of assets rule, 12 CFR 561.16c, reevaluation of assets, adjustment of book value, and adjustment charges 12 CFR 563.17–2, and accounting for uncollectible interest with respect to 1–4 family residential mortgage loans pursuant to 12 CFR 563c.11.

*5. Risk Analysis Reporting Forbearances*

Insured institutions may also include in their regulatory capital additional items reflecting forbearances previously authorized, or which may be authorized in the future, by the Corporation, the Board, or the Principal Supervisory Agents. Most of the forbearances included in this category result from FSLIC merger transactions.

*6. Elimination of Certain Risk Analysis Reporting Requirements*

The final rule eliminates altogether prospective authority for insured institutions to rely on five other accounting procedures heretofore permitted by the Board which represent departures from GAAP. First, the Board's accounting regulations, 12 CFR 563.23–1(f) (1986), are eliminated, and insured institutions and their service corporations must account for the sales of real estate developed by the institution or its service corporation in accordance with GAAP. *See* FASB *Statement of Financial Accounting Standards No. 66.* Second, insured institutions must record marketable equity securities in accordance with GAAP. *See* FASB *Statement of Financial Accounting Standards No. 12.* Third, the final rule amends 12 CFR 563.17–4(g) to require institutions to determine gains or losses arising from futures transactions in accordance with GAAP. *See* FASB *Statement of Financial Accounting Standards No. 80.* Fourth, 12 CFR 563.23–1 is amended to require that premiums on securities be amortized and that discounts on securities be accreted in accordance with GAAP. *See* FASB *Statement of Financial Accounting Standards No. 65.* Fifth, the final rule removes obsolete accounting procedures set forth in 12 CFR 563.23–2, which provided for the deferral and amortization of gains and losses on the disposition of securities made for purposes of meeting the Board's liquidity requirements during the period beginning on December 11, 1969, and ending December 31, 1971.

*7. Technical and Procedural Matters*

As discussed above, the final rule requires that all insured institutions file all financial statements and reports with the Board on a GAAP basis with a reconciliation to regulatory capital. The Board, however, wishes to clarify that, for purposes of regulatory reporting to the Board, insured institutions shall continue to file such reports on an unconsolidated basis and report any investments in majority owned subsidiaries by the "equity method of accounting." Further, pursuant to 12 CFR 563c.10, insured institutions with total assets of $10 million or less are not required to use the accrual basis of reporting.

**D. Effective Date of Final Rule**

The final rule becomes effective on January 1, 1988, as of which date all insured institutions shall compute their regulatory capital pursuant to § 561.13. With respect to the GAAP reporting requirement, all financial statements issued by insured institutions subject to the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), all audited financial statements and reports, all financial reports required to be filed with the Board, and all counter statements prepared by insured institutions for all periods beginning on or after January 1, 1988, shall be prepared in accordance with GAAP and shall include a footnote reconciliation of GAAP equity capital to regulatory capital.

**Final Regulatory Flexibility Analysis**

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in SUPPLEMENTARY INFORMATION.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in SUPPLEMENTARY INFORMATION.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies include insured institutions which had assets totaling $100 million or less as of December 31, 1986, or 1,651 institutions. Because undercapitalization and its attendant problems are no respecter of size, the final rule treats all institutions identically regardless of their size for

the reasons discussed fully in SUPPLEMENTARY INFORMATION. To do otherwise would be fundamentally inconsistent with the objectives of the rule.

**List of Subjects in 12 CFR Parts 545, 561, 563, 563c and 570**

Accounting, Bank deposit insurance, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings and loan associations and Securities.

Accordingly, the Board hereby amends Part 545, Subchapter C, Parts 561, 563, 563c, and 570, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

**SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM**

**PART 545—OPERATIONS**

1. The authority citation for 12 CFR Part 545 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, and 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

2. Section 545.115 is amended by revising paragraph (b) to read as follows:

**§ 545.115 Statement of condition.**

* * * * *

(b) *Format.* The information set forth in a Statement of Condition shall be presented in accordance with generally accepted accounting principles and shall include a full and fair disclosure of the reconciliation of equity capital, as determined in accordance with generally accepted accounting principles, with regulatory capital, as defined in § 561.13 of this chapter. Each statement of condition shall include in bold type in the body of the statement the following language: "The Federal Savings and Loan Insurance Corporation (FSLIC), an agency of the United States Government, insures all depositors' savings up to $100,000 in accordance with the rules and regulations of the FSLIC." In addition, the footnote reconciliation of equity capital to regulatory capital contained in such statements shall include the following language: "Regulatory capital is the basis by which the Federal Home Loan Bank Board determines whether an institution is insolvent, and whether an institution is meeting its regulatory capital requirement."

* * * * *

**SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**

**PART 561—DEFINITIONS**

3. The authority citation for 12 CFR Part 561 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943–1948 Comp., p. 1071.

4. Section 561.13 is revised to read as follows:

**§ 561.13 Regulatory capital.**

Regulatory Capital is the sum of:

(a) Equity capital, as determined in accordance with generally accepted accounting principles ("equity capital");

(b) Definitional capital, which is the sum of:

(1) Income capital certificates, mutual capital certificates (issued pursuant to § 563.7–4 of this subchapter), outstanding net worth certificates issued in accordance with Part 572 of this subchapter or which the Corporation is committed to purchase by virtue of § 572.3(c), accumulated annual income payments on capital certificates not due and payable, pledged certificates of deposit, allowances for loan losses except specific allowances (including those specific allowances established pursuant to §§ 561.16c, 563.17–2, and 571.1a of this subchapter), and any other nonwithdrawable accounts (excluding any Treasury shares held by the insured institution) to the extent such nonwithdrawable accounts are not included in equity capital: *Provided*, that for any nonpermanent instrument qualifying as regulatory capital under paragraph (b)(1) of this § 561.13, either (i) the remaining period to maturity or required redemption (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is not less than one year, or (ii) the redemption or prepayment is only at the option of the issuing insured institution and such payments would not cause the insured institution to fail or continue to fail to meet its regulatory capital requirement under § 563.13 of this subchapter: *Provided further*, that capital stock may be included as regulatory capital without limitation if it would otherwise qualify but for a provision permitting redemption in the event of a merger, consolidation, or reorganization approved by the Corporation when the issuing institution is not the survivor, or a provision permitting a redemption when the funds for redemption are raised by the issuance of permanent stock;

(2)(i) Subordinated debt securities issued pursuant to § 563.8–1 of this subchapter: *Provided*, that an institution whose application to include subordinated debt in net worth pursuant to § 563.8–1 was approved prior to December 5, 1984, shall be permitted to continue to include 100 percent of the principal amount of such subordinated debt as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is less than one year: *Provided further*, that an institution that had filed a substantially complete application pursuant to § 563.8–1 prior to December 5, 1984, shall be permitted to include 100 percent of the subordinated debt issued pursuant to such application as regulatory capital until the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation with respect to the amount of such prepayment or reserve) is less than one year if such subordinated debt otherwise is in compliance with the requirements of § 563.8–1 and if such application is not amended in any material respect subsequent to December 5, 1984: *Provided further*, that, except as otherwise provided in paragraph (b)(2)(i) of this § 561.13 and unless otherwise approved by the Corporation in writing, subordinated debt securities issued pursuant to § 563.8–1 after December 5, 1984, may be included as regulatory capital only in accordance with the following schedule:

| Years to maturity of outstanding subordinated debt | Percent included in regulatory capital |
|---|---|
| Greater than or equal to 7 | 100 |
| Less than 7 but greater than or equal to 6 | 86 |
| Less than 6 but greater than or equal to 5 | 71 |
| Less than 5 but greater than or equal to 4 | 57 |
| Less than 4 but greater than or equal to 3 | 43 |
| Less than 3 but greater than or equal to 2 | 29 |
| Less than 2 but greater than or equal to 1 | 14 |
| Less than 1 | 0 |

(ii) For purposes of determining the principal amount outstanding of an obligation issued at a discount that exceeds 10 percent of the face amount, the issuing institution shall treat as principal only the gross consideration actually received upon issuance plus the accrued interest not payable until maturity, as of the date of the computation. In the case of an instrument sold at a discount which exceeds 10 percent and which bears no stated rate of interest, the amount which can be added to principal each period is an amount equal to the accrued interest payable computed on the "level-yield" or "interest" method.

(iii) For purposes of computing the amount of subordinated debt includable as regulatory capital pursuant to paragraph (b)(2) of this § 561.13, the issuing institution must determine the effective maturity of each portion of the principal amount outstanding of the subordinated debt which is subject to required sinking fund payments, other required prepayments, and required reserve allocations, and calculate the percentage amount of each portion of the principal amount outstanding which may be included pursuant to the schedule set forth in paragraph (b)(2)(i) of this § 561.13; and

(3)(i) Preferred stock that is redeemable at the option of the issuer (A) which was issued prior to July 23, 1985, or (B) which was issued on or after July 23, 1985: *Provided,* that the form of any security issued on or after July 23, 1985, was approved prior to issuance pursuant to § 563.1 of this subchapter and states that no redemption may be made by the issuing insured institution if, after giving effect to such redemption, the insured institution would fail to meet its regulatory capital requirement under § 563.13 of this subchapter;

(ii) Mandatorily redeemable preferred stock that (A) was issued prior to July 23, 1985, or (B) was issued pursuant to § 563.7–5 of this subchapter on or after July 23, 1985, was approved as to its form prior to issuance pursuant to § 563.1 of this subchapter, and was approved in writing by the Corporation for inclusion as regulatory capital, before or after its issuance, pursuant to § 563.7–5: *Provided,* that unless otherwise approved by the Corporation in writing, mandatorily redeemable preferred stock issued on or after July 23, 1985, may be included as regulatory capital only in accordance with the schedule set forth in paragraph (b)(2)(i) of this § 561.13 and consistent with the provisions of paragraphs (b)(2)(ii) and (2)(iii) of this § 561.13;

(c) The sum of the following items determined in accordance with risk analysis reporting in effect prior to January 1, 1988, and which an insured institution has included in computing and reporting its regulatory capital to the Corporation prior to January 1, 1988:

(1) Appraised equity capital (as defined in § 563.13(c) of this subchapter);

(2) The amount of unamortized loan gains and losses the exclusion or inclusion of which was deferred pursuant to § 563c.14 of this subchapter; and

(3) The amount of the following items computed by an insured institution in accordance with risk analysis reporting in effect prior to January 1, 1988, and included in its financial statements prior to January 1, 1988. An institution may include an amount which represents the sum of the differences between the treatment of the following items under generally accepted accounting principles and the treatment under risk analysis reporting after January 1, 1988:

(i) Sales of real estate developed by the institution or its subsidiary;

(ii) Futures transactions; and

(iii) Accretion of discounts and amortization of premiums on securities.

(d) The amount which represents the sum of the differences between the treatment of the following items under generally accepted accounting principles and the treatment under risk analysis reporting after January 1, 1988:

(1) Loan origination and commitment fees calculated pursuant to § 563.23–1(f)(3) of this subchapter;

(2) Gains or losses realized on options transactions pursuant to § 563.17–5(g) of this subchapter;

(3) Valuation allowances established pursuant to asset classification and appraisals under §§ 561.16c, 563.17–2, and 571.1a of this subchapter;

(4) Uncollectible interest determined pursuant to § 563c.11 of this subchapter; and

(e) Forbearances permitted under risk analysis reporting which shall include all forbearances and other practices authorized by the Corporation, the Board, or its Principal Supervisory Agents.

(f) Notwithstanding paragraphs (a), (b), (c), (d) and (e) of this § 561.13, the term "regulatory capital" does not include any capital instrument or security which may be included as regulatory capital pursuant to any of those paragraphs of § 561.13 if such capital instrument or security is held by a service corporation or other subsidiary, regardless of the organizational form of that entity, in which the insured institution directly or indirectly (1) owns, controls, or holds with power to vote, or holds proxies representing 10 percent or more of the voting shares or rights in such entity, or (2) invested in or contributed to such entity more than 10 percent of such entity's capital, unless inclusion of regulatory capital is specifically approved by the Corporation in writing.

## PART 563—OPERATIONS

5. The authority citation for 12 CFR Part 563 continues to read as follows:

**Authority:** Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

### § 563.17–4 [Amended]

6. Section 563.17–4 is amended by removing paragraph (g).

7. Section 563.23–1 is amended by revising paragraphs (a) and (b) to read as follows; and by removing paragraph (f) and redesignating paragraph (g) as the new paragraph (f):

### § 563.23–1 Premiums, discounts, charges, and credits with respect to loans; sale of real estate; and related items.

(a) *Purchase at a premium.* A premium paid by an insured institution in connection with the acquisition of a loan shall be accounted for in accordance with generally accepted accounting principles.

(b) *Purchase at a discount.* If an insured institution purchases a loan at a discount, the discount shall be deferred by a credit to an account descriptive of deferred income and shall thereafter be credited to income in accordance with generally accepted accounting principles. For purposes of § 563.23–1 a loan shall be deemed to have been purchased at a discount if the price paid for the loan is less than the amount of the loan balance. Any charges by the purchaser in connection with the purchase of a loan shall be deducted from the purchase price to determine the amount of the discount.

* * * * *

### § 563.23–2 [Removed]

8. Part 563 is amended by removing § 563.23–2.

9. Section 563.23–3 is amended by revising paragraph (c); and by adding a new paragraph (d) to read as follows:

§ 563.23-3 Accounting Principles and Procedures.

* * * * *

(c) Prepare all financial statements and financial reports to the Corporation on the basis of generally accepted accounting principles and include in all such financial statements and reports a full and fair disclosure of the reconciliation of equity capital, as determined in accordance with generally accepted accounting principles, to regulatory capital, as defined in § 561.13 of this subchapter; and

(d) Prepare its Statement of Condition in accordance with generally accepted accounting principles and include in a footnote to such statement a full and fair disclosure of the reconciliation of equity capital, as determined in accordance with generally accepted accounting principles, with regulatory capital, as defined in § 561.13 of this chapter. Each statement of condition shall include in bold type in the body of the statement the following language: "The Federal Savings and Loan Insurance Corporation ("FSLIC"), an agency of the U.S. government, insures all depositors' savings up to $100,000 in accordance with the rules and the regulations of the FSLIC." In addition, the footnote reconciliation of equity capital to regulatory capital contained in such statements shall include the following language: "Regulatory capital is the basis by which the Federal Home Loan Bank Board determines whether an institution is insolvent, and whether an institution is meeting its regulatory capital requirement."

## PART 563c—ACCOUNTING REQUIREMENTS

10. The authority citation for Part 563c is revised to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

11. Section 563c.14 is amended by adding a new paragraph (f) to read as follows:.

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

* * * * *

(f) *"Sunset" and "Grandfather" Provisions.* Authority to exclude the unamortized amount of gain deferrals and to include the unamortized amount of loss deferrals pursuant to § 561.13 in computing an institution's regulatory capital will cease as of January 1, 1988. Any insured institution that has excluded gain deferrals and included loss deferrals in computing its regulatory capital as of January 1, 1988, may continue to exclude the unamortized amount of such gain deferrals and include the unamortized amount of such loss deferrals in computing its regulatory capital after January 1, 1988.

## PART 570—BOARD RULINGS

16. The authority citation for Part 570 is revised to read as follows:

Authority: Secs. 552, 559, 80 Stat. 383, 388, as amended (5 U.S.C. 552, 559); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405, 407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728, 1730); sec. 414, as added by sec. 522, 94 Stat. 165, as amended (12 U.S.C. 1730g); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

13. Section 570.4 is amended by revising the heading of the section and paragraph (a) to read as follows:

§ 570.4 Regulatory capital.

(a) The term "regulatory capital" is defined in § 561.13 of this subchapter to mean the sum of equity capital as determined in accordance with generally accepted accounting principles, definitional capital, certain other components of capital as the Board determines consistent with its risk analysis conventions, and risk analysis reporting forbearances. To the extent regulatory capital includes reserves (except specific or valuation reserves), the rules set forth in paragraphs (b) and (c) of this section 570.4 shall apply.

* * * * *

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Acting Secretary.*

[FR Doc. 87-10760 Filed 5-14-87; 8:45 am]

BILLING CODE 6720-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 101

[Revision 2; Amdt. 46]

### Delegation of Authority To Conduct Program Activities in Field Offices; Surety Guarantee

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises 13 CFR Part 101, § 101.3-2, Part III, Section C—Surety Guarantee to conform it to § 18014 of the Consolidated Omnibus Reconciliation Act of 1985 (Pub. L. 99-272, approved April 7, 1986), which increased the amount of the contracts which SBA is permitted to guarantee from $1,000,000 to $1,250,000. This rule increases delegated authority, as applicable, from $1,000,000 to $1,250,000; from $500,000 to $750,000; and from $250,000 to $500,000.

**EFFECTIVE DATE:** May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Howard F. Huegel, Director, Office of Surety Guarantees, Small Business Administration, 4040 No. Fairfax Drive, Arlington, VA 22203, telephone (703) 235-2900.

**SUPPLEMENTARY INFORMATION:** Part 101 consists of rules relating to the Agency's organization, management and procedures; therefore, notice of proposed rulemaking, public participation and reviews under Executive Order 12291 or the Regulatory Flexibility Act, 5 U.S.C. 501, et seq., are not required and this amendment is adopted without resort to those procedures. This final rule does not contain recordkeeping requirements subject to the Paperwork Reduction Act 44 U.S.C. Chapter 35.

### List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

## PART 101—[AMENDED]

1. The authority citations for 13 CFR Part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); Sec. 308, Pub. L. 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); Sec. 5(b)(11), Pub. L. 93-386 and 5 U.S.C. 552.

§ 101.3-2 [Amended]

In 13 CFR 101.3-2, Part III, Section C—Surety Guarantee Items A through H are revised to read as follows:

1.* * *

| | |
|---|---|
| a. Regional Administrator | $1,250,000 |
| b. Deputy Regional Administrator | 1,250,000 |
| c. Assistant Regional Administrator/FVI, except Atlanta and Seattle R.O.'s | 750,000 |
| d. Assistant Regional Administrator/FSI, Atlanta and Seattle R.O.'s only | 1,250,000 |
| e. Supervisory Surety Bond Guarantee Specialist, Philadelphia R.O. only | 750,000 |
| f. Surety Bond Coordinator, Atlanta and Seattle R.O.'s only | 750,000 |
| g. Senior Surety Bond Guarantee Specialist | 500,000 |
| h. Surety Bond Officer | 500,000 |

Date: April 28, 1987.

James Abdnor,

*Administrator.*

[FR Doc. 87-10299 Filed 5-14-87; 8:45 am]

BILLING CODE 8025-01-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 436

### Regulatory Flexibility Act Review of Franchise Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of results of Regulatory Flexibility Act Review of the Franchise Rule.

**SUMMARY:** In accordance with the Regulatory Flexibility Act, (5 U.S.C. 601 et seq.) the Federal Trade Commission solicited comments during the period February 24, 1986, through April 25, 1986, on whether the Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (16 CFR Part 436) has had a significant economic impact on a substantial number of small entities and, if it has, whether the Rule should be rescinded or amended to minimize any such significant economic impact on small entities (51 FR 6421). The Commission concluded that no modification of the Rule was warranted.

**FOR FURTHER INFORMATION CONTACT:** John M. Tifford, Rule Coordinator for Franchising, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326-3032.

**ADDRESS:** Copies of the comments and two impact evaluation studies are available at the Public Reference Room 130 at the above address.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (RFA) requires that the Federal Trade Commission conduct a periodic review of rules which have or may have a significant economic impact upon a substantial number of small entities.

On December 21, 1978, the Federal Trade Commission promulgated the Franchise Rule (16 CFR Part 436). The Rule, which became effective on October 21, 1979, requires franchisors and franchise brokers to furnish prospective franchisees with information about the franchisor, the franchise business and the terms of the franchise agreement. Franchisors and franchise brokers must furnish additional information if they make any claim about actual or potential earnings, either to the prospective franchisee or in the media. All disclosures must be made: (i) Before any sale is made and (ii) by means of disclosure documents whose form and content are set forth in the Rule.

The Federal Trade Commission, in accordance with the RFA, solicited comments on whether the Rule has had a significant economic impact on a substantial number of small entities and, if it has, whether the Rule should be amended to minimize any significant economic impact on small entities (51 FR 6421). Attention was directed to two impact evaluation studies of the Rule which were conducted for the Commission by independent research organizations.

Questions posed were: (1) Whether the Rule has had a significant economic impact on a substantial number of small entities; (2) whether there was a continued need for the Rule and all its requirements; (3) what burdens, if any, compliance with the Rule places on small entities; (4) what changes, if any, should be made to minimize any economic impact the Rule has on small businesses; (5) to what extent the Rule overlaps, duplicates or conflicts with other federal, state and local government rules; (6) whether any changed conditions have occurred that affect the Rule; and (7) whether three million dollars is an appropriate size standard for the RFA review.

While the comments contained general suggestions concerning possible modifications of the disclosure documents or of the Commission's enforcement policies, no changes to the Rule were suggested that would specifically minimize the impact on small entities. In addition, two commentators suggested that the Rule pre-empt state franchise disclosure laws, alleging that such laws are costly, burdensome, economically inefficient and do not enhance consumer protection or furnish information not now required by the Rule. The Commission considered and rejected pre-emption at the time of the Rule's promulgation in December 1978, choosing, instead, to establish a minimum standard of disclosure application to all states and permitting each state to take whatever additional measures it deemed appropriate for particular local needs. Insufficient evidence has been presented, to date, to demonstrate the need to reevaluate the Commission's current policy, especially in the context of an analysis directed specifically at the impact of the Rule on small entities.

Ten comments were submitted. These comments and the two studies indicate the Rule provides substantial benefits for both franchisors and prospective franchisees, that there is a continuing need for the Rule, that the Rule is accomplishing the objectives contemplated by Congress and the Commission, that the Rule serves the interests of both franchisors and prospective franchisees and that any burdens imposed by the Rule are outweighed by the benefits to both franchisors and prospective franchisees. Accordingly, the Commission has no basis to conclude that the Rule has had a significant economic impact on a substantial number of small entities sufficient to warrant modification.

### List of Subjects in 16 CFR Part 436

Franchises, Trade practices.

By Direction of the Commission.

Emily H. Rock,

*Secretary.*

[FR Doc. 87-10486 Filed 5-14-87; 8:45 am]

BILLING CODE 6750-01-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1601

### Filing of Charges; Technical Amendment

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule; technical amendment; correction.

**SUMMARY:** This final rule corrects references in the text of § 1601.13 in order to conform to a recent amendment of that section which redesignated two of its paragraphs.

**EFFECTIVE DATE:** May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Assistant Legal Counsel, or Thomas J. Schlageter, Staff Attorney, at (202) 634-6592.

**SUPPLEMENTARY INFORMATION:** On March 31, 1987 (52 FR 10224), EEOC published a revision of § 1601.13(a) deleting former paragraph (a)(3) and redesignating paragraphs (a)(4) and (a)(5) as paragraphs (a)(3) and (a)(4). This technical amendment is issued to conform the references in the text of the section to the redesignations made by the March 31, 1987 final rule.

### List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal Employment

Opportunity, Intergovernmental relations.

For the Commission.

Clarence Thomas,

*Chairman.*

Accordingly, 29 CFR Part 1601 is amended as follows:

## PART 1601—[AMENDED]

1. The authority citation for Part 1601 continues to read as follows:

**Authority:** Sec. 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sec. 2000e–12(a), unless otherwise noted.

### § 1601.13 [Amended]

2. Section 1601.13 is amended as follows:

a. The reference to "paragraph (a)(4)(iii)" in paragraph (a)(4)(ii)(A) is changed to "paragraph (a)(3)(iii)."

b. The reference to "paragraph (a)(4)(iii)" and the reference to "paragraph (a)(5)(i)" in paragraph (a)(4)(ii)(B) are changed to "paragraph (a)(3)(iii)" and "paragraph (a)(4)(i)" respectively.

[FR Doc. 87–11149 Filed 5–14–87; 8:45 am]

BILLING CODE 6760–01–M

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 2619

### Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning June 1, 1987. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The PBGC adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after June 1, 1987, and will remain in effect until the PBGC issues new interest rates and factors.

**EFFECTIVE DATE:** June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Foster, Attorney, Corporate Policy and Regulations Department, Code 35400, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** The PBGC's regulation on the valuation of plan benefits in single-employer plans (29 CFR Part 2619) sets forth the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although the amendments to Title IV effected by the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") change significantly the rules for terminating single-employer plans, the valuation rules are much the same. (SEPPAA applies to all plan terminations initiated on or after January 1, 1986.) Under amended ERISA section 4041(c), all plans wishing to terminate in a distress termination (like all insufficient plans under prior law) must value guaranteed benefits and (new under SEPPAA) benefit commitments under the plan using the formulas set forth in Part 2619. Plans terminating in a standard termination may, for purposes of the notice given to the PBGC, use these formulas to value benefit commitments, although this is not required. (Such plans may value benefit commitments that are payable as annuities on the basis of a qualifying bid obtained from an insurer.)

Appendix B in Part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since March 1, 1987 (52 FR 4617 (February 13, 1987)). Changes in the financial and annuity markets now require an increase in those rates. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after June 1, 1987, which set reflects an increase of ¼ percent in the immediate interest rate to 7½ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after June 1, 1987, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

### List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

## PART 2619—[AMENDED]

1. The authority citation for Part 2619 is revised to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362, as amended by secs. 11004(a), 11007–11009, 11016(c)(12)–(c)(13) and 11011(a), Pub. L. 99–272, 100 Stat. 239–240, 244–252, 274 and 253–257.

2. Rate Set 67 of Appendix B is revised and Rate Set 68 of Appendix B is added to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

### Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "$G_T$" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, $k_1$, $k_2$, $k_3$, $n_1$, and $n_2$ are defined in § 2619.45.

good cause exists for making the rates

| Rate set | For plans With a Valuation Date | | Immediate annuity rate (percent) | Deferred annuities | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | and before | | $k_1$ | $k_2$ | $k_3$ | $n_1$ | $n_2$ |
| • • • • • • • • | | | | | | | | |
| 67 | 3-1-87 | 6-1-87 | 7.25 | 1.0650 | 1.0525 | 1.0400 | 7 | 8 |
| 68 | 6-1-87 | | 7.50 | 1.0675 | 1.0550 | 1.0400 | 7 | 8 |

Kathleen P. Utgoff,

*Executive Director, Pension Benfit Guaranty Corporation.*

[FR Doc. 87-11117 Filed 5-14-87; 8:45 am]

BILLING CODE 7708-01-M

## 29 CFR Part 2676

## Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of June 1987.

**EFFECTIVE DATE:** June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (35400), Pension Benefit Guaranty Corporation 2020 K Street, NW., Washington DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).)

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competiton, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

### PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

**§ 2676.15 Interest.**

* * * * *

(c) *Interest rates.*

| For valuation dates occurring in the month— | The values of $i_t$ are— | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | $i_1$ | $i_2$ | $i_3$ | $i_4$ | $i_5$ | $i_6$ | $i_7$ | $i_8$ | $i_9$ | $i_{10}$ | $i_{11}$ | $i_{12}$ | $i_{13}$ | $i_{14}$ | $i_{15}$ | $i_{16}$ |
| • | | | | | | | | | | | | | | | | |
| June 1987 | .08875 | .08625 | .08375 | .08 | .07625 | .07125 | .07125 | .07125 | .07125 | .07125 | .065 | .065 | .065 | .065 | .065 | .05875 |

Kathleen P. Utgoff,

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 87-11116 Filed 5-14-87; 8:45 am]

BILLING CODE 7708-01-M

## VETERANS ADMINISTRATION

## 38 CFR Part 36

## Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

**EFFECTIVE DATE:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3042.

**SUPPLEMENTARY INFORMATION:** The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for

manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

**Regulatory Flexibility Act/Executive Order 12291**

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with Congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), title 38, Code of Federal Regulations.

**List of Subjects in 38 CFR Part 36**

Condominiums, Handicapped, Housing, Loan Programs—housing and community development, Manufactured homes, Veterans.

Approved: May 8, 1987.

By direction of the Administrator:

**James E. DeWire,**

*Chief of Staff, Veterans Administration.*

**PART 36—[AMENDED]**

38 CFR Part 36, Loan Guaranty, is amended as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

**§ 36.4212 Interest rates and late charges.**

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective May 11, 1987, 12½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective May 11, 1987, 12 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective May 11, 1987, 12 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

**§ 36.4311 Interest rates.**

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10 per centum per annum, effective May 11, 1987, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the

VA which specify an interest rate in excess of 10¼ per centum per annum, effective May 11, 1987, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 10¼ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective May 11, 1987, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

**§ 36.4503 Amount and amortization.**

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 9½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11 percent per annum. (38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 87-10984 Filed 5-14-87; 8:45 am]
BILLING CODE 8320-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 61

[FRL-3202-6]

### National Emission Standards for Hazardous Air Pollutants (NESHAPS); Delegation of Authority to the State of Kansas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of delegation of authority.

**SUMMARY:** This notice announces the delegation of authority by the Environmental Protection Agency (i.e., EPA or the agency) to the state of Kansas for the implementation of certain provisions of NESHAPS 40 CFR Part 61, Subpart M. This action is in response to the state's request for delegation of authority. The effect of the delegation is to shift the primary responsibility for implementation of the standard from EPA to the state of Kansas. Under the terms of the delegation, Kansas will implement certain provisions of NESHAPS and EPA will retain the primary authority to enforce against the NESHAPS violations.

**EFFECTIVE DATE:** May 15, 1987.

**ADDRESSES:** All requests, reports, applications, submittals, and such other communications, which are required to be submitted under 40 CFR Part 61, Subpart M (including all the notifications required to be submitted under 40 CFR 61.146) for the affected owners or operators in Kansas, should be sent to the Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620. A copy of all related notifications must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Whitmore, Air Compliance Section, Air Branch, U.S. EPA, Region VII, at the above address or call (913) 236-2896 or FTS: 757-2896.

**SUPPLEMENTARY INFORMATION:** Section 112(d) of the Clean Air Act allows the Administrator of Environmental Protection Agency (i.e., EPA or the agency) to delegate to any state government authority to implement certain provisions promulgated by the agency under 40 CFR Part 61, Subpart M. When a delegation is issued, the agency retains concurrent authority to implement the delegated standard. This delegation basically shifts the primary responsibility for implementation of the standard from the agency to the state government. The agency maintains the primary responsibility for enforcement of the standard.

The state of Kansas has requested the authority for delegation of 40 CFR Part 61, Subpart M. On November 5, 1986, the agency and the state of Kansas entered into an agreement which delegated authority to implement certain provisions of the NESHAPS Subpart. The provisions which are affected by this delegation are:

Applicability: Section 61.145 (a)–(d); excluding (d)(1)
Notification: Section 61.146
Emission Control: Section 61.147; excluding that portion of (c) dealing with dry removal

Interested individuals are informed that, as of November 5, 1986, the state of Kansas has EPA's authorization to implement the requirements of the certain NESHAPS provisions affected by the delegation agreement. These provisions are listed in the delegation of authority letter dated November 5, 1986, which is reproduced in its entirety as follows:

Barbara J. Sabol,
*Secretary, Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620.*

Dear Ms. Sabol: This letter is in response to the request by the Kansas Department of Health and Environment (KDHE) for partial delegation of the National Emission Standards for Hazardous Air Pollutants (NESHAPS), 40 CFR Part 61, Subpart M, National Emission Standard for Asbestos.

KDHE was given the authority by the Kansas State Legislature to implement and enforce asbestos control law and regulations (K.S.A. 65-5301 *et seq.*, and Kansas Administrative Regulations 28-50-1 through 28-50-14) which were adopted on April 24, 1985. The regulations became effective on January 1, 1986. The Environmental Protection Agency (EPA) has determined that the state of Kansas asbestos regulations provide adequate and effective procedures for partial implementation of 40 CFR Part 61, Subpart M.

The EPA hereby delegates the authority to implement certain provisions of the asbestos standard at 40 CFR Part 61, Subpart M. The sections of this subpart which are affected by this delegation are:

Applicability: Section 61.145 (a)–(d); excluding (d)(1)
Notification: Section 61.146
Emission Control: Section 61.147; excluding that portion of (c) dealing with dry removal

Since the state's asbestos regulations, effective January 1, 1985, pertaining to proper asbestos removal and disposal, do not apply to building owners, the EPA retains the primary authority to implement and enforce 40 CFR Part 61, Subpart M, for violations involving building owners. KDHE will continue to implement and enforce the state regulations. EPA will use information obtained during KDHE inspections to enforce the NESHAPS regulations.

If the Director, Air and Toxics Division, determines that the NESHAPS asbestos program is not being effectively carried out, this partial delegation may be revoked. In such instances, the regional office will notify the state of this action. The EPA may specify (or suggest) appropriate corrective measures, and will allow the state a reasonable period of time to implement corrective measures. If deficiencies continue to exist after the allotted time, the EPA regional office may revoke the delegation as discussed above. The regional office will notify the state of its intent to revoke the delegation, and will state the reason(s) for the intended action, at least fifteen (15) calendar days prior to the effective date of the action.

If the state determines that it can (or will) no longer implement the NESHAPS regulation for any reason, it may request, by letter, that

the delegation be revoked in whole or in part. To ensure a smooth transfer of primary enforcement responsibilities, the state will continue to implement the delegated provisions until the regional office formally acts on the revocation request, unless the circumstances of the situation absolutely dictate otherwise.

The state and the EPA regional office shall continue to maintain a system of communication sufficient to guarantee that each office is always fully informed regarding the compliance status of the subject facilities and of enforcement actions taken (or being contemplated) by the offices involved. A protocol will be developed by the respective state and EPA staffs concerning the implementation of this delegation. When finalized the protocol will become part of this delegation.

The EPA retains concurrent authority to implement and/or enforce all provisions of the delegated regulation. The agency shall give the state prior notification before it exercises its concurrent authority. However, nothing in this partial delegation shall relieve any person subject to any requirement of 40 CFR Part 61, Subpart M, of the obligation to comply with such requirement.

This delegation is effective immediately, unless otherwise requested by the state of Kansas. Please acknowledge acceptance, in writing, within ten (10) days of receipt of this letter. A notice announcing this partial delegation will appear in the Federal Register in the near future.

If you have any questions, please contact Ms. Mary Tietjen at (913) 236–2886.

Sincerely yours,

Morris Kay,

*Regional Administrator.*

cc: David J. Romano, KDHE

Effective immediately, all reports, correspondence, and such other communications, that are required to be submitted under the NESHAP Subpart for owners or operators in Kansas affected by the delegation of authority, should be sent to the KDHE at the above address. A copy of each notification required to be submitted under 40 CFR 61.146, must also be sent to the attention of the Director, Air and Toxics Division, U.S. EPA Region VII, at the above address.

Each document and letter mentioned in this notice is available for public inspection at the EPA regional office.

This notice is issued under the authority of section 112 of the Clean Air Act, as amended (42 U.S.C. 7412).

Morris Kay,

*Regional Administrator.*

[FR Doc. 87–11128 Filed 5–14–87; 8:45 am]

BILLING CODE 6560–50–M

## 40 CFR Part 61

[FRL 3201–4]

## National Emission Standards for Hazardous Air Pollutants (NESHAPS); Change of Address

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The information in 40 CFR 61.04 is being revised to reflect a recent NESHAPS delegation to the state of Kansas. The intended effect of the action is to keep the information in 40 CFR 61.04 current.

**EFFECTIVE DATE:** May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 (913/236–2886 or FTS: 757–2886).

**SUPPLEMENTARY INFORMATION:** Section 40 CFR 61.04 sets forth the EPA regional offices and state agencies to which all requests, reports, applications, submittals, and other communications must be sent by owners and/or operators of facilities (or activities) affected by the National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulation. The information in 40 CFR 61.04 is being revised to reflect a recent NESHAPS delegation to the state of Kansas. All interested individuals are hereby informed of the new information.

The Administrator finds good cause for foregoing prior public notice of the amendments and for making this rulemaking effective immediately in that the amendments are an administrative change and not one of substantive content. No additional burdens are imposed upon the parties affected by the amendments.

### List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous substances control.

Morris Kay,

*Regional Administrator.*

### PART 61—[AMENDED]

Part 61 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

2. In § 61.04, text is added to reserved paragraph (b)(R) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(R) State of Kansas: Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

* * * * *

[FR Doc. 87–11129 Filed 5–14–87; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

## 42 CFR Part 64a

## Obligated Service Provisions for Mental Health Traineeships

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final rule.

**SUMMARY:** This rule amends regulations implementing the provisions of section 303 of the Public Health Service (PHS) Act (42 U.S.C. 242a), as amended by section 803 of the Mental Health Systems Act, regarding the service payback obligations of individuals who receive clinical traineeships in psychology, psychiatry, social work or nursing (that are not of limited duration or experimental nature). The rule amends Part 64a of Title 42 of the Code of Federal Regulations to establish a uniform rate of interest for all individuals who receive clinical traineeships, clarifies the fact that funds owed to the Government become a debt when the trainee fails to complete the obligation, requires that training institutions conduct entrance and exit interviews with trainees to inform them of the seriousness of their service obligations, and provides guidelines for hardship deferrals.

**EFFECTIVE DATE:** June 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Diana Trunnell, Grants Management Specialist, National Institute of Mental Health, Room 7C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4924.

**SUPPLEMENTARY INFORMATION:** A Notice of Proposed Rulemaking was published on May 28, 1986 (51 FR 19225) to amend 42 CFR Part 64a, regulations implementing the service and monetary payback obligations of individuals receiving mental health clinical traineeships under section 303 of the Public Health Service Act, 42 U.S.C. 242a. These proposed changes would affect the manner in which interest is calculated for monetary payback,

require training institutions to conduct entrance and exit interviews, and establish criteria for granting extensions of time to perform service payback. Because no comments were received on the proposed rules and the Secretary believes their adoption is appropriate, the Final Rule adopts the proposed changes without modification.

**Economic Impact of Regulatory Requirements**

Because the Final Rule does not impose a significant burden on training institutions, it is anticipated that compliance with the rule will not impose any new major expenditures on their part. The change in the method of calculating the interest rate will solely affect individual trainees and, in the aggregate, is not expected to be substantial although it may be significant in individual cases. Therefore, these regulations will not have a significant economic impact on a substantial number of small entities and a Regulatory Flexibility Analysis under the Regulatory Flexibility Act of 1980 is not required. Further, since these regulations do not meet any criteria for a major regulation under Executive Order 12291, a Regulatory Impact Analysis is not required.

**Paperwork Reduction Act**

Section 64a.104 of this Final Rule contains information collection requirements which have been approved for use through March 31, 1989 (OMB No. 0930–0120).

**List of Subjects in 42 CFR Part 64a**

Health professions, Manpower training programs, Mental health programs, Clinical traineeships, Obligated service.

Dated: March 20, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: April 30, 1987.

**Otis R. Bowen,**

*Secretary.*

Therefore, Subchapter E of Chapter I of Title 42 of the Code of Federal Regulations is amended in Part 64a as follows:

**PART 64a—[AMENDED]**

1. The authority citation for Part 64a continues to read as follows:

Authority: Section 803, Pub. L. 99–398, 94 Stat. 1607–1608 (42 U.S.C. 242a).

2. In § 64a.104, paragraphs (b) and (c) are revised and (d) and the OMB control number are added to read as follows:

**§ 64a.104 What requirements are imposed upon grantees?**

* * * * * *

(b) Before awarding a clinical traineeship, conduct an entrance interview with the individual in order to explain and emphasize the service obligation the individual is incurring, obtain the individual's written assurance that he or she will satisfy the requirements of § 64a.105, and document, in accordance with paragraph (d) of this section, the entrance interview on the form containing the individual's written assurance.

(c) At the time of termination of the clinical traineeship,

(1) Notify the Secretary in writing of the date on which the individual's traineeship is terminated;

(2) Conduct an exit interview with the individual to remind the trainee of the service obligation, to fully explain the consequences that will incur should the trainee fail to satisfy the obligation, and, to tell the individual that the Secretary has been notified of the date of termination of the traineeship; and

(3) Document, in accordance with paragraph (d) of this section, the exit interview on the form notifying the Secretary of the termination of the traineeship.

(d) Document the entrance and exit interviews with at least the following information: The date of the interview, the names of the participants involved in the interview, and a statement that the interview included an explanation to the individual of the service payback requirement and the consequences of failing to fulfill the service payback requirement.

(Approved by the Office of Budget and Management under control number 0930–0120)

3. Section 64a.105(e)(1)(iii) is added and paragraph (g) is revised to read as follows:

**§ 64a.105 What are the conditions of obligated service?**

* * * * *

(e) *Conditions for deferral or break in service, waiver, or cancellation.* (1) * * *

* * * * *

(iii) In making determinations under § 64a.105(e)(1)(i)(C), the Secretary will take into consideration the following factors:

(A) The individual's present financial resources and obligations;

(B) The individual's estimated future financial resources and obligations;

(C) The reasons for the individual's failure to complete the requirements within the prescribed period, such as problems of a personal nature;

(D) The unavailability of employment opportunities appropriate to the individual's education and training; and

(E) Any other extenuating circumstances.

* * * * *

(g) *Recovery for failure to perform obligated service.* (1) If an individual fails to begin or complete the obligated service in accordance with the requirements of paragraphs (a) through (f) of this section, that individual is obligated to repay the United States an amount equal to three times the cost of the award (including stipends and other trainee allowances) plus interest on that amount calculated for the total period since the trainee failed to perform the obligated service at the rate set by the Secretary of the Treasury for National Research Service Awards prevailing on the date on which the period of appointment begins, multiplied, in any case in which the service that was required has been performed in part, by the percentage which the length of service that was not performed is to the length of the service that was required to be performed. The amount will be determined under the following formula:

$$A = 3(\theta + mi\theta)\frac{(t-s)}{(t)}$$

where

A = the amount the United States is entitled to recover;

$\theta$ = the cost of the clinical traineeship (including stipends and other trainee allowances);

m = the number of months since the trainee failed to perform obligated service;

i = the National Research Service Award rate on the date which the period of appointment begins divided by twelve;

t = the total number of months of the service obligation;

s = the number of months that have been served.

(2) Unless the Secretary extends the repayment period as provided in paragraph (e) of this section, the individual shall pay to the United States the total amount which the United States is entitled to recover under paragraph (g)(1) immediately upon the date that the individual fails to begin or complete the period of obligated service (including failing to comply with the applicable terms and conditions of an extension or break in service granted the individual) or upon the date that the individual indicates his or her intention not to fulfill the service obligation as determined by the Secretary. The

amount is considered a debt owed to the United States, with interest accruing monthly upon the total debt as provided under paragraph (g)(1).

[FR Doc. 87-10997 Filed 5-14-87; 8:45 am]
BILLING CODE 4196-17-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 32, 77, 92, 96, 190 and 195

[CGD 84-073]

Miscellaneous Changes; Tank Vessels, etc.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule makes changes to the regulations in three general areas. First, it modifies regulations for accommodations, rails and guards, and anchors for tank vessels to bring 46 CFR Subchapter D into uniformity with the rules for other vessels found in 46 CFR Subchapters H, I, and U. Since the requirements for radiotelegraph, radiotelephone, and radio direction finder are found in the Federal Communications Commission (FCC) regulations, this rule deletes overlapping regulations from Subchapters D, H, I and U. This action does not, however, change or delete any current requirements for this equipment aboard certain ships. Third, this rule will bring the structural fire protection regulations of Subchapter I and U in conformity with Subchapters D and H, the 1981 amendments to the International Conference on Safety of Life at Sea, 1974 (SOLAS 74), and current marine practice with regard to non-combustible construction in control spaces. The purpose of the rule is to revoke unnecessary regulations, and revise existing regulations to be more uniform in application among the various classes of vessels. The rule results in clearer and more consistent regulations.

EFFECTIVE DATE: April 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Kinsey, Ship Design Branch, Marine Technical and Hazardous Materials Division, Office of Marine Safety, Security and Environmental Protection, (202) 267-2997.

SUPPLEMENTARY INFORMATION: A Notice of proposed rulemaking was published on September 30, 1985 at 50 FR 39729, and public comment was invited for 60 days ending November 29, 1985. Comments were received from two marine trade organizations, and two shipping companies.

**Regulatory Background**

The Federal Register of October 18, 1952 revised, updated, and rearranged the Coast Guard vessel inspection regulations, grouping them into subchapters pertaining to various classes of vessels. The regulations for tank vessels were not revised to the same extent as the regulations for passenger and cargo and miscellaneous vessels. The language and depth of treatment for fire protection, accommodations, and other headings have differed between Subchapter D and Subchapters H, I, and, more recently, U, notwithstanding the fact that many tank, passenger, cargo, and miscellaneous vessels are generally similarly sized, engaged on similar routes, exposed to similar hazards, and have similar manning by crews of similar training and competency. Under the circumstances, similar standards for accommodations, rails and guards, anchors and ground tackle, and structural fire protection are in order in the interests of uniformity and marine safety.

A review of the rules in Subchapter D for rails (46 CFR 32.01-10) revealed there was no provision for storm rails in tank vessels as there is for other vessel classes. Current marine practice dictates, however, that tank vessels are typically furnished with these rails during construction. This rule codifies a good current marine practice that should remain in force.

Under the present tank vessel regulations, anchors, chains, and hawsers are not required as they are for other classes of vessels. Such equipment is clearly necessary for the safe operation of all vessels. This rule corrects this oversight.

A review of Subchapters I and U indicated that specific requirements for non-combustible construction in control spaces (i.e., spaces that contain emergency sources of power, and those spaces in which a continuous watch is maintained and in which navigating, radio, or fire control equipment is located) were not included. In addition, the first set of amendments to SOLAS 74, which have been in effect since September 1, 1984, require that control spaces on new cargo and tank vessels over 500 gross tons on international voyages be constructed with non-combustible materials. In keeping with the Coast Guard's intention to minimize any economic impact of these revisions, the requirements for non-combustible construction in control spaces will not apply to existing vessels, i.e. those for which an initial Application for Inspection was submitted before the effective date of these rules. Similarly, the fire protection requirements for control spaces in oceanographic research vessels will not apply to vessels for which an Application for Inspection was received before the effective date of these rules. A complete revision of all the fire regulations will be forthcoming to bring the rules for all vessel classes into conformity with the international standards.

**Drafting Information**

The principal persons involved in drafting this rule are Mr. John M. Kinsey, Project Manager, and Commander Ronald C. Zabel, Project Counsel, Office of Chief Counsel.

**Discussion of Comments and Changes**

Four comments were received related to specific sections of the proposed rules. These comments are discussed below.

One comment from an association representing the offshore marine industry expressed concern that the addition of fire protection requirements for control spaces in Subchapter I would constitute a major change in current marine practice for industrial vessels (offshore supply vessels). The letter stated "By adding a new paragraph (g) to § 92.07-10, the Coast Guard has applied international standards intended for cargo ships of 500 gross tons trading internationally to domestic vessels and cargo ships less than 500 gross tons generally." This impression is not correct. The vessels to which 46 CFR 92.07-10 applies have not been changed. The non-combustible construction requirements apply to all cargo and miscellaneous vessels over 4000 gross tons contracted for on or after January 1, 1962, and industrial vessels over 300 gross tons, contracted for on or after July 1, 1968, carrying more than 12 industrial personnel. The international requirements for non-combustible construction apply to cargo vessels of 500 gross tons and over on international voyages, and they came into effect when the U.S. adopted the 1981 amendments to SOLAS 74 on September 1, 1984.

The addition of § 92.07-10(g) in this rule is intended to require non-combustible construction in control spaces on new domestic Subchapter I (cargo and miscellaneous) and U (oceanographic) vessels whose initial applications for inspection are submitted after publication of this rule. However, the applicability sections in 46 CFR 92.07-1 (a) and (b) and 190.07-1 (a)-(d) with regard to tonnage are not

changed. The Coast Guard, as a matter of policy, has always considered these standards to apply to control spaces on cargo and oceanographic vessels in the past, and has consistently required non-combustible construction. The Coast Guard has only recently noted that "control spaces" were not specifically cited in the regulations in Subchapters I and U, as they are in Subchapters D and H. With regard to the specific concern of this comment, § 92.07–10(g) will require new industrial vessels (offshore supply vessels) to have control spaces constructed with non-combustible materials only if they exceed 300 gross tons and carry more than twelve industrial personnel. Most offshore supply vessels in service today are less than 300 gross tons and below the threshold for non-combustible construction as presently detailed.

The Coast Guard believes that the impact on the industry is not significant. The regulatory policy and application is unchanged from the past, but the language now specifically requires certain cargo, industrial and oceanographic vessels for which initial Applications for Inspection are made on or after the effective date of these regulations to apply non-combustible material standards to control spaces.

One comment suggested "deckhouse sides" be further described as pertaining to weather decks at all deck levels in proposed 46 CFR 32.01–10(d) regarding installation of storm rails. We have added the phrase "on weather decks" after "deckhouse sides" to clarify this.

One comment suggested the last sentence of the proposed 46 CFR 32.15–15(d) be revised to read "If the service of the tank vessel is significantly changed, the suitability of the existing equipment will be evaluated by the Officer in Charge, Marine Inspection." The suggested addition of the word "significantly" is misleading. What is of concern is not the extent of the change in service, but whether the vessel's equipment is suitable for the new service. In view of the many possible circumstances that could arise, the only suitable solution is a case-by-case evaluation. Accordingly, we have substituted the word "evaluated" for the word "established" to clarify the intent of the rule.

One comment suggested paragraph (b) and (c) of 46 CFR 32.40–5 could be deleted since paragraph (a) covers the intent of the section. We agree. Paragraph (b) distinguished between officers and unlicensed crew, but in several places, the word "crew" implies that both officer and non-officer accommodations are affected. In § 32.40–15 "crew quarters" applies to officers as well, and "crew accommodations" in §§ 32.40–70 and 32.40–80 also cover the licensed members. The only specific accommodation standard for officers is § 32.40–25(b), where each licensed officer is to be provided a separate stateroom where practicable. Subparagraph (c) simply enumerated spaces considered under the term "accommodation space." Since these are discussed specifically in the sections that follow, there is no need for such a definition. Therefore, paragraphs (b) and (c) have been omitted and paragraph (a) has been revised to clarify that "crew" includes both officer and unlicensed personnel.

One comment suggested rewriting 46 CFR 32.40–70(a) in a somewhat abbreviated form, but offered no explanation for the suggested change. Since no real substantive change was offered, we have left the wording intact. 46 CFR 32.40–70(b) was suggested for rewording as follows: "Accommodations shall be properly lighted, heated, drained, located, arranged and insulated from undue noise and odors." While we understand the motive was to make the rule a general statement of the construction considerations, we prefer the proposed rule wording which requires the construction to be "consistent with the principles underlying the requirements" for larger tank vessels, thus providing guidance to designers and a discretionary reference to Officers in Charge, Marine Inspection.

One trade operator felt the accommodation regulations for Subchapter D presented a standard below that considered acceptable by the industry, and should be eliminated as unnecessary. Another operator expressed the view that the portions of those regulations dealing with arrangements of sleeping spaces (proposed 46 CFR 32.40–25) and the regulations dealing with requirements for adequate clothes washing facilities and recreation space (proposed 46 CFR 32.40–55) were inappropriate for regulations. The Coast Guard recognizes the standards are lower than what is generally provided today on large oceangoing tankships, as these vessels are able to devote more than ample space to crew accommodations due to their size. We consider it expedient, however, to include in our regulations minimum standards for adequate living conditions for the crew. Proper ventilation, lighting, toilet and washing facilities, and living quarters free of excessive noise, heat, vibration and noxious odors contribute directly to the health and well being of the crew, and thereby the safety of the vessel. The standards will have a greater bearing on new smaller tank vessels (presently about 25 percent of the fleet of inspected tankships is under 5,000 gross tons and replacements are anticipated). To provide these essential facilities and living conditions, designers may need to pay additional attention to the arrangement of these smaller vessels.

The living conditions of U.S. Merchant seamen were not always what they are today. It was the result of union demands and public awareness that led to the passage of the Seaman's Act of 1915 (The LaFollette Act). This law imposed minimum space allotments and general construction standards for crew spaces. The statutory standards were drafted within the confines of the available knowledge of the times and with regard to the type and limitations of shipbuilding design available to the marine industry seventy years ago. These 1915 standards were the minimums applied to all commercial vessels of 100 gross tons and over until 1952 when the Coast Guard revised the regulations for accommodations for officers and crew of cargo and passenger vessels, specifying somewhat larger spaces than the minimum statutory allotments. The tank vessel regulations (46 CFR Subchapter D) were not similarly amended. This rule now incorporates accommodation requirements for tankships similar to those of cargo and passenger vessels. While there is no indication that these requirements exceed current tank vessel construction and arrangement practices, it makes good sense to incorporate the same modern minimum standard into the tank vessel regulations and provide uniformity with 46 CFR Subchapters H, I and I–A.

One national trade association, representing 24 U.S. flag shipping companies owning or operating ten million deadweight tons of tankers, dry bulk carriers and other ocean going vessels engaged in the domestic and international trades of the United States, expressed unqualified support of the proposed amendments to the regulations for accommodations, rails and guards, and anchors for tank vessels as well as the deletions of requirements for radiotelegraph, radiotelephone and radio direction finders in deference to the similar requirements of the Federal Communications Commission.

**E.O. 12291 and DOT Regulatory Policies and Procedures**

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory

policies and procedures (44 FR 11034; February 26, 1979). The regulations contain minor changes that in some cases may appear to be adding requirements for new vessels with a corresponding increase in cost. However, vessels being constructed today meet and often exceed the regulations. There will be no economic impact on existing vessels because the proposal provides for acceptance of current arrangements and equipment on these vessels. Thus, this proposed change to 46 CFR Subchapters D, H, I, and U represents no real cost increase to industry or government. Since the economic impact is expected to be minimal, the Coast Guard has determined that no further evaluation is necessary.

**Regulatory Flexibility Act**

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

These regulations contain no information collection or recordkeeping requirements.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary.

**List of Subjects**

*46 CFR Part 32*

Barges, Fire protection, Marine safety, Tank vessels.

*46 CFR Part 77*

Marine safety, Navigation (water), Passenger vessels.

*46 CFR Part 92*

Cargo vessels, Fire protection, Marine safety.

*46 CFR Part 96*

Cargo vessels, Marine safety, Navigation (water).

*46 CFR Part 190*

Fire prevention, Marine safety, Oceanographic vessels.

*46 CFR Part 195*

Marine safety, Navigation (water), Oceanographic vessels.

For the reasons set out in the preamble, Title 46, Chapter 1 of the Code of Federal Regulations, is amended as follows:

## PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

1. The authority citation for Part 32 is revised to read as follows and all other authority citations in the part are removed:

**Authority:** 46 U.S.C. 3306, 3703; 50 U.S.C. 198; 49 CFR 1.46(b) and (n).

2. By adding a new paragraph (d) to § 32.01–10 to read as follows:

**§ 32.01–10 Rails—TB/ALL.**

* * * * *

(d) All tank vessels in ocean and coastwise service, except unmanned tank barges, constructed on or after April 1, 1987, must have suitable storm rails installed in all passageways and at the deckhouse sides on weather decks where persons on board might have normal access. Storm rails must be installed on both sides of passageways which are six feet or more in width. Tank vessels to which this paragraph applies constructed prior to April 1, 1987, may retain previously accepted or approved installations so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

3. By revising § 32.15–15 to read as follows:

**§ 32.15–15 Anchors, Chains, and Hawsers—TB/ALL.**

(a) *Application.* The provisions of this section, with the exception of paragraph (d), apply to every tankship and manned seagoing barge constructed on or after April 1, 1987. Tankships and manned seagoing barges constructed prior to April 1, 1987 must meet the requirements of paragraph (d) of this section.

(b) *Ocean, Coastwise, or Great Lakes Service.* Tankships in ocean, coastwise, or Great Lakes service and manned seagoing barges must be fitted with anchors, chains and hawsers in general agreement with the standards established by the American Bureau of Shipping. The current standards of other recognized classification societies may also be accepted upon approval by the Commandant.

(c) *Lakes, Bays, and Sounds, or River Service.* Tankships in lakes, bays, and sounds, or river service must be fitted with such ground tackle and hawsers as deemed necessary by the Officer in Charge, Marine Inspection, depending upon the size of the tankship and the waters on which it operates.

(d) *Tankships and Barges Constructed Prior to April 1, 1987.* For tankships and manned seagoing barges constructed prior to April 1, 1987, the installations previously accepted or approved will be considered satisfactory for the same service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. If the service of the tank vessel is changed, the suitability of the equipment will be evaluated by the Officer in Charge, Marine Inspection.

**§ 32.15–20 [Removed]**

4. By removing § 32.15–20.

**§ 32.15–25 [Removed]**

5. By removing § 32.15–25.

6. By revising Subpart 32.40 to read as follows:

**Subpart 32.40—Accommodations for Officers and Crew**

Sec.


32.40–1 Application—TB/ALL.
32.40–5 Purpose and definitions—T/ALL.
32.40–10 Restrictions—T/ALL.
32.40–15 Location of crew spaces—T/ALL.
32.40–20 Construction—T/ALL.
32.40–25 Arrangement of sleeping spaces—T/ALL.
32.40–30 Size of sleeping spaces—T/ALL.
32.40–35 Berths and lockers—T/ALL.
32.40–40 Wash spaces; toilet spaces; and shower spaces—T/ALL.
32.40–45 Messrooms—T/ALL.
32.40–50 Hospital space—T/ALL.
32.40–55 Miscellaneous accommodation spaces—T/ALL.
32.40–60 Heating requirements—T/ALL.
32.40–65 Insect Screens—T/ALL.
32.40–70 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.
32.40–90 Crew accommodations on tankships constructed before April 1, 1987—T/ALL.


**Subpart 32.40—Accommodations for Officers and Crew**

**§ 32.40–1 Application—TB/ALL.**

(a) The provisions of this subpart, with the exception of § 32.40–70 and § 32.40–90, apply to all tankships of 100 gross tons and over constructed on or after April 1, 1987.

(b) Tankships of less than 100 gross tons and manned tank barges must meet the requirements of § 32.40–70.

(c) Tankships of 100 gross tons and over constructed prior to April 1, 1987, must meet the requirements of § 32.40–90.

**§ 32.40–5 Purpose and definitions—T/ALL.**

The accommodations provided for the crew, including both officers and unlicensed members, on all tankships must be securely constructed, properly lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise and odors.

**§ 32.40-10 Restrictions—T/ALL.**

(a) There must be no direct communication between the accommodation spaces and any chainlocker, stowage, or machinery space, except through solid, close-fitted doors or hatches.

(b) No access, vent, or sounding tube from a fuel or oil tank may open into any accommodation space, except that accesses and sounding tubes may open into corridors.

**§ 32.40-15 Location of crew spaces—T/ALL.**

Crew quarters must not be located forward of a vertical plane located at five per cent of the tankship's length aft of the stem at the designed summer load line. However, for tankships in other than ocean or coastwise service, this distance does not need to exceed 28 feet. For the purpose of this paragraph, the length defined in § 42.13-15 of Subchapter E (Load Lines) of this chapter is to be used. No section of the deckhead of the crew spaces may be below the deepest load line.

**§ 32.40-20 Construction—T/ALL.**

(a) Each sleeping, mess, recreational, or hospital space that is adjacent to or immediately above a galley, machinery space, paint locker, drying room, washroom, toilet space, or other odor source must be made odor proof.

(b) Each accommodation space that is adjacent to or immediately above a galley, machinery space, machinery casing, boiler room, or other noise or heat source, must be protected from heat and noise.

(c) Where the shell of an unsheathed weather deck forms a boundary of an accommodation space, the shell of the deck must have a covering that prevents the formation of moisture.

(d) The deckheads of each accommodation space must be light in color.

(e) Each accommodation space in which water may accumulate must have a drain scupper located in the lowest part of the space, considering the average trim of the vessel.

(f) Each public toilet space must be constructed and located so that its odors do not readily enter any sleeping, mess, recreational, or hospital space.

**§ 32.40-25 Arrangement of sleeping spaces—T/ALL.**

(a) To the extent practicable, each crew department must be berthed together in sleeping spaces arranged to minimize disturbance created by personnel leaving for or arriving from a working period.

(b) Each licensed officer is to be provided with a separate stateroom where practicable.

**§ 32.40-30 Size of sleeping spaces—T/ALL.**

(a) No sleeping space may berth more than four persons.

(b) Without deducting any equipment used by the occupants, each sleeping space must have for each occupant—

(1) 30 square feet of deck area; and

(2) 210 cubic feet of volume.

(c) Each sleeping space must have at least six feet three inches of headroom over clear deck areas.

**§ 32.40-35 Berths and lockers—T/ALL.**

(a) Each sleeping space must have a separate berth for each occupant.

(b) No more than one berth may be placed over another.

(c) Each berth must have a framework of hard, smooth material that is not likely to corrode or harbor vermin.

(d) Each berth must be arranged to provide ample room for easy occupancy.

(e) Each berth must be at least 30 inches wide by 76 inches long.

(f) Adjacent berths must be separated by a partition that extends at least 18 inches above the sleeping surface.

(g) The bottom of the lower berth must be at least 12 inches above the deck.

(h) The bottom of an upper berth must be at least 30 inches from the bottom of the berth below it and from the deck or any pipe, ventilating duct, or other overhead installation.

(i) Each berth must have a berth light.

(j) Each sleeping space must have a readily accessible locker of hard, smooth material for each occupant.

(k) Each locker must be at least 300 square inches in cross section and 60 inches high.

**§ 32.40-40 Wash spaces; toilet spaces; and shower spaces—T/ALL.**

(a) For the purposes of this section—

(1) "Private facility" means a toilet, washing, or shower space that is accessible only from one single or double occupancy sleeping space;

(2) "Semi-private facility" means a toilet, washing, or shower space that is accessible from one or two one-to-four person occupancy sleeping spaces; and

(3) "Public facility" means a toilet, washing, or shower space that is not private or semi-private.

(b) Each private facility must have one toilet, one shower, and one washbasin, all of which may be in a single space.

(c) Each semi-private facility must have at least one toilet and one shower, which may be in a single space.

(d) Each room adjoining a semi-private facility must have a washbasin if a washbasin is not installed in the semi-private facility.

(e) Each tankship must have enough public facilities to provide at least one toilet, one shower, and one washbasin for each eight persons who occupy sleeping spaces that do not have private or semi-private facilities.

(f) Urinals may be installed in toilet rooms, but no toilet required in this section may be replaced by a urinal.

(g) Each public toilet space and washing space must be convenient to the sleeping space that it serves.

(h) No public facility may open into any sleeping space.

(i) Each washbasin, shower, and bathtub must have hot and cold running water.

(j) Adjacent toilets must be separated by a partition that is open at the top and bottom for ventilation and cleaning.

(k) Public toilet facilities and shower facilities must be separated.

(l) Each public facility that is a toilet space must have at least one washbasin unless the only access to the toilet space is through a washing space.

(m) Each toilet must have an open front seat.

(n) Each washing space and toilet space must be so constructed and arranged that it can be kept in a clean and sanitary condition and the plumbing and mechanical appliances kept in good working order.

(o) Washbasins may be located in sleeping spaces.

**§ 32.40-45 Messrooms—T/ALL.**

(a) Each messroom that is not adjacent to the galley that serves it must be equipped with a steam table.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

**§ 32.40-50 Hospital space—T/ALL.**

(a) Except as specifically modified by paragraph (j) of this section, each tankship, which in the ordinary course of its trade makes voyages of more than three days duration between ports and which carries a crew of twelve or more, must have a hospital space. This space is to be situated with due regard for the comfort of the sick so that they may receive proper attention in all weather.

(b) The hospital must be suitably separated from other spaces and used only for the care of the sick and for no other purpose.

(c) The entrance to each hospital space must be wide enough and arranged to readily admit a person on a stretcher.

(d) Each berth in a hospital space must be made of metal.

(e) Berths may be in double tier, provided the upper berth is hinged and arranged to be secured clear of the lower berth when not in use.

(f) Each hospital space must have at least one berth that is accessible from both sides.

(g) Each hospital space must have one berth for every twelve members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed six.

(h) Each hospital space must have a toilet, washbasin, and bathtub or shower accessible from the hospital space.

(i) Each hospital space must have a clothes locker, a table, and seats.

(j) On tankships in which the entire crew is berthed in single occupancy rooms, a hospital space is not required if one room is designated and fitted for use as a treatment and/or isolation room, and meets the following standards:

(1) The room must be available for immediate medical use;

(2) The room must be accessible to stretcher cases;

(3) The room must have a single berth or examination table that is accessible from both sides; and

(4) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

**§ 32.40-55 Miscellaneous accommodation spaces—T/ALL.**

(a) Each tankship must have enough facilities for the crew to wash their own clothes, including at least one tub or sink that has hot and cold running water.

(b) Each tankship must have enough equipment for the crew to dry their own clothes.

(c) Each tankship must have an accommodation space that can be used for recreation.

**§ 32.40-60 Heating requirements—T/ALL.**

(a) Each accommodation space must be heated by a heating system that can maintain at least 68°F.

(b) Radiators and other heating apparatus must be constructed, located or shielded so as to avoid risk of fire or danger and discomfort to the occupants of each accommodation space.

(c) Each exposed pipe in an accommodation space leading to a radiator or other heating apparatus must be insulated.

**§ 32.40-65 Insect screens—T/ALL.**

(a) Accommodation spaces must be protected against the admission of insects.

(b) Insect screens must be installed when natural ventilation is provided.

**§ 32.40-70 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.**

(a) The crew accommodations on all tankships of less than 100 gross tons and all manned tank barges must have sufficient size and equipment, and be adequately constructed to provide for the protection of the crew in a manner practicable for the size, facilities, and service of the tank vessel.

(b) The crew accommodations must be consistent with the principles underlying the requirements for crew accommodations on tankships of 100 gross tons or more.

**§ 32.40-90 Crew accommodations on tankships constructed before April 1, 1987—T/ALL.**

All tankships of 100 gross tons and over constructed before April 1, 1987 may retain previously accepted or approved installations and arrangements so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

## PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

7. The authority citation for Part 77 is revised to read as follows and all other authority citations in the part are removed:

**Authority:** 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

**§ 77.13 [Removed]**

8. By removing § 77.13.

**§ 77.15 [Removed]**

9. By removing § 77.15.

## PART 92—CONSTRUCTION AND ARRANGEMENT

10. The authority citation for Part 92 is revised to read as follows and all other authority citations in the part are removed:

**Authority:** 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

11. By adding a new paragraph (g) to § 92.07-10 to read as follows:

**§ 92.07-10 Construction.**

* * * * *

(g) The provisions of subparagraphs (1) through (9) of paragraph (d) of this section apply to control spaces on vessels whose initial Application for Inspection is submitted to an Officer in Charge, Marine Inspection on or after April 1, 1987.

## PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

12. The authority citation for Part 96 is revised to read as follows and all other authority citations in the part are removed:

**Authority:** 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

**§ 96.13 [Removed]**

13. By removing § 96.13.

**§ 96.15 [Removed]**

14. By removing § 96.15.

## PART 190—CONSTRUCTION AND ARRANGEMENT

15. The authority citation for Part 190 is revised to read as follows and all other authority citations in the part are removed:

**Authority:** 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

16. By adding a new paragraph (f) to § 190.07-10 to read as follows:

**§ 190.07-10 Construction.**

* * * * *

(f) The provisions of subparagraphs (1) through (9) of paragraph (d) of this section apply to control spaces on vessels whose initial Application for Inspection is submitted to an Officer in Charge, Marine Inspection on or after April 1, 1987.

## PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

17. The authority citation for Part 195 is revised to read as follows and all other authority citations in the part are removed:

**Authority:** 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

**§ 195.13 [Removed]**

18. By removing § 195.13.

**§ 195.15 [Removed]**

19. By removing § 195.15.

Dated: March 17, 1987.

**W.J. Ecker,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 87-11040 Filed 5-14-87; 8:45 am]

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## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1160**

**[Ex Parte No. 55 (Sub-No. 63)]**

## Technical Revisions

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission's regulations at 49 CFR Part 1160, *How to Apply for Operating Authority*, govern the filing of applications for authority to conduct regulated operations as a motor carrier, as a household goods freight forwarder, as a water carrier, and as a broker of motor vehicle transportation. The Commission here adopts technical revisions, all ministerial in nature, to these regulations. These revisions will bring the regulations up-to-date and will correct certain errors.

**EFFECTIVE DATE:** June 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Paul Markoff, 202–275–7960.

or

Mark Shaffer, 202–275–7292.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

### Environmental and Energy Considerations

This rule will not significantly affect either the quality of the human environment or the conservation of energy resources.

### Regulatory Flexibility Analysis

The Commission certifies that this rule will not have a significant economic impact on a substantial number of small business entities because the changes are ministerial only and do not impose additional requirements on any entity.

### List of Subjects in 49 CFR Part 1160

Administrative practice and procedure.

Decided: April 28, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

Title 49 of the Code of Federal Regulations is amended as follows:

## PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

1. The authority citation for Part 1160 is revised to read as follows:

**Authority:** 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553; 16 U.S.C. 1456.

2. In § 1160.5, the third sentence of paragraph (d)(1) is revised, and paragraph (e) is added, to read as follows:

**§ 1160.5 Information to be submitted by applicants (except fitness only applications).**

* * * * *

(d) * * *

(1) * * * This evidence shall be submitted in part (9) of applicant's verified statement, as shown in § 1160.6 of this part.

* * * * *

(e) *Water carriers: Compliance with the Coastal Zone Management Act.* An applicant filing an application for a certificate, permit, or exemption for water carrier transportation of property or passengers, to be conducted in the "coastal waters" of a "coastal State" (hereinafter, a "coastal zone water carrier applicant"), must comply with the applicable requirements of the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 et seq., as established in the implementing regulations, 15 CFR Part 930, see especially Subpart D thereof.

(1) The CZMA contains technical definitions of such terms as "coastal zone," "coastal waters," and "coastal State." *See* 16 U.S.C. 1453. For our purposes, it sufficies to say that the CZMA applies to water carrier activities conducted in the waters of the Atlantic, Pacific, or Arctic Oceans, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes; and that the coastal States are the States bordering on these waters. The CZMA, which applies to certain water carrier application cases, requires, *inter alia*, (i) that any Federal agency conducting or supporting activities in a coastal zone management area shall ensure to the maximum extent practicable that these activities are consistent with the State's coastal zone management program (CZMP), and (ii) that an applicant conducting an activity affecting land or water lying within a State's designated coastal zone provide the Federal agency with a certification that its proposal is consistent with the State's CZMP. The CZMA further provides that no Federal agency shall issue a permit or license to an applicant seeking authorization affecting a coastal zone until the State whose coastline is involved concurs in the applicant's certification that its proposal is consistent with the State's CZMP. See 16 U.S.C. 1456(c)(3)(A).

(2) Regulations promulgated under the CZMA have different filing requirements for federal licensing applicants depending on whether the proposed activity is subject to consistency review. 15 CFR 930.53(b). If a coastal State has listed, in its approved CZMP, the ICC licensing of water carriers as subject to consistency review, an applicant shall certify in its application that the proposed activity complies with and will be conducted in a manner consistent with the State's approved CZMP. 15 CFR 930.57. Applicant must also file, with the State agency that administers the State's CZMP, a copy of its certification, and the information required by 15 CFR 930.58. These States will then have 6 months from the date of applicant's consistency certification to concur with or object to the certification. Absence of action by a State will be conclusively presumed to be concurrence. 15 CFR 930.60 and 930.63.

(3) If a coastal State has not listed, in its approved CZMP, the ICC licensing of water carriers as subject to consistency review, an applicant must notify the State agency of its application, 15 CFR 930.54, and must thereafter comply with the procedure set out in that section (which varies, depending upon whether or not the State agency seeks to review the application). Applicant must include in its application a copy of its notice to the State agency. If the State agency wants to review the activity and receives the approval of the Assistant Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, then applicant must follow the certification process described above. 15 CFR 930.54(a), (c), (e). A State agency's failure to object within the time periods set out in 15 CFR 930.54(e) will be presumed to be concurrence.

3. Section 1160.6 is revised to read as follows:

**§ 1160.6 Applicant's verified statement (except fitness only applications).**

Applicant shall file the information described in this section. The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable, write "N/A."

**APPLICATIONS COVERED**

Motor common carrier of property application.

Motor contract carrier of property application.

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Household goods freight forwarder application.
Water common carrier application.
Water contract carrier application.
Water carrier exemption application.

INFORMATION TO BE SUBMITTED

(1) Legal name and domicile of application.
(2) Name of witness presenting evidence of applicant and why this person is qualified to speak for applicant (as, position with applicant and experience).
(3) Authority requested in this application.
(4) Brief description of present ICC regulated operations, or any other transportation experience. Do not submit copies of existing authority unless they are an issue in the application.
(5) *Description of equipment.* It is not necessary to list separately all pieces. A summary is preferred. If applicant has no equipment, it shall specify its plan to obtain equipment (*e.g.*, owner-operators under lease).
(6) *Safety evidence.* Motor carriers holding ICC authority should indicate that they are in compliance with DOT safety regulations. New entrants shall state the following:
I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations.
**Note to Applicants.**—These regulations are found in Title 49, Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling DOT's Office of Motor Carrier Safety Field Operations, at 202–366–2983 (safety) and at 202–366–1724 (Hazardous materials).
(7) Services now provided to supporting shipper or witness, if any, or service provided within area sought by application.
(8) Description of service that will be provided if this application is granted. State whether services of this type are not now available.
(9) Any other evidence in support of the application. *Motor common carrier of property applicants.* If no shipper support statements are being provided, applicant shall submit other evidence under this paragraph.
(10) Legal argument supporting the application. (Optional.)
(11) Any oral hearing request (Optional).
*Verification:* Separate verification of this statement is not necessary. Applicant understands that the oath in the application form applies to this statement.

4. In § 1160.8, paragraphs (2), (5), and (7)(vi) under INFORMATION TO BE SUBMITTED are revised to read as follows:

**§ 1160.8 The applicant's verified statement in fitness only applications.**

* * * * *

(2) Name of witness presenting evidence and why this person is qualified to speak for applicant (as, position with applicant and experience).

* * * * *

(5) *Safety evidence:* Motor carriers holding ICC authority shall indicate that they are in compliance with DOT safety regulations. New entrants shall state the following:
I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations.

**Note to Applicants:**

These regulations are found in Title 49 of the Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling DOT's Office of Motor Carrier Safety Field Operations, at 202–366–2983 (safety) and at 202–366–1724 (hazardous materials). (1 only.)

* * * * *

(7) * * *
(vi) When the certification in paragraph (5) of this section is made, and applicant has otherwise established its right to a certificate, the Commission will issue a certificate subject to the filing, when rail service is terminated, of another certification that all service has ceased at the granted points.

* * * * *

5. In § 1160.19, paragraph (b) is revised to read as follows:

**§ 1160.19 Compliance.**

* * * * *

(b) For Motor Contract Carriers of Property, 49 CFR Parts 1043, 1044, and 1053.

* * * * *

6. In § 1160.23, paragraph (e) introductory text is revised to read as follows:

**§ 1160.23 Water carrier applicants only.**

* * * * *

(e) If applicant is a water common carrier seeking a revised certificate covering extension of service pursuant to 49 U.S.C. 10922(g)(3)(B), the following shall be furnished:

* * * * *

7. In § 1160.64, paragraph (c) is revised to read as follows:

**§ 1160.64 Petition to clarify or interpret formally an operating authority.**

* * * * *

(c) Notice of the petition will be published in the *ICC Register.* Interested persons may obtain copies of the petition from petitioner's representative in the same manner as provided in §§ 1160.13 and 1160.61. Petitioner may file a rebuttal to any opposing argument.

8. In § 1160.66, paragraph (d) is revised to read as follows:

**§ 1160.66 Consolidation of applications.**

* * * * *

(d) The applications will be published in the *ICC Register* and their consolidation will be indicated. Protestants may file a single protest which will apply to all the proceedings.

9. In § 1160.71, paragraph (a)(5) is revised to read as follows:

**§ 1160.71 Types of proof required for applications for operating authority to perform motor carrier transportation of passengers.**

* * * * *

(a) * * *
(5) Motor common carrier of passengers transportation to any community where the only interstate motor common carrier of passengers has applied to discontinue the interstate service under 49 U.S.C. 10925(b) or to reduce intrastate service under 49 U.S.C. 10935 to less than one trip per day (excluding Saturdays and Sundays).

* * * * *

10. In § 1160.73, paragraph (b) is revised to read as follows:

**§ 1160.73 Starting the application process.**

* * * * *

(b) Obtain the form at Commission regional and field offices, or call either of the following headquarters offices: Publications (202–275–7833) or Public Assistance (202–275–7597).

11. In § 1160.75, paragraphs (g) and (j), and the fifth sentence in paragraph (k), are revised to read as follows:

**§ 1160.75 Applicant's verified statement.**

* * * * *

(g) Safety evidence: Motor passenger carriers holding ICC authority shall indicate that they are in compliance with DOT safety regulations. New entrants shall state the following:

"I certify that I have access to and am familiar with all applicable regulations of the U.S. Dept. of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations."

**Note to Applicants**

These regulations are found in Title 49 of the Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling DOT's Office of Motor Carrier Safety Field Operations, at 202–366–2983 (safety) and at 202–366–1724 (hazardous materials).

* * * * *

(j) Application under § 1160.71(a)(5): If the application is to provide transportation to any community where the only interstate motor common carrier of passengers seeks to

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discontinue interstate service under 49 U.S.C. 10925(b) or to reduce intrastate service under 49 U.S.C. 10935 to less than one trip per day (excluding Saturdays and Sundays), certify that the community has only one interstate motor passenger service available, and provide a copy of, or appropriate reference to, the existing carrier's application to the Commission for discontinuance or reduction.

(k) * * * Applicant should submit sufficient information under this paragraph for the Commission to determine readily the precise portions of the existing authorities on which applicant's proposal is based. * * *

* * * * *

12. In § 1160.76, paragraph (a)(1)(iii) introductory text is revised to read as follows:

**§ 1160.76 Caption summary.**

(a) * * *

(1) * * *

(iii) 49 U.S.C. 10922(c)(4) applications for charter/special authority: * * *

* * * * *

13. In § 1160.78, paragraph (b) is revised to read as follows:

**§ 1160.78 Commission review of the application.**

* * * * *

(b) The caption summary will be published in the *ICC Register* to give notice to the public in case anyone wishes to oppose the application. The application will be published in the form of a grant of authority.

* * * * *

14. The heading for § 1160.80 is revised to read as follows:

**§ 1160.80 After publication in the ICC Register.**

15. In § 1160.87, paragraph (a) is revised to read as follows:

**§ 1160.87 Appeals.**

(a) If a division of the Commission, or an employee board or other decisional body, rejects an application, applicant has a right of appeal. The appeal must be filed at the Commission within 10 days of the date of the letter of rejection.

* * * * *

16. In § 1160.106, paragraph (e)(2) is revised to read as follows:

**§ 1160.106 Fitness-only authority.**

* * * * *

(e) * * *

(2) For contract carriage.—To operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizer, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in the United States, under continuing contract(s) with _____ (person, class of persons, industry, or industries).

* * * * *

[FR Doc. 87-11148 Filed 5-14-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 675

**[Docket No. 61225-7052]**

### Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of inseason adjustment.

**SUMMARY:** NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH) under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. Groundfish are apportioned according to the regulations implementing the FMP. The intent of this action is to assure optimum use of these groundfish by allowing the domestic fishery to proceed without interruption.

**EFFECTIVE DATE:** May 12, 1987. Comments will be accepted through May 27, 1987.

**ADDRESS:** Comments should be mailed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or to be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Janet E. Smoker (Resource Management Specialist, NMFS), 907-586-7230.

**SUPPLEMENTARY INFORMATION:** The FMP governs the groundfish fishery in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act. The FMP was developed by the North Pacific Fishery Management Council (Council) and implemented by rules appearing at 50 CFR 611.93 and Part 675. The total allowable catches (TACs) for various groundfish species are apportioned initially among DAH, reserves and total allowable level of foreign fishing (TALFF). Each reserve amount, in turn, is to be apportioned to DAH and/or TALFF during the fishing year, under 50 CFR 611.93(c) and 675.20(b). Under § 675.20(b)(1)(i), reserves may be apportioned after April 1, June 1, August 1 and other dates as necessary. No action was scheduled for the April 1 date because the need for additional JVP was not apparent at that time.

The initial specifications of domestic annual processing (DAP) and JVP (both components of DAH) for 1987 were based in part on the projected needs of the U.S. industry as assessed by a mail survey sent by the Director, Alaska Region, NMFS (Regional Director), to fishermen and processors in November 1986. The results of the survey indicated that the total DAH capacity for pollock in the Bering Sea subarea exceeded the TAC. After the 15 percent of TAC was placed in the non-specific reserve, as required at § 675.20(a)(3), the initial specifications for Bering Sea pollock were determined as follows: for DAP, 189,987 mt; and for JVP, the remainder, 830,013 mt (52 FR 785, January 9, 1987).

On January 1, JVP was supplemented by 18,339 mt of the non-specific reserve, and TALFF by 10,071 mt of the non-specific reserve, which included 5,000 mt to the Bering Sea pollock TALFF, to provide bycatch in foreign flatfish fisheries. This action supplements DAH by 100,000 mt from the current 271,590 mt non-specific reserve, reducing the non-specific reserve to 171,590 mt.

**Reapportionments (Table 1)**

The following actions are taken by this notice to reapportion specifications in the BSA fisheries.

**To the BSA–JVP**

To provide for continued JVP fishing in the Bering Sea for pollock, 100,000 mt of the non-specific reserve is transferred to the Bering Sea pollock JVP. The JVP catch of pollock in the Bering Sea through April 18 was 725,337 mt; at current catch rates, the remainder of the current quota would be taken during the first week of May. About 40 foreign processors and 70 U.S. catcher boats continue to target pollock in the Bering Sea subarea. This apportionment does not result in overfishing of the pollock stock, as the resulting TAC is 1,125,000 mt, less than the equilibrium yield (EY) of 1.2 million mt.

**Comments and Responses**

In accordance with 50 CFR 611.92(c) and 675.20(b), aggregated reports on U.S. catches of Alaska groundfish and the processing of those groundfish were available for public inspection to

facilitate informed public comment. In addition, those provisions afforded the public an opportunity to submit comments on the extent to which U.S. fishermen will harvest and the extent to which U.S. processors will process Alaska groundfish. Three comments were received, each making the same request.

*Comment:* Because the remaining allocation for the Bering Sea appears insufficient to carry the JVP pollock fishery beyond the May Council meeting, where the question of JVP pollock allocations will be reviewed, NMFS should transfer adequate pollock reserves to JVP to allow the fishery to continue until that time.

*Response:* The 100,000 mt of reserves released should be sufficient to allow the JVP pollock fishery to continue until late May, assuming similar catch rates are experienced during May of this year as for that month for the two previous years of the fishery.

## Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit groundfish who otherwise would have to forego substantial amounts of other groundfish species if fishing were closed as a result of achieving previously specified JVPs or TACs. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

## List of Subjects in 50 CFR Part 675

Fisheries.

**Authority:** 16 U.S.C. 1801 et seq.

Dated: May 8, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

TABLE 1.—BERING SEA/ALEUTIANS ISLANDS REAPPORTIONMENTS OF TAC

| | | Current | This action | Revised |
|---|---|---|---|---|
| Pollock (Bering Sea Subarea) EY=1,200,000; TAC=1,125,000 | DAP | 189,987 | | 189,987 |
| | JVP | 830,013 | +100,000 | 930,013 |
| | TALFF | 5,000 | | 5,000 |
| Total (TAC=2,000,000) | DAP | 416,018 | | 416,018 |
| | JVP | 1,248,040 | +100,000 | 1,348,040 |
| | TALFF | 84,352 | | 61,352 |
| | Reserves | 271,590 | −100,000 | 171,590 |

[FR Doc. 87-11113 Filed 5-12-87; 1:16 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 94
Friday, May 15, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 929

### Cranberries Grown in the States of Massachusetts et al.; Order Directing That a Referendum Be Conducted, Determination of Representative Period for Voter Eligibility, and Designation of Referendum Agents To Conduct the Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Referendum order.

**SUMMARY:** This document directs that a referendum be conducted among eligible growers of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, to determine whether they favor continuance of the marketing agreement and order program.

**DATES:** Referendum period May 20 through May 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, telephone (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** Pursuant to Marketing Order No. 929, as amended (7 CFR Part 929), and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), it is hereby directed that a referendum be conducted within the period May 20 through May 30, 1987, among the growers who, during the period September 1, 1987, through March 31, 1987, (which period is hereby determined to be a representative period for purposes of such referendum), were engaged in the production area in the production of cranberries covered by the said amended marketing agreement and order to ascertain whether continuance of the said amended marketing order is favored by the growers. Section 929.68(d) specifies that such a referendum shall be held during the month of May 1975, and during the month of May every fourth year thereafter, to ascertain whether growers favor such continuance.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than Two-thirds of the growers of cranberries voting in the referendum and growers of less than two-thirds of the volume of such fruit represented in the referendum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum but also all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operating of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers favor termination, and such majority produced for market more than 50 percent of the commodity covered by such order.

Patricia A. Petrella and Jay N. Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, are hereby designated as referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et. seq.*).

Copies of the texts of the aforesaid amended marketing order may be examined in the offices of the referendum agents or of the Director, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250.

Ballots to be cast in the referendum may be obtained from the referendum agents and from their appointees.

**Authority:** Agricultural Marketing Agreement Act of 1937, as amended, Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: May 12, 1987.

Kenneth A. Gilles,
*Assistant Secretary for Marketing and Inspection Services.*

[FR Doc. 87–11179 Filed 5–14–87; 8:45 am]
BILLING CODE 3410–02–M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Parts 561, 563, and 571

[No. 87–527]

### Classification of Assets

Date: May 5, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is proposing to revise its present regulations governing the classification of assets of insured institutions. This proposed rule would ensure the use of broader, but judicious, examiner discretion in the classification of assets, consistent with the examination practices of the bank regulatory agencies. Specifically, the proposal employs the existing classification categories of Substandard, Doubtful, and Loss, but significantly alters the consequences of the respective classifications with respect to both reserve requirements and minimum capital requirements.[1] Assets classified Substandard would no longer be treated as scheduled items; thus, twenty percent of Substandard assets would not be included in calculating the contingency component of an insured institution's minimum regulatory capital requirement. Moreover, with respect to assets classified Doubtful, the Board would no longer require institutions to establish specific allowances for loan losses. With respect to assets classified Substandard or Doubtful, if the examiner concludes that the valuation allowances established by the

[1] N.B. This proposal refers to specific and general "allowances for loan losses" or to "valuation allowances" instead of "reserves," since the former designations are more consistent with accepted accounting terminology.

institution are inadequate, the examiner would determine the need for, and extent of, any increase necessary in the insured institution's general allowances for loan losses, subject to review by the Principal Supervisory Agent ("PSA"). For the portion of assets classified Loss, the Board would continue to require institutions either to establish specific allowances for losses of 100 percent of the amount classified, or charge off such amount. Institutions would also be required to classify their own assets and to establish prudent general allowances for loan losses. The Board is soliciting public comment on all aspects of the proposed rule.

This proposal is part of the Board's comprehensive review of its scheme for classification and appraisal of assets of insured institutions. The Board also is proposing today a rule that would codify its appraisal standards with appropriate changes to clarify and simplify existing supervisory directives. Board Res. No. 87–528, published elsewhere in the Proposed Rules section of this issue of the **Federal Register**.

**DATES:** Comments must be received on or before July 14, 1987.

**ADDRESS:** Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Karen Knopp O'Konski, Deputy Director, (202) 377–7240, Daniel G. Lonergan, Staff Attorney, (202) 377–6458, Kathy L. Kresch, Staff Attorney, (202) 377–6417, Regulations and Legislation Division, Office of General Counsel; or Robert J. Pomeranz, Senior Policy Analyst, (202) 377–6760, Jane W. Katz, Senior Policy Analyst, (202) 377–6782, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; Edward J. Taubert, Associate Director—Policy, (202) 778–2511, or Francis E. Raue, Policy Analyst, (202) 778–2517, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The Board, as operating head of the FSLIC, is authorized pursuant to section 403(b) of the National Housing Act ("NHA"), to conduct examinations of institutions the accounts of which are insured by the FSLIC ("insured institutions"). 12 U.S.C. 1726(b). Pursuant to this authority, the Board has the responsibility to examine and evaluate insured institutions' assets, to require reporting, and to prescribe the treatment of such assets for regulatory evaluation purposes. In addition, the NHA requires insured institutions to establish and maintain reserves in accordance with Board regulations. *Id.*

Section 325 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, 96 Stat. 1469, amended section 5(c)(1)(R) of the Home Owners Loan Act of 1933, 12 U.S.C. 1464(c)(1)(R), to authorize federally chartered savings and loan associations and mutual savings banks to invest in secured or unsecured loans for commercial, corporate, business, or agricultural purposes within specified limits. The Board promptly promulgated regulations to implement this new commercial lending authority for federal institutions. *See* 12 CFR 545.46. Moreover, many states subsequently granted state-chartered institutions the authority to engage in commercial lending activity.

The Board's then-existing asset classification system, which had been primarily designed to address the requirements of home lending, emphasized the timely receipt of periodic payments and other features inherent in loans secured by real estate. Because of Board concern that this system of asset classification was not attuned to the characteristics of the newly authorized type of lending and was thus not appropriately suited to gauge the condition of a given asset, the Board sought a better method of evaluating the condition of these loans.

On June 21, 1985, the Board proposed for public comment a new method of classifying certain commercial loans and a revision of its regulation governing examiners' reevaluation of real estate. Board Res. No. 85–504, 50 FR 27290 (July 2, 1985). The Board's proposal adopted the basic asset classification concepts contained in the "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks" ("Uniform Agreement"), issued in revised form on May 7, 1979, as a Joint Statement of the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Board of Governors of the Federal Reserve System ("FRB"), and the Conference of State Bank Supervisors. In short, the proposed scheme classified problem assets as Substandard, Doubtful, or Loss and prescribed treatment of each problem asset depending on the category to which it was assigned.[2] The proposal also sought to revise the appraisal provisions in the Board's examinations and audit regulation. *See* 12 CFR 563.17–2(b).

On December 9, 1985, the Board adopted as a final rule the proposed classification of assets scheme with some modifications. This regulation, currently in effect, employs the classification categories of the Uniform Agreement, *i.e.*, Substandard, Doubtful, and Loss. Assets classified Substandard are treated as scheduled items, thus increasing the contingency component of an institution's minimum regulatory capital requirement under § 563.13 by an amount equal to 20 percent of the dollar amount of the substandard assets. *See* Board Res. No. 86–857, 51 FR 33565, 33585 (Sept. 22, 1986) (to be codified at 12 CFR 563.13(b)(4)(ii)(B)). *See also* 12 CFR 561.16c(c)(1). In effect, this classification serves to increase an insured institution's capital requirement by 20 percent of the assets classified Substandard, since the contingency component is added to an institution's liability component (minus the maturity matching credit) to determine the minimum regulatory capital requirement. *See* Board Res. No. 86–857, 51 FR 33565, 33584 (Sept. 22, 1986) (to be codified at 12 CFR 563.13(b)). Assets classified as Doubtful require establishment of specific allowances for loan losses of up to 50 percent of the amount of the asset so classified. Assets classified as Loss require establishment of specific allowances for loan losses of 100 percent of book value of the amount of the asset classified as Loss. This scheme permits assets to be "split" for classification purposes: different portions of the same asset may be classified to different categories and a portion of an asset may remain unclassified. 12 CFR 571.1a.

The Board's final rule also authorized examiners to reevaluate assets in accordance with the newly adopted classification system, as reflected in 12 CFR 563.17–2(b). Section 563.17–2(b) was amended to provide that a re-evaluation of real estate is to be based on an appraisal, except in the following instances: (1) If a loan or investment requires an appraisal under the Board's rules but the institution has no appraisal in its files, the asset is to be classified as

[2] These categories are defined in detail in the existing regulation and policy statement. *See* 12 CFR 561.16c(b), 571.1a(a). Generally, assets classified Substandard are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, and have a well defined weakness or weaknesses. Assets classified Doubtful have all of the weaknesses inherent in those classified Substandard, with the added characteristic that the weaknesses make collection or liquidation in full highly questionable and improbable. Assets classified Loss are considered uncollectible and of such little value that their continuance as assets without establishment of a specific allowance for loan losses is not warranted.

Doubtful; (2) if there is an appraisal in the institution's files that does not conform with the Board's appraisal standards, or if the examiner determines that the assumptions underlying an appraisal (even one that was in compliance when made) are demonstrably incorrect, such assets should be classified as Substandard; and (3) if the examiner and District Appraiser determine that the assumptions underlying an appraisal are demonstrably incorrect, rendering such appraisal inaccurate, and the asset has an additional weakness inherent in an asset classified Substandard, such asset is to be classified Doubtful. In promulgating this final rule, the Board emphasized that its supervisory experience indicated that continued reliance on reappraisals as the sole means for classifying problem real estate assets was not advisable.

The Board also amended § 563.17–2(c) to require adjustments to the book value of assets deemed to be overvalued on the institution's books as a result of asset re-evaluation. At the direction of its supervisory agent, an institution must make such an adjustment to the book value by establishing a specific valuation allowance in an amount equal to the overvaluation.

Although the Board adopted the above classification of assets scheme as a final rule, the Board also provided an additional 60-day comment period to solicit further public comment on the general scope of the classification system which, in its final form, encompassed all assets except consumer loans, loans secured by one-to-four family, owner-occupied homes, and securities.

In response to its solicitation of comments on the scope of the final rule, the Board received fifty-six comment letters. Of these fifty-six letters, only thirty addressed the scope of the classification of assets regulation, while the remainder addressed aspects of the final rule on which comment had not been solicited. Forty-four of the letters were received from insured institutions. Of the remainder, seven letters were received from industry trade associations, two were received from state agencies, one was received from a law firm representing 20 insured institutions, one was received from a mortgage insurance company, and one letter was received from a private citizen.

Although the comments received in response to the scope of the final rule were generally supportive, several criticisms and suggestions were made by more than one commenter. Several commenters recommended that the Board broaden the scope of the regulation specifically to include loans on the security of one-to-four family owner-occupied homes. Several other commenters objected to the breadth of the scope of the final rule, specifically criticizing its application to loans secured by real estate. These commenters generally argued that because loans made on the security of real property are inherently less risky than commercial loans, such loans should not fall within the rule. Several other commenters contended that the rule should properly apply only to those institutions that are of "substantial supervisory concern" to the Board and threaten the industry, and that the Board should not "overregulate" all insured institutions for the excesses of a few.

One trade association commenter supported the broadened scope of the rule contingent upon further regulatory modifications, including granting supervisory personnel discretion to establish loan loss allowance requirements below the stated percentages to take into account the lower loss levels associated with loans secured by real estate. Another trade association asserted that the Board lacked authority under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, to broaden the scope of the proposed rule without soliciting additional comment prior to its issuance of the final rule.

In proposing the following revisions of the existing classification of assets provisions, the Board has carefully considered all comments submitted. In view of the fact that further comment is solicited in this proposal, however, the Board has decided to defer responding to the comments just described and consider them together with any additional comments it receives.

**Objectives of the Proposal**

The Board's current classification regulation became effective on January 30, 1986. Thus, the Board, the Federal Home Loan Bank System supervisory staff, and the field examination staff have had more than a year of experience with the rule. This experience suggests that modifications to the rule are in order. Specifically, by adopting this proposal the Board seeks to encourage greater exercise of discretion, judgment, and flexibility by both supervisory and examination staff, to integrate the classification system with other regulations prescribing treatment of problem assets, to promote the Board's goal of increasing the thrift industry's capital, and, finally, to achieve greater conformity with the classification practices of the bank regulators.

Upon further consideration, the Bank Board believes that the existing classification system could be construed to constrain the broad exercise of judgment, flexibility, and discretion by both supervisory agents and examiners. As written, certain portions of the provisions bearing on asset classification rely heavily on appraisals of collateral. For example, the Board's regulation governing re-evaluation of assets imposes a requirement that, when reevaluation is necessary, most assets should be classified based on an appraisal done in conformity with Board standards. 12 CFR 563.17–2. *See also* Office of Regulatory Policy, Oversight and Supervision ("ORPOS") Memorandum No. R–41c (Sept. 11, 1986). Similarly, the Board's Statement of Policy on classification of assets requires that the amount of specific allowances for loan losses for assets classified Doubtful or Loss be based on a conforming appraisal. 12 CFR 571.1a.

The Board's original classification of assets proposal contained language that would have made reliance on an appraisal in re-evaluating real estate merely permissive, in order to allow for evaluations that take into consideration economic factors that directly affect the immediate value of the assets from the insured institution's point of view. Board Res. No. 85–504, 50 FR 27290 (July 2, 1985). Most commenters opposed this position. "They believed that the proposal might lead to arbitrary decision-making by examiners because it was highly subjective and, consequently, they believed that it would give examiners too much discretionary authority." 50 FR 53280 (summary of comments). The Board responded to these comments by requiring appraisals to support reevaluation of most assets and by providing for the automatic classification of assets unsupported by a conforming appraisal. 12 CFR 563.17–2.

The Board continues to believe that an appraisal of collateral that follows accepted appraisal methodology is an important factor in an examiner's assessment of the risk of non-payment associated with assets in an insured institution's portfolio. Risk of non-payment is also dependent upon other factors, however. These factors include the overall risk involved in the project being financed; the nature and degree of the collateral security; the character, capacity, financial responsibility, and record of the borrower; and the feasibility and probability of orderly liquidation of the asset. Of necessity, the

examiner's arrival at a valuation based on all the relevant factors will involve the exercise of some subjective judgment. The Board recognizes the importance of an appraisal; however, it believes the value of the collateral should not be the sole determinant of asset valuation where, for example, the borrower has other resources for repayment against which the lender has legal recourse.

Nor does the Board believe that the examiner's exercise of discretion and judgment will result in arbitrary valuation. Three reasons support this conclusion. First, the Board notes that additional training has been available to the examiners, especially since July of 1985 when the Board transferred its field examination force to the twelve Federal Home Loan Bank districts under the authority of the PSAs. Second, today's proposal does not give unreviewable discretion to examiners but retains the current approach of vesting the PSA or his designee with authority to review and disapprove or modify the examiner's classification and valuation of assets. Finally, the Board notes that it is also proposing to adopt by regulation appraisal standards that would assist examiners by clarifying and simplifying the appraisal requirements currently imposed by supervisory memorandum. Board Res. No. 87–528.

The approach implicit in today's proposal—that is, the introduction of greater flexibility into the classification process—is more consistent with the practices of the banking regulatory agencies. As a matter of course, bank examiners exercise informed judgment both in determining whether to classify an asset and in determining the appropriate amounts of capital and allowances for loan losses to be maintained by a bank whose portfolio contains classified assets. One virtue of a more flexible approach to classification is that it is more likely to encourage the examiner to identify weaknesses inherent in the institution's ongoing lending strategies and practices, in addition to quantifying current problems.

The Board believes that classification is a crucial tool for protecting both insured institutions and the FSLIC insurance fund. Identification of problem assets enables the FSLIC, through the examination process, to require institutions to maintain adequate allowances for loan losses and, under today's proposal, adequate capital to help insulate the FSLIC from loss. The classification process can serve a second, invaluable function. It can reveal lending patterns or deficiencies in portfolio administration that are consistently causing collectibility problems for an institution. Once the examiner identifies such patterns or deficiencies, his or her discussions with management can focus on avoiding practices that have resulted in the necessity for classifying existing assets. In this way, the classification process can serve a preventive, as well as a protective, function.

By adopting this proposal, the Board also seeks to promote consistency between its classification scheme and other aspects of its regulatory framework. For example, the Board has given high priority to encouraging insured institutions to increase their levels of capital. In August, 1986, some nine months after issuing its rule on classification of assets, the Board instituted a comprehensive revision of its regulatory capital requirements. *See* Board Res. No. 86–857, 51 FR 33565 (Sept. 22, 1986) (to be codified at 12 CFR 563.13). Like the banking regulatory agencies, whose practice it is to vary capital requirements depending on, among other factors, the quality of an institution's asset portfolio, the Board believes that classified assets, which by definition present an increased risk of non-payment, should be supported not only by allowances for loan losses but also by additional capital. Moreover, the Board believes that the amount of additional capital should be determined based on an evaluation of the institution's asset portfolio as a whole. Therefore, this proposal would provide for imposition of a higher capital requirement based on the quality of an institution's asset portfolio.

**Description of Proposal**

*1. Scope.*

The Board is proposing to broaden the scope of the classification of assets regulation to encompass securities (debt and equity), as defined in § 561.41 of the Board's regulations. In issuing the existing rule, the Board earlier alluded to the desirability of including securities within the scope of the regulation, but recognized the need for further review of the implications of such an expansion of coverage. 50 FR 53275, 53279 (December 31, 1985). Upon further consideration, and in light of supervisory experience, the Board believes it would be appropriate to include securities in its asset classification scheme. In addition, while off-balance-sheet items are not subject to the classification of assets regulation, the Board believes that, as a matter of prudent practice, insured institutions should continue to establish valuation allowances and liabilities for such items in accordance with generally accepted accounting principles ("GAAP") as described in Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* ("FASB–5").[3] FASB–5, which is attached to this proposal as Attachment 2 provides that an estimated loss shall be accrued when it is probable that the asset has been impaired or a liability incurred, and the amount of loss can be reasonably estimated. The Board has not specifically addressed how debt and equity securities should be valued for purposes of the proposed classification of assets rule, and solicits comment on an appropriate valuation method.

Although the proposed regulation continues the exclusion for consumer credit as defined in § 561.38 and loans secured by one-to-four family, owner-occupied dwellings, the Board specifically solicits comment on whether the latter loans generally should continue to be excluded from classification. The Board also seeks comment on whether real estate owned, which at the time it served as collateral for a loan was one-to-four family, owner-occupied real estate, should continue to be excluded and treated as a scheduled item under § 561.15(c).[4]

*2. Effect of classification.*

Under today's proposal, the categories to which problem assets may be classified—Substandard, Doubtful, and Loss—would remain the same as they are in the current classification regulation. 12 CFR 561.16c(b). The Board reiterates that, as under the existing rule, a portion of an asset may remain unclassified, or may be classified under a different category than the remainder of the asset. Moreover, this proposal would retain without change the factors used to determine the proper category or categories to which an asset should be classified, except in cases of certain "automatic" classifications related to appraisal deficiencies. 12 CFR 571.1a;

[3] Generally, valuation allowances are established for assets and liabilities are established for off-balance-sheet items. Because off-balance-sheet items are typically not assets, it is advised that liabilities be recorded for such items when off-balance-sheet loss becomes probable and estimable.

[4] Section 407 of the NHA provides that, in making examinations of insured institutions, examiners appointed by the Board shall have power, on behalf of the FSLIC, to make such examinations of the affairs of all affiliates of such institutions as shall be necessary to disclose fully the relations between such institutions and their affiliates, and the effect of such relations upon such institutions. 12 U.S.C. 1730(m)(1). In view of this authority, the Board also solicits comment on the extent to which the proposed classification scheme should be applied to the assets of the affiliates of insured institutions.

see discussion at subheading 5., *infra*, "Automatic Classification for Failure to Comply with Appraisal Requirements." This proposal would, however, amend both the classification rule and policy statement to change the effect of classification for two of the three categories.

The proposal would no longer require treating assets classified Substandard as scheduled items. For assets classified Doubtful, establishing specific allowances for loan losses would no longer be required; instead, in cases where assets are classified Substandard or Doubtful, the proposal would authorize the examiner to direct the establishment of general allowances for loan losses based on the assets classified and the overall quality of the asset portfolio. In cases where an examiner has classified an asset Loss, the institution would continue to be required either to establish a specific allowance for loan losses in the amount of 100 percent of the amount classified Loss, or be permitted to charge off that amount. The Board solicits comment on whether institutions should be permitted to charge off such loss amounts as an alternative to establishing specific allowances for loan losses.

In examining an institution's asset portfolio, the examiner will consider the systems and internal controls employed by the institution in classifying assets. By examining those assets classified and the allowances for loan losses established pursuant to the institution's self-classification, the examiner can determine the effectiveness of, and the institution's adherence to, its classification procedures and methods of evaluation, and determine the need to require additional valuation allowances and/or additional capital.

This proposed treatment of classified assets more closely parallels that used by examiners in the commercial banking system. Once assets have been classified Substandard or Doubtful, the thrift examiner would review the adequacy of an insured institution's general allowances for loan losses and, if necessary, direct that an institution increase these allowances. While establishing these allowances reduces GAAP equity, the institution could include general allowances for loan losses in determining its regulatory capital. An increase in general allowances will thus have a different result from the current allocation of amounts to specific allowances for loan losses for Doubtful items, because specific valuation allowances for loan losses do not qualify as regulatory capital.[5] *See* Board Res. No. 86–857, 51 FR 33565, 33584 (Sept. 22, 1986) (to be codified at 12 CFR 561.13(a)).

Treatment of items classified Loss remains the same under this proposal as in the current regulation; the requirement that institutions establish specific allowances or undertake charge-offs for these items is analogous to the practice, employed by banking examiners, of requiring an immediate charge-off for items classified Loss.

In Attachment 1 to this proposal, the Board is providing a simple example of the accounting consequences of classification under today's proposal. Readers are advised that this example is intended only to illustrate the operation of the proposed scheme under regulatory accounting principles. Insured institutions should not rely upon it to predict the consequences of classification on their own capital positions, nor should they conclude that the calculation would be the same under GAAP.

As indicated earlier, the Board believes that, consistent with the current practice of the banking regulators, weak assets (*i.e.*, assets posing significant problems of collectibility) should be supported by additional capital. Accordingly, this proposal would amend the Board's regulation on minimum regulatory capital requirements to permit the PSA to impose an additional capital requirement on an insured institution based on the quality of its asset portfolio.

The amendments contained in today's proposal are silent with regard to the factors that should influence the examiner or the PSA in setting the amount of general allowances for loan losses or the amount of additional capital required as a result of the classification process. The Board believes that such an approach is consistent with the practice of the banking regulatory agencies and the Board's goal of achieving similar flexibility in the administration of its own classification system.[6] In adopting this approach, the Board recognizes its responsibility to ensure that examiners receive necessary training.

*3. Self-Classification and Reporting*

The Board is also proposing to amend section 561.16c to require that insured institutions independently review their asset portfolios, classify their assets, and set aside appropriate valuation allowances on the basis of such self-classification. This amendment merely sets forth as a regulatory requirement what is commonly regarded as a prudent institutional management policy. This process of self-classification is already widely observed throughout the commercial banking industry.[7]

Pursuant to the Board's authority, as operating head of the FSLIC, to prescribe the manner in which an insured institution reports its affairs to the FSLIC, 12 CFR 563.18, the Board also is proposing to require that an institution reflect its self-classification of assets in its quarterly reports to the Board, in the form of aggregate totals of assets for each of the three asset classifications.

*4. Delegations and Interpretations*

This portion of the classification regulation would remain substantially unchanged. The Principal Supervisory Agent would retain primary authority (which the PSA could delegate to a supervisory agent) over the examiner's classification of an asset, the examiner's directives with respect to the appropriate amount of allowances for loan losses to be established, and the acceptability of an appraisal made in connection with the re-evaluation of an asset. The amendment would also substitute a delegation to ORPOS for the previous delegation to the Board's former Office of Examination and Supervision ("OES"). *See* Board Res. No. 86–755, 51 FR 27165, 27167 (July 24, 1986) (to be codified at 12 CFR 522.90) (ORPOS succeeds to all delegations of authority from Board to OES).

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[5] The Federal Reserve Board ("FRB"), upon consultation with other federal bank regulatory agencies and the Bank of England, has issued several recent proposals in an effort to establish uniform capital standards. The FRB has issued for comment a revised proposal that would establish a risk-based capital measure (risk asset ratio) to be used in tandem with existing ratios of primary and total capital to total assets. This proposal would also amend the definition of primary capital. 52 FR 5119 (February 19, 1987). As proposed, primary capital would exclude "reserves allocated for identified losses." 50 FR 531, 5121. The Board solicits comment on the extent to which the FRB's treatment of reserves differs from the Board's existing or proposed treatment of valuation allowances, and the extent to which the FRB's proposed approach should be followed.

[6] It should be noted that the Board continues to believe that factors such as the coverage of a loan by private mortgage insurance should be taken into account in determining the appropriate allowances for loan losses when the probability of a full insurance payment is substantial. *See* 12 CFR 571.1a(b)(3).

[7] This self-classification and reporting requirement should not pose a particular problem for insured institutions GAAP financial reporting, since the proposed method of setting aside allowances for loan losses is generally consistent with GAAP.

*5. Automatic Classification for Failure to Comply With Appraisal Requirements*

The Board also is proposing to amend § 563.17–2 pertaining to the re-evaluation of assets. The proposal would delete those provisions of § 563.17–2(b) requiring "automatic" or mandatory classification where the appraisal is absent or does not conform with the Board's appraisal requirements, or where the assumptions underlying such appraisal are demonstrably incorrect. While the Board recognizes the importance of a properly conducted appraisal to an examiner's assessment of the risk of nonpayment associated with a particular asset, such an amendment is consistent with the Board's recognition that risk of nonpayment is dependent upon other factors as well. Therefore, the Board is deleting this automatic classification mechanism to provide examiners with sufficient flexibility and discretion to consider these other factors and to promote consistency between the Board's classification of assets scheme and the classification practices of the bank regulatory agencies. This is also consistent with the Board's intention to afford examiners adequate discretion to determine the necessity of, and appropriate reliance on, a re-appraisal, subject to review by the PSA.

*6. Technical Questions*

Today's proposal includes amendments to the scheduled items regulation consistent with the amendments just described to the classification of assets provisions. *See* 12 CFR 561.15. First, the proposal would delete references in the scheduled items regulation to assets classified Substandard, Doubtful, or Loss as unnecessary in view of the revisions to the classification scheme. Second, the proposal would amend § 561.15(c) to clarify that the reference to real estate owned means only real estate that, at the time it served as collateral for a loan, was a one-to-four family, owner-occupied home. These assets are excluded from the coverage of the classification regulation and therefore properly come within the scope of scheduled items. Finally, the proposal would delete the paragraph prescribing scheduled-item treatment for securities in view of the proposed inclusion of those assets in the classification scheme.

In light of the proposal's deletion of the requirement of specific valuation allowances for assets classified Doubtful, questions may arise as to the appropriate treatment of existing specific valuation allowances for assets classified Doubtful under the current regulation. The Board contemplates that, as of the effective date of any final rule, specific allowances for loan losses set aside for assets classified Doubtful will be added to the institution's general valuation allowances. At the institution's next examination following the effective date of the proposal, the examiner will review the institution's asset portfolio to evaluate the adequacy of allowances for loan losses established for such assets. The Board specifically solicits comment as to this treatment of existing specific valuation allowances for assets classified Doubtful, and seeks comment on the need, if any, for institutions to retain those specific allowances set aside for assets classified Doubtful on the basis of a reappraisal.

*7. Solicitation of Comment*

The Board solicits comment on all aspects of this proposal without limitation. Commenters are invited to suggest alternatives to today's proposal, including retention of the current classification scheme. The Board notes that ORPOS has issued a supervisory memorandum on asset classification that interprets the current regulation to permit the PSAs to require specific allowances for loan losses for Doubtful assets in variable amounts up to 50 percent of book value. ORPOS Memorandum No. SP–68 (Aug. 14, 1986). SP–68 also includes factors for PSAs to consider in classifying assets. SP–68 is set forth as Attachment 3 to this proposal so that commenters may consider whether the Board should adopt the approach SP–68 sets forth in lieu of the modifications contained in today's proposal.

**Initial Regulatory Flexibility Analysis**

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in SUPPLEMENTARY INFORMATION.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions without regard to size.

3. *Impact of the proposed rule on small entities.* The Board believes that the proposed revision of its classification of asset scheme will not have a disparate effect on small entities. Moreover, to the extent that small entities engage to a greater degree than larger insured institutions in one-to-four family, owner-occupied mortgage lending, the impact of the proposal would be minimized since such loans are not within the coverage of the proposal.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* In the above SUPPLEMENTARY INFORMATION the Board is soliciting comment on the rule as proposed.

**List of Subjects in 12 CFR Parts 561, 563 and 571**

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, and Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 561, 563, and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

**SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**

**PART 561—DEFINITIONS**

1. The authority citation for Part 561 continues to read as follows:

**Authority:** Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et. seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 561.15 by revising paragraph (a) to read as follows; by removing the period at the end of paragraph (d) and by inserting the following phrase to read as follows; and by removing paragraph (e) and by redesignating existing paragraphs (f) through (l) as new paragraphs (e) through (k) respectively:

**§ 561.15 Scheduled items.**

* * * * *

(a) Slow consumer credit and slow loans (other than loans specified in paragraph (b) of § 561.15).

* * * * *

(c) * * *, *Provided,* however, that this paragraph (c) includes only real estate owned that, at the time it served as collateral for a loan, was one-to-four-family, owner-occupied, residential real estate.

* * * * *

3. Amend § 561.16c by revising paragraphs (a), (c), and (d); and by adding a new paragraph (e) to read as follows:

**§ 561.16c Classification of certain assets.**

(a) *Scope.* The classification system described in this section applies to all assets or portions thereof held by an insured institution except for loans secured by "homes," as defined in § 541.14, that are owner-occupied, and "consumer credit," as defined in § 561.38 of this chapter.

* * * * *

(c) *Implementation of classification system.* (1) In connection with examinations of an insured institution, the examiner shall have authority to identify problem assets and, if appropriate, classify them.

(2) Each insured institution shall classify its own assets on a regular basis.

(3) In its quarterly reports to the Corporation, each insured institution shall include aggregate totals of assets that the institution has classified in each of the three asset classification categories.

(d) *Effect of classification.* (1) When, pursuant to § 561.16c, an insured institution has classified one or more assets, or portions thereof, Substandard or Doubtful, the insured institution shall establish prudent general allowances for loan losses. When, pursuant to § 561.16c, an examiner has classified one or more assets or portions thereof Substandard or Doubtful, and has determined that the existing valuation allowances are inadequate, the insured institution shall establish general allowances for loan losses in an appropriate amount as determined by the examiner.

(2) When, pursuant to § 561.16c, either an insured institution or an examiner has classified one or more assets or portions thereof Loss, the insured institution shall establish specific allowances for loan losses in the amount of 100 percent of the portion of the asset(s) classified Loss, or charge off such amount.

(e) *Delegations and interpretations.* (1) The Principal Supervisory Agent may approve, disapprove, or modify any classifications of assets made pursuant to § 561.16c and any amounts of general allowances for loan losses established by insured institutions or required by examiners pursuant to § 561.16c.

(2) When an appraisal is required or made in connection with any re-evaluation of assets, the Principal Supervisory Agent may approve or reject the appraisal and any valuation related to it.

(3) The Office of Regulatory Policy, Oversight and Supervision of the Federal Home Loan Bank System shall, from time to time, issue interpretations and other informational material regarding classification of assets. *See* § 571.1a of this subchapter containing the Corporation's statement of policy on the classification of assets.

(4) The Principal Supervisory Agent may delegate functions assigned under § 561.16c to a Supervisory Agent in the same Federal Home Loan Bank district.

## PART 563—OPERATIONS

4. The authority citation for Part 563 continues to read as follows:

**Authority:** Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

5. Amend § 563.13 by adding a new paragraph (a)(3) to read as follows:

**§ 563.13 Regulatory capital requirement.**

(a) *Scope.* * * *

(3) In addition to the minimum regulatory capital requirements imposed by this section, the Principal Supervisory Agent may require an insured institution to maintain additional capital, in an amount to be determined by the Principal Supervisory Agent, if the insured institution's asset portfolio contains assets classified pursuant to § 561.16c of this subchapter.

* * * * *

6. Amend § 563.17–2 by revising paragraph (b) to read as follows:

**§ 563.17–2 Re-evaluation of assets; adjustment of book value; adjustment charges.**

* * * * *

(b) *Re-evaluation of other assets.* In connection with each examination of an insured institution or service corporation, the Board's examiner shall make such re-evaluation of such institution's or service corporation's assets (exclusive of insured or guaranteed loans) as deemed advisable or necessary. Any such re-evaluation of real estate may be based on an appraisal as provided by § 563.17–1, and re-evaluation of parcels of real estate that are similar in all essential respects may be based on an appraisal of one or more of such parcels. When an appraisal is required, it shall conform with § 563.17–1a of the Board's regulations.

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## PART 571—STATEMENTS OF POLICY

7. The authority citation for Part 571 continues to read as follows:

**Authority:** Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

8. Amend § 571.1a by removing the last sentence of the text of the introductory paragraph; and by revising paragraph (d) to read as follows:

**§ 571.1a Classification of certain assets.**

* * * * *

(d) *Effect of classification.* (1) When, pursuant to § 561.16c of this subchapter, an insured institution has classified one or more assets, or portions thereof, Substandard or Doubtful, the insured institution shall establish prudent general allowances for loan losses. When, pursuant to § 561.16c of this subchapter, an examiner has classified one or more assets, or portions thereof, Substandard or Doubtful, and has determined that the existing valuation allowances are inadequate, the insured institution shall establish general allowances for loan losses in an appropriate amount as determined by the examiner.

(2) When, pursuant to § 561.16c of this subchapter, either an insured institution or an examiner has classified one or more assets, or portions thereof, Loss, the insured institution shall establish specific allowances for losses in the amount of 100 percent of the book value of the asset(s) classified Loss, or charge off such amount.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Acting Secretary.*

**Note.**—Attachments 1 through 3 will not appear in the Code of Federal Regulations.

### Attachment 1

The following is an example of the application of the proposed classification of assets regulation to the books and records of a $1,000,000 association as noted in I. The association reviews its loan portfolio and classifies its assets which results in the amounts listed in II. The increased capital requirement as noted in the table of $17,500 is determined through a review of asset quality by the PSA. The allowances established for substandard

and doubtful assets of $12,500 are included in determining regulatory capital and the total allowance established under GAAP of $22,500 is charged against earnings in the current period as reflected in the balance sheet shown in III through a reduction to the capital accounts.

*I. Institution before allowance for loan losses and classification of assets:*

| | |
|---|---|
| Loans | $900,000 |
| Other assets | 100,000 |
| Total | 1,000,000 |
| Deposits and liabilities | 950,000 |
| Capital | 50,000 |
| Total | 1,000,000 |

*II. Loans are classified and allowances established by institution and concurred in by FHLBank examination and supervision personnel in the following manner:*

| Classification | Loan(s) balance | Amount classified | Allowances established | Increased capital |
|---|---|---|---|---|
| Substandard | 100,000 | 50,000 | [1] 5,000 | 7,500 |
| Doubtful | 75,000 | 25,000 | [1] 7,500 | 10,000 |
| | | | 12,500 | 17,500 |
| Loss | 50,000 | 10,000 | [1 2] 10,000 | 0 |
| Total | | | 22,500 | 17,500 |

[1] Allowance for loan losses established in accordance with generally accepted accounting principles (GAAP), FASB Statement No. 5 *Accounting for Contingencies.** [2] 100 percent of amount classified Loss is required as a specific allowance for loan losses.

* Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies*, provides that an estimated loss should be accrued when it is probable that the asset has been impaired and if the amount of loss can be reasonably estimated.

*III. Institution after allowance for loan losses and classification of assets:*

| | |
|---|---|
| Loans | $900,000 |
| Allowance for loan losses: | |
| General | (12,500) |
| Specific | (10,000) |
| | (22,500) |
| Net Loans | 877,500 |
| Other Assets | 100,000 |
| | 977,500 |
| Deposits and liabilities | 950,000 |
| Capital | 27,500 |
| | 977,500 |
| Regulatory Capital: | |
| Capital | 27,500 |
| General reserves | 12,500 |
| | 40,000 |
| Regulatory capital requirement: | |
| 950,000×3% | 28,500 |
| Increase from classification | 17,500 |
| | 46,000 |
| Regulatory capital deficiency | (6,000) |

**Attachment 2.—Statement of Financial Accounting Standards No. 5, Accounting for Contingencies**


| Contents | Paragraph Nos. |
|---|---|
| Introduction | 1–7 |
| Standards of Financial Accounting and Reporting: | |
| Accrual of Loss Contingencies | 8 |
| Disclosure of Loss Contingencies | 9–13 |
| General or Unspecified Business Risks | 14 |
| Appropriation of Retained Earnings | 15 |
| Examples of Application of this Statement | 16 |
| Gain Contingencies | 17 |
| Other Disclosures | 18–19 |
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| Appendix A: Examples of Application of this Statement | 21–45 |
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**INTRODUCTION**

1. For the purpose of this Statement, a contingency is defined as an existing condition, situation, or set of circumstances involving uncertainty as to possible gain (hereinafter a "gain contingency") or loss [1] (hereinafter a "loss contingency") to an enterprise that will ultimately be resolved when one or more future events occur or fail to occur. Resolution of the uncertainty may confirm the acquisition of an asset or the reduction of a liability or the loss or impairment of an asset or the incurrence of a liability.

2. Not all uncertainties inherent in the accounting process give rise to contingencies as the term is used in this Statement. Estimates are required in financial statements for many on-going and recurring activities of an enterprise. The mere fact that an estimate is involved does not of itself constitute the type of uncertainty referred to in the definition in paragraph 1. For example, the fact that estimates are used to allocate the known cost of a depreciable asset over the period of use by an enterprise does not make depreciation a contingency; the eventual expiration of the utility of the asset is not uncertain. Thus, depreciation of assets is not a contingency as defined in paragraph 1, nor are such matters as recurring repairs, maintenance, and overhauls, which interrelate with depreciation. Also, amounts owed for services received, such as advertising and utilities, are not contingencies even though the accrued amounts may have been estimated; there is nothing uncertain about the fact those obligations have been incurred.

3. When a loss contingency exists, the likelihood that the future event or events will confirm the loss or impairment of an asset or the incurrence of a liability can range from probable to remote. This Statement uses the terms *probable, reasonably possible,* and *remote* to identify three areas within that range, as follows:

a. *Probable.* The future event or events are likely to occur.

b. *Reasonably possible.* The chance of the future event or events occurring is more than remote but less than likely.

c. *Remote.* The chance of the future event or events occurring is slight.

4. Examples of loss contingencies include:

a. Collectibility of receivables.

b. Obligations related to product warranties and product defects.

c. Risk of loss or damage of enterprise property by fire, explosion, or other hazards.

d. Threat of expropriation of assets.

e. Pending or threatened litigation.

f. Actual or possible claims and assessments.

g. Risk of loss from catastrophes assumed by property and casualty insurance companies including reinsurance companies.

h. Guarantees of indebtedness of others.

i. Obligations of commercial banks under "standby letters of credit." [2]

[1] The term *loss* used for convenience to include many charges against income that are commonly referred to as *expenses* and others that are commonly referred to as *losses.*

[2] As defined by the Federal Reserve Board, "standby letters of credit" include "every letter of credit (or similar arrangement however named or designated) which represents an obligation to the beneficiary on the part of the issuer (1) to repay

Continued

j. Agreements to repurchase receivables (or to repurchase the related property) that have been sold.

5. Some enterprises now accrue estimated losses from some types of contingencies by a charge to income prior to the occurrence of the event or events that are expected to resolve the uncertainties while, under similar circumstances, other enterprises account for those losses only when the confirming event or events have occurred.

6. This Statement establishes standards of financial accounting and reporting for loss contingencies (see paragraphs 8–16) and carries forward without reconsideration the conclusions of *Accounting Research Bulletin (ARB) No. 50*, "Contingencies," with respect to gain contingencies (see paragraph 17) and other disclosures (see paragraphs 18–19). The basis for the Board's conclusions, as well as alternatives considered and reasons for their rejection, are discussed in Appendix C. Examples of application of this Statement are presented in Appendix A, and background information is presented in Appendix B.

7. This Statement supersedes both *ARB No. 50* and Chapter 8, "Contingency Reserves," of *ARB No. 43*. The conditions for accrual of loss contingencies in paragraph 8 of this Statement do not amend any other present requirement in an Accounting Research Bulletin or Opinion of the Accounting Principles Board to accrue a particular type of loss or expense. Thus, for example, accounting for pension cost, deferred compensation contracts, and stock issued to employees are excluded from the scope of this Statement. Those matters are covered, respectively, in *APB Opinion No. 8*, "Accounting for the Cost of Pension Plans," *APB Opinion No. 12*, "Omnibus Opinion—1967," paragraphs 6–8, and *APB Opinion No. 25*, "Accounting for Stock Issued to Employees." Accounting for other employment-related costs, such as group insurance, vacation pay, workmen's compensation, and disability benefits, is also excluded from the scope of this Statement. Accounting practices for those types of costs and pension accounting practices tend to involve similar considerations.

## STANDARDS OF FINANCIAL ACCOUNTING AND REPORTING

### Accrual of Loss Contingencies

8. An estimated loss from a loss contingency (as defined in paragraph 1) shall be accrued by a charge of income [3] if *both* of the following conditions are met:

a. Information available prior to issuance of the financial statements indicates that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements.[4] It is implicit in this condition that it must be probable that one or more future events will occur confirming the fact of the loss.

b. The amount of loss can be reasonably estimated.

### Disclosure of Loss Contingencies

9. Disclosure of the nature of an accrual [5] made pursuant to the provisions of paragraph 8, and in some circumstances the amount accrued, may be necessary for the financial statements not to be misleading.

10. If no accrual is made for a loss contingency because one or both of the conditions in paragraph 8 are not met, or if an exposure to loss exists in excess of the amount accrued pursuant to the provisions of paragraph 8, disclosure of the contingency shall be made when there is at least a reasonable possibility that a loss or an additional loss may have been incurred.[6] The disclosure shall indicate the nature of the contingency and shall give an estimate of the possible loss or range of loss or state that such an estimate cannot be made. Disclosure is not required of a loss contingency involving an unasserted claim or assessment when there has been no manifestation by a potential claimant of an awareness of a possible claim or assessment unless it is considered probable that a claim will be asserted and there is a reasonable possibility that the outcome will be unfavorable.

11. After the date or an enterprise's financial statements but before those financial statements are issued, information may become available indicating that an asset was impaired or a liability was incurred after the date of the financial statements or that there is at least a reasonable possibility that an asset was impaired or a liability was incurred after that date. The information may relate to a loss contingency that existed at the date of the finanical statement, e.g., an asset that was not insured at the date of the financial statements. On the other hand, the information may relate to a loss contingency that did not exist at the date of the financial statement, e.g., threat of expropriation of assets after the date of the financial statements or the filing for bankruptcy by an enterprise whose debt was guaranteed after the date of the financial statements. In none of the cases cited in this paragraph was an asset impaired or a liability incurred at the date of the financial statements, and the condition for accrual in paragraph 8(a) is, therefore, not met. Disclosure of those kinds or losses or loss contingencies may be necessary , however, to keep the financial statements from being misleading. If disclosure is deemed necessary, the financial statements shall indicate the nature of the loss or loss contingency and give an estimate of the amount or range of loss or possible loss or state that such an estimate cannot be made. Occasionally, in the case of a loss arising after the date of the financial statements where the amount of asset impairment or liability incurrence can be reasonably estimated, disclosure may best be made by supplementing the historical financial statements with pro forma financial data giving effect to the loss as if it had occurred at the date of the financial statements. It may be desirable to present pro forma statements, usually a balance sheet only, in columnar form on the face of the historical financial statements.

12. Certain loss contingencies are presently being disclosed in financial statements even though the possibility of loss may be remote. The common characteristic of those contingencies is a guarantee, normally with a right to proceed against an outside party in the event that the guarantor is called upon to satisfy the guarantee. Examples include (a) guarantees of indebtedness of others, (b) obligations of commercial banks under "standby letters of credit," and (c) guarantees to repurchase receivables (or, in some cases, to repurchase the related property) that have been sold or otherwise assigned. The Board concludes that disclosure of those loss contingencies, and others that in substance have the same characteristic, shall be continued. The disclosure shall include the nature and amount of the guarantee. Consideration should be given to disclosing, if estimable, the value of any recovery that could be expected to result, such as from the guarantor's right to proceed against an outside party.

13. This Statement applies to regulated enterprises in accordance with provisions of the Addendum to *APB Opinion No. 2*, "Accounting for the 'Investment Credit.'" If, in conformity with the Addendum, a regulated enterprise accrues for financial accounting and reporting purposes an estimated loss without regard to the conditions in paragraph 8, the following information shall be disclosed in its financial statements:

a. The accounting policy including the nature of the accrual and the basis for estimation.

b. The amount of any related "liability" or "asset valuation" account included in each balance sheet presented.

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money borrowed by or advanced to or for the account of the account party or (2) to make payment on account of any evidence of indebtedness undertaken by the account party or (3) to make payment on account of any default by the account party in the performance of an obligation." A note to that definition states that "as defined, 'standby letter of credit' would not include (1) commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw upon the issuer and which do not 'guaranty' payment of a money obligation or (2) a guaranty or similar obligation issued by a foreign branch in accordance with and subject to the limitations of Regulation M (of the Federal Reserve)." Regulations of the Comptroller of the Currency and the Federal Deposit Insurance Corporation contain similar definitions.

[3] Paragraphs 23–24 of *APB Opinion No. 9*, "Reporting the Results of Operations," describe the "rare" circumstance in which a prior period adjustment is appropriate. Those pargraphs are not amended by this Statement.

[4] *Date of the financial statements* means the end of the most recent accounting period for which financial statements are being presented.

[5] Terminology used shall be descriptive of the nature of the accrual (see paragraphs 57–64 of *Accounting Terminology Bulletin No. 1*, "Review and Resume").

[6] For example, disclosure shall be made of any loss contingency that meets the condition in paragraph 8(a) but that is not accrued because the amount of loss cannot be reasonably estimated (paragraph 8(b)). Disclosure is also required of some loss contingencies that do not meet the condition in paragraph 8(a)—namely, those contingencies for which there is a *reasonable possibility* that a loss may have been incurred even though information may not indicate that it is *probable* that an asset had been impaired or a liability had been incurred at the date of the financial statements.

**General or Unspecified Business Risks**

14. Some enterprises have in the past accrued so-called "reserves for general contingencies." General or unspecified business risks do not meet the conditions for accrual in paragraph 8, and no accrual for loss shall be made. No disclosure about them is required by this Statement.

**Appropriation of Retained Earnings.**

15. Some enterprises have classified a portion of retained earnings as "appropriated" for loss contingencies. In some cases, the appropriation has been shown outside the stockholder' equity section of the balance sheet. Appropriation of retained earnings is not prohibited by this Statement provided that is shown within the stockholders' equity section of the balance sheet and is clearly identified as an appropriation of retained earnings. Costs or losses shall not be charged to an appropriation of retained earnings, and no part of the appropriation shall be transferred to income.

**Examples of Application of This Statement**

16. Examples of application of the conditions for accrual of loss contingencies in paragraph 8 and the disclosure requirements in paragraph 9–11 are presented in Appendix A.

**Gain Contingencies**

17. The Board has not reconsidered *ARB No., 50* with respect to gain contingencies. Accordingly, the following provisions of paragraphs 3 and 5 of that Bulletin shall continue in effect:

a. Contingencies that might result in gains usually are not reflected in the accounts since to do so might be to recognize revenue prior to its realization.

b. Adequate disclosure shall be made of contingencies that might result in gains, but care shall be exercised to avoid misleading implications as to the likelihood of realization.

**Other Disclosures**

18. Paragrpah 6 *ARB No. 50* required disclosure of a number of situations including "unused letters of credit, long-term leases, assets pledged as security for loans, pension plans the existence of cumulative preferred stock dividends in arrears, and commitments such as those for plant acquisition or an obligation to reduce debts, maintain working capital, or restrict dividends." Subsequent Opinions issued by the Accounting Principles Board established more explicit disclosure requirements for a number of those items, i.e., lease (see *APB Opinions No. 5* and *31*), pension plans (see *APB Opinion No. 8*), and preferred stock dividend arrearages (see *APB Opinion No. 10*, paragraph 11(b)).

19. Situations of the type described in the proceding paragraph shall continue to be disclosed in financial statements, and this Statement does not alter the present disclosure requirements with respect to those items.

**Effective Date and Transition**

20. This Statement shall be effective for fiscal years beginning on or after July 1, 1975, although earlier application is encouraged. A change in accounting principle resulting from compliance with paragraph 8 or 14 of this Statement shall be reported in accordance with *APB Opinion No. 20*, "Accounting Changes." Accordingly, except in the special circumstances referred to in paragraphs 29–30 of *APB Opinion No. 20*, the cumulative effect of the change on retained earnings at the beginning of the year in which the change is made shall be included in net income of the year of the change, and the disclosures specified in *APB Option No. 20* shall be made. Reclassification of an appropriation of retained earnings to comply with paragraph 15 of this Statement shall be made in any financial statements for periods before the effective date of this Statesment, or financial summaries or other data derived therefrom, that are presented after the effective date of this Statement.

The provisions of this Statement need not be applied to immaterial items.

*This Statement was adopted by the unanimous vote of the seven members of the Financial Accounting Standards Board:*

Marshall S. Armstrong, Chairman
Oscar S. Gellein
Donald J. Kirk
Arthur L. Litke
Robert E. Mays
Walter Schuetze
Robert T. Sprouse

**Appendix A.—Examples of Application of This Statement**

21. This Appendix contains examples of application of the conditions for accrual of loss contingencies in paragraph 8 and of the disclosure requirements in paragraphs 9–11. Some examples have been included in response to questions raised in letters of comment on the Exposure Draft. It should be recognized that no set of examples can encompass all possible contingencies or circumstances. Accordingly, accrual and disclosure of loss contingencies should be based on evaluation of the facts in each particular case.

**Collectibility of Receivables**

22. The assets of an enterprise may include receivables that arose from credit sales, loans, or other transactions. The conditions under which receivables exist usually involve some degree of uncertainty about their collectibility, in which case a contingency exists as defined in paragraph 1. Losses from uncollectible receivables shall be accrued when both conditions in paragraph 8 are met. Those conditions may be considered in relation to individual receivables or in relation to groups of similar types of receivables. If the conditions are met, accrual shall be made even though the particular receivables that are uncollectible may not be identifiable.

23. If, based on available information, it is probable that the enterprise will be unable to collect all amounts due and, therefore, that at the date of its financial statements the net realizable value of the receivables through collection in the ordinary course of business is less than the total amount receivable, the condition in paragraph 8(a) is met because it is probable that an asset has been impaired. Whether the amount of loss can be reasonably estimated (the condition in paragraph 8(b)) will normally depend on, among other things, the experience of the enterprise, information about the ability of individual debtors to pay, and appraisal of the receivables in light of the current economic environment. In the case of an enterprise that has no experience of its own, reference to the experience of other enterprises in the same business may be appropriate. Inability to make a reasonable estimate of the amount of loss from uncollectible receivables (i.e., failure to satisfy the condition in paragraph 8(b)) precludes accrual and may, if there is significant uncertainty as to collection, suggest that the installment method, the cost recovery method, or some other method of revenue recognition be used (see paragraph 12 of *APB Opinion No. 10*, "Omnibus Opinion—1966"); in addition, the disclosures called for by paragraph 10 of this Statement should be made.

**Obligations Related to Product Warranties and Product Defects**

24. A warranty is an obligation incurred in connection with the sale of goods or services that may require further performance by the seller after the sale has taken place. Because of the uncertainty surrounding claims that may be made under warranties, warranty obligations fall within the definition of a contingency in paragraph 1. Losses from warranty obligations shall be accrued when the conditions in paragraph 8 are met. Those conditions may be considered in relation to individual sales made with warranties or in relation to groups of similar types of sales made with warranties. If the conditions are met, accrual shall be made even though the particular parties that will make claims under warranties may not be identifiable.

25. If, based on available information, it is probable that customers will make claims under warranties relating to goods or services that have been sold, the condition in paragraph 8(a) is met at the date of an enterprise's financial statements because it is probable that a liability has been incurred. Satisfaction of the condition in paragraph 8(b) will normally depend on the experience of an enterprise or other information. In the case of an enterprise that has no experience of its own, reference to the experience of other enterprises in the same business may be appropriate. Inability to make a reasonable estimate of the amount of a warranty obligation at the time of sale because of significant uncertainty about possible claims (i.e., failure to satisfy the condition in paragraph 8(b)) precludes accrual and, if the range of possible loss is wide, may raise a question about whether a sale should be recorded prior to expiration of the warranty period or until sufficient experience has been gained to permit a reasonable estimate of the obligation; in addition, the disclosures called for by paragraph 10 of this Statement should be made.

26. Obligations other than warranties may arise with respect to products or services that have been sold, for example, claims resulting

from injury or damage caused by product defects. If it is probable that claims will arise with respect to products or services that have been sold, accrual for losses may be appropriate. The condition in paragraph 8(a) would be met, for instance, with respect to a drug product or toys that have been sold if a health or safety hazard related to those products is discovered and as a result it is considered probable that liabilities have been incurred. The condition in paragraph 8(b) would be met if experience or other information enables the enterprise to make a reasonable estimate of the loss with respect to the drug product or the toys.

**Risk of Loss or Damage of Enterprise Property**

27. At the date of an enterprise's financial statements, it may not be insured against risk of future loss or damage to its property by fire, explosion, or other hazards. The absence of insurance against losses from risks of those types constitutes an existing condition involving uncertainty about the amount and timing of any losses that may occur, in which case a contingency exists as defined in paragraph 1. Uninsured risks may arise in a number of ways, including (a) noninsurance of certain risks or co-insurance or deductible clauses in an insurance contract or (b) insurance through a subsidiary or investee[7] to the extent not reinsured with an inde risks, for all practical purposes, may be noninsurable, and the self-assumption of those risks is mandatory.

28. The absence of insurance does not mean that an asset has been impaired or a liability has been incurred at the date of an enterprise's financial statements. Fires, explosions, and other similar events that may cause loss or damage of an enterprise's property are random in their occurrence.[8] With respect to events of that type, the condition for accrual in paragraph 8(a) is not satisfied prior to the occurrence of the event because until that time there is no diminution in the value of the property. There is no relationship of those events to the activities of the enterprise prior to their occurrence, and no asset is impaired prior to their occurrence. Further, unlike an insurance company, which has a contractual obligation under policies in force to reimburse insureds for losses, an enterprise can have no such obligation to itself and, hence, no liability.

[7] The effects of transactions between a parent or other investor and a subsidiary or investee insurance company shall be eliminated from an enterprise's financial statements (see paragraph 6 of *ARB NO. 51*, "Consolidated Financial Statements," and paragraph 19(a) of *APB Opinion No. 18*, "The Equity Method of Accounting for Investments in Common Stock"). pendent insurer. Some

[8] The Board recognizes that, in practice, experience regarding loss or damage to depreciable assets is in some cases one of the factors considered in estimating the depreciable lives of a group of depreciable assets, along with such other factors as wear and tear, obsolescence, and maintenance and replacement policies. This Statement is not intended to alter present depreciation practices (see paragraph 2).

**Risk of Loss from Future Injury to Others, Damage to the Property of Others, and Business Interruption**

29. An enterprise may choose not to purchase insurance against risk of loss that may result from injury to others, damage to the property of others, or interruption of its business operations.[9] Exposure to risks of those types constitutes an existing condition involving uncertainty about the amount and timing of any losses that may occur, in which case a contingency exists as defined in paragraph 1.

30. Mere exposure to risks of those types, however, does not mean that an asset has been impaired or a liability has been incurred. The condition for accrual in paragraph 8(a) is not met with respect to loss that may result from injury to others, damage to the property of others, or business interruption that may occur after the date of an enterprise's financial statements. Losses of those types do not relate to the current or a prior period but rather to the *future* period in which they occur. Thus, for example, an enterprise with a fleet of vehicles should not accrue for injury to others or damage to the property of others that may be caused by those vehicles in the future even if the amount of those losses may be reasonably estimable. On the other hand, the conditions in paragraph 8 would be met with respect to uninsured losses resulting from injury to others or damage to the property of others that took place prior to the date of the financial statements, even though the enterprise may not become aware of those matters until after that date, if the experience of the enterprise or other information enables it to make a reasonable estimate of the loss that was incurred prior to the date of its financial statements.

**Write-Down of Operating Assets**

31. In some cases, the carrying amount of an operating asset not intended for disposal may exceed the amount expected to be recoverable through future use of that asset even though there has been no physical loss or damage of the asset or threat of such loss or damage. For example, changed economic conditions may have made recovery of the carrying amount of a productive facility doubtful. The question of whether, in those cases, it is appropriate to write down the carrying amount of the asset to an amount expected to be recoverable through future operations in not covered by this Statement.

**Threat of Expropriation**

32. The threat of expropriation of assets is a contingency within the definition of paragraph 1 because of the uncertaintly about its outcome and effect. If information indicates that expropriation is imminent and compensation will be less than the carrying amount of the assets, the condition for accrual in paragraph 8(a) is met. Imminence may be indicated, for example, by public or private declarations of intent by a government to expropriate assets of the enterprise or actual expropriation of assets of other enterprises. Paragraph 8(b) requires that accrual be made only if the amount of loss can be reasonably estimated. If the conditions for accrual are not met, the disclosures specified in paragraph 10 would be made when there is at least a reasonable possibility that an asset has been impaired.

[9] As to injury or damage resulting from products that have been sold, see paragraph 26.

**Litigation, Claims, and Assessments**

33. The following factors, among others, must be considered in determining whether accrual and/or disclosure is required with respect to pending or threatened litigation and actual or possible claims and assessments:

a. The period in which the underlying cause (i.e., the cause for action) of the pending or threatened litigation or of the actual or possible claim or assessment occurred.

b. The degree of probability of an unfavorable outcome.

c. The ability to make a reasonable estimate of the amount of loss.

34. As a condition for accrual of a loss contingency, paragraph 8(a) requires that information available prior to the issuance of financial statements indicate that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements. Accordingly, accrual would clearly be inappropriate for litigation, claims, or assessments whose underlying cause is an event or condition occurring after the date of financial statements but before those financial statements are issued, for example, a suit for damages alleged to have been suffered as a result of an accident that occurred after the date of the financial statements. Disclosure may be required, however, by paragraph 11.

35. On the other hand, accrual may be appropriate for litigation, claims, or assessments whose underlying cause is an event occurring on or before the date of an enterprise's financial statements even if the enterprise does not become aware of the existence or possibility of the law suit, claim, or assessment until after the date of the financial statements. If those financial statements have not been issued, accrual of a loss related to the litigation, claim, or assessment would be required if the probability of loss is such that the condition in paragraph 8(a) is met and the amount of loss can be reasonably estimated.

36. If the underlying cause of the litigation, claim, or assessment is an event occurring before the date of an enterprise's financial statements, the probability of an outcome unfavorable to the enterprise must be assessed to determine whether the condition in paragraph 8(a) is met. Among the factors that should be considered are the nature of the litigation, claim, or assessment, the progress of the case (including progress after the date of the financial statements but before those statements are issued), the opinions or views of legal counsel and other advisers, the experience of the enterprise in similar cases, the experience of other enterprises, and any decision of the enterprise's management as to how the enterprise intends to respond to the lawsuit, claim, or assessment (for example, a decision to contest the case vigorously or a decision to seek an out-of-court settlement). The fact that

legal counsel is unable to express an opinion that the outcome will be favorable to the enterprise should not necessarily be interpreted to mean that the condition for accrual of a loss in paragraph 8(a) is met.

37. The filing of a suit or formal assertion of a claim or assessment does not automatically indicate that accrual of a loss may be appropriate. The degree of probability of an unfavorable outcome must be assessed. The condition for accrual in paragraph 8(a) would be met if an unfavorable outcome is determined to be probable. If an unfavorable outcome is determined to be reasonably possible but not probable, or if the amount of loss cannot be reasonably estimated, accrual would be inappropriate, but disclosure would be required by paragraph 10 of this Statement.

38. With respect to unasserted claims and assessments, an enterprise must determine the degree of probability that a suit may be filed or a claim or assessment may be asserted and the possibility of an unfavorable outcome. For example, a catastrophe, accident, or other similar physical occurrence predictably engenders claims for redress, and in such circumstances their assertion may be probable; similiarly, an investigation of an enterprise by a governmental agency, if enforcement proceedings have been or are likely to be instituted, is often followed by private claims for redress, and the probability of their assertion and the possibility of loss should be considered in each case. By way of further example, an enterprise may believe there is a possibility that it has infringed on another enterprise's patent rights, but the enterprise owning the patent rights has not indicated an intention to take any action and has not even indicated an awareness of the possible infringement. In that case, a judgment must first be made as to whether the assertion of a claim is probable. If the judgment is that assertion is not probable, no accrual or disclosure would be required. On the other hand, if the judgment is that assertion is probable, then a second judgment must be made as to the degree of probability of an unfavorable outcome. If an unfavorable outcome in probable and the amount of loss can be reasonably estimated, accrual of a loss is required by paragraph 8. If an unfavorable outcome is probable but the amount of loss cannot be reasonably estimated, accrual would not be appropriate, but disclosure would be required by paragraph 10. If an unfavorable outcome is reasonably possible but not probable, disclosure would be required by paragraph 10.

39. As a condition for accrual of a loss contingency, paragraph 8(b) requires that the amount of loss can be reasonably estimated. In some cases, it may be determined that a loss was incurred because an unfavorable outcome of the litigation, claim, or assessment is probable (thus satisfying the condition in paragraph 8(a)), but the range of possible loss is wide. For example, an enterprise may be litigating an income tax matter. In preparation for the trial, it may determine that, based on recent decisions involving one aspect of the litigation, it is probable that it will have to pay additional taxes of $2 million. Another aspect of the litigation may, however, be open to considerable interpretation, and depending on the interpretation by the court the enterprise may have to pay taxes of $8 million over and above the $2 million. In that case, paragraph 8 requires accrual of the $2 million if that is considered a reasonable estimate of the loss. Paragrah 10 requires disclosure of the additional exposure to loss if there is a reasonable possibility that additional taxes will be paid. Depending on the circumstances, paragraph 9 may require disclosure of the $2 million that was accrued.

**Catastrophe Losses of Property and Casualty Insurance Companies**

40. At the time that a property and casualty insurance company or reinsurance company issues an insurance policy covering risk of loss from catastrophes, a contingency arises. The contingency is the risk of loss *assumed* by the insurance company, that is, the risk of loss from catastrophes that may occur *during the term of the policy*. The insurance company has not assumed risk of loss for catastrophes that may occur *beyond* the term of the policy. Clearly, therefore, no asset has been impaired or liability incurred with respect to catastrophes that may occur beyond the terms of policies in force.

41. The conditions in paragraph 8 should be considered with respect to the risk of loss assumed by an insurance company for catastrophes that may occur during the terms of policies in force to determine whether accrual of a loss is appropriate. To satisfy the condition in paragraph 8(a) that it be probable that a liability has been incurred to existing policyholders, the occurrence of catastrophes (i.e., the confirming future events) would have to be reasonably predictable within the terms of policies in force. Further, to satisfy the condition in paragraph 8(b), the amounts of losses there from would have to be reasonably estimable. Actuarial techniques are employed by insurance companies to predict the rate of occurrence of and amounts of losses from catastrophes over long periods of time for insurance rate-setting purposes. Predictions over relatively short periods of time, such as an individual accounting period or the terms of a large number of existing insurance policies in force, are subject to substantial deviations. Consequently, assumption of risk of loss from catastrophes by property and casualty insurance companies and reinsurance companies fails to satisfy the conditions for accrual in paragraphs 8(a) and 8(b). Moreover, deferral of unearned premiums *within* the terms of policies in force represents the "unknown liabililty" for loss (including catastrophe losses) on unexpired policies, making an accrual inappropriate—see paragraphs 94–96 in Appendix C. Recognition of premium income as earned revenue within the terms of policies in force is discussed in the AICPA Industry Audit Guide, " Audits of Fire and Casualty Insurance Companies."

42. Although some property and causalty insurance companies have accrued an estimated amount for catastrophe losses, other insurance companies have accomplished the same objective by deferring a portion of the premium income. Deferral of any portion of premium income *beyond the terms of policies in force* is, in substance, similar to premature accrual of catastrophe losses and, therefore, also does not meet the conditions of paragraph 8.

43. The conditions for accrual in paragraph 8 do not prohibit a property and casualty insurance company from accruing probable catastrophe losses that have been incurred on or before the date of its financial statements but that have not been reported by its policyholders as of that date. If the amount of loss can be reasonably estimated, paragraph 8 requires accrual of those incurred-but-not-reported losses.

**Payments to Insurance Companies That May Not Involve Transfer of Risk**

44. To the extent that an insurance contract or reinsurance contract does not, despite its form, provide for indemnification of the insured or the ceding company by the insured or reinsurer against loss or liability, the premium paid less the amount of the premium to be retained by the insurer or reinsurer shall be accounted for as a deposit by the insured or the ceding company. Those contracts may be structured in various ways, but if, regardless of form, their substance is that all of part of the premium paid by the insured or the ceding company is a deposit, it shall be accounted for as such.

45. Operations in certain industries may be subject to such high risks that insurance is unavailable or is available only at what is considered to be prohibitively high cost. Some enterprises in those industries have "pooled" their risks by forming a mutual insurance company in which they retain an equity interest and to which they pay insurance premiums. For example, some electric utility companies have formed such a mutual insurance company to insure risks related to nuclear power plants, and some oil companies have formed a company to insure against risks associated with petroleum exploration and production. Whether the premium paid represents a payent for the transfer of risk or whether it represents merely a deposit will depend on the circumstances surrounding each enterprise's interest in and insurance arrangement with the mutual insurance company. An analysis of the contract is required to determine whether risk has been transferred and to what extent.

## Appendix B

## BACKGROUND INFORMATION

46. In April 1973, the FASB placed on its technical agenda a project then entitled "Accounting for Future Losses." The project addressed accrual and disclosure of loss contingencies. The Board believes that "Accounting for Contingencies" is a more descriptive title for this Statement than "Accounting for Future Losses."

47. A task force of 16 persons from industry, public accounting, the financial community, and academe was appointed in the summer of 1973 to provide counsel to the Board in preparing a Discussion Memorandum analyzing issues related to the project.

48. The Discussion Memorandum gave examples of various types of contingencies and considered several of those at length to assist in the development of standards of financial accounting and reporting. These included (a) uninsured risks ("self-insurance"), (b) risk of losses from catastrophes assumed by property and casualty insurance companies, and (c) risk of losses from expropriations by foreign governments.

49. Research undertaken in connection with this project included (a) a search of relevant literature, (b) an examination of published financial statements in annual reports to shareholders and in filings with the SEC on Form 10-K, (c) a questionnaire survey conducted by the Financial Executives Institute to which 64 companies responded, and (d) a study of catastrophe reserve accounting methods employed by property and casualty insurance companies. Summaries of research findings are included in appendices to the Discussion Memorandum.

50. On January 3, 1973 (prior to the date the Board placed this subject on its agenda), the Securities and Exchange Commission issued its *Accounting Series Release No. 134*, which pointed out that a number of property and casualty insurance companies had adopted the accounting policy of making a provision from each period's income to cover a portion of major losses expected to occur in future periods. The SEC Release indicated that the Committee on Insurance Accounting and Auditing of the AICPA was working actively on the subject in cooperation with industry groups. The Release set forth certain disclosure requirements pending resolution of the question of accrual.

51. The AICPA committee's report (dated July 17, 1973) was in the form of a memorandum setting forth the views of those committee members favoring and those opposing accrual of losses from future catastrophes. In the course of its study, the AICPA committee had gathered considerable data on the subject, in part from a survey of member companies of the American Insurance Association, and this information was made available to the Board.

52. On August 2, 1973, the SEC announced in *Accounting Series Release No. 145* that property and casualty insurance companies should not change their method of accounting for catastrophe losses "until a single method has been adopted by the Financial Accounting Standard Board."

53. The Board issued the Discussion Memorandum on March 13, 1974, and held a public hearing on the subject on May 13, 1974. The Board received 87 position papers, letters of comment, and outlines of oral presentations in response to the Discussion Memorandum. Eighteen presentations were made at the public hearing.

54. An Exposure Draft of a proposed Statement on "Accounting for Contingencies" was issued on October 21, 1974. The Board received 212 letters of comment on the Exposure Draft.

## Appendix C

## BASIS FOR CONCLUSIONS

55. This Appendix discusses factors deemed significant by members of the Board in reaching the conclusions in this Statement, including various alternatives considered and reasons for accepting some and rejecting others.

### SCOPE OF THIS STATEMENT

56. Some respondents to the Exposure Draft proposed that the Statement not deal with accrual and disclosure of loss contingencies in general but, rather, only with the following three specific matters: "self-insurance," risks of losses from catastrophes assumed by property and casualty insurance companies including reinsurance companies, and threat of expropriation. As the basis for that position, they noted that the Discussion Memorandum considered those three matters at length. Other respondents suggested that catastrophe losses be dealt with in a separate Statement.

57. The Board has concluded, however, that the broad issue of accrual and disclosure of loss contingencies should be dealt with in a single Statement, just as the Discussion Memorandum encompassed "the broad issue of accounting for future losses."[10] As the Discussion Memorandum stated, "future losses of all types presently known to affect enterprises and new types of future losses that may arise are conceptually included in the scope of this project." The three matters dealt with at length in the Discussion Memorandum were used "as examples to assist in the evaluation and development of criteria for accounting for future losses," and other examples were discussed. The Board has concluded that loss contingencies such as those given as examples in paragraph 4 of this Statement have common characteristics and that questions about accounting for and reporting of those contingencies should be resolved comprehensively. It is for that reason, also, that the Board believes it inappropriate to deal with catastrophe losses in a separate Statement.

58. A question has been raised whether uncollectibility of receivables and product warranties constitute contingencies within the scope of this Statement. The Board recognizes that uncertainties associated with uncollectibility of some receivables and some product warranties are likely to be, in part, inherent in making accounting estimates (described in paragraph 2) as well as, in part, the type of uncertainties that give rise to a contingency (described in paragraph 1). The Board believes that no useful purpose would be served by attempting to distinguish between those who types of uncertainties for purposes of establishing conditions for accrual of uncollectible receivables and product warranties. Consequently, those matters are deemed to be contingencies within the definition of paragraph 1 and should be accounted for pursuant to the provisons of this Statement.

### ACCRUAL OF LOSS CONTINGENCIES

59. Paragraph 8 requires that a loss contingency be accrued if the two specified conditions are met. The purpose of those conditions is to require accrual of losses when they are reasonably estimable and relate to the current or a prior period. The requirement that the loss be reasonably estimable is intended to prevent accrual in the financial statements of amounts so uncertain as to impair the integrity of those statements. The Board has concluded that disclosure is preferable to accrual when a reasonable estimate of loss cannot be made. Further, even losses that are reasonably estimable should not be accrued if it is not probable that an asset has been impaired or a liability has been incurred at the date of an enterprise's financial statements because those losess relate to a future period rather than the current or a prior period. Attribution of loss to events or activities of the current or prior periods is an element of asset impairment or liability incurrence.

60. In establishing the conditions in paragraph 8, Board members considered the factors discussed in paragraphs 61–101. Individual Board members gave greater weight to some factors than to others.

#### Accounting Accruals Do Not Provide Protection against Losses

61. Accrual of a loss related to a contingency does not create or set aside funds to lessen the possible financial impact of a loss, although some respondents to the Discussion Memorandum and the Exposure Draft argued to the contrary. The Board believes that confusion exists between accounting accruals (sometimes referred to as "accounting reserves") and the reserving or setting aside of specific assets to be used for a particular purpose or contingency. Accounting accruals are simply a method of allocating costs among accounting periods and have no effect on an enterprise's cash flow. An enterprise may choose to maintain or have access to sufficient liquid assets to replace or repair lost or damaged property or to pay claims in case a loss occurs. Alternatively, it may transfer the risk to others by purchasing insurance. Those are financial decisions, and if enterprise management decides to do neither, the presence or absence of an accrued credit balance on the balance sheet will have no effect on the consequences of that decision. The accounting standards set forth in this Statement do not affect the fundamental business economics of that decision.

62. In that regard, some respondents to the Discussion Memorandum and the Exposure Draft contended that an accounting standard that does not permit periodic accrual of so-called "self-insurance reserves" and, in the case of insurance compaines, so-called "catastrophe reserves" will force enterprises to purchase insurance or reinsurance because the "protection" afforded by the accrual would no longer exist. Those accruals, however, in no way protect the assets available to replace or repair uninsured property that may be lost or damaged, or to satisfy claims that are not covered by insurance, or, in the case of insurance companies, to satisfy the claims of insured parties. Accrual, in and of itself, provides no

[10] The Board believes that *contingencies* is a more descriptive term than *future losses*, and the Discussion Memorandum indicated that the project would necessarily involve reconsideration of both *ARB No. 50* and Chapter 6 of *ARB No. 43*.

financial protection that is not available in the absence of accrual.

63. The sole result of accrual, for financial accounting and reporting purposes, is allocation of costs among accounting periods. Some respondents to the Discussion Memorandum and the Exposure Draft took the position that estimated losses from loss contingencies should be accrued even before available information indicates that it is probable that an asset has been impaired or a liability has been incurred to avoid reporting net income that fluctuates widely from period to period. In their view, financial statement users may be misled by those fluctuations. They believe that estimated losses should be accrued without regard to whether the loss relates to the current period if, based on experience, it is reasonable to expect losses sometime in the future.

64. Financial statement users have indicated, however, that information about earnings variability is important to them. Two elements often cited as basic to the decision models of many financial statement users are (a) expected return—the predicted amount and timing of the return on an investment—and (d) risk—the variability of that expected return. If the nature of an enterprise's operations is such that irregularities in the incurrence of losses cause variations in periodic net income, that fact should not be obscured by accruing for anticipated losses that do not relate to the current period.

65. The Board recognizes that some investors may have a preference for investments in enterprises having a stable pattern of earnings, because that indicates lesser uncertainty or risk than fluctuating earnings. That preference, in turn, is perceived by many as having a favorable effect on the market prices of those enterprises' securities. If accruals for such matters as future uninsured losses and catastrophes were prohibited, some respondents contended, enterprises would be forced to purchase insurance or reinsurance to achieve the more stable pattern of reported earnings that tends to accompany the use of an "accounting reserve." Insurance or reinsurance reduces or eliminates risks and the inherent earnings fluctuations that accompany risks. Unlike insurance and reinsurance, however, the use of "accounting reserves" does not reduce or eliminate risk. The Board rejects the contention, therefore, that the use of "accounting reserves" is an alternative to insurance and reinsurance in protecting against risk. Earnings fluctuations are inherent in risk retention, and they should be reported as they occur. The Board cannot sanction the use of an accounting procedure to create the illusion of protection from risk when, in fact, protection does not exist.

66. The Board has also considered the argument that periodic accrual of losses without regard to whether an asset has been impaired or liability incurred is justified on grounds of comparability of financial statements among enterprises. Some respondents contended, for example, that accrual is necessary to make the financial statements of enterprises that do not purchase insurance comparable to those of enterprises that do purchase insurance (and report the premiums as expenses) and to make the financial statements of property and casualty insurance companies comparable regardless of the extent to which reinsurance has been purchased. In the Board's view, however, to report activity when there has been none would obscure a fundamental difference in circumstance between enterprises that transfer risks to others and those that do not.

**Financial Accounting and Reporting Reflects Primarily the Effects of Past Transactions and Existing Conditions**

67. Financial accounting and reporting reflects primarily the effects of past transactions and existing conditions, not future transactions or conditions. For example, paragraph 35 of *APB Statement No. 4*, "Basic Concepts and Accounting Principles Underlying Financial Statements of Business Enterprises," states:

> Financial accounting and financial statements are primarily historical in that information about events that have taken place provides the basic data of financial accounting and financial statements.

68. The first condition in paragraph 8—that a loss contingency not be accrued until it is probable that an asset has been impaired or a liability has been incurred—is consistent with this concept of financial accounting and financial statements. That condition is not so past-oriented that accrual of a loss must await the occurrence of the confirming future event, for example, final adjudication or settlement of a lawsuit. The condition requires only that it be probable that the confirming future event will occur. The condition is intended to prohibit the recognition of a liability when it is not probable that one has been incurred and to prohibit the accrual of an asset impairment when it is not probable that an asset of an enterprise has been impaired.

**The Concept of a Liability**

69. In many cases, the accrual of a loss contingency results in the recording of a liability, for example, accruals for a probable tax assessment, a warranty obligation, or a probable loss resulting from the guarantee of indebtedness of others. In the course of its deliberations, therefore, the Board found it relevant to consider the concept of a liability as expressed in accounting literature.

70. The economic obligations of an enterprise are defined in paragraph 58 of *APB Statement No. 4* as "its present responsibilities to transfer economic resources or provide services to other entities in the future." Two aspects of that definition are especially relevant to accounting for contingencies: first, that liabilities are *present* responsibilities and, second, that they are obligations to *other entities*. Those notions are supported by other definitions of liabilities in published accounting literature, for example:

> Liabilities are claims of creditors against the enterprise, arising out of past activities, that are to be satisfied by the disbursement or utilization of corporate resources.[11]

A liability is the result of a transaction of the past, not of the future.[12]

71. The condition in paragraph 8(a)—that a loss contingency shall be accrued if it is probable that a liability has been incurred—is intended to proscribe recognition of losses that relate to future periods but to require accrual of losses that relate to the current or a prior period (assuming the amount of loss can be reasonably estimated—see paragraph 8(b)).

72. Liability definitions also generally require that the amount of an economic obligation be known or susceptible of reasonable estimation before it is recorded as a liability. For example:

> [Liabilities] are measured by cash received, by the established price of noncash assets or services received, or by estimates of a definitive character when the amount owing cannot be measured more precisely.[13]
>
> The amount of the liability must be the subject of calculation or of close estimation.[14]

73. The condition in paragraph 8(b)—that an estimated loss from loss contingency not be accrued until the amount of loss can be reasonably estimated—is consistent with this feature of the liability concept.

**Accounting for Impairment of Value of Assets**

74. The accrual of some loss contingencies may result in recording the impairment of the value of an asset rather than in recording a liability, for example, accruals for expropriation of assets or uncollectible receivables. Accounting presently recognizes impairments of the value of assets such as the following:

a. Paragraph 9 of Chapter 3A, "Current Assets and Current Liabilities," of *ARB No. 43* provides that "in the case of marketable securities where market value is less than cost by a substantial amount and it is evident that the decline in market value is not due to a mere temporary condition, the amount to be included as a current asset should not exceed the market value."

b. Statement 5 of Chapter 4, "Inventory Pricing," of *ARB No. 43* states that "a departure from the cost basis of pricing the inventory is required when the utility of the goods is no longer as great as its cost . . . . A loss of utility is to be reflected as a charge against the revenues of the period in which it occurs."

c. Paragraph 19(h) of *APB Opinion No. 18*, "The Equity Method of Accounting for Investments in Common Stock," states that "a loss in value of an investment which is other than a temporary decline should be recognized the same as a loss in value of other long-term assets."

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[11] American Accounting Association, *Accounting and Reporting Standards for Corporate Financial Statements and Preceding Statements and Supplements* (Sarasota, Fla.: AAA, 1957), p. 16.

[12] Maurice Moonitz, "The Changing Concept of Liabilities," *The Journal of Accountancy*, May 1960, p. 44.

[13] American Accounting Association, *Accounting and Reporting Standards for Corporate Financial Statements*, p. 16.

[14] Maurice Moonitz, "The Changing Concept of Liabilities," p. 44.

d. Paragraph 15 of *APB Opinion No. 30*, "Reporting the Results of Operations," states that "If a loss is expected from the proposed sale or abandonment of a segment, the estimated loss should be provided for at the measurement date . . . ." Paragraph 14 states that the measurement date is the date on which management "commits itself to a formal plan to dispose of a segment of the business, whether by sale or abandonment."

e. Paragraph 183 of *APB Statement No. 4* states that "when enterprise assets are damaged by others, asset amounts are writteh down to recoverable costs and a loss is recorded."

75. A recurring principle underlying all of these references to asset impairments in the accounting literature is that a loss should not be accrued until it is probable that an asset *has been* impaired and the amount of the loss can be reasonably estimated. As indicated by those references, impairment is recognized, for instance, when a non-temporary decline in the market price of marketable securities below cost *has taken place*, when the utility of inventory *is no longer* as great as its cost, when a commitment, in terms of a formal plan, *has been made* to abandon a segment of a business or to sell a segment at less than its carrying amount, when enterprise assets *are damaged*, and so forth. The condition in paragraph 8(a) is intended to proscribe accrual of losses that relate to future periods, and the condition in paragrapn 8(b) further requires that the amount of loss be reasonably estimable before it is accrued.

**The Matching Concept**

76. A number of respondents to the Discussion Memorandum and the Exposure Draft noted that losses from certain types of contingencies are likely to occur irregularly over an extended period of time encompassing a number of accounting periods. In their view, the matching process in accounting requires that estimated losses from those types of contingencies be accrued in each accounting period even if not directly related to events or activities of the period.

77. *APB Statement No. 4* explicitly avoids using the term "matching" because it has a variety of meanings in the accounting literature. In its broadest sense, matching refers to the entire process of income determination—described in paragraph 147 of *APB Statement No. 4* as "identifying, measuring, and relating revenue and expenses of an enterprise for an accounting period." Matching may also be used in a more limited sense to refer only to the process of expense recognition or in an even more limited sense to refer to the recognition of expenses by associating costs with revenue on a cause and effect basis.

78. Three pervasive principles for recognizing costs as expenses are set forth in paragraphs 156–160 of *APB Statement No. 4* as follows:

*Associating Cause and Effect* . . . . Some costs are recognized as expenses on the basis of a presumed direct association with specific revenue . . . recognizing them as expenses accompanies recognition of the revenue.

*Systematic and Rational Allocation* . . . . If an asset provides benefits for several periods its cost is allocated to the periods in a systematic and rational manner in the absence of a more direct basis for associating cause and effect.

*Immediate Recognition.* Some costs are associated with the current accounting period as expenses because (1) costs incurred during the period provide no discernible future benefits, (2) costs recorded as assets in prior periods no longer provide discernible benefits or (3) allocating costs either on the basis of association with revenue or among several accounting periods is considered to serve no useful purpose.

79. Some who believe that matching requires accrual of losses that are likely to occur irregularly over an extended period of time encompassing a number of accounting periods cite the systematic and rational allocation principle of expense recognition as justification for their position. That principle, however, involves the systematic and rational allocation of the cost of an asset (an asset that *has been* acquired) throughout the estimated periods that the asset provides benefits or the systematic and rational accrual of the amount of some obligations (obligations that *have been* incurred) throughout the estimated periods that the obligations are incurred. The customary depreciation of plant and equipment is an example of the former; when reasonably estimable, the accrual of vacation pay is an example of the latter. The systematic and rational allocation principle has no application to assets that are expected to be acquired in the future or to obligations that are expected to be incurred in the future.

80. Matching, in the sense of recognizing expenses by associating costs with specific revenue on a cause and effect basis, is a consideration in relation to accrual for such matters as uncollectible receivables and warranty obligations. For example, most enterprises that make credit sales or warrant their products or services regularly incur losses from uncollectible receivables and warranty obligations. Frequently, those losses can be associated with revenue on a cause and effect basis. If the amount of those losses can be reasonably estimated, paragraph 8 of this Statement requires accrual if it is probable that an asset has been impaired (estimated uncollectible receivables) or that a liability has been incurred (estimated warranty claims).

**Spreading the Burden of Irregularly Occurring Costs to Successive Generations of Customers and Shareholders**

81. Some respondents to the Discussion Memorandum and the Exposure Draft contended that all costs of doing business should be accrued in each accounting period so that successive generations of customers and shareholders would bear their share of all costs including those that occur irregularly. It would seem, however, that those irregularly occurring costs are usually borne by customers through pricing policy and that pricing is not necessarily dependent upon financial accounting and reporting practices. With regard to accrual on grounds that it enables successive generations of shareholders to bear their share of irregularly occurring costs, see paragraph 63–65.

**Conservatism**

82. On the grounds of conservatism, some respondents supported accrual of estimated losses from loss contingencies before available information indicates that it is probable that an asset has been impaired or a liability has been incurred. Conservatism is indicated as one of the "characteristics and limitations" of financial accounting in paragraph 35 of *APB Statement No. 4* as follows:

*Conservatism.* The uncertainties that surround the preparation of financial statements are reflected in a general tendency toward early recognition of unfavorable events and minimization of the amount of net assets and net income.

83. Conservatism is further discussed in paragraph 171 of *APB Statement No. 4:*

*Conservatism.* Frequently, assets and liabilities are measured in a context of significant uncertainties. Historically, managers, investors, and accountants have generally preferred that possible errors in measurement be in the direction of understatement rather than overstatement of net income and net assets. This has led to the convention of conservatism. . . .

84. The conditions for accrual in paragraph 8 are not inconsistent with the accounting concept of conservatism. Those conditions are not intended to be so rigid that they require virtual certainty before a loss is accrued. They require only that it be *probable* that an asset has been impaired or a liability has been incurred and that the amount of loss be *reasonably* estimable. In the absence of that probability or estimability, however, the Board has concluded that disclosure is preferable to accruing in the financial statements amounts so uncertain as to impair the integrity of the financial statements.

**Risk of Future Loss or Damage to Enterprise Property, Injury to Others, Damage to the Property of Others, and Business Interruption**

85. Some persons contend that the decision not to purchase insurance against losses that can be reasonably expected some time in the future (such as risk of loss or damage of enterprise property, injury to others, damage to the property of others, and business interruption) justifies periodic accrual for those losses without regard to whether it is probable that an asset has been impaired or a liability incurred at the date of the financial statements. As a basis for their position, they frequently cite the following factors: matching of revenue and expense, spreading the burden of irregularly occurring costs to successive generations of customers, and conservatism. They also believe that accrual of estimated losses from those types of risks improves the comparability of the financial statements of enterprises that do not insure with those of enterprises that purchase insurance. Some contend that a prohibition against periodic accrual for uninsured losses will force enterprises to purchase insurance coverage that would not otherwise be purchased.

86. In the Board's judgment, however, the mere existence of risk, at the date of an

enterprise's financial statements, does not mean that a loss should be accrued. Anticipation of asset impairments or liabilities or losses from business interruption that do not relate to the current or a prior period is not justified by the matching concept.

87. The Board's views regarding the contention that periodic accrual for uninsured losses is a way of providing protection against loss and improving comparability among enterprises that do and do not purchase insurance, and the contention that prohibition of accrual will force enterprises to purchase insurance, are discussed in paragraphs 61–66. The Board's position regarding periodic accrual for uninsured risks and other loss contingencies on the grounds of spreading the burden of irregularly occurring costs to successive generations of customers or on the grounds of conservatism is discussed in paragraph 81–84.

88. Some respondents to the Exposure Draft said that prohibition against periodic accrual for uninsured losses would be detrimental to government contractors because requirements of Federal government agencies in auditing costs subject to procurement regulations currently allow reimbursement for periodic accruals for uninsured losses only if they are included in the contractor's financial statement. Contract reimbursement and financial accounting and reporting may well have different objectives. Accordingly, the provisions of this Statement may not be appropriate for contract reimbursement purposes.

**Catastrophe Losses of Property and Casualty Insurance Companies**

89. At the time that a property and casualty insurance company or reinsurance company issues an insurance policy covering risk of loss from catastrophes, a contingency arises. The contingency is the risk of loss *assumed* by the insurance company, that is, the risk of loss from catastrophes that may occur *during the term of the policy.*

90. Some respondents to the Discussion Memorandum and the Exposure Draft proposed that insurance companies accrue estimated losses from catastrophes including both those that may occur during the terms of insurance policies in force and those that may occur beyond the terms of policies in force. Other respondents proposed that some portion of the premium revenue of a property and casualty insurance company be deferred beyond the terms of insurance policies in force to provide what, in substance, is an estimated liability for future catastrophe losses. Some respondents proposed that accrual of estimated losses or deferral of premiums be permitted but not required. On the other hand, some respondents to the Discussion Memorandum and the Exposure Draft were opposed to any accrual for future catastrophe losses by means of an estimated liability or deferral of premium revenue. Because those estimated liabilities and revenue deferrals have come to be referred to as "catastrophe reserves," that term will be used in paragraphs 91–101 for convenience.

91. In response to the Exposure Draft, it was recommended that the FASB appoint a special committee to study further the matter of catastrophe reserve accounting and to make recommendations thereon. The Board has concluded, however, that its own research and that of others (mentioned in Appendix B to this Statement and summarized in the Discussion Memorandum), the written responses received to the Discussion Memorandum, the presentations made at the public hearing, and the letters of comment on the Exposure Draft provide the Board with sufficient information with which to reach a conclusion.

92. Proponents of catastrophe reserve accounting generally cite the following reasons for their position:

a. *Catastrophes certain to occur.* Over the long term, catastrophes are certain to occur; therefore, they are not contingencies.

b. *Predictability of catastrophe losses.* On the basis of experience and by application of appropriate statistical techniques, catastrophe losses can be predicted over the long term with reasonable accuracy.

c. *Matching.* Some portion of property and casualty insurance premiums is intended to cover losses that usually occur infrequently and at intervals longer than both the terms of the policies in force and the financial accounting and reporting period. Catastrophe losses should, therefore, be accrued when the revenue is recognized (or premiums should be deferred beyond the terms of policies in force to periods in which the catastrophes occur) to match catastrophe losses with the related revenue.

d. *Stabilization of reported income.* Catastrophe reserve accounting stabilizes reported income and avoids erratic variations caused by irregularly occurring catastrophes.

e. *Comparability.* Reinsurance premiums paid by a prime insurer are said to be similar to accrual of catastrophe losses prior to their occurrence because the reinsurance premiums paid reduce income before a catastrophe loss occurs. Accrual of catastrophe losses as an expense prior to occurrence of a catastrophe makes the financial statements of property and casualty insurance companies comparable regardless of the extent to which reinsurance has been purchased.

f. *Non-accrual would force purchase of reinsurance.* Non-accrual of catastrophe losses will force property and casualty insurance companies to purchase reinsurance.

g. *Generations of policyholders.* Periodic accrual of estimated catastrophe losses charges each generation of policyholders with its share of the loss through the premium structure.

93. The Board does not find those arguments persuasive. The fact that over the long term catastrophes are certain to occur does not justify accrual before the catastrophes occur. As stated in paragraph 59, the purpose of the conditions for accrual in paragraph 8 is to require accrual of losses if they are reasonably estimable *and relate to the current or a prior period.* An enterprise may know with certainty, for example, next year's administrative salaries, but that does not justify accrual in the current accounting period because those salaries do not relate to that period. As indicated in paragraphs 67–68, financial accounting and reporting reflects primarily the effects of past transactions and existing conditions, not future transactions or conditions; accrual for losses from catastrophes that are expected to occur *beyond the terms of insurance policies in force* would amount to accrual of a liability before one has been incurred. Existing policyholders are insured only during the period covered by their insurance contracts; an insurance company is not presently obligated to policyholders for catastrophes that may occur after expiration of their policies. Accrual for those catastrophe losses would record a liability that is inconsistent with the concept of a liability discussed in paragraphs 69–73.

94. The Board recognizes that the costs of catastrophes to insurance companies are large and are incurred irregularly and that insurance companies recoup those costs in the long run through periodic adjustments in the premiums charged to policyholders. It is the view of the Board, however, that the long-run nature of pricing of premiums should not be a determinant of the time when a liability is recorded.

95. The AICPA Industry Audit Guide, "Audits of Fire and Casualty Insurance Companies," describes accounting for premiums as follows (pp. 24–25):

As soon as a policy is issued promising to indemify for loss, the insurance company incurs a potential liability. The company may be called upon to pay the full amount of the policy, a portion of the policy, or nothing. It would be impossible to try to measure the liability under a single policy. However, since insurance is based on the law of averages, one may estimate from experience the loss on a large number of policies.

As state supervision of insurance developed, the insurance departments set about providing a legal basis for determining the potential liability under outstanding policies in order to establish an ample reserve for the protection of policyholders and provide a uniform method of calculation. It was recognized that, since the premium is expected to pay losses and expenses, and provide a margin of profit over the term of the policy, the portion measured by the unexpired term should be adequate to pay policy liabilities (principally losses and loss expenses) and return premiums during the unexpired term on a uniform basis for all companies. Therefore the unearned premium was adopted as the basis for computing the unknown liability on unexpired policies.

96. Because unearned premiums represents the "unknown liability," the Board is of the view that it is inappropriate to accrue an additional amount as an estimate for that same unknown liability. Further, in the Board's view, deferral of premiums beyond the terms of policies in force is inconsistent with the concept of revenue recognition set forth in the Audit Guide and is without any conceptual basis. Moreover, the Board believes that its conclusion regarding the time at which accruals shall be made for catastrophic losses is consistent with the Audit Guide. It should be noted that this Statement does not prohibit (and, in fact, requires) accrual of a *net* loss (that is, a loss in excess of deferred premiums) that

probably will be incurred on insurance policies that are in force, provided that the loss can be reasonably estimated, just as accrual of net losses on long-term construction-type contracts is required (see *ARB No. 45*, "Long-Term Construction-Type Contracts").

97. With respect to catastrophes that may occur within the terms of policies in force, to satisfy the conditions for accrual in paragraph 8, the occurrence of catastrophes would have to be probable during the terms of those policies, and the amounts of losses therefrom would have to be reasonably estimable. The letters of comment and position papers received in response to the Discussion Memorandum and the Exposure Draft and presentations at the public hearing lead the Board to conclude that neither the timing of catastrophes nor the amounts of losses therefrom are reasonably predictable within the terms of policies in force.

98. The Board is of the view that accrual of losses from catastrophes is not justified by the accounting concept of matching. Systematic and rational allocation does not apply to costs that have not been incurred. The Board recognizes that large and irregularly occurring costs must of necessity be considered in systematically and rationally determining premiums to be charged to customers but does not believe that pricing considerations should dictate the accrual of losses for financial accounting purposes. The Board also does not believe that matching in the sense of recognizing expenses by associating losses with specific revenue on a cause and effect basis is, in and of itself, a basis for accrual of catastrophe losses prior to the event causing the loss. The Board believes that, for the reasons stated in paragraphs 94–96, there can be no presumed direct association with specific revenue prior to the event causing the catastrophe loss.

99. The Board's views regarding justification of periodic accrual of catastrophe reserves on grounds of (a) stabilizing reported income, (b) improving comparability among financial statements of insurance companies, and (c) preventing the "forced" purchase of reinsurance are discussed in paragraphs 61–66.

100. The argument that accrual of catastrophe reserves enables each generation of policyholders to bear its share of the losses through the premiums that it is charged is also questionable because amounts established for premiums are not necessarily dependent on financial accounting and reporting practices.

101. The Board considered the proposal that catastrophe reserve accounting be permitted but not made mandatory. Whether it is probable that an asset has been impaired or a liability incurred is determined by the circumstances, not by choice. Accordingly, the conditions for accrual in paragraph 8 apply to all loss contingencies, including risk of loss from catastrophes assumed by property and casualty insurance companies and reinsurance companies. In the Board's view, the use of different methods to report catastrophe losses in similar circumstances cannot be justified.

### APPLICABILITY TO LIFE INSURANCE COMPANIES

102. Some respondents to the Exposure Draft inquired as to whether the conditions for accrual in paragraph 8 are intended to change accounting practices of life insurance companies. This Statement does not amend the AICPA Industry Audit Guide, "Audits of Stock Life Insurance Companies."

### DISCLOSURE OF NONINSURANCE

103. A number of respondents to the Exposure Draft inquired as to whether it is the Board's intent to require disclosure of noninsurance or underinsurance. Some recommended that the Board require disclosures with respect to uninsured risks that enterprises ordinarily insure against. Others said that they were unable to define risks that would ordinarily be insured against because the insurance practices of enterprises are so varied. Because of the problems involved in developing operational criteria for disclosure of noninsured or underinsured risks, this Statement does not require disclosure of uninsured risks. However, the Board does not discourage those disclosures in appropriate circumstances.

### EFFECTIVE DATE AND TRANSITION

104. The Board considered three alternative approaches to a change in the method of accounting for contingencies: (1) prior period adjustment, (2) the "cumulative effect" method described in *APB Opinion No. 20*, "Accounting Changes", and (3) retention-of amounts accrued for contingencies that do not meet the conditions for accrual in paragraph 8 until those amounts are exhausted by actual losses charged thereto. The Exposure Draft had proposed the change be effected by the prior period adjustment method. A large number or respondents to the Exposure Draft, however, opposed the prior period adjustment method for a number of reasons, including significant difficulties involved in determining the degree of probability and estimability that had existed in prior periods as would have been required if the conditions in paragraph 8 were applied retroactively. On further consideration of all the circumstances, the Board has concluded that use of the "cumulative effect" method described in *APB Opinion No. 20* represents a satisfactory solution and has concluded that the effective date in paragraph 20 is advisable.

**Attachment 2**

**Federal Home Loan Bank Board, Office of Examinations and Supervision**

*MEMORANDUM SP68*

TO: Principal Supervisory Agents, August 14, 1985

FROM: Francis M. Passarelli, Classification of Assets

1. This memorandum reiterates the Board's policy and provides clarification for classification of assets and reevaluation of real estate pursuant to 12 CFR 561.16c and 563.17–2(b). The use of this memorandum should aid in efforts to ensure that asset evaluations receive consistent treatment nationwide.

2. It has always been the Board's intent that examination and supervision have maximum flexibility in classifying assets.

3. Principal Supervisory Agents are responsible for implementation and supervision of the classification of assets and reevaluation of real estate. The Principal Supervisory Agent has the final authority on all classifications and valuation reserves. It is the Board's intent that in exercising the discretion available to them under these regulations, the Principal Supervisory Agents may require less than a 50 percent valuation reserve, that is to say 1 to 50%, on Doubtful classifications taking into account appropriate credit and collateral factors, e.g., future prospects, performance, willingness and ability to pay, previous payment record (other than from an interest reserve) of the borrower, and management strength of the institution, its past experience in complying with supervisory directives, supervisory agreements or consent resolutions, and willingness to enter into a supervisory agreement or consent resolution geared toward resolving the problem at issue.

4. It is not the Board's intent that an entire asset be automatically classified because of a single weakness in the credit file. As indicated in the Statement of Policy (§ 571.1a) on classification of assets, it is incumbent upon examination and supervision to avoid classification of sound assets. This duty exists regardless of the type of asset or underwriting deficiency involved, e.g., the absence of any appraisal. Discretion and judgment should be exercised; if only part of the asset is at risk, only that part should be classified. Thus, consideration should be given to, among other things, the overall risk involved; the nature and degree of collateral security; the character, capacity, financial responsibility and record of the borrower; and the probability of orderly liquidation in accordance with the specified terms. Accordingly, an entire credit should not be classified as Doubtful when an analysis of the relevant factors shows that collection of a specific portion appears probable. It is The Principal Supervisory Agent who has the final authority on all classifications and valuation reserves.

5. An appraisal is only one factor to be weighed in credit analysis, and other factors, such as those discussed above in paragraph three, should be evaluated and weighed prior to determining a classification. Sound lending practices dictate that insured institutions obtain appraisals reflecting current market conditions. Memorandum R–41b is the definitive interpretation of the Board's appraisal requirements. The absence of an R–41b appraisal is a weakness because without an appraisal it is very difficult to make a sound credit judgment. The absence of an R–41b appraisal also suggests there may be a problem with the loan. Furthermore, this weakness may be considered unsafe and unsound, as a failure to reflect the asset's true value may result in misrepresentation of the institution's financial condition.

6. In classifying an asset the examiner should document all information required to support the classification and any valuation reserve. In those instances where the

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institution disputes the classification or the reserve, the examiner should have available the information supplied by the institution so that all documentation bearing on the classification and reserve is available for decision by the Principal Supervisory Agent.

Francis M. Passarelli,

*Director.*

cc: Professional Staff—Examination and Supervision

[FR Doc. 87-10758 Filed 5-14-87; 45 am]

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## 12 CFR Parts 563 and 571

[No. 87-528]

## Appraisal Policies and Practices of Insured Institutions and Service Corporations

Date: May 5, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") proposes to adopt a rule and a statement of policy pertaining to appraisal policies and practices of institutions insured by the FSLIC ("insured institutions") and service corporations of such institutions. The proposal is intended to codify the standards to be used by insured institutions and service corporations of such institutions, as well as examiners and supervisory staff, in determining compliance with the appraisal requirements of 12 CFR 563.17–1 and 563.17–2. The Board invites comment on all aspects of the proposal. This proposal is part of the Board's comprehensive review of its procedures related to classification and appraisal of insured institutions' assets. The Board is also adopting today a proposal designed to enhance its system of asset classification. Board Res. No. 87–527, published elsewhere in the Proposed Rules section of this issue.

**DATE:** Comments must be received on or before July 14, 1987.

**ADDRESS:** Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Kathy L. Kresch, Attorney, (202) 377–6417, Daniel G. Lonergan, Attorney, (202) 377–6458, or Karen Knopp O'Konski, Deputy Director, (202) 377–7240, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Diana Garmus, Policy Analyst, (202) 778–2515, Office of Regulatory Policy, Oversight, and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The soundness of the mortgage loans and real estate investments made by insured institutions and service corporations is dependent upon the adequacy of the appraisals used to support these transactions. Section 563.17–1 of the Board's regulations requires that the records of a loan secured by real estate include "[o]ne or more written appraisal reports, prepared at the request of the lender or its agent . . . by a person or persons duly appointed and qualified as appraisers by the board of directors of such lender, disclosing the market value of the security offered by the borrower and containing sufficient information and data concerning the appraised property to substantiate the market value of the security described in such report . . . ." 12 CFR 563.17–1(c)(1)(iv). To date, standards for compliance with 12 CFR 563.17–1 have been issued in the form of "R" Memoranda by the Office of Regulatory Policy, Oversight, and Supervision of the Federal Home Loan Bank System ("ORPOS"). Today, the Board is proposing to incorporate in its regulations appraisal standards to be used by insured institutions and service corporations in complying with regulatory requirements.

### 1. Statutory Authority

Among the paramount purposes of Title IV of the National Housing Act ("NHA") (12 U.S.C. 1724–30) and the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1421–29) is the development and maintenance of a system of sound and economical home financing. An additional, closely related purpose of the NHA is protection of the FSLIC fund from exposure to undue risk. The appraisal standards proposal is designed to enable the Board to carry out both statutory objectives.

It has been the Board's longstanding position, supported by legislative history and prior administrative practice, that the NHA authorizes the Board to regulate all institutions the accounts of which are insured by the FSLIC ("insured institutions") in furtherance of these purposes. Section 402(a) of the NHA (12 U.S.C. 1725(a)) empowers the Board, as the operating head of the FSLIC, to prescribe rules and regulations "for carrying out the purposes of this [Act]." Since the appraisal policies and practices proposal is designated to maintain safe, sound, and economical home financing, as well as protect the FSLIC fund from undue risk, the proposal would further the purposes of the NHA.

Moreover, under section 407 of the NHA, the Board has authority to terminate insurance coverage (12 U.S.C. 1730(b)) and to initiate cease-and-desist proceedings for any violation of a law, rule, regulation, or condition imposed by written agreement with the Board or for any unsafe or unsound practice (12 U.S.C. 1730(e)). These powers encompass the less drastic power to prevent unsafe and unsound practices through regulations, such as this appraisal practices rule.

Section 17 of the Bank Act expressly grants the Board the "power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of [this Act]." 12 U.S.C. 1437(a). As noted above, one of the paramount purposes of the Bank Act is maintenance of sound and economical home financing. The Board is therefore empowered to adopt regulations, such as this appraisal practices rule, designed to carry out that purpose.

The Board has often cited its authority under the Bank Act as support for regulations governing the deposit-insurance system administered by the FSLIC. This practice is supported by the close interrelationship between the Bank Act and the NHA, including their common purpose and similar design.

The Board also is authorized by sections 403(b) and 407(m) of the NHA to conduct examinations of insured institutions and their service corporations. 12 U.S.C. 1726(b), 1730(m). The Board believes that carefully documented appraisals are essential to accurate evaluation of the asset portfolio of an insured institution or service corporation. The proposed rule and policy statement pertaining to appraisal policies and practices of insured institutions and their service corporations therefore comport with the Board's statutory authority to examine and evaluate the asset portfolio of insured institutions and their service corporations.

A Congressional committee recently endorsed the Board's current substantive approach to appraisal standards. House Report 99–891, entitled "Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market," [hereinafter, the "House Report"] issued by the Committee on Government

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Operations of the United States House of Representatives on September 25, 1986, states: "Among all the Federal banking agencies, only the [Board] has a highly developed and comprehensive system regarding appraisal policies, practices and procedures. This system includes detailed guidelines for how appraisals are to be performed (Memorandum #R–41b), thorough procedures for reviewing appraisals, and . . . staff appraisers in all district offices." H.R. Rep. No. 99–891, 99th Cong., 2d Sess. 8 (1986). The House Report recommended that the banking agencies establish uniform requirements regarding appraisals and stated that such regulations and procedures should, in part, include "development and dissemination of appraisal guidelines utilizing . . . Memorandum #R–41b as a model." *Id.* at 13. The House Report made several other recommendations specifically regarding the Board's then-current appraisal standards. These recommendations are noted and discussed below.

The appraisal standards proposed by the Board in this proposed rulemaking are similar to those praised in the House Report. They are consistent with accepted appraisal practices and with the uniform standards adopted by the leading national professional appraisal organizations. The Board believes that it is in the public interest to receive public comment on these proposed standards to ensure adoption of appraisal standards that are as current and useful as possible.

**2. History of the Board's Appraisal Standards**

The Board's first appraisal guidelines were issued as R-Memorandum 41, on June 6, 1977, by its Office of Examinations and Supervision ("OES," now "ORPOS"). At that time, the thrift industry had suggested that the Board emphasize the importance of the appraisal process in prudent loan underwriting. Moreover, the Board's experience with problem loans had revealed that when a loan underwriter did not receive market-based appraisal information loans were based upon inaccurate collateral valuations and, consequently, inappropriate underwriting assumptions. In the worst cases, deficient underwriting was directly responsible for losses. The Board responded by issuing R–41 and its progeny.

The appraisal documentation requirement of R–41 was not new to the industry in 1977. An appraisal report containing a detailed description of the appraiser's reasoning in arriving at an estimate of value had been a requisite portion of a loan record at least since the adoption of 12 CFR 563.17–1 in 1963. This requirement has been continually revised and expanded in R–41a, issued September 15, 1977, R–41a–1, issued March 1, 1979, R–41b, issued March 12, 1982, and R–41c, issued September 11, 1986.

R–41c updated, revised, and replaced R–41b, the Memorandum praised by Congress in House Report 99–891. R–41c elaborated upon the appraisal guidelines of R–41b, adding to its appraisal management procedures requirements used by the leading national appraisal organizations. Additionally, R–41c updated the definition of market value to be consistent with the terminology adopted by the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Federal National Mortgage Association ("Fannie Mae"). On February 26, 1987, ORPOS issued a memorandum clarifying R–41c. *See* Memorandum from William L. Robertson to Professional Staff, Examinations and Supervision (Feb. 27, 1987) [hereinafter "R–41c Clarifications"]. The referenced documents are attached in Appendix A.

**3. Existing Appraisal Standards—Memorandum R–41c as Clarified**

R–41c, as clarified, addresses four components of the Board's appraisal standards and reporting requirements: management policies, appraisal management, appraisal content, and related considerations.

*a. Management policies*

This section of R–41c addresses the responsibility of an institution's board of directors for developing the institution's loan and investment policies and procuring appraisals to support such transactions. The board of directors of an insured institution or service corporation is responsible for establishing loan and investment policies that reflect the institution's operational policies and the regulatory limitations under which it conducts business.

Prudent lending policy must reflect both the credit arrangements offered by an institution and the underwriting procedures for each of its loan transactions. R–41c points out the responsibility of the board of directors and the senior officers to ensure that the different types of appraisal services used by the institution's underwriting staff properly reflect both the collateral lending posture of the institution and its lending policies.

Similarly, the board of directors is responsible for ensuring that appraisal services used by the institution to evaluate investments fulfill its regulatory obligation to operate in a safe and sound manner. "Failure to ensure that appraisal services match the needs of the institution will be considered an abdication of this responsibility and is representative of an unsafe and unsound operating policy." Memorandum R–41c.

Finally, an insured institution or its service corporation should be able to demonstrate that appraisers approved by its board of directors possess the requisite experience, education, and facilities to perform acceptably. Accordingly, R–41c indicates that the board of directors should encourage fee and staff appraisers to join professional appraisal organizations and to undergo continual professional development. Management is also responsible for periodically reviewing the performance of all approved appraisers and taking necessary action to eliminate substandard work.

*b. Appraisal Management*

This section of R–41c, as clarified, describes appraisal components needed to facilitate sound underwriting of an institution's investments.

A conforming appraisal should be prepared by appraisers independent of the borrower or the seller, who have been approved by the institution's board of directors. The appraisal should reflect the market value of the collateral, be sufficiently current to reflect actual market conditions, contain sufficient information to enable the institution to determine the proper loan amount, and support the categorization of an asset as a real estate loan or another type of credit arrangement.

Generally, appraisals must be presented in narrative form. However, the R–41c Clarifications indicate that compliance with the appraisal reporting guidelines and use of standard form reports approved by Freddie Mac and Fannie Mae are sufficient for appraisals on existing and proposed one-to-four family and existing multi-family properties.

An appraisal should be based upon market value and should analyze and disclose the following information: the listing or agreement of sale of the property being appraised; prior sales of the property within one year of the date of the appraisal for one-to-four-family residential property or within three years of the date of the appraisal for all other property; and in a speculative market, a sales history of comparable properties. If an appraisal is based upon preliminary plans or specifications, it must accurately reflect the impact upon value of significant changes in such

plans and specifications. Moreover, the appraisal must contain detailed information regarding the plans and specifications and describe "all value changes projected to occur from the conception of a project to its completion." Memorandum R–41c.

R–41c also requires that an appraisal contain an estimate of the highest and best use of the property appraised, based upon consideration of factors including: existing land use regulations, economic demand, physical adaptability of the property, neighborhood trends, optimal use of the property, and anticipated public and private improvements, on or off site, to the extent that market activity reflects such improvements. Additionally, all appraisals, including those involving proposed construction, development, or changes in use, must include the appraiser's analysis of the anticipated economic feasibility of the property. If an appraiser relies on feasibility or marketability studies prepared by a third party to support the estimate of highest and best use, the appraiser must attest that the study has been thoroughly examined and that he or she fully concurs with its findings and conclusions; the appraiser must specifically identify the study examined and summarize significant data, analyses, and conclusions presented in the study; and, finally, the appraiser must have available for examination a complete copy of the feasibility or marketability study prepared by the third party.

R–41c, as clarified, also requires that an appraisal state the present market value of the appraised property to a single purchaser even though a portion of the property will be sold to its ultimate users at a future date. This figure should account for deductions and discounts that reflect the expenses associated with the disposition of the property as of the date of completion, the cost of capital, and entrepreneurial profit. With regard to rental properties under construction or conversion, the appraisal should realistically state the market value of the property where anticipated market conditions indicate that stabilized occupancy is unlikely as of the date of completion. The value estimate must reflect the impact of rental and other concessions, including costs associated with preparing the improvement for occupancy by tenants.

If the property being appraised is an income-producing property, the appraisal must contain a summary of the income produced and expenses incurred in the operation of this real estate. The appraisal, moreover, should report the "as is" value of the real estate on the date of the appraisal or the last inspection of the property. Finally, where the objective of the report is to estimate the value of a fractional interest in the real estate, the appraiser must consider and report the effect on value of the terms and conditions of any agreement establishing this interest. Accordingly, the appraisal must indicate that the value of any fractional part has been evaluated by an analysis of appropriate market data.

*c. Appraisal Content*

This section of R–41c reflects the concern that an appraisal set forth, in a clear and accurate manner, the appraiser's analytical process and contain sufficient information to enable persons who must rely on this document to make an accurate decision with respect to a loan or investment transaction. Therefore, under the current standards, the content of each appraisal accepted by an insured institution must conform with the generally accepted written and established appraisal practices and standards of the nationally recognized professional appraisal organizations.

In this regard, R–41c states that each appraisal must be self-contained and possess a cogent analysis such that the appraiser's logic, reasoning, and judgment demonstrate the reasonableness of the market value reported to the reader. The appraisal should identify the property rights being appraised, highlighting the salient features of the real estate. The appraisal should state that its purpose is to estimate the market value of the property and should set forth the effective date of the value conclusion(s), the date of the report, and all relevant data as well as the analytical process employed by the appraiser to arrive at the highest and best use conclusion.

Moreover, the appraiser's analytical process should be presented so that it includes a complete explanation of all comparable data adjustments used in the analysis with appropriate market support for each adjustment and fully detailed descriptive information for all comparable data presented. Additionally, the appraisal must set forth a summary of all assumptions and limiting conditions that affect the analyses, opinions, and conclusions in the report. Finally, R–41c requires an appraiser to sign a certification statement attesting to the veracity of the information and analyses contained in the appraisal as well as his independence from the parties and property involved.

*d. Related Considerations*

R–41c warns appraisers that they will be subject to criminal prosecution under the provisions of Title 18 of the United States Code if they knowingly make false statements or willfully overvalue land, property, or security in appraisal reports "for the purpose of influencing in any way the action of a Federal Home Loan Bank, the Federal Home Loan Bank Board, a Federal Savings and Loan Association, any institution the accounts of which are insured by the FSLIC, any member of the Federal Home Loan Bank System, or the Federal Savings and Loan Insurance Corporation." *See* 18 U.S.C. 1014. R–41c concludes by emphatically stating that "[i]t is incumbent upon all appraisers to diligently adhere to generally accepted professional appraisal standards of practice and the provisions and requirements of the Federal Home Loan Bank Board's standards and reporting requirements relating to the preparation of appraisal reports prepared for these entities."

**4. The Proposed Rule and Policy Statement**

The proposed rule and policy statement address the same four components of the Board's appraisal standards and reporting requirements addressed in R–41c as clarified: management policies, appraisal management, appraisal content, and related considerations. This proposal, however, has been designed to clarify and simplify the R–41c guidelines. The chief ways in which this proposal differs from the existing standards are described below.

*a. Management Policies*

The proposed rule contains a section, entitled *Responsibilities of management*, that sets forth in a general way the obligations of management to oversee the appraisal services. This section also imposes specific requirements upon management to employ written appraisal guidelines and develop procedures for approving appraisers in accordance with lending and appraisal policies developed by the board of directors. More specific guidance concerning appropriate management policies is set forth in the proposed statement of policy.

The responsibilities of the board of directors to develop and implement prudent lending and appraisal practices are similar under the proposed policy statement and under R–41c as clarified. The board of directors would remain primarily responsible for ensuring that the appraisal services provided properly reflect the lending policies and collateral

lending posture of an institution. The board of directors would also remain responsible for approving appraisers who possess the requisite experience, education, and facilities to perform in an acceptable manner and for reviewing their work.

The Board has excluded from the proposed policy statement the language of R–41c stating that "[f]ailure [by the board of directors] to ensure that appraisal services meet the needs of the institution will be considered an abdication of this responsibility [to operate the institution in a safe and sound manner] and is representative of an unsafe and unsound operating policy." Although the responsibilities of the board of directors remain unchanged with regard to the procuring of appraisal services, the Board believes that the quoted statement addressing directors' responsibilities is unnecessary and redundant. Directors are under a fiduciary duty to operate insured institutions in a manner that comports with the requirements of safety and soundness. *See* ORPOS Memorandum No. R 62 (May 8, 1985). This duty includes the duty to oversee the adequacy of appraisal services. Moreover, because institutions will vary in their methods of fulfilling this duty, the Board is of the view that the recommendation, made in House Report 99–891, that it improve existing internal control and review systems to assure appraisal ' quality is best implemented through the examination process, on an institution-by-institution basis.

*b. Appraisal Management*

The proposed rule would require the management of an insured institution or service corporation to obtain appraisals adequate under the standards it sets forth. The appraisal management portion of the proposal lists twelve factors to guide management in this regard. The Board wishes to make clear, however, that a deficiency in management's ability to demonstrate attention to a single factor will not necessarily be deemed an unsafe and unsound practice. Rather, examiners and supervisory staff will use these factors, taken together, in determining whether an institution's overall appraisal practices conform with principles of safety and soundness.

The proposal simplifies R–41c's list of factors to be contained in appraisals supporting an insured institution's credit and investment decisions. It emphasizes the importance of appraisals in the underwriting process and reiterates the requirement of R–41c, as clarified, that an appraisal conform with recognized appraisal guidelines. In so doing, the appraisal must reflect the market value of the rights in realty offered as security and clearly label and segregate all other values or interests appraised. The proposal eliminates the restriction of R–41c that an appraisal may be deemed "sufficiently current" if it has been made within six months prior to the approval of the loan. In this regard, it is not the Board's intent to encourage the use of out-dated appraisals. Rather, the Board believes that because market conditions are indicative of the timeliness of an appraisal and do not necessarily vary over a specific time period, the underwriter should have discretion to determine whether an appraisal is sufficiently current.

The proposal also excludes the language of R–41c, as clarified, requiring an appraiser to be independent from the borrower and the seller and to have no interest in the real estate. The Board emphasizes that the exclusion of this language does not indicate that independence is no longer required of the appraiser. Rather, it is the Board's view that this language of R–41c is redundant in view of the requirement that the appraiser attest to his independence by signing a certification verifying the facts and analyses contained in the appraisal and stating that he has no present or prospective interest in either the property being appraised or with the parties involved.

Additionally, the proposal retains the R–41c requirement to present an appraisal in a narrative format unless the appraiser uses a form report that is appropriate for the specific appraisal assignment and, when read together with all attachments, results in a totally self-contained appraisal. In accordance with R–41c, as clarified, the proposal provides that, for existing and proposed one-to-four family and existing multi-family properties, compliance with the Freddie Mac and Fannie Mae appraisal reporting guidelines and use of the forms developed and approved by those agencies would satisfy the requirements of this rule.

The Board encourages industry-wide development of standardized appraisal forms and has recently solicited the submission of appraisal forms from the public. In this regard, the Board contemplates that appraisers or professional appraisal organizations will submit proposed appraisal forms for review and clearance by the supervisory staff at the appropriate Federal Home Loan Bank under the overall coordination and supervision of ORPOS.[1] The Board anticipates that the development, approval, and eventual use of forms standardized to comply with the requirements of any final rule on appraisal standards will simplify and expedite the appraisal process.

Additionally, like R–41c as clarified, the proposal requires that an appraisal state the market value of collateral. Market value is defined as:

> The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgably and assuming the price is not affected by undue stimulus.

This definition contemplates consummation of a sale as of a specified date and the passing of title from buyer to seller under open and competitive market conditions requisite to a fair sale. The Board has determined that market value is an accurate measure of the economic potential of security property, because most troubled real estate loans have ultimately resulted in the sale of the property.

In computing market value, the anticipated net cash flows from the operation and/or disposition of a property over time are discounted back to the appraisal date at a market discount rate. The value of the property therefore should reflect the market's economic opportunity costs. Moreover, the discount factors and adjustments unique to the market value computation adjust the value of the property to reflect holding costs, return on investment, and entrepreneural profit so as to translate the future anticipated cash flows of the property back to a present market value.

The Board has also simplified the requirement of R–41c, as clarified, to require the provision of detailed information and calculations with respect to a proposed project improvement or change in use. That requirement, in part, simply repeated professional appraisal standards. Additionally, this portion of the policy statement has been designed to eliminate a frequent misperception of R–41c by emphatically stating that although it is incumbent upon an appraiser to estimate remaining economic life and it is often necessary for an appraiser to estimate an investment holding period for discounted cash flow analyses or similar valuation purposes, it is not the appraiser's obligation to make

[1] The Board intends to provide specific instructions regarding the submission of proposed standardized appraisal forms in the final rule.

projections relating to the life of an institution's investment.

Although the proposal continues to require that an appraisal reflect the value to a single purchaser of property wherein a portion of real property rights would in the future be sold to its ultimate users, the proposal requires that the appraisal report "present market value," and contain sufficient information to enable the underwriter to determine present market value as of the date of completion. Similarly, with respect to properties under construction or conversion and where anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion, the appraisal should set forth "present market value" and sufficient information to enable the underwriter to determine the value of the property upon completion.

Moreover, the Board has simplified the specific language of R–41c that requires an appraisal to contain sufficient information to enable the management and board of directors to determine the loan amount and to support classification of the asset as a real estate loan. Also eliminated is the R–41c requirement that the appraisal contain information relative to current and projected market conditions and their impact on the estimated value of the property so as to enable an institution to determine whether its financial position would be protected over the life of the investment. The Board wishes to eliminate the confusion created by R–41c and to stress that it is not incumbent upon the appraiser to determine the future market value of a project. Rather, the Board recognizes that the final value estimate reflects present production costs and sales prices in addition to future cash flows, and therefore uses a combination of the cost approach, the market approach, and the income approach to derive present market value.

*c. Appraisal Content*

The proposed rule sets forth specific requirements for information to be included in the appraisal document. The proposal modifies the requirements of R–41c, as clarified, with respect to this information. The proposal requires that the content of each appraisal accepted by an institution follow the Uniform Appraisal Standards of Professional Appraisal Practice and the Board's reporting requirements.

The Board is implementing a recommendation made by Congress in House Report 99–891 by proposing to expand the appraisal content requirements of R–41c to include a form identifying the person at each institution who has reviewed the appraisal file. The information to be included on the form includes the person's name, title, and the date of review. The Board believes that this procedure will improve internal appraisal control and review systems.

The proposal continues to require that an appraisal report contain a legal description of the appraised property and states that it is management's responsibility to ensure that the legal description in the appraisal report is identical to the legal description in the loan documents. Additionally, the proposal permits appraisals made on existing and proposed one-to-four family and existing multi-family properties to be prepared under the Freddie Mac and Fannie Mae appraisal standards and on their standardized appraisal forms.

Additionally, the Board is proposing to remove the explicit certification language set forth in R–41c, as clarified. The Board recognizes that the professional appraisal organizations have several standard certification forms and believes that appraisers should be free to choose certification language from forms sanctioned by a professional appraisal society.

*d. Related Considerations*

The Board believes that certain components of a loan file are as essential to prudent underwriting as the appraisal report. Therefore, the proposed rule specifically requires inclusion of select information in the loan documentation.

The proposal requires that the loan documentation contain any third party economic feasibility studies utilized by the appraiser. The loan documentation for construction loans should also contain information to indicate that disbursements shall not exceed the present value of the project at any time during the construction period.

The Board is, moreover, implementing another recommendation made by Congress in House Report 99–891 by requiring insured institutions to include in their files of loans purchased a form identifying the person who has inspected the property securing the subject loan. The Board believes that an inspection of the security property would constitute verification that the property is as it is represented to be in the original or any supplemental appraisal and loan documentation. The Board also believes that for loans purchased such an inspection, in conjunction with review of the latest appraisal, is an adequate substitute for securing a new appraisal strictly in conformance with the Board's current regulatory standards. The Board recognizes that there may be considerable expense associated with implementation of this verification procedure. However, the Board is of the opinion that this projected expense is negligible in view of the risk associated with the purchase of out-of-state loans.

The proposal seeks to clarify the language of R–41c regarding the applicability of the criminal code to the preparation of appraisal reports. Therefore, the proposal concludes with a statement warning appraisers that they may be subject to criminal prosecution under the provisions of Title 18 of the United States Code if they knowingly make false statements or willfully overvalue land, property, or security in appraisal reports "for the purpose of influencing in any way the action of a Federal Home Loan Bank, the Federal Home Loan Bank Board, a Federal savings and loan association, any insured institution, any member of the Federal Home Loan Bank System, or the Federal Savings and Loan Insurance Corporation." *See* 18 U.S.C. 1014. The proposal also excludes the last sentence of R–41c as clarified, because the Board believes that the very purpose of codifying its appraisal standards is to emphasize that it is incumbent upon the appraiser to adhere to the appraisal standards of the Board and the national professional appraisal organizations.

**5. Appraisal Training for Underwriters**

The Board is of the opinion that the recommendation made in House Report 99–891 that loan officers be required to undergo appraisal training is well founded. Through ORPOS, the Board currently conducts appraisal training seminars for examiners at each of its twelve Federal Home Loan District Banks. The Board strongly recommends that insured institutions throughout the Federal Home Loan Bank System institute appraisal training programs for loan officers.

**6. Solicitation of Comments**

In placing this proposal before the public, the Board's objective is to initiate a process of comment and analysis that will enable the Board to establish appraisal standards designed to promote safety and soundness throughout the thrift industry. The Board therefore solicits public comment on all aspects of the proposed rule. Finally, the Board notes that the policy statement portion of this proposal is an interpretative rule, which is not subject to the notice and comment provisions of the Administrative Procedure Act. 5 U.S.C. 553 *et seq.* The Board believes, however, that the public interest will be best served by considering public

comment on the policy statement as well as the rule that it is proposing to adopt. In this regard, the Board specifically solicits comment on the structure of the proposal as a rule and a policy statement and asks whether its appraisal standards should be combined and adopted in final as a rule alone.

**Initial Regulatory Flexibility Analysis**

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in SUPPLEMENTARY INFORMATION.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions without regard to size.

3. *Impact of the proposed rule on small entities.* All institutions, including small ones, should benefit from the safety and soundness resulting from investments in loans secured by property that has been valued in compliance with the revised appraisal standards set forth in the proposal.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* In the above SUPPLEMENTARY INFORMATION the Board is soliciting comment on the rule as proposed.

**List of Subjects in 12 CFR Parts 563 and 571**

Accounting, Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Parts 563 and 571, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

**SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION**

**PART 563—OPERATIONS**

1. The authority citation for Part 563 continues to read as follows:

**Authority:** Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.17–1a following § 563.17–1 to read as follows:

**§ 563.17–1a Appraisal policies and practices of insured institutions and service corporations.**

(a) *Introduction.* The soundness of an insured institution's or service corporation's mortgage loans and real estate investments depends to a great extent upon the adequacy of the appraisals used to support these transactions. This rule sets forth appraisal standards to be used by insured institutions and service corporations of such institutions, as well as the Corporation, in determining compliance with the appraisal requirements of §§ 563.17–1 and 563.17–2 of this subchapter.

(b) *Responsibilities of management.* Management shall take reasonable steps to ensure that all appraisal services provided to the insured institution properly reflect the institution's collateral lending posture and its lending policies. Management shall also take reasonable steps to ensure that all appraisals used to support credit or investment decisions demonstrate professional competence, ethics, and expertise. To achieve these results, management shall prepare and disseminate to appropriate personnel written appraisal policies and guidelines. Management shall also develop and institute procedures for approval of appraisers, whether they are fee or staff appraisers, who perform appraisal services for the insured institution. Compliance with the requirements of § 563.17–1a and with the guidelines set forth in 571.1b, which contains the Corporation's statement of policy on management policies, shall be deemed adequate to demonstrate management's fulfillment of its responsibilities under paragraph (b) of § 563.17–1a. For purposes of § 563.17–1a and 571.1b, the term management means the members of the board of directors and the senior officers of an insured institution or service corporation.

(c) *Appraisal management.* Management shall take reasonable steps to ensure that all appraisals used to support credit and investment decisions demonstrate professional competence, ethics, and expertise. The indicia of acceptable appraisals are as follows:

(1) Appraisals shall be prepared in accordance with regulatory requirements and conform with the institution's written appraisal guidelines. Management shall provide appraisers approved by the institution with a copy of both the Corporation's requirements, as set forth in this § 563.17–1a, and the institution's written guidelines. Management shall also assist appraisers in obtaining information needed to comply with these requirements. Such information includes, when reasonably available, but is not limited to, leases, purchase agreements, and profit and loss statements from the security property.

(2) Appraisals shall be sufficiently current to reduce the likelihood that material changes in actual market conditions may have occurred by the time the loan or investment decision is made.

(3) Appraisals shall reflect the market value of the rights in realty offered as security or as part of the transaction. All other values or interests appraised must be clearly labeled and segregated, *e.g.*, value of chattels, value of financing terms, business value, furnishings, fixtures, and equipment value.

(4) Appraisals shall be presented in a narrative format, unless *both* of the following conditions are met:

(i) The appraiser uses a form report that is appropriate for the specific appraisal assignment, *i.e.*, the form is designed for both the property type and the interests being appraised; and

(ii) The appraiser uses a form report that, when read together with all attachments, results in a totally self-contained appraisal.

For existing or proposed one-to-four family and existing multi-family properties, the requirements of this rule may be met by use of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association standardized appraisal forms.

(5) Appraisals shall be based upon the following definition of market value: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(i) Buyer and seller are typically motivated;

(ii) Both parties are well informed or well advised, and each acts in what he considers his own best interest;

(iii) A reasonable time is allowed for exposure in the open market;

(iv) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(v) The price represents the normal consideration for the property sold

unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(6) Appraisals shall contain all recognized approaches to market value unless the appraiser fully explains and supports the rationale for eliminating one or more approaches to such value.

(7) Appraisals shall consider, analyze, and disclose in reasonable detail:

(i) Any current agreement of sale, option, or listing of the property being appraised when the existence and nature of such agreements are known and/or made available to the appraiser.

(ii) Any prior sales of the property being appraised that occurred within the following time periods:

(A) For one-to-four-family residential property, one year preceding the date when the appraisal was prepared;

(B) For all other property types, three years preceding the date when the appraisal was prepared;

(iii) A history of land, market, and sales comparables used, if the subject property is located in a market where many of the comparable sales properties have been atypically resold numerous times prior to the sales used by the appraiser. Such sales analysis should cover the time period of the atypical multiple transactions and address the potential or reality of artificially inflated sales prices.

(8) Appraisals shall accurately reflect the impact upon value of any known material changes in plans and specifications from those used in an appraiser's analysis of a proposed project, improvement, or change in use. In all instances where an institution relies upon an appraisal based on preliminary plans and specifications in a loan or investment decision, it shall take appropriate steps, prior to disbursement of any funds, to ensure the validity of the appraisal. Whenever material changes in plans and specifications occur after a loan or investment decision has been made, management shall take steps to assure the protection of the institution's financial position. Typically, such steps shall involve either having the original appraiser recertify his value estimate after examining the final plans and specifications for the project or obtaining a new appraisal based on the final plans and specifications.

(9) Appraisals shall contain a properly supported estimate of the highest and best use of the property appraised that is consistent with the definition of market value set forth in paragraph (c)(6) of this § 563.17–1a. Such estimate shall consider the effect on use and value of such factors as existing land use regulations, reasonably probable modifications of land use regulations, economic demand and supply, physical adaptability of the property, documentable property value trends, and optimal usage of the property. In addition, the appraisal must consider the effect on the property being appraised of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the appraisal date. Where appropriate, and in all cases involving proposed construction, development, or changes in use, the appraiser shall specifically address, consider, and support the anticipated economic feasibility and cite all significant market data used in developing his conclusions. Such analyses shall be presented in sufficient detail to support the appraiser's forecast of probable success and conclusion of highest and best use of the project. Moreover, if a market or economic feasibility study is prepared by someone other than the appraiser, the appraiser shall set forth the reasoning and rationale for accepting or rejecting that study.

(10) Appraisals shall report the present market value to a single purchaser and provide sufficient information to determine value upon completion for all properties for which a portion of the overall real property rights or physical asset would typically be sold to its ultimate users over some future time period. Valuations involving such properties must reflect all appropriate adjustments and discounts as well as the anticipated cash flows to be derived from the disposition of the asset over time. Appropriate adjustments and discounts are considered to be those that reflect all expenses associated with the disposition of the realty, as well as the cost of capital and entrepreneurial profit.

(11) Appraisals shall report the present market value and provide sufficient information to determine value upon completion for properties, other than those described in paragraph (c)(10) of this § 563.17–1a, that are under construction, conversion, or are proposed and where anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion. In addition, the value estimate shall reflect the impact of rental and other concessions, including the costs of preparing the improvements for occupancy by tenants.

(12) Appraisals shall reflect, in the valuation of fractional interests in the real estate, the accepted premise that it is inappropriate to arrive at the value of the whole by simply summing the fractional interests. Similarly, it is also inappropriate to arrive, without market support, at the value of a fractional interest in the real estate by merely subdividing the value of the whole into proportional parts. All analyses involving fractional interests in the real estate, where the combined value of all interests or estates is not reported, must definitively establish with market evidence whether the terms and conditions of the agreement creating the estate or fractional interest reflect market rates and terms.

(d) *Appraisal content.* The content of each appraisal accepted by an institution shall follow generally acceptable and established appraisal practices as reflected in the uniform appraisal standards of the nationally recognized professional appraisal organizations. Specifically, each appraisal shall:

(1) Be totally self-contained and not misleading so that, when it is read by any third party, the appraiser's logic, reasoning, judgment, and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the market value reported;

(2) Unequivocally identify, by legal description or otherwise, the real estate being appraised (management is obliged to ensure, prior to funding, that the appraised real estate is described in a manner consistent with the description found in the institution's evidence of debt or encumbrance);

(3) Identify the property rights being appraised;

(4) Describe all salient features of the property being appraised;

(5) State that the purpose of the appraisal is to estimate market value as defined in paragraph (c)(6) of this § 563.17–1a;

(6) Set forth the effective date of the value conclusion and the date of the report;

(7) Set forth the appraisal procedures followed and the data considered that support the reasoning, analyses, adjustments, opinions, and conclusions (including highest and best use) arrived at by the appraiser;

(8) As it relates to market comparable data analysis, be presented so that:

(i) It contains descriptive information presented with sufficient detail to demonstrate that the transactions were conducted under the terms and conditions of the definition of value being estimated, or have been adjusted to meet such conditions; have a highest and best use equivalent to the best use of the subject property; and that the selected properties are physically and

economically comparable to the subject property; and

(ii) It includes a presentation and explanation of adjustments used in the analysis together with appropriate market support. In the case of existing and proposed one-to-four family dwellings and existing multi-family properties, appraisals may be prepared in accordance with Freddie Mac and Fannie Mae appraisal standards.

(9) Contain a summary of actual operating statements for existing income producing properties together with a supported forecast of the most likely future financial performance;

(10) Set forth all assumptions and limiting conditions that affect the analyses, opinions, and conclusions in the report. Such assumptions and limiting conditions may not result in either a non-market value estimate or one so limited in scope that the final product will not represent a complete appraisal. A summary of all such assumptions and limiting conditions shall be presented in one separate section within the appraisal;

(11) Include in the appraiser's certification (i) a statement that the appraiser has no present or prospective interest in either the property being appraised or with the parties involved and (ii) a statement indicating that the analyses, opinions, and conclusions were developed, and the report was prepared, in accordance with the standards and reporting requirements of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation; including, but not limited to, 12 CFR Part 529, Nondiscrimination in Federally Assisted Programs, and 12 CFR 531.8, Guidelines relating to nondiscrimination in lending;

(12) Contain a form identifying the person at the institution who has reviewed the appraisal, that person's title, and the date of review;

(13) State that it complies with all statutes, rules and regulations prohibiting discrimination on the basis of race, color, religion, sex, national origin, marital status, age of the property and location of the property.

(e) *Related considerations.* (1) Loan documentation shall contain:

(i) Any third party market or economic feasibility studies utilized by the appraiser;

(ii) With respect to loans purchased by an institution, a form identifying the person who has inspected the security property to verify the accuracy of the appraisals and the date of the latest available appraisal; and

(iii) with respect to construction loans, information to indicate that at no time during the construction period will disbursements exceed the present value of the project.

(2) Appraisers or other individuals who knowingly make false statements or willfully overvalue land, property, or security for the purpose of influencing in any way the action of a Federal Home Loan Bank, the Federal Home Loan Bank Board, a Federal savings and loan association, any insured institution, any member of the Federal Home Loan Bank System, or the Federal Savings and Loan Insurance Corporation are subject to criminal prosecution under the provisions of Title 18 of the United States Code.

## PART 571— STATEMENT OF POLICY

3. The authority citation for Part 571 continues to read as follows:

**Authority:** Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

4. Amend Part 571 by adding a new § 571.1b to read as follows:

**§ 571.1b Appraisal policies and practices of insured institutions and service corporations.**

(a) *Purpose.* The purpose of this § 571.1b is to provide guidelines for the managements of insured institutions and service corporations in fulfilling their responsibilities under § 563.17–1a of this subchapter. For purposes of this § 571.1b, the term management has the same meaning as it is given in § 563.17–1a.

(b) *Management policies.* To a great extent, the complexity and diversity of the credit arrangements offered by an insured institution or a service corporation determine the types of appraisal services the institution's underwriting staff require. The board of directors and senior officers have the responsibility to assure that the appraisal services provided, whether by fee or staff appraisers, properly reflect the collateral lending posture of the institution, as well as its lending policies. Each institution or service corporation should be able to demonstrate that the appraisers approved by the board of directors, whether or not upon recommendation of staff, possess the requisite experience, education, and facilities to perform in an acceptable fashion. Appraisal skills and technology are not static, and attendance at courses and participation in the activities of professional organizations are factors to be considered by the board of directors in selecting both fee and staff appraisers. Memberships in professional appraisal organizations as well as continuous professional development should be encouraged to ensure that the appraisers whose services are being used are actively increasing their knowledge and skills over time. Management should periodically review the performance of all approved appraisers for compliance with generally accepted and established appraisal practices as reflected in the uniform appraisal standards adopted by the national professional appraisal organizations and the Board's reporting requirements. Management should take whatever steps are necessary to eliminate poor quality or inappropriate appraisal work products.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Acting Secretary.*

**Appendix A**

**Note.—This appendix will not appear in the Code of Federal Regulations.**

**Federal Home Loan Bank Board, Office of Examinations and Supervision**

*Memorandum #R 41*

To: OES Professional Staff, June 6, 1977

From: William Sprague, Appraisal Policies and Practices of Insured Institutions and Service Corporations

Synopsis: Guidelines Regarding Appraisal Procedures and Management.

The soundness of an association's or service corporation's mortgage loans and real estate investments depends to a great extent upon the timeliness and adequacy of the appraisals of the real estate. This memorandum provides guidelines for appraisal management and procedures to this end. It is the responsibility of the examiner at each examination to evaluate the quality of the association's appraisal function in meeting the requirements of Insurance Regulations 563.17–1(c)(1) and, 563.10. The examiner must similarly evaluate the service corporation's appraisal function.

*Appraisal Management*

The lending policies established by the board of directors determine the association's and service corporation's appraisal staff, fee appraiser and plant requirements. Management should ensure at all times that appraisal services fit both the ordinary and specialized needs of the association and service corporation, whether performed by staff or fee appraisers.

*A. Staff and Plant*

An appraisal should readily serve an underwriter's needs by providing a documented opinion of the market value of the property as of the date of the estimated market value and should indicate the degree of feasibility/marketability of the property. An accurate and fully useful appraisal is most often the work of a capable and suitably equipped fee or staff appraiser who has

ready access to current market information. Therefore, each association and service corporation must be able to demonstrate that its fee and staff appraisers are capable and have the facilities necessary to perform adequate appraisals.

*B. Training*

Staff appraisers should continually increase their knowledge and skills through attendance at courses sponsored by universities, colleges and/or professional appraisal organizations. Memberships in professional appraisal organizations should be encouraged.

*Appraisal Procedures*

The appraisal content shall follow generally accepted and established appraisal practices as reflected in the nationally recognized professional appraisal organizations, such as: The American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers.

Specifically, each appraisal report must:

1. Be totally self-contained so that:

a. It is a useful tool for prudent underwriting, REO and/or LTF decisions.

b. When read by any third party, the appraiser's logic, reasoning, judgment and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the market value reported.

c. It demonstrates professiona1 competence, ethics and expertise.

2. Be of a narrative style for major loans and/or investments of similar magnitude made by the association or affiliates.

3. Contain all recognized approaches to market value unless the appraiser fully explains and documents the rationale for eliminating one or more of the approaches to value.

4. Take into consideration and make provision for all appropriate deductions and discounts for any development type property that requires:

a. Marketing periods in excess of 12 months for total, 100 percent, sell out, or

b. Occupancy build-up periods in excess of 12 months for the property to reach the appraiser's anticipated normal occupancy level.

5. Address itself to the market/economic feasibility prospects for any proposed *major loan/investment* real estate project, in sufficient detail to support the appraiser's forecast of the probable success. If a market/economic feasibility report is prepared by other than the appraiser, the appraiser will set forth the reasoning and rationale for accepting or rejecting said report. All such market/ economic feasibility studies will be made a permanent part of the appraisal report.

6. For properties and investments (other than single family or two family dwellings) assigned a value of $100,000 or more, contain a sales history analysis of the property over the past five years preceding the appraisal report, fully disclosing and verifying:

a. Grantor(s)-grantee(s).

b. Sale date(s).

c. Sale price(s) and terms of financing, discounting the sale to a cash equivalent, where necessary.

d. Any interrelated parties to each transaction.

7. Address itself to "Market Value" as defined and qualified as acceptable to the Federal Home Loan Bank Board. Under no circumstance should the appraiser further qualify, or by assumptions, erode the impact of this definition. All market data inputs should be thoroughly analyzed and/or adjusted in terms of the above definition as qualified. Market value as defined is applicable in all lending/investment circumstances for insured associations and affiliates, including special purpose properties and REO/LTF situations. In REO/LTF situations, defined market value estimates will be derived on an "as is" basis.

The appraiser's "market value" estimate should, in view of the collateral lending posture of the savings and loan industry, reflect the most probable price to be derived should the property be placed on the market for sale, given the previously noted market value definition qualifiers.

**William Sprague,**

*Director.*

Distribution to State supervisory authorities to be made by District Directors—Examinations.

**Federal Home Loan Bank Board, Office of Examinations and Supervision**

*Memorandum #R 41a*

To: OES Professional Staff, September 15, 1977

From: William Sprague, Appraisal Policies and Practices of Insured Institutions and Service Corporations

Synopsis: Guidelines Regarding Appraisal Procedures and Management. Supercedes Memo #R 41.

(Editor's Note.—Revisions have been made to the introductory paragraph of Appraisal Procedures and item #6.)

The soundness of an association's or service corporation's mortgage loans and real estate investments depends to a great extent upon the timeliness and adequacy of the appraisals of the real estate. This memorandum provides guidelines for appraisal management and procedures to this end. It is the responsibility of the examiner at each examination to evaluate the quality of the association's appraisal function in meeting the requirements of Insurance Regulations 563.17–1(c)(1) and 563.10. The examiner must similarly evaluate the service corporation's appraisal function.

*Appraisal Management*

The lending policies established by the board of directors determine the association's and service corporation's appraisal staff, fee appraiser and plant requirements. Management should ensure at all times that appraisal services fit both the ordinary and specialized needs of the association and service corporation, whether performed by staff or fee appraisers.

*A. Staff and Plant*

An appraisal should readily serve an underwriter's needs by providing a documented opinion of the market value of the property as of the date of the estimated market value and should indicate the degree of feasibility/marketability of the property. An accurate and fully useful appraisal is most often the work of a capable and suitably equipped fee or staff appraiser who has ready access to current market information. Therefore, each association and service corporation must be able to demonstrate that its fee and staff appraisers are capable and have the facilities necessary to perform adequate appraisals.

*B. Training*

Staff appraisers should continually increase their knowledge and skills through attendance at courses sponsored by universities, colleges and/or professional appraisal organizations. Memberships in professional appraisal organizations should be encouraged.

*Appraisal Procedures*

The appraisal content shall follow generally accepted and established appraisal practices as reflected in the nationally recognized professional appraisal organizations.

Specifically, each appraisal report must:

1. Be totally self-contained so that:

a. It is a useful tool for prudent underwriting, REO and/or LTF decisions.

b. When read by any third party, the appraiser's logic, reasoning, judgment and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the market value reported.

c. It demonstrates professional competence, ethics and expertise.

2. Be of a narrative style for major loans and/or investments of similar magnitude made by the association or affiliates.

3. Contain all recognized approaches to market value unless the appraiser fully explains and documents the rationale for eliminating one or more of the approaches to value.

4. Take into consideration and make provision for all appropriate deductions and discounts for any development type property that requires:

a. Marketing periods in excess of 12 months for total, 100 percent, sell out, or

b. Occupancy build-up periods in excess of 12 months for the property to reach the appraiser's anticipated normal occupancy level.

5. Address itself to the market/economic feasibility prospects for any proposed major loan/investment real estate project, in sufficient detail to support the appraiser's forecast of the probable success. If a market/economic feasibility report is prepared by other than the appraiser, the appraiser will set forth the reasoning and rationale for accepting or rejecting said report. All such market/economic feasibility studies will be made a permanent part of the appraisal report.

6. Appraisals of major loan/investment properties (except for home type properties) located in highly speculative local market areas which have experienced dramatic price increases relative to regional norms, must contain a sales history analysis of the subject property covering the speculative time period.

Said analysis should reasonably disclose and verify:

a. Grantor(s)-grantee(s)

b. Sale date(s).

c. Sale price(s) and terms of financing, discounting the sale to a cash equivalent, where necessary.

d. Any interrelated parties to each transaction.

7. Address itself to "Market Value" as defined and qualified as acceptable to the Federal Home Loan Bank Board. Under no circumstance should the appraiser further qualify, or by assumptions, erode the impact of this definition. All market data inputs should be thoroughly analyzed and/or adjusted in terms of the above definition as qualified. Market value as defined is applicable in all lending/investment circumstances for insured associations and affiliates, including special purpose properties and REO/LTF situations. In REO/LTF situations, defined market value estimates will be derived on an "as is" basis.

The appraiser's "market value" estimate should, in view of the collateral lending posture of the savings and loan industry, reflect the most probable price to be derived should the property be placed on the market for sale, given the previously noted market value definition qualifiers.

Memorandum #R 41 is hereby rescinded.

William Sprague,

*Director.*

Distribution to State supervisory authorities to be made by District Directors-Examinations.

**Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, Department of Examinations**

*Memorandum #R 41a–1*

To: Professional Staff, March 1, 1979
From: Robert J. Moore, Appraisal Policies and Practices of Insured Institutions and Service Corporations
Synopsis: Guidelines Regarding Definition of "Market Value" and "Typical Financing" Valuation Policy

The Federal Home Loan Bank Board's appraisal policy and practice guidelines as contained in Memorandum R–41a, require all appraisal reports for insured associations and affiliates to evaluate market value. Under no circumstances should the appraiser further qualify or erode by assumption the impact of the accepted market value definition. "Market value" as acceptable to the Bank Board is defined as follows:

"The highest price in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

"Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated.

2. Both parties are well informed or well advised, and each acting in what he/she considers his/her own best interest.

3. A reasonable time is allowed for exposure in the open market.

4. Payment is made in cash or its equivalent.

5. Financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale

**Federal Home Loan Bank Board; Office of Examinations and Supervision**

*Memorandum #R 41b*

To: OES Professional Staff, March 12, 1982
From: D. James Croft, Appraisal Policies and Practices of Insured Institutions and Service Corporations
Synopsis: Guidelines Regarding Appraisal Procedures and Management. Supersedes Memo #R 41a and R 41a–1, Incorporates and Rescinds Memo #T 15–1

**(Editor's Note.—In addition to consolidating the provisions of Memoranda R 41a and R 41a–1 into a single document and incorporating the content of T 15–1, the following significant revisions have been incorporated in the section entitled "Appraisal Procedures":**

*Item #4*—expands and clarifies requirement that appraisals of development type properties reflect deductions and discounts by eliminating the 12 month sell-out/occupancy threshold formerly provided by R 41a.

*Item #5*—expands and clarifies expected use of market/economic feasibility assessments to include support of appraiser's conclusion of highest and best use as well as of probable success of the project.

*Item #7*—revises definition of "Market Value" to reflect terminology currently in use by leading professional appraisal organizations and, consistent with the collateral lending posture of the savings and loan industry, the need to obtain the most probable selling price should the property be placed on the market under the conditions herein specified.)

*Introduction*

The soundness of an association's or service corporation's mortgage loans and real estate investments depends to a great extent upon the adequacy of the appraisals of the real estate. This memorandum provides guidelines for appraisal management and procedures to assist in determining compliance with the appraisal requirements of Insurance Regulation 563.17– 1(c)(1)(iii).

*Appraisal Management*

The lending policies established by the board of directors will determine the complexity and diversity of appraisal situations to be encountered and, therefore, the general requirements of the association or service corporation for appraisal staff and facilities. Management should ensure that appraisal services provided, whether by fee or staff appraisers, meet the current needs of the association or service corporation.

An appraisal should serve an underwriter's needs by providing a supported opinion of a property's market value as of a specified date sufficiently current so as to reduce the likelihood of material value fluctuations prior to the loan/investment decision. In addition, to providing estimated market value, the appraisal should give the appraiser's opinion of the property's feasibility and marketability. An accurate and useful appraisal is most often produced by a capable and suitably equipped fee or staff appraiser who has ready access to current market information. Therefore, each association and service corporation should be able to demonstrate that its fee and staff appraisers are competent and knowledgeable of the relevant markets, and have the facilities necessary to perform adequate appraisals.

Appraisal skills and professional requirements are not static. Staff appraisers should continually increase their knowledge and skills through attendance at courses sponsored by universities, colleges, and/or professional organizations. Memberships in professional appraisal organizations should be encouraged. Attendance at courses and participation in the activities of professional organizations are also useful factors for management to consider in selecting independent fee appraisers.

*Appraisal Procedures*

The appraisal content shall follow generally accepted and established appraisal practices, as reflected in the standards of the nationally recognized professional appraisal organizations.

Specifically, each appraisal report must:

1. Be totally self-contained so that:

a. It is a useful tool for prudent underwriting, REO and/or LTF decisions.

b. When read by any third party, the appraiser's logic, reasoning, judgment and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the market value reported.

c. It demonstrates professional competence, ethics and expertise.

2. Be of a narrative style for major loans and/or investments made by the association or affiliates.

3. Contain all recognized approaches to market value unless the appraiser fully explains and documents the rationale for eliminating one or more of the approaches to value.

4. Take into consideration and make provision for all appropriate deductions and discounts for any development type property.

5. Address itself to the market/economic feasibility prospects for any proposed major loan/investment real estate project, in sufficient detail to support the appraiser's forecast of the probable success and the conclusion(s) of highest and best use. If a market/economic feasibility report is prepared by other than the appraiser, the appraiser will set forth the reasoning and rationale for accepting or rejecting said report. All such market/economic feasibility studies will be made a permanent part of the appraisal report.

6. Contain, if for major loan/investment properties (except for home type properties) located in highly speculative local market areas which have experienced dramatic price increases relative to regional norms, a sales history analysis of the subject property covering the speculative time period. This

analysis should reasonably disclose and verify:

a. Grantor(s)-grantee(s).

b. Sale date(s).

c. Sale price(s) and terms of financing, discounting the sale to a cash equivalent, where necessary.

d. Any interrelated parties to each transaction.

7. Address itself to "Market Value" as hereby defined and qualified:

The most probable price in terms of money which a property should bring in competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

Implicit in this definition is the consummation of a sale as of a specified date and the passing of time from seller to buyer under conditions whereby:

a. Buyer and seller are typically motivated.

b. Both parties are well informed or well advised, and each acting in what they consider their own best interest.

c. A reasonable time is allowed for exposure in the open market.

d. Payment is made in cash or its equivalent.

e. Financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale.

f. The price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs, or credits incurred in the transaction.

Market value as defined is applicable in all lending/investment circumstances for insured associations and affiliates, including special purpose properties and REO/LTF situations. In REO/LTF situations, defined market value estimates will be derived on an "as is" basis. Under no circumstance should the appraiser further qualify or, by assumptions, erode the impact of this definition. All market data inputs should be thoroughly analyzed and, where necessary, adjusted in terms of the above definition, as qualified.

As reflected in qualifications d, e and f of the above definition, all valuations must be couched in terms of "cash or its equivalent" and "typical financing" for that particular property type.

Any valuations which by assumption or qualification effectively utilize any form of specialized, unique and/or subsidized financing assumptions as surrogates for "typical financing" assumptions in the appraisal methodology are not considered to be acceptable. All properties, regardless of the specific nature of the particular financing arrangements then existing and/or as proposed, must be evaluated in a market value context as defined and as qualified relative to "typical financing" and "cash equivalency."

For certain governmental subsidy programs, such as HUD Section 8 Programs, where the real estate project and the ultimate product user represent a distinct and readily identifiable separate market relative to those projects found in the typical market, the appraiser may consider the various subsidized income/vacancy guarantees and/or subsidized aspects of the specific financing/contractual programs. In no case, however, should the final value estimate exceed replacement cost. Replacement cost in this context refers to the sum of the following:

1. Market value of the subject site ("value" conforming to the above referenced market value definition).

2. Current reproduction cost less deterioration and obsolescence of all building and site improvements.

3. A reasonable, market-supportable, entrepreneurial profit.

Please note that the definition of "market value" contained in this memorandum supersedes all older definitions of "market value" or "fair market value" previously deemed acceptable to the Bank Board. Memorandum #T 15–1, which contains a now obsolete definition, is hereby rescinded. It should be understood, however, that the long-standing examining and supervisory policy described in #T 15–1 remains in effect. Substantial variations between the appraised "market value" of a property and its actual selling price (and/or book value in the case of REO) will continue to be carefully scrutinized during the examination process.

D. James Croft,

*Director.*

**Distribution to state supervisory authorities to be made by District Directors-Examinations.**

**Federal Home Loan Bank System Office of Regulatory Policy, Oversight and Supervision**

*Memorandum AB 80*

To: Professional Staff—Examinations and Supervision, February 26, 1987

From: William L. Robertson, R–41c

Clarifications

Synopsis: This Memorandum Serves to Clarify Four Areas of R–41c That Have Been Subject to Repeated Misinterpretations

It has become increasingly clear that at least four issues addressed in the R–41c memorandum need clarification. The following represents the official interpretative views of this Office relative to these issues.

1. Compliance with Freddie Mac and Fannie Mae appraisal and appraisal reporting guidelines (and standard form reports) is sufficient for appraisals on existing one-to-four family dwellings and multi-family properties.

2. In order to assist in cost control of appraisal services and to encourage the further establishment of uniform appraisal standards, the use of other standardized forms will eventually be permitted, provided they are consistent with generally accepted and established written appraisal practices and are preapproved by the Bank Board.

3. It is not intended that the appraiser enmeshed in aspects of the underwriting process other than those necessary to perform the appraisal.

4. An appraiser shall report the present market value for both existing properties and for proposed developments. The appraiser may also report a value as of the conclusion of construction and as of the projected date when stabilized occupancy is achieved.

William L. Robertson,

*Director.*

**Distribution to State supervisory authorities to be made by Principal Supervisory Agents.**

**Federal Home Loan Bank Board; Office of Examinations and Supervision**

*Memorandum R 41c*

To: Professional Staff—Examinations and Supervision, September 11, 1986

From: Francis M. Passarelli, Appraisal Policies and Practices of Insured Institutions and Service Corporations

Synopsis: This Memorandum Revises and Replaces R–41b. It does not represent any shift in board policy but it does encompass significantly greater detail, specifically with regard to "Appraisal Management," adding guidelines which are appropriate to ensure acceptable appraisal procedures in the current market. The guidelines listed are generally standards of practice utilized by the leading national professional appraisal organizations. The Memorandum also contains the new definition of market value, as recently adopted by both the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae). R–41b is hereby rendered obsolete and is rescinded.

*Introduction*

The soundness of an association's or service corporation's mortgage loans and real estate investments depends to a great extent upon the adequacy of appraisals utilized to support such transactions. This memorandum sets forth the standards and reporting requirements utilized by the Federal Home Loan Bank Board in determining compliance with the appraisal requirements of Insurance Regulation 563.17–1(c)(1)(iii).

*Management Policies*

Loan and investment policies established by an institution's board of directors should reflect both the overall operational policies of the institution as well as the regulatory limitations under which it must conduct its business. Such policies should be clearly defined and set forth in a manner that provides effective supervision of the institution's operations by the directors.

Prudent loan policy should identify the types of credit arrangements the institution offers as well as the procedures to be followed in the underwriting of each of these arrangements. In secured credit transactions, such policies should definitively address the need to establish the value of collateral offered by borrowers in order to ensure that the institution is appropriately protected throughout the life of the credit arrangement. To a great extent, the complexity and diversity of the credit arrangements offered will determine the types of appraisal services the institution's underwriting staff will require. It is the board of directors' and

senior officers' responsibility to ensure that the appraisal services provided, whether by fee or staff appraisers, properly reflect the collateral lending posture of the institution, as well as its lending policies.

Similarly, the board of directors is responsible for establishing appropriate guidelines and procedures relative to other investments of an institution. Appraisal services utilized by the institution in evaluating such transactions should reflect the institution's regulatory obligation to operate in a safe and sound manner. Failure to ensure that appraisal services match the needs of the institution will be considered an abdication of this responsibility and is representative of an unsafe and unsound operating policy.

In formulating its loan and investment policies, the board of directors should recognize that appropriate appraisal services are most often produced by fee or staff appraisers, who are both competent and knowledgeable and have properly equipped facilities within which to prepare adequate appraisals. Each association or service corporation should be able to demonstrate that the appraisers approved by the board of directors possess the requisite experience, education and facilities to perform in an acceptable fashion.

Appraisal skills and technology are not static and attendance at courses and participation in the activities of professional organizations are factors to be considered by the board of directors in selecting both fee and staff appraisers. Memberships in professional appraisal organizations as well as continuous professional development should be encouraged to ensure that the appraisers whose services are being utilized are actively increasing their knowledge and skills over time. Management should periodically review the performance of all approved appraisers for compliance with the standards and reporting requirements of the Federal Home Loan Bank Board and take whatever steps are necessary to eliminate poor quality or inappropriate work products.

*Appraisal Management*

Appraisals serve as an important basis in the decision processes involved in the underwriting of secured credit transactions as well as investment decisions involving interests in real property. Management must ensure that all appraisals utilized in these decisions:

1. Are prepared in accordance with the standards and reporting requirements of the Federal Home Loan Bank Board and conform to the institution's written appraisal guidelines. Management should provide appraisers approved by the institution with a copy of both the Board's requirements, as promulgated herein, and the institution's written guidelines. Management should also assist appraisers in obtaining the information needed to comply with these requirements. Such information includes leases, Purchase agreements, profit and loss statements from the security property, etc.

2. Are sufficiently current to reduce the likelihood of material changes in actual market conditions from those upon which the loan or investment decision were predicated. (Though not exclusively definitive, "sufficiently current" may be deemed to be an appraisal made six months prior to the approval of the loan or investment.)

3. Reflect the market value of the rights in realty offered as security or involved with the transaction. All other values or interests appraised must be clearly labeled and segregated, i.e., value of chattels, value of financing terms, business value, furniture, furnishing and equipment value, etc.

4. Contain sufficient information to assist management and/or the board of directors in establishing the loan amount as well as other significant terms involved in the credit arrangement.

5. Support the classification of the asset as a real estate loan or other type of credit arrangement.

6. Are prepared by appraisers, independent from the borrower or the seller of the real estate, and approved by the institution's board of directors. It is suggested the board review the prior work and references of newly engaged appraisers. Final board of directors' approval should be recorded in the board's minutes.

7. Contain adequate infomation relative to both current and projected market conditions and their resulting impact upon the estimated value of the property to enable an institution to determine whether its financial position will be properly protected over the life of the credit arrangement or term of the investment. The scope of such information will depend upon the property type, the structure of the credit or investment arrangement and the financial realities of the contemplated transaction.

8. Are presented in a narrative style format, unless *both* of the following conditions are met:

a. A form report is utilized which is appropriate for the specific appraisal assignment, i.e., the form is designed for both the property type and the interests being appraised.

b. A form report is utilized, including all attachments, that results in a totally self-contained appraisal, as defined elsewhere in this memorandum.

9. Are based upon the following definition of market value: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

a. Buyer and seller are typically motivated;

b. Both parties are well informed or well advised, and each acting in what he considers his own best interest;

c. A reasonable time is allowed for exposure in the open market;

d. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

10. Correctly employ all recognized appraisal methods and techniques that are necessary to produce a credible analysis, opinion, or conclusion. Exclusion or omission of any recognized method for cause must be fully justified.

11. Consider, analyze and disclose in reasonable detail:

a. Any current agreement of sale, option, or listing of the property being appraised.

b. Any prior sales of the property being appraised that occurred within the following time periods:

(1) One year preceding the date when the appraisal was prepared for one to four family residential property, and

(2) Three years preceding the date when the appraisal was prepared for all other property types.

c. A sales history of the comparables, if the subject property is located in a speculative market, which has experienced dramatic price fluctuations relative to regional norms, covering the speculative time period involving the comparable sales.

12. Contain the following information where an analysis, opinion or conclusion of a proposed project, improvement or change in use is involved: (i) Plans, specifications, or other documentation in sufficient detail to identify the scope and character of the proposed improvements; (ii) evidence indicating the probable time of completion of the proposed improvements; (iii) clear and appropriate evidence supporting development costs, anticipated rent levels or per unit sales levels, occupancy projections, and the anticipated competition at the time of completion; and (iv) all value changes projected to occur from the conception of a project to its completion and/or stabilized occupancy should be set forth in sufficient detail so that the continuum of present value estimates over the life of the credit arrangement or investment can be reconciled with the values reported in the appraisal. Included as documentation should be a explanation of how discount and capitalization rates used in generating the present value estimates were deduced.

In addition to the above requirements, whenever value is estimated as of completion and/or stabilized occupancy, the appraisal must contain the following information:

a. The date or dates when the value estimate or estimates apply.

b. Factual data supporting the reasonableness of all conditions and assumptions impacting each value conclusion cited in the apprisal. Such information must be presented in sufficient detail and directly linked to current market information so that the appraiser's logic, reasoning, judgment and analysis indicate to a third-party reader the reasonableness of the value or values reported.

c. An explanation of the appraisal techniques selected and the data used to arrive at the final value estimate(s).

d. A fully documented and supported highest and best use analysis and conclusion which coincides with the date(s) of the value estimate(s).

e. A definitive statement as to whether the value estimate reflects the worth of the

property at stabilized occupancy and whether the appraiser considered and included the effect of income and expenses during the projected absorption period in developing a value estimate as of the date of completion.

13. Accurately reflect the impact upon value of any changes in plans and specifications from those utilized in an appraiser's analysis of a proposed project, improvement or change in use.

In all instances where an institution utilizes an appraisal based upon preliminary plans and specifications in a loan or investment decision, it shall take appropriate steps, prior to the disbursement of any funds, to ensure the validity of the appraisal, relative to the decision, has not been negated. Further, whenever significant changes in plans and specifications occur after a loan or investment decision has been made, the institution's management shall take appropriate steps to ensure its financial position is appropriately protected. Typically, such steps will involve either having the original appraiser recertify his value estimate after examining the final plans and specifications for the project or a new appraisal will be obtained based on the final plans and specifications.

For the purposes of this paragraph, significant changes in plans and specifications are defined as those which directly affect the value of the property, e.g., changes in the scope, character or timing of the proposed improvements.

14. Contain a properly documented and supported estimate of the highest and best use of the property appraised, which is consistent with the definition of market value cited in this memorandum. Such estimate must consider the effect on use and value of the following factors: Existing land use regulations, reasonably probable modifications of such land use regulations, economic demand, the physical adaptability of the property, neighborhood trends, and the optimal usage of the property. In addition, the appraisal must consider the effect on the property being appraised of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the appraisal date.

In all appraisals, including those involving proposed construction, development or changes in use, the appraiser must specifically address and consider in his analysis the anticipated economic feasibility, as well as cite all significant market data utilized in developing his/her conclusions. Such analyses must be presented in sufficient detail to support the appraiser's forecast of the probable success and the conclusion of highest and best use of the project.

In all instances where the appraiser relies on feasibility/marketability studies prepared by a third party to support his estimate of the highest and best use, he must:

a. Attest that such study has been thoroughly examined and that he fully concurs with its findings and conclusions, and;

b. Specifically identify both the study examined as well as set forth within the body of the appraisal, a summary of the significant data, analyses and conclusions presented in the study. Such summary must be presented in sufficient detail, so that further reference to the study is unnecessary by a third-party reader of the appraisal, and;

c. Have available for future examination by users of the appraisal, a complete copy of the feasibility/marketability study prepared by the third party.

15. Report the market value to a single purchaser as of the date of completion for all properties, wherein a portion of the overall real property rights or physical asset would typically be sold to its ultimate users over some future time period. Valuations involving such properties must fully reflect all appropriate deductions and discounts as well as the anticipated cash flows to be derived from the disposition of the asset over time. Appropriate deductions and discounts are considered to be those which reflect all expenses associated with the disposition of the realty, as of the date of completion, as well as the cost of capital and entrepreneurial profit.

16. For properties under construction, conversion or proposed, report the market value of the subject property as of the date of completion, excepting those properties described in paragraph 15 immediately above, where anticipated market conditions indicate stabilized occupancy is not likely as of the date of completion. Such valuations shall fully reflect the impact upon the "as if completed value" of all pertinent operating expenses as well as the anticipated pattern of income during the absorption period. In addition, the value estimate must reflect the impact of rental and other concessions, including the costs associated with preparing the improvement for occupancy by tenants.

17. Contain a summary of actual income and expenses experienced by the subject property where it is an existing income or revenue producing property. In addition, all such appraisals must contain a complete reconciliation of all deviations projected by the appraiser in his forecast of future financial performance from those historically realized by the property.

18. Report the "as is" value of the subject property as of the date when either the appraisal was prepared or when the property was last inspected. The date of the "as is" value estimate should be sufficiently current to reduce the likelihood of material changes in the actual market conditions from those upon which the loan or investment decision were predicated. In addition to any other value estimates contained in an appraisal, the "as is" value must be reported.

19. Consider and report the effect on value, if any, of the terms and conditions of any agreement establishing a fractional interest or estate, where the objective of the report is to estimate the value of such fractional interest or estate. All such appraisals must clearly demonstrate that the value of any fractional part or estate has been evaluated by an analysis of appropriate market data. Such analyses must recognize that it is generally considered inappropriate to arrive at either the value of the whole or its parts by simply summing the fractional interests or subdividing the value of the whole into proportional parts.

All analyses involving fractional interests or estates, where the combined value of all interests or estates is not reported, must definitively establish with market evidence whether the terms and conditions of the agreement creating the estates or fractional interests reflects market rates and terms.

In addition to the above requirements, all analyses involving fractional interests or estates must disclose whether the final value estimate of such fractional interests or estates included non-realty components, i.e., tenant or borrower's credit quality, other non-realty contractual arrangements, etc. Further, whenever such value estimate includes non-realty components, the value assignable to them must be specifically disclosed in the appraisal.

All appraisals, where there is a clear indication that the subject property is encumbered by a lease instrument or legal limitations upon its operation [e.g., when inspection reveals occupancy of the property by tenants or the property is subject to rent control statutes], must consider and report the impact of the terms of the lease or such legal limitations upon the value of the estate being appraised.

*Appraisal Content*

Prior to the approval of a loan or investment transaction, each appraisal accepted by an institution must be prepared in writing and contain sufficient information to enable the persons who receive or rely on the report to understand it properly. Appraisals which fail to set forth, in a clear and accurate manner, the analytical process followed by the appraiser, in a fashion that will not be misleading to the persons who receive or rely on the report, will be considered unacceptable.

The content of each appraisal accepted by an institution shall follow generally accepted and established appraisal practices, as reflected in the standards of the nationally recognized professional appraisal organizations and as noted in the body of this memorandum.

Specifically, each appraisal must:

1. Be totally self-contained so that when read by any third party, the appraiser's logic, reasoning, judgment and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the market value reported.

2. Identify via a legal description the real estate being appraised.

3. Identify the property rights being appraised.

4. Describe all salient features of the property being appraised.

5. State that the purpose of the appraisal is to estimate market value as defined in this memorandum.

6. Set forth the effective date of the value conclusion(s) and the date of the report.

7. Set forth all relevant data and the analytical process followed by the appraiser in arriving at the highest and best use conclusion.

8. Set forth the appraisal procedures followed, the data considered, and the reasoning that supports the analyses, opinions, and conclusions arrived at by the

appraiser. The analytical process followed by the appraiser must be presented so that:

(a) It includes a complete explanation of all comparable data adjustments utilized in the analysis together with appropriate market support for each adjustment, and;

(b) It contains descriptive information for all comparable data presented with sufficient detail to demonstrate the transactions were conducted under the terms and conditions of the definition of value being estimated or have been adjusted to meet such conditions; have a highest and best use equivalent to the best use of the subject property, and; are physically and economically comparable to the subject property.

9. Set forth all assumptions and limiting conditions that affect the analyses, opinions, and conclusions in the report; however, such assumptions and limiting conditions must not result in either a non-market value estimate or one so limited in scope that the final product will not represent a complete appraisal. A summary of all such assumptions and limiting conditions must be presented in one physical location within the appraisal.

10. Include a manually signed certification by the appraiser that is similar in content to the following form:

I certify that, to the best of my knowledge and belief, . . .

—The statements of fact contained in this report are true and correct.

—The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions.

—I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

—My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

—My analyses, opinions, and conclusions were developed, and this report has been prepared, in accordance with the standards and reporting requirements of the Federal Home Loan Bank Board.

—I have made a personal inspection of the property that is the subject of this report. [If more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property.]

—No one provided significant professional assistance to the person signing this report. [If there are exceptions, the name of each individual providing significant professional assistance must be stated.]

*Related Considerations*

Appraisal reports prepared for the purpose of influencing in any way the action of a Federal Home Loan Bank, the Federal Home Loan Bank Board, a Federal Savings and Loan Association, any institution the accounts of which are insured by the FSLIC, any member of the Federal Home Loan Bank System, or the Federal Savings and Loan Insurance Corporation are subject to the provisions of Title 18, United States Code. It is incumbent upon all appraisers to diligently adhere to generally accepted professional appraisal standards of practice and the provisions and requirements of the Federal Home Loan Bank Board's standards and reporting requirements relating to the preparation of appraisal reports prepared for these entities.

**Francis M. Passarelli,**

*Director.*

Distribution to State supervisory authorities to be made by Directors of Examinations.

[FR Doc. 87-10750 Filed 5-14-87; 8:45 am]

BILLING CODE 6720-01-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 223

### National Forest Timber Sales; Control of Skewed Bidding

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; withdrawal of proposed policy.

**SUMMARY:** The Forest Service published a proposed policy to control skewed bidding on National Forest System timber sales January 30, 1987, at 52 FR 3027. In response to public comments received on that policy, the Forest Service hereby gives notice that it is withdrawing its proposal.

**DATE:** This decision to withdraw the proposal is effective on May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Questions about this notice should be addressed to Lloyd Olson, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 447-4051.

**SUPPLEMENTARY INFORMATION:** On July 1, 1983, (48 FR 30417) and July 16, 1984, (49 FR 28748), the Forest Service published proposed policies to limit skewed bidding on National Forest timber sales. Based on the extensive comments received and the fact that numerous changes have been implemented in timber sale procedures since the last proposal, the Agency published a third proposal on January 30, 1987, (52 FR 3027). The public comment period closed March 31.

The Agency has received written responses on the 1987 proposal from 4 parties representing individual timber purchasers as well as several oral responses presented at a meeting of an association representing timber purchasers. While the majority of reviewers agreed that a policy on skewed bidding is needed, the preponderance of reviewers strongly objected to the latest proposal on the grounds that it is too complex, fails to adequately address differences among timber sale bidders and geographical areas, and contains factual errors. The strength and substance of these comments have led the Agency to conclude that it needs to take a fresh look at the issue of skewed bidding, to identify alternative approaches, and especially to simplify the procedures if possible. Accordingly, the Forest Service is withdrawing its present proposal. It is uncertain how quickly a new proposal can be developed, but the Agency hopes to be in a position to issue a revised proposal by the end of the year.

Dated: April 27, 1987.

**George M. Leonard,**

*Associate Chief.*

[FR Doc. 87-11108 Filed 5-14-87; 8:45 am]

BILLING CODE 3410-11-M

## VETERANS ADMINISTRATION

## DEPARTMENT OF DEFENSE

### 38 CFR Part 21

### Veterans Education; Effective Date of VEAP Disenrollment and Other Technical Changes

**AGENCIES:** Veterans Administration and Department of Defense.

**ACTION:** Proposed regulations.

**SUMMARY:** This proposed regulatory amendment would permit a veteran who has received a refund of his or her contributions to the Post-Vietnam Era Veterans Educational Assistance Program (VEAP) fund to retain his or her eligibility if the refund check is returned to the Veterans Administration (VA). Current regulations state that such a person is disenrolled from VEAP on the date the VA receives his or her request for a refund. Hence, he or she has lost eligibility by the time of receipt of the refund check. This amendment is the result of many attempts by veterans to return their refund checks, and will result in the VA's treating these veterans in a manner similar to veterans in other programs administered by the VA.

Besides this substantive proposal the VA is also proposing several technical amendments which are necessary to correct erroneous cross-references.

**DATES:** Comments must be received on or before June 15, 1987.

**ADDRESSES:** Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC

20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until June 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

**SUPPLEMENTARY INFORMATION:** The VA is proposing an amendment to 38 CFR 21.5052 to make clear that the VA does not consider the return of a check representing a refund of contributions to the VEAP fund to be a contribution to the fund. Section 21.5062 is amended to state that a participant in VEAP is disenrolled on the date the participant negotiates a refund check. In addition, there are several amendments designed to correct erroneous cross-references. These are not substantive, but are technical only.

The VA has determined that these proposed regulatory amendments do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The proposed regulatory amendments will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that these proposed regulatory amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the proposed regulatory amendments affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the program affected by these proposed regulatory amendments is 64.120.)

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 20, 1987.

**Thomas K. Turnage**

Approved: March 9, 1987.

**A. Lukeman,**

*Deputy Assistant Secretary of Defense.*

**PART 21—[AMENDED]**

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. In § 21.5001, paragraph (c) is revised to read as follows:

**§ 21.5001 Administration of benefits program; Chapter 32.**

* * * * *

(c) Section 21.4003—(except paragraphs (d) and (e)—Revision of Decisions. (38 U.S.C. 1641)

* * * * *

2. In § 21.5052, parargaph (e) is revised to read as follows:

**§ 21.5052 Contribution requirements.**

* * * * *

(e) *Prohibition against contributing.* An individual may not make contributions to the fund after the date of his or her discharge. The Veterans Administration does not consider the return of an unnegotiated refund check to be a contribution. (39 U.S.C. 1622; Pub. L. 94–502)

* * * * *

3. In § 21.5062, paragraph (b) is revised to read as follows:

**§ 21.5062 Date of disenrollment.**

* * * * *

(b) The date of the individual negotiates the check which represents a refund of his or her remaining contributions to the fund, whichever is earlier. (38 U.S.C. 1621(d); Pub. L. 94–502)

4. In § 21.5130, paragraphs (a), (b), and (d) are revised and paragraph (h) added to read as follows:

**§ 21.5130 Payments—educational assistance allowance.**

(a) Section 21.4131 (except pars. (c)(3), (e), and (h))—Commencing dates.

(b) Section 21.4133–Notification of suspension or discontiunuance (38 U.S.C. 1641)

* * * * *

(d) Section 21.4135 (except pars. (b), (c), (d), (m), (o), and (v))—Discontinuance dates. (38 U.S.C. 1641)

* * * * *

(h) Section 21.4136(k) (except supar. (3))—Mitigating circumstances. (38 U.S.C. 1641, 1780(a))

5. In § 21.5131, the introductory text is revised to read as follows:

**§ 21.5131 Educational assistance allowance.**

The VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 while the individual is pursuing a course of education. The VA will make no payment for training in any course if the training is not part of the veteran's program of education. The VA may withhold final payment until it receives proof of the individual's continued enrollment and adjusts the individual's account. (38 U.S.C. 1641; Pub. L. 94–502)

[FR Doc. 87–11089 Filed 5–14–87; 8:45 am]

BILLING CODE 8320-01-M

**VETERANS ADMINISTRATION**

**38 CFR Part 21**

**Veterans Education; Nonpunitive Grades**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulations.

**SUMMARY:** A veteran's award of educational assistance allowance must be reduced when he or she withdraws from a course or when he or she receives a nonpunitive grade for a course. Regulations exist for determining the effective date of the reduction. Some readers of the regulations have been uncertain as to which of the pertinent regulations apply when a veteran withdraws from a course and, as a result of that withdrawal, receive a nonpunitive grade for it. This proposal eliminates this problem. It addresses this situation by expanding the regulation which deals with the effective date of reduction and termination of educational assistance allowance.

**DATE:** Comments must be received on or before June 15, 1987.

**ADDRESS:** Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday

through Friday (except holidays) until June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2092.

**SUPPLEMENTARY INFORMATION:** The VA is proposing to amend 38 CFR 21.4135. As proposed, the paragraphs dealing with termination or reduction of a veteran's award of educational assistance allowance due to withdrawal from one or more courses now recognize that a veteran can receive a nonpunitive grade as a result of withdrawing from a course.

The VA has determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator or Veterans Affairs has certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111)

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 5, 1987.
Thomas K. Turnage,
*Administrator.*

**PART 21—[AMENDED]**

In 38 CFR Part 21, *Vocational Rehabilitation and Education*, § 21.4135 is proposed to be amended by revising paragraphs (e)(1), (s), and (w) to read as follows:

**§ 21.4135 Discontinuance dates.**

* * * * *

(e) *Course discontinued; course interrupted; course terminated; course not satisfactorily completed or withdrawn from §§ 21.4136 and 21.4137.* (1) If the individual withdraws from all courses; received all nonpunitive grades; and there are no mitigating circumstances as provided in §§ 21.4136(k) or 21.4137(h), the VA will terminate the individual's education assistance allowance effective the latter of the following:

(i) The first date of the term in which the withdrawal occurs, or

(ii) December 1, 1976.

* * * * *

(s) *Reduction in rate of pursuit of course (§ 21.4270).* (1) The VA will reduce an individual's educational assistance allowance effective the first date of the term in which the individual reduces training by withdrawing from part of a course, if the reduction occurs at the beginning of the term.

(2) The VA will reduce an individual's educational assistance allowance effective the earlier of the end of the month or end of the term in which an individual reduces training by withdrawing from part of a course when—

(i) The reduction does not occur at the beginning of the term; and

(ii) There are mitigating circumstances, or the individual receives a punitive grade for the portion of the course from which he or she withdraws.

(3) If the individual reduces training by withdrawing from a part of a course; there are no mitigating circumstances; and the individual receives a nonpunitive grade form that portion of the course from which he or she withdrew; the VA will reduce the individual's educational assistance allowance effective the later of the following:

(i) The first date of enrollment of the term in which the reduction occurs; or

(ii) December 1, 1976. See paragraphs (e) and (w) of this section also.

(4) An individual, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in others, may receive an interval payment based on the subjects completed, if the requirements of § 21.4136(f) are met. If those requirements are not met, the VA will reduce the individual's educational assistance allowance effective the date the subject or subjects were completed.

(38 U.S.C. 1780; Pub. L. 98–406)

* * * * *

(w) *Nonpunitive grade assigned without a withdrawal from courses.* (1) If an individual receives a nonpunitive grade for a particular course for any reason other than a withdrawal from it, the VA will reduce the individual's educational assistance allowance effective the last date attendance when mitigating circumstances are found.

(2) If an individual receives a nonpunitive grade in a particular course for any reason other than a withdrawal from it, and there are no mitigating circumstances, the VA will reduce his or her educational assistance effective the later of the following:

(i) The first date of enrollment for the term in which the grade applies, or

(ii) December 1, 1976. See paragraphs (e) and (s) of this section. (38 U.S.C. 1780(a)(4)

* * * * *

[FR Doc. 87–11090 Filed 5–14–87; 8:45 am]
BILLING CODE 8320-01-M

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**38 CFR Part 36**

**Loan Guaranty; Proposed Decrease in Amount of Time VA Will Allow Loan Holder To Begin Terminating Defaulted Loans**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendment.

**SUMMARY:** The Veterans Administration (VA) is proposing to amend its loan guaranty regulations (38 CFR Part 36) by decreasing from two months to thirty days the amount of time the VA will allow a loan holder to begin termination proceedings on a defaulted VA-guaranteed home loan when imposing a cutoff date. Interest on, and charges to, the loan after the cutoff date may not be included in the computation of the guaranty claim. Reducing the time allowed to begin proceedings will facilitate the termination of defaulted loans and consequently reduce the average dollar amount per claim paid by the Administrator of Veterans Affairs. It will also reduce veterans debts to the VA resulting from the claims.

**DATES:** Comments must be received on or before June 15, 1987. The VA proposes to make this regulatory amendment effective 30 days after publication of the final regulations.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NE., Washington, DC 20420. All written comments received will be available for public inspection in the Veterans Service Unit, room 132 of the above address, between the hours of 8:00 a.m.and 4:30 p.m., Monday through Friday (except holidays) until June 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, (202) 233–3668.

**SUPPLEMENTARY INFORMATION:** When a VA-guaranteed loan is in default both the holder of the loan and the VA have servicing responsibilities. Efforts are made to work with the veteran-borrower to bring the loan current and to prevent foreclosure. However in some instances, even after extensive servicing efforts loan defaults are insoluble, and the loan must be foreclosed. VA may incur liability to pay a claim under guaranty in such cases. Section 36.4319(f) of title 38, Code of Federal Regulations, allows the Administrator to set a limit on the time span for which the VA will pay accrued interest and other charges in a claim, when the loan holder fails to begin or complete termination of the loan in a timely manner. The regulation states that in such cases the Administrator must request in writing that the holder take appropriate action to begin or prosecute termination action. The regulation further allows the holder up to two months from the date of request to begin termination proceedings.

During much of the existence of the Loan Guaranty Program this two month allowance had only a minor impact on the dollar amount of claims eventually paid by the VA. However, with the substantial increase in property values and loan amounts between 1975 and 1980, and with the increase in interest rates on loans closed between 1980 and 1985, the costs associated with delay in foreclosure have risen considerably. The purpose of the proposed amendment is to lower these costs by reducing from two months to 30 days the time the loan holder is allowed to begin terminating the loan. The proposed amendment will also reduce veterans debts to the VA which result from claims paid by the VA to the loan holders on the defaulted loan. Holder compliance should not present any difficulty, since 30 days allows reasonable time for normal preparations to begin termination.

The Administrator hereby certifies that this proposed regulatory amendment will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. The provision concerning the amount of time the VA will allow a loan holder to begin termination proceedings will affect guaranty claims only in those cases in which the loan holder fails to take timely action to terminate loans when defaults have become insoluble. When a default is insoluble, and there is no reasonable alternative to foreclosure, prudent loan servicing practice dictates that action be taken to terminate the loan without delay. The loan holder is responsible for foreclosure and is able to avoid unnecessary delays. In addition, only a relatively small percentage of VA-guaranteed loans are held by small entities. For these reasons, this proposed regulatory amendment will not significantly affect small entites. Pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

The Administrator has also determined that this proposed regulatory amendment is not a "major rule" within the meaning of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more, and will not cause a major increase in costs or prices for consumers or individual industries; nor will it have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

**List of Subjects in 38 CFR Part 36**

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

This proposed regulatory amendment is proposed under the authority granted the Administrator by sections 210(c), 1816(c)(1)(D), and 1820 of title 38, United States Code.

Approved: April 21, 1987.

**Thomas K. Turnage,**

*Administrator.*

38 CFR Part 36, *Loan Guaranty*, is proposed to be amended as follows:

**PART 36—[AMENDED]**

1. The authority citation for §§ 36.4300 through 36.4375 continues to read:

**Authority:** Section 36.3400 through 36.4375 insured under 72 stat. 1114 (38 U.S.C. 210)

2. In § 36.4319, the first sentence of paragraph (f) is revised to read as follows:

**§ 36.4319 Legal proceedings.**

* * * * * *

(f) If following a default the holder does not begin appropriate action within 30 days after requested in writing by the Administrator to do so, or does not prosecute such action with reasonable diligence, the Administrator may at his option intervene in, or begin and prosecute to completion any action or proceeding, in his name or in the name of the holder, which the Administrator deems necessary or appropriate, and may fix a date beyond which no further charges may be included in the computation of the guaranty claim or an insured loss. * * *

[FR Doc. 87-11147 Filed 5-14-87; 8:45 am]

BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[FRL 3201-9]**

**Approval and Promulgation of Implementation Plans; Seven Districts in California**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This notice proposes to approve revisions to the California State Implementation (SIP) concerning the Bay Area Air Quality Management District (AQMD), the Kern County Air Pollution Control District (APCD), the Sacramento County APCD, the San Diego County APCD, the South Coast AQMD, the Stanislaus County APCD and the Yolo-Solano APCD. These revisions were submitted by the State of California on February 6, 1985 and April 12, 1985 and consist of regulations which control emissions of volatile organic compounds (VOC), nitrogen oxides (NOx) and sulfur oxides (SOx). EPA has evaluated each of the regulations

addressed in this notice and determined that they should be approved.

**DATES:** Comments must be submitted by June 15, 1987.

**ADDRESSES:** Comments should be sent to: Regional Administrator, Attn: Air Management Division, State Implementation Plan Section (A–2–3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Franciso, CA 94105.

Copies of the submitted regulations are available for public inspection during normal business hours at the EPA Region 9 office and at the following locations:

California Air Resources Board, SIP Section, 1131 "S" Street, Sacramento, CA 95812
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109
Kern County Air Pollution Control District, 1601 "H" Street, Suite 250, Bakersfield, CA 93301
Sacramento County Air Pollution Control District, 9323 Tech Center Drive, Suite 800, Sacramento, CA 95828
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123
Yolo-Solano Air Pollution Control District, 323 First Street, Suite 5, Woodland, CA 95695

**FOR FURTHER INFORMATION CONTACT:** Julie A. Rose, State Implementation Plan Section (A–2–3), Air Programs Branch, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105 (415) 974–8066, (FTS) 454–8066.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 6, 1985 and April 12, 1985, the State of California submitted two revisions to its SIP. These revisions consist of new or amended control regulations for volatile organic compounds (VOC) nitrogen oxides (NOx) and sulfur oxides (SOx). A brief description of each of the regulations by submittal date and district is provided below. The affected pollutant is also identified for each rule. EPA's evaluations and proposed action follow the description of the regulations.

## Description of Regulations

February 6, 1985 submittal

*Kern County APCD*

Rule 411.1—Steam Drive Well Vents (VOC)
Rule 414.5—Pump and Compressor Seals (VOC)

*Sacramento County APCD*

Rule 447—Organic Liquid Loading (VOC)

*South Coast AQMD*

Rule 1105—Fluid Catalytic Cracking Units (SOx)
Rule 1110.1—Stationary Internal Combustion Engines (NOx)
Rule 1117—Glass Melting Furnances (NOx)
Rule 1128—Paper, Fabric and Film Coating (VOC)

*Yolo-Solano APCD*

Rule 2.21—Organic Liquid Transfer (VOC) (Paragraphs (a)(7)(a) and (a)(7))

April 12, 1985 submittal

*Bay Area AQMD*

Regulation 8, Rule 14—Coating Large Appliances (VOC)

*San Diego County APCD*

Rule 67.3—Coating Metal Parts and Products (VOC)
Rule 67.10—Kelp Processing and Bio-Polymer Manufacturing (VOC)

*South Coast AQMD*

Rule 1108—Cutback Asphalt (VOC)

*Stanislaus County APCD*

Rule 409.4—Coating of Metal Parts and Products (VOC)

## EPA's Evaluation

EPA has evaluated the above rules for consistency with the Clean Air Act, EPA policy and 40 CFR Part 51. The Clean Air Act requires that areas which have not attained the National Ambient Air Quality Standards (NAAQS) adopt, at a minimum, reasonably available control technology (RACT) for all significant sources of emissions.

EPA has established RACT for several VOC categories through the issuance of Control Techniques Guidelines (CTGs). Areas which have not attained the NAAQS for ozone must, if there are sources within the district, implement control measures (rules) for those source categories which require RACT-level control at a minimum. Implementation of such rules satisfies the requirements of the Clean Air Act, 40 CFR Part 51 and EPA policy.

The following rules have been evaluated by EPA and have been preliminarily found to satisy the requirements of the CTGs: Sacramento County Rule 447, South Coast Rules 1108 and 1128, Bay Area AQMD Regulation 8, Rule 14, San Diego Rule 67.3, and Stanislaus Rule 409.4.

Yolo-Solano APCD submitted only subparagraphs (7)(a) and (7)(b) of paragraph (a) of Rule 2.21. EPA has evaluated these subparagraphs and has found them to be approvable, as they meet the requirements of the Clean Air Act, 40 CFR 51 and EPA policy and they strengthen the SIP. The existing federally-approved version of Rule 2.21 contains only paragraphs 1 through 5. Paragraph 6 has never been submitted to EPA as a SIP revision and is not a part of the SIP. In its enforcement actions, EPA may enforce only those portions of the rule which have been approved by EPA, in this case, paragraphs 1 through 5 and paragraph 7.

San Diego County APCD Rule 67.10 has been evaluated for consistency with CAA requirements, EPA policy and 40 CFR Part 51.

There is no corresponding CTG documents for this rule. Rule 67.10 was found to satisfy Clean Air Act requirements, EPA policy, is consistent with 40 CFR Part 51 and strengthens the SIP.

South Coast Rule 1105, Fluid Catalytic Cracking Units has been evaluated and found to be approvable. The only change to the rule consists of a 6-month delay in an interim compliance date. The revision does not change the final compliance date nor does it change the sulfur dioxide emission limitation.

The following rules were found to strengthen the SIP, and are necessary for attainment and maintenance of the NAAQS: South Coast Rules 1110.1 and 1117, and Kern County APCD Rules 411.1 and 414.5.

## EPA Proposed Action

EPA proposes to approve these rules under Section 110 of the Clean Air Act because they satisfy the requirements of the Clean Air Act, 40 CFR 51 and EPA policy, and/or they strengthen the SIP. EPA is not at this time taking action under Part D until we more fully evaluate the rules in relation to EPA's RACT requirements.

## Regulatory Process

Under 5 U.S.C. Section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

## List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7642.

Date: September 30, 1987.
John Wise,
*Acting Regional Administrator.*
[FR Doc. 87-11130 Filed 5-14-87; 8:45 am]
BILLING CODE 4310-08-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AA-850-85-4121-2410]

### 43 CFR Parts 3420 and 3450

### Competitive Leasing and Environment; Amendments to the Federal Coal Management Program

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rulemaking.

**SUMMARY:** This proposed rulemaking would clarify or modify those sections of the Federal coal management program regulations related to the 20 different coal unsuitability criteria and their application during the Bureau of Land Management's land use planning process. The proposed changes arise from the Office of Technology Assessment's study of the Federal coal management program's treatment of environmental issues, and from the Secretary of the Interior's decisions of February 1986 on the Federal coal leasing program.

**DATE:** Comments should be submitted by June 15, 1987. Comments postmarked or received after the above date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

**ADDRESS:** Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1800 C Street NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Carole Smith, (202) 343-6821, or Robert C. Bruce, (202) 343-8735.

**SUPPLEMENTARY INFORMATION:** As part of Department of the Interior Fiscal Year 1984 Appropriations Act (Pub. L. 98-63), the Congress directed the Office of Technology Assessment to assess whether the Federal coal management pogramn was ensuring the development of coal leases in an environmentally compatible manner. Among the issues studied and discussed in the resulting report, *Environmental Protection in the Federal Coal Leasing Program* (May 1984), was the Department of the Interior's application of the 20 coal unsuitability criteria during the land use planning process.

The Secretary of the Interior responded to the Office of Technology Assessment report on July 9, 1984, in a document entitled *Review of Planning Considerations in Federal Coal Leasing.* As part of that response, he directed the Bureau of Land Management to study the effects of the regulation changes made in 1982 and 1983 on the coal unsuitability criteria. The Bureau expanded the Secretary's directive to include an evaluation of the application of the criteria and a determination of the results. The resulting document, *A Review of the Unsuitability Criteria In Federal Coal Leasing* (March, 1985), was published for public comment and appeared in the February 1985 Draft Environmental Impact Statement to the 1979 Federal coal management program.

The final document included responses to the comments received and appeared as Appendix I in the Supplement to the Final Environmental Impact Statement to the Federal Coal Management Program in October 1985.

Based on the Environmental Impact Statement and the Secretarial Issue Document of January 1986, the Secretary of the Interior on February 21, 1986, made his decisions on 11 program-related issues, one of which is the subject of this proposed rulemaking. The Secretary also concurred on a number of other program issues, some of them related to the unsuitability criteria and their application during land use planning. This proposed rulemaking incorporates these Secretarial concurrences and responds to proposals made by the task force on unsuitability criteria that prepared the unsuitability report.

This proposed rulemaking would amend §§ 3420.1-4(c) and 3420.1-6 to implement the Secretary of the Interior's decision on issue 3 of the Secretarial Issue Document. The Secretary decided that no new unsuitability criteria would be promulgated through the rulemaking process. Instead, the existing regulations would be revised to specify that such items as wetlands, riparian habitat, sole-source aquifers, reclaimability of lands, and lands adjacent to Class I air quality areas or to units of the National Park System would receive increased emphasis during the multiple use assessment screen of land use planning. (For a description of the coal screens and the land use planning process, see Chapter 2 of the Final Environmental Impact Statement Supplement to the Federal Coal Management Program.) This proposed rulemaking also would provide a stronger consultation process with other affected surface management agencies by requiring a joint determination during land use planning by the Bureau of Land Management and the other surface management agency(s) that the purposes and values of the other agency(s) are considered. Further, as part of this new consultation process, the final land use plan would identify the types of mitigation that might be required if the lands were found eligible for further consideration for coal leasing. This consultation process has already been established through a memorandum of understanding between the Bureau and the National Park Service. The public is requested to consider and comment on the question of whether the planning and program coordination provided in this proposed rulemaking could be implemented through a series of memoranda of understandings similar to that entered into by the Bureau and the Park Service. Copies of the memorandum discussed herein can be obtained by contacting the Washington Office of the Bureau.

The proposed rulemaking would modify § 3420.1-4(c)(3) of the existing regulations by adding additional items to be given increased emphasis during the multiple use assessment screen of land use planning. Section 3420.1-6 of the existing regulations would be amended to add a provision that the Bureau of Land Management and the other surface management agency(s) whose lands might be adversely affected by coal-related land use planning decisions must jointly determine that the Bureau's lands are acceptable for further consideration for Federal coal leasing.

The recommendations of the unsuitability criteria task force appear beginning on page III-33 of Appendix III of the Secretarial Issue Document. The recommendations are discussed later in this preamble in the order in which they appear in Appendix III. The first task force recommendation requiring an amendment to the existing regulations would be a reformatting of the existing unsuitability criteria regulations concerning application procedures as set out in §§ 3461.2 through 3461.5. The proposed reformatting would consolidate the procedural requirements found in those sections and move them to § 3420.1-4, which sets forth the general requirements for land use planning. This change should simplify the regulations by putting in one place all requirements for applying the four screens, one of which is the unsuitability criteria. However, this proposed rulemaking modifies the proposed reformatting. An effort to consolidate all

of the procedural requirements set forth in subpart 3461 into § 3420.1–4 resulted in an unwieldy text which unbalanced the paragraphs in the sections describing the other three coal screens, i.e., development potential, multiple use assessment, and surface owner consultation. The rewrite discussed above and the problems encountered resulted in the proposed rulemaking making changes based on an earlier task force recommendation, found in the review report but not in Appendix III. The recommendation was that the sections within subpart 3461 be reversed so that the procedures for applying the unsuitability criteria, now found at §§ 3461.2 through 3461.5, would appear in §§ 3461.1 through 3461.4, and the list of criteria, now found in § 3461.1 would be moved to § 3461.5.

The second task force recommendation is to define certain terms used within specific unsuitability criteria, i.e., "municipal watershed," "occupied dwelling," "church," "gravesite," "cultural property," and "cultural resource." The change was recommended by the task force because it wanted to assure consistency with the terms as they are defined in the regulations of the Office of Surface Mining Reclamation and Enforcement. Definitions for the terms "occupied dwelling" and "cemetery" are found in the Office of Surface Mining regulations at 30 CFR Chapter VII. The term "church" is covered in the Office of Surface Mining regulations under the definition of the term "community or institutional buildings." The other terms listed by the task force are not defined in the Office of Surface Mining regulations. The following terms recommended for definition are not used in any of the 20 coal unsuitability criteria: "cultural property," "cultural resource" and "gravesite." Because these terms are not used in any specific criterion, there is no need to include definitions of the terms in this proposed rulemaking. Criterion 17, in which the term "municipal watershed" is used, does not require a definition of that term since a "municipal watershed" is established when the surface management agency commits the lands for that purpose.

This proposed rulemaking would define only those terms found in the regulations of the Office of Surface Mining Reclamation and Enforcement by reference to those regulations within the specific criterion concerning the defined term. Detail as to how each unsuitability criterion is to be applied will be set out in manuals and handbooks.

A third task force recommendation was that the Bureau of Land Management should clarify several aspects of the existing coal management regulations as they relate to the application of any unsuitability criteria which are deferred during land use planning. One recommendation was to specify at what point in activity planning (either regional activity planning or lease-by-application activity planning) the deferred unsuitability criterion must be applied or the lands affected by the criterion dropped from further consideration for coal leasing. This proposed rulemaking would amend § 3461.3–1(b)(1) by adding a sentence providing that the application of Criterion 19 (alluvial valley floors) may be deferred until approval of the mining permit. The proposed rulemaking would require that any other unsuitability criteria deferred during land use planning be applied before the environmental analysis is completed for the lands being studied for possible Federal coal leasing.

The task force also recommended that § 3461.3–1(b)(1) be amended to require a public comment period on the application of any unsuitability criterion previously deferred during land use planning. This recommendation has been adopted by the proposed rulemaking by adding language at the end of the section specifying such a public comment period.

The task force recommended that the reference to the plan maintenance provisions at the end of § 3461.3–1(c) be deleted. Plan maintenance is discussed in § 1610.5–4 of the planning regulations, and its inclusion in these regulations was considered by the task force to be redundant. This proposed rulemaking would not change the existing language. While the retention of the language of § 3461.3–1(c) of the existing regulations may appear to be duplicative of the language in the Bureau of Land Management's land use planning regulations, the language serves a useful purpose by placing the public on notice that certain changes in unsuitability designations are considered plan maintenance activities.

All of the remaining task force recommendations concerned modifications of specific unsuitability criteria. The task force suggested that Criterion 2, Federal lands within rights-of-way or easements or within surface leases for commercial, industrial or other public purposes, be modified to add an exception. The exception would clarify that rights-of-way or easements granted after approval of the land use plan would be subject to being moved if the subsurface coal were later leased and mined. The proposed rulemaking has adopted this suggestion and would amend the exception at Criterion 2 in § 3461.1(b)(1) to make the suggested change.

The task force suggested that criteria 2 and 3 be rewritten so that only one of them addresses rights-of-way and easements, including public roads, and the other one addresses public buildings, cemeteries, churches and commercial, industrial and residential land uses and their associated buffers. According to the task force, the primary confusion in applying the two criteria comes from the fact that public roads are discussed in both of them.

A review of criteria 2 and 3 shows that the primary difference between them is not the subject matter of each of them, but whether the rights-of-way or easements are located on private or Federal lands. Criterion 2 concerns only those rights-of-way, easements or surface leases on Federal (public) lands. Criterion 3 concerns public roads, cemeteries, public buildings, churches and commerical, industrial and residential land use on all lands, whether public or private. In other words, Criterion 3 concerns the mandatory, nondiscretionary, unsuitability criteria listed in section 522(e) of the Surface Mining Control and Reclamation Act of 1977. As a result of the review of these two criteria, the proposed rulemaking has not adopted this recommendation.

The task force recommended that Criterion 5, Federal lands designated as Class I scenic areas, be rearranged so that the exception, which now appears as the second sentence in the description of the criterion, be moved so that it would appear in a separate entry as an exception to Criterion 5. The proposed rulemaking has adopted this recommendation and would make a change to § 3461.1(3)(1) of the existing regulations.

Another recommendation of the task force dealt with Criterion 7, which concerns publicly owned sites listed on the National Register of Historic Places, and suggested that the existing regulations be changed to include privately owned National Register sites. Criterion 7 was changed in December 1983 to be consistent with the Office of Surface Mining Reclamation and Enforcement regulations, which had been changed to specifically exclude privately owned sites. The Office of Surface Mining published a final rulemaking in the **Federal Register** of February 11, 1987 (52 FR 4244), that modifies its existing regulations to

exclude mining operations from the vicinity of National Register sites whether on public or private lands. This change resulted from an opinion of the United States District Court for the District of Columbia and from a petition for rulemaking filed by the Society of Professional Archeologists. Because the basis for the Bureau's existing provisions for Criterion 7 was for consistency with the regulations of the Office of Surface Mining, the proposed rulemaking would change the provisions of Criterion 7 to conform them to the final rulemaking issued by the Office of Surface Mining.

Another unsuitability task force recommendation is that Criterion 8 be modified by deleting Exception 1 as it appears in § 3461.1(h)(2) of the existing regulations. That exception allows "an area or site of regional or local significance only" to be further considered for surface coal mining operations with State concurrence. The task force concluded that the exception did not make any sense in its present form because a "national" site of regional or local significance only is difficult to envision. A review of the July 1979 Federal coal management regulations shows that this particular exception was placed in the regulations subject to its proving to be useful as part of the land use planning process (See A. Unsuitability Criteria, p. 46, and B. Issue Paper 1, Land Unsuitability Criteria, Volume 1 of the Secretarial Issue Document on the July 1979 Federal Coal Management Program). The task force concluded that in practice, those attempting to apply the criterion found it confusing and unusable. Therefore, the proposed rulemaking adopts the recommendation of the task force and deletes the exception.

The task force recommended that Criterion 9 be modified in two ways. Criterion 9 concerns Federal designated critical habitat and habitat determined by the Fish and Wildlife Service to be of essential value for threatened and endangered species. The task force recommended that the criterion be modified to include proposed threatened and endangered species and proposed critical habitat for these proposed species. The task force made these two recommendations after concluding that existing procedures are perceived as providing inadequate protection for proposed threatened and endangered species and their habitat. The task force could not find any specific examples, however, of any proposed threatened and endangered species being inadequately protected under existing procedure.

When the Fish and Wildlife Service proposes a species for listing as threatened and endangered, it must have evidence demonstrating the necessity for protecting that species under the Endangered Species Act. Section 7(a)(4) of that Act requires all Federal agencies, including the Bureau of Land Management, to confer with the Secretary of the Interior on any action likely to jeopardize the continued existence of any species proposed for listing as threatened and endangered. The Bureau currently confers with the Fish and Wildlife Service, the agency designated by the Secretary to carry out his/her responsibility under the Endangered Species Act, as part of the multiple use assessment screen during land use planning. In this screen, the proposed threatened and endangered species compete with other high priority species for protection, even though the Bureau has a responsibility to ensure the recovery of a species once it has been proposed for listing by the Fish and Wildlife Service. The result has been that treatment of proposed threatened and endangered species has been discretionary with the general management objectives established for individual species. The recommendation for treatment of proposed threatened and endangered species in the existing regulations was designed to achieve consistency of treatment for proposed species. This proposed rulemaking has adopted the recommendation of the task force on this point and would modify Criterion 9 in § 3461.1(i) to include proposed threatened and endangered species and their proposed critical habitat as unsuitable for further consideration for surface coal mining operations.

Criterion 15 as it appears in the existing regulations was the subject of two recommendations of the task force. Criterion 15 deals with Federal lands that are fish and wildlife habitat for resident species of high interest to the State and that are essential for maintaining these high priority wildlife species. The task force recommended that the criterion be amended to include protection for sensitive plants, and that the phrase "most critical" found in § 3461.1(o)(1)(ii) be changed to "crucial" to avoid confusion with the terminology used in connection with threatened and endangered species. The proposed rulemaking has adopted these recommended changes. Criterion 15 in its existing form covers game species of interest to a State because of the revenues generated from hunting licenses issued by the States for those species. Introducing sensitive plants into the criterion would change the criterion from what was originally intended and mix purposes. There is, however, no existing criterion for considering sensitive, that is, high interest, plants in the existing regulations. While the proposed rulemaking would include sensitive plants in Criterion 15, the public is specifically asked to comment on where, in the unsuitability criteria, to include a provision covering sensitive plants, as well as any nonregulatory process that might be used for ensuring that sensitive plants are given adequate consideration in coal land use planning.

A final task force recommendation was that Criterion 20 as it appears in § 3461.1(t)(1) of the existing regulations be expanded to allow Indian tribes, as well as State Governors, to recommend new unsuitability criteria to the Secretary of the Interior. The task force was of the view that this change to Criterion 20 would facilitate coordination with Indian tribes during land use planning. The proposed rulemaking has adopted this recommendation and would amend the existing regulations to allow Indian tribes to recommend specific unsuitability criteria to the Secretary, who would review the recommendation and either adopt it or not adopt it.

This proposed rulemaking also would make one change recommended by the task force report, but not found in Appendix H1 to the Secretarial Issue Document. The language contained in the exemption to Criterion 1 which refers to lands proposed for inclusion in the various land systems would be deleted. This language was inadvertently retained when Criterion 1 was changed in July 1982 to conform to the court decision in *Texaco and NCA v. Andrus*.

The principal author of this proposed rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

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The changes made by this proposed rulemaking may affect the acreage that the United States may ultimately offer for coal lease sale. However, the effect of the proposed changes on small entities will be no greater and no less than their effect on all other classes of potential lessees.

The information collection requirements for Group 3400 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned approval number 1004—0073.

**List of Subjects**

*43 CFR Part 3420*

Administrative practice and procedure, Coal, Government contracts, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

*43 CFR Part 3460*

Coal, Environmental protection, Government contracts, Mines, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351—359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521—531), the Department of Energy Organization Act (42 U.S.C. 7101 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Federal Coal Leasing Amendments Act, as amended (90 Stat. 1083—1092) and the Act of October 30, 1978 (92 Stat. 2073—2075), is is proposed to amend Parts 3420 and 3460, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Reguations as set forth below:

**PART 3420—[AMENDED]**

1. The authority citation for part 3420 continues to read:

Authority: 30 U.S.C. 181 et seq., 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; 42 U.S.C. 1701 et seq.; 43 U.S.C. 1701 et seq.; 15 U.S.C. 631–644.

**§ 3420.1–4 [Amended]**

2. Section 3420.1–4(e) is amended by revising paragraph (3) to read:

"(3) Multiple land use decisions shall be made which may eliminate additional coal deposits from further consideration for leasing to protect other resource values and land uses that are locally, regionally or nationally important or unique and that are not included in the unsuitability criteria discussed in paragraph (e) of this section. Such values and uses include, but are not limited to, those identified in section 522(a)(3) of the Surface Mining Reclamation and Control Act of 1977 and as defined in 30 CFR 762.5. In making these multiple use decisions, the Bureau of Land Management or the surface management agency conducting the land use planning shall place particular emphasis on protecting the following: air and water quality; wetlands, riparian areas and sole-source aquifers; the Federal lands which, if leased, would adversely impact units of the National Park System, the National Wildlife Refuge System, the National System of Trails, and the National Wild and Scenic Rivers System."

3. Section 3420.1–6 is revised to read:

**§ 3420.1–6 Consultation with Federal surface management agencies.**

Where a Federal surface management agency other than the Bureau of Land Management administers limited areas overlying Federal coal within the boundaries of a comprehensive land use plan or land use analysis being prepared by the Bureau of Land Management, or where the Bureau of Land Management manages lands on which coal development may impact land units of other Federal agencies, the Bureau of Land Management shall consult with the other agency to jointly determine the acceptability for further consideration for leasing of the potentially impacted lands the other agency administers or lands managed by the Bureau of Land Management that may impact lands of another agency.

**PART 3460—[AMENDED]**

4. The authority citation for part 3460 continues to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 40 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; 43 U.S.C. 1701 et seq.; unless otherwise noted.

5. Sections 3461.2 through 3461.5 are renumbered §§ 3461.1 through 3461.4 and § 3461.1 is renumbered § 3461.5 and is amended by:

A. Amending paragraph (a)(3) by removing the last sentence of that paragraph in its entirety;

B. Amending paragraph (b)(2) by removing the period at the end of subparagraph (v) and replacing it with a semicolon and the word "or" and by adding a new subparagraph (vi) to read:

"(vi) The right-of-way or easement was granted after the approval of the land use plan in which case the right-of-way or easement would be subject to being moved, if the lands were later leased.";

C. Amending paragraph (c)(1) by adding immediately after the phrase *"Criterion Number 3."* the sentence "The terms used in this criterion have the meaning set out in the Office of Surface Mining Reclamation and Enforcement regulations at Chapter VII of Title 30 of the Code of Federal Regulations.";

D. Revising paragraph (e) to read:

"(e)(1) *Criterion Number 5.* Scenic Federal lands designated by visual resource management analysis as Class I (an areas of outstanding scenic quality or high visual sensitivity) but not currently on the National Register of Natural Landmarks shall be considered unsuitable.

(2) *Exception.* A lease may be issued if the surface management agency determines that surface coal mining operations will not significantly diminish or adversely affect the scenic quality of the designated area.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator has made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977, or which include operations on which a permit has been issued."

E. Amending paragraph (g)(1) by removing from where it appears the phrase "All publicly owned places on Federal lands which are included" and replacing it with the phrase "All publicly or privately owned places which are included";

F. Amending paragraph (h)(2) by removing subparagraph (i) in its entirety and be renumbering subparagraphs (ii) and (iii) as subparagraphs (i) and (ii), respectively;

G. Amending paragraph (i)(1) by removing from where it appears the phrase "Federally designated critical habitat for threatened or endangered animal and plant species, and habitat" and replacing it with the phrase "Federally designated critical habitat for listed threatened or endangered plant and animal species, and habitat proposed to be designated as critical for listed threated or endangered plant and animal species or species proposed for listing, and habitat";

H. Revising paragraph (o)(1) to read:

"(o)(1) *Criteron Number 15.* Federal lands which the surface management agency and the state jointly agree are habitat for resident species of fish, wildlife and plants of high interest to the state and which are essential for maintaining these priority wildlife and plant species shall be considered

unsuitable. Examples of such lands which serve a critical function for the species involved include:

(i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;

"(ii) Winter ranges crucial for deer, antelope, and elk;

"(iii) Migration corridor for elk; and

"(iv) Extremes of range for plant species."; and

I. Amending paragraph (t) by:

(1) Revising subparagraph (1)(i) to read:

"(i) Proposed by the state or Indian tribe located in the planning area, and"; and

(2) Amending subparagraph (2)(ii) by removing from where is appears the phrase "the state, the surface management agency" and replacing it with the phrase "the state or affected Indian tribe, the surface management agency".

6. Section 3461.2–1(b)(1), formerly § 2461.3–1, is revised to read:

"(b)(1) The authorized officer shall make his/her assessment on the best available data that can be obtained given the time and resources available to prepare the plan. The comprehensive land use plan or land use analysis shall include an indication of the adequacy and reliability of the data involved. Where either a criterion or exception (when under paragraph (a) of this section the authorized officer decides that application of an exception is appropriate) cannot be applied during the land use planning process because of inadequate or unreliable data, the plan or analysis shall discuss the reasons therefor and disclose when the data needed to make an assessment with reasonable certainty would be generated. In the case of Criterion 19, application shall be made before approval of the mining permit. In the case of other deferred criteria, application shall be made prior to finalizing the environmental analysis for the area being studied for coal leasing. The authorized officer shall make every effort within the time and resources available to collect adequate and reliable data which would permit the application of Criterion 19 in the land use or activity planning process. When those data are obtained, the authorized officer shall make public his/her assessment on the application of the criterion or, if appropriate, the exception and the reasons therefor and allow opportunity for public comment on the adequacy of the application as required by paragraph (a)(2) of this section."

J. Steven Griles,

*Assistant Secretary of the Interior.*

March 6, 1987.

[FR Doc. 87–10968 Filed 5–14–87; 8:45 am]

BILLING CODE 4310–84–M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 586

[Docket No. 87–6]

### Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

**AGENCY:** Federal Maritime Commission.

**ACTION:** Proposed Rule; Extension of Time to Comment.

**SUMMARY:** The Federal Maritime Commission is extending until July 3, 1987, the period of filing comments in this proceeding.

**DATES:** Comments due on or before July 3, 1987.

**ADDRESS:** Send Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this proceeding by Notice published in the **Federal Register** on April 13, 1987 ("April Notice") (52 FR 11832) to address apparent conditions unfavorable to shipping the United States-Peru trade ("the Trade") pursuant to section 19(1)(b) of the Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876. Comments on the proposed rule are presently due May 13, 1987. Three Peruvian-flag carriers, Compania Peruana de Vapores, Naviera Neptuno, S.A., and Emprea Naviera Santa, S.A., ("Petitioners") have now jointly filed a petition to extend the time for comments "until July 1, 1987, or a date not earlier than fourteen (14) days after the promulgation of regulations by the Government of Peru" to implement a Memorandum of Understanding ("MOU") reached between the Government of Peru and the Government of the United States on May 1, 1987. Petitioners contend that conditions in the Trade will be directly affected by the regulations issued pursuant to the MOU and, therefore, any comments submitted in this proceeding should consider and address the regulations and their effect on conditions in the Trade.

The MOU, which is attached to the Petition, states that Peruvian authorities will, upon application from third-flag vessel operators, grant renewable two-year authorizations for free access to the Trade. The MOU states further that consistent with the principle of reciprocity, these authorizations may be denied to third-flag vessel operators whose countries deny Peruvian operators access to their cross-trades. Finally, the MOU provides that within forty-five days of its signing on May 1, 1987, the Government of Peru will promulgate "pertinent regulations" pertaining to the access of third-flag vessels to the Trade.

The section 19 action proposed by the April Notice is intended to address apparent conditions unfavorable to shipping in the Trade resulting from burdens imposed by the Government of Peru on non-Peruvian-flag carriers, which burdens are not experienced by Peruvian-flag carriers. The MOU appears to be a significant development which may be expected to affect access of non-Peruvian-flag carriers to the Trade. For this reason, the Commission believes it appropriate to extend the time for comments on the proposed rule in order to obtain the views of interested parties on this recent development.

Therefore, the time within which interested parties may file comments in this proceeding is extended to July 3, 1987. In addition to the matters previously set forth in the April Notice, such comments may address the Memorandum of Understanding and any regulations promulgated by the Government of Peru pursuant thereto.

By the Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87–11016 Filed 5–14–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 67

[CC Docket Nos. 78–72 and 80–286; FCC 87J–2]

### Common Carrier Services; Allocation of Costs Between the State and Interstate Jurisdictions

**AGENCY:** Federal Communications Commission; Federal-State Joint Board.

**ACTION:** Recommended Decision and Order.

**SUMMARY:** As a result of AT&Ts intention to assume the billing and collecting functions from the local exchange carriers, this action recommends changing the Allocation method for revenue Accounting Expenses.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael Wilson or Gary Seigel, Accounting and Audits Division, Common Carrier Bureau, (202) 632-7500.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal-State Joint Board's *Recommended Decision and Order*, MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, adopted March 12, 1987, released April 9, 1987. The full text of this *Recommended Decision and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractors, International Transcription Service. (202 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**Summary of Recommended Decision and Order**

1. The American Telephone and Telegraph Company (AT&T) has stated its intention to discontinue subscribing to a portion of the interexchange billing and collecting services offered by the local exchange carriers (LECs). AT&T is currently the only interexchange carrier (IC) generating significant amounts of billing and collecting revenues for the LECs. The Federal-State Joint Board was concerned that this assumption of the billing and collecting function by AT&T might have an impact on the state and interestate revenue requirements for revenue accounting expense. Therefore, the Joint Board sought comment and data on proposed amendments to Part 67 of the Commission's rules to change the manner in which the revenue accounting expenses in Account 662, Accounting Department Expense, are separated between the state and interstate jurisdictions.[1]

2. After reviewing the comments and on further analysis, the Joint Board recommended that the revenue accounting expenses in Account 662, Accounting Department Expense, for each study area, be segregated into the following categories based on an analysis of job functions: (1) Message Processing Expense; (2) Other Billing and Collecting Expense; and (3) Carrier Access Charge Billing and Collecting Expense. The Joint Board recommended that the Message Processing Expense category be divided into Toll Ticket Processing Expense and Local Message Processing Expense based on the relative number of toll and local messages. Those expenses apportioned to the Toll Ticket Processing Expense subcategory would be allocated between the jurisdictions based on the relative number of state and interstate toll messages. This is the same separations procedure currently used for the uncombined categories of Local Message Processing Expense and Toll Message Processing Expense. The Joint Board suggested that the Other Billing and Collecting Expense category be allocated on the basis of the proportion of users billed for interstate services adjusted to reflect any reduction in the number of interstate users billed by the LECs as AT&T discontinues subscribing to the billing and collecting services offered by the LECs. The Joint Board's further suggested that, for LECs, the allocation to the interstate jurisdiction, for the Other Billing and Collecting Expense category, be limited to a maximum of 33 percent and a minimum of 5 percent. For the Carrier Access Charge Billing and Collecting Expense, the Joint Board recommended retention of the current procedures which assigns all such expense to the interstate jurisdiction if there are no state access charges assessed; if state access charges, other than subscriber line access charges, are assessed, one-half of such expense will be allocated to the interstate jurisdiction and one-half to the state jurisdiction.

3. The Joint Board found that the current procedures for the Message Processing Expense the Carrier Access Charge Billing and Collecting Expense categories provide sound allocation methods and do not require the carriers to conduct additional usage studies. Therefore, the Joint Board recommended the procedures for allocating these categories be left intact. The Joint Board recommended that the Other Billing and Collecting category be changed from the current procedures to allow jurisdictional separations to reflect any reduction in the number of interstate users billed by the LECs as AT&T discontinues subscribing to the billing and collecting services offered by the LECs. The Joint Board stated that assignment of the Other Billing and Collecting category should reflect the three basic services for which the LECs render bills: local, state toll and interstate toll. Therefore, the maximum interstate assignment would be 33 percent of total costs in the Other Billing and Collecting Expense category. As AT&T begins performing its own billing and collecting functions, the 33 percent assignment to the interstate jurisdiction would be adjusted accordingly. The Joint Board recommended a minimum 5 percent assignment of the Other Billing and Collecting Expense category to the interstate jurisdiction to reflect the LEC's cost of billing all users for the federal subscriber line charge. The Joint Board recommended that these new procedures become effective January 1, 1988.

Federal Communications Commission.
**William J. Tricarico,**
*Secretary.*

[FR Doc. 87-11103 Filed 5-14-87; 8:45 am]
BILLING CODE 6712-01-M

[1] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, FCC 86J-3, released July 25, 1986.

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**47 CFR Part 80**

**[General Docket 79-144; FCC 87-64]**

## Protection From Potentially Hazardous Environmental Radiofrequency Radiation From Ship Earth Stations and Ship Radar Stations

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Proposed rule.

**SUMMARY:** This item proposes to amend Part 80 of the Commission's Rules to establish rules for ship earth stations and ship radar stations to help prevent excessive human exposure to RF radiation from these facilities. This item follows the Commission's earlier *Report and Order* and *Further Notice of Proposed Rule Making* in this proceeding, and is a consequence of the Commission's responsibilities under the National Environmental Policy Act of 1969 to assess environmental impact of FCC-regulated facilities.

**DATES:** Comments are due on or before July 17, 1987, and Reply comments are due on or before August 17, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert F. Cleveland, Office of Engineering and Technology, FCC, telephone (202) 653-8169.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Third Notice of Proposed Rule Making (NPRM)*, General Docket 79–144, FCC 87–64, Adopted February 12, 1987, and Released May 8, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The collection of information requirement contained in this proposed rule has been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

**Summary of Third Notice of Proposed Rulemaking**

1. In the first *Report and Order* (50 FR 11151; 3/20/85) in this proceeding the Commission amended its rules in Part 1 implementing the National Environmental Policy Act of 1969 (NEPA). The amendment provided that potential human exposure to environmental RF radiation would be explicitly evaluated at the time of licensing or authorization of designated FCC-regulated services. At the same time, a *Further Notice of Proposed Rule Making* (50 FR 10814; 3/18/85) proposed that most other FCC-regulated services would be categorically excluded from such routine environmental evaluation.

2. In addition to our proposal for categorical exclusion, we also requested comment in the *Further Notice* on a second proposal to require environmental evaluation under Part 1 of the Rules for ship earth stations. This proposal was based on our tentative conclusion that these transmitters might cause excessive exposures to RF radiation. However, we concluded that additional information was needed before a final decision could be made.

3. The *Second Report and Order* in this docket (52 FR 13240; 4/22/87), adopted at the same time as this NPRM, amends Section 1.1307(b) of the FCC Rules and Regulations specifying that routine environmental evaluation, with regard to RF radiation exposure will only be required for services licensed or approved under the following Parts of the Rules: Part 5 (experimental radio), Part 25 (satellite communications), Part 73 (radio and television broadcast), Part 74, Subpart A (experimental broadcast), and Part 74, Subpart G (low power television). All other FCC-regulated services are categorically excluded from routine environmental evaluation for RF radiation outlined in Part 1.

6. We have now modified our original proposal concerning ship earth stations. Through this *NPRM*, we are proposing to amend Part 80 of the FCC Rules to add a requirement that both ship earth stations and ship radar stations not cause excessive exposure to RF radiation. We believe that these facilities could cause potentially hazardous environmental exposure to RF radiation. But we believe that it would be administratively impractical to require routine environmental evaluation of each and every application for these facilities at the time of licensing.

7. By amending Part 80 we would be satisfying the Commission's obligation under NEPA to ensure that these facilities do not cause excessive exposure, and, thus, routine environmental analysis at the time of licensing would not be necessary. Our original proposal had only targeted ship earth stations for evaluation of RF environmental radiation. However, comments received and our own analysis have suggested that ship radar stations should also be evaluated. We invite comment on this proposal.

8. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this action should not have significant impact on small entities. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

9. This item has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

**Ordering Clauses**

10. Accordingly, it is ordered that there is hereby instituted a *Third Notice of Proposed Rule Making* to amend Part 80 of the Commission's Rules and Regulations as set forth below. All interested persons may file comments on this specific proposal on or before July 17, 1987. Reply comments shall be filed on or before August 17, 1987. In accordance with § 1.1419 of the Commission's Rules, 47 CFR 1.1419, an original and five (5) copies of all filings shall be furnished to the Commission. Copies of comments and reply comments filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Room at 1919 M Street NW., Washington, DC 20554.

11. These actions are taken pursuant to the provisions of sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

**List of Subjects in 47 CFR Part 80**

Maritime services, Ship earth stations, Marine radar, Radiofrequency radiation.

**Proposed Rule Changes**

It is proposed to amend Part 80, Chapter I of Title 47 of the Code of Federal Regulations as follows:

## PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read:

**Authority:** Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

### Subpart C—Operating Requirements and Procedures Station Requirements—Ship Stations

Section 80.83 would be added to Subpart C as follows:

**§ 80.83 Protection from potentially hazardous RF radiation.**

Transmitters for ship earth stations and ship radar stations must be operated and installed in such a way that no person will be exposed to radiofrequency (RF) radiation in excess of the RF exposure guidelines specified in § 1.1307(b) of the Commission's Rules. Otherwise an Environmental Assessment, as defined in § 1.1311, must be filed at the time of application for a license.

* * * * *

### Subpart E—General Technical Standards

* * * * *

Section 80.227 would be added to Subpart E as follows:

**§ 80.227 Special requirements for protection from RF radiation.**

As part of the information provided with each such unit, manufacturers of transmitters for ship earth stations and ship radar stations must include

installation and operating instructions advising how to prevent human exposure to radiofrequency (RF) radiation in excess of the RF exposure guidelines specified in § 1.1307(b) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-11098 Filed 5-14-87; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 684, 681, 680, and 685

### Bottomfish and Seamount Groundfish Fisheries, Western Pacific Spiny Lobster Fisheries, Precious Corals, and Pelagic Fisheries; Change of Public Hearing Date

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Change of date for a public hearing.

**SUMMARY:** The Western Pacific Fishery Management Council scheduled public hearings on amendments to several fishery management plans, published May 8, 1987 (52 FR 17422), and by this notice is changing the date of the hearing scheduled to be held in Guam. All other information remains the same.

**DATE:** Hearing date May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, Hawaii 96813, 808-523-1368, (FTS) 546-8923..

The hearing previously scheduled for May 14, 1987, will be held May 20, 1987, 7:00 p.m., Guam Legislative Session Hall, 165 Chalan Santo Papa, Juan Pablo Des (John Paul II Street), Agana, Guam.

Dated: May 12, 1987.

Richard B. Roe,

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-11200 Filed 5-14-87; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 94
Friday, May 15, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Special Supplemental Food Program for Women, Infants and Children; Poverty Income Guidelines

**AGENCY:** Food and Nutrition, USDA.

**ACTION:** Notice.

**SUMMARY:** The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Food Program for Women, Infants and Children (WIC Program). These poverty income guidelines are to be used in conjunction with the WIC Regulations, 7 CFR Part 246.

**EFFECTIVE DATE:** July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, Park Officer Center, Alexandria, Virginia 22302. (703) 756–3730.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under Executive Order 12291, and has been determined to be *not major*. The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Nor will this action have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that the action will not have a significant economic impact on a substantial number of small entities. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.577 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112).

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) requires the Secretary to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9 of the National School Lunch Act (42 U.S.C. 1758). Under section 9, the income limit for reduced-price school meals is 185 percent of the Federal poverty income guidelines, as adjusted.

Section 9 also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 1987 was published by the Department of Health and Human Services (DHHS) in the Federal Register for February 20, 1987 at 52 FR 5340. The guidelines published by DHHS are referred to as the poverty income guidelines.

The Department published final WIC regulations on February 13, 1985, at 50 FR 6108. Section 246.7(c) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines established under section 9 of the National School Lunch Act for reduced-price school meals, or are less than 100 percent of the Federal poverty income guidelines.

Consistent with the method used to compute eligibility guidelines for reduced-priced meals under the National School Lunch Program, the poverty income guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC poverty income limits by household size for the period July 1, 1987 to June 30, 1988. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

[Effective July 1, 1987—June 30, 1988]

| Family size | Annual poverty income guidelines (PIG) | Annual FNS income guidelines for reduced-price lunches (185% of PIG) |
|---|---|---|
| 48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam: | | |
| 1 | 5,508 | 10,175 |
| 2 | 7,400 | 13,690 |
| 3 | 9,292 | 17,205 |
| 4 | 11,200 | 20,720 |
| 5 | 13,100 | 24,235 |
| 6 | 15,008 | 27,750 |
| 7 | 16,908 | 31,265 |
| 8 | 18,808 | 34,780 |
| For each additional family member add | 1,900 | 3,515 |
| Alaska: | | |
| 1 | 6,880 | 12,721 |
| 2 | 9,240 | 17,094 |
| 3 | 11,599 | 21,457 |
| 4 | 14,066 | 25,996 |
| 5 | 16,360 | 30,303 |
| 6 | 18,799 | 34,798 |
| 7 | 21,140 | 39,109 |
| 8 | 23,520 | 43,512 |
| For each additional family member add | 2,380 | 4,403 |
| Hawaii: | | |
| 1 | 6,310 | 11,674 |
| 2 | 8,500 | 15,725 |
| 3 | 10,690 | 19,777 |
| 4 | 12,880 | 23,828 |
| 5 | 15,070 | 27,880 |
| 6 | 17,260 | 31,931 |
| 7 | 19,450 | 35,983 |
| 8 | 21,640 | 40,034 |
| For each additional family member add | 2,190 | 4,052 |

**Authority:** (42 U.S.C. 1786).

Dated: May 11, 1987.

S. Anna Kondratas,

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 87-11095 Filed 5-14-87; 8:45 am]

BILLING CODE 3401-30-M

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### Public Advisory Committee for Trademark Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 5:00 p.m. on June 2, 1987, at the U.S. Patent and Trademark Office in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Automation Activities
(2) Financial Reporting
(3) Quality of the Registration Process
(4) Intent to Use Legislation

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

For further information, contact Ellen J. Seeherman, Office of the Assistant Commissioner for Trademarks, Room CP3-11C17, Patent and Trademark Office, Washington, DC 20231. Telephone: 703-557-7464.

Dated: May 8, 1987.

Approved:

Donald J. Quigg,

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 87-11121 Filed 5-14-87; 8:45 am]

BILLING CODE 3510-16-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber Silk Blend and Other Vegetable Fiber Textiles and Textile Products, Produced or Manufactured in Sri Lanka

May 12, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 1, 1987. For further information contact Kim Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 682-3075. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 as amended between the Governments of the United States and Sri Lanka establishes specific restraint limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 331, 333/633, 334, 335, 336, 337, 338, 339, 340, 341, 342, 345/845, 347, 348, 350, 351, 363, 369-S, 442, 445/446, 631, 634, 635, 636/836, 638/639/838, 640, 641, 642/842, 644, 645/646, 647 and 648, produced or manufactured in Sri Lanka and exported to the United States during the twelve-month period beginning on June 1, 1987 and extending through May 31, 1988. The levels for Categories 335, 336, 340, 341, 641 and 648 have been reduced to account for carryforward used in the previous agreement year.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textiles and textile products in the foregoing categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on June 1, 1987 and extending through May 31, 1988, in the excess of the designated levels of restraint.

A description of the textile categories in terms of T.S.U.S.A. Numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 12, 1987.

### Committee for the Implementation of Textile Agreements

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, between the Governments of the United States and Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on June 1, 1987 and extending through May 31, 1988, in excess of the indicated restraint limits:

| Category | 12-Mo. limit |
|---|---|
| 331 | 1,082,812 dozen pairs. |
| 333/633 | 30,740 dozen. |
| 334 | 211,029 dozen. |
| 335 | 145,904 dozen. |
| 336 | 67,416 dozen. |
| 337 | 119,102 dozen. |
| 338 | 260,675 dozen. |
| 339 | 449,442 dozen of which not more than 335,000 dozen shall be in other than tank tops and T-shirts.[1]. |
| 340 | 524,984 dozen. |
| 341 | 525,256 dozen. |
| 342 | 202,248 dozen. |
| 345/845 | 95,400 dozen. |
| 347 | 417,167 dozen. |
| 348 | 309,318 dozen. |
| 350 | 47,700 dozen. |
| 351 | 111,300 dozen. |
| 363 | 6,741,600 numbers. |
| 369–S [2] | 951,622 pounds. |
| 442 | 12,120 dozen. |
| 445/446 | 94,003 dozen. |
| 631 | 328,244 dozen pairs. |
| 634 | 126,248 dozen. |
| 635 | 208,308 dozen. |
| 636/836 | 145,000 dozen. |
| 638/639/839 | 495,000 dozen. |
| 640 | 108,550 dozen. |
| 641 | 525,256 dozen. |
| 642/842 | 140,000 dozen. |
| 644 | 23,320 dozen. |
| 645/646 | 113,623 dozen of which not more than 75,749 dozen shall be in Category 646. |
| 647 | 398,578 dozen. |
| 648 | 178,853 dozen. |

[1] In Category 339, all TSUSA numbers except 384.0205, 384.0207, 384.0208, 384.0212, 384.0218, 384.0220, 384.0221, 384.2806, 384.2810, 384.2812, 384.2814, 384.2910, 384.2914 and 384.2915.

[2] In Category 369, only TSUSA number 366.2540.

In carrying out this directive, entries of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the foregoing categories, produced or manufactured in Sri Lanka, and exported during the control periods extending through May 31, 1987 shall, to the extent of any unfilled balances, be charged to the levels of restraint established for such goods during those periods. In the event the levels of restraint established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, which provide, in part, that (1) any specific limit and sublimit may be exceeded by designated percentages of the square yards equivalent total in any agreement period, provided that the amount of the increase is compensated for by an equivalent decrease in one or more other specific limits; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit, of which not more than 6 percent can be used for carryforward; however, carryover will not be available in the agreement period during which the specific limit is first established; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement, any of the adjustments referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11166 Filed 5-14-87; 8:45 am]

BILLING CODE 3510-DR-M

[Form ITA-37OP]

## Special Access Program CBI Export Declaration

May 12, 1987.

On October 20, 1986, a notice was published in the Federal Register (51 FR 37214) which announced the availability of the Special Access Program CBI Export Declaration (Form ITA-37OP).

The purpose of this notice is the advise the public that Form ITA-37OP has been revised. Orders for the revised form may be placed with the Superintendent of Documents, Government Printing Office, Washington, DC 20402-0325 (202/783-3238). The revised form will be sold for $29 per package of 100. Refer to stock number 003-009-00505-1. The earlier version will continue to be accepted until the supply is depleted.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11165 Filed 5-14-87; 8:45 am]

BILLING CODE 3510-DR-M

## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 18, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-9450. For information on embargoes and quota re-openings, please call (202) 377-3515.

### Background

A CITA directive dated June 25, 1986 (51 FR 23807) established limits for certain specified categories of cotton, wool and man-made fiber textile products within the Group II limit, including Category 639, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987. A further directive dated April 30, 1987, established limits for certain cotton and man-made fiber textile products, including Category 342/642, produced or manufactured in Indonesia and exported during the six-month period which began on January 1, 1987 and extends through June 30, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985 between the Government of the United States and Indonesia, special carryforward is being applied to the restraint limits established for Categories 639 and 342/642. This adjustment will reopen the limit for Category 639 which is currently embargoed.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44783), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 12, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
*Department of the Treasury, Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives of June 25, 1986 and April 30, 1987 from the Chairman, Committee for the Implementation of Textile Agreements, which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Indonesia and exported during the periods which began, in the case of Category 639, on July 1, 1986; and, in the case of Category 342/642, on January 1, 1987; and extend through June 30, 1987.

Effective on May 18, 1987, the directives of June 25, 1986 and April 30, 1987 are hereby amended to adjust the previously established restraint limits for categories 342/642 and 639 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended: [1]

| Category | Adjusted restraint limit [1] |
|---|---|
| 342/642 | 95,000 dozen. |
| 639 | 492,142 dozen. |

[1] The limits have not been adjusted to reflect any imports exported after June 30, 1986, in the case of Category 639, and December 31, 1986, in the case of Category 342/642.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11162 Filed 5-14-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) within the group limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

May 12, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 18, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

A CITA directive dated October 31, 1985 (50 FR 46152) established limits for certain specific categories of cotton, wool and man-made fiber textile products, including categories subject to specific limits (Group I) and categories not subject to specific limits (Group II), produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1985 and extended through June 30, 1986.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended, between the Governments of the United States and the Republic of Indonesia, swing is being applied to the restraint limits established for Categories 314, 315, 317, 341, 631-W, and 645/646 in Group I for the agreement year July 1, 1985 to June 30, 1986. As a result of swing applied to the above categories, the charges for the 1986-1987 period will be reduced by the amount of the increase to the adjusted restraint limits for Categories 314, 315, 317, 341, 631-W, and 645/646. These same amounts will be charged to the 1985-1986 limits for these categories. The restraint limits for Group I and Group II are being decreased for carryover from the 1985-1986 period, applied to the 1986-1987 period.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the previously established restraint limits at the designated levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 12, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
*Department of the Treasury,*
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of October 31, 1985 from the Chairman, Committee for the Implementation of Textile Agreements, which establishes restraint limits for certain cotton, wool, and man-made fiber textile products, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1985 and extended through June 30, 1986.

Effective on May 18, 1987, the directive of October 31, 1985 is hereby further amended to adjust the previously established restraint limits for the following categories and groups under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended, between the Governments of the United States and the Republic of Indonesia [1]:

| Category | Adjusted 12-mo. limit [1] |
|---|---|
| Group I | 219,571,403 square yards equivalent. |
| 314 | 14,980,000 square yards. |
| 315 | 17,013,000 square yards. |
| 317 | 10,700,000 square yards. |
| 341 | 448,000 dozen. |
| 631-W [2] | 895,500 dozen pairs. |
| 645/646 | 374,500 dozen. |
| Group II | 43,801,449 square yards equivalent. |

[1] The limits have not been adjusted to reflect any imports exported after June 30, 1986.

[2] In Category 631, only TSUSA numbers 704.3215, 704.8525, 704.8550 and 704.9000.

Also effective on May 18, 1987, you are directed to deduct the following charges

[1] The agreement provides, in part, that: (1) within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

made to the restraint limits established in the directive of June 25, 1986 for the period July 1, 1986 through June 30, 1987. These same amounts are to be charged to the limits established for the July 1, 1985–June 30, 1986 period, for goods which had been exported during that period.

| Category | Deduct/charge |
|---|---|
| 314 | 980,000 square yards. |
| 315 | 1,113,000 square yards. |
| 317 | 700,000 square yards. |
| 341 | 28,000 dozen. |
| 631–W | 45,500 dozen pairs. |
| 645/646 | 24,500 dozen. |

The Committee for the Implementation of Textile Agreement has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–11163 Filed 5–14–87; 8:45 am]

BILLING CODE 3510-DR-M

## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

May 12, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 18, 1987 For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

### Background

A CITA directive dated June 25, 1986 (51 FR 23807) establishes limits for certain specific categories of cotton, wool and man-made fiber textile products, including categories subject to specific limits (Group I) and categories not subject to specific limits (Group II) and categories not subject to specific limits (Group II) produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended, between the Governments of the United States and the Republic of Indonesia, swing is being applied to the restraint limits established for Categories 339, 341, 347/348, 351, 640, 641 and 645/646 in Group I and for Group II for the agreement year July 1, 1986 to June 30, 1987. The restraint limits for Groups I and II are being increased for carryover for the same period.

Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the previously established restraint limits at the designated levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622) July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULRES OF THE UNITED STATES ANNOTATED (1987).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

May 12, 1987.

Commissioner of Customs,

*Department of the Treasury, Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 25, 1986 from the Chairman, Committee for the Implementation of Textile Agreements, which establishes restraint limits for certain cotton, wool, and man-made fiber textile products, produced or manufactured in Indonesia and exported during the agreement year which began on July 1, 1986 and extends through June 30, 1987.

Effective on May 18, 1987, the directive of June 25, 1986 is hereby amended to adjust the previously established restraint limits for the following categories and groups under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25 and October 3, 1985, as amended between the Governments of the United States and the Republic of Indonesia: [1]

| Category | Adjusted 12-mo. limit [1] |
|---|---|
| Group I | 261,002,558 square yards equivalent. |
| 339 | 299,600 dozen. |
| 347/348 | 793,940 dozen. |
| 341 | 474,880 dozen. |
| 351 | 124,762 dozen. |
| 640 | 374,286 dozen. |
| 641 | 1,246,560 dozen. |
| 645/646 | 396,970 dozen. |
| Group II | 64,680,638 square yards equivalent. |

[1] The limits have not been adjusted to reflect any imports exported after June 30, 1986.

The Committee for the Implementation of Textile Agreement has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–11164 Filed 5–14–87 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Public Information Collection Requirement Submitted to OMB for Review.

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Numbers, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

**Extension**

Application for Uniformed Services Identification Cards, DD Form 1172

DD Form 1172 (0704–0020) is the form used by retired members, survivors, and other qualified persons to apply for the Uniformed Services Identification Card(s).

- Individuals.
- 45,000 respondents.
- 7,500 hours.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503; and, Mr. Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

**FOR FURTHER INFORMATION CONTACT:** A copy of the information collection proposal may be obtained from Mr. Robert L. Newhart, OASD(FM&P), Room 3D937, Pentagon, Washington, DC 20301–4000, telephone (202) 694–3089. This request is for an extension of an approved collection, and not for contract.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

May 11, 1987.

[FR Doc. 87–11118 Filed 5–14–87; 8:45 am]

BILLING CODE 3810–01–M

## DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Monday, 1 June 1987.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** David Slater, AGED Secretariat, 201 Varick Street, New York, NY 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

May 11, 1987.

[FR Doc. 87–11119 Filed 5–14–87; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Air Force

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Public Information Collection Requirement Submitted to OMB for Review.

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

**Extension**

DOD Working Dog Program (AFLC Form 4504) (OMB No. 0704–0048).

Prospective donors of DOD working dogs are required to provide information about their animals prior to acquisition by the DOD for training as a military working dog. It is necessary for the animal to meet acceptable standards for health, age, temperament, and breed prior to acceptance by the DOD.

Individuals

Responses—608.
Burden hours—304.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from Mr. James Tatum, CML, Lackland AFB TX 78236, telephone (512) 671–4291.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

May 11, 1987.

[FR Doc. 87–11120 Filed 5–14–87; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Navy

### Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Constrained Resources Task Force will meet May 28, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's approaches to maritime operations and readiness in the management of resources, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(b)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: May 18, 1987.

**Jane M. Virga,**

*Lieutenant, JAGC, U.S. Navy Reserve Federal Register Liaison Officer.*

[FR Doc. 87–11160 Filed 5–14–87; 8:45 am]

BILLING CODE 3810–AE–M

## Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Outer ASW Battle will meet on May 21 and 22, 1987. The meeting will be held at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8:30 A.M. and terminate at 4:30 P.M. on May 21; and commence at 8:30 A.M. and terminate at 3:00 P.M. on May 22, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to compare the elements of the Outer ASW Battle with the elements of the Outer Air Battle and determine if platforms and sensors can be coordinated to provide information to ASW forces; review and address command, control and communication aspects; review information received from sensor systems, and assess efforts in defensive systems. The agenda will include technical briefings and discussions related to the Outer Air Battle Study, sensor correlation and networking, intelligence support and Soviet concept of operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

**FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT:** Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 12, 1987.

Jane M. Virga,

*Lieutenant, JAGC, U.S. Navy Reserve Federal Register Liaison Officer.*

[FR Doc. 87–11161 Filed 5–14–87; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF ENERGY

## Conduct of Employees; Notice of Post-Employment Restriction Waiver

Section 207(f), Title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of subsection (a) of section 207, Title 18, United States Code, to permit a former employee with outstanding scientific or technological qualifications to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications, where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Charles W. Edington, formerly Associate Director of the Office of Health and Environmental Research, Department of Energy Office of Energy Research, has a unique combination of outstanding scientific qualifications in the field of biological science, including the study of radiation effects upon humans, and extensive experience in management of scientific research and development programs. I am further satisfied that it will serve the national interest to permit him, in his capacity as Principal Staff Officer and Deputy Associate Director for International Affairs of the Commission of Life Sciences of the National Research Council (National Academy of Sciences), to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to funding and operation of the Radiation Effects Research Foundation (RERF), a nonprofit organization that receives funding from the Department of Energy through the National Academy of Sciences. I am satisfied that these activities are in a scientific field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsection (a) of section 207, title 18, United States Code (in consulation with the Director of the Office of Government Ethics), with respect to contact by Dr. Edington with employees of the Department of Energy and other Government agencies to permit him to undertake the stated activities.

Dated: May 8, 1987.

John S. Herrington,

*Secretary of Energy.*

[FR Doc. 87–11190 Filed 5–14–87; 8:45 am]

BILLING CODE 6450-01-M

## Restricted Eligibility for Morgantown Energy Technology Center; Financial Assistance Award to West Virginia University (Cooperative Agreement)

**AGENCY:** Department of Energy (DOE), Morgantown Energy Technology Center.

**ACTION:** Notice of Restricted Eligibility for Cooperative Agreement Award.

**SUMMARY:** The Department of Energy (DOE), Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to restrict eligibility for the award of a cooperative agreement to the West Virginia University , Energy and Waste Research Center, Morgantown, West Virginia. This agreement will support the National Energy Policy Plan by promoting fluidization phenomena-related research that will expand the Nation's Fossil Energy Date Base with an emphasis on direct utilization, conversion, cleanup processes, and ancillary requirements.

The DOE has determined that restriction to West Virginia University is appropriate based on the following information:

- In 1984, the National Science Foundation (NSF) formally recognized WVU's predominant role in fluidization phenomena by sponsoring the establishment of an exclusive research center titled "NSF/WVU/Industry Cooperative Research Center on Fluidization and Fluid Particle Science." This exclusive recognition by NSF represents the culmination of 15 years of dedicated research and development activities and assists WVU in remaining at the forefront of research in fluidization technology and related areas.
- WVU has several individuals that are considered to be unquestionably predominant experts in fields relevant to the fluidization phenomena activity. Dr. H. Kono and Dr. R. C. Bailie along with a technically diverse team of specialist provides the strongest possible support and complement to the DOE activity.

The total estimated project cost for this cooperative agreement shall not exceed $2,500,000 for the proposed 3-year duration, of which the anticipated project cost to the Government is $2,375,000. The distribution and availability of funds is subject to budget limitations, satisfactory definition of WVU's research projects, results of research under the proposed cooperative agreement and other Government-sponsored research, and may deviate from the above projection.

**FOR FURTHER INFORMATION CONTACT:** Raymond R. Jarr, U.S. Department of

Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507-0880, Telephone: (304) 291-4068 or FTS 923-4068, Procurement Request No. 21-87MC24207.000.

Dated: May 4, 1987.

**Ronald E. Cone,**

*Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.*

[FR Doc. 87-11195 Filed 5-14-87; 8:45am]

BILLING CODE 6450-01-M

## Office of Assistant Secretary for International Affairs and Energy Emergencies

### Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-EU-918, for the sale of 5 milligrams of uranium-236 to the Department of Geology, Bedford New College, England, for use as tracer material for analysis of uranium in rock samples.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: May 11, 1987.

For the Department of Energy.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 87-11197 Filed 5-14-87; 8:45 am]

BILLING CODE 6450-01-M

### Proposed Subsequent Arrangement; European Atomic Energy and Sweden

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned-agreements involves approval of the following retransfer: RTD/SW(EU)-141, for the retransfer of 42,000 kilograms of uranium, enriched to 3.12 percent in the isotope uranium-235 from France to Sweden for fabrication of fuel for the Brunsbuettel power reactor in the Federal Republic of Germany.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: May 11, 1987.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 87-11198 Filed 5-14-87; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket Nos. ER87-416-000 et al.]**

### Arkansas Power & Light Company et al.; Electric Rate and Corporate Regulation Filings

May 11, 1987.

Take notice that the following filings have been made with the Commission:

**1. Arkansas Power & Light Company**

[Docket No. ER87-416-000]

Notice is hereby given that, effective the 1st day of May 1987, Rate Schedule FERC No. 74, effective date July 31, 1978 and filed with the Federal Energy Regulatory Commission by Arkansas Power & Light Company, is to be cancelled.

Notice of the proposed cancellation has been served upon the following:

Mr. John H. McDaniel, Manager, City Light & Water, P.O. Box 9, Paragould, Arkansas 72451-0009

Arkansas Public Service Commission, P.O. Box C-400, Little Rock, Arkansas 72203.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

**2. Boston Edison Company**

[Docket No. ER87-345-000]

Take notice that on May 1, 1987, Boston Edison Company (Edison) of Boston, Massachusetts, tendered for filing First Revised Sheet No. 2, First Revised Sheet No. 3 and Original Sheet No. 4 of the rate schedule tendered in the captioned proceeding on March 26, 1987. The revised sheets establish a $5,000 ceiling for the recovery of Boston Edison administrative and related costs, provide for recoveries over that amount by filing with the Commission under Section 205 of the Federal Power Act, insert a billing provision and eliminate the annual informational filing called for by the rate schedule as originally tendered to the Commission.

Edison did not change the effective date as requested in its March 26, 1987 tender to the Commission. Edison states that it has served copies of this rate filing upon each person served with the original rate filing.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

**3. Carolina Power and Light Company**

[Docket No. ER87-240-001]

Take notice that on April 30, 1987, in compliance with a prior Commission Order Carolina Power and Light Company (CP&L or Company) tendered for filing revised rates and cost statements, as well as revised testimony and exhibits, reflecting a 34 percent Federal income tax rate.

The Company states that it is filing an application for rehearing of the Commission's March 31, 1987, Order. Pending resolution of CP&L's application for rehearing, the Company is complying, under protest, with that Order's requirement concerning the 34 percent tax rate.

CP&L states that by making the filing, CP&L is not waiving any rights it may have with regard to its application for rehearing nor should this filing be construed in any way as evidence of the Company's agreement with, or acquiesence in, those aspects of the March 31, 1987, Order granting summary disposition and requiring the use of a 34 percent Federal income tax rate in the Company's cost of service and resultant rates.

The Company submits the following:

1. Revised Sheet Nos. 5 through 8b of CP&L's FPC Electric Tariff containing Resale Service Schedule RS87–1A for service to Electric Membership Corporations; Resale Service Schedule RS87–2A for service to Municipal customers, Partial Requirements Resale Service Schedule RS87–3A for service to partial requirements customers; and Resale Fuel Adjustment Clause Rider No. 87B, which is applicable to all three rate schedules.

2. Revised statements comparing the sales and revenues under the above-listed rate schedules and rider, by month and for the year, with the following:

a. For Period I, Rate Schedules RS87–1A, and RS87–2A, and RS87–3A, and accompanying rider, are compared with Rate Schedules RS85–1B, RS85–2B and RS85–3B and Resale Fuel Adjustment Clause Rider 85D; and

b. For Period II, Rate Schedules RS87–1A, RS87–2A and RS87–3A, and accompanying rider, are compared with Rate Schedules RS85–1B, RS85–2B, and RS85–3B and Resale Fuel Adjustment Clause Rider 85E.

3. Revised pages as required for revised Statements AK, BG and BK for Period I;

4. Revised pages as required for revised Statements, AA, AB, AC, AF, AG, AH, AK, AL, AN, AO, AP, AR, AT, AU, AV, AW, AY, BG, BJ, BK, and BL for Period II;

5. Supplemental workpapers; and

6. Supplemental testimony and exhibits.

Copies of this entire filing have been mailed to all persons included in the Commission's official Service List in this proceeding.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

**4. Cogeneration Coalition American, Inc.**

[Docket No. EL87–34–000]

Take notice that on April 28, 1987, the Cogeneration Coalition of America, Inc., ("the Coalition"), pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 and Rule 207 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.207, tendered for filing a petition requesting that the Commission initiate an expedited investigation nationwide into current state regulatory commission practices which act to eliminate the opportunity for valid competition among generators of electric energy and to limit the development of energy efficient alternatives to traditional sources of electric energy generation. The Coalition requests that the Commission exercise its authority under section 210(h) of PURPA to oversee the implementation of state regulatory programs.

The Coalition alleges that an investigation is necessitated by the recent approvals by various state regulatory commissions of filings by electric utilities to provide discount rates with cogeneration "buy-out"; features, rights of first refusal, or contractual limitations which are anti-competitive and discriminate against qualifying cogeneration facilities. The Coalition further alleges that approval of contracts, rates and tariff's containing such features, rights or limitations violates PURPA and is contrary to the intent of Congress in enacting this legislation.

Comment date: June 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

**5. Consolidated Edison Company of New York, Inc.**

[Docket No. ER87–420–000]

Take Notice That on May 1, 1987, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, an agreement to provide interruptible transmission service to Baltimore Gas and Electric Company ("BG&E"). The agreement provides for a charge of 2.6 mills per kilowatthour for transmission of power purchased by BG&E from the companies of the Northeast Utilities system.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's regualtions so that the Rate Schedule can be made effective as of November 18, 1986.

Con Edison states that a copy of this filing has been served by mail upon BG&E.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

**6. El Paso Electric Comapny**

[Docket Nos. ER86–366–006, ER86–366–007, ER86–366–008, ER86–366–012, ER86–366–015, ER86–638–001, ER86–638–002, ER86–638–003, ER86–638–004, ER86–638–005]

Take notice that on April 15, 1987, El Paso Electric Company (EPE) tendered for filing in these dockets a report of refunds pursuant to the Commission's order of March 30, 1987. EPE also tendered for filing in the same transmittal its proposed accounting for various charges and expenses listed in the Commission's order of March 30, 1987.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

**7. Gulf States Utilities Company**

[Docket No. ER85–538–000]

Take notice that on April 28, 1987, Cajun Electric Power Cooperative, Inc., tendered for filing its comments to Compliance Report filed by Gulf States Utilities Company.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this document.

**8. Niagara Mohawk Power Corporation**

[Docket No. ER87–418–000]

Take notice that Niagara Mohawk Power Corporation ("Niagara Mohawk") on May 1, 1987, tendered for filing an application to increase the Company's charges for transmission and delivery of power and energy for the New York Power Authority under Niagara Mohawk FERC Rate Schedule No. 138. The Power Authority customers affected are certain municipal and cooperatives located in Connecticut, Massachusetts, New Jersey, Ohio, Pennsylvania, and Rhode Island. Niagara Mohawk requests an effective date of July 1, 1987.

The proposed change implements a provision of the Settlement Agreement dated December 9, 1986 and approved by the Commission on March 13, 1987 in Docket ER86–354–001 requiring a filing reflecting the Tax Reform Act of 1986, plus other cost-of-service items.

Copies of the filing were served upon NYPA and the New York State Public Service Commission.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

**9. New England Power Company**

[Docket No. ER87–411–000]

Take notice that on May 1, 1987, New England Power Company (NEP) tendered for filing revisions which reduce the return on equity (ROE) components in the following rate schedules:

FERC Rate Schedule No. 324—Newport Electric Corporation
FERC Rate Schedule No. 325—Vermont Marble Company
FERC Rate Schedule No. 326—Green Mountain Power Company; Central Vermont Public Service Corp.; Vermont Electric Power Company
FERC Rate Schedule Nos. 327 and 328—Boston Edison Company.

NEP states that these rate schedules establish rates in accordance with a cost-of-service formula and provide for unit power sales or transmission support arrangements. NEP further states that the proposed revisions are in compliance with its contractual

obligation to seek adjustment of the currently effective fixed ROE components of these contracts in the event the FERC generic ROE differs from the fixed ROE by more than 1%.

NEP seeks waiver of the Commission's notice requirements so that the proposed reductions may become effective January 1, 1987, for Rate Nos. 324 and 325 and February 1, 1987 for the remainder of the rate schedules, in accordance with the terms of these agreements. NEP states that copies of this filing have been served on all customers under these rate schedules.

Comment date: May 28, 1987, in accordance with Standard Paragraph E at the end of this document.

**10. Florida Power Corporation**

[Docket No. ER87-365-000]

Take notice that on May 1, 1987 Florida Power Corporation (Florida Power) tendered for filing amended revisions to the capacity charges, reservation fees and energy adder for various interchange services provided by Florida Power pursuant to interchange contracts with Florida Power & Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Tampa Electric Company, and the Cities of Gainesville, Homestead, Key West, Lakeland, Lake Worth, New Smyrna Beach, St. Cloud, Starke, Tallahassee and Vero Beach, Florida. The interchange services which are affected by these revisions are Service Schedule B—Short Term Firm, current negotiated commitments under Service Schedule D—Long Term Firm, Service Schedule F—Assured Capacity and Energy, Service Schedule G—Backup Service, Service Schedule H—Reserve Service, and the Contract for Assured Capacity and Energy with Florida Power & Light Company. Florida Power states that the revised capacity charges, reservation fees, and energy adder were developed using the same methodology as used in the original filings.

Florida Power requests that the amended revised capacity charges, reservation fees and energy adder be made effective on May 1, 1987 through and including June 30, 1987 for the first period and July 1, 1987 for the second period. Florida Power therefore requests waiver of the sixty day notice requirement. According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**11. Puget Sound Power and Light Co.**

[Docket No. ER87-413-000]

Take notice that on April 10, 1987 Puget Sound Power and Light Co., ("Puget"), tendered for filing pursuant to 18 CFR 35.30(c) relating to the calculation of Average System Cost (ASC) for Puget for the Exchange Period effective October 1, 1986 through January 31, 1987. Puget states that this filing includes the ASC material demonstrating the Energy Cost Adjustment Clause adjustment reflecting Case No. U-86-111 data.

Puget submits copies of the following:

1. The ECAC ASC adjustment demonstrated on Schedule 4 of Appendix 1 to the Residential Purchase and Exchange Agreement, Contract No. DE-MS79-81BP90804 ("Agreement"), between Puget and BPA reflecting Puget's ASC schedules.

2. BPA Report dated April 14, 1987, pertaining to the above ASC filing.

Comment date: May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**12. Puget Sound Power & Light Company**

[Docket No. ER87-175-000]

Take notice that Puget Sound Power & Light Company ("Puget") on May 1, 1987 tendered for filing an amendment to its filing of February 24, 1987 for proposed changes in its Supplement No. 5 to the General Transfer Agreement between Puget and the United States of America, Department of Interior, acting by and through the Bonneville Power Administrator ("Bonneville"), Contract No. 14-03-110-11487. (Puget Sound Power & Light Company Supplement No. 10 to Rate Schedule FPC No. 16.)

The amendment to filing sets forth cost data supporting the levelized fixed charge rate and loss factor used in determining the proposed rate changes.

Copies of the amendment to filing were served upon Bonneville.

Comment date: May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**13. Southern California Edison Company**

[Docket No. ER87-377-000]

Take notice that, on April 10, 1987, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, the following agreement, which has been executed by Edison and The Metropolitan Water District of Southern California ("MWD" or "District"): District—Edison, 1987 Service Interchange Agreement between The Metropolitan Water District of Southern California and Southern California Edison Company.

The Service and Interchange Agreement provides for the integration of MWD's electric facilities associated with the providing of electric power for pumping on MWD's Colorado River Aqueduct, and the generating resources available to MWD from the Hoover Power Plant and the Parker Power Plant, with Edison's electric system; for Edison to provide MWD with firm transmission service; for Edison to provide to MWD, if requested by MWD, with energy for pumping Colorado River water; and for Edison to provide MWD with an amount of off-peak energy for water supply purposes.

Edison has requested a waiver of the 60-day notice period in order that the Service Interchange Agreement may become effective on June 1, 1987.

Copies of this filing were served upon the Public Utilities Commission of the State of California and The Metropolitan Water District of Southern California.

Comment date: May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**14. Union Electric Company**

[Docket No. ER87-419-000]

Take notice than on May 1, 1987, Union Electric Company (Union) tendered for filing proposed changes in its transmission service rate in Transmission Service Transaction 3 of the Transmission Service Agreement between Union Electric Company and the City of Malden, Missouri. The proposed changes would decrease revenues from jurisdictional sales and service by approximately $6,300, based on the 12 month period ending June 30, 1988.

Union states that the decrease in this rate is filed pursuant to a settlement which calls for the filing of an application for a change in the transmission service rate to Malden that will reflect the provisions of the Tax Reform Act of 1986, Pub. L. No. 99-514.

Copies of the filing were served upon the public utility's customer, the City of Malden, as well as the Missouri Public Service Commission.

Comment date: May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington.

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11135 Filed 5-14-87; 8:45 am]

BILLING CODE 6717-01-M

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[Project Nos. 10335-000 et al.]

**Hydroelectric Applications (Peter Renner et al.); Applications Filed With the Commission**

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No: 10335-000.

c. Date Filed: February 27, 1987.

d. Applicant: Peter Renner.

e. Name of Project: Cedarburg Nail Factory.

f. Location: Cedar Creek, Ozaukee County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Peter Renner, 626 N. Water St., Milwaukee, WI 53202, (414) 273–6637.

i. Comment Date: July 13, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing reinforced concrete gravity dam 80 feet long and 20 feet high; (2) an existing reservoir of 3.6-acre surface area and 35 acre-feet storage capacity at a normal maximum surface elevation of 756 feet msl; (3) an existing 90-foot-long, 8-foot-wide millrace, an existing mill building housing an existing 125-kW capacity turbine-generator (to be refurbished), and an existing 40-foot-long tailrace; (4) a proposed 240-volt transmission line 40 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 0.6 GWh. The net hydraulic head is 23 feet. Power would be sold to Cedarburg Light and Water Commission. The existing facilities are owned by the applicant. Applicant estimates that the cost of the work to be performed under the preliminary permit would be negligible.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

2 a. Type of Application: Major License, 5MW or Less.

b. Project No: 6459-001.

c. Date Filed: May 31, 1984.

d. Applicant: Southeastern Hydro-Power, Inc.

e. Name of Project: Tar River Water Power.

f. Location: On the Tar River in Nash County, North Carolina.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles B. Mierek, Southeastern Hydro-Power, Inc., Route 2, Box 302 A, One Clifton—Glendale Road, Spartanburg, SC 29302.

i. Comment Date: June 29, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing concrete dam, approximately 450 feet long and having a maximum height of 30 feet; (2) an existing reservoir with an estimated gross storage capacity of 8,000 acre-feet at normal pool elevation of 125 feet, m.s.l.; (3) a proposed intake structure 40 feet wide with three sets of trash racks, each 12 feet wide and 20 feet high; (4) a proposed steel penstock, 14 feet in diameter and 270 feet long, which will bifurcate at the proposed powerhouse into two branches each seven feet in diameter; (5) a proposed concrete powerhouse, 65 feet long and 31 feet wide containing two turbine/generating units with a total installed capacity of 2,100 kW; (6) a proposed tailrace; (7) a new substation; (8) two proposed 23-kV transmission lines, one about 1.7 miles long, the other about .9 miles long; and (9) appurtenant facilities. It is proposed to remove the Old Davenport Mill Dam, located about one mile downstream from the project, which is breached at several locations and in very poor condition. Applicant estimates that the average annual energy generation would be 8,100,000 kWh. Project power would be sold to Carolina Power and Light Company. The project dams are owned by the City of Rocky Mount, North Carolina.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: Major License (5 MW or Less).

b. Project No: 9868-000.

c. Date Filed: March 2, 1986.

d. Applicant: Spartan Mills.

e. Name of Project: John P. King Mill.

f. Location: Augusta Canal and Savannah River, Richmond County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Lester Eledge, Vice—President, Spartan Mills, P.O. Box 1668, Spartanburg, SC 29304, (803) 574–0211.

i. Comment Date: June 29, 1987.

j. Description of Project: The existing project consists of: (1) A headgate and intake structure, approximately 50 feet long and 15 feet high, located on the east bank of the City-owned Augusta Canal; (2) a concrete lined, masonry open flume headrace, approximately 200 feet long and 40 feet wide; (3) a powerhouse of brick and masonry construction, containing two generating units with a total capacity of 2,050 kW; (4) a tailrace excavated in rock, approximately 435 feet long and 30 feet wide; and (5) appurtenant facilities. The estimated average annual generation of 13.0 GWh is used by the applicant in its textile mill operation.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4 a. Type of Application: Preliminary Permit.

b. Project No: 10344-000.

c. Date Filed: March 9, 1987.

d. Applicant: Windsor Machinery Company, Inc.

e. Name of Project: Marlboro Mills.

f. Location: On the Lattintown Creek in Ulster County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Harry A. Terbush, RD3, Box 157, Orbit Lane, Hopewell Junction, NY 12533, (914) 897–4194.

i. Comment Date: June 26, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing gravity dam 20 feet high and 40 feet long at elevation 180 feet msl owned by William Lyons and Nancy Dalby; (2) a small existing impoundment with a normal surface elevation of 180 feet msl; (3) a proposed 24-inch-diameter penstock approximately 800 feet long; (4) a proposed 12-footwide and 12-foot-long powerhouse to contain one turbine/generator with an installed capacity of 300 kW with flows discharging directly into the stream; (5) an existing three phase 13.2-kV transmission line 300 feet long; and (6) appurtenant facilities. The estimated average annual energy produced by the project would be 984,500 kWh operating under a net hydraulic head of 175 feet. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $15,400.

k. Purpose of Project: Project power will be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, & D2.

5 a. Type of Application: Application for Relicense (5MW or Less).

b. Project No: 1510-001.

c. Date Filed: January 29, 1987.

d. Applicant: City of Kaukauna, Wisconsin.

e. Name of Project: Kaukauna Hydro Project.

f. Location: On the Fox River near Kaukauna, Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ernest J. Mullen, General Manager, Kaukauna Electric and Water Department, 777 Island Street, Kaukauna, WI 54130, (414) 766–5721.

i. Comment Date: July 10, 1987.

j. Description of Project: The existing project is owned and operated by the City of Kaukauna, and consists of: (1) The Kaukauna City Dam, approximately 2,860 feet long and 25 feet high, which is designed as an overflow spillway with the exception of 2 Tainter gate sections, one of which contains a single 30-foot-wide gate and the second of which contains two 30-foot-wide gates; (2) a 19-acre reservoir having a normal pool elevation of 629 msl; (3) a concrete powerhouse located north of the dam and containing two 2,400-kW generators each rated at a 22-foot head; (4) a downstream tailrace; (5) the 2.4-kV generator leads connected by 68 feet of cable to two 2.4/12-kV, 3,000-kVA transformer banks in the applicant's substation adjacent to the powerhouse; and (6) appurtenant facilities. The applicant estimates that the average annual generation is 34,577 MWh. All of the power generated is utilized by the City of Kaukauna.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6 a. Type of Application: Transfer of License (Minor).

b. Project No.: 1992–001.

c. Date Filed: January 16, 1987.

d. Applicant: Ken Willis.

e. Name of Project: Fire Mountain Lodge Hydropower Project.

f. Location: On Fern Springs Creek, within the Lassen National Forest, Tehama County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Transferor: Donald R. Townsend, P.O. Box 26, Mineral, CA 96063, (916) 595–3279

Transferee: Ken Willis, Five Mountain Lodge, Mill Creek, CA 96061, (916) 258–2938

i. Comment Date: June 22, 1987.

j. Description of Proposed Transfer of Project: The applicant requests the transfer of the license from Mr. Donald R. Townsend, licensee, since the applicant has purchased the Fire Mountain Project. The project has been completed and is operational. It generates 45 kW for private use purposes. The transferee, Ken Willis, is a resident of the State of California and will comply with all the applicable laws of the State of California as required by section 9(b) of the Federal Power Act.

k. This notice also consists of the following standard paragraphs: B and C.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 10233–000.

c. Date Filed: January 7, 1987.

d. Applicant: Klamath Hydroelectric Company.

e. Name of Project: Klamath Pumped Storage.

f. Location: On U.S. Bureau of Reclamation irrigation canal, in Klamath County, Oregon near the town of Malin.

T.40S., R.13E.,
Sec. 31, SW¼ of NW¼, SW¼, S½ of SE ¼.
T.41S., R.13E.,
Sec. 6
Sec. 7, NE¼ of NW¼, E½;
Sec. 8, SW ¼ of SW ¼;
Sec. 17, W ½ of NW ¼; W ½ of SW ¼; SE ½ of SW¼.
Sec. 18, NE ¼ of NE ¼.
T.41S., R.12E.,
Sec. 1;
Sec. 2;
Sec. 11;
Sec. 12.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bart O'Keeffe, Mutual Energy Company, Inc., P.O. Box 60565, Sacramento, CA 95860, (916) 971–3717.

i. Comment Date: July 13, 1987.

j. Description of Project: The proposed pumped storage project would consist of: (1) A 100-foot-high, 2,000-foot-long earth dam; (2) the Pope Reservoir enlarged to have a surface area of 150 acres, a storage capacity of 10,500 acre-feet at elevation 5,300 feet m.s.l.; (3) an intake structure; (4) a 20-foot-diameter power tunnel consisting of a 1,160-foot-high vertical section from the intake to elevation 4,250 feet and an 8,500-foot-long horizontal section extending to the powerhouse; (5) a powerhouse containing four generating units with a total installed capacity of 200 MW, producing approximately an average annual energy output of 600,000 MWh; (6) a 90-foot-high, 6,000-foot-long earth dam creating; (7) a 210-acre Lower Reservoir at the foot of Bryant Mountain with a storage capacity of 10,500-acre-feet at elevation 4,200 feet m.s.l.; (8) a 36-inch-diameter, 2-mile-long pipeline extending from the pumping plant to the Lower Reservoir; (9) a pumping plant located on the "D" canal; (10) a 3-mile-long transmission line tying into a Pacific Southwest Intertie at the Malin substation. No new access road will be needed to conduct the studies.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $1,000,000.

The proposed project would be located on lands under the administration of the U.S. Bureau of Land Management.

k. Purpose of Project: Project power would be sold to California private utility companies or other purchasers.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 10325–000.

c. Date Filed: February 17, 1987.

d. Applicant: Draper Irrigation Company.

e. Name of Project: Big Willow Creek Water Treatment Plant Supply Penstock Project.

f. Location: On Big Willow Creek, near Draper, in Salt Lake County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person:

Noel H. Ennis, President, Draper Irrigation Company, 1201 East 13200 South, Draper, UT 84020, (801) 571–1436

Alden C. Robinson, P.E., Sunrise Engineering, Inc., P.O. Box 188, Fillmore, UT 84631, (801) 743–6151

i. Comment Date: July 13, 1987.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 30-foot-long concrete diversion dam across Big Willow Creek; (2) a 12-inch-diameter, 6,000-foot-long penstock; (3) a powerhouse containing a single turbine-generator unit with a rated capacity of 300 kW, operating under a head of 855 feet and producing an estimated annual generation of 1,645,329 kWh; and (4) a 50-foot-long, 12.5-kV transmission line interconnecting the project to an existing Utah Power and Light Company line. The proposed project would be located in Sections 22, 23, and 26, Township 3 South, Range 1 East, SLB&M, Salt Lake County, Utah.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

l. The applicant estimates the cost of the work to be performed under the preliminary permit would be $7,500.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10334–000.

c. Date Filed: February 25, 1987.

d. Applicant: Warren T. Jacobson.

e. Name of Project: Boulder Creek No. 2 Project.

f. Location: On Boulder Creek in Garfield County, Utah: Sections 2 & 3, T33S, R4E: SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Warren T. Jacobson, P.O. Box 241, Fountain Green, UT 84632.

i. Comment Date: July 10, 1987.

j. Description of Project: The proposed project would be located on lands of the Dixie National Forest, would utilize tailrace canal flows of Garkane Power Association's Boulder Creek Project No. 2219, and would consist of: (1) A small diversion dam at elevation 7,600 feet m.s.l.; (2) a steel pipeline/penstock, 30 inches in diameter and about ¼ mile long; (3) a powerhouse with an installed capacity of 1,200 kW under a head of 390 feet; (4) a tailrace returning flow to Boulder Creek; (5) a 7.2-kV transmission line, about 1.25 miles long; and (6) appurtenant facilities. The applicant estimates that the average annual energy output would be 4,285,000 kWh. The applicant estimates that the cost of studies under the permit would be $7,400.

k. Purpose of Project: Project energy would be sold to the Garkane Power Association.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10356–000.

c. Date Filed: March 20, 1987.

d. Applicant: Snoqualmie River Hydro.

e. Name of Project: Middle Fork Snoqualmie River Project.

f. Location: Part of the project is within the Snoqualmie-Mt. Baker National Forest, near the town of North Bend, in King County, Washington. Township 24N and Range 10E and 11E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, WA 98053, (206) 885–3986.

i. Comment Date: July 13, 1987.

j. Description of Project: The proposed project would consist of the following:

(A) The Middle Fork Snoqualmie River Development would consist of: (1) Seven diversion structures with inlet elevations of 2,800 feet msl; and (2) seven feeder penstocks connected to a main penstock 45,000 feet long and 96 inches in diameter.

(B) The Dingford and Cripple Creek Development would consist of: (1) Two diversion structures with inlet elevations of 2,000 feet msl; and (2) two penstocks 10,000 feet long and 48 inches in diameter.

(C) The Burntboot Creek Development would consist of: (1) A diversion structure with an inlet elevation of 2,300 feet msl; and (2) a penstock 1,000 feet long and 48 inches in diameter.

The Middle Fork Snoqualmie River, Dingford and Cripple Creek, and Burntboot Creek Developments would share a powerplant at elevation 1,200 feet msl containing three turbine/generator units with an installed capacity of 22,703 kW and a 12-mile-long, 115-kV transmission line.

(D) The Taylor River Development would consist of: (1) Eight diversion structures with inlet elevations of 2,000 feet msl; and (2) eight feeder penstocks connected to a main penstock 30,000 feet long and 60 inches in diameter.

(E) The Quartz Creek Development would consist of: (1) A diversion structure with an inlet elevation of 2,000 feet msl; and (2) a penstock 5,000 feet long and 18 inches in diameter.

The Taylor River and Quartz Creek Developments would share a powerplant at elevation 1,200 feet msl containing two turbine/generator units with an installed capacity of 7,684 kW and a 10-mile-long, 115-kV transmission line.

(F) The Pratt River Development would consist of: (1) Five diversion structures with inlet elevations of 2,400 feet msl; (2) five feeder penstocks connected to a main penstock 30,000 feet long and 84 inches in diameter leading to; (3) a powerplant at elevation 1,040 feet msl containing a single turbine/generator unit with a capacity of 11,580 kW; and (4) a 6-mile-long, 115-kV transmission line.

(G) The Granite Creek Development would consist of: (1) A diversion structure with an inlet elevation of 2,400 feet msl; (2) a penstock 7,000 feet long and 18 inches in diameter leading to: (3) a powerplant at elevation 880 feet msl containing a single turbine/generator unit with a capacity of 2,072 kW; and (4) a 3-mile-long, 115-kV transmission line.

The total installed capacity would be 44,039 kW. The applicant estimates the average annual energy production to be 192.91 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10359–000.

c. Date Filed: March 25, 1987.

d. Applicant: Snoqualmie River Hydro.

e. Name of Project: Young's Creek No. 1 and 2.

f. Location: In Snoqualmie-Mt. Baker National Forest on Young's Creek, in Snohomish County, Washington. Township 27N and Range 7E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, WA 98053, (206) 885–3986.

i. Comment Date: July 13, 1987.

j. Description of Project: The proposed project would consist of the following:

(A) The Young's Creek No. 1 Development would consist of: (1) A diversion structure with an inlet elevation of 2,380 feet msl; (2) a penstock 20,000 feet long and 24 inches in diameter leading to: (3) a powerplant at elevation 600 feet msl and containing a single turbine/generator unit with a capacity of 3,010 kW operating at 1,780 feet of hydraulic head; and (4) a 4-mile-long, 115-kV transmission line.

(B) The Young's Creek No. 2 Development would consist of: (1) A diversion structure with an inlet elevation of 600 feet msl; (2) a penstock 5,000 feet long and 84 inches in diameter leading to: (3) a powerplant at elevation 300 feet msl and containing a single turbine/generator unit with a capacity of 1,974 kW operating at 300 feet of hydraulic head; and (4) a 3-mile-long, 115-kV transmission line.

The applicant estimates the average annual energy production to be 26.2 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 10360–000.

c. Date Filed: March 25, 1987.

d. Applicant: Snoqualmie River Hydro.

e. Name of Project: Upper South Fork Snoqualmie.

f. Location: In Snoqualmie-Mt. Baker National Forest on the Upper South Fork Snoqualmie River, in King County, Washington. Township 22N and Range 10E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, WA 98053, (206) 885–3986.

i. Comment Date: July 13, 1987.

j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,800 feet msl; (2) a penstock 12,000 feet long and 24 inches in diameter leading to: (3) a powerplant at elevation 2,000 feet msl and containing a single turbine/generator unit with a capacity of 1,838 kW operating at 800 feet of hydraulic head; and (4) a one-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 8.05 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project. Applicant intends to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 10361–000.

c. Date Filed: March 25, 1987.

d. Applicant: Snoqualmie River Hydro.

e. Name of Project: North Fork Tolt River Project.

f. Location: In Snoqualmie-Mt. Baker National Forest on the North Fork Tolt River, in King County, Washington. Township 26 N and Range 6 E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th NE., Redmond, WA 98053, (206) 885–3986.

i. Comment Date: July 13, 1987.

j. Description of Project: The proposed project would consist of: (1) Two diversion structures with inlet elevations of 1,150 feet msl; (2) a bifurcated penstock 17,000 feet long and 120 inches in diameter leading to; (3) a powerplant at elevation 400 feet msl containing a single turbine/generator unit with a capacity of 10,004 kW operating at 750 feet of hydraulic head; and (4) a 2-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 43.82 GWh. The approximate cost of the studies under the permit would be $40,000.

k. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

14 a. Type of Application: Declaration of Intention.

b. Project No: EL87–25.

c. Date Filed: March 18, 1987.

d. Applicant: Greyhound Mine.

e. Name of Project: Ronald C. Yanke.

f. Location: On Sulphur Creek, Custer County, Idaho, Sections 4, 5, and 9, T. 14 N., R. 11 E., B.M., and Sections 31 and 32, T. 15 N., R. 11 E., B.M.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Ronald C. Yanke, P.O. Box 5411, Boise, Idaho 83705.

i. Comment Date: June 22, 1987.

j. Description of Project: The proposed project would consist of: (1) A 15-foot-long, 6-foot-high diversion structure; (2) a 2,800-foot-long, 1-foot-diameter penstock; (3) a powerhouse containing one generating unit with capacity of 50 kW; (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

k. Purpose of Project: The proposed project would furnish electric power for the Applicant's mining and milling operation.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 10280–000.

c. Date Filed: January 29, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Cumberland Creek.

f. Location: On Cumberland Creek, tributary of the Skagit River, within the Snoqualmie—Mt. Baker National Forest in Skagit County, Washington near the town of Concrete. T. 35 N., R. 6 E., sec. 23, E½, sec. 24, SW¼; sec. 25.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, President, Washington Hydro Development Company, 12122 196th Avenue NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: June 25, 1987.

j. Description of Project: The proposed project would consist of: (1) A 36-inch-wide diversion-intake structure at elevation 2,000 feet; (2) a 24-inch-diameter, 10,000-foot-long penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 3,702 kW, producing an average annual energy output of 16.29 GWh; (4) a tailrace; (5) a 9-mile-long, 115-kV buried transmission line tying into an existing Puget Sound Power and Light Company line. No new access road will be needed to conduct the studies.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $40,000.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No: 10286–000.

c. Date Filed: January 29, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Lower Pressentin Creek.

f. Location: On Lower Pressentin Creek, tributary of the Skagit River, within Snoqualmie-Mt. Baker National Forest in Skagit County, Washington. T. 35 N., R. 7 E., sec. 31, W½; T. 34 N., R. 7 E., sec. 1, NE¼, E½NW¼; T. 35 N., R. 7 E., sec. 24, SE¼, E½SW¼, S½NE¼, SE¼NW¼; sec. 25, E¾; sec. 36, E¾.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, President, Washington Hydro Development Company, 12122 196th NE., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: June 25, 1987.

j. Description of Project: The proposed project would consist of: (1) Two 36-inch-wide diversion-intake structure; (2) an 84-inch-diameter, 13,000-foot-long penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 8,193 kW, producing an annual energy output of 35.88 GWh; (4) a tailrace; and (5) a 5-mile-long, 115-kV transmission line tying into an existing Puget Sound Power and Light Company

line. No new access road will be needed to conduct these studies.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $40,000.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No: 10287–000.

c. Date Filed: January 29, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Grandy Creek Trib.

f. Location: On tributaries of Grandy Creek, tributary of the Skagit River, within Snoqualmie-Mt. Baker National Forest in Skagit County, Washington near the town of Hamilton. T. 35 N., R. 7 E., sec. 2, NE¼; T. 36 N., R. 8 E., sec. 19, E½SW¼, W½SE¼; sec. 30, E½W½W ½E½; sec. 31, E½NW¼, W½NE¼.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Lawrence J. McMurtrey, President, Washington Hydro Development Company, 12122 196th NE., Redmond, WA 98052, (206) 885–3966.

i. Comment Date: June 25, 1987.

j. Description of Project: The proposed project would consist of: Two developments on tributaries of Grandy Creek. Tributary No. 1 development would consist of: (1) A 36-inch-wide concrete diversion-intake structure at elevation 2,500 feet; (2) an 18-inch-diameter, 7,000-foot-long penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 2,524 kW, producing an average annual energy output of 11.05 GWh; (4) a tailrace; (5) a 4-mile-long, 115-kV transmission line tying into an existing Puget Sound Power and Light Company line; The Tributary No. 2 development would consist of: (1) a 36-inch-wide concrete diversion-intake structure at elevation 1,000 feet, (2) a 12-inch-diameter, 3,000-foot-long penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 680 kW, producing an average annual energy output of 4.8 GWh; (4) a tailrace; (5) a 2-mile-long, 115-kV transmission line tying into an existing Puget Sound Power and Light Company line. No new access road will be needed to conduct the studies.

The Applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $40,000.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

18 a. Type of Application: New Major License (5 MW or Less).

b. Project No: 663–001.

c. Date Filed: May 4, 1984.

d. Applicant: Puerto Rico Electric Power Authority.

e. Name of Project: Rio Blanco.

f. Location: Rio Blanco River, Naguabo Municipality, Puerto Rico.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Orlando Anglero, Director of Planning and Environmental Protection, Puerto Rico Electric Power Authority, G.P.O. Box 4267, San Juan, PR 00936, (809) 725–4589.

i. Comment Date: July 10, 1987.

j. Description of Project: The existing project consists of: (1) A concrete gravity dam structure, 32 feet high and 150 feet long, including a 90-foot-long overflow spillway section; (2) four small concrete diversion structures; (3) approximately 9,300 feet of concrete pipeline, 18 to 42 inches in diameter, leading from the various diversions; (4) a 32 inch diameter riveted steel penstock, approximately 3,690 feet in length; (5) a powerhouse containing two generating units with a total capacity of 5,000 kW; (6) a concrete flume tailrace structure, approximately 210 feet long and 6 feet wide; and (7) appurtenant facilities. The average annual generation is 19 GWh. Project power is sold by the applicant to its customers. The existing project is not subject to federal takeover under sections 14 and 15 of the Federal Power Act.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

19 a. Type of Application: License (under 5 MW).

b. Project No.: 9980–000.

c. Date Filed: April 24, 1986.

d. Applicant: Hyrum City, Utah.

e. Name of Project: Blacksmith Fork Power Project No. 2.

f. Location: On Blacksmith Fork River in Cache County, Utah: Section 7 and 8, T10N, R2E; section 12, T10N, R1E: SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Honorable Bruce E. Darley, Mayor, Hyrum City, 83 West Main, Hyrum, UT 84319.

i. Comment Date: June 19, 1987.

j. Competing Application: Project No. 9375. Date Filed: March 24, 1986. Due Date: May 29, 1987.

k. Description of Project: The proposed project would be located in the Cache National Forest and would consist of: (1) An earthfill dam, 27 feet high and 125 feet long; (2) a reservoir of minimal pondage at maximum water surface elevation 4,995 feet m.s.l.; (3) a steel penstock, 54 inches in diameter and 1.5 miles long; (4) a powerhouse with an installed capacity of 1,400 kW under a net head of 144 feet; (5) a tailrace returning flow to the Blacksmith Fork River; (6) a 12.5-kV transmission line, 400 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 7,560,00 kWh.

l. Purpose of Project: Project energy would be utilized by the Applicant.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D1.

20 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 10056–000.

c. Date Filed: August 1, 1986 and supplemented March 6, 1987.

d. Applicant: Michiana Hydroelectric Company and the Village of Bellevue, Michigan.

e. Name of Project: Bellevue Mill Dam Hydro Project.

f. Location: On Battle Creek in Bellevue, Eaton County, Michigan.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Persons:

William Stockhousen, Michiana Hydroelectric Company, 218 W. Dunlop Street, Northville, MI 48167, 313–349–2333

Mr. Bernard Otto, Village Hall, 201 N. Main Street, Bellevue, MI 49021, 616–763–9571.

i. Comment Date: June 18, 1987.

j. Description of Project: The proposed project would consist of: (1) The existing Bellevue Mill Dam approximately 165 feet long and 16 feet high; (2) an existing 33-acre reservoir having a storage area of 82 acre-feet at an elevation of 852.5 msl; (3) a new powerhouse containing two 30-kW generator for a total installed capacity of 60 kW; (4) a tailrace; (5) a new 1,300-foot-long, 8.32-kV transmission line; and (6) appurtenant facilities. Applicants estimate that the average annual generation would be 200 MWh. Applicants hold all real estate interests necessary to develop and operate the proposed project.

k. Purpose of Project: All project energy produced would be sold to Consumers Power Company.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee

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priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from the permit or license applicants that would seek to take or develop the project.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

21 a. Type of Application: Major License (5MW or less).

b. Project No.: 10096–000.

c. Date Filed: September 23, 1986.

d. Applicant: Trafalgar Power, Inc.

e. Name of Project: Saugerties.

f. Location: Esopus Creek in Ulster County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Persons:

Mr. Neal F. Dunlevy, Stetson-Dale, Architects & Engineers, 185 Genesee Street, Utica, NY 13501, (315) 793–0366

Mr. Arthur H. Steckler, Trafalgar Power, Inc., Smith and Canal Streets, Franklin, NH 03035, (603) 934–4202.

i. Comment Date: July 13, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 32-foot-high, 346-foot-long concrete gravity dam; (2) a reservoir with a surface area of 140 acres, a storage capacity of 826 acre-feet, and a normal water surface elevation of 48.0 feet m.s.l.; (3) a new 10-foot-diameter, 45-foot-long steel penstock; (4) a new concrete powerhouse containing one generating unit with a capacity of 2,225 kW; (5) a new 60-foot-wide, 80-foot-long tailrace; (6) a new transmission line, 4,000 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 7,400,000 kWh. The existing dam is owned by Houseboat Realty, Bearsville, New York.

k. Purpose of Project: Project power would be sold to the Central Hudson Gas and Electric Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

22 a. Type of Application: Exemption (5MW or less).

b. Project No.: 10113–000.

c. Date Filed: October 2, 1986.

d. Applicant: Perpetual Storage, Inc.

e. Name of Project: Whitmore Hydro Project.

f. Location: On Little Cottonwood Creek in Salt Lake County, Utah.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, (16 U.S.C. 2705 and 2708 *as amended).*

h. Contact Person: Mr. Stanley S. Postma, 106 West 500 South, Suite 101, Bountiful, UT 84010.

i. Comment Date: June 19, 1987.

j. Description of Project: The proposed project would be located on private lands leased by the applicant, would utilize and replace existing project works and would consist of: (1) An existing reinforced concrete weir diversion structure; (2) rehabilitated penstock intake works; (3) a new 48-inch-diameter steel pipeline/penstock, about 7,500 feet long; (4) an existing powerhouse to contain new generating units rated at 5,000 kW under a 550 foot head; (5) a rehabilitated tailrace returning flow to Little Cottonwood Creek; (6) an existing 12.5-kV transmission line, about 7 miles long; and (7) appurtenant facilities. The applicant estimates that the average annual energy output would be 19,154,000 kWh.

k. Purpose of Project: Project energy would continue to be utilized by the Applicant and by the Whitmore Oxygen Company; surplus energy would be sold to the Utah Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A9, B, C, & D3a.

23 a. Type of Application: Exemption Under 5MW.

b. Project No: 10128–000.

c. Date Filed: October 22, 1986.

d. Applicant: Mr. Ivan D. Davis.

e. Name of Project: St. George River.

f. Location: On the St. George River in Waldo County, Maine.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Contact Person: Mr. James D. Sysko, Small Hydro East, Star Route 240, Bethel, ME 04217, (207) 824–3244.

i. Comment Date: June 19, 1987.

j. Description of Project: The proposed project would consist of: (1) A proposed inlet utilizing the existing stilling pool; (2) a proposed 18-inch-diameter penstock; (3) replacement of existing fish screen; (4) a proposed powerhouse to contain one turbine/ generator with an installed capacity of 100 kW; (5) a proposed tailrace channel; and (6) appurtenant facilities. The property is owned by the applicant. The estimated average annual energy produced by the project would be 657,000 kWh per year operating under a net hydraulic head of 154 feet.

k. Purpose of Project: Project power will be sold to the Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

m. Purpose of Exemption: An exemption, if issued, gives the exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the exemptee from permit or license applicants that would seek to take or develop the project.

24 a. Type of Application: Preliminary Permit.

b. Project No.: 10328–000.

c. Date Filed: February 17, 1987.

d. Applicant: Skagit River Hydro.

e. Name of Project: Alma/Copper Creek.

f. Location: On Alma and Copper Creeks within Mt. Baker—Snoqualmie National Forest in Skagit County, Washington. Township 36 North, Range 11 East, Williamette Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Lawrence J. McMurtrey, 12122—196th N.E., Redmond, WA 98052, (206) 885–3986.

i. Comment Date: July 9, 1987.

j. Description of Project: The proposed project would consist of: (1) 3-foot-wide diversion structures in the streambeds at elevation 2,000 feet; (2) a 36-inch-diameter penstock totalling 13,000 feet in length; (3) a powerhouse at elevation 400 feet containing a generating unit rated at 10,478 kW, producing an average annual output of 45.89 GWh; and (4) a 4-mile-long transmission line connecting to a Puget Power distribution line at Marblemount. The estimated cost of permit activities is $40,000.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

25 a. Type of Application: Preliminary Permit.

b. Project No: 10363–000.

c. Date Filed: March 25, 1987.

d. Applicant: Columbia County Partners.

e. Name of Project: Claverack Creek Project.

f. Location: On the Claverack Creek, in Columbia County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. J. Kirk Rector, 5041 S. Boabab Drive, Salt Lake City, UT 84117, (801) 272–2030.

i. Comment Date: July 10, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 200-foot-long, 12-foot-high concrete gravity dam; (2) an impoundment having a surface area of 1 acre with negligible storage and a water surface elevation of 140 feet m.s.l.; (3) a proposed intake structure; (4) a proposed 80-foot-long 40-inch-diameter steel penstock; (5) a proposed powerhouse containing one generating unit with an installed capacity of 400 kW; (6) a proposed tailrace; (7) a proposed 200-foot-long,

12.5-kV transmission line; and (8) appertenant facilities. The applicant estimates the average annual generation would be 1,600,000 kWh. The applicant intends to acquire all of the necessary property rights from the various property owners. All project energy generated would be sold to the Niagara Mohawk Power Corporation. The applicant estimates the cost of the work to be performed under the preliminary permit would be $155,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs:

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the intial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. § 825*l*(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described

application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 12, 1987.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11112 Filed 5-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CI87-548-000 and CI87-558-000]**

## Conoco Inc.; Application

May 11, 1987.

Take notice that on April 30, 1987, Conoco Inc. (Conoco), P.O. Box 2197, Houston, Texas 77252, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (15 U.S.C. 717 c and f) and Part 157 of the Commission's Regulations under the Natural Gas Act (18 CFR Part 157), for authorization to permanently abandon certificates of public convenience and necessity issued to Conoco heretofore authorizing the slaes of natural gas to Southern Natural Gas Company (Southern) under various contracts covering gas sales subject to the Commission's Natural Gas Act jurisdiction as shown in Exhibit "A". Conoco additionally requests the issuance of a permanent blanket certificate with pregranted abandonment authorizing the sale for resale of natural gas in interstate commerce from sources formerly committed to Southern. Conoco also requests abandonment of individual sales made pursuant to the requested blanket certificate upon expiration of the term of such sales.

Conoco states that these authorities are necessary to enable Conoco to implement a comprehensive settlement agreement between Conoco and Southern to settle, compromise and release certain claims arising from various contractual relationships including the mutual understanting and agreement to rescind, terminate and cancel as of April 1, 1987 the contracts covering sales for which abandonment authorization is requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 26, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must filed a petition to intervne in accordance with the Commission's rule.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

EXHIBIT A

| Docket No. | Conoco Inc., FERC gas rate schedule No. | Location | Estimated deliverability | NGPA category |
|---|---|---|---|---|
| G-17520 | 175 | North Bayou Long Field, Iberia Parish, Louisiana | 180 Mcfd | 104 replacement/recompletion. |
| G-19437 | 172 | Bayou Long Field, Iberia and St. Martin Parishes, Louisiana | Depleted | |
| C162-1504 | 222 | Bayou Pigeon Field, Iberia Parish, Louisiana | 40 Mcfd | 104 replacement/recompletion. |
| C70-135 | 351 | Bayou Long Field, St. Martin Parish, Louisiana | Lease expired | |
| C73-560 | 405 | Main Pass Area, Offshore Louisiana | 2500 Mcfd | 102(d). |
| C177-606 | 439 | Main Pass Area, Offshore Louisiana | 25 Mcfd | 102 (d) |
| C181-236-000 | 470 | Main Pass Area, Offshore Louisiana | 4000 Mcfd | 102 (d) |

[FR Doc. 87-11109 Filed 5-14-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI87-547-000]**

## Enron Gas Marketing, Application

May 11, 1987.

Take notice that on April 29, 1987, Enron Gas Marketing, Inc. (EGM), 1400 Smith Street, Houston, Texas 77002, filed in this proceeding an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting blanket certificate authorization for (1) Self-implementing sales for resale of certain natural gas in interstate commerce, without market restriction; (2) self-implementing sales of certain natural gas by others to EGM for resale in interstate commerce, without market restriction; and (3) self-implementing sales for resale of certain natural gas in interstate commerce, without market restriction, by producers through EGM acting as their agent. EGM also seeks pregranted abandonment of all sales for resale for which sales certificate authority is sought herein and a waiver of Parts 154 and 271 of the Commission's Regulations concerning maintenance of rate schedules. Finally, EGM requests that the Commission declare in its order issuing the requested authorizations that the Commission's NGA jurisdiction over the activities and operations of EGM is limited to the transactions for which authorization is sought in the Application.

EGM states that the purpose of its application is to permit EGM to make sales in interstate commerce for resale of gas which is available for sale to markets, but is still subject to the certificate and abandonment provisions of the Natural Gas Act, including natural

gas for which abandonment of service has been granted under section 7 of the NGA and imported natural gas, without market restriction and regardless of classification under the NGPA.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 28, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to herein must file a petition to intervene in accordance with the Commission rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11110 Filed 5-14-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP87-43-002]

## MIGC, Inc.; Proposed Changes in FERC Gas Tariff

May 11, 1987.

Take notice that on May 4, 1987, MIGC, Inc. (MIGC) tendered for filing pursuant to § 154.38(d)(4)(vi)(a) of the Commission's regulations and Ordering Paragraph (D) of the order issued March 31, 1987 in the above-captioned proceeding, a Base Tariff Rate restatement restating, effective May 1, 1987, base tariff rates reflected in MIGC's FERC Gas Tariff, Original Volume No. 1. Also included in the filing is a cost and revenue study supporting such restated base tariff rates.

MIGC states that this filing updates and restates MIGC's base cost of purchased gas included in its base tariff rates effective May 1, 1987. MIGC further states that the cost and revenue study included in its filing, which is based on the twelve months of actual experience (as annualized) ending December 31, 1986, indicates an annual revenue deficiency of $751,153 and, thus, more than adequately supports MIGC's restated base tariff rates. MIGC further states that copies of this filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before May 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11130 Filed 5-14-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TA87-3-55-000 and -001]

## Mountain Fuel Resources, Inc.; Tariff Filing

May 11, 1987.

Take notice that on May 4, 1987, Mountain Fuel Resources, Inc. (MRF) tendered for filing and acceptance revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, as follows:

First Revised Sheet No. 1
Seventh Revised Sheet No. 12
Eighth Revised Sheet No. 12
Sixth Revised Sheet No. 14

Seventh Revised Sheet No. 12 reflects the removal of the $0.02/Dth Moxa Arch surcharge, approved by the Commission's May 20 1986, letter order in Docket Nos. RP85-208-000 and CP80-274-011. The surcharge was to be effective from May 1, 1986, through the earlier of April 30, 1987, or until MFR has accumulated $1,400,000 by virtue of applying the surcharge. MFR has requested an effective date of May 1, 1987.

Eighth Revised Sheet No. 12 reflects a change in MFR's Commodity Base Cost of Purchased Gas As Adjusted of $(0.07001)/Dth from $2.29661/Dth to $2.22660/Dth, and a change in its Uncovered Purchased Gas Cost Adjustment of $(0.19373)/Dth from $(0.02157)/Dth, currently in effect, to $(0.21530)/Dth, resulting in a net decrease in the commodity rate change under Rate Schedule CD-1 of $0.26374/Dth. Also reflected on Eighth Revised Sheet No. 12 is a decrease in the Demand Base Cost of Purchased Gas As Adjusted of $0.00015/Mcf from $1.10944/Mcf to $1.10929/Mcf. Sixth Revised Sheet No. 14 reflects $0.00 projected incremental pricing for the June 1, 1987, through November 30, 1987, PGA period. First Revised Sheet No. 1 updates MFR's Table of Contents to First Revised Volume No. 1 to reflect changes in MFR's tariff from various filings. MFR has requested an effective date of June 1, 1987.

Copies of the filing were served upon Mountain Fuel Supply Company, MFR's sole sale-for-resale customer, and the Public Service Commissions of Utah and Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11137 Filed 5-14-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP87-13-001]

## South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 11, 1987.

Taken notice that South Georgia Natural Gas Company (South Georgia) on May 1, 1987 tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and First Revised Volume No. 2. The purpose of these tariff sheets is to place into effect the rates accepted, subject to refund, by the Commission's order of November 28, 1986, in Docket No. RP87-13-000, and to update the cost of gas in Docket No. RP87-13-000 to reflect the current level of purchased gas costs as represented in South Georgia's Purchased Gas Adjustment (PGA) filing which became effective January 1, 1987.

In addition, South Georgia has tendered certain revised tariff sheets with a proposed effective date of June 1, 1987, modifying the PGA provisions of its FERC Gas Tariff so as to permit purchases from suppliers other than

Southern Natural Gas Company and to provide for the treatment of nonconcurrent exchange transactions.

Copies of this filing have been served upon South Georgia's jurisdictional customers, interested state public service commissions and all parties of record.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11138 Filed 5-14-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. ST87-1653-000 et al.]

## Tennessee Gas Pipeline Co. et al.; Self-Implementing Transactions

May 11, 1987.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeling or a local distribution company pursuant to Section 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under §§ 284.221 of the Commission's Regulations.

A "G-S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to a §§ 284.223 and a blanket certificate issued under §§ 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before May 29, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

*Secretary.*

BILLING CODE 6717-01-M

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

| DOCKET NUMBER * | TRANSPORTER/SELLER | RECIPIENT | DATE FILED | SUBPART | EXPIRATION DATE** | TRANSPORTATION RATE (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1653 | TENNESSEE GAS PIPELINE CO. | NORTHERN INTRASTATE PIPELINE CO. | 03-02-87 | B | | |
| ST87-1654 | TENNESSEE GAS PIPELINE CO. | SOUTH JERSEY GAS CO. | 03-02-87 | B | | |
| ST87-1655 | ONG TRANSMISSION CO. | NATURAL GAS PIPELINE CO. OF AMERICA | 03-02-87 | C | 07-30-87 | 10.00 |
| ST87-1656 | NATURAL GAS PIPELINE CO. OF AMERICA | PEOPLES GAS LIGHT & COKE CO. | 03-02-87 | B | | |
| ST87-1657 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN INDIANA PUBLIC SERVICE CO. | 03-02-87 | B | | |
| ST87-1658 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN ILLINOIS GAS CO. | 03-02-87 | B | | |
| ST87-1659 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN ILLINOIS GAS CO. | 03-02-87 | B | | |
| ST87-1660 | NATURAL GAS PIPELINE CO. OF AMERICA | IOWA-ILLINOIS GAS & ELECTRIC CO. | 03-02-87 | B | | |
| ST87-1661 | ARKLA ENERGY RESOURCES | ARKLA ENERGY RESOURCES, (LA INTRA. SEG.) | 03-02-87 | B | | |
| ST87-1662 | ARKLA ENERGY RESOURCES | ARKANSAS LOUISIANA GAS CO. | 03-02-87 | B | | |
| ST87-1663 | ARKLA ENERGY RESOURCES | NORTHERN ILLINOIS GAS CO. | 03-02-87 | B | | |
| ST87-1664 | NORTHERN NATURAL GAS CO. | CHANNEL INDUSTRIES GAS CO. | 03-02-87 | B | | |
| ST87-1665 | NORTHERN NATURAL GAS CO. | THC PIPELINE CO. | 03-03-87 | B | | |
| ST87-1666 | TENNESSEE GAS PIPELINE CO. | SOUTH GEORGIA NATURAL GAS CO. | 03-03-87 | B | | |
| ST87-1667 | TENNESSEE GAS PIPELINE CO. | COMMONWEALTH GAS SERVICES | 03-03-87 | B | | |
| ST87-1668 | TENNESSEE GAS PIPELINE CO. | POLARIS CORP. | 05-03-87 | B | | |
| ST87-1669 | COLORADO INTERSTATE GAS CO. | CITY OF TRINIDAD | 03-03-87 | B | | |
| ST87-1670 | COLORADO INTERSTATE GAS CO. | WESTERN GAS SUPPLY CO. | 03-03-87 | B | | |
| ST87-1671 | COLORADO INTERSTATE GAS CO. | INDIANA GAS CO., ET AL. | 03-03-87 | B | | |
| ST87-1672 | ARKLA ENERGY RESOURCES | ARKANSAS LOUISIANA GAS CO. | 03-03-87 | B | | |
| ST87-1673 | ARKLA ENERGY RESOURCES | ARKANSAS LOUISIANA GAS CO. | 03-03-87 | B | | |
| ST87-1674 | TEJAS GAS CORP. | TEXAS EASTERN TRANSMISSION CORP. | 03-03-87 | D | | |
| ST87-1675 | BLUE DOLPHIN PIPE LINE CO. | DOW CHEMICAL CO. | 03-03-87 | G-EU | | |
| ST87-1676 | OASIS PIPE LINE CO. | EL PASO NATURAL GAS CO. | 03-03-87 | C | | |
| ST87-1677 | HOUSTON PIPE LINE CO. | EL PASO NATURAL GAS CO. | 03-03-87 | C | | |
| ST87-1678 | OASIS PIPE LINE CO. | COLUMBIA GAS OF KY INC., ET AL. | 03-03-87 | C | | |
| ST87-1679 | OASIS PIPE LINE CO. | SOUTHERN CALIFORNIA GAS CO. | 03-03-87 | C | | |
| ST87-1680 | HOUSTON PIPE LINE CO. | FLORIDA GAS TRANSMISSION CO. | 03-03-87 | C | | |
| ST87-1681 | HOUSTON PIPE LINE CO. | FLORIDA GAS TRANSMISSION CO. | 03-03-87 | C | | |
| ST87-1682 | WILLIAMS NATURAL GAS CO. | KANSAS PIPELINE CO. | 03-03-87 | B | | |
| ST87-1683 | NORTHERN NATURAL GAS CO. | COLUMBIA GAS OF PENNSYLVANIA, INC. | 03-03-87 | B | | |
| ST87-1684 | NORTHERN NATURAL GAS CO. | COLUMBIA GAS OF MARYLAND, INC. | 03-03-87 | B | | |
| ST87-1685 | NORTHERN NATURAL GAS CO. | MICHIGAN CONSOLIDATED GAS CO. | 03-03-87 | B | | |
| ST87-1686 | NORTHERN NATURAL GAS CO. | IOWA PUBLIC SERVICE CO. | 03-03-87 | B | | |
| ST87-1687 | NORTHERN NATURAL GAS CO. | AUSTIN UTILITIES | 03-03-87 | B | | |
| ST87-1688 | NORTHERN NATURAL GAS CO. | MIDWEST NATURAL GAS CO., INC. | 03-04-87 | B | | |
| ST87-1689 | TENNESSEE GAS PIPELINE CO. | PONTCHARTRAIN NATURAL GAS SYSTEM | 03-04-87 | B | | |
| ST87-1690 | PANHANDLE EASTERN PIPE LINE CO. | CIMARRON RIVER-QUINQUE SYSTEM | 03-04-87 | C | | |
| ST87-1691 | OASIS PIPE LINE CO. | UGI CORP. | 03-04-87 | B | | |
| ST87-1692 | PANHANDLE EASTERN PIPE LINE CO. | NORTHERN INDIANA FUEL & LIGHT CO. | 03-04-87 | B | | |
| ST87-1693 | PANHANDLE EASTERN PIPE LINE CO. | KANSAS PIPELINE CO. | 03-04-87 | B | | |
| ST87-1694 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 03-04-87 | B | | |
| ST87-1695 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-04-87 | B | | |
| ST87-1696 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-04-87 | B | | |
| ST87-1697 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-04-87 | B | | |
| ST87-1698 | PANHANDLE EASTERN PIPE LINE CO. | NORTHERN INDIANA FUEL & LIGHT CO. | 03-04-87 | B | | |
| ST87-1699 | PANHANDLE EASTERN PIPE LINE CO. | PRODUCER'S GAS CO. | 03-04-87 | B | | |
| ST87-1700 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS PUBLIC SERVICE CO. | 03-04-87 | B | | |
| ST87-1701 | PANHANDLE EASTERN PIPE LINE CO. | CITY OF SHELBINA | 03-04-87 | B | | |

| DOCKET NUMBER * | TRANSPORTER/SELLER | RECIPIENT | DATE FILED | SUBPART | EXPIRATION DATE** | TRANSPORTATION RATE (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1702 | PANHANDLE EASTERN PIPE LINE CO. | NORTHERN INDIANA PUBLIC SERVICE CO. | 03-04-87 | B | | |
| ST87-1703 | PANHANDLE EASTERN PIPE LINE CO. | MICHIGAN GAS UTILITIES | 03-04-87 | B | | |
| ST87-1704 | PANHANDLE EASTERN PIPE LINE CO. | OHIO VALLEY GAS CORP. | 03-04-87 | B | | |
| ST87-1705 | PANHANDLE EASTERN PIPE LINE CO. | OHIO VALLEY GAS CORP. | 03-04-87 | B | | |
| ST87-1706 | WILLIAMS NATURAL GAS CO | CLEVELAND MUNICIPAL AUTHORITY | 03-04-87 | B | | |
| ST87-1707 | NORTHERN NATURAL GAS CO | PEOPLES NATURAL GAS CO. | 03-04-87 | B | | |
| ST87-1708 | SNG INTRASTATE, INC. | NORTHERN INDIANA PUB. SERV. CO., ET AL. | 03-04-87 | C | 08-01-87 | 35.90 |
| ST87-1709 | TENNESSEE GAS PIPELINE CO. | PUBLIC SERVICE ELECTRIC AND GAS CO. | 03-05-87 | B | | |
| ST87-1710 | TENNESSEE GAS PIPELINE CO. | ELIZABETHTOWN GAS CO. | 03-05-87 | B | | |
| ST87-1711 | TENNESSEE GAS PIPELINE CO. | CORONADO TRANSMISSION CO. | 03-05-87 | B | | |
| ST87-1712 | TENNESSEE GAS PIPELINE CO. | BRIDGELINE GAS DISTRIBUTION CO. | 03-05-87 | B | | |
| ST87-1713 | TENNESSEE GAS PIPELINE CO. | ALABAMA GAS CORP. | 03-05-87 | B | | |
| ST87-1714 | TENNESSEE GAS PIPELINE CO. | BALTIMORE GAS AND ELECTRIC CO. | 03-05-87 | B | | |
| ST87-1715 | KENTUCKY WEST VIRGINIA GAS CO. | BLUE CIRCLE ATLANTIC | 03-05-87 | G-EU | | |
| ST87-1716 | KENTUCKY WEST VIRGINIA GAS CO. | REYNOLDS METALS CO. | 03-05-87 | G-EU | | |
| ST87-1717 | TEXAS GAS TRANSMISSION CORP. | INDIANA GAS CO. | 03-05-87 | B | | |
| ST87-1718 | TEXAS GAS TRANSMISSION CORP. | INDIANA GAS CO. | 03-05-87 | B | | |
| ST87-1719 | TEXAS GAS TRANSMISSION CORP. | WESTERN KENTUCKY GAS CO. | 03-05-87 | B | | |
| ST87-1720 | TEXAS GAS TRANSMISSION CORP. | SOUTHERN CONNECTICUT GAS CO. | 03-05-87 | B | | |
| ST87-1721 | TEXAS GAS TRANSMISSION CORP. | INDIANA GAS CO. | 03-05-87 | B | | |
| ST87-1722 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN INDIANA PUBLIC SERVICE CO. | 03-05-87 | B | | |
| ST87-1723 | NATURAL GAS PIPELINE CO. OF AMERICA | SPINDLETOP GAS DISTRIBUTION SYSTEM | 03-05-87 | B | | |
| ST87-1724 | NATURAL GAS PIPELINE CO. OF AMERICA | IOWA-ILLINOIS GAS & ELECTRIC CO. | 03-05-87 | B | | |
| ST87-1725 | COLORADO INTERSTATE GAS CO. | NORTHERN INDIANA PUB. SERV. CO., ET. AL | 03-05-87 | B | | |
| ST87-1726 | COLORADO INTERSTATE GAS CO. | WESTERN GAS SUPPLY CO. | 03-05-87 | B | | |
| ST87-1727 | NATURAL GAS PIPELINE CO. OF AMERICA | PEOPLES NATURAL GAS CO. | 03-06-87 | B | | |
| ST87-1728 | UNITED TEXAS TRANSMISSION CO. | NATURAL GAS PIPELINE CO. OF AMERICA | 03-06-87 | C | | |
| ST87-1729 | UNITED TEXAS TRANSMISSION CO. | TENNESSEE GAS PIPELINE CO. | 03-06-87 | C | | |
| ST87-1730 | UNITED TEXAS TRANSMISSION CO. | EL PASO NATURAL GAS CO. | 03-06-87 | C | | |
| ST87-1731 | NORTHERN NATURAL GAS CO. | V.H.C. PIPELINE CO. | 03-06-87 | B | | |
| ST87-1732 | TENNESSEE GAS PIPELINE CO. | SOUTH JERSEY GAS CO. | 03-06-87 | B | | |
| ST87-1733 | NECHES PIPELINE SYSTEM | SPINDLETOP GAS DISTRIBUTION SYSTEM | 03-06-87 | G | | |
| ST87-1734 | CRANBERRY PIPELINE CORP. | CONSOLIDATED GAS TRANSMISSION CORP. | 03-06-87 | G | 08-03-87 | 43.00 |
| ST87-1735 | TENNESSEE GAS PIPELINE CO. | ATLANTA GAS LIGHT CO., ET AL. | 03-06-87 | B | | |
| ST87-1736 | NORTHERN NATURAL GAS CO. | ILLINOIS POWER CO. | 03-09-87 | B | | |
| ST87-1737 | NATURAL GAS PIPELINE CO. OF AMERICA | SPINDLETOP GAS DISTRIBUTION SYSTEM | 03-09-87 | B | | |
| ST87-1738 | NATURAL GAS PIPELINE CO. OF AMERICA | ALABAMA GAS CORP., ET AL. | 03-09-87 | B | | |
| ST87-1739 | NORTHWEST PIPELINE CORP. | CASCADE NATURAL GAS CORP. | 03-09-87 | B | | |
| ST87-1740 | NORTHWEST PIPELINE CORP. | INTERMOUNTAIN GAS CO. | 03-09-87 | B | | |
| ST87-1741 | NORTHWEST PIPELINE CORP. | WASHINGTON WATER POWER CO. | 03-09-87 | B | | |
| ST87-1742 | NORTHWEST PIPELINE CORP. | WASHINGTON NATURAL GAS CO. | 03-09-87 | B | | |
| ST87-1743 | TRANSWESTERN PIPELINE CO. | SOUTHERN CALIFORNIA GAS CO. | 03-09-87 | B | | |
| ST87-1744 | NORTHWEST PIPELINE CORP. | NORTHWEST NATURAL GAS CO. | 03-09-87 | B | | |
| ST87-1745 | TRANSCONTINENTAL GAS PIPE LINE CORP. | DAYTON POWER AND LIGHT CO. | 03-09-87 | B | | |
| ST87-1746 | TRANSCONTINENTAL GAS PIPE LINE CORP. | EASTEX GAS TRANSMISSION | 03-09-87 | B | | |
| ST87-1747 | TRANSCONTINENTAL GAS PIPE LINE CORP. | ACADIAN NATRUAL GAS COMPANY | 03-09-87 | B | | |
| ST87-1748 | TRANSCONTINENTAL GAS PIPE LINE CORP. | SOUTH CAROLINA PIPELINE CO., ET AL. | 03-09-87 | B | | |
| ST87-1749 | TRANSCONTINENTAL GAS PIPE LINE CORP. | BRIDGELINE GAS DISTRIBUTION CO. | 03-09-87 | B | | |
| ST87-1750 | SUPERIOR OFFSHORE PIPELINE CO. | TENNESSEE RIVER INTRASTATE, ET AL. | 03-09-87 | B | | |

| DOCKET NUMBER * | TRANSPORTER/SELLER | RECIPIENT | DATE FILED | SUBPART | EXPIRATION DATE** | TRANSPORTATION RATE (¢/MMBTU |
|---|---|---|---|---|---|---|
| ST87-1751 | TENNESSEE GAS PIPELINE CO. | MOUNTAINEER GAS CO. | 03-09-87 | B | | |
| ST87-1752 | TENNESSEE GAS PIPELINE CO. | MOUNTAINEER GAS CO., ET AL. | 03-09-87 | B | | |
| ST87-1753 | TRANSCONTINENTAL GAS PIPE LINE CORP. | PHILADELPHIA ELECTRIC CO. | 03-09-87 | B | | |
| ST87-1754 | TRANSCONTINENTAL GAS PIPE LINE CORP. | PEOPLES NATURAL GAS CO., ET AL. | 03-09-87 | B | | |
| ST87-1755 | TRANSCONTINENTAL GAS PIPE LINE CORP. | BALTIMORE GAS AND ELECTRIC CO. | 03-09-87 | B | | |
| ST87-1756 | TRANSCONTINENTAL GAS PIPE LINE CORP. | PUBLIC SERVICE ELECTRIC AND GAS CO. | 03-09-87 | B | | |
| ST87-1757 | TRANSCONTINENTAL GAS PIPE LINE CORP. | ALABAMA GAS CORP. | 03-09-87 | B | | |
| ST87-1758 | NORTHERN NATURAL GAS CO. | OWATONNA PUBLIC UTILITIES | 03-09-87 | B | | |
| ST87-1759 | NORTHERN NATURAL GAS CO. | PENINSULAR GAS CO. | 03-09-87 | B | | |
| ST87-1760 | EL PASO NATURAL GAS CO. | V.H.C. PIPELINE CO. | 03-10-87 | B | | |
| ST87-1761 | EL PASO NATURAL GAS CO. | CITY OF LONG BEACH | 03-10-87 | B | | |
| ST87-1762 | MIGC, INC. | MGTC, INC. | 03-10-87 | B | | |
| ST87-1763 | MIGC, INC. | MGTC, INC. | 03-10-87 | B | | |
| ST87-1764 | EL PASO NATURAL GAS CO. | SOUTHERN CALIFORNIA GAS CO. | 03-11-87 | B | | |
| ST87-1765 | EL PASO NATURAL GAS CO. | PACIFIC GAS AND ELECTRIC CO. | 03-11-87 | B | | |
| ST87-1766 | EL PASO NATURAL GAS CO. | EL PASO HYDROCARBONS CO. | 03-11-87 | B | | |
| ST87-1767 | EL PASO NATURAL GAS CO. | EL PASO GAS TRANSPORTATION CO. | 03-11-87 | B | | |
| ST87-1768 | NORTHWEST PIPELINE CORP. | CP NATIONAL CORP. | 03-11-87 | B | | |
| ST87-1769 | TENNESSEE GAS PIPELINE CO. | BERKSHIRE GAS CO., ET AL. | 03-12-87 | B | | |
| ST87-1770 | TENNESSEE GAS PIPELINE CO. | WASHINGTON GAS LIGHT CO., ET AL. | 03-12-87 | B | | |
| ST87-1771 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN ILLINOIS GAS CO. | 03-12-87 | B | | |
| ST87-1772 | TEXAS EASTERN TRANSMISSION CORP. | NEW JERSEY NATURAL GAS CO. | 03-12-87 | B | | |
| ST87-1773 | TEXAS EASTERN TRANSMISSION CORP. | COLUMBIA GAS OF VIRGINIA, INC. | 03-12-87 | B | | |
| ST87-1774 | IAFT PIPELINE CO. | NORTHERN NATURAL GAS CO. | 03-12-87 | C | | |
| ST87-1775 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-12-87 | B | | |
| ST87-1776 | ARKLA ENERGY RESOURCES | SOUTHERN CALIFORNIA GAS CO. | 03-12-87 | B | | |
| ST87-1777 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 03-12-87 | B | | |
| ST87-1778 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 03-12-87 | B | | |
| ST87-1779 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 03-12-87 | B | | |
| ST87-1780 | PANHANDLE EASTERN PIPE LINE CO. | CONSUMERS POWER CO. | 03-12-87 | B | | |
| ST87-1781 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 03-12-87 | B | | |
| ST87-1782 | PANHANDLE EASTERN PIPE LINE CO. | NORTHERN INDIANA FUEL & LIGHT CO. | 03-12-87 | B | | |
| ST87-1783 | TENNESSEE GAS PIPELINE CO. | RIVERSIDE PIPELINE CO. | 03-13-87 | B | | |
| ST87-1784 | TENNESSEE GAS PIPELINE CO. | NORTHERN INTRASTATE PIPELINE CO. | 03-13-87 | B | | |
| ST87-1785 | TENNESSEE GAS PIPELINE CO. | ROCHESTER GAS & ELECTRIC CORP. | 03-13-87 | B | | |
| ST87-1786 | NORTHWEST PIPELINE CORP. | SAN DIEGO GAS & ELECTRIC CO. | 03-13-87 | B | | |
| ST87-1787 | NORTHWEST PIPELINE CORP. | PACIFIC GAS AND ELECTRIC CO. | 03-13-87 | B | | |
| ST87-1788 | NORTHWEST PIPELINE CORP. | SOUTHWEST GAS CORP. | 03-13-87 | B | | |
| ST87-1789 | NATURAL GAS PIPELINE CO. OF AMERICA | HOUSTON PIPE LINE CO. | 03-13-87 | B | | |
| ST87-1790 | NATURAL GAS PIPELINE CO. OF AMERICA | TEXAS PRODUCTS CORP., INC. (TPC) | 03-13-87 | B | | |
| ST87-1791 | ANR PIPELINE CO. | WISCONSIN NATURAL GAS CO. | 03-13-87 | B | | |
| ST87-1792 | ANR PIPELINE CO. | MICHIGAN CONSOLIDATED GAS CO. | 03-13-87 | B | | |
| ST87-1793 | ANR PIPELINE CO. | MICHIGAN CONSOLIDATED GAS CO. | 03-13-87 | B | | |
| ST87-1794 | ANR PIPELINE CO. | WISCONSIN NATURAL GAS CO. | 03-13-87 | B | | |
| ST87-1795 | ANR PIPELINE CO. | MICHIGAN CONSOLIDATED GAS CO. | 03-13-87 | B | | |
| ST87-1796 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS LIGHT CO. | 03-13-87 | B | | |
| ST87-1797 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 03-13-87 | B | | |
| ST87-1798 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS LIGHT CO. | 03-13-87 | B | | |
| ST87-1799 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 03-13-87 | B | | |

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| ST87-1800 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS LIGHT CO. | 03-13-87 | B | | |
| ST87-1801 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1802 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1803 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1804 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1805 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1806 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1807 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1808 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1809 | MISSISSIPPI VALLEY GAS CO. | PEOPLES NATURAL GAS CO. | 03-12-87 | C | 08-09-87 | 29.18 |
| ST87-1810 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1811 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1812 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1813 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1814 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1815 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS LIGHT CO. | 03-13-87 | B | | |
| ST87-1816 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1817 | PANHANDLE EASTERN PIPE LINE CO. | UNION ELECTRIC CO. | 03-13-87 | B | | |
| ST87-1818 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS LIGHT CO. | 03-13-87 | B | | |
| ST87-1819 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1820 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1821 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1822 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1823 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1824 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1825 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1826 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1827 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1828 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1829 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-13-87 | B | | |
| ST87-1830 | NORTHERN NATURAL GAS CO. | DELHI GAS PIPELINE CORP. | 03-13-87 | B | | |
| ST87-1831 | ARKLA ENERGY RESOURCES | MICHIGAN CONSOLIDATED GAS CO. | 03-16-87 | B | | |
| ST87-1832 | PANHANDLE EASTERN PIPE LINE CO. | MICHIGAN CONSOLIDATED GAS CO. | 03-16-87 | B | | |
| ST87-1833 | NORTHWEST PIPELINE CORP. | CITY OF ELLENSBURG | 03-16-87 | B | | |
| ST87-1834 | WILLIAMS NATURAL GAS CO. | KPL GAS SERVICE CO. | 03-16-87 | B | | |
| ST87-1835 | NORTHWEST PIPELINE CORP. | GREELEY GAS CO. | 03-16-87 | B | | |
| ST87-1836 | OASIS PIPE LINE CO. | PACIFIC GAS AND ELECTRIC CO., ET AL. | 03-16-87 | C | | |
| ST87-1837 | OASIS PIPE LINE CO. | SOUTHERN CALIFORNIA GAS CO. | 03-16-87 | C | | |
| ST87-1838 | HOUSTON PIPE LINE CO. | SOUTHERN CALIFORNIA GAS CO. | 03-16-87 | C | | |
| ST87-1839 | HOUSTON PIPE LINE CO. | TEXAS EASTERN TRANSMISSION CORP. | 03-16-87 | C | | |
| ST87-1840 | HOUSTON PIPE LINE CO. | NATURAL GAS PIPELINE CO. OF AMERICA | 03-16-87 | C | | |
| ST87-1841 | ONG TRANSMISSION CO. | NATURAL GAS PIPELINE CO. OF AMERICA | 03-16-87 | C | 08-13-87 | 24.32 |
| ST87-1842 | NATURAL GAS PIPELINE CO. OF AMERICA | NGC INTRASTATE PIPELINE CO. | 03-16-87 | B | | |
| ST87-1843 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN ILLINOIS GAS CO. | 03-16-87 | B | | |
| ST87-1844 | ARKLA ENERGY RESOURCES | ARKANSAS LOUISIANA GAS CO. | 03-16-87 | B | | |
| ST87-1845 | WESTERN GAS SUPPLY CO. | NORTHWEST PIPELINE CORP. | 03-17-87 | C | | |
| ST87-1846 | WILLIAMS NATURAL GAS CO. | IOWA ILLINOIS GAS AND ELECT. CO., ET AL. | 03-17-86 | B | | |
| ST87-1847 | PRODUCER'S GAS CO. | TENNESSEE GAS PIPELINE CO. | 03-17-87 | C | 08-14-87 | 25.20 |
| ST87-1848 | TRANSCONTINENTAL GAS PIPE LINE CORP. | NORTHERN INDIANA PUBLIC SERVICE CO. | 03-17-87 | B | | |

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| ST87-1849 | TRANSCONTINENTAL GAS PIPE LINE CORP. | COLUMBIA GAS OF KY, INC., ET AL. | 03-17-87 | B | | |
| ST87-1850 | TRANSCONTINENTAL GAS PIPE LINE CORP. | MISSISSIPPI VALLEY GAS CO., ET AL. | 03-17-87 | B | | |
| ST87-1851 | TRANSCONTINENTAL GAS PIPE LINE CORP. | NORTHERN ILLINOIS GAS CO. | 03-18-87 | B | | |
| ST87-1852 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN ILLINOIS GAS CO. | 03-18-87 | B | | |
| ST87-1853 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN INDIANA PUBLIC SERVICE CO. | 03-18-87 | B | | |
| ST87-1854 | NORTHWEST PIPELINE CORP. | COASTAL STATES GAS TRANSMISSION CO. | 03-18-87 | B | | |
| ST87-1855 | WILLIAMS NATURAL GAS CO. | TEXOL INDUSTRIAL SALES CO. | 03-18-87 | B | | |
| ST87-1856 | WILLIAMS NATURAL GAS CO. | KANSAS GAS SUPPLY CORP. | 03-19-87 | C | 08-16-87 | 22.40 |
| ST87-1857 | LOUISIANA INTRASTATE GAS CORP. | TEXAS EASTERN TRANSMISSION CORP. | 03-19-87 | B | | |
| ST87-1858 | UNITED GAS PIPE LINE CO. | ENMARK GAS CORP. | 03-19-87 | B | | |
| ST87-1859 | UNITED GAS PIPE LINE CO. | LOUISIANA STATE GAS CORP. | 03-19-87 | B | | |
| ST87-1860 | UNITED GAS PIPE LINE CO. | CHATTANOOGA GAS CO. | 03-19-87 | B | | |
| ST87-1861 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN ILLINOIS GAS CO. | 03-19-87 | B | | |
| ST87-1862 | EL PASO NATURAL GAS CO. | PACIFIC GAS AND ELECTRIC CO. | 03-19-87 | B | | |
| ST87-1863 | EL PASO NATURAL GAS CO. | SOUTHERN CALIFORNIA GAS CO. | 03-19-87 | B | | |
| ST87-1864 | EL PASO NATURAL GAS CO. | ENERGAS CO. | 03-19-87 | B | | |
| ST87-1865 | COLORADO INTERSTATE GAS CO. | CITY OF COLORADO SPRINGS | 03-19-87 | B | | |
| ST87-1866 | COLORADO INTERSTATE GAS CO. | PEOPLES NATURAL GAS CO. | 03-19-87 | B | | |
| ST87-1867 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-19-87 | B | | |
| ST87-1868 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-19-87 | B | | |
| ST87-1869 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-19-87 | B | | |
| ST87-1870 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-19-87 | B | | |
| ST87-1871 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 03-19-87 | B | | |
| ST87-1872 | WILLIAMS NATURAL GAS CO. | KANSAS GAS SUPPLY CORP. | 03-19-87 | B | | |
| ST87-1873 | WILLIAMS NATURAL GAS CO. | TAFT PIPELINE CO. | 03-19-87 | B | | |
| ST87-1874 | TRANSCONTINENTAL GAS PIPE LINE CORP. | SOUTHERN CALIFORNIA GAS CO., ET AL. | 03-19-87 | B | | |
| ST87-1875 | TRANSCONTINENTAL GAS PIPE LINE CORP. | AMOCO GAS CO. | 03-19-87 | B | | |
| ST87-1876 | TRANSCONTINENTAL GAS PIPE LINE CORP. | NORTHERN INDIANA PUBLIC SERVICE CO. | 03-19-87 | B | | |
| ST87-1877 | TRANSCONTINENTAL GAS PIPE LINE CORP. | CAROLINA PIPELINE CO. | 03-19-87 | B | | |
| ST87-1878 | TRANSCONTINENTAL GAS PIPE LINE CORP. | PUBLIC SERVICE ELECTRIC AND GAS CO. | 03-19-87 | B | | |
| ST87-1879 | TENNESSEE GAS PIPELINE CO. | ENERGY NORTH, INC. | 03-20-87 | B | | |
| ST87-1880 | NORTHERN NATURAL GAS CO. | TEXAS PRODUCTS CORP., INC. (TPC) | 03-20-87 | B | | |
| ST87-1881 | NORTHERN NATURAL GAS CO. | PHILADELPHIA ELECTRIC CO. | 03-20-87 | B | | |
| ST87-1882 | NORTHERN NATURAL GAS CO. | NORTHERN ILLINOIS GAS CO. | 03-20-87 | B | | |
| ST87-1883 | NORTHERN NATURAL GAS CO. | IOWA-ILLINOIS GAS & ELECTRIC CO. | 03-20-87 | B | | |
| ST87-1884 | NORTHERN NATURAL GAS CO. | HOUSTON PIPE LINE CO. | 03-20-87 | B | | |
| ST87-1885 | WILLIAMS NATURAL GAS CO. | UNION GAS SYSTEM | 03-20-87 | B | | |
| ST87-1886 | TEXAS GAS TRANSMISSION CORP. | ROCHESTER GAS AND ELECTRIC CO., ET AL. | 03-20-87 | B | | |
| ST87-1887 | TEXAS GAS TRANSMISSION CORP. | WESTERN KENTUCKY GAS CO. | 03-20-87 | B | | |
| ST87-1888 | TAFT PIPELINE CO. | NORTHERN ILLINOIS GAS CO. | 03-20-87 | C | | |
| ST87-1889 | TAFT PIPELINE CO. | IOWA-ILLINOIS GAS & ELECTRIC CO. | 03-20-87 | C | | |
| ST87-1890 | COLUMBIA GAS TRANSMISSION CORP. | PHILADELPHIA ELECTRIC CO. | 03-20-87 | B | | |
| ST87-1891 | NATURAL GAS PIPELINE CO. OF AMERICA | PEOPLES GAS LIGHT & COKE CO. | 03-20-87 | B | | |
| ST87-1892 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN ILLINOIS GAS CO. | 03-20-87 | B | | |
| ST87-1893 | NATURAL GAS PIPELINE CO. OF AMERICA | YANKEE PIPELINE CO. | 03-20-87 | C | 08-17-87 | 26.25 |
| ST87-1894 | TRANSOK, INC. | SOUTHERN NATURAL GAS CO. | 03-20-87 | B | | |
| ST87-1895 | TEXAS GAS TRANSMISSION CORP. | LOUISVILLE GAS & ELECTRIC CO. | 03-20-87 | B | | |
| ST87-1896 | TEXAS GAS TRANSMISSION CORP. | WESTERN KENTUCKY GAS CO. | 03-20-87 | B | | |
| ST87-1897 | TEXAS GAS TRANSMISSION CORP. | COMMUNITY NATURAL GAS CO., INC. | 03-20-87 | B | | |

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| ST87-1898 | WILLIAMS NATURAL GAS CO. | KPL GAS SERVICE CO. | 03-23-87 | B | | |
| ST87-1899 | WILLIAMS NATURAL GAS CO. | KPL GAS SERVICE CO. | 03-23-87 | B | | |
| ST87-1900 | PANHANDLE EASTERN PIPE LINE CO. | KANSAS PIPELINE CO. | 03-23-87 | B | | |
| ST87-1901 | TRUNKLINE GAS CO. | UGI CORP., ET AL. | 03-23-87 | B | | |
| ST87-1902 | PANHANDLE EASTERN PIPE LINE CO. | WELLHEAD VENTURES CORP. | 03-23-87 | B | | |
| ST87-1903 | PANHANDLE EASTERN PIPE LINE CO. | KANSAS PIPELINE CO. | 03-23-87 | B | | |
| ST87-1904 | PANHANDLE EASTERN PIPE LINE CO. | KANSAS PIPELINE CO. | 03-23-87 | B | | |
| ST87-1905 | PANHANDLE EASTERN PIPE LINE CO. | KANSAS PIPELINE CO. | 03-23-87 | B | | |
| ST87-1906 | PANHANDLE GAS CO. | COLUMBIA GAS OF VIRGINIA, INC. | 03-23-87 | D | | |
| ST87-1907 | NATURAL GAS PIPELINE CO. OF AMERICA | ILLINOIS POWER CO. | 03-23-87 | B | | |
| ST87-1908 | VALERO TRANSMISSION CO. | EL PASO NATURAL GAS CO. | 03-24-87 | C | | |
| ST87-1909 | PANHANDLE GAS CO. | COLUMBIA GAS OF KENTUCKY, INC. | 03-23-87 | D | | |
| ST87-1910 | PANHANDLE GAS CO. | COLUMBIA GAS OF NEW YORK, INC. | 03-23-87 | D | | |
| ST87-1911 | HOUSTON PIPE LINE CO | ENRON INDUSTRIAL NATURAL GAS CO. | 03-23-87 | C | | |
| ST87-1912 | TRUNKLINE GAS CO. | MICHIGAN GAS UTILITIES | 03-24-87 | B | | |
| ST87-1913 | TRUNKLINE GAS CO. | MICHIGAN GAS UTILITIES | 03-24-87 | B | | |
| ST87-1914 | TRUNKLINE GAS CO. | WELLHEAD VENTURES CORP. | 03-24-87 | B | | |
| ST87-1915 | TRUNKLINE GAS CO. | MICHIGAN CONSOLIDATED GAS CO., ET AL. | 03-24-87 | B | | |
| ST87-1916 | TENNESSEE GAS PIPELINE CO. | TEXLINE GAS CO. | 03-24-87 | B | | |
| ST87-1917 | COLORADO INTERSTATE GAS CO. | QUIVIRA GAS CO. | 03-24-87 | B | | |
| ST87-1918 | TEXAS EASTERN TRANSMISSION CORP. | ASSOCIATED NATURAL GAS CO. | 03-25-87 | B | | |
| ST87-1919 | TEXAS EASTERN TRANSMISSION CORP. | CITY OF RICHMOND, VA | 03-25-87 | B | | |
| ST87-1920 | TEXAS EASTERN TRANSMISSION CORP. | ORANGE AND ROCKLAND UTILITIES, INC. | 03-25-87 | B | | |
| ST87-1921 | TEXAS EASTERN TRANSMISSION CORP. | VIRGINIA NATURAL GAS | 03-25-87 | B | | |
| ST87-1922 | TEXAS EASTERN TRANSMISSION CORP. | COLUMBIA GAS OF PENNSYLVANIA, INC. | 03-25-87 | B | | |
| ST87-1923 | TEXAS EASTERN TRANSMISSION CORP. | CITY OF NORRIS CITY | 03-25-87 | B | | |
| ST87-1924 | TEXAS EASTERN TRANSMISSION CORP. | HAYES ALBION PIPELINE CO. | 04-25-87 | B | | |
| ST87-1925 | TEXAS EASTERN TRANSMISSION CORP. | CITY OF RICHMOND | 03-25-87 | B | | |
| ST87-1926 | TEXAS EASTERN TRANSMISSION CORP. | VILLAGE OF ENFIELD | 03-25-87 | B | | |
| ST87-1927 | TEXAS EASTERN TRANSMISSION CORP. | CITY OF RICHMOND DEPT. OF PUBLIC UTIL. | 03-25-87 | B | | |
| ST87-1928 | NORTHERN NATURAL GAS CO. | NORTHERN INTRASTATE PIPELINE CO. | 03-26-87 | B | | |
| ST87-1929 | WILLIAMS NATURAL GAS CO. | KANSAS PIPELINE CO. | 03-26-87 | B | | |
| ST87-1930 | WILLIAMS NATURAL GAS CO. | MISSOURI PUBLIC SERVICE | 03-26-87 | B | | |
| ST87-1931 | TRANSCONTINENTAL GAS PIPE LINE CORP. | LOUISVILLE GAS AND ELECTRIC CO., ET AL. | 03-23-87 | B | | |
| ST87-1932 | TRANSCONTINENTAL GAS PIPE LINE CORP. | CONNECTICUT LIGHT AND POWER CO., ET AL. | 03-23-87 | B | | |
| ST87-1933 | TRANSCONTINENTAL GAS PIPE LINE CORP. | CORPUS CHRISTI INDUSTRIAL PIPELINE CO. | 03-23-87 | B | | |
| ST87-1934 | TRANSCONTINENTAL GAS PIPE LINE CORP. | BALTIMORE GAS AND ELECTRIC CO., ET AL. | 03-23-87 | B | | |
| ST87-1935 | CONSOLIDATED GAS TRANSMISSION CORP. | EAST OHIO GAS CO. | 03-27-87 | B | | |
| ST87-1936 | NATURAL GAS PIPELINE CO. OF AMERICA | CENTRAL ILLINOIS LIGHT CO. | 03-26-87 | B | | |
| ST87-1937 | PGC PIPELINE, DIV. OF LPC ENERGY INC. | TEXAS GAS TRANSMISSION CORP. | 03-26-87 | C | 08-23-87 | 21.50 |
| ST87-1938 | ONG TRANSMISSION CO. | WILLIAMS NATURAL GAS CO. | 03-26-87 | C | 08-23-87 | 10.00 |
| ST87-1939 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1940 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1941 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1942 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1943 | CONSOLIDATED GAS TRANSMISSION CORP. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1944 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1945 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1946 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |

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| ST87-1947 | CONSOLIDATED GAS TRANSMISSION CORP. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1948 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1949 | GAS CO. OF NM (DIV. PUBLIC SERV. CO. NM) | EL PASO NATURAL GAS CO. | 03-27-87 | C | | |
| ST87-1950 | CONSOLIDATED GAS TRANSMISSION CORP. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1951 | CONSOLIDATED GAS TRANSMISSION CORP. | EAST OHIO GAS CO. | 03-27-87 | B | | |
| ST87-1952 | VALERO TRANSMISSION, L. P. | UNITED GAS PIPE LINE CO. | 03-27-87 | C | | |
| ST87-1953 | CONSOLIDATED GAS TRANSMISSION CORP. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1954 | CONSOLIDATED GAS TRANSMISSION CORP. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1955 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1956 | CONSOLIDATED GAS TRANSMISSION CORP. | WASHINGTON GAS LIGHT CO. | 03-27-87 | B | | |
| ST87-1957 | CONSOLIDATED GAS TRANSMISSION CORP. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1958 | CONSOLIDATED GAS TRANSMISSION CORP. | HOPE GAS, INC. | 03-27-87 | B | | |
| ST87-1959 | CONSOLIDATED GAS TRANSMISSION CORP. | HOPE GAS, INC. | 03-27-87 | B | | |
| ST87-1960 | CONSOLIDATED GAS TRANSMISSION CORP. | HOPE GAS, INC. | 03-27-87 | B | | |
| ST87-1961 | CONSOLIDATED GAS TRANSMISSION CORP. | HOPE GAS, INC. | 03-27-87 | B | | |
| ST87-1962 | CONSOLIDATED GAS TRANSMISSION CORP. | EAST OHIO GAS CO. | 03-27-87 | B | | |
| ST87-1963 | CONSOLIDATED GAS TRANSMISSION CORP. | VIRGINIA NATURAL GAS | 03-27-87 | B | | |
| ST87-1964 | CONSOLIDATED GAS TRANSMISSION CORP. | CLINTON NEWBERRY NAT. GAS AUTHORITY | 03-27-87 | B | | |
| ST87-1965 | CONSOLIDATED GAS TRANSMISSION CORP. | HOPE GAS, INC. | 03-27-87 | B | | |
| ST87-1966 | CONSOLIDATED GAS TRANSMISSION CORP. | HOPE GAS, INC. | 03-27-87 | B | | |
| ST87-1967 | WILLIAMS NATURAL GAS CO. | KANSAS POWER AND LIGHT CO. | 03-27-87 | B | | |
| ST87-1968 | CONSOLIDATED GAS TRANSMISSION CORP. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1969 | CONSOLIDATED GAS TRANSMISSION CORP. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1970 | CONSOLIDATED GAS TRANSMISSION CORP. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1971 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1972 | CONSOLIDATED GAS TRANSMISSION CORP. | NIAGARA MOHAWK POWER CORP. | 03-27-87 | B | | |
| ST87-1973 | ANR PIPELINE CO. | NORTHERN INDIANA PUBLIC SERVICE CO. | 03-27-87 | B | | |
| ST87-1974 | ACADIAN GAS PIPELINE SYSTEM | COLUMBIA GAS OF OHIO, INC. | 03-27-87 | C | | |
| ST87-1975 | ANR PIPELINE CO. | WISCONSIN NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1976 | NORTHERN NATURAL GAS CO. | PEOPLES NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1977 | NORTHERN NATURAL GAS CO. | HOUSTON PIPE LINE CO. | 03-27-87 | B | | |
| ST87-1978 | ANR PIPELINE CO. | MICHIGAN GAS UTILITIES | 03-27-87 | B | | |
| ST87-1979 | ANR PIPELINE CO. | WISCONSIN NATURAL GAS CO. | 03-27-87 | B | | |
| ST87-1980 | COLORADO INTERSTATE GAS CO. | PUBLIC SERVICE CO. OF COLORADO | 03-27-87 | B | | |
| ST87-1981 | ANR PIPELINE CO. | DELHI GAS PIPELINE CORP. | 03-27-87 | B | | |
| ST87-1982 | ANR PIPELINE CO. | MAYES ALBION PIPELINE CO. | 03-27-87 | B | | |
| ST87-1983 | ANR PIPELINE CO. | HUMBLE GAS TRANSMISSION CO. | 03-27-87 | B | | |
| ST87-1984 | ANR PIPELINE CO. | SOUTHEASTERN MICHIGAN GAS CO. | 03-27-87 | B | | |
| ST87-1985 | ANR PIPELINE CO. | MICHIGAN CONSOLIDATED GAS CO. | 03-27-87 | B | | |
| ST87-1986 | DIG TRANSMISSION CO. | PANHANDLE EASTERN PIPE LINE CO. | 03-30-87 | C | 08-27-87 | 10.00 |
| ST87-1987 | NORTHERN NATURAL GAS CO. | NORTHERN ILLINOIS GAS CO. | 03-30-87 | B | | |
| ST87-1988 | NORTHERN NATURAL GAS CO. | GULF SOUTH PIPELINE CO. | 03-30-87 | B | | |
| ST87-1989 | NORTHERN NATURAL GAS CO. | ENRON INDUSTRIAL NATURAL GAS CO. | 03-30-87 | B | | |
| ST87-1990 | COLUMBIA GULF TRANSMISSION CO. | INDIANA GAS CO. | 03-30-87 | B | | |
| ST87-1991 | COLUMBIA GAS TRANSMISSION CORP. | LONG ISLAND LIGHTING CO. | 03-30-87 | B | | |
| ST87-1992 | NATURAL GAS PIPELINE CO. OF AMERICA | CITY OF SALEM | 03-31-87 | B | | |
| ST87-1993 | NATURAL GAS PIPELINE CO. OF AMERICA | IOWA ILLINOIS GAS & ELECTRIC CO. | 03-31-87 | B | | |
| ST87-1994 | NATURAL GAS PIPELINE CO. OF AMERICA | PEOPLES GAS LIGHT & COKE CO. | 03-31-87 | B | | |
| ST87-1995 | NATURAL GAS PIPELINE CO. OF AMERICA | CENTRAL ILLINOIS LIGHT CO. | 03-31-87 | B | | |

| DOCKET NUMBER * | TRANSPORTER/SELLER | RECIPIENT | DATE FILED | SUBPART | EXPIRATION DATE** | TRANSPORTATION RATE (¢/MMBTU) |
|---|---|---|---|---|---|---|
| CP87-1996 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTH SHORE GAS CO. | 05-31-87 | B | | |
| CP87-1997 | NATURAL GAS PIPELINE CO. OF AMERICA | NORTHERN ILLINOIS GAS CO. | 05-31-87 | B | | |
| CP87-1998 | NATURAL GAS PIPELINE CO. OF AMERICA | PEOPLES GAS LIGHT & COKE CO. | 05-31-87 | B | | |
| CP87-1999 | NATURAL GAS PIPELINE CO. OF AMERICA | SOUTHERN INDIANA GAS & ELECTRIC CO. | 05-31-87 | B | | |
| CP87-2000 | TENNESSEE GAS PIPELINE CO. | NASHVILLE GAS CO., ET AL. | 05-31-87 | B | | |
| CP87-2001 | TENNESSEE GAS PIPELINE CO. | CITY OF SPRINGFIELD | 05-31-87 | B | | |
| CP87-2002 | TENNESSEE GAS PIPELINE CO. | CITY OF MOLLY SPRINGS | 05-31-87 | B | | |
| CP87-2003 | TENNESSEE GAS PIPELINE CO. | CITY OF PORTLAND | 05-31-87 | B | | |
| CP87-2004 | TEXAS EASTERN TRANSMISSION CORP. | PENNSYLVANIA GAS AND WATER CO. | 05-31-87 | B | | |
| CP87-2005 | TEXAS EASTERN TRANSMISSION CORP. | TENNESSEE RIVER INTRASTATE GAS CO. | 05-31-87 | B | | |
| CP87-2006 | TEXAS EASTERN TRANSMISSION CORP. | WEST OHIO GAS CO. | 05-31-87 | B | | |
| CP87-2007 | TEXAS EASTERN TRANSMISSION CORP. | WISCONSIN GAS CO. | 05-31-87 | B | | |
| CP87-2008 | TEXAS EASTERN TRANSMISSION CORP. | CENTRAL ILLINOIS PUBLIC SERVICE CO. | 05-31-87 | B | | |
| CP87-2009 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 05-31-87 | B | | |
| CP87-2010 | PANHANDLE EASTERN PIPE LINE CO. | CITY OF COLORADO SPRINGS, CO | 05-31-87 | B | | |
| CP87-2011 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS LIGHT CO. | 05-31-87 | B | | |
| CP87-2012 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS LIGHT CO. | 05-31-87 | B | | |
| CP87-2013 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS PUBLIC SERVICE CO. | 05-31-87 | B | | |
| CP87-2014 | PANHANDLE EASTERN PIPE LINE CO. | OHIO TRANSMISSION CO. | 05-31-87 | B | | |
| CP87-2015 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 05-31-87 | B | | |
| CP87-2016 | TRUNKLINE GAS CO. | DELHI GAS PIPELINE CORP. | 05-31-87 | B | | |
| CP87-2017 | TRUNKLINE GAS CO. | ATLANTA GAS LIGHT CO., ET AL. | 05-31-87 | B | | |
| CP87-2018 | TRUNKLINE GAS CO. | CONSUMERS POWER CO. | 05-31-87 | B | | |
| CP87-2019 | PANHANDLE EASTERN PIPE LINE CO. | MICHIGAN CONSOLIDATED GAS CO. | 05-31-87 | B | | |
| CP87-2020 | PANHANDLE EASTERN PIPE LINE CO. | MICHIGAN CONSOLIDATED GAS CO. | 05-31-87 | B | | |
| CP87-2021 | PANHANDLE EASTERN PIPE LINE CO. | MICHIGAN CONSOLIDATED GAS CO. | 05-31-87 | B | | |
| CP87-2022 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS LIGHT CO. | 05-31-87 | B | | |
| CP87-2023 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 05-31-87 | B | | |
| CP87-2024 | PANHANDLE EASTERN PIPE LINE CO. | CITIZENS GAS AND COKE UTILITY | 05-31-87 | B | | |
| CP87-2025 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS LIGHT CO. | 05-31-87 | B | | |
| CP87-2026 | PANHANDLE EASTERN PIPE LINE CO. | CENTRAL ILLINOIS PUBLIC SERVICE CO. | 05-31-87 | B | | |
| CP87-2027 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 05-30-87 | B | | |
| CP87-2028 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 05-31-87 | B | | |
| CP87-2029 | PANHANDLE EASTERN PIPE LINE CO. | MICHIGAN CONSOLIDATED GAS CO. | 05-31-87 | B | | |
| CP87-2030 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 05-31-87 | B | | |
| CP87-2031 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 05-31-87 | B | | |
| CP87-2032 | PANHANDLE EASTERN PIPE LINE CO. | INDIANA GAS CO. | 05-31-87 | B | | |
| CP87-2033 | PANHANDLE EASTERN PIPE LINE CO. | CITIZENS GAS AND COKE UTILITY | 05-31-87 | B | | |
| CP87-2034 | PANHANDLE EASTERN PIPE LINE CO. | CITIZENS GAS AND COKE UTILITY | 05-31-87 | B | | |
| CP87-2035 | EL PASO NATURAL GAS CO. | SOUTHERN CALIFORNIA GAS CO. | 05-31-87 | B | | |
| CP87-2036 | TENNESSEE GAS PIPELINE CO. | NORTHERN ILLINOIS GAS CO., ET AL. | 05-31-87 | B | | |
| CP87-2037 | TENNESSEE GAS PIPELINE CO. | NORTH ALABAMA GAS DISTRICT | 05-31-87 | B | | |
| CP87-2038 | TENNESSEE GAS PIPELINE CO. | CITY OF CLARKSVILLE | 05-31-87 | B | | |
| CP87-2039 | EL PASO NATURAL GAS CO. | SOUTHERN CALIFORNIA GAS CO. | 05-31-87 | B | | |
| CP87-2040 | MOUNTAIN FUEL RESOURCES, INC. | MOUNTAIN FUEL SUPPLY CO. | 05-31-87 | B | | |
| CP87-2041 | MOUNTAIN FUEL RESOURCES, INC. | WESTERN GAS SUPPLY CO. | 05-31-87 | B | | |
| CP87-2042 | MOUNTAIN FUEL RESOURCES, INC. | MOUNTAIN FUEL SUPPLY CO. | 05-31-87 | B | | |
| CP87-2043 | ARKLA ENERGY RESOURCES | EAST OHIO GAS CO. | 05-31-87 | B | | |
| CP87-2044 | ARKLA ENERGY RESOURCES | PEOPLES NATURAL GAS CO. | 05-31-87 | B | | |

* NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WITH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42,372, 10/18/85).

** THE INTRASTATE PIPELINE HAS SOUGHT COMMISSION APPROVAL OF ITS TRANSPORTATION RATE PURSUANT TO SECTION 284.123(B)(2) OF THE COMMISSION'S REGULATIONS (18 CFR 284.123(B)(2)). SUCH RATES ARE DEEMED FAIR AND EQUITABLE IF THE COMMISSION DOES NOT TAKE ACTION BY THE DATE INDICATED.

[FR Doc. 87-11111 Filed 5-14-87; 8:45 am]

BILLING CODE 6717-01-C

[Docket No. TA87-4-45-000,001]

**Williston Basin Interstate Pipeline Co.; Motion of Williston Basin Interstate Pipeline Co. for Waiver of Requirements To Permit an Additional Sixty Day Extension of Time To File Purchased Gas Adjustment**

May 11, 1987.

Take notice that on May 4, 1987, Williston Basin Interstate Pipeline Company (Williston Basin) filed a Motion for Waiver of Requirements to Permit an Additional Sixty Day Extension of Time to File Purchased Gas Adjustment pursuant to Rules 212 and 2008 of the Commission's rules of practice and procedure. Williston Basin requests the waiver to permit it to file its regular semi annual purchased gas adjustment (PGA) on June 30, 1987, to be effective August 1, 1987.

Williston Basin states that it is currently involved in extensive restructuring/renegotiation of gas purchase contracts with its various suppliers. Therefore, sufficient information is not currently available to make the filing required under Section 21.3.3.1 of First Revised Volume No. 1. Williston Basin believes that the additional sixty days provided by the requested extension of time will allow for the development of the information necessary to accurately reflect gas costs in the rates charged its customers. This will serve to mitigate future deferred account adjustments, thus promoting rate stability.

In the alternative, should the Commission deny the request for extension, Williston Basin submitted for filing as part of its FERC Gas Tariff the following sheets:

*First Revised Volume No. 1*

Third Revised Sheet No. 10
Second Revised Sheet No. 11

*Original Volume No. 1-A*

Second Revised Sheet No. 11
Fourth Revised Sheet No. 12

*Original Volume No. 2*

Sixth Revised Sheet No. 10
Seventh Revised Sheet No. 11

The proposed effective date of the tariff sheets is June 1, 1987.

Third Revised Sheet No. 10, Second Revised Sheet No. 11 (First Revised Volume No. 1), Sixth Revised Sheet No. 10 and Seventh Revised Sheet No. 11 (Original Volume No. 2) and the schedules in support thereof were computed in adherence to Williston Basin's PGA clause and the Commission's Rules and Regulations, except that that "proxy" price levels included in the Company's last PGA filing in Docket No. TA87-1-49-000 are reflected n the current gas cost adjustment for those gas supply sources with whom contract negotiations have not yet been completed, as the Company has no basis for specifying either the volumes to be purchased or the price to be paid where settlement has not been reached. The use of such "proxy" pricing was allowed in Docket Nos. TA85-3-49-000, TA85-3-49-001, TA86-1-49-000, TA86-1-49-001 TA86-2-49-000 and TA87-1-49-000. The changes herein reflect a cumulative gas cost adjustment for Rate Schedules G-1, SGS-1, I-1 and X-1 of a negative 16.456 cents per dkt. The surcharge adjustment for Rate Schedules G-1, SGS-1 and I-1, which also reflects "proxy" pricing as allowed in the last PGA, is a negative 6.751 cents per dkt. These changes represent a net increase in rates for Rate Schedules G-1, SGS-1 and I-1 of 12.888 cents per dkt and a net increase of 7.834 cents per dkt for Rate Schedule X-1, from currently effective rates. Rate Schedule X-5 reflects a cumulative gas cost adjustment of a negative 17.561 cents per dkt, an increase of 18.394 cents per dkt.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with the Commission's Rules 211 and 214. All such motions or protests should be filed on or before May 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-11139 Filed 5-14-87; 8:45 am]
BILLING CODE 6717-01-M

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## Office of Hearings and Appeals

**Issuance of Decisions and Orders; Week of March 30 Through April 3, 1987**

During the week of March 30 through April 3, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

*David R. Soler, 3/31/87; KFA-0078*

David R. Soler filed an Appeal from a denial by the Freedom of Information Authorizing Official of the Chicago Operations Office of the Department of Energy (DOE) of a Request for Information which he submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the documents at issue contained pre-decisional evaluative comments and were properly withheld under Exemption 5 of the FOIA. In addition, the DOE found that the Exemption 5 privilege had not been waived by limited release of the report to the contractor operating the facility. Therefore, the Appeal was denied. Important issues considered in the Decision and Order were the agency's deliberative process privilege and waiver of Exemption 5 by disclosure to a person outside the government.

*Tooze Marshall Shenker, Holloway & Duden, 3/31/87; KFA-0083*

Tooze Marshall Shenker Holloway & Duden filed an Appeal from a partial denial by the Director, Customer Service Division, of the Bonneville Power Administration of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE generally upheld the initial determination, but found that some of the memoranda which were initially withheld under Exemption 5 did not contain deliberative information and should be released to the public. The Appeal was therefore granted in part.

**Requests for Exception**

*Jasper Oil Company, 3/31/87; KEE-0068*

Jasper Oil Company filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In evaluating the request, the DOE found that the firm had not responded to DOE's repeated requests that it provide documentation of its claim that it was experiencing hardship in filing Form EIA-782B. Accordingly, exception relief was denied.

*Kelley Williamson Company, 4/3/87; KEE-0069*

The Kelley Williamson Company filed an Application for Exception on November 18, 1986, in which it sought relief from the reporting requirements of Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm did not bear an unusual burden as a result of the reporting requirements. Accordingly, exception relief was denied.

*Morgan Oil Company, 3/30/87; KEE-0112*

Morgan Oil Company filed an Application for Exception from the requirement that it prepare and file Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-863,

"Petroleum Product Sales Identification Survey." In considering the Application, the DOE found that Morgan had not demonstrated that it was particularly adversely affected by the requirement that it file the Forms. Accordingly, exception relief was denied.

*Pickett Oil Company, Inc., 3/30/87; KEE–0113*

Pickett Oil Company, Inc. filed an Application for Exception from the requirement that it prepare and file Form EIA–782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." In considering the Application, the DOE found that Pickett had not demonstrated that it was particularly adversely affected by the requirement that it file the Form. Accordingly, exception relief was denied.

*State of Hawaii, 4/2/87; KEE–0102*

The State of Hawaii filed an Application for Exception from the provisions of 10 CFR Parts 450 and 455. In particular, Hawaii requested that it be excepted from the requirement that to be eligible for grants under the DOE's Institutional Conservation Program (ICP), buildings must be heated or cooled by mechanical means. In considering the Application, the DOE found that many Hawaii school buildings, which together represent a majority of the State's ICP-related structures, were ineligible to receive ICP grants because they were cooled by the trade winds rather than by mechanical means. The DOE concluded that the exclusion of such a large proportion of the State's ICP-related buildings from participation in the ICP program frustrated the goals of the National Energy Conservation Policy Act and therefore imposed a gross inequity on Hawaii. Accordingly, the Application for Exception was granted.

**Motions for Discovery**

*Dane Energy Company, 4/1/87; HRD–0141, HRX–0141, KRX–0030*

The Dane Energy Company filed Motions for Discovery and for Evidentiary Hearing in connection with a Proposed Remedial Order issued to the firm by the Economic Regulatory Administration (ERA) on January 7, 1983. With respect to the Motion for Discovery, OHA found that Dane did not show that there was information in ERA's possession which would assist Dane in establishing the amount of the overcharges stemming from the alleged layered transactions or the validity of the layering rule as interpreted by the DOE. In denying the evidentiary hearing motion, the OHA found that Dane did not explain why such a hearing was necessary to decide any issue in the case. In addition, OHA ruled that the correct method of determining the amount of Dane's overcharges should be a gross profits methodology rather than a methodology of matching purchases and sales. OHA therefore required Dane to submit evidence of its total cost of crude oil and total crude oil sales revenues for the audit period in order for ERA to calculate its gross profits.

*Port Petroleum, Inc., 4/3/87; KRD–0150, KRZ–0151*

Port Petroleum, Inc. (Port) filed a Motion for Discovery and a Motion to Defer Filing a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) issued to it by the Economic Regulatory Administration (ERA) on August 13, 1985. Port sought discovery related to the administrative record and contemporaneous construction of 10 CFR Subpart L (the layering and permissible average markup regulations). The DOE denied these requests in their entirety, finding that Port had failed to show their relevance and materiality. Specifically, it was determined that Port had access to all of the materials in the official administrative records, and contemporaneous construction was not warranted because there had been no inconsistency in the DOE's interpretation of the layering regulation. The DOE also denied Port's Motion to Defer Filing a Request for Evidentiary hearing, finding no reason for such a delay. Notwithstanding this determination, the DOE permitted Port to file a Motion for Evidentiary Hearing within 15 days of the receipt of the Decision and Order.

**Refund Applications**

*Apco Oil Corporation/ Apco Quick Shop, et al., 4/2/87; RF83–149 et al.*

The DOE issued a Decision and Order concerning six Applications for Refund filed by Apco Quick Shop, *et al.* Each of the applicants had purchased refined petroleum products from Apco Oil Corporation, and each sought a portion of the settlement fund obtained by the DOE through a consent order with Apco. *Apco Oil Corp.*, 12 DOE ¶ 85,140 (1985). Each of the six applicants applied for refunds of less than $5,000 and followed the small claims procedures outlined in *Apco*. After examining the applications, the DOE concluded that each of the six firms should receive a refund based on its purchases from Apco times the volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted was $4,541.

*Conoco Inc./ Block Oil Company, Inc., et al., 4/2/87; RF220–265 et al.*

The DOE issued a Decision and Order concerning five Applications for Refund filed by purchasers of Conoco refined products. Each customer documented the volumes of refined products that it purchased from Conoco and requested a refund based upon the small claims procedures outlined in *Conoco Inc.*, 13 DOE ¶ 85,316 (1985). After examining the claims, the DOE concluded that all five applicants should receive refunds based on the volumetric refund amount established in *Conoco*. The total amount of refunds granted was $1,763.

*First Nationwide Corporation, et al., 3/30/87; RF270–1758 et al.*

The DOE issued a decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by twelve trucking companies and will use those volumes as a basis for the refund that will ultimately be issued to the twelve firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the twelve firms' refunds will be determined at a later date.

*Faribault Transportation Company, Inc., et al., 3/31/87; RF270–593 et al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by twelve trucking companies and will use those volumes as a basis for the refund that will ultimately be issued to the six firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the twelve firms' refunds will be determined at a later date.

*Gary Energy Corporation/Vangas, Inc., 3/30/87; RF47–21*

The DOE issued a supplemental Decision and Order granting Vangas, Inc., an additional refund from the Gary Energy Corporation deposit escrow account. The additional refund of $4,225 in principal was granted after it appeared that the refund approved for the firm in a Decision and Order issued on March 23, 1987, had been understated.

*Gulf Oil Corporation/B. J. McAdams, Inc., et al., 3/30/87; RF40–3679 et al.*

The DOE issued a Supplemental Decision and Order concerning six Applications for Refund filed in the Gulf Oil Corporation special refund proceeding. The Decision corrected the interest and total refund amounts calculated for six of the applicants listed in the Appendix to *Gulf Oil Corp./ Laurens Glass*, 15 DOE ¶ 85,415 (1987). The refunds totaled $42,718, representing $34,514 in principal and $8,204 in interest.

*Gulf Oil Corporation/Morris Oil Company, et al., 4/3/87; RF40–3574 et al.*

In accordance with the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), and after examining the evidence and the supporting documentation submitted, the DOE issued a Decision and Order granting seven applications for refund from the Gulf Oil Corporation escrow account. These refund totalled $21,867, representing $17,667 in principal plus $4,200 in interest.

*Lewtex Oil & Gas Corporation/Enterprise Products Company, 4/2/87; RF9–2*

Enterprise Products Company filed an Application for Refund in the Lewtex Oil Gas Corporation special refund proceeding. The request for a refund of more than $5,000 was based upon the claim that Enterprise had purchased 3,161,251 gallons of mixed LPGs from Lewtex. However, Enterprise failed to demonstrate that it had experienced any economic injury as a result of its purchases. As a result the DOE limited the Enterprise refund to $5,000, plus accrued interest of $4,930.

*Macmillan Ring-Free Oil Co. Inc./Cool Fuel, Inc., Delta Petroleum Company, Inc., Armolene Oil Company, 3/31/87; RF217–1, RF217–2, RF217–4*

The DOE issued a Decision and Order concerning three Applications for refund in the Macmillan Ring-Free Oil Co., Inc. special refund proceeding. Macmillan Ring-Free Oil Co., Inc., 13 DOE ¶ 85,165 (1985). Each applicant documented the volumes of petroleum products purchased from Macmillan and claimed a refund of less than $5,000. After examining the applications and supporting documentation, the DOE approved refunds totaling $12,857, representing $10,624 in principal and $2,233 in accrued interest.

*Marathon Petroleum Company/A. L. Ross & Sons, Inc., et al., 3/30/87; RF250–2852 et al.*

The DOE issued a Decision and Order concerning 60 Applications for Refund filed by resellers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant submitted information indicating the volume of the Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $80,070, representing $74,074 in principal and $5,990 in interest.

*Marathon Petroleum Company/J&L Oil, Inc., 4/13/87; RF250–2398, RF250–2399*

The DOE issued a Decision and Order concerning two Applications for Refund filed by J&L Oil, Inc. (J&L), a reseller of Marathon covered products. Although the firm's purchase of distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, J&L elected to file its refund applications in accordance with procedures for filing claims of less than $50,000 under the 35 percent presumption method outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that J&L should receive a refund of $49,999.99 in principal and $3,403.89 in accrued interest for a total refund of $53,403.88.

*Marathon Petroleum Company/Kare Oils, Inc., Forest City Oil Co., Inc., Charles P. Addis, 4/3/87, RF250–621, RF250–622, RF250–702*

The DOE issued a Decision and Order concerning three Applications for Refund filed on behalf of Kare Oils, Inc., Forest City Oil Co., Inc., and Charles P. Addis, purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Because the three firms are under common ownership, the DOE determined that their claims should be consolidated for purposes of analysis. Under the medium-range presumption of injury, refunds totaling $8,300 in principal and $711 in interest were approved for the three firms on the basis of 35 percent of their combined allocable shares.

*Marathon Petroleum Company/Sellers Oil Company, Inc., 3/31/87, RF250–1298*

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Sellers Oil Company, Inc. in the Marathon Petroleum Company refund proceeding. According to the procedures outlined in *Marathon Petroleum Co.*, 14 DOE ¶ 85,289 (1986), Sellers demonstrated that it indirectly purchased 1,841,560 gallons of covered product from Marathon through Southwest Georgia Oil Company of Bainbridge, Georgia, a direct Marathon customer. Since the agency granted Southwest a refund under the 35 percent (medium-range) presumption of injury in *Marathon Petroleum Co./Southwest Georgia Oil Co.*, 15 DOE ¶ 85,328 (1987), there was no conclusive finding that Southwest absorbed all of the alleged overcharges. Therefore, Sellers is eligible to receive a small claims refund in this proceeding. Sellers will receive its full allocable share of $773 in principal plus $0 in accrued interest.

*Marathon Petroleum Company/ Smith-Shafer Oil Company, 4/3/87; RF250–2385, RF250–2386.*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Smith-Shafer Oil, Inc. (Smith-Shafer), a reseller of Marathon covered products. Although the firm's purchase of distillates and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, Smith-Shafer elected to file its refund applications in accordance with procedures for filing claims of less than $50,000 under the 35 percent presumption method outlined in the Marathon decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Smith-Shafer should receive a refund of $10,147.24 in principal and $690.25 in accrued interest for a total refund of $1,838.49.

*Market Transport, Ltd, et al., 4/1/87; RF270–1787 et al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE Stripper Well Exemption litigation. The DOE approved the purchase volumes of refined petroleum products claimed by twelve trucking companies and will use those volumes as a basis for the refund that will ultimately be issued to the twelve firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the twelve firms' refunds will be determined at a later date.

*Mobil Oil Corporation/ Ambler Mobil Service, et al., 4/2/87; RF225–7540 et al.*

The DOE issued a Decision granting 49 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $24,208, representing $19,946 in principal and $4,262 in interest.

*Mobil Oil Corporation/Bentz Oil Company, et al., 3/31/87; RF225–8344 et al.*

The DOE issued a Decision granting 39 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $61,931, representing $51,020 in principal and $10,911 in interest.

*National Helium Corp./Nevada, 4/2/87; RQ3–351*

The DOE issued a Decision approving the second-stage refund application submitted by the State of Nevada in the National Helium Corp. refund proceeding. The State will use $110,857 for Energy Extension services. The funds will be used for workshops, publications, public service announcements, a ride-share hotline for Las Vegas commuters, and National Energy Education Day activities. Nevada may not use these oil overcharge monies for energy education activities for grades K–12 because the students would not have been purchasers of refined petroleum products during the period of price controls, 1973–1981.

*National Helium Corp./New Jersey, 4/3/87; RQ3–381*

The DOE issued a Decision approving the second-stage refund plan of New Jersey for use of funds from the National Helium Corp. escrow account. New Jersey stated that it planned to use its remaining share of National Helium funds, $175,001 plus accrued interest, to expand the state's ridesharing and vanpooling program. The DOE found that New Jersey's plan would reduce motorists' consumption of motor gasoline, thereby providing indirect restitution to injured consumers of refined petroleum products. Accordingly, New Jersey was granted $344,794 ($175,001 principal plus $169,793 interest) for the program.

*Standard Oil Company (Indiana)/North Dakota, Coline Gasoline Corporation/ North Dakota, Vickers Energy Corporation/North Dakota, 3/31/87, RQ251–350, RQ1–352, RQ2–352*

The DOE issued a Decision and Order approving the second-stage refund application submitted by the State of North Dakota for use of funds from the Standard Oil Company (Indiana), Coline Gasoline Corp. and Vickers Energy Corp. escrow accounts. North Dakota stated that it planned to use $421,002 plus accrued interest to supplement operational funding of three city bus systems and to subsidize state-wide transportation services that benefit the elderly and handicapped. The DOE found that North Dakota's plan would make restitution to injured consumers of refined petroleum products. The total amount of the second-stage funds released to North Dakota was $443,602.

*Standard Oil Company (Indiana)/Oglala Sioux Tribe, 3/31/87, RQ251–325, RQ251–326*

The Oglala Sioux Tribe filed a second-stage refund application with the Office of Hearings and Appeals, pursuant to a consent order entered into with Standard Oil Co. (Indiana) (Amoco). The Tribe proposed to fund a home energy audit program for all residents of the Pine Ridge Reservation. The application was granted.

**Dismissals**

The following submissions were dismissed:

| Company name | Case No. |
|---|---|
| Chevron U.S.A. Inc. | RF181-88. |
| J.C. Marsh Oil Co. | RF40-3650. |
| Woodson Oil Co. | KEE-0134. |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
*Director, Office of Hearings and Appeals.*
May 8, 1987.

[FR Doc. 87-11196 Filed 5-14-87; 8:45 am]
BILLING CODE 6450-01-M

## Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a $5 million consent order fund to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Total Petroleum, Inc. of Denver, Colorado (KEF-0061).

**DATE AND ADDRESS:** Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to Total Petroleum, Inc. Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case No. KEF-0061.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Total Petroleum, Inc. of Denver, Colorado and the DOE which settled a number of outstanding enforcement issues involving Total Petroleum, Inc. and Vickers Petroleum, Inc., a petroleum products reseller acquired by Total in October 1980. Among the issues settled by the consent order was Total's alleged non-compliance with certain provisions of the Crude Oil Entitlements Program, 10 CFR 211.67. The consent order also settled Total's possible regulatory violations in sales of certain refined petroleum products during the period September 1, 1973 through October 31, 1980.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow account funded by Total pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Total motor gasoline, No. 2 heating oil, and No. 2-D diesel fuel during the period September 1, 1973 through October 31, 1980 may file claims for refunds. In addition, purchasers of crude oil and refined petroleum products may apply for refunds in accordance with the DOE Modified Statement of Restitutionary Policy concerning crude oil overcharges. 51 FR 27899 (August 4, 1986). Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: May 8, 1987.
George B. Breznay,
*Director, Office of Hearings and Appeals.*

**Proposed Decision and Order of the Department of Energy**

*Implementation of Special Refund Procedures*

May 8, 1987.

Name of Firm: Total Petroleum, Inc.
Date of Filing: October 2, 1986.
Case Number: KEF-0061.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulated and implement special refund procedures in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 C.F.R. Part 205, Subpart V. On October 2, 1986, the ERA requested that the OHA formulate procedures to distribute $5 million which the DOE received pursuant to a Consent Order entered into by Total Petroleum, Inc. (Total) and the DOE.

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds are set forth in 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of alleged or adjudicated violations or ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's request to implement Subpart V procedures with respect to the funds received from Total and have determined that such procedures are appropriate. Accordingly, we will grant the ERA's request. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

**I. Background**

During the period January 1, 1973 through January 27, 1981, Total engaged in the production, importation, sale and refining of crude oil, the sale of refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products. Total was therefore subject to the federal petroleum price and allocation regulations.

On June 12, 1986, a Consent Order was executed between Total and the DOE which resolved a number of outstanding enforcement issues involving Total and Vickers Petroleum, Inc. (Vickers), a petroleum products reseller which was acquired by Total in October 1980.[1] The Consent Order

[1] These issues were:

(i) Allegations in a Proposed Remedial Order which the ERA issued to Total on April 25, 1985 alleging non-compliance with certain provisions of

Continued

was finalized on August 5, 1986. Under the terms of the settlement, Total paid $5 million to the DOE. The Consent Order states that the DOE has made no formal findings of violation and that Total does not admit it has committed any regulatory violations. Of the settlement fund, now held in an interest-bearing escrow account maintained by the Department of the Treasury, $2 million is intended to resolve all claims concerning Total's possible crude oil violations. Consent Order ¶ 402. The remaining $3 million is attributable to issues regarding Total's sale of refined products. *Id.* Accordingly, we propose to establish two refund pools, one for crude oil and one for refined products.

**II. Proposed Refund Procedures for Crude Oil Pool**

As indicated above, Total remitted $2 million to the DOE to settle alleged crude oil regulatory violations. Therefore, we propose that a portion of the settlement fund equivalent to this amount (plus interest) be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges issued on July 26, 1986, 51 Fed. Reg. 27899 (August 4, 1986) (hereinafter referred to as "the DOE Policy").[2] Under that policy, up to 20 percent of alleged crude oil violation amounts will be reserved to satisfy valid claims by eligible purchasers of crude oil and refined petroleum products. Remaining funds are to be disbursed to the state and federal governments for indirect restitution, also in accordance with the DOE Policy. In the present case, we have decided to reserve the full 20 percent—$400,000—of the alleged crude oil violation amount, plus a proportionate share of the accrued interest, for direct refunds to purchasers of refined petroleum products and crude oil who prove that they were injured by these alleged crude oil violations.[3]

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used to evaluate claims based on alleged refined product overcharges pursuant to 10 C.F.R. Part 205, Subpart V. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986).

As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured by the alleged violations (i.e., that they did not pass on alleged overcharges to their own customers). We propose to utilize the standards for showing injury which the OHA has developed in analyzing non-crude oil claims. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a presumption that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry absorbed the increased costs resulting from a consent order firm's alleged overcharges. *See A. Tarricone, Inc.*, 15 DOE ¶ _____ No. KEF-0049 (April 15, 1987) (*Tarricone*); *O.B. Mobley, Jr.*, 16 DOE ¶ _____ No. HEF-0498 (May 4, 1987) (*Mobley*). Reseller and retailer claimants must submit detailed evidence of injury, and may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type used in the OHA Report in *In Re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507.

Refunds to eligible claimants will be calculated on the basis of a volumetric refund amount derived by dividing the money available in the crude oil pool ($2 million) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). The crude oil volumetric refund amount in this proceeding is $0.0000009896. In addition, after all valid claims are paid, unclaimed funds from the 20 percent claims reserve will be divided equally between federal and state governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

We propose that the remaining 80 percent of the crude oil funds—$1,600,000—be disbursed to the federal and state governments for indirect restitution. We propose to direct the DOE's Office of the Controller to segregate this amount and distribute $400,000 plus appropriate interest to the states and $1,200,000 plus appropriate interest to the federal government.[4] Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share (ratio) of the funds in the state account which each state will receive if these procedures are adopted is contained in Appendix B to the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Settlement Agreement.

**III. Proposed Refund Procedures for Refined Product Pool**

Total remitted $3 million to the DOE to settle allegations regarding its sales of refined products. This portion of the settlement fund (plus interest) should be distributed to wholesale customers of Total who purchased motor gasoline and No. 2 oils (No. 2 heating oil and No. 2-D diesel fuel) from the firm between September 1, 1973 and October 31, 1980 (hereinafter referred to as the consent order period).[5] The principal non-crude oil issue resolved by the Consent Order pertained to Total's pricing of motor gasoline and No. 2 oils in sales to its wholesale customers. This matter was the subject of an earlier Consent Order with which Total did not comply (*see* n.1.). The dispute involving Total's Compliance with that earlier Consent Order is specifically mentioned as an issue which is resolved by the current Consent Order. ¶ 501. *See also* 51 FR 22860 (June 23, 1986) (Notice of Proposed Consent Order). Moreover, the amount of money whith Total originally agreed to remit to the DOE in settlement of claims regarding its wholesale sales of motor gasoline and No. 2 oils, $2 million, plus the interest which accrued on this amount from the date on which it should

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the Crude Oil Entitlements Program, 10 C.F.R. § 211.67.

(ii) Total's compliance with a Consent Order executed in January 1981, requiring Total to make restitution for alleged overcharges by implementing a price rollback in its retail sales of motor gasoline and paying $2 million to the DOE with respect to its wholesale sales of motor gasoline, No. 2 heating oil, and No. 2-D diesel fuel during the period from September 1, 1973 through October 31, 1980. Total implemented the price rollback but did not remit the $2 millions to the DOE.

(iii) Vicker's compliance with a Consent Order requiring it to refund $2,350,000 to the DOE and to implement a price rollback of $6,300,000 in its retail sales of motor gasoline. Vickers remitted $2,350,000 to the DOE and implemented a price rollback. However, the ERA and Vickers disagreed as to whether the firm refunded the entire amount required under the Consent Order.

[2] In the Order implementing the DOE Policy, the OHA solicited comments and objections regarding the proper application of the DOE Policy to OHA refund proceedings involving alleged crude oil violations. On April 6, 1987, the OHA issued a notice which analyzes the comments that were submitted and explains the procedures which the Office will follow in processing applications filed under the Subpart V regulations for refunds of the crude oil overcharge funds. 52 Fed. Reg. 11737 (April 10, 1987).

[3] On July 7, 1986, the United States District Court for the District of Kansas approved the Stripper Well Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378, 3 Fed. Energy Guidelines ¶ 26,563. That Agreement resolves a number of matters, including the distribution of funds collected by the Court and the distribution of alleged crude oil violation amounts collected by the DOE in order cases. Under the Settlement Agreement, firms which apply for a portion of the Stripper Well Exemption Litigation funds generally must sign a waiver releasing their claims to a portion of the crude oil funds to be distributed by the OHA. Settlement Agreement, Part III.

[4] This distribution reflects a ratio of 25 percent of the state governments and 75 percent of the federal government. Under the terms of the Settlement Agreement, the states received an advance of $266 million from funds which would otherwise have been disbursed to the DOE. In order to reimburse the DOE for one-half of the advance, the Settlement Agreement provides that for amounts which the OHA transfers to the state and federal governments in excess of $100 million, the DOE shall receive 75 percent and the states shall receive 25 percent. This arrangement shall continue until the OHA has distributed the next $400 million. Settlement Agreement, Paragraph II.B.3.c.ii. The first transfer of funds to the states by the OHA occurred on August 7, 1986, when the OHA transferred $104,081,950.61 to the state and federal governments. Stripper Well Exemption Litigation, 14 DOE ¶ 85,382 (1986). The $4 million in excess of $100 million was disbursed 75 percent to the federal government and 25 percent to the states. Under the Agreement, the next $200 million, including the $316 million disbursed to the states and federal government in *Torricone* and the $9.87 million disbursed in *Mobley*, will be disbursed using the 75/25 percent formula.

[5] Notwithstanding the period of time encompassed by the consent order period, Total customers will only be eligible to receive refunds for their purchases of No. 2 oils through June 30, 1976, the last day on which these products were subject to federal price controls. *See* 41 FR 24516 (June 16, 1976).

have been remitted to the DOE, totals more than the $3 million of available product-related funds.[6] We have therefore determined that the entire $3 million should be available for distribution to Total's wholesale customers.

*A. Eligible Claimants*

We propose that the funds in the refined product pool be distributed to claimants who can satisfactorily demonstrate that they were injured by Total's alleged regulatory violations in wholesale sales of motor gasoline and/or No. 2 oils during the relevant period.

During the consent order period, Total sold to three groups of wholesale customers. *See* Letter dated November 3, 1986 from L.C. Ross, Total's Vice-President, to Janice Pliner, OHA staff analyst. First, Total sold petroleum products to customers of its Alma, Michigan refinery throughout the entire consent order period. Second, on April 1, 1978, Total acquired another refinery located in Arkansas City, Kansas, from APCO Petroleum Corporation, and began selling to customers of that refinery. Finally, on October 2, 1980, Total purchased Vickers and began selling to Vickers' wholesale customers. We propose that customers in all three groups be eligible to apply for refunds in this proceeding. However, customers who purchased product from the former APCO refinery or who were Vickers' customers may only apply for refunds for the periods beginning April 1, 1978 or October 2, 1980, respectively. Prior to those dates, Total had no relationship with those customers. In addition, as we previously stated, no refunds will be granted for purchases of No. 2 oils made after June 30, 1978. The following chart depicts these parameters.

| Site of purchase | Dates of refund eligibility motor gasoline | No. 2 oils |
|---|---|---|
| Total refinery. | 9/1/73–10/31/80 | 9/1/73–6/30/76 |
| Former APCO refinery. | 4/1/78–10/31/80 | Not eligible |
| Former Vickers refinery. | 10/2/80–10/31/80 | Not eligible |

[6] While the question of the accuracy of the price rollback implemented by Vickers during the period of controls is also a matter resolved by the current Consent Order, we do not believe that setting aside anyof the fund for retail purchasers of Vickers' motor gasoline is appropriate in this case. From the language in the Consent Order, it appears that the issue was simply closed by the execution of the settlement. Moreover, it is indisputed that money has already been refunded to Vickers' customers through the price rollback. In contrast, Total's wholesale customers have received no refunds to date for the pricing violations which they allegedly experienced. Thus, we believe that the entire fund should be allocated for claims arising from matters intended to be settled in the January 1981 Consent Order with Total.

*B. Showing of Injury*

To demonstrate injury, a reseller claimant (including refiners and retailers) must provide evidence that it would have maintained its prices for the specified petroleum products purchased from Total at the same level had the alleged overcharges not occurred. Accordingly, any claimant should show that at the time it purchased petroleum products from Total, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982). In addition, a reseller must show that it had "banks" of unrecovered increased product costs from the date of purchase through decontrol in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[7]

The maintenance of a bank, however, will not automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

1. Applicants Claiming a Refund of $5,00 or Less

Making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of covered products from Total. For example, such firms may have limited accounting the data-retrieval capabilities and may therefore be unable to produce the records necessary to prove that they did not pass on the alleged overcharges to their own customers. The cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury should also not exceed the amount of the refund to be gained. We thus propose to adopt a small claims presumption in this case. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Any reseller applicant claiming a refund of $5,000 or less, based upon the volumetric refund amount established below, need not make a detailed showing of injury in order to be eligible to receive a refund.

2. Spot Purchasers

We further propose that resellers that made spot purchases from Total be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers*, 8 DOE at 85,396–07.

[7] Retailer applicants will not be required to submit bank information in connection with sales made after July 15, 1979, the date on which the amendment to the price rule eliminating the banking requirement for retailers became effective. 44 Fed. Reg. 42541 (July 19, 1979). Reseller applicants will not be required to submit bank information for the period beginning May 1, 1980, with the exception of the firms who elected not to be subject to the new price rules which became effective on that date. 45 FR 29546 (May 2, 1980); 45 FR 81255 (December 10, 1980).

Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of its spot purchase(s).

3. End-Users

We also propose to adopt a finding that end-users (or ultimate consumers) of Total motor gasoline and No. 2 oils whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges addressed in this proceeding. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the time covered by the Consent Order, and thus were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), and cases cited therein. Thus, in order to qualify for a refund from the Total consent order fund, end-users who purchased Total motor gasoline and No. 2 oils need only document their purchases from the firm.

4. Regulated Firms

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the overcharges alleged by the ERA. In the case of regulated firms, e.g., public utilities, any overcharges incurred as a result of Total's alleged violations of the DOE regulations would routinely be passed through to the utilities' customers. Similarly, any refunds received by such firms should be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives should likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982). Instead, those firms should provide with their application a full explanation of the manner in which refunds will be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by a cooperative to non-members, however, will be treated the same as sales by any other reseller.

*C. Calculation of Refund Amounts*

We propose to use a volumetric method to divide the Total refined products refund pool among the applicants who demonstrate that they are eligible to receive refunds. In this case, there will be a separate volumetric refund amount for motor gasoline purchases and for No. 2 oil purchases.

The January 1981 Consent Order stated that $1,400,000 of the $2 million consent order fund should be used for refunds to motor gasoline purchasers and $600,000 should go to No. 2 oil purchasers. Consent Order at 4. This information, when considered in conjunction with Total sales volume data, leads us to the conclusion that the per gallon amount of alleged overcharges in Total's sales of motor gasoline differs from the per gallon alleged overcharges in No. 2 oil sales. We thus propose to utilize two different volumetric refund amounts in order to distribute the refund monies to firms in a manner which more closely approximates claimant's actual injury. *See, e.g., E.B. Lynn Oil Co.*, 14 DOE ¶ 85,228 (1986); *Blex Oil, Inc.*, 13 DOE ¶ 85,019 (1985).

We have divided the Total refined product refund pool into two pools in proportion to the manner in which the January 1981 settlement amount was divided. Thus, the refund pool for motor gasoline purchases is $2,100,000 and the refund pool for No. 2 oil purchases is $600,000. We have determined the volumetric refund factors by dividing each of Total's refind product refund pools by the estimated total volume of applicable product(s) sold by Total to its wholesale customers during the relevant period. This results in refund amounts of $0.000651 ($2,100,000 divided by 3,225,066,372) for each gallon of motor gasoline and $0.002652 ($600,000 divided by 339,339,279 gallons) for each gallon of No. 2 oils which an applicant purchased from Total during the relevant period. In addition, the interest which has accrued on the money in escrow will be added to the refund of each successful applicant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 C.F.R. § 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing any funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. Any funds remaining in the refined product pools after all refund applications have been considered will be distributed to the state and federal governments in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509, Title III, Fed. Energy Guidelines ¶ 11,700.

It is therefore ordered that: The refund amount remitted to the Department of Energy by Total Petroleum, Inc. pursuant to the Consent Order finalized on August 5, 1986 will be distributed in accordance with the foregoing Decision.

[FR Doc. 87-11194, Filed 5-14-87; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3201-7]

### Environmental Impact Statements; Availability

Availability of Environmental Impact Statements Filed May 04, 1987 Through May 08, 1987.

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

*EIS No. 870158*, DSuppl, COE, MS, Yazoo River Basin Flood Control Plan, Yalobusha River Channel Enlargement, Yazoo Headwater Area, Due: June 30, 1987, Contact: Dan Johnson (601) 634-5453

*EIS No. 870159*, Final, COE, KS, Great Bend Kansas Local Flood Protection Plan, Construction, Arkansas River, Walnut and Little Walnut Creeks, Barton County, Due: June 15, 1987, Contact Paul Mace (918) 581-7857

*EIS No. 870160*, Draft, FHW, TX, TX-71/US 290 Improvements, R.M. 1826 to F.M. 973, Travis County, Due: June 29, 1987, Contact: Gamaliel Olvera (512) 482-5966

*EIS No. 870161*, Final, FHW, IA, US 20/Dodge Street Improvement, Concord Street to Dodge-Locust Street Intersection, Dubuque County, Due: June 15, 1987, Contact: H.A. Willard (515) 233-1664.

*EIS No. 870162*, Draft, AFS, OR, Mount Ashland Ski Area Development Plan, Rogue River National Forest, Jackson Count, Due: June 29, 1987, Contact: Ronald Waitt (503) 482-3333

*EIS No. 870164*, Draft, COE, FL, Port Everglades Expansion, Construction and Fill Placement in U.S. Waters and Contiguous Wetlands, sections 10 and 404 Permit, Broward County, Due: June 29, 1987, Contact: Dan Malanchuk (904) 791-1669

*EIS No. 870165*, Final, FHW, GA, I-20 Widening, Hill Street to Columbia Drive, Dekalb and Fulton Counties, Due: June 15, 1987, Contact: Louis Papst (404) 347-4751

### Amended Notices

*EIS No. 870083*, Draft, FHW, MA, MA-2/Alewife Brook Parkway Improvement, MA-2/Pleasant Street to Alewife Brook Parkway/Fresh Pond Parkway, Middlesex County, Due: June 8, 1987, Published FR 3-30-87—Review period extended

*EIS No. 870132*, DSuppl, MD, Calvert Road Closure, US-1 to MD-201, Metro Line Construction, Additional Information, Due: June 22, 1987, Published FR 4-24-87—Review period reestablished

*EIS No. 870157*, DSuppl, BLM, CA, AZ, Devers—Palo Verde #2, 500V Transmission Line Project, Construction and Operation, Additional Alternatives, Due: June 8, 1987, Published FR 5-8-87—Filing date reestablished

*EIS No. 870082*, Draft, COE, TX, Applewhite Dam and Reservior and Leon Creek Diversion Dam and Lake, Water Supply Project, Bexar County, Due: June 28, 1987, Published FR 3-13-87—Review period extended

Dated: May 12, 1987.

Richard E. Sanderson,

*Director, Office of Federal Activities.*

[FR Doc. 87-11192 Filed 5-14-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3201-8]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 27, 1987 through May 1, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

### Draft EISs

*ERP No. D-BLM-L70007-ID*, Rating EC2, Pocatello Resource Area, Resource Mgmt. Plan, ID. SUMMARY: EPA has concerns on how Best Management Practices will be implemented and the water quality and fisheries effects from management practices

*ERP No. DS-CDB-K85038-AZ*, Rating EC2, Rio Nuevo—North Redevelopment Project, Land Use Changes and New Information, CDBG, AZ. SUMMARY: EPA requested that the final supplemental EIS assess whether: (1) There is any soil or water contamination on the project site due to past waste disposal practices at a paint and varnish company; and (2) the project complies with the draft Air Quality Plan for Pima County, Arizona

*ERP No. D-COE-C32033-NJ*, Rating EC2, Port Jersey Channel Navigation Improvement Plan, NJ. SUMMARY: EPA's review concluded that the proposed channel dredging would have no significant impacts on the channel environment, however,

BEST COPY AVAILABLE

updated bioassay and bioaccumulation testing is required for approval of ocean disposal of the dredged material

*ERP No. D–ICC–D53006–00,* Rating EC2, Georgetown Subdivision (Docket No. AB–19) (Sub–No. 112) Rail Line Abandonment, Milepost 0.23 to Milepost 10.96, License, MD and DC. SUMMARY: EPA has concerns and requested additional information on mitigation for impacts resulting from the project, energy projections, impacts of truck traffic, and impacts of possible hazardous wastes

**Final EISs**

*ERP No. F–FHW–F40130–MN,* New US 10 Construction and Reconstruction, Egret Blvd. in Coon Rapids to I–35W in Moundsview, 404 Permit, MN. SUMMARY: EPA has concerns regarding the lack of specific wetland or noise mitigation for the second and third phases of this project. A commitment to future coordination was requested. EPA also expressed concerns regarding the value of the proposed wetland mitigation for phase one

**Amended Notice**

The following review should have appeared in the FR Notice published on May 1, 1987.

*ERP No. D–AFS–J61069–CO,* Rating EC2, East Fork Ski Area Development, Special Use Permit, San Juan Nat'l Forest, 404 Permit, CO. SUMMARY: EPA has some concerns with wetlands disturbance and portions of air quality modeling and requests additional discussion and modification of modeling methodology to eliminate them

Dated: May 12, 1987.

Richard E. Sanderson,

*Director, Office of Federal Activities.*

[FR Doc. 87–11193 Filed 5–14–87; 8:45 am]

BILLING CODE 6560–50–M

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[FRL 3201–5]

## Florida; Reports of Performance Under FY 87 Section 105 Grants

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of grantee performance evaluation reports.

**SUMMARY:** EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed midyear evaluations of the Florida Department of Environmental Regulation, the State agency, and one of the local agencies in the State, the Pinellas County Department of Environmental Management. These midyear audits were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to Section 105 of the Clean Air Act. The audits were also conducted as part of the National Air Audit System (NAAS) established by EPA in an effort to assure nationwide consistency in the evaluation of state and local air pollution programs. EPA Region IV has prepared reports for both agencies and these NAAS/Section 105 reports are now available for public inspection.

**ADDRESS:** The reports may be examined at the EPA's Regional IV Office, 345 Courtland Street NE., Atlanta, GA 30365, in the Air, Pesticides & Toxics Management Division.

**FOR FURTHER INFORMATION CONTACT:** Walter Bishop (Florida) at 404/347–2864 (FTS: 257–2864) or Jeff Pallas (Pinellas County) at 404/347–2904 (FTS 257–2904).

Dated: May 6, 1987.

Jack E. Ravan,

*Regional Administrator.*

[FR Doc. 87–11131 Filed 5–14–87; 8:45 am]

BILLING CODE 6560–50–M

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[FRL 3201–5]

## Science Advisory Board; Environmental Health Committee, Drinking Water Subcommittee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on June 4–5, 1987, in the basement auditorium at the Andrew Breidenbach Environmental Research Center of the U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268. The meeting will start at 8:30 a.m. on June 4th and adjourn no later than 4:00 p.m. on June 5th.

The purpose of the meeting will be to review the Health Effects Research Program on Drinking Water Disinfectants and Disinfectant By-Products. The Subcommittee will hear presentations concerning the research program on June 4th and will discuss the program on June 5th.

An issue paper has been prepared for this review and is available from Mr. David Kleffman, Office of Research and Development (RD–683), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, (202) 382–5895.

The meeting will be open to the public. Any member of the public wishing to attend the meeting must contact Dr. C. Richard Cothern, Executive Secretary to the Committee, or Mrs. Frederica Jones, by telephone at (202) 382–2552 or by mail to: Science Advisory Board (A–101–F), 401 M Street SW., Washington, DC 20460 no later than c.o.b. on May 29, 1987.

Dated: May 8, 1987.

Terry F. Yosie,

*Director, Science Advisory Board.*

[FR Doc. 87–11132 Filed 5–14–87; 8:45 am]

BILLING CODE 6560–50–M

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[OPP–30280; FRL 3202–5]

## Abbott Laboratories; Application To Register a Pesticide Product

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATE:** Comment by June 15, 1987.

**ADDRESS:** By mail submit comments identified by the document control number [OPP–30280] and the file number (275–AO) to:

Information Services Section (TS–757C), Program Management and Support Division, Attn: Product Manager (PM) 17, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

In person, bring comments to: Rm. 236, CM#2, Attn: PM 17, Registration Division (TS–767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for

public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Arturo Castillo, PM 17, (703–557–2690).

**SUPPLEMENTARY INFORMATION:** Abbott Laboratories, Chemical and Agricultural Products Division, 14th Street, and Sheridan Road, North Chicago, IL 60064, has submitted an application to EPA to register the pesticide product DiBeta Solution Concentrate an insecticide, EPA File Symbol 275–AO, containing the active ingredient thuringiensin or Beta-exotoxin (2-0-(4'-0-5-L-deoxyadenosine-5'-yl-beta-0-glucopyranosyl)-4-0-phospho-0-allaric acid) at 1.5 percent, pursuant to the provisions of section 3(c)(4) of FIFRA. The application proposes that the product be classified for general use on all raw agricultural commodities and for specific use on cotton, potatoes, and greenhouse ornamentals. Notice of receipt of this application does not imply a decision by the Agency on the application. Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

Dated: May 7, 1987.

**James W. Akerman,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–11133 Filed 5–14–87; 8:45 am]

BILLING CODE [illegible]

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**[OPTS-59236B; FRL-3200-2]**

## Certain Chemical; Denial of an Application for a Modification to a Test Marketing Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's denial of an application for a modification to a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–87–5.

**EFFECTIVE DATE:** April 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** John G. Davidson, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, Rm. E–613, 401 M St., SW., Washington, DC 20460, (202 382–3373).

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury. On January 6, 1987, EPA received an application for a modification to TME–87–5. The application requested an increase in the production volume limit of an additional 45,000 kilograms, a 3 month extension of the test marketing period, and the addition of one customer. This substance was previously test marketed under TME–85–31 (50 FR 19228) and under a modification to TME–85–31 (51 FR 19063).

EPA has not been able to determine that test marketing of the TME substance described below, under the conditions set out in the application and the application for modification for additional production volume and time period, will not present any unreasonable risk of injury to the environment. Therefore, . the application for modification is denied.

**T–87–5**

*Date of Receipt:* December 15, 1986.

*Notice of Receipt:* January 6, 1987 (52 FR 44943).

*Applicant:* Confidential.

*Chemical:* (G) Functional acrylate type polymer.

*Use:* (G) Industrial paint ingredient.

*Modified Production Volume:* 45,000 kilograms.

*Number of additional Customers:* 1.

*Worker Exposure:* Manufacturer: dermal, a total of 20 workers up to 8 hours/day up to 26 days/year.

*Modified Test Marketing Period:* Three Months.

*Risk Assessment:* EPA identified no significant health concerns. EPA identified potential adverse environmental effects associated with exposure to the TME substance. EPA is unable to determine, in the absence of chronic test data on the test market substance, its potential toxicity to aquatic species.

*Public Comments:* None.

Dated: April 30, 1987.

**Charles L. Elkins,**

*Director, Office of Toxic Substances.*

[FR Doc. 87–10914 Filed 5–14–87; 8:45 am]

BILLING CODE [illegible]

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## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Requirement Approval by Office of Management and Budget

May 8, 1987.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0084

Title: Ownership Report for Noncommercial Educational Broadcast Station

Form No.: FCC 323–E

The approval on form FCC 323–E has been extended through 4/30/90. The April 1984 edition with a previous expiration date of 4/30/87 will remain in use until updated forms are available.

OMB No.: 3060–0318

Title: Notification of Status of Facilities Under Part 22

Form No.: FCC 489

The approval on form FCC 489 has been extended through 4/30/90. The January 1985 edition with a previous expiration date of 4/30/87 will remain in use until updated forms are available.

OMB No.: 3060–0319

Title: Application for Assignment or Transfer of Control Under Part 22

Form No.: FCC 490

The approval on form FCC 490 has been extended through 4/30/90. The January 1985 edition with a previous expiration date of 4/30/87 will remain in use until updated forms are available.

Federal Communications Commission.
William J. Tricarico,
*Secretary.*
[FR Doc. 87-11097 Filed 5-14-87; 8:45 am]
BILLING CODE 6712-01-M

[Report No. W-15]

## Window Notice; Filing of FM Broadcast Applications

Released: May 6, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment(s) listed below may be submitted for filing during the period beginning May 6, 1987, and ending June 15, 1987, inclusive.

Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—[illegible] A:

| | |
|---|---|
| Bethel | AK |
| New Haven | IN |
| Midway | KY |
| Muskegon | MI |
| West Point | NE |
| Delaware | OH |
| Tobyhanna | PA |
| East Ridge | TN |
| West Point | VA |

Channel—[illegible] C1:

| | |
|---|---|
| Key West | FL |
| Kirksville | MO |

Federal Communications Commission.
William J. Tricarico,
*Secretary.*
[FR Doc. 87-11098 Filed 5-14-87; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket No. 86-484]

## Notification of Inquiry Regarding Reexamination of the Commission's Comparative Licensing, Distress Sale and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications; Extension of Comment Deadline

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of inquiry; extension of initial comment deadline.

**SUMMARY:** This action grants a motion for an extension of time for filing comments in response to the *Notice of Inquiry* in MM Docket No. 86-484 (Reexamination of the Commission's Comparative Licensing, Distress Sale and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications), 52 FR 596 (January 7, 1987). American Women in Radio and Television, Inc. (AWRT) requested that the deadline for filing initial comments be extended from May 7, 1987, to May 21, 1987, a period of two weeks, to allow for the computerization and compilation of data collected in response to an industry survey and a survey of the Commission's broadcast comparative hearing initial decisions utilizing minority and female enhancement credits. The National Association of Black Owned Broadcasters and other interested parties ("NABOB") filed a motion in support of an extension of time, but suggested that the deadline be extended three weeks to May 28, 1987. NABOB stated in support that a three-week extension would be more appropriate since recent developments, including the Commission's recent instructions to its Administrative Law Judges on the treatment of comparative hearing cases involving enhancement credits, and the required minority ownership report questionnaire, have caused them to reevaluate the direction their comments in this proceeding might take. As the *Notice* in this proceeding specifically requested the type of empirical and statistical data being compiled by AWRT and since the Commission was persuaded that the requested extension was reasonably necessary to facilitate the completion of the subject studies, the Commission is extending the initial comment date in this proceeding. The Commission also granted the additional time requested by NABOB to allow it and other commenters to incorporate into their comments the above-noted developments. Consequently, an extension of time for filing comments until May 28, 1987, was granted.

**DATES:** Comments are now due by May 28, 1987. Reply comments remain due by July 6, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.
James C. McKinney,
*Chief, Mass Media Bureau.*
[FR Doc. 87-11099 Filed 5-14-87; 8:45 am]
BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Boyd W. Fellows et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city/State | File No. | MM Docket No. |
|---|---|---|
| A. Boyd W. Fellows; Sturgeon Bay, WI. | BPH-850711OZ | 87-122 |
| B. Assembly of God; Sturgeon Bay, WI. | BPH-850712YU | |
| C. Margaret E. Maney; Sturgeon Bay, WI. | [illegible] (dismissed). | |
| D. James C. Anderson; Sturgeon Bay, WI. | [illegible] (dismissed). | |

2. Pursuant to 47 U.S.C. 309(e), the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M. Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,
*Assistant Chief, Audio Services Division, Mass Media Bureau.*
[FR Doc. 87-11101 Filed 5-14-87; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL HOME LOAN BANK BOARD

[No. AC-613]

### Brandywine Savings and Loan Association, Downingtown, PA; Final Action Approval of Conversion Application

Dated: May 8, 1987.

Notice is hereby given that on April 30, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Brandywine Savings and Loan Association, Downingtown, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222–4893.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
*Secretary.*
[FR Doc. 87–11169 Filed 5–14–87; 8:45 am]
BILLING CODE 6720–01–M

[No. AC-614]

### Elmwood Federal Savings Bank Media, PA; Final Action Approval of Conversion Application

Dated: May 8, 1987.

Notice is hereby given that on May 1, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Elmwood Federal Savings Bank, Media, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222–4893.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
*Secretary.*
[FR Doc. 87–11168 Filed 5–14–87; 8:45 am]
BILLING CODE 6720–01–M

[No. AC-615]

### Valley Federal Savings Bank, Terre Haute, IN; Final Action; Approval of Conversion Application

Dated: May 8, 1987.

Notice is hereby given that on May 1, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Valley Federal Savings Bank, Terre Haute, Indiana for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
*Secretary.*
[FR Doc. 87–11169 Filed 5–14–87; 8:45 am]
BILLING CODE 6720–01–M

## FEDERAL MARITIME COMMISSION

### Filing and Effective Date of Agreement

The Federal Maritime Commission hereby gives notice, that on May 7, 1987, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201–011096
Title: Assessment Agreement Among Marine Terminal Operators in Hawaii
Parties:
C. Brewer Corporation d/ba HT & T Company, Inc.
Honolulu Terminals Co. Ltd.
Matson Terminals, Inc.
McCabe, Hamilton and Renny Co. Ltd.
Hawaii Stevedores, Inc.
Kawaihae Terminals, Inc.
Synopsis: The subject Agreement supersedes the parties current assessment Agreement No. T–2879, as amended, concerning the fair allocation of employer costs of providing fringe benefits for employees in marine terminal operations.

By order of the Federal Maritime Commission.
Joseph C. Polking,
*Secretary.*
Dated: May 12, 1987.
[FR Doc. 87–11154 Filed 5–14–87; 8:45 am]
BILLING CODE 6730–01–M

### Ocean Freight Forwarder License; Rescission of Order of Revocation

Notice is hereby given that the following ocean freight forwarder license revocation has been rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

| License No. | Name/address |
|---|---|
| 2721 | ABCO Freight Forwarders, Inc., P.O. Box 521010, Miami, FL 33152. |

Robert G. Drew,
*Director, Bureau of Domestic Regulation.*
[FR Doc. 87–11155 Filed 5–14–87; 8:45 am]
BILLING CODE 6730–01–M

### Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2201
Name: Taab, Hummel & Schnall (California) Inc.
Address: 130 Pine Street, M–102, Long Beach, CA 90802
Date Revoked: April 1, 1987
Reason: Failed to maintain a valid surety bond

License Number: 82
Name: Allen Forwarding Company
Address: 313 Chestnut Street, Philadelphia, PA 19106
Date Revoked: April 9, 1987
Reason: Requested revocation voluntarily

License Number: 1713
Name: Expedair International, Inc.
Address: 153–66 Rockaway Blvd., Jamaica, NY 11434

Date Revoked: April 15, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2700
Name: Starboard Group, Inc.
Address: c/o P.O. Box 3139, Laguna Hills, CA 92654–3139
Date Revoked: April 17, 1987
Reason: Failed to maintain a valid surety bond

License Number: 1487
Name: Woodrow DeWitt dba DeWitt Freight Forwarding
Address: c/o 3380 Country Club Dr., Glendale, CA 91208
Date Revoked: April 18, 1987
Reason: Failed to maintain a valid surety bond

Robert G. Drew,
*Director, Bureau of Domestic Regulation.*

[FR Doc. 87–11156 Filed 5–14–87; 8:45 am]
BILLING CODE 6730–01–M

## Listing of Controlled Carriers Under the Shipping Act of 1984

**AGENCY:** Federal Maritime Commission.

**ACTION:** Listing of controlled carriers.

**SUMMARY:** The Federal Maritime Commission is adding Romanian Shipping Company Constanta, China Resources Transportation & Godown Co., Ltd., Guangdong International Shipping Co., Ltd. and Zhu Sheng Transportation Co., Ltd. to the list of controlled carriers subject to the advance tariff filing and other regulatory requirements of section 9 of the Shipping Act of 1984.

**DATE:** None.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

**SUPPLEMENTARY INFORMATION:** Sections 3(8) and 9 of the Shipping Act of 1984, 46 U.S.C. app. 1702(8) and 1708, provide for the regulation of rates and charges by certain state-controlled carriers in the foreign commerce of the United States. The Commission has determined that Romanian Shipping Company Constanta, China Resources Transportation & Godown Co., Ltd. ("China Resources"), Guangdong International Shipping Co., Ltd., and Zhu Sheng Transportation Co., Ltd. meet the definition of a "controlled carrier" as set forth in section 3(8) of the Act. Letters dated February 27, 1987, were sent to each of the carriers named above with copies to their agent or tariff publisher in the United States, notifying them of such determination. Of the four, only China Resources responded to the letter. However, the information contained in the China Resources letter did not alter the Commission's original determination to classify China Resources as a "controlled carrier."

The Commission's list of controlled carriers previously published in the **Federal Register** on Monday, January 26, 1987 [52 FR 2769]. The amended list is shown below:

Baltic Shipping Co.—U.S.S.R.
Bangladesh Shipping Corp.—Bangladesh
Black Sea Shipping Company—U.S.S.R.
Black Star Line—Ghana
China Ocean Shipping Co. (COSCO)—People's Republic of China
China Resources Transportation & Godown Co., Ltd.—People's Republic of China
Compagnie Maritime Zairoise (CMZ)—Zaire
Compagnie Nationale Algerienne de Navigation—Algeria
Companhia de Navegacao Loide Brasileiro—Brazil
Compania Peruana de Vapores (CPV) (Peruvian State Line)— Peru
Djakarta Lloyd P. T.—Indonesia
Egyptian National Line—Egypt
Empresa Maritima del Estado (Empremar Line)—Chile
Far Eastern Shipping Co. (FESCO)—U.S.S.R.
Flota Bananera Ecuatoriana S.A.—Ecuador
Flota Mercante Gran Centro Americana S.A. (Flomerca)— Guatemala
Guangdong International Shipping Co., Ltd.—Peoples's Republic of China
MISR Shipping Company (MISR)—Egypt
Murmansk Shipping Co. (Arctic Line)—U.S.S.R.
Nauru Pacific Line—Nauru
National Galleon Shipping Corporation—Philippines
National Shipping Corporation of the Philippines— Philippines
Neptune Orient Lines (NOL)—Singapore
Pakistan National Shipping Corporation—Pakistan
Pharaonic Shipping Co. (S.A.E.) (Pharaonic)—Egypt
Polish Ocean Lines (POL)—Poland
Romanian Shipping Company Constanta (NAVROM)—Romania
Shipping Corporation of India (SCI)—India
Sudan Shipping Line Limited—Sudan
Transportes Navieros Ecuatorianos (Transnave)—Ecuador
Zhu Sheng Transportation Co., Ltd.—People's Republic of China

The process of identification and classification of controlled carriers is continuous. The list as shown will be amended as such carriers enter and leave the United States trades.

By the Commission May 7, 1987.

Joseph C. Polking,
*Secretary.*

[FR Doc. 87–11088 Filed 5–14–87; 8:45 am]
BILLING CODE 6730–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 8, 1987.

**Public Health Service (PHS)**

(Call Reports Clearance Officer on 202–245–2100 for copies of Package)

*Centers for Disease Control*

Subject: Teenage Health Teaching Evaluation—NEW.
Respondents: Individuals or households

**National Institutes of Health**

Subject: Program Evaluation: Office of Cancer Communications Education Program—NEW
Respondents: Individuals or households
Subject: Final Invention Statement and Certification (For Grant or Award)—Extension—(0925–0159)
Respondents: State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Subject: Health Professionals' Use of MEDLINE—NEW
Respondents: Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

*Health Resources Services Administration*

Subject: Common Reporting Requirements for IHS Community Health Representative Program—NEW
Respondents: State or local governments
OMB Desk Officer: Shannah Koss

**Office of Human Development Services**

(Call Reports Clearance Officer on 202–472–4415 for copies of package)

Subject: FY 1988 Coordinated Discretionary Funds Program; Availability of Funds and Request for Applications
Respondents: State or local governments; Non-profit institutions; Small businesses or organizations

OMB Desk Officer: Allison Herron

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)

Subject: Report on Individuals with Mental Impairment—Revision—(0960–0058)

Respondents: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations

Subject: Application for Mother's or Father's Insurance Benefits—Extension—(0960–0003)

Respondents: Individuals or households

OMB Desk Officer: Elana Nordon

Office of the Secretary

(Call Reports Clearance Officer on 202–245–0509 for copies of package)

Subject: Health Care Program Violations Notification Form—Revision—(0990–0141)

Respondents: State or local governments

OMB Desk Officer: Elana Nordon

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
SSA: 301–594–5706
OS: 202–245–0509
OHDS: 202–472–4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer).

Dated: May 8, 1987.

James F. Trickett,

*Deputy Assistant Secretary, Administrative and Management Services.*

[FR Doc. 87–11122 Filed 5–14–87; 8:45 am]

BILLING CODE 4150–04–M

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## Alcohol, Drug Abuse and Mental Health Administration

### Advisory Committee Meetings, June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees and one of its national advisory bodies in the month of June 1987. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee name: Epidemiology Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH.

Date and time: June 1–3: 9:00 a.m.

Place: Sheraton Washington Hotel, 2660 Woodley Road NW., Washington, DC 20008.

Status of meeting:

Open—June 1: 9:00–10:00
Closed—Otherwise

Contact: Gloria Yockelson, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Research Scientist Development Review Committee, NIMH.

Date and time: June 3–5: 9:00 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Status of meeting:

Open—June 3: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Linda Rainey, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientists and Research Scientists Development Awards to appropriate institutions for the support of individuals who are engaged full time in research and related activities relevant to mental health with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Behavioral Sciences Subcommittee of the Mental Health Research Education Review Committee, NIMH.

Date and time: June 4–5: 9:00 a.m.

Place: The Marbury Hotel, 3600 M Street NW., Washington, DC 20007.

Status of meeting:

Open—June 4: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Jean Byrne, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Mental Health Small Grant Review Committee, NIMH.

Date and time: June 4–5: 9:30 a.m.

Place: The Canterbury Hotel, 1733 N Street NW., Washington, DC 20036.

Status of meeting:

Open—June 4: 9:30–10:30 a.m.
Closed—Otherwise

Contact: Betty Russell, Room 9C06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843.

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences.

* * * * *

Committee name: National Advisory Council on Alcohol Abuse and Alcoholism, NIAAA.

Date and time: June 4–5: 10:30 a.m.

Place: National Institutes of Health, Building #31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting:

Open—June 4: 10:30 a.m.–5:00 p.m.
Closed—Otherwise

Contact: James Vaughan, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375.

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these

applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

* * * * *

Committee name: Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and time: June 4–6: 9:00 a.m.

Place: The Canterbury Hotel, 1733 N Street NW., Washington, DC 20036.

Status of Meeting:

Open—June 4: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Dorothy Tengood, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to community and developmental psychology with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee, NIMH.

Date and time: June 8–9: 9:00 a.m.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, MD 20814.

Status of Meeting:

Open—June 8: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Shirley Maltz, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the area of biological sciences related to mental health with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Criminal and Violent Behavior Research Review Committee, NIMH.

Date and time: June 10–11: 9:15 a.m.

Place: The River Inn, 924 25th Street NW., Washington, DC 20037.

Status of Meeting:

Open—June 10: 9:15–10:30 a.m.
Closed—Otherwise

Contact: Peg Lyons, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Alchol, Drug Abuse, and Mental Health Advisory Board, ADAMHA.

Date and time: June 11–12: 9:00 a.m.

Place: National Institutes of Health, 9000 Rockville Pike, Building #1, Wilson Hall, 3rd Floor, Bethesda, MD 20892.

Status of Meeting: Open.

Contact: Barbara Wagner, Room 12C05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1910.

Purpose: The Board assesses the national needs for alcoholism, alcohol abuse, drug abuse, and mental health treatment and prevention services and the extent to which those needs are being met by State, local, and private programs, and programs receiving funds under Title V and Parts B and C of Title XIX of the Public Health Service Act. The Board provides advice and recommendations to the Secretary and to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration respecting these activities to assist in guiding national strategies aimed at the amelioration of alcohol, drug abuse, and mental health programs.

* * * * *

Committee name: Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and time: June 11–12: 9:00 a.m.

Place: Grand Hyatt, 666 11th Street NW., Washington, DC 20001.

Status of Meeting:

Open—June 11: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Pamela J. Mitchell, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and time: June 11–12: 9:00 a.m.

Place: Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, MD 20814.

Status of Meeting:

Open—June 11: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Connie Staliper, Room 9C02, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

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Committee name: Mental Health Behavioral Sciences Research Review Committee, NIMH.

Date and time: June 11–13: 9:00 a.m.

Place: The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Status of Meeting:

Open—June 11: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Naomi Lichtenberg, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and/or research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Neurosciences Research Review Committee, NIMH.

Date and time: June 11–13: 8:30 a.m.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status of meeting:

Open—June 11: 8:30–9:30 a.m.
Closed—Otherwise

Contact: Gerry Perlman, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Psychopathology and Clinical Biology Research Review Committee, NIMH.

Date and time: June 15–17: 9:00 a.m.

Place: The Canterbury Hotel, 1733 N Street NW., Washington, DC 20036.

Status of meeting:

Open—June 15: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Emilie A. Embrey, Room 9C06, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of clinical psychopathology and clinical biology as they relate to mental health with recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Clinical Program Projects/Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee, NIMH.

Date and time: June 18–19: 9:00 a.m.

Place: Grand Hyatt, 666 11th Street NW., Washington, DC 20001.

Status of meeting:

Open—June 18: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Pamela J. Mitchell, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1367.

Purpose: The Subcommittee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of Mental Health Clinical Research Centers, clinical program projects, and other large-scale multidisciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review.

* * * * *

Committee name: Aging Subcommittee of the Life Course and Prevention Research Review Committee, NIMH.

Date and time: June 18–19: 9:00 a.m.

Place: Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008

Status of meeting:

Open—June 18: 9:00–9:30 a.m.
Closed—Otherwise

Contact: Jean Byrne, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to mental health, in the fields of child, family, and aging with recommendations to the National Mental Health Advisory Mental Health Council for final review.

* * * * *

Committee name: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and time: June 22–24: 9:00 a.m.

Place: Wellington Hotel, 2505 Wisconsin Avenue NW., Washington, DC 20007

Status of meeting:

Open—June 22: 9:00–9:30 a.m.
Closed—Otherwise

Contact: Ronald F. Suddendorf, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

* * * * *

Committee name: Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review Committee, NIAAA.

Date and time: June 24–26: 9:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of meeting:

Open—June 24: 9:00–10:30 a.m.
Closed—Otherwise

Contact: Mary L. Ganikos, Room 16C–26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

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Committee name: Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee, NIAAA.

Date and time: June 28–30: 9:00 a.m.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Status of meeting:

Open—June 28: 9:00–11:00 a.m.
Closed—Otherwise

Contact: Samir Zakhari, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

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Committee name: Basic Behavioral Processes Research Review Committee, NIMH.

Date and time: June 29–30: 9:00 a.m.

Place: The State Plaza Hotel, 2117 E Street NW., Washington, DC 20037.

Status of meeting:

Open—June 29: 9:00–10:00 a.m.
Closed—Otherwise

Contact: Doris East, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3944.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.

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Substantative information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Acting Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375; NIDA: Ms. Camilla Holland, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644; NIMH: Ms. Joanna Kieffer, Committee Management Officer, Room, 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: May 12, 1987.

**Peggy W. Cockrill,**

*Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 87–11141 Filed 5–14–87; 8:45 am]

BILLING CODE 4160-20-M

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## Health Resources and Services Administration

### Health and Allied Health Professions Eligibility for Scholarship Consideration Under the Health Professions Preparatory and Pregraduate Scholarship Programs for Indians, and the Indian Health Scholarship Program

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Correction of notice.

**SUMMARY:** On February 25, 1987 a "Notice of Health and Allied Health Professions Which Will be Eligible for Scholarship Support under the Indian Health Service (IHS) Scholarship Programs" was published in the Federal Register (52 FR 5586). The "Summary" portion of the notice incorrectly included the statement that "Awards will not be available in health and allied health professional areas not listed". This statement was in conflict with the body of the Notice which correctly stated that:

Applicants for health and allied health professions not on the above priority list will be considered pending the availability of Funds and dependent upon the availability of qualified applicants in the priority areas.

The statement in the Summary should have read: Awards may be available in health and allied health professional areas not listed pending the availability of funds and dependent upon the availability of qualified applicants in the priority areas.

**EFFECTIVE DATE:** May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Thomas, Indian Health Service, Parklawn Building, Room 6–12, 5600 Fishers Lane, Rockville, Maryland 20857; telephone 301–443–6197. (This is not a toll-free number.)

Dated: May 11, 1987.

**David N. Sundwall,**

*Administrator.*

[FR Doc. 87–11142 Filed 5–15–87; 8:45 am]

BILLING CODE 4160-15-M

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## National Institutes of Health

### Advisory Committee to the Director, Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on June 15–16, 1987, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place from 8:30 a.m. to 5:00 p.m. on June 15, and from 8:30 to approximately 11:45 a.m. on June 16, in Building 31, Conference Room 10, C Wing. The meeting will be open to the public.

The meeting will be devoted to discussions of "The Health of Biomedical Research Institutions."

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Dated: May 4, 1987

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–11180 Filed 5–14–87; 8:45 am]

BILLING CODE 4140-01-M

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### Establishment and Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92–463, 86 Stat. 770–776] and the Health Research Extension Act of 1985, November 20, 1985 [Pub. L. 99–158, section 402(b)(6)], the Director, NIH, announces the establishment, effective June 1, 1987, of the following committees:

Board of Scientific Counselors, Biometry and Risk Assessment Program, National Institute of Environmental Health Sciences.

Gerontology and Geriatrics Review Committee, National Institute on Aging

The Director, NIH, also announces the reestablishment, effective June 1, 1987, of the Board of Scientific Counselors, National Eye Institute, and the Vision Research Review Committee, National Eye Institute.

The duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: May 12, 1987.

**James B. Wyngaarden,**

*Director, NIH.*

[FR Doc. 87–11178 Filed 5–14–87; 8:45 am]

BILLING CODE 4140-01-M

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### National Cancer Institute; Ad Hoc Acrylonitrile Study Advisory Panel; Meeting

Notice is hereby given of the meeting of the Ad Hoc Acrylonitrile Study Advisory Panel, National Cancer Institute, June 29, 1987, Building 31, C Wing, Conference Room 7, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open from 10 a.m. to adjournment for discussion and review of the study protocol and study progress. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Acrylonitrile Study Advisory Panel, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6972) will provide substantive program information, upon request.

Dated: May 11, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–11183 Filed 5–14–87; 8:45 am]

BILLING CODE 4140-01-M

**National Cancer Institute; Ad Hoc Methylene Chloride Study Advisory Panel; Meeting**

Notice is hereby given of the meeting of the Ad Hoc Methylene Chloride Study Advisory Panel, National Cancer Institute, June 10, 1987, Building 31, C Wing, Conference Room 7, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open to the public from 9 a.m. to adjournment for discussion and review of the study protocol and the feasibility report. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Methylene Chloride Study Advisory Panel, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will provide substantive program information, upon request.

Dated: May 11, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–11182 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

**National Cancer Institute; Board of Scientific Counselors; Meeting**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on June 11–12, 1987, Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on June 11 and from 9 a.m. to adjournment on June 12 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9 a.m. to approximately 12 p.m. on June 11 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will furnish substantive program information.

Dated: May 1, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–11184 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

**National Cancer Institute; (Division of Cancer Treatment Board of Scientific Counselors); Meeting**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, June 1–2, 1987, Building 31, 6th Floor, "C" Wing, Conference Room 10, Bethesda, Maryland 20892.

This meeting will be open to the public on June 1 from 8:30 a.m. to approximately 5:30 p.m., and again on June 2 from 8:30 a.m. until adjournment, to review program plans, contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 1 from 5:30 p.m. until recess, for the review, discussion and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A–06, National Institute of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A–52, National Institute of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Dated: May 1, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–11181 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

**National Cancer Institute; (President's Cancer Panel); Meeting**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel, National Cancer Institute, June 22, 1987, at the University of Pittsburgh, School of Medicine-Scaife Hall, Lecture Room 6, 3550 Terrace Street, Pittsburgh, PA 15261.

This meeting will be open to the public on June 22 from 8:30 a.m. to adjournment. Agenda items include reports by the Chairman, President's Cancer Panel and the Director, National Cancer Institute; and reports and discussions from experts to obtain information regarding research programs supported by the National Cancer Institute. Attendance by the public will be limited to space available. Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A23, National Institutes of Health, Bethesda, Maryland 20892 (301/496–1148) will provide an agenda for the meeting, a roster of the Panel members, and substantive program information upon request.

Dated: May 11, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–11180 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

**National Eye Institute; Board of Scientific Counselors, NEI; Meeting**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, June 18–19, 1987, Building 31, NEI Conference Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 18 from 8:30 a.m. until approximately 4 p.m for general remarks

by the Institute's Scientific Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 18 from approximately 4 p.m. until recess and on June 19 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Mechanisms of Ocular Diseases. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4903, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: May 1, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–11185 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Allergy and Infectious Diseases, Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on June 8, 9 and 10. The meeting will be held in Conference Room 428, Building 5, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on June 8 from 9:00 a.m. until 12:30 p.m. and 1:30 p.m. until 3 p.m. During this open session, the permanent staff of the Laboratories of Immunogenetics, Immunopathology and Microbial Immunity will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting of the Board will be closed to the public on June 8 from 8:30 a.m. until 9:00 a.m., 12:30 p.m. until 1:30 p.m. and from 3 p.m. until recess, on June 9 from 8:00 a.m. until recess and on June 10 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301–496–3006), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13–301, National Institutes of Health)

Dated: May 1, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–11186 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Child Health and Human Development; Board of Scientific Counselors, NICHD; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, June 5, 1987, in Building 31, Room 2A52.

This meeting will be open to the public from 9:00 a.m. to 12 noon on June 5 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on June 5 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C06, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: May 1, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–11187 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Diabetes and Digestive and Kidney Diseases; National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on June 29, 1987, from 8:30 a.m. to approximately 5 p.m. at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the longrange digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland, 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: May 11, 1987.

Betty J. Beveridge,

*NIH Committee Management Officer.*

[FR Doc. 87–11189 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Diabetes and Digestive and Kidney Diseases; National Kidney and Urologic Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Kidney and Urologic Diseases Advisory Board on June 25 and 26, 1987, from 8 a.m. to approximately 5 p.m. on June 25 and from 8 a.m. to approximately 4 p.m. on June 26, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open

to the public, is being held to discuss the Board's activities and the development of a long-range plan to combat kidney and urologic diseases. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Kidney and Urologic Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland, 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his Office.

Dated: May 11, 1987.

Betty J. Beveridge,

*NIH Committee Management Officer.*

[FR Doc. 87-11186 Filed 5-14-87; 8:45 am]

BILLING CODE 4140-01-M

## Meeting of the General Clinical Research Centers Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), June 17-19, 1987, Conference Room 10, Bldg. 31, 9000 Rockville Pike, Bethesda, MD 20892.

The meeting will be open to the public on June 19, from 1:30 p.m. to adjournment, during which time there will be comments by the Director, DRR; an update on the GCRC Program; and reports on the Clinical Associate Physician Program, the diffusion of the CLINFO System, possible new technologies for GCRCs, and clinical research data management. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 17 from 1 p.m. to recess and on June 18 from 8 a.m. to recess and on June 19 from approximately 8 a.m. to 1:30 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Room. 5B-10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the Committee members upon request. Dr. Stanley L. Slater, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B-51, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6595, will furnish program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: May 4, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87-11081 Filed 5-14-87; 8:45 am]

BILLING CODE 4140-01-M

## National Cancer Institute; Meeting Cancer Biology-Immunology Contract Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 15, 1987, Linden Hill Hotel, Forest Hills Conference Room, 5400 Pooks Hill Road, Bethesda, Maryland 20814.

This meeting will be open to the public on June 15 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 15 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology-Immunology Contract Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496-7153) will furnish substantive program information.

Dated: May 1, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87-11082 Filed 5-14-87; 8:45 am]

BILLING CODE 4140-01-M

## National Eye Institute; Meeting of the Vision Research Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, June 25-26, 1987, Conference Room 8, Building 31, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on June 25 from 8:30 a.m. to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 9:30 a.m. on June 25 until recess and on June 26 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A-03, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4903, will provide summaries of the meeting, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Dated: May 4, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87-11083 Filed 5-14-87; 8:45 am]

BILLING CODE 4140-01-M

## National Eye Institute; Meeting of the National Advisory Eye Council

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the

National Advisory Eye Council, National Eye Institute, June 1–2, 1987, Building 31, Conference Room 9, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. until approximately 12 noon on Monday, June 1. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute concerning Institute programs and various research assistance mechanisms. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 12 noon until recess on Monday, June 1, and from 9 a.m. until adjournment on Tuesday, June 2, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

There will also be a meeting of the Vision Research Program Planning Subcommittee on Sunday, May 31, from 7 p.m. to 9 p.m. to discuss further the plans for *Vision Research: A National Plan 1989–90*. The meeting will be held in the Embassy Room at the Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland. Attendance by the public will be limited to space available.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4903, will provide summaries of meetings, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Dated: May 1, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–11084 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Child Health and Human Development; Review Committee Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for June 1987.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the Executive Secretary indicated.

Name of Committee: Population Research Committee
Executive Secretary: Dr. A.T. Gregoire, Rm. 6C03, Landow Building, Telephone: 301, 496–1696
Date of Meeting: June 18–19, 1987
Place of Meeting: Landow Building, Conference Room A
Open: June 18, 1987, 8:30 a.m.–10:00 a.m.
Closed: June 18, 1987, 10:00 a.m.–5:00 p.m., June 19, 1987, 8:30 a.m.–adjournment
Name of Committee: Maternal and Child Health Research Committee
Executive Secretary: Dr. Scott Andres, Room 6C08, Landow Building, Telephone: 301, 496–1485
Date of Meeting: June 23–24, 1987
Place of Meeting: Landow Building, Conference Room A
Open: June 23, 1987, 9:00 a.m.–10:00 a.m.
Closed: June 23, 1987, 10:00 a.m.–5:00 p.m., June 24, 1987, 9:00 a.m.–adjournment
Name of Committee: Mental Retardation Research Committee
Executive Secretary: Dr. Susan Streufert, Room 6C08, Landow Building, Telephone: 301, 496–1696
Date of Meeting: June 25–26, 1987,
Place of Meeting: Landow Building, Conference Room A
Open: June 25, 1987, 9:00 a.m.–10:00 a.m.
Closed: June 25, 1987, 10:00 a.m.–5:00 p.m., June 26, 1987, 9:00 a.m.–adjournment

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: May 4, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–11085 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

## National Library of Medicine; Meetings of the Biomedical Library Review Committee and the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on June 17–18, 1987, convening each day at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Subcommittee for the Review of Medical Library Resource Improvement Grant Applications on June 16 from 3 p.m. to 4 p.m. in the 5th-Floor Conference Room of the Lister Hill Center Building.

The meeting on June 17 will be open to the public from 8:30 to 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the regular meeting and the subcommittee meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications as follows: The regular meeting on June 17 from 11 a.m. to 5 p.m., and on June 18, from 8:30 a.m. to adjournment; and the subcommittee meeting on June 16 from 3 to 4 p.m. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Executive Secretary of the Committee, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: May 14, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–11088 Filed 5–14–87; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY–040–08–4212–08; W101088]

### Intent To Amend the Big Sandy Management Framework Plan; Sweetwater County, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to amend the Big Sandy management framework plan, Sweetwater County, Wyoming.

**SUMMARY:** This notice issued pursuant to 43 CFR Part 1600 invites public review and comment on the proposal to amend the Big Sandy MFP to authorize the withdrawal of the following 357.34 acres of public land for the protection of the Natural Corrals archeological site near Superior, Wyoming.

T.21N., R.101W., Sixth Principal Meridian.
Sec. 18: Lots 1–3, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.

Utilizing input received from the public, an interdisciplinary team will prepare an environmental assessment in accordance with 40 CFR Part 1502. Upon approval of the plan amendment by the Wyoming State Director, a public notice will be issued and a thirty day protest period will be allowed (43 CFR 1610.5–2).

**DATE:** Comments are to be submitted by July 6, 1987.

**ADDRESS:** Area Manager, Green River Resource Area, P.O. Box 1170, Rock Springs, Wyoming 82902.

**FOR FURTHER INFORMATION CONTACT:** Sally Haverly, BLM Green River Resource Area, (307) 362–6422.

**SUPPLEMENTARY INFORMATION:** Preliminary issues identified include: consistency with plans and program of other governmental agencies, rights of existing permittees and lessees, impact on present and future surface and mineral use, level of protection required for the archeological site.

The lands have been segregated for a two-year period from surface entry and mining (52 FR 10954, April 6, 1987).

Donald H. Sweep,

*District Manager.*

May 7, 1987.

[FR Doc. 87–11092 Filed 5–14–87; 8:45 am]

BILLING CODE 4310–22–M

[OR–010–07–4410–10; GP7–184]

### Intent To Amend the Warner Lakes Resource Area Management Framework Plan; Lakeview, OR

**AGENCY:** Bureau of Land Management, (BLM) Lakeview, Oregon, Interior.

**ACTION:** Opportunity for public comment: Notice of intent to amend the Warner Lakes resource area management framework plan (MFP), specifically for wetland management.

**SUMMARY:** This Notice of Intent is to advise the public that the BLM Lakeview District Office intends to amend an existing planning document to address wetland management opportunities and a potential Area of Critical Environmental Concern.

**SUPPLEMENTARY INFORMATION:** The BLM is proposing to amend the 1980 Warner Lakes Resource Area MFP to address management of permanently or intermittently flooded wetlands on public lands in Lake and southwestern Harney Counties in south central Oregon. The Warner Lakes Resource Area is bounded by the Fremont National Forest and the (BLM) High Desert Resource Area on the west, Oregon/California/Nevada state lines on the south, and the (BLM) Burns District on the east and north.

The purpose of the amendment would be to identify alternatives which resolve management issues for public wetlands in the Warner Lakes Resource Area. Preliminary management alternatives identified to date include: (1) Maintain present situation (No Action). (2) Emphasize maximum protection of wildlife habitat and watershed values on wetlands. (3) Maximize protection of wildlife (especially waterflow) habitat, while continuing to utilize other existing resources.

The existing plan (MFP) does not adequately address the current management opportunities for wetlands habitat in the Warner Lakes Resource Area. This amendment, when final, will specify management direction and priorities for wetlands on the public lands within the resource area.

The Warner Potholes Allotment, a 39,200 acre are including lakes and wetlands in the vicinity of Flagstaff Lake in the Warner Valley, has been nominated for designation as an Area of Critical Environmental Concern (ACEC). Analysis of the resources and application of the Bureau review criteria for ACEC supports the nomination. The plan amendment will evaluate the nomination to determine whether the area should be designated as an ACEC.

Disciplines to be represented on the interdisciplinary team preparing the plan amendment and environmental assessment are; wildlife, recreation, geology, cultural resources, watershed, range management, lands and realty, and land use planning. More detailed information on planning issues, criteria and preliminary management alternatives is available at the Lakeview District Office, and has also been mailed to known interested parties. The comment period on preliminary issues and planning criteria for the plan amendment and associated Environmental Assessment will close June 30, 1987. Other public participation activities will include a 45 day review of the draft plan amendment and EA and an open house to receive comments and answer questions. Dates, times and locations will be announced through local media and mailings to interested parties. Existing planning documents and information are available at the Lakeview District Office of the BLM, 1000 South Ninth Street, P.O. Box 151, Lakeview, Oregon 97630 during normal working hours. Phone (503) 947–2177.

**FOR FURTHER INFORMATION CONTACT:** Jerry E. Asher, Lakeview District Manager.

Dated: May 1, 1987.

Jerry E. Asher,

*District Manager.*

[FR Doc. 87–11106 Filed 5–14–87; 8:45 am]

BILLING CODE 4310–33–M

[NM–030–07–4333–09]

### Emergency Closure of Off-Road Travel Within the Horse Mountain Wilderness Study Area (WSA) in Catron County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of emergency closure.

**SUMMARY:** Notice is hereby given that effective immediately May 15, 1987, all vehicle use is prohibited on a 2 mile vehicle trail in the Horse Mountain

WSA (NM-020-043). The trail is located in T. 3 S., R. 12 W., Section 31, SW¼; T. 4 S., R. 13 W., Section 1, S½; T. 4 S., R. 12 W., Section 6, N½; T. 4 S., R. 12 W., Section 5, SW¼NW¼.

The purpose of this designation is to prevent impairment of the existing wilderness values, soil erosion, and degradation of the watershed within the WSA which will be caused by off-road travel. The authority for this closure is 43 CFR 8341.2. This designation will remain in effect until further notice.

**FOR FURTHER INFORMATION CONTACT:** Kevin Carson at the Bureau of Land Management, Socorro Resource Area Office, 198 Neel Avenue, NW., Socorro, New Mexico 87801 or at (505) 835-0412.

Robert R. Calkins,

*Acting District Manager.*

[FR Doc. 87-11091 Filed 5-14-87; 8:45 am]

BILLING CODE 4310-FB-M

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[NM-030-07-4212-13; NM68372]

## Realty Action; Exchange of Public Land in Dona Ana County for Private Land in Hidalgo County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

T. 22 S., R. 3 E., NMPM
Sec. 6, Lots 3, 4, 5, 6, 7, SE¼NW¼, E½SW¼,

Containing 327.93 acres, more or less.

In exchange for these lands, the United States will acquire the following described land from Joe S. Jackson of Animas, New Mexico.

T. 28 S., R. 20 W., NMPM
Sec. 17, W½SW¼;
Sec. 18, E½SE¼;
Sec. 19, E½NE¼, SE¼;
Sec. 20, W½NW¼, SW¼;
Sec. 27, W½;
Sec. 28, All;
Sec. 29, E½;
Sec. 33, N½;
Sec. 34, W½.
T. 28 S., R. 21 W., NMPM
Sec. 26, N½, N½S½, SE¼, SE¼.
T. 29 S., R. 21 W., NMPM
Sec. 3, Lots 1, 2, SE¼NE¼, N½SE¼;
Sec. 10, E½SW¼, SE¼;
Sec. 11, NW¼NE¼, W½;
Sec. 14, NW¼NW¼;
Sec. 15, N½, N½S½, SW¼SW¼;
Sec. 16, N½, N½N½SW¼, SE¼NE¼ NW¼, N½SE¼, E½SE¼SE¼;
Sec. 22, W½NW¼, SE¼NW¼, SW¼;
Sec. 23, NE¼SW¼, S½SW¼, W½SE¼;
Sec. 26, NW¼NE¼, NW¼, W½SW¼, SE¼;
Sec. 27, S½NE¼, NW¼, N½SE¼;
Sec. 34, E½SE¼;
Sec. 35, NE¼NE¼, W½NE¼, E½NW¼, SW¼NW¼, W½SW¼.

Containing 6,549.55 acres, more or less.

**DATE:** Comments must be submitted on or before June 29, 1987.

**ADDRESSES:** Comments should be sent to Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** Marvin M. James at the address above or at 505-525-8228, (FTS 571-8350).

**SUPPLEMENTARY INFORMATION:** The land to be transferred will be subject to:

1. Reservations to the United States for ditches and canals, and all minerals together with the right to prospect for, mine, and remove same.

2. Subject to rights-of-way: (a) NM45805, Dona Ana County Road Department for County Road D087; (b) NM61214, Moongate Water Association for a water pipeline; and (c) Application NM64745, City of Las Cruces for an access road and water pipeline.

3. The grazing permit will be cancelled on that portion of Allotment No. 5007 which is encompassed by the public land described in this Notice. Cancellation will occur 2 years after the date of publication of this Notice unless the 2-year notification period is waived by the grazing allottee.

Private land to be acquired by the United States will be subject to the following conditions:

1. The grazing preference on land to be acquired in the Joe S. Jackson Allotment No. 1514 will be allocated to him.

2. The grazing preference on land that is outside of designated allotments may be allocated to qualified applicants at the discretion of the authorized officer. Grazing use shall be allocated under 43 CFR 4130.1-2 of this title.

3. Mr. Joe S. Jackson will retain 40 acres of private land around each of the base waters.

The purpose of the exchange is to implement the following decisions in the Gila Management Plan: (1) To consolidate public land into areas that provide habitat for desert bighorn sheep, mule and white-tail deer, javelina, small game, and a great variety of nongame species including several listed as threatened or endangered by the State of New Mexico and (2) to consolidate public land for better management opportunities and legal hunter access.

Publication of this notice will segregate the public land from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 2 years from the date of publication of this notice in the Federal Register or upon publication of a notice of termination.

Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Robert R. Calkins,

*Acting District Manager.*

[FR Doc. 87-11093 Filed 5-14-87; 8:45 am]

BILLING CODE 4310-FB-M

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[CO-010-07-4410-08]

## Availability of Approved Piceance Basin Resource Management Plan/Record of Decision; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of Resource Management Plan/Record of Decision.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management (BLM), has prepared a Record of Decision (ROD) for the Piceance Basin Resource Management Plan (RMP). Initiation of actions which implement this plan can begin with the signing of the ROD. Concurrently, with the signing of the ROD, five sites within the Piceance Basin are designated as areas of critical environmental concern (ACECs), pursuant to the Federal Land Policy and Management Act of 1976 (Section 202(c)(3)) and 43 CFR Part 1610.

**EFFECTIVE DATE:** The Record of Decision and the ACEC designations thereunder became effective with the signing of that document on March 13, 1987, by Neil F. Morck, State Director for Colorado.

**ADDRESS:** Copies of the ROD/RMP are available upon request at the White River Resource Area Office, Bureau of Land Management, PO Box 928, Meeker, Colorado 81641.

**FOR FURTHER INFORMATION CONTACT:** B. Curtis Smith, Area Manager, at the above address. Telephone: (303) 878-3601.

**SUPPLEMENTARY INFORMATION:**

### Alternatives Analyzed

Five alternatives for managing 674,370 acres of public land in the Piceance

Basin Planning Area were analyzed in the RMP/environmental impact statement [EIS].

1. The Current Management Alternative maintained present management directions to resolve issues under existing decisions and the Management Framework Plan currently in effect. This was the No Action Alternative required by NEPA.

2. The Wildlife Alternative emphasized the management and use of the public lands for the benefit of wildlife and other renewable resources. Significant surface disturbing activities would be discouraged with management actions directed toward maintaining or enhancing wildlife habitat and other related resource values. Although this alternative was the environmentally preferable alternative, it did not resolve all of the planning issues or balance all land uses and resource values to the greatest benefit of all the public; therefore, it was not BLM's preferred plan.

3. The Oil and Gas Alternative placed management emphasis on planning and providing for oil and gas development and transportation. In addition, management emphasis was directed toward providing access to the public lands for other resource values including forest products, off-road vehicle use, and major linear rights-of-way.

4. The Oil Shale Alternative placed management emphasis on the development, production, and transportation of oil shale and other associated minerals. Management priority would be directed toward making lands available for commercial oil shale leasing by private industry as demand and economics dictate. Minimum management of renewable resources would generally occur under this alternative.

5. The Proposed Resource Management Plan (Preferred Alternative) achieves the combination of management options that is the most acceptable resolution of the planning issues identified during the planning process. It attempts to balance all land uses and resource values and was developed only after considering the impacts to all management options and the long-term public interest and benefits of implementation.

### Decision

The decision is to adopt the Proposed Plan as the Piceance Basin Resource Mnagement Plan. Major decisions contained in the plan are to:

—Allow for potential future oil shale leasing for open pit mining on 27,303 acres and for underground mining on 207,295 acres
—Implement a sequential lease offering process for future oil shale leasing whereby critical environmental and socioeconomic carrying capacities are not exceeded
—Reserve the multimineral zone (76,595 acres) from future commercial oil shale leasing until improved recovery rates have been proven, as determined by the BLM State Director
—Allow for potential future coal leasing by underground mining on 29,610 acres. Of this amount, 24,635 acres are also potentially available for coal leasing by surface mining
—Continue oil and gas leasing and development subject to the terms of approval cited in the White River Resource Area Oil and Gas Leasing Umbrella Environmental Assessment (EA). The Umbrella EA will be updated to reflect changes appropriate to implement plan decisions and to comply with current policy
—Continue livestock grazing management as identified in the Proposed Grazing Management Program for the White River Resource Area, Final EIS, and as approved in subsequent Rangeland Program Summaries, providing for a long-term allocation of 64,011 AUMs for livestock grazing
—Continue wild horse management according to decisions approved in the White River Resource Area Herd Management Area Plan to reach a herd management objective of 65 to 100 animals in the Piceance Basin.
—Continue implementation of the Piceance Basin Habitat Management Plan
—Provide for long-term increases to initial wildlife forage allocation of 36,253 AUMs to 40,501 AUMs over a 20-year period. Place off-road vehicle restrictions on approximately 177,000 acres in the Piceance Basin
—Designate the Piceance Basin Special Recreation Management Area
—Designate 16 utility corridors for major linear rights-of-way
—Designate five areas as ACECs (Deer Gulch, Dudley Bluffs, Lower Greasewood Creek, South Cathedral Bluffs, Yanks Gulch/Upper Greasewood Creek. See Federal Register Vol. 51, No. 224, Friday, December 19, 1986, for a complete legal description of these units as well as a discussion of the resource value and resource use limitations for each unit)
—Designate the Soldier Creek area as an ACEC if the State of Colorado designates their adjoining acreage
—Designate the School Gulch area as an ACEC if ongoing monitoring indicates the important values present require designation

### Mitigation Measures

All practicable measures will be taken to mitigate adverse impacts. These measures will be strictly enforced during implementation. Monitoring will tell how effective these measures are in minimizing environmental impacts. Therefore, additional measures to protect the environment may be taken during or following monitoring.

Dated: April 22, 1987.

**Neil F. Moock,**

*State Director, Colorado.*

[FR Doc. 87-10832 Filed 5-15-87; 8:45 am]

BILLING CODE 4310-JB-M

## National Park Service

### Great Basin National Park, Nevada; Legal Description

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of legal description, correction.

This document corrects an erroneous map reference and certain minor errors contained in the legal description published April 27, 1987, Vol. 52, No. 80, FR Doc. 87-9454, pp 13881-13882.

The first paragraph is corrected to read as follows: Pub. L. 99-565 dated October 27, 1986, established Great Basin National Park as generally depicted on a map titled "Boundary May, Great Basin National Park, Nevada," numbered NA-GB 20,017, and dated October 1986. Pursuant to section 2(c) of that Act a legal description is provided. The lands set forth below comprise approximately 77,109.15 acres and are located in the Mount Diablo Meridian. All sections are unsurveyed and protracted unless otherwise noted. Acreages shown are therefore approximate and subject to survey.

The following corrections are made to the legal description:

1. On page 13881, third column, twenty-fourth line of description "1,258.00" is corrected to read "1,280.00".

2. On page 13882, first column, seventh line, "conrers" is corrected to read "corners".

3. On page 13882, first column, last line, "Secs. 34, and 36" is corrected to read "Secs. 34, 35, and 36".

4. On page 13882, second column, first line, "320.00" is corrected to read "320.05".

**W. Lowell Wilke,**

*Acting Regional Director, Western Region.*

[FR Doc. 87-11153 Filed 5-14-87; 8:45 am]

BILLING CODE 4310-70-M

### Denali National Park Subsistence Resource Commission Meeting

**AGENCY:** National Park Service, Alaska Region.

**ACTION:** Subsistence Resource Commission Meeting.

**SUMMARY:** The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Denali National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Call to order.
2. Reading and approval of minutes.
3. Internal Commission business (election of officers).
4. Subsistence use zones.
5. Time limits for Cantwell residents to apply for permits.
6. Status of hunting plan.
7. Review correspondence addressed to Commission.
8. Update on Park plans that could affect subsistence.
9. Subsistence research data needs.
10. Other business.
11. Adjourn.

The Denali National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Lands Conservation Act, Public Law 96-487.

**DATE:** The meeting will begin at 9:00 a.m. on Friday, June 5, 1987, and conclude the afternoon or the morning of June 6 if needed.

**ADDRESS:** Denali National Park, Headquarter Recreational Hall.

**FOR FURTHER INFORMATION CONTACT:** Bob Cunningham, Superintendent, Denali National Park, P.O. Box 9, McKinley Park, Alaska 99755, Phone (907) 683-2294.

**SUPPLEMENTARY INFORMATION:** The Denali National Park Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487 .

Dated: May 4, 1987.

Boyd Evison,

*Regional Director Alaska, Region.*

[FR Doc. 87-11157 Filed 5-14-87; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

*Background:* The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

**List of Recordkeeping/Reporting Requirements Under Review**

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

**Comments and Questions**

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**Extension**

Employment and Training Administration
Job Corps Enrollee Allotment Determination
1205-0030; ETA 658
On occasion
Individuals or households; Federal agencies or employees
16,560 respondents; 3,312 hours; 1 form

Job Corps enrollees may elect to have a portion of their Readjustment Allowance sent to a dependent monthly. This form provides the information necessary to administer those allotments.

**Reinstatement**

Employment and Training Administration
In-Season Farm Labor Report
1205-0006; ETA 223
On occasion
Individuals or households; State or local governments; Farms
8,047 respondents; 16,094 hours; 1 form

In planning and budgeting for agricultural worker placement programs and programs to provide health and related services to migrant and seasonal farmworkers, it is important to know where seasonal farm jobs are located, level of labor needs, active work periods, tasks to be performed and home bases of workers.

Pension and Welfare Benefits Administration
Class Exemption 77-4 for Certain Transactions
1210-0049
Annually when exemption is used
Business or other for profit; Small Business or Organizations
18,150 responses; 1,633 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the purchase and sale by an employee benefit plan of shares of a registered open-end mutual fund when a fiduciary with respect to the plan (e.g., an investment manager) is also investment adviser for the mutual fund.

**Reinstatement**

Pension and Welfare Benefits Administration
DOL Regulation § 2560-503-1 Claims Procedure
1210-0053
On Occasion
individuals or households; Buiness or other for-profit; non-profit institutions; Small business or organizations
73,567 responses; 30,634 hours

The regulation requires employee benefit plans to establish procedures which provide adequate written notice to any participant or beneficiary of an employee benefit plan whose claim has been denied. An opportunity for a review of a denied claim must also be

provided; the decision upon a review must also be in writing.

**Reinstatement**

Pension and Welfare Benefits Administration
DOL Regulation § 2550.408b–3, Loans to Employee Stock Ownership Plans (ESOP)
On occasion
Individuals or households; business or other for-profit; small businesses or organizations
4,640 responses; 427 hours

The paperwork requirement included in this regulation is a disclosure requirement to furnish certain individuals receiving securities from an ESOP, notices of their right to exercise put options under certain limited circumstances and within a limited time frame.

**Reinstatement**

Pension and Welfare Benefits Administration
Suspension of Benefits Regulation
1210-0040
Whenever benefits are suspended
Business or other for-profit; Small businesses or organizations
106,188 responses; 26,547 hours; 0 forms

DOL Regulation § 2530.203–3 allows a plan to suspend an individual's pension benefits if the individual continues to work or returns to work. The plan is required to notify the individual during the first calendar month or payroll period in which the plan withholds payment of the reasons for the suspensions.

**Reinstatement**

Office of Pension and Welfare Benefits Administration
Prohibited Transaction Exemption 78–19
Recordkeeping
Business or other for-profit; small businesses or organizations
1 Respondent; 1 hour

This exemption allows parties in interest of an employee benefit plan that invests in an insured pooled separate account to engage in transactions with the separate account if the plan's participation in the separate account does not exceed specified limits. Six year recordkeeping is required.

**Reinstatement**

Pension and Welfare Benefits Administration
Prohibited Class Exemption 76–1
Recordkeeping
Business or other for-profit; non-profit institutions; small businesses or organizations
3,200 recordkeepers; 800 hours

The class exemption permits parties in interest, under specified conditions, (A) to make delinquent employer contributions (B) to receive construction loans, and (C) to obtain office space, administrative services, and goods from plans.

Signed at Washington, DC, this 12th day of May, 1987.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 87–11174 Filed 5–14–87; 8:45 am]

BILLING CODE 4510-29-M

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## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Workers Adjustment Assistance; A&E Products Groups et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or theratened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (10 days after public). May 26, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 26, 1987.

The petition filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 4th day of May 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (Union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| A&E Products Groups (Workers) | Woodbridge, NJ | 5/4/87 | 4/23/87 | 19,614 | Plastic Garment Hangers. |
| Bailey Controls Co. (U.A.W.) | Wickliffe, OH | 5/4/87 | 4/27/87 | 19,615 | Electronic Control Devices. |
| Brown Shoe Co. (ACTWU) | Bernie, MO | 5/4/87 | 4/22/87 | 19,616 | Womens Shoes. |
| CHG Producting Co. (Workers) | New Orleans, LA | 5/4/87 | 4/22/87 | 19,617 | Oil & Gas. |
| Champion Bldg., Products-Division of Champion Int'l (Workers). | Helena, MT | 5/4/87 | 4/20/87 | 19,618 | Softwood Lumber. |
| Champion International Bldg. Products Div. (Workers) | Bonner, MT | 5/4/87 | 4/27/87 | 19,619 | Lumber. |
| Damson Oil Corp. (Workers) | Carmi, IL | 5/4/87 | 4/23/87 | 19,620 | Oil & Gas. |
| Desco Shoe Corp. (Company) | New York, NY | 5/4/87 | 3/24/87 | 19,621 | Women's Shoes & Boots. |
| Drico Industrial (Workers) | Midland, TX | 5/4/87 | 4/12/87 | 19,622 | Mining Equipment & Tools. |
| Enserch Exploration, Inc. (Workers) | Dallas, TX | 5/4/87 | 4/23/87 | 19,623 | Oil & Gas. |
| Exxon Company USA, Headquarters (Workers) | Houston, TX | 5/4/87 | 4/21/87 | 19,624 | Crude Oil. |
| Exxon Company USA, Eastern Production Div. (Workers) | New Orleans, LA | 5/4/87 | 4/21/87 | 19,625 | Crude Oil. |
| Halliburton Services (Workers) | Lafayette, LA | 5/4/87 | 4/23/87 | 19,627 | Oil Services. |
| Honeywell Solid State Electronic Div. (Workers) | Plymouth, MN | 5/4/87 | 4/21/87 | 19,628 | Semi-Conductor Chips. |
| J.E. Carter Energy & Development Corp. (Workers) | Houston, TX | 5/4/87 | 4/22/87 | 19,629 | Oil Exploration. |
| Koppers Co., Inc. (OCAW) | Youngstown, OH | 5/4/87 | 4/21/87 | 19,630 | Roofing Materials. |
| Mackintosh-Hemphill International, Inc. (Workers) | Pittsburgh, PA | 5/4/87 | 4/21/87 | 19,631 | Iron & Steel Rolls. |
| N I Industries, Inc./Auto Trim Div./Mirrex Plant (Teamsters). | Mt. Clemens, MI | 5/4/87 | 4/21/87 | 19,632 | Sideview Mirrors. |
| Omni Duralite Co (Company) | S. Grafton, MA | 5/4/87 | 4/21/87 | 19,633 | Lawn Furniture. |
| Pennsylvania Industrial (Company) | Donora, PA | 5/4/87 | 4/30/87 | 19,634 | Fasteners. |
| Pilkington-Electro-Optic-Communication System (Company) | Sun Valley, CA | 5/4/87 | 4/13/87 | 19,635 | Data. |

APPENDIX—Continued

| Petitioner (Union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Pogo Producing, Co. (Workers) | Houston, TX | 5/4/87 | 4/21/87 | 19,636 | Crude Oil. |
| Pogo Producing, Co. (Workers) | Midland, TX | 5/4/87 | 4/21/87 | 19,637 | Do. |
| Pogo Producing, Co. (Workers) | Oklahoma City, OK | 5/4/87 | 4/21/87 | 19,638 | Do. |
| Pogo Producing, Co. (Workers) | Denver, CO | 5/4/87 | 4/21/87 | 19,639 | Do. |
| Pyro Energy Corp. (Workers) | Dallas, TX | 5/4/87 | 4/21/87 | 19,640 | Oil & Gas. |
| Revelations Shoe Corporation (USWA) | Exeter, PA | 5/4/87 | 4/22/87 | 19,641 | Ladies Footwear. |
| Robert Shaw Controls (Company) | El Paso, TX | 5/4/87 | 3/16/87 | 19,642 | Thermostats. |
| Sun Exploration and Production (Workers) | Cropus Christi, TX | 5/4/87 | 4/19/87 | 19,643 | Crude Oil. |
| Taylor/TCA (Workers) | Arden, NC | 5/4/87 | 4/9/87 | 19,644 | Thermometers. |
| Texas Instruments, Inc.-Semiconductor Div. 3 (Workers) | Houston, TX | 5/4/87 | 4/6/87 | 19,645 | Semiconductors. |
| U.S. Steel Mining Co, Inc. (UMWA #2390) | Washington, PA | 5/4/87 | 4/13/87 | 19,646 | Coal. |
| Unimation Inc. (Workers) | Danbury, CT | 5/4/87 | 4/21/87 | 19,647 | Industrial Robots. |
| United Technology/Hamilton Standard Control, Inc./Essex Electromechanical Products (USWA). | Flora, IN | 5/4/87 | 4/22/87 | 19,648 | Transformers, Coils, Relays. |
| Vulcan Patton International (Workers) | Burleson, TX | 5/4/87 | 4/20/87 | 19,649 | Sucker Rods. |
| Well'tech, Inc. (Workers) | Odessa, TX | 5/4/87 | 4/23/87 | 19,650 | Oil & Gas. |

[FR Doc. 87-11177 Filed 5-14-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,739]

## AT&T Technologies, Inc.; AT&T Technology Systems, Reading, PA; Affirmed Determination Regarding Application for Reconsideration

By an application dated March 30, 1987, counsel for the International Brotherhood of Electrical Workers, Local #1696, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of AT&T Technologies, Inc., AT&T Technology Systems, Reading, Pennsylvania. The determination was published in the Federal Register on March 10, 1987 (52 FR 7330).

Counsel for the union claims, among other things, that the Department did not investigate the Regional Operating Bell Companies. Counsel for the union also does not agree with the Department's negative findings concerning the outsourcing of production to offshore facilities in 1986.

### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of May 1987.

**Harold A. Bratt,**

*Deputy Director, Office of Program Management, UIS.*

[FR Doc. 87-11175 Filed 5-14-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18, 115, et al.]

## Conoco, Inc., Petroleum Exploration and Production Division and All Other Locations of the Petroleum Exploration and Production Division in Alaska et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: Conoco, Inc., Petroleum Exploration and Production Division.

Lakewood, Colorado, TA-W-18,115
Houston, Texas, TA-W-18,115A
Midland, Texas, TA-W-18,116
Lafayette, Louisiana, TA-W-18,117
New Orleans, Louisiana, TA-W-18,118

And all other locations of the petroleum exploration and production division in the following states:

Alaska, TA-W-18,116A
Arkansas, TA-W-18,116B
California, TA-W-18,116C
Colorado, TA-W-18,116D
Kansas, TA-W-18,116E
Louisiana, TA-W-18,116F
Mississippi, TA-W-18,116G
Montana, TA-W-18,116H
New Mexico, TA-W-18,116I
North Dakota, TA-W-18,116J
Oklahoma, TA-W-18,116K
Texas, TA-W-18,116L
Utaha, TA-W-18,116M
Wyoming, TA-W-18,116N

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assitance on December 19, 1986 applicable to all workers of the Petroleum Exploration and Production Division of Conoco, Incorprated, headquartered in Houstion, Texas and including several other locations. The Certification was published in the Federal Register shortly thereafter.

The certification notice is amended to identify the states in which the Petroleum Exploration and Production Division maintains operations. The company has oil fields in numerous states as well as offices which support crude oil production. Worker separations have occured throughout the Division.

The intent of the certification is to cover all workers of the Petroleum Exploration and Production Division in all locations. The amended notice applicable to TA-W-18,115 through TA-W-18,118 is hereby issued as follows:

All workers of the Petroleum Exploration and Production Division of Conoco, Incorporated, headquartered in Houston, Texas, and operating in the states of Alaska; Arkansas; California; Colorado; Kansas; Louisiana; Mississippi; Montana; New Mexico; North Dakota; Oklahoma; Texas; Utah; and Wyoming who became totally or partially separated from employment on or after June 18, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of May 1987.

**Robert O. Deslongchamps,**

*Director, Office of Legislation and Actuarial Services, UIS.*

[FR Doc. 87-11171 Filed 5-14-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,646 et al.]

## Whitaker Division of Ristance Corp. et al.; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90-18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Whitaker Division of Ristance Corporation, St. Joseph, Missouri; Amerada Hess Corporation, Anchorage, Alaska; Halliburton Company, Halliburton Services Manufacturing Center, Oilfield Services Division, Duncan, Oklahoma. The reviews indicated that the applications

contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA–W–18,646; Whitaker Division of Ristance Corporation, St. Joseph, Missouri (April 23, 1987).

TA–W–18,771; Amerada Hess Corporation, Anchorage, Alaska (May 1, 1987).

TA–W–19,342; Halliburton Company, Halliburton Services Manufacturing Center, Oilfield Services Div., Duncan, Oklahoma (April 23, 1987).

Signed at Washington, DC, this 6th day of May 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87–11176 Filed 5–14–87; 8:45 am]

BILLING CODE 4510–30–M

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## Job Training Partnership Act; Native Employment and Summer Youth Employment and Training Programs; Allocations, Distribution Formulas and Rationale

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration of the Department of Labor is publishing the final Native American programs total allocations, distribution formulas, and rationale for Program Year 1987 (July 1, 1987—June 30, 1988) for regular programs funded under Title IV–A of the Job Training Partnership Act, and for Calendar Year 1987 for Summer Youth Employment and Training Programs funded under Title II–B of the Job Training Partnership Act.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4641, Washington, DC 20213; Phone: 202–535–0500.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 162 of the Job Training Partnership Act (JTPA), The Employment and Training Administration (ETA) of the Department of Labor (DOL) publishes the final allocations and distribution formula for Native American grantees to be funded under JTPA section 401, and JTPA Title II, Part B. The amounts to be distributed are $61,484,000 for JTPA section 401 programs for Program Year (PY) 1987 (July 1, 1987–June 30, 1988); and $11,565,739 for JTPA Title II, Part B, for the Summer Youth Employment and Training Program (SYETP) for the summer of Calendar Year 1987.

This information, along with individual grantee planning estimates, was published in the **Federal Register** as a proposal on December 8, 1986. 51 FR 44132.

Written comments from the public were invited, but none were received.

The formula for JTPA section 401, provides that 25% of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75% will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating SYETP funds divides the funds among eligible recipients based on the proportion that the number of youths in a recipient's area bears to the total number of youths in all eligible areas.

The rationale for the above formulas is that the number of poverty-level persons, unemployed persons, and youth among the Native American population is indicative of the need for employment and training funds.

No hold-harmless provisions have been applied to the Title IV or the Title II–B allocations. 51 FR 21639 (June 13, 1986); 51 FR 44132 (December 8, 1986).

Statistics on youth, unemployed persons, and poverty-level persons among Native Americans used in the above program are derived from the Decennial Census of the Population, 1980.

Signed at Washington, DC, this 11th day of May 1987.

**Roger D. Semerad,**

*Assistant Secretary of Labor.*

BILLING CODE 4510–30–M

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U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 1
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| POARCH BAND OF CREEK INDIANS<br>ROUTE 3, BOX 243A<br>ATMORE, ALABAMA<br>36502<br>GRANT NUMBER:99-7-0648-55-104-02 | 400,665 | 320,532 | 80,133 | 0 | 0 | 0 |
| ALEUTIAN/PRIBILOF ISLANDS ASSOC.<br>1689 C STREET<br>ANCHORAGE, ALASKA<br>99501<br>GRANT NUMBER:99-7-0117-55-071-02 | 47,787 | 38,230 | 9,557 | 30,986 | 24,789 | 6,197 |
| ASSOC. OF VILLAGE COUNCIL PRESIDENTS<br>P.O. BOX 848<br>BETHEL, ALASKA<br>99559<br>GRANT NUMBER:99-7-2713-55-135-02 | 568,026 | 454,421 | 113,605 | 232,855 | 186,284 | 46,571 |
| BRISTOL BAY NATIVE ASSOCIATION<br>P.O. BOX 189<br>DILLINGHAM, ALASKA<br>99576<br>GRANT NUMBER:99-7-0116-55-070-02 | 140,808 | 112,646 | 28,162 | 70,705 | 56,564 | 14,141 |
| CENTRAL COUNCIL OF TLINGIT AND HAIDA INDIAN TRIBES<br>320 W. WILLOUGHBY, SUITE 300<br>JUNEAU, ALASKA<br>99801<br>GRANT NUMBER:99-7-0114-55-068-02 | 219,876 | 175,901 | 43,975 | 150,142 | 120,114 | 30,028 |
| COOK INLET TRIBAL COUNCIL<br>900 WEST 5TH AVENUE SUITE 300<br>ANCHORAGE, ALASKA<br>99501<br>GRANT NUMBER:99-7-3402-55-188-02 | 364,890 | 291,912 | 72,978 | 179,113 | 143,290 | 35,823 |
| | | | | (The Title II-B funds above will be awarded to the current grantee, Cook Inlet Native Assn. in accordance with Dept. of Labor policy.) | | |
| KAWERAK INCORPORATED<br>P.O. BOX 948<br>NOME, ALASKA<br>99762<br>GRANT NUMBER:99-7-0123-55-073-02 | 221,863 | 177,490 | 44,373 | 82,293 | 65,834 | 16,459 |
| KENAITZE INDIAN TRIBE<br>P. O. BOX 988<br>KENAI, ALASKA<br>99611<br>GRANT NUMBER:99-7-0089-55-067-02 | 30,268 | 24,214 | 6,054 | 15,619 | 12,495 | 3,124 |
| KODIAK AREA NATIVE ASSOCIATION<br>402 CENTER AVENUE<br>KODIAK, ALASKA<br>99615<br>GRANT NUMBER:99-7-0115-55-069-02 | 64,152 | 51,322 | 12,830 | 29,894 | 23,915 | 5,979 |
| MANILAQ MANPOWER<br>P.O. BOX 725<br>KOTZEBUE, ALASKA<br>99752<br>GRANT NUMBER:99-7-0124-55-074-02 | 174,098 | 139,278 | 34,820 | 79,270 | 63,416 | 15,854 |

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 2
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| METLAKATLA INDIAN COMMUNITY<br>P.O. BOX 8<br>METLAKATLA, ALASKA<br>99926<br>GRANT NUMBER:99-7-0064-55-053-02 | 15,796 | 12,637 | 3,159 | 16,291 | 13,033 | 3,258 |
| NORTH PACIFIC RIM<br>611 EAST 12TH - SUITE 102<br>ANCHORAGE, ALASKA<br>99501<br>GRANT NUMBER:99-7-0118-55-072-02 | 57,940 | 46,352 | 11,588 | 23,344 | 18,675 | 4,669 |
| TANANA CHIEFS CONFERENCE, INC.<br>201 FIRST AVENUE - DOYON BLDG.<br>FAIRBANKS, ALASKA<br>99701<br>GRANT NUMBER:99-7-3109-55-150-02 | 387,084 | 309,667 | 77,417 | 192,632 | 154,106 | 38,526 |
| AFFILIATION OF ARIZONA IND. CNTRS. INC.<br>2721 NORTH CENTRAL AVE., SUITE 814<br>PHOENIX, ARIZONA<br>85004<br>GRANT NUMBER:99-7-0268-55-089-02 | 256,041 | 204,833 | 51,208 | 0 | 0 | 0 |
| AMERICAN INDIAN ASSOC. OF TUCSON<br>P.O. BOX 7246<br>TUCSON, ARIZONA<br>85725<br>GRANT NUMBER:99-7-0492-55-096-02 | 334,105 | 267,284 | 66,821 | 0 | 0 | 0 |
| COLORADO RIVER INDIAN TRIBES<br>ROUTE 1, BOX 23-B<br>PARKER, ARIZONA<br>85344<br>GRANT NUMBER:99-7-0498-55-097-02 | 81,827 | 65,462 | 16,365 | 27,879 | 22,303 | 5,576 |
| GILA RIVER INDIAN COMMUNITY<br>BOX 97<br>SACATON, ARIZONA<br>85247<br>GRANT NUMBER:99-7-0054-55-049-02 | 489,268 | 391,414 | 97,854 | 120,080 | 96,064 | 24,016 |
| HOPI TRIBAL COUNCIL<br>BOX 123<br>KYKOTSMOVI, ARIZONA<br>86039<br>GRANT NUMBER:99-7-0057-55-050-02 | 383,398 | 306,718 | 76,680 | 93,560 | 74,448 | 19,112 |
| INDIAN DEV. DIST. OF ARIZONA, INC.<br>1777 W. CAMELBACK ROAD, SUITE A-108<br>PHOENIX, ARIZONA<br>85015<br>GRANT NUMBER:99-7-0053-55-048-02 | 111,812 | 89,450 | 22,362 | 38,963 | 31,170 | 7,793 |
| NATIVE AMERICANS FOR COMMUNITY ACTION<br>15 NORTH SAN FRANCISCO STREET<br>P.O. BOX 372<br>FLAGSTAFF, ARIZONA 86002<br>GRANT NUMBER:99-7-1777-55-119-02 | 113,968 | 91,174 | 22,794 | 0 | 0 | 0 |

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| NAVAJO TRIBE OF INDIANS<br>P.O. BOX 1689<br>WINDOW ROCK,ARIZONA<br>86515<br>GRANT NUMBER:99-7-0059-55-052-02 | 6,794,990 | 5,435,992 | 1,358,998 | 2,107,198 | 1,685,758 | 421,440 |
| PASQUA YAQUI TRIBE<br>7474 S. CAMINO DE OESTE<br>TUCSON, ARIZONA<br>85746<br>GRANT NUMBER:99-7-3289-55-160-02 | 38,417 | 30,734 | 7,683 | 8,313 | 6,650 | 1,663 |
| PHOENIX INDIAN CENTER, INC.<br>1337 NORTH 1ST STREET<br>PHOENIX, ARIZONA<br>85004<br>GRANT NUMBER:99-7-0195-55-084-02 | 702,967 | 562,374 | 140,593 | 0 | 0 | 0 |
| SALT RIVER PIMA-MARICOPA IND. COMMUN.<br>ROUTE 1, BOX 216<br>SCOTTSDALE, ARIZONA<br>85256<br>GRANT NUMBER:99-7-0476-55-094-02 | 95,653 | 76,522 | 19,131 | 41,734 | 33,387 | 8,347 |
| SAN CARLOS APACHE TRIBE<br>P.O. BOX O<br>SAN CARLOS, ARIZONA<br>85550<br>GRANT NUMBER:99-7-0173-55-081-02 | 312,059 | 249,647 | 62,412 | 105,049 | 84,039 | 21,010 |
| TOHONO O'ODHAM NATION<br>P.O. BOX 837<br>SELLS, ARIZONA<br>85634<br>GRANT NUMBER:99-7-0181-55-083-02 | 426,469 | 341,175 | 85,294 | 113,614 | 90,891 | 22,723 |
| WHITE MOUNTAIN APACHE TRIBE<br>P.O. BOX 700<br>WHITE RIVER, ARIZONA<br>85941<br>GRANT NUMBER:99-7-0174-55-186-02 | 331,436 | 265,149 | 66,287 | 117,813 | 94,250 | 23,563 |
| AM. INDIAN CENTER OF ARKANSAS, INC.<br>2 VAN CIRCLE, SUITE 7<br>LITTLE ROCK, ARKANSAS<br>72207<br>GRANT NUMBER:99-7-1778-55-120-02 | 464,237 | 371,390 | 92,847 | 0 | 0 | 0 |
| CALIFORNIA INDIAN MANPOWER CONT.<br>4441 AUBURN BOULEVARD, SUITE J<br>SACRAMENTO, CALIFORNIA<br>95841<br>GRANT NUMBER:99-7-2058-55-181-02 | 2,751,331 | 2,201,065 | 550,266 | 137,043 | 109,634 | 27,409 |
| CANDALARIA AMERICAN INDIAN COUNCIL<br>2635 WAGON WHEEL ROAD<br>OXNARD, CALIFORNIA<br>93030<br>GRANT NUMBER:99-7-0086-55-066-02 | 459,455 | 367,564 | 91,891 | 0 | 0 | 0 |

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OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| CSRT. OF UNITED INDIAN NATIONS<br>1404 FRANKLIN STREET, SUITE 202<br>OAKLAND, CALIFORNIA<br>94612<br>GRANT NUMBER:99-7-2310-55-133-02 | 640,481 | 512,385 | 128,096 | 0 | 0 | 0 |
| FRESNO AMERICAN INDIAN COUNCIL<br>283 NORTH FRESNO STREET<br>CLOVIS, CALIFORNIA<br>93701<br>GRANT NUMBER:99-7-0079-55-193-02 | 280,119 | 224,095 | 56,024 | 0 | 0 | 0 |
| HOOPA VALLEY BUSINESS COUNCIL<br>P.O. BOX 815<br>HOOPA, CALIFORNIA<br>95546<br>GRANT NUMBER:99-7-5142-55-114-02 | 51,612 | 41,290 | 10,322 | 20,237 | 16,190 | 4,047 |
| INDIAN CENTER OF SAN JOSE, INC.<br>3485 EAST HILLS DRIVE<br>SAN JOSE, CALIFORNIA<br>95127<br>GRANT NUMBER:99-7-0499-55-098-02 | 235,838 | 188,670 | 47,168 | 0 | 0 | 0 |
| INDIAN HUMAN RESOURCES CENTER<br>4040 30TH STREEET, SUITE A<br>SAN DIEGO, CALIFORNIA<br>92104<br>GRANT NUMBER:99-7-2441-55-134-02 | 449,796 | 359,837 | 89,959 | 0 | 0 | 0 |
| NORTHERN CALIF. IND. DEV. COUNCIL, INC.<br>241 F STREET<br>EUREKA, CALIFORNIA<br>95501<br>GRANT NUMBER:99-7-0686-55-015-02 | 323,986 | 259,189 | 64,797 | 13,771 | 11,017 | 2,754 |
| ORANGE COUNTY INDIAN CENTER, INC.<br>P.O. BOX 2550 - SUITE I<br>GARDEN GROVE, CALIFORNIA<br>92642-2550<br>GRANT NUMBER:99-7-0170-55-172-02 | 1,986,276 | 1,589,021 | 397,255 | 0 | 0 | 0 |
| TULE RIVER TRIBE<br>DEPT. OF HEALTH, SAFETY & WELFARE<br>P.O. BOX 589<br>PORTERVILLE, CALIFORNIA 93257<br>GRANT NUMBER:99-7-1219-55-193-02 | 133,261 | 106,609 | 26,652 | 3,779 | 3,023 | 756 |
| YA-KA-AMA INDIAN EDUC. AND DEV., INC.<br>6215 EASTSIDE ROAD<br>HEALDSBURG, CALIFORNIA<br>95448<br>GRANT NUMBER:99-7-0082-55-065-02 | 131,922 | 105,538 | 26,384 | 0 | 0 | 0 |
| DENVER INDIAN CENTER, INC.<br>4407 MORRISON ROAD<br>DENVER, COLORADO<br>80207<br>GRANT NUMBER:99-7-0076-55-062-02 | 615,250 | 492,200 | 123,050 | 0 | 0 | 0 |

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 5
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| SOUTHERN UTE INDIAN TRIBE<br>P.O. BOX 800<br>IGNACIO, COLORADO<br>81137<br>GRANT NUMBER:99-7-2714-55-136-02 | 56,918 | 45,534 | 11,384 | 13,687 | 10,950 | 2,737 |
| UTE MOUNTAIN UTE TRIBE<br>P.O. BOX 39<br>TOWAOC, COLORADO<br>81334<br>GRANT NUMBER:99-7-1143-55-115-02 | 68,627 | 54,902 | 13,725 | 16,543 | 13,234 | 3,309 |
| AMERICAN INDIANS FOR DEVELOPMENT, INC.<br>P.O. BOX 117<br>MERIDEN, CONNECTICUT<br>06450<br>GRANT NUMBER:99-7-0361-55-091-02 | 191,614 | 153,291 | 38,323 | 0 | 0 | 0 |
| MUIC d/b/a DELAWARE INDIAN COUNCIL<br>2250 S. BROADWAY<br>DENVER, COLORADO<br>80210<br>GRANT NUMBER:99-7-3403-55-187-02 | 39,576 | 31,661 | 7,915 | 0 | 0 | 0 |
| FLA. GOVERNORS COUNCIL ON IND. AFFAIRS<br>521 E. COLLEGE AVENUE<br>TALLAHASSEE, FLORIDA<br>32301<br>GRANT NUMBER:99-7-0692-55-107-02 | 867,831 | 694,265 | 173,566 | 0 | 0 | 0 |
| MICCOSUKEE CORPORATION<br>P.O. BOX 440021, TAMIAMI STATION<br>MIAMI, FLORIDA<br>33144<br>GRANT NUMBER:99-7-0052-55-047-02 | 121,894 | 97,515 | 24,379 | 35,604 | 28,483 | 7,121 |
| SEMINOLE TRIBE OF FLORIDA<br>JTPA DEPARTMENT<br>6073 STIRLING ROAD<br>HOLLYWOOD, FLORIDA 33024<br>GRANT NUMBER:99-7-0004-55-004-02 | 68,650 | 54,920 | 13,730 | 6,970 | 5,576 | 1,394 |
| MUIC d/b/a GEORGIA ASSOCIATION OF NATIVE AMERICANS<br>2250 S. BROADWAY<br>DENVER, COLORADO<br>80210<br>GRANT NUMBER:99-7-3406-55-190-02 | 347,762 | 278,210 | 69,552 | 0 | 0 | 0 |
| ALU LIKE, INC.<br>1024 MAPUNAPUNA STREET<br>HONOLULU, HAWAII<br>96819-4417<br>GRANT NUMBER:99-7-1179-55-110-02 | 2,528,396 | 2,022,717 | 505,679 | 1,848,393 | 1,478,714 | 369,679 |
| AMERICAN INDIAN SERVICE CORPORATION<br>810 NORTH VINEYARD BOULEVARD<br>HONOLULU, HAWAII<br>96817<br>GRANT NUMBER:99-7-3404-55-189-02 | 89,148 | 71,318 | 17,830 | 0 | 0 | 0 |

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 6
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| KOOTENAI TRIBE OF INDIANS<br>P. O. BOX 1269<br>BONNERSFERRY, IDAHO<br>83805<br>GRANT NUMBER:99-7-3334-55-161-02 | 32,928 | 26,342 | 6,586 | 1,176 | 941 | 235 |
| NEZ PERCE TRIBE<br>P.O. BOX 365<br>LAPWAI, IDAHO<br>83540-0305<br>GRANT NUMBER:99-7-0065-55-054-02 | 82,369 | 65,895 | 16,474 | 11,000 | 8,800 | 2,200 |
| SHOSHONE-BANNOCK TRIBES<br>FORT HALL INDIAN RESERVATIONS<br>P.O. BOX 306<br>FORT HALL, IDAHO 83203<br>GRANT NUMBER:99-7-1780-55-121-02 | 244,580 | 195,664 | 48,916 | 35,688 | 28,550 | 7,138 |
| AMERICAN INDIAN BUSINESS ASSOCIATION<br>4735 NORTH BROADWAY, SUITE 700<br>CHICAGO, ILLINOIS<br>60640<br>GRANT NUMBER:99-7-0869-55-109-02 | 1,108,472 | 886,778 | 221,694 | 0 | 0 | 0 |
| MID AMERICA ALL INDIAN CENTER, INC.<br>660 N. SENECA<br>WICHITA, KANSAS<br>67203<br>GRANT NUMBER:99-7-0168-55-078-02 | 165,280 | 132,224 | 33,056 | 0 | 0 | 0 |
| UNITED TRIBES OF KANSAS AND S.E. NEB.<br>P.O. BOX 29<br>HORTON, KANSAS<br>66439<br>GRANT NUMBER:99-7-0178-55-082-02 | 505,423 | 404,338 | 101,085 | 8,733 | 6,986 | 1,747 |
| INTER-TRIBAL COUNCIL OF LOUISIANA, INC.<br>5425 GALERIA DRIVE - SUITE 4<br>BATON ROUGE, LOUISIANA<br>70816<br>GRANT NUMBER:99-7-0026-55-026-02 | 458,019 | 366,415 | 91,604 | 4,870 | 3,896 | 974 |
| CENTRAL MAINE INDIAN ASSOCIATION, INC.<br>352 MARLOW STREET<br>BANGOR, MAINE<br>04401<br>GRANT NUMBER:99-7-2719-55-182-02 | 93,272 | 74,618 | 18,654 | 0 | 0 | 0 |
| TRIBAL GOVERNORS, INC.<br>93 MAIN STREET<br>ORONO, MAINE<br>04473<br>GRANT NUMBER:99-7-0091-55-167-02 | 107,298 | 85,838 | 21,460 | 24,436 | 19,549 | 4,887 |
| BALTIMORE AMERICAN INDIAN CENTER<br>113 SO. BROADWAY<br>BALTIMORE, MARYLAND<br>21231<br>GRANT NUMBER:99-7-3405-55-192-02 | 322,496 | 257,997 | 64,499 | 0 | 0 | 0 |

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 7
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| BOSTON INDIAN COUNCIL, INC.<br>105 S. HUNTINGTON AVENUE<br>JAMAICA PLAIN, MASSACHUSETTS<br>02130<br>GRANT NUMBER:99-7-0494-55-174-02 | 242,795 | 194,236 | 48,559 | 0 | 0 | 0 |
| MASHPEE-WAMPANOAG INDIAN TRIBAL COUNCIL<br>P.O. BOX 1048<br>MASHPEE, MASSACHUSETTS<br>02649<br>GRANT NUMBER:99-7-0400-55-093-02 | 84,678 | 67,742 | 16,936 | 0 | 0 | 0 |
| GRAND RAPIDS INTER-TRIBAL COUNCIL<br>45 LEXINGTON AVE. N.W.<br>GRAND RAPIDS, MICHIGAN<br>49504<br>GRANT NUMBER:99-7-0699-55-108-02 | 121,184 | 96,947 | 24,237 | 0 | 0 | 0 |
| GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIAN<br>ROUTE 1 BOX 135<br>SUTTONS BAY, MICHIGAN<br>49682<br>GRANT NUMBER:99-7-2721-55-137-02 | 56,143 | 44,914 | 11,229 | 2,183 | 1,746 | 437 |
| INTER-TRIBAL COUNCIL OF MICHIGAN, INC.<br>405 EAST EASTERDAY AVENUE<br>SAULTE ST. MARIE, MICHIGAN<br>49783<br>GRANT NUMBER:99-7-0172-55-080-02 | 67,287 | 53,806 | 13,481 | 27,123 | 21,698 | 5,425 |
| MICHIGAN INDIAN EMPLOYMENT AND TRAINING SERVICES,<br>809 CENTER STREET - SUITE 6<br>LANSING, MICHIGAN<br>48906<br>GRANT NUMBER:99-7-1140-55-179-02 | 810,425 | 648,340 | 162,085 | 0 | 0 | 0 |
| NORTH AMERICAN INDIAN ASSOC. OF DETROIT<br>600 WOODWARD AVENUE - 7TH FLOOR<br>DETROIT, MICHIGAN<br>48226<br>GRANT NUMBER:99-7-0695-55-176-02 | 408,316 | 326,653 | 81,663 | 0 | 0 | 0 |
| POTAWATOMI INDIAN NATION<br>53237 TOWNHALL ROAD<br>P. O. BOX 61<br>DOWAGIAC, MICHIGAN 49047<br>GRANT NUMBER:99-7-2137-55-164-02 | 155,103 | 124,082 | 31,021 | 0 | 0 | 0 |
| SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS<br>2151 SHUNK ROAD<br>SAULT STE. MARIE, MICHIGAN<br>49783<br>GRANT NUMBER:99-7-0567-55-100-02 | 238,539 | 190,831 | 47,708 | 38,039 | 30,431 | 7,608 |
| SOUTHEASTERN MICHIGAN INDIANS, INC.<br>P. O. BOX 861<br>WARREN, MICHIGAN<br>48090<br>GRANT NUMBER:99-7-1216-55-154-02 | 65,733 | 52,586 | 13,147 | 0 | 0 | 0 |

U.S. DEPARTMENT OF LABOR - EMPLOYMENT AND TRAINING ADMINISTRATION PAGE 8
OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| AMERICAN INDIAN FELLOWSHIP ASSN.<br>8 EAST FOURTH STREET<br>DULUTH, MINNESOTA<br>55802<br>GRANT NUMBER:99-7-0254-55-087-02 | 138,551 | 110,841 | 27,710 | 1,847 | 1,478 | 369 |
| AMERICAN INDIAN OPPORTUNITIES CTR.<br>2495 - 18TH AVENUE SOUTH<br>MINNEAPOLIS, MINNESOTA<br>55404<br>GRANT NUMBER:99-7-3221-55-155-02 | 532,629 | 426,103 | 106,526 | 0 | 0 | 0 |
| BOIS FORTE R. E. C.<br>P.O. BOX 16<br>NETT LAKE, MINNESOTA<br>55772<br>GRANT NUMBER:99-7-0010-55-014-02 | 39,565 | 31,652 | 7,913 | 7,977 | 6,382 | 1,595 |
| FOND DU LAC R.E.C.<br>105 UNIVERSITY ROAD<br>CLOQUET, MINNESOTA<br>55720<br>GRANT NUMBER:99-7-0009-55-013-02 | 40,435 | 32,348 | 8,087 | 5,710 | 4,568 | 1,142 |
| LEECH LAKE R. E. C.<br>ROUTE 3, BOX 100<br>CASS LAKE, MINNESOTA<br>56633<br>GRANT NUMBER:99-7-0012-55-017-02 | 182,799 | 146,239 | 36,560 | 43,582 | 34,866 | 8,716 |
| MILLE LACS BAND OF CHIPPEWA INDIANS<br>STAR ROUTE-BOX 194<br>ONAMIA, MINNESOTA<br>56359<br>GRANT NUMBER:99-7-0008-55-012-02 | 33,370 | 26,696 | 6,674 | 7,893 | 6,314 | 1,579 |
| MINNEAPOLIS AMERICAN INDIAN CENTER<br>1530 EAST FRANKLIN AVENUE<br>MINNEAPOLIS, MINNESOTA<br>55404<br>GRANT NUMBER:99-7-0204-55-085-02 | 311,865 | 249,492 | 62,373 | 11,000 | 8,800 | 2,200 |
| RED LAKE TRIBAL COUNCIL<br>P.O. BOX 310<br>RED LAKE, MINNESOTA<br>56671<br>GRANT NUMBER:99-7-0017-55-020-02 | 146,372 | 117,098 | 29,274 | 56,177 | 44,942 | 11,235 |
| WHITE EARTH R.E.C.<br>BOX 418<br>WHITE EARTH, MINNESOTA<br>56591<br>GRANT NUMBER:99-7-0011-55-016-02 | 163,849 | 131,079 | 32,770 | 44,841 | 35,873 | 8,968 |
| MISSISSIPPI BAND OF CHOCTAW INDIANS<br>ROUTE 7, BOX 21<br>PHILADELPHIA, MISSISSIPPI<br>39350<br>GRANT NUMBER:99-7-0005-55-010-02 | 317,336 | 253,869 | 63,467 | 46,269 | 37,015 | 9,254 |

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OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| REGION VII AMERICAN INDIAN COUNCIL, INC.<br>310 ARMOUR ROAD, SUITE 205<br>KANSAS CITY, MISSOURI<br>64116<br>GRANT NUMBER:99-7-0961-55-177-02 | 587,960 | 470,368 | 117,592 | 0 | 0 | 0 |
| ASSINIBOINE AND SIOUX TRIBES<br>FORT PECK INDIAN RESERVATION<br>P.O. BOX 1027<br>POPLAR, MONTANA 59255<br>GRANT NUMBER:99-7-0035-55-031-02 | 218,944 | 175,155 | 43,789 | 68,353 | 54,682 | 13,671 |
| BLACKFEET TRIBAL BUSINESS COUNCIL<br>P.O.BOX 1090<br>BROWNING, MONTANA<br>59417<br>GRANT NUMBER:99-7-0006-55-011-02 | 253,973 | 203,178 | 50,795 | 82,125 | 65,700 | 16,425 |
| CHIPPEWA CREE TRIBE, ROCKY BOYS RESERV.<br>ROCKY BOY ROUTE - P.O. BOX 500<br>BOX ELDER, MONTANA<br>59521<br>GRANT NUMBER:99-7-0033-55-033-02 | 102,200 | 81,760 | 20,440 | 26,451 | 21,161 | 5,290 |
| CONFEDERATED SALISH & KOOTENAI TRIBES<br>P.O. BOX 278<br>PABLO, MONTANA<br>59855<br>GRANT NUMBER:99-7-0031-55-030-02 | 256,959 | 205,567 | 51,392 | 64,491 | 51,593 | 12,898 |
| CROW INDIAN TRIBE<br>P.O. BOX 257<br>CROW AGENCY, MONTANA<br>59022<br>GRANT NUMBER:99-7-0030-55-029-02 | 215,814 | 172,651 | 43,163 | 72,132 | 57,706 | 14,426 |
| AREA SERVED IN PY 1986 BY FT. BELKNAP AGENCY | 82,392 | 65,914 | 16,478 | 32,413 | 25,930 | 6,483 |
| MONTANA UNITED INDIAN ASSOCIATION<br>435 NORTH LAST CHANCE GULCH SUITE 2-A<br>HELENA, MONTANA<br>59601<br>GRANT NUMBER:99-7-0074-55-060-02 | 443,107 | 354,486 | 88,621 | 0 | 0 | 0 |
| NORTHERN CHEYENNE TRIBE<br>P.O. BOX 368<br>LAME DEER, MONTANA<br>59043<br>GRANT NUMBER:99-7-0034-55-032-02 | 171,016 | 136,813 | 34,203 | 48,348 | 38,694 | 9,674 |
| INDIAN CENTER, INC.<br>1100 MILITARY ROAD<br>LINCOLN, NEBRASKA<br>68508<br>GRANT NUMBER:99-7-2722-55-183-02 | 176,364 | 141,091 | 35,273 | 0 | 0 | 0 |

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OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| NEBRASKA INDIAN INTER-TRIBAL DEV. CORP.<br>ROUTE 1 - BOX 66-A<br>WINNEBAGO, NEBRASKA<br>68071<br>GRANT NUMBER:99-7-0087-55-171-02 | 319,873 | 255,898 | 63,975 | 48,788 | 39,030 | 9,758 |
| INTER-TRIBAL COUNCIL OF NEVADA<br>P.O. BOX 7440<br>RENO, NEVADA<br>89510<br>GRANT NUMBER:99-7-0058-55-051-02 | 343,318 | 274,654 | 68,664 | 61,468 | 49,174 | 12,294 |
| NATIONAL AMERICAN INDIAN CENTER, INC.<br>2300 BONANZA ROAD<br>LAS VEGAS, NEVADA<br>89101<br>GRANT NUMBER:99-7-0687-55-103-02 | 96,078 | 76,862 | 19,216 | 0 | 0 | 0 |
| SHOSHONE PAIUTE TRIBES<br>P.O. BOX 219<br>OWYHEE, NEVADA<br>89832<br>GRANT NUMBER:99-7-2723-55-138-02 | 169,178 | 135,342 | 33,836 | 17,130 | 13,704 | 3,426 |
| POWHATAN RENAPE NATION<br>RANKOKUS RESERVATION - P.O. BOX 225<br>RANKOKUS, NEW JERSEY<br>08073<br>GRANT NUMBER:99-7-3222-55-156-02 | 303,972 | 243,178 | 60,794 | 0 | 0 | 0 |
| ALAMO NAVAJO SCHOOL BOARD<br>P.O. BOX 907<br>MAGDALENA, NEW MEXICO<br>87825<br>GRANT NUMBER:99-7-2724-55-139-02 | 79,455 | 63,564 | 15,891 | 15,871 | 12,697 | 3,174 |
| ALL INDIAN PUEBLO COUNCIL, INC.<br>1015 INDIAN SCHOOL RD. NW POBOX 6507<br>ALBUQUERQUE, NEW MEXICO<br>87197<br>GRANT NUMBER:99-7-3341-55-165-02 | 153,158 | 122,526 | 30,632 | 70,705 | 56,564 | 14,141 |
| EIGHT INDIAN PUEBLO COUNCIL<br>P.O. BOX 969<br>SAN JUAN PUEBLO, NEW MEXICO<br>87566<br>GRANT NUMBER:99-7-3223-55-157-02 | 59,863 | 47,890 | 11,973 | 21,581 | 17,265 | 4,316 |
| FIVE SANDOVAL INDIAN PUEBLOS, INC.<br>P.O. BOX 580<br>BERNALILLO, NEW MEXICO<br>87004<br>GRANT NUMBER:99-7-3336-55-162-02 | 123,178 | 98,542 | 24,636 | 60,796 | 48,637 | 12,159 |
| JICARILLA APACHE TRIBE<br>P.O. BOX 507<br>DULCE,NEW MEXICO<br>87528<br>GRANT NUMBER:99-7-2725-55-140-02 | 55,417 | 44,334 | 11,083 | 27,795 | 22,236 | 5,559 |

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| MESCALERO APACHE TRIBE<br>P.O. BOX 176<br>MESCALERO, NEW MEXICO<br>88340<br>GRANT NUMBER:99-7-3100-55-149-02 | 77,385 | 61,908 | 15,477 | 27,039 | 21,631 | 5,408 |
| NATIONAL INDIAN YOUTH COUNCIL<br>318 ELM STREET<br>ALBUQUERQUE, NEW MEXICO<br>87102<br>GRANT NUMBER:99-7-0077-55-063-02 | 735,390 | 588,312 | 147,078 | 0 | 0 | 0 |
| PUEBLO OF ACOMA<br>P.O.BOX 469<br>PUEBLO OF ACOMA, NEW MEXICO<br>87034<br>GRANT NUMBER:99-7-2199-55-128-02 | 103,880 | 83,104 | 20,776 | 36,864 | 29,491 | 7,373 |
| PUEBLO OF LAGUNA<br>P.O. BOX 194<br>LAGUNA, NEW MEXICO<br>87026<br>GRANT NUMBER:99-7-1583-55-117-02 | 77,967 | 62,374 | 15,593 | 51,643 | 41,314 | 10,329 |
| PUEBLO OF TAOS<br>P.O. BOX 1846<br>TAOS, NEW MEXICO<br>87571<br>GRANT NUMBER:99-7-2200-55-129-02 | 33,438 | 26,750 | 6,688 | 11,252 | 9,002 | 2,250 |
| PUEBLO OF ZUNI<br>ZUNI TRIBAL COUNCIL<br>P.O. BOX 339<br>ZUNI, NEW MEXICO 87327<br>GRANT NUMBER:99-7-0021-55-023-02 | 298,180 | 238,544 | 59,636 | 114,118 | 91,294 | 22,824 |
| RAMAH NAVAJO SCHOOL BOARD, INC.<br>DRAWER 6<br>PINE HILL, NEW MEXICO<br>87321<br>GRANT NUMBER:99-7-0146-55-075-02 | 95,210 | 76,168 | 19,042 | 20,825 | 16,660 | 4,165 |
| SANTA CLARA INDIAN PUEBLO<br>P.O. BOX 580<br>ESPANOLA, NEW MEXICO<br>87532<br>GRANT NUMBER:99-7-3224-55-138-02 | 19,934 | 15,947 | 3,987 | 5,038 | 4,030 | 1,008 |
| SANTO DOMINGO TRIBE<br>GENERAL DELIVERY<br>SANTO DOMINGO, NEW MEXICO<br>87052<br>GRANT NUMBER:99-7-1781-55-122-02 | 129,800 | 103,840 | 25,960 | 36,864 | 29,491 | 7,373 |
| AMERICAN INDIAN COMMUNITY HOUSE, INC.<br>842 BROADWAY, 6TH FLOOR<br>NEW YORK CITY, NEW YORK<br>10003<br>GRANT NUMBER:99-7-0348-55-090-02 | 796,045 | 636,836 | 159,209 | 2,771 | 2,217 | 554 |

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OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| NATIVE AMERICAN CULTURAL CENTER, INC.<br>P. O. BOX 272<br>ROCHESTER, NEW YORK<br>14601<br>GRANT NUMBER:99-7-3407-55-191-02 | 91,867 | 73,494 | 18,373 | 0 | 0 | 0 |
| NATIVE AMERICAN MANPOWER PROGRAM, INC.<br>1047 GRANT STREET (REAR) - P.O. BOX 86<br>BUFFALO, NEW YORK<br>14207-0086<br>GRANT NUMBER:99-7-0489-55-106-02 | 237,080 | 189,664 | 47,416 | 9,069 | 7,255 | 1,814 |
| THE NORTH AM. IND. CLUB OF SYRACUSE AND VICINITY,<br>P.O. BOX 851<br>SYRACUSE, NEW YORK<br>13201<br>GRANT NUMBER:99-7-2201-55-130-02 | 200,462 | 160,370 | 40,092 | 6,466 | 5,173 | 1,293 |
| ST. REGIS MOHAWK TRIBE<br>COMMUNITY BUILDING<br>HOGANSBURG, NEW YORK<br>13655<br>GRANT NUMBER:99-7-0522-55-103-02 | 169,111 | 135,289 | 33,822 | 24,604 | 19,683 | 4,921 |
| SENECA NATION OF INDIANS<br>1490 RTE. 438<br>IRVING, NEW YORK<br>14081<br>GRANT NUMBER:99-7-0169-55-079-02 | 314,467 | 251,574 | 62,893 | 48,452 | 38,762 | 9,690 |
| CUMBERLAND COUNTY ASSOC. FOR IND. PEOPLE<br>102 INDIAN DRIVE<br>FAYETTEVILLE, NORTH CAROLINA<br>28301<br>GRANT NUMBER:99-7-1782-55-123-02 | 128,706 | 102,965 | 25,741 | 0 | 0 | 0 |
| EASTERN BAND OF CHEROKEE INDIANS<br>P.O. BOX 455<br>CHEROKEE, NORTH CAROLINA<br>28719<br>GRANT NUMBER:99-7-0003-55-008-02 | 242,580 | 194,064 | 48,516 | 77,254 | 61,803 | 15,451 |
| GUILFORD NATIVE AMERICAN ASSOC.<br>P.O. BOX 3623<br>400 PRESCOTT STREET<br>GREENSBORO, NORTH CAROLINA 27403<br>GRANT NUMBER:99-7-2727-55-142-02 | 97,830 | 78,264 | 19,566 | 0 | 0 | 0 |
| LUMBEE REG. DEV. ASSOC.<br>P.O. BOX 68<br>PEMBROKE, NORTH CAROLINA<br>28372<br>GRANT NUMBER:99-7-0067-55-055-02 | 1,322,203 | 1,057,762 | 264,441 | 0 | 0 | 0 |
| METROLINA NATIVE AMERICAN ASSN.<br>800 BRIAR CREEK ROAD CC-513<br>CHARLOTTE, NORTH CAROLINA<br>28205<br>GRANT NUMBER:99-7-2726-55-141-02 | 99,987 | 79,990 | 19,997 | 0 | 0 | 0 |

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| NORTH CAROLINA COMM. OF IND. AFFAIRS<br>P.O. BOX 27228<br>RALEIGH, NORTH CAROLINA<br>27611-7228<br>GRANT NUMBER:99-7-0070-55-057-02 | 394,130 | 315,304 | 78,826 | 0 | 0 | 0 |
| DEVILS LAKE SIOUX TRIBE<br>P.O. BOX 300<br>FORT TOTTEN, NORTH DAKOTA<br>58335<br>GRANT NUMBER:99-7-0037-55-034-02 | 121,814 | 97,451 | 24,363 | 34,345 | 27,476 | 6,869 |
| STANDING ROCK SIOUX , BOX<br>GENERAL DELIVERY<br>FORT YATES, NORTH DAKOTA<br>58538<br>GRANT NUMBER:99-7-0046-55-041-02 | 254,926 | 203,941 | 50,985 | 83,468 | 66,774 | 16,694 |
| THREE AFFILIATED TRIBES<br>BOX 697<br>NEW TOWN, NORTH DAKOTA<br>58763<br>GRANT NUMBER:99-7-0062-55-170-02 | 172,291 | 137,833 | 34,458 | 49,628 | 39,702 | 9,926 |
| TURTLE MOUNTAIN BAND OF CHIPPEWA IND.<br>TURTLE MOUNTAIN TRIBAL COUNCIL<br>BELCOURT, NORTH DAKOTA<br>58316<br>GRANT NUMBER:99-7-0075-55-061-02 | 346,423 | 277,138 | 69,285 | 96,988 | 77,590 | 19,398 |
| UNITED TRIBES - ED. TECH. CNTR.<br>3315 S. AIRPORT ROAD<br>BISMARCK, NORTH DAKOTA<br>58501<br>GRANT NUMBER:99-7-0206-55-173-02 | 174,757 | 139,806 | 34,951 | 0 | 0 | 0 |
| NORTH AMERICAN INDIAN CULTURAL CENTER<br>1159 LAKESHORE BOULEVARD<br>AKRON, OHIO<br>44301<br>GRANT NUMBER:99-7-3349-55-166-02 | 739,199 | 591,359 | 147,840 | 0 | 0 | 0 |
| CADDO TRIBE OF OKLAHOMA<br>P.O. BOX 487<br>BINGER, OKLAHOMA<br>73009<br>GRANT NUMBER:99-7-1783-55-124-02 | 28,466 | 22,773 | 5,693 | 11,000 | 8,800 | 2,200 |
| CENTRAL TRIBES OF THE SHAWNEE AREA, INC.<br>624 NORTH BROADWAY<br>SHAWNEE, OKLAHOMA<br>74801<br>GRANT NUMBER:99-7-0038-55-035-02 | 82,468 | 65,974 | 16,494 | 43,833 | 35,066 | 8,767 |
| CHEROKEE NATION OF OKLAHOMA<br>P.O. BOX 948<br>TAHLEQUAH, OKLAHOMA<br>94465<br>GRANT NUMBER:99-7-0027-55-027-02 | 1,440,758 | 1,152,606 | 288,152 | 658,090 | 526,472 | 131,618 |

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OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| CHEYENNE-ARAPAHO TRIBES<br>P.O. BOX 38<br>CONCHO, OKLAHOMA<br>73022<br>GRANT NUMBER:99-7-0048-55-043-02 | 193,484 | 154,787 | 38,697 | 82,377 | 65,902 | 16,475 |
| CHICKASAW NATION OF OKLAHOMA<br>P.O. BOX 1548<br>ADA, OKLAHOMA<br>74820<br>GRANT NUMBER:99-7-0042-55-038-02 | 386,276 | 309,021 | 77,255 | 168,344 | 134,691 | 33,673 |
| CHOCTAW NATION OF OKLAHOMA<br>DRAWER 1210<br>DURANT, OKLAHOMA<br>74702<br>GRANT NUMBER:99-7-0041-55-037-02 | 786,674 | 629,339 | 157,335 | 295,750 | 236,600 | 59,150 |
| CITIZENS BAND POTAWATOMI IND. OF OKLA.<br>RT. 5, BOX 151<br>SHAWNEE, OKLAHOMA<br>74801<br>GRANT NUMBER:99-7-2102-55-131-02 | 194,953 | 155,962 | 38,991 | 138,218 | 110,574 | 27,644 |
| COMANCHE TRIBE OF OKLAHOMA<br>P.O. BOX 908<br>LAWTON, OKLAHOMA<br>73502<br>GRANT NUMBER:99-7-3130-55-151-02 | 160,440 | 128,352 | 32,088 | 106,477 | 85,182 | 21,295 |
| CREEK NATION OF OKLAHOMA<br>P.O. BOX 580<br>OKMULGEE, OKLAHOMA<br>74447<br>GRANT NUMBER:99-7-0025-55-035-02 | 586,215 | 468,972 | 117,243 | 318,087 | 254,470 | 63,617 |
| FOUR TRIBES CONSORTIUM OF OKLAHOMA<br>P.O. BOX 1193<br>ANADARKO, OKLAHOMA<br>73005<br>GRANT NUMBER:99-7-2128-55-143-02 | 73,539 | 58,831 | 14,708 | 33,001 | 26,401 | 6,600 |
| INTER-TRIBAL COUNCIL OF N.E. OKLAHOMA<br>P.O. BOX 1308<br>MIAMI, OKLAHOMA<br>74335<br>GRANT NUMBER:99-7-1135-55-110-02 | 51,393 | 41,114 | 10,279 | 32,077 | 25,662 | 6,415 |
| KAW TRIBE OF OKLAHOMA<br>DRAWER 50<br>KAW CITY, OKLAHOMA<br>74641<br>GRANT NUMBER:99-7-2129-55-144-02 | 2,814 | 2,251 | 563 | 1,260 | 1,008 | 252 |
| KIOWA TRIBE OF OKLAHOMA<br>P.O. BOX 361<br>CARNEGIE, OKLAHOMA<br>73015<br>GRANT NUMBER:99-7-0047-55-042-02 | 208,315 | 166,652 | 41,663 | 76,163 | 60,930 | 15,233 |

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| OKLAHOMA TRIBAL ASSISTANCE PROGRAM, INC.<br>P.O. BOX 2841<br>TULSA, OKLAHOMA<br>74101<br>GRANT NUMBER:99-7-0072-55-058-02 | 340,091 | 272,073 | 68,018 | 174,746 | 139,797 | 34,949 |
| OSAGE TRIBAL COUNCIL<br>P.O. BOX 147 - OSAGE AGENCY CAMPUS<br>PAWHUSKA, OKLAHOMA<br>74056<br>GRANT NUMBER:99-7-0022-55-024-02 | 103,831 | 83,065 | 20,766 | 68,269 | 54,615 | 13,654 |
| OTOE-MISSOURIA INDIAN TRIBE OF OKLA.<br>P.O. BOX 68<br>RED ROCK, OKLAHOMA<br>74074<br>GRANT NUMBER:99-7-2730-55-145-02 | 36,852 | 29,482 | 7,370 | 18,642 | 14,914 | 3,728 |
| PAWNEE TRIBE OF OKLAHOMA<br>P.O. BOX 470<br>PAWNEE, OKLAHOMA<br>74058<br>GRANT NUMBER:99-7-1785-55-126-02 | 23,441 | 18,753 | 4,688 | 14,827 | 11,622 | 3,705 |
| PONCA TRIBE OF INDIANS<br>WHITE EAGLE - BOX 2<br>PONCA CITY, OKLAHOMA.<br>74601<br>GRANT NUMBER:99-7-0029-55-028-02 | 55,269 | 44,215 | 11,054 | 42,910 | 34,328 | 8,582 |
| SEMINOLE NATION OF OKLAHOMA<br>P.O. BOX 1481<br>WEWOKA, OKLAHOMA<br>74884<br>GRANT NUMBER:99-7-0051-55-046-02 | 147,964 | 118,371 | 29,593 | 59,788 | 47,830 | 11,958 |
| TONKAWA TRIBE OF OKLAHOMA<br>P.O. BOX 70<br>TONKAWA, OKLAHOMA<br>74653<br>GRANT NUMBER:99-7-1136-55-111-02 | 40,839 | 32,671 | 8,168 | 40,810 | 32,648 | 8,162 |
| UNITED URBAN INDIAN COUNCIL<br>2728 CLASSEN BLVD., SUITE 101<br>OKLAHOMA CITY, OKLAHOMA<br>73106-3435<br>GRANT NUMBER:99-7-2731-55-146-02 | 306,394 | 245,115 | 61,279 | 196,243 | 156,994 | 39,249 |
| CONFED. TRIBES OF SILETZ INDIANS<br>P.O. BOX 549<br>SILETZ, OREGON<br>97380<br>GRANT NUMBER:99-7-3153-55-152-02 | 323,392 | 258,714 | 64,678 | 12,344 | 9,875 | 2,469 |
| CONFED. TRIBES OF THE UMATILLA IND. RES.<br>P.O. BOX 638<br>PENDLETON, OREGON<br>97801<br>GRANT NUMBER:99-7-3063-55-148-02 | 45,299 | 36,239 | 9,060 | 14,611 | 11,689 | 2,922 |

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OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| CONFEDERATE TRIBES OF WARM SPRINGS<br>P.O. BOX C - TENINO ROAD<br>WARM SPRINGS, OREGON<br>97761<br>GRANT NUMBER:99-7-0256-55-088-02 | 95,596 | 76,477 | 19,119 | 37,955 | 30,364 | 7,591 |
| ORGANIZATION OF FORGOTTEN AMERICANS<br>4509 SOUTH 54TH STREET, RM. 206<br>KLAMATH FALLS, OREGON<br>97601<br>GRANT NUMBER:99-7-2732-55-147-02 | 444,614 | 355,691 | 88,923 | 3,693 | 2,956 | 739 |
| URBAN INDIAN COUNCIL<br>1115 S. E. MORRISON<br>PORTLAND, OREGON<br>97208<br>GRANT NUMBER:99-7-0164-55-076-02 | 287,219 | 229,775 | 57,444 | 0 | 0 | 0 |
| COUNCIL OF THREE RIVERS<br>200 CHARLES STREET<br>PITTSBURGH, PENNSYLVANIA<br>15238<br>GRANT NUMBER:99-7-0442-55-175-02 | 451,420 | 361,136 | 90,284 | 0 | 0 | 0 |
| UNITED AM. INDIANS OF THE DEL. VALLEY<br>225 CHESTNUT STREET<br>PHILADELPHIA, PENNSYLVANIA<br>19106<br>GRANT NUMBER:99-7-0477-55-095-02 | 201,812 | 161,450 | 40,362 | 0 | 0 | 0 |
| RHODE ISLAND INDIAN COUNCIL<br>444 FRIENDSHIP ST.<br>PROVIDENCE, RHODE ISLAND<br>02907<br>GRANT NUMBER:99-7-0510-55-101-02 | 147,370 | 117,896 | 29,474 | 0 | 0 | 0 |
| PALMETTO INDIAN AFFAIRS COMMISSION<br>EMPLOYMENT AND TRAINING DIVISION<br>1300 PICKENS STREET<br>COLUMBIA, SOUTH CAROLINA 29201-3430<br>GRANT NUMBER:99-7-0493-55-092-02 | 269,569 | 215,655 | 53,914 | 10,245 | 8,196 | 2,049 |
| CHEYENNE RIVER SIOUX TRIBE<br>P.O. BOX 768<br>EAGLE BUTTE, SOUTH DAKOTA<br>57625<br>GRANT NUMBER:99-7-0539-55-036-02 | 230,639 | 184,511 | 46,128 | 73,812 | 59,050 | 14,762 |
| AREA SERVED IN PY 1986 BY CROW CREEK SIOUX TRIBE | 76,827 | 61,462 | 15,365 | 24,688 | 19,750 | 4,938 |
| LOWER BRULE SIOUX TRIBE<br>P.O. BOX 187<br>LOWER BRULE, SOUTH DAKOTA<br>57548<br>GRANT NUMBER:99-7-0073-55-059-02 | 58,449 | 46,759 | 11,690 | 12,932 | 10,346 | 2,586 |

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OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| OGLALA SIOUX TRIBE<br>P.O. BOX 6<br>PINE RIDGE, SOUTH DAKOTA<br>57770<br>GRANT NUMBER:99-7-0043-55-039-02 | 727,876 | 582,301 | 145,575 | 202,793 | 162,234 | 40,559 |
| ROSEBUD SIOUX TRIBE<br>BOX 430<br>ROSEBUD, SOUTH DAKOTA<br>57570<br>GRANT NUMBER:99-7-0044-55-040-02 | 431,144 | 344,915 | 86,229 | 103,118 | 82,494 | 20,624 |
| SISSETON-WAHPETON SIOUX TRIBE<br>P.O. BOX 509<br>AGENCY VILLAGE, SOUTH DAKOTA<br>57262<br>GRANT NUMBER:99-7-0045-55-169-02 | 167,922 | 134,338 | 33,584 | 43,666 | 34,933 | 8,733 |
| UNITED SIOUX TRIBES DEV. CORP.<br>P.O. BOX 1193<br>PIERRE, SOUTH DAKOTA<br>57501<br>GRANT NUMBER:99-7-0165-55-077-02 | 636,449 | 509,159 | 127,290 | 32,245 | 25,796 | 6,449 |
| USET INCORPORATED<br>1101 KERMIT DRIVE<br>SUITE 800<br>NASHVILLE, TENNESSEE 37217<br>GRANT NUMBER:99-7-2737-55-184-02 | 640,141 | 512,113 | 128,028 | 0 | 0 | 0 |
| ALABAMA-COUSHATTA INDIAN TRIBAL COUNCIL<br>BOX 1141<br>LIVINGSTON,TEXAS<br>77351<br>GRANT NUMBER:99-7-1784-55-125-02 | 668,258 | 534,606 | 133,652 | 4,786 | 3,829 | 957 |
| DALLAS INTER-TRIBAL CENTER<br>209 EAST JEFFERSON BLVD.<br>DALLAS, TEXAS<br>75203-2690<br>GRANT NUMBER:99-7-0078-55-064-02 | 274,247 | 219,398 | 54,849 | 0 | 0 | 0 |
| TIGUA INDIAN TRIBE<br>P.O. BOX 17579 - YSLETA STATION<br>EL PASO, TEXAS<br>79917<br>GRANT NUMBER:99-7-2099-55-127-02 | 456,462 | 365,170 | 91,292 | 10,497 | 8,398 | 2,099 |
| NIBC d/b/a UNITED TRIBES SERVICE CENTER, INC.<br>1164 FOLGER STREET<br>SALT LAKE CITY, UTAH<br>84111<br>GRANT NUMBER:99-7-3337-55-163-02 | 419,015 | 335,212 | 83,803 | 0 | 0 | 0 |
| UTE INDIAN TRIBE<br>P.O. BOX 190<br>FORT DUCHESNE, UTAH<br>84026<br>GRANT NUMBER:99-7-0049-55-044-02 | 75,306 | 60,245 | 15,061 | 31,658 | 25,326 | 6,332 |

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OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| ABENAKI SELF-HELP ASSN./N.H.IND. COUNC.<br>BOX 276<br>SWANTON, VERMONT<br>05488<br>GRANT NUMBER:99-7-3064-55-165-02 | 111,584 | 89,267 | 22,317 | 0 | 0 | 0 |
| MATTAPONI PAMUNKEY MONACAN CONSORTIUM<br>ROUTE 2 - P.O. BOX 200<br>WEST POINT, VIRGINIA<br>23181<br>GRANT NUMBER:99-7-3227-55-159-02 | 242,166 | 193,733 | 48,433 | 1,428 | 1,142 | 286 |
| AMERICAN INDIAN COMMUNITY CENTER<br>EAST 801 SECOND AVE.<br>SPOKANE, WASHINGTON<br>99202<br>GRANT NUMBER:99-7-1138-55-112-02 | 720,007 | 576,006 | 144,001 | 106,057 | 84,846 | 21,211 |
| COLVILLE CONFEDERATED TRIBES<br>P.O. BOX 150<br>NESPELEM, WASHINGTON<br>99155<br>GRANT NUMBER:99-7-1726-55-118-02 | 204,253 | 163,402 | 40,851 | 44,923 | 35,940 | 8,985 |
| AREA SERVED IN PY 1986 BY LUMMI INDIAN BUSINESS CO | 44,814 | 35,851 | 8,963 | 17,802 | 14,242 | 3,560 |
| N.W. INTER-TRIBAL COUNCIL<br>P.O. BOX 113<br>NEAH BAY, WASHINGTON<br>98357<br>GRANT NUMBER:99-7-0069-55-056-02 | 46,502 | 37,202 | 9,300 | 29,390 | 23,512 | 5,878 |
| PUYALLUP TRIBE<br>2002 EAST 28TH ST.<br>TACOMA, WASHINGTON<br>98404<br>GRANT NUMBER:99-7-1137-55-178-02 | 164,904 | 131,923 | 32,981 | 17,886 | 14,309 | 3,577 |
| SEATTLE INDIAN CENTER<br>2222 2ND AVE.<br>SEATTLE, WASHINGTON<br>98121<br>GRANT NUMBER:99-7-0511-55-102-02 | 431,993 | 345,594 | 86,399 | 0 | 0 | 0 |
| WESTERN WASH. IND. EMPL. AND TRNS. PROG.<br>4608 PACIFIC HIGHWAY EAST<br>SUITE C-5<br>TACOMA, WASHINGTON 98424<br>GRANT NUMBER:99-7-1933-55-180-02 | 869,017 | 695,214 | 173,803 | 117,309 | 93,847 | 23,462 |
| LAC COURTE OREILLES TRIBAL GOVERNING BOARD<br>ROUTE 2, BOX 2700<br>HAYWARD, WISCONSIN<br>54843<br>GRANT NUMBER:99-7-0018-55-021-02 | 97,897 | 78,318 | 19,579 | 22,924 | 18,339 | 4,585 |

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OFFICE OF FINANCIAL AND ADMINISTRATIVE MANAGEMENT
PY 1987 TITLE IV-A AND PY 1986 II-B (SUMMER 1987) FINAL ALLOCATIONS FOR NATIVE AMERICANS
03-11-1987

| | PY 1987 IV-A | | | PY 1986 II-B | | |
|---|---|---|---|---|---|---|
| | TOTAL | PROGRAM | COST POOL | TOTAL | PROGRAM | COST POOL |
| LAC DU FLAMBEAU<br>P.O. BOX 24<br>LAC DU FLAMBEAU, WISCONSIN<br>54538<br>GRANT NUMBER:99-7-1139-55-113-02 | 47,134 | 37,707 | 9,427 | 17,634 | 14,107 | 3,527 |
| MENOMINEE INDIAN TRIBE<br>P.O. BOX 397<br>KESHENA, WISCONSIN<br>54135-0397<br>GRANT NUMBER:99-7-0013-55-018-02 | 74,773 | 59,818 | 14,955 | 42,994 | 34,395 | 8,599 |
| MILWAUKEE AREA AM. IND. MANPOWER COUNC.<br>3121 W. WISCONSIN AVE.<br>MILWAUKEE, WISCONSIN<br>53208<br>GRANT NUMBER:99-7-0227-55-086-02 | 231,788 | 185,430 | 46,358 | 0 | 0 | 0 |
| ONEIDA TRIBE OF INDIANS OF WIS., INC.<br>P.O. BOX 365<br>ONEIDA, WISCONSIN<br>54115<br>GRANT NUMBER:99-7-0015-55-019-02 | 205,480 | 164,384 | 41,096 | 28,467 | 22,774 | 5,693 |
| STOCKBRIDGE-MUNSEE COMMUNITY<br>ROUTE 1<br>BOWLER, WISCONSIN<br>54416<br>GRANT NUMBER:99-7-0500-55-099-02 | 62,453 | 49,962 | 12,491 | 8,481 | 6,785 | 1,696 |
| WISCONSIN INDIAN CONSORTIUM<br>P.O. BOX 181<br>ODANAH, WISCONSIN<br>54861<br>GRANT NUMBER:99-7-2207-55-132-02 | 91,809 | 73,447 | 18,362 | 23,932 | 19,146 | 4,786 |
| WISCONSIN-WINNEBAGO BUSINESS COMMITTEE<br>P.O. BOX 311<br>TOMAH, WISCONSIN<br>54660<br>GRANT NUMBER:99-7-0019-55-022-02 | 199,334 | 159,467 | 39,867 | 13,603 | 10,882 | 2,721 |
| SHOSHONE/ARAPAHOE TRIBES<br>P.O. BOX 217<br>FORT WASHAKIE, WYOMING<br>82514<br>GRANT NUMBER:99-7-0650-55-045-02 | 224,585 | 179,668 | 44,917 | 64,155 | 51,324 | 12,831 |
| NATIONAL TOTAL | 61,484,000 | 49,187,197 | 12,296,803 | 11,565,739 | 9,252,586 | 2,313,153 |

[FR Doc. 87-11170 Filed 5-14-87; 8:45 am]
BILLING CODE 4510-30-C

## Employment Standards Administration

### Office of Workers' Compensation Programs; Report on Computer Matching Project Involving Certain Beneficiaries Under the Black Lung Benefits Act (BLBA)

**SUMMARY:** The Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs (OWCP) announces a computer match to be performed by the Illinois Department of Public Aid (IDPA) of the Department of Labor (DOL) black lung beneficiary data and Illinois Medicaid data. The match will be made under written agreement. The purpose of the data exchange is to identify those DOL black lung beneficiaries who live in Illinois, in order that the IDPA can determine which black lung beneficiaries have been recipients of Illinois Medicaid benefits. It is the responsibility of the State Agency administering the Medicaid program to pursue all liable third party resources prior to the utilization of Medicaid funds for payment of medical services. With the information obtained from this data exchange the IDPA will be able to identify potentially liable third party payors of medical expenses.

*a. Authority:* Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901, *et seq.*, and Title XIX of the Social Security Act, 42 U.S.C. 301, *et seq.*

*b. Description of Match:* The OWCP will send the IDPA an extract from the DOL Black Lung Benefit Master File of all DOL black lung beneficiaries with an Illinois address. The IDPA will match the DOL black lung beneficiaries living in Illinois with the IDPA's records of recipients of Illinois Medicaid benefits. When a match occurs, the black lung extract data on that individual will be reviewed by the IDPA of determine whether there is potential third party liability. The IDPA will be able to seek reimbursement, if it is found that a third party should have paid for medical expenses that were paid by Medicaid in Illinois. Potential third party payors of these medical expenses include the BLBA Trust Fund and Responsible Coal Mine Operators/Insurance Carriers.

*c. Description of Federal Records to be Matched:* DOL/ESA–7 Office of Workers' Compensation Programs, Black Lung Benefit Payments File (47 FR 30378, July 13, 1982; as amended in 48 FR 5824, February 8, 1983, and 50 FR 5144, February 6, 1985) will be the source of the Federal black lung data extract. Among the items contained in the DOL source data extract will be: miner Social Security Number and birth date, payee name and address, payee monthly benefit amount, date and amount of last check.

*d. Period of Match:* The first match should begin on or about June 1, 1987, and recur annually. Follow-up procedures may extend through the calendar year.

*e. Security:* The personal privacy of individuals identified is protected by strict compliance with the Privacy Act (Pub. L. 93–579) and OMB Circular A–130. Information from the match will be used only for official purposes and will not be released to the public.

The extract files will be used and accessed only for the purposes previously agreed upon. Extract files will not be used to obtain information for any purpose concerning individuals who are not included in the match. Extract files will not be duplicated or disseminated within or outside the matching or source agency, unless agreed upon in writing by both agencies. The IDPA will use the data supplied in a manner prescribed by law and will maintain proper safeguards to prevent unauthorized release or use of all data contained in the source extract and the matching extract.

Access to working spaces and claim file storage areas in the IDPA offices is restricted to Illinois State employees. File areas are locked after normal duty hours and the offices are protected from outside access by security personnel. Strict control measures are enforced to ensure that access to and disclosure of these records is limited to a need-to-know basis.

*f. Disposition of Records:* The OWCP source data extract will remain the property of the OWCP and will be destroyed by the IDPA upon receipt of the following year's source data extract from the OWCP. The matching extract will become the joint property of the IDPA and the OWCP, and will be kept by the IDPA so long as the administrative audit is active. The matching extract will be destroyed by IDPA upon receipt of the following year's source data extract from the OWCP.

Signed at Washington, DC, this 7th day of May 1987.

**Richard Staufenberger,**

*Acting Director, Office of Workers' Compensation Programs.*

[FR Doc. 87–11172 Filed 5–14–87; 8:45 am]

BILLING CODE 4510–27–M

## Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29

BEST COPY AVAILABLE

CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

**Modifications to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

*Volume I*

Connecticut CT87-1 (Jan. 2, 1987) pp. 70-82.
New York NY87-11 (Jan. 2, 1987) p. 762.
Pennsylvania PA87-5 (Jan. 2, 1987) pp. 804-836.

*Volume II*

Iowa IA87-2 (Jan. 2, 1987) pp. 28-29.
Illinois:
IL87-6 (Jan. 2, 1987) p. 132.
IL87-17 (Jan. 2, 1987) p. 216.
Indiana:
IN87-3 (Jan. 2, 1987) pp. 208-209.
IN87-4 (Jan. 2, 1987) p. 280.
Texas:
TX87-1 (Jan. 2, 1987) p. 915.
TX87-3 (Jan. 2, 1987) p. 942.
Listing by Location (Index) p. xxxiii.

*Volume III*

Montana MT87-1 (Jan. 2, 1987) p. 188.
Utah:
UT87-1 (Jan. 2, 1987) p. 307.
UT87-3 (Jan. 2, 1987) pp. 319-329.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 8th day of May 1987.

Alan L. Moss,
*Director, Division of Wage Determinations.*

[FR Doc. 87-10455 Filed 5-14-87; 8:45 am]
BILLING CODE 4510-27-M

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## Occupational Safety and Health Administration

### Alaska State Standards; Notification of Approval

**1. Background**

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the Federal Register (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated December 17, 1982 from Jim Robison, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards amendments comparable to 29 CFR Part 1910 Subpart S, Electrical Standards, as published in the Federal Register (46 FR 4034) on January 16, 1981, and subsequent correction. The State's original standards were published in the Federal Register (46 FR 40183) on August 7, 1981.

Regional review revealed discrepancies in several of the State's responses and the failure of the State to incorporate the corrections that appeared in the Federal Register at 46 FR 40183 dated August 7, 1981. The submission was returned to the State on December 8, 1983, for corrective action.

On November 5, 1984, the State resubmitted a corrective amendment to its Electrical Standards and pointed out that an additional amendment was forthcoming to correct an additional deficiency.

On June 28, 1985, a second corrective amendment was forwarded for inclusion in the State's submittal for Electrical Standards.

These State standards, which are contained in AAC 03.001, Electrical, were promulgated after public hearings which were held on July 19, 20, and 23, 1984. Notifications of the hearings were published in statewide media on June 18 and 25, 1984. The public comment period was open for thrity days by Jim Robison, Commissioner, under authority vested by AS 18.60.020. The State incorporated editorial modifications consisting of the replacement of parentheses with commas, the word *shall* has been changed to *must*, and the phrase the *employer shall* has been deleted throughout the standard as the employer's responsibilities are spelled out in Alaska's *State Statutes*, Section 18.60.075, Safe Employment.

**2. Decision.**

The above State standard has been reviewed and compared with the relevant Federal standards. OSHA has determined that the State standard is at least as effective as the comparable Federal Standard, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

**3. Location of supplement for inspection copying.**

A copy of the standards supplement, along with the approve plan, may be inspected and copied during normal business hours at the following locations: Office of Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska, 99802; and the Office of State Programs, Room N–3476, 200 Constitution Avenue NW., Washington, DC 20210.

**4. Public participation.**

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comments and further public participation would be repetitious.

This decision is effective May 15, 1987.

(Sec 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 23rd day of March 1987.

James W. Lake,
*Regional Administrator.*

[FR Doc. 87–11173 Filed 5–14–87; 8:45 am]
BILLING CODE 4510–26–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87–43]

### NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Task Team on Spacecraft Power for Future Missions.

**DATE AND TIME:** June 5, 1987, 8:30 a.m. to 4 p.m.

**ADDRESS:** Room 647, Federal Office Building 10B, National Aeronautics and Space Administration Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Wasel, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2855.

**SUPPLEMENTARY INFORMATION:** The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance and direction to the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The ad hoc team on Spacecraft Power for Future Missions, chaired by Dr. Beno Steralicht, is comprised of six members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

*Agenda*

*June 5, 1987*

8:30 a.m.—Summary of Prior Meeting
9 a.m.—Discussion of Spacecraft Power Report
1p.m.—Drafting of Report
3:30 p.m.—Status Review, Discuss Future Meeting
4 p.m.—Adjourn

May 8, 1987.

Richard L. Daniels,
*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 87–11114 Filed 5–14–87; 8:45 am]
BILLING CODE 7510–01–M

[Notice 87–44]

### NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Onboard Processing and Data Management Technology Ad Hoc Review Team.

**DATE AND TIME:** June 9, 1987, 8 a.m. to 5 p.m.; June 10, 1987, 8 a.m. to 3:15 p.m.

**ADDRESS:** Jet Propulsion Laboratory, National Aeronautics and Space Administration, Building 198, Room 111, 4800 Oak Grove Drive, Pasadena, CA 91109.

**FURTHER INFORMATION CONTACT:** Mr. Robert D. Kreider, Code RC, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2744.

**SUPPLEMENTARY INFORMATION:** The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Onboard Processing and Data Management Technology Ad Hoc Review Team was established to provide an assessment of the current state of the art in onboard processing and data management system technologies, with an emphasis on reliability. The team, chaired by Dr. Donald C. Fraser, is comprised of 11 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the team members and other participants).

Type of Meeting: Open.

*Agenda*

June 9, 1987

8 a.m.—Introduction, Objectives, Format
8:45 a.m.—General Purpose Computers
9:15 a.m.—Special Purpose Processing
9:45 a.m.—System Issues (Networks)
10:45 a.m.—Flight (data) Recorders
11:15 a.m.—Design, Evaluation and Verification Issues
1:15 p.m.—Revisit Current OAST Programs in Context of Morning Presentations

3:15 p.m.—Discuss/Initiate Refinement of Panel Group Outputs in Order to Coalesce into Focused OAST Program(s)

5 p.m.—Adjourn

June 10, 1987

8 a.m.—Complete Development of Specific OAST Program Recommendations

3:15 p.m.—Adjourn

Richard L. Daniels,

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

May 8, 1987.

[FR Doc. 87-11115 Filed 5-14-87; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Biological Facilities Centers; Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Facilities Centers.

Date and Time: June 3, 4 and 5, 1987—8:30–5:00.

Place: National Science Foundation, Room 540, Washington, DC 20550

Type of Meeting: Closed.

Contact Person: John C. Wooley, Program Director, Biological Instrumentation, Room 325E. Telephone: 202/357–7852.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,

*Committee Management Officer.*

May 12, 1987.

[FR Doc. 87-11134 Filed 5-14-87; 8:45 am]

BILLING CODE 7555-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15734; 812-6585]

### Technology Funding Partners III, L.P. et al.

May 8, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* Technology Funding Partners III, L.P. (the "Partnership"), Technology Funding Inc. and Technology Funding Ltd. (the "Managing General Partners").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) of the 1940 Act from certain provisions of sections 2(a)(3) and 2(a)(19) of the 1940 Act.

*Summary of Application:* Applicants seek an order determining that (1) under section 2(a)(19) of the 1940 Act, the independent general partners of the Partnership are not "interested persons" of the Partnership solely by reason of being general partners thereof; and (2) under section 2(a)(3) of the 1940 Act, that no limited partner who owns less than 5% of the units of limited partnership interest in the Partnership is an "affiliated person" of the Partnership, any of the other limited partners, or any of the general partners, solely by reason of being a limited partner of the Partnership.

*Filing Date:* The Application was filed on December 18, 1986, and amended on March 7, April 17, and May 8, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on May 22, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Partnership and the Managing General Partners, 2000 Alameda de las Pulgas, Suite 250, San Mateo, California 94403.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Richard Pfordte at (202) 272–3011 or Special Counsel Curtis R. Hilliard at (202) 272–3028, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

**Applicant's Representations**

1. The Partnership is a newly formed Delaware limited partnership that has elected status as a business development company pursuant to section 54 of the 1940 Act. The investment objective of the Partnership is to seek long-term capital appreciation by making venture capital investments.

2. The Partnership's registration statement under the Securities Act of 1933, with respect to a proposed public offering of units of limited partnership interest ("Units") was declared effective on March 25, 1987.[1] The maximum proceeds from the offering will be $60 million which will be invested in 20 to 30 venture capital investments over a period of up to four years.

3. The General Partners of the Partnership initially will consist of three individual general partners (the "Individual General Partners") and the Managing General Partners. The initial Individual General Partners will not be "interested persons" of the Partnership within the meaning of that term under section 2(a)(19) of the 1940 Act ("Independent General Partners"). The Managing General Partners are a California corporation (Technology Funding Inc.) and a California limited partnership (Technology Funding, Ltd.). The Managing General Partners are in the business of organizing and managing limited partnerships. Both Managing General Partners will register as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act") as soon as possible, and Applicants undertake that the Partnership will not commence operations until both are so registered.

4. The three Individual General Partners and one representative from each Managing General Partner will serve on a management committee ("Committee") of the Partnership. The Committee has complete and exclusive authority to manage and control the Partnership except for those specific activities of the Partnership for which

[1] For further information as to the Partnership, reference is made to its registration statement, as amended (File No. 33–10856), which includes a copy of the Partnership Agreement.

under the supervision of the Committee, the Managing General Partners will be responsible. Such activities are summarized below and are specifically set forth in the Partnership Agreement. The Committee will provide overall guidance and supervision with respect to the operations of the Partnership, will perform all duties of a board of directors of a business development company pursuant to the 1940 Act, and will monitor the activities of companies in which the Partnership invests.

The Partnership Agreement provides that the general partners are elected at the annual meetings of the limited partners and serve for annual terms. The Committee is empowered from time to time to determine the number of persons to be elected as Individual General Partners. If at any time the number of Independent General Partners is reduced to less than a majority of the general partners, the remaining members of the Committee must, within ninety days, designate one or more successor Independent General Partners so as to restore the number of Independent General Partners to such a majority.

5. The Managing General Partners will be responsible and have authority, subject to the supervision of the Committee, to determine and manage the Partnership's venture capital investments and manage day-to-day Partnership operations. The Independent General Partners will assume the responsibilities and obligations under the 1940 Act required of non-interested directors of a business development company in corporate form.

6. The Managing General Partners undertake that they will not resign or withdraw from the Partnership unless successor Managing General Partners have been appointed and consented to by the limited partners in compliance with the Partnership Agreement.

7. Applicants state that the Independent General Partners will have full-time employment with entities unrelated to the Partnership and will have substantial experience that they will bring to their positions as Independent General Partners. Applicants state that the Independent General Partners are in a position to act capably and independently on behalf of the Partnership and the limited partners. The Partnership Agreement requires the Independent General Partners to act, in their good faith judgment, in the best interests of the Partnership. In addition, the actions of the Independent General Partners will be subject to the fiduciary responsibilities imposed on general partners to limited partners of partnerships by applicble partnership laws.

8. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the non-interest directors of an incorporated investment company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" individual directors of an investment company. However, there is no comparable exclusion for general partners of a partnership. Applicants submit that granting the requested exemption from the provisions of section 2(a)(19) of the 1940 Act is consistent with the purpose fairly intended by the policy and provisions of the 1940 Act.

9. The limited partners, in general, have the right to vote only on certain major Partnership events specifically contemplated by Delaware law (such as dissolution of all or substantially all of the Partnership assets and dissolution of the Partnership) and on certain occasions required by the 1940 Act. The limited partners have no right to participate in the control of the Partnership's business. The Partnership will seek an opinion of counsel that the existence of or exercise of the voting rights granted to limited partners will not subject the limited partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act.

10. The Partnership Agreement empowers the general partners to take all actions which may be necessary or appropriate to protect the limited liability of the limited partners. The Partnership does not presently have an insurance policy that would provide coverage to persons who become limited partners, but the general partners expressly represent and undertake that they will take all such actions necessary or appropriate to protect the limited liability of the limited partners. Moreover, the Partnership will consider the possiblity of obtaining an errors and omissions insurance policy, and the Individual General Partners will periodically review the appropriateness of obtaining such an insurance policy for the Partnership.

11. The rights of limited partners to vote on certain matters are either equivalent to or more limited that those of corporate shareholders. Section 2(a)(3) of the 1940 Act specifically excludes from the definition of "affiliated persons," shareholders with less than a 5% ownership in such a corporation. Applicants state that limited partner investors may be deemed affiliates of the Partnership because section 2(a)(3) of the 1940 Act contains no comparable exclusion for limited partners of partnerships. Applicants therefore seek exemption from the provisions of section 2(a)(3) of the 1940 Act to the extent that limited partners with less than a 5% interest in the Partnership will not be deemed "affiliated persons" of the Partnership, any of the other limited partners and the General Partners of the Partnership.

12. The Partnership Agreement provides generally that the net profits of the Partnership will be allocated first to those partners with deficit capital account balances until such deficits have been eliminated, and then to the partners as necessary to offset net losses previously allocated to such partners and sales commissions charged to their capital accounts.

13. The Partnership Agreement specifically provides that the cash and securities available for distribution will be distributed 99% to the limited partners and 1% to the general partners until "conversion", i.e., when the amount previously distributed equals the aggregate capital contributions of all limited partners, less any excess capital contributions retured to the limited partners. Thereafter, the Partnership will make distributions, subject to the representations and express conditions agreed to below, 75% to the limited partners (ordinarily in proportion to the number of Units held by each), 5% to the limited partners (to be allocated pursuant to "Unit months" as defined in the Partnership Agreement) and 20% to the Managing General Partners. The Partnership Agreement also provides that securities distributed in kind to the partners will be treated as so sold at the time of distribution. The various allocation provisions in the Partnership Agreement have not been reviewed or approved by the Commission and the Commission expresses no opinion with regard to whether section 205 of the Advisers Act permits such allocations.

## Applicants' Conditions

Applicants agree that the following may be made express conditions to the requested order:

1. The Partnership will be structured so that the Independent General Partners are the functional equivalents of the non-interested directors of an investment company registered under the 1940 Act.

2. The Partnership will not make any in-kind distributions of portfolio securities to its partners until it has obtained either a no-action letter from the staff of the Commission confirming the Partnership's interpretation of section 205 of the Advisers Act (i.e., that unrealized gains or losses attributable to

securities distributed in-kind to partners are properly deemed realized upon such distribution) or, in the alternative, the Partnership has obtained an order of exemption from section 205 of the Advisers Act pursuant to section 206A of the Advisers Act, permitting the Partnership to deem such gains or losses to be realized upon any in-kind distributions.

4. The Partnership will not commence operations until both Managing Partners are registered under the Advisers Act as investment advisers.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-11191 Filed 5-14-87; 8:45 am]

BILLING CODE 8010-10-M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2275]**

### Louisiana; Declaration of Disaster Loan Area

Terrebonne Parish in the State of Louisiana constitutes a disaster area because of damage from tornadic winds which occurred on March 29, 1987. Applications for loans for physical damage may be filed until the close of business on June 9, 1987, and for economic injury until the close of business on January 11, 1988, at the address listed below:

Disaster Area 3 Office,
Small Business Administration,
2306 Oak Lane, Suite 110,
Grand Prairie, Texas 75051,

or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 7.500 |
| Businesses without credit available elsewhere | 4.000 |
| Businesses (EIDL) without credit available elsewhere | 4.000 |
| Other (non-profit organizations including charitable and religious organizations) | 8.500 |

The number assigned to this disaster is 227512 for physical damage and for economic injury the number is 852100.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: April 10, 1987.

**James Abdnor,**

*Administrator.*

[FR Doc. 87-11144 Filed 5-14-87; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #6519]**

### Texas; Declaration of Disaster Loan Area

Galveston and Chambers Counties in the State of Texas constitute a disaster area because of the closure of the oyster grounds from December 20, 1986 to February 20, 1987, due to heavy rains and flooding of the Trinity and San Jacinto Rivers, which began on or about December 18, 1986. Eligible small businesses without credit available elsewhere and small agricultural cooperative without credit elsewhere may file applications for economic injury assistance until the close of business on *January 11, 1988*, at the address listed below:

Disaster Area 3 Office,
Small Business Administration,
2306 Oak Lane, Suite 110,
Grand Prairie, Texas 75051.

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 9.5 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Program No. 59002.

Dated: April 10, 1987.

**James Abdnor,**

*Administrator.*

[FR Doc. 87-11145 Filed 5-14-87; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE-87-8]**

### Petitions for Exemption; Summary and Disposition

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 4, 1987.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. , 800 Independence Avenue, SW., Washington, DC 20951.

**FOR FURTHER INFORMATION:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 12, 1987.

Leonard E. Smith,

*Manager, Program Management Staff.*

PETITIONS FOR EXEMPTION

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25217 | Kenmore Air Harbor | § 135.265 | To allow Kenmore Air Harbor, Inc. pilots to operate aircraft more than 34 flight hours in any 7 consecutive days. |
| 25229 | MTU Maintenance GmbH | §§ 145.71 and 145.73 | To allow MTU Maintenance GmbH to inspect, repair, maintain, overhaul, and return to service aircraft engines, appliances, parts, and components for installation on any U.S. registered aircraft without geographical limitation. |
| 25230 | Chromalloy American Corporation | § 145.1(b) | To allow Chromalloy American Corporation to be a domestic repair station partially located within the U.S. and partially located outside the U.S. |
| 25251 | FFV Aerotech | §§ 145.71 and 145.73(a) | To allow FFV Aerotech to perform repair and overhaul of Saab SF-340 aircraft components on U.S.-registered SF-340 aircraft operating solely within the U.S. |

[FR Doc. 87–11158 Filed 5–14–87; 8:45 am]

BILLING CODE 4910–13–M

## Research and Special Programs Administration

[Docket No. IR–15]

## Inconsistency Ruling No. IR–15—Decision on Appeal; Vermont Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste; Correction

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Decision on appeal; correction.

In FR Doc. 87–8833 beginning on page 13062 in the issue of Monday, April 20, 1987, make the following correction: On page 13064, in the third column, under "Conclusion" change the first sentence to read: "For the reasons indicated above and for the reasons set forth in IR–15 itself, I affirm the determination by the Associate Director of the Materials Transportation Bureau in IR–15 that Vermont Agency of Transportation Rules III(G), III(J), III(K), V and VII are inconsistent with the HMTA and the HMR."

Issued in Washington, DC, on May 11, 1987.

M. Cynthia Douglass,

*Administrator, Research and Special Programs Administration.*

[FR Doc. 87–11201 Filed 5–14–87; 8:45 am]

BILLING CODE 4910–60–M

## UNITED STATES INFORMATION AGENCY

## Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Venus Anadyomene" (see list)[1] imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about June 8, 1987, to on or about June 12, 1987, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: May 11, 1987.

R. Wallace Stuart,

*Acting General Counsel.*

[FR Doc. 87–11151 Filed 5–14–87; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. John Lindsay of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 94
Friday, May 15, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Wednesday, May 6, 1987, the Board of Directors of the Federal Depost Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for a purchase and assumption transaction, or (2) in the event no acceptable bid for a purchase and assumption transaction is submitted, accept the highest acceptable bid for an insured deposit transfer transaction which may be submitted, or (3) in the event no acceptable bid for either type transaction is submitted, make funds available for the payment of the insured deposits of the closed bank, with respect to each of the following: (a) American Bank of Commerce, Denver, Colorado, which was closed by the State Bank Commissioner for the State of Colorado on Wednesday, May 6, 1987; (b) North American National Bank, Littleton, Colorado, which was expected to be closed by the Senior Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, May 7, 1987; (c) First State Bank, Sisseton, South Dakota, which was expected to be closed by the Director of Banking and Finance for the State of South Dakota on Thursday, May 7, 1987; and (d) Moreauville State Bank, Moreauville, Louisiana, which was expected to be closed by the Commissioner for Financial Institutions for the State of Louisiana on Friday, May 8, 1987; and

(B)(1) accept the highest acceptable bid which may be submitted in accordance with the "Instructions for Bidding" for the transfer of insured deposits in Farmers State Bank, Maddock, North Dakota, which was expected to be closed by the Commissioner of Banking and Financial Institutions for the State of North Dakota on Friday, May 8, 1987; or (2) in the event no acceptable bid for a deposit transfer transaction is submitted, make funds available for the payment of the insured deposits of the closed bank.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 11, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 87-11202 Filed 5-12-87; 5:07 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:50 p.m. on Thursday, May 7, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding an administrative enforcement proceeding against certain individuals of an insured bank: names of persons and name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: May 8, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

*Deputy Executive Secretary.*

[FR Doc. 87-11203 Filed 5-12-87; 5:07 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

BOARD OF GOVERNORS

TIME AND DATE: 2:30 p.m., Thursday, May 21, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 13, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11277 Filed 5-13-87; 3:34 pm]

BILLING CODE 6210-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Ninth Annual Meeting

TIME AND DATE: 2:00 p.m.—Wednesday, May 20, 1987.

PLACE: 1325 G Street, NW., Suite 800, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Timothy McCarthy, Director of Communications, 376-2623.

AGENDA

I. Call to Order/Corporate Secretary
II. Election of Temporary Chairman
III. Election of Chairman and Vice Chairman
IV. Approval of Minutes, November 24, 1986
V. Executive Director's Activity Report
VI. Personnel Committee Report
VII. Election of Officers and Appointment of Assistant Secretary
VIII. Audit Committee Report; Budget Adjustments and Reallocations
IX. Budget Committee Report
X. Treasurer's Report

Carol J. McCabe,
*Secretary.*

[FR Doc. 87-11247 Filed 5-13-87; 11:48 am]

BILLING CODE 7570-01-M

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# Corrections

Federal Register
Vol. 52, No. 94
Friday, May 15, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510, 520, 522, 524, and 529

### Animal Drugs, Feeds, and Related Products; Change of Sponsor; Labeler Code Correction

*Correction*

In rule document 87-5378 beginning on page 7831 in the issue of Friday, March 13, 1987, make the following corrections:

1. On page 7831, in the second column, in the seventh line, "guaiacolate" was misspelled.

2. On the same page, in the same column, in the table, under the heading "Ingredient", in the second line, "luteinizing" was misspelled.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 874

[Docket No. 78N-1549]

### Ear, Nose, and Throat Devices; General Provisions and Classifications of 47 Devices

*Correction*

In rule document 87-25091 beginning on page 40378 in the issue of Thursday, November 6, 1987, make the following correction:

**§ 874.1100 [Corrected]**

1. On page 40390, in the second column, in the first line, "§ 874.110" should read "§ 874.1100".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

[Lease Sale 129]

### Outer Continental Shelf Operations; Oil & Gas Lease Sale Request for Interest; Norton Basin

*Correction*

In notice document 87-9843 beginning on page 15932 in the issue of Thursday, April 30, 1987, make the following corrections:

1. The subject heading is corrected to read as set forth above with "Sales" corrected to read "Sale".

2. In the first column, in the second paragraph, in the 10th line, "unit" should read "until".

3. In the same column, in the third paragraph, in the 10th line from the bottom, "or" should read "of".

4. In the second column, in the fourth complete paragraph, in the first line, "on" should read "one".

5. In the third column, in the second complete paragraph, in the first line, insert "the" before "review".

6. In the same column, in the third complete paragraph, "Dolores" was misspelled.

BILLING CODE 1505-01-D

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federal register

Friday
May 15, 1987

Part II

# Postal Rate Commission

## Postal Rate and Fee Changes, 1987; Filing of Proposed Changes and Order Designating Officer of the Commission, Fixing Date for Prehearing Conference, and Establishing Procedures; Notice

## POSTAL RATE COMMISSION

[Docket No. R87-1; Order No. 756]

### Postal Rate and Fee Changes, 1987; Filing of Proposed Changes and Order Designating Officer of the Commission, Fixing Date for Prehearing Conference, and Establishing Procedures

Issued May 12, 1987.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Notice is hereby given that on May 7, 1987, the United States Postal Service (hereafter Postal Service or Service), pursuant to section 3622 of the Postal Reorganization Act (39 U.S.C. 3622), filed a request with the Postal Rate Commission for a recommended decision on certain proposed changes in rates of postage and fees for postal services, and for certain related changes to the Domestic Mail Classification Schedule. This filing has been assigned Docket No. R87-1.

The Postal Service indicates that its filing is in accordance with the Commission's rules of practice applicable to requests for changes in postage rates and fees (39 CFR 3001.51-3001.55) and classification changes (39 CFR 3001.61-3001.65). The Postal Service also asserts that at current rates, for the fiscal year ending September 30, 1989, it would generate total revenues of approximately $34.5 billion and incur total costs of approximately $39.5 billion, resulting in a total revenue deficiency of approximately $5.0 billion. The Postal Service states that this revenue deficiency contravenes the requirement of 39 U.S.C. 3621 that total estimated income and appropriations will equal as nearly as practical total estimated costs. Therefore, the Postal Service has filed proposed rate and fee changes with the Commission in order that revenues in the test year [1] should approximately equal total estimated costs. According to the Postal Service, implementation of its suggested rates will increase total revenues by approximately $4.3 billion, while decreasing total costs approximately $0.7 billion.

The approximate percentage rate increases proposed for the various major categories of mail service are as follows:

| Category | Rate increase proposed by Postal Service |
|---|---|
| First Class: | |
| Letters (percent) | 15 |
| Cards | 14 |
| Priority | 7 |
| Express Mail | (1) |
| Second Class: | |
| In County (full rates) | 22 |
| Outside | |
| Nonprofit (full rates) | 20 |
| Classroom (full rates) | 21 |
| Regular Rate | 14 |
| Third Class: | |
| Single Piece | 12 |
| Bulk Rate Regular | 23 |
| Bulk Rate Nonprofit (full rates) | 4 |
| Fourth Class: | |
| Parcel Post | 12 |
| Bound Printed Matter | 21 |
| Special Rate | 27 |
| Library Rate | 13 |
| Overall increase | 16 |

[1] Decrease.

The specific rates and fees, both current and proposed, are cotained in Attachment A to this notice and order.

Included in the Postal Service's filing are proposals for mail classification changes. Among the major classification changes are: (1) Adding an Express Mail letter rate, (2) volume discounts for Express Mail, (3) addition of second-day Express Mail, (4) simplification of the Express Mail rate schedule by eliminating zone-related charges and charging rates in 5-pound increments, (5) simplification of the Priority Mail rate schedule by eliminating zone-related charges for 3-to-5-pound pieces and charging rates for higher weights in 5-pound increments, (6) discount for ZIP + 4 prebarcoded First-Class letters presorted to 5-digit ZIP code areas, (7) discount for second-class regular rate palletized mail, (8) nonadvertising incentive added for nonprofit and classroom second-class mail and increased for regular rate second class, (9) all second-class pound rates to vary with distance, (10) second-class Sectional Center Facility discount to be calculated with regard to pounds rather than pieces, (11) calculating allowable sample and complimentary copies of second class by pieces rather than weight, (12) simplification of the parcel post rate structure by eliminating zone-related charges for 2-pound and for 3-to-5-pound parcels and charging rates for higher weights in 5-pound increments, (13) discount for prebarcoded business reply with advance deposit, (14) return receipt for merchandise as a stand-alone service, and (15) additional stamped envelope options.

Simultaneously with filing this request, Postal Service filed a Request for Waiver of Portions of Rule 54 (39 CFR 3001.54). This rule specifies supporting materials which should accompany a request for a recommended decision on rates. The Service states it has not completed cross-referencing its "roll-forward workpapers" and states its belief that delayed production will not prejudice any party or the Commission.

The request of the United States Postal Service for a recommended decision on changes in rates of postage and fees for postal services is on file with the Commission's docket section and is available for public inspection during regular business hours.

### I. Intervention

Hearings will be held on the proposal submitted by the Postal Service in Docket No. R87-1. Any person desiring to be heard in this matter and to become a party to the proceeding or to participate as a party in the hearings, should file a written notice of intervention. Notices of intervention must be filed, with the Secretary, Postal Rate Commission, Washington, DC 20268-0001, on or before June 9, 1987, and must be in accordance with section 20 of the Commission's rules of practice (39 CFR 3001.20). We direct specific attention to § 20(b) which provides that notices of intervention shall affirmatively indicate whether or not the petitioner intends to actively participate in the hearings. Alternatively, those persons seeking limited participation who do not wish to become formal intervenors may, on or before June 9, 1987, file a written notice of intervention as a limited participator, pursuant to section 20a of the Commission's rules of practice (39 CFR 3001.20a). In addition, those persons wishing to express their views informally, not desiring to become either a party or limited participant, may file comments pursuant to section 20b of the Commission's rules (39 CFR 3001.20b).

Intervenors wishing to comment on the Request of the United States Postal Service for Waiver of Portions of Rule 54 should do so, in writing, on or before June 9. All persons filing a notice of intervention, whether generally or on a limited basis, will be permitted to participate in the proceeding pending a final ruling by the Commission, should any written opposition to such notice of intervention be filed.

[1] The Postal Service proposes a test year in this proceeding from October 1, 1988 to September 30, 1989.

## II. Representation of the General Public

We designate, to represent the general public [2] in this proceeding, Stephen A. Gold, the Director of the Office of Consumer Advocate (OCA). During this proceeding, the OCA will direct the activities of Commission personnel assigned to assist him and neither he nor any of those designated assigned personnel will participate in or advise as to any Commission decision in this proceeding.[3] The OCA will supply for the record, at the appropriate time, the names of all Commission personnel assigned to assist him in this proceeding. In this proceeding, the OCA shall be separately served with three copies of all filings in addition to, and simultaneously with, service on the Commission of the 24 copies required by section 10(c) of the rules of practice [39 CFR 3001.10(c)].

## III. Discovery

The Commission directs the attention of all participants to the provisions of sections 25, 26, 27, and 28 of the rules of practice (39 CFR 3001.25, 3001.26, 3001.27, 3001.28) establishing the availability of, and rules for, discovery requests. The discovery process is one aspect of this general rate filing which we particularly wish to expedite. All interrogatories must be answered promptly in order that the expedited hearing format which we utilize can function as intended. In this regard, we point out that under our rules of practice, interested parties may immediately obtain active status in this proceeding by filing a notice of intervention. Accordingly, all parties filing such notices may immediately engage in discovery of the Postal Service's case-in-chief, without any additional action by the Commission. In accord with our desire for expedition in this proceeding, parties are actively encouraged to do so.

Participants should be aware that the limited time available to the Commission for issuing its decision makes expeditious discovery practice essential. Participants are put on notice that it is the present intention to schedule completion of discovery concerning the evidence presented by the Postal Service for July 10, 1987, although additional discovery may be allowed, especially on testimony or materials where analysis has been delayed as a result of the Service's failure to present complete information as required by Rule 54 (39 CFR 3001.54).

[2] *See* 39 U.S.C. 3624(a), providing for an officer of the Commission for that purpose.

[3] *See* 39 CFR 3001.8.

## IV. Procedures for Expedition

Section 3624(c)(1) of the Postal Reorganization Act (39 U.S.C. 3624(c)(1)) provides that the Commission is to render its recommended decision within ten months after receiving a request proposing changes in rates and fees. In order to expedite this proceeding and still be consistent with procedural fairness, we are issuing the present detailed order so that all those who contemplate participating in this proceeding will have sufficient time to prepare for the prehearing conference.

In this regard, we direct the attention of the parties and of those who intend to file notices of intervention or notices of intervention as limited participators to Commission rule 24(d) [39 CFR 3001.24(d)], which sets forth the matters which the presiding officer and participants may consider and resolve at the prehearing conference. All interested persons are expected to appear at the prehearing conference fully prepared to discuss in detail and resolve all matters contemplated within section 24(d). All interested persons will have an opportunity to comment, at that time, on a list of suggested procedural dates and proposed special rules of practice, and should have the authority to make commitments with respect to items to be discussed and resolved. The list of suggested procedural dates and proposed special rules of practice will be distributed to intervenors, and available for inspection at the Commission docket section at least seven days prior to the prehearing conference. Before the end of the prehearing conference, all interested persons also will have an opportunity to raise appropriate subjects of concern to them. A participant intending to raise one or more issues at the initial prehearing conference should provide advance written notice explaining its concerns.

In conformity with the requirement of the Postal Reorganization Act and consistent with our past practice in general rate cases, we are resolved to expedite the conduct of this proceeding. We intend to adhere to the procedural requirements and filing deadlines set forth in our rules of practice and in any special rules of practice subsequently promulgated. The parties are forewarned that they should insure, from the outset of this proceeding, that they have provided adequate resources for the timely preparation of and response to discovery requests.

Participants may also inform the Postal Service, informally and promptly, of any desired preliminary clarification in the Service's presentation which the participant believes will assist it in contributing to the expedition of this proceeding. The Postal Service has been cooperative in providing informal clarification of past requests. Participants are urged to utilize these informal off-the-record techniques to the maximum extent feasible in resolving their particular difficulties. Should these informal procedures be used, every two weeks Postal Service is to file (1) a listing of all information given in response to these informal requests, and (2) a copy of such information with the docket section of the Commission. Such a procedure will avoid duplicative requests for information.

In order to reduce or preclude discovery by the parties of information which should have been included in the Postal Service's filing, the Commission will entertain motions requesting an opportunity to engage in a limited amount of "preliminary cross examination" of Postal Service witnesses during prehearing conferences.[4] It is our expectation that promptly scheduled conferences of this type will shorten and simplify formal discovery. However, requests of this nature concerning roll-forward workpapers should not be filed prior to May 21, as the Postal Service has admittedly failed to complete its filing on that subject, and is preparing additional materials as of this date. As opportunity for preliminary cross-examination for clarification of the presentations of other participants will exist following the filing of other participants' cases.

We also shall employ in this docket a procedure to be followed in instances where answers to discovery requests are not filed within the prescribed time. This procedure is the same as that employed in our two most recent omnibus rate cases. If a motion to compel a response is not answered by a showing of cogent and convincing reasons for delay, the presiding officer may prescribe a time at which the witness to whom the discovery request was addressed will appear for oral examination on the subject matter of the request. This examination may be conducted parallel to main hearings, before a special presiding officer to be designated by the Chairman. The special presiding officer will record any objections made, together with the proposed disposition thereof, and transmit both to the presiding officer in

[4] This procedure would involve a witness explaining how he reached conclusions, not why he did so. *Compare* the notice appearing at 48 FR 51337, November 8, 1983.

this docket. A transcript will be made of all such examination and the responding witness may be represented by counsel. We anticipate that such ancillary proceedings will accelerate the obtaining of responses, while not requiring the main proceeding to be delayed.

While we are not at this time specifying any procedures for the taking of depositions parallel to the main proceeding, we anticipate that the parties and the presiding officer will consider their use, when appropriate, in order to expedite responses to discovery requests and also where attendance of a special presiding officer may not be required.

As we have emphasized above, the Act requires expedited proceedings, subject to procedural fairness. We wish the parties to be on notice that this mandate of expedition applies also to the briefing stage of the proceeding, following close of the evidentiary record. Parties should be prepared to adhere strictly to a briefing schedule which is consonant with this policy.

**V. Date of Initial Prehearing Conference**

In accordance with the Commission's goal of expeditious consideration, the Commission will conduct all prehearing conferences and hearings en banc (39 CFR 3001.30(b)]. An initial prehearing conference will be held on June 11, 1987. Additional prehearing conferences will be held on such further dates as may be scheduled by the presiding officer who will be designated by the Chairman of the Commission. Conferences and hearings will commence each day at 9:30 a.m. at the Postal Rate Commission's hearing room, Suite 300, 1333 H Street NW., Washington, DC 20268–0001. Hearings shall be on the record and a transcript made except where the presiding officer determines otherwise.

The Commission orders:

(A) The Commission will sit en banc in the above-captioned proceeding.

(B) A prehearing conference in this proceeding will be held on June 11, 1987, commencing at 9:30 a.m. in the Postal Rate Commission hearing room, Suite 300, 1333 H Street NW., Washington, DC 20268–0001. The Conference will be held for the purposes specified in § 24 of the Commission's rules of practice (39 CFR 3001.24) and in this Notice and Order, and also to afford all participants in the proceeding an opportunity to be heard with respect to the procedures to be followed. The prehearing conference proceedings shall be recorded by an official reporter except where the presiding officer otherwise directs.

(C) Stephen A. Gold, the Director of the Office of Consumer Advocate, is designated to represent the general public in this proceeding. Service of documents on the Commission shall not constitute service on the OCA, who shall separately be served three copies of all documents.

(D) The Secretary shall cause this Notice and Order to be published in the Federal Register.

By the Commission.

Charles L. Clapp,

*Secretary.*

ATTACHMENT A.—PRESENT AND PROPOSED RATES OF POSTAGE AND FEES FOR POSTAL SERVICES

[Rate schedule 100—First class mail]

| Mail type | Postage rate unit | Current rates | | Proposed rates | |
|---|---|---|---|---|---|
| | | Regular (cents) | Presorted (cents) [1] | Regular (cents) | Presorted (cents) [2] |
| (1) | (2) | (3) | (4) | (5) | (6) |
| Letters | 1st ounce | 22 | 18/17 | 25 | 21.5/20 |
| | Each additional ounce [3] | 17 | 17 | 20 | 20 |
| Cards | Piece | 14 | 12/11 | 16 | 14/12.5 |
| ZIP+4 Mail: [4] | | | | | |
| Letters | first ounce | 21.1 | 17.5 | 29 | [4] 20.7 |
| | Pre-bar code | | | | 20.2 |
| | Each additional ounce [3] | 17 | 17 | 20 | 20 |
| Cards | Piece | 13.1 | 11.5 | [4] 14.5 | 13.2 |
| | Pre-bar coded | | | | 12.7 |
| Nonstandard Surcharge [5]. | | 10 | 10 | 10 | 10 |

[1] Presorted First-Class Mail must be presented in a single mailing of at least 500 pieces properly prepared and presorted. The 5-digit presort rate applies only to each piece of a group of ten or more pieces destined for the same 5-digit ZIP Code or each piece of a group of 50 or more pieces destined for the same 3-digit ZIP Code. The lower rate applies only to mail presorted to carrier route, with a minimum of 10 pieces per route. A mailing fee of $50 must be paid once each year at each office of mailing by any person who mails presorted First-Class Mail. [The fee for mailers allows usage of either or both of these rates.]

[2] Presorted First-Class Mail must be presented in a single mailing of at least 500 pieces properly prepared and presorted. The higher rate applies to mail presorted to ZIP Code and prepared as prescribed by the Postal Service. The lower rate applies only to mail presorted to carrier route, and prepared as prescribed by the Postal Service. A mailing fee must be paid once each year at each office of mailing by any person who mails presorted First-Class Mail. [The fee for mailers allows usage of either or both of these rates.]

[3] Rate applies through 12 ounces. Heavier pieces are subject to zone-rated priority mail rates.

[4] ZIP+4 mail must be properly prepared and submitted in a single mailing of at least 250 pieces, except where the presort minimum of 500 applies. ZIP+4 rates are not available for carrier route presort mail.

[5] Applies to the first ounce only. Not applicable to ZIP+4 mail.

BILLING CODE 7715-01-M

RATE SCHEDULE 103(a)

Current Priority Mail Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate 1/ | | | | | |
|---|---|---|---|---|---|---|
| | Zones | | | | | |
| | Local 1, 2 & 3 | 4 | 5 | 6 | 7 | 8 |
| 2 ..... | 2.40 | 2.40 | 2.40 | 2.40 | 2.40 | 2.40 |
| 3 ..... | 2.74 | 3.16 | 3.45 | 3.74 | 3.96 | 4.32 |
| 4 ..... | 3.18 | 3.75 | 4.13 | 4.53 | 4.92 | 5.33 |
| 5 ..... | 3.61 | 4.32 | 4.86 | 5.27 | 5.81 | 6.37 |
| 6 ..... | 4.15 | 5.08 | 5.71 | 6.31 | 6.91 | 7.66 |
| 7 ..... | 4.58 | 5.66 | 6.39 | 7.09 | 7.80 | 8.67 |
| 8 ..... | 5.00 | 6.23 | 7.07 | 7.87 | 8.68 | 9.68 |
| 9 ..... | 5.43 | 6.81 | 7.76 | 8.66 | 9.57 | 10.69 |
| 10 ..... | 5.85 | 7.39 | 8.44 | 9.44 | 10.45 | 11.70 |
| 11 ..... | 6.27 | 7.97 | 9.12 | 10.22 | 11.33 | 12.71 |
| 12 ..... | 6.70 | 8.55 | 9.81 | 11.01 | 12.22 | 13.72 |
| 13 ..... | 7.12 | 9.12 | 10.49 | 11.79 | 13.10 | 14.73 |
| 14 ..... | 7.55 | 9.70 | 11.17 | 12.57 | 13.99 | 15.74 |
| 15 ..... | 7.97 | 10.28 | 11.86 | 13.36 | 14.87 | 16.75 |
| 16 ..... | 8.39 | 10.86 | 12.54 | 14.14 | 15.75 | 17.75 |
| 17 ..... | 8.82 | 11.44 | 13.22 | 14.92 | 16.64 | 18.76 |
| 18 ..... | 9.24 | 12.01 | 13.90 | 15.70 | 17.52 | 19.77 |
| 19 ..... | 9.67 | 12.59 | 14.59 | 16.49 | 18.41 | 20.78 |
| 20 ..... | 10.09 | 13.17 | 15.27 | 17.27 | 19.29 | 21.79 |
| 21 ..... | 10.51 | 13.75 | 15.95 | 18.05 | 20.17 | 22.80 |
| 22 ..... | 10.94 | 14.33 | 16.64 | 18.84 | 21.06 | 23.81 |
| 23 ..... | 11.36 | 14.90 | 17.32 | 19.62 | 21.94 | 24.82 |
| 24 ..... | 11.79 | 15.48 | 18.00 | 20.40 | 22.83 | 25.83 |
| 25 ..... | 12.21 | 16.06 | 18.69 | 21.19 | 23.71 | 26.84 |
| 26 ..... | 12.63 | 16.64 | 19.37 | 21.97 | 24.59 | 27.84 |
| 27 ..... | 13.06 | 17.22 | 20.05 | 22.75 | 25.48 | 28.85 |
| 28 ..... | 13.48 | 17.79 | 20.73 | 23.53 | 26.36 | 29.86 |
| 29 ..... | 13.91 | 18.37 | 21.42 | 24.32 | 27.25 | 30.87 |
| 30 ..... | 14.33 | 18.95 | 22.10 | 25.10 | 28.13 | 31.88 |
| 31 ..... | 14.75 | 19.53 | 22.78 | 25.88 | 29.01 | 32.89 |
| 32 ..... | 15.18 | 20.11 | 23.47 | 26.67 | 29.90 | 33.90 |
| 33 ..... | 15.60 | 20.68 | 24.15 | 27.45 | 30.78 | 34.91 |
| 34 ..... | 16.03 | 21.26 | 24.83 | 28.23 | 31.67 | 35.92 |
| 35 ..... | 16.45 | 21.84 | 25.52 | 29.02 | 32.55 | 26.93 |

RATE SCHEDULE 103(a) (Cont'd.)
Current Priority Mail rates
(Dollars)

| | Zones | | | | | |
|---|---|---|---|---|---|---|
| | Local 1, 2 & 3 | 4 | 5 | 6 | 7 | 8 |
| 36 ..... | 16.87 | 22.42 | 26.20 | 29.80 | 33.43 | 37.93 |
| 37 ..... | 17.30 | 23.00 | 26.88 | 30.58 | 34.32 | 38.94 |
| 38 ..... | 17.72 | 23.57 | 27.56 | 31.36 | 35.20 | 39.95 |
| 39 ..... | 18.15 | 24.15 | 28.25 | 32.15 | 36.09 | 40.96 |
| 40 ..... | 18.57 | 24.73 | 28.93 | 32.93 | 36.97 | 41.7 |
| 41 ..... | 18.99 | 25.31 | 29.61 | 33.71 | 37.85 | 42.98 |
| 42 ..... | 19.42 | 25.89 | 30.30 | 34.50 | 38.74 | 43.99 |
| 43 ..... | 19.84 | 26.46 | 30.98 | 35.28 | 39.62 | 45.00 |
| 44 ..... | 20.27 | 27.04 | 31.66 | 36.06 | 40.51 | 46.01 |
| 45 ..... | 20.69 | 27.62 | 32.35 | 36.85 | 41.39 | 47.02 |
| 46 ..... | 21.11 | 28.20 | 33.03 | 37.63 | 42.27 | 48.02 |
| 47 ..... | 21.54 | 28.78 | 33.71 | 38.41 | 43.16 | 49.03 |
| 48 ..... | 21.96 | 29.35 | 34.39 | 39.19 | 44.04 | 50.04 |
| 49 ..... | 22.39 | 29.93 | 35.08 | 39.98 | 44.93 | 51.05 |
| 50 ..... | 22.81 | 30.51 | 35.76 | 40.76 | 45.81 | 52.06 |
| 51 ..... | 23.23 | 31.09 | 36.44 | 41.54 | 46.69 | 53.07 |
| 52 ..... | 23.66 | 31.67 | 37.13 | 42.33 | 47.58 | 54.08 |
| 53 ..... | 24.08 | 32.24 | 37.81 | 43.11 | 48.46 | 55.09 |
| 54 ..... | 24.51 | 32.82 | 38.49 | 43.89 | 49.35 | 56.10 |
| 55 ..... | 24.93 | 33.40 | 39.18 | 44.68 | 50.23 | 57.11 |
| 56 ..... | 25.35 | 33.98 | 39.86 | 45.46 | 51.11 | 58.11 |
| 57 ..... | 25.78 | 34.56 | 40.54 | 46.24 | 52.00 | 59.12 |
| 58 ..... | 26.20 | 35.13 | 41.22 | 47.02 | 52.88 | 60.13 |
| 59 ..... | 26.63 | 35.71 | 41.91 | 47.81 | 53.77 | 61.14 |
| 60 ..... | 27.05 | 36.29 | 42.59 | 48.59 | 54.65 | 62.15 |
| 61 ..... | 27.47 | 36.87 | 43.27 | 49.37 | 55.53 | 63.16 |
| 62 ..... | 27.90 | 37.45 | 43.96 | 50.16 | 56.42 | 64.17 |
| 63 ..... | 28.32 | 38.02 | 44.64 | 50.94 | 57.30 | 65.18 |
| 64 ..... | 28.75 | 38.60 | 45.32 | 51.72 | 58.19 | 66.19 |
| 65 ..... | 29.17 | 39.18 | 46.01 | 52.51 | 59.07 | 67.20 |
| 66 ..... | 29.59 | 39.76 | 46.69 | 53.29 | 59.95 | 68.20 |
| 67 ..... | 30.02 | 40.34 | 47.37 | 54.07 | 60.84 | 69.21 |
| 68 ..... | 30.44 | 40.91 | 48.05 | 54.85 | 61.72 | 70.22 |
| 69 ..... | 30.87 | 41.49 | 48.74 | 55.64 | 62.61 | 71.23 |
| 70 ..... | 31.29 | 42.07 | 49.42 | 56.42 | 63.49 | 72.24 |

1/ Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are charged a rate equal to that for a 15-pound parcel for the zone to which addressed.

RATE SCHEDULE 103(b)

Proposed Priority Mail Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate 1/ | | | | | |
|---|---|---|---|---|---|---|
| | ZONES | | | | | |
| | Local 1,2,3 | 4 | 5 | 6 | 7 | 8 |
| To 2 | 2.65 | 2.65 | 2.65 | 2.65 | 2.65 | 2.65 |
| 3- 5 2/ | 3.80 | 3.80 | 3.80 | 3.80 | 3.80 | 3.80 |
| 6-10 | 4.80 | 6.10 | 6.95 | 7.50 | 8.25 | 9.35 |
| 11-15 | 6.75 | 8.90 | 10.35 | 11.25 | 12.45 | 14.35 |
| 16-20 | 8.70 | 11.70 | 13.75 | 15.00 | 16.70 | 19.30 |
| 21-25 | 10.65 | 14.50 | 17.15 | 18.75 | 20.95 | 24.30 |
| 26-30 | 12.60 | 17.30 | 20.55 | 22.50 | 25.15 | 29.30 |
| 31-35 | 14.55 | 20.05 | 23.90 | 26.25 | 29.40 | 34.25 |
| 36-40 | 16.50 | 22.85 | 27.30 | 30.00 | 33.60 | 39.25 |
| 41-45 | 18.45 | 25.65 | 30.70 | 33.75 | 37.85 | 44.20 |
| 46-50 | 20.40 | 28.45 | 34.10 | 37.50 | 42.10 | 49.20 |
| 51-55 | 22.30 | 31.25 | 37.50 | 41.20 | 46.30 | 54.20 |
| 56-60 | 24.25 | 34.05 | 40.85 | 44.95 | 50.55 | 59.15 |
| 61-65 | 26.20 | 36.85 | 44.25 | 48.70 | 54.80 | 64.15 |
| 66-70 | 28.15 | 39.65 | 47.65 | 52.45 | 59.00 | 69.15 |

1/ Exception: Parcels weighing less than 15 pounds, measuring over 84 inches in length and girth combined, are charged a rate equal to that for a 15-pound parcel for the zone to which addressed.

2/ Applies to items weighing greater than 2 pounds up to 5 pounds.

BILLING CODE 7715-01-C

## RATE SCHEDULE 200

[Second-class mail: Regular rate publications, outside county [1]]

| | Postage rate unit | Rates [2] Current (cents) | Rates [2] Proposed (cents) |
|---|---|---|---|
| Per pound: | | | |
| Non-advertising portion | Pound | 11.8 | ([3]) |
| Zoned pound rates: | | | |
| Zone: | | | |
| SCF | do | | 11.4 |
| 1 and 2 [4] | do | [5] 15.8 | 14.4 |
| 3 | do | 16.6 | 14.6 |
| 4 | do | 18.2 | 15.9 |
| 5 | do | 20.7 | 17.7 |
| 6 | do | 23.3 | 19.6 |
| 7 | do | 26.0 | 21.8 |
| 8 | do | 28.9 | 23/7 |
| Pallet difference [6] | | Pound rate | 10% |
| Per piece: | | | |
| A—Prepared [7] | Piece | 12.3 | 15.1 |
| B—Presorted to 3-digit city/5-digit ZIP code | do | 9.6 | 11.9 |
| C—Carrier-route presort | do | 7.8 | 9.7 |
| SCF difference [8] | do | (1.0) | |
| Non-advertising difference [9] | do | (3.0) | (4.0) |

[1] The rates in this schedule apply to commingled non-subscriber, non-requester, complementary, and sample copies in excess of the 10 percent allowance in regular-rate, non-profit, and classroom second-class mail.
[2] Charges are computed by adding the appropriate per-piece charge to the sum of the non-advertising portion and the advertising portion charge, as applicable.
[3] Under proposed rates, the full weight of the publication pays the zoned pound rates shown below.
[4] Under proposed rates, the zones 1 & 2 pound rate does not apply to mail entered under the SCF pound rate.
[5] Full rate for advertising portion of science-of-agriculture publications mailed to zones 1 & 2 is currently 10.1 cents per pound. The proposed full rate is 6.6 cents per pound for zones 1 & 2 and 3.8 cents per pound for SCF.
[6] Palletized publications receive a 10 percent reduction in the total of the pound rate charges of qualifying mail.
[7] Presorted to 3-digit (other than 3-digit city), SCF, states, mixed states.
[8] Applies to mail destinating in the originating SCF area. The difference is subtracted from the applicable piece rate.
[9] Per-piece rate reduction equals this rate times the proportion of the publication which is non-advertising.

## RATE SCHEDULE 201

[Second-class mail: In-county]

| | Full rates Current (cents) | Full rates Proposed (cents) |
|---|---|---|
| Per pound | 7.9 | 9.4 |
| Per piece: | | |
| Required presort | 4.3 | 5.3 |
| Carrier route presort | 2.5 | 3.1 |

## RATE SCHEDULE 202

[Second-class mail: Publications of authorized nonprofit organizations, outside county [1]]

| | Postage rate unit | Full rates [2] Current (cents) | Full rates [2] Proposed (cents) |
|---|---|---|---|
| Per pound: | | | |
| Non-advertising portion | Pound | 7.6 | ([3]) |
| Zoned pound rates: [3] | | | |
| Zone: | | | |
| SCF | do | | 3.8 |
| 1 and 2 [4] | do | 10.1 | 6.6 |
| 3 | do | 11.5 | 7.1 |
| 4 | do | 13.7 | 8.4 |
| 5 | do | 17.0 | 10.3 |

## RATE SCHEDULE 202—Continued

[Second-class mail: Publications of authorized nonprofit organizations, outside county [1]]

| | Postage rate unit | Full rates [2] | |
|---|---|---|---|
| | | Current (cents) | Proposed (cents) |
| 6 | do | 20.5 | 12.9 |
| 7 | do | 24.7 | 14.7 |
| 8 | do | 28.2 | 16.7 |
| Per piece | | | |
| A—Prepared [5] | Piece | 8.4 | 12.0 |
| B—Presorted to 3-digit city/5-digit ZIP code | do | 5.8 | 8.8 |
| C—Carrier-route presort | do | 3.9 | 5.6 |
| SCF difference [6] | do | (1.0) | |
| Non-advertising difference [7] | do | | (2.0) |

[1] These rates apply to second-class mail which is entered by authorized nonprofit organizations or associations.
[2] Charges are computed by adding the per-piece charge to the sum of the non-advertising portion charge and the advertising portion charge, as applicable.
[3] Under current rates, zoned pound rates are not applicable to publications containing 10 percent or less advertising content.
[4] Under proposed rates, the zones 1 & 2 pound rate does not apply to mail entered under the SCF pound rate.
[5] Presorted to 3-digit (other than 3-digit city), SCF, states, mixed states.
[6] Applies to mail destinating in the originating SCF area. The difference is subtracted from the applicable piece rate.
[7] Per-piece rate reduction equals this rate times the proportion of the publication which is non-advertising.
[8] Under proposed rates, the full weight of the publication pays the zoned pound rates shown below.

## RATE SCHEDULE 203

[Second-class mail: Classroom publications outside county]

| | Postage rate unit | Full rates [1] | |
|---|---|---|---|
| | | Current (cents) | Proposed (cents) |
| Per pound: | | | |
| Non-advertising portion | Pound | 6.2 | ([4]) |
| Zoned pound rates: | | | |
| Zone: | | | |
| SCF | do | | 3.5 |
| 1 and 2 [2] | do | 6.2 | 5.2 |
| 3 | do | 9.4 | 5.5 |
| 4 | do | 11.5 | 6.1 |
| 5 | do | 14.9 | 7.1 |
| 6 | do | 18.2 | 8.1 |
| 7 | do | 22.3 | 9.4 |
| 8 | do | 26.0 | 10.4 |
| Per piece | Piece | 5.6 | 11.9 |
| SCF difference [3] | do | (1.0) | |
| Non-advertising difference [4] | do | | (4.0) |

[1] Charges are computed by adding the per-piece charge to the sum of the non-advertising portion charge and the advertising portion charge, as applicable.
[2] Under proposed rates, the zones 1 & 2 pound rate does not apply to mail entered under the SCF pound rate.
[3] Applies to mail destinating in the originating SCF area. The difference is subtracted from the piece rate.
[4] Per-Piece rate reduction equals this rate times the proportion of the publication which is non-advertising.
[5] Under proposed rates, the full weight of the publication pays the zoned pound rates shown below.

## RATE SCHEDULE 207

[Second-class mail: Commingled non-subscriber and [1] non-requester]

| | Postage rate unit | Rates [2] | |
|---|---|---|---|
| | | Current (cents) | Proposed (cents) |
| Per Pound: | | | |
| Non-advertising portion | Pound | 11.6 | |
| Zoned pound rates: | | | |
| Zone: | | | |
| 1 and 2 | do | 15.6 | |
| 3 | do | 16.6 | |

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## RATE SCHEDULE 207—Continued

[Second-class mail: Commingled non-subscriber and [1] non-requester]

| | Postage rate unit | Rates [2] | |
|---|---|---|---|
| | | Current (cents) | Proposed (cents) |
| 4 | do | 18.2 | |
| 5 | do | 20.7 | |
| 6 | do | 23.3 | (6) |
| 7 | do | 26.0 | |
| 8 | do | 28.9 | |
| Per Piece: | | | |
| A—Prepared [3] | Piece | [5] 12.3 | |
| B—Presorted to 3-digit city/5-digit ZIP code | do | [5] 9.6 | |
| C—Carrier route presort | do | [5] 7.8 | |
| SCF difference [4] | do | (1.0) | |
| Non-advertising difference | do | (3.0) | |

[1] Includes sample copies in excess of the 10 percent allowance and complimentary copies.
[2] Charges are computed by adding the appropriate per-piece charge to the sum of the non-advertising portion and the advertising portion charge, as applicable.
[3] Presorted to 3-digit (other than 3-digit city) SCF, states, mixed states.
[4] Applies to mail destinating in the originating SCF area. The difference is subtracted from the applicable piece rate.
[5] For postage calculation, multiply the percentage of non-advertising content by 3.0 cents and subtract from the applicable piece charge.
[6] Under the proposed rates, this schedule is deleted and mailers otherwise paying these rates are referred to Schedule S–4.

## RATE SCHEDULE 300

[Third-class mail single piece]

| | Rate | |
|---|---|---|
| | Current (cents) | Proposed (cents) |
| Single piece: | | |
| One ounce | 22 | 25 |
| Two ounces | 29 | 45 |
| Three ounces | 56 | 65 |
| Four ounces | 73 | 85 |
| Five and six ounces | 88 | 100 |
| Each additional 2 ounces | 10 | 10 |
| Nonstandard surcharge [1] | 10 | 10 |
| Keys and identification devices: | | |
| First 2 ounces | 62 | 85 |
| Each additional 2 ounces | 34 | 47 |

[1] Applies only to pieces weighting 1 ounce or less.

## RATE SCHEDULE 301

[Third-class mail regular bulk]

| | Rate | |
|---|---|---|
| | Current (cents) | Proposed (cents) |
| Bulk Rate Structure: [1] | | |
| Per pound, required presortation | 38 plus 4.2 cents per piece | 45 plus 6.4 cents per piece. |
| Per pound, presorted to 5-digit ZIP Code | 38 plus 1.8 cents per piece | 45 plus 3.1 cents per piece. |
| Per pound, presorted to carrier route | 38.0 | 45.0. |
| Minimum per piece, required presortation | 12.5 | 16.5. |
| Minimum per piece, presorted to 5-digits | 10.1 | 13.2. |
| Minimum per piece, presorted to carrier route | 8.3 | 10.1. |

[1] Currently, a fee of $50 must be paid once each calendar year for each bulk mailing permit. The proposed bulk fee is $60.

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## RATE SCHEDULE 302

[Third-class mail nonprofit bulk]

| | Full rate | |
|---|---|---|
| | Current (cents) | Proposed (cents) |
| Nonprofit Bulk Rate Structure:[1] | | |
| Per pound, required presortation | 21.9 plus 2.6 cents per piece | 16.1 plus 3.5 cents per piece. |
| Per pound, presorted to 5-digit ZIP Code | 21.9 plus 1.5 cents per piece | 16.1 plus 2.6 cents per piece. |
| Per pound, presorted to carrier route | 21.9 | 18.1. |
| Minimum per piece, required presortation | 7.4 | 5.0. |
| Minimum per piece, presorted to 5-digits | 6.3 | 7.1. |
| Minimum per piece, presorted to carrier route | 4.8 | 4.5. |

[1] Currently, a fee of $50 must be paid once each calendar year for each bulk mailing permit. The proposed bulk fee is $60.

## RATE SCHEDULE 400

[Fourth-class mail: Parcel post][1]

Current Rates Are Shown on Schedules 400(a)(1) and 400(a)(2).
Proposed Rates Are Shown on Schedules 400(b)(1) and 400(b)(2).

[1] Bulk parcel post: The bulk fourth-class zone rates are applied to mailings of at least 300 pieces or 2,000 pounds of fourth-class mail of identical weight.

BILLING CODE 7715-01-M

RATE SCHEDULE 400(a)(1)

Parcel Post - Intra BMC/ASF Service
Current Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | |
|---|---|---|---|---|---|
| | Zones | | | | |
| | Local | 1&2 | 3 | 4 | 5 |
| 2 | 1.19 | 1.25 | 1.35 | 1.50 | 1.73 |
| 3 | 1.25 | 1.33 | 1.49 | 1.71 | 2.05 |
| 4 | 1.31 | 1.41 | 1.62 | 1.92 | 2.38 |
| 5 | 1.36 | 1.49 | 1.76 | 2.13 | 2.70 |
| 6 | 1.42 | 1.58 | 1.89 | 2.34 | 3.02 |
| 7 | 1.47 | 1.66 | 2.03 | 2.55 | 3.35 |
| 8 | 1.53 | 1.74 | 2.16 | 2.76 | 3.67 |
| 9 | 1.59 | 1.83 | 2.30 | 2.97 | 3.99 |
| 10 | 1.64 | 1.91 | 2.43 | 3.18 | 4.32 |
| 11 | 1.69 | 1.97 | 2.54 | 3.33 | 4.55 |
| 12 | 1.74 | 2.04 | 2.63 | 3.49 | 4.78 |
| 13 | 1.78 | 2.10 | 2.73 | 3.63 | 4.99 |
| 14 | 1.82 | 2.16 | 2.82 | 3.76 | 5.19 |
| 15 | 1.86 | 2.21 | 2.90 | 3.88 | 5.38 |
| 16 | 1.90 | 2.26 | 2.98 | 4.00 | 5.55 |
| 17 | 1.94 | 2.32 | 3.06 | 4.11 | 5.72 |
| 18 | 1.98 | 2.36 | 3.13 | 4.22 | 5.87 |
| 19 | 2.02 | 2.41 | 3.20 | 4.32 | 6.02 |
| 20 | 2.05 | 2.46 | 3.27 | 4.42 | 6.17 |
| 21 | 2.09 | 2.51 | 3.33 | 4.51 | 6.31 |
| 22 | 2.12 | 2.55 | 3.40 | 4.60 | 6.44 |
| 23 | 2.16 | 2.59 | 3.46 | 4.69 | 6.57 |
| 24 | 2.19 | 2.64 | 3.52 | 4.78 | 6.69 |
| 25 | 2.23 | 2.68 | 3.58 | 4.86 | 6.81 |
| 26 | 2.26 | 2.72 | 3.64 | 4.94 | 6.92 |
| 27 | 2.29 | 2.76 | 3.69 | 5.02 | 7.04 |
| 28 | 2.32 | 2.80 | 3.75 | 5.09 | 7.14 |
| 29 | 2.36 | 2.84 | 3.80 | 5.17 | 7.25 |
| 30 | 2.39 | 2.88 | 3.85 | 5.24 | 7.35 |
| 31 | 2.42 | 2.92 | 3.91 | 5.31 | 7.45 |
| 32 | 2.45 | 2.96 | 3.96 | 5.38 | 7.55 |
| 33 | 2.48 | 2.99 | 4.01 | 5.45 | 7.65 |
| 34 | 2.51 | 3.03 | 4.06 | 5.52 | 7.74 |
| 35 | 2.54 | 3.07 | 4.10 | 5.58 | 7.83 |

RATE SCHEDULE 400(a)(1) (Cont'd.)

Parcel Post - Intra BMC/ASF Service
Current Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | |
|---|---|---|---|---|---|
| | Zones | | | | |
| | Local | 1&2 | 3 | 4 | 5 |
| 36 | 2.57 | 3.10 | 4.15 | 5.65 | 7.92 |
| 37 | 2.60 | 3.14 | 4.20 | 5.71 | 8.01 |
| 38 | 2.63 | 3.17 | 4.25 | 5.77 | 8.09 |
| 39 | 2.66 | 3.21 | 4.29 | 5.83 | 8.18 |
| 40 | 2.69 | 3.24 | 4.34 | 5.89 | 8.26 |
| 41 | 2.72 | 3.28 | 4.38 | 5.95 | 8.34 |
| 42 | 2.75 | 3.31 | 4.42 | 6.01 | 8.42 |
| 43 | 2.78 | 3.34 | 4.47 | 6.07 | 8.50 |
| 44 | 2.81 | 3.38 | 4.51 | 6.12 | 8.58 |
| 45 | 2.84 | 3.41 | 4.55 | 6.18 | 8.65 |
| 46 | 2.86 | 3.45 | 4.60 | 6.23 | 8.73 |
| 47 | 2.89 | 3.48 | 4.64 | 6.29 | 8.80 |
| 48 | 2.92 | 3.51 | 4.68 | 6.34 | 8.87 |
| 49 | 2.95 | 3.54 | 4.72 | 6.39 | 8.94 |
| 50 | 2.98 | 3.58 | 4.76 | 6.45 | 9.01 |
| 51 | 3.01 | 3.61 | 4.80 | 6.50 | 9.08 |
| 52 | 3.03 | 3.64 | 4.84 | 6.55 | 9.15 |
| 53 | 3.06 | 3.67 | 4.88 | 6.60 | 9.22 |
| 54 | 3.09 | 3.70 | 4.92 | 6.65 | 9.29 |
| 55 | 3.12 | 3.73 | 4.96 | 6.70 | 9.35 |
| 56 | 3.14 | 3.77 | 5.00 | 6.75 | 9.42 |
| 57 | 3.17 | 3.80 | 5.04 | 6.80 | 9.48 |
| 58 | 3.20 | 3.83 | 5.07 | 6.85 | 9.55 |
| 59 | 3.23 | 3.86 | 5.11 | 6.90 | 9.61 |
| 60 | 3.25 | 3.89 | 5.15 | 6.94 | 9.67 |
| 61 | 3.28 | 3.92 | 5.19 | 6.99 | 9.74 |
| 62 | 3.31 | 3.95 | 5.22 | 7.04 | 9.80 |
| 63 | 3.34 | 3.98 | 5.26 | 7.08 | 9.86 |
| 64 | 3.36 | 4.01 | 5.30 | 7.13 | 9.92 |
| 65 | 3.39 | 4.04 | 5.33 | 7.17 | 9.98 |
| 66 | 3.42 | 4.07 | 5.37 | 7.22 | 10.03 |
| 67 | 3.44 | 4.10 | 5.41 | 7.26 | 10.09 |
| 68 | 3.47 | 4.13 | 5.44 | 7.31 | 10.15 |
| 69 | 3.50 | 4.16 | 5.48 | 7.35 | 10.21 |
| 70 | 3.52 | 4.19 | 5.51 | 7.40 | 10.27 |

RATE SCHEDULE 400(a)(2)

Parcel Post - Inter BMC/ASF Service
Current Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | | | |
|---|---|---|---|---|---|---|---|
| | Zones | | | | | | |
| | 1&2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 2 ..... | 1.41 | 1.51 | 1.66 | 1.89 | 2.13 | 2.25 | 2.30 |
| 3 ..... | 1.49 | 1.65 | 1.87 | 2.21 | 2.58 | 2.99 | 3.87 |
| 4 ..... | 1.57 | 1.78 | 2.08 | 2.54 | 3.03 | 3.57 | 4.74 |
| 5 ..... | 1.65 | 1.92 | 2.29 | 2.86 | 3.47 | 4.16 | 5.62 |
| 6 ..... | 1.74 | 2.05 | 2.50 | 3.18 | 3.92 | 4.74 | 6.49 |
| 7 ..... | 1.82 | 2.19 | 2.71 | 3.51 | 4.37 | 5.32 | 7.36 |
| 8 ..... | 1.90 | 2.32 | 2.92 | 3.83 | 4.82 | 5.91 | 8.25 |
| 9 ..... | 1.99 | 2.46 | 3.13 | 4.15 | 5.26 | 6.49 | 9.12 |
| 10 ..... | 2.07 | 2.59 | 3.34 | 4.48 | 5.71 | 7.07 | 10.00 |
| 11 ..... | 2.13 | 2.70 | 3.49 | 4.71 | 6.03 | 7.49 | 10.62 |
| 12 ..... | 2.20 | 2.79 | 3.65 | 4.94 | 6.34 | 7.89 | 11.23 |
| 13 ..... | 2.26 | 2.89 | 3.79 | 5.15 | 6.63 | 8.27 | 11.78 |
| 14 ..... | 2.32 | 2.98 | 3.92 | 5.35 | 6.90 | 8.62 | 12.30 |
| 15 ..... | 2.37 | 3.06 | 4.04 | 5.54 | 7.15 | 8.94 | 12.79 |
| 16 ..... | 2.42 | 3.14 | 4.16 | 5.71 | 7.39 | 9.25 | 13.24 |
| 17 ..... | 2.48 | 3.22 | 4.27 | 5.88 | 7.61 | 9.54 | 13.67 |
| 18 ..... | 2.52 | 3.29 | 4.38 | 6.03 | 7.83 | 9.81 | 14.08 |
| 19 ..... | 2.57 | 3.36 | 4.48 | 6.18 | 8.03 | 10.07 | 14.46 |
| 20 ..... | 2.62 | 3.43 | 4.58 | 6.33 | 8.22 | 10.32 | 14.83 |
| 21 ..... | 2.67 | 3.49 | 4.67 | 6.47 | 8.41 | 10.56 | 15.18 |
| 22 ..... | 2.71 | 3.56 | 4.76 | 6.60 | 8.59 | 10.79 | 15.51 |
| 23 ..... | 2.75 | 3.62 | 4.85 | 6.73 | 8.76 | 11.01 | 15.83 |
| 24 ..... | 2.80 | 3.68 | 4.94 | 6.85 | 8.92 | 11.22 | 16.14 |
| 25 ..... | 2.84 | 3.74 | 5.02 | 6.97 | 9.08 | 11.42 | 16.43 |
| 26 ..... | 2.88 | 3.80 | 5.10 | 7.08 | 9.23 | 11.61 | 16.72 |
| 27 ..... | 2.92 | 3.85 | 5.18 | 7.20 | 9.38 | 11.80 | 16.99 |
| 28 ..... | 2.96 | 3.91 | 5.25 | 7.30 | 9.52 | 11.98 | 17.26 |
| 29 ..... | 3.00 | 3.96 | 5.33 | 7.41 | 9.66 | 12.16 | 17.52 |
| 30 ..... | 3.04 | 4.01 | 5.40 | 7.51 | 9.80 | 12.33 | 17.77 |
| 31 ..... | 3.08 | 4.07 | 5.47 | 7.61 | 9.93 | 12.50 | 18.01 |
| 32 ..... | 3.12 | 4.12 | 5.54 | 7.71 | 10.06 | 12.66 | 18.24 |
| 33 ..... | 3.15 | 4.17 | 5.61 | 7.81 | 10.19 | 12.82 | 18.47 |
| 34 ..... | 3.19 | 4.22 | 5.68 | 7.90 | 10.31 | 12.97 | 18.70 |
| 35 ..... | 3.23 | 4.26 | 5.74 | 7.99 | 10.43 | 13.12 | 18.91 |

RATE SCHEDULE 400(a)(2) (Cont'd.)

Parcel Post - Inter BMC/ASF Service
Current Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | | | |
|---|---|---|---|---|---|---|---|
| | ZONE | | | | | | |
| | 1&2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 36 | 3.26 | 4.31 | 5.81 | 8.08 | 10.54 | 13.27 | 19.12 |
| 37 | 3.30 | 4.36 | 5.87 | 8.17 | 10.66 | 13.41 | 19.33 |
| 38 | 3.33 | 4.41 | 5.93 | 8.25 | 10.77 | 13.55 | 19.53 |
| 39 | 3.37 | 4.45 | 5.99 | 8.34 | 10.88 | 13.69 | 19.73 |
| 40 | 3.40 | 4.50 | 6.05 | 8.42 | 10.98 | 13.83 | 19.92 |
| 41 | 3.44 | 4.54 | 6.11 | 8.50 | 11.09 | 13.96 | 20.11 |
| 42 | 3.47 | 4.58 | 6.17 | 8.58 | 11.19 | 14.09 | 20.29 |
| 43 | 3.50 | 4.63 | 6.23 | 8.66 | 11.29 | 14.21 | 20.47 |
| 44 | 3.54 | 4.67 | 6.28 | 8.74 | 11.39 | 14.34 | 20.65 |
| 45 | 3.57 | 4.71 | 6.34 | 8.81 | 11.49 | 14.46 | 20.82 |
| 46 | 3.61 | 4.76 | 6.39 | 8.89 | 11.59 | 14.58 | 20.99 |
| 47 | 3.64 | 4.80 | 6.45 | 8.96 | 11.68 | 14.69 | 21.16 |
| 48 | 3.67 | 4.84 | 6.50 | 9.03 | 11.77 | 14.81 | 21.32 |
| 49 | 3.70 | 4.88 | 6.55 | 9.10 | 11.86 | 14.92 | 21.48 |
| 50 | 3.74 | 4.92 | 6.61 | 9.17 | 11.95 | 15.03 | 21.64 |
| 51 | 3.77 | 4.96 | 6.66 | 9.24 | 12.04 | 15.14 | 21.80 |
| 52 | 3.80 | 5.00 | 6.71 | 9.31 | 12.13 | 15.25 | 21.95 |
| 53 | 3.83 | 5.04 | 6.76 | 9.38 | 12.22 | 15.36 | 22.10 |
| 54 | 3.86 | 5.08 | 6.81 | 9.45 | 12.30 | 15.46 | 22.25 |
| 55 | 3.89 | 5.12 | 6.86 | 9.51 | 12.39 | 15.57 | 22.39 |
| 56 | 3.93 | 5.16 | 6.91 | 9.58 | 12.47 | 15.67 | 22.54 |
| 57 | 3.96 | 5.20 | 6.96 | 9.64 | 12.55 | 15.77 | 22.68 |
| 58 | 3.99 | 5.23 | 7.01 | 9.71 | 12.63 | 15.87 | 22.82 |
| 59 | 4.02 | 5.27 | 7.06 | 9.77 | 12.71 | 15.97 | 22.95 |
| 60 | 4.05 | 5.31 | 7.10 | 9.83 | 12.79 | 16.06 | 23.09 |
| 61 | 4.08 | 5.35 | 7.15 | 9.90 | 12.87 | 16.16 | 23.22 |
| 62 | 4.11 | 5.38 | 7.20 | 9.96 | 12.94 | 16.25 | 23.35 |
| 63 | 4.14 | 5.42 | 7.24 | 10.02 | 13.02 | 16.35 | 23.48 |
| 64 | 4.17 | 5.46 | 7.29 | 10.08 | 13.10 | 16.44 | 23.61 |
| 65 | 4.20 | 5.49 | 7.33 | 10.14 | 13.17 | 16.53 | 23.74 |
| 66 | 4.23 | 5.53 | 7.38 | 10.19 | 13.24 | 16.62 | 23.86 |
| 67 | 4.26 | 5.57 | 7.42 | 10.25 | 13.32 | 16.71 | 23.99 |
| 68 | 4.29 | 5.60 | 7.47 | 10.31 | 13.39 | 16.80 | 24.11 |
| 69 | 4.32 | 5.64 | 7.51 | 10.37 | 13.46 | 16.88 | 24.23 |
| 70 | 4.35 | 5.67 | 7.56 | 10.43 | 13.53 | 16.97 | 24.35 |

For nonmachinable Inter-BMC parcels, add $0.90.

RATE SCHEDULE 400(b)(1)

Parcel Post - Intra BMC/ASF Service
Proposed Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | |
|---|---|---|---|---|---|
| | Zones | | | | |
| | Local | 1&2 | 3 | 4 | 5 |
| Up to 2..... | 1.40 | 1.40 | 1.40 | 1.40 | 1.40 |
| 3-5 ..... | 1.55 | 1.55 | 1.55 | 1.55 | 1.55 |
| 6-10 ..... | 1.70 | 1.90 | 2.35 | 2.85 | 3.70 |
| 11-15 ..... | 2.05 | 2.40 | 3.25 | 4.20 | 5.65 |
| 16-20 ..... | 2.30 | 2.75 | 3.80 | 5.05 | 6.65 |
| 21-25 ..... | 2.55 | 3.05 | 4.15 | 5.50 | 7.35 |
| 26-30 ..... | 2.75 | 3.30 | 4.50 | 5.90 | 7.90 |
| 31-35 ..... | 3.00 | 3.55 | 4.85 | 6.30 | 8.40 |
| 36-40 ..... | 3.20 | 3.80 | 5.15 | 6.70 | 8.90 |
| 41-45 ..... | 3.40 | 4.00 | 5.40 | 7.00 | 9.30 |
| 46-50 ..... | 3.60 | 4.25 | 5.65 | 7.35 | 9.70 |
| 51-55 ..... | 3.80 | 4.45 | 5.95 | 7.65 | 10.10 |
| 56-60 ..... | 4.00 | 4.65 | 6.20 | 7.95 | 10.45 |
| 61-65 ..... | 4.20 | 4.90 | 6.45 | 8.25 | 10.80 |
| 66-70 ..... | 4.40 | 5.10 | 6.70 | 8.50 | 11.10 |

RATE SCHEDULE 400(b)(2)

Parcel Post - Inter BMC/ASF Service
Proposed Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | | | |
|---|---|---|---|---|---|---|---|
| | Zones | | | | | | |
| | I&2 | 3 | 4 | 5 | 6 | 7 | 8 |
| Up to 2 .. | 2.05 | 2.05 | 2.05 | 2.05 | 2.05 | 2.05 | 2.05 |
| 3-5 ..... | 2.75 | 2.75 | 2.75 | 2.75 | 2.75 | 2.75 | 2.75 |
| 6-10..... | 2.80 | 2.95 | 3.05 | 3.90 | 4.70 | 6.20 | 8.40 |
| 11-15..... | 2.90 | 3.45 | 4.40 | 5.85 | 7.30 | 10.10 | 14.10 |
| 16-20..... | 2.95 | 4.00 | 5.25 | 6.85 | 8.50 | 11.95 | 16.45 |
| 21-25..... | 3.25 | 4.35 | 5.70 | 7.55 | 9.40 | 13.15 | 18.35 |
| 26-30..... | 3.50 | 4.70 | 6.10 | 8.10 | 10.10 | 14.15 | 19.75 |
| 31-35..... | 3.75 | 5.05 | 6.50 | 8.60 | 10.80 | 15.10 | 20.75 |
| 36-40..... | 4.00 | 5.35 | 6.90 | 9.10 | 11.30 | 15.75 | 21.85 |
| 41-45..... | 4.20 | 5.60 | 7.20 | 9.50 | 11.80 | 16.45 | 22.80 |
| 46-50..... | 4.45 | 5.85 | 7.55 | 9.90 | 12.25 | 17.05 | 23.60 |
| 51-55..... | 4.65 | 6.15 | 7.85 | 10.30 | 12.70 | 17.65 | 24.40 |
| 56-60..... | 4.85 | 6.40 | 8.15 | 10.65 | 13.15 | 18.20 | 25.10 |
| 61-65..... | 5.10 | 6.65 | 8.45 | 11.00 | 13.55 | 18.70 | 25.75 |
| 66-70..... | 5.30 | 6.90 | 8.70 | 11.30 | 13.90 | 19.20 | 26.40 |

For Nonmachinable Inter-BMC parcels, add $1.25.

BILLING CODE 7715-01-C

## RATE SCHEDULE 402

[Fourth-class mail: Special and library rates]

| | Rates | |
|---|---|---|
| | Current (cents) | Proposed (cents) |
| Special: | | |
| First Pound: | | |
| Not presorted | 69 | 87 |
| Presorted to 5-digits [1] [2] | 47 | 57 |
| Presorted to BMC [1] [3] | 60 | 76 |
| Each additional pound through 7 pounds | 25 | 32 |
| Each additional pound over 7 pounds | 15 | 19 |
| Library: [4] | | |
| First pound | 50 | 61 |
| Each additional pound through 7 pounds | 17 | 21 |
| Each additional pound over 7 pounds | 9 | 11 |

[1] A fee of $50 must be paid once each calendar year for each permit. The proposed fee level is $60.
[2] For mailings of 500 or more pieces properly prepaid and presorted to five-digit destination ZIP Codes.
[3] For mailings of 500 or more pieces properly prepaid and presorted to Bulk Mail Centers.
[4] Current and proposed Library Rates are full rates.

BILLING CODE 7715-01-M

RATE SCHEDULE 405

Fourth-Class Mail: Single-Piece Bound Printed Matter
(Dollars)

Current

| Postage Rate Units (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | Local | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1.5 | 0.55 | 0.77 | 0.81 | 0.89 | 1.00 | 1.11 | 1.26 | 1.38 |
| 2 | 0.58 | 0.81 | 0.87 | 0.97 | 1.12 | 1.27 | 1.46 | 1.62 |
| 2.5 | 0.60 | 0.85 | 0.92 | 1.05 | 1.23 | 1.42 | 1.67 | 1.86 |
| 3 | 0.63 | 0.89 | 0.98 | 1.12 | 1.35 | 1.58 | 1.87 | 2.10 |
| 3.5 | 0.65 | 0.93 | 1.03 | 1.20 | 1.47 | 1.73 | 2.07 | 2.34 |
| 4 | 0.68 | 0.97 | 1.09 | 1.28 | 1.58 | 1.89 | 2.28 | 2.59 |
| 4.5 | 0.70 | 1.01 | 1.14 | 1.36 | 1.70 | 2.04 | 2.48 | 2.83 |
| 5 | 0.73 | 1.06 | 1.20 | 1.44 | 1.82 | 2.20 | 2.69 | 3.07 |
| 6 | 0.77 | 1.14 | 1.30 | 1.60 | 2.05 | 2.50 | 3.09 | 3.55 |
| 7 | 0.82 | 1.22 | 1.41 | 1.76 | 2.28 | 2.81 | 3.50 | 4.04 |
| 8 | 0.87 | 1.30 | 1.52 | 1.91 | 2.51 | 3.12 | 3.91 | 4.52 |
| 9 | 0.92 | 1.38 | 1.63 | 2.07 | 2.75 | 3.43 | 4.31 | 5.01 |
| 10 | 0.97 | 1.46 | 1.74 | 2.23 | 2.98 | 3.74 | 4.72 | 5.49 |

Proposed

| Postage Rate Units (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | Local | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1.5 | 0.73 | 1.00 | 1.06 | 1.15 | 1.27 | 1.41 | 1.57 | 1.72 |
| 2 | 0.74 | 1.02 | 1.10 | 1.22 | 1.38 | 1.56 | 1.78 | 1.98 |
| 2.5 | 0.75 | 1.04 | 1.14 | 1.29 | 1.49 | 1.72 | 1.99 | 2.24 |
| 3 | 0.76 | 1.06 | 1.18 | 1.36 | 1.60 | 1.87 | 2.20 | 2.50 |
| 3.5 | 0.77 | 1.08 | 1.22 | 1.43 | 1.71 | 2.03 | 2.41 | 2.76 |
| 4 | 0.78 | 1.10 | 1.26 | 1.50 | 1.82 | 2.18 | 2.62 | 3.02 |
| 4.5 | 0.79 | 1.12 | 1.30 | 1.57 | 1.93 | 2.34 | 2.83 | 3.28 |
| 5 | 0.80 | 1.14 | 1.34 | 1.64 | 2.04 | 2.49 | 3.04 | 3.54 |
| 6 | 0.82 | 1.18 | 1.42 | 1.78 | 2.26 | 2.80 | 3.46 | 4.06 |
| 7 | 0.84 | 1.22 | 1.50 | 1.92 | 2.48 | 3.11 | 3.88 | 4.58 |
| 8 | 0.87 | 1.30 | 1.58 | 2.06 | 2.70 | 3.42 | 4.30 | 5.10 |
| 9 | 0.92 | 1.38 | 1.66 | 2.20 | 2.92 | 3.73 | 4.72 | 5.62 |
| 10 | 0.97 | 1.46 | 1.74 | 2.34 | 3.14 | 4.04 | 5.14 | 6.14 |

BILLING CODE 7715-01-C

## RATE SCHEDULE 406

[Fourth-class mail: Bulk bound printed matter [1]]

| Zones | Current | | | Proposed | | |
|---|---|---|---|---|---|---|
| | Per-piece | | Per pound (cents) | Per-piece | | Per pound (cents) |
| | Required (cents) | Carrier route [2] (cents) | | Required (cents) | Carrier route [2] (cents) | |
| Local | 24 | 19 | 3.6 | 35 | 30 | 2.0 |
| 1 and 2 | 32 | 27 | 6.3 | 47 | 42 | 4.0 |
| 3 | 32 | 27 | 9.1 | 47 | 42 | 8.0 |
| 4 | 32 | 27 | 14.0 | 47 | 42 | 14.0 |
| 5 | 32 | 27 | 21.5 | 47 | 42 | 22.0 |
| 6 | 32 | 27 | 33.1 | 47 | 42 | 31.0 |
| 7 | 32 | 27 | 38.9 | 47 | 42 | 42.0 |
| 8 | 32 | 27 | 46.6 | 47 | 42 | 52.0 |

[1] Includes both catalogs and similar bound printed matter.
[2] Applies to mailings of at least 300 pieces presorted to carrier route as prescribed by the Postal Service.

BILLING CODE 7715-01-M

## RATE SCHEDULE 500(a)

### Express Mail - Same Day Airport Service
### Current Rates
### (Dollars)

| Postage Rate Units (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | 8.35 | 8.35 | 8.35 | 8.35 | 8.35 | 8.35 | 8.35 | 8.35 |
| 2 | 8.35 | 8.35 | 8.35 | 8.35 | 8.35 | 8.35 | 8.35 | 8.35 |
| 3 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 |
| 4 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 |
| 5 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 | 10.35 |
| 6 | 10.50 | 10.55 | 11.00 | 11.55 | 12.20 | 12.75 | 13.55 | 14.70 |
| 7 | 11.05 | 11.15 | 11.60 | 12.30 | 13.00 | 13.65 | 14.60 | 15.95 |
| 8 | 11.60 | 11.70 | 12.25 | 13.00 | 13.85 | 14.60 | 15.65 | 17.20 |
| 9 | 12.10 | 12.25 | 12.85 | 13.75 | 14.65 | 15.50 | 16.70 | 18.40 |
| 10 | 12.65 | 12.80 | 13.50 | 14.45 | 15.50 | 16.40 | 17.75 | 19.65 |
| 11 | 13.20 | 13.35 | 14.10 | 15.20 | 16.30 | 17.35 | 18.80 | 20.90 |
| 12 | 13.75 | 13.90 | 14.75 | 15.90 | 17.15 | 18.25 | 19.85 | 22.15 |
| 13 | 14.30 | 14.45 | 15.35 | 16.65 | 17.95 | 19.15 | 20.90 | 23.40 |
| 14 | 14.85 | 15.00 | 16.00 | 17.35 | 18.80 | 20.10 | 21.95 | 24.65 |
| 15 | 15.35 | 15.55 | 16.60 | 18.05 | 19.60 | 21.00 | 23.00 | 25.85 |
| 16 | 15.90 | 16.10 | 17.20 | 18.80 | 20.45 | 21.95 | 24.05 | 27.10 |
| 17 | 16.45 | 16.70 | 17.85 | 19.50 | 21.25 | 22.85 | 25.10 | 28.35 |
| 18 | 17.00 | 17.25 | 18.45 | 20.25 | 22.10 | 23.75 | 26.15 | 29.60 |
| 19 | 17.55 | 17.80 | 19.10 | 20.95 | 22.90 | 24.70 | 27.20 | 30.85 |
| 20 | 18.10 | 18.35 | 19.70 | 21.70 | 23.75 | 25.60 | 28.25 | 32.10 |
| 21 | 18.60 | 18.90 | 20.35 | 22.40 | 24.55 | 26.50 | 29.30 | 33.30 |
| 22 | 19.15 | 19.45 | 20.95 | 23.10 | 25.40 | 27.45 | 30.35 | 34.55 |
| 23 | 19.70 | 20.00 | 21.60 | 23.85 | 26.20 | 28.35 | 31.40 | 35.80 |
| 24 | 20.25 | 20.55 | 22.20 | 24.55 | 27.05 | 29.25 | 32.45 | 37.05 |
| 25 | 20.80 | 21.10 | 22.85 | 25.30 | 27.85 | 30.20 | 33.50 | 38.30 |
| 26 | 21.35 | 21.65 | 23.45 | 26.00 | 28.70 | 31.10 | 34.55 | 39.55 |
| 27 | 21.85 | 22.25 | 24.10 | 26.75 | 29.50 | 32.05 | 35.60 | 40.75 |
| 28 | 22.40 | 22.80 | 24.70 | 27.45 | 30.35 | 32.95 | 36.65 | 42.00 |
| 29 | 22.95 | 23.35 | 25.35 | 28.20 | 31.15 | 33.85 | 37.70 | 43.25 |
| 30 | 23.50 | 23.90 | 25.95 | 28.90 | 32.00 | 34.80 | 38.75 | 44.50 |
| 31 | 24.05 | 24.45 | 26.60 | 29.60 | 32.80 | 35.70 | 39.80 | 45.75 |
| 32 | 24.60 | 25.00 | 27.20 | 30.35 | 33.65 | 36.60 | 40.85 | 47.00 |
| 33 | 25.15 | 25.55 | 27.85 | 31.05 | 34.45 | 37.55 | 41.90 | 48.25 |
| 34 | 25.65 | 26.10 | 28.45 | 31.80 | 35.30 | 38.45 | 42.95 | 49.45 |
| 35 | 26.20 | 26.65 | 29.10 | 32.50 | 36.10 | 39.35 | 44.00 | 50.70 |

RATE SCHEDULE 500(a) (Cont'd)

Express Mail - Same Day Airport Service
Current Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 36 | 26.75 | 27.20 | 29.70 | 33.25 | 36.95 | 40.30 | 45.05 | 51.95 |
| 37 | 27.30 | 27.80 | 30.35 | 33.95 | 37.75 | 41.20 | 46.10 | 53.20 |
| 38 | 27.85 | 28.35 | 30.95 | 34.70 | 38.60 | 42.10 | 47.15 | 54.45 |
| 39 | 28.40 | 28.90 | 31.60 | 35.40 | 39.40 | 43.05 | 48.20 | 55.70 |
| 40 | 28.90 | 29.45 | 32.20 | 36.10 | 40.25 | 43.95 | 49.25 | 56.90 |
| 41 | 29.45 | 30.00 | 32.80 | 36.85 | 41.05 | 44.90 | 50.30 | 58.15 |
| 42 | 30.00 | 30.55 | 33.45 | 37.55 | 41.90 | 45.80 | 51.35 | 59.40 |
| 43 | 30.55 | 31.10 | 34.05 | 38.30 | 42.70 | 46.70 | 52.40 | 60.65 |
| 44 | 31.10 | 31.65 | 34.70 | 39.00 | 43.55 | 47.65 | 53.45 | 61.90 |
| 45 | 31.65 | 32.20 | 35.30 | 39.75 | 44.35 | 48.55 | 54.50 | 63.15 |
| 46 | 32.15 | 32.75 | 35.95 | 40.45 | 45.20 | 49.45 | 55.55 | 64.35 |
| 47 | 32.70 | 33.35 | 36.55 | 41.15 | 46.00 | 50.40 | 56.60 | 65.60 |
| 48 | 33.25 | 33.90 | 37.20 | 41.90 | 46.85 | 51.30 | 57.65 | 66.85 |
| 49 | 33.80 | 34.45 | 37.80 | 42.60 | 47.65 | 52.20 | 58.70 | 68.10 |
| 50 | 34.35 | 35.00 | 38.45 | 43.35 | 48.50 | 53.15 | 59.75 | 69.35 |
| 51 | 34.90 | 35.55 | 39.05 | 44.05 | 49.30 | 54.05 | 60.80 | 70.60 |
| 52 | 35.40 | 36.10 | 39.70 | 44.80 | 50.15 | 55.00 | 61.85 | 71.80 |
| 53 | 35.95 | 36.65 | 40.30 | 45.50 | 50.95 | 55.90 | 62.90 | 73.05 |
| 54 | 36.50 | 37.20 | 40.95 | 46.25 | 51.80 | 56.80 | 63.95 | 74.30 |
| 55 | 37.05 | 37.75 | 41.55 | 46.95 | 52.60 | 57.75 | 65.00 | 75.55 |
| 56 | 37.60 | 38.30 | 42.20 | 47.65 | 53.45 | 58.65 | 66.05 | 76.80 |
| 57 | 38.15 | 38.90 | 42.80 | 48.40 | 54.25 | 59.55 | 67.10 | 78.05 |
| 58 | 38.70 | 39.45 | 43.45 | 49.10 | 55.10 | 60.50 | 68.15 | 79.30 |
| 59 | 39.20 | 40.00 | 44.05 | 49.85 | 55.90 | 61.40 | 69.20 | 80.50 |
| 60 | 39.75 | 40.55 | 44.70 | 50.55 | 56.75 | 62.30 | 70.25 | 81.75 |
| 61 | 40.30 | 41.10 | 45.30 | 51.30 | 57.55 | 63.25 | 71.30 | 83.00 |
| 62 | 40.85 | 41.65 | 45.95 | 52.00 | 58.40 | 64.15 | 72.35 | 84.25 |
| 63 | 41.40 | 42.20 | 46.55 | 52.75 | 59.20 | 65.05 | 73.40 | 85.50 |
| 64 | 41.95 | 42.75 | 47.20 | 53.45 | 60.05 | 66.00 | 74.45 | 86.75 |
| 65 | 42.25 | 43.30 | 47.80 | 54.15 | 60.85 | 66.90 | 75.50 | 87.95 |
| 66 | 43.00 | 43.85 | 48.40 | 54.90 | 61.70 | 67.85 | 76.55 | 89.20 |
| 67 | 43.55 | 44.45 | 49.05 | 55.60 | 62.50 | 68.75 | 77.60 | 90.45 |
| 68 | 44.10 | 45.00 | 49.65 | 56.35 | 63.35 | 69.65 | 78.65 | 91.70 |
| 69 | 44.65 | 45.55 | 50.30 | 57.05 | 64.15 | 70.60 | 79.70 | 92.95 |
| 70 | 45.20 | 46.10 | 50.90 | 57.80 | 65.00 | 71.50 | 80.75 | 94.20 |

## RATE SCHEDULE 501(a)

### Express Mail - Custom Designed Service
### Current Rates
### (Dollars)

| Postage Rate Units (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 |
| 2 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 |
| 3 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 |
| 4 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 |
| 5 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 |
| 6 | 12.90 | 13.65 | 14.30 | 14.85 | 15.45 | 16.05 | 16.80 | 17.95 |
| 7 | 12.95 | 14.30 | 15.00 | 15.70 | 16.40 | 17.05 | 18.00 | 19.35 |
| 8 | 13.00 | 14.95 | 15.75 | 16.50 | 17.35 | 18.10 | 19.15 | 20.70 |
| 9 | 13.05 | 15.55 | 16.50 | 17.35 | 18.30 | 19.15 | 20.30 | 22.05 |
| 10 | 13.15 | 16.20 | 17.25 | 18.20 | 19.25 | 20.15 | 21.50 | 23.40 |
| 11 | 13.45 | 16.85 | 18.00 | 19.05 | 20.20 | 21.20 | 22.65 | 24.75 |
| 12 | 13.80 | 17.50 | 18.75 | 19.90 | 21.10 | 22.25 | 23.80 | 26.15 |
| 13 | 14.10 | 18.15 | 19.50 | 20.70 | 22.05 | 23.30 | 25.00 | 27.50 |
| 14 | 14.45 | 18.75 | 20.20 | 21.55 | 23.00 | 24.30 | 26.15 | 28.85 |
| 15 | 14.80 | 19.40 | 20.95 | 22.40 | 23.95 | 25.35 | 27.35 | 30.20 |
| 16 | 15.10 | 20.05 | 21.70 | 23.25 | 24.90 | 26.40 | 28.50 | 31.55 |
| 17 | 15.45 | 20.70 | 22.45 | 24.05 | 25.85 | 27.40 | 29.65 | 32.90 |
| 18 | 15.80 | 21.30 | 23.20 | 24.90 | 26.80 | 28.45 | 30.85 | 34.30 |
| 19 | 16.10 | 21.95 | 23.95 | 25.75 | 27.70 | 29.50 | 32.00 | 35.65 |
| 20 | 16.45 | 22.60 | 24.70 | 26.60 | 28.65 | 30.50 | 33.15 | 37.00 |
| 21 | 16.75 | 23.25 | 25.40 | 27.40 | 29.60 | 31.55 | 34.35 | 38.35 |
| 22 | 17.10 | 23.90 | 26.15 | 28.25 | 30.55 | 32.60 | 35.60 | 39.70 |
| 23 | 17.45 | 24.50 | 26.90 | 29.10 | 31.50 | 33.65 | 36.65 | 41.10 |
| 24 | 17.75 | 25.15 | 27.65 | 29.95 | 32.45 | 34.65 | 37.85 | 42.45 |
| 25 | 18.10 | 25.80 | 28.40 | 30.75 | 33.35 | 35.70 | 39.00 | 43.80 |
| 26 | 18.45 | 26.45 | 29.15 | 31.60 | 34.30 | 36.75 | 40.15 | 45.15 |
| 27 | 18.75 | 27.05 | 29.90 | 32.45 | 35.25 | 37.75 | 41.35 | 46.50 |
| 28 | 19.10 | 27.70 | 30.60 | 33.30 | 36.20 | 38.80 | 42.50 | 47.85 |
| 29 | 19.40 | 28.35 | 31.35 | 34.10 | 37.15 | 39.85 | 43.65 | 49.25 |
| 30 | 19.75 | 29.00 | 32.10 | 34.95 | 38.10 | 40.85 | 44.85 | 50.60 |
| 31 | 20.10 | 29.65 | 32.85 | 35.80 | 39.00 | 41.90 | 46.00 | 51.95 |
| 32 | 20.40 | 30.25 | 33.60 | 36.65 | 39.95 | 42.95 | 47.15 | 53.30 |
| 33 | 20.75 | 30.90 | 34.35 | 37.45 | 40.90 | 44.00 | 48.35 | 54.65 |
| 34 | 21.05 | 31.55 | 35.10 | 38.30 | 41.85 | 45.00 | 49.50 | 56.05 |
| 35 | 21.40 | 32.20 | 35.85 | 39.15 | 42.80 | 46.05 | 50.65 | 57.40 |

RATE SCHEDULE 501(a) (Cont'd)

Express Mail - Custom Designed Service
Current Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 36 | 21.75 | 32.80 | 36.55 | 40.00 | 43.75 | 47.10 | 51.85 | 58.75 |
| 37 | 22.05 | 33.45 | 37.30 | 40.85 | 44.65 | 48.10 | 53.00 | 60.10 |
| 38 | 22.40 | 34.10 | 38.05 | 41.65 | 45.60 | 49.15 | 54.15 | 61.45 |
| 39 | 22.75 | 34.75 | 38.80 | 42.50 | 46.55 | 50.20 | 55.35 | 62.80 |
| 40 | 23.05 | 35.40 | 39.55 | 43.35 | 47.50 | 51.20 | 56.50 | 64.20 |
| 41 | 23.40 | 36.00 | 40.30 | 44.20 | 48.45 | 52.25 | 57.65 | 65.55 |
| 42 | 23.70 | 36.65 | 41.05 | 45.00 | 49.40 | 53.30 | 58.85 | 66.90 |
| 43 | 24.05 | 37.30 | 41.75 | 45.85 | 50.35 | 54.35 | 60.00 | 68.25 |
| 44 | 24.40 | 37.95 | 42.50 | 46.70 | 51.25 | 55.35 | 61.15 | 69.60 |
| 45 | 24.70 | 38.60 | 43.25 | 47.55 | 52.20 | 56.40 | 62.35 | 71.00 |
| 46 | 25.05 | 39.20 | 44.00 | 48.35 | 53.15 | 57.45 | 63.50 | 72.35 |
| 47 | 25.40 | 39.85 | 44.75 | 49.20 | 54.10 | 58.45 | 64.65 | 73.70 |
| 48 | 25.70 | 40.50 | 45.50 | 50.05 | 55.05 | 59.50 | 65.85 | 75.05 |
| 49 | 26.05 | 41.15 | 46.25 | 50.90 | 56.00 | 60.55 | 67.00 | 76.40 |
| 50 | 26.35 | 41.75 | 46.95 | 51.70 | 56.90 | 61.55 | 68.15 | 77.75 |
| 51 | 26.70 | 42.40 | 47.70 | 52.55 | 57.85 | 62.60 | 69.35 | 79.15 |
| 52 | 27.05 | 43.05 | 48.45 | 53.40 | 58.80 | 63.65 | 70.50 | 80.50 |
| 53 | 27.35 | 43.70 | 49.20 | 54.25 | 59.75 | 64.70 | 71.65 | 81.85 |
| 54 | 27.70 | 44.35 | 49.95 | 55.05 | 60.70 | 65.70 | 72.85 | 83.20 |
| 55 | 28.05 | 44.95 | 50.70 | 55.90 | 61.65 | 66.75 | 74.00 | 84.55 |
| 56 | 28.35 | 45.60 | 51.45 | 56.75 | 62.55 | 67.80 | 75.15 | 85.90 |
| 57 | 28.70 | 46.25 | 52.15 | 57.60 | 63.50 | 68.80 | 76.35 | 87.30 |
| 58 | 29.00 | 46.90 | 52.90 | 58.40 | 64.45 | 69.85 | 77.50 | 88.65 |
| 59 | 29.35 | 47.50 | 53.65 | 59.25 | 65.40 | 70.90 | 78.65 | 90.00 |
| 60 | 29.70 | 48.15 | 54.40 | 60.10 | 66.35 | 71.90 | 79.85 | 91.35 |
| 61 | 30.00 | 48.80 | 55.15 | 60.95 | 67.30 | 72.95 | 81.00 | 92.70 |
| 62 | 30.35 | 49.45 | 55.90 | 61.80 | 68.20 | 74.00 | 82.15 | 94.10 |
| 63 | 30.65 | 50.10 | 56.65 | 62.60 | 69.15 | 75.05 | 83.35 | 95.45 |
| 64 | 31.00 | 50.70 | 57.35 | 63.45 | 70.10 | 76.05 | 84.50 | 96.80 |
| 65 | 31.35 | 51.35 | 58.10 | 64.30 | 71.05 | 77.10 | 85.70 | 98.15 |
| 66 | 31.65 | 52.00 | 58.85 | 65.15 | 72.00 | 78.15 | 86.65 | 99.50 |
| 67 | 32.00 | 52.65 | 59.60 | 65.95 | 72.95 | 79.15 | 88.00 | 100.85 |
| 68 | 32.35 | 53.25 | 60.35 | 66.80 | 73.90 | 80.20 | 89.20 | 102.25 |
| 69 | 32.65 | 53.90 | 61.10 | 67.65 | 74.80 | 81.25 | 90.35 | 103.60 |
| 70 | 33.00 | 54.55 | 61.85 | 68.50 | 75.75 | 82.25 | 91.50 | 104.95 |

Note: Add $5.60 for each custom pickup and delivery stop.

RATE SCHEDULE 502(a)
Express Mail - Next Day Service, Post Office to Post Office
Current Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1..... | $ 8.60 | $ 8.60 | $ 8.60 | $ 8.60 | $ 8.60 | $ 8.60 | $ 8.60 | $ 8.60 |
| 2..... | 8.60 | 8.60 | 8.60 | 8.60 | 8.60 | 8.60 | 8.60 | 8.60 |
| 3..... | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 |
| 4..... | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 |
| 5..... | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 | 10.70 |
| 6..... | 10.75 | 11.50 | 12.15 | 12.70 | 13.30 | 13.90 | 14.65 | 15.80 |
| 7..... | 10.80 | 12.15 | 12.85 | 13.55 | 14.25 | 14.90 | 15.85 | 17.20 |
| 8..... | 10.85 | 12.80 | 13.60 | 14.35 | 15.20 | 15.95 | 17.00 | 18.55 |
| 9..... | 10.90 | 13.40 | 14.35 | 15.20 | 16.15 | 17.00 | 18.15 | 19.90 |
| 10..... | 11.00 | 14.05 | 15.10 | 16.05 | 17.10 | 18.00 | 19.35 | 21.25 |
| 11..... | 11.30 | 14.70 | 15.85 | 16.90 | 18.05 | 19.05 | 20.50 | 22.60 |
| 12..... | 11.65 | 15.35 | 16.60 | 17.75 | 18.95 | 20.10 | 21.65 | 24.00 |
| 13..... | 11.95 | 16.00 | 17.35 | 18.55 | 19.90 | 21.15 | 22.85 | 25.35 |
| 14..... | 12.30 | 16.60 | 18.05 | 19.40 | 20.85 | 22.15 | 24.00 | 26.70 |
| 15..... | 12.65 | 17.25 | 18.80 | 20.25 | 21.80 | 23.20 | 25.20 | 28.05 |
| 16..... | 12.95 | 17.90 | 19.55 | 21.10 | 22.75 | 24.25 | 26.35 | 29.40 |
| 17..... | 13.30 | 18.55 | 20.30 | 21.90 | 23.70 | 25.25 | 27.50 | 30.75 |
| 18..... | 13.65 | 19.15 | 21.05 | 22.75 | 24.65 | 26.30 | 28.70 | 32.15 |
| 19..... | 13.95 | 19.80 | 21.80 | 23.60 | 25.55 | 27.35 | 29.85 | 33.50 |
| 20..... | 14.30 | 20.45 | 22.55 | 24.45 | 26.50 | 28.35 | 31.00 | 34.85 |
| 21..... | 14.60 | 21.10 | 23.25 | 25.25 | 27.45 | 29.40 | 32.20 | 36.20 |
| 22..... | 14.95 | 21.75 | 24.00 | 26.10 | 28.40 | 30.45 | 33.35 | 37.55 |
| 23..... | 15.30 | 22.35 | 24.75 | 26.95 | 29.35 | 31.50 | 34.50 | 38.95 |
| 24..... | 15.60 | 23.00 | 25.50 | 27.80 | 30.30 | 32.50 | 35.70 | 40.30 |
| 25..... | 15.95 | 23.65 | 26.25 | 28.60 | 31.20 | 33.55 | 36.85 | 41.65 |
| 26..... | 16.30 | 24.30 | 27.00 | 29.45 | 32.15 | 34.60 | 38.00 | 43.00 |
| 27..... | 16.60 | 24.90 | 27.75 | 30.30 | 33.10 | 35.60 | 39.20 | 44.35 |
| 28..... | 16.95 | 25.55 | 28.45 | 31.15 | 34.05 | 36.65 | 40.35 | 45.70 |
| 29..... | 17.25 | 26.20 | 29.20 | 31.95 | 35.00 | 37.70 | 41.50 | 47.10 |
| 30..... | 17.60 | 26.85 | 29.95 | 32.80 | 35.95 | 38.70 | 42.70 | 48.45 |
| 31..... | 17.95 | 27.50 | 30.70 | 33.65 | 36.85 | 39.75 | 43.85 | 49.80 |
| 32..... | 18.25 | 28.10 | 31.45 | 34.50 | 37.80 | 40.80 | 45.00 | 51.15 |
| 33..... | 18.60 | 28.75 | 32.20 | 35.30 | 38.75 | 41.85 | 46.20 | 52.50 |
| 34..... | 18.90 | 29.40 | 32.95 | 36.15 | 39.70 | 42.85 | 47.35 | 53.90 |
| 35..... | 19.25 | 30.05 | 33.70 | 37.00 | 40.65 | 43.90 | 48.50 | 55.25 |

Add: $5.60 for each pickup stop.

RATE SCHEDULE 502(a) (Cont'd.)

Express Mail - Next Day Service, Post Office to Post Office
Current Rates
(Dollars)

| Postage Rate Units (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 36..... | 19.60 | 30.65 | 34.40 | 37.85 | 41.60 | 44.95 | 49.70 | 56.60 |
| 37..... | 19.90 | 31.30 | 35.15 | 38.70 | 42.50 | 45.95 | 50.85 | 57.95 |
| 38..... | 20.25 | 31.95 | 35.90 | 39.50 | 43.45 | 47.00 | 52.00 | 59.30 |
| 39..... | 20.60 | 32.60 | 36.65 | 40.35 | 44.40 | 48.05 | 53.20 | 60.65 |
| 40..... | 20.90 | 32.25 | 37.40 | 41.20 | 45.35 | 49.05 | 54.35 | 62.05 |
| 41..... | 21.25 | 33.85 | 38.15 | 42.05 | 46.30 | 50.10 | 55.50 | 63.40 |
| 42..... | 21.55 | 34.50 | 38.90 | 42.85 | 47.25 | 51.15 | 56.70 | 64.75 |
| 43..... | 21.90 | 35.15 | 39.60 | 43.70 | 48.20 | 52.20 | 57.85 | 66.10 |
| 44..... | 22.25 | 35.80 | 40.35 | 44.55 | 49.10 | 53.20 | 59.00 | 67.45 |
| 45..... | 22.55 | 36.45 | 41.10 | 45.40 | 50.05 | 54.25 | 60.20 | 68.85 |
| 46..... | 22.90 | 37.05 | 41.85 | 46.20 | 51.00 | 55.30 | 61.35 | 70.20 |
| 47..... | 23.25 | 37.70 | 42.60 | 47.05 | 51.95 | 56.30 | 62.50 | 71.55 |
| 48..... | 23.55 | 38.35 | 43.35 | 47.90 | 52.90 | 57.35 | 63.70 | 72.90 |
| 49..... | 23.90 | 39.00 | 44.10 | 48.75 | 53.85 | 58.40 | 64.85 | 74.25 |
| 50..... | 24.20 | 39.60 | 44.80 | 49.55 | 54.75 | 59.40 | 66.00 | 75.60 |
| 51..... | 24.55 | 40.25 | 45.55 | 50.40 | 55.70 | 60.45 | 67.20 | 77.00 |
| 52..... | 24.90 | 40.90 | 46.30 | 51.25 | 56.65 | 61.50 | 68.35 | 78.35 |
| 53..... | 25.20 | 41.55 | 47.05 | 52.10 | 57.60 | 62.55 | 69.50 | 79.70 |
| 54..... | 25.55 | 42.20 | 47.80 | 52.90 | 58.55 | 63.55 | 70.70 | 81.05 |
| 55..... | 25.90 | 42.80 | 48.55 | 53.75 | 59.50 | 64.60 | 71.85 | 82.40 |
| 56..... | 26.20 | 43.45 | 49.30 | 54.60 | 60.40 | 65.65 | 73.00 | 83.75 |
| 57..... | 26.55 | 44.10 | 50.00 | 55.45 | 61.35 | 66.65 | 74.20 | 85.15 |
| 58..... | 26.85 | 44.75 | 50.75 | 56.25 | 62.30 | 67.70 | 75.35 | 86.50 |
| 59..... | 27.20 | 45.35 | 51.50 | 57.10 | 63.25 | 68.75 | 76.50 | 87.85 |
| 60..... | 27.55 | 46.00 | 52.25 | 57.95 | 64.20 | 69.75 | 77.70 | 89.20 |
| 61..... | 27.85 | 46.65 | 53.00 | 58.80 | 65.15 | 70.80 | 78.85 | 90.55 |
| 62..... | 28.20 | 47.30 | 53.75 | 59.65 | 66.05 | 71.85 | 80.00 | 91.95 |
| 63..... | 28.50 | 47.95 | 54.50 | 60.45 | 67.00 | 72.90 | 81.20 | 93.30 |
| 64..... | 28.85 | 48.55 | 55.20 | 61.30 | 67.95 | 73.90 | 82.35 | 94.65 |
| 65..... | 29.20 | 49.20 | 55.95 | 62.15 | 68.90 | 74.95 | 83.55 | 96.00 |
| 66..... | 29.50 | 49.85 | 56.70 | 63.00 | 69.85 | 76.00 | 84.70 | 97.35 |
| 67..... | 29.85 | 50.50 | 57.45 | 63.80 | 70.80 | 77.00 | 85.85 | 98.70 |
| 68..... | 30.20 | 51.10 | 58.20 | 64.65 | 71.75 | 78.05 | 87.05 | 100.10 |
| 69..... | 30.50 | 51.75 | 58.95 | 65.50 | 72.65 | 79.10 | 88.20 | 101.45 |
| 70..... | 30.85 | 52.40 | 59.70 | 66.35 | 73.60 | 80.10 | 89.35 | 102.80 |

## RATE SCHEDULE 503(a)

### Express Mail - Next Day Service, Post Office to Addressee
### Current Rates
### (Dollars)

| Postage Rate Unit (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 1 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 |
| 2 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 | 10.75 |
| 3 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 |
| 4 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 |
| 5 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 | 12.85 |
| 6 | 12.90 | 13.65 | 14.30 | 14.85 | 15.45 | 16.05 | 16.80 | 17.95 |
| 7 | 12.95 | 14.30 | 15.00 | 15.70 | 16.40 | 17.05 | 18.00 | 19.35 |
| 8 | 13.00 | 14.95 | 15.75 | 16.50 | 17.35 | 18.10 | 19.15 | 20.70 |
| 9 | 13.05 | 15.55 | 16.50 | 17.35 | 18.30 | 19.15 | 20.30 | 22.05 |
| 10 | 13.15 | 16.20 | 17.25 | 18.20 | 19.25 | 20.15 | 21.50 | 23.40 |
| 11 | 13.45 | 16.85 | 18.00 | 19.05 | 20.20 | 21.20 | 22.65 | 24.75 |
| 12 | 13.80 | 17.50 | 18.75 | 19.90 | 21.10 | 22.25 | 23.80 | 26.15 |
| 13 | 14.10 | 18.15 | 19.50 | 20.70 | 22.05 | 23.30 | 25.00 | 27.50 |
| 14 | 14.45 | 18.75 | 20.20 | 21.55 | 23.00 | 24.30 | 26.15 | 28.85 |
| 15 | 14.80 | 19.40 | 20.95 | 22.40 | 23.95 | 25.35 | 27.35 | 30.20 |
| 16 | 15.10 | 20.05 | 21.70 | 23.25 | 24.90 | 26.40 | 28.50 | 31.55 |
| 17 | 15.45 | 20.70 | 22.45 | 24.05 | 25.85 | 27.40 | 29.65 | 32.90 |
| 18 | 15.80 | 21.30 | 23.20 | 24.90 | 26.80 | 28.45 | 30.85 | 34.30 |
| 19 | 16.10 | 21.95 | 23.95 | 25.75 | 27.70 | 29.50 | 32.00 | 35.65 |
| 20 | 16.45 | 22.60 | 24.70 | 26.60 | 28.65 | 30.50 | 33.15 | 37.00 |
| 21 | 16.75 | 23.25 | 25.40 | 27.40 | 29.60 | 31.55 | 34.35 | 38.35 |
| 22 | 17.10 | 23.90 | 26.15 | 28.25 | 30.55 | 32.60 | 35.60 | 39.70 |
| 23 | 17.45 | 24.50 | 26.90 | 29.10 | 31.50 | 33.65 | 36.65 | 41.10 |
| 24 | 17.75 | 25.15 | 27.65 | 29.95 | 32.45 | 34.65 | 37.85 | 42.45 |
| 25 | 18.10 | 25.80 | 28.40 | 30.75 | 33.35 | 35.70 | 39.00 | 43.80 |
| 26 | 18.45 | 26.45 | 29.15 | 31.60 | 34.30 | 36.75 | 40.15 | 45.15 |
| 27 | 18.75 | 27.05 | 29.90 | 32.45 | 35.25 | 37.75 | 41.35 | 46.50 |
| 28 | 19.10 | 27.70 | 30.60 | 33.30 | 36.20 | 38.80 | 42.50 | 47.85 |
| 29 | 19.40 | 28.35 | 31.35 | 34.10 | 37.15 | 39.85 | 43.65 | 49.25 |
| 30 | 19.75 | 29.00 | 32.10 | 34.95 | 38.10 | 40.85 | 44.85 | 50.60 |
| 31 | 20.10 | 29.65 | 32.85 | 35.80 | 39.00 | 41.90 | 46.00 | 51.95 |
| 32 | 20.40 | 30.25 | 33.60 | 36.65 | 39.95 | 42.95 | 47.15 | 53.30 |
| 33 | 20.75 | 30.90 | 34.35 | 37.45 | 40.90 | 44.00 | 48.35 | 54.65 |
| 34 | 21.05 | 31.55 | 35.10 | 38.30 | 41.85 | 45.00 | 49.50 | 56.05 |
| 35 | 21.40 | 32.20 | 35.85 | 39.15 | 42.80 | 46.05 | 50.65 | 57.40 |

Add: $5.60 for each pickup stop.

RATE SCHEDULE 503(a) (Cont'd.)

Express Mail - Next Day Service, Post Office to Addressee
Current Rates
(Dollars)

| Postage Rate Unit (Pounds) | Rate | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Zones | | | | | | | |
| | 1 & 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 36 | 21.75 | 32.80 | 36.55 | 40.00 | 43.75 | 47.10 | 51.85 | 58.75 |
| 37 | 22.05 | 33.45 | 37.30 | 40.85 | 44.65 | 48.10 | 53.00 | 60.10 |
| 38 | 22.40 | 34.10 | 38.05 | 41.65 | 45.60 | 49.15 | 54.15 | 61.45 |
| 39 | 22.75 | 34.75 | 38.80 | 42.50 | 46.55 | 50.20 | 55.35 | 62.80 |
| 40 | 23.05 | 35.40 | 39.55 | 43.35 | 47.50 | 51.20 | 56.50 | 64.20 |
| 41 | 23.40 | 36.00 | 40.30 | 44.20 | 48.45 | 52.25 | 57.65 | 65.55 |
| 42 | 23.70 | 36.65 | 41.05 | 45.00 | 49.40 | 53.30 | 58.85 | 66.90 |
| 43 | 24.05 | 37.30 | 41.75 | 45.85 | 50.35 | 54.35 | 60.00 | 68.25 |
| 44 | 24.40 | 37.95 | 42.50 | 46.70 | 51.25 | 55.35 | 61.15 | 69.60 |
| 45 | 24.70 | 38.60 | 43.25 | 47.55 | 52.20 | 56.40 | 62.35 | 71.00 |
| 46 | 25.05 | 39.20 | 44.00 | 48.35 | 53.15 | 57.45 | 63.50 | 72.35 |
| 47 | 25.40 | 39.85 | 44.75 | 49.20 | 54.10 | 58.45 | 64.65 | 73.70 |
| 48 | 25.70 | 40.50 | 45.50 | 50.05 | 55.05 | 59.50 | 65.85 | 75.05 |
| 49 | 26.05 | 41.15 | 46.25 | 50.90 | 56.00 | 60.55 | 67.00 | 76.40 |
| 50 | 26.35 | 41.75 | 46.95 | 51.70 | 56.90 | 61.55 | 68.15 | 77.75 |
| 51 | 26.70 | 42.40 | 47.70 | 52.55 | 57.85 | 62.60 | 69.35 | 79.15 |
| 52 | 27.05 | 43.05 | 48.45 | 53.40 | 58.80 | 63.65 | 70.50 | 80.50 |
| 53 | 27.35 | 43.70 | 49.20 | 54.25 | 59.75 | 64.70 | 71.65 | 81.85 |
| 54 | 27.70 | 44.35 | 49.95 | 55.05 | 60.70 | 65.70 | 72.85 | 83.20 |
| 55 | 28.05 | 44.95 | 50.70 | 55.90 | 61.65 | 66.75 | 74.00 | 84.55 |
| 56 | 28.35 | 45.60 | 51.45 | 56.75 | 62.55 | 67.80 | 75.15 | 85.90 |
| 57 | 28.70 | 46.25 | 52.15 | 57.60 | 63.50 | 68.80 | 76.35 | 87.30 |
| 58 | 29.00 | 46.90 | 52.90 | 58.40 | 64.45 | 69.85 | 77.50 | 88.65 |
| 59 | 29.35 | 47.50 | 53.65 | 59.25 | 65.40 | 70.90 | 78.65 | 90.00 |
| 60 | 29.70 | 48.15 | 54.40 | 60.10 | 66.35 | 71.90 | 79.85 | 91.35 |
| 61 | 30.00 | 48.80 | 55.15 | 60.95 | 67.30 | 72.95 | 81.00 | 92.70 |
| 62 | 30.35 | 49.45 | 55.90 | 61.80 | 68.20 | 74.00 | 82.15 | 94.10 |
| 63 | 30.65 | 50.10 | 56.65 | 62.60 | 69.15 | 75.05 | 83.35 | 95.45 |
| 64 | 31.00 | 50.70 | 57.35 | 63.45 | 70.10 | 76.05 | 84.50 | 96.80 |
| 65 | 31.35 | 51.35 | 58.10 | 64.30 | 71.05 | 77.10 | 85.70 | 98.15 |
| 66 | 31.65 | 52.00 | 58.85 | 65.15 | 72.00 | 78.15 | 86.65 | 99.50 |
| 67 | 32.00 | 52.65 | 59.60 | 65.95 | 72.95 | 79.15 | 88.00 | 100.85 |
| 68 | 32.35 | 53.25 | 60.35 | 66.80 | 73.90 | 80.20 | 89.20 | 102.25 |
| 69 | 32.65 | 53.90 | 61.10 | 67.65 | 74.80 | 81.25 | 90.35 | 103.60 |
| 70 | 33.00 | 54.55 | 61.85 | 68.50 | 75.75 | 82.25 | 91.50 | 104.95 |

Add: $5.60 for each pickup stop.

BILLING CODE 7715-01-C

## RATE SCHEDULES 500(B), 501(B), 502(B), AND 503(B)

[Express mail proposed rates (dollars)]

| Postage rate unit (pounds) | Schedule 500(b) same day airport service | Schedule 501(b) custom designed | Schedule 503(b) next day PO to addressee | Schedule 502(b) next day PO to PO |
|---|---|---|---|---|
| Up to: | | | | |
| 0.5 pound [1] | 8.35 | 7.75 | 8.75 | 8.60 |
| 1–2 [2] | 8.35 | 9.75 | 10.75 | 8.60 |
| 3–5 [3] | 10.35 | 11.85 | 12.85 | 10.70 |
| 6–10 | 13.00 | 15.50 | 16.50 | 14.35 |
| 11–15 | 16.65 | 19.70 | 20.70 | 18.55 |
| 16–20 | 20.25 | 23.90 | 24.90 | 22.75 |
| 21–25 | 23.85 | 28.10 | 29.10 | 26.96 |
| 26–30 | 27.45 | 32.30 | 33.30 | 31.15 |
| 31–35 | 31.05 | 36.45 | 37.45 | 35.30 |
| 36–40 | 34.70 | 40.65 | 41.65 | 39.50 |
| 41–45 | 38.30 | 44.85 | 45.85 | 43.70 |
| 46–50 | 41.90 | 49.05 | 50.05 | 47.90 |
| 51–55 | 45.50 | 53.25 | 54.25 | 52.10 |
| 56–60 | 49.10 | 59.00 | 60.00 | 57.85 |
| 61–65 | 52.75 | 64.00 | 65.00 | 62.65 |
| 66–70 | 56.35 | 69.00 | 70.00 | 67.85 |

ADD: $4.00 for each pickup stop and $4.00 for each Custom Designed delivery stop.

[1] Applies to pieces weighing up to 8 ounces.
[2] Applies to pieces weighing more then 8 ounces but not in excess of 2 pounds.
[3] Applies to pieces weighing more then 2 pounds but not in excess of 5 pounds.

## RATE SCHEDULES 504(B)

[Express mail proposed rate differential [1] (dollars)]

| Minimum monthly volume [2] | Discounts from regular rates | | | |
|---|---|---|---|---|
| | Postage pounds | | | |
| | ½ pound [3] | 1–2 pounds [3] | 3–5 pounds [3] | 6–70 pounds [3] |
| 26–250 | $0.50 | $1.25 | $1.50 | $2.25 |
| 251–500 | .75 | 1.50 | 1.75 | 2.50 |
| 501–750 | 1.00 | 1.75 | 2.00 | 3.00 |
| 751–1000 | 1.25 | 2.00 | 2.25 | 3.50 |
| 1001–5000 | 1.50 | 2.25 | 2.75 | 4.00 |
| 5001 and over | 1.75 | 2.75 | 3.50 | 5.00 |

[1] Volume discounts from regular Express Mail rates apply to Express Mail paid through Corporate Account postage payment system.
[2] Discounts based on total monthly volume sent at Express Mail rates.
[3] Discounts applied against available published rates. One-half pound volume discounts are not applicable to Next Day Post Office to Post Office or Same Day Airport service options.

## SCHEDULE SS–1

## SPECIAL SERVICES: ADDRESS CORRECTION

| Description | Fee | |
|---|---|---|
| | Current | Proposed |
| Per Piece | $0.30 | $0.30 |

## SCHEDULE SS-2

### BUSINESS REPLY MAIL

| Description | Fees (in addition to postage) | |
|---|---|---|
| | Current (cents) | Proposed (cents) |
| Business Reply: [1] | | |
| With advance deposit account: | | |
| Regular | 7 | 9 |
| Discount [2] | | 7 |
| Without advance deposit account | 23 | 40 |

[1] Rates are applied on a per-piece basis in addition to regular First-Class postage. Currently, a fee of $50 must be paid to each year for each business reply permit. The proposed fee is $60. An accounting charge of $100 must be paid once each year for each business reply advance deposit account. The proposed charge is $206.

[2] Currently there is no rate differential offered for pieces that are bar-coded. It is proposed that a 2¢ discount be offered for bar-coded pieces meeting certain ZIP+4 and additional automated mail processing criteria.

## SCHEDULE SS-4

### SPECIAL SERVICES: CERTIFICATES OF MAILING

| Description | Fees (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| Individual Pieces: | | |
| Original certificate of mailing for listed pieces of all classes of ordinary mail (per piece) | $0.45 | $0.45 |
| Three or more pieces individually listed in a firm mailing book or an approved customer provided manifest (per piece) | .15 | .15 |
| Each additional copy of original certificate of mailing or original mailing receipt for registered, insured, certified and C.O.D. mail (each copy) | .45 | .45 |
| Bulk pieces: | | |
| Identical pieces of first- and third-class mail paid with ordinary stamps, precanceled stamps, or meter stamps are subject to the following fees: | | |
| Up to 1,000 pieces (1 certificate for total number) | 1.60 | 2.00 |
| Each additional 1,000 pieces or fraction | .20 | .25 |
| Duplicate copy | .45 | .45 |

## SCHEDULE SS-5

### SPECIAL SERVICES: CERTIFIED MAIL

| Description | Fee (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| Per Piece | $0.75 | $0.85 |

## SCHEDULE SS-6

### SPECIAL SERVICES: COLLECT ON DELIVERY

| Amount to be collected or insurance coverage desired | Fees (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| $0.01 to $25 | $1.50 | $2.00 |
| 25.01 to 50 | 1.80 | 2.50 |
| 50.01 to 100 | 2.10 | 3.00 |
| 100.01 to 200 | 2.40 | 3.40 |
| 200.01 to 300 | 3.00 | 4.25 |
| 300.01 to 400 | 3.70 | 5.25 |

BEST COPY AVAILABLE

SCHEDULE SS–6—Continued

| Amount to be collected or insurance coverage desired | Fees (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| 400.01 to 500 | 4.70 | 6.50 |
| Notice of nondelivery of C.O.D. | 1.25 | 1.75 |
| Alteration of C.O.D. charges or designation of new addressee | 1.25 | 1.75 |
| Registered C.O.D | 1.50 | 2.00 |

SCHEDULE SS–8

SPECIAL SERVICES: MONEY ORDERS

| Amount | Fees (domestic) | |
|---|---|---|
| | Current | Proposed |
| $0.01 to $25 | $0.75 | $0.80 |
| 25.01 to 50 | 1.00 | 1.00 |
| 50.01 to 700 | 1.00 | 1.00 |
| APO-FPO | | |
| $0.01 to $500 | .25 | .25 |
| Inquiry fee, which includes the issuance of copy of a paid money order | 1.40 | 2.00 |

SCHEDULE SS–9

SPECIAL SERVICES: INSURED MAIL

| Liability | Fees (domestic) (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| $0.01 to $25 | $0.50 | $0.60 |
| 25.01 to $50 | 1.10 | 1.30 |
| 50.01 to $100 | 1.40 | 1.70 |
| 100.01 to $150 | 1.80 | 2.15 |
| 150.01 to $200 | 2.10 | 2.50 |
| 200.01 to $300 | 3.00 | 3.60 |
| 300.01 to $400 | 3.70 | 4.50 |
| 400.01 to $500 | 4.40 | 5.20 |

SCHEDULE SS–10

SPECIAL SERVICES: LOCKBOX/CALLER SERVICE

A. Rental Rates for Post Office Boxes

| Cubic inch capacity of lockboxes | Fee Per Semi-Annual Period | | | | |
|---|---|---|---|---|---|
| | Less Than 296 | 296 to | 500 to | 1,000 to | 2,000 and over |
| Box Size | 1 | 2 | 3 | 4 | 5 |
| Group I: | | | | | |
| Current | $11.00 | $14.50 | $26.50 | $42.00 | $64.00 |
| Proposed | 13.00 | 18.00 | 36.00 | 60.00 | 100.00 |
| Group II: | | | | | |
| Current | 2.50 | 3.50 | 6.50 | 10.00 | 15.00 |
| Proposed | 2.75 | 4.00 | 8.00 | 14.00 | 22.00 |
| Group III: [1] | | | | | |
| Current | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |
| Proposed | 1.00 | 1.00 | 1.00 | 1.00 | 1.00 |

[1] Payment on annual basis.

B. Caller Service

| Description | Fees | |
|---|---|---|
| | Current | Proposed |
| For caller service (semi-annual) | $130 | $170 |
| For each reserved call number (annual) | 15 | 20 |

SCHEDULE SS–11a

SPECIAL SERVICES: ZIP CODING OF MAILING LISTS

| Description | Fee | |
|---|---|---|
| | Current | Proposed |
| Per 1,000 addresses | $36.00 | $42.00 |

SCHEDULE SS–11b

SPECIAL SERVICES: CORRECTION OF MAILING LIST

| Description | Fee | |
|---|---|---|
| | Current | Proposed |
| Per submitted address | $0.15 | $0.15 |

SCHEDULE SS–11c

ADDRESS CHANGES FOR ELECTION BOARDS AND REGISTRATION COMMISSIONS

| Description | Fee | |
|---|---|---|
| | Current | Proposed |
| Per change of address | $0.15 | $0.15 |

SCHEDULE SS–11d

MAILING LIST SERVICES

| | Fee | |
|---|---|---|
| | Current (cents) | Proposed (cents) |
| Corrections associated with arrangement of address cards in sequence of carrier delivery: Per Correction | 15 | 15 |

When rural routes have been consolidated or changed to another post office, no charge will be made for correction if the list contains only names of persons residing on the route or routes involved

## SCHEDULE SS-12

### SPECIAL SERVICES: SERVICES: METER SETTING ON SITE

| Description | Fees | |
|---|---|---|
| | Current | Proposed |
| Meter company adjustments: | | |
| First meter | $10.00 | $30.00 |
| Additional meters (each) | 10.00 | 12.00 |
| All other meter settings: | | |
| First meter: | | |
| By appointment | 17.00 | 25.00 |
| Unscheduled request | 19.00 | 28.00 |
| Additional meters (each) | 4.00 | 4.00 |

## SCHEDULE SS-13

### SPECIAL SERVICES: PARCEL AIR LIFT

| Description | Fees (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| Up to 2 pounds | $0.30 | $0.35 |
| Over 2 but not exceeding 3 pounds | .80 | .80 |
| Over 3 but not exceeding 4 pounds | .80 | .80 |
| Over 4 pounds | 1.20 | 1.25 |

## SCHEDULE SS-14(a)

### SPECIAL SERVICES: REGISTERED MAIL

| Value | Current fees (in addition to postage) | |
|---|---|---|
| | For articles covered by insurance | For articles not covered by insurance |
| | Fees | Fees |
| $0.00 to $100 | $3.60 | $3.55 |
| 100.01 to 500 | 3.90 | 3.80 |
| 500.01 to 1,000 | 4.25 | 4.15 |
| 1,000.01 to 2,000 | 4.60 | 4.40 |
| 2,000.01 to 3,000 | 4.95 | 4.65 |
| 3,000.01 to 4,000 | 5.30 | 4.90 |
| 4,000.01 to 5,000 | 5.65 | 5.15 |
| 5,000.01 to 6,000 | 6.00 | 5.40 |
| 6,000.01 to 7,000 | 6.35 | 5.65 |
| 7,000.01 to 8,000 | 6.70 | 5.90 |
| 8,000.01 to 9,000 | 7.05 | 6.15 |
| 9,000.01 to 10,000 | 7.40 | 6.40 |
| 10,000.01 to 11,000 | 7.75 | 6.65 |
| 11,000.01 to 12,000 | 8.10 | 6.90 |
| 12,000.01 to 13,000 | 8.45 | 7.15 |

SCHEDULE SS-14(a)—Continued

| Value | Current fees (in addition to postage) | |
|---|---|---|
| | For articles covered by insurance | For articles not covered by insurance |
| | Fees | Fees |
| 13,000.01 to 14,000 | 8.80 | 7.40 |
| 14,000.01 to 15,000 | 9.15 | 7.65 |
| 15,000.01 to 16,000 | 9.50 | 7.90 |
| 16,000.01 to 17,000 | 9.85 | 8.15 |
| 17,000.01 to 18,000 | 10.20 | 8.40 |
| 18,000.01 to 19,000 | 10.55 | 8.65 |
| 19,000.01 to 20,000 | 10.90 | 8.90 |
| 20,000.01 to 21,000 | 11.25 | 9.15 |
| 21,000.01 to 22,000 | 11.60 | 9.40 |
| 22,000.01 to 23,000 | 11.95 | 9.65 |
| 23,000.01 to 24,000 | 12.30 | 9.90 |
| 24,000.01 to 25,000 | 12.65 | 10.15 |
| 25,000 to 1,000,000 | [1] 12.65 | [1] 10.15 |
| $1,000,000 to $15,000,000 | [2] 256.40 | [2] 253.90 |
| Over $15,000,000 | Additional charges may be made based on considerations of weight, space and value. | |

[1] Plus handling charge of 25 cents per $1,000 or fraction over first $25,000.
[2] Plus handling charge of 20 cents per $1,000 or fraction over first $1,000,000.

SCHEDULE SS-14(b)

SPECIAL SERVICES: REGISTERED MAIL

| Value | Proposed fees (in addition to postage) | |
|---|---|---|
| | For articles covered by insurance | For articles not covered by insurance |
| | Fees | Fees |
| $0.00 to $100 | $4.90 | $4.60 |
| 100.01 to 500 | 5.30 | 5.15 |
| 500.01 to 1,000 | 5.70 | 5.50 |
| 1,000.01 to 2,000 | 6.15 | 5.85 |
| 2,000.01 to 3,000 | 6.60 | 6.20 |
| 3,000.01 to 4,000 | 7.05 | 6.55 |
| 4,000.01 to 5,000 | 7.50 | 6.90 |
| 5,000.01 to 6,000 | 7.95 | 7.25 |
| 6,000.01 to 7,000 | 8.40 | 7.60 |
| 7,000.01 to 8,000 | 8.85 | 7.95 |
| 8,000.01 to 9,000 | 9.50 | 8.30 |
| 9,000.01 to 10,000 | 9.95 | 8.65 |
| 10,000.01 to 11,000 | 10.45 | 9.00 |
| 11,000.01 to 12,000 | 10.95 | 9.35 |
| 12,000.01 to 13,000 | 11.45 | 9.70 |
| 13,000.01 to 14,000 | 11.95 | 10.05 |
| 14,000.01 to 15,000 | 12.45 | 10.40 |
| 15,000.01 to 16,000 | 12.95 | 10.75 |
| 16,000.01 to 17,000 | 13.45 | 11.10 |
| 17,000.01 to 18,000 | 14.00 | 11.45 |
| 18,000.01 to 19,000 | 14.55 | 11.80 |
| 19,000.01 to 20,000 | 15.10 | 12.15 |
| 20,000.01 to 21,000 | 15.70 | 12.50 |
| 21,000.01 to 22,000 | 16.25 | 12.85 |
| 22,000.01 to 23,000 | 16.80 | 13.20 |
| 23,000.01 to 24,000 | 17.35 | 13.55 |
| 24,000.01 to 25,000 | 17.90 | 13.90 |
| 25,000 to 1,000,000 | [1] 17.90 | [1] 13.90 |
| $1,000,000 to $15,000,000 | [2] 359.15 | [2] 355.15 |

SCHEDULE SS–14(b)—Continued

| Value | Proposed fees (in addition to postage) | |
|---|---|---|
| | For articles covered by insurance | For articles not covered by insurance |
| | Fees | Fees |
| Over $15,000,000 | Additional charges may be made based on considerations of weight, space and value. | |

[1] Plus handling charge of 35 cents per $1,000 or fraction over first $25,000.
[2] Plus handling charge of 25 cents per $1,000 or fraction over first $1,000,000.

## SCHEDULE SS–15

## SPECIAL SERVICES: RESTRICTED DELIVERY

| Description | Fee (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| Per piece | $1.25 | $2.00 |

## SCHEDULE SS–16

## SPECIAL SERVICES: RETURN RECEIPTS

| Description | Fee (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| Showing to whom (signature) and date delivered | $0.70 | $0.90 |
| Without another special service-merchandise only | | 1.00 |
| Showing to whom (signature) and date and address where delivered | 0.90 | 1.20 |
| Without another special service-merchandise only | | 1.35 |
| Requested after mailing: | | |
| Showing to whom and date delivered | 4.50 | 5.00 |

## SCHEDULE SS–17

## SPECIAL SERVICES: SPECIAL DELIVERY

| Class/weight | Fees (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| First-class and priority mail: | | |
| Not more than 2 pounds | $2.95 | $3.70 |
| More than 2 pounds but not more than 10 pounds | 3.15 | 3.95 |
| More than 10 pounds | 4.00 | 5.00 |
| All other classes: | | |
| Not more than 2 pounds | 3.10 | 3.90 |
| More than 2 pounds but not more than 10 pounds | 3.60 | 4.50 |
| More than 10 pounds | 4.50 | 5.60 |

## SCHEDULE SS–18

### SPECIAL SERVICES: SPECIAL HANDLING

| Weight | Fees (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| Not more than 10 pound | $1.10 | $1.55 |
| More than 10 pounds | 1.60 | 2.25 |

## SCHEDULE SS–19

### SPECIAL SERVICES: STAMPED ENVELOPES

| Type | Fees (in addition to postage) | |
|---|---|---|
| | Current | Proposed |
| Single sale | $0.05 | $0.05 |
| Bulk (500) #6¾ size: | | |
| Regular | 5.00 | 6.40 |
| Window | 6.50 | 7.00 |
| Bulk (500) #10 size: [1] | | |
| Regular | 7.40 | 8.00 |
| Window | 8.00 | 8.50 |
| Multi-color printing (500): | | |
| #6¾ size | | 8.00 |
| #10 size [1] | | 11.00 |
| Printing charge per 500 envelopes: [2] | | |
| Minimum order (500 envelopes) | 3.50 | 3.50 |
| Orders for 1,000 or more envelopes | 3.50 | 3.50 |
| Double window (500) #10 size [1] | | 12.00 |
| Household (50) #6¾ size: | | |
| Regular | | 2.50 |
| Window | | 2.60 |
| Household (50) #10 size: [1] | | |
| Regular | | 2.70 |
| Window | | 2.80 |
| Printed regular (500) #10 size: [1] | | |
| Minimum order 500,000 | | 11.00 |
| Minimum order 1,000,000 | | 10.50 |
| Minimum order 2,500,000 | | 10.40 |
| Minimum order 5,000,000 | | 10.30 |
| Minimum order 10,000,000 | | 10.20 |
| Printed window (500) #10 size: [1] | | |
| Minimum order 500,000 | | 11.80 |
| Minimum order 1,000,000 | | 11.30 |
| Minimum order 2,500,000 | | 11.20 |
| Minimum order 5,000,000 | | 11.10 |
| Minimum order 10,000,000 | | 11.00 |

[1] Includes all sizes greater than #6¾ through #10.
[2] Printing charge for all of the above.

### SCHEDULE SS–20

### FEES: MERCHANDISE RETURN

| | Fees | |
|---|---|---|
| | Current (cents) | Proposed (cents) |
| Per Transaction.....<br>Shipper must have an advance deposit account. | 30 | 20 |

### RATE SCHEDULE 1000 FEES

| | Fee | |
|---|---|---|
| | Current | Proposed |
| First-class mailing fees: | | |
| Presort fee..... | $50 | $60 |
| Merchandise return: | | |
| Per facility receiving merchandise return labels..... | 50 | 60 |

### FEES: SECOND-CLASS MAILING FEES

| Type | Fee (one time only) | |
|---|---|---|
| | Current | Proposed |
| Original entry..... | $220 | $265 |
| News agent..... | 35 | 40 |
| Reentry..... | 35 | 40 |
| Additional entry..... | 60 | 70 |

### FEE: PERMIT-IMPRINT FEE

| Description | Fee | |
|---|---|---|
| | Current | Proposed |
| Per permit (one time only)..... | $50 | $60 |

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Part III

# Department of Transportation

## Federal Aviation Administration

14 CFR Part 71

Establishment of an Airport Radar Service Area at Luis Munoz Marin International Airport, San Juan, PR; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-43]

Radar Service Area at Luis Munoz Marin International Airport, San Juan, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish an Airport Radar Service Area (ARSA) at Luis Munoz Marin International Airport, San Juan, PR. This location is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of an ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at the affected location would promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

DATES: Comments must be received on or before August 17, 1987. The informal airspace meeting date is July 16, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 86-AWA-43, 800 Independence Avenue, SW., Washington, DC 20591.

The informal airspace meeting place is as follows:

Luis Munoz Marin International Airport, San Juan, PR, ARSA
*Time:* 7:30 p.m.
*Location:* Muniz Air National Guard Base, Dining Facility, Luis Munoz Marin International Airport, San Juan, PR.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert L. Laser, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

## Comments Invited

This notice involves one location. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-43." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

## Meeting Procedures

In addition to seeking written comments on this proposal, the FAA will hold an informal airspace meeting for the proposed ARSA location in order to receive additional input with respect to the proposal. The date, time, and place for this meeting is listed above. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at this meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted at the discretion of the FAA representative. Participants submitting handout materials should present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

*Agenda*

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

## Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1-2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83-9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus

International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbus, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD, (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which are included in the TRSA replacement program. The task group recommended that these criteria take into account, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. This criteria has been developed and is being published via the FAA directives system.

The FAA has established ARSA's at 86 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's.

### Related Rulemaking

This notice proposes ARSA designation at one of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Other candidate locations will be proposed in future notices published in the Federal Register.

### The Current Situation at the Proposed ARSA Location

A TRSA is currently in effect at Luis Munoz Marin International Airport. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport and within the airport traffic area (ATA) of the primary airport are excluded from the two-way radio communications requirement of § 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

### The Proposal

The FAA is considering an amendment to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish an ARSA at Luis Munoz Marin International Airport, San Juan, PR. The above location is a public airport at which a nonregulatory TRSA is currently in effect. The proposed location is depicted on a chart in Appendix 1 to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating with the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88.

The FAA has determined that this proposed regulation is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, for the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291.

### Regulatory Evaluation

The FAA has conducted a Regulatory Evaluation of the proposed establishment of additional ARSA sites. The major findings of that evaluation

are summarized below, and the evaluation is available in the regulatory docket.

*a. Costs*

Costs which potentially could result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

FAA expects that the ARSA program can be implemented without requiring additional controller personnel above current authorized staffing levels because participation at most TRSA locations is already quite high, and the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, because controller training will be conducted during normal working hours, and existing TRSA facilities already operate the necessary radar equipment, FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to remove TRSA airspace depictions and incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

Much of the need to notify the public and educate pilots about ARSA operations will be met as a part of this rulemaking proceeding. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. Because the expenses associated with these public meetings will be incurred regardless of whether or not an ARSA is ultimately established at a proposed site, they are more appropriately considered costs attributable to the rulemaking process rather than costs of the ARSA program. Once the decision has been made to establish an ARSA through a final rule issued in this proceeding, however, any public information costs which follow are strictly attributable to the ARSA program. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA will also issue an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs for the airport at which an ARSA is being proposed by this notice is estimated to be approximately $450. This cost will be incurred only once upon the initial establishment of the ARSA.

Information on ARSA's following implementation of the program will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and therefore will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA to allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA, or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment (which will be offset somewhat by the descent).

FAA recognizes that the potential exists for delay to develop at some locations following establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the mandatory participation requirement may, in some instances, result in minor delays to aircraft operations. FAA does not expect such delay to be appreciable. FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the efficiencies that an ARSA will permit. This has been the experience at the locations where ARSA's have been in effect for the longest period of time, and is the trend at most of the locations that have been more recently designated.

The FAA does not expect that any operators will find it necessary to install radio transceivers as a result of establishing the ARSA proposed in this notice. Aircraft operating to and from primary airports already are required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the proposed ARSA. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would otherwise have extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installations costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed base and airport operators. Similarly, the FAA has eliminated potential adverse impacts on existing flight training practice areas, as well as

soaring, ballooning, parachuting, ultralight and banner towing activities, by developing special procedures to accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA does not expect that any such adverse impact will occur at the candidate ARSA site proposed in this notice.

*b. Benefits*

Much of the benefit that will result from ARSA's is nonquantifiable, and is attributable to simplification and standardization of ARSA configurations and procedures, which will eliminate much of the confusion pilots currently experience when operating in nonstandard TRSA's. Further, once experience is gained in ARSA operations, the greater flexibility allowed air traffic controllers in handling traffic within an ARSA will enable them to move traffic more efficiently than they currently are able to under TRSA's. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA, but are expected to eventually provide overall time savings to all traffic, IFR as well as VFR, as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, FAA estimates that implementation of the ARSA program nationally may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to $300 million or more, resulting from the prevention of a midair collision involving a large air carrier aircraft and numerous fatalities. Establishment of an ARSA at the site proposed in this notice will contribute to these improvements in safety.

*c. Comparison of Costs and Benefits*

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

FAA expects that any adjustment problems that may be experienced at new ARSA locations will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. This has been the experience at the vast majority of ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of the proposed ARSA site will contribute to a reduction in near and actual midair collisions. For these reasons, FAA expects that establishment of the ARSA site proposed in this notice will produce long term, ongoing benefits that will far exceed its costs, which are essentially transitional in nature.

**International Trade Impact Analysis**

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

The small entities that potentially could be affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. FAA has proposed to exclude many satellite airports located within 5 nautical miles of the primary airport at candidate ARSA sites to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some cases, the same purposes will be achieved through letters of Agreement between ATC and the affected airports that establish special procedures for operating to and from these airports. In this manner, FAA expects to eliminate any adverse impact on the operations of small satellite airports that potentially could result from the ARSA program. Similarly, FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures that will accommodate these activities through local agreements between ATC facilities and the affected organizations. FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type that use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

**List of Subjects in 14 CFR Part 71**

Aviation safety, airport radar service areas.

**The Proposed Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

**§ 71.501 [Amended]**

**San Juan Luis Munoz Marin International Airport, PR [New]**

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Luis Munoz Marin International Airport (lat. 18°26'29"N., long. 66°00'06"W.); and that airspace extending upward from 2,500 feet MSL to 4,000 feet MSL within a 10-mile radius of the Luis Munoz Marin International Airport from the 129°T(140°M) bearing from the airport clockwise to the 189°T(200°M) bearing from the airport and that airspace extending upward from 3,700 feet MSL to 4,500 feet MSL within a 10-mile radius of the airport from the 189°T(200°M) bearing from the airport clockwise to the 229°T(240°M) bearing from the airport and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 50-mile radius of the airport from the 229°T(240°M) bearing from the airport clockwise to the 129°T(140°M) bearing from the airport.

Issued in Washington, DC, on May 8, 1987.

**Daniel J. Peterson,**

*Manager, Airspace—Rules and Aeronautical Information Division.*

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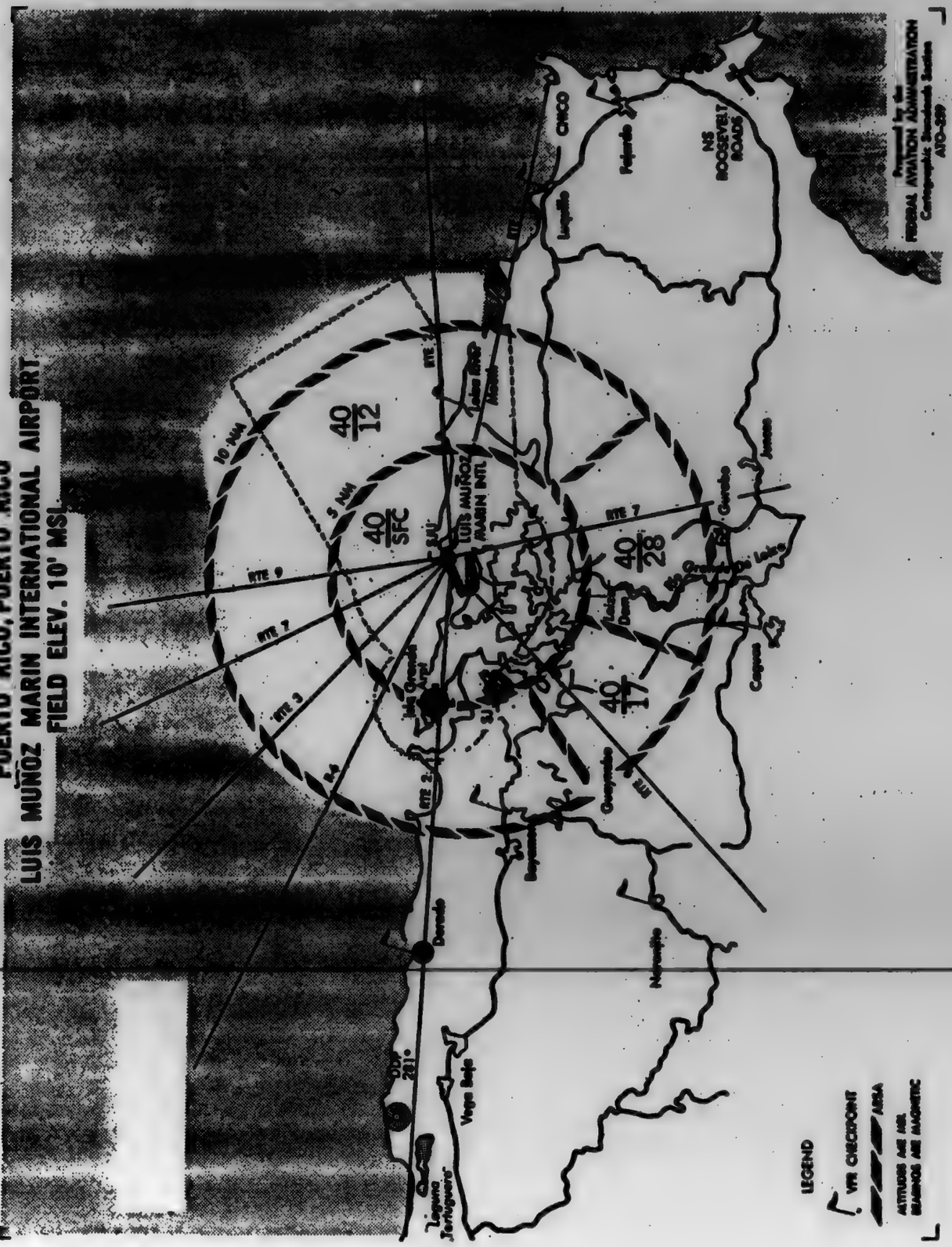


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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 55 / Pub. L. 100-36**

Designating the week of May 10, 1987, through May 16, 1987, as "National Osteoporosis Prevention Week of 1987." (May 12, 1987; 101 Stat. 303; 2 pages) Price: $1.00

**S.J. Res. 124 / Pub. L. 100-37**

Designating May 10, 1987, through May 16, 1987, as "Just Say No to Drugs Week." (May 12, 1987; 101 Stat. 305; 1 page) Price: $1.00

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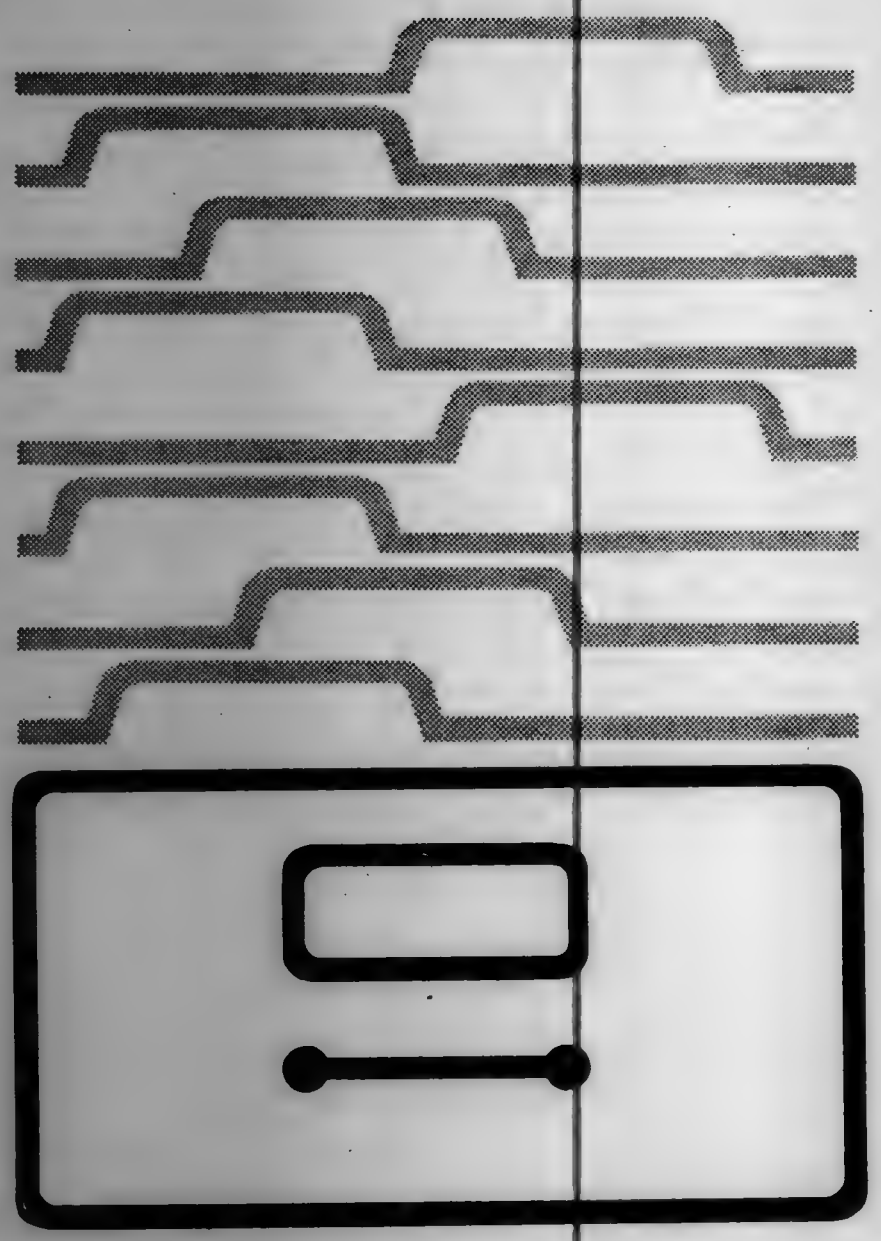

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# federal register

Monday
May 18, 1987

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**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** June 9, at 9 a.m.
**WHERE:** Office of the Federal Register,
First Floor Conference Room,
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**WHEN:** July 8, at 9 a.m.
**WHERE:** Room 204A,
Everett McKinley Dirksen Federal Building,
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Chicago, IL.
**RESERVATIONS:** Call the Chicago Federal Information Center, 312-353-0339.

### BOSTON, MA

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**WHERE:** Main Auditorium, Federal Building,
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# Rules and Regulations

Federal Register
Vol. 52, No. 95
Monday, May 18, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Part 1951

### Implementation of Salary Offset

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Farmers Home Administration (FmHA), United States Department of Agriculture (USDA) amends its regulations to permit salary offset to collect debts owed by Federal employees arising from delinquent FmHA loans and other debts. The objective is to inform the public of the procedures that will be used by FmHA to exercise salary offset. The intended effect is to allow FmHA to collect from an employee's current salary, to increase collections and reduce delinquencies.

**DATES:** Effective Date: May 18, 1987. Comments must be submitted on or before June 17, 1987.

**ADDRESSES:** Send comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348–S, 14th and Independence Avenue SW., Washington, DC 20250. All written comments will be available for public inspection during normal working hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Pat Vincenzo, Management Analyst, telephone (202) 475–5502, Farmers Home Administration, U.S. Department of Agriculture, Room 5505, South Agriculture Building, Washington, DC 20250.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." The Administrator of FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. No. 91–190, an Environmental Impact Statement is not required.

This activity is listed in the Catalog of Federal Domestic Assistance under Farm Labor Housing Loans (No. 10.405), Farm Ownership Loans, specifically related to non-farm enterprise loans (No. 10.407), Rural Housing Site Loans (No. 10.411), Resource Conservation and Development Loans (No. 10.414), Rural Rental Housing Loans (No. 10.415), Soil and Water Loans (SW Loans) (No. 10.416), Water and Waste Disposal Systems for Rural Communities (No. 10.418), Housing Technical Assistance (Section 523 Technical Assistance (No. 10.420), Business and Industrial Loans (No. 10.422), Community Facilities Loans (No. 10.423), and Rural Rental Assistance Payments (Rental Assistance) (No. 10.427), and are subject to the provisions of Executive Order 12371 which requires intergovernmental consultation with State and local officials. (7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983.) Emergency loans (No. 10.404), Farm Operating Loans (No. 10.406), Farm Ownership Loans (No. 10.407), Low-Income Housing Loans (Section 502 Rural Housing Loans) (No. 10.410), Very Low-Income Housing Repair Loans (Section 504 Rural Housing Loans) (No. 10.417), Indian Tribes and Tribal Corporation Loans (No. 10.421), and Economic Emergency Loans (No. 10.428) are excluded from the Executive Order.

FmHA is implementing this interim rule immediately with a 30 day comment period. It is the policy of USDA that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. Good cause exists to make this regulation effective immediately and not to publish the regulation as a proposed rule. This is a rule concerned with matters of agency management only and publication as a proposed rule is unnecessary, but FmHA is accepting public comments.

While delinquent debts owed to FmHA remain unpaid, FmHA must borrow money to operate which increases the Federal deficit. Increased Government borrowing causes interest rates to rise and reduces the availability of credit in the country. The Debt Collection Act of 1982 (31 U.S.C. 3701, 3711 and 3716–19), the Attorney General-Comptroller General's joint claims collection standards for agencies (4 CFR Parts 101–105), and the USDA debt collection regulations (7 CFR Part 3) contain specific and detailed requirements which agencies of USDA must follow in order to collect debts by offset. This FmHA regulation does not add to those existing requirements and simply restates those requirements and identifies the FmHA employees who are responsible for fulfilling those requirements for FmHA. Publication as a proposed rule is unnecessary because no new requirements or restrictions are imposed on those who are already subject to USDA regulations. Making this FmHA regulation effective immediately upon publication is warranted because the regulation only gives guidance to the FmHA staff and affected parties as to how FmHA intends to administer the Debt Collection Act, the Attorney General-Comptroller General regulations, and the USDA regulations.

### List of Subjects in 7 CFR Part 1951

Account servicing, Loan programs, Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Accounting, Credit.

Accordingly, 7 CFR Part 1951 is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Offsets of Federal Payments to FmHA Borrowers

§ 1951.105 [Amended]

2. In § 1951.105, paragraph (f) is amended by removing the words, "ASCS and FCIC" at the end of the paragraph.

3. A new § 1951.111 is added to read as follows:

§ 1951.111 Salary offset.

Salary offset may be used to collect debts arising from delinquent FmHA loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, underwithholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect debts owed to them by employees of FmHA, excluding County Committee members. Salary offset will not be initiated until after other servicing options available to the borrower have been utilized. In addition, for farmer program loans, salary offset will not be instituted if the federal salary has been considered on the farm and home plan, and it was determined the funds were to be used for another purpose other than payment on the FmHA loan. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before FmHA can ask a Federal agency to offset any amount. Decisions made under the following section are not appealable under Subpart B of Part 1900 of this chapter.

(a) *Authorities.* The following authorities are granted to FmHA employees in order that they may initiate and implement salary offset:

(1) Certifying Officials are authorized to certify to the debtor's employing agency that the debt exists, the amount of the delinquency or debt, that the procedures in FmHA's and United States Department of Agriculture's (USDA's) regulations regarding salary offsets have been followed, that the actions required by the Debt Collection Act have been taken; and to request that salary offset be initiated by the debtor's employing agency. This authority may not be redelegated.

(2) Certifying Officials are authorized to advise the Finance Office to establish employee defalcation accounts and non-cash credits to borrower accounts in cases involving other debts, such as those arising from theft, fraud, embezzlement, loss of funds through negligence, and similar actions involving FmHA employees.

(3) The Finance Office is authorized to establish defalcation accounts and non-cash credits to borrower accounts upon receipt of requests from the Certifying Officials.

(b) *Definitions*—(1) *Salary offset.* The collection of a debt due to the U.S. by deducting a portion of the disposable pay of a Federal employee without the employee's consent.

(2) *Debt or debts.* A term that refers to one or both of the following:

(i) *Delinquent debts.* A past due amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(ii) *Other debts.* An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to the employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

(A) Theft, misuse, or loss of Government funds;

(B) False claims for services and travel;

(C) Illegal, unauthorized obligations and expenditures of Government appropriations;

(D) Using or authorizing the use of Government owned or leased equipment, facilities supplies, and services for other than official or approved purposes;

(E) Lost, stolen, damaged, or destroyed Government property;

(F) Erroneous entries on accounting record or reports; and,

(G) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of Government funds.

(3) *Certifying Officials.* State Directors; the Assistant Administrator, Finance Office; and the Deputy Administrator for Management, National Office.

(4) *Hearing Officer.* An Administrative Law Judge of the USDA or another individual not under the control of the USDA, designated by the Certifying Official to review the determination of the alleged debt.

(5) *Disposable pay.* Pay due an employee that remains after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits, and such other deductions required by law to be withheld.

(6) *Defalcation account.* An account established in the Finance Office for other debts owed the Federal government in the amount missing due to the action of an employee or former employee.

(7) *Non-cash credit.* The accounting action taken by the Finance Office to credit and make a borrower's account whole for funds paid by the borrower but missing due to an employee's or former employee's actions.

(c) *Feasibility of salary offset.* The first step the Certifying Official must take to use this offset procedure is to decide, on a case by case basis, whether offset is feasible. If an offset is feasible, the directions in the following paragraphs of this section will be used to collect by salary offset. If the official making this determination decides that salary offset is not feasible, the reasons supporting this decision will be documented in the borrower's running case record in the case of delinquent debts, or the "For Official Use Only" file in cases of other debts. Ordinarily, and where possible, debts should be collected in one lump-sum; but payments may be made in installments. Installment deductions can be made over a period not greater than the anticipated period of employment. However, the amount deducted for a pay period will not exceed 15 percent of the disposable pay from which the deduction is made. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. Based on the Comptroller General's decisions, other debts by employees cannot be forgiven. If the employee retires or resigns, or if employment ends before collection of the debt is completed, final salary payment, lump-sum leave, etc. may be offset to the extent necessary to

liquidate the debt. Salary offset is feasible if:

(1) The cost to the Government of collecting salary offset does not exceed the amount of the debt. County Committee members are exempt from salary offset because the amount collected by salary offset would be so small as to be impractical.

(2) There are no legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court, or the statute of limitations having expired. The Debt Collection Act of 1982 permits offset of claims that have not been outstanding for more than 10 years.

(d) *Notice to debtor.* (1) After the Certifying Official determines that collection by salary offset is feasible, FmHA Form Letter 1951–4 will be sent to notify the debtor at least 30 days before the salary offset begins. FmHA Form Letter 1951–4 will be personally delivered to the debtor or sent certified mail, Return Receipt Requested, with a copy sent by regular mail on the same day. If the certified mail receipt is returned, the date the debtor received the letter will be established and the time limits set out in FmHA Form Letter 1951–4 will run from that date. If delivery by certified mail is not accomplished, FmHA will assume that the debtor received the letter by regular mail on the day the certified mail was refused or was unable to be delivered.

(2) The Debt Collection Act of 1982 requires that the hearing officer issue a written decision not later than 60 days after the filing of the petition requesting the hearing; thus, the evidence upon which the decision to notify the debtor is based, to the extent possible, should be sufficient for FmHA to proceed at a hearing, should the debtor request a hearing under paragraph (f) of this section.

(e) *Notice requirement before salary offset.* Salary offset will not be made unless the employee receives 30 calendar days written notice. This Notice of Intent (FmHA Form Letter 1951–4) will state:

(1) It has been determined that the debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The debt will be collected by means of deduction of not more than 15 percent from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(3) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(4) An explanation of the requirements concerning interest, penalties and administrative costs, unless such payments are waived;

(5) The employee's right to inspect and request a copy of records relating to the debt;

(6) The employee's right to voluntarily enter into a written agreement for a repayment schedule with the agency different from that proposed by FmHA, if the terms of the repayment proposed by the employee are agreeable with the agency;

(7) That the employee has a right to a hearing conducted by an Administrative Law Judge of USDA or a hearing official not under the control of the Secretary of Agriculture, concerning the agency's determination of the existence or amount of the debt and the percentage of disposable pay to be deducted each pay period, if a petition for a hearing is filed by the employee as prescribed by FmHA;

(8) The timely filing of a petition for hearing will stay the collection proceedings;

(9) That a final decision will be issued at the earliest practical date, but not later than 60 calendar days after the filing of petition requesting the hearing;

(10) That any knowingly false or frivolous statements may subject the employee to disciplinary procedures, or penalties, under the applicable statutory authority;

(11) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(12) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee unless there are provisions to the contrary;

(13) The method and time period for requesting a hearing; and

(14) The name and address of an official of USDA to whom communications should be directed.

(f) *Debtor's request for records, offer to repay, request for a hearing or request for information concerning debt settlement.* (1) If a debtor responds to FmHA Form Letter 1951–4 by asking to review and copy FmHA's records relating to the debt, the Certifying Official will promptly respond by sending a letter which tells the debtor the location of the debtor's FmHA files and that the files may be reviewed and copied within the next 30 days. Copying costs (see FmHA Instruction 2018–F) will be set out in the letter, as well as the hours the files will be available each day. If a debtor asks to have FmHA copy the records, a copy will be made within 30 days of the request.

(2) If a debtor responds to FmHA Form Letter 1951–4 by offering to repay the debt, the offer may be accepted by the Certifying Official, if it would be in the best interest of the government. FmHA Form Letter 1951–5 will be used if a repayment offer for an FmHA loan or grant is accepted. Upon receipt of an offer to repay, the Certifying Official will delay institution of a hearing until a decision is made on the repayment offer. Within 60 days after the initial offer to repay was made, the Certifying Official must decide whether to accept or reject the offer. This decision will be documented in the running case record or the "For Official Use Only" file, as appropriate, and the debtor will be sent a letter which sets out the decision to accept or reject the offer to repay. The decision to accept or reject a repayment offer should be based upon a realistic budget or farm and home plan and according to the servicing regulations for the type of loan(s) involved.

(3) If a debtor responds to FmHA Form Letter 1951–4 by asking for a hearing on FmHA's determination that a debt exists and/or is due, or on the percentage of net pay to be deducted each pay period, the Certifying Official will notify the debtor in accordance with paragraph (g)(3) of this section and request the debtor's case file or the "For Official Use Only" file.

(4) If a debtor is willing to have more than 15 percent of the disposable pay sent to FmHA, a letter prepared and signed by the debtor clearly stating this must be placed in the debtor's case file or the "For Official Use Only" file.

(5) If a debtor who is an FmHA borrower requests debt settlement, the account must be in collection-only status or be an inactive account for which there is no security. The Certifying Official must inform the borrower of how to apply for debt settlement. Any application will be considered independently of the salary offset. A salary offset should not be delayed because the borrower applied for debt settlement.

(6) The time limits set in FmHA Form Letter 1951–4 and in paragraphs (f) (1), (2), and (3) of this section run concurrently. In other words, if a debtor asks to review the FmHA file and offers to repay the debt, the debtor cannot take 30 days to ask to review the file and then take another 30 days to offer to repay. The request to review the file and the offer to repay must both be made within 30 days of the date the debtor receives the notification letter.

(7) If an employee is included in a bargaining unit which has a negotiated grievance procedure that does not specifically exclude salary offset proceedings, the employee must grieve the matter in accordance with the

negotiated procedure. Employees who are not covered by a negotiated procedure must utilize the salary offset proceedings as outlined in FmHA Form Letter 1951–4. The employee must be informed, in writing, which procedure to follow and, as appropriate, reference should be made to the appropriate sections of the negotiated agreement.

(g) *Hearings.* (1) A hearing officer must be a USDA Administrative Law Judge or a person who is not a USDA employee. In order to ensure that a hearing officer will be available promptly when needed, Certifying Officials need to make appropriate arrangements with officials of nearby federal agencies for the use of each other's employees as hearing officers.

(2) Not later than 30 days from the date the debtor receives the Notice of Intent (FmHA Form Letter 1951–4), the employee must file with the Certifying Official issuing the notice, a written petition establishing his/her desire for a hearing on the existence and amount of the debt or the proposed offset schedule. The employee's petition must fully identify and explain all the information and evidence that supports his/her position. In addition, the petition must bear the employee's original signature and be dated upon receipt by the Certifying Official.

(3) Certifying Officials are responsible for determining if the employee's petition for a hearing has been submitted in a timely fashion. Petitions received from employees after the 30-day time limitation expires will be accepted only if the employee can show the delay was because of circumstances beyond his/her control or because of failure to receive notice of the time limitation. Certifying Officials are required to provide written notification to the employee of the acceptance or non-acceptance of the employee's petition for hearing.

(4) For those petitions accepted, FmHA will arrange for a hearing officer and notify the employee of the time and place of the hearing. The hearing location should be convenient to all parties involved. The employee will also be notified that the acceptance of the petition for hearing will stay the commencement of collection proceedings. Any payments collected in error due to untimely or delayed filing beyond the employee's control will be refunded unless there are applicable contractual or statutory provisions to the contrary.

(5) The hearing will be based on written submissions and documentation provided by the debtor and FmHA unless:

(i) A statute authorizes or requires consideration of waiving the debt, the debtor requests waiver of the debt, and the waiver determination turns on an issue of credibility or truth.

(ii) The debtor requests reconsideration of the debt and the hearing officer determines that the question of the indebtedness cannot be resolved by a review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or truth.

(iii) The hearing officer determines that an oral hearing is appropriate.

(6) Oral hearings may be conducted by conference call at the request of the debtor or at the discretion of the hearing officer. The hearing officer's determination that the offset hearing is on the written record is final and is not subject to review.

(7) The hearing officer will issue a written decision not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the Certifying Official grants a delay in the proceedings. The written decision will state the facts supporting the nature and origin of the debt, the hearing officer's analysis, findings and conclusions as to the amount and validity of the debt, and repayment schedule. Both the employee and FmHA will be provided with a copy of the hearing officer's written decision on the debt.

(h) *Processing delinquent debts.* (1) Form AD–343, "Payroll Action Request," will be prepared and submitted by the Certifying Official to the debtor's employing agency along with FmHA Form Letter 1951–6 if:

(i) The borrower does not respond to FmHA Form Letter 1951–4 within 30 days.

(ii) The borrower responds to FmHA Form Letter 1951–4 within 30 days and

(A) Has had an opportunity to review the file, if requested,

(B) Has received a hearing, if requested, and

(C) A decision has been made by the hearing officer to uphold the offset.

(2) A copy of Form AD–343 and the Form Letter 1951–6 will be sent to the Finance Office, St. Louis, MO 63103, Attn: Account Settlement Unit.

(3) If the debtor is an FmHA employee, the Certifying Official will send Form AD–343 to the National Finance Center (NFC), New Orleans, LA, and a copy to the Finance Office, St. Louis, MO, Attn: Account Settlement Unit.

(4) If the debtor has agreed to have more or less than 15 per cent of the disposable pay sent to FmHA, a copy of the debtor's letter (FmHA Form Letter 1951–8) authorizing this must be attached to Form AD–343.

(5) Field offices will be notified of payments received from salary offset by receipt of a transaction record from the Finance Office.

(i) *Deduction percentage.* (1) Generally, installment deductions will be made over a period not greater than the anticipated period of employment. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. Certifying Officials are responsible for determining the size and frequency of the deductions. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(2) Deductions will be made only from basic pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay. If there is more than one salary offset, the maximum deduction for all salary offsets against an employee's disposable pay is 15 percent unless the employee has agreed in writing to a greater amount.

(j) *Agency/NFC responsibility for other debts.* (1) FmHA will inform NFC about other indebtedness by transmitting to NFC an AD–343. NFC will process the documents through the Payroll/Personnel System, calculate the net amount of the adjustment and generate a salary offset notice. This notice will be sent to the employee's employing office along with a duplicate copy for the FmHA's records. FmHA is responsible for completing the necessary information and forwarding the employee's notice to the employee.

(2) Other indebtedness falls into two categories:

(i) An agency-initiated indebtedness (i.e. personal telephone calls, property damages, etc.).

(ii) An NFC-initiated indebtedness (i.e. duplicate salary payments, etc.). NFC will send the salary offset notice to the employing office.

(k) *Establishing employees or former employees defalcation accounts and non-cash credits to borrower accounts.* In cases where a borrower made a payment on an FmHA account(s) and, due to theft, embezzlement, fraud,

negligence, or some other action on the part of an FmHA employee or employees, the payment is not transmitted to the Finance Office for application to the borrower's account(s), certain accounting actions must be taken by the Finance Office to establish non-cash credits to the borrower's account and an employee defalcation account.

(1) The Certifying Official will advise the Assistant Administrator, Finance Office by memorandum to establish a defalcation account. The memorandum must state the following information:

(i) Employee's name (or former),

(ii) Social Security Number,

(iii) Present or last known address,

(iv) Date of Payment, and

(v) Amount of the defalcation account.

(2) If a non-cash credit to a borrower's account(s) is required, the letter to the Finance Office will include:

(i) Borrower's name and case number,

(ii) Fund Code and Loan Code,

(iii) Date and amount of missing payment,

(iv) Copy of receipt issued for the missing payment, and

(v) Name of employee who last had custody of the missing funds.

(3) To assist and assure proper accounting for defalcation accounts and non-cash credits, the request should be made at the same time. Should requests be made separately, be sure to identify appropriately.

(4) The Certifying Official shall furnish a copy of the memorandum and supporting documentation for paragraphs (k) (1) and (2) of this section to the Deputy Administrator for Management for distribution to the Financial Management and Analysis Staff (FMAS) and Employee Relations Branch, Personnel Division.

(l) *Application of payments, refunds and overpayments.* (1) If a debtor is delinquent or indebteded on more than one FmHA loan or debt, amounts collected by offset will be applied as specified on Form AD–343, based on the advantage to agency or debtor. The check date will be used as the date of credit in applying payments to the borrower's accounts.

(2) If a court or agency orders FmHA to refund the amount obtained by salary offset, a refund will be requested promptly by the Certifying Official in accordance with the order by sending FmHA Form Letter 1951–5 to the Finance Office. Processing FmHA Form Letter 1951–5 in the Finance Office will cause a refund to be sent to the debtor through the county office or other appropriate FmHA office. The debtor is not entitled to any payment of interest, on the refunded amount.

(3) If a debtor does not request a hearing within the required time and it is later determined that the delay was due to circumstances beyond the debtor's control, any amount collected before the hearing decision is made will be refunded promptly by the Certifying Official in accordance with paragraph (l) (2) of this section.

(4) If FmHA receives money through an offset but the debtor is not delinquent or indebted at the time or the amount received is in excess of the delinquency or indebtedness, the entire amount or the amount in excess of the delinquency or indebtedness will be refunded promptly to the debtor by the Certifying Official in accordance with paragraphs (l) (1) and (2) of this section.

(m) *Cancellation of offset.* If a debtor's name has been submitted to another agency for offset and the debtor's account is brought current, the Certifying Official will notify the other agency with Form AD–343 that the debtor is no longer delinquent or indebted and to cancel the offset. A copy of the cancellation document will be sent to the debtor and the Finance Office, Attn: Account Settlement Unit.

(n) *Intra-departmental transfer.* When an FmHA employee who is indebted to one agency in USDA transfers to another agency within USDA, a copy of the repayment schedule should be forwarded by the agency personnel office to the new employing agency. The NFC will continue to make deductions until full recovery is effected.

(o) *Liquidation from final checks.* Upon the determination that an employee owing a debt to FmHA is to retire, resign, or employment otherwise ends, the Certifying Official should forward a telegram with the appropriate employee identification and amount of the debt to the NFC. The telegram should request that the debt be collected from final salary/lump sum leave or other funds due the employee, and, if necessary, to put a hold on the retirement funds. The telegram information should be confirmed by completion of Form AD–343. Collection from retirement funds will be in accordance with Departmental Administrative Offset procedures (7 CFR, Part 3, Subpart B, Section 3.32).

(p) *Coordination with other agencies.* (1) If FmHA is the creditor agency but not the paying agency, the FmHA will submit Form AD–343 to the paying agency to begin salary offset against an indebted employee. The request will include a certification as to the determination of indebtedness, and that FmHA has complied with applicable regulations and instructions for submitting the funds to the Finance Office. (See FmHA Form Letter 1951–6.)

(2) When an employee of FmHA owes a debt to another Federal agency, salary offset may be used only when the Federal agency certifies that the person owes the debt and that the Federal agency has complied with its regulations. The request must include the creditor agency's certification as to the indebtedness, including the amount, and that the employee has been given the due process entitlements guaranteed by the Debt Collection Act of 1982. When a request for offset is received, FmHA will notify the employee and NFC and arrange for offset. (See FmHA Form Letter 1951–7).

(q) *Deductions by the National Finance Center (NFC).* The NFC will automatically deduct the full amount of the delinquency or indebtedness if less than 15 percent of disposable pay or 15 percent of disposable pay if the delinquency or indebtedness exceeds 15 percent, unless the creditor agency advises otherwise. Deductions will begin the second pay period after the 30-day notification period has expired unless FmHA issues the notice. If FmHA issues the notice, the NFC will begin deductions on the first pay period after receipt of the Form AD–343.

(r) *Interest, penalties and administrative costs.* Interest and administrative costs will normally be assessed on outstanding claims being collected by salary offset. However, penalties should not be charged routinely on debts being collected in installments by salary offsets, since it is not to be construed as a failure to pay within a given time period. Additional interest, penalties, and administrative costs will not be assessed on delinquent loans until FmHA publishes regulations permitting such charges.

(s) *Adjustment in rate of repayment.* (1) When an employee who is indebted receives a reduction in basic pay that would cause the current deductions to exceed 15 percent of disposable pay, and the employee has not consented in writing to a greater amount, FmHA must take action to reduce the amount of the deductions to 15 percent of the new amount of disposable pay. Upon an increase in basic pay which results in the current deductions to be less than the specified percentage, FmHA may increase the amount of the deductions accordingly. In either case, when a change is made the employee will be notified in writing.

(2) When an employee has an existing reduced repayment schedule because of financial hardship, the creditor agency

may arrange for a new repayment schedule.

Dated: April 13, 1987.

Michael C. Wilkinson,

*Acting Administrator, Farmers Home Administration.*

[FR Doc. 87-11248 Filed 5-15-87; 8:45 am]

BILLING CODE 3410-07-M

## DEPARTMENT OF ENERGY

### 10 CFR Parts 420, 465, and 600

### Class Deviation; Subawards Under the State Energy Conservation Program and Energy Extension Service Grant Program

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of class deviation.

**SUMMARY:** The Department of Energy (DOE) announces that a class deviation has been approved which exempts subawards (subgrants) under the State Energy Conservation Program and Energy Extension Service grant program for Fiscal Year 1987 from the requirement that subgrants must be "specifically authorized by statute or program rule" (10 CFR 600.3).

**DATE:** The class deviation is effective June 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Howard K. Mitchell, Office of Clearance and Support, Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8226. Ernestine Gibson, Energy Management and Extension Programs, Office of State and Local Programs, Conservation and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8294.

**SUPPLEMENTARY INFORMATION:** As part of the Department's energy conservation mission, DOE fosters and promotes comprehensive state energy conservation plans by providing technical and financial assistance for specific state initiatives to conserve and improve efficiency in the use of energy and to encourage the use of renewable resources through the State Energy Conservation Program (SECP), 10 CFR Part 420. DOE also provides financial and technical assistance to the States through the Energy Extension Service (EES) program, 10 CFR Part 465, to stimulate, provide for and supplement programs for the conduct of evaluation, planning and other technical assistance and energy conservation efforts, including energy outreach activities of States.

Each year the Department receives applications from the States for these grant programs and, because of the diversity of conditions among the various States, some contain requests to make subgrants for purposes of planning and implementing a variety of local energy projects to local community organizations.

Subgrants are not permissible funding mechanisms under the SECP and EES programs since they are not specifically authorized by statute or program rules in accordance with 10 CFR 600.3, Definitions, "Recipient," "Subaward", "Subrecipient," and 10 CFR 600.101, "Subgrant."

The Director, Procurement and Assistance Management Directorate, has approved a class deviation in accordance with 10 CFR 600.4, exempting subgrants under SECP and EES grant programs for Fiscal Year 1987 from the requirements of the DOE Financial Assistance Rules described above for use when subgrants are necessary to achieve program objectives.

Berton J. Roth,

*Director, Procurement and Assistance, Management Directorate.*

[FR Doc. 87-11313 Filed 5-15-87; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 87-CE-05-AD; Amdt. 39-5624]

### Airworthiness Directives; Bellanca Models 17-30, 17-30A, 17-31, 17-31A, 17-31TC, and 17-31ATC Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to all Bellanca Models 17-30, 17-30A, 17-31, 17-31A, 17-31TC, and 17-31ATC airplanes, which requires repetitive inspections of the fuel filler caps and fuel filler well (scupper) drains. Additionally, for airplanes manufactured between late 1966 and early 1973, the AD requires that revisions be incorporated in the Airplane Flight Manuals (AFM), and that revised fuel system placards, referenced in the AFMs be installed in the airplanes. A high percentage of the accidents and incidents in which these airplanes were involved were related to loss of engine power, with fuel contamination or fuel mismanagement being the cause in many instances. The fuel filler cap and fuel filler well drain inspections will reduce the possibility of fuel contamination. The AFM revisions, which contain improved descriptions of the fuel system and related operating procedures, will provide pilots with specific operating information and improved emergency procedures to prevent inflight power loss due to fuel contamination or starvation.

**DATE:** Effective Date: June 22, 1987.

Compliance: As prescribed in the body of the AD.

**ADDRESSES:** Bellanca Service Letter No. B-105, dated February 2, 1967, and the Airplane Flight Manual Revisions (Model 17-30/Rev. 15, dated February 2, 1987; Model 17-30A/Rev. 6, dated February 2, 1987; Model 17-31/Rev. 2, dated February 2, 1987; Model 17-31A/Rev. 8, dated February 2, 1987; Model 17-31TC/Rev. 2, dated February 2, 1987; Model 17-31ATC/Rev. 8, dated February 2, 1987) applicable to this AD may be obtained from Bellanca, Inc., P.O. Box 964, Alexandria, Minnesota 56308. This information may be examined at the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ty Krolicki, FAA, Chicago Aircraft Certification Office, ACE-140C, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018; Telephone (312) 694-7032.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring repetitive inspections of the fuel filler caps and fuel filler well (scupper) drains on all airplanes and AFM revisions (and installation of referenced fuel system placards) on certain Bellanca 17 Series airplanes was published in the Federal Register on March 2, 1987 (52 FR 6170). National Transportation Safety Board (NTSB) data for the period from 1967 through 1985 showed that Bellanca 17-30 and 17-31 series airplanes were involved in 127 accidents in which there was a loss of engine power. This represented about 38 percent of the total accidents which these model airplanes were involved in during the period. During the same timespan, however, loss of engine power accounted for only 21 percent of the total number of accidents in which airplanes of several other comparable manufacturers were involved. In addition, the Federal Aviation Administration (FAA) data base for 1980

through 1985 contained 22 incidents in which these airplanes experienced loss of engine power. Fuel system contamination and fuel mismanagement are two identified or probable causal factors in many of these accidents and incidents. To protect against fuel system contamination due to water entering the fuel tanks, Bellanca has developed Service Letter No. B–105, dated February 2, 1987, which contains specific procedures for inspecting the fuel caps and the fuel filler well (scupper) drains. Inspection of the fuel caps will help provide a good seal, thus preventing moisture from entering the tanks. A test is also required for the thermos-type expansion fuel caps to assure moisture will not enter the cap through the locking tab mechanism. In addition, procedures are included to ensure that the fuel filler well drain is not plugged. A plugged drain could permit water to accumulate in the fuel filler well and possibly reach a level where it would flow into the tank inlet if the filler cap seal was defective or loosefitting. The FAA believes that mandatory compliance with the procedures of the service letter will reduce the possibility of water entering the fuel tanks. Fuel starvation of the engine due to a fuel tank being dry despite the presence of ample fuel in another tank has been a recurring problem. The design of the fuel system on late 1966 through early 1973 versions of these airplanes is complex, requiring improved instructions to prevent fuel system mismanagement. This design includes the use of two fuel selector valves (in airplanes with wing auxiliary fuel tanks), a fuel quantity gauging system that does not provide a dedicated gauge for each tank, and the characteristic that the main tank fuel quantity gauge reads empty (regardless of the actual amount of fuel present in the tanks) when the main fuel selector valve is set to the "AUX" tank position.

The problem is compounded by the fact that the fuel system description and operating procedures provided in the existing airplane flight manuals for these older airplanes are generally inadequate. To improve the situation, Bellanca has developed comprehensive revisions to the flight manuals for these older airplanes. These revisions incorporate an improved description of the operation of the fuel system, specific operating information regarding management of available fuel resources, a recommendation that fuel tanks not be intentionally run dry, and procedures for restarting the engine in flight. In addition, Bellanca has developed improved placards, referenced in the revised flight manuals, to highlight certain peculiarities of the fuel system in a more clear manner. The FAA believes that these changes will heighten pilot awareness of the importance of proper fuel management and increase overall understanding of the fuel system, thereby reducing accidents and incidents caused by fuel mismanagement.

Since the condition described is likely to exist or develop in other Bellanca airplanes of the same type design, the AD requires (1) periodic inspections of the fuel filler caps and fuel filler well (scupper) drains in accordance with Bellanca Service Letter No. B–105, dated February 2, 1987; and (2) for airplanes manufactured between late 1966 and early 1973, a revision to the airplane flight manuals to incorporate an improved description of fuel system (and installation of the associated revised fuel system placards) and related operating procedures.

Interested persons have been afforded an opportunity to comment on the proposal. Two comments were received. One commenter concurred with the proposal. The second commenter concurred with the fuel filler cap/well drain inspections and AFM revision aspects of the proposal but objected to the instrument panel placard of paragraph (b)(2)(ii). The commenter maintained that the placard duplicated information in the AFM, was not of emergency value, and would contribute to panel placard clutter. Although the FAA is in agreement with the concept of minimizing panel clutter and acknowledges that the placard repeats AFM information, it believes that the placard is appropriate and necessary. The only new message contained in this revised placard is that the main fuel tank gauge is inoperative when an auxiliary tank is selected. This is a vital piece of information of which a pilot may be unaware if he has not received an adequate airplane check-out and has not reviewed the AFM. An uninformed pilot, not understanding the functioning of the fuel gauging system, may fail to switch back to a main tank upon inadvertently running an auxiliary tank dry if the main fuel tank gauges indicate empty. This sort of scenario might explain some of the previous accidents which prompted several NTSB recommendations to the FAA regarding the fuel systems on these airplanes. No comments or objections were received on the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change.

The FAA has determined there are approximately 1,300 airplanes affected by the inspections specified in the AD at a negligible cost per airplane, and 661 airplanes affected by the flight manual revision and placard installation specified in the AD, at a cost of approximately $10 per airplane. The total cost is estimated to be less than $7,000 to the private sector. The cost of compliance with the AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety, Aircraft, Safety.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Bellanca:** Applies to Models 17–30, 17–30A, 17–31, 17–31A, 17–31TC, and 17–31ATC (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To preclude engine power loss due to either the accumulation of water or other contaminants in the fuel system or due to mismanagement of available fuel resources caused by lack of pilot familiarity with the airplane fuel system design and operating procedures, accomplish the following:

(a) For all airplanes, within the next 30 days after the effective date of this AD or at the next annual inspection, whichever occurs later, and thereafter at each annual inspection, inspect the fuel filler caps and fuel filler well (scupper) drains in accordance with the instructions contained in Section II of Bellanca Service Letter No. B–105, dated February 2, 1987.

(b) For Bellanca Models and Serials identified in Table 1., within the next 30 days after the effective date of this AD, accomplish the following:

(1) Install the appropriate AFM revision, as specified in Table 1.

(2) Install permanent placards which state the following at the specified airplane locations:

(i) On the instrument panel adjacent to the auxiliary fuel pump switch: "USE TO RESTORE FUEL PRESSURE AND RELEASE TO PREVENT ENGINE FLOODING."

(ii) On the instrument panel adjacent to the fuel quantity gauges: "FUEL GAUGES READ QUANTITY IN TANK SELECTED. MAIN FUEL TANK GAUGE INOPERATIVE WHEN AUXILIARY TANK SELECTED. FUEL REMAINING IN SELECTED TANK CANNOT BE USED SAFELY IN FLIGHT WHEN GAUGE READS ZERO."

(iii) On the console adjacent to the fuel selector valve (on airplanes with a 58 gallon capacity fuel system):

"LEFT TANK: 15.5 GALLONS
RIGHT TANK: 15.5 GALLONS
AUXILIARY TANK: 20 GALLONS
USE AUX. TANK IN LEVEL FLIGHT ONLY."

(3) Placards specified in (b)(2)(i), (b)(2)(ii), and (b)(2)(iii) may be fabricated and installed using letters with minimum 1/16 inch height.

Note.—The AFM revisions specified above (and associated placards) are available at a nominal cost from Bellanca, Inc., P.O. Box 964, Alexandria, Minnesota 56308; Telephone (612) 762–1501. The placards are revised versions of existing placards. The existing placards may either be removed and discarded or overlaid by the corresponding revised placard. The placard specified in paragraph (2)(iii) deletes information which was contained in the placard being replaced. This information, however, is presented more clearly in the placard of paragraph (2)(ii) which is a new placard for the airplanes to which paragraph (2)(iii) applies.

(c) The requirements of paragraph (b) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations (FAR) on any airplane owned or operated by him, provided the airplanes are not used in air taxi operations. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Ave., Des Plaines, Illinois 60018; Telephone (312) 694–7357.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Bellanca, Inc., P.O. Box 964, Alexandria, Minnesota 56308; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on June 22, 1987.

Issued in Kansas City, Missouri, on May 6, 1987.

**Jerold M. Chavkin,**

*Acting Director, Central Region.*

TABLE 1.

[Serial numbers (may be AFM Revision Model prefixed with year of manufacture) to be installed]

| | | |
|---|---|---|
| 17-30 | 30001-30262 | Rev. 15, dtd. 2/2/87. |
| 17-30A | 30253-30514 (except 30486) | Rev. 6, dtd. 2/2/87. |
| 17-31 | 32-1—32-14 | Rev. 2, dtd. 2/2/87. |
| 17-31A | 32-15—32-102 | Rev. 8, dtd. 2/2/87. |
| 17-31TC | 31001-31003 | Rev. 2, dtd. 2/2/87. |
| 17-31ATC | 31004-31046 | Rev. 8, dtd. 2/2/87. |

[FR Doc. 87-11209 Filed 5-15-87; 8:45 am]
BILLING CODE 4910-13-M

## 14 CFR Part 39

**[Docket No. 86-NM-159-AD; Amdt. 39-5625]**

## Airworthiness Directives; The de Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd., Model DHC-7 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action adopts a new airworthiness directive (AD), applicable to de Havilland Model DHC-7 series airplanes, which requires the installation of a fine mesh stainless steel screen in the rear cargo compartment perforated ceiling center panel. This action was prompted by several reports of fires in the cargo compartments of various transport airplanes, and an investigation that revealed the perforated cargo compartment ceiling liner installed on Model DHC-7 series airplanes is unsatisfactory in preventing flame penetration through the perforations to the fuselage primary structure. This condition, if not corrected, could lead to fires on board the airplane.

**DATE:** Effective June 21, 1987.

**ADDRESSES:** The applicable service information may be obtained from The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. Kallis or Mr. W. White, Aerospace Engineers, Systems Branch, ANE-173, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone number (516) 791-6427.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an airworthiness directive which requires installation of a fine mesh stainless steel screen in the rear cargo compartment perforated ceiling center panel on de Havilland Model DHC-7 series airplanes, was published in the Federal Register on August 18, 1986 (51 FR 29474).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter agreed with the intent of the proposed rule, but suggested that paragraph B. be changed to indicate that any alternate means of compliance with the rule must be in accordance with FAR 25.855. That regulation pertains to requirements for "Cargo and Baggage Compartments" on transport category airplanes. The FAA does not concur with the suggestion. Any alternate means of compliance with this AD must also satisfy other FAA regulations, such as "Ventilation" (FAR 25.831) and "Pressurization" (FAR 25.841) requirements, and cannot be limited only to FAR 25.855.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $14,080.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number

of small entities, because few, if any, de Havilland Model DHC–7 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**The De Havilland Aircraft Company of Canada, a Division of Boeing of Canada, Ltd.:** Aplies to all Model DHC–7 series airplanes, certificated in any category. Compliance is required as indicated, unless already accomplished.

To assure that flames will not penetrate the rear cargo compartment liner to the fuselage primary structure, accomplish the following:

A. Within the next 6 months after the effective date of this AD, modify the DHC–7 rear cargo liner in accordance with DH Modification No. 7/2499, as detailed in DeHavilland Service Bulletin No. 7–25–49, Revision A, dated July 11, 1986, or later revisions approved by the Manager, New York Certification Office, FAA, New England Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to The de Havilland Aircraft Company of Canada, A Division of Boeing of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This Amendment becomes effective June 21, 1987.

Issued in Seattle, Washington, on May 7, 1987.

**Wayne J. Barlow,**

*Director, Northwest Mountain Region.*

[FR Doc. 87–11210 Filed 5–15–87; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 87–ACE–02]**

## Alteration of Transition Area; Maquoketa, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The nature of this Federal action is to alter the 700–foot transition area at Maquoketa, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Maquoketa, Iowa, Municipal Airport, utilizing the Davenport, Iowa, VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

**EFFECTIVE DATE:** July 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

**SUPPLEMENTARY INFORMATION:** To enhance airport usage, an additional approach procedure is being developed for the Maquoketa, Iowa, Municipal Airport, utilizing the Davenport VORTAC as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails alteration of the transition area at Maquoketa, Iowa, at or above 700 feet above the ground, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft, using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C, dated January 2, 1987.

**Discussion of Comments**

On page 7445 of the **Federal Register**, dated March 11, 1987, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations, so as to alter the transition area at Maquoketa, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No responses were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition areas.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

**Maquoketa, Iowa [Revised]**

That airspace extending upward from 700 feet above the surface within a 7 mile radius of Maquoketa Municipal Airport (Latitude 42°03'05" N., Longitude 90°44'27" W.); and that airspace 3 miles each side of the 343° bearing from the Maquoketa NDB (Latitude 42°03'05" N., Longitude 90°44'27" W.); extending from the 7 mile radius area to 8.5 miles northwest of the NDB; and within 2.5 miles each side of the 161° bearing from the Maquoketa NDB, extending from the 7 mile radius area to 9 miles southeast of the NDB.

This amendment becomes effective at 0901 UTC July 3, 1987.

Issued in Kansas City, Missouri, on May 7, 1987.

**T.R. Beckloff, Jr.,**

*Manager, Air Traffic Division.*

[FR Doc. 87–11212 Filed 5–15–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 73

[Airspace Docket No. 86-ASO-20]

## Establishment of Restricted Areas R-3008 A, B, and C—GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Restricted Areas R-3008 A, B, and C Grand Bay Weapons Range near Moody Air Force Base (AFB), GA, at the request of the U.S. Air Force. The restricted areas will provide airspace necessary for needed training to increase combat readiness. Proximity of the range to Moody AFB will enable the user to accomplish its mission better and more economically.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

### History

On September 23, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to establish Restricted Areas R-3008 A, B, and C near Moody AFB, GA (51 FR 33790). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.30 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

### The Rule

This amendment to Part 73 of the Federal Aviation Regulations establishes Restricted Areas R-3008 A, B, and C Grand Bay Weapons Range, GA. This action provides airspace required by the military to conduct training operations which would constitute a hazard to nonparticipating aircraft.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

### Adoption of the Amendment

### PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522, Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

### § 73.30 [Amended]

2. Section 73.30 is amended as follows:

R-3008A Grand Bay Weapons Range, GA [New]

Boundaries. Beginning at lat. 30°57'35" N., long. 88°11'05"W.; to lat. 30°59'12" N., long. 83°10'00" W.; to lat. 30°59'12" N., long. 83°07'53" W.; to lat. 30°58'30" N., long. 83°07'53" W.; to lat. 30°58'30" N., long. 83°07'45" W.; to lat. 30°57'43" N., long. 83°07'45" W.; to lat. 30°57'43" N., long. 83°08'05" W.; to lat. 30°56'55" N., long. 83°08'05" W.; to lat. 30°56'23" N., long. 83°08'43" W.; to lat. 30°56'50" N., long. 83°10'00" W.; to the point of beginning.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. 0700-1900 local time, Monday-Friday; other times by NOTAM 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Air Force, 347 Tactical Fighter Wing, Moody AFB, GA.

R-3008B Grand Bay Weapons Range, GA [New]

Boundaries. Beginning at lat. 30°59'12" N., long. 83°10'00"W.; to lat. 31°02'00" N., long. 83°09'00" W.; to lat. 31°01'30" N., long. 83°08'00" W.; to lat. 30°54'30" N., long. 83°08'00" W.; to lat. 30°53'30" N., long. 83°09'00" W.; to lat. 30°56'50" N., long. 83°10'00" W.; to lat. 30°56'23" N., long. 83°08'43" W.; to lat. 30°56'55" N., long. 83°08'05" W.; to lat. 30°57'43" N., long. 83°08'05" W.; to lat. 30°57'43" N., long. 83°07'45" W.; to lat. 30°58'30" N., long. 83°07'45" W.; to lat. 30°58'30" N., long. 83°07'53" W.; to lat. 30°59'12" N., long. 83°07'53" W.; to the point of beginning.

Designated altitudes. 100 feet AGL to 10,000 feet MSL.

Time of designation. 0700-1900 local time, Monday-Friday; other times by NOTAM 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Air Force, 347 Tactical Fighter Wing, Moody AFB, GA.

R-3008C Grand Bay Weapons Range, GA [New]

Boundaries. Beginning at lat. 31°04'00" N., long. 83°01'00"W.; to lat. 31°04'00" N., long. 83°06'00" W.; to lat. 31°02'00" N., long. 83°09'00" W.; to lat. 31°01'30" N., long. 83°06'00" W.; to lat. 30°54'30" N., long. 83°06'00" W.; to lat. 30°53'30" N., long. 83°09'00" W.; to lat. 30°51'00" N., long. 83°06'00" W.; to lat. 30°51'00" N., long. 83°01'00" W.; to the point of beginning.

Designated altitudes. 500 feet AGL to 10,000 feet MSL, excluding that airspace below 1,500 feet ACL within one nautical mile of Lakeland, GA. (One-nautical-mile radius centered at lat. 31°02'30" N., long. 83°04'15" W.)

Time of designation. 0700-1900 local time, Monday-Friday; other times by NOTAM 6 hours in advance.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. U.S. Air Force, 347 Tactical Fighter Wing, Moody AFB, GA.

Issued in Washington, DC, on May 6, 1987.

Daniel J. Peterson,

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87-11211 Filed 5-15-87; 8:45 am]

BILLING CODE 4910-13-M

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## FEDERAL TRADE COMMISSION

16 CFR Part 455

## Trade Regulation Rule; Sale of Used Motor Vehicles

AGENCY: Federal Trade Commission.

ACTION: Staff Compliance Guidelines.

SUMMARY: The staff of the Federal Trade Commission has written compliance guidelines for the Used Car Rule to help industry members comply with the Rule. The views expressed in the guidelines are those of staff only. They have not been approved or adopted by the Commission and are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the Used Car Rule.

DATES: Effective date: May 18, 1987. Written comments regarding the staff compliance guidelines will be accepted until July 17, 1987.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, NW.,

Washington, DC 20580. All comments should be captioned: "Comment on Staff Compliance Guidelines—Used Car Rule—FTC File No. 215–54."

**FOR FURTHER INFORMATION CONTACT:** Joyce E. Plyler [202/326–3021], or Matthew D. Gold [202/326–3019], Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

**Staff Compliance Guidelines**

*Outline*

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C. "Dealer" Defined—Section 455.1(d)(3)
D. "Consumer" Defined—Section 455.1(d)(4)
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VI. State Exemption Petitions—Section 455.6

## I. Introduction

These staff compliance guidelines describe certain provisions of the Federal Trade Commission's Trade Regulation Rule Concerning the Sale of Used Motor Vehicles (the "Rule" or "Used Car Rule"), 16 CFR Part 455, which was promulgated on November 19, 1984.[1] The Used Car Rule became effective on May 9, 1985.[2]

These guidelines cover the entire Used Car Rule. The guidelines neither amend nor modify the Rule. Rather, staff is publishing these guidelines to provide assistance to industry members in understanding the Commission's Rule and complying with its obligations.

The views expressed in these guidelines are those of staff only. These views have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for staff in assessing compliance with the Used Car Rule. Although staff views these guidelines as final, it will accept written comments until July 17, 1987. If it is appropriate to revise any portion of the guidelines based upon the comments received, revised staff compliance guidelines will be published in the Federal Register.

The Used Car Rule has four basic components. Basically, the Rule requires dealers to: (1) Prepare and display a Buyers Guide on each used vehicle offered for sale to a consumer; (2) include a special disclosure in the contract of sale; (3) identify the final warranty terms in the contract of sale; and (4) give to the purchaser a copy of the Buyers Guide that includes the final warranty terms. These guidelines explain the Rule, section by section, and explain these requirements. Included in the discussion are illustrations of how the Rule applies in specific fact situations that are faced by many dealers. The guidelines cover those areas in which guidance should prove most helpful to industry members. If further compliance questions arise, they will be handled by staff through informal advisory opinions,[3] or if appropriate, by the Commission, through formal advisory opinions, as provided for in §§ 1.1 through 1.4 of the Commission's Rules of Practice, 16 CFR 1.1–1.4.

The Used Car Rule is primarily intended to prevent and discourage oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. The Rule provides a uniform method for written disclosure of such information on a window sticker, called the "Buyers Guide." The Rule requires clear disclosure through the Buyers Guide of any warranty coverage and of the terms and conditions of any warranty offered by the dealer in connection with the sale of a used vehicle, including the duration of warranty coverage and the percentage of total repair costs that the dealer will pay. The Rule also requires certain additional disclosures that are incorporated directly onto the Buyers Guide, including: a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; a warning against reliance on spoken promises that are not confirmed in writing; and a list of the fourteen major systems of an automobile and defects that can occur in these systems. When the used car transaction is conducted in Spanish, the Rule requires that a Spanish-language version of the Buyers Guide be displayed on the vehicle prior to being offered for sale. The Rule includes a text for the Spanish-language version. In addition, the Rule provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract. In the event of any inconsistency between the Buyers Guide and the sales contract, the Rule states that the Buyers Guide will govern. The Rule also tells dealers to give a copy of the Buyers Guide to the buyer. The Buyers Guide that is given to the buyer must reflect the final warranty terms.

## II. Who Must Comply With the Rule?

Generally, all sellers of used vehicles are covered by the Rule, except those who sell, or offer to sell, fewer than six (6) vehicles in a twelve month period. A used vehicle is any car, light-duty van or light-duty truck that has been driven more than the distance necessary for test driving or moving new cars. As discussed in section II(B), below, "demonstrator" vehicles *are* covered within the definition of "used vehicles." The following definitions, included in the Used Car Rule, provide more detailed information as to the persons, firms, and vehicles that are covered by the Rule.

The Used Car Rule does not affect the definitions of terms in state law such as "dealer," "used vehicle," "new vehicle," or "vehicle." Likewise, state law definitions of the specific terms set out in § 455.1(d) of the Rule have no effect on the Used Car Rule.

### *A. "Vehicle" Defined—Section 455.1(d)(1)*

For the purposes of the Rule, a "vehicle" is defined as "any motorized vehicle with a gross vehicle weight rating (GVWR) (the loaded weight) of less than 8,500 lbs., a curb weight (the weight of an unloaded vehicle) of less than 6,000 lbs., and a frontal area of less than 46 sq. ft." Thus, the Rule covers automobiles, as well as most light-duty vans and light-duty trucks. Motorcycles are not covered. Due to the limit on the

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[1] 49 FR 45692 (Nov. 19, 1984). That notice included the Used Car Rule and the Commission's Statement of Basis and Purpose concerning the Rule.

[2] *Id. But see infra* Section II(F) of these guidelines concerning the application of the Rule within the State of Wisconsin.

[3] Staff may be contacted at the address listed in the beginning of these guidelines, under the heading "For Further Information Contact."

vehicle size built into this provision, large trucks and recreational vehicles generally fall outside the definition of the term "vehicle," and are therefore not covered.

In staff's opinion, "classic" cars are covered by the Used Car Rule. However, it is staff's opinion that the Rule does not apply to the sale of vehicles such as tractors, combines, tillers, etc., that are designed primarily for use on a farm, but which meet the definition of the term "vehicle" that is set forth in the Rule. In addition, staff is of the opinion that mopeds, like motorcycles, are not covered by the Rule.

*B. "Used Vehicle" Defined—Section 455.1(d)(2)*

Under the Rule, the term "used vehicle" includes all vehicles, as defined above, "driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer." This definition, therefore, includes demonstrators and company cars.[4] However, a vehicle sold as scrap or for its parts, and not as an operating vehicle, is specifically excluded from the definition of used vehicle, if the dealer surrenders any title documents to the appropriate State authority and obtains a salvage certification. Illustrations 2.6, 2.7, and 2.9 discuss the application of the Rule to demonstrator vehicles. Illustration 2.8 discusses how the Rule applies when a vehicle is transferred from one dealer to another.

*C. "Dealer" Defined—Section 455.1(d)(3)*

The Used Car Rule defines a "dealer" in terms of the number and frequency of used vehicle sales or offerings. Under the Rule, the term dealer includes any person or business that is presently selling or offering for sale a used vehicle, after having sold or offered for sale five or more used vehicles during the previous twelve months. *In other words, a person or business becomes a "dealer," for purposes of the FTC Used Car Rule, upon offering for sale their sixth used vehicle in twelve months.* The Rule does not impose any requirements on persons or businesses that offer *less than* six used vehicles for sale in twelve months. Illustrations 2.1 and 2.2 discuss this provision of the Rule.

The Used Car Rule's definition of "dealer" specifically excludes banks and financial institutions selling used vehicles forfeited as collateral on consumer loans. However, the Rule applies to the retail sale of used vehicles by affiliates and subsidiaries of banks or financial institutions. Illustration 2.13 discusses the application of the Rule to banks.

Section 455.1(d)(3) of the Rule also excludes a business which sells its used vehicles to its own employees. In addition, the term "dealer" excludes a lessor offering to sell a leased vehicle to one of the following parties: (1) The lessee; (2) an employee of the lessee; or (3) an individual who approached the lessee and inquired about buying the vehicle (the Rule would apply to the lessor, however, if the lessee advertised that the leased vehicle was for sale).[5] Therefore, the Rule covers the sale of a leased vehicle to an individual who did not lease the vehicle, work for the lessee, or ask the lessee about purchasing the vehicle. Illustration 2.10 discusses how the Rule applies to the sale of leased vehicles.

*D. "Consumer" Defined—Section 455.1(d)(4)*

For purposes of the Used Car Rule, the term "consumer" is broadly defined to include any person who is not a used vehicle dealer. This definition is important because § 455.2(a) of the Rule requires you (the dealer) to prepare and display a Buyers Guide before you offer to sell a used vehicle to a *consumer*. In the Statement of Basis and Purpose, the Commission indicated that the term "consumer" also includes small businesses. 49 FR 45692, 45708 (1984). If you are offering to sell a used vehicle *only* to another dealer, the Rule does not apply to the sale of that vehicle. Illustrations 2.3–2.5 highlight this provision of the Rule.

*E. Consignment Sales and Auctions*

The Rule applies whenever a dealer offers to sell a used vehicle to a consumer. (See § 455.2(a).) Therefore, before you offer to sell a used vehicle that you have on your lot due to a consignment, power of attorney or other such agreement, the Rule requires you to prepare and display a Buyers Guide. The point to remember is that whenever *you*, the dealer, offer to sell a used vehicle to a consumer, *you* are responsible for making sure that there is full compliance with the Rule.

If you are a dealer who consigns a car to *another dealer* for sale to a consumer on your behalf, the Rule covers both you and the other dealer. Both of you are responsible to make sure that the requirements of the Rule are met.

You are not covered by the Rule if you offer to sell a vehicle through an auction that is *only* open to other dealers. However, you would be covered by the Rule when offering to sell at an auction, *if:* (1) The auction is open to consumers; *and* (2) the auction is advertised to consumers in some manner.

The auctioneer is also covered by the Rule if the auctioneer has sold or offered to sell six or more used vehicles to consumers within a twelve month period. As with consignment sales, both you and the auctioneer are responsible to make sure that the requirements of the Rule are met when used vehicles are offered for sale to consumers. See Illustrations 2.11–2.12 for a further discussion of sales through auctions.

*F. Where Does the Rule Apply?*

The Used Car Rule was issued by the FTC based upon two sources of authority: Section 109(b) of the Magnuson Moss Warranty Act, 15 U.S.C. 2309(b), and section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a. Accordingly, the Used Car Rule applies in those states and jurisdictions where either the Federal Trade Commissison Act or the Magnuson Moss Warranty Act apply. The Magnuson Moss Warranty Act covers all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa. 15 U.S.C. 2301(15). Therefore, with the exception discussed in the next paragraph, the Used Car Rule applies in each of these jurisdictions. In addition, the Rule covers vehicles exported from the United States for sale at military post exchanges. 16 CFR 700.1(i).

In March, 1985, the Wisconsin Department of Transportation petitioned the Commission for a statewide exemption from the Used Car Rule, under § 455.6 of the Rule. (Section 455.6 of the Rule is discussed in further detail in section VI of these guidelines.) On June 9, 1986, the Commission announced its determination that an exemption was justified, because the applicable law of Wisconsin "affords an overall level of protection to consumers that is as great as, or greater than, that afforded by the Used Car Rule." 51 FR 20936, 20943

[4] As used in these guidelines, the term "demonstrator" vehicle refers to "new" vehicles that have never been sold to a retail customer, but have been driven for purposes other than test drives or moving. This may include use by the dealer, the dealer's employees, the dealer's corporate officers, or anyone else. Demonstrators are covered by the Rule because the Rule's definition of a "used vehicle" in § 455.1(d)(2) includes any vehicle that has been driven more than for the limited purpose of either test driving the vehicle or moving it to the dealership from the manufacturer or from another dealer.

[5] This explanation assumes that the lessor meets the definition of the term "dealer," because the lessor has offered to sell, or sold, six or more used vehicles in a twelve month period. If the lessor is not a "dealer," as defined in the Used Car Rule, the lessor will not be covered by the Rule, even if the lessee advertises the leased vehicle for sale.

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(1986). Therefore, the Used Car Rule does not apply within the State of Wisconsin, "for so long as Wisconsin administers and enforces effectively its law." *Id.*

*G. Illustrations*

*Illustration 2.1:* You are opening your first dealership, and on your first day of business, you offer to sell five used vehicles to consumers. In the past twelve months, you have not offered to sell any other used vehicles to consumers. Are you covered by the Rule?

*No.* You are not a "dealer," because you have not offered to sell at least *six* used vehicles in a twelve month period. However, as soon as you offer your sixth used vehicle for sale to consumers within a twelve month period, you become a "dealer" as defined in the Rule, and therefore must prepare and display a Buyers Guide on *all* used vehicles that you offer for sale to consumers. (Section 455.1(d)(3).)

*Illustration 2.2:* You are an individual who occasionally buys used cars, repairs them, and then offers them for sale to the public. In the past twelve months, you have offered five used cars for sale. You now are offering to sell your sixth used car to the public. Are you covered by the Rule?

*Yes.* The Rule defines you as a "dealer." Because you are offering to sell your *sixth* used vehicle to consumers within twelve months, you must comply with all aspects of the Rule, including preparing and displaying a Buyers Guide on that vehicle. It does not matter that you may not be considered a "dealer" under *state law:* once you offer your sixth used vehicle for sale to consumers in twelve months, you are a "dealer" under the FTC's Used Car Rule and must comply with its requirements. (Section 455.1(d)(3).)

*Illustration 2.3:* You are a dealer that is offering to sell a particular used vehicle *only* to dealers. You do not offer to sell the vehicle to consumers. Are you covered by the Rule?

*No.* Here, you are not offering to sell the vehicle *to consumers*, and therefore the Rule does not apply. (Section 455.2(a).)

*Illustration 2.4:* Same as in 2.3 above, but it is your company's policy to offer a vehicle for sale to consumers for only 30 days, and then if the vehicle is unsold, it would be sold to a dealer at wholesale. Are you covered by the Rule?

*Yes.* Whenever you offer to sell a used vehicle to a consumer, you must comply with the Rule by preparing and posting a Buyers Guide before offering the vehicle for sale. In this example, you would be required to prepare and display a Buyers Guide while the used vehicle is offered for sale to consumers. However, the Rule does not apply when you conduct a wholesale transaction, even if the vehicle was first offered for sale to consumers. (Section 455.2(a).)

*Illustration 2.5:* Same as in 2.4 above, but instead, your company offers to sell its used vehicles to *anyone* at *any time.* Therefore, you offer to sell each of your used cars to consumers and dealers, at the same time. Are these used cars covered by the Rule?

*Yes.* As discussed above, whenever you sell, or offer to sell a used vehicle to a consumer, the Rule applies. This is the case even if you also offer to sell the used car to a dealer at the same time. The Rule does not require you to give a copy of the Buyers Guide to the purchaser if you sell the car to another dealer. (Section 455.2(a).)

*Illustration 2.6:* You are a dealer who regularly offers both new and used vehicles to the general public. You currently have four "demonstrator" vehicles in service. When the new model year begins, you decide to sell the demonstrators and replace them with new models. Must you comply with the Rule?

*Yes.* Under the Rule, demonstrator vehicles are included within the definition of "used vehicles."[6] Therefore, *before* you offer a demonstrator vehicle for sale to a consumer, you must prepare and display a Buyers Guide, as required by the Rule. On demonstrators that have never been titled to a consumer, both the Buyers Guide and the new vehicle disclosure sticker (the "Monroney Sticker") must be posted.[7] (Section 455.1(d)(2).)

*Illustration 2.7:* You are a dealer who has just put three vehicles into demonstrator service. It is your company's policy that no demonstrators are made available for sale until after five months or 5,000 miles in service. Before that time, your company will not discuss selling the demonstrator with a consumer. At the time when you first put the vehicle into demonstrator service, must you comply with the Rule?

*No.* Until you offer the demonstrator for sale to a consumer, the Rule does not apply. However, once you choose to offer the demonstrator to a consumer, you must *first* prepare and display a Buyers Guide in the side window of that vehicle. (Sections 455.1(d)(2), 455.2(a).)

*Illustration 2.8:* You are a dealer who sometimes "transfers" or "trades" new vehicles with another dealer, so that you can provide your customers with the exact car that they want. Do these traded cars have to display a Buyers Guide before you can offer them for sale to a consumer?

*No.* Simply by trading a car with another dealer, you have only accumulated mileage for the purpose of delivering the vehicle to the consumer. Therefore, the car would not be a "used vehicle" under the Rule. (Section 455.1(d)(2).)

*Illustration 2.9:* Same as 2.8 above, except that the first dealer drove the vehicle as a demonstrator before trading it to you. Does the traded car have to have a Buyers Guide before it can be offered for sale to a consumer?

*Yes.* If the vehicle was used as a demonstrator at any time, it must have a Buyers Guide in its side window before it can be offered for sale to a consumer. (Section 455.1(d)(2).)

*Illustration 2.10:* You are a dealer who also leases vehicles. You lease a car to Jones, who is not a dealer. At the end of the lease term, you offer to sell the car to Jones. Must you prepare a Buyers Guide for this vehicle?

*No.* Although you are a used vehicle dealer, the Rule does not cover situations in which you sell or offer to sell the leased vehicle to the lessee, to an employee of the lessee, or to a buyer who is found by the lessee. Thus, you would not have to comply with the Rule if you offered to sell the car to Jones, the lessee, or to an employee of Jones. In addition, you would not be required to display a Buyers Guide if Jones' next door neighbor asked Jones about buying the car. But, if you reclaimed the car at the end of the lease term and then offered it for sale to the public, the Rule would apply. (Section 455.1(d)(3).)

*Illustration 2.11:* You are a used vehicle dealer who sells vehicles, from time to time, at auctions. These auctions are only open to other dealers. The only advertisements for these auctions are in trade journals and through dealer associations. Are these sales covered by the Rule?

*No.* Selling at an auction that is *only open to other dealers* is just like a non-auction sale to another dealer: the Rule does not apply. (Sections 455.1(d)(3), 455.2(a).)

*Illustration 2.12:* Same as 2.11 above, but instead the auctions are open to consumers *and* are advertised in local newspapers or other publications. Are

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[6] *See supra* note 4 for a discussion of the term "demonstrator."

[7] The Automobile Information Disclosure Act (commonly known as the Monroney Act) can be found at 15 U.S.C. 1231–33. *See also* the Commission's Statement of Basis and Purpose for the Used Car Rule, 49 FR 45692, 45707 n.234 (1984) (recognizing that dealers would have to display both the Monroney Sticker and the FTC Buyers Guide on some vehicles).

the vehicles offered for sale at this auction covered by the Rule?

*Yes.* The Rule applies to an auction that is both: (1) Open to consumers; and (2) advertised to consumers in some manner. Before your used vehicles are offered for sale, sold, or made available for inspection at an auction that is open to consumers and advertised to consumers, you must prepare and display a Buyers Guide as required by the Rule. If the vehicle is sold to a consumer, you must comply with the other requirements of the Rule, just as if you had sold the vehicle from your regular place of business. If your used vehicle is sold at the auction to another dealer, you need not comply with respect to that particular vehicle.

Evidence that staff might look at to see whether an auction is advertised to consumers might include, among other things, newspaper ads, television or radio ads, listings in the yellow pages of the phone book, or roadside signs.

*Illustration 2.13:* In your state, banks and financial institutions may own or operate general businesses as separate entities. You operate a retail used vehicle dealership that is owned in part by a bank. Must you comply with the Rule?

*Yes.* The Rule is intended to cover all used vehicle dealers, regardless of ownership. However, banks and financial institutions that *directly* offer to sell used cars *forfeited as collateral on consumer loans* are not covered by the Rule. (Section 455.1(d)(3), Statement of Basis and Purpose, 49 FR 45708.)

## III. The Buyers Guide

### *A. General Information*

The Buyers Guide is the heart of the Used Car Rule. Before offering a used vehicle for sale to a consumer, § 455.2 of the Rule requires dealers to prepare and display a window sticker called the "Buyers Guide." The Buyers Guide discloses whether there is any warranty offered, and also states the duration of coverage, the percentage of repair costs that the dealer will pay and a list of the exact systems covered under the warranty. If the dealer does not provide an express warranty, then the Buyers Guide indicates that the vehicle is being offered for sale "as is" (with no written or implied warranties), or with only the applicable "implied warranties" required by state law. An explanation of each of these terms is incorporated directly onto the Buyers Guide.

The Buyers Guide also includes several additional disclosures, including: A list of the fourteen major systems of an automobile and defects that can occur in these systems; a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; and a warning against reliance on spoken promises that are not confirmed in writing. Finally, at the time of sale, the dealer must give the buyer the original Buyers Guide (or an accurate copy) that was displayed in the vehicle.

### *B. Preparing the Buyers Guide*

Before a dealer may offer a used vehicle for sale to a consumer, § 455.2(a) of the Rule requires that a completed Buyers Guide must be displayed on that vehicle. There are four different parts of the pre-printed Buyers Guide that the dealer must fill in: (1) General vehicle information; (2) warranty information; (3) service contract availability; and (4) dealer identification and consumer complaint information. The following sections of these Guidelines discuss how to prepare the Buyers Guide. In addition, staff has prepared a brochure entitled "Facts For Business: A Dealer's Guide to the FTC Used Car Rule," designed to assist dealers in understanding the Rule. Staff mailed a copy of this brochure to every dealer in the country before the Rule took effect. If you are a new dealer, did not receive this brochure, or need another copy, you may request a copy free of charge by writing to the Publications Branch, Federal Trade Commission, Washington, DC 20580.

#### 1. Buyers Guide Format—Section 455.2(a)

The Rule requires dealers to use the exact form for the Buyers Guide which is shown in the Rule. The text of the Rule contains a model Buyers Guide, in both English and Spanish, and also provides specific printing instructions. Although dealers may print their own Buyers Guides or get copies from any other source (for example, trade associations and form companies), all Buyers Guides must comply exactly with the standardized wording, type style, type size, and format required by the Rule. No additional information or printing may be added to the Buyers Guide, such as a dealership logo, consumer signature line, or the price of the vehicle. Of course, dealers may post a completely separate window sticker to make other information known to the consumer, so long as that information does not conflict with the Buyers Guide and the sales contract. Illustration 3.1 discusses this provision of the Used Car Rule.

#### 2. Vehicle Information—Section 455.2(d)

At the top of the Buyers Guide, fill in the vehicle make, model, model year, and vehicle identification number (VIN) in the spaces provided. You may write in a dealer stock number in the space provided or you may leave this space blank.

#### 3. Warranty Information—Section 455.2(b)

(a) *"As Is" Version.* If you offer a vehicle "as is," which means without any implied warranties, mark the box provided next to the "As Is" disclosure. The Used Car Rule *does not* take the place of any state law that requires you to use special language or a separate form to make an effective "as is" sale. "As is" disclosures will excuse you from liability under state law only if you follow state law requirements for making the disclosure. Illustration 3.3 further discusses this portion of the Rule.

(b) *Implied Warranties Only Version.* If you offer the vehicle with state law implied warranties only, delete the "As Is" disclosure, substitute the "Implied Warranties Only" disclosure (see below), and mark the box provided:

*Implied Warranties Only.* This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

In order to substitute this disclosure, dealers may prepare a Buyers Guide with this disclosure printed in place of the "As Is" statement. The "Implied Warranties Only" version of the Buyers Guide is generally available from the same sources as the "as is" version of the Buyers Guide. Alternatively, dealers could have the "Implied Warranties Only" disclosure printed on labels, and then simply affix these labels to the Buyers Guide, covering up the "As Is" statement. See Appendix A and Illustration 3.2 for examples of a Buyers Guide with the "Implied Warranties Only" disclosure.

In some states, dealers are not allowed to sell used vehicles on an "as is" basis. The Used Car Rule does not override such state laws. In those states, § 455.2(b)(1)(ii) of the Rule requires that dealers must include the "Implied Warranties Only" disclosure on the Buyers Guide in place of the "As Is" disclosure. The "Implied Warranties Only" disclosure is shown above and in Appendix A.

If you are in a state that *allows* you to sell used vehicles "as is," but you choose to sell a used vehicle with only implied warranties, § 455.2(b)(1)(ii) of the Rule requires you to substitute the "Implied Warranties Only" disclosure in

place of the "As Is" statement on the Buyers Guide.

(c) *Full/Limited Warranties.* Determining whether your warranty is "full" or "limited" under federal law is not difficult. If each of the following five statements about your warranty's terms and conditions is true, then your warranty is "full": [8]

1. You provide warranty service to anyone who owns the vehicle during the warranty period, when they report a problem.

2. You provide warranty service free of charge, including such costs as returning the vehicle or removing and reinstalling a "covered" system when necessary.

3. You provide, at the consumer's choice, either a replacement or a full refund if you are unable, after a reasonable number of tries, to repair the vehicle.

4. You provide warranty service without requiring that consumers return a warranty registration card.

5. You do not disclaim or limit the duration of implied warranties.

If any one of these statements is *not* true, then your warranty is "limited". Please note that a "full" or "limited" warranty need not cover the entire vehicle. You may specify certain systems for coverage under a warranty. By giving a "limited" warranty, you are telling your customers that there are some costs or responsibilities that you will not cover for the specified systems. See Illustration 3.5 for an additional discussion of this issue.

(d) *Unexpired Manufacturer's Warranties.* If you choose to, you may disclose unexpired manufacturer's warranties in the warranty section of the Buyers Guide. To disclose that a manufacturer's warranty still applies on a used vehicle, staff suggests that dealers use one of two methods, depending on whether the dealer offers a warranty in addition to the unexpired manufacturer's warranty. (Section 455.2(b)(2)(v).

First, if additional warranty coverage is not offered by the dealer, the dealer should check the large box to indicate that a "warranty" is offered, and then simply fill in (with a rubber stamp, if desired) the unexpired manufacturer's warranty statement set forth in section 455.2(b)(2)(v):

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc.

Separately, and beneath that statement, the dealer may add the following language, only if permitted by state law to sell a used vehicle on an "as is" basis:

The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacturer's warranty."

An example of a completed Buyers Guide with this language is included as Appendix B to these Guidelines.

If a dealership warranty is offered and the dealer also chooses to disclose the unexpired manufacturer's warranty, the dealer should: (1) Mark the large box to indicate that a "warranty" is offered, and fully complete the rest of the Buyers Guide's warranty section, indicating whether the *dealer's* warranty is full or limited, what percentage of parts and labor are covered, the systems covered, and the duration of coverage, as required by § 455.2(b) of the Rule; and (2) fill in (with a rubber stamp, if desired) the unexpired manufacturer's warranty statement below the dealer's warranty disclosure. An example of a completed Buyers Guide with this language is included as Appendix C to these Guidelines.

*(e) Filling in the Warranty Portion of the Buyers Guide.* Dealers who offer a warranty on the vehicle must mark the large box next to the word "warranty," and fill in the warranty section of the Buyers Guide. (Section 455.2(b).) There are several other parts of the warranty section that must be completed.

*First,* mark one of the smaller boxes to indicate whether the warranty offered is "Full" or "Limited." (See section III(B)(3)(c) above, and Illustration 3.5, for a discussion of this issue.) (Section 455.2(b)(2)(i) of the Rule.)

*Second,* fill in the percentage of the repair cost that will be paid by the dealer. For example, "The dealer will pay 100% of the labor and 100% of the parts. . . ." [9] See Illustration 3.7 for a discussion of how the Rule applies to the use of a deductible. (Section 455.2(b)(2)(iv).)

*Third,* indicate which of the specific systems are covered. Do not use shorthand terms such as "drive train" or "power train". Rather, indicate the exact systems (*e.g.*, frame and body, brake systems, etc.) that are covered. A list of the major systems of an automobile is printed on the back of the Buyers Guide. Those terms may be used to indicate the specific systems covered by the warranty. Illustration 3.6 provides an explanation of how to disclose systems covered. (Section 455.2(b)(2)(ii).)

Some dealers may wish to provide warranty coverage for some systems of a used vehicle and at the same time disclaim all other express or implied warranty coverage for the other systems of the car. A dealer may use the space provided for warranty disclosures to write in any such disclaimers or exclusions. Illustration 3.4 further discusses this issue. Illustration 3.1 explains how to enlarge the Buyers Guide, if necessary, to provide additional warranty information.

If some systems are covered by a "full" warranty, while most others are covered by a "limited" warranty: (1) Check the "limited" warranty box; and (2) indicate which system(s) are covered by the full warranty by writing "(full warranty)" next to the system name, as it is listed on the Buyers Guide.

*Fourth,* indicate the duration of the warranty. For example, "30 days or 1,000 miles, whichever occurs first." If there are different durations for different systems, write out each different duration. If the duration of the warranty is the same for all systems covered by the warranty, you need only write the duration once. (Section 455.2(b)(2)(iii).)

### 4. Service Contract Availability

A "service contract" is defined in § 455.1(d)(7) of the Used Car Rule as "a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle [which is] provided *at an extra charge* beyond the price of the used vehicle." (emphasis added). However, careful attention should be paid to the distinction between "service contracts" and "warranties." Under § 455.1(d)(5) of the Rule, a "warranty" is defined as "any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided *at no extra charge* beyond the price of the used vehicle. (emphasis added).

If you offer a service contract on a particular vehicle, § 455.2(b)(3) requires you to mark the box provided on the Buyers Guide, next to the service contract disclosure that follows:

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[8] These standards are set out in section 104 of the Magnuson-Moss Act, 15 U.S.C. 2304. The Magnuson-Moss Act does not apply to vehicles manufactured before July 4, 1975. Therefore, in offering such vehicles for sale, dealers are not required to indicate whether the warranty offered is "full" or "limited." Rather, dealers may simply cross out the terms "full" and "limited," leaving just the term "warranty." However, all other provisions of the Used Car Rule apply to sales of such vehicles.

[9] Note that the Used Car Rule does not require that a dealer pay any specific percentage of repair or labor costs. The figure in the example is provided only for the sake of clarity.

Service Contract. A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

Remember: when a dealer enters into a service contract with a consumer within 90 days of selling the vehicle, federal law prohibits the dealer from disclaiming implied warranties on the systems covered in that service contract. For example, if you are a dealer who sells a car "as is," the car normally will not be covered by implied warranties (assuming that state law permits "as is" sales). But if you also sell a service contract covering the engine for six months, you automatically provide an implied warranty on the engine.

If you are in a state that regulates service contracts as the "business of insurance," you need not include the Service Contract Disclosure on your Buyers Guides. (Section 455.2(b)(3).) In those states, you have the option to check the box next to the Service Contract Disclosure, cross out the Service Contract Disclosure, delete it from the Buyers Guide, or do nothing to change the preprinted Buyers Guide that you have purchased.

**5. Dealer Identification and Consumer Complaint Information**

Put the name and address of your dealership in the space provided on the back of the Buyers Guide. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address. (Section 455.2(c).)

In the space provided below the dealer's name and address, you must put the name and telephone number of the person to contact if the buyer has a complaint. You might want to include the *position* of the person to be contacted, along with their name, so that consumers will know who to contact if the individual named has left the dealership. (Section 455.2(e).)

*C. Spanish Language Sales*

Section 455.5 of the Rule sets forth a Buyers Guide in Spanish that must be used by a dealer who conducts a sale in Spanish. From a practical standpoint, dealers must post *both* the English and Spanish versions of the Buyers Guide where a substantial number of sales are made in both languages. See Illustration 3.11 for a further discussion of this provision of the Rule.

*D. How to Display the Buyers Guide*

The Buyers Guide must be displayed in a *side* window of the vehicle so that the front side (with the title "Buyers Guide") faces the outside. You may display copies of *both* the front and back of the Buyers Guide so that both sides can be read from outside. (Section 455.2(a)(1).)

The Buyers Guide should be firmly affixed to the inside of the side window. This may be accomplished using any method you select, such as tape, light glue, etc. If desired, you may display the Buyers Guide inside a clear plastic sleeve which holds the Buyers Guide against the inside of the side window. If necessary, the form may be removed from the window temporarily during a test drive, but you must return it to the window as soon as the test drive is over. Remember that you must give the buyer the original Buyers Guide (or an accurate copy) that was displayed on the vehicle. (Section 455.3(a).)

*E. Changes in Warranty Coverage*

If you and the buyer agree to any changes in the warranty that was described on the Buyers Guide, you must write those changes onto the Buyers Guide. (See §§ 455.2(b)(2)(v)(¶¶ 2–3) and 455.4 of the Rule.) If, for instance, the car was originally offered with a warranty, but following negotiations it was actually sold without a warranty, cross out the offered warranty and mark the "As Is" or "Implied Warranties Only" box, as appropriate. If you first offer the vehicle for sale "as is" (or with only implied warranties), but then sell it with a warranty, simply cross out the box for the "As Is" Disclosure (or the "Implied Warranties Only" disclosure) and fill in the warranty terms, as explained in section III(B)(3)(e) of these guidelines, above. Be sure to include the final warranty terms in the sales contract and also on the copy of the Buyers Guide that you give to the buyer. Appendix D and Illustrations 3.8 and 3.9 further explain this provision of the Rule.

*F. How to Disclose Mandatory Warranties*

The Used Car Rule requires dealers to disclose information about all warranty coverage on the vehicles that they offer for sale. Therefore, if federal, state, or local laws *require you* to give a specific warranty on a used vehicle that you offer for sale, you must briefly describe this warranty on the Buyers Guide. (Section 455.2(b)(2).) This warranty information should be included in the "systems covered/duration" portion of the Buyers Guide. The Rule does not require dealers to disclose on the Buyers Guide warranties that are the responsibility of another party, such as the manufacturer. Of course, you may include truthful information on the Buyers Guide about additional warranty coverage that is offered by other parties. For example, see the discussion of unexpired manufacturer's warranties in section III(B)(3)(d) of these guidelines. If necessary, you may enlarge the "systems covered/duration" portion of the Buyers Guide to accommodate additional warranty information. Of course, you still must comply with other legal requirements that tell you to provide information about the warranty on a separate document.

Under state or local law, you may be required to provide warranty coverage in addition to, or in place of, implied warranties.[10] You must disclose any such mandatory warranty on the Buyers Guide and you must fully comply with the disclosure requirements of the state or local law. For example, you must comply with a state or local law that requires you to give the consumer a separate warranty document.[11]

*G. Illustrations*

*Illustration 3.1:* May a dealer put a dealership logo or insignia, or other vehicle information (*e.g.*, price, features, color, service contract details, etc.) on the Buyers Guide?

*No.* The Buyers Guide must be in the exact format required by the Rule, including wording, capitalization, type style and type size. No changes, additions or deletions are permitted, except as noted in the Rule.

Section 455.2(a)(2) of the Rule requires that the Buyers Guide be printed in 100% black ink on white stock that is at least 11 inches high and 7¼ inches wide. You may enlarge the "systems covered/duration" portion of the Buyers Guide if you need additional room. However, such additional room may only be used to describe the warranty coverage. You may also provide additional accurate and truthful information about the vehicle on a completely separate window sticker. (Sections 455.2(a)(2), 455.4., Statement of Basis and Purpose, 49 FR 45710.)

*Illustration 3.2:* You are offering a used vehicle for sale in a state that prohibits you from selling used vehicles "as is." Do you have to replace the "As Is" disclosure with the "Implied Warranties Only" disclosure on the Buyers Guide?

*Yes.* The "Implied Warranties Only" disclosure *must* appear on the Buyers

[10] For one example, see New York General Business Law Section 198–b. This provision of New York law requires dealers to give consumers written warranties covering seven mechanical systems of a used vehicle that is sold for over $1,500.

[11] *See, e.g.*, New York General Business Law section 98–b(b).

Guide in place of the "As Is" disclosure: (1) If the vehicle is offered for sale in a state which prohibits "as is" sales; or (2) if you decide to offer implied warranties, but no other warranties. In states that prohibit "as is" sales, you must use the "Implied Warranties Only" disclosure even if you offer a warranty. See Appendix A for an example of a Buyers Guide incorporating the "Implied Warranties Only" disclosure. [Section 455.2(b)(1)(ii).]

*Illustration 3.3:* You offer all your used vehicles for sale on an "as is" basis. Under the laws of your state, you must prepare a warranty disclaimer form, using specific language required by state law, and have the buyer sign the form. Can you display that form instead of the Buyers Guide?

*No.* The state law requirement does not affect your obligation to prepare and post a Buyers Guide on the used vehicle. If you want to sell the car "as is," you should simply fill in the appropriate vehicle and dealership information on the Buyers Guide, mark the large box next to the "As Is" disclosure, and complete the reverse side of the Buyers Guide. Of course, the Used Car Rule does not affect your obligations under state law, so you still must comply with all applicable provisions of state law, including warranty disclaimer requirements. (Sections 455.2(a), 455.2(b)(1)(i).)

*Illustration 3.4:* You are a dealer who is offering a used vehicle for sale and want to offer a warranty on the vehicle. You would like to warrant only the engine, transmission and drive shaft, differential and electrical systems, and you would like to disclaim any warranties, express or implied, on the other systems of the vehicle. Can you indicate this disclaimer on the Buyers Guide?

*Yes.* Mark the large box to indicate that a warranty is offered on the vehicle. Indicate whether the warranty is "full" or "limited".[12] Fill in the lines to show what percentage of parts and labor you will pay for repairs to covered systems. Beneath the warranty disclosure, fill in the list of covered systems, and the duration of the warranty coverage for each covered system. Below that, you may indicate that you disclaim all warranties, express or implied, on other systems or parts of the vehicle. Of course, you still must describe the warranty in the contract of sale, including the systems covered and the systems not covered. This requirement is more fully discussed in Section IV(B) of these guidelines.

[12] *See supra* text accompanying note 8 for a discussion of the terms "full" and "limited."

Be careful to check your state's laws for any restrictions that might apply to disclaimers of express warranty coverage or disclaimers of implied warranty coverage.

See Appendix D for an example of the front of a Buyers Guide that has been completed for a warranty such as the one discussed in this illustration. (Section 455.2(b)(2), Statement of Basis and Purpose, 49 FR 45710.)

*Illustration 3.5:* You are a dealer who is offering a warranty on a used vehicle. The warranty that you offer covers *less than* 100% of the cost of labor and parts for the systems covered. Is this a "full" warranty?

*No.* A "full" warranty is one which meets the minimum standards for a warranty under Section 104 of the Magnuson-Moss Act, 15 U.S.C. 2304. All other warranties are called "limited." In the example provided in this illustration, the warranty covers less than 100% of the repair costs of the covered systems, and thus does not meet one of the elements of a "full" warranty. The elements of a "full" warranty are discussed more completely in the text that accompanies footnote 8, *supra.* (Section 455.2(a)(2)(i).)

*Illustration 3.6:* You are a dealer who wishes to provide a warranty covering *all vehicle systems shown on the reverse of the Buyers Guide.* Under "systems covered" in the warranty section of the Buyers Guide, can you write "all systems shown on reverse of the Buyers Guide"?

*Yes.* To indicate that your warranty covers *all systems shown on the reverse side of the Buyers Guide,* write in the "systems covered" section that the warranty covers: "All systems shown on the reverse side of the Buyers Guide." You also must specifically list in the "systems covered" section any systems not covered. For example, if your warranty covers all systems shown on the reverse of the Buyers Guide, except for the fuel system, write: "All systems shown on the reverse side of the Buyers Guide, except the fuel system."

Shorthand terms, such as "power train" or "drive train" may not be used to describe the systems covered by a warranty. These requirements are designed so that both you and the consumer will be clear as to exactly what is covered by the warranty. This avoids misunderstandings and potential disputes that might otherwise occur. A useful list of the names of fourteen of the major systems in an automobile can be found on the reverse of the Buyers Guide. (Section 455.2(a)(2)(ii).)

*Illustration 3.7:* You offer a warranty that covers 100% of labor and parts, but with a $50 deductible over the course of the warranty. Should you fill in "100%" on the Buyers Guide in the lines for percentage of repair cost covered under the warranty?

*Yes.* Fill in "100%*" in the lines for percentage of parts and labor, and include a note to explain the deductible on the first line of the "systems covered/duration" portion of the Buyers Guide. For example, on the first line of the "systems covered/duration" portion, write: "*—A one-time $50 deductible will apply on repairs." See Appendix E for an example of a completed Buyers Guide with this language. (Section 455.2(a)(2)(iv).]

*Illustration 3.8:* You are a dealer who is offering a used car for sale "as is" in a state that permits such sales. The Buyers Guide displayed on the vehicle indicates that the car is offered "as is". However, after negotiating with the buyer, you agree to warrant the vehicle's engine for 90 days or 3,000 miles, whichever comes first, and to pay 75% of the cost of parts and labor involved in necessary repairs during the warranty period. Do you have to change the Buyers Guide before you give it to the buyer?

*Yes.* Before you give the buyer a copy of the Buyers Guide, you must change the Buyers Guide to indicate the warranty that you have agreed to provide. In the alternative, you may simply fill out a new Buyers Guide with the new information. If, however, you choose to change the "old" Buyers Guide, first cross out the "As Is" box. (If the Buyers Guide has an "Implied Warranties Only" disclosure and the car was originally offered with implied warranties only, then cross out the "Implied Warranties Only" box.) Next, fill in the warranty portion of the Buyers Guide just as you would if you were originally offering the car with that warranty. Remember that the final warranty terms must be included in the sales contract for the car. An example of the front of a Buyers Guide like the one described in this illustration is included as Appendix D to these guidelines. (Sections 455.2(a)(2)(v)(¶¶ 2–3), 455.4.)

*Illustration 3.9:* Same as above, but instead you originally offered the car *with* a warranty. Now you want to sell it with implied warranties only. Do you have to change the Buyers Guide before you offer the vehicle with implied warranties only?

*Yes.* You should cross out the warranty portion of the Buyers Guide and mark the box for the "Implied Warranties Only" disclosure. (If you choose to offer the car "as is" in a state that permits such sales, then simply mark the box next to the "As Is"

disclosure.) Alternatively, you could prepare a new Buyers Guide, and just mark the box next to the "Implied Warranties Only" disclosure. (Sections 455.2(a)(1)(ii), 455.2(a)(2)(v)(¶¶ 2–3), 455.4.)

*Illustration 3.10:* Your dealership has a used vehicle that is still being prepared for sale. A consumer is interested in looking at that vehicle, with the understanding that it cannot be delivered until the preparations are complete. Does the vehicle need to have a Buyers Guide?

*Yes.* Before you offer to sell, show, or actually sell any used vehicle to a consumer, you must prepare and display a Buyers Guide in the side window of that vehicle. Therefore, you may want to prepare and display a Buyers Guide soon after you acquire the vehicle. (Section 455.2(a).)

*Illustration 3.11:* You are a dealer who makes a substantial number, but not a majority, of your sales to Spanish speaking customers. Your staff is trained to conduct sales in both Spanish and English. Must you display both a Spanish and English version of the Buyers Guide on all your vehicles?

*Yes.* You are offering to sell each of your vehicles to consumers who speak only Spanish and also to other consumers who speak only English. Therefore, you must prepare and display *both* an English and Spanish version of the Buyers Guide for each vehicle, *before* you offer it for sale to consumers. However, if it would be unreasonable for a dealer to expect that sales will be conducted in Spanish, then the dealer would not be required to post a Spanish language Buyers Guide. For example, a dealer who has never sold a used vehicle in Spanish and does not expect to do so would not be covered by § 455.5, even if the dealer was bilingual.

In effect, this provision of the Rule means that where dealers expect to conduct sales in Spanish, *and* are prepared to do so, then they *offer to sell* their used vehicles in Spanish. Such dealers come within the requirements of § 455.5 of the Rule. Evidence that staff may look at to see whether a dealer is prepared to sell vehicles in Spanish might include, among other things, advertisements in Spanish language newspapers, journals, and phone books, bilingual staff, or "se habla Espanol" signs. (Sections 455.2, 455.5.)

## IV. The Sales Contract

### *A. The Rule's Requirements*

There are several requirements in the Used Car Rule pertaining to sales contracts. Section 455.3(a) requires that at the time of a sale, you must give the buyer the original Buyers Guide (or an accurate copy) that was displayed on the vehicle. Remember that the copy of the Buyers Guide that you give to the consumer must include any changes in warranty coverage agreed to by you and the buyer. (Sections 455.2(a)(2)(v)(¶¶ 2–3), 455.4.)

You must include warranty information in the sales contract. (The warranty information may be printed in your sales contract, *or* it may be on a separate warranty page that is referred to and made part of your sales contract.) Information on the Buyers Guide will override any contrary provisions that there may be in the sales contract. (Section 455.3(b).) To inform consumers of this provision of the Used Car Rule, you must place the disclosure that follows in the sales contract so that it appears in a *conspicuous manner.* A good place to put this disclosure is at the beginning of the warranty portion of the sales contract:

> The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.[13]

### *B. What to Include in the Contract of Sale*

Under § 455.4 of the Rule, you must identify the final warranty terms in the contract of sale. Under other federal laws,[14] the warranty portion of the contract of sale must meet certain requirements. If you do not offer a warranty, you do not need to comply with the requirements discussed in this portion of the guidelines.

A warranty that satisfies the disclosure requirements discussed below will also satisfy the Used Car Rule. To meet these requirements, your warranty document must:

(1) State whether the warranty offered is "full" or "limited".

(2) Indicate the percentage of the repair costs that you will pay.

(3) List the specific systems that are covered by the warranty.

(4) If it is necessary for clarification, list any parts or systems that are excluded from coverage under the warranty. For example, "battery not covered."

(5) Indicate the duration of warranty coverage for each of the covered systems.

(6) Explain how a customer gets warranty service. Include your company's name, address, and the telephone number of the person to call concerning warranty service.

(7) Include the following disclosure: "This warranty gives you specific legal rights, and you may also have other rights which vary from state to state."

(8) Disclose all obligations that the consumer has, if any, as a condition to obtaining warranty service.

(9) Include the following disclosure only if you wish to limit the duration of implied warranties: "Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you."

(10) Include the following disclosure only if you wish to exclude or limit consequential or incidental damages: "Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply to you."

(11) Indicate who is covered by the warranty, if you choose to limit the coverage. For example, "warranty covers only the original purchaser" or "commercial use excluded."

Put into the contract of sale everything that you will do and everything that you expect your customers to do under the warranty. Write the warranty clearly. Make sure that your customers can find each item of information in the warranty easily.

If you sell the vehicle "as is" or with implied warranties only, you must state this fact in the contract of sale. "As is" disclosures in the contract of sale will excuse you from liability under implied warranties *only* if you follow *state law* requirements for making this disclosure.

The Federal Trade Commission has prepared two publications that also may help you to comply with the laws and regulations governing warranties. You can get a free copy of "Making Business Sense Out of Warranty Law" by writing to the Publications Branch, Federal Trade Commission, Washington, DC 20580. "Writing Readable Warranties" is available for $2.00, from the Superintendent of Documents, Washington, DC 20402, GPO Order #: 018–000–00303–1.

You may also want to consult your lawyer to be sure that your warranty meets all the requirements of both federal and state laws.

### *C. Illustrations*

*Illustration 4.1:* When you sell a vehicle, you complete a customer order, or bill of sale, and a financing document prepared by a bank, if the consumer finances the vehicle. Do both of these

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[13] 16 CFR 455.3(b). The Spanish translation of this disclosure is as follows: La informacion que aparece en la ventanilla de este vehiculo forma parte de este contrato. La informacion contenida en el formulario de la ventanilla anula cualquier prevision que establezca lo contrario y que aparezca en el contrato de venta.

[14] 16 CFR Part 701.

documents have to contain the contract disclosure required by § 455.3(b) of the Rule?

*No.* The disclosure is required only on the "contract of sale." The *contract of sale* is the document by which you agree to transfer title to the vehicle upon payment of the purchase price. That contract must contain the specific warranty information required by federal law,[15] which is discussed in section IV(B) of these Guidelines.

The dealership may use a document, such as a "buyer's order," "purchase order," or "bill of sale," as its contract of sale. The disclosure should be placed on the form in close proximity to the warranty information or the disclaimer of implied warranties, if there is any such disclaimer. Whether the "financing agreement" must *also* contain this disclosure depends upon the content of that financing agreement. The disclosure should be included in the financing agreement if the financing agreement contains terms and provisions apart from those governing the actual financing of the transaction. Such terms might include, but are not limited to, warranty terms, sale terms, or a statement that the financing document represents the complete and total agreement between the dealer and the consumer. If such additional terms are present in the financing document, then the disclosure required by § 455.3(b) should be included in the financing document. In addition, if the financing agreement is the only document given to the consumer to record the transaction, then the financing agreement should include the disclosure required by § 455.3(b) of the Rule.

*Illustration 4.2:* You are a dealer who uses a separate warranty document that is in compliance with all the requirements of federal and state law. Can you continue to use this form and be in compliance with the Used Car Rule?

*Yes.* The Rule merely requires you to identify the final warranty terms in the contract of sale. You may do this by writing the warranty information on the contract form. In the alternative, unless prohibited by state law, you may incorporate a separate warranty document by reference into the contract. (Section 455.4. *See also* 16 CFR Part 701).

### V. Contrary Statements—Section 455.4

Section 455.4 of the Rule prohibits dealers from making "any statements, oral or written, or tak[ing] other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3 [of the Rule]." For example, it is staff's opinion that you may not write that there is a warranty on the Buyers Guide, but disclaim all warranties in the contract of sale. (As discussed in section IV(A) of these guidelines, the information on the Buyers Guide supercedes contrary information in the contract, under § 455.3(b) of the Rule.) However, staff does not interpret § 455.4 to mean that the Used Car Rule prohibits a dealer from making a repair to a vehicle that was sold "as is."

### VI. State Exemption Petitions—Section 455.6

The Used Car Rule includes a specific provision that sets out the standards for granting statewide exemptions from the Rule. This provision states that the Used Car Rule will not be in effect in a state, to the extent specified by the Commission, where:

(1) There is a state requirement in effect which applies to any transaction to which this rule applies, and

(2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by [the Used Car] Rule; . . . for as long as the State administers and enforces effectively the state requirement.

Final staff guidelines for state exemption petitions have been developed for the Commission's Trade Regulation Rule Concerning Funeral Industry Practices, 16 CFR Part 453 (the "Funeral Rule"). These state exemption guidelines (published at 50 FR 12521 (1985)) provide an analysis of the procedures and materials that staff believes are relevant to an exemption proceeding. The state exemption provisions in both the Funeral Rule (16 CFR 453.9) and the Used Car Rule (16 CFR 455.6) are virtually identical. Therefore, staff recommends that states (or state agencies) that are interested in filing a petition for statewide exemption from the Used Car Rule should consult the state exemption guidelines developed for the Funeral Rule for more detailed information about § 455.6 of the Rule.

### List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 87-11316 Filed 5-15-87; 8:45 am]

BILLING CODE 6750-01-M

[15] 16 CFR Part 701.

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 375

[Docket No. RM87-14-000; Order No. 470]

## Delegation of Authority to the Director of the Office of Pipeline and Producer Regulation To Pass Upon Certain Uncontested Settlements

Issued: May 12, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending § 357.307 of its regulations to delegate to the Director of the Office of Pipeline and Producer Regulation the authority to pass upon uncontested settlements in the proceedings in Independent Oil and Gas Association of West Virginia, Docket Nos. RI74–188 and RI75–21 that are substantially similar to settlements previously approved by the Commission therein.

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Roidakis, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8224.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

The Federal Energy Regulatory Commission is amending its *Delegations* regulations (18 CFR Part 375, Subpart C) to delegate to the Director of the Office of Pipeline and Producer Regulation (OPPR) the authority to pass upon certain uncontested settlements.

By separate order issued on May 12, 1987, the Federal Energy Regulatory Commission (Commission) approved certain settlements in the Independent Oil & Gas Association of West Virginia (IOGA) proceedings, Docket Nos. RI74–188–091 *et al.* and RI75–21–087 *et al.*, and stated its intent to delegate to the Director of OPPR authority to approve other settlements in those proceedings that are certified to the Commission as uncontested, and that are substantially similar to previous uncontested settlements already approved by the Commission. This final rule delegates this authority by making the necessary amendment to Part 375 Subpart C of the Commission's regulations.

The authority delegated by this final rule involves only limited discretion which is consistent with established

Commission policy with respect to delegations. As previously noted, this delegation relates only to uncontested settlements which are substantially similar to others previously approved in the IOGA proceedings. As defined in 18 CFR 375.301(c), "uncontested" means that "no motion to intervene, or notice of intervention, in opposition to the pending matter made under § 385.214 (intervention) has been received by the Commission." Furthermore, the Commission understands "substantially similar" with respect to this delegation to mean virtually identical (with the exception of producer-sellers' names, contracts affected, and effective dates), to prototype settlements previously approved in the Docket No. RI74–188, RI75–21 IOGA proceedings between various producer-sellers and Consolidated Gas Transmission Corporation,[1] Columbia Gas Transmission Corporation,[2] Equitable Gas Company,[3] and Carnegie Natural Gas Company,[4] respectively. In addition, the Commission notes that as provided in 18 CFR 375.301(a), any staff action may be appealed to the Commission pursuant to § 385.1902.

The Commission is issuing this final rule in order to use more efficiently the resources at its disposal and to expedite the approval of uncontested settlements in the IOGA proceedings, which have become routine. This will allow the Commission more time to devote to the less routine, more complex issues of law and policy that come before it and will benefit both the regulated entities involved and the public interest. Moreover, as already noted, any delegated action is appealable to the Commission itself.

Because this final rule is a matter of agency management, organization, procedure, and practice, prior notice and comment are unnecessary. 5 U.S.C. 553 (a) and (b) (1982). This rule becomes effective May 12, 1987.

[1] *See, e.g.*, Order Approving Settlements, Independent Oil & Gas Association of West Virginia, Docket Nos. RI74–188–089 and RI75–21–084, issued December 11, 1986, 37 FERC ¶ 61,230.

[2] *See, e.g.*, Order Approving Settlements, Independent Oil & Gas Association of West Virginia, Docket No. RI74–188–087 and RI75–21–082, issued November 10, 1986, 37 FERC ¶ 61,124.

[3] *See, e.g.*, Order Approving Settlements, Independent Oil & Gas Association of West Virginia, Docket Nos. RI74–188–086 and RI75–21–081, issued October 23, 1986, 37 FERC ¶ 61,051.

[4] *See, e.g.*, Order Approving Settlements, Independent Oil & Gas Association of West Virginia, Docket Nos. RI74–188–088 and RI75–21–083, issued November 15, 1985, 33 FERC ¶ 61,227.

**List of Subjects in 18 CFR Part 375**

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission amends Part 375 of Chapter I of Title 18, Code of Federal Regulations, as set forth below, effective May 12, 1987.

By the Commission.

Kenneth F. Plumb,

*Secretary.*

**PART 375—[AMENDED]**

1. The authority citation for Part 375 is revised to read as follows:

**Authority:** Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7532, Exec. Order No. 12,009, 3 CFR 1977 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553; Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Public Utilities Regulatory Policies Act, 16 U.S.C. 2601 *et seq.*, as amended.

2. A new § 375.307(a)(18) is added to read as follows:

**§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.** * * *

(a) * * *

(18) Offers of settlement in the Independent Oil and Gas Association of West Virginia proceedings in Docket Nos. RI74–188 and RI75–21, that are substantially similar to settlements previously approved by the Commission therein.

* * * * * *

[FR Doc. 87–11237 Filed 5–15–87; 8:45 am]

BILLING CODE 6717–01–M

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**Income Tax; Taxable Years Beginning After December 31, 1953; Percentage to be Used by Foreign Life Insurance Companies in Computing Income Tax for the Taxable Year 1986 and Estimated Tax for the Taxable Year 1987**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Proclamation.

**SUMMARY:** This proclamation announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States.

**EFFECTIVE DATE:** March 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Neubig, Office of Tax Analysis, U.S. Treasury Department, Washington, DC. 20220, (202–566–5374), not a toll free call.

**SUPPLEMENTARY INFORMATION:** This proclamation, issued each year by the Secretary of the Treasury, announces the percentage to be used to compute the income tax liability of foreign corporations carrying on life insurance business in the United States.

**Proclamation:**

For purposes of computing the 1986 income tax of foreign corporations carrying on a life insurance business, a percentage of 18.9 percent shall be used in determining the "minimum figure" under Section 813. The same percentage shall be used for purposes of computing the estimated tax and the installment payments of estimated tax for the taxable year 1987. No additions to tax shall be made because of any underpayment of estimated tax for the taxable year 1987 which results solely from the use of this percentage.

This proclamation is issued without notice and public procedure because the public cannot effectively participate in the determination of the percentage. It is computed from information contained in income tax returns that are not open to the public. The proclamation was not published prior to its effective date because the percentage is computed on the basis of data which was not then available.

J. Roger Mentz,

*Assistant Secretary (Tax Policy).*

May 4, 1987.

[FR Doc. 87–11268 Filed 5–15–87; 8:45 am]

BILLING CODE 4830–01–M

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

**[CGD2 87–01]**

**Special Local Regulations; Annual Marine Events within the Second Coast Guard District**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes permanent special local regulations for marine events within the Second Coast Guard District which recur on an annual

basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is taken to insure the safety of life during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event.

**EFFECTIVE DATE:** June 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** LCDR B.J. WILLIS, Chief, Boating Technical Branch, Second Coast Guard District; 1430 Olive St., St. Louis, MO 63103–2398 (314) 425–5971.

**SUPPLEMENTARY INFORMATION:** On April 10, 1987 the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (52 FR 11693). Interested persons were requested to submit comments. No comments were received.

**Drafting Information**

The drafters of this regulation are LCDR B.J. Willis, Second Coast Guard District Boating Technical Branch and LT R.E. Kilroy, USCG, Project Attorney, Second Coast Guard District Legal Office.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated areas will be in effect for short periods of time. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Final Regulations**

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. Part 100 is amended by adding a § 100.201 to read as follows:

**§100.201, Annual Marine Events within the Second Coast Guard District.**

Permanent special local regulations are hereby established for the marine events listed in Table 1. These regulations will be effective annually, for the duration of each event, on or about the dates indicated in Table 1. Annual notice of the exact dates and times of the effective period of the regulations with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in local notices to mariners. To be placed on the mailing list for such notices, contact: Commander (oan), Second Coast Guard District, 1430 Olive St. St. Louis, MO 63103–2398.

(a) The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER." Vessels desiring to transit the regulated area may do so with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(b) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the ara under the director of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(c) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(d) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(e) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

**Table One**

Kentucky Derby Festival Steamboat Race
- Sponsor: Kentucky Derby Festival Inc.
- Date: Late April
- Location: Ohio River, Mile 604, near Louisville, KY

Memphis in May Canoe & Kayak Race
- Sponsor: Outdoors, Inc.
- Date: Early May
- Location: Lower Mississippi River, mile 738.5, near Memphis, TN

Great Tennessee River Raft Race
- Sponsor: Tennessee Jaycee Foundation
- Date: Early June
- Location: Tennessee River, mile 470.5, near Chattanooga, TN

Steamboat Days
- Sponsor: Peoria Convention & Visitors Bureau
- Date: Middle June
- Location: Illinois River, mile 162.3, near Peoria, IL

Riverbend Festival Formula I Outboard Races
- Sponsor: Friends of the Festival, Inc.
- Date: Middle June
- Location: Tennessee River, mile 463.5, near Chattanooga, TN

Outboard Power Boat Races & Fireworks
- Sponsor: Tri-STate Fair and Regatta
- Date: Late June
- Location: Ohio River, mile 327.0, near Ironton, OH

New Martinsville Regatta
- Sponsor: New Martinsville Regatta Inc.
- Date: Early July
- Location: Ohio River, mile 129.5, near New Martinsville, WV

Riverfest
- Sponsor: Riverfest Inc.
- Date: Early July
- Location: Upper Mississippi River, mile 697.0, near Lacrosse, WI

Budweiser Indiana Governors Cup
- Sponsor: Madison Regatta, Inc.
- Date: Early July
- Location: Ohio River, mile 557.0, near Madison, IN

Clinton Riverboat Days
- Sponsor: Riverboat Days Inc.
- Date: Early July
- Location: Upper Mississippi River, mile 519.0, near Clinton, IA

V.P. Fair
- Sponsor: V.P. Fair Foundation
- Date: Early July
- Location: Upper Mississippi River, mile 179.2, near St. Louis, MO

Freedom Festival/Thunder on the Ohio
- Sponsor: Thunder on the Ohio
- Date: Late June
- Location: Ohio River, mile 792.0, near Evansville, IN

Ramblin Raft Race
Sponsor: American Rafting Assn.
Date: Middle July
Location: Upper Mississippi River, mile 856.0, near Minneapolis, MN
Port of Sioux City River-Cade
Sponsor: Port of Sioux City River-Cade Assn.
Date: Middle July
Location: Missouri River, mile 731.0, near Sioux City, IA
Huntington–Miller Classic Powerboat
Sponsor: Tri-State Fair and Regatta
Date: Late July
Location: Ohio River, mile 307.5, near Huntington, WV
Oakmont Yacht Club Regatta
Sponsor: Oakmont Yacht Club
Date: Late July
Location: Allegheny River, mile 12.0, near Oakmont, PA
Minneapolis Aquatennial Flotilla & Frolic
Sponsor: Minneapolis Aquatennial Assn.
Date: Late July
Location: Upper Mississippi River, mile 813.0, near Hastings, MN
Minneapolis Aquatennial Formula I Grand Prix
Sponsor: Minneapolis Aquatennial Assn.
Date: Late July
Location: Upper Mississippi River, Mile 854.8, near Minneapolis, MN
Pittsburgh Three Rivers Regatta
Sponsor: Pittsburgh Three Rivers Regatta
Date: Late July
Location: Ohio, Allegheny & Monongahela Rivers, miles 00.0, near Pittsburgh, PA
Ohio River Festival Regatta
Sponsor: Ohio River Festival Inc.
Date: Early August
Location: Ohio River, mile 220.0, near Ravenswood, WV
Annual Fernbank Regatta
Sponsor: Ohio Valley Motorboat Racing Assn.
Date: Early August
Location: Ohio River, mile 483.0, near Fernbank, OH
Beaver County River Regatta
Sponsor: Beaver County River Regatta Inc.
Date: Middle August
Location: Beaver River, mile 000.0, near Bridgewater, PA
Hoosier Boy Regatta
Sponsor: Indiana Outboard Assn.
Date: Middle August
Location: Ohio River, mile 505.5, near Rising Sun, IN
Armstrong Co. Chamber of Commerce Regatta
Sponsor: Three Rivers Outboard Racing Assn.
Date: Middle August
Location: Allegheny River, mile 44.0, near West Kittanning, PA
Power Boat Racing/Anything That Floats
Sponsor: Kanawha River Navy
Date: Middle August
Location: Kanawha River, mile 58.0, near Charleston, WV
Ohio River Championship River Days
Sponsor: Riverdays Committee
Date: Late August
Location: Ohio River, mile 355.5, near Portsmouth, OH
Annual Charleston Sternwheel Regatta
Sponsor: Charleston Festival Commission
Date: Late August
Location: Kanawha River, mile 58.0, near Charleston, WV
Ft. Smith United Way Raft Race
Sponsor: United Way of Ft. Smith Inc.
Date: Early September
Location: Arkansas River, mile 308.5, near Ft. Smith, AR
Air Show
Sponsor: Steamboat Days Festival Inc.
Date: Early September
Location: Ohio River, mile 602.0, near Louisville, KY
Hudy Gold/WEBN Fireworks
Sponsor: WEBN Radio
Date: Late August
Location: Ohio River, mile 470.0, near Cincinnati, OH

Dated: May 5, 1987.

R.T. Nelson,
*Rear Admiral (Lower Half), U.S. Coast Guard.*

[FR Doc. 87–11278 Filed 5–15–87; 8:45 am]
BILLING CODE 4910–14–M

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## INTERSTATE COMMERCE COMMISSION

## 49 CFR Part 1014

## Enforcement of Non-Discrimination on the Basis of Handicap in Federally Conducted Programs

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Self-evaluation—Public Comment Notice.

**SUMMARY:** 49 CFR 1014.110 requires that the Interstate Commerce Commission shall, by August 24, 1987, evaluate its current policies and practices and the effects thereof, that do not or may not meet the requirements of 49 CFR Part 1014, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

**DATE:** Comments by June 17, 1987.

**ADDRESS:** Interested parties may obtain a copy of the agency's self-evaluation report by contacting the Director, Office of Human Relations, Interstate Commerce Commission, Rm. 1419, 12th Street & Constitution Ave., NW., Washington, DC 20423. Voice: 202–275–7503. TDD: 202–275–1721.

**FOR FURTHER INFORMATION CONTACT:** Gideon Fenebee, Equal Opportunity Mgr. 202–275–1644. TDD 202–275–1721.

**SUPPLEMENTARY INFORMATION:** On August 22, 1986, the Interstate Commerce Commission's rule to implement section 504 of the Vocational Rehabilitation Act of 1973, as amended, became effective. The purpose of the regulation is to ensure that the ICC's policies and practices do not discriminate against an otherwise qualified handicapped person wishing to participate in or benefit from any of the agency's programs, activities, or offerings. 49 CFR 1014.110 (b) requires that the ICC shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

Persons wishing to present oral or written comments on the agency's self-evaluation should contact the Director, Office of Human Relations within 30 calendar days from publication of this notice.

Kathleen M. King,
*Acting Secretary.*

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# Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### 7 CFR Part 713

### Feed Grain, Rice, Upland and Extra Long Staple Cotton, and Wheat; Discretionary Special Disaster Payments for the 1987–1990 Crops

**AGENCY:** Agricultural Stabilization and Conservation Service, USDA

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the regulations found at 7 CFR Part 713 to establish the criteria that the Commodity Credit Corporation ("CCC") would use in making special disaster payments available to eligible producers of the 1987 through 1990 of rice, upland cotton, feed grains, and wheat.

**DATE:** Comments must be received on or before, July 14, 1987, in order to be assured of consideration.

**ADDRESSES:** Send comments on this proposed rule to Director, Emergency Operations and Livestock Programs Division, ASCS, Department of Agriculture P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this rule will be available for further inspection in Room 4095 South Building, USDA, between the hours of 8:15 AM and 4:45 PM, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Divisions, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 447–5621.

**SUPPLEMENTARY INFORMATION:** Information collection requirements contained in this regulation (7 CFR Part 713) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35.

This proposed rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 by Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases; Number 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have not significant impact on the quality of human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

### Background

The Food Security Act of 1985 (the "Act") which was enacted on December 23, 1985, amended the Agricultural Act of 1949 to provide that disaster payments may be made available to producers of the 1986 through 1990 crops of rice, upland cotton, feed grains, and wheat notwithstanding the availability of Federal crop insurance for the disaster-affected acreage. This proposed rule does not include the 1986 crop year since section 633(B) of the Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, as included in Pub. L. 99–500 and 99–591 ("Public Law 99–500"), provided for a disaster payment program for 1986 crops.

This proposed rule would establish the criteria for determining when CCC would make such discretionary special disaster payments to eligible producers participating in the CCC price support and production adjustment programs established for the 1987 through 1990 crops.

### Proposed Rule

The statutory authorization for this proposed rule is found at sections 101A(c)(2)(D), 103A(c)(2)(D), 105C(c)(2)(D), and 107D(c)(2)(D) of the Agricultural Act of 1949, as amended (the "1949 Act") (7 U.S.C. 1441–1(c)(2)(D), 1441–1(c)(2)(D), 1444e(c)(2)(D), and 14445b–3(c)(2)(D)), for rice, upland cotton, feed grains, and wheat, respectively.

The proposed rule provides that these payments would be made only to producers who are in a county in which a natural disaster or other similar condition has created an economic emergency and such producers have also experienced an economic emergency as the result of the natural disaster or similar occurrence. Section 713.130 of the proposed rule sets forth definitions applicable to these discretionary disaster payments. A "natural disaster or other condition beyond the control of the producers" ("natural disaster") would be defined as an adverse weather condition or other similar occurrence which results in at least a 60 percent reduction in the yield of the applicable program crop on the farm and throughout a county, as applicable. An "economic emergency" would be defined as a loss of 60 percent or more of the value of all crop production, including hay and pasture on a farm and throughout a county, as applicable. "Insufficient assistance to alleviate the economic emergency" would be defined as a situation in which an economic loss of 60 percent or more exists after taking into consideration the value of agricultural commodities produced and Federal assistance made available to producers on a farm and to producers throughout a county, as applicable.

Section 713.134 of the proposed rule provides that an economic emergency would be determined to exist on a farm and in a county, as applicable, when a natural disaster has created an economic loss of 60 percent or more. By providing that such discretionary

disaster payments would be made only after the occurrence of an economic emergency, a determination of economic necessity would not be subject solely to noneconomic events. For example, reductions in program crop yields due to seasonal fluctuations in productivity of 20 to 30 percent or more are not uncommon. Accordingly, the proposed rule provides for making a determination with respect to the availability of these payments by considering the crop yields produced in a county and on individual farms as well as the prices received for these crops and all forms of Federal assistance made available as the result of the natural disaster.

Section 713.135 of the proposed rule also sets forth the criteria to be used to determine whether an economic emergency exists on a farm and in a county as the result of a natural disaster. Such a determination would be based upon a determination of the agricultural economic base of the farm and county in a normal year as compared to the year in which the natural disaster occurred. Accordingly, a normal year's and disaster year's yields, crop acreages, and price data for agricultural commodities would be determined by ASCS based upon, to the extent practicable, data furnished by the National Agricultural Statistics Service ("NASS"), USDA. However, if available, a disaster year's yield and prices would be the actual yield of the farm and the higher of the actual prices received by the producer or the average price received by producers in the country. A situation in which insufficient assistance to alleviate an economic emergency would be determined to exist in the country if the disaster year's "gross income" (crop yields times prices of the agricultural commodities produced in the county, plus Federal assistance made available in the county) is 40 percent or less than a normal year's "gross income" (crop yields times prices of agricultural commodities produced in the county). Section 713.132 of the proposed rule provides that all forms of Federal assistance made available to producers shall be considered in making determinations of economic emergencies in a county or on a farm.

The unlimited availability of discretionary special disaster payments would severely jeopardize the Federal Crop Insurance Corporation ("CCC") insurance program since producers would not have an incentive to purchase such insurance if "free crop insurance" in the form of discretionary disaster payments is available. Such a result would affect adversely the actuarial soundness of the FCIC insurance program. Accordingly, in order to assure the viability of an actuarially sound FCIC crop insurance program, while providing adequate assistance to producers who have been subjected to natural disasters which have created an economic situation for which FCIC insurance and other forms of Federal assistance are insufficient, § 713.136 of the proposed rule provides that producers must have crop insurance on at least a portion of the affected program crop acreage if crop insurance is available to the producer. Similarly, § 713.135 includes the availability of crop insurance as one of the criteria used to determine if an economic emergency exists.

Section 713.134 of the proposed rule provides that with respect to the determination of the availability of the crop insurance CCC shall consider insurance offered at the highest indemnity for which Federal subsidization of insurance policy premiums exist. Thus, to the benefit of the producer, any insurance indemnities in excess of this amount will not be included in the determination of an economic loss which may have been incurred by a producer.

The respective provisions of the 1949 Act provide that these discretionary special disaster payments be made in a manner "so as to assure the equitable allotment of such payments among producers, taking into account other forms of Federal disaster assistance provided to the producers for the crop involved." In order to assure the equitable allotment of these discretionary special disaster payments among eligible producers, it is proposed that such producers must be in a county which the Secretary has determined has suffered an economic emergency as the result of a natural disaster.

The determination that discretionary special disaster payments would be made only in a county in which an economic emergency as the result of a natural disaster has occurred also is consistent with the historical administration of virtually all CCC price support and production adjustment programs. These CCC programs are administered at the local level by producer-elected members of a county Agricultural Stabilization and Conservation ("ASC") committee which are established in accordance with the Soil Conservation and Domestic Allotment Act, as amended. In addition, CCC emergency haying and grazing and emergency feed and livestock programs are established on the occurrence of a natural disaster in a county.

Similarly, FCIC insurance rates and indemnity levels also are based upon the historical production of a commodity in a county. Further, Farmers Home Administration ("FmHA") emergency and disaster loans are made available to producers based upon the financial condition existing in a county as well as on a farm. Since CCC, FCIC, and FmHA are the primary agencies which provide assistance to producers, it is proposed that these discretionary special disaster payments also be administered on a county basis in a manner similar to current practices. Further, in the most recent comprehensive disaster payment legislation, Pub. L. 99-500, eligibility was determined on a county-by-county basis.

These discretionary disaster payments are a benefit, such as deficiency, diversion and mandatory disaster payments and nonrecourse price support loans, which CCC makes available to producers who are otherwise eligible to receive benefits as a result of participation in the respective CCC price support and production adjustment programs. Section 713.136 of the proposed rule provides that a producer in a county which has met the economic emergency requirements would be eligible to apply for these decretionary special disaster payments if the producer was participating in, and in compliance with, the commodity price support and production adjustment programs set forth at 7 CFR Part 713 which were in effect for the applicable crop years 1987–1990.

Section 713.137 provides that if an elibible producer has experienced an economic emergency, discretionary special disaster payments may be made to the producer. Section 713.138 provides that the payment rate for these discretionary special disaster payments would be based upon the same rate established for mandatory prevented planting and reduced yield disaster payments.

**List of Subjects in 7 CFR Part 713**

Cotton, Feed grains, Price support program, Wheat, Rice.

Accordingly, it is proposed that Part 713 of Title 7 of the Code of Federal Regulations be amended as follows:

**PART 713—[AMENDED]**

1. The authority citation is revised to read as follows:

Authority: Sections 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 63 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1444, 1383, as amended, 1448; 91 Stat. 950, as

amended, 63 Stat. 1054, as amended; 99 Stat. 1461; as amended, 1462, 1463, 1464, 1465, 1566, 1467, 1468, 1469 (7 U.S.C. 1441–1. 1444–1. 1444b, 1444b–2, 1445b–3, 1445b–4, 1445b, 1445h, 1421, 1423, and 1461 through 1469); Sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444, as amended (7 U.S.C. 1308); Sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309); Sec. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, 1072, as amended (15 U.S.C. 714b and 714c).

2. Part 713 is amended by adding new entries to the Table of Contents to read as follows:

Sec.
713.132 Special disaster payments.
713.133 Availability of special disaster payments in a county.
713.134 County eligibility designation.
713.135 Determination of economic emergency.
713.136 Producer eligibility.
713.137 Determination of economic emergency for a producer.
713.138 Special disaster payment provisions.
713.139 Duplication of disaster payments.

3. Part 713 is amended by adding the following new sections (§§ 713.132 through 713.139):

**§ 713.132 Special disaster payments.**

(a) "Economic emergency" means a loss of 60 percent or more of the value of all crop production, including hay and pasture, of producers on the farm and in the county, respectively;

(b) "Insufficient assistance to alleviate the economic emergency" means an economic loss of 60 percent or more on the farm and in the county, respectively, after taking into consideration:

(1) The value of agricultural commodities produced on the farm and in the county, respectively, during the applicable crop year; and

(2) Any Federal assistance provided to producers on the farm and in the county, respectively, including, but not limited to, the value of any Federal crop insurance indemnity coverage available to producers in the county, land diversion payments, deficiency payments, and noncash payments including in-kind compensation.

(c) "Natural disaster or other conditions beyond the control of the producers" means an occurrence which results in a yield reduction of at least 60 percent as the result of adverse weather or other similar condition.

(d) "Special disaster payments" means the discretionary special disaster payments authorized by sections 101A(c)(2)(D), 103A(c)(2)(D), 105C(c)(2)(D), and 107D(c)(2)(D) of the Agricultural Act of 1949, as amended.

**§ 713.133 Availability of special disaster payments in a county.**

(a) Special disaster payments may be made to producers on a farm when the Administrator determines that:

(1) As the result of drought, flood, or other natural disaster, or other conditions beyond the control of the producers in a county, such producers have suffered substantial losses of production for the crop year:

(i) Because the producers were prevented from planting applicable program crops or other nonconserving crops; or

(ii) Due to reduced program crop yields.

(2) Such losses have created an economic emergency in the county;

(3) Federal crop insurance indemnity payments and other forms of assistance made available by the Federal Government to producers in the county for such losses provide insufficient assistance to alleviate the economic emergency; and

(4) In accordance with paragraph (b) of this section, additional assistance must be made available to such producers to alleviate the economic emergency in the county.

(b) If special disaster payments are made available, producers in a county are eligible for special disaster payments made in accordance with §§ 713.136 through 713.139 only if:

(1) A natural disaster or other condition beyond the control of the producers in the county has substantially and adversely affected producers in the county; and

(2) A written request from the State Governor for a special disaster designation has been received by the Secretary within 90 days of the last day of the occurrence of the natural disaster, except that CCC may waive the requirement that the Governor's request be received within 90 days if it is determined by CCC that the extent of loss in the affected area reasonably can be ascertained as of the date the request is received; and

(3) The Administrator determines that unusual and adverse weather conditions or other causes beyond the control of producers, excluding flooding within flood plains or in flowage easement areas, have resulted in substantial crop production losses resulting in an economic emergency.

**§ 713.134 County eligibility designation.**

(a) A county may be designated as a county in which producers are eligible to receive special disaster payments when the requirements of § 713.133 are met.

(b) Upon receipt of the Governor's request made in accordance with § 713.133, the Governor's request shall be acknowledged and, if any delay is anticipated in processing the request, the acknowledgement shall state the reasons for such delay and when action will be taken.

(c) The State Executive Director, ASCS, in the role of the Food and Agriculture Council ("FAC") Vice Chairperson, Emergency Programs, will immediately:

(1) Notify the local FAC to prepare a Damage Assessment Report ("DAR") for the requested county; and

(2) Review each DAR and forward such DAR to the Deputy Administrator with a transmittal memorandum containing views, comments, and recommendations concerning the need or lack of need for special disaster payments to be made available.

(d) The local FAC Chairperson of an affected county shall forward DAR's to the FAC, Vice Chairperson, Emergency Programs. The DAR's shall be completed in accordance with instructions issued by the Deputy Administrator.

(e) Reports submitted in accordance with this section and any other evidence determined by the Administrator to be relevant shall be used to determine whether the requirements of § 713.135 have been met. Such a determination shall take into consideration, but not be limited to, the value of all crops, including hay and pasture, in the affected county, the value of crop insurance available in the county (determined by multiplying the greater of (1) the acreage planted for harvest, or if a production adjustment program is in effect for the commodity, (2) the total permitted acreage for the commodity for the county, by the highest indemnity available for each commodity in the county at the 65 percent coverage level made available in accordance with section 508(b) of the Federal Crop Insurance Act), and other Federal assistance available in the county.

(f) The Deputy Administrator will review DAR's, the State Executive Director's recommendations, and all other pertinent data to determine whether an economic emergency exists.

**§ 713.135 Determination of economic emergency.**

(a) In determining whether an economic emergency exists in a county, the total value of all crops, including hay and pasture, grown in the county shall be taken into consideration. The total value of such crops shall be determined by converting yield losses into dollar losses in the manner specified in this section. In making such a determination, the following criteria shall be used:

(1) The value of crops produced in the county during normal years shall be determined by multiplying a normal year's yield for each commodity by a normal year's price for each such commodity.

(2) The normal year's yield for each commodity shall be the average yield in the county for such commodity based upon each of the 5 years immediately preceding the year in which the disaster occurred.

(3) The normal year's price for each commodity shall be the average of the market prices for each such commodity based upon the 3 years immediately preceding the year in which the disaster occurred.

(4) Yields, crop acreage, and price data used to establish the normal year's production shall be determined by the Administrator and, to the extent practicable, shall be obtained from the National Agricultural Statistics Service ("NASS"), USDA.

(5) Yields, crop acreages, and price data used to establish the disaster year's production shall be determined by the Administrator and may be obtained from the DAR's submitted in accordance with § 713.134 or, if available, the actual production data for such year as determined by NASS except as otherwise provided in §§ 713.136 through 713.138.

(b)(1) The gross income for each commodity for the year in which the disaster occurred shall be determined by multiplying the total acres of the crop of each commodity planted in the county in the disaster year by the disaster year's yield for the crop by the price of the commodity. The gross income for the county will be the total of the individual commodity computations.

(2) The gross income for each commodity for the normal year shall be determined by multiplying the total acres planted and intended to be planted in the country in the disaster year by the price of the commodity by the normal year's yield for the crop. The gross income for the county will be the total of the individual commodity computations.

(3) A gross income gain will exclude the county from consideration. The gross income loss experienced in the county in the disaster year shall be determined by subtracting the disaster year's gross income from the normal year's gross income.

(4) The gross income loss determined in accordance with paragraph (b)(3) of this section shall be adjusted by the following:

(i) The total value of the Federal crop insurance available in the county (determined by multiplying the greater of (A) the acreage planted for harvest or, if a production adjustment program is in effect for the commodity, (B) the total permitted acreage for the commodity for the county, by the highest indemnity available for the commodity in the county at the 65 percent coverage level made available in accordance with section 508(b) of the Federal Crop Insurance Act). The total FCIC adjustment will be the total for all commodities for which crop insurance is available in the county;

(ii) The value of all noncash payments, including in kind compensation, provided in the county;

(iii) The total value of Farmers Home Administration emergency loans made available for the same disaster losses of crop production;

(iv) The value of any special emergency haying or grazing of acreage diverted to the acreage conservation reserve under the commodity production adjustment programs, or acreage subject to a contract under the Water Bank Program;

(v) The value of any emergency livestock feed made available in the county;

(vi) The value of any land diversion payments and deficiency payments made available; and

(vii) The value of any other forms of assistance made available by the Federal Government to such producers in a county for the same disaster losses of crop production.

(c) To determine whether a sufficient percentage of loss exists to constitute insufficient assistance to alleviate the economic emergency in the county, the adjusted gross income loss shall be divided by the normal year's gross income.

**§ 713.136 Producer eligibility.**

(a) If it is determined that the county has met the conditions set forth in §§ 713.134 and 713.135, the county committee may be authorized to make payments available to only those producers on a farm for which the operator of the farm:

(1) Submits a Form ASCA–574, Application for Disaster Credit, in the case of a reduced yield application or a Form ASCS–574–1, Prevented Planting Claim, in the case of a prevented planting application, in accordance with instructions issued by the Deputy Administrator;

(2) Submits a report in accordance with the provisions in § 713.137;

(3) Meets the economic emergency requirements in § 713.137; and

(4) Applies for payment on a form prescribed by the Deputy Administrator.

(b) Special disaster payments are authorized to be made to producers of wheat, corn, grain sorghum, oats, barley, upland cotton, and rice only if:

(1) For a crop of a commodity for which a production adjustment program has been established, such producer is in compliance with the regulations set forth in of this title; and

(2) The producer had a Federal Crop Insurance policy in effect on at least a part of the affected program crop acreage if such insurance is available for purchase by producers in the county; and

(3) The operator of the farm has complied with the requirements in paragraph (a) of this section; and

(4) The producer submits a report of any indemnity payments received for crops produced on the farm, and any other assistance made available by the Federal Government to such producers for such losses.

(c) In addition to the requirements of paragraph (b) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or other nonconserving crop, or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity, because of a drought, flood, other natural disaster or other condition beyond the control of the producers.

**§ 713.137 Determination of economic emergency for a producer.**

(a) In determining whether a producer has suffered a loss which constitutes an economic emergency, the total value of all crops produced on the farm, including hay and pasture, will be taken into consideration. The total value of such crops shall be determined by converting yield losses into dollar losses in accordance with this section.

(b)(1) The value of crops produced on the farm during normal years shall be determined by multiplying a normal year's yield for each commodity by a normal year's price for each such commodity.

(i) The normal year's yield for each commodity shall be the farm program payment yield established for program crops and, with respect to other crops, the yield established by the county committee in accordance with instructions issued by the Deputy Administrator taking into consideration actual production on the farm in the five years immediately preceding the disaster year and the average yields of such crops in the county for such years.

(ii) The normal year's price for each commodity shall be the average of the

market prices for each such commodity based upon the 3 years immediately preceding the year in which the disaster occurred.

(2) The value of production from any acreage for the disaster year shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production.

(ii) The production from acreage which is harvested shall be the actual production of the farm. The farm program payment yield established in accordance with § 713.6 shall be used with respect to any acreage for which production cannot be determined. If the county committee determines that the acreage of a farm was affected by a natural disaster, the farm yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield established in accordance with § 713.6 or the actual yield from the harvested acreage of the crop.

(iii) Producers shall report the production and disposition of all crops produced on the farm, including hay and pasture, in accordance with instructions issued by the Deputy Administrator.

(A) If there has been a disposition of crop production through commercial channels, the producer must furnish documentary evidence of such disposition in order to verify the information provided on the report. Acceptable evidence shall include such items as the original or copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries.

(B) If there has been disposition of crop production other than through commercial channels, the producer must furnish such documentary evidence as the county committee determines to be necessary in order to verify the information provided on the report. If the producer utilized any of the crops produced on the farm as feed, the producer must provide the number and type of livestock fed, the duration of the feeding period, the type of feed, and other documentation to substantiate the production on the farm in the disaster year.

(iv) Prices of commodities used to establish the disaster year's production will be the higher of the price the producer actually received for the crop or the average of the prices received by producers in the county as determined in accordance with instructions issued by the Deputy Administrator.

(3)(i) The gross income for each commodity for the year in which the disaster occurred shall be determined by multiplying the total acres of each commodity planted or intended to be planted which were affected by the disaster by the disaster year's yield for each crop by the price of the commodity for the disaster year. The gross income for the farm will be the total of the individual commodity components.

(ii) The gross income for each commodity in the normal year shall be determined by multiplying the total acres planted and intended to be planted on the farm in the disaster year by the price of the commodity by the normal year's yield for the commodity. The gross income for the farm will be the total of the individual commodity components.

(iii) A gross income gain will exclude the producer from consideration. The gross income loss experienced by the producers on the farm shall be determined by subtracting the disaster year gross income from the normal year's gross income.

(iv) The gross income loss determined in accordance with paragraph (a)(3)(iii) of this section shall be adjusted by, the following:

(A) The total value of the Federal crop insurance available for the farm (determined by multiplying the greater of (1) the acreage planted for harvest or, if a production adjustment program is in effect for the commodity, (2) the total permitted acreage for the commodity on the farm, by the highest indemnity available for the commodity in the county at the 65 percent coverage level made available in accordance with section 508(b) of the Federal Crop Insurance Act). The total FCIC adjustment will be the total for all commodities for which crop insurance is available on the farm whether or not the producer elected to purchase such crop;

(B) The value of all noncash payments, including in-kind payments, received by such producer;

(C) The total value of Farmers Home Administration emergency loans made available for the same disaster losses of crop production;

(D) The value of any special emergency haying or grazing of acreage diverted to the Acreage Conservation Reserve under the commodity production adjustment programs, or acreage subject to a contract under the Water Bank Program;

(E) The value of emergency livestock feed made available to such producers;

(F) The value of any land diversion payments and deficiency payments made available to such producer; and

(G) The value of any other forms of assistance made available by the Federal Government to the producer for the same disaster losses of crop production.

**§ 713.135 Special disaster payment provisions**

(a) *Applicability.* Special disaster payments may be made to eligible producers as soon as practicable after the extent of the crop loss is determined and payment is approved. Special disaster payments shall not exceed the amount necessary to alleviate the economic emergency of the producer on the farm, as defined in § 713.132.

(b) *Prevented planting.* Producers who were prevented from planting a program crop may receive special disaster payments in accordance with this section.

(1) *Payment rate.* The prevented payment rate is one-third of the established (target) price as provided for in § 713.106.

(2) *Acreage eligible for payment.* Acreage in flood plains or flowage easement areas is ineligible acreage for special disaster payment purposes. The acreage eligible for payment shall equal the smaller of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster or other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction or set-aside requirement is in effect or on farms participating in a land diversion or wheat grazing and hay program, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Crop Insurance Act is not available.

(3) *Payment computation.* Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm program payment yield as determined in accordance with § 713.6 by the prevented planting payment rate.

(c) *Reduced yield.* Producers on farms on which the yield of the program crop planted for harvest is reduced may receive payments in accordance with this paragraph.

(1) *Payment rate.* The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided for in § 713.106.

(2) *Payment computation.* Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the smaller of the result of the following computations:

(i) The result determined by multiplying the acreage of the crop on the farm by 60 percent (75 percent for upland cotton and rice) of the farm yield as provided in § 713.6, and subtracting the determined production for the farm therefrom; or

(ii) The result determined by multiplying the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm yield as provided in § 713.6, and subtracting the determined production for the eligible acreage therefrom.

**§ 713.133 Duplication of disaster payments.**

To eliminate the duplication of compensatory disaster benefits from CCC and FmHA for the same disaster losses, any cash disaster payment due a producer who has received a FmHA emergency loan will be made with FmHA as joint payee and a check in the name of the producer and FmHA will be forwarded to the FmHA county office.

Signed at Washington, DC on May 11, 1987.

Milton J. Hertz,

*Executive Vice President Agricultural Stabilization and Conservation Service.*

[FR Doc. 87-11063 Filed 5-15-87; 8:45 am]

BILLING CODE 3410-E-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 102

### Disclosure of Information and Privacy Act of 1974

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** These proposed regulations implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). The intended effect of this proposed rule if adopted in final form would be to provide to the public the method by which SBA would charge and waive fees in connection with requests made under the Freedom of Information Act.

**DATE:** *Public Comment:* The public may furnish comments by June 17, 1987, to the Small Business Administration at the address indicated below.

**FOR FURTHER INFORMATION CONTACT:** Inquiries and comments should be directed to C. Nicholas Kalcounos, Director, Freedom of Information/Privacy Acts, 2100 K Street, NW., Room 303, Washington, DC 20416, (202) 653-6460.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically required the Office of Management and Budget to develop and issue a schedule of fees and guidelines pursuant to notice and comment. That Act also required agencies to publish their own regulations for those same purposes based upon the OMB guidelines. These regulations represent SBA's response to that requirement. They are based upon the OMB guidelines.

### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this notice because the proposal, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in the reporting recordkeeping or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental efforts on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

### Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, SBA has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Paperwork Reduction Act

These regulations, if promulgated in final form, will not result in any implications pursuant to the Paperwork Reduction Act.

### List of Subjects in 13 CFR Part 102

Disclosure of Information, Privacy Act of 1974.

### PART 102—[AMENDED]

Accordingly, 13 CFR Part 102 is proposed to be amended as follows:

1. The authority citation for Part 102, Subpart A would be revised to read as follows:

**Authority:** The Freedom of Information Act (5 U.S.C. 552), as amended; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); the Budget and Accounting Procedures Act (31 U.S.C. 67 *et seq.*).

2. Section 102.6 would be revised to read as follows:

**§ 102.6 Fees.**

(a) *Definitions.* For the purpose of these regulations all the terms defined in the Freedom of Information Act apply.

(1) The term "direct costs" means those expenditures which SBA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material. within documents.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk) among others. The copy provided must be in a form that is reasonably usable by the requester.

(4) The term "review" refers to the process of examining documents located in response to a request that is for a

commercial use (see paragraph (f) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, SBA will determine the use to which a requester will put the documents requested. Moreover, where SBA has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, SBA will seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

(b) *Basis Upon Which Fees Are To Be Charged.* SBA will charge fees that recoup the full allowable direct costs it incurs. SBA will use the most efficient and least costly methods to comply with requests for documents made under the FOIA.

(1) *Manual Searches for Records*—SBA will charge at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), agencies may establish an average rate for the range of grades typically involved.

(2) *Computer Searches for Records*—SBA will charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search.

(3) *Review of Records*—Only requesters who are seeking documents for commercial use may be charged for time SBA spends reviewing records to determine whether they are exempt from mandatory disclosure. It should be noted that charges may be assessed only for the initial review; i.e., the review undertaken the first time SBA analyzes the applicability of a specific exemption to a particular record or portion of a record. SBA may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Where a single class of reviews is typically involved in the review process, SBA may establish a reasonable agency-wide average and charge accordingly.

(4) *Duplication of Records*—SBA has established an agency-wide, per page charge for paper copy reproduction of documents of ten cents per page. This charge shall represent the reasonable direct costs of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. For copies prepared by computer, such as tapes or printouts, SBA shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, agencies should charge the actual direct costs of producing the document(s). In practice, if SBA estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) *Other Charges*—It should be noted that complying with requests for special services such as those listed below is entirely at the discretion of SBA. Neither the FOIA nor its fees structure cover these kinds of services. SBA will recover the full costs of providing services such as those enumerated below to the extent that SBA elects to provide them:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(6) *Restrictions on Assessing Fees*—With the exception of requesters seeking documents for a commercial use, section 4(A)(iv) of the Freedom of Information Act, as amended, requires SBA to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits SBA from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, SBA would not begin to assess fees until after it had provided the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, SBA would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than the cost to the agency of billing the requester and processing the fee collected, no charges would result. SBA's Freedom of Information/Appellate Office will be the entity within SBA which determines if the cost to the Agency of billing the requester and processing the fee

collected will be equal to or greater than the cost to be recovered.

(i) The elements to be considered in determining the "cost of collecting a fee," are the administrative costs to the agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account (or the agency's account if the agency is permitted to retain the fee). The per-transaction cost to the Treasury to handle such remittances is negligible and should not be considered in the agency's determination.

(ii) For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

(iii) Similarly, the term "search time" in this context has as its basis, *manual search*. To apply this term to searches made by computer, SBA will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, SBA will begin assessing charges for computer search.

(iv) *Fees to be Charged*—Categories of Requesters. There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. Specific levels of fees will be charged for each of these categories.

(A) *Commercial use requesters*—When SBA receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 pages of reproduction of documents.

(B) *Educational and Non-commercial Scientific Institution Requesters*—SBA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(C) *Requesters who are Representatives of the News Media* — SBA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in section 5 above, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(D) *All Other Requesters*—SBA shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(d) *Methods of Assessing Charges*— (1) *Charging Interest—Notice and Rate.* SBA shall begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(2) *Charges for Unsuccessful Search.* SBA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. In practice, if the agency estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Aggregating Requests.* Except for requests that are for a commercial use, SBA may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When SBA reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly.

(4) *Advance Payments.* SBA may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(i) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, SBA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment; or

(ii) A Requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the agency may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(iii) When SBA acts under paragraph (d) (1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e. 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the agency has received fee payments described above.

(e) *Fee Waivers.* SBA may furnish documents under these regulations without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. All requests for a waiver or reduction of fees should be addressed to SBA's Freedom of Information Appellate Office, 2100 K Street, NW., Room 303, Washington, DC 20416. That office will

render all determinations on such requests.

Dated: May 7, 1987.

James Abdnor,

*Administrator.*

[FR Doc. 87-11143 Filed 5-15-87; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 21 and 23

[Docket No. 17929; Notice No. 23-ACE-32]

### Special Conditions; Aviation Safety Release Corporation, Modified Univair Model 108-2 Airplane To Incorporate the Aviation Safety Release System Provisions

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Amendment to Special Conditions No. 23-83-EA-11.

**SUMMARY:** This notice proposes to amend Special Conditions No. 23-83-EA-11 issued on May 19, 1978, for the Univair Model 108-2 airplane to permit the installation and approval of the Aviation Safety Release (ASR) system. The FAA has determined that the Special Conditions No. 23-83-EA-11 do not adequately set forth requirements to assure the necessary level of safety for the installation, operation, and maintenance of the ASR system. This amendment, as proposed, will assure the level of safety necessary for the supplemental type certification approval of the ASR system for the Univair Model 108-2 airplane.

**DATE:** Comments must be received on or before June 17, 1987.

**EFFECTIVE DATE:** Comments on this proposal may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 17929, Room 1558, Federal Office Building, 601 East 12th Street, Kansas City, MO 64106. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ronald K. Rathgeber, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of these amended special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 17929." The postcard will be date stamped and returned to the commenter.

In addition to commenting on the proposed special conditions, the FAA requests that commenters respond to the questions listed below. A technical discussion is desired as part of each response. This discussion will assist the FAA in evaluating the merits of the special conditions.

1. Are there hazards posed to the general public from the ARS system as a result of possible falling objects?

2. Does an airplane with an ARS system pose a hazard to other aircraft as a result of possible uncontrolled flight?

3. Should special operating rules and/or pilot training be required for operators of an airplane with an ARS system?

4. Should special ground handling procedures be developed for an airplane with an ARS system?

The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Type Certification Basis

The type certification basis for the Univair Model 108-2 airplane is Civil Air Regulations (CAR) Part 3, effective December 15, 1946, as amended by Amendments 3-1 through 3-3. In addition, any changes to Special Conditions No. 23-83-EA-11 resulting from this proposed action will become a part of the type certification basis of the Univair Model 108-2 when the Aviation Safety Release (ASR) system is installed.

#### Background

On June 24, 1976, Dario J. Manfredi filed an application for a Supplemental Type Certificate (STC) for the Univair Model 108-2 airplane to install the Aviation Safety Release (ASR) system. The ASR system operates to jettison the wings and then parachute the rest of the airplane to the ground. The ASR system is intended for use as a last resort for the survival of the occupants and only in a situation where the airplane is disabled and there is no suitable landing site available.

The Univair Model 108-2 is a small, four-place, single engine, high wing airplane with a maximum certificated weight of 2,235 pounds.

The type design changes for the Univair Model 108-2 airplane to accommodate the ASR system contains unusual design features for an airplane type certificated under Part 3 of the CAR. In view of these unusual design features, the applicable airworthiness requirements do not contain adequate or appropriate safety standards and special conditions are necessary to provide a level of safety equal to that established by the regulations incorporated by reference in the type certificate.

On May 19, 1978, Special Conditions No. 23-83-EA-11 were issued. The applicant and other interested persons were given an opportunity to participate in the making of these special conditions and all comments received were fully considered. However, the applicant did not pursue supplemental type certification of the Univair Model 108-2 with the ASR system installed in accordance with § 21.17(b) of the Federal Aviation Regulations. Subsequent to the issuance of Special Conditions No. 23-83-EA-11, as a result of a similar project, the FAA further identified issues that need to be addressed in special conditions to assure an acceptable level of safety. Therefore, the FAA is proposing to require a showing of compliance with requirements addressing the inadvertent jettisoning of the parachute after it has been deployed to assure that after the ASR system has been deployed that inadvertent jettisoning of the parachute, thereby creating a catastrophic situation for the occupants, is extremely improbable. The use of rational methods for safety assessment of the ASR system does not mandate the use of a numerical analysis to determine an extremely improbable condition to achieve the required level of safety. The applicant may use a numerical analysis to assist in a showing of compliance, but

adequate data may not be available for preparing a stand-alone numerical analysis. Therefore, the applicant may use a rational analysis based on the identification of failure mode and the failure modes consequences to assure the required level of system reliability in conjunction with a numerical analysis.

To protect the occupants from serious head or upper torso injury due to flailing during parachute deployment or ground impact, the FAA is proposing that the applicant provide a seat belt and shoulder harness restraint system at each seat position which will protect the occupants for critical loads.

Because the ASR system incorporates the use of explosive charges as a part of the system design, the FAA considers it necessary that the explosive charges be properly labeled and that the applicant provide appropriate instructions for the installation, handling, and maintenance to assure that the necessary precautions are exercised with these potentially dangerous articles.

The FAA is proposing that the applicant establish a sequence for system operation to assure that the ASR system would not be inadvertently activated. Inadvertent operation subjects the occupants of the airplane to a situation that is intended to occur only under the most extreme circumstance when no other alternatives for a safe landing exists.

In addition, the FAA is proposing to require that the ASR system be capable of being disarmed after being armed at any time prior to final system activation. This requirement is considered necessary to assure that should the pilot decide to continue the flight that this alternative is made available after arming the system and that the final activation step is removed from a possible inadvertent operation when the decision to continue the flight has been made by the pilot.

The FAA is proposing to require that it be shown that the parachute can be jettisoned after impact under various weather conditions, including high winds. This requirement is considered necessary to assure that the occupants of the fuselage are not endangered after the successful completion of the descent by the inflated parachute dragging the fuselage through a hostile terrain. The FAA is proposing that the applicant develop Instructions for Continued Airworthiness for the ARS system which meet the requirements of § 23.1529 of the FAR. This requirement will assure that the unique maintenance inspection procedures for this system are detailed by the applicant.

Since the issuance of Special Conditions Number 23–83–EA–11, the FAA Small Airplane Certification Directorate has standardized on a new format for special conditions. In the public interest, the FAA is presenting the modified special conditions in this format.

**List of Subjects in 14 CFR Part 21**

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

**Authority:** Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(b).

**The Proposed Special Condition Amendment**

Accordingly, the Federal Aviation Administration proposes to amend Special Conditions Number 23–83–EA–11 by placing the special conditions originally with the heading of *"SPECIAL FLIGHT CONDITIONS"* under a new heading of *"1. Flight Test Demonstration"*; by adding new special conditions for occupant flailing protection under the heading of "2. *Occupant Restraint"*; by placing the special conditions originally with the heading of *"SPECIAL AIRFRAME CONDITIONS"* and the sub-heading of "1. *Protection"* under a new heading of "3. *System Protection"*; by placing the special conditions originally with the heading of *"SPECIAL AIRFRAME CONDITIONS"* and the sub-heading of "2. *Inspection Provisions"* under a new heading of "4. *System Inspection Provisions"* and adding new requirements for Instruction for Continued Airworthiness; by placing the special conditions originally with the heading of *"SPECIAL AIRFRAME CONDITIONS"* and the sub-heading of "3. *Parachute"* under a new heading of "5. *Parachute Performance"; by placing the special conditions originally with the heading of "SPECIAL PROPULSION CONDITIONS"* under a new heading of "6. *Fuel Containment"*; by placing the special conditions originally with the heading of *"SPECIAL SYSTEMS AND EQUIPMENT CONDITIONS"* and the sub-heading of "1. *General"* under a new heading of "7. *Lightning Strike Protection"*; by placing the special conditions originally with the heading of *"SPECIAL SYSTEMS AND EQUIPMENT CONDITIONS"* and the sub-heading of "2. *Function and Installation"* in paragraph (a) of a new section with the heading of "8. *System Functions and Operations"*; by adding new special conditions (b) through (f) to the new section with the heading "8. *System Functions and Operations"*; and by placing the special conditions originally with the heading of *"SPECIAL OPERATING LIMITATION CONDITION"* under a new heading of "9. *Operating Limitations"* and adding the following sentence: "This parachute must be considered an auxiliary parachute in the context of § 105.43(a)(2) of this chapter.

With these changes, the special conditions read as follows:

1. *Flight Test Demonstration.* The Aviation Safety Release (ASR) system must be demonstrated in flight to satisfactorily perform its intended function, for both normal and inadvertent operation, in the critical flight conditions.

2. *Occupant Restraint.* Each seat in the airplane must be equipped with a restraint system, consisting of a seat belt and shoulder harness, which will protect the occupant from head and upper torso injury during parachute deployment and ground impact at the critical conditions.

3. *System Protection.* All components of the ASR system must be designed or suitably protected, or both, against deterioration due to weathering, corrosion, abrasion, or other causes. In addition, adequate provisions must be made for ventilation and drainage of the parachute compartment (and associated structure) to ensure the sound condition of the parachute.

4. *System Inspection Provisions.*

(a) Instructions for Continued Airworthiness must be prepared for the ARS system which meet the requirements of § 23.1529 of this chapter.

(b) Adequate means must be provided to permit the close examination of the parachute and the ARS system components to ensure proper functioning, alignment, lubrication, and adjustment during all required inspections of the parachute and system components.

5. *Parachute Performance.* The fuselage parachute must meet the applicable requirements of TSO–C23 for the critical airplane weights. In addition, it must be shown that although the structure may be damaged, the fuselage impact with the ground will result in occupant environment that will give each occupant every reasonable chance of escaping serious injury.

6. *Fuel Containment.* Each line that carries flammable fluid and that will be separated during operation of the ASR system must incorporate means to prevent leakage of the fluid unless an acceptable fuel jettisoning system is installed.

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7. *Lightning Strike Protection.* It must be shown by analysis and test, including test under simulated or actual lightning strike, that inadvertent or partial activation of the ASR system which can be catastrophic is extremely improbable.

8. *System Functions and Operations.*

(a) The ASR system must be shown to function reliably, to perform adequately the functions for which it is to be used, and to function properly when installed. It must be adequately labeled as to its identification, function, operational limitations, or any combination of these, whichever are applicable.

(b) It must be shown that the inadvertent jettisoning of the parachute after it has been deployed is extremely improbable.

(c) It must be shown that the explosive charges are properly labeled and its handling, installation, and maintenance procedures are safe.

(d) It must be shown that arming the system, activating the system, and parachute jettisoning can only be accomplished in a sequence which would make inadvertent pilot operation extremely improbable.

(e) It must be shown that the system, after arming, may be disarmed at any time prior to final system activation.

(f) It must be shown that after impact the parachute can be jettisoned under various adverse weather conditions, including high winds.

9. *Operating Limitations.* An operating limitation must be prescribed that requires the fuselage parachute to be repacked at intervals no greater than 120 days. This parachute must be considered an auxiliary parachute in the context of § 105.43(a)(2) of this chapter.

Issued in Kansas City, Missouri, on May 4, 1987.

Paul K. Bohr,

*Director, Central Region.*

[FR Doc. 87-11213 Filed 5-15-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-39-AD]

## Airworthiness Directives; Short Brothers Model SD3-30 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes an airworthiness directive (AD), applicable to certain Short Brothers Model SD3-30 series airplanes, that would require the installation of an extended guard behind the overhead lockers to protect the elevator and rudder control system from interference caused by oversized luggage. This condition, if not corrected, could result in partial loss of control of the airplane.

**DATE:** Comments must be received no later than July 6, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-39-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22022-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-39-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### *Discussion*

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an incident where excessive friction was created in the elevator and rudder control system on a Shorts Model SD3-30 airplane when an oversized piece of luggage was forced into the overhead locker. This caused the back of the locker to deform and press against the adjacent controls. This condition, if not corrected, could result in partial loss of control of the airplane.

Short Brothers issued Service Bulletin SD330-27-31, dated March 1986, which describes a modification to provide additional guards for the control system. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the installation of an extended guard behind the overhead lockers in accordance with the previously mentioned service bulletin.

It is estimated that 52 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $33,280.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($640). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Proposed Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449 January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Short Brothers PLC:** Applies to Model SD3-30 series airplanes, serial numbers SH3002 through SH3099, SH3102, and SH3105, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent interference with the elevator and rudder control system, accomplish the following:

A. Within 180 days after the effective date of this AD, install an extended guard behind the overhead lockers in accordance with the Accomplishment Instructions of Shorts Service Bulletin No. SD330-27-31, dated March 1986.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Shorts Aircraft, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 7, 1987.

Frederick M. Isaac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-11214 Filed 5-15-87; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

**[Airspace Docket No. 87-AEA-6]**

**Proposed Alteration of Control Zone, New York LaGuardia Airport, NY**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposed to alter the published description of the New York LaGuardia Airport Control Zone by excluding that airspace within one mile of the center of the Pan Am Metroport. The intended effect of this action is to provide ingress/egress for aircraft operating under visual weather conditions in controlled airspace at Pan Am Metroport.

**DATE:** Comments must be received on or before July 2, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Glenn A. Bales, Manager, Airspace Planning Branch, AEA-530, Federal Aviation Administration, Docket 87-AEA-6, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

**FOR FURTHER INFORMATION CONTACT:** Glenn A. Bales, Airspace Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AEA-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in the notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Regional Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the published description of the New York LaGuardia Airport Control Zone by excluding that airspace within one mile of the center of the Pan Am Metroport. The intended effect of this action is to provide ingress/egress for aircraft operating under visual weather conditions in controlled airspace at Pan Am Metroport. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 74606 dated January 2, 1986.

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones.

**The Proposed Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**New York LaGuardia, NY [Amended]**

By adding the words "Excluding that portion within a 1-mile radius of Pan Am Metroport (Lat. 40°45'36" N., Long. 73°57'26" W.)".

Issued in Jamaica, New York, on May 8, 1987.

**Edmund Spring,**

*Manager, Air Traffic Division.*

[FR Doc. 87-11215 Filed 5-15-87; 8:45 am]

BILLING CODE 4910-13-M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 271**

**[Docket No. RM79-76-175 (Colorado—34)]**

**High-Cost Gas Produced From Tight Formations; Order Withdrawing Proposed Rulemaking and Termination Docket**

Issued: May 12, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order withdrawing proposed rulemaking and terminating docket.

**SUMMARY:** Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas a high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Commission received a request from the Colorado Oil and Gas Commission to withdraw a recommendation previously submitted to the Commission that the Sussex Formation underlying certain acreage in Boulder and Weld Counties, Colorado (Colorado—34) be designated a tight formation under § 271.703(d). The Commission grants the request for withdrawal of the recommendation, withdraws its proposed rulemaking and terminates this docket.

**DATE:** This order is effective June 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward G. Gingold, (202) 357-8114 or Victor H. Zabel, (202) 357-8737.

**Background**

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Section 271.703[1] of the Federal Energy Regulatory Commission's (Commission) regulations establishes procedures and substantive guidelines whereby a jurisdictional agency may submit recommendations to the Commission that a particular formation or portion thereof be designated as a tight formation. Section 271.703(c)(2)(i) establishes the guidelines which a formation must meet to be designated as a tight formation.

On January 7, 1983, the Commission received from the State of Colorado Oil and Gas Conservation Commission (Colorado) a recommendation that the Sussex Formation in portions of Boulder and Weld Counties, Colorado, be designated as a tight formation. Pursuant to § 271.703(c)(4), a Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation (OPPR) was issued on October 25, 1983, to determine whether the Colorado recommendation should be adopted.[2] No comments were received.

[1] 18 CFR 271.703 (1986).

[2] 48 FR 50088, October 31, 1983.

**Discussion**

As authorized by § 271.703(c)(3)(vii), the Commission's staff requested by letter dated January 11, 1985, that Colorado submit additional information to supplement its recommendations. The Commission's staff required further data in order to determine whether the average *in situ* gas permeabilities were expected to be 0.1 millidarcy or less, in accordance with § 271.703(c)(2)(i)(A). The Commission's staff also requested well information since portions of the recommended area subject to infill spacing orders appear to be substantially developed and may meet the guidelines of the infill exclusion established in § 271.703(c)(2)(i)(D). On December 23, 1985, the Commission staff sent a letter to Colorado resubmitting its data request.

In response to the Commission staff request, the petitioners for the tight formation designation, Coral Gulf Exploration Corporation, Vessels Oil and Gas Company, and Machii-Ross Petroleum Company, indicated to Colorado that they wished to withdraw their applications for tight formation designation. By letter dated February 3, 1987, Colorado transmitted the petitioners' request for withdrawal to the Commission and indicated its concurrence. The Commission is treating the Colorado concurrence as a request for withdrawal of Colorado's recommendation. This action is without prejudice to resubmittal of the recommendation if and at such time as additional information required by the Commission's regulations becomes available.

*The Commission orders:*

(A) The request by the Colorado Oil and Gas Commission that the subject recommendation for designation of a tight formation be withdrawn is granted.

(B) The Notice of Proposed Rulemaking in this docket be withdrawn.

(C) Docket No. RM79-76-175 is hereby terminated without prejudice to any subsequent recommendation that Colorado may resubmit that the Sussex Formation be designated as a tight formation under § 271.703.

By the Commission.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-11236 Filed 5-15-87; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-174 (Colorado—33)]

## High-Cost Gas Produced From Tight Formations; Order Withdrawing Proposed Rulemaking and Terminating Docket

Issued: May 12, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order withdrawing proposed rulemaking and terminating docket.

**SUMMARY:** Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas a high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Commission received a request from the Colorado Oil and Gas Commission to withdraw a recommendation previously submitted to the Commission that the Shannon Formation underlying certain acreage in Boulder and Weld Counties, Colorado (Colorado—33) be designated a tight formation under § 271.703(d). The Commission grants the request for withdrawal of the recommendation, withdraws its proposed rulemaking and terminates this docket.

**DATE:** This order is effective June 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward G. Gingold, (202) 357-9114 or Victor H. Zabel, (202) 357-8737.

### Background

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Section 271.703 [1] of the Federal Energy Regulatory Commission's (Commission) regulations establishes procedures and substantive guidelines whereby a jurisdictional agency may submit recommendations to the Commission that a particular formation or portion thereof be designated as a tight formation. Section 271.703(c)(2)(i) establishes the guidelines which a formation must meet to be designated as a tight formation.

On January 10, 1983, the Commission received from the State of Colorado Oil and Gas Conservation Commission (Colorado) a recommendation that the Shannon Formation in portions of Boulder and Weld Counties, Colorado, be designated as a tight formation. Pursuant to § 271.703(c)(4), a Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation (OPPR) was issued on October 25, 1983, to determine whether the Colorado recommendation should be adopted.[2] No comments were received.

### Discussion

As authorized by § 271.703(c)(3)(vii), the Commission's staff requested by letter dated January 11, 1985, that Colorado submit additional information to supplement its recommendations. The Commission's staff required further data in order to determine whether the average *in situ* gas permeabilities were expected to be 0.1 millidarcy or less, in accordance with § 271.703(c)(2)(i)(A). The Commission's staff also requested well information since portions of the recommended area subject to infill spacing orders appear to be substantially developed and may meet the guidelines of the infill exclusion established in § 271.703(c)(2)(i)(D). On December 23, 1985, the Commission staff sent a letter to Colorado resubmitting its data request.

In response to the Commission staff request, the petitioners for the tight formation designation, Coral Gulf Exploration Corporation, Vessels Oil and Gas Company, and Machii-Ross Petroleum Company, indicated to Colorado that they wished to withdraw their applications for tight formation designation. By letter dated February 3, 1987, Colorado transmitted the petitioners' request for withdrawal to the Commission and indicated its concurrence. The Commission is treating the Colorado concurrence as a request for withdrawal of Colorado's recommendation. This action is without prejudice to resubmittal of the recommendation if and at such time as additional information required by the Commission's regulations becomes available.

*The Commission orders:*

(A) The request by the Colorado Oil and Gas Commission that the subject recommendation for designation of a tight formation be withdrawn is granted.

(B) The Notice of Proposed Rulemaking in this docket be withdrawn.

(C) Docket No. RM79-76-174 is hereby terminated without prejudice to any subsequent recommendation that Colorado may resubmit that the Shannon Formation be designated as a tight formation under § 271.703.

By the Commission.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11235 Filed 5-15-87; 8:45 am]

BILLING CODE 6717-01-M

[1] 18 CFR 271.703 (1986).

[2] 48 FR 50065, October 31, 1983.

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

26 CFR Part 1

[LR-295-84]

## Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts; Public Hearing on Proposed Regulations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the diversification requirements for variable annuity, endowment, and life insurance contracts.

**DATES:** The public hearing will be held on Wednesday, July 1, 1987, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Wednesday, June 17, 1987.

**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-295-84), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Angela Wilburn of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. 20224, telephone 202-566-3935 (not a toll free call).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 817(h) of the Internal Revenue Code of 1986. The proposed regulations appeared in the Federal Register for Monday, September 15, 1986 (51 FR 32664).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of

proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Wednesday, June 17, 1987, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

**Donald E. Osteen,**

*Director, Legislation and Regulations Division.*

[FR Doc. 87-11270 Filed 5-15-87; 8:45 am]

BILLING CODE 4830-01-M

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**26 CFR Parts 1 and 602**

**[LR-146-86]**

## Information Reporting for Tax-exempt Bond Issues; Public Hearing on Proposed Regulations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to information reporting for tax-exempt bonds under section 149 (e) of the Internal Revenue Code of 1986.

**DATES:** The public hearing will be held on Friday, June 26, 1987, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, June 12, 1987.

**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-146-86), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Angela Wilburn of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 149(e) of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Wednesday, March 11, 1987 (52 FR 7449).

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, June 12, 1987, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

**Donald E. Osteen,**

*Director, Legislation and Regulations Division.*

[FR Doc. 87-11269 Filed 5-15-87; 8:45 am]

BILLING CODE 4830-01-M

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**CENTRAL INTELLIGENCE AGENCY**

**32 CFR Part 1900**

## Public Access to Documents and Records and Declassification Requests

**AGENCY:** Central Intelligence Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Central Intelligence Agency is proposing to amend 32 CFR Part 1900, title—Public Access to Documents and Records And Declassification Requests, which implements the Freedom of Information Act, as amended (5 U.S.C. 552) within the Central Intelligence Agency. The Agency proposes to amend its FOIA fee schedule in compliance with pertinent section of the Freedom of Information Reform Act (FOIRA) of 1986, (Pub. L. 99-570). The FOIRA requires that all agencies conform to a uniform schedule of fees in conformance with the Office of Management and Budget (OMB). The Agency's proposed fee schedule is based on the OMB guidelines issued March 27, 1987 (52 FR 10012) and certain Justice Department guidance.

**DATE:** Comments must be submitted on or before June 2, 1987.

**ADDRESS:** Send written comments to: Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington D.C. 20505 Telephone: (703) 351-2083.

**FOR FURTHER INFORMATION CONTACT:** Lee S. Strickland, Information and Privacy Coordinator, Central Intelligence Agency, Washington DC 20505, Telephone: (703) 335-2083.

**SUPPLEMENTARY INFORMATION:** The Central Intelligence Agency's policies and procedures for handling requests for Agency records under the Freedom of Information Act (FOIA) appear in 32 CFR Part 1900. The Agency proposes to amend those portions of the regulations concerned with fees charged for records services in response to FOIA requests, to be consistent with the provisions of the FOIRA. To accomplish the purposes of the amendment it will be necessary to modify § 1900.3 (Definitions) and § 1900.25 (Fees for Records Services). The proposed fee schedule reflects recommended adjustments for agency-wide charges that are permitted by law and the remaining charges are based on the government-wide schedule. The proposed increases in fee schedule charges more accurately reflect current, direct costs.

Additionally, FOIRA specifies two basic requirements to be met for qualification for a waiver or reduction of chargeable fees. This proposed amendment sets forth the factors which will be used in making fee waiver determinations, based on the Justice Department's April 2, 1987 guidance.

The FOIRA also requires that we publish our regulations specifying a schedule of fees to be charged for processing FOIA requests, after public notice and opportunity for comment. Because FOIRA requires that our fees conform to guidelines promulgated by the Director, Office of Management and Budget, we have waited OMB's issuance of final guidelines on March 27, 1987 (52 FR 10012) before beginning this proceeding. The Agency believes that a 15 day comment period on the fee schedule is appropriate because the

Agency's proposed rule follows the OMB guidelines on uniform fee schedule on which the public had a opportunity to comment, and because of the short deadline in FOIRA for publishing these regulations.

Set forth below are specific policies and procedures for incorporation into the original regulation which will allow efficient processing of requests consistent with the FOIA, as amended. The Agency will issue a final rule on the fee schedule pursuant to FOIRA as soon as is possible. Between May 26 and the date that the revised fees schedule becomes effective, the Agency intends to exercise its discretion to waive or reduce fees, upon request, and otherwise conform, as nearly as practicable, to the standards set forth by the FOIRA.

This proposed rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more:

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

**List of Subjects in 32 CFR Part 1900**

Freedom of Information.

For reasons set forth in the preamble, 32 CFR Part 1900 is amended as follows:

**PART 1900—[AMENDED]**

1. The authority for Part 1900 is revised to read as follows:

**Authority:** Sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403), the Central Intelligence Act of 1949 (50 U.S.C. 403a *et seq.*) E.O. 12356 (3 CFR Apr. 2, 1982) and the Freedom of Information Act as amended (5 U.S.C. 552).

2. Sections 1900.3 paragraphs (j) through (q) are added to read as follows:

**§ 1900.3 Definitions.**

* * * * *

(j) "Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the current salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(k) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Efforts will be made to ensure that search for material is done in the most efficient and least expensive manner so as to minimize costs for both the Agency and the requester. "Search" for the purpose of determining whether a document is responsive is distinguishable from "review" where the objective is to determine whether any of the responsive material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

(l) "Duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g. magnetic tape or disk) among others. The copy provided must be in a form that is reasonably useable by requesters.

(m) "Review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (n) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g. doing all that is necessary to remove or obliterate any material which is exempt from disclosure and otherwise preparing them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(n) "Commercial use request" refers to a request in which the disclosure sought is primarily in the commercial interest of the requester. It is a request from or on behalf of one who seeks information primarily for the use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. The requester is expected to provide information as to the use to which the requester intends to put the requested information. Moreover, where there is reasonable cause to doubt the use to which the requester will put the information sought, or where that use is not clear from the request itself, the agency will seek additional clarification before assigning the request to a specific catetory.

(o) "Educational institution" refers to a preschool, public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education which operates a program or programs of scholarly research. The institution should be located in the United States. The criteria to be met to be included in this category, for the purposes of fee waivers, are not satisfied simply by showing that the request is for a library or other records repository. Such requests, like those of other requesters, will be analyzed to identify the particular person who will actually use the requested information in a scholarly or other analytic work and then disseminate it to the general public.

(p) "Non-commercial scientific institution" refers to an institution in the United States that is not operated on a "commercial" basis as that term is referenced in paragraph (n) of this section and which is operated solely for the purpose of conducting natural life or physical sciences research the results of which are not intended to promote any particular product or industry.

(q) "Representatives of the news media" refers to any person actively gathering news for an United States entity that is organized and operated to publish or broadcast news to the United States public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g. electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's past publication record may also be relevant evidence of the requester's status.

3. Section 1900.25 is revised to read as follows:

**§ 1900.25 Fees for records services.**

(a) Search and duplication fees will be charged in accordance with the schedule set forth in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. To the extent possible, the most efficient and least costly methods will be used to comply with requests for documents made under the FOIA. Records will be furnished without charge or at a reduced rate whenever the Coordinator determines that a waiver or reduction is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the United States government and is not primarily in the commercial interest of the requester. The Coordinator shall consider the following factors in making his determination:

(1) Whether the subject of the requested records concerns the operations or activities of the United States government; and, if so,

(2) Whether disclosure of the requested information is likely to contribute to an understanding of United States government operations or activities; and, it so,

(3) Whether disclosure of the requested information will contribute to public understanding of United States government operations or activities; and if so,

(4) Whether disclosure of the requested information is likely to contribute significantly to public understanding of United States government operations and activities; and,

(5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(6) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the commercial interest of the requester.

The Coordinator may also waive or reduce the charge whenever he determines that the interest of the government would be served thereby. Fees shall not be charged where they would amount, in the aggregate, for a request or for a series of related requests, to less than $600. Denials of requests for fee waiver may be appealed by writing to the Chairman of the Information Review Committee, via the Coordinator.

(b) In order to protect the requester and the Agency from large, unexpected fees, when the anticipated charges will amount to more than $2500, the processing of the request shall be suspended until the requester indicates his willingness to pay. The requester shall be notified and asked for this commitment to pay all reasonable search and duplication (and when appropriate, review) fees. At his option, the requester may indicate in advance a dollar limitation to the fees he is prepared to pay. In such an event, the Coordinator, shall initiate a search of the system or systems of records deemed most likely to produce relevant records, instructing the system managers to discontinue the search as soon as the stipulated amount has been expended. Where an advance limit has not been stipulated, the Coordinator may, at his discretion or at the behest of the requester, compile an estimate of the search fees likely to be incurred in processing a request, or of such portion thereof as can readily be estimated. The requester shall be promptly notified of the amount and be asked to approve its expenditure. In those cases where the Coordinator estimates that the fees will exceed $250.00 and the requestor has no history of payment, an advance deposit of up to 100 percent of the estimated fees will be required. In all cases where there is reasonable evidence that the requestor may possibly fail to pay the fees which would be accrued by processing his request, an advance deposit of 100 percent of the estimated fees will be required. The notice or request for an advance deposit shall extend an offer to the requester whereby he is afforded an opportunity to revise the request in a manner calculated to reduce the fees. Dispatch of such a notice shall suspend the running of the period for response by the Agency until a reply is received from the requester. Except for requests that are for commercial use, the Agency may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, which are merely discrete subdivisions of the information he actually seeks, for the purpose of artificially diminishing the individual requests solely to avoid payment of fees. When the Coordinator reasonably believes that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of smaller requests solely for the purpose of evading the assessment of fees, the Coordinator may aggregate any such requests and charge accordingly.

(c) The schedule of fees for services performed in responding to requestes for CIA records is established as follows:

(1) For each one quarter hour, or fraction thereof, spent by non-professional personnel in searching for a record, $2.50;

(2) For each one quarter hour, or fraction thereof, spent by a professional personnel in searching for a record, $4.50;

(3) For each on-line computer search, $11.00;

(4) For each off-line (batch) computer search of Central Reference Files, $27.00;

(5) For all other off-line computer searches of Agency files, $8.00 per minute of Central Processing Unit (CPU) time;

(6) For copies of paper documents in sizes not larger than 8½×14, $0.10 per copy of each page;

(7) For duplication of non-paper media (film, magnetic tape disc etc.) for any document that cannot be reproduced on a standard office copier, actual direct cost; and

(8) For extra copies of reports, maps, reference aids, and other Agency publications, actual costs.

(d) Inasmuch as the Agency's systems of records are highly decentralized, several computer searches may be required to process a request, depending upon its scope. The computer search costs given in paragraph (c) of this section, do not include whatever professional/clerical search time is needed to determine whether the records located are in fact responsive to the request.

(e) Search fees are assessable even when no records pertinent to the requests, or no releaseable records are found, provided the requester has been advised of this fact and he has, that notwithstanding, agreed to incur the costs of search.

(f) For requests which have accrued search and duplication fees in excess of $250.00, or where there is reasonable evidence that the requester may possibly fail to pay the accrued fees, then, at the discretion of the Coordinator, the requester may be required to pay the accrued search and duplication fees prior to the actual delivery of the requested records; otherwise, the requester shall be billed for such fees at the time the records are provided. Payment shall be remitted by check or money order, made payable to the Treasurer of the United States, and shall be sent to the Coordinator. No appeals or additional requests shall be accepted for processing until the requester has paid all outstanding charges for services rendered under this part.

(g) With the exception of requesters seeking documents for a commercial

use, section 4(A)(iv) of the Freedom of Information Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, the Agency will not begin to assess fees until after providing the specified free search and reproduction. If the amount of the chargeable fees is equal to or less than the cost of the Agency of billing the requester and processing the fee collected, no charges would result. The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account. The per-transaction cost to the Treasury to handle such remittances will not be considered in the Agency's determination. For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard Agency size which will normally be "8½×11" or "11×14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction. Similarly, the term "search time" in this context has as its basis, manual search. To apply this term to searches made by computer, the Agency will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, the Agency will begin assessing charges for computer search.

(h) There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institution; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(1) *"Commercial Use" requesters.* When the Agency receives a request for documents for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The Agency will recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records.

(2) *"Educational and Non-commercial Scientific Institution" Requesters.* The Agency will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying United States institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) *Requesters who are "Representatives of the News Media".* The Agency shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1900.3(g), and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(4) *All other requesters.* FOIA requesters who do not fit in any of the categories above will be charged fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requesters asking for records about themselves will continue to be treated under the CIA fee provisions of the privacy Act of 1974 which permit access to records without charge.

Dated: May 11, 1987.

Approved:

William F. Donnelly,

*Deputy Director for Administration.*

[FR Doc. 87-11270 Filed 5-15-87; 8:45 am]

BILLING CODE 6315-02-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

[CGD7 87-04]

### Drawbridge Operation Regulations; Taylor Creek, Florida

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the Florida Department of Transportation (FDOT), the Coast Guard is considering a change to the regulations governing the Taylor Creek Bridge, U.S. 441, at Okeechobee, Florida, by requiring that requests for opening be made further in advance than at present. This proposal is being made because of the limited number of requests for opening of the draw. This action should relieve the bridge owner of the burden of having a person constantly available on short notice to open the draw, yet still provide for the reasonable needs of navigation.

**DATE:** Comments must be received on or before July 2, 1987.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard district, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne Lee, Chief, Bridge Section, Seventh Coast Guard District, telephone (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

### Drafting Information

The drafters of this notice are Mr.

Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

**Discussion of Proposed Regulations**

The Taylor Creek drawbridge presently opens on signal if requests for opening are made at least two hours in advance. Records show the bridge was opened only 50 times between March 1985 and February 1986. Based on the infrequent operation of this bridge, providing requests 48-hours in advance should not be an unreasonable burden on navigation and will allow FDOT ample time to arrange for openings.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Excecutive Order 12291 of Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because so few vessels would be affected. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entites.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.335 is revised to read as follows:

**§ 117.335 Taylor Creek.**

The draw of the US 441 bridge, mile 0.3 at Okeechobee, shall open on signal if at least 48 hours advance notice is given.

Dated: May 12, 1987.

**M.J. O'Brien,**

*Captian, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.*

[FR Doc. 87–11279 Filed 5–15–87; 8:45 am]

BILLING CODE 4910-14-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

**[SW–FRL–3199–2]**

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Supplemental Notice of Proposed Rulemaking.

**SUMMARY:** On June 13, 1986, the Agency proposed to amend its hazardous waste identification regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) by modifying the existing toxicity characteristic. This modified characteristic would replace the existing EP toxicity characteristic and be used by all generators in determining whether their solid wastes are toxic hazardous wastes. Among other comments, a large number of comments were received which questioned the validity of applying the proposed toxicity characteristic to wastes, including wastewaters, likely to be managed in surface impoundments. In response to comments, EPA is considering, in addition to the option of promulgating the Toxicity Characteristic as proposed, a number of modifications to the proposal and is requesting comments with supporting documentation on these options.

**DATE:** EPA will accept public comments on this notice until July 2, 1987. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this notice by filing a request with Sylvia Lowrance, whose address appears below by May 28, 1987.

**ADDRESSES:** One original and three copies of all comments, identified by the docket number F–87–TCN–FFFFF should be sent to the following address: EPA RCRA Docket [S–212], U.S. Environmental Protection Agency [WH–562], 401 M Street, SW., Washington, DC 20460. The EPA RCRA docket is located in the sub-basement area at the above address, and is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling Mia Zmud at 475–9327. A maximum of 50 pages of material may be copied from any one regulatory docket at no cost. Additional copies cost $.20/page.

**FOR FURTHER INFORMATION CONTACT:** The RCRA Hotline, call toll-free at (800) 424–9346 or (202) 382–3000. For technical information, contact Doreen Sterling, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–8551.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On June 13, 1986, the Agency proposed to amend its hazardous waste identification regulations by modifying the existing Toxicity Characteristic (referred to as the Extraction Procedure Toxicity Characteristic (EPTC)). The proposed characteristic, like the existing one, would estimate the migration potential of toxicants to leach from the waste if the waste were managed in a co-disposal scenario; that is, we assume that the waste is managed in a sanitary landfill with municipal trash and garbage, that acetic acid is the primary extractant medium, and that the toxicants would contaminate a well 500 feet downstream of the landfill at levels that exceed the health-based numbers. Among other things, the proposed toxicity characteristic would increase the number of toxicants to be considered in defining a waste as hazardous and would introduce a new leach procedure, the Toxicity Characteristic Leaching Procedure (TCLP). (See 51 FR 21648, June 13, 1986). In addition, in establishing the regulatory levels, the Agency proposed to use a ground water transport model (EPASMOD) to generate the dilution/attenuation factors for each of the chemicals. The details of the modeling approach were provided in the Federal Register notice of January 14, 1986 (51 FR 1602).

The Agency received comments on many aspects of the proposal. However, a large number of comments were received which questioned the validity of applying the toxicity characteristic to wastes, including wastewaters, likely to be managed in surface impoundments; in particular, the commenters argued that the mismanagement scenario (*i.e.*, codisposal of industrial waste with municipal wastes) assumed in the characteristic is not a reasonable mismanagement scenario for certain wastes (*i.e.*, wastewaters). In particular, they argued that wastewaters were normally managed in surface impoundments and/or tanks and not in a municipal landfill.

In response to comments, the Agency is reexamining the applicability of the co-disposal scenario to wastes likely to be managed in surface impoundments and is requesting comments and

supporting documentation on the points discussed in the next section.

It should be noted that the Agency is *only* soliciting comments on this aspect of the proposal.

## II. Notice and Request for Comments

A number of comments were received which questioned the validity of applying the proposed toxicity characteristic to industrial wastes likely to be managed in surface impoundments. As we described earlier, many of these commenters objected to using the proposed characteristic since the assumptions used in developing it (*i.e.*, industrial waste would be co-disposed with municipal trash and garbage in a landfill) are not relevant to certain wastes, including wastewaters, likely to be managed in impoundments. In particular, the commenters argued that wastewaters are normally managed in surface impoundments and/or tanks, the discharges of which are normally regulated under a NPDES or pretreatment permit. Commenters further noted that the characteristic does not account for the waste management processes, such as equalization and biological treatment, which normally occur in these units. The commenters state that the objective of these treatment processes is to achieve an averaging of constituent concentration through equalization and an overall decrease of concentration through biological removal. They further argue that it is this "average" concentration that is experienced by the aquifer and, therefore, the sampling of the unit itself is a more accurate measure of leachate concentration.

As a result of these comments, the Agency is seriously considering, in addition to the option of promulgating the toxicity characteristic as proposed, modifying the proposed characteristic as it would apply to wastes which are likely to be managed in surface impoundments, such as industrial wastewaters. The Agency is therefore considering, as one option, developing a mismanagement scenario that assumes that certain wastes are managed in an unlined impoundment. One major reason for adopting this scenario is that a large amount of industrial wastes are managed in these types of impoundments. For example, according to the RCRA Subtitle D Census,[1] there are 227,000 Subtitle D Facilities in the United States, 85% of which are surface impoundments. In addition, data from the Office of Solid Waste's Industry Studies Data Base (ISDB) [2] reveal that for the seven industrial categories for which information was tabulated, 63 million metric tons of waste are managed in on-site impoundments. We, therefore, believe that a surface impoundment scenario may be an appropriate scenario to consider for certain types of wastes.

Developing a surface impoundment scenario, in addition to the landfill scenario, would mean that the toxicity characteristic would have two possibly different regulatory levels. Waste generators would first have to determine which scenario is appropriate and then would be responsible for evaluating whether their waste exceeded the applicable regulatory levels. The Agency is considering a number of approaches for deciding the applicability of the surface impoundment characteristic. These include the following:

- *Management based.* Under this approach, the surface impoundment scenario would be applicable only to those wastes actually managed in impoundments (*i.e.*, those wastes that are managed in tanks would still be subject to the proposed OTC). Waste constituent concentrations could either be measured directly by an analysis of: a representative liquid sample taken from within the impoundment; the supernatant from a representative sludge sample taken from within the impoundment; or a representative sludge sample extracted according to the TCLP (or modified TCLP) using liquid in the impoundment as the extractant. Another alternative would be to sample the waste at the influent to the impoundment and apply factors to take into account attenuative mechanisms (such as biodegradation, and hydrolysis).
- *Physical property based.* The surface impoundment scenario could also be implemented to apply to those wastes having a certain physical property such as percent solids (*e.g.*, any waste that contains less than 5% solids, for instance, would be subject to the surface impoundment characteristic). The rationale for this approach is that those wastes having low per cent solids [3] are likely to be managed in an impoundment (*i.e.*, this is the reasonable mismanagement scenario). Once a waste is defined as being subject to the surface impoundment scenario, the waste could then be sampled. The regulatory levels will have been established so as to take into account attenuative mechanisms (such as biodegradation, and hydrolysis).
- *Definition based.* The surface impoundment scenario could also be applied to those wastes which are managed in treatment/disposal units, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of the wastewater). Once a waste is defined as being subject to the surface impoundment scenario the waste could either be sampled at some point in the unit or at the inlet and factors for attentive mechanisms (*e.g.*, biodegradation, hydrolysis, etc.) would be applied. (This is more thoroughly described above, under the management based approach.)

While the Agency believes that the third approach may be the most appropriate, we are today inviting the public to further comment and provide specific documentation on this issue. The Agency specifically requests comment and data on the following points:

1. If the Agency decides to develop (as part of the characteristic) a separate mismanagement scenario for wastes likely to be managed in surface impoundments, what criteria should be used to determine whether the surface impoundment scenario should apply (*e.g.*, should it apply to wastes managed in surface impoundments, wastes having certain physical characteristics such as percent solids, etc.)? The Agency is, in particular, requesting available data on the relationship between constituent concentrations at the inlet, effluent, and in the sludge of an impoundment; dimensions of impoundments; depth of impoundments; and retention time in impoundments. The Agency is also requesting comment on whether a different mismanagement scenario should apply.

2. Should evaluation of the waste be based on actual measurement of concentration in the impoundment or calculated through measurement at the inlet and application of predictive models? This may involve either measuring. (1) A representative sample of the liquid portion at some location in the impoundment, (2) measuring the liquid portion and the sludge in the impoundment, or (3) measuring the

[1] "Subtitle D Study, Phase I Report," U.S. EPA, Office of Solid Waste and Emergency Response, EPA/530-SW-86-054 (October 1986).

[2] Data was tabulated on the following six industrial categories: Organic Chemicals, Synthetic Fibers and Plastics, Wood Preserving, Pesticides, Coke, and Inorganic Chemicals. One major industry which was not included was Refining. Inclusion of this industry would likely increase the amounts and overall percentages of wastes managed in impoundments.

[3] Per cent solids can be determined by Method 160.3, Standard Methods for Chemical Analysis of Water and Wastes, USEPA, EPA-600/04-79-020, Revised March 1983.

concentration at the inlet and applying attenuation factors.

3. How should multiple impoundments be handled?

Based on the comments received on this notice and previous comments received on the proposed characteristic, the Agency may modify its regulatory definition of those wastes subject to the characteristic in one of the ways noted above.

Comments on the issues raised in this notice must be received by EPA on or before July 2, 1987 date of publication to ensure consideration. It should be noted that we are reopening the comment period for only those issues discussed in this notice.

Dated: May 6, 1987.

J.W. McGraw,

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 87-10909 Filed 5-15-87; 8:45 am]

BILLING CODE 6560-50-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### 45 CFR Part 1100

### Statement for the Guidance of the Public Organization, Procedures and Availability of Information

**AGENCY:** National Foundation on the Arts and the Humanities.

**ACTION:** Proposed rule.

**SUMMARY:** The National Foundation on the Arts and the Humanities (NFAH) proposes to amend its Freedom of Information Act (FOIA) regulations to incorporate recent changes to the FOIA effected by the Freedom of Information Reform Act of 1986, Pub. L. 99-570, which requires agencies to issue final regulations in conformance with guidelines issued by the Office of Management and Budget. In addition, this rule replaces the existing regulation at 45 CFR Part 1100 which was published in the **Federal Register** on April 17, 1979 in order to include the Institute of Museum Services in the National Foundation on the Arts and the Humanities.

**DATE:** Comments must be received by June 17, 1987.

**ADDRESS:** Comments should be sent to Ms. Tracy Joselson, Attorney/Advisor, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tracy Joselson, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506 or call (202) 786-0322.

**SUPPLEMENTARY INFORMATION:** This proposed rule is not a major rule for the purpose of Executive Order 12291. As is required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities. This proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 45 CFR Part 1100**

Administrative practice and procedures, Freedom of Information Act.

For the reasons set out in the preamble, it is proposed to revise 45 CFR Part 1100 as follows:

## PART 1100—STATEMENT FOR THE GUIDANCE OF THE PUBLIC—ORGANIZATION, PROCEDURE AND AVAILABILITY OF INFORMATION

Sec.

1100.1 Definitions.
1100.2 Organization.
1100.3 Availability of information to the public.
1100.4 Current index.
1100.5 Agency procedures for handling requests for documents.
1100.6 Fees.
1100.7 Foundation report of actions.

**Authority:** 5 U.S.C. 552, as amended by Pub. L. 99-570.

### § 1100.1 Definitions.

(a) "Agency" means the National Endowment for the Arts, the National Endowment for the Humanities, the Institute of Museum Services, or the Federal Council on the Arts and the Humanities.

(b) "Commercial use request" means a request by or on behalf of anyone who seeks information for a use or purpose that furthers the commercial trade or profit interests of the requestor (or the person on whose behalf the request is made.) The agency must determine the use to which a requestor will put the document. Where the agency has reasonable cause to doubt the use to which a requestor will put the records sought or the use is not clear from the request, the agency may seek additional clarification. The requestor bears the burden of demonstrating the use or purpose of the information requested.

(c) "Direct costs" means those expenditures which an agency actually incurs in searching for the duplicating documents to respond to a Freedom of Information Act (FOIA) request. In the case of commercial use requests, the term shall also include expenditures for reviewing documents.

(d) "Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies may be in the form of paper, microfilm, machine readable documents, or other materials.

(e) "Educational institution" means a preschool, elementary, or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(f) "Non-commercial scientific institution" means an institution that is not operated on a "commercial use" basis as defined in paragraph (b) of this section and which is operated solely for the purposes of conducting scientific research the results of which are not intended to promote any particular product or industry.

(g) "Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast information that is about current events or that would be of current interest to the public. Freelance journalists may be regarded as working for a new organization if they can demonstrate a sound basis for expecting publication through that organization, even though not actually employed by it.

(h) "Review" means the process of examining a document located in response to a commerical use request to determine whether any portion is permitted to be withheld. Review includes processing documents for disclosure, including all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(i) "Search" means all the time that is spent looking for material that responds to a request, including page-by-page or line-by-line identification of material in documents. Searches may be done manually or by computer using existing programs.

### § 1100.2 Organization.

(a) The National Foundation on the Arts and the Humanities was established by the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 951 *et seq.* The Foundation is composed of the National Endowment for the Arts, the National Endowment for the Humanities, the Institute of Museum Services, and the Federal Council on the Arts and the

Humanities. The Institute of Museum Services became a part of the National Foundation on the Arts and Humanities pursuant to Pub. L. 97–384 (December 30, 1982) and Pub. L. 98–306 (May 31, 1984). Each Endowment is headed by a Chairman and has an advisory national council composed of 26 presidental appointees. The Institute of Museum Services is headed by a Director and has a National Museum Services Board composed of 15 presidential appointees. The Federal Council on the Arts and the Humanities, comprised of Executive branch offcials and appointees of the legislature branch, is authorized to make agreements to idemnify against loss or damage for certain exhibitions and advise on arts and humanities matters.

**§ 1100.3 Availability of information to the public.**

(a) All inquiries, or requests should be addressed to the appropriate agency. Descriptive brochures of the organization, programs, and function of each agency are available upon request. Inquiries involving work of the National Endowment for the Arts should be addressed to the National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. The telephone number of the National Endowment for the Arts is (202) 682–5400. Requests or inquiries involving the National Endowment for the Humanities should be addressed to the National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington DC 20506. The telephone number of the National Endowment for the Humanities is (202) 786–0310. Requests or inquiries involving the Institute of Museum Services should be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. The telephone number of the Institute of Museum Services is (202) 786–0536.

(b) The head of each agency is responsible for the effective administration of the Freedom of Information Act. The head of each agency pursuant to this responsibility hereby directs that every effort be expended to facilitate service to the public with respect to the obtaining of information and records.

(c) Requests for access to records of the National Endowment for the Arts, the National Endowment for the Humanities, or the Institute of Museum Services may be filed by mail with the General Counsel of the National Endowment for the Arts, the Deputy Chairman of the National Endowment for the Humanities, or the Public Affairs Officer of the Institute of Museum Services, as is appropriate. Requests for access to records of the Federal Council on the Arts and the Humanities should be directed to the attention of the National Endowment for the Humanities. All requests should reasonably describe the record or records sought. Requests submitted should be clearly identified as being made pursuant to the Freedom of Information Act.

**§ 1100.4 Current index.**

(a) Each agency shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated and which is required to be made available pursuant to 5 U.S.C. 552(a) (1) and (2). Publication and distribution of such indices has been determined by the Foundation to be unnecessary and impracticable. The indices will be provided upon request at a cost not to exceed the direct cost of the duplication.

**§ 1100.5 Agency procedures for handling requests for documents.**

(a) Upon receiving a request for documents in accordance with the rules of this part, the General Counsel of the National Endowment for the Arts, Deputy Chairman of the National Endowment for the Humanities, or the Public Affairs Officer of the Institute of Museum Services, as is appropriate, shall determine whether or not the request shall be granted in whole or in part.

(1) The determination shall be made within ten (10) days (excepting Saturdays, Sundays, ad legal holidays) after receipt of such request.

(2) The requestor shall be notified of the determination and the reasons that support it. When a request is denied in whole or in part, the requestor, will be notified of his or her rights to appeal the determination to the head of the agency.

(b) Any party whose request for documents has been denied in whole or in part may file a appeal no later than ten (10) working days following receipt of the notification of denial. Appeals must be addressed to the Chairman, National Endowment for the Arts, Washington, DC 20506, the Chairman, National Endowment for the Humanities, Washington, DC 20506, or the Director Institute of Museum Services, Washington, DC 20506, as is appropriate.

(2) The head of the agency or his delegatee shall make a determination with respect to the appeal within twenty (20) days) excepting Saturdays, Sundays, and legal holidays) after the agency has received the appeal, except as provided in paragraph (c) of this section. If, on appeal, the denial is upheld either in whole or in part, he head of the agency shall notify the party submitting the appeal of the judicial review provisions of 5 U.S.C. 552(a)(4)(B).

(c) In unusual circumstances, the time limits prescribed to determine a request for documents with respect to initial actions or actions on appeal may be extended by written notice from the General Counsel of the National Endowment for the Arts, the Deputy Chairman of the National Endowment for the Humanities, or the Public Affairs Officer of the Institute of Museum Services as is appropriate. The notice shall describe the reason for the extension and the date on which the determination is expected to be made. No notice shall specify a date that would result in an extension of more than ten (10) days (excepting Saturdays, Sundays, and legal holidays). As is used in this paragraph, "unusual circumstances" means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject-matter interest in the request.

**§ 1100.6 Fees.**

(a) *Categories of fees.* Fees will be charged according to the category of the FOIA request.

(1) *Commercial use requests.* The agency will assess charges to recover the full direct cost of searching for, reviewing, and duplicating the requested document. The agency may recover the full cost of searching for and reviewing records even if there is ultimately no disclosure.

(2) *Requests from educational and non-commercial scientific institutions.* The agency will charge for duplication costs. To qualify for this category the requestor must show:

(i) That requested records are being sought under the auspices of a qualified institution as defined in § 110.1 (e) or (f) of this part;

(ii) The records are not sought for commercial use; and

(iii) The records are being sought in furtherance of scholarly or scientific research of the institution.

(3) *Requests by representatives of the news media.* The agency will charge duplication costs for the requests in this category.

(4) *All other requests.* (i) All other request shall be charged fees which recover the full reasonable cost for searching for and duplicating the requested records.

(b) *General fee schedule.* The agency shall use the most efficient and least costly method to comply with requests for documents made under the FOIA. The agency will charge fees to recover all allowable direct costs incurred. The agency may charge fees for searching for and reviewing requested documents even if the documents are determined to be exempt from disclosure or cannot be located. If search charges are likely to exceed $25, the agency shall notify the requestor, unless the requestor has indicated in advance the willingness to pay higher fees. The following fees shall be charged in accordance with paragraph (a) of this section.

(1) *Searches*—(i) *Manual.* The fee charged will be the salary rate(s) (i.e., basic pay plus 16.1 percent) of the employee(s) conducting the search.

(ii) *Computer.* The fee charged will be the actual direct cost of providing the service including the cost of operating the central processing unit for the operating time that is directly attributed to searching for records responsive to a request and the operator/programmer salary apportionable to the search.

(2) *Review.* The fee chargd will equal the salary rate(s) (basic pay plus 16.1 percent) of the employee(s) conducting the review.

(3) *Duplication.* Copies of documents photocopied on a 8½ x 11 inch sheets of paper will be provided at $.10 per page. For duplication of other materials, the charge will be the direct cost of duplication.

(c) *Restrictions on charging fees.*

(1) Except for documents provided in response to a commercial use request, the first 100 pages of duplication or the first two (2) hours of search time shall be provided at no charge.

(i) For the purposes of this section, two (2) hours of search time by computer entitles the requestor to two (2) hours of computer operator salary translated into computer search costs. Computer search costs consist of operator salary plus central proceeding unit operating time costs for the duration of the research.

(2) Fees shall not be charged to any requestor, including commercial use requestors, if the cost of collecting a fee would be equal to or greater than the fee itself.

(d) *Waiver or reduction of fees.* Documents shall be furnished without charge or at reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor.

(e) *Assessment and collection of fees.* (1) Interest will accrue from the date the bill is mailed if the fee is not paid within thirty (30) days. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717.

(2) If the agency reasonably believes that a requestor(s) is making multiple requests to avoid the assessment of fees, the agency may aggregate such requests and charge accordingly.

(3) The agency may request an advance payment of the fee if

(i) The allowable charges are likely to exceed $250; or

(ii) The requestor has failed previously to pay a fee in a timely fashion.

(4) When the agency requests an advance payment, the time limits prescribed in section (a)(6) of the Freedom of Information Act will begin only after the agency has received full payment.

**§ 1100.7 Foundation report of actions.**

(a)(1) On or before March 1 of each calendar year, the National Foundation on the Arts and the Humanities shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. The report shall include:

(i) The number of determinations made by the National Foundation on the Arts and the Humanities not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination;

(ii) The number of appeals made by persons under such provision, the result of such appeals, and the reasons for the action upon each appeal that results in the denial of information;

(iii) The names and titles or positions of each person responsible for the denial of records requested under the provisions of this part and the number of instances of participation for each;

(iv) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), as amended, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(v) A copy of every rule made by the Foundation implementing the provisions of the FOIA.

(vi) A copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(vii) Such other information as indicates efforts to administer the provisions of the FOIA, as amended.

Dated: May 7, 1987.

**Lynne V. Cheney,**

*Chairman, National Endowment for the Humanities.*

Dated: May 11, 1987.

**Francis S.M. Hodsoll,**

*Chairman, National Endowment for the Arts.*

Dated: May 8, 1987.

**Lois Burke Shepard,**

*Director, Institute of Museum Services.*

[FR Doc. 87-11253 Filed 5-15-87; 8:45 am]

BILLING CODE 7537-01-M

# Notices

Federal Register
Vol. 52, No. 95
Monday, May 18, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and Place: Sheraton Atlanta Airport Hotel, 1325 Virginia Ave., Atlanta, GA 30344.

Status: Open.

Matters To Be Considered: On June 1, the Commission will hold a public hearing to receive testimony on the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm. The meeting on June 2 is expected to review the public hearing, disuss Commission matters with the Executive Director, and discuss background materials related to the dairy industry.

Written Statements may be filed before or after the meeting with: Contact person named below.

Contact Person for More Information: Mr. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave., NW., Suite 1100, Washington, DC 20005, [202] 638–5222.

Signed at Washington, DC, this 11th day of May 1987.

David R. Dyer,

*Executive Director, National Commission on Dairy Policy.*

[FR Doc. 87–11250 Filed 5–15–87; 8:45 am]

BILLING CODE 3410–06–M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Incidental Take—Sea Turtles.

Form Number: Agency—N/A; OMB—0648–0178.

Type of Request: Reinstatement of a previously approved collection—Expedited review requested.

Burden: 12 respondents; 1 burden hour.

Needs and Uses: Shrimp fishermen in a selected area off Texas must report any catch of sea turtles incidental to their shrimping activities. The information will be used to ensure allowable incidental take levels are not exceeded.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: John Griffin, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearing Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6228, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffin, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: May 13, 1987.

Edward Michals,

*Department Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–11306 Filed 5–15–87; 8:45 am]

BILLING CODE 3510–CW–M

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Survey of Building and Zoning Permit Systems

Form Number: Agency—C–411; OMB—0607–0350.

Type of Request: Revision of currently approved collection.

Burden: 400 respondents; 68 reporting hours.

Needs and Uses: This data is needed to update the universe of permit-issuing places which is required to select reliable samples for estimating building permit authorizations. Estimates of building permits authorized are widely used for economics and business decisions. The respondents are state and local building permit officials.

Affected Public: State or local governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW, Washington, DC. 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: May 13, 1987.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–11307 Filed 5–15–87; 8:45 am]

BILLING CODE 3510–07–M

[A–588–703]

### Initiation of Antidumping Duty Investigation; Certain Internal-Combustion, Industrial Forklift Trucks From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of certain internal-combustion, industrial forklift trucks (forklift trucks) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine

whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 8, 1987. If that determination is affirmative, we will make a preliminary determination on or before September 29, 1987.

**EFFECTIVE DATE:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gary Taverman or Kathleen Doering, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–0161 or 377–8498.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On April 22, 1987, we received a petition filed in proper form by the Hyster Company, the Independent Lift Truck Builders Union, the International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL–CIO), and the United Shop and Service Employees, on behalf of the U.S. industry producing forklift trucks. On May 7, 1987, an amendment to the petition was filed to include as petitioners a group of workers employed by the Hyster Co. in its Berea, Kentucky and Sulligent, Alabama facilities, and to enlarge the scope of the petition to cover certain less than complete forklift trucks. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of forklift trucks from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Petitioners' estimate of United States price is based on actual sales, price quotes, price bids, price lists and advertisements. Prices provided were generally to the end-user from the dealer, with deductions made for dealer mark-up, estimated foreign inland freight, ocean freight, marine insurance, dock and customs fee, duties, and U.S. inland freight. Petitioners' estimate of foreign market value is based on retail list prices and average actual prices on sales to end-users in Japan, with deductions made for foreign inland freight. In addition, petitioners made adjustments and deductions, where appropriate, for options, credit expenses, product liability costs, reclearing fees, warranty expenses, and indirect selling expenses.

Based on a comparison of United States prices and foreign market value, petitioners allege dumping margins ranging from 1.1 percent to 56.8 percent.

Petitioners have requested that we specifically look at certain resales which involve new trucks that may or may not have been operated for a few hours and which then may be sold by Japanese resellers or trading companies at a discount to the United States. We will look at resales and other distribution practices as part of this investigation.

After analysis of petitioners' allegations and supporting data, we conclude that a formal investigation is warranted.

**Initiation of Investigation**

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on forklift trucks from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of forklift trucks from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 29, 1987.

**Scope of Investigation**

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, and HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 lbs, currently provided for under TSUSA items 692.4025, 692.4030 and 692.4070, and currently classifiable under HS item numbers 84272000–0, 84279000–0 and 84312000–0. The products covered by this investigation are further described as follows: Assembled, not assembled, and less than complete, finished and not finished operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles "less than complete" forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. We understand that the frame by itself is the identifying feature and principal component part of the product, and is solely dedicated for the manufacture of a complete internal-combustion, industrial forklift truck.

**Notification of ITC**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by June 8, 1987, whether there is a reasonable indication that imports of forklift trucks from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Gilbert B. Kaplan,

*Deputy Assistant Secretary for Import Administration.*

May 12, 1987.

[FR Doc. 87-11308 Filed 5-15-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-701]

## Initiation of Countervailing Duty Investigation; Certain Steel Wire Nails From New Zealand

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in New Zealand of certain steel wire nails, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before July 14, 1987.

**EFFECTIVE DATE:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Tom Bombelles or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3174 or 377-0161.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On April 20, 1987, we received a petition in proper form filed on behalf of the U.S. industry producing certain steel wire nails from the Air Nail Company, the Atlas Steel & Wire Corporation, CF & I Steel Corporation, Davis Walker Corporation, Dickson Weatherproof Nail Company, Exposaic Industries, Inc., Keystone Steel and Wire Company and Northwestern Steel & Wire Company. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in New Zealand of certain steel wire nails receive bounties or grants withion the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

New Zealand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise cause or threaten material injury to a U.S. industry.

### Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on certain steel wire nails and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in New Zealand of certain steel wire nails, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before July 14, 1987.

### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appopriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written descriptions remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street, NW., and Constitution Avenue, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are certain steel wire nails from New Zealand. These nails are: one-piece steel wire nails as currently provided for in TSUSA item numbers 646.2500 and 646.2610-00, and similar steel wire nails of one-piece construction, whether at, over or under .065 inch in diameter as currently provided for in item number 646.3040; two-piece steel wire nails as currently provided for in item number 646.3200; and steel wire nails with lead heads as currently provided for in item number 646.3800. These products are currently classifiable under HS item numbers 7317.0055, 7317.0065, 7317.0075 and 7616.1010.

### Allegations of Bounties or Grants

The petition lists a number of practices by the Government of New Zealand which allegedly confer bounties or grants on manufacturers, producers, or exporters in New Zealand of certain steel wire nails. Although some of the programs listed below have been or are in the process of being terminated by the Government of New Zealand, we are initiating an investigation to determine whether any of the respondents in this investigation receive benefits under programs currently in effect and residual benefits under the terminated programs. We are initiating an investigation on the following programs:

- Export Performance Taxation Incentive (EPTI);
- Export Market Development Taxation Incentive (EMDTI);
- Export Marketing Assistance;
- Export Credits from the Development Finance Corporation;
- Export Suspensory Loan Scheme (ESLS);
- Export Programme Grant Scheme (EPGS) and Export Programme Suspensory Loan Scheme (PSLS);
- Export Manufacturing Investment Allowance (EMIA);
- Exemption from or Refund of Sales Taxes on Machinery and Equipment Used in the Production of Goods for Export;
- Preferential Treatment to Exporters in Granting Import Licenses;
- Regional Development Investment Incentives; and
- Supplementary Investment Allowances for Plant and Machinery.

Although not specifically alleged by petitioners, we are initiating an investigation to determine whether the New Zealand steel wire nail industry receives countervailable benefits under

the following programs cited in previous investigations:

• Development Financing from the Development Finance Corporation; and

• Research and Development Incentives.

Both these programs were investigated in *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Steel Wire from New Zealand* (51 FR 31156, September 2, 1986) and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from New Zealand* (51 FR 7971, March 7, 1986) (*"Steel Wire Rod"*) but found not to have been used in those cases. The latter program was also investigated in *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Low Fuming Brazing Copper Rod and Wire from New Zealand* (50 FR 31638, August 5, 1985) (*"Copper Rod"*) and found not to have been used.

Petitioners have provided no new information on programs determined in previous investigations not to confer bounties or grants or to have been terminated. We are therefore not initiating an investigation on the following programs for the reasons stated below:

• Technical Assistance from the Testing Laboratory Registration Council (TELARC) and the Department of Scientific and Industrial Research (DSIR)—

We have previously investigated the provision of such assistance by TELARC and DSIR and have determined that it is not contingent upon export performance and is not limited to a specific enterprise or industry or group of enterprises or industries. See *Steel Wire Rod, supra.*

• Exemption from or Refund of Import Duties on Machinery and Equipment Used in the Production of Goods for Export—

We have previously investigated this program and have determined that it is not contingent upon export performance and is not limited to a specific enterprise or industry or group of enterprises or industries. See *Steel Wire Rod, supra.*

• New Markets Increased Exports Taxation Incentive—

We have previously investigated this program and have determined that it was terminated by the Government of New Zealand in March 1981 and that benefits could not still have been accruing during the review period of this investigation. See *Steel Wire Rod, supra.*

• Regional Investment Allowance—

We have previously investigated this program and have determined that it was terminated by the Government of New Zealand in March 1983 and that benefits could not still have been accruing during the review period of this investigation. See *Copper Rod, supra.*

• Extraordinary Depreciation Allowance—

We have previously investigated this program and have determined that it is not contingent upon export performance and is not limited to a specific enterprise or industry or group of enterprises or industries. See *Copper Rod, supra.*

This notice is published pursuant to section 702(c)(2) of the Act.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

May 11, 1987.

[FR Doc. 87-11309 Filed 5-15-87; 8:45 am]

BILLING CODE 3510-DS-M

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**[C-549-701]**

## Initiation of Countervailing Duty Investigation; Certain Steel Wire Nails From Thailand

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Thailand of certain steel wire nails as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If this investigation proceeds normally, we will make our preliminary determination on or before July 14, 1987.

**EFFECTIVE DATE:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Tom Bombelles or Gary Taverman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3174 or 377-0161.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On April 20, 1987, we received a petition in proper form filed on behalf of the U.S. industry producing certain steel wire nails from Air Nail Company, Atlas Steel & Wire Corporation, CF & I Steel Corporation, Davis Walker Corporation, Dickson Weatherproof Nail Company, Exposaic Industries, Inc., Keystone Steel and Wire Company and Northwestern Steel & Wire Company. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Thailand of certain steel wire nails receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the "Act").

Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the merchandise being investigated is dutiable. Therefore sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise cause or threaten material injury to a U.S. industry.

### Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on certain steel wire nails and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Thailand of certain steel wire nails as described in the "Scope of Investigation" section of this notice, receive benefits which constitute bounties or grants within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before July 14, 1987.

### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are certain steel wire nails from Thailand. These nails are: one-piece steel wire nails as currently provided for in TSUSA item numbers 646.2500 and 646.2610–90, and similar steel wire nails of one-piece construction, whether at, over or under .065 inch in diameter as provided for in item number 646.3040; two-piece steel wire nails as provided for in item number 646.3200; and steel wire nails with lead heads as provided for in item number 646.3600. These products are currently classifiable under HS item numbers 7317.0055, 7317.0065, 7317.0075 and 7616.1010.

**Allegations of Bounties or Grants**

The petition lists a number of practices by the Government of Thailand which allegedly confer bounties or grants on manufacturers, producers, or exporters in Thailand of certain steel wire nails. We are initiating an investigation on the following alleged programs:

- Export Packing Credits under the "Regulations Governing the Rediscount of Promissory Notes Arising from Exports;"
- Rediscounts of Industrial Bills under the "Regulations Governing the Rediscount of Promissory Notes Arising from Industrial Undertakings;"
- Electricity Discounts for Exporters;
- Tax Certificates for Exports;
- Investment Promotion Act:

—Section 31: Income Tax Exemption
—Section 33: Goodwill and Royalties Exemption
—Section 34: Tax Deduction for Dividends
—Section 36: Benefits for International Trading Companies;

- Export Processing Zones;
- Export Promotion Fund;
- Sales Tax Exemptions for Promoted Industries; and
- Business Tax Exemption for Manufacturers of Construction Materials.

This notice is published pursuant to section 702(c)(2) of the Act.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

May 11, 1987.

[FR Doc. 87-11310 Filed 5-15-87; 8:45 am]
BILLING CODE 3510-DS-M

## National Bureau of Standards

**[Docket No. 70474-7074]**

## National Voluntary Laboratory Accreditation Program

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The National Bureau of Standards (NBS) has received a request to establish a laboratory accreditation program under the procedures of the National Voluntary Laboratory Accreditation Program (NVLAP) (15 CFR Part 7). In a letter dated March 13, 1987, the California Energy Commission, Sacramento, CA, requested that NBS establish an accreditation program for laboratories that test plumbing fixtures fittings. A copy of the request letter is set out as an appendix to this notice. Announcement of this request by the California Energy Commission and of the NBS request for comments with respect thereto are being made under § 7.11(d) of the referenced procedures.

**DATE:** Comments must be submitted in writing on or before July 17, 1987.

**ADDRESS:** Comments may be mailed to the Director, Office of Product Standards Policy, National Bureau of Standards, ADMIN A603, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** Lawrence S. Galowin, Laboratory Accreditation, National Bureau of Standards, ADMIN A531, Gaithersburg, MD 20899; phone (301) 975-4022.

**SUPPLEMENTARY INFORMATION:**

**Scope of LAP**

The California Energy Commission NVLAP request concerns their regulatory jurisdiction for energy efficiency on a statewide basis. The selected plumbing fittings (showerheads, kitchen faucets and lavatory faucets including public restroom lavatory faucets) use significant amounts of energy in the state. The requestor finds that effectiveness of regulations depends on credibility of testing and certification. Other interests beyond flow rate testing consider quality and safety aspects of plumbing fixture fittings. Consequently, the program should cover all aspects of ANSI Standard A112.18.1M–1979 (current revision under development) for all plumbing fixture fittings within the scope of that standard. The California Energy Commission expects that it would be petitioned to have participation in NVLAP become a condition of approval of test laboratories to eliminate unsubstantiated claims and assure quality of products in accordance with the ANSI standard.

**Procedure Following Receipt of Comments**

After the 60 day comment period, NBS will thoroughly evaluate all comments pertaining to the proposed program and will notify all interested persons (those who submit comments or request to be placed on the NVLAP mailing list) of the decision, by the Director of NBS, regarding development of this program. If the decision is made to develop the program, technical assistance will be sought from all interested parties to develop the technical requirements for assessing applicants and establishing appropriate proficiency testing programs.

**Documents in Public Record**

All comments in response to this notice will be made part of the public record and will be available for inspection and copying at the NBS Records Inspection Facility, Administration Building, Room E106, Gaithersburg, Maryland.

Dated: May 12, 1987.

**Ernest Ambler,**

*Director.*

March 13, 1987

**Lawrence S. Galowin,**

*National Bureau of Standards, Washington, D.C. 20234*

Dear Mr. Galowin: Michael Martin has passed me the information you sent him about the National Voluntary Laboratory Accreditation Program and how to request new programs.

The California Energy Commission has for eleven years regulated the energy efficiency of all appliances which use a significant amount of energy on a statewide basis. Plumbing fittings (specifically showerheads, lavatory faucets and kitchen faucets) fall into that category. We have found that the effectiveness of these regulations depends on the credibility of those who test and certify. We therefore urge you to develop a laboratory accreditation program for plumbing fixture fittings. We also urge the ASME A112 Committee at its meeting in New York on April 27, 1987 to pass a resolution supporting such a request.

Should you have any questions, please contact R. Michael Martin at (916) 324-3354 or at the ASME April 27th meeting.

Sincerely,

G. William Pennington,

*Manager, New Building and Appliance Efficiency Office.*

**Request for Laboratory Accreditation Program**

1. *Scope of Program.*

Since the California Energy Commission's jurisdiction is limited to energy related subjects, we are requesting only a program for the flow rate testing of showerheads, kitchen faucets and lavatory faucets including public restroom lavatory faucets. Since other parties have interests in quality and safety aspects of a wider range of plumbing fixture fittings, it would be logical for the program to cover all aspects of ANSI Standard A112.18.IM–1979 and all plumbing fixture fittings within the scope of that standard.

2. *Applicable Standards and Test Methods.*

ANSI/ASME A112.18.1–1987 Plumbing Fixture Fittings (a revision of ANSI A112.18.IM–1979 presently being developed by the ASME A112 Committee).

3. *Statement of Need.*

i. *Technical and Economic Reasons.* The California Energy Commission in 1986 completed a rulemaking proceeding which determined that a need for approval of testing laboratories existed (a) because some certification of flow rates to CEC contained unsubstantiated claims and (b) because poor quality products which do not comply with the quality requirements of the ANSI standard were being sold in quantities (frequently from Far East sources). The CEC set up a program of approving laboratories for testing flow rate. The approval is based solely on the submittal of a written application and includes no on-site inspection. It is likely that if a NVLAP system of approval existed, the CEC would be petitioned to make participation in the NVLAP program a conditions of approval of a laboratory.

ii. *Evidence of Need Beyond Existing Programs.* We are unaware of any accreditation program other than the CEC laboratory approval program which we consider to be inadequate.

iii. *Estimated Number of Laboratories.* Twenty-four laboratories have requested approval by the CEC for testing flow rates. Applications are still coming in. We estimate a national program would have thirty laboratories. Some of these would be in Europe and the Far East.

iv. *Estimated Number of Users of the Laboratories.* We estimate that one hundred companies would use the laboratories accredited by NVLAP. Some of these companies would be in Europe and the Far East. The number of companies would depend on the scope of the program.

4. *Statement of Support.*

The Commission believes that financial support should be provided by the manufacturers who use the laboratories and the cost passed on to those who buy the fittings. The Commission pledges enthusiastic staff support in the development and management of the program.

[FR Doc. 87–11233 Filed 5–15–87; 8:45 am]

BILLING CODE 3510-13-M

## National Oceanic and Atmospheric Administration

### Coastal Zone Management: Federal Consistency Appeal by John K. DeLyser From an Objection by the New York Department of State

**AGENCY:** National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Correction to request for comments.

On April 30, 1987, a request for comments in the above-captioned appeal was published at 52 FR 15743. That request contained an error which should be corrected as follows. In paragraph one, the date of Appellant's perfecting of his appeal should be changed from March 13, 1987, to April 13, 1987.

**FOR ADDITIONAL INFORMATION CONTACT:** Sydney Minnerly, Attorney/Adviser, Office of General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: May 12, 1987.

Dainel W. McGovern,

*General Counsel.*

[FR Doc. 87–11254 Filed 5–5–87; 8:45 am]

BILLING CODE 3510-08-M

[P77#20]

### Marine Mammals; Issuance of Permit; National Marine Fisheries Service, Northwest and Alaska Fisheries Center

On October 10, 1986, notice was published in the **Federal Register** (51 FR 36458) that an application has been filed by the Northwest and Alaska Fisheries Center, National Marine Mammal Laboratory, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115 to take gray whales (*Eschrichtius robustus*) and humpback whales (*Megaptera novaeangliae*) for scientific research.

Notice is hereby given that on May 8, 1987 as authorized by the provisions of the Marine Mammal Protection Act (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 is based on a finding that such Permit: (1) was applied for in good faith; (2) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This Permit is available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW Room 805, Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West Street, Federal Building, Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, B.E., BIN C15700 Seattle, Washington 98115

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Peterburg, Florida 33702

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: May 11, 1987.

Dr. Nancy Foster, *Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87–11274 Filed 5–5–87; 8:45 am]

BILLING CODE 3510-22-M

[P277B]

### Marine Mammals; Application for Permit; Dr. Richard H. Lambertsen

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant: Dr. Richard H. Lambertsen, Director, Institute of Biomedical Aquatic Studies, University of Florida Box J–144, Gainesville, Florida 32610.

2. Type of Permit: Scientific Research/Scientific purposes.

3. Name and Number of Marine Mammals: An unspecified number of all species of cetaceans.

4. Type of Take: Harassment during close approach for photography and underwater photography for the analysis of feeding behavior, kinematics, jaw dynamics, and body velocity profiles of cetaceans.

5. Location of Activity: U.S. coastal waters, S.E. Alaska, Hawaiian Islands.

6. Period of Activity: 5 Years.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC;

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington, 98115;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: May 11, 1987.

Nancy Foster,

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87–11275 Filed 5–15–87; 8:45 am]

BILLING CODE 3510-22-M

## Permits; Foreign Fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the exclusive economic zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235.

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231–0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 320 South New Street Dover, DE 19901, 302/674–2331

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571–4366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753–4926

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228–2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/221–6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/274–4563

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523–1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202–673–5319).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the Federal Register. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1987 have been received from the Governments shown below.

Dated: May 12, 1987.

Richard B. Roe,

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

| Code | Fishery | Regional fishery management councils |
|---|---|---|
| ABS | Atlantic Billfishes and Sharks. | New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean. |
| BSA | Bering Sea and Aleutian Islands Groundfish. | North Pacific. |
| GOA | Gulf of Alaska | North Pacific. |
| NWA | Northwest Atlantic Ocean. | New England, Mid-Atlantic. |
| SNA | Snails (Bering Sea) | North Pacific. |
| WOC | Pacific Groundfish (Washington, Oregon and California). | Pacific. |
| PBS | Pacific Billfishes and Sharks. | Western Pacific. |

Activity codes which specify categories of fishing operations applied for are as follows:

| Activity code | Fishing operations |
|---|---|
| 1 | Catching, processing and other support. |
| 2 | Processing and other support only. |
| 3 | Other support only. |
| * | Vessel(s) (in support of U.S. vessels Joint Venture). |
| ** | Cargo transport vessels with fish finding equipment on board will receive an activity code 2 to enable them to perform both scouting as well as support activities. |

| Nation, vessel name, vessel type | Application No. | Fishery | Activity |
|---|---|---|---|
| Government of the People's Republic of China: | | | |
| *Yan Yuan No. 2*, Factory Ship | CH-87-0006 | BSA, WOC, GOA | 1*, 2* |
| *Yun Hai*, Factory Ship | CH-87-0007 | BSA, WOC, GOA | 1*, 2* |

| Nation, vessel name, vessel type | Application No. | Fishery | Activity |
|---|---|---|---|
| Government of the German Democratic Republic: | | | |
| *Evershagen*, Cargo/Transport Vessel | GC-87-0057 | NWA | 3 |
| Government of Japan: | | | |
| *Atago Maru*, Cargo/Transport Vessel | JA-87-0195 | BSA, GOA, NWA, SNA | 3 |
| *Eniwa Maru*, Large Stern Trawler | JA-87-0998 | BSA, GOA | 1*, 2* |
| *Heiklu*, Cargo/Transport Vessel | JA-87-0196 | BSA, GOA, SNA, NWA | 3 |
| *Sanyo Maru*, Cargo/Transport Vessel | JA-87-0024 | BSA, GOA, SNA, NWA | 3 |
| *Kaiyo Maru No. 28*, Medium Stern Trawler | JA-87-1544 | BSA | 1 |
| *Ryoun Maru No. 8*, Pot Fishing Vessel | JA-87-0850 | SNA | 1 |
| *Kiyo Maru*, Cargo/Transport Vessel | JA-87-1026 | BSA, GOA, NWA, SNA | 3 |
| *Uno Maru No. 8*, Cargo/Transport Vessel | JA-87-1032 | BSA, GOA, NWA, SNA | 3 |
| *Eikyu Maru No. 75*, Small Stern Trawler | JA-87-1541 | BSA | 1 |
| Government of the Republic of Korea: | | | |
| *Ocean Express*, Cargo/Transport Vessel | KS-87-0142 | BSA, GOA | 3 |
| *Shige Maru Ho*, Cargo/Transport Vessel | KS-87-0143 | BSA, GOA | 3 |
| *Khana*, Cargo/Transport Vessel | KS-87-0145 | BSA, GOA | 3 |
| *Dae Sung Ho*, Large Stern Trawler | KS-87-0051 | WOC | 1* |
| Government of the Kingdom of the Netherlands: | | | |
| *Friesland*, Large Stern Trawler | NL-87-0031 | NWA | 1* |
| *Geertruid Margreta*, Medium Stern Trawler | NL-87-0032 | NWA | 1* |
| Government of the Polish People's Republic: | | | |
| *Altair*, Large Stern Trawler | PL-87-0115 | BSA, WOC, GOA | 1*, 3* |
| *Gopto*, Medium Stern Trawler | PL-87-0057 | BSA, WOC | 1* |
| *Kociewie*, Cargo/Transport Vessel | PL-87-0116 | BSA, GOA, NWA, WOC | 3 |
| Union of the Soviet Socialist Republics: | | | |
| *Aleksandr Ivanov*, Cargo/Transport Vessel | UR-87-0575 | NWA | 3 |
| *Mys Lazareva*, Large Stern Trawler | UR-87-0013 | BSA, GOA | 1*, 2* |
| *Mys Svobodnyi*, Large Stern Trawler | UR-87-0544 | BSA, GOA | 1*, 2* |
| *Paudzha*, Large Stern Trawler | UR-87-0704 | BSA, GOA | 1*, 2* |
| *Tatarstan*, Large Stern Trawler | UR-87-0903 | BSA, GOA, WOC | 3 |
| *Serebriannyi*, Cargo/Transport Vessel | UR-87-0797 | BSA, GOA | 3 |
| *Soiuz-5*, Large Stern Trawler | UR-87-0226 | BSA, GOA | 1*, 2* |

**Joint Venture**

The Government of the Republic of Korea has submitted a permit application requesting authorization for joint venture activities in the Washington, Oregon, California Trawl (WOC) fisheries. The species requested is Pacific whiting in the amount of 2500 mt for directed fishing and 2500 mt for joint venture activities. The designated American partner is Dona JV Fisheries, Seattle, WA.

The Government of Japan has submitted a permit application for the *Kohoku Maru No. 7* requesting authorization for joint venture activities in the Bering Sea and Aleutian Islands fisheries. The following table summarizes that request:

BERING SEA AND ALEUTIAN ISLANDS FISHERY

[In metric tons]

| Country | Yellowfin sole | Pacific cod | Pollock | Flounder and other flatfish | U.S. Partner |
|---|---|---|---|---|---|
| Japan | 1,120 | 270 | 130 | 480 | Profish Int'l, Inc., Seattle, WA |

[FR Doc. 87-11240 Filed 5-13-87; 12:13 pm]

BILLING CODE 3510-22-M

## COMMODITY FUTURES TRADING COMMISSION

### Leverage Survey

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of leverage survey questionnaire.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") has been directed by Congress, pursuant to section 109 of the Futures Trading Act of 1986, Pub. L. No. 99-641, 100 Stat. 3556 (1986), to conduct a survey, with the assistance of a registered futures association, to identify the number of firms interested in entering the leverage business. The Commission and the National Futures Association ("NFA") have now developed a leverage survey questionnaire and an accompanying explanatory cover letter which may be obtained by interested persons upon a telephone or written request to the NFA.

**DATE:** Responses to the leverage survey questionnnaire are due by no later than August 15, 1987.

**ADDRESS:** A leverage survey questionnaire may be obtained by writing to the NFA Information Center, 200 West Madison Street, Suite 1600, Chicago, Illinois 60606.

**FOR FURTHER INFORMATION CONTACT:** A leverage survey questionnaire may also be obtained by calling the NFA Information Center toll-free at (800) 621-3570 (in Illinois, 800-572-9400). Any questions regarding the survey questionnaire can be directed to Steven S. Andrews, Compliance Manager, NFA, (312) 781-1322, Regina L. Glasscock, Compliance Supervisor, NFA, at (312) 781-1300, Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, CFTC, at (202) 254-8955, or David R. Merrill, Assistant General Counsel, CFTC, at (202) 254-9880.

**SUPPLEMENTARY INFORMATION:** Leverage contracts are long-term contracts (ten years or longer) involving gold, silver or platinum entered into directly between a leverage transaction merchant or "LTM" and a customer. Unlike futures contracts, leverage contracts are not traded on exchanges. The current regulatory framework for leverage transactions requires registration of LTMs and their salespeople as well as the leverage commodities they offer. LTMs are also subject to minimum financial, disclosure, recordkeeping and reporting requirements.

The NFA plans to mail the leverage survey questionnaire to all of its member futures commission merchants and to those member introducing brokers which are also securities broker-dealers. A direct mailing to certain banks and metals firms will also be made. However, a firm need not be in the metals business or registered with

the CFTC or any other regulatory agency to have an interest in entering the leverage business or to participate in the survey.

Issued in Washington, DC, on May 13, 1987 by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87-11261 Filed 5-15-87; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on Improving the Acquisition Management Process for Conventional Munitions Meeting

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Improving the Acquisition Management Process for Conventional Munitions will meet in closed session on June 9, 1987 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will reconvene to evaluate the managerial aspects (both organizational and procedural) of the acquisition management process of conventional munitions systems.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

May 12, 1987.

[FR Doc. 87-11249 Filed 5-15-87; 8:45 am]

BILLING CODE 3810-01-M

### Graduate Medical Education Advisory Committee; Open Meeting

**AGENCY:** Department of Defense Graduate Medical Education Advisory Committee.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of Pub. L. 92-463, notice is hereby given that an open meeting of the Department of Defense Graduate Medical Education Advisory Committee has been scheduled as follows:

**DATE:** June 12, 1987, 8:00 a.m. to 5:00 p.m.

**ADDRESS:** Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Michael Herndon, Executive Secretary, DoD Graduate Medical Education Advisory Committee, Office of the Assistant Secretary of Defense (Health Affairs), Room 3E349, the Pentagon, Washington, DC 20301 (202) 694-5355.

**SUPPLEMENTARY INFORMATION:** This will be the tenth and final meeting of the Advisory Committee. The Advisory Committee will prepare and discuss the final Committee report.

Linda M. Lawson,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87-11248 Filed 5-15-87; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: 11 June 1987.

Time of meeting: 0800-1600 hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board 1987 Summer Study on Lightening the Force will meet in executive session for the purpose of developing and discussing preliminary issues and recommendations. Chairmen of the Technology Subgroup, Logistics Subgroup and Operational Subgroup will present their preliminary findings to the Panel. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting.

The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

[FR Doc. 87-11286 Filed 5-15-87; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of committee: Army Science Board (ASB).

Dates of meeting: 9-10 June 1987.

Times of meeting:

0900-1630 hours, 9 June 1987

0800-1500 hours, 10 June 1987

Place: LTV Company, Aerospace Divison, 1725 Jefferson Davis Highway (Suite 900), Crystal City, Arlington, VA.

Agenda: The Army Science Board Summer Study Panel for Army Force Cost Drivers will meet for briefings and discussions on findings determined by the Natural, Induced, and Process and Methods Subpanels. Executive session will focus on outlining overall findings and recommendations of the study, organizing activities between this meeting and the summer study, and the summer study itself at Fort Monroe, VA. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening and portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695-7046.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

[FR Doc. 87-11285 Filed 5-15-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

[CFDA 84.168B]

### Notice Inviting Applications for a New Award Under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages for Fiscal Year 1987

*Purpose:* To fund a project of national significance to improve curricula in science.

*Deadline for Transmittal of Applications:* July 10, 1987.

*Applications Available:* May 20, 1987.

*Available Funds:* Approximately $500,000.

*Estimated Number of Awards:* 1.

*Estimated Size of Award:* $500,000.

*Project Period:* Up to 3 years.

*Applicable Regulations:* (a) The regulations governing the Secretary's

Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages at 34 CFR Part 755. Amendments to these regulations were published in the Federal Register on January 28, 1987 (52 FR 2891); and (b) the Education Department General Administrative Regulations at 34 CFR Parts 74, 75, 77, and 78.

*Priorities:* From the broader priority to "improve curricula in mathematics, science, computer learning, and critical foreign languages" at 34 CFR 755.11(b)(3), the Secretary has chosen the improvement of curricula in science as an absolute priority for this competition in accordance with 34 CFR 75.105(c)(3). Only those applications meeting this priority will be considered under this competition.

The Secretary particularly invites applications proposing a research center to examine what is and what should be learned and taught in science, how student performance in science is and should be assessed, and how content in science is and should be delivered through instruction. However, applications meeting this invitational priority will not receive an absolute or competitive advantage over other applications to conduct activities to improve curricula in science.

*Selection Criteria:* The program regulations at 34 CFR 755.30 authorize the Secretary to distribute 15 reserved points among the selection criteria described in the regulations at § 755.32 to bring the total of possible points to a maximum of 100 points. For the purposes of this competition, the Secretary will distribute the reserved points as follows:

*Plan of operation* (§ 755.32(a)). Ten (10) additional points will be added for a possible total of 20 points for this criterion.

*Quality of key personnel* (§ 775.32(b)). Five (5) additional points will be added for a possible total of 10 points for this criterion.

*For Application or Information Contact:* Conrad Katzenmeyer, Office of Educational Research and Improvement, Office of Research, Room 608–D, 555 New Jersey Avenue, NW., Washington, DC 20208–1430, 202–357–6026.

*Program Authority:* 20 U.S.C. 3972.

Dated: May 19, 1987.

**Chester E. Finn, Jr.,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 87–11305 Filed 5–15–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Financial Assistance Award; Intent To Renew Cooperative Agreement With the Alliance To Save Energy; Restricted Eligibility

**AGENCY:** Energy Department.

**ACTION:** Notice of restricted eligibility for cooperative agreement.

**SUMMARY:** The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for an award under cooperative Agreement Number DE–FG01–87CE21020 to the Alliance to Save Energy (ASE) for energy conservation retrofit activities: Field studies, research, training and information dissemination.

Scope: This cooperative agreement will provide for energy conservation retrofit research, training and dissemination of results.

Field studies will consist of testing promising retrofit technologies in three different climatic areas, preparing a project plan, securing participation of utilities in those areas, comment/analysis of technical approaches and preparing technical summary reports for dissemination.

Research and Training include the development of a comprehensive retrofit audit methodology and development of curricula to enable technical schools and other training institutions to teach auditing methods and performance of retrofit installation and analyses.

Eligibility for award of the cooperative agreement is being limited to the Alliance to Save Energy because the new agreement is a continuation of, or is derived from, projects covered under an earlier cooperative agreement. In addition, the Alliance to Save Energy is a non-profit organization which provides the only demonstrated capability to secure the cooperation of state agencies, local utilities, private heating system contractors and state or regional trade associations due to their national network. This provides the necessary coordination to accomplish the goal of this program.

The term of this cooperative agreement shall be from approximately May 26, 1987, through September 30, 1988 and the project cost is estimated at $789,000.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Procurement Operations, Attn: Shari Daniels, MA–453.2, 1000 Independence Avenue SW., Washington, DC 20585.

**Stephen J. Michaleen,**

*Director, Contract Operations Division "B", Office of Procurement Operations.*

[FR Doc. 87–11315 Filed 5–15–87; 8:45 am]

BILLING CODE 6450–01–M

## National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Tuesday, June 2, 1987, from 7:30 a.m. to 12:00 Noon.

Place: Park Hyatt Hotel, 24th and M Streets, NW., Washington, DC 20037.

Contact: Georgia A. Benjamin, U.S. Department of Energy, Office of Fossil Energy (FE–23), Washington, DC 20545, Telephone: 301–353–4718.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

—Call to Order by James McGlothlin, Chairman.
—Remarks by Chairman McGlothlin.
—Remarks by Department of Energy official.
—Report of the Coal Policy Committee.
—Report of the Nominating Committee.
—Discussion of any other business properly brought before the Council.
—Public Comment—10 minute Rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Georgia A. Benjamin at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE–190, Forrestal Building, 1000 Independent Avenue, SW., Washington, DC, between 9:00 and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 12, 1987.

**J. Robert Franklin,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 87–11311 Filed 5–15–87; 8:45 am]

BILLING CODE 6450–01–M

## Coal Policy Committee of the National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Monday, June 1, 1987, from 12:30 p.m. to 4:30 p.m.

Place: Park Hyatt Hotel, 24th and M Streets, NW., Washington, DC 20037.

Contact: Georgia A. Benjamin, U.S. Department of Energy, Office of Fossil Energy (FE-23), Washington, DC 20545, Telephone: 301-353-4718.

Purpose of the Parent Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: For the Committee to discuss reports prepared by the National Coal Council with respect to requests from the Secretary of Energy for advice, information, and recommendations.

Tentative Agenda:

—Call to Order by Gerald Blackmore, Chairman.
—Approval of draft reports to be presented to full Council for consideration.
—Discussion of any other business properly brought before the Committee.
—Public Comment—10 Minute Rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Georgia A. Benjamin at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room IE-190, Forrestal Building, 1000 Independent Avenue, SW., Washington, DC, between 9:00 and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 12, 1987.

J. Robert Franklin,

*Deputy Advisory Committee Management Officer.*

[FR Doc. 87-11312 Filed 5-15-87; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

### Agency Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for clearance to the Office of Management and Budget.

**SUMMARY:** The Department of Energy (DOE) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information: (1) The sponsor of the collection (DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) a brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed by June 17, 1987. Last notice published Monday, May 4, 1987, 52 FR 16307.

**ADDRESS:** Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.)

**FOR FURTHER INFORMATION CONTACT:** John Gross, Director, Data Collection Services Division (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2308.

**SUPPLEMENTARY INFORMATION:** If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB DOE desk officer of your intent as early as possible.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-537
3. 1902-0000
4. Gas Pipeline Certificates
5. Revision
6. On occasion
7. Mandatory
8. Businesses or other for profit
9. 50 respondents
10. 627 responses
11. 151,422 hours
12. Requirements for additional filings to be made by section 7(c) applicants to assure open access/non-discriminatory transportation to their customers.

Statutory Authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, May 12, 1987.

Yvonne M. Bishop,

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 87-11314 Filed 5-15-87; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. EL85-19-114]

### Ohio River Basin, Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Virginia, and West Virginia; Intent to Hold Scoping Sessions and Public Hearings for the Ohio River Basin Environmental Impact Statement

May 13, 1987.

As referenced in the April 29, 1987, Notice of Intent to Prepare Environmental Impact Statement and to Hold Scoping Sessions and Public Hearings, the staff of the Federal Energy Regulatory Commission has determined that issuance of licenses for the development of 24 proposed hydroelectric projects [1] in the Ohio River Basin would constitute a major Federal action significantly affecting the quality of the human environment.

Interested persons and agencies are invited to provide comments and recommendations, including any supporting data, on the scope of the planned environmental impact statement (EIS). The target resources [2]

[1] FERC Project Nos. 2071, 3218, 3490, 4017, 4474, 4675, 6901, 6902, 6939, 6956, 7041, 7307, 7389, 7588, 7000, 7908, 7914, 8094, 8908, 8990, 9027, 9042, 9989, and 10009.

[2] A target resource is an important resource that could be adversely affected by two or more proposed hydropower projects. The staff has

Continued

will be evaluated in the EIS, along with other relevant resources and issues. Substantive evidence is requested that would support a conclusion that any one of the 24 projects would not contribute to cumulative impacts to the target resources and therefore should be excluded from further consideration of cumulative impacts within the Ohio River Basin. Substantive evidence should include but should not be limited to results of studies, resource management policies, and reports from Federal, State, and local agencies.

**Scoping Sessions**

Interested persons and agencies are invited to participate in two scoping sessions to discuss the environmental impact issues associated with the proposed 24 projects. One scoping session will be held on Thursday, June 11, 1987, from 9 a.m. to 12 noon, at the Courthouse Building (in the Gold Room), located on the corner of 5th and Grant Streets, in Pittsburgh, Pennsylvania. Another scoping session will be held on Wednesday, June 17, 1987, from 9 a.m. to 12 noon, at the Department of the Army, Corps of Engineers Federal Building (in the 6th Floor Conference Room), 502 Eighth Street, in Huntington, West Virginia.

Scoping sessions are used by the Commission staff to do the following: (1) Present environmental issues, which have been identified for coverage in the EIS, to the public and to experts familiar with the projects; (2) receive input from the public and from experts on the issues presented; (3) clarify the significance of issues; (4) identify additional issues for EIS treatment; and (5) identify issues that do not merit EIS treatment. Agencies and individuals with environmental expertise and concerns are encouraged to attend the sessions and to assist the Commission's staff in determining the issues to be addressed in the EIS. An EIS scoping document will be prepared and distributed to the interested parties before the EIS scoping sessions. For additional information, contact George Taylor at (202) 376–9288, or Brian Romanek at (202) 376–1730.

**Public Hearings**

Interested officials and members of the public are invited to express their views about the projects in two public hearings. One public hearing will be held on Thursday, June 11, 1987, from 7 p.m. to 10 p.m., at the Courthouse Building (in the Gold Room), located on the corner of 5th and Grant Streets, in Pittsburgh, Pennsylvania. Another public hearing will be held on Wednesday, June 17, 1987, from 7 p.m. to 10 p.m., at the Department of the Army, Corps of Engineers Federal Building (in the 6th Floor Conference Room), 502 Eighth Street, in Huntington, West Virginia.

The Commission's staff will conduct the public hearings. At these hearings, persons may take statements orally or in writing. The hearing will be recorded by a stenographer, and all statements, oral and written, will become part of the public hearing record. In addition, the public hearing record will remain open until June 30, 1987, and anyone may submit written comments on the projects until that time.

All written comments and recommendations must be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should clearly show, on the first page, the caption, Ohio River Basin, Docket No. EL85–19–114, as well as the name and the FERC number of each project discussed.

For further information, please contact project manager George Taylor at (202) 376–9288, project manager Brian Romanek at (202) 376–1730, or attorney William O. Blome at (202) 357–8131.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–11301 Filed 5–15–87; 8:45 am]

BILLING CODE 6717–01–M

identified dissolved oxygen, recreational fishing, and river navigation as target resources in the Ohio River Basin.

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**[Docket Nos. CP87–303–000 et al.]**

**Natural Gas Certificate Filings; United Gas Pipe Line Co. et al.**

May 12, 1987.

Take notice that the followings filings have been made with the Commission:

**1. United Gas Pipe Line Co.**

[Docket No. CP87–303–000]

Take notice that on April 23, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–303–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to install a 2-inch sales tap on United's 8-inch Mississippi Power Company's Watson Generating Plant Main Line near Gulfport, Harrison County, Mississippi, under the authorization issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that the proposed sales tap would enable United to sell and deliver to Entex, Inc., the local distributor, an estimated daily average of 137 Mcf of gas per day for resale to the Intraplex -10 Industrial Park located near Gulfport, Harrison County, Mississippi, under United's Rate Schedule DG–N. It is explained that the effective service agreement for such service is dated November 17, 1971. United advises it has sufficient capacity to render the proposed service without detriment or disadvantage to United's other customers.

*Comment date:* June 26, 1987, in accordance with Standard Paragraph G at the end of this notice.

**2. Trunkline Gas Co.**

[Docket No. CP79–504–002]

Take notice that on April 30, 1987, Trunkline Gas Company (Petitioner), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP79–504–002 a petition to amend the authorization issued in Docket No. CP79–504 so as to modify Petitioner's transportation of natural gas on behalf of Amoco Production Company (Amoco), all as more fully set forth in the petition on file with the Commission and open to public inspection.

Petitioner explains that by Commission order issued on March 3, 1980, in Docket No. CP79–504, that it was authorized to receive, transport and redeliver up to 3,000 Mcf of natural gas per day on a firm basis on behalf of Amoco to assist Amoco in fulfilling a warranty sales agreement with Florida Gas Transmission Company (FGT). Petitioner states that it receives the natural gas at Amoco's production platform in South Timbalier Block 156, offshore Louisiana and redelivers such volumes for Amoco's account at the existing point of interconnection between Petitioner and FGT located in Calcasieu Parish, Louisiana. The underlying transportation agreement between Petitioner and Amoco, described in Petitioner's Rate Schedule T–57 of its FERC Gas Tariff, Original Volume No. 2, has an indefinite term tied to the life of Petitioner's facilities or to Amoco's discretion, it is noted. Petitioner also notes the Commission's March 3, 1980, order limited Petitioner's transportation service on behalf of Amoco to fulfill Amoco's warranty obligations to FGT only. Petitioner states that it has been advised that such warranty agreement between Amoco and FGT has been satisfied and that the

two parties have entered into a new sales agreement.

Petitioner specifically requests to have the warranty limitation removed from the Commission's authority as it currently applies to Rate Schedule T–57 service. Petitioner states that no other change is proposed for its transportation service on behalf of Amoco.

*Comment date:* June 2, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**3. Tennessee Gas Pipeline Co., A Division of Tenneco Inc.**

[Docket No. CP87–318–000]

Take notice that on April 30, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87–318–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish a new delivery point to its existing firm sales customer New York State Electric & Gas Corporation (NYSEG) under the authorization issued in Docket No. CP82–413–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

Applicant states that pursuant to NYSEG's request, it has agreed to establish a new delivery point near Prattsburg, Steuben County, New York. According to Applicant, the new delivery point is necessary to enable NYSEG to render service to a new gas franchise area recently acquired by NYSEG.

The estimated $80,000 cost associated with the construction of the proposed new delivery point will be borne by NYSEG, it is stated.

Applicant further states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to NYSEG. Applicant asserts that the establishment of the proposed new delivery point is not prohibited by Applicant's currently effective tariff and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of Applicant's other customers.

*Comment date:* June 26, 1987, in accordance with Standard Paragraph G at the end of this notice.

**4. Southern Natural Gas Co.**

[Docket No. CP87–289–000]

Take notice that on April 15, 1987, Southern Natural Gas Company (Southern), P. O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP87–289–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing for a term expiring on October 31, 1988, the transportation of natural gas for Bishop Pipeline Corporation (Bishop), acting as agent for various end-users, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, gas on behalf of Bishop, acting as agent in arranging for the transportation of natural gas supplies for Kimberly-Clark Corporation (Kimberly-Clark), United Merchants and Manufacturers (United), Allied Corporation, Engineered Materials Sector (Allied), AT&T Nassau Metals (AT&T), Pennwalt Corporation (Pennwalt) and TRT Corporation, Guilford Prints Division (TRT), hereinafter collectively referred to as "End-users."

Southern states that Bishop has agreed to sell gas to and act as agent for six End-users in order to serve their natural gas requirements.

Southern proposes to transport gas on behalf of Bishop in accordance with the terms and conditions of transportation agreements between Bishop, Southern and the End-users as shown below:

| End-user | Plant or sector | Location | Agreement date |
|---|---|---|---|
| Kimberly-Clark. | U.S. Pulp and Newsprint plant (U.S. Pulp Plant). | Coosa Pines, AL. | 1/22/87 |
| United | | Greenville, SC | 12/25/87 |
| Kimberly-Clark. | Nonwovens Support Group Plant (Nonwovens Plant). | LaGrange, GA | 1/22/87 |
| Allied | Engineered Materials. | Columbia, SC | 12/31/86 |
| AT&T | | Gaston, SC | 12/15/86 |
| Pennwalt | | Mableton, GA | 12/15/86 |
| TRT | Guilford Prints Division. | Augusta, GA | 11/11/86 |
| Kinberly-Clark | Household Products Sector Plant (Household Plant). | Beech Island, SC. | 1/22/87 |

Southern states that it has agreed to transport on an interruptible basis the following maximum daily volumes of natural gas that the End-users have arranged to purchase from Bishop: Up to 4,000 MMBtu to the Kimberly-Clark U.S. Pulp Plant; up to 2,500 MMBtu to United; up to 300 MMBtu to the Kimberly-Clark Nonwovens Plant; up to 3,500 MMBtu to Allied; up to 7,500 MMBtu to AT&T; up to 2,000 MMBtu to Pennwalt; up to 6,500 MMBtu to TRT; and up to 1,300 MMBtu to the Kimberly-Clark Household Plant.

Southern states that Bishop will cause gas to be delivered to Southern for transportation at the various existing point of delivery on Southern's contiguous pipeline system specified in Exhibit F to the Application. Southern states that it would redeliver for the account of Kimberly-Clark's U.S. Pulp Plant to the Waterworks, Sewer and Gas Board of the City of Childersberg, Alabama; for the account of Kimberly-Clark's Nonwovens Plant to the City of LaGrange, Georgia (LaGrange); for the account of Allied, AT&T and Kimberly-Clark's Household plant to South Carolina Pipeline Corporation (South Carolina); and for the account of Pennwalt and TRT to Atlanta Gas Light Company (Atlanta). Southern states that it would redeliver to United at the Clearwater Mill Meter Station in Aiken County, South Carolina. It is stated that an equivalent quantity of gas will be redelivered less 3.25 percent of such amount which shall be deemed to be used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Bishop's pro-rata share of any gas delivered for Bishop's account which is lost or vented for any reason.

It is stated that Bishop would pay Southern each month for the transportation services rendered under the Kimberly-Clark U.S. Pulp Plant Agreement a transportation rate of 64.9 cents per MMBtu.

It is stated that Bishop would pay Southern each month for the transportation service rendered under the United Agreement a transportation rate of 77.6 cents per MMBtu.

It is stated that Bishop would pay Southern each month for performing the transportation service rendered under the Kimberly-Clark Nonwovens Plant Agreement the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to LaGrange under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to LaGrange do not exceed the daily contract demand of LaGrange, the transportation rate would be 39.9 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to LaGrange under any and all transportation agreements with Southern, when added to the

volumes of gas delivered under Southern's Rate Schedule OCD on such day to LaGrange exceed the daily contract demand of LaGrange, the transportation rate for the excess volumes would be 64.9 cents per MMBtu.

It is stated that Bishop would pay Southern for the transportation services rendered under the Allied, AT&T, and Kimberly-Clark Household Plant Agreements the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Carolina under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Carolina do not exceed the daily contract demand of South Carolina, the transportation rate would be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Carolina under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Carolina exceed the daily contract demand of South Carolina, the transportation rate for the excess volumes would be 77.6 cents per MMBtu.

It is stated that Bishop would pay Southern for the transportation services rendered under the Pennwalt and TRT Agreements the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Soutern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate would be 48.2 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes would be 77.6 cents per MMBTtu.

It is further stated that Southern would also collect from Bishop the GRI surcharge of 1.52 cents per McF.

Southern also proposes to sell gas to the End-users in limited instances when the End-users take quantities of gas from Southern in excess of quantities actually delivered to Southern. Southern proposes to charge the End-users for excess takes at the effective rate provided for in Southern's Rate Schedule AO for the zone in which redeliveries would be made.

Southern states that the transportation arrangement will enable the End-users to diversify their natural gas supply sources and to obtain gas at competitive prices.

*Comment date:* June 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

**5. Southern Natural Gas Co., South Georgia Natural Gas Co.**

[Docket No. CP87-282-000]

Take notice that on April 9, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, and South Georgia Natural Gas Company (South Georgia) (jointly referred to as Applicants), P.O. Box 1279, Thomasville, Georgia 31792, filed in Docket No. CP87-282-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Oil-Dri Corporation of Georgia (Oil-Dri), and for permission and approval to abandon the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public insection.

Applicant proposes to transport up to 7,000 MMBtu of natural gas per day for Oil-Dri on an interruptible basis for a term expiring October 31, 1988.

It is stated that Oil-Dri has acquired the right to purchase gas from SNG Trading Inc., Diamond Shamrock Partners Limited Partnership, and Consolidated Fuel Supply Inc., (jointly referred to as Sellers), in order to serve the natural gas requirements of its plant in Ochlocknee, Georgia. It is claimed that in order to effectuate delivery of the gas, Meigs, the local distribution company that serves Oil-Dri, has agreed to deliver the gas to Oil-Dri's plant, and as agent for Oil-Dri to obtain the transportation of the gas through Southern's pipeline system. It is stated that Meigs, has entered into an agreement with South Georgia (Meigs Agreement), wherein South Georgia agreed to act as agent in arranging for the transportation of the gas through Southern's pipeline system, and that South Georgia, as agent for Meigs, and Southern entered into a transportation agreement (Southern-Meigs Agreement), under which Southern would transport the gas purchased by Oil-Dri to South Gerogia.

In addition it is asserted that Oil-Dri has entered into an agreement with South Georgia (South Georgia Agreement), for South Georgia to act as agent on behalf of Oil-Dri in arranging for the transportation of the gas through Southern's pipeline system, and that South Georgia and Southern entered into an agreement (Southern Agreement), under which Southern will transport the gas purchased by Oil-Dri from the Sellers.

Applicants state they have agreed to transport on an interruptible basis up to 4,000 MMBtu of gas per day purchased by Oil-Dri pursuant to the South Georgia Agreement, and up to 3,000 MMBtu of gas per day pursuant to the Meigs Agreement.

It is stated that under the Southern Agreement and the Southern-Meigs Agreement South Georgia would cause gas to be delivered to Southern for transportation at the various specified existing points of delivery on Southern's contiguous pipeline system, and that Southern would redeliver an equivalent quantity of gas less 3.25 percent of the volume transported for fuel use to South Georgia at the existing point of interconnection between the facilities of Southern and South Georgia in Lee County, Alabama (South Georgia Redelivery Point). It is further stated that the South Georgia Agreement and the Meigs Agreement provide for South Georgia to receive the gas for transportation on behalf of Oil-Dri at the South Georgia Redelivery Point and to deliver the gas to Meigs in Thomas County, Georgia, and to Oil-Dri in Thomas County, Georgia. Applicant states South Georgia would redeliver an equivalent volume of gas less 0.5 percent of the voume transported for fuel use.

Southern proposes to charge Oil-Dri a transportation rate of 39.9 cents where the aggregate of the volume transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered to South Georgia under Rate Schedule OCD of Southern's FERC Gas Tariff do not exceed South Georgia's daily contract demand; for those volumes that exceed the daily contract demand, the transportation rate would be 64.9 cents per MMBtu.

South Georgia proposes to charge Oil-Dri a transportation rate of 49.88 cents for each MMBtu of gas redelivered by South Georgia under the South Georgia agreement. South Georgia also proposes to charge Meigs a transportation rate of 49.88 cents for each MMBtu of gas redelivered by South Georgia under the Meigs agreement. In addition it is stated

that either Meigs or Oil-Dri would reimburse South Georgia for all transportation and fuel charges South Georgia pays Southern for the transportation for Oil-Dri. In addition, the appropriate GRI surcharge would be collected.

*Comment date:* June 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

**8. Algonquin Gas Transmission Co.**

[Docket No. CP87-317-000]

Take notice that on April 30, 1987, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP87-317-000 an application pursuant to section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and sale of natural gas and for permission and approval to abandon certain facilities and services, all as more fully set in the petition on file with the Commission and open to public inspection.

*Comment date:* June 2, 1987, in accordance with standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken out will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-11302 Filed 5-15-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. CP87-296-000 et al.]

**Natural gas certificate filings; Southwest Gas Corp. et al.**

Take notice that the following filings have been made with the Commission:

**1. Southwest Gas Corporation**

[Docket No. CP87-296-000]

May 7, 1987.

Take notice, that on April 20, 1987, Southwest Gas Corporation (Southwest), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP87-296-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a high pressure mainline sales tap and appurtenant facilities to enable the sale and delivery of natural gas to Gold Fields Mining Corporation (Gold Fields), a new retail customer, under the certificate issued in Docket No. CP84-739-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southwest states that under the authorization issued in Docket No. CP84-739-000, Southwest was permitted to utilize the prior notice procedure of § 157.205 of the Commission's Regulations in connection with requests for authority to install and operate sales taps on its northern Nevada jurisdictional system to serve retail customers which are not being served by Southwest at any other location. Pursuant to such authorization, Southwest proposes to establish a sales tap to be located in Section 34, Township 42 North, Range 40 East, MDB&M, Humboldt County, Nevada. Southwest states that the tap would be used to provide up to 1,250 Mcf of natural gas per day for use by Gold Fields to meet its processing, space heating, and other energy requirements. It is estimated that the cost of the tap would be approximately $31,400, which cost would be reimbursed to Southwest by Gold Fields.

Southwest further states that service to Gold Fields would be rendered under the regulatory authority of the Public Service Commission of Nevada (PSCN) and in accordance with Southwest's rate schedules on file with the PSCN. Southwest asserts that it has sufficient capacity available to provide for the proposed deliveries without any detriment or disadvantage to any of its existing customers, and that the relatively small volumes anticipated to be delivered to Gold Fields would not affect Southwest's ability to serve its existing customers.

Comment date: June 22, 1987, in accordance with Standard Paragraph G at the end of this notice.

**2. Northwest Pipeline Corporation**

[Docket No. CP87-297-000]

May 11, 1987

Take notice, that on April 20, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-297-000, an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate approximately 130 feet of 16-inch station piping, two 16-inch ball valves and any appurtenant facilities necessary to modify the existing Vernal Compressor Station; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Northwest's Vernal Compressor Station compresses natural gas flowing in a northerly direction on Northwest's mainline. Northwest states that at times it is unable to delivery desired quantities of system supply gas

for injection into the Clay Basin Storage Field while concurrently maximizing transportation gas deliveries from receipt points north of Muddy Creek to Ignacio, Colorado at the southern terminus of its system. Northwest indicates that it has determined that having the capability to operate its Vernal Compressor station to compress gas flowing south would enable Northwest to increase injections into Clay Basin Storage Field when utilizing its full system capacity to flow gas south of Vernal.

All of the proposed facilities would be located within the Vernal Compressor Station site which is adjacent to Northwest's Ignacio-Sumas mainline in Uintah County, Utah, it is stated. The estimated cost of the subject facilities is approximately $163,600. The proposed modifications would enable the flow of an incremental 21 MMcf of gas per day from Muddy Creek south for injection into the Clay Basin Storage Field while maintaining mainline flows at system capacity.

Northwest states that it would obtain additional system reliability in having the flexibility to operate the Vernal Station in a southern direction should a unit at the Green River or Rangely Stations fail for any reason.

Comment date: June 1, 1987, in accordance with Standard Paragraph F at the end of this notice.

**3. Texas Gas Transmission Corporation**

[Docket No. CP86-143-006]

May 11, 1987.

Take notice, that on April 27, 1987, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP86-143-006 a petition to amend the Commission's order issued February 14, 1986, in Docket No. CP86-143-000, as amended, pursuant to Section 7(c) of the Natural Gas Act so as to authorize an increase in the transportation volumes for several of the customers for whom transportation services is authorized, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Texas Gas states that by the order issued February 14, 1986, Texas Gas received authorization to transport natural gas on an interruptible basis for 52 end-user customers. By order issued February 12, 1987, it is stated, the Commission extended the term of the transportation service to the earlier of one year from the date of issuance of the order or until Texas Gas accepts a blanket certificate under Order No. 436.

Texas Gas proposes to increase the transportation volumes of several customers served under the authority granted in this docket.

| Customer | Transportation Volumes | |
|---|---|---|
| | Existing (MMBtu) | Proposed (MMBtu) |
| CSX Oil and Gas Corporation (formerly Texas Gas Exploration Corporation) | 80,364 | 85,000 |
| Brownsville/Haywood Company | 600 | 800 |
| Indiana Gas/Knauf Fiber Glass | 2,541 | 5,000 |
| Memphis/Humko Chemical | 5,086 | 6,400 |
| Western Kentucky Gas/General Tire | 4,580 | 5,670 |

Comment date: June 1, 1987, in accordance with Standard Paragraph F at the end of this notice.

**4. United Gas Pipe Line Company**

[Docket No. CP87-308-000]

May 11, 1987.

Take notice that on April 28, 1987, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-308-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and for permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate 0.67 mile of 24-inch pipeline located in the Shell Chemical Company's Norco Refinery Yard in St. Charles Parish, Louisiana. Applicant explains that the proposed 24-inch pipe would replace an existing 16-inch mainline and 18-inch loopline which were installed in 1927 and have fallen into a state of disrepair. This section of pipe is part of Applicant's Baton Rouge-New Orleans line, it is indicated.

Applicant avers that it filed on February 19, 1987, in Docket No. CP87-214-000, an application to construct and operate 50.16 miles of 24-inch pipeline and to abandon by removal 53.9 miles of 18-inch pipeline and 16.6 miles of various diameter pipeline on its Baton Rouge-New Orleans line in three phases commencing in 1988 and ending in 1990. It is stated that the 0.67 mile of pipe proposed to be replaced in the instant application is part of the facilities included in the CP87-214-000 filing and were originally to be replaced in 1990. However, shortly after that filing was made, Applicant explains that it determined that the pipe in the Norco Refinery Yard should be replaced now rather than in 1990 because of operational considerations.

Applicant states that the estimated cost of the proposed project is $557,700.

Comment date: June 1, 1986, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee in this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11300 Filed 5-15-87; 8:45 am]

BILLING CODE 6717-01-M

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[Project Nos. 9890-002 et al.]

**Surrender of preliminary permits; Artech, Inc., et al**

May 12, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

**1. Artech Inc.**

[Project No. 9890-002]

Take notice that Artech, Inc., permittee for the proposed Upper and Lower Mesa Falls Project, has requested that its preliminary permit be terminated. The permit was issued on July 2, 1986, and would have expired June 30, 1989. The project would have been located on the Henry's Fork of the Snake River, in Fremont County, Idaho.

The permittee filed the request on April 23, 1987.

**2. The Town of Jackson, WY**

[Project No. 8052-001]

Take notice that The Town of Jackson, Wyoming, permittee for the proposed Jackson Lake Power Project, has requested that its preliminary permit be terminated. The permit was issued on July 25, 1985, and would have expired June 30, 1988. The project would have utilized the existing Bureau of Reclamations' Jackson Lake Dam and Reservoir, located on the Snake River, in Teton County, Wyoming. The permittee cites that the proposed project is a marginal project as the basis for the surrender request.

The permittee filed the request on April 20, 1987.

**3. Rocky Mountains Water Works Co.**

[Project No. 8942-001]

Take notice that Rocky Mountains Water Works Company, permittee for the proposed Independent Blue Ditch Project No. 8942 requested that its preliminary permit be terminated. The preliminary permit was issued on August 8, 1985, and would have expired on July 31, 1988. The project would have been located on the Blue River in Summit County, Colorado.

The permittee filed the request on April 10, 1987.

**Standard Paragraph**

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11303 Filed 5-15-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. QF84-323-001 et al.]

**Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc. Fieldcrest Cannon, Inc., et al.**

Comment date: On or before June 17, 1987, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

**1. Fieldcrest Cannon, Inc.**

[Docket No. QF84-323-001]

May 12, 1987.

On May 4, 1987, Fieldcrest Cannon, Inc., (Applicant), of Eden, North Carolina 27288 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 27,360 kW hydroelectric facility (FERC P.2655) will be located on the Chattahoochie River in Columbus, Georgia.

Recertification of the facility is requested to include the addition of one power house and three turbine generators having a total capacity of 23,100 kW. The combined total capacity of the facility will be 27,360 kW. In addition, the owner of the facility, formerly Fieldcrest Mills, Inc., is changed to Fieldcrest Cannon, Inc.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

**2. LUZ Solar Partners V, Ltd.**

[Docket No. QF87-402-000]

May 12, 1987.

On May 1, 1987, LUZ Solar Partners V, Ltd. (Applicant), a California Limited Partnership, c/o LUZ Engineering Corporation, a General Partner, 924 Westwood Boulevard, Suite 1000, Westwood, California 90024 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 31 miles west of Barstow, California at the junction of U.S. Highway 395 and California Highway 58 at Kramer Junction, California. The primary energy source will be solar energy. The facility will consist of a solar collector field, a solar-fired preheater/steam generator, a solar-fired superheater, a separate natural gas-fired auxiliary boiler, a natural gas-fired emergency heat transfer fluid heater and a dual inlet steam turbine generator. The net electric power production capacity of the facility will be 30 MW. Potomac Capital Investment Corporation, a wholly-owned subsidiary of Potomac Electric Power Company, an electric utility, has an option to acquire equity interest in the limited partnership. No other small power production facilities owned by the Applicant and using the same energy source are located within one mile of the facility.

**3. Pennsauken Solid Waste Management Authority**

[Docket No. QF87-399-000]

May 11, 1987.

On April 28, 1987, Pennsauken Solid Waste Management Authority (Applicant), of 9600 River Road, Pennsauken, New Jersey 08110 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Pennsauken, New Jersey. The facility will consist of two mass-burn steam generators and a

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steam turbine generator. The primary energy source will be biomass in the form of municipal solid waste. The net electric power production capacity of the facility will be 8.9 MW. Installation of the facility will begin approximately in September 1987.

**Standard Paragraphs**

E. Any persons desiring to be heard or to protest said filing shoudl file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-11238 Filed 5-15-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP87-327-000]**

## Northwest Pipeline Corp.; Application

May 13, 1987.

Take notice that on April 30, 1987, Northwest Pipeline Corporation (Applicant), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-327-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas in inerstate commerce for the account of IGI Resources Inc. (IGI), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 80,000 MMBtu of natural gas per day, on an interruptible basis, for the account of IGI for a term of two years commencing with the issuance and acceptance of regulatory authorization, pursuant to a gas transportation agreement datd April 23, 1987, which provides for transportation service under Rate Schedule T-4 and T-5 of Applicant's FERC Gas Tariff Volume 1-A.

It is stated that IGI owns or controls natural gas supplies which it would deliver to Applicant at various existing receipt points on Applicant's transmission system.

Applicant proposes to transport IGI's volumes on an interruptible basis, through its transmission system and redeliver to Intermountain Gas Company (Intermountain), its parent company, for ultimate delivery to essential agricultural end-users served by Intermountain at existing sales meter stations in Idaho.

It is asserted that the proposed transportation would enable IGI to provide the specific end-users with low-cost gas supplies that might not be available otherwise.

Applicant proposes to charge IGI for all volumes of gas transported and delivered under the transportation agreement at either the interruptible, incremental on system transportation rate or the interruptible, replacment on system transportation rate as set forth, respectively, in Applicant's Rate Schedules T-4 and T-5, FERC Gas Tariff, Volume No. 1-A. The T-4 transportation rate would apply to volumes transported during any months which are incremental to the corresponding 1984 monthly volumes for the end-users as indicated on Exhibit C of the transportation agreement it is stated, The T-5 transportation rate would apply to all volumes transported which are not incremental to the corresponding 1984 monthly volumes, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 22, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission in its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-11304 Filed 5-15-87; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3203-8]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

### Office of Water

*Title:* Underground Injection Control Program Information (EPA ICR #0370). (Revision of existing requirements.)

*Abstract:* Owners/operators of injection wells must obtain permits, monitor, maintain records, and report results to EPA or the appropriate State agency. States must report to EPA on permittee compliance and related information. The data are used to ensure safety of underground sources of drinking water.

*Respondents:* Owners and operators of injection wells, and State underground injection control agencies.

*Frequency:* For permittees: Quarterly, annually, on occasion and/or one time

(depending on type of injection well); and for States: quarterly and annually.

*Estimated Annual Burden:* 383,449 hours.

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**Agency PRA Clearance Requests Completed by OMB**

None received since the last **Federal Register** notice.

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Send comments on the above abstract(s) to:

Patricia Minami, PM–223, U.S. Environmental Protection Agency, Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460,
and
Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503.

Dated: May 12, 1987.

**Odelia Funke,**

*Acting Director, Information and Regulatory Systems Division.*

[FR Doc. 87–11286 Filed 5–15–87; 8:45 am]

BILLING CODE 6560–50–M

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[FRL–3202–5]

## Sole Source Designation of the Cross Valley Aquifer, Snohomish County and King County, WA

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final determination.

**SUMMARY:** Pursuant to section 1424(e) of the Safe Drinking Water Act, the Administrator of the U.S. Environmental Protection Agency has determined that the Cross Valley Aquifer in Snohomish County and King County, Washington is the sole or principal source of drinking water for the Cross Valley area, and that the aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, Federal financially assisted projects constructed in the designated area will be subject to EPA review to ensure that these projects are designed and constructed so that they do not create a significant hazard to public health.

**EFFECTIVE DATE:** This determination shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on June 1, 1987.

**ADDRESS:** The data upon which these findings are based are available to the public and may be inspected during normal business hours at the Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington and the Snohomish Public Library, First and Cedar, Snohomish, Washington.

**FOR FURTHER INFORMATION CONTACT:** Steven Roy at (206) 442–2118 or FTS 399–2118.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that pursuant to section 1424(e) of the Safe Drinking Water Act (42 U.S.C., 300f, 300h–3(e), Pub. L. 93–523), the U.S. Environmental Protection Agency (EPA) has determined that the Cross Valley Aquifer located in Snohomish County and King County, Washington, is the sole or principal source of drinking water for much of the Cross Valley Water Association, Inc. service area and adjoining areas. Pursuant to section 1424(e), Federal financially assisted projects, constructed in this area, will be subject to EPA review.

### I. Background

Section 1424(e) of the Safe Drinking Water Act states: "If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of the law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer."

On July 29, 1983, the Mount Forest Protection Association and the Cross Valley Water Association, Inc. submitted a petition requesting that the Administrator of the EPA designate the aquifer underlying the Cross Valley Water Association service area as the sole drinking water source for the area. Notice of this petition and a request for public comment was published in the **Federal Register** on September 15, 1983. In response to public comments and after analyzing additional information, the EPA Regional Office staff modified the boundary to coincide with the aquifer boundary rather than with the Water Association's service area boundary. A **Federal Register** notice was published on October 17, 1984, stating that (1) the Regional Office is proposing to recommend to the Administrator that the Cross Valley Aquifer be designated as a sole source aquifer, (2) a support document summarizing the bases for this recommendation (and describing the modified boundary) is available for review, (3) public comments are being requested, and (4) a hearing will be held if interest is expressed by the public. The hearing was subsequently cancelled due to lack of interest. The public comment period remained open until December 28, 1984. Public comments are discussed in Part V.

### II. Basis for Determination

Among the determinations which the Administrator must make in connection with the designation of an area under section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of water supply, and (2) whether, if contaminated, a significant hazard to public health would result.

Based on the information available to this Agency, EPA has made the following findings, which are the bases for the determination noted above:

1. The Cross Valley Aquifer is the principal source of drinking water for approximately 11,400 residents of the Cross Valley area in Snohomish County and King County. Approximately 77.6 per cent of drinking water used in the proposed area is supplied by the aquifer. There is no existing alternative drinking water source or combination of sources which could replace the aquifer should it become contaminated.

2. Because ground-water contamination can be difficult or impossible to reverse and because the aquifer in this area is the principal source of drinking water for the area's residents, contamination of the aquifer could pose a significant hazard to public health.

### III. Description of the Cross Valley Aquifer

The Cross Valley Aquifer is located in the Puget Sound lowland in the State of Washington, between Puget Sound and the Cascade Mountains. The 40 square mile aquifer is mostly situated in Snohomish County but extends south into northern King County. The northern and eastern boundaries of the aquifer lie close to the Snohomish River flood plain. To the south, the aquifer is approximately bounded by the county line.

Most of the Cross Valley area is an undulant drift plain with a north-south texture that is the result of glacial sculpturing. The subsurface geology, to a

depth of about 300 feet, is fairly well defined. At the surface is a mantle, up to 75 feet thick, of glacial till (hardpan). Below the till is a region-wide deposit of outwash sand and gravel with moderate permeability. This unit has been named the Esperance Sand by the U.S. Geological Survey. Below the Esperance Sand is a more complex sequence of clay and firmly cemented gravels that form a till. Information is meager on the extent and hydraulic characteristics of these deposits, but it is known that some permeable zones exist in the deeper section. Beneath the deeper glacial deposits lies bedrock composed of marine sediments and basalts.

Most wells in the area tap the unconfined Esperance Sand unit which is recharged by direct infiltration of precipitation. The Esperance Sand is generally capable of supplying yields up to 300 gpm from properly constructed wells. There is no water of regional importance in the bedrock. Available information indicates that the ground-water flows generally in a southerly direction in the main body of the aquifer. However, around the perimeter, the flow is toward the edge of the aquifer. The ground-water table is at an elevation of about 350 feet above mean sea level, which indicates that, depending on the land surface elevation, the ground water might be as deep as 200 feet below ground surface in the higher areas. In some areas the ground water is found perched above the regional water table.

There is no streamflow source zone associated with the Cross Valley Aquifer. The aquifer is recharged by downward percolation of precipitation on the plateau surface. Contamination from any surface or subsurface source can enter the aquifer by the same route. Potential sources of contamination include septic tanks, surface runoff from residential, commercial, and light industrial zones, and accidental spills or leaks of hazardous materials.

## IV. Project Review

When EPA publishes this determination for a sole or principal drinking water source, the consequence is that no commitment for Federal financial assistance may be made if EPA finds that the Federal financially-assisted project may contaminate the aquifer through a recharge zone so as to create a significant hazard to public health. . . . Safe Drinking Water Act section 1424(e), 42 U.S.C. 300h–3(e). Therefore, EPA will review Federal financially assisted projects to determine potential impacts on the aquifer, as specified by section 1424(e) of the Act. In some cases, proposed Federally-assisted projects may also be analyzed in an "Environmental Impact Statement" ("EIS"), under the National Environmental Policy Act ("NEPA"), 42 U.S.C. 4332(2)(C). All EISs, as well as any other proposed Federal actions affecting an EPA program or responsibility, are required by Federal law (under the so-called "NEPA/309" process)[1] to be reviewed and commented upon by the EPA Administrator.

Therefore, to streamline EPA's review of the possible environmental impacts on designated aquifers, when an action is analyzed in an EIS, the two reviews will be consolidated, and both authorities will be cited. The EPA review (under section 1424(e), Safe Drinking Water Act) of Federal financially-assisted projects potentially affecting sole or principal source aquifers, will be included in the EPA review (under the "NEPA/309" process) of any EIS accompanying the same Federally-assisted project. The letter transmitting EPA's comments on the final EIS to the lead agency will be the vehicle for informing the lead agency of EPA's actions under section 1424(e).

## V. Discussion of Public Comments

Three comment letters were received regarding EPA Region 10's proposal to recommend designation of the Cross Valley Sole Source Aquifer. Two of the commenters supported designation. A third commenter believed that insufficient information exists to designate the aquifer as a sole source. This commenter also stated that with designation of this aquifer as a precedent, much of the till/Esperance Sand upland areas in the Puget Sound area could be designated as sole source aquifer areas, and that this could result in limiting development in such areas.

EPA, however, has determined that there is an adequate basis for designation. Available geologic and water supply data have provided an understanding of the nature and extent of the aquifer area. These data have also allowed EPA to determine that 77.6 per cent of the water used by the population of the area is drawn from the aquifer. Designation of additional sole source aquifers in upland areas around Puget Sound may occur in the future, but only if criteria regarding dependency on ground water resources and availability of alternative water sources are met. Sole source aquifer designation has not limited development in any previously designated areas of Region 10. EPA has not used its veto authority to halt any projects, nor have any projects been cancelled by their sponsors in response to EPA requests for project modifications. EPA has closely cooperated with state and local agencies when conducting project reviews.

## VI. Summary

Today's action only affects the Cross Valley Aquifer in Snohomish and King Counties. This action provides a review process to insure that necessary ground-water protection measures are incorporated into Federal financially-assisted projects.

Dated: May 4, 1987.

**Robie G. Russell,**

*Regional Administrator, Environmental Protection Agency, Region 10.*

[FR Doc. 87–11257 Filed 5–15–87; 8:45 am]

BILLING CODE [illegible]

[1] 42 U.S.C. 7609 requires EPA to conduct this review. The "309" in "NEPA/309" is derived from the original source of this general requirement: Section 309 of the Clean Air Act.

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0106.

Title: Flooded Property Purchase Program.

Abstract: Section 1362 of the National Flood Insurance Act of 1968 (Pub. L. 90–488) as amended (42 U.S.C. 4103), authorizes FEMA to purchase severely or repetitively damaged insured properties to reduce future Federal disaster costs. The forms will be used to collect data which determines eligibility, funding priorities and cost effectiveness.

Type of Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Number of respondents: 165.

Burden Hours: 2,475.

Frequency of Recordkeeping or Reporting: Semi-annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: May 12, 1987.

Wesley C. Moore,

*Director, Office of Administrative Support.*

[FR Doc. 87–11242 Filed 5–15–87; 8:45 am]

BILLING CODE 6718–01–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010646–002.

Title: Port of Oakland Terminal Agreement.

Parties: Port of Oakland and Hyundai Merchant Marine Co., Ltd., as assignee of Koren Marine Transport Co., Ltd.

Synopsis: The proposed agreement amendment would provide that Hyundai's right to transfer the agreement No. 224–010646 to certain other Port container terminals operated as public facilities may be exercised by Hyundai upon 60 days prior written notice to the Port or shorter prior notice as is acceptable to Port. Parties have requested shortened review.

Agreement No.: 224–011097.

Title: Port of Charleston Terminal Agreement.

Parties: South Carolina State Ports Authority (Port) ABC Containerline N.V. (ABC).

Synopsis: The proposed agreement permits the Port to grant a license unto ABC to exclusively use, pursuant to the terms of this Agreement, 110 container parking slots (Area A) at the Port's Wando Terminal. The term of the agreement shall be for a period of three contract years with a guaranteed minimun of 50,000 short tons of cargo per annum.

Dated: May 11, 1987.

By order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87–11267 Filed 5–15–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### F.N.B. Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. section 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 8, 1987.

A. **Federal Reserve Bank of Cleveland** (Johjn J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *F.N.B. Corporation*, Hermitage, Pennsylvania; to acquire Mortgage Service Corporation of Pittsburgh, Pittsburgh, Pennsylvania, and thereby engage in originating mortgage loans for non-affiliated financial institutions and performing the servicing on these loans pursuant to § 225.25(b)(1) of the Board's Regulation Y, and to act as an escrow agent on behalf of the financial institutions for which it will be servicing mortgages pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp*, Dallas, Texas, and MCorp Financial, Inc., Wilmington, Delaware; to acquire Westmoreland Computer Services, Inc., Greensburg, Pennsylvania, and thereby engage in providing to others financially related data processing and data transmission services, facilities, and data bases; or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87–11227 Filed 5–15–87; 8:45 am]

BILLING CODE 6210–01–M

### First Chicago Corp. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR § 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenince, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation,* Chicago, Illinois; to acquire 100 percent of the voting shares of First United Financial Services, Inc., Arlington Heights, Illinois, and thereby indirectly acquire United National Bank, Arlington Heights, Illinois; Bloomingdale State Bank, Bloomingdale, Illinois; Mount Prospect State Bank, Mount Prospect, Illinois; Oak Park Trust and Savings Bank, Oak Park, Illinois; and The Dunham Bank, St. Charles, Illinois. In connection with this application, First Chicago Acquisition Corp., Chicago, Illinois, has applied to become a bank holding company by acquiring 100 percent of the voting shares of First United Financial Services, Inc., Arlington Heights, Illinois.

In addition, Applicants also propose to acquire B.I.P. Incorporated, Bloomingdale, Illinois, and thereby engage in providing to others data processing and data transmission services facilities, data bases or access to such services, facilities, or data bases by any technological means pursuant to § 225.25(b)(7) of the Board's Regulation Y, and to acquire Arlington Commercial Finance Company, Arlington Heights, Illinois, and First United Trust Company, Arlington Heights, Illinois, and thereby engage in making, acquiring or servicing loans or other extensions of credit including letters of credit for the company's account pursuant to § 225.25(b)(1) and accepting and executing trusts and carrying on a general trust company business as permitted by the State of Illinois pursuant to § 225.25(b)(3) of the Board's Regulation Y.

2. *Valley Bancorporation,* Appleton, Wisconsin; to acquire 100 percent of the voting shares of Community Banks, Inc., Middleton, Wisconsin, and thereby indirectly acquire the Bank of Middleton, Middleton,Wisconsin; The Bank of Shorewood Hills, Madison, Wisconsin; The American Exchange Bank of Madison, Madison, Wisconsin; Monona Grove State Bank, Monona, Wisconsin; Brooklyn State Bank, Brooklyn, Wisconsin; and Farmers and Merchants Bank, Richland Center, Wisconsin.

In connection with this application, Applicant also proposes to acquire CBT Trust and Financial Services, Inc., Madison, Wisconsin, and thereby engage in trust activities including escrow accounts, guardianships, estates and other personal trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Wisconsin.

Board of Governors of the Federal Reserve System, May 13, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-11228 Filed 5-15-87; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 2, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *H.P. Hunnicutt,* Princeton, West Virginia; to acquire 35.65 percent of the voting shares of First Community Bancshares, Inc., Princeton, West Virginia, and thereby indirectly acquire First Community Bank—Adrian Buckhannon, Buckhannon, West Virginia, and First Community Bank, Inc., Princeton, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Herbert E. Behrens, Jr.,* Bonita Springs, Florida; Elizabeth J. Hoover, John W. Hoover, Jr., Elizabeth H. Marcus, Linda J. McBride, and William L. Randol, Jr., all of Coral Gables, Florida, to acquire 33.3 percent of the voting shares of Grovegate Bank, Miami, Florida.

2. *Harvey Polly,* Highland Beach, Florida; Nathan Phillips, Westport, Connecticut; Lawrence Kaplan, Woodbury, New York; and Leo Yarfitz, Delray Beach, Florida; to acquire 62.5 percent of the voting shares of Hanover Financial Corporation, Plantation, Florida, and thereby indirectly acquire Hanover Bank of Florida, Plantation, Florida.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 320 South LaSalle Street, Chicago, Illinois 60690:

1. *Harry C. Jackson,* Plainfield, Indiana; to acquire 50 percent of the voting shares of Hoosier Bancrop, Rushville, Indiana.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Frederick M. Haynes,* Englewood, Colorado; Richard W. Newman, Englewood, Colorado; and Herbert H. Maruyama, Lakewood, Colordo; to acquire 22.1 percent of the voting shares of Frontier Bancorporation of Denver, Inc., Denver, Colorado, and thereby indirectly acquire Frontier Bank of Denver, Denver, Colorado.

Board of Governors of the Federal Reserve System, May 13, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-11229 Filed 5-15-87; 8:45 am]

BILLING CODE 6210-01-M

## 180 Investors Group Ltd., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank

holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 8, 1987.

**A. Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *180 Investors Group Ltd.*, Providence, Rhode Island; to become a bank holding company by acquiring at least 51 percent of the voting shares of First Financial Corp., Providence, Rhode Island, and thereby indirectly acquire First Bank and Trust Company, Providence, Rhode Island. Comments on this application must be received by June 5, 1987.

**B. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to acquire 100 percent of the voting shares of The Montgomery National Bank, Rock Hill, Montgomery Township, New Jersey. Comments on this application must be received by June 2, 1987.

**C. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *St. Joseph Bancorporation, Inc.*, South Bend, Indiana; to merge with The Citizens Bancorp, Inc., Hartford City, Indiana, and thereby indirectly acquire The Citizens State Bank of Hartford City, Hartford City, Indiana.

2. *St. Joseph Bancorporation, Inc.*, South Bend, Indiana; to merge with First State Bancorp, Inc., Dunkirk, Indiana, and thereby indirectly acquire First State Bank of Dunkirk, Dunkirk, Indiana.

3. *St. Joseph Bancorporation, Inc.*, South Bend, Indiana; to merge with Midwest Bancorp, Inc., Columbus, Indiana, and thereby indirectly acquire First National Bank of Columbus, Columbus, Indiana.

**D. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Credit International Bancshares, Ltd.*, Washington, D.C.; to become a bank holding company by acquiring 100 percent of the voting shares of Credit International Bank, N.A., Washington, D.C., a *de novo* bank.

2. *Independent Banks of Virginia, Inc.*, Norfolk, Virginia; to acquire 100 percent of the voting shares of Heritage Bank of Northern Virginia, McLean, Virginia, a *de novo* bank.

3. *One Valley Bancorp of West Virginia, Inc.*, Charleston, West Virginia; to acquire 100 percent of the voting shares of F&M Holding Company, Summersville, West Virginia, and thereby indirectly acquire Farmers and Merchants Bank of Summersville, Summersville, West Virginia.

**E. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illini Community Bancorp, Inc.*, Springfield, Illinois; to acquire 100 percent of the voting shares of Greenview Bancshares, Inc., Greenview, Illinois, and thereby indirectly acquire Greenview Community Bank, Greenview, Illinois. *Comments on this application must be received by June 5, 1987.*

**F. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Security Bancorp of Tennessee, Inc.*, Hells, Tennessee; to acquire 100 percent of the voting shares of Bank of Crockett, Bells, Tennessee.

**G. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Lindale National Bancshares, Inc.*, Lindale, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Lindale National Bank, Lindale, Texas.

2. *Southlake Bancshares, Inc.*, Southlake, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Texas National Bank, Southlake, Texas.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11231 Filed 5-15-87; 8:45 am]

BILLING CODE 6210-01-M

## MNC Financial, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 1987.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *MNC Financial, Inc.* (formerly Maryland National Corporation), Baltimore, Maryland; to engage *de novo* through its subsidiary, MNC Capital Corporation, Baltimore, Maryland, in making, acquiring, and servicing commercial loans and other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial Inc., Des Moines, Iowa; to engage *de novo* through its subsidiary, Norwest Mortgage, Inc., Des Moines, Iowa, in performing functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Viejo Bancorp,* Mission Viejo, California; to engage *de novo* through its subsidiary, Viejo Audit Corporation, Mission Viejo, California, in management consulting of audit services to financial institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. Comments on this application must be received by June 5, 1987.

Board of Governors of the Federal Reserve System, May 13, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–11230 Filed 5–15–87; 8:45 am]

BILLING CODE 6210–01–M

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## Union Planters National Bank; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that there are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than June 2, 1987.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Union Planter National Bank;* to establish a corporation to be known as Union Planters International Corporation. This application may be inspected at the Federal Reserve Bank of St. Louis.

Board of Governors of the Federal Reserve System, May 13, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87–11232 Filed 5–15–87; 8:45 am]

BILLING CODE 6210–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Child Support Enforcement

### Conformity of Child Support Enforcement Plan of the Commonwealth of Puerto Rico With Federal Requiremetns; Hearing

Notice of hearing is hereby given as set forth in the following letter that has been sent to the Commonwealth of Puerto Rico's Department of Social Services.

The Honorable Carmen Sonia Zayas,
*Secretary; Puerto Rico Department of Social Services, P.O. Box 11398, Fernandez Juncos Station, Santurce, Puerto Rico 00910*

Dear Mrs. Zayas: This letter is in response to your letter of February 20, requesting a hearing prior to my final decision to approve or disapprove Puerto Rico's State IV–D plan in accordance with the procedures set forth in OCSE–AT–86–21.

Pursuant to 45 CFR 213.12, I am scheduling a hearing to be held on the 24th day of June 1987 in Washington, DC, at 9:30 a.m. in Room 2155 of the Board of Contract Appeals, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

In accordance with 45 CFR 213.21, I have designated Norval D. Settle, Chair of the Departmental Grant Appeals Board, as the presiding officer for the hearing in this matter. A copy of the designation is enclosed. The hearing will be conducted under the provisions of 45 CFR Part 213.

The issues which will be considered at the hearing concern whether the Commonwealth's State IV–D plan is in conformance with State plan requirements, as specified in my notice of January 2, 1987. Specifically, the issues are whether:

1. The State has failed to submit an approvable amendment to its State plan at section 2.12–1 providing for a program for wage withholding, in accordance with the requirement at 45 CFR 302.70(a)(1).

2. The State has failed to submit an approvable amendment to its State plan at section 2.12–2 providing for expedited procedures, in accordance with the requirement at 45 CFR 302.70(a)(2).

3. The State has failed to submit an approvable amendment to its State plan at section 2.12–3 providing for the collection of overdue support from State income tax refunds, in accordance with the requirement at 45 CFR 302.70(a)(3).

4. The State has failed to submit an approvable amendment to its State plan at section 2.12–4 providing for the imposition of liens against the real and personal property of absent parents who owe ovedue support, in accordance with the requirement at 45 CFR 302.70(a)(4).

5. The State has failed to submit an approvable amendment to its State plan at section 2.12–6 providing for the posting of security bond or giving some guarantee to secure payment of overdue support, in accorance with the requirement at 45 CFR 302.70(a)(6).

6. The State has failed to submit an approvable amendment to its State plan at section 2.12–7 for making absent parent information on overdue support available to consumer reporting agencies upon request, when the amount is in excess of $1,000, in accordance with the requirement at 45 CFR 302.70(a)(7).

7. The State has failed to submit an approvable amendment to its State plan at section 2.12–8 providing that all child support orders issued or modified in the State include a provision for withholding from wages as a means of collecting child support in accordance with the requirement at 45 CFR 302.(a)(8).

8. The State has failed to submit an approvable amendment to its State plan at section 2.4–2 which conforms to the requirement at 45 CFR 302.51(e) that when a family ceases to receive assistance under the State's title IV–A plan, the IV–D agency must provide support enforcement services.

9. The State has failed to submit an amendment to its State plan at section 2.5–3 which conforms to the requirement at 45 CFR 302.33(c) that beginning October 1, 1985, an application fee will be charged for IV–D services to individuals not otherwise eligible for paternity and support services.

10. The State has failed to submit an approvable amendment to its State plan at section 3.9 which conforms to the requirements at 45 CFR 302.30 that the IV-D agency publicize regularly and frequently the availability of support enforcement services.

11. The State has failed to submit an approvable amendment to its State plan at section 3.10 which conforms to the requirements at 45 CFR 302.54 that the IV-D agency annually send a notice of

support payments collected to individuals for whom an assignment of rights exists under 45 CFR 232.11.

12. The State has failed to submit an approvable amendment to its State plan at section 2.1–2 which conforms to the requirements at 45 CFR 302.31(a) that the IV–D Agency undertake to secure support for a spouse (or former spouse) who is receiving aid under the State title IV–A plan from any person who is legally liable for such support.

13. The State has failed to submit an approvable amendment to its State plan at section 2.9 which conforms to the requirements at 45 CFR 302.60(a) that the IV–D agency have in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury.

14. The State has failed to submit an approvable amendment to its State plan at section 2.8 which conforms to the requirements at 45 CFR 302.80(b) that States include medical support as part of any support order whenever health coverage is available at a reasonable cost.

Any further inquiries, submissions or correspondence regarding this hearing should be filed in an original and two copies with Mr. Settle at the Departmental Grant Appeals Board, Room 451, Hubert H. Humphrey Building, 330 Independence Avenue SW., Washington, DC 20201, where the record of this hearing will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience, please refer to Docket No. 87–40 assigned to these proceedings.

Dated May 8, 1987.

**Wayne A. Stanton,**

*Director, Office of Child Support Enforcement.*

[FR Doc. 87–11296 Filed 5–15–87; 8:45 am]

BILLING CODE 4150–11–M

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## Food and Drug Administration

**[Docket No. 87D–0120]**

## Computerized Drug Processing; Source Code for Process Control Application Programs; Availability of Compliance Policy Guide

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide 7132a.15, which affirms that source code and its supporting documentation for application programs used in drug process control is considered to be part of the master production and control records. Accordingly, the sections of the current good manufacturing practice regulations that pertain to master production and control records also apply to source code and its documentation.

**ADDRESS:** Written comments and requests for single copies of FDA Compliance Policy Guide 7132a.15 may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Written comments and requests for single copies should include the docket number that appears in the heading of this notice. (Send two self-addressed adhesive labels to assist the Branch in processing your requests.)

**FOR FURTHER INFORMATION CONTACT:** Paul J. Motise, Center for Drugs and Biologics (HFN–323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8089.

**SUPPLEMENTARY INFORMATION:** FDA has prepared Compliance Policy Guide 7132a.15 to describe the agency's policy with regard to certain computerized operations that may be used during drug processing. An increasing number of pharmaceuticals are being manufactured under the control of computer systems. The manufacturing procedures, control, instructions, specifications, and precautions to be followed within such automated systems are embodied in the computer program(s) that drive the computer. Depending on the complexity of the programs, they may also contain controlling data on product formulation, batch size, yields, and automated in-process sampling/testing procedures. In a manual system, such procedures, instructions, specifications, precautions, and other controlling data would be embodied in master production records, which must be reviewed and approved before implementation and which must be maintained, as required by the current good manufacturing practices regulations (CGMP's). Such manual records are, of course, prepared in human readable form.

In the case of computerized drug process control, certain information required by CGMP's to be in a master production record is contained in the source code for the application program. (An application program is software written to specified user requirements for the purpose of performing a designated task.) Source code is the human readable form of the program, written in its original (source) programming language. Source code must be compiled, assembled, or interpreted before it can be executed by a computer. Because the source code ultimately has a direct and significant bearing on drug product quality as manual master records, it is vital that source code and supporting documentation be reviewed and approved by the drug manufacturer before implementation, and be maintained as the CGMP's require for master production and control records (e.g., see 21 CFR 211.100, 211.180, and 211.186). Careful review of source code and its documentation is especially important for assuring that process specifications, conditions, sequencing, decision criteria, and formulas have been properly incorporated into the computer program; source code should also be reviewed to detect and remove dead code—nonexecutable instructions that are usually artifacts of earlier versions of the program.

Supportive program documentation, such as flow diagrams and explanatory narratives, can be useful in understanding and reviewing source code. However, such documentation is not an acceptable substitute for source code itself.

Therefore, FDA regards source code and its supporting documentation for application programs used in drug process control to be part of master production and control records, within the meaning of 21 CFR Parts 210 and 211.

Compliance Policy Guide 7132a.15 is available for public examination in the Dockets Management Branch (address above). Requests for single copies of the Guide should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch.

Interested persons may, at any time, submit written comments regarding the Compliance Policy Guide to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Copies are to be identified with the docket number found in brackets in the heading of this document. Such comments will be considered in determining whether revisions of the Compliance Policy Guide are warranted. Received comments and the Compliance Policy Guide may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under 21 CFR 10.85.

Dated: May 8, 1987.
John M. Taylor,
*Associate Commissioner for Regulatory Affairs.*
[FR Doc. 87-11219 Filed 5-15-87; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 87M-0139]

## Allergan Medical Optics; Premarket Approval of Models YAG-100, YAG-100A and YAG-200 Nd:YAG Ophthalmic Lasers for Iridotomy

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Allergan Medical Optics, for premarket approval, under the Medical Device Amendments of 1976, of the Models YAG-100, YAG-100A, and YAG-200 Nd:YAG Ophthalmic Lasers for performing an iridotomy (hole in the iris). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by June 17, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8221.

**SUPPLEMENTARY INFORMATION:** On January 20, 1987, Allergan Medical Optics, Irvine CA 92718, submitted to CDRH a supplemental application for premarket approval of the Models YAG-100, YAG-100A, and YAG-200 Nd:YAG Lasers. The Models YAG-100, YAG-100A, and YAG-200 Nd:YAG Lasers are neodymium-yttrium-aluminum-garnet (Nd:YAG) ophthalmic lasers that are indicated for performing an iridotomy (hole in the iris).

On February 26, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 8, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ-460), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 17, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 11, 1987.
John C. Villforth,
*Director, Center for Devices and Radiological Health.*
[FR Doc. 87-11222 Filed 5-15-87; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 87M-0145]

## Applied Laboratories, Inc.; Premarket Approval of Applied Laboratories Sterile Saline Solution

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Applied Laboratories, Inc., Columbus, IN, for premarket approval, under the Medical Device Amendments of 1976, of Applied Laboratories Sterile Saline Solution for use with soft (hydrophilic) contact lenses. Applied Laboratories Sterile Saline Solution is indicated for use in the rinsing, heat disinfection, and storage after heat disinfection of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by June 17, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** On January 13, 1987, Applied Laboratories, Inc., Columbus, IN 47201, submitted to CDRH an application for premarket approval of Applied Laboratories Sterile Saline Solution. The device is indicated for use in the rinsing, heat disinfection, and storage after heat disinfection of soft (hydrophilic) contact lenses.

On February 27, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 31, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of Applied Laboratories Sterile Saline Solution states that the solution is indicated for use in the rinsing, heat disinfection, and storage after heat disinfection of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the Federal Register of the approval of a new solution for use with an approved soft contact lens, the manufacturer or PMA holder of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 17, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 11, 1987.

John C. Villforth,

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–11220 Filed 5–15–87; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 87N-0146]

## Bausch and Lomb Optics Center; Premarket Approval of BAUSCH & LOMB HYPO-CARE™ Sterile Saline Spray

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of the BAUSCH & LOMB HYPO-CARE™ Sterile Saline Spray for use in the rinsing, heat disinfection, and storage after heat disinfection of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by June 17, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

**SUPPLEMENTARY INFORMATION:** On August 19, 1986, Bausch & Lomb Optics Center, Rochester, NY 14692, submitted to CDRH an application for premarket approval of BAUSCH & LOMB HYPO-CARE™ Sterile Saline Spray. The device is indicated for use in the rinsing, heat disinfection, and storage after heat disinfection of soft (hydrophilic) contact lenses.

On February 27, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 31, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of BAUSCH & LOMB HYPO-CARE™ Sterile Saline Spray states that the solution is indicated for use in the rinsing, heat disinfection, and storage after heat disinfection of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the Federal Register of the approval of a new solution for use with an approved soft contact lens, the manufacturer or PMA holder of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR

10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 17, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360i(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 11, 1987.

John C. Villforth,

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–11221 Filed 5–15–87; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 87M-0136]

## THERAKOS, Inc.; Premarket Approval of the THERAKOS UVAR™ Photopheresis System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by THERAKOS, Inc., King of Prussia, PA, formerly Johnson & Johnson Cardiovascular, for premarket approval, under the Medical Device Amendments of 1976, of the THERAKOS UVAR™ Photopheresis System. After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by June 17, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Susanne R. Rohrer, Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7750.

**SUPPLEMENTARY INFORMATION:** On April 17, 1986, THERAKOS, Inc., P.O. Box 386, King of Prussia, PA 19406, submitted to CDRH an application for premarket approval of the THERAKOS UVAR™ Photopheresis System. The device consists of the TP50 UVAR instrument, the TP501 UVAR Tubing Set, and the TP502 UVAR Cassette. It is indicated for use in the ultraviolet-A irradiation, in the presence of the photoactive drug methoxsalen (8-methoxypsoralen or 8-MOP), of extracorporeally circulating leukocyte-enriched blood in patients with skin manifestations of cutaneous T-cell lymphoma (CTCL) who are enrolled under the notice of claimed investigational exemption for a new drug (IND) (IND 29.804), and have not been responsive to other therapy. The sale, distribution, and use of this device are limited to investigators participating in IND 29.804.

On July 30, 1986, the Gastroenterology-Urology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 8, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Susanne R. Rohrer (HFZ–420), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under §10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 17, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological health (21 CFR 5.53).

Dated: May 11, 1987.

John C. Villforth,

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–11223 Filed 5–15–87; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 87M-0148]

## Vision Care Associates, Inc.; Premarket Approval of Vision Care Vis-Sol Saline Spray

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Vision Care Associates, Inc., Los Angeles, CA,

for premarket approval, under the Medical Device Amendments of 1976, of Vision Care Vis-Sol Saline Spray that is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by June 17, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

**SUPPLEMENTARY INFORMATION:** On December 18, 1986, Vision Care Associates, Inc., Los Angeles, CA 90048, submitted to CDRH an application for premarket approval of Vision Care Vis-Sol Saline Spray. The device is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses.

On February 27, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 31, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of Vision Care Vis-Sol Saline Spray states that the solution is indicated for use in the rinsing, heat disinfection, and storage after heat disinfection of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with an approved soft contact lens, the manufacturer or PMA holder of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 17, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 11, 1987.

**John G. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–11224 Filed 5–15–87; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM–010–07–0119]

### Emergency Road Closure in Rio Puerco Resource Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Effective May 18, 1987, the Rio Puerco Resource Area, Albuquerque District, Bureau of Land Management will be closing (except for authorized users and administrative purposes) approximately six miles of BLM Road No. 1103 traversing the Ignacio Chavez Grant located in T. 15 and 16N., R. 4 and 5W., Sandoval and McKinley Counties, New Mexico. Under the emergency closure authority contained in 43 CFR 8341.2, this action is being taken to prevent vehicle use associated with this access route from causing additional damage to the soils, vegetative and scenic resource values on the Ignacio Chavez Grant. The closure will remain in effect until the adverse impacts are eliminated and adequate measures are implemented to prevent recurrence.

**FOR FURTHER INFORMATION CONTACT:** Herrick E. Hanks, Area Manager, Rio Puerco Resource Area, 435 Montano NE, Albuquerque, NM 87107, (505) 761–4504.

**Michael F. Keltz,**

*Associate District Manager, Bureau of Land Management.*

[FR Doc. 87–11323 Filed 5–15–87; 8:45 am]

BILLING CODE 4310–FB–M

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[ES–940–07–4520–12; ES–037344, Group 21]

### Missouri; Filing of Plat of Dependent Resurvey and Subdivision of Section 14

May 8, 1987

1. The plat of the dependent resurvey of the east boundary (Fifth Principal Meridian), a portion of the south boundary, a portion of the subdivisional lines, and the subdivision of section 14, Township 32 North, Range 1 West, Fifth Principal Meridian, Missouri, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on June 22, 1987.

2. The dependent resurvey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South

Pickett Street, Alexandria, Virginia 22304 prior to 7:30 a.m., June 22, 1987.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Joseph W. Beaudin,**

*Acting Deputy State Director for Cadastral Survey and Support Services.*

[FR Doc. 87-11217 Filed 5-15-87; 8:45 am]

BILLING CODE 4310-GJ-M

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**[ES-940-07-4520-12; (ES-037343, Group 127)]**

## Wisconsin; Filing of Plat of Dependent Resurvey and Survey of Omitted Land

May 8, 1987.

1. The plat of the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, the reestablishment of the record meander line, a survey of omitted land in section 33, and the meanders of Lake Osborn, Township 45 North, Range 6 West, Fourth Principal Meridian, Wisconsin, will be officially filed in the Eastern States Ofice, Alexandria, Virginia at 7:30 a.m., on June 22, 1987.

2. This survey was executed in response to an application for survey of omitted lands submitted by Mr. and Mrs. Algie Montgomery, Pekin, Illinois 61554.

3. All inquiries or protests concerning the legal determination to perform the survey of omitted lands or concerning the technical aspects of either the dependent resurvey or the survey of omitted lands must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, prior to 7:30 a.m., June 22, 1987.

4. All inquiries concerning color-of-title claims should be filed with the Deputy State Director for Lands and Renewable Resources, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, after June 22, 1987.

5. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

**Joseph W. Beaudin,**

*Acting Deputy State Director for Cadastral Survey and Support Services.*

[FR Doc. 87-11218 Filed 5-15-87; 8:45 am]

BILLING CODE 4310-GJ-M

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**[UT-942-07-4220-10; U 57025]**

## Utah; Proposed Withdrawal and Opportunity for Public Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 3,537.33 acres of public land for the protection of the Tabernacle Hill Volcanic Field, near Fillmore, Utah. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

**DATE:** Comments and requests for a public meeting should be received by August 24, 1987.

**ADDRESS:** Comments and meeting requests should be sent to: Utah State Director, Bureau of Land Management, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303.

**FOR FURTHER INFORMATION CONTACT:** Nancy Bloyer, BLM, Utah State Office, 801 524-4036.

On May 4, 1987, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

**Salt Lake Meridian, Utah**

T. 22 S., R. 6 W.,
- Sec. 3, lots 4 and 12, SW¼NW¼, W½SE¼NW¼, SW½, W½NW¼SE¼; SW¼SE¼;
- Sec. 4, lots 1 and 2, S½N½, S½;
- Sec. 5, S½S½SW¼, E½SE¼, E½W½ SE¼, SW¼SW¼SE¼;
- Sec. 7, E½E½E½;
- Sec. 8, All;
- Sec. 9, All;
- Sec. 10, W½NE¼, W½, NW¼NE¼SE¼, N½NW¼SE¼, SW¼NW¼SE¼, W½W½SW¼SE¼;
- Sec. 15, W½NE¼NW¼, W½NW¼, SE¼NW¼
- Sec. 17, N½, E½SE¼, E½NW¼SE¼, NE¼SW¼SE¼;
- Sec. 20, E½NE¼NE¼;
- Sec. 21, NW¼NW¼.

The area described contains 3,537.33 acres in Daggett County, Utah. There are no lands to be excepted from those described above.

The purpose of the proposed withdrawal is protection of the Tabernacle Hill Volcanic Field.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Utah State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Utah State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. No temporary uses will be permitted during the segregative period.

The temporary segregation of the lands in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the lands, and the segregation shall not have the effect of authorizing any use of the lands by the Bureau of Land Management.

Dated: May 7, 1987.

**Orval L. Hadley,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87-11207 Filed 5-15-87; 8:45 am]

BILLING CODE 4310-20-M

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## Minerals Management Service

## Alaska Outer Continental Shelf; Cancellation of Preparation of an Environmental Impact Statement for an Arctic Offshore Sand and Gravel Lease Sale

The Minerals Management Service is announcing cancellation of the preparation of an Environmental Impact Statement (EIS) for an Arctic Offshore Sand and Gravel Lease Sale.

The proposed sale was scheduled for November 1984. The Notice of Intent to prepare an EIS was published in the Federal Register November 25, 1983, page 53184. On March 30, 1984, a Request for Supplemental Information on the advisability of holding sand and gravel lease sales offshore Alaska was published in the Federal Register, page 12761. Comments indicated that industry is not interested in a lease sale of sand and gravel at this time and that alternative terms and conditions of the sales should receive more study.

Questions concerning this cancellation should be addressed to John Schindler, Chief, Environmental Assessment Section, Leasing and

Environment Office, Minerals Management Service, 949 East 36th Avenue, Anchorage, Alaska 99508–4302, telephone (907) 261–4650.

Dated: May 11, 1987.

Donald T. Sant,

*Acting Director, Minerals Management Service.*

Approved:

Bruce Blanchard,

*Director, Office of Environmental Project Review.*

[FR Doc. 87–11245 Filed 5–15–87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 61[1]]

### National Classification Committee—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and request for comment.

SUMMARY: The National Classification Committee (NCC) has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement filed under 49 U.S.C. 10706(b). Since several modifications are required before the agreement may receive final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of NCC's proposed amended agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, and from NCC's representatives:

John R. Bagileo, Suite 700, One Thomas Circle NW., Washington, DC 20005
William W. Pugh, 2200 Mill Road, Alexandria, VA 22314

DATES: Comments from interested parties are due June 17, 1987. Replies are due 15 days thereafter.

ADDRESS: An original and 10 copies, if possible, of comments referring to section 5a Application No. 61 sould be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Jane Udovic (202) 275–7831

or

Andrew L. Lyon (202) 275–7691

SUPPLEMENTARY INFORMATION: Additional information is in the Commission's decision. To obtain a copy of the full decision, write to the Office of the Secretary, Room 2215, 12th & Constitution Avenue NW., Washington, DC 20423, or call (202) 275–7428.

We have provisionally approved NCC's agreement as consistent with 49 U.S.C. 10706(b) and *Motor Carrier Rate Bureaus—Implementation of P.L. 96–296*, 364 I.C.C. 464 (1980), and 364 I.C.C. 921 (1981) *(Rate Bureau)*, subject to certain conditions and modifications in the following subject areas: Right of independent action; rate bureau protests; employee docketing; open meetings; quorum standard; and final disposition of cases. We have also offered comments and imposed requirements concerning the agreement generally. NCC has been directed to file a revised agreement conforming to the imposed conditions within 120 days of service of the decision.

In light of the complexity of interpretation involved in determining whether the agreement is consistent with the MCA and *Rate Bureau, supra*, we request applicant and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria, and their application to NCC's agreement. In addition, we request comments on our determination that only some of the requirements of 49 U.S.C. 10706(b) apply to NCC's agreement.

A copy of any comments filed with the Commission must also be served on NCC, which will have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that NCC must submit to the Commission as a condition to final approval of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

(40 U.S.C. 10321 and 10706 and 5 U.S.C. 553)

Decided: May 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre concurred.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–11272 Filed 5–15–87; 8:45 am]

BILLING CODE 7035-01-M

[1] Section 5a was recodified as 49 U.S.C. 10706.

## DEPARTMENT OF JUSTICE

### Information Collection(s) Under OMB Review

May 13, 1987.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form/supporting documents is available); (2) the office of the agency issuing the form; (3) the title of the form; (4) the agency form number, if applicable; (5) how often the form must be filled out; (6) who will be required or asked to report; an estimate of the number of responses; (7) an estimate of the total number of respondents; (8) an estimate of the total number of hours needed to fill out the form; (9) an indication of whether Section 3504(h) of Public Law 96–511 applies; and, (10) the name and the telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer *AND* the Agency Clearance Officer of your intent as early as possible.

**Department of Justice**

*Agency Clearance Officer:* Larry E. Miesse, 202/633–4312.

**Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or the Method of Collection**

(1) Larry E. Miesse, 202/633–4312
(2) Immigration and Naturalization Service, Department of Justice
(3) EMPLOYMENT ELIGIBILITY VERIFICATION
(4) I–9
(5) On occasion
(6) State or local governments, individuals or households, farms, businesses or other for-profit, Federal agencies or employees, non-

profit institutions. The I–9 has been developed to facilitate compliance with Section 101 of the Immigration Reform and Control Act.
(7) 135,000,000 respondents
(8) 24,900,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Fishman—395–7340

Larry E. Miesse,
*Clearance Officer, Department of Justice.*
[FR Doc. 87–11299 Filed 5–15–87; 8:45 am]
BILLING CODE 4410–10–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Record Disposition Authority (Records Schedules)

**AGENCY:** National Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.S. 3303a(a).

**DATE:** Requests for copies must be received in writing on or before July 2, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESS:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

### Schedules Pending Approval

1. Department of the Air Force, N1–AFU–87–9. Records relating to drinking water.

2. Department of the Army (N1–AU–87–11, –12, and –13). Records concerning foreign disclosure of technological information/materiels consisting of technology transfer case files and related reference papers.

3. Department of the Army, N1–AU–87–18. Records relating to appeals made by enlisted personnel of their evaluations.

4. Department of the Army, N1–AU–87–14. Records relating to child care services provided for the dependents of Army personnel.

5. Defense Logistics Agency, Headquarters and Field Units (N1–361–87–1). Records relating to administrative support activities such as supply, security and inspections.

6. Department of the Navy, Chief of Naval Operations, Bureau of Ships (N1–19–87–1). Administrative, facilitative, and non-program records created by the Bureau of Ships (1940–66). Program, policy, and primary mission related records are permanent.

7. Department of Commerce, Office of the Secretary (N1–40–87–2). Schedule for textual records of the Office of Computer Services.

8. Department of Commerce, Office of the Secretary (N1–40–87–3). Textual records of the Management Service Center within the Office of Finance and Federal Assistance.

9. Department of Commerce, Office of the Secretary (N1–40–87–6). Facilitative records of the Office of Technical Services and predecessor organizations, 1945–50.

10. Department of Commerce, National Bureau of Standards (N1–167–87–1). Selected brief public service announcements ("spots") made for TV.

11. Federal Communications Commission, Financial Management Division (N1–173–87–2). Annual budget estimate and justification files.

12. Federal Communications Commission, Field Operations Bureau (N1–173–87–3). Records of licensee violations and fines.

13. Department of Education, Administrative Resources Management Service (N1–12–87–1). Educational films of insufficient value to warrant transfer to the National Archives.

14. Environmental Protection Agency (NC1–412–85–18). Records relating to regional air and hazardous waste programs.

15. Environmental Protection Agency (N1–412–86–4). Administrative and program records of the Office of the Inspector General.

16. Environmental Protection Agency, Offices of Congressional Liaison, and Legislative Analysis (N1–412–87–2). Records relating to the legislative program of EPA.

17. Department of the Interior, U.S. Geological Survey (N1–57–87–1). Records relating to personal property accountability.

18. Agency for International Development (NC1–286–85–4). Comprehensive schedule for records of A.I.D. Overseas Missions.

19. Department of Justice, Federal Bureau of Investigation, Records Management Division (N1–65–87–7, –8, and –9). Documentation containing personal information of insufficient historical or other value to warrant archival retention. Expunction of the information has been requested by the individual to whom it relates.

20. National Archives and Records Administration, Office of the National Archives, Military Archives Division (N2–19–87–1). Accessioned records of the Department of the Navy, Bureau of

Ships. Allowance lists of hull, machinery, and consumable supplies for individual ships, 1911–45.

21. National Archives and Records Administration, Office of the National Archives, Military Archives Division (N2–80–87–1). Accessioned records of the Department of the Navy, Compensation Board, Material Order Section. Purchase orders and related correspondence for minor items used in ship construction 1917–29.

22. Tennessee Valley Authority, Office of Coal Gasification (N1–142–86–4). North Alabama Coal-to-Methanol Project case files.

23. Department of the Treasury, Synthetic Fuels Corporation (N1–56–86–5). Comprehensive schedule for records of the defunct U.S. Synthetic Fuels Corporation.

24. Department of the Treasury, Comptroller of the Currency (N1–101–87–2). Securities disclosure files.

25. Veterans Administration (N1–15–87–7). Loan Guaranty Folders, other than paid in full, which are not in default and on which no claim has been paid and no action is pending by VA.

Dated: May 12, 1987.

**Frank G. Burke,**

*Acting Archivist of the United States.*

[FR Doc. 87–11318 Filed 5–15–87; 8:45 am]

BILLING CODE 7515-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted by June 12, 1987.

**ADDRESSES:** Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5464).

**FOR FURTHER INFORMATION CONTACT:** Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5464) from whom copies of the document are available.

**SUPPLEMENTARY INFORMATION:** The Endowment requests the reinstatement of one previously approved collection, and the approval of one revised collection and one new collection. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Fellowship Grant Compliance Agreement.

*OMB Number:* 3135–0031.

*Frequency of Collection:* One-time.

*Respondents:* Individuals.

*Use:* This information is used to establish the fellowship grant period and payment schedule.

*Estimated Number of Respondents:* 700.

*Estimated Hours for Respondents to Provide Information:* 140.

*Title:* Study Fellowship Grant Compliance Agreement.

*OMB Number:* 3135–0029.

*Frequency of Collection:* One-time.

*Respondents:* Individuals.

*Use:* This information is used to establish the followship grant period and payment schedule.

*Estimated Number of Respondents:* 70.

*Estimated Hours for Respondents to Provide Information:* 18.

*Title:* Final Fellowship Report.

*Frequency of Collection:* One-time.

*Respondents:* Individuals.

*Use:* The information will be used to conduct a post-award evaluation of the fellowship recipient.

*Estimated Number of Respondents:* 700.

*Estimated Hours for Respondents to Provide Information:* 700.

**Murray R. Welsh,**

*Director, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 87–11250 Filed 5–15–87; 8:45 am]

BILLING CODE 7537-01-M

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The Nationafl Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATE:** Comments on this information collection must be submitted by June 12, 1987.

**ADDRESSES:** Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW, Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5464).

**FOR FURTHER INFORMATION CONTACT:** Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5464) from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** The National Endowment for the Arts requests the extension of two currently approved information collections. Each entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Basic State Grant Application Narrative Format.

*OMB Number:* 3135–0027.

*Frequency of Collection:* Average of one response per 1.87 years.

*Respondents:* State governments and regional consortia of state government.

*Use:* Requested information is needed to enable the Endowment to determine whether applicants meet eligibility requirements and published criteria; to provide the Endowment with information on past performance of applicant agencies; and to provide information needed for routine liaison with the state agencies.

*Estimated Number of Respondents:* 50.

*Estimated Hours for Respondents to Provide Information:* 413.

*Title:* Final Descriptive Report for State and Regional Arts Agencies.

*OMB Number:* 3135–0034.

*Frequency of Collection:* Annually.

*Respondents:* Non-profit institutions, state or local governments.

*Use:* Reported information is needed and used for: (1) Monitoring state and regional arts agency program activities; (2) coordination of Endowment programs and activities with those of state and regional arts agencies; and (3) reporting to the Congress and the public on the types of projects, groups, and localities benefitting from state and regional arts agency support.

*Estimated Number of Respondents:* 53.

*Estimated Hours for Respondents to Provide Information:* 252.

**Murray R. Welsh,**

*Director, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 87–11251 Filed 5–15–87; 8:45 am]

BILLING CODE 7537-01-M

## Ad Hoc Committee on State Programs Reassessment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Committee on State Programs Reassessment to the National Council on the Arts will be held on May 27, 1987, from 9:00 a.m.–5:00 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic of discussion will be the State Programs Reassessment.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

May 13, 1987.

[FR Doc. 87–11280 Filed 5–15–87; 8:45 am]

BILLING CODE 7537-01-M

## Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographers Fellowships Section) to the National Council on the Arts will be held on June 1, 1987, from 9:00 a.m.–8:00 p.m., June 2, 1987, from 9:00 a.m.–6:30 p.m., June 3, 1987, from 9:00 a.m.–9:00 p.m., June 4, 1987, from 9:00 a.m.–7:00 p.m. and June 5, 1987, from 9:00–5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC. 20506.

A portion of this meeting will be open to the public if time permits on June 5, 1987 from 4:20 p.m.–5:30 p.m. The topics for discussion will include policy issues.

The remaining sessions of this meeting on June 1, 1987 from 9:00 a.m.–8:00 p.m. June 2, 1987 from 9:00 a.m.–6:30 p.m., June 3, 1987 9:00 a.m.–9:00 p.m., June 4, 1987 9:00 a.m.–7:00 p.m. and June 5, 1987 9:00 a.m.–4:30 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682/5433.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 13, 1987.

[FR Doc. 87–11281 Filed 5–15–87; 8:45 am]

BILLING CODE 7537-01-M

## Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section to the National Council on the Arts will be held on June 4–6, 1987, from 9:00 a.m.–5:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

May 13, 1987.

[FR Doc. 87–11282 Filed 5–15–87; 8:45 am]

BILLING CODE 7537-01-M

## Office for Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (State Programs Section) to the National Council on the Arts will be held on June 4, 1987, from 9:00 a.m.–5:00 p.m. and June 5, 1987, from 9:30 a.m.–1:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic of discussion will be the application review/recommendation, CPAC report, status of the reassessment process, reassessment of the regional organizations and FY 88–89 guidelines.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100

Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

*Director, Council and Panel Operations, National Endowment for the Arts.*

May 13, 1987.

[FR Doc. 87–11283 Filed 5–15–87; 8:45 am]

BILLING CODE 7537–01–M

## Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Artistic Advancement Section) to the National Council on the Arts will be held on June 3–4, 1987, from 9:00 a.m.–5:00 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 4, 1987 from 4:00 p.m.–5:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on June 3, 1987 from 9:00 a.m.–5:00 p.m. and June 4, 1987 from 9:00 a.m.–4:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 13, 1987.

[FR Doc. 87–11284 Filed 5–15–87; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary Systems; Meeting

The ACRS Subcommittee on Auxiliary Systems will hold a meeting on May 29, 1987, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Friday, May 29, 1987—8:30 a.m. until the conclusion of business*

The Subcommittee will discuss the following: (1) Regulatory requirements for designing fire protection systems to prevent inadvertent actuation, (2) recent incidents associated with inadvertent actuation of fire protection systems and their interaction on safety systems, (3) systems interaction effects resulting from the December 9, 1986 Surry incident, (4) manual fire mitigation and associated issues, and (5) propagation of heat and smoke and associated issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact one of the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 11, 1987.

Morton W. Libarkin,

*Assistant Executive Director for Project Review*

[FR Doc. 87–11204 Filed 5–15–87; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards, Subcommittees on Severe Accidents/Probabilistic Risk Assessment; Meeting

The ACRS Subcommittees on Severe Accidents/Probabilistic Risk Assessment will hold a joint meeting on June 3, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, June 3, 1987–8:30 a.m. until the conclusion of business—*

The Subcommittees will begin its review of the Research report NUREG–1150, "Reactor Risk Reference Document", which was issued in February 1987 for public comment.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff members, Dr.

Richard Savio or Mr. Dean Houston (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 12, 1987.

Morton W. Libarkin,

*Assistant Executive Director for Project Review.*

[FR Doc. 87–11319 Filed 5–15–87; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published April 20, 1987 (52 FR 12988). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the June 1987 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

### ACRS Subcommittee Meetings

*Waste Management*, May 18 and 19, 1987, Washington, DC. The Subcommittee will review the following topics: A. *High-Level Waste:* (1) Impact of NMSS reorganization on waste management program, (2) Overview of QA program and activities, (3) Waste acceptance activities regarding the processing of radioactive wastes into glass, (4) Update on the National Bureau of Standards' waste package program, (5) Generic Technical Position (GTP) on Qualification of Existing Data for HLW Repositories, (6) GTP on Peer Review for HLW Repositories, and (7) Report on the Hanford, Washington (BWIP) hydrology meeting. B. *Waste Management Research:* (1) Demonstration of Performance Modeling of a LLW Shallow Land Burial Site—the nitrate disposal pit site at Chalk River, Canada, and (2) Control of Water Filtration into Near Surface LLW Disposal Units. C. *Low-Level Waste:* (1) Update on status of mixed wastes issue, and (2) Greater than Class C wastes.

*Nuclear Plant Chemistry*, May 19, 1987, Washington, DC (1:00 P.M.). The Subcommittee will review SRP section 6.5.2, "Containment Spray as a Fission Product Cleanup System," and SRP section 6.5.5, "Suppression Pools as Fission Product Cleanup Systems."

*Regulatory Policies and Practices*, May 28, 1987, Washington, DC. The Subcommittee will continue its review of the nuclear plant regulatory process as related to specific operating reactor events which have occurred.

*Decay Heat Removal Systems*, May 27, 1987, Washington, DC—POSTPONED.

*Generic Items*, May 27, 1987, Washington, DC. The Subcommittee will discuss the process involved in identifying, prioritizing, resolving and implementing generic issues, and unresolved safety issues (USIs) so as to determine the effectiveness of this process.

*Severe Accidents*, May 27, 1987, Washington, DC. The Subcommittee will continue the review of the proposed generic letter for Individual Plant Examinations (IPEs) as part of the NPR Implementation Plan for the Severe Accident Policy Statement.

*Auxiliary Systems*, May 29, 1987, Washington, DC. The Subcommittee will discuss the following: (1) Regulatory requirements for designing fire protection systems to prevent inadvertent actuation, (2) recent incidents associated with inadvertent actuation of fire protection systems and their interaction on safety systems, (3) systems interaction effects resulting from the December 9, 1986 Surry incident, (4) manual fire mitigation and associated issues, and (5) propagation of heat and smoke and associated issues.

*Regional and I&E Programs*, postponed from May 29, 1987 to August 28, 1987.

*Joint Severe Accidents/Probabilistic Risk Assessment*, June 3, 1987, Washington, DC. "The Subcommittees will begin its review of the Research report NUREG–1150, "Reactor Risk Reference Document", which was issued in February 1987 for public comment.

*Advanced Reactor Designs*, June 17, 1987, Washington, DC. The Subcommittee will discuss and review the three DOE-sponsored advanced reactor designs (one HTGR and two LMRs).

*Thermal Hydraulic Phenomena*, June 18, 1987, Washington, DC. The Subcommittee will review: MIST Program Status including results of MIST Phase III tests, IST Scaling Coordination, and plans for a follow-on test Program.

*Occupational and Environmental Protection Systems*, June 22 and 23, 1987, Washington, DC. The Subcommittee will discuss issue concerning emergency plans and other matters.

*Human Factors*, June 24, 1987, Washington, DC. The Subcommittee will review SECY 87–101, "Issues and Proposed Options Concerning Degree Requirement for Senior Operators."

*Joint Severe Acccidents/Probabilistic Risk Assessment*, July 8, 1987, Washington, DC. The Subcommittee will conclude its review of the Research report NUREG–1150, "Reactor Risk Reference Document", which was issued in February 1987 for public comment.

*Thermal Hydraulic Phenomena*, July 16, 1987, Washington, DC. The Subcommittee will review: (1) Development of Uncertainty Methodology for BE ECCS Codes, (2) Status of the Generic Issue addressing Steam Generator/Steam Line Overfill Issues, and (3) Status of the Water Hammer Issue.

*Babcock & Wilcox Reactor Plants*, July 22, 1987, Washington, DC. The Subcommittee will continue its review of the long-term safety review of B&W reactors. This effort was begun during the summer of 1986; initial Committee comments offered on July 16, 1986 in a letter to V. Stello, EDO.

*Auxilary Systems*, July 23, 1987, Washington, DC. The Subcommittee will discuss with the NRC research staff and the personnel from the Sandia National Laboratories the progress of the "Scoping Study" being performed by the Sandia National Laboratories for NRC on the need for future research in the fire protection area.

*Metal Components*, July 24, 1987, Washington, DC. The Subcommittee will review broad rule scope (GDC–4), SRP Section 3.6.2 (subcompartment pressurization), and other related matters.

*Regional and I&E Programs*, August 28, 1987, Walnut Creek, CA. The

Subcommittee will review the activities under the control of the Region V Office.

*Generic Items,* Date to be determined (July/August), Washington, DC. The Subcommittee will continue the discussion on the effectiveness of the programs that address generic issues and USIs. Also, it will discuss with selected licensees the contribution to plant safety resulting from the implementation of the resolved generic issues and USIs.

*Decay Heat Removal Systems,* Date to be determined (July/August), Washington, DC. The Subcommittee will review: (1) the resolution status for GI 23: "RCP Seal Failure", and (2) the resolution status for GI 124: "AFW System Reliability".

*Auxiliary Systems,* Date to be determined (August), Washington, DC. The Subcommittee will discuss the heating, ventilation, and air conditioning (HVAC) system malfunctions and their impact on safety systems. In addition, it will discuss problems associated with instrument airy systems, AEOD findings concerning the instrument air system malfunctions and its recommendations to alleviate this problem.

*Decay Heat Removal Systems,* Date to be determined (August), Washington, DC. The Subcommittee will continue its review of the NRC Resolution Position for USI A–45..

*Auxiliary Systems,* Date to be determined (September), Washington, DC. The Subcommittee will discuss the criteria used by the utilities to design Chilled Water Systems, associated regulatory requirements, and the criteria being used by the NRC Staff to review the Chilled Water System design.

*Thermal Hydraulic Phenomena,* Date to be determined (September/October), Washington, DC. The Subcommittee will review: (1) Final version of revised ECCS Rule, and (2) status of RES-proposed new integral test facility.

*Joint Seabrook/Occupational & Environmental Protection Systems/ Severe Accidents,* Date to be determined, Washington, DC. The Subcommittees will review Brookhaven National Laboratory's report of the Seabrook Emergency Planning Sensitivity Study and other related matters.

*Seabrook Unit 1,* Date to be determined, Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook Unit 1.

*Joint Standardization of Nuclear Facilities/GE Reactors,* Date to be determined, Washington, DC. The Subcommittees will review the Staff SER and Chapter I of the EPRI Requirements Document, and the GE Licensing Basis Agreement.

**ACRS Full Committee Meeting**

June 4–6, 1987

Items are *tentatively* scheduled:

*A. *NRC Severe Accident Policy (Open)*—Discuss proposed NRC Staff generic letter to implement this plan.

*B. *Foreign Nuclear Power Plant Safety features (Open/Closed)*—Discuss proposed ACRS comments regarding safety features in foreign nuclear power plants.

*C. *NRC Policy Regarding Advanced Reactors (Open)*—Discuss proposed ACRS report on NUREG–1226, Development and Utilization of NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants.

*D. *Station Blackout (Open)*—Discuss proposed ACRS comments on proposed NRC rule on Loss of Alternating Current Power at Nuclear Power Plants (10 CFR 50.63).

*E. *Emergency Core (Open)*—Discuss proposed ACRS comments regarding proposed changes in NRC requirements (e.g., 10 CFR 50.55 Appendix K) regarding emergency core cooling systems in nuclear power plants.

*F. *Renewal of Nuclear Power Plant Licenses (Open)*—Briefing and discussion regarding proposed NRC policy statement on renewal of operating licenses for nuclear power plants.

*G. *Seismic Qualification of Nuclear Power Plant Components (Open)*—Report of seismic walkdown of the Zion Nuclear Station (May 11–22, 1987).

*H. *Long Range Planning (Open)*—Briefing and discussion of proposed NRC Strategic Plan for long-range planning of NRC activities.

*I. *Appointment of New ACRS Members (Closed)*—Discuss the qualifications of candidates proposed for appointment to the ACRS.

*J. *Future Activities (Open)*—Discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

*K. *ACRS Subcommittee Activities (Open/Closed)*—Hear and discuss reports of ACRS subcommittee activities in assigned areas, including performance of auxiliary systems in nuclear power plants, radwaste management and disposal, reliability assurance of nuclear power plant components and systems, resolution of generic issues, regulatory policies and practices, and nuclear power plant chemistry.

*L. *Safety Information Management Systems (Open)*—Briefing regarding the NRC Safety Information Management Systems.

*M. *Improved Safety Regarding Future Light-Water Nuclear Power Plants (Open)*—Briefing and discussion regarding proposed NRC resolution of ACRS recommendations regarding improved safety features in nuclear power plants and ACRS development of additional information regarding this topic.

*N. *Operating Experience (Open/ Closed)*—Briefing and discussion of operating events and incidents at nuclear facilities.

*O. *Control Room Habitability (Open)*—Discuss proposed ACRS comments/recommendations regarding the habitability of control rooms in nuclear power plants.

*P. *Quality Assurance in Nuclear Power Plants*—Discuss proposed ACRS comments regarding consideration of quality assurance programs in foreign nuclear facilities.

July 9–11, 1987

Agenda to be announced.

August 6–8, 1987

Agenda to be announced.

Dated: May 13, 1987.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 87–11320 Filed 5–15–87; 8:45 am]

BILLING CODE 7590-01-M

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[NUREG–0800]

**Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; Issuance and Availability for Comment; Errata to Proposed New Section 6.5.5**

On April 6, 1987, the U.S. Nuclear Regulatory Commission (NRC) published proposed new Section 6.5.5., "Suppression Pools as Fission Product Cleanup Systems," of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," LWR Edition (SRP). Due to word-processing error, parts of the published copies are incorrect. Errata will be sent directly to utilities, utility industry groups and associations, and environmental and public interest groups, and to the NRC Public Document Room.

To permit prospective commenters adequate time to study the proposed new section, the comment period will be extended. Comment should be sent to David L. Meyer, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S.

BEST COPY AVAILABLE

Nuclear Regulatory Commission, Washington, DC 20555, by July 7, 1987.

Dated at Bethesda, Maryland, this 7th day of May, 1987.

For the U.S. Nuclear Regulatory Commission.

Dunwood F. Ross,

*Acting Director, Division of Reactor Accident Analysis Office of Nuclear Regulatory Research.*

[FR Doc. 87-11298 Filed 5-15-87; 8:45 am]

BILLING CODE 7590-01-M

## Carolina Power & Light Co.; (Brunswick Steam Electric Plant, Units 1 and 2); Exemption

I

[Dockets Nos. 50-325 and 50-324]

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-71 and DPR-62 which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2, respectively (Brunswick or the facilities). These licenses provide, among other things, that the facilities are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are boiling water reactors located at the licensee's site in Brunswick County, North Carolina.

II

Section 50.54(o) of 10 CFR Part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules and acceptance criteria for test of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Section III.D of Appendix J required that Type C local leak rate tests be performed during each reactor shutdown for refueling, but in no case at intervals greater than two years.

By letter dated October 25, 1985, the licensee requested exemptions from the Appendix J requirements for Type C testing for certain primary containment penetrations associated with (1) instrument isolation valves, (2) lines terminating below the minimum torus level, and (3) hydrogen/oxygen monitor isolation valves for Brunswick Steam Electric Plant, Unit 2 (Brunswick 2). Additional information clarifying the exemption request was provided by letters dated December 20, 1985, and March 20, 1986. By letter dated September 4, 1986, the licensee withdrew the exemption request related to lines terminating below minimum torus level and provided additional information on the hydrogen/oxygen isolation valves. By letter dated December 11, 1986, the licensee committed to perform soap bubble leak testing of the hydrogen/oxygen monitoring system in lieu of the Type C tests. Soap bubble testing would be performed at the frequency and pressure specified in Appendix J for Type C tests and also after maintenance work performed on the system. By letter dated March 17, 1987, the licensee requested that the exemption request related to the hydrogen/oxygen monitor isolation valves be extended to include the same valves on Brunswick Steam Electric Plant, Unit 1 (Brunswick 1).

With the withdrawal of the exemption request related to Type C testing of lines terminating below minimum torus level, the NRC staff considered only the exemption requests related to instrument isolation valves and hydrogen/oxygen monitor isolation valves. Subsequently, the NRC staff determined that the instrument isolation valves listed in the licensee's October 25, 1985 letter do not require Type C testing because the instrument lines are exposed to containment pressure during Type A tests. These instrument lines are connected to sealed transducers and are designed to withstand the stresses of a design basis loss of coolant accident. Since the valves are required to be operable during normal operation, shutdown and accidents in order to monitor critical parameters, the lines are considered a part of the containment barrier. Therefore, the instrument isolation valves do not require Type C testing to meet the intent of Appendix J; and no exemption is required.

The acceptability of the remaining exemption request relating to certain hydrogen/oxygen monitor isolation valves is addressed below. More details are contained in the Commission's related Safety evaluation (concurrently issued with this Exemption).

III

The exemption request under consideration involves an exemption from the Type C testing requirements of Appendix J for valves in the sample supply and return lines for the hydrogen/oxygen monitors. Type C tests are tests intended to measure containment isolation valve leakage rates in valves whose failure to close after a postulated accident could result in an uncontrolled discharge of radiation outside of the plant. The valves for which an exemption was requested are in the following penetrations in both the Brunswick Unit 1 and Unit 2 primary containments:

| Penetration number [1] | Function [1] |
|---|---|
| X-57A | CAC-AT-4408 Supply. |
| X-57B | CAC-AT-4409 Supply. |
| X-60E | CAC-AT-4409 Supply. |
| X-209B-A | CAC-AT-4409 Supply. |
| X-245E | CAC-AT-4409 Return. |
| X-73A | CAC-AT-4410 Supply. |
| X-73B | CAC-AT-4410 Supply. |
| X-73C(E) | CAC-AT-4410 Supply. |
| X-206A-A | CAC-AT-4410 Supply. |
| X-244B | CAC-AT-4410 Return. |

[1] The penetration and instrument numbers are identical for both Units.

By letter dated February 27, 1987, the licensee provided information relevant to the "special circumstances" finding required by 10 CFR 50.12(a). The licensee stated that these valves are designed to be open after a loss of coolant accident to permit discharge of the containment atmosphere into the closed hydrogen/oxygen sampling system outside of containment. The licensee stated that these sampling system lines constitute an extension of the containment boundary, and with these valves open, leakage outside the plant is prevented by the leak-tight nature of the monitoring system lines. Assurance is provided that system piping will not leak by the performance of periodic integrated leak rate (Type A) tests and soap bubble testing of the pipe joints. The licensee stated that these tests ensure system integrity and therefore, accomplish the underlying purpose of the rule. The licensee further stated that compliance with the Type C test requirements would result in undue hardship. Compliance with Appendix J for this system would result in 20 periodic tests per outage for each unit. These tests involve entry into the primary containment to attach test equipment, thus increasing occupational radiation exposure. The licensee estimated that the performance of the Type C tests on the hydrogen/oxygen monitor isolation valves cost approximately $21,000 per outage. Type C testing would therefore involve higher personnel exposures and financial expenditure compared to the soap bubble tests.

The staff agrees with the licensee's determination and therefore concludes that "special circumstances" exist for the licensee's requested exemption in that application of the regulations in these particular circumstances is not necessary to achieve the underlying purpose of Appendix J to 10 CFR Part 50 and additional costs would be imposed if the exemption were not granted. See 10 CFR 50.12(a)(2)(ii).

We have evaluated other information provided by the licensee to justify the exemption. The instrument lines associated with the penetrations listed above are one-half inch sampling lines connected to hydrogen/oxygen monitors CAC–AT–4409 and CAC–AT–4410 for both units. The piping used in these systems is seismic Category 1, Quality Group 1B. The valves are not designated for containment isolation; and, although they receive an isolation signal after a postulated accident, they are reopened for long-term containment atmosphere monitoring. Previous containment integrated leak rate tests showed no piping leakage problems with the valves opened. The staff concurs that these valves need not be considered necessary for containment isolation if assurance is provided that the system piping is leak-tight and therefore can be considered an extension of containment. However, the system piping contains some threaded and compression fittings which are not qualified to be used as extensions of the containment boundary. Threaded fittings are used in the system to permit disassembly for equipment connections and maintenance. To ensure leak tightness of these fittings, the licensee committed, by letter dated December 11, 1986, to perform soap bubble tests on the system at the same pressure and frequency as would be required for Type C testing by Appendix J and also after maintenance is performed on the system. The licensee has also stated that this system piping will continue to be tested for leak tightness during performance of the containment integrated leak rate tests as required by Appendix J.

Based on the above discussion, the licensee's request for exemption from the requirements of Appendix J for the above-listed penetrations for the hydrogen/oxygen monitoring system is granted for Brunswick 1 and 2.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authroized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption, namely that application of the regulation in the particular circumstances would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule—to ensure the leak-tight integrity of systems which penetrate primary containment, and would impose additional costs. The leak-tight integrity of the hydrogen/oxygen monitoring system is ensured through the performance of soap bubble tests and integrated leak rate tests on the system.

Accordingly, the Commission hereby grants an exemption from the Type C testing requirements of Appendix J to 10 CFR Part 50 for valves in the following hydrogen/oxygen monitoring system penetrations in both the Brunswick 1 and 2 primary containments:

| Penetration No. | Function |
|---|---|
| X–57A | CAC–AT–4409 Supply |
| X–57B | CAC–AT–4409 Supply |
| X–60E | CAC–AT–4409 Supply |
| X–209B–A | CAC–AT–4409 Supply |
| X–245E | CAC–AT–4409 Return |
| X–73A | CAC–AT–4410 Supply |
| X–73–B | CAC–AT–4410 Supply |
| X–73C(E) | CAC–AT–4410 Supply |
| X–208A–A | CAC–AT–4410 Supply |
| X–244B | CAC–AT–4410 Return |

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 17650).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 12th day of May, 1987.

For the Nuclear Regulatory Commission
Steve A. Varga,
*Director, Division of Reactor Projects I–II.*

[FR Doc. 87–11295 Filed 5–15–87; 8:45 am]
BILLING CODE 7590–01–M

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[Docket No. 30–20261; License No. 35–15486–02; EA 86–152]

## Nurrie Construction Co.; Order Imposing a Civil Monetary Penalty

I

Nurrie Construction Company, Muskogee, Oklahoma, (the "licensee") was the holder of License No. 35–15486–02 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") on January 6, 1984, and is now holder of a revised license No. 35–15486–02 issued on May 23, 1986 which is essentially the same as the original license. The current license, as well as the former license, authorizes the licensee to use licensed materials in Troxler Model 3400 Series moisture/density gauges and Troxler Model 2401 surface moisture/density gauges for measurement of properties of materials. The current license expires on January 31, 1989.

II

NRC safety inspections of the licensee's activities under the license were conducted on April 15 and 20–22, 1986. During these inspections, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated October 31, 1986 and nine violations were proposed. The Notice stated the nature of the violations, the provisions of the Commission's requirements that the licensee had violated, and the amount of the proposed civil penalty for the violations. A response, dated November 18, 1986, to the Notice of Violation and Proposed Imposition of a Civil Penalty was received from the licensee.

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations has determined, as set forth in the Appendix to this Order, that the penalty proposed in the Notice of Violation and Proposed Imposition of Civil Penalty for the violations should be reduced because two of the nine violations have been withdrawn. Accordingly, the Notice of Violation has been amended as set forth in the Appendix.

III

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (ACT), 42 U.S.C. 2282, Pub. L. 96–295, and 10 CFR 2.205, It Is Hereby Ordered That:

The licensee pay a civil penalty in the amount of Three Hundred Eighty-Eight dollars ($388) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasuer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

IV

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555 with a copy to the Assistant General Counsel for Enforcement at the same address, and to the NRC Regional Administrator, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

a. Whether the licensee was in violation of Commission requirements as set forth in violations B, C.1, C.2, D.1, D.2, D.3 and E of the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and as amended by this Order, and

b. Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 7th day of May 1987.

For The Nuclear Regulatory Commission.

James M. Taylor,

*Deputy Executive Director for Regional Operations.*

**Appendix—Evaluation and Conclusion**

On October 31, 1986, a Notice of Violation and Proposed Imposition of Civil Penalty was issued to the licensee for nine violations of NRC requirements. The licensee responded to the Notice in a letter dated November 18, 1986, and indicated that it did not deny that six of the violations occurred, but questioned the validity of the remaining three violations. Provided below are (1) a restatement of each violation, (2) a summary of the licensee's response, and (3) the NRC evaluation of the licensee's response. Several of the licensee's responses suggested that the Notice of Violation and Proposed Imposition of Civil Penalty referred to the wrong license conditions. Contrary to that belief, the license in effect during the inspection was referred to properly. The confusion resulted from a subsequent license amendment which caused some conditions to be renumbered.

**A. Restatement of Violation A**

License Condition 13 requires, in part, that each sealed source shall be tested for leakage and/or contamination at intervals not to exceed six months.

Contrary to the above, from January 1984 to April 1986, the licensee had not performed about 25 percent of the required source leak tests on the sealed source in Troxler Density Gauge, Model 2401, Serial No. 1939.

*Summary of Licensee's Response to Violation A*

The licensee contends that Troxler Gauge Model 2401, Serial No. 1939 was in storage during the periods in question. Therefore, the licensee asserts that a violation did not occur since leak tests are not required when a gauge is in storage.

*NRC Evaluation of Licensee's Response*

This violation was cited by the NRC inspector because leak test records were not found for the last half of 1984 or the first half of 1985 and the licensee had not previously indicated that the Troxler Gauge was not being used and was in storage. However, based upon the licensee's statements in its letter of November 18, 1986, this violation is withdrawn.

**B. Restatement of Violation B**

License Condition 15 requires, in part, that the licensee conduct a physical inventory every six months to account for all sealed sources received and possessed under the license.

Contrary to the above, from January 1984 to April 1986 the licensee had not performed any physical inventories of sealed sources in its possession.

*Summary of Licensee's Response to Violation B*

The licensee contends that physical inventory records of the licensed material were not in their files at the time of inspection, but they always maintain the inventory records.

*NRC Evaluation of Licensee's Response*

At the time of the inspection, the comptroller indicated that he did not know of any physical inventories that had been performed. Since no inventory records were found, a violation was proposed. The licensee's response to the Notice of Violation and Proposed Imposition of Civil Penalty indicated that physical inventory records had been available. Subsequently, the NRC requested the licensee to submit copies of those records. The licensee submitted shipping records, not inventory records. Even these shipping records, which the NRC does not consider to be adequate substitutes for the physical inventory records, indicated that six inventories were missing for two gauges. Therefore, the violation occurred as stated.

**C. Restatement of Violation C**

License Condition 16 requires licensed material to be transported in accordance with 10 CFR Part 71. 10 CFR 71.5 requires compliance with the applicable requirements of the appropriate Department of Transportation regulations in 49 CFR Parts 170 through 189.

1. 49 CFR 173.415(a) requires, in part, that each shipper of a specification 7A package must maintain the package performance test records for at least one year after the latest shipment.

Contrary to the above, from January 1984 to April 1986, the licensee had not maintained the shipping package test records.

2. 49 CFR 172.200 requires, in part, shipping papers to be prepared for each shipment and 49 CFR Part 203(d) specifies the information required on the shipping papers.

Contrary to the above, from January 1984 to April 1986, shipping papers were not used by the licensee during transportation of licensed materials in its own vehicles and several shipments of licensed materials were made by common carriers without shipping papers containing the radionuclide or activity.

*Summary of Licensee's Response to Violation C*

Regarding Violation C.1, the licensee contends that it was not aware of the requirement to maintain package performance test records.

Regarding Violation C.2, the licensee asserts that shipping papers were always used when the Troxler gauges were transported and each company vehicle had a copy of a permanent type shipping paper in the cab when transporting the gauges.

*NRC Evaluation of Licensee's Response*

The licensee's lack of understanding of the requirement to have package performance test records does not provide a basis for withdrawal of the violation. Licensees are expected to be knowledgeable about applicable regulatory requirements. Therefore, Violation C.1 remains as stated.

Violation C.2 was cited because the comptroller indicated that he thought current shipping papers were not being utilized each time the gauges were transported and the absence of records verified his belief of this matter. The NRC inspector did find shipping papers for licensed material being shipped by common carriers, but these papers did not contain all the required information. The licensee's response to the Notice of Violation and Proposed Imposition of Civil Penalty indicated that each company vehicle contained permanent shipping papers and that individual shipping papers were used for common carrier shipments. The violation is hereby modified to read, "Contrary to the above, from January 1984 to April 1986, several shipments of licensed materials by common carrier were not accompanied by shipping papers showing the radionuclide or activity."

**D. Restatement of Violation D**

License Condition 17 requires that all licensed material be possessed and used in accordance with statements, representations, and procedures contained in application dated November 1, 1983, and letter dated December 8, 1983.

1. The license application, dated November 1, 1983, names a specific individual as Radiation Protection Officer (RPO).

Contrary to the above, qualified individuals other than the authorized RPO acted as the RPO. Specifically, the authorized RPO left the company in 1982, and his duties as RPO were assumed by two other individuals of Nurrie Construction Company. Additionally, in April

1986 the company named a third individual as RPO.

2. The licensee's letter, dated December 6, 1983, states, in part, that workers would wear a film badge or other dose measuring device when using or transporting the device.

Contrary to the above, during March and April 1986, a worker did not wear a film badge when he used the moisture/density gauge about 11 times.

3. The licensee's letter, dated December 6, 1983, states, in part, that when the gague is stored, the area would be locked and that security of the instrument would be maintained at all times.

Contrary to the above, the gauge was stored in an area that was not locked and security of the instrument was not maintained. Specifically, on April 20, 1986, the moisture-density gauge was stored in an unlocked construction trailer and no one was present to prevent unauthorized removal of the gauge.

*Summary of Licensee's Response to Violation D*

The licensee admitted Violation D and has implemented corrective actions, which include requesting an amendment to the license, estimating exposures and revising dosimetry records, and stating its intent to always maintain strict security with gauges.

*NRC Evaluation of Licensee's Response*

Since the licensee admitted the violation, Violation D remains as stated.

**E. Restatement of Violation E**

10 CFR 20.401(a) requires in part that each licensee shall maintain records showing the radiation exposures of all individuals for whom personnel monitoring is required under 10 CFR 20.202.

Contrary to the above, from January 1984 to April 1986, the licensee had not maintained the monthly dosimetry records for personnel for whom record keeping is required under 10 CFR 20.202.

*Summary of Licensee's Response to Violation E*

The licensee contends that, if records had not been misfiled, this violation would not have occurred because adequate records exist in the area of personnel monitoring.

*NRC Evaluation of Licensee's Response*

As a result of the licensee's response, the NRC requested the licensee to submit copies of those records. As received, those records were deficient in that several months of exposure data were missing. Therefore, the violation remains as stated.

**F. Restatement of Violation F**

10 CFR 30.51(a) requires in part that each person who receives byproduct material pursuant to a license shall keep records showing the receipt, transfer, and disposal of byproduct material.

Contrary to the above, from January 1984 to April 1986, the licensee failed to maintain receipt records of the licensed radioactive materials in its possession.

*Summary of Licensee's Response to Violation F*

The licensee's response stated that it had shipping records proving receipt, delivery, or transfer of sealed sources.

*NRC Evaluation of Licensee's Response*

On February 24, 1987, the licensee submitted two "shipped from and shipped to" forms showing shipments of Troxler gauges between the licensee and Troxler. Pending further review, these records will be accepted as satisfying the receipt and transfer record requirements of 10 CFR 30.51(a). Therefore, Violation F is hereby withdrawn.

**G. Summary of Licensee's Request for Mitigation**

The licensee states that it has improved its organization and has corrected all of the problems brought to its attention by the NRC. The licensee asserts that full compliance was achieved within days after the inspection and that its mistakes should not necessitate a Severity Level III problem and do not merit a civil penalty.

*NRC Evaluation of Licensee's Request for Mitigation*

During the NRC inspection, it was apparent to the NRC inspector that licensee personnel lacked knowledge of NRC requirements and that an overall strengthening of management control of licensed activities was necessary. Even with the withdrawal of two of the violations, as discussed above, the weaknesses identified in the license's control of its licensed activities is evidenced by the seven remaining violations and these violations constitute a problem are warranting a Severity Level III. No mitigations is considered appropriate.

**Conclusion**

Violations A and F have been withdrawn. The other violations occurred as stated in the Notice, as amended in this Appendix, and the licensee has not provided information to support a reduction in the severity level of the problem. Based on the reductions in the number of violations, a sufficient basis exists for reduction of the proposed civil penalty. Therefore, a civil penalty in the amount of Three Hundred Eighty-Eight Dollars (388) is imposed.

[FR Doc. 87-11296 Filed 5-15-87; 8:45 am]

BILLING CODE 7590-01-M

## University of Wisconsin; Order Imposing Civil Monetary Penalty

**[Docket No. 30-03465; Licensee No. 48-09849-18; EA 86-179]**

I

The University of Wisconsin, Madison, Wisconsin (licensee) is the holder of Materials License No. 48-09849-18 issued by the Nuclear Regulatory Commission (NRC) on March 12, 1981. The license authorizes the licensee to conduct (1) research and development; (2) medical research, diagnosis, and therapy; and (3) tracer studies in accordance with the conditions specified therein.

II

A special safety inspection of the licensee's activities was conducted from September 2 through 19, 1986. The results of that inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated December 11, 1986. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice by two letters dated January 6, 1987.

III

After consideration of the licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Regional Operations, has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, It Is Hereby Ordered That:

The licensee pay a civil penalty in the amount of One Thousand Two Hundred Fifty Dollars ($1,250) within 30 days of the date of this Order by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 7th day of May 1987.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Deputy Executive Director for Regional Operations.*

**Appendix—Evaluations and Conclusions**

On December 11, 1986, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC special safety inspection. The University of Wisconsin, Madison, Wisconsin, responded to the Notice by two letters dated January 6, 1987. In its response, the licensee admits the violations occurred as described in the Notice, but requests remission or further mitigation of the proposed civil penalty.

**I. Restatement of Violations**

10 CFR 20.201(b) requires each licensee to make or cause to be made such surveys as (1) may be necessary for the licensee to comply with the regulations in this part and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

10 CFR 20.105(b) requires in part that no licensee possess, use, or transfer licensed material in such a manner as to create in any unrestricted area radiation levels that, if an individual were continuously present in the area, could result in that individual receiving a dose in excess of two millirems in any 1 hour, or 100 millirems in any 7 consecutive days.

1. Contrary to the above, on June 26 and 27, 1986, the licensee failed to perform a survey of unrestricted areas to assure compliance with 10 CFR 20.105(b) following the implant of 557 iridium-192 seeds in animals at the Charmany Instructional Facility.

2. Contrary to the above, from June 26 until August 21, 1986, the licensee failed to perform reasonable surveys under the circumstances to determine the extent of radiation hazards that may have been present. Specifically, surveys of the floor, rubber mats, and animal feces were not conducted to detect loose radioactive sources immediately prior to having the feces washed down the drain. This resulted in the loss of seven iridium-192 sealed sources.

Collectively, these violations have been categorized as a Severity Level III problem (Supplement IV).

Civil Penalty—$1,250—assessed equally among the violations.

**II. Licensee's Response and NRC Evaluation of Licensee's Response**

In its response, the licensee admits the violations occurred as described in the Notice, states reasons why the violations occurred, states corrective action taken and steps to avoid further violations as well as the dates when full compliance was achieved. The licensee also acknowledges that the NRC mitigated the base civil penalty by 50 percent for unusually prompt and extensive corrective action. However, the licensee submits that, given all the circumstances of the incident, the violations identified are not at the same level of concern as the example of a Severity Level III violation set forth in Supplement IV.C.2 of the Enforcement Policy regarding radiation exposure rates in unrestricted areas. The licensee also requests remission or further mitigation of the proposed civil penalty based on the additional reasons set forth below:

**A. Severity Level**

*Licensee Assertion*

The licensee agrees that the unrestricted areas were not surveyed, but argues that the likelihood of exposures at the level identified in Supplement IV.C.2 of the Enforcement Policy as meriting classification at Severity Level III was small. The licensee also asserts that the loss of the sources occurred because of a series of unforseeable happenings, and it is mere speculation to conclude that adequate control and oversight were not exercised.

*NRC Evaluation*

The violations described in the Notice concern the licensee's failure to conduct adequate radiation hazard surveys in unrestricted areas as well as within the animal experimental area, which resulted in the loss of seven sealed iridium-192 sources. As such, these violations represent a failure to control licensed material, which is properly categorized at Severity Level III pursuant to Supplement IV.C.2 of the Enforcement Policy.

It is not speculation to say that increased oversight would have recognized and prevented the violations. This was an unusual experiment which was authorized without a full review by the Radiation Safety Committee. Furthermore, the health physics staff was not actively involved in the experiment until the seeds were reported missing. More active health physics staff involvement would have resulted in more appropriate surveys and radiological controls being performed.

**B. Remission or Mitigation**

*Licensee Assertion*

The licensee offers five reasons why it believes the proposed penalty should be remitted or mitigated further based on its prompt actions taken in response to the event. These are: (1) Upon notification that sources were missing, University personnel immediately surveyed the facility and physically inspected and surveyed the grounds surrounding the facility, (2) when sources could not be located within the facility, health physicists physically inspected and surveyed the creek which receives effluent water from the sewer system and did dosimetry calculations for potential exposures, (3) the NRC was promptly notified, (4) a press release was prepared and a press conference was held, and (5) the primary investigator's authorization to use radio-nuclides was revoked pending full University Radiation Safety Committee (URSC) review and the radionuclides in his possession were confiscated.

The licensee also asserts that, in addition to these immediate steps, the University critically reviewed the internal procedures used to review and monitor experiments with radionuclides and extensively revised its process for reviewing and approving radionuclide experiments. The licensee also states that assessment of 50 percent of the fine is inappropriate because of the University's past record of compliance and commitment to safety.

*NRC Evaluation*

The NRC has already recognized both the licensee's immediate and long-range corrective actions, and has reduced the base civil penalty by the maximum allowable 50 percent for unusually prompt and extensive corrective actions. Further reduction for the licensee's past record of compliance is not considered appropriate because of the seriousness of this event which could have been prevented by appropriate surveys in response to available information.

With regard to the licensee's assertion that the NRC was promptly notified, the NRC agrees that the licensee promptly reported the loss of licensed material once the licensee determined the seeds were lost. However, the NRC Enforcement Policy, 10 CFR Part 2, Appendix C, Section V.B.1 states, "Reduction of up to 50 percent of the base civil penalty may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In weighing this factor, consideration will be given to, among other things, the length of time the violation existed prior to discovery, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report." In addition, immediate corrective action is required to apply this factor. This experiment began on June 26, 1986, and concluded on August 21, 1986. On June 29, 1986, the licensee became aware that there were problems with the experiment when it discovered a template holding sources was partially hanging from an animal and some sources had separated

from the template and migrated into the animal tissue. Furthermore, the licensee found one catheter containing sources loose on the floor. The licensee discovered the discrepancy in a source inventory on August 21, 1986. On August 25, 1986, the licensee determined that the sources were lost and notified the NRC as required by 10 CFR 20.402. The licensee had ample opportunity to involve the health physics staff and incorporate comprehensive survey procedures, which may have averted the loss of sources, more promptly than it did. Therefore, mitigation for this factor is not warranted.

**III. NRC Conclusion**

The NRC staff has concluded that all violations did occur as originally stated in the December 11, 1986 Notice of Violation and Proposed Imposition of Civil Penalty and that the problem represented by these violations was properly categorized at Severity Level III in accordance with 10 CFR Part 2, Appendix C, Supplement IV. In addition, the staff concludes that a sufficient basis was not provided for remission or further mitigation of the proposed civil penalty. Therefore, the NRC staff has concluded that a $1,250 civil penalty should be imposed.

[FR Doc. 87-11291 Filed 5-15-87; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-352-OLA ASLBP No. 87-550-03-LA]

**Philadelphia Electric Co.; Establishment of Atomic Safety and Licensing Board**

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

**Philadelphia Electric Co. Limerick Generating Station, Unit 1 Facility Operating License No. NPF-39**

This Board is being established pursuant to a notice published by the Commission on March 12, 1987, in the **Federal Register** (52 FR 7675-7676, 7691-7693) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing." The proposed amendment would authorize the licensee to revise the reporting requirements on primary coolant iodine spikes as described in the Model TS accompanying Generic Letter No. 85-19 issued on September 27, 1985.

The Board is comprised of the following Administrative Judges:

Sheldon J. Wolfe, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Peter A. Morris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 7th day of May 1987.

B. Paul Cotter, Jr.,

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 87-11205 Filed 5-15-87; 8:45 am]

BILLING CODE 7590-01-M

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## POSTAL SERVICE

**Privacy Act of 1974; Matching Program—Postal Service/State of Alaska Department of Revenue**

**AGENCY:** Postal Service.

**ACTION:** Notice of matching program—Postal Service/State of Alaska Department of Revenue.

**SUMMARY:** The purpose of this document is to publish notice of the Postal Service's plan to participate in a computer matching program with the State of Alaska Department of Revenue to identify and locate postal employees who are absent parents owing child support obligations in Alaska.

**DATE:** The match is expected to begin in or about May 1987.

**ADDRESS:** Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday in Room 8121 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Betty Sheriff, Records Office, (202) 268-5158.

**SUPPLEMENTARY INFORMATION:** The Child Support Enforcement Division of the State of Alaska Department of Revenue is charged with the responsibility of enforcing child support orders issued by courts in other jurisdications and establishing, enforcing, and administering child support orders and obligations in the State of Alaska. The Postal Service has agreed to assist that office in its efforts to identify and locate current postal employees who have failed to fulfill child support obligations so that those obligations may be enforced. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

**Report of a Matching Program: U.S. Postal Service (USPS) and State of Alaska Department of Revenue (A-DOR).**

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the A-DOR will submit to the USPS a computer tape of the names, social security account numbers (SSANs), and dates of birth of absent parents within the State of Alaska. The USPS will match that tape against its payroll system files (USPS 050.020, Finance Records—Payroll System) for the purpose of identifying postal employees who are absent parents delinquent in their child support obligations and will disclose to the Child Support Enforcement Division of the A-DOR the following information about resultant "hits": Name, SSAN, date of birth, home address, facility where employed, and gross wage information.

The validity of "matched" employee/absent parent information will be verified by the Child Support Enforcement Division of the A-DOR. Subsequent enforcement actions may include service of notice and/or garnishment of or lien against assets to collect delinquent child support from the nonsupporting parent. Further, the USPS Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Any actions taken as a result of the match will comply with all applicable due process standards. Disclosure of this information is authorized by routine use No. 32 in USPS 050.020, Payroll System, most recently published in 52 FR 6251 of March 2, 1987.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in May 1987 and end no later than November 1988.

d. *Security:* The USPS personnel who perform the match will: (a) Have the only USPS access to the A-DOR

computer tape: (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to the A–DOR will be used by authorized A–DOR personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by A–DOR and will return it upon completion of the match. All information complied as a result of this matching effort must be destroyed as soon as the determination is made that no irregularity has occurred.

f. *Other Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

**Fred Eggleston,**

*Assistant General Counsel Legislative Division.*

[FR Doc. 87–11216 Filed 5–15–87; 8:45 am]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–24438; File No. SR–BSE–86–5]**

### Self-Regulatory Organizations; Proposed Rule Changes by the Boston Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78 s(b)(1), notice is hereby given that on November 12, 1986 the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed changes as described in Items I, II and III below, which items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Changes

The proposed amendments to Chapter XXXII, sections 31 and 33 conform the Boston Stock Exchange's arbitration fee schedules to those of the New York Stock Exchange ("NYSE").[2] The proposed Chapter XXXII, section 34 would require parties to an arbitration hearing to exchange documents in their possession which they intend to introduce to the arbitrators at least ten days before a hearing.[3]

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements governing the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

The purpose of the proposed rule change is to conform the BSE's arbitration fee schedules to those adopted by the Uniform Code of Arbitration. The Commission recently published notice of and solicited comments on a similar conforming arbitration amendment submitted by the New York Stock Exchange, Inc. ("NYSE").[4] Such conformity is important not only to ensure consistent procedures among self-regulatory organizations, but also because many of the arbitration filings brought to the BSE are subsequently referred to other self-regulatory organizations.

Proposed new section 34 would be an experimental rule for a one year pilot period. If approved, it would require that parties to an arbitration proceeding exchange documents to be introduced to the arbitrators at least ten days prior to the scheduled hearing date.[5] Arbitrator time will be saved both in terms of session hours saved and adjournments avoided. For example, when documents are introduced at a hearing, parties may need to recess to read the documents which can cause session delays. Parties have also requested adjournments at the hearing because they were not able to anticipate the contents of an opposing party's exhibits and hence could not effectively address the documents. If the parties are compelled to exchange relevant documents prior to the commencement of a hearing, the arbitration process will be improved. The length of this experiment will be one year. The NYSE also proposed this change in its arbitration rule filing.

(B) The statutory basis for the proposed rule changes is section 6(b)(5) of the Act in that they promote just and equitable principles of trade by ensuring that members and member-organizations and the public have an impartial forum for the resolution of their disputes.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule changes.

### III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed changes, or

(b) Institute proceedings to determine whether the proposed rule changes should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities, and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the

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[1] The BSE filed Amendment No. 1 to its proposed rule change on April 10, 1987.

[2] In its filing, the BSE included copies of its revised fee schedule. Copies of the fee schedule are available from the Commission at the address noted in section IV below and from BSE.

[3] As discussed in more detail below, Amendment No. 1 indicates that proposed Chapter XXXII, section 34 concerning the exchange of documents will be implemented for a one year period.

[4] See, Securities Exchange Act Release No. 24282, March 5, 1987, 52 FR 7722, March 13, 1987.

[5] We note that under the rule the arbitrator may exclude any document not so exchanged.

file number in the caption above and should be submitted by June 8, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 8, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11241 Filed 5-15-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24440; File No. SR-CBOE-87-15]

## Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Government Securities Options Permits

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Definitions

Rule 1.1. No change except as follows.

[Nonequity Options Permit Holder

(hh) The terms "nonequity options permit holder" or "permit holder" mean a qualified individual or organization with an approved nominee that has been issued a nonleasable, nontransferable temporary permit for effecting transactions in nonequity, that is, debt, options designated by the Board. Each permit holder shall be subject to the provisions of the Constitution and Rules that are applicable to the owner of a regular Exchange membership, unless exempted from such provisions by the Board; provided, however, Rule 3.12, which concerns the ownership of membership, Rule 3.13, which concerns the purchase of membership, and section 2.6 of the Constitution, which concerns voting and other rights and powers, shall not apply to a permit holder in his or its capacity as such.]

[Nonequity] *Government Security* Options Permits

Rule 3.20. Permits issued for effecting transactions *pursuant to Exchange Rules and policies* in [nonequity] *Government security* options *settled by physical delivery* shall be effective for one year and shall be renewable annually for a maximum duration of three (3) years from the date of issuance. Permits which are not renewed shall be retired and shall not be reissued by the Exchange. Permits not issued by December 31, 1984 shall be withdrawn.

Privileges and Responsibilities of Permit Holders

Rule 3.21. (a) Privileges. *Government security* [P]permits issued by the Exchange shall entitle the holders to:

(i) Be admitted to the Floor of the Exchange during business days;

(ii) Enter into principal transactions as a Market-Maker in [nonequity] *Government security* options during the prescribed business hours and days;

(iii) Purchase a regular membership during the last month of the three-year permit period in accordance with procedures established by the Exchange;

(iv) Such other privileges as may subsequently be granted by the Board.

Permit holders, however, shall have no right to petition or to vote at Exchange meetings or elections *and shall have no interest in Exchange assets.*

(b) Nontransferability. The foregoing privileges may not be transferred or assigned; however, an organization with an approved permit-holder nominee may, upon approval of the Exchange, substitute another permit-holder nominee.

(c) Dues and Fees. Fees for the first fifty (50) permits [issued in connection with the opening of the GNMA options market] shall be ten-thousand dollars ($10,000) per year. Permit holders shall not be charged Exchange dues, but each permit holder and applicant for a permit shall be subject to all other fees and charges established by the Board.

. . . Interpretations and Policies:

.01 The Board has entitled permit holders to enter into agency transactions as Floor Brokers in [nonequity] *Government security* options during the prescribed business hours and days.

Procedures for *Government Security* Permit Issuance

Rule 3.22. Permits may be issued to qualified applicants who are either individuals or organizations with an approved nominee meeting the same qualifications as an individual permit holder. The Membership Committee shall select the applicants who appear most qualified based on demonstrated knowledge of and experience in the securities and related industries, adequacy of financial resources and successful completion of a proficiency examination.

*Additional Government Security Options Permits*

*Rule 3.22A. The Exchange may issue up to 20 three-year permits for effecting transactions in Government security options settled by physical delivery, since no new permits may be issued under Rule 3.20. All of these permits shall expire three years after [insert date to be set by the Exchange after SEC approval]. These additional permits shall have the same terms as the old permits with the following exceptions. There is no right to purchase a regular membership. No member or member organization may hold more than two permits. A member who is a sole proprietor may employ a nominee to use a permit, with the approval of the Membership Committee. The Membership Committee may withdraw, temporarily or permanently, some or all unused permits.*

Admission to and Conduct on the Trading Floor

Rule 6.20. No change except as follows.

. . . Interpretations and Policies:

.03 Rule 3.21 provides that a [nonequity] *Government securities* options permit holder is entitled to enter into principal transactions as a Market-Maker and agency transactions as a Floor Broker in [nonequity] *Government securities* options *settled by physical delivery* on the floor of the Exchange until his permit expires.

Letters of Authorization

Rule 6.72. No change except as follows.

. . . Interpretations and Policies:

.01 Floor brokers executing [nonequity] *Government security* options must have a separate Letter of Authorization issued by a Debt Securities Clearing Member.

Letters of Guarantee

Rule 8.5. No change except as follows.

. . . Interpretations and Policies:

.01 Market-Makers entering into [nonequity] *Government securities* options transactions must have a separate Letter of Guarantee issued by a Debt Securities Clearing Member.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The proposed rule change would enable the Exchange to issue up to 20 permits that would give market-makers and floor brokers inexpensive access to the trading of Government securities options settled by physical delivery. With the exceptions noted in proposed Rule 3.22A, these new permits have the same terms as those permits approved by the SEC in filing SR–CBOE–81–13. There are only two of the old permits in existence at present, and no additional old permits can be issued. Therefore the Exchange wishes to create new permits in order to provide inexpensive access to attract market-makers and floor brokers to trade Government securities options.

In addition, this proposed rule change replaces the term "nonequity options" with the more precise term "Government securities options settled by physical delivery" in the Rules concerning both the old and the new permits. The definition of a "nonequity options permit holder" contained in Rule 1.1(hh) is omitted as unnecessary, since the permit Rules in Chapter Three provide an adequate definition. Definition 1.1(ii) will become 1.1(hh). The statutory basis for this proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that the proposed rule changes are designed to facilitate transactions in Government securities options settled by physical delivery.

*(B) Self-Regulatory Organization's Statement on Burden on Competition.*

The proposed rule change will not impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 8, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 11, 1987.

Jonathan G. Katz,

*Secretary.*

[FR. Doc. 87–11290 Filed 5–15–87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34–24445; File No. SR–NASD–87–22]**

**Self-Regulatory Organizations; Proposed Rule Changes by National Association of Securities Dealers, Inc. Relating to Amendments to Code of Arbitration Procedure**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD proposes to change its Code of Arbitration Procedure ("Code") to conform it to changes in the securities industry's Uniform Code of Arbitration regarding the schedule of fees to be deposited by claimants with the NASD at the beginning of the arbitration, and the amounts ultimately chargeable to the parties for the use of the arbitration forum.[1]

In addition, the NASD proposes to amend the Resolution of its Board of Governors concerning failure to act under provisions of the Code, to provide that all arbitration awards must be honored by a cash payment to the prevailing party of the exact dollar amount of the award and must be honored upon receipt of the award or within such other time period as may be prescribed by the award.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In the filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C), below, of the most significant aspects of such statements.

**III**

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) *Increase in Filing Fees.* A Uniform Arbitration Code ("Uniform Code") has been developed by the Securities Industry Conference on Arbitration

[1] In its filing, the NASD included copies of its revised fee schedule. Copies of the fee schedule are available from the Commission at the address noted in section IV below and from the NASD.

("SICA"), which is composed of the representatives of the NASD, nine other self-regulatory organizations, four public members, and the Securities Industry Association. The Uniform Code, as implemented by the various self-regulatory organizations, has established throughout the securities industry a uniform system of arbitration procedures. The proposed rule change is intended to conform the provisions of the Association's Code of Arbitration Procedure to amendments to the Uniform Code approved by SICA.

The proposed increase affects cases where the amount in controversy is over $10,000. The fee increase allows the NASD to charge the users of the arbitration facility a larger share of the cost while still maintaining a fee schedule that makes arbitration affordable to the public. The fee change reduces the amount of deposit required for claims between $20,000 and $50,000, making the filing fee less burdensome. The fee schedule places a higher fee on claims exceeding $500,000. Claims in this category require multiple hearing sessions of over one day's duration and are administratively more expensive to conduct. Even with this fee increase, the arbitration service is a highly subsidized activity.

(21) *Manner and Time of Payment of Awards.* The proposed change is intended to clarify that awards must be paid in cash, rather than by offsetting the award against other monies owed to the prevailing party. In a 1986 decision of the NASD's Board Governors, a decision of a District Business Conduct Committee was reversed because NASD did not have a rule or written policy specifically prescribing or prohibiting a particular method of payment. The District Committee had imposed sanctions on the respondent broker/dealer, which had offset a debit balance in its customer's account in satisfaction of an arbitration award rendered against it in an action brought by the customer. The District Committee found that the respondent did not remit a cash payment to the claimant customer for more than one year after the award was rendered, and then only after the institution of disciplinary proceedings. In order to avoid such delays in the future, the Board determined to amend its Resolution to provide for cash payment and timely payment of awards.

These changes are consistent with section 15A(b)(6) of the Securities Exchange Act of 1934, which requires that the Association's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect the investors and the public interest; and with section 15A(b)(5) of that Act, which requires that the Association's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Comments were neither solicited nor received.

**IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**V. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, an all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–22 and should be submitted by June 8, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: May 12, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–11289 Filed 5–15–87; 8:45am]

BILLING CODE 8010–01–M

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**[Release No. 34–24239; File No. SR–PHLX–87–17]**

**Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 27, 1987 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Philadelphia Stock Exchange ("PHLX" or the "Exchange") proposes to amend its Exchange Rule 101 to modify the hours business trading may be conducted in foreign currency options. Italics indicates material proposed to be added; brackets indicate material proposed to be deleted.)

Dealings Upon the Exchange

Hours of Business

Rule 101. Except as otherwise ordered by the Board of Governors, the Exchange shall be open for the entrance of members upon every business day, at 8:00 A.M. The Exchange shall conform with daylight saving time when effective in the City of Philadelphia. The Board of Governors shall determine by resolution the hours during which business may be transacted on the Exchange. The Board of Governors has resolved that no option series shall freely trade after 4:10 P.M. except that Value Line Index Options and National Over-the-Counter Index Options shall freely trade until 4:15 P.M. each business day. The Board of Governors has resolved that except under unusual conditions as may be determined by the Board (or the *Foreign Currency* Options Committee or the

Exchange official or officials designated by the Board) foreign currency option *trading sessions shall be conducted in the evening from 7:00 P.M. to 11:00 P.M. Sundays through Thursdays and in the daytime from 8:00 A.M. to 2:30 P.M. Mondays through Fridays.* [transactions may commence on the exchange at 8:00 A.M. each business day and may be effected on the Exchange until 2:30 P.M. each business day at which time no further foreign currency option transactions may be made.]

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change*

The purpose of the proposed rule change is to extend trading hours in foreign currency options. The PHLX proposes to add an evening trading session from 7:00 P.M. to 11:00 P.M. Sundays through Thursdays to accommodate market interest in the Far East. In this regard the Exchange recently established liaison offices in Hong Kong and Tokyo. Exchange executives accompanied by representatives of member organizations and the Options Clearing Corporation recently completed an extensive trip to various Far East money centers to assess market potential and penetration of PHLX foreign currency options as a strategic investment and risk hedging product. The Exchange has been particularly encouraged by the trading activity of the recently introduced Australian Dollar foreign currency option which, despite trading during off-business hours respecting the primary inter-bank market, have traded 800 contracts average daily trading volume since their introduction on January 19, 1987. The PHLX believes that evening trading sessions in foreign currency options will provide it a significant real time opportunity to meet the exchange rate risk protection and related hedging needs of Far East manufacturing, banking and other commercial firms during Far East business hours.

For virtually all purposes, the regular daytime trading session and the preceding evening session will be treated as parts of a single trading day. Thus, with the addition of the evening session, each trading day will be deemed to commence at 7:00 p.m. and continue until 2:30 p.m. the following afternoon. For example, open interest and volume will be calculated at the end of the regular daytime trading session reflecting activity from the entire trading day (*ie.*, the prior evening session plus the regular daytime trading session). Margin requirements will be based on a net calculation of positions created throughout the entire trading day (*ie.*, the daytime trading session plus the prior evening session). The Exchange contemplates that evening trading sessions will not necessitate any changes in current procedures respecting options exercises or assignments. The Exchange's real time trade comparison system will be utilized in all trading sessions and augmented computer processing of evening trading sessions transactions will be initiated by the Exchange and OCC, respectively.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("the Act"), and in particular, section 6(b)(5) of the Act. Implementation of the proposed rule change will allow the Exchange to offer an organized trading market during Far East business hours, during which no such market currently is available. Hence, the proposal should promote the maintenance of fair and orderly markets. In addition, provision of such a market during Far East business hours should further the public interest and promote the protection of investors desiring to use the options markets during these hours. Finally, the interbank currency markets operate on a 24-hour basis. Hence, persons that establish currency options positions during U.S. business hours are at risk that the underlying currency markets may move against them after the PHLX market closes. Addition of an evening trading session will provide an opportunity for daytime trading session participants to better protect themselves against 24-hour currency market fluctuations.

*B. Self-Regulatory Organization's Statements on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statements on Comments on the Purposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 8, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 11, 1987.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 87-11244 Filed 5-15-87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-15772; 812-6636]

## American Southwest Financial Corporation; Application

Dated: May 11, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application to Amend Order of Exemption under the Investement Company Act of 1940 (the "1940 Act").

*Applicants:* American Southwest Financial Corporation and American Southwest Finance Co., Inc. (the "Applicants").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* The Applicant seeks to amend an order exempting Applicants from all provisions of the 1940 Act for the limited purpose of issuing mortgage-collateralized obligations and investing in certain mortgage certificates.

*Filing Date:* The application to amend the previous order was filed on February 25, 1987 and amended on April 10, and 30, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 1, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 15060 North Black Canyon Highway, Suite 120, Phoenix, Arizona 85023.

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney (202) 272-2383 or H. R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person, or the Commission's commerical copier (800) 231-3282 (in Maryland (301) 258-4300).

### Summary of Current Application

Applicants are Arizona corporations organized in 1982 by a number of then otherwise unrelated entities. Applicants have previously received an Exemptive Order from the Commission on November 23, 1982 (Investment Company Act Release No. 12944), pursuant to an application filed September 9, 1982 (the "Original Application"); an Order dated August 7, 1984 (Investment Company Act Release No. 14099) amending the terms of the prior order pursuant to a "First Amended Application"; and an Order dated December 28, 1986 (Investment Company Act Release No. 15510) amending the terms of the prior order pursuant to a "Second Amended Application" (the First Amended Application and the Second Amended Application are together referred to herein as the "Amended Application"). As stated in the Original Application and in the Amended Applications, each Applicant is a limited purpose financing corporation which, in turn, is wholly owned by other limited purpose financing companies (collectively the "Finance Companies"), each of which is principally owned by or otherwise affiliated with one or more concerns engaged in the homebuilding business, or which is a mortgage banking or other financial institution providing financing or other services to builders. Each Applicant was incorporated for the limited purpose of facilitating the financing of long-term residential mortgages on single family residences and does not engage in any other unrelated business or investment activities. Each Applicant issues mortgages-collateralized bonds ("Bonds") in series ("Series") pursuant to an indenture (the "Indenture") between the issuer of the Bonds of such Series and an independent trustee (the "Trustee") as supplemented by one or more supplemental indentures, and enters into Funding Agreements (as described in the Original Application and in the Amended Applications) with various Finance Companies with respect to such Series of Bonds. Applicants propose to continue to conduct business and engage in the transactions set forth in the Original Application, as modified in the Amended Applications, subject to the addition of the representations and conditions set forth in this application (the "Current Application"). The specific changes sought by Applicants' Current Application related solely to the issuance of variable interest rate Bonds, the election of REMIC status, and the plege of collateral owned by Applicants to secure a Series of Bonds.

### Applicants' Representatives

1. The Bonds of a Series issued by either Applicant may in the future include, in addition to fixed interest rate Bonds, one or more classes of Bonds ("Classes") bearing variable or floating interest rates ("Variable Rate Bonds"). A Variable Rate Bond is one on which the interest rate adjusts periodically according to a fixed index set forth in the Prospectus Supplement and in the Indenture with respect to such Bonds.

Any Series of Bonds containing one or more Classes of Variable Rate Bonds will be structured with reference to the set maximum interest rate ("Interest Rate Caps") for that particular Series, insuring that the scheduled cash flow from the Mortgage Collateral (as defined in the Original Application) pledged to secure the Bonds will be sufficient to make all payments of principal and interest on the Bonds, even if the interest rate on any Class of Variable Rate Bonds rose to the interest Rate Cap in the first interest period and remained constant throughout the life of the Variable Rate Bonds. The structure for each Series of Bonds will be reviewed independently by the agencies rating the Bonds (as well as by the independent accountants for the issuing Applicant) to insure, for the appropriate rating, that the collateral is sufficient to meet all such payments of principal and interest on the Bonds.

2. With respect to any Series of Bonds, the Applicant issuing such Series of Bonds may elect treatment as a "real estate mortgage investment conduit" ("REMIC"), in which case the Bonds of such Series would be considered to be "regular interests" in the REMIC. Any such election will have no effect on the level of expenses that would be incurred by the Applicant issuing such Series of Bonds. Each Applicant that makes a REMIC election will provide that all administrative fees and expenses in connection with the issuance of a Series of Bonds with respect to which a REMIC election has been made will be paid or provided for in a manner satisfactory to the rating agency rating such Series of Bonds.

3. The Original Application and the Amended Applications noted that each Series of Bonds would be secured primarily by Mortgage Collateral pledged to an Applicant issuing a Series by Finance Companies pursuant to Funding Agreements with respect to such Series of Bonds and that the Applicant would lend all or a portion of the proceeds of the sale of such Series of Bonds to such Finance Companies to repay indebtedness with respect to the

Mortgage Collateral securing the Series of Bonds incurred by such Finance Companies.

Although the Mortgage Collateral securing a Series of Bonds generally will include Mortgage Collateral pledged to the Applicant issuing such Series of Bonds pursuant to Funding Agreements, Applicants expect that in the future the Mortgage Collateral securing a Series of Bonds also may consist of or include Mortgage Collateral owned by the Applicant issuing such Series of Bonds. If a Series of Bonds is secured by Mortgage Collateral owned by the Applicant issuing such Series the proceeds from the sale of such Series of Bonds will be used by the Applicant to purchase or repay indebtedness with respect to such Mortgage Collateral.

4. Applicants request that the Commission issue an Order pursuant to section 6(c) exempting Applicants from all of the provisions of the Act on the terms, and subject to the conditions set forth in the Original Application and in the Amended Applications as modified by the Current Application to permit Applicants (1) to issue Series of Bonds that may include one or more Classes of Variable Interest Bonds, (2) to make REMIC elections with respect to one or more Series of Bonds, and (3) to issue Series of Bonds secured by Mortgage Collateral owned by the Applicant issuing such Series of Bonds.

5. For the reasons set forth above, Applicants believe that each such modification is (1) in the interest of Applicants and the participating entities (including the small affiliated builders that established Applicants), (2) supportive of the national goals established by Congress and set forth in the Amended Applications, including the goal of enhancing a strong and liquid secondary mortgage market, and (3) consistent with the best interests of investors, who will acquire a more diversified and stable portfolio of mortgage obligations.

Applicants therefore believe that granting the relief requested is, and will continue to be, in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the 1940 Act. Applicants believe that the modifications requested are necessary to permit their continued operations on such terms, and request that the Commission issue an Order granting the requested relief.

**Applicants' Conditions**

*A. Conditions relating to Variable-Rate Bonds*

1. Each Class of Variable Rate Bonds of a Series will have an Interest Rate Cap.

2. At the time of the deposit of the collateral with the Trustee for the Bonds, as well as during the life of the Bonds, the scheduled payments of principal and interest to be received by the Trustee on all Mortgage Collateral pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any, pledged to secure the Bonds (as described in the Original Application and the Amended Applications) will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the Interest Rate Cap of each Class of Variable Rate Bonds. Such collateral will be paid down as the mortgage underlying the Mortgage Certificates (as defined in the Original Application) are repaid, but will not be released from the lien of the Indenture prior to payment of the Bonds of such Series.

*B. Condition Relating to REMICs*

The election by an Applicant to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by any such Applicant. Any Applicant which elects to be treated as a REMIC will provide for the payment of administrative fees and expenses as set forth in the application. Each Applicant will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

*C. Condition relating to Bonds secured by Mortgage Collateral owned by the Applicant issuing such Series of Bonds*

The issuance of Bonds secured primarily by Mortgage Collateral owned by the Applicant issuing such Series of Bonds will be subject to the same conditions applicable to Bonds secured primarily by Mortgage Collateral pledged to an Applicant issuing a Series of Bonds by Finance Companies pursuant to Funding Agreements with respect to such series.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-11243 Filed 5-15-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15725; 812-6611]

## ASW Residential Mortgage Financial Coporation; Application

May 11, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* ASW Residential Mortgage Financial Corporation.

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order conditionally exempting certain trusts ("Trusts") to be established by Applicant from all provisions of the 1940 Act for the limited purpose of issuing collateralized mortgage obligations, investing in certain mortgage certificates, and selling beneficial interests in such Trusts.

*Filing Date:* The application was filed January 30, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, an order disposing of the application will be issued. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on June 1, 1987. Requests must be in writing, setting forth the nature of your interest, the reasons for the request, and the issues contested. Applicants should be served with a copy of the request, either personally or by mail, and the request should also be sent to the Secretary of the SEC, along with proof of service (by affidavit or, in the case of an attorney-at-law, by certificate). Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 15650 North Black Canyon, Hwy, Suite 120, Phoenix, Arizona 85023.

**FOR FURTHER INFORMATION CONTACT:** Special Counsel Curtis R. Hilliard (202) 272-3026 or Special Counsel H.R. Hallock, Jr. (202) 272-3030, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicant's Representations**

1. Applicant is an Arizona corporation incorporated on May 13, 1986, as a limited purpose finance corporation wholly owned by limited purpose financing companies (the "Finance Companies"), each of which is principally owned by or otherwise affiliated with one or more concerns engaged in the homebuilding business (the "Builders"), or is a mortgage banking or other financial institution providing financing or other services to Builders. None of such Finance Companies owns more than five percent of the Applicant. Applicant was incorporated to facilitate the financing of mortgages either directly or through affiliates or Trusts, and will not engage in any other unrelated business activities.

2. Applicant will form separate trusts for the limited purpose of issuing one or more series ("Series") of collateralized mortgage obligations ("Bonds") and acquiring, owning, holding and pledging certain mortgage collateral ("Mortgage Collateral") which will be used to collateralize such Bonds.

3. Each Trust will be created under the laws of one of the States of the United States of America by an agreement (the "Deposit Trust Agreement") between the Applicant, as depositor and the initial sole beneficial owner, and an independent bank, trust company or fiduciary, acting as owner-trustee (the "Owner-Trustee"). Each such Trust will be established solely for the purpose of issuing one Series of Bonds. The Series of Bonds issued by a Trust will constitute obligations solely of the Trust and each Trust will have no significant assets other than the Collateral used to secure the particular Series. The Bonds will be secured primarily by Mortgage Collateral as defined in paragraph 6. Each Series of Bonds may also be secured by certain funds and accounts (including proceeds accounts, debt service funds, reserve funds and overcollateralization funds) and by servicing agreements, insurance policies and other credit enhancement devices described in the prospectus supplement for such Series of Bonds.

4. Under the terms of each Deposit Trust Agreement, Applicant will convey trust property to the Trust which is a party to such Deposit Trust Agreement in return for certificates or other instruments evidencing beneficial ownership of the Trust created under such Deposit Trust Agreement (the "Certificates"). On or after the closing date for the sale of any Series of Bonds issued by a Trust, Applicant may sell all or a portion of the Certificates to one or more sophisticated investors which are "accredited investors" as defined in Rule 501(a) of the Securities Act of 1933 (the "1933 Act") ("Eligible Investors") in transactions not involving any public offering within the meaning of section 4(2) of the 1933 Act. Such Eligible Investors may include mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutional or knowledgeable investors which customarily engage in the purchase of mortgages and mortgage-backed assets. The Owner-Trustee with respect to a Trust will act as trustee for and at the direction of the Beneficial Owners of such Trust. The Deposit Trust Agreement with respect to a Trust will prohibit the transfer of any Certificate of Beneficial Ownership in such Trust if there would be more than one hundred Beneficial Owners of such Trust at any time.

5. Each Series of Bonds will be either registered under the Securities Act of 1933 (the "1933 Act") or sold in transactions exempt from registration pursuant to section 4(2) of the 1933 Act. Each Series of Bonds will be issued pursuant to an Indenture (the "Indenture") between the Trust issuing such Series of Bonds and an independent trustee (the "Bond Trustee") as supplemented by one or more supplemental indentures.

6. The Mortgage Collateral securing a Series of Bonds will consist of one or more of the following: Conventional mortgage loans secured by first liens on single (one-to-four) family residential properties, mortgage loans insured by the Federal Housing Administration ("FHA Loans") or partially guaranteed by the Veterans Administration ("VA Loans") (collectively "Pledged Loans"), fully-modified pass-through certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA"), mortgage pass-through certificates ("FNMA Certificates") guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA"), and mortgage participation certificates ("Freddie Mac Certificates") guaranteed as to timely payment of interest and ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("Freddie Mac"). Each Series of Bonds also may be secured by certain funds and accounts (including proceeds accounts, debt service funds, reserve funds and over-collateralization funds) and by servicing agreements, insurance policies and other credit enhancement devices described in the Prospects Supplement for a Series of Bonds.

7. The Mortgage Collateral securing each Series of Bonds will have scheduled cash flows sufficient (together with cash available to be withdrawn from any debt service funds, reserve funds, over-collateralization funds or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds of such Series to make timely payments of principal of and interest on the Bonds of such Series in accordance with their terms and to pay all of the fees and expenses of the Trust with respect to such Series of Bonds. The Outstanding Bond value of the Collateral securing a Series of Bonds will be described in the Indenture for such Series and will be at least equal to the initial principal amount of such Bonds on their date of issuance.

8. The Collateral securing each Series of Bonds will be owned either by the Trust issuing the Bonds of such Series or by the Finance Companies and pledged to secure such Series of Bonds pursuant to funding agreements with respect to such Series of Bonds ("Funding Agreements"). Such Collateral will consist of or include mortgage loans (1) that were initially originated by or on behalf of an affiliate of a Finance Company participating in such Series of Bonds or (2) that were purchased by the Trust issuing such Series of Bonds or an affiliate of a Finance Company participating in such Series of Bonds in the mortgage market.

9. Each Finance Company participating in a Series of Bonds will enter into a Funding Agreement with respect to such Series of Bonds pursuant to which the Finance Company will (i) borrow a portion of the proceeds of the sale of such Series of Bonds; (ii) repay such loan by causing payments to be made to the Bond Trustee for such Series of Bonds in such amounts as are necessary to pay accrued interest on such loan and to repay the principal amount of such loan; and (iii) pledge Mortgage Collateral to the Trust issuing such Series of Bonds as security for its loan. The Trust issuing a Series of Bonds will assign to the Bond Trustee for such Series of Bonds as security for such Series of Bonds its entire right, title and interest in the Collateral and all proceeds thereof pledged under the Funding Agreements (except for its right to receive certain fees and

reimbursement for certain expenses and its right to indemnification).

10. The Bonds of a Series may be subject to redemption by the Trust issuing such Series of Bonds under the circumstances set forth in the Prospectus Supplement for such Series of Bonds. Such redemption will be exercised by direction of the Beneficial Owners of the Trust issuing such Series of Bonds. The Bonds of a Series will not be redeemable at the option of holders of Bonds of such Series except that certain Series of Bonds may provide for the establishment of a redemption fund and requests for redemption by holders of such Bonds will be honored to the extent funds are available in such redemption fund.

**Applicant's Conditions**

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds of each Series will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the Mortgage Collateral directly securing each Series of Bonds (whether owned by the Trust issuing such Series of Bonds or pledged pursuant to the Funding Agreements) will be limited to Pledged Loans, GNMA Certificates, FNMA Certificates and Freddie Mac Certificates.

(3) If new Mortgage Collateral is substituted as security for a Series of Bonds, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraphs (2), (4) and (6). In addition, new collateral may not be substituted for more than 20% of the aggregate face amount of the Pledged Loans initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. New Pledged Loans may be substituted for Pledge Loans initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the Mortgage Collateral being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral. New Funding Agreements may be substituted for Funding Agreements initially pledged only if the substitution of Mortgage Collateral underlying those instruments would be permitted under this condition.

(4) The Mortgage Collateral and other items of collateral securing a Series of Bonds will be assigned to and held by the Bond Trustee for such Series of Bonds or on behalf of such Bond Trustee by an independent custodian. The custodian for a Series of Bonds may not be affiliate (as the term "affiliate" is defined in 1933 Act rule 405, 17 CFR 230.405) of the Trust issuing such Series of Bonds, the master servicer for such Series of Bonds or the originator of any Pledged Loans securing such Series of Bonds. The Bond Trustee for such Series of Bonds will be granted a first priority perfected security or lien interest in and all Mortgage Collateral securing such Series of Bonds.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Trust issuing such Series of Bonds. The Bonds issued by each Trust will not be considered redeemable securities within the meaning of section 2(a)(32) of the 1933 Act.

(6) The master servicer of the Pledged Loans securing a Series of Bonds may not be an affiliate of the Bond Trustee for such Series of Bonds. If there is no master servicer for the Pledge Loans securing a Series of Bonds, no servicer of such Pledged Loans may be an affiliate of the Bond Trustee for such Series of Bonds. Each such master servicer and servicer will be approved by FNMA or Freddie Mac as an "eligible seller/servicer" of conventional, residential mortgage loans. The servicing agreements covering each Pledge Loan securing a Series of Bonds will obligate the servicer to provide substantially the same services with respect to such Pledged Loan as the servicer is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA of Freddie Mac.

(7) No less often than annually, an independent public accountant will audit the books and records of each Trust and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral securing each Series of Bonds, together with reinvestment income thereon at the assumed reinvestment rate, will continue to be adequate to pay the principal of and interest on the Bonds of each such Series in accordance with their terms. Upon completion of such audits, copies of the accountant's reports will be provided to the Bond Trustee for the related Series of Bonds.

(8) Each Class of Bonds of a Series bearing a variable interest rate will have a set maximum interest rate.

(9) At the time of the deposit of the Collateral with a Trust, as well as during the term of the Bonds issued by such Trust, the Mortgage Collateral securing such Bonds will have scheduled cash flows sufficient (together with cash available to be withdrawn from any debt service funds, reserve funds, overcollateralization funds or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to the Rating Agency rating the Bonds of such Series, to make all payments of principal of and interest on the Bonds in accordance with their terms and to pay all of the fees and expenses of the Trust with respect to the Series of Bonds, assuming the maximum interest rate on each Class of Bonds bearing a variable interest rate. Such Collateral will be paid down as the mortgage underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to payment of the Bonds of such Series.

(10) The Applicant hereby represents that the election by any Trust to be treated as a REMIC will have no effect on the level of the expenses that would be incurred by any such Trust. The Applicant further represents that any Trust that makes a REMIC election will provide that all administrative fees and expenses in connection with the administration of such Trust will be paid or provided for in a manner satisfactory to the Rating Agency rating the Bonds of a Series issued by such Trust.

If a Trust makes a REMIC election with respect to a Series of Bonds, such Trust will provide for the payment of the administrative fees and expenses incurred in connection with the issuance of such Series of Bonds and the administration of such Trust by one of the following methods or a combination of one or more of such methods:

(a) A third party, whose credit is acceptable to the Bond Trustee and to the Rating Agency rating the Bonds of such Series, will guarantee the payment of such fees and expenses.

(b) One or more reserve funds will be established to provide for the payment of such fees and expenses, which fees typically will be projected, assuming current inflation factors scenarios required by the Rating Agency rating the Bonds of such Series, at the time of the issuance of such Bonds and at the time of the establishment of such reserve funds. Thereafter, the Bond Trustee will

look solely to such reserve funds for the payment of certain fees and expenses.

(c) Such Series of Bonds will be secured by Collateral the value of which will be in excess of the amount necessary to make payments of principal of and interest of such Bonds. Such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with any of the other methods described herein. In no event will the Applicant deposit into such Trust Collateral with a Collateral Value which exceeds 120% of the aggregate principal amount of such Bonds.

(d) The Beneficial Owners of such Trust will be personally liable, pursuant to the Deposit Trust Agreement, for the fees and expenses of such Trust not otherwise payable from one of the sources described above.

The Applicant hereby represents that the anticipated level of fees and expenses will be more than adequately provided for regardless of which of the above methods (which methods may be used in combination) are selected to provide for the payment of such fees and expenses.

In addition, because of the possible sale of Certificates of Beneficial Ownership in each Trust, the Applicant expressly agrees that, as a condition to the granting of the order sought by the Application, the proposed transactions to be entered into by each Trust issuing a Series of Bonds will comply with the following conditions:

(1) The Beneficial Owners of each Trust will agree to be bound by the terms of the applicable Deposit Trust Agreement.

(2) Certificates of Beneficial Ownership in each Trust will be offered and sold only to one or more Eligible Investors.

(3) Each sale of Certificates of Beneficial Ownership in a Trust to an Eligible Investor will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the 1933 Act.

(4) The Deposit Trust Agreement relating to each Trust will prohibit the transfer of any Certificates of Beneficial Ownership in such Trust if there would be more than one hundred Beneficial Owners of such Trust at any time.

(5) The Deposit Trust Agreement relating to each Trust will require that each purchaser of a Certificate of Beneficial Ownership in such Trust represent that it is purchasing such Certificate of Beneficial Ownership for investment purposes and not with a view to distribution thereof, in whole or in part, and that it will hold such Certificate of Beneficial Ownership in its own name and not as nominee for undisclosed investors.

(6) The Deposit Trust Agreement relating to each Trust will provide that (i) no Beneficial Owner of such Trust may be affiliated with the Bond Trustee for such Trust, (ii) no holders of a controlling (as that term is defined in Rule 405 under the 1933 Act) equity interest in such Trust may be affiliated with either the custodian of the Mortgage Collateral for such Trust or the Rating Agency rating the Bonds issued by such Trust, and (iii) the Owner Trustee for such Trust will not purchase any Certificates of Beneficial Ownership in such Trust but will function as a legal stakeholder for the assets of such Trust.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-11287 Filed 5-15-87; 8:45 am]

BILLING CODE 8110-01-M

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**[Release No. IC-15726; 812-6280]**

## Merrill Lynch Retirement/Income Fund, Inc.; Application for an Amended Order

May 11, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

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*Applicant:* Merrill Lynch Retirement/Income Fund, Inc. (the "Fund").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder.

*Summary of Application:* Applicants seek to amend a prior order relating to the assessment of a contingent deferred sales charge ("CDSC") and to the waiver of the CDSC to permit such waiver for an additional class of investors.

*Filing Date:* The application was filed on May 1, 1987 and amended on May 11, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 1, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Fund, Box 9011, Princeton, New Jersey 08543-9011.

**FOR FURTHER INFORMATION CONTACT:** Curtis R. Hilliard, Special Counsel (202) 272-3028, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

### Applicant's Representations

1. The Fund is registered under the Act as an open-end, diversified, management investment company and is organized under the laws of the State of Maryland. The Fund's investment adviser is Merrill Lynch Asset Management, Inc. ("MLAM") and its principal underwriter/distributor is Merrill Lynch Funds Distributor, Inc. (the "Distributor").

2. On March 5, 1986, the SEC issued an order (Investment Company Act Release No. 14970) pursuant to section 6(c) of the Act exempting the Fund from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22d-1 thereunder to the extent necessary to permit the Fund to assess a CDSC on certain redemptions of its shares and to permit the Fund to waive the CDSC with respect to certain types of redemptions (the "Prior Order").

3. The Fund proposes to offer its shares in connection with a new program developed by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), which is called Merrill Lynch Blueprint Program (the "Program"). The Program is a service offered by MLPF&S which is designed to afford the individual investor the opportunity to trade in odd lot quantities of full and fractional shares of the publicly-traded securities of certain companies at discounts of up to 55% off the regular commission rates charged by MLPF&S. The initial minimum investment through the Program is $100 and subsequent investments as low as $50 per transaction are permitted.

The Program expands upon a program called the Merrill Lynch Sharebuilder

Plan (the "Sharebuilder Plan"). The Program also enables small investors, under certain circumstances, to purchase shares of registered, open-end investment companies for which MLAM or its wholly-owned subsidiary, Fund Asset Management ("FAMI"), acts as principal underwriter/distributor which are sold with the imposition of a front end sales charge at reduced sales charge rates. The Program will also be marketed directly by MLPF&S to participants in certain affinity groups, such as trade associations, credit unions and corporate benefit plans. Unless directed otherwise by shareholders, shares purchased through the Program are registered in a nominee name designated by MLPF&S and dividends on such shares are automatically reinvested. Participants in the Program have the right to vote full shares held in their Program account.

4. Investors may initiate orders through the Program by mail or through the MLPF&S wire system. MLPF&S aggregates overnight all orders for a particular security which it receives through the Program on the previous business day. Mail orders must be received at the Program offices prior to 3:00 P.M., New York time, wire orders must be received prior to 4:00 P.M., New York time, and telephone orders prior to 4:30 P.M., New York time, on a business day in order to ensure that the order will be processed that evening. The aggregated transactions are executed at the opening price on the applicable exchange or market on the next business day. Each investor receives a confirmation of each transaction for his account and, in addition, is sent a quarterly statement reflecting all activity in his account.

5. Recently, open-end investment companies offered with the imposition of a CDSC rather than the more traditional front end sales charge have become increasingly popular with investors. As a result, it is proposed that the Program include the offering of shares of the Fund. In this regard, it is proposed that the Fund be granted the ability to waive the CDSC related to shares of the Fund sold in connection with the Program. The ability to waive such CDSC is believed to be appropriate because investors purchasing shares of the Fund through the Program will be subject to certain procedures regarding investments and redemptions which differ from the procedures applicable to other investors. In addition, the services available to investors through the Program may be different from those available to other investors. For example, MLPF&S financial consultants will not be available to investors who purchase shares of the Fund through the Program and investments in the Fund pursuant to the Program may only be made through a special department of MLPF&S. In addition, no payment-by-wire service will be available to investors through the Program. Orders for shares received through the Program will be grouped for execution purposes which, in some circumstances, may involve the execution of such orders two business days following the day the order is placed with MLPF&S. Similarly, redemption of Fund shares held in connection with the Program may only be made through MLPF&S and if MLPF&S receives notice of a redemption of shares of the Fund after 4:00 p.m. on a particular day, the redemption will be effective on the second business day thereafter.

6. Specifically, the Fund requests that the Prior Order be amended to the extent necessary to permit the Fund, and all other open-end management companies or series thereof which may impose a contingent deferred sales charge ("CDSC") substantially as described in the application granted by the Prior Order for which MLAM acts as investment adviser or manager or the Distributor, also a wholly owned subsidiary of MLAM, is principal underwriter or distributor (together with the Fund, the "Funds"), to waive the CDSC in connection with the purchase of shares of the Funds pursuant to the Merrill Lynch Blueprint Program.

7. As discussed in the application ultimately granted in the Prior Order, the Fund believes that arguments can be made that the proposed waiver of the CDSC is consistent with the provisions of the Act and that no exemptive relief would be required in order to implement the Program with respect to the Funds. To avoid any possibility that questions may be raised as to the potential applicability of various sections of the Act, the Fund, pursuant to section 6(c) of the Act, requests an order of the Commission amending the Prior Order in connection with the offering of the Fund's shares through the Program, to the extent necessary, from section 22(d) of the Act and Rule 22d–1 thereunder.

8. Rule 22d–1, in substance, permits variation or elimination of sales loads to "particular classes of investors or transactions," provided that such variation or elimination is described in the investment company's registration statement. Because its CDSC and the waiver therefrom will be applied as described in the Fund's registration statement, the Fund believes that Rule 22d–1 exempts the CDSC and the Waiver therefrom from the prohibitions of section 22(d) of the Act. Nonetheless, to preclude any assertion that Rule 22d–1 is inapplicable to the waiver of the CDSC in connection with the Program, the Fund requests an exemption from section 22(d) to the extent necessary or appropriate to waive the CDSC as described above. The Fund believes that such an order would, in all events, be consistent with the policies embodied in Rule 22d–1, since the Fund intends to disclose fully relevant aspects of the Program, the CDSC and the waiver of the CDSC in the Fund's prospectus. Also as a condition to the granting of an Order, the Fund undertakes to comply with the requirements of Rule 22d–1.

9. The Fund believes that the waiver of the CDSC in connection with shares sold to certain individuals or groups pursuant to special arrangements similar to those under which front end sales charges could be reduced or waived pursuant to Rule 22d–1 under the Act is justified since, as in the case of front end sales charges, the Funds generally recognize economics of scale and a reduction of sales related expenses in connection with sales to such individuals or groups. The Program, in particular, is designed to enable the Funds to realize such economies of scale and reduction of expenses by virtue of the different investment and redemption procedures and services placed through a securities dealer and received by the Distributor prior to 4:30 P.M., New York time, are executed at a price based on net asset value computed following the close of the New York Stock Exchange on the day of receipt. Orders received later than 4:30 P.M. are executed at a price based on net asset value determined on the following business day. However, orders by Program customers would not be delivered to the transfer agent of the Funds on the day of receipt by MLPF&S, regardless of the time of receipt. Instead orders would be executed only upon receipt of the order by the applicable transfer agent at the net asset value next determined. Absent an exemptive order by the Commission, such procedure may be deemed to be a violation of Rule 22c–1.

14. The Fund submits that to comply with Rule 22c–1, as interpreted by the staff, would require replacement of the entire Program "bunched order" system described in the application with an "on-line" system providing instant access to computerized information. Such replacement would be prohibitively expensive and would effectively preclude the offer of shares of the Funds through the Program. 15. The Fund states that the Commission

has previously granted exemptions from Rule 22c1 to allow operation of substantially the same order processing system in connection with the Sharebuilding Plan. See *In the Matter of Merrill Lynch Basic Value Fund, Inc., et al.*, IC–13218 (May 5, 1983) and IC–13864 (April 4, 1980) (the "Sharebuilder Orders"). The Fund submits that the Rule 22c–1 exemptions in the Sharebuilder Orders are applicable to the Funds in connection with the Program. However, in order to avoid any controversy and for the sake of completeness, the Fund is requesting a similar Rule 22c–1 exemption. For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–11286 Filed 5–15–87; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 8, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket No. 44858*

*Date Filed:* May 4, 1987.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 1, 1987.

*Description:* Application of New York Express, Inc., pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests authority to engage in foreign charter air transportation of property.

*Docket No. 44859*

*Date Filed:* May 4, 1987.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 1, 1987.

*Description:* Application of New York Express, Inc., pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests permanent authority to engage in interestate and oversees air transportation of persons, property and mail.

*Docket No. 44872*

*Date Filed:* May 8, 1987.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 1, 1987.

*Description:* Application of Empresa Ecuatoriana de Aviacion (Ecuatoriana), pursuant to section 402 of the Act and Subpart Q of the Regulations, applies for renewal and amendment of its foreign air carrier permit to engage in foreign air transportation with respect to persons, property and mail in accordance with the terms of the Air Transport Agreement between Ecuador and the United States signed September 26, 1986.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87–11285 Filed 5–15–87; 8:45 am]

BILLING CODE 4910–62–M

### Aviation Proceedings; Agreements Filed During the Week Ending—May 8, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

*Docket No. 44868 R–1—R–7*

*Parties:* Members of International Air Transport Association.

*Date Filed:* May 8, 1987.

*Subject:* TC123 North/Mid/South Atlantic Resolutions

*Proposed Effective Date:* June 1, 1987.

*Docket No. 44869 R–1—R–3*

*Parties:* Members of International Air Transport Association.

*Date Filed:* May 8, 1987.

*Subject:* Amendment and Extension of Voting Period re Standard Condition Reso 100 Governing Resos 028/152c/152d.

*Proposed Effective Date:* July 1, 1987.

*Docket No. 44870 R–1—R–25*

*Parties:* Members of International Air Transport Association.

*Date Filed:* May 1, 1987.

*Subject:* Fares between the USA and Belgium/Germany/Luxembourg/Netherlands in USA-Europe Agreements.

*Proposed Effective Date:* June 1, 1987.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87–11284 Filed 5–15–87; 8:45 am]

BILLING CODE 4910–62–M

## Federal Highway Administration

### National Motor Carrier Advisory Committee; Working Group on Drug Testing; Meeting

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** The FHWA announces that the Working Group on Drug Testing of the National Motor Carrier Advisory Committee will hold a meeting on June 4, 1987, in Washington, DC, at the U.S. Department of Transportation headquarters, 400 Seventh Street SW., Washington, DC 20590. The meeting will be held from 9 a.m. to 5 p.m. in Room 4234. This meeting is open to the public. The agenda will focus on the issue of drug testing in the motor carrier industry. The issues to be discussed include the various methods of drug testing, the effectiveness of each of those methods, the potential cost of drug testing to the motor carrier industry, the protection of the rights of the individuals being tested and the appropriate rehabilitation programs for individuals testing positive for drug use.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA–1, Room 4218, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2238. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

Issued on: May 11, 1987.

**Ray Barnhart,**

*Administrator.*

[FR Doc. 87–11263 Filed 5–15–87; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

**[Supplement to Department Circular—Public Debt Series—No. 13–87]**

### Treasury Bonds of 2017

Washington, May 8, 1987.

The Secretary announced on May 7, 1987, that the interest rate on the bonds designated Bonds of 2017, described in Department Circular—Public Debt Series—No. 13–87 dated April 30, 1987, will be 8¾ percent. Interest on the

bonds will be payable at the rate of 8¾ percent per annum.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 87-11258 Filed 5-15-87; 8:45 am]

BILLING CODE 4810-40-M

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[Supplement to Department Circular—Public Debt Series—No. 12-87]

## Treasury Notes, Series A-1997

Washington, May 7, 1987.

The Secretary announced on May 6, 1987, that the interest rate on the notes designated Series A-1997, described in Department Circular—Public Debt Series—No. 12-87 dated April 30, 1987, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 87-11259 Filed 5-15-87; 8:45 am]

BILLING CODE 4810-40-M

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[Supplement to Department Circular—Public Debt Series—No. 11-87]

## Treasury Notes, Series T-1990

Washington, May 6, 1987.

The Secretary announced on May 5, 1987, that the interest rate on the notes designated Series T-1990, described in Department Circular—Public Debt Series—No. 11-87 dated April 30, 1987, will be 7⅛ percent. Interest on the notes will be payable at the rate of 7⅛ percent per annum.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 87-11260 Filed 5-15-87; 8:45 am]

BILLING CODE 4810-40-M

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## Public Information Collection Requirements Submitted to OMB for Review

Dated: May 12, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

### Internal Revenue Service

*OMB Number:* 1545-0887
*Form Number:* 8281
*Type of Review:* Revision
*Title:* Information Return for Publicly Offered Original Issue Discount Instruments
*Description:* Form 8281 is filed by the issuer of a publicly-offered debt instrument having Original Issue Discount. The information will be used to update Pub. 1212, List of Original Issue Discount Instruments.
*Respondents:* Businesses
*Estimated Burden:* 562 hours

*OMB Number:* 1545-0957
*Form Number:* 8508
*Type of Review:* Revision
*Title:* Request for Waiver from Filing Information Returns on Magnetic Media
*Description:* Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.
*Respondents:* State or local governments, Farms, Businesses, Federal agencies or employees, Non-profit institutions
*Estimated Burden:* 22,500 hours

*OMB Number:* 145-0351
*Form Numbers:* 3975, 3975A, 3975B, 3975C, 3975D, 3975E, 3975F, 3975G, 3975H, 3975I and 3975J,
*Type of Review:* Revision
*Title:* Tax Practitioner Mailing File [TPMF]
*Description:* Form 3975 series allows practitioners a systematic way to remain on the Tax Practitioner mailing file (TPMF) and to order informational copies of tax forms materials.
*Respondents:* Businesses
*Estimated Burden:* 41,190 hours

*OMB Number:* 1545-0225
*Form Number:* 6248-T
*Type of Review:* Extension
*Title:* Summary and Transmittal of Windfall Profit Tax Information
*Description:* Form 6248-T is used to transmit Forms 6248 to the Internal Revenue Service. The information is used to reconcile and total the Forms 6248 submitted.
*Respondents:* Businesses
*Estimated Burden:* 3,581 hours

*OMB Number:* 1545-0889
*Form Number:* 8275
*Type of Review:* Extension
*Title:* Disclosure Statement Under Section 6661
*Description:* Internal Revenue Code section 6661 imposes a penalty on taxpayers for the substantial understatement of income tax liability. The penalty may be reduced if the taxpayer adequately discloses the relevant facts affecting the tax treatment of any item on his/her return, provided the items are not from a tax shelter.
*Respondents:* Individuals, Farms, Businesses, Non-profit institutions
*Estimated Burden:* 50 hours
*Clearance Officer:* Garrick Shear, (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

### U.S. Customs Service

*OMB Number:* 1515-0127
*Form Number:* None
*Type of Review:* Extension
*Title:* Application for Bonding of Smelting and Refining Warehouses
*Description:* A manufacturer engaged in smelting or refining of metal-bearing materials shall submit an application for the bonding of the plant to the District Director, giving the location of the plant and the nature of the work to be performed.
*Respondents:* Businesses
*Estimated Burden:* 576 hours
Clearance Officer: B.J. Simpson, (202) 566-7529, U.S. Customs Service, Room 6428, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

### Alcohol, Tobacco and Firearms

*OMB Number:* 1512-0040
*Form Numbers:* ATF F 5630.2 and ATF F 5630.3
*Type of Review:* Extension
*Title:* Taxpayer Delinquency Program (form letter) ATF F 5630.2 Statement of Liability (form letter) ATF F 5630.3
*Description:* These forms are used to determine whether a person is liable for special occupational taxes involving alcoholic beverages. The forms identify the person who is liable or the reason why the person is not liable, and also the details concerning the payment of tax and information concerning changes in ownership. ATF uses the forms to request payment of taxes for those determined liable.
*Respondents:* Businesses
*Estimated Burden:* 3,000 hours
*Clearance Officer:* Robert Masarsky, (202) 566-7077, Bureau of Alcohol,

BEST COPY AVAILABLE

Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

*OMB Reviewer:* Milo Sunderhauf, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

*Departmental Reports Management Officer.*

[FR Doc. 87-11234 Filed 5-15-87; 8:45 am]

BILLING CODE 4810-25-M

BEST COPY AVAILABLE

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 95
Monday, May 18, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FARM CREDIT ADMINISTRATION**

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 19, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

**FOR FURTHER INFORMATION CONTACT:** William A. Sanders, Jr., Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703–883–4010).

**ADDRESS:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). The matters to be considered at the meeting are:

1. Consideration of directives regarding Federal Land Bank Stock Reduction Programs.
*2. Review of Financial Conditions of Farm Credit System Institutions and Consideration of certifying to the Treasury that the System is in Need of Financial Assistance
*3. Consideration of Changes to FCA Statutory Authority.
*4. Examination and Enforcement Matters.

*Session closed to the public-exempt pursuant to 5 U.S.C. 552b(c)(4), (8) and (9).

Dated: May 13, 1987.

William A. Sanders, Jr.,
*Secretary, Farm Credit Administration Board.*

[FR Doc. 87–11326 Filed 5–14–87; 10:03 am]

BILLING CODE 6705-01-M

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of May 18, 25, June 1, and 8, 1987.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of May 18**

*Wednesday, May 20*

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

*Thursday, May 21*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of May 25—Tentative**

*Tuesday, May 26*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of June 1—Tentative**

*Thursday, June 4*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of June 8—Tentative**

*Monday, June 8*

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 5 & 7) (Tentative)

*Tuesday, June 9*

10:00 a.m.
Discussion/Possible Vote on Fort St. Vrain Authorization to Exeed 35 Percent Power Level (Public Meeting)

*Thursday, June 11*

2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**ADDITIONAL INFORMATION:** Discussion of Possible Enforcement Action (Closed—Ex. 5 & 7) was held on May 13.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (202) 634–1498.

**CONTACT PERSON FOR MORE INFORMATION:** Robert McOsker (202) 634–1410.

Robert B. McOsker,
*Office of the Secretary.*

May 7, 1987.

[FR Doc. 87–11387 Filed 5–14–87; 3:50 pm]

BILLING CODE 7590-01-M

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**SECURITIES AND EXCHANGE COMMISSION**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 18, 1987:

A closed meeting will be held on Tuesday, May 19, 1987, at 2:30 p.m. An open meeting will be held on Thursday, May 21, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10), and 17 CFR 200.402 (a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 19, 1987, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.
Administrative proceeding of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter involving discussion of enforcement action.

The subject matter of the open meeting scheduled for Thursday, May 21, 1987, at 10:00 a.m., will be:

1. Consideration of a proposal by the New York Stock Exchange (SR–NYSE–85–1) to amend its Rules 13 and 123A.30 to broaden the ability of specialists to represent percentage orders. For further information, please contact Stephen Luparello at (202) 272–2028.

2. Consideration of whether to issue a release adopting a new rule and amendments to existing rules intended to simplify the filing requirements applicable to a registration statement at the time of effectiveness. New Rule 430A allows registrants, if specified conditions are satisfied, to omit information concerning the public offering price, price-related information and the underwriting syndicate from a prospectus contained in a registration statement at the time that it is declared effective. In addition, the Commission has adopted changes to provide for a shortened filing period for certain prospectuses, to eliminate unnecessary filings, and to classify prospectuses according to the nature of the information being modified or added. For further information, please contact Alexander G. Shtofman at (202) 272–2589.

3. Consideration of whether to issue a release adopting amendments to its proxy rules and certain other rules including

changes to conform further the proxy disclosure for mergers and similar transactions to that required for registration of securities in certain business combinations. Also, the Commission will consider whether to adopt a new rule concerning modified or superseded statements in documents incorporated by reference into a proxy statement. For further information, please contact Caroline W. Dixon or Barbara J. Green at (202) 272–2589.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–3065.

Jonathan G. Katz,
*Secretary.*
May 13, 1987.

[FR Doc. 11358 Filed 5–14–87; 12:44 pm]
BILLING CODE 8010-01-M

# Corrections

Federal Register
Vol. 52, No. 95
Monday, May 18, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF ENERGY

### Office of General Counsel

### 10 CFR Part 1010

### Conduct of Employees; Statements of Employment and Financial Interest, and Interests in Energy Concerns

*Correction*

In proposed rule document 87-10796 beginning on page 17765 in the issue of Tuesday, May 12, 1987, make the following corrections:

**Appendix I—[Corrected]**

1. On page 17766, in the third column, in the list of occupational series, in the third column, the 21st entry should read "1310".

2. On page 17767, in the first column, in the third list of occupational series, in the first column, the last entry should read "881"; and in the second column of the same list, the reference to footnote 2 should be removed from the second entry and inserted before the third entry, "1101".

BILLING CODE 1505-01-D

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 97

**[PR Docket No. 86-161; RM-5022, RM-5023, RM-5024, RM-5025, RM-5039, RM-5251, RM-5291, RM-5282]**

### Amendment of the Amateur Radio Service Rules To Expand the Privileges Available To Novice Operators

*Correction*

In rule document 87-3480 beginning on page 5115 in the issue of Thursday, February 19, 1987, make the following correction:

**§ 97.25 [Corrected]**

On page 5116, in the second column, in § 97.25(a), in the third line "void" should read "valid".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 87N-0062]**

### Report on Adjunct Studies of Intraocular Lenses; Availability

*Correction*

In notice document 87-8640 beginning on page 12606 in the issue of Friday, April 17, 1987, make the following correction:

On page 12607, in the first column, in the last paragraph, in the first line, "not" should read "now".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

**[A-32/7.6]**

### Agreement on Social Security Between the United States and Sweden; Entry Into Force

*Correction*

In notice document 87-10116 appearing on page 16458, in the issue of Tuesday, May 5, 1987, make the following corrections:

In the third column, in the first paragraph, in the third line, "fights" should read "rights"; and in the ninth line, "for" should read "from".

BILLING CODE 1505-01-D

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federal register

Monday
May 18, 1987

Part II

# Department of the Treasury

Internal Revenue Service

Tax Forms Coordinating Committee; Release of Tax Forms; Notice

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Tax Forms Coordinating Committee; Release of Tax Forms**

The Internal Revenue Service is publishing advance proof copies of the major 1987 Federal tax forms and schedules for individual taxpayers. Included are Forms 1040, 1040A, 1040EZ and 2106, and Schedules A, B, D, and E of Form 1040. In June, the Service plans to release Schedules C, F, R and SE of Form 1040, the 1987 Tax Table and Tax Rate Schedules, and other principal tax forms for individual taxpayers. Additional forms for individuals will be released in July, along with certain business income tax returns.

**Please Note That These Proofs Are Subject to Change and OMB Approval Before Being Released for Printing in Early October**

The revised forms include changes required by the Tax Reform Act of 1986. Major changes are circled. Suggestions for improving these forms should be sent by June 19, 1987, to: Tax Forms Committee, ATTN: Early Release, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224.

Although IRS is not required to publish copies of the tax forms under section 1505 of the Federal Register Act or section 552 of the Administrative Procedures Act, we are doing so at this time due to wide public interest in changes to the forms caused by the Tax Reform Act of 1986 and to give the forms broad public exposure. We may be unable to give detailed replies to the comments we receive. However, each suggestion will be carefully considered before the final versions of the forms are issued.

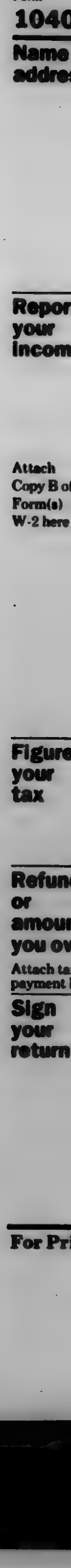
Dated: May 8, 1987.

Approved:

**Edmund L. Goldwag,**

*Director, Tax Forms and Publications Division.*

BILLING CODE 4830-01-M



Department of the Treasury Internal Revenue Service

Form **1040EZ**

**Income Tax Return for Single filers with no dependents** **1987**

OMB No 1545-0675

**Name & address** Use the IRS mailing label. If you don't have one, please print.

Print your name above (first, initial, last)

Present home address (number and street). (If you have a P.O. box, see instructions.)

City, town, or post office, state, and ZIP code

Please print your numbers like this: 1 2 3 4 5 6 7 8 9 0

Your social security number

If you filed a return in 1986 and this address is different, check here ▶ ☐

**Presidential Election Campaign Fund** Do you want $1 to go to this fund? Note: Checking "Yes" will not change your tax or reduce your refund ▶ Yes ☐ No ☐

| | | Dollars | Cents |
|---|---|---|---|
| **Report your income** | 1 Total wages, salaries, and tips. This should be shown in Box 10 of your W-2 form(s). (Attach your W-2 form(s).) 1 | | |
| | 2 Taxable interest income of $400 or less. If the total is more than $400, you cannot use Form 1040EZ. | | |
| Attach Copy B of Form(s) W-2 here | 3 Add line 1 and line 2. This is your **adjusted gross income.** 3 | | |
| | 4 Standard deduction. If you can be claimed as a dependent on another person's return, check here, ▶ ☐ and see line 4 instructions. Otherwise, enter 2,540. 4 | | |
| | 5 Subtract line 4 from line 3. 5 | | |
| | 6 Personal exemption. If you checked the box on line 4, enter 0. Otherwise, enter 1,900. 6 | | |
| | 7 Subtract line 6 from line 5. If line 6 is larger than line 5, enter 0 on line 7. This is your **taxable income.** 7 | | |
| **Figure your tax** | 8 Enter your Federal income tax withheld. This should be shown in Box 9 of your W-2 form(s). 8 | | |
| | 9 Use the **single** column in the tax table on pages 31-36 of the Form 1040A instruction booklet to find the **tax** on your taxable income on line 7. Enter the amount of tax. 9 | | |
| **Refund or amount you owe** | 10 If line 8 is larger than line 9, subtract line 9 from line 8. Enter the amount of your refund. 10 | | |
| Attach tax payment here | 11 If line 9 is larger than line 8, subtract line 8 from line 9. Enter the **amount you owe.** Attach check or money order for the full amount, payable to "Internal Revenue Service." 11 | | |
| **Sign your return** | **I have read this return. Under penalties of perjury, I declare that to the best of my knowledge and belief, the return is true, correct, and complete.** | | |

Your signature Date

For IRS Use Only—Please do not write in boxes below.

Mailed on May 18, 1987

## 1987 Instructions for Form 1040EZ

**You can use this form if:**

- Your filing status is single.
- You do not claim any dependents.
- You had only wages, salaries, and tips, and your taxable interest income was $400 or less. **Caution:** If you received tips (including allocated tips) that are not included in Box 14 of your W-2 form, you may not be able to use Form 1040EZ. See page 15 in the **Instructions for preparing 1040EZ and 1040A.**
- You are not 65 or over, OR blind.
- Your taxable income is less than $50,000.

If you can't use this form, you must use Form 1040A or Form 1040 instead. See pages 4 through 6 in the instruction booklet. If you are uncertain about your filing status, dependents, or exemptions, read the step-by-step instructions for Form 1040A that begin on page 7.

**Completing your return**

It will make it easier for us to process your return if you print your numbers (do not type) and keep them inside the boxes. Do not use dollar signs. You may find calculations easier if you round off cents to whole dollars. See page 13 of the instruction booklet for details.

**Name and address**

Use the mailing label we sent you. After you complete your return, carefully place the label in the name and address area. Mark through any errors on the label and print the correct information right on the label. Use of the label saves processing time. If you don't have a label, print the information on the name and address lines. If your post office does not deliver mail to your street address and you have a P.O. box, enter your P.O. box number on the line for your present home address instead of your street address.

**Presidential election campaign fund**

Congress set up this fund to help pay for Presidential election campaigns. You may have one of your tax dollars go to this fund by checking the "Yes" box. Checking the "Yes" box does not change the tax or refund shown on your return.

**Report your income**

**Line 1.** Enter on line 1 the total amount you received in wages, salaries, and tips. This should be shown in Box 10 of your 1987 wage statement(s), **Form W-2.** If you don't receive your W-2 form by February 15, contact your local IRS office. You must still report your earnings even if you don't get a Form W-2 from your employer. Attach the first copy or Copy B of your W-2 form(s) to your return.

**Line 2.** Enter on line 2 the total taxable interest income you received from all sources, such as banks, savings and loans, and credit unions. You should receive a **Form 1099-INT** from each institution that paid you interest. You cannot use Form 1040EZ if your total taxable interest income is over $400. If you received tax-exempt interest, in the space to the left of line 2, write "TEI" and show the amount of your tax-exempt interest. DO NOT include tax-exempt interest in the total entered in the boxes on line 2.

**Line 4.** Generally, you should enter 2,540 on line 4. However, if you can be claimed as a dependent on another person's return (such as your parents'), check the box on line 4 and enter the larger of 500 or the amount on line 1, but DO NOT enter more than 2,540.

**Line 6.** Generally, you should enter 1,900 on line 6 as your personal exemption. However, if you can be claimed as a dependent on another person's return (such as your parents'), you cannot claim a personal exemption for yourself. Enter 0 on line 6. If you are entitled to additional exemptions for your spouse, for your dependent children, or for other dependents, you cannot use Form 1040EZ.

**Figure your tax**

**Line 8.** Enter the amount of Federal income tax withheld. This should be shown in Box 9 of your 1987 W-2 form(s). If you had two or more employers and had total wages of over $43,800, see page 25 of the instruction booklet. If you want IRS to figure your tax for you, complete lines 1 through 8, sign and date your return. If you want to figure your own tax, continue with these instructions.

**Line 9.** Use the amount on line 7 to find your tax in the tax table on pages 31–36 of the instruction booklet. Be sure to use the column in the tax table for **single** taxpayers. Enter the amount of tax on line 9. If your tax from the tax table is zero, enter 0.

**Refund or amount you owe—Compare line 8 with line 9**

**Line 10.** If line 8 is larger than line 9, you are entitled to a refund. Subtract line 9 from line 8, and enter the result on line 10.

**Line 11.** If line 9 is larger than line 8, you owe more tax. Subtract line 8 from line 9, and enter the result on line 11. Attach your check or money order for the full amount. Write your social security number, daytime phone number, and "1987 Form 1040EZ" on your payment.

**Sign your return**

You must sign and date your return. If you pay someone to prepare your return, that person must also sign it below the space for your signature and supply the other information required by IRS. See page 28.

**Mailing your return**

File your return by **April 15, 1988.** Mail it to us in the addressed envelope that came with the instruction booklet. If you don't have an addressed envelope, see page 30 of the instruction booklet for the address.

Publication 1987 Rev. 1987

Form **1040A**

Department of the Treasury Internal Revenue Service

# U.S. Individual Income Tax Return 1987

**Step 1** Name and address

Use the IRS mailing label. If you don't have one, please print or type:

OMB No. 1545-0085

Your first name and initial (if joint return, also give spouse's name and initial) | Last name | Your social security no.

Present home address (number and street). (If you have a P.O. Box, see page 7 of the instructions.) | Spouse's social security no.

City, town or post office, state, and ZIP code | If you filed a return in 1986 and this address is different, check here ▶ ☐

## Presidential Election Campaign Fund

Do you want $1 to go to this fund? ☐ Yes ☐ No

If joint return, does your spouse want $1 to go to this fund? ☐ Yes ☐ No

*Note: Checking "Yes" will not change your tax or reduce your refund.*

**Step 2** Check your filing status (Check only one)

1 ☐ Single (See if you can use Form 1040EZ.)
2 ☐ Married filing joint return (even if only one had income)
3 ☐ Married filing separate return. Enter spouse's social security number above and spouse's full name here. _____
4 ☐ Head of household (with qualifying person). If the qualifying person is your child but not your dependent, enter this child's name here. _____

**Step 3** Figure your exemptions (See page 11 of instructions.)

5a ☐ Yourself b ☐ Spouse

Caution: If you can be claimed as a dependent on another person's tax return (such as your parents'), do not check box 5a. But be sure to check the box below line 19 on page 2.

| c Dependents: 1. First and last name | 2. Check if under age 5 | 3. If age 5 or over, dependent's social security number | 4. Relationship | 5. No. of months lived in your home |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

If more than 7 dependents, see instructions.

No. of boxes checked on 5a and 5b _____

No. of children on 5c who lived with you _____

No. of children on 5c who didn't live with you due to divorce or separation _____

No. of parents listed on 5c _____

No. of other dependents listed on 5c _____

Attach Copy B of Form(s) W-2 here.

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ ☐

e Total number of exemptions claimed. (Also complete line 16.) Add numbers entered on lines above ☐

**Step 4** Figure your total income

6 Wages, salaries, tips, etc. This should be shown in Box 10 of your W-2 form(s). (Attach Form(s) W-2.) 6

7a Taxable interest income (see page 15). (If over $400, also complete and attach Schedule 1, Part II.) 7a

Attach check or money order here.

b Tax-exempt interest income. (DO NOT include on line 7a.) 7b

8 Dividends. (If over $400, also complete and attach Schedule 1, Part III.) 8

9 Unemployment compensation (insurance) from Form(s) 1099-G. 9

10 Add lines 6, 7a, 8, and 9. Enter the total. This is your **total income**. ▶ 10

**Step 5** Figure your adjusted gross income

11a Your individual retirement arrangement (IRA) deduction, from the worksheet on page 19. 11a

b Spouse's individual retirement arrangement (IRA) deduction, from the worksheet on page 19. 11b

c Add lines 11a and 11b. Enter the total. These are your **total adjustments**. 11c

12 Subtract line 11c from line 10. Enter the result. This is your **adjusted gross income**. (If this line is less than $15,432 and a child lived with you, see "Earned Income Credit" (line 21b) on page 26 of instructions.) ▶ 12



Proposed May 1987

**1987 Form 1040A** Page 2

**Step 6** Figure your taxable income

13 Enter the amount from line 12. 13

Caution: If you can be claimed as a dependent on another person's return, see page 20 of the instructions and check here . . . . . ▶ ☐

If you are married filing separately and your spouse files Form 1040 and itemizes deductions, see page 20.

14a Check if: ☐ You were 65 or over ☐ Blind; ☐ Spouse was 65 or over ☐ Blind. Enter number of boxes checked ▶ 14a

b Standard deduction. If, on page 1, you checked filing status box: 1 or 4, enter $2,540; 2, enter $3,760; 3, enter $1,880. Caution: If you completed line 14a, enter amount from chart on page 21. 14b

15 Subtract line 14b from line 13. Enter the result. 15

16 Multiply $1,900 by the total number of exemptions claimed on line 5e. See the chart on page 22 of the instructions. 16

17 Subtract line 16 from line 15. Enter the result. This is your taxable income. ▶ 17

**If You Want IRS To Figure Your Tax, See Page 22 of the Instructions.**

**Step 7** Figure your tax, credits, and payments (including advance EIC payments)

Caution: If you are under age 14 and have more than $1,000 of unearned income, see page 22 of the instructions and check here . . . . . ▶ ☐

18 Find the tax on the amount on line 17. Check if from: ☐ Tax Table (pages 31-36); or ☐ Form 8615, Computation of Tax for Children Under Age 14 Who Have More Than $1,000 of Unearned Income. 18

19 Credit for child and dependent care expenses. Complete and attach Schedule 1, Part I. 19

20 Subtract line 19 from line 18. Enter the result. (If line 19 is more than line 18, enter -0- on line 20.) This is your total tax. ▶ 20

21a Total Federal income tax withheld. This should be shown in Box 9 of your W-2 form(s). (If line 6 is more than $43,800, see page 25 of the instructions.) 21a

b Earned income credit, from the worksheet on page 27 of the instructions. See page 26 of the instructions. 21b

22 Add lines 21a and 21b. Enter the total. These are your **total payments.** ▶ 22

**Step 8** Figure your refund or amount you owe

23 If line 22 is larger than line 20, subtract line 20 from line 22. Enter the result. This is the **amount of your refund.** 23

24 If line 20 is larger than line 22, subtract line 22 from line 20. Enter the result. This is the amount you owe. Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number, daytime phone number, and "1987 Form 1040A" on it. 24

**Step 9** Sign your return

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than the taxpayer) is based on all information of which the preparer has any knowledge.

Your signature — Date — Your occupation

X

Spouse's signature (if joint return, both must sign) — Date — Spouse's occupation

X

**Paid preparer's use only**

Preparer's signature — Date — Preparer's social security no.

X

Firm's name (or yours, if self-employed) — Employer identification no.

Address and ZIP code — Check if self-employed ☐

Proof Only

# 1987 Schedule 1 (Form 1040A)

Name(s) as shown on Form 1040A — Your social security number

**You MUST complete and attach Schedule 1 to Form 1040A only if you:**

- Claim the credit for child and dependent care expenses (complete Part I)
- Have over $400 of interest income (complete Part II)
- Have over $400 of dividend income (complete Part III)

## Part I Credit for child and dependent care expenses (see page 23)

Complete this part to figure the amount of credit you can take on Form 1040A, line 19. Attach Schedule 1 to Form 1040A.

**Note:** *If you paid cash wages of $50 or more in a calendar quarter to an individual for services performed in your home, you must file an employment tax return. Get Form 942 for details.*

1 Enter the number of qualifying persons who were cared for in 1987. (See the instructions for the definition of a qualifying person.) — 1

2 Enter the amount of qualified expenses you incurred and actually paid in 1987 for the care of the qualifying person. (See the instructions for which expenses qualify for the credit.) DO NOT enter more than $2,400 ($4,800 if you paid for the care of two or more qualifying persons.) — 2

3a You must enter your earned income on line 3a. — 3a

b If you are married, filing a joint return for 1987, you must enter your spouse's earned income on line 3b. — 3b

c If you are married, compare the amounts on lines 3a and 3b, and enter the smaller of the two amounts on line 3c. — 3c

4 • If you were unmarried at the end of 1987, compare the amounts on lines 2 and 3a, and enter the smaller of the two amounts on line 4.
• If you are married, filing a joint return for 1987, compare the amounts on lines 2 and 3c, and enter the smaller of the two amounts on line 4. — 4

5 Enter the percentage from the table below that applies to the amount on Form 1040A, line 13.

| If line 13 is: Over— | But not over— | Percentage is: |
|---|---|---|
| $0 | 10,000 | 30% (.30) |
| 10,000 | 12,000 | 29% (.29) |
| 12,000 | 14,000 | 28% (.28) |
| 14,000 | 16,000 | 27% (.27) |
| 16,000 | 18,000 | 26% (.26) |
| 18,000 | 20,000 | 25% (.25) |
| $20,000 | 22,000 | 24% (.24) |
| 22,000 | 24,000 | 23% (.23) |
| 24,000 | 26,000 | 22% (.22) |
| 26,000 | 28,000 | 21% (.21) |
| 28,000 | | 20% (.20) |

5 × .

6 Multiply the amount on line 4 by the percentage on line 5. Enter the result here and on Form 1040A, line 19. — 6 =

Proof of Mailing 1987

**1987** **Schedule 1 (Form 1040A)** OMB No. 1545-0085

Name(s) as shown on Form 1040A. (Do not complete if shown on other side.) Your social security number

**Part II** **Interest income** (see page 15)

Complete this part and attach Schedule 1 to Form 1040A if you received over $400 in taxable interest income.

**Note:** *If you received a Form 1099-INT or Form 1099-OID from a brokerage firm, enter the firm's name and the total interest shown on that form.*

| 1 List name of payer | Amount |
|---|---|
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |

2 Add amounts on line 1. Enter the total here and on Form 1040A, line 7a. 2 .

**Part III** **Dividend income** (see page 16)

Complete this part and attach Schedule 1 to Form 1040A if you received over $400 in dividends.

**Note:** *If your securities were held by a brokerage firm, enter the firm's name and the total dividends shown on Form 1099-DIV.*

| 1 List name of payer | Amount |
|---|---|
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |
| | $ . |

2 Add amounts on line 1. Enter the total here and on Form 1040A, line 8. 2 .

Proof of May 18 1987

Form **1040** Department of the Treasury—Internal Revenue Service **U.S. Individual Income Tax Return** **1987**

For the year January 1–December 31, 1987, or other tax year beginning , 1987, ending , 19 OMB No. 1545-0074

Use IRS label. Otherwise, please print or type.

Your first name and initial (if joint return, also give spouse's name and initial) Last name — Your social security number

Present home address (number and street or rural route). (If you have a P.O. Box, see page 4 of Instructions.) — Spouse's social security number

City, town or post office, state, and ZIP code — If you filed a return in 1986 and this address is different, check here ▶

**Presidential Election Campaign** ▶ Do you want $1 to go to this fund? Yes No — Note: Checking "Yes" will not change your tax or reduce your refund.
If joint return, does your spouse want $1 to go to this fund? Yes No

**Filing Status** — Check only one box.

1 ☐ Single
2 ☐ Married filing joint return (even if only one had income)
3 ☐ Married filing separate return. Enter spouse's social security no. above and full name here. _____
4 ☐ Head of household (with qualifying person). (See page 5 of Instructions.) If the qualifying person is your child but not your dependent, enter child's name here. _____
5 ☐ Qualifying widow(er) with dependent child (year spouse died ▶ 19 ). (See page 5 of Instructions.)

For Privacy Act and Paperwork Reduction Act Notice, see Instructions.

**Exemptions** (See Instructions on page 6.)

6a ☐ Yourself b ☐ Spouse
Caution: If you can be claimed as a dependent on another person's tax return (such as your parents' return), do not check boxes 6a and b. But be sure to check the box below line 31 on page 2.

| c Dependents (1) Name (first, initial, and last name) | (2) Check if under age 5 | (3) If age 5 or over, dependent's social security number | (4) Relationship | (5) No. of months lived in your home |
|---|---|---|---|---|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

If more than seven dependents, use attachment.

No. of boxes checked on 6a and 6b ▶
No. of children on 6c who lived with you ▶
No. of children on 6c who didn't live with you due to divorce or separation ▶
No. of parents listed on 6c ▶
No. of other dependents listed on 6c ▶

d If your child didn't live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ ☐
e Total number of exemptions claimed (also complete line 36) . . . ▶ Add numbers entered on lines above ▶

**Income** — Please attach Copy B of your Forms W-2, W-2G, and W-2P here. If you do not have a W-2, see page 4 of Instructions.

| | | | |
|---|---|---|---|
| 7 | Wages, salaries, tips, etc. (attach Form(s) W-2) | | 7 |
| 8 | Taxable interest income (also attach Schedule B if over $400) | | 8 |
| 9 | Tax-exempt interest income. (DO NOT include on line 8.) | 9 | |
| 10 | Dividend income (also attach Schedule B if over $400) | | 10 |
| 11 | Taxable refunds of state and local income taxes, if any, from the worksheet on page 9 of Instructions | | 11 |
| 12 | Alimony received | | 12 |
| 13 | Business income or (loss) (attach Schedule C) | | 13 |
| 14 | Capital gain or (loss) (attach Schedule D) | | 14 |
| 15 | Other gains or (losses) (attach Form 4797) | | 15 |
| 16a | Pensions, IRA distributions, annuities (including rollovers). Total received | 16a | |
| b | Taxable amount, if any, from page 10 | | 16b |
| 17 | Rents, royalties, partnerships, estates, trusts, etc. (attach Schedule E) | | 17 |
| 18 | Farm income or (loss) (attach Schedule F) | | 18 |
| 19 | Unemployment compensation (insurance) (see page 10) | | 19 |
| 20a | Social security benefits (see page 10) | 20a | |
| b | Taxable amount, if any, from the worksheet on page 11 | | 20b |
| 21 | Other income (list type and amount—see page 11) _____ | | 21 |
| 22 | Add the amounts shown in the far right column for lines 7 through 21. This is your total income ▶ | | 22 |

Please attach check or money order here.

**Adjustments to Income** (See Instructions on page 11.)

| | | | |
|---|---|---|---|
| 23 | Reimbursed employee business expenses from Form 2106 | 23 | |
| 24a | Your IRA deduction, from the worksheet on page 12 | 24a | |
| b | Spouse's IRA deduction, from the worksheet on page 12 | 24b | |
| 25 | Self-employed health insurance deduction, from worksheet on page 13 | 25 | |
| 26 | Keogh retirement plan and self-employed SEP deduction | 26 | |
| 27 | Penalty on early withdrawal of savings | 27 | |
| 28 | Alimony paid (recipient's last name _____ and social security no. _____) | 28 | |
| 29 | Add lines 23 through 28. These are your total adjustments ▶ | | 29 |

**Adjusted Gross Income**

30 Subtract line 29 from line 22. This is your adjusted gross income. If this line is less than $15,432 and a child lived with you, see "Earned Income Credit" (line 56) on page 16 of Instructions. If you want IRS to figure your tax, see page 13 of Instructions ▶ 30

Approved May 18, 1987

Form 1040 (1987) Page 2

**Tax Computation** (See instructions on page 13.)

| | | | |
|---|---|---|---|
| 31 | Amount from line 30 (adjusted gross income) | 31 | |
| | **Caution:** If you can be claimed as a dependent on another person's return, check here ▶ ☐ and see page 13. Also see page 13 if you are married filing a separate return and your spouse itemizes, or you are a dual-status alien. | | |
| 32 | If you itemize, attach Schedule A (Form 1040). Enter the amount from Schedule A, line 26, skip lines 33a and 33b, and go to line 34. If you do NOT itemize, complete lines 33a and 33b. | 32 | |
| 33a | Check if: ☐ You were 65 or over ☐ Blind; ☐ Spouse was 65 or over ☐ Blind. Add the number of boxes checked. Enter the total here ▶ 33a | | |
| b | **Standard deduction** If, on page 1, you checked Filing Status box: 1 or 4, enter $2,540; 2 or 5, enter $3,760; 3, enter $1,880. **Caution:** If you completed line 33a, enter amount from chart on page 14 | 33b | |
| 34 | Subtract line 32 or 33b, whichever applies, from line 31. Enter the result here | 34 | |
| 35 | Multiply $1,900 by the total number of exemptions claimed on line 6e (see page 14) | 35 | |
| 36 | **Taxable income.** Subtract line 35 from line 34. Enter the result (but not less than zero) | 36 | |
| | **Caution:** If under age 14 and you have more than $1,000 of unearned income, check here ▶ ☐ and see page 14. | | |
| 37 | Enter tax here. Check if from ☐ Tax Table, ☐ Tax Rate Schedule X, Y, or Z, ☐ Schedule D, or ☐ Form 8615 (Computation of tax for children under age 14 who have more than $1,000 of unearned income) | 37 | |
| 38 | Additional taxes (see page 14). Check if from ☐ Form 4970, ☐ Form 4972, or ☐ Form 5544 | 38 | |
| 39 | Add lines 37 and 38. Enter the total tax ▶ | 39 | |

**Credits** (See instructions on page 14.)

| | | | |
|---|---|---|---|
| 40 | Credit for child and dependent care expenses *(attach Form 2441)* | 40 | |
| 41 | Credit for the elderly or for the permanently and totally disabled *(attach Schedule R)* | 41 | |
| 42 | Add lines 40 and 41. Enter the total | 42 | |
| 43 | Subtract line 42 from line 39. Enter the result (but not less than zero) | 43 | |
| 44 | Foreign tax credit *(attach Form 1116)* | 44 | |
| 45 | General business credit. Check if from ☐ Form 3800, ☐ Form 3468, ☐ Form 5884, ☐ Form 6478, ☐ Form 6765, or ☐ Form 8586 | 45 | |
| 46 | Add lines 44 and 45. Enter the total | 46 | |
| 47 | Subtract line 46 from line 43. Enter the result (but not less than zero) ▶ | 47 | |

**Other Taxes** (Including Advance EIC Payments)

| | | | |
|---|---|---|---|
| 48 | Self-employment tax *(attach Schedule SE)* | 48 | |
| 49 | Alternative minimum tax *(attach Form 6251)* | 49 | |
| 50 | Tax from recapture of investment credit *(attach Form 4255)* | 50 | |
| 51 | Social security tax on tip income not reported to employer *(attach Form 4137)* | 51 | |
| 52 | Tax on retirement plans *(attach Form 5329)* | 52 | |
| 53 | Add lines 47 through 52. This is your total tax ▶ | 53 | |

**Payments** Attach Forms W-2, W-2G, and W-2P to front.

| | | | |
|---|---|---|---|
| 54 | Federal income tax withheld | 54 | |
| 55 | 1987 estimated tax payments and amount applied from 1986 return | 55 | |
| 56 | Earned income credit (see page 16) | 56 | |
| 57 | Amount paid with Form 4868 | 57 | |
| 58 | Excess social security tax and RRTA tax withheld (see page 17) | 58 | |
| 59 | Credit for Federal tax on gasoline and special fuels *(attach Form 4136)* | 59 | |
| 60 | Regulated investment company credit *(attach Form 2439)* | 60 | |
| 61 | Add lines 54 through 60. These are your total payments ▶ | 61 | |

**Refund or Amount You Owe**

| | | | |
|---|---|---|---|
| 62 | If line 61 is larger than line 53, enter amount **OVERPAID** ▶ | 62 | |
| 63 | Amount of line 62 to be **REFUNDED TO YOU** ▶ | 63 | |
| 64 | Amount of line 62 to be applied to your 1988 estimated tax ▶ 64 | | |
| 65 | If line 53 is larger than line 61, enter **AMOUNT YOU OWE.** Attach check or money order for full amount payable to "Internal Revenue Service." Write your social security number, daytime phone number, and "1987 Form 1040" on it. Check ▶ ☐ if Form 2210 (2210F) is attached. See page 17. **Penalty:** $ | 65 | |

**Please Sign Here**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

| | | |
|---|---|---|
| ▶ Your signature | Date | Your occupation |
| ▶ Spouse's signature (if joint return, BOTH must sign) | Date | Spouse's occupation |

**Paid Preparer's Use Only**

| | | | |
|---|---|---|---|
| Preparer's signature ▶ | Date | Check if self-employed ☐ | Preparer's social security no. |
| Firm's name (or yours if self-employed) and address ▶ | | E.I. No. | |
| | | ZIP code | |

Proof Copy May 1987

**SCHEDULES A&B (Form 1040)**

Department of the Treasury
Internal Revenue Service

# Schedule A—Itemized Deductions

(Schedule B is on back)

▶ Attach to Form 1040. ▶ See Instructions for Schedules A and B (Form 1040).

OMB No. 1545-0074

**1987**

Attachment Sequence No. 07

Name(s) as shown on Form 1040 | Your social security number

**Medical and Dental Expenses** (Do not include expenses reimbursed or paid by others.) (See instructions on page 19.)

| | | | |
|---|---|---|---|
| 1a | Prescription medicines and drugs, insulin, doctors, dentists, nurses, hospitals, insurance premiums you paid for medical and dental care, etc. | 1a | |
| b | Transportation and lodging | 1b | |
| c | Other (list—include hearing aids, dentures, eyeglasses, etc.) ▶ | 1c | |
| 2 | Add lines 1a through 1c, and enter the total here | 2 | |
| 3 | Multiply the amount on Form 1040, line 31, by 7.5% (.075) | 3 | |
| 4 | Subtract line 3 from line 2. If zero or less, enter -0-. Total medical and dental ▶ | | 4 |

**Taxes You Paid** (See instructions on page 20.)

Note: General sales taxes are no longer deductible.

| | | | |
|---|---|---|---|
| 5 | State and local income taxes | 5 | |
| 6 | Real estate taxes | 6 | |
| 7 | Other taxes (list—include personal property taxes) ▶ | 7 | |
| 8 | Add the amounts on lines 5 through 7. Enter the total here. Total taxes ▶ | | 8 |

**Interest You Paid** (See instructions on page 20.)

Caution: If you paid interest on a loan incurred after August 16, 1986, that is secured by your home OR if you paid mortgage interest on more than two homes, see page 20 of the instructions.

| | | | |
|---|---|---|---|
| 9a | Deductible home mortgage interest you paid to financial institutions (report deductible points on line 10) | 9a | |
| b | Deductible home mortgage interest you paid to individuals (show that person's name and address) ▶ | 9b | |
| 10 | Deductible points | 10 | |
| 11 | Deductible investment interest | 11 | |
| 12a | Personal interest you paid (see page 20) 12a | | |
| b | Multiply the amount on line 12a by 65% (.65). Enter the result | 12b | |
| 13 | Add the amounts on lines 9a through 11 and 12b. Enter the total here. Total interest ▶ | | 13 |

**Contributions You Made** (See instructions on page 21.)

| | | | |
|---|---|---|---|
| 14a | Cash contributions. (If you gave $3,000 or more to any one organization, report those contributions on line 14b.) | 14a | |
| b | Cash contributions totalling $3,000 or more to any one organization. (Show to whom you gave and how much you gave.) ▶ | 14b | |
| 15 | Other than cash. (You must attach Form 8283 if over $500.) | 15 | |
| 16 | Carryover from prior year | 16 | |
| 17 | Add the amounts on lines 14a through 16. Enter the total here. Total contributions ▶ | | 17 |

| | | | |
|---|---|---|---|
| **Casualty and Theft Losses** | 18 | Casualty or theft loss(es) (attach Form 4684). (See page 21 of the Instructions.) ▶ | 18 |
| **Moving Expenses** | 19 | Moving expenses (attach Form 3903 or 3903F). (See page 22 of the Instructions.) ▶ | 19 |
| **Miscellaneous Deductions Subject to 2% AGI Limit** (See instructions on page 22.) | 20 | Unreimbursed employee business expenses (attach Form 2106) | 20 |
| | 21 | Other expenses (list type and amount) ▶ | 21 |
| | 22 | Add the amounts on lines 20 and 21. Enter the total. | 22 |
| | 23 | Multiply the amount on Form 1040, line 31, by 2% (.02). Enter the result here | 23 |
| | 24 | Subtract line 23 from line 22. Enter the result (but not less than zero) ▶ | 24 |
| **Other Miscellaneous Deductions** | 25 | Miscellaneous deductions not subject to 2% AGI limit (see page 22). (List type and amount.) ▶ ▶ | 25 |
| **Total Itemized Deductions** | 26 | Add the amounts on lines 4, 8, 13, 17, 18, 19, 24, and 25. Enter your answer here and on Form 1040, line 32 ▶ | 26 |

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

Schedule A (Form 1040) 1987

Proof of Mailing 1987

Schedules A&B (Form 1040) 1987 OMB No. 1545-0074 Page 2

Name(s) as shown on Form 1040. (Do not enter name and social security number if shown on other side.) | Your social security number

## Schedule B—Interest and Dividend Income

Attachment Sequence No. 08

**Part I Interest Income**

(See instructions on pages 8 and 22.)

Also complete Part III.

Note: If you received a Form 1099–INT or Form 1099–OID from a brokerage firm, enter the firm's name and the total interest shown on that form.

If you received more than $400 in taxable interest income, you must complete Part I and list ALL interest received. If you received, as a nominee, interest that actually belongs to another person, or you received or paid accrued interest on securities transferred between interest payment dates, see page 22.

| Interest Income | | Amount |
|---|---|---|
| 1 Interest income from seller-financed mortgages. (See Instructions and list name of payer.) ▶ | 1 | |
| 2 Other interest income (list name of payer) ▶ | 2 | |
| 3 Add the amounts on lines 1 and 2. Enter the total here and on Form 1040, line 8. ▶ | 3 | |

**Part II Dividend Income**

(See instructions on pages 8 and 22.)

Also complete Part III.

Note: If your securities were held by a brokerage firm, enter the firm's name and the total dividends shown on Form 1099–DIV.

If you received more than $400 in gross dividends and/or other distributions on stock, complete Part II. If you received, as a nominee, dividends that actually belong to another person, see page 23.

| Dividend Income | | Amount |
|---|---|---|
| 4 Dividend income (list name of payer—include on this line capital gain distributions, nontaxable distributions, etc.) ▶ | 4 | |
| 5 Add the amounts on line 4. Enter the total here | 5 | |
| 6 Capital gain distributions. Enter here and on line 13, Schedule D.* | 6 | |
| 7 Nontaxable distributions. (See Schedule B Instructions for adjustment to basis.) | 7 | |
| 8 Add the amounts on lines 6 and 7. Enter the total here | 8 | |
| 9 Subtract line 8 from line 5. Enter the result here and on Form 1040, line 10 ▶ | 9 | |

*If you received capital gain distributions for the year and you do not need Schedule D to report any other gains or losses, do not file that schedule. Instead, enter your capital gain distributions on Form 1040, line 14. Write "CGD" on the dotted line to the left of line 14.

**Part III Foreign Accounts and Foreign Trusts**

(See instructions on page 23.)

If you received more than $400 of interest or dividends, OR if you had a foreign account or were a grantor of, or a transferor to, a foreign trust, you must answer both questions in Part III.

| | Yes | No |
|---|---|---|
| 10 At any time during the tax year, did you have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? (See page 23 of the Instructions for exceptions and filing requirements for Form TD F 90-22.1.) | | |
| If "Yes," enter the name of the foreign country ▶ | | |
| 11 Were you the grantor of, or transferor to, a foreign trust which existed during the current tax year, whether or not you have any beneficial interest in it? If "Yes," you may have to file Forms 3520, 3520-A, or 926 | | |

Proof Of May 18, 1987

**SCHEDULE D (Form 1040)**

Department of the Treasury
Internal Revenue Service

# Capital Gains and Losses and Reconciliation of Forms 1099-B

▶ Attach to Form 1040. ▶ See Instructions for Schedule D (Form 1040).

For Paperwork Reduction Act Notice, see Form 1040 Instructions.

OMB No. 1545-0074

**1987**

Attachment Sequence No. 12

Name(s) as shown on Form 1040 | Your social security number

1 Report here, the total sales of stocks, bonds, etc., reported for 1987 by your broker to you on Form(s) 1099-B or an equivalent substitute statement(s) . . . . . 1

If this amount differs from the total of lines 2b and 9b, column (d), attach a statement explaining the difference. See the Instructions for line 1 for examples.

Do not include real estate transactions reported to you on a Form 1099-B on this line.

## Part I Short-term Capital Gains and Losses—Assets Held Six Months or Less

| (a) Description of property (Example, 100 shares 7% preferred of "Z" Co.) | (b) Date acquired (Mo., day, yr.) | (c) Date sold (Mo., day, yr.) | (d) Sales price (see instructions) | (e) Cost or other basis (see instructions) | (f) LOSS If (e) is more than (d), subtract (d) from (e) | (g) GAIN If (d) is more than (e), subtract (e) from (d) |
|---|---|---|---|---|---|---|
| 2a Form 1099-B Transactions (Sales of Stocks, Bonds, etc.): (Report real estate transactions reported on a Form 1099-B on line 2c.) | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| 2b Total (add column (d)) . . . . . ▶ | | | | | | |
| 2c Other Transactions: | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

| | | | |
|---|---|---|---|
| 3 | Short-term gain from sale or exchange of a principal residence from Form 2119, lines 8 or 14 | 3 | |
| 4 | Short-term gain from installment sales from Form 6252, lines 23 or 31 . . . | 4 | |
| 5 | Net short-term gain or (loss) from partnerships, S corporations, and fiduciaries . | 5 | |
| 6 | Short-term capital loss carryover . . . . . | 6 | |
| 7 | Add all of the transactions on lines 2a and 2c and lines 3 through 6 in columns (f) and (g) . . . | 7 | ( ) |
| 8 | Net short-term gain or (loss), combine columns (f) and (g) of line 7 . . . . . | 8 | |

## Part II Long-term Capital Gains and Losses—Assets Held More Than Six Months

9a Form 1099-B Transactions (Sales of Stocks, Bonds, etc.): (Report real estate transactions reported on a Form 1099-B on line 9c.)

| | | | | | | |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| 9b Total (add column (d)) . . . . . ▶ | | | | | | |
| 9c Other Transactions: | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

| | | | |
|---|---|---|---|
| 10 | Long-term gain from sale or exchange of a principal residence from Form 2119, lines 8, 10, or 14 | 10 | |
| 11 | Long-term gain from installment sales from Form 6252, lines 23 or 31 . . . | 11 | |
| 12 | Net long-term gain or (loss) from partnerships, S corporations, and fiduciaries . | 12 | |
| 13 | Capital gain distributions . . . . . | 13 | |
| 14 | Enter gain from Form 4797, line 7 or 9 . . . . . | 14 | |
| 15 | Long-term capital loss carryover . . . . . | 15 | |
| 16 | Add all of the transactions on lines 9a and 9c and lines 10 through 15 in columns (f) and (g) . . | 16 | ( ) |
| 17 | Net long-term gain or (loss), combine columns (f) and (g) of line 16 . . . . . | 17 | |

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Schedule D (Form 1040) 1987 Attachment Sequence No. 12 Page 2

Name(s) as shown on Form 1040. (Do not enter name and social security number if shown on other side.) Your social security number

**Part III Summary of Parts I and II**

18 Combine lines 8 and 17, and enter the net gain or (loss) here. If result is a gain, also enter the gain on Form 1040, line 14 . . . . . 18

*Note: If lines 17 and 18 are net gains and your taxable income is taxed over the 28% tax rate, you should use Part IV below to figure your tax.*

19 If line 18 is a loss, enter here and as a loss on Form 1040, line 14, the smaller of:
a The amount on line 18; or b $3,000 ($1,500 if married filing a separate return) . . . . . 19

**Part IV Alternative Tax Computation**
(You will have to complete Form 1040 in order to figure your taxable income for purposes of line 20.)

Use Part IV if both lines 17 and 18 show net gains, AND:

| You checked filing status box: | AND | Form 1040, line 36 is over: | You checked filing status box: | AND | Form 1040, line 36 is over: |
|---|---|---|---|---|---|
| 1 | | $27,000 | 3 | | $22,500 |
| 2 or 5 | | 45,000 | 4 | | 38,000 |

| | | |
|---|---|---|
| 20 | Enter amount from Form 1040, line 36 | 20 |
| 21 | Enter the smaller of the gain on line 18 or the gain on line 17 | 21 |
| 22 | Subtract line 21 from 20 and enter the result | 22 |
| 23 | Enter: a $16,800 if you checked filing status box 1; b $28,000 if you checked filing status box 2 or 5; c $14,000 if you checked filing status box 3; or d $23,000 if you checked filing status box 4 | 23 |
| 24 | Enter the greater of line 22 or line 23 | 24 |
| 25 | Subtract line 24 from line 20 | 25 |
| 26 | Figure the amount of tax on line 24. (See Instructions.) | 26 |
| 27 | Multiply line 25 by 28% (.28) and enter the result | 27 |
| 28 | Add lines 26 and 27. Enter the result here and on Form 1040, line 37 and check the box for Schedule D | 28 |

**Part V Computation of Capital Loss Carryovers From 1987 to 1988**
(Complete this part if the loss on line 18 is more than the loss on line 19.)

| | | |
|---|---|---|
| 29 | Enter the loss shown on line 8; if none, enter zero and skip lines 30 through 33 | 29 |
| 30 | Enter gain shown on line 17. If that line is blank or shows a loss, enter zero | 30 |
| 31 | Subtract line 30 from line 29 | 31 |
| 32 | Enter the smaller of line 19 or 31 | 32 |
| 33 | Subtract line 32 from line 31. This is your short-term capital loss carryover from 1987 to 1988 | 33 |
| 34 | Enter loss from line 17; if none, enter zero and skip lines 35 through 38 | 34 |
| 35 | Enter gain shown on line 8. If that line is blank or shows a loss, enter zero | 35 |
| 36 | Subtract line 35 from line 34 | 36 |
| 37 | Subtract line 32 from line 19. (Note: *If you skipped lines 30 through 33, enter the amount from line 19.*) | 37 |
| 38 | Subtract line 37 from line 36. This is your long-term capital loss carryover from 1987 to 1988 | 38 |

**Part VI Complete This Part Only If You Elect Out of the Installment Method and Report a Note or Other Obligation at Less Than Full Face Value**

| | | |
|---|---|---|
| 39 | Check here if you elect out of the installment method ▶ ☐ | |
| 40 | Enter the face amount of the note or other obligation. ▶ | |
| 41 | Enter the percentage of valuation of the note or other obligation. ▶ | |

**Part VII Reconciliation of Forms 1099-B for Bartering Transactions**
Complete this part if you received one or more Form(s) 1099-B or an equivalent substitute statement(s) reporting bartering income.

| | | Amount of bartering income from Form 1099-B or equivalent statement excluded on: |
|---|---|---|
| 42 | Form 1040, line 21 | 42 |
| 43 | Schedule C (Form 1040) | 43 |
| 44 | Schedule D (Form 1040) | 44 |
| 45 | Schedule E (Form 1040) | 45 |
| 46 | Schedule F (Form 1040) | 46 |
| 47 | Other (identify) (if not taxable, indicate reason—attach additional sheets if necessary) ▶ ..... | 47 |
| 48 | Total (add lines 42 through 47) | 48 |

Note: *The amount on line 48 should be the same as the total bartering income on all Forms 1099-B or equivalent statements received.*

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**SCHEDULE E (Form 1040)**

Department of the Treasury
Internal Revenue Service

Name(s) as shown on Form 1040

# Supplemental Income Schedule

(From rents, royalties, partnerships, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, Form 1041, or Form 1041S.
▶ See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

**1987**

Attachment Sequence No. 13

Your social security number

**Part I Rental and Royalty Income or (Loss)** **Caution:** Your rental loss may be limited. See Instructions.

1 In the space provided below, show the kind and location of each rental property.

2 For each property listed, did you or a member of your family use for personal purposes any of the properties for more than the greater of 14 days or 10% of the total days rented at fair rental value during the tax year?

3 For each rental real estate property listed, did you actively participate in the operation of the activity during the tax year? (See Instructions.)

| | 2 Yes | 2 No | 3 Yes | 3 No |
|---|---|---|---|---|
| Property A ▶ | | | | |
| Property B ▶ | | | | |
| Property C ▶ | | | | |

| Rental and Royalty Income | | Properties A | Properties B | Properties C | Totals (Add columns A, B, and C) |
|---|---|---|---|---|---|
| 4 Rents received | 4 | | | | |
| 5 Royalties received | 5 | | | | |
| **Rental and Royalty Expenses** | | | | | |
| 6 Advertising | 6 | | | | |
| 7 Auto and travel | 7 | | | | |
| 8 Cleaning and maintenance | 8 | | | | |
| 9 Commissions | 9 | | | | |
| 10 Insurance | 10 | | | | |
| 11 Legal and other professional fees | 11 | | | | |
| 12 Mortgage interest paid to financial institutions (see Instructions) | 12 | | | | [redacted] |
| 13 Other interest | 13 | | | | |
| 14 Repairs | 14 | | | | |
| 15 Supplies | 15 | | | | |
| 16 Taxes (Do not include windfall profit tax here. See Part V, line 40.) | 16 | | | | |
| 17 Utilities | 17 | | | | |
| 18 Wages and salaries | 18 | | | | |
| 19 Other (list) ▶ | | | | | |
| 20 Total expenses other than depreciation and depletion. Add lines 6 through 19. | 20 | | | | 20 |
| 21 Depreciation expense (see Instructions), or depletion (see Publication 535) | 21 | | | | 21 |
| 22 Total. Add lines 20 and 21 | 22 | | | | [redacted] |
| 23 Income or (loss) from rental or royalty properties. Subtract line 22 from line 4 (rents) or 5 (royalties) | 23 | | | | |
| 24 Deductible rental loss (see Instructions) | 24 | | | | |
| 25 Add properties with profits on line 23, and enter the total profits here | | | | | 25 |
| 26 Add royalty losses from line 23 and losses from line 24, and enter the total (losses) here | | | | | 26 ( ) |
| 27 Combine amounts on lines 25 and 26, and enter the net profit or (loss) here | | | | | 27 |
| 28 Net farm rental profit or (loss) from Form 4835, line 34 | | | | | 28 |
| 29 Total rental or royalty income or (loss). Combine amounts on lines 27 and 28, and enter the total here. If Parts II, III, IV, and V on page 2 do not apply to you, enter the amount from line 29 on Form 1040, line 17. Otherwise, include the amount from line 29 in line 42 on page 2 of Schedule E | | | | | 29 |

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Schedule E (Form 1040) 1987 Attachment Sequence No. 13 Page 2

Name(s) as shown on Form 1040. (Do not enter name and social security number if shown on other side.) Your social security number

**Part II Income or (Loss) from Partnerships and S Corporations**

If you report a loss below and have amounts invested in that activity for which you are not at risk, you may have to file Form 6198. See Instructions.

| | (a) Name | (b) Enter P for partnership; S for S Corporation | (c) Check if foreign partnership | (d) Employer identification number |
|---|---|---|---|---|
| A | | | | |
| B | | | | |
| C | | | | |
| D | | | | |
| E | | | | |

| | Passive Activities | | Nonpassive Activities | |
|---|---|---|---|---|
| | (e) Loss allowed from Form 8582 | (f) Income from Schedule K-1 | (g) Loss from Schedule K-1 | (h) Section 179 deduction | (i) Income from Schedule K-1 |
| A | | | | | |
| B | | | | | |
| C | | | | | |
| D | | | | | |
| E | | | | | |
| 30a Totals | | | | | |
| b Totals | | | | | |

| | | | |
|---|---|---|---|
| 31 | Add amounts in columns (f) and (i), line 30a. Enter total income here | 31 | |
| 32 | Add amounts in columns (e), (g), and (h), line 30b. Enter total (loss) and section 179 deduction here | 32 | ( ) |
| 33 | Total partnership and S corporation income or (loss). Combine amounts on lines 31 and 32. Enter the total here and include in line 42 below | 33 | |

**Part III Income or (Loss) from Estates and Trusts**

| | (a) Name | (b) Employer identification number |
|---|---|---|
| A | | |
| B | | |
| C | | |

| | Passive Activities | | Nonpassive Activities | |
|---|---|---|---|---|
| | (c) Loss allowed from Form 8582 | (d) Income from Schedule K-1 | (e) Loss from Schedule K-1 | (f) Income from Schedule K-1 |
| A | | | | |
| B | | | | |
| C | | | | |
| 34a Totals | | | | |
| b Totals | | | | |

| | | | |
|---|---|---|---|
| 35 | Add amounts in columns (d) and (f), line 34a. Enter total income here | 35 | |
| 36 | Add amounts in columns (c) and (e), line 34b. Enter total (loss) here | 36 | ( ) |
| 37 | Total estate and trust income or (loss). Combine amounts on lines 35 and 36. Enter the total here and include in line 42 below | 37 | |

**Part IV Income or (Loss) from Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder**

| (a) Name | (b) Employer identification number | (c) Excess inclusion from Schedules Q, line 2c (see Instructions) | (d) Taxable income (net loss) from Schedules Q | (e) Income from Schedules Q, line 3 |
|---|---|---|---|---|
| | | | | |

| | | | |
|---|---|---|---|
| 38 | Combine columns (d) and (e) only. Enter the total here and include in line 42 below | 38 | |

**Part V Windfall Profit Tax Summary**

| | | | |
|---|---|---|---|
| 39 | Windfall profit tax credit or refund received in 1987 (see Instructions) | 39 | |
| 40 | Windfall profit tax withheld in 1987 (see Instructions) | 40 | ( ) |
| 41 | Combine amounts on lines 39 and 40. Enter the total here and include in line 42 below | 41 | |

**Part VI Summary**

| | | | |
|---|---|---|---|
| 42 | TOTAL income or (loss). Combine lines 29, 33, 37, 38, and 41. Enter total here and on Form 1040, line 17 ▶ | 42 | |
| 43 | Farmers and fishermen: Enter your share of GROSS FARMING AND FISHING INCOME applicable to Parts I, II, and III (see Instructions). 43 | | |

Printed on May 19, 1987

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Form **2106**
Department of the Treasury
Internal Revenue Service

# Employee Business Expenses

▶ See separate instructions.
▶ Attach to Form 1040.

OMB No. 1545-0139
**1987**
Attachment Sequence No. **54**

Your name | Social security number | Occupation in which expenses were incurred

**Part I Employee Business Expenses**

| | | | |
|---|---|---|---|
| 1 | Vehicle expenses from Part II, line 15 or line 22 | 1 | |
| 2 | Parking fees, tolls and local transportation, including train, bus, etc. | 2 | |
| 3 | Travel expense while away from home, including lodging, airplane, car rental, etc. DO NOT include meals and entertainment | 3 | |
| 4 | Business expenses not reported on lines 1 through 3. Do not include meal and entertainment expenses; these expenses are reported on line 12 | 4 | |
| 5 | Add lines 1 through 4 | 5 | |
| 6 | Reimbursements for the expenses listed on lines 1 through 4 that your employer did NOT report to you on Form W-2 or Form 1099 | 6 | |
| 7 | If line 5 is more than line 6, subtract line 6 from line 5. Otherwise enter zero | 7 | |
| 8 | If line 6 is more than line 5, subtract line 5 from line 6. Otherwise enter zero | 8 | |
| 9 | Reimbursements for the expenses listed on lines 1 through 4 that your employer separately identified to you as a reimbursement on Form W-2 or Form 1099. (See instructions) | 9 | |
| 10 | Enter the smaller of line 7 or line 9 | 10 | |
| 11 | Subtract line 10 from line 7. If zero or less, enter zero | 11 | |

If you are **NOT** claiming expenses for meals or entertainment, **SKIP LINES 12 THROUGH 22 AND ENTER:**

The amount from line 8 on Form 1040, line 7; **AND**
The amount from line 10 on Form 1040, line 23; **AND**
The amount from line 11 on Schedule A, line 20.

**Otherwise, go to line 12.**

| | | | |
|---|---|---|---|
| 12 | Meal and entertainment expenses (see instructions) | 12 | |
| 13 | Reimbursements for the expenses listed on line 12 that your employer did NOT report to you on Form W-2 or Form 1099 | 13 | |
| 14 | If line 12 is more than line 13, subtract line 13 from line 12. Otherwise enter zero | 14 | |
| 15 | If line 13 is more than line 12, subtract line 12 from line 13. Otherwise enter zero | 15 | |
| 16 | Reimbursements for the expenses listed on line 12 that your employer separately identified to you as a reimbursement on Form W-2 or Form 1099. (See instructions) | 16 | |
| 17 | Enter the smaller of line 14 or line 16 | 17 | |
| 18 | Subtract line 17 from line 14. If zero or less, enter zero | 18 | |
| 19 | Multiply line 18 by 80% (.8) | 19 | |
| 20 | Add lines 8 and 15. Enter here and on Form 1040, line 7 | 20 | |
| 21 | Add lines 10 and 17. Enter here and on Form 1040, line 23 | 21 | |
| 22 | Add lines 11 and 19. Enter here and on Schedule A (Form 1040), line 20 | 22 | |

Proof of May 18, 1987

Form 2106 (1987) Page 2

**Part II Vehicle Expenses (Use either your actual expenses or the standard mileage rate.)**

| Section A.—General Information | | Vehicle 1 | Vehicle 2 |
|---|---|---|---|
| 1 Enter the date vehicle was placed in service | 1 | / / | / / |
| 2 Total mileage vehicle was used during 1987 | 2 | miles | miles |
| 3 Miles included on line 2 that vehicle was used for business | 3 | miles | miles |
| 4 Percent of business use (divide line 3 by line 2) | 4 | % | % |
| 5 Average daily round trip commuting distance | 5 | miles | miles |
| 6 Miles included on line 2 that vehicle was used for commuting | 6 | miles | miles |
| 7 Other personal mileage (subtract line 6 plus line 3 from line 2) | 7 | miles | miles |

8 Do you (or your spouse) have another vehicle available for personal purposes? ☐ Yes ☐ No

9 If your employer provided you with a vehicle, is personal use during off duty hours permitted? ☐ Yes ☐ No ☐ Not applicable

10 Do you have evidence to support your deduction? ☐ Yes ☐ No. If yes, is the evidence written? ☐ Yes ☐ No

**Section B.—Standard Mileage Rate (Do not use this section unless you own the vehicle.)**

| | | |
|---|---|---|
| 11 Enter the smaller of Part II, line 3 or 15,000 miles | 11 | miles |
| 12 Subtract line 11 from Part II, line 3 | 12 | miles |
| 13 Multiply line 11 by 21¢ (.21) (see instructions for a fully depreciated vehicle) | 13 | |
| 14 Multiply line 12 by 11¢ (.11) | 14 | |
| 15 Add lines 13 and 14. Enter total here and on Part I, line 1 | 15 | |

| Section C.—Actual Expenses | | Vehicle 1 | Vehicle 2 |
|---|---|---|---|
| 16 Gasoline, oil, repairs, vehicle insurance, etc | 16 | | |
| 17 Vehicle rentals | 17 | | |
| 18 Value of employer-provided vehicle (applies only if included on Form W-2 at 100% fair rental value, see instructions) | 18 | | |
| 19 Add lines 16 through 18 | 19 | | |
| 20 Multiply line 19 by the percentage on Part II, line 4 | 20 | | |
| 21 Depreciation from Section D, column (f) (see instructions) | 21 | | |
| 22 Add lines 20 and 21. Enter total here and on Part I, line 1 | 22 | | |

**Section D.—Depreciation of Vehicles** (Depreciation can only be claimed for a vehicle you own. If a vehicle is used 50 percent or less in a trade or business, the Section 179 deduction is not allowed and depreciation must be taken using the straight line method over 5 years. For other limitations, see instructions.)

| | Cost or other basis (a) | Basis for depreciation (Business use only—see instructions) (b) | Method of figuring depreciation (c) | Depreciation deduction (d) | Section 179 expense (e) | Total column (d) + column (e) (enter in Section C, line 21) (f) |
|---|---|---|---|---|---|---|
| Vehicle 1 | | | | | | |
| Vehicle 2 | | | | | | |

Proof of May 18, 1987

[FR Doc. 87-10919 Filed 5-14-87; 8:45 am]
BILLING CODE 4830-01-C

federal register

Monday
May 18, 1987

Part III

# Department of Transportation

## Research and Special Programs Administration

## The National Tank Truck Carriers, Inc. and the American Trucking Associations, Inc.; Application for Inconsistency Ruling; Public Notice and Invitation To Comment

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA–40]

## The National Tank Truck Carriers, Inc. and the American Trucking Associations, Inc., Application for Inconsistency Ruling

AGENCY: Research and Special Programs Administration; DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The National Tank Truck Carriers, Inc. (NTTC) and the American Trucking Associations, Inc. (ATA) have applied for an administrative ruling to determine whether directives 3–76, 5–63, 6–76, and 7–74 of the New York Fire Department's Bureau of Fire Prevention (BFP) and the hazardous materials time and routing restrictions of the City of New York and the Port Authority of New York and New Jersey (Port Authority) are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder, and, therefore, preempted under section 112(a) of the HMTA. The BFP directives require tank truck carriers to receive permits before compressed gases, flammable and combustible liquids, and flammable and combustible mixtures are transported into the City of New York. The City of New York routing regulations define specific time periods when hazardous materials shipments may pass through the City and restrict the use of the George Washington Bridge and Interstate 95 for the transportation of such materials. The regulations of the Port Authority impose limitations on the quantities of flammable materials that may be transported as dry freight and prohibit tank trucks that carry flammable materials from entering the George Washington Expressway.

DATES: Comments received on or before July 10, 1987, and rebuttal comments received on or before August 25, 1987, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comment received may be reviewed in the Dockets Branch, Research and Special Programs Administration, Department of Transportation, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC 20590. Comments and rebuttal comments on the application should separately address those issues related to the BFP directives and those issues related to the time and routing restrictions. They are to be submitted to the Dockets Branch at the above address, and should include the Docket Number IRA–40A if related to the BFP directives and IRA–40B if related to the time and routing restrictions. Three copies are requested. A copy of each comment and rebuttal comment also must be sent to Clifford J. Harvison, President, NTTC, 2200 Mill Road, Alexandria, VA. 22314; Daniel R. Barney, Director, ATA Litigation Center, 2200 Mill Road, Alexandria, VA 22314; Doron Gopstein, Esq., Acting Corporation Counsel, City of New York, 100 Church Street, Room 6C–37, NY, NY 10017 (Attn: Grace Goodman, Esq., Assistant Corporation Counsel); and Patrick J. Falvey, Esq., The Port Authority of New York and New Jersey, One World Trade Center, Suite 665, NY, NY 10048 (Attn: Robert Johnson, Esq.); and that fact certified to at the time the comment is submitted to the Dockets Branch. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Harvison, Barney, Gopstein, and Falvey at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, Telephone 202–366–4362. Single copies of the directives and regulations at issue may be obtained from Sandy Cureton, Dockets Unit, Research and Special Programs Administration, Room 8426, 400 Seventh Street SW., Washington, DC 20590, Telephone 202–366–5046.

SUPPLEMENTARY INFORMATION:

### 1. Background

The HMTA (49 App. U.S.C. 1801 *et seq.*) at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112 of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or local requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

### 2. Application for Inconsistency Ruling

The American Trucking Associations, Inc. (ATA) and the National Tank Truck Carriers, Inc. (NTTC) have filed an application for an administrative ruling seeking a determination that directives 3–76, 5–63, 6–76, and 7–74 of the New York Fire Department's Bureau of Fire Prevention (BFP) and the hazardous materials regulations of the City of New York and the Port Authority of New York and New Jersey (Port Authority) are inconsistent with the HMTA and the HMR. BFP Directives 6–76 and 7–74 create permit systems that govern the use of tank trucks which transport combustible or flammable mixtures within New York City. BFP Directive 3–76 establishes a City permit system for transporting flammable and combustible liquids through the use of open and closed body platform trucks, while Directive 5–63 creates a permit system for the transportation of compressed gases within the City.

The New York City routing regulations define specific time periods when hazardous material shipments may pass through the City and restrict the use of the George Washington Bridge and Interstate 95 for the transportation of such materials. The regulations of the Port Authority impose limitations on the quantities of flammable materials that may be transported as dry freight and prohibit tank trucks carrying flammable materials from entering onto the George Washington Expressway.

Initially, the applicants contend that the BFP directives and the New York and Port Authority regulations, in addition to being inconsistent with the HMTA and the HMR, are inconsistent with the Federal Motor Carrier Safety Regulations (FMCSR) contained in 49 CFR Parts 391, 392, 393, and 396. The FMCSR were reissued under the authority of the HMTA to allow the imposition of civil penalties and the use of additional enforcement tools provided by such legislation. See Incorporation of the Federal Motor Carrier Safety Regulations by Reference,

43 FR 4858 (Feb. 6, 1978). However, when the FMCSR were reissued under the HMTA, such action was not intended to change the intent, scope of application, or preemptive effects of the FMCSR as they existed under their original statutory authority (Interstate Commerce Act, 49 U.S.C. 304). *Id.* Therefore, RSPA will consider the preemptive effects of 49 CFR Parts 391, 392, 393, and 396 only to the extent those effects existed prior to their reissuance under the HMTA. Inconsistency Ruling 2 (IR–2), 44 FR 75566, 75568 (Dec. 20, 1979). 49 CFR 390.30, part of the incorporation by reference, sets out the standards to be used in considering preemption under the FMCSR:

> Except as otherwise specifically indicated, Parts 390 through 397 of this subchapter are not intended to preclude States or subdivisions thereof from establishing or enforcing State or local laws relating to safety, the compliance with which would not prevent full compliance with these regulations by the person subject thereto.

The standards thus established are essentially identical to the first test used to determine preemption under the HMTA; i.e., the dual compliance test. Therefore, a state or local requirement concerning a subject addressed by the cited FMCSR provisions is preempted only if compliance with it and a provision of the FMCSR is impossible.

**3. Bureau of Fire Prevention Directives**

The receipt of a permit under any one of the four BFP directives is conditioned upon fulfillment of the requirements of that particular directive.

Directive 3–76 requires each flammable and combustible mixture platform truck to adhere to engine fuel tank volume capacity restrictions (gasoline: 60 gallons; diesel fuel: 120 gallons). Additionally, the use of certain engine fuel tanks is prohibited unless they have been approved by Underwriters Laboratory (such approval designated by a permanently attached metal label). Directive 3–76 requires engine fuel tanks, even if they conform to DOT specifications, to be additionally inspected by an entity designated by the New York Fire Department. Furthermore, Directive 3–76 imposes numerous additional equipment specifications (e.g., brakes, wiring, fire protection, engine exhaust, etc.) and mandates specific methods to haul containerized flammable or combustible materials.

To receive a permit under Directive 5–63, each owner of a vehicle transporting or delivering compressed gases must prepare and file with the Fire Commissioner, an affidavit stating that the truck chassis is adequate to transport the truck body and its contents. Also, the manufacturer of each tank truck must submit an affidavit to prove that the truck was manufactured in accordance with DOT specifications and regulations. Furthermore, each driver of a compressed gas vehicle must pass certification tests administered by New York City. Finally, to ensure that Directive 5–63 is followed, each vehicle must be inspected by City employees.

Directive 6–76 governs the use of tank trucks that transport combustible mixtures. Under Directive 6–76, engine fuel tanks must adhere to volume capacity restrictions (gasoline: 60 gallons; diesel fuel: 120 gallons), and some must be approved by Underwriters Laboratory (such approval designated by a permanently attached metal label). Furthermore, each tank must be tested pursuant to the City's prescribed procedures. Also, Directive 6–76 imposes numerous equipment specifications (e.g., capacity indicator, relief valves, bumpers, brakes, etc.). Directive 6–76 requires each driver of combustible mixture transport vehicles to pass certification tests, and the vehicle itself must be inspected for compliance with Directive 6–76's requirements. Finally, tank trucks that transport combustible petroleum products are prohibited from transporting any other type of material.

Directive 7–74 governs the use of tank trucks transporting flammable mixtures. To obtain a permit under Directive 7–74, each transport vehicle must be inspected by City authorities and the drivers of such vehicles must successfully complete certification testing. Numerous tank construction specifications are required by Directive 7–74 (e.g., engine exhaust, relief vents, mudguards, bumpers, etc.). Also, each tank must be tested and certified pursuant to New York's prescribed procedures. Similarly, fuel tanks must adhere to volume capacity restrictions (gasoline: 60 gallons; diesel fuel: 120 gallons), and some must be approved by Underwriters Laboratory (such approval designated by a permanently attached metal label). Furthermore, tank trucks carrying flammable liquids may only be unloaded pursuant to a City-approved gravity method. Directive 7–74 requires manufacturers to provide: (1) Detailed chassis specifications complete with drawings and a calibration chart as to tank capacity for each vehicle; and (2) an affidavit showing compliance with the Directive's requirements. Directive 7–76 prohibits the use of semi-trailers to haul flammable liquids and also prohibits tank trucks that carry flammable liquids from carrying other forms of materials.

The applicants contend that the directives are inconsistent for five general reasons:

(1) They impose highly technical and burdensome regulations that bear no relationship to the Federal requirements.

(2) They effectively ban from New York the vast majority of vehicles that transport hazardous materials.

(3) They would compel hazardous materials shipments to be transferred at the City's borders into specialized trucks meeting the special equipment, vehicle permit, and driver certification requirements of New York.

(4) Such increased loading will create risks of spillage, accidents, delays in transit and other significant safety concerns.

(5) The risks created by New York's regulations are imposed on the carriers, the drivers and workers involved in loading vehicles in jurisdictions surrounding the City, and the residents of those jurisdictions.

The applicants further allege that particular requirements of the directives are inconsistent with the HMTA and the HMR.

Comments and rebuttal comments concerning these directives should be addressed to Docket IRA–40A.

**4. New York City & Port Authority Time and Routing Restrictions**

City routing restrictions apply to all shipments of hazardous materials except those that conform to the City's equipment specifications, that have specialized Fire Department permits, and that are driven by City-certified drivers. Specifically, the routing restrictions only allow hazardous materials shipments to pass through the City during 9 a.m. to 4 p.m. and 6 p.m. to 7 a.m. Monday through Friday, and any time on Saturdays, Sundays and holidays. In other words, there is a 7–9 a.m. and 4–6 p.m. ban on such shipments on non-holiday weekdays.

Applicants assert that this restriction adds considerable driving time and mileage to each shipment of hazardous materials, since each non-conforming truck must go around the City or pull off the road prior to entering the City and wait for the curfew to lift.

The City regulations also require interstate traffic using Interstate Highway 95 to proceed from the George Washington Bridge to the Washington Expressway and prohibit any detours onto City streets. Additionally, the Port Authority regulations limit the quantity of flammable materials that may be transported as dry freight, and prohibit all tank trucks carrying flammable materials from entering the George

Washington Expressway. Consequently, applicants assert that the City's prohibition of detours onto City streets effectively bans the bulk transportation of flammable materials over Interstate 95 and the George Washington Bridge. The Port Authority regulations also restrict the dry freight transport of flammable materials over I–95 and the George Washington Bridge.

The applicants contend that neither the City nor the Port Authority consulted or coordinated with surrounding jurisdictions when establishing their regulations or evaluated the effects of their regulations on surrounding jurisdictions.

Comments and rebuttal comments concerning these time and routing restrictions should be addressed to Docket IRA–40B.

**5. Public Comment**

Comments should be restricted to the issues of whether the challenged BFP directives and the time and routing restrictions of New York City and the Port Authority are inconsistent with the HMTA or either the HMR or the FMSCR issued thereunder. To facilitate an orderly review of the issues raised in the inconsistency application, those comments addressing the BFP directives should be addressed to "Docket IRA–40A." Comments addressing the time and routing restrictions of the City and the Port Authority should be addressed to "Docket IRA–40B." Persons intending to comment on the application should examine the complete application in the RSPA Dockets Branch (including copies of all challenged requirements) and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201 through 107.211).

Issued in Washington, DC on May 11, 1987.

Alan I. Roberts,

*Director, Office of Hazardous Materials Transportation.*

[FR Doc. 87–11282 Filed 5–15–87; 8:45 am]

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Monday
May 18, 1987

Part IV

# Department of Health and Human Services

**Public Health Service**

**42 CFR Part 57**

## Program of Financial Assistance for Disadvantaged Health Professions Students; Final Regulations

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 57**

**Program of Financial Assistance for Disadvantaged Health Professions Students**

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final regulations.

**SUMMARY:** This rule establishes regulations for the program of Financial Assistance for Disadvantaged Health Professions Students (FADHPS), authorized by section 787 of the Public Health Service Act (the Act), as amended by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985.

**EFFECTIVE DATE:** These regulations are effective May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

**SUPPLEMENTARY INFORMATION:** On September 5, 1986, the Department published a Notice of Proposed Rulemaking (NPRM) (51 FR 31920) to establish regulations for the FADHPS program. The Department received 40 comments on this NPRM from schools and professional associations. The comments and the Department's responses to the comments are discussed below. For clarity, the comments and responses are arranged according to the section numbers and titles of the NPRM to which they pertain.

*Section 57.2901 To what program do these regulations apply?*

One respondent opposed proposed § 57.2901, which stated that these regulations apply to grants to eligible schools under section 787 (a)(2)(F) and (b) of the Act. This respondent objected to using 20 percent of the funds authorized under section 787 to provide direct financial assistance to health professions students. In response to this comment, the Department clarifies that section 787(b) of the Act, as amended by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, requires that 20 percent of the section 787 funds be used for direct financial assistance to students at schools of medicine, osteopathy, and dentistry. Since this is required by statute, the Department has retained this provision as proposed.

*Section 57.2902 Definitions.*

Thirteen respondents opposed the proposed definitions of "student" and "school," which would limit eligibility to students at schools of medicine, osteopathic medicine, or dentistry. These respondents believed that students of allied health, chiropractic, clinical psychology, optometry, pharmacy, podiatry, public health, and veterinary medicine should be included as eligible recipients of these funds. In response to these comments, the Department clarifies that section 787 (a)(2)(F) and (b) of the Act limits student eligibility for these funds to students at schools of medicine, osteopathic medicine, or dentistry. Therefore, the Department has retained these definitions as proposed.

*Section 57.2904 Eligibility and selection of aid recipients.*

Nine respondents commented on proposed § 57.2904(a), which would establish student eligibility criteria for the FADHPS program. One respondent suggested a phased-in narrowing of eligibility by class year, which would limit funding in 1987–88 to students in the first 3 years of study, in 1988–89 to students in the first 2 years of study, and in 1989–90 to students in the first year of study. A second alternative suggested was to limit funding only to students in their first 2 years of study. This respondent believed that these additional restrictions would ensure a wider distribution of funds while accomplishing the goal of providing initial year debt-free support.

In response to this comment, the Department notes that the statement of consensus of the House Subcommittee on Health and Environment and the Senate Committee on Labor and Human Resources on the provisions of Pub. L. 99–129 explains that Congress intends that these funds be available to students in all years of attendance (*Congressional Record* for October 3, 1985, pages H8113–H8114, and *Congressional Record* for October 4, 1985, page S12668). Since including these suggestions in the FADHPS regulations would be contrary to Congressional intent, the Department has made no change in this provision.

Five respondents suggested that the eligibility criteria be amended to require that, to qualify as "disadvantaged," a recipient must meet Part (i) of the "disadvantaged background" definition set forth in § 57.2904(a)(3). This was considered necessary so that preferential selection would be given to students who have marginal academic preparedness as well as exceptional financial need. These respondents further suggested that, in addition to meeting the basic "exceptional financial need" requirement, all recipients of funds under this program should be required to be identified by the admissions office as having been accepted as "academically at risk," and document participation in some pre-professional school academic reinforcement program. One respondent suggested that the regulations should limit eligibility to students who are prior participants in the Health Career Opportunity Program (HCOP), to increase the likelihood that the funds are awarded to disadvantaged students who are members of ethnic or racial minorities and thus increase minority representation in the health professions. Another respondent was concerned that Part (i) of the "disadvantaged background" definition is too general, and suggested that the regulatory language or accompanying policy should more clearly define the target population. It was also recommended that the Department analyze the national applicant pool to determine the grade point average and admission test scores which should serve as the threshold for "marginal" or "academically at risk."

Two respondents were concerned that the example provided in the proposed rule for determining which students qualify as disadvantaged implied that only objective criteria used in the admissions process could be used to identify disadvantaged students. One respondent believed that since a test score considered typical at one school may be borderline at another, the example of how to determine who is disadvantaged should not be so closely tied to admissions criteria, but rather should be linked in some way to a factor in the student's background which may impede a person of lesser ability or determination from matriculating at that school. It was also suggested that the disadvantaged definition be amended to allow a student to qualify as disadvantaged based on his or her educational pathway, and to include continuing students who may not have entered as "marginal" but are currently in an environment that inhibits their graduation from school.

In response to these suggestions, the Department notes that the proposed definition of "disadvantaged background" is identical to the definition set forth in 42 CFR 57.1804 of the HCOP regulations (under which the remaining 80 percent of section 787

funds are administered), and thus assures that any prior HCOP participant meets this eligibility criterion. This definition allows a recipient to be considered disadvantaged if he or she meets the criteria in either paragraph (i) or paragraph (ii) of § 57.2904(a)(3). Since this definition has already been established as part of the HCOP regulations, no change has been made. The Department further notes that since some schools which actively recruit and enroll disadvantaged students do not participate in HCOP, it would be unfair to these schools and their disadvantaged students to limit student eligibility to prior HCOP participants.

Although the proposed definition of "disadvantaged background" is being retained, the Department clarifies that each school must develop criteria, consistent with the general requirements of the regulations, for determining which students meet Part (i) of the "disadvantaged background" definition. Some of the suggestions of those respondents—that a student must have been admitted as "academically at risk" and must have participated in a pre-professional school academic reinforcement program, that a student must be a prior HCOP participant, or that there must be a factor in the student's background which may impede matriculation at that school—are examples of appropriate criteria for a school to use in determining whether a student qualifies as disadvantaged under § 57.2904(a)(3)(i). The Department does not believe it should establish uniform grade point average or admission test score thresholds for all schools to follow in identifying students who are "marginal" or "academically at risk." Rather, since each school generally determines its own grade point average and admission test score thresholds as part of its admissions criteria, these individually established levels can be used in determining which students meet the "disadvantaged background" definition.

One respondent requested clarification of whether the family income levels mentioned in § 57.2904(a)(3)(ii) are to be based upon adjusted gross income. The Department clarifies that, as indicated in the table which sets forth these figures for calendar year 1986, the income levels do refer to adjusted gross income.

One respondent requested clarification of whether university and agency scholarships count as resources in calculating whether a student meets the exceptional financial need requirement proposed in § 57.2904(a)(4). The Department clarifies that in § 57.2904(a)(4), the term "student's resources" refers to the expected family contribution determined through the need analysis process, minus the items specifically excluded in the last sentence of § 57.2904(a)(4). Thus, for purposes of determining if a student has "exceptional financial need," university and agency scholarships would not count as resources.

One respondent commented on the introductory sentence in proposed § 57.2904(b), which stated that the school is to select qualified recipients and determine the amount of aid to be awarded. This respondent suggested that language be added to clarify that the intent of this provision is to grant schools flexibility to provide their needy students with the maximum possible benefit. In response to this comment, the Department has revised this provision to state that the school is to select qualified recipients and determine the amount of aid to be awarded to provide its needy students with the maximum possible benefit.

One respondent commented on the provision in proposed § 57.2904(b)(1)(i), which would require that, in determining the amount of aid needed, the school must take into account the expected contribution from parents, spouse, self, or (as appropriate) other family members. This respondent requested that the Department clarify the meaning of the words "as appropriate" and the circumstances under which the expected contribution from family members other than parents or a spouse should be considered.

In response to this comment, the Department clarifies that any contributions that the student receives from any family members must be considered in determining the student's resources, consistent with the information detailing the student's total financial resources that the student provides in the need analysis process. This language was included in the proposed regulations to emphasize that all resources received by the student must be considered when determining the student's financial need, regardless of where the resources are coming from. Therefore, the Department has retained this provision as proposed.

Twenty-two respondents opposed the requirement in proposed § 57.2904(b)(1)(i) that institutions collect Internal Revenue Service (IRS) certified income tax returns from the applicant, the applicant's parents, and the applicant's spouse. These respondents stated that obtaining IRS certified tax returns would be administratively impractical, cumbersome, time-consuming, unnecessary, and costly, and noted that this requirement is inconsistent with the requirements for other Federal financial aid programs. It was believed that this requirement would create lengthy delays and more paperwork in the awarding of FADHPS funds to students, and greater inconvenience and frustration among both financial aid personnel and students and their families. Respondents also indicated that it can take from 10 weeks to 6 months to acquire certified returns from the IRS. As a result, there was concern that the tax returns would not be available before the FADHPS program application deadline.

Respondents also indicated that it is unlikely that funds from this program would go to any students who are not from families with very limited financial means, and that if such a family is not required to file a tax return it is inappropriate to burden it with the cost of obtaining certification from the IRS that no return was filed. In addition, it was noted that if the request for the tax return is submitted to the IRS before the tax return has been fully processed, the IRS certification may incorrectly show that no return was filed, thus creating a potential for inaccuracies in the information received from the IRS.

As an alternative, respondents suggested that the Department eliminate this requirement completely or use the same guidelines for tax returns incorporated in the Department of Education (ED) verification system, which requires photocopies of the income tax returns with original signatures of the parents, student, and spouse. It was believed that following ED's Integrated Verification System would ensure that those applications with probable errors are identified and scrutinized more carefully. In addition, respondents suggested that financial aid administrators be given discretion to require IRS certified tax returns only when they have reason to doubt the accuracy of a signed photocopy of the tax return, or to collect alternate documentation, such as W-2 forms accompanied by a signed statement itemizing amounts and sources of all income. Other respondents suggested that, if IRS certified copies are necessary, schools should be permitted to obtain them prior to the disbursement of funds or after the application and award process, as verification of the information submitted at the time of application, and that if discrepancies occur, the student should be required to return the funds.

In response to these comments, the Department agrees that it would be

extremely difficult for most schools to implement this proposal because of the problems in obtaining tax information from the IRS congruent with the financial aid application and award deadlines. Therefore, the Department has revised this provision to state that a school must collect photocopies of Federal income tax returns with original signatures (or certification that no Federal income tax return was filed and documentation of the total income) from the parents, student, and spouse. The revised provision also states that a school may, at its option, require tax returns that are certified as having been received by the IRS.

Four respondents suggested that the language in this provision be revised to refer to the return for the "most recent tax year" rather than the "most recent tax return," to avoid misunderstandings if, for example, the most recent tax return was filed 10 years ago. The Department agrees with this suggestion and has revised the provision accordingly.

One respondent requested clarification in the regulations regarding the treatment of students with step-parents, deceased parents, or parents who reside in a country where it is impossible for the student to obtain income information directly from the parent. The Department believes it is preferable to exclude from the regulations requirements for the treatment of specific circumstances such as these. However, the Department clarifies that FADHPS applicants with unusual circumstances, such as described above, generally should be handled in the same manner that the school would handle a dependent student in a similar circumstance.

One respondent commented on the provision in § 57.2904(b)(1)(ii), which would require schools to document the criteria used for determining the costs reasonably necessary for the student's attendance at the school. This respondent requested clarification of the extent and nature of the documentation required. In response to this comment, the Department has added to this provision language which clarifies that this documentation must include resource materials used by the school to determine the dollar amount for each category of expenses (e.g., tuition, supplies, room and board, etc.) in its standard student budgets.

Five respondents commented on § 57.2904(b)(2), which would require that FADHPS recipients must be selected in order of greatest need, as determined by the school. These respondents recommended that schools be permitted to take into account other scholarship, grant, or fellowship aid that a student has received or will receive for the award period when determining the order of greatest need. The Department accepts this suggestion and has amended the provision accordingly.

*Section 57.2905 Amount of student award.*

Five respondents commented on proposed § 57.2905, which would establish requirements regarding the maximum amount of funds a student can receive under the FADHPS program. It was recommended that language be added to clarify that the total amount of assistance a student receives from this program, plus other sources of aid the student has received or will receive for the award period, may not exceed the student's need, as determined by the school. Two respondents also noted that the language of this section does not address awarding funds at an amount less than a student's need, and suggested that the regulations or policy documents should clearly permit schools to distribute funds among eligible students at amounts less than each student's full need, to allow a greater number of students to share in these grant funds. In response to these comments, the Department notes that it intended for this provision to clearly prohibit overawards and to allow each school the flexibility to distribute funds in a way that is most beneficial to its students. Therefore, the Department has revised this provision to incorporate both of these suggestions.

*Section 57.2909 What other records, audit, and inspection requirements apply to schools?*

Five respondents opposed proposed § 57.2909, which would establish school requirements regarding records, audit, and inspection for the FADHPS program. These respondents noted that few schools, if any, require a separate application form from students for each program of aid they are seeking, but rather use comprehensive applications that gather the data needed to award all forms of aid administered by the school. As a result, schools would not have a record of students who applied for aid from this program specifically. However, it was considered appropriate for schools to maintain detailed records for each recipient of FADHPS funds, including the need analysis and determination of the recipient's resources, the student budget, other sources of aid, and the amount of funds awarded to each recipient. Also, there was support for requiring that each school maintain up-to-date records of its applications for funding.

In response to these comments, the Department has revised this provision to delete the requirement to maintain a record of all applicants for the FADHPS program, and to add requirements that the school must maintain the following: (1) Documentation of the student budget and other sources of aid for each recipient of FADHPS funds, and (2) each institutional application for funding, including documentation to support the number of eligible students listed on each application.

It was also suggested that, with the increased utilization of computer support systems for financial aid administration, the Department should clarify that school records may be maintained in computer, electronic, microfiche, microfilm, or paper form. The Department has amended this provision accordingly.

The Department has also included a paragraph (c) in this section to state that institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations. This language is being added to clarify the role of the HHS Office of Inspector General in investigating actual or suspected acts of fraud, as well as to inform individuals who are party to financial transactions involving these funds of their responsibility to report information regarding such acts to the appropriate Regional Inspector General for Investigations.

*Section 57.2910 Additional conditions.*

Six respondents opposed proposed § 57.2910, which would permit the Secretary to impose additional conditions if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds. These respondents were concerned that this language is very broad and would appear to allow the Secretary to make any changes in the program without the benefit of a public comment period, contrary to the intent of the Administrative Procedures Act.

In response to these comments, the Department clarifies that this provision permits the Secretary to establish conditions specific to a particular grantee to be placed in the grant award document as a condition for the receipt of funds. The provision does not address substantive rules of general applicability, and thus is not subject to

the Administrative Procedures Act. Accordingly, the Department has retained this provision as proposed.

**Regulatory Flexibility Act and Executive Order 12291**

The Department believes that the resources required to implement the requirements in these regulations are minimal in comparison to the overall resources of health professions schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of health professions schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

**Paperwork Reduction Act**

Sections 57.2904 and 57.2909 of these regulations contain information collection requirements which have been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980 and assigned control number 0915–0110.

**List of Subjects in 42 CFR Part 57**

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, 42 CFR Part 57, Subpart DD is revised as set forth below:

(Catalog of Federal Domestic Assistance, No. 13.139, Financial Assistance for Disadvantaged Health Professions Students)

Dated: March 9, 1987.

Robert E. Windom,

*Assistant Secretary for Health.*

Approved: April 30, 1987.

Otis R. Bowen,

*Secretary.*

## PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

1. 42 CFR Part 57 is amended by removing Subpart DD, entitled "Grants for Training United States Citizen Foreign Medical Students" and adding a new Subpart DD, entitled "Financial Assistance for Disadvantaged Health Professions Students" to read as follows:

**Subpart DD—Financial Assistance for Disadvantaged Health Professions Students**

Sec.

57.2901 To what program do these regulations apply?
57.2902 Definitions.
57.2903 How to apply for a grant.
57.2904 Eligibility and selection of aid recipients.
57.2905 Amount of student award.
57.2906 How is the amount of the grant award determined?
57.2907 For what purposes may grant funds be spent?
57.2908 What additional Department regulations apply to grants?
57.2909 What other records, audit, and inspection requirements apply to schools?
57.2910 Additional conditions.

**Subpart DD—Financial Assistance for Disadvantaged Health Professions Students**

**Authority:** Sec. 215 of the Public Health Service Act, 58 stat. 690, as amended by 63 stat. 35 (42 U.S.C. 216); sec. 787 of the Public Health Service Act, 90 stat. 2309, as amended by 95 stat. 923, 99 stat. 541 (42 U.S.C. 295g–7).

**§ 57.2901 To what program do these regulations apply?**

These regulations apply to grants to eligible schools under section 787(a)(2)(F) and (b) of the Public Health Service Act for financial assistance for disadvantaged health professions students of exceptional financial need.

**§ 57.2902 Definitions.**

"Act" means the Public Health Service Act, as amended.

"Full-time student" means a student enrolled in a school and pursuing a course of study which constitutes a full-time academic workload, as determined by the school, leading to a degree from a school of medicine, school of osteopathic medicine, or school of dentistry, as specified in section 701(4) of the Act.

"National of the United States" means—

(1) A citizen of the United States; or

(2) A person who, though not a citizen of the United States, owes permanent allegiance to the United States, as defined in the Immigration and Nationality Act, at 8 U.S.C. 1101(a)(22).

"School" means a public or private nonprofit school of medicine, osteopathic medicine, or dentistry, as defined in section 701(4) of the Act.

"School year" means the traditional approximately 9-month September to June annual session. For the purpose of computing school year equivalents for students who, during a 12-month period, attend for a longer period than the traditional school year, the school year will be considered to be 9 months in length.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department to whom the authority involved has been delegated.

"State" means in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.[1]

**§ 57.2903 How to apply for a grant.**

(a) Any school located in a State may apply for a grant. Each school seeking a grant must submit an application at the time and in the form and manner that the Secretary may require. The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and the terms and conditions of the award.

(b) Each application will be reviewed to determine eligibility and the reasonableness of the amount of Federal support requested. The Secretary may require the applicant to submit additional data for this purpose.

**§ 57.2904 Eligibility and selection of aid recipients.**

(a) *Determination of eligibility.* An individual is eligible for consideration for financial assistance under this program if he or she:

(1) Is a national of the United States, a permanent resident of the Trust Territory of the Pacific Islands[1] or the Commonwealth of the Northern Mariana Islands, or a lawful permanent resident of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, or Guam;

(2) Is enrolled or has been accepted for enrollment as a full-time student at a school;

[1] In light of recent developments regarding the status of the entities that previously comprised the Trust Territory of the Pacific Islands, we are viewing the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia each as a State for purposes of this grant program.

(3) Comes from a disadvantaged background. For purposes of this program, an individual from a disadvantaged background is one who—

(i) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school; or

(ii) Comes from a family with an annual income below a level based on low income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary will periodically publish these income levels in the Federal Register; and

(4) Has exceptional financial need. For purposes of this program, a student will have exceptional financial need if the school determines that the student's resources, as described in paragraph (b)(1) of this section, do not exceed the lesser of $5,000 or one-half of the cost of attendance at the school. Student summer earnings, educational loans, veterans (G.I.) benefits, and earnings during the school year will not be considered resources for purposes of determining whether a student has exceptional financial need.

(b) *Selection of aid recipients.* The school will select qualified recipients and determine the amount of aid to be awarded to provide its needy students with the maximum possible benefit.

(1) In determining the amount of aid an eligible student needs to pursue a full-time course of study at the school, the school will take into consideration:

(i) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Secretary of Education and published under 34 CFR 674.13 in combination with other information which the school has regarding the student's financial status. The school must take into account, regardless of the tax status of the student, the expected contributions from parents, spouse, self, or (as appropriate) other family members. In making this determination, the school must consider photocopies of the parents', student's, and spouse's Federal income tax forms with original signatures for the most recent tax year (or certification that no Federal income tax return was filed and documentation of the total income for the most recent tax year), and may require tax returns that are certified as having been received by the Internal Revenue Service (IRS); and

(ii) The costs reasonably necessary for the student's attendance at the school. The school must document the criteria used for determining these costs. This documentation must include resource materials used by the school to determine the dollar amount for each category of expenses in its standard student budgets.

(2) The school must select aid recipients in order of greatest need, as determined by the school. The school may consider other scholarship, grant, or fellowship funds that a student has received or will receive for the award period when determining the order of greatest need.

(Approved by the Office of Management and Budget under control number 0915-0112.)

**§ 57.2904 Amount of student award.**

(a) The total award made under this program to any student, plus all other sources of aid the student has received or will receive for the award period, may not exceed the amount the school determines that the student needs to meet the costs of education (i.e., tuition, fees, books, equipment, other expenses required by the school, and reasonable living expenses) for the period covered by the award. The total award made under this program to any student may be less than the amount the school determines that the student needs to meet the costs of education for the period covered by the award.

(b) The total award made under this program to any student for a school year may not exceed $10,000. The maximum amount awarded during a 12-month period to any student enrolled in a school which provides a full-time course of study longer than the traditional 9-month school year may be proportionately increased.

(c) The school must disburse this award to the student in payments based on the student's need during each academic period (e.g. semester, quarter, trimester) of a school year.

**§ 57.2905 How is the amount of the grant award determined?**

(a) The amount of the grant to each eligible school will be the amount requested in its application, except that if the total of the amounts requested for any fiscal year by all schools for these funds exceeds the amount of Federal funds determined by the Secretary at the time of payment to be available for this purpose, the grant to each school will be reduced to whichever is smaller:

(1) The amount requested in the application; or

(2) An amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of grant award to be available for that fiscal year for this program as the number of eligible students at the school bears to the total number of eligible students at all participating schools during that year.

(b) Amounts remaining after the calculation described in paragraph (a) will be distributed in accordance with paragraph (a)(2) of this section among schools whose applications requested more than the amount paid to them, but with whatever adjustments may be necessary to prevent the total grant to any school from exceeding the amount requested by it.

**§ 57.2907 For what purposes may grant funds be spent?**

(a) A school shall only spend funds it receives under this subpart in accordance with the approved application, the authorizing legislation, terms and conditions of the grant award, and these regulations.

(b) The school must discontinue all payments to a recipient in the event that the recipient ceases to be a full-time student at the school, and must remit any unused balance of funds to the Federal Government in the event it is unable to make full use of its grant award during the award period.

**§ 57.2908 What additional Department regulations apply to grants?**

Several other regulations apply to these grants. They include, but are not limited to, the following:

42 CFR Part 50, Subpart D—Public Health Service Grant Appeals Procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Administration of Grants

45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and Procedure for Hearings Under Part 80 of This Title

45 CFR Part 83—Regulation for the Administration and Enforcement of Sections 704 and 855 of the Public Health Service Act

45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

45 CFR Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting From Federal Financial Assistance

45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or

Activities Receiving Federal Financial Assistance

**§ 57.2909 What other records, audit, and inspection requirements apply to schools?**

(a) Each school must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act concerning recordkeeping, audit, and inspection.

(b) The school must also maintain the following records in computer, electronic, microfiche, microfilm, or paper form:

(1) A record of all recipients of aid under this program which includes, for each recipient, a copy of the total need analysis and determination of resources, documentation for any changes made to the need analysis report used by the school, documentation that the recipient met the eligibility requirements, a copy of the student budget used to determine the recipient's costs of attendance, and documentation of other sources of aid received by the recipient;

(2) A record of the amount of funds awarded to each recipient; and

(3) A record of each institutional application for funding, including documentation to support the number of eligible students listed on each application and how they met the eligibility criteria.

(c) Institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(Approved by the Office of Management and Budget under control number 0915–0110.)

**§ 57.2910 Additional conditions.**

The Secretary may impose additional conditions on any grant award before or at the time of an award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 87–11256 Filed 5–15–87; 8:45 am]
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Part V

# Department of the Interior

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 870**

**Surface Coal Mining Reclamation Operations; Initial and Permanent Regulatory Programs; Excess Moisture Content Allowance; Reclamation Fees; Proposed Rule**

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Surface Coal Mining Reclamation Operations; Initial and Permanent Regulatory Programs; Excess Moisture Content Allowance; Reclamation Fees

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) proposes to amend its regulations governing how the weight of each ton of coal produced is determined for reclamation fee purposes. This action will make the weight determination consistent with the method used for certain other tax purposes. The intended effect of the proposal is to permit a deduction for moisture over and above the inherent moisture content present in coal at the point of sale.

DATES: *Written comments:* OSMRE will accept written comments on the proposed rule until 5:00 p.m. Eastern time on July 27, 1987.

*Public Hearings:* Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC.; Birmingham, Alabama; and Denver, Colorado, at 9:30 a.m. local time. The hearing will be held in Washington, DC. on July 10, 1987; in Birmingham, Alabama, on July 27, 1987; and in Denver, Colorado, on August 3, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern time on June 17, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

*Public Hearings:* Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Birmingham, Alabama address; Brooks Towers, 2nd floor Conference Room, 1020–15th St., Denver, Colorado. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

*Request for public hearings:* Submit requests orally or in writing to the person and address specified under "FOR FURTHER INFORMATION CONTACT".

FOR FURTHER INFORMATION CONTACT: Jane Robinson, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202–343–2853 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background and Discussion of Proposed Rules
III. Procedural Matters

## I. Public Comment Procedures

### *Written Comments*

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period or delivered to addresses other than those listed above (see "DATES") may not be considered or included in the Administrative Record for the final rule.

### *Public Hearings*

OSMRE will hold public hearings on the proposed rule or request only. The times, dates and addresses scheduled for the hearings are specified previously in this notice (see "DATES" and "ADDRESSES"). The times, dates and addresses for hearings at other locations have not yet been scheduled, but will be announced in the Federal Register at least 7 days prior to any hearings which are held at other locations.

Any person interested in participating at a hearing at a particular location should inform Ms. Robinson (see "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time June 17, 1987. If no one has contacted Ms. Robinson to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results will be included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

## II. Background and Discussion of Proposed Rule

Title IV of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1231–43, (the Act) provides for the collection of a fee from coal mining operators on each ton of "coal produced." The funds are to be used for the reclamation of lands mined and abandoned or left in an inadequate reclamation status before the effective date of the Act, August 3, 1977. Neither the Act, nor the legislative history, explicitly define the term "coal produced" or indicate the congressional intent as to how that term should be implemented. See *Drummond Coal Company v. Hodel*, 796 F.2d 503 (D.C. Cir. 1986), *cert. denied*, ——— *U.S.* ——— *[1987]*.

OSMRE first promulgated regulations governing reclamation fee collections on December 13, 1977, at 30 CFR 837.12 (42 FR 62713). Those regulations were later renumbered as Part 870 without any editorial changes. On June 30, 1982, OSMRE promulgated regulatory language "to clarify the point in time of fee determination, as well as the value and weight parameters for calculating reclamation fees." (47 FR 28577). This regulation assesses the abandoned minelands (AML) fee "by the weight or value at the time of the initial bona fide sale, transfer of ownership or use by the operator." The weight of the coal taxed includes "impurities, including water, that *have not* been removed prior to the initial bona fide sale, transfer of ownership or use by the operator." Therefore, pursuant to the rule, the fee is collected on the gross weight of all materials, including moisture, extracted with the coal by the process of mining, which are not removed prior to the first disposition of the coal. In addition, any moisture absorbed by the coal after severance, which is not removed prior to

the first disposition, is also included in the gross weight.

Since Congress did not determine the point in time at which the reclamation fee should be assessed or what the weight of the coal should include, the Secretary, in adopting the regulations, had discretion to consider a number of options for determining fee liability. OSMRE considered the range of options and adopted an approach that was relatively easy to administer, could be consistently applied throughout the Field Offices, and was designed to collect the maximum amount of reclamation fees. The U.S. Court of Appeals for the District of Columbia Circuit in the *Drummond* case determined that OSMRE's approach was not inconsistent with the language of the Act or the legislative history, and its adoption, therefore, was not arbitrary and capricious. The Supreme Court declined, without explanation, to review that holding.

However, an inconsistency in the methods of determining coal weight under various Federal taxation requirements now exists. Under Internal Revenue Service Revenue Ruling 86–86, operators can reduce their Black Lung tax liability by taking a deduction based on the weight of excess moisture content of the coal. At the same time, operators are required to include that same amount when determining their AML fee liability. Since this situation is different from the one that existed prior to 1982, where only one State's taxation method differed from the AML method, OSMRE has decided to reconsider the issue of including the weight of moisture absorbed after the coal's severance from the seam in the assessment of the AML fee. Accordingly, OSMRE is proposing this change to the regulations. If adopted, a final rule would apply prospectively to coal produced after the effective date of the final rule.

Section 870.5 would be amended to include a definition of excess moisture. Excess moisture would be defined to mean moisture found with the coal at the point of first disposition that was not part of the coal as removed from the seam. Moisture found with the coal as removed from the seam is defined as inherent moisture.

Section 870.12(i) would be amended by deleting the phrase "including water" and adding the phrase "including excess moisture for which a reduction is not taken pursuant to paragraph (B) of this section" and renumbering it as § 870.12(i)(A). This provision clarifies that excess moisture will be included in the weight of the coal for determining AML fee liability unless the operator has made the reduction pursuant to the proposed § 870.12(i)(B).

Section 870.12(i)(B) is added. This subparagraph provides that, to take the reduction in fees for the weight of the moisture, an operator must: (1) Establish the amount of reduction, i.e., the percentage of excess moisture, by standardized laboratory testing; (2) retain the results of the testing for a period of six years and (3) update the laboratory test results annually. A standardized test such as the American Society for Testing and Materials (ASTM) Standard Test Method for Total Moisture in Coal, D3302–74, would be acceptable.

OSMRE is particularly interested in comments on the adequacy of procedures for testing the moisture content of coal and ways to ensure the accuracy of excess moisture measurements. OSMRE is also interested in comments on the specific economic hardships imposed by the present rule and the degree to which the proposal would alleviate such impacts. In connection with the impacts on individual operators, OSMRE seeks comments concerning the likely impact of the proposal on the coal industry and information on changes occurring in the industry since 1982. OSMRE solicits comments on whether or not a user fee should be imposed upon operators who take a deduction for excess moisture. OSMRE also seeks comments on the regional application of the present rule and whether the proposed rule would more equitably deal with regional differences in climate, business practices or other factors.

## III. Procedural Matters

### *Federal Paperwork Reduction Act*

The recordkeeping requirements in the proposed rule have been submitted to the Office of Management and Budget in accordance with 44 U.S.C. 3501 *et seq.* The recordkeeping is necessary to meet the requirements of section 402 of Pub. L. 95–87, and would be used by OSMRE to fulfill its statutory mission to collect reclamation fees.

### *Executive Order 12291*

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not a major rule and does not require a regulatory impact analysis. This determination is based in part on the conclusion that the regulatory revisions and additions proposed by this rule do not increase the regulatory burden of those who pay reclamation fees, and as a result, the rulemaking will provide an equitable economic benefit to the fee payer. Therefore, the rule should not add appreciably to the cost of operating a mine in compliance with a regulatory program.

### *Regulatory Flexibility Act*

The DOI has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in the preceding paragraph.

### *National Environmental Policy Act*

OSMRE has prepared a draft environmental assessment (EA) and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact will be approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address listed in the "ADDRESSES" section of the preamble. An EA will be completed on the final rule and a conclusion reached on the significance of any resulting impacts before promulgation of the final rule.

### *Author*

The principal author of this rule is Jane Robinson, Division of Compliance Management, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–2853 (Commercial or FTS).

### List of Subjects in 30 CFR Part 870

Reporting and recordkeeping requirements; Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Part 870 as set forth below:

Dated: May 1, 1987.

J. Steven Griles,

*Assistant Secretary—Land and Minerals Management.*

## PART 870—ABANDONED MINE LAND RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

1. The authority citation for Part 870 continues to read as follows:

Authority: Secs. 201, 402 and 412, Pub. L. 95–87, 30 U.S.C. 1211, 1232 and 1242.

2. Section 870.5 is amended by adding the following definition of "excess

moisture" at the appropriate point in the alphabetized list of definitions:

§ 870.5 Definitions.

* * * * *

*Excess moisture* means non-inherent water accumulated in the coal after extraction. Inherent water is natural bed moisture contained in the coal.

* * * * *

3. Section 870.12(b)(3)(i) is revised to read as follows:

§ 870.12 Reclamation fee.

* * * * *

(b) * * *

(3) * * *

(i)(A) Impurities, including excess moisture for which a reduction is not taken pursuant to paragraph (B) of this section, that *have not* been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator *shall not* be deducted from the gross weight.

(B) The operator may take a calculated weight reduction to allow for the weight of excess moisture in the coal, if the operator retains records of a standardized laboratory analysis used to establish the amount of the excess moisture. Such analysis is to be performed by a certified testing laboratory acceptable to the Office. Laboratory analyses are to be retained for a period of six years from the date of such analysis. To verify the reduction taken, documentation of the laboratory analysis shall be updated on an annual basis.

* * * * *

[FR Doc. 87-11376 Filed 5-15-87; 8:45 am]

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Part VI

# The President

**Soybean Imports From Argentina;
Memorandum of May 14, 1987**

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# Presidential Documents

Title 3—

## The President

### Memorandum of May 14, 1987

### Determination Under Section 301 of the Trade Act of 1974

**Memorandum for the United States Trade Representative**

Pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), I have determined that suspending our investigation under Section 301 is an appropriate and feasible action in response to the decision by the Government of Argentina to eliminate export taxes on soybeans and soybean products. The United States Trade Representative initiated this investigation of Argentina's system of differential export taxes on soybeans and soybean products on April 25, 1986, in response to a petition filed by the National Soybean Processors Association on April 4, 1986.

I direct you as the United States Trade Representative to notify the Government of Argentina of my determination and to take any actions necessary to implement and monitor it. I also direct that the Section 301 proceeding be suspended temporarily until the Government of Argentina fully implements its decision, at which time I direct you to terminate the proceeding.

*Reasons for Determination*

In its petition, the National Soybean Processors Association alleged that Argentina's differential export tax system had caused an increase in exports of Argentine soybean meal and oil to third countries and a decrease in U.S. exports of these products. Currently, the Government of Argentina imposes a 15 percent export tax on soybeans, but only a 3 percent tax on soybean meal and oil.

Recently the Government of Argentina informed the United States Trade Representative that it had decided to eliminate the export taxes on soybeans and soybean products within 180 days. When implemented, this action will eliminate the practice under investigation.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
*Washington, May 14, 1987.*

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S. 1167 / Pub. L. 100–38

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[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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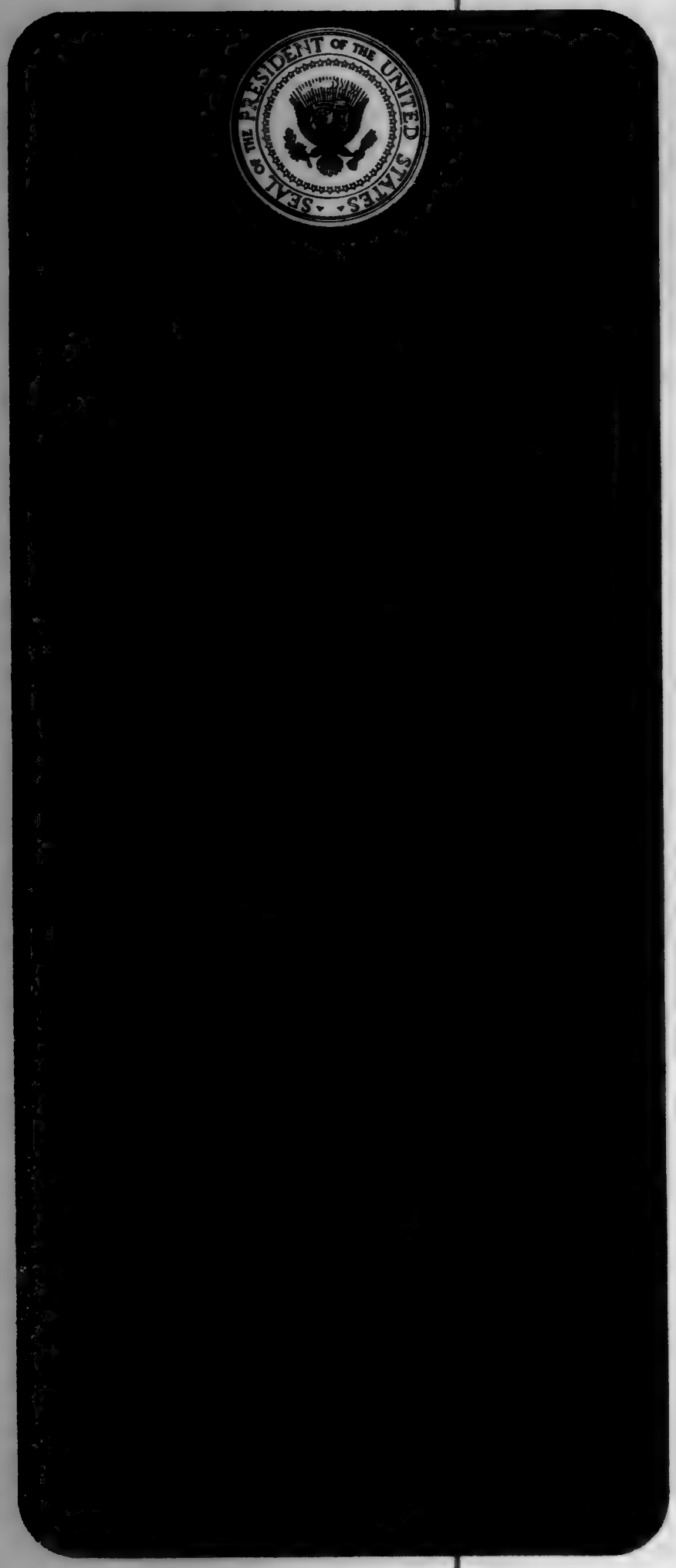

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# federal register

Tuesday
May 19, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, Chicago, IL, and Boston, MA, see announcement on the inside cover of this issue.

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## THE FEDERAL REGISTER

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**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** June 9, at 9 a.m.
**WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.
**RESERVATIONS:** Gertrude E. Belton, 202-523-5237

### CHICAGO, IL

**WHEN:** July 8, at 9 a.m.
**WHERE:** Room 204A,
Everett McKinley Dirksen Federal Building,
219 S. Dearborn Street,
Chicago, IL.
**RESERVATIONS:** Call the Chicago Federal Information Center, 312-353-0339.

### BOSTON, MA

**WHEN:** July 15, at 9 a.m.
**WHERE:** Main Auditorium, Federal Building,
10 Causeway Street,
Boston, MA.
**RESERVATIONS:** Call the Boston Federal Information Center, 617-565-8129

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# Rules and Regulations

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

### Revision of Delegations of Authority; Assistant Secretary et al.

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** This document amends the delegations of authority from the Secretary of Agriculture and General Officers of the Department to reflect the transfer of responsibility for physical security functions from the Inspector General to the Assistant Secretary for Administration and the Director, Office of Operations.

**EFFECTIVE DATE:** May 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Bucy, Deputy Director, Office of Operations, U.S. Department of Agriculture, Washington, DC (202) 447-2582.

**SUPPLEMENTARY INFORMATION:** The delegations of authority of the Department of Agriculture are amended to reflect the transfer of responsibility for the physical security functions for the Department of Agriculture from the Inspector General to the Assistant Secretary for Administration and the Director, Office of Operations.

The Assistant Secretary for Administration and the Director, Office of Operations, have responsibility for real property and space management in the Department. This transfer will strengthen the effectiveness and coordination of the physical security functions.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the Federal Register.

Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291.

Finally, this action is not a rule as defined by the Regulatory Flexibility Act and, thus, is exempt from the provisions of that Act.

### List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

### PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

**Authority:** 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise noted.

### Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.25 is amended by adding a new paragraph (c)(9) as follows:

**§ 2.25 Delegations of authority to the Assistant Secretary for Administration.**

* * * * *

(c) * * *

(9) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

* * * * *

3. Section 2.33 is amended by removing and reserving paragraph (c) as follows:

**§ 2.33 Delegations of authority to the Inspector General.**

* * * * *

(c) [Reserved]

* * * * *

### Subpart J—Delegations of Authority by the Assistant Secretary for Administration

4. Section 2.76 is amended by adding a new paragraph (a)(11) to read as follows:

**§ 2.76 Director, Office of Operations.**

(a) *Delegations.* * * *

(11) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

Dated: May 11, 1987.

For Subpart C.

Peter C. Myers,

*Acting Secretary of Agriculture.*

Dated: May 11, 1987.

For Subpart J.

John J. Franke, Jr.,

*Assistant Secretary for Administration.*

[FR Doc. 87-11293 Filed 5-18-87; 8:45 am]
BILLING CODE 3410-01-M

## Animal and Plant Health Inspection Service

### 9 CFR Part 78

**[Docket No. 86-115]**

### Validated Brucellosis-Free States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the regulations concerning the interstate movement of swine because of brucellosis by changing the program status of Connecticut, New Jersey, New York, and Ohio to validated brucellosis-free States. This action is necessary because we have determined that Connecticut, New Jersey, New York, and Ohio meet the criteria for validated brucellosis-free States. The effect of this action is to relieve certain restrictions on moving breeding swine from these States.

**DATES:** Interim rule effective May 19, 1987. All comments must be postmarked on or before July 20, 1987.

**ADDRESSES:** Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505

Belcrest Road, Hyattsville MD 20782. Please state that your comments refer to Docket Number 86–115. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:**
Dr. Mitchell A. Essey, Program Planning Staff, VS, APHIS, USDA, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5961.

**SUPPLEMENTARY INFORMATION:**

**Background**

Brucellosis is a serious, infectious, and contagious disease which affects animals and man and is caused by bacteria of the genus *Brucella*.

Title 9 of the Code of Federal Regulations Part 78 (referred to below as the regulations), regulates the interstate movement of cattle, bison, and swine with respect to brucellosis. States, areas, herds, and individual animals are classified according to brucellosis status, and interstate movement requirements for animals are based upon the disease status of the herd, area, or State from which the animal originates.

Section 78.43 of the regulations, which lists validated brucellosis-free States, is amended by changing the swine brucellosis program status of Connecticut, New Jersey, New York, and Ohio to validated brucellosis-free States. After reviewing their brucellosis program records, we have concluded that these States meet the criteria for validated brucellosis-free States. Therefore, we are adding Connecticut, New Jersey, New York, and Ohio to the list of States in § 78.43. The effect of this action is to relieve certain restrictions on moving breeding swine from these States.

**Emergency Action**

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to make this interim rule effective immediately to accurately reflect the current brucellosis status of Connecticut, New Jersey, New York, and Ohio.

For this reason, we find that pursuant to the administrative procedure provisions in 5 U.S.C. 533, prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the Federal Register. We are requiring that comments concerning this interim rule be submitted within 60 days of its publication. We will discuss comments received and any amendments required in a final rule that will be published in the Federal Register.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United-States based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action will allow breeding swine to move interstate from these States without testing for brucellosis. The groups affected by this action will be herd owners in Connecticut, New Jersey, New York, and Ohio, and the effect will be beneficial because restrictions are being relieved. This action will have no effect on the market swine identification programs in these States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 78**

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

**PART 78—BRUCELLOSIS**

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

**Authority:** 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 78.43 is revised as follows:

**§ 78.43 Validated brucellosis-free States.**

Alaska, Arizona, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, New Hampshire, North Dakota, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Utah, Vermont, Virgin Islands, Virginia, Washington, Wisconsin, Wyoming.

Done in Washington, DC, this 13th day of May, 1987.

**J.K. Atwell,**

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87–11291 Filed 5–18–87; 8:45 am]

BILLING CODE 3410-34-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 91 and 135**

**[Docket No. 25149; SFAR No. 50]**

**Special Flight Rules in the Vicinity of Grand Canyon National Park**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** The Grand Canyon National Park Special Flight Rules Area was established by a final rule published in the Federal Register on March 26, 1987, (52 FR 9784). The rule takes effect on April 27, 1987. This action makes a correction to the description of boundaries which define the Special Flight Rules Area.

**EFFECTIVE DATE:** 0001 UTC April 27, 1987.

**FOR FURTHER INFORMATION CONTACT:**
David L. Bennett, Office of the Chief Counsel AGC–230, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC, 20591; telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

History

FAA Special Federal Aviation Regulation (SFAR) No. 50, published as Federal Register Document No. 87–6647 on March 26, 1987, (52 FR 9768) established rules governing flight within a special flight rules area in the vicinity of the Grand Canyon National Park. The description of the boundaries of the Grand Canyon Special Flight Rules Area contained an error which is corrected by this action.

[Docket No. 25149; SFAR No. 50]

Accordingly, Federal Register Document 87–6647, as published in the Federal Register on March 26, 1987, (52 FR 9768) is corrected as follows. The last paragraph on column 1 of page 9775, containing the description of the boundaries of the Grand Canyon National Park Special Flight Rules Area, is corrected to read:

That airspace extending upward from the surface to and including 9,000 feet MSL within an area bounded by a line beginning at lat. 36°09'30" N., long. 114°03'00" W.; northeast to lat. 36°14'00" N., long. 113°12'00" W.; to lat. 36°30'00" N., long. 112°36'00" W.; to lat. 36°30'00" N., long. 111°42'00" W.; to lat. 35°59'30" N., long. 111°42'00" W.; to lat. 35°57'30" N., long. 112°03'20" W.; thence counterclockwise via the 5-statute-mile radius of the Grand Canyon Airport reference point (lat. 35°57'09" N., long. 112°08'47" W.); to lat. 35°57'30" N., long. 112°14'00" W.; to lat. 35°58'00" N., long. 113°11'00" W.; to lat. 35°42'30" N., long. 113°11'00" W.; to lat. 35°38'50" N., long. 113°27'00" W.; thence counterclockwise via the 5-statute-mile radius of the Peach Springs VORTAC to lat. 35°41'20" N., long. 113°36'00" W.; thence to the point of beginning.

Issued in Washington, DC, on May 12, 1987.

Donald D. Engen,

*Administrator.*

[FR Doc. 87–11321 Filed 5–18–87; 8:45 am]

BILLING CODE 4910–13–M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

[Release No. IC–15737]

### Delegation of Authority to Director of Division of Investment Management

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules relating to general organization and program management. The amendment will give delegated authority to the Director of the Division of Investment Management to issue a notice of the filing of an application for a temporary or permanent exemptive order from the prohibition against serving or acting in specified capacities with respect to registered investment companies where the Director has temporarily granted such an exemption for a period of up to 60 days. This amendment supplements the delegated authority granted to the Director by the Commission on January 15, 1987, and should facilitate prompt and careful review of such applications for exemption.

EFFECTIVE DATE: May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel, Office of Investment Company Regulation, Division of Investment Management, Securities and Exchange Commission, Mail Stop 5–2, 450 Fifth Street NW., Washington, DC 20549, (202) 272–3018.

SUPPLEMENTARY INFORMATION: On January 15, 1987, the Commission granted the Director of the Division of Investment Management ("Division Director") delegated authority to exempt temporarily persons from the prohibitions contained in section 9(a) [15 U.S.C. 80a–9(a) (1982)] of the Investment Company Act of 1940 ("Act") [15 U.S.C. 80a–1 *et seq.* (1982)] for up to 60 days.[1] Under that delegated authority the Division Director may grant a 60 day temporary exemption if it appears that: (i)(a) The prohibitions of section 9(a), as applied to the applicant, may be unduly or disproportionately severe, or (b) the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption; and (ii) granting the temporary exemption would protect the interests of the investment companies being served by the applicant by allowing time for the orderly consideraton of the application for permanent relief or the orderly transition of the applicant's responsibilities to a successor, or both.[2] The delegated authority will allow the Commission's staff to respond promptly to emergency situations which may result from imposition of the section 9(a) bar.

Historically, where the Commission has granted temporary relief from the section 9(a) bar, it has also given notice of filing of an application for temporary or permanent relief from section 9(a) in the same release granting the temporary relief.[3] In order to continue that procedure, the Commission has determined to give the Division Director additional authority to issue notices of filing of section 9(c) applications where the Director has granted a temporary exemption from the section 9(a) bar for up to 60 days. This will allow publication of the required public notice in the same release that announces the temporary exemption. This revised delegation will *not* permit the staff to extend a temporary exemption beyond 60 days, or to take final action on the application. Any further action on the application must be taken by the Commission.

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[1] Section 9(a) provides (the italicized language was added by the Government Securities Act of 1986, Pub. L. 99–571, and is effective July 25, 1987):

It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company.

(1) Any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, *municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act,* or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, *or entitiy or person required to be registered under the Commodity Exchange Act;*

(2) Any person who, by reason of misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, *municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act,* or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, *or entity or person required to be registered under the Commodity Exchange Act,* or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

(3) A company any affiliated person of which is ineligible, by reason of paragraph (1) or (2), to serve or act in the foregoing capacities.

For the purposes of paragraphs (1), (2), and (3) of the subsection, the term "investment adviser" shall include an investment adviser as defined in [the Investment Advisers Act of 1940].

[2] *See* Investment Company Act Release No. 15539 (January 15, 1987), which summarizes the process by which applications filed under section 9(c) of the Act for exemptions from the prohibitions of section 9(a) are reviewed by the staff and the Commission.

[3] Section 40 of the Act [15 U.S.C. 80a–41 (1982)] requires that the Commission give "appropriate" notice and opportunity to request a hearing before issuing any orders under the Act. The only orders issued under the Act without prior notice and opportunity for hearing being given are emergency temporary orders, when warranted by the circumstances, which must be issued immediately in order to resolve a problem suddenly facing an investment company under one or more of the regulatory provisions of the Act. *See, e.g.*, American Birthright Trust, Investment Company Act Release No. 11644 (February 24, 1981).

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act [15 U.S.C. 553(b)(A)], that this amendment relates solely to agency organization, procedure, or practice and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date is not needed.

**List of Subjects in 17 CFR Part 200**

Administrative practice and procedure, Freedom of information, Privacy, Securities.

**Text of Amendment**

The Commission hereby amends Title 17, Chapter II of Code of Federal Regulations as follows:

## PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read as follows: (Authority citations before * * * indicate general rulemaking authority).

Authority: Secs. 19, 23, 48, Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, sec. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 8a–37, 80b–11, unless otherwise noted. * * * § 200.30–5 is also issued under Pub. L. 91–567, 84 Stat. 1497 (15 U.S.C. 77c(a)(2); Pub. L. 87–592, 76 Stat. 394, as amended by Pub. L. 94–29, 89 Stat. 163 (15 U.S.C. 78d–1, 78d–2); 15 U.S.C. 80a–44, 80b–11(a); secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498–1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 77sss(a), 80a–37; 15 U.S.C. 78d–1, 78d–2.

2. Section 200.30–5 is amended by revising paragraph (a)(8) as follows:

**§ 200.30–5 Delegation of authority to Director of Division of Investment Management.**

* * * * *

(a) * * *

(8) To issue notices, pursuant to Rule 0–5(a) (§ 270.0–5(a) of this chapter) with respect to applications for temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(c)), and to conditionally or unconditionally exempt persons, for a temporary period not exceeding 60 days, from section 9(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)), if, on the basis of the facts then set forth in the application, it appears that:

(i)(A) The prohibitions of section 9(a), as applied to the applicant, may be unduly or disproportionately severe, or (B) the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption; and

(ii) Granting the temporary exemption would protect the interests of the investment companies being served by the applicant by allowing time for the orderly consideration of the application for permanent relief or the orderly transition of the applicant's responsibilities to a successor, or both.

* * * * *

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

May 13, 1987.

[FR Doc. 87–11398 Filed 5–18–87; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 510, 522, and 524

### Animal Drugs, Feeds, and Related Products, Nitrofurazone Ointment

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Vet Labs Limited, Inc., providing for use of a nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections on dogs, cats, and horses. The regulations are also amended to reflect Veterinary Laboratories' purchase of Wittney & Co. and its change of sponsor name to Vet Labs Limited, Inc.

**EFFECTIVE DATE:** May 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

**SUPPLEMENTARY INFORMATION:** Vet Labs Limited, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215, is sponsor of NADA 138–657 which provides for use of a 0.2-percent nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections of wounds, burns, and cutaneous ulcers of dogs, cats, and horses. The NADA is approved and 21 CFR 510.600(c) is amended to reflect this approval. The basis of this approval is discussed in the freedom of information summary.

Veterinary Laboratories, Inc., informed the agency that it purchased Wittney & Co. of Denver, CO, and changed its name to Vet Labs Limited, Inc. Accordingly, the lists of sponsors of approved NADA's in § 510.600(c) are amended to remove Veterinary Laboratories, Inc., and Wittney & Co. and to add Vet Labs Limited, Inc. Additionally, this final rule removes and adds drug labeler codes in §§ 522.1183(e)(1), 522.1680(b), 524.1580b(b), and 524.1580d(b) to reflect the purchase of Wittney & Co. and the sponsor name change. The NADA's affected are:

| NADA | Product | Ingredient |
|---|---|---|
| 8–142 | Enteritis Formula (swine) | Nitrofurazone. |
| 8–354 | Sodium Arsanilate Tablets (swine). | Sodium arsanilate. |
| 42–889 | Oxytocin Injection (cats, dogs, ewes, sows, cows, horses). | Oxytocin. |
| 121–559 | Nitrofurazone Solution 0.2 percent (dogs, cats, horses). | Nitrofurazone. |
| 136–255 | Iron Hydrogenated Dextran Injection (baby pigs). | Iron dextran. |
| 138–657 | Nitrofurazone Ointment (dogs, cats, horses). | Nitrofurazone. |

This change of sponsor does not involve any changes in current manufacturing facilities, equipment, procedures, or production personnel.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects**

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 522*

Animal drugs.

*21 CFR Part 524*

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510, 522, and 524 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

**Authority:** Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by removing the entries for "Veterinary Laboratories, Inc." and "Wittney & Co." and alphabetically adding an entry for "Vet Labs Limited, Inc.," and in paragraph (c)(2) by removing the entries for "000857" and "012481" and numerically adding an entry for "054016" to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |
| Vet Labs Limited, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215 | 054016 |
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 054016 | Vet Labs Limited, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215. |
| * * * * * | |

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 522 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

4. Section 522.1183 is amended by revising paragraph (e)(1) to read as follows:

**§ 522.1183 Iron hydrogenated dextran injection.**

* * * * *

(e)(1) *Sponsors.* See Nos. 015562, 015579, and 054016 in § 510.600(c) of this chapter.

* * * * *

5. Section 522.1680 is amended by revising paragraph (b) to read as follows:

**§ 522.1680 Oxytocin injection.**

* * * * *

(b) *Sponsors.* See Nos. 00010, 000381, 000893, 000856, 000864, 010271, 015562, 015579, 032420, and 054016 in § 510.600(c) of this chapter.

* * * * *

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

6. The authority citation for 21 CFR Part 524 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 524.1580b [Amended]**

7. Section 524.1580b *Nitrofurazone ointment* is amended in paragraph (b) by removing the "and" before "015579" and adding after the same number", and 054016".

8. Section 524.1580d is amended by revising paragraph (b) to read as follows:

**§ 524.1580d Nitrofurazone solution.**

* * * * *

(b) *Sponsors.* See 015562, 015579, 051259, and 054016 in § 510.600(c) of this chaper for use as in paragraphs (d) (1) and (2) of this section. See 017153 and 053617 in § 510.600(c) of this chapter for use in paragraph (d)(1) of this section.

Dated: April 30, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-11327 Filed 5-18-87; 8:45 am]

BILLING CODE 4160-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

**[Region II Docket No. 69; FRL 3283-2]**

### Designation of Areas for Air Quality Planning Purposes; Revisions to Section 107 Attainment Status Designations for the State of New Jersey

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This notice announces the Environmental Protection Agency's approval of a request from New Jersey to revise the air quality designation of the City of Bridgeton from "does not meet secondary standards" to "better than national standards" for the particulate matter secondary standard. Such designations are required by section 107(d) of the Clean Air Act. This action means that the air quality of Bridgeton will be designated as better than the particulate matter secondary standard.

**EFFECTIVE DATE:** This action is effective June 18, 1987.

**ADDRESSES:** Copies of the proposals submitted by the State of New Jersey are available for public inspection during normal business hours at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, 401 East State Street, CN 027, Trenton, New Jersey 08625.

**FOR FURTHER INFORMATION CONTACT:** Raymond Werner, Acting Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278 (212) 264–2517.

**SUPPLEMENTARY INFORMATION:** Section 107(d) of the Clean Air Act directed each State to submit to the Administrator of the Environmental Protection Agency (EPA) a list of national ambient air quality standard attainment status designations for all areas within the State. EPA received such designations from the States and promulgated them on March 3, 1978 (43 FR 8962). As authorized by the Clean Air Act, after EPA review and approval, these designations have been revised from time to time at a State's request.

On October 25, 1985 the New Jersey Department of Environmental Protection (NJDEP) submitted a request to revise the air quality designation for the City of Bridgeton from "does not meet secondary standards" to "better than national standards" for attainment of the particulate matter secondary standards. Additional information clarifying its original request was submitted by NJDEP on February 13, 1986.

In the September 22, 1986 issue of the Federal Register (51 FR 33626) EPA advised the public that, based on its review of the technical material submitted by the State, it was proposing to approve the requested redesignation. The reader is referred to the September 22, 1986 notice for a detailed description of the State's submittal and for a description of EPA's review criteria and findings. No comments were received by EPA during the comment period, which ended on October 22, 1986.

EPA is today approving the redesignation request submitted by the State of New Jersey. The request has been found to meet the requirements of sections 107 and 301 of the Clean Air Act and applicable EPA guidelines.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 1987. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 81**

Air pollution control, National Parks, Wilderness areas.

Dated: May 13, 1987.

Lee M. Thomas,

*Administrator, Environmental Protection Agency.*

## PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Title 40 Chapter I, Subchapter C; Part 81, Code of Federal Regulations is amended as follows:

## PART 81—[AMENDED]

**Subpart C—Section 107 Attainment Status Designations**

1. The authority citation for Part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

**§ 81.331 [Amended]**

2. Section 81.331 is amended by revising the entry for the New Jersey Intrastate AQCR in the particulate matter attainment status designation table "New Jersey—TSP" as below:

3. In the § 81.331 "New Jersey—TSP" designation table, the entry for the Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR is reprinted for format purposes only.

NEW JERSEY—TSP

| Designated area | Does not meet primary standards | Does not meet secondary standards | Cannot be classified | Better than national standards |
|---|---|---|---|---|
| New Jersey Intrastate AQCR | | | | X |
| Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR | | | | X |

[FR Doc. 87-11407 Filed 5-18-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL MARITIME COMMISSION

**46 CFR Parts 516, 559, and 572**

**[Docket No. 85-10]**

## Marine Terminal Agreements

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** This exempts marine terminal agreements (other than marine terminal conference, interconference, joint venture and discussion agreements) from the waiting period requirement of the Shipping Act of 1984 and from the approval requirement of the Shipping Act, 1916. The Final Rule establishes a uniform exemption procedure conditioned upon the filing of the agreement and Federal Register publication. The exemptions become effective upon the filing of the agreement with the Federal Maritime Commission.

**EFFECTIVE DATE:** The amendments to Part 559 shall become effective July 20, 1987, or upon the receipt of OMB clearance for the collection of information requirements, whichever is later. OMB approval will be published when received. The amendments to Part 572 shall become effective July 20, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, Washington, DC 20573, (202) 523–5796.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, Washington, DC 20573, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:** By Notice of Proposed Rulemaking published in the Federal Register on April 5, 1985 (50 FR 13617) pursuant to sections 16 and 17 of the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1715 and 1716, and sections 35 and 43 of the Shipping Act, 1916 (1916 Act), 46 U.S.C. app. 833a and 841a, the Commission invited comments on the exemption of certain classes of marine terminal agreements from the filing and/or waiting period requirements of section 5 of the 1984 Act, 46 U.S.C. app. 1705, and from the filing and/or approval requirements of section 15 of the 1916 Act, 46 U.S.C. app. 814.[1] The Proposed Rule implemented then Commissioner Robert Setrakian's recommendations in *Report of Inquiry Officer—Part I* (served September 28, 1984 (49 FR 38087)) in Federal Maritime Commission Docket No. 83–38, *Notice of Inquiry and Intent to Review Regulation of Ports and Marine Terminal Operators.*

The Proposed Rule would have incorporated the exemptions for marine terminal agreements in a new Part 516 of Title 46 of the Code of Federal Regulations. In the interest of maintaining the integrity of the current organizational scheme, the exemptions will now be included in existing Parts 559 and 572 of the Code of Federal Regulations, which currently set forth agreements that are exempt from requirements of the 1916 Act and the 1984 Act, respectively.

Fifteen port, marine terminal operator, trade association and ocean common carrier interests filed comments in response to the Commission's Notice. These are: (1) The Maryland Port Administration (MPA); (2) the Port of Sacramento (Sacramento); (3) the Terminal Operators Conference of Hampton Roads (TOCHR); (4) the Virginia Port Authority and Virginia International Terminals (collectively, VPA); (5) the Port of Houston Authority of Harris County, Texas (Port of Houston); (6) American President Lines, Ltd. (APL); (7) the Port of Oakland (Oakland); (8) Matson Terminals, Inc. (Matson) (9) the Houston Port Bureau, Inc. (Houston Port Bureau); (10) the Tampa Port Authority (Tampa); (11) the American Association of Port Authorities (AAPA); (12) the Port of Seattle (Seattle); (13) Sea-Land Service, Inc. (Sea-Land); (14) the United States Atlantic & Gulf Ports/Italy France & Spain Freight Conference (Conference); and (15) the Jacksonville Port Authority (Jacksonville).

[1] A correction to the Supplementary Information of the Proposed Rule was published in the Federal Register on May 10, 1985 (50 FR 19727).

All of the commenters support at least a partial exemption for marine terminal agreements, other than marine terminal conference and interconference agreements, from the waiting period/approval requirements of the 1984 and 1916 Acts. A majority recommend that all exempt agreements be filed with the Commission for **Federal Register** publication. Some of the commenters favor a pre-effectiveness review procedure while others support the proposal that the exemption become effective immediately upon an agreement's filing. A number of commenters also addressed the Commission's policy concerning agreements that relate back to events or activities that occurred before the agreement became effective or was approved pursuant to the appropriate Shipping Act.[2]

**Discussions.**[3]

After careful consideration of the comments, we are establishing a uniform waiting period/approval exemption procedure for all classes of marine terminal agreements, other than marine terminal conference, interconference, joint venture, and discussion agreements. This procedure requires agreements to be filed and published in the **Federal Register**, with the exemption becoming effective upon the agreement's filing. The Final Rule should serve to reduce regulatory delays to a minimum while preserving the benefits derived from prompt public notice of the existence and content of marine terminal agreements. For the reasons more fully explained below, we have determined that the Final Rule will not substantially impair effective regulation by the Commission, be unjustly discriminatory or detrimental to commerce within the meaning of section 16 of the 1984 Act and section 35 of the 1916 Act; nor result in a substantial reduction in competition within the meaning of section 16 of the 1984 Act.

We have considered all of the comments received in this proceeding and the Supplementary Information discusses some of the more significant issues raised by the comments. Any comments not expressly discussed have either been incorporated as a technical change without discussion, have been found to be mooted by the changes incorporated in the Final Rule, or have been found to be irrelevant or without merit.

*A. Proposed § 516.4 (a) and (e)—"Agreement" and "Marine Terminal Agreement" (now §§ 559.7(a) and 572.307(a))*

Proposed § 516.5(a) defined the term "agreement" for the purposes of the rule. This definition was narrowly drawn to exclude agreement provisions relating back to activity or events that occurred prior to an agreement's execution. Proposed § 516.4(d) defined the term "marine terminal agreement." The Final Rule combines these definitions under the term "marine terminal agreement."

However, because the Final Rule exempts the agreement only upon filing, the term "marine terminal agreement" is defined to only include agreements that apply to "future, prospective activities" that occur after filing. In response to comments filed in this proceeding and consistent with the Commission's action taken this date in Docket No. 85–22, *supra*, the Final Rule deletes specific references to unacceptable types of agreement provisions. It is extremely difficult, if not impossible, to prescribe a rule which addresses the legitimate concerns of the commenters while at the same time providing clear, definitive guidelines covering all potential variant situations. Accordingly, determinations as to retroactivity will continue to be made on an *ad hoc* basis.

Four commenters urge clarification as to the manner in which the exemption should apply to agreement provisions relating to activity or events occurring prior to an agreement's execution. VPA notes that neither the 1916 and 1984 Acts nor the cases interpreting them provide adequate guidance in this area, and states that a number of valid factors in the business environment could result in entirely reasonable circumstances where parties to marine terminal agreements—wholly lacking unlawful intent—might lock in triggering events or dates ultimately predating the agreement's actual effectiveness. APL believes that the Proposed Rule may blur the distinction between agreement provisions which are, on the one hand, prospective in effect, but which quite properly relate back in terms of an accounting or an adjustment period or some other measure of future performance, and, on the other hand, provisions which on their face provide for performance which predates the filing of an agreement. Accordingly, APL recommends revising the proposed definition to exclude agreement provisions that on their face become effective as of a date, or as of an event, or as of any activity, occurring prior to the agreement's execution, rather than categorically excluding all agreement provisions relating back to pre-execution activity or events.

Oakland is encouraged to see a clear statement on the retroactivity issue in the Proposed Rule, stating that it has found some uncertainty concerning the acceptability of pre-execution provisions under the Commission's precedents. AAPA urges the Commission to advise whether preapproval events may properly be included in marine terminal agreements.

The complexity of the retroactivity issue is amply attested to by the comments which have been received in this proceeding and in Docket No. 85–22, *supra*. The Commission limited the exemption provided by the rule proposed in this proceeding to those agreements which relate to prospective events or activities on the grounds that is unlawful to implement an agreement that has not been approved, become effective or exempted from applicable 1916 or 1984 Act requirements. *See* 46 U.S.C. app. 816, 833a, 1704, 1706(a), 1709(a) and 1715. The Commission may not therefore exempt, or otherwise act to grant antitrust immunity to an agreement or the activity that occurred thereunder prior to the agreement being made lawful under the applicable Shipping Act. *Mediterranean Pools Investigation*, 9 F.M.C. 264 (1966). *See also, Carnation v. Pacific Westbound Conference*, 383 U.S. 213 (1966); *Pacific Coast European Conference v. FMC*, 439 F.2d 514 (D.C. Cir. 1970); *River Plate and Brazil Conference v. Pressed Steel Car Co.*, 327 F.2d 60 (2d Cir. 1955). The Final Rule continues the limitation to the exemption conferred and defines the term "marine terminal agreement" in §§ 559.7(a) and 572.307(a) to limit the exemption provided to those arrangements which apply soley to prospective activities or events.

Finally, the Final Rule also clarifies that the definition of "marine terminal agreement" (and therefore any exemption accorded herein to that class of agreement) does not apply to joint venture arrangements among marine terminal operations. Given their significant and possible competitive

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[2] On December 17, 1986, the Commission published a Notice of Proposed Rulemaking in the Federal Register (50 FR 51418) in Docket No. 86–22, *Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984*. Docket No. 86–22 proposed to add a new paragraph (h) to Part 572 setting forth the Commission's policy with regard to agreement provisions that relate back to events that occurred before the agreement's effectiveness or approval. By separate Notice served this date, the Commission has determined to withdraw the proposed rule and to continue to address retroactive agreement provisions on an *ad hoc* basis.

[3] This discussion addresses those sections of proposed Part 516 that are being retained in the Final Rule. Certain sections, such as proposed § 516.3 "Policy and Scope," are not being retained and will not be addressed herein. It indicates, however, where the retained provisions of Part 516 will appear in Parts 559 and/or 572.

impact, these arrangements will continue to be subject to the filing and approval/waiting period requirements of the 1916 and 1984 Acts.

*B. Proposed § 516.5 (a) and (b)—Marine Terminal Agreements—Exemptions (now §§ 559.7(f) and 572.307(e))*

Proposed § 516.5 (a) and (b) contained the operative provisions exempting certain classes of marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act, or from the filing and/or approval requirements of the 1916 Act, depending on which Act applies to the agreement in question. Two types of exemptions were proposed, which were differentiated on the basis of the likely anticompetitive impacts of the classes of agreement involved. The Supplementary Information to the Proposed Rule also invited comment on an alternative to each type of exemption.

The first alternative was set forth in § 516.5(a) and proposed an exemption from both Acts' filing requirements (hereinafter referred to as the "Paragraph (a) Exemption") for four classes of agreements: (1) Landlord-tenant marine terminal facility leases; (2) agreements relating to marine terminal facilities or services used in connection with the handling of proprietary cargo; (3) agreements relating to the financing or construction of marine terminal facilities; and (4) agreements relating to off-dock container freight station facilities or services (the four classes hereinafter referred to as "Paragraph (a) Agreements").

We also invited comments on a procedure that would exempt Paragraph (a) Agreements from only the waiting period/approval requirements, on condition that they be filed for informational purposes and **Federal Register** publication (hereinafter referred to as the "Paragraph (a) Exemption Alternative"). The exemption provided by the Paragraph (a) Exemption Alternative would become effective upon filing as the Commission did not intend to substantially review these agreements before they were implemented. The Commission proposed this Alternative because of its concern that agreements should generally be made available to the maritime community as a matter of public information.

The second type of exemption, as proposed in § 516.5(b), provided an exemption from the 1984/1916 Acts' waiting period/approval requirements (hereinafter referred to as the "Paragraph (b) Exemption") for classes of marine terminal agreements other than Paragraph (a) Agreements, with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, on condition that they be filed for **Federal Register** publication. (These "other" marine terminal agreements are hereinafter referred to as "Paragraph (b) Agreements").[4] Again, no substantive pre-implementation review of these agreements would be undertaken.

We also invited comments on an alternative exemption for Paragraph (b) Agreements which would provide a substantive pre-effectiveness review procedure to ensure overall conformity with the exemption's standards and the Commission's rules (hereinafter referred to as the "Paragraph (b) Exemption Alternative"). Under this Alternative, the exemption would take effect on the earlier of: (1) Twenty-one days after the filing of the agreement; and (2) the date of the letter from the Commission advising that the agreement has been accepted for exemption. An agreement not accepted for exemption under the Paragraph (b) Exemption Alternative would instead be processed for effectiveness or approval under the normal procedures prescribed in 46 CFR Part 572 or 560, as appropriate for the category of agreement involved.

Fourteen commenters specifically addressed proposed § 516.5(a): One favors the Paragraph (a) Exemption in its proposed form; four recommend that certain other agreements be designated Paragraph (a) Agreements; and nine urge adoption of the Paragraph (a) Exemption Alternative. TOCHR favors adoption of the Paragraph (a) Exemption in its proposed form.

Of the four commenters recommending that other types of agreements be designated Paragraph (a) Agreements, MPA and APL suggest inclusion of marine terminal leases where the lessor retains some control over the facility through its public tariff. Matson urges the Commission to classify marine terminal services agreements between marine terminal operators and their common carrier customers as Paragraph (a) Agreements. Matson argues that there is competition among terminal operators performing terminal services and there is therefore no regulatory need to file such agreements. However, if this suggestion is not adopted, Matson urges enforcement of the requirement that complete marine terminal services agreements be filed, including the rates and charges agreed to by the parties involved.

The Conference recommends that all marine terminal agreements, except marine terminal conference agreements, be classified as Paragraph (a) Agreements. The Conference argues that the majority of such agreements have no anticompetitive effects, due to the availability of such facilities and services, as well as the innocuous, purely operational nature of the arrangements involved. The Conference also urges elimination of § 516.5(a)(3), which requires furnishing exempted agreements to any interested party, stating that this procedure is without precedent in Commission practice and is susceptible to abuse through "fishing expeditions" by carriers and terminals solely interested in keeping abreast of competitors' terminal rates and conditions.

Whatever the merits of the various recommendations to expand the types of agreements classified as Paragraph (a) Agreements, they are beyond the scope of this rulemaking and will not be addressed further. With regard to Matson's comments concerning the need for file complete marine terminal agreements, we believe that the Final Rule makes clear that agreements are not entitled to the exemption if they do not completely set forth the rates and charges agreed to by the parties.[5]

A majority of commenters support the Paragraph (a) Exemption Alternative in one form or another, on the grounds that it would allow all interested parties timely and accurate notice of the existence and content of agreements that may affect them, protect the Commission and other interested parties from the loss of relevant information that would otherwise be in the agreement parties' private files,[6] and

[4] Terminal services arrangements, berthing agreements and other such arrangements are examples of Paragraph (b) Agreements.

[5] The Commission has recently received numerous inquiries and requests concerning its requirement that marine terminal operators' charges for terminal services be set forth in an agreement on file with the Commission or separately reflected in a filed tariff. As a result of these inquiries, and the apparent confusion regarding the Commission's requirements, the Commission gave notice that it would waive assessing penalties for the pre-filing implementation of such terminal services agreements until a formal study of the issue had been completed. *Notice of Waiver of Penalties*, 51 FR 23145 (June 25, 1986). Because there still appeared to be some continuing confusion regarding its requirement, the Commission on October 15, 1986 extended indefinitely the waiver of penalties provided by the June Notice. The Commission, by separate Order served this date is instituting Fact Finding Investigation No. 17 to study this matter. The Commission is also issuing this date a Second Supplemental Notice of Waiver of Penalties to extend the June Notice.

[6] Sea-Land argues that the Paragraph (a) Exemption would be counterproductive to the

Continued

enable negotiations and decisions in the industry to be based on actual knowledge of the relevant facts.

Many commenters urge the Commission to avoid artificial distinctions between classes of agreements and to treat all classes the same. The division of marine terminal agreements into different categories for exemption purposes, some of which would no longer be filed and others continuing to be filed but exempt from subsequent waiting period/approval requirements, allegedly would create uncertainty concerning which agreements should be filed; may be discriminatory as between the types of agreements and carriers involved, particularly as to off-dock CFS agreements; and would render effective regulation of agreements entitled to the Paragraph (a) Exemption impossible, since there would be no effective, uniform and timely procedure to ascertain the nature of an agreement to ensure that it properly falls within the exemption. Several of these commenters note that the Paragraph (a) Exemption Alternative would create no additional burden for marine terminal operators in comparison to the system currently in place, and is similar to current procedures, while affording a significant savings in time.

The reasons advanced in support of the Paragraph (a) Exemption Alternative are meritorious and this Alternative, modified as discussed below, is adopted in the Final Rule. The common tread running through virtually all of the comments supporting this Alternative is that marine terminal agreements falling within the scope of the 1984 or 1916 Acts should generally be made available to the maritime community as a matter of public information.The concern here is that all interests that are not parties to an agreement—but nonetheless may be affected by the agreement—have timely and accurate knowledge of the agreement's existence and content.

The objections to dividing marine terminal facility and services agreements into classes for exemption purposes are also well supported. Marine terminal faciltiy and services agreements are often "mixed" in their characteristics. As a result, the proposed Paragraph (a) Exemption would not apply to agreements which, while primarily landlord-tenant leases or other arrangements described in § 516.5(a) of the Proposed Rule, also include other activities which would not fit within the Paragraph (a) Agreement category. Moreover, the several recommendations for aggregating all marine terminal facility and services agreements into a single class for uniform treatment for exemption purposes are well supported in logic. The adoption of this approach should result in a significantly clarified and more easily administered Final Rule.

Eleven commenters specifically address proposed § 516.5(b): Four support the Paragraph (b) Exemption as proposed; another would classify intra-port discussion agreements as Paragraph (a) Agreements; two suggest that some or all of the agreements included as Paragraph (b) Agreements be instead classified as Paragraph (a) Agreements; and four support the Paragraph (b) Exemption Alternative.

Sacramento, Tampa, Seattle and Sea-Land favor the Paragraph (b) Exemption without substantive change. They state that this procedure would allow all interested parties sufficient and timely notice of agreements that may affect them, provide adequate safeguards to make the Paragraph (b) Exemption Alternative unnecessary and avoid significant and unnecessary delay to the parties. Tampa believes that this exemption would provide a basis for ensuring that Congress continues the antitrust exemption presently afforded marine terminal agreements by the 1916 and 1984 Shipping Acts. Seattle suggests clarifying the effective date of the Paragraph (b) Exemption to deem an agreement to be "filed" when deposited in the United States mail or delivered to a courier for delivery. Seattle also urges the Commission to reduce the number of copies required to be filed to the absolute minimum necessary—perhaps a true original and two copies—in view of the cost and time consumed in providing the oversized exhibits often included in a terminal lease.

The Final Rule does not adopt Seattle's suggested technical modifications. The filing "date" for exemption purposes is consistent with our procedures for agreements in general, and the requirement that an original and fifteen copies be filed is based on our need to have sufficient number of copies available to facilitate agency processing, the Federal Register notice and assure prompt public access to copies of filed agreements. We will, however, continue the current practice of accepting agreement copies that have had oversized exhibits reduced to standard paper size, provided that they are complete, legible and reproducible.

MPA suggests that intra-port discussion agreements be classified as Paragraph (b) Agreements, stating that such agreements warrant special treatment. A discussion agreement involving local port interests is said to present a much different set of regulatory options than do two-port or range-wide discussion agreements.

Two other commenters recommend that certain or all of the Paragraph (b) Agreements be instead classified as Paragraph (a) Agreements and therefore entitled to the less stringent Paragraph (a) Exemption. Matson believes that marine terminal services agreements should be classified as Paragraph (a) Agreements for the reasons summarized in the discussion of § 516.5(a); and the Conference urges that all agreements proposed as Paragraph (b) Agreements be instead afforded the Paragraph (a) Exemption, for the reasons summarized in the discussion of § 516.5(a). As noted earlier, we cannot consider the merits of recommendations to expand the scope of this proceeding beyond that originally set forth in the Proposed Rule.

TOCHR, VPA, Oakland and Houston Port Bureau favor adoption of the Paragraph (b) Exemption Alternative in one form or another. They note that it is consistent with the shortened review procedure now requested by many parties under the 1984 Act, and argue that it is preferable to the Paragraph (b) Exemption since the latter exemption may permit agreements that do not conform to the Commission's requirements to become effective without even a cursory review. These commenters argue that Paragraph (b) Exemption is inconsistent with the Commission's obligations, and would be inequitable to other parties who might well be damaged if they did not have the opportunity to review and challenge an agreement before it became effective.

The Final Rule adopts the Paragraph (b) Exemption for all classes of marine terminal agreements, other than marine terminal conference, interconference, joint venture and discussion agreements, with the exemption becoming effective upon the filing of an agreement with the Commission. Thus, the Final Rule implements a uniform procedure consisting of the Paragraph (a) Exemption Alternative and the Paragraph (b) Exemption for all classes of marine terminal agreements, excepting marine terminal conference, interconference, joint venture and discussion agreements.

On balance, we agree with the many views favoring a uniform exemption

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Commission's obligations under section 18 of the 1984 Act, 46 U.S.C. app. 1717, which requires the Commission to collect and analyze information concerning the Act's impact on the international ocean shipping industry, and to submit a report thereon specifically addressing, among other things, the need for antitrust immunity for ports and marine terminals.

procedure. There is merit to the objections to the classification system upon which the Proposed Rule was predicated. Another factor we considered in adopting this Final Rule is the disproportionate amount of the Commission's own resources that would have been required to administer an exemption alternative that would subject all agreements filed thereunder to a substantive pre-effectiveness review procedure within twenty-one days following filing (as suggested under proposed § 516.5(b) (the Paragraph (b) Exemption Alternative)) or within fourteen days following Federal Register publication (as suggested by some of the commenters favoring this alternative). The Commission will, however, monitor those agreements that are filed for exemption pursuant to the Final Rule to ensure that the agreements otherwise conform to the Commission's statutory and regulatory requirements. In this connection it should be noted that the Final Rule makes it clear that only agreements that apply to prospective activities, *i.e.*, events or payments that occur after filing are entitled to the exemption. The exemption also does not apply to agreements which fail to completely set forth the rates and charges agreed to by the parties. Parties who implement agreements that do not qualify for the exemption or which otherwise are in violation of the Commission's requirements will be subject to substantial penalties of the applicable statute.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions. The primary economic impact of this rule would be on marine terminal operators and common carriers which generally are not small entities. A secondary impact may fall on shippers, some of whom may be small entities but that impact is not considered to be significant.

The Federal Maritime Commission has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental assessment or environmental impact statement was prepared.

The collection of information requirements contained in this regulation have been previously approved under 46 CFR Part 516, OMB Control Number 3072–0049. Since that Part is being discontinued, the requirements that are being codified in Part 559 are being resubmitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504). No clearance is necessary for the requirements being codified in Part 572 as these requirements do not add to the burden already present therein. A copy of the request for OMB review and supporting documentation may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the Agency and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission.

**List of Subjects in 46 CFR Parts 559 and 572**

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and record-keeping requirements.

Therefore, pursuant to 5 U.S.C. 553, and sections 5, 16 and 17 of the Shipping Act of 1984, 46 U.S.C. 1704, 1715, 1716 and sections 15, 35 and 43 of the Shipping Act, 1916, in order to exempt certain marine terminal agreements from the waiting period requirements of the 1984 Act, and from the approval requirement of the 1916 Act, Title 46 of the Code of Federal Regulations is amended as follows:

**PART 559—[AMENDED]**

1. The authority citation to Part 559 continues to read:

Authority: 5 U.S.C. 553; secs. 15, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 814, 833a and 841a.

**§ 559.8 [Redesignated from § 559.7]**

2. Section 559.7 to Part 559 in Subchapter C in Title 46 of the Code of Federal Regulations is redesignated § 559.8.

3. A new § 559.7 to Part 559 in Subpart C in Title 46 of the Code of Federal Regulations is added to read as follows:

**§ 559.7 Marine terminal agreements—exemption.**

(a) *Marine terminal agreement* means an agreement, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) that applies to future, prospective activities between or among the parties and which relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more common carriers in interstate commerce that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or common carriers in interstate commerce for the conduct or facilitation of marine terminal operations in connection with waterborne common carriage in the domestic commerce of the United States and which:

(1)(i) Provides for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or common carriers in interstate commerce solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the

receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to, docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landing and receiving stations, which are used for the transmission, care and convenience of cargo and/or passengers or the interchange of some between land and common carriers by water in interstate commerce, or between two common carriers by water in interstate commerce. This term is not limited to waterfront port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to consignees or at which outbound cargo may be received from shippers for vessel or container loading.

(f) All marine terminal agreements as defined in § 559.7(a), with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, as defined in § 559.7 (b), (c) and (d) are exempt from the approval requirements of section 15 of the Shipping Act, 1916 on the condition that they be filed with the Commission. Such filing shall consist of:

(1) A true copy and 15 additional copies of the filed agreement;

(2) A letter of transmittal, which shall:

(i) Clearly state that the agreement is being filed for exemption pursuant to this paragraph;

(ii) Identify all of the documents being transmitted including, in the instance of a modification to an approved or exempted agreement, the full name of the approved or exempted agreement, the Commission-assigned agreement number of the approved or exempted agreement and the revision, page and/or appendix number of the modification being filed;

(iii) Provide a concise summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(iv) Clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the filing party; and

(v) Be signed in the original by the filing party or on the filing party's behalf by an authorized employee or agent of the filing party.

(3) To facilitate the timely and accurate publication of the Federal Register Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(f) Agreements filed for and entitled to exemption under this paragraph will be exempted from the approval requirements of the Shipping Act, 1916 effective on the date they are filed with the Commission.

## PART 572—[AMENDED]

4. The authority citation to Part 572 continues to read:

**Authority:** 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

§ 572.308 [Redesignated from § 572.307]

5. Section 572.307 to Part 572 in Subpart C of Subchapter D of Title 46 of the Code of Federal Regulations is redesignated § 572.308.

6. A new § 572.307 to Part 572 in Subpart C of Subchapter D, Marine Terminal Agreements-Exemption is added to read as follows:

**§ 572.307 Marine terminal agreements-exemption.**

(a) *Marine terminal agreement* means an agreement, understanding, or association written or oral (including any modification, cancellation or appendix) that applies to future, prospective activities between or among the parties and which relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations in connection with waterborne common carriage in the foreign commerce of the United States and which:

(1)(i) Provides for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or ocean common carriers solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) All marine terminal agreements, as defined in § 572.307(a), with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements as defined in § 572.307 (b), (c) and (d) are exempt from the waiting period requirements of section 6 of the Shipping Act of 1984 and Part 572 of this chapter on the condition that they be filed in the form and manner presently required by Part 572 of this chapter.

(f) Agreements filed for and entitled to exemption under this paragraph will be exempted from the waiting period requirements effective on the date of their filing with the Commission.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-11359 Filed 5-18-87; 8:45 am]

BILLING CODE 6730-01-M

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 85-390; RM-4963, 5052, 5084, 5882, 6361]**

## Radio Broadcasting Services; Roswell, GA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 298A to Roswell, Georgia, at the request of Willian E. Mallon, as a first FM service. The requests for Channel 298A at Elizabeth, Georgia (Elizabeth Community Broadcasters), Acworth, Georgia (C. Phillip Robuck), Carterville, Georgia (Julia N. Frew) and the counterproposal for Channel 298A at Duluth, Georgia (Duluth Broadcasting Company) have been denied. Each of the above petitioners have presented arguments which indicate that their respective community deserves a first local FM service. However, Channel 298A is the only available channel. We have allotted Channel 298A to Roswell since it is the community with the largest population.

With this action, this proceeding is terminated.

**DATES:** Effective date: June 26, 1987. The window period for filing applications will open on June 29, 1987, and close on July 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 85–380, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. § 73.202(b), the Table of Allotments, in the entry for Roswell, Georgia, Channel 298A is added.

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–11369 Filed 5–18–87; 8:45 am]

BILLING CODE 6712-01-M

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**[MM Docket No. 85–381; RM–5120; RM–5302]**

## Radio Broadcasting Services; Lake View and Cheraw, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document, at the request of Cheraw Broadcasting Company, Inc., substitutes Channel 277C2 for Channel 276A at Cheraw, SC, and modifies the license of Station WPDZ–FM to specify the higher powered channel. The substitution of channels could provide expanded radio service to Cheraw and its environs. Channel 277C2 can be allocated to Cheraw in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.8 kilometers (13.8 miles) southwest. The request of Willard Payne to allocate Channel 277A to Lake View, SC, is dismissed due to a lack of continuing interest. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** June 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 85–381, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during noral business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service. (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for Cheraw, South Carolina, is amended by removing Channel 276A and adding Channel 277C2.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–11371 Filed 5–18–87; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 86–305; RM–5248]**

## Radio Broadcasting Services; Aberdeen, SD

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Alrox, Inc., allocates Channel 294C1 to Aberdeen, South Dakota, as the community's third local FM service. The channel can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** June 26, 1987. The window period for filing applications will open on June 29, 1987, and close on July 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order MM Docket No. 86–305, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows.

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for Aberdeen, South Dakota, is amended by adding Channel 294C1.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–11372 Filed 5–18–87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-235; RM-5136]

## Radio Broadcasting Services; Brenham, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots channel 231A to Brenham, Texas, as that community's second FM channel, at the request of Brenham Bluebonnet Communications. A site restriction of 7.7 kilometers (4.8 miles) west of the city is required. With this action, this proceeding is terminated.

**DATES:** *Effective date:* June 26, 1987. The window period for filing applications will open on June 27, 1987, and close on July 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order MM Docket No. 86-238, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

### § 73.202 [Amended]

2. § 73.202(b), the FM Table of Allotments, in the entry for Brenham, Texas, Channel 231A is added.

Mark N. Lipp,

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-11368 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-220, RM-5243]

## Radio Broadcasting Services; Whitehouse, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 297C2 for channel 257A at Whitehouse, Texas, and modifies the license of Station KEYP-FM, to specify operation on the new frequency, at the request of Broadco of Texas, Inc. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** June 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-220, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel 257A to 297C2 for Whitehouse.

Mark N. Lipp,

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-11373 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-352; RM-5285]

## Radio Broadcasting Services; Derby Center, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 221A to Derby Center, Vermont, as that community's first FM service, as requested by Steele Communications, Co. A site restriction of 5.4 kilometers (3.4 miles) northeast of the community if required. With this action, this proceeding is terminated.

**DATES:** June 26, 1987. The window period for filing applications will open on June 29, 1987, and close of July 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-352, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

### § 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, in amended by adding Channel 221A to Derby Center, Vermont.

Mark N. Lipp,

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-11370 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

50 CFR Part 91

## Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; administrative changes.

**SUMMARY:** The Service is revising the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest. Among other minor changes, the amendments provide for a commendation to be given to the artists placing first, second, and third; require artists to sign both the reproduction agreement and the display agreement in order for their entries to be eligible. The

dates and location of this year's contest are also announced, and the public is invited to attend.

**DATES:**

1. This rule is effective July 1, 1987, the beginning of the 1987–1988 contest.

2. This year's contest will be held on November 9 and 10, 1987, beginning at 11 a.m. on Monday and 9 a.m. on Tuesday.

3. Persons wishing to enter this year's contest may submit entries any time after July 1, but all must be postmarked no later than midnight October 1.

**ADDRESSES:** Requests for complete copies of the regulations, reproduction rights and display agreements should be addressed to: Migratory Bird Hunting and Conservation Stamp Contest, Department of the Interior, U.S. Fish and Wildlife Service, 18th & C Streets NW., Room 2643, Washington, DC 20240.

Location of Contest

Department of the Interior Building Auditorium (C Street Entrance), 18th & C Streets NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Norma Opgrand, Coordinator, U.S. Fish and Wildlife Service, Washington, DC 20240, Telephone: (202) 343–5508.

**SUPPLEMENTARY INFORMATION:** Analysis of these amendments to 50 CFR Part 91 has resulted in the Department's determining that they are not major actions under the provisions of Executive Order 12291. The amendments also will not significantly affect a substantial number of small entities under the provisions of the Regulatory Flexibility Act, since entrants are individuals and not small entities as defined in 5 U.S.C. 601, *et seq.* The amendments do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.* Because this rule constitutes only minor technical revisions to the duck stamp contest procedures, notice and public comment are determined to be unnecessary in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3). No compliance with the National Environmental Policy Act is required because this rule constitutes minor changes or amendments to an approved action (the Duck Stamp Contest), which changes have no potential for causing substantial environmental impact.

Therefore, the rulemaking is categorically excluded from NEPA compliance under departmental guidelines. 516 DM 6, App. 1. The primary authors of this document are David Fisher, James E. Pinkerton, and Norma E. Opgrand, U.S. Fish and Wildlife Service.

**List of Subjects in 50 CFR Part 91**

Hunting, Wildlife.

Accordingly, 50 CFR Part 91 is amended to read as follows:

1. Part 91 is revised to read as follows:

## PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

**Subpart A—Introduction**

Sec.

91.1 Purpose of regulations.
91.2 Definitions.
91.3 Public attendance at contest.

**Subpart B—Procedures for Entering the Contest**

91.11 Contest deadlines.
91.12 Contest eligibility.
91.13 Technical requirements for design and submission of entry.
91.14 Restrictions on subject matter of entry.
91.15 Suitability of entry for engraving.
91.16 Submission procedures for entry.
91.17 Property insurance for entries.
91.18 Failure to comply with contest regulations.

**Subpart C—Procedures for Administering the Contest**

91.21 Selection and qualification of contest judges.
91.22 Display of entries for contest.
91.23 Scoring criteria for contest.
91.24 Contest procedures.

**Subpart D—Post-Contest Procedures**

91.31 Return of entries after contest.

Authority: 5 U.S.C. 301, 31 U.S.C. 9701.

### Subpart A—Introduction

**§ 91.1 Purpose of regulations.**

The purpose of the regulations is to establish procedures for selecting a design that will be used for the annual Migratory Bird Hunting and Conservation Stamp.

**§ 91.2 Definitions.**

"Contest coordinator:" The contest official responsible for overseeing the judges' scores for each entry. The contest coordinator will be named by the Secretary of the Interior and will not be a past or present employee of the Fish and Wildlife Service.

"Display agreement:" A document that each contestant must complete, sign and submit with the entry. The signed agreement permits the Service to display the entry for Migratory Bird Hunting and Conservation Stamp for promotional purposes.

"Qualifying entry:" Each original work of art submitted to the contest that satisfies the requirements outlined in Subpart B of this part.

"Reproduction rights agreement:" A document that each contestant must sign and submit with the entry. The signed agreement certifies that the entry is an original work of art and stipulates how the Fish and Wildlife Service may use the winning entry.

**§ 91.3 Public attendance at contest.**

All phases of the nomination and voting process will be open for viewing by the general public.

### Subpart B—Procedures for Entering the Contest

**§ 91.11 Contest deadlines.**

(a) The contest will officially open on July 1 of each year.

(b) All individuals entering the contest must comply with the regulations. A copy of these regulations may be requested from the Migratory Bird Hunting and Conservation Stamp Office (Duck Stamp Office), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Entries must be postmarked no later than midnight of October 1.

**§ 91.12 Contest eligibility.**

United States citizens, nationals, or resident aliens are eligible to participate in the contest. Any person who has won the contest during the preceding three years shall be ineligible to submit an entry in the current year's contest. Contest judges and their relatives are ineligible to submit an entry. All entrants must submit a non-refundable fee of $50.00. The fee must be a cashier's check, a certified check or a money order made payable to: Fish and Wildlife Service. (Personal checks will not be accepted). All entrants must submit signed reproduction rights and display agreements.

**§ 91.13 Technical requirements for design and submission of entry.**

The design must be a horizontal drawing or painting seven (7) inches high and ten (10) inches wide. The entry may be drawn in any medium desired by the contestant and may be in either multicolor or black and white. No scrollwork, lettering, bird band numbers, signatures or initials may appear on the design. Each entry must be matted (over or under) with a nine (9) inch by twelve (12) inch white mat, one (1) inch wide, and cannot exceed one quarter (¼) inch in total thickness. Entries must not be framed, under glass or have a protective covering that is attached to the entry.

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**§ 91.14 Restrictions on subject matter of entry.**

A portrayal of live, non-extinct, North American migratory ducks, geese, or swans (Family Anatidae) must be the dominant feature of the design. No species that has been selected for the Migratory Bird Hunting and Conservation Stamp during the preceding five years will be eligible. The design must be the contestant's original creation and may not be copied or duplicated in whole or in part from previously published art, including photographs. An entry submitted in a prior contest that was not selected for the Federal or a State stamp design may be submitted in the current contest.

**§ 91.15 Suitability of entry for engraving.**

All entries should be drawn with fullest attention to clarity of detail and the relationship of total values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engraved line techniques and direction. The engraver relies on the accuracy of the artist's work for successful interpretation. Detailed art can be drawn as transparent or opaque watercolor, oil painting, or pencil drawings. An entry that is a line pencil drawing, scratchboard or an etching should effectively interpret the full range of tone, rather than duplicate line engraving techniques of past Migratory Bird Hunting and Conservation Stamps. The engraver is primarily responsible for line interpretation and discipline, creating the miniature image of the stamp.

**§ 91.16 Submission procedures for entry.**

(a) Each contestant may submit only one entry. Each entry must be accompanied by a non-refundable entrance fee and a completed and signed Reproduction Rights Agreement and a completed and signed Display Agreement. The bottom portion of the Reproduction Rights Agreement must be attached to the back of the entry.

(b) Each entry should be appropriately wrapped to protect the art work and sent by registered mail or hand delivered to: Migratory Bird Hunting and Conservation Stamp Contest, Room 2643, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

**§ 91.17 Property insurance for entries.**

Each contestant is responsible for obtaining adequate insurance coverage for his/her entry. The Department of the Interior will not insure the entries it receives. The Department of the Interior is not responsible for loss or damage unless it is caused by its negligence or willful misconduct; in any event, the liability of the Department of the Interior will not exceed the amount of the fifty dollar ($50.00) entry fee.

**§ 91.18 Failure to comply with contest regulations.**

Any entry that does not comply with the requirements of Subpart B will be disqualified from the contest.

## Subpart C—Procedures for Administering the Contest

**§ 91.21 Selection and qualification of contest judges.**

Five judges will be selected annually by the Secretary of the Interior. Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

**§ 91.22 Display of entries for contest.**

Entries selected by the judges under the procedures described in Subpart C, § 91.24 will be displayed in numerical order. The only visible identification on each entry will be the number assigned to it in chronological order when it is received and processed by the Service.

**§ 91.23 Scoring criteria for contest.**

Entries will be judged on the basis of anatomical accuracy, artistic composition and suitability for engraving the production of a stamp.

**§ 91.24 Contest procedures.**

(a) Prior to the judging of entries, the judges will be briefed by a printing and engraving expert on the characteristics that make a design suitable for engraving.

(b) All eligible entries will be displayed in the Department of the Interior auditorium. Prior to the first round of judging, the judges will spend two hours in the auditorium reviewing the entries the first day before the official contest begins. Public viewing will begin at 11 a.m.

(c) All qualified entries will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote "in" or "out" on each entry; those entries receiving a majority of votes "in" will receive further consideration. The remaining eligible entries will be placed on display as a group for public viewing and further judging.

(d) In the second round of judging each entry selected in the first round will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote by indicating a numerical score from zero to nine for each entry. One highest and one lowest score for each entry will be eliminated and the remaining scores will be totaled to provide the entry score. The entries receiving the five highest scores will be advanced to the third and final round.

(e) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

(f) In case of a tie vote for first place in the final round, the judges will vote again on the entries that are tied. Each judge will vote by raising his or her hand for the one entry believed to be the most qualified. The entry receiving the most votes will be declared the winner.

(g) The selection of the winning entry by the judges will be final. Each contestant will be notified of the winning artist and the design. The winning artist will receive a pane of stamps signed by the Secretary of the Interior at the Duck Stamp Contest the following year. The artists placing first, second and third will receive a framed commendation from the Director of the U.S. Fish and Wildlife Service.

## Subpart D—Post-Contest Procedures

**§ 91.31 Return of entries after contest.**

All entries will be returned by certified mail to the participating artists within 120 days after the contest. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed one year from the date of the contest.

Dated: May 5, 1987.

Susan Recce,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87-11363 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Sisters Rocks to Chetco Point, Oregon, at midnight, May 14, 1987, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Pacific Fishery Management Council, and the Oregon Department of Fish and Wildlife, that the commerical fishery quota of 7,500 chinook salmon for the subarea will be reached by that time. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATES: Closure of the EEZ from Sisters Rocks to Chetco Point, Oregon, to commerical salmon fishing is effective at 2400 hours local time, May 14, 1987. Comments on this closure will be received until May 29, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the Federal Register under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 commercial fishery for all salmon except coho from Sisters Rocks to Chetco Point, Oregon, was established as May 1, 1987, through the earlier of May 31, 1987, or the attainment of a quota of 7,500 chinook salmon.

Based on the best available information, the commercial fishery catch in the subarea is projected to reach the 7,500 chinook quota by midnight, May 14, 1987.

Therefore, NOAA issues this notice to close the commercial fishery in the EEZ from Sisters Rocks to Chetco Point, Oregon, effective midnight, May 14, 1987. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife (ODFW) regarding a closure of the commercial fishery between Sisters Rocks and Chetco Point, Oregon. ODFW repesentatives confirmed that Oregon will close the commercial fishery in State waters adjacent to this subarea of the EEZ effective noon, May 14, 1987. Oregon will allow a period of 24 hours for landings.

### Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

### List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: May 14, 1987.

Joseph W. Angelovic,

*Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.*

[FR Doc. 87-11427 Filed 5-14-87; 5:12 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 98
Tuesday, May 19, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

**12 CFR Part 225**

**[Regulation Y; Docket No. R-0567]**

### Capital Maintenance; Revision to Capital Adequacy Guidelines

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Extension of Time to Comment on Proposed Rulemaking.

**SUMMARY:** On February 12, 1987, the Board announced a proposed modification of its Guidelines for minimum and appropriate levels of capital for bank holding companies and state chartered banks that are members of the Federal Reserve System. [52 FR 5119 (February 19, 1987)] This proposed amendment to the Board's Guidelines, contained in Appendix A to the Board's Regulation Y, 12 CFR Part 225, was designed to make the Board's capital policies more systematically and explicitly sensitive to the risk exposure of individual banking organizations by providing for a risk-based capital measure to be used in tandem with existing capital ratios and to amend the definition of primary capital for purposes of computing existing capital-to-total assets ratios. The Board indicated that it would consider comments on this proposal received by May 13, 1987.

Subsequently, on March 18, 1987, the Board announced a proposal to incorporate credit risks on off-balance sheet interest rate and exchange rate contracts (including interest rate swaps) into the proposed risk-based capital measure. [52 FR 9304 (March 24, 1987)].

Since publication of these proposals the Board has received several requests for additional time to comment on these proposals, requests which cite the nature of the proposals and the importance of the issues they raise. While the Board has provided for a substantial comment period and while there is a need to proceed expeditiously to consider the proposals and the comments received, the Board is extending the comment period for both of its risk-based capital proposals (Docket R-0567) until June 1, 1987. The Board believes such an extension of the comment period will allow it to receive additional and more complete responses to its proposal.

**DATE:** All comments should be received by June 1, 1987.

**ADDRESS:** All comments, which should refer to Docket No. R-0567, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, or should be delivered to the courtyard entrance, Eccles Building, 20th Street, NW., between "C" Street and Constitution Avenue, NW., between the hours of 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room 1122, Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Richard Spillenkothen, Deputy Associate Director (202/452-2594), Anthony G. Cornyn, Assistant Director (202/452-3354), or James E. Scott, Senior Counsel, Legal Division (202/452-3513) of the Board's staff; or Andrew Spindler, Vice President, Federal Reserve Bank of New York (212/791-5846). For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202) 452-3544.

By order of the Board of Governors of the Federal Reserve System, May 13, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87-11335 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**18 CFR Parts 157 and 284**

**[Docket No. RM87-16-000]**

### Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts

May 7, 1987.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to provide for abandonment of certain sales and purchases under the Natural Gas Act by both sellers and purchasers where the underlying contract term has expired, the contract has been terminated under a provision of the contract, or the contract has been terminated or modified by mutual agreement of the parties. Under the proposal, when a contract has expired or been terminated, either party to the contract may, upon thirty (30) days written notice, abandon its service obligation to purchase or sell the gas. However, if an interstate pipeline purchaser is seeking to abandon purchases from a producer, it must continue the transportation of the "abandoned" gas if the producer so elects. The abandonment is automatically effective in accordance with the notice given. The abandoning party must notify the Commission of the abandonment within thirty (30) days of the effective date of abandonment. If the parties agree to terminate the contract or to modify their sales and purchase obligations under the contract, the abandonment is effective in accordance with the parties' agreement, but one of the parties must notify the Commission within thirty (30) days of the effective date of abandonment.

**DATE:** An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by June 18, 1987.

**ADDRESS:** All filings should refer to Docket No. RM87-16-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capital Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Jacob Silverman, Federal Energy Regulatory Commission, 825 N. Capital Street, NE., Washington, DC 20426, (202) 357-8119.

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to permit abandonment under section 7(b) of the

Natural Gas Act (NGA) [1] of certain sales and purchases of natural gas under an expired or terminated contract upon 30-days written notice, or where the parties to the contract have mutually agreed upon termination or modification of the contract.

## II. Background

### A. History

The NGA declares that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest. The NGA was adopted "so as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." [2] Critical to the achievement of those objectives is the assurance of an adequate and reliable supply of natural gas.[3] To achieve that assurance of supply, gas companies that seek to sell or transport natural gas for resale in interstate commerce are required, under section 7(c) of the NGA,[4] to obtain a certificate of public convenience and necessity from the Commission.

The Federal Power Commission (predecessor to the Commission) took the position, which the Supreme Court affirmed, that there was "a continuing obligation to perform 'service' imposed by the [NGA] which outlasts the term of a seller's original contract of sale." [5] Thus, once gas service in interstate commerce has commenced, natural gas companies are precluded—under section 7(b) of the NGA—from abandoning all or part of this service without Commission approval. Abandonment within the meaning of section 7(b) "occurs whenever a natural gas company abandons facilities or permanently reduces a significant portion of a particular service." [6] Similarly, although a pipeline does not need a certificate to purchase gas, the pipeline's purchase and transportation of the gas constitute "services" under the NGA, and accordingly, a pipeline requires abandonment authorization to cease purchases, even if no facilities are abandoned.[7]

Under section 7(b), an applicant has the burden of demonstrating that abandonment is permitted due to the depletion of reserves or is otherwise permitted by the present or future public convenience or necessity.[8] Most producer abandonment applications are based on depletion of reserves. They are generally not opposed and the Commission routinely grants them.[9] Where the gas supply is not depleted, and abandonment has been contested, the courts have said that, in determining whether the public convenience or necessity permits such abandonment, (1) a pipeline with a certificate of public convenience and necessity to serve a particular market has a "deep legal obligation" to continue service; (2) the burden of proof is on the proponent of the abandonment to demonstrate that the public interest "will in no way be disserved" by the abandonment; and (3) the principal index of the public interest is a comparative needs test which balances the relative needs of the competing pipelines and their ultimate consumers.[10]

These standards for abandonment were developed during a period marked at its close in the 1970's by gas shortages in the interstate market. By enacting the Natural Gas Policy Act of 1978 (NGPA) [11] to meet this shortage and other problems, Congress transformed federal regulation of the gas industry from an all-encompassing regulatory approach to one which "move[s] toward a less-regulated national natural gas market," and "leave[s] determination of supply and first-sale price to the market." [12]

In the Commission's April 10, 1985 Policy Statement,[13] the Commission expressed an intent to allow parties to change their service obligations to accommodate take-or-pay buy-out agreements. The Commission stated that it would expeditiously grant abandonment authorization necessary to implement any such agreement reached by the parties, and that where a producer files for abandonment based on payments made pursuant to the policy statement, the pipeline purchaser will be deemed to have waived its right to oppose the abandonment. Subsequently, in Order No. 436, the Commission developed a regulatory approach to "allow competitive forces to operate in those areas where Congress has determined they will better protect the public interest than traditional utility-type regulation, while retaining traditional-type regulation in those areas where competitive forces have been found inadequate by the Congress."[14]

In Order No. 436, the Commission reaffirmed its April 1985 Policy Statement, and expanded the categories of gas that could be the subject of expedited abandonment, stating:

> In the Commission's judgment, new § 2.77 is consistent with the policies reflected in this rule, in that producers should be able to sell shut-in gas and purchasers, to the extent possible, should be able to renegotiate or buy-out higher priced contracts so that gas under those contracts can be sold at market-clearing prices. To this end, the Commission will consider requests for permanent, limited-term, or partial abandonment of sales subject to reduced takes irrespective of the NGPA price category of such gas.[15]

The Commission further noted its concern "about the need for abandonment in cases where the underlying contract has expired" because of "the market disordering effects of reduced sales of lower-priced gas as well as the economic effect on sellers." [16] The Commission declined to issue any criteria for allowing abandonment under expired contracts at that time but added that it would:

> Review the matter based on experience gained in individual proceedings and will, if it appears reasonable and desirable to do so,

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[1] Section 7(b), 15 U.S.C. 717f(b) (1982), provides: No natural gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

[2] *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, 388 (1959).

[3] *California et al.* v. *Southland Royalty Co. et al.*, 436 U.S. 519, 523 (1978).

[4] 15 U.S.C. 717f(c) (1982).

[5] *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137, 153-55 (1960) (Sunray).

[6] *Reynolds Metals Co.* v. *FPC*, 534 F.2d 379, 384 (D.C. Cir. 1976).

[7] *United Gas Pipeline Co.* v. *FPC*, 385 U.S. 83 (1966) (*United*). In *Panhandle Pipe Line Co.* v. *FERC*, 803 F.2d 726 (D.C. Cir. 1986) (*Panhandle*), the court held, on the basis of *United*, that the Commission must entertain abandonment applications filed by purchasers seeking to cease purchases of gas if the gas is transported through a certificated facility. *Accord: Valero Interstate Transmission Company* v. *FERC*, 804 F.2d 1408 (5th Cir. 1986).

[8] *Michigan Consolidated Gas Co.*, v. *FPC*, 283 F.2d 204 (D.C. Cir.), *cert. denied*, 364 U.S. 913 (1960).

[9] The Commission has delegated the authority to grant specified unopposed applications for abandonment to the Director of the Office of Pipeline and Producer Regulation. 18 CFR 375.307 (1986).

[10] *Transcontinental Gas Pipeline Corp.* v. *FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973), *cert denied*, 417 U.S. 921 (1974) *(Transco); Michigan Consolidated Gas Co.* v. *FPC*, *supra*.

[11] 15 U.S.C. 3301 through 3432 (1982).

[12] *Transcontinental Gas Pipeline Corp.* v. *State Oil and Gas Board of Mississippi*, 108 S. Ct. 709, 717 (1988).

[13] Regulatory Treatment of Payments Made in Lieu of Take-or-Pay Obligations, 50 FR 16076 (April 24, 1985); FERC Statutes and Regulations [Regulations Preambles 1982–1985] ¶ 30,637. The policy statement is embodied in 18 CFR 2.76 (1986).

[14] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (October 18, 1985); FERC Statutes and Regulations [Regulations Preambles 1982–1985] ¶ 30,665 (1985).

[15] *Id.* at 31,566.

[16] *Id.*

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establish guidelines to be applied in ruling on future contested abandonments as a means of further expediting the determination of such abandonments.[17]

In 1985, the Commission reconsidered its abandonment policy under section 7(b) in *Felmont Oil Corp. et al.* (*Felmont* and Opinion No. 245).[18] The applicant therein was a producer seeking abandonment (which the pipeline's customers opposed) because of the expiration of the underlying contract and the reduced takes by the purchaser, which had led to the shutting-in of the gas.[19] The Commission held that in light of substantially changed conditions in the natural gas market following enactment of the NGPA, the "comparative needs" test articulated in the *Transcontinental* case, *supra* n. 10, which was developed in quite different conditions, had to be reexamined.

The Commission adopted an abandonment policy that would allow shut-in, low-priced gas to enter the marketplace in order to allow purchasers to displace higher cost gas. The Commission reasoned that if lower-priced gas begins to displace some high-cost gas, pipelines and gas producers will have the incentive to renegotiate their contracts both to reduce prices and lower take-or-pay requirements. The Commission, therefore, held that:

> Where a party can demonstrate that abandonment in a particular instance would have beneficial effects on the market overall, such as increasing competition and causing gas prices to respond to that competition, and the benefits of the abandonment outweigh any adverse effect to the purchaser to whom the gas is presently dedicated, or that purchaser's customers, the Commission will grant abandonment.[20]

Applying that standard to the case before it, the Commission held that the record supported the grant of a limited term three-year abandonment, suggested by the producer in a settlement offer.[21] On rehearing, the Commission, in rejecting the specific arguments made by the petitioners,[22] stressed inter alia, that "[t]he abandonment policy expressed in Opinion No. 245 is designed to facilitate competition in the natural gas markets resulting in significant benefits to the overall public interest." The Commission concluded that, "[g]iven the limited nature of the abandonment approved, Opinion No. 245 represents a careful and modest application of the Commission's revised approach to abandonment."[23]

The Commission, in revising its abandonment policy, essentially changed the focus of its analysis in light of the current situation in the gas industry. Rather than limiting its analysis to the needs of a current purchaser and a prospective new purchaser, the Commission sought to balance the benefits to natural gas customers as a whole from a release of gas against any detriments to the current purchaser and its customers. In *Felmont*, the Commission recognized that it was changing prior policy, and set forth a reasoned explanation for its action. Specifically, the Commission recognized that other fuels have become more competitive with gas, that demand for gas has accordingly declined, and that a significant surplus has developed. In such circumstances, the Commission concluded that, where the abandonment request is predicated upon a current purchaser's failure to buy substantial amounts of available gas due to a sharp decline in the market, the traditional comparative needs test was inappropriate and the Commission "must look at a wider range of factors than it has previously considered".[24] Thus:

> The real change from the past will be a shift in the identification of the public interest, from the interest of only specific customers to the interest of the market as a whole and in the determination of how the public's needs are best served.[25]

After passage of the NGPA and the onset of an over-supply condition, diminution of demand, and the incurring of take-or-pay obligations by pipelines, the Commission recognized the need to change existing regulations governing the release of gas. Thus the Commission permitted special marketing programs (SMPs). These authorized the release by pipelines, temporary abandonment, and sale of certain categories of gas under certain conditions to other (generally industrial, fuel switching) customers, in order to allow pipelines to obtain take-or-pay relief.

The U.S. Court of Appeals for D. C. Circuit struck down the SMP's in *Maryland People's Counsel* v. *FERC*, (*MPC I*)[26] because of the exclusion of "captive customers" from the class of customers eligible to participate in the programs. The SMP's in *MPC I* had already expired when the court rendered its decision on May 10, 1985. Since successor SMP orders with later expiration dates had been issued by the Commission, the Court directed the Commission to show cause why the successor orders should not also be vacated. In *MPC II*,[27] the court held that the new orders were similarly infected with unlawful discrimination. However, since the new orders were scheduled to expire on October 31, 1985, the court stated that it would "allow the current SMP orders to die a natural death" by which time the Commission was expected "to promulgate new rules that may effect fundamental changes in the marketing of natural gas." The court was referring to the Notice of Proposed Rulemaking that ultimately resulted in Order No. 436.

In a series of orders subsequent to *MPC II*, the Commission approved limited-term abandonments (LTA's) and granted sales certificates to permit continuation of the sale of the gas that had been sold under various SMP's that expired on October 31, 1985.[28] These orders were originally intended to be a temporary bridge between the defunct SMP arrangements and arrangements under Order No. 436, and thus the Commission limited the duration of

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[17] *Id.* at 31,567. The Commission referred to its policy at that time that a seller was obligated to continue providing service under an expired contract, if requested to do so, even though the purchaser had no obligation to continue purchasing, and required no Commission authorization to cease its purchases, citing Mississippi River Transmission Corporation (MRT), 30 FERC ¶ 61,185 (1985). In *Panhandle*, *supra* n.7, the United States Court of Appeals for the District of Columbia reversed the Commission's decision to dismiss MRT's application to abandon purchases, and remanded the case for further Commission consideration.

[18] 33 FERC ¶ 61,333 (1985), *reh'g denied*, 34 FERC ¶ 61,350 (1986). The orders in *Felmont* and the subsequent certificate orders involving the released gas, are on appeal. Oral argument was heard by the court on February 18, 1987. *Consolidated Edison* v. *FERC*, Docket Nos. 86-1108 *et al.* (D.C. Cir.).

[19] The gas involved was priced under NGPA sections 104 and 106.

[20] 33 FERC at 61,857.

[21] The order also included a provision granting the purchaser's customers a call upon the gas, as requested by the parties. The Commission has not imposed that condition in subsequent abandonment orders.

[22] Petitioners argued that the Commission could not change the "comparative needs" test and that, in any event, there was no substantial evidence to support the application of the new policy in the case before it.

[23] 34 FERC at 61,555.

[24] 33 FERC at 61,856.

[25] *Id.* at 61,857.

[26] 761 F.2d 768 (D.C. Cir. 1985) (MPC I).

[27] 785 F. 2d 999 (D.C. Cir. 1986).

[28] The LTA's were issued in basket orders covering numerous applications. The leading case is Tenneco Oil Co., 35 FERC § 61,134 (1986), *reh'g denied and clarification granted*, 34 FERC ¶ 62,145 (1986). The Commission has also issued other LTA orders approving many applications. 35 FERC ¶ 61,233 (1986), 35 FERC ¶ 61,173 (1986), and 39 FERC ¶ 61,325 (1985).

authorizations until March 31, 1986.[29] However, the Commission later determined that these orders would provide important benefits to the public interest, even after Order No. 436 programs were implemented, and extended the authorizations because they allowed for the release by pipelines of shut-in, above-market-priced gas which could be sold by producers at market clearing prices. The public interest was served by the releases because pipelines could by this means obtain take-or-pay relief, producers were able to sell gas and generate cash flow, and increased gas sales made the natural gas market more price sensitive.[30]

The Commission has granted LTA authorizations not only for individual producers but also for applications filed by pipelines on behalf of their producer-suppliers.[31] The Commission recognized that this was an extension of *Felmont supra*, and granted such pipeline applications because:

> Based upon [the pipeline's] assertions that it has substantially reduced takes from all of its producer-suppliers and that it may be unable to take even minimum volumes of gas to protect against drainage and well or reservoir damage, and upon our own review of [the pipeline's] demand and supply projections for 1986 and 1987, we have determined that the requested abandonment is permitted by the public convenience [or] necessity.[32]

The LTA orders have stated that any release is a matter of mutual agreement between the pipeline and its producers. The authorizations merely allow the release, but do not mandate it. Each producer is free to determine whether it wishes to enter into the release arrangement. Second, administration of the program by the pipelines must be on a non-discriminatory basis. Furthermore, the authorizations do not alter the pipelines' responsibilities to meet service obligations under their certificates. The pipelines' decisions to release gas constitute purchasing practices subject to review in rate proceedings. Third, the authorizations granted do not provide for blanket transportation, and transportation authorization must be obtained through other proceedings.

The changed gas marketing environment after the NGPA also prompted the Commission to authorize abandonment on a generic basis under Order No. 451.[33] This new rule provides an alternative maximum lawful price (MLP) for older vintages of gas under NGPA sections 104 and 106 (old gas). It also establishes a good faith negotiation procedure. The negotiation procedure is available to a producer who sells old gas under an interstate contract or the service obligation of a certificate in effect on July 18, 1986, that provides for escalation of the contract price to a higher MLP. This negotiation rule grants such producers abandonment if the producer seeks a higher price for its old gas, is unable to reach agreement with the purchaser on a suitable price, finds another purchaser, and gives 30-days written notice to the existing purchaser. The rule further grants the seller, with respect to the abandoned gas, a blanket certificate authorizing sales for resale in interstate commerce, with pre-granted abandonment upon termination of any contract. In addition, the rule grants abandonment for the benefit of purchasers in certain circumstances. In response to a producer's request for a higher price for old gas, the purchaser may seek a lower price for any gas in any contract with the producer which includes old gas. The purchaser may terminate purchases of any such gas on which no agreement as to price is reached, and abandonment authority is granted for any such gas that is subject to the Commission's NGA jurisdiction.

The abandonment provisions under Order No. 451 are not available for gas sold under interstate contracts that do not provide for escalation of the contract price to a higher MLP, or for gas sold under intrastate rollover contracts. However, the price of gas sold under such contracts may be increased up to the new higher MLP if the producer can nevertheless secure the purchaser's agreement to a higher price.

In support of the rule the Commission stated:

> Abandonment under the good faith negotiation rule is in the public interest, since it is necessary to ensure that the goals of Order No. 451 of increased production of old gas and overall lower prices * * * are achieved. Those goals cannot be achieved unless producers can obtain the market-responsive prices permitted by the rule. Without the possibility of abandonment, purchasers under existing contracts could prevent producers from obtaining those prices by insisting on continuation of the present price. In addition, requiring individual producers to file abandonment applications and considering those applications on a case-by-case basis is an inadequate solution. That would cause lengthy delays before abandonments could be granted, given the vast number of producers in the nation and the Commission's limited resources. Achievement of the goals of increased production and lower overall prices would thereby be substantially delayed. Thus, granting abandonment in the present proceeding, if the conditions set forth in the good faith negotiation rule are met, is in the interest of the natural gas market as a whole and is necessary to bring about market-responsive prices for old gas and overall lower prices.[34]

### *B. The Need for the Rule*

Under the NGA the Commission had concluded that service obligations should not be limited to the contractual term between the parties.[35] To permit the contract term to govern the service obligation would allow the parties to avoid the Commission's authority over abandonment. Thus, the Commission's prior policy attempted to ensure that the interstate market would not be subject to limitations of supplies because of competition from the unregulated markets.

Furthermore, the prior policy on abandonment protected pipelines, which had substantial capital investment in the facilities to deliver the gas, from being cut-off from their supplies. The crux of that policy was that under the NGA, it was "Congress' purpose to regulate the supply and price of natural gas." [36] However, Congress significantly changed the method of achieving this desired objective in enacting the NGPA by permitting market forces, to a very large extent, to regulate price and

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[29] Tenneco Oil Co., *supra*, 34 FERC at 61,250.

[30] Columbia Gas Transmission Corp., 34 FERC ¶ 61,407 (1986); Marathon Oil Co., 34 FERC ¶ 61,417 (1986); and Odeco Oil and Gas Co., 38 FERC ¶ 61,343 (1987).

[31] *E.g.*, ANR Pipeline Company *et al.*, 38 FERC ¶ 61,046 (1987); Southern Natural Gas Co., 38 FERC 61,401 (1986) (Southern); and Transcontinental Gas Pipe Line Corp., 38 FERC ¶ 61,403 (1986).

[32] *Southern supra*, 38 FERC at 62,013.

[33] Ceiling Prices; Old Gas Pricing Structure, 50 FR 22168 (June 18, 1986); III FERC Statutes & Regulations ¶ 30,701 (1986).

[34] Order No. 451–A, 51 FR 46782 (December 24, 1986); III FERC Statutes & Regulations ¶ 30,720 at 30,405 (1986).

[35] *Sunray, supra*, text at n.5.

[36] United Gas Pipe Line Co. v. McCombs, 442 U.S. 529, 539 (1979). The Commission notes that in *Sunray*, the court held that another reason for permitting the Commission to issue certificates of indefinite duration was to prevent producers from obtaining, at the contract expiration date, a higher price as an initial rate under a new certificate. The Court reasoned that to consider sales after the contract expiration as new service under a new certificate would force the Commission to test the reasonableness of the rate under NGA section 5(a), where the Commission has the burden of proof and where experience had shown the procedure to be subject to great delays, and would avoid the rate-change procedures of NGA section 4(e), where the producer has the burden of proof and rates can be temporarily suspended, and implemented subject to refund, pending issuance of a final rate order. This distinction between the effective date and burden of proof concerning producers' rate increases under new service and a continuation of existing service is no longer relevant because Congress has provided in NGPA section 601(b) that for purposes of NGA sections 4 and 5, ceiling prices under the NGPA are deemed to be "just and reasonable."

supply. The conversion of the natural gas market to a nationwide market has virtually eliminated the need for the Commission's prior abandonment policy, because the NGPA has eliminated the dual (inter and intrastate) markets altogether by establishing a single national market where both interstate and intrastate gas purchasers have equal access to new gas production without substantial price disparity, "to assure adequate supplies of natural gas at fair prices." [37]

The Commission believes that the continuation of service obligations after the contract has expired prevents market forces from operating to the extent envisaged under the NGPA, and frustrates the parties' agreements. To the extent that either a producer or a purchaser concludes that it no longer wishes to continue its contractual arrangement after the contract has expired, Congress' NGPA policies are thwarted by policies that interfere with parties' bargained-for arrangement. Thus producers with contracts for the sale of gas at prices that may be less than the replacement cost of gas reserves should be permitted to seek the market price up to the maximum lawful price for that gas once the contract terminates. Similarly, purchasers should not be required to continue purchasing relatively high-priced gas when the contract term expires, unless it is in their interest to do so. In that situation, the purchaser, and not the Commission, should determine whether it wishes to continue purchasing under the contract. Expedited abandonment procedures, such as those in this proposed rule, are necessary to ensure that the parties are not required to continue selling or purchasing gas where the marketplace provides a better alternative than their expired or terminated contractual arrangement. Requiring sellers to continue selling gas at a lower price than the gas commands in the market, or requiring the purchaser to continue purchasing the gas where it could satisfy its requirements with lower-priced gas, may prevent the gas being priced at its real value to the economy. Accordingly, the proposed rule would treat both producers and purchasers evenhandedly and allow either party to terminate its purchase or sale obligation when the contract term expires without the need to obtain Commission approval on a care-by-case basis. [38]

Dedication and abandonment do not, at a particular moment in time, impact the total gas supply available to the market as a whole. Continuation of the dedication after expiration or termination of a contact merely places restraints on the movement of the gas, preventing it from going from one group of customers to other customers who may have a greater need for it. When there were distinct markets prior to the NGPA, dedication and abandonment arguably helped achieve the goals of the NGA. However, even under the NGA, natural gas shortages were a recurring phenomena, and to some extent abandonment policies exacerbated the shortages because where gas surpluses existed on certain pipeline systems, the surplus gas could not readily be utilized to alleviate gas shortages existing on other pipeline systems. If supplies were free to move quickly, as contemplated under this rule, the nation's entire gas supply could be more efficiently utilized to satisfy consumer needs, thereby allocating the gas supply as the economy dictated rather than in accordance with "dedicated reserves," as under the current policy.

The Commission notes that a study prepared by the Commission's Office of Pipeline and Producer Regulation (OPPR), entitled "Dedicated Interstate Gas Supply, Potential Supplemental Sources and Their Effects on Meeting Potential Demand" (April 1987), provides information relevant to the evaluation of the need for the rule, and is attached as Appendix A. The study indicates that at the present time the reserves of dedicated gas subject to the Commission's certificate and abandonment authority are serving a diminishing role in satisfying total nationwide natural gas requirements of residential and commercial customers. Dedicated production is estimated to have been between 5.1 and 5.2 Tcf in 1985 while total U.S. residential and commercial consumption in 1985 in interstate and intrastate markets amounted to 6.8 Tcf. Accordingly, assurance of supply to these customers cannot come solely from dedicated reserves.

The OPPR study also indicates that future supply for these customers must increasingly come from sources other than dedicated gas. New reserves that are dedicated account for a decreasing percentage of total new reserve additions and will continue to decrease in the future because the NGPA "prevents the universe of gas subject to the NGA from expanding." [39] Yet, dedicated reserves provide a disproportionate amount of production. In 1985, for example, dedicated reserves provided an average of 58% of dedicated and/or contractually committed production [40] while comprising only 45% of reserves dedicated and/or contractually committed to interstate pipelines in 1985. This disparity between the addition of reserves and production has caused dedicated reserves to decline approximately 10% per year since 1976.

Finally, the OPPR study estimates the potential for supplemental sources to meet gas requirements. The 1987 U.S. surplus deliverability is estimated at 3.6 Tcf but, since this surplus may be exhausted in the near future, other supplemental sources were evaluated. Fuel switching by dual fuel industrials and electric utilities, infill drilling, and imports could potentially make available a range of 3.92 to 7.69 Tcf in one year and up to 10.44 Tcf in two or more years. The potential of this range of supplemental sources is dependent upon alternative fuel availability, market price signals that encourage production of the supplemental supplies, and the absence of bottlenecks that prevent access to the available gas. However, one important fact noted by the study is that an oil supply disruption would increase demand for gas and possibly eliminate the estimated supplemental gas potential of 5.64 Tcf from fuel switching.

As the OPPR study indicates, dedicated reserves have diminished to the point that they already appear questionable in meeting the demands of total U.S. high-priority customers, [41] and are estimated to continue dwindling. Therefore, it is obvious that the purpose of the Commission's certificate and abandonment policy during the 1970's of maintaining enough dedicated reserves to protect high-priority customers in the interstate market against possible shortages cannot possibly be realized in the future by denying applications for abandonment.

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[37] See Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, 106 S. Ct. 709, 710 [1986].

[38] Termination of the sale or purchase obligation will not, of course, affect the parties' contractual rights and obligations arising prior to the termination.

[39] *Pennzoil Co.* v. *FERC*, 645 F.2d 360, 380 (5th Cir. 1981).

[40] In this context, contractually committed production means production that is committed to an interstate pipeline under a contract, but is not subject to the Commission's NGA jurisdiction as are "dedicated reserves."

[41] The OPPR estimate for residential and commercial use does not exactly correspond to the definition of "high priority users" under section 401(f)(2) of the NGPA. The estimate includes commercial establishments consuming more than 50 Mcf on a peak day that would not be "high priority" and excludes "high priority use" for life, health, and maintenance of physical property.

Interstate pipelines and local distribution companies cannot rely on the authority of the Commission under section 7(b) of the NGA to deny contested applications for abandonment to meet their duty of assuring an adequate supply of reasonably priced natural gas to their high-priority customers. As a matter of hindsight, it is apparent that the Commission's ability to deny abandonment was never an effective means of securing gas supplies for the interstate market. The effort to secure supplies for the interstate market by attempting to force producers to sell gas beyond the terms of their contractual commitments at prices that were less than they could receive from other potential purchasers was ultimately a failure, as the recurring shortages in the interstate market during the 1970's made abundantly clear.[42]

While the proposed rule will not detrimentally affect high priority customers' assurance of supply, the rule will provide three related economic benefits. First, the rule would increase competition by allowing more gas to enter the market. Purchasers may have an opportunity to lower their gas costs which in turn, would exert pressure on other sellers of gas to reduce prices. Further, in contrast to limited term abandonments, dedicated gas abandoned under the rule would be available for purchase under either short- or long-term contracts. This maximizes the competitive effect by allowing the gas to be purchased in the most highly valued manner: As a spot purchase, a long-term contract to ensure supply reliability, or something between.

The second economic benefit of the rule is that it increases high-priority user's access to gas. If expired contracts are not abandoned, high priority customers are not expected to have access to all of the existing dedicated production. Some pipelines are likely to have dedicated production in excess of their customers' high priority usage. But that excess dedicated production would not be available to other high priority users. However, under the rule, the free market's ability to move reserves among different systems and regions in response to consumers' demands would be enhanced.[43]

Closely related to the other two economic benefits is the improved allocation of society's resources. The OPPR study indicates that additional supplies of gas from various sources will quickly become available under adequate price incentives. However, if underpriced dedicated gas continues to be sold under expired contracts, unregulated market prices will be distorted upward. The distorted price response to any future gas shortage will then induce more supply from supplemental sources than is socially optimal. The rule will remove this distortion, allowing the market to allocate more optimally the use of gas, alternative fuels, and other resources associated with the "potential supplemental sources of gas supply."

The new rule will provide economic benefits to the market as a whole. The standard used in *Felmont* and in Order No. 451, of balancing the particular purchaser's needs and the needs of the market as a whole, provides support for the proposed rule.

The Commission believes that security of supply can best be achieved under the NGPA's schedule of decontrol by permitting producers and purchasers of natural gas to buy and sell gas in accordance with their contractual commitments, free of the constraints of any requirement to seek Commission approval on a case-by-case basis. The mechanism of a free market will provide adequate gas supplies to pipelines to meet their customer's demands, and in the event of a shortfall of supply, gas will be allocated on individual pipelines in accordance with Commission approved curtailment plans. It is possible that a disruption could be so severe that market forces would not satisfy the supply needs of high priority users. Under this emergency condition, Title III [44] of the NGPA provides authority to the President to allocate natural gas supplies to meet those needs from any available source of gas, without regard to whether such gas is subject to the Commission's NGA jurisdiction. This authority under Title III provides a more effective way to deal with any emergency shortage of natural gas supply than the Commission trying to anticipate such an event by refusing to permit abandonments. In addition, in both times of surplus and shortage, nothing in the proposed rule will alter the continued sales service obligations of pipelines to their customers, unless revised by the Commission after case specific review under the NGA.

For all the reasons stated above, the Commission also believes that parties to gas purchase contracts should be free to terminate their contractual arrangements either permanently or for a limited period without Commission approval on a case-by-case basis. Given the limitations on Commission resources, requiring such individual approval serves no useful purpose and merely imposes an unnecessary step that injects uncertainty, and delays the parties from consumating sales which would benefit the public interest in general. It should be noted, however, because a pipeline's decision to release gas constitutes a purchasing practice, a pipeline's agreement to modify contracts will be subject to scrutiny in rate proceedings. This rule does not preclude parties from challenging any release of gas by a pipeline in future rate cases, where the pipeline has voluntarily agreed to enter into such arrangement.

The goal of assuring high-priority users an adequate supply of gas can thus be furthered by removing regulatory impediments to the efficient operation of the forces of supply and demand in a competitive natural gas market.

## III. Discussion

### *A. The Proposed Rule*

The proposed rule will be applicable to "first sales" of gas as defined in the NGPA and to purchases by a pipeline from producers or another pipeline. The rule permits any party to a contract for such a sale, once the contract term has expired or has been terminated by exercise of an option contained therein, to notify the other party that it will cease sales or purchases under the contract at the expiration of thirty days from the date of notification or the notification period in the contract, whichever period is longer. The rule also applies where the parties to the contract have mutually agreed to terminate, or modify the contract. Termination or modification of the parties' certificate obligations becomes effective in accordance with the parties' agreement.

Where a pipeline is abandoning purchases of gas from a producer, abandonment under the proposed rule will be conditioned upon providing for the transportation of the abandoned gas. If the abandoning pipeline is not an open-access transporter subject to the non-discrimination provisions of § 284.8(b) or § 284.9(b) of the

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[42] The bizarre situation of natural gas shortages in the interstate market concurrent with a glut of natural gas in certain intrastate markets, was a compelling factor leading to enactment of the NGPA.

[43] Moreover, the nation's broader energy security interests will be served by the removal of regulatory impediments to the marketing of natural gas by reducing the vulnerability of the economy to oil supply disruptions. Oil shortages can be ameliorated by the ability of many boiler fuel users to switch to gas, if gas reserves can be quickly brought to market without the delay of abandonment proceedings before the Commission. (U.S. Department of Energy, *Energy Security: A Report to the President of the United States* at p. 40 (March 1987)).

[44] 15 U.S.C. 3361 *et. seq.* (1982).

Commission's regulations, transportation will be available under § 284.227, a blanket transportation provision similar to that promulgated in Order No. 451.

Authority to abandon the purchase or sale of gas is granted automatically upon compliance with the above conditions. The rule further provides for the grant of a blanket certificate to the producer or other first seller under § 157.301 of the Commission's regulations to sell the abandoned gas for resale in interstate commerce, with pregranted abandonment of any sale of the gas under the blanket certificate upon termination of the contract.

The abandoning party, or the purchaser if the abandonment is mutually agreed to, must notify the Commission of the abandonment within thirty days after the effective date of the abandonment, and shall provide the Commission with certain information concerning the abandoned transaction.

The rule will apply to all contracts between producers and pipelines, and will not be limited to contracts containing an indefinite price escalation clause, as under the good faith negotiation procedures of Order No. 451. Thus all gas sold under any expired contract will be eligible for price renegotiation or abandonment.[45] In addition, purchases under expired contracts between pipelines would be covered by this proposed rule, although beyond the scope of Order No. 451.

*B. Hearing Requirement and the Legal Basis for the Commission's Action*

Once gas reserves have been committed to an interstate pipeline, any sales from these reserves cannot be made to another purchaser without Commission approval under section 7(b). In other words, a producer cannot cease service to an interstate pipeline without a Commission grant of abandonment authority. Abandonment, while typically considered on a case-specific basis, has been generically authorized.[46] The ultimate criterion in determining whether abandonment should be granted under section 7(b) is the public interest.[47] As stated above, the Commission believes that the Congressional policy of achieving market-responsive pricing of gas that is embodied in the NGPA would be furthered by permitting generic abandonment as provided herein. Permitting both producers and purchasers to terminate obligations which they consider disadvantageous in the present market would help further the objective of achieving an equilibrium between supply and demand because gas would move more readily to the market that needs it and at the same time diminishing surplus deliverability in markets where it is not needed. Therefore, the Commission believes that, where contracts have expired and other conditions set forth in the rule are met, abandonment is in the interest of the natural gas market as a whole and is necessary to bring about a closer equilibrium between supply and demand.

In this proceeding, the Commission will consider all relevant factors involved in determining the overall public interest. The Commission believes that generally a purchaser's loss of gas under abandonment provisions where contracts have expired should not cause it, or the market it serves, to experience a shortage of supply. The move to market-responsive prices for new gas over the last eight years under the NGPA has already eliminated shortages of gas. Permitting old gas covered by expired or terminated contracts to enter the gas market will ensure that present adequate supplies of gas continue into the foreseeable future. Therefore, there is no reason to believe that purchasers losing supplies under this rule should have difficulty replacing those supplies. In addition, the increased flexibility of supply brought about by this rule should allow purchasers to replace lost supplies at reasonable prices.[48] Of course initially at least, some persons, particularly those who benefitted from the distortions inherent in the continuation of expired contracts with low fixed prices, may experience price increases. However, such isolated instances are outweighed by the benefits to the market as a whole described above.

The present rule is consistent with section 7(b). Abandonment authorization is, and will continue to be required, for gas still subject to the NGA. Where the conditions described in this rule are met, the Commission grants abandonment authorization by the rule. Where the conditions are not met, a party must seek abandonment authorization by a specific filing. In enacting the NGPA Congress limited the role of dedication under the NGA in regulating the nation's gas supply by legislating a continued diminution of dedicated reserves with the passage of time. Security of supply at reasonable prices was to be achieved by the working of the incentive price provisions and free market forces. This rule merely accelerates that process in light of the success of the NGPA along with other economic factors in creating a competitive wellhead market.

For the reasons stated, the Commission believes that the present and future public convenience or necessity would permit abandonment when the parties' contract has expired or the parties have agreed to such abandonment, because the abandonment will serve the overall interest of all participants in the natural gas market. The proposed rule permitting abandonment on a generic basis is limited to expired contracts, contracts terminated in accordance with a provision of the contract, or terminated or modified by mutual agreement of the contracting parties. Accordingly, there can be no conflict with the *Sierra-Mobile* doctrine [49]

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[45] Where the contract has not expired and the parties cannot mutually agree upon termination or a modification, a party may seek abandonment under other Commission procedures, including, 18 CFR 2.77 (1986), *supra* pp. 4–5, which provides expedited procedures where the producer is subject to substantially reduced takes, or abandonment is sought in connection with take-or-pay buy-out arrangements.

[46] FPC v. Moss, 424 U.S. 494 U.S. 494, 501 (1975); Order No. 436, *supra*.

[47] *Transco, supra.*, n. 10.

[48] In short, the Commission relies on market forces to assure that purchasers have adequate supplies at reasonable cost. Such reliance on market forces in the context of NGA section 7(b) is supported by the Supreme Court's decision in FCC v. WNCN Listeners Guild, 450 U.S. 482 (1981). That case involved a similar requirement that the Federal Communications Commission (FCC) determine whether the "public interest, convenience, and necessity" permit radio station license renewals or transfers. Among the factors to be considered in making the necessary determination is whether granting the renewal or transfer will promote diversity in entertainment programming. The FCC issued a policy statement that it would not consider this in individual cases since it would rely on market forces to promote diversity. The Supreme Court upheld the policy statement, finding that the FCC had provided a rational explanation of its reliance on the market. The Court noted that an agency's decision "must sometimes rest on judgment and predictions rather than pure factual determination", 450 U.S. 581. The Commission here has provided a detailed explanation why under this rule market forces should assure adequate supplies at reasonable costs, and would provide for a more efficient utilization of the nation's natural gas supply.

[49] Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956); United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); United Gas Pipe Line Co. v. Memphis Light, Gas & Water Division, 358 U.S. 103 (1958). The doctrine established in these cases recognizes that the NGA preserved the integrity of private contracts, and that the scheme of the NGA was one applying the regulatory system on the foundation of private contracts. The NGA did not abrogate private contracts, but simply provided protection to the public interest through the statutory filing procedures and notice requirements.

because the Commission action is in conformity with the parties' contractual agreement.

To the extent that the Commission adopts the proposed rule, the present rulemaking proceeding would satisfy the hearing requirement under NGA section 7(b). That hearing requirement will be satisfied by the opportunities to file comments in this proceeding. Section 7(b) does not require that the Commission hold individual case-by-case hearings.[50] The Commission may determine in this proceeding that the public interest permits abandonment where the underlying contract has expired or has been terminated or modified by agreement. If so, it would make no sense for the Commission to require individual producers to file abandonment applications and to hold a hearing on each application for abandonment under such a contract. Given the large number of certificates where the underlying contract has expired or may be terminated or temporarily modified by mutual agreement, that procedure could result in a very large number of hearings.[51] The inevitable result would be lengthy delays before individual abandonments could be granted because of the Commission's limited resources, which would seriously impede the achievement of this rule's goals of permitting the market allocation of gas that Congress intended in enacting the NGPA. As the Supreme Court stated in *Texaco* v. *FPC*, "We see no reason why under this statutory scheme the processes of regulation need be so prolonged and crippled." [52]

[50] *See Phillips Petroleum Co.* v. *FPC*, 475 F.2d 842, 848–852 (10th Cir. 1973), and *American Public Gas Ass'n.* v. *FPC*, 567 F.2d 1016, 1064–1067 (D.C. Cir. 1977), holding that the Commission may establish area and national rates in rulemaking proceedings as opposed to case-by-case adjudications without violating the similar hearing requirements of NGA sections 4 and 5. *See also FPC* v. *Moss*, 424 U.S. 494, 500–501 (1976), stating that the Commission has discretion to determine the timing of its finding that the public convenience or necessity permits abandonment, including the discretion to pre-grant abandonment on a generic basis, even though years may elapse before the abandonment actually occurs.

[51] The Commission notes that in the short time that LTA programs have been in effect, almost half of the major interstate pipelines have filed for LTA's on behalf of their producer-suppliers. Furthermore, the number of abandonment applications filed with the Commission has increased from 455 in 1985 to 792 in 1986, and the number of abandonments granted by the Commission has increased from 569 in 1985 to 792 in 1986.

[52] 377 U.S. at 38, 44 (1964). *See also Phillips Petroleum Co.* v. *FPC*, 475 F.2d at 849, 851, citing *Permian*, 380 U.S. at 777, holding the Commission has broad discretion to contrive expeditious administrative methods in order to achieve its regulatory purposes.

## V. Request for Comments

At the request of Commissioner Charles G. Stalon, the Commission seeks comments on the following questions:

1. The Commission is concerned that the benefits meant to accrue from the adoption of this Notice of Proposed Rulemaking may not be fully realized by captive residential customers of local distribution companies because of the unavailability of Order No. 436 transportation. Under Order No. 436, firm customers have the ability to reduce firm sales entitlements or convert firm sales entitlements to firm transportation. Without the right to sign long-term contracts with producers that include assured transportation, captive customers may not be able to realize the benefits of competitive wellhead markets. The Commission, therefore, seeks comments on modifying the proposed rule to condition the blanket abandonment authorized under the rule on the pipeline purchaser providing Order No. 436 transportation.

2. The Commission also seeks comments on modifying its proposal to require pipeline purchasers to transport from producer sellers in cases where the producer initiates the abandonment.

At the request of Commissioner Charles A. Trabandt, the Commission seeks comments on the following questions:

1. The Commission is interested in receiving comments with regard to the extent to which the Commission, pursuant to section 7(b) of the Natural Gas Act, may grant its permission and approval of this generic abandonment rule, after due hearing, and a finding that the present or future public convenience or necessity permit such abandonment. The Commission is particularly interested in the extent to which such a finding may be based upon (1) a general public interest test placing primary emphasis on beneficial effects of the abandonment on the overall natural gas market rather than an individual producer-pipeline specific standard; (2) an analysis placing primary reliance on national market forces as a substitute for the traditional concept of dedication and abandonment in achieving the statutory objective of section 7(b); (3) an interpretation of law placing primary emphasis on general Congressional intent embodied in the Natural Gas Policy Act of 1978, as interpreted by the Courts, and the application of recent Commission precedent under section 7(b) particularly *Felmont* and the LTA cases and; (4) an approach incorporated in the proposed rule providing prior generic approvals of qualified abandonments conditioned on filing of a report and, in certain situations, a transportation service requirement, rather than a case-by-case determination after prior notice and comment. The Commission also is particularly interested in the extent to which "the present or future public convenience or necessity" should be deemed as a matter of law or as a matter of policy to require the Commission to consider whether and how natural gas consumers are provided with an assured and reliable supply of natural gas under applicable judicial precedent.

2. The Commission seeks comments on modifying its proposal to provide for a one-year Limited-Term Abandonment using the same generic approach and procedures, rather than the permanent abandonment included in the proposed rule.

## VI. Initial Regulatory Flexibility Analysis

Whenever the Commission is required by section 553 of the Administrative Procedure Act (APA) [53] to publish a general notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) [54] to prepare and make available for public comment an initial regulatory flexibility analysis. The analysis must describe the impact the proposed rule will have on small entities. The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules that may significantly affect small business and small government entities, and to encourage cost-benefit analyses of these rules, as well as the agency's consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on these small entities. The Commission is not required to make an RFA analysis, however, if it certifies that a rule "will not, if promulgated, have a significant economic impact on a substantial number of small entities." [55]

In this notice of proposed rulemaking, the Commission presents its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed above, the proposed rule would allow all producers and purchasers, many of which would probably be classified as small businesses,[56] to abandon a certificated

[53] 5 U.S.C. 553 (1982).

[54] 5 U.S.C. 601 through 612 (1982).

[55] 5 U.S.C. 605(b) (1982).

[56] 5 U.S.C. 601(c), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines small business concerns

Continued

obligation upon the underlying contract's expiration, termination in accordance with a provision of the contract, or the parties' mutual agreement to terminate or temporarily suspend the contract, by notification to the other party of its intention to do so at the expiration of the notice period. Abandonment would be granted automatically, and the need for filing an application for abandonment with the Commission would be eliminated. The only requirement imposed on the abandoning party is notifying the Commission of the action taken. The rule will thus benefit small producers by permitting them to abandon sales in a simple and expeditious manner at minimal cost.

Since the impact of the proposed rule on small producers is expected to be beneficial, the Commission does not believe that the economic impact will be "significant" within the meaning of the RFA. Pursuant to section 605(b), the Commission certifies that the rule, if promulgated, will not have a "significant economic impact on a substantial number of small entities".

## VII. Paperwork Reduction Act Statement

The information collection provisions in this proposed rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [57] and OMB's regulations.[58] Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (Attention: Peg Covello, Energy Validation Data Branch, (202) 357–5402). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington DC 20503 (Attention: Desk Officer for Federal Energy Regulatory Commission).

## VIII. Comment Procedures

The Commission invites interested persons to submit written comments, data, views, and other information concerning the matters set out in this notice including the questions in Part V, *supra*. An original and 14 copies of comments should be filed with the Commission by June 18, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM87–16–000. All written submissions will be placed in the Commission's public files and will be available for public inspection through the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

## List of Subjects

*18 CFR Part 157*

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

*18 CFR Part 284*

Continental Shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is proposing to amend Parts 157 and 284, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Trabandt concurred in part and dissented in part with a separate statement attached.

**Kenneth F. Plumb,**

*Secretary.*

## PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

**Authority:** Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

2. The table of contents for Part 157 is amended by adding a new section to Subpart A to read as follows:

Sec.

* * * * *

157.21 Abandonment of purchases.

3. Part 157 is amended by adding a new § 157.21 to Subpart A to read as follows:

### § 157.21 Abandonment of purchases.

(a) A purchaser subject to the Commission's jurisdiction under the Natural Gas Act is authorized, upon 30-days written notice to the seller, or any longer notice period required by contract, to abandon purchases of natural gas from any first seller or pipeline, subject to the provisions of paragraph (c) of this section, under a contract that has expired or has been terminated by the purchaser under any provision of the contract.

(b) A purchaser subject to the Commission's jurisdiction under the Natural Gas Act is authorized to abandon purchases of gas from any first seller or pipeline in accordance with the terms of any contract under which the purchase obligations have been modified or terminated by agreement of the parties to the contract.

(c) A purchaser that is an interstate pipeline not subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b) of this chapter that abandons purchases of gas under paragraph (a) of this section from any seller that is not a pipeline must transport the gas in accordance with § 284.227 of this chapter. The notice required under paragraph (a) of this section must indicate the conditions under which such gas will be transported.

(d) A purchaser that abandons purchases of gas under this section must file a report with the Commission within 30 days of the date that purchases are terminated providing the following information:

(1) The name of the former seller;

(2) A description of the certificate authority under which the former seller sold the abandoned gas;

(3) A description of the contractual authority under which the purchases were terminated; and

(4) If the abandonment is partial, a description of the acreage from which purchases were terminated and acreage from which purchases continue.

(e) For purposes of this section, the term "first seller" means any seller that engages in a sale of natural gas that is a "first sale" under section 2(21) of the Natural Gas Policy Act of 1978.

4. In § 157.30, paragraph (a) is amended by adding the phrase, "Except as provided in paragraph (c) of this section," to the beginning of the paragraph, and paragraphs (c) through (f) are added to read as follows:

### § 157.30 Abandonment of service.

* * * * *

(c) A first seller is authorized, upon 30-days written notice to the purchaser, or any longer notice period required by contract, to abandon sales of gas to any purchaser except a local distribution company under a contract that has expired or has been terminated by the seller under any provision of the contract.

(d) A first seller is authorized to abandon sales of gas to any purchaser, except a local distribution company, in accordance with the terms of any contract under which the sales obligations have been modified or terminated by agreement of the parties to the contract.

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as a business which is independently owned and operated and which is not dominant in its field of operation.

[57] 44 U.S.C. 3501 through 3520 (1982).

[58] 5 CFR 1320.12 (1986).

(e) Unless the former purchaser agrees to file a report of the abandonment under § 157.21(d), a seller that abandons sales of gas under paragraph (c) of this section must file a report with the Commission within 30 days of the date that sales are terminated providing the following information:

(1) A description of the certificate authority under which the abandoned sales were made;

(2) The name of the former purchaser;

(3) A description of the contractual authority under which the sales were terminated; and

(4) If the abandonment is partial, a description of the acreage from which sales were terminated and acreage from which sales continue.

(f) For purposes of this section, the term "first seller" means any seller that engages in a sale of natural gas that is a "first sale" under section 2(21) of the Natural Gas Policy Act of 1978.

5. Amend § 157.301 by revising paragraph (a) to read as follows:

**Subpart G—Natural Gas Producer Blanket Authorization for Sales and Abandonment**

**§ 157.301 Blanket certificate authority, pregranted abandonment, and reporting requirements.**

(a) *Blanket certificate authority.* Any first seller of natural gas that is authorized to abandon the sale of gas under § 157.30(c) or the good faith negotiation procedures set forth in § 270.201 of this chapter is granted a certificate of public convenience and necessity to sell such gas for resale in interstate commerce, subject to the reporting requirements of paragraph (c) of this section.

* * * * *

**PART 284—[AMENDED]**

6. The authority for Part 284 continues to read as follows:

**Authority:** Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); E.O. 12,009, 3 CFR 142 (1978).

7. The table of contents for Part 284 is revised by adding a new section to subpart G to read as follows:

Sec.

* * * * *

284.227 Transportation by interstate pipelines of gas released under generic abandonment procedures.

8. Part 284 is amended by adding a new § 284.227 to read as follows:

**§ 284.227 Transportation by interstate pipelines of gas released under generic abandonment procedures.**

(a) *Applicability.* This section applies to any interstate pipeline that must transport natural gas under the abandonment provisions of § 157.21 of this chapter.

(b) *Blanket certificate.* An interstate pipeline is granted a blanket certificate of public convenience and necessity that authorizes firm and interruptible transportation of natural gas to any existing customer of the interstate pipeline or to any pipeline to which the interstate pipeline is interconnected, if the sale of the gas is abandoned under § 157.21 of this chapter.

(c) *Terms and conditions of service.* (1) An interstate pipeline that transports gas under a certificate granted by this section is subject to the provisions of paragraphs (c), (d), (e), (f)(1), and (f)(3) of § 284.225.

(2) An interstate pipeline that transports gas under a certificate granted by this section and is not otherwise subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b) is not required to transport on behalf of others any gas the sale of which is not abandoned under § 157.21 of this chapter.

Note.—This appendix is not being codified in the Code of Federal Regulations.

**Appendix A—Dedicated Interstate Gas Supply, Potential Supplemental Supply Sources and Their Effects on Meeting Potential Demand—April 1987—Office of Pipeline and Producer Regulation**

**Index**

I. Introduction
II. Executive Summary
III. Analysis
IV. Summary and Conclusion

**I. Introduction**

The purpose of this study is to identify the amount of dedicated interstate reserves (those which require Natural Gas Act (NGA) section 7(b) abandonment to be sold to a new customer) and the ability of these reserves and other supplemental sources to meet gas supply requirements of all gas customers and particularly high priority users in the next several years. The availability of short term supplemental supplies would be instrumental in allowing adequate time for market forces to stimulate drilling and bring on longer term supply.

With the diminution of supplies dedicated to interstate commerce, depressed oil and gas prices, and the significant plunge in gas exploration there is growing pessimism in some quarters about future gas supply.

Currently dedicated reserves are preserved for the interstate market even after the contract to purchase these volumes has expired unless the seller receives abandonment authority. The concern of this study is to investigate the supply and market consequences of a generic policy that facilitates the abandonment of dedicated reserves not currently needed. To analyze the possibilities this study will examine the volume of dedicated reserves, the deliverability of these reserves, and the potential for other supplemental sources to meet high priority gas requirements and other requirements in the near future and in the longer term.

The potential supplemental sources that will be analyzed are: (a) Alternate fuel switching capability, (b) infill drilling, (c) imports, and (d) current surplus deliverability. The potential of these supplemental supplies is aggregated to examine their effectiveness. The oil/gas price relationship is incorporated to investigate the impact of market forces on the effectiveness of these supplemental sources. The study also reviews the ability to respond to a gas or oil shortage with the assistance of these sources under market conditions. The possible use of mandatory allocation mechanisms provided by the Natural Gas Policy Act of 1978 (NGPA) is also considered. Other factors that may inhibit the mobility of the interstate pipeline system to respond are discussed. Finally a brief review of three studies considers the long term supply/demand outlook to the year 2000 and beyond.

**II. Executive Summary**

*Dedicated Supplies*

Gas reserves dedicated to interstate commerce as of January 1, 1986 are calculated to be approximately 38 Tcf. This accounts for 45% of U.S. reserves dedicated under the NGA or legally committed by contract only to interstate pipelines of 85.1 Tcf, and 20% of total U.S. reserves of 193.4 Tcf. Dedicated production for 1985 was approximately 5.2 Tcf. This accounted for approximately 58% of dedicated and/or committed production and 31% of total U.S. production.

A comparison of the reserve and production percentages indicates that dedicated gas reserves are progressively decreasing. Since 1976, dedicated reserves have declined approximately 10% each year. The picture for dedicated and/or committed reserves is brighter. Until the recent gas glut, committed reserves were increasing rapidly enough

to counterbalance the decrease in dedicated reserves.

*Current Surplus Deliverability*

The Office of Pipeline and Producer Regulation (OPPR) estimates 1986 excess deliverability was 4.7 Tcf. The Energy Information Administration (EIA) estimates that the 1987 surplus will be 3.8 Tcf. Uncertainty has arisen over the length of the current surplus.

Even with this current surplus some energy analysts predict peak day shortages in the winter of 1987–88. With the low gas and oil prices, the U.S. drilling rig count in June of 1986 fell to 686 compared to 4,530 at yearend 1981. Gas well completions are projected to drop to 6,800 in 1986, and 6,300 in 1987 from 13,600 in 1985. Several studies predict the gas bubble will be exhausted between 1988 and 1990.

*Potential Supplemental Sources*

Potential supplemental sources of gas supply that might be exploited to meet future demand or deliverability shortages include: (1) Industrial and electric generation fuel switching capability, (2) infill drilling, and (3) imports.

The following chart demonstrates the potential supplemental supplies that may be available on a short term basis to meet any potential shortages.

POTENTIAL SUPPLEMENTAL SOURCES PER YEAR (TCF)

| | Minimum | Maximum |
|---|---|---|
| Fuel Switching of Dual Fuel Industrials | 1.31 | 3.07 |
| Fuel Switching of Electric Utilities | 1.71 | 3.57 |
| Infill Drilling | .10 | .75 |
| Imports: | | |
| Mexico | 0 | .20 |
| LNG | 0 | .10 |
| Canada | .80 | 1.00 |
| Total | 3.92 | 7.69 |
| Two or more years | | 2.75 |
| | | 10.44 |

*Shortages*

The estimated volumes of potential supplies could probably meet shortages of reasonable duration (not a long term oil embargo). This would allow time for expected market-induced price rises to stimulate additional exploration and production of longer term gas supplies. Furthermore, a significant contribution toward a safety margin for residential and commercial consumption (6.8 Tcf in 1985) could be made by these supplemental sources. Pipeline capacity to move the supplemental supplies to the affected markets should generally be available but some capacity bottlenecks could occur.

Mandatory allocation under Title III of the NGPA could be used to move the supplemental supplies to high priority markets if price stimulus does not elicit the supply. While dedicated supplies could help an individual pipeline in a time of shortage, mandatory allocation applies to all supplies moving through interstate pipelines and all boiler fuel gas including intrastate users. Therefore the distinction between dedicated and non-dedicated supply is not necessarily important during a shortage. Dedicated production still plays a significant role as part of total interstate production but with dedicated reserves continuously being depleted, the role of dedicated production is diminishing. Dedicated production has been decreasing almost continuously reaching a low of 4.3 Tcf in 1986 as estimated by OPPR.

**III. Analysis**

*U.S. Gas Supplies Dedicated to Interstate Commerce*

Supplies of natural gas dedicated to interstate commerce peaked at 198.1 Tcf in 1968 but have declined steadily ever since. Prior to the Natural Gas Policy. Act of 1978 (NGPA), dedicated reserves experienced a steady decline from 198.1 Tcf in 1968 to 98.3 Tcf in 1977. With the enactment of the NGPA and associated price deregulation total interstate (dedicated & committed) reserves began to increase beginning in 1979. However as a result of the NGPA, many reserves added after February 19, 1977 were no longer legally dedicated to interstate commerce, just committed under a contract.

The following chart describes the NGPA categories that are still dedicated under section 7(b) of the Natural Gas Act (NGA) and those that are just committed:

STATUS UNDER NGPA [1]

| Section | Subject to price ceiling | Dedicated Under section 7 of NGA |
|---|---|---|
| 102(c) | No | No. |
| 102(d) | Yes | Yes. |
| 103 Committed or dedicated on 4/20/77. | Yes | No. |
| 103 Not Committed or dedicated on 4/20/77. | No | No. |
| 104 | Yes | Yes. |
| 106(a) | Yes | Yes. |
| 105 and 106(b) price greater than $1.00 on 12/31/84. | No.[2] | No. |
| 105 and 106(b) price less than $1.00 on 12/31/84. | Yes | No. |
| 107(c)(1)–(c)(4) | No | No. |
| 107(c)(5) Post 2/19/77 wells. | Yes | No.[3] |
| 107(c)(5) Pre 2/19/77 wells. | Yes | Yes.[4] |
| 108 | Yes | No.[5] |
| 109 | Yes | No.[5] |

[1] As of July 1, 1987.
[2] Unless sold under indefinite price escalator clause.
[3] Per Commission Order No. 406 (NOTE.—Court reversed Commission—on appeal).
[4] If committed or dedicated prior to 11-9-78.
[5] Unless committed or dedicated prior to 11-9-78.

The NGPA catecories that are not dedicated under section 7 of the NGA no longer require abandonment to be sold to other parties. These reserves are committed to interstate commerce in the sense that these volumes are committed by contract to the interstate market but are bound only by the terms of the contract. All dedicated volumes recuire Commission authorized abandonment to terminate sales even if the contract has expired.

OPPR and EIA performed studies attempting to estimate the dedicated reserves remaining. Using different methodologies, the OPPR and EIA estimates were 37.5 Tcf (45%) and 38.5 Tcf (48%), respectively for the 1986, beginning of the year, dedicated reserves. The percentages represent the share of the estimated 1986 total interstate reserves.

OPPR develooed its estimate by using available reserve and production data [1] beginning with 1976 and with the use of extrapolations and regression analysis derived final 1986 and 1987 figures. The year 1976 was chosen as the initial year because it was the last year that all U.S. reserves and production were dedicated. Althouqh the NGPA was enacted in November 1978, certain reserves could qualify as not dedicated (committed) if the production well had a spud date of February 19, 1977 or later.[2] To derive an

[1] The two major sources of data used in the OPPR analysis consisted of: (1) Gas Supplies of Interstate Natural Gas Pipeline Companies 1985 annual report, and
(2) Natural Gas Monthly November 1986, both of these reports are published by EIA.
[2] The spud date is the day drilling of the well begins.

estimate of the 1977 reserve composition, it was assumed that 50% of the net reserve additions were designated as new gas. But to account for new added reserves subject to NGPA section 102(d) (new gas which is discovered on old OCS leases),[3] it was assumed that 13% [4] of the 50% was dedicated. As a result 1977 dedicated reserves added were 57% of the new reserve additions. This 13% figure for section 102(d) gas was subsequently assumed for the years 1978 through 1986, in deriving the net reserve addition composition.

The data points of 1973–76 were used to extrapolate 1977–80 dedicated production. The new production for 1977–80, was obtained by subtracting dedicated from total production. To derive the production composition for the years 1981 through 1985, projected PGA volumes under categories 102(c), 103, 105, 107, and 109 were used to estimate new gas production. The PGA volumes of new gas purchases by NGPA category as shown in Table 5 of the Natural Gas Monthly are assumed to be proportionately correct. New Gas Production for the years 1981–85 was taken from PGA Projected New Gas Production. The sum was divided by the PGA projected total production for the same year. The quotient or fraction was then multiplied by actual total production from FERC Form 15 to obtain an estimate of actual new production. For the years 1981–86, dedicated production was obtained by subtracting new production from total production. The estimated production figure in 1986 was obtained from PGA estimations and extrapolated. Extrapolation was used to calculate total net reserve additions in 1986.

Section 102(d) production was derived by multiplying projected section 102 production volumes by 40% to reflect the portion of 102 production subject to abandonment. The figure is based on an OPPR 1984, section 102(d) production study which estimated 1.1 Tcf of 102(d) production which was 40% of total 102 production in 1984. This OCS gas typically is produced at a much higher production rate than onshore gas, thus any reserve additions of Section 102(d) gas may also be depleted at a high rate.

To calculate the beginning-of-year dedicated reserve volume for 1978, the dedicated production for 1977 was subtracted from the 1977 beginning-of-year dedicated reserve volume and the result added to the 1977 net dedicated reserve additions. The 1978 committed reserve volume was then calculated by subtracting the 1978 dedicated reserve volume from the 1978 total reserve volume. These calculations were repeated for each year 1979 through 1987 (1987 calculations included estimates for total production and net reserve additions for 1986).

The EIA study began with a base year of 1978 end-of-year reserves level. In addition to the same data sources as OPPR, EIA used Dwight's Energy Data. From this data source EIA estimated reserves and production volumes at the regional level and by pipeline. The specifics of the EIA methodology are explained below.

The 1978 end-of-year reserves level from the FERC Form 15 data base was assumed to be the base point from which reserves dedicated under the Natural Gas Act were to be calculated. Since passage of the NGPA in 1978, it was assumed that any new gas reserves contracted to the interstate market were no longer subject to FERC contract abandonment procedures, thus all production from old gas reserves decreased the level of gas still subject to abandonment procedures. Based upon data available at the state and field level for the years 1978 through 1985 (FERC Form 15 merged with Dwight's Energy Data (from which old vs new gas production was discernible)), the percent of old and new gas produced, per field, in each year was developed and decremented from the 1978 end-of-year reserves. This new reserves level (remaining dedicated reserves and additional new gas reserves (post NGPA)), became the end-of-year reserves for the following year, and the calculation repeated for each year 1979 through 1985. The result was a 1985 end-of-year reserve level per field that represented that gas still dedicated as of 1985. The difference between this and the 1985 total remaining reserves represented the level of gas reserves made up of post NGPA reserve additions.

These field specific data were merged with detail 1985 data at the pipeline level. The percent of dedicated reserves (derived by dividing 1978 reserves by computed 1985 remaining old gas reserves) for the field was then used as an approximation of the pipeline's own level of dedicated reserves in the field.

In some specific states and in instances where nonmatches occurred between data sources, a remaining dedicated reserve level and percentage could not be derived. In these instances, and if PGA data were available at either the field or pipeline level, a ratio of old/new gas purchased in 1985 was calculated, and the result then used to impute a level of remaining dedicated reserves. This percent of PGA old gas 1985 purchases was applied to the Form 15 remaining reserves for pipeline/field to arrive at an estimated level of dedicated reserves.

The intermediate totals for reserve and production shown on the tables approximate those published in the EIA publication "Gas Supplies of Interstate Natural Gas Pipeline Companies—1985." They differ primarily in that the published figures include dedicated plant supplies as well as SNG, miscellanous supplies and storage volumes. EIA tables include only gas supplies identified at the wellhead (i.e., the field). EIA reserve and production data does not include any plant gas or storage gas. At the national level the difference is 5 trillion cubic feet of reserves and 300 billion cubic feet of production. These volumes could be dedicated and/or committed.

EIA notes the following data limitations regarding use of Dwight's Energy Data to derive levels of old/new gas production for the years 1978 through 1985:

1. Dwight's does not provide coverage of the northeast and northcentral United States. Purchased Gas Adjustments (PGA) gas purchase levels were used to provide estimated dedication levels in these States.

2. Dwight's does not distinquish between gas produced for the interstate and intrastate markets. As a result, the percentage of old/new gas produced at the field level represented all production regardless.

3. The distinction between pre-NGPA and post-NGPA production is based upon the date of first production for each gas well. Since Dwight's only provides this item of data for gas wells only, old vs new gas production from oil wells could not be calculated.

Old gas levels included NGPA Sections 104, 106(a), and 102(d), as well as Sections 108 and 107(c) sold under contracts effective prior to February 1977. New gas levels included all other production.

The following table compares the EIA and FERC estimates:

[3] NGPA categories section 107(c)(5), pre-February 19, 1977 wells, section 108 if committed or dedicated prior to November 9, 1978, and sections 104 and 105 volumes remained dedicated but there were no additions to dedicated reserves in these categories.

[4] A staff judgement based on NGPA production filings.

| 1986 beginning-of-year dedicated reserves Tcf/% | 1986 beginning-of-year committed reserves Tcf/% | 1985 dedicated production Tcf/% | 1985 committed production Tcf/% |
|---|---|---|---|
| OPPR 37.52(44) | 47.56(56) | 5.24(58) | 3.58(42) |
| EIA 38.54(48) | 41.61(52) | 5.07(59) | 3.53(41) |

Comparing the methodologies and data limitations of the studies, the EIA study does not include approximately 5 Tcf of reserves and 300 Bcf of production that is included in the Form 15 data base (and therefore in the OPPR data) which is reported as plant supplied gas to the interstate market from solution and gas well gas reservoirs and reserves and production from storage. This will account for some of the differences in committed and dedicated reserves and production of the two estimates. Some of the difference in dedicated reserves can be explained by the different beginning base years of early 1977 (OPPR) versus end-of-year 1976 (EIA) for estimating reserve additions. OPPR estimates non-dedicated reserves of 2.2 Tcf at the beginning of 1978 which EIA would consider dedicated. Also EIA evidently assumed all new reserves after 1978 were not dedicated. OPPR assumed an adjustment of 13% to account for NGPA section 102(d) additions to dedicated reserves. EIA was able to use actual projected PGA production figures for sections 106(a), 107(c) contracts dated prior to February 19, 1977, and 102(d) categories. OPPR used estimates of these categories assuming percentages of the totals. OPPR assumed NGPA Section 107(c)(5) production was deminutus and not included. Finally EIA merged PGA and Form 15 data and where there were nonmatches used the lower figure. OPPR did not make these adjustments.

Remaining dedicated reserves fall somewhere in the range of 37.5 to 38.5 Tcf. Dedicated reserves accounted for approximately 45% of total dedicated and committed reserves in the U.S. which were 85.1 Tcf in January of 1986. Dedicated reserves accounted for 20% of total U.S. reserves of 193.4 Tcf. Dedicated production for 1985 was in the range of 5.1 Tcf to 5.2 Tcf. This accounts for approximately 58% of dedicated and committed U.S. production and 31% of total U.S. production.

These estimates of dedicated reserves and production demonstrate a progressive deterioration of this gas supply as a percentage of U.S. total supplies. Dedicated reserves have been declining approximately 10% each year since 1976. Dedicated production still plays a significant role (58% in 1985) as part of total interstate production but with dedicated reserves continuously being depleted, the role of dedicated production is diminishing. Dedicated production has been decreasing every year since 1972 (except 1981) declining to 4.3 Tcf in 1986.

In 1985, total residential and commercial gas consumption in the U.S. was 6.8 Tcf which exceeded dedicated interstate production but represented 75% of 1985 dedicated and committed production. The interstate system is becoming increasingly dependent on contractually committed production and reserves (those not subject to abandonment requirements). The role of dedicated production in serving the residential and commercial market will diminish in the future (see the figure on page III–7)

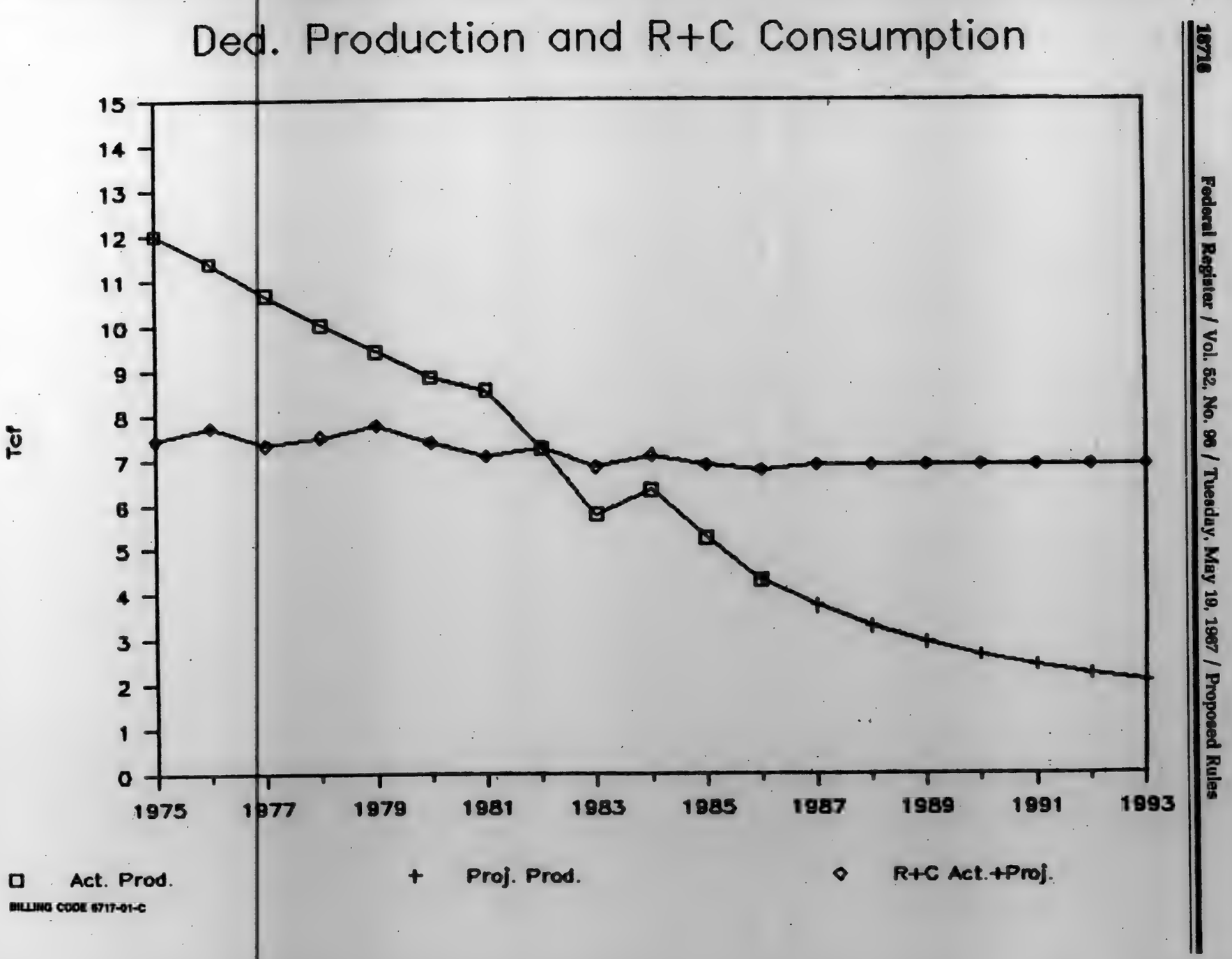
Gas reserves dedicated and committed in January, 1986 accounted for approximately 44% of total U.S. reserves (85.1 Tcf out of 193.4 Tcf). Dedicated and committed production for 1985 was approximately 54% of the U.S. total production (8.9 Tcf [5] out of 16.4 Tcf).[6] Total interstate reserves (dedicated and committed) were increased from 1978 to 1983 by 6%. Until the U.S. gas surplus ballooned to 3.4 Tcf in 1983, price incentives from the NGPA were effective in maintaining the level of supplies either dedicated or committed to interstate commerce.

The remainder of this study will focus on the ability of the interstate system to respond to short term and long term changes in supply and demand. As gas supplies tighten, market pressures should increase gas prices which will stimulate exploration and drilling. But there will be a lag time between the period when supplies tighten and when increased gas production from these reserves are realized. This study will focus on the supply sources that may be available in the short term (within one year) and near term (2 to 3 years). A look at the ability of gas markets to respond to an oil or gas shortage and views of the long term gas market will be reviewed.

BILLING CODE 6717-01-M

[5] Gas Supplies of Interstate Natural Gas Pipeline Companies, 1985.

[6] EIA Monthly Energy Review, October 1986.

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*Current Surplus Deliverability*

The timing of and the need for the following discussed supplemental supply sources is dependent upon when the current gas bubble is exhausted. OPPR estimated that U.S. surplus deliverability was 4.7 Tcf in 1986. EIA estimates that surplus deliverability will be 3.6 Tcf in 1987 with estimated production at 13.1 Tcf and total available deliverability at 16.7 Tcf for non-associated gas in the lower-48 states. For all practicable purposes, the difference between flow capacity and production for associated dissolved gas is considered to be zero.

There is disagreement within the natural gas industry over the length of this annual deliverability surplus and the current peak day supply availability.

The low oil and gas prices have brought a depression to the oil and gas exploration and drilling industry. As of June 9, 1986, only 686 drilling rigs were in service [7] compared to 4,530 units at year end 1981.[8] According to AGA oil and gas completions in the first half of 1986 were down 25% from the first half of 1985 and down 33.2% from the first half of 1984.[9] Gas well completions are projected to drop from a level of 13,600 in 1985 to 6,800 in 1986 and 6,300 in 1987.[10]

A Shearson Lehman Bros. Inc. study estimates that the current surplus will be exhausted in 1988.[11] Joe B. Foster, executive vice president of Tenneco predicts peak day shortages are possible in the winter of 1987–88.[12] He notes that the lower-48 gas reserves inventory is down to 160 Tcf from 260 Tcf in 1970. The surplus has been a result of inventory drawdown, not reserve additions.

As this deliverability surplus approaches exhaustion, market signals should begin to bring spot market gas price increases. The price incentive will enhance the effectiveness of the following mentioned supplemental sources.

*Fuel Switching Capability of Dual Fuel Industrial Users*

The fuel switching capability of dual fuel industrial consumers has historically served as a critical supply source during periods of curtailment and supply shortages. Pipelines and utilities are able to use this dual fuel industrial consumption as a type of storage which can be made available to meet peak day needs and if necessary on a longer term. Due to insufficient data, estimates of this capability vary. The AGA [13] and Dun & Bradstreet Major Industrial Plant Database [14] (MIPD) have collected data on this capability and analyses of these data have been performed by OPPR and EIA [15] respectively.

The AGA study surveys a sample of 37 gas utilities representing approximately 50% of the gas utility industry's industrial/ electric generation markets in 1985.[16] The alternate fuels of the industrial users included under "oil" were identified as residual oil (49%) distillate (36%) and LPG (15%).[17] (In a combined category, identified as "other", alternate fuels of coal, wood, electricity and site-generated waste fuels were separately measured.) The industrial use of the gas or alternate fuel was not identifed.

Firms in the industrial sector which had dual fuel capability with oil represented 52% of gas sales. (In the "other" category an additional 2% capability was reflected.) To derive a volume estimate for nationwide dual fuel capability, OPPR multiplied by this 52% the total natural gas consumption of the U.S. industrial sector which in 1985 was 5.901 Tcf. This product provides an estimate of 3.069 Tcf of dual fuel capability for the industrial sector. (This estimate does not incorporate the capability of those industrial users that could use gas but in 1985 were using oil.)

The MIPD/EIA study provides a review of 1984 data from the 20,000 largest energy consuming plants accounting for over 90% of manufacturing energy use. Residual fuel oil was the only alternate fuel considered in measuring fuel switching capability. The data on the industrial use of gas or residual fuel oil was limited to fuel in dual fired boilers. The MIPD/EIA study limited the analyses to industrial boiler fuel use because of the relative ease of switching from one fuel to another without affecting the product or production process. Gas use in furnaces and as feedstock generally is limited to more stringent fuel use constraints. Fuel switching cannot necessarily be accomplished as rapidly.

The MIPD recorded fuel switching capability between gas and residual oil in dual fired boilers of 1,349 Quadrillion Btu's or approximately 1.31 Tcf. In 1984, these industrial boiler fuel users consumed 1,092 Quads (81%) of gas and 257 Quads (19%) of oil.

Differences in the industrial fuel switching capability derived in the AGA/OPPR study of 3.07 Tcf and the MIPD/EIA study of 1.31 Tcf can be explained by the significant differences in study definitions and data considerations of alternate fuel and plant use. In the AGA data (from 1981) residual oil accounted for approximately 49% [18] of the alternate fuels while in the MIPD data residual oil was 100% of the alternate fuel. By this 49% share of fuel switching capability, dual fuel users who consume residual oil in the AGA data account for approximately 1.50 Tcf (.49 x 3,069 Bcf) of the total fuel switching capability.

In the AGA study the plant use of the gas or alternate fuel is not specified while the scope of the MIPD study is limited to boiler fuel. Table A4 of the EIA/MIPD study shows the following breakdown in fossil fuel consumption by end-use in 1984: Boilers (49.7%), Furnaces (43.5%), and Feedstock (6.7%). The percentage of dual fuel capability installed in furnaces and in feedstock processes is not known; however, in the AGA study it was noted that there was a net gain of 13 Bcf of gas use in industrials from fuel switching to gas from distillate oil and LPG in 1984. Apparently some dual fuel capability exists for distillate oil and LPG in furnaces and feedstock uses. This dual fuel capability would bring the AGA/OPPR estimate of 1.5 Tcf even closer to the MIPD/EIA estimate of 1.3 Tcf. The following table compares the assumptions of the two studies and results.

---

[7] July 7, 1986—Oil and Gas Journal.
[8] June 16, 1986—Oil and Gas Journal.
[9] September 15, 1986—Oil and Gas Journal.
[10] August 11, 1986—Oil and Gas Journal.
[11] August 11, 1986—Oil and Gas Journal.
[12] February 23, 1987—Oil and Gas Journal.

[13] "Survey of Industrial Fuel Switching and Dual-Fuel Capability: 1985/1986," Energy Analysis, American Gas Association, May 5, 1986.
[14] 1984 Dun & Bradstreet Major Industrial Plant Database.
[15] "Industrial Fuel Switching," EIA, February 10, 1987.
[16] Estimated gas utility industry sales to the industrial/ electric generation sector were 5.265 Tcf. Total industrial consumption in 1985 was 5.901 Tcf.
[17] Percentages were obtained from: "Percentage of 1981 Gas Use in Dual Fuel Capable Facilities by Alternate Fuel, by Region and Total U.S.," Energy Analysis, American Gas Association September 3, 1982.

[18] In Table A5 of the MIPD/EIA study consumption of distillate oil and other oil represented a combination of 9% of total consumption in boilers in 1984. Residual oil also accounted for 9%. The 1981 data from AGA shows dual fuel industrial consumption of 51% distillate and LPG, 49% residual oil for dual fuel capable facilities.

| AGA/OPPR | MIPD/EIA |
|---|---|
| **Data Source** | |
| 37 gas utilities representing 50% of gas utility industry's industrial/electric generation market. | 20,000 largest energy consuming plants accounting for over 80% of manufacturing energy use. |
| **Alternate Fuel** | |
| Residual oil, LPG, distillate 49%, 15% and 36% respectively. | Residual oil 100%. |
| **Plant Use** | |
| Any manufacturing use where gas is alternate fuel. | Boiler fuel—just dual fired boilers. |
| **Derivation of Fuel Switching Capability** | |
| Fuel use in Dual Fuel Facilities (AGA) X 1985 Industrial Gas Consumption (EIA) | |
| .52 x 5.901 Tcf=*3.069 Tcf=1.31 Tcf* | |
| 1984 Consumption in Dual Fired Boilers (Quads): | |
| Gas | +1,092 |
| Oil | 257 |
| Total | 1,349 |

In summary, dual fuel capability of industrial boiler fuel facilities which use residual oil as an alternate fuel appears to be in the area of 1.31 Tcf.[19] The total dual fuel capability of the industrial sector including all uses of gas and its alternate fuel which includes residual oil, distillate, and LPG as the alternate fuel appears to be in the area of 3 Tcf.

With the recent decline in oil prices a trend of industrial fuel switching to gas from oil, which ran from 1982 through 1985, has reversed itself in 1986. In both 1984 and 1985 natural gas showed a net gain of 40 Bcf and 28 Bcf respectively. Based on the first quarter figures of 1986, the estimated net switching to oil was 92 Bcf on an annualized basis. Therefore this 3 Tcf of the displacement capability of 1985 may be reduced when the final figures are in for 1986. The MIPD/EIA study projected 1985 fuel switching capability to be 1.17 Quads, a drop of nearly .2 Quads from 1984.

In addition, these fuel switching estimates assume rather optimistically that all these volumes of alternate fuel users could be made available in times of shortages. A portion of these volumes are consumed totally in the intrastate market where bottlenecks and barriers could arise in times of nationwide shortages. Also, contract terms between these alternate fuel users and producers may inhibit the mobility of these volumes to assist the residential and commercial markets in times of shortage.

*Fuel Switching Capability of Electric Utilities*

Fuel switching capability of electric utilities is another short term and possibly long term supply source that may be available during periods of gas supply shortages. EIA and AGA have performed studies evaluating this potential fuel switching capability.

The EIA study used historical generation and consumption data from Form EIA–759, "Monthly Power Plant Report" to develop their fuel switching potential.[20] There are three basic methods for reducing the use of natural gas. One method is for a utility to rearrange the mix of generators emphasizing the use of plants fired by alternate fuels to gas. A second method is to use alternate fuel in dual fired boilers that use gas. A final option is for a utility to purchase power rather than generate it with its own gas-fired facilities.

In estimating the potential for reduction in gas consumption, gas, oil and coal consumption were evaluated on a utility-by-utility basis. For each utility with gas-fired generation, potential gas consumption reduction or elimination was evaluated by assessing the ability to switch to an alternate fuel in dual-fired units; to utilize other types of generating ability more intensively, or to combine both methods. If a plant could only burn alternate fuel (oil or coal) for a limited amount of time (30 days or less) it was not considered dual-fired. The study limited its focus to steam electric plants which account for 92% of the gas consumed by electric utilities.[21]

From the aggregated results of all utilities EIA estimates that utility gas consumption can be reduced by 1.706 Tcf. The primary reduction in gas consumption would be due to displacement by oil of 1.608 Tcf. Coal could displace .098 Tcf.

The AGA study of gas utility switching capability was incorporated in the "Survey of Industrial Fuel Switching and Dual-Fired Capability: 1985/1986," in which the industrial fuel switching study was performed. The study surveyed 37 gas utilities representing 50% of the industry's industrial/electric generation market.

The alternate fuel categories in the electric generation market included residual oil and other fuels (other fuels was not defined). The study acknowledged the potential weakness of the data:

> In the electric generation sector the percentage of dual-fired capability (99%) was more reflective of those utilities whose power plant customers are almost entirely dual-fuel capable. It should be borne in mind that these data are only estimates and that they reflect a sample of gas utility companies.

Subject to the above caveats the estimated dual fuel capability of the electric generation market in 1986 would be approximately 2.570 Tcf (99% of EIA estimated total 1986 utility gas consumption—2.600 Tcf).

The .994 Tcf difference in the EIA and AGA estimates can be accounted for primarily by the stricter assumptions of the EIA study and the weakness of the AGA data. The EIA study included only those steam generation plants that could burn alternate fuel on a sustained basis. The alternate fuels considered were limited to oil and coal. The AGA study did not incorporate any of the above restrictions. In addition the AGA study surveyed gas utilities who served the electric generation sector which was by acknowledgement almost entirely dual-fuel capable. The following table (next page) compares the assumptions and conclusions of the two studies.

Estimates of electric generation fuel switching potential range from 1.706 Tcf to 2.570 Tcf. This true potential is probably closer to the 1.706 Tcf estimate. Both studies point out possible problems of exploiting this alternate supply potential. One concern is adequate transportation facilities and arrangements to move volumes from the areas of the greatest fuel switching potential, the Southwest and West to possible problem markets areas such as the Northeast. A large potential source of fuel switching supply is the significant number of electric generation plants in Western Texas. Intrastate pipelines provide the only capacity to transport gas volumes cross the state to interconnect with the interstate trunklines serving the Northwest. The availability of this intrastate capacity during periods of peak conditions cannot be guaranteed. Also due to the price advantage of gas, plants in the Southwest have never relied on oil as a major source of electric generation.

[19] This EIA estimate of 1.31 Tcf includes 1.06 Tcf of boiler fuel use of gas and .25 Tcf oil. So actual fuel switching capability (from oil to gas) in 1984 by the EIA estimate was 1.06 Tcf.

[20] Data for 1986 are preliminary but are estimated to differ less than 1% from final data.

[21] The remaining 8% of gas consumption is by gas turbines and combined cycle plants. The alternate fuel burned, if any, is distillate fuel.

Although some fuel switching capability exists, the true capability of this potential large fuel switching source has hardly been tested. Adequate oil storage is also in question.

**Electric Generation Fuel Switching**

| AGA/OPPR | FIA |
|---|---|
| **Data Source** | |
| 37 gas utilities representing 50% of the gas utility industry's industrial/electric generation market. | Data collected from Form EIA-759, "Monthly Power Plant Report." Data for 1986 are preliminary but estimated at only 1% differential. |
| **Alternate Fuel** | |
| Residual oil and other fuels. | Residual fuel oil and coal. |
| **Usage Criteria** | |
| . . . "the percentage of dual-fuel capability (99%) was more reflective of those utilities whose power plant customers are almost entirely dual-fuel capable.". | If alternate fuel can only be burned for a limited amount of time (30 days or less), it is not considered dual-fired. |
| **Fuel Switching Capability** | |
| Total Electric Utility 1986 Fuel Consumption consumption in 1985: 2.600 Tcf×.99 of Dual Fuel capability 2.570 Tcf. | |

**1986 Fuel Consumption**

| Gas (Tcf) | Oil (1,000 BBL/D) | Coal (1,000 short tons) |
|---|---|---|
| 2.600 | 632 | 885,133 |

**Reduced Gas Consumption**

| | |
|---|---|
| Oil | 1.608 Tcf |
| Coal | .098 Tcf |
| Total | =1.706 Tcf |

*Infill Drilling*

Accelerated infill drilling is another source of enhancing short term gas supply. Infill drilling causes a gas field to be produced at a faster rate by drilling more wells with closer spacing. There are two primary considerations of a producer in deciding on infill drilling. A necessary consideration is the approval of the State regulatory body to alter its rules such that well spacing is allowed on a smaller acreage unit. However, depending on the geological structure and the oil and gas composition and age of a field, well spacing can be adjusted. Closer spacing on an older field usually enhances productivity.

The second primary consideration is the profit incentive to the producer. If the producer is obligated by a contract where all wells in a field are priced the same, the price incentive may not exist to consider further development of a field. Also currently depressed oil and gas prices will dampen the producer motivation to infill drill.

In addition to the above potential constraints, infill drilling potential is also limited by the number of drilling rigs and crews available, environmental regulations, and available gathering systems.

Subject to the above considerations the potential for infill drilling production potential can be estimated using drill rig activation rates, drill rates and gas production per well averages. EIA, OPPR and AGA have performed studies attempting to evaluate this infill potential.

The EIA study [22] began with an attempt to quantify a maximum production response from a nationwide infill drilling program. The number of non-associated gas wells producing in the U.S. as of December 31, 1985, was 233,797 onshore gas wells (excluding Alaska). The average daily production (1985) of onshore wells was about 110 Mcf per day. Assuming that one offset well could be completed for each of the 233,797 onshore gas wells in the U.S., the new production would amount to 233,797 x 110 Mcf/day x 365 days or 9.39 Tcf per year. Assuming that half the current non-associated gas wells are stripper wells, the number of infill wells is reduced by half to 120,000 prospects. Assuming among these prospects, many have been drilled, are on low spacing units, or are poor infill drilling prospects, this number was reduced further (by approximately 50%) arriving at between 50,000 to 55,000 prospects that would be suitable for infill drilling. Assuming that these more suitable prospects would produce the national average of 110 Mcf per day, new production from 55,000 infill wells would amount to 2.2 Tcf per year. With proper price incentives these 55,000 infill prospects could be drilled and completed in one to two years.

The EIA study included additional pricing scenarios attempting to obtain more realistic estimates of the infill drilling potential. The results demonstrated that, in general, higher prices would allow infill wells that are deeper and smaller to be economically developed, but the questions of how many of the infill prospects at what price and how much ultimate recovery would be added, have not been answered.

The OPPR study [23] assumed a one year time frame and attempted to determine the volume and timing of gas extraction.

According to oil and gas publications in a period of one year approximately 1,200 rigs could be assembled with crews in areas where infill drilling is most suitable, provided there are no constraints. Using this figure, a finding success ratio of 90% and a national average production of 54 MMcf per non-associated gas well per year (including onshore and offshore), as reported by AGA, 295 Bcf of additional gas would be available from infill drilling in the first year.

According to the AGA study [24] certain producers predicted ultimate reserve increases of as much as 7.6 Tcf in the Hugoton field, 1.4 Tcf in the San Juan area, and as much as 400 Bcf per year on a national basis (no recovery period was identified). Hugoton and San Juan areas are considered prime areas for infill production as they could be developed at very low costs. In consideration of the current low gas market prices, AGA estimates that 50 to 100 Bcf of added production from infill drilling would be feasible within 12 months. With higher natural gas prices this capability increases to 100 to 400 Bcf.

The EIA and the OPPR infill drilling figures are possibly optimistic since constraints such as state spacing and other state regulations, environmental restrictions and especially a lack of pricing incentives will inhibit drilling activity.

The EIA estimate of 2.2 Tcf, when considering more of the nonquantifiable constraints, is extremely optimistic in its one or two year infill drilling potential. The AGA estimate of 50 to 100 Bcf provides a bottom range. The OPPR estimate of approximately .3 Tcf and AGA upper range of .1 to .4 Tcf may be feasible one year estimates. Physical constraints of drilling rigs, equipment and crews; and pipeline gathering systems; regulatory constraints of adopting new spacing policies and environmental concerns; and finally pricing incentive constraints all play major roles in determining the infill

[22] "Infill Drilling Response," EIA, March 3, 1987.

[23] OPPR Infill Drilling Calculations, March 1987.

[24] "Short Term Supply Potential," Energy Analysis, American Gas Association, September 28, 1986.

production potential. A comparison chart of the assumptions and estimates of the three studies follows:

INFILL DRILLING COMPARISON OF RESULTS

| | Additional annual production | Assumptions |
|---|---|---|
| OPPR | .285 Tcf | (a) Availability of drilling rigs based on historical data.<br>(b) No regulatory constraints such as spacing or environmental restrictions.<br>(c) A 90% success ratio, since these wells would be direct offsets to producing wells. |
| EIA | 2.2 Tcf | (a) For each of the 233,797 gas wells in the U.S. one successful offset could be drilled.<br>(b) One half of U.S. N/A gas wells are Stripper reducing number to 120,000.<br>(c) One half of 120,000 wells are unsuitable prospects.<br>(d) An average of 110 Mcf per well per day in the first year.<br>(e) No regulatory constraints such as spacing and environmental restriction. |
| AGA | 0.1–.4 Tcf | (a) Infill drilling is sensitive to market prices. |
| | 0.5–1.0 Tcf (with higher prices). | (b) Only Hugoton and San Juan areas were considered to arrive at their estimates.<br>(c) All their figures were strictly estimates. |

*Imports*

Imports from Mexico and Canada and LNG imports have in the past served as supplemental supplies to the U.S. gas supply. Currently Canada is the only import source that is operational.

Mexico

Authorized transmission capacity for gas imports from Mexico is currently 300 MMcf per day or 110 Bcf per year. However due to a lack of a market for Mexican gas, falling U.S. gas prices and negotiation problems, Mexican gas imports were suspended November 1, 1984.

According to AGA,[25] Mexican gas production may be over the 1.37 Tcf reported for 1984. With the Mexican reserve to production ratio of over 56 to one, AGA estimates that 1.5 Tcf could be produced, with a Mexican market for 1.3 Tcf leaving a surplus of 200 Bcf. The 110 Bcf per year transmission capacity could also be increased to 200 Bcf per year with minor construction in Mexico and the U.S. EIA[26] is much more optimistic in projecting a potential import of 700 Bcf per year with economic incentives, more pipeline construction, refurbishing existing pipeline facilities, and substantial field development. If justified by U.S. demand, a supplemental supply of 200 Bcf per year and possibly as much as 700 Bcf could be imported.

LNG

LNG deliveries ended in 1985. Terminals at Everett, Massachusetts; Cove Point, Maryland; Elba Island, Georgia; and Lake Charles, Louisiana could be made operational with a capability of recovering the LNG equivalent of 770 to 900 Bcf annually. The constraining factor would be in price. However, on an optimistic note, Panhandle Eastern Corporation recently announced a new agreement with Sonatrech, the Algerian national oil and gas company, to resume imports of LNG for peak day supply for the 1987/88 winter. The agreement calls for no minimum annual purchase obligation, but Sonatrech will make available up to 3 Tcf of supply over 20 years. Volume, terms and selling price are negotiated for each individual sales proposal.

Canada

Canada appears to be the primary and most reliable source of import supply.

Assuming no new facilities and that exporters can honor the maximum licensed export quantities (which appears to be very likely), the five major interconnection points which account for more than 90% of available transmission capacity provide the following available summer (s) and winter (w) capacity:

| Company name | Available transmission capacity (MMcf/day) | Current use (est. 1984–85) MMcf/day | Excess (MMcf/day) |
|---|---|---|---|
| Northwest | 824 | 300 | 524 |
| PGT | 1,475 (s)<br>1,610 (w) | 840 (s)<br>1,140 (w) | 635 (s)<br>470 (w) |
| Northern Border | 1,064 (s)<br>1,115 (w) | 200 (s)<br>400 (w) | 864 (s)<br>715 (w) |
| Midwestern | 655 | 250 | 405 |
| Great Lakes | 1,506 | 1,015 TCPL[1] | 491 |
| | 5,524 (s)<br>5,710 (w) | 2,605 (s)<br>3,105 (w) | 2,919 (s)<br>2,605 (w) |

[1] TCPL could release capacity to U.S. shippers in emergencies if they do not have the same emergency situations.

OPPR estimates that under current use patterns Canada exports about 900 Bcf per year to 1,000 Bcf per year. Additional exports of approximately 1,000 Bcf per year could be made available through the five major importing pipelines. Imports are currently authorized at approximately 1,700 Bcf per year, thus additional authorization would be needed.[27]

EIA also projects potential Canadian annual import increases of 1,000 Bcf and with added construction Canadian reserves would allow substantial increases of exports.

## IV. Summary and Conclusion

*Supplies*

As indicated above, gas reserves dedicated to interstate commerce as of January 1, 1986 are calculated to be approximately 38 Tcf.

As shown on the following table, potential supplemental sources to meet any sudden supply shortage in the U.S. range from a minimum of 3.92 Tcf to a maximum of 7.69 Tcf. It should be noted that the above mentioned current annual deliverability surplus would first have to be depleted before the following supplies are needed.

POTENTIAL SUPPLEMENTAL SOURCES PER YEAR

[Tcf]

| | Minimum | Maximum |
|---|---|---|
| Fuel Switching of Dual Fuel Industrials | 1.31 | 3.07 |
| Fuel Switching of Electric Utilities | 1.71 | 2.57 |
| Infill Drilling | .10 | .75 |
| Imports: | | |
| Mexico | 0 | .30 |
| LNG | 0 | .10 |
| Canada | .80 | 1.00 |
| Total | 3.92 | 7.69 |
| Two or more years | | 2.75 |
| | | 10.44 |

These are estimates based on the logic and supporting data in the subject studies that form the basis for this paper. If one wanted to be extremely

[25] "Short Term Supply Potential," Energy Analysis, American Gas Association, September 26, 1986.

[26] "Expected U.S. Natural Gas Surplus, Flow Capacity for 1987," EIA, March 3, 1987.

[27] The National Energy Board is considering a plan to increase permitted exports to 1.9 Tcf per year by year-end 1989.

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optimistic, the maximum potential could be increased as follows: 1.45 Tcf from the EIA infill drilling projection; .5 Tcf from the EIA Mexican imports projection and an additional .8 Tcf if all LNG terminals could be quickly activated for a total additional supplemental supply potential of 2.75 Tcf. Realistically these additions may be possible in two or more years with the proper price incentives. Natural gas consumption in the U.S. in 1985 for residential and commercial use was 6.8 Tcf so that a significant contribution toward a safety margin for such uses exists in the potential short term gas supply sources even without the 2.75 Tcf of the more difficult to obtain supplemental supplies.

The range of the potential supplements is wide due to the uncertainty over the numerous parameters that impact the effectiveness of these sources. The following discussion will focus on those parameters that bear the most weight and how the gas market might react to shortage scenarios. Certainly these supplemental sources can quickly react to market demand and provide time for additional drilling to bring on longer term sources of supplies.

*Oil/Gas Price Relationship*

The price of gas has been a significant parameter in determining the potential of the various gas supply sources. A major cause of the gas price decline, in addition to the current gas surplus, is the collapse in oil prices. As long as oil prices remain low the alternate fuel users market will only be maintained by keeping gas prices at similar competitive low levels. As gas supplies tighten market forces will tend to drive up production gas prices but, if oil prices remain low, distributors will be forced to pass increases in the marginal cost of gas to their residential and commercial markets or face load loss of the alternate fuel users market. A tightening of gas supplies may cause gas price increases but as long as a low price of oil exists an upper limit is established on gas price increases in the alternate fuel users market.

Unless gas prices begin to move upward, new gas exploration, infill drilling and Canadian, Mexican, and LNG imports will lack incentive or motivation to expand. Low oil prices inhibit the potential of these sources of supply. At current oil and gas prices the potential supplemental sources of infill drilling and imports are likely to produce only their minimum of .1 and .8 Tcf respectively. Of course low production gas prices indicate gas supplies are still plentiful. As the need for supplemental supply sources increases gas production prices are likely to be on the increase. Also, as gas prices rise, some gas utilities with high average gas costs will be unable to retain all of their dual fuel customers. This would release a portion of the 3.0 to 5.6 Tcf of fuel switchable volumes.

*Gas Shortage—Decreasing Deliverability Due to Declining Reserve Base*

As 1990 approaches and if the prediction of a tightening gas supply prevails, assuming stable oil prices, a demand/supply imbalance will exert upward pressure on gas prices. Utilities will attempt to maintain their fuel switching market by attempting to pass on higher gas costs to the residential and commercial markets. However, as was the case in 1985 and 1986, some of the fuel switching market will convert to oil, freeing up at least a portion of the 3 to 5 Tcf available, conservatively 1 Tcf. Higher gas production prices will encourage more infill drilling and production in general, conservatively .1 Tcf. Canada could fairly quickly increase exports by .8 Tcf. If Mexico and Algeria are back on line, another .3 Tcf could be added. In summary, with a tightening of gas supplies and stable oil prices (which assumes stable oil supplies) supplemental sources could conservatively add 2.2 Tcf within a year. Assuming 1 Tcf of fuel switching took place throughout the year, at least a minimum of 2 Tcf of further fuel switching gas would remain available to meet any peak services needs.

*Oil Supply Disruption*

In the event OPEC attempted an embargo on all exports to the U.S., gas supply should be able to meet demand at least in the short term. An OPEC oil embargo will cause a leap in oil spot prices which will be followed by significant increases in gas spot prices. Assuming a significant shortage of oil supplies dual fuel users will be attempting to purchase any available fuel at the cheapest price. Assuming at the time of the embargo gas supply and demand are in balance, price and supply advantages will initially be with gas. Increased demand from dual fuel consumers will exert pressure on available gas supplies and gas prices will rise. The higher gas prices should encourage infill drilling to reach a level of .75 Tcf and Mexican and Canadian exports to reach their maximum potential of 1.20 Tcf for an increase of 1.95 Tcf. During previous oil embargoes gas production increased by less than 1 Tcf which was the volume required. The Strategic Oil Reserve with a 1986 estimated stock of 511 million barrels (approximately 3 Tcf) [28] will provide a buffer zone for these supplemental supplies to come on line. With this buffer zone and the supplemental sources, supplies should be able to meet demand needs in the short term and in the longer term price incentives should continue to encourage exploration and production.

The overall effectiveness of market signals and the quick response of the participants in the U.S. gas market may be enhanced or inhibited by other factors which warrant a brief discussion.

*Dedicated Versus Non-Dedicated Reserves*

Dedicated supplies could give some protection to those pipelines having a high percentage of such reserves. Of course the percentage is not uniform throughout the pipeline industry. However, mandatory allocation procedures in Title III of the NGPA covers non-dedicated supplies also. Therefore the distinction between dedicated and non-dedicated supply is not that meaningful during a shortage. As indicated in the reserve analysis above, dedicated reserves have been decreasing at approximately 10% a year since 1976 so that the effect of such reserves will be diminishing as we move toward a predicted period of tighter supply/demand balances.

*Caveats*

Mobility of Volumes in the Interstate System and Ability To Respond on Short Notice

During the severe shortages of the mid-1970's, a basic problem was the inability of the interstate system to draw on the intrastate system and other nonjurisdictional sources due to regulatory constraints. The NGPA attempted to correct this with price deregulation and section 311 allowing reciprocal transportation in the inter and intrastate systems. Mobility of gas volumes were improved with Order No. 436. This is evidenced by the fact that more than 50% of all volumes moving through the interstate system are now transportation volumes, not sales volumes.

Potential Insufficient Pipeline Capacity to the Northeast

The Northeast region of the U.S. is one of the more prolific consuming regions of gas in the U.S. Yet this area is one of the most remote areas from major

[28] EIA Monthly Energy Review, October, 1986.

production regions in the U.S. During the periods of shortage in the 1970's, this region experienced some difficulty in meeting peak day needs. The potential problem is the lack of available pipeline capacity from the large electric generation and industrial fuel switchable market in Northeast Texas to the major interstate pipeline systems originating in Southwest Texas and Louisiana which are the major trunklines serving the Northeast region of the U.S.

**Future Considerations: Gas Supply/ Demand in the Year 2000**

The AGA, Gas Research Institute (GRI), and EIA have developed forecasting models that forecast the U.S. gas supply/demand scenario. AGA's Total Energy Resource Base Analysis Model (TERA) Base Case 1986 predicts that gas supply and demand will be in balance with a total output of 23.1 Tcf [20] in the year 2000. GRI's 1986 Baseline Projection of U.S. Energy Supply and Demand to 2010 predicts that supply will be 19.7 Tcf and demand 19.1 Tcf in the year 2000. EIA's 1986 Annual Energy Outlook predicts in the year 2000 the projected supply of 18.6 Tcf will be sufficient to meet the projected demand of 17.9 Tcf. The following summary will review assumptions and projections of these models and how they expect gas supplies will be available to meet projected demand.

AGA predicts that between 1985 and 2000 average retail constant dollar gas prices will decrease while the prices of oil, coal and electricity will increase. During this period gas sales will grow more rapidly than these other energy sources. Only nuclear fuel use will increase faster than gas consumption. The model assumed oil prices of $25/bbl. in 1986 and 1987. A rather startling prediction is that gas prices to residential consumers will decrease from $5.33/MMBtu in 1986 to $5.16/MMBtu in 2000.

The model projects conventional lower-48 natural gas will represent 94% of natural gas utility industry supplies in 1985, and about 98% of total U.S. supplies. By 2000 domestic natural gas will represent only 80% of flowing gas supply and this includes 1.1 Tcf of incremental tight formation gas which it is assumed will be technically feasible then. Without this tight gas, conventional supplies will comprise only 75% of total supply. Conventional supplies will decline to 17.1 Tcf in 2000. Supplemental supplies will make up the difference in meeting the expected demand of 23.1 Tcf. Of the 4.7 Tcf of supplemental supplies, imports from Canada and Mexico will account for 57%, other various technologies will supply 22%, and other sources such as LNG, SNG, and coal gas, will make up the remaining 21%. The model optimistically predicts that 2.5 Tcf will be available but not taken.

The most surprising aspect of the TERA projections is the optimistic prediction of lower gas prices in the year 2000 while gas supplies become more dependent on expensive supplemental sources such as LNG, SNG, coal gas and 22% from unknown technologies. As supplies tighten, Canada and Mexico can also be expected to attempt to increase price margins. Gas prices will be determined by the marginal cost of these supplemental supplies and imports.

The GRI baseline projection presents the GRI planning outlook for the economic and energy supply and demand situation to the year 2010. GRI states that as a result of the recent fall in world oil prices, this year has been a particularly difficult period in which to produce a forecast. The projection includes much lower oil prices over the projection time frame reaching $27/bbl. by 2000. The study projects steady economic growth, although at rates less than historical norms, with energy prices gradually increasing from today's low levels.

Natural gas acquisition prices are projected to increase from an average of $2.53/MMBtu in 1985 to $4.01/MMBtu in 2000. Between 1985 and 1990 lower-48 production prices will grow less than 5%.

The significant price increase will begin after 1990 due to the need for increasing new producer investment. Lower-48 prices are projected to grow 55% between 1990 and 2000.

In projecting future gas supply GRI initially assumes a base technology and then advanced technology using unconventional supplies. With this base technology, lower-48 production will begin to decline in the 1990's. Under the base technology lower-48 production will decline from 15.8 Tcf in 1985 to 13.4 Tcf in 2000. Increased availability of supplemental supplies would compensate for the decline in lower-48 natural gas production through the 1990's. But after 2000 the rate of decline of the lower-48 base technology production is projected to accelerate, and at the price of alternate fuels, practicable supplemental supplies from imports and synthetics would be unable to completely compensate for the decline. Overall availability of competitively priced gaseous fuels in the U.S. would begin to decline.

With advanced gas supply technology GRI projects an additional .3 Tcf in 1990, 2.5 Tcf in 2000, and 4.6 Tcf in 2010 at market clearing prices. GRI estimates that average U.S. gas acquisition prices could be reduced by about 25% with the introduction of the advanced technologies. These supplemental supplies in addition to SNG and imports from Canada will comprise most of the supply to meet demand until 2000. After 2000, LNG imports, more SNG and coal gas will add to supplies. In addition the Alaska Natural Gas Pipeline will begin operation in 2002.

In the EIA base case the economy is assumed to maintain an average growth of 2.5% per year through 2000. Oil prices will reach $33 by the year 2000. The average wellhead price of gas will increase at an annual rate of 9% reaching $5.38 Mcf in 2000. The current gas bubble will be absorbed by 1990. Demand for natural gas in all sectors will rise up until 1990 and afterward will decline at 1% per year through 2000. Electric utility demand will outpace gas. The gas industry should satisfy demand with market-based, competitive prices.

In summary all models project adequate supplies in the year 2000. GRI and EIA are not as optimistic as AGA on the costs of obtaining these supplies.

[FR Doc. 87-10884 Filed 5-18-87; 8:45 am]
BILLING CODE 6717-01-M

[20] The model uses quadrillion Btu for which Tcf was substituted.

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## FEDERAL MARITIME COMMISSION

### 46 CFR Part 572

[Docket No. 85-22]

### Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

**AGENCY:** Federal Maritime Commission.

**ACTION:** Discontinuance of proceeding.

**SUMMARY:** The Federal Maritime Commission is discontinuing its proposed rulemaking proceeding concerning provisions in agreements subject to the Shipping Act of 1984 that affect or relate back to activities or events which occurred prior to the agreements becoming effective. The Commission will continue to address these matters on an *ad hoc* basis.

**DATES:** This proceeding is discontinued effective May 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L

Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission initiated this proposed rulemaking proceeding by Notice published in the **Federal Register** (50 FR 51418–51420, December 17, 1985). The proposed rule would have amended the Commission's agreement rules by adding a new subparagraph to 46 CFR 572.103 to read as follows:

(h) An agreement filed under the Act shall apply only to prospective, future activities of the parties and may not in any way directly or indirectly affect or rely upon activities, events or payments which occurred prior to the effective date of the agreement.

In proposing this rule, the Commission advised that it had been receiving an increasing number of agreements which contained provisions affecting activities or events which occurred prior to the effective dates of the agreements. The Commission noted that these provisions were particularly pervasive in the area of marine terminal agreements, where ocean common carriers often agree to use port facilities in the future, but in so doing attempt to credit prior use to future formulas or rerate prior use at a new and lower rate once the agreement becomes effective. The Commission explained that agreements with retroactive application raised legal concerns under various provisions of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 through 1720.

Comments in response to the Notice were received from ocean common carriers, ocean carrier conferences, port authorities, terminal operators, law firms, and the Department of Justice. Some commenters supported the rule as proposed or in a modified form. Several commenters expressed the view that there is no particular need for a rule on "retroactivity" because the parameters of acceptable conduct under the 1984 Act are already clear, as a matter of law. In addition, many of the commenters raised concerns about portions of the proposed rule which appeared to be overbroad, in that they would condemn agreement provisions which have heretofore been considered legitimate. In this regard, some commenters requested that any final rule identify with particularity unacceptable retroactive provisions.

Upon careful consideration of all of the comments submitted, and in light of the regulatory objectives underlying this proceeding, the Commission has decided to withdraw the proposed rule. We do not believe that a formal regulation defining the limits of an agreement's application to past events is either feasible or necessary, at least at this time. Section 10(a)(2) of the 1984 Act, 46 U.S.C. app. 1709(a)(2), prohibits anyone from "operat[ing] under an agreement required to be filed under section 5 * * * that has not become effective under section 6 [of that Act] * * *." Similarly, section 7 of the Act, 46 U.S.C. app. 1706, conveys no antitrust immunity on activity which has occurred prior to an agreement becoming effective. As a result, and because it would be extremely difficult, if not impossible, to prescribe a rule which would address the legitimate concerns of the commenters while at the same time providing clear, definitive guidelines covering all potential variant situations, the Commission has decided to discontinue this rulemaking proceeding and continue to address the issue of possible retroactive agreement provisions on an *ad hoc* basis.

*Therefore, It Is Ordered,* That the rule proposed in this proceeding is withdrawn and the proceeding discontinued.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–11360 Filed 5–18–87; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 87–128, RM–5675]**

### Radio Broadcasting Services; Blackduck, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Roger Paskvan, proposing the allocation of FM Channel 252A to Blackduck, Minnesota, as that community's first FM broadcast service. Concurrence of the Canadian government is required for the allotment of FM Channel 252A at Blackduck.

**DATES:** Comments must be filed on or before July 6, 1987, and reply comments on or before July 21, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry F. Cole, Bechtel & Cole, Chartered, 2101 L Street, NW. Suite 502, Washington, DC 20036 (counsel for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No 87–128, adopted April 17, 1987, and released May 13, 1987. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–11367 Filed 5–18–87; 8:45 am]

BILLING CODE 6712–01–M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 663

**[Docket No. 70101–7001]**

### Pacific Coast Groundfish Fishery; Proposed Inseason Adjustment

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of proposed inseason adjustment and request for comments.

**SUMMARY:** NMFS announces and requests comments on a proposed inseason adjustment to the 1987 specifications for three species of Pacific Coast groundfish caught in the ocean off Washington, Oregon, and California.

The adjustment would increase the acceptable biological catch (ABC) for widow rockfish by 3 percent to 12,500 metric tons (mt), for chilipepper rockfish by 20 percent to 3,600 mt, and would increase the ABC and optimum yield (OY) for sablefish by 12 percent to 13,400 mt. This action makes use of the best available scientific information for estimating the 1987 specifications and is intended to promote full utilization of available groundfish resources without biological stress to these or other species.

**DATE:** Comments on this action will be accepted until June 3, 1987.

**ADDRESSES:** Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

**FOR FURTHER INFORMATION CONTACT:** Rolland A. Schmitten, 206–526–6150, or E. Charles Fullerton, 213–514–6196.

**SUPPLEMENTARY INFORMATION:** The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR 663.24(a) state that annual specifications of ABC and OY will not exceed by more than 30 percent the ABCs and OYs specified at the beginning of the previous fishing year. The FMP also provides at § 663.22(b) for inseason increases in OYs that cumulatively do not exceed by more than 30 percent the ABCs and OYs set at the beginning of the current fishing year.

ABCs are specified for all groundfish species, individually or in a group, and are estimates of the annual catch that could be taken without jeopardizing a resource's biological productivity. OYs are specified for six species, including sablefish, and set the maximum amount of fish (round weight) that may be taken and retained, or landed each year from the ocean off Washington, Oregon, and California.

The 1987 specifications of ABC and OY were developed in public meetings of the Pacific Fishery Management Council (Council) in September and November 1986. The preliminary specifications were published at 51 FR 43057 (November 28, 1986) and the final specifications at 52 FR 682 (January 8, 1987). The final 1987 ABCs for widow and chilipepper rockfishes were restricted by the regulations at § 663.24 limiting annual increases to 30 percent. Accordingly, the 1986 ABX for widow rockfish of 9,300 mt was increased the maximum 30 percent to reach the 1987 ABC of 12,100 mt, even though scientific data support a 34 percent increase to 12,500 mt. The 1986 ABC for chilipepper rockfish of 2,300 mt also was increased the maximum amount to reach the 1987 ABC of 3,000 mt. even though scientific data support a 57 percent increase to 3,600 mt. Subsequently, additional increases to the 1987 ABCs for widow and chilipepper rockfishes were recommended at the November 1986 Council meeting, based on the best available scientific information.

The recommendation to increase the ABC and OY for sablefish was made at the April 7–10, 1987, Council meeting after the Groundfish Management Team (State and Federal fishery and social scientists) presented new survey data and revised methods of estimating the available biomass for sablefish. The Council considered this analysis in addition to advice from its Groundfish Advisory Subpanel (industry and consumer representatives) and Scientific and Statistical Committee (State, Federal, and university scientists) in recommending an inseason increase to the 1987 ABC and OY for sablefish based on the best available scientific information.

The Secretary of Commerce concurs with the Council's recommendations. The aggregate data upon which these increases are based are available for public inspection at the Regional Offices at the above addresses during business hours until the end of the comment period.

### Widow Rockfish

The Council recommended increasing the 1987 coastwide widow rockfish ABC from 12,100 mt to 12,500 mt, a 3 percent inseason increase and 34 percent greater than the 9,300 mt ABC established at the beginning of 1986. The proposed increase would raise the widow rockfish ABC to the 1987 OY. It is supported by the most recent scientific data indicating that the 1978, 1979, and 1980 year classes, which are contributing to the fishery, are considerably stronger than previously estimated. The ABC could not be raised to 12,500 mt on January 1, 1987, because of the 30 percent limit on annual increases. The OY could be increased to 12,500 mt in January , however, because OY was 10 percent greater than ABC in 1986, i.e., 10,200 mt. Thus the annual increase to OY in 1987 was within the 30 percent limit. This increase would remove the discrepancy between ABC and OY and would not warrant changes to the trip limits for this species because they are based on achieving OY.

### Chilipepper Rockfish

The Council recommended increasing the 1987 coastwide chilipepper rockfish ABC from 3,000 mt to 3,600 mt, a 20 percent inseason increase and 57 percent greater than the 2,300 mt ABC in 1986. This increase was not made between seasons because of the 30 percent limit. The proposed increase would raise the chilipepper rockfish ABC to the level supported by a revised assessment methodology, which shows that several large year classes are contributing to the fishery. This increase would be too small to warrant changes to the trip limits for the *Sebastes* complex of rockfishes (which includes this species south of Coos Bay, Oregon.

### Sablefish

The Council recommended increasing the 1987 coastwide ABC and OY for sablefish by 12 percent, from 12,000 mt to 13,400 mt based upon the best available scientific information. This proposed level of 13,400 mt is 200 mt below the 13,600 mt OY for sablefish in 1986, 26 percent greater than the 10,600 mt ABC for sablefish in 1986, and equals the ABC for sablefish each year from 1982 through 1984. This most recent estimate does not reflect growth of the resource but rather results from revised analytical procedures and inclusion of areas that were not previously considered and which have been found to contain some fishable concentrations of sablefish. The regulations at § 663.22(b) require that the following factors be considered in a determination to increase an OY during the fishing year.

#### *(i) Exploitable Biomass and Spawning Biomass Relative to Maximum Sustainable Yield (MSY) Levels*

(MSY is the average of the largest catch which can be taken continuously from a stock over a period of years.) Data are inadequate to determine the relationship between the exploitable biomass, the spawning biomass, and the MSY.

#### *(ii) Fishing Mortality Rate Relative to MSY Levels*

Although MSY is not known for certain, fishing mortality is expected to exceed the proposed ABC of 13,400 mt if the fishery is not restricted.

#### *(iii) Magnitude of Incoming Recruitment*

The sablefish fishery is dominated by

a relatively small number of large year classes. The contribution of the strong 1980 year class is declining, and the strength of subsequent year classes is uncertain; therefore, the magnitude of incoming recruitment is unknown.

*(iv) Projected Effort and Corresponding Catches Relative to ABC*

Effort on groundfish species is expected to increase as groundfish fisheries in Alaska close and those vessels move to the Washington-Oregon-California fishery. Sablefish landings have exceeded ABC in recent years (OY has been set higher than ABC), with the 5-year average landings (1982–1986) being about 15,000 mt. Since 1982, various management strategies have been used to avoid reaching OY early in the year and closing the fishery. Fishing effort in 1987 is expected to be capable of harvesting the proposed ABC/OY before the end of the year if not restricted.

*(v) In the Case of Species Normally Taken in Mixed Catches, the Relative Contribution of the Species to the Total Catch*

Although sablefish may be a significant incidental catch in the trawl fishery for Dover sole, adjustment of the sablefish OY is not expected to influence incidental catch rates in the trawl fishery. A target trawl fishery might be slightly encouraged, however.

*(vi) The Impact, if any, of the Proposed Increase in OY on Other Species*

Sablefish can be caught fairly selectively in a target fishery. The proposed increase in OY should have little or no impact on other species.

Because shore-based processors intend to use all available sablefish, none of the proposed increase would be made available for joint venture processing (JVP) or foreign fishing (TALFF) except for minimal allowances for unavoidable incidental catches.

In 1987 the sablefish OY is allocated 52 percent to trawl gear and 48 percent to fixed gear (52 FR 790, January 9, 1987). Therefore, based on these percentages the proposed increase would change the gear allocations from 6,200 mt to 7,000 mt for trawl gear and from 5,800 mt to 6,400 mt for fixed gear. The proposed increase would be too small to necessitate changes to the current management strategy for this species.

In accordance with the recommendations above, Tables 1 and 2 (published at 52 FR 683 and 684) are proposed to be revised as indicated below. Only these portions (including footnotes) that pertain to widow and chilipepper rockfishes and sablefish are revised and printed here. All other portions remain unchanged except for footnote 2 to Table 2 which was deleted by Amendment 2 to the FMP (52 FR 4910, February 18, 1987) with the elimination of the separate 2,500 mt OY for sablefish in Monterey Bay, California.

TABLE 1.—FINAL ESTIMATES OF ABC FOR 1987 IN METRIC TONS (MT) FOR GROUNDFISH OFF WASHINGTON, OREGON, AND CALIFORNIA BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

| Species | Vancouver | Columbia | Eureka | Monterey | Conception | Total |
|---|---|---|---|---|---|---|
| Roundfish: | | | | | | |
| Sablefish | | | | | | [3] 13,400 |
| Rockfish | | | | | | |
| Widow | | | | | | [3] 12,500 |
| Other Rockfish: [4] | | | | | | |
| Chilipepper | | | | | | [3] 3,600 |

[3] Total all areas.
[4] "Other Rockfish" means rockfish species at § 663.2, as amended, which do not have a numerical OY.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1987 IN THOUSANDS OF METRIC TONS (MT) FOR GROUNDFISH OFF WASHINGTON, OREGON, AND CALIFORNIA

| Species | Total OY | DAP | JVP | DAH | Reserve | TALFF |
|---|---|---|---|---|---|---|
| Sablefish | 13.4 | 13.4 | 0.0 | 13.4 | 0.0 | 0.0 |

## Classification

This proposed inseason adjustment is made under the authority of §§ 663.22 and 663.23 and complies with Executive Order 12291. This action is covered by the regulatory flexibility analysis prepared for the implementing regulations.

## List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing.

(16 U.S.C. 1801 *et seq.*)

Dated: May 13, 1987.

James E. Douglas, Jr.,

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 87-11428 Filed 5-18-87; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ARMS CONTROL AND DISARMAMENT AGENCY

### General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: May 27, 28, 1987.

Time: 9:00 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact Person: Barry Daniel, Executive Director, General Advisory Committee, U.S. Arms Control and Disarmament Agency, Room 5927, Washington, DC 20451, (202) 647–5177.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will present the following discussions and presentations:

*May 27, 1987*

AM—Receive briefing on and discuss arms control and NATO/WP forces.

PM—Receive briefing on and discuss ATBM issues.

*May 28, 1987*

AM—Receive briefing on and discuss Verification ATBM issues and requirements. Executive Discussions.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated April 1, 1987, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,
*Committee Management Officer.*

[FR Doc. 87–11438 Filed 5–18–87; 8:45 am]
BILLING CODE 6820–32–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C–351–529]

### Certain Castor Oil Products From Brazil; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the countervailing duty order on certain castor oil products from Brazil. The review covers the period January 1, 1985 through December 31, 1985 and 15 programs.

As a result of the review, the Department has preliminarily determined the net subsidy for the period of review to be 0.63 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** May 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Henderson or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202 377–2786).

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 19, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 45497) the final results of its last administrative review of the countervailing duty order on certain castor oil products from Brazil (41 FR 8634; March 16, 1976). On March 31, 1986, the petitioner, the American Manufacturers of Castor Oil Products, requested in accordance with § 355.10 of the Commerce Regulations that we conduct an administrative review of the order. We published the initiations on April 16, 1986 (51 FR 13274). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

#### Scope of Review

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. Such merchandise is currently classifiable under items 178.2000, 490.2050, and 490.2070 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1985 through December 31, 1985 and 15 programs: (1) CACEX export financing; (2) an income tax exemption for export earnings; (3) the export credit premium for the IPI; (4) CIC–CREGF 14–11 financing; (5) incentives for trading companies (Resolution 683); (6) accelerated depreciation for Brazilian-made capital goods; (7) BEFIEX; (8) CIEX; (9) FINEX; (10) duty-free treatment and tax exemption on equipment used in export production ("CDI"); (11) FUNPAR; (12) exemption from state-administered value-added taxes on domestic sales ("ICM"); (13) PROEX; (14) PROSIM; and (15) financing for the storage of merchandise destined for export (Resolution 330).

#### Analysis of Programs

*(1) CACEX Export Financing*

Under this program, the Department of Foreign Commerce ("CACEX") of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a duration of up to one year. During the period of review, producers of certain castor oil products could obtain CACEX financing based on the value of their previous year's exports. The maximum amount of CACEX financing that could be obtained in Brazil was 20 percent of the value of the previous year's exports.

Resolution 882, which became effective on January 2, 1984, required the full interest payment at maturity. It also set the maximum interest rate at

monetary correction (calculated by the change in the value of readjustable treasury bonds, "ORTN") plus 3 percentage points.

On August 21, 1984, Resolution 950 superseded Resolution 882 and changed the short-term export financing program substantially. Resolution 950, which was made effective retroactively to January 2, 1984, made working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Banco do Brasil to pay the lending institution an "equalization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which the lending institution can pass on to the borrowers. On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points.

To find the interest differential for Resolution 882 loans, we compared to effective rates. The nominal interest rates on Resolution 882, 950, and 1009 loans are the same as the effective rates because the full amount of interest is paid at maturity. For our benchmark, we took the national average rate for thirty-day discounts of accounts receivable, as reported in *Analise/Business Trends*. This rate includes the 1.5 percent tax on financial transactions ("IOF"), from which preferential loans are exempt. We then compounded this rate to find the effective annual commercial benchmark.

Since the interest charged on CACEX export financing under Resolutions 950 and 1009 is now at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF. Therefore, the interest differential for those loans is equal to the equalization fee plus the 1.5 percent IOF.

We consider the benefit from loans to occur when the borrower makes the interest payments. For Resolution 882, 950, and 1009 loans on which interest was paid during the period of review, we multiplied the interest differential by the loan principal. We allocated the result over each firm's total exports and then weight-averaged each company's benefit by its share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.10 percent *ad valorem*.

*(2) Income Tax Exemption for Export Earnings*

Under this program, exporters of certain castor oil products are eligible for an exemption from income tax on a portion of their profits attributable to exports. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. Two firms took advantage of this program in 1983.

The nominal corporate tax rate in Brazil is 35 percent. However, Brazilian tax law permits companies to reduce their income taxes by investing up to 26 percent of their tax liability in specified companies and funds. This tax credit effectively reduces the nominal 35 percent corporate tax rates. The firms under review invested in the specified companies and funds.

We calculated the effective tax rates by dividing each company's net tax liability by its taxable profit. We calculated the benefit by multiplying the amount of tax-exempt profit by the effective corporate tax rate and allocating the result over each company's total exports. We then weight-averaged each company's benefit by its share of total exports of the merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.46 percent *ad valorem*.

*(3) The Export Credit Premium for the IPI*

Exporters of certain castor oil products are eligible for the maximum export credit premium for the IPI. The Brazilian government pays exporters in cash a percentage of the f.o.b. price of the exported merchandise. The payment is made through the bank involved in the export transaction.

Effective June 26, 1981, the Brazilian government imposed an export tax to offset the benefit of the premium on exports to the United States. Therefore, we preliminarily determine that exporters of this merchandise received no benefits from this program during the period of review.

Further, on May 1, 1985, the Brazilian government eliminated the IPI credit premium for exporters of certain castor oil products.

*(4) CIC–CREGE 14–11 Financing*

Under its CIC–CREGE 14–11 circular, the Banco do Brasil provides preferential financing to exporters on the condition that they maintain on deposit a minimum level of foreign exchange. Exporters of certain castor oil products participated in this program during the period of review.

There is no maximum interest rate for this program. Interest payments are normally made quarterly or semiannually, with the full principal to be repaid at maturity. We calculated the benefit based on the interest payment date in a manner similar to that used for CACEX export financing, using the same benchmark rate. We preliminarily determine the benefit from this program to be 0.02 percent *ad valorem*.

*(5) Incentives for Trading Companies (Resolution 883)*

Under this program, CACEX declares trading companies eligible to receive loans at preferential rates. Eligible firms have access to a line of credit that can be drawn down to purchase goods for export. The trading companies use the loans as advance payment for the goods purchased. These loans are subject to interest constraints similar to those on Resolution 882 loans. Normally, the term of the loan does not exceed 180 days, but the actual length varies, running from the date of receipt of the loan to the date of shipment of the goods. The interest is paid in full at maturity.

During the period of review, one firm received benefits under this program for the purchase of certain castor oil products for export. We calculated the benefit in a manner similar to that for CACEX export financing, based on the interest payment date. We allocated the benefit over the firm's total exports and weight-averaged the result by the firm's share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.03 percent *ad valorem*.

*(6) Accelerated Depreciation for Brazilian-made Capital Goods*

Firms may depreciate Brazilian-made capital equipment at twice the normal rate allowed under Brazilian tax laws if they obtain approval from the Industrial Development Council ("CDI") for a plant expansion project. One firm benefited from this page in 1984.

To calculate the benefit, we multiplied the amount of accelerated depreciation declared on the income tax return filed in the review period by the effective corporate income tax rate and divided the result by the firm's total sales in 1985. We then weight-averaged the benefit by the firm's share of total exports of this merchandise to the United States.

On this basis, we preliminarily determine the benefit to be 0.001 percent *ad valorem*.

*(7) Other Programs*

We also examined the following programs and preliminarily find that exporters of certain castor oil products did not use them during the review period:

a. Fiscal Benefits for Special Export Programs ("BEFIEX");

b. Tax Reductions on Equipment used in Export Production ("CIEX");

c. Export Financing under Resolution 68 ("FINEX");

d. Duty-free treatment and tax exemptions on equipment used in export production ("CDI");

e. Export financing under the Fundo Nacional de Participadoes ("FUNPAR");

f. Exemption from state-administered value-added taxes ("ICM") on domestic sales;

g. Export Promotion Financing ("PROEX");

h. Benefits from Import Substitution ("PROSIM"); and

i. Financing for the storage of merchandise destined for export ("Resolution 330").

**Preliminary Results of Review**

As a result of our review, we preliminarily determine the net subsidy to be 0.63 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 0.63 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.63 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of the publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: May 12, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87-11393 Filed 5-18-87; 8:45 am]

BILLING CODE 3510-DS-M

## Short-Supply Review on Certain Flat-Rolled Steel Products; Request For Comments

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for short supply under Article 8 of the U.S.–EC Arrangement on Certain Steel Products with respect to certain hot-rolled steel sheet and strip used to manufacture bi-metal band saws.

**DATE:** Comments must be submitted on or before May 29, 1987.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230.Q02

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.–EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *."

We have received a short-supply request for D6A hot-rolled alloy steel sheet and strip, ranging from 0.080 to 0.125 inch in thickness and from 10 to 16 inches in thickness. This material is used to produce cold-rolled steel sheet and strip for bi-metal band saws.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 29, 1987. Comments should focus on economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

May 13, 1987.

[FR Doc. 87-11394 Filed 5-18-87; 8:45 am]

BILLING CODE 3510-DS-M

## Short-Supply Review on Certain Flat-Rolled Steel Products; Request For Comments

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products with respect to certain high carbon flat-rolled products for use in the manufacture of spherical agricultural disk blades.

**DATE:** Comments must be submitted no later than May 29, 1987.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *.

We have received a short supply request for certain high carbon flat-rolled steel products, 0.079 to 0.472 inch in thickness, that is used in the manufacture of disk blades for agricultural machinery. The products are made either:

(a) Through cross-rolling, with widths ranging from 20 to 48 inches and lengths ranging from 176 to 312 inches; or

(b) Through straight-rolling with sulphur inclusion controls, with widths ranging from 20 to 48 inches, in cut lengths from 176 to 312 inches, or in coils.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 29, 1987. Comments should focus on economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

*Deputy Assistant Secretary for Import Administration.*

May 13, 1987

[FR Doc. 87-11395 Filed 5-18-87; 8:45 am]

BILLING CODE 3510-DS-M

## Minority Business Development Agency

## Financial Assistance Applications; New York

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $416,000 for the project performance of October 1, 1987 to September 30, 1987. The MBDC will operate in the Brooklyn Metropolitan Statistical Area (MSA). The first year cost for the MBDC consist of $416,000 in Federal funds and a minimum of $73,412 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and State governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources availalbe to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is June 18, 1987. Applications must be postmarked on or before June 18, 1987.

**ADDRESS:** New York Regional Office, Minority Business Development Agency, Jacob J. Javits Federal Building, Rm. 3720, New York, New York 10278, Area Code/Telephone Number (212) 264-3262.

**FOR FURTHER INFORMATION CONTACT:** Gina A. Sanchez, Regional Director, New York Regional Office.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance).

Dated: May 14, 1987.

William E. Fuller,

*Deputy Regional Director, New York Regional Office.*

[FR Doc. 87-11439 Filed 5-18-87; 8:45 am]

BILLING CODE 3510-21-M

[Project I.D. Number 06-10-87007-01; Transmittal No. 06-10-87007-01]

## Minority Business Development Center (MBDC) Program, Texas; Financial Assistance Application Announcement

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of 9/01/87-8/31/88. The MBDC will operate in the Beaumont, Texas Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

| | |
|---|---|
| Federal Funding | $165,000 |
| Non-Federal Funding [1] | 29,118 |
| Grand Total | 194,118 |

[1] Can be a combination of cash, in-kind contribution and fees for services.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's

proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

*Closing Date:* The closing date for receipt of application is June 18, 1987.

ADDRESS: MBDA, Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas, 75242–0790.

FOR FURTHER INFORMATION, CONTACT: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767–8001.

*A pre-bid conference will be held:* May 26, 1987—10:00 am., MBDA, Dallas Regional Office, 1100 Commerce, Suite 7B23, Dallas, Texas, 75242–0790, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Melda Cabezas,

*Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.*

*Section B. Project Specifications*

Program Number and Title: *11.800 Minority Business Development*
Project Name: *Beaumont, Texas MBDC* (Geographic Area or SMSA)
Project Identification Number: *06–10–87007–01*
Project Start and End Dates: *9/01/87 thru 8/31/88*
Project Duration: *12 Months*
Total *Federal Funding (85%) $165,000*
Minimum *Non-Federal Funding* Sharing (15%) *29,118*
Total Project Cost (100%) *$194,118*

*Closing Date for Receipt of this Application:* June 18, 1987.

*Geographic Specification:* The Minority Business Development Center shall offer assistance in the geographic area of: Beaumont, Texas.

*Eligibility Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

*Project Period:* The competitive award period will be for approximately three years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be estimated for each of the three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

*MBDA's Minimum Levels of Effort:* Financial Packages, $2,286,000; Billable M&TA, $103,000; Procurements, $4,807,000; Number of Clients, 65.

[FR Doc. 87–11464 Filed 5–18–87; 8:45 am]

BILLING CODE 3510–21–M

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[Project I.D. No. 06–10–87006–01 Pre-Bid Conference; Transmittal No. 06–10–87006–01]

## McAllen Minority Business Development Center (MBDC); Pre-Bid Conference

*Summary:* The Minority Business Development Agency (MBDA) announces that it is holding a Pre-Bid Conference to answer questions (Re: the RFA) for the McAllen, Texas MBDC competition.

The MBDA advertised the McAllen MBDC request in the **Federal Register** dated May 4, 1987, pages 16295 and 16296. Please refer to this document for additional information.

The Pre-Bid Conference will be held:

*Date:* May 28, 1987
*Place:* Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, Phone: (214) 767–8001
*Time:* 10:00 a.m.
Closing Date: The closing date for receipt of applications is June 1, 1987.
*Address:* MBDA-Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790

For further information, contact: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767–8001.

Thomas J. Hawkins,

*Acting Regional Deputy Directory, Minority Business Development Agency.*

[FR Doc. 87–11465 Filed 5–18–87; 8:45 am]

BILLING CODE 3510–21–M

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Export Visa Requirement for Certain Cotton Textile Products Produced or Manufactured in India

May 14, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 14, 1987. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

### Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of Febraury 6, 1987, the Governments of the United States and India have agreed to further amend the existing export visa requirement to designate Category 341–Y for cotton shirts and blouses made from yarn-dyed fabric of two or more colors in the warp or filling and Category 341–O for cotton shirts and blouses made from fabrics other than yarn-dyed. Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry of cotton textile products in Category 341, produced or manufactured in India and exported on and after May 1, 1987 and until further notice visaed as 341–Y and 341–O.

Merchandise in Category 341, exported before July 1, 1987, may be visaed as 341, 341–Y, 341–N or 341–O, provided all other requirements established under this visa arrangement have been met.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782) July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

May 14, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive cancels and supersedes the directive of January 26, 1987 which directed you to permit entry or withdrawal from warehouse for consumption in the United States of cotton textile products in Category 341, visaed as 341, 341–Y, 341–N exported from India.

Effective on May 14, 1987 and until further notice, the existing export visa requirement established by the directive of November 28, 1979, as amended, is hereby further amended to permit entry for consumption, or withdrawal from warehouse for consumption, in the United States of cotton textile products in Category 341 which have been visaed as Category 341–Y and 341–O, if exported on and after May 1, 1987. Cotton textile products in Category 341, exported before July 1, 1987, may be visaed as 341, 341–Y, 341–N or 341–O, provided all other requirements established under this visa arrangement have been met.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreement.*

[FR Doc. 87–11391 Filed 5–18–87; 8:45 am]

BILLING CODE 3510–DR–M

## Exemption of Certain Products in Category 627pt.; Film Strips

May 14, 1987.

The purpose of this notice is to advise the public that, effective on May 14, 1987, shipments of inked ribbon film strips in Category 627 (only TSUSA numbers 389.6260 and 389.6265) exported from all countries are exempt from the terms of bilateral agreements and export visa arrangements negotiated by the United States.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 18, 1984 (49 FR 28754), November 9, 1984) 49 FR 44782), July 29, 1986 (51 FR 27088) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

**FOR FURTHER INFORMATION CONTACT:** Marty Walsh, Office of Textiles and Apparel, (202) 377–4212.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–11392 Filed 5–18–87; 8:45 am]

BILLING CODE 3510–DR–M

## COMMODITY FUTURES TRADING COMMISSION

### Agricultural Advisory Committee; Second Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the "Commodity Futures Trading Commission Agricultural Advisory Committee." As required by section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 14(a)(2)(A), and 41 CFR 101–6.1007 and 101–6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration, and the Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, and lenders and others interested in or affected by the agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the committee.

Commissioner Kalo A. Hineman serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. The Committee's membership represents a cross-section of interested and affected groups including representives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Issued in Washington, DC, this 13 day of May, 1987 by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87–11357 Filed 5–18–87; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Advisory Committee on Integrated Long-Term Strategy; Meeting

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Advisory Committee on Integrated Long-Term Strategy will meet in closed session on 11–12 June 1987 in the Pentagon, Arlington, VA.

The mission of the Advisory Committee on Integrated Long-Term Strategy is to provide the Secretary of Defense and the Assistant to the President for National Security Affairs with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war. At this meeting the Committee will hold classified discussions of national security matters dealing with long term strategy and policy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [U.S.C. App. II, (1982)], it has been determined that this Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

May 13, 1987

[FR Doc. 87–11346 Filed 5–18–87; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Air Force

### USAF Scientific Advisory Board Airlift Cross-Matrix Panel; Meeting

May 11, 1987.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel will meet at the 314th Tactical Airlift Wing, Little Rock Air Force Base, AK on June 8, 1987 from 8:00 a.m. to 5:00 p.m., at the 443rd Military Airlift Wing, Altus Air Force Base, OK on June 9, 1987 from 8:00 a.m. to 5:00 p.m., and at the 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM on June 10, 1987 from 8:00 a.m. to 5:00 p.m.

The purpose of these meetings is to review, discuss and evaluate the

effectiveness of training facilities and procedures being developed by the Air Force for combat operations.

These meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For futher information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Connor,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–11352 Filed 5–18–87; 8:45 am]

BILLING CODE 3910–01–M

## USAF Scientific Advisory Board Committee on Software Expertise and Ada; Meetings Closed

May 11, 1987.

The USAF Scientific Advisory Board Committee on Software Expertise and Ada will conduct closed meetings at the Sacramento Air Logistics Center, McClellan Air Force Base, CA on June 11, 1987 from 8:00 a.m. to 5:00 p.m. and at Space Division, Los Angeles Air Force Station, CA on June 12, 1987 from 8:00 a.m. to 5:00 p.m.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air Force and the success of implementing the Ada computer language on aircraft and space systems.

These meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Connor,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–11350 Filed 5–18–87; 8:45 am]

BILLING CODE 3910–01–M

## USAF Scientific Advisory Board Electronic Systems Division Advisory Group; Closed Meeting

May 11, 1987.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will conduct closed meetings at the Command Management Center, Hanscom Air Force Base, Bedford, MA on June 30, 1987 from 8:00 a.m. to 5:00 p.m. and on July 1, 1987 from 8:00 a.m. to 1:00 p.m.

The purpose of this meeting is to review, discuss and evaluate software capabilities, image processing systems, strategic defense battle management/C3 testbed, E–3 improvements, Joint Tactical Information Distribution System, Joint Surveillance Target Attack Radar System, Universal Modem, and WWMCCS Information System.

This meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Connor,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–11351 Filed 5–18–87; 8:45 am]

BILLING CODE 3910–01–M

## DEPARTMENT OF EDUCATION

[CFDA No. 84.199]

## Applications for a New Award Under the National Assessment of Educational Progress (NAEP) Program for FY 1988; Invitation

*Purpose:* Provide a grant to a nonprofit educational organization to conduct the biennial NAEP assessment during the 1987–88 school year and to analyze and report the results of this assessment; to develop the objectives and exercises for the assessment to be conducted during the 1989–90 school year; and, if adequate funding is available, to design, with the States' participation, an assessment to provide comparable data for each State. This grant does not include the conduct of either the 1989–90 biennial assessment or the State comparable assessment of one subject area.

*Deadline for transmittal of applications:* July 6, 1987.

*Applications available:* May 22, 1987.

*Available funds:* $50,000 (fiscal year 1987 appropriation). It is anticipated that up to $10,800,000 will be awarded during the 30-month project period.

*Estimated number of awards:* 1.

*Project period:* 30 months.

*Applicable regulations:* The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

*Weighting for selection criteria:* Educational Department General Administrative Regulations at 34 CFR 75.210(c) authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 75.210 to bring the total possible points to maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation: (§ 75.210 (b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

*Information conference:* An information conference for prospective applicants will be held on June 1, 1987, from 1:00 p.m. to 4:00 p.m. in Room 326, 555 New Jersey Avene NW., Capitol Place, Washington, DC 20208. Potential applicants who are unable to attend the information conference are invited to contact Eugene Owen for a written report of the conference.

*For applications or information contact:* Eugene Owen, U.S. Department of Education, 555 New Jersey Avenue NW., Room 306–C, Capitol Place, Washington, DC 20208 Telephone: (202) 357–6748.

Program authority: 20 U.S.C. 1221e.

*Dated:* May 14, 1987.

Chester E. Finn, Jr.,

*Assistant Secretary and Counselor to the Secretary.*

[FR Doc. 87–11423 Filed 5–18–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket Nos. RP82–80–024 and CP82–542–011]

## ANR Pipeline Co.; Compliance Filing

May 13, 1987.

Take notice that on April 29, 1987, ANR Pipeline Company (ANR) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 1–A, to become effective November 1, 1987. ANR states that the filing reflects compliance with the Commission's Opinion Nos. 258 and 258–A. The revised Tariff Sheets designated PRO FORMA are listed below:

**Original Volume No. 1**

Sheet No. 18
Sheet No. 20
Sheet No. 25
Sheet No. 79
Sheet No. 80
Sheet No. 80A
Sheet No. 111
Sheet No. 112
Sheet No. 113
Sheet No. 114

**Original Volume No. 1–A**

Sheet No. 5
Sheet No. 6
Sheet No. 7
Sheet No. 8.

ANR states that this filing is being made under protest, and with full

reservation of all rights relative to appeal of Opinion Nos. 258 and 258–A and any other lawful action relative to the subject matter. ANR has also stated that it has filed its appeal of Opinion Nos. 258 and 258–A to a Court of competent jurisdiction, and that it anticipates that aspects thereof will be set aside, and may be stayed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–11415 Filed 5–18–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket RP86–105–007 and RP86–169–004]

## ANR Pipeline Co.; Tariff Revision

May 13, 1987.

Take notice that on May 7, 1987, ANR Pipelien Company (ANR) tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following revised tariff sheets to Original Volume No. 1–A of its F.E.R.C. Gas Tariff.

Substitute First Revised Sheet No. 6
Substitute First Revised Sheet No. 13
Substitute First Revised Sheet No. 14
Original Sheet No. 14A
Substitute First Revised Sheet No. 35
Substitute First Revised Sheet No. 36
Original Sheet No. 36A
Substitute First Revised Sheet No. 54
Substitute First Revised Sheet No. 55
Substitute First Revised Sheet No. 56
Substitute First Revised Sheet No. 136

ANR states that on April 17, 1987 it indicated in the Public Hearings at Docket Nos. RP86–105–000 and RP86–169–000, that it would revise certain balancing provisions included in Original Volume No. 1–A of its F.E.R.C. Gas Tariff. Accordingly, the revised tariff sheets listed above have been submitted for filing. ANR further states that the above tariff sheets reflect only those revisions necessary to reflect the modified balancing provisions which ANR indicated it would submit for filing to the Commission during the proceeding at the captioned dockets.

ANR has requested an effective date of July 1, 1987 for these tariff sheets. ANR has served copies of this filing on all parties to the captioned proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–11414 Filed 5–18–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CI87–406–000]

## R. Lacy, Inc., et al.; Application for Abandonment and Pregranted Abandonment for Sales Under Small Producer Certificate

May 12, 1987.

Take notice that on April 13, 1987, as amended on April 23, and 30, 1987, R. Lacy, Inc., *et al.*[1] (Lacy) of P.O. Box 2146, Longview, Texas 25606 filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules. Lacy requests authorization to abandon sales to Natural Gas Pipeline Company of America (Natural) from the Carthage Field, Panola County, Texas. Lacy also requests pregranted abandonment for three years for sales of such gas under Lacy's small producer certificate in Docket No. CS72–250. Lacy states it is subject to substantially reduced takes without payment. The wells produce NGPA section 104 replacement contract and post-1974 gas and 108 gas. Deliverability is 2,800 Mcf/day. Lacy proposes to make sales of the subject gas in intrastate or interstate commerce.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 490 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–11411 Filed 5–18–87; 8:45 am]

BILLING CODE 6717–01–M

[1] The additional applicants are Sara Harding Deakins, Trustee; Jack E. Price Testamentary Trust; Madge S. Terrell; Ann Ferguson Williams; Ann Lacy Crain; Ann Lacy Crain, II; Bluford Walter Crain, III; Rogers Lacy Crain; Patsy Lacy Griffith (individually and as Trustee); Estate of A. O. Phillips, Shirley Phillips Mead Trust #1, Shirley Phillips Mead Trust #12, Michael Phillips Trust #5, and Pamela Phillips Trust #5 (Interfirst Bank Tyler, NA, Trustee); B. F. Phillips, Jr.; Wilson-Owens Production Company; Lois Crain Murphy; Lois J. Crain; John Edwin Lacy; Elizabeth Lacy Bond; Kathryn Lacy Keane; and W. H. Mitchell.

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[Docket No. CP86–701–003]

## Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Filing

May 13, 1987.

Take notice that on May 4, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing six copies of the following tariff sheets to its FERC Gas Tariff:

**Original Volume No. 2**

Second Revised Sheet Nos. 3, 6 and 9
First Revised Sheet Nos. 464 through 479
First Revised Sheet Nos. 923, 924, 927, 928, 929 and 945
Original Sheet Nos. 1848 through 1917
Original Sheet Nos. 1918 through 5000

Tennessee states that the purpose of these revised tariff sheets is to

implement new rate schedules for certain long-term transportation agreements that have received authorization in various proceedings before the Commission, to amend existing transportation rate schedules pursuant to Commission authorization, to provide notice of cancellation of Rate Schedule T-66, and to revise the Table of Contents and the Summary of Rates and Charges in Original Volume No. 2.

Tennessee states that copies of this filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11412 Filed 5-18-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. ER87-280-000, et al.]

## Electric Rate and Corporate Regulation Filings; American Electric Power Service Corp., et al.

May 12, 1987.

Take notice that the following filings have been made with the Commission:

### 1. American Electric Power Service Corp.

[Docket No. ER87-280-000]

Take notice that American Electric Power Service Corporation (AEP) on April 17, 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Comnpany, Ohio Power Company, and Wheeling Electric Company, which are all AEP affiliated operating subsidiaries, revisions to the cost support data previously submitted in this docket to take into account a federal tax rate of 34%.

Copies of this filing were served upon the Kentucky Public Service Commission, Public Service Commission of Indiana, Michigan Public Service Commission, Public Utilities Commission of Ohio, State Corporate Commission of Virginia, and Public Service Commission of West Virginia.

*Comment date:* May 28, 1987, in accordance with Standard Paregraph E at the end of this notice.

### 2. American Electric Power Service Corp.

[Docket No. ER87-281-000]

Take notice that American Electric Power Service Corporation (AEP) on April 17, 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Ohio Power Company, and Wheeling Electric Company, which are all AEP affiliated operating subsidiaries, revisions to the cost support data previously submitted in this docket to take into account a federal tax rate of 34%.

Copies of this filing were served upon the Public Utilities Commission of Ohio, State Corporate Commission of Virginia, and Public Service Commission of West Virginia.

*Comment date:* May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 3. American Electric Power Service Corp.

[Docket No. ER87-355-000]

Take notice that American Electric Power Service Corporation (AEP) on April 17, 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, and Ohio Power Company, which are all AEP affiliated operating subsidiaries, revisions to the cost support data previously submitted in this docket to take into account a federal tax rate of 34%.

Copies of this filing were served upon the Public Service Commission of Indiana, Michigan Public Service Commission, Public Utilities Commission of Ohio, State Corporate Commission of Virginia, and Public Service Commission of West Virginia.

*Comment date:* May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 4. Boston Edison Co.

[Docket No. ER87-423-000]

Take notice that on May 5, 1987, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Traffic, Originial Volume No. III, Non/Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, May 1, 1987.

Edison states that it has served the filing on Braintree Electric Light Department and the Massachusetts Department of Public Utilities.

*Comment date:* May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 5. Consolidated Edison Co. of New York, Inc.

[Docket No. ER87-421-000]

Take notice that on May 5, 1987, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, an agreement to provide interruptible transmission service to Atlantic City Electric Company ("Atlantic Electric"). The agreement provides for a change of 2.6 mills per kilowatthour for transmission of power purchased by Atlantic Electric from companies in the New England Power Pool.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of September 1, 1986.

Con Edison states that a copy of this filing has been served by mail upon Atlantic Electric.

*Comment date:* May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 6. The Dayton Power and Light Co. and the Ohio Edison Co.

[Docket No. ER 87-333-000]

Take notice that The Dayton Power and Light Company on May 7, 1987 tendered for filing, on its own behalf, and on behalf of The Ohio Edison Company, a revision to the Interconnection Agreement filed in this docket March 26, 1987. Specifically, DP&L has reduced the minimum charge associated with economy transactions.

This filing was served upon the Public Utilities Commission of Ohio.

*Comment date:* May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 7. Pacific Gas and Electric Co.

[Docket No. ER87-424-000]

Take notice that Pacific Gas and Electric Company (PGandE) tendered for filing, on May 6, 1987, the 1985 recorded cost of thermal capacity to be

used in calculating the Capacity Account repurchase rate that PGand E charges the Western Area Power Administration (Western) pursuant to Article 22(c)(1)(i) of Contract No. 14–06–200–2948A.

Copies of this filing were served upon Western and the California Public Utilities Commission.

*Comment date:* May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

**8. Southern California Edison Co.**

[Docket No. ER87–422–000]

Take notice that, on May 5, 1987, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, the following Agreement, which has been executed by Edison and the City of Anaheim, California ("Anaheim").

Edison-Anaheim Deseret Firm Transmission Service Agreement

Under the terms and conditions of the Agreement, Edison, will make available to Anaheim firm transmission service for its purchases of nonintegrated capacity and energy from Deseret Generation and Transmission Cooperative, Inc. ("Deseret") to the Point of Delivery at Lewis Substation, Anaheim, California.

The Agreement is proposed to become effective when executed by the Parties and accepted for filing by the Commission (without changes unacceptable to either party); and as such, Edison requests, to the extent necessary, waiver of notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Anaheim California.

*Comment date:* May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

**9. System Energy Resources, Inc.**

[Docket No. ER82–616–031]

Take notice that on April 17, 1987, System Energy Resources, Inc. (SERI) tendered for filing supplemental information with respect to the Nuclear Decommissioning Trust Fund Agreement which has been proposed for accumulation of money intended to compensate for SERI's share of anticipated decommissioning expenses for Unit 1 of its Grand Gulf Nuclear Electric Station.

*Comment date:* May 20, 1987, in accordance with Standard Paragraph E at the end of this document.

**10. Utilicorp United Inc.**

[Docket No. ES87–26–000]

Take notice that on April 29, 1987, UtiliCorp United Inc., pursuant to section 204 of the Federal Power Act, filed an application for authorization to issue 400,000 shares of common stock, par value $1.00 per share pursuant to its Savings Plan, 100,000 shares of its common stock, par value $1.00 per share pursuant to its 1986 Employee Stock Purchase Plan and 200,000 shares of its common stock, par value $1.00 per share pursuant to its Dividend Reinvestment and Stock Purchase Plan. Utilicorp is requesting that the Commission grant authorization effective retroactive to April 1, 1987.

*Comment date:* May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**11. Utilicorp United Inc.**

[Docket No. ES87–27–000]

Take notice that on April 29, 1987, UtiliCorp United Inc., pursuant to section 204 of the Federal Power Act, filed an application for authorization to issue up to and including 300,000 shares of common stock, par value $1.00 per share, pursuant to a proposed two percent stock dividend based on the number of shares outstanding as the record date and requesting exemption from the competitive bidding requirements of the Commission's Regulations.

The securities will be issued pro rata on the basis of one new share for each fifty shares held for record. Should a shareholder have shares not evenly divisible by two, a fractional share cash payment will be made based on the closing price on the New York Stock Exchange at such record date.

*Comment date:* May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

**12. UtiliCorp United Inc.**

[Docket No. ES87–28–000]

Take notice that on April 29, 1987, UtiliCorp United Inc., pursuant to section 204 of the Federal Power Act, filed an application for authorization for UtiliCorp to issue common stock to holders of existing shares of common stock on a three for two basis, based on the number of shares outstanding as of the record date established by the Executive Committee of UtiliCorp and requesting exemption from the competitive bidding requirement of § 34.2 of the Commission's Regulations.

The securities will be issued pro rata on the basis of one additional share for each two shares held of record, such record date to be determined by UtiliCorp's Executive Committee after receipt of all regulatory approvals. Should a shareholder have shares not evenly divisible by two, a fractional share cash payment will be made based on the closing price on the New York Stock Exchange at such date to be fixed by the Executive Committee.

*Comment date:* May 28, 1987, in accordance with Standard Paragraph E at the end of this document.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant's parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–11400 Filed 5–18–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket Nos. CP86–408–002, et al.]

**Natural Gas Certificate Filings; Southern Natural Gas Co., et al.**

May 12, 1987.

Take notice that the following filings have been made with the Commission:

**1. Southern Natural Gas Co.**

[Docket No. CP86–408–002]

Take notice that on April 27, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–408–002 a petition pursuant to section 7(c) of the Natural Gas Act to further amend the certificate issued in Docket No. CP86–408–000, so as to permit Southern to increase the currently authorized transportation volume for Atlanta Gas Light Company (Atlanta) and to extend the authorized transporation term for such services, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

Southern proposes in Docket No. CP86-406-002 to increase the volumes of gas transported on an interruptible basis for Atlanta, acting as agency for Anglo-American Clays Corporation (Anglo-American), from 4,700 MMBtu per day to 12,000 MMBtu per day. It is stated that Anglo-American has arranged to obtain additional sources of gas and has requested that Southern add these volumes to those presently authorized for transportation. In addition, Southern proposes to extend the term of the transporation service to October 31, 1988. It is stated that this extension would permit Southern to continue to transport gas for Anglo-American beyond the October 31, 1987, termination date authorized in Docket No. CP86-406-001. It is asserted that the proposed extension of the transportation term is consistent with Southern's policy statement filed in Docket Nos. CP86-277-001, *et al.* Southern further states it will receive take-or-pay relief on gas Anglo-American may receive from its suppliers.

*Comment date:* June 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

**2. Southern Natural Gas Co.**

[Docket Nos. CP86-400-002 and CP86-467-002]

Take notice that on April 23, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563 filed in Docket Nos. CP86-400-002 and CP86-467-002 petitions pursuant to section 7(c) of the Natural Gas Act to further amend the certificates issued in Docket Nos. CP86-400-000 and CP86-467-000, so as to permit Southern to increase the currently authorized transportation volume and, in Docket No. CP86-467-002, to extend the authorized transportation term, all as more fully set forth in the petitions which are on file with the Commission and open to public inspection.

Southern requests authorization in Docket No. CP86-400-002 to increase the volumes of interruptible natural gas transported by Southern for Engelhard Corporation (Engelhard), with Atlanta Gas Light Company acting as agent, from 20,000 MMBtu of gas per day to 30,000 MMBtu of gas per day, for a limited term ending October 31, 1988. It is stated that Engelhard had obtained additional gas supplies and has requested that Southern add these volumes to those presently authorized for transportation. Southern further states it will receive take-or-pay relief on gas Engelhard may receive from its suppliers.

Southern requests authorization in Docket No. CP86-467-002 to increase the volumes of natural gas transported on an interruptible basis by Southern for the City of Austell Natural Gas System (Austell) from 6,500 MMBtu of gas per day to 20,000 MMBtu of gas per day, for a limited term ending October 31, 1988. It is stated that Austell has arranged to obtain additional gas supplies and has requested that Southern add these volumes to those presently authorized for transportation. It is explained that both Engelhard and Austell have arranged to obtain the additional gas supplies in order to gain access to more competitively priced gas. Southern further states it will receive take-or-pay relief on gas Austell may obtain from its suppliers.

In Docket No. CP86-467-002 Southern also requests authorization to amend the certificate by extending the transportation term to October 31, 1988, in order that Southern may continue to transport gas for Austell beyond the October 31, 1987, termination date authorized in Docket No. CP86-467-001. It is asserted that the proposed extension of the transportation term is consistent with Southern's policy statement filed in Docket Nos. CP-86-277-001, *et al.*

*Comment date:* June 2, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**Standard Paragraph**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10) All protests filed with the Commission will be considered by it in detemining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motin to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-11413 Filed 5-18-87; 8:45 am]
BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 3263-4]

**Fuels and Fuel Additives**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency has reconsidered a portion of a fuel waiver granted under section 211(f) of the Clean Air Act to E. I. DuPont de Nemours and Company, Inc. (DuPont) on January 10, 1985. This waiver was previously reconsidered and modified on October 31, 1986 (51 FR 39800). Today's notice approves the use of an alternative corrosion inhibitor, DMA-67, in DuPont's gasoline-alcohol fuel.

**ADDRESS:** Copies of the information relative to this notice are available for inspection in public docket FN-84-06 at the Central Docket Section (LE-131A) of EPA, Gallery 1—West Tower, 401 M Street SW., Washington, DC 20460, (202) 382-7548, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying materials in the docket.

**FOR FURTHER INFORMATION CONTACT:** Sylvia L. Correa, Attorney/Advisor, Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2635.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 211(f)(1) of the Clean Air Act (Act), 42 U.S.C. 7545(f)(1), states that effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce

into commerce or to increase the concentration in use of any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4), provides that the Administrator of EPA, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under section 211(f)(1), if the Administrator determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, or the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny an application within 180 days of receipt of the application, the waiver authorized by section 211(f)(4) shall be treated as granted.

DuPont submitted a waiver application for a gasoline-alcohol blend on July 16, 1984. On January 10, 1985, the Administrator granted the waiver, subect to certain conditions. 50 FR 2615. On March 18, 1985, the Oxygenated Fuels Association (OFA), on behalf of its member companies, filed petitions for reconsideration. On April 22, 1986 (51 FR 15064), EPA granted OFA's petition for reconsideration and, on October 31, 1986 (51 FR 39800), EPA decided to rescind one condition of the waiver and to modify certain other conditions.

One of the conditions that was modified concerned which corrosion inhibitor formulation could be used in the waived fuel. In that notice, EPA allowed the use of corrosion inhibitor, Petrolite's TOLAD MFA–10, as an alternative to the inhibitor originally allowed under the waiver (DuPont's DGOI–100). At the same time, EPA invited other corrosion inhibitor manufacturers to submit test data to the Agency to establish, on a case-by-case basis, whether their formulations are environmentally acceptable.

On November 13, 1986, DuPont requested that EPA allow the use of its corrosion inhibitor, DMA–67, in its gasoline-alcohol fuel blend which otherwise would not be allowed under the waiver. DMA–67 is a formulation consisting of a corrosion inhibitor and a carburetor detergent. The physical properties of DMA–67 are shown in Table 1 in the DuPont Docket (EN–84–06), document no. VIII–A–3.

On March 31, 1987, EPA published a notice in the **Federal Register** (52 FR 10261) announcing receipt of DuPont's request and inviting comment on it. The comment period closed on April 30, 1987.

## II. Discussion

One of the major areas of concern to EPA in reviewing any waiver request is the problem of materials compatibility. Materials compatibility date could show a potential failure of fuel systems, emissions-related parts and emission control parts from use of the fuel of additive. Any failure could result in greater emissions.

Initially, DuPont had requested the use of DGOI–100 or its equivalent in the final fuel. However, at that time the Agency had no measure of equivalency that could be used to test other corrosion inhibitors. The Agency decided, therefore, to look at corrosion inhibitors on a case-by-case basis to establish whether each formulation was environmentally acceptable. Subsequently, EPA did recise the waiver to allow the use of Tolad MFA–10 as an alternative to DGOI–100.

DuPont has submitted information demonstrating that DMA–67 has the same level of corrosion inhibitor and carburetor detergent as was used in its original 50,000-mile waiver test data. The principal ingredient of both DMA–67 and DGOI–100 relative to vehicle emissions in DuPont's DMA–54. DMA–54 is a widely used carburetor detergent in the United States.

The principal ingredient of both DMA–67 and DGOI–100 relative to corrosion inhibition is DCI–11. DCI–11 is currently used in over 80 percent of the fuel grade ethanol in the United States. It was specifically designed to provide corrosion protection to gasoline-alcohol blends.

In order to determine whether the DuPont waiver would meet the criteria of section 211(f)(4) DMA–67 is used as an inhibitor, EPA reviewed all data submitted with the application. No comments regarding DMA–67 have been received at this time.

## III. Finding and Conclusion

Based on the information submitted by DuPont in its application, I conclude that DMA–67 is comparable to DGOI–100 and TOLAD MFA–10. Therefore, I am modifying condition (3) of the waiver to read as follows:

(3) Any one of the following three corrosion inhibitor formulations must be included:

(a) DuPont's proprietary corrosion inhibitor formulation, DGOI–100, blended in the final fuel at 41.2 milligrams per liter (mg/1); OR.

(b) Petrolite's corrosion inhibitor formulation, TOLAD MFA–10, blended in the final fuel at 42.7 mg/1; OR

(c) DuPont's corrosion inhibitor formulation, DMA–67, blended in the final fuel at 31.4 mg/1.

This should provide additional flexibility to manufacturers wishing to produce the DuPont blend. Since EPA is still unaware of any single test which assure the environmental compatibility of an inhibitor, the Agency will continue to examine the emissions impact of any specific future corrosion inhibitor formulation on a case-by-case basis.

## IV. Miscellaneous

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act of other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

This is a final Agency action of national applicability. Jurisdiction to review the action lies exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of the date of publication of this notice. Under section 307(b)(2), judicial review may not be obtained in any subsequent judicial proceeding brought by the Agency to enforce the statutory prohibitions.

Dated: May 13, 1987.

**Lee M. Thomas,**

*Administrator.*

[FR Doc. 87–11408 Filed 5–18–87; 8:45 am]

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[PF–482; FRL: 2204–1]

## Pesticide Tolerance Petition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice amends a pesticide petition by Ciba-Geigy Corp. proposing tolerances for the combined residues of the fungicide 1-[[2-]2,4-dichlorophenyl]-4-propyl-1, 3-dioxolan-2-yl]-methyl[1*H*1, 2, 4-triazole and its metabolites, determined as 2, 4-dichlorobenzoic acid and expressed as the parent compound, in or on certain agricultural commodities. The amendment proposed to increase tolerance levels and proposes additional tolerances on certain commodities.

**ADDRESS:** By mail, submit comments identified by the document control number [PF-482] at the following address:

Information Services Section (TS-757C) (Attn: Product Manager (PM-21)), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to:

Information Services Section (TS-757C), Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Lois Rossi, PM-21, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the Federal Register of May 23, 1984 (49 FR 21796), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, submitted pesticide petition 4F3074 to EPA proposing tolerances for the fungicide 1-[[2-]2,4-dichlorophenyl]-4-propyl-1, 3-dioxolan-2-yl]-methyl[1*H*1, 2, 4-triazole and its metabolites, determined as 2, 4-dichlorobenzoic acid and expressed as the parent compound, in or on certain agricultural commodities. Ciba-Geigy Corp. has amended the petition as follows:

1. By increasing the tolerance levels for the kidney and liver of cattle, goats, hogs, horses, poultry, and sheep from 0.1 part per million (ppm) to 0.2 ppm.

2. By adding tolerances for fat, meat, and meat byproducts (except kidney and liver) of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm; eggs at 0.1 ppm; and milk at 0.05 ppm.

The proposed analytical method for determining residues is gas liquid chromatograph equipped with an electron capture detector.

Authority: 21 U.S.C. 346a.

Dated: May 15, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division Office of Pesticide Programs.*

[FR Doc. 87-11490 Filed 5-18-87; 8:45 am]

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**[OPTS-42060B; FRL 3203-6]**

## Testing Consent Agreement Development for Chemical Subatances Under TSCA Section 4; Solicitation for Public Participation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA issued a proposed test rule on three triethylene glycol ethers (triethylene glycol monomethyl ether, CAS No. 112-35-6; triethylene glycol monoethyl ether, CAS No. 112-50-5; triethylene glycol monobutyl ether, CAS No. 143-22-6) published in the Federal Register of May 15, 1986 (51 FR 17883). The Agency is considering a testing consent agreement for these three chemicals and is soliciting public participation in the process. EPA invites persons interested in becoming involved in or monitoring negotiations for the development of a consent agreement to identify themselves as "interested parties". A public meeting is announced to discuss the Agency's consideration of a testing consent agreement for these chemicals.

**DATES:** Submit written notice of interest to be designated an "interested party" on or before June 8, 1987. A public meeting will be held on May 28, 1987.

**ADDRESS:** Submit written notice of interest in being designated an "interested party" in triplicate identified by the document control number [OPTS-42060B] to:

TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street, SW., Washington, DC 20460, (202) 554-1404.

Persons interested in attending the public meeting should notify EPA by telephone before May 26, 1987.

**SUPPLEMENTARY INFORMATION:** EPA has issued amendments to the procedural regulations in 40 CFR Part 790, which govern the development and implementation of testing requirements under section 4 of TSCA. These amendments establish procedures for using enforceable consent agreements to develop testing requirements under section 4 of the Act. This notice serves three purposes under those procedures. First, it announces a public meeting to initiate testing negotiations for the chemicals. Second, it requests "interested parties", who wish to participate in testing negotiations for the three triethylene glycol ethers proposed for testing by EPA, to identify themselves to the Agency. Third, it proposes a target schedule for implementation of the consent agreement process for the chemicals under consideration.

### I. Identification of Interested Parties

Under 40 CFR 790.22 the testing negotiation procedures are initiated by the publication of a Federal Register notice which invites persons interested in participating in or monitoring negotiations for the development of a consent agreement to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties". The procedures for these negotiations are described in 40 CFR 790.22.

Individuals and groups desiring to have the status of "interested parties" in the development of testing consent agreements for the three triethylene glycol ethers should submit a written notice of this fact to the Agency at the address given above on or before June 8,

1987. The Agency is considering initiating the consent agreement process rather than finalizing the proposed rule for these chemicals because EPA believes the consent agreement process will lead to the development of necessary test data significantly earlier.

The Agency has not previously applied the consent order process to chemicals for which testing has already been proposed, but in this instance an exception is being made because: (1) The Interim Final Rule on consent order procedures was published after the proposed rule on the triethylene glycol ethers, and (2) an industry group approached EPA with some testing in progress and plans for further studies. EPA would like to examine this proposal in the context of a testing consent order.

### II. Public Meetings

A public meeting will be held to discuss EPA's evaluation of testing needs for these chemicals and industry's proposal on May 28, 1987 at 1:30 p.m. This meeting will be held in Room 103, Northeast Mall, EPA Headquarters, 401 M Street, SW., Washington, DC 20460. Persons interested in attending this meeting should notify the EPA TSCA Assistance Office by telephone at the telephone number listed above on or before May 26, 1987.

### III. Timetable for Negotiating Consent Agreements

In accordance with the procedures for the development of consent agreements established in 40 CFR 790.22, the following target schedule is established for the three triethylene glycol ethers. EPA has shortened the negotiating time for these chemicals because: (1) The process is beginning after the proposal, and (2) an industry group has already come together and been able to agree on some joint testing.

May 28, 1987—Public meeting to discuss EPA's preliminary testing decisions.

June 8, 1987—Deadline for the notice of interested party designation.

June 19, 1987—Decision by EPA on whether to use consent order or finalize test rule.

July 13, 1987—Draft consent order sent to interested parties for comment (if EPA decides to use the consent order).

October 5, 1987—Issue consent order.

Dated: May 14, 1987.

J. Mereanda,

*Director, Existing Chemical Assessment Division.*

[FR Doc. 87-11476 Filed 5-18-87; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidated Hearing; Thaddeus Bishop et al.; Correction

On April 23, 1987, the Commission published two Notices regarding Applications for Consolidated Hearing involving Thaddeus Bishop, et al. The first Notice is corrected by changing the MM Docket No., at the top of page 13517, in the last column, from 87-82 to 87-83. The second Notice is corrected by changing the MM Docket No., in the middle of page 13517, in the last column, from 87-83 to 87-86.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-11366 Filed 5-18-87; 8:45 am]

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[Report No. 1658]

### Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 11, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed May 19, 1987. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing opposition has expired.

Subject: Revision and Update of Part 22 of the Public Mobile Radio Service Rules. (CC Docket No. 80-57) Number of petitions received: 2.

Subject: Implementation and Scope of the International Settlements Policy for Parallel International Communications Routes. (CC Docket No. 85-204) Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Livingston, Texas) (MM Docket No. 86-268, RM-5285) Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-11375 Filed 5-18-87; 8:45 am]

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[MM Docket No. 86-484; FCC 87-113]

### Comparative Licensing, Distress Sales and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications; Order

**AGENCY:** Federal Communications Commission.

**ACTION:** Order.

**SUMMARY:** This action modifies one aspect of the Commission's *Notice of Inquiry*, 52 FR 596 (January 7, 1987), to provide that in comparative licensing cases in which a racial, ethnic, or gender-based enhancement credit is dispositive: (1) Initial decisions will issue and will make alternative findings as to the successful applicants if the subject credit is allowed or disallowed; (2) appeal of an initial decision can be taken and decided by the Commission's Review Board or the Commission itself; and (3) final decisions will be held in abeyance pending the conclusion of the Commission's general inquiry only if the enhancement credit is held to be dispositive and the case is no longer subject to appeal. This action is taken to avoid unnecessary delay of comparative licensing cases and to expedite provision of radio and television service to the public.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is the complete text of the Commission's *Order* in MM Docket No. 86-484, adopted April 7, 1987, and released April 22, 1987.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-11374 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Information Collection Submitted to OMB For Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

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Title of Information Collection: Quarterly Report of Pledged Assets (OMB No. 3064–0010).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

**ADDRESS:** Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

**COMMENTS:** Comments on this collection of information should be submitted on or before June 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3810.

**SUMMARY:** The FDIC is requesting OMB approval to extend, for a three-year period, the Quarterly Report of Pledged Assets information collection system. The current clearance for this information collection expires on July 31, 1987. There is no change in the method or substance of the collection. The information collection requirements are contained in 12 CFR Part 346 of FDIC's rules and regulations.

Reports of pledged assets are submitted to the FDIC by insured U.S. branches of foreign banks and by the depositories holding the pledged assets. The purpose of the pledge of assets is to provide protection to the deposit insurance fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. The provision for the pledge of assets by an insured U.S.-based branch of a foreign branch is contained in section 5(c) of the Federal Deposit Insurance Act (12 U.S.C. 1815(c)). While no form is prescribed for the reporting, the items of information to be furnished are prescribed in § 346.19(e) of 12 CFR Part 346. The FDIC requires the reporting to verify that foreign banks are in compliance with the statute and FDIC's regulation. It is estimated that the reporting creates an annual burden of 132 hours on the respondents collectively.

Dated: May 13, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 87–11342 Filed 5–18–87; 8:45 am]

BILLING CODE 6714–01–M

## Request for Comments on Proposed Guidelines Regarding Bank Bribery Law

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Request for comments on proposed guidelines.

**SUMMARY:** The Bank Bribery Amendments Act of 1985 requires that Federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institution officials in complying with this law. The proposed guidelines were developed by the Interagency Bank Fraud Working Group. The guidelines proposed by the Federal Deposit Insurance Corporation ("FDIC") encourage all FDIC-insured state-chartered banks that are not members of the Federal Reserve System and all FDIC-insured state-licensed branches of foreign banks to adopt codes of conduct that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the FDIC, do not constitute violations of the Federal bank bribery law.

**DATE:** Comments must be received on or before July 20, 1987.

**ADDRESS:** Comments regarding the proposed guidelines should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or delivered to Room 6108 at the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days. Comments will be available for photocopying and inspection between 9:00 a.m. and 5:00 p.m. on business days at the Office of the Executive Secretary.

**FOR FURTHER INFORMATION CONTACT:** James R. Dudine, Chief, Special Activities Section, Division of Bank Supervision (202–898–6750), or Ronald R. Glancz, Assistant General Counsel, Legal Division (202–898–7266), 550 17th Street, NW., Washington, DC 20429.

### Guidelines on Bank Bribery Law

*Background*

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473, Title 11, October 12, 1984) amended the Federal bank bribery law, 18 U.S.C. Section 214, to prohibit employees, offices, directors, agents and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. The amended law also prohibited anyone from offering or giving anything of value to employees, officers, directors, agents or attorneys of financial institutions for or in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under section 215, and indicated that cases to be considered for prosecution under the new bribery law entail breaches of fiduciary duty or dishonest efforts to undermine financial institution transactions. Because the statute was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift giving or entertaining that does not involve a breach of fidiciary duty or dishonesty.

Congress decided that the broad scope of the statute provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99–370, August 4, 1986) to narrow the scope of 18 U.S.C. section 215 by adding a new element, namely, an intent to corruptly influence or reward an office in connection with financial institution business. As amended, section 215 provides in pertinent part:

Whoever—

(1) Corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) As an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be [guilty of an offense]

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. This exception is set forth in subsection 215(c).

The penalty for violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds $100, the offense is a felony

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punishable by up to five years imprisonment and a fine of $5,000 or three times the value of the bribe or gratuity. If the value does not exceed $100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of $1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents and attorneys of financial institutions in complying with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to, but not dispositive of, any prosecutorial decision the Department of Justice may make in any particular case. 132 Cong. Rec. 5944 (daily ed. Feb. 4, 1986). Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standard set forth in the statute. Nonetheless, in adopting its own prosecution policy under the bank bribery statute, the Department of Justice can be expected to take into account the appropriate financial institution regulatory agencies' expertise and judgment in defining those activities or practices that the agencies believe do not undermine the duty of an employee, officer, director, agent or attorney to the financial institution. *United States Attorneys' Manual* section 9–40.439.

*Proposed Guidelines*

The proposed guidelines encourage all FDIC-insured state-chartered banks that are not members of the Federal Reserve System and all FDIC-insured State-licensed branches of Foreign banks ("insured state nonmember banks") to adopt internal codes of conduct or written policies or to amend their present codes of conduct to include provisions that explain the general prohibitions of the bank bribery law. The proposed guidelines relate only to the bribery law and do not address other areas of conduct that an insured state nonmember bank would find advisable to cover in its code of ethics. The code should, consistent with the statute, prohibit any employee, officer, director, agent or attorney of an insured state nonmember bank (hereinafter "Bank Official(s)") from (1) Soliciting for themselves or for a thrid party (other than the bank itself) anything of value from anyone in return for any business, service or confidential information of the bank and (2) accepting anything of value (other than normal authorized compensation) from anyone in connection with the business of the bank either before or after a transaction is discussed or consummated.

The insured state nonmember bank's codes or policies should be designed to alert Bank Officials about the bank bribery statute, as well as to establish and enforce written policies on acceptable business practices.

In its code of conduct, the insured state nonmember bank may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with bank business. There are a number of instances where a Bank Official, without risk of corruption or breach of trust, may accept something of value from one doing or seeking to do business with the insured State nonmember bank. The most common examples are the business luncheon or the special occasion gift from a customer. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the Bank Official; or if the benefit would be paid for by the insured state nonmember bank as a reasonable business expense if not paid for by another party. Indeed, by adopting a code of conduct with appropriate allowances for such circumstances, an insured State nonmember bank recognizes that acceptance of certain benefits by its Bank Officials does not amount to a corrupting influence on the bank's transactions.

In issuing guidance under this statute in the area of business purpose entertainment or gifts, it is not advisable for the FDIC to establish rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. An insured State nonmember bank should seek to embody the highest ethical standards in its code of conduct. In doing this, an insured state nonmember bank may establish in its own code of conduct a range of dollar values which covers the various benefits that its Bank Officials may receive from those doing or seeking to do business with the bank.

The code of conduct should provide that, if a Bank Official is offered, receives, or anticipates receiving something of value from a customer beyond what is expressly authorized in the bank's code of conduct or written policy, the Bank Official must disclose that fact to an appropriately designated official of the bank. The insured state nonmember bank should keep contemporaneous written reports of such disclosures. An effective reporting and review mechanism should serve to prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the insured State nonmember bank to better protect itself from self-dealing. However, a Bank Official's full disclosure evidences good faith only when such disclosure is made in the context of properly exercised supervision and control. Thus, the prohibitions of the bank bribery statute cannot be avoided by simply reporting to management the acceptance of various gifts unless management reviews the disclosures and determines that what is accepted is reasonable and does not pose a threat to the integrity of the insured State nonmember bank.

The FDIC recognizes that a serious threat to the integrity of an insured State nonmember bank occurs when its Bank Officials become involved in outside business interests or employment that gives rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, insured State nonmember banks are encouraged to prohibit, in their codes of conduct or policies, their Bank Officials fromn self-dealing or otherwise trading on their positions with the bank or accepting from doing or seeking to do business with the bank a business opportunity not generally available to the public. In this regard, an insured State nonmember bank's code of conduct or policy should require that its Bank Officials disclose all potential conflicts of interest, including those in which they have been inadvertenly placed due to either business or personal relationship with customers, suppliers, business associates, or competitors of the bank.

*Exceptions*

In its code of conduct or written policy, an insured State nonmember bank may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with bank business. These exceptions may include those that:

(a) Permit the acceptance of gifts, gratuities, amenities or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a Bank Official) where the circumstances make it clear that it is those relationships rather than the businees of the bank concerned which are the motivating factors;

(b) Permit acceptance of meals, refreshments or entertainment of reasonable value in the course of a

meeting or other occasion the purpose of which is to hold bona fide business discussions (the bank may establish a specific dollar limit for such an occasion);

(c) Permit acceptance of loans from other banks or financial institutions on customary terms to finance proper and usual activities of Bank officials, such as home mortage loans, except where prohibited by law;

(d) Permit acceptance of advertising or promotional material of nominal value, such as pens, pencils, note pads, key chains, calendars and similar items;

(e) Permit acceptance of discounts or rebates on merchandise or services that do not exceed those available to other customers;

(f) Permit acceptance of gifts of modest value that are related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, holiday or birthday (the bank may establish a specific dollar limit for such an occasion); or

(g) Permit the acceptance of civic, charitable, educational, or religious organization awards for recognition of service and accomplishment (the bank may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case by case basis, an insured state nonmember bank may approve of other circumstances, not identified above, in which a Bank Official accepts something of value in connection with bank business, *Provided That* such approval is made in writing on the baiss of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

*Disclosures and Reports*

To make effective use of these guidelines, the FDIC recommends the following additional procedures:

(a) The insured state nonmember bank should maintain a copy of any code of conduct or written policy it establishes for its Bank Officials, including any modifications thereof;

(b) The insured state nonmember bank should require periodic written acknowledgement from its Bank Officials of its code or policy and the Bank Officials' agreement to comply therewith; and

(c) The insured State nonmember bank should maintain contemporaneous written reports of any disclosures made by its Bank Officials in connection with a code of conduct *or* written policy.

By Order of the Board of Directors, this 12th day of May, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 87-11343 Filed 5-18-87; 8:45 am]

BILLING CODE 6714-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-790-DR]

### Massachusetts; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of Massachusetts (FEMA-790-DR), dated April 18, 1987, and related determinations.

**DATED:** May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the Commonwealth of Massachusetts, dated April 18, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 18, 1987:

The communities of Ashby and Billerica in Middlesex County; Hubbardston, Phillipston, and Warren in Worcester County; Georgetown, Hamilton, Manchester, Methuen, Middleton, Newbury, Rowley, Topsfield, Amesbury, and Boxford in Essex County; and Blandford, Chester, and Granville in Hampden County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

*Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 87-11345 Filed 5-18-87; 8:45 am]

BILLING CODE 6718-02-M

### Anti-Arson Program; Solicitation for Award of Cooperative Agreement

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice of solicitation for award of cooperative agreement.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Fire Prevention and Control Act of 1974, will issue a Request for Assistance (RFA) No. EMW-87-S-2561 on May 29, 1987, regarding the design and implementation of anti-arson strategy program for Community-Based Anti-Arson Programs. This program is limited to Community-Based Organizations.

The purpose of this assistance is to focus on nationwide efforts to reduce the number of arson related fires that occur every year throughout this country.

Some broad objectives of this program are:

- To encourage neighborhood involvement in reducing arson fires through new and innnovative broad spectrum programs.
- To expand the neighborhood involvement to a community-wide participation in fighting arson.
- To make information available to other neighborhoods and communities regarding successful programs.
- To increase the cooperation between neighborhood residents, community groups and public service organizations such as fire, police, building and code departments.
- To build a comprehensive community anti-arson program.

Applications for assistance must be requested in writing and addressed as follows: Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street, SW., Room 728, Washington, DC 20472, ATTN: Mark Russell, Contract Specialist.

Request for Assistance No. EMW-87-S-2561.

Please include a self-addressed mailing label with the request.

Cooperative Agreements are anticipated to be awarded as a result of this request for assistance. It is anticipated that a minumum of five (5) and a maximum of thirty (30) assistance awards will be made. The anticipated funding levels of this program are between $5,000.00 to $25,000.00 based on the criteria shown in Attachment C of the solicitation package.

Joseph A. Pegnato,

*Acting Director, Office of Acquisition Management.*

May 4, 1987.

[FR Doc. 87-11346 Filed 5-18-87; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 17]

### Rates, Charges and Services Provided at Marine Terminal Facilities; Order of Investigation

May 14, 1987.

On September 5, 1985, International Transporation Service, Inc. (ITS), a marine terminal operator (MTO), filed a petition for declaratory order on the issue of whether a lump-sum charge to an ocean carrier for wharfage, dockage, and stevedoring would have to be filed with the Commission. In a subsequently filed "Supplemental Statement Regarding Facts and Grounds Prompting the Petition" ITS outlined certain practices that have developed in the MOT industry which prompted it to file the petition. The Commission, on April 4, 1986, denied the petition on procedural grounds but in so doing noted that an MTO's charges for terminal services must be set forth in a tariff or an agreement on file with the Commission. The Commission further advised that it wold initiate an informal investigation into MTO practices to ensure compliance with the shipping statutes and the Commission's regulations.

As a result of this informal inquiry, the Commission has learned that a widespread practice appears to have developed in the MTO industry whereby MTOs are providing services to ocean carriers pursuant to negotiated agreements which may be required to be filed with the Commissin but which have not been so filed. As there appeared to be industry-wide uncertainty regarding the applicable filing requirements and in order to encourge compliance with these requirements, the Commission determined to waive the assessment of penalties for previously implemented but unfiled terminal service agreements if submitted to the Commission within 120 days of the Commission's Notice. Notice of Waiver of Penalties, 51 FR 23154 (June 25, 1986) (June Notice).

A number of terminal service agreements were filed with the Commission in apparent response to the June Notice. The Commission also received numerous requests for clarification of its filing requirements and expressions of concern as to their commerical impact and regulatory necessity. In addition several marine terminal/stevedore associations filed petitions seeking either an enlargement of time to comply with the Commission's requirements or exemption from these requirements pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715 or section 35 of the Shipping Act, 1916, U.S.C. app. 833(a).[1] As a result of these communications, the Commission extended indefinitely the waiver of penalties provided by the June Notice. Supplemental Notice of Waiver of Penalties, 51 FR 36755 (October 15, 1986) (October Notice).[2]

One of the primary reasons given by MTOs or their associations for the uncertainty regarding the Commission's filing requirements is the maritime industry's transition from breakbulk carriage to containerized and Ro-Ro operations. As a result of this technological development, the traditional line demarcation between MTOs and stevedores has allegedly become blurred. stevedores which has not heretofore been regulated by the Commission, are said to have gegun to offer services other than physically moving cargoes an and off vessels. Consequently, we are advised that stevedoring/MTO agreements oftern provide for a combination of terminal and stevedoring or other services and that it is difficult, allegedly, to distinguish in which category a particular service would fall and whether it would be subject to the Commission's jurisdiction and, in particular, its filing requirements.

Because of this difficulty in distinguishing the various services, certain MTOs/stevedores view the Commission's filing requirements as unduly burdensome. Other have advised the Commission that their lump-sum all-inclusive rates are confidential commercial information which should not be subject to the Commission's filing requriements.

The Commission believes that a nonadjudicatory investigation initiated pursuant to Subpart R of its Rules of Practice and Procedure, 46 CFR 502.281, would be the most appropriate vehicle for examining the various issues arising from the Commission's June Notice and the responses received thereto. Given the absence of a factual record, and the industry-wide uncertainty regarding the Commission's requirements, a nonadversarial proceeding like that provided by Subpart R would appear to be the most appropriate vehicle for gathering information to facilitate the resolution the issues raised concerning the Commission's requirements.

Accordingly, the Commission is initiating a nonadjudicatory investigation and will appoint an Investigative Officer who will identify and make recommendations as to which services being furnished at terminal facilities, as well as the rates and charges therefor, should be classified as rates and services subject to the Commission's jurisdiction. In this connection, the Investigative Officer should determine the scope and impact of the Commission's filing requirements and assess the advisability of exempting certain kinds of services or the rates therefor from the Commission's filing requirements. This investigation shall also address such other matters as the Investigative Officer may determine to be relevant to the Commission's resolution of this matter.

*Therefore, It Is Ordered,* That pursuant to sections 11 and 12 of the Shipping Act of 1984, 46 U.S.C. app. 1710 and 1711; sections 22 and 27 of the Shipping Act, 1916, 46 U.S.C. app. 821 and 826; and Subpart R of Title 46 of the Code of Federal Regulations, 46 CFR 502.281, a nonadjudicatory investigation is hereby instituted into the furnishing of marine terminal facilities and services in connection with the transfer of cargo between an ocean common carrier, on the one hand, and a shipper or consignee or other means of transportation, on the other.

*It Is Further Ordered,* That the Investigative Officer shall be Commissioner Thomas F. Moakley of the Commission. The Investigative Officer shall direct the investigation and shall be assisted by such staff as may be assigned by the Commission's Managing Director;

The Investigative Officer shall have the full authority of the Commission to hold public or nonpublic sessions, to resort to all compulsory processes authorized by law (including the

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[1] The Commission received petitions or requests for clarification from the New York Terminal Conference, the Port of Philadephia Marine Terminal Association, Inc., the Traffic Board of the North Atlantic Ports Association, the Baltimore Marine Terminal Association, the New Orleans Steamship Association, Maher Terminals, Inc., West Gulf Maritime Association and the law firm of Lillick, McHose & Charles. In general, the parties urge the Commission to extend the waiver period until the Commission clarifies its filing requirements. They argue that the Commission's regulations do not clearly require the filing of agreements which provide for lump-sum rates for both terminal and stevedoring services. These parties further argue that it would be unduly burdensome to requise MTOs to segregate their terminal service rates from their stevedoring rates and to file the former with the Commission. In this connection, it is alleged that it is difficult, given modern technology, to categorize the services MTOs provide carriers. Accordingly, many MTOs urge the Commission to exempt terminal service agreements from its filing requirements.

Some of the petitions were held in abeyance in the October Notice. The Commission will now hold all of the various petitions or requests for clarification in abeyance pending its further Order.

[2] By a separate Order served this date, the Commission has further clarified the waiver of penalties for marine terminal service agreements.

issuance of subpoenas), to administer oaths and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission;

*It Is Further Ordered,* That any person having an interest and desiring to participate in this proceeding, shall file a statement with the Investigative Officer, describing its interest on or before June 15, 1987;

*It Is Further Ordered,* That the Investigative Officer shall issue to the Commission interim progress reports at least every three months, and a final report of findings and recommendations no later than one year after publication of this Order in the **Federal Register** all such reports to remain confidential unless and until the Commission rules otherwise; and

*It Is Further Ordered,* That Notice of this Order be published in the **Federal Register.**

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-11362 Filed 5-18-87; 8:45 am]

BILLING CODE 6730-01-M

## Marine Terminal Service Agreements

May 14, 1987.

**AGENCY:** Federal Maritime Commission.

**ACTION:** Second supplemental notice of waiver of penalties.

**SUMMARY:** This Second Supplemental Notice clarifies that the Commission's waiver of the assessment of penalties under the Shipping Act, 1916, and the Shipping Act of 1984 for pre-filing implementation of marine terminal service agreements: (1) Applies only to marine terminal service agreements, and not to leases, licenses, assignments, or other agreements of a similar nature for the use of marine terminal property; (2) extends to penalties which could otherwise be assessed for failure to file the rates and charges set forth in such terminal service agreements in a marine terminal tariff; and (3) encompasses marine terminal agreements entered into after June 25, 1986.

**DATE:** May 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

**SUPPLEMENTARY INFORMATION:** On October 15, 1986, the Commission published in the **Federal Register** (51 FR 36755) a Supplemental Notice of Waiver of Penalties (October Notice), which extended indefinitely its June 25, 1986 Notice of Waiver of Penalties (June Notice) (51 FR 23154) concerning the pre-filing implementation of marine terminal service agreements.

The October Notice stated that the Commission was extending until further notice its waiver of penalties for terminal service agreements pending a formal study to determine the scope and impact of the Commission's filing requirement. The Commission also intended to explore whether an exemption would be appropriate for certain such agreements.

The Commission has by separate Order issued this date instituted a non-adjudicatory fact finding investigation into the nature and scope of marine terminal services and their relationship to the Commission's agreement filing requirements. However, in the interim, there is a need to clarify the Commission's policy with regard to terminal service agreements, particularly with respect to its waiver of penalties in this area.

On the basis of its experience to date under the June and October Notices, the Commission has determined it necessary to clarify its intention that the waiver applies only to marine terminal service agreements, and not to leases, licenses, assignments, or other agreements of a similar nature for the use of marine terminal property.[1] The Commission is also clarifying its intention that the waiver extend to penalties which could otherwise be assessed for failure to file the rates and charges set forth in the unfiled marine terminal service agreements in a marine terminal tariff as required by 46 CFR Part 515. Finally, the Commission desires to hereby clarify that this waiver of penalties encompasses marine terminal service agreements entered into after June 25, 1986.

Parties to marine terminal service agreements are, of course, free to file such agreements with the Commission under the 1916 and 1984 Acts pursuant to 46 CFR Part 560 and/or 46 CFR Part 572, respectively, during this period.

Accordingly, notice is hereby given that, until further notice, the penalty provisions of sections 32(a) and 32(c) of the Shipping Act, 1916, 46 U.S.C. app. 831, and section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712, will not be invoked against parties to terminal service agreements, including agreements entered into after June 25, 1986, for failure to file such agreements with the Commission as required by section 15 of the Shipping Act, 1916, 46 U.S.C. app. 814, and/or section 5 of the Shipping Act of 1984, 46 U.S.C. app. 1704; or for failure to file the rates and charges set forth in such unfiled marine terminal service agreements in the marine terminal operator's terminal tariff, as required by 46 CFR Part 515.

This notice supersedes the October Notice.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-11361 Filed 5-18-87; 8:45 am]

BILLING CODE 6730-01-M

[1] For the purpose of this notice, "terminal service agreement" means an agreement which relates to rates and charges for terminal services including, but not limited to, "services" as defined in 46 CFR 515.6(d), performed for common carriers pursuant to negotiated contracts. The term "terminal service agreement" does not, however, include leases, licenses, assignments or other arrangements of a similar nature for the use of marine terminal property.

## Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 217-011098.

*Title:* Shipping Corporation of New Zealand Limited/Pacific Australia Direct Line Reciprocal Space Charter Agreement.

*Parties:*

Shipping Corporation of New Zealand Limited

Pacific Australia Direct Line

*Synopsis:* The proposed agreement would permit the parties to charter space on one another's vessels and to interchange containers and related equipment in the trade between North American Pacific Coast ports and ports in Australia.

Dated: May 14, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87-11381 Filed 5-18-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Asia Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 11, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Asia Bancshares, Inc.*, Flushing, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Asia Bank, National Association, Flushing, New York.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St., Louis, Missouri 63166:

1. *Arkansas Union Bancshares, Inc.*, Benton, Arkansas; to become a bank holding company by acquiring at least 80 percent of the votong shares of Union Bancshares of Benton, Inc., Benton, Arkansas, and thereby indirectly acquire The Union Bank of Benton, Benton, Arkansas.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11336 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

### Bankcore, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1987.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bankcore, Inc.*, North Conway, New Hampshire; to engage *de novo* in data processing advisory services and management consulting to depository institutions pursuant to § 225.25(b)(7) and (b)(11) of the Board's Regulation Y. These activities will be conducted in the State of New Hampshire.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11337 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

### Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Alan E. Johnson et al.

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Alan E. Johnson*, Jacksonville, Florida; to acquire 38.80 percent of the voting shares of St. Petersburg, St. Petersburg, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Charles D. Campbell*, Paragould, Arkansas; to acquire 59.94 percent of the voting shares of Mountain Bancshares, Inc., Yellville, Arkansas, and thereby indirectly acquire The Bank of Yellville, Yellville, Arkansas.

2. *Louis H. Schlafly*, Kenneth W. Stumpf; Horce C. Volkert; William E. Mixon III; Harold A. Dashner; and

Gernald L. Giffhorn; all of Columbia, Illinois; to acquire 25.14 percent of the voting shares of Columbia Bancshares, Inc., Columbia, Illinois, and thereby indirectly acquire Columbia National Bank, Columbia, Illinois.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11338 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

## Rebank Netherlands Antilles, N.V.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbaking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be acompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Rebank Netherlands Antilles, N.V.*, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Republic Banking Corporation of Florida, Miami, Florida.

In connection with this application, Applicant also proposes to acquire Rebank Mortgage Corporation, Miami, Florida, and thereby engage in making and servicing mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11339 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

## Applications To Engage de Novo in Permissible Nonbanking Activities; Valley Bancorporation; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-10624) published at page 17638 of the issue for Monday, May 11, 1987.

Under the Federal Reserve Bank of Chicago, the entry for Valley Bancorporation is revised to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation*, Appleton, Wisconsin; to acquire Valley Systems, Inc., Appleton, Wisconsin, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Comments on this application must be received by June 1, 1987.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11340 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Cooperative Agreements for Community Chronic Disease Prevention; Availability of Funds for Fiscal Year 1987

#### Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1987 for competitive applications for cooperative agreements for building State capacity for community chronic disease prevention.

#### Authority

This cooperative agreement is authorized by section 301(a)[42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

#### Eligible Applicants

Because the intent of this cooperative agreement program is to develop State capacity to assist communities in the development and implementation of community-based chronic disease prevention programs, competition is limited to the official State public health agencies, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. No other applications will be accepted.

#### Program Background and Objectives

The purpose of this program is to assist States to build a capacity for assistance to communities in the development of community-based chronic disease prevention programs, which relate to cardiovascular disease (CVD) and cancer. These chronic diseases are of obvious importance as a public health issue in the United States; they rank as numbers 1 and 2 for a variety of negative health indicators, including leading causes of death, total hospital days, and expected years of life lost. Thus, they rank overall as the two most important diseases in this nation.

Objectives for this cooperative agreement are:

- To develop State's internal capacity to process and analyze community-level chronic disease behavioral risk factor data.
- To demonstrate the capacity of these same States to assist two or more communities each to design and implement effective community-based

interventions focusing on measurable, local chronic disease priorities related to CVD and cancer.

It is expected that 50 percent of the resources specified for intervention activities under this cooperative agreement will be directed at high risk and minority populations.

### Availability of Funds

Approximately $400,000 will be available in Fiscal Year 1987 to award 3–5 cooperative agreements. The average award will be $100,000 with individual cooperative agreements ranging from approximately $50,000 to $130,000. It is expected that cooperative agreements will begin on or about September 30, 1987. The cooperative agreements will be awarded in 12 month budget periods within a 3 year project period. Funding estimates outlined above may vary and are subject to change.

### Application Submission and Deadline

The original and two copies of the application must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia, 30305, on or before July 15, 1987.

*1. Deadline*

Applications will be considered to meet the deadline if they are either:

a. Received at the above address on or before the deadline date, or

b. Sent on or before July 15, 1987, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks will not be accepted as proof of timely delivery).

*2. Late Applications*

Applications which do not meet the above criteria are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

### Other Submission and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

### Where to Obtain Additional Information

Information on application procedures, copies of application forms and other material may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262–6575, or FTS 236–6575. Technical assistance may be obtained from James S. Belloni, Division of Health Education, Center for Health Promotion and Education, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–3452 or FTS 236–3452.

Dated: May 13, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87–11324 Filed 5–18–87; 8:45 am]

BILLING CODE 4160–18–M

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## Food and Drug Administration

[Docket No. 87S–0025]

## Preproduction Quality Assurance Planning; Draft Recommendations for Medical Device Manufacturers

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of draft recommendations entitled "Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers—February 1987." The draft recommendations were prepared by FDA's Center for Devices and Radiological Health (CDRH). FDA is making available the draft recommendations to assist a device manufacturer to plan and implement a preproduction quality assurance program to provide reasonable assurance of the safety and effectiveness of the designs of medical devices before the manufacturer releases the designs to production for routine manufacturing.

**DATE:** Comments by August 17, 1987.

**ADDRESS:** Written requests for single copies of the draft recommendations to the Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857. The draft recommendations are also on file, and available for review, at the Dockets Management Branch.

**FOR FURTHER INFORMATION CONTACT:** Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ–330), Food and Drug Administration, 6757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7984.

**SUPPLEMENTARY INFORMATION:** FDA, through CDRH, develops and carries out a national program to ensure the safety and effectiveness of medical devices. One aspect of this program involves regulatory activities under the laws administered by the agency. As an important adjunct to its regulatory program, CDRH conducts a variety of educational efforts, such as making available recommendations that anesthesia professionals perform a daily checkout and inspection procedure of the anesthesia gas machine before using it (52 FR 5583; February 25, 1987).

FDA now is making available draft recommendations intended to assist a device manufacturer to plan and implement a preproduction quality assurance program to provide reasonable assurance of the safety and effectiveness of the designs of its devices before the manufacturer releases the designs to production for routine manufacturing.

CDRH prepared the draft recommendations for preproduction quality assurance planning for device designs following its evaluation of over 1,000 device recalls that manufacturers have made during 1983 through 1985. CDRH believes that the device problems that resulted in about half of these recalls would not have occurred had the manufacturers established and implemented a preproduction quality assurance program for device designs. These draft recommendations are based on 30 cited scientific references describing good design practices that CDRH has adapted to medical device manufacturing.

FDA often formulates and disseminates recommendations about matters which are authorized by, but do not involve direct regulatory action under, the laws administered by the agency. Accordingly, FDA is making these draft recommendations available under 21 CFR 10.90(c) of the agency's administrative practices and procedures regulations.

Comments received before August 17, 1987, will be considered by FDA during its preparation of final recommendations on this matter; however, comments on these draft recommendations may be submitted at any time. The comments will be considered in determining whether amendments of the recommendations are warranted.

Interested persons may, on or before August 17, 1987 submit to the Dockets Management Branch (address above)

written comments regarding these draft recommendations. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the document number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 12, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-11328 Filed 5-18-87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Alaska Land Use Council; Meeting

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980, Section 1201, Paragraph (b), the Alaska Land Use Council will meet at 10:00 a.m., Thursday, June 4, 1987, in the Juneau City and Borough Assembly Chamber, 155 South Seward Street, Juneau, Alaska.

The Tentative Agenda will include Council consideration of:

—Kodiak and Kenai NWR Comprehensive Conservation Plans,
—Council Work Program Recommendations for 1988-87,
—Council Call for Work Program Items,
—Recreation Use of Land, State of Alaska, House Bill 136,
—Cooperative Planning Zones Recommendations,
—National Park Service Proposed Mining Rule, 36 CFR Part 9,
—Trans-Alaska Gas System EIS Status,
—U.S. FWS Development of Regulations for Subsistence Hunting of Migratory Birds,
—Tongass Timber Reform Act,
—Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or matters of general concern to the Council should contact either Cochairman's office before the close of business Thursday, May 21, 1987.

FOR FURTHER INFORMATION CONTACT:

Alaska Land Use Council, Office of the Federal Cochairman, P.O. Box 10012, Anchorage, Alaska 99510, (907) 272-3422, (FTS) 271-54f85;

Alaska Land Use Council, Office of the State Cochairman Designee, Pouch AM, Juneau, AK 99811, (907) 465-3562 or 2600 Denali St., Suite 700, Anchorage, AK 99503, (907) 274-3528.

The public is invited to attend.

William P. Horn,

*Assistant Secretary for Fish and Wildlife and Parks.*

May 12, 1987.

[FR Doc. 87-11341 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-10-M

## Office of the Secretary

### Reservation of Colorado River Water for Use on Federally Owned Lands in Arizona; Boulder Canyon Project

Pursuant to the authority contained in the Boulder Canyon Project Act, dated December 21, 1928 (45 Stat. 1057), as amended; section 301(b) of the Colorado River Basin Project Act, dated September 30, 1968 (82 Stat. 887); and consistent with the Supreme Court Opinion of June 3, 1963 (373 U.S.C. 546); the Supreme Court Decree of March 9, 1964, in *Arizona v. California et al.* (376 U.S. 340), as supplemented January 9, 1979 (439 U.S. 419); and the February 9, 1944, contract between the United States and the State of Arizona, notice is given that there is hereby reserved to the United States out of the waters of the Colorado River the annual consumptive use of 1,930 acre-feet for use on Federally owned lands in Arizona which are administered by the Bureau of Land Management of the Department of the Interior. The water so reserved is in addition to 800 acre-feet previously reserved for said purpose in Arizona by notice dated August 30, 1973, (Federal Register, Volume 38, No. 173, Pages 24389 and 24390, Friday, September 7, 1973), and 1,280 acre-feet previously reserved for said purpose in Arizona by notice, dated September 29, 1981, (Federal Register, Volume 46, No. 194, Pages 49654 and 49655, Wednesday, October 7, 1981). The water is for culinary, sanitary, and related nonagricultural domestic uses on Bureau of Land Management campsites, concession areas, cabinsites, and other purposes involved in the recreational program of the Bureau of Land Management along the Lower Colorado River in Arizona.

In times of shortage, the quantity of water available for delivery under this reservation will be accorded equal priority with all similar uses of water in Arizona authorized by contracts or other arrangements after September 30, 1968, irrespective of the order in which such contracts or other arrangements were made after September 30, 1968.

The aforesaid reservation of water is suject to

(a) The provisions of the Colorado River Compact signed in Santa Fe, New Mexico, November 24, 1922;

(b) The provisions of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended;

(c) The provisions of the Supreme Court Opinion, dated June 3, 1963 (373 U.S. 546), and the Supreme Court Decree of March 9, 1964, in *Arizona v. California, et al.* (376 U.S.C 340), as supplemented January 9, 1979 (439 U.S. 419);

(d) The provisions of the Mexican Water Treaty, signed in Washington, DC, February 3, 1944, and Minute 242 of the International Boundary and Water Commission, United States and Mexico, dated August 30, 1973; and

(e) The provisions of section 301(b) of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885).

For further information, you may contact Mr. LeGrand Neilson, Contracts and Repayment Branch, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, at (702) 293-8536.

Dated: April 27, 1987.

Donald P. Hodel,

*Secretary of the Interior.*

[FR Doc. 87-11385 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-09-M

## Bureau of Indian Affairs

### Reservation Establishment; Pueblo of Santa Ana, NM; Determination; Correction

May 5, 1987.

In FR Doc. 87-7982 appearing on page 11756, in the issue for Friday, April 10, 1987, the following correction is hereby made:

Appearing in the first paragraph, line 8, after "Interior" delete the word "received" and insert the words "did not receive any".

Ross O. Swimmer,

*Assistant Secretary, Indian Affairs.*

[FR Doc. 87-11353 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-02-M

## Bureau of Land Management

[NV-930-4212-24; N-42585]

### Termination of Airport Lease Application Involving Lands in Clark County, NV

Notice is hereby given that airport lease application N-42585, involving the following described lands, has been withdrawn:

Mount Diablo Meridian, NV

T.13S., R.70E.,

Sec. 15, All,
Sec. 16, E½,
Sec. 21, E½,
Sec. 22, W½,
Sec. 27, NW¼,
Sec. 28, NE¼.

the segregative effect of the airport lease application is hereby removed upon publication of this notice in the Federal Register.

Dated: May 11, 1987.

Charles Frost,

*Acting District Manager.*

[FR Doc. 87-11329 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-HC-M

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[CO-070-07-4410-08]

## Colorado; Availability of the Approved Grand Junction Resource Management Plan and Record of Decision

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management (BLM), has prepared a record of decision for the approved Grand Junction Resource Management Plan and Environmental Impact Statement. The BLM also has designated eight areas of critical environmental concern (ACECs).

**ADDRESS:** Copies of the record of decision and approved resource management plan are available upon request at the Grand Junction Resource Area Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

**FOR FURTHER INFORMATION CONTACT:** John Singlaub, Area Manager, Bureau of Land Management, Grand Junction Resource Area Office, 764 Horizon Drive, Grand Junction, Colorado 81506.

**SUPPLEMENTARY INFORMATION:** The Grand Junction Resource Management Plan is approved. The plan was prepared under the regulations for implementing the Federal Land Policy and Management Act (FLPMA) of 1976 (43 CFR Part 1600). An environmental impact statement was prepared for this plan in compliance with the National Environmental Policy Act (NEPA) of 1969. The approved plan is identical to the one set forth in the proposed plan and associated final environmental impact statement published in November 1985.

### Decisions

—Withdraw an additional 171,320 acres from mineral entry.

—Identify approximately 390,000 acres of the Book Cliffs potential coal development area as acceptable for further coal leasing consideration.

—Increase fuelwood harvesting approximately 8 percent, from 2,600 to 2,800 cords per year.

—Manage deer, elk, and bighorn sheep as the key wildlife species on about 80 percent of the resource area.

—Continue to manage livestock grazing as described in the Grand Junction Grazing Management Environmental Statement. Reevaluate existing allotment management plans to ensure consistency with objectives for riparian and critical erosion area goals.

—Expand the Little Book Cliffs Wild Horse Range by 2,380 acres for a total of 30,281 acres and manage for 65 to 120 wild horses.

—Protect approximately 35 percent of the resource area's visual resources from impairment.

—Designate 480,110 acres as open, 640,323 acres as limited, and 156,627 acres as closed to off-road vehicle use. Allow competitive events and intensive off-road vehicle activity on approximately 11,000 acres.

—Recommend four wilderness study areas totaling 166,340 acres as preliminarily suitable for wilderness designation.

—Dispose of approximately 25,000 acres of mostly small, isolated, and difficult to manage public land tracts.

—Designate eight areas covering 23,240 acres as areas of critical environmental concern (ACECs) and as either research natural areas (RNAs) or outstanding natural areas (ONAs).

### ACEC Designations

*1. Fruita Paleontological Site (280 acres)*

Designate as an RNA and ACEC to protect fossils. Close the area to off-road vehicle travel. Continue the withdrawal for locatable minerals under the 1872 Mining Laws, as amended. Close the area to mineral material disposal. Designate the area as unsuitable for public utilities. Place a no surface occupancy stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases.

*2. Rabbit Valley Paleontological Site (280 acres)*

Designate as an RNA and ACEC for educational purposes and to protect fossils. Limit off-road vehicle travel to designated roads and trails. Close the area to mineral material disposal. Identify the area as unsuitable for public utilities. Place a no surface occupancy stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases.

*3. Unaweep Seep RNA (37 acres)*

Designate this RNA as an ACEC and manage to protect a sensitive butterfly. Close the area to off-road vehicle travel and wood harvesting. Place a no surface occupancy stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases.

*4. Badger Wash (1,520 acres)*

Designate as an ACEC and manage to protect sensitive plants and a hydrologic study area. Identify the entire ACEC as sensitive to placement of public utilities. Protect the sensitive plants on the entire ACEC by placing an avoidance stipulation on all proposed projects. Prohibit surface-disturbing activities on 685 acres (the Badger Wash hydrologic study area) of this ACEC. Close the hydrologic study area to mineral material disposal. Place a no surface occupancy stipulation on new oil and gas leases and on applications for permit to drill existing oil and gas leases in the hydrologic study area.

*5. Pyramid Rock (470 acres)*

Designate as an RNA and ACEC. Manage to protect sensitive and endangered plants. Limit off-road vehicle travel to designated roads and trails. Place a no surface occupancy stipulation on new leases and on applications for permit to drill existing oil and gas leases. Close the ACEC to mineral material disposal.

*6. Rough Canyon (1,470 acres)*

Designate as an RNA and ACEC. Manage to protect endangered and sensitive plants, scenic, geologic, and cultural values. Limit off-road vehicle travel to existing roads and trails. Maintain the existing natural recreation setting and recreational opportunities in this special recreation management area. Place a no surface occupancy stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases. Close the ACEC to mineral material disposal, public utilities, and wood sales. Classify as a visual resource management class

II area to retain the landscape character. Provide for continued educational and interpretive uses.

*7. Gunnison Gravels (5 acres)*

Designate as an RNA and ACEC. Manage to protect the sand and gravel deposit (geologic processes). Close the area to off-road vehicle travel. Close the area to mineral material disposal. Identify the area as unsuitable for public utilities. Place a no surface disturbance stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases.

*8. The Palisade (19,178 acres)*

Designate as an RNA and ACEC. Manage to protect scenic values. Close 1,930 acres to off-road vehicle use and limit 17,258 acres to designated roads and trails. Maintain the national setting and recreational opportunities in this special recreation management area. Classify 1,920 acres as a visual resource management class I area to preserve the natural landscape character and 17,258 acres as a visual resource management class II area to retain the landscape character. Place a no surface occupancy stipulation on new oil and gas leases and on applications for permit to drill existing oil and gas leases. Design firewood sales to protect scenic values and to remain compatible with other ONA management objectives. Close the area to mineral material disposal and to public utilities.

Dated: May 8, 1987.

**Kenneth D. Witt,**

*Acting State Director.*

[FR Doc. 87-11330 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-HC-M

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[NV-943-07-4220-11; Nev-044542 and Nev-05 [770]

## Proposed Modification and Continuation of Withdrawals; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) proposes that the two withdrawals aggregating 40 acres for an air navigation site near Reno, Nevada, be modified to establish a 20-year term. The land will remain closed to surface entry and mining, but will be opened to application under the mineral leasing laws.

**DATE:** Comments should be received by August 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520 (702) 784-5481.

**SUPPLEMENTARY INFORMATION:** The FAA proposes that the existing withdrawals made by Secretarial Order of January 31, 1936, and BLM Order of April 3, 1957, be modified to establish a 20-year term. This action is taken pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714). The lands are described as follows:

**Mount Diablo Meridian, NV**

T. 19 N., R. 21 E.,

Sec. 8, W½SW¼NE¼, E½SE¼NW¼.

The area described aggregates 40 acres in Washoe County.

The purpose of the withdrawals is to provide the minimum essential acreage required to protect the construction, operation, and maintenance of this site from electronic or physicial interference for flight safety purposes. The withdrawals segregate the land from operation of the public land laws, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose. The segregative effect of the withdrawals will be modified to allow applications under the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

Dated: May 11, 1987.

**Maria B. Bohl,**

*Acting Deputy State Director, Operations.*

[FR Doc. 87-11331 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-HC-M

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[WO-150-07-4836-11]

## National Public Lands Advisory Council; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of the National Public Lands Advisory Council.

**SUMMARY:** Notice is hereby given that the National Public Lands Advisory Council will meet June 19, 1987. The meeting will be held at the Sheraton Hotel, 401 East Sixth Avenue, Anchorage, Alaska, from 8:00 a.m. to 5:00 p.m. Preceding the June 19 meeting, Council members will participate in a field tour of BLM-managed lands in Alaska. The proposed agenda for the meeting is:

**Friday, June 19**

*Morning*

Status report on gas transmission system development; Discussion of the Department's Arctic National Wildlife Refuge (ANWR) report; Placer mining operations in Alaska; Meeting and Council Subcommittees (Energy and Minerals, Lands, and Renewable Resources).

*Afternoon*

Public Statement Period; Council old and new business, to include Department responses to previous Council resolutions; Presentation on the Automated Land Records System; Alaska conveyance issues; Final meeting of Council subcommittees; Report from subcommittees to full Council, and consideration of Council resolutions.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on June 19. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written testimony prior to oral delivery. Please send written comments by June 12 to the Bureau of Land Management's Alaska State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

**DATE:** June 19—Council Meeting and Public Statements.

**ADDRESS:** Copies of public statements should be mailed by June 12 to: Director, Alaska State Office (912), Bureau of Land Management, Box 13, 701 C Street, Anchorage, Alaska 99513.

**FOR FURTHER INFORMATION, CONTACT:** Karen Slater, Washington, D.C. Office BLM, telephone (202) 343–2054; or Joette Storm, Alaska State Office, BLM, telephone (907) 271–5555.

**SUPPLEMENTARY INFORMATION:** The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Dated: May 13, 1987.

**Robert F. Burford,**

*Director.*

[FR Doc. 87–11364 Filed 5–18–87; 8:45 am]

BILLING CODE 4310-84-M

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[MT–070–07–4212–13; M72225]

## Realty Action; Exchange of Public and Private Lands; Lewis and Clark County, MT

**AGENCY:** Butte District Office Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action Exchange of public and private lands in Lewis and Clark County.

**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

**Principal Meridian, Montana**

T. 13 N., R. 5 W.,
Sec. 2, Lot 4, S½NW¼, N½SE¼,
Sec. 4, S½NW¼,
Sec. 6, Lot 1,
Sec. 10, SE¼SW¼, SW¼SE¼,
Sec. 20, E½NE¼, N½NW¼, SW¼NW¼,
Sec. 28, E½NE¼, NW¼NE¼,
Sec. 28, W½NW¼, SW¼, W½SE¼, SE¼SE¼,
Sec. 33, Lot 1, N½SE¼,
Sec. 34, NE¼, N½NW¼, SW¼NW¼, SE¼SW¼, S½SE¼.
T. 13 N., R. 4 W.,
Sec. 18; Lot 1,
T. 13 N., R. 3 W.,
Sec. 32; W½NW¼SE¼, W½SE¼ NW¼SE¼.
Aggregating 1809.71 acres of public land.

In exchange for these lands, the United States will acquire a portion of the following described lands:

**Principal Meridian, Montana**

T. 14 N., R. 4 W.,
Sec. 32; SE¼,
Sec. 34; SE¼SW¼, SW¼SE¼.
T. 13 N., R. 3 W.,
Sec. 18; Lots 1,3,4, E½NW¼, NE¼SW¼.
T. 13 N., R. 4 W.,
Sec. 3; All,
Sec. 9; All lands in the N½N½ located east of the Interstate R/W,
Sec. 10; S½N½,
Sec. 11; S½NW¼, N½SW¼, NW¼SE¼,
Sec. 13; NE¼, N½NW¼.
T. 12 N., R. 3 W.,
Sec. 22; W½,
Sec. 27; NW¼, N½SW¼,SW¼, SW¼,
Sec. 28; S½NW¼, N½SW¼, SE¼SE¼.
Aggregating 2553.81 acres of private lands.

**DATE:** For a period of on or before July 6, 1987, interested parties may submit comments to the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate, sustain, or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

**FOR FURTHER INFORMATION CONTACT:** Information relating to the exchange, including the environmental assessment and land report, is available at the Butte District Office, P.O. Box 3388, Butte, Montana 59702.

**SUPPLEMENTARY INFORMATION:** The purpose of this exchange is to acquire additional public lands in the Sleeping Giant area which have high recreational and wildlife values in exchange for small, isolated public domain tracts which are difficult and uneconomical to manage.

The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. All valid existing rights (e.g., rights-of-way, easements and leases of record).

3. Value equalization by cash payments or acreage adjustments.

4. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

Dated: May 8, 1987.

**James A. Moorhouse,**

*District Manager.*

[FR Doc. 87–11354 Filed 5–18–87; 8:45 am]

BILLING CODE 4310-DN-M

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## National Park Service

### To Negotiate Concession Contract; Temple Bar Resort

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Temple Bar Resort authorizing it to continue to provide lodging, food and beverage, merchandising, trailer village, marina and related facilities and services for the public at Lake Mead National Recreation Area, Nevada for a period of fifteen (15) years from January 1, 1988, through December 31, 2002.

The proposed contract requires a construction and improvement program which was previously described in the Environmental Impact Statement (September 11, 1986 FES–86–27) for the General Management Plan for Lake Mead National Recreation Area.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: April 22, 1987.

**Howard H. Chapman,**

*Regional Director, Western Region.*

[FR Doc. 87–11424 Filed 5–18–87; 8:45 am]

BILLING CODE 4310-70-M

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## National Register of Historic Places; Pending Nominations; Arkansas, et al

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 9, 1987. Pursuant to § 60.13 of 36 CFR Part

60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 3, 1987.

Carol D. Shull,

*Chief of Registration, National Register.*

ARKANSAS

Phillips County

Helena, *Helena Depot,* Natchez and Missouri Sts.

KENTUCKY

Laurel County

London, *Pennington Infirmary,* 411 Main St.

MARYLAND

Baltimore (Independent City)

*Coleman, Robert W., School,* 2201 Walbrook Ave.

Prince George's County

Berwyn Heights, *O'Dea House,* 5604 Ruatan St.

MASSACHUSETTS

Essex County

Newburyport, *Newburyport Harbor Rear Range Light (Lighthouses of Massachusetts TR),* Water St., near Merrimac River

Plymouth County

Brockton, *Brockton Edison Electric Illuminating Company Power Station,* 70 School St.

Suffolk County

Boston, *Abbotsford,* 300 Walnut Ave.

Worcester County

Athol, *Athol Historical Society Museum,* 1307 Main St.
Westborough, *West Main Street Historic District,* Roughly bounded by Milk, Main, Blake, and Fay Sts.
Winchendon, *Old Centre Historic District,* Roughly Old County and Baldwinsville Rds., Halle St., and Teel Rd.

MISSOURI

St. Charles County

St. Charles, *St. Charles Historic District (Boundary Increase),* 1000 S. Main St.

NEW JERSEY

Middlesex County

Edison, *Shotwell, Benjamin, House,* 26 Runyon's Lane

NEW MEXICO

Chaves County

Roswell, *Chaves County Courthouse (County Courthouses of New Mexcio TR),* 400 Blk. Main St.

Colfax County

Raton, *Colfax County Courthouse (County Courthouses of New Mexico TR),* Third and Savage
Springer, *Colfax County Courthouse in Springer (County Courthouses of New Mexcio TR),* 614 Maxwell Ave.

Curry County

Clovis, *Curry County Courthhouse (County Courthouses of New Mexico TR),* 700 Blk. Main St.

De Baca County

Fort Sumner, *De Baca County Courthouse (County Courthouses of New Mexico TR),* 500 Blk. Ave. C

Dona Ana County

Las Cruces, *Dona Ana County Courts Building (County Courthouses of New Mexico TR),* NW corner Church and Griggs Ave.

Guadalupe County

Puerto de Luna, *Guadalupe County Courthouse (County Courthouses of New Mexico TR),* S side NM 91
Santa Rosa, *Guadalupe County Courthouse in Santa Rosa (County Courthouses of New Mexico TR),* NW corner S. Fourth St. and Parker Ave.

Harding County

Mosquero, *Harding County Courthouse (County Courthouses of New Mexico TR),* Pine St.

Hidalgo County

Lordsburg, *Hidalgo County Courthouse (County Courthouses of New Mexico TR),* 300 S. Shakespeare St.

Lea County

Lovington, *Lea County Courthouse (County Courthouses of New Mexico TR),* 100 Blk. Main St.

McKinley County

Gallup, *McKinley County Courthouse (County Courthouses of New Mexico TR),* 205–209 W. Hill St.

Rio Arriba County

Tierra Amarilla, *Rio Arriba County Courthouse (County Courthouses of New Mexico TR),* NM 162, SE of US. 84

Union County

Clayton, *Union County Courthouse (County Courthouses of New Mexico TR),* Court St.

OREGON

Marion County

Silverton, *Silverton Commercial Historic District,* Roughly bounded by High and Oak Sts., Silver Creek, Lewis, Water, and First Sts.
St. Paul vicinity, *Kirk, John, W., and Thomas F., House,* 4686 St. Paul Hwy. NE

Multnomah County

Portland, *Desch, Henry E., Investment Property,* 425 NW 18th Ave.
Portland, *Portland Thirteenth Avenue Historic District,* NW Thirteenth St. between Davis and NW Johnson Sts.

TEXAS

El Paso County

El Paso, *Plaza Theater,* 125 Pioneer Plaza

WASHINGTON

Thurston County

Olympia, *Aller House Hotel (Downtown Olympia MRA),* 114–118 N. Jefferson
Olympia, *American Legion Hall (Downtown Olympia MRA),* 219 W. Legion Way
Olympia, *Jeffers Studio (Downtown Olympia MRA),* 502 and 502 S. Washington
Olympia, *Olympia National Bank (Downtown Olympia MRA),* 422 S. Capitol Way
Olympia, *Town Square (Downtown Olympia MRA),* Bounded by Seventh, Legion, Capitol Way, and S. Washington

WYOMING

Sweetwater County

Natural Corrals Archaeological Site [48SW336]

[FR Doc. 87–11380 Filed 5–18–87; 8:45 am]

BILLING CODE 4310-70-M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S. C. Chapter 35). Copies of the proposed collection of information and related forms and explantory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

*Title:* Requirements for Permits and Permit Processing 30 CFR Part 773.

*Abstract:* Sections 507, 508, and 513 of Pub. L. 95–87 requires procedures for public participation in the approval or disapproval of the permit application. Information is used by the regulatory authority to evaluate the permit application.

*Bureau Form Number:* None.

*Frequency:* On occasion.

*Description of respondents:* Coal Mine Operators.

*Annual responses:* 5,950.

*Annual burden hours:* 28,352.

*Bureau clearance officer:* Darlene Grose-Boyd (202) 343-5447.

Dated: April 14, 1987.

Carson W. Culp,

*Assistant Director, Budget and Administration.*

[FR Doc. 87-11382 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-65-M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[Docket No. M-87-65-C]

### Birchfield Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Birchfield Mining, Inc., 41 Eagles Road, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 1 Mine (I.D. No 46-07273) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 90 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. The Birchfield No. 1 Mine is a new operation which is currently mining in a southeastern direction which will approach within 100 feet of the west bleeder entries of the Quinland No. 1 Mine.

3. Petitioner requests a modification of the standard to allow mining to within 100 feet of the Quinland No. 1 Mine, without the drilling of boreholes. In support of this request, petitioner states that:

(a) The west bleeder entries of the Quinland No. 1 Mine are being ventilated and evaluated in compliance with the approved ventilated plan;

(b) The west bleeder entries of the Quinland No. 1 Mine do not contain dangerous accumulations of water or gas;

(c) A resurvey was carried from the Birchfield No. 1 Mine permanent underground points into the affected area of the Quinland No. 1 Mine as a second check on the coordinates and location of the Quinland mine workings; and

(d) Birchfield and Quinland employ the same engineering firm for engineering services (spads and maps) which gives assurance that the mine maps of the Quinland No. 1 and Birchfield No. 1 Mines are compatible and contain consistent references to each mine since both mines are on the same coordinate system.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1987. Copies of the petition are available for inspection at that address.

Dated: May 8, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-11383 Filed 5-18-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-110-C]

### Fox Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Fox Coal Company, 1744 Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Vein Slope (I.D. 36-02000) located in Dauphin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

#### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1987. Copies of the petition are available for inspection at that address.

Dated: May 6, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-11384 Filed 5-18-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-66-C]

### G & G Coal & Equipment Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

G & G Coal & Equipment Co., Inc., Route 1, Box 152, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) ot its Mine No. 1 (I.D. No. 15-14281) located in Knox County, Kentucky, and its Mine No. 4 (I.D. No.

15–15833) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1987. Copies of the petition are available for inspection at that address.

Dated: May 6, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–11385 Filed 5–18–87; 8:45 am]

BILLING CODE 4510–43–M

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[Docket No. M–87–99–C]

## Laurel Fork Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Laurel Fork Mining Company, Route 2, Box 1043, Wartburg, Tennessee 37887 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its Mine No. 7 (I.D. No. 40–02944) located in Morgan County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer banks of elevated roadways.

2. Petitioner states that application of the standard will result in a diminution of safety to the miners affected because berms confine water runoff to the road surface which washes away the surfacing materials, resulting in a dangerous road surface. The berms also hamper the removal of snow and ice with a motor grader.

3. As an alternate method, petitioner states that:

(a) Daily inspections of all coal-hauling vehicles will be made. Any defects will be corrected before the vehicle is put into service;

(b) A specific traffic system will be developed for the roads. These rules will be posted on the bulletin boards throughout the mine area, and they will become a part of the training and retraining programs;

(c) Warning signs will be posted designating curves, steep grades, where trucks should shift to a lower gear, and where roadways are reduced to one-lane traffic. Stop signs will be posted where one road intersects another, giving main haulage traffic the right-of-way, and signs will be posted designating passing points. Passing of one vehicle by another vehicle while traveling in the same direction is prohibited; except in the case where one vehicle is parked in a run-around area out of the normal lanes of traffic.

(d) All haulage vehicles will have original manufacturers brakes and an emergency braking system;

(e) All equipment operators will be trained in the use of haulage equipment and the safety of vehicles on haulage roads;

(f) Where abrupt drop-offs occur along the outer banks, elevation will be provided to cause the vehicles to gravitate toward the highwall side of the road;

(g) Roadway surfaces will be kept free of debris, excessive water, snow, and ice, and maintained as free as practicable of small ditches (washboard effects); and

(h) The speed at which trucks will be operated will be consistent with conditions of roadway clearance, visibility and traffic. Trucks operating on any descending grade will be restricted to 10 miles per hour.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1987. Copies of the petition are available for inspection at that address.

Dated: May 6, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87–11386 Filed 5–18–87; 8:45 am]

BILLING CODE 4510–43–M

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## Pension and Welfare Benefits Administration

[Application Nos. D–5598 and D–5776]

## Amendment to Prohibited Transaction Exemption (PTE) 81–6 Involving Lending of Securities by Employee Benefit Plans

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Adoption of amendment to PTE 81–6.

**SUMMARY:** This document amends PTE 81–6. PTE 81–6 is a class exemption that permits the lending of securities by

employee benefit plans to certain broker-dealers and banks which are parties in interest with respect to the plans. The amendment affects participants, beneficiaries and fiduciaries of plans engaging in the described transactions, banks, and certain broker-dealers.

**EFFECTIVE DATE:** January 23, 1981.

**FOR FURTHER INFORMATION CONTACT:** Paul Kelty of the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor, (202) 523–8196. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On March 21, 1986, notice was published in the **Federal Register** (51 FR 9900) of the pendency before the Department of two proposed amendments to PTE 81–6. PTE 81–6 provides an exemption from the prohibited transaction restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code.

Manufacturers Hanover Trust Company (Manufacturers Hanover) requested the first proposed amendment to PTE 81–6 by application dated June 29, 1984 (Application No. D–5598). The second proposed amendment was requested by Merrill Lynch, Pierce, Fenner & Smith (Merrill Lynch) in an application dated September 26, 1984 (Application No. D–5776). Both applications were submitted pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code[1] and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). The amendment requested by Merrill Lynch was withdrawn by the applicant by letter dated January 9, 1987.

Information collection requirements contained in PTE 81–6 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB #1210–0065 approved for use through May 31, 1987.

The notice gave interested persons an opportunity to comment on the proposal. Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

### 1. Description of the Exemption

PTE 81–6 permits an employee benefit plan to lend securities to a broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) or to a bank, provided certain conditions are met. These conditions include a requirement that the lending plan must receive from the borrower collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies, or irrevocable bank letters of credit. In the absence of an exemption, securities lending transactions would be prohibited under circumstances where the borrowing broker-dealer or bank is a party in interest or disqualified person with respect to the plan under section 3(14) of ERISA or section 4975(e)(2) of the Code.

The amendment to PTE 81–6 granted pursuant to this notice, requested by Manufacturers Hanover, adds broker-dealers which are exempted from registration under section 15(a)(1) of the 1934 Act as dealers in exempted Government securities to the categories of securities borrowers with whom plans may engage in transactions in reliance on the class exemption. The amendment requested by Merrill Lynch would have expended the types of premissible collateral under the exemption to include qualifying irrevocable surety bonds. Since Merrill Lynch no longer contemplates the use of surety bonds as collateral in securities lending transactions and, therefore, has withdrawn its request for exemptive relief, the proposed amendment has not been adopted. For the sake of convenience, the entire text of PTE 81–6, as amended, is reprinted with this notice.

### 2. Discussion of Comments Received

The Department received three letters commenting on various aspects of the proposed amendments to PTE 81–6. Both the American Bankers Association (ABA) and the California Bankers Association expressed support for the proposal. A letter from the ABA noted that, under the existing class exemption, a bank trustee of an employee benefit plan would be hesitant to lend securities to a dealer in Government securities if the dealer is not registered under the 1934 Act unless it can clearly be demonstrated that the dealer is not a party in interest with respect to the plan. According to the ABA, the burden of proving that a dealer is not a party in interest may be a deterrent to making the securities loan. However, Government securities dealers are major market participants and plans should not be precluded from lending securities to them. The ABA stated that, if the proposed amendments were adopted, employee benefit plans would benefit from the additional income resulting from the wider universe of eligible borrowers.

A letter submitted on behalf of the Committee on Securities Lending of the Robert Morris Associates, a trade group of over 35 banks representing securities lenders, asserted that the availability of surety bonds as acceptable collateral under PTE 81–6 would diminish the level of protection for employee benefit plans lending securities. In view of Merrill Lynch's decision to withdraw its request for amendment of PTE 81–6, it is unnecessary for the Department to respond to this comment.

### 3. Miscellaneous

Paragraph 2 of PTE 81–6 states that "securities issued or guaranteed by the United States Government or its agencies" are acceptable collateral to secure loans of securities made in reliance on the class exemption. The Department was asked by a fourth commentator to clarify the scope of the phrase "securities issued or guaranteed by the United States Government or its agencies." In this respect, the Department has concluded that obligations of instrumentalities of the United States Government are sufficiently similar to U.S. Government obligations that they are appropriate collateral for securities lending transactions. Thus, the Department has modified paragraph 2 of the final exemption to clearly indicate that securities issued or guaranteed by instrumentalities of the U.S. Government are acceptable collateral.[2]

### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary

[2] In the Department's view, it would not be proper for a plan fiduciary to accept U.S. Government or Governmental instrumentality securities as collateral in a securities lending transaction unless the securities are sufficiently liquid to be readily marketable in the event of default. U.S. Government securities were included within the categories of permissible collateral under the original exemption because such securities are essentially treated by investors as being equivalent to cash.

responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of seciton 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible,

(ii) It is in the interests of plans and of their participants and beneficiaries, and

(iii) It is protective of the rights of the participants and beneficiaries of plans;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

**Exemption**

Accordingly, PTE 81-6 amended under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Effective January 23, 1981, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the lending of securities that are assets of an employee benefit plan to a broker-dealer registered under the Secutities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government securities (as defined in section 3(a)(12) of the 1934 Act) or to a bank, if:

1. Neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3-21(c)) with respect to those assets;

2. The plan receives from the borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the borrower, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than the borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 100 percent of the then market value of the securities lent;

3. Prior to the making of any such loan, the borrower shall have furnished the lending fiduciary with (1) the most recent available audited statement of the borrower's financial condition, (2) the most recent available unaudited statement of its financial condition (if more recent than such audited statement), and (3) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to the lending fiduciary. Such representation may be made by the borrower's agreeing that each such loan shall constitute a representation by the borrower that there has been no such material adverse change;

4. The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as an arm's-length transaction with an unrelated party would be. Such agreement may be in the form of a master agreement covering a series of securities lending transactions;

5. (a) The plan (1) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation throught the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the borrower, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party;

(b) The plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities;

6. If the market value of the collateral at the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of trading on that day, the borrower shall deliver, by the close of business on the following business day, an additional amount of collateral (as described in paragraph 2) the market value of which, together with the market value of all previously delivered collateral, equals at least 100 percent of the market value of all the borrowed securities as of such preceding day.

Notwithstanding the foregoing, part of the collateral may be returned to the borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities;

7. The load may be terminated by the plan at any time, whereupon the borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) five business days, or (3) the time negotiated for such delivery by the plan and the borrower, whichever is lesser; and

8. In the event the loan is terminated, and the borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph 7, above, (i) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase, and (ii) the borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the plan the amount of any remaining obligations and expenses not covered by the collateral plus interest at a reasonable rate.

Notwithstanding the foregoing, the borrower may, in the event the borrower fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the lending fiduciary.

If the borrower fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the borrower's failure to

comply with the conditions of the exemption.

For purposes of this class exemption the term "affiliate" of another person shall include: (i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, DC, this 13th day of May, 1987.

**David M. Walker,**

*Deputy Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87-11430 Filed 5-18-87; 8:45 am]

BILLING CODE 4510-23-M

## Occupational Safety and Health Administration

### National Advisory Committee on Occupational Safety and Health; Full Committee Meetings

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) meeting previously announced in the **Federal Register** May 7, 1987 (Vol. 52 No. 86 page 17344) for May 20 and 21, 1987 will be meeting only on May 21 1987 at 9:00 am in Room C-2313 in the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC

NACOSH was established under section 7 (a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

The public is invited to attend these meetings. The committe will discuss general issues affecting the workplace safety and health. A detailed agenda will be prepared, made publicly available and sent to members prior to the meetings. Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Committee chairperson to the extent to which time permits.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, Third Street and Constitution Avenue, NW., Washington, DC., 20210. Telephone: 202-523-8615.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 15th day of May, 1987.

**John A. Pendergrass,**

*Assistant Secretary.*

[FR Doc. 87-11494 Filed 5-15-87; 3:26 pm]

BILLING CODE 4510-26-M

## Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 87-37; Exemption Application No. D-5612 et al.]**

### Grant of Individual Exemptions; Retirement Plan for Employees of Hemphill-Wells Co.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Retirement Plan for Employees of Hemphill-Wells Co. (the Plan) Located in Lubbock, TX

[Prohibited Transaction Exemption 87-37; Exemption Application No. D-5612]

*Exemption*

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the leasing from July 1, 1984 through April 30, 1986 of certain parcels of real property by the Plan to Hemphill-Wells Company provided all of the terms of the leases were as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

*Effective Date:* This exemption will be effective July 1, 1984 through April 30, 1986.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 5, 1986 at 51 FR 43991.

*For Further Information Contact:* Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**The Longmont National Bank Pension Plan (the Pension Plan); The Longmont National Bank Profit Sharing Plan (the Profit Sharing Plan); and the Harvey Potts Individual Retirement Account (the IRA) Located in Longmont, CO**

[Prohibited Transaction Exemption 87–40; Exemption Application Nos. D-6363, D-6364, and D-6365]

*Exemption*

The restrictions of section 406(b)(2) of the Act shall not apply to the October 10, 1984 sale of two portions of a U.S. Treasury Note by the IRA, one portion each to the Pension Plan and the Profit Sharing Plan, provided such transaction was consummated at fair market value on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 9, 1987 at 53 FR 7235.

*Effective Date:* This exemption is effective October 10, 1984.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Diamond Shamrock Employee Stock Ownership Plan and the Employee Shareholding and Investment Plan of Diamond Shamrock Corporation (the Savings Plan; collectively, the Plans) Located in Cleveland, OH**

[Prohibited Transaction Exemption 87–42; Exemption Application Nos. D–6360 & D–6361]

*Exemption*

The restrictions of sections 406(a) and 407(a) of the Act shall not apply, effective October 30, 1985, to (1) the acquisition and holding by the Plans of certain Units (the Units) representing limited partnership interests in Diamond Shamrock Offshore Partners, Ltd. (the Partnership) distributed as dividends to the Plans as shareholders of Diamond Shamrock Corporation (DSC) Common Stock (the Stock); and (2) the acquisition and holding by the Plans of Units acquired on the open market as a result of either the Plans' reinvestment of cash distributions made with respect to the Units or the purchase by the Savings Plan of Units with contributions from participants of the Savings Plan in accordance with directions given by those participants.

*Effective Date:* The effective date of this exemption is October 30, 1985.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32141.

*Written Comments:* The Applicants submitted certain comments on the proposed exemption.

First, the Applicants represent that on July 17, 1986, DSC announced that beginning with the third quarter of 1986 and continuing for a period of unknown duration, DSC's quarterly dividend distributions will consist only of cash and will not include Units. However, the Applicants state that the exemption as proposed is still necessary since the distribution of the Units as dividends may be resumed at some future time. In addition, the Plans will continue to acquire Units in open-market transactions as a result of the Plans' reinvestment of cash which is distributed to the Plans by the Partnership with respect to Units already held by the Plans. Finally, the exemption is necessary for the open-market acquisition of Units pursuant to the directions of Savings Plan participants as of the first date such transactions are permitted.

Second, in response to the Department's suggestion, the Applicants state that additional Units will not be acquired and held for any participant's account in the Plan if, immediately before such acquisition, the Units comprise ten percent or more of the value of the participant's account balance. The Applicants also state that if Units comprise less than ten percent of the value of a participant's account immediately before the acquisition, but would exceed ten percent immediately after the acquisition, then the acquisition and holding of such additional Units for the participant's account would be carried out only to the extent that it is possible to do so without exceeding the ten percent limit. The Applicants represent that at no time prior to the date of their comment letter had any Units held for a participant's account in either of the Plans exceeded ten percent of the value of such participant's account.

Third, the Applicants have requested clarification as to whether the ten percent limitation would be violated by the receipt by a participant's account of additional Units as a distribution with respect to securities held for the participant's account. The Department does not belive that the ten percent limitation should preclude a participant's account from receiving Units that the account would otherwise be entitled to receive as a holder of any security. In addition, the Department does not believe that the ten percent limitation should impose upon the Trustee of the Plans an obligation to dispose of any Units merely because the value of the Units exceeds ten percent of the value of the participant's account on a date subsequent to the date the Units were acquired due to, for example, an increase in the market value of the Units.

After consideration of the entire record, the Department has determined to grant the exemption.

*For further Information Contact:* Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**The Bloserman Companies, Inc. Employee Stock Ownership Plan and Trust (the Plan) Located in Ocean Springs, MS**

[Prohibited Transaction Exemption 87–43; Exemption Application No. D-6041]

*Exemption*

The restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the proposed sales by the Plan of certain improved real property (the Property) and a lease with respect to the Property to Alpha Investment Corporation (Alpha), a party in interest with respect to the Plan; and (2) the assumption by Alpha, in connection with the proposed sale, of a first deed of trust obligation of the Plan, provided the terms of the transactions are at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 13, 1987 at 52 FR 4686.

*For Further Information Contact:* Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**Gainesville Medical Group—Andrews & Associates, P.A. Profit Sharing Plan (the Plan) Located in Gainesville, FL**

[Prohibited Transaction Exemption 87–44; Exemption Application No. D–6050]

*Exemption*

The restrictions of section § 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease of real property located in the North Florida

Doctors Office Park in Gainesville, Florida, by the Plan to GMG Enterprises, a partnership whose partners are composed of the Plan's trustees, provided that the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the fact and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 17, 1987 at 52 FR 8376.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

**Tuscaloosa News, Inc. Profit Sharing Plan and Trust (the Plan) Located in Tuscaloosa, AL**

[Prohibited Transaction Exemption 87–45; Exemption Application No. D–6832]

*Exemption*

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanction resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (e) of the Code, shall not apply to the cash sale on December 15, 1986 by the Plan of three unsecured promissory notes (the Notes) to the Tuscaloosa News Division of the New York Times Company, the sponsor of the Plan, provided that the sales price for each of the Notes was no less than the fair market value of each Note on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 9, 1987 at 52 FR 7236.

*Effective Date:* The effective date of this exemption is December 15, 1986.

*For Further Information Contact:* Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Stolar Partnership Profit Sharing Plan (the Plan Located in St. Louis, MO)**

[Prohibited Transaction Exemption 87–46; Exemption Application No. D–6851]

*Exemption*

The restriction of sections 406 (a)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan (the Loan) by the Plan to the Stolar Partnership, the sponsor of the Plan, in the amount of the lesser of $800,000 or twenty five percent of the Plan's assets at the time of the Loan; provided that such Loan is on terms at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 17, 1987 at 52 FR 8377.

*For Further Information Contact:* Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Lear Petroleum Profit Sharing Plan (the Plan) Located in Dallas, TX**

[Prohibition Transaction Exemption 87–47; Exemption Application No. D–6871]

*Exemption*

The restrictions of sections 406(a) and 407(a) of the Act shall not apply, effective May 15, 1985, to the acquisition and holding by the Plan of certain units representing limited partnership interests in Lear Petroleum Partners, L.P. which were distributed as dividends to the Plan as a shareholder of Lear Petroleum Corporation Common Stock on May 15, August 15, August 28 and November 13, 1985 and February 14, 1986.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 9, 1987 at 52 FR 7238.

*Effective Date:* The effective date of this exemption is May 15, 1985 and is applicable only to the Units acquired on the dates specified above.

*For Further Information Contact:* Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

**Boulder Orthopedics, P.C. Pension Plan and Boulder Orthopedics, P.C. Profit Sharing Plan (the Plans) Located in Boulder, CO**

[Prohibited Transaction Exemption 87–48; Exemption Application Nos. D–6872 and D–6873]

*Exemption*

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a parcel of undeveloped real property from the individual accounts in the Plans of Rex C. Bosley, M.D. (Bosley) to Bosley, a party in interest with respect to the Plans, provided the Plans receive no less than fair market value for the property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 13, 1987 at 42 FR 4669.

*For Further Information Contact:* Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

**Minnesota Mutual Fire & Casualty Co. Performance Share Program (the Plan) Located in Minnesota, MN**

[Prohibited Transaction Exemption 87–49; Exemption Application No. D–7040]

*Exemption*

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of an annuity contract to the Plan by Minnesota Mutual Life Insurance Company (MML), provided the following conditions are met:

(a) MML—

(1) Is a party in interest with respect to the Plan by reason of its ownership of guaranty fund certificates of Minnesota Mutual Fire and Casualty Company (MMF&C),

(2) Is licensed to sell insurance in at least one State as defined in section 3(10) of the Act,

(3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, Minnesota, within the 18 months prior to the date when the transaction is entered into, or when such certificates were last made available by the domiciliary state, if earlier, and

(4)(A) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Minnesota) by the Insurance Commissioner of Minnesota within 5 years prior to the end of the year preceding the year in which the subject transaction occurs; or

(B) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the subject transaction.

(b) The Plan pays no more than adequate consideration for the annuity contract;

(c) No commissions are paid with respect to the sale of the contract; and

(d) For each taxable year of MML, the gross premiums and annuity considerations received in that taxable

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year by MML for life and health insurance or annuity contracts for the Plan, MMF&C, and all employee benefit plans (and their employers) with respect to which MML is a party in interest by reason of a relationship to such employer described in sections 3(14) (E) or (G) of the Act, or by reason of its ownership or guaranty fund certificates, does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by MML. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means that total of premiums and annuity considerations received, reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by MML.

(2) All premiums and annuity considerations written by MML for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 17, 1987 at 52 FR 8378.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of May, 1987.

Elliot I. Daniel,

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87-11431 Filed 5-18-87; 8:45 am]

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[Application No. D-6792 et al.]

## Proposed Exemptions; Hochman, Salkin and DeRoy Money Purchase Pension Plan, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendancy before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 CFR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Hochman, Salkin and DeRoy Money Purchase Pension Plan (the Plan) Located in Beverly Hills, CA**

[Application No. D-6792]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the proposed cash sale by the Plan of a single family residence in Los Angeles, California (the Property) to Richard Marmaro (Mr. Marmaro), a party in interest with respect to the Plan; provided that the cash received from the sale is not less than the fair market

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value of the Property on the date of the sale.

*Summary of Facts and Representations*

1. The Plan is a defined contribution money purchase pension plan with an estimated thirty (30) individual accounts for the participants and total assets of approximately $6,253,541, as of February 28, 1986.

2. Hochman, Salkin & DeRoy, a profesional corporation engaged in the practice of law and located at 9100 Wilshire Boulevard, Beverly Hills, California, is the employer and sponsor of the Plan (the Employer). Bruce I. Hochman, Avram Salkin, and George DeRoy are the officers, directors, and shareholders of the Employer and the discretionary trustees (the Trustees) of the Plan. As of February 28, 1986, the Trustees held 89% of the assets of the Plan in their individual accounts.

3. On March 4, 1983, the Plan lent $450,000 (the Loan) at an interest rate of 21% per annum to Jin Ho Chang and Martha Sung Ja Chang (Mr. & Mrs. Chang), unrelated third parties. The Loan was secured by a second deed of trust on the Property located at 201 South Rimpau St., Los Angeles, California. Concurrent with the funding of the Loan, the Plan retained $47,250 as the first six month's interest. At the time the Loan was made, the Property also secured a first deed of trust (the 1st Mortgage) in favor of Great Western Savings & Loan Association in the amount of $166,000 at the interest rate of 11.5% per annum. On November 16, 1983, after payment of $7,875, Mr. & Mrs Chang defaulted on the Loan. Foreclosure procedures were completed in August 1985. Between the default and the foreclosure lengthy negotiations took place which resulted in payments of $40,000. The applicants represent that because California law effectively precludes deficiency judgments, the Plan took title to the Property subject to the 1st Mortgage. Subsequently, an unlawful detainer action was brought, which resulted in possession of the Property in January 1986, by the Plan. Since January 1986, the Property has been vacant. It is represented that the Property constitutes approximately 10% of the Plan's assets.

4. Since its acquisition of the Property, the Plan has had a total of $224,737 in expenditures, including principal and interest payments of $193,524 to pay the 1st Mortgage in full and $31,213 on foreclosure costs, legal fees, property taxes, repairs, maintenance, and utilities on the Property, including roof repair, clean-up, and the purchase of new draperies, carpets, and applicances.[1] The applicants represent that the roof repair, clean-up, and purchases of draperies, carpets, and appliances were necessary prior to listing the Property for sale with a realtor.

5. On August 18, 1986, Arthur B. Goode (Mr. Goode) of Arthur B. Goode Liquidators & Appraisers, 8532 Melrose Avenue, Los Angeles, California, appraised the Property. Mr. Goode has determined that the current fair market value of the Property is $565,000. Mr. Goode's qualifications include more than fifty (50) years experience in buying, selling, and appraising all types of property in Los Angeles. He is also a Senior Member of the International Society of Appraisers, a member of the American Society of Appraisers, and is a licensed auctioneer and real estate broker.

6. The Plan proposes to sell the Property to Mr. Marmaro, a full-time employee of the Employer and a party in interest with respect to the Plan. It is represented that Mr. Marmaro is not a shareholder, officer, director, or member of the management committee of the Employer, nor is he one of the Trustees of the plan who were responsible for the Plan's making the Loan or acquiring and holding the Property. Mr. Marmaro is seeking an exemption from the prohibited transaction provisions of the Act and Code to permit him to purchase the Property for cash in the amount of the higher of the fair market value of the Property on the date of sale or $565,000. It is represented that the plan will incur no fees, commissions, or other costs as a result of the sale.

7. The Trustees represent that the sale is in the best interest of the plan. During the four months that Coldwell Banker and company listed the Property for sale at a price of $665,000, the Plan received only one offer of $575,000. The Trustees responded with a price of $625,000 which was countered with an offer for $600,000 at 9% interest involving a cash downpayment of approximately $100,000 on a first mortgage of approximately $500,000. The Trustees represent that after the above round of negotiations, it did not appear that after the payment of brokerage commissions by the Plan, a third party purchase would realize net proceeds greater than that which the Plan will obtain from the sale of the Property to Mr. Marmaro. Upon sale of the Property the Plan will be relieved of costly maintenance and taxes of approximately $500 per month and will be able to earn a substantial income from investment of the proceeds from the sale.

8. In summary, Mr. Marmaro represents that the proposed transaction satisfies the criteria for exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The sale of the Property will be a one-time transaction for cash; (b) no fees, commissions, or other cost will be incurred by the Plan as a result of the sale; (c) the Plan will sell the Property at its fair market value as determined by a qualified, independent appraiser; (d) the Plan will use the proceeds from the sale to earn a substantial income, and (e) the Plan will be relieved of Property which is costly to maintain.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

**Ralph Korte Enterprises Profit Sharing Plan (the Plan) Located in Highland, IL**

[Application No. D-6938]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of certain real property by the Plan to Ralph Korte, a party in interest with respect to the Plan provided all the terms of the transaction are as favorable to the Plan as those obtainable by the Plan in an arm's-length transaction with an unrelated party on the date the transaction was consummated.

*Effective Date:* April 30, 1987.

*Summary of Facts and Representations*

1. The Plan is a defined contribution profit-sharing plan with 77 participants. The Plan had net assets of $1,156,343 as of October 31, 1985. The trustees of the Plan are William D. Boudouris, Ralph Korte and Gerald E. Staley (the Trustees). The Trustees are stockholders of the Employer. The Employer is a construction company.

2. On February 23, 1978, the Plan purchased a parcel of real property, together with a building, garage and

[1] The Department is expressing no opinion herein as to whether the initial Loan by the Plan to Mr. & Mrs. Chang or the acquisition and holding of the Property by the Plan violates any of the fiduciary responsibility provisions of Part 4 Subtitle B of Title I of the Act.

shed thereon, located at 822 Broadway, Highland, Illinois (the Property) from Laurence A. and Anna Lou Heineman and Michael and Delores Kapilla (the Sellers) for $84,000 in cash. The Sellers are unrelated parties with respect to the Plan. A 7,800 square foot commercial building constitutes the primary improvement on the Property. A 20 foot by 30 foot garage, and a 10 foot by 20 foot concrete block shed (the Shed) are also located on the Property.

3. Since the Plan's purchase of the Property in 1978, it has leased space in the commercial building and garage to various tenants who are unrelated parties with respect to the Plan. The Plan presently leases commercial space to five such unrelated parties at competitive rental rates. During the calendar year 1985, the Plan received $16,794 in rental income, and incurred expenses respecting such building of $9,150, thereby realizing a net profit of $7,674 from operation of the commercial building and garage. In 1986, it is projected that the Plan will realize a net profit of $7,223 respecting the commercial building and garage.

4. Since the Plan's purchase of the property in 1978, it has rented the Shed to the Employer's wholly-owned subsidiary, Ralph Korte, Inc. (Korte Realty) at a rate of $50 per month. The applicant states that such rental rate represents the fair market rental value of the Shed. Korte Realty has timely remitted payment of the plan of its rental obligations.[2]

5. The applicant represents that over the past three to four years, the Plan has unsuccessfully attempted, through the use of several independent realtors, to sell the Property to unrelated parties. The Plan initially attempted to sell the Property for a sale price of $115,000, but reduced the sales price to $90,000. To date, the Plan has received no offers from unrelated parties to purchase the Property at a price of $90,000.

6. On February 4, 1986, Wilfred Holzinger, an independent professional appraiser, established the fair market value of the Property at $86,000. Over the eight year period since the Plan purchased the Property, its fair market value has risen only $2,000. Due to the Plan's lack of success in selling the Property to unrelated parties, the applicant proposes that the Property be sold to Ralph Korte (Mr. Korte), a Trustee and stockholder of the Employer for a purchase price of $90,000, which is in excess of the fair market value of the Property. The proposed sale would be an all cash sale. The Plan would incur no real estate commissions or fees in connection with the sale. The applicants have requested an effective date of April 30, 1987 so that the Plan can expeditiously invest the proceeds of the sale in various interest bearing accounts.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the At because:

(a) This will be a one-time cash transaction;

(b) The Plan will receive an amount in excess of the fair market value of the Property as determined by an independent appraisal;

(c) The Plan will not be required to pay any real estate commissions in connection with the sale of the Property, and;

(d) The Trustees have determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

*For Further Information Contact:* Ms. Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of May, 1987.

**Elliot I. Daniel,**

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87-11429 Filed 5-18-87; 8:45 am]

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[2] The applicant represents that the trustees of the Plan and Korte Realty were unaware that such use and rental of the Shed constituted a prohibited transaction. Within 60 days after the date an exemption is granted, Korte Realty will pay all applicable excise taxes for its prior prohibited transaction.

## LIBRARY OF CONGRESS

### American Folklife Center Board of Trustees; Meeting

**AGENCY:** Library of Congress.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94-463.

**DATE:** June 12, 1987, 9:30 a.m. to 4:30 p.m.

**ADDRESS:** Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination,

training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out it mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: May 11, 1987.

Glen A. Zimmerman,

*Associate Librarian for Management.*

[FR Doc. 87-11333 Filed 5-18-87; 8:45 am]

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## NATIONAL COMMISSION FOR EMPLOYMENT POLICY

### Meeting

**ACTION:** Notice of meeting.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a public meeting of the National Commission for Employment Policy at the Ramada Renaissance Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

**DATES:** Thursday, June 11, 1987—9:00 a.m. to 5:00 p.m., Friday, June 12, 1987 9:00 a.m. to 3:00 p.m.

Status: The meeting is open to the public.

Matters To Be Discussed: Commission members will discuss the NCEP Budget, the research agenda for Program Year 1987, proposed new JTPA research, and the legislative update.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Mahaffey, Public Affairs Officer, National Commission for Employment Policy, 1522 K. St., NW., Suite 300, Washington, DC 20005, 202-724-1545.

**SUPPLEMENTARY INFORMATION:** The National Commision for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97-300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Copies of the minutes and materials prepared for the meeting will be available for public inspection at the Commission's offices, 1522 K St., NW., Suite 300, Washington, DC 20005.

Signed this 11th day of May 1987.

Scott W. Gordon,

*Director.*

[FR Doc. 87-11382 Filed 5-18-87; 8:45 am]

BILLING CODE 4510-30-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-528]

### Arizona Public Service Co., et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NFP-41 issued to Arizona Public Service Company (the licensee), et al., for operation of the Palo Verde Nuclear Generating Station, Unit 1, located in Maricopa County, Arizona.

The amendment would change Technical Specification 3/4.11.1, "Secondary System Liquid Waste Discharges to the Onsite Evaporation Pond," to allow the concentrations of Antimony-124 (Sb-24) discharged from the secondary system liquid waste to the onsite evaporation pond to exceed $5X10^{-7}$ μCi/ml for a period not to exceed 292 days. This discharge will be within the limits of 10 CFR part 20, Appendix B, Table II, Column 2, concentrations. These revisions to the technical specifications would be made in response to the licensee's application for amendment dated May 10, 1987.

On March 24, 1987, the Commission granted an emergency Technical Specification change (documented in Amendment 16 to Facility Operating License NPF-41) in response to the licensee's application or amendment dated March 23, 1987, to allow for a period of 60 days the release of secondary system liquid waste, to the onsite evaporation pond, while the concentration of principal gamma emitters with half-lives less than 75 days is in excess of $5XC10^{-7}$ μCi/ml, provided that 10 CFR part 20 limits are not exceeded. The required cleanup activities of the secondary system are due to the primary to secondary leakage which occurred in January 1987. In the present request, the licensee has determined that 60 days authorized in March 1987 would not afford adequate time for removal of the isotope Antimony-124 (Sb-124), with a half life of 60 days, and has requested an additional 292 days.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involes no significant hazards consideration if operation of the facility in accordance with proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; (3) involve a significant reduction in a margin of safety.

a discussion of these standards as they relate to the amendment request follows:

#### Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the proposed change does not alter the current design of the facility. The proposed Technical Specifications change would allow continued operation of the unit while the concentration of Sb/124 discharged from secondary system liquid waste to the onsite evaporation ponds is above the lower limit of detectability but within the limits of 10 CFR Part 20, Appendix B, Table II, Column 2. This would allow for cleanup (decontamination) activities of radioactive liquids resulting from a previous primary to secondary leak, while maintaining the unit in an operational condition. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

#### Standard 2—Create the Possibility of New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because

the proposed amendment does not vary, effect, or provide any physical changes to the facility. This proposed change allows for discharge of Sb-24 which has been generated during processing/regeneration of condensate demineralizer resins. The small amounts ($5X10^{-6}$ to $5X10^{-7}$ μCi/ml) of Sb-124 activity present in regeneration wastes, which will be discharged into the onsite evaporation ponds, are within the limits of 10 CFR part 20, Appendix B, Table II, Column 2. (the current inventory of Antimony in the secondary system is estimated to be less than one Curie.) For these reasons, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

**Standard 3—Involve a Significant Reduction in a Margin of Safety**

The requested amendment does not involve a significant reduction in a margin of safety, because the proposed change does not affect the design basis of the plant. The existing limits for concentrations of radioactive material discharged from secondary system liquid waste on the onsite evaporation ponds will remain at $5X10^{-7}$ μCi/ml for principal gamma emitters, except for Sb-124. Releases of Sb-124 may be allowed to exceed $5X10^{-7}$ μCi/ml for a period not to exceed 180 days, but will be limited to 10 CFR Part 20, Appendix B, Table II, Column 2 concentrations. Because of the short half life (60 days) and the limited time involved (292 days), the effect of the proposed action on the previous accident analysis, i.e., the dose to the public from accumulated particulates in the evaporation ponds after the three units have been operating for 40 years, is negligible. For these reasons, it has been determined that the change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agree with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

The licensee states and the Commission has agreed that failure to act in a timely way would result in derating and subsequent loss of power generation commencing in late May 1987. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the Federal Register at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does invove a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the Federal Register and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to George W. Kinghton, Director, Project Directorate V, by collect call to 301–492–7331 or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register Notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. All comments received by June 3, 1987, will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85007.

Dated at Bethesda, Maryland, this 14th day of May, 1987.

For the Nuclear Regulatory Commission.

**E.A. Licitra,**

*Senior Project Manager, Project Directorate V, Division of Reactor Projects—III/IV/V and Special Projects.*

[FR Doc. 87–11403 Filed 5–18–87; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 70–1113; License No. SNM 1097]**

## General Electric Co., Wilmington, NC Facility; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated April 6, 1987, as corrected April 8, 1987, Anthony Z. Roisman and Mozart G. Ratner requested that the Director, Office of Inspection and Enforcement, take action with regard to the General Electric Company (GE) for its alleged illegal discrimination against Ms. Vera English. The Petition requests that the NRC impose upon GE the maximum fine permitted by statute for its willful discrimination against Ms. English, and that it impose a license condition upon GE requiring GE to fully compensate Ms. English for her losses incurred as a result of her alleged illegal discharge. The Petition asserts as bases for this request that the reason given to justify deferral of action on this issue in an earlier Director's Decision (DD 86–11), i.e., awaiting action by the Secretary of Labor, is no longer valid; that a Department of Labor Administrative Law Judge found that GE had discriminated against Ms. English but GE has not paid any fine for its conduct, nor has Ms. English been compensated for the wrong done her; and that the effectiveness of the NRC's program to protect and encourage workers to report safety violations is severely hampered by any further delay in taking action. The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Silver Spring, Maryland, this 13th day of May 1987.

For the Nuclear Regulatory Commission.

**Hugh L. Thompson, Jr.,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 87–11404 Filed 5–18–87; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–320]**

## Advisory Panel for the Decontamination of Three Mile Island, Unit 2; Meeting and States Report From GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI–2) will be meeting on June 10, 1987, from 7:00 pm to 10:00 pm at the Lancaster Council Chambers, Public Safety Building, 201 North Duke Street, Lancaster, PA 17603. The meeting will be open to the public.

The Panel will receive from General Public Utilities Nuclear Corporation, the licensee, a status report on the progress of the cleanup. The licensee will comment on the schedule for accomplishing the remaining tasks of the cleanup. At the direction of the Nuclear Regulatory Commission, the Panel will

discuss the timing for a final Commission decision on the disposal of the accident-generated water. A recommendation will be forwarded to the Commission. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Cleanup Project Directorate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–492–0445.

Dated: May 14th, 1987.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 87–11388 Filed 5–18–87; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 13, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Astrotech International Corporation
Common Stock, $0.30 Par Value (File No. 7–9933)
B.A.T. Industries PLC
Ordinary Shares 25p Par Value (File No. 7–9934)
Cablevision Systems Corporation
Class A Common Stock, $0.01 Par Value (File No. 7–9935)
Computer Consoles, Incorporated
Common Stock, $0.10 Par Value (File No. 7–9936)
Conquest Exploration Company
Common Stock, $0.20 Par Value (File No. 7–9937)
Dillard Department Stores, Inc.
Class A Common Stock, No Par Value (File No. 7–9938)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–11400 Filed 5–18–87; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–24442; File No. SR–PHLX–87–14]**

### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Creation of a Foreign Currency Options Committee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)91), notice is hereby given that on April 27, 1987, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Subetance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX"), pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 ("Act"), hereby proposes the following changes to the PHLX By-Laws: (Brackets indicate deletions; Italics indicates additions.)

*Standing Committees*

Section 10–1(a). The Standing Committees of the Corporation shall consist of: An Admissions Committee, an Allocation, Evaluation and Securities Committee, an Arbitration Committee, a Business Conduct Committee, a Disciplinary Review Committee, an Elections Committee, an Executive Committee, a Finance Committee, a Floor Procedure Committee, *a Foreign Currency Options Committee,* a Marketing Committee, a Nominating Committee, and an Options Committee. Each of such Committees, except as otherwise specifically provided in the by-laws or rules shall be composed of not less than nine members, exclusive of ex officio members, as may be determined by the Chairman of the Board with the approval of the Board of Governors, at least three of whom, exclusive of ex officio members, shall be members of the Board of Governors, and any additional number of whom may be members of this Corporation or general partners of officers or member organizations, or other persons who are considered to be qualified.

Sec. 10–1(b). No change.

Sec. 10–1(c). No change.

Sec. 10–2 through Sec. 10–14. No changes.

*Foreign Currency Options Committee*

*Section 10–15. The Foreign Currency Options Committee shall have general supervision of the dealings of members of the foreign currency options trading floor, and of the premises of the exchange facility immediately adjacent thereto. It shall make or recommend for adoption, and administer such rules as it may deem necessary for the convenient and orderly transaction of business upon the foreign currency options trading floor.*

*The Committee shall have supervision of the activities on the foreign currency options trading floor of specialists, assistant specialists, registered option traders, floor brokers, or other types of market-makers and shall establish standards and procedures for the training and qualification of members active on the foreign currency options trading floor. It shall have supervision over all foreign currency options floor employees of members or participants of the Corporation, and shall make and enforce such rules with respect to such employees as it may deem necessary.*

*The Committee shall resolve trading disputes. It shall have supervision of all connections or means of communications with the foreign currency options trading floor and may require the discontinuance of any such connnection or means of communication when, in the opinion of the Committee, it is contrary to the welfare or interest of the Corporation. It shall also have supervision over the location of equipment and the assignment and use of space on the foreign currency options trading floor.*

*The Committee shall have supervision over relations with other options exchanges in the areas of foreign currency trading, market-making and related matters. It shall coordinate with and provide information and assistance to the Allocation, Evaluation and Securities and the Options Committees as appropriate.*

*The Committee shall make and enforce rules and regulations relating to order, decorum, health, safety and welfare on the foreign currency options trading floor and the immediately adjacent premises of the exchange facility and shall be empowered to impose penalties for violations thereof.*

*The Committee, in its discretion, may delegate to other Standing or Special Committees of the Exchange supervision over questions pertaining to foreign currency options trading and over administration of such Rules as it deems appropriate.*

*Marketing Committee*

Sec. [10–15] *10–16*—[No change].

*Options Committee*

Sec. [10–16] *10–17.* The Options Committee shall have general supervision of the dealings of members on the *equity and index* options trading floor, and of the premises of the exchange facility immediately adjacent thereto. It shall make or recommend for adoption, and administer such rules as it may deem necessary for the convenient and orderly transaction of business upon the *equity and index* options trading floor.

The Committee shall have supervision of the activities on the *equity and index* options trading floor of specialists, assistant specialists, registered option traders, floor brokers, or other types of market-makers and shall establish standards and procedures for the training and qualification of members active on the *equity and index* options trading floor. It shall have supervision over all *equity and index* options floor employees of members of the Corporation, and shall make and enforce such rules with respect to such employees as it may deem necessary.

The Committee shall resolve trading disputes. It shall have supervision of all connections or means of communications with the *equity and index* options trading floor and may require the discontinuance of any such connection or means of communication when, in the opinion of the Committee, it is contrary to the welfare or interest of the Corporation. It shall also have supervision over the location of equipment and the assignment and use of space on the *equity and index* options trading floor.

The Committee shall have supervision over relations with other options exhcanges in the areas of trading, market-making and related matters. It shall coordinate with and provide information and assistance to the Allocation, Evaluation and Securities and *Foreign Currency Options Committees* as appropriate [and shall be empowered to make temporary appointments of specialists, assistant specialists, registered options traders or other types of options floor market-makers until permanent appointments are made by the latter Committee].

The Committee shall make and enforce rules and regulations relating to order, decorum, health, safety and welfare on the *equity and index* options trading floor and the immediately adjacent premises of the exchange facility and shall be empowered to impose penalties for violations thereof.

The Committee, in its discretion, may delegate to other Standing or Special Committees of the Exchange supervision over questions pertaining to *equity and index* options trading and over administration of such Rules as it deems appropriate.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change*

The purpose of the proposed rule change is to designate a new Standing Committee of the Board of Governors, the Foreign Currency Options Committee.The Committee was created to handle the significant policy and structural decisions which will be made in the future regarding foreign currency options trading. Also, since foreign currency options trading is a separate and distinct market from the market for equity and index options, with its own participants, it is appropriate to designate a Foreign Currency Options Committee to oversee such trading.

This new Standing Committee would have a charter basically identical to that of the Options Committee with responsibility for interpreting the Exchange's rules as they apply to foreign currency options trading and to oversee the operations of the currency options floor. By-Law Section 10–16 respecting the Options Committee is redesignated as By-Law Section 10–17 with deletion of language respecting temporary appointment of specialists, assistant specialists, and registered options traders. Those responsibilities now reside in the Allocation, Evaluation and Securities Committee.

The proposed rule change is consistent with section 6(b)(5) of the Securities and Exchange Act of 1934 in that it will facilitate growth of foreign currency options trading while fostering the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit writen data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section,

450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying of at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 9, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 11, 1987.

Jonathan G. Katz,

*Secretary*

[FR Doc. 87-11401 Filed 5-18-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24441; File No. SR-PHLX-87-19]

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Stop and Stop Limit Orders**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1987 the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Philadelphia Stock Exchange, Inc., ("PHLX"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), proposes to amend Exchange Rule 1066(c)(3) and Option Floor Procedure Advice A-5 ("Advice"), as follows (new material is italicized; deleted material is bracketed):

Rule 1066(c)(3). A stop order and a stop limit order in option contracts shall also be elected by a quotation, as follows. A stop order to buy shall become a market order when the bid price in the options series is at or above the stop price, after the order is represented in the trading crowd. A stop order to sell shall become a market order when the offer price in the option series is at or below the stop price, after the order is represented in the trading crowd.

A stop limit order to buy shall become a limit order executable at the limit price or a better price, if obtainable, when the bid price in the option series is at or above the stop price, after the order is represented in the trading crowd.

A stop limit order to sell shall become a limit order executable at the limit price or a better price, if obtainable, when the bid price in the option series is at or above the stop price, after the order is represented in the trading crowd.

[No stop or stop limit order elected by a quotation may be executed without prior approval of a Floor Official.] *Stop and stop limit orders elected by a quotation must be brought to the attention of a floor official (who may then refer questionable instances to market surveillance staff) by the respective specialist, or his representative, prior to, or promptly after, the execution. Specialists should ensure that stop and stop-limit orders are reported to the tape with a designation to that effect (i.e., "STPD").*

*A-5*

Execution of Stop and Stop-Limit Orders.

[Stop Order

A stop order to buy becomes a market order when the bid price in the option series is quoted at or above the stop price. Conversely, a stop order to sell becomes a market order when the offer price in the option series is quoted at or below the stop price.

Stop Limit Orders

A stop limit order to buy becomes a limit order executable at the limit price or at a better price, if obtainable, when the bid price in the option series is quoted at or above the stop price. Conversely, a stop limit order to sell becomes a limit order executable at the limit or at a better price, if obtainable, when the offer price in the option series is quoted at or below the stop price.

All stop and stop limit orders, prior to being executed on the established bid and offer, must be approved by a Floor Official.

See Rule 1018(a) or Rule 1066(2) and (1).

Fine Schedule

*A-5*

Fine not applicable]

*Stop and stop-limit orders are contingency orders to buy or sell when the market for a particular option reaches a specified price.*

*Stop and stop-limit orders to buy become eligible for execution when the option trades at or above the stop price or when the bid price for the option is at or above the stop price. Stop and stop-limit orders to sell become eligible for execution when the option trades at or below the stop price or when the offer price for the option is at or below the stop price.*

*A stop or stop-limit order made eligible by an opening sale or quote should be executed during the opening of the respective series. An order made eligible by an opening sale should print as a separate trade immediately following the opening trade. An order made eligible by an opening quote should print immediately following dissemination of the quote.*

*Stop and stop-limit orders elected by a quotation must be brought to the attention of a floor official (who may then refer questionable instances to market surveillance staff) by the respective specialist, or his representative, prior to, or promptly after, the execution.*

Specialists should ensure that stop and stop-limit orders are reported to the tape with a designation to that effect (i.e., "STPD").

Fine Schedule

*A-5*

*Fine not applicable.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. the self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change*

The purposes of the proposed rule and Advice change are: (i) To provide members with a description of the circumstances under which a stop and stop-limit order is elected; (ii) to adopt procedures for the handling of stop and stop-limit orders on the opening; and (iii) to address functional problems surrounding the requirement for floor official approval *prior to* execution of a stop or stop-limit order elected by a quotation. In order to monitor the effectiveness of the above stop and stop-limit execution procedures, the rule and Advice change would also require

the respective specialist to ensure that stop and stop-limit order executions be appropriately designated (i.e., "STPD") when reported to the tape.

Moreover, the Advice as currently written refers to stop and stop-limit orders made eligible by a quote change but does not contain language pertaining to stop and stop-limit orders made eligible by a trade. The proposed Advice change would enhance the Advice in this regard by describing how stop and stop-limit orders are made eligible by a trade.

Similarly, the Advice does not now provide direction for the handling of stop and stop-limit orders made eligible on the opening. This has resulted in inconsistencies in the handling of such Orders. The proposed Advice change would promote uniformity in this area by providing that orders elected by an opening trade or quotation would be assured of a prompt execution without having to wait until the end of rotation in the option.

Securing floor official approval prior to executing a stop or stop-limit order elected by a quotation can cause functional problems in instances where the market is active and a floor offical is not within the immediate area. Under such circumstances, the specialist faces a dilemma: Either to stay at his post and facilitate the execution of the numerous orders there (and thereby not seek out a floor official to approve execution of the stop order ) or to leave his post to seek out a floor official and disrupt the activity at his post. To address this problem, the proposed Advice change would allow specialists to notify floor officials promptly after such executions rather than having to receive prior floor official approval. The Exchange does not believe that this alternative would impede its safeguarding against improper executions since all such trades will still be subjected to floor official review.

Furthermore, the requirement that the specialist designate the execution of such an order "STPD" enables Exchange Market Surveillance staff effectively to monitor the execution of stop orders. All "STPD" orders can be singled our for special surveillance to ensure they were appropriately handled. Additionally, the Exchange notes that its rules also provide that a member organization may reject a transaction taken or supplied by the specialist for his own account if the specialist is notified in accordance with Commentary .05 to Exchange Rule 1019.

The Exchange believes the proposed rule and Advice change are consistent with Section 6 of the Act, and, in particular, section 6(b)(5), in that the proposed changes are designed to promote fair and orderly markets and otherwise foster the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on competition*

The PHLX does not believe that the proposed rule and advice change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 9, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 11, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11402 Filed 5-18-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; U.S. Route 29, Montgomery County, MD; Notice of Intent To Prepare

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Correction of notice of intent.

**SUMMARY:** The FHWA is issuing this correction to the May 5, 1987, **Federal Register** (published on p. 16477) advising the public of our intent to prepare an environmental impact statement for highway improvements on U.S. Route 29 in Montgomery County.

**FOR FURTHER INFORMATION CONTACT:** Mr. Louis Ege, Jr., Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/333-1130.

**SUPPLEMENTARY INFORMATION:** The project limits were incorrectly stated as being from the Patuxent River to Interstate 495 (Capital Beltway). The correct limits are from the Patuxent River to Sligo Creek.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program)

Emil Elinsky,

*Division Administrator, Baltimore, Maryland.*

[FR Doc. 87-11334 Filed 5-18-87; 8:45 am]

BILLING CODE 4910-22-M

### Uniform Relocation Act Amendments of 1987

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat. 132, was enacted April 2, 1987. Title IV of the Act (the 1987 Amendments) amends the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 U.S.C. sections 4601 through 4655 (1982). Among other things, the 1987 Amendments established the

Department of Transportation (DOT) as the lead agency for implementing the Uniform Act. The lead agency has a number of continuing responsibilities in the administration of the Uniform Act. DOT's function will largely be the responsibility of the Federal Highway Administration (FHWA). The FHWA is issuing this notice to inform all interested parties and agencies of the significant changes in the law and general plans to implement those changes.

**FOR FURTHER INFORMATION CONTACT:** Barbara Reichart, Chief, Relocation Division, HRW–20, (202) 366–0116; Gerald Saunders, Chief, Real Estate Division, HRW–10, (202) 366–2015; or Reid Alsop, Attorney Advisor, Office of the Chief Counsel, HCC–40, (202) 366–1371. The address is Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** The following are brief descriptions of the more significant amendments to the Uniform Act. The citations are to sections of the 1987 Amendments.

The 1987 Amendments enhance the benefits provided under the Uniform Act to individuals and businesses that are required to move as a result of a Federal or federally assisted project. The 1987 Amendments also, for the first time, address the treatment of utilities which must relocate as a result of such projects, unless another Federal law governs their relocation. Furthermore, State and local autonomy is enhanced by allowing certification of State and local programs which are carried out in accordance with State laws that are determined to have the same purpose and effect as the Uniform Act. Finally, greater uniformity of program implementation and administration at the Federal level is attained by designating a lead agency for the Federal government which has the responsibility of issuing government wide standards, and generally overseeing Federal activities under the Uniform Act. The Congress clearly envisioned that the lead agency would coordinate with other Federal agencies in carrying out its responsibilities.

Key changes provided by the 1987 Amendments include:

—*Lead Agency.* The Department of Transportation has been designated as lead agency. (Section 402(e)). By delegation from the Secretary of Transportation, FHWA will carry out these responsibilities. Lead agency duties include the development and issuance, with the active participation of the Secretary of Housing and Urban Development, and other Federal agencies, of such regulations as may be necessary to carry out the Uniform Act. (Section 412). The lead agency is specifically required to issue rules, establish procedures and make interpretations to implement the provisions of the Uniform Act.

—*Displaced person.* The definition is expanded to include displacement because of rehabilitation and demolition if such displacement is permanent. (Section 402(d)).

—*Federal and State agencies.* These definitions have been expanded to include any private entity that has the power of eminent domain under Federal or state law. (Sections 402 (a) and (b)).

—*Replacement housing payments.* The maximum payment to homeowners is increased to $22,500. (Section 406). The maximum payment for tenants and certain others is increased to $5,250. These payments to tenants are based on the increased rent required over a specified period of time which is reduced to 42 months. The requirement that a displaced tenant, who elects to receive a downpayment in lieu of a rent supplement, must match a portion of the amount provided has been eliminated. (Section 407).

—*Moving expenses.* Benefits are expanded to include a reestablishment payment not to exceed $10,000 for small businesses, farms, or non-profit organizations. Under certain conditions a payment is permitted to qualifying utility companies for certain extraordinary moving costs. The maximum payment to a business in lieu of moving costs is increased to $20,000 while the minimum payment has been reduced to $1,000. (Section 405).

—*Certification.* Regarding programs or projects carried out with Federal financial assistance, as an alternative to the assurances under sections 210 and 305 of the Uniform Act, the Federal agency providing the financial assistance may accept a certification from a State agency that it will carry out the responsibilities of the Federal agency under the Uniform Act. The lead agency must first determine if State law is sufficient to accomplish the purpose and effect of the Uniform Act (as amended). Before making this determination, the lead agency must provide an opportunity for public review and comment, and consult with local general purpose governments within the State. (Section 403).

—*Effective Date.* The provisions of section 412 with respect to lead agency authority to develop and issue regulations were effective upon enactment. The remaining provisions will be effective on the effective date specified in the regulations issued under such authority, but not later than two years from the date of enactment which was April 2, 1987. (Section 418).

FHWA intends to implement those provisions of the 1987 Amendments which are not amenable to notice and comment as soon as practical. Where the law is explicit and admits to little, if any, administrative discretion or significant agency interpretation we do not consider that a period for notice and comment would serve a useful purpose. In addition, such a comment period could, in certain cases, delay eligibility for benefits provided in the 1987 amendments. Thus, we expect to issue an interim final rule, primarily on specific payments, in the near future. To the maximum extent practicable, displaced persons should be considered eligible for the enhanced benefits contemplated by the Act if they are displaced after the date of enactment of the 1987 Amendments (April 2, 1987).

Federal and State agencies that consider themselves to now have statutory authority that is broad enough to allow the additional benefits set forth in the 1987 Amendments, are encouraged to preserve the eligibility of persons displaced after the effective date of the 1987 Amendments pending the issuance of the interim final rule by the lead agency. Such agencies would probably also need to make changes, as necessary, in their existing procedures after the interim rule is published. State agencies that do not currently consider themselves to have authority to comply should continue to operate under their existing procedures until such authority is obtained prior to April 2, 1988.

Where State enabling legislation must be changed to conform to the amended Federal law, State legislatures are encouraged to begin this process. The FHWA is drafting model legislation to provide assistance to such States, with an emphasis on a generic statute which could accommodate expected revision in Federal regulations. We recognize that not all States may wish to use such a model law.

To further carry out its responsibility, the FHWA will develop implementing procedures and/or regulations required by the 1987 Amendments as soon as possible. In addition to the interim final rule referred to above, we plan to issue a notice of proposed rulemaking concerning implementing the remaining provisions of the 1987 Amendments within the next several months. Comments will be sought and final regulations will be issued shortly thereafter.

Issued on: May 12, 1987.

Ray Bernhart,

*Administrator.*

[FR Doc. 87-11322 Filed 5-18-87; 8:45 am]

BILLING CODE 4910-23-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: May 14, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* New.
*Form Number:* IRS Form 8610.
*Type of Review:* Resubmission.
*Title:* Annual Low-Income Housing Credit Agencies Report.
*Description:* Form 8610 is used as a transmittal form for Forms 8609, Low-Income Housing Credit allocation Certification. Form 8610 is completed by state and local housing credit agencies.
*Respondents:* State or local governments.
*Estimated Burden:* 60 hours.
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

*Departmental Reports Management Office.*

[FR Doc. 87-11399 Filed 5-18-87; 8:45 am]

BILLING CODE 4810-25-M

## VETERANS ADMINISTRATION

### Advisory Committee on Readjustment Problems of Vietnam Veterans; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Advisory Committee on Readjustment Problems of Vietnam Veterans has been renewed by the Administrator of Veterans Affairs for a two year period beginning May 8, 1987 through May 7, 1989.

Dated: May 8, 1987.

By direction of the Administrator.

Rose Maria Fontanez,

*Committee Management Officer.*

[FR Doc. 87-11325 Filed 5-18-87; 8:45 am]

BILLING CODE 8320-01-M

### Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisons of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elania Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by July 20, 1987.

Dated: May 13, 1987.

By direction of the Administrator.

Jack L. Sharkey,

*Director, Office of Information Systems and Telecommunications.*

**Extension**

1. Deparatment of Veterans Benefits.
2. Disability Benefits Questionnaire.
3. VA Form 29-8313.
4. The form is used to request medical and industrial data to determine the insured's continuous entitlement to disability insurance benefits.
5. On occasion.
6. Individuals or households.
7. 92,000 responses.
8. 23,000 hours.
9. Not applicable.

**Extension**

1. Department of Veterans Benefits.
2. Notice of Lapse.
3. VA Forms 29-389 & 29-389-1.
4. These forms are used to advise the insured of the lapsed status of their insurance policy and the requirements necessary for reinstatement. The information is needed to determine eligibility for reinstatement.
5. On occasion.
6. Individuals or households.
7. 23,352 responses.
8. 3,892.
9. Not applicable.

**Extension**

1. Department of Veterans Benefits.
2. Veteran's Application for Compensation or Pension.
3. VA Form 21-526.
4. This information is used to determine the eligibility for compensation or pension for a veteran, spouse, surviving spouse or dependent and the extent of intitlement.
5. On occasion.
6. Individuals or households.
7. 248,284 responses.
8. 330,218 hours.
9. Not applicable.

**Extension**

1. Department of Veterans Benefits.
2. VA Property Management Consolidated Invoice.
3. VA Form 26-6974.
4. This information is necessary to proper management of VA's properties and serves as proof of broker's expenses and claimed fees prior to authorizing payments.
5. On occasion.
6. Businesses or other for-profit; Small businesses or organizations.
7. 28,600 responses.
8. 19,200 hours.
9. Not applicable.

**Extension**

1. Department of Veterans Benefits.
2. Report of Income from Property or Business.
3. VA Form 21-4185.
4. This information is needed to determine basic eligibility for all benefits where income forms the basis for that determination.
5. On Occasion.
6. Individuals or households.
7. 59,500 responses.
8. 29,750 hours.
9. Not applicable.

[FR Doc. 87-11349 Filed 5-18-87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE**

**COMMISSION MEETING**

**DATE AND TIME:** May 27, 1987, 9:00 a.m.–9:15 p.m.

**PLACE:** Embassy Row Hotel, Continental Room, 2015 Massachusets Avenue, NW., Washington, DC 20036.

**STATUS:** Open.

**MATTERS TO BE DISCUSSED:**

Chairman's Report
Approval of Minutes
Executive Director's Report
—FY 1987 Progress Report
—FY 1989 Programs
—Administrative Matters
Report, Budget and Finance Committee
Guest Speaker: Joan Durrance "Local Governance"
Chief Officers of State Library Agencies Briefing, Nettie Taylor, Maryland State Librarian
NCLIS Committee Structure
Information Age Commission
Network Advisory Committee Statement
Reports:
—Bicentennial Committee
—International Committee
—1989 White House Conference Committee
Program Committee
OMB Clearance
Role of Commission in Advising the Executive and Legislative Branches
Commission Recognition Awards
Preservation Panel:
Jeffrey Heynen, ARL
Alan Calmes, NARA
George Farr, NEH
Carol Morrow Manns, RLG
Movie on Preservation: "Slow Fires"

**CONTACT:** Vivian J. Arterbery, NCLIS Executive Director.

**Jane D. McDuffie,**

*Staff Assistant.*

May 14, 1987.

[FR Doc. 87-11441 Filed 5-15-87; 10:56 am]
BILLING CODE 7527-01-M

# Corrections

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 182, 184, and 186

[Docket No. 79N-0269]

### Iron and Iron Salts; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

*Correction*

In proposed rule document 87-8850 beginning on page 13086 in the issue of Tuesday, April 21, 1987, make the following correction:

On page 13106, in the first complete paragraph, in the last line, "not" should read "now".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### 30 CFR Parts 5, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 35, 36 and 74

### Fees for Testing, Evaluation and Approval of Mining Products

*Correction*

In rule document 87-10389 beginning on page 17506 in the issue of Friday, May 8, 1987, make the following corrections:

1. On page 17510, in Table 1, under the heading "30 CFR part and agency tracking code", the second line should read "*12 Approval Evaluation" and the words "Permissibility Tests" should appear on a new line directly above "Physical Exam".

2. On page 17511, in Table 1, in the "Hourly rate" column, the seventh entry, now reading "28", should read "29" and in the "Flat rate" column the third entry, now reading "6", should be removed.

3. On page 17512, in the first column, in the 6th, 7th, 9th and 10th lines from the bottom, the tracking codes "*12" and "*14" should read "12" and "14".

BILLING CODE 1505-01-D

## VETERANS ADMINISTRATION

### 38 CFR Part 3

### Removal of Monetary Rates

*Correction*

In proposed rule document 87-10709 beginning on page 17773 in the issue of Tuesday, May 12, 1987, make the following corrections:

1. On page 17774, in the first column, under SUPPLEMENTARY INFORMATION, in the fifth line, "delivered" should read "derived".

**§ 3.23 [Corrected]**

2. On the same page, in the third column, in § 3.23(a), in the 10th line, "Notice" should read "Notices".

**§ 3.27 [Corrected]**

3. In § 3.27(b), on page 17776, in the first column, in the sixth line, "increases" was misspelled.

**§ 3.28 [Corrected]**

4. On the same page, in the first column, in the introductory text of § 3.28, in the second line, "improved" was misspelled; and in paragraph (b), in the fourth line, "pension" was misspelled.

**§ 3.1600 [Corrected]**

5. On the same page, in the second column, in § 3.1600(b), in the seventh line, "computed" was misspelled; and in the third column, in paragraph (f), in the eighth line, insert ")" after "§ 3.6(c)"

BILLING CODE 1505-01-D

federal register

Tuesday
May 19, 1987

Part II

# General Services Administration

41 CFR Part 101-6
Federal Advisory Committee Management; Proposed Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-6

Federal Advisory Committee Management; Administrative and Interpretive Guidelines and Management Controls

AGENCY: Office of Administration, General Services Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Federal Advisory Committee Act, as amended (5 U.S.C., App.) (hereinafter "the Act"). In a previous issue of the Federal Register, GSA published an interim final rule on the management of Federal advisory committees and requested comments (48 FR 19324; April 28, 1983). Additional comments were requested through an advance notice of proposed rulemaking published in the Federal Register on February 13, 1987 (52 FR 4631). Comments received have been considered in formulating this proposed rule prior to its publication as a final rule. This revised rule is intended to improve the management and use of Federal advisory committees in the Executive Branch of the Federal government.

DATES: Comments must be received on or before: August 17, 1987.

ADDRESSES: Comments should be addressed to: General Services Administration, Committee Management Secretariat (CTM), Washington, DC 20405.

Copies of comments that have been received are available for public inspection in Room 7030 of the General Services Building, 18th and F Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Senior Committee Management Specialist, Committee Management Secretariat, Office of Management Services, Office of Administration, General Services Administration, Washington, DC 20405 (202–523–1343).

SUPPLEMENTARY INFORMATION:

## Background

GSA's authority for administering the Act is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445, 3 CFR, 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act, as amended, except that the Annual Report to the Congress required by section 6(c) shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

## Prior Comments

As stated above, GSA issued an interim final rule on the management of Federal advisory committees in the Federal Register and invited comments. The substantive comments received are addressed as follows:

*Rescind the No-Compensation Policy*

It was the general opinion of the commenters responding that the policy of not paying advisory committee members should be withdrawn. The commenters felt that the decision to compensate or not to compensate members should be left to the discretion of the agency heads because needs of agencies vary, and agencies are in the best position to know when compensation is appropriate. GSA has agreed to withdraw the nocompensation requirement.

*Eliminate Quarterly Reports of Membership*

A change that many commenters recommended was elimination of the requirement to update committee membership lists on a quarterly basis. The commenters stated that these reports placed an unnecessary paperwork burden on agencies having advisory committees.

The annual report of membership that the Federal Advisory Committee Act requires was considered sufficient. GSA has eliminated this requirement from the proposed rule.

*Withdraw the Limits on Committee Size*

The interim final rule included a provision recommending that the size of committees be limited. Commenters noted that the Federal Advisory Committee Act does not establish a limit on the size of membership. Some agency heads find that larger committees can be an efficient device, saving the cost of setting up separate committees and staffs.

GSA never intended this limitation to be mandatory. To avoid misinterpretation, however, GSA has changed this provision to say that the number of members should be limited to the fewest necessary to accomplish committee objectives.

*Clarify the Requirements Applicable to Subcommittees*

The commenters recommended that subcommittees that provide advice and recommendations to the parent committee should be considered part of the parent committee and exempt from separate chartering and consultation provisions of the Federal Advisory Committee Act, although they would still be subject to the other provisions of the Act. GSA has accepted this recommendation and has reflected it in this proposed rule.

*Exempt One-Time Meetings*

Several commenters recommended that a final rule provide an exclusion for one-time meetings. GSA is of the opinion that such an exclusion is not appropriate in view of the limited litigation history available for consideration. Accordingly, GSA has not accepted the recommendation to exclude meetings or groups from the Act's coverage solely because they take place or meet only once. In the absence of any additional judicial precedent to the contrary, GSA believes a one-time meeting exclusion in this rule would be inconsistent with the Act.

*Streamline the Consultation Process*

One commenter suggested that the final rule allow an agency head to proceed to establish an advisory committee, for which consultation with the Administrator is required, if that agency head had not received GSA's views within 15 days of receipt. GSA does not believe that the lack of a final response within 15 days has been a widespread problem. For those consultations which require additional time, GSA normally provides the agency with a reason for the delay and makes every effort to expedite the review process and respond to the agency. Since the need for additional time to review a consultation often indicates a need to resolve problems or respond to additional information, GSA does not believe an agency should proceed to charter a committee until all relevant issues have been resolved.

However, GSA recognizes that an agency head retains final authority for establishing a particular advisory committee and this concept has been incorporated into the proposed rule. To expedite the consultation process generally, the proposed rule also provides for agencies to submit consultations directly to the Secretariat to streamline administrative processing.

## Miscellaneous Comments

Other sections have been amended or revised for purposes of clarity or to better explain GSA's intent.

### Additional Instructions

Pursuant to section 7(d) of the Act, the Administrator after study and consultation with the Director, Office of Personnel Management (OPM), is to establish guidelines with respect to uniform fair rates of pay for comparable services for members, staffs and consultants of advisory committees. The consultation process with OPM has taken place.

### Executive Order 12291

GSA has determined that this proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. GSA has based all administrative decisions on this proposed rule on adequate information concerning the need for and consequences of this proposed rule. GSA has also determined that the potential benefits to society from this proposed rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least net cost to society.

### Regulatory Flexibility Act

These regulations are not subject to the regulatory flexibility analysis or other requirements of 5 U.S.C. 603 and 604.

### List of Subjects in 41 CFR Part 101–6

Civil rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Federal advisory committees.

Accordingly, it is proposed to amend 41 CFR Part 101–6 as follows:

## PART 101–6—MISCELLANEOUS REGULATIONS

1. Subpart 101–6.10 is revised to read as follows:

### Subpart 101–6.10—Federal Advisory Committee Management

Sec.


101–6.1001 Scope.
101–6.1002 Policy.
101–6.1003 Definitions.
101–6.1004 Examples of advisory meetings or groups not covered by the Act or this regulation.
101–6.1005 Authorities for establishment of advisory committees.
101–6.1006 [Reserved]
101–6.1007 Agency procedures for establishing advisory committees.
101–6.1008 The role of GSA.
101–6.1009 Responsibilities of an agency head for an advisory committee established under general agency authority.
101–6.1010 [Reserved]
101–6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.
101–6.1012 [Reserved]
101–6.1013 Charter filing requirements.
101–6.1014 [Reserved]
101–6.1015 Advisory committee information which must be published in the Federal Register.
101–6.1016 [Reserved]
101–6.1017 Responsibilities of the agency Committee Management Officer.
101–6.1018 [Reserved]
101–6.1019 Duties of the Designated Federal Officer.
101–6.1020 [Reserved]
101–6.1021 Public participation in advisory committee meetings.
101–6.1022 [Reserved]
101–6.1023 Procedures for closing an advisory committee meeting.
101–6.1024 [Reserved]
101–6.1025 Requirement for maintaining minutes of advisory committee meetings.
101–6.1026 [Reserved]
101–6.1027 Termination of advisory committees.
101–6.1028 [Reserved]
101–6.1029 Renewal of advisory committees.
101–6.1030 [Reserved]
101–6.1031 Amendments to advisory committee charters.
101–6.1032 [Reserved]
101–6.1033 Compensation and expense reimbursement of advisory committee members and staff.
101–6.1034 [Reserved]
101–6.1035 Reports required for advisory committees.


Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); sec. 7, 5 U.S.C. App. 1; and E.O. 12024, 3 CFR 1977 Comp. p. 158.

### Subpart 101–6.10—Federal Advisory Committee Management

#### § 101–6.1001 Scope.

(a) The following regulations define the policies, establish minimum requirements, and provide guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership, activities, and cost of these advisory committees are also included.

(b) The Act and these regulations do not apply to advisory meetings or groups listed in § 101–6.1004.

#### § 101–6.1002 Policy.

The policy to be followed by Federal departments, agencies, and commissions, consistent with the Federal Advisory Committee Act, as amended, is as follows:

(a) An advisory committee shall be established only when it is essential to the conduct of agency business. Decision criteria include whether committee deliberations will result in the creation, elimination of, or change in, regulations, guidelines, or rules affecting agency business; whether the information to be obtained is already available through another advisory committee or source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint impacting agency operations;

(b) An advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished; the subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's main functions by another entity within the Federal Government; or the agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(c) An advisory committee shall be balanced in its membership in terms of the points of view represented and the functions to be performed; and

(d) An advisory committee shall be open to the public in its meetings except in those circumstances where a closed meeting shall be determined proper and consistent with the Act.

#### § 101–6.1003 Definitions.

"Act" means the Federal Advisory Committee Act, as amended, 5 U.S.C. App. I.

"Administrator" means the Administrator of General Services.

"Advisory Committee" subject to the Act means any committee, board, commission, council, conference, panel, task force, or other similar group established by statute, or established or utilized by the President or any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities. The term "advisory committee" includes any subcommittee or subgroup of an advisory committee, except such a group that reports to the parent group and meets as described in paragraph (k) of § 101–6.1004.

"Agency" has the same meaning as in section 551(1) of Title 5 of the United States Code.

"Committee Management Secretariat" ("Secretariat"), established pursuant to the Act is responsible for all matters relating to advisory committees, and carries out the Administrator's responsibilities under the Act and Executive Order 12024.

"Committee member" means an individual who serves by appointment on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

"Presidential advisory committee" means any advisory committee which advises the President. It may be established by the President or by the Congress, or used by the President in the interest of obtaining advice or recommendations for the President. "Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

"Staff member" means any individual who serves in a support capacity to an advisory committee.

"Utilized" (or "used"), as referenced in the definition of "Advisory Committee" in this section, means a committee or other group composed in whole or in part of other than full-time officers or employees of the Federal Government with an established existence outside the agency seeking its advice which the President or agency official(s) adopts, such as through institutional arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

**§ 101–6.1004 Examples of advisory meetings or groups not covered by the Act or this regulation.**

The following are examples of advisory meetings or groups not covered by the Act or this regulation:

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(b) Any advisory committee specifically exempted by an Act of Congress;

(c) Any advisory committee established or utilized by the Central Intelligence Agency;

(d) Any advisory committee established or utilized by the Federal Reserve System;

(e) The Advisory Committee on Intergovernmental Relations;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions, except that such committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this regulation, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group may be covered by the Act if an agency begins to accept the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group as a preferred source of advice or recommendations;

(k) Meetings of two or more advisory committee members convened to gather information or conduct research for the committee to analyze relevant issues and facts, or to draft proposed position papers for consideration by the advisory committee or a subgroup of the advisory committee; or

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

**§ 101–6.1005 Authorities for establishment of advisory committees.**

An advisory committee may be established in one of four ways:

(a) By the President by Executive Order;

(b) By law where the Congress specifically directs the President or an agency to establish it;

(c) By law where the Congress authorizes but does not direct the President or an agency to establish it. In this instance, an agency head shall follow the procedures provided in § 101–6.1007; or

(d) By an agency under general agency authority in Title 5 of the United States Code or under other general agency-authorizing law. In this instance, an agency head shall follow the procedures provided in § 101–6.1007.

**§ 101–6.1006 [Reserved]**

**§ 101–6.1007 Agency procedures for establishing advisory committees.**

(a) When an agency head decides that it is necessary to establish a committee, the agency must consider similar committees in the same or other agencies before submitting a consultation to GSA to ensure that no duplication of effort will occur.

(b) In establishing or utilizing an advisory committee, the head of an agency or designee shall comply with the Act and this subpart, and shall:

(1) Prepare a proposed charter for the committee which includes the information listed in section 9(c) of the Act; and

(2) Submit a letter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(i) An explanation of why the committee is essential to the conduct of agency business and in the public interest;

(ii) An explanation of why the committee's functions cannot be performed by the agency, another existing advisory committee, or other means such as a public hearing; and

(iii) A description of the agency's plan to attain balanced membership. For purposes of obtaining balance, agencies shall consider for membership interested persons and groups with professional or personal qualifications or experience to contribute to the functions and tasks to be performed. This shall not be construed to limit the participation of any individual where such participation is necessary to obtain divergent points of view that are

relevant to the business of the advisory committee.

(3) Subcommittees that do not function independently of the parent committee need not follow the requirements of paragraphs (b)(1) and (b)(2) of this section. However, except for the subgroups that meet solely as described in paragraph (k) of § 101–6.1004, they are subject to all other requirements of the Act.

(4) The requirements of paragraphs (b)(1) and (b)(2) of this section shall apply for any subcommittee of a chartered advisory committee, whether its members are drawn in whole or in part from the parent advisory committee, which functions independently of the parent advisory committee such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

(c) The Secretariat will review the proposal and notify the agency of GSA's views within 15 calendar days of receipt, if possible. The agency head retains final authority for establishing a particular advisory committee.

(d) The agency shall notify the Secretariat in writing that either:

(1) The advisory committee is being established. The filing of the advisory committee charter as specified in § 101–6.1013 shall be considered appropriate written notification in this instance. The agency head shall then comply with the provisions of § 101–6.1009 for an established advisory committee; or

(2) The advisory committee is not being established. In this instance, the agency shall also advise the Secretariat if the agency head intends to take any further action with respect to the proposed advisory committee.

**§ 101–6.1008 The role of GSA.**

(a) The functions under section 7 of the Act will be performed for the Administrator by the Secretariat. The Secretariat assists the Administrator in prescribing administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting these guidelines. In exercising internal controls over the management and supervision of the operations and procedures vested in each agency by section 8(b) of the Act and by §§ 101–6.1009 and 101–6.1017 of this rule, agencies shall conform to the guidelines prescribed by GSA.

(b) The Secretariat may request comments from agencies on management guidelines and policy issues of broad interagency interest or application to the Federal advisory committee program.

(c) In advance of issuing informal guidelines, nonstatutory reporting requirements, and administrative procedures such as report formats or automation, the Secretariat shall request formal or informal comments from agency Committee Management Officers.

**§ 101–6.1009 Responsibilities of an agency head for an advisory committee established under general agency authority.**

The head of each agency that uses one or more advisory committees shall ensure:

(a) Compliance with the Act and this regulation;

(b) Issuance of administrative guidelines and management controls which apply to all advisory committees established or used by the agency;

(c) Designation of a Committee Management Officer who shall carry out the functions specified in section 8(b) of the Act;

(d) Provision of a written determination stating the reasons for closing any advisory committee meeting to the public;

(e) A review, at least annually, of the need to continue each existing advisory committee, consistent with the public interest and the purpose and functions of each committee;

(f) Rates of pay are justified and levels of agency support are adequate;

(g) The appointment of a Designated Federal Officer for each advisory committee;

(h) The opportunity for reasonable public participation in advisory committee activities; and

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives.

**§ 101–6.1010 [Reserved]**

**§ 101–6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.**

The chairperson of an independent Presidential advisory committee shall comply with the Act and this regulation and shall:

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer; and

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d) and (h) of § 101–6.1009.

**§ 101–6.1012 [Reserved]**

**§ 101–6.1013 Charter filing requirements.**

No advisory committee may operate, meet, or take any action until its charter has been filed as follows:

(a) *Advisory committee established, used, reestablished, or renewed by an agency.* The agency head shall file—(1) The charter with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency;

(2) A copy of the charter with the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540; and

(3) A copy of the charter, along with copies of the transmittal letters to the Senate and the House and the Library of Congress, with the Secretariat.

(b) *Advisory committee specifically directed by law.* Procedures are the same as in paragraph (a) of this section.

(c) *Presidential advisory committee.* When either the President or the Congress establishes an advisory committee that advises the President, the responsible agency head or, in the case of an independent Presidential advisory committee, the President's designee, shall file—

(1) The charter with the Secretariat;

(2) A copy with the Library of Congress; and

(3) If specifically directed by law, a copy with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency or the independent Presidential advisory committee.

**§ 101–6.1014 [Reserved]**

**§ 101–6.1015 Advisory committee information which must be published in the Federal Register.**

(a) *Committee establishment, reestablishment, or renewal.* (1) A notice in the **Federal Register** is required when an advisory committee, except a committee directed by law or established by the President, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat, the agency shall publish a notice in the **Federal Register** that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also include statements describing the nature and purpose of the committee and that the committee is necessary and in the public interest.

(2) Establishment and reestablishment notices shall appear at least 15 days before the committee charter is filed, except that the Secretariat may approve less than 15 days when requested for good cause by the agency. The 15-day advance notice requirement does not apply to committee renewals, notices of

which may be published concurrently with the filing of the charter.

(b) *Committee meetings.* (1) The agency or an independent Presidential advisory committee shall publish at least 15 days prior to an advisory committee meeting a notice in the **Federal Register**, which includes:

(i) The exact name of the advisory committee as chartered;

(ii) The time, date, place, and purpose of the meeting;

(iii) A summary of the agenda; and

(iv) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552b) as the basis for closure.

(2) In exceptional circumstances, the agency or independent Presidential advisory committee may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the **Federal Register**.

**§ 101–6.1016 [Reserved]**

**§ 101–6.1017 Responsibilities of the agency Committee Management Officer.**

In addition to implementing the provisions of section 8(b) of the Act, the Committee Management Officer will carry out all responsibilities delegated by the agency head. The Committee Management Officer should also ensure that sections 10(b), 12(a) and 13 of the Act are implemented by the agency to provide for the appropriate recordkeeping. Agency files will constitute the official advisory committee records. Records include, but are not limited to:

(a) A set of approved charters of each advisory committee.

(b) Copies of the agency's portion of the Annual Review of Federal Advisory Committees, as required in section 6(c) of the Federal Advisory Committee Act; and

(c) Agency guidelines on committee management operations and procedures as maintained and updated.

**§ 101–6.1018 [Reserved]**

**§ 101–6.1019 Duties of the Designated Federal Officer.**

The agency head, or in the case of an independent Presidential advisory committee, the Administrator, shall designate a full-time Federal employee to be the Designated Federal Officer for the advisory committee, who:

(a) Must approve or call the meeting of the advisory committee;

(b) Must approve the agenda;

(c) Must attend the meetings;

(d) Shall adjourn the meetings when such adjournment is in the public interest; and

(e) Chairs the meeting when so directed by the agency head.

(f) The requirement in paragraph (b) of this section does not apply to a Presidential advisory committee.

**§ 101–6.1020 [Reserved]**

**§ 101–6.1021 Public participation in advisory committee meetings.**

The agency head, or the chairperson of an independent Presidential advisory committee, shall ensure that—

(a) Each advisory committee meeting is held at a reasonable time and in a place reasonably accessible to the public;

(b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee; and

(d) Any member of the public may speak at the advisory committee meeting if the agency's guidelines so permit.

**§ 101–6.1022 [Reserved]**

**§ 101–6.1023 Procedures for closing an advisory committee meeting.**

(a) To close all or part of a meeting, the committee shall submit a request to the agency head, or, in the case of an independent Presidential advisory committee, the Administrator, citing the specific provisions of the Government in the Sunshine Act (5 U.S.C. 552b) which justify the closure. The request shall provide the agency head or the Administrator sufficient time to review the matter in order to make a determination prior to publication of the meeting notice required by § 101–6.1015(b).

(b) The general counsel of the agency, or in the case of an independent Presidential advisory committee, the General Services Administration' general counsel, should review all requests to close meetings.

(c) If the agency head, or in the case of an independent Presidential advisory committee, the Administrator, agrees that the request is consistent with the Government in the Sunshine Act and Federal Advisory Committee Act, he or she shall issue a determination that all or part of the meeting be closed.

(d) The agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Make a copy of the determination available to the public upon request; and

(2) State the reasons why all or part of the meeting is closed, citing the specified exemptions used from the Government in the Sunshine Act in the meeting notice published in the **Federal Register**.

**§ 101–6.1024 [Reserved]**

**§ 101–6.1025 Requirement for maintaining minutes of advisory committee meetings.**

The agency head, or, in the case of an independent Presidential advisory committee, the chairperson, shall ensure that detailed minutes of each advisory committee meeting are kept. The minutes must include:

(a) Time, date, and place;

(b) A list of the following persons who were present:

(1) Advisory committee members and staff;

(2) Agency employees; and

(3) Members of the public who presented oral or written statements;

(c) An estimated number of other members of the public present;

(d) An accurate description of each matter discussed and the resolution, if any, made by the committee of such matter; and

(e) Copies of each report or other document received or issued by the committee.

**§ 101–6.1026 [Reserved]**

**§ 101–6–6.1027 Termination of advisory committees.**

Any advisory committee shall automatically terminate not later than 2 years after it is established, reestablished, or renewed, unless:

(a) Its duration is otherwise provided for by law;

(b) The President or agency head renews it prior to the end of such period; or

(c) The President or agency head terminates it before that time.

**§ 101–6.1028 [Reserved]**

**§ 101–6.1029 Renewal of advisory committees.**

(a) Advisory committees specifically directed by law:

(1) Whose duration extends beyond 2 years shall require a new charter to be filed every 2 years after the date of enactment of the law establishing the committee. If a new charter is not filed, the committee is not terminated, but may not meet or take any action.

(2) Which would terminate under the provisions of section 14 of the Act, and for which renewal would require reauthorization by law, may be reestablished by an agency provided that the agency complies under general

agency authority with the provisions of § 101–6.1007.

(b) Advisory committees established by the President may be renewed by appropriate action of the President and the filing of a new charter.

(c) Advisory committees authorized by law or established or used by an agency may be renewed, provided that at least 30 but not more than 60 days before the committee terminates, an agency head who intends to renew a committee complies with the provisons of § 101–6.1007.

**§ 101–6.1030 [Reserved]**

**§ 101–6.1031 Amendments to advisory committee charters.**

(a) *Committees specifically directed by law or established by the President.* When the Congress by law, or the President by Exective Order, changes the authorizing language which has been the basis for establishing an advisory committee, the agency head or chairperson of an independent Presidental advisory committee shall:

(1) Amend those sections of the current charter affected by the new law or Executive Order; and

(2) File the amended charter as specified in § 101–6.1013.

(b) *Committees established or used by an agency.* The charter of an advisory committee established under general agency authority may be amended when an agency head determines that the existing charter no longer accurately reflects the objectives or functions of the committee. Changes may be minor, such as revising the name of the advisory committee, or modifying the estimated number of frequency of meetings. Changes may also be major such as those dealing with the objectives or composition of the committee. Amending any existing advisory committee charter does not constitute renewal of the committee under § 101–6.1029.

(1) To make a minor amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary, and

(ii) File the amended charter as specified in § 101–6.1013.

(2) To make a major amendment to a committee charter, and agency shall:

(i) Amend the charter language as necessary,

(ii) Submit the proposed amended charter with a letter to the Secretariat requesting GSA's views on the amended language, along with an explanation of the purpose of the changes and why they are necessary. The Secretariat will review the proposed changes and notify the agency of GSA's views within 15 calendar days of the request, if possible; and

(iii) File the amended charter as specified in § 101–6.1013.

**§ 101–6.1032 [Reserved]**

**§ 101–6.1033 Compensation and expense reimbursement of advisory committee members and staff.**

(a) *Uniform pay guidelines for members of an advisory committee.* Nothing in this rule shall require agency heads to provide compensation, unless otherwise provided by law, to members of advisory committees. However, when compensation is deemed appropriate by an agency, it shall fix the pay of the members of an advisory committee to the daily equivalent of a rate of the General Schedule in 5 U.S.C. 5332 unless the members are appointed as consultants and compensated under 5 U.S.C. 3109. In determining an appropriate rate of pay for the members, an agency shall give consideration to the significance, scope, the technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the members of the advisory committee. An agency may not fix the pay of the members of an advisory committee at a rate higher than the daily equivalent of the maximum rate for a GS–15 under the General Schedule, unless a higher rate is mandated by statute, or the head of the agency has personally determined that a higher rate of pay under the General Schedule is justified and necessary. Such a determination must be reviewed by the head of the agency annually. Under this rule, an agency may not fix the pay of an advisory committee member at a rate of pay higher than the daily equivalent of a rate for a GS–18, as provided in 5 U.S.C. 5332.

(b) *Pay for consultants to an advisory committee.* An agency shall fix the pay of a consultant to an advisory committee after giving consideration to the qualifications required of the consultant and the significance, scope, and technical complexity of the work. The compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109, and shall be in accordance with any applicable statutes, regulations, Executive Orders and administrative guidelines

(c) *Pay for staff members of advisory committee.* An agency may fix the pay of each advisory committee staff member at a rate of the General Schedule in which the Staff member's position would appropriately be placed (5 U.S.C. Chapter 51). An agency may not fix the pay of a staff member at the rate higher than the daily equivalent of the maximum rate for GS–15, unless the agency head has determined that under the General Schedule the staff member's position would appropriately be placed at a grade higher than GS–15. This determination must be reviewed annually by the agency head.

(1) In establishing rates of compensation, the agency head shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(2) A staff member who is a Federal employee shall serve with the knowledge of the Designated Federal Officer and the approval of the employee's direct supervisor. If a non-Federal employee, the staff members shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(d) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this regulation shall prevent an agency from accepting the gratuitous services of a committee member, consultant or a staff member who agrees in advance to serve without compensation.

(e) *Travel expenses.* Advisory committee members and staff members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United State Code, for persons employed intermittently in the Government service.

(f) *Services for handicapped members.* While performing advisory committee duties, an advisory committee member who is blind or deaf or who qualifies as a handicapped individual may be provided services by a personal assistant for handicapped employees if the member:

(1) Qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(2) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of an agency.

(g) *Exclusions.* (1) Nothing is this section prevents any person who (without regard to his or her service with an advisory committee) is a full-time Federal employee from receiving compensation at a rate at which he or she otherwise would be compensated as a full-time Federal employee.

(2) Nothing in this section prevents any person who immediately before his or her service with an advisory committee was a full-time Federal

employee from receiving compensation at the rate at which he or she was compensated as a full-time Federal employee.

(3) Nothing in this section affects a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the General Schedule classification and pay system in Chapter 51 and Chapter 53 of Title 5, United States Code.

§ 101–6.1034 [Reserved]

§ 101–6.1035 Reports required for advisory committees.

(a) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate will prepare a follow-up report to the Congress detailing the disposition of the committee's recommendations in accordance with section 6(d) of the Act;

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 6(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat.

(c) In accordance with section 10(d) of the Act, advisory committees holding closed meetings shall issue reports at least annually, setting forth a summary of activities consistent with the policy of section 552(b) of Title 5, United States Code.

(d) Subject to the section 552 of Title 5, United States Code, eight copies of each report made by advisory committees and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress for public inspection and use.

Dated: May 13, 1987.

**Paul T. Weiss,**

*Associate Administrator for Administration.*

[FR Doc. 87–11344 Filed 5–18–87; 8:45 am]

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federal register

Tuesday
May 19, 1987

Part III

# Department of Education

## Experimental and Innovative Training Program, Fiscal Year 1987; Proposed Funding Priorities and Invitation to Apply for New Awards; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

## Experimental and Innovative Training Program; Proposed Funding Priorities

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed funding priorities for fiscal year 1987.

**SUMMARY:** The Secretary proposes annual funding priorities for training grants under the Experimental and Innovative Training Program in order to ensure effective use of program funds and to direct funds to areas of identified personnel need during fiscal year 1987. The Secretary will give an absolute preference to applications that meet terms of the proposed priorities.

**DATE:** Comments must be received on or before June 18, 1987.

**ADDRESS:** All written comments and suggestions should be sent to Ed Sontag, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3042—M/S 2312), Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Toby Lawrence, Office of Developmental Programs, Rehabilitation Services Administration. Telephone: (202) 732–1351.

**SUPPLEMENTARY INFORMATION:** Grants for the Experimental and Innovative Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Experimental and Innovative Training Program are established at 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to support projects designed to develop new types of rehabilitation personnel and to demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to severely disabled persons and to develop new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

### Eligible Applicants

Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies and organizations, including institutions of higher education.

### Funds Available

The Congress appropriated $29,550,000 for the Rehabilitation Training Program in fiscal year 1987. Of this amount, approximately $800,000 to $1,200,000 will be available for the support of new experimental and innovative training projects announced under this notice. An estimated eight to twelve projects will be funded at an average project award of $100,000, with four to six project awards in the area of learning-disabilities, and four to six project awards in the area of traumatic brain-injury.

### Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications submitted under the Experimental and Innovative Training Program that address the priorities described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priorities.

*Priority 1*

The training under this priority must address the training of rehabilitation counselors and supervisors of rehabilitation counselors in State vocational rehabilitation agencies. The training must upgrade their knowledge and improve their skills: (1) To use diagnostic and evaluative techniques in identifying learning-disabled adults and determining the severity of their disabilities; (2) to interpret diagnostic, psychological, and educational background information and relate such information to the functional capacities of, and any proposed vocational planning for, learning-disabled adults; (3) to determine and substantiate the eligibility of learning-disabled adults to receive services; and (4) to plan effective rehabilitation programs for, and deliver rehabilitation services to, learning-disabled adults. The training must emphasize improving the capacity of these personnel to develop linkages between providers of special education and vocational rehabilitation services and enhance coordination and transition among service providers. The training must include technical assistance to Rehabilitation Continuing Education Programs to increase their capacity to train employed personnel to provide improved rehabilitation services to learning-disabled individuals. Program regulations for the Rehabilitation Continuing Education Programs are established at 34 CFR Part 389. Such technical assistance is intended to ensure the integration and replication of training supported under this priority by Rehabilitation Continuing Education Programs. In addition, written training materials and visual aids must be developed and made available to Rehabilitation Continuing Education Programs for their use in training rehabilitation personnel to provide effective services to learning-disabled adults.

*Priority 2*

The training under this priority must address the training of rehabilitation counselors and supervisors of rehabilitation counselors in State vocational rehabilitation agencies to provide effective rehabilitation services to traumatically brain-injured adults. The training must improve their skills: (1) To determine and substantiate the eligibility of traumatically brain-injured adults to receive rehabilitation services; (2) to evaluate the functional capacities of traumatically brain-injured adults; (3) to plan effective vocational and independent living rehabilitation programs for, and deliver vocational and independent living rehabilitation programs to, traumatically brain-injured adults; (4) to coordinate community resources in the rehabilitation plan to address their needs; and (5) to develop jobs for and place traumatically brain-injured adults in employment. The training must include technical assistance to Rehabilitation Continuing Education Programs in providing rehabilitation services to traumatically brain-injured adults. Such technical assistance is intended to ensure the integration and replication of training supported under this priority by Rehabilitation Continuing Education Programs. In addition, written training materials and visual aids must be developed and made available to Rehabilitation Continuing Education Programs for their use in training rehabilitation personnel to provide effective rehabilitation services to traumatically brain-injured adults.

A separate competition will be conducted for the two priorities described above. Each application must respond to only one of the priorities.

### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final priorities. All comments submitted in response to

these proposed priorities will be available for public inspection, during and after the comment period, in Room 3042, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m. (Washington, DC time) Monday through Friday of each week except Federal holidays.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: April 13, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87-11417 Filed 5-18-87; 8:45 am]

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[CFDA No.: 84.129]

## Invitation for Applications for New Awards Under the Experimental and Innovative Training Program for Fiscal Year 1987

*Purpose:* To provide grants to State vocational rehabilitation agencies and other public and private agencies and organizations, including institutions of higher education, for the purpose of: (1) Developing new types of rehabilitation personnel and demonstrating the effectiveness of these new types of rehabilitation personnel; and (2) developing new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

*Deadline for Transmittal of Applications:* June 30, 1987.

*Applications Available:* May 19, 1987.

*Project Period:* Not to exceed 36 months.

*Applicable Regulations:* (a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); (b) regulations governing the Experimental and Innovative Training Program (34 CFR Parts 385 and 387); and (c) when adopted in final form, the Notice of Proposed Priorities published in this issue of the Federal Register. Applicants should prepare their applications based on the proposed priorities. If there are any changes made when the final priorities are published, applicants will be given an opportunity to amend or resubmit their applications.

*Priorities:* As described in the Notice of Proposed Priorities, the Secretary proposes to establish the following priorities for fiscal year 1987. The Secretary intends to give an absolute preference to applications that meet these priorities. Each application must respond to only one of the priorities.

| Priority | Estimated available funds | Estimated number of awards |
|---|---|---|
| Learning-Disabled | $400,000 to $600,000 | 4 to 6. |
| Traumatically Brain-Injured. | $400,000 to $600,000 | 4 to 6. |

*For Applications or Information Contact:* Mary Vest, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3332-M/S 2312), Washington, DC 20202, Telephone: (202) 732-1343.

**Program Authority:** 29 U.S.C. 774.

Dated: May 13, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87-11418 Filed 5-18-87; 8:45 am]

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Part IV

# Department of Education

**Extension of Closing Dates; Transmittal of Applications for New Awards Under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Severely Disabled Individuals and Providing Transitional Planning Services; Youths With Severe Handicaps for Fiscal Year 1987; Notices**

## DEPARTMENT OF EDUCATION

[CFDA No. 84.128A]

### Extending the Closing Date for Transmittal of Applications for New Awards Under the Program of Special Projects and Demonstrations for Providing Transitional Planning Services to Youths with Severe Handicaps for Fiscal Year 1987

*Deadline for Transmittal of Applications:* The closing date for applications is extended from June 10, 1987 to June 24, 1987.

On April 10, 1987, three different Notices were published that established the closing dates for transmittal of applications for fiscal year 1987 competitions under the Program of Special Projects and Demonstrations for Providing Transmittal Planning Services to Youths with Severe Handicaps (52 FR 11729). Detailed information concerning this program is included in those Notices. The purpose of this Notice is to extend the closing date for transmittal of applications due to a delay in the availability of the application packages.

*For Applications of Further Information Contact:* Mary Vest, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, (Switzer Building, M/S–2312), Washington, DC 20202. Telephone: 732–1343.

Program Authority: 29 U.S.C. 777a(e).

Dated: May 13, 1987.

Madeleine Will,

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–11421 Filed 5–8–87; 8:45 am]

BILLING CODE 4000–01–M

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[CFDA 84.128A]

### Extension of Closing Date for Transmittal of Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Severely Disabled Individuals for Fiscal Year 1987

*Deadline for Transmittal of Applications:* The closing date for applications is extended from June 10, 1987 to June 24, 1987.

On April 10, 1987, a Notice was published that established the closing date for transmittal of applications for the fiscal year 1987 competition under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Severely Disabled Individuals (52 FR 11729). Detailed information concerning this program is included in that Notice. The purpose of this Notice is to extend the closing date for transmittal of applications due to a delay in the availability of application packages.

*For Applications or Further Information Contact:* Mary Vest, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, (Switzer Building, M/S—2312), Washington, DC 20202. Telephone: 732–1343.

Program Authority: 29 U.S.C. 777a(d)(1).

Dated: May 13, 1987.

Madeleine Will,

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–11422 Filed 5–18–87; 8:45 am]

BILLING CODE 4000–01–M

federal register

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Part V

# Department of Education

**Invitation for Application for Fiscal Year 1987 and Establishment of Closing Date for Transmittal for New Awards Under the Educational Media Research, Production, Distribution, and Training Program; Proposed Annual Funding Priority Notices**

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Educational Media Research, Production, Distribution, and Training Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed annual funding priority.

**SUMMARY:** The Secretary proposes an annual funding priority under the Educational Media Research, Production, Distribution, and Training Program. This priority supports a single project to design and manufacture a Line 21 decoder which will be less expensive than the present decoder. The Line 21 decoder permits captions of television programs to be displayed on television sets equipped with these decoders. The project should result in reduced equipment costs for persons purchasing decoders. In addition, the present stock of decoders will eventually be depleted and new decoders will be needed to ensure a continuing supply.

**DATE:** Comments must be received on or before June 18, 1987.

**ADDRESS:** Comments should be addressed to Dr. Malcolm J. Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4088–M/S 2313), Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Dr. Malcolm J. Norwood. Telephone: (202) 732–1177.

**SUPPLEMENTARY INFORMATION:** The Educational Media Research, Production, Distribution, and Training Program, authorized by sections 651 and 652 of Part F of the Education of the Handicapped Act (EHA), supports the educational advancement of persons with handicaps by providing assistance for: (a) Conducting research in the use of educational media and technology for persons with handicaps; (b) production and distribution of educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of person with handicaps; and (c) training person in the use of educational media for the instruction of persons with handicaps.

In 1972 the Federal Government, through the former Office of Education, initiated the development of the closed-captioned television Line 21 system whch allows the broadcast signal to transmit captions (subtitles) visible only on television sets equipped with decoders. This system makes television accessible to the nation's population with hearing impairments.

The system was implemented in March, 1980, and has resulted in cooperative efforts between the public and private sectors to provide closed-captioned television to Americans with hearing impairments. All major networks are making closed-captioned programs available. Federal funding supports approximately 40% of the current level of captioning programming, the networks support approximately 30%, and corporate advertisers, foundations, and individual contributions account for the remaining 30%.

The Congress has appropriated funds annually which have been used to provide support for closed-captioning. Federal funds have been used also to assist in the design and manufacture of Line 21 decoders in order to reduce the cost of decoders to persons with hearing impairments. The Secretary now proposes a priority to design a Line 21 decoder which is lower in cost than the existing unit and which will be effective in overcoming problems that have resulted from recent changes in broadcast and video technology. The Federal government will subsidize the manufacture of at least 50,000 of the new decoders.

### Proposed Priority

In accordance with Education Department General Administrative Regulations (EDGAR) as 34 CFR 75.105(c)(3), the Secretary propose to give an absolute preference to applications submitted under this priority of the Educational Media Research, Production, Distribution, and Training Program in 1987 that respond to the priority described below.

*The Design and Manufacture of a Less Expensive Line 21 Decoder*

This proposed priority will support a cooperative agreement with an organization that has the technical expertise and knowledge to design, produce, and distribute a decoder that is less expensive than existing decoders. The applicant must submit a plan for the design of a new decoder and subsequent production and distribution of at least 50,000 Line 21 decoders as part of the application. The plan must provide evidence of commitment from one or more manufacturers and retailers to assure production and sale of the units. The plan must contain a timeline for testing the new decoder for function and effectiveness in overcoming problems that have resulted from recent changes in broadcast and video technology, a timeline for production, and an estimated retail price for the assembled units to be marketed to consumers with hearing impairments. The estimated retail price must be lower than the retail price for existing units. The plan shall also provide assurances that at least 50,000 Line 21 decoders will be marketed to consumers. Existing decoders have been sold at prices ranging from $179.99 to $199.99.

### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's specific plans and actions for this program.

### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this priority will be available for public inspection, during and after the comment period in Room 4088, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1451, 1452)

(Catalog of Federal Domestic Assistance No. 84.028; Media Services and Captioned Films)

Dated: April 27, 1987.

William J. Bennett,

*Secretary of Education.*

[FR Doc. 87–11419 Filed 5–18–87; 8:45 am]

BILLING CODE 4000-01-M

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[CFDA 84.028]

## Inviting Applications for New Awards Under the Educational Media Research, Production, Distribution, and Training Program for Fiscal Year 1987

*Purpose:* To support a single project to design and manufacture and distribute a Line 21 decoder which will be effective in overcoming problems that have resulted from recent changes in broadcast and video technology and is lower in cost than the existing unit. The project will ensure a continuing supply of these devices to the Nation's

population of persons with hearing impairments.

*Deadline for Transmittal of Applications:* July 7, 1987.

*Deadline for Intergovernmental Review:* September 7, 1987.

*Applications Available:* May 27, 1987.

*Estimated Size of Awards:* $2,000,000.

*Estimated Number of Awards:* 1.

*Project Period:* 3 years.

*Application Regulations:* (a) The Educational Media Research, Production, and Training Regulations, 34 CFR Part 332; (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79; and (c) when adopted in final form, the Annual Funding Priority for this program. A notice of proposed annual funding priority is published in this issue of the Federal Register. Applicants should prepare their applications based on the proposed priority. If there are any changes when the final annual funding priority is published, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Dr. Malcolm J. Norwood, Telephone: (202) 732-1177, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094-M/S 2313), Washington, DC 20202.

**Program Authority:** 20 U.S.C. 1451(a)(2), 1452(b)(5).

Dated: May 14, 1987.

Madeleine Will,

*Assistant Secretary, Office of Special Education and Rehabilitative Service.*

[FR Doc. 87-11420 Filed 5-18-87; 8:45 am]

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Part VI

# Department of the Interior

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 762**

## Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Definitions of Fragile Lands and Historic Lands; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 762

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Definitions of Fragile Lands and Historic Lands

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is amending its permanent program rule that defines "fragile lands" and "historic lands," two types of lands that may be found unsuitable for certain types of surface coal mining operations. Both of these definitions, which apply throughout the lands unsuitable petition process, are being changed to eliminate the requirement of a finding of irreparable damage. These changes are being made in response to a settlement agreement resulting from litigation. In addition, the definition of fragile lands is being changed to remove buffer zones adjacent to areas where mining is prohibited, as an example of fragile lands, in response to comments on the proposed rule.

EFFECTIVE DATE: June 18, 1987.

ADDRESS: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Annetta Cheek, 202–343–7951 (commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comments on Proposed Rule and Responses to Comments
III. Procedural Matters

## I. Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, sets forth the general regulatory requirements governing surface coal mining and reclamation operations and the surface impacts of underground coal mining. Section 522 of SMCRA, 30 U.S.C. 1272, establishes a process through which surface coal mining operations may be prohibited or limited under certain circumstances. Section 522(a)(3) establishes four categories of surface areas that may be determined unsuitable for certain types of surface coal mining operations, and specifies the criteria for making that determination for each category. Fragile or historic lands are included in one of these categories.

In 1979, OSMRE established performance standards under 30 CFR Chapter VII of its permanent regulatory program in order to implement SMCRA. The rules at 30 CFR 762.5 defined fragile and historic lands; 30 CFR 762.11 established criteria under which lands could be designated unsuitable for surface coal mining operations.

On September 14, 1983 (48 FR 41312), the Secretary of the Interior promulgated rules amending OSMRE's permanent regulatory program. Among other things, those rules revised the definitions of "fragile lands" and "historic lands" in § 762.5 by incorporating an irreparable damage standard. The effect of the change was to require a petitioner to show that lands would suffer irreparable damage or be destroyed before they would be considered fragile or historic.

The September 14, 1983, rules were challenged in Round III of *In re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. 1984). On December 3, 1984, the district court issued an order approving an agreement between the Plaintiff Citizen and Environmental Organizations and the Defendant Secretary of the Interior. The order withdrew from the litigation an issue concerning the definitions of "fragile lands" and "historic lands."

Under the terms of the agreement, the Secretary suspended portions of the definitions of "fragile lands" and "historic lands" in §762.5 by a **Federal Register** notice published on January 3, 1985 (50 FR 257). The notice also stated that to implement the agreement OSMRE would propose a rule to amend the fragile lands and historic lands definitions to require only a finding of significant damage, in contrast to the 1983 rule which required a finding of irreparable damage or destruction.

On July 25, 1985, (50 FR 30408), OSMRE proposed rulemaking to further implement the settlement agreement. In that notice, OSMRE solicited public comments and made provision to hold public hearings upon request. Comments were received from industry, government agencies, and environmental groups during the 70-day comment period. No public hearings were requested, and none were held.

On December 10, 1986 (51 FR 44484), OSMRE reopened the comment period in order to analyze more fully the request of commenters on the proposed rule that the phrase "buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under section 552(e) of SMCRA and Part 761 of this chapter, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources" be removed from the list of examples in the definition of fragile lands. Comments were received from industry and one government agency during the 60-day comment period. No public hearings were requested, and none were held.

## II. Public Comments on Proposed Rule and Response to Comments

This rule defines "fragile lands" and "historic lands," two types of lands that may be found unsuitable for certain types of surface coal mining operations. Both of these definitions, which apply throughout the lands unsuitable petition process, are being changed to eliminate the requirement of a finding of irreparable damage. In addition, the definition of fragile lands is being changed to remove buffer zones adjacent to areas where mining is prohibited under section 522(e) of SMCRA and Part 761 of this chapter as an example of fragile lands.

Fragile lands are defined by this rule to include such areas as valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

Historic lands are defined by this rule to mean areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

OSMRE is also moving the example of paleontological lands, previously included as a type of historic land, to the definition of fragile lands. Additionally, a minor wording change, from historic "sites" to historic "property" is being made. Finally, OSMRE is removing the concept of "significant damage" from the definition of historic lands.

Twenty-two comments were received on the proposed rule. Of these, 13 came from industry or from groups representing industry, 6 came from Federal agencies, 1 came from an

environmental organization, and 2 came from a State historic preservation officer.

The comments raised several major issues and a number of minor ones. A discussion of these comments and OSMRE's responses follow:

*1. Inclusion of the Concept of "Important" Resources in the Definition*

A number of commenters suggested that the proposed definitions of "fragile lands" and "historic lands" were vague, and that OSMRE erred in not including in them the concept of "important" resources. As OSMRE has noted previously in responding to comments on earlier versions of this rule (44 FR 14998, March 13, 1979), qualifiers addressing the importance of fragile and historic lands are included in the *criteria* for finding such lands to be unsuitable for surface coal mining operations, i.e. in 30 CFR 762.11. The definitions provide guidance on what types of resources are fragile or historic, not the criteria for designating lands as unsuitable. Section 522(a)(3)(B) of SMCRA authorizes the protection of fragile or historic lands in which surface coal mining operations could result in significant damage to important resources. Thus, it is more consistent with SMCRA to address the issue of importance in the rules specifying the criteria for determining lands unsuitable than in these definitions. For these reasons, OSMRE has not included the concept of importance in the final rule defining fragile and historic lands.

*2. Inclusion of the Concept of Damage to the Resources as Part of the Definition of Fragile and Historic Lands*

A number of commenters noted that it was illogical to include a concept of damage as part of the *definition* of fragile and historic lands. The suggestion was made that it was more appropriate to reserve such considerations for the section of the rules dealing with the criteria for finding lands unsuitable for mining.

The regulations promulgated in 1979 (44 FR 15344, March 13, 1979) included the concept of damage from surface coal mining operations in the definition of fragile lands, but not in the definition of historic lands. Revisions in 1983 (48 FR 41351, September 14, 1983) introduced the concept that both fragile and historic lands were those which could be damaged beyond an operator's ability to repair or restore, or be destroyed by surface coal mining operations. This language was suspended under the terms of the settlement agreement resulting from *In Re: Permanent Surface Mining Regulation Litigation II*, discussed above. The proposed rule included the concept of significant damage in the definitions of both fragile and historic lands.

OSMRE agrees in part that it is confusing to include the issue of degree of damage in both of the definitions. On the one hand, the status of historic lands does not depend on their potential for incurring significant damage. Therefore, this final rule does not include the criterion of significant damage in the definition of historic lands.

On the other hand, however, OSMRE believes that the concept of damage is critical to the definitions of fragile lands; the term "fragile" itself implies that the lands in question are delicate and subject to damage from surface coal mining activities. Therefore, OSMRE has retained the language concerning significant damage in the definition of fragile lands.

*3. Inclusion of Terms "Important Resources" and "Significant Damage"*

A number of commenters noted that the terms "important resources" and "significant damage" were not defined in the rules, either in the definitions at § 762.5 or in the discussion of unsuitability criteria at 30 CFR 762.11. They proposed that these terms be further defined in one or the other section of the rules.

OSMRE does not believe that it is appropriate to include such guidance in a rule that will apply to all State programs. Rather, it is a matter for the individual regulatory authorities to determine what specific resources are important and what degree of damage is significant. Adoption of specific definitions for these terms is likely to generate needless controversy in an already settled process. The concepts of significant damage and important resources have been used in the unsuitability petition process since 1970 without regulatory definitions for these terms. The process has worked reasonably well and no need has been demonstrated for national definitions of these concepts.

*4. Buffer Zones*

Buffer zones that provide additional protection to areas where surface coal mining operations are prohibited under section 522(e) of SMCRA and 30 CFR Part 761, and buffer zones that themselves contain fragile resources, were cited as examples of fragile lands in the proposed definition of "fragile lands." Several commenters questioned the legitimacy of such buffer zones, claiming that they were not authorized if not specifically required under section 522(e). Contrary to what these commenters claim, however, the buffer zone concept is authorized by SMCRA. It was upheld by court decision in *In Re: Permanent Surface Mining Regulation Litigation II*, No 79-1144 (D.D.C., July 15, 1985). This concept is based on section 522(a)(3) of SMCRA, which states that an area may be designated unsuitable for surface coal mining operations which "will * * * affect fragile lands" that contain specified "important" resources that could be significantly damaged by such operations. Thus, operations may be prohibited in a buffer zone to protect important resources that could be damaged on adjacent fragile lands. Areas on which mining is prohibited under section 522(e) also can be fragile lands which may require such protection.

Other commenters stated that buffer zones were unnecessary and inappropriate examples of "fragile lands." OSMRE agrees. Although buffer zones may be found unsuitable for mining to protect important resources of fragile lands, including those in section 522(e) prohibited areas, buffer zones which do not themselves contain important resources are inappropriate examples of "fragile lands" because they do not meet the terms of the definition. Furthermore, where a buffer zone itself contains important fragile resources, its status are "fragile lands" is independent of its status as a buffer zone. Thus, an example which singles out such buffer zones for protection is unnecessary. Accordingly, all reference to buffer zones has been deleted from the rule.

Other commenters wondered why the proposed rule provided buffer zones around fragile lands, but not around historic lands. As explained previously, the final rule does not include buffer zones as examples of either fragile lands or historic lands. Nevertheless, buffer zones around historic lands may be appropriate for the same reasons as given in the previous discussion of fragile lands.

*5. Paleontological Sites*

Several commenters suggested that it is more appropriate to include paleontological sites under the definition of fragile lands, rather than historic lands. OSMRE agrees, and has moved this language accordingly. This change will have no effect on the protection afforded such lands under these rules.

*6. Historic Property Terminology*

Several commenters noted that the use of the term "historic sites" was inconsistent with common usage and

with other Department of the Interior regulations. OSMRE agrees, and has changed the term historic "sites" too historic "properties."

*7. Inclusiveness of the Term "Historic Lands"*

Several commenters questioned inclusion of properties "for which historic designation is pending" and "properties eligible for, but not listed on, the National Register of Historic Places" as historic lands. This issue was addressed by the district court in *In Re: Permanent Surface Mining Regulation Litigation II,* No. 79–1144 (D.D.C., July 15, 1985). The court agreed that the Secretary acted within his authority in including such properties under the definition of historic lands. The court noted that it is not unreasonable to protect lands which are in the process of possibly being declared historic. To do otherwise would run the risk of damaging lands before such a determination could be made. Therefore, OSMRE intends to retain these examples within the definition of historic lands. This does not mean that such properties *must* be considered unsuitable for mining under section 522(a)(3) of SMCRA. Rather, it gives regulatory authorities the discretion to do so.

*8. Inclusion of Scientific Resources as Both Fragile and Historic Lands*

One commenter questioned why scientific resources were included under both definitions. Such resources are included since both types of lands may contain properties important for the scientific information they can provide, such as geologic formations and archeological sites.

*9. Probability of Historic Properties*

One commenter suggested that the definition of historic lands be expanded to include areas *likely* to contain historic properties, even though the occurrence of such properties cannot be demonstrated. OSMRE believes that it would be confusing to introduce such a concept into the definition of historic lands. The discretion to consider such areas as historic is best left to the individual regulatory authoritites, to be considered on a case-by-case basis.

*10. Scenic Values*

Two commenters suggested that scenic values be addressed specifically in the definition of fragile lands. This change is not necessary because scenic values could be protected as esthetic resources under one of the examples in the final definition of fragile lands. For this reason, OSMRE is retaining the proposed language.

*11. Inclusion of Flooding in the Definition of Fragile Lands*

One commenter suggested that the inclusion of "areas where mining may result in flooding" in the definition of fragile lands exceeded OSMRE's mandate. The commenter suggested that if the phrase were not deleted it should at least be modified to clarify that not all flooded lands would be protected, but only those which were fragile. OSMRE believes it is reasonable to include areas susceptible to flooding within the definition of fragile lands. Furthermore, it would be confusing to use the term "fragile lands" within one of the examples of the fragile lands definition. Therefore, OSMRE has retained the proposed language in the final rule. However, it should be clear that all lands which may be flooded are not automatically fragile. Rather, a regulatory authority would have to consider the nature of the resources within an area which might be flooded and whether they could be significantly damaged as a result of surface coal mining operations. Finally, a regulatory authority would have to apply the criteria in §§ 762.11 and 762.12 before determining that an area was unsuitable for mining.

*12. Scope of Definitions*

Several commenters suggested that the list of examples of fragile and/or historic lands was too broad or included redundant items. Language suggested by the commenters focused on adding qualifiers to the definitions that would limit their scope. OSMRE believes that these commenters have failed to differentiate between these definitions and the criteria by which the regulatory authority determines whether an area such be designated unsuitable, as found in 30 CFR 762.11. OSMRE believes that the examples in the definitions provided useful guidance for regulatory authorities who must apply them to specific situations. The examples are meant to provide guidance on what general types of resources can be considered fragile or historic lands, not a list of areas which can or should automatically be designated unsuitable. The district court in *In Re: Permanent Surface Mining Regulation Litigation II,* No. 79–1144 (D.D.C., July 15, 1985), found that the Secretary is not restricted to words used in SMCRA or the legislative history because to do so would mean that the definitions could only mirror the statute. The court found that the examples were helpful to users of the regulations, and were not all-inclusive, but were intended to assist States, petitioners and operators in interpreting SMCRA.

*13. Promulgation of Rules in Response to Court Decision*

One commenter objected to OSMRE promulgating rules based on a court decision, without giving industry an opportunity to participate in the process. The availability of the proposed rule for public comment and the opportunity to request a public hearing has provided ample opportunity for any interested individual or group to participate in the regulatory process.

*14. Coverage of Privately Owned Lands*

One commenter objected to the fact that privately owned, as well as publicly owned, lands were covered by the proposed rule.

SMCRA clearly was intended to regulate surface coal mining operations on private lands, and therefore OSMRE is obliged to cover privately owned lands in this rule.

*15. Deletion of Terms "Irreparable or Permanent Damage"*

One commenter objected to the change from the terms "irreparable or permanent damage" to "significant" damage. This change is consistent with section 522(a)(3) of SMCRA which uses the concept of significant damage. Damage does not have to be permanent or irreparable in every instance to be significant. Finally, the rule is consistent with the order of the district court in *In Re: Permanent Surface Mining Regulation Litigation II,* (D.D.C., December 3, 1984).

*16. Regulation of Other Industries*

One commenter noted that other industries are not required to consider historic or fragile lands. OSMRE is required to implement SMCRA, which includes provisions for the protection of such lands.

## III. Procedural Matters

*Federal Paperwork Reduction Act*

This rule contains no information collection requirements requiring approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

*Executive Order 12291 and Regulatory Flexibility Act*

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The

rule does not distinguish between small and large entities, and will make no change in the threshold for determining whether to grant a petition designating an area as unsuitable for surface coal mining operations because the lands are fragile or historic in nature. No incremental economic effects are anticipated as a result of the rule.

*National Environmental Policy Act*

OSMRE has prepared an environmental assessment (EA) on this final rule and has made a finding that it would not have a significant impact on the quality of the human environmental under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA and the finding of no significant impact are on file in the OSMRE Administrative Record at the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1100 L St. NW., Room 5131, Washington, DC 20240.

**Author**

The author of this final rule is Annetta L. Cheek, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: 202–343–7951.

**List of Subjects in 30 CFR Part 762**

Historic preservation, Surface mining, Underground mining, Wildlife refuges.

For the reasons set out in this preamble, 30 CFR Part 762 is amended as set forth below.

Dated: April 28, 1987.

**J. Steven Griles,**

*Assistant Secretary for Land and Minerals Management.*

## PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

1. The authority citation for Part 762 is required to read as follows:

**Authority:** Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

2. In § 762.5, the definitions of "fragile lands" and "historic lands" are revised to read as follows:

**§ 762.5 Definitions.**

For purposes of this part:

*Fragile lands* means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

*Historic lands* means areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

* * * * *

[FR Doc. 87–11377 Filed 5–18–87; 8:45 am]

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Part VII

# Department of Defense

Department of the Army

## Privacy Act of 1974; Amendments to Systems of Records; Notice

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; Amendments to Systems of Records Notice

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of amendments to systems of records.

**SUMMARY:** The Army proposes to amend forty eight notices for systems of records subject to the Privacy Act of 1974. The specific changes to the notices being amended are set forth below followed by the system notices, as amended, published in their entirety.

**DATE:** This proposed action will be effective without further notice on June 18, 1987, unless comments are received which would result in a contrary determination.

**ADDRESS:** Send comments to the system manager identified in the system notice.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cliff Jones, AS–OPS–RI, Room 1138, Hoffman Building I, Alexandria, VA 22331–0301. Telephone: (202) 325–6044, Autovon 221–6044.

**SUPPLEMENTARY INFORMATION:** The Army's systems of records notices inventory to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published to date in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22060) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 FR 40479) November 7, 1986
FR Doc. 87–8140 (52 FR 11847) April 13, 1987

The proposed amendment is not within the purview of the provisions of 5 U.S.C. 552(o) which requires the submission of an altered system report.

Linda M. Lawson,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

May 14, 1987.

## AMENDMENTS

### A0102.03DAAG

*System Name:*

Personnel Locator/Organizational Roster/Telephone Directory, 50 FR 22111, May 29, 1985.

*Changes:*

Line 1 change "A0102.03DAAG" to "A0102.03DAIM".

*System Location:*

Lines 9, 10, and 11 change "Official mailing addresses are in the organizational directory in the appendix to Army system notices (48 FR 25773, June 1983)" to "Official mailing addresses are contained in the compilation of the Army's system notices".

**Authority for Maintenance of the System:**

Line 25 add "E.O. 9397".

*Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses:*

Lines 32 and 33 change "See blanket routine uses at 48 FR 25503, June 6, 1983" to "See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices".

*Storage:*

Line 39 add "or other computer media".

*Retrievability:*

Lines 40 and 41 change "By individual's surname" to "By individual's surname and SSN".

Lines 74 and 75 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

### A0305.03aDACA

*System Name:*

Travel Payment System, 50 FR 22119, May 29, 1985.

*Changes:*

**Authority for Maintenance of the System:**

Line 21 add "E.O. 9397".

*Retrievability:*

Lines 44 and 45 change "By individual's surname and/or SSN." to "By individual's SSN".

Line 68 and 75 change to read "Records of travel payments are retained for 3 years following settlement at installation making current payments. Military member's record of outstanding advance payments is transferred to new servicing finance office upon permanent change of station or to the U.S. Army Finance and Accounting Center upon death or separation from active duty. Civilian employee's record of outstanding advance payments is transferred to new servicing finance office upon reassignment. Military and civilian records of travel payments for settled travel claims are destroyed by the old duty station 3 years following separation or transfer. Records for individuals performing invitational travel are destroyed 1 year from date of final payment.

*System Manager(s) and Address:*

Lines 77 and 78 change "Comptroller of the Army, The Pentagon, Washington, DC 20310." to "Comptroller of the Army, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310."

*Notification Procedure:*

Lines 86 and 87 change "ATTN: FINCR, Indianapolis, IN 46249." to "ATTN: DACA–FAZ–S, Indianapolis, IN 46249–0526.

Lines 106 and 107 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

### A0305.10bDACA

*System Name:*

Joint Uniform Military Pay System-Reserve Components-Army, 50 FR 22121 May 29, 1985.

*Changes:*

**Authority for Maintenance of the System:**

Line 19 change "et seq." to "*et. seq*" and add "E.O. 9397".

*Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses:*

Lines 51 and 52 "(7) Disclosure to consumer reporting agencies."

*Notification Procedure:*

Line 102 change "of San Francisco, CA." to "of San Francisco, CA; Ft. McCoy, WI; Ft. Douglas, UT."

Lines 127 an 128 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

### A0305.10dDACA

*System Name:*

Health Professions Scholarship Program, 50 FR 22123, May 29, 1985.

*Changes:*

*System Location:*

Line 5 change "Denver, CO 80240." to "Aurora, CO 80045–5001."

*Authority for Maintenance of the System:*

Line 31 add "E.O. 9397".

*Notification Procedure:*

Line 80 change "Denver, CO 80240" to "Aurora, CO 80045–5001".

Lines 101 an 102 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

**A0305.11DAPE**

*System Name:*

USMA Cadet Account System, 50 FR 22124, May 29, 1985.

*Changes:*

*System Name:*

Lines 1 and 2 change "USMA Cadet Pay and Accounts System" to "USMA Cadet Account System".

*System Location:*

Line 4 change "10996" to "10996–1783".

*Categories of Records in the System:*

Lines 9 through 14 change to read: Monthly deposit listings of Corps of Cadet members showing entitlements and activity pertaining to funds held in trust by the USMA Treasurer.

*Authority for Maintenance of the System:*

Line 19 add "E.O. 9397".

*Purpose(s):*

Lines 20 through 28 change to read: To compute deposits and charges to cadet account to include: Barber, laundry/dry cleaning charges; advance pay, and funds deposited with Treasurer, USMA to be held in trust to pay for required uniforms, books, and equipment.

*Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:*

Lines 32 through 56 change to read:

(1) Treasurer, USMA: To record and provide taxable interest data to individual cadet and Internal Revenue Service. To control and monitor charges/credits to the cadet account. To record deposits to the cadet account and to maintain records of financial institutions for direct deposit purposes.

(2) Disclosure to consumer reporting agencies: Disclosure pursuant to 5 U.S.C. 552a(b) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

*Retrievability:*

Line 62 change "By Cadet number" to "By Cadet account number".

*Retention and Disposal:*

Lines 70 through 80 change to read: Duplicate account statements are retained locally for one year after cadets graduation and then destroyed by shredding. Information in automated media is retained for one thru three months, except that annual interest tapes are retained for one year before being erased.

*System Manager(s) and Address:*

Line 83 Change "10996" to "10996–1738".

*Notification Procedure:*

Lines 84 through 91 change to read: Requests from individuals may be submitted to the U.S. Military Academy, Treasurer, West Point, NY 10996–1783; telephone 914/938–3516. Individual should provide full name, Cadet account number, SSN, graduating class year, current address and telephone number, and signature.

*Record Access Procedures:*

Lines 96 and 97 change "Finance and Accounting Officer," to "Treasurer,".

Lines 111 and 112 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

**A0306.01DACA**

*System Name:*

Civilian Employee Pay System, 50 FR 22124, May 29, 1985.

*Changes:*

*Authority for Maintenance of the System:*

Line 33 add "E.O. 9397".

*Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:*

Line 62 change "Consumer reporting agencies" to " 'consumer reporting agencies' ".

*Retention and Disposal:*

Line 86 change "pay" to "retirement".

*Notification Procedure:*

Line 124 change "Accounting Offices," to "Accounting Offices worldwide,"

Lines 145 and 146 change "*System exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

**A0306.20DACA**

*System Name:*

Military and Civilian Waiver Files, 50 FR 22126, May 29, 1985.

*Changes:*

*Categories of Individuals covered by the system:*

Line 10 change "of pay and allowances." to "of pay and allowances, travel, transportation, and relocation allowances."

*Authority for Maintenance of the System:*

Line 19 add "E.O. 9397".

*Retention and Disposal:*

Lines 36 and 39 change "Records are retained until waiver is approved/denied." to "Records are retained for 6 years after waiver is approved/denied."

Lines 62 and 63 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

**A0314.08DACA**

*System Name:*

Nonappropriated Fund Accounts Receivable System, 50 FR 22128, May 29, 1985.

*Changes:*

*Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:*

Lines 54 and 55 change "at 48 FR 25503, June 6, 1983" to "set forth at the beginning of the Army's listing of record system notices".

Line 56 and 57 delete "(2) Disclosure to consumer reporting agencies."

Line 58 change "(3)" to "(2)".

*System Manager(s) and Address:*

Lines 79, 80, and 81 change "Commander, US Army Finance and Accounting Center, Indianapolis, IN 46249" to "Assistant Comptroller of the Army for Finance and Accounting, ATTN: DACA–FAP–N, STOP 66, Indianapolis, IN 46249–1056".

Lines 101 and 102 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

**A0408.01DAJA**

*System Name:*

U.S. Army Claims Service Management Information System, 50 FR 22136, May 29, 1985.

*Changes:*

*System Location:*

Lines 4, 5, and 6 change "US Army Claims Service, Office of The Judge Advocate General, Ft Meade, MD 20755–5360" to "JACS–Z, Ft Meade, MD 20755–5360".

*Authority for Maintenance of the System:*

Line 30 add "E.O. 9397".

Lines 130 and 131 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

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**A0[illegible].08DAJA**

*System Name:*

Tort Claim Files, 50 FR 22137, May 29, 1985.

*Changes:*

*System Location:*

Lines 3, 4, 5, and 6 change "Office of The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210" to "HQDA(DAJA–LT), The Pentagon, Washington DC 20310–2210".

Lines 78 and 79 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].16DAJA**

*System Name:*

Army Property Claim Files, 50 FR 22138, May 29, 1985.

*Changes:*

*System Location:*

Lines 3, 4, 5, and 6 change "The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210" to "HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210".

Lines 81 and 82 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].17DAJA**

*System Name:*

Medical Expense Claim Files, 50 FR 22138, May 29, 1985.

*Changes:*

*System Location:*

Lines 6, 7, and 8 change "The Judge Advocate General's Office, HQDA, Washington, DC 20310–2210" to HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210".

Lines 89 and 90 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].26DAJA**

*System Name:*

Patent, Copyright, Trademark, and Proprietary Data Files, 50 FR 22141, May 29, 1985.

*Changes:*

*System Location:*

Lines 5, 6, 7, and 8 change "(1) Primary: Headquarters, Department of the Army, Office of The Judge Advocate General, The Pentagon, Washington, DC 20310" to "(1) Primary: JALS–PC, Nassif Building, Falls Church, VA 22041–5013".

Lines 13 and 14 delete "(See 48 FR 25773, June 6, 1983.)"

*Notification Procedure:*

Lines 99 and 100 change "write to the System Manager, ATTN: DAJA–IP," to "write to system location,"

Lines 120 and 121 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].10DAMI**

*System Name:*

Counterintelligence Research File System (CIRFS), 50 FR 22147, May 29, 1985.

*Changes:*

*System Location:*

Lines 4, 5, 6, 7, 8, and 9 change to read: Counterintelligence and Security Division, Assistant Chief of Staff for Intelligence, Department of the Army, the Pentagon, Washington, DC 20310.

*Notification Procedure:*

Line 64 delete "Deputy".

*Record Access Procedures:*

Line 70 delete "Deputy".

Lines 90 and 91 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].03aDAMI**

*System Name:*

Intelligence Collection Files, 50 FR 22146, May 29, 1985.

*Changes:*

*Notification Procedure:*

Line 74 delete "Deputy".

*Record Access Procedures:*

Line 80 delete "Deputy".

Lines 101 and 102 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].03bDAMI**

*System Name:*

Technical Surveillance Index, 50 FR 22148, May 29, 1985.

*Changes:*

*Notification Procedure:*

Line 61 change "202/695–4474" to "(202) 697–7993"

Lines 74 and 75 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].08DAMI**

*System Name:*

Badge and Credential Files, 50 FR 22149, May 29, 1985.

*Changes:*

*Notification Procedure:*

Line 66 delete "Deputy"

*Record Access Procedures:*

Line 71 delete "Deputy"

Lines 89 and 90 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].10aDAMI**

*System Name:*

USAINSCOM Investigative Files System, 50 FR 22150, May 29, 1985.

*Changes:*

*Notification Procedure:*

Line 370 delete "Deputy"

*Authority for Maintenance of the System:*

Line 180 add "Executive Order 9397"

*Record Access Procedures:*

Line 375 delete "Deputy"

Lines 425 and 426 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].03cDAMI**

*System Name:*

Department of the Army Operational Support Activities Files, 50 FR 22152, May 29, 1985.

*Changes:*

*Notification Procedure:*

Line 64 delete "Deputy".

*Record Access Procedures:*

Line 70 delete "Deputy".

Lines 90 and 91 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0[illegible].03eDAMI**

*System Name:*

Counterintelligence Operations Files, 50 FR 22153, May 29, 1985.

*Changes:*

*Authority for Maintenance of the System:*

Line 71 add "E.O. 9397"

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*Notification Procedure:*

Lines 151, 152, and 513 change "Assistant Chief of Staff for Intelligence, Department of the Army, Washington, DC 20310" to "Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755; telephone: (301) 677–4742/3".

*Record Access Procedures:*

Lines 155, 156, and 157 change "Assistant Chief of Staff for Intelligence, Department of the Army, Washington, DC 20310" to "Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755".

Lines 172 and 173 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0609.02DAAG

*System Name:*

Army Nuclear Test Personnel Review Program (ANTPR), 50 FR 22167, May 29, 1985.

*Changes:*

*System Location:*

Lines 9 and 10 change "205 S. Whiting Street, Alexandria, VA 22304" to "1606 Spring Hill Road, Vienna, VA 22180–2270".

*Authority for Maintenance of the System:*

Line 33 add "E.O. 9397". Lines 107 and 108 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0614.01NGB

*System Name:*

Equal Opportunity Investigative Files, 50 FR 22168, May 29, 1985.

*Changes:*

*System Location:*

Lines 3, 4, and 5 change "National Guard Bureau, Office of Minority Affairs, 5611 Columbia Pike, Falls Church, VA 22041" to "Office of Human Resources (Field Operating Activity) HRA–FOA, 5600 Columbia Pike, Falls Church, VA 22041–5125'.'

*System Manager(s) and Address:*

Lines 48, 49, and 50 change "Chief, National Guard Bureau, The Pentagon, Washington, DC 20310" to "Office of Human Resources (Field Operating Activity) HRA–FOA, 5600 Columbia Pike, Falls Church, VA 22041–5125".

*Notification Procedure:*

Lines 55, 56, and 57 change "ATTN: Office of Minority Affairs, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041" to "Office of Human Resources (Field Operating Activity) HRA–FOA, 5600 Columbia Pike, Falls Church, VA 22041–5125".

A0704.10bUSMEPCOM

*System Name:*

ASVAB Student Test Scoring and Reporting System, 50 FR 22170, May 29, 1985.

*Changes:*

Line 1 change "A0704.10bMEPCOM" to "A0704.10bUSMEPCOM".

Lines 2 and 3 change "ASVAB Institutional Test Scoring and Reporting System" to "ASVAB Student Test Scoring and Reporting System".

*System Location:*

Lines 5, 6, 7, and 8 change "Military Enlistment Processing Command, Ft Sheridan, IL 60037. Segments exist at Military Entrance Processing Stations," to "U.S. Military Entrance Processing Command, 2500 Green Bay Road, North Chicago, IL 60064–3094. Segments exist at Military Entrance Processing Stations (MEPS),".

*Categories of Individuals Covered by the System:*

Line 18 change "institutional" to "student".

*Categories of Records in the System:*

Line 27 change "12 ASVAB tests" to "10 ASVAB subtests".

*Authority for Maintenance of the System:*

Line 30 add "E.O. 9397".

*Policies and Practices for Storing, Retrieving, Accessing, retaining, and Disposing of Records in the System:*

*Storage:*

Lines 47 and 48 change "Microfiche, optical mark, sense cards, computer magnetic tapes." to "Microfiche, optical mark sense answer sheets, computer magnetic tapes."

*Retrievability:*

Line 49 change "By individual's name." to "By individual's name and Social Security Number (SSN)."

*Retention and Disposal:*

Lines 57, 58, and 59 change "Records are maintained for two years from the date the ASVAB is administered." to "Records are maintained 2 years from the date the Armed Services Vocational Aptitude Battery (ASVAB) is administered."

*System Manager(s) and Address:*

Lines 67, 68, and 69 change "Commander, U.S. Military Enlistment Processing Command, Ft. Sheridan, IL 60037." to "Commander, U.S. Military Entrance Processing Command, 2500 Green Bay Road, North Chicago, IL 60064–3094."

*Notification Procedure:*

Lines 70 and 71 change "Information may be obtained from the System Manager." to "Information may be obtained from the Military Entrance Processing Stations (MEPS)."

*Record Access Procedures:*

Lines 77 and 78 change "System Manager" to "MEPS" Lines 87 and 88 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0708.03cDAPC

*System Name:*

Officer Personnel Management Information System (OPMIS), 50 FR 22185, May 29, 1985.

*Changes:*

*Categories of Records in the System:*

Change lines 16 through 96 to read:

(1) Officer Master File (OMF) contains name, SSN, grade and date to rank, appointment and service agreement, service data and date, promotion, assignment, qualifications, specialties, efficiency, education and training, occupation, language, career pattern, awards and badges, physical location, separation, retirement, date and place of birth, race, religion, ethnic group dependents, sex, citizenship, marital status, and mailing address.

(2) Management Accession Information System (AMIS) contains selected information for the OMF, date of entry on active duty, personal demographic data, and assignment information.

(3) Assignments and Training Selection for ROTC graduates contains selected information from the OMF, the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty or delay selection, Regular Army selection, and branch selection.

(4) Officer Evaluation Reporting System (OERS) contains selected information from the OMF; selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OER; selected information for each of the last ten OERs; and the name, SSN, and rating history of each individual, military and civilian, who

has served as the senior rating official for an active duty Army officer.

(5) Officer Distribution and Assignment System (ODAS) contains selected information from the OMF, projected assignment information for officers and warrant officers who are being reassigned.

(6) Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the OMF and the following information pertaining to ROTC instructors: ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned.

(7) Officer Civil Schools Management Information System (CSMIS) contains the following selected information from the OMF and the following information concerning officer and warrant officer personnel participating or who have participated in the Army sponsored degree completion program: school attended, start and completion dates, degree level and discipline, and Army Education Requirements Board (AERB) positions.

(8) Army Education Requirements Board (AERB) File contains selected information from the OMF for officer and warrant officer personnel who are serving or are projected to serve in an AERB approved position requiring graduate level education.

(9) USMA Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the United States Military Academy (USMA) teaching staff: academic department and projected availability for USMA instructor duty.

*Authority for Maintenance of the System:*

Line 99 add "E.O. 9397".

*Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:*

*Retention and Disposal:*

Line 146 change "OASIS" to "AMIS".

Lines 187 and 188 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

**A0708.05DAPC**

*System Name:*

Emergency Data Files, 50 FR 22187, May 29, 1985.

*Changes:*

*System Location:*

Line 6 change "DA Form 41" to "DD Form 93".

*Categories of Records in the System:*

Line 12 change "DA Form 41" to "DD Form 93".

*Authority for Maintenance of the System:*

Line 22 add "E.O. 9397".

*Notification Procedure:*

Line 63 change "(DAPC–PEZ–A)" to "(DAPC–PE–SI)".

*Contesting Record Procedures:*

Lines 66 through 70 to read: "The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)".

Lines 80 and 81 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

**A0708.18DAPC**

*System Name:*

Line of Duty Investigations, 50 FR 22190, May 29, 1985.

*Changes:*

*Categories of Individuals Covered by the System:*

Lines 5, 6, and 7 change to read: "Service members who have been injured, are diseased, or deceased".

*Categories of Records in the System:*

Line 16 change period to comma after "instruments" and add "and action on appeals".

*Authority for Maintenance of the System:*

Line 19 add "E.O. 9397".

*Purpose(s):*

Lines 20 through 23 change to read: "To review facts and circumstances of service member's injury and render decision having the effect of approving/denying certain military benefits, pay and allowances".

*System Manager(s) and Address:*

Line 52 change "22332" to "22332–0400".

*Notification Procedure:*

Line 59 change "DAPC–PAR–R" to "DAPC–MSR–R".

Lines 61 through 65 change "c. Commander, U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132 (for Army reserve personnel);" to "c. Commander, Army Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132 (for Army reserve personnel);"

Line 69 add "e. National Guard Bureau, 5611 Columbia Pike, Falls Church, VA 22041 (for full-time National Guard Duty under Title 32, U.S.C., those in federalized status, or those attending active Army service school)."

*Contesting Record Procedures:*

Line 81 add "Appeals of determinations by authority of the Secretary of the Army are governed by AR 600–8–1; collateral review of decided cases is limited to questions of completeness of the records of such determinations."

*Record Source Categories:*

Lines 82 through 85 change to read: "From the applicant, medical records, DA Form 2173, service member's commander, official Army records and reports, witness statements."

Lines 86 and 87 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

**A0708.20DARC**

*System Name:*

Philippine Army Files, 50 FR 22191, May 29, 1985.

*Changes:*

*System Location:*

Lines 3, 4, and 5 change "US Army Reserve Components Personnel and Administration Center" to "U.S. Army Reserve Personnel Center".

*System Manager(s) and Address:*

Lines 68, 69, and 70 change "Commander, US Army Reserve Components Personnel and Administration Center" to "Commander, U.S. Army Reserve Personnel Center".

*Notification Procedure:*

Line 76 change "ATTN: DARC–PSE–AP" to "ATTN: DARP–PAS–EAP".

Lines 97 and 98 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

**A0709.03DPE**

*System Name:*

U.S. Military Academy Personnel Cadet Records, 50 FR 22193, May 29, 1985.

*Changes:*

*System Location:*

Line 5 change "10996" to "10996–5000".

*Authority for Maintenance of the System:*

Line 25 add "E.O. 9397".

*Safeguards:*

Lines 45 and 46 change "cabinets in locked rooms" to "cabinets and/or in locked rooms".

*Rentention and Disposal:*

Line 51 add "Microfilmed records maintained by USMA are Permanent; hardcopy files are destroyed after being microfilmed".

*System Manager(s) and Address:*

Line 54 change "10996" to "10996–5000".

*Record Access Procedures:*

Line 62 delete "or Cadet number".

Line 77 and 78 change *"Systems exempted from certain provisions of the act"* to *"Exemptions claimed for the system"*.

**A0710.02DAJA**

*System Name:*

JAGC Reserve Components Personnel Records, 50 FR 22194, May 29, 1985.

*Changes:*

*System Location:*

Lines 4, 5, 6, and 7 change "The Judge Advocate General's School, US Army, Charlottesville, VA 22901; Computer Center, University of Virginia 22901" to JAFS–ZA, 600 Massey Street, Charlottesville, VA 22903–1781".

*Authority for Maintenance of the System:*

Line 30 add "E.O. 9397".

Lines 93 and 94 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0710.08DAAR**

*System Name:*

Career Management Files of Dual Component Personnel, 50 FR 22194, May 29, 1985.

*Changes:*

*System Location:*

Lines 4, 5, and 6 change "US Army, Reserve Components Personnel and Administration Center" to "U.S. Army Reserve Personnel Center".

*Authority for Maintenance of the System:*

Line 23 add "E.O. 9397".

*Purpose(s):*

Lines 26 and 27 change "military education that needs for completed to be eligibility" to "military education that needs to be completed for aligibility".

*Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:*

*Rentention and Disposal:*

Lines 51, 52, and 53 change "US Army Reserve Components Personnel and Administration Center" to "U.S. Army Reserve Personnel Center".

*System Manager(s) and Address:*

Lines 57 and 58 change "US Army Reserve Components Personnel and Administration Center" to "U.S. Army Reserve Personnel Center".

*Notification procedure:*

Lines 62 and 63 change "ATTN: Personnel Management and Training Division" to "ATTN: DARP–MOB–SD".

Lines 78 and 79 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0710.09DAAG**

*System Name:*

Personnel Management/Action Officer Files, 50 FR 22195, May 29, 1985.

*Changes:*

*System Location:*

Lines 4, 5, 6, and 7 change "US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132" to "U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200".

*Categories of Records in the System:*

Lines 20 and 21 delete "application for active duty". Lines 25 and 26 delete "selection/nonselection for promotion".

*System Manager(s) and Address:*

Lines 73, 74, and 75 change "Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132" to "Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200".

*Notification Procedure:*

Line 80 change "ATTN: AGUZ–RCPD" to "ATTN: DARP–IMG–F".

Lines 95 and 96 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0722.02DACH**

*System Name:*

Baptism, Marriage, and Funeral Files, 50 FR 22202, May 29, 1985.

*Changes:*

*System Location:*

Line 5 change "General Services Administration" to "National Archives and Records Administration".

*Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses:*

Lines 28 and 29 change "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983" to "See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices".

*System, Manager(s) and Address:*

Lines 50 and 51 change "The Pentagon, Washington, DC 20310" to "Washington, DC 20310–2700".

*Notification Procedure:*

Lines 53, 54, and 55 change "System Manager, ATTN: DACH–AMW, Room 1E–417, The Pentagon, Washington, DC 20310" to "Office, Chief of Chaplains, Headquarters, Department of the Army, ATTN: DACH–IMW, Washington, DC 20310–2700".

Lines 78 and 79 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0722.05DACH**

*System Name:*

Chaplain Counseling/Interview Files, 50 FR 22203, May 29, 1985.

*Changes:*

*System Location:*

Lines 4, 5, and 6 change "official addresses are contained in the directory at the end of the Army inventory of record system notices."

*Systems Manager(s) and Address:*

Lines 39 and 40 change "The Pentagon, Washington, DC 20310" to "Washington, DC 20310–2700".

Lines 60 and 61 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A0722.06DACH**

*System Name:*

Religious Census, Education, and Registration Files, 50 FR 22203, May 29, 1985.

*Changes:*

*System Location:*

Lines 5, 6, and 7 change "official addresses are contained in the directory following the Army inventory of System Notices at 48 FR 25773, June 6, 1983" to "official addresses are contained in the directory at the end of the Army inventory of record system notices."

*Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses:*

Lines 29 and 30 change "See 'Blank Routine Uses' at 48 FR 25503, June 6, 1983" to "See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices".

*System Manager(s) and Address:*

Lines 48 and 49 change "The Pentagon, Washington, DC 20310" to "Washington, DC 20310–2700".

Lines 63 and 64 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system".*

**A0728.08DAPC**

*System Name:*

Casualty Information System (CIS), 50 FR 22207, May 29, 1985.

*Changes:*

*System Location:*

Lines 5 through 10 eliminate the sentence: "A manual segment of this system pertaining to Army reserve members not on active duty exists at the US Army Reserve Components Personnel and Administration Center, St. Louis, MO 63132".

*Categories of Records in the System:*

Lines 22 and 23 change "death, and documents pertaining to Serviceman's Group Life Insurance". to "death". Eliminate the words: "and documents pertaining to Serviceman's Group Life Insurance".

*Authority for Maintenance of the System:*

Line 26 add "E.O. 9397".

*Purpose(s):*

Lines 27 through 30 change to read: "To respond to inquiries; to provide statistical data comprising type, number, place and cause of casualty/death of Army members".

*Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:*

Line 40 eliminate the word "Punch cards". Should read as follows:

*Storage:*

Magnetic tapes, computer printouts, paper records in file cabinets.

Lines 42 and 43 change to read:

*Retrievability:*

By individual's name and/or SSN or any other data element.

*Notification Procedure:*

Line 58 change "the System Manager". to "HQDA (DAPC–E–SI), 200 Stovall Street, Alexandria, VA 22332, telephone: 202–325–0719".

Lines 73 and 74 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system".*

**A0737.09DAAG**

*System Name:*

Army Civilian/Military Service Review Board, 50 FR 22210, May 29, 1985.

*Changes:*

*System Location:*

Lines 3, 4, 5, and 6 change "U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132" to "U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200".

*System Manager(s) and Address:*

Lines 61, 62, 63, and 64 change "Commander, U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis Mo 63132" to "Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200".

*Notification Procedure:*

Line 68 add "ATTN: DARP–PAS–ENC".

Lines 84 and 85 change *"Systems exempted from certain provisions of the Act"* to *"Exemption claimed for the system".*

**A1012.03bAMC**

*System Name:*

Student/Faculty Records: AMC Schools System, 50 FR 22229, May 29, 1985.

*Changes:*

*System Location:*

Lines 7, 8, and 9 delete "Joint Military Packaging Training Center, Aberdeen Proving Grounds, MD". Lines 9 and 10 change "USAMC Ammunition Center/School, Savanna, IL" to "U.S. Army Defense Ammunition Center and School, Savanna, IL".

*Authority for Maintenance of the System:*

Line 26 add "E.O. 9397".

Lines 28 and 29 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system".*

**A1012.03gHSC**

*System Name:*

Academy of Health Sciences; Academic and Supporting Records, 50 FR 22236, May 29, 1985.

*Changes:*

*System Location:*

Line 5 add "and Fitzsimons Army Medical Center, Aurora, CO 80045–5001".

*Authority for Maintenance of the System:*

Line 26 add "E.O. 9397".

*System Manager(s) and Address:*

Lines 61, 62, and 63 change "Commander, Health Services Command, Ft Sam Houston, TX 78234." to "Superintendent, Academy of Health Sciences, Ft Sam Houston, TX 78234."

Lines 75 and 76 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system".*

**A1012.03jHSC**

*System Name:*

Practical Nurse Course Files, 50 FR 22231, May 29, 1985.

*Changes:*

*System Name:*

Lines 1 and 2 change "Clinical Specialist School Student Files" to "Practical Nurse Course Files."

*System Location:*

Lines 3, 4, and 5 change "Health Services Command Clinical Specialist School, Fitzsimons Army Medical Center, Denver, CO 80240." to "Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001."

*Notification Procedure:*

Lines 55, 56, and 57 change "Commander, Fitzsimons Army Medical Center, ATTN: HAF–N, Denver, CO 80240." to "Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001."

Lines 75 and 76 change *"Systems exempted from certain provisions of the*

*Act"* to *"Exemptions claimed for the system"*.

**A1108.04USAISC**

*System Name:*

Military Affiliate Radio System, 50 FR 22237, May 29, 1985.

*Changes:*

*Authority for Maintenance of the System:*

Line 23 add "E.O. 9397".

*Routine Uses of Records in the System, Including Categories of Users and the Purposes of Such Uses:*

Lines 32, 33, and 34 change "Information may be disclosed to the Federal Communications Commission." to "Information may be disclosed to Department of Army and Department of Defense communication agencies and their authorized contractors in connection with individual's participation in the Army Military Affiliate Radio System (MARS) Program and to Federal supply agencies in connection with individual's participation in the Army MARS Equipment Program."

Lines 74 and 75 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A1108.16DAAG**

*System Name:*

Postal and Mail Service System, 50 FR 22238, May 29, 1985.

*Changes:*

Line 1 change "A1108.16DAAG" to "A1108.16DAIM".

*Authority for Maintenance of the System:*

Line 24 add "E.O. 9397".

*Retention and Disposal:*

Line 51 change "3 years" to "1 year"—Line 53 change "1 year" to "6 months".

*System Manager(s) and Address:*

Line 55 and 56 change "The Adjutant General" to "ACSIM"—Line 58 change "22331" to "22331-0301".

Lines 78 and 79 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A1111.01DAMO**

*System Name:*

Individual Flight Records Folder, 50 FR 22238, May 29, 1985.

*Changes:*

Line 1 change "A1111.01DAMO" to "A1111.01TRADOC".

*System Location:*

Lines 3 through 20 change to read: Decentralized to Flight Operations Section of Army/Army Reserve/ National Guard units for all personnel on whom flight records are maintained. Copies of individual flight records (DA Form 759) are maintained at the Directorate of Evaluation and Standardization, ATTN: ATZQ–ESO, U.S. Army Aviation Center, Ft. Rucker, AL, for active Army and Reserve Component personnel who are instructor pilots, standardization instructor pilots, or instrument flight examiners; USAMILPERCEN, HQDA (DAPC–OPE–V), for active Army officers; USAMILPERCEN, HQDA (DAPC–OPW–AV), for active Army warrant officers; and HQDA (DASG–HCO–A for active Army MSC officers. Records of Army reservists not on extended active duty are maintained at the U.S. Army Reserve Personnel Center, St. Louis, MO; those of National Guardsmen are maintained at the National Guard Bureau, Aberdeen Proving Ground, MD.

*Authority for Maintenance of the System:*

Line 46 add E.O. 9397.

*System Manager(s) and Address:*

Lines 73, 74, 75, and 76 change "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO–RQD), Headquarters, Department of the Army, Washington, DC 20310." to "Commander, U.S. Army Training and Doctrine Command, Fort Monroe, VA 23651."

Lines 99 and 100 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**A1201.02MTMC**

*System Name:*

Personnel Property Movement and Storage Records, 50 FR 22239, May 29, 1985.

*Changes:*

*Categories of Records in the System:*

Line 24 change "Standard Form 1103" to "Standard Form 1203".

*Authority for Maintenance of the System:*

Lines 28 "E.O. 9397".

*System Manager(s) and Address:*

Lines 70 and 71 change "Washington, DC 20315" to "Falls Church, VA 22041–5050".

Lines 92 and 93 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

**1301.07AMC**

*System Name:*

Food Taste Test Panel Files, 50 FR 22242, May 29, 1985.

*Changes:*

*System Location:*

Lines 6, 7, and 8 change "US Army Natick Research and Development Center, Natick, MA 01760" to "U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760".

*Routine Uses of Records Maintained in the System:*

Lines 31 and 32 change "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983" to "See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices".

*System Manager(s) and Address:*

Lines 49, 50, and 51 change "Commander, US Army Natick Research and Development Center, Natick, MA 01760" to "Commander, U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760".

*Notification Procedure:*

Lines 54 and 55 change "ATTN: Science and Advanced Technology Laboratory" to "ATTN: Science and Advanced Technology Directorate".

*Record Access Procedures:*

Lines 59, 60, 61, and 62 change "Sensory Analysis Branch, Science and Advanced Technology Laboratory, US Army Natick Research and Development Center, Natick, MA 01760" to "Sensory Analysis Branch, Science and Advanced Technology Directorate, U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760".

Lines 71 and 72 change *"Systems exempted from certain provisons of the Act"* to *"Exemptions claimed for the system"*.

**A1401.07bDAAG**

*System Name:*

Library Borrowers'/Users' Profile Files, 50 FR 22244, May 29, 1985.

*Changes:*

Line 1 change "A1401.07bDAAG" to "A1401.07bDAIM".

*Authority for Maintenance of the System:*

Line 12 add "E.O. 9397".

*System Manager(s) and Address:*

Lines 37 through 40 change "The Adjutant General, Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria, VA 22331" to "Office of Assistant Chief of Staff for Information Management, Department of the Army, Washington, DC."

Lines 59 and 60 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A1405.15DAJA

*System Name:*

Procurement Misconduct Files, 50 FR 22245, May 29, 1985.

*Changes:*

*System Location:*

Lines 3, 4, 5, and 6 change "Office of The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310" to "HQDA(DAJA-LT), The Pentagon, Washington, DC 20310-2210".

*Categories of Records in the System:*

Line 14 change "of fraudulent or other criminal conduct" to "of fraudulent, criminal or other misconduct".

Lines 17, 18, and 19 change "and the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors" to "and Consolidated List of Debarred, Suspended, and Ineligible Contractors".

Lines 74 and 75 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A1405.20aDAEN

*System Name:*

Resettlement Files, 50 FR 22250, May 29, 1985.

*Changes:*

*System Name:*

Change from "Resettlement Files" to "Relocation Assistance Files".

*Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:*

Lines 25 and 26 change "See 'Blanket Routine Uses' at 40 FR 25503, June 6, 1983" to "See 'blanket routine uses' set forth at the beginning of the Army's listing."

*Retention and Disposal:*

Lines 38, 39, 40 and 41 change "Records are retained 12 years after final action or determination on appeals, following which they are destroyed by shredding" to "Records are destroyed 10 years after final action or determination on appeals, as applicable, at offices having Army-wide responsibility. Other offices destroy records 10 years after payment in full satisfaction of claim or final payment, as applicable. Records are destroyed by shredding".

Lines 66 and 67 change "*Systems exempted from certain provisions of the Act* to "*Exemptions claimed for the system*".

A1511.02DAEN

*System Name:*

Army Housing Information Management System, 50 FR 22251, May 29, 1985.

*Changes:*

*System Name:*

Change "Army Housing Information Management System" to "Army Housing Operations Management System".

*Authority for Maintenace of the System:*

Line 33 add "E.O. 9397".

*Retention and Disposal:*

Lines 68, 70, 71, 72, 73, 74, 75, 78, and 79 change "Installation housing and tenancy files and destroyed after 3 years; cost control files are destroyed 11 years after last entry; leasing/rental rate files are destroyed after 10 years; housing referral service files are destroyed after 5 years; off-post rental housing reports/and/or complaints/investigations are destroyed 5 years after completion at office having Army wide responsibility (other office: 3 years)" to "Installation troop housing files are destroyed after 3 years; installation housing project tenancy files are destroyed 3 years after termination of quarters occupancy; family housing cost controls are destroyed 11 years after last entry; family housing leasing files are destroyed 3 years after lease terminates, is cancelled, lapses, or after any litigation is concluded; family housing rental rates are destroyed after 10 years; housing referral services are destroyed after 5 years; off-post rental housing reports are destroyed after 2 years; off-post housing complaints and investigations are destroyed 5 years after completion at office having Army wide responsibility, and at other offices complaint and investigation records are destroyed 2 years after completion".

Lines 105 and 106 change "*Systems exempted from certain provisions of the Act* to "*Exemptions claimed for the system*":

A0102.03DAIM

SYSTEM NAME:

Personnel Locator/Organizational Roster/Telephone Directory.

SYSTEM LOCATION:

Segments are maintained by offices and/or Army telephone switchboards at Headquarters, Department of the Army, Staff and field operating agencies, commands, installations and activities. Official mailing addresses are contained in the compilation of the Army's system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, civilian employees, and in some instances their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include cards or listings/compilations of individual's name, Social Security Number, unit of assignment and/or home address, unit and/or home telephone number, and related information. Military alert rosters, organizational telephone directories, and listings of office personnel are included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

To provide commanders and supervisors with emergency notification data, and operators and other users with locator data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of records system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, card files, loose-leaf and bound notebooks; magnetic tape/discs or other computer media.

RETRIEVABILITY:

By individual's surname and SSN.

SAFEGUARDS:

Records are maintained in file cabinets, locked desk, or rooms accessible only to authorized personnel having official need therefor.

RETENTION AND DISPOSAL:

Individual records are destroyed upon transfer or separation of individual; rosters are destroyed upon update.

SYSTEM MANAGER(S) AND ADDRESS:

Commander or supervisor of organization maintaining locator or directory.

NOTIFICATION PROCEDURE:

Information may be obtained from commander or supervisor of organization to which individual is/was assigned or employed.

RECORD ACCESS PROCEDURES:

Requests should be made as indicated under 'Notification procedure'. Individual should provide full name, and some detail such as organization of assignment, that can be verified, except that, in cases where individual has provided written consent to release of home address/telephone number to the general public no identification is required.

CONTESTING RECORD PROCEDURES:

The Army's rules of access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; official Army records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0305.05aDACA

SYSTEM NAME:

Travel Payment System.

SYSTEM LOCATION:

Decentralized to Finance and Accounting Offices world-wide; addresses may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Miliary and civilian personnel of the Department of Defense, U.S. Army, U.S. Navy, and U.S. Air Force, and other individuals who perform invitational travel for the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual travel vouchers and documents used to effect travel allowance payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Department of Defense Annual Appropriations Act; 5 U.S.C., sections 5701–5742; 10 U.S.C., sections 828, 832, 946, 3012; 28 U.S.C., section 1821; 37 U.S.C., sections 404–427; E.O. 9397.

PURPOSE(S):

To provide basis for reimbursing military and civilian personnel for expenses incident to travel for official Government business purposes and to account for such payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices. Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, cards, magnetic tape/disks, cassettes, computer printouts.

RETRIEVABILITY:

By individual's SSN.

SAFEGUARDS:

Records are accessible only to authorized persons who are properly screened, cleared and trained. Buildings employ security guards and/or military police patrols. Access to automated files is controlled by assigned passwords.

RETENTION AND DISPOSAL:

Individual vouchers and documents used for payment are retained at the installation making payment until end of month, following which they are sent to U.S. Army Finance and Accounting Center.

Signature cards used for approval of certain vouchers are retained at installation where payments are made until 3 years after date of revocation of authority, following which they are destroyed.

Records of travel payments are retained for 3 years following settlement at installation making current payments. Military member's record of outstanding advance payments is transferred to new servicing finance office upon permanent change of station or to the U.S. Army Finance and Accounting Center upon death or separation form active duty. Civilian employee's record of outstanding advance payments is transferred to new servicing finance office upon reassignment. Military and civilian records of travel payments for settled travel claims are destroyed by the old duty station 3 years following separation or transfer. Records for individuals performing invitational travel are destroyed 1 year from date of final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller of the Army, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring information on them from this system should inquire of the Finance and Accounting Office who currently pays them. For periods of Army service prior to current assignment, request should be addressed to the Commander, U.S. Army Finance and Accounting Center, ATTN: DACA–FAZ–S, Indianapolis, IN 46249–0528. Individual must provide full name and Social Security Number as well as current address.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records pertaining to them should write either to the appropriate Finance and Accounting Officer where record is believed to exist or to the Commander, U.S. Army Finance and Accounting Center providing information required by 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Department of Defenses staff agencies and field commands/installations.

EXEMPTIONS CLAIMED FOR THE SYSTEM

None

A0305.10bDACA

SYSTEM NAME:

Joint Uniform Military Pay System-Reserve Components—Army.

SYSTEM LOCATION:

Centralized at U.S. Army Finance and Accounting Center, Indianapolis, IN 46249. Decentralized segments exist at Army Finance and Accounting Offices worldwide.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All members of the U.S. Army National Guard and U.S. Army Reserve who are drawing inactive duty training pay.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual military pay records, substantiating documents, transmittal letters, index cards, financial data record folders, miscellaneous military pay vouchers, personal financial history records.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

37 U.S.C., section 101 *et. seq;* E.O. 9397.

**PURPOSE(S):**

To maintain a record of member's drill attendance, entitlements and deductions in order to compute and disburse his/her pay while keeping a record of taxes and disbursements other than those to the member.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information from this system may be disclosed to:

(1) Treasury Department: To record check issue data, taxable earnings and taxes withheld.

(2) Individual States of the U.S.: To furnish wages earned for the calendar year; these data are furnished to the state of home record.

(3) Army National Guard Bureau: To furnish budget data to account for every expenditure within categories established.

(4) Individual National Guard States Associations: To furnish a report and an associated check regarding state sponsored life insurance premium withheld.

(5) American Red Cross: To assist military personnel and their dependents in determining the status of monthly pay, dependents allotments, loans, and related financial transactions.

(6) Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

(7) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and bulk storage; cards, computer magnetic tape and paper printouts, microfiche.

**RETRIEVABILITY:**

By SSN, name of the member, and document number.

**SAFEGUARDS:**

The U.S. Army Finance and Accounting Center employs security guards. An employee badge and visitor registration system is in use. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Access to computer magnetic tape files is restricted to the members' servicing finance and accounting officer. Computer equipment and files are located in a separate secure area. Within finance and accounting offices Army-wide, access is limited to designated personnel having official need for the information in the performance of their duties.

**RETENTION AND DISPOSAL:**

Individual military pay records are converted to microfiche which are retained for 56 years. Other records are retained for varying periods but total retention does not exceed 56 years; disposition is to Federal records centers; destruction thereafter is by burning or shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

**NOTIFICATION PROCEDURE:**

Information may be obtained from the System Manager. Individuals may also contact U.S. Property and Fiscal Officer, Army National Guard of each state and/or the District of Columbia, Puerto Rico, and the Virgin Islands. Individual may also contact the Finance and Accounting Officer at Ft Indiantown Gap, PA; Ft McPherson, GA; Ft Riley, KS; Presidio of San Francisco, CA; Ft McCoy, WI; Ft Douglas, UT. These Finance and Accounting Officers are responsible for U.S. Army Reserve pay accounts only. Individuals must provide full name, SSN, and military status.

**RECORD ACCESS PROCEDURES:**

Requests should be addressed to the Commander, U.S. Army Finance and Accounting Center, ATTN: FINCP, Indianapolis, IN 46249 or telephoned to 317/542–2891 and should contain the information indicated in 'Notification procedure'.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

The source of all data to establish and maintain JUMPS–RC–Army originates at unit level; i.e., all units of U.S. Army National Guard and U.S. Army Reserve which perform inactive duty training and whose members receive drill pay as a result of this training furnish the data to support the system.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0305.10dDACA**

**SYSTEM NAME:**

Health Professions Scholarship Program.

**SYSTEM LOCATION:**

Fitzsimons Army Medical Center, Aurora, CO 80045–5001. A segment of this system exists at the Army Medical Department Personnel Support Agency, 1900 Half Street SW., Washington, DC 20324.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Members of the U.S. Army Reserve who are enrolled in the Army-Health Professions Scholarship Program.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Contract between the Army and the University participating in the Health Professions Scholarship Program: tuition payments; individual's military pay records, cost data worksheets, active duty military pay vouchers, personal financial history records, monthly payroll listings of current members showing entitlements and deductions, bank identification data for deposit of pay, member's permanent home address, current mailing address and telephone number, orders to active duty, student's elective to defer entry on active duty, and similar relevant documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., Chapter 104, *et seq.:* Pub. L. 94–426; E.O. 9397.

**PURPOSE(S):**

To establish the pay account of students accepted into the Health Professions Scholarship Program; to

determine appropriate pay, deductions, reimbursable expense, taxes and disbursements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be discussed to:

(1) Department of the Treasury: to record check issue data, taxable earnings and taxes withheld.

(2) States and cities/counties which have an agreement with the Department of the Army: to verify tax liability against member's state and city/county tax returns.

(3) Social Security Administration: to record earned wages by member under the Federal Insurance Contributions Act.

(4) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders: Magnetic tapes; computer printouts; microfilm; ledger cards.

RETRIEVABILITY:

By member's name, SSN. Conventional indexing is used to retrieve data.

SAFEGUARDS:

Information is accessible only to authorized personnel having official need therefor. Records are stored in secured buildings protected by Military Police/security guards.

RETENTION AND DISPOSAL:

Individual pay records are retained at the Finance and Accounts Office, Fitzsimons Army Medical Center while reservist is enrolled in the Health Professions Scholarship Program. Upon completion of program, member's records are forwarded to U.S. Army Finance and Accounting Center, Indianapolis, IN 46249 for recoupment determination.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Finance and Accounting Officer, Fitzsimons Army Medical Center, Aurora, CO 80045-5001 so long as reservist is enrolled in the Scholarship Program. Thereafter, information may be obtained from the Commander, Army Medical Department Personnel Support Agency, Washington, DC 20324.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records concerning themselves in this system of records may write as indicated under 'Notification procedure', providing his/her full name, present address and telephone number, and sufficient detail to locate the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; university/college in which student is enrolled; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0395.11DAPE

SYSTEM NAME:

USMA Cadet Account System.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996-1783.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Corps of Cadets, U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly deposit listings of Corps of Cadets members showing entitlements and activity pertaining to funds held in trust by the USMA Treasurer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., Sections 205, 4340 and 4350; Title 6, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies; E.O. 9397.

PURPOSE(S):

To compute deposits and charges to cadet account to include: Barber, laundry/dry cleaning charges; advance pay, and funds deposited with Treasurer, USMA to be held in trust to pay for required uniforms, books, and equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Treasurer, USMA: To record and provide taxable interest data to individual cadet and Internal Revenue Service. To control and monitor charges/credits to the cadet account. To record deposits to the cadet account and to maintain records of financial institutions for direct deposit purposes.

(2) Disclosure to consumer reporting agencies: Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

(3) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and computer printout; paper records in file folders.

RETRIEVABILITY:

By Cadet account number.

SAFEGUARDS:

Records are maintained in buildings which are secured and patrolled and are accessible only to personnel who have need therefor in the performance of official duties. Automated master data and back-up files are further protected by assignment of passwords.

RETENTION AND DISPOSAL:

Duplicate account statements are retained locally for one year after cadets graduation and then destroyed by shredding. Information in automated media is retained for one thru three months, except that annual interest tapes are retained for one year before being erased.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996-1738.

NOTIFICATION PROCEDURE:

Requests from individuals may be submitted to the U.S. Military Academy, Treasurer, West Point, NY 10996-1783; telephone 914/938-3516. Individual should provide full name, Cadet account number, SSN, graduating class year, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individual may request access by writing to the System Manager, furnishing information indicated in "Notification procedure". Personal visits may be made to the Treasurer, U.S. Military Academy; individual must provide acceptable identification such as valid driver's license and information that can be verified with his/her payroll.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and

appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Department of Army, Department of the Treasury, financial institutions and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0306.01DACA

SYSTEM NAME:

Civilian Employee Pay System.

SYSTEM LOCATION:

U.S. Army Finance and Accounting Offices worldwide and U.S. Property and Fiscal Offices in the United States, Puerto Rico, Virgin, Islands, and the District of Columbia having civilian payroll responsibilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and contract teachers employed by the Department of the Army; Office, Secretary of Defense; and specified elements of the Navy and Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employees' pay, leave, and retirement records; individual withholding/deduction authorization for dependents, allotments, health benefits, savings bonds, etc.; tax exemption certificates; personal exception and indebtedness papers; statements of charges, claims, repatriated payment files; roster of authorized timekeepers and signature cards; payroll and retirement control and working paper files; unemployment compensation data requests; reports of retirement fund deductions; management narrative and statistical reports relating to pay, leave, and retirement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 6, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies; E.O. 9397.

PURPOSE(S):

To provide basis for computing civilian pay entitlements; to record history of pay transactions; to record leave accrued and taken, bonds due and issued, taxes paid; to answer inquiries and process claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to:

(1) Treasury Department: To record checks and bonds issued.

(2) Social Security Administration: to report earned wages by employees under the Federal Insurance Contributions Act.

(3) Internal Revenue Service: To record taxable earnings and taxes withheld.

(4) Office of Personnel Management: To record monies paid into Federal Retirement Fund and to provide information pertaining to health benefits.

(5) States and Cities. To provide taxable earnings of employees to those states and cities which have entered into an agreement with the Department of the Army and the Treasury Department.

(6) Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

(7) See "Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and bulk storage; card files, computer magnetic tapes, disks, and printouts, and microfilm.

RETRIEVABILITY:

Automated records are retrieved by SSN within payroll block; manual records are retrieved by surname within payroll block.

SAFEGUARDS:

Records are restricted to personnel who are properly cleared and trained, and have an official need therefor. In addition, integrity of automated data is ensured by internal audit procedures, data base access accounting reports, and controls to preclude unauthorized disclosure.

RETENTION AND DISPOSAL:

Individual retirement record files are permanent; they are retained at installation while member is actively employed. They are forwarded to new installation when member is transferred to another Army activity. When employee transfers to another agency under the Department of Defense not serviced by Army or separates from Federal Service, record is forwarded to the Office of Personnel Management. Microfilm of manually maintained individual retirement records is sent to the National Personnel Records Center after 3 years.

Personnel exceptions and indebtedness files are permanent. These documents are filed in individual's Official Personnel Folder (OPF). Upon separation or transfer, if OPF is not on file locally, records are forwarded to National Personnel Records Center, General Services Administration, St. Louis, MO 63118.

Repatriated personnel payment files are permanent; forwarded to National Personnel Records Center after 3 years.

Subsistence and quarters rate deviation files are permanent; they are retired on discontinuance of the installation.

Retention periods vary for other records according to category of record. The minimum retention period is 2 years and the maximum period is 12 years, after which records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller of the Army, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, U.S. Army Finance and Accounting Offices worldwide or, if National Guard Technician, from the National Guard Bureau, 5600 Columbia Pike, Falls Church, VA 22041, or from U.S. Property and Fiscal Offices.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed as indicated in "Notification procedure", and should include individual's full name, SSN, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, former employers, DOD Staff agencies and field commands, Social Security Administration, Treasury Department, financial organizations, and automated systems interface.

EXCEPTIONS CLAIMED FOR THE SYSTEM:

None.

A0306.20DACA

SYSTEM NAME:

Military and Civilian Waiver Files.

SYSTEM LOCATION:

U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Army members or civilian employees who apply for waiver of claims arising out of erroneous payments of pay and allowances, travel, transportation, and relocation allowances.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains application, employment history, reports of investigation, copies of vouchers, certificates, record of disposition, and correspondence with the U.S. General Accounting Office, Army staff offices, and other government agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

To determine the validity of waivers or to make referrals to the U.S. General Accounting Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefor, within buildings which employ security guards.

RETENTION AND DISPOSAL:

Records are retained for 6 years after waiver is approved/denied.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, ATTN: Chief, Claims/ Inquiries Division, telephone: 317–542–2793.

RECORD ACCESS PROCEDURES:

Individuals desiring access to information about themselves in this system of records should write to the System Manager, ATTN: Chief, Claims/ Inquiries Division, Centralized Pay Operations, providing their full name, SSN, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army Finance and Accounting Offices; and other Government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0314.09DACA

SYSTEM NAME:

Nonappropriated Fund Accounts Receivable System.

SYSTEM LOCATION:

Nonappropriated fund activities at Army installations worldwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and past members of Officer or Noncommissioned Officer Club facilities whose accounts show balances other than zero; persons using Post billeting facilities on a fee paid basis (bachelor officer quarters, visitor officer quarters and guesthouse facilities) and persons no longer using such facilities whose accounts have other than zero balances; any individual having a statement of account for the billing period, individuals occupying government housing at any military installation; individual class B telephone subscribers; members, customers or civilians having 30 day credit terms for "charge" sales and/or dues obligations to NAF activities; all persons whose accounts have been dishonored by banking institutions and their checks returned to NAF activities; individuals who have cash loans charged to their accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, rank, amount of charges, billings of items or services furnished, subsidiary ledgers containing detail of services billed and paid by individual; work order forms, invoice listings, monthly receipt vouchers, date and method of payment, file of billings associated with returned/dishonored checks, and relevant similar documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66; 10 U.S.C. 2481 and 3012; 5 U.S.C. 5101; Pub. L. 210, section 401; Pub. L. 784, section 113.

PURPOSE(S):

To maintain current rosters as subsidiary records for accounts receivable and cash accountability control; to provide monthly statements to customers; to provide ledger balances for activity financial statements; to prepare aged listing of accounts receivable, 30, 60, and 90 days; to answer inquires of members on account status and specific transactions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

(2) Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes and/or discs by account in numerical and alphabetical order; computer hard copy printouts filed in binders; copies of statements filed in folders.

RETRIEVABILITY:

By customer name and SSN.

SAFEGUARDS:

Records are maintained in lock-type cabinets within storage areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 3 years following audit with no exceptions or irregularities disclosed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Comptroller of the Army for Finance and Accounting, ATTN: DACA–FAP–N, STOP 66, Indianapolis, IN 46249–1056.

NOTIFICATION PROCEDURE:

Individuals may submit written request to the custodian of nonappropriated fund activities at the installation where record is believed to exist.

**RECORD ACCESS PROCEDURE:**

Individuals desiring access to records pertaining to them in this system should write to the appropriate fund activity custodian, furnishing full name, SSN, and account number.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From daily transaction registers/ journals received from billeting officers, signal officers, and/or club officers.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0403.01DAJA**

**SYSTEM NAME:**

U.S. Army Claims Service Management Information System.

**SYSTEM LOCATION:**

JACS–Z, Ft Meade, MD 20755–5360. Segments exist at subordinate field operating agencies and at Staff Judge Advocate Offices at Army installations throughout the world.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals, corporations, associations, countries, states, territories, political subdivisions presenting a claim against the United States.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name of claimant, claim file number, type of claim presented, reports of investigation, witness statements, police reports, photographs, diagrams, bills, estimates, expert opinions, medical records and similar reports, copy of correspondence with claimant, potential claimants, third parties, and insurers of claimants or third parties, copies of finance vouchers evidencing payment of claims, and similar relevant information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., sections 938, 2733, 2734, 2734a, 2734b, 2737; 28 U.S.C., sections 2671–2680; 31 U.S.C., sections 3711 and 3721; 32 U.S.C., section 715; E.O. 9397.

**PURPOSE(S):**

To develop and preserve all relevant evidence about incidents which generate claims against the Army. Evidence developed is used as a legal basis to support the settlement of claims. Data are also used as a management tool to supervise claims operations at subordinate commands world-wide.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

(1) Information may be disclosed to Internal Revenue Service for tax purposes;

(2) Department of Justice for assistance to deciding disposition of claims filed against the Government and for considering criminal prosecution, civil court action or regulatory orders;

(3) U.S. Claims and the Court of Appeals for the Federal Circuit, to support legal actions, considerations or evidence to support proposed legislative or regulatory changes, for budgetary purposes, for quality control or assurance type studies, or to support action against a third party;

(4) Foreign governments, for use in settlements of claims under the North Atlantic Treaty Organization Status of Forces Agreement or similar international agreements;

(5) State governments for use in defending or prosecuting claim by the state or its representatives;

(6) Department of Labor, for consideration in determining rights under Federal Employees Compensation Act or similar legislation;

(7) Civilian and Governmental medical experts for evaluation of medical aspects and records and related material;

(8) Office of Management and Budget for preparation of private relief bills for presentation to the Congress;

(9) Government contractors for use in defending or settling claims filed against them, including recovery actions, arising out of the performance of a Government contract;

(10) Federal and State workmen's compensation agencies for use in adjudicating claims.

(11) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Index cards, paper records in file folders, computer disc.

**RETRIEVABILITY:**

By last name.

**SAFEGUARDS:**

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information, buildings housing records are locked after normal duty hours.

**RETENTION AND DISPOSAL:**

Destroyed 10 years after final action.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

**NOTIFICATION PROCEDURE:**

Individuals desiring to know whether or not information on them exists in this system of records may write to the Commander, U.S. Army Claims Service, Ft Meade, MD 20755, furnishing full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data which would assist in determining location of the records.

**RECORD ACCESS PROCEDURE:**

Individuals seeking access to records about themselves in this system of records should write to the Commander, U.S. Army Claims Service, Ft Meade, MD 20755–5360, furnishing information required by 'Notification procedure' above.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From the individual; investigative reports originating in the Department of the Army, Federal Bureau of Investigation, and/or foreign, State, or local law enforcement agencies; medical treatment facilities; Armed Forces Institute of Pathology; relevant records and reports in the Department of Defense.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0403.06DAJA**

**SYSTEM NAME:**

Tort Claim Files.

**SYSTEM LOCATION:**

HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have filed a complaint against the U.S. Army in the U.S. District Court under the Federal Tort Claims Act.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Pleadings, motions, briefs, orders, decisions, memoranda, opinions,

supporting documentation, and allied material, including claims investigation, reports and files involved in representing the U.S. Army in the Federal Court System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C., sections 2671–2680.

PURPOSE(S):

To defend the Army in Civil suits filed against it in the Federal Court System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is disclosed to the Department of Justice and United States Attorneys' offices handling the particular case. Most of the information is filed in some manner in the courts in which the litigation is pending and therefore is a public record. In addition, some of the information will appear in the written orders, opinions, and decisions of the courts which, in turn, are published in the Federal Reporter System under the name or style of the case and are available to individuals with access to a law library. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of records system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

By claimant's surname and court docket number.

SAFEGUARDS:

Records are maintained in file cabinets within secured buildings and available only to designated authorized individuals who have official need thereof.

RETENTION AND DISPOSAL:

Records are destroyed 10 years after final action on the case.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, furnishing their full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves should submit their request as indicated in 'Notification procedure', providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

A0403.16DAJA

SYSTEM NAME:

Army Property Claim Files.

SYSTEM LOCATION:

HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, having damaged Government property, were not subject to the collection activities of other agencies or organizations and therefore require litigation on behalf of the Department of the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of reports from the claim investigator, accident and police reports relating to damage, and pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied material involved in representing the U.S. Army.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C., section 3711.

PURPOSE(S):

To negotiate with, or to sue, as appropriate, the individual or entity, including insurance carriers, responsible for loss or damage of U.S. Army property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice, U.S. Attorney, and opposing parties and their attorneys as deemed necessary in litigation property claims. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file orders; magnetic tapes/discs.

RETRIEVABILITY:

By individual's surname and court docket number.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records at The Judge Advocate General's Office are destroyed 10 years after final action; i.e., completion of litigation or determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 5 years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, furnishing their full name, current address and telephone number, case number that appeared on documenation, any other information that will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves should submit their request as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports; Office of Personnel Management; Department of Justice, U.S. Attorney, opposing counsel, and similar pertinent sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0403.17DAJA

SYSTEM NAME:

Medical Expense Claim Files.

SYSTEM LOCATION:

Staff Judge Advocate Offices at Army commands, field operating agencies, installations and activities. A segment of the System is located at HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received medical treatment at the expense of the U.S. Army as a result of a tortuous or negligent act of a third party; third parties causing medical care to be furnished to individuals entitled to medical care at Government expense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of medical and personnel records of individuals injured by a third party from whom the U.S. Army is seeking to recover the costs of medical care furnished the injured party; accident and police reports relating to the injury, claims investigation files; correspondence with attorneys representing the Army's interest; court documents; and similar pertinent documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C., sections 2651–2653; Executive Order 11060; 28 CFR Part 43.

PURPOSES:

To negotiate with the tortfeasor or an insurance carrier, or to sue the same to collect the value of medical care furnished the injured party.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice, appropriate U.S. Attorneys, civilian attorneys representing the injured party who agree also to represent the U.S. Army's claim, and opposing parties and their attorneys. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

By individual's surname and court docket number.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records at The Judge Advocate General's Office are destroyed 10 years after final action; i.e., completion of litigation or determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 5 years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, furnishing their full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves should submit their request as indicted in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports; Office of Personnel Management; Department of Justice, U.S. Attorneys, opposing counsel, and similar pertinent sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0406.08DAJA

SYSTEM NAME:

Patent, Copyright, Trademark, and Proprietary Data Files.

SYSTEM LOCATION:

(1) Primary: JALS–PC, Nassif Building, Falls Church, Va 22041–5013

(2) Secondary: Office of the Staff Judge Advocate at major Army commands, field operating agencies, and installations; addresses are listed in the Appendix to the Army inventory of system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted inventions to the Government; inventors with patents or applications for patents procured on behalf of the Department of the Army or in which the Government has an interest; authors of copyrightable or copyrighted material in which the Government has an interest; and Government employees to whom copyright assistance has been rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Document relating to; disposition of rights in Government employees' inventions; foreign patent filings; licensing of Government-owned patents, copyrights, and service marks; Government interest in or under patents, applications for patent, and copyrights procured on behalf of the Department of the Army; and invention disclosures including drawings, patentability search reports, evaluation reports, applications, amendments, petitions, appeals, interferences, licenses, assignments, other instruments, and relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE(S):

To determine the rights in Government employee inventions, and to maintain evidence and record of: Documents used in filing for foreign patents; invention disclosures submitted to the Department of the Army; patents and applications for patent procured on behalf of the Army or in which the Army has an interest; patent and copyright licensing and assignments; and copyright assistance rendered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information from the system may be disclosed to the U.S. Patent and Trademark Office, Department of Commerce, and/or to the Copyright Office, Library of Congress.

(2) In the event of legal proceedings and litigation, information may be disclosed to the Civil Division, Department of Justice.

(3) For foreign patent filings, records are presented to the Director of Patent Administration, Department of National Defense in Ottawa, Ontario, Canada.

(4) Parties to a licensing arrangement have access to the specific files involved.

(5) Contractors and/or Government agencies have access in

order to conduct patent investigations and evaluations.

(6) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

By individual's surname.

**SAFEGUARDS:**

Records are maintained in buildings protected by security guards, and are accessible only to authorized persons having need therefor in the performance of official duties.

**RETENTION AND DISPOSAL:**

At the primary location: Records pertaining to patent matters are retained for 20 to 25 years depending on the specific case; those concerning copyright matters are retained either for 56 years or on expiration of copyright not renewed, after which they are destroyed by shredding. Records at the secondary location are destroyed after 2 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310; senior patent attorney at each secondary location.

**NOTIFICATION PROCEDURE:**

Individuals desiring to know whether or not information on them exists in the system of records may write to system location, furnishing full name, current address and telephone number, the case number of other identifying information on correspondence emanating from the Army.

**RECORD ACCESS PROCEDURES:**

Individuals desiring access to their records in system should write to the System Manager, furnishing information required under 'Notification procedure'.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing intitial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From the individual, Army records, the Government agency interested n the invention or copyright, research material in libraries, the Patent and Trademark Office, and/or the Copyright Office.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A0501.10DAMI**

**SYSTEM NAME:**

Counterintelligence Research File System (CIRFS).

**SYSTEM LOCATION:**

Counterintelligence and Security Division, Assistant Chief of Staff for Intelligence, Department of the Army, the Pentagon, Washington, DC 20310.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have come to the attention of the U.S. Army counterintelligence community during the course of intelligence operations or normal mission requirements.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains reports used by the U.S. intelligence community and, in some cases, photographs of the individual. File is random is structure and personalities are coded for retrieval by a computerized index.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Order 10450.

**PURPOSE(S):**

To assist the Counterintelligence Desk Analyst in compiling a historical record.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

None authorized.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Microfilmed reels in cassettes and indexed on computer diskpack.

**RETRIEVABILITY:**

Microfilmed in random order. Retrieved by personality name via computer index which identifies the reel and document location containing the requested name.

**SAFEGUARDS:**

Building protected by security guards and storage point electronically monitored for illegal entry. Computerized index is access controlled by a code word that is issued only to properly screened, cleared and trained personnel. Code word is presently held only by the Assistant Chief of Staff for Intelligence and issued only to the team of a group conducting a screening operation of the CIRFS.

**RETENTION AND DISPOSAL:**

Records are permanent. They photographed onto microfilm and the original document destroyed. The file is presently being screened for identification of documents no longer needed and selected documents are being destroyed at the direction of the Assistant Chief of Staff for Intelligence, Headquarters, Department of Army.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Assistant Chief of Staff for Intelligence, Department of the Army, The Pentagon, Washington, DC 20310.

**NOTIFICATION PROCEDURE:**

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755; telephone: 301/677–4242/4243.

**RECORD ACCESS PROCEDURE:**

Requests from individuals should be addressed to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755. Written requests must contain the full name and SSN of the individual, current address, and telephone number. For personal visits, the individual should furnish acceptable identification and verbal information that can be verified from his/her file card.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From investigative reports of the Defense Investigative Service, U.S. Army Intelligence and Security Command, other Federal and Department of Defense investigative and law enforcement agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

All portions of this System of records which fall within 5 U.S.C. 522a(k)(1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

**A0502.03aDAMI**

**SYSTEM NAME:**

Intelligence Collection Files.

**SYSTEM LOCATION:**

U.S. Army Intelligence and Security Command, Ft Meade, MD 20755. Decentralized segments located at U.S. Army Intelligence and Security Command groups, field stations, battalions, detachments, field offices

and resident offices stationed worldwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is qualified and may be accepted for sensitive intelligence duties with the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain documents which describe the requirements, the objectives, the approvals, the implementation, the reports, and the results of Department of the Army sensitive intelligence activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 14; 10 U.S.C., section 3012(b)(c)(g); National Security Act of 1947, as amended.

PURPOSE(S):

To support contingency planning and military operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used by The Federal Bureau of Investigation and the Central Intelligence Agency for counterintelligence and intelligence; within the continental United States for the FBI and outside the continential United States for the CIA.

(2) Information may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of DOD military and civilian personnel and other countries where there are routine reciprocal exchanges of information.

(3) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and visible, vertical card files; automated records on disc with video display of individual source records on cathrode ray tube.

RETRIEVABILITY:

Alphabetically by last name, numerically by source and numerically by project number.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly cleared, and have a need-to-know for the information. Automated media are protected by authorized code word for access to system, controlled access to operations rooms, and controlled input distribution.

RETENTION AND DISPOSAL:

Records are permanent and retained in active file until no longer needed; then retired to the Investigative Records Repository, U.S. Army Intelligence and Security Command, Ft Meade, MD 20755.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Chief of Staff for Intelligence, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN; IACSF–FI, Ft. Meade, MD 20755; telephone: Area Code 301–377–4742/4743.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Commander, United States Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755. Written requests must contain the full name and SSN of the individual, current address, and telephone number. For personal visits, the individual must furnish acceptable identification and verbal information that can be verified from his/her file.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)

RECORD SOURCE CATEGORIES:

From individual investigative reports of Defense Investigative Services, U.S. Army Intelligence and Security Command, and other Federal and DOD investigative and law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All portions of this system of records which fall within 5 U.S.C. 552a(k)(1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

A0503 03bDAMI

SYSTEM NAME:

Technical Surveillance Index.

SYSTEM LOCATION:

Decentralized location at Investigative Records Repository, Headquarters, U.S. Army Intelligence and Security Command, Ft. Meade, MD; Systems Division, Office of the Deputy Chief of Staff, Intelligence, HQ, U.S. Army Europe and Seventh Army, Heidelberg, Germany; Office of the Depty Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon; and Crimes Record Center, Ft Holabird, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons whose conversations have been intercepted during techical surveillance operations conducted by, or on behalf of the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and citizenship, any associated telephone number or radio call sign; location, date, and time of the surveillance activity, and the source document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C., sections 2510–2520 and 3504.

PURPOSE(S):

To assist the Counterintelligence Officer in compiling a total investigative record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None authorized.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes and paper records.

RETRIEVABILITY:

U.S. Army Europe and Seventh Army segment uses a computerized retrieval system of name, address, telephone number or case designation. Other segments are retrieved manually by name, address telephone number or case designation.

SAFEGUARDS:

Access to buildings is controlled by security guards. Records are maintained in General Services Administration approved security containers, physically separated from other materials, and are accessible only to authorized personnel who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Chief of Staff for Intelligence, Headquarters, Department of the Army. The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from Headquarters, Department of the Army, ATTN: DAMI–CIS, The Pentagon, Washington, DC 20310; telephone: (202) 697–7993.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the appropriate decentralized repository. Written requests should contain the full name of the individual, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)

RECORD SOURCE CATEGORIES:

From the Army and other investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All portions of this system of records which fall within 5 U.S.C. 522a (k)(1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., Section 522a (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I).

A0502.06DAMI

SYSTEM NAME:

Badge and Credential Files.

SYSTEM LOCATION:

U.S. Army Intelligence and Security Command, Ft Meade, MD 20755. Decentralized Segments exist at U.S. Army Intelligence and Security Command groups, field stations, battalions, detachments, field or resident offices having assigned personnel who possess Military Intelligence badges and credentials.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who currently possess or in the past possessed Military Intelligence badge and credential.

CATEGORIES OF RECORDS IN THE SYSTEM:

Card file contains the names, SSN, rank, and badge and credenital number of each person who has been issued Military Intelligence badge and credential. This card file is an index to a numerical filing system consisting of envelopes having a badge and credential status and Control Card (MIA Form 70) attached which contains the name of the individual, badge and credential number, component (military or civilian), military occupational speciality, clearance of civilian, authority for issue, and comments which indicate the history of the badge and credential keyed to the individuals having been assigned the badge and credential.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, sections 2, 3, 4, 5, 6, 7, 8, 9 and 14; 10 U.S.C., section 3012(b)(c)(d) and (g); National Security Act of 1974, as amended.

PURPOSE(S):

To maintain control and accountability over Military Intelligence badges and credentials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to Federal investigative and/or intelligence agencies to ascertain if an individual legally possesses badges and credentials. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files.

RETRIEVABILITY:

Alphabetically by last name of possessor of badge and credential.

SAFEGUARDS:

Primary system is maintained in buildings employing security guards. Records are maintained in areas accessible only to authorized personnal who are properly cleared and trained.

RETENTION AND DISPOSAL:

Records are maintained indefinitely. Destruction is authorized by Central Custodian of the badge and credential.

SYSTEM MANAGER(S) AND ADDRESS:

The assistance Chief of Staff for Intelligence, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755; telephone 301/677–4742/47443.

RECORD ACCESS PROCEDURE:

Requests should be addressed to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755. Written request must contain the full name and SSN of the individual, current address, and telephone number. For personal visits, the individual should furnish acceptable identification and verbal information that can be verified from his/her file card.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

U.S. Army personnel and security records and U.S. Army Orders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0503.10aDAMI

SYSTEM NAME:

USAINSCOM Investigative Files System.

SYSTEM LOCATION:

U.S. Army Intelligence and Security Command, Ft Meade, MD 20755. Decentralized segments are located at U.S. Army Intelligence and Security Command groups, field stations, battalions, detachments, and field officers stationed worldwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel of the U.S. Army, including active duty, National Guard, reservists and retirees; civilian employees of the Department of the Army, including contract, temporary, part-time, advisory, and volunteer, citizen and alien employees located both in the U.S. and in overseas areas; industrial or contractor personnel who are civilians working in private industry for firms which have contracts involving access to classified Department of Defense information; aliens granted limited access authorization to U.S. Defense information; DOD alien personnel investigated for visa purposes; individuals about whom there is a reasonable basis to believe that they are engaged in, or plan to engage in, activities such as (1) theft, destruction, or sabotage of ammunition, equipment, facilities, or records belonging to DOD units or installations, (2) possible compromise of classified defense information by unauthorized disclosure or by espionage, (3) subversion of loyalty, discipline or morale of Department of Army military or civilian personnel by actively

encouraging violation of lawful orders and regulations or disruption of military activities, (4) demonstrations on active or reserve Army installations or immediately adjacent thereto which are of such character that they are likely to interfere with the conduct of military operations, (5) direct threats to DOD military or civilian employees regarding their official duties or to other persons authorized protection by DOD resources, and (6) activities or demonstrations endangering classified defense contract facilities or key defense facilities of the Panama Canal approved by Headquarters, Department of the Army; certain non-DOD affiliated persons whose activities involve them with the DOD, namely, activities involving requests for admission to DOD facilities or requests for certain information regarding DOD personnel, activities, or facilities; persons formerly affiliated with the DOD; persons who applied for or are/were being considered for employment with or access to DOD such as applicants for military service, pre-inductees and prospective contractors; visa applicants, individuals residing on, having authorized official access to, or conducting or operating any business or other function at any DOD installation and facility; and U.S. Army Intelligence and Security Command sources.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(1) Requests for investigation and attachments thereto such as personal history statements; fingerprint cards; personnel security questionnaire; waivers for release of credit; medical and/or educational records; and National Agency check requests.

(2) Investigations conducted by U.S. Army Intelligence and Security Command or other DOD, Federal, State or local investigative agency to include: National Agency checks; local agency checks; military records; birth records; employment records; education records; credit records; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; documents which succinctly summarize information in subject's investigative file; case summaries prepared by both investigative control offices and requesters of investigation interrogation reports, correspondence pertaining to the investigation or its adjudication by clearance authority to include; (1) information which reflects the chronology of the investigation and adjudication; (2) all recommendations regarding the future status of the subject; (3) actions of security/loyalty review boards (4) final actions/determinations made regarding the subject, and (5) security clearance, limited access authorization, or security determination; index tracing reference which contains aliases and the names of the subject and names of co-subjects; U.S. Army Intelligence and Security Command form indicating dossier has been reviewed and all material therein conforms to Department of Defense policy regarding retention criteria; U.S. Army Intelligence and Security Command form to indicate material has been removed and forwarded to the Defense Investigative Service; security termination statements; notification of denial, suspension, or revocation of clearance; record of U.S. Army Intelligence and Security Command agent case assignments; reports of casualty, biographic data concerning Army personnel who are missing or captured; cross reference sheets which indicate the removal of investigative documents requiring limited access.

(3) Case control and management documents that serve as the basis for conducting the investigation. This includes documents requesting the investigation; background data such as personal history statement, fingerprint cards, National Agency check requests, and release statements; and documents used in case management and control such as lead sheets, other field tasking documents, and transfer forms.

(4) Card index of personnel investigations/operations which are under controlled access, to include U.S. Army Intelligence and Security Command personnel, file procurement officers, and sensitive counter-espionage, counter-sabotage, and counter-subversion investigations and/or operations.

(5) Accession file maintained to keep record of all persons and agencies authorized to receive Investigative Records Repository (IRR) Files.

(6) Microfilm index and catalogue file, which is an index to all investigative holdings contained in microfilmed investigative records.

(7) Investigative index card file record system maintained to keep a permanent record of all dossiers charged out of U.S. Army Intelligence and Security Command on loan to user agencies or on permanent transfer to Defense Investigative Service.

(8) Document account record or dossiers of their reproductions or microfiche files forwarded from and returned to U.S. Army Intelligence and Security Command.

(9) File containing a record of all favorable IRR dossiers destroyed because no action has transpired in the file within the past 15 years. File consists of either the last clearance certificate contained in the dossier or, if no clearance certificate exists, a summary card containing the name of the individual, his/her date and place of birth, his/her SSN, or Army service number, date and type of investigation, and the name of the agency which conducted the investigation.

(10) Records accounting for the disclosure of U.S. Army Intelligence and Security Command investigative material made outside the U.S. Army.

(11) Card file containing a summary of all actions taken by the U.S. Army Intelligence and Security Command in the conduct of security adjudication.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Order 10450, Sections 2, 3, 4, 5, 6, 7, 8, 9 and 14; Title 10 U.S.C., Section 3012(b)(c)(g); National Security Act of 1947, as amended; Executive Order 11652 Sections, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12; Executive Order 9397.

**PURPOSE(S):**

To provide information to assess an individual's acceptability for assignment to or retention in sensitive positions consistent with the interest of national security; to provide authorized protective service; and to conduct counterintelligence and limited reciprocal investigations.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information may be disclosed to:

(1) Accredited Federal criminal and civil law enforcement agencies including those responsible for conducting their own investigations as to suitability for employment or access of current or potential employees formerly affiliated with the Department of Defense.

(2) Other accredited Federal agencies serviced by the Office of Personnel Management but with a need to evaluate the suitability of potential employees formerly affiliated with the Department of Defense.

(3) Congress, including the General Accounting Office.

(4) Veterans Administration.

(5) Specific uses of U.S. Army Intelligence and Security Command Investigative files are:

(6) To determine the loyalty, suitability, eligibility, and general trustworthiness of individuals for assignment or appointment to sensitive military duties or to critical sensitive civilian positions.

(7) To determine the eligibility and suitability of individuals for entry and retention in the Armed Forces.

(8) To provide information for ongoing security and suitability investigations being conducted by Federal agencies.

(9) To provide information to assist Federal agencies in the administration of criminal justice and prosecution of offenders.

(10) To provide information in judicial or adjudicative proceedings, including litigation, or in accordance with a court order.

(11) To make statistical evaluations of investigative activities.

(12) To provide protective services when authorized by the Secretary of Defense for the Department of Defense, Distinguished Visitors Protection Program. The objective of this program is to provide physical protection for distinguished foreign visitors of Department of Defense and the Military departments and high ranking members of the Department of Defense and its agencies, and to assist the U.S. Secret Service in its protective functions.

(13) To provide information in response to Inspector General, Equal Employment Opportunity, other complaint investigations and Congressional inquiries.

(14) To determine the eligibility and suitability of an individual for favorable personnel actions in the Armed Forces of the U.S., to include Reserve and National Guard.

(15) For use in alien admission and naturalization inquiries conducted under section 105 of the Immigration and Nationality Act of 1952, as amended.

(16) For use in benefit determinations by the Veterans Administration.

(17) The distribution of investigative information to other DA activities or outside agencies is based on this agency's evaluation of their needs and the relevance of the information to the use for which it is provided. Information collected for one purpose is not automatically used for the other purposes or by the other users indicated in this description.

(18) See 'Blanket Routine Uses set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

Upon receipt of a valid request for an investigation, the request package is given a control number and placed in a case folder (paper record) together with identification data concerning the subject of the request for investigation and control number. The request is entered into an automated data processing system (U.S. Army Intelligence and Security Command case control system) which is designed to provide statistical data and case control management information on the number and types of investigations that are opened, currently pending, and closed in U.S. Army Intelligence and Security Command. This automated system triggers automatic requests upon the Defense Central Index of Investigations (DCII), a master index that holds reference to all Department of Defense investigations conducted by U.S. Army Intelligence and Security Command and the Military Services investigative file repositories. If there are files on the subject, a request is generated by U.S. Army Intelligence and Security Command upon the appropriate repository. Upon review of the request package and other investigative files retrieved through DCII, investigative requirements are then determined by the U.S. Army Intelligence and Security Command Control Office and investigative leads are dispatched to the U.S. Army Intelligence and Security Command field elements and other pertinent Governmental investigative agencies. Upon receipt of the investigative leads at the field level, a duplicate investigative field is prepared by the receiving field element. This file contains investigatory report and case control material pertaining only to the specific investigative leads assigned to the controlling field element. At this point the U.S. Army Intelligence and Security Command investigative file enters into a pending status. During this pending status, investigative reports are prepared by U.S. Army Intelligence and Security Command field element and sent to the control office, based upon record and interview data obtained during the investigation. Upon completion of the investigation, the closed investigative file held by the U.S. Army Intelligence and Security Command Control Office is forwarded thru the IRR to the requestor of the investigation. Upon receipt, the requestor adjudicates the investigation and returns it to the IRR for retention. The duplicate files prepared by U.S. Army Intelligence and Security Command field elements are destroyed 120 days after the closing.

**STORAGE:**

Paper records in file folders, rolled microfilm, and microfiche.

**RETRIEVABILITY:**

(a) File folders are maintained in terminal digit order by regular dossier number and SSN. In order to obtain the dossier number of the subject at least one personal identifier is required. For those subjects who have no identifying data such as date of birth, military service number or SSN, the name only index is searched. Additionally, a non-standard search is required. The name only index will provide a subject's name and dossier number only. The non-standard search will provide a listing of all subjects with identifying data. In these instances, some other identifying data must be furnished such as address. Dossiers possibly identical with the subject may be forwarded to the requester.

(b) Microfiche files are maintained in duplicate copy in separate locations in Microfilm Division, IRR. The records are maintained in terminal digit order according to regular dossier number or SSN.

(c) Microfilm records are retrieved by name or dossier number.

**SAFEGUARDS:**

Building 4552, which houses the IRR, is under 24-hour guard and accessible only to authorized personnel. Only individuals accredited as file procurement officers may obtain and review IRR investigative records. Subordinate U.S. Army Intelligence and Security Command elements and other official requesters are required to have General Services Administration approved containers for the storage of investigative files. Certified mail is used to forward any investigative files to official requesters of U.S. Army Intelligence and Security Command subordinate elements.

**RETENTION AND DISPOSAL:**

Personnel security investigative files may be retained for 15 years after last action reflected in the file, except that files which resulted in adverse action against the individual will be retained permanently. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Assistant Chief of Staff for Intelligence, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

**NOTIFICATION PROCEDURE:**

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF-FI, Ft. Meade, MD 20755; telephone: 301/677-4742-4743.

**RECORD ACCESS PROCEDURES:**

Requests should be sent to the Commander, U.S. Army Intelligence and

Security Command, ATTN: IACSF–FI, Ft. Meade, MD 20755. Written requests should contain the full name of the individual, SSN, previous service number (if any), current address, and telephone number. Visits are limited to Building 4552, Ft. Meade, MD 20755; Visitors must provide acceptable identification (e.g., valid driver's license, employing officer's identification card) and verbal information that can be verified with his/her case folder.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Department of Defense and Military Department records; Federal Agency records; State, county, and municipal records; employment records of private schools, colleges, universities, technical and trade schools; hospital records; real estate agencies; credit bureaus, loan companies, credit unions, banks, and other financial institutions which maintain credit information on individuals; Transportation companies, (airlines, railroads, etc.); Other private records sources deemed necessary in order to complete an investigation; miscellaneous records such as: Telephone directories; city directories; Who's Who in America; Who's Who in Commerce and Industry; Who Knows What—A listing of experts in various fields; American Medical Directory; Martindale-Hubbell Law Directory; U.S. Postal Guide; Insurance Directory; Dunn and Bradstreet; and The U.S. Army Register; any other type of miscellaneous record deemed necessary to complete the U.S. Army Intelligence and Security Command investigation; the interview of individuals who have knowledge of the subject's background and activities; the interview of witnesses; the interview of victims; the interview of confidential sources; and the interview of other individuals deem necessary to complete the U.S. Army Intelligence and Security Command investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All portions of this system of records which fall within 5 U.S.C. 552a(k) (1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C. section 552a: (d), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

A0503.03aDAMI

SYSTEM NAME:

Department of the Army Operational Support Activities Files.

SYSTEM LOCATION:

U.S. Army Intelligence and Security Command, Ft. Meade, MD 20755–5995.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected members of the U.S. Army and civilian employees of the Department of the Army who participate in and have received support for conducting U.S. Army intelligence and counterintelligence duties. Included are personnel of other Federal agencies who request and receive support from appropriate authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Card file with automated index of individuals who have received support from Department of the Army in completing specialized duties within the Army's intelligence and counterintelligence activities. Card files and duplicate automated files of individuals indicating any identity and other data which may be used to identify them in their support of the Department of Army's intelligence and counterintelligence activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; 10 U.S.C., section 3012(b)(c)(g); National Security Act of 1947, as amended; E.O. 9397.

PURPOSE(S):

To identify and manage the career of individuals performing duties in the Department of the Army specialized intelligence and counterintelligence assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Other Federal investigative and/or intelligence agencies use the file to verify identity and assignments. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, vertical card file, computer diskpack and printouts.

RETRIEVABILITY:

Alphabetically by individual's surname; automated files by SSN.

SAFEGUARDS:

Material is stored in General Services Administration containers approved for the storage of secret material. Building in which material is stored is locked during hours of nonoccupancy. Automated files are access controlled by a codeword issued only to properly screened, cleared, and trained personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Chief of Staff for Intelligence, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft. Meade, MD 20755; telephone: 301/677–4742–4743.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755. Written requests must contain the full name and SSN of the individual, current address, and telephone number. For personal visits, the individual must furnish acceptable identification and verbal information that can be verified from his/her file card.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; investigative reports of Defense Investigative Service, U.S. Army Intelligence and Security Command, and other Federal and Department of Defense investigative and law enforcement agencies.

EXEMPTION CLAIMED FOR THE SYSTEM:

All portions of this system of records which fall within 5 U.S.C. 552a(k) (1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(4)(g), (e)(4)(H), (e)(4)(I), and (f).

A0503.05aDAMI

*System name:*

Counterintelligence Operations Files.

*System location:*

Primary: U.S. Army Intelligence and Security Command, Ft Meade, MD 20755. Decentralized segments exist at U.S. Army Intelligence and Security Command groups, field stations,

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battalions, detachments, and field offices stationed world-wide.

*Categories of individuals covered by the system:*

Active and retired military personnel, Department of Defense affiliated civilians including contractor personnel employed by civilian firms having defense contracts, and individuals not affiliated with the Department of Defense only if there is a reasonable basis to believe that one or more of the following situations exist: Theft, destruction or sabotage of weapons, ammunition, equipment, facilities or records belonging to Department of Defense units or installations; possible compromise of classified defense information by unauthorized disclosure or by espionage; subversion of loyalty, discipline or morale of Department of the Army military or civilian personnel by actively encouraging violation of laws, disobedience of lawful orders and regulations, or disruption of military activities; demonstrations on active or reserve Army installations or demonstrations immediately adjacent to them which are of such a size or character that they are likely to interfere with the conduct of military activities (Armed Forces Induction Centers, U.S. Army Recruiting Stations located offpost and facilities of Federalized National Guard Units are considered to be active DOD installations. For the purpose of the sub-paragraph, Reserve Officer Training Corps installations on campuses are not considered to be active or reserve Army installations and coverage of demonstrations at or adjacent to such installations is not authorized); direct threats to Department of Defense military or civilian personnel regarding their official duties or to other persons authorized protection by Department of Defense resources; activities or demonstrations endangering classified Defense contract facilities or key defense facilities, including Panama Canal, approved by Headquarters, Department of the Army as key to the defense and operation of the Panama Canal.

*Categories of records in the system:*

Documents used to conduct foreign counterintelligence operations and investigations pertaining to the U.S. Army's responsibilities under the categories of counterintelligence, counterespionage, counter-sabotage, counter-subversion, and international terrorism.

*Authority for maintenance of the system:*

Executive Order 10450, Security Requirements for Government Employment, in particular Sections 2 and 9c thereof; Executive Order 12036, U.S. Intelligence Activities, in particular paragraph 1–1104, 1–1112, 1–1113, 1–204(b) and 2–208; the National Security Act of 1947, as amended (10 U.S.C., Section 3012(b)(c) and (g); E.O. 9397.

*Purpose(s):*

To document investigations and operations pertaining to the U.S. Army's responsibilities for counterintelligence, and to detect, identify, and neutralize foreign intelligence and international terrorist threats to the Department of Defense.

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

(1) Information is provided to Federal agencies and other services and governmental agencies whose missions contain responsibility for foreign counterintelligence activities.

(2) Information may be disclosed to foreign law enforcement, security, investigatory or administrative authorities in order to comply with requirements imposed by or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel and other countries where there are routine reciprocal exchanges of information.

(3) This distribution of operational and investigative information to outside agencies is based on the evaluation by the U.S. Army Intelligence and Security Command of the other activity's needs and the relevance of the information to the use for which it is to be provided. Information collected is not automatically used for all the purposes or by all the other users listed in this description.

(4) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing or record system notices.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

*Storage:*

Reports generated in the documentation of agency investigations and operations are retained in original report format as paper records in file folders. Other records and reports are maintained as paper records in file folders and in microfiche. Extracted information is converted into appropriate language for storage on a computer diskpack.

*Retrievability:*

Paper records are retrieved by name or file number. Computerized data are retrieved by name, SSN, date of birth, placed of birth, and aliases; by designation of the operation or investigation, or by identification of foreign intelligence agency.

*Safeguards:*

Files are maintained in three-position combination, fire resistant steel security containers housed in security controlled areas accessible only to authorized personnel. Computerized data are controlled by a codeword that is issued only to properly screened, cleared and trained personnel. System employs on-line, dial-up procedures, enhanced by shielding and other appropriate technical safeguards to protect data against potential compromising emanations and/or unauthorized access.

*Retention and disposal:*

Paper records documenting foreign counterintelligence operations are permanent. At the termination of the operation/investigation, files are retired to the U.S. Army Intelligence and Security Command's Investigative Records Repository. Computerized information is updated periodically and all previous copies destroyed.

*System manager(s) address:*

The Assistant Chief of Staff for Intelligence, Department of Army, Washington, DC 20310.

*Notification procedure:*

Information may be obtained by writing to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755; telephone: (301) 677–4742/4743.

*Record access procedures:*

Requestor should contact the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755; furnishing full name, SSN, current address, and telephone number. For personal visits, requestor should present acceptable proof of identity such as a valid driver's license, military identification card, Department of Defense building pass, or other type of identification containing photograph and identity data.

*Contesting record procedures:*

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

*Record source categories:*

From individuals.

*Exemptions claimed for the system:*

All portions of this system of records which fall within 5 U.S.C. 552a(k)(1), (2), or (5) are exempt for provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

A0009.02DAAG

SYSTEM NAME:

Army Nuclear Test Personnel Review Program (ANTPR).

SYSTEM LOCATION:

(1) Primary system exist at The Adjutant General's Office, Headquarters, Department of the Army, Washington, DC 20310.

(2) Automated segments exist at JAYCOR, 1608 Spring Hill Road, Vienna, VA 22180–2270, and at Reynolds Electrical and Engineering Company, INC., Mail Shop 543, P.O. Box 1440, Las Vegas, Nevada 89114.

(3) Extracts of individual records are located at Headquarters, Defense Nuclear Agency, Washington, DC 20305.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army military and civilian personnel and/or contractor personnel in support of the Army who were exposed to radiation as the direct result of government-sponsored atmospheric nuclear detonation occurring between 1945 and 1962.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank/grade, service number, Social Security Number, current or last known address, dates of test participation, radiation exposure and dosage data, Army unit/office of assignment at time of exposure, current medical status, and next- of-kin data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; 42 U.S.C., section 2013c; E.O. 9397.

PURPOSE(S):

To identify personnel who either were exposed to or participated in the atmospheric nuclear detonation program and to collect radiation exposure information so as to determine appropriate government-provided medical treatment; and to answer inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be dislcosed to:

(1) Veterans Administration, to process/adjudicate claims in which service-connected disabilities resulting from radiation exposure are alleged.

(2) National Research Council and similar government authorized agencies, to conduct epidemiological studies of effects of ionizing radition from atmospheric nuclear weapons tests.

(3) Authorized contractors of the Department of Defense and Department of Energy, to reconstruct individual dosimetry data based on research and application of mathematical factors and to write historical summaries of atmospheric nuclear testing.

(4) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records on file folders; computer magnetic tapes, disks, and printouts.

RETRIEVABILITY:

By individual's name and/or service number/SSN.

SAFEGUARDS:

Access is limited to properly cleared personnel having need for the information in the preformance of official duties. Paper records are maintained in locked containers. Magnetic tapes and discs are stored in secured computer areas, access to which is controlled by password.

RETENTION AND DISPOSAL:

Paper records are retained after data are transferred to magnetic tapes; retired to Washington National Records Center upon completion of ANTPR program. Magnetic tapes and discs are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

The Adjutant General, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, ATTN: DAAG–ESG–N, Room 210, 1730 K Street, NW., Washington, DC 20006–3868.

RECORD ACCESS PROCEDURE:

Individuals may access records pertaining to them by writing as indicated in 'Notification procedure', and furnishing full name, SSN or service number, Army unit/office to which assigned at time of radiation exposure, and place and approximate date(s) of exposure.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army organizational personnel, and medical records, Veterans Administration, Department of Energy, Defense Nuclear Agency, and other military departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0614.01WOCE

SYSTEM NAME:

Equal Opportunity Investigative Files.

SYSTEM LOCATION:

Office of Human Resources (Field Operating Activity) HRA–FOA, 5600 Columbia Pike, Falls Church, VA 22041–5125.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Guard Technicians and military members who file complaints of discrimination or who are involved in such complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal complaints of discrimination; counselors' reports; notification letters to the complainant; affidavits from complainant and/or witnesses; investigative reports; hearings transcript; examiner's findings, recommendations; decisional documents; and similar relevant records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI, Civil Rights Act of 1964, Pub. L. 92–261.

PURPOSE(S):

To investigate and resolve complaints of discrimination, provide facts to the Adjutant General of a State for issuing a proposed disposition to a complainant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Equal Employment Opportunity Commission, Washington, DC (see EEOC–GOVT–1 system of records notice). See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name of complainant.

SAFEGUARDS:

Records are maintained in secured rooms/cabinest accessible only to designated officials having a need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are permanent. They are retained in active file until the case is closed, then forwarded to the Washington National Records Center, Suitland, MD.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources (Field Operating Activity) HRA–FOA, 5600 Columbia Pike, Falls Church, VA 22041–5125.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records should write to the System Manager, ATTN: Office of Human Resources (Field Operating Activity) HRA–FOA, 5600 Columbia Pike, Falls Church, VA 22041–5125. Individual should provide his/her full name, current address and telephone number, sufficient details concerning the complaint to facilitate locating the record, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves should write as indicated in 'Notification procedure', providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, investigative reports, witness statements, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0704.10bUSMEPCOM

SYSTEM NAME:

ASVAB Student Test Scoring and Reporting System.

SYSTEM LOCATION:

Primary System is located at the U.S. Military Entrance Processing Command, 2500 Green Bay Road, North Chicago, IL 60064–3094. Segments exist at Military Entrance Processing Stations (MEPS), participating school system; State departments of education/testing agencies; Air Force Human Resources Laboratory, Brooks Air Force Base, TX 78236; Defense Manpower Data Center, Monterey, CA 93940; and all service recruiters/recruiting commands.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

High school, job corps, college, and other students who have been administered the student version of the Army Services Vocational Aptitude Battery (ASVAB).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, address, telephone number, date of birth, sex, ethnic group identification, grade, booklet number of ASVAB test, individual's plans after graduation, and individual item responses to each of the 10 ASVAB subtests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 133 and 3012; E.O. 9397.

PURPOSE(S):

To compute and furnish test score products for career/vocational guidance and group assessment of aptitude test performance; to establish eligibility for enlistment and verify enlistment and placement scores and retest eligibility; for marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche, optical mark sense answer sheets, computer magnetic tapes.

RETRIEVABILITY:

By individual's name and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in locked rooms or filing cabinets, accessible only to authorized personnel having need therefor in the performance of official duties. Information in automated media is further protected by user identification and manual controls.

RETENTION AND DISPOSAL:

Records are maintained for 2 years from the date the Armed Services Vocational Aptitude Battery (ASVAB) is administered. Research data maintained by contractors for longer periods require segregation of personal identifying information and test score data, with analyses performed using only summary statistics. Personal identifying information is also erased from data residing at the Defense Manpower Data Center.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Military Entrance Processing Command, 2500 Green Bay Road, North Chicago, IL 60064–3094.

NOTIFICATION PROCEDURE:

Information may be obtained from the Military Entrance Processing Stations (MEPS). Individual should provide his/her full name, SSN, date tested, address at the time of testing, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves in this system should inquire of the MEPS providing information specified in 'Notification Procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; ASVAB tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system which fall within the purview of 5 U.S.C. 552a(k)(6) are exempt from subsection (d) of 5 U.S.C. 552a.

A0708.02cDAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS).

SYSTEM LOCATION:

U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332–0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals projected for entrance into the Army officer corps; Army officer and warrant officer personnel projected to

enter on active duty, separated, or in-retired status; individuals, civilian and military, who serve as senior rating officials on the officer evaluation reports (OERs) of Army officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Officer Master File (OMF) contains name, SSN, grade and date of rank, appointment and service agreement, service data and date, promotion, assignment, qualifications, specialties, efficiency, education and training, occupation, language, career pattern, awards and badges, physical location, separation, retirement, date and place of birth, race, religion, ethnic group, dependents, sex, citizenship, marital status, and mailing address.

(2) Management Accession Information System (AMIS) contains selected information for the OMF, date of entry on active duty, personal demographic data, and assignment information.

(3) Assignments and Training Selection for ROTC graduates contains selected information from the OMF, the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty or delay selection, Regular Army selection, and branch selection.

(4) Officer Evaluation Reporting System (OERS) contains selected information from the OMF; selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OER; selected information for each of the last ten OERs; and the name, SSN, and rating history of each individual, military and civilian, who has served as the senior rating official for an active duty Army officer.

(5) Officer Distribution and Assignment System (ODAS) contains selected information from the OMF, projected assignment information for officers and warrant officers who are being reassigned.

(6) Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the OMF and the following information pertaining to ROTC instructors; ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned.

(7) Officer Civil Schools Management Information System (CSMIS) contains the following selected information from the OMF and the following information concerning officer and warrant officer personnel participating or who have participated in the Army sponsored degree completion program; school attended, start and completion dates, degree level and discipline, and Army Education Requirements Board (AERB) positions.

(8) Army Education Requirements Board (AERB) File contains selected information from the OMF for officer and warrant officer personnel who are serving or are projected to serve in an AERB approved position requiring graduate level education.

(9) USMA Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the United States Military Academy (USMA) teaching staff; academic department and projected availability for USMA instructor duty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; 10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

Information used for personnel management strength accounting, manpower management, accessioning and determining basic entry specialty (branch) and initial duty assignments; tracking Officer Evaluation Reports, the rating history of senior rating official's posting of the senior rating official's rating history on individual Officer Evaluation Reports, producing reports on active duty officers who have served as senior rating officials; managing instructor population at ROTC detachments and U.S. Military Academy; tracking information relating to the Army Degree Completion Civil School Program; transmitting necessary assignment instructions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to:

(1) Social Security Administration: To verify SSNs.

(2) Smithsonian Institution (The National Museum of American History): Copy of the U.S. Army Active Duty Register, for historical research purposes (not authorized for public display).

(3) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer mangetic tapes and discs.

RETRIEVABILITY:

By SSN, name, or other individual identifying characteristics.

SAFEGUARDS:

Physical security devices, guards, computer hareware and software features, and personnel clearances. Automated media are protected by authorized password for system controlled access to operator rooms and controlled output distribution.

RETENTION AND DISPOSAL:

Records are retained on the active OMF files for 4 months after separation. Historical OMF records are retained dating back to FY 1970. Accessions in AMIS are retained on active file until effective date of accession and are than placed on a history file for a period of 6 months. Records in the ROTC Graduate Assignment and Training Selection File are retained for approximately 400 days after the file is created (approximately December each year). Historical files for the OER system are kept for the life of the system. All other records are retained for active duty only until the individual is released from active duty and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332-0400.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. Individuals must furnish full names, SSN, whether awaiting active duty, active retired, or separated; return address; and must identify the specific category of record involved. Blanket requests against this consolidated system will not be accepted. If separated, individual must state date of separation; if awaiting active duty, specify the date thereof.

RECORD ACCESS PROCEDURE:

Individuals desiring to access records about themselves should write to the System Manager, furnishing information required by 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, other Federal agencies and departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0706.05DAPC

SYSTEM NAME:

Emergency Data Files.

SYSTEM LOCATION:

U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332. Copy of Record of Emergency Data (DD Form 93) exists in soldier's Military Personnel Records Jacket.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains DD Form 93, Record of Emergency Data. Document reflects the service member's name; social security number (SSN); spouse and children's name and current address; persons to be and not to be notified in the event of death or injury; information on wills, insurance, and other such information; and designation of beneficiaries for certain benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 3012; E.O. 9397.

PURPOSE(S):

To document names and addresses of person(s) to be notified in emergency situations; to determine lawful disposition of service member's pay and allowances when that member is missing, captured, or becomes a casualty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Machine processed card in vertical file; paper copy in Military Personnel Records Jacket.

RETRIEVABILITY:

Card is retrieved by SSN; paper copy in MPRJ is retrieved by soldier's surname.

SAFEGUARDS:

Building employs security guards; the Office in which record is locaed is in operation 24 hours a day, 7 days a week. Records are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The Emergency Data Card is retained until individual separates from the Army; then destroyed. Copy in the MPRJ is retired with the MPRJ. If individual dies, the form becomes part of the casualty case file which is retired upon completion to the National Personnel Records Center (Military), St. Louis, MO 63132.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from HQDA (DAPC–PE–SI), 200 Stovall Street, Alexandria, VA 22332; telephone 703/325–0719

RECORD ACCESS PROCEDURES:

Individuals desiring access to information in this system should inquire of the System Manager, ATTN: DAPC–PE–SI, 200 Stovall Street, Alexandria, VA 22332, providing sufficient information to located record desired.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Service member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0708.18DAPC

SYSTEM NAME:

Line of Duty Investigations.

SYSTEM LOCATION:

Personnel Actions Branch of Army Installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Service members who have been injured, are diseased, or deceased.

CATEGORIES OF RECORDS IN THE SYSTEM:

Department of the Army (DA) Form 2173 (Statement of Medical Examination and Duty Status); DD Form 261 (Report of Investigation-Line of Duty and Misconduct Status); and supporting documents such as military police reports, accident reports, witness statements, and appointment instruments, and action on appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 972, 1204, 1207, 3822, and 37 U.S.C., 802; E.O. 9397.

PURPOSE(S):

To review facts and circumstances of service member's injury and render decision having the effect of approving/denying certain military benefits, pay and allowances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be provided to the Veterans Administration or other Government agencies, to include State agencies, for a determination of the service member's entitlements to benefits. See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfiche.

RETRIEVABILITY:

By service member's surname.

SAFEGUARDS:

Records are maintained in metal file cabinets accessible only to designated authorized personnel.

RETENTION AND DISPOSAL:

The original is a permanent part of member's Official Military Personnel File. Copies filed in offices of the investigating officer, unit commander, appointing authority, and final reviewing authority are destroyed after 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

(1) Information may be obtained from: a. Commander, U.S. Army Enlisted Records and Evaluation Center, Ft. Benjamin Harrison, IN 46249 (for enlisted personnel on active duty); b. HQDA, U.S. Army Military Personnel Center, ATTN: DAPC–MSR–R, 200 Stovall Street, Alexandria, VA 22332 (for officers on active duty); c. Commander, Army Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132 (for Army reserve personnel); d. National Personnel Records Center (Military), 9700 Page Boulevard, St. Louis, MO 63132 (for separated enlisted and officer personnel); e. National Guard Bureau, 5611 Columbia Pike, Falls Church, VA 22041 (for full-time National Guard Duty under Title 32, U.S.C., those in federalized status, or those attending active Army service school).

(2) Individual must provide full name, SSN, present address, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring to access information pertaining to them should submit a written request as indicated in 'Notification procedure', providing the information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505). Appeals of determinations by authority of the Secretary of the Army are governed by AR 600–8–1; collateral review of decided cases is limited to questions of completeness of the records of such determinations.

RECORD SOURCE CATEGORIES:

From the applicant, medical records, DA Form 2173, service member's commander, official Army records and reports, witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0708.20DARC

SYSTEM NAME:

Philippine Army Files.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Philippine Commonwealth Army who were inducted for service with the U.S. Armed Forces Far East under the Military Order of the President of the United States dated July 26, 1941; Philippinos who served in Guerrilla units officially recognized and listed in the Recognized Philippine Guerrilla Rosters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual military personnel file contains enlistment papers, orders inducting individual into U.S. Armed Forces Far East service, soldier's qualification card, unit orders of assignment, efficiency rating sheets, pay vouchers or receipts, affidavits and certificates, service records, determination of status under the Missing Persons Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 490–77, 7 May 1942.

PURPOSE(S):

To answer inquiries regarding individuals who served, or allegedly served, with the Philippine Commonwealth Army including recognized Guerrilla Forces, during World War II, in the Philippines.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to:

(1) Veterans Administration: To verify or certify service with the U.S. Armed Forces Far East or recognized guerrilla units; provide available medical records or other documents to assist in determining benefits.

(2) Department of Justice: To certify or verify service regarding application of individual for citizenship.

(3) Department of Health and Human Services: To verify type of service that is used to assist in determining eligibility for benefits.

(4) Department of State: To provide statement of service or verification of type of service performed.

(5) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name, service number, VA claim number, units assigned to during period of service in question, names or parents, birth date and place, name of spouse and children if applicable. (Due to similarity of names complete file must be screened to determine proper individual.)

SAFEGUARDS:

Records are maintained in area accessible only to designated personnel having official need therefor.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists should write to the System Manager, ATTN: DARP–PAS–EAP, providing full name, service number, VA claim number, if applicable, and name and/or number of the unit to which assigned during the period of service.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves should write as indicated in 'Notification procedure', providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From records of military service compiled during period of individual's service with the Philippine Commonwealth Army and/or the U.S. Armed Forces Far East prior to December 7, 1941 up to August 1945.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

A0709.03DAPE

SYSTEM NAME:

U.S. Military Academy Personnel Cadet Records.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Cadets of the U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and evaluations of cadet for admission; letters of recommendation/endorsement; academic achievements, awards, honors, grades and transcripts; performance counseling; health, physical aptitude and abilities and athletic accomplishments, peer appraisals; supervisory assessments; suitability data, including honor code infractions and disposition. Basic biographical and historical summary of Cadet's tenure at the U.S. Military Academy is maintained on cards in the Archives Office or on microfiche in the Cadet Records Section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 4334; E.O. 9397.

PURPOSE(S):

To record the Cadet's appointment to the Academy, his/her scholastic and athletic achievements, performance, motivation, discipline, final standing, and potential as a military career officer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Academic transcripts may be provided to educational institutions. See

also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records in the file folder; microfilm.

RETRIEVABILITY:

By surname, or Social Security Number.

SAFEGUARDS:

Access to records is limited to persons having official need therefor; records are maintained in secure file cabinets and/or in locked rooms.

RETENTION AND DISPOSAL:

Records of Cadets who are commissioned become part of his/her Official Military Personnel File. Records of individuals not commissioned are destroyed after 5 years. Microfilmed records maintained by USMA are Permanent; hardcopy files are destroyed after being microfilmed.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager.

RECORD ACCESS PROCEDURE:

Individuals may request access to their records by contacting the System Manager, furnishing their full name, SSN, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her sponsors, peer evaluations, grades and reports of U.S. Military Academy academic and physical education department heads, transcripts from other educational institutions, medical examinations/assessments, supervisory counseling/performance reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system which fall within 5 U.S.C. 552a(k) (5) and (7) are exempt from subsection (d) of 5 U.S.C., section 553a.

A0710.02DAJA

SYSTEM NAME:

JAGC Reserve Components Officer Personnel Records.

SYSTEM LOCATION:

JAGS–ZA, 600 Massey Street, Charlottesville, VA 22903–1781.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Judge Advocate General Corps (JAGC) U.S. Army Reserve and National Guard officers, not serving on extended active duty; and officers seeking appointment, branch transfer, or Federal Recognition to the JAGC without concurrent call to active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, application for appointment, active duty training, constructive credit, mobilization designee position, educational courses completed, home and business addresses and telephone numbers, grade, promotion eligibility date, primary military occupational specialty, date of birth, sex, basic date of mandatory removal, unit assignment and address, employer, job title, specialty and awards, correspondence between Army and the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 275(a); E.O. 9397.

PURPOSE(S):

To schedule Judge Advocate General Corps reserve officer training; select officers for reserve unit command positions; identify individual reservists in need of training; determine mandatory retirement dates; provide full background information on individuals applying for mobilization designee positions, constructive credit for training courses and/or active duty for training, to document background of applicants for appointment in the Judge Advocate General Corps or branch transfer consistent with prerequisites required for type of appointment/branch transfer and to establish eligibility for appointment/branch transfer. Records are also used for management and statistical studies and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, magnetic tape/disc.

RETRIEVABILITY:

By individual's surname, SSN.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated officials. Automated records require password for access.

RETENTION AND DISPOSAL:

Records are retained until individual officer retires from the Reserves, held 2 additional years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system should inquire of the Director, Reserve Affairs Department at The Judge Advocate School, Charlottesville, VA 22901. Individual must provide his/her name, SSN, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should submit a written request as indicated in 'Notification procedure', providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; official personnel documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0710.08DAAR

SYSTEM NAME:

Career Management Files of Dual Component Personnel.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any reserve or warrant officer on active duty as an enlisted man; any reserve officer on active duty as a Regular Army warrant officer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, SSN, basic pay entry date, promotion eligibility date, mandatory removal date, military education, copies of officer evaluation reports, academic reports, qualification records, letters of appreciation and commendations, general orders concerning awards; and similar documents, records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 275; E.O. 9397.

PURPOSE:

To advise reserve officers when they will be considered for promotion, military education that needs to be completed for eligibility; to determine if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer or enlisted person; to appraise individuals of changes in the reserve program affecting them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth in the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tape/disc.

RETRIEVABILITY:

By individual's surname and SSN.

SAFEGUARDS:

All records are restricted to officially designated individuals having need therefor in assigned duties. Records are maintained in secured buildings; automated data are stored in vaults.

RETENTION AND DISPOSAL:

Records on this system are combined with Army personnel records and retained either at U.S. Army Reserve Personnel Center, if officer, or at U.S. Army Enlisted Records and Evaluation Center, if an enlisted person.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, ATTN: DARP–MOB–SD; Individual should provide full name, SSN, current address and telephone number and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0710.09DAAG

SYSTEM NAME:

Personnel Management Officer Files.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Individual Ready Reserve (IRR), Standby Reserve, Retired Reserve, unit personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence; orders; pay vouchers; efficiency reports; assignment instructions; medical evaluations; request for wavier of disqualifications; grade determinations; flagging actions which preclude completion of favorable personnel actions; transcripts; requests for transfer to another Branch, status, or service; claims for pay; assignment instructions for Active Duty or Active Duty for Training; applications for delay or exemption from Active Duty/Active Duty for Training; nominations for decorations or wards; notification of removal from active Reserve status for physical disqualification, nonparticipation, two-time passover for promotion or elimination action; application for waiver of disqualification for enlistment in U.S. Army Reserves; requests for discharge or voiding of enlistments; requests for transfer to or from the Ready Reserve, Standby Reserve, or Retired Reserve; claims for pay not received while on active duty; request for assignment/attachment to Army National Guard units, mobilization designation positions or detachments, reinforcement training units, and U.S. Army Reserve school student detachments; applications for participation in Army Reserve Logistic Career Program and Foreign Area Officer Program; decisions pertaining to the career management of officers and senior enlisted personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 275.

PURPOSE(S):

To respond to inquiries from an individual or other government agencies concerning reserve status of Army personel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets; card files.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are maintained for a period of 6 months to 3 years depending on the type of action involved, after which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63133–5200.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not this system of records contains information on them should write to the System Manager, ATTN: DARP–IMG–F, and provide full name, current address, and telephone number.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and

appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0722.02DACH

SYSTEM NAME:

Baptism, Marriage, and Funeral Files.

SYSTEM LOCATION:

Records from 1917–1952 are in the National Archives, National Archives and Record Administration. Records from 1953–1977 are in the Washington National Records Center, Washington, DC 20409, as well as the office, Chief of Chaplains, Department of the Army, Washington, DC 20310.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any service member, his/her dependent, authorized civilian personnel, or retired service member for whom an Army chaplain has performed a baptism, marriage, or funeral.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals who apply for marriage, those on whom funeral services are conducted, or baptisms are performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3547.

PURPOSE(S):

To render service to military members, their dependents and authorized civilians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record systems notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm at office of the Chief of Chaplains; paper records at the Washington National Record Center for period 1917–1952.

RETRIEVABILITY:

Marriage records are filed by groom's surname; funeral records by surname of deceased person; baptismal records by the individual's surname.

SAFEGUARDS:

Records are retained in buildings which employ security guards.

RETENTION AND DISPOSAL:

Records from 1953 to 1977 are retained for 50 years; this system was discontinued October 1, 1977 after which no information was collected or is retained.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, Headquarters, Department of the Army, Washington, DC 20310–2700.

NOTIFICATION PROCEDURE:

Information may be obtained from the Office, Chief of Chaplains, Headquarters, Department of the Army, ATTN: DACH–IMW, Washington, DC 20310–2700.

RECORD ACCESS PROCEDURE:

Individuals may write to the System Manager, providing the following information:

(1) For baptismal records: Full name of person baptized, approximate date, names of parents, name of chaplain, and place of baptism.

(2) For marriage records: Full name of groom and maiden name of bride, approximate date, installation at which married, and name of chaplain.

(3) For funeral records: Name of deceased person, year of death, and name of next-of-kin.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealling initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0722.05DACH

SYSTEM NAME:

Chaplain Counseling/Interview Files.

SYSTEM LOCATION:

Army installations; official addresses are contained in the directory at the end of the Army inventory of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army members, their dependents and other individuals who have received pastoral counseling from Army chaplains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memoranda and/or documents resulting from counseling or interview sessions between a chaplain and an individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE(S):

To document privileged counseling/interview sessions between Army chaplains and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None authorized; See Army Regulation 165–20.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is stored in locked cabinets or desks, and is accessible only to the chaplain maintaining the record.

RETENTION AND DISPOSAL:

Retained for 2 years after the individual case is closed; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, Headquarters, Department of the Army, Washington, DC 20310–2700.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should inquire of either the System Manager or the Chaplain at the Army installation where counseling or interview occurred.

RECORD ACCESS PROCEDURES:

Individuals may write to the System Manager or the Chaplain at the Army installation where record is believed to exist; individuals must provide their full name, present address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determination are contained in Army Regulation 340–21 (32 CRF Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0722.08DACH

SYSTEM NAME:

Religious Census, Education, and Registration Files.

SYSTEM LOCATION:

Army installations; official addresses are contained in the directory at the end of the Army inventory of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, dependent, and civilian personnel who voluntarily participated in religious services and/or activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, age, denominational preference, religious education desired/attained, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE(S):

To provide data on religious education/training or needs of faith groups, denominations, or religious sects; to determine and administer educational or training needs in social, spiritual, and humanitarian relationships for military community served; to record attendance, training accomplished, participation, and spiritual growth.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and/or card files.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessed only by individuals determined to have need therefor in the performance of official business.

RETENTION AND DISPOSAL:

Information retained until individual is no longer active in official chaplain-sponsored services and activities.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, Headquarters, Department of the Army, Washington, DC 20310–2700.

NOTIFICATION PROCEDURE:

Individuals may inquire of the Chaplain at the Army installation where he/she participated in religious education/training.

RECORD ACCESS PROCEDURES:

See "Notification procedure."

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determination are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0726.08DAPC

SYSTEM NAME:

Casualty Information System (CIS).

SYSTEM LOCATION:

U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel who are reported as casualties in accordance with Army Regulation 600–10.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, social security number (SSN), date of brith, branch of service, organization, duty, Military Occupational Specialty, rank, sex, race, religion, home of record, and other pertinent information; DD Form 1300, notification/certificate of death.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sec. 3012; Pub. L. 93–289; E.O. 9397.

PURPOSE(S):

To respond to inquiries; to provide statistical data comprising type, number, place and cause of casualty/death of Army members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, computer printouts, paper records in file cabinets.

RETRIEVABILITY:

By individual's name and/or SSN or any other data element.

SAFEGUARDS:

All information is restricted to a secure area in buildings which employ security guards. Computer printouts and magnetic tapes and files are protected by password known only to properly screened personnel possessing special authorization for access.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from HQDA (DAPC–PE–SI), 200 Stovall Street, Alexandria, VA 22332, telephone: 202/325–0719.

RECORD ACCESS PROCEDURES:

Written requests should contain the individual's name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and SSN.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From casualty reports received from Army commanders or from next-of-kin who provide notification or certificate of death.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0727.09DAAG

SYSTEM NAME:

Army Civilian/Military Service Review Board.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Loius, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian or contractual personnel (or their survivors) who were members of a group certified by the Secretary of the Air Force to have performed active duty with the Armed Forces of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application of individuals for recognition of service, evidence that supports claim of membership in approved group, action of the Army Civilian/Military Service Review Board, DD Form 214 and DD Form 256 or 257 as appropriate, and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 401, Pub. L. 95–202; DOD Directive 1000.20.

PURPOSE(S):

To determine whether individual applicants were members of civilian or contractual groups approved as having rendered service to the Army and whose service constitutes active military service, and to issue appropriate discharge or casualty documents, including applicable pay and equivalent rank or grade.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Copy of DD Form 214 is furnished to the Veterans Administration for benefits entitlements. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers stored in file folders.

RETRIEVABILITY:

By applicant's surname.

SAFEGUARDS:

Information is accessible only to designated persons having official need therefor in the performance of their duties. During non-duty house, guards assure that records areas are secured.

RETENTION AND DISPOSAL:

Upon favorable Board decision, an Official Military Personnel File is created, containing individual's application, Board action, DD Form 214, DD Form 256 or 257 as appropriate, DD Form 1300 if applicable. This file is transferred to the National Personnel Records Center, General Services Administration, where it is retained permanently. Disapproved applications, together with supporting documentation and the Board's decision, are retained for 2 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Requests from individuals as to whether or not information on them exists in this system should be addressed to the System Manager, ATTN: DARP–PAS–ENC. Individual should provide full name at the time of the recognized military service, data and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature.

RECORD ACCESS PROCEDURES:

Requests for access should be submitted as specified under "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial deteminations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the inidividual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1012.03bAMC

SYSTEM NAME:

Student/Faculty Records: AMC Schools System.

SYSTEM LOCATION:

U.S. Army Logistics Management Center, Ft. Lee, VA; U.S. Army Management Engineering Training Agency, Rock Island, IL; U.S. Army Defense Ammunition Center and School, Savanna, IL; USAMC Field Safety Agency, Charlestown, IN.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students enrolled/attending schools identified above, faculty, instructors, and guest speakers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student academic records consisting of course completion and results, aptitudes and personal qualities, grades/ratings assigned; instructor/guest speaker qualifications and evaluations, including biographical data; class historical/academic achievements; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C sec. 301; E.O. 9397.

PURPOSE(S):

To determine applicant eligibility, monitor individual's progress, maintain record of student/faculty achievements, and to provide bases for management assessment of curricula and faculty effectiveness and class standing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; cards, photographs; magnetic tapes/discs; and printouts.

RETRIEVABILITY:

By name, SSN, military service number.

SAFEGUARDS:

Records are maintained in locked cabinets within secured areas accessible only to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

Individual academic records are retained for 40 years, 3 of which are at the school which created them; they are subsequently transferred to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132. Faculty/instructor qualifications records are retained until individual transfers from the facility, held for 5 years, and then destroyed. Other records are retained until no longer needed, at which time they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commandant/Director of the appropriate School/Agency. Requests should contain person's full name, rank/grade, SSN, course title/class number, and date of attendance or, if a faculty member; name, course(s) taught, and period in which instructed at named training facility.

**RECORD ACCESS PROCEDURES:**

Written requests for information should be made to the Commandant/Director of the appropriate training facility, giving information specified in "Notification procedure".

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From the individual student, faculty, instructor, guest speaker, and management analyses of class performance.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

A1012.02g|HSC

**SYSTEM NAME:**

Academy of Health Sciences; Academic and Supporting Records.

**SYSTEM LOCATION:**

Academy of Health Sciences, Ft. Sam Houston, TX 78234 and Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Resident and correspondence students enrolled in courses at the Academy.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Student's name, SSN, grade/rank, academic qualifications, progress reports, academic grades, ratings attained, aptitudes and personal qualities, including corporate fitness results; faculty board records pertaining to class standing/rating/classification/proficiency of students; class academic records maintained by instructors indicating attendance and progress of class members.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. section 301; E.O. 9397.

**PURPOSE(S):**

To determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses which may prerequisite for other formal courses of instruction.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information may be disclosed to colleges or universities or medical institutions which accredit the Academy's instruction. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records, microfiche, cards, magnetic tape and/or disc, and computer printouts.

**RETRIEVABILITY:**

By individual's name, SSN, student number.

**SAFEGUARDS:**

Information is accessed only by individuals having need therefor in the performance of their duties; automated data are protected further by assigned passwords.

**RETENTION AND DISPOSAL:**

Academic records are maintained 40 years at the Academy of Health Sciences. Except for the master file, automated data are erased after the fourth updating cycle.

**SYSTEM MANAGER(S) AND ADDRESS:**

Superintendent, Academy of Health Sciences, Ft. Sam Houston, Texas 78234.

**NOTIFICATION PROCEDURE:**

Individuals desiring to know whether or not information on them is contained in this system of records may inquire of the Register, Academy of Health Sciences, Ft. Sam Houston, TX. Inquiries should furnish full name, SSN, date attended/enrolled, current address, and signature.

**RECORD ACCESS PROCEDURES:**

Written requests should be sent to the Superintendent, Academy of Health Sciences, Ft. Sam Houston, TX 78234 and include the information in "Notification procedure".

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From the individual; Academy of Health Sciences staff and faculty.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

A1012.03|HSC

**SYSTEM NAME:**

Practical Nurse Course Files.

**SYSTEM LOCATION:**

Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

These files relate to student personnel who attend a formal course of instruction at the Practical Nurse Course.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual Academic Record Files consisting of courses attended by Army members, length of each, extent of each, completion and results, aptitudes and personal qualities, grade and rating attained and related data for each individual. Faculty Board Files pertaining to the class standing, rating, classification and proficiency of students; Class Academic Record indicating progress and attendance of class members.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C., section 301.

**PURPOSE(S):**

To confirm eligibility for attendance, monitor student progress, determine successful completion of academic requirements and prepare transcripts. Records reflect accomplishment of courses which may be prerequisites for attendance at other formal courses of instruction, or taking of State Board, Licensed Practical Nursing examinations.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders, card files; magnetic discs and tapes.

**RETRIEVABILITY:**

By name and/or assigned class number.

**SAFEGUARDS:**

Building housing records has limited access; information is released only to authorized personnel.

**RETENTION AND DISPOSAL:**

Individual Academic Records and Class Academic records are destroyed after 40 years; collateral individual training records are destroyed after 1

year; Faculty Board files are destroyed after 1 year.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Health Services Command, Ft. Sam Houston, TX 78234.

NOTIFICATION PROCEDURE:

Information may be obtained from the Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

RECORD ACCESS PROCEDURES:

Written requests for information should be addressed to the appropriate course director, and include student's full name, rank at time of attendance, SSN, military service number or student number, if applicable, course title and class number, or description of type training received and dates of course attendance.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From staff and faculty of the school responsible for presentation of instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1106.04USAISC

SYSTEM NAME:

Military Affiliate Radio System.

SYSTEM LOCATION:

U.S. Army Information Systems Command, Ft. Huachuca, AZ for individuals on whom an investigation or inquiry has been received. For addresses of locations where member records exist, the System Manager may be contacted.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having a valid amateur radio station license issued by the Federal Communications Commission who apply for membership in the Army Military Affiliate Radio System (MARS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, home address and telephone number, licensing data and call-sign provided by Federal Communications Commission, Army MARS call sign, relevant inquiries/records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; DOD Directive 4650.2; E.O. 9397.

PURPOSE(S):

To provide a potential reserve of trained radio communications personnel for military duty when needed and/or to provide auxiliary communications for military, civil, and/or disaster officials during periods of emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to Department of Army and Department of Defense communication agencies and their authorized contractors in connection with individual's participation in the Army Military Affiliate Radio System (MARS) Program and to Federal supply agencies in connection with individual's participation in the Army MARS Equipment Program. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards; paper in file folders, computer tapes, discs, listings.

RETRIEVABILITY:

By member's name.

SAFEGUARDS:

Information is maintained in buildings having security guards and is accessible only to individuals who have need therefor in the performance of their duties. Automated records are further protected by a product control number assigned to designated persons.

RETENTION AND DISPOSAL:

Retained 1 year beyond the time individual is active in the program, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Information Systems Command, Ft. Huachuca, Arizona 85613–5000.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should write to the System Manager, furnishing name under which licensed in the Army MARS program, SSN, present address, call sign, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to their records should follow instructions given under "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Federal Communications Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1106.16DAIM

SYSTEM NAME:

Postal and Mail Service System.

SYSTEM LOCATION:

Postal facilities at Army headquarters offices, commands and installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons designated as mail agents; military personnel assigned/attached to Army installations who desire mail handling service; standing delivery order agents designated by individuals who desire such service.

CATEGORIES OF RECORDS IN THE SYSTEM:

DD Form 285 designating Army postal clerks/NCO's/supervisors; locator cards comprising a directory of individuals assigned enroute, and/or departing given installation showing individual's full name, grade, current mailing address, date of assignment/detachment, and SSN (latter is voluntary); standing delivery order designations of agents to handle individual's mail.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

To designate persons authorized to perform Army postal functions; to maintain current addresses of persons arriving/departing units for purpose of handling personal mail.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to U.S. Postal Service. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards, paper records; microfiche, word processing disc.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are located in secured buildings, accessible only to designated persons having an official need for the information. Where word processing equipment is used, information is protected by a password system; when not in use, word processing equipment is locked.

RETENTION AND DISPOSAL:

Postal designations and designation of mail delivery agents by individuals are destroyed 1 year following termination of individual's duty as such. Directory locator cards are retained 6 months after individual departs a unit.

SYSTEM MANAGER(S) AND ADDRESS:

The ACSIM, Headquarters, Department of the Army, 2461 Eisenhowere Avenue, Alexandria, VA 22331-0301

NOTIFICATION PROCEDURE:

Individuals desiring to know whether this system of records contains information concerning them should inquire of this Postal Director at the unit where assigned or employed.

RECORD ACCESS PROCEDURE:

Written requests should contain individual's full name, rank/grade, SSN, and any other information that will assist in locating records. Personal visits may be made; individual must furnish proof of identity.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, unit commanders and Army postal officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1111.01TRADOC

SYSTEM NAME:

Individual Flight Records Folder.

SYSTEM LOCATION:

Decentralized to Flight Operations Section of Army/Army Reserve/National Guard units for all personnel on whom flight records are maintained. Copies of individual flight records (DA Form 759) are maintained at the Directorate of Evaluation and Standardization, ATTN: ATZQ-ESO, U.S. Army Aviation Center, Ft Rucker, AL, for active Army and Reserve Component personnel who are instructor pilots, standardization instructor pilots, or instrument flight examiners; USAMILPERCEN, HQDA(DAPC-OPE-V), for active Army officers; USAMILPERCEN, HQDA(DAPC-OPW-AV), for active Army warrant officers; and HDQA(DASC-HCO-A) for active Army MSC officers. Records of Army reservists not on extended active duty are maintained at the U.S. Army Reserve Personnel Center, St Louis, MO; those of National Guardsmen are maintained at the National Guard Bureau, Aberdeen Proving Ground, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army aviators who are members of the Active and Reserve Components and qualified and current in the aircraft to be flown; civilian employees of Government agencies and Government contractors who have appropriate certifications or ratings, flight surgeons or aeromedical physicians' assistance in aviation service, enlisted crew chief/crew members, aerial observers, personnel in non-operational aviation positions, and those restricted or prohibited by statute from taking part in aerial flights.

CATEGORIES OF RECORDS IN THE SYSTEM:

DA Forms 759 and 759-1 (Individual Flight Records and Flight Certificate Army (Sections I, II, and III); DA Form 4186 (Medical Recommendations for Flying Duty), results of annual aviation written examinations, waivers, disqualifications, DA Form 4187 requesting requalification, requalification orders, aeronautical orders awarding ratings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; 10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

To record the flying experience and qualifications data of each aviator, crewmembers, and flight surgeon in aviation service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Federal Aviation Agency and/or the National Transportation safety Board. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname and/or SSN.

SAFEGUARDS:

Records are maintained in controlled areas accessible only to designated persons having official need therefor.

RETENTION AND DISPOSAL:

So long as an aviator remains operational, records are maintained by installation operations officer; when individual is no longer in operational flying status, individual Flight Records Folder is collocated with his/her Military Personnel Records Jacket.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Training and Doctrine Command, Fort Monore, VA 23651.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not this system of records contains information on them should inquire of the Flight Operations Section of their current unit, furnishing full name and SSN; if not on active duty, inquiry should be addressed as indicated in 'System location'.

RECORD ACCESS PROCEDURE:

Access may be achieved by writing or visiting the appropriate office and furnishing information required by "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulations 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Federal Aviation Agency, flight surgeon, evaluation reports, proficiency and readiness tests, and other relevant records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1201.02SMC

SYSTEM NAME:

Personnel Property Movement and Storage Records.

**SYSTEM LOCATION:**

Installation Transportation Offices and Joint Personal Property Shipping Offices, world-wide; addresses may be obtained from the System Manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military members of the Army, Navy, Marine Corps, and Air Force; civilian employees; dependents; personnel of other government agencies when sponsored by the Department of Defense.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Orders authorizing shipment/storage of personal property to include privately owned vehicles and house trailers/mobile homes; Department of Defense Form 1131 (Cash Collection Voucher), DD Form 1299 (Application for Shipment and/or Storage of Personal Property), DD Form 1384 (Transportation Control and Movement Document), DD Form 1797 (Personal Property Counseling Checklist), Standard Form 1203 (Government Bill of Lading), Storage contracts and other related documents.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., section 3012; E.O. 9397.

**PURPOSE(S):**

To arrange for the movement, storage and handling of personal property; to identify/trace lost of damaged shipments; to answer inquiries and monitor effectiveness of personal property traffic management functions.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information may be disclosed to commercial carriers to identify ownership, verify delivery of shipment, support billing for services rendered, and justify claims for loss, damage, or theft. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; microfilm; magnetic tapes and computer printouts.

**RETRIEVABILITY:**

By individual's surname.

**SAFEGUARDS:**

Information is maintained in secured areas, accessible only to authorized personnel having an official need-to-know. Automated segments are further protected by code numbers/passwords.

**RETENTION AND DISPOSAL:**

Documents relating to packing, shipping and/or storing of household goods within continental United States are destroyed after 3 years; those relating to oversea areas are destroyed after 6 years. Documents regarding shipment of Privately owned vehicle/house trailers are destroyed after 2 years. Shipment discrepancy reports are destroyed after 2 years or when claim/investigation is settled, whichever is later. Administrative files reflecting queries and responses are retaind for 2 years; then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Headquarters, Military Traffic Management Command, Falls Church, VA 22041–5050.

**NOTIFICATION PROCEDURE:**

Information may be obtained from the Installation Transportation Office which processed the shipping/storage documents.

**RECORD ACCESS PROCEDURES:**

Written requests should contain requester's full name, SSN, current address and telephone number, and any information which will assist in locating the records requested (e.g. type of shipment, origin, destination, date of application, etc.).

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From the individual whose personal property is shipped/stored; from the carrier/storage facility.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A1301.07AMC**

**SYSTEM NAME:**

Food Taste Test Panel Files.

**SYSTEM LOCATION:**

U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilian and military personnel who volunteer to participate in sensory taste tests of food items.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Questionnaire and locator documents completed by participants containing name, date, organization, business telephone number, sex, age, martial status, rank/grade, present/prior military service, highest educational level attained, section of country lived in the longest, willingess to test irradiated foods, food aversion/food preference data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., section 3012.

**PURPOSE(S):**

To evaluate food rations under development by the Army; to determine acceptability of food items in consideration of purchase.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Computer paper printouts, cards, magnetic tapes and paper records in file folders.

**RETRIEVABILITY:**

By participant's surname or assigned unique number

**SAFEGUARDS:**

Records are stored in metal file cabinets which are locked when not under the control of authorized personnel. Buildings housing the records employ security guards.

**RETENTION AND DISPOSAL:**

Records are destroyed when participant is no longer active in the program.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Natick Reserch, Development and Engineering Center, Natick, MA 01760.

**NOTIFICATION PROCEDURE:**

Information may be obtained by writing to the System Manager, ATTN: Science and Advance Technology Directorate.

**RECORD ACCESS PROCEDURES:**

Individuals who believe information on them is contained in this sytem of records should write to the Sensory Analysis Branch, Science and Advanced Technology Directorate, U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760, furnishing their full name and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1401.07dDAIM

SYSTEM NAME:

Library Borrowers'/Users' Profile Files

SYSTEM LOCATION:

Libraries on Army installations activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized users of Army library facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, SSN, and telephone number of the user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; E.O. 9397.

PURPOSE(S):

To identify individuals authorized to borrow library materials; to ensure that all library property is returned and individual's account is cleared, and to provide librarian useful information for selecting, ordering, and meeting user requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, magnetic tapes, computer printouts.

RETRIEVABILITY:

By user's surname, SSN, and/or residence.

SAFEGUARDS:

Information is maintained in areas accessible only to authorized persons who have official need therefor. Libraries are secured during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed to obtain and/or control library materials.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Assistant Chief of Staff for Information Management, Department of the Army, Washington, DC 20310–0700.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them is contained in this system of records should inquire of the specific library that provided the services, furnishing their name, period, in which a user and any other information that would assist in locating applicable records.

RECORD ACCESS PROCEDURE:

Individuals seeking access should follow the guidance in 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access for records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1402.18DAJA

SYSTEM NAME:

Procurement Misconduct Files.

SYSTEM LOCATION:

HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or legal entities investigated for alleged procurement misconduct, such as fraudulent activities in securing or performing a Government contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal and administrative investigations of fraudulent, criminal or other misconduct in connection with Government procurement activities and Consolidated List of Debarred, Suspended, and Ineligible Contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE(S):

To determine whether criminal or civil proceeding should be initiated against the contractor with the Government or government procurement officials for criminal conduct in connection with procurement activities and to maintain and distribute a list of contractors determined to be ineligible to participate in Government procurement activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice and United States Attorney. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By last name.

SAFEGUARDS:

Records are maintained in file cabinets accessible only by authorized personnel who are properly instructed in the permissable use of the information.

RETENTION AND DISPOSAL:

Destroyed 15 years after final action on the case.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: Chief, Litigation Division, furnishing full name, current address and telephone number, specific details that will enable locating the record, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write as indicated in 'Notification procedure', supplying information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Department of the Army Staff agencies, Army records and reports, Department of Justice, U.S. Attorney, opposing counsel, and similar relevant sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1506.03aDAEN

SYSTEM NAME:

Relocation Assistance Files.

SYSTEM LOCATION:

Office, Chief of Engineers, Headquarters, Department of the Army, Washington, DC 22314; Engineer Division and District Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for relocation assistance pursuant ot Title II of Pub. L. 91–646.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for relocation assistance; relevant correspondence; documents relating to the movement of displaced persons because of acquisition of real estate for Army Military, Civil works, or other Federal agency use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 91–646.

PURPOSE(S):

To process applications for relocation assistance benefits and to consider appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file holders; magnetic tape, cards, discs.

RETRIEVABILITY:

By applicant's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having need therefor, within buildings protected by security guards.

RETENTION AND DISPOSAL:

Records are destroyed 10 years after final action or determination on appeals, as applicable at offices performing Army-wide responsibility. Other offices destroy records 10 years after payment in full satisfaction of claim or final payment, as applicable. Records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Engineers, Headquarters, Department of the Army, Washington, DC 20314.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: DAEN–REH–O; individual must furnish full name, address and telephone number, state of residence at the time application was filed, other pertinent information that will assist in locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves in this system of records should submit a request as indicated under 'Notification procedure', providing the information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determination are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1511.02DAEN

SYSTEM NAME:

Army Housing Operations Management System.

SYSTEM LOCATION:

Office, Chief of Engineers, Headquarters, Department of the Army, Washington, DC 20314; Housing Managers at Army installations world-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, their dependents, Department of Defense or other key civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for on/off post housing containing name, service/SSN, rank/grade and date, service data, organization of assignment, home address and telephone number; locator data; appropriate travel orders; records reflecting housing availability/assignment/termination; housing financial records; referral services; property inventories, hand receipts; and issues slips; cost control, job orders; survey data; reports of liaison with real estate boards, realtors, brokers and other Government agencies; other management reports regarding the Army housing system, complaints and investigations; and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 133 and 2674; DOD Instructions 1100.16, 4165.27, 4165.34, 4165.43, 4165.44, 4165.47, 4165.51 and E.O. 9397.

PURPOSE(S):

To provide information relating to the management, operation, and control of the Army housing program; to provide necessary housing for military personnel, their dependents, and qualified civilian employees; to determine housing adequacy/suitability to document cost data for alterations/repair of units; to establish rental rates; to provide guidance and referral service; to reflect liaison with real estate boards, brokers, and other Government agencies; to render reports; to investigate complaints and related matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's lising of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; cards; computer tapes, discs, and printouts.

RETRIEVABILITY:

By individual's surname, facility name or number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized persons having official need therefor, housed in buildings protected by security guards or lock when not in use. Information in automated media is further protected by physical security devices; access or to update of information in the system is protected through a system of passwords, thereby preserving integrity of data.

RETENTION AND DISPOSAL:

Installation troop housing files are destroyed after 3 years; installation housing project tenancy files are destroyed 3 years after termination of quarters occupancy; faily housing cost controls are destroyed 11 years after last entry; family housing leasing files are destroyed 3 years after lease

terminates, is cancelled, lapses, or after any litigation is concluded; family housing rental rates are destroyed after 10 years; housing referral services are destroyed after 5 years; off-post rental housing reports are destroyed after 2 years; off-post housing complaints and investigations are destroyed 5 years after completion at office having Army wide responsibility, and at other offices complaint and investigation records are destroyed 2 years after completion.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Engineers, Headquarters, Department of the Army, Washington, DC 20314.

NOTIFICATION PROCEDURE:

Information may be obtained from the Director of Industrial Operations, Office of the Chief of Engineers or his counterpart in District/Division Engineer Offices providing housing service.

RECORD ACCESS PROCEDURES:

An individual's request may be addressed to the Director of Industrial Operations at the appropriate installation, and contain his/her name and address and last assignment location.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her personnel records, tenants/landlords and realty activities, financial institutions, and previous employers/commanders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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Tuesday
May 19, 1987

Part VIII

# Department of Health and Human Services

**Health Care Financing Administration**

**42 CFR Part 412**

**Medicare; Capital Payments Under the Inpatient Hospital Prospective Payment System; Proposed Rule**

**Medicare Program; Changes to the DRG Classification System; Proposed Notice**

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-403-P]

## Capital Payments Under the Inpatient Hospital Prospective Payment System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Medicare regulations governing the inpatient hospital prospective payment system to incorporate capital-related costs into that system.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m on July 20, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-403-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-403-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

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## I. Introduction

On June 3, 1986, we published a notice of proposed rulemaking (the June 1986 NPRM) in the **Federal Register** (51 FR 19970) to amend the regulations governing the prospective payment system and to update various components of the system. In particular, we proposed, under section 1886(a)(4) of the Social Security Act (the Act), to incorporate capital-related costs into the prospective payment system effective with cost reporting periods beginning in Federal fiscal year (FY) 1987, which began on October 1, 1986. However, on July 2, 1986, the Urgent Supplemental Appropriations Act for FY 1986 (Pub. L. 99-349) was enacted, and section 206 of that law amended section 1886(a)(4) of the Act to extend the period (through cost reporting periods beginning prior to October 1, 1987) during which capital-related costs must be treated separately from other inpatient hospital costs. In effect, section 206 of Pub. L. 99-349 precluded the incorporation of capital-related payments into the prospective payment system, as we had proposed, until October 1, 1987. As a result, and in order to devote more time to analysis of the public comments on the capital-related provisions of the NPRM, we decided to remove those provisions from the prospective payment system update for FY 1987 (published as a final rule on September 3, 1986 (51 FR 31454)) and to publish them in a separate rule.

In addition, on October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) was enacted and included a provision, section 9303, that amended section 1886(g) of the Act. Section 9303 of Pub. L. 99-509 also requires that the amount of payments for capital-related costs attributable to inpatient services of prospective payment hospitals, otherwise determined to be reasonable under current law, be reduced by—

- Three and one-half percent for payments attributable to portions of cost reporting periods occurring during FY 1987;
- Seven percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during FY 1988; and
- Ten percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during FY 1989.

Section 9303 also provides that, in any inclusion of capital-related costs into the prospective payment system, the aggregate Medicare capital payments, for those capital-related costs attributable to portions of cost reporting periods occurring during FYs 1988 and 1989, must be neither greater nor less than the aggregate Medicare capital payments that would have been made, taking into account the reductions mandated under section 9303 of Pub. L. 99-509, without such inclusion of capital related costs into the prospective payment system.

Furthermore, sections 9303(b) and 9304 of Pub. L. 99-509 amended sections 1886(d) and 1886(g) of the Act to include hospitals in Puerto Rico under the prospective payment system effective for inpatient hospital discharges in fiscal years beginning on or after October 1, 1987.

Accordingly, in this proposed rule, we are proposing to change the regulations that apply specifically to the way in which inpatient hospital capital-related costs, excluding payments to proprietary hospitals for a reasonable rate of return on equity capital, will be treated for Medicare payment purposes effective with hospital cost reporting periods beginning on or after October 1, 1987. Capital-related costs under Medicare include depreciation, interest, taxes, insurance and similar expenses (defined further in § 413.130) for plant and fixed equipment, and moveable equipment. We are taking into consideration the public comments on the June 1986 NPRM concerning the capital-related proposals (including recommendations from the Prospective Payment Assessment Commission (ProPAC)). Affected regulations are located in 42 CFR Parts 412 and 413.

Inpatient operating costs are the only costs currently covered by the prospective payment amounts for those hospitals subject to the prospective payment system (§ 412.2(c)) and by the target rate-of-increase limits for those hospitals and units excluded from the prospective payment system (§ 413.40). Accordingly, under current Medicare rules, payment for capital-related costs

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is on a reasonable cost basis (§ 413.5) because those costs are specifically excluded from the definition of inpatient operating costs for both hospitals subject to and those excluded from the prospective payment system.

This proposed rule would eliminate the previous distinction maintained between capital-related and operating costs only for Medicare inpatient hospital services provided by hospitals subject to the prospective payment system for cost reporting periods beginning on or after October 1, 1987. However, section 9303(a) of Pub. L. 99–509 provides that sole community hospitals are exempt from the capital cost reductions through portions of cost reporting periods or discharges (as the case may be) occurring during FY 1989 (section 1886(g)(3)(A) and (B) of the Act), and from the inclusion of capital-related costs in operating costs of inpatient hospital services, through their cost reporting periods beginning before October 1, 1990 (section 1886(g)(3) (C)(i) of the Act); accordingly, we are proposing to exempt them from the provisions of this rule for those periods.

## II. Background

Section 1886(a)(4) of the Act, as amended by section 601(a)(2) of the Social Security Amendments of 1983 (Pub. L. 98–21), section 9107 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), section 206 of Pub. L. 99–349, and sections 9303(c) and 9320(g)(1) of Pub. L. 99–509 states:

> For purposes of this section, the term "operating costs of inpatient hospital services" includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary). Such term does not include costs of approved educational activities, a return on equity capital, or, *with respect to costs incurred in cost reporting periods beginning prior to October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select), other capital-related costs, as defined by the Secretary.* (Emphasis added.)

The first statutory distinction between capital-related costs and total Medicare Part A hospital inpatient operating costs was made with the enactment of Pub L. 98–21 on April 20, 1983 Prior to that time capital-related costs were identified and treated separately for Medicare payment purposes only under regulations—specifically, § 413.30, under which capital-related costs were excluded from the inpatient routine operating cost limits (that is, the section 223 limits enacted by the Social Security Amendments of 1972 (Pub. L. 92–603)) for cost reporting periods beginning on or after July 1, 1979, and § 413.40, under which capital-related costs were excluded from the inpatient total operating cost limits and rate-of-increase limits enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub L. 97–248). Section 601(a)(2) of Pub. L. 98–21, however, amended subsection 1886(a)(4) of the Act, specifying that the term "operating costs of inpatient hospital services" did not include costs that are defined by the Secretary as capital-related costs. Initially, the exclusion of capital-related costs was to apply only to cost reporting periods beginning prior to October 1, 1986. However, section 206 of Pub. L. 99–349 further amended section 1886(a)(4) of the Act by postponing for an additional year the inclusion of capital-related costs into the definition of operating costs (that is, for cost reporting periods beginning prior to October 1, 1987). Subsequently, section 9303(c) of Pub. L. 99–509 further revised section 1886(a)(4) of the Act by providing that capital-related costs be excluded from inpatient operating costs for cost reporting periods beginning prior to October 1, 1987 or later at the Secretary's discretion. Therefore, until the Secretary amends the regulations to include them, capital-related costs are excluded from costs that are incorporated into the prospective payment system under section 1886(d) of the Act and the rate-of increase limits under section 1886(b) of the Act; they are instead subject to reasonable cost reimbursement provisions under section 1861(v) of the Act.

Section 1886(d)(1)(A) of the Act establishes the prospective payment system as the sole basis for paying for "operating costs of inpatient hospital services (as defined in subsection (a)(4))" for hospitals subject to that system. The current prospective payment rates are not set at levels designed to cover capital-related costs as well as operating costs as previously defined. We are, therefore, setting forth in this proposed rule prospectively determined capital-related payment rates to be effective with cost reporting periods beginning on or after October 1, 1987, as authorized under sections 9303 and 9304 of Pub. L. 99–509.

As a means of providing complete information to the public concerning our approach to new capital payment regulations, we summarize below the capital provisions of the June 1986 NPRM. We also discuss some of the comments on that NPRM, and a summary of the April 1, 1986 and April 1, 1987 recommendations of ProPAC concerning capital.

## III. Summary of Proposed Changes in Capital Payment in the June 1986 NPRM

We stated in the June 1986 NPRM our intention to change the way we make capital payments for hospital inpatient services from the reasonable cost-based reimbursement system to the prospective payment system in light of the statutory limit on the Secretary's authority to distinguish capital related costs from other inpatient operating costs under section 1886(a)(4) of the Act. We proposed a methodology to incorporate capital payments into the prospective payment system that conformed with the statutory provisions governing the payment for all inpatient operating costs, while using the Secretary's exceptions and adjustments authority under section 1886(d)(5)(C)(iii) of the Act as the basis for phase-in rules to ease the transition of hospitals from cost reimbursement to the inclusion of capital payments under the prospective payment system.

### *A. Hospitals Subject to the Prospective Payment System*

Section 1886(a)(4) of the Act, prior to enactment of Pub. L. 98–21, simply incorporated capital-related costs into the definition of operating costs. As noted above, we proposed to establish a transition period and other refinements that would improve the equity of the system by using the exceptions and adjustments authority under section 1886(d)(5)(C)(iii) of the Act. We proposed a four-year transition period, effective with cost reporting periods beginning on or after October 1, 1986, leading to fully national capital payment rates. During each year of the proposed transition period, payments to hospitals were to be based on a combination of a Federal capital rate and a hospital-specific capital portion. The proposed schedule for the phase-in period to national capital payment rates was indicated for each component as shown in the following table:

| For cost reporting periods beginning in Federal FY | Hospital-specific portion (percent) | Federal portion (percent) |
|---|---|---|
| 1987 | 80 | 20 |
| 1988 | 60 | 40 |
| 1989 | 40 | 60 |
| 1990 | 20 | 80 |
| 1991-on | 0 | 100 |

We proposed to add new §§ 412.85 through 412.87 to the regulations to describe the new payment policy.

*B. Determination of Federal Capital Payment Rates*

We proposed to compute the Federal capital-related rate using audited hospital inpatient capital-related cost data from Medicare cost reports for reporting periods beginning on or after October 1, 1982 and before October 1, 1983 (that is, Federal FY 1983) to develop average capital-related costs per discharge. We reduced those costs by an estimated amount to reflect an offset for interest income earned on funded depreciation. We then used the base period (Federal FY 1983) cost data to establish an average standardized amount per discharge for each payment area (that is, urban and rural) of each census division and for the nation in the following manner:

- The FY 1983 costs per discharge were inflated through FY 1986 using the historical and projected annual rates of increase in the capital component of the proposed hospital market basket.
- The costs were standardized to remove the effects of factors causing variation in hospital operating costs that are subsequently recognized in the computation of each hospital's prospective payment. Because capital-related costs were to be treated as "other nonlabor standardized amounts" in the prospective payment methodology, we proposed that each hospital's capital-related costs be standardized for the effects of case, mix, indirect medical education costs, and the higher costs of treating a disproportionate share of low income patients. In addition, because Alaska and Hawaii have a higher cost of living compared to other States, the capital-related costs for hospitals in these two States were also standardized by the applicable cost-of-living adjustment factor.
- We computed separate averages of the adjusted capital-related costs per discharge for urban hospitals and rural hospitals, nationally and in each census division.
- Each of the average capital-related standardized amounts was reduced by the estimated proportion (five percent in FY 1987) of total prospective payments that are for outlier cases.
- We adjusted each of the average capital-related standardized amounts by the appropriate indirect medical education payment equality factor.

In order to remain consistent with the prospective payment rules governing the transition from regional to national Federal rates, we proposed that the Federal capital-related rates for discharges in Federal FY 1987 be a blend of Federal regional (50 percent) and national (50 percent) rates. For discharges occurring in Federal FY 1988 and onward, we proposed that the full national rate be applicable.

*C. Determination of Hospital-Specific Capital-Related Payment Rates*

In the June 1986 NPRM, we proposed that the hospital-specific portion of the capital-related payment be based on the lesser of—

- Its hospital-specific capital-related rate (that is, its audited inpatient capital-related cost per discharge, standardized for case mix, from its cost reporting period beginning in Federal FY 1986, updated through each year of the transition period by the prospective payment update factor; or
- Its actual inpatient capital-related cost per discharge in each transition year.

*D. New Hospitals*

We proposed that new hospitals would be paid on the basis of the full Federal capital-related rate (that is, there would be no capital-related phase-in period for these facilities).

*E. Capital Expenditure Agreements*

Section 1886(g)(1) of the Act provided that, if legislation concerning payment for capital-related costs for inpatient hospital services is not enacted before October 1, 1986 (subsequently amended by section 206 of Pub. L. 99-349 to October 1, 1987), certain restrictions would apply. No payment would be made for capital-related costs of capital expenditures for inpatient hospital services in a State, if such expenditures were obligated after September 30, 1986 (subsequently amended to September 30, 1987), unless—

- The State has an agreement with the Secretary under section 1122(b) of the Act; and
- The State has recommended approval of the capital expenditure under the agreement.

For purposes of section 1886(g)(1) of the Act, capital-related costs of capital expenditures are defined in section 1122(g) of the Act as those expenditures that, under generally accepted accounting principles, are not properly chargeable as an expense of operation and maintenance, and that—

- Exceed $600,000 (or such lesser amount as the State may establish);
- Change the bed capacity of the facility with respect to which the expenditure is made; or
- Substantially change the services of the facility with respect to which the expenditure is made.

However, under section 1122(j) of the Act, for those capital expenditures that are made by a health maintenance organization or a competitive medical plan, no State review is required if 75 percent of the enrollees are expected to use the service for which the capital expenditure is made, and the Secretary determines that the expenditures are necessary for the organization to operate efficiently and economically.

Under the June 1986 NPRM, capital-related costs for expenditures disapproved by a State under section 1122 of the Act would be considered nonallowable costs for Medicare cost reporting purposes. We proposed to adjust the Federal portion of the capital-related prospective payment amount on the basis of the percentage of the total disapproved capital expenditures to total capital assets. Because our capital payment proposal provided that the hospital-specific portion of the capital payment would be determined on a reasonable cost basis for allowable costs (that is, costs that are specifically approved under section 1122 of the Act), we did not propose to adjust the hospital-specific capital payments.

*F. Sole Community Hospitals*

We proposed to pay sole community hospitals (SCHs) the capital-related payment rates for all discharges occurring in cost reporting periods beginning on or after October 1, 1986 at—

- 25 percent of the Federal regional capital-related rates, plus
- 75 percent of their capital-related hospital-specific rate.

We also proposed to—

- Disregard the blending of Federal and hospital-specific rates and the transition to full national rates applicable to all other hospitals; and
- Apply the additional payment provisions applicable to SCHs under § 412.92(e) to include capital-related payment adjustments.

*G. Hospitals and Units Not Subject to the Prospective Payment System*

We proposed, for a limited time, not to incorporate capital-related costs into inpatient operating costs for those hospitals and units not subject to the prospective payment system, using the Secretary's exception authority under section 1886(b)(4)(A) of the Act. Their capital related costs were to continue to be paid on a reasonable cost basis. However, we noted that it was our intention to develop an alternative to reasonable cost reimbursement for the capital-related costs of these excluded facilities.

*H. Summary of Additional Options Presented in the June 1986 NPRM*

We specifically invited public comment on an option in which we would not standardize for case mix, indirect medical education or disproportionate share payments. In addition to the basic proposal outlined above, we set forth and solicited comments on several options (described below) that we were considering in order to permit hospitals to better adjust to this significant change in the way Medicare would pay for inpatient hospital capital-related costs and to avoid sudden and severe disruptions in hospital capital funding.

1. Distinguishing Plant and Fixed Equipment from Moveable Equipment during Transition

Under this option, all moveable equipment costs would have been incorporated into the Federal prospective payment rates with no transition, and a transition of longer than four years as proposed would have been provided for plant and fixed equipment.

As a variation to this approach, we considered paying hospitals based on the costs reported in their FY 1986 cost reports for plant and fixed equipment related to debt service (principal and interest) and lease costs. Depreciation, as it is currently defined in regulations at § 413.134 through § 413.149, would not have been paid on a hospital-specific basis.

2. Alternative to Hospital-Specific Rate—Rolling Base

Rather than establishing a hospital-specific capital-related rate from a fixed base year, we indicated we would consider using the actual costs during each transition year to determine the hospital-specific portion of the blended payment amount

3. Transitional Exception Process for Hospitals Disadvantaged by Phasing Capital-Related Payments Into the Prospective Payment System

Under this approach, an exceptions process which was distinct for capital-related costs, was set forth pursuant to the general authority granted to the Secretary under section 1886(d)(5)(C)(iii) of the Act to provide for such exceptions and adjustments to prospective payment amounts as are deemed appropriate. Under this option, the amounts to be paid under the capital payment exception process would be funded by a reserve of funds obtained by reducing the average standardized capital-related payment rates by five to ten percent to generate a pool equal to the amount estimated to be paid to hospitals meeting the following exceptions criteria:

- The ratio of current liabilities to current assets exceeds 200 percent.
- Inpatient per discharge capital-related costs exceed 200 percent of the Medicare adjusted standardized capital payment for a hospital's payment area (region and urban or rural location). Only costs associated with capital-related items and services that were obligated before a specified date, for example, before January 1, 1986, were to be considered.
- Total inpatient cost per discharge exceeds total prospective payments and pass-through payments per discharge (capital and noncapital payments per case).

4. Lengthening the Capital Payment Transition Period

We proposed consideration of a phase-in period longer than the four years stated in our proposal.

5. Variations in Blending Federal and Hospital-Specific Rates During Transition

We proposed consideration of an increase in the hospital-specific proportion and a commensurate decrease in the Federal proportion during the transition period so that the capital-related hospital-specific portion would be weighted higher in the early years of the transition period than was specified in the June 1986 NPRM.

6. Adjustment to Hospital-Specific Rates for Low Occupancy

Under this approach, the capital-related hospital-specific rate was to be modified when a hospital's occupancy rate was significantly below the national average. We stated that we would inflate the number of total inpatient days in the cost reporting year by the percentage difference between the hospital's actual occupancy rate in that period and an appropriate percentage threshold. Using the resulting adjusted inpatient days figure, we would derive the capital-related cost per diem to be used in determining the hospital's total inpatient capital-related cost for the cost reporting period. This modification was to result in an appropriate and proportional reduction in the hospital's rate per case in making its capital payment.

7. Update of the Capital-Related Hospital-Specific Rate

Rather than updating the capital-related hospital-specific rate by the overall prospective payment update factor, as proposed, we indicated that we were considering an alternative to update that rate by the percentage change in the capital component of the hospital market basket.

## IV. April 1, 1986 ProPAC Recommendations on Capital Payment

In its April 1, 1986 Report to the Secretary (published as Appendix C of the June 1986 NPRM (51 FR 20123)), ProPAC made recommendations related to the incorporation of capital-related costs into the prospective payment system. We described those proposals in detail in that NPRM and provided our responses. The following is a summary of those recommendations.

*A. Including Capital in the Prospective Payment System (Recommendation 5)*

ProPAC recommended that beginning in FY 1987, the Secretary should initiate a transition to all-inclusive prospective prices that combine inpatient operating and inpatient capital-related cost components in a single prospective payment per case for hospitals. The capital payment methodology that is adopted—

- Should provide neutrality in capital-related cost and operating cost trade-offs; and
- Should not favor either capital-related or operating costs but should encourage hospital managers to choose the optimal combination of those cost components. An all-inclusive payment rate would allow individual providers the flexibility to make what they consider to be the most cost-effective decisions based on the unique characteristics of their institutions.

*B. Capital Payment Method (Recommendation 6)*

ProPAC recommended that the Federal portion of capital payments should be calculated as a fixed percentage add-on to the standardized amounts, beginning in FY 1987, and that the Secretary should immediately develop capital components to be added to the hospital market basket. When appropriate data become available, the components of prospective payments should be recalculated to reflect the addition of capital costs. The results of this recomputation should be implemented as soon as possible, but no later than FY 1988.

*C. Level of Capital Payment (Recommendation 7)*

ProPAC recommended that capital payment should be added to the Federal portion of the prospective payment rates

for hospital accounting years beginning in FY 1987 in the following steps:

- For building and fixed equipment, average actual Medicare capital-related costs per discharge for FY 1985, projected forward to FY 1987 by an index of construction capital costs.
- For moveable equipment, average actual Medicare capital costs per discharge for hospital cost reporting year FY 1983, projected forward to FY 1987 by an index of equipment capital costs
- The proportion attributed to moveable equipment should be the lesser of the FY 1983 proportion or 40 percent.

*D. Capital Payment Transition (Recommendation 8)*

ProPAC recommended that the transition to Federal capital payments under the prospective payment system should begin in FY 1987 in accordance with the following provisions:

- There should be no transition for moveable equipment. All payments for moveable equipment should be included as a fixed percentage add-on to the Federal standardized amounts beginning in FY 1987.
- Payment for plant and fixed equipment should be phased in as a fixed percentage add-on to the Federal standardized amounts over a seven- to ten-year period on a straight line basis.
- For plant and fixed equipment, the hospital-specific capital payment portions should be based on the actual costs incurred during each year of the transition.
- During the transition, the Federal portion for plant and fixed equipment should be updated each year by an index of construction costs.
- The addition of capital to the Federal standardized amounts should reflect base-year treatment of return on equity and interest offsets. Return on equity payments should be added to the hospital-specific portion of operating costs. Once the transition to fully national rates for operating payments ends, there should be no hospital specific payment for return on equity.

## V. Proposed Changes to Capital Payment

*A. General Discussion*

A wide variety of comments were received on the policies and options described in the June 1986 NPRM. We have revised our original proposal in several substantial ways in response to the comments and in light of section 209 of Pub. L. 99-349 and sections 9303 and 9304 of Pub. L. 99-509. Below, we describe in detail various aspects of our proposal and the specific methodology that we would use to implement our proposal.

- As discussed earlier, section 206 of Pub. L. 99-509 extended the period during which the Secretary is required to distinguish and treat capital-related costs separately from other inpatient hospital operating costs that are subject to the provisions of section 1886 of the Act (that is, subject to the prospective payment system, the rate-of-increase limits, and State reimbursement control systems). Section 9303 of Pub. L. 99-509 amended section 1886(g)(3) of the Act to provide that, in the design of a prospective payment system for capital-related costs, the aggregate capital payments attributable to portions of cost reporting periods occurring during FYs 1988 and 1989 shall be neither greater nor less than the aggregate capital payments that would have been made on a reasonable cost basis subject to the reductions of seven percent in FY 1988 and ten percent in FY 1989, as authorized under section 9303(a) of Pub. L. 99-509. In addition, section 9304 of Pub. L. 99-509 provides for inclusion of hospitals in Puerto Rico under the prospective payment system effective with inpatient hospital discharges beginning in FY 1988. We plan to implement the provisions concerning hospitals in Puerto Rico in a separate proposed rule to be published shortly in the Federal Register. (We note that in that document we plan to further amend Subpart K to Part 412 to implement those provisions. In this proposed rule, we are proposing to add Subpart K consisting of § 412.214 to implement the provision for incorporating capital payments into the prospective payment system for hospitals in Puerto Rico.) Section 9304 of Pub. L. 99-509 also revises section 1886(d) of the Act (by adding section 1886(d)(9)(D)(iii)) to authorize the Secretary to make exceptions and adjustments under which we believe a transition period and other refinements for incorporating capital payments into the prospective payment system could be extended to hospitals in Puerto Rico. (We note that the reductions in capital payments for FY 1988 and FY 1989, as provided under section 1886(g)(3) of the Act, also apply to hospitals in Puerto Rico.)

The regulations for implementation of the incorporation of capital payments into the prospective payment system, which we propose to be effective with cost reporting periods beginning on or after October 1, 1987, would be different from the June 1986 NPRM in the following manner:

- We would establish national urban and rural capital rates separately for plant/fixed equipment and for moveable equipment, using the best data currently available, that is, capital-related costs for cost reporting periods beginning in Federal FY 1984. (Since the Federal capital rates are calculated according to the Federal fiscal year, we would update the national capital rates each Federal fiscal year.)
- We would determine the hospital-specific portion of the capital payment on the basis of each hospital's allowable capital-related costs for plant and fixed equipment and for moveable equipment in each year of the transition.
- We would provide a ten-year transition period for incorporating capital payments for plant and fixed equipment into the prospective payment system.
- We would provide a two-year transition period for incorporating capital payments for moveable equipment into the prospective payment system.
- We would amend the existing payment policy for outliers (42 CFR Part 412, Subpart F), which is mandated by section 1886(d)(5)(A) of the Act, by adding a portion of the Federal capital payment to the pool set aside for total outlier payments. The cost outlier policy (§ 412.84) would be based on capital and noncapital-related costs, and we would pay high capital cost cases only when both the capital-related and noncapital-related operating costs for a case are above the cost outlier threshold. We believe that there is no need to make cost outlier payments for cases in which both capital-related and noncapital-related operating costs are below the cost outlier threshold.
- The blending of Federal and hospital-specific portions of the capital payment for plant and fixed equipment during the transition period would be weighted heavily toward the hospital-specific portion in the earlier transition years as follows:

| Cost reporting period beginning on or after | Plant and fixed equipment | | Moveable equipment | |
|---|---|---|---|---|
| | Federal (percent) | Hospital-specific (percent) | Federal (percent) | Hospital-specific (percent) |
| 1988 | 5 | 95 | 33 | 67 |
| 1989 | 10 | 90 | 67 | 33 |
| 1990 | 15 | 85 | 100 | 0 |
| 1991 | 20 | 80 | | |
| 1992 | 25 | 75 | | |
| 1993 | 30 | 70 | | |
| 1994 | 40 | 60 | | |
| 1995 | 50 | 50 | | |
| 1996 | 65 | 35 | | |
| 1997 | 80 | 20 | | |
| 1998 | 100 | 0 | | |

- We would determine the hospital-specific portion based on Medicare's share of total allowable capital-related costs of plant and fixed equipment, and Medicare's share of total allowable capital-related costs of moveable equipment (rolling base) subject to the applicable blending percentages in each year of the transition for each hospital.
- We would include Puerto Rico hospitals in the prospective capital payment process in accordance with sections 1886(d)(9) and (g)(3)(A) of the Act.
- For Federal FYs 1988 and 1989, we would adjust the capital payment amounts (Federal and hospital-specific portions) in order that the aggregate capital payment amounts under the prospective payment system approximate the aggregate capital payment amounts that would have been made, taking into account the reductions prescribed under section 9303 of Pub. L. 99-509, on a reasonable cost basis during Federal FYs 1988 and 1989.
- We would make capital payments to new hospitals on the same basis as all other hospitals subject to the prospective payment system, using the rolling base approach and the applicable Federal/hospital-specific blend for the Federal fiscal year in which the hospital first participates in the Medicare program.
- We would exclude sole community hospitals from inclusion of capital into the prospective payment system for cost reporting periods beginning before October 1, 1990, in accordance with section 1886(g)(3)(C)(i) of the Act.
- We believe that the proposed capital payment policy would negate the need for a further distinct capital outlier policy or exceptions process. As we described it in the June 1986 NPRM, an additional distinct exceptions process would provide a payment adjustment to those hospitals that could document that their capital-related inpatient costs were substantially in excess of a prescribed threshold (for example, twice the standardized capital payment amount and total prospective payments less than total inpatient costs covered by the prospective payment system). We recognize that capital expenditures for plant and fixed equipment are subject to long-term replacement, renovation and expansion cycles and may not be amenable to short-term adjustment due to the commitment of capital funds involved. Due to these factors, we are proposing to adopt those options that called for a longer transition period, with payments for fixed capital costs more heavily weighted toward the hospital-specific portion of the blend during the phase-in, and a rolling base year approach in determining the hospital-specific portion (that is, paying a portion of the actual allowable capital-related costs in each transition year as opposed to a fixed base year rate updated during the transition period).

In selecting these options, it became apparent that there would be little remaining rationale to support a provision for a distinct capital exceptions process. Because a rolling base, initially heavily weighted to hospital-specific costs, would recognize not only a hospital's prior commitments (higher than average standardized costs), but also costs for acquisitions during the transition period (that are normally committed for in prior years), there should be practically no basis on which a hospital would find itself in financial distress over capital expenditures due solely to Medicare's incorporation of such payments into the prospective payment system. An adequately long transition period for plant and fixed equipment gives hospitals sufficient time to plan for changes in capital or other operating expenditures, especially since the payment levels are known in advance under a prospective system Also, with capital payments tied closely to current costs with eight years of the ten-year transition period for plant/fixed equipment being paid at 50 percent or more of the hospital-specific costs, hospitals' financial situations would not be substantially affected before the hospitals have had adequate time to make adjustments even in the face of long-term capital cycles.

In moving to a process that would allow hospitals to meet prior capital commitments for a longer term through an extended transition period, and with full knowledge of the rate of future payments, hospitals would have adequate financing for old debt (prior capital commitments) and adequate information regarding future capital income to plan future capital expenditures without the need of an additional safeguard in the program. In addition, this process could act as a disincentive for hospitals to take appropriate action to bring capital costs into line with expected payment levels under future standardized rate schedules.

For these reasons, we conclude that the added administrative complexity of a capital payment exceptions process, as well as the reduction in rates required to establish a pool of exception payment funds, are persuasive arguments against creating such an exceptions process. However, we are open to suggestions and will continue to consider a potential exceptions process or additional outlier capital policy during the transition period.

*B. Capital Payment Policy—Specific Methodology*

Under this proposed rule, hospitals subject to the prospective payment system, other than SCHs, would begin receiving capital payments on a prospective payment basis effective with cost reporting periods beginning on or after October 1, 1987, based on a combination of a Federal capital rate and a hospital-specific portion during ten-year and two-year transition periods. This would continue until capital payments are fully integrated into the prospective payment system with cost reporting periods beginning on or after October 1, 1997. Following is a step-by-step description of the methodology we have used in determining the proposed capital payment rates.

We would extend the prospective payment system to capital-related costs under the authority of section 1886(a)(4) of the Act. We would establish special transitional and other procedures for capital-related costs under the authority in section 1886(d)(5)(C)(iii) of the Act to make necessary exceptions and adjustments to the prospective payment system.

1. Determination of Federal Capital Payment Rates

*Step 1—Split of plant and fixed equipment from moveable equipment.* Inpatient capital-related cost data from FY 1984 Medicare cost reports (latest available audited data) were used in the determination of the proposed Federal capital payment rates. In determining the split of plant and fixed equipment from moveable equipment, ratios of plant and fixed equipment costs to the total capital-related costs, and of moveable equipment costs to the total of capital-related, costs were developed for each hospital Capital-related costs for departments as shown on the Medicare cost report, such as nursery, other reimbursable cost centers (for example, home dialysis), and nonreimbursable cost centers were excluded from these totals because these costs do not represent inpatient capital costs for Medicare payment. Since a split of plant/fixed equipment and moveable equipment could not be determined for directly assigned capital-related costs, directly assigned capital-related costs were treated as moveable equipment costs only for those hospitals that did not separately report capital-related costs in the moveable equipment cost center.

For those cases in which capital related costs were reported in both the moveable equipment cost center and the directly assigned cost center, the directly assigned costs were not used in the ratio calculations. That is, it was assumed that the split of plant and fixed equipment from moveable equipment in the directly assigned cost category is consistent with the split in the plant and fixed equipment from moveable equipment cost centers.

Inpatient capital-related costs apportioned to the Medicare program were split between plant/fixed equipment and moveable equipment, using the ratios as determined above for each hospital.

We note that through additional audit efforts, we are in the process of collecting additional information on directly assigned capital-related costs to disaggregate these costs between plant/fixed equipment and moveable equipment, more precisely. In addition, we will be examining alternative methodologies to apportion Medicare inpatient capital-related costs between plant/fixed equipment and moveable equipment, more appropriately. For example, we will be looking at approaches to apportion ancillary plant/fixed equipment costs and moveable equipment costs between inpatient and outpatient services as a refinement to the split ratios in apportioning Medicare inpatient capital related costs between plant/fixed equipment and moveable equipment.

*Step 2—Adjustments and standardizations—General.* The Federal capital payment rates calculated separately for plant/fixed equipment and for moveable equipment from Federal FY 1984 cost reporting data are adjusted, updated, standardized and computed as separate national averages for urban and rural hospitals, in the 50 States and the District of Columbia as described in the June 1986 NPRM (51 FR 19975).

*Puerto Rico.* We developed a separate adjusted average for urban and rural hospitals in Puerto Rico using FY 1984 Puerto Rico hospital data and, in general, the same methodology as that used for the 50 States and the District of Columbia. We note that we are continuing to look at data on Puerto Rico hospitals and will conduct further audits of the hospital data. Also, we are considering whether other methods of determining the classification of plant/fixed equipment from moveable equipment are appropriate.

*Standardization.* We are standardizing the Medicare capital-related plant/fixed equipment and moveable equipment costs of each hospital to eliminate cost variation due to differences in case mix complexity, indirect medical education, and disproportionate share payments (and for the moveable capital costs of hospitals in Alaska and Hawaii, a cost-of-living adjustment) because the statute, by permitting the Secretary to define capital-related costs as operating costs, requires both the standardization of the rates and the adjustments to payments to hospitals for these factors, unless there is an appropriate reason for not standardizing capital-related costs by one or more of these factors. Our preliminary statistical analysis indicates that there is a reasonable analytical support for standardizing capital-related costs by the hospital case-mix index. The evidence, however, for standardizing the indirect costs of medical education and disproportionate share adjustments is inconclusive.

Since we have no strong evidence to suggest that is is inappropriate to standardize capital-related costs by the same factors used in standardizing inpatient hospital operating costs, we propose to standardize capital-related costs by the indirect teaching factor, disproportionate share adjustment, and the case-mix index. We will continue to examine the appropriateness of standardizing capital-related costs by these factors. (We refer the reader to the regulatory impact analysis in Appendix D of this document for further information on the effects of standardization.) We are required to compute urban and rural averages as provided by sections 1886(d)(2)(D) and (d)(3)(D) of the Act. We note that rural referral centers (see § 412.96) would be paid on the same basis for capital as for other operating costs under the prospective payment system.

*Local cost variations.* Several commenters on the June 1986 NPRM suggested that we adjust the capital payment amounts for area construction cost variations. In recognition of the varintions in construction cost among areas, a construction cost index (listed in Appendix B of this document) would be applied in making payments for plant/fixed equipment This construction cost index would apply only to the Federal payment portion for plant/fixed equipment since such variations would already be recognized on an individual hospital basis in determining the hospital-specific portion using a "rolling base." The construction cost index would be applied to standardize the plant/fixed equipment cost data in the same manner that cost data are standardized for case mix, indirect medical education and disproportionate share.

Construction and renovation of hospital facilities represent most of hospital fixed capital expenditures Since the cost of construction varies geographically, we believe it is necessary to include an index of geographic variation in construction costs to incorporate fixed capital costs into the prospective payment system. We reviewed a variety of data sources from which a construction cost index could be developed, including the Bureau of the Census, the Bureau of Labor Statistics, and non-government sources The criteria we considered important in our review were the type of data available, the comprehensiveness of the data, the degree to which it was specific to hospital construction, the number of years for which data were available, the timeliness of the data, and the geographic detail available.

We selected the Dodge/Data Resources, Incorporated (DRI)

Construction Potentials database as the most appropriate source for developing a fixed capital construction cost index for the prospective payment system The Dodge/DRI database contains information on all major building projects in the country, both new construction and additions and alterations, with a projected value of over $25,000. Data collected from architects, developers, building contractors, building permit offices, newspapers, and other sources by a network of 1,500 correspondents are entered into the database when a contract has been signed and construction is to begin within 60 days. Data recorded on each project include the date, type of facility to be built, contracted cost and square footage to be constructed, location by city and county and other information. The Dodge/DRI database is widely used as a data source by the construction industry. (Congress itself recently provided for the use of a Dodge Construction Index to measure certain construction costs incurred by skilled nursing facilities in the Medicaid program. See section 1902(a)(13)(C) of the Act, as amended by section 9509 of Pub. L. 99-272. We believe that this is evidence of the widespread acceptance of those indexes by the industry.)

*Data on institutional construction.* From the Dodge/DRI database, we developed a file of nonresidential "institutional" construction by Metropolitan Statistical Area (MSA) and New England County Metropolitan Area (NECMA) for each year 1972 to 1986. Counties that did not fall into MSA/NECMA areas were included in the appropriate state rural areas. We used the MSA-NECMA assignment that was listed in Table 4a (Wage Index for Urban Areas) in the addendum to the September 3, 1986 final rule (51 FR 31555). Types of construction included in our file were as follows:

- Schools and colleges;
- Nonmanufacturing owned laboratories;
- Libraries and museums;
- Hospitals and other health treatment buildings;
- Capitols, court houses, city halls and other government service buildings; and
- Houses of worship and other religious buildings.

We selected these types of construction for the file because they included all types of construction in the Dodge/DRI database that reasonably represented relative variations in hospital construction costs. For that reason, we excluded residential construction (also because it would include a substantial volume of small wood frame construction not representative of hospital construction). Amusement, social, recreational and transportation terminal buildings (gymnasiums, arenas, auditoriums, theaters, airports etc.) were excluded because we expected their cost per square foot would vary too much by size of the facility rather than by geographic area. We also excluded other noninstitutional construction (stores, restaurants, office and bank buildings).

In determining the types of construction to include in computing a prospective payment system construction cost index, we first considered using only hospital construction. However, in some geographic areas, this resulted in no data in some years because no hospital construction had taken place in the area in those years and some areas had less than five years of hospital-only construction data to average in the 15 year period. For the types of construction we included in our file, the methodology used to compute the prospective payment system construction cost index for fixed capital is as follows:

*Step a.* The contracted cost of all construction for each urban or State rural area (365 different geographic areas) was totaled by year. Likewise, the square footage of all construction for each geographic area was totaled by year.

*Step b.* For each year from 1972 to 1986, a national average construction cost per square foot was computed for the year by summing the construction cost for the year over all geographic areas and dividing by the total square footage of construction over all geographic areas for that year.

*Step c.* The cost per square foot for each geographic area for each year was calculated by dividing the construction cost for each area by the square footage for each area. This resulted in 365 different cost per square foot values, one for each geographic area for each of the 15 years, or 5,475 total values. Aberrant values were defined to be geographic areas that had an average cost per square foot exceeding three times the national average for that year, or less than one-third the national average for that year. Fifteen of the 5,475 cost per square foot values exceeded these limits and were dropped as aberrant values, thus leaving 5,460 cost values.

*Step d.* A construction cost index for each geographic area for each year was obtained by dividing the cost per square foot for each area by the national cost per square foot for the respective year. This resulted in 5,460 index values.

*Step e.* A 15-year average index for each geographic area was computed by multiplying each area's index for each year by the square footage of construction for the area for that year and summing across years, then dividing by the total square footage of construction for the area over the entire 15 year period This resulted in a 15-year average index for each of the 365 geographic areas. For areas with aberrant values (as described in step c above) for a particular year, that year's index and square footage were excluded in calculating the 15 year average index for that area.

*Step f.* The arithmetic mean of these 365 fifteen year average construction cost indexes was computed and each of the index values was divided by this mean to obtain an index with a national mean of 1.000. The resulting indexes are listed in Appendix B of this document.

The criteria used for excluding aberrant values had a more significant impact on the index when only hospital construction was used because the hospital construction cost per square foot in some areas for some years ranged from 11 percent to 1,443 percent of the national average. Although averaging the index over 15 years for each geographic area helped smooth out this variation, the index was still rather volatile and would have produced a final index that ranged from .43 to 1.80 with a standard deviation of .21, rather than the index in Appendix B, which ranges from .73 to 1.72 with a standard deviation of .16. We are continuing to investigate criteria for determining aberrant values that might result in a less volatile index based only on hospital construction.

In computing the construction cost index, we had available two additional years of data, 1970 and 1971. (Dodge/DRI has collected hospital construction data since 1970.) We considered using periods of other than 15 years for computing the multiyear average index for each area. We chose 15 years because the year-to-year correlation reached 99 percent by year 15. This result produces a very stable index and reduces major fluctuations in Medicare hospital capital payments as new investments are incurred each year. Also, since the capitalization of construction project costs averages roughly 30 years, using an index averaged over 15 years allows the cost of an amortized project to influence the construction cost index for the median of its useful life. Using a shorter averaging period would result in a more volatile index, with a year to year correlation from about 99 percent to 90

percent, depending on the number of years averaged. As a result, some areas would experience significant changes in their index each time the index is updated. This would allow the index to respond more quickly to abrupt changes in the cost of construction in a particular area, but would also allow a very large single contract in a particular area in one year to have a possibly disruptive impact on the fixed capital payments for that area when the index is next updated.

*Local cost variation—Puerto Rico.* URI does not collect construction cost data for Puerto Rico, and we were not able to compute a construction cost index for Puerto Rico in the same manner as for other areas. We are not including index values for Puerto Rico in the construction cost indexes in Appendix B of this document, but are considering three proxy approaches to estimate the construction cost index for Puerto Rico.

- Our first approach for estimating a construction cost index for hospitals located in Puerto Rico would be to calculate the average cost per square foot for Federal government building rental in Puerto Rico, and divide by the average cost per square foot for Federal government building rental for the State with the lowest construction cost index in the United States. We are currently obtaining data on the cost of renting Federal government buildings from the General Services Administration. We would use the ratio calculated above to determine a construction cost index for Puerto Rico. For the Puerto Rico rural construction cost index, we would multiply that ratio by the rural construction cost index for the State with the lowest rural construction cost index. For the Puerto Rico urban construction cost index, we would determine a single value for all Puerto Rico urban areas by applying the ratio to the average of the urban indexes for the urban areas of the State with the lowest average urban construction cost index.
- A second approach would be to identify a geographic area in the United States in which economic conditions are most comparable to those in Puerto Rico.
- A third approach would be the direct collection of construction cost records and information from Puerto Rico hospitals, and computation of urban/rural indexes as the construction cost per square foot of Puerto Rico hospitals divided by the average construction cost per square foot for hospitals in the continental United States. We are evaluating the feasibility and reliability of such a survey.

We are evaluating the merits of each of these approaches and specifically solicit public comments on other approaches in determining the appropriate construction cost index for Puerto Rico hospitals.

*Conclusion.* We are continuing to investigate the manner in which the construction cost index is calculated and, in particular, solicit suggestions regarding—

—Developing a methodology for computing a less volatile index based only on hospital construction;

—Developing an index that is a combination of hospital-only construction and other institutional construction, in which the data are combined in a manner other than just summation. Examples would be a hospital-only construction index for those areas with a large amount of hospital construction data, and a proxy based on general institutional construction for areas with a small amount of hospital construction. Also, a different method of weighting other than square footage of construction could be used to obtain the multiyear average index;

—Adding or deleting types of construction to the index;

—Changing the length of the averaging period for the index; and

—Using a different geographical unit to determine the index (for example, census regions).

We will continue to examine the construction cost index we are proposing and will attempt to increase the precision with which it reflects variation in construction costs across geographic areas. We expect to update the index on a periodic basis to reflect recent changes in area construction costs.

We also seek comments on the alternatives of using the hospital wage index (used for purposes of the inpatient hospital prospective payment system) or no construction cost index in lieu of the proposed construction cost index to adjust the plant/fixed capital-related Federal rates for area variation in hospital construction costs. We plan to update the values of the hospital wage index as part of the proposed update of the hospital prospective payment system for FY 1988 to be published shortly in the **Federal Register**. We caution the reader that the rates in tables one and two of Appendix A of this proposed rule would change if either alternative is adopted because the underlying plant/fixed equipment costs used to derive the rates in the tables reflect standardization by the proposed construction cost index. That standardization would be eliminated entirely if no construction cost index were adopted, and would be replaced with standardization by the hospital wage index if that alternative were selected.

*Step 3—Updating.* The results from step 2 (the standardized average fixed and moveable costs per case for each hospital) are updated through FY 1987 using the estimated rate of increase in actual inpatient hospital capital costs. In the June 1985 NPRM, we proposed to update the FY 1983 average cost per case through FY 1986 using the capital component of the hospital market basket, and for FY 1987 onward, the prospective payment update factor in order to be consistent with the prospective payment system methodology for all other inpatient operating costs. However, in light of the requirement that aggregate payments for inpatient capital costs under a prospective payment system approximate aggregate payments for inpatient capital-related costs under cost reimbursement subject to the reductions under section 1886(g)(3) of the Act, we propose instead to update hospitals' FY 1984 costs per case through FY 1987 by the estimated actual increase in capital costs per case for purposes of establishing the rates. We would also update costs for FY 1988 and FY 1989 for purposes of estimating the payments that would be made, subject to the reductions under section 1886(g)(3) of the Act, under reasonable cost principles. (The latter estimate would form the basis of the budget neutrality adjustment to the rates.) For FY 1990 onward, the same update factor (the applicable percentage change under sections 1886(b)(3)(B) and (e)(4) of the Act) would apply to the capital-related rates as to all other inpatient hospital operating rates. We also wish to point out that no updating of the hospital-specific portion of capital-related payments would be necessary under this proposed rule since a rolling base year (actual costs in each transition year) would be used rather than a fixed base year.

*Step 4—Separate averages.* The amounts resulting from step 3 are then used to compute average standardized rates for plant/fixed equipment and moveable equipment, for all urban hospitals and for all rural hospitals in the United States and the District of Columbia, and for urban and rural hospitals in Puerto Rico. The national urban and rural averages are discharge-weighted in the same manner as the prospective payment rates for other inpatient hospital operating costs that

will be in effect with discharges occurring on or after October 1, 1987.

*Step 5—Reducing for outliers.* In accordance with section 1886(d)(5)(A) of the Act, we would amend the current outlier policy (in 42 CFR Part 412, Subpart F) by adding capital to the pool set aside for outliers. The average standardized rates for plant/fixed equipment and moveable equipment resulting from step 4 are reduced by the proportion (estimated by HCFA) of the amount of payments that, based on the total amount of the Federal capital-related payments for urban hospitals and the total amount of the Federal capital-related payments for rural hospitals, are additional payments for outlier cases.

We are proposing that payment for capital-related day outliers (extended length-of-stay cases) be determined based on the same provisions in effect for noncapital-related day outliers (§ 412.82). We are proposing that payment for capital related cost outliers (extraordinarily high-cost cases) be determined based on both capital-related and noncapital related costs. We would amend § 412.84 to provide that payment for high capital cost cases would occur only when both the capital related and noncapital-related costs exceed the cost outlier threshold. We believe it would be inappropriate to make cost outlier payments for high capital cost cases in which the capital related and noncapital-related costs are below the cost outlier threshold.

*Step 6—Budget neutrality.* Section 1886(g)(3)(C)(ii) of the Act requires that, effective with cost reporting periods occurring during FY 1988, Medicare capital-related payments into the prospective payment system shall approximate the amount that would have made (that is, make budget neutral) (taking into account the seven percent reduction in capital-related payments in FY 1988 under section 1886(g)(3)(A)(ii) of the Act) without such inclusion into the prospective payment system. Since we assumed that the seven percent reduction to capital-related payments applied with or without the incorporation of capital into the prospective payment system, we did not reduce the amounts resulting from step 5 by seven percent. As well, since sole community hospitals are excluded from a capital prospective payment system (section 1886(g)(3)(C)(i) of the Act) through cost reporting periods beginning before October 1, 1990, we did not adjust the amounts resulting from step 5 for their costs.

We are adjusting the amounts resulting from step 5 (by a budget neutrality adjustment factor of 1.0382) so that capital-related payments during FY 1988 under the proposed capital prospective payment system equal the capital-related costs that would have been paid for the same time period in the absence of the proposed system (that is, under the reasonable cost reimbursement system). Taking into consideration the different blends of the hospital-specific and Federal portions applied to plant/fixed equipment and moveable equipment in FY 1988, the budget neutrality equation is as follows:

.95 HSP Fixed + .05 Fed Fixed + .67 HSP Mov + .33 Fed Mov = CRC Fixed + CRC Mov

where—

- HSP Fixed and HSP Mov represent the total hospital-specific payments made for plant/fixed equipment and moveable equipment during FY 1988 under the proposed capital prospective payment system;
- Fed Fixed and Fed Mov are the total Federal payments for plant/fixed equipment and moveable equipment during FY 1988 under the proposed capital prospective payment system; and
- CRC Fixed and CRC Mov are the capital-related costs for plant/fixed equipment and moveable equipment that would have been paid under the reasonable cost reimbursement system.

Since the hospital-specific capital payments are based on actual costs in FY 1988, the budget neutrality equation can be modified as follows:

.05 Fed Fixed + .33 Fed Mov = .05 HSP Fixed + .33 HSP Mov

The terms on both sides of the equation were estimated for each hospital applying the proposed payment rules described elsewhere in this proposed rule. For each hospital, the hospital-specific payments were adjusted to the midpoint of the hospital's FY 1988 fiscal year. The Federal payments were estimated using rates adjusted to the midpoint of FY 1987. In both cases, these adjustments were based on estimates of the actual rate of increase in capital-related costs per admission derived from AHA data. As a result of the one year difference between the updating of the hospital-specific and Federal variables, the adjustment factor defined below accounts both for capital cost differences between 1987 and 1988 and for the budget neutrality requirement.

Federal payments were computed using case-mix indexes for FY 1988. Since all estimates were made on a per discharge basis, the number of discharges has no effect on the value of the adjustment factor.

To calculate the required adjustment to the Federal rates, we substituted the adjusted Federal payments for the Federal terms in the equation above. Let the adjustment factor applied to the Federal rates be k. Then the adjusted Federal payments are k*Fed fixed and k*Fed Mov. Solving the resulting equation for k yields the following:

k = (.05 HSP Fixed + .33 HSP Mov)/(.05 Fed Fixed + .33 Fed Mov)

2. Determination of the Hospital-Specific Portion of the Capital Payment

The hospital-specific portion of the capital payment during the transition period would be made by determining Medicare's share of the actual allowable capital-related costs of hospital plant/fixed equipment and of moveable equipment apportioned to inpatient areas for each transition year reducing those costs by the percentage factors (seven and ten percent) mandated for FYs 1988 and 1989, respectively, and the appropriate blend percentages.

*Step 1—Allocation of equipment.* The amount of Medicare allowable capital-related costs of plant/fixed equipment and of moveable equipment, separately apportioned to inpatient hospital services, would be determined pursuant to §§ 412.113(a) and 413.130. Due to the importance of splitting fixed/plant from moveable equipment, we are proposing a detailed list for classifying the current and future stock of hospital capital. The list, presented in appendix C of this document, is compatible with the definitions of fixed/plant and moveable equipment contained in section 104 of Chapter 1 of the Provider Reimbursement Manual (HCFA Pub. 15-1). The HCFA list is an adaptation of the list of the American Hospital Association (AHA) 1987 Edition and is an extensive, but not exhaustive list of items of plant/fixed equipment, and of moveable equipment. (We note that we have added extracorporeal shockwave lithotripters and magnetic resonance imaging equipment to the AHA list of equipment under the moveable equipment category.) We are proposing that HCFA update the list periodically as necessary through notices published in the Federal Register. We are also proposing that the definition contained in the Provider Reimbursement Manual be used to classify equipment not specified on the list.

For hospitals that have been classifying a capital item differently than it would be classified under the list, we would consider allowing them to continue the present classification practice if they can justify it to their fiscal intermediary. We request comment on the plant/fixed and moveable classification scheme as

described in the proposed § 412.67 and Appendix C and the potential policy that would allow hospitals to classify items differently from the list.

*Step 2—Apportionment.* The Medicare allowable capital-related costs of plant/fixed equipment and of moveable equipment, apportioned to inpatient hospital services, are reduced by the appropriate percentage factor pursuant to section 1886(g)(3) of the Act, as added by section 9303 of Pub. L. 99–509. The capital-related costs thus reduced by seven percent and ten percent in FYs 1988, 1989, respectively, are then multiplied by the appropriate hospital-specific blend percentage applicable to the pertinent transition cost reporting period.

3. Additional Payments

We are directed by section 1886(d)(5) of the Act to provide additional payments for outliers (section 1886(d)(5)(A)), indirect medical education (section 1886(d)(5)(B)), and disproportionate share adjustments (section 1886(d)(5)(C)) for hospitals that are under the prospective payment system. As a result, we are required to add to the current noncapital-related payment the portion of the Federal capital-related payment for those additional payments that we are proposing to include in the prospective payment rate.

*a. Payments for Outliers.* The pool of funds for day and cost outlier payments would be increased by reducing the average standardized Federal capital payment rates by the same factors used to reduce noncapital-related prospective payment rates. In determining the amount of a day outlier payment, we are proposing to use the same methodology currently used for noncapital-related costs. That is, the Federal capital-related and noncapital-related standardized amounts, adjusted to reflect the construction cost index and the wage index (as appropriate), and also to reflect the appropriate blends, would be multiplied by the applicable DRG weighting factor. The resulting adjusted standardized amounts for capital and noncapital would be added together, and the result divided by the geometric average length-of-stay figure for the DRG. This amount would then be multiplied by .60 (the marginal cost factor), and the resulting amount would be paid to the hospital for each day of care beyond the day outlier threshold.

In determining the amount for a cost outlier payment, we are proposing to use the same methodology currently used for noncapital-related costs. Since we are proposing to include capital-related costs as part of total inpatient operating costs, we would make any appropriate changes to the cost outlier thresholds to reflect additional capital-related costs. The plant/fixed capital-related portion of the thresholds would be adjusted by the construction cost index in the same manner as the noncapital-related portion is adjusted by the hospital wage index. In addition, the national cost-to-charge ratio used in determining cost outlier payments would be increased to reflect capital-related costs.

We note that capital outlier payments would not be paid until a hospital is subject to prospective payments for capital, that is, effective for discharges in cost reporting periods beginning on or after October 1, 1987. For example, if a hospital's cost reporting period in FY 1988 begins January 1, 1988, capital outlier payments would be made, if applicable, for discharges occurring on or after January 1, 1988. Therefore, adjustments to outlier payments for capital would not be available to that hospital until January 1, 1988. In addition, both changes to the outlier (both cost and day outliers) criteria and capital outlier payments would apply on a Federal fiscal year basis in order to maintain consistency with the outlier policy for other noncapital operating costs under the prospective payment system. This means that changes in outlier criteria and payments announced next year to be effective for Federal FY 1989 will apply to the January 1, 1988 hospital as of October 1, 1988.

In summary, we would make appropriate changes to §§ 412.82 and 412.84 to incorporate capital into the outlier criteria and payments in the final rule.

*b. Payments for Indirect Medical Education.* As we proposed in the June 1986 NPRM (51 FR 20027), we are proposing to adjust the average standardized amounts to account for indirect medical education payments. Hospitals that are eligible for indirect medical education payments under § 412.118 would receive an additional payment to their capital-related payments for indirect medical education costs to be calculated in the same manner as noncapital-related indirect medical education payments are determined.

*c. Payments for Hospitals that Serve a Disproportionate Share of Low-Income Patients.* Also, as we proposed in the June 1986 NPRM (51 FR 20014), we are proposing to adjust the average standardized amounts to account for the costs of hospitals that serve disproportionate shares of low-income patients. Hospitals that meet the disproportionate share criteria under § 412.106 would receive an additional payment to their capital-related payments for disproportionate share costs to be calculated in the same manner as noncapital-related disproportionate share payments are determined.

4. Total Capital Payment

The total capital payment to a hospital for any particular cost reporting period would be a total of the following components:

- The total of the hospital-specific amounts for discharges occurring in a period according to the following formula:

| | | | | |
|---|---|---|---|---|
| Medicare's Share of Allowable Cost for Plant and Fixed Equipment. | × | Applicable Percentage Reduction Factor [1] .... | × | Hospital-Specific Portion Transition Blend Percentage |
| — Plus — | | | | |
| Medicare's Share of Allowable Cost for Moveable Equipment. | × | Applicable Percentage Reduction Factor [1] .. | × | Hospital-Specific Portion Transition Blend Percentage |

[1] Represents the reduction applicable for FYs 1988 and 1989 as provided under section 1886(g)(3) of the Act.

- The aggregate Federal portion payment amounts for plant/fixed equipment and for moveable equipment, for discharges occurring during the pertinent cost reporting period based on the following formula:

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Total of Plant and Fixed Equipment Federal Rate Per Discharge [1]. | × | Area Construction Index. | × | DRG Weight..... | × | Any Applicable Adjustment [2]. | × | Federal Transition Blend Percentage |

— Plus —

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Moveable Equipment Federal Rate Per Discharge [1]. | × | DRG Weight ..... | × | Any Applicable Adjustment [2]. | × | Federal Transition Blend Percentage |

— Plus —

Any Applicable Outlier Payments

[1] Includes the reductions and budget neutrality adjustments applicable for FYs 1986 and 1989 as provided under section 1886(g)(3) of the Act.

[2] For example, indirect medical education, disproportionate share.

5. New Hospitals

As a result of using a rolling base to determine the hospital-specific portion of the capital payment during the transition period, no special provision would be made for new hospitals that become subject to the prospective payment system upon entering the Medicare program. A new hospital is subject to the capital payment transition blends in effect at the beginning of its cost reporting period when it enters the program. Thus a hospital entering the program (that is, newly participating in the Medicare program, under present or previous ownership) on January 1, 1993 would be paid at 70 percent of its hospital-specific costs and 30 percent of its Federal rate for plant/fixed equipment and 100 percent of its Federal rate for moveable equipment.

6. Sole Community Hospitals

As prescribed in section 1886(g)(3)(C)(i) of the Act, sole community hospitals would continue to be paid under the reasonable cost methodology described in section 1861(v)(1) of the Act with respect to capital-related costs for cost reporting periods beginning before October 1, 1990.

7. Capital Expenditure Agreements

Section 1886(g)(1) of the Act provides that, if legislation concerning payment for capital-related costs for inpatient hospital services is not enacted before October 1, 1987, no payment may be made for capital-related costs of capital expenditures (as defined in section 1122(g) and except as provided in section 1122(j) of the Act) for inpatient hospital services in a State (including the District of Columbia and Puerto Rico as defined in sections 210(h) and 1861(x) of the Act) if such expenditures are obligated after September 30, 1987, unless the State or jurisdiction has an agreement with the Secretary under section 1122(b) of the Act and under such agreement the State recommended approval of the capital expenditure.

The deadline in section 1886(g)(1) of the Act for legislation to avoid invocation of the section 1122 requirements was extended to October 1, 1987, by section 206 of Pub. L. 99-349, enacted July 2, 1986. Subsequently, under section 9303 of Pub. L. 99-509, Congress enacted section 1886(g)(3) of the Act, which requires certain reductions in the payments for capital-related costs for inpatient hospital services. We believe that section 1886(g)(3) constitutes the necessary legislation required under section 1886(g)(1) "respecting the payment . . . for capital related costs for inpatient hospital services," thus nullifying the requirement of section 1886(g)(1).

8. Interest Expense

Interest expense, as described in § 413.153 is an integral part of capital-related costs. Under the current Medicare capital payment system (reasonable costs), it is important for hospitals to distinguish operatin9 interest from capital interest appropriately since interest on funds borrowed for operating expenditures is included under the inpatient hospital prospective payment system, and therefore are not a pass-through, while interest on funds borrowed for capital expenditures is paid for on a reasonable cost pass-through basis. We propose to continue the application of this principle without change throughout the transition period.

The allocation of interest between fixed and moveable capital assets has not been as important to Medicare payment determinations as the allocation between inpatient operating and capital-related interest expense, since both are paid on a cost pass-through basis and, in general, there is little effect on Medicare reasonable cost reimbursement resulting from misallocation of capital expenditures. Under the proposed rule, because of the different transition periods for plant/fixed equipment and moveable equipment, properly classifying capital-related interest expenses between plant/fixed equipment and moveable equipment becomes very important in order to pay hospitals appropriately for the interest portion of the hospital-specific pass-through payment. As a result, we intend to place increased emphasis on the cost finding and allocation procedures employed by hospitals. We are, however, considering further refinements to the cost finding procedures that currently apply to the interest expense determination.

In general, capital-related costs can be readily identified and classified as related to either plant/fixed equipment or moveable equipment, based on the financial, statistical, and accounting records of the hospital. However, there are capital-related interest costs that, due to their nature, may relate to both categories of equipment. We believe interest expense on funds borrowed for capital purposes needs to be addressed specifically because it is an integral part of overall capital costs and is incurred through various types of loans. Since it may be difficult to readily identify interest expenses related to moveable versus fixed equipment, we are considering some additional approaches for allocating interest expenses under the proposed rule. Because these approaches are different from current cost finding methods, we are soliciting public comments on them or other approaches that may be appropriate.

*a. Treatment of interest expense.* Under current regulations (§ 413.153) and program guidelines (see section 3202.1 of the Provider Reimbursement

Manual (HCFA Pub. 15-1)), to be allowable as a Medicare expense, interest must be—

- Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of funds are required;
- Identifiable in the hospital's records;
- Related to the reporting period in which the costs are incurred; and
- Necessary and proper for the operation, maintenance, or acquisition of the hospital's facilities.

To support the existence of a loan, the hospital must have available a signed copy of the loan contract, which should contain the pertinent terms of the loan. If the lender does not customarily furnish a copy of the loan contract, correspondence from the lender stating the pertinent terms of the loan would be acceptable. If interest expense has been determined to be allowable and the interest expense records are maintained physically away from the hospital's premises, such as a county treasurer's office, these records would be deemed to be those of the hospital. This would be applicable when bond issues have been specifically designated for the construction or acquisition of hospital facilities and the financial records relative to the bond issue are maintained by some governmental body.

We propose that, once the allowable interest expense on capital indebtedness is determined, the interest expense be classified to plant/fixed equipment or to moveable equipment using the current Medicare procedures for classifying interest. These procedures and two other approaches are shown below. We are continuing to examine these approaches or some combinations of certain features of the three approaches (the Federal capital rates stated in Appendix A of this proposed rule reflect the fixed/moveable interest allocation from the FY 1984 cost report):

- Interest Expense Classified to the Account Related to the Indebtedness Using Current Medicare Principles of Reasonable Cost Reimbursement

If a loan is obtained to finance the purchase of a facility or moveable equipment, the interest expense would be classified to plant/fixed equipment or to moveable equipment, as appropriate.

If a loan is obtained to finance the purchase of facilities and various equipment items, the interest expense must be distributed among the assets the loan covers based on the purchase price of the acquisitions.

Example:

| Assets purchased | Purchase cost |
|---|---|
| Buildings & Fixtures | $240,000 |
| Moveable Equipment | 60,000 |
| Total | 300,000 |

Of the $300,000 purchase price, assume the hospital borrowed $270,000 for buildings, fixtures, capital improvements and moveable equipment at 10 percent annual interest. Thus, annual interest on the loan is equal to $27,000. The allocation to plant/fixed equipment and to moveable equipment is shown below:

| | | | |
|---|---|---|---|
| Buildings & Fixtures | $240,000 / $300,000 | × $270,000 × 10% = | $21,600 |
| Moveable Equipment | $ 60,000 / $300,000 | × $270,000 × 10% = | 5,400 |
| Total Interest Expense | | | $27,000 |

If a loan is obtained to finance the purchase of a facility and equipment and the loan exceeds the asset value of the acquisitions, the interest expense on that portion of the loan in excess of the asset value of the acquisitions is not considered capital-related. The portion of the interest expense on the asset value of the acquisitions must be distributed among the assets of the loan as described in the example above.

There are some cases in which a hospital may, for a variety of reasons, undertake advance refunding (that is, to replace existing debt prior to its scheduled maturity with new debt). The revenues and expenses associated with the advance refunding are treated in accordance with the principles set forth in section 233 of the Provider Reimbursement Manual. The allocation of interest expense on the new debt would be dependent upon the allocation used under the old debt.

If a hospital has consolidated various individual debts through advance refunding, the interest expense on the new debt would be allocated to the appropriate accounts based on the old debt balances that were refinanced.

- Fixed Formula.

It may be reasonable to allocate interest expenses on funds borrowed for capital assets based on a formula that reflects the asset values of plant/fixed equipment from moveable equipment. We would propose to classify capital interest to plant/fixed equipment or to moveable equipment using the respective gross book values (value of assets prior to depreciation) as described in the cost report. The rationale for gross book value is similar to that contained in the current guidelines for commingled assets in which interest on a bond used to finance moveable and fixed equipment is allocated based on the proportion of the gross book values of the fixed and moveable equipment (see section 2338 of the Provider Reimbursement Manual). Under the gross book value formula, interest for plant/fixed equipment would be allocated based on the ratio of the gross book value of plant/fixed equipment to the total gross book value for all capital assets. Moveable equipment interest would be allocated based on the ratio of gross book value of moveable equipment to the total gross book value for all capital assets. To maintain consistency under this alternative, we would use the FY 1984 gross book values for fixed and moveable capital equipment to determine the appropriate classification of plant/fixed equipment and moveable equipment costs. For example, if the approach results in a shift of interest from fixed to moveable assets, then the FY 1984 capital cost allocation between fixed and moveable assets would be altered to reflect the shift. While this approach is a departure from the current rules used to classify interest, it has the advantage that it may be simpler to administer We invite comments on this formula or other formula approaches that may be appropriate.

We note that we are in the process of collecting information on interest expense on funds borrowed for capital assets and information on gross book values for plant/fixed equipment and moveable equipment in order to recalculate the Federal capital rates if the fixed formula approach is to be utilized.

- Modifications of current guidelines

Since close attention may not have been given to the allocation between interest for plant/fixed equipment and interest for moveable equipment, we are soliciting suggestions from the public for simplifying administration of the current system. For example, the current policy procedures for allocating interest could be simplified by applying proceeds from a bond to the first capital items purchased after the bond is obtained. More specifically, if bond revenues were

available for more than one project, proceeds from the bond would be allocated to the capital assets purchased by the hospital in the order the assets were acquired. We would use hospital purchase records to identify the plant/fixed equipment and moveable equipment assets necessary to make the proper allocation. With this approach ("first-in, first-assigned"), we would eliminate the need for allocating commingled assets based on their gross book or fair market values.

*b. Treatment of Interest Income from Funded Depreciation.* In the June 1986 NPRM, we proposed to adjust the Federal capital rates to reflect an offset to interest expense for income earned on funded depreciation accounts. To minimize the disruption in a hospital's cash flow during the initial part of the transition period, we are proposing not to offset the interest expense for income earned on funded depreciation. We will, however, continue to examine the appropriateness of the funded depreciation offset.

9. Revaluation of Assets

Under section 1861(v)(1) of the Act, for hospital acquisitions which involve revaluation of assets, the new depreciation value of the purchased asset is limited to the lesser of the purchase price or original book value of the asset. When the sale price of the asset exceeds the net book value, Medicare recaptures its proportion of previous depreciation payments from the seller.

Under the proposed rule, fixed and moveable capital expenses would be phased-in using different transition schedules. For fixed assets, the amount of the capital-related expenses after adjustments for gains and losses due to changes of ownership would be equal to the percentage of fixed assets (as provided in the proposed transition period) that are subject to the hospital-specific portion of capital related costs. Similarly, for moveable assets, the capital related expenses after adjustment for gains and losses due to changes of ownership would be the percentage of moveable equipment (as provided in the proposed transition period) subject to the hospital-specific capital-related payment.

10. Hospitals and Units Not Subject to the Prospective Payment System

Capital-related costs for hospitals and units excluded from the prospective payment system would continue to be paid on a reasonable cost basis for future periods as described above and in the June 1986 NPRM (51 FR 19979).

## VI. April 1, 1987 ProPAC Recommendations

In its April 1, 1987 Report to the Secretary (to be included as Appendix C in a separate proposed rule regarding changes to the inpatient hospital prospective payment system to be published shortly in the Federal Register), ProPAC made further recommendations related to the incorporation of capital-related costs into the prospective payment system. The recommendations on capital, and the actions we are proposing to take with regard to them (when an action is required), are discussed below.

### *A. All-Inclusive Rate (Recommendation 7)*

*Recommendation:* ProPAC recommends that the Secretary should initiate a transition to a new capital payment method beginning in FY 1988. This method should combine inpatient operating and capital cost components in a single prospective payment per case.

*Response:* We agree that a transition to a new capital payment method for inpatient hospital services should be initiated in the Medicare program beginning in Federal FY 1988. Although we would prefer that the new method combine inpatient operating and capital payments into a single prospective payment per case, this result cannot be attained due to the special treatment that must be accorded in computing capital payments that is not applicable to other inpatient operating costs. These factors include the distinction between plant/fixed equipment expenses and moveable equipment expenses, application of an area construction cost index, updating factor differences between operating and capital cost components, budget neutrality adjustments required by law, and the necessity to blend the capital rates with the hospital-specific payment during the transition period.

### *B. Level of Federal Capital Payment (Recommendation 8)*

*Recommendation:* ProPAC recommends that capital payments should be added to the Federal portion of prospective payments for hospital cost reporting years beginning in FY 1988 at a spending level to be consistent with that established by section 9303(a) of Pub L. 99–509 (budget neutrality provisions) and that the level for FYs 1988 and 1989 should be based on official Medicare inpatient capital spending projections in FY 1987. The projections should include all capital components as presently determined on a reasonable cost basis.

*Response:* We concur with this recommendation that capital payments under the prospective payment system be set at a spending level that is consistent with the budget neutrality requirements of section 1886(g)(3) of the Act, as amended by section 9303(a) of Pub. L. 99–509 That section provides that if capital payments are incorporated into the prospective payment system, the aggregate payments made under such a system must approximate the payments in Federal FYs 1988 and 1989 that would have been made under the reasonable cost reimbursement rules, subject to the seven percent and ten percent reductions applicable to capital-related costs in FYs 1988 and 1989, respectively. The Federal prospective capital payment rates will be budget neutral to the spending levels established under section 9303(a) of Pub. L. 99–509 as discussed elsewhere in this document. During the transition period, the hospital-specific portion would be determined based on the actual reasonable cost of all components of capital-related costs on a reasonable cost basis and would be fully adjusted pursuant to section 1886(g)(3) of the Act.

### *C. Capital Payment Transition (Recommendation 9)*

*Recommendation:* ProPAC recommends that the transition to Federal capital payments under the prospective payment system should begin in FY 1988 in the following manner:

- Payments for fixed capital should be phased in over a ten year period on a straight-line basis.
- Payments for moveable capital should be phased in over a three-year period on a straight-line basis.
- Hospital-specific fixed and moveable capital payment portions should be based on the actual capital costs incurred during each year of the transition.

*Response:* Our proposal to incorporate capital payments for inpatient hospital services conforms generally to the ProPAC recommendations for the structure of the transition period except for their recommendation on the phasing-in of plant/fixed equipment on a straight-line basis. We would phase-in the standardized rates covering plant and fixed equipment with a blending schedule that weighs the proportion paid on the basis of hospitals' actual allowable capital-related costs more heavily in the early years of transition than a straight-line declining proportion would allow. We are proposing these

higher hospital-specific blend percentages in the early phase-in years to allow hospitals more flexibility to modify their capital expense obligations. As noted below, we are responding to similar concerns expressed by comment on the June 1986 NPRM.

*D. Institutional Neutrality (Recommendation 10)*

*Recommendation:* Until the start of the transition to an all-inclusive prospective payment rate, the Secretary should provide supplemental payments to hospitals that have contracts with other facilities for capital costs incurred at such other facilities (for example, other hospitals, clinics, and so forth). These costs are not currently paid under Medicare.

*Response:* In light of the "rebundling" provisions under sections 1862(a)(14) and 1861(w)(1) of the Act, as amended by sections 602 (e) and (h) of Pub. L. 98–21, we are not accepting ProPAC's recommendation. These sections require that all nonphysician services and items for hospital inpatients must be furnished by hospitals either directly or under arrangement. (Arrangement is limited to arrangements under which receipt of payment by the hospital, with respect to services for which an individual is entitled to have payment made by Medicare, discharges the liability of such individual or any other person to pay for the services.) Thus, hospitals bear the financial liability for all items and services furnished under arrangements provided to their inpatients. (We note that section 9343(c)(1) of Pub. L. 99–509 further amended section 1862(a)(14) of the Act to extend the rebundling provisions to outpatient services.)

In the development of the prospective payment rates for inpatient operating services, the rates were adjusted to account for items and services that were not previously the financial liability of the hospital. The adjustment was based on 1980 and 1981 charge data related to inpatient services previously billed under Part B of Medicare. No distinction was made in this adjustment between operating and capital costs of such items and services as the costs of purchased services has historically been defined and treated as operating costs. Therefore, the Federal standardized amounts for inpatient operating services already reflect an estimate of the full costs, including capital-related costs, of items and services furnished by outside suppliers or institutions. As a result, we believe that there is no need to make supplemental payments for capital-related costs to any outside suppliers or institutions since such costs have been reflected in the rates.

*E. Capital Exceptions Process (Recommendation 11)*

*Recommendation:* ProPAC recommends that the Secretary should develop an exceptions policy to assist hospitals that are vulnerable to financial hardship when capital payment is included under the prospective payment system. Hospital eligibility criteria should emphasize the goal of ensuring the continued access of Medicare beneficiaries to high-quality hospital services. The exceptions policy should not be used to protect hospitals simply because they are in financial difficulty. Therefore, a limited dollar pool should be made available with strict criteria to be used in determining which hospitals would be eligible for a capital payment adjustment.

*Response:* Although ProPAC recommends that an exceptions policy be established as capital payments are incorporated into the prospective payment system, we believe the cost outlier portion of the proposed capital policy obviates the need for a distinct exceptions approach in this proposed rule for the reasons discussed below. We would, of course, evaluate the impact of any new capital payment system that we implement to determine whether such a modification should be added to the program. Moreover, since our proposal is weighted heavily toward the hospital-specific portion of the blended rate during the early transition years (as the bulk of the capital payment), the possibility for financial hardship as a result of the new capital payment policy would be substantially reduced. We would consider adopting a distinct exceptions policy, as necessary, if, during the transition years, the standardized capital payments cause financial difficulties for hospitals that result in reduced access to high-quality hospital services for Medicare beneficiaries.

One of the most prevalent concerns expressed in communications received from public and private sources is the need to address the nature of long-term debt for plant and high-cost fixed equipment. The chief criticism of the transition period and hospital-specific portions of the June 1986 NPRM was that they gave inadequate attention to the long-term nature of such capital costs, and that they did not exhibit sensitivity to dealing with "old capital" as opposed to future capital expenditures; that is, the high outstanding debt of some hospitals that had invested in significant plant renovation or replacement. In order to lessen the need for special provisions (for example, an exceptions process) for seriously impacted hospitals, we are proposing to split the incorporation of moveable equipment from that of plant/fixed equipment during the phase-in of prospective capital payments in the manner discussed above. We believe that this recognizes the need to treat long term "old capital" in a special manner that takes into consideration a hospital's cash flow situation from previously committed obligations. We agree that prospective capital payments can be applied more readily by hospitals when "new capital" expenditures are being considered in light of the standardized payment levels available, but that this may not have occurred when, prior to this proposed rule, hospital managers had decided whether to increase routine expense or capitalize for future services. In addition, since moveable equipment has a shorter lifespan than plant/fixed equipment, we believe that a shorter transition period is appropriate for moveable equipment, and therefore, we are proposing a two year transition period for that component of capital costs.

## VII. Other Required Information

*A. Impact Statement*

See Appendix D for the Regulatory Impact Analysis.

*B. Paperwork Reduction Act*

Section 412.65(b) of this rule contains information collection requirements subject to approval by the Executive Office of Management and Budget under section 3507 of the Paperwork Reduction Act (44 U.S.C. 3507). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB New Executive Office Building (Room 3208), Washington, DC, 20503, Attn: Desk Officer for HCFA.

**List of Subjects in 42 CFR Part 412**

Health facilities, Medicare.

42 CFR Chapter IV is amended as follows:

**CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**SUBCHAPTER B—MEDICARE PROGRAMS**

**PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES**

I. Part 412 is amended as follows:

A. The authority citation for Part 412 continues to read as follows:

**Authority:** Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww).

B. The Table of Contents of Part 412 is amended by adding the titles of new §§ 412.65 through 412.67 to Subpart D, and by adding Subpart K consisting of § 412.214 to read as follows:

**Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates**

Sec.

* * * * *

412.65 Incorporation of capital payments into the prospective payment system.
412.66 Federal capital-related rates beginning during and after Federal fiscal year 1988.
412.67 Phase-in period and methodology for capital payments.

* * * * *

**Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico**

Sec.
412.214 Capital payments.

C. Subpart A is amended as follows:

**Subpart A—General Provisions**

1. Section 412.1 is amended by revising paragraph (a) to read as follows:

**§ 412.1 Scope of part.**

(a) *Purpose.* This part implements section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital-related costs for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and, for cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, the costs of qualified nonphysician anesthetists' services) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

2. In section 412.2, the introductory language of paragraphs (c) and (d) is republished; a new paragraph (c)(5) is added; and paragraph (d)(1) is revised to read as follows:

**§ 412.2 Basis of payment.**

* * * * *

(c) *Inpatient operating costs.* The prospective payment system provides a payment amount for inpatient operating costs, including—

* * * * *

(5) For cost reporting periods beginning on or after October 1, 1987, capital-related costs as described in Subpart D of this part.

(d) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

(1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987, capital-related costs as described in § 413.130 of this chapter; and an allowance for return on equity, as described in § 413.157 of this chapter.

* * * * *

D. Subpart D is amended as follows:

**Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates**

1. Section 412.63 is amended by revising paragraph (a)(1) to read as follows:

**§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.**

(a) *General rule.* (1) HCFA determines a national adjusted prospective payment rate for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 (including an additional payment, effective with cost reporting periods beginning on or after October 1, 1987, for the incorporation of capital payments as described in § 412.64) involving inpatient hospital services of a hospital in the United States subject to the prospective payment system, and determines a regional adjusted prospective payment rate for such discharges in each region, for which payment may be made under Medicare Part A.

* * * * *

2. New §§ 412.65 through 412.67 are added to read as follows:

**§ 412.65 Incorporation of capital payments into the prospective payment system.**

(a) *General rule.* As described in §§ 412.66 and 412.67, effective with cost reporting periods beginning on or after October 1, 1987, HCFA pays an amount for capital-related costs for each inpatient hospital discharge, in addition to the Federal rates as determined under § 412.63.

(b) *Cost reporting periods beginning on or after October 1, 1987 through September 30, 1997.* For cost reporting periods beginning during the period October 1, 1987 through September 30, 1997, the capital payment amount is based on a combination of a hospital-specific capital-related portion and a Federal capital-related rate as determined under §§ 412.66 and 412.67.

(c) *Cost reporting periods beginning after the transition periods end.* For cost reporting periods beginning on or after October 1, 1997, the capital payment amount for moveable equipment is based solely on a Federal capital-related rate as determined under § 412.66(h). For cost reporting periods beginning on or after October 1, 1997, the capital payment amount for plant and fixed equipment is based solely on a Federal capital-related payment as determined under § 412.66(h).

**§ 412.66 Federal capital-related rates beginning during and after Federal fiscal year 1988.**

(a) *Determining allowable base-year capital-related costs.* HCFA determines the Federal capital-related rate on the basis of hospitals Medicare capital-related costs per discharge, as described in § 413.130 of this chapter, using hospital cost reports from fiscal year 1984 for hospitals in the fifty States and the District of Columbia subject to the prospective payment system, and from short-term acute care hospitals in Puerto Rico.

(b) *Separating moveable equipment from plant and fixed equipment.* For purposes of the phase-in period, as described in § 412.67, HCFA separates portions of each hospital's inpatient capital-related costs determined under paragraph (a) of this section that are attributable to moveable equipment from those portions attributable to plant/fixed equipment.

(c) *Standardizing the amounts.* (1) HCFA standardizes each portion of plant/fixed equipment and of moveable equipment, determined under paragraph (b) of this section for each hospital as follows:

(i) For both moveable equipment and plant/fixed equipment, by—

(A) Adjusting for resource intensity in case mix among hospitals;

(B) Excluding an estimated amount of indirect medical education payments;

(C) Excluding an estimated amount of the payments for hospitals that serve a disproportionate share of low-income patients; and

(D) Adjusting for the reductions to capital-related payments under § 413.64(k)(6) of this chapter.

(ii) For moveable equipment, by adjusting for the effects of higher cost of living payments to hospitals located in Alaska and Hawaii.

(iii) For plant/fixed equipment, by adjusting for the effects of a capital construction cost index.

(2) Based on the standardizations calculated in paragraphs (c)(1)(i) through (c)(1)(iii) of this section, HCFA determines standardized rates for plant/fixed equipment and for moveable equipment, for hospitals in the fifty States and the District of Columbia subject to the prospective payment system, and for hospitals in Puerto Rico subject to the prospective payment system.

(d) *Updating the capital-related costs.* HCFA updates each hospital's adjusted plant/fixed and moveable costs per case determined under paragraph (c) of this section by—

(1) Updating from fiscal year 1984 through fiscal year 1987 using estimated increases in actual capital costs per case;

(2) Updating for fiscal years 1988 and 1989 using the respective annual estimated increase in actual capital costs per case, as adjusted in accordance with § 413.64(k)(6); and

(3) Projecting for fiscal year 1990 onward the applicable percentage change under § 412.63(e).

(e) *Computing urban and rural averages.* HCFA computes a discharge-weighted average of the standardized amounts determined under paragraph (d) of this section for all urban hospitals and for all rural hospitals, as defined in § 412.62(f), in the fifty States and the District of Columbia, and for urban hospitals and rural hospitals in Puerto Rico. HCFA also computes a discharge-weighted average of the urban capital payment rate and the rural capital payment rate for hospitals in Puerto Rico.

(f) *Reducing for value of outlier payments.* HCFA reduces each of the average standardized amounts determined under paragraph (e) of this section by the proportion (estimated by HCFA) of the amount of payments that, based on the total amount of the Federal capital-related payments for urban hospitals and the total amount of the Federal capital-related payments for rural hospitals, are additional payments for outlier cases, as provided under Subpart F of this part.

(g) *Application of blending percentages during the phase-in period.* For cost reporting periods beginning during the period October 1, 1987 through September 30, 1997, the amounts for plant/fixed equipment and for moveable equipment determined separately under paragraphs (b) through (f) of this section are multiplied by the appropriate phase-in period percentages, respectively, as described in § 412.67(b).

(h) *Federal capital-related payment.* (1) Except for sole community hospitals as described in paragraph (h)(2) of this section, the Federal capital-related payment equals the product of—

(i) The national capital-related rates as determined under paragraphs (a) through (g) of this section and § 412.67(b) including an adjustment to the plant/fixed equipment standardized amounts for the construction cost index and an adjustment to the moveable equipment standardized amounts for the higher cost of living for hospitals located in Alaska and Hawaii; and

(ii) The DRG weighting factor determined under § 412.60(b) for each discharge.

(2) For cost reporting periods beginning before October 1, 1990, sole community hospitals are paid on a reasonable cost basis, as provided under Part 413 of this chapter, for their capital related costs.

(i) *Additional capital-related payments.* HCFA makes additional capital-related payments to hospitals—

(1) That serve a disproportionate share of low-income patients, as described in § 412.106; and

(2) For indirect medical education costs, as described in § 412.118.

**§ 412.67 Phase-in period and methodology for capital payments.**

(a) *Phase-in period.* Except for new hospitals and sole community hospitals as described in paragraphs (e) and (f) of this section respectively, inclusion of payments for capital for plant/fixed equipment and for moveable equipment in the prospective payment rates is to be phased-in over a ten-year period and a two-year period, respectively, as described in paragraph (b) of this section. During this period, the capital payment amount is based on a combination of a hospital-specific capital-related portion and a Federal capital-related rate as determined in § 412.66. At the end of the transition periods (that is, for discharges occurring in a cost reporting period beginning on or after October 1, 1989, for moveable equipment, and on or after October 1, 1997, for plant and fixed equipment), payment amounts are based entirely on a Federal capital-related rate.

(b) *Blended percentages for capital-related rates.* The blends of the hospital-specific capital-related portions and the Federal capital-related rates, for plant/fixed equipment and for moveable equipment, are described in the following tables:

TABLE.—HOSPITAL-SPECIFIC AND FEDERAL RATE PERCENTAGES FOR DETERMINING PHASE-IN PERIOD CAPITAL-RELATED RATES FOR PLANT AND FIXED EQUIPMENT

| Cost reporting related period beginning on or after | Hospital-specific capital-related percentage | Federal capital-related percentage |
|---|---|---|
| Oct. 1, 1987 | 95 | 5 |
| Oct. 1, 1988 | 90 | 10 |
| Oct. 1, 1989 | 85 | 15 |
| Oct. 1, 1990 | 80 | 20 |
| Oct. 1, 1991 | 75 | 25 |
| Oct. 1, 1992 | 70 | 30 |
| Oct. 1, 1993 | 60 | 40 |
| Oct. 1, 1994 | 50 | 50 |
| Oct. 1, 1995 | 35 | 65 |
| Oct. 1, 1996 | 20 | 80 |
| Oct. 1, 1997 | | 100 |

TABLE.—HOSPITAL-SPECIFIC AND FEDERAL RATE PERCENTAGES FOR DETERMINING PHASE-IN PERIOD CAPITAL-RELATED RATES FOR MOVEABLE EQUIPMENT

| Cost reporting period beginning on or after | Hospital-specific capital-related percentage | Federal capital-related percentage |
|---|---|---|
| Oct. 1, 1987 | 67 | 33 |
| Oct. 1, 1988 | 33 | 67 |
| Oct. 1, 1989 | | 100 |

(c) *Hospital-specific capital-related portion.* The hospital-specific capital-related portion is the hospital's actual allowable Medicare inpatient hospital costs attributed to plant/fixed equipment and to moveable equipment, determined separately, for the applicable phase-in year multiplied by the appropriate phase-in period percentages described in paragraph (b) of this section.

(d) *Classification of capital assets as plant/fixed or moveable equipment*—(1) *General rule.* For purposes of receiving payment for capital expenditures under the prospective payment system, hospitals must classify their capital assets as plant/fixed equipment or as moveable equipment as specified in this paragraph.

(2) *Procedure for classifying assets.* (i) HCFA establishes a list under which HCFA assigns capital-related assets to a plant/fixed equipment category or a moveable equipment category and

updates the list periodically as necessary in notices published in the Federal Register.

(ii) Capital-related assets not specified on the list are assigned to the plant/fixed or moveable equipment categories under the definitions provided in paragraph (d)(3) of this section.

(3) *Definitions.* The following definitions apply for purposes of classifying assets not specified on the HCFA list.

(i) "Plant/fixed equipment" means—

(A) A building, which includes, in a restrictive sense, the basic structure or shell and additions thereto (with the remainder being identified as building equipment); and

(B) Building equipment, the general characteristics of which are that it is affixed to the building, and not subject to transfer; and that it has a fairly long useful life, but one that is shorter than the useful life of the building to which it is affixed.

(ii) "Moveable equipment" means equipment that has the following general characteristics:

(A) A relatively fixed location in the building;

(B) Capability of being moved as distinguished from building equipment;

(C) A unit cost sufficient to justify ledger control;

(D) Sufficient size and identity to make control feasible by means of identification tags; and

(E) A minimum useful life of approximately three years.

(e) *Payment rate for newly-participating hospitals.* (1) If a hospital meets the criteria in paragraph (e)(2) or (e)(3) of this section, it is paid on the basis of the Federal capital-related portion, as determined in § 412.66, and the hospital-specific capital-related portion, as determined in paragraph (c) of this section, using the blending percentages applicable for the Federal fiscal year in which it initially participates in the Medicare program.

(2) The hospital—

(i) Is newly participating in the Medicare program (under previous and present ownership); and

(ii) Does not have a 12-month cost reporting period ending on or before September 30, 1987.

(3) The hospital is under new ownership and documents to the satisfaction of its intermediary that the ownership and occupancy rate requirements described in § 412.74(a)(2) are met.

(f) *Payment rate for sole community hospitals.* For cost reporting periods beginning before October 1, 1990, a hospital that meets the criteria in § 412.92(a) for classification as a sole community hospital is paid on a reasonable cost basis, as provided under Part 413 of this chapter, for its capital-related costs.

E. Subpart F is amended as follows:

**Subpart F—Payment for Outlier Cases**

1. In § 412.82, paragraph (c) is revised to read as follows:

**§ 412.82 Payment for extended length-of-stay cases (day outliers).**

* * * * *

(c) The per diem payment made under paragraph (a) of this section is derived by first taking 60 percent of the average per diem payment for the applicable DRG, as calculated by dividing the Federal prospective payment rates (noncapital-related, and effective with cost reporting periods beginning on or after October 1, 1987, capital-related) determined under Subpart D of this part by the geometric mean length-of-stay for that DRG. The resulting amounts are then multiplied by the applicable Federal portions (capital-related and noncapital-related) of the blend as follows:

FEDERAL NONCAPITAL-RELATED PORTIONS

| Cost reporting periods beginning on or after | Federal portion (percent) |
|---|---|
| October 1, 1983 | 25 |
| October 1, 1984 | 50 |
| October 1, 1985 | |
| The first seven months of the cost reporting period | 50 |
| The remaining five months of the cost reporting period | 55 |
| October 1, 1986 | 75 |
| October 1, 1987 | 100 |

FEDERAL CAPITAL-RELATED PORTIONS

| Cost reporting periods beginning on or after | Plant and fixed equipment (percent) | Moveable equipment (percent) |
|---|---|---|
| Oct. 1, 1987 | 5 | 30 |
| Oct. 1, 1988 | 10 | 57 |
| Oct. 1, 1989 | 15 | 100 |
| Oct. 1, 1990 | 20 | 100 |
| Oct. 1, 1991 | 25 | 100 |
| Oct. 1, 1992 | 30 | 100 |
| Oct. 1, 1993 | 40 | 100 |
| Oct. 1, 1994 | 50 | 100 |
| Oct. 1, 1995 | 65 | 100 |
| Oct. 1, 1996 | 80 | 100 |
| Oct. 1, 1997 | 100 | 100 |

* * * * *

2. In § 412.84, paragraph (i) is revised to read as follows:

**§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).**

* * * * *

(i) The additional payment amount is derived by first taking 60 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (g) of this section) and the threshold criteria established under § 412.80(a)(2). The resulting amounts are then multiplied by the applicable Federal portions (noncapital-related, and effective with cost reporting periods beginning on or after October 1, 1987, capital-related) of the blend as indicated in § 412.82(c).

F. Subpart G is amended as follows:

**Subpart G—Special Treatment of Certain Facilities**

1. In § 412.92, paragraph (d) is revised to read as follows:

**§ 412.92 Special treatment: Sole community hospitals.**

* * * * *

(d) *Determining prospective payment rates for sole community hospitals.* For all cost reporting periods beginning on or after October 1, 1983, the prospective payment rates for sole community hospitals equal the sum total of the following payment rates:

(1) 75 percent of the hospital-specific base payment rate as determined under § 412.73;

(2) 25 percent of the appropriate regional prospective payment rate as determined under Subpart D of this part; and

(3) The capital-related payment as determined under § 412.67(f).

* * * * *

2. In § 412.96, paragraphs (d) and (e) are revised to read as follows:

**§ 412.96 Special treatment: Referral centers.**

* * * * *

(d) *Payment to rural referral centers with 500 or more beds.* A hospital that meets the criteria of § 412.96(b)(1) is paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 412.62(j) or § 412.63(f), as adjusted by the hospital's area wage index, and § 412.66(h), as adjusted by the capital construction cost index adopted by HCFA and applicable to the hospital.

(e) *Payment to all other rural referral centers.* For cost reporting periods beginning on or after October 1, 1984, a hospital that is located in a rural area and meets the criteria of § 412.96(b)(2) or (c) is paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 412.62(j) or § 412.63(f), as adjusted by the hospital's

area wage index, and § 412.66(h), as adjusted by the capital construction cost index adopted by HCFA and applicable to the hospital.

G. Subpart H is amended as follows:

**Subpart H—Payments to Hospitals Under the Prospective Payment System**

1. Section § 412.113 is amended by revising paragraph (a) to read as follows:

**§ 412.113 Payments determined on a reasonable cost basis.**

(a) *Capital-related costs.* Payment for capital-related costs (as described in § 413.130 of this chapter) is determined on a reasonable cost basis for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987. During that period, the capital-related costs for each hospital must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the hospital's prospective payment rate under §§ 412.70 through 412.73. For cost reporting periods beginning on or after October 1, 1987, capital-related costs are paid on a prospective basis as described in §§ 412.65 through 412.67.

* * * * *

2. In section 412.125, the introductory language of the section is republished and paragraph (b) is revised to read as follows:

**§ 412.125 Effect of change of ownership on payments under the prospective payment system.**

When a hospital's ownership changes, as described in § 489.18 of this chapter, the following rules apply:

* * * * *

(b) Payment for capital-related costs (for reporting periods beginning before October 1, 1987) and bad debts, as described in §§ 412.113(a) and 412.115(a), respectively, is made to each owner or operator of the hospital (buyer and seller) in accordance with the principles of reasonable cost reimbursement.

H. Subpart K consisting of § 412.214, is added to read as follows:

**Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico**

* * * * *

**§ 412.214 Capital payments.**

Subject to the blending percentages for the Federal rates described in § 412.204, capital payments for hospitals located in Puerto Rico are determined in the same manner, as described in §§ 412.65 through 412.67, as for other hospitals subject to the prospective payment system.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance Program)

Dated: April 30, 1987.
**William L. Roper,**
*Administrator, Health Care Financing Administration.*
Approved: May 1, 1987.
**Otis R. Bowen,**
*Secretary.*

## Appendix A—Federal Capital-Related Rates[1]

TABLE 1—FIFTY STATES AND DISTRICT OF COLUMBIA

| Plant/fixed equipment | | Movable equipment | |
|---|---|---|---|
| Urban | Rural | Urban | Rural |
| 171.83 | 160.50 | 106.53 | 97.11 |

TABLE 2—PUERTO RICO [1]

| | Plant/fixed equipment | | | Movable equipment | |
|---|---|---|---|---|---|
| | Urban | | Rural | Urban | Rural |
| Puerto Rico | 137.38 | | 139.71 | 46.92 | 7.72 |
| National | | 168.97 | | 103.08 | |

[1] For hospitals located in Puerto Rico, the Federal rate is comprised of 75 percent of the Puerto Rico-specific adjusted capital prospective payment rate and 25 percent of the discharge-weighted average of the national urban and rural adjusted capital prospective payment rates.

## Appendix B—Construction Cost Indexes

*Table I—Construction Cost Index for Urban Areas*

| Urban area (constituent counties or county equivalents) | Construction cost index |
|---|---|
| Abilene, TX | .899 |
| Taylor, TX | |
| Akron, OH | 1.053 |
| Portage, OH | |
| Summit, OH | |
| Albany, GA | .814 |
| Dougherty, GA | |
| Lee, GA | |
| Albany-Schenectady-Troy, NY | 1.190 |
| Albany, NY | |
| Greene, NY | |
| Montgomery, NY | |
| Rensselaer, NY | |
| Saratoga, NY | |
| Schenectady, NY | |
| Albuquerque, NM | .967 |
| Bernalillo, NM | |
| Alexandria, LA | 1.049 |
| Rapides, LA | |
| Allentown-Bethlehem, PA-NJ | 1.114 |
| Warren, NJ | |
| Carbon, PA | |
| Lehigh, PA | |
| Northampton, PA | |
| Altoona, PA | 1.464 |
| Blair, PA | |
| Amarillo, TX | .917 |
| Potter, TX | |
| Randall, TX | |
| Anaheim-Santa Ana-Garden Grove, CA | .985 |
| Orange, CA | |
| Anchorage, AK | 1.717 |
| Anchorage, AK | |
| Anderson, IN | .921 |
| Madison, IN | |
| Anderson, SC | .800 |
| Anderson, SC | |
| Ann Arbor, MI | 1.166 |
| Washtenaw, MI | |
| Anniston, AL | .830 |
| Calhoun, AL | |
| Appleton-Oshkosh, WI | .925 |
| Calumet, WI | |
| Outagamie, WI | |
| Winnebago, WI | |
| Asheville, NC | .927 |
| Buncombe, NC | |
| Athens, GA | .879 |
| Clarke, GA | |
| Jackson, GA | |
| Madison, GA | |

[1] The rates reflect the reduction for capital-related costs of seven percent for cost reporting periods or discharges (as the case may be) occurring during FY 1986, as required under section 1886(g)(3)(A)(ii) of the Act, and an offset for budget neutrality as required under section 1886(g)(3)(C)(ii) of the Act for cost reporting periods occurring during FY 1986

| Urban area (constituent counties or county equivalents) | Construction cost index |
|---|---|
| Oconee, GA | |
| Atlanta, GA | .844 |
| Barrow, GA | |
| Butts, GA | |
| Cherokee, GA | |
| Clayton, GA | |
| Cobb, GA | |
| Coweta, GA | |
| De Kalb, GA | |
| Douglas, GA | |
| Fayette, GA | |
| Forsyth, GA | |
| Fulton, GA | |
| Gwinnett, GA | |
| Henry, GA | |
| Newton, GA | |
| Paulding, GA | |
| Rockdale, GA | |
| Spalding, GA | |
| Walton, GA | |
| Atlantic City, NJ | 1.188 |
| Atlantic, NJ | |
| Cape May, NJ | |
| Augusta, GA-SC | .830 |
| Columbia, GA | |
| McDuffie, GA | |
| Richmond, GA | |
| Aiken, SC | |
| Aurora-Elgin, IL | .917 |
| Kane, IL | |
| Kendall, IL | |
| Austin, TX | .888 |
| Hays, TX | |
| Travis, TX | |
| Williamson, TX | |
| Bakersfield, CA | 1.062 |
| Kern, CA | |
| Baltimore, MD | 1.125 |
| Anne Arundel, MD | |
| Baltimore, MD | |
| Baltimore City, MD | |
| Carroll, MD | |
| Harford, MD | |
| Howard, MD | |
| Queen Annes, MD | |
| Bangor, ME | 1.067 |
| Penobscot, ME | |
| Baton Rouge, LA | .924 |
| Ascension, LA | |
| East Baton Rouge, LA | |
| Livingston, LA | |
| West Baton Rouge, LA | |
| Battle Creek, MI | .985 |
| Calhoun, MI | |
| Beaumont-Port Arthur-Orange, TX | .900 |
| Hardin, TX | |
| Jefferson, TX | |
| Orange, TX | |
| Beaver County, PA | 1.356 |
| Beaver, PA | |
| Bellingham, WA | 1.029 |
| Whatcom, WA | |
| Benton Harbor, MI | 1.002 |
| Berrien, MI | |
| Bergen-Passaic, NJ | 1.353 |
| Bergen, NJ | |
| Passaic, NJ | |
| Billings, MT | 1.056 |
| Yellowstone, MT | |
| Biloxi-Gulfport, MS | .956 |
| Hancock, MS | |
| Harrison, MS | |
| Binghamton, NY-PA | 1.259 |
| Broome, NY | |
| Tioga, NY | |
| Birmingham, AL | .878 |
| Blount, AL | |
| Jefferson, AL | |
| Saint Clair, AL | |
| Shelby, AL | |
| Walker, AL | |
| Bismarck, ND | .957 |
| Burleigh, ND | |
| Morton, ND | |
| Bloomington, IN | 1.398 |
| Monroe, IN | |
| Bloomington-Normal, IL | .970 |
| McLean, IL | |
| Boise City, ID | .793 |
| Ada, ID | |
| Boston, MA | 1.338 |
| Essex, MA | |
| Middlesex, MA | |
| Norfolk, MA | |
| Plymouth, MA | |
| Suffolk, MA | |
| Boulder-Longmont, CO | .882 |
| Boulder, CO | |
| Bradenton, FL | .760 |
| Manatee, FL | |
| Brazoria, TX | .832 |
| Brazoria, TX | |
| Bremerton, WA | 1.069 |
| Kitsap, WA | |
| Bridgeport, CT | 1.290 |
| Fairfield, CT | |
| Brownsville-Harlingen-San Benito, TX | .739 |
| Cameron, TX | |
| Bryan-College Station, TX | 1.012 |
| Brazos, TX | |
| Buffalo, NY | 1.352 |
| Erie, NY | |
| Burlington, NC | .824 |
| Alamance, NC | |
| Burlington, VT | .984 |
| Chittenden, VT | |
| Grand Isle, VT | |
| Canton, OH | .902 |
| Carroll, OH | |
| Stark, OH | |
| Casper, WY | .784 |
| Natrona, WY | |
| Cedar Rapids, IA | .858 |
| Linn, IA | |
| Champaign-Urbana-Rantoul, IL | 1.243 |
| Champaign, IL | |
| Charleston-North Charleston, SC | .921 |
| Berkeley, SC | |
| Charleston, SC | |
| Dorchester, SC | |
| Charleston, WV | 1.155 |
| Kanawha, WV | |
| Putnam, WV | |
| Charlotte-Gastonia, NC | .803 |
| Cabarrus, NC | |
| Gaston, NC | |
| Lincoln, NC | |
| Mecklenburg, NC | |
| Rowan, NC | |
| Union, NC | |
| York, SC | |
| Charlottesville, VA | 1.343 |
| Albermarle, VA | |
| Charlottesville City, VA | |
| Fluvanna, VA | |
| Greene, VA | |
| Chattanooga, TN-GA | .868 |
| Catoosa, GA | |
| Dade, GA | |
| Walker, GA | |
| Hamilton, TN | |
| Marion, TN | |
| Sequatchie, TN | |
| Cheyenne, WY | .976 |
| Laramie, WY | |
| Chicago, IL | 1.108 |
| Cook, IL | |
| Du Page, IL | |
| McHenry, IL | |
| Chico, CA | .970 |
| Butte, CA | |
| Cincinnati, OH-KY-IN | 1.039 |
| Dearborn, IN | |
| Boone, KY | |
| Campbell, KY | |
| Kenton, KY | |
| Clermont, OH | |
| Hamilton, OH | |
| Warren, OH | |
| Clarksville-Hopkinsville, TN-KY | .904 |
| Christian, KY | |
| Montgomery, TN | |
| Cleveland, OH | 1.190 |
| Cuyahoga, OH | |
| Geauga, OH | |
| Lake, OH | |
| Medina, OH | |
| Colorado Springs, CO | .947 |
| El Paso, CO | |
| Columbia, MO | 1.197 |
| Boone, MO | |
| Columbia, SC | .944 |
| Lexington, SC | |
| Richland, SC | |
| Columbus, GA-AL | .940 |
| Russell, AL | |
| Chattahoochee, GA | |
| Muscogee, GA | |
| Columbus, OH | .976 |
| Delaware, OH | |
| Fairfield, OH | |
| Franklin, OH | |
| Licking, OH | |
| Madison, OH | |
| Pickaway, OH | |
| Union, OH | |
| Corpus Christi, TX | .904 |
| Nueces, TX | |
| San Patricio, TX | |
| Cumberland, MD-WV | 1.183 |
| Allegany, MD | |
| Mineral, WV | |
| Dallas-Fort Worth, TX | .961 |
| Collin, TX | |
| Dallas, TX | |
| Denton, TX | |
| Ellis, TX | |
| Kaufman, TX | |
| Rockwall, TX | |

| Urban area (constituent counties or county equivalents) | Construction cost index |
|---|---|
| Danville, VA | .924 |
| Danville, VA | |
| Pittsylvania, VA | |
| Davenport-Rock Island-Moline, IA-IL | 1.016 |
| Scott, IA | |
| Henry, IL | |
| Rock Island, IL | |
| Dayton, OH | 1.081 |
| Clark, OH | |
| Greene, OH | |
| Miami, OH | |
| Montgomery, OH | |
| Daytona Beach, FL | .903 |
| Volusia, FL | |
| Decatur, IL | 1.111 |
| Macon, IL | |
| Denver-Boulder, CO | .932 |
| Adams, CO | |
| Arapahoe, CO | |
| Denver, CO | |
| Douglas, CO | |
| Jefferson, CO | |
| Des Moines, IA | 1.081 |
| Dallas, IA | |
| Polk, IA | |
| Warren, IA | |
| Detroit, MI | 1.135 |
| Lapeer, MI | |
| Livingston, MI | |
| Macomb, MI | |
| Monroe, MI | |
| Oakland, MI | |
| Saint Clair, MI | |
| Wayne, MI | |
| Dothan, AL | .805 |
| Dale, AL | |
| Houston, AL | |
| Dubuque, IA | .902 |
| Dubuque, IA | |
| Duluth-Superior, MN-WI | 1.063 |
| St. Louis, MN | |
| Douglas, WI | |
| Eau Claire, WI | .839 |
| Chappewa, WI | |
| Eau Claire, WI | |
| El Paso, TX | .858 |
| El Paso, TX | |
| Elkhart, IN | .959 |
| Elkhart, IN | |
| Elmira, NY | 1.121 |
| Chemung, NY | |
| Enid, OK | .955 |
| Garfield, OK | |
| Erie, PA | 1.223 |
| Erie, PA | |
| Eugene-Springfield, OR | 1.028 |
| Lane, OR | |
| Evansville, IN-KY | 1.081 |
| Posey, IN | |
| Vanderburgh, IN | |
| Warrick, IN | |
| Henderson, KY | |
| Fargo-Moorhead, ND-MN | .940 |
| Clay, MN | |
| Cass, ND | |
| Fayetteville, NC | .785 |
| Cumberland, NC | |
| Fayetteville-Springdale, AR | .947 |
| Washington, AR | |
| Flint, MI | .987 |
| Genesee, MI | |
| Shiawassee, MI | |
| Florence, AL | .861 |
| Colbert, AL | |
| Lauderdale, AL | |
| Florence, SC | .840 |
| Florence, SC | |
| Fort Collins, CO | .926 |
| Larimor, CO | |
| Fort Lauderdale-Hollywood, FL | .878 |
| Broward, FL | |
| Fort Myers, FL | .761 |
| Lee, FL | |
| Fort Pierce, FL | .900 |
| Martin, FL | |
| St. Lucie, FL | |
| Fort Smith, AR-OK | .770 |
| Crawford, AR | |
| Sebastian, AR | |
| Sequoyah, OK | |
| Fort Walton Beach, FL | 1.008 |
| Okaloosa, FL | |
| Fort Wayne, IN | .964 |
| Allen, IN | |
| De Kalb, IN | |
| Whitley, IN | |
| Fort Worth-Arlington, TX | .883 |
| Johnson, TX | |
| Parker, TX | |
| Tarrant, TX | |
| Fresno, CA | 1.057 |
| Fresno, CA | |
| Gadsden, AL | .813 |
| Etowah, AL | |
| Gainesville, FL | .969 |
| Alachua, FL | |
| Bradford, FL | |
| Galveston-Texas City, TX | 1.047 |
| Galveston, TX | |
| Gary-Hammond-East Chicago, IN | 1.050 |
| Lake, IN | |
| Porter, IN | |
| Glens Falls, NY | 1.377 |
| Warren, NY | |
| Washington, NY | |
| Grand Forks, ND-MN | .943 |
| Grand Forks, ND | |
| Grand Rapids, MI | .912 |
| Kent, MI | |
| Ottawa, MI | |
| Great Falls, MT | 1.089 |
| Cascade, MT | |
| Greeley, CO | .880 |
| Weld, CO | |
| Green Bay, WI | .859 |
| Brown, WI | |
| Greensboro-Winston-Salem-High Point, NC | .850 |
| Davidson, NC | |
| Davie, NC | |
| Forsyth, NC | |
| Guilford, NC | |
| Randolph, NC | |
| Stokes, NC | |
| Yadkin, NC | |
| Greenville-Spartanburg, SC | .804 |
| Greenville, SC | |
| Pickens, SC | |
| Spartanburg, SC | |
| Hagerstown, MD | .968 |
| Washington, MD | |
| Hamilton-Middletown, OH | .937 |
| Butler, OH | |
| Harrisburg, PA | 1.109 |
| Cumberland, PA | |
| Dauphin, PA | |
| Lebanon, PA | |
| Perry, PA | |
| Hartford, CT | 1.220 |
| Hartford, CT | |
| Middlesex, CT | |
| Tolland, CT | |
| Hickory, NC | .826 |
| Alexander, NC | |
| Burke, NC | |
| Catawba, NC | |
| Honolulu, HI | 1.023 |
| Honolulu, HI | |
| Houma-Thibodaux, LA | 1.201 |
| Lafourche, LA | |
| Terrebonne, LA | |
| Houston, TX | .858 |
| Fort Bend, TX | |
| Harris, TX | |
| Liberty, TX | |
| Montgomery, TX | |
| Waller, TX | |
| Huntington-Ashland, WV-KY-OH | 1.029 |
| Boyd, KY | |
| Carter, KY | |
| Greenup, KY | |
| Lawrence, OH | |
| Cabell, WV | |
| Wayne, WV | |
| Huntsville, AL | .806 |
| Madison, AL | |
| Indianapolis, IN | .968 |
| Boone, IN | |
| Hamilton, IN | |
| Hancock, IN | |
| Hendricks, IN | |
| Johnson, IN | |
| Marion, IN | |
| Morgan, IN | |
| Shelby, IN | |
| Iowa City, IA | 1.070 |
| Johnson, IA | |
| Jackson, MI | 1.096 |
| Jackson, MI | |
| Jackson, MS | .930 |
| Hinds, MS | |
| Madison, MS | |
| Rankin, MS | |
| Jackson, TN | .937 |
| Madison, TN | |
| Jacksonville, FL | .874 |
| Clay, FL | |
| Duval, FL | |
| Nassau, FL | |
| St. Johns, FL | |
| Jacksonville, NC | 1.115 |
| Onslow, NC | |
| Janesville-Beloit, WI | .932 |
| Rock, WI | |
| Jersey City, NJ | 1.400 |
| Hudson, NJ | |

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| Urban area (constituent counties or county equivalents) | Construction cost index |
|---|---|
| Johnson City-Kingsport-Bristol, TN-VA | 1.004 |
| Carter, TN | |
| Hawkins, TN | |
| Sullivan, TN | |
| Unicoi, TN | |
| Washington, TN | |
| Bristol City, VA | |
| Scott, VA | |
| Washington, VA | |
| Johnstown, PA | 1.199 |
| Cambria, PA | |
| Somerset, PA | |
| Joliet, IL | .877 |
| Grundy, IL | |
| Will, IL | |
| Joplin, MO | .941 |
| Jasper, MO | |
| Newton, MO | |
| Kalamazoo, MI | 1.117 |
| Kalamazoo, MI | |
| Kankakee, IL | 1.119 |
| Kankakee, IL | |
| Kansas City, KS-MO | .913 |
| Johnson, KS | |
| Leavenworth, KS | |
| Miami, KS | |
| Wyandotte, KS | |
| Cass, MO | |
| Clay, MO | |
| Jackson, MO | |
| Lafayette, MO | |
| Platte, MO | |
| Ray, MO | |
| Kenosha, WI | .872 |
| Kenosha, WI | |
| Killeen-Temple, TX | .910 |
| Bell, TX | |
| Coryell, TX | |
| Knoxville, TN | .873 |
| Anderson, TN | |
| Blount, TN | |
| Grainger, TN | |
| Jefferson, TN | |
| Knox, TN | |
| Sevier, TN | |
| Union, TN | |
| Kokomo, IN | .885 |
| Howard, IN | |
| Tipton, IN | |
| LaCrosse, WI | .970 |
| LaCrosse, WI | |
| Lafayette, LA | .958 |
| Lafayette, LA | |
| St. Martin, LA | |
| Lafayette, IN | 1.116 |
| Tippecanoe, IN | |
| Lake Charles, LA | .929 |
| Calcasieu, LA | |
| Lake County, IL | 1.035 |
| Lake, IL | |
| Lakeland-Winter Haven, FL | .788 |
| Polk, FL | |
| Lancaster, PA | .977 |
| Lancaster, PA | |
| Lansing-East Lansing, MI | 1.108 |
| Clinton, MI | |
| Eaton, MI | |
| Ingham, MI | |
| Laredo, TX | .728 |
| Webb, TX | |
| Las Cruces, NM | .845 |
| Dona Ana, NM | |
| Las Vegas, NV | .949 |
| Clark, NV | |
| Lawrence, KS | 1.118 |
| Douglas, KS | |
| Lawton, OK | .997 |
| Comanche, OK | |
| Lewiston-Auburn, ME | .952 |
| Androscoggin, ME | |
| Lexington-Fayette, KY | 1.063 |
| Bourbon, KY | |
| Clark, KY | |
| Fayette, KY | |
| Jessamine, KY | |
| Scott, KY | |
| Woodford, KY | |
| Lima, OH | .943 |
| Allen, OH | |
| Auglaize, OH | |
| Lincoln, NE | 1.066 |
| Lancaster, NE | |
| Little Rock-North Little Rock, AR | .925 |
| Faulkner, AR | |
| Lonoke, AR | |
| Pulaski, AR | |
| Saline, AR | |
| Longview-Marshall, TX | .746 |
| Gregg, TX | |
| Harrison, TX | |
| Lorain-Elyria, OH | 1.048 |
| Lorain, OH | |
| Los Angeles-Long Beach, CA | 1.065 |
| Los Angeles, CA | |
| Louisville, KY-IN | .963 |
| Clark, IN | |
| Floyd, IN | |
| Harrison, IN | |
| Bullitt, KY | |
| Jefferson, KY | |
| Oldham, KY | |
| Shelby, KY | |
| Lubbock, TX | .911 |
| Lubbock, TX | |
| Lynchburg, VA | .900 |
| Amherst, VA | |
| Campbell, VA | |
| Lynchburg City, VA | |
| Macon-Warner Robins, GA | .809 |
| Bibb, GA | |
| Houston, GA | |
| Jones, GA | |
| Peach, GA | |
| Madison, WI | 1.044 |
| Dane, WI | |
| Manchester-Nashua, NH | 1.004 |
| Hillsborough, NH | |
| Mansfield, OH | .875 |
| Richland, OH | |
| McAllen-Edinburg-Mission, TX | .762 |
| Hidalgo, TX | |
| Medford, OR | .975 |
| Jackson, OR | |
| Melbourne-Titusville, FL | .839 |
| Brevard, FL | |
| Memphis, TN-AR-MS | .877 |
| Crittenden, AR | |
| De Soto, MS | |
| Shelby, TN | |
| Tipton, TN | |
| Merced, CA | 1.022 |
| Merced, CA | |
| Miami-Hialeah, FL | .961 |
| Dade, FL | |
| Middlesex-Somerset-Hunterdon, NJ | 1.191 |
| Hunterdon, NJ | |
| Middlesex, NJ | |
| Somerset, NJ | |
| Midland, TX | .862 |
| Midland, TX | |
| Milwaukee, WI | 1.069 |
| Milwaukee, WI | |
| Ozaukee, WI | |
| Washington, WI | |
| Waukesha, WI | |
| Minneapolis-St Paul, MN-WI | .943 |
| Anoka, MN | |
| Carver, MN | |
| Chisago, MN | |
| Dakota, MN | |
| Hennepin, MN | |
| Isanti, MN | |
| Ramsey, MN | |
| Scott, MN | |
| Washington, MN | |
| Wright, MN | |
| St. Croix, WI | |
| Mobile, AL | .906 |
| Baldwin, AL | |
| Mobile, AL | |
| Modesto, CA | 1.058 |
| Stanislaus, CA | |
| Monmouth-Ocean, NJ | 1.093 |
| Monmouth, NJ | |
| Ocean, NJ | |
| Monroe, LA | .934 |
| Ouachita, LA | |
| Montgomery, AL | .824 |
| Autauga, AL | |
| Elmore, AL | |
| Montgomery, AL | |
| Muncie, IN | 1.006 |
| Delaware, IN | |
| Muskegon, MI | .970 |
| Muskegon, MI | |
| Naples, FL | .879 |
| Collier, FL | |
| Nashville, TN | .975 |
| Cheatham, TN | |
| Davidson, TN | |
| Dickson, TN | |
| Robertson, TN | |
| Rutherford, TN | |
| Sumner, TN | |
| Williamson, TN | |
| Wilson, TN | |
| Nassau Suffolk, NY | 1.362 |
| Nassau, NY | |
| Suffolk, NY | |
| New Bedford-Fall River-Attleboro, MA | 1.248 |
| Bristol, MA | |
| New Haven-Waterbury-Meriden, CT | 1.189 |
| New Haven, CT | |
| New London-Norwich, CT | 1.165 |
| New London, CT | |
| New Orleans, LA | 1.052 |
| Jefferson, LA | |
| Orleans, LA | |

| Urban area (constituent counties or county equivalents) | Construction cost index |
|---|---|
| St. Bernard, LA | |
| St. Charles, LA | |
| St. John The Baptist, LA | |
| St. Tammany, LA | |
| New York, NY | 1.495 |
| Bronx, NY | |
| Kings, NY | |
| New York City, NY | |
| Putnam, NY | |
| Queens, NY | |
| Richmond, NY | |
| Rockland, NY | |
| Westchester, NY | |
| Newark, NJ | 1.421 |
| Essex, NJ | |
| Morris, NJ | |
| Sussex, NJ | |
| Union, NJ | |
| Niagara Falls, NY | 1.100 |
| Niagara, NY | |
| Norfolk-Virginia Beach-Newport News, VA | .957 |
| Chesapeake City, VA | |
| Gloucester, VA | |
| Hampton City, VA | |
| James City Co., VA | |
| Newport News City, VA | |
| Norfolk City, VA | |
| Poquoson, VA | |
| Portsmouth City, VA | |
| Suffolk City, VA | |
| Virginia Beach City, VA | |
| Williamsburg City, VA | |
| York, VA | |
| Oakland, CA | 1.069 |
| Alameda, CA | |
| Contra Costa, CA | |
| Ocala, FL | .755 |
| Marion, FL | |
| Odessa, TX | .969 |
| Ector, TX | |
| Oklahoma City, OK | .865 |
| Canadian, OK | |
| Cleveland, OK | |
| Logan, OK | |
| McClain, OK | |
| Oklahoma, OK | |
| Pottawatomie, OK | |
| Olympia, WA | 1.045 |
| Thurston, WA | |
| Omaha, NE-IA | .958 |
| Pottawattamie, IA | |
| Douglas, NE | |
| Sarpy, NE | |
| Washington, NE | |
| Orange County, NY | 1.382 |
| Orange, NY | |
| Orlando, FL | .858 |
| Orange, FL | |
| Osceola, FL | |
| Seminole, FL | |
| Owensboro, KY | .959 |
| Daviess, KY | |
| Oxnard-Ventura, CA | 1.140 |
| Ventura, CA | |
| Panama City, FL | .876 |
| Bay, FL | |
| Parkersburg-Marietta, WV-OH | 1.075 |
| Washington, OH | |
| Wood, WV | |
| Pascagoula, MS | .757 |
| Jackson, MS | |
| Pensacola, FL | .842 |
| Escambia, FL | |
| Santa Rosa, FL | |
| Peoria, IL | .968 |
| Peoria, IL | |
| Tazewell, IL | |
| Woodford, IL | |
| Philadelphia, PA-NJ | 1.169 |
| Burlington, NJ | |
| Camden, NJ | |
| Gloucester, NJ | |
| Bucks, PA | |
| Chester, PA | |
| Delaware, PA | |
| Montgomery, PA | |
| Philadelphia, PA | |
| Phoenix, AZ | .959 |
| Maricopa, AZ | |
| Pine Bluff, AR | .943 |
| Jefferson, AR | |
| Pittsburgh, PA | 1.311 |
| Allegheny, PA | |
| Fayette, PA | |
| Washington, PA | |
| Westmoreland, PA | |
| Pittsfield, MA | 1.502 |
| Berkshire, MA | |
| Portland, ME | .992 |
| Cumberland, ME | |
| Portland, OR | .989 |
| Clackamas, OR | |
| Multnomah, OR | |
| Washington, OR | |
| Yamhill, OR | |
| Portsmouth-Dover Rochester, NH | 1.050 |
| Rockingham, NH | |
| Strafford, NH | |
| Poughkeepsie, NY | 1.193 |
| Dutchess, NY | |
| Providence-Pawtucket-Woonsocket, RI | 1.101 |
| Bristol, RI | |
| Kent, RI | |
| Providence, RI | |
| Washington, RI | |
| Provo-Orem, UT | .827 |
| Utah, UT | |
| Pueblo, CO | .949 |
| Pueblo, CO | |
| Puerto Rico [1] | |
| Racine, WI | 1.088 |
| Racine, WI | |
| Raleigh Durham, NC | .990 |
| Durham, NC | |
| Franklin, NC | |
| Orange, NC | |
| Wake, NC | |
| Rapid City, SD | 1.112 |
| Pennington, SD | |
| Reading, PA | 1.104 |
| Berks, PA | |
| Redding, CA | .944 |
| Shasta, CA | |
| Reno, NV | 1.021 |
| Washoe, NV | |
| Richland-Kennewick, WA | 1.002 |
| Benton, WA | |
| Franklin, WA | |
| Richmond-Petersburg, VA | 1.011 |
| Charles City Co., VA | |
| Chesterfield, VA | |
| Colonial Heights City, VA | |
| Dinwiddie, VA | |
| Goochland, VA | |
| Hanover, VA | |
| Henrico, VA | |
| Hopewell City, VA | |
| New Kent, VA | |
| Petersburg City, VA | |
| Powhatan, VA | |
| Prince George, VA | |
| Richmond City, VA | |
| Riverside-San Bernardino, CA | 1.073 |
| Riverside, CA | |
| San Bernardino, CA | |
| Roanoke, VA | .883 |
| Botetourt, VA | |
| Roanoke, VA | |
| Roanoke City, VA | |
| Salem City, VA | |
| Rochester, MN | 1.358 |
| Olmsted, MN | |
| Rochester, NY | 1.250 |
| Livingston, NY | |
| Monroe, NY | |
| Ontario, NY | |
| Orleans, NY | |
| Wayne, NY | |
| Rockford, IL | .899 |
| Boone, IL | |
| Winnebago, IL | |
| Sacramento, CA | 1.202 |
| Eldorado, CA | |
| Placer, CA | |
| Sacramento, CA | |
| Yolo, CA | |
| Saginaw-Bay City-Midland, MI | 1.013 |
| Bay, MI | |
| Midland, MI | |
| Saginaw, MI | |
| St. Cloud, MN | .954 |
| Benton, MN | |
| Sherburne, MN | |
| Stearns, MN | |
| St. Joseph, MO | 1.035 |
| Buchanan, MO | |
| St. Louis, MO-IL | 1.143 |
| Clinton, IL | |
| Jersey, IL | |
| Madison, IL | |
| Monroe, IL | |
| St. Clair, IL | |
| Franklin, MO | |
| Jefferson, MO | |
| St. Charles, MO | |
| St. Louis, MO | |
| St. Louis City, MO | |
| Salem, OR | .988 |
| Marion, OR | |
| Polk, OR | |
| Salinas-Seaside-Monterey, CA | 1.091 |
| Monterey, CA | |
| Salt Lake City-Ogden, UT | .871 |
| Davis, UT | |
| Salt Lake, UT | |
| Weber, UT | |
| San Angelo, TX | .909 |
| Tom Green, TX | |

| Urban area (constituent counties or county equivalents) | Construction cost index |
|---|---|
| San Antonio, TX | .921 |
| Bexar, TX | |
| Comal, TX | |
| Guadalupe, TX | |
| San Diego, CA | 1.043 |
| San Diego, CA | |
| San Francisco, CA | 1.043 |
| Marin, CA | |
| San Francisco, CA | |
| San Mateo, CA | |
| San Jose, CA | 1.028 |
| Santa Clara, CA | |
| Santa Barbara-Santa Maria-Lompoc, CA | 1.036 |
| Santa Barbara, CA | |
| Santa Cruz, CA | .950 |
| Santa Cruz, CA | |
| Santa Fe, NM | 1.066 |
| Los Alamos, NM | |
| Santa Fe, NM | |
| Santa Rosa-Petaluma, CA | 1.134 |
| Sonoma, CA | |
| Sarasota, FL | .804 |
| Sarasota, FL | |
| Savannah, GA | 1.028 |
| Chatham, GA | |
| Effingham, GA | |
| Scranton-Wilkes Barre, PA | 1.110 |
| Columbia, PA | |
| Lackawanna, PA | |
| Luzerne, PA | |
| Monroe, PA | |
| Wyoming, PA | |
| Seattle, WA | 1.065 |
| King, WA | |
| Snohomish, WA | |
| Sharon, PA | 1.144 |
| Mercer, PA | |
| Sheboygan, WI | 1.040 |
| Sheboygan, WI | |
| Sherman-Denison, TX | .949 |
| Grayson, TX | |
| Shreveport, LA | .936 |
| Bossier, LA | |
| Caddo, LA | |
| Sioux City, IA-NE | 1.020 |
| Woodbury, IA | |
| Dakota, NE | |
| Sioux Falls, SD | 1.202 |
| Minnehaha, SD | |
| South Bend-Mishawaka, IN | 1.143 |
| St. Joseph, IN | |
| Spokane, WA | .971 |
| Spokane, WA | |
| Springfield, IL | 1.011 |
| Menard, IL | |
| Sangamon, IL | |
| Springfield, MO | .912 |
| Christian, MO | |
| Greene, MO | |
| Springfield, MA | 1.233 |
| Hampden, MA | |
| Hampshire, MA | |
| State College, PA | 1.035 |
| Centre, PA | |
| Steubenville-Weirton, OH-WV | 1.167 |
| Jefferson, OH | |
| Brooke, WV | |
| Hancock, WV | |
| Stockton, CA | 1.060 |
| San Joaquin, CA | |
| Syracuse, NY | 1.012 |
| Madison, NY | |
| Onondaga, NY | |
| Oswego, NY | |
| Tacoma, WA | 1.036 |
| Pierce, WA | |
| Tallahassee, FL | .989 |
| Gadsden, FL | |
| Leon, FL | |
| Tampa-St. Petersburg-Clearwater, FL | .890 |
| Hernando, FL | |
| Hillsborough, FL | |
| Pasco, FL | |
| Pinellas, FL | |
| Terre Haute, IN | 1.040 |
| Clay, IN | |
| Vigo, IN | |
| Texarkana-TX-Texarkana, AR | .754 |
| Miller, AR | |
| Bowie, TX | |
| Toledo, OH | 1.044 |
| Fulton, OH | |
| Lucas, OH | |
| Wood, OH | |
| Topeka, KS | .996 |
| Shawnee, KS | |
| Trenton, NJ | 1.226 |
| Mercer, NJ | |
| Tucson, AZ | .931 |
| Pima, AZ | |
| Tulsa, OK | .911 |
| Creeks, OK | |
| Osage, OK | |
| Rogers, OK | |
| Tulsa, OK | |
| Wagoner, OK | |
| Tuscaloosa, AL | 1.003 |
| Tuscaloosa, AL | |
| Tyler, TX | .922 |
| Smith, TX | |
| Utica-Rome, NY | 1.256 |
| Herkimer, NY | |
| Oneida, NY | |
| Vallejo-Fairfield-Napa, CA | 1.118 |
| Napa, CA | |
| Solano, CA | |
| Vancouver, WA | .919 |
| Clark, WA | |
| Victoria, TX | .842 |
| Victoria, TX | |
| Vineland-Millville-Bridgeton, NJ | 1.069 |
| Cumberland, NJ | |
| Visalia-Tulare-Porterville, CA | 1.017 |
| Tulare, CA | |
| Waco, TX | .940 |
| McLennan, TX | |
| Washington, D.C.-MD-VA | 1.155 |
| District of Columbia, DC | |
| Calvert, MD | |
| Charles, MD | |
| Frederick, MD | |
| Montgomery, MD | |
| Prince Georges, MD | |
| Alexandria City, VA | |
| Arlington, VA | |
| Fairfax, VA | |
| Fairfax City, VA | |
| Falls Church City, VA | |
| Loudoun, VA | |
| Manassas City, VA | |
| Manassas Park City, VA | |
| Prince William, VA | |
| Stafford, VA | |
| Waterloo-Cedar Falls, IA | .911 |
| Black Hawk, IA | |
| Bremer, IA | |
| Wausau, WI | .869 |
| Marathon, WI | |
| West Palm Beach-Boca Raton-Delray Beach, FL | .944 |
| Palm Beach, FL | |
| Wheeling, WV-OH | 1.052 |
| Belmont, OH | |
| Marshall, WV | |
| Ohio, WV | |
| Wichita, KS | .872 |
| Butler, KS | |
| Harvey, KS | |
| Sedgwick, KS | |
| Wichita Falls, TX | .929 |
| Wichita, TX | |
| Williamsport, PA | 1.003 |
| Lycoming, PA | |
| Wilmington, DE-NJ-MD | 1.231 |
| New Castle, DE | |
| Cecil, MD | |
| Salem, NJ | |
| Wilmington, NC | .951 |
| New Hanover, NC | |
| Worcester-Fitchburg-Leominster, MA | 1.252 |
| Worcester, MA | |
| Yakima, WA | .975 |
| Yakima, WA | |
| York, PA | .994 |
| Adams, PA | |
| York, PA | |
| Youngstown-Warren, OH | .961 |
| Mahoning, OH | |
| Trumbull, OH | |
| Yuba City, CA | .910 |
| Sutter, CA | |
| Yuba, CA | |

[1] To be developed.

TABLE II.—CONSTRUCTION COST INDEX FOR RURAL AREAS

| Non-Urban area | Construction cost index |
|---|---|
| Alabama | .787 |
| Alaska | 1.582 |
| Arizona | 1.000 |
| Arkansas | .749 |
| California | 1.034 |
| Colorado | .909 |
| Connecticut | 1.163 |
| Delaware | 1.040 |
| Florida | .777 |
| Georgia | .817 |
| Hawaii | .907 |
| Idaho | .930 |
| Illinois | .978 |
| Indiana | .919 |
| Iowa | .880 |

TABLE II.—CONSTRUCTION COST INDEX FOR RURAL AREAS—Continued

| Non-Urban area | Construction cost index |
|---|---|
| Kansas | .814 |
| Kentucky | .921 |
| Louisiana | .941 |
| Maine | 1.037 |
| Maryland | 1.180 |
| Massachusetts | 1.169 |
| Michigan | .962 |
| Minnesota | .918 |
| Mississippi | .834 |
| Missouri | .847 |
| Montana | .917 |
| Nebraska | .772 |
| Nevada | .966 |
| New Hampshire | 1.069 |
| New Jersey [1] | |
| New Mexico | .893 |
| New York | 1.224 |
| North Carolina | .788 |
| North Dakota | .942 |
| Ohio | .884 |
| Oklahoma | .826 |
| Oregon | .931 |
| Pennsylvania | 1.177 |
| Puerto Rico [2] | |
| Rhode Island [1] | |
| South Carolina | .774 |
| South Dakota | .886 |
| Tennessee | .766 |
| Texas | .783 |
| Utah | .869 |
| Vermont | 1.036 |
| Virginia | .912 |
| Washington | 1.072 |
| West Virginia | 1.031 |
| Wisconsin | .864 |
| Wyoming | .958 |

[1] All counties within the State are classified urban.
[2] To be developed.

**Appendix C—American Hospital Association List of Plant and Fixed Equipment, and Moveable Equipment**

*I. Plant*

A. Land Movements

Bumpers
Culverts
Fencing
  a. Brick or stone
  b. Chain link
  c. Wire
  d. Wood
Flagpole
Heated pavement
Lawn sprinkler system
Parking lot gate
Parking lot, open walls
Paving (including roadways, walks, and parking)
  a. Asphalt
  b. Concrete
  c. Gravel
Retaining wall
Shrubs, lawns, trees
Sign
Snow melting system
Turf, artificial
Underground sewer and water lines
Yard lighting

B. Buildings

Boiler house
Garage
  a. Masonry
  b. Wood frame
Masonry, reinforced concrete frame
Masonry, steel frame, fireproofed
Masonry, steel frame, not fireproofed
Masonry, wood frame
Reinforced concrete, common design
Residence
  a. Masonry
  b. Wood frame
Storage building
  a. Masonry
  b. Wood frame
Building, componentized parts
  a. Automatic door
  b. Canopies
  c. Ceiling finishes
  d. Computer flooring
  e. Cubicle track
  f. Designation signs
  g. Drapery track
  h. Floor finishes
  i. Folding partitions
  j. Interior finish
  k. Loading docks
  l. Overhead door
  m. Partitions, interior
  n. Roof covering
  o. Storefront construction
  p. Toilet partitions
  q. Wall paint
  r. Wallpaper
Multilevel parking structure, masonry

*II. Fixed Equipment*

A. Building Services Equipment

Boiler smokestack, metal
Clean air equipment
Clock system, central
Doctors' in and-out register
Electric lighting and power
  a. Feed wiring
  b. Conduit and wiring
  c. Fixtures
  d. Transformer
  e. Switch gear
Elevator
  a. Dumbwaiter
  b. Freight
  c. Passenger, high-speed automatic
  d. Passenger, other
Emergency light system
Escalator
Fire alarm system, door closing devices
Heating, ventilating, and air conditioning system
Air conditioning system, all equipment and units
  a. Large—over 20 tons
  b. Medium—5–15 tons
  c. Small—under 5 tons
  d. Boiler
  e. Compressor, air
  f. Condensate tank
  g. Condenser
  h. Controls
  i. Cooler and dehumidifier
  j. Cooling tower
    (1) Metal
    (2) Wood
  k. Duct work
  l. Fan, air handling and ventilating
  m. Furnace, domestic type
  n. Incinerator, indoor
  o. Oil storage tank
  p. Piping
  q. Precipitator
  r. Pump
  s. Radiator, cast iron
  t. Radiator, finned tube
  u. Solar heat equipment
  v. Unit heater
Intercom system
Laboratory plumbing, piping
Magnetic door holders
Nurse call system
Oxygen, gas, air piping
Paging system
Plumbing, composite
  a. Fixtures
  b. Piping
  c. Pump
  d. Water heater, commercial
  e. Water storage tank
Pneumatic tube system
Sprinkler and fire protection system
  a. Fire alarm system
  b. Fire pump
  c. Smoke and heat detectors
  d. Sprinkler system
  e. Tank and tower
Sewerage, composite
  a. Piping
  b. Sump pump and sewerage ejector
Telephone system
Television antenna system
Vacuum cleaning system
Water wells

B. Other Fixed Equipment

Bench, bin, cabinet, counter, shelving, built-in
Cabinet, biological safety
Carpentry work
Caulking
Ceramic tile
Conveying system
Drilled piers
Fire protection in hoods
Generator set
Hood, fume
ICU–CCU counters
Lockers, built-in
Mailboxes, built-in
Millwork
Nurses' counter
Painting

Pass-through boxes
Patients' wardrobes and vanities
Sink and drainboard
Sterilizer, built-in
X-ray protection

*III. Moveable Equipment*

Accelerator
Accounting/bookkeeping machine
Acculab
Adding machine
Air conditioner, window
Alternating pressure pad
Ambulance
Amplifier
Analyzer
- a. Amino acid
- b. Autos
- c. Biochromatic
- d. Clinical
- e. Gas
- f. Oxygen
- g. pH gas
- h. Peripheral
- i. Pulmonary function

Anesthesia unit
Ankle exerciser
Apparatus
- a. Anesthesia
- b. Blood transfusion
- c. Bone surgery
- d. Resuscitating

Arthroscopy instrumentation
Aspirator
Audiometer
Autoclave
Automobile
- a. Delivery
- b. Passenger

Autoscaler, ionic
Auto suture stapler
Balance
- a. Analytical
- b. Electronic
- c. Precision mechanical

Basal metabolism unit
Bassinet
Bassinet, heated
Bath
- a. Paraffin
- b. Serological
- c. Sitz
- d. Water, laboratory
- e. Whirlpool

Battery charger
Bed
- a. Electric
- b. Flotation therapy
- c. Hydraulic
- d. Labor
- e. Manual
- f. Orthopedic

Bedpan washer
Beepers, paging
Bench, metal or wood
Bilirubin lamps
Bin, metal or wood
Binder, punch machine
Biochemical analysis unit, micro
Biofeedback machine
Bipolar coagulator
Blanket drier
Blanket warmer
Blood chemistry analyzer, automated
Blood cell counter
Blood gas analyzer
Blood gas apparatus, volumetrics
Blood warmer
Blood warmer coil
Boiler, copper
Bookcase, metal
Bottle washer
Bovie unit
Breathing unit, positive pressure
Broiler
Bronchoscope
- a. Flexible
- b. Rigid

Buffer, electric
Bulletin board
Burnisher, silverware
Cabinet
- a. Bedside
- b. File
- c. Instrument
- d. Metal or wood
- e. Pharmacy
- f. Solution
- g. X-ray

Cage, animal
Camera
Camera, surgical
Camera, TV monitoring, color or black and white
Camera, videotape color or black and white
Can opener, electric
Canopy, ventilating, ironer
Capsule machine
Carbon monoxide recorder/detector
Cardioscope
Carpeting
Cart
- a. Food/tray, heat-refrig
- b. Maid
- c. Medicine
- d. Supply
- e. Utility

Cash register
Cassette changer
Cautery unit
- a. Dermatology
- b. Gynecology

Central processing unit
Centrifuge
Centrifuge, refrigerated
Chair
- a. Dental
- b. Executive
- c. Hydraulic, surgeon's
- d. Kinetron
- e. Podiatric
- f. Specialist

Chart rack
Chart recorder
Check signer
Child immobilizer
Chloridiometer
Chromatograph, gas
Cidematic washer
Clock
Clopay wrapping machine
Clothes locker
- a. Fiberglass or metal
- b. Laminate or wood

Cobalt unit
Coffee maker
Cold pack unit, floor
Collator, electric
Collector, silver, automatic
Colonoscope
Colorimeter
Colposcope with floorstand
Compactor, waste
Compresser, air
Computer assisted system for exercise
Computer
- a. Cardiac output
- b. Clinical
- c. Large
- d. Micro
- e. Mini

Computer terminal
Conductivity tester
Conveyor system, laundry
Conveyor, tray
Cooker, pressure, food
Cooler
- a. Walk-in, freestanding
- b. Water

CO-oximeter
Copier
Coulter counter
Credenza
Crib
Croupette
Cryo-ophthalmic unit with probes
Cryostat
Cryosurgical unit
Cutter
- a. Cloth, electric
- b. Food

Cystic fibrosis system
Cystometer
Cystoscope
Data card processing unit, including keypunch, verifier, reader, sorter
Data printing unit
Data storage unit
- a. Mechanical
- b. Nonmechanical

Data tape processing unit, including controller, drive, tape deck
Decalcifier
Defibrillator
Densitometer, recording
Dental drill with syringe
Dermatome
Desk, metal or wood
Diagnostic set
Diathermy unit
Dictating equipment
Digital fluoroscopy unit
Digital radiography unit
Dilutor
Dish Sterilizer

Dishwasher
Disinfector
Dispenser
  a. Alcohol
  b. Butter, refrigerated
  c. Milk or cream
Distilling apparatus
Dopplers
Dose calibrator
Dresser
Drier
  a. Clothes
  b. Hair
  c. Sonic
Drill press
Drying oven, paint shop
Duplicator
Echocardiograph system
Echoview system
Electrocardioscamer
Electrocardiograph
Electroencephalograph
Electromyograph
Electronic blood pressure device
Electrophoresis unit
Electrosurgical unit
Emission computer tomography (ECT) scanner
Enlarger
Ergometer
Ether-suction unit
Evacuator
Evoked potential unit
Exercise apparatus
Extracorporeal shock-wave lithotripters
Extractor, laundry
Facsimile transmitter
Fiber optic equipment
Fiberometer
Film changer
Flame photometer
Floor scrubbing machine
Floor waxing machine
Fluorimeter
Fluoroscope
Folder, flatwork
Food chopper
Frame, turning
Freezer, ultra cold
Fryer, deep fat
Furnace, laboratory
Furniture
  a. Central supply
  b. Dietary
  c. Housekeeping
  d. ICU–CCU
  e. In-service education
  f. Labor-delivery
  g. Laboratory
  h. Lobby or public areas
  i. Nursing services
  j. Office
  k. Operating room
  l. Patient
  m. X-ray
Gamma camera
Gamma counter
Gamma wall system
Garbage disposal
Graphotype
Griddle
Grinder, food waste
Hand dynamometer
Heart-lung system
Hemoglobinometer
Hemodialysis unit
Hemophotometer
Hoist, chain or cable
Holter electrocardiograph
Holter electroencephalograph
Homogenizer
Hood, exhaust or Bacti
Hot-food box
Hotplate
Humidifier
Hyperbaric chamber
Hydrocollator
Hydrotherapy equipment
Hyfrecator
Hypothermia apparatus
Ice-cream freezer
Ice-cream storage cabinet
Ice-cube making equipment
Illuminator unit, multifilm
Illuminator unit, single
Image intensifier
IMI infant care center
Immuno-diffusion equipment
Imprinter, addresser
Imprinter, embossed plate
Incubator
  a. Laboratory
  b. Nursery
Indicator, remote
Infusion pump
Inhalator
Instruments, ortho-urological
Insufflator
Integrator
Intercom
Iontophoresis unit
Ironer, flatwork
Isodensitometer
Isolation chamber
Isotope equipment
Kettle, steam-jacketed
Kiln
K-pads
Kymograph
Laminar air-flow unit
  a. Cabinet
  b. Wall
Lamp
  a. Deep therapy
  b. Emergency
  c. Infrared
  d. Mercury quartz
  e. Microscope
Laparoscope
Laryngoscope
Lathe
Lawn mower, power
Library furnishings
Lifter, patient
Light
  a. Delivery
  b. Examining
  c. Operating
  d. Portable, emergency
Linear accelerator
Linen cart
Linen drier
Linen press
Linen table
Linen washer
Loom
Lowerator
Magnetic resonance imaging
Mailing machine
Mannequin
Marking machine
Meat chopper
Medi-prep
Meter, pH
Microfilm unit
Microgasometer
Microphone
Microscope
Microprojector
Microtome
Mirror, therapy
Mixer, commercial type
Model, anatomical
Monitor
  a. Apnea
  b. Cardiac
  c. Cerebral function
  d. Patient
  e. TV
Narcotic safe
Natural childbirth backrest
Nebulizer
  a. Pneumatic
  b. Ultrasonic
Nephroscope
Neurological surgical table headrest
Nourishment ice station
Nuclear magnetic resonance scanner
Operating stool
Opthalmoscope
Optical readers
Orthotron system
Oscilloscope
Osmometer
Otoscope
Ottoman
Oven
  a. Baking
  b. Microwave
  c. Paraffin
  d. Roasting
  e. Sterilizing
Oximeter
Oxygen tank, motor, and truck
Pacemaker, cardiac
Pacing system analyzer
Packaging machine
Paint spray booth
Paint spraying machine
Panendoscope
Paper baler
Parallel bars
Parking lot sweeper
Patient monitoring equipment
Peeler, vegetable, electric
Percussor

Perforator
Phonocardiograph
Photocoagulator
Photocopier
Photography apparatus, gross pathology
Photometer
Phototherapy unit
Physician's in-and-out register, portable
Physiological monitor
Physioscope
Piano
Pipe cutter-threader
Pipette, automatic
Planer and shaper, electric
Plasma freezer
Plate bending press
Polisher, floor
Polishing and buffing machine
Power supply
Press, laundry
Proctoscope
Projection machine
Projector, slide
Prothrombin timer, automated
Pulmonary function equipment
Pulsed oxygen chamber
Pump
- a. Breast
- b. Stomach
- c. Surgical
- d. Vacuum

Radiation meter
Radioactive source, cobalt
Radiographic duplicating printer
Radiographic fluoroscopic combination
Radiographic head unit
Range, household
Ratemeter, dual
Recorder
- a. Laboratory
- b. Tape

Refractometer
Refrigerator
- a. Blood bank
- b. Commercial
- c. Domestic
- d. Undercounter

Remote control receiver
Respirator
Resuscitator
Retractor
Rhinoscope
Rinser, sonic
Rotary tiller
Roto-osteotome unit
Safe
Sanitizer
Saw
- a. Autopsy
- b. Band
- c. Bench, electric
- d. Meat cutting
- e. Surgical, electric
- f. Neurosurgery

Scale
- a. Baby
- b. Bed
- c. Chair
- d. Clinical
- e. Laundry, platform
- f. Laundry, movable
- g. Metabolic
- h. Patient
- i. Postal

Scanner
- a. Body-CT
- b. Isotope
- c. Rectilinear
- d. Ultrasonic

Scintillation scaler
Sectocardiograph
Sensitometer
Seriograph, automatic
Settee
Sewing Machine
Shaking machine
Sharpener, microtome knife
Shears, squaring, floor
Shelving, portable, steel
Shoulder wheel
Sigmoidoscope
Silver recovery unit
Simulator
Skeleton
Slicer
- a. Bread
- b. Meat

Slide projector
Slide strainer, laboratory
Slit lamp
Snow blower
Sofa
Spectroscope
Spectrophotometer
Sphygmomanometer
Spirometer
Stall bars
Stamp machine
Stand
- a. Basin
- b. Irrigating
- c. IV
- d. Mayo

Stapler, electric or air
Steam pack equipment
Steamer, vegetable
Stencil machine
Stereo equipment
Sterilizer, movable
Stethophone
Still, water
Station system
Stimulator, muscle
Stretcher
Suction pump
Table
- a. Anesthetic
- b. Autopsy
- c. Electrohydraulic tilt
- d. Examining
- e. Fracture
- f. Food preparation
- g. Instrument
- h. Light
- i. Metal
- j. Obstetrical
- k. Operating
- l. Orthopedic
- m. Overbed
- n. Pool
- o. Refrigerated
- p. Therapy
- q. Traction
- r. Urological
- s. Wood

Tank
- a. Cleaning
- b. Full body
- c. Hot water
- d. Paraffin
- e. Therapy

Telemetry unit
Telescope, microlens
Telescopic shoulder wheel
Telethermometer
Television receiver
Tent
- a. Aerosol
- b. Oxygen

Test equipment
Thermometer, electronic
Thyroid testing equipment
Time recording equipment
Tissue embedding center
Tissue processor
Titrator, automatic
Toaster, commercial type
Tonometer
Totalap
Traction unit
Tractor
Transcribing equipment
Transcutaneous nerve simulator system
Treadmill, electric
Truck, hot food
Truck
- a. Forklift
- b. Multipurpose filling
- c. Van, pickup

Trunk
- a. Platform
- b. Tray

Tube dryer
Tube tester
Tumbler
Typewriter
- a. Electric
- b. Manual

Ultrasonic cleaner
Ultrasonic fetal heart detector
Urn, coffee
Vacuum cleaner
Vacuvette
Valet, office
Vectorcardiograph
Vending machine
Ventilator, respiratory
Vial filler
Vibrator
Victoreens meter
Vise, large bench
Walkie-talkie
Warmer
- a. Dish
- b. Food

Washer, glassware

Washing machine
a. Commercial
b. Domestic
Water cooler, bottle or fountain type
Water purifier or softener
Welder
Wheelchair
Wire tightener-twister
Word processor
a. Large
b. Small
X-ray
a. Developing tank
b. Film drier
c. Film processor
d. Image intensifier
e. Intensifying screens
f. Wiring
g. Unit, deep therapy
h. Unit, fluoroscopic
i. Unit, mobile
j. Unit, radiographic
k. Unit, superficial therapy

**Appendix D—Regulatory Impact Analysis**

*A. Introduction*

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA)(5 U.S.C 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

The following discussion, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

*B. Summary of the Initial Analysis Published June 3, 1986*

For the proposal published last June to incorporate capital-related cost into the prospective payment system, we prepared an initial regulatory impact analysis that compared projected payments under the proposed phase-in of prospective payments for capital-related cost over the four-year transition period to projected payments under current reasonable cost principles. The comparison used FY 1983 hospital cost data that were inflated by the capital component of the hospital market basket through FY 1987. We displayed the effects of implementing the proposed payment system over the proposed four-year transition period in terms of the percent change in payment levels between payment amounts approximating what hospitals would have received under the current system for FY 1987 compared to what they could have expected under proposed capital-related prospective payment system.

As a result of both the relatively short transition period of four years and the proposal to inflate the base year costs by the capital component of the hospital market basket, most hospitals would have experienced substantial reductions in their payments for capital-related costs. Many commenters, in responding to the June 3 NPRM, indicated concern with the proposed system. We are now presenting a new proposal that we believe addresses many of the commenters' concerns.

*C. Objectives*

In our June 3, 1986 proposal we discussed the objectives we hoped to achieve through the proposed capital related prospective payment system. Although we have eliminated certain features of the original proposal that we believe could have imposed considerable hardship on some providers—in particular, the four-year transition period—our objectives for this proposal generally are the same as those we presented in the June 3 document.

By incorporating capital-related costs into the prospective payment system, we are extending the objectives underlying the current system to this area of hospital inpatient costs. Because we have continued to reimburse hospital capital-related costs on a pass-through basis, hospital administrators have had less incentive to bring their capital-related spending in line compared to inpatient hospital operations under the prospective payment system. Under the present system of capital-related payments, access to financial markets may be a more important factor in determining a hospital's capital investments than the overall contribution of such assets to the effective or efficient operation of the facility. For example, under cost-based reimbursement, a hospital with low utilization could borrow funds for expansion of its plant even though it may have surplus capacity, and Medicare will still reimburse those capital costs.

The chief objective we hope to achieve through integrating payments for inpatient capital-related costs into the prospective payment system is to establish the same kind of economic relationship between hospital operational characteristics and market conditions on the one hand, and capital investment decisions, on the other hand, as exists in a price-competitive market. The retrospective payment system now in effect does not constrain hospital capital related spending sufficiently to bring these costs under control. This proposal to establish prospective payment rates for inpatient hospital capital related costs, therefore, would establish a payment system that would result in hospitals accepting a greater degree of risk for their investment decisions. Incorporating payments for capital-related costs into the prospective payment system would subject these costs to the same financial and economic incentives to which operating costs are now subject.

*D. Analytical Methodology*

1. General Considerations

Our approach for displaying the effects of the proposed payment system is similar to the one we adopted in the June 3, 1986 impact analysis. We will compare FY 1988 payment levels under the proposed payment system with projected payments under the present system using three different FY 1988 payment blends. Hospital groupings that would, on average, receive higher payments under the proposed system will have positive values in our analysis while hospital groupings that would, on average, receive lower payments under the proposed system will have negative values. These positive and negative values represent the percent increase or reduction in payments compared to projected payments under the present system.

Similarly to the June 3, 1986 proposal, we computed projected payments under reasonable cost principles by inflating each hospital's FY 1984 costs through FY 1988, using an estimate of the actual rate of inflation for capital-related costs. While we used these projected FY 1988 costs to compare payments under reasonable costs with FY 1988 prospective payments, we warn the reader that the cyclical nature of capital investments actually produces different increases on the Medicare capital cost per case for each hospital. Because

section 1886(g)(3) of the Act (added by section 9303(a) of Pub. L. 99-509) requires payments for capital-related costs to be reduced by seven percent for portions of cost reporting periods or discharges occurring in FY 1988, regardless of the method of payment, we reduced our projected costs by seven percent. A similar reduction has already been made in the Federal prospective payment rates, so we are maintaining comparability between reasonable cost payments and prospective payments. As a result, the impact analysis in this document assumes that the Federal payment rates and projected payment rates already have the seven percent removed from them.

Since the hospital-specific portion of the prospective payments for capital is, under these regulations, the hospital's actual allowable costs, we need not compute it separately from the reasonable costs used to simulate payments under the current system. That is, to compute the hospital-specific portion for a given year of the transition, all we need do is multiply the hospital's reasonable costs by the applicable blend factor in effect for that year of the transition. For example, applying the third year blend in FY 1988, hospital-specific payments would equal the product of the same capital-related reasonable costs for fixed plant and fixed equipment (Federal payments for moveable equipment are 100 percent phased in) used to compute reasonable cost payments, multiplied by the applicable blend factor of .85.

In interpreting the results of this comparison, readers should keep in mind the following points:

- First, the following comparisons are not directly comparable to the analyses presented in the June 3 NPRM. We are now using different data both for rate determination and cost projection. Further, the rates we are comparing to projected costs are computed differently from the earlier proposed rates, and the factors used to inflate the available cost data have been revised and updated. Thus, though the following discussion has analytic similarities to the previous impact analysis, the actual quantitative assessments presented below should not be compared to the earlier values.
- Second, is the static nature of the analysis. Hospitals and other interested parties should interpret the following analysis as indicating the direction and magnitude of changes in payment amounts based on the capital costs for hospitals in FY 1984. Since hospitals have continued to invest in new existing facilities, the changes that have occurred since FY 1984 may well result in our proposal having different effects on hospitals than the ones presented in Tables, I, II, and III. Although the cyclical nature of hospital investment would result in projected rates of growth in Medicare capital costs per case which are different for each hospital, we did not have the hospital-specific data to incorporate these different growth rates in projecting FY 1988 hospital capital costs. Thus, for all of the impact analyses, we increased each hospital's FY 1984 capital costs per case by our projections of the national average increase in Medicare capital costs per case between FY 1984 and FY 1988. As a result, we warn the reader that, in assessing the following tables, the impact results for each group of hospitals assumes FY 1984 conditions which may not exist in FY 1988.
- Third, we are presenting the effects of this proposal on hospital payments using the Federal blends for the first, second, and third years of the transition based on the assumption that these blends would be adopted for all hospitals on October 1, 1987. That is, we are displaying the effects of this proposal using three different blends of Federal and hospital-specific payments for fixed plant/equipment and moveable equipment: a five percent Federal payment blend, a 10 percent Federal payment blend, and a 15 percent Federal payment blend for fixed plant/equipment, and a corresponding Federal blend of 33, 67, and 100 percent for moveable equipment.
- A positive or negative value associated with a specific hospital grouping does not necessarily mean that hospitals in that group would experience either accounting or economic profits or losses for all inpatient care services. Our results show only decreases or increases of Medicare payments for capital-related costs under the proposed system, relative to payments under the present system. At present, Medicare covers, on average, approximately 41 percent of all inpatient hospital costs (based on estimated FY 1988 Medicare data compared to total hospital inpatient revenues as reported by the American Hospital Association), and capital expenditures account for about ten percent of all hospital inpatient expenditures. Thus, a five percent reduction in Medicare capital-related payments for an average hospital would result in a payment reduction of about .2 percent in inpatient expenses. A hospital could receive lower payments under the proposed system, but overall, it could still be profitable because of operating gains earned from noncapital-related services to Medicare patients as well as to other patients. The converse may also occur; hospitals earning surpluses under the capital payment system may be suffering operating losses.
- The final point is that the impact values shown in Table I are single point estimates for different groups of hospitals rather than a range. Since a range of impact values allows one to better understand variations in capital payments among individual hospitals, we are including an analysis of range data for urban and rural hospitals, showing the distribution of hospitals using the blended Federal payment share effective for the first year of the phase-in. We are not, however, presenting detailed data on each and every hospital, as some commenters on the June 3, 1986 NPRM would have had us do. Our data at the individual hospital level will not support this kind of analysis because our current data do not reflect present hospital capital-related costs. As explained earlier, the cyclical nature of capital investments can produce wide fluctuations in capital-related spending within a short period of time which we are unable to model. For an individual hospital, our FY 1988 projection of capital-related costs could be inaccurate, and an impact analysis for individual hospitals that relied on these data also would be inaccurate.

The analysis showing the range of impacts on all hospitals is presented in section D.3., and a discussion of the impact on hospitals if we assume no transition policy is presented in section D.4.. In section D.5. we discuss the effects on hospitals of removing the indirect medical education and disproportionate share factors from the standardization of the capital rates.

2. Projected differences between current and proposed payment methods

The following table displays effects of the proposed prospective payment system compared to the present system. The table combines payments for plant and fixed equipment, and movable equipment since we felt it was more appropriate to show the impact of this proposal on total inpatient capital-related payments rather than on each portion separately Also, as previously explained, the results are based on FY 1984 costs inflated to FY 1988 and incorporate both the seven percent reduction mandated under section 1886(g)(3) of the Act and the budget neutrality factor for FY 1988. It should be noted that, since we have no data on the investment patterns for each hospital between FY 1984 and FY 1988, the impact values for various groups may not be representative of the profits

or losses resulting from our prospective payment proposal; that is, hospital groups with higher than average capital costs in FY 1984, which would indicate losses in the impact analysis in Table I, could actually have lower than average capital costs in FY 1988, and therefore, they would obtain a profit in FY 1988; the reverse situation could also occur.

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TABLE I--ESTIMATED IMPACT OF THE PROPOSED PROSPECTIVE PAYMENT SYSTEM FOR CAPITAL-RELATED COSTS BASED ON IMPLEMENTATION OF FIRST, SECOND AND THIRD YEAR PAYMENT BLENDS OF FEDERAL AND HOSPITAL-SPECIFIC PAYMENTS FOR FIXED AND MOVEABLE CAPITAL-RELATED COST IN FY 1988 [1]

| | Number of Hospitals [2] | Percent Change in payments assuming implementation in FY 1988 [3]: Fixed - 5% Federal Moveable - 33% Federal [4] (FY 1988 Implementation) | Fixed - 10% Federal Moveable - 67% Federal [5] (FY 1988 Implementation) | Fixed - 15% Federal Moveable - 100% Federal [6] (FY 1988 Implementation) |
|---|---|---|---|---|
| All Hospitals | 4624 [7] | 0.0 | 0.0 | 0.0 |
| Urban by Region | | | | |
| New England | 174 | 4.6 | 9.3 | 13.9 |
| Mid Atlantic | 257 | 2.6 | 5.2 | 7.8 |
| South Atlantic | 367 | -1.0 | -2.1 | -3.1 |
| East North Central | 488 | 0.1 | 0.2 | 0.3 |
| East South Central | 151 | -2.0 | -4.1 | -6.1 |
| West North Central | 172 | -0.9 | -1.8 | -2.7 |
| West South Central | 321 | -2.1 | -4.1 | -6.2 |
| Mountain | 83 | -2.8 | -5.6 | -8.4 |
| Pacific | 446 | -0.5 | -1.1 | -1.7 |
| Rural by Region | | | | |
| New England | 70 | 4.9 | 9.9 | 14.8 |
| Mid Atlantic | 82 | 4.1 | 8.4 | 12.5 |
| South Atlantic | 293 | 1.1 | 2.2 | 3.3 |
| East North Central | 346 | 0.5 | 1.1 | 1.6 |
| East South Central | 285 | 0.4 | 0.8 | 1.2 |
| West North Central | 504 | 0.8 | 1.6 | 2.4 |
| West South Central | 395 | 0.4 | 0.8 | 1.2 |
| Mountain | 133 | -0.5 | -0.9 | -1.4 |
| Pacific | 87 | 2.1 | 4.2 | 6.2 |
| Urban Hospitals | 2469 | -0.2 | -0.5 | -0.7 |
| 0-99 Beds | 603 | 0.5 | 1.0 | 1.5 |
| 100-404 Beds | 1506 | -0.9 | -1.9 | -2.9 |
| 405-684 Beds | 302 | 1.3 | 2.6 | 3.9 |
| 685 + Beds | 58 | 0.2 | 0.3 | 0.4 |
| Rural Hospitals | 2155 | 1.0 | 2.0 | 3.0 |
| 0-99 Beds | 1645 | 2.5 | 5.0 | 7.5 |
| 100-169 Beds | 342 | -0.2 | -0.3 | -0.5 |
| 170 + Beds | 168 | 0.3 | 0.5 | 0.8 |
| Teaching Status | | | | |
| Non-Teaching | 3767 | -0.5 | -1.0 | -1.5 |
| Resident/Bed Ratio Less than 0.25 | 712 | 0.1 | 0.1 | 0.2 |
| Resident/Bed Ratio 0.25 or Greater | 145 | 3.0 | 6.0 | 9.0 |

Table I - continued

| | Number of Hospitals 2/ | Percent Change in payments assuming implementation in FY 1988 3/ | | |
|---|---|---|---|---|
| | | Fixed - 5% Federal Moveable - 33% Federal 4/ (FY 1988 Implementation) | Fixed - 10% Federal Moveable - 67% Federal 5/ (FY 1988 Implementation) | Fixed - 15% Federal Moveable - 100% Federal 6/ (FY 1988 Implementation) |
| Disproportionate Share Hospitals (DSH) | | | | |
| No Additional Payments | 3652 | -0.3 | -0.6 | -0.9 |
| Urban DSH 100 Beds or More | 740 | 0.5 | 1.1 | 1.6 |
| Urban DSH fewer than 100 Beds | 64 | 1.9 | 3.8 | 5.7 |
| Rural DSH | 168 | 4.7 | 8.5 | 14.2 |
| Other Special Status | | | | |
| Rural Referral Centers (RRCs) | 191 | 1.3 | 2.5 | 3.8 |
| Rural fewer than 50 beds | 953 | 5.1 | 10.4 | 15.6 |
| Type of Ownership | | | | |
| Voluntary | 2788 | 0.4 | 0.8 | 1.2 |
| Proprietary | 881 | -4.1 | -8.3 | -12.4 |
| Government | 1136 | 2.9 | 5.8 | 8.7 |

1/ This table represents estimated Medicare margins if the Federal/hospital-specific payment blend for fixed and moveable capital costs for the first, second, and third years of the proposal were implemented in FY 1988. All three comparison years reflect a budget neutrality factor based on projected FY 1988 payments and the exclusion of sole community hospitals from the proposed payment system.

2/ This column shows the number of hospitals in each cell of the FY 1984 hospital cost data base used to compute both the proposed payment rates and the estimated impact. Puerto Rican hospitals are not included.

3/ These margins result from a comparison of proposed payments to payments under the current system, based on 1984 data inflated through FY 1988, and assumes all hospitals have cost reporting periods corresponding to the beginning and end dates of the phase-in year.

4/ 95 percent hospital-specific for plant/fixed equipment, and 67 percent hospital-specific portion for the moveable equipment.

5/ 90 percent hospital-specific portion for plant/fixed equipment, and 67 percent hospital-specific for moveable equipment.

6/ 85 percent hospital-specific for plant/fixed equipment rate, and no hospital-specific portion for moveable equipment. End of phase-in for moveable equipment.

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In the aggregate, our analysis shows no change in payments from the present method of paying for hospital capital-related costs. This is to be expected because we have maintained throughout this analysis the budget neutrality requirement imposed on payments for the first year. Nevertheless, the impact varies among geographic regions. Based on the first year Federal blend the impact ranges from a high of a 4.6 percent increase for urban hospitals in the New England region to a low of a 2.8 percent decrease for urban hospitals in the Mountain census division.

Among categories of hospitals there is also a wide range of projected impacts. Rural hospitals, overall, fare better than urban hospitals, with rural hospitals that have fewer than 50 beds doing especially well, showing, on average, a 5.1 percent increase in payments. All rural hospitals, in the aggregate, show a 1.0 percent average increase as compared to the average decrease of 0.2 percent for all urban hospitals. Because we lack adequate data we cannot be completely certain of the reason for the better performance of rural hospitals under the proposed payment system compared to urban hospitals. Nevertheless it appears that the gains made by small rural hospitals are, in part attributable to our computing the standardized payment rates on a case weighted basis in accordance with section 1886(d)(3)(A) of the Act (as amended by section 9302(c) of Pub. L. 99–509).

Similarly, teaching hospitals with "heavy" graduate teaching programs (defined as hospitals with resident to bed ratios of 0.25 or greater) show an average increase in their capital-related payments of approximately 3.0 percent when projected payments are based on a first year Federal payment blend. Other categories of hospitals that would receive higher payments under the proposed system are large urban hospitals (with 405 beds or more) and government controlled facilities. The latter group is shown to benefit by a 2.9 percent increase based on the first year blend.

Among hospitals that would likely experience a drop in payments are proprietary facilities, with a projected payment decrease, under the first year Federal payment blend, of 4.1 percent. We cannot determine with certainty the reason for this decline without specific data on the age of their facilities, but we suspect that proprietary hospitals have recently invested in capital, and as a result, they have incurred higher interest and depreciation expenses. In fact, if the FY 1984 cost data for proprietary hospitals are indicative of new major investments, the losses in the impact analyses may be overstated. It is quite possible that with major new investments, the capital costs for proprietary hospitals remained fairly level between FY 1984 and FY 1988. Thus, the assumption that FY 1984 capital costs for proprietary hospitals were inflated at the same rate as all other hospitals would be incorrect, and the reduction of the FY 1988 payments to these hospitals would probably be less than 4.1 percent.

In general, any observed reductions in FY 1988 payments do not necessarily imply losses for hospitals. A noncash expense, such as depreciation, may cause a hospital to show an accounting loss, but does not affect cash flow. Also, principal payments, which Medicare does not reimburse, would not significantly affect cash flow, since these are usually low during the initial years after investment. Finally, hospitals that incur a loss in capital payments in FY 1988 due to a major recent investment will have fairly level capital expenses over the next ten years. Since the capital payments for all hospitals will be increased each year by the prospective payment system update factor, we would expect that a number of these hospitals will obtain capital surpluses during the transition. For hospitals with projected losses in the first year of the transition, there are a number of actions they can take to adapt their operations and spending. For example, hospitals could purchase less costly assets or refinance debt at lower interest rates. Also, since the present payment system may encourage hospitals to purchase assets prematurely, construction projects or acquisitions could be postponed until a more appropriate time.

### 3. Projected Distributional Effects of This Proposal

Recognizing that the previous analysis only provides a measure of central tendency, and fails to give an indication of the range of possible effects, we have examined the range of possible effects the proposed payment system may have on all hospitals subject to the prospective payment system, and hospitals grouped by their location in either urban or rural areas for the first year of the transition. In presenting this analysis, we must point out again that our analysis does not reflect any investment changes for hospitals since FY 1984. Table II displays both the absolute number of hospitals in our data base groups and the percent they comprise of the number of hospitals in the group under analysis.

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TABLE II DISTRIBUTION OF HOSPITALS

Percentage Increases or Decreases in Proposed Payments Compared to Projected Cost-Basis Payments[1/]

First Year Payment Blend

| | Hospitals in data base[3/] | Percent Decreases[2/] | | | | | Percent Increases[2/] | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Less than 20 percent | -20 to -15 | -15 to -10 | -10 to -5 | -5 to 0 | 0 to +5 | +5 to +10 | +10 to +15 | +15 to +20 | Greater than 20 percent |
| All Hospitals | 4624 | 0.6 | 1.3 | 3.2 | 10.8 | 20.9 | 17.7 | 15.1 | 9.0 | 6.6 | 14.7 |
| Urban Hospitals | 2469 | 0.5 | 1.2 | 3.8 | 13.2 | 24.7 | 19.6 | 14.0 | 7.2 | 5.2 | 10.6 |
| Rural Hospitals | 2155 | 0.8 | 1.3 | 2.5 | 8.1 | 16.7 | 15.6 | 16.5 | 11.0 | 8.1 | 19.4 |

1/ Analysis based on FY 1984 hospital data inflated by an estimate of the actual rate of inflation used in calculating both a projection of payments under current reasonable cost principles and hospital-specific payments under the proposed system. Proposed payments used in this analysis are based on FY 1988 proposed blend of five percent Federal for plant/fixed equipment and 33 percent Federal blend for moveable equipment to simulate payments during the first transition year.

2/ Increases and decreases are relative to 1984 payments projected to 1988 levels under current reimbursement principles. The rates used for comparison purposes assume that all hospitals in the data base have an October 1 to September 30 cost reporting period.

3/ Excludes Puerto Rican and sole community hospitals.

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At the national level, for the first year of the proposed system approximately 39 percent of all hospitals in the data base would either lose or gain between zero and five percent compared to current payments for capital-related costs. The breakdown between those hospitals that would lose between zero and five percent is almost identical to the percent of hospitals that would gain between zero and five percent. The percent of gaining hospitals is about 18 percent, while hospitals losing payments equals 21 percent. Over 64 percent of hospitals would receive payment increases or decreases during the first year between the −10 percent and +10 percent interval.

A similar clustering around the −5 percent and +5 percent interval is also evident among hospitals grouped by urban and rural locations. Approximately 32 percent of all rural hospitals fall within this interval, while 44 percent of all urban hospitals will either lose or gain between zero and five percent. Of all rural hospitals in the data base, nearly 16 percent are projected to receive between zero and five percent higher payments under the proposed payment system for the first year compared to their current payment levels while about 17 percent of rural hospitals would stand to lose between zero and five percent of their current payments. Similarly, among urban hospitals, approximately 20 percent of the hospitals are projected to receive increases of between zero and five percent while about 25 percent of urban hospitals are expected to receive between zero and five percent lower payments.

During FY 1988, nearly one fifth of all rural hospitals would receive increases in their payments for capital-related expenses of 20 percent or more, while only .8 percent of all rural hospitals would receive payment decreases of 20 percent or greater. Slightly more than 10 percent of urban hospitals would get payments of 20 percent or greater, while only about .5 percent would see decreases in their payments of 20 percent or more. Of all hospitals under the prospective payment system, almost 15 percent would have their payments go up by 20 percent or more, with slightly more than .6 percent of all hospitals receiving reductions of 20 percent or more.

On the whole, based on policies and payment rates we are proposing for FY 1988, more hospitals would receive increases in payments over current levels than hospitals receiving decreases in their payments. Nationally, about 63 percent of all hospitals in the data base (71 percent of rural hospitals and 56 percent of all urban hospitals) would receive increases in their capital-related payments in the first year.

4. Effects of Eliminating Transition for Capital Costs

If we were to eliminate the transition and immediately incorporate capital costs into the prospective payment system, a number of hospitals would probably have difficulty quickly adapting their operations to the lower payment levels. For example, assuming the projected increase in the average Medicare cost per case between FY 1984 and FY 1988 is appropriate, urban hospitals in the East South Central region would experience an 11.6 percent reduction in their FY 1988 capital payments if our policy did not have a transition (compared to a 2.0 percent reduction under our policy of a ten-year transition). Thus, since some hospitals may face major capital reductions if all capital were incorporated immediately into the prospective payment system, we believe it is critical to provide hospitals a ten-year transition period to give them adequate time to adjust their operations and spending to the new payment levels.

As stated previously, the long transition allows hospitals to adapt their operations and spending in a number of ways. Hospitals may seek to purchase less costly assets or refinance debt at lower interest rates. Also, since the present payment system may encourage hospitals to purchase or construct assets earlier than necessary, hospitals could postpone construction projects or acquisitions of assets until a more appropriate time. Finally, hospitals that incur a loss in capital payments in FY 1988 due to a major recent investment will have fairly level capital expenses over the next ten years. Since the capital payment for all hospitals will be increased each year by the prospective payment system update factor, we would expect that a number of these hospitals will obtain capital surpluses during the transition.

Table III, below, indicates the FY 1988 impact of a policy with no transition for capital expenditures. We note that this table reflects FY 1984 capital costs and does not reflect changes in hospital investment behavior between FY 1984 and FY 1988. It should be noted that hospitals with increases in payments may not reflect major investments (capital costs) made between FY 1984 and FY 1988, thereby overstating gains for these hospitals. Similarly, hospitals that made major investments prior to FY 1984 may have their losses overstated, since the increase in these hospitals' FY 1984 Medicare capital costs per case from FY 1984 to FY 1988 was probably overstated.

We want to emphasize that the table *does not* reflect our projections of hospital capital profits or losses in FY 1997, when the proposed capital prospective system would be fully phased in. Given the numerous changes that the hospital industry will undergo in the next ten years, it would be highly speculative and inappropriate to attempt to project long-run impact on hospitals resulting from our capital proposal.

TABLE III.—ESTIMATED IMPACT OF IMMEDIATE IMPLEMENTATION OF THE PROSPECTIVE PAYMENT SYSTEM FOR CAPITAL-RELATED COSTS [1]

| | Number of hospitals [2] | Percent impact [3] |
|---|---|---|
| All Hospitals | 4624 | 0.0 |
| *Urban by Region:* | | |
| New England | 174 | 33.0 |
| Mid Atlantic | 257 | 17.7 |
| South Atlantic | 367 | −3.3 |
| East North Central | 488 | −1.3 |
| East South Central | 151 | −11.6 |
| West North Central | 172 | −8.1 |
| West South Central | 331 | −14.1 |
| Mountain | 83 | −16.8 |
| Pacific | 446 | −0.9 |
| *Rural by Region:* | | |
| New England | 30 | 45.6 |
| Mid Atlantic | 82 | 27.4 |
| South Atlantic | 293 | 1.1 |
| East North Central | 346 | −0.1 |
| East South Central | 285 | 0.2 |
| West North Central | 504 | 4.2 |
| West South Central | 395 | −3.3 |
| Mountain | 133 | −7.9 |
| Pacific | 87 | 9.9 |
| *Urban Hospitals* | 2464 | −0.7 |
| 0–99 Beds | 603 | −5.8 |
| 100–404 Beds | 1506 | −0.1 |
| 405–684 Beds | 302 | 12.1 |
| 685 + Beds | 58 | 21.2 |
| *Rural Hospitals* | 2155 | 3.9 |
| 0–99 Beds | 1645 | 10.2 |
| 100–169 Beds | 342 | −5.2 |
| 170 + Beds | 168 | 3.2 |
| *Teaching Status:* | | |
| Non-Teaching | 3767 | −7.1 |
| Resident/Bed Ratio, Less than 0.25 | 712 | 5.2 |
| Resident/Bed Ratio, 0.25 or Greater | 145 | 28.0 |

TABLE III.—ESTIMATED IMPACT OF IMMEDIATE IMPLEMENTATION OF THE PROSPECTIVE PAYMENT SYSTEM FOR CAPITAL-RELATED COSTS [1]—Continued

| | Number of hospitals [2] | Percent impact [3] |
|---|---|---|
| *Disproportionate Share Hospitals (DSH):* | | |
| No Additional Payments | 3652 | −2.7 |
| Urban DSH 100 Beds or More | 740 | 6.1 |
| Urban DSH fewer than 100 Beds | 84 | 7.5 |
| Rural DSH | 168 | 26.2 |
| *Other Special Status:* | | |
| Rural Referral Centers (RRCs) | 191 | 4.7 |
| Rural fewer than 50 Beds | 953 | 28.3 |
| *Type of Ownership:* | | |
| Voluntary | 2786 | 2.6 |
| Proprietary | 681 | −30.6 |
| Government | 1138 | 24.0 |

[1] These estimated Medicare impacts are based on the assumption that there is no transition, and proposed capital-related payments would be incorporated into the present prospective payment system effective October 1, 1987. This impact reflects the budget neutrality factor for FY 1988 and the exclusion of sole community hospitals.

[2] This column shows the number of hospitals in each cell of the FY 1984 hospital cost data base used to compute both the proposed payment rates and the estimated impact.

[3] These margins are shown as a percent difference between payments under the proposed system compared to payments under the current system, based on each hospital's FY 1984 data inflated by the estimated growth in Medicare capital costs per case through FY 1988, and assumes all hospitals have cost reporting periods corresponding to the beginning and end dates of the phase-in year.

5. Effects of Standardizing the Federal Payment Rates by the Indirect Medical Education Factor and the Factor for Disproportionate Share Hospitals

This final section briefly examines the effects on hospital payments of standardizing by the indirect medical education factor and the factor for disproportionate share utilization. As discussed in section II of this preamble, sections 1886(a)(4) and (d)(1)(A) of the Act treat the exclusion or inclusion of capital-related costs in the prospective payment system, as either excluding or including these costs in the definition of inpatient operating costs. Since we are proposing to incorporate the payment of capital-related costs into the existing framework of the prospective payment system for hospital inpatient operating costs under sections 1886 (a)(4) and (d)(1)(A) of the Act, we must standardize these costs for case-mix variations, indirect cost of medical education and disproportionate share, unless there is an appropriate reason for not standardizing capital-related costs by one or more of these factors. A preliminary statistical analysis indicates that there is reasonable analytical support for standardizing capital-related costs by the hospital case-mix index. The evidence, however, for standardizing for the indirect costs of medical education and disproportionate share is inconclusive.

Since we have no strong evidence to suggest that it is inappropriate to standardize capital-related costs by the same factors used in standardizing hospital inpatient operating costs, we propose to standardize capital related costs by the indirect teaching factor, disproportionate share, and the case-mix index. We will continue to examine the appropriateness of standardizing capital-related costs by these three factors. Below, we present rates that have not been standardized for indirect medical education and disproportionate share factors along with the prospective payment rates we are proposing for FY 1988 in Tables 1 and 2 in Appendix A.

TABLE IV.—COMPARISON OF CAPITAL-RELATED FEDERAL PAYMENT RATES NOT STANDARDIZED FOR DISPROPORTIONATE SHARE AND INDIRECT COSTS OF MEDICAL EDUCATION COMPARED WITH PROPOSED FY 1988 FEDERAL RATES

| | Nonstandardized rates | | Standardized rates | |
|---|---|---|---|---|
| | Urban | Rural | Urban | Rural |
| Plant/Fixed Equipment | $161.89 | $160.35 | $171.83 | $160.59 |
| Moveable Equipment | 115.99 | 87.06 | 108.76 | 87.11 |

Without standardizing for indirect teaching and disproportionate share, the urban Federal payment rate for plant/fixed equipment would increase from $171.83 to $161.89 (a 5.9 percent increase). Similarly, the urban national Federal rate for moveable equipment would increase from $108.53 to $115.99 (a 6.9 percent increase). Rural rates for fixed and moveable are affected only slightly, since most teaching and disproportionate share hospitals are located in urban areas. The rural Federal rate for plant/fixed equipment would actually decrease slightly, going from $160.59 to $160.35 (a 0.1 percent decrease). The rural rate for moveable equipment would remain virtually unchanged, going from $87.11 to $87.06.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-410-PN]

## Medicare Program; Changes to the DRG Classification System

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed notice.

**SUMMARY:** The regulations governing the prospective payment system for inpatient hospital services provide that we will periodically publish notices addressing changes to the Diagnosis-Related Group (DRG) classification system. We first did this in 1985, and are continuing that practice with this proposed notice.

As in previous notices, we are responding to comments received on the DRG classification system, listing diagnoses and procedures for which new identifying codes (in the coding system of the International Classification of Diseases—9th Edition—Clinical Modification (ICD-9-CM) on which DRG assignments are based) have been approved, and proposing certain changes in the DRG classification system to resolve some of the problems identified by outside comments and our own analysis.

**DATE:** Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 20, 1987.

**ADDRESS:** Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-410-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309 G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-410 PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m to 5:00 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION, CONTACT:** Linda Magno, (301) 594-9343.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Prospective Payment System—General*

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system (PPS) for Medicare payment for inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the diagnosis-related group (DRG) to which a beneficiary's stay is assigned. The list of DRGs currently contains 473 specific categories. All but 3 DRGs are categorized into 23 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body. Some, such as MDC 18 (Infections and Parasitic Diseases; Systemic or Unspecified Sites) and MDC 22 (Burns), are not, because they involve multiple organ systems.

The formula used to calculate payment for a specific case takes a hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average resources consumed per case by the average hospital. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

### *B. Basic DRG Classification System*

The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. First, the physician enters into a patient's medical record the principal diagnosis, any additional diagnoses, and any procedures performed during the stay. This information is expressed by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD-9-CM). The principal diagnosis, as many as four additional diagnoses, and up to three procedures are reported, along with a patient's age, sex, and discharge status, to the hospital's fiscal intermediary on the hospital's request for payment.

The intermediary then enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnoses and procedure codes and demographic information (that is, sex, age, and discharge status). It is used to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights, and to classify current cases for purposes of determining payment.

Principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis, age, and presence or absence of complications or comorbidities (hereafter CC) only. Generally, GROUPER does not consider other procedures; that is, non-surgical procedures or minor surgical procedures generally not done in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy (ESWL) for patients with a principal diagnosis of urinary stones.

### *C. Changes to the DRG Classifications and Weighting Factors*

#### 1. General.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. In addition, Congress provided the Secretary with authority to reclassify diagnoses and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Initially, section 1886(d)(4)(C) of the Act required the Secretary to adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. Subsequently, Congress amended section 1886(d)(4)(C), through section 9302(e) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509; October 21, 1986), requiring the Secretary to adjust the classifications

and weighting factors for discharges in FY 1988 and at least annually thereafter. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress is that we make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology.

2. Changes to the ICD–9–CM Coding System.

The International Classification of Diseases, Ninth Revision (ICD–9) is a classification system developed by the World Health Organization for recording morbidity and mortality information for statistical purposes, for indexing hospital records by diseases, and for storing and retrieving data. The International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) is a system for reporting diagnostic information and procedures performed in hospitals and other types of health care delivery systems.

The clinical modification to ICD–9 (that is, ICD–9–CM), was developed under the guidance of the National Center for Health Statistics (NCHS) to adapt the ICD–9 classification system to the needs of hospitals in North America. The modifications were intended to provide a mechanism to present a clinical picture of the patient. Thus, ICD–9–CM codes are more precise than those included in ICD–9 since greater precision is needed to describe the clinical picture of a patient than for statistical groupings and trend analysis.

Effective January 1979, after nearly two years of development by numerous national experts on clinical technical matters, the ICD–9–CM became the single classification system intended for use by hospitals in the United States. This system replaced several earlier related but somewhat dissimilar classification systems. Once the ICD–9–CM classification system was in place, several errors and omissions were noted. Consequently, in September 1980 a second edition of ICD–9–CM was published. The preface to the second edition noted that the continuous maintenance of ICD–9–CM is the responsibility of the Federal government. The preface also stated that no future modifications to ICD–9–CM would be made by the Federal government without considering the opinions of representatives of major users of the classification system.

In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal inter-departmental committee charged with the mission of maintaining and updating the ICD–9–CM. This includes approving new coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee encourages participation in the above process by major health-related organizations. In this regard the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for input into coding matters from representatives from recognized organizations in the coding fields, such as the American Medical Record Association, The American Hospital Association, and the Commission on Professional and Hospital Activities, as well as physicians, medical record administrators, and other members of the public. Considering the opinions expressed at the public meeting, the Committee formulates recommendations, which then must be approved by the co-chair agency heads (that is, the Administrator of HCFA and the Director of NCHS) before adoption for general use.

Coding changes approved by the Committee and agency heads are published in the Federal Register and made available through the Government Printing Office (GPO). On August 29, 1986, a notice was published (51 FR 30913) that set forth all changes approved before July 1, 1986. (If needed, a comparable notice will be published this year.) A correction document was published on October 7, 1986 (51 FR 35693).

3. The Role of ProPAC in the Analysis of DRGs

The Prospective Payment Assessment Commission (ProPAC) is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classification weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary. (ProPAC is also directed, by the provisions of section 1886 (e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with Federal FY 1986 and thereafter.) These recommendations are due to the Secretary no later than the first day of April before the beginning of each fiscal year. (Beginning in 1999, they will be due no later than the first day of March.) The statute requires that ProPAC, in making its recommendations, take into account changes in the hospital market basket, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost-effectiveness in the provision of inpatient hospital services.

Under section 1886(e)(5) of the Act we are required to publish the annual report of ProPAC recommendations in conjunction with the statutorily mandated proposed rule setting forth the proposed update to standardized amounts and other changes to the prospective payment system for inpatient hospital services. In the preamble to that proposed rule, we discuss our responses to ProPAC's recommendations in detail. However, certain recommendations of the April 1, 1987 ProPAC report are specifically relevant to the changes in the DRG classification system proposed in this notice. In those cases, our primary responses are set forth in this notice (See section III. below) rather than in the separate proposed rule. See that rule for a reprint of ProPAC's recommendations and our other responses.

4. Publication of Notices on DRG Classification Changes

On June 10, 1985, we published a notice of proposed rulemaking (NPRM or proposed rule) in the Federal Register (50 FR 24966) to update the prospective payment system in general. As part of that NPRM, and as required by section 1886(d)(4)(C) of the Act, we proposed to adjust the DRG classifications and weighting factors for discharges beginning with Federal fiscal year (FY) 1986.

On September 3, 1985, we published a final rule in the Federal Register (50 FR 35646) concerning the prospective payment system. We included in that rule the classification changes proposed in the June 10 proposed rule as we had modified them in response to comments and suggestions we received on the NPRM. In that final rule, we also established by regulation, now codified as 42 CFR 412.10, that we would publish the proposed changes (except for new coverage decisions) in the DRG classification system for public comment

before implementing them. We also included some additional changes that followed the principles discussed in the proposed rule or that were similar to them. We indicated in the final rule that we could not address certain classification issues that were raised in the NPRM comment period for various reasons; we also noted that those comments would be analyzed and reviewed during the several months after publication of the September 3 final rule and that actions on them would be published in a notice early in 1986. Also, we solicited comments on any other proposed classification changes, and provided an address for such comments.

In keeping with that commitment, and in accordance with our regulations at § 412.10, the following year we published a proposed notice in the Federal Register on March 13, 1986 (51 FR 8762) and a final notice on June 3, 1986 (51 FR 20192). In those notices, we responded to comments received on the DRG classification system, discussed Medicare coverage changes affecting the DRG system, listed procedures for which new ICD–9–CM codes had been proposed, and proposed certain changes in the DRG classification system to resolve some of the problems identified by comments and our analysis up to that time.

Further classification changes, principally arising from recommendations made by ProPAC, were proposed on June 3, 1986 (51 FR 19970). A correction document was published on June 4, 1986 (51 FR 20435). Those changes, as modified by comments and additional analysis, were finalized on September 3, 1986 (51 FR 31454). A correction document was published on October 1, 1986 (51 FR 34982).

### 5. Basic References on ICD–9–CM Coding and the DRG Classification System

ICD–9–CM is published as a three volume set:

Volume 1—Diseases: Tabular List
Volume 2—Diseases: Alphabetic Index
Volume 3—Procedures: Tabular List and Alphabetic Index

The three-volume set can be purchased from the GPO at a cost of $29.00 in paper, and $40.00 in hardback. In addition, the ICD–9–CM coding changes published August 29, 1986 are also available from the GPO. Copies can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The ICD–9–CM revisions to become effective October 1, 1987, summarized later in this document, also will be available from the GPO this fall.

Health Systems International (HSI), under contract with HCFA, is responsible for updating and maintaining the GROUPER program and related documentation used in processing Medicare claims under the prospective payment system. The current DRG Definitions Manual may be purchased for $150.00 from HSI by writing to their office at 100 Broadway, New Haven, Connecticut 06511. The DRG Definitions Manual for FY 1988, which will include the changes proposed in this document as finalized in response to public comment, will be available in September, 1987 at a yet-to-be determined price.

The most recent list of DRGs, including their titles, relative weights, mean length of stay, and outlier thresholds, is that published in September 3, 1986 at 51 FR 31561. Due to the length and detail of that list, it is not feasible to reprint it here. However, for the convenience of the reader, we are providing the following list of the MDCs. By reference to this list, we are also able to simplify the later discussion by referring to each MDC by number alone.

**Table I.—Major Diagnostic Categories**

| | |
|---|---|
| 1 | Diseases and Disorders of the Nervous System |
| 2 | Diseases and Disorders of the Eye |
| 3 | Diseases and Disorders of the Ear, Nose, and Throat |
| 4 | Diseases and Disorders of the Respiratory System |
| 5 | Diseases and Disorders of the Circulatory System |
| 6 | Diseases and Disorders of the Digestive System |
| 7 | Diseases and Disorders of the Hepatobiliary System and Pancreas |
| 8 | Diseases and Disorders of the Musculoskeletal System and Connective Tissue |
| 9 | Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast |
| 10 | Endocrine, Nutritional and Metabolic Diseases and Disorders |
| 11 | Diseases and Disorders of the Kidney and Urinary Tract |
| 12 | Diseases and Disorders of the Male Reproductive System |
| 13 | Diseases and Disorders of the Female Reproductive System |
| 14 | Pregnancy, Childbirth and Puerperium |
| 15 | Newborns and Other Neonates With Conditions Originating in the Perinatal Period |
| 16 | Diseases and Disorders of Blood and Blood Forming Organs and Immunological Disorders |
| 17 | Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms |
| 18 | Infections and Parasitic Diseases (Systemic and Unspecified Sites) |
| 19 | Mental Diseases and Disorders |
| 20 | Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders |
| 21 | Injuries, Poisonings and Toxic Effects of Drugs |
| 22 | Burns |
| 23 | Factors Influencing Health Status and Other Contacts With Health Services |

### II. Public Comments

In addition to the opportunity for public comment afforded by publications of notices such as this, we maintain an address for public comments and suggestions year-round. Specific questions concerning the DRG classification system and suggestions for DRG changes should be addressed to: HCFA, Grouper Changes, P.O. Box 26681, Baltimore, Maryland 21207.

Comments that we have received through this address since publication of the June 3, 1986 notice have been considered in analyzing the issues discussed below.

### III. 1987 ProPAC Recommendations Discussed in this Notice

On April 1, 1987, ProPAC issued its third annual Report and Recommendations to the Secretary of the U.S. Department of Health and Human Services. Certain recommendations of that report dealt with issues of patient and DRG classification that are relevant to this notice. Although our responses to ProPAC's recommendations generally may be found in the separately published proposed rule on changes to the prospective payment system, those particular recommendations are more appropriately responded to in this document.

A summary of these ProPAC recommendations follows, with an indication after each summary of the section of this notice in which our response to that recommendation may be found.

- Recommendation 21: The Use of Patient Age in Defining DRGs.

DRGs should not be defined based on the current variable of age greater than 69 and/or presence of a complication or comorbidity (CC). The commission believes that the resource use for Medicare patients 70 years or older without a CC is significantly lower than for cases with CCs. DRGs should be defined on the basis of the presence or absence of a CC, regardless of age. The Secretary should implement this change for DRGs that currently split on age and

CC, and should determine whether other DRGs should also be split on CC.

—See section V.A. for how we propose to implement this recommendation.

• *Recommendation 22: Improving the Use of Complications and Comorbidities in Defining DRGs.*

The Secretary should revise the current list of complications and comorbidities, and its use in defining DRGs, to ensure more appropriate grouping of Medicare cases for payment under the prospective payment system. The Secretary should evaluate several possible approaches, including the development of Major Diagnostic Category (MDC)- or DRG-specific CCs on the basis of resource intensity, and the specification of levels of complexity among the CCs.

—See section V.B. for our initial proposals to improve the use of CCs.

• *Recommendation 24: Improving GROUPER Logic and ICD–9–CM Coding.*

The Secretary should develop and implement changes to ICD–9–CM and the use of these codes by the DRG GROUPER. Specifically, the Secretary should evaluate how the GROUPER recognizes ICD–9–CM guidelines and make revisions where necessary to ensure more accurate DRG assignment. More consistant coding guidelines should be developed for the selection of principal diagnosis and sequencing of other diagnoses. Further, noted deficiencies in the ICD–9–CM coding system should be addressed in the next revision (ICD–10). Finally, the Secretary should review all the codes in Chapter 16 of the coding system to establish consistent coding rules and guidelines and help ensure more appropriate DRG assignment.

—We agree that consistent and appropriate ICD–9–CM coding is essential for accurate DRG classification of cases, and believe the ICD–9–CM Coordination and Maintenance Committee should address the particular concerns raised by ProPAC. To date, however, development and dissemination of coding guidelines have been handled by the hospital industry. We have been striving to improve the quality of coding in the health care system through the Coordination and Maintenance Committee, review of bills by PROs, and liaison with the coding industry.

A number of the proposals discussed below, such as refinement of the treatment of CCs, would improve the GROUPER logic with respect to coding practices. However, the level of refinement apparently contemplated in the ProPAC recommendation will not be easily or quickly achieved, dependent as it is on developing consensus on associated guidelines, conventions, and practices among experts, the industry and payers such as us. Nonetheless, we continue to devote resources to making needed improvement, and we encourage specific suggestions for improvements. Those suggestions may be submitted to the address in section II, above, or to both of the following addresses:

Ms. Sue Meads, National Center for Health Statistics, Room 2–19 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782

Ms Patricia Brooks, Health Care Financing Administration, Bureau of Data Management and Strategy, Room G–A–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207

• *Recommendation 25: Temporary DRG for the Implantable Defibrillator*

Implantable defibrillator cases should be assigned to a new, temporary, device-specific DRG.

—See sections IV.C.6. for our alternative proposal for temporary assignment of these cases.

• *Recommendation 26: Temporary DRG for the Cochlear Implant*

Cochlear implant cases should be assigned to a temporary, device-specific DRG.

—See section IV.A. for our reasons for not accepting this recommendation.

## IV. Discussion of Comments Affecting a Particular MDC

### *A. MDC 3*

As noted in Recommendation 26, ProPAC is concerned that classification of cochlear implant cases into DRG 49 (Major Head and Neck Procedures) is inappropriate, both in terms of resource consumption and clinical coherence. ProPAC believes that assigning cochlear implant cases to a new, temporary DRG for 3 years would allow HCFA and ProPAC to better evaluate the costs of cochlear implants and payments to hospitals.

We agree that cochlear implant cases are not clinically coherent with other cases assigned to DRG 49. As ProPAC correctly reported, the kinds of resource use associated with major head and neck procedures is significantly different from cochlear implant cases. However, based on the only Medicare data available to date, there would be no material difference in the weighting factors for a new cochlear implant DRG and for the existing DRG 49. That is, the FY 87 early PATBILL data showed less than a six hundred dollar difference (5 percent) in the average standardized charges (hereafter referred to simply as average charges) between cochlear implant cases and the other cases in DRG 49. In addition, we find no merit to the allegation that the establishment of a new DRG would facilitate evaluation of the cochlear implant issue. Three unique ICD–9 CM codes for cochlear implant procedures were approved and became effective October 1, 1986. These procedure codes can be tracked and data evaluated just as easily, regardless of whether the case showing these codes are in DRG 49 or some other new DRG.

Finally, there have not as yet been enough Medicare claims to allow us to calculate a statistically meaningful weighting factor. Consequently, we are not adopting this ProPAC recommendation at this time. We will continue to evaluate the issue as more Medicare data become available. We will further consider ProPAC's recommendation for the FY 1989 classification changes.

### *B. MDC 4*

We have received several comments that payments under the DRG classification system have failed to recognize the higher costs of patients that require mechanical ventilation. Further, there have been numerous comments that current coding guidelines for coding respiratory failure result in many severely ill patients requiring mechanical ventilation being classified into inappropriately low-weighted DRGs throughout MDC 4. This dispersion of such resource-intensive cases over several DRGs tends to dilute the impact of mechanical ventilation on the average resource utilization of patients with respiratory diseases.

In reviewing the FY 1985 PATBILL data, we found that cases involving mechanical ventilation had average charges that were 2 to 10 times the average charge for other patients in the same DRG for each DRG of MDC 4. Although there were substantial differences in the average charge of ventilator dependent patients between the DRGs evaluated, these differences are minimal in comparison to the differences between the average charge for ventilated patents as compared to non-ventilated patients in each DRG in MDC 4.

In further evaluating the cases requiring ventilation, we noted a significant difference in use of resources between those patients for whom ventilator access was achieved through endotracheal intubation as opposed to tracheostomy The average charge for cases involving tracheostomies was

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three times the average charge for other ventilator cases. Our medical consultants speculate that this relates primarily to ventilator time as opposed to actual resource difference associated with creating access. That is, in patients expected to be ventilated for extended periods of time, tracheostomy is the preferred access due to irritations of the larynx frequently caused by prolonged endotracheal intubation.

We believe it is appropriate for the DRG classification system to recognize the higher resources associated with mechanical ventilation of patients with a principal diagnosis of diseases and disorders of the respiratory system. Further, we wish to recognize the significant difference in use of resources in ventilator cases related to access. Consequently, we are proposing to create two new DRGs for MDC 4. Cases presenting a principal diagnosis in MDC 4 and one of the tracheostomy procedure codes (31.1, Temporary tracheostomy, 31.21, Mediastinal tracheostomy, 31.29, Other permanent tracheostomy) would be assigned to new DRG 474. This DRG would be ordered above all other DRGs in MDC 4, including the surgical DRGs.

Procedure code 31.1, Temporary tracheostomy, would remain a non-OR procedure. We recognize this is somewhat inconsistent with the general framework of the DRG classification system with respect to the commingling of surgical and medical cases. However, in this instance the tracheostomy procedure codes serve as a proxy for data that are not currently available through the Medicare claim form; that is, time of ventilation. We believe it is appropriate, in this case, for the DRG classification system to recognize this highly resource-intensive procedure regardless of whether the patient was otherwise treated surgically or not.

We are also proposing to create a new DRG for cases involving mechanical ventilation through endotrachial intubation. A new medical DRG, 475, would be established for cases presenting a principal diagnosis assigned to MDC 4 and showing both of non-OR procedure codes 93.92, Other mechanical assistance to respiration, and 96.04, Insertion of endotrachial tube.

The majority of cases involving surgery for respiratory diagnosis are routinely intubated endotrachially, if only on a prophylactic basis. This procedure is considered a part of the surgery and is not normally coded. However, the weighting factor for surgical DRGs already account for the resources involved in intubating the patients. The new DRG 475 is intended to recognize the resources associated with mechanical ventilation of non surgical cases. Such ventilation is likely to be of a longer duration than surgical or post surgical intubation and therefore, may be more resource intensive. Consequently, the GROUPER logic will assign cases to DRG 475 only if no surgical procedure is performed.

We expect that the weighting factors for both of the new proposed DRGs would be quite high. We are somewhat concerned with the impact of this change on quality of care, physician practice patterns and medical coding. We intend that in the future Utilization and Quality Control Peer Review Organizations (PROs) will be targeting DRGs 474 and 475 for review to assure that no Medicare patients are subjected to unnecessary procedures in order for hospitals to obtain increased payment. Finally, we wish to emphasize that we view creation of these DRGs as an interim measure. We intend to continue to monitor this issue, consider necessary coding refinements, and further evaluate ventilator cases across other MDCs.

### *C. MDC 5*

#### 1. Major Vessel Resection with Replacement

Procedure codes 38.46, Abdominal artery resection with replacement, 38.47, Abdominal vein resection with replacement and 38.48, Lower limb artery resection with replacement, are currently classified to DRG 112, Vascular Procedures Except Major Reconstruction Without Pump, for patients with a principal diagnosis of circulatory disorders. Our medical consultants have advised us that these procedures are similar, from both clinical and resource perspectives, to procedures coded 38.36, Abdominal artery resection with anastomosis, 38.37 Abdominal vein resection with anastomosis, and 38.38, Lower limb artery resection with anastomosis. Therefore, these procedures should be treated similarly by the DRG classification system.

Data analysis supports our physician consultants recommendation and further shows that the resources associated with the procedure are more closely related to DRGs 110 and 111, Major Reconstruction Vascular Procedure Without Pump, Age 69 and/or CC and Age Under 70 without CC, respectively. Consequently, we propose to assign procedure codes 38.46, 38.47, and 38.48 to DRGs 110 and 111 and remove them from DRG 112.

#### 2. Malignant Hypertension

One commenter noted that malignant and benign types of hypertension diseases are classified into a single DRG, 134, Hypertension. The commenter alleges that patients with malignant hypertension are more severely ill and require much more resources to treat.

To evaluate this commenter's hypothesis, we pulled all cases with a principal diagnosis of some form of malignant hypertension from DRG 134 (diagnosis codes 401.0, 402.00, 404.0, 405.01, and 405.09). We found 28 percent of the cases in DRG 134 involved malignant hypertension. However, the average charge for such cases was only slightly higher (7 percent) than the average charge for all cases in DRG 134. Based on such minimal differences in resources, we find no basis for reclassification of malignant hypertension.

#### 3. Acute myocardial infarction

Two issues have been raised with respect to the acute myocardial infarction (AMI) DRGs (121, 122, and 123). First, several commenters noted that while other circulatory disorder DRGs have been split to recognize cardiac catheterization and angiography, the AMI cases are not. The commenters stated that this results in systematic underpayments on AMI cases involving cardiac catheterization. Other commenters noted that the organization of the AMI cases recognizes cardiovascular complications only. One commenter believes any secondary diagnosis on the list of CCs should affect classification of AMI cases.

In evaluating these issues, we used data from the 1985 PATBILL file for all cases assigned to DRGs 121, 122, and 123. With respect to the catheterization issue, we found that such cases were in fact more expensive than the mean charge for each of the AMI DRGs. However, the number of cardiac catheterization cases in each DRG is small, comprising only 5, 9, and 3 percent of DRGs 121, 122, and 123, respectively. Similarly, we found support for the commenter's hypothesis that presence of CCs, other than those diagnoses considered cardiovascular complications, increased use of hospital resources. The average charge for cases presenting non-cardiovascular complication were 11, 14, and 31 percent higher than the mean charges for DRGs 121, 122, and 123, respectively.

Although both comments have noted issues that merit further consideration, we are not proposing DRG classification changes at this time. We do not believe it is appropriate or necessary to maintain nine DRGs for AMI cases. Further, we note that due to the ICD-9-

CM guidelines, many cases reported with AMI diagnoses do not represent cases of current, documented myocardial infarction. That is, coding guidelines permit coding of AMI in cases in which a patient has had an infarction within eight weeks, or in which an AMI is the suspected diagnosis. Rather than act hastily in establishing a multitude of AMI DRGs to respond to co-occurrences that appear to influence use of resources in AMI cases, we believe the most justifiable action at this time is to work with the ICD–9–CM user community to develop more specific guidelines for use of AMI diagnoses codes. We also intend to continue our analysis of this issue with the expectation of developing a classification methodology that would capture the factors that significantly contribute to resource utilization in AMI cases without increasing the number of DRGs significantly.

4. Adding a CC to DRG 124

For assignment to DRG 124, Circulatory Disorders Except AMI with Cardiac Catheterization and Complex Diagnosis, patients must present one or more complex cardiac diagnoses. Presently, congestive heart failure and left heart failure are considered complex diagnoses. However, Heart failure, unspecified, diagnosis code 428.9, is not.

Our medical consultants have advised us that both specific and non-specific heart failure are complex diagnoses. In this regard, we note that Heart failure, not otherwise specified (NOS) is already considered a significant complication in MDC 5 with respect to AMI patients assigned to DRG 121. Thus, we propose to add diagnosis code 428.9 to the diagnoses included in DRG 124.

5. Pacemakers

In its April 1986 report, ProPAC had recommended that separate DRGs be created for single chamber pacemakers and dual chamber or functionally similar devices. In response to ProPAC's recommendation, we stated that ICD–9–CM procedure coding in use at that time did not permit implementation of the recommendation, nor did it provide enough information to allow for in-depth evaluation of the proposal. However, we did revise the classification scheme related to pacemaker pulse generator replacements. Further, we stated that we would be working toward modification of the ICD–9–CM procedure codes so that they may more accurately identify pacemaker procedures. We also promised to seek data to evaluate the need for classification changes in the pacemaker DRGs (115 through 118).

New ICD–9–CM procedure codes have been recommended by the ICD–9–CM Coordination and Maintenance Committee and approved for use effective October 1, 1987. These codes are presented in section VI. D. below. The use of these new codes will assure ongoing data collection on pacemakers by type of device and will allow for future modification of the DRG classification system, if necessary, to take into account significant differences in pacemaker devices.

With respect to data analysis, we were able to differentiate a sample of PATBILL claims data by type of pacemaker device through cross-matching with data on the pacemaker registry file. Like ProPAC, we found the average charge for dual chamber pacemaker implants was approximately $2,000 higher than single chamber cases. However, we found the percentage of the Medicare beneficiary population receiving dual chamber devices to be substantially smaller (14 percent) than that estimated by ProPAC (25 percent).

Although we found a substantial difference in the mean charges when we separated pacemaker cases by type of device, we noted little to no improvement in the coefficient of variation in the reconfigured DRGs. We believe this to be related to the fact that there is a broad continuum of pacemaker device charges. That is, there is a large range of charges for both single and dual chamber devices, with the charges for the more expensive single chamber devices being very similar to the less expensive dual chamber devices.

We also evaluated patient characteristic information available through Medicare claims forms to attempt to identify whether there were any indications that course of care differed materially between the two types of devices. We concluded that none of the variables studies (for example, complications, comorbidity, discharge status) differed significantly between the two groups of patients.

Consequently, we are not proposing classification changes in the pacemaker DRGs at this time. Given the broad continuum of charges for pacemaker devices, there would be little to no improvement in the coefficient of variation in the pacemaker DRGs if they were reconfigured. The concern that prompted ProPAC's past recommendation to sub-divide the pacemaker DRGs was the fear that the payment scheme would provide an incentive to utilize incentive to furnish substandard care; that is, use single chamber devices in lieu of dual chamber devices. Given that the amount of variation in charges is not materially different under the suggested reconfiguration, this same degree of incentive to provide substandard care, if it exists at all, would remain under the reclassification. That is, the reclassification could be viewed by some hospitals as an incentive to utilize inexpensive devices of presumably poorer quality. This could potentially result in increased program costs through more replacement procedures and present a hardship upon beneficiaries, if the less expensive devices proved to be of poorer quality.

We should point out that ProPAC also further evaluated the pacemaker DRGs. Upon further analysis, it also noted the broad continuum of charges for pacemaker devices, and that due to group purchasing, volume discounts, variable mark-up, etc., it was difficult to ascertain the cost of various pacemaker devices. ProPAC voted to continue analysis of the pacemaker issue and to temporarily delay further recommendations in this regard.

6. Defibrillators

In Recommendation 25 of its April 1987 report to the Secretary, ProPAC has restated its previous recommendation that automatic implantable cardioverter defibrillator (AICD) cases be assigned to a unique DRG. In its discussion concerning this issue, ProPAC again noted that cardioverter defibrillator implants were not clinically consistent with other cases assigned to DRG 104, Cardiac Valve Procedure With Pump and With Cardiac Catheterization. They also expressed some concerns that DRG 104 assignment of AICD cases may result in excessive payments to hospitals.

In addition, during 1986 "An Analysis of the Inpatient Hospital Costs and Charges Associated with Implantation of the Automatic Implantable Cardioverter Defibrillator" was conducted under contract by the AICD manufacturer. This study concluded that payment at DRG 104 for initial implants was appropriate, but that assignment to DRG 117 for replacement procedures results in inappropriately low payments. Further, the study concluded that a separate DRG may be indicated for cases involving other concurrent surgery or electrophysiologic studies.

New unique ICD–9–CM procedure codes for AICD implants became effective October 1, 1986. Consequently, we were able to search early PATBILL data for information pertaining to Medicare utilization and costs. We found a significant difference in charges

for AICD cases. AICD implants involving cardiac catheterization (and, presumably, electrophysiological studies) during the same admission as the implantation showed charges that were more than twice as high as charges for implants without catheterization. Moreover, AICD replacements showed charges 47 percent lower than initial implants without catheterization and 74 percent lower than initial implants involving catheterization.

There is merit to ProPAC's concern that AICD cases are not clinically consistent with other cases assigned to DRG 104. There also appears to be merit to their concern that DRG 104 results in excess payments for AICD total system implants. That is, the average charge for AICD initial implants in our PATBILL file was approximately 24 percent lower than the average charge for DRG 104. However, given the large degree of variation in charges for AICD implants, we do not believe it is appropriate to assign these cases to a single new DRG. Further, given the minimal number of AICD cases, we consider it inappropriate to create multiple new DRGs.

Instead, we propose to alter somewhat the current classification of AICD cases. Our data show that AICD total system implants with cardiac catheterization procedure codes were very similar in charges to DRG 104 cases. Thus, we propose to continue to assign such cases to this DRG. However, those AICD cases without catheterization, for which electrophysiological testing was presumably performed prior to the admission involving the implant, were significantly less expensive. We believe it is appropriate to allow the otherwise applicable GROUPER logic for the DRG pair 104/105 to take place. That is, AICD total system implants will be classified differently in recognition of cardiac catheterization procedures just as are all other surgical procedures assigned to DRG 104. Consequently, we propose to assign AICD total system implant cases without cardiac catheterization to DRG 105.

Further, we found that classification of AICD replacements to DRG 117 does, as the manufacturer's study alleges, result in significant underpayment. AICD replacement procedures were, on average, 96 percent higher than the average case assigned to DRG 117 in our data file. We believe DRG 120 is the most appropriate classification in MDC 5, from both clinical and resource use perspectives. Therefore, we propose to assign procedure codes 37.95 through 37.96, implant or replacement of cardiodefibrillator leads or generator, to DRG 120 and remove them from DRG 117.

We must emphasize that this proposed reclassification of AICD cases is solely an interim measure. The data used in evaluating this issue were minimal. We will continue to monitor Medicare payment for AICD implants and further evaluate the issue as more data become available.

### *D. MDC 6*

#### 1. Reassignment of Ulcer Diagnosis Code

Diagnosis code 531.70, Chronic gastric ulcer without mention of hemorrhage, perforation or obstruction, is presently assigned to DRG 176, Complicated Peptic Ulcer. However, all other diagnoses assigned to this DRG report findings of either perforation, obstruction, or both. Further, other types of peptic ulcer diagnoses presenting neither perforation nor obstruction have been assigned to DRGs 177 and 178, uncomplicated peptic ulcer.

Based on the advice of our medical consultants, we propose to remove diagnosis code 531.70 from DRG 176 and reassign it to DRGs 177 and 178. This change would improve the clinical consistency of the DRGs in MDC 6.

#### 2. No Change in the Classification of Bowel Procedures

We received several letters alleging that there are problems in the classification of major small and large bowel procedures, DRGs 148 and 149. None of the commenters noted specific types of cases or procedures that seemed to be causing problems, nor did they recommend changes.

We began our evaluation of this issue by looking at general statistical data on the DRGs. Both of the DRGs showed a coefficient of variation similar to the mean for the DRG classification structure. In fact, DRG 149 presents substantially less variation than is typical of the DRGs generally. However, given the interest in this DRG pair, we decided to study the issue in more detail.

Noting that there are 57 different procedures assigned to this DRG, we suspected that there might be significant differences in resources associated by procedure types. We gathered data on frequency, mean charges, average length of stay, and statistical measures of variation for each procedure by patient sex. We found that 77 percent of the cases in DRG 148 were accounted for by only 13 different procedures. Further, 2 procedures, 45.73, Right hemicolectomy, and 45.76, Sigmoidectomy, accounted for 43 percent of the cases in this DRG. Thus, the mean charge for the DRG is substantially influenced by the resources associated with these procedures.

In further evaluating mean charges for the most frequently occurring procedures, we found all but 2 procedures fell within 20 percent of the mean charge for the DRG. Those two procedures accounted for only 11 percent of the cases in DRG 148 and only 7 percent of those in DRG 149. Without further specific information from commenters identifying more precisely what classification changes they believe are necessary, we can only conclude that the problems being experienced by the commenters are arising from isolated high cost cases or from practice patterns that are idiosyncratic to a particular area. National data indicate no significant classification problems in the major bowel procedures DRGs.

### *E. MDC 8*

#### 1. Hamartoma

Diagnosis code 759.6, Hamartoma, is a non-neoplastic tissue overgrowth. Presently, this code is assigned to MDC 17, Myeloproliferative and poorly differentiated neoplasms. Since hamartoma is non-neoplastic, we believe such classification is not clinically consistent. We propose to remove the code from MDC 17, DRGs 406, 407, 408, 413 and 414, and to add this diagnosis to MDC 8. When treated medically, hamartoma would be assigned to DRG 256, Other Musculoskeletal System and Connective Tissue Diagnoses. When surgical intervention is necessary for this diagnosis, we would expect procedure code 32.29, Other local excision or destruction of lesion or tissue of lung, to be reported. Thus, we are also proposing to add procedure code 32.29 to DRGs 233 and 234, Other musculoskeletal and connective tissue procedures, in order to avoid inappropriate assignment to DRG 468.

#### 2. Certain femur procedures

Procedure code 79.95, Unspecified operation on femur bone injury, is currently assigned to DRGs 218 through 220. However, the titles of these DRGs specifically exclude hip, foot and femur procedures. Consequently, for clinical consistency, we are proposing to reassign the procedure to DRGs 210 through 212, Hip and Femur Procedures Except Major Joint. However, we should point out that code 79.95 is an extremely vague classification category. We

anticipate that it would be unusual for the medical record to fail to specify the procedure performed.

*F. MDC 9*

1. Cellulitis of finger, toe, and digit

DRGs 283 and 284 [Skin Grafts and/or Debridement of Ulcer or Cellulitis: Age Greater than 69 and/or CC, and Age Under 70 without CC, respectively] are assigned when a patient has a principal diagnosis of cellulitis or skin ulcer that is treated with wound debridement or skin graft. We noted that cellulitis of the finger, toe, and digit had inadvertently been omitted from the diagnoses assigned to DRGs 283 and 284. Further, our medical consultants have advised us that onychia of the finger and toe, as well as felon, are forms of cellulitis that may in certain situations appropriately be treated with debridement or skin graft. Consequently, we are proposing to add the following diagnoses to the list of principal diagnoses that may result in assignment to DRGs 283 and 284.

681.00 Cellulitis and abscess of finger, unspecified
681.01 Felon
681.02 Onychia and paronychia of finger
681.10 Cellulitis and abscess of toe, unspecified
681.11 Onychia and paronychia of toe
681.9 Cellulitis and abscess of unspecified digit

2. Infected abrasion or friction burn of face, neck, and scalp

Diagnosis code 910.1, Abrasion or friction burn of face, neck, and scalp except eye, infected, is currently assigned to DRGs 280 through 282 (Trauma to the Skin, Subcutaneous Tissue and Breast; Age Greater Than 69 and/or CC, Age 18–69 Without CC, and age 0–17, respectively). Other diagnosis codes for infected skin conditions have been assigned to DRGs 277 through 279 (Cellulitis, Age Greater Than 69 and/or CC, Age 18–69 Without CC, and Age 0–17, respectively). We believe it is appropriate to assign diagnosis code 910.1 to DRGs 277–279 along with other diagnoses for infections. We are proposing to remove the code from DRGs 280–282.

*G. MDC 11*

Diagnosis code 581.9, Nephrotic syndrome with unspecified pathological lesion in kidney, is currently assigned to DRGs 325 through 327, Kidney and Urinary Signs and Symptoms. However, all other diagnosis codes for nephrotic syndrome, 581.0 through 581.89, are assigned to DRGs 331 through 333, Other Kidney and Urinary Tract Diagnoses. Although code 581.9 is non-specific, we do not believe it is appropriately classified as a sign or symptom. Therefore, we propose to remove it from DRGs 325–327 and place it in DRGs 331–333.

*H. MDC 19*

Diagnosis code 785.59, Shock without mention of trauma, not elsewhere classified, is currently assigned to MDC 5 with unspecified shock and cardiogenic shock. However, based on ICD–9–CM coding guidelines and indexing, this code primarily is used to report shock arising from infectious diseases. For example, coding instructions provide for reporting of this code for endotoxic shock, gram negative shock, and septic shock. Given that most cases reporting this diagnosis do not present diseases and disorders of the circulatory system, we propose to remove code 785.59 from MDC 5 and reassign the condition to MDC 18. Non-surgical cases will be classified into DRGs 416 and 417, Septicemia.

*I. MDC 20*

1. Refinement of alcohol/drug DRGs

When the DRG classification system initially came into use under the prospective payment system, there was concern that the organization of the DRGs for alcohol and drug use was inappropriate. We agreed to temporarily exclude alcohol/drug hospitals and units while we studied the issue further. In the September 3, 1985 Federal Register, we modified the DRG classification of alcohol/drug cases.

Although there was general consensus that the revised alcohol/drug DRGs were an improvement over the original classification scheme, there remained concern with the classification. Commenters noted coding difficulties and questioned the completeness of the rehabilitation and detoxification procedure data used to set the weighting factors. The Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) conducted an independent study of the DRG classification issue. The evaluation process involved selecting a sample of claims and reabstracting the data to assure claims were coded in accordance with current guidelines. Based on its analysis, ADAMHA recommended further refinement in the structure of the DRGs to distinguish between patients with CCs not related to MDC 20, and patients presenting only MDC 20 diagnoses. Using the FY 1985 and FY 1986 PATBILL files, we modeled the reconfigurations suggested by ADAMHA's research and have concluded that further DRG classification changes are appropriate. Alcohol/drug hospitals and units have been excluded from the prospective payment system while we and ADAMHA studied the appropriateness of the alcohol/drug DRGs. However, their exclusion is expected to expire at the end of this cycle of cost reporting periods. That is, under current regulations, formerly excluded alcohol/drug hospitals and units will begin to enter the prospective payment system, and be paid under the appropriate DRGs, effective with cost reporting periods beginning on or after October 1, 1987. Because of the importance of this change, details on the proposed reclassification of the DRGs in MDC 20 have been included in the separate proposed rule setting forth the FY 1988 changes for the prospective payment system, rather than this notice.

2 Addition of drug diagnoses to CC list

Most drug abuse and dependency diagnoses are currently included on the list of CCs. However, we noted that several diagnoses, such as those involving cocaine, hallucinogens, and unspecified drugs, have been omitted from the listing. We believe that abuse of or dependence on these drugs, as with those currently included on the CC list, would alter the course of care when present in a patient with a principal diagnosis not related to alcohol or drug abuse or dependency. Consequently, we propose to add the following diagnoses to the list of CCs.

304.20 Cocaine dependency, unspecified
304.21 Cocaine dependency, continuous
304.22 Cocaine dependency, episodic
304.50 Hallucinogen dependency, unspecified
304.51 Hallucinogen dependency, continuous
304.52 Hallucinogen dependency, episodic
304.60 Drug dependency, not elsewhere classified, unspecified
304.61 Drug dependency, not elsewhere classified, continuous
304.62 Drug dependency, not elsewhere classified, episodic
305.30 Hallucinogen abuse, unspecified
305.31 Hallucinogen abuse, continuous
305.32 Hallucinogen abuse, episodic
305.60 Cocaine abuse, unspecified
305.61 Cocaine abuse, continuous
305.62 Cocaine abuse, episodic
305.90 Drug abuse, not elsewhere classified, unspecified
305.91 Drug abuse, not elsewhere classified, continuous
305.92 Drug abuse, not elsewhere classified, episodic

## V. Proposed Changes Affecting Multiple MDCs

### *A. Elimination of Age Over 69*

As noted above, age is one of the demographic factors used to classify cases into DRGs. Presently there are 92 sets of paired DRGs that are distinguished by age greater than 69 and/or the presence of CCs. This distinction based on age was incorporated originally into the DRG classification system because, on average, relative resource use increases with patient age. It has since been suggested, however, that the age of the patient may not be a good indicator of resource utilization because the proportion of patients with complications or comorbidities rises with age group, and that it is the presence of CCs, rather than age, that explains the relatively greater resource intensity of older patients compared to younger ones.

Evidence to support this hypothesis just arose when we conducted an analysis in preparation for restructuring the leukemia/lymphoma DRGs (401–404), which was discussed in the June 3, 1986 proposed rule. Once we removed acute leukemia cases from other leukemias and lymphomas, we found that cases split into groups based only on the presence or absence of CCs, without regard to age, were more homogeneous than cases in groups based on age and/or GC. In addition, the two DRGs in each pair, when partitioned only on the basis of CCs, were more different from each other than were the two DRGs in each pair when split on age over 69 and/or CC. Accordingly, we eliminated age from consideration in the restructuring of DRGs 401–404, and decided to evaluate the effects of eliminating age from consideration in all other DRG pairs. (Note: references to elimination of age breaks are only to breaks of over or under age 70, and do not imply the elimination of pediatric DRGs for patients under age 18.)

We conducted an analysis of the effect of eliminating age over 69 as a determining factor in DRG classification using FY 85 PATBILL data. Overall, the results confirmed our findings with the leukemia/lymphoma DRGs. We found a substantial improvement in the homogeneity, as measured by the coefficient of variation, for a significant number of DRGs. Some DRG pairs showed more variation when age was eliminated. Overall, elimination of age, when weighted for case frequency, reduced the variation in the paired DRGs by 3 percent. Moreover, the difference between mean charges for the two DRGs in virtually every pair widened. Generally, the ratio of charges for each DRG with CCs to charges for the same DRG without CCs increased when age was eliminated. The average increase in the ratio was .13. These results suggest that it takes little or no more resources to treat an otherwise healthy person over age 69 than to treat a person under age 70; and, further, that commingling otherwise healthy patients over age 69 with patients presenting significant complications and comorbidities serves to depress the average charges for the DRGs involving CCs, resulting in underpayment for cases presenting CCs.

ProPAC also studied this issue as part of its systematic analysis of the DRGs conducted this year. Their study found that, in all but a few cases, grouping patients who are over 69 with the CC patients is inappropriate. They found the average length of stay and charges for patients who are over 69 without a CC are more similar to other patients without a CC than to patients with a CC. Overall, the average charges for patients who are over 69 without a CC, while only 4 percent higher than the other non-CC patients, are 30 percent lower than charges for all patients with a CC.

ProPAC concluded that, while both advanced age and the presence of a CC clearly are associated with higher resource use, the effect of having a CC is much greater. Their findings hold for both medical and surgical DRGs, but are especially dramatic for the surgical DRGs. Based on our findings and those of ProPAC, we propose to eliminate age over 69 as a criterion for DRG classification. We propose to continue to consider age under 18 in those pediatric DRGs that already have been established and to consider age 35 in the diabetic DRGs (294 and 295). Thus, this proposed change would not alter the total number of DRGs. We wish to point out that our analysis and conclusions regarding consideration of age over 69 in the DRG classification system is based solely on Medicare patient data. It is possible that age may be an appropriate demographic factor to consider for classification purposes on other populations.

### *B. Refinement of Complications and Comorbidities Listing*

Currently, there is a standard list of diagnoses that are considered complications and comorbidities regardless of the patient's principal diagnosis. This list includes approximately 2,700 diagnoses that were considered to increase the length of stay by at least one day for at least 75 percent of the patients. However, there are a number of diagnoses that are appropriately included on the CC list in that they alter the course of care for 75 percent of the cases but will not have any effect on treatment of other cases. In fact, in some cases it is expected that a diagnosis which is on the CC listing will almost always co-exist with certain other diagnoses.

Despite the fact that in as many as 25 percent of the cases a particular diagnosis may not alter the course of care, the DRG classification system was developed with a single general CC listing. This principle of the classification system has received some criticism and is being studied by both ProPAC and HCFA. Both organizations believe some refinement of the CC listing is appropriate. (See ProPAC Recommendation 22.)

With the proposed elimination of age over 69 as a criterion for DRG classification, we are concerned that there may be an incentive for hospitals to inappropriately report secondary diagnoses in order to maximize payment. We do not wish the DRG classification system to adversely affect the quality of medical coding and data reported by providing an incentive to duplicatively code the same or very similar diagnosis.

For nearly every diagnosis there are a number of related signs and symptoms that frequently accompany that diagnosis. For example:

- A patient with a principal diagnosis of code 345.1, General convulsive epilepsy, could nearly always have diagnosis code 780.3, Convulsions;
- A patient with a principal diagnosis of code 852.06, Subarachnoid hematoma—deep coma, could also show code 780.0, Coma and stupor; and
- A patient with a diagnosis of 958.5, Traumatic anuria, could also present code 788.2, Retention of urine.

We are concerned that such duplicate coding would ultimately result in a vast majority of cases being classified into the higher paying DRG of each DRG pair. Such a practice would result in a masking of resource utilization with the treating of true complications and comorbidities. Upon annual recalibration of the DRGs, this would be likely to result in severe underpayments for more resource intensive cases.

Consequently, we propose to modify the GROUPER logic so that certain diagnoses generally included on the list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. This is similar to the

changes we will be proposing in the alcohol/drug reclassification in MDC 20 (to be discussed in the separate proposed rule on prospective payment system changes), but on a much more restricted scale. With the assistance of our medical consultants, an individual determination has been made for each ICD–9–CM diagnosis code to identify those other diagnoses that should not be considered as a CC for a particular principal diagnosis. We believe this proposed logic change will not only ensure that combinations of codes will result in appropriate classification of cases between the complicated and uncomplicated DRGs in a pair, but will also act to improve the quality of medical coding.

Since a unique set of exclusionary codes has been developed for each ICD–9–CM diagnosis code, the list is extremely voluminous. Therefore, we have not printed the entire listing in this notice. We have, however, attempted to secure clinical input from sources outside of HCFA. Readers who feel the complete listing is essential in order to comment on the proposal may examine the document at our offices (see addresses above) or obtain the document for the cost of photocopying ($71.10), by writing to the address listed in section II of this notice.

We wish to make it clear that the exclusion of diagnoses from the CC list for a particular principal diagnosis is intended solely to limit duplicate coding of particular or related conditions or to act as an edit for erroneous coding by not considering codes for diagnoses that cannot co-exist as CCs, such as obstructed and unobstructed conditions. For the most part, existing coding guidelines have been followed in developing the exclusions. Further, it should be noted that hospitals are free to continue to report related diagnoses on the Medicare billing form regardless of the fact that those diagnoses would not be considered as a CC for a particular principal diagnosis. Generally, the excluded secondary diagnoses have been established using the following principles:

1. Chronic and acute manifestations of the same condition should not be coded in a single case. For example:

- Acute peptic ulcer would not be a CC for a principal diagnosis of chronic peptic ulcer;
- Acute pericarditis, not otherwise specified (NOS), would not be a CC for a principal diagnosis of chronic rheumatic pericarditis; and
- Acute gastritis would not be a CC for a principal diagnosis of alcoholic gastritis.

- 2. Specific and non-specific (that is, NOS) diagnosis codes for a condition should not be coded in a single case. For example:
- Vocal cord paralysis, NOS would not be a CC for vocal paralysis, unilateral, partial;
- Hernia, site NOS with gangrene, would not be a CC for umbilical hernia with obstruction; and
- Secondary cardiomyopathy, NOS, would not be a CC for cardiomyopathy in other diseases.

3. Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, benign/malignant, should not be coded on a single case. For example:

- Acute epiglottitis with no obstruction would not be a CC for acute epiglottitis with obstruction;
- Benign hypertensive heart disease with congestive heart failure would not be a CC for malignant hypertensive heart disease; and
- Bilateral inguinal hernia with obstruction would not be a CC for unilateral inguinal hernia.

4. The same condition in anatomically proximal sites would not constitute a CC. For example:

- Chronic and acute stomach and duodenal ulcers would not be a CC of peptic ulcers;
- Acute epiglottitis with obstruction would not be a CC for acute tracheitis with obstruction; and
- Subarachnoid hemorrhage would not be a CC for subdural hemorrhage.

5. Closely related conditions would not constitute a CC. For example:

- Rheumatic mitral insufficiency would not be a CC for mitral stenosis;
- Asbestosis would not be a CC for bronchopneumonia organism, NOS; and
- Cellulitis of pharynx would not be a CC for parapharyngeal abscess.

As noted, ProPAC recommended in its 1987 report that the Secretary evaluate several possible approaches to revision of the CC listing in order to improve the ability of the DRGs to capture differences in case complexity. ProPAC further recommended that the GROUPER logic be modified to respond more appropriately to coding guidelines. We intend to further develop the ideas presented by ProPAC and may be proposing further revision in the classification system in the future, including further refinements of the CC listing. In the meantime, we believe this proposed refinement will help to assure appropriate classification of cases.

### *C. Surgical Hierarchies*

We are proposing changes to the surgical hierarchies for FY 1988, similar to those changes made only for MDC 7 for FY 1987. However, since these changes would be based on recalibration of the DRGs, we are presenting those proposals in the separate NPRM setting forth the proposed changes to the prospective payment system for FY 1988.

## VI. Proposed Changes to Reduce Inappropriate DRG 468 Assignment

### *A. Background*

DRG 468, Unrelated OR procedures, is reserved specifically for those cases in which none of the surgical procedures furnished to a patient is related to the principal diagnosis. It was established as a means of identifying those cases that do not readily lend themselves to classifications within groups of clinically similar patients, because the cases themselves do not reflect typical treatment patterns. These include, for example, cases in which the patient develops pressing medical-surgical needs related to a secondary diagnosis or complication. DRG 468 is not a catch-all for cases that do not fit elsewhere. It is designed to preserve the utility of, rather than violate the principle of, diagnosis-related classifications.

### *B. Reassignment of Intra-abdominal Hemangioma to MDC 6*

Intra-abdominal hemangioma, diagnosis code 228.04, is currently classified in MDC 5, Diseases and Disorders of the Circulatory System. However, when this procedure is treated surgically by excision of the lesion, the case is assigned to DRG 468 because the procedure codes for excision of lesions at intra-abdominal sites are not included in MDC 5.

We believe it is more appropriate to assign diagnosis code 228.04 to MDC 6, Diseases and Disorders of the Digestive System. This is consistent with classification of hemangioma of other specified sites. For example, intracranial hemangioma is in MDC 1, retinal hemangioma is in MDC 2 and skin hemangioma is in MDC 9. We propose to assign cases treated surgically to the appropriate surgical DRG based on the site of the lesion. Cases treated medically would be assigned to DRGs 182, 183, and 184, Esophagitis, Gastroenteritis, and Miscellaneous Digestive Disorders, with CC, without CC, and Age 0–17, respectively.

### *C. Removal of Codes for Minor Skin Procedures from Surgical List*

Procedure codes 86.09, Other incision of skin and subcutaneous tissue, and 86.3; Other local excision or destruction of lesion or tissue of skin and subcutaneous tissue, are very

nonspecific codes used to describe a wide variety of procedures. Analysis of PATBILL data has shown that these two procedure codes are responsible for a significant number of DRG 468 cases. Moreover, we have received comments that often a very minor superficial skin procedure, such as wart or mole removal, is performed during an inpatient stay for an unrelated diagnosis, solely for the convenience of the patient. When this is the only procedure performed, the case is grouped to DRG 468. Therefore, given the wide variety of procedures that do not require use of an operating room reported under codes 86.09 and 86.3, we propose to remove these codes from the list of OR procedures.

Although the procedures coded 86.09 and 86.3 frequently do not require the use of an operating room, and therefore should be removed from the list of OR procedures, they are nonetheless the only available codes for some more severe subcutaneous skin procedures that utilize the resources of an operating room. We wish to continue to recognize these codes in a manner that will assign such cases to an appropriate DRG. Therefore, the presence of these codes on cases showing a principal diagnosis in MDC 9 (Diseases and Disorders of the Skin, Subcutanecus Tissue, and Breast) would continue to result in classification to DRGs 269 or 270.

*D. Adding Lymphatic Structure Biopsy to MDC 1*

Lymphatic structure biopsy, procedure code 40.11, is frequently performed on patients with a principal diagnosis of secondary malignant neoplasm of the brain and spinal cord. This diagnosis is assigned to MDC 1 but the procedure is not; consequently, their appearance together on a request for payment results in assignment of the case to DRG 468. Therefore, we propose to add procedure code 40.11 to MDC 1, DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Procedures).

*E. Adding Total Splenectomy to MDC 5*

Total splenectomy, procedure code 41.5, is frequently performed on patients presenting a principal diagnosis of Splenic artery aneurysm, diagnosis code 442.83. The diagnosis is included in MDC 5 but the procedure is not, resulting in the assignment of cases to DRG 468. Thus, we propose to add procedure code 41.5 to MDC 5, DRG 120, Other Circulatory System OR Procedures.

*F. Adding Certain Pancreas Procedure Codes to MDC 10*

Diagnosis code 211.7, Benign neoplasm of the Islets of Langerhans, is a lesion of the pancreas and commonly is treated by excision of the lesion or part of the pancreas. While pancreatic diagnostic and transplant procedures are included in MDC 10 along with the diagnosis, excision procedures are not. Thus, DRG 468 assignment results. We propose to add the following procedure codes to MDC 10, DRGS 292 and 293 (Other Endocrine, Nutritional and Metabolic Procedures, With and Without CC, respectively).

52.2 Local destruction, pancreatic lesion
52.51 Proximal pancreatectomy
52.52 Distal pancreatectomy
52.53 Radical, subtotal pancreatectomy
52.59 Partial pancreatectomy, not elsewhere classified

*G. MDC 11 Issues*

In MDC 11, we have noted 3 situations that result in inappropriate assignment of cases to DRG 468. First, procedure code 70.77, Vaginal suspension and fixation, is sometimes performed on patients with a principal diagnosis of Urinary incontinence, diagnosis code 788.3. Further, Mechanical complication of genitourinary device, implant and graft, diagnosis codes 996.30 and 996.39, are used to code malfunction of a penile prosthesis. Yet the procedure codes for replacement and removal of penile prosthesis, procedure codes 64.95 through 64.97, are included in MDC 12 only. Moreover, procedure code 60.69, Other prostatectomy, has been omitted inadvertently from the list of prostatectomies included in DRGs 306 and 307.

We propose to add procedure code 70.77 to MDC 11, DRGs 306 and 309 (Minor Bladder Procedures). We also propose to add procedure codes 64.95, 64.96, and 65.97 to MDC 11, DRG 315 (Other Kidney and Urinary Tract OR Procedures). Finally, we propose to add procedure code 60.69 to DRGs 306 and 307 (Prostatectomy). These changes would prevent inappropriate DRG 468 assignment of cases in which the procedure is related to the principal diagnosis.

*H. Adding a Urethral Repair Code to MDC 12*

In MDC 12, patients with a principal diagnosis of Hypospadias and epispadias, diagnosis code 752.6, may be treated with a procedure coded 58.49, Urethral repair, not elsewhere classified. However, since the procedure code is not assigned to MDC 12, this treatment results in DRG 468 assignment. We propose to add procedure code 58.49 to MDC 12, DRG 341 (Penis Procedures) to prevent inappropriate assignment of cases to DRG 468 when the procedure is related to the principal diagnosis.

*I. Deletion of Certain Codes from the OR List*

Procedure codes 39.62, Hypothermia incidental to open heart surgery, 39.63, Cardioplegia, and 39.64 Intraoperative cardiac pacemaker, are on the list of OR procedures but have not been assigned to any surgical DRGs. Therefore, at present, they would result in assignment to DRG 468 of all cases for which they are the only surgical procedure reported. These procedures are auxiliary to open heart surgery and are not usually performed alone (similarly to non-OR procedure 39.61, Extracorporeal circulation). Therefore, we propose to delete them from the list of operating room procedures.

## VII. Coding Issues

*A. Background*

In the final notice on changes to the DRG classification system, published June 3, 1986 (51 FR 20192), and the later final rule on the prospective payment system published September 3, 1986 (51 FR 31454), we published lists of new ICD-9-CM codes that became effective October 1, 1986. These new codes were adopted as a result of the recommendation of the ICD-9-CM Coordination and Maintenance Committee, and were also published by that committee on August 29, 1986 (51 FR 30914) in a notice announcing all codes approved before July 1, 1986, the availability of related instructional material, additions to the ICD-9-CM indexes, and errata for volumes 1, 2, and 3 of ICD-9-CM.

*B. Proposed Removal of Certain Codes From the Surgical List*

Because the new codes were not approved before publication on June 3, 1986 of the notice of proposed changes in the prospective payment system for FY 1987, we generally accommodated the new codes into the system without classification changes. That is, for purposes of assigning a case to a DRG, the new code was treated the same as the code that was previously used to identify the procedure or diagnosis. For example, procedure code 44.2, Pyloroplasty, was divided into 3 new subcategories: 44.21, Dilation of the pylorus by incision; 44.22, Endoscopic dilation of pylorus; and 44.29, Other pyloroplasty. All 3 new codes were

treated as code 44.2 had been under the DRG system.

While this policy had advantages in that it allowed the classification system to recognize timely all new codes, it did result in some inappropriate DRG classifications in that several new procedure codes were placed on the OR list despite the fact that they usually did not involve an operating room. Based on the advice of our medical consultants, the following procedures do not generally require an operating room and, therefore, are appropriately considered non-surgical procedures under the DRG classification system. Therefore, we propose to remove them from the list of surgical procedures.

—38.22, Percutaneous angioscopy
—44.22, Endoscopic dilation of pylorus
—44.93, Insertion of gastric bubble
—44.94, Removal of gastric bubble
—51.97, Therapeutic endoscopic procedures on biliary tract, oral route
—51.98, Other percutaneous procedures on biliary tract
—55.03, Percutaneous nephrostomy without fragmentation
—55.04, Percutaneous nephrostomy with fragmentation
—80.52, Intervertebral chemonucleolysis

Thus, the presence of any one of these procedure codes would not result in assignment of a case to a surgical DRG. This would affect DRGs 4, 112, 154, 155, 156, 193, 194, 214, 215, 286, 292, 293, 303, 304, 305, 400, 442, and 443.

*C. Proposed Removal of a Code From the CC List*

The new diagnosis code 795.8, Positive serological or viral culture finding for Human T-Cell Lymphotropic Virus—III/Lymphadenopathy—Associated Virus (HTLV–III/LAV), was included inadvertently in the list of complications and comorbidities in the FY 87 GROUPER program. Our medical consultants have advised us that a positive serological or viral culture finding, absent any symptoms or diagnosis of Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related condition (ARC), would not significantly alter the course of patient care. Therefore, we are proposing to remove code 795.8 from the list of CCs. Thus, this code would not be considered in assigning a case to one of a pair of DRGs based on CC.

*D. New Coding Changes*

As discussed above, the ICD–9–CM Coordination and Maintenance Committee has been established to update and maintain the ICD–9–CM codes. The Committee formulates recommendations on ICD–9–CM changes and forwards them to the Administrator of HCFA and the Director of the National Center for Health Statistics (NCHS) for approval. At the time we published our proposed DRG classification changes for FY 1987 (March 13, 1986), no new ICD–9–CM codes had been approved. Since our regulations at § 412.10 provide that, except for new coverage issues, no DRG classification change will be made without a prior public comment period, we adopted a policy of recognizing new codes approved prior to July 1, 1986 without classification changes. We now are proposing to reclassify some of those codes newly effective for FY 1987 as discussed above.

Additional new ICD–9–CM codes have been recommended by the Committee and approved by both agency heads. These codes will become effective October 1, 1987. Since these codes have already been approved in time for publication in the proposed notice, we are proposing some DRG classification changes in this notice. We are soliciting comments on the proposed DRG classification only. The code numbers and their titles were aired for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved.

Further, the committee has recommended, and the agency heads have approved, the deletion of several ICD–9–CM procedure codes. Code 37.84 has been deleted, since this procedure is now included in new code 37.77. In addition, all codes in the 99.7 series have been deleted. These codes indicate pacemaker technology that no longer is in use. Table IV displays the deleted procedure codes and their titles. None of the 99.7 series codes are considered OR procedures and, therefore, their removal will not affect the DRG classification system. Although code 37.84 is considered an OR procedure, the new replacement code, 37.77, will also be considered an OR procedure and will be treated similarly by the GROUPER. Consequently, this change also will not affect DRG classification of cases showing this procedure.

Listed below are the new ICD–9–CM codes and their proposed DRG classifications

TABLE II.—NEW DIAGNOSIS CODES

| Diagnosis Code [1] | Description | MDC | DRG [2] |
|---|---|---|---|
| 518.81 | Respiratory failure | 4 | 87 |
| 518.82 | Other pulmonary insufficiency, not elsewhere classified | 4 | 99 and 100 |
| 518.89 | Other diseases of lung, not elsewhere classified [3] | 4 | 101 and 102 |
| 799.1 | Respiratory arrest | 4 | 101 and 102 |
| 996.51 | Mechanical complication due to corneal graft | 2 | 46, 47, and 48 |
| 996.52 | Mechanical complication due to graft of other tissue, not elsewhere classified | 21 | 452 and 453 |
| 996.53 | Mechanical complication due to ocular lens prosthesis | 2 | 46, 47, and 48 |
| 996.54 | Mechanical complication due to breast prosthesis | 9 | 276 |
| 996.59 | Mechanical complication due to other implant and internal device, not elsewhere classified | 21 | 452 and 453 |
| 996.80 | Complications of transplanted organ, not otherwise specified | 21 | 452 and 453 |
| 996.81 | Complications of transplanted kidney | 11 | 331, 332, and 333 |
| 996.82 | Complications of transplanted liver | 7 | 205 and 206 |
| 996.83 | Complications of transplanted heart | 5 | 144 and 145 |
| 996.84 | Complications of transplanted lung | 4 | 101 and 102 |
| 996.86 | Complications of transplanted pancreas | 7 | 204 |
| 996.89 | Complications of other specified transplanted organ | 21 | 452 and 453 |

[1] All of the new diagnosis codes, except 518.89, would be added to the list of CCs.
[2] DRG listed is assignment based on non-surgical treatment. If an OR procedure is performed, DRG assignment within the MDC is determined by the OR procedure performed.
[3] Not added to the list of CCs.

TABLE III.—NEW PROCEDURE CODES

| Procedure Code | Description | DRG |
|---|---|---|
| 01.11 | Closed (percutaneous) (needle) biopsy of cerebral meninges | non-OR [1] |
| 01.12 | Open biopsy of cerebral meninges | 1, 2, 3, 400, 406, and 407 [1] |
| 01.13 | Closed (percutaneous) (needle) biopsy of brain | non-OR [1] |
| 01.14 | Open biopsy of brain | 1, 2, 3, 400, 406, and 407 [1] |
| 03.90 | Insertion of catheter into spinal canal for infusion of therapeutic or palliative substances | non-OR [2] |
| 04.11 | Closed (percutaneous) (needle) biopsy of cranial or peripheral nerve or ganglion | non-OR [1] |
| 04.12 | Open biopsy of cranial or peripheral nerve or ganglion | 7, 8, 63, 233, 234, 442, and 443 [1] |
| 06.11 | Closed (percutaneous) (needle) biopsy of thyroid gland | non-OR [1] |
| 06.12 | Open biopsy of thyroid gland | 290 [1] |
| 07.11 | Closed (percutaneous) (needle) biopsy of adrenal gland | non-OR [1] |
| 07.12 | Open biopsy of adrenal gland | 286 [1] |
| 27.22 | Biopsy of uvula (soft palate) | 63, 168 and 169 [1] |
| 33.24 | Closed biopsy (endoscopic) of bronchus | non-OR [1] |
| 33.25 | Open biopsy of bronchus | 75 [1] |
| 33.26 | Closed percutaneous (needle) biopsy of lung | non-OR [1] |
| 33.27 | Closed endoscopic biopsy of lung | 76 and 77 [2] |
| 33.28 | Open biopsy of lung | 75, 233, 234, 315, 400, 406, and 407 [2] |
| 33.29 | Other diagnostic procedures on lung or bronchus | 76 and 77 [1] |
| 34.25 | Closed (percutaneous) (needle) biopsy of mediastinum | non OR [1] |
| 34.26 | Open biopsy of mediastinum | 76, 77, 292, 293, 394, 400, 406, and 407 [1] |
| 36.01 | Single vessel percutaneous transluminal coronary angioplasty (PTCA) without mention of thrombolytic agent. | 108 and 112 [1] |
| 36.02 | Single vessel percutaneous transluminal coronary angioplasty (PTCA) with thrombolytic agent. | 108 and 112 [1] |
| 36.05 | Multiple vessel percutaneous transluminal coronary angioplasty (PCTA) (performed during the same operation) with or without mention of thrombolytic agent. | 108 and 112 [2] |
| 37.70 | Initial insertion of pacemaker lead, (electrode) not otherwise specified | 115, 116, 442, and 443 [2] |
| 37.71 | Initial insertion of tranvenous lead (electrode) into ventricle | 115, 116, 442, and 443 [2] |
| 37.72 | Initial insertion of transvenous leads (electrodes) into atrium and ventricle | 115, 116, 442, and 443 [2] |
| 37.73 | Initial insertion of transvenous lead (electrode) into atrium | 115, 116, 442, and 443 [2] |
| 37.74 | Insertion or replacement of epicardial lead (electrode) into epicardium | 115, 116, 117, 442, and 443 [2] |
| 37.75 | Revision of lead (electrode) | 117, 442, and 443 [2] |
| 37.76 | Replacement of transvenous atrial and/or ventricular lead(s) (electrode) | 117, 442, and 443 [2] |
| 37.77 | Removal of lead(s) (electrode) without replacement | 117, 442, and 443 [2] |
| 37.78 | Insertion of temporary transvenous pacemaker system | non OR [2] |
| 37.79 | Revision or relocation of pacemaker pocket | 117, 269, 270, 442, and 443 [2] |
| 37.80 | Insertion of permanent pacemaker, initial or replacement, type of device NOS | 115, 116, 118, 442, and 443 [2] |
| 37.81 | Initial insertion of single-chamber device, not specified as rate responsive (to physiologic stimuli). | 115, 116, 422, and 443 [2] |
| 37.82 | Initial insertion of single-chamber device, rate responsive | 115, 116, 442, and 443 [2] |
| 37.83 | Initial insertion of dual-chamber device | 115, 116, 442, and 443 [2] |
| 37.85 | Replacement of any type of pacemaker device with single-chamber device, not specified as rate responsive. | 118, 442, and 443 [2] |
| 37.86 | Replacement of any type of pacemaker device with single-chamber device, rate responsive. | 118, 442, and 443 [2] |
| 37.87 | Replacement of any type pacemaker device with dual-chamber device | 118, 442, and 443 [2] |
| 37.89 | Revision or removal of pacemaker device | 117, 442, and 443 [2] |
| 41.32 | Closed (aspiration) (percutaneous) biopsy of spleen | non-OR [1] |
| 41.33 | Open biopsy of spleen | 392, 393, 400, 406, 407 [1] |
| 44.14 | Closed (endoscopic) biopsy of stomach | non-OR [1] |
| 44.15 | Open biopsy of stomach | 154, 155, and 156 [1] |
| 45.14 | Closed (endoscopic) biopsy of small intestine | non OR [1] |
| 45.15 | Open biopsy of small intestine | 152 and 153 [1] |
| 45.25 | Closed (endoscopic) biopsy of large intestine | non-OR [1] |
| 45.26 | Open biopsy of large intestine | 152 and 153 [2] |
| 45.95 | Anastomosis to anus | 148, 149, 400, 406, 407, 442, and 443 [2] |
| 48.24 | Closed (endoscopic) biopsy of rectum | non-OR [1] |
| 48.25 | Open biopsy of rectum | 152 and 153 [2] |
| 50.11 | Closed (percutaneous) (needle) biopsy of liver | non OR [1] |
| 50.12 | Open biopsy of liver | 63, 76, 77, 170, 171, 199, 200, 233, 234, 269, 270, 292, 293, 315, 344, 345, 395, 394, 400, 406, 407, 442, and 443 [1] |
| 51.12 | Closed (percutaneous) biopsy of gallbladder or bile ducts | non-OR [1] |
| 51.13 | Open biopsy of gallbladder or bile ducts | 170, 171, 199, and 200 [1] |
| 52.11 | Closed (aspiration) (needle) (percutaneous) biopsy of pancreas | non-OR [1] |

TABLE III.—NEW PROCEDURE CODES—Continued

| Procedure Code | Description | DRG |
|---|---|---|
| 52.12 | Open biopsy of pancreas | 170, 171, 199, 200, 292, 293, 400, 406, 407, 442, and 443 [1] |
| 54.24 | Closed (percutaneous) (needle) biopsy of intra-abdominal mass | non-OR [3] |
| 55.23 | Closed (percutaneous) (needle) biopsy of kidney | non-OR [1] |
| 55.24 | Open biopsy of kidney | 233, 234, 303, 304, 305, 394, 400, 406, 407, 442, and 443 [1] |
| 56.32 | Closed percutaneous biopsy of ureter | non-OR [1] |
| 56.33 | Closed endoscopic biopsy of ureter | non-OR [3] |
| 56.34 | Open biopsy of ureter | 303, 304, and 305 [3] |
| 56.35 | Endoscopy (cystoscopy) (loopscopy) of ileal conduit | non-OR [3] |
| 57.33 | Closed transurethral biopsy of bladder | 310, 311, 344, 345, and 365 [1] |
| 57.34 | Open biopsy of bladder | 308, 309, 344, 345, 365, 400, 406, and 407 [1] |
| 60.11 | Closed (percutaneous) (needle) biopsy of prostate | non-OR [1] |
| 60.12 | Open biopsy of prostate | 310, 311, 344, and 345 [1] |
| 60.13 | Closed (percutaneous) biopsy of seminal vesicles | non-OR [1] |
| 60.14 | Open biopsy of seminal vesicles | 344 and 345 [1] |
| 62.11 | Closed (percutaneous) (needle) biopsy of testis | non-OR [1] |
| 62.12 | Open biopsy of testis | 338, 339 and 340 [1] |
| 68.13 | Open biopsy of uterus | 354, 355, 357, and 359 [3] |
| 68.14 | Open biopsy of uterine ligaments | 354, 355, 357, 358, and 359 [1] |
| 68.15 | Closed biopsy of uterine ligaments | 361 [3] |
| 68.16 | Closed biopsy of uterus | 363 and 364 [3] |
| 78.40 | Other repair and plastic operations on bone, unspecified site | 233, 234, 442, and 443 [1] |
| 78.41 | Other repair and plastic operations of chest cage | 76, 77, 233, 234, 442, and 443 [1] |
| 78.42 | Other repair and plastic operations of humerus | 218, 219, 220, 442, and 443 [1] |
| 78.43 | Other repair and plastic operations of radius/ulna | 223, 224, 442 and 443 [1] |
| 78.44 | Other repair and plastic operations of metacarpals/carpals | 228, 229, and 441 [1] |
| 78.45 | Other repair and plastic operations of femur | 210, 211, 212, 442, and 443 [1] |
| 78.46 | Other repair and plastic operations of patella | 221, 222, 442, and 443 [1] |
| 78.47 | Other repair and plastic operations of tibia/fibula | 218, 219, 220, 442, and 443 [1] |
| 78.48 | Other repair and plastic operations of metatarsals/tarsals | 225, 442 and 443 [1] |
| 78.49 | Other repair and plastic operation on bone, not elsewhere classified | 233, 234, 442, and 443 [1] |
| 78.90 | Insertion of bone growth stimulator, unspecified site | 233, 234, 442 and 443 [1] |
| 78.91 | Insertion of bone growth stimulator into chest cage | 76, 77, 233, 234, 442 and 443 [1] |
| 78.92 | Insertion of bone growth stimulator into humerus | 218, 219, 220, 442, and 443 [1] |
| 78.93 | Insertion of bone growth stimulator into radius/ulna | 223, 224, 442, and 443 [1] |
| 78.94 | Insertion of bone growth stimulator into carpals/metacarpals | 228, 229 and 441 [1] |
| 78.95 | Insertion of bone growth stimulator into femur | 210, 211, 212, 442, and 443 [1] |
| 78.96 | Insertion of bone growth stimulator into patella | 221, 222. 442, and 443 [1] |
| 78.97 | Insertion of bone growth stimulator into tibia/fibula | 218, 219, 220, 442, and 443 [1] |
| 78.98 | Insertion of bone growth stimulator into tarsals/metatarsals | 225, 442, and 443 [1] |
| 78.99 | Insertion of bone growth stimulator, not elsewhere classified | 233, 234, 442 and 443 [1] |
| 85.11 | Closed (percutaneous) (needle) biopsy of breast | non OR [1] |
| 85.12 | Open biopsy of breast | 259, 260, 262, 292, 293, 442, and 443 [1] |
| 85.95 | Insertion of breast tissue expander | 259, 260, 261, 442, and 443 [3] |
| 85.96 | Removal of breast tissue expanders | 259, 260, 261, 442, and 443 [3] |
| 86.93 | Insertion of tissue expander | 7, 8, 63, 120, 170, 171, 217, 263, 264, 265, 266, 267, 439, 458 and 472 [3] |
| 86.06 | Insertion of infusion pump | 7, 8, 76, 77, 170, 171, 201, 233, 234, 269, 270, 292, 293, 315, 344, 345, 365, 394, 401, 402, 408, 442, 443, 459 and 472 [3] |
| 99.85 | Hyperthermia for treatment of cancer | non OR [3] |
| 99.86 | Non-invasive placement of bone growth stimulator | non-OR [3] |

[1] Descriptions redefined, but procedure codes not changed and not classified differently.
[3] Procedure codes changed, but procedures are classified into the same DRGs.
[3] Completely new codes.

The following ICD–9–CM codes are being deleted without replacement.

TABLE IV.—DELETED PROCEDURE CODES

| Procedure Code | Description |
|---|---|
| 37.84 | Removal of epicardial electrode. |
| 89.71 | Mercury zinc pacemaker battery. |
| 89.72 | Nuclear pacemaker battery. |
| 89.73 | Lithium pacemaker battery. |
| 89.74 | Other pacemaker battery type. |

TABLE IV.—DELETED PROCEDURE CODES—Continued

| Procedure Code | Description |
|---|---|
| 89.75 | Fixed rate pacemaker sensing type. |
| 89.76 | Triggered demand pacemaker sensing type. |

TABLE IV.—DELETED PROCEDURE CODES—Continued

| Procedure Code | Description |
|---|---|
| 89.77 | Inhibited demand pacemaker sensing type. |
| 89.78 | Other pacemaker sensing type. |
| 89 79 | Programmable pacemaker. |

## VIII. Effective Date

We propose to make these changes in DRG classification and new ICD–9–CM codes effective for discharges occurring on or after October 1, 1987.

## IX. Regulatory Impact Statement

### *A. Executive Order 12291*

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for notices such as this if the implementation of the notice would meet the criteria of a "major rule." A notice would be considered a major rule if its implementation would be likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

As is clear from the above discussion, changes in the DRG classification system affect how much hospitals are paid for services furnished to Medicare patients. However, the effects of changes are not simple to analyze or project. The changes proposed in this notice will, if finalized, be incorporated in the revised DRGs and the recalibration of weights for those DRGs that will be effective October 1, 1987.

Each affected hospital will experience the classification changes only as mediated through recalibrated weights. We do not have a revised GROUPER available, and it is not feasible to attempt a detailed analysis at this time of the effects these changes might have. To the extent possible, we have looked at whether each change would increase or decrease particular DRG weights, as is clear from the above specific discussions. With the possible exception of the elimination of age breaks, we do not believe that any of these proposed changes to the DRG classification system and the consequent changes to the GROUPER program would meet the E.O. criteria for a major rule.

We have not prepared a regulatory impact analysis for this notice. However, we have, as is our usual practice, prepared such an analysis for the proposed rule on FY 1988 changes to the prospective payment system. In that analysis, and even more particularly in the analysis we plan to prepare in the subsequent final rule, we will include the effects of these changes to the DRG classification system in the assessment of impact on hospitals.

### *B. Regulatory Flexibility Act*

It is our practice to prepare and publish an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612) for a proposed notice such as this, unless the Secretary certifies that implementation of the notice would not have a significant economic impact on a substantial number of small entities We treat all hospitals under the prospective payment system as small entities for purposes of the RFA. Therefore, this notice clearly would affect a substantial number of small entities. However, we do not consider an economic impact on small entities to be significant unless their annual total costs or revenues would be increased or decreased by at least three percent.

As noted above, these proposed changes would affect the amounts hospitals would receive under the prospective payment system for furnishing services to Medicare beneficiaries. Some of these proposals certainly would change the amount paid for a particular DRG by more than 3 percent. The eliminations of age breaks, for example, may have significant effects on the weights of nearly all DRGs. However, it must be remembered that a DRG weight is a measure of average resource utilization for a particular group of cases relative to the average for all cases. The changes we propose in this notice will be used in determining the DRG weights for discharges occurring on or after October 1, 1987. Thus, each change that affects the group to which a case is assigned affects not only the payment for the reassigned case, but the weight for all other cases in both the prior and the new group. Through annual recalibrations, all weights are readjusted to reflect all reassignments, based on the best available data. Through this process some changes are offset by others. The interaction is complex, and, of course, differs from year to year. However, the end result is that most hospitals will receive higher payments for some cases and lower payments for others. Overall, we expect payments on the whole to reflect more accurately average resource utilization per case as the classification system is refined. Thus, we view it as highly unlikely that a substantial number of hospitals would experience increases or decreases of revenues of more than three percent solely as a result of changes in DRG classification.

Hypothetically, a given year's classification changes could have an effect of such magnitude on some hospitals. We expect they usually would be hospitals having a high proportion of cases falling in particular strongly affected DRGs. In such instances, we believe that improvements to the classification system would tend to correct systematic understatements or overstatements of average resource utilization. In the first case, those hospitals most affected would be significantly benefited. In the latter case, we would be ending an inappropriate windfall. In either case, the system as a whole would benefit.

For these reasons, we have determined, and the Secretary certifies, that this proposed notice would not be likely to have a significant economic impact in a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

## X. Information Collection Requirements

This notice contains no information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

XI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed notice such as this, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to the comments in the final action.

(Sections 1102, 1871, and [illegible](f)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and [illegible]); 45 CFR 402.10)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: April 27, 1987.

William L. Roper,

*Administrator, Health Care Financing Administration.*

Approved: May 7, 1987.

Otis R. Bowen,

*Secretary.*

[FR Doc. 87-[illegible] Filed 5-15-87; 2:00 pm]

BILLING CODE [illegible]

federal register

Tuesday
May 19, 1987

Part IX

# Department of Agriculture

**Agriculture Marketing Service**
**7 CFR Part 1030**
**Milk in the Chicago Regional Marketing Area; Hearing of Proposed Amendments to Tentative Marketing Agreement and Order; Proposed Rulemaking**

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-301-A25]

Milk; Chicago Regional Marketing Area; Hearing of Proposed Amendments; Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider changes in the Chicago Regional order in response to various industry proposals.

Proposals by Central Milk Producers Cooperative (CMPC), a federation of 11 dairy farmer cooperatives, would pay from pooled milk values a portion of the cost of getting milk from farms to milk bottling plants. The first proposal provides for a maximum per mile transportation allowance for supply plant shipments to pool distributing plants, payable to the distribution plant operator, of .22 cents per hundredweight for the months of March through July and .28 cents for the months of August through February. CMPC's other proposals would provide for a direct-delivery differential on milk direct-shipped to distributing plants; a direct-delivery differential payable to producers on milk divert-transferred to distributing plants; and a maximum allowance for supply plants transferring milk to distributing plants. The rates for these proposals would be 8 cents per hundredweight for the months of March through July and 5 cents for the months of August through February.

Proposals by four proprietary handlers would require monthly minimum shipping requirements for all supply plants during August through January and would give the Director of the Dairy Division the authority to temporarily increase or decrease those percentages. Other proposals would amend the plant location adjustments to prices by removing the snubber that prevents the adjusted price from being less than the Class III price for the month, would eliminate shipments from supply plants to other order plants as qualifying shipments, and would eliminate both the provisions for "reserve supply plants" and the "call" for shipments by such plants. Other parties have proposed modifications of the proposals by both groups of proponents.

DATE: The hearing will convene at 9:00 a.m., local time, on June 2, 1987.

ADDRESS: The hearing will be held at the Howard Johnson—Executive Hotel, 525 W. Johnson Street, Madison, Wisconsin 53703, (608) 251-5511.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) [illegible].

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provision of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order [illegible].

Notice is hereby given of a public hearing to be held at the Howard Johnson—Executive Hotel, [illegible] West Johnson Street, Madison, Wisconsin 53703, beginning at 9:00 a.m., local time, on June 2, 1987, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

## PART 1030—[AMENDED]

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1030 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Central Milk Producers Cooperative

*Proposal No. 1*

This proposal would provide a maximum per mile location allowance for supply plant shipments to pool distributing plants for Class I use, payable to the distributing plant operator of .22 cents for the months of March through July and .28 cents for the months of August through February.

Revise §1030.52 Plant location adjustments for handlers as follows:

§ 1030.52 Plant location adjustments for handlers.

(a) The market administrator shall determine the location adjustment rate for each plant at which Class I and producer milk is to be priced under this part pursuant to the following schedule, except that in no event shall the adjustment result in a price less than the Class III price for the month:

| Zone | Distance in miles from city hall in Chicago | Location adjustment rate (cents per hundredweight) |
|---|---|---|
| 1 | 0-40 | 0 |
| 2 | 41-55 | -3.0 |
| 3 | 56-70 | -6.0 |
| 4 | [1] 71-85 | -9.0 |
| 5 | [2] 86-100 | -12.0 |
| 6 | 101-115 | -14.3 |
| 7 | 116-130 | -16.6 |
| 8 | 131-145 | -18.9 |
| 9 | 146-160 | -21.2 |
| 10 | 161-175 | -23.5 |
| 11 | 176-190 | -25.8 |
| 12 | 191-205 | -28.1 |
| 13 | 206-220 | -30.4 |
| 14 | 221-235 | -32.7 |
| 15 | 236-250 | -35.0 |
| 16 | [3] | -36.0 |

[1] Including Milwaukee County, WI, and Winnebago County, IL.
[2] Excluding Milwaukee County, WI, and Winnebago County, IL.
[3] Beyond 250.

(i) The market administrator shall also determine a transportation allowance for each transfer of bulk fluid milk that is physically received into a pool distributing plant from another pool plant, and shall determine the distance in miles the two plants are from each other.

(ii) The miles pursuant to paragraph [illegible] of this section, shall be multiplied by the rate determined by the following:

(*a*) For the months of March through July the result of .22 cents per mile minus the value difference between the supplying plant's location adjustment rate and that of the receiving distributing plant; and

(*b*) For the months of August through February the result of .28 cents per mile minus the value difference between the supplying plant's location adjustment rate and that of the receiving distributing plants;

(*c*) Except that if the shipping plant is in a zone having a lesser value than that of the distributing plant there will be no subtraction.

(iii) The rates pursuant to paragraph (a)(ii) of this section, are a combination

of the location adjustment and the transportation allowance, the maximum amount shall be no greater than the amount determined for the transportation allowance and the minimum amount shall be the difference between the two plant location adjustment rates.

(b) The mileage applicable pursuant to paragraph (a) of this section, and § 1030.75 shall be determined by the market administrator on the basis of the shortest highway distance between the handler's plant and the city hall in Chicago—with fractions rounded up to the next whole mile.

(i) The mileage applicable pursuant to paragraph (a)(i) of this section, shall be determined by the market administrator on the basis of the shortest highway distance between the transferor and transferee plants.

(ii) The market administrator shall notify each handler of the zone or mileage determination, which shall be subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of his findings within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

(c) * * *

(10) Multiply the quantity assigned to receipts from other pool plants pursuant to paragraph (c)(6)(ii) of this section by 110 percent; except if a handler reports more than one pool distributing plant pursuant to § 1030.7(a)(4), the quantity to be assigned shall be to each such pool distributing plant; and

(11) Multiply by the transportation allowance rates in sequence beginning with the quantity of the actual transfer which has the least transportation mileage and continuing until the allowable volume is exhausted: *Provided*, if two or more handlers have pool plant transfer(s) that have identical mileage and there is an insufficient allowable volume, the remaining volume will be assigned pro rata;

(12) Multiply by the location adjustment rates applicable at the transferor plants and by the transportation allowance rates for bulk transfers, the quantities assigned pursuant to paragraph (c)(7) of this section to receipts from other pool plants in prior months;

(13) Multiply the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to nonpool plants and classified as Class I by the location adjustment rate applicable at the shipping plant;

(13) Multiply the quantity of Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants by the location adjustment rates applicable at the pool supply plants from which disposition is made; and

(14) Add together the minus amounts obtained pursuant to paragraphs (c)(8), (9), (10), (11), (12), and (13) of this section.

*Proposal No. 2*

This proposal would provide an assembly allowance for supply plants of 6 cents for the months of March through July and 8 cents for August through February on transfers to pool distributing plants.

In § 1030.60 Handler's value of milk for computing uniform price, revise paragraph (g) as follows and add new paragraphs (h) and (i) as follows:

§ 1030.60 [Amended]

* * * * *

(g) Subtract an amount equal to the minus location adjustment computed pursuant to § 1030.52 (c)(14) or (d);

(h) Subtract the amount obtained from multiplying the pounds of bulk fluid milk products transferred from pool reserve and supply plants to pool distributing plants as defined in § 1030.52(c)(6)(ii), by an assembly credit of 6 cents per hundredweight for the months of March through July and 8 cents per hundredweight for all remaining months;

(i) Subtract an amount equal to the minus transportation allowance computed pursuant to § 1030.52(c)(10)(i).

*Proposal No. 3*

This proposal would provide a direct-delivery differential of 6 cents per hundredweight during March through July and 8 cents during August through February payable to producers on milk direct-shipped and divert-transferred to distributing plants.

In § 1030.61 Computation of uniform price, revise paragraphs (c) and (d) as follows, and redesignate the present paragraphs (c), (d) and (e) as (e), (f) and (g).

§ 1030.61 [Amended]

* * * * *

(c) Add the amount at pool distributing plants obtained by multiplying the difference between the pounds of producer milk in all classes pursuant to § 1030.60(a) and the diversions associated with that producer milk by 6 cents per hundredweight for the months of March through July and 8 cents per hundredweight for all remaining months.

(d) Add the amount at pool distributing plants obtained by multiplying the pounds of producer milk receive directly from farms pursuant to § 1030.13(d) by 6 cents per hundredweight for the months of March through July and 8 cents per hundredweight for all remaining months.

(e) Add an amount representing not less than one-half the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(h); and

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

*Proposal No. 4*

§ 1030.71 [Amended]

In § 1030.71 Payments to the producer-settlement fund, revise paragraph (a)(2)(i) to read as follows:

(a)(2)(i) The value at the uniform price as adjusted pursuant to § 1030.75, of each handler's receipts of producer milk plus the value pursuant to § 1030.61 (c) and (d); and.

*Proposal No. 5*

§ 1030.73 [Amended]

In § 1030.73 Payments to producers and to cooperative associations, revise paragraphs (a)(2) and (c)(2)(ii) to read as follows:

* * * * *

(a)(2) On or before the 16th day after the end of each month, for producer milk received during such month, at a rate per hundredweight of not less than the uniform price plus the added value pursuant to § 1030.61 (c) and (d) as adjusted pursuant to §§ 1030.74, § 1030.75, and § 1030.86, less any payment made pursuant to paragraph (a)(1) of this section, and any proper deduction authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer. If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) * * *

(2)(ii) For milk received during the month, the handler shall pay the cooperative association on or before the 16th day after the end of the month during which time the milk was received at a rate per hundredweight of not less than the uniform price computed as described under § 1030.61 plus the added value pursuant to paragraph (c) of that section, as adjusted pursuant to § 1030.74 and § 1030.75 and less any payment made pursuant to paragraph (c)(2)(i) of this section.

*Proposal No. 6*

§ 1030.7 [Revised]

Revise § 1030.7 Pool plant to:

1. Specify for a supply plant shipping percentages of five percent for August and January and ten percent for September through December, and for units of supply plants shipping percentages of ten percent for August

and January and 20 percent for September through December.

2. Provide the Director of the Dairy Division discretionary authority to increase or decrease the monthly qualification shipping percentages established for both supply plants and units of supply plants.

3. Allow units of supply plants that are owned or fully leased and operated by the handler requesting the unit.

4. Allow two or more cooperative associations to file a written contractual agreement with the market administrator obligating each plant of the unit to ship as directed by such cooperatives.

5. Require that each supply plant in a unit must be located within the State of Wisconsin or within the portion of the State of Illinois that is defined as part of the marketing area of Order 30.

*Proposal No. 7*

**§ 1030.6 [Amended]**

§ 1030.6 Supply plant and reserve supply plant, revise paragraph (a) to read as follows:

* * * * *

(a) "Supply plant" means a plant from which a Grade A fluid milk product is shipped or transshipped during the month to another plant, except that no storage capacity shall be maintained in a plant described in § 1030.4(a).

*Proposal No. 8*

**§ 1030.13 [Amended]**

In § 1030.13 Producer milk, delete paragraph (d)(1), redesignate (d)(2) as (d)(1) and revise as follows, delete (d)(3), redesignate (d)(4) and (d)(5) as (d)(2) and (d)(3), delete (d)(6), and redesignate (d)(7) as (d)(4).

* * * * *

(d)(1) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless one day's production during the next two calendar months is received and unloaded into the pool plant where such milk is reported as producer milk;

**Proposed by Dean Foods Company, Cedarburg Dairy, Inc., Certified Grocers of Illinois, Inc., and Hawthorn-Mellody, Inc.**

*Proposed No. 9*

**§ 1030.7 [Revised]**

Revise § 1030.7 Pool plant to:

1. Require reserve supply plants to ship to plants described in § 1030.7(d) an amount not less than 5 percent for August and January, and 10 percent for September through December of each year of the amount of Grade A milk received at the plant from producers. Any plant not meeting these shipping qualifications would not be a pool plant for the remaining months of February through July.

2. Provide the Director of the Dairy Division the authority to revise the percentage for qualification of a reserve supply plant if upon his investigation he finds it necessary.

3. Eliminate shipments from supply plants to other order plants as qualifying shipments.

4. Eliminate the provisions for "reserve supply plants" and issuance of a "call" for shipments by such plants.

*Proposal No. 10*

**§ 1030.52 [Amended]**

In § 1030.52 Plant location adjustments for handlers, delete the following words in the introductory paragraph:

* * * "except that in no event shall the adjustment result in a price less than the Class III price for the month:."

**Proposed by The Southland Corporation, Kraft Incorporated, and Dean Foods Company:**

*Proposal No. 11*

This proposal would modify Central Milk Producers Cooperative's proposals No. 2 and No. 3 (assembly allowance and direct-delivery and divert-transfer differentials) by making them available for Class I uses at all pool plants. Also the direct-delivery differentials, divert-transfer differentials and the assembly allowance would be gradually decreased beyond zones 1 and 2.

**§ 1030.60 [Amended]**

11a. Revise proposed paragraph (h) in § 1030.60 as follows:

(h) Subtract the amount obtained by multiplying the Class I pounds of bulk fluid milk products transferred from a pool plant to another pool plant by an assembly credit based upon the zone location of the transferee plant according to the following schedule:

| Transferee plant | March–July | Other months |
|---|---|---|
| Zone 1 and 2 | $0.06 | $0.06 |
| Zone 3 | .05 | .07 |
| Zone 4 | .04 | .06 |
| Zone 5 | .03 | .05 |
| Zone 6 | .02 | .04 |
| Zone 7 | .01 | .03 |
| Zone 8 | .00 | .02 |
| Zone 9 | .00 | .01 |
| Other Zones | .00 | .00 |

11b. Revise proposed paragraphs (c) and (d) in § 1030.61 as follows:

**§ 1030.61 [Amended]**

* * * * *

(c) Add the amount at pool plants obtained by multiplying the pounds of Class I producer milk received at such plants, by the credit based upon the zone location of the plant, according to the following schedule:

| Pool plant | March–July | Other months |
|---|---|---|
| Zone 1 and 2 | $0.01 | $0.06 |
| Zone 3 | .05 | .07 |
| Zone 4 | .04 | .06 |
| Zone 5 | .03 | .05 |
| Zone 6 | .02 | .04 |
| Zone 7 | .01 | .03 |
| Zone 8 | .00 | .02 |
| Zone 9 | .00 | .01 |
| Other Zones | .00 | .00 |

(d) Add the amount at pool plants obtained by multiplying the pounds of Class I producer milk received directly from farms pursuant to § 1030.13(d), by the credit based upon the zone location of the plant, according to the following schedule:

| Pool plant | March–July | Other months |
|---|---|---|
| Zone 1 and 2 | $0.06 | $0.06 |
| Zone 3 | .05 | .07 |
| Zone 4 | .04 | .06 |
| Zone 5 | .03 | .05 |
| Zone 6 | .02 | .04 |
| Zone 7 | .01 | .03 |
| Zone 8 | .00 | .02 |
| Zone 9 | .00 | .01 |
| Other Zones | .00 | .00 |

**Proposed by the Dairy Division, Agricultural Marketing Service**

*Proposal No. 12*

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Myron R. McKinley, 800 Roosevelt Road, Building A, Suite 200, Glen Ellyn, Illinois 60137, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Chicago Regional Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on May 15, 1987.

J. Patrick Boyle,
*Administrator.*

[FR Doc. 87-11083 Filed 5-18-87; 10:22 am]
BILLING CODE 3410-02-M

federal register

Tuesday
May 19, 1987

Part X

## The President

Proclamation No. 5655—World Trade Week, 1987

Proclamation No. 5656—National Fishing Week, 1987

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 1987

# Presidential Documents

Title 3—

The President

Proclamation 5655 of May 15, 1987

## World Trade Week, 1987

By the President of the United States of America

A Proclamation

Each year, World Trade Week celebrates the many benefits of international trade to our country and all countries. This commerce strengthens our economy in many ways. Exports expand our business and employment opportunities: in the growing world marketplace, over 5 million American jobs are related to foreign sales. Imports also enrich our lives. Foreign goods increase consumer choice both in terms of quality and price. Competition from foreign producers provides an important stimulus to American producers to maintain and enhance the quality of American-made products.

Americans can be proud of the role our country plays in international trade. We are the world's largest participant in international commerce. We have also taken a leading role in ensuring the expansion of international trade around the world. Our initiative has made possible successive monetary and trade agreements that have integrated world markets and offered unprecedented prosperity. We have extended friendship to former adversaries and have seen them grow into valued trading partners. Through our impetus, the developing and newly industrialized countries become fully accepted into the world trading community.

As increased trade has led to increased integration of world economies, the growth of the world economy has become more dependent on achieving better coordination of macroeconomic policies and continued adoption of sound microeconomic policies to facilitate structural adjustment. Thus, it is crucial that cooperative solutions be found to the problems faced in the international economy.

For its part, the United States must work to regain and sustain our competitiveness in world markets; continue with its efforts to expand and improve the ground rules of world trade provided by the General Agreement on Tariffs and Trade; and resist pressures toward protectionism. The futile prescription of protectionism would only fuel inflation; lower economic growth; and invite retaliatory policies against our exports.

It is also important for our trading partners to do their part—by dismantling protective barriers around their home markets and allowing more open competition; by adopting fiscal, monetary, and exchange rate policies that are in line with goals of stable growth with low inflation; and by helping resolve the problem of Third World debt.

The challenges we face are difficult. They require the strong resolve of all nations. We can and will succeed in these ventures that offer much for the American people and for the peoples of the world.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week beginning May 17, 1987, as World Trade Week. I invite the people of the United States to join in appropriate observances to reaffirm the great promise of international trade for creating jobs and stimulating economic activity in our country and for generating prosperity everywhere.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-11617
Filed 5-18-87; 11:53 am]
Billing code 3195-01-M

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## Presidential Documents

**Proclamation 5858 of May 15, 1987**

# National Fishing Week, 1987

**By the President of the United States of America**

**A Proclamation**

It is most fitting that we take time to salute the role of fishing in the lives of Americans. Fishing greatly aids our economy, is a source of healthful food, promotes respect for sound conservation and for the bounty and wonder of our natural resources, and introduces millions of people to the benefits of outdoor recreation.

Today, roughly a quarter of all Americans call sport fishing one of their favorite outdoor activities. Fishing represents a fine opportunity for all of us, especially children and young adults, to discover a wholesome, relaxing, and enjoyable pastime. Fishing can teach us the importance of clean water and a stable aquatic environment. Recreational fishing also contributes much to our economy, and each year provides millions of dollars in revenue for fishery restoration projects. Fishermen take pride in our abundant fishery resources and work diligently for their continued well-being.

In recognition of all that recreational fishing and the commercial fishing industry do for America, the Congress, by Public Law 100–22, has designated the week of June 1 through June 7, 1987, as "National Fishing Week" and authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of June 1 through June 7, 1987, as National Fishing Week. I encourage all Americans to join with anglers and all who treasure our Nation's fisheries as they work to ensure superior fishing opportunities for our children and for generations to come.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-11018
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To authorize and request the President to issue a proclamation designating May 3 through May 10, 1987, as "Jewish Heritage Week."

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# Rules and Regulations

Federal Register
Vol. 52, No. 97
Wednesday, May 20, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

## Lemons Grown in California and Arizona; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule amends rules and regulations established under the marketing order covering California-Arizona lemons to increase, from 250 to 350 cartons per week, the amount of organic lemons handlers may ship without regard to volume and size regulations under the order. The amendment recognizes additional opportunity to market organic lemons to organic or health food wholesalers and retailers.

EFFECTIVE DATE: May 20, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act", and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 85 handlers of California-Arizona lemons under the marketing order for lemons grown in California and Arizona will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. However, this rule will not have a significant effect on the vast majority of handlers subject to regulation because there are only 2 handlers who currently ship organic lemons. There are an estimated 2000–2500 lemon growers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those producers having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms have been defined as those whose gross annual receipts are less than $3,500,000. The majority of growers and handlers of California-Arizona lemons may be classified as small entities.

This action was recommended by the Lemon Administrative Committee, the committee responsible for local administration of the marketing order, and has been implemented in previous seasons, but at a lower level of exempted shipments. This action will have a beneficial economic impact on small entities because it will relieve restrictions on handlers and provide them with increased marketing flexibilities. In addition, there are no additional reporting or recordkeeping requirements associated with this rule.

Based on the above, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Act. Interested persons were invited to submit comments on the proposed rule (52 FR 12537; April 17, 1987). No comments were received. This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

Section 910.80 of the order authorizes the committee, with the approval of the Secretary, to establish minimum quantities and types of shipments which shall be free from regulation under this order. Section 910.180(d)(3) of the rules and regulations prescribes procedures governing the exemption from volume and size regulations for organic lemons handled in minimum quantities. This amendment will increase to 350 cartons the amount of organic lemons handlers may ship each week to organic or health food wholesalers and retailers. Currently, handlers can ship up to 250 cartons of such lemons weekly (51 FR 39854; November 3, 1986). Handlers have indicated that organic fruit markets have absorbed this level of shipments and that additional marketing opportunity exists for organic lemons. This action is designed to facilitate the marketing of organic lemons and will provide increased flexibility in the scheduling of organic lemon shipments by those handlers currently utilizing this exemption.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because handlers of organic lemons need to be allowed to fully utilize available marketing opportunities as soon as possible.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, Lemons, California, Arizona.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**Subpart—Lemon Administrative Committee Rules and Regulations**

2. Section 910.180 is amended by revising the first sentence in paragraph (d)(3) to read as follows:

**§ 910.180 Lemons not subject to regulation.**

* * * * *

(d) * * *

(3) Any person may be granted an exemption of up to 350 cartons per week, or an equivalent amount thereof, to market or distribute organic lemons to organic or health food wholesalers and retailers. * * *

* * * * *

Dated: May 13, 1987.

Ronald L. Cioffi,

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 87-11396 Filed 5-19-87; 8:45 am]

BILLING CODE 3410-02-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 87-NM-84-AD; Amdt. 39-5827]**

**Airworthiness Directives: Boeing Model 737-100 and 737-200 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of the Boeing model 737-100 and 737-200 series airplanes by individual telegrams. This AD requires inspections and repair, if necessary, for cracks in the front spar upper chord of the wing from the side of the body to front spar station 110 and from front spar station 195 to 206. This action is prompted by reports of cracks greater than two inches in length found in this area of the wing. This condition, if not corrected, could compromise the ultimate load capability of the wing.

**DATES:** Effective June 6, 1987. This AD was effective earlier to all recipients of telegraphic AD T87-05-52, dated March 11, 1987.

**ADDRESSES:** The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. James W. Hart, Jr., Airframe Branch, ANM-120S; telephone (206) 431-1920. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** On March 11, 1987, the FAA issued Telegraphic AD T87-05-52, applicable to certain Boeing Model 737-100 and -200 series airplanes, which requires inspections and repair, if necessary, of the wing front spar upper chord in two areas. The specific areas to be inspected are bounded by the side of the body and front spar station (FSS) 110, and FSS 195 to FSS 206. Cracks have been reported in the wing front spar upper chord on four airplanes which had been modified to comply with the terminating action of AD 74-01-01, Amendment 39-2799. Cracks were found in the modified areas as well as beyond the modification area. The ultimate load capability of the wing is compromised if the cracks exceed two inches in length; since cracks greater than this were found, the FAA has determined that inspections and repair, if necessary, are required to ensure the airplanes operate at an acceptable level of safety.

It should be noted that AD 74-01-01 requires inspections of Boeing Model 737-100 and 737-200 series airplanes for cracks in areas between the aforementioned locations. Since cracks have been found in areas located beyond the area required to be inspected by AD 74-01-01, the FAA is considering further rulemaking to revise AD 74-01-01 to require additional inspections for all affected airplanes, including those incorporating the terminating modification described in Boeing Service Bulletin 737-57A1081, Revision 4.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection of the wing front spar upper chord as discussed above.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449; January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**BOEING:** Applies to Boeing Model 737-100 and 737-200 series airplanes, delivered prior to November 1, 1972 (Line Number 310 and below), certificated in any category. Compliance required are indicated, unless previously accomplished.

To prevent structural degradation of the wing accomplish the following within 75 flight hours after receipt of this AD, unless accomplished within the last 1,000 flight hours:

A. Visually inspect for cracks the forward side of the wing front spar upper chord from the side of the body to front spar station (FSS) 110 and from FSS 195 to FSS 206, both left and right wings. Spar chords found cracked must be repaired prior to further flight in accordance with an FAA-approved method or in accordance with paragraph B., below.

B. If cracks less than two inches in length are found, step drill prior to further flight in accordance with Boeing Service Bulletin 737-57-1081, Revision 9, or later FAA-approved revisions. Thereafter, reinspect daily, using eddy current or dye penetrant inspection methods. If crack growth is observed, or prior to the accumulation of an additional 400 hours time-in-service, whichever occurs first, repair in accordance with an FAA-approved method.

C. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and

which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 6, 1987, as to all persons, except those persons to whom it was made immediately effective by Telegraphic AD T87-05-52, issued March 11, 1987.

Issued in Seattle, Washington, on May 13, 1987.

**Frederick M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-11437 Filed 5-19-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Parts 71 and 75**

**[Airspace Docket No. 86-AWP-18]**

## Alteration of VOR Federal Airway and Jet Routes—Nevada

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment alters the descriptions of Federal Airway V-32 and Jet Routes J-32 and J-94 located in the vicinity of Lovelock, NV. The Lovelock very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) has been relocated and this action alters the descriptions of all airways and jet routes affected by this relocation.

**EFFECTIVE DATE:** 0901 UTC, July 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

**SUPPLEMENTARY INFORMATION:**

### History

On March 20, 1987, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign VOR Federal Airway V-32 and Jet Routes J-32 and J-94 located in the vicinity of Lovelock, NV (52 FR 8920). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

### The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations realign VOR Federal Airway V-32 and Jet Routes J-32 and J-94 located in the vicinity of Lovelock, NV. The Lovelock VORTAC has been moved approximately 5 miles north of its current location to lat. 40°07'30"N., long. 118°34'35"W. Also, the centerline of J-32 and J-94 has been realigned to the north to provide additional separation from the Gabbs North MOA. This action increases safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and Jet routes.

### Adoption of the Amendments

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. § 71.123 is amended as follows:

**V-32 [Amended]**

By removing the words "INT Lovelock 053° and Battle Mountain, NV, 234° radials" and substituting the words "INT Lovelock 057° and Battle Mountain, NV, 234° radials"

**PART 75—[AMENDED]**

3. The authority citation for Part 75 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 75.100 [Amended]**

4. § 75.100 is amended as follows:

**J-32 [Amended]**

After "Mustang, NV;" insert "Lovelock, NV;"

**J-94 [Amended]**

After "Mustang, NV;" insert "Lovelock, NV;"

Issued in Washington, DC, on May 12, 1987.

**Daniel J. Peterson,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87-11434 Filed 5-19-87; 8:45 am]

BILLING CODE 4910-13-M

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**Office of the Secretary**

**14 CFR Part 300**

**[OST Docket No. 1; Amdt. 300-7]**

## Aviation Proceedings; Rules of Conduct in DOT Proceedings

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Final rule.

**SUMMARY:** This rule broadens an existing exception to the prohibition of substantive communications between concerned DOT employees and interested persons regarding public proceedings, to make clear that it includes all communications with Executive departments and agencies in connection with the section 801 Presidential review process.

**EFFECTIVE DATE:** This rule is effective May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Myers, Office of the General Counsel (C-20), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590; (202) 366-9183.

**SUPPLEMENTARY INFORMATION:** Section 801 of the Federal Aviation Act (49 U.S.C. 1461) provides for Presidential review of DOT orders affecting carrier operating rights or prices in foreign air

transportation. The President may disapprove any such order for foreign relations or national defense reasons, within 60 days in the case of orders affecting carrier certificates or permits, and within 10 days in the case of orders affecting fares, rates or charges.

Executive orders implementing this review process have permitted federal departments and agencies to advise the President on the foreign relations and national defense implications of such orders. Executive Order 12547, issued February 6, 1986, assigned to the Department the function of transmitting its reviewable orders to certain specified Executive departments and agencies and soliciting their recommendations, if any, for transmittal to the President. If no agency or department recommended disapproval, or a statement of reasons for non-disapproval, the Order directed the Department to so indicate in a memorandum to the President through the Assistant to the President for National Security Affairs. If any such recommendations were received, the Department was to forward them to the Assistant to the President for National Security Affairs for his or her summary and recommendation to the President.

A new procedure was adopted by Executive Order 12597, of May 13, 1987 (52 FR 18335). By that Order the President authorized the Secretary to receive reviewable DOT orders on his behalf, and delegated to her the exercise of his statutory review authority in the case of orders which elicit no written recommendations from the coordinating Executive departments and agencies within specified response periods. In such cases, the Secretary may determine not to disapprove the order and issue it for immediate effectiveness. Where written recommendations are received, the existing procedure is to be followed.

In a companion rule, the Secretary's review authority is delegated to the General Counsel.

This rule broadens an existing exception to the prohibition of substantive communications "between any concerned DOT employee and any interested person outside DOT, concerning a public proceeding" in § 300.2 of this Part to make clear that communications with Executive departments and agencies provided for by Executive Order in connection with the section 801 Presidential review process are not prohibited or restricted in hearing as well as nonhearing cases. Specifically, it amends paragraph (e) of § 300.2 expressly to permit communications on national defense or foreign policy matters in hearing cases, if the communicator's position cannot otherwise be fairly presented. Such communications are not included as part of the hearing record.

The explicit exception provided for herein is for certification only. It is not intended to narrow the current scope of paragraph (e). Nor does it imply that the coordinating departments and agencies are "interested persons" within the rule, or that such communications are not otherwise exempt because they take place "after final disposition of the proceeding" or because they are "as provided by Federal statute". In this instance, an amendment appears preferable to an interpretive rule.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in less than thirty days after publication in the Federal Register. This rule is a nonsignificant rule under the Department of Transportation's Regulatory Policies and Procedures.

**List of Subjects in 14 CFR Part 300**

Prohibited communications (exceptions).

As Secretary of the Department of Transportation, I amend 14 CFR Part 300, *Rules of Conduct in DOT Proceedings* under this Chapter, as follows:

**PART 300—[AMENDED]**

1. The authority of Part 300 continues to read as follows:

**Authority:** 49 U.S.C. 1324, 1371–1389, 1471, 1473, 1481, 1482 and 1487; 18 U.S.C. 20(b)(c); 49 U.S.C. Subtitle 1.

2. Revise paragraph (e) of § 300.2 to read as follows:

**§ 300.2 Prohibited communications.**

* * * * *

(e) *National defense and foreign policy.* In nonhearing cases, paragraph (a) of this section shall not apply to communications concerning national defense or foreign policy matters, including international aviation matters. In hearing cases, any communications on those subjects that would be barred by paragraph (a) of this section are permitted if the communicator's position with respect thereto cannot otherwise be fairly presented, but such communications shall not be included as part of the record on which decisions must be made.

* * * * *

Issued in Washington, DC, on May 13, 1987.

**Elizabeth Hanford Dole,**

*Secretary of Transportation.*

[FR Doc. 87-11519 Filed 5-19-87; 8:45 am]

BILLING CODE 4910-62-M

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**14 CFR Part 385**

**[OST Docket No. 1; Amdt. 385-3]**

## Aviation Proceedings; Staff Assignments and Review of Action Under Assignments

**AGENCY:** Department of Transportation (DOT), Office of the Secretary.

**ACTION:** Final rule.

**SUMMARY:** This rule assigns to the Chief, Coordination Section, Documentary Services Division, the authority to perform the coordination functions assigned to the Department by Executive orders establishing procedures for Presidential review of certain Departmental decisions.

**EFFECTIVE DATE:** This rule is effective May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Myers, Office of the General Counsel (C-20), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; (202) 366-9183.

**SUPPLEMENTARY INFORMATION:** Section 801 of the Federal Aviation Act (49 U.S.C. 1461) provides for Presidential review of DOT decisions affecting carrier operating rights or prices in foreign air transportation. The President may disapprove any such order for foreign relations or national defense reasons, within 60 days in the case of orders affecting carrier certificates or permits, and within 10 days in the case of orders affecting fares, rates or charges.

Executive Order 12597, issued May 13, 1987 (52 FR 18335) assigned to the Department various coordination functions incident to the exercise of that authority, including the transmittal of the Department's decisions to specified Executive departments and agencies, the receipt of the decisions on behalf of the President, the receipt and implementation of classification determinations under Executive Order 12356, the receipt of clearances or written recommendations to the President from the coordinating departments and agencies, and the timely transmittal of any such written recommendations to the Assistant to the President for National Security Affairs for further action. In the case of decisions which elicit no written recommendations to the President,

Executive Order 12597 delegates to the Secretary the authority to exercise the President's authority to determine not to disapprove them and to issue such decisions for immediate effectiveness. In a companion rule, the Secretary's review authority is delegated to the General Counsel.

This rule assigns the authority to perform all coordination functions incident to the section 801 review process, except the authority to act for the President delegated to the Secretary as indicated above, to the Chief, Coordination Section, Documentary Services Division.

In a companion final rule, the Department is amending its Rules of Conduct in DOT proceedings, 14 CFR Part 300, to make clear that all communications incident to the section 801 review process are exempted from the prohibitions and restrictions contained in that part, and are consistent with the rules on Employee Responsibilities and Conduct in 49 CFR Part 99.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in less than thirty days after publication in the **Federal Register**. This rule is a nonsignificant rule under the Department of Transportation's Regulatory Policies and Procedures.

**List of Subjects in 14 CFR Part 385**

Assignments of functions to staff members.

As Secretary of the Department of Transportation, I amend 14 CFR Part 385, *Staff Assignments and Review of Action under Assignments*, as follows:

**PART 385—[AMENDED]**

1. The authority of Part 385 continues to read as follows:

**Authority:** 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1377 and 1386.

2. Add a new § 385.21 to read as follows:

**§ 385.21 Authority of the Chief, Coordination Section, Documentary Services Division.**

The Chief, Coordination Section, Documentary Services Division, has the authority to coordinate and perform all administrative functions of the Department provided for in sections 2, 3 and 5 of Executive Order 12597 issued May 13, 1987, except that this delegation shall not include the exercise of the authority delegated by the President to the Secretary by sections 2 and 5 of that Order to determine not to disapprove orders of the Department in certain cases.

Issued in Washington, DC, on May 13, 1987.

**Elizabeth Hanford Dole,**

*Secretary of Transportation.*

[FR Doc. 87-11516 Filed 5-19-87; 8:45 am]

BILLING CODE 4910-62-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**14 CFR Part 1206**

**Availability of Agency Records to Members of the Public**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Interim rule with comments requested.

**SUMMARY:** This action implements certain provisions regarding fees of the Freedom of Information Reform Act (FOIA) of 1986 (Pub. L. 99-570). The Freedom of Information Reform Act permits agencies to charge for the direct costs of providing FOIA services such as search, duplication, and in certain cases, review. NASA interprets this "direct cost" provision to mean the actual costs incurred in operating its FOIA program.

NASA invites interested parties to provide comments on this proposal.

**DATE:** Comments must be submitted in writing on or before June 19, 1987. Unless a notice is published in the **Federal Register** indicating changes to be made, this interim regulation shall take effect as a final regulation July 15, 1987.

**ADDRESS:** Freedom of Information Act Officer, National Aeronautics and Space Administration, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Riep, 202-453-8346, or Teresa Stremel, 202-453-2465.

**SUPPLEMENTARY INFORMATION:** The National Aeronautics and Spece Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

**List of Subjects in 14 CFR Part 1206**

Freedom of Information, Information.

**PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC**

For reasons set out in the Preamble, 14 CFR Part 1206 is amended as follows:

1. The authority citation for 14 CFR Part 1206 is revised to read as follows:

**Authority:** Sec. 203, National Aeronautics and Space Act of 1958, as amended, 72 Stat. 429, 42 U.S.C. 2473 and 5 U.S.C. 552 as amended by Pub. L. 93-504, 88 Stat. 1561, Pub. L. 99-507; the Privacy Act of 1974 (5 U.S.C. 552a).

2. The table of contents for Subpart 7 is revised to read as follows:

**Subpart 7—Search and Duplication Fees**

Sec.

1206.700 Schedule of fees.
1206.701 Categories of requesters.
1206.702 Waiver of reduction of fees.
1206.703 Aggregation of requests.
1206.704 Advance payments.
1206.705 Form of payment.
1206.706 Nonpayment of fees.

3. Section 1206.101 is amended by adding paragraphs (g) through (o) to read as follows:

**§ 1206.101 Definitions.**

* * * * *

(g) A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency to set the level of fees for particular types of records in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(h) The term "direct costs" means those expenditures which NASA actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to an FOIA request. District costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not

included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(i) The term "search" includes all time spent looking or material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. NASA will ensure that searching for material is done in the most efficient, least expensive manner so as to minimize costs for both the agency and the requester and will only utilize line-by-line, page-by-page search when consistent with this policy. "Search" should be distinguished, however, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (k) of this section). Searches may be done manually or by computer using existing programming.

(j) The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(k) The term "review" refers to the process of examining documents located in response to a commercial use request (see paragraph (l) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) The term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NASA will look first to the use to which requester will put the documents requested. Where NASA has reasonable cause to doubt the use to which a requester will put the records sought or where that use is not clear from the request itself, NASA will seek additional clarification before assigning the request to a specific category.

(m) The Term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(n) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (l) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(o) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to published or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals [but only in those instances when they can qualify as disseminators of "news"] who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as nontraditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. NASA will consider such factors as a publication contract and the requester's past publication record in making this determination.

4. Section 1206.601(c) is revised to read as follows:

**§ 1206.601 Mail requests.**

* * * * *

(c) If a fee is chargeable under Subpart 7 of this part for search or duplication costs incurred in connection with a request for an agency record, and the requester knows the amount of the fee at the time of the request, the request should be accompanied by a check or money order payable in that amount to the "National Aeronautics and Space Administration." Cash or stamps should not be sent by mail. If the amount of the fee chargeable is not known at the time of the request, the requester will be notified in the initial determination (or in a final determination) of the amount of the fee chargeable (see § 1206.608(c)). For circumstances in which advance payment of fees is required, see § 1206.704.

* * * * *

5. Section 1206.603 is amended by revising paragraph (c) to read as follows:

**§ 1206.603 Procedures and time limits for initial determination.**

* * * * *

(c) If it is determined that the requested record (or portions thereof) will be made available and the fee chargeable is $250.00 or less, a copy of the record requested (or portions thereof) shall be sent to the requester with the initial determination or, if that is not feasible, promptly after the initial determination is made. The amount to be charged and the fact that interest will be charged from the 31st day after the date of the response, shall be stated in the response. If the fee chargeable exceeds $250.00, the requester will be informed of the fee in the initial determination, and the requested record will be sent to the requester promptly upon receipt of the required fee.

* * * * *

6. Subpart 7 is revised to read as follows:

**Subpart 7—Search and Duplication Fees**

**§ 1206.700 Schedule of fees.**

The fees specified in this section shall be charged for searching for, reviewing, and/or duplicating an agency record made available in response to a request under this part.

(a) *Copies.* For copies of documents such as letters, memoranda, statements, reports, contracts, etc., $0.10 per copy of each page. For copies of oversize documents, such as maps, charts, blueprints, etc., $0.15 for each reproduced copy per square foot. These charges for copies include the time spent in duplicating the documents. For copies of still photographs, videotapes, etc., the fee charged will reflect the full direct cost to NASA of reproducing or copying the record.

(b) *Clerical searches.* For each one quarter hour spent by clerical personnel in searching for an agency record in response to a request under this part, $2.25.

(c) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the

requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent by such higher level personnel in searching for a requested record, $4.50.

(d) *Computerized records.* Because of the diversity in the types and configurations of computers which may be required in responding to requests for agency records maintained in whole or in part in computerized form, it is not feasible to establish a uniform schedule of fees for search and printout of such records. In most instances, records maintained in computer data banks are available also in printed form and the standard fees specified in paragraph (a) of this section shall apply. If the request for an agency record required to be made available under this part requires a computerized search or printout, the charge for the time of personnel involved shall be at the rates specified in paragraphs (b)( and (c) of this section. The charge for the computer time involved and for any special supplies or materials used, shall not exceed the direct cost to NASA. This charge may be as high as $125.00 per quarter hour. Before any computer search or printout is undertaken in response to a request for an agency record, the requester shall be notified of the applicable unit costs involved and the total estimated cost of the search and/or printout.

(e) *Other search and duplication costs.* Reasonable standard fees, other than as specified in paragraphs (a) through (f) of this section, may be charged for additional direct costs incurred in searching for or duplicating an agency record in response to a request under this part. Charges which may be made under this paragraph include, but are not limited to, the transportation of NASA personnel to places of record storage for search purposes or freight charges for transporting records to the personnel searching for or duplicating a requested record.

(f) *Charges for special services.* Complying with requests for special services such as those listed in (f) (1) and (2) of this section is entirely at the discretion of NASA. Neither the FOIA nor its fee structure cover these kinds of services. To the extent that NASA elects to provide the following services, it will levy a charge equivalent to the full cost of the service provided:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail, etc.

(g) *Unsuccessful or unproductive searches.* Search charges, as set forth in paragraphs (b) and (c) of this section, may be made even when an agency record which has been requested cannot be identified or located after a diligent search and consultation with a professional NASA employee familiar with the subject area of the request, or if located, cannot be made available under Subpart 3 of this part. Ordinarily, however, fees will not be charged in such instances unless they are substantial (over $50.000) and the requester has consented to the search after having been advised that it cannot be determined in advance whether any records exist which can be made available (see § 1206.704) and that search fees will be charged even if no record can be located and made available.

(h) *Review of records.* For commercial use requests only, where time is spent reviewing to determine whether they are exempt from mandatory disclosure, a charge may be made at the rate for each one quarter hour spent by an attorney, $5.50. No charge shall be made for the time spent in resolving general legal or policy issues regarding the application of exemptions. This charge will only be assessed the first time NASA reviews a record and not at the administrative appeal level.

(i) *Fees not chargeable.* (1) NASA will not charge for the first 100 pages of duplication and the first 2 hours of search time (meaning manual search) except to requesters seeking documents for commercial use.

(2) If the cost to be billed to the requester is equal to or less than $5.00, no charges will be billed.

### § 1206.701 Categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(a) *Commercial use requesters.* When NASA receives a request for documents appearing to be for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Moreover, in the case of such a request, NASA will not consider a request for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents.

(b) *Educational and Noncommercial Scientific Institution Requesters.* NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. Requesters eligible for free search must reasonably describe the records sought.

(c) *Requesters who are Representatives of the News Media.* NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 1206.101(a) of this part, and his/her request must not be made for a commercial use. Requesters eligible for free search must reasonably describe the records sought.

(d) *All Other Requesters.* NASA shall charge requesters who do not fit into any of the categories mentioned in this section, fees which recover the full direct reasonable cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in NASA's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permits fees only for reproduction. Requesters must reasonably describe the records sought.

### § 1206.702 Waiver or reduction of fees.

(a) NASA shall furnish documents without charge or at reduced charges in accordance with 5 U.S.C. 552(a)(4)(A)(iii), provided that: (1) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and (2) is not primarily in the commercial interest of the requester.

(b) Where these two statutory

requirements are satisfied, based upon information supplied by the requester or otherwise made known to NASA, the FOIA fee shall be waived or reduced. Where one or both of these requirements is not satisfied, a fee waiver or reduction is not warranted under the statute.

(c) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the following considerations shall be applied:

(1) Whether the subject of the requested records concerns "the operations or activities of the government";

(2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) Whether disclosure of the requested information will contribute to "public understanding"; and

(4) Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(d) In determining whether disclosure of the information "is not primarily in the commercial interest of the requester," the following considerations shall be applied:

(1) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(2) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

**§ 1206.703 Aggregation of requests.**

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NASA has reason to believe that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, NASA will aggregate any such requests and charge accordingly. NASA will consider that multiple requests made within a 30-day period were so intended, unless there is evidence to the contrary. Where the relevant time period exceeds 30 days, NASA will not assume such a motive, unless there is evidence to the contrary. In no case will NASA aggregate multiple requests on unrelated subjects from one requester.

**§ 1206.704 Advance payments.**

(a) Where NASA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, NASA will require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), NASA will require the requester to pay the full amount owed plus any applicable interest as provided in § 1206.706(a) and to make an advance payment of the full amount of the estimated fee before NASA begins to process a new request or a pending request from that requester.

(c) When NASA acts under paragraphs (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after NASA has received fee payments described in §§ 1206.705 and 1206.706.

**§ 1206.705 Form of payment.**

Payment by mail shall be made by check or money order payable to the "National Aeronautics and Space Administration" and sent to the NASA office which processed the request.

**§ 1206.706 Nonpayment of fees.**

(a) *Interest to be charged.* Requesters are advised that should they fail to pay the fees assessed, they may be charged interest on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

(b) *Applicability of Debt Collection Act of 1982 (Pub. L. 97–365).* Requesters are advised that if full payment is not received within 60 days after the billing was sent, the procedures of the Debt Collection Act may be invoked (14 CFR 1261.400 through 1261.407). These procedures include three written demand letters at not more than 30-day intervals, disclosure to a consumer reporting agency, and the use of a collection agency where appropriate.

James C. Fletcher,

*Administrator.*

[FR Doc. 87–11255 Filed 5–19–87; 8:45 am]

BILLING CODE 7510-01-M

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Parts 1, 15 and 16**

**Filing of Delivery Notice Information; Reporting of Transfer and Other Trades by Contract Markets**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is adopting final amendments to § 1.42, 17 CFR 1.42(1986), § 16.00(a), 17 CFR 16.00(a) (1986), and § 15.03(a), 17 CFR 15.03(a) (1986), of its regulations as part of its continuing efforts to reduce unnecessary paperwork and reporting burdens on its regulated entities. As part of its ongoing review of various reporting requirements, the Commission has determined that it is no longer necessary to have certain data reported to the Commission daily by contract markets. In this regard the Commission has determined that the filing of notices of delivery under § 1.42 will be required only in response to a special call to a contract market. Under this regulation, as amended, the Commission will be able to analyze delivery notice data for selected contracts on selected exchanges, as needed. In the case of transfer trades, the Commission has determined that the routine filing of such information under § 16.00(a) will be discontinued. Contract markets, however, are still required to maintain records of transfer trades pursuant to Commission §§ 1.35 and 1.38.

With respect to § 15.03(a), the Commission has reviewed the data it currently receives for market surveillance from members of contract markets, futures commission merchants (FCMs), foreign brokers and individual traders. For a number of markets it has found that the growth in trading volume, open interest, and account size of individual traders enables the Commission to carry out its market surveillance program with fewer reports. Accordingly, the Commission has adopted amendments to its reporting regulations under the Commodity Exchange Act, as amended ("Act"), to raise position levels in certain commodities for which forms 103 and 40 must be filed by traders and series '01 reports and Form 102s must be filed by members of contract markets, FCMs and foreign brokers.

**DATE:** These rules shall be effective June 19, 1987.

**ADDRESS:** Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Mielke, Associate Director, Division of Economic Analysis at the above address. Telephone: (202) 254-3310.

**SUPPLEMENTARY INFORMATION:** Commission §§ 1.42 and 16.00(a), respectively, require all contract markets to file reports of delivery notices and transfer trades. These data periodically are needed by the Commission for market surveillance, regulatory analysis or investigative purposes. After re-evaluating its current use of these data, however, the Commission has determined that the frequency of their use no longer justifies a requirement that all exchanges submit or cause to be submitted daily reports of delivery notices and transfer trades for each of their contracts. The Commission believes that it can use these data more efficiently through specific requests or special calls to exchanges only for those contracts regarding which a study or investigation is being conducted or the data are needed routinely. Contract markets need not otherwise be burdened with filing such data. The Commission, for similar reasons, is also raising the position levels in certain commodities for which daily reports are filed by members of contract markets, FCM's, foreign brokers and traders.

The Commission for good cause finds that the notice and public comment procedure for amending the above reporting rules is unneccessary. 5 U.S.C. 533(b). The amendments to these reporting rules are routine determinations, and in this particular instance are insignificant in nature and impact. As a result, these amendments are inconsequential to the industry and public. The Commission requires reports of delivery notices, transfer traders and traders' futures positions to carry-out certain provisions of the Commodity Exchange Act ("Act"), as amended. As noted below, the Commission has determined that the routine reporting of certain of the information collected under §§ 1.42, 16.00(a)(3) and 15.03(a) is no longer necessary for these purposes. In this respect, eliminating the routine filing of delivery notice information and transfer trades and the increase in reporting levels for certain commodities reduce an existing reporting burden. Moreover, the information required under §§ 1.42 and 16.00(a)(3) is available on call, so that the Commission will retain access to that portion of the information which may be needed for enforcement of the Act. With respect to reporting levels, the Commission reviews such levels on a routine basis to ensure that the reporting burdens are in the public interest. Accordingly, the Commission is adopting the amendments to §§ 1.42, 15.03 and 16.00 effective June 19, 1987.

### I. Amendments to § 1.42—Delivery Notice, Filing of Copy

Section 1.42 of the Commission's regulations currently requires each contract market to furnish or cause to be furnished to the Commission a copy of each delivery notice issued by any member for any futures or option contract of the contract market. Exchanges comply with this requirement in a variety of ways. Some exchanges require their clearing members to provide copies of delivery notices and/or invoices directly to the Commission. Other exchanges directly provide the notices or substitute summary schedules of this information.

Delivery notices provide valuable information for some markets. An analysis of these notices can yield information on the location of deliveries, the quality or type of commodity being delivered, and changes in the ownership of that commodity through consecutive deliveries. While this information can be very valuable for some markets, for others, or at certain times, it provides little useful information. As amended, § 1.42 requires contract markets to file delivery notices with the Commission only in response to a special call from the Commission or its designee. The Commission plans routinely to collect delivery notices for a few of the more than 100 futures and option contracts that currently are being traded. These special calls will be limited to specified contracts on markets for which the Commission's surveillance staff routinely analyzes the information obtained from delivery notices. Other contract markets may be subject to special calls for delivery notices if analyses are needed, for example, to study the relative frequency with which certain grades of a commodity are delivered or certain delivery points or facilities are used. By limiting the filing of delivery notices to special calls, the reporting burden will be reduced significantly for all contract markets and for the members of those contract markets.

### II. Amendment to Part 16—Reports by Contract Markets

Section 16.00 requires each contract market to file daily reports with the Commission, both in hard copy and in machine-readable form, of data separately for each clearing member and for each of its futures and option contracts. These data include total positions, trades, deliveries, transfer trades, and exchanges of futures for physical commodities. Most of this information is used daily in the Commission's market surveillance program and is vital to the effectiveness of that program. However, a review of this requirement revealed that only infrequent use is being made of the data provided on transfer trades. A transfer trade assigns positions that are open on the books of one clearing member to another clearing member but involves no change in beneficial ownership of the positions. Furthermore, some exchanges provide this information on transfer trades in distinct reports as opposed to part of a consolidated report. Given the infrequent use of these data, the Commission has determined that the daily reporting requirement found in § 16.00(a)(3) is no longer justified. Accordingly, the Commission is deleting that paragraph.

Data on transfer trades are of value in certain investigations which may from time to time be conducted by the Commission or by contract markets. Sections 1.35(e) of the Commission's regulations requires contract markets to maintain records regarding transfer trades and § 1.38(b) requires persons handling transfer trades appropriately to mark and identify such trades. Consequently, the Commission reminds contract markets to continue collecting these data. The deletion of current § 16.00(a)(3) simply relieves exchanges of the responsibility to report all transfer trades to the Commission on a daily basis. Similarly, other existing recordkeeping requirements for office trades will remain in effect.

### III. Amendments to § 15.03(a)—Quantities Fixed for Reporting

Reporting levels are set in commodities to ensure that the Commission receives adequate information to carry out its market surveillance programs, which include detection and prevention of market congestion and price manipulation and enforcement of speculative limits. In addition, the information serves as a basis to gauge overall hedging and speculative uses of the futures markets, use of the markets by foreign participants and other matters of public and/or Congressional concern.

Generally, Parts 17 and 18 of the regulations require reports from members of contract markets, FCMs or foreign brokers and traders, respectively, when a trader holds a "reportable position," i.e. any open

position held or controlled by a trader at the close of business in any one future of a commodity traded on any one contract market that is equal to or in excess of the quantities fixed by the Commission in § 15.03(a) of the regulations. See § 15.00(b) 17 CFR 15.00(b) (1986).

Members of contract markets, FCMs and foreign brokers who carry accounts in which there are "reportable positions" of traders are required to identify such accounts on a Form 102 and report on the series '01 forms any reportable positions in the account, the delivery notices issued or stopped by the account and any exchanges of futures for physicals. Traders who own or control reportable positions are required to file annually a CFTC Form 40 giving certain background information concerning their trading in commodity futures and, on call by the Commission, must submit a Form 103 showing positions and transactions in the commodity specified in the call.

The Commission has determined that the growth in trading volume, open interest, and position sizes of individual traders in certain markets enables the Commission to maintain effective surveillance of those markets with fewer reports from members of contract markets, FCMs, foreign brokers and the trading public. Accordingly, as part of its ongoing efforts to reduce reporting burdens, where possible, the Commission has determined that reporting levels should be raised for the following commodities:

Crude Oil from 100 contracts to 200 contracts; No. 2 Heating Oil from 75 contracts to 150 contracts; Unleaded Gasoline from 25 contracts to 100 contracts and three-month Eurodollar time deposit rates from 200 contracts to 400 contracts.[1]

## IV. Other Related Issues

### *The Regulatory Flexibility Act*

As the Commission has not published a prior general notice of proposed rulemaking with respect to these amendments which are relief measures, the amendments are not "rules" as that term is defined in section 3(a) of the Regulatory Flexibility Act ("RFA"), Pub. L. 96–354, 94 Stat. 1165 (5 U.S.C. 601(2)).[2]

[1] The Commission is also amending § 15.03(a) by deleting specific reference to commodities for which all contract markets are now dormant. These are silver coins and loaded gasoline.

[2] That section defines the term "rules" as "any rule for which the agency publishes a general notice of propose rulemaking pursuant to section 553(b) of this title. . . ."

## V. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2812 et seq. ("PRA"), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by PRA 44 U.S.C. 3501 et seq. OMB control number 3038–0009 has previously been assigned to §§ 16.00 and 15.03(a) and 3038–0018 to § 1.42. In compliance with the PRA the Commission has submitted this final rule and its associated information collection requirement to the Office of Management and Budget. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

### List of Subjects

*17 CFR Part 1*

General regulations.

*17 CFR Part 15*

Reports—General provisions.

*17 CFR Part 16*

Reports by contract markets.

In consideration of the foregoing, the Commission is amending Parts 1, 15 and 16 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 12a, 13a, 13a–1, 19, and 21, unless otherwise noted.

2. Section 1.42 is amended by revising paragraph (a) to read as follows:

**§ 1.42 Delivery notice: filing of copy.**

(a) Upon special call from the Commission or its designee, each contract market shall furnish or cause to be furnished promptly to the Commission for the futures or option contracts specified in the call a copy of each notice of delivery issued by any member thereof subject to the rules of such contract market, and shall also furnish or cause to be furnished promptly to the Commission a record of all endorsements of the original notice of delivery shown in the order in which such endorsements were made. For the purposes of this paragraph the Commission hereby delegates to the Director of the Division of Economic Analysis, or to such other person designated by the Director, authority to issue calls for information contained in this section.

* * * * *

## PART 15—REPORTS—GENERAL PROVISIONS

3. The authority citation for Part 15 continues to read as follows:

**Authority:** 7 U.S.C. 2, 4, 5, 6a, (a)–(d), 6f, 6g, 6i, 6k, 6m, 6n 7, 8, 12a, 19 and 21; 5 U.S.C. 552 and 552(b) unless otherwise noted.

4. Section 15.03(a) is revised to read as follows:

**§ 15.03 Quantities fixed for reporting.**

(a) The quantities for the purpose of reports filed under Parts 17 and 18 of this chapter are as follows:

| Commodity | Quantity |
|---|---|
| Wheat (bushels) | 500,000 |
| Corn (bushels) | 500,000 |
| Soybean (bushels) | 500,000 |
| Oats (bushels) | 200,000 |
| Cotton (bales) | 5,000 |
| Soybean oil (contracts) | 150 |
| Soybean meal (contracts) | 150 |
| Live cattle (contracts) | 100 |
| Hogs (contracts) | 50 |
| Sugar No. 11 (contracts) | 200 |
| Sugar No. 12 (contracts) | 100 |
| Copper (contracts) | 200 |
| Gold (contracts) | 200 |
| Silver bullion (contracts) | 150 |
| Platinum (contracts) | 50 |
| No. 2 Heating oil (contracts) | 150 |
| Crude oil (contracts) | 200 |
| Unleaded gasoline (contracts) | 100 |
| Long-term U.S. Treasury bonds (contracts) | 500 |
| GNMA (contracts) | 100 |
| Three-month (13-week) U.S. Treasury bills (contracts) | 100 |
| Long-term U.S. Treasury notes (contracts) | 200 |
| Domestic certificates of deposit (contracts) | 50 |
| Three-month Eurodollar time deposit rates (contracts | 400 |
| Foreign currencies (contracts) | 200 |
| Standard and Poor's 500 stock price index (contracts) | 300 |
| New York Stock Exchange composite index (contracts) | 100 |
| Amex Major Market stock index (contracts) | 100 |
| Amex Major Market index-mini (contracts) | 80 |
| Municipal bonds (contracts) | 50 |
| Value Line Average index (contracts) | 100 |
| All other commodities (contracts) | 25 |

## PART 16—REPORTS BY CONTRACT MARKETS

5. The authority citation for Part 16 continues to read as follows:

**Authority:** 7 U.S.C. 2, 4, 6c(a)–(d), 6f, 6g, 6k, 6m, 6n, 7, 12a, 19 and 21; 5 U.S.C. 552 and 552 (b) unless otherwise noted.

**§ 16.00 [Amended]**

6. Section 16.00 is amended by removing and reserving paragraph (a)(3).

Dated: May 13, 1987.

**Jean Anderson Webb,**

*Secretary to the Commission.*

[FR Doc. 87–11355 Filed 5–19–87; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 87N-0143]

## Food Additives Permitted for Direct Addition to Food for Human Consumption; Editorial Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is correcting a printer's error in § 172.210(b)(4) (21 CFR 172.210(b)(4)). This document corrects the word "or" in the phrase "Calcium salt or partially dimerized rosin" to the word "of".

DATES: Effective May 20, 1987; written objections by June 19, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: The agency is amending 21 CFR 172.210(b)(4) by correcting the word "or" in the phrase "Calcium salt or partially dimerized rosin" to the word "of"

Any person who will be adversely affected by this regulation may at any time on or before June 19, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual infomation intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the dockets number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

## PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s) 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 172.210 [Amended]

2. Section 172.210 *Coatings on fresh citrus fruit* is amended in the table under "Component" in paragraph (b)(4) by correcting the word "or" in the phrase "Calcium salt or partially dimerized rosin" to the word "of".

Dated: May 11, 1987

Richard J. Ronk,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-11448 Filed 5-19-87; 8:45 am]

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POSTAL SERVICE

39 CFR Parts 224, 225, 916, and 963

## Addition to Judicial Officer's Authority

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule transfers responsibility for proceedings under the pandering advertisements statute from Postal Service Regional Counsel to the Judicial Officer. It replaces the Regional Counsel's existing rules of practice for these proceedings with new rules of practice issued by the Judicial Officer. This transfer is based on a policy determination that the Judicial Officer should be responsible for administrative adjudications whenever possible. The transfer also permits Regional Counsel to concentrate more on the demands of the core of their practice having to do with contracts and real property matters.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: John Ventresco, (202) 268-3065.

SUPPLEMENTARY INFORMATION: Under section 3008 of title 39, United States Code, any recipient of a mailed advertisement who considers the matter the advertisement offers for sale to be "erotically arousing or sexually provocative" may request the Postal Service to issue a prohibitory order against the mailer of the advertisement. The order prohibits the mailer from, among other things, making any further mailings whatsoever to the addressee. If the Postal Service believes such an order has been violated, it issues a complaint and provides the mailer an opportunity to respond and request a hearing. Section 3008 provides that the Administrative Procedure Act (subchapter II of chapter 5, and chapter 7 of title 5, U.S.C.) does not apply as this procedure is intended to be more informal.

In accordance with the rules of practice in 39 CFR Part 916, Regional Counsel have been conducting the administrative hearings. However, as the Judicial Officer is the Postal Service official having responsibility for administrative adjudications under most other postal laws, the Postal Service has decided to add section 3008 proceedings to this responsibility. Title 39, CFR 224.1(c)(4)(ii)(A), the regulation defining the Judicial Officer's authority, is being amended to include section 3008 matters. New rules of practice adopted by the Judicial Officer replace the rules now codified as 39 CFR Part 916. The new rules are designated 39 CFR Part 963. Title 39, CFR 225.9(b)9, defining Regional Counsel's authority, is being amended to reflect the change in responsibility from that of conducting hearings to that of acting as Postal Service counsel as directed by the General Counsel. Accordingly, 39 CFR is hereby amended as follows:

List of Subjects in 39 CFR Parts 224, 225, 916, and 963

Organization and functions (Government agencies), Administrative practice and procedure, Pandering advertisements, Postal Service.

## PART 224—[AMENDED]

1. The authority citation for Part 224 continues to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, and 409.

§ 224.1 [Amended]

2. In § 224.1, paragraph (c)(4)(ii)(A) is amended by removing the words "and 3007 of Title 39." and adding, in their place, the words "3007, and 3008 of Title 39,".

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**PART 225—[AMENDED]**

3. The authority citation for Part 225 continues to read as follows:

**Authority:** 39 U.S.C. 201, 401, 402, 403, 404.

4. In § 225.9, paragraph (b)(9) is revised to read as follows:

**§ 225.9 Regional Counsel, Law Division.**

* * * * *

(b) * * *

(9) As directed by the General Counsel, represents the Postal Service in proceedings under 39 CFR Part 963, relative to alleged violations of the pandering advertisements statute, 39 U.S.C. 3008.

**PART 916—[REMOVED AND RESERVED]**

5. Part 916 is removed and reserved.

6. New Part 963 is added to read as follows:

**PART 963—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO VIOLATIONS UNDER 39 U.S.C. 3008.**

Sec.


963.1 Authority for the rules.
963.2 Scope of the rules.
963.3 Petition; notice of hearing; answer; filing and copies of documents; summary judgment.
963.4 Presiding Officer.
963.5 Appearances.
963.6 Computation of time.
963.7 Location of hearing.
963.8 Change of place of hearing.
963.9 Election as to hearing.
963.10 Continuances and extensions.
963.11 Default.
963.12 Settlement agreements.
963.13 Subpoenas and witness fees not authorized.
963.14 Discovery.
963.15 Evidence.
963.16 Transcript.
963.17 Proposed findings of fact and conclusions of law.
963.18 Initial decision.
963.19 Appeal.
963.20 Final agency decision.
963.21 Official record.
963.22 Public information.


**Authority:** 39 U.S.C. 204, 401, 3008.

**§ 963.1 Authority for the rules.**

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 224.1(c)(4).

**§ 963.2 Scope of the rules.**

These rules of practice are applicable to cases in which a Field Division General Manager/Postmaster (hereinafter, "Postmaster") has issued a complaint, pursuant to 39 U.S.C. 3008(d), alleging violation of a prohibitory order, and in which the alleged violator has petitioned for a hearing in the matter. As provided in 39 U.S.C. 3008(h), Subchapter II of Chapter 5 (relating to administrative procedure) and Chapter 7 (relating to judicial review) of Part I of Title 5, U.S.C., do not apply to the hearings authorized by 39 U.S.C. 3008(d).

**§ 963.3 Petition; notice of hearing; answer; filing and copies of documents; summary judgment.**

(a) *Petition.* Anyone against whom a complaint has been issued pursuant to 39 U.S.C 3008(d) may submit to the Postmaster a petition for hearing on the alleged violation. The petition must be in writing, signed by the petitioner or his attorney, and filed with the Postmaster on or before the 15th day after receipt of the complaint. The petition shall state the reasons why the petitioner believes the complaint to be erroneous. No petition received after the 15th day will be considered to have been filed on time, unless it was duly sent to the Postmaster via certified mail, deposited in the U.S. mail on or before the 15th day. The Postmaster will forward each timely petition to the Recorder, Judicial Officer Department, U.S. Postal Service, Washington, DC 20260–6101.

(b) *Notice of hearing.* Upon receiving a petition, the Recorder shall schedule a hearing for a date not later than 30 days after the date of receipt, issue and send a notice of hearing to the parties, and send a copy of the petition to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel shall file with the Recorder an answer to the petition within 15 days after the date of receiving a copy thereof. A certified copy of the material documents from the Postmaster's case file (i.e., of the PS Forms 2150, *Notice for Prohibitory Order Against Sender of Pandering Advertisement in the Mails*, 2152, *Prohibitory Order*, and 2153, *Complaint*, underlying mail pieces, and pertinent return receipts) shall be appended to the answer.

(d) *Filing and copies of documents.* With the exception of the initial petition, all documents shall be filed with the Recorder in triplicate at the address set forth above. The Recorder shall promptly provide copies to the other party to the proceeding and to the presiding officer.

(e) *Summary Judgment.* Upon motion of either the General Counsel or the petitioner, or on his or her own initiative, the presiding officer may find that the petition and answer present no genuine and material issues of fact requiring an evidentiary hearing, and thereupon may render an initial decision upholding or dismissing the complaint. The initial decision shall become the final agency decision if a timely appeal is not taken.

**§ 963.4 Presiding Officer.**

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary properly to preside over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

**§ 963.5 Appearances.**

(a) *Petitioner.* A petitioner may appear and be heard in person or by attorney. An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see Part 951 of this chapter). When a petitioner is represented by an attorney, all pleadings and other papers to be served on petitioner after entry of the attorney's appearance shall be mailed to the attorney. A petitioner must promptly file notice of any change of attorney.

(b) *Postal Service.* The Postal Service will be represented by its General Counsel or any attorney designated by the General Counsel.

**§ 963.6 Computation of time.**

A designated period of time under these rules means calendar days, excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the close of business on the next business day.

**§ 963.7 Location of hearing.**

Hearings are held at the headquarters of the Postal Service, Washington, DC 20260, or other locations designated by the presiding officer.

**§ 963.8 Change of place of hearing.**

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the

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notice. The party shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Washington, DC. The presiding officer shall consider the convenience and necessity of the parties and the relevance of the evidence to be offered.

**§ 963.9 Election as to hearing.**

If both parties elect, an oral hearing may be waived and the matter submitted for decision on the basis of the petition and answer, and of any documentary evidence or briefs requested by the presiding Officer. The written election to waive oral hearing must be received by the Recorder no later than 10 days prior to the scheduled hearing date.

**§ 963.10 Continuances and extensions.**

Continuances and extensions will be granted by the presiding officer for good cause shown.

**§ 963.11 Default.**

If a petitioner, without notice or cause satisfactory to the presiding officer, fails to appear at the hearing or comply with any of the provisions of these rules or an order issued by the presiding officer, the petitioner may be deemed to have abandoned his petition and to have acquiesced in the allegations of the complaint. The presiding officer thereupon may find the petitioner to be in default and refer the matter to the Judicial Officer for dismissal of the petition.

**§ 963.12 Settlement agreements.**

These rules do not preclude the disposition of any matter by agreement between the parties at any stage of the proceeding.

**§ 963.13 Subpoenas and witness fees not authorized.**

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a petitioner's witnesses or for depositions requested by a petitioner.

**§ 963.14 Discovery.**

Discovery is to be conducted on a voluntary basis to the extent possible. The presiding officer may, upon application of either party, order such discovery as he deems reasonable and necessary. Discovery may include one or more of the following: production of documents, requests for admissions, interrogatories, depositions, and witness lists. The presiding officer will establish the terms upon which requested discovery will be allowed.

**§ 963.15 Evidence.**

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements of fact are encouraged and may be received in evidence.

**§ 963.16 Transcript.**

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

**§ 963.17 Proposed findings of fact and conclusions of law.**

(a) Each party who participates in the hearing may, unless the presiding officer orders otherwise, submit proposed findings of fact, conclusions of law, orders, and supporting reasons, either in writing or orally at the discretion of the presiding officer. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders, and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder, who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders, and supporting reasons shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be stated separately.

**§ 963.18 Initial decision.**

Unless given orally at the conclusion of the hearing, the presiding officer shall render an initial decision as expeditiously as practicable following the conclusion of the hearing and the receipt of the proposed findings and conclusion, if any. The initial decision becomes the final agency decision if a timely appeal is not taken.

**§ 963.19 Appeal.**

Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after the receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues de novo.

**§ 963.20 Final agency decision.**

The Judicial Officer, or by delegation the Associate Judicial Officer, renders the final agency decision which will be served upon the parties. If the decision is that the Postal Service's prohibitory order was violated, the Recorder shall provide a certified copy of the record to the General Counsel for use in seeking court enforcement of the order.

**§ 963.21 Official record.**

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

**§ 963.22 Public information.**

The Law Librarian of the Postal Service maintains for public inspection in the Law Library copies of all initital, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87-11489 Filed 5-19-87; 8:45 am]

BILLING CODE 7710-12-M

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1611

### Income Levels for Individuals Eligible for Legal Assistance

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule; Revised Appendix.

**SUMMARY:** The Legal Services Corporation is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual

amendments to the official Federal Poverty Income Guidelines as defined by the Department of Health and Human Services.

**EFFECTIVE DATE:** May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Timothy B. Shea, General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751; (202) 863–1823.

**SUPPLEMENTARY INFORMATION:** Section 1007(a)(2), of the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that income shall be taken into account along with other specified factors. Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one-hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines as defined by the Office of Management and Budget. Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Office of Management and Budget to the Department of Health and Human Services. The revised figures for 1987 equivalent to 125% of the current official Federal Poverty Income Guidelines as set out at 52 FR 5341 (Feb. 20, 1987) are set forth below:

**List of Subjects in 45 CFR Part 1611**

Legal services, Eligibility.

**PART 1611—ELIGIBILITY**

1. The authority citation for Part 1611 continues to read as follows:

**Authority:** Sec. 1006(b)(1), 1007(a)(1), 1007(a)(2) Legal Services Corporation Act of 1974, as amended, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

**Appendix A of Part 1611—Legal Services Corporation Poverty Guideline**

| Size of family unit | All States but Hawaii and Alaska [1] | Alaska [2] | Hawaii [3] |
|---|---|---|---|
| 1 | 5,875 | 5,575 | 7,887 |
| 2 | 9,250 | 11,550 | 10,625 |
| 3 | 11,625 | 14,525 | 13,362 |
| 4 | 14,000 | 17,500 | 16,100 |
| 5 | 16,375 | 20,475 | 18,837 |
| 6 | 18,750 | 23,450 | 21,575 |
| 7 | 21,125 | 26,425 | 24,312 |
| 8 | 23,500 | 29,400 | 27,050 |

[1] For family units with more than eight members, add 2,375 for each additional member in a family.

[2] For family units with more than eight members, add 2,975 for each additional member in a family.

[3] For family units with more than eight members, add 2,737 for each additional member in a family.

Dated: May 15, 1987.

**Timothy B. Shea,**

*General Counsel.*

[FR Doc. 87–11550 Filed 5–19–87; 8:45 am]

BILLING CODE 6820–35–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 86–269; RM–5319]**

**Radio Broadcasting Services; Lafayette, FL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 260A to Lafayette, Florida, at the request of Family Group Broadcasting, as the community's first FM service. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** June 29, 1987. The window period for filing applications will open on June 30, 1987, and close on July 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86–269, adopted April 17, 1987, and released May 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended, in the entry for Florida, Lafayette, Channel 260A, is added.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–11500 Filed 5–19–87; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 86–186; RM–5063]**

**Radio Broadcasting Services; Greenwood, IN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 294A to Greenwood, Indiana as that community's first FM channel in response to a petition filed by Morgan County Broadcasters Inc.

With this action, this proceeding is terminated.

**EFFECTIVE DATE:** June 29, 1987. The window period for filing applications will open on June 30, 1987, and close on July 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** D. David Weston, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86–186, adopted March 27, 1987, and released May 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In § 73.202(b), the Table of FM Allotments is amended by adding the entry of Channel 294A to Greenwood, Indiana.

Federal Communications Commission.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-11502 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-371; RM-5350]

## Radio Broadcasting Services; Georgetown, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 293C2 for Channel 292A at Georgetown, South Carolina, at the request of Seacoast Broadcasting Corp. and modifies its license for Station WAZX(FM) to specify operation on the higher powered channel. Channel 293C2 can be allocated to Georgetown in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 29, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-371, adopted April 17, 1987, and released May 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments for Georgetown, South Carolina is amended by adding Channel 293C2 and deleting Channel 292A.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-11501 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-307; RM-4910]

## Television Broadcasting Services; Salem, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 58 to Salem, Indiana as that community's first television channel at the request of J.R. Broadcasting. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 29, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-307, adopted March 27, 1987, and released May 15, 1987. The full text of this Commission decision is availalbe for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments in the entry for Salem, Indiana, Channel 58+ is added.

Federal Communications Commission.

Mark N. Lipp,

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-11512 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-276; RM-5336]

## Television Broadcasting Services; Palestine, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 43 to Palestine, Texas, as that community's first commercial television service, at the request of Jeffery L. Ward. A site restriction of 12.4 miles north of the community is required. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 29, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-276, adopted April 17, 1987, and released May 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments, is amended by adding Channel 43 at Palestine, Texas.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-11511 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-66; RM-5100]

## Television Broadcasting Services; Sulphur Springs, TX and Lake Charles, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document allots UHF-TV Channel 18 to Sulphur Springs, Texas, as that community's first commercial television service, at the request of Harold Hardgrave. In addition, the offset on Channel 18 at Lake Charles, Louisiana must be changed from "zero" to "minus" in order to accomplish the Sulphur Springs allotment. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86-99, adopted April 17, 1987, and released May 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of Allotments, is amended under Louisiana, by revising Channel *18 to *18- for Lake Charles and by adding in the entry for Texas, Channel 18 at Sulphur Springs.

**Mark N. Lipp,**

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-11513 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 97**

**[PR Docket No. 85-196; FCC-87-158]**

## Amendment of the Amateur Radio Service Rules To Permit Volunteer-Examiner Coordinators (VECs) To Maintain Pools of Questions for Amateur Operator Examinations; Action on Petitions for Reconsideration

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The attached Memorandum Opinion and Order requires that all VEC's maintain the existing examination questions until January 30, 1988, and develop common question pools for use on and after that date. This action is necessary so that there will be examination standardization during the transition period while maintenance of the question pools is being transferred from the FCC to VECs. The effect of this action is to assure fairness in the examination process for all examinees.

**EFFECTIVE DATE:** July 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

**SUPPLEMENTARY INFORMATION:** This a summary of the Commission's Memorandum Opinion and Order, adopted April 29, 1987 and released May 14, 1987.

1. The full text of this Commission decision and the rule amendment is available for inspection and copying during normal hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision and the rule amendment may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**Summary of Memorandum Opinion and Order**

2. In responding to Petitions for Reconsideration from American Radio Relay League, Inc. (ARRL), Arthur H. Ekblad and Lyndell C. Miller (Miller), the FCC clarified the matter of standardization of amateur operator license examinations. The FCC ordered VECs to maintain the existing examination questions until January 30, 1988. During the interim period, which runs from the adoption of this Memorandum Opinion and Order until January 30, 1988, the VECs must develop common question pools which must be used beginning on the latter date. Petitioners ARRL, Gordon G. Girton, Frederick O. Malia, Miller and David B. Popkin had made other requests concerning the telegraph requirement, the topics covered on the written examinations, review of administering VEC's judgment in determining the correctness of the examinee's answers and readministration of the same telegraphy message or the same question set to the same person. These requests in their Petitions for Reconsideration were denied.

3. It is ordered that Part 97 is amended as set forth at the end of this document. It is further ordered that all VEC's must maintain the existing examination questions until January 30, 1988, without change except for necessary typographical or grammatical corrections and for question revisions required by amendments to FCC rules. It is further ordered that, during the interim period which runs from the adoption of this Memorandum Opinion and Order until January 30, 1988, the VECs must develop common question pools which must be used beginning on the latter date. It is further ordered that the Petitions for Reconsideration are granted insofar as they are consistent with this Memorandum Opinion and Order and are denied in all other respects. It is further ordered that this proceeding is terminated.

4. The authority for this action is contained in 47 U.S.C. 154 (i) and 303 (r).

**List of Subjects in 47 CFR Part 97**

Amateur radio, Examinations, Radio.

**William J. Tricarico,**

*Secretary.*

**Amended rule**

**PART 97—[AMENDED]**

Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 97 to read, as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 303. Interpret or apply, 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 301-609, unless otherwise noted.

2. Section 97.521 is revised to read, as follows:

**§ 97.521 VEC question pools.**

All VECs must cooperate in maintaining one standard question pool for each written examination element. Each standard question pool must contain at least ten times the number of questions required for a single examination. See § 97.21. No question in a question set may be used for a written examination in an examination session coordinated by any VEC unless it appears on the standard question pool. The standard question pools must be published and made available to the public prior to their use for making question sets.

[FR Doc. 87-11495 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-217]

Aviation Proceedings; Organization and Delegation of Powers and Duties

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final Rule.

SUMMARY: This rule delegates to the General Counsel the authority of the Secretary to exercise, in certain cases, the President's statutory authority to review and determine not to disapprove orders of the Department in foreign air transportation.

EFFECTIVE DATE: This rule is effective [May 20, 1987].

FOR FURTHER INFORMATION CONTACT: Lawrence Myers, Office of the General Counsel (C-20), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590; (202) 366-9183.

SUPPLEMENTARY INFORMATION: Section 801 of the Federal Aviation Act (49 U.S.C. 1461) provides for Presidential review of DOT orders affecting carrier operating rights or prices in foreign air transportation. The President may disapprove any such order for foreign relations or national defense reasons, within 60 days in the case of orders affecting carrier certificates or permits, and within 10 days in the case of orders affecting fares, rates or charges.

Executive orders implementing this review process have permitted federal departments and agencies to advise the President on the foreign relations and national defense implications of such DOT orders. Executive Order 12547, issued February 6, 1986, assigned to the Department the function of transmitting its reviewable orders to certain specified Executive departments and agencies and soliciting their recommendations, if any, for transmittal to the President. If no agency or department recommended disapproval, or a statement of reasons for non-disapproval, the Order directed the Department to so indicate in a memorandum to the President through the Assistant to the President for National Security Affairs. If any such recommendations were received, the Department was to forward them to the Assistant to the President for National Security Affairs for his or her summary and recommendation to the President.

A new procedure was adopted by Executive Order 12597, of May 13, 1987 (52 FR 18335). By that Order the President authorized the Secretary to receive reviewable DOT orders on his behalf and delegated to her the exercise of his statutory review authority in the case of orders which elicit no written recommendations from the coordinating Executive departments and agencies within specified response periods. In such cases, the Secretary may determine not to disapprove the order and issue it for immediate effectiveness. Where written recommendations are received, the existing procedure is to be followed.

This rule delegates the Secretary's new authority to act for the President to the General Counsel, including the acting General Counsel in his or her absence. The Office of the General Counsel is vested with the responsibility for administering the current Executive Order and receiving recommendations from other agencies under that Order. Thus, the General Counsel will, in the future, be able to determine the effective date of orders subject to the 801 review process where no written recommendations are received from other agencies. Under §§ 1.43 and 1.55 of this Part, the Secretary or the Deputy Secretary may exercise the authority delegated herein.

Since this amendment relates to Departmental management, procedures, and practices, notice and comment on it are unnecessary and it may be made effective in less than thirty days after publication in the Federal Register. This rule is a nonsignificant rule under the Department of Transportation's Regulatory Policies and Procedures.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies).

As Secretary of the Department of Transportation, I amend 49 CFR Part 1 *Organization and Delegation of Powers and Duties*, to read as follows:

PART 1—[AMENDED]

1. The authority of Part 1 continues to read as follows:

Authority: 49 U.S.C. 322, 1652 and 1657(e)

§ 1.57 [Amended]

2. In paragraph 1.57, *Delegations to General Counsel*, a new paragraph (r) is added at the end thereof, to read as follows:

(r) Exercise the review authority delegated to the Secretary by the President in Executive Order 12597 of May 13, 1987.

Issued in Washington, DC, on May 13, 1987

Elizabeth Hanford Dole,

*Secretary of Transportation.*

[FR Doc. 87-11520 Filed 5-19-87; 8:45 am]

BILLING CODE 4910-62-M

# Proposed Rules

Federal Register
Vol. 52, No. 97
Wednesday, May 20, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### 7 CFR Parts 725 and 726

### Tobacco Acreage Allotment and Marketing Quota Regulations

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS), USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends the regulations at 7 CFR Parts 725 and 726 with respect to the flue-cured and burley tobacco. The rule redefines the term "leaf account" and provides that a tobacco dealer, warehouseman, or other person who acquires tobacco from a processor or manufacturer and wishes purchase credit for such tobacco for a leaf account must obtain from the processor or manufacturer a certification stating that the tobacco is in the form normally marketed by producers. This rule provides that no purchase credit will be allowed for tobacco acquired by any person from a processor or manufacturer which is (1) in the form not normally marketed by producers and (2) blended with tobacco in the form normally marketed by producers and such action causes the warehousemen or dealers resales to exceed purchases. A marketing penalty will be due on the excess resales resulting from this action. The proposed rule also provides that processors and manufacturers shall report to the Director of Tobacco and Peanuts Division, ASCS, all sales of tobacco to dealers and warehousemen that is in the form not normally marketed by producers.

**DATE:** Comments on the proposed rule must be received by June 19, 1987.

**ADDRESS:** Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in room 5750-South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Raymond S. Fleming, Chief, Tobacco Program Adjustment Branch, Tobacco and Peanuts Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013 (202) 447–4318.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Department Regulation No. 1512–1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises, to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

### Background

A by-product that results from processing tobacco prior to the redrying of the tobacco is the accumulation of inferior quality leaves, bits of leaves and scraps of tobacco. This low value tobacco is generally referred to in the tobacco trade as "pickings". Since pickings result from the processing of tobacco, such tobacco is considered to be tobacco in the form not normally marketed by producers. The annual volume of pickings is estimated at 5 million pounds. Historically, pickings have been utilized directly in the manufacture of tobacco products. A recent audit by the Department concluded that some dealers and warehousemen may be acquiring low cost pickings for the express purpose of blending it with unidentified tobacco so as to avoid the payment of marketing quota penalties with respect to the sale of the unidentified tobacco. The audit presented evidence to show that pickings were acquired by some dealers and destroyed shortly thereafter yet the dealers' resales were as much as their purchases indicating that other tobacco was being substituted for the pickings.

The intent of this regulation is to close the outlet for unidentified tobacco provided by the acquisition of pickings or any other tobacco in the form not normally marketed by producers. This regulation would not prohibit the blending of low cost pickings with other tobacco but it would deny purchase credit to a dealer or warehouseman when such tobacco is acquired from a processor or manfacturer.

The current regulations which deal with the marketing of tobacco in the form not normally marketed by producers are not adequate to close the outlet for unidentified tobacco where pickings are involved. The current regulations require any dealer, warehouseman, or other person who purchases tobacco from processors or manufacturers to report the intended purchase of such tobacco to the respective State ASCS office so that an ASCS representative can determine the marketable value of the tobacco and whether the tobacco is in the form normally marketed by producers. If it is determined by an ASCS representative that the tobacco is not in the form normally marketed by producers, the dealer or warehouseman must provide an opportunity for an ASCS representative to observe the disposition or blending of such tobacco. Any such tobacco purchased by a dealer, warehouseman, or other person and marketed, disposed of by any means, or blended with other tobacco before the State ASCS office has been notified timely is considered to have been substituted for excess tobacco, and a penalty at the full rate is due on each pound of such tobacco.

This proposed rule defines pickings as the residue of tobacco which accumulates in the course of processing tobacco prior to being redried,

consisting of scrap, stems, portions of leaves and leaves of poor quality. Such tobacco is considered to be tobacco in the form not normally marketed by producers and no purchase credit will be allowed for such tobacco when acquired by any person from a processor or manufacturer. Furthermore, no dealer, warehouseman, or other person will receive a purchase credit for any purchase from a processor or manufacturer unless the processor or manufacturer certifies that the tobacco involved in the purchase is tobacco in the form normally marketed by producers. The certification by the processor or manfacturer will be a certification to ASCS that the acquired tobacco is in the form normally marketed by producers.

**List of Subjects in 7 CFR Parts 725 and 726**

Acreage allotment, Marketing quota, Reporting and recordkeeping requirements.

**Proposed Rule**

For the reasons set forth in the preamble, Chapter VII, Title 7 of the CFR is amended as follows.

**PART 725—[AMENDED]**

1. In Part 725:

a. The authority citation continues to read as follows:

**Authority:** Sec. 301, 313, 314, 314A, 316, 316A, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 98 Stat. 215, 75 Stat. 469, as amended, 98 Stat. 205, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 76 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c 1363, 1372–75, 1377, 1378; sec. 401, 69 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

b. Section 725.51 is amended by revising paragraph (s) and adding paragraph (oo-1) to read:

**§ 725.51 Definitions.**

* * * * *

(s) *Leaf account tobacco.* The quantity of tobacco purchased or otherwise acquired by or for the amount of a warehouseman (except floor sweepings which accumulate on the warehouse floor and tobacco in the form not normally marketed by producers), as adjusted by the debits and credits to the buyer's correction account, and including floor sweepings purchased from another warehouseman or dealer.

* * * * *

(oo-1) *Tobacco pickings.* The residue which accumulates in the course of processing tobacco prior to the redrying of such tobacco, consisting of scrap, stems, portions of leaves, and leaves of poor quality. Such tobacco shall be considered to be tobacco in the form not normally marketed by producers.

* * * * *

c. Section 725.94 is amended by revising paragraph (c) and adding paragraph (i) to read as follows:

**§ 725.94 Penalties considered to be due from warehousemen, dealers, buyers and others excluding producer.**

* * * * *

(c) *Leaf account tobacco.* If warehouse resales exceed prior leaf account purchases, such marketings shall be considered to be a marketing of excess tobacco unless such warehouseman furnishes evidence acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State committee shall not be based on the warehouseman's proof of purchase of tobacco that is not in the form normally marketed by producers even though such evidence indicates that resales exceed prior leaf account purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the warehouseman's prior purchases of leaf account tobacco.

* * * * *

(i) *Blending tobacco not in the form normally marketed by producers.* Tobacco purchased from processors or manufacturers that is considered not in the form normally marketed by producers that is blended with tobacco in the from normally marketed by producers shall not be credited as a purchase to the dealer's or warehouseman's account by the State committee when reconciling the warehouseman's leaf account or the purchases and resales. Tobacco not in the form normally marketed by producers that is blended with other tobacco shall be deemed to be excess tobacco and a penalty shall be due on the pounds of tobacco by which warehouseman's or dealer's resales exceed prior purchases.

**§ 725.100 [Amended]**

d. Section 725.100 is amended by removing paragraph (g).

e. Section 725.101 is amended by revising paragraphs (b) and (c) to read:

**§ 725.101 Dealer purchases of damaged tobacco or tobacco from processors or manufacturers.**

* * * * *

(b) *Purchase from processor or manufacturer.* (1) Any tobacco purchased by a dealer, warehouseman, or other person from a processor or manufacturer shall be considered to be tobacco in the form not normally marketed by producers unless the purchaser obtains from the processor or manufacturer a certification stating that such purchased tobacco is in the form normally marketed by producers. The certification by the processor or manufacturer shall be on a form prescribed by the Deputy Administrator certifying to ASCS that the tobacco involved in the transfer of ownership is in the form normally marketed by producers. No purchase credit shall be given to a dealer, warehouseman, or other person of MQ–79, Dealer's Record, for any purchase of tobacco which is in the form not normally marketed by producers. Tobacco which meets the definition of pickings as defined in this part shall be considered tobacco in the form not normally marketed by producers.

(2) Any dealer, warehouseman or other person who plans to purchase tobacco in the form normally marketed by producers from a processor or manufacturer shall, prior to purchase, report such plans to the State ASCS office issuing form MQ–79, Dealer Record Book, to such person. Such report shall be made timely so that a representative of ASCS may inspect the tobacco to determine its marketable value and whether the tobacco is in the form normally marketed by producers. Any tobacco purchased from processors or manufacturers before (i) such plans are reported to the State ASCS office and (ii) the tobacco is inspected by an ASCS representative or an inspection is declined by an ASCS representative shall be deemed to be excess tobacco and a penalty at the rate provided in § 725.92 shall be due.

(c) *Report by processor and manufacturer.* For the 1987–88 and subsequent marketing years, each processor or manufacturer shall make a report to the Director that shows the quantity of tobacco sold in the form not normally marketed by producers to dealers and buyers other than processors or manufacturers. The report shall be filed no later than the end of the calendar week following the week in which such tobacco was sold and shall show the name of the purchaser, the date of the sale and the pounds sold.

**PART 726—[AMENDED]**

2. In Part 726:

a. The authority citation continues to read as follows:

**Authority:** Sec. 301, 313, 314, 314A, 316B, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 98

Stat. 215, 210, 79 Stat. 66, as amended, 52 Stat. 63, as amended; 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b–2, 1314c 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421, unless otherwise noted.

b. Section 726.51 is amended by revising paragraph (r) and adding paragraph (nn–1) to read:

**§ 726.51 Definitions.**

* * * * *

(r) *Leaf account tobacco.* The quantity of tobacco purchased or otherwise acquired by or for the account of a warehouseman (except floor sweepings which accumulate on the warehouse floor and tobacco in the form not normally marketed by producers), as adjusted by the debits and credits to the buyers correction account, and including floor sweepings purchased from another warehouseman or dealer.

* * * * *

(nn–1) *Tobacco pickings.* The residue which accumulates in the course of processing tobacco prior to the redrying of such tobacco, consisting of scrap, stems, portions of leaves, and leaves of poor quality. Such tobacco shall be considered to be tobacco in the form not normally marketed by producers.

* * * * *

c. Section 726.88 is amended by revising paragraph (c) and adding paragraph (i) to read as follows:

**§ 726.88 Penalties considered to be due from warehousemen, dealers, buyers and others excluding producer.**

* * * * *

(c) *Leaf account tobacco.* If warehouse resales exceed prior leaf account purchases, such marketings shall be considered to be a marketing of excess tobacco unless such warehouseman furnishes evidence acceptable to the State committee showing that such marketing is not a marketing of excess tobacco. However, evidence acceptable to the State committee shall not be based on the warehouseman's proof of purchase of tobacco that is not in the form normally marketed by producers even though such evidence indicates that resales exceed prior leaf account purchases as a result of the blending of tobacco, which was not in the form normally marketed by producers, with the warehouseman's prior purchases of leaf account tobacco.

* * * * *

(i) *Blending tobacco not in the form normally marketed by producers.* Tobacco purchased from processors or manufacturers that is considered not in the form normally marketed by producers, which is blended with tobacco in the form normally marketed by producers, shall not be credited as a purchase to the dealer's or warehouseman's account by the State committee when reconciling the warehouseman's leaf account or the dealer's purchases and resales. Tobacco not in the form normally marketed by producers that is blended with other tobacco shall be deemed to be excess tobacco and a penalty shall be due on the pounds of tobacco that a warehouseman's or dealer's resales exceeds prior purchases.

d. Section 726.94 is amended by revising paragraph (e) (2) and (3), adding (e) (4) and removing paragraph (h), to read:

**§ 726.94 Dealer's records and reports.**

* * * * *

(e) (1) * * *

(2) *Purchase from processor or manufacturer.* Any tobacco purchased by a dealer, warehouseman, or other person from a processor or manufacturer shall be considered to be tobacco in the form not normally marketed by producers unless the purchaser obtains from the processor or manufacturer a certification stating that such purchased tobacco is in the form normally marketed by producers. The certification by the processor or manufacturer shall be on a form prescribed by the Deputy Administrator certifying to ASCS that the tobacco involved in the transfer of ownership is in the form normally marketed by producers. No purchase credit shall be given to a dealer, warehouseman, or other person on MQ–79, Dealer's Record, for any purchase of tobacco which is in the form not normally marketed by producers. Tobacco which meets the definition of pickings as defined in this part shall be considered tobacco in the form not normally marketed by producers.

(3) *Certification.* Any dealer, warehouseman or other person who plans to purchase tobacco in the form normally marketed by producers from a processor or manufacturer shall prior to purchase, report such plans to the State ASCS office issuing form MQ–79, Dealer Record Book, to such person. Such report shall be made timely so that a representative of ASCS may inspect the tobacco to determine its marketable value and whether the tobacco is in the form normally marketed by producers.

Any tobacco purchased from processors or manufacturers before such plans are reported to the State ASCS office and before the tobacco is inspected by an ASCS representative or an inspection is declined by an ASCS representative shall be deemed to be excess tobacco and the penalty at the full rate shall be due.

(4) *Report of processor or manufacturer.* For the 1987–88 and subsequent marketing years, each processor or manufacturer shall make a report to the Director, showing the quantity of tobacco sold in the form not normally marketed by producers to dealers and buyers other than processors or manufacturers. The report shall be filed no later than the end of the calendar week following the week in which such tobacco was sold and shall show the name of the purchaser, the date of the sale and the pounds sold.

* * * * *

(h) [Removed]

Signed in Washington, DC, on May 14, 1987.

Milton J. Hertz,

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 87–11529 Filed 5–19–87; 8:45 am]

BILLING CODE 3410–05–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

[Airspace Docket No. 87–ACE–1]

## Proposed Alteration of VOR Federal Airways—MO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposed to alter the description of Federal Airways V–12, V–44 and V–504 located in the vicinity of Jefferson City, MO. The Jefferson City very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) will be decommissioned and the Tiger, MO, VOR/DME will be relocated to the Columbia Regional Airport, MO. This action alters the descriptions of all airways affected by the decommissioning and relocation of these navigational aids (NAVAID).

**DATE:** Comments must be received on or before July 6, 1987.

**ADDRESS:** Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 87–ACE–1, Federal Aviation Administration 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and

5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–ACE–1." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of the Advisory Circular No. 11–2 which describes the application procedure.

## The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions, in part, of V–12, V–44 and V–504 located in the vicinity of Jefferson City, MO. The Jefferson City VOR/DME will be decommissioned during fiscal year 1987. In addition, Tiger, MO, VOR/DME will be relocated to the Columbia Regional Airport, MO, (lat. 38°48'38" N., 92°13'05" W.) due to nonrenewal of the lease. This action alters the descriptions of all airways affected by the decommissioning and relocation of the these NAVAID's. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C date January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so miminal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

## The Proposed Amendment

## PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. § 71.123 is amended as follows:

**V–12 [Amended]**

By removing the words "TIGER, MO; Foristell, MO;" and by substituting the words "INT Napolean 096°T(066°M) and Columbia, MO, 292°T (292°M) radials; Columbia; Foristell, MO;"

**V–44 [Amended]**

By removing the words "From Jefferson City, MO, via Foristell, MO;" and by substituting the words "From Columbia, MO; INT Columbia 131°T(128°M) and Foristell, MO, 282°T(257°M) radials; Foristell;"

**V–504 [Removed]**

3. § 71.203 is amended as follows:

**Columbia, MO [Added]**

Issued in Washington, DC, on May 12, 1987.

**Daniel J. Peterson,**

*Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 87–11435 Filed 5–19–87; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 102 and 161

**[Docket No. 84N–0081]**

## Bonito and Canned Tuna; Termination of Consideration of Codex Standard

**AGENCY:** Food and Drug Administration.

**ACTION:** Advance notice of proposed rulemaking; termination of consideration.

**SUMMARY:** The Food and Drug Administration (FDA) is terminating consideration of amending the U.S. standard of identity for canned tuna and for establishing a U.S. standard of identity for canned bonito, based on the Codex Alimentarius Commission Standard for Canned Tuna and Bonito in Water or Oil (Codex Standard No. CAC/RS70–1974) (Codex standard) because there is neither sufficient interest nor need to warrant either action.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0110.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of April 20, 1984 (49 FR 16807), FDA published an advance notice of proposed rulemaking which offered interested persons an opportunity to review the Codex standard and to comment on the desirability of and need to amend the U.S. standard for canned tuna (21 CFR

161.190) and to establish a U.S. standard for canned bonito. The Codex standard was submitted to the United States for consideration of acceptance by the Joint Food and Agriculture Organization/World Health Organization's Codex Alimentarius Commission.

Three comments were received in response to the advance notice of proposed rulemaking. None of the comments were in favor of adopting the Codex standard for canned tuna or of establishing a standard of identify for canned bonito.

Having considered the comments received, FDA has concluded that there is neither sufficient interest nor need to warrant amending the U.S. standard of identity for canned tuna to adopt the Codex standard, nor to establish a U.S. standard of identity for canned bonito at this time, under authority of section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

Therefore, under the procedures in 21 CFR 130.6, notice is given that the Commissioner of Food and Drugs has terminated consideration of amending the U.S. standard for canned tuna and of establishing a U.S. standard for canned bonito based on the Codex standard. This action is without prejudice to further consideration of amending the standard for tuna or of developing a standard for canned bonito upon appropriate justification.

FDA will inform the Codex Alimentarius Commission that an imported food which complies with the requirements of the Codex standard may mover freely in interstgate commerce in this country, provided that it complies with applicable U.S. laws and regulations.

Dated: May 11, 1987

Richard J. Ronk,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-11449 Filed 5-19-87; 8:45 am]

BILLING CODE 4160-01-M

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## 21 CFR Parts 103 and 165

[Docket No. 82N-0319]

## Nonalcoholic Beverages; Proposal To Repeal Standard of Identity for Soda Water

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to repeal the standard of identity for soda water and is inviting comments regarding this proposed action. FDA is issuing this proposal in conjunction with its proposal, published elsewhere in this issue of the Federal Register, to codify a prior sanction for the use of added caffeine in nonalcoholic carbonated beverages.

**DATE:** Comments by July 20, 1987.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0122.

**SUPPLEMENTARY INFORMATION:** FDA is proposing to repeal the standard of identity for soda water, which appears at 21 CFR 165.175, and is inviting comments regarding the need to retain this standard. Consistent with the proposed repeal of this standard, FDA is also proposing to delete the reference to the soda water standard that appears in the standard of quality for bottled water in 21 CFR 103.35(a).

Elsewhere in this issue of the Federal Register, FDA is proposing to codify a prior sanction for the use of caffeine in nonalcoholic carbonated beverages at a level of not more than 0.02 percent. The reasons for that action are set forth in the preamble to that document. In view of the proceeding to codify the prior sanction, FDA believes that the limit of 0.02 percent of caffeine in the standard of identity for soda water would be duplicative and, therefore, would be unnecessary.

The standard of identity for soda water, established in the Federal Register of January 27, 1966 (31 FR 1068), specifies, among other things, that (1) products described by names that include "cola" or "pepper" "* * * shall contain caffeine from kola nut extract and/or other natural caffeine-containing extracts"; (2) the total caffeine content in the finished food shall not exceed 0.02 percent by weight; and (3) soda water may contain any safe and suitable optional ingredient, except that vitamins, minerals, and proteins added for nutritional purposes and artificial sweeteners are not suitable ingredients.

FDA believes that it is both timely and sensible to propose to remove the standard of identity for soda water because some provisions of the standard are being adequately dealt with by other regulations, while other provisions are no longer necessary. The proposed regulation to codify the prior-sanctioned use of added caffeine in nonalcoholic carbonated beverages would specify the same maximum level of use, 0.02 percent, as that established by the standard of identify. FDA's finding in § 165.175 that vitamins, minerals, and proteins are unsuitable ingredients in carbonated beverages is also set forth in the nutritional fortification policy statement (21 CFR 104.20). Finally, the statement in the soda water standard regarding artificially sweetened carbonated beverage products is outdated. For some time, the agency has considered artificially sweetened carbonated beverage products to be nonstandardized foods.

On October 21, 1980 (45 FR 69810), FDA proposed to amend the standard of identity for soda water (1) to designate kola nut extract, rather than caffeine, as the mandatory ingredient in "cola-" and "pepper-" type beverages; (2) to provide for decaffeinated "cola" or "pepper" soda water beverages under the standard of identity; and (3) to continue to permit the use of added caffeine in these beverages as an optional ingredient. If FDA repeals the soda water standard, as it is now proposing to do, the October 21, 1980, proposed amendment to the soda water standard will be withdrawn.

### Economic Impact

The proposed rule to appeal the soda water standard, if promulgated, would make mandatory the label declaration of all ingredients used, including caffeine, in nonalcoholic carbonated beverages. Currently, cola- and pepper-type beverages are the only soda water beverages allowed by this standard of identity to exclude caffeine from the label. Because manufacturers of cola- and pepper-type beverages have voluntarily disclosed the presence of caffeine on the label, a final rule based on this proposal would require no changes in current industry labeling practices of both small and large entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

### Request for Comments

Interested persons may, on or before July 20, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

*21 CFR Part 103*

Beverages, Food standards.

*21 CFR Part 165*

Beverages, Food standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, it is proposed that Parts 103 and 165 be amended as follows:

**PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS**

1. The authority citation for 21 CFR Part 103 is revised to read as follows:

Authority: Secs. 401, 403, 701, 52 Stat. 1046–1048 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 343, 371); 21 CFR 5.10.

2. Section 103.35 is amended in paragraph (a)(1) by revising the second sentence to read as follows:

**§ 103.35 Bottled water.**

(a) * * * (1) * * * Bottled water does not include mineral water or any beverage made by absorbing carbon dioxide in potable water.

* * * * *

**PART 165—[REMOVED]**

3. Part 165, consisting of Subpart A, which is reserved, and Subpart B, which consists of § 165.175 *Soda water*, is removed.

Dated: April 17, 1987.

Frank E. Young,

*Commissioner of Food and Drugs.*

[FR Doc. 87–11450 Filed 5–19–87; 8:45 am]

BILLING CODE 4160-01-M

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**21 CFR Part 181**

[Docket No. 82N–0318]

**Caffeine in Nonalcoholic Carbonated Beverages**

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to codify a prior sanction for the use of added caffeine in nonalcoholic carbonated beverages. This action is based on a review of comments on the question of whether there is a prior sanction for this use. The agency received these comments in response to a proposal, published in the Federal Register of October 21, 1980, to delete caffeine from the list of substances that are generally recognized as safe (GRAS). Elsewhere in this issue of the Federal Register, FDA is proposing to repeal the food standard for soda water.

**DATE:** Comments by July 20, 1987.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

Caffeine has been widely consumed for many years, both as a naturally occurring component of coffee, tea, and chocolate and as an added ingredient in colas, pepper drinks, and other soda water beverages. Despite caffeine's well-known stimulant properties, FDA has listed its use in cola-type beverages as GRAS (21 CFR 182.1180) and has permitted its use in soda water (21 CFR 165.175) up to a maximum of 0.02 percent by weight.

Since 1970, FDA has been conducting a comprehensive review of the safety of those human food ingredients that are currently listed as GRAS or subject to a prior sanction. As a result of its review of caffeine, FDA published a proposal in the Federal Register of October 21, 1980 (45 FR 69817), to delete caffeine from the GRAS list, to declare that no prior sanction exists for the use of caffeine as an added food ingredient, and to list caffeine as an interim food additive. The proposed interim food additive regulation would have permitted current food uses of added caffeine pending the completion of studies considered necessary by FDA to resolve questions about caffeine's safety.

The agency stated in the proposal that any person who wished to assert a prior sanction for added caffeine should submit proof of the existence of the prior sanction in response to the proposal. The proposal stated that if FDA received acceptable evidence of a prior sanction, or became otherwise convinced that a prior sanction exists, the agency would propose to recognize the prior-sanction use and would exclude that use from the coverage of the interim food additive regulation.

**II. Prior Sanction**

Section 201(s)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)(4)) exempts from the definition of a food additive "any substance used in accordance with a sanction or approval granted" under the act, the Meat Inspection Act, or the Poultry Products Inspection Act before the enactment of the Food Additives Amendment of 1958. This type of sanction or approval is generally referred to as a "prior sanction." Neither the act nor its legislative history defines the term "prior sanction." However, FDA has adopted a regulation (21 CFR 170.3(l)) that defines this term as "an explicit approval granted with respect to use of a substance in food prior to September 6, 1958 * * *" under any of the three statutes listed above. Another FDA regulation (21 CFR 181.5(a)) states that a prior sanction "shall exist only for a specific use(s) of a substance in food, i.e., the level(s), condition(s), product(s), etc., for which there was explicit approval * * *."

The "explicit approval" required to establish a prior sanction may be either formal or informal. In the event that a formal approval, such as a food standard regulation promulgated under the act before 1958, does not exist, the agency recognizes that correspondence issued by authorized agency officials can constitute an informal prior sanction. As stated in the October 21, 1980, proposal, FDA searched its correspondence files for letters that might constitute a prior sanction for the use of caffeine in food before issuing that proposal, and, based on the letters that it could locate, the agency tentatively determined that a prior sanction did not exist.

**III. Comments on Prior Sanction Issue**

FDA received six comments on the prior sanction issue. Two comments (one each from a consumer group and a public interest group) stated their belief that no prior sanctions exist for food uses of caffeine. However, these comments did not present any new information to support their assertions. Four additional comments (three from manufacturers and one from a trade association) stated that a prior sanction does exist for use of caffeine in all soda water beverages. Among these four comments, two did not present new information; one presented a photocopy of a letter dated August 20, 1958, from FDA to the Coca-Cola Co. (discussed in more detail below); and one, from the National Soft Drink Association, presented a substantial number of documents in support of its prior sanction claim. None of the comments presented any information alleging that a prior sanction exists for food uses of caffeine other than in soda water.

The comment from the National Soft Drink Association (Ref. 1) alleged that a

prior sanction exists for the soda water use of caffeine based on the following facts:

(1) When FDA entered into a court-approved settlement in the case *United States* v. *Forty Barrels and Twenty Kegs Coca-Cola* in 1917, the agency thereby approved the use of caffeine in cola drinks at a level equal to that used by the Coca-Cola Co.

(2) FDA stated in a letter dated May 8, 1940, that, pending the adoption of a standard of identity, it had no objection to the use of 0.69 grain of caffeine, without label declaration, in carbonated beverages that ordinarily contain added caffeine. After 1940, it issued several similar letters.

(3) In letters to consumers from 1938 through 1958, FDA stated that it had no evidence to show that caffeine, in amounts of no more than ⅛ to ¾ grain in a bottle of the finished carbonated beverage, was injurious to health.

(4) During World War II, FDA participated in the allocation of caffeine to the soft drink industry and did not object to such allocation on grounds that the use of caffeine in soft drinks might be harmful.

(5) In a letter dated August 20, 1958, from FDA to the Coca-Cola Co., the agency stated that it had "long sanctioned the distribution of Coca-Cola." The comment asserted that FDA had the knowledge of the use of caffeine in the product.

*A. Analysis of Evidence of a Prior Sanction*

FDA considers that the most significant document submitted with the comments is the letter dated August 20, 1958, from John L. Harvey, then Deputy Commissioner of Food and Drugs, to Edgar J. Forio of the Coca-Cola Co. (Ref. 2). FDA first became aware of the existence of this letter when it searched its files in response to a request for documents under the Freedom of Information Act that was made after the publication of the 1980 proposal. This letter states "[T]he beverage Coca-Cola has been, in our opinion, in such common use for such a long period of time that its safety, as well as the safety of its components, is well established by this history of food experience. Under the Food Additives Bill, it would not be necessary for your company to disclose your secret formula, or processes, and there would be no requirement that we publish such formula, or processes. We have long sanctioned the distribution of Coca-Cola and the enactment of H.R. 13254, 'The Food Additives Amendment of 1958,' would not affect our sanction in any way."

This letter was sent less than a week after the U.S. House of Representatives passed the Food Additives Amendment and just before the U.S. Senate passed that legislation. Therefore, FDA believes that Mr. Harvey understood the significance of his use of the term "sanctioned" when he referred to the distribution of Coca-Cola and the impact of the Food Additives Amendment on the components of Coca-Cola. Accordingly, because the agency was aware of the presence of added caffeine in Coca-Cola, as evidenced by the fact that it analyzed the level of this ingredient in Coca-Cola from 1915 through 1959 (Ref. 4) FDA believes that the reference in this letter to the well-established history of safe use of the ingredients of Coca-Cola represents a prior sanction for the use of added caffeine in carbonated beverages.

As for the other evidence cited by the National Soft Drink Association, FDA finds that the court settlement in 1917 does not constitute a prior sanction. Under 21 U.S.C. 321(s)(4), the sanction or approval must have been issued under the act. The 1917 court settlement predates the effective date of the act by 22 years. Moreover, because the agency believes that the 1958 Harvey letter by itself constitutes a prior sanction for the use of caffeine in nonalcoholic carbonated beverages, FDA finds that there is no need to determine the adequacy of any of the other evidence as a basis for establishing the existence of a prior sanction for the use of caffeine in soda water.

*B. The Scope of the Prior Sanction*

Although the 1958 Harvey letter refers to Coca-Cola only, the agency believes that consideration of the historical background on the use of caffeine together with this letter supports the conclusion that the prior sanction covers not only Coca-Cola but also other cola and noncola carbonated beverages.

Before 1958, FDA did not have formal approval authority over added food ingredients. Firms using food ingredients were not required to obtain approval before marketing. FDA would, however, respond to inquiries as to whether it considered the use of certain food ingredients to be safe. It was in this context that FDA issued the 1958 Harvey letter. The letter was apparently in response to an inquiry from the Coca-Cola Co. about the impact that the pending food additive legislation would have on the use of caffeine in Coca-Cola.

However, FDA has never licensed the use of food ingredients. FDA's traditional position has been that if it advised one manufacturer that a use of an ingredient is safe, that finding would apply to the same use of the ingredient by other manufacturers. The agency has considered that there is no need for each manufacturer to obtain its own letter from FDA advising that the use of the ingredient was safe.

Consistent with the agency's traditional position, in response to comments on FDA regulations establishing criteria for GRAS and prior sanction determinations, the agency stated that "it is inequitable if one manufacturer who knows of a prior sanction is permitted to take advantage of it, while his competitors are constrained * * *. If the prior-sanctioned use is safe, all users should be permitted to rely upon it" (41 FR 53603; December 7, 1976). Thus, a prior sanction is not limited to specific products but rather applies to all similar products. Therefore, the 1958 Harvey letter would cover any comparable use of caffeine in products similar to Coca-Cola regardless of manufacturer.

The question then is how to determine which products are similar to Coca-Cola and thus are covered by the proposed prior sanction. FDA tentatively concludes that products are similar if they are of the same class. The product class to which Coca-Cola belongs is nonalcoholic carbonated beverages. Recognition that FDA raised no objections to the addition of caffeine to this class of beverages is consistent with the available information. Other carbonated beverages that FDA knew contained added caffeine included root beer and peper-type beverages (e.g., see the letter dated July 19, 1944, that is included in Ref. 3). There is no evidence that FDA was more concerned about caffeine used in these other carbonated beverages than about that used in Coca-Cola before 1958.

*C. The Level of Use That Is Prior Sanctioned*

Although the 1958 Harvey letter refers to Coca-Cola and its components, the letter did not specify use levels for the components. Nevertheless, FDA analyzed the level of caffeine in cola drinks, including Coca-Cola, periodically from 1915 through 1958 (Ref. 4). In correspondence with consumers during that period (Ref. 3), FDA often informed them of the concentration of caffeine in various carbonated beverages.

The actual caffeine content in a specific beverage can vary from time to time, depending on the amount of syrup (containing the caffeine) used by the bottler in formulating the product. FDA's analytical records (Ref. 4) show that the carbonated beverages it analyzed from

1915 through 1959 contained between ¼ and ¾ grain (or 16.2 and 48.6 milligrams) of caffeine per 6-ounce bottle, with most carbonated beverages containing between ⅓ and ⅔ grain. There was also a trend in which the amounts of caffeine used in cola beverages decreased over this 44-year period. For instance, in the 1930's and early 1940's, most cola beverages contained ⅓ to ¾ grain of caffeine per 6-ounce bottle, while after the later 1940's most of them contained ⅓ to ½ grain.

In the later 1950's, all of the cola beverages contained ⅓ to ½ grain of caffeine per 6-ounce bottle. At that time, Coca-Cola contained ⅓ grain of caffeine in the size bottle. One-half grain of caffeine in a 6-ounce bottle equals approximately 0.02 percent of caffeine by weight. Because of the then prevailing use levels of caffeine (no soda water was known to exceed ½ grain of caffeine per 6-ounce bottle), FDA set a limitation of ⅓ to ½ grain for caffeine in cola beverages when it assembled a GRAS list in a proposed rule published in the Federal Register of December 9, 1958 (23 FR 9511, 9517). FDA adopted a limitation of 0.02 percent in the final rule it published in the Federal Register of November 20, 1959 (24 FR 9368).

FDA considers it appropriate to adopt the maximum use level of caffeine in cola beverages used in the later 1950's as a limitation of the prior sanction, i.e., a limitation set at ½ grain (or 32.4 milligrams) of caffeine per 6-ounce bottle or 0.02 percent by weight. Although FDA is aware that the contents of caffeine in cola beverages were much higher in the early 1940's and before, it does not consider it necessary to set a limitation at a level higher than the maximum use level that has been followed by the beverage industry since the late 1940's. Moreover, because the Harvey letter sanctioned Coca-Cola and its components in 1958, using the caffeine contents in the late 1950's for setting the limitation is more appropriate than using those of the early 1940's or earlier.

In summary, based on comments received on the October 21, 1980, proposal, this new proposal announces FDA's tentative conclusion that a prior sanction exists for caffeine in nonalcoholic carbonated beverages at a maximum level of 0.02 percent by weight. This prior sanction is consistent with the current use of caffeine permitted by the GRAS regulation (21 CFR 182.1180) and by the food standard for soda water (21 CFR 165.175). If this proposal is adopted as a final rule, this use of caffeine will be exempt from the food additive provisions of the act.

Furthermore, because no prior sanction was asserted for uses of caffeine in foods other than nonalcoholic carbonated beverages, this proposal does not address the other uses. FDA will, however at some future date, address (1) the remaining uses of caffeine and (2) comments received in response to the October 21, 1980, proposal.

## IV. Safety of the Prior-Sanctioned Use

Based on the foregoing evaluation, the agency has tentatively concluded that the documentation supplied in the comments supports the existence of a prior sanction for the use of caffeine in nonalcoholic carbonated beverages at a maximum level of 0.02 percent. However, before the agency can recognize this prior sanction, the agency must assure that this use is safe. Section 181.5(b) (21 CFR 181.5(b)) states that "the existence of a prior sanction exempts the sanctioned use(s) from the food additive provisions of the Act but not from other adulteration or misbranding provisions of the Act." Furthermore, under § 181.1(b) (21 CFR 181.1(b)) the agency may modify or prohibit a prior-sanctioned use of an ingredient "based on scientific data or information that show that use of a prior-sanctioned food ingredient may be injurious to health, and thus in violation of section 402 of the Act."

In its 1980 proposal, FDA identified several safety issues about caffeine. These issues included the potential fetotoxic and teratogenic properties of caffeine; the comparative metabolism and pharmacokinetic handling of caffeine in humans and experimental animals; the potential behavioral effects of caffeine, particularly in children; the potential reproductive effects of caffeine; and the potential carcinogenicity of caffeine. These issues formed the basis for the agency's decision to propose to regulate caffeine as an interim food additive pending completion of further studies regarding these issues. Section 180.1(a) (21 CFR 180.1(a)) stipulates that an interim food additive regulation may be promulgated only if "there is a reasonable certainty that the substance is not harmful and that no harm to the public health will result from the continued use of this substance for a limited period of time while the question being raised is being resolved by further study."

FDA concluded in the proposal that "[a]lthough the existing data raise questions about the safety of caffeine, they do not demonstrate that a hazard to the public actually exists" (October 21, 1980; 45 FR 69830). FDA had earlier considered several possible regulatory actions that could arise from these questions, including a proposed ban on the use of added caffeine in food. FDA rejected the option to ban added caffeine because "the existing data * * * do not demonstrate any actual risk to humans" (October 21, 1980; 45 FR 69830). Therefore, it is clear that FDA in 1980 considered that the then available data did not show that the presence of caffeine in food would render that food injurious to health.

Since the publication of the 1980 proposal, a large number of studies that address the concerns outlined in the proposal have been completed and submitted to the agency. FDA has also carried out a literature search to determine if there is new published information that has a bearing on any adverse health effects of caffeine. The data assembled by the agency since 1980 include studies on teratology, reproduction, behavior, carcinogenicity, and cardiovascular disease.

The agency reviewed these data (Ref. 5) but found no evidence to show that the use of caffeine in carbonated beverages would render these beverages injurious to health. Therefore, the agency tentatively concludes that nonalcoholic carbonated beverages containing a maximum level of 0.02 percent caffeine by weight would not be adulterated under section 402 of the act, and that codificaton of a prior sanction for this use be proposed.

Prior-sanctioned ingredients may also be regulated under the misbranding provisions of the act, as discussed in the 1980 proposal. Thus, under section 403(a) of the act (21 U.S.C. 343(a)), the agency could require warning labels on caffeine-containing nonalcoholic carbonated beverages if it determines that such products present a potential health hazard to consumers. Although FDA does not believe that a requirement for such a warning label is warranted at this time, such a requirement can be proposed at any time the available data indicate a need for such action.

## V. References

The following references are on file with the Dockets Management Branch (address above), and may be seen between 9 a.m. to 4 p.m., Monday through Friday.

1. Comment No. 114 in response to the October 21, 1980, proposal, submitted by the National Soft Drink Association.

2. Letter, August 20, 1958, John L. Harvey, FDA, Washington, DC, to Edgar J. Forio, the Coca-Cola Co., Atlanta, GA.

3. FDA correspondence with consumers on caffeine from 1938 through 1958.

4. FDA analyses of caffeine contents in soda water beverages from 1915 through 1986.

5. A paper entitled "Caffeine, Review of Toxicological Studies from 1980 to Present," by Carl B. Johnson, Samuel I. Shibko, and Jean M. Taylor, FDA, September 1986, and the references cited therein.

### VI. Environmental, Regulatory, and Economic Analyses

The agency has determined that this action is not specifically designated in 21 CFR 25.22(a) and does not fall within the scope of the general provision (21 CFR 25.22(a)(19)) because the action could not significantly affect the quality of the human environment. Since the action is not covered by 21 CFR 25.22(a), the preparation of an environmental assessment and consideration by the agency of the need for preparing an environmental impact statement are not required.

This proposed prior sanction regulation for caffeine, if promulgated, will not impose any additional costs on firms manufacturing or using caffeine in connection with soda water. The proposed regulation would not require any changes in the manufacture or uses of this ingredient. Because this proposed rule, if promulgated, would therefore have no economic effects, FDA has determined that it is not a major rule under Executive Order 12291. Further, because the effect of the final rule would be to maintain the current known uses of caffeine by large and small soda water manufacturers, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act of 1980 that the proposed rule, if promulgated, would have no significant economic impact on a substantial number of small entities.

### VII. Request for Comments

Interested persons may, on or before July 20, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, expect that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 181

Food ingredients, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 181 be amended as follows:

## PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

1. The authority citation for 21 CFR Part 181 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

2. By adding new § 181.35 to read as follows:

**§ 181.35 Caffeine.**

Caffeine ($C_8H_{10}N_4O_2$, CAS Reg. No. 58-08-2) may be used as a component of nonalcoholic carbonated beverages. The total caffeine content in the finished beverage shall not exceed 0.02 percent by weight.

Dated: April 17, 1987.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 87-11451 Filed 5-19-87; 8:45 am]

BILLING CODE 4160-01-M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 223

### Removal of National Forest System Timber

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** In the past 5 years the Forest Service has witnessed an upsurge in the numer of purchasers who are not completing National Forest timber sales contracts. These defaults and resultant delays in timber harvest can adversely impact attaining management objectives for visual quality, watershed management, wildlife habitat, and other activities as well as the planned flow of forest products to market. They also reduce timber revenues to the Federal Treasury and revenue sharing payments to local units of Government. Therefore, the Forest Service is proposing to require additional downpayments from those purchasers whose recent history demonstrates a lack of timely performance on their timber contracts. The Agency believes that additional downpayments are necessary to reduce the Government's risk of nonperformance by purchasers with a demonstrated history of failure to perform their contracts. Secondly, the Agency believes that the requirement for a larger downpayment from purchasers who have a history of performance will act as an effective incentive for all purchasers to fulfill their timber sale contracts on time.

The second part of this proposed rule would establish broader standards for a Contracting Officer to use in determining whether a prospective purchaser is responsible and capable of performing a particular contract before the Government enters into a contract with that prospective purchaser. The Forest Service believes this proposal would improve timber sale contracting. The Agency also believes that future default-related contract delays would be reduced if Agency regulations are modified to permit consideration of all elements of performance in determining whether a prospective purchaser is responsible and, therefore, eligible for award of new timber contracts. Elements of responsibility include, among others, a bidder's tenacity, perseverance, integrity, and intent to operate in addition to the current determination that a bidder is financially able and capable of performing the contract.

**DATE:** Comments must be received by June 19, 1987.

**ADDRESSES:** Send written comments to F. Dale Robertson, Chief (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20013.

The public may inspect comments received on this proposed rule in the office of the Director, Timber Management Staff, Room 3207, South Building, 14th and Independence SW, Washington, DC., between the hours of 8:30 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** David M. Spores, Timber Management Staff, (202) 447-4051.

**SUPPLEMENTARY INFORMATION:** Delayed performance of Federal timber sale contracts can adversely affect natural resource management. A timber sale program is designed so that every year the cumulative effects of the program are compatible with, and contribute to, the planned management of a National Forest. When a timber sale contract is defaulted, the harvest of that timber is delayed until the timber can be resold and cut under the resale contract.

A default-delayed harvest may result in adverse economic, multiple use, and environmental effects which are both direct and indirect, as well as cumulative. The major impacts are as follows:

(1) Some timber sales are sold to remove trees for the benefit of other resources. Timber harvest can improve cover/forage ratios for wildlife, increase available water supplies, open vistas for public viewing along roadsides, improve range conditions for livestock and wildlife, or remove potentially

hazardous trees in a recreation area. A default-caused delay in the harvest of such a sale will delay these benefits.

(2) If an uncompleted timber sale expires, it is often necessary to resell the remaining timber as soon as possible in order to minimize the impacts of the delayed harvest and/or to support the collection of damages from the defaulter. This can result in more open areas in a drainage at one time than originally planned. The increased opening affect visual quality objectives, wildlife habitat, water flow, erosion, and water temperature.

(3) Some timber harvests are timed to minimize logging damage to the remaining timber, or to reduce the spread of pathogens from the overstory to the understory (for example, to reduce the spread of mistletoe). When operations are delayed, the logging may be too late minimize damage to the remaining timber or to reduce the spread of pathogens.

(4) Some logging is planned to remove some, or all, of the overstory in order to maintain or increase the growth of the understory. Delays in harvesting the overstory can slow the growth of the remaining smaller trees, resulting in increased brush competition, or can postpone precommercial thinning of the remaining timber.

(5) If a timber sale contract was planned and offered to achieve commercial thinning of the timber in the sale area, a harvest delay could delay the increased growth of the remaining timber.

(6) Other silviculture treatments, such as timber stand improvement, in nearby areas may be delayed because the slash in the default-delayed area was not treated when originally planned. This can result in growth losses in those stands and/or an increased cost of treating the logging debris.

(7) Sales are designed to leave a healthy residual stand of timber. Default-caused delays may mean that the planned residual stand would not meet management objectives if the sale were logged as originally designed. This can result in additional delay and expense, if the sale has to be redesigned to meet the objectives.

(8) Many sales are made to salvage timber that has been damaged by fire, insects, diseases, or other causes. Such timber is often subject to rapid deterioration. Default-caused delay in the harvest of this timber can cause a significant loss in the timber's volume and value and thus a significant loss of receipts to the American public.

(9) Some sales are prepared to assist control of forest pest epidemics. Failure to remove such timber in a timely manner can increase the damage to adjacent stands.

(10) If a timber sale default delays construction of a road, the resulting delay in access could affect management of the resources which would be tributary to the road.

Many purchasers have defaulted Federal timber sale contracts in the last five years. These defaults have caused some serious resource problems. In addition, the economies of many communities, particularly in the West, are heavily dependent upon the employment generated by the harvest and manufacture of timber from the National Forests. Timber sale defaults can interrupt the flow of timber to those communities.

Defaults also reduce receipts to the Federal Treasury and revenue sharing payments to local counties that are based on those receipts. The public services provided by many western counties are heavily dependent on these payments.

Inequities among purchasers also result from timber sale defaults. Purchasers who default with the expectation of delaying the payment of damages are in a stronger financial position to bid on new contracts than they would have been had they performed the defaulted contracts. An inequity exists when purchasers, who have conscientiously performed their high-priced contracts and have suffered economic losses as a result, are required to compete for new contracts against purchasers whose financial ability to bid has been enhanced as a result of their failure to perform their own high-priced contracts.

The Forest Service believes that purchasers who fail to operate timber sale contracts in a timely manner demonstrate that they present an increased risk of failing to perform on new contracts. Therefore, increased downpayments are needed on new contracts which may be awarded to such purchasers.

Under the proposed rule, if a purchaser or its affiliate(s) defaults one or more Forest Service or Bureau of Land Management timber sale contracts within 12 calendar months before the bid date of a new sale that the purchaser is bidding on, and the contract value of the previously defaulted timber is $100,000 or more, the downpayment on that new contract, if awarded to that purchaser, will be twice the amount as that normally required pursuant to 36 CFR 223.49. Further, the purchaser will not be able to apply funds deposited as the downpayment to other uses until the last timber on the sale is being harvested. This provision would apply to defaults occurring 30 calendar days after the effective date of this rule.

The second part of this proposed rule addresses the determination of whether a purchaser is responsible and able to perform a timber sale contract it has bid on. The large number of contract defaults in recent years indicates that some contracts were awarded to purchasers who were either not able or who chose not to operate sales in accordance with the contract terms. It is clear that the Government, operating in the public's interest, should only do business with responsible entities who are willing and able to operate under the terms of the contracts.

Presently, under existing rules at 36 CFR 223.103, a bidder may be required to make a satisfactory showing of financial ability to operate a new sale before the bid is acted on. This provision has not proven sufficiently effective in minimizing the potential for default. Additional standards are needed to ensure that successful bidders are capable of fulfilling a timber sale contract. The Forest Service proposes to incorporate in a new § 223.101 many of the bidder responsibility standards found in the Federal Acquisition Regulations (48 CFR 9.104–3(c)). Before any bidder could be awarded a Forest Service timber sale contract, the contracting officer would have to determine that the bidder has met all of the conditions of the sale offer and that the bidder is responsible.

**Regulatory Impact**

This action has been submitted to the Office of Management and Budget for review pursuant to Executive Order 12291. The Assistant Secretary for Natural Resources and Environment has determined that this regulation is not a major rule. It does not change the total amount a purchase would pay for national forest timber, although it would affect the timing of when a purchaser with a recent history of poor timber sale contract performance would pay for the timber.

The procedures implemented by this rule will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs for consumers, individual industries, Federal, State or local Government agencies or geographic regions, and will not have significant adverse effects on the ability of United States-based industries to compete with foreign based enterprises in domestic or export markets. On the contrary, the proposed requirements will contribute to the economic well-being of timber-

dependent communities, the orderly flow of timber to market and receipts to Treasury, strengthen the orderly accomplishment of resource management objectives and reduce administrative costs associated with settling claims against defaulting purchasers.

The Assistant Secretary of Agriculture for Natural Resources and Environment has also determined that this rule will not have significant economic impact on a substantial number of small entities. There are very few small entities that have defaulted more than $100,000 worth of Federal timber within a 12 month period. In addition the Certificate of Competency procedures as applied by the Small Business Administration will continue to cover small business firms under the proposed bidder responsibility standards.

Based on both past experience and environmental analysis, the proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4). Furthermore, the proposed rule will not result in additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) are not applicable.

**List of Subjects in 36 CFR Part 223**

Exports, Government contracts, National forest, Reporting and recordkeeping requirements, Timber.

Therefore, for the reasons set forth above, it is proposed to amend Part 223 of Chapter II of Title 36 of the Code of Federal Regulations as follows:

**PART 223—[AMENDED]**

1. The authority citation for Part 223 continues to read as follows:

**Authority:** Sec. 14, Pub. L. 94–588, 90 Stat. 2958, 16 U.S.C. 472a, unless otherwise noted. Secs. 223.49 and 223.50 also issued under Sec. 2 Pub. L. 98–478, 98 Stat. 2213, 16 U.S.C. 618.

2. Amend § 223.49 by adding new paragraphs (a)(5), and (e) through (h) to read as follows:

**§ 223.49 Downpayment.**

(a) * * *

(5) *Affiliate.* Concerns are affiliates if directly or indirectly, either one controls or has the power to control the other, or one or more third parties controls or has the power to control both. In determining whether or not affiliation exists, the Forest Service shall consider all appropriate factors, including, but not limited to, common ownership, common management, and contractual relationships.

* * * * *

(e) A purchaser, or any affiliate of that purchaser, that is awarded a Forest Service timber sale contract must meet the additional downpayment requirements of paragraph (f) of this section under the following circumstances:

(1) The purchaser, or its affiliate, fails to perform in accordance with the terms of the contract which results in the contract expiring uncompleted or the contract is terminated;

(2) The contract expired or was terminated within a 12-month period prior to the bid date of the new sale at issue and after [*insert date 30 days after the effective date of this paragraph*]; and the estimated value of the unscaled timber on scaled sales and the estimated value of the timber that has not been shown on the timber sale statement of account to have been cut and removed on tree measurement sales included in those terminated or expired contracts exceeds $100,000.

(f) Notwithstanding the provisions of paragraphs (c) and (d) of this section, the minimum downpayment for a pruchaser meeting the criteria of paragraph (e) of this section shall be the equivalent of 20 percent of the total bid value of each sale, except in those areas where the Chief of the Forest Service determines before advertisement of the sale, that another downpayment rate is necessary to achieve the management objectives of the National Forest System.

(1) For sales on National Forests where the average bid ratio has exceeded 1.6 in the previous fiscal year or where the bid ratio on a significant number of timber sales exceeds a 1.6 ratio and the average bid premium on those sales is at least $25 per thousand board feet or equivalent, the amount of the downpayment will be equal to 20 percent of the advertised value, plus 40 percent of the total bid premium. In calculating bid ratios and bid premiums for the downpayment requirement, the Forest Service will not use the portion of the bid premium that offsets ineffective purchaser credit.

(2) To determine the amount of the downpayment due on a sale where the timber is measured in units other than board feet, the Forest Service shall convert the measure to board feet, using appropriate conversion factors with any necessary adjustments.

(g) A purchaser subject to the additional downpayment requirements of paragraph (f) of this section cannot apply to other uses the amount deposited as a downpayment until:

(1) On scaled sales, the estimated value of the unscaled timber is less than the amount of the downpayment; or

(2) *On tree measurement sales*, the estimated value remaining to be cut and removed as shown on the timber sale statement of account is less than the amount of the downpayment.

(h) For the purpose of releasing funds deposited as downpayment by a purchaser subject to paragraph (f) of this section, the Forest Service shall compute the estimated value of timber as follows:

(1) *On scaled sales* the estimated value of the unscaled timber is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been scaled of that species.

(2) *On tree measurement sales*, the estimated value of the timber outstanding (that not shown on the timber sale statement of account as cut and removed) is the sum of the products obtained by multiplying the current contract rate for each species by the difference between the advertised volume and the volume that has been shown on the timber sale statement to have been cut and removed of that species. The current contract rate for each species is that specified in each Forest Service timber sale contract.

3. Revise the introductory text and paragraph (c) of § 223.100 to read as follows:

**§ 223.100 Award to highest bidder.**

Advertised timber will be awarded to the responsible bidder submitting the highest bid that conforms to the conditions of the sale unless: * * *

* * * * *

(c) The highest bidder is notoriously or habitually careless with fire.

* * * * *

**§ 223.103 [Removed]**

**§ 223.101 and § 223.102 [Redesignated as § 223.102 and § 223.103]**

4. Remove § 223.103, redesignate §§ 223.101 and 223.102 as §§ 223.102 and 223.103 respectively, and add a new § 223.101 to read as follows:

**§ 223.101 Determination of purchaser responsibility.**

(a) A contracting officer shall not award a timber sale contract unless that officer makes an affirmative determination of purchaser responsibility. In the absence of information clearly indicating that the prospective purchaser is responsible, the

contracting officer shall conclude that the prospective purchaser does not qualify as a responsible purchaser.

(b) To be determined responsible, a contracting officer must find that the purchaser:

(1) Has adequate financial resources to perform the contract or the ability to obtain them;

(2) Is able to perform the contract within the contract term taking into consideration all existing commercial and governmental business commitments;

(3) Has a satisfactory performance record on timber sale contracts. A prospective purchaser that has been seriously deficient in contract performance within the 12 calendar months before the bid date of a new sale that the purchase is bidding on shall be presumed not to be responsible, unless the contracting officer determines that the circumstances were properly beyond the purchaser's control or that the purchaser has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably under a contract is strong evidence that a purchaser is not a responsible contractor. The contracting officer shall consider the number of contracts involved and extent of deficiency of each in making this evaluation;

(4) Has a satisfactory record of integrity and business ethics;

(5) Has or is able to obtain equipment and supplies suitable for logging the timber and for meeting the resource protection provisions of the contract;

(6) Is otherwise qualified and eligible to receive an award as of the bid opening date under applicable laws and regulations.

(c) If the prospective purchaser is a small business concern and the contracting officer determines that the purchaser does not qualify as a responsible purchaser on an otherwise acceptable bid, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether or not to issue a Certificate of Competency.

(d) Affiliated concerns, as defined in § 223.49(a)(5), are normally considered separate entities in determining whether the concern that is to peform the contract meets the applicable standards for responsibility. However, the Contracting Officer shall consider an affiliate's past performance and integrity when they may adversely affect the prospective purchaser's responsiblity.

Dated: May 1, 1987.

**Douglas W. MacCleery,**

*Deputy Assistant Secretary for Natural Resources and Environment.*

[FR Doc. 87-11307 Filed 5-19-87; 8:45 am]

BILLING CODE 3410-11-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 62

### National Flood Insurance Program

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the flood insurance commission allowances paid to property insurance agents and brokers ("producers") for the procurement of new flood insurance policies, and renewals thereof, on behalf of policyholders insured by the National Flood Insurance Program (NFIP) through its Servicing Company. The commissions would be increased in connection with the procurement of new business, as an incentive to increase the NFIP's policies-in-force base, and decreased with respect to the renewals of policies to reflect the reduced level of activity required of producers by reason of the NFIP's fully automated renewal billing system whereby payees of renewal premiums are billed directly by and make premium payments directly to the NFIP, with the producer being advised of the renewal activity. The immediate effect of the revised commission schedule, if adopted, will be to save the federal government approximately $7 million per annum, which is an extremely desirable cost containment result in light of the fiscal constraints placed upon the NFIP by reason of the Gramm-Rudman-Hollings Act (Pub. L. 99-177, signed on December 12, 1985).

**DATE:** Comments must be received on or before July 20, 1987.

**ADDRESS:** Send comments to—Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number (202) 646-3419.

**SUPPLEMENTARY INFORMATION:** With the introduction in 1981 of a detailed planning system, the Federal Insurance Administration of the Federal Emergency Management Agency established as one of its primary goals that the National Flood Insurance Program be placed on a fiscally sound basis by 1988. This was in recognition of the fact that premiums generated by the sale of flood insurance coverage are, traditionally, insufficient to defray the expenses attendant the sale of policies, including producers' commissions, and the payment of flood losses and the expenses of adjusting these losses. Loss adjustment fees paid to independent claims adjusters, after consultation with that industry, were reduced by way of a new, general schedule of fees, in lieu of time and expense payments, in FY 1984. To reach its goal of being on a fiscally sound basis by 1988, by which FIA means that the NFIP should generate sufficient premium to cover expenses and losses in the normal or historical average loss year, not including the influence of catastrophic flood loss years, FIA proposed a general rate increase in FY 1987 of 27%, which would have placed the NFIP at a level of about 90% of its, then, historical average loss year. The proposed rate increase was based upon FIA's annual review of the NFIP's available underwriting experience.

In furtherance of a general rate increase, FEMA published a proposed rule for comment in the **Federal Register** on April 10, 1986 (51 FR 12348) to increase the NFIP's subsidized rates, which are rates applicable to buildings located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program.

Subsequent to the publication of the proposed rule on April 10, 1986, the House Appropriations Committee in its Report (dated July 31, 1986) accompanying H.R. 5313 directed that NFIP premium rates not be increased "during the period beginning on the date of enactment of this bill and ending on September 30, 1987, by more than a prorated annual rate of 10 percent." Also, the Senate Appropriations Committee in its Report (dated September 25, 1986) accompanying H.R. 5313 stated that it was "in agreement with the House Appropriations Committee and both authorizing committees that premium rate changes

for flood insurance during fiscal year 1987 may not be increased by more than 10 percent."

To comply with this Congressional limit, the increase in the subsidized rates made by the final rule (February 27, 1987, 52 FR 5977) was adjusted downward which, of course, has the effect of impairing FIA's ability to meet its goal of placing the NFIP on a fiscally sound basis by 1988.

Given the need to contain costs in this taxpayer subsidized program, FIA has undertaken a review of the commissions paid to producers and has found that certain adjustments may be in order, as recommended in this proposed rule. Publication of this proposed rule is in furtherance of the NFIP's statutory direction that the Director should, from time to time, negotiate with appropriate representatives of the insurance industry for the purpose of establishing the NFIP's operating costs, including reasonable compensation payable for selling and servicing flood insurance coverage, or commissions or service fees paid to producers (42 U.S.C. 4018). To assure appropriate dissemination of the proposed rule and invite a wide response, FIA will, coincident with its publication, forward copies of the proposed rule to the national trade association representing property insurance agents and brokers.

Regarding the review of the NFIP's commission arrangement with its producers, the current commission arrangement is as follows:

The earned commission which shall be paid to any property or casualty insurance agent or broker duly licensed by a state insurance regulatory authority, with respect to each policy or renewal the agent duly procures for an insured, shall not be less than $10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

| Policy term | Premium amount | Commissions (percent) |
|---|---|---|
| 1 year | 1st of $2,000 | 15 |
| | Excess of $2,000 | 5 |
| 3 years | 1st of $6,000 | 15 |
| | Excess of $6,000 | 5 |

(2) In the case of mid-term increases in amounts of insurance added by endorsement, the following commissions shall apply based on the total premium paid for the increased amounts of insurance:

| Premium amounts | Commissions (percent) |
|---|---|
| 1st of $2,000 | 15 |
| Excess of $2,000 | 5 |

From the early beginnings of the NFIP in the late sixties, producers were paid a commission of 15% of the written premium, but no less than a minimum commission of $10.00, for the procurement of policies of flood insurance. In connection with each new policy and each renewal of a policy, the producer was required to, manually complete and submit an application for flood insurance coverage detailing the description of the risk and the rating elements including the premium calculation, accompanied by the premium payment. In the mid-seventies, the NFIP began to move toward a system whereby preprinted and partially completed renewal application forms ware sent to producers, usually in a format under which the producer was only required to add the dollar amounts of premium and rates to the renewal application, supply any missing information, and return the renewal application, accompanied by a check for the appropriate premium to the NFIP servicing company. The commission rates during this period remained at the same levels.

Then, on March 25, 1981, the producers' commission schedule was changed as part of a general revision to the NFIP's coverage, sales and loss prevention provisions in an effort to deliver enhanced coverage to the policyholders, but at rates more reflective of the risk (46 FR 13513, published on February 23, 1981). Included in these changes was the decrease in the commission schedule impacting only on those policies generating premiums in excess of $2,000, in the case of polices for a term of one year, and $6,000, in the case of policies written for a three-year term. The change was made "consistent with private sector practices of providing graduated commission arrangements as between insurers and producers" and in recognition of the fact that the commission schedule adjustment was being effected simultaneously with a general, countrywide, flood insurance premium rate increase of 32%, which, of course, generated significantly increased amounts of commission income for the producers of NFIP policies.

By 1981, the NFIP's systems procedures had improved to the point where renewals of policies were fully automated, in that the producer was no longer, except in a limited number of instances, required to manually complete an application for a policy renewal or even to calculate the appropriate premium on a preprinted renewal application made available to the producer by the NFIP. At this stage of the program's development, the NFIP would determine the applicable rates and calculate renewal premiums for a given policy and, via a computerized, automatic direct billing system, send a renewal premium notice directly to the insured, agent, mortgagee (if the mortgagee was to pay the renewal premium) or other payor. This is the business practice under which the NFIP operates today and generally parallels insurance industry practices. Typically, the policyholder or mortgagee is the payor of the premium and the producer's copy of the premium notice is for the producer's records. Exceptions to this automatic renewal procedure, engendered in cases where the NFIP does not have sufficient data on file to properly rate the policy, are handled buy mailing a renewal application form to the producer, along with the premium notice, and, in such cases, the producer is requested to attend to the furnishing of the needed rating information on behalf of the producer's client, the policyholder, in much the same way as this was accomplished, as to all renewals, in the early years of the NFIP.

The level of effort required of a producer to attend to his or her NFIP renewal business has diminished considerably since the program's beginnings. Yet, during the almost two decades of the NFIP's existence the commission schedule has virtually remained the same. Also weighing heavily in FEMA's deliberations leading to this proposed adjustment in the producers' commission schedule is the fact that recent and multiple rate increases to policyholders, made necessary by FEMA's need in deference to the taxpaying public to place the NFIP on a fiscally sound basis by 1988, have resulted in substantial increases in the dollars of commissions paid to producers. For example, the average commission paid in 1978 more than doubled by 1986 and, even adjusting for inflation, has risen by 50%. The following chart depicts the steady rise in average commission paid, as adjusted for inflation:

NATIONAL FLOOD INSURANCE PROGRAM

[Agent Commissions]

| Mar. 31 year | Average written premium [1] | Actual average commission | Inflation adjustment factor | Average commission (adjustment to 1987 dollars) |
|---|---|---|---|---|
| 1978 | $97.41 | $14.21 | 1.729 | $24.57 |
| 1979 | 80.78 | 12.12 | 1.550 | 18.69 |
| 1980 | 81.18 | 12.18 | 1.365 | 16.64 |
| 1981 | 121.61 | 18.24 | 1.240 | 22.62 |
| 1982 | 174.52 | 26.18 | 1.169 | 30.60 |
| 1983 | 195.66 | 29.35 | 1.135 | 33.31 |
| 1984 | 218.40 | 32.77 | 1.099 | 36.01 |
| 1985 | 213.64 | 32.05 | 1.061 | 34.01 |
| 1986 | 224.05 | 33.61 | 1.030 | 34.62 |

[1] Includes one-year and three-year policies.

It is also important to note that the number of policies in force has substantially increased since 1978, along with the written premium rise due to rate increases to the policyholder, which has resulted in additional commission payments.

Another salient fact which FEMA considered in arriving at the determination to propose a change in the commission schedule is the NFIP's distribution of buisness. The following listing shows the percentage of the NFIP's renewal policies which are issued pursuant to the automated direct billing system as compared with policies issued pursuant to new applications for flood insurance, which require the producer to complete the application form and forward it to the NFIP with the premium payment.

NATIONAL FLOOD INSURANCE PROGRAM

[Direct Business Distribution of Policies]

| | Percent |
|---|---|
| First $2,000 of premium: | |
| Direct bill renewals | 71 |
| Renewal applications | 4 |
| New business applications that pass rating edits | 17 |
| Applications which cannot pass rating edits | 8 |
| Excess of $2,000: | |
| All business | (1) |

[1] Less than 1/2%.

As a review of the current policy distribution information indicates, 71% of the NFIP's direct business policies are placed in force without the need for the producers to address the task of completing an application form calculating the premium, and mailing the application for flood insurance, with the correct premium, to the NFIP. FEMA believes this to be a major change in the way the NFIP operates, among the beneficiaries of which is the producer.

Having given due consideration to the matters discussed herein, FEMA believes it would not be fair to the taxpayers to continue to provide remuneration to the producers of NFIP policies, at the same rates as have been in effect, virtually, since the beginning of the NFIP, in compensation for a level of effort which has been sharply reduced by the introduction of FEMA's direct billing system for renewal policies. FEMA is obliged to follow the statutory mandate that it establish "reasonable compensation . . . for . . . commissions or service fees paid to producers" (42 U.S.C. 4018) and believes it is no longer reasonable to continue a commission level established for a given level of effort at a time when the level of effort is no longer required. FEMA recognizes the long-term and valued commitment to the NFIP made over the years by the producers, who are held in high regard by the NFIP and who are considered vital to the program's long-term success.

Along with the proposed reduction in commission rates as to direct billing of renewal policies, FEMA is proposing and increase in commission rates for new business, to encourage the sale of more flood insurance policies, a reduction in rates for applications which cannot pass the computer system's rating edits due to errors in the insurance application submitted to FEMA, and continuation of the traditional 15% commission when the producer is called upon to complete a renewal application form. The proposed commission rate adjustments, as respects the renewal business, will reduce commission costs by about $5 million annually, and the reduced rate for applications which cannot pass rating edits will reduce commission costs by about $2 million annually, based on NFIP's current written premiums for its direct business. Thus, the government stand to save upward of $7 million, annually, by virtue of the revised commission schedule. The proposed revision to the commission schedule is as follows:

NATIONAL FLOOD INSURANCE PROGRAM, DIRECT BUSINESS

[Proposed Agent's Commission Schedule]

| | Distribution of business | Commission |
|---|---|---|
| First $2,000 of Premium: | | |
| Direct bill renewals | 71 | 12 |
| Renewal applications | 4 | 15 |
| New business applications that pass rating edits | 17 | 16 |
| Applications which cannot pass rating edits | 8 | 5 |
| Excess of $2,000: | | |
| All business | (1) | 5 |

[1] Less than ½%.

It has been calculated that this revision will produce, in 1987, an actual average commission, based upon an average written premium of $249.95, of $30.62, which is $2.99 (or $4.00, adjusted for inflation) less than the 1986 actual average commission. However, commissions are still substantially higher, even after allowing for inflation, than commissions paid prior to 1982. The proposed increase in commissions is an attempt to focus the marketing emphasis of producers on the area of the program's greatest need—new business. It has been estimated that there is a potential market for new flood insurance business, countrywide, of at least double the NFIP's present book of business, which stands at over two million policyholders.

The adjustment in the NFIP direct business commission schedule will also produce an effective average commission, for all activities under the schedule, of 12 ¼%. This average commission rate will be consistent with State and industry practices in both State property insurance plans and beach plans in which producers' commissions are fixed, variously, at about on the average, 10.2% to 12.9%, respectively. Some of the State plans also make the distinction between new business and renewal business, for example, in Missouri, where 12% is the commission rate for new business and 10% is the rate for renewal business (NFIP's rates will be 16% and 12%, respectively). Not unlike the federal flood insurance program, State property insurance plans and windstorm pools are statutory creations historically founded upon a recognition by

numerous State legislatures that a decided absence of essential insurance coverage existed among certain segments of the population. While the initial enabling legislation and characterization differed widely among the States (i.e., the Plans are variously referred to as Joint Insurance Associations, Insurance Facilities, Windstorm Underwriting Associations, and Catastrophe Pools), a central characteristic of these organizations is the provision of property insurance coverage to the public, e.g., windstorm coverage to those living in hurricane hazardous coastal areas. As an aside, the NFIP has arrangements (under guidelines developed by the National Committee on Property Insurance and the FIA) with these coastal insurer associations to, in a combined flood and windstorm hurricane situation, share loss adjusters in furtherance of providing better service to the affected policyholders.

The proposed adjustment to the commission schedule, if adopted, will be made at this time only as respects flood insurance policies issued by the NFIP as direct business and not as respects flood insurance policies issued by private sector property insurance companies under the NFIP's Write-Your-Own (WYO) Program. Commission arrangements under the WYO Program will be addressed in Fiscal Year 1988 in connection with general revisions to the WYO Arrangement with insurers participating in the program. The WYO Program contemplates that the standard flood insurance policy (the form and substance of which is approved by the Administrator) may be issued by insurers signatory to the arrangement in their own names. Insurers are then responsible for all aspects of service, including policy issuance to new policyholders and to those policyholders insured by them under other lines of property insurance; endorsements to and renewals of policies; and the adjustment of claims brought under the policies. The insurers pay losses and loss adjustment expenses, as well as the commissions of agents, out of written premiums. Under the arrangement, the government backs the policies. Thus, insurers are able to offer flood insurance in the private insurance market, the NFIP is increasing its policy-in-force base by reason of WYO companies' marketing efforts, and policyholders are benefitting from an infusion into the NFIP of considerable private sector insurance expertise and service.

FEMA has determined, based upon an Environmental Assessment, that this proposed rule does not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This proposed rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this proposed rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

**List of Subjects in 44 CFR Part 62**

Flood insurance.

Accordingly, it is proposed to amend 44 CFR Chapter I, Subchapter B as follows:

**PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS**

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. The introductory text to § 62.6(a) and paragraph (a)(i) are proposed to be revised to read as follows:

**§ 62.6 Minimum commissions.**

(a) The earned commission which shall be paid to any property or casualty insurance agent or broker duly licensed by a state insurance regulatory authority, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of its servicing agent, but not as respects policies of flood insurance issued pursuant to Subpart C of this part, shall not be less than $10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

| Premium amount | Commissions (percent) |
|---|---|
| First $2,000 of Premium: | |
| Direct bill renewals | 12 |
| Renewal applications | 15 |
| New business applications that pass rating edits | 16 |
| Applications which cannot pass rating edits | 5 |
| Excess of $2,000: | |
| All Business | 5 |

* * * * *

Harold T. Duryee,
*Federal Insurance Administrator.*

[FR Doc. 87-11247 Filed 5-19-87; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 31 and 32**

[CC Docket 87-135; FCC 87-162]

**Common Carrier Services; Revision of the Uniform System of Accounts for Telecommunications Companies; Furniture and Office Equipment Capitalization**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is inviting comments on changing the expense limits to $500 for capitalizing individual items of furniture and office equipment or in lieu thereof amending the new Part 32 to eliminate requirements to maintain continuing property records for furniture type items.

**DATES:** Comments due on or before June 12, 1987. Reply comments due on or before June 29, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** John T. Curry, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634-1861.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking adopted April 28, 1987, and released May 14, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service,

BEST COPY AVAILABLE

(202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC.

On October 20, 1986, the American Telephone and Telegraph Company (AT&T) filed for a partial waiver of the Commission's rules (Part 31) to permit AT&T to expense the cost of individual items of equipment costing $500 or less and to amortize the previously capitalized, undepreciated investment in these items over a three-year period commencing January 1, 1986. The equipment items would include tools, test sets, furniture and office equipment that are now subject to a $200 expense limitation. In addition, several LECs have filed a joint petition for rulemaking requesting that Part 31 be amended to eliminate the requirement of detailed continuing property records for furniture type items, which are also included among the items covered by the AT&T petition. In the Notice of Proposed Rulemaking the Commission has denied AT&T's petition for waiver and instead invited comments on amending §§ 31.2–20(d), 31.221 and 31.262 of Part 31 and § 32.2000(a)(4) of Part 32 to permit telephone companies to expense the cost of individual items of equipment costing $500 or less. Raising the expense limit from $200 to $500 would reduce the administrative burden associated with the large volume of items with small dollar value that are now being carried in the rate base and, over time, would result in a reduction in the rate base. In addition, an increase in the capitalization limits would grant the joint petitioners requesting elimination of continuing property records a large measure of the relief they are seeking.

The regulation contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval of the Office of Management and Budget as prescribed by the Act.

### Ordering Clause

Accordingly, it is ordered, that petition of the American Telephone and Telegraph Company for partial waiver of § 31.2–20(d), 31.221, and 31.262 of this Commission's rules to expense the cost of individual items of equipment costing $500 or less and amortize the previously capitalized undepreciated investment in such items over a three year period commencing January 1, 1986, is denied.

Pursuant to the provisions of sections 4(i), 4(j), 220, 221, and 403 of the Communications Act of 1934, as amended, section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and § 1.411 *et. seq.*, of the Commission's Rules there is hereby instituted a rulemaking concerning the matters described herein. Members of the public are notified that any polices that may be established in this proceeding may be embodied in the Rules.

### List of Subjects

*47 CFR Part 31*

Uniform System of Accounts for Class A and Class B Telephone Companies.

*47 CFR Part 32*

Uniform System of Accounts for Telecommunications Companies.

William J. Tricarico,

*Secretary.*

[FR Doc. 87–11498 Filed 5–19–87; 8:45 am]

BILLING CODE 6712–01–M

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## 47 CFR Part 73

[MM Docket No. 87–127, RM–5574]

## Radio Broadcasting Services; Mokelumne Hill, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document requests comments on a petition by Eric R. Hilding proposing the allotment of Channel 259A to Mokelumne Hill, California, as a first local service.

**DATES:** Comments must be filed on or before July 6, 1987, and reply comments on or before July 29, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Eric R. Hilding, 12130 Calle Uvas, Gilroy, CA 95020.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket 87–127, adopted April 17, 1987, and released May 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–11504 Filed 5–19–87; 8:45 am]

BILLING CODE 6712–01–M

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## 47 CFR Part 73

[MM Docket No. 85–156, RM–4932; RM–5402; RM–5609]

## Radio Broadcasting Services; Claremore, Locust Grove and Nowata, OK, and Barling, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document request comments on mutually exclusive proposals. KXOJ, Inc. and Doyal Hoover request the allocation of Channel 233A to Claremore, OK, and Channel 284A to Locust Grove, OK. These allotments could provide each community with its first local FM service. Station KNFB, Channel 232A, Nowata, OK, must relocate its transmitter to an area northwest of the community in order for Channel 233A to be allocated to Claremore. Channel 233A can be allocated to Claremore in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.6 kilometers (7.2 miles) south in order to avoid a short-spacing to the application site specified by Station KNFB–FM, if Channel 233C2 is not allocated to Barling, AR. KXOJ is requested to furnish a signal coverage study showing that a site is available from which a Channel 233A operation could provide the required 70 dBu signal over the entire community of Claremore. Channel 284A can be allocated to Locust Grove in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Teresa Brown, permittee of a new FM station at

Barling, AR, seeks the substitution of Channel 233C2 for Channel 233A at Barling and the modification of her permit to specify the higher powered channel. The allocation of Channel 233C2 at Barling could provide the community with its first local wide coverage area FM service. Channel 233C2 can be allocated to Barling and used at the site specified in Brown's construction permit if Channel 233A is not allocated to Claremore. Mike Warren requests the allocation of Channel 264A to Claremore, OK.

**DATES:** Comments must be filed on or before July 6, 1987, and reply comments on or before July 21, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Julian P. Freret, Esq., Booth, Freret & Imlay, 1920 N Street, NW., Suite 520, Washington, DC 20036 (Counsel to Mike Warren); M. Scott Johnson, Esq., Lynn M. Clancy, Esq., Gardner, Carton & Douglas, 1875 Eye Street NW., Washington, DC 20006–5472 (Counsel to KXOJ and Doyal Hoover); Richard R. Zaragoza, Esq., Fisher, Wayland, Cooper and Leader, 1255–23rd Street NW., Suite 800, Washington, DC 20037–1125 (Counsel to Special Services Radio, Inc.); Aaron Shanis, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036 (Counsel to Teresa Brown).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 85–156, adopted April 17, 1987, and released May 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments. See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–11505 Filed 5–19–87; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 87–126, RM–5570]**

## Radio Broadcasting Services; Bradford, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by David N. Tucker proposing the allotment of Channel 249A to Bradford, Vermont, as that community's first FM service. Canadian concurrence must be obtained.

**DATES:** Comments must be filed on or before July 6, 1987, and reply comments on or before July 21, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David N. Tucker, 25 Churchill Street, Springfield, MA 01108.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–126, adopted April 17, 1987, and released May 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve chanel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–11496 Filed 5–19–87; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 87–129, RM–5581]**

## Radio Broadcasting Services; Marlboro, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Marrian Akley proposing the allotment of Channel 208A to Marlboro, Vermont, as that community's first FM service. A site restriction of 2.7 kilometers (1.7 miles) northwest of the community is required.

**DATES:** Comments must be filed on or before July 6, 1987, and reply comments on or before July 21, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Marrian Akley, c/o Brian Dodge, Harvest Broadcasting Services, Box 105FM, Hinsdale, NH 03451 (Consultant to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–129, adopted April 17, 1987, and released May 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, (202) 857–3800,

2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

*Chief, Allocations Branch Mass Media Bureau.*

[FR Doc. 87-11503 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 87-130, RM-5669]**

## Radio Broadcasting Service, Wells River, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Puffer Broadcasting, Inc., proposing the allotment of Channel 229A to Wells River, Vermont, as that community's first FM service.

**DATES:** Comments must be filed on or before July 6, 1987, and reply comments on or before July 21, 1987.

**ADDRESS:** Federal Communications, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John R. Wilner, Esquire, Gary P. Schonman, Esquire, Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street, NW., Washington, DC 20005 (Counsels to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-130, adopted April 17, 1987, and released May 15, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87-11514 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 87-125, RM-5653]**

## Television Broadcasting Services; Columbia, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Columbia Television, Inc. to allot UHF TV Channel 47 to Columbia, South Carolina, as the community's fourth local commercial television service. Channel 47 can be allotted to Columbia in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.1 kilometers northeast to avoid a short-spacing to unused and unapplied for noncommercial educational Channel *47 at Macon, Georgia.

**DATES:** Comments must be filed on or before July 6, 1987, and reply comments on or before July 21, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Aaron Shainis, Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street NW., Suite 203, Washington, DC 20036 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapris, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-125, adopted April 17, 1987, and released May 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

Federal Communications Commission.

Mark N. Lipp,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-11499 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 90**

**[Docket No. 86-37; FCC 87-157]**

## Restriction of Use of Radio Transmitters With External Frequency Controls; Further Notice of Proposed Rulemaking

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is revising its initial proposals to incorporate into Part 90 of its Rules restrictions against the use of certain radio transmitters with external frequency programming capabilities that would permit front

panel selection of frequencies allocated to the private land mobile radio services. The proposed rules would inhibit willful or unintentional transmissions on unauthorized frequencies, resulting in less interference to authorized operations.

**DATES:** Comments may be filed on or before July 6, 1987, and reply comments on or before July 21, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Eugene Thomson, Private Radio Bureau, telephone (202) 634–2443.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking, PR Docket No. 86–37, adopted April 29, 1987, and released May 14, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW. Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037. Telephone (202) 857–3800.

**Summary of Further Notice of Proposed Rulemaking**

The Commission proposes to amend § 90.203 of the Rules and Regulations to deny type acceptance for equipment for use under Part 90 if the operator can, by using the equipment's external operating controls, program, select, and transmit on unauthorized frequencies. Additionally, transmitters designed to operate above 25 MHz that are capable of user programming with front panel controls, and that have been type accepted prior to the date of the Report and Order in this proceeding, shall not be manufactured within or imported into the United States after the effective date of the Report and Order. Transmitters with frequency programming capability will be exempt from the proposed rules if the design of such transmitters requires programming by methods and equipment not normally accessible to the operator. Also exempted are transmitters specifically designed for and utilized in aircraft operations pursuant to § 90.423 of the Rules.

**Ex parte**

This is a non-restricted notice and comment rulemaking proceeding. *See* § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

**Initial Regulatory Flexibility Anaylsis**

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The major impact of the proposed rules will be on a few equipment manufacturers. However, since the proposals in this Further Notice of Proposed Rulemaking are those submitted by the electronics Industries Association with concurrence from equipment manufacturers, it would appear that the equipment manufacturers are prepared to absorb any resulting impact.

**Paperwork Reduction Act Statement**

The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, an will not increase or decrease burden hours imposed on the public.

**Procedure Matters**

Authority for issuance of this Further Notice of Proposed Notice of Proposed Rulemaking is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on or before July 6, 1987, and reply comments on or befor July 21, All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

In accordance with the provision of § 1.149 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments an other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M. Street, NW., Washington, DC.

For further information concerning this rulemaking contact Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 634–2443.

**List of Subjects in 47 CFR Part 90**

Private land mobile radio service, Type acceptance.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87 11397 Filed 5–19–87; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 52, No. 97
Wednesday, May 20, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Programmatic Agreements Regarding Forest Service Activities in North Carolina and Florida

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice.

**SUMMARY:** The Advisory Council on Historic Preservation proposes to execute two Programmatic Agreements pursuant to § 800.13 of the Council's regulations, "Protection of Historic Properties" (36 CFR Part 800), with the USDA Forest Service, and the North Carolina and Florida State Historic Preservation Officers, respectively, providing for the integration of historic property protection with other Forest Service management needs on all lands under Forest Service jurisdiction or control within the two states. The proposed Programmatic Agreements will establish mechanisms for identification, evaluation, and treatment of historic properties in conjunction with Forest planning and site-specific undertakings, and provide for regular consultation with the State Historic Preservation Officers throughout Forest planning. The Forest Service has proposed these Agreements in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f) in a manner compatible with its ongoing programs in the two states.

*Comments Due:* June 19, 1987.

Address: Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW, Washington, DC 20004 [Attn: Ronald D. Anzalone] Telephone Number: 202–786–0505.

Dated: May 11, 1987.

John M. Fowler,

*Acting Executive Director.*

[FR Doc. 87–11447 Filed 5–19–87; 8:45 am]

BILLING CODE 4310–10–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

### Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than May 31, 1988.

| Antidumping duty proceedings and firms | Periods to be reviewed |
|---|---|
| Sugar and Syrups from Canada: | |
| Lantic Sugar | 04/01/86–03/31/87 |
| Sorbitol from France: | |
| Roquette Freres | 04/01/86–03/31/87 |
| Spun Acrylic Yarn from Italy: | |
| Aniciflex | 04/01/86–03/31/87 |
| Cofisa | 04/01/86–03/31/87 |
| Emmepi | 04/01/86–03/31/87 |
| Fentasia | 04/01/86–03/31/87 |
| Lanificio Di Nervesa/International Fibre | 04/01/86–03/31/87 |
| Mister Joe | 04/01/86–03/31/87 |
| Seberifi | 04/01/86–03/31/87 |
| Tunisitc Tessuti | 04/01/86–03/31/87 |
| Calcium Hypochlorite from Japan: | |
| Nankai | 04/01/86–03/31/87 |
| Nippon Soda | 04/01/86–03/31/87 |
| Nissin Denka | 04/01/86–03/31/87 |
| Cyanuric Acid from Japan: | |
| Shikoku Chemicals/Mitsubishi | 04/01/86–03/31/87 |
| Dichloroisocyanurates from Japan: | |
| Nissan Chemical Ind./Toyomenka | 04/01/86–03/31/87 |
| Shikoku Chemicals/Mitsubishi | 04/01/86–03/31/87 |
| Trichloroisocyanuric Acid from Japan: | |
| Nissan Chemical Ind./Toyomenka | 04/01/86–03/31/87 |
| Shikoku Chemicals/Mitsubishi | 04/01/86–03/31/87 |
| Roller Chain, Other Than Bicycle, from Japan: | |
| Daido Kogyo/Daido Corp | 04/01/86–03/31/87 |
| Enuma/Daido Corp | 04/01/86–03/31/87 |
| Hitachi Metals | 04/01/86–03/31/87 |
| Honda | 04/01/86–03/31/87 |
| Izumi | 04/01/86–03/31/87 |
| Nissan | 04/01/86–03/31/87 |
| Pulton | 04/01/86–03/31/87 |
| Sugiyama | 04/01/86–03/31/87 |
| Takasago | 04/01/86–03/31/87 |
| Toyota | 04/01/86–03/31/87 |
| Tsubakimoto | 04/01/86–03/31/87 |
| Spun Acrylic Yarn from Japan: | |
| Asahi Chemical | 04/01/86–03/31/87 |
| C. Itoh | 04/01/86–03/31/87 |
| Gunze Sangyo | 04/01/86–03/31/87 |
| Itoman | 04/01/86–03/31/87 |
| Mitsubishi | 04/01/86–03/31/87 |
| Mitsui | 04/01/86–03/31/87 |
| Nichimen | 04/01/86–03/31/87 |
| Nissho | 04/01/86–03/31/87 |
| Teijin Shoji | 04/01/86–03/31/87 |
| Television Receiving Sets from Japan: | |
| Fujitsu General | 03/01/86–02/28/87 |
| Funai | 03/01/86–02/28/87 |
| Hitachi | 03/01/86–02/28/87 |
| Mitsubishi | 03/01/86–02/28/87 |
| Nippon Electric | 03/01/86–02/28/87 |
| Sanyo | 03/01/86–02/28/87 |
| Bicycle Tires & Tubes from South Korea: | |
| Korea Inoue Kasei | 04/01/86–04/21/87 |
| Color Television Receivers from South Korea: | |
| Cosmos Electronic | 04/01/86–03/31/87 |
| Daewoo | 04/01/86–03/31/87 |
| Goldstar | 04/01/86–03/31/87 |
| Samsung | 04/01/86–03/31/87 |
| Color Television Receivers from Taiwan: | |
| AOC | 04/01/86–03/31/87 |
| Capetronic (ESP) | 04/01/86–03/31/87 |
| Fulet | 04/01/86–03/31/87 |
| Funai | 04/01/86–03/31/87 |
| Hitachi (Taiwan) | 04/01/86–03/31/87 |
| Kuang Yuan | 04/01/86–03/31/87 |
| Netlek | 04/01/86–03/31/87 |
| Paramount | 04/01/86–03/31/87 |
| Philips | 04/01/86–03/31/87 |
| RCA (Taiwan) | 04/01/86–03/31/87 |
| Sampo | 04/01/86–03/31/87 |
| Sanyo Electric (Taiwan) | 04/01/86–03/31/87 |
| Shin-Shirasuna | 04/01/86–03/31/87 |
| Tatung | 04/01/86–03/31/87 |
| Teco Electric | 04/01/86–03/31/87 |

| Countervailing duty proceedings | Periods in the reviewed |
|---|---|
| Wood from Argentina | 01/01/86–12/31/86 |
| Leather Wearing Apparel from Mexico | 01/01/86–12/31/86 |
| Rice from Thailand | 01/27/86–12/31/86 |

We also received requests to review four Japanese television manufacturers but, due to injunctive orders issued by the Court of International Trade, we are deferring initiation of those reviews until the injunctive orders may be dissolved.

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c)).

Dated: May 12, 1987.

Gilbert B. Kaplan,

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87–11545 Filed 5–19–87; 8:45 am]

BILLING CODE 3510-DS-M

## Switching Subcommittee of the Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Switching Subcommittee of the Telecommunications Equipment Technical Advisory Commitee will be held June 9, 1987, 1:00 p.m. Herbert C. Hoover Building, Room B841, 14th Street and Constitution Avenue NW., Washington, DC. The Switching Subcommittee was formed to study computer controlled switching equipment with the goal of making recommendations to the Office of Technology & Policy Analysis relating to the appropriate parameters for controlling exports for reasons of national security.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Dated: May 14, 1987.

Margaret A. Cornejo,

*Director, Technical Support Staff, Office of Technology & Policy Analysis.*

[FR Doc. 87–11546 Filed 5–19–87; 8:45 am]

BILLING CODE 3510-DT-M

## Telecommunications Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held June 9, 1987, 9:30 a.m. Herbert C. Hoover Building, Room B–841, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

*Agenda*

1. Introduction of attendees and opening remarks by the Chairman.
2. Review and approval of the minutes of April 21, 1987.
3. Presentation of papers or comments by the public.
4. Request for suggestions for decontrol to the Bloc and relaxations to the PRC. Attention should be focused specifically on ECCNs 1501, 1502, and 1531. However, consideration will be given to all the entries in the telecommunications area.
5. Discussion of need for annual work plan and annual report.

*Executive Session*

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes, call Betty Ferrell at (202) 377–4959.

Dated: May 15, 1987.

Margaret A. Cornejo,

*Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 87–11547 Filed 5–19–87; 8:45 am]

BILLING CODE 3510-DT-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

May 15, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 18, 1987. For further information contact Kim Pham, International Trade Specialist (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 682–3075. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

CITA directives dated May 24, 1985 and May 22, 1986 (50 FR 21923 and 51 FR 19249) established import limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month periods which began, in the case of Category 347, on June 1, 1985 and extended through May 31, 1986; and, in the case of Categories 342, 347, 348 and 363, on June 1, 1986 and extends through May 31, 1987.

A subsequent directive dated April 2, 1987 (52 FR 11308) established an import limit for cotton textile products in Category 350, among others, for the twelve-month period which began on June 1, 1986 and extends through May 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, and at the request of the Government of Sri Lanka, the 1986/1987 restraint limits for Categories 347 and 348 are being increased by application of swing. Carryover is also being applied to Category 347 for the 1986/1987 agreement year. The limits for Categories 350 and 363 are being reduced to account for swing applied to Category 347. The limit for Category 342 is being reduced to account for swing applied to Category 348. The limit for Category 347 for the 1985/1986 agreement year is being reduced to account for carryover applied to the current year's limit.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the previously established restraint limits for the foregoing categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20788) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 15, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of May 24, 1985 and May 22, 1986 concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the twelve-month periods which began, in the case of Category 347, on June 1, 1985 and extended through May 31, 1986; and, in the case of Categories 342, 347, 348 and 363, on June 1, 1986 through May 31, 1987.

This directive also amends, but does not cancel, the directive of April 2, 1987 concerning cotton textile products in Category 350, among others, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1986 and extends through May 31, 1987.

Effective on May 18, 1987, the directives of May 24, 1985, May 22, 1986 and April 2, 1987 are hereby amended to include the following adjustments to the previously established restraint limits for cotton textile products in Categories 342, 347, 348, 350 and 363, provided under the terms of the bilateral agreement of May 10, 1983, as amended: [1]

| Category | Adjusted 12-mo. limit [1] June 1, 1985–May 31, 1986 |
|---|---|
| 347 | 343,854 dozen. |

[1] The limit has not been adjusted to account for any imports exported after May 31, 1985.

| Category | Adjusted 12-mo. limit [2] June 1, 1986–May 31, 1987 |
|---|---|
| 342 | 162,907 dozen. |
| 347 | 436,116 dozen. |
| 348 | 292,802 dozen. |
| 350 | 40,679 dozen. |
| 363 | 5,939,670 numbers. |

[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable limit; and (3) administrative arrangements and adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The limits have not been adjusted to account for any imports exported after May 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11548 Filed 5-19-87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Procurement; Air Force Activities for Conversion to Contract

**ACTION:** Notice.

The Air Force recently determined that the Instrument Flight Simulator Console Operation at Randolph AFB, TX will be examined for possible conversion to contract.

For further information contact Mr. Bob Moore, HQ ATC/XPMRC, Randolph AFB, TX 78150, telephone (512) 925-2384.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-11550 Filed 5-19-87; 8:45 am]

BILLING CODE 3910-01-M

### Corps of Engineers, Department of the Army

### Supplement to the Environmental Impact Statement for the Aquatic Plant Management Program for the Control of Eurasian Watermilfoil in the State of Washington

**AGENCY:** Corps of Engineers, Department of the Army, DOD.

**ACTION:** Notice of Intent.

**SUMMARY:** This NOI describes major issues being considered in the preparation of an Environmental Impact Statement Supplement (EISS) to the 1979 Final Environmental Impact Statement (FEIS) for this program. The program addresses the need for management of the introduced aquatic weed, *Myriophyllum spicatum*, Eurasian watermilfoil, in the State of Washington. The proposed action is to use a variety of mechanical, biological and chemical methods to control this plant. The EISS will assess potential impacts of changes and developments since the FEIS; these changes and developments include new areas of infestation that are proposed

for treatment, new methods for treatment, and new information on treatment effects and efficacies. The EISS will provide the basis for use of a broader range of environmentally compatible control methods.

**DATES:** Written comments regarding initial scoping by May 27, 1987. The draft EISS will be available for comment in late July 1987.

**ADDRESS:** Comments may be directed to the attention of Planning Branch, U.S. Army Corps of Engineers, Seattle District, Post Office Box C–3755, Seattle, Washington 98124–2255.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Wakeman, Environmental Coordinator, at (206) 764–3624 (FTS 446–3624) or at the above address.

**SUPPLEMENTARY INFORMATION:** Heavy infestations of Eurasian watermilfoil were first discovered in western Washington and in tributaries to the Columbia River in the mid-1970's. Infestations have since spread to additional lakes and down the Columbia River from near the Canada–U.S. border to the present downstream limit near Richland, Washington. A program was initiated in 1980 to alleviate impacts that occur when growth or spread of watermilfoil obstructs public use, blocks navigable waters or fouls dams, and damages fish and wildfowl habitat. This program is cost-shared between the State of Washington Department of Ecology and local governments and the U.S. Army Corps of Engineers. The Corps' authority for involvement is a directive by the Office of the Chief of Engineers on June 17, 1980 in accordance with Pub. L. 89–298 and section 302 of the Rivers and Harbors Act of 1965. Federal waters are specifically excluded from treatment under this program. Several alternative treatment methods were approved for use in the 1979 FEIS and Design Memorandum. The sponsors determine which of these are to be utilized. As the infestation has spread, treatment areas have changed with the addition of the Pend Oreille River and the pool above Wells Dam at Malott on the Columbia and Okanogan Rivers. Also, new information has become available on the impacts of some of the treatments originally considered, and new treatments (more efficient tillage and a new herbicide) have been developed. The 1979 FEIS is updated with yearly Environmental Assessments detailing the work plans provided by the sponsors.

*Alternatives.* The EISS will summarize changes in the program and review recent information on treatment methodologies, with a view to providing the environmentally acceptable flexibility to the sponsors for their treatment programs. The proposed alternative is for use of appropriate mechanical, chemical and biological control options. A no-action alternative will also be considered. Options which will be considered individually for incorporation into the proposed alternative are (a) mechanical harvesting and sediment tillage (rotovation), (b) chemical methods (2,4–D, endothall, diquat and fluridone), (c) bottom barriers such as fiberglass screens, and (d) biological methods such as white amur (grass carp), fungal pathogens or insects. Issues raised for consideration may all be present in the proposed combined-action control alternative; however, specific methods could be fit to particular sites or conditions in a manner to increase the effectiveness of the treatment and to minimize negative environmental or human health impacts. Some of the methods considered will probably be found to be inappropriate or improper for certain circumstances; accordingly, the proposed alternative will state where they are appropriate for use in this program.

*Significant Issues.* In the *no-action* alternative, the major concerns are (a) that watermilfoil would continue to cause distruption to human recreational use, e.g., endangering swimmers, entangling boat propellors and fishing lines; (b) that attached or floating masses of watermilfoil would hamper navigation and be costly to remove from bathing beaches or trash-racks of dams, (c) that native aquatic plant species would be competitively excluded by watermilfoil; and (d) that aquatic communities would be disturbed, or fish and wildlife habitat would be made unsuitable by watermilfoil overgrowth. In the *mechanical* option for control, issues include (a) entrainment of fish by the machinery, (b) damage to aquatic invertebrate communities, and (c) effects of resuspending and potentially redissolving nutrients and pollutants from the sediments, and (d) the potential for bottom tilling to disturb flooded historic or prehistoric sites with significant cultural resources value. In the *chemical* option, issues include (a), the effects of herbicides released into the water on human health via ingestion of the water or of organisms living in or feeding on aquatic organisms, (b) effects on aquatic communities and (c) effects on wildlife or livestock ingesting treated water. In the *bottom barrier* option, issues include (a) exclusion of oxygen from benthic animal communities and (b) reducing fish habitat. In the *biological* option for control, issues include (a) impacts to nontarget species of aquatic plant and (b) effects of introduction of exotic species into new environments.

*Scoping and Public Involvement.* Scoping letters are being sent to key agencies, groups and individuals; and coordination is occurring with the U.S. Fish and Wildlife Service pursuant to the requirements of section 7(c) of the Endangered Species Act. The Advisory Council on Historic Preservation and the State Historic Preservation Office is also being contacted as required under the National Historic Preservation Act.

Dated: April 22, 1987.

**Philip L. Hall,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 87-11843 Filed 5-19-87; 8:45 am]

BILLING CODE 3710-GR-M

## Draft Environmental Impact Statement (DEIS) for Snoqualmie River Flood Damage Reduction Study

**AGENCY:** Corps of Engineers, DOD.

**ACTION:** Notice of Intent.

**SUMMARY:** The project area consists of lands along the Snoqualmie River in and near the city of Snoqualmie in King County, Washington. The city of Snoqualmie and surrounding county land are susceptible to flooding. Major floods occurred in 1959 and 1968, and lesser floods in 1975 and 1977. The November 1986 flood, an 18-year event, damaged 123 homes and 36 businesses within the city. Should the 100-year flood occur (an event which would have a 1 percent chance of occurring on any year), then almost every home would receive damage. The most likely flood damage reduction alternative is channel widening and overbank excavation along the river in and near Snoqualmie. Channel widening would occur downstream of the Highway 202 bridge along 1,000 feet of shoreline on the right bank and 1,000 feet of shoreline on the left bank. Overbank excavation would occur upstream of the Highway 202 bridge on 35 acres of right bank land and 25 acres of left bank land. A railroad bridge would also be removed upstream of Highway 202 bridge. This potential project would remove a hydraulic bottleneck in the river and result in the lowering of flood waters in and near the city. In general, the 10-year flood would be lowered by about 2 feet in downtown Snoqualmie and the 100-year flood would be lowered by about 3 feet.

This alternative would require work within the Snoqualmie River, it would eliminate 63 acres of wildlife habitat,

and it would require the disposal of almost 700,000 cubic yards of material. Appropriate mitigation measures will be made an integral part of the eventual recommended plan.

**DATES:** Written comments regarding scoping are due by June 26, 1987. The DEIS is presently scheduled to become available for review in February 1988.

**ADDRESS:** Comments may be directed to the attention of Planning Branch, U.S. Army Corps of Engineers, Seattle District, Post Office Box C-3755, Seattle, Washington 98124-2255.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ken Brunner, Environmental Coordinator, at (206) 764-3624 (FTS 446-3624) or at the above address.

**SUPPLEMENTARY INFORMATION:**

*Alternatives.* Two variations of the channel widening and overbank excavation alternative are also being considered. These variations would both result in less adverse environmental impacts, but they would also not lower flood heights as much as the preferred alternative. The no-action plan will also be studied in detail. Several other flood damage reduction alternatives for the Snoqualmie area have been studied previously and have been shown to be economically infeasible. These include: Upstream storage dams and reservoirs, levees and floodwalls, and raising homes. Results of these past studies will be presented in the EIS.

*Significant Concerns.* Several concerns have been identified during agency meetings and the public workshop. The more important concerns are listed below:

a. Develop an alternative that will avoid or minimize impacts to nursery and rearing habitat of fingerling and juvenile fishes, minimize downstream sedimentation that may result from the project, and identify appropriate mitigation measures.

b. Develop an alternative that minimizes impacts to wildlife habitat and identify appropriate migitation needs.

c. Perform a cultural resources reconnaissance that will identify historic and prehistoric resources within the project area and prescribe necessary salvage or mitigation measures.

d. Determine whether the Puget Sound Railway bridge need to be removed, and if so, determine appropriate mitigation required by Puget Sound Railway Historical Association.

e. Determine the location of the most acceptable site for disposal of excavated materials.

f. Determine the extent of potential increased downstream flooding and its possible effects on communities such as Carnation.

g. Preserve esthetic values in the Snoqualmie River area.

*Public Involvement Program.* Major meetings with agencies have been held on November 6, 1985, April 23, 1986, and September 18, 1986. A public workshop was held in the city of Snoqualmie on November 20, 1986. Numerous smaller meetings with local sponsors, agencies, and interest groups have been held over the past 2 years. Additional public involvement, including meetings and public workshops, will be held through the remainder of the study.

*Environmental Review and Consultation Requirements.* This project investigation is being coordinated with the U.S. Fish and Wildlife Service and will satisfy requirements of the Fish and Wildlife Coordination Act and section 7(c) of the Endangered Species Act. Section 404 of Pub. L. 92-500 requires an evaluation of the effects of activities on aquatic ecosystems involving the discharge of dredged or filled material in waters of the United States. A section 404(b) evaluation which discusses the project impacts on the aquatic ecosystems will be developed.

Dated: May 1, 1987.

**Rance H. Boustree,**

*Lt. Colonel, Corps of Engineers, Acting District Engineer.*

[FR Doc. 87-11444 Filed 5-19-87; 8:45 am]

BILLING CODE 3710-GR-M

## DELAWARE RIVER BASIN COMMISSION

### Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 27, 1987 beginning at 1:30 p.m. in the Jefferson Room of the Holiday Inn at 4th and Arch Streets, Philadelphia, Pennsylvania. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

*Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or section 3.8 of the Compact:*

1. *Holdover Project: Borough of Dublin D-81-75 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 27,000 gallons per day (gpd) (seven day average) from Well Nos. 1 and 2. Commission approval on December 12, 1984 was limited to two years and has expired. The applicant requests that the total withdrawal from the two wells remain the same, but that the control pumping levels be modified. The project is located in Bucks County in the Southeastern Pennsylvania Ground Water Protected Area. This hearing continues that of April 22, 1987.

2. *Holdover Project: Mid-Atlantic Canners Association D-86-83.* An application for approval of a ground water withdrawal project to supply up to 5.1 million gallons (mg)/30 days of water to the applicant's bottling and canning facility from existing Well Nos. 1, 2, and 3, not previously approved by the Commission. The project is located in Hamburg Borough, Berks County, Pennsylvania. This hearing continues that of April 22, 1987.

3. *Ralph Franceschini D-81-49 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 5.83 mg/30 days of water to the applicant agricultural irrigation system from an irrigation well. Commission approval on September 3, 1981 was limited to five years and has expired. The applicant requests that the total withdrawal from all wells remain limited to 5.83 mg/30 days. The project is located in the City of Vineland, Cumberland County, New Jersey.

4. *Fawn Lake Forest Water Company D-81-61 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 3.3 mg/30 days of water to the applicant's distribution system from Well Nos. 1, 2, 3, 4 and 5. Commission approval on August 5, 1982 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 3.3 mg/30 days. The project is located in Lackawaxen Township, Pike County, Pennsylvania.

5. *Jim Thorpe Municipal Authority D-81-71 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 14.1 mg/30 days of water to the applicant's distribution system from Well No. 4. Commission approval on August 5, 1982 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 14.1 mg/30 days. The project is located in Jim Thorpe Borough, Carbon County, Pennsylvania.

6. *Town of Middletown D-86-77 CP.* An application for approval of a ground water withdrawal project to supply up to 4.5 mg/30 days of water to the Arkville Water District from new Well

No. 4, and to limit the withdrawal from all wells to 4.5 mg/30 days. The project is located in the Town of Middletown, Delaware County, New York.

7. *Berks-Montgomery Municipal Authority D–87–7 CP.* An application for an upgrading and expansion of the West Swamp Creek Wastewater Treatment Facility, located in Douglass Township, Montgomery County, Pennsylvania. The existing facility consists of two secondary treatment plants which are operated in parallel. Docket No. D–70–210 CP rated the original plant at 0.312 million gallons per day (mgd) and the second plant approved by that docket at 0.8 mgd. The proposed expansion and upgrading is designed to provide tertiary treatment for a flow of 1.9 mgd. The applicant has applied for Sewerage Facilities Plan (537) approval from the Pennsylvania Department of Environmental Resources to expand the facility to 2.3 mgd in the future. The plant will continue to serve the Borough of Bechtelsville and portions of Colebrookdale Township in Berks County, plus portions of Douglass Township, Montgomery County. Treatment plant effluent will continue to discharge to Swamp Creek. A new parallel effluent line will be installed to convey the increased flow.

8. *Easton Area Joint Sewer Authority D–87–10 CP.* An application to upgrade a 10 mgd sewage treatment plant located off Pennsylvania State Highway 611 in Williams Township, Northampton County. The plant serves the City of Easton and surrounding environs. The proposed facility is designed to provide secondary treatment of wastewater through the year 1986. Treatment plant effluent will continue to discharge to the Delaware River through the existing outfall.

9. *The Cutler Group, Inc. D–87–12.* An application to construct a 0.06 mgd sewage treatment plant to serve a proposed housing development on 174 acres in Montgomery Township, Montgomery County, Pennsylvania. The proposed plant is designed to provide high quality secondary treatment of sewage from 174 new homes through the year 1990, at which time a phase II expansion is planned. The wastewater treatment plant effluent will be discharged to Little Neshaminy Creek.

10. *West Grove Borough Authority D–87–24 CP.* An application to expand a 0.2 mgd sewage treatment plant located off Valley Road in London Grove Township, Chester County, Pennsylvania. The proposed 0.25 mgd plant is designed to serve an equivalent population of over 3,300 persons through the year 2005. The applicant will continue to provide high quality secondary treatment of predominantly domestic waste from West Grove Borough and a portion of London Grove Township. Treatment plant effluent will continue to be discharged to Middle Branch White Clay Creek through the existing outfall.

11. *Trailer Marine Transport Corporation D–87–25.* An application to dredge along the north shore of Petty Island in the tidal Delaware River at Pennsauken Township, Camden County, New Jersey. The applicant plans to connect two 400 feet by 100 feet by 25 feet barges to eight 24 inch diameter steel spuds. These barges will serve as floating platforms linked to two proposed, 14 feet wide, pipe pile supported piers. The piers and associated facilities will be constructed on the river bank of a 50 acre lot adjacent to the applicant's existing 38-acre marine terminal. The applicant proposes to mechanically dredge approximately 300,000 cubic yards of materials. The dredged area will be 1,100 feet long and up to 450 feet from the shore. The applicant has proposed a maximum dredging depth of 40 feet below mean low water outshore of the floating platform mooring area, and 18 feet below mean low water inshore of that area. The proposed facilities will increase the applicant's rolling cargo handling capacity.

12. *Farda Associates Inc. D–87–27.* An application to construct a 0.2 mgd sewage treatment plant at the Summit Resort located off Pennsylvania Highway 715 in Pocono Township, Monroe County. The four season, 184 unit resort will be developed to provide an additional 621 dwelling units plus service facilities. The proposed plant is designed to provide high quality secondary treatment of sewage through the year 2000. Treatment plant effluent will be discharged to an unnamed tributary of Pocono Creek at River Mile 213.0–4.9–1.0–10.4–0.9.

13/ *Upper Gwynedd Township Authority D–87–29 CP.* An application to rerate a 2.2 mgd sewage treatment plant to process an average flow of 2.5 mgd. The tertiary treatment plant is located in Upper Gwynedd Township, Montgomery County, Pennsylvania. The plant will continue to serve only portions of Whitpain and Upper Gwynedd Townships. A primary effluent pump has been installed to handle the inceased flow. The project is designed to serve an equivalent population of 25,000 persons through the year 1990. Treatment plant effluent will continue to be discharged to Wissahickon Creek through the existing outfall.

14. *Country Place Water Company, Inc. D–87–23 CP.* An application for approval of a ground water withdrawal project to supply up to 4.32 and 6.48 mg/30 days of water to the applicant's distribution system from new Well Nos. 3 and 4, respectively, and increase the existing withdrawal limit of 8.64 mg/30 days, from all wells of 19.44 mg/30 days. The project is located in Coolbaugh Township, Monroe County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

**Susan M. Weisman,**

*Secretary.*

May 12, 1987.

[FR Doc. 87–11442 Filed 5–19–87; 8:45 am]

BILLING CODE 6360-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CI87–514–000 et al.]

### Amoco Production Co. et al.; Notice of Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

May 12, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 28, 1987, file with the Federal Energy Regulatory Commisison, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in acordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
*Secretary.*

| Docket No. and date filed | Applicant | Purchaser and location | Price per 1,00 ft.³ | Pressure base |
|---|---|---|---|---|
| CI87-514-000, A, Apr. 29, 1987. | Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150. | Transcontinental Gas Pipe Line Corp., East Breaks Area Block 160 Field, Offshore Texas. | (1) | |
| CI87-518-000, A, Apr. 24, 1987. | ....do.... | Florida Gas Transmission Company, Eugene Island Blocks 301 and 322, Offshore Louisiana. | (2) | |
| CI87-519-000, A, Apr. 24, 1987. | ....do.... | South Timbalier Block 156, Offshore Louisiana. | (3) | |
| CI87-520-000, A, Apr. 24, 1987. | ....do.... | South Marsh Island Block 128, Offshore Louisiana. | (3) | |
| CI87-526-000, A, Apr. 24, 1987. | ....do.... | Ship Shoal Block 84, Offshore Louisiana | (3) | |
| CI87-527-000, A, Apr. 24, 1987. | ....do.... | East Cameron Block 33, Offshore Louisiana. | (3) | |
| CI87-528-000, A, Apr. 24, 1987. | ....do.... | East Cameron Block 264, Offshore Louisiana. | (3) | |
| G-3762-000, D, Apr. 27, 1987. | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221. | El Paso Natural Gas Company, Fulcher-Kutz Pict Cliffs, San Juan County, New Mexico. | (3) | |
| G-9980-001, D, Apr. 30, 1987. | ....do.... | Natural Gas Pipeline Company of America, Camrick Field, Texas County, Oklahoma. | (3) | |
| G-13635-000, D, Apr. 27, 1987. | ....do.... | Northwest Pipe Line Corporation, San Juan Basin Field, San Juan County, New Mexico. | (3) | |
| CI63-538-004, D, Apr. 27, 1987. | ....do.... | Northwest Lovedale Field, Harper Conty, Oklahoma. | (3) | |
| CI62-1331-000, D, Apr. 27, 1987. | ....do.... | Northern Natural Gas Company, Division of Enron Corp., Hunt Baggett Field, Corckett County, Texas. | (3) | |
| CI61-1032-001, D, Apr. 30, 1987. | ....do.... | ANR Pipeline Company, Laverne Area, Harper County, Oklahoma. | (3) | |
| CI66-572-000, D, Apr. 27, 1987. | ....do.... | K N Energy, Inc., Beauchamp Field, Stanton County, Kansas. | (3) | |
| CI62-1511-000, D, Apr. 30, 1987. | Arco Oil and Gas Company, Division of Atlantic Richfield Company. | Panhandle Eastern Pipe Line Company, Avard and Lenora Fields, Woods and Dewey Counties, Oklahoma. | (3) | |
| CI68-139-000, D, Apr. 30, 1987. | ....do.... | Northeast Waynoka Field, Woods County, Oklahoma. | (3) | |
| CI65-571-000, D, Apr. 30, 1987. | ....do.... | El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico. | (4) | |
| CI61-1454-000, D, Apr. 30, 1987. | ....do.... | ....do.... | (4) | |
| CI65-461-000, D, Apr. 30, 1987. | ....do.... | ....do.... | (4) | |
| CI65-571-001, D, Apr. 30, 1987. | ....do.... | Northwest Pipe Line Corporation, Basin Dakota Field, San Juan County, New Mexico. | (4) | |
| CI64-207-000, D, Apr. 30, 1987. | ....do.... | Southern Union Gathering Company, Basin Dakota Field, San Juan County, New Mexico. | (4) | |
| CI62-47-003, D, May 1, 1987. | Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309. | Colorado Interstate Gas Company, Patrick Draw Field, Sweetwater County, Wyoming. | (5) | |
| CI87-556-000, (CI75-612), B, May 1, 1987. | ....do.... | Mountain Fuel Resources, Inc., Spearhead Ranch Field, Converse County, Wyoming. | (6) | |
| CI87-562-000, (CI73-695), B, May 4, 1987. | ....do.... | Transwestern Pipeline Company, Worsham Ellenburger Field, Reeves County, Texas. | (7) | |
| G-14719-000, B, Apr. 24, 1987. | Kerr-McGee Corporation, P.O. Box 25861, Oklahoma City, Okla. 73125. | Natural Gas Pipeline Company of America (NGPL-Gilliland Unit), Texas County, Oklahoma. | (8) | |

| Docket No. and date filed | Applicant | Purchaser and location | Price per 1,00 ft.[2] | Pressure base |
|---|---|---|---|---|
| CI83-64-001, D, May 1, 1987. | ....do.... | Transcontinental Gas Pipe Line Corp., OCS-G-3741, Galveston Block 393, Wells A-1 and A-2, Offshore Texas. | ([9]).... | .... |
| CI87-534-000, B, Apr. 27, 1987. | Hamon Operating Company.... | El Paso Natural Gas Company, Carlsbad Field, Eddy County, New Mexico. | ([10]).... | .... |
| CI87-535-000, B, Apr. 27, 1987. | ....do.... | Natural Gas Pipeline Company of America, Belko South Field, Beaver County, Oklahoma. | ([11]).... | .... |
| CI87-532-000, B, Apr. 24, 1987. | Frank H. Walsh, P.O. Box 30, Sterling, Colorado 80751. | K N Energy, Inc., Sec. 7-T9N-R53W, Logan County, Colorado. | ([12]).... | .... |
| CI87-541-000, B, Apr. 27, 1987. | Jogruss Oil Corp.... | El Paso Natural Gas Company, Sprayberry Trend Area, Irion County, Texas. | ([6]).... | .... |
| CI87-542-000, B, Apr. 24, 1987. | Evelyn Gruss Lipper & Evelyn Gruss Lipper Trust. | ....do.... | ([6]).... | .... |
| CI87-543-000, B, Apr. 27, 1987. | Gruss Petroleum.... | ....do.... | ([6]).... | .... |
| CI87-545-000, B, Apr. 27, 1987. | ....do.... | Sprayberry Trend Area, Upton County, Texas. | ([6]).... | .... |
| CI87-544-000, B, Apr. 27, 1987. | Martin D. Gruss.... | Sprayberry Trend Area, Irion County, Texas. | ([6]).... | .... |
| CI77-438-002, D, Apr. 24, 1987. | Texaco Producing Inc., P.O. Box 52322, Houston, Texas 77052. | United Gas Pipe Line Company, High Island Area, (E/2 of Block 110, W/2 of Block 111, and N/2 of Block 138), Offshore Texas. | ([13]).... | .... |
| CI87-540-000, (CI87-471), B, Apr. 27, 1987. | Texaco Producing Inc. (Succ. in Interest to Dome Petroleum Corp.). | El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico. | ([14]).... | .... |
| CI87-552-000, F, May 1, 1987. | Texaco Producing Inc. (Succ. in Interest to Atlantic Richfield Company). | Texas Eastern Transmission Corp., Karon Slick Sand Unit, Live Oak County, Texas. | ([15]).... | .... |
| CI84-496-003, B, Apr. 24, 1987. | Eastern Kentucky Production Co., 1989 East Stone Drive, Kingsport, Tenn 37660. | Kentucky West Virginia Gas Co., Well No. 6128, David Ritchie Farm, Knott County, Kentucky. | ([17]).... | .... |
| CI87-537-000, (CI61-1655), B, Apr. 27, 1987. | Union Texas Petroleum Corp., P.O. Box 2120, Houston, Texas 77252-2120. | Oklahoma Natural Gas Gathering Corp., Kingwood Field, Major County, Oklahoma. | ([18]).... | .... |
| CI87-539-000, (G20295), B, Apr. 27, 1987. | Camplin Petroleum Company, Four Allen Center, 1400 Smith Street, Suite 1500, Houston, Texas 77002. | Arkansas Louisiana Gas Company, E. Kremlin Field, Garfield County, Oklahoma. | ([19]).... | .... |
| CI87-538-000, (CI78-739), B, Apr. 27, 1987. | Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880. | El Paso Natural Gas Company, Monument Grayburg (San Andres), Lea County, New Mexico. | ([20]).... | .... |
| CI87-553-000, (CI73-340), B, Apr. 30, 1987. | Hondo Oil and Gas Company, P.O. Box Midland, Texas 79702. | Mountain Fuel Resources, Inc., Jake Shaeffer #1, Mam Creek Area, Sec. 12-R93W-T7S, Garfield County, Colorado. | ([21]).... | .... |
| CI87-560-000, B, May 4, 1987. | Mountain States Petroleum Corp., Roswell, New Mexico 88201. | El Paso Natural Gas Company Chaves County, New Mexico. | ([22]).... | .... |
| G-4579-041, D, May 4, 1987. | Cities Service Oil & Gas Corp., P.O. Box 300 Tulsa, Okla. 74102. | Pennsylvanian formation in SW/4, Sec. 7-25S-37E-. Lea County, New Mexico. | ([23]).... | .... |
| CI85-584-001, B, Mar. 17, 1987. | Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150. | Florida Gas Transmission Company, Various Fields and Blocks in South Louisiana. | ([24]).... | .... |
| CI87-496-500. B, Apr. 24, 1987. | Hilin Production Company, P.O. 1521, Odessa, Texas 79760. | El Paso Natural Gas Company, Winchester Field, Eddy County, New Mexico. | ([25]).... | .... |
| CI87-496-000, B, Apr. 24, 1987. | ....do.... | ....do.... | ([25]).... | .... |

[1] Applicant is filing under Gas Purchase Contract dated 3-27-87.
[2] Applicant is filing under Gas Purchase Contract dated 4-15-87.
[3] ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company by assignment effective 1-1-87.
[4] ARCO assigned its interest in certain acreage to Amoco Production Company by assignment effective 3-1-86.
[5] Acreage has been assigned to Chriscor Oil and Gas Corporation.
[6] Uneconomical.
[7] The Pennzoil's TUBB "C" No. 1 well has been plugged an abandoned. Chevron U.S.A. Inc. plans no further development or production from the properties committee under the agreement.
[8] To facilitate contract administration Applicant proposes to terminate its certificate in Docket No. G-14719 and cancel its related Rate Schedule No. 53 since the subject acreage is currently covered by two certificates and Rate Schedules: Rate Schedule 46, Docket G-11020 and Rate Schedule No. 53, Docket G-14719.
[9] Wells permanently abandoned.
[10] Purchaser unable to obtain a market for this gas and has not requested volume since April, 1987. Well has been shut in and since this is a Morrow completion, it is possible the reservior has been damaged.

[11] Term of Contract expires 7-1-87, and Purchaser has stated it does not want to rollover this contract or continue purchasing the small volume available.

[12] Available supply of natural gas is depleted.

[13] Federal Lease OCS-G-2680 (North half of High Island Block 138) terminated 10-9-85.

[14] Effective 10-1-86, Texaco Oils Inc. (Succ. in Interest to Dome Petroleum Corporation) assigned to Curtis J. Little Oil and Gas Company, its right, title, and interest in and to the North half of Section 18-30N-10W, San Juan County, New Mexico. At time of assignment, the acreage was non-productive. The only well under the contract, Schumacher #3, was disconnected 10-31-81. Effective 12-31-86, Texaco Producing Inc. succeeded to the interests of Texaco Oils Inc.

[15] Atlantic Richfield Company assigned to Applicant certain acreage effective 5-1-86.

[16] Not used.

[17] Plugged and abandoned due to economic depletion; water encroachment and bailing operations made well uneconomical.

[18] Effective 10-1-86 Union Texas Petroleum Coporation conveyed its working interest in some of the leases dedicated under Rate Schedule 61 of American Exploration Acquisition Company and also effective 10-1-86, Union Texas Petroleum Corporation conveyed its working interest in other leases dedicated under Rate Schedule 61 of South Timbers Limited Partnership. Leases dedicated under Rate Schedule 61 and not conveyed to the aforementioned parties reverted to the Lessor and Union Texas Petroleum Corporation no longer holds a working interest in any acreage dedicated under Rate Schedule 61.

[19] Champlin has assigned all of its rights, title and interest in the dedicated acreage to Wheeler Energy Company, effective 3-1-87.

[20] Sun assigend PN 414114, Britt B, to Doyle Hartman effective 10-1-84.

[21] Mountain Fuel Resources, Inc. cancelled the contract effective 2-15-87, and rescinded its rollover offering citing lack of markets and an intercompany decision not to add any reserves to its system.

[22] To permit the sale of gas to Phillips 66 Natural Gas Company with the residue gas still entering into the El Paso mainline at the tailgate of the Phillips 66 NGC Lusk Plant in Lea County, New Mexico and thereby alleviate many of the accounting and bookeeping difficulties now handled by Mountain States.

[23] Gas Purchase Agreement dated 11-3-52, covering gas well gas only, expired 1-1-80, and there has been no gas well gas produced from this acreage.

[24] Application amended on April 30, 1987.

[25] Certificate expired on its own terms. Amoco requests cancellation of its related Rate Schedule No. 439.

[26] Applicant's original application for abandonment was received on April 13, 1987, and was noticed on May 6, 1987, (52 FR 16896). Applicant now requests a three-year limited-term abandonment with pregranted abandonment udner its small producer certificate.

Filing code: A—Initital Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-11410 Filed 5-19-87; 8:45 am]
BILLING CODE 6717-01-M

## Western Area Power Administration

### Final Post-1989 Allocations of Power; Salt Lake City Area Integrated Projects

In Federal Register Volume 52, No. 10620, April 2, 1987, make the following corrections:

On page 10626: In Table 1, fourth column entitled "Energy (MWH)," third line (Chandler Heights Citrus I.D.D.), change "671,748" to "671.748."

On page 10626: In Table 2, change the heading from "POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION EXISTING CUSTOMERS LOVELAND AREA," to "POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION EXISTING CUSTOMERS."

On page 10626: In Table 2, third column entitled "Capacity (MW)," seventh line (Subtotal, Loveland Area), change "446.471" to "466.471."

On page 10626: In Table 2, fourth column entitled "Energy (MWH)," first line (Center, CO), change "3,945.115" to "3,954.115."

On page 10626: In Table 2, fourth column entitled "Energy (MWH), nineteenth line (Brigham City, UT), change "27.577.769" to "27,577.770."

On page 10626: In Table 2, fifth column entitled "Capacity (MW)," fifteenth line (Wray, CO), change "0.051" to "0.501."

On page 10626: In Table 2, second column entitled "Customer," twenty-fifth line, change "Doe-Albuq. Oper. Off." to "DOE-Albuq. Oper. Off."

On page 10627: In Table 2, change the heading from "POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION EXISTING CUSTOMERS LOVELAND AREA—Continued," to "POST-1989 SLCA/IP ALLOCATIONS NORTHERN DIVISION EXISTING CUSTOMERS—Continued."

On page 10627: In Table 2, second column entitled "Customer," fourth line, change "Irea" to "IREA."

On page 10627: In Table 2, second column entitled "Customer," sixth line, change "Navajo Tribal UT. Ath." to "Navajo Tribal Util. Ath."

On page 10627: In Table 2, fourth column entitled "Energy (MWH)," twenty-second line (Subtotal, Salt Lake City Area), change "1.569,083.125" to, "1,569,083.125."

On page 10627: In Table 2, fifth column entitled "Capacity (MW)," twenty-second line (Subtotal, Salt Lake City Area), change "582,155" to "582.155."

On page 10627: In Table 2, sixth column entitled "Energy (MWH)," twenty-second line (Subtotal, Salt Lake City Area), change "1.275,922.954" to "1,275,922.954."

On page 10627: In Table 3, under "Load Factor," change "Summer: 2597.181" to "Summer: 2597.818."

On page 10628: In Table 3, second column entitled "Customer,"first line, change "Aspend, CO" to "Aspen, CO."

On page 10628: In Table 3, fourth column, change "Energy (NWH)" to "Energy (MWH)."

On page 10628: In Table 3, sixth column, change "Energy (NWH)" to "Energy (MWH)."

On page 10628: In Table 3, fourth column entitled "Energy (MWH)," thirteenth line (Holloman AFB), change "5,396.666" to "5,366.666."[11]On page 10628: In Table 3, sixth column entitled "Energy (MH)," seventeen line (Lea County Elec. Co-op), change "9,092,366" to "9,092.366."

On page 10628: In Table 3, sixth column entitled "Energy (MWH)," twenty-fifth line (Springdale, UT), change "61.049" to "61.052."

On page 10628: In Table 3, sixth column entitled "Energy (MWH)," thirtieth line (West Bountiful, UT), change "1,126.827 " to "1,126.827."

On page 10628: In Table 3, fifth column entitled "Capacity (MW)," thirty-first line (Subtotal, Prospective Customers), change "47.107" to "47.108."

On page 10628: In Table 3, sixth column entitled "Energy (MWH)," thirty-first line (Subtotal, Prospective Customers), change "123,656.596" to "123,656.599."

On page 10628: In Table 3 (lower), second column entitled "Customer," change "DOE-Albuq. oper. off." to "DOE Albuq. Oper. Off."

On page 10628: In Table 3 (lower), fourth column, change "Energy (NWH)" to "Energy (MWH)."

On page 10628: In Table 3 (lower), fifth column entitled "Adjusted Capacity

(MW)," third line (DOE-Albuq. Oper. Off.), change "3.655" to "3.555."

On page 10628: In Table 3 (lower), sixth column, change "Energy (NWH)" to "Energy (MWH)."

On page 10629: In Table 3, fourth column, change "Energy (NWH)" to "Energy (MWH)."

On page 10629: In Table 3, sixth column, change "Energy (NWH)" to "Energy (MWH)."

On page 10629: In Table 3, fifth column entitled "Adjusted Capacity (MW)," tenth line (Subtotal, Existing Customers), change "36.539" to "36.538."

On page 10627: In Table 2, third column entitled "Capacity (MW)", fifteenth line ("St. George"), change "35.495" to "31.915".

On page 10627: In Table 2, fifth column entitled "Capacity (MW)", fifteenth line ("St. George"), change "21.882" to "19.673".

On page 10627: In Table 2, third column entitled "Capacity (MW)", seventeenth line ("UAMPS"), change "156.134" to "159.714".

On page 10627: In Table 2, fifth column entitled "Capacity (MW)", seventeenth line ("UAMPS"), change "101.509" to "103.718".

On page 10629: In Table 3, sixth column entitled "Adjusted Energy (MWH)," eleventh line (Subtotal, Exist. + Prosp. (Excl. Spec. Alloc.)), change "217,297.138" to "217,297.141."

On page 10629: In Table 3 (lower), second column entitled "Customer," change "DOE-Albuq. oper. off." to "DOE Albuq. Oper. Off."

Issued at Golden, Colorado, April 29, 1987.

William H. Clagett,

*Administrator.*

[FR Doc. 87-11517 Filed 5-19-87; 8:45 am]

BILLING CODE 6450-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

[OPP-180735; FRL 3201-]

## Receipt of Applications for Emergency Exemptions From Delaware To Use Dinoseb; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of receipt.

**SUMMARY:** EPA has received specific exemption requests from the Delaware Department of Agriculture (hereafter referred to as "Delaware") to use dinoseb (CAS 88-85-7). Delaware proposes to use dinoseb on green peas, snap beans, lima beans, blackeyed peas, and dry beans to control broadleaf weeds. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemptions.

**DATE:** Comments must be received on or before June 4, 1987.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180735" should be submitted by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7700).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40 CFR Part 166.

The Department of Agriculture for the state of Delaware, by letter received April 13, 1987, has requested the Administrator to issue specific exemptions for the use of dinoseb on green peas, snap beans, lima beans, dry beans, and blackeyed peas to control broadleaf weeds.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registrations was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry, pursuant to the terms of the Agency's October 7, decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicant's specific exemption requests are, therefore, subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for an emergency exemption under section 18 for a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determine that reconsideration is warranted if, among other things, he finds that the Applicant has presented substantial new evidence which may materially affect the prior suspension or cancellation order (40 CFR 164.131(c)). If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the suspension or cancellation order is justified (40 CFR 164.131(c)).

Should the Administrator decide to lift the suspension of certain dinoseb registrations, the Agency would then determine whether and under what terms and conditions dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

### II. Emergency Condition

Delaware states that there are a number of herbicides registered for use in green peas, snap beans, lima beans, dry beans and blackeyed peas. According to Delaware, trifluralin (Treflan), pendimethalin (Prowl), and

metolachlor (Dual) are mainly for control of annual grasses, and provide only fair to good control of a few broadleaf weeds. According to Delaware, chloramben (Amiben) has a high water solubility which results in rapid leaching in coarse-textured soils low in organic matter, common in Delaware. Rapid leaching results in poor crop tolerance and short-term, erratic weed control. Delaware states that bentazon (Basagran) controls only certain seedling broadleaf weeds and frequently causes crop injury which reduces yield and/or delays harvest. Harvest delays are not tolerable because planting is rigidly scheduled to stagger harvest. According to Delaware, MCPB gives postemergence control of Canada thistle and controls or suppresses lambsquarters, pigweed, smartweed, sowthistle, fanweed, annual morningglory and nightshade. However, Delaware points out that this compound is in the phenoxy family of herbicides, so some temporary twisting of some pea varieties may occur. In addition, spray drift has to be avoided as it may injure other broadleaf crops and ornamentals. Delaware has not recommended this herbicide in the past. Delaware points out that use of MCPB at temperatures above 80°F can cause crop injury. Delaware also states that MCPB works best early in the season when weeds are small and application use parameters described limit its use in peas in Delaware.

EPTC (Eptam) and DCPA (Dacthal) are labeled for use in snap beans only. According to Delaware these pesticides are primarily for control of annual grasses and control few broadleaf weeds.

According to Delaware mechanical cultivation only controls weeds between the rows. Weeds in the row can significantly reduce yields and result in fields that cannot be harvested. Cultivation cannot be done late in the season after the crop reaches a certain height, further limiting its effectiveness. According to Delaware, mechanical cultivation cannot be used in peas because the rows are narrow.

Delaware states that with the suspension of dnoseb, growers of green peas, dry beans, lima beans, snap beans and blackeyed peas have no effective and/or economically viable alternative herbicides. Delaware goes on to state that with the depressed economy of corn and soybean production, these crops represent the only other means for many Delaware farmers to make a profit in farming.

Delaware claims that without the use of dinoseb, pea, lima bean, and snap bean growers can expect a 25% loss in yield valued at $1.1 million for peas, $300 thousand for lima beans, and $300 thousand for snap beans. Monetary losses were not presented for blackeyed peas or dry beans.

### III. Proposed Use

Delaware requested emergency exemptions for use of dinoseb on green peas, lima beans, snap beans, dry beans, and blackeyed peas between April 1 and August 31, 1987. The proposed specific exemption programs involve use of the following dinoseb products: Basanite, Caldon, Chemox General, Chemox PE, Chemsect DNBP, Dinitro, Dinitro-3, Dinitro General, Dynamyte, Elgetrol 318, Gebutox, Hel-Fire, Kiloseb, Nitropone C, Premerge 3, Sinox General, Subitex, Unicrop DNBP, Vertac Dinitro Weed Killer 5, Vertac General Weed Killer, and Vertac Selective Weed Killer.

Delaware proposes to use a total of 94,000 pounds active ingredient on 25,000 acres of crops in New Castle, Kent, and Sussex counties. By crop, the proposed uses involve: 36,000 pounds active ingredient to treat up to 10,000 acres of green peas; 40,000 pounds active ingredient to treat up to 11,000 acres of lima beans; 18,000 pounds of active ingredient to treat 4,000 acres of snap beans, blackeyed peas, or dry beans.

Dinoseb would be applied at a rate of 0.75 to 3 lbs active ingredient per acre to peas and 0.56 to 4.5 pounds active ingredient per acre to lima beans. A maximum of 2 applications would be made, one preemergence and the other postemergence. Dinoseb will be applied to dry beans, blackeyed peas, and snap beans at a rate of 3 to 4.5 pounds active ingredient. One preemergence application would be allowed. Other restrictions to be imposed include: (1) Application by ground row crop spray; (2) use by persons certified by State of Delaware in private or commercial categories; (3) no mixing/loading/application by females; (4) mixer/loader/applicator must wear tyvek suit and chemical resistant gloves; (5) do not mix with liquid fertilizers; (6) no aerial application; and (7) a 40-day pre-harvest intetrval would be observed.

### IV. Notification and Comment

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption requests from Delaware will be based on whether or not there is sufficient new information to open Subpart D hearings and, if so, the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes any emergency use of a pesticide if such pesticide were the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunity for public comment on the applications (40 CFR 166.24).

Interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period.

Dated: May 4, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87-11031 Filed 5-19-87; 8:45 am]

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[OPTS-140083; FRL-3203-8]

## Access to Confidential Business Information by ICF, Inc.; Mathtech Inc. and Research Triangle Institute

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor ICF, Incorporated, and ICF's subcontractors, Mathtech Incorporated and Research Triangle Institute for access to information submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**DATE:** Access to the confidential data submitted to EPA will occur no sooner than June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

**SUPPLEMENTARY INFORMATION:** Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Chemical

Substances Inventory, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA.

Under contract no. 68-02-4273, EPA's contractor ICF, Incorporated (ICF), 1850 K Street, NW, Suite 950, Washington, DC and ICF's subcontractors Mathtech Incorporated (Mathtech), Skyline Center, 5111 Leesburg Pike, Building 5, Falls Church, VA, and Research Triangle Institute (RTI), 3040 Cornwallis Road, Research Triangle Park, NC, will assist the Office of Toxic Substances' Economics and Technology Division in performing economic and regulatory analyses. Primarily these analyses will be of the costs, economic impacts, benefits, and regulatory impacts of actual or potential EPA actions taken under TSCA.

A significant portion of TSCA actions affect the chemical manufacturing and processing industry and related industries. The contractor may be required to develop industry profiles, analyze regulatory and non-regulatory alternatives, and estimate the costs, economic impacts, and benefits of options, as directed by the project officer.

In a previous notice published in the Federal Register of December 30, 1983 (48 FR 57620), EPA announced TSCA CBI access authorization for ICF and RTI under contract no. 68-02-4055, for information submitted under sections 4, 5, 6, and 8 of TSCA to perform functions similar to those under this contract. Contract no. 68-02-4273 replaces contract no. 68-02-4055.

In accordance with 40 CFR 2.306(j), EPA has determined that under contract no. 68-02-4273, ICF, Mathtech, and RTI will require access to CBI submitted to EPA under TSCA to successfully perform the contract. ICF, Mathtech, and RTI personnel will require access to information submitted under section 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide ICF, Mathtech, and RTI access to these CBI materials on a need-to-know basis. All access to TSCA CBI under this contract will take place at EPA Headquarters or at the contractor and subcontractor sites identified above. Upon completing review of the CBI materials under the contract, ICF, Mathtech, and RTI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1989.

ICF, Mathtech, and RTI have been authorized for access to TSCA CBI at their facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved security plans prepared by ICF, Mathtech, and RTI and has performed the required inspection of their facilities and found them to be in compliance with the requirements of the manual. Contractor personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: May 15, 1987.

**Charles L. Elkins,**

*Director, Office of Toxic Substances.*

[FR Doc. 87-11477 Filed 5-19-87; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-51674; FRL 3204-2]**

## Certain Chemicals Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-nine such PMNs and provides a summary of each.

**DATES:**

Close of review period: P 87-1025, 87-1026, 87-1027, 87-1028, 87-1029, 87-1030, 87-1031, 87-1032, 87-1033, 87-1034 and 87-1035—July 23, 1987.

P 87-1036, 87-1037, 87-1038, 87-1039, 87-1040, 87-1041, 87-1042, 87-1043, 87-1044, 87-1045 and 87-1046—July 26, 1987.

P 87-1047, 87-1048, 87-1049 and 87-1050—July 27, 1987.

P 87-1051, 87-1052 and 87-1053—July 28, 1987.

Written comments by: P 87-1025, 87-1026, 87-1027, 87-1028, 87-1029, 87-1030, 87-1031, 87-1032, 87-1033, 87-1034 and 87-1035—July 22, 1987.

P 87-1036, 87-1037, 87-1038, 87-1039, 87-1040, 87-1041, 87-1042, 87-1043, 87-1044, 87-1045 and 87-1046—July 26, 1987.

P 87-1047, 87-1048, 87-1049 and 87-1050—June 27, 1987.

P 87-1051, 87-1052 and 87-1053 June 28, 1987.

**ADDRESS:** Written comments, identified by the document control number "[OPTS-51674]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**P 87-1025**

*Manufacturer.* Dynamit Nobel Chemicals.

*Chemical.* (S) Methyltrioctylsinlane.

*Use/Production.* (S) Commercial lubricant oil and grease base. Prod. range: Confidential.

**P 87-1026**

*Manufacturer.* Dynamit Nobel Chemicals.

*Chemical.* (S) 2,3-Dimethylpropyldimethylchlorosilane.

*Use/Production.* (S) Industrial synthetic chemical intermediate for sales to chemical and pharmaceutical industries. Prod. range: Confidential.

**P 87-1027**

*Manufacturer.* Dynamit Nobel Chemicals.

*Chemical.* (S) 1 , 3-Diphenyltetrakis-1,1,3,3-(dimethylsiloxy) disiloxane.

*Use/Production.* (S) Industrial crosslinker for specialty silicone elastomers. Prod. range: Confidential.

**P 87-1028**

*Manufacturer.* Dynamit Nobel Chemicals.

*Chemical.* (S) Vinyltris(isopropenoxy)silane.

*Use/Production.* (S) Industrial crosslinker for specialty silicone elastomers. Prod. range: Confidential.

P 87-1029

*Manufacturer.* Confidential.
*Chemical.* (G) Block toluene diisocyanate prepolymer.
*Use/Production.* (S) Encapsulant in wire wheel and flap wheel assembly. Prod. range: Confidential.

P 87-1030

*Manufacturer.* Confidential.
*Substance.* (G) *Bacillus subtilis* that has been recombinantly modified to contain a gene for protease from another *Bacillus* species, using a vector from *Staphylococcus aureus*
*Use/Production.* (G) The microorganism will be used for the biosynthesis of protease. Production range: Confidential.
*Toxicity data.* Pathogenicity study by oral instillation in mice showed no infectivity or pathogenicity in mice in a 21-day test. Microbial survival under post-production conditions in water, soil, and river water showed no survival advantage of the recombinant strain over the wild type. In the formulated enzyme product, bacterial cell number decreases; viable remaining cells are spores.
*Exposure.* Workers in production areas who maintain and process cultures of the microorganism.

P 87-1031

*Manufacturer.* Confidential
*Chemical.* (G) Alkylcycloalkanoneacetic acid.
*Use/Production.* (G) Site-limited reaction intermediate. Prod. range: Confidential.

P 87-1032

*Importer.* V.I.B. Company.
*Chemical.* (G) Cetazoneresin based on triazone.
*Use/Import.* (G) Industrial and commercial absorber for oils and liquid chemicals. Import range: 100,000,000 to 200,000,000 kg/yr.

P 87-1033

*Manufacturer.* Confidential.
*Chemical.* (G) Polyester polymer with neopentyl glycol.
*Use/Production.* (G) Industrially used coating with a dispersive use. Prod. range: 100,000 to 300,000 kg/yr.

P 87-1034

*Manufacturer.* Alkaril Chemicals, Incorporated.
*Chemical.* (G) Octyl iminodipropionate.
*Use/Production.* (G) Wetting agent. Prod. range: Confidential.

P 87-1035

*Manufacturer.* Henkel Corporation.
*Chemical.* (G) Aromatic sulfonate polymer salt.
*Use/Production.* (S) Tall oil separation aid. Prod. range: Confidential.

P 87-1036

*Importer.* Confidential.
*Chemical.* (G) Substituted 1,6-dihydroxynaphthalene.
*Use/Import.* (G) Component for preparing polymer composite. Import range: Confidential.
*Toxicity Data.* Acute dermal: >1.0 g/kg; Irritation: Skin—Irritant, Eye—Irritant.

P 87-1037

*Manufacturer.* Confidential.
*Chemical.* (G) Alkylmetallic mercaptide.
*Use/Production.* (G) Open, non-dispersive use. Prod. range: Confidential.
*Toxicity Data.* Acute oral: 0.5 g/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant.

P 87-1038

*Manufacturer.* Confidential.
*Chemical.* (G) Alkylmetallic mercaptide.
*Use/Production.* (G) Open, non-dispersive use. Prod. range: Confidential.
*Toxicity Data.* Acute oral: 0.5 g/kg; Irritation: Skin—Nonirritant, Eye—Non-irritant.

P 87-1039

*Manufacturer.* Confidential.
*Chemical.* (G) Polyurethane polymer.
*Use/Production.* (G) Coatings/adhesives for open, non-dispersive use. Prod. range: Confidential.

P 87-1040

*Manufacturer.* Lilly Industrial Coatings, Incorporated.
*Chemical.* (G) Polymer of benzenedicarboxylic acid, cycloaliphatic diol, hexanedioic acid, aromatic anhydride, fatty acids, and aliphatic diols.
*Use/Production.* (G) Industrial liquid paints. Prod. range: 125,000 to 175,000 kg/yr.

P 87-1041

*Manufacturer.* Monsanto Company.
*Chemical.* (G) 1,2-Epoxypropionamide glycidamide melamine resin.
*Use/Production.* (G) Component of thermosetting paint formulations. Prod. range: Confidential.

P 87-1042

*Importer.* Shin Etsu Silicone of America, Inc.
*Chemical.* (S) 3-(2-aminoethyl)amino propyl methyl, dimethyl polysiloxane, dimethyl, methyl 3-(oxiranylmethoxy)-propyl polysiloxane.
*Use/Import.* (S) Silicone coating agent for general purpose. Import range: 500 to 3,000 kg/yr.

P 87-1043

*Importer.* Shin-Etsu Silicone of America, Inc.
*Chemical.* (S) Trichloromethylsilane, dichlorodimethylsilane, trichorophenysilane.
*Use/Import.* (G) Industrial varnish for electric insulation or vehicle of paints. Import range: 400 to 900 kg/yr.

P 87-1044

*Importer.* Shin-Etsu Silicone of America, Inc.
*Chemical.* (S) Dimethyl polysiloxane, hydroxy terminated copolymer of styrene and butyl acrylate methoxy methyl polysiloxane.
*Use/Import.* (S) Industrial and commercial coating agent for sheet products. Import range: 500 to 3,000 kg/yr.

P 87-1045

*Manufacturer.* Confidential.
*Chemical.* (G) Silanetriol with condensation products.
*Use/Production.* (S) Industrial primer for silicone rubber. Prod. range: Confidential.

P 87-1046

*Importer.* Ajinomoto U.S.A., Inc.
*Chemical.* (S) N,N'-dibutyl-2-[1-oxododecyl-amino].
*Use/Import.* (S) Industrial gelling agent for oils and industrial commercial and consumer gelling agent for epoxy adhesives. Import range: 500 to 1,000 kg/yr.

P 87-1047

*Manufacturer.* Confidential.
*Chemical.* (S) Butanamide,2-[4-[[4'-[N-(2,4-dimethylphenyl)-3-oxo-butanamide-2-yl]]azo][3,3'dichloro[1,1'-biphenyl]-4,4'-diyl]]axo]-N-(2-methylphenyl)-3-oxo-,.
*Use/Production.* (G) Colorant for printing inks. Prod. range: Confidential.

P 87-1048

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Aromatic carboxylate, methyl ester.
*Use/Production.* (G) Site-limited chemical intermediate. Prod. range: Confidential.

P 87-1049

*Manufacturer.* Confidential.

*Chemical.* (G) Ester of substituted benzophenone and diazonaphthol sulfonic acid.

*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.

P 87-1050

*Manufacturer.* The Dow Chemical Company.

*Chemical.* (G) Aromatic carboxylate, magnesium salt.

*Use/Production.* (G) Site-limited chemical intermediate. Prod. range: Confidential.

P 87-1051

*Manufacturer.* Confidential.

*Chemical.* (G) Polycarbonate polyurethane dispersive.

*Use/Production.* (S) Industrial, commercial and consumer general purpose coating, modifier for coatings inks and adhesives. Prod. range: Confidential.

P 87-1052

*Importer.* Confidential.

*Chemical.* (G) Styrenated methacrylate.

*Use/Import.* (G) Industrially used coating with dispersive use. Import range: 500 to 44,000 kg/yr.

P 87-1053

*Manufacturer.* Confidential.

*Chemical.* (G) Substituted spiro[isobenzofuranxanthenone].

*Use/Production.* (G) Minor color-forming component in paper coatings. Prod. range: confidential.

Dated: May 14, 1987.

Denise Devoe,

*Acting Division Director, Information Management Division.*

[FR Doc. 87-11491 Filed 5-19-87; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-00240; FRL 3203-7]

## Nominations to the Scientific Advisory Panel; Request for Comments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice provides the names, addresses, professional affiliations, and selected biographical data of persons nominated to serve on the Scientific Advisory Panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 *et seq.*). Public comment on the nominations is invited. Comments will be used to assist the Agency in selecting nominees to comprise the Panel and should be so oriented.

**ADDRESS:** By mail, submit comments to: Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Proteciton Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

**DATE:** Comments should be postmarked not later than June 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7695).

**SUPPLEMENTARY INFORMATION:**

### I. Background

FIFRA amendments enacted November 28, 1975, added, among other things, a requirement set forth in section 25(d) that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2), as well as proposed and final forms of rulemaking pursuant to section 25(a), be submitted to a Scientific Advisory Panel prior to being made public or issued to a registrant. In accordance with section 25(d), the Scientific Advisory Panel is to have an opportunity to comment on the health and environmental impact of such actions.

### II. Charter

A Charter for the FIFRA Scientific Advisory Panel has been issued in accordance with the requirements of section 9(c) of the Federal Advisory Committee Act, Pub. L. 92-463, 86 Stat. 770 (5 U.S.C. App I). The qualifications as provided by the Charter follow.

*A. Qualifications of Members*

Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providng expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. No person shall be ineligible to serve on the Panel by reason of his membership on any other advisory committee to a Federal department or agency or his employment by a Federal department or agency (except the Environmental Protection Agency). The Administrator appoints individuals to serve on the Panel for staggered terms of 4 years. Panel members are subject to the provisions of Title 40, CFR, Part 3, Subpart F—Standards of Conduct for Special Government Employees, which include rules regarding conflicts-of-interest. An officer and/or employee of an organization producing, selling, or distributing pesticides and any other person having a substantial financial interest (as determined by the Administrator) in such an organization, as well as an officer or employee of an organization representing pesticide users shall be excluded from consideration as a nominee for membership on the Panel. Each nominee selected by the Administrator shall be required, before being formally appointed, to submit a Confidential Statement of Employment and Financial Interests, which shall fully disclose the nominee's sources of research support, if any.

In accordance with section 25(d) of FIFRA, the Administrator shall require all nominees to the Panel to furnish information concerning their professional qualifications, including information on their educational background, employment history, and scientific publications. Section 25(d) of FIFRA requires the Administrator to issue for publication in the Federal Register the name, address, and professional affiliations of each nominee.

*B. Applicability of Existing Regulations*

With respect to the requirement of section 25(d) that the Administrator promulgate regulations regarding conflicts of interest, the Charter provides that EPA's existing regulations applicable to special governmental employees (which include advisory committee members) will apply to the members of the Scientific Advisory Panel. These regulations appear at 40 CFR Part 3, Subpart F. In addition, the Charter provides for open meetings with opportunities for public participation.

*C. Process of Obtaining Nominees*

In accordance with provisions of section 25(d), EPA, in February 1987, requested the National Institutes of Health (NIH) and the National Science Foundation (NSF) to nominate scientists to fill four vacancies occurring on the SAP. NIH responded by letter dated April 7, 1987, enclosing a list of 8 nominees; NSF responded by letter dated March 13, 1987, with a list of 12 nominees.

III. Nominees

The following are the names, addresses, professional affiliations, and selected biographical data on nominees being considered for membership on the FIFRA Scientific Advisory Panel to fill four vacancies occurring during calendar year 1987.

Anthony, Robert Gene, Department of Fisheries and Wildlife, Oregon State University, Corvallis, Oregon. Expertise: wildlife ecology. Born: January 6, 1944. Education: Ft. Hays Kansas State College, BS 1966; Washington State University, MS 1968; University of Arizona, PhD (zoology) 1972. Professional experience: Assistant professor, Wildlife Management, Pennsylvania State University, University Park, 1972, Professor, Department of Fisheries and Wildlife, Oregon State University, Corvallis, Oregon 1972-present. Societies: Wildlife Society, American Society of Mammalogists; American Ecology Society. Research: Ecology and population dynamics of mammals: Effect of pollution and environmental alteration on wildlife biometrics.

Auerbach, Stanley Irving, Staff Advisor, Environmental Services Division, Oak Ridge National Laboratory, Oak Ridge, Tennessee. Expertise: Radiation ecology, system analysis. Born: May 21, 1921. Education: University of Illinois, BS 1946, MS 1947; Northwestern University, PhD (zoology) 1949. Professional experience: Assistant, Zoology and Animal Ecology, Northwestern University, 1947–1948; lecturer, biology, Roosevelt University, 1950–1951, instructor, 1951–1954, assistant professor, 1954–1970; associate scientist, 1954–1955; health physicist ecologist, 1954–1959, scientist, 1955–1959, section chief, radiation ecology, 1959–1970, director, Ecology Science Division, 1970–1972, director, Environmental Science Division, Oak Ridge National Laboratory, 1972–present; concurrent position: Lecturer, University of Tennessee, 1960; adjunct research professor, University of Georgia, 1964; director, Eastern Deciduous Forest Biome, International Biology Program, 1968; vice president, U.S. Executive Committee, 1971; member, board energy studies and various subcommittees, National Academy of Science-National Research Council, 1974–present; Societies: American Institute of Biology Scientists; American Society of Zoologists; AAAS; Ecology Society of America; British Ecology Society. Research: Ecosystem analysis; radioactive waste cycling in terrestrial ecosystems.

Castleman, William Lawrence, Department of Pathobiological Sciences, School of Veterinary Medicine, University of Wisconsin-Madison, Madison, Wisconsin. Expertise: Pathology. Born: March 28, 1949. Educational background: University of California, Davis, BS 1971, MS 1972, D.V.M. 1977, PhD. (comparative pathology) 1979. Professional experience: Pathology resident and graduate student, School of Veterinary Medicine, University of California, Davis, California, 1977–1979; postdoctoral trainee in environmental pathology, School of Veterinary Medicine, University of California, Davis, California, 1977–1979; assistant professor of pathology, N.Y.S. College of Veterinary Medicine, Cornell University, 1979–1985; associate professor of pathology, N.Y.S. College of Veterinary Medicine, Cornell University, Ithaca, New York 1985–1986; associate professor of pathology, School of Veterinary Medicine, University of Wisconsin-Madison, 1986–present. Societies: American Association for the Advancement of Science, American Association of Pathologists, American Thoracic Society, American Veterinary Medical Association, International Academy of Pathology. Research: Morphogenesis and repair of respiratory bronchiolitis.

Dickson, Kenneth Lynn, Director, Institute of Applied Sciences, North Texas State University, Denton, Texas. Expertise: Aquatic biology, environmental sciences. Born: November 20, 1943. Education: North Texas State University, BS 1966; MS 1968, Polytechnical Institute and State University, PhD (zoology) 1971. Professional experience: From assistant professor to associate professor, zoology, Virginia Polytechnical Institute and State University, 1970–1978; assistant director, Center for Environmental Studies, 1970–1976; research scientist, 1978–1979, professor, Department of Biological Sciences, North Texas State University, 1981–present; director, Institute for Applied Sciences, 1979–present. Concurrent position: Consultant, National Academy of Science, 1971–present. Societies: American Fisheries Society; Society of Environmental Toxicologists and Chemists. Research: Limnology of reservoirs and rivers; microbiotic cycles in reservoirs; development of biological pollution monitoring systems; effects of pollution on aquatic organisms; biological diversity indices of community structure: Effects of carbon, nitrogen and phosphorus on aquatic communities; fate and effects of chemicals in aquatic life.

Giesy, John Paul, Jr., Professor, Pesticide Research Center, Michigan State University, East Lansing, Michigan. Born: August 9, 1948. Expertise: Limnology. Education: Alma College, BS 1970; Michigan State University, MS 1972; PhD (limnology) 1974. Professional experience: Research associate, limnology, Savannah River Ecology Laboratory, University of Georgia, 1974–1981; professor, Pesticide Research Center, Michigan State University, 1981–present. Concurrent positions: National Science Fellow, 1969–1970; fellow, Woodrow Wilson Foundation, 1970; instructor of ecology, Alma College, 1972; fellow, North Center Research Foundation, 1972–1974; instructor, ecology, University of South Carolina, 1975. Societies: Ecology Society of America; American Society of Limnologists and Oceanographers; Phycology Society of America; International Society for Theoretical Application of Limnology. Research: Cycling of heavy metals; update and availability of heavy metals in aquatic systems.

Hodgson, Ernest, William Neal Reynolds Professor, Chairman, Toxicology Program, North Carolina State University, Raleigh, North Carolina. Born: July 28, 1932. Educational background: University of Durham, BS 1954; Oregon State University, PhD 1958. Professional experience: Demonstrator, zoology, Kings College, University of Durham, 1954–1955; fellow in entomology, University of Wisconsin, 1958–1961; from assistant professor to professor 1961–1977; professor, entomology, North Carolina State University, 1977-present. Societies: American Association for the Advancement of Science; American Society for Pharmacology and Experimental Therapeutics; Society of Toxicologists; Entomological Society of America; American Chemical Society. Research: enzymatic aspects of toxicology; comparative toxicology.

Juchau, Mont Rawlings, Professor, Department of Pharmacology, School of Medicine, University of Washington, Seattle, Washington. Expertise: Pharmacology. Born: November 11, 1934. Education: Idaho State University, BS 1960; Washington State University, MS 1963; University of Iowa, PhD (pharamcology) 1966. Professional experience: Pharmacist, Trolinger Pharmacy Tick Klock Drug, 1960–1963; from instructor to assistant professor, biochemical pharmacology, State University of New York, Buffalo, 1966–1969; assistant professor, 1969–1973;

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associate professor, 1973–1980, professor, pharmacology, School of Medicine, University of Washington, 1980-present. Honors and awards: Delbert-Putnam Award, 1959; Rexall Award, 1960. Societies: AAAS, American Society of Phamacologists and Experimental Therapeutics; International Society of the Biochemical Pharmacologists. Research: Investigation of the biotransformation of drugs in the human foetoplacental unit.

Kaufman, David Gordon, Department of Pathology, Medical School, University of North Carolina, Chapel Hill, North Carolina. Expertise: Pathology, biochemistry. Born: May 28, 1943. Education: Reed College, BA 1966, Washington University, MD 1968, PhD (experimental patholgy) 1973. Professional experience: Intern pathologist, Barnes Hospital, Washington University, 1968–1969, resident, 1969–1970; research associate, carcinogenesis, National Cancer Institute, 1970–1973, research scientist, 1973–1975; associate professor, 1975–1980; professor, University of North Carolina, 1980-present. Concurrent positions: member, Pathology B Study Section, NIH 1977–1979, Chemical Pathology Study Section, 1970-present; member, Prototype Explicit and Pesticides Committee, National Academy of Science, 1978–1980; Research Career Development Award, National Cancer Institute, 1978. Societies: American Association for Cancer Research; American Association of Pathologists; American Society of Cellular Biologists; American College of Toxicologists; New York Academy of Science. Research Chemical carcinogenesis; eukaryotic DNA replication and repair; cell biology of respiratory tract and female genital tract tissues.

Matsumura, Fumio, Professor, Pesticide Research Center, and Department of Entomology, and Coordinator of Laboratory of Pesticide Biotechnology, Michigan State University, East Lansing, Michigan. Expertise: Zoology. Born: February 3, 1934. Educational background: University of Tokyo, BS 1957; University of Alberta, Edmonton, Alberta, Canada, MS 1959; University of Western Ontario, London, Ontario, Canada, PhD (zoology) 1961. Professional experience: Postdoctoral research fellow, University of Western Ontario, London, Ontario, Canada, 1961–1962; visiting researcher, Laboratory of Insecticide Research, Department of Agriculture, Netherlands, 1962–1963; postdoctoral research specialist, Cornell University, Ithaca, New York, 1963–1964; assistant professor, associate professor and professor, University of Wisconsin, 1964–1977; professor and director, Pesticide Research Center, Michigan State University, East Lansing, Michigan, 1977–1987; professor, Pesticide Research Center and Department of Entomology, and coordinator of Laboratory of Pesticide Biotechnology Assessment, 1986-present. Societies: Entomological Society of America, Society of Toxicology, Society of Environmental Toxicology and Chemistry, American Chemical Society, Agrichemicals Division, Society of Pesticide Science. Research: Toxicology of insecticides; biodegradation of pesticides.

Mitton, Jeffrey B., Department of Environmental Population, and Organismal, and Organismal Biology, University of Colorado, Boulder, Colorado. Expertise: Population genetics. Born: March 16, 1947. Education: University of Connecticut, BS 1969; State University New York, Stony Brook, PhD 1973. Professional experience: NIH fellow, genetics, University of California, Davis, 1973–1974; assistant professor, biology, Department of Environmental Population and Organismic Biology, University of Colorado, Boulder, 1974, research associate insect behavior genetics, 1975-present. Societies: Genetics Society of America; Society for Study Evaluation, AAAS; Sigma X; Society Systemic Biology. Research: Processes of natural selection resulting in population structuring and geopraphic variation of gene frequencies, protein polymorphisms; multi-locus systems, human evolution.

Prestwich, Glenn Downes, Department of Chemistry, State University of New York at Stony Brook, Stony Brook, New York. Expertise: Organic chemistry, entomology. Born: November 29, 1948. Education: California Institute of Technology, BS 1970; Stanford University, PhD (chemistry) 1974. Professional experience: Research scientist, International Center for Insect Physiology and Ecology, Kenya, 1974–1975. NIH fellow, Cornell University, 1976–1977; assistant professor 1977–1982, associate professor, chemistry, State University New York, Stony Brook, 1982-present. Concurrent positions: Alfred P. Sloan research fellow, 1981–1983; Camille and Henry Dreyfus teacher scholar grant, 1981-present. Societies: American Chemical Society, AAAS, American Entomology Society; International Union Study Social Insects. Research: Termite chemical defense, specifically evolution, natural products and chemosystematics; termite lipid metabolism; chemical ecology; organic synthesis; insect juvenile hormone and steroid metabolism; new termiticides; synthetic organic and natural products chemistry; pheromone biochemistry.

Saylor, Gary S., Department of Microbiology, University of Tennessee, Knoxville, Tennessee. Expertise: Biochemisty, microbiology. Born: August 26, 1949. Education: North Dakota State University, BS 1971; University of Idaho, PhD (microbiology) 1974. Professional experience: Research technican, department of chemistry, North Dakota State University, 1970; research associate, North Dakota Water Resources Committee, Fargo, North Dakota, 1971; graduate teaching assistant, Department of Bacteriology and Biochemistry, University of Idaho, 1971–1973; postdoctoral research fellow, department of microbiology, University of Maryland, 1974–1975; assistant professor, Department of Microbiology and Graduate Program in Ecology, Environmental Toxicology Program, University of Tennessee, 1976–1980; associate professor, Department of Microbiology and Graduate Program in Ecology, Environmental Toxicology Program, University of Tennessee, 1980-present. Societies: American Society of Microbiology; American Association for the Advancement of Science; American Chemical Society; Society for Environmental Toxicology and Chemistry. Research: Biodegradation, plasmid evolution, and the ecological and toxicological impacts of environmental contaminants upon the structure and function of microbial communities.

Spacie, Anne, Department of Forestry and Natural Resources, Purdue University, West Lafayette, Indiana. Expertise: Limnology, Population Biology. Born: August 19, 1945. Education: Mt. Holyoke College, BA 1967; University of California, San Diego, MS 1969, Purdue University, PHD (Limnology) 1975. Professional experience: Researcher, aquatic biolgy, Union Carbine Corporation, 1969–1973; assistant professor, Liminology, Purdue University, 1975–present. Societies: American Fisheries Society; American Society Limnology and Oceanography; AAAS. Research: Accumulation and toxicity of synthetic organic compounds in fish and other acquatic organism:

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effects of stream modifications on water quality and the distribution of fishes.

Wang, Ching Chung, Department of Pharmaceutical Chemistry, School of Pharmacy, University of California, San Francisco, San Farancisco, California. Expertise: biochemistry, parasitology. Born: February 10, 1936. Education: National Taiwan University, BS 1956; University of California, Berkeley, PhD (biochemistry) 1966. Professional experience: Fellow, biochemistry, College of Physicians and Surgeons, Columbia University, 1966–1967; research associate, Princeton University, 1967–1969; senior research biochemist, Merck Institute Theraputic Research, 1969–1972, research fellow, 1972–1975, senior research fellow, 1975–1978, senior investigator, 1978–1981; professor of chemistry and pharmaceutical chemistry, department of pharmaceutical chemistry, School of Pharmacology, University of California, San Francisco, 1981-present. Awards: Burrough Wellcome Molecular Prasitol Award, 1983. Societies: American Society of Biological Chemists. Research: Biochemistry and development of protozoan parasites; invertebrate neurobiology; antiparasitic chemotherapy.

Wilkinson, Christopher F., Director, Institute for Comparative and Environmental Toxicology, Cornell University, Ithaca, New York. Expertise: Entomology. Born: February 9, 1938. Educational background: University of Reading, BS 1961; University of California, Riverside, PhD (entomology) 1965. Professional experience: United Kingdom Civil Service Commission, senior resident fellow, insecticide chemistry, Pest Infestation Lab., Agricultural Research Council, England, 1965–1966; from assistant professor to associate professor, 1966–1978; professor of insect toxicology, Cornell University, 1979–present. Societies; Society of Toxicologists; Entomological Society of America; Chemical Society; British Biochemistry Society. Research: structure-activity relationships and mode of action of synergists; biochemistry; comparatiave biochemistry of microsomal drug metobolism.

Dated: May 11, 1987.

John A. Moore,

*Assistant Administrator for Pesticides, and Toxic Substances.*

[FR Doc. 87–11475 filed 5–19–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket 86–285; MM Docket 86–286]

### Low Power Television and Television Translator Filing Window From June 22 Through July 2, 1987.

Released: May 18, 1987.

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Notice of Filing Window.

**SUMMARY:** This action gives notice of an application filing window for the tendering of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. The notice sets forth filing procedures including when and where to file and the applicable application form to be used, and information concerning application filing fees. This item is related to Commission actions in Gen. Docket 86–285, 2 FCC Rcd 947 (1987), and MM Docket 86–286 (1987).

**EFFECTIVE DATE:** June 22, 1987 through July 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau, (202) 632–3894.

**SUPPLEMENTARY INFORMATION:**

Commencing on June 22, 1987, and continuing to and including July 2, 1987, the Commission will permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations at the below specified locations only. Applications filed before June 22nd will not be accepted.

No more than five (5) applications for new low power television or television translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one percent (1%) or greater in any applicant(s) filing in the June 22nd—July 2nd, 1987 window. This restriction does not apply to major change applications.

All applications must be "complete and sufficient" when tendered for filing, in accordance with § 73.3564 of the Commission's rules. As noted below, a fee of $375.00 must accompany each application. Further, applicants filing during this window period *MUST* use the May 1987 edition of FCC Form 346. See 52 FR 15764 (April 30, 1987). All applications filed on obsolete editions will be returned as defective and unacceptable for filing. FCC Form 346 can be obtained from the FCC's Operations Support Division, Services and Supply Branch, Room B–10, 1919 M Street, NW., Washington, DC 20554, telephone number (202) 632–7272.

To accommodate the cash management procedures established by the Deficit Reduction Act of 1984, the Commission will utilize in this window application filing process the facilities of a Treasury Department lockbox bank. Window application filings can be made, either by mail or by person, at the following locations *ONLY*:

If mailed—Federal Communications Commission, Low Power Television Window Filing, P.O. Box 371995M, Pittsburgh, PA 15250–7995.

If hand-delivered—Federal Communications Commission, Low Power Television Window Filing, Foster Plaza Building #4, 501 Holiday (Inn) Drive, Pittsburgh, PA 15220.

Hand-carried or couriered applications can be delivered daily at the above location during normal business hours (8:30 a.m. to 5:00 p.m.). Detailed instructions to get to this location are included in this Public Notice as Attachment I. Submissions tendered after close of business (5:00 p.m.) on Thursday, July 2, 1987, will not be accepted. Mailed applications must be actually received no later than July 2nd. Window application filings WILL NOT be accepted at the offices of the Federal Communications Commission in Washington, DC.

An original and two copies of the application and all required exhibits must be filed. To facilitate the initial processing of these applications, all applicants are requested to enclose in a single envelope the original and duplicate copies of the application, with each duplicate copy clearly denoted as such by the applicant. Where more than one new station or major change application is being filed, separate envelopes enclosing the individual application (*i.e.*, an original and two copies) can be mailed in a single package. Receipts or "return copy" applications cannot be furnished by the lockbox bank facility for mailed window application filings. However, for hand-carried or couriered applications delivered to the Foster Plaza Building #4 location, bank personnel, if requested in person, will date stamp as received a proffered copy of the application and return it to the requestor.

Generally, applicants seeking to construct a new low power television or television translator station or to make a major change in the facilities of an existing low power television or television translator station are required

to pay a filing fee. A separate fee payment of $375.00, attached to each original application, must be submitted for each new station or major change application filed during this window; a single fee payment for multiple applications will *not* be accepted. Payment of the required fee can be made by check, bank draft or money order payable to the Federal Communications Commission.

Applications submitted with insufficient payments or without any payments will be dismissed and returned, along with the insufficient payment, to the applicant without processing. See § 1.1107 of the Commission's rules. Following the fee review process, applications that are found to be patently defective, not "complete and sufficient," filed on an obsolete edition of FCC Form 346, or received by mail prior to the opening or after the closing of the filing window will be rejected and returned to the applicant. A refund of the application filing fee will *not* be made in these instances. See §§ 1.1108 and 1.1111 of the Commission's rules.

Governmental entities are exempt from the $375.00 filing fee. As defined by § 1.1112(f) of the Commission's rules, governmental entities include "any possession, state, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs." Also exempted from this fee are noncommercial educational FM and full service television broadcast station licensees seeking to make major changes in the facilities of their existing low power television or television translator stations or to construct new low power television or television translator stations, provided those stations operate or will be operated on a noncommercial educational basis. Exempt applicants MUST file a certification with their applications, briefly describing the nature of their claimed exemption. To aid the fee review process, such certifications should be clearly identified, preferably in a transmittal letter or on the first page of the application. See § 1.1112 of the Commission's rules.

For further information concerning the filing window, contact Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau at telephone number (202) 632–3894.

Federal Communications Commission.
William J. Tricarico,
*Secretary.*

**Directions to Federal Communications Commission, Low Power Television Window Filing Location, June 22, 1987–July 2, 1987**

The courier delivery (over the counter) service for the Federal Communications Commission's Low Power Television Window Filing will be available from 8:30 a.m. to 5:00 p.m., Monday, June 22nd, through Thursday, July 2nd, 1987, at the following address:

Federal Communications Commission, Low Power Television Window Filing, Foster Plaza Building #4, 501 Holiday (Inn) Drive, Pittsburgh, PA 15220.

From the Greater Pittsburgh International Airport:

- Proceed east on the Parkway (Interstate 376)
- Take the "*Route 121—Green Tree/Mt. Lebanon*" exit, *Exit 4*
- Stay in the *left lane* of the exit ramp and turn *left*, at the traffic light, onto *Greentree Road*
- At the following traffic light, turn *left* onto *Mansfield Road* (Follow the signs for Holiday (Inn) Drive.)
- Proceed down the hill and continue straight through the next intersection (traffic light)
- Continue down the hill to the next traffic light (This will be the Holiday (Inn) Drive intersection.)
- Turn *right* onto *Holiday (Inn) Drive* and proceed up the hill (A Holiday Inn will be on the left.)
- Enter the *fifth (5th) drive* on the right for the *Foster Plaza Building #4* (D–B sign is on its roof.) There will be a Mellon Bank 24 Hour Banking Machine sign at the drive entrance. Parking lots surround the building.
- Enter the front of the building and follow the signs to the designated area

From downtown Pittsburgh:

- Proceed west on the Parkway (Interstate 376) through the Fort Pitt Tunnels
- Take the "*Green Tree/Crafton*" exit, *Exit 7*
- Stay in the *left lane* of the exit ramp (overhead signs marked "Crafton")
- At the stop sign at the end of the ramp, turn *left* onto *Mansfield Road*
- Proceed down the hill and continue straight through the next intersection (traffic light)
- Continue down the hill to the next light (This will be the Holiday (Inn) Drive intersection.)
- Turn *right* onto *Holiday (Inn) Drive* and proceed up the hill (A Holiday Inn will be on the left.)
- Enter the *fifth (5th) drive* on the right for the *Foster Plaza Building #4* (D–B sign is on its roof.) There will be a Mellon Bank 24 Hour Banking Machine sign at the drive entrance. Parking lots surround the building.
- Enter the front of the building and follow the signs to the designated area.

[FR Doc. 87–11516 Filed 5–19–87; 8:45 am]
BILLING CODE 6712–01–M

**Applications for Consolidated Hearing; Broadcast West Associates et al.**

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant and city/state | File No. | MM Docket No. |
|---|---|---|
| A. Broadcast West Associates; Central Valley, CA. | BPH-850711ME | 87-123 |
| B. Richard P. Bott II; Central Valley, CA. | BPH-850711MG | |
| C. Mount Shasta Broadcasting Company, A Limited Partnership; Central Valley, CA. | BPH-850711MH | |
| D. Jeffrey Broadcasting Corporation; Central Valley, CA. | BPH-850712MI | |
| E. Lola Jean Broadcasting, A California Limited Partnership; Central Valley, CA. | BPH-850712MJ | |
| F. Happy Valley Telephone Company; Central Valley, CA. | BPH-850712MM | |
| G. Axell Broadcasting; Central Valley, CA. | BPH-850712MN | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Financial Qualifications, E
2. Air Hazard, F, G
3. Environmental Impact, C, D
4. Comparative, All
5. Ultimate, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M

Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800.)

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–11507 Filed 5–19–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Cablevision of Crisfield et al.

The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant and city/state | File No. | MM Docket No. |
|---|---|---|
| A. Benchmark Cable Fund Limited Partnership, d/b/a Cablevision of Crisfield; Crisfield, MD. | BPH-851231ZZ | 87–137 |
| B. Leigh Sandoz Lavernier; Crisfield, MD. | BPH-860123 MX | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, B
2. Comparative, A,B
3. Ultimate, A,B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass media Bureau.*

[FR Doc. 87–11506 Filed 5–19–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Empire State Broadcasting Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

| Applicant and city state | File No. | MM Docket No. |
|---|---|---|
| A. Empire State Broadcasting Corporation; Buffalo, NY. | BR-840210WO | 87–110 |
| B. Bursam Communications Corporation; Mineola, NY. | BP-840430AC | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding hearings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

*Issue Heading and Applicant(s)*

1. (See Appendix), A
2. 307(b), All applicants
3. Contingent Comparative, All applicants
4. Ultimate, All Applicants

3. If there is any non-standarized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

### Appendix

To Determine Whether Applicant A (Empire State Broadcasting) is entitled to a renewal expectancy

[FR Doc. 87–11508 Filed 5–19–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Susan H. Kincannon et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, City, and State | File No. | MM Docket No. |
|---|---|---|
| A. Susan H. Kincannon; Appomattox, VA. | BPH-850709MH | 87–138 |
| B. Louis McAuslan; Appomattox, VA. | BPH-850709ML | |
| C. Appomattox Radio Partners, Inc.; Appomattox, VA. | BPH-850711PG | |
| D. William Stephen Gotchey; Appomattox, VA. | BPH-850712EI | |
| E. Elaine C. Eicher; Appomattox, VA. | BPH-850712ZH | |
| F. Home Town Broadcasting, Inc.; Appomattox, VA. | BPH-850712ZI | |
| G. Maranatha Broadcasting Co., Inc.; Appomattox, VA. | BPH-850712GZJ | |
| H. J. Scott Broadcasting; Appomattox, VA. | BPH-850712ZK | |
| I. James A. Pounds; Appomattox, VA. | BPH-850712GZ | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, E
2. Comparative, A11
3. Ultimate, A11

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800.)

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–11509 Filed 5–19–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Northern Arizona Radio Ltd. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, City, and State | File No. | MM Docket No. |
|---|---|---|
| A. Richfam Arizona Radio Limited Partnership, Pinetop, AZ. | BPH-860712IM | 87-126 |
| B. New Life Christian Services Association, Pinetop, AZ. | BPH-860712IS | |
| C. Philip D. Vandehoef, Pinetop, AZ. | BPH-860712IT | |
| D. Barbara J. Masovich, Pinetop-Lakeside, AZ. | BPH-860712IU | |
| E. D&M Communications, Inc., Pinetop, AZ. | BPH-860712IW | |
| F. Patricia Ann Sears, Pinetop, AZ. | BPH-860712IX | |
| G. Pinetop Partners, Inc., Pinetop, AZ. | BPH-860712IY (Dismissed) | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 28, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicants*

1. Main Studio, A
2. Site Availability, E
3. Air Hazard, C, F
4. Environmental, ALL
5. Comparative, ALL
6. Ultimate, ALL

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to the Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87-11510 Filed 5-19-87; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OBM for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3001; et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC. 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the Federal Register in which this notice appears.

### Summary of Item Submitted for OMB Review, 46 CFR Parts 518, 559, and 572

FMC requests clearance of a final rule amendment to add a new section 7 to 46 CFR Part 559 (for marine terminal agreements). The rule exempts marine terminal agreements from section 15, Shipping Act, 1916, approval requirements provided they are filed with the Commission with an original and 15 copies, along with a letter of transmittal which includes information specified therein.

The informational filing requirement and subsequent Federal Register publication by the Commission will provide interested parties with information necessary for filing 1916 Act protests or complaints with the Commission.

Potential respondent universe is marine terminal operators and common carriers entering into agreements with them. The Commission estimates a respondent universe of 11 with total estimated annual manhour burden of 220. Total estimated cost to the Federal Government is approximately $1,150; total estiamted cost to respondents is approximately $5500.

Joseph C. Polking

*Secretary.*

[FR Doc. 87-11404 Filed 5-19-87; 8:45 am]

BILLING CODE 6730-01-M

## Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW, Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224-011099.

*Title:* Marine Terminal Operator Advisory Commission Study Agreement.

*Parties:*

Shippers Stevedoring Co.
Clark Maryland Terminals, Inc.
Long Beach Container Terminal, Inc.
Palmetto Shipping & Stevedoring Co., Inc.
Ceres Terminals, Inc.
Southeast Stevedoring Corp.
Stevedoring Services of America
Lavino Shipping Co.
Transocean Terminal Operators
Young & Co.
Maher Terminals, Inc.
Global Terminal & Container Service, Inc.
International Terminal Operating Co., Inc.
Metropolitan Stevedore, Co.
International Transportation Services, Inc.
New Haven Terminal, Inc.
Copper/T. Smith Corp.
Maersk Container Service Co.
Southeast Atlantic Cargo Operators, Inc.
Universal Maritime Service Corp.
Bernard S. Costello, Inc.
Ryan-Walsh Stevedoring Co.
John J. Orr & Son, Inc.
Marine Terminals Corp.
Detroit Marine Terminals, Inc.

*Synopsis:* The proposed agreement would permit parties to discuss matters addressed by section 18 of the Shipping Act of 1984 and to submit data, information and industry positions and concerns about the Act to the Federal Maritime Commission. The agreement allows any other privately owned marine terminal to become a party to the agreement. The parties have requested shortened review.

*Agreement No.:* 224-011100.

*Title:* Port Everglades Terminal Agreement.

*Parties:* Port Everglades Authority and South Atlantic Cargo Shipping N.V.

*Synopsis:* The proposed agreement would provide for preferential berthing rights and volume and incentive discount rates for the use of Port Everglade's facilities.

*Agreement No.:* 224-011101.

*Title:* Port of Long Beach Stevedor and Terminal Agreement.

*Parties:* Container Stevedoring Co., Inc. (Stevedoring Co.) Senator Linie.

*Synopsis:* The proposed agreement permits Stevedoring Co. to provide or arrange to have provided to Senator Linie terminal services as specified in this Agreement and Appendices. As consideration, Senator Linie agrees to compensate Stevedoring Co. in accordance with the provisions of the rate schedule(s) set forth in Appendix I of this agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: May 15, 1987.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87-11443 Filed 5-19-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### President's Advisory Committee on Mediation and Conciliation; Meeting

Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the President's Advisory Committee on Mediation and Conciliation will be held on Tuesday, June 9, 1987 from 9:00 a.m. to 5:00 p.m., Wednesday, June 10, 1987 from 9:00 a.m. to 5:00 p.m. and Thursday, June 11, 1987 from 9:00 a.m. to 5:00 p.m., at the Hyatt Regency Hotel, Skyway Meeting Room #288, 151 East Wacker Drive, Chicago, Illinois 60601.

The purpose of the meeting is to obtain the views of representatives of labor and management, and other qualified individuals, with regard to labor-management goals and objectives expected to be achieved within a period of five years. A hearing procedure will be followed in which the views of witnesses will be transcribed for the record.

The meeting will be open to the public. Interested persons may file written statements with the Committee, and subject to reasonable Committee procedures may also make oral statements on matters germane to subjects under consideration at the meeting.

Further information regarding this meeting may be obtained from Mr. Dennis R. Minshall, Executive Director, President's Advisory Committee on Mediation and Conciliation, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, or call (202) 653-5290.

Dated: May 14, 1987.

Kay McMurray,

*Director, Federal Mediation and Conciliation Service.*

[FR Doc. 87-11473 Filed 5-19-87; 8:45 am]

BILLING CODE 6370-01-M

## FEDERAL RESERVE SYSTEM

### Lizton Financial Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to change *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lizton Financial Corporation*, Lizton, Indiana; to engage de novo through its subsidiary, Schorling & Associates, Inc., Lizton, Indiana, in data processing services and management consulting advice pursuant to §§ 225.25(b)(7) and (b)(11) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Valley Capital Corporation*, Las Vegas, Nevada; to engage *de novo* through its subsidiary, Valley Electronic Services, Inc., Las Vegas, Nevada, in data processing and transmission services and the issuance of retail money orders and similar consumer-type payment instruments pursuant to §§ 225.25(b)(7) and (b)(12) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 14, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11445 Filed 5-19-87; 8:45 am]

BILLING CODE 6210-01-M

### Susquehanna Bancshares, Inc., et al.; Formation of; Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 11, 1987.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Susquehanna Bancshares, Inc.*, Lititz, Pennsylvania; to acquire 100 percent of the voting shares of Spring Grove National Bank, Spring Grove, Pennsylvania.

B. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *D.S.B. Bankshares, Inc.*, Randolph, Wisconsin; to become a bank holding company by acquiring at least 80 percent of the voting shares of Dairymans State Bank, Randolph, Wisconsin.

2. *Firstbank Corp.*, Alma, Michigan; to acquire 100 percent of the voting shares of Comerica Bank—Central, Shepher, Michigan, and Comerica Bank—West Branch, N.A., West Branch, Michigan.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota, 55480:

1. *Fillmore County Bancshares, Inc.*, Canton, Minnesota; to become a bank holding company by acquiring 97.4 percent of the voting shares of Canton State Bank, Canton, Minnesota.

Board of Governors of the Federal Reserve System, May 14, 1987.

James McAfee,

*Associate Secretary of the Board*

[FR Doc. 87-11446 Filed 5-19-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87F-0150]

### Ciba-Geigy Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of dimethyl succinate polymer with 4-hydroxy-2,2,6,6,-tetramethyl-1-piperidineethanol as a stabilizer for olefin polymers and ethylene-vinyl acetate copolymers complying with 21 CFR 177.1520 and 21 CFR 177.1350, respectively.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(B)(5))), notice is given that a petition (FAP 7B3991) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of dimethyl succinate polymer with 4-hydroxy-2,2,6,6-tetramethyl-piperidineethanol as a stabilizer for olefin polymers and ethylene-vinyl acetate copolymers complying with 21 CFR 177.1520 and 21 CFR 177.1350, respectively.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 11, 1987.

Richard J. Ronk,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-11452 Filed 5-19-87; 8:45 am]

BILLING CODE 4160-01-M

### Advisory Committee; Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

*Technical Electronic Product Radiation Safety Standards Committee*

*Date, time, and place.* June 22, 10 a.m. and June 23, 8:30 a.m., Rm. 416-418, Twinbrook Bldg., 12720 Twinbrook Parkway, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, June 22, 10 a.m. to 11 a.m.; open committee discussion, 11 a.m. to 5 p.m.; open committee discussion, June 23, 8:30 to 12 m.; Arlene R. Underdonk, Center for Devices and Radiological Health (HFZ-83), Food and Drug Administration, 12720 Twinbrook Parkway, Rockville, MD 20857, 301-443-3426.

*General function of the committee.* The committee provides advice and consultation to the Commissioner of Food and Drugs on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products, and may recommend electronic product radiation safety standards to the Commissioner for his consideration.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 12, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss draft amendments to the performance standard for diagnostic x-ray systems and their major components (21 CFR 1020.30, 1020.31, and 1020.32) and receive an update on the progress of other retrospective reviews of performance standards.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion, whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guidelines (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives

of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's pubic administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFW-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (FHA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 14, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-11453 Filed 5-19-87; 8:45 am]

BILLING CODE 4160-01-M

## Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Atlanta District Office, chaired by John H. Turner, District Director. The topics to be discussed are health messages on food labels and cholesterol labeling.

DATE: Tuesday, May 26, 1987, 11 a.m. to 1 p.m.

ADDRESS: South Fulton Government Annex, 5600 Stonewall Tell Rd., Atlanta, GA 30329.

FOR FURTHER INFORMATION CONTACT: Carolyn Hommel, Consumer Affairs Officer, Food and Drug Administration, 60 8th St. NE., Atlanta, GA 30309, 404-347-7355.

Atlanta District Office, chaired by John H. Turner, District Director. The topics to be discussed are health messages on food labels and cholesterol labeling.

DATE: Wednesday, May 27, 1987, 11 a.m. to 1 p.m.

ADDRESS: North Fulton Government Annex, 7741 Roswell Rd. NE., Atlanta, GA 30338.

FOR FURTHER INFORMATION CONTACT: Carolyn Hommel, Consumer Affairs Officer, Food and Drug Administration, 60 8th St. NE., Atlanta, GA 30309. 404-347-7355.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: May 14, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-11454 Filed 5-19-87; 8:45 am]

BILLING CODE 4160-01-M

## Public Health Service

## National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Wednesday, June 3, 1987 from 1:30 p.m. to 5:00 p.m., Thursday, June 4, 1987 from 9:00 a.m. to 5:00 p.m. and Friday, June 5, 1987 from 9:00 a.m. to 1:00 p.m. in Room 703A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Committee will receive reports from each of its Subcommittees and may address new business as appropriate.

Further information regarding this meeting of the Committee may be obtained by contacting Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: May 7, 1987.

Robert A. Israel,

*Deputy Director, National Center for Health Statistics.*

[FR Doc. 87-11483 Filed 5-19-87; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[CA-050-07-4351-12]

## Availability of Draft Management Plan Amendment, Shasta River Salmon Spawning Area of Critical Environmental Concern (ACEC); and Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft plan amendment and environmental assessment.

DATE: Comments will be accepted until July 20, 1987.

SUMMARY: The intent of this amendment is to establish a portion of the Shasta River as an area of critical environmental concern (ACEC) for the protection of Chinook salmon, which spawn in this area. Management as an ACEC would require a Plan of Operations for gold dredging with dredges larger than three inches and a 50 foot "no disturbance" buffer strip above and below each weir constructed in the river to hold spawning gravel. Comments should be sent to: Robert J. Bainbridge, Redding Resource Area Manager, Bureau of Land Management, Redding Area Office, 355 Hemsted Drive, Redding, CA 96002, 916-246-5325.

Dated: May 7, 1987.
Robert J. Beimbridge,
*Area Manager, Redding Resource Area.*
[FR Doc. 87-11457 Filed 5-19-87; 8:45 am]
BILLING CODE 4310-40-M

[NM-930-87-4220-10; NM NM-35529]

## New Mexico; Withdrawal of Lands Under Section 2 of the Military Lands Withdrawal Act of 1986, McGregor Range

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Pub. L. 99-606 (H.R. 1790) dated November 6, 1986, the lands, described in paragraph 2 of this Notice, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws and the mineral leasing laws and the geothermal leasing laws, subject to prior existing rights, and are reserved for training, weapons testing, and other defense related purposes by the Secretary of the Army, for the McGregor Range.

**FOR FURTHER INFORMATION CONTACT:** Kay Thomas, BLM, New Mexico State Office, 505-988-6589.

New Mexico Principal Meridian

T. 26 S., R. 6 E.,
Sec. 1, N½SE¼ lying south and east of the Southern Pacific Railway right-of-way;
Sec. 25, S½N½, and E½SE¼;
Sec. 26, S½NE¼, and S½SE¼;
Sec. 35, N½NE¼;
Sec. 36, lots 5, 6, 7, 8, and N½N½.
T. 24 S., R. 7 E.,
Secs. 1, 12, 13, 14, and 23, those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 24, and 25;
Secs. 26, 27, and 34, those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 35, and 36.
T. 25 S., R. 7 E.,
Secs. 1, and 2;
Sec. 3, E½ and that part of the W½ lying east of the Southern Pacific Railway right-of-way;
Secs. 4, and 9, those parts lying east of the Southern Pacific right-of-way;
Secs. 10 to 14, inclusive;
Sec. 16, that part lying east and south of the Southern Pacific Railway right-of-way;
Sec. 20, NE¼NE¼;
Sec. 21, NW¼NW¼;
Sec. 23;
Sec. 24, N½, SW¼, E½SE¼, and SW¼SE¼;
Secs. 25 to 27, inclusive;
Sec. 28, S½S½;
Sec. 30, that part lying east of the Southern Pacific Railway right-of-way;
Sec. 31, lots 5, 6, and 7;
Sec. 32, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 34, lots 1, 2, NE¼, and N½SE¼;
Sec. 35, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 36, lots 1, 2, 3, 4, N½, and N½S½.
T. 26 S., R. 7 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, S½NE¼, and SE¼;
Sec. 4, lots 3, 6, and SE¼NW¼;
Sec. 10;
Sec. 11, E½, and NW¼;
Secs. 12, and 13;
Sec. 14, E½, and SW¼;
Sec. 15, NE¼, N½NW¼, SE¼NW¼, and SW¼SW¼;
Secs. 16, and 17;
Sec. 18, lots 3, 4, E½, and E½SE¼;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 23 to 28, inclusive;
Sec. 29, N½;
Sec. 30, lots 1, 2, NE¼, and E½NW¼;
Sec. 31, lots 2, 3, 4, and 5;
Sec. 32, lots 1, 2, 3, 4, and N½N½;
Sec. 33, lots 1, 2, 3, 4, and N½N½;
Sec. 34, lots 1, 2, 3, 4, and N½N½;
Sec. 35, lots 1, 2, 3, 4, and N½N½;
Sec. 36, lots 1, 2, 3, 4, and N½N½;
T. 22 S., R. 8 E.,
Secs. 13, 23, and 24, those parts lying east of the Southern Pacific Railway right-of-way;
Sec. 25, lots 1 to 16, inclusive;
Sec. 26, lots 1, 2, 6, and that part of S½ lying east of the Southern Pacific Railway right-of-way;
Secs. 34, and 35, those parts lying east of the Southern Pacific Railway right-of-way;
Sec. 36.
T. 23 S., R. 8 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Secs. 3, 9, and 10, those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 11 to 15, inclusive;
Secs. 16, 20, and 21, those parts lying east and south of the Southern Pacific Railway right-of-way;
Secs. 22 to 28, inclusive;
Secs. 29, 31, and 32, those parts lying east and south of the Southern Pacific Railway right-of-way;
Secs. 33 to 36, inclusive.
T. 24 S., R. 8 E.,
Sec. 1, lots 1, 2, 3, 4, SE¼NE¼, S½NW¼, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Secs. 6, and 7, those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 8 to 14, inclusive;
Sec. 15, N½, N½S½, SE¼SW¼, and S½SE¼;
Secs. 16, and 17;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32 to 36, inclusive.
T. 25 S., R. 8 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32 to 36, inclusive.
T. 26 S., R. 8 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 28, inclusive;
Sec. 27, E½, E½W½, W½NW¼, and NW¼SW¼;
Sec. 28, N½N½, NE¼SW¼, and NW¼SE¼;
Sec. 29, N½, N½S½, S½SW¼, and SW¼SE¼;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1 to 5, inclusive, N½NE¼, and NE¼NW¼;
Sec. 33, lot 4, and NW¼NW¼;
Sec. 34, N½NE¼, and NE¼NW¼;
Sec. 35, lots 1, 2, 3, 4, and N½N½;
Sec. 36, lots 1, 2, 3, 4, and N½N½.
T. 19 S., R. 9 E.,
Sec. 2, lots 1 to 12, inclusive, and S½;
Secs. 3, and 10, all those parts lying east of the Southern Pacific Railway right-of-way;
Sec. 11, W½;
Sec. 12, E½;
Secs. 13, and 14;
Secs. 15, and 22, all those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 23 to 26, inclusive;
Secs. 27, and 34, all those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 35, and 36.
T. 20 S., R. 9 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Secs. 3, and 10, those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 11 to 14, inclusive;
Secs. 15, and 21, those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 22 to 27, inclusive;
Secs. 33, and 33, those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 34 to 36, inclusive.
T. 21 S., R. 9 E.,
Sec. 1, lots 1 to 12, inclusive, and S½;
Sec. 2, lots 1 to 8, inclusive, 10, 11, 12, and S½;
Sec. 3, lots 1 to 12, inclusive, and S½;
Secs. 4, and 9, those parts lying east of the Southern Pacific Railway right-of-way;

Secs. 10 to 15, inclusive;
Sec. 18, E½;
Sec. 21, that part lying east of the Southern Pacific Railway right-of-way;
Secs. 22 to 25, inclusive;
Sec. 26, NE¼, W½, N½SE¼, and SE¼SE¼;
Sec. 27;
Secs. 28, 32, and 33, those parts lying east of the Southern Pacific Railway right-of-way;
Sec. 34, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 35, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 36, lots 1, 2, 3, 4, N½, and N½S½.

T. 22 S., R. 9 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Secs. 5, 7, and 8, those parts lying east of the Southern Pacific Railway right-of-way;
Secs. 9 to 14, inclusive;
Sec. 15, E½, E½NW¼, NW¼NW¼, and SW¼;
Secs. 16, and 17;
Sec. 18, that part lying east of the Southern Pacific Railway right-of-way;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20, and 21;
Sec. 22, E½;
Secs. 23 to 26, inclusive;
Sec. 27, E½;
Secs. 28, and 29;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32, and 33;
Sec. 34, E½;
Secs. 35, and 36.

T. 23 S., R. 9 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, S½NE¼, and SE¼;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 8;
Sec. 9, W½NE¼, and W½;
Sec. 10, E½, NW¼NW¼, SE¼NW¼, and SW¼;
Secs. 11 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½
Secs. 20 to 22 inclusive;
Sec. 23, N½, SW¼, E½SE¼, and SW¼SE¼;
Secs. 24 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32 to 36, inclusive.

T. 24 S., R. 9 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½ and E½W½;
Secs. 8 to 11, inclusive;
Sec. 12, E½, E½W½, W½NW¼, and NW¼SW¼;
Secs. 13 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½ and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32 to 36, inclusive.

T. 25 S., R. 9 E.
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8 to 10, inclusive;
Sec. 11, W½NE¼, SE¼NE¼, W½, and SE¼;
Sec. 12, SW¼SW¼;
Secs. 13 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 26, inclusive;
Sec. 27, W½NE¼, SE¼NE¼, W½, and SE¼;
Secs. 28, and 29;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32 to 36, inclusive.

T. 26 S., R. 9 E.,
Sec. 1, NE¼, W½, and W½SE¼;
Secs. 2 to 4, inclusive;
Sec. 5, E½;
Sec. 6, lots 1, 2, 3, 4, and E½W½;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8 to 16, inclusive;
Sec. 17, N½, and SW¼;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 20, W½;
Sec. 21, E½, and SW¼;
Secs. 22, and 23;
Sec. 24, N½, N½S½, SE¼SW¼, and S½SE¼;
Secs. 25 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1 to 5, inclusive, N½NE¼, and NE¼NE¼;
Sec. 32, lots 1, 2, 3, 4, and N½N½;
Sec. 33, lots 1, 2, 3, 4, and N½N½;
Sec. 34, lots 1, 2, 3, 4, and N½N½;
Sec. 35, lots 1, 2, 3, 4, and N½N½;
Sec. 36, lots 1, 2, 3, 4, and N½N½.

T. 19 S., R. 10 E.,
Sec. 7, W½, and S½SE¼;
Sec. 8, SW¼SW¼;
Sec. 9, SW¼;
Sec. 10, E½;
Sec. 11;
Sec. 12, W½ (unsurveyed);
Sec. 13, lots 1, 2, 3, 4, and W½;
Sec. 14, NE¼, and S½;
Secs. 15, and 16;
Sec. 17, W½W½;
Secs. 18 to 22, inclusive;
Sec. 23, E½, and SW¼;
Sec. 24, lots 1, 2, 3, 4, and W½;
Sec. 25, lots 1, 2, 3, 4, and W½;
Secs. 26 to 34, inclusive;
Sec. 36, lots 1, 2, 3, 4, and W½;

T. 20 S., R. 10 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 6, inclusive, S½NE¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, and E½;
Secs. 8, and 9;
Secs. 11 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, and E½;
Sec. 19, lots 1, 2, 3, 4, and E½;
Secs. 22 to 27, inclusive;
Sec. 30, lots 1, 2, 3, 4, and E½;
Secs. 31 to 36, inclusive.

T. 21 S., R. 10 E.,
Sec. 1, lots 1 to 12, inclusive, and S½;
Sec. 2, lots 1 to 12, inclusive, and S½;
Sec. 3, lots 1 to 12, inclusive, and S½;
Sec. 4, lots 1 to 12, inclusive, and S½;
Sec. 5, lots 1 to 12, inclusive, and S½;
Sec. 6, lots 1 to 21, inclusive, and SE¼;
Sec. 7, lots 1 to 12, inclusive, and E½;
Secs. 8 to 14, inclusive;
Sec. 15, SE¼;
Secs. 16, and 17;
Sec. 18, lots 1 to 12, inclusive, and E½;
Sec. 19, lots 1 to 12, inclusive, and E½;
Secs. 20 to 22, inclusive;
Sec. 23, N½, SW¼, and N½SE¼;
Secs. 24, and 25;
Sec. 26, W½NE¼, W½, and SE¼;
Secs. 27 to 29, inclusive;
Sec. 30, lots 1 to 12, inclusive, and E½;
Sec. 31, lots 1 to 14, inclusive, and NE¼, and N½SE¼;
Sec. 32, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 33, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 34, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 35, lots 1, 2, 3, 4, N½, and N½S½;
Sec. 36, lots 1, 2, 3, 4, N½, and N½S½.

T. 22 S., R. 10 E.,
Sec. 1, lots 5 to 12, inclusive, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 5 to 12, inclusive, and S½;
Sec. 4, lots 1 to 12, inclusive, and S½N½;
Sec. 5, lots 1, 2, 3, 4, and S½N½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 8;
Sec. 9, lots 1 to 16, inclusive;
Secs. 10 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 5 to 12, inclusive, NE¼, and E½NW¼;
Sec. 20, lots 1 to 15, inclusive;
Sec. 21, lots 1 to 8, inclusive, and E½;
Secs. 22 to 29, inclusive;
Sec. 30, lots 5 to 20, inclusive;
Sec. 31, lots 5 to 20, inclusive;
Secs. 32 to 36, inclusive.

T. 23 S., R. 10 E.,
Sec. 1, lots 1, 2, 3, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, N½NE¼, SW¼NE¼, E½W½, and SE¼;
Sec. 20, N½NE¼, SW¼NE¼, W½, and SE¼;
Secs. 21 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32, and 33;

Sec. 34, E½, E½SW¼, NW¼SW¼, and W½SW¼;
Secs. 35, and 36.
T. 24 S., R. 10 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 5 to 20, inclusive;
Sec. 4, lots 5 to 20, inclusive;
Sec. 5, lots 3 to 8, inclusive, S½NW¼, and S½;
Sec. 6, lots 1, 2, 3 to 13, inclusive, S½NE¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8, and 9;
Sec. 10, E½, W½NW¼, and SW¼;
Sec. 11, lots 1 to 16, inclusive;
Sec. 12, lots 1, 2, 3, 4, E½, and NW¼;
Sec. 13, lots 1 to 16, inclusive;
Secs. 14 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 23, inclusive;
Sec. 24, lots 1 to 16, inclusive;
Sec. 25, lots 1 to 16, inclusive;
Secs. 26 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 32, E½, W½NW¼, SE¼NW¼, and SW¼;
Secs. 33 to 36, inclusive.
T. 25 S., R. 10 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 8, SW¼;
Sec. 9, S½;
Sec. 10, S½S½;
Sec. 11, All;
Secs. 12, and 13;
Sec. 14, E½SW¼, NW¼SW¼, and SE¼;
Secs. 15, 16, and 17;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20, 21, and 22;
Sec. 23, E½E½, NW¼NE¼, and W½SE¼;
Sec. 24, N½, and SW¼;
Sec. 25, E½, and S½SW¼;
Secs. 27, 28, and 29;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32, and 33;
Sec. 34.
T. 26 S., R. 10 E.,
Secs. 2, to 5, inclusive;
Sec. 6, lots 1, 2, E½, and E½W½;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8, and 9;
Sec. 10, NW¼;
Sec. 16, N½, and SW¼;
Sec. 17;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 20;
Sec. 21, NW¼;
Sec. 29, N½, and SW¼;
Sec. 30, lot 1, NE¼, and NE¼NW¼;
Sec. 32, lots 3, 4, and N½NW¼.
T. 20 S., R. 11 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 8, SW¼;
Sec. 9, S½;
Sec. 10, S½S½;
Sec. 11, All;
Secs. 12, and 13;
Sec. 14, E½SW¼, NW¼SW¼, and SE¼;
Secs. 15, 16, and 17;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 23, inclusive;
Sec. 24, N½, and SW¼;
Sec. 25, E½, and S½SW¼;
Secs. 27, 28, and 29;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32, and 33;
Sec. 34.
T. 21 S., R. 11 E.,
Sec. 1, lots 1 to 12, inclusive, and S½;
Sec. 2, lots 1 to 12, inclusive, and S½;
Sec. 3, lots 1 to 12, inclusive, and S½;
Sec. 6, lots 1 to 14, inclusive, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 20;
Secs. 25 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½S½;
Sec. 32, lots 1, 2, 3, 4, E½, and E½S½;
Sec. 33, lots 1, 2, 3, 4, E½, and E½S½;
Sec. 34, lots 1, 2, 3, 4, NW¼NE¼, N½NW¼, S½N½, and N½S½;
Sec. 35, lots 1, 2, 3, 4, E½, and N½S½;
Sec. 36, lots 1, 2, 3, 4, E½, and N½S½;
T. 22 S., R. 11 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8, to 12, inclusive;
Secs. 15, 16, and 17;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32 to 36, inclusive.
T. 23 S., R. 11 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32 to 36, inclusive.
T. 24 S., R. 11 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 5 to 23, inclusive;
Sec. 7, lots 5 to 20, inclusive;
Sec. 8, lots 1 to 18, inclusive;
Secs. 9, 10, and 11;
Sec. 12, NW¼;
Sec. 14, NW¼;
Secs. 15, 16, and 17;
Sec. 18, lots 5 to 20, inclusive;
Sec. 19, lots 5 to 20, inclusive;
Sec. 20, lots 1 to 8, inclusive, and W½;
Sec. 21, lots 1 to 16, inclusive;
Sec. 22, lots 3, 4, 5, 6, 11, 12, 13, and 14;
Sec. 28, N½, and SW¼;
Sec. 29;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 32.
T. 25 S., R. 11 E.,
Sec. 5, lots 3, 4, S½NW¼, and SW¼;
Sec. 6, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 7, N½, and SW¼;
Sec. 18, NW¼.
T. 20 S., R. 12 E.,
Sec. 2, lots 3½;
Sec. 3, lots 1, 2, 3, 4, and S½N½;
Sec. 5, lots 1, 2, and S½NE¼;
Sec. 7, NW¼NW¼;
Sec. 8, NW¼;
Sec. 9, SE¼NE¼;
Sec. 10, N½SW¼, and SE¼SE¼;
Sec. 11, E½NW¼, and NE¼SW¼
Sec. 15, E½NE¼, and SE¼SE¼;
Sec. 16;
Sec. 22, W½SW¼;
Sec. 24, lot 3, and NW¼SE¼;
Sec. 26, SE¼NE¼, S½NW¼, N½SW¼, and NW¼SE¼;
Sec. 27, SW¼NE¼, S½NW¼, and N½S½;
Sec. 28, NW¼NE¼, N½NW¼, S½N½, and N½S½;
Secs. 30, and 32;
Sec. 36, lots 1, 2, 3, 4, W½E½, and W½.
T. 21 S., R. 12 E.,
Sec. 1, lots 3 to 12, inclusive, and S½;
Sec. 2, lots 3 to 12, inclusive, and S½;
Sec. 3, lots 1, 2, 3, and 4;
Sec. 4, lots 1 to 6, inclusive, 11, 12, and SW¼;
Sec. 5, lots 1 to 12, inclusive, and S½;
Sec. 6, lots 1 to 11, inclusive, and SE¼;
Sec. 7, lots 1, 2, 3, 4, and E½;
Secs. 8, 11 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, and E½;
Sec. 19, lots 1, 2, 3, 4, and E½;
Secs. 20, and 21;
Sec. 22, N½;
Secs. 23 to 27, inclusive;
Sec. 29;
Sec. 30, lots 1, 2, 3, 4, and E½;
Sec. 31, lots 1, 2, 3, 4, and E½;
Secs. 32, 34, 35, and 36.
T. 22 S., R. 12 E.,
Sec. 1, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 2, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 6, inclusive, S½NE¼, and SE¼;
Secs. 8 to 12, inclusive;
Secs. 14 to 17, inclusive;
Sec. 18, E½;
Sec. 19, lots 1, 2, 3, 4, and E½;
Secs. 20, 21, and 22;
Secs. 24 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, and E½;
Sec. 31, lots 1, 2, 3, 4, and E½;
Secs. 32 to 36, inclusive.
T. 23 S., R. 12 E.,

Secs. 1 to 5, inclusive;
Sec. 6, lots 1, 2, 3, 4, and E½;
Sec. 7, lots 1, 2, 3, 4, and E½;
Secs. 8 to 12, inclusive;
Sec. 14, N½;
Sec. 15, N½, N½S½, and S½SW¼;
Sec. 17;
Sec. 18, lots 1, 2, 3, 4, and E½;
Sec. 19, lots 1, 2, 3, 4, and E½;
Secs. 20, and 21;
Sec. 22, W½NE¼, SE¼NE¼, and W½;
Sec. 28, NW¼;
Sec. 29;
Sec. 30, lots 1, 2, 3, 4, and E½;
Sec. 31, lots, 1 to 6, inclusive, NE¼, and NE¼SE¼;
Sec. 32, NW¼.

T. 24 S., R. 12 E.,
Sec. 6, lots 10, 11, 12, and 13.

T. 20 S., R. 13 E.,
Sec. 7, lots 3, and 4;
Sec. 16, S½;
Sec. 17, S½;
Sec. 18, lots 1, 2, 3, 4, E½SW¼, and SE¼;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 21, NE¼;
Sec. 22, E½, NW¼, and E½SW¼;
Sec. 25, E½NW¼, and SW¼;
Sec. 26, SW¼NW¼, and E½SE¼;
Secs. 27, and 28;
Sec. 29, S½;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32, 33, and 34;
Sec. 35, SE¼NW¼, W½W½, and NE¼SW¼;
Sec. 36.

T. 21 S., R. 13 E.,
Sec. 1, lots 8, 9, 10, 12, and S½;
Sec. 2, lots 1 to 12, inclusive, and S½;
Sec. 3, lots 1 to 12, inclusive, and S½;
Sec. 4, lots 1 to 12, inclusive, and S½;
Sec. 5, lots 1 to 12, inclusive, and S½;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 8 to 17, inclusive;
Sec. 18, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 19, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 20 to 23, inclusive;
Sec. 24, N½, and SW¼;
Sec. 25, NW¼;
Secs. 26 to 29, inclusive;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Secs. 32, 33, and 34;
Sec. 35, N½, and SW¼.

T. 22 S., R. 13 E.,
Sec. 3, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 4, lots 3, 4, S½NW¼, and S½;
Sec. 5, lots 1, 2, 3, 4, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 8, E½, and SW¼;
Sec. 10, W½;
Sec. 16, NW¼, and N½SW¼;
Sec. 20;
Sec. 21, NW¼;
Sec. 28, N½, and SW¼;
Sec. 30, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 31, lots 1, 2, 3, 4, E½, and E½W½;
Sec. 32, NW¼.

T. 23 S., R. 13 E.,
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, and E½SW¼.

T. 21 S., R. 14 E.,
Sec. 5, lots 1, 2, 3, 6, and SW¼;
Sec. 6, lots 1 to 14, inclusive, E½SW¼, and SE¼;
Sec. 7, lots 1, 2, 3, 4, NE¼, and E½W½;
Sec. 18, lots 1, 2, and E½NW¼.

The lands described above aggregate approximately 606,384.87 acres, in Otero County.

The map and other appropriate information are available for public inspection in the following offices:

Director, Bureau of Land Management, Main Interior Bldg., 18th & C Streets, NW., Washington, DC 20240
State Director, Bureau of Land Management, New Mexico State Office, Joseph F. Montoya Bldg., South Federal Place, Santa Fe, NM 87501
Director, United States Fish and Wildlife Service, main Interior Bldg., 18th & C Streets, NW., Washington, DC 20240
Regional Director, United States Fish and Wildlife Service, 500 Gold Ave., SW., Room 3018, Albuquerque, NM 87102
Office of the Secretary of Defense, Pentagon Bldg., U.S. Route 95, Arlington, VA
Commander, U.S. Air Defense Center, Attention: Colonel Laspada, ATZC—Commanding Officer, Fort Bliss, TX 79916.

Dated: May 12, 1987.

**Robert L. Schultz,**

*Acting State Director.*

[FR Doc. 87-11551 Filed 5-19-87; 8:45 am]

BILLING CODE 4310-FB-M

## Fish And Wildlife Service

**[DES 87-15]**

### Availability of Draft Environmental Impact Statement; Amended

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Availability of a Draft Environmental Impact Statement (EIS) for the Proposed Comprehensive Conservation Plan (CCP), Wilderness Review, and Wild River Plan for the Yukon Delta National Wildlife Refuge, Alaska.

**DATE:** Comments will be accepted until July 22, 1987.

**ADDRESS:** Comments should be sent to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199 (Attn: William Knauer).

**FOR FURTHER INFORMATION CONTACT:** William Knauer, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199; telephone (907) 786-3399.

**SUPPLEMENTARY INFORMATION:** This notice amends a previous notice of availability (52 FR 12473, April 16, 1987).

The closing date for comments on the draft environmental impact statement has been changed from June 30, 1987, to July 22, 1987.

A limited number of individual copies of the draft CCP/EIS may be obtained by contacting Mr. Knauer.

Copies of the draft CCP/EIS are also available for review at the Office of the Regional Director, address as listed previously, as well as at the Office of the Yukon Delta National Wildlife Refuge, Bethel, Alaska 99559, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuges, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240;
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 NW. Multnomah Street, Suite 1692, Portland, OR 97232;
U.S. Fish and Wildlife Service, Refuges and Wildlife, 500 Gold Avenue, SW., Albuquerque, NM 87103;
U.S. Fish and Wildlife Service, Refuges and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111;
U.S. Fish and Wildlife Service, Refuges and Wildlife, Richard B. Russell Federal Bldg., 75 Spring Street SW., Atlanta, GA 30303;
U.S. Fish and Wildlife Service, Refuges and Wildlife, One Gateway Center, Suite 700, Newton Corner, MA 02158; and
U.S. Fish and Wildlife Service, Refuges and Wildlife, 134 Union Blvd., Lakewood, CO 80225.

Public meetings will be held in a number of the communities within or near the refuge during the Spring of 1987. Dates, times, and places for the village meetings will be advertised through various means, including the news media and communication with the village councils. A public hearing will be held in Anchorage, Alaska, at the Fairview Community Center, 1121 E. 10th Ave., on Thursday, May 28, 1987, beginning at 7:00 p.m.

Dated: May 13, 1987.

**Bruce Blanchard,**

*Director, Environmental Project Review.*

[FR Doc. 87-11483 Filed 5-19-87; 8:45 am]

BILLING CODE 4310-55-M

## Minerals Management Service

### Development Operations Coordination Documents; Hall-Houston Oil Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposed to conduct on

Leases OCS–G 5704 and 5705, Blocks 164 and 165, respectively, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 11, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday thrugh Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plan Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 12, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–11459 Filed 5–19–87; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Texaco U.S.A.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Texaco U.S.A., Unit Operator of the South Marsh Island Block 73 Federal Unit Agreement No. 14–08–0001–20234, has submitted a DOCD describing the activities it proposes to conduct on the South Marsh Island Block 236 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Louisa, Louisiana and Morgan City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 6, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9: a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Towner; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Utilization Section; Unitization Unit; Telephone (504) 736–2641.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 12, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–11460 Filed 5–19–87; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Union Texas Petroleum Corp.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Union Texas Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6677, Block 237, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 8, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised §250.34 of Title 30 of the CFR.

Dated: May 12, 1987.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-11461 Filed 5-19-87; 8:45 am]

BILLING CODE 4310-MR-M

## National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; Agenda for Plenary Meeting

**AGENCY:** Department of the Interior, Minerals Management Service, Pacific OCS Region.

**ACTION:** National Outer Continental Shelf Advisory Board, Pacific Regional Technical Working Group Committee; Notice and Agenda for Plenary Meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463.

The Pacific Regional Technical Working Group Committee of the National OCS Advisory Board is scheduled to meet June 18, 1987 from 8:00 a.m. to 4:00 p.m., in the Cabrillo Room of the Sheraton Santa Barbara, 1111 E. Cabrillo Blvd., Santa Barbara, California 93103.

The Agenda for the meeting covers the following topics:

—5-year OCS Oil & Gas Leasing Program
—Post Lease Projects Update—San Miguel
—Review of Pacific OCS Issues and Activities
—Projects Update: Strategic & International Minerals Program
—Review and Ranking Recommendation for FY 89 Pacific OCS Studies Plan

Minutes of the meeting will be available for public inspection and copying at the following locations:

Pacific OCS Region, 1340 West Sixth Street, Room 275, Los Angeles, CA 90017
Office of the Offshore Advisory Board Support, Minerals Management Service, Department of the Interior, Washington, DC 20240.

Dated: May 11, 1987.

William E. Grant,

*Director, Pacific OCS Region.*

[FR Doc. 87-11458 Filed 5-19-87; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### Subsistence Resource Commission Meeting

**AGENCY:** National Park Service, Alaska Region, Interior.

**ACTION:** Subsistence Resource Commission Meeting.

**SUMMARY:** The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commission. The following agenda items will be discussed:

1. Call to order
2. Minutes of last meeting
3. Superintendent's report—implementation issues
4. Fish and Game regulations: The process for change and the NPS/ADF&G Memorandum of Understanding
5. Resident zone regulations
6. Identification of important subsistence use areas.
7. Preparation of draft subsistence hunting program recommendations
8. Subsistence research needs
9. Staff support
10. Correspondence.

**DATE:** The meeting will begin on June 8, 1987, at 9:00 a.m. and will conclude the afternoon of June 9, 1987.

**ADDRESS:** The meeting will be held in the Drift Inn Conference Room in Kotzebue, Alaska.

**FOR FURTHER INFORMATION CONTACT:** G. Ray Bane, Acting Superintendent, Northwest Alaska Areas, National Park Service, P.O. Box 1029, Kotzebue, Alaska 99752, Phone: (907) 442-3890.

**SUPPLEMENTARY INFORMATION:** The Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: May 12, 1987.

Richard J. Stenmark,

*Acting Regional Director, Alaska Region.*

[FR Doc. 87-11556 Filed 5-19-87; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Eighty Second Meeting of the Board for International Food and Agricultural Development (BIFAD) on June 2, 1987.

The purposes of the meeting is for the ad hoc committee on procurement procedure and the Research Committee to report to the Board and the Joint Committee on Agricultural Research and Development. The main item on the agenda will be an "open forum" for an exchange of views and concerns between the Board and representatives of Title XII institutions who will be meeting in Rhode Island at the same location.

The Meeting will be held at 1:15 P.M. and adjourn at 5:00 P.M. on June 2, 1987. The Meeting will be held at the Dutch Inn Motor Hotel in Galilee, Rhode Island. Any interested person may attend, may file written statements with the Committee before or after the meetings, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Marshall D. Brown, Counselor to the Administrator, C/AID, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Mr. Charles D. Ward, Deputy Executive Director BIFAD Staff, in care of the Agency for International Development, Washington, DC, 20523, or telephone him at (202) 647-8976.

Date: May 12, 1987.

Marshall D. Brown,

*A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.*

[FR Doc. 87-11455 Filed 5-19-87; 8:45 am]

BILLING CODE 6116-01-M

### Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the nineteenth meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on June 2, 1987.

The purposes of the meeting are to review in collaboration with BIFAD, the issues relating to Title XII that need to be addressed, and to make plans for the follow-up actions to be taken. JCARD will meet jointly with BIFAD from 1:30-5:00, during which time the Board will hear a report from various committees and from invited members of the Title XII Community.

JCARD will hold this meeting at the Dutch Inn Motor Hotel in Galilee, Rhode Island. Any interested person may

attend, may file written statements with the Committee before or after the meetings, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. John Stovall, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meetings. It is suggested that those desiring further information write to him in care of the Agency of the Agency for International Development, BIFAD/S, Washington, DC 20523 or telephone him at (202) 647–8532.

Dated: April 6, 1987.

John Stovall,

*A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Research and Development, Board for International Food and Agricultural Development.*

[FR Doc. 87–11456 Filed 5–19–87; 8:45 am]

BILLING CODE 6116–01–M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–253]

### Certain Electrically Resistive Monocomponent Toner and "Black Powder" Preparations Therefor; Commission Decision Not To Review an Initial Determination Extending the Deadline for Completion of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Nonreview of an initial determination (ID) extending the deadline for completion of the investigation to the full 18 months allowed for "more complicated" investigations.

**SUMMARY:** The Commission has determined not to review an ID (Order No. 17) extending the deadline for completion of this investigation to the full 18 months permitted by statute for "more complicated" cases, i.e., to February 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0148.

**SUPPLEMENTARY INFORMATION:** This investigation had previously been declared more complicated and the deadline for completion of the investigation had been extended by 3 months, to November 20, 1987. *See* 51 FR 46943 (December 29, 1986).

On April 9, 1987, the presiding administrative law judge (ALJ) granted an unopposed joint motion of Aunyx and the IA to declare the investigation "more complicated" and extend the deadline for completion of the investigation to the full 18 months permitted by statute. The basis for this motion was that the complexity of the issues, and the need for completion of discovery on these issues, required the extension of time.

The Commission has decided not to review the ID extending the deadline for completion of the investigation to February 22, 1988.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Part 210 of the Commission rules (19 CFR Part 210).

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: May 13, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–11540 Filed 5–19–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–257]

### Certain Electronic Wall Stud Finders; Commission Decision Not To Review Initial Determination Terminating Investigation on the Basis of Issuance of Consent Orders

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Termination of investigation on the basis of issuance of consent orders.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) granting joint motions to terminate the above-captioned investigation on the basis of consent orders.

**FOR FURTHER INFORMATION CONTACT:** Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523–0421.

**SUPPLEMENTARY INFORMATION:** On August 26, 1986, Zircon International, Inc. (Zircon) filed a complaint with the Commission under section 337 of the Tariff Act of 1930 (19 U.S.C. 1377). The complaint alleged that Philips Home Products, Inc. (Philips) and Meyer Electronics (Meyer) were violating section 337 by importing and selling in the United States certain electronic wall stud finders which infringe U.S. Letters Patent 4,099,118. By separate motions filed on March 25, 1987, Zircon, Meyer, and Philips jointly moved, along with the Commission investigative attorney, for termination of the investigation on the basis of consent orders. On April 7, 1987, the presiding administrative law judge issued an ID (Order No. 5) granting the motions and terminating the investigation. No petitions for review or comments from government agencies or the public were received concerning the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 and Commission rule § 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–523–0002.

Issued: May 13, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–11538 Filed 5–19–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–377 (Preliminary)]

### Internal Combustion Engine Fork-Lift Trucks From Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Change in the scope of the preliminary investigation No. 731–TA–377 (Preliminary).

**SUMMARY:** The Commission hereby gives notice of changes in the scope of its investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of internal

combustion engine fork-lift trucks, with lifting capacity of 2,000 to 15,000 pounds [1] provided for in item 692.40 of the Tariff Schedules of the United States, that are alleged to be sold in the United States as less than fair value.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jim McClure (202–523–1793), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

**Background**

The purpose of this change in the scope of the Commission's investigation is to conform the scope of this investigation with that initiated by the Department of Commerce on May 12, 1987.

**Authority:** This notice is published pursuant to § 207.12 of the Commission's rules of practice and procedure (19 CFR 207.12).

Issued: May 14, 1987.

By order of the Commision.

Kenneth E. Mason,

*Secretary.*

[FR Doc. 87–11536 Filed 5–19–87; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. 337–TA–246]

## Certain Plastic Fasteners and Processes for the Manufacture Thereof; Commission Determination Not To Review an Initial Determination Declaring the Investigation More Complicated and Extending the Deadline for Completion of the Investigation and for Filing of the Final ID

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Nonreview of initial determination declaring the above-captioned investigation "more complicated" and extending the deadline for completion of the investigation and for filing of the final ID by one month.

**SUMMARY:** The Commission has determined not to review the initial determination (ID)(Order No. 29) of the presiding administrative law judge (ALJ) declaring the investigation "more complicated" and extending the deadline for completion of the investigation and for filing of the final ID by one month. The new deadline for filing of the final ID is June 18, 1987. The new administrative deadline for completion of the investigation is September 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0421.

**SUPPLEMENTARY INFORMATION:** The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.59 of the Commission's Rules of Practice and Procedure (19 CFR 210.59).

The investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation of sale of certain plastic fasteners. The proceedings were instituted on the basis of a complaint filed by Dennison Manufacturing Co. (Dennison) alleging infringement of certain patents owned by Dennison. Earlier, on November 25, 1986, the investigation was declared "more complicated" and the administrative deadline for completion of the investigation was extended from June 18, 1987 to August 18, 1987 and the deadline for filing of the final ID was set for May 18, 1987.

On April 23, 1987, the presiding ALJ determined that the time remaining to file the final ID in this investigation was insufficient and issued Order No. 29. This determination was based upon the ALJ's need for sick leave, complicated issues present in the case, and an unusually heavy work load during April and May.

The Commission has determined that the deadline for filing of the final ID and for completion of the investigation should be extended one month (to June 18, 1987, and September 18, 1987, respectively) for the reasons noted above.

Notice of this investigation was published in the **Federal Register** on June 18, 1986 (51 FR 22144).

All nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–747–0002.

By order of the Commission.

Issued: May 13, 1987.

Kenneth E. Mason,

*Secretary.*

[FR Doc. 87–11539 Filed 5–19–87; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. 337–TA–250]

## Certain Ventilated Motorcycle Helmets; Commission Decision Not To Review Initial Determination Terminating Investigation as to two Respondents on the Basis of a Settlement Agreement; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Termination of investigation as to two respondents on the basis of a settlement agreement; termination of investigation.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 36) granting a motion to terminate the above-captioned investigation as to respondents Shoei Kako Co., Ltd. and Shoei Safety Helmets Corporation (the Shoei respondents), on the basis of a settlement agreement. Termination of the shoei respondents terminates the investigation.

**FOR FURTHER INFORMATION CONTACT:** Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0079.

**SUPPLEMENTARY INFORMATION:** On May 28, 1986, Bell Helmets, Inc. (Bell), filed a complaint pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) with the Commission alleging unfair acts in the importation and sale of certain ventilated motorcycle helmets. The unfair acts alleged were infringement of Bell's U.S. Letters Patents 4,054,953 and 4,555,818.

On January 16, 1987, complainant Bell and the Shoei respondents jointly moved (Motion No. 250–24), pursuant to Commission rule § 210.51(b)(1), for termination of the investigation with

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[1] For purposes of this investigation, "internal combustion engine fork-lift trucks" include both assembled, not assembled, and less than complete, finished and not finished, operator-riding fork-lift trucks powered by gasoline, propane, or diesel fuel internal combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. "Less than complete" fork-lift trucks, are defined as imports which include a frame by itself or a frame assembled with one or more componsit parts. The Department of Commerce has stated that the frame by itself is the indentifying feature and principal component part of the product, and is solely dedicated for the manufacture of a complete internal combustion, industrial fork-lift truck.

respect to the Shoei respondents on the basis of a settlement agreement. On January 26, 1987, the presiding administrative law judge (ALJ) issued an ID granting the motion to terminate on the basis of the settlement agreement (Order No. 31).

On March 2, 1987, the Commission determined to review Order No. 31 and remand it to the ALJ with instructions that the settlement agreement should be amended to provide for a dispute settlement procedure that does not attempt to rely on the issuance of Commission advisory opinions. On March 20, 1987, complainant and the Shoei respondents jointly moved to amend their settlement agreement and to terminate the investigation. On April 7, 1987, the presiding ALJ issued an ID (Order No. 36) granting their motion. No petitions for review or comments from Government agencies or the public were filed.

While declining to review the ID herein, the Commission notes the following in passing. The Commission investigative attorney opposed the motion, asserting that amended paragraph 6 of the settlement agreement "incorrectly indicates that the Commission has continuing jurisdiction to enter and presumably enforce, an arbitration award." The Commission does not so construe the language in question. Since the Shoei respondents are the only remaining respondents, termination of the investigation as to them necessarily terminates the investigation (section 337 of the Tariff Act of 1930; Commission rule § 210.53 (19 CFR 210.53)), and the Commission's jurisdiction in this investigation is ended. By declining to review the ID herein, the Commission does not commit itself, in any future proceeding before the Commission, to accord a particular effect to those provisions of the settlement agreement which concern arbitration or to an award made pursuant to such provisions. *See Certain Fluidized Bed Combustion System*, Inv. No. 337–TA–213, USITC Pub. 1752 (1985).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: May 13, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–11557 Filed 5–19–87; 8:45 am]

BILLING CODE 7035-01-M

## INTERSTATE COMMERCE COMMISSION

[No. MC–F–18265]

## ConAgra, Inc.; Control Exemption; Monfort Transportation Co.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed exemption.

**SUMMARY:** ConAgra, Inc. (ConAgra), a noncarrier, seeks an exemption from the requirement of prior regulatory approval for its acquisition of stock control of motor carrier Monfort Transportation Company (MTC) (No. MC–144572).

**DATE:** Comments must be received by June 19, 1987.

**ADDRESSES:** Send comments (an original and 10 copies), referring to Docket No. MC–F–18265, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) ConAgra's representative: Peter A. Green, Thompson, Hine and Flory, 1920 N Street, NW., Washington, DC 20036

(3) MTC's representative: John R. Wirth, Nelson & Harding, 717–17th Street, Suite 2800, Denver, CO 80202–3357.

**FOR FURTHER INFORMATION CONTACT:** Warren C. Wood, (202) 275–7977.

**SUPPLEMENTARY INFORMATION:** ConAgra seeks, under 49 U.S.C. 11343(e) and the Commission's regulations in Procedures—Handling Exemptions Filed by Motor Carriers, 367 I.C.C. 113 (1982), an exemption from the requirement of prior regulatory approval for its acquisition of stock control of MTC. ConAgra has filed a separate application seeking approval for the change in control of MTC's property broker authority under the same docket series.

Under the terms of the transaction, MTC's noncarrier parent, Monfort of Colorado, Inc. (Monfort), will become a first tier, noncarrier subsidiary of ConAgra. ConAgra presently controls the following carriers: ConAgra Transportation, Inc. (No. MC–150422 and No. W–1333); Lynn Transportation Company, Inc. (No. MC–133604); Balcom Chemicals, Inc. (No. MC–174324); Armour Food Express Company (Nos. MC–149364 and MC–152245); U.S. Tire, Inc. (No. MC–170511; and Yellowstone Valley Chemicals, Inc. (No. MC–185117). A petition for exemption of control by ConAgra of motor carrier Miller Bros. Co., Inc. (No. MC–117669), is currently pending in No. MC–F–18138.

Under 49 U.S.C. 11343(a)(5), the Commission's prior approval is required for the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers. Here, ConAgra already controls several carriers. Therefore, its proposed acquisition of control of MTC is subject to the Commission's jurisdiction and can be carried out only under Commission regulation or an exemption from regulation.

MTC operates in intrastate commerce in Colorado and Nebraska. These intrastate operations are also subject to the instant exemption petition. *See* 49 U.S.C. 11341(a).

ConAgra argues that its acquisition of control of MTC will promote the national transportation policy by adding one additional carrier to the family of carriers it already controls pursuant to the Commission's prior approval or exemption. ConAgra asserts that its proposed acquisition of control of MTC is of limited scope, and will have no significant adverse effect on other carriers, employees or shippers. Finally, ConAgra states that the transaction will not threaten shippers with an abuse of market power because of the competitive structure of the motor carrier industry.

A copy of the petition may be obtained from ConAgra's representative, or it may be inspected at the Washington, DC offices of the Interstate Commerce Commission during normal business hours.

Decided: May 12, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–11486 Filed 5–19–87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30984]

## The Shore Fast Line, Inc.; Exemption

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** The Interstate Commerce Commission exempts The Shore Fast Line, Inc., from the requirements of 49 U.S.C. 11343 for the acquisition and operation of Consolidated Rail Corporation's Mary's Wye-Winslow

Secondary Track, a 0.3 mile section of line located in the Township of Winslow, Camden County, NJ, subject to employee protective conditions.

**DATES:** This exemption will be effective on June 19, 1987. Petitions to stay must be filed by June 1, 1987, and petitions for reconsideration must be filed by June 9, 1987.

**ADDRESSES:** Send petitions referring to Finance Docket No. 30884 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Erick M. Hocky, 1900 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106

**FOR FURTHER INFORMATION:** Joseph Dettmar, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area).

Decided: May 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,
*Secretary.*

[FR Doc. 87-11407 Filed 5-19-87; 8:45 am]
BILLING CODE 7035-01-M

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[Docket No. AB-32 (Sub-No. 37X)]

## Boston and Maine Corporation—Exemption—Discontinuance of Service in Essex County, MA; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* for the purpose of discontinuing service on its South Middleton Branch between milepost 3.24 in Peabody and milepost 6.86 in Lynnfield, a distance of 3.62 miles, all within Essex County, Massachusetts.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State of local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on June 19, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by June 1, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by June 9, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kristin Dorney, Boston and Maine Corporation, Iron Horse Park, No. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: May 1, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
*Secretary.*

[FR Doc. 87-11408 Filed 5-19-87; 8:45 am]
BILLING CODE 7035-01-M

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-46)]

## NASA Advisory Council, History Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee (HAC). DATE AND TIME: June 10, 1987, 9 a.m. to 3 p.m., and June 11, 1987, 9 a.m. to 5:30 p.m.

**ADDRESS:** NASA Headquarters, Federal Office Building No. 6, Room TBD, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sylvia D. Fries, Code XH, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8302).

**SUPPLEMENTARY INFORMATION:** The History Advisory Committee was established to provide advice and guidance to the NASA history program, which maintains a non-record historical reference file and publishes works in the history of aeronautics and space science technology. The Committee, chaired by Dr. Melvin Kranzberg, consists of 8 members. The meeting will be open to the public. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.
Agenda: June 10, 1987
9 a.m.—Introductory Remarks.
9:15 a.m.—History Program Review.
1 p.m.—History Program Review (cont'd).
2 p.m.—Planning: Future Projects.
3 p.m.—Adjourn.
June 11, 1987
9 a.m.—NASA Contract History Presentation: Apollo, Shuttle and Space Station Policy Decision (Seminar).
1 p.m.—NASA Contract History Presentation: Post-War Solar Science (Seminar).
3 p.m.—NASA Contract History Presentation: Aeronautical Research at Lewis Research Center (Seminar).
5:30 p.m.—Adjourn.

Richard L. Daniels,
*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

May 12, 1987.

[FR Doc. 87-11405 Filed 5-19-87; 8:45 am]
BILLING CODE 7510-01-M

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## NUCLEAR REGULATORY COMMISSION

[Renewal of Source Material License No. STB-401; Docket 40-8563]

## Columbium—Tantalum Division, Mallinckrodt, Inc., St. Louis, MO; Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering the renewal of Source Material License No. STB-401 for the continued operation of the Columbium-Tantalum Division of Mallinckrodt, Inc., of St. Louis, Missouri.

### Environmental Assessment

*Identification of the Proposed Action:* The proposed action would allow Mallinckrodt to continue operation for another 5 years essentially as it has been operated for the past years. The Mallinckrodt facility prepares Tantalum and Columbium (Niobium) (Cb-Ta)

products for use in several segments of industry. The Tantalum and Columbium are recovered from ores by use of chemical operations. The ores contain unwanted quantities of natural uranium and thorium.

*The need for the Proposed Action:* The Mallinckrodt, Inc., Cb-Ta Plant is one of many extraction metallurgy facilities in the United States that provides valuable metal products for a broad range of industrial applications. Mallinckrodt supplies independent clients with $Cb_2O_5$ and $K_2TaF_7$ and denial of the license renewal would require those clients to find a new source for the products, thus transferring potential impacts elsewhere. This could impose an unnecessary economic impact on the applicant.

*Environmental Impacts of the Proposed Action:* The applicant was first licensed on August 31, 1964. This is the first NEPA review of the facility operations performed under NRC licensing responsibility for evaluation of environmental impacts including potential public exposure to radioactive material.

The staff concluded that the principal environmental impacts of current operation at the Cb-Ta Plant include the potential release of radioactive particles and radon from storage, handling, and processing the ores. The radiological impacts of the Mallinckrodt facility were assessed by calculating the maximum dose to the individual living at the nearest residence and to the local population living within a 16–km (10 mile) radius of the plant site. Air monitoring data was used to estimate the 50-year dose commitment to the maximally-exposed individual living at the nearest residence (250m NW of Building 238): the committed doses are: whole body - 0.84 mrem; bone - 8.2 mrem; and lung - 2.6 mrem. The dose are in compliance with the individual exposure limits established by the Clean Air Act. The collective whole-body dose to the population within a 16–km (10 mile) radius of the plant is 3.2 person-rem which is only about 0.0025 percent of the population dose of $1.3 \times 10^5$ person-rem resulting from the natural background radiation dose in the area. For nonradiological air effluents, the plant is not expected to add significantly to the concertrations of polluants in the atmosphere of the industrial St. Louis area where the plant is located. Liquid effluents are discharged to the St. Louis Metropolitan Sewer District and are considered insignificant. Therefore, the staff concludes that there will be no significant impacts associated with the proposed action.

*Alternatives to the Proposed Action:* One alternative would be to deny the renewal application. This would result in the facility shutting down. Although denial is an alternative available to the Commission, it would be considered only if significant issues of public health and safety could not be resolved to the satisfaction of regulatory authorities involved.

*Agencies and Persons Consulted:* In addition to reviewing the applicants request, the staff contacted the St. Louis Air Pollution Division and the St. Louis Metropolitan Sewer District.

*Finding of No Significant Impact:* The Commission has prepared an Environmental Assessment (NUREG–1239) related to the license renewal of Source Material License No. STB–401. On the basis of this assessment, the Commission has concluded that environmental impacts created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No significant Impact is appropriate.

The Environmental Assessment (NUREG–1239) for the proposed action, on which this Finding of No Significant Impact is based, relied on the following documents: (1) Environmental Information prepared by Mallinckrodt, Inc., Columbium - Tantalum Division, June 26, 1985, (2) Licensing Information, Mallinckrodt, Inc., Columbium - Tantalum Division, July 26, 1985, and (3) Responses to NRC site visit questions, Mallinckrodt, Inc., Columbium - Tantalum Division, May 28, 1986, and June 4, 1986.

The Environmental Assessment (NUREG–1239) and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of the Environmental Assessment may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writting to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7982.

Dated at Silver Spring, Maryland, this 14th day of May 1987.

For the Nuclear Regulatory Commission.

**Leland C. Rouse,**

*Chief, Fuel Cycle Safety Branch, Division of Fuel Cycle, Medical, Academic, and Commercial Use Safety.*

[FR Doc. 87–11543 Filed 5–19–87; 8:45 am]

BILLING CODE 7590–01–M

## Bi-Weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on May 6, 1987 (52 FR 16939) through May 8, 1987.

## NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records,

Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 19, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Alabama Power Company, Docket No. 50-348, Joseph M. Farley Nuclear Plant, Unit No. 1, Houston County, Alabama**

*Date of amendment request:* October 25, 1985, supplemented September 29, 1986.

*Description of amendment request:* The amendment would modify the Technical Specifications to change Figures 3.4-2 and 3.4-3 based on the results of analysis of Capsule "U" Reactor Vessel Material Radiation Surveillance Program in response to the Commission's letter dated May 2, 1985. Analysis results are detailed in WCAP-10934 provided to the Commission by licensee letter dated October 25, 1985.

By letter dated September 29, 1986, the licensee submitted a revision to WCAP-

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10934 and Figures 3.4-2 and 3.4-3 as the result of NRC staff concerns expressed in our letter dated June 16, 1986. The revised Figures 3.4-2 and 3.4-3 are different from those previously noticed on December 4, 1985 (50 FR 49780). Therefore, we have determined that the changes to the heatup/cooldown curves require renoticing.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment could not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's analyses contained in the October 25, 1985, letter, as well as the September 29, 1986, letter conclude that the revised heatup/ cooldown curves comply with Commission guidance of Regulatory Guide 1.99 Revision 2 and 10 CFR Part 50, Appendix G, and, therefore, do not involve a significant hazards consideration.

The staff has reviewed the licensee's analyses provided by letter dated October 25, 1985, as supplemented September 29, 1986, and conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposes to make no significant hazards consideration determination.

*Local Public Document Room location:* George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Elinor G. Adensam

**Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas**

*Date of amendment request:* November 17, 1986

*Description of amendment request:* The proposed amendment would revise the technical specifications to reflect the revised requirements of 10 CFR 50.72 and the new requirements of 10 CFR 50.73. The revised Section 50.73 modifies the immediate notification requirements for operating nuclear power reactors and the new Section 50.73 provides for a revised Licensee Event Report System.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). One of the examples (vii) of actions not likely to involve a significant hazards consideration relates to a change to make a license conform to changes in regulations, where the license change results in very minor changes to facility operations clearly in keeping with regulations. The proposed amendment is similar to the example in that the changes were requested by the NRC staff in Generic Letter 83-43 to assure compliance with the revised Section 50.72 and the new Section 50.73. In addition, the proposed amendment would only revise the reporting requirements in accordance with the regulations and would not change any current limitations related to the operation of the plant.

Therefore, since the application for amendment involves a proposed change that is similar to an example of actions that are considered not likely to involve significant hazards considerations, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

*NRC Project Director:* Jose A. Calvo

**Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas**

*Date of amendment request:* December 12, 1986

*Description of amendment request:* The proposed amendment would delete license condition 2.c.(3)(g) of Facility Operating License No. NPF-6 relating to CESEC code verification. CESEC is a simplified thermal-hydraulic transient computer program developed for analyzing transient and accident events. The license condition requires that the licensee shall complete tests to verify the use of the CESEC code during the initial startup and power ascension testing program and submit the results for Commission review and approval. By letters dated March 6, 1980, June 9, 1980, March 27, 1981 and December 27, 1983, the licensee submitted test results for Commission review. By letter dated March 20, 1984, the NRC staff provided Commission approval and the associated safety evaluation stating that the licensee has fulfilled all of the requirements regarding the verification of the CESEC code. This change is one of several changes requested in the application. The remaining issues will be addressed in separate notices.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the proposed change follows:

(1) Consideration of Probability and Consequences of Accident: CESEC is a thermal-hydraulic transient computer program developed for analyzing transient and accident analyses. The NRC staff has reviewed and found the CESEC code acceptable for use in licensing applications for calculating FSAR Chapter 15 events for ANO-2. Accordingly the deletion of the license condition requiring the code verification would not affect previously analyzed events. The proposed change, therefore, would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Consideration of Possibility of a New or Different Kind of Accident: The proposed deletion of a license condition which has been fulfilled by the licensee would not involve any new safety information or affect any plant operating condition or parameter. Therefore, the proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Consideration of a Reduction in a Margin of Safety: The proposed change would not involve a change in safety limits, limiting conditions for operation, surveillance requirements, or the design bases for the plant equipment. Therefore, the proposed change involves no significant hazards considerations.

Based on the above considerations, the Commission proposes to determine

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that the proposed change involves no significant hazards considerations.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

*NRC Project Director:* Jose A. Calvo

**Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas**

*Date of amendment request:* December 12, 1986

*Description of amendment request:* The proposed amendment would revise the technical specifications to change the reporting requirements for primary coolant iodine spikes from a short-term report (Special Report) to an item to be included in the Annual Report in accordance with the staff's guidance provided in General Letter No. 85-19. The proposed amendment would also delete the requirement to shut down the reactor if coolant iodine activity limits are exceeded for 800 hours in a 12-month period in accordance with the staff's guidance provided in the generic letter. The requirement to shut down the reactor after primary coolant activity exceeds 1.0 microcurie per gram Dose Equivalent I-131 for greater than 48 hours and the requirement to shut down the reactor if primary coolant activity exceeds the allowable limit of Figure 3.4-1 would still be retained. The remaining issues in the amendment request will be addressed in separate notices.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). One of the examples (i) of actions not likely to involve a significant hazards consideration relates to a purely administrative change to technical specifications; for example, a change to achieve consistency throughout technical specifications, correction of an error, or a change in nomenclature. Another example (vii) of actions not likely to involve a significant hazards considerations relates to a change to make a license conform to changes in regulations, where the license change results in very minor changes to facility operations clearly in keeping with regulations.

The first change appears to be similar to example (i) in that it is purely administrative. In addition, it meets the staff's guidance provided in Generic Letter No. 85-19. The second change involving deletion of the 800-hour shutdown requirement was previously evaluated on a generic basis by the staff and the results were stated in Generic Letter No. 85-19. The staff determined that the 800-hour limit was no longer necessary because the improved quality of nuclear fuel coupled with existing reporting requirements should preclude licensees ever approaching the limit. Short term shutdown requirements for iodine coolant activity limits remain unaffected by the proposed specifications. The generic letter also incorporated the above change into the standard technical specifications. Therefore, this change appears to be similar to example (vii) in that the change would bring the technical specifications in conformance with the standard technical specifications.

Therefore, since the application for amendment involves proposed changes that are similar to examples of actions that are considered not likely to involve significant hazards considerations, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW., Washington, DC 20036

*NRC Project Director:* Jose A. Calvo

**Carolina Power & Light Company, Dockets Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Date of application for amendments:* March 27, 1987

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2, to include operability requirements for the pressurized nitrogen system that has been installed as a backup to the plant instrument air system. The new operability requirements would be incorporated into TS Section 3.6.4.2, Suppression Pool-Reactor Building Vacuum Breakers.

By letter dated May 8, 1984, the NRC issued Generic Letter 84-09, "Recombiner Capability Requirements of 10 CFR 50.44 (c)(3)(ii)," to clarify the conditions that would preclude the need for a hydrogen recombiner capability at some reactor plants. Criteria were provided in the Generic Letter to ensure that the amount of oxygen that could be present in a Mark I boiling water reactor containment after a postulated accident would be limited to safe values. In response to Generic Letter 84-09, the licensee has proposed a modification to the Brunswick instrument air system that would isolate the air supply to pneumatic valves inside containment after a postulated loss-of-coolant accident (LOCA). The only pneumatic valves inside containment required to operate after a LOCA are the automatic depressurization system (ADS) valves. The ADS valves would be supplied by a backup pressurized nitrogen supply upon isolation of the instrument air system. In addition, the nitrogen backup system would also supply the operators for the suppression pool to reactor building vacuum breaker valves. The vacuum breakers are located in the reactor building and are required to have a safety-grade source of pneumatic pressure after a postulated accident. The switchover to the backup nitrogen supply occurs automatically on receipt of a reactor vessel low level 3 or high drywell pressure signal which would occur during a LOCA.

By letter dated October 30, 1986, the NRC issued a Safety Evaluation relating to the acceptability of the nitrogen backup system modifications to the instrument air system. The staff provided additional criteria to be applied to the nitrogen backup system to assure that only nitrogen would be introduced into the containment after a postulated LOCA. Two of the criteria that would have to be met to assure compliance with Generic Letter 84-09 involve the addition of TS to control the operability of the nitrogen backup system. That is, the licensee was requested to provide:

a. Testing and surveillance TS for the essential nitrogen backup system, and

b. TS for the essential nitrogen backup system that limit operation of the plant on loss of redundancy and loss of the system.

The licensee's application of March 27, 1987, responds to the NRC's request for nitrogen backup system TS. The licensee has proposed to add operability and surveillance TS for the nitrogen backup system in TS Section 3.6.4.2, Suppression Pool-Reactor Building Vacuum Breakers. This TS section was chosen as an appropriate administrative location for incorporating the requested additions to the Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no

significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards in 10 CFR 50.92 and has determined the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes reflect additional restrictions on plant operation. The changes will effectively assure operability of the essential nitrogen supply system in the event of a loss-of-coolant accident (LOCA), thereby reducing the potential for oxygen to enter the drywell should a postulated LOCA occur concurrent with a rupture of the instrument air line.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The surveillance requirements assure a post-accident supply of oxygen-free working fluid for the required pneumatically operated systems inside the primary containment.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed revisions incorporate additional, more restrictive requirements to ensure that oxygen does not get into the containment due to a rupture of an instrument air line concurrent with a loss-of-coolant accident.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff therefore proposes to determine that the requested amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

*Attorney for licensee:* Thomas A Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Elinor G. Adensam

**Commonwealth Edison Company, Docket Nos. 50-237/249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois**

*Date of amendment request:* August 21, 1986

*Description of amendment request:* This amendment request includes proposed Technical Specification changes to Section 6 (Administrative Controls) of the Dresden Units 2 and 3 Technical Specifications. These changes are a result of recent Commonwealth Edison Corporate and Station organizational changes. Additional changes include referencing 10 CFR 50.73 in the reporting requirements, and revising Section 6.1.G regarding the review and investigative function and revising the audit function to reflect organizational and responsibility changes and to allow delegation of these functions. Lastly, Special Report Table 6.6.1 has been revised to delete reporting requirements for Unit 1 as it is no longer in operation.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using standards in 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

Commonwealth Edison has evaluated the proposed Technical Specification amendment and determined that it does not represent a significant hazards consideration. Based on the criteria for defining a significant hazards consideration established in 10 CFR 50.92(c), operation of Dresden Station Units 2 and 3 in accordance with the proposed amendments will not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated because:

the proposed changes involve administrative changes in the management organizational structural and do not affect any plant equipment or operational procedures which could impact the probability or consequences of an accident.

(2) create the possibility of a new or different kind of accident from any accident previously evaluated for the same reason as 1) above. No new equipment or operating practices are being introduced.

(3) involve a significant reduction in the margin of safety since the amendment does not affect any operating practices or limits nor any equipment or system important to safety.

The staff has reviewed the licensee's no significant hazards consideration determination on the proposed changes to Section 6, Administrative Controls, and agrees with the licensee's analysis. In addition the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (March 6, 1986 51 FR 7751). Examples of actions involving no significant hazards consideration include purely administrative changes or changes to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations (i.e., examples (i) and (vii)). The changes proposed in the application for amendment are encompassed by these examples in that the proposed changes reflect recent organization changes, deletion of references to Dresden Unit 1 and review of reportable events as defined by 10 CFR 50.73. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

*Local Public Document Room location:* Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

*Attorney for licensee:* Mr. Michael I. Miller; Isham, Lincoln and Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602.

*NRC Project Director:* Daniel R. Muller

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois**

*Date of application for amendments:* April 8, 1987

*Description of amendments request:* These amendments would revise the specimen capsule withdrawal schedule to incorporate the removal of two additional specimen capsules at fluences in excess of those expected at End of Life. This is consistent with the requirements of 10 CFR Part 50, Appendix H.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided

standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

*Criterion 1*

This change only affects the withdrawal schedule for the specimen capsules installed inside of Zion's reactor vessels. This schedule is not a factor in any of the previously analyzed accidents. Thus, the change does not alter the probability or consequences of any accident previously evaluated.

*Criterion 2*

As discussed above, this change only addresses the timing of capsule withdrawal. The withdrawal of specimen capsules was considered in Zion's design and has previously taken place on numerous occasions.

In addition, the withdrawal schedule has no effect on the performance of any of Zion's systems or structures. Based upon this lack of system interaction, the proposed change will not affect any of the pre-existing accident sequences contained in Zion's PSAR.

Thus, this change does not create the possibility for a new or different kind of accident.

*Criterion 3*

While Zion's margin of safety is insensitive to changes in capsule withdrawal schedules, this change will allow for a more meaningful reactor vessel surveillance program. Thus, the future properties of Zion's vessels can be more accurately predicted, providing a slight increase in the margin of safety.

Note that this change will bring Zion Station into compliance with the 1983 revision to 10 CFR 50, Appendix H. Thus, example vii is applicable in this situation. Example vii reads as follows:

(vii) A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92 and is similar to examples for which no significant hazards consideration exists, Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

*Attorney to licensee:* P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

*NRC Project Director:* Daniel R. Muller

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois**

*Date of application for amendments:* April 9, 1987

*Description of amendments request:* These amendments expand the containment isolation valve list, correct minor errors, and incorporate the guidance of NUREG-0452, Rev. 4, as follows:

*Pages iii, viii, ix, x, xi:* These pages update the Table of Contents and List of Tables.

*Pages 199a, 199b:* These pages update the existing guidance of the Zion Technical Specifications regarding containment isolation valves. The proposed guidance is consistent with that contained in the Standard Technical Specification NUREG-0454, Rev. 4.

*Page 200:* This page updates guidance regarding main steam isolation valves with guidance consistent with the Standard Technical Specifications as discussed above.

*Page 201:* This page capitalizes the defined term, containment integrity, as discussed in Section 1.0 of the Technical Specifications. In addition, this page deletes the guidance that was previously contained in Section 3.9.4.C. This section provided for the option of 3-loop operation following the failure of an MSIV. Section 2.C.4 of the Zion Composite License prohibits operation with less than 4 reactor coolant loops above P-7 (approximately 10 percent reactor power). Thus, the guidance previously contained in Section 3.9.4.C conflicted with this license requirement.

*Page 202:* This page is blank due to repagination.

*Page 203:* This page involves a correction of a minor error and incorporates a revised format.

*Pages 206, 206a, 206, 207, 207a, 207b, 207c, 208:* These pages contain revised and expanded lists of Zion Station's containment isolation valves. These tables are divided into Phase A, B, manually operated and "other" containment isolation valves.

*Page 208:* This table explicitly defines the main steam isolation valves and their bypasses.

*Pages 209, 210, 211:* These pages provide the revised bases for the proposed changes discussed above.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of a accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

*Criterion 1*

An amendment to the Zion Facility Operating License is proposed to update the listing of the containment isolation valves for Zion Station and to correct minor errors within Sections 3.9 and 4.9. This proposed change does not affect the operation of Zion Station's containment isolation systems. The expansion and updating of the containment isolation valve list for Zion Station will allow for better administrative control over this system.

The incorporation of the guidance contained in the Standard Technical Specification NUREG-0452, Rev. 4, provides needed clarification and guidance to Sections 3.9 and 4.9 of the Zion Technical Specifications. The formalization of the prescribed actions and allotted time periods constitute revised and clarified constraints on the operation of Zion Station.

Since the improvement in the Zion Technical Specifications described above has no effect on the physical operation of the containment isolation system, this proposed amendment has no effect on any accident that has been previously evaluated. In addition, this proposed change has no effect on any

other Zion system or structure. Therefore this proposed amendment does not involve a significant increase in the probability of or consequences of any accident previously evaluated.

*Criterion 2*

The clarification of the requirements of Sections 3.9 and 4.9, the incorporation of the guidance contained in NUREG-0452, Rev. 4, and the expansion of the containment isolation valve list has no effect on any of Zion's systems or structures. There will be no change in the normal operation of Zion's containment isolation systems. Thus, there can be no potential for any previously unanalyzed malfunction or component failure.

The containment isolation system is intended to contain any postulated release of radioactively from the reactor coolant system within the containment structure. Thus, the containment isolation systems performance is essential during any postulated accident sequence that may involve the release of radioactive material to the containment environs. The analyses for these accidents contained in Zion's FSAR have been reviewed. Based on the lack of system interaction discussed above, the proposed amendment of the Zion Technical Specifications will not affect any of these pre-existing accident sequences.

Thus this proposed amendment does not create the possibility of a new or different kind of accident from those previously evaluated.

*Criterion 3*

The incorporation of the guidance contained in NUREG-0452, Rev. 4, and the expansion of the containment isolation valve list will not affect the safety function of the containment isolation system. The containment isolation system will remain continuously available to perform the intended safety function.

Since the containment isolation system's ability to effectively contain any postulated release of radioactivity inside of the Zion containment structure will be unaltered by this proposed change, there will be no change in the margin of safety.

This proposed change involves the expansion of the containment isolation valve list, the expansion and clarification of the prescribed actions, the correction of minor errors, and the deletion of conflicting requirements. Thus, examples (i) and (ii) are applicable in this instance. Examples (i) and (ii) read as follows:

(i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specification, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification: for example, a more stringent surveillance requirement.

Therefore, since the application for amendment satisfies the criteria specified in 10 CFR 50.92 and is similar to examples for which no significant hazards consideration exists, Commonwealth Edison Company has made a determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

*Attorney to licensee:* P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

*NRC Project Director:* Daniel R. Muller

**Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan**

*Date of amendment request:* April 27, 1987 (VP-NO-87-0035)

*Description of amendment request:* The proposed amendment would revise the Fermi-2 Operating License No. NPF-43 Plant Technical Specification 3/4.6.1.7 to change the drywell average air temperature limit from 135°F to 145°F to ensure continuous plant operation during the summer months without the need to derate plant operations.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the possibility or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that:

1. The proposed increase in the drywell average air temperature limit does not involve a physical modification to the plant or a change in operating practices. It does, however, involve a change in the limiting conditions for operation which has been evaluated for: (1) impact on equipment environmental qualification requirements; (2) drywell concrete (structural) design requirements; (3) piping and piping support design requirements; and (4) the balance of safety-related mechanical equipment in the drywell. A reanalysis of the design basis loss of coolant accident (LOCA) indicates that the dynamic loads and containment response during a LOCA are bounded by the accident analysis documented in the Final Safety Analysis Report, and that peak drywell and wetwell pressures and the drywell pressurization rate, due to the higher temperature limit, actually decrease. Although operation at the higher temperature limit of 145°F could potentially accelerate aging of certain system components such as seals, solenoid valves and pressure switches, which may require earlier replacement, these components are periodically monitored by the Environmental Qualification Preventive Maintenance Program to ensure that any accelerated aging of those components will be detected and not inhibit their intended safety functions. In view of these determinations, the proposed change would not involve a significant increase in the possibility or consequences of an accident previously evaluated.

2. The proposed change to increase the drywell average air temperature to 145°F does not create the possibility of a new or different kind of accident from any accident previously evaluated. The increase in drywell average air temperature has been analyzed to be within the bounds of the results established in the Final Safety Analysis Report for the design basis LOCA. Thus, the change would not impact plant performance and would not provide an opportunity for the plant to enter into a condition not previously evaluated.

3. The proposed change to increase the drywell average air temperature to 145°F does not involve a significant reduction in safety margin. Reanalysis of the design basis LOCA at the higher temperature indicates that there is no significant impact on the dynamic loads or the containment response during a LOCA. The design basis LOCA reanalysis also indicates that the peak drywell and wetwell pressures, and drywell pressurization rate, actually decrease with the proposed increase in

the drywell average air temperature, thus enhancing the safety margin.

The Commission agrees with the licensee's determination and proposes to determine that the change requested to Technical Specification 3/4.6.1.7, as described above, does not involve a significant hazards consideration.

*Local Public Document Room location:* Monroe County Public Library System, 3700 South Custer Road, Monroe, Michigan 48161.

*Attorney for licensee:* John Flynn, Esq., The Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

*NRC Project Director:* Martin J. Virgilio, Acting.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* April 9, 1987

*Description of amendment request:* The proposed amendments would change the Technical Specifications (TSs) to reflect the third refueling of Unit 2 and its fourth fuel cycle. (The refueling for Unit 2 Cycle 4 would continue the transition to use of optimized fuel assemblies (OFAs) initiated during the first refueling and would replace an additional 64 standard fuel assemblies with OFAs; thus, 184 of the total 193 fuel assemblies in Cycle 4 would be OFAs.) The existing TS figures for axial flux difference limits as a function of rated thermal power would be relabeled such that the existing figure for Unit 1 only (Figure 3.2-1a) would apply to both Units 1 and 2, and the existing figure for Unit 2 only (Figure 3.2-1b) would be deleted. The TS Index would be updated consistent with these changes.

The proposed amendments would also increase the limit specified for heat flux hot channel factor (Fq) for both Unit 1 and Unit 2 from the present value of 2.26 to 2.32. This change would be reflected in each of several TSs presently specifying 2.26, including TSs 3.2.2, 4.2.2.2c, 4.2.2.2f, 4.2.2.3, 4.2.2.4c, 4.2.2.4f.2, and Bases 3/4.2.1. A corresponding change would be made to TS Figure 3.2-2 which shows normalized Fq as a function of core height (i.e., the revised normalized figure would be based upon a total Fq of 2.32 rather than 2.26.)

The title of TS 6.9.1.9, "Radial Peaking Factor Limit Report" would be changed to "Peaking Factor Limit Report." This change would also be reflected in the TS Index. The schedule in TS 6.9.1.9 for providing the peaking factor limit report to the NRC would be changed from 60 days before cycle initial criticality (or 60 days before W(Z) functions and the value for $APL^{RP}$ would become effective) to 20 days after implementation. The change would also update the NRC addressee specified in TS 6.9.1.9 for receipt of the peaking factor limit report (i.e., the NRC's Core Performance Branch would be changed to the NRC Document Control Desk, with copies also specified to be provided to the Regional Administrator and the Resident Inspector) based upon changes in the Commissions regulations (51 FR 40308). TS 6.9.1.9 would also be supplemented to specify that the methodology used to generate the W(Z) functions for Relaxed Axial Offset Control (RAOC) and base load operation and the value for $APL^{RP}$ shall be those previously reviewed and approved by the NRC (i.e., from WCAP-10216 "Relaxation of Constant Axial Offset Control-Fq Surveillance Technical Specifications"). If changes to these methods are deemed necessary, the revised TS 6.9.1.9 would specify that such changes are to be evaluated in accordance with 10 CFR 50.59 and submitted to the NRC for review and approval prior to their use if the change is determined to involve an unreviewed safety question or if such a change would require amendments of previously submitted documentation.

*Basis for proposed no significant hazards consideration determination:* On April 29, 1984, the Commission issued Amendment No. 32 to Facility Operating License NPF-9 to change the Technical Specifications to permit changes in operating limits related to the transition to the use of optimized fuel assemblies in McGuire Unit 1. A similar amendment for Unit 2 (Amendment 23) was issued March 22, 1985.

Accordingly, beginning with their first refuelings for Cycle 2, Unit 1 and Unit 2 operated with the first stage of a transition core consisting of approximately 1/3 Westinghouse 17x17 Optimized Fuel Assemblies (OFAs) and 2/3 Westinghouse 17x17 low-parasitic fuel assemblies (STDs). During Cycle 3, each unit contained about 2/3 OFAs and 1/3 STDs. Unit 1 is currently operating in Cycle 4 and Unit 2 will achieve Cycle 4 by its next refueling. In Cycle 4, 184 of the total 193 fuel assemblies are OFAs.

The major differences between STDs and OFAs are the use of Zircaloy grids for the OFAs versus Inconel grids for STDs and a reduction in fuel rod diameter. The OFA fuel has similar design features compared to the STD fuel, which has had substantial operating experience in a number of nuclear plants. Major advantages for utilizing the OFAs are: (1) Increased efficiency of the core by reducing the amount of parasitic material and (2) reduced fuel cycle costs due to an optimization of water to uranium ratio.

The proposed amendments would provide for plant operation consistent with the design and safety evaluation conclusions in the licensee's McGuire Unit 2 Cycle 4 Reload Safety Evaluation (RSE). The changes to the Technical Specifications would reflect adjustments in the limiting conditions and surveillance requirements for (1) axial flux difference and (2) heat flux hot channel factor, consistent with the parameters used in the RSE.

The Commission proposes to determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The McGuire Unit 2/Cycle 4 RSE accompanying the licensee's amendment request of April 9, 1987, describes all of the accidents comprising the licensing bases which could potentially be affected by the fuel reload for the Unit 2 Cycle 4 design. The results of the analysis conclude that:

a. The Westinghouse OFA reload fuel assemblies for McGuire 1 and 2 are mechanically compatible with the STD design, control rods, and reactor internals interfaces. Both fuel assemblies satisfy the current design bases for the McGuire units.

b. Changes in the nuclear characteristics due to the transition from STD to OFA fuel will be within the range normally seen from cycle to cycle due to fuel management effects.

c. The reload OFAs are hydraulically compatible with the current STD design.

d. The accident analyses for the OFA transition core were shown to provide acceptable results by meeting the applicable criteria, such as, minimum DNBR, peak pressure, and peak clad temperature, as required. The previously reviewed and licensed safety limits are met.

e. Plant operating limitations given in the Technical Specifications will be satisfied with the proposed changes.

From these evaluations, it is concluded that the Unit 2 Cycle 4 design does not cause the previously acceptable safety limits to be exceeded.

The Commission has provided examples of amendments likely to

involve no significant hazards considerations (51 FR 7744). One example of this type is (vi), "A change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where results of the change are clearly within all acceptable criteria with respect to the system or component specified in the standard review plan: For example, a change resulting from the application of a small refinement of a previously used calculational model or design method". Because the evaluations previously discussed show that all of the accidents comprising the licensing bases which could potentially be affected by the fuel reload were reviewed for the Unit 2 Cycle 4 design and conclude that the reload design does not cause the previously acceptable safety limits to be exceeded, the above example can be applied to this situation. Accordingly, the Commission proposes to determine that these changes for the Unit 2 Cycle 4 reload, including the changes in axial flux difference, and heat flux hot channel factor, do not involve a significant hazards consideration.

By previous Amendments 32 (Unit 1)/13(Unit 2) and Amendments 42 (Unit 1)/23 (Unit 2), McGuire changed to a type of Fq function for which the title "Radial Peaking Factor Limit" was no longer appropriate. The previous amendments failed to correct the title of TS 6.9.1.9. The proposed amendment would correct the title by deleting "Radial". Also, during its licensing review of another nuclear plant (Vogtle Nuclear Station), the Commission determined that the safety of a plant would not be affected if the peaking factor limit report required by TS 6.9.1.9 were submitted 30 days after implementation rather than 60 days before criticality, provided the methodology used was previously reviewed and approved by the NRC and changes to this methodology are subject to the requirements of 10 CFR 50.59. The proposed change in the McGuire schedule would include these conditions in the revised TS 6.9.1.9.

Another example of actions not likely to involve a significant hazards consideration, example (i), relates to a purely administrative change to technical specifications to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The Commission proposes to find that the changes to the TS index; the title and submittal schedule and NRC addressee in TS 6.9.1.9; and changes to Unit 1 specifications which do not change the content for Unit 1 but which eliminate the distinctions between units within the common document (as is the case for Figure 3.2-1) are administrative and involve no significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC) Station, North Carolina 28223

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* B. J. Youngblood

**Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina**

*Date of amendment request:* April 10, 1987

*Description of amendment request:* The proposed amendments would revise the Station's common Technical Specifications (TSs) to revise TS 6.1.1.4 and allow the Superintendent of Operations to hold or have held either a senior reactor operator (SRO) license or SRO certification. The current TSs require that an SRO license is required to be held or have been held for this position. The licensee proposes to include the option of SRO certification.

*Basis for proposed no significant hazards consideration determination:* The proposed amendment revises the requirements for holding the Superintendent of Operations position at Oconee. The requirements are specified in Section 6.1.1.4 in the Administrative Controls/Organization Section. Presently the Superintendent of Operations must hold or have held an SRO license. This proposed amendment includes an option to the requirement so an SRO certification will also qualify a candidate for the Superintendent position.

To ensure the quality of operations through qualified management, the licensee has developed an SRO certification program to provide a course of study and experiences similar to that of an SRO during normal and abnormal conditions. The licensee SRO certification program was designed for non-licensed management personnel who are required to have an understanding of plant operations. The certification program training is equivalent to the SRO license training and is administered through completion of an NRC format audit exam which certifies technical competence of trainees. This audit exam consists of a written exam, simulator operation and plant walkthrough examination. Candidates for certification do not take the NRC license exam since their positions do not require actual operating of the plant.

The licensee states that the SRO certification program was based on ANSI 3.1 Standards, previous commitments and the NRC approved Cold License Certification program. The SRO license Preparatory Program is an INPO accredited program and is approved by the NRC. The licensee has defined this program and the SRO Certification Program in the Employee Training and Qualification Manual. The licensee determined that the SRO Certification Program meets or exceeds ANSI 3.1 Standards thus providing adequate technical knowledge to qualify management personnel to assume the responsibilities of the Superintendent of Operations.

The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The details of position requirements are included in the Administrative Controls section of the TSs and have no impact on the probability or consequences of any accident analysis.

The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because the change offers an option to qualify for Superintendent of Operations.

The proposed amendment would not involve a significant reduction in a margin of safety. Inclusion of the SRO certification may prove to be an acceptable experience alternative and may not lower the quality standards that the licensee maintains in nuclear station personnel.

Therefore, the proposed action would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any

accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On this basis the Commission proposes to determine that the application involves no significant hazards consideration.

*Local Public Document Room location:* Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691

*Attorney for licensee:* J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* B. J. Youngblood

**Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida**

*Date of amendment request:* March 17, 1987

*Description of amendment request:* The licensee proposes to make administrative changes to the technical specifications to remove outdated material, make minor text changes, and correct typographical errors. The changes are grouped into five categories.

Category 1 changes deal with changing the units of reactivity. The licensee proposes changing "% delta k/k" to "pcm" wherever "% delta k/k" is used in the technical specifications. One "% delta k/k" equals $10^{+3}$ pcm.

Category 2 changes deal with removal of requirements that are currently outdated. These requirements were either effective for a period of time that is now past, or they have become redundant to requirements in another section of the technical specifications. The changes dealing with the former are: (1) modified incore detector system operability requirements which were temporarily in effect until October 1, 1981 (TS 3.3.3.2); (2) modified power operated relief valve block valve action statement which was temporarily in effect until October 1, 1981 (TS 3.4.12); and (3) Commission approval of offsite dose calculation manual (TS 6.14.1) and process control program (TS 6.13.1). The change dealing with the latter is removal of specific technical specifications dealing with secondary water chemistry, which were never fully defined (TS 3/4.1.6). The valid secondary water chemistry technical specifications are contained in the administrative controls part of the technical specifications (T.S. 6.8.4.C).

Category 3 changes represent typographical errors.

Category 4 changes correct the titles of the Company Nuclear Review Board (CNRB).

Category 5 changes ensure that the required 10 CFR Part 50 reports are sent to the Document Control Desk, Washington, DC 20555.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance for the application of standards for determining if a no significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (51 FR 7751). One of these examples, (i), is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed changes come under this example. Category 1 changes only the reactivity units; the correct reactivity will still be in effect as far as the technical specification is concerned. Category 2 changes requirements that are either outdated and no longer in effect or are more appropriately specified in another part of the technical specifications. Category 3 corrects typographical errors, an example of an administrative change given in 51 FR 7751. Category 4 provides the correct make-up of the CNRB with correct titles. Category 5 changes ensure that the required 10 CFR Part 50 reports are forwarded to the Document Control Desk in Washington, DC.

Based upon the above, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida 33450.

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Lester S. Rubenstein

**Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida**

*Date of amendment request:* April 1, 1987

*Description of amendment request:* The Unit No. 1 technical specifications currently contain tables which identify safety-related hydraulic snubbers and safety-related mechanical snubbers. The snubbers ensure that the structural integrity of the reactor coolant system and all other safety-related systems is maintained during and following a seismic event or other events initiating dynamic loads.

The Commission issued Generic Letter 84-13 entitled "Technical Specifications for Snubbers" on May 3, 1984. The Generic Letter stated that the staff reassessed the inclusion of snubber listings within the technical specifications and concluded that such listings are not necessary provided the snubber technical specification is modified to specify which snubbers are required to be operable. In response to the Generic Letter, the licensee proposed to: (1) delete Table 3.7-2a which identifies safety-related hydraulic snubbers and Table 3.7-2b which identifies safety-related mechanical snubbers; (2) modify the technical specification wording in various locations to state safety-related snubbers versus snubbers; (3) maintain the actual listings in a document; and (4) implement any changes in snubber quantities, types, or locations as a change to the facility as controlled under the Commission's regulation 10 CFR 50.59.

In addition to the above changes, the licensee also proposed to remove snubber-related requirements that are outdated. This consists of the first inservice visual inspection requirements which have already been fulfilled and the deletion of a footnote concerning the waiving of mechanical snubber functional test requirements until startup following the fifth refueling outage, which has already occurred.

Lastly, the licensee proposed to correct an error in a reference contained in the snubber service life monitoring specification (TS 4.7.10.f). The current reference is "Specification 6.10.2.m." The correct reference should be "Specification 6.10.2.l."

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards considerations exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

> . . . the changes being proposed by FPL are administrative; they do not affect assumptions contained in plant safety

analyses, nor do they affect Technical Specifications that do preserve safety analysis assumptions. Safety related snubbers will continue to be controlled and surveilled according to Technical Specifications. Changes in snubber quantities, types, or locations would be a change to the facility and would be adequately controlled per the provisions of 10 CFR 50.59. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

In connection with the second standard, the licensee states that:

. . . the changes being proposed by FPL are administrative; they will not lead to physical modifications. These changes do not add to, or delete from, the total number of plant snubbers available to provide dynamic load support during and following a seismic event or other initiating dynamic loads. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Regarding the third standard, the licensee states that:

. . . the changes being proposed by FPL are administative; they do not modify the safety margins defined in and maintained by the Technical Specifications. The NRC has concluded that snubber listings are not necessary provided the snubber Technical Specification specifies which snubbers are required to be OPERABLE. The snubber LCO has been clarified to show that all safety related snubbers must be OPERABLE. This change does not involve a significant reduction in a margin of safety since: 1) the LCO clearly specifies which snubbers are required to be OPERABLE, and 2) the snubber listing will be maintained via controlled documents.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on this review, it appears that the proposed amendment does not involve an increase in the probability or consequences of events previously evaluated and that the proposed amendment will not create the possibility or a new or different kind of accident from any previously evaluated. Likewise, it does not appear that the margin of safety is reduced. The snubber listings will be moved to another document and controlled under 10 CFR 50.59. The proposed technical specifications make it clear that safety-related snubbers are enveloped. The removal of outdated requirements is administrative in nature, as well as the correction to a specification reference.

Based upon the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Lester S. Rubenstein

**Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida**

*Date of amendment request:* March 31, 1987

*Description of amendment request:* The licensee proposes to make administrative changes to the technical specifications to remove outdated material, make minor text changes, and correct typographical errors. The changes are grouped into five categories.

Category 1 changes deal with changing the units of reactivity. The licensee proposes changing "% delta k/k" to "pcm" wherever "% delta k/k" is used in the technical specifications. One "% delta k/k" equals $10^{+3}$ pcm.

Category 2 changes deal with the removal of requirements that are currently outdated. These requirements were in effect for a period of time that is now past, and included such items required before initial criticality, prior to initial 5% power, and the like.

Category 3 changes represent typographical errors.

Category 4 changes will correct the titles of the Company Nuclear Review Board (CNRB).

Category 5 changes ensure that the required Part 50 reports are sent to the Document Control Desk, Washington, DC 20555.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance for the application of standards for determining if a no significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (51 FR 7751). One of these examples, (i), is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The proposed changes come under this example. Category 1 changes the reactivity units; the correct reactivity will still be in effect as far as the technical specification is concerned. Category 2 changes requirements that are outdated and no longer in effect, but which have been met. Category 3 are typographical errors. Category 4 provides the correct titles of the CNRB. Category 5 changes ensures that the required Part 50 reports are forwarded to the Document Control Desk in Washington, DC.

Based upon the above, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Lester S. Rubenstein

**GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey**

*Date of amendment request:* March 17, 1987 (TSCR 158)

*Description of amendment request:* The proposed amendment would revise Section 3.3, Reactor Coolant, of the Appendix A Technical Specifications (TS) regarding the requirements of Generic Letter 84-11. Specifically, the licensee is proposing to increase the current requirements in TS 3.3.D.1.c. The proposed amendment is to have the reactor coolant system leakage limited to a 2 gpm increase in unidentified leakage rate within *any 24 hour period* while operating at steady state power. The current TS requires this within any 4-hour period.

*Basis for proposed no significant hazards consideration determination:* In response to a staff request dated September 5, 1986, concerning Generic Letter 84-11, the licensee has proposed Technical Specification Change Request No. 158. The licensee's proposed change increases the requirements on reactor coolant unidentified leakage in the TS.

The licensee has evaluated its proposed change against the standards in 10 CFR 50.92. The results are as follows:

By a letter dated September 5, 1986, the NRC requested GPU Nuclear (GPUN) the licensee for the Oyster Creek Nuclear Generating Station (OCNGS) to justify its Technical Specification (TS) requirements (TS3.3D.1.c) for unidentifed leakage against the requirements of Generic Letter (GL) 84-11, attachment 1, item B. Briefly, OCNGS TS3.3D.1.c states that reactor coolant system leakage shall be limited to a 2 gpm increase in unidentified leakage rate within any *4-hour* period while operating at steady state power. GL 84-11 states that a maximum increase in unidentified leakage rate within any *24-hour* period while operating would be sufficiently restrictive to ensure timely investigation of potential through-wall cracks in austenitic stainless steel piping.

GPUN agrees that the OCNGS TS3.3D.1.c for the unidentified leakage is not as restrictive as the requirements of GL 84-11 and is proposing this amendment to revise the time interval from 4 hours to 24 hours.

Since this proposed amendment increases the time interval for the same flow rate (2 gpm), this change places a more restrictive requirement on the maximum allowable rate of increase for the unidentified reactor coolant system leakage.

This proposed change would increase the margin of safety through more restrictive limiting conditions of operation for the unidentified reactor coolant system leakage.

Likewise, the more restrictive limiting conditions of operation would provide for the timely detection of potential cracks, and would decrease the probability of a design basis loss-of-coolant accident.

Based upon the hereinbefore discussion, we [the licensee] have evaluated that this change request involves no significant hazards considerations. In summary, we have determined that the proposed amendment would not:

a. Involve a significant increase in the probability or consequences of an accident previously evaluated;

This proposed change would place a more restrictive limiting conditions of operation for the unidentified reactor coolant system leakage which provides for the timely detection of potential through-wall cracks in austenitic stainless steel piping. By this timely detection the probability of a design basis loss-of-coolant accident would not have any effect on the consequences of the design basis accidents previously evaluated.

b. Create the possibility of a new or different kind of accident from any accident previously evaluated;

This proposed change only places more restrictive limiting conditions of operation for the unidentified reactor coolant system leakage, so this proposed change does not create the possibility of a new or different kind of accident.

c. Involve a significant reduction in a margin of safety;

This proposed change would increase the margin of safety by the initiation of timely actions for the detection of potential through-wall cracks in austenitic stainless steel piping, and thereby reduces the probability of a design basis loss-of-coolant accident.

The staff has reviewed the licensee's no significant hazards consideration determination and agree with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

*Local Public Document Room location:* Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

*Attorney for licensee:* Ernest L. Blake, Jr.; Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* John F. Stolz

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia**

*Date of amendment request:* March 30, 1987

*Description of amendment request:* The proposed amendment would increase the shutdown margin requirements shown in Technical Specification (TS) Figure 3.1-2 and change the title of Figure 3.1-2. The proposed title change would avoid confusion with TS Figure 3.1-1 and be consistent with TS 3.1.1.3.

Technical Specification 3.1.1.2 specifies the minimum shutdown requirement during operation in Modes 3, 4, and 5. Currently, TS Figure 3.1-2 shows the required shutdown margin for Mode 4 when no reactor coolant pumps (and at least one residual heat removal pump) are in operation and for Mode 5 at all times. Based upon its review of the Diablo Canyon natural circulation test results, the staff concluded that under low flow, natural circulation conditions, the water in the reactor vessel upper head could become stagnant and not actively mix with the remainder of the reactor coolant. Therefore, borated water in the upper head would not be able to contribute to the mitigation of a boron dilution event.

Because of the revised NRC staff position, Westinghouse reanalyzed the Vogtle boron dilution accident for Modes 4 and 5 with no reactor coolant pumps operating while not taking credit for the borated water contained in the reactor vessel upper head. This lower assumed water volume results in a reduction of the time available to the operator (a minimum of 15 minutes from the time of the high flux at shutdown alarm to the total loss of shutdown margin). Therefore, the reanalysis resulted in a slightly greater boron requirement which increases the time available to the operator so that the safety design bases continue to be met. The revised TS Figure 3.1-2 is consistent with the Westinghouse reanalysis of the boron dilution event in Modes 4 and 5 with no reactor coolant pumps in operation. Additionally, the title change removes the overlap regarding pump operation which currently exists between TS Tables 3.1-1 and 3.1-2.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and has determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The only effect of the proposed change is to increase the required shutdown margin during low reactor coolant flow conditions in order to counterbalance the decrease in the assumed available mixing volume for mitigation of boron dilution events.

Also, the licensee's proposed changes would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because no new or novel features would be added to plant design. Finally, the licensee's proposed changes would not (3) involve a significant reduction in a margin of safety because the increased boron requirement counterbalances the reduced available water volume so that the previous safety design bases continue to be met.

One of the Commission's examples in 51 FR 7744 of actions likely to involve no significant hazards considerations is (i), "a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change to modify the title of TS Figure 3.1-2 represents a change that meets the guidance provided by this example because the change corrects an error in the title.

Accordingly, the Commission proposes to determine that the proposed changes involve no significant hazards consideration.

*Local Public Document Room location:* Burke County Public Library, 4th Street, Waynesboro, Georgia 30830

*Attorney for licensee:* Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, Georgia 30043

*NRC Project Director:* B. J. Youngblood

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* September 15, 1986

*Description of amendment request:* The proposed license amendment would revise Duane Arnold Energy Center Technical Specification Sections 3.6.E and 4.6.E and the associated bases to reflect the latest General Electric guidance on jet pump operability and surveillance requirements.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request as follows:

In reviewing this proposed request for Technical Specification change we have concluded that this amendment:

(1) does not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes are based upon GE's recommendations (SIL 0) and are derived from evaluation of actual in-plant data from facilities where failures of jet pump hold-down beams have occurred. The NRC has approved the same Technical Specification changes for facilities similar to the DAEC. The jet pump flow and WP signals are inherently noisy at low pump speed/core flow. This is because the natural circulation effects dominate the flow through the core. As the pump speed increases, the forced circulation overcomes the natural circulation and the process stabilizes, allowing more reliable readings of jet pump performance to be obtained. The present Technical Specifications require an immediate plant shutdown if the present surveillance requirements are not met, even at the low speeds where the readings are often anomalous. Since the actual beam failure mode is a slow, progressively degrading process which can be trended, the requirement to perform daily evaluations at low pump speeds (less than 80%) will ensure that true degradation is observed and will allow for anomalous data to be discounted without forcing an unnecessary plant shutdown, as with the present Technical Specifications. Therefore, these changes to the Technical Specification requirements will have no impact on either the probability or consequences of a jet pump failure from those previously analyzed; they will improve our ability to detect true degradation in jet pump performance before hold-down beam failure actually occurs.

(2) does not create the possibility of a new or different kind of accident. These surveillances do not require any plant equipment to be manipulated, only that data be recorded from existing control room instrumentation; therefore, the possibility of an accident different from those previously analyzed is not created.

(3) does not involve a significant reduction in a margin of safety because the purpose for the present Technical Specification is the detection of a jet pump failure which could cause the plant to operate outside of its analyzed condition. These changes will improve our ability to detect true degradation in jet pump performance before such failures can occur. Therefore, the margin of safety is not reduced.

Based on an evaluation of the above licensee analysis, the Commission's staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

*NRC Project Director:* Martin J. Virgilio, Acting.

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of amendment request:* March 13, 1985 as amplified January 15, 1986 and January 13, 1987.

*Description of amendment request:* The proposed Technical Specification (TS) change would bring Maine Yankee's TS into conformance with the requirements set forth in USNRC Generic Letter 83-37 pertaining to the Reactor Coolant System (RCS) Vent System. Generic Letter 83-37 requires at least one RCS vent path to be operable and closed at all times. For Maine Yankee, which uses a pressure operated relief valve (PORV) as a RCS vent, the block valve is not required to be closed if the PORV is operable.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazard exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment it must provide to the Commission its analysis using the standards in 10 CFR 50.92 about the issue of no significant hazards consideration. The licensee has performed that analysis and we have performed an evaluation in accordance with 10 CFR 50.91(a)(1) to determine whether this proposed change involves a significant hazards consideration as defined by 10 CFR 50.92. A summary of our evaluation follows.

This proposed change does not increase the probability or consequence of a previously analyzed accident because the change simply requires four valves to be shut and to be operable with power removed from their actuators at or above Condition 4 (when the reactor is subcritical and its temperature is between 210°F and 500°F). Additionally, even if the valves were to be inadvertently opened at power and left that way despite alarms and other indications to the operator, the system was designed such that flow through the lines would be within the capacity of normal charging.

The proposed change does not create the possibility of a new or different kind of accident from any previously analyzed accident because potential accidents were assessed by the Commission when considering the requirement for reactor coolant system vents.

The proposed change does not significantly decrease any margin of safety because an operable reactor coolant vent system makes possible better mitigation of postulated accidents in which non-condensible gases might accumulate in the pressurizer or in the reactor vessel.

Based on our evaluation, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

*Local Public Document Room location:* Wiscasset Public Library, High Street, P. O. Box 367, Wiscasset, Maine 04578.

*Attorney for licensee:* J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

*NRC Project Director:* V. Nerses

**Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota**

*Date of amendments request:* April 13, 1987.

*Description of amendments request:* The technical specifications have single limits for each of the nuclear hot channel factors designated as $F_Q$ and $F_{delta\ H}$. Specifically, these hot channel factors currently must meet the following limits:

$F_Q$ x 1.03 x 1.05 less than or equal to 2.30 x $K_{(Z)}$; and $F_{delta\ H}$ x 1.04 less than or equal to 1.80 x [1+0.3(1-P)] where $K_{(Z)}$ is the axial dependence function at Z core height locations and P is the fraction of radial power at which the core is operating.

The amendment request proposes a change allowing a variable function for both $F_Q$ and $F_{delta\ H}$ with respect to each other. The proposed functions expressed as $F_Q$ ($F_{delta\ H}$) and $F_{delta\ H}$ ($F_Q$) allow operational flexibility by taking advantage of the typical peaks and valleys of $F_Q$ and $F_{delta\ H}$ throughout the fuel cycles. Therefore, the proposed change will allow the limits to be varied so that additional $F_Q$ margin can be obtained by decreasing the $F_{delta\ H}$ limits or conversely, more $F_{delta\ H}$ margin can be obtained at the expense of the $F_Q$ margin.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (51 FR 7751). One of the examples, (vi), of actions not likely to involve a significant hazards consideration involves a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

The licensee has performed analyses that when applying the locus of points for the proposed hot channel factors (i.e., $F_Q/F_{delta\ H}$) in the transient analyses (i.e., small and large break LOCA's), the peak clad temperature of 2200°F is not exceeded and thus meets the criteria in the Standard Review Plan, Section 4.2. In this case, the consequences of a previously analyzed accident (i.e., LOCA) have resulted in a slight reduction in the safety margin in that the maximum peak clad temperature has increased from 2186° to 2197°F but is clearly below the maximum allowable temperature of 2200°F. The results of the transient analyses stemming from the proposed changes are clearly within the acceptance criteria and meet the requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K.

On this basis, the staff believes that the proposed change is enveloped by example (vi) and, therefore, the staff proposes to determine that it does not involve a significant hazards consideration.

*Local Public Document Room location:* Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N. Street, NW., Washington, DC 20037.

*NRC Project Director:* David L. Wigginton, Acting.

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* August 5, 1986

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 and Unit 2 Technical Specifications to correct some errors, achieve consistency in the Technical Specifications, change nomenclature, and delete some dated requirements which have already been completed. Specifically, the Pennsylvania Power and Light Company (licensee) has proposed the following changes:

(1) for Unit No. 1, the licensee proposes to correct 17 errors, make 29 changes to achieve consistency in the Technical Specifications, make two changes to reflect a change in nomenclature, and to delete a dated requirement which has been completed; and

(2) for Unit No. 2, the licensee proposes to correct 12 errors, make 14 changes to achieve consistency throughout the Technical Specifications, delete five dated requirements which have already been completed, and make two changes updating the site drawings to show new construction.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and concurs with the basis provided by the licensee, in its August 5, 1986 submittal, for a conclusion that the proposed request for change involves no significant hazards consideration. In addition the Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing examples (51 FR 7744) of amendments that are considered not likely to involve significant hazards considerations. Example (i) relates to, "A purely administrative change to technical specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." Because the above described changes proposed by the licensee are encompassed by the Commission's example (i), the staff proposes to determine that the requested action does not involve a significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* February 11, 1987

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 and Unit 2 Technical Specifications (TSs) to change the action statement regarding automatic operating bypass of the reactor protection system (RPS) instrumentation and end-of-cycle recirculation pump trip (EOC-RPT) instrumentation on a turbine stop valve closure or turbine control valve fast closure signal from the condition of thermal power below 30%. Specifically, the Pennsylvania Power & Light Company (PP&L) proposes to change:

(a) Table 3.3.1-1 Action Statement No. 6 to clearly specify that the operators should reduce the power to below 30% of the rated power if RPS scram function bypass fails to lift when the rated thermal power is greater than 30%. The present action statement is unclear and could be interpreted to permit full power operation with RPS functions bypassed;

(b) Table 3.3.1-1 Note (j) to be consistent with the Action Statement No. 6 and to change the format of the note to emphasize that the real safety significance of the bypass is that it must

lift when required to allow the RPS to perform its intended function;

(c) Table 3.3.4.2-1 Note (b) to make EOC-RPT automatic bypass consistent with RPS trip function bypass, since both (RPS and EOC-RPT) bypasses are controlled by the same instrumentation, setpoints, and administrative controls; and

(d) Bases Section related to "Reactor Protection System Instrumentation Setpoints."

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following basis for its conclusion that the proposed changes involve no significant hazards consideration:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because: (a) the proposed clarification of the Action Statement provides better assurance of the availability of the anticipatory trip function than available now; (b) revision to Table 3.3.1-1 Note (j) does not affect the design, operation, or administrative control of the RPS; (c) revision to Table 3.3.4.2-1 Note (b) does not affect the design, operation, or administrative controls of EOC-RPT; and (d) changes to the Bases do not affect the probability or consequences of any accidents.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because changes (a), (b), (c), and (d) do not affect the design or operation of the RPS and EOC-RPT operation or alter instrumentation calibration practices.

(3) The proposed changes do not involve a significant reduction in a margin of safety because: (a) revised Table 3.3.1-1 Action Statement No. 6 will increase assurance that the margin of safety provided by the RPS is maintained; (b) Table 3.3.1-1 Note (j) will not change operation or setpoints for the RPS; (c) Table 3.3.4.2-1 Note (b) will not change operation or setpoints for EOC-RPT, and (d) changes to the Bases section do not affect any margins of safety.

The staff concurs with the above licensee's findings. The proposed changes, therefore, meet the Commission's standards for a determination that the changes involve no significant hazards consideration.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* April 8, 1987.

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 and Unit 2 Technical Specifications with regard to the Sodium Pentaborate concentration in the Standby Liquid Control (SLC) system. The proposed change would permit an increase in the maximum allowable concentration of Sodium Pentaborate in the SLC system from the present value of 13.8% to proposed the value of 15.8%. The minimum boron concentration of 660 ppm, which assures adequate shutdown margin, will remain unchanged. Increasing the maximum Sodium Pentaborate concentration from 13.8% to 15.8% would increase the saturation temperature from 50°F to 70°F. Since the liquid temperature must be maintained above the saturation temperature to prevent precipitation (crystallization) of Sodium Pentaborate, the licensee proposes to maintain the liquid at 90°F (10°F above the present 80°F) to maintain the margin above the saturation temperature, and will provide an alarm in the main control room to warn the operators if the liquid temperature drops below 90°F.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and made the following determination.

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the accident evaluation is based on the minimum SLC system boron concentration which is unchanged.

(2) The proposed change does not create a possibility of a new or different kind of accident because increasing the maximum Sodium Pentaborate concentration in the SLC system does not affect the safety function of the system.

(3) The proposed change does not involve a significant reduction in the margin of safety because an increase in the boron solution saturation temperature will be offset by increasing the minimum liquid temperature from 80°F to 90°F and providing an alarm to warn the operators in the main control room if the temperature drops below 90°F.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* April 10, 1987.

*Description of amendment request:* The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 and 2 Technical Specifications to change the requirement

that the scram discharge volume (SDV) vent and drain valves be demonstrated operable during control rod scram test with control rod density less than or equal to 50%. The proposed change would delete the requirement that the control rod density be less than or equal to 50%. The revision is being proposed with the purpose of allowing the licensee to do the surveillance test typically during a refueling outage which coincides with the 18 month SDV vent and drain valve surveillance frequency specified in the Technical Specifications. The licensee states that the present 18 month vent and drain valve operability requirement has caused a plant scram to be taken specifically for the purpose of testing. Since testing in the shutdown mode can provide the necessary operability check, the present requirement is imposing unnecessary scrams on the plant.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and made the following determination.

(1) The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated, because the SDV vent and drain valve operability will continue to be demonstrated at the current testing frequency.

(2) The proposed change would not create the possibility of a new or different kind of accident because there would be no change in the plant operation; and the reliability of the SDV vent and drain valve will not change.

(3) The proposed change does not involve a significant reduction in a margin of safety because the proposed surveillance of the SDV vent and drain valve will most likely reduce unnecessary reactor scrams without changing the confidence in the valve operability demonstration.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Walter R. Butler

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* January 12, 1987.

*Description of amendment request:* The proposed amendments revise the Peach Bottom Atomic Power Station, Units 2 and 3, Technical Specifications (TS) relating to (I) reactor core thermal hydraulic stability and (II) operation with jet pump flow indication failures and jet pump operability surveillance requirements. An operating restriction concerning a limiting Safety System Setting on Unit 2 is also proposed to be removed since it is no longer necessary.

On January 23, 1986, NRC issued generic letter 86-02, "Technical Resolution of Generic Issue B-19-Thermal Hydraulic Stability", to licensees of operating BWRs. The generic letter concluded that there was potential uncertainty in the approved methods for calculation of core stability decay ratio in predicting the onset of limit cycle oscillations. The generic letter stated that "licensees should examine each core reload to assure it is typical of previously evaluated cores which have acceptable stability margin. For cores which do not meet the analytical criteria, we have concluded that operating limitations which provide for the detection and suppression of flux oscillations in operating regions of potential instability consistent with the recommendations of General Electric SIL-380 are acceptable." The generic letter further stated that: "all BWR owners should review the need for technical specifications (which enforce GE SIL-380 recommendations for operation of their plants) in light of the approved stability criteria and the status of core stability design calculations for specific plants. Licensees are advised that the approved stability criteria are applicable to all operating reactors, and should be included in future safety evaluations in support of 10 CFR 50.59 determinations for all core reloads and design or operating modifications which relate to core thermal-hydraulic stability."

Philadelphia Electric Company (PECo) submitted a reload amendment for Peach Bottom Unit 2 by letter dated January 9, 1987. The subject application for amendments is in response to generic letter 86-02. The proposed revisions to the Technical Specifications would add monitoring and operability requirements to the Unit 2 Technical Specifications to avoid the possibility for thermal hydraulic instability. The new, additional requirements would:

(1) Add a Limiting Condition for Operation (LCO) to establish thermal power and core flow operating limits to avoid thermal hydraulic instability.

(2) Add a LCO to prohibit continued single recirculation loop operation below 39% of rated core flow and power above the 80% rod line.

(3) Add a LCO to require APRM and LPRM noise level monitoring when operating in the regions of potential instability (low flow/high power).

(4) Revise an existing LCO to reduce the time limit for having the requirements applicable to single loop operation in effect from 24 hours to 6 hours.

(5) Remove a specification which prohibits operation in the natural circulation mode and replace it with an action-to-be-taken requirement: namely, an immediate reduction of thermal power followed by a reactor shutdown within 6 hours if the mode switch is in Startup or Run with no recirculation loops in operation.

(6) Remove a restriction on operation at a maximum of 50% thermal power in the single loop mode since stability is assured by other restrictions.

On December 3, 1984, the Commission issued Amendment 107 for Peach Bottom Unit 3 permitting increased core flow. Although generic letter 86-02 had not been developed at the time, the staff was developing some proposed Technical Specification provisions to preclude possible thermal-hydraulic instability. At the NRC staff's request, the licensee incorporated the provisions (which reflected the staff's position at the time) into the increased core flow application which was approved by Amendment 107 issued December 3, 1984 and into the Peach Bottom Unit 2 Cycle 7 reload application which was approved by Amendment 106 issued March 19, 1985. Now that the NRC requirements on thermalhydraulic stability have been established (generic letter 86-02) some of the staff's previously proposed restrictions are no

longer needed or applicable.

Accordingly, the proposed amendments would revise the Unit 2 Technical Specifications to (1) remove APRM and LPRM noise level monitoring requirements in operating regions 2, 3 and 4; (2) decrease the allowable time for taking appropriate action when entering single loop operation from 24 to 6 hours; (3) increase the frequency for monitoring APRM and LPRM noise levels at low flows from 24 hours to once every 8 hours; (4) reduce the upper core flow limit for Region I from 45% to 39% of rated flow and (5) decrease the cut-off criterion from neutron flux noise levels from 5% to 4%. There would also be some rewording and reformatting of the Technical Specification requirements on recirculation pump operation to make the thermal-hydraulic stability requirements easier to understand.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards (10 CFR 50.92) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis of each of the above criteria for the amendment request as follows:

*I. Thermal Hydraulic Stability*

It has been determined..... that operation of Peach Bottom Atomic Power Station Units 2 and 3, in accordance with these proposed revisions to the Technical Specifications, does not involve a significant hazards consideration for the following reasons:

(i) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated because the revisions are consistent with the NRC-approved stability criteria and the monitoring requirements are sufficient to prevent thermal hydraulic instability. Stability monitoring provisions decrease the probability of fuel damage by avoiding limit cycle neutron flux oscillations. The more restrictive action statements decrease the possibility for instability.

(ii) The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because the monitoring requirements and revised action statements do not change reactor operating procedures or characteristics. They merely serve to prevent operation in regions of potential instability.

(iii) The proposed revisions do not involve a significant reduction in a margin of safety because these monitoring requirements will ensure that limit cycle neutron flux oscillations are avoided, thereby reducing the potential for a reactor power transient.

*II. Jet Pump Flow Indication Failures and Jet Pump Operability*

It has been determined..... that operation of Peach Bottom Atomic Power Station Units 2 and 3, in accordance with these proposed revisions to the Technical Specifications does not involve a significant hazards consideration for the following reasons:

(i) The proposed revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated. The change to LCO [Limiting Condition for Operation] 3.6.E.3 does not change the intent of the Specification; it simply makes it more understandable, which increases the probability of conformance to the LCO. The revisions to the surveillance requirements merely provide clarification by addressing single loop operation and two-loop operation specifically. The addition of LCO 3.6.E.4 prevents continued operation of the reactor in an unanalyzed condition, thereby decreasing the probability of an accident, without affecting the consequences of an accident. These changes are, therefore, conservative.

(ii) The provisions do not create the possibility of a new or different kind of accident from any accident previously evaluated because the revisions do not adversely change allowable reactor operations. In effect, the revisions of LCO 3.6.E.3 and revisions to the surveillance requirements do not change reactor operation. The addition of LCO 3.6.E.4 does not create any new mode of operation; rather, it prohibits an unanalyzed operation which the Technical Specifications previously did not address.

(iii) The proposed revisions do not involve a significant reduction in a margin of safety because the revisions clarify the specifications and reduce the possibility of reactor operation in an unanalyzed condition which clearly increases the margin of safety.

The Plant Operating Review Committee and the Nuclear Review Board have reviewed these proposed changes to the Technical Specifications and have concluded that they do not involve an unreviewed safety question or a significant hazards consideration and will not endanger the health and safety of the public.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff has made a proposed determination that the proposed amendments involve no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

*Attorney for Licensee:* Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

*NRC Project Director:* Walter R. Butler

**Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon**

*Date of amendment request:* February 10, 1987.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) Section 3/4.4.2, Reactor Coolant System Safety Valves-Shutdown, TS-Section 3/4.4.3, Reactor Coolant System Safety and Relief Valves-Operating, and TS Section 3/4.7.1, Turbine Cycle Safety Valves, to reflect a change in the pressurizer and main steam safety valves setpoint tolerance from plus or minus 1 percent to plus or minus 2 percent.

*Basis for proposed no significant hazards consideration determination:* 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve a significant reduction in a margin of safety. The Commission has also provided guidance concerning the application of these standards by providing certain examples (March 6, 1986, 51 FR 7751). An example of an amendment that is considered not likely to involve a significant hazards consideration is Example (vi) a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan.

The licensee has analyzed the effects of the proposed changes with respect to the overpressurization accident analyses relating to the Reactor Coolant System (RCS) and the main steam system.

The pressurizer and main steam safety valves are designed to mitigate transients by preventing overpressurization of the RCS and main steam system, respectively. The proposed change does not alter this design basis. The increase in setpoint tolerance does increase the range of pressures at which the safety valves may lift and subsequently close. This can result in greater system pressures prior to valve lifting and increased blowdown prior to valve seating. This

does alter the consequences of an accident from the standpoint that the safety valves may respond differently as far as when the valves open and close.

The licensee has performed an analysis to determine system effects utilizing assumed setpoint tolerances of plus 4 percent and minus 3 percent for both the pressurizer and main steam safety valves. Since neither the design nor the operation of the plant was modified, results of the analysis indicated that any pressurizer safety valve lifting at the extremes of the proposed tolerance will not result in a low lift setpoint that is less than the pressurizer high-pressure reactor trip, nor a high lift setpoint that allows RCS overpressurization, and that any main steam safety valve lifting at the extremes of the proposed tolerance will not result in a low lift setpoint that is less than the normal no-load system pressure, nor a high lift setpoint that allows main steam system overpressurization.

The pressurizer safety valves are designed to prevent RCS pressure from exceeding 110 percent of design pressure in accordance with the ASME Code. The RCS design pressure is 2500 psia, which corresponds to a Code and TS safety limit of 2750 psia. The analysis indicates that, for a plus 4 percent tolerance and 3 percent accumulation, the peak RCS pressure is 2699 psia, which is within the Code limit of 2750 psia.

The main steam safety valves are designed to prevent the main steam system pressure from exceeding 110 percent of design pressure in accordance with the ASME Code. The main steam system design pressure is 1200 psia, which corresponds to a Code limit of 1320 psia. The analysis indicates that the peak main steam system pressure with a plus 4 percent tolerance on the main steam safety valves with 3 percent accumulation is 1283 psia, which is within the ASME Code limit of 1320 psia.

While the revised safety analysis demonstrated the acceptability of a lift tolerance of plus 4 percent, and minus 3 percent, the TS are being revised to increase the tolerance only to plus or minus 2 percent. Section XI of the ASME Code allows a tolerance of only plus or minus 2 percent, which includes an allowance for setpoint drift. Since the pressurizer and main steam safety valves are Code valves which are tested to meet ASME Section XI per TS 4.0.5, the more restrictive Code requirements govern.

Thus, the results of analyses utilizing the proposed setpoint tolerances are encompassed by those of the revised analysis. As such, the proposed change may result in some increase to the probability or consequences of a previously analyzed accident, or may reduce in some way a safety margin, but the results are clearly within the acceptance criteria regarding overpressure protection, as specified in Standard Review Plan Sections 5.22 and 10.3.

The staff has reviewed the licensee's no significant hazards analysis and concurs with their conclusions. We also conclude that the proposed change is within the scope of the Commission's cited example. Thus, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

*Local Public Document Room location:* Multnomah County Library, 801 S. W. 10th Avenue, Portland, Oregon 97205

*Attorney for licensee:* J. W. Durham, Senior Vice President, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204

*NRC Project Director:* George W. Knighton

**Power Authority of The State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* March 16, 1987.

*Description of amendment request:* The proposed amendment would change the Technical Specifications (TS) to include revised limits that restrict operating pressures and temperatures to assure that brittle fracture of the reactor vessel cannot occur and that vessel integrity is maintained. These revised limits were developed for three reactor conditions: hydrostatic pressure testing, non-nuclear heatup and cooldown, and core critical operation. The new limits are valid up to 16 effective full power years and are based on evaluation of a surveillance specimen removed from the FitzPatrick reactor vessel, in accordance with the requirements of 10 CFR Part 50, Appendix H. The proposed amendment also revises the withdrawal schedule for remaining surveillance specimens and, in addition, includes several editorial changes.

*Basis for proposed no significant hazards consideration determination:* In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility or a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

Transient and accident analyses are based on the assumption that reactor vessel integrity is maintained. When these analyses were originally performed, operating limits were established to ensure that temperature and pressure were kept within a safe range such that reactor vessel integrity would be maintained. The proposed changes establish new, more conservative limits based on new calculations and on the results of evaluation of surveillance specimens. These limits were established according to the methods described in Regulatory Guide 1.99 and 10 CFR Part 50 Appendix G, and incorporate the safety margins included in Appendix G. Previous accident analyses are unaffected. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. Similarly, because the proposed amendment would only establish new operating pressure-temperature limits that would prevent operation in the brittle fracture range, the possibility of a new type of accident would not be created.

Because the proposed changes establish more conservative limits on operating pressure and temperature, and incorporate safety margins as described in 10 CFR Part 50 Appendix G, the effect of these changes will be an overall improvement in plant safety. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

*Local Public Document Room location:* Penfield Library, State University College of Oswego, Oswego, New York.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019

*NRC Project Director:* Robert A. Capra, Acting Director

**Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of amendment requests:* February 9, 1987 (TS 226)

*Description of amendment requests:* The proposed amendments would change the technical specifications (TS) of Browns Ferry Nuclear Plant (BFN) Units 1, 2 and 3 by making one substantive and two administrative changes to TS table 3.1.A.

The substantive change to Table 3.1.A deletes alternative action 1.B when the average power range monitor (APRM) High Flux or Inoperative trip function minimum number of operable instrument channels per trip system is not satisfied.

The administrative changes involve changes in wording to improve the clarity and consistency of table 3.1.A. requirements.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide the Commission its analysis, using standards in 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 50.92, the licensee has performed the following analysis of these standards as they related to the proposed change to table 3.1.A. to delete action 1.B for inoperability of APRM High Flux and Inoperative trip function instrumentation channels.

1. This change removes an alternative action which is not appropriate for the APRM High Flux and Inoperative trip functions. These two trip functions are required to be operable in both the Run and Startup/Hot Standby Modes or reactor operation. However, the mode to which action 1.B directs the plant to be taken when either of these two trip functions is inoperable is the Startup/Hot Standby Mode. While deletion of this alternative action 1.B would have no effect on the probability of a previously evaluated accident, this change would result in a decrease in the consequences of an accident since it will further restrict operational conditions allowed with these trip functions inoperable.

2. This change removes an alternative action which is not appropriate for the operator to take when the APRM High Flux and Inoperative trip functions are inoperable. The primary action and alternate action 1.A remain available to the operator when these specified APRM trip function channels are inoperable. Therefore, no new accident possibilities are created.

3. The margin of safety will be increased because an inappropriate alternative action will be deleted and only the correct actions will be specified.

A discussion of the above standards as they relate to the proposed administrative changes follows:

1. These administrative changes provide additional consistency and clarification of table 3.1.A requirements and notes without altering the intent of the requirements or information provided. Therefore, no accident probabilities or consequences are affected.

2. The possibility of a new kind of accident is not created since these administrative changes will not eliminate or modify any protective function nor permit any new operational conditions.

3. These administrative changes will not result in any change to the requirements of intent of table 3.1.A and, therefore, will not result in any reduction of the margin of safety.

Since the application for amendment involves propose changes that are encompassed by the criteria for which no significant hazards consideration exists, TVA has made a proposed determination that the application involves no significant hazards consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

*NRC Assistant Director:* John A. Zwolinski

**Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of application:* February 18, 1987

*Description of proposed amendment:* This amendment would add a new section to the Technical Specifications, and would impose new Limiting Conditions for Operation (LCO) and Surveillance Requirements (SR) for the Motor-Driven Feedpump System. The proposed TSs are similar to the existing Auxiliary Feedwater TSs and are a requirement imposed by the Commission in its evaluation of the restart of the Davis-Besse facility following the June 9, 1985 loss of feedwater event.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration is involved by providing certain examples, 51 FR 7750. One of the examples (ii) of an action which does not involve a significant hazards consideration relates to amendments which impose additional limitations, restrictions, or controls not presently included in the TSs. The Commission has already approved the operation of the motor-driven feedwater system (cf. NUREG-1177) and has made the addition to the license of LCO and SR a requirement. The proposed amendment matches the Commission's example, and on this basis, a proposed determination of no significant hazards consideration is made.

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

*Attorney for licensee:* Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Martin J. Virgilio, Acting

**Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of amendment request:* March 17, 1987

*Description of amendment request:* This amendment would substitute the reporting requirements for occurrences of Iodine-131 dose equivalent specific activity in the reactor coolant greater than 1 microcurie per gram (but still within the maximum allowable) with the requirement to report similar data on an annual basis in the Annual Operating Report. Additionally, the requirement to shut down the reactor in the event the cumulative operating time above 1 microcurie per gram exceeds 10% of the operating time would be deleted by this amendment. The amendment would revise Technical Specification (TS) Sections 3/4.4.8 and 6.9.1.5, and Basis Section 3/4.4.8. The licensee has proposed these changes to the TSs in response to the Commission's Generic Letter 85-19 which provided guidance on TS revisions necessary as a result of the

revisions to 10 CFR 50.72 and implementation of 10 CFR 50.73.

*Basis for proposed no significant hazards consideration determination:* The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed changes to the TSs with respect to the three criteria above as follows:

1. No accident conditions or assumptions are affected by the changes to the reporting requirements and the deletion of the shutdown requirement; therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)).

2. No equipment, system, or test is modified by the changes; therefore, the changes do not create the possibility of a new or different kind of accident (10 CFR 50.92(c)(2)).

3. The reduction in the frequency of reporting does not involve a significant reduction in a margin of safety since the licensee is still required to collect and analyze data on a timely basis. The deletion of the shutdown requirement does not significantly reduce the margin for safety since shut down will still be required if the level is exceeded for more than 48 hours in one continuous time interval (10 CFR 50.92(c)(3)).

Based on the above, the Commission proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

*Attorney for licensee:* Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Martin J. Virgilio, Acting

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri.**

*Date of amendment request:* March 30, 1987.

*Description of amendment request:* The proposed amendment would revise the requirements for reporting iodine spiking from a short-term report to an item which is to be included in the Annual Report, and eliminate the requirement to shut down the plant after 800 hours of operation with a dose equivalent I-131 value of 1 microcurie/gm or greater.

*Basis for proposed no significant hazards consideration determination:* On September 27, 1985, the NRC issued Generic Letter (GL) 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes." The purpose of GL 85-19 was to propose that licensees be relieved of certain unnecessary requirements associated with primary system activity, as follows:

As part of our continuing program to delete unnecessary reporting requirements, we have reviewed the reporting requirements related to primary coolant specific activity levels, specifically primary coolant iodine spikes. We have determined that the reporting requirements for iodine spiking can be reduced from a short-term report (Special Report or Licensee Event Report) to an item which is to be included in the Annual Report. The information to be included in the Annual Report is similar to that previously required in the Licensee Event Report but has been changed to more clearly designate the results to be included from the specific activity analysis and to delete the information regarding fuel burnup by core region.

In our effort to eliminate unnecessary Technical Specification requirements, we have also determined that the existing requirements to shut down a plant if coolant iodine activity limits are exceeded for 800 hours in a 12-month period can be eliminated. The quality of nuclear fuel has been greatly improved over the past decade with the result that normal coolant iodine activity (i.e., in the absence of iodine spiking) is well below the limit. Appropriate actions would be initiated long before accumulating 800 hours above the iodine activity limit. In addition, 10 CFR 50.72(b)(1)(iii) requires the NRC to be immediately notified of fuel cladding failures that exceed expected values or that are caused by unexpected factors. Therefore, this Technical Specification limit is no longer considered necessary on the basis that proper fuel management by licensees and existing reporting requirements should preclude ever approaching the limit.

Licensees are expected to continue to monitor iodine activity in the primary coolant and take responsible actions to maintain it at a reasonably low level (i.e., accumulated time with high iodine activity should not approach 800 hours).

The licensee's application dated March 30, 1987 was submitted in response to GL 85-19.

The proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated. As indicated in GL 85-19, the improved quality of fuel and the existence of adequate reporting requirements precludes the operation of the facility with primary system activity that is excessive. Excessive primary system activity would be of concern in the event of an accident involving release of reactor coolant. Finally, the proposed changes to the TS do not involve the creation of a new or different type of accident or a significant reduction in a safety margin since no changes in plant equipment, operating modes or safety analyses are involved.

Based upon the above, the staff proposes to determine that the proposed changes to the TS do not involve significant hazards considerations.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* David L. Wigginton, Acting

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* January 30, 1987, as supplemented April 6, 1987.

*Description of amendment request:* The purpose of the proposed amendments is to revise the North Anna Power Station, Units No. 1 and 2 (NA-1&2) Reactor Trip System (RTS) Instrumentation Technical Specifications based on the NRC staff's previous review and approval of Westinghouse topical report WCAP-10271 and its Supplement 1. The proposed revisions are summarized as follows:

1. Increase the surveillance interval for RTS analog channel operational tests from once per month to once per quarter,

2. Increase the time during which an inoperable RTS analog channel may be maintained in an untripped condition from one hour to six hours, and

3. Increase the time an inoperable RTS analog channel may be bypassed to allow testing of another channel in the same function from two hours to four hours.

These changes are three of the four changes proposed by WCAP-10271 and Supplement 1 and approved as part of the NRC's Safety Evaluation Report dated February 21, 1985. A fourth

change discussed in WCAP-10271 and the February 21, 1985, NRC SER would allow testing of RTS analog channels in a bypassed condition instead of a tripped condition. The NA-1&2 design does not currently include the capability for bypass testing. Therefore, the portion of WCAP-10271 and its Supplement 1 which concerns bypass testing is not applicable to this amendment request.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The bases for these criteria follows:

*Criterion 1*

Operation of NA-1&2 in accordance with the proposed license amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect the Reactor Trip System (RTS), the system which monitors reactor system conditions and scrams the reactor when those conditions reach or are outside a predetermined allowable envelope. Scramming the reactor stops the fission process by rapidly inserting control rods. Failure of the RTS system can lead to a transient or accident without a scram. While such events are not a design basis accident, the probability and consequences of such a situation have been analyzed. The accident sequences which describe such situations are referred to as Anticipated Transients Without Scram (ATWS).

For design basis accidents, the RTS will successfully scram the reactor because the system meets the single failure criteria. The proposed changes do not affect the way in which the system meets the single failure criteria.

The proposed changes would not change the analyzed consequences of an ATWS since the consequences are based on an assumed failure of the RTS to stop the fission process. The proposed changes would not change this assumed failure.

The proposed changes do not significantly increase the probability of a RTS failure. WCAP-10271 and Supplement 1 evaluated the increases in ATWS probability for the four changes proposed by WCAP-10271 on a generic basis. Sensitivity analyses were used to examine the effects of each of the four changes. WCAP-10271 concluded that the changes in probability were very small. For NA-1&2, only three of the four changes addressed in WCAP-10271 are being requested-those related to surveillance interval, maintenance time, and test time. The change related to testing in bypass is not being proposed for NA-1&2.

In the February 21, 1985, Safety Evaluation Report addressing WCAP-10271, the NRC concluded that the increase in probability of RTS failure due to the four proposed changes was very small and not significant.

The sensitivity analyses demonstrate that some increased probability is associated with each of the changes. However, the overall probability for all four of the changes proposed by WCAP-10271 was judged by the NRC to not be significant. The proposed NA-1&2 subset of only three of those changes would result in an even smaller increased probability than all four of the NRC approved WCAP-10271 changes. Therefore, the increased probability associated with the three changes proposed for NA-1&2 would also not be significant.

*Criterion 2*

The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The four changes proposed in WCAP-10271 affect only the amount of time during which individual RTS channels may be unavailable and the frequency of testing of the RTS channels. The Technical Specifications presently allow the unavailability of individual channels for short periods of time. Changes in the allowed unavailability times and test intervals do not create a new failure mechanism; they only affect the probability of that failure as discussed under Criterion 1 above. As explained under Criterion 1, failures of the RTS have been analyzed.

Since none of the changes proposed by WCAP-10271 create new failure mechanisms, the changes proposed for NA-1&2 (which are a subset of the WCAP-10271 changes) would also not create new failure mechanisms.

*Criterion 3*

The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter any safety limits or limiting safety system settings, nor do the changes reduce the requirements for the number of operable RTS channels.

As explained above under Criteria 1 and 2 above, the changes proposed by WCAP-10271 only affect the test intervals and allowed unavailable times for the RTS channels, and the increase in the probability of RTS failure due to the proposed changes is not significant. In the February 21, 1985, SER the NRC concluded that the resultant increase in the overall plant risk to core damage was not significant.

Since the changes proposed for NA-1&2 are a subset of the WCAP-10271 proposal, the resultant increase in overall plant core damage risk would be even smaller than the increase for the four NRC approved WCAP-10271 changes. Therefore, the overall reduction in the plant margin of safety is not significant for the three changes proposed for NA-1&2.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

*NRC Project Director:* Lester S. Rubenstein

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of amendment requests:* January 13, 1987 (revising in its entirety the submittal of April 18, 1986, as modified June 24, 1986).

*Description of amendment request:* This application revised in its entirety the application dated April 18, 1986 which was noticed in the Federal Register on May 21, 1986 (51 FR 18099).

The NRC Generic Letter 85-09 dated May 23, 1985, requested licensees to submit Technical Specifications (TS) to explicitly require independent testing of the reactor trip breaker undervoltage and shut trip attachments during power operation and independent testing of the control room manual reactor trip switch contacts during each refueling outage.

*Basis for proposed no significant hazards consideration determination:* The proposed changes to the Technical Specifications (TS) were submitted by the licensee in response to Generic

Letter (GL) 85-09. In GL 85-09, the Commission notes its conclusion that:

Technical Specification changes should be proposed by licensees to explicitly require independent testing of the undervoltage and shunt trip attachments during power operation and independent testing of the control room manual switch contacts during each refueling outage. The Commission also concluded that these tests are necessary to ensure reliable reactor trip breaker operation.

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 by providing certain examples (51 FR 7751). One of the examples, (ii), of an amendment likely to involve no significant hazards consideration relates to "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed amendment to the TS matches the example because it would impose additional limitations for operation and additional surveillance requirements for the reactor trip break undervoltage and shunt trip attachments not presently included in the TS. Therefore, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

*Attorney for licensee:* David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

*NRC Project Director:* David L. Wigginton, Acting

**Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* May 7, 1987.

*Description of amendment request:* The proposed amendment request revises Wolf Creek Generating Station (WCGS) Technical Specification Table 3.3-5, Engineered Safety Features (ESF) Response Times for items 2.a. (Containment Pressure-High-1, Safety Injection), 3.a. (Pressurizer Pressure-Low, Safety Injection), and 4.a. (Steam Line Pressure-Low, Safety Injection). These changes are being made to more accurately reflect the time required to change charging pump suction from the Volume Control Tank (VCT) to the Refueling Water Storage Tank (RWST).

*Basis for proposed no significant hazards consideration determination:* In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

This license amendment request proposes revising Technical Specification Table 3.3-5 and its associated Bases to change the Engineered Safety Features (ESF) response times for items 2.a. (Containment Pressure-High-1, Safety Injection), 3.a. (Pressurizer Pressure-Low, Safety Injection), and 4.a. (Steam Line Pressure-Low, Safety Injection).

These changes are being made to more accurately reflect the time required to change charging pump suction from the Volume Control Tank to the Refueling Water Storage Tank.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Increasing the acceptance criterion for the ESF response times is acceptable since evaluation of the impact of the increased response times on the steam line break event demonstrated that the Departure from Nucleate Boiling design basis is still met. The conclusions in the Updated Safety Analysis Report (USAR) remain valid. These changes do not involve a change in the operational limits or physical design of the involved systems.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no new failure modes associated with the proposed change, as no design changes have been made. These changes do not involve a change in the operational limits or physical design of the involved systems. Existing plant equipment will be utilized as before the proposed change. Therefore, an increase in the ESF response times for Containment Pressure-High-1, Pressurizer Pressure-Low, and Steam Line Pressure-Low does not create the possiblity of an accident or malfunction of a different type than any evaluated previously in the safety analysis report.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes are intended to bring the technical specification surveillance requirements into agreement with the Bases for the technical specification. Since there is no impact on the conclusions presented in the USAR all existing safety limits are still valid.

Based on the above discussions it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability of consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a signficant hazards consideration.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

*Local Public Document Room location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Jose A. Calvo

**Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* May 7, 1987.

*Description of amendment request:* The proposed amendment request revises Wolf Creek Generating Station (WGGS) Technical Specification 3/4.1.3, Movable Control Assemblies, and its associated Bases to allow continued operation for 72 hours for diagnosis and repair, with one or more control rod assemblies inoperable due to a rod control urgent failure alarm or other electrical problem in the rod control system provided all affected control rods remain trippable.

*Basis for proposed no significant hazards consideration determination:* In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

This amendment request revised Wolf Creek Generating Station (WGGS) Technical Specification 3/4.1.3, Movable Control Assemblies, and its associated Bases to allow continued operation for 72 hours for diagnosis and repair, with one or more control rod assemblies inoperable due to a rod control urgent failure alarm or other electrical problem in the rod control system provided all affected control rods remain trippable.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Increasing the allowed outage time associated with electronic/electrical malfunctions of the Control Rod Drive System (CRDS) is acceptable, since the safety function of the CRDS (reactor trip) remains unaffected. The conclusions in the Updated

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Safety Analysis Report (USAR) remain valid. The proposed change does not affect the ability of the CRDS to perform its intended safety function, reactor trip, by putting the reactor in a subcritical condition when a safety system setting is approached. The design of the CRDS assures isolation of essential elements of the CRDS (those required to insure reactor trip) from nonessential portions of the CRDS.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. There are no new failure modes or mechanisms associated with the proposed change. This change does not involve any modification in the operational limits or physical design of the involved systems. The change merely allows an extended time period for the diagnosis and repair of portions of the CRDS, thus reducing the probability of a plant transient because of insufficient time for proper corrective action or a hurried diagnosis.

3. The proposed changes do not involve a significant reduction in a margin of safety. This change does not affect any Technical Specification margin of safety. This change allows appropriate ACTIONS commensurate with the significance of the CRDS malfunction, while not requiring plant transients in response to malfunctions that do not affect the capability of the CRDS to perform its safety function.

Based on the above discussions it has been determined that the requested Technical Specification revisions do not involve a significant increase in the probability or consequences of an accident or other adverse condition over previous evaluations; or create the possibility of a new or different kind of accident or condition over previous evaluations; or involve a significant reduction in a margin of safety. Therefore, the requested license amendment does not involve a significant hazards consideration.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

*Local Public Document Room location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Jose A. Calvo

## PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

**Commonwealth Edison Company, Docket Nos. 50-454 and 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois**

*Date of application for amendments:* March 24, 1987

*Description of amendments request:* The amendments would revise the provisions of the Technical Specifications to allow plant operation with the essential service water pump discharge temperature greater than 80°F, but less than 98°F, with no cooling tower fans running. Operation in this condition would be allowed during Ultimate Heat Sink cooling tower performance testing.

*Date of publication of individual notice in Federal Register:* April 9, 1987 (52 FR 11575)

*Expiration date of individual notice:* May 11, 1987

*Local Public Document Room location:* Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plants, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of amendments requests:* March 12 and April 10, 1987

*Description of amendments requests:* The amendments would modify Technical Specification 15.5.3 to remove certain limitations on the repair of leaking fuel rods so long as the repairs proposed during a given outage can be justified by a cycle-specific reload analysis.

*Date of publication of individual notice in Federal Register:* April 27, 1987 (52 FR 13585).

*Expiration date of individual notice:* May 27, 1987.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

## NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

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**Baltimore Gas & Electric Company, Docket No. 50-318 Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland**

*Date of application for amendment:* July 31, 1986 response, as supplemented January 21, 1987.

*Brief description of amendment:* The amendment changed the full closure time for main steam isolation valve (MSIV) operability to "less than 5.2 seconds" as an integral part of MSIV modifications at Calvert Cliffs.

*Date of issuance:* April 29, 1987

*Effective date:* April 29, 1987

*Amendment No.:* 107

*Facility Operating License No. DPR-69:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: December 17, 1986 (51 FR 45191 at 45193)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland.

**Baltimore Gas & Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland**

*Date of application for amendment:* February 6, 1987, as supplemented March 17, March 25, March 27, April 7, and April 17, 1987.

*Brief description of amendment:* The amendment changes the Unit 2 Technical Specifications (TS) to reflect analyses performed in support of Unit 2 Cycle 8 operation by providing more restrictive limits for the Acceptable Operation Region of peripheral axial shape index versus rated thermal power and for shutdown margin while also raising the moderator temperature coefficient limit for operation above 70% power.

The supplements to the February 6, 1987 submittal did not affect the proposed TS changes noticed in the Federal Register on March 25, 1987 and did not affect the staff's proposed no significant hazards determination.

*Date of issuance:* May 4, 1987

*Effective date:* May 4, 1987

*Amendment No.:* 108

*Facility Operating License No. DPR-69:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: March 25, 1987 (52 FR 9980)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 1987.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland.

**Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts**

*Date of application for amendment:* October 2, 1986

*Brief description of amendment:* The amendment revises the Technical Specifications by adding Figure 3.11-7 to provide the maximum average planar linear heat generation rate (MAPLHGR) versus planar average exposure curves for fuel type BP8DRB306. This will allow the licensee to use fuel type BP8DRB300 in addition to the fuel types currently reflected in curves in Figure 3.11-6 through 3.11-6.

*Date of issuance:* April 9, 1987

*Effective date:* 30 days after the date of issuance.

*Amendment No.:* 100

*Facility Operating License No. DPR-35:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: November 19, 1986 (51 FR 41946)

The Commission's related evalsation of the amendment is contained in a Safety Evaluation dated April 9, 1987.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Units No. 1 and 2, Ogle County, Illinois**

*Date of application for amendment:* January 6, 1987, supplemented March 4, 1987 and March 23, 1987.

*Brief description of amendment:* These amendments revise Design Features Section 5.3.1 on page 5-4 to allow for the reconstitution of fuel assemblies by insertion of filler rods fabricated from Zircaloy-4 or stainless steel or by leaving vacancies.

The licensee's submittals dated March 4 and March 23, 1987 were made as a result of NRC staff request to clarify the language of the original submittal and do not contain substantive changes.

*Date of issuance:* May 1, 1987

*Effective date:* May 1, 1987

*Amendment No.:* 7

*Facility Operating License Nos. NPF-37 and NPF-66:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: February 11, 1987 (52 FR 4404)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 1987.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

**Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois**

*Dates of amendment requests:* October 23, 1986, as supplemented by letters dated November 5, 1986, and March 6, 1987

*Brief description of amendments:* The amendments to Operating License No. NPF-11 and Operating License No. NPF-18 revise the La Salle Units 1 and 2 Technical Specifications to change the Group I Main Steam Isolation Valves' closure signal from Reactor Pressure Vessel Level 2 to Level 1. Changes to related systems are also effected.

*Date of issuance:* May 6, 1987

*Effective date:* May 6, 1987

*Amendment Nos.:* 50 and 33

*Facility Operating License Nos. NPF-11 and NPF-18:* Amendments revise the Technical Specifications.

*Date of initial notice in* Federal Register: November 19, 1986 (51 FR 41847)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1987

No significant hazards consideration comments received: No

*Local Public Document Room location:* Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* July 10, 1986, as revised April 15, 1986 and supplemented October 30, and November 21, 1986

*Brief description of amendments:* The amendments change Technical Specifications regarding emergency diesel generator testing and surveillance.

*Date of issuance:* May 6, 1987

*Effective date:* May 6, 1987

*Amendment Nos.:* 71 and 52

*Facility Operating License Nos. NPF-9 and NPF-17:* Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: August 27, 1986 (51 FR 30567)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 5, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina**

*Date of application for amendments:* August 15, 1984, as revised on July 3, 1985

*Brief description of amendments:* The amendments revise TS 3.6-3 to reflect a new Limiting Condition for Operation (LCO) on the reactor building (RB) purge system. The RB purge system is required to be isolated whenever the reactor coolant system temperature is above 250°F and the pressure is above 350 psig. The LCO allows one isolation valve to open on each penetration at or below hot shutdown for testing or maintenance. TS 4.4.4 is added to reflect the RB purge system surveillance requirements and the purge valve seal inspection.

*Date of Issuance:* April 30, 1987

*Effective date:* April 30, 1987

*Amendment Nos.:* 157, 157, and 154

*Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55:* Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: November 20, 1985 (50 FR 47860)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 1987

No significant hazards consideration comments received: No

*Local Public Document Room location:* Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

**Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina**

*Date of application for amendments:* February 12, 1986, as revised on October 10 and supplemented on October 20, 1986

*Brief description of amendments:* These amendments revise the Station's common Technical Specifications to describe the operation and maintenance of the containment hydrogen recombiner system which will serve as the primary method for maintaining hydrogen concentration in the post-accident atmosphere below the deflagration limit. The Hydrogen Purge System which presently contributes to hydrogen control will be available as a backup system, if needed.

*Date of Issuance:* April 30, 1987

*Effective date:* April 30, 1987

*Amendment Nos.:* 158, 158, and 155

*Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55:* Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: February 26, 1987 (52 FR 5853)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 1987

No significant hazards consideration comments received: No

*Local Public Document Room location:* Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of application for amendment:* October 31, 1986, as clarified March 20, 1987

*Brief description of amendment:* The amendment revised the Technical Specifications to support the reload and restart for Cycle 9 operation. The Technical Specification changes updated the fuel thermal limits, revised the Limiting Conditions for Operation and Surveillance Requirements for the Rod Sequence Control System and Rod Worth Minimizer, and modified the description of the control blades.

*Date of issuance:* May 7, 1987

*Effective date:* May 7, 1987

*Amendment No.:* 142

*Facility Operating License No. DPR-49:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: March 25, 1987 (52 FR 9572)

The March 20, 1987, submittal provided clarifying information and did not change the finding of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 1987.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

**Northeast Nuclear Energy Company, Docket No. 50-423, Millstone Nuclear Power Station Unit No. 3, New London County, Connecticut**

*Date of application for amendment:* September 5, 1986

*Brief description of amendment:* The amendment revises the Technical Specification Sections 4.6.6.1, 4.7.7, and 4.7.9 and 4.9.12 by replacing the 31 day requirement to verify the fan curves based on observed flow rates and pressure drops.

*Date of issuance:* April 7, 1987

*Effective date:* April 7, 1987

*Amendment No.:* 2

*Facility Operating License No. NPF-49:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: October 8, 1986 (51 FR 36100).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 7, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

**Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* July 17, 1986

*Description of amendment request:* The amendment incorporates revised Limiting Conditions for Operation and Surveillance requirements for the steam generator isolation signal.

*Date of issuance:* April 28, 1987

*Effective date:* 30 days from the date of issuance

*Amendment No.:* 108

*Facility Operating License No. DPR-40:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: August 13, 1986 (51 FR 29007)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1987.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

**Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of application for amendment:* January 22, 1987, as supplemented February 13 and 24, 1987

*Brief description of amendment:* The amendment modifies the Technical Specifications to reflect changes which are necessary to support Cycle 11 operation.

*Date of issuance:* May 4, 1987

*Effective date:* May 4, 1987

*Amendment No.:* 109

*Facility Operating License No. DPR-40:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: March 12, 1987 (52 FR 7875 at 7880).

The licensee's February 24, 1987 submittal provided clarifying information regarding the analysis of Exxon fuel and a commitment to provide a report on Batches K and L fuel prior to reaching a peak assembly burnup of 43,000 MWD/MTU. This submittal did not alter the NRC staff's conclusion regarding a no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

**Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Platteville, Colorado**

*Date of application for amendment:* December 19, 1986

*Brief description of amendment:* The amendment changed Technical Specification Section 4.10.7, Table 4.10-7 to properly reflect the actual location of Fire Hose Station No. TH12-G4 as elevation 4904.

*Date of issuance:* May 5, 1987

*Effective date:* May 5, 1987

*Amendment No.:* 53

*Facility Operating License No. DPR-34:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: March 25, 1987 (52 FR 9561)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Greeley Public Library, City Complex Building, Greeley, Colorado.

**Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of application for amendments:* February 6, 1986

*Brief description of amendments:* The amendments modify the Technical Specifications to derate the capacities of the manipulator crane and the fuel handling area crane.

*Date of issuance:* March 31, 1987

*Effective date:* March 31, 1987

*Amendment Nos.:* 77 and 51

*Facility Operating License Nos. DPR-70 and 75:* Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: August 31, 1986 (51 FR 29013)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 31, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

**Public Service Electric and Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of application for amendments:* October 25, 1985 and supplemented by letter dated July 31, 1986, and October 24, 1986.

*Brief description of amendments:* The amendments delete the Technical Specifications relating to the high boron concentration in the boron injection tank and the associated heat tracing required to maintain the high boron concentration solution.

The licensee's supplementary submittals of July 31, and October 24, 1986, were made as a result of an NRC staff request to clarify the language of the original submittal, dated October 25, 1985, and do not contain substantive changes.

*Date of issuance:* April 7, 1987

*Effective date:* April 7, 1987

*Amendment Nos.:* 78 and 52

*Facility Operating License Nos. DPR-70 and 75:* Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: March 12, 1986 (51 FR 8601)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 7, 1987

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

**Public Service Electric and Gas Company, Docket No. 50-272 and 50-311, Salem Nuclear Generating Station Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of application for amendment:* September 21, 1984 and supplemented August 8, 1986,

*Brief description of amendment:* The amendments revise the technical specifications, Appendix A, sections regarding Accident Monitoring Instrumentation and Radiation Monitoring Instrumentation.

The licensee's submittal of August 8, 1986, was made as a result of NRC staff request to clarify the language of the original submittal dated September 21, 1984, and does not contain substantive changes.

*Date of issuance:* April 10, 1987

*Effective date:* April 10, 1987

*Amendment Nos.:* 79 & 53

*Facility Operating License Nos. DPR-70 and 75:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: February 27, 1985 (50 FR 8002)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Salem Free Library, 112 West Broadway, Salem, New Jersey 08079.

**South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina**

*Date of application for amendment:* December 10, 1986, as supplemented March 17 and April 3, 1987

*Brief description of amendment:* Decreases the maximum allowable Heat Flux Hot Channel Factor in support of increased steam generator tube plugging.

*Date of issuance:* April 28, 1987

*Effective date:* April 28, 1987

*Amendment No.* 66

*Facility Operating License No. NPF-12:* Amendment revised the Technical Specifications

*Date of initial notice in* Federal Register: March 12, 1987 (52 FR 7906)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 1987

No significant hazards consideration comments received: No

*Local Public Document Room location:* Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* September 29, 1986, as supplemented February 18, 1987.

*Brief description of amendment:* The amendment changes the Technical Specifications to increase overall emergency diesel generator reliability and to prevent undue stress and wear on the diesel generator engines.

*Date of issuance:* May 1, 1987

*Effective date:* May 1, 1987

*Amendment No.:* 21

*Facility Operating License No. NPF-30:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: December 3, 1986 (51 FR 43685)

The February 18, 1987 submittal contained only minor changes to, and clarification of, the original application. It was consistent with the staff's original findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 1987.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of application for amendment:* October 23, 1985 and as amended January 30, 1987.

*Brief description of amendment:* This amendment allows steam generator tube repairs as well as plugging in order to isolate unacceptable tube degradation.

*Date of issuance:* April 1, 1987

*Effective date:* April 1, 1987

*Amendment No.:* 73

*Facility Operating License No. DPR-43:* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: December 30, 1985 (50 FR 53236)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 1987.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

**NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)**

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By June 19, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of

the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-5700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

**Northeast Nuclear Energy Company, Docket No. 50-423 Millstone Nuclear Power Station Unit 3, New London County, Connecticut**

*Date of application for amendment:* April 6, 1987

*Brief description of amendment:* The amendment would increase the engineered safety features (ESF) response time for Low Steamline Pressure in Technical Specification Table 3.3-5, Item 4.a by 15 seconds to 27 seconds with offsite power and 37 seconds without offsite power.

*Date of issuance:* April 9, 1987

*Effective date:* April 9, 1987

*Amendment No.:* 3

*Facility Operating License No. NPF-49:* Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No

The Commission's related evaluation of the amendment and final no significant hazards considerations determination are contained in a Safety Evaluation dated April 9, 1987. Mr. K. McCarthy of the State of Connecticut was consulted concerning the proposed emergency technical specification change on April 7, 1987. After discussion of the proposed change, Mr. McCarthy indicated that all his comments have been resolved.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut.

*NRC Project Director:* Victor Nerses, Acting Director

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* April 16, 1987

*Brief description of amendment:* The amendment revises Table 3.3-5 of the Technical Specifications to increase the Engineered Safety Features (ESF) response times by fifteen seconds for Items: 2.a. (Containment Pressure-High-1, Safety Injection); 3.a. (Pressurizer Pressure-Low, Safety Injection); and 4.a. (Steam Line Pressure-Low, Safety Injection).

*Date of issuance:* May 4, 1987

*Effective date:* May 4, 1987

*Amendment No.:* 22

*Facility Operating License No. NPF-30:* Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. 52 FR 13367, April 22, 1987.

Comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 1987.

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

*NRC Project Director:* David L. Wigginton, Acting

Dated at Bethesda, Maryland this 14th day of May, 1987.

For the Nuclear Regulatory Commission

Bruce A. Boger, Acting Director

*Division of Reactor Projects, I/II*

[FR Doc. 87-11405 Filed 5-19-87; 8:45 am]

BILLING CODE 7590-01-D

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**Draft NUREG-1230; Issuance, Availability**

The Nuclear Regulatory Commission has issued for public comment Draft NUREG-1230, "Compendium of ECCS Research for Realistic LOCA Analysis." Draft NUREG-1230 is being developed

to describe the research supporting the proposed amendments to 10 CFR Part 50 (52 FR 6334). It also supplements the draft regulatory guide, "Best Estimate Calculations of Emergency Core Cooling System Performance," (52 FR 11385). Draft NUREG–1230: (1) summarizes the understanding of loss-of-coolant-accident (LOCA) phenomena in 1974; (2) reviews the experimental and analytical programs developed in the past twelve years to address LOCA phenomena; (3) describes the current understanding of LOCA phenomena; (4) describes the best-estimate computer codes developed by the NRC for LOCA analyses; (5) discusses methods for evaluating computer code uncertainty for LOCA analyses; (6) discusses probabilistic risk assessment results and perspectives, and (7) evaluates the impact of research results on the ECCS regulations.

Public comments are being solicited on draft NUREG–1230. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by July 1, 1987.

Draft NUREG–1230 is available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Single copies of draft NUREG–1230 can be obtained, free of charge, by writing to the Director, Division of Information Support Services, Distribution Section, Room P–130A, U.S. Nuclear Regulatory Commission, Washington, DC 20655. Telephone requests cannot be accommodated.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 23rd day of April 1987.

For the Nuclear Regulatory Commission.

Brian Sheron,

*Director, Division of Reactor and Plant Systems, Office of Nuclear Regulatory Research.*

[FR Doc. 87–11544 Filed 5–19–87; 8:45 am]

BILLING CODE 7590–01–M

## PHYSICIAN PAYMENT REVIEW COMMISSION

### Commission Subcommittee Hearing

**AGENCY:** Physician Payment Review Commission.

**ACTION:** Notice of public hearing.

**SUMMARY:** A subcommittee of the Commission will hold a public haring on potential changes in Medicare physician payment policy to meet congressional budget targets for Fiscal year 1988. The hearing will begin at 8:30 a.m. on Wednesday, May 27, 1987 in the Congressional Room of the Quality Inn-Capitol Hill, 415 New Jersey Avenue, NW. Those wishing to testify should notify the Commission staff by Friday, May 22. All oral statements should be brief summaries of written statements forwarded to the Commission by Tuesday, May 26 at the latest. The Commission was established by Section 9305 of Pub. L. 99–272.

**ADDRESS:** The Commission recently moved to Suite 510, 2120 L Street NW., Washington, DC 20037. The telephone number is 202/653–7220.

**FOR FURTHER INFORMATION CONTACT:** Lauren LeRoy, Deputy Director, 202/653–7220.

**SUPPLEMENTARY INFORMATION:** The Commission has been asked to provide advice on what policy changes related to physician payment would be most appropriate to meet Congressional budget targets for Fiscal Year 1988. The Commission is giving consideration to the following options: (1) A reduction in the amount by which prevailing charges are updated by the Medicare Economic Index; (2) an "inherent reasonableness" option that would reduce prevailing charges for a list of procedures regarded as outliers; and, (3) the "new physician" option proposed in the President's Budget. The Commission would like to hear the views of interested groups on these and other alternatives to meet budget targets.

Paul B. Ginsburg,

*Executive Director.*

[FR Doc. 87–11557 Filed 5–19–87; 8:45 am]

BILLING CODE 6820–SE–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–24452; File No. SR–Amex–87–7]**

### Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

On February 13, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] a proposed rule change to expand, to the February and March cycles, the stock options pilot program which provides for four expiration months—including two near-term months. In addition, the Amex proposes to extend this pilot program for an additional year.

The proposed rule change was noticed in Securities Exchange Act Release No. 24288 (April 1, 1987), 52 FR 11577 (April 9, 1987). No comments were received on the proposed rule change.

In June 1986, in conjunction with the other options exchanges, the Amex implemented a one-year stock option pilot program (*See* SR–AMEX–85–16) for certain January cycle stock options. Under the terms of the pilot, the traditional January trading cycle was altered to ensure that (i) one-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times.

In July 1986, the Exchange received approval to expand the pilot to all Amex-traded January cycle stock options and to extend the pilot to January 1987 (See SR–AMEX–86–21). The pilot was later extended for an additional four months (See SR–Amex–87–3).

The purpose of the pilot program is to determine whether a near-term expiration cycle, featuring four expiration months, will improve investors' interest in such stock options. After monitoring the trading of the January cycle options and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchange has found the pilot has improved investors' interest in trading such options.

Accordingly, the Amex has determined to continue the pilot and to expand it to stock options trading on February and March cycles. The Exchange believes it is necessary to extend for an additional year the entire pilot program in order to have sufficient time to phase-in and assess the trading of the February and March cycle options.

Therefore, the Exchange proposes to extend the pilot program an additional one year beyond the current four month extension and expand the pilot program to include options traded on the February and March cycles. The implementation of the February and March cycles on the pilot program will follow the January cycle paradigm. For

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1986).

March cycle options, the Exchange proposes that it may phase in such options at the March expiration by adding the two near term months (April and May). Similarly, the February cycle options will be phased in at the May expiration by adding June and July expirations.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange by continuing and expanding a pilot program tailored to meet investors' preferences for stock options with near-term expiration cycles. In addition, the Commission has not received any negative comments on the pilot's operation, which the Amex has found to run uniformly favor the pilot. Therefore, the Commission believes the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[3] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 14, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11521 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24453; File No. SR-CBOE-87-14]

## Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc.; Transaction Fees in Certain Index Option Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 7, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[3] 15 U.S.C. 78 s(b)(2) (1982).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

From Monday, April 20, 1987, through Friday, April 24, 1987, the Exchange will not charge transaction fees in its Standard and Poor's 500 Stock Index Option contracts (SPX and NSX). NSX is the Exchange's newly created Standard and Poors 500 Index Option that will settle based on opening prices at expiration. SPX is the Exchange's original Standard Poors 500 Index Option and will continue to settle based on closing prices at expiration.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this proposed rule change, is to facilitate the moving of positions from SPX to NSX. The statutory basis for this proposed rule change is section 6(b)(5) of the Act, in that it is designed to facilitate transactions in SPX and NSX.

*(B) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

This proposed rule change will not impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 10, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

May 14, 1987.

[FR Doc. 87-11522 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

May 14, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Alexanders Inc.
Common Stock, $1.00 Par Value (File No. 7-9946)

American Barrick Resources Corp.
Common Stock, No Par Value (File No. 7-9947)

Angelica Corp.
Common Stock, $1.00 Par Value (File No. 7-9948)

Chock Full O' Nuts
Common Stock, $.25 Par Value (File No. 7–8949)
Colonial Municipal Income Trust
Common Stock, No Par Value (File No. 7–8950)
Consolidated Rail Corp.
Common Stock, $1.00 Par Value (File No. 7–8951)
Cooper Tire & Rubber Co.
Common Stock, $1.00 Par Value (File No. 7–8952)
Elcor Corp.
Common Stock, $1.00 Par Value (File No. 7–8953)
Empire District Electric Co.
Common Stock, $1.00 Par Value (File No. 7–8954)
Esselte Business Systems Inc.
Common Stock, $1.00 Par Value (File No. 7–8955)
Foodmaker Inc.
Common Stock, $1.00 Par Value (File No. 7–8956)
Health and Rehabilitation Properties Trust
Shares of Beneficial Interest (File No. 7–8957)
Himont Inc.
Common Stock, $1.00 Par Value (File No. 7–8958)
Hi-Shear Industries Inc.
Common Stock, $.10 Par Value (File No. 7–8959)
Kansas City Southern Industries Inc.
Common Stock, No Par Value (File No. 7–8960)
Kleinwort Benson Australian Income Fund
Common Stock, $.001 Par Value (File No. 7–8961)
Maritrans Partners, L.P.
Depository Units (File No. 7–8962)
MFS Multimarket Income Trust
Shares of Beneficial Interest (File No. 7–8963)
Musicland Corp. (The)
Common Stock, $.10 Par Value (File No. 7–8964)
Nacco Corp.
Class "A" Common Stock, $1.00 Par Value (File No. 7–8965)
National Standard Co.
Common Stock, $1.00 Par Value (File No. 7–8966)
Norstar Bancorp Inc.
Common Stock, $5.00 Par Value (File No. 7–8967)
Pay'N Pak Stores Inc.
Common Stock, $.10 Par Value (File No. 7–8968)
Petrolane Partners, L.P.
Common Stock, No Par Value (File No. 7–8969)
Phillips Van Husen Corp.
Common Stock, $1.00 Par Value (File No. 7–8970)
QMS Inc.
Common Stock, $.01 Par Value (File No. 7–8971)
Savannah Electric Power Co.
Common Stock, $5.00 Par Value (File No. 7–8972)
Southland Corp.
$1.00 Cumulative Convertible Exchangeable A Preferred (File No. 7–8973)
Stride Rite Corp.
Common Stock, $1.00 Par Value (File No. 7–8974)
Sun Electric Corp.
Common Stock, $1.00 Par Value (File No. 7–8975)
TCW Convertible Securities Fund
Common Stock, $.01 Par Value (File No. 7–8976)
Thompson Industries Inc.
Common Stock, $1.00 Par Value (File No. 7–8977)
Timplex Inc.
Common Stock, $.01 Par Value (File No. 7–8978)
Transcapital Financial Corp.
Common Stock, $1.00 Par Value (File No. 7–8979)
Trinity Industries Inc.
Common Stock, $1.00 Par Value (File No. 7–8980)
United States Tobacco Co.
Common Stock, $.50 Par Value (File No. 7–8981)
Van Dorn Co.
Common Stock, No Par Value (File No. 7–8982)
Vulcan Materials Co.
Common Stock, $1.00 Par Value (File No. 7–8983)
Wyle Laboratories
Common Stock, No Par Value (File No. 7–8984)
Del Laboratories Inc.
Common Stock, $1.00 Par Value (File No. 7–8985)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 5, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 87–11525 Filed 5–19–87; 8:45 am]
BILLING CODE 8010-01-M

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[Release No. 34–24451; File No. SR–DTC–87–7]

## Self-Regulatory Organizations; Proposed Rule Change By The Depository Trust Co.; Fees for ancillary DTC services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 13, 1987, The Depository Trust Company filed with the Securities and Exchange Commission the Proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Depository Trust Company ("DTC") is filing herewith the following changes in the fee schedule for ancillary DTC services.

| Service | Present fee | Proposed fee |
|---|---|---|
| *Inter-Depository Interface Fees to Participants:* | | |
| Third-party delivery | $.70 surcharge for each item delivered, received or reclaimed on the regular DO fee. | $.46 surcharge for each delivered, received or reclaimed on the regular DO fee. |
| Fourth-party delivery | None | $.15 surcharge to the delivering and receiving depository and the regular DO fee. |
| Self-delivery | Regular DO fee | $.30 surcharge for each item delivered, received or reclaimed on the regular DO fee. |

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of

these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Depository Trust maintains interfaces with three other registered securities depositories for the benefit of a number of participants in each depository. These agencies are the Midwest Securities Trust Company ("MSTC"), the Pacific Securities Depository Trust Company ("PSDTC") and Philadelphia Depository Trust Company ("Philadep").

Interface service cost to DTC is incurred in processing book-entry delivery activity between depositories and processing the consequences of those deliveries, such as redirecting dividend and interest payments. DTC processes four types of inter-depository book-entry deliveries: RIO (Regional Interface Operations) deliveries[1], third-party deliveries, fourth-party deliveries and self-deliveries. For 1987, average daily delivery volume is estimated as follows: RIO 5,400; third-party 7,000; fourth-party 400; and self-deliveries 3,300.

DTC's long-standing policy on charges for inter-depository interfaces was last set forth in a May 27, 1986 memorandum entitled "Securities Depository Interface Fees" distributed to Participants and submitted to the Commission as a comment letter in response to Commission Exchange Act Release No. 23083. The fees proposed below are based on that policy, which is that interface costs should be recovered from fees charged to those who actually use the interfaces, according to their use.

Third-Party Deliveries

A third-party delivery occurs when a DTC Participant delivers to or receives a delivery from a participant in another depository. This type of interface delivery permits Participants to eliminate in-house costs of issuing two sets of settlement instructions, one to each depository, or to deliver to a participant of a depository of which it is not a member. The present fee for this service, established in 1976 and unchanged since that time, is a surcharge of $.70 to the delivering or receiving Participant on DTC's regular Deliver Order fee. DTC proposes to reduce this surcharge to $.40 to recover the currently estimated cost of transmitting this delivery record from its system to the other depository or receiving such a record, and for settlement.

Fourth-Party Deliveries

A fourth-party delivery reflects share movements from another depository's account at DTC to the DTC account of a third depository based on activity initiated by participants in those depositories. These movements generally occur between Philadep and MSTC and Philadep and PSDTC; it has been more convenient for them to effect their interface through DTC than to establish direct interfaces. None of the other depositories now pay any DTC fees for processing these fourth-party deliveries or any other DTC book-entry delivery fees. For fourth-party deliveries, DTC proposes to charge its regular Deliver Order fee ($.50 to the deliverer and $.35 to the receiver) and a $.15 surcharge to the delivering and receiving depository for transmitting the record of this movement. This is the only fee to other depositories included in this set of proposed interface fees.

Self-Deliveries

A self-delivery occurs when a DTC Participant moves a securities position to or from its DTC account from or to another depository. The Participant now pays DTC only the normal Deliver Order fee but the cost of transmitting the record from DTC's system to the other depository is not recovered. DTC proposes a $.30 surcharge to Participants on its Deliver Order fee for each item it moves to or from its DTC account from or to another depository.

DTC has adopted the proposed rule change pursuant to section 17A(b)(3)(D) of the Exchange Act which authorizes DTC to adopt reasonable fees for the services which it provides to Participants.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will more equitably allocate fees among DTC's Participants.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

By a memorandum to Participants and other users dated February 6, 1987 entitled "Various Ancillary Service Fees" DTC solicited comments on the proposed rule change and other fee changes. No comments were received about the proposed rule change in response to this notice. DTC also invited comments on the fourth-party delivery fee from the other three registered securities depositories, two of which responded by requesting that implementation of the fee be postponed pending a study of the feasibility of direct links between the other depositories.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-

[1] A RIO delivery occurs when inter-regional clearing corporation deliveries related to Continuous Net Settlement ("CNS") are made into or out of National Securities Clearing Corporation's ("NSCC") account at DTC from or to another depository's account at DTC.

Last year the Commission approved a DTC proposal pending since 1977 to charge NSCC $.40 for a RIO delivery. *See* Securities Exchange Act Release No. 23082 (March 31, 1986). DTC did not make that fee effective, however, pending an updated cost study of this and related DTC services. The study indicated that the fee in 1987 should be $.30 and a fee at that reduced level has been adopted effective for services provided after March 31, 1987 *See* SR–DTC–87–6.

mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 10, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 14, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11523 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24444; File No. SR-MSE-87-1]

## Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted on February 5, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder to suspend application of Article XXX, Rule 1.01(I)(6)(c) (Mandatory Posting Rule)[1] for the six month periods ending June 30, 1986 and December 30, 1986.

Under the proposal, the MSE would not post for applications any securities in which the registered co-specialist performed unsatisfactorily for the six month periods ending June 30, 1986 and December 31, 1986.

Notice of the proposal together with its terms of subatance was given by the issuance of a Commission release (Securities Exchange Act Release No. 24181, March 5, 1987) and by publication in the Federal Register (52 FR 7727, March 12, 1987). No comments were received regarding the proposal.

Currently, the Exchange's Committee on Specialist Assignment and Evaluation is attempting to formulate revised specialist performance evaluation criteria. In its filing, the Exchange has indicated that it intends to draft and submit to the Commisson for approval revised performance evaluation criteria used for posting securities under the Rule. The Exchange has also indicated that if it submits revised evaluation criteria to the Commission by June 30, 1987, it will continue to suspend application of the Rule for the six month period ending June 30, 1987.[2] If, however, revised evaluation criteria have not been submitted and approved by the Commission by that date, the Exchange intends to resume posting securities for applications under the Rule for the six month period ending June 30, 1987.

The Commission believes that it is important for the Exchange to monitor the performance of MSE specialists and co-specialists to ensure that they provide the best possible markets for the securities they trade. In this regard, the Commission believes the Exchange's plans to revise its mandatory posting evaluation criteria is part of a continuing effort to develop comprehensive, balanced, and fair specialist performance standards. Based on the above, we have concluded that it is appropriate to allow the MSE to suspend application of the Rule for the past two posting periods while the MSE is evaluating the adequacy of the current criteria to determine whether revisions are necessary. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirement of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commisison, by the Division of Market Regulation, pursuant to delegated authority.[3]

Dated: May 12, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11471 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24446; File No. SR-Phlx-87-4]

## Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Establishment of Standards for the Operation of a System of Alternate Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 2, 1987, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("the "Act") proposes to adopt rules to establish formal standards for the operation of a system of alternate specialists. The proposed rules provide set procedures for the appointment, assignment and termination of alternate specialists. The rules ensure, among other things, that applicants meet the same financial adequacy standards as those required for equity and options specialists and registered option traders. Further, the rules provide that no member appointed as an alternate specialist will be assigned in an equity issue in which the alternate specialist or any person associated with the alternate specialist, or the member organization with which the alternate specialist is affiliated, is either a specialist in the options overlying that equity issue, or a Registered Options Trader with an assignment in the overlying options. The proposed rules also outline the responsibilities of alternate specialists. Generally, an alternate specialist is required only to effect transactions on the Exchange in his assigned securities that constitute a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market. Such dealings include the requirement that fifty percent of an alternate specialist's quarterly share volume be in issues to which he is assigned, and a requirement that alternate specialists must accept and guarantee all 100 share agency orders that are not accepted by the specialist. These negative and affirmative obligations are imposed to enable the alternate specialist to qualify as a market maker, as envisioned under the Act, in their assigned stocks.

### II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

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[1] The Mandatory Posting Rule ("Rule") requires the MSE to continuously calculate its market share for the previous six month period (that is, a percentage of the number of trades reported to the consolidated tape) in each security for which there is a registered specialist and compare that market share with the market shares of other exchanges that trade that security. If during the preceding six months, the Exchange's market share in the security is less than the third largest exchange and also less than the Exchange's average market share for all securities with registered specialists, the security is immediately posted for applications for reallocation.

[2] We note that, to date, the MSE has not submitted revised specialist evaluation criteria to the Commission for approval.

[3] 17 CFR 200-30-3.

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

The purpose of the proposed rule change is to establish formal standards for the operation of a system of alternate specialists on the Exchange. The alternate specialist system is intended to add depth and liquidity to markets on the Exchange. The proposed rule imposes both "affirmative" and "negative" obligations on alternate specialists, thus enabling members who register as such to qualify for market-maker status as contemplated by the Act and the rules thereunder. At the same time, these obligations are aimed at protecting the public interest and strengthening the Exchange's ability to maintain fair, orderly and competitive markets on the floor.

(b) Statutory Basis for Proposed Rule Change

Implementation of the proposed rule change will be consistent with those provisions of the Act by facilitating transactions in securities and, in general, to protect investors and the public interest. *See* section 6(b)(5) of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will: (A) By order approve such proposed rule change, or, (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 10, 1987. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 12, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-11472 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-24447; File No. SR-NASD-87-19]**

**Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc.; Processing Membership Applications of Government Securities Brokers and Dealers; Forms and Procedures**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 9, 1987, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change sets forth the intention of the NASD to utilize Form BD, Form U-4 and the existing NASD membership application procedures of Part I of Schedule C to the NASD By-Laws in processing applications for membership by government securities brokers and dealers that are required to become members of a self-regulatory organization under the provisions of Pub. L. 99-571, the Government Securities Act of 1986 ("GSA").

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The GSA provides that, effective July 25, 1987, it shall be unlawful for any government securities broker or dealer required to register with the Commission under the GSA to engage in a government securities business unless such government securities broker or dealer is a member of a national securities exchange or a registered securities association. The NASD, as the only registered association, anticipates that a substantial number of heretofore unregistered government securities brokers and dealers will seek to become NASD members in order to comply with the provisions of the GSA. The NASD has represented to the Commission that it will endeavor to process the applications of firms filed with the NASD prior to April 15, 1987 before the effective date of the GSA. In order to facilitate such expeditious processing of new member firm applications, the NASD has determined that it is imperative for it to utilize, to the degree consistent with the provisions of the GSA, those forms and procedures currently in use for processing of membership applications of brokers and

dealers that register with the Commission under section 15(b) of the Act.

The Resolution of the Board of Governors that is the subject of this filing authorizes the NASD to utilize existing Forms BD and U–4 and the application procedures contained in Part I of Schedule C to the NASD By-Laws to the degree that such procedures are not inconsistent with the provisions of the GSA. The NASD believes that utilization of both Forms U–4 and BD is consistent with the purposes of the GSA. In this regard, it should be noted that the Commission has approved revisions to Form BD for use by government securities brokers and dealers in registering with the Commission as required by the GSA.[1] Similarly, it is contemplated that the North American Securities Administrators Association will be considering amendments to Form U–4 that will facilitate its use by persons associated with government securities brokers and dealers. Pending formal revision of these forms, the NASD contemplates utilization of existing versions of Forms U–4 and BD with appropriate annotation, either on the form itself or in a letter format, to indicate that the applicant for membership engages in a government securities business or, in the case of the U–4, that the person is associated with a government securities broker and dealer.

In a similar manner, the NASD believes that the provisions of Part I of Schedule C to the By-Laws dealing with applications for membership are generally equally applicable to firms seeking membership pursuant to registration under section 15C of the Act. In the case of government securities brokers and dealers with an ongoing business, the pre-membership interview procedure of Part I of Schedule C will generally take the form of an on-site pre-membership examination rather than the interview normally conducted in the NASD district office. The elements of such review will be those set forth in Schedule C. The scope of the pre-membership review process will be limited to ensuring compliance with the provisions of the GSA and the financial responsibility, record keeping and reporting requirements adopted by the Department of the Treasury pursuant to the GSA. Because of the statutory limitation on NASD authority over government securities brokers and dealers, those references in section 1(c) of Part I of Schedule C calling for qualification of associated persons and any other provisions not relating to the purposes of the GSA will not be applied to government securities applicants.

The NASD believes that the utilization of these forms and procedures in processing membership applications is consistent with section 15A(f) and section 15A(g) of the Act as amended by the GSA. Section 15A(g)(3)(A) provides that a registered securities association may deny or condition membership of a government securities broker or dealer if the firm does not meet standards of financial responsibility under the rules adopted pursuant to the GAS, or is subject to a statutory disqualification under section 15C(c) of the Act. The Act provides that a registered securities association may establish procedures including examination procedures to verify compliance with these provisions. The NASD believes that the filing of Form BD and the application of the NASD pre-membership procedures to government securities applicants will provide the NASD with the information required to carry out these obligations. Section 15A(g)(3)(B) of the Act further provides that a registered securities association may bar or condition the association of a person with a member based upon the existence of a statutory disqualification as defined pursuant to section 15C(c), or if such person does not agree to supply the association with information with respect to its relationship and dealings with the member as may be specified in the rules of the Association. The NASD believes that the utilization of Form U–4 by persons seeking to become associated with government securities brokers and dealers is consistent with these provisions in that the information elicited by Form U–4 is designed to provide the NASD with information as to the possible existence of a statutory disqualification and also enables the NASD to access disciplinary and other records that are necessary to verify the existence of a statutory disqualification and to enable the NASD to make the determination required by section 15A(g)(4)(B).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as amended by the GSA.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action**

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after its publication in the Federal Register. The NASD believes that the short time frames contained in the GAS for registration and membership in a registered securities association, as well as the fact that the NASD seeks only to require the filing of forms that have long been utilized in conjunction with the registration of broker/dealers and persons associated with those broker/dealers and to adopt existing NASD procedures for the processing of membership applications, make such acceleration necessary and appropriate in carrying out the NASD's obligations under the GSA. Accordingly, the NASD believes that good cause exists, to accelerate the effectiveness of the rule change to facilitate the processing of membership applications.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, sections 15A(f) and 15A(g) as amended by the GAS.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that accelerated approval will allow the NASD to process membership applications of government securities brokers and dealers by utilizing existing forms and procedures in order to meet the short time frames set by the GSA, which requires that all government securities brokers and dealers be registered with the Commission and be members of a self-regulatory organization by July 25, 1987, or cease doing business until they comply with section 15C(a)(1).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent

[1] See Securities Exchange Act Release No. 34–24372, April 21, 1987; 52 FR 16838 (May 6, 1987).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–87–19 and should be submitted by June 10, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: May 13, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–11524 Filed 5–19–87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24450/File No. SR-PSE-87-11]

## Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Inc.; Creation of a Permanent Program for the Use of Market Index Option Escrow Receipts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 22, 1987, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comiments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19(b)(4) of the Securities Exchange Act of 1934 (the "Act"), is submitting this rule filing for the purpose of creating a permanent program out of the existing index option escrow receipt pilot program, set forth in PSE Rule XXI, section 16.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Items IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change*

On August 19, 1985, the Commission, in Securities Exchange Act Release No. 34–22323, approved a one-year pilot program of the market index option escrow receipt ("MIOER"). The purpose of the proposed rule change was to provide a valuable mechanism through which index call option contracts could be written in a cash account. As such, the MIOER will be able to be collateralized by cash, cash equivalents, one or more marginable equity securities, or any combination thereof, provided the customer maintains a diversified securities portfolio. The pilot was subsequently extended through February 20, 1987, in order to provide sufficient time for a review to be made of data compiled during the pilot program. The Chicago Board Options Exchange ("CBOE") was designated the exchange to study the pilot and to report on the findings, and submitted its report to the Commission on February 6, 1987.

The CBOE report determined that the MIOER is a successful and worthwhile concept and has asked the Commission to approve its use on a permanent basis. In that regard, and to maintain the uniformity of all participating Self-Regulatory Organizations, the Exchange is also requesting the same permanent approval. Pending consideration by the Commission, the PSE has also filed an additional extension of the pilot program to June 30, 1987. See SR–PSE–87–10.

The statutory basis for this filing is section 6(b)(5) of the Securities Exchange Act of 1934, which provides, in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 10, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 14, 1987.

[redacted] G. Katz,

*Secretary.*

[FR Doc. 87-11525 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 1070]

## Intention to Cancel the Registration of John Adams Trust Corporation

May 14, 1987.

Notice is hereby given that the Securities and Exchange Commission intends to issue an order pursuant to section 203(h) of the Investment Advisers Act of 1940 cancelling the registration of John Adams Trust Corporation.

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence or is not engaged in business as an investment adviser, the Commission shall by order cancel the registration of such person.

On August 22, 1986, the United States District Court for the District of Massachusetts, pursuant to a complaint filed by the Commission, appointed a receiver to take possession and control of the funds, assets, and other property of John Adams Trust Corporation and to render an accounting.[1] The receiver reported to the court that the registrant is insolvent, is without assets, employees, or offices, and had ceased operations as of September 1986. By order of the court, all of the registrant's client accounts were transferred to another investment adviser for temporary servicing until the clients could make permanent arrangements.

In view of these circumstances, the Commission believes that reasonable grounds exist to support a finding that the registrant is no longer in existence or is not engaged in business as an investment adviser.

Notice is further given that any interested person may, not later than thirty days after the date of this publication, submit to the Commission in writing a request for a hearing on the matter, accompanied by a statement as to the nature of his interest, the reasons for such request, and the request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

[1] *SEC v. John Adams Trust Corporation and Milton Adams Corey*, USDC DMA, Civil Action No. [redacted]-WD.

At any time after said date, the Commission may issue an order cancelling the registration of John Adams Trust Corporation upon the basis of the information stated herein, unless an order for hearing on said cancellation shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11527 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. IC-15739; 812-6552]

## Merrill Lynch, Pierce, Fenner & Smith Inc., et al; Application

May 14, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** Merrill Lynch, Pierce, Fenner & Smith Incorporated, Shearson Lehman Brothers Inc., Prudential-Bache Securities Inc., Dean Witter Reynolds Inc., Paine Webber Incorporated ("Sponsors"); and all presently outstanding, or subsequently issued, series ("Series") of The Corporate Income Fund, The Equity Income Fund, The Fund of Stripped U.S. Treasury Securities, The Government Securities Income Fund, The International Bond Fund, Liberty Street Trust, The Merrill Lynch Fund of Stripped U.S. Treasury Securities, The Mortgage Backed Income Fund, The Municipal Income Fund, Municipal Investment Trust Fund and The Tax Exempt Mortage Fund (the "Funds"), on behalf of themselves and any other broker-dealer which in the future acts as a sponsor, any series of future unit investment trust sponsored by a Sponsor, and any bank or custodian which meets the specifications of section 26(a)(1) of the Act which acts as a trustee of any present or future series of unit investment trusts for which one or more of the Sponsors acts as sponsor ("Trustee").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of section 26(a)(2)(D) of the 1940 Act.

*Summary of Application:* Applicants seek an order under section 6(c) of the Act to permit the Trustee to deposit, or to cause or permit the deposit of, securities and other assets of any Series with the Euro-Clear System ("Euro-clear") or Central de Livraison Valeurs Mobilieres, S.A. ("CEDEL", collectively with Euro-clear, the "Transnational Agencies").

*Filing Date:* The application was filed on March 18 and amended on April 27, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, an order disposing of the application will be issued. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on June 8, 1987. Requests must be in writing, setting forth the nature of your interest, the reasons for the request, and the issues contested. Applicants should be served with a copy of the request, either personally or by mail, and the request should also be sent to the Secretary of the SEC, along with proof of service (by affidavit or, in the case of an attorney-at-law, by certificate). Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated, One Liberty Plaza, New York, New York 10080.

**FOR FURTHER INFORMATION CONTACT:** Special Counsel Curtis R. Hilliard (202) 272-3026 or Special Counsel Karen Skidmore (202) 272-3023 (Office of Investment Company Regulation).

### Supplementary Information

The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

### Applicants' Representations

1. Each of the Funds is sponsored by one or more of the Sponsors and is made up of one or more Series of separate unit investment trusts registered or to be registered under the Securities Act of 1933. Each Series is created by a Trust Indenture (the "Indenture") among the Sponsors and a Trustee. The current Trustees for the Funds are Bank of New England, N.A., Bank of New York, Bankers Trust Company, The Chase Manhattan Bank, N.A. and U.S. Trust Company.

2. Euro-clear and CEDEL are two of the largest clearance and custody systems of internationally traded securities. They were organized principally to provide a simple, economic and automated means of settling secondary market transactions in internationally traded securities regardless of the geographical location of the parties to the transaction. The branch of Morgan Guaranty in Brussels, Belgium operates Euro-clear, and is subject to regulation by the New York and federal banking authorities and the Belgian Banking Commission. Belgian law also governs Morgan Guaranty's liability as custodian and operator of Euro-clear under the Terms and Conditions Governing the Euro-clear System, which constitutes the contract between Euro-clear and each participating entity that has an account with Morgan Guaranty Brussels. CEDEL was founded as a limited company under the laws of the Grand Duchy of Luxembourg. CEDEL is headquartered in Luxembourg and has representative offices in London and New York. CEDEL operates under the supervision of the Institute Monetaire Luxembourgeois, the Luxembourg Monetary Authority, which is also the banking control authority.

3. Pursuant to the proposed custody arrangements described in the Application, permission is sought to use the Transnational Agencies to hold certain non-United States securities of current Series or of Series of future unit investment trusts sponsored by one or more of the Sponsors.

4. Under the proposed arrangements, each Trustee would provide to a Fund custody services which would permit the foreign securities of the Fund to be held abroad in the custody of a Transnational Agency. Such services would be offered by each Trustee pursuant to arrangements which would be the same as with those applicable to registered management investment companies as contemplated by Rule 17f-5 under the 1940 Act, except: (i) Certain duties and responsibilities of the boards of directors of such companies would, in the case of the Funds, be performed by the particular Trustee; (ii) the Trustee would provide indemnification as summarized below; and, (iii) pending further action by the Securities and Exchange Commission, only the Transnational Agencies would qualify as eligible foreign custodians for the Funds.

5. Each Trustee will undertake itself, with respect to foreign custody services offered to the Funds, to fulfill substantially all of the supervisory and monitoring roles currently assigned by Rule 17f-5 to the board of directors of a management investment company. In particular, prior to the holding of foreign securities of any Fund in a Transnational Agency, the Trustee for such Fund will be required to:

(i) Make a determination that maintaining the Fund's assets in the particular country or countries is consistent with the best interests of the Fund and its unitholders;

(ii) Make a determination that maintaining the Fund's assets with the particular Transnational Agency is consistent with the best interests of the Fund and its unitholders;

(iii) Enter into a written contract which is consistent with the best interests of the Fund and its unitholders and which will govern the manner in which such Transnational Agency will maintain the Fund's assets and which provides that:

(A) The Fund will be adequately indemnified and its assets adequately insured in the event of loss (without regard to the indemnity provided by the Trustee under its Trust Agreement);

(B) The Fund's assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Transnational Agency or its creditors except a claim of payment for their safe custody or administration;

(C) Beneficial ownership for the Fund's assets will be freely transferable without the payment of money or value other than for the safe custody or administration;

(D) Adequate records will be maintained identifying the assets as belonging to the Fund;

(E) The Fund's independent public accountants will be given access to records identifying assets of the Fund or confirmation of the content of those records; and

(F) The Trustee will receive periodic reports with respect to safekeeping of the Fund's assets, including, but not necessarily limited to, notification of any transfer to or from the Trustee's account;

(iv) Establish a system to monitor the foreign custody arrangements in order to ensure compliance with the proposed trust provisions and the representations and conditions of this application;

(v) Review and approve, at least annually, the continuing maintenance of Fund assets in a particular country or countries with a particular Transnational Agency as being consistent with the best interests of the Fund and the unitholders.

Each Trustee, in making such determinations, will consider various factors, such as the comparative operational efficiencies of custody, clearance and settlement and the costs thereof and the political and other risks, attendant to the holding of foreign securities in the particular Transnational Agency, all as more specifically set forth in the Application. Each Trustee shall consider the extent of the Fund's exposure to loss because of the use of a particular Transnational Agency. The potential effect of such exposure upon unitholders shall be disclosed, if material, by the Sponsors in the prospectus relating to the Fund. In addition, before entering into any custodial contract with a Transnational Agency, the Trustee shall specifically consider whether, under the terms of the contract and without regard to the indemnity provided by the Trustee, the Fund will be adequately indemnified and its assets adequately insured in the event of loss. Each Trustee shall select with the exercise of reasonable care the particular Transnational Agency which may have custody of the foreign securities.

6. Each Trustee shall maintain, and keep current, written records regarding the basis for the choice or continued use of a particular Transnational Agency, and such records shall be available for inspection by unitholders and the Securities and Exchange Commission at the Trustee's offices at all reasonable times during its usual business hours. In addition, where the Trustee has determined that a Transnational Agency may no longer be considered eligible under the terms of the Trust Agreement or that continuance of the arrangement would not be consistent with the best interests of the Fund and the unitholders, the Fund must withdraw its assets from the care of such Transnational Agency as soon as reasonably practicable, and in any event within 180 days of the date when the Trustee made the determination.

7. Apart from the written contract governing the manner in which the Transnational Agencies will maintain Fund Assets, under the proposed trust provisions each Trustee will indemnify and hold the Fund whose foreign securities are held harmless from and against any loss which shall occur as the result of the failure of the Transnational Agency holding such foreign securities to exercise reasonable care with respect to the safekeeping of such foreign securities to the same extent that the Trustee would be required to indemnify and hold the Fund harmless if the Trustee itself were holding such foreign securities in the United States' jurisdiction whose laws govern the Indenture. Such provisions would provide, however, that the Trustee will not have liability for loss except by reason of the gross negligence, bad faith or willful

misconduct of the Trustee or the Transnational Agency.

8. Applicants believe that securities deposited in Euro-clear or CEDEL are at least as effectively protected as the same securities would be if directly deposited with a foreign branch of a U.S. bank, or shipped to the U.S. for custody, for several reasons, including:

(i) The insurance coverage for Euro-clear and CEDEL depositaries and their outstanding loss record;

(ii) The expertise and experience of the banks holding securities for Euro-clear or CEDEL;

(iii) The efficiencies resulting from handling large quantities of the same issue;

(iv) The excellent track records of Euro-clear and CEDEL;

(v) The close scrutiny of Euro-clear and CEDEL services resulting from the market's dependence upon (and hence concern for) these services and the oversight of the depositaries; and

(vi) The depositary agreements pursuant to which securities are held by Euro-clear and CEDEL depositaries, which impose high standards of care on the depositaries.

9. Applicants further believe that the exposure to certain custodial risks is reduced when securities are held through Euro-clear or CEDEL rather than directly by a U.S. bank branch since securities held in Euro-clear or CEDEL do not have to be transported for deposit outside these systems or to effect sale. Furthermore, holding foreign securities outside of Euro-clear and CEDEL would give rise to substantially higher costs for holding and transferring securities and for settling transactions.

### Applicants' Conditions

Applicants have agreed, and will file an amendment to the Application stating that compliance with Representations 5, 6, and 7 above may be made a condition to any order granting the requested exemption.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11523 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. IC-15734; File No. 812-6695]

## Hartford Life Insurance Co., et al.; Application

May 12, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

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*Applicants:* Hartford Life Insurance Company ("Hartford"), Hartford Life Insurance Company-Advest Variable Annuity Separate Account ("Account"), and Hartford Equity Sales Company, Inc. ("Equity Sales").

*Relevant 1940 Act Sections:* Exemption requested *under* section 6(c) *from* sections 26(a)(2)(C) and 27(c)(2).

Summary of Application: Applicants request exemption to offer certain individual and group flexible premium tax deferred variable annuity contracts ("contracts") subject to a daily asset charge for mortality and expense guarantees at the annual rate of 1.25%, estimated at .90% and .35%, respectively.

*Filing Date:* The application was filed on April 28, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Hartford Plaza, Hartford, Connecticut 06115.

**FOR FURTHER INFORMATION CONTACT:** Financial Analyst Margaret Warnken (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

### Applicant's Representations

1. Hartford is a stock life insurance company organized under the laws of the state of Connecticut. The Account is registered under the 1940 Act as unit investment trust. Equity Sales, a registered broker-dealer, is the principal underwriter for the contracts.

2. The contractowner has the right to allocate purchase payments to any one or more of four portfolios ("Funds") of Advest Advantage Investment Trust. A sales charge is not deducted at the time of purchase. Each premium payment, net of any applicable premium tax, is credited to the contract. A contingent deferred sales charge may be assessed against contract values upon surrender. The time from receipt of a premium payment to the time of surrender determines the contingent deferred sales charge; and the charge equals 5% of the amount withdrawn for the first and second year, 4% for the third year, 3% for the fourth year, 2% for the fifth year, and 0% for the sixth year. A single partial surrender may be made each year after the first full contract year of up to 10% of the aggregate premium payments without the application of the contingent deffered sales charge.

3. An annual maintenance fee of $25 is deducted from contract values. A daily charge of .175% per annum is made against contract values for administration. The contracts issued with respect to the Account will provide for a 1.25% annual asset charge paid to the Hartford on a daily basis for providing mortality and expense guarantees.

4. The mortality undertaking provided by Hartford under the contracts, assuming the selection of one of the forms of life annuities, is to make monthly annuity payments (determined in accordance with the 1983(a) Individual Annuity Table with ages set back one year and other provisions in the contract) regardless of how long an annuitant may live, and regardless of how long all annuitants as a group may live. Hartford also assumes the liability for payment of a minimum death benefit. The expense undertaking is the risk assumed that the contingent deferred sales charges, the annual maintenance fee, and the asset-based administration charge, may be insufficient to cover the actual costs.

5. Exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) is requested in order that the contracts may be subject to the mortality and expense risk charge. Hartford and the Account represent that:

(a) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as detemined by a survey of comparable contracts annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. These contracts are similar in that current charge levels are approximately the same; all provide minimum death benefit guarantees the same as or lower

than the Applicants' contract; all have guaranteed annuity purchase rates; and all have the same special accounting system for separate account unit value administration; and all are offered in the same market. Hartford will undertake to maintain and make available to the Commission upon request a memorandum underlying this representation;

(b) There is the likelihood that the periods from explicit sales loads will be insufficient to cover the expected costs of distributing the contracts. Harford has concluded that there is a reasonable likelihood that the Account's distribution financing arrangement will benefit the Account and countractowners, and that it will maintain and made available to the Commission upon request a memorandum setting forth the basis for this representation; and

(c) The Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

6. The exemption requsted to permit the deduction for mortality and expenses guarantees is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–11469 Filed 5–19–87; 8:45 am]

BILLING CODE 8010–01–M

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[Release No. IC–15729; 812–6707]

## New England Mutual Life Insurance Co. et al.; Application

May 14, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* New England Mutual Life Insurance Company ("The New England"); New England Life Variable Annuity Fund I ("VA I"); and New England Life Variable Annuity Fund II ("VA II") (each referred to individually as a "Fund" and collectively as "the Funds").

*Relevant 1940 Act Sections:* Exemption requested under section 17(b) from section 17(a).

*Summary of Application:* Applicants seek and order of exemption to the extent necessary to permit them to combine VA I and VA II of The New England.

*Filing Date:* The application was filed on May 1 and amended on May 11, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 4, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail and also sent it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 501 Boylston Street, Boston, Massachusetts 02117.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Jeffrey M. Ulness (202) 272–3027 or Special Counsel Lewis B. Reich (202) 272–2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 in Maryland (301) 258–4300).

### Applicants' Representations

1. The New England is a Massachusetts mutual life insurance company. Each of the Funds is registered under the Act as an open-end management investment company. Each of VA I and VA II is a separate account of The New England and serves as the investment vehicle for certain variable annuity contracts issued by The New England.

2. The New England directly or indirectly owns (1) stock possessing 80% of the outstanding voting power of Loomis, Sayles & Company, Incorporated, ("Loomis Sayles") and (2) all of the outstanding capital stock of New England Securities Corporation ("Securities"). Loomis Sayles acts as investment adviser for VA I and VA II. Securities Acts as principal underwriter for each Fund. In addition, The New England, may be deemed the beneficial owner of the portfolio assets of each of VA I and VA II. Because of the foregoing affiliations, each Applicant may be deemed to be an "affiliated person," within the meaning of section 2(a)(3) of the 1940 Act, or an affiliated person of an affiliated person, of one or more of The New England, Loomis Sayles, Securities, and their respective subsidiaries and affiliates.

3. VA I was organized as the investment vehicle for individual variable annuity contracts for use with certain tax-qualified retirement plans, annuity purchase plans, individual retirement annuities and government plans. VA II was organized as the investment vehicle for variable annuity contracts for individual use and for use with plans and trusts not qualifying for tax-benefited treatment. Before annuity payments begin, the value of a contract supported by a Fund is measured by an accounting device known as accumulation unit.

4. Prior to 1984, federal tax law required that, because the contracts for which VA II serves as the investment vehicle were not for use with tax-qualified plans, capital gains of VA II be treated differently from capital gains of VA I. In 1984, however, federal tax law was amended to eliminate this difference in treatment retroactive to January 1, 1984. Because of this change in federal tax, the principal reason for the separate existence and operation of the Funds no longer applies.

5. Applicants have received approval from VA II's contractholders to transfer all the assets and liabilities of VA II into VA I (the "Surviving Fund") in exchange for a number of accumulation units of the Surviving Fund having an aggregate value immediately prior to the effective time of the combination equal to the net asset value of VA II immediately prior to the effective time. Applicants state the exchange is consistent with section 22(c) and Rule 22c–1 thereunder. The consummation of the combination is contingent upon receipt by the Board of Managers of both VA II and of the Surviving Fund of an opinion of counsel that the Surviving Fund should qualify as a "segregated asset account" and the variable annuity contracts should continue to qualify as "variable contracts" and that the combination should be a tax free event. The New England will assume all costs incurred in effecting the combination.

6. The Board of Managers of each of the Surviving Fund and VA II have each unanimously approved the combination of the Funds. The assets of the Surviving Fund are registered with the Commission under the Securities Act of 1933 on Form N–1A.

7. The Surviving Fund and VA II have identical investment objectives, pricing,

distribution and purchase procedures and redemption features. The New England deducts the same advisory fees and mortality and expense risk charges from the assets of each Fund and the same persons constitute the Board of Managers of each Fund, the rules and regulations of each Fund are identical. The combination will not affect any rights to annuity payments, the annuity options that are offered, the death benefit or the federal income tax treatment of either Fund. There are no material differences between the voting or other rights of contractholders of VA II and the rights they will have as contractholders of the Surviving Fund.

8. The Applicants seek an exemption from the provisions of section 17(a) pursuant to section 17(b) of the 1940 Act to permit the combination of the Funds (the "Combination").

9. The interests of the annuity contractholders of each of the Funds will not be adversely affected by the Combination. The Combination will not result in the dilution of the interests of existing contractholders of either Fund. The Combination may result in reduced operating costs and enhanced flexibility of asset management and opportunity for portfolio diversification.

10. The Combination as described above is reasonable and fair, does not involve overreaching on the part of any person concerned, is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act, and is consistent with the provisions, policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11469 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 35-24282]

## Filings Under the Public Utility Holding Company; Application

May 14, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 8, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### New England Power Company (70-7208)

New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts 01582, a wholly owned electric utility subsidiary of New England Electric System, a registered holding company, has filed a post-effective amendment to its declaration pursuant to section 6(a) and 7, 9(a), 10 and 12(c) of the Act, and Rule 42 thereunder.

By order dated May 29, 1986 (HCAR No. 24115) NEP was authorized, among other things, to issue and sell up to $550 million of general and refunding mortgage bonds ("G&R Bonds") for refinancing purposes. NEP now proposes that it be authorized to issue and sell up to $35 million of the $550 million of G&R Bonds to finance its $35 million share of the construction of pollution control and solid waste disposal facilities for the Seabrook, New Hampshire nuclear project. The G&R Bonds would have a variable interest rate not in excess of 14% and would be issued simultaneously with, and on the same terms as, pollution revenue control bonds to be issued by the Industrial Development Authority of the State of New Hampshire.

### Ohio Power Company, et al. (70-7387)

Ohio Power Company, ("Ohio Power"), a wholly owned electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Ohio Power's subsidiaries, Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company, and Windsor Power House Coal Company (collectively, "the coal mining subsidiaries") all of 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

The coal mining subsidiaries propose to enter into a renewable master leasing agreement with a nonaffiliate, the Connecticut Bank and Trust Company ("Connecticut"), whereby Connecticut will lease to the coal mining subsidiaries, between July 1, 1987 and June 30, 1989, mining equipment with a total aggregate acquisition cost not exceeding $22,000,000. All costs of operation, maintenance, taxes, insurance and other costs are to be borne by the lessees.

Ohio Power will execute a guaranty agreement to unconditionally and irrevocably guarantee COCCo's payment obligations in connection with the lease in light of COCCo's partial assignment to nonaffiliates of revenues received under its coal supply agreement with Ohio Power.

### Clearfield Ohio Holding, Inc. (70-7388)

Clearfield Ohio Holdings, Inc. (the "Applicant"), Radnor Corporate Center 5, Suite 400, 100 Matsonford Road, Radnor, Pennsylvania 19087, has filed an application pursuant to sections 9(a)(2) and 10 of the Act.

Applicant is an Ohio corporation, organized in 1985, and a holding company claiming an exemption pursuant to section 3(a)(1) of the Act and Rule 2 thereunder from all the provisions of the Act, except section 9(a)(2). Applicant owns all of the outstanding common stock of two gas distribution companies, Southeastern Natural Gas Company ("Southeastern") and Eastern Natural Gas Company ("Eastern"), both of which are Ohio corporations and provide natural gas distribution services exclusively within the state of Ohio. Applicant has no other subsidiaries and is not a public-utility company itself.

Applicant proposes to acquire all of the outstanding shares of common stock, par value $3.00 per share, (the "Pike Shares"), of Pike Natural Gas Company ("Pike"), an Ohio corporation and a public-utility company within the meaning of the Act. The Acquisition is to be effected pursuant to a cash tender offer. The tender offer is not conditioned upon the receipt of tenders for a minimum number of shares.

Southeastern provides natural gas services to other utilities, to industrial customers for their own use, and to residential customers. It presently has approximately 50 customers. All gas is transmitted over leased lines in Washington, Athens, Morgan, Perry, Hocking, and Fairfield Counties, all in

Ohio. At the present time, Southeastern owns no producing fields, gas manufacturing plants, or gas distribution facilities, other than certain service lines to residential customers. Eastern provides natural gas services through its own lines to approximately 5,700 residential, commercial, industrial, and public-utility customers, in Trumbull and Ashtabula Counties, Ohio. As the present time, Eastern owns no producing fields or gas manufacturing plants.

Pike, an Ohio corporation, provides natural gas services exclusively within the State of Ohio to approximately 5,300 residential, commercial, industrial, and public-authority customers in Clinton, Highland, Pike, Jackson, and Ross Counties. At the present time, Pike owns no producing fields; it owns two small propane peak shaving facilities. Pike's system is divided into two physically separate operations of approximately equal size. The Hillsboro Division, serving Highland and Clinton Counties, is supplied by Columbia Gas Transmission Corporation; the Waverly Division, serving Ross, Pike, and Jackson Counties, is supplied by Tennessee Gas Pipeline Company. Pike employs some 20 persons in the two divisions.

Applicant asserts that the acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system. It is stated that the economies resulting from the combination of the three companies as part of an integrated system will benefit investors and consumers. Applicant believes that its greater size and extensive contacts with Ohio producers may enable it to obtain gas supplies at a more favorable price than Eastern and Pike alone would be able to. Applicant expects to achieve significant operating economies in these operations by eliminating duplicated overhead activities and reducing Pike's operating work force. Applicant also expects that lower gas costs to customers will result.

The authorized capital stock of Pike consists of 450,000 shares of common stock, of which 84,711 shares were issued and outstanding on December 31, 1986. The Pike Shares were formerly registered with the Commission pursuant to the Securities Exchange Act of 1934 but were deregistered in 1964 when the number of shareholders was reduced to fewer than 300 as a result of a reverse stocksplit.

Applicant has entered into agreements with the three principal shareholders of Pike, The Ohio Company, Alice H. Reilly, and St. Clair Oil Company, who in the aggregate own 53,701 Pike Shares, or approximately 63% of the outstanding shares, pursuant to which such shareholders have agreed to tender their shares in response to the tender offer (the "Shareholder Agreements"). In addition, the board of directors of Pike has considered the terms of the proposed tender offer and has recommended that the other shareholders tender their Pike Shares in response to it. The Shareholder Agreements are the result of arms'-length negotiations. The terms of the tender offer were negotiated with the officers and directors of Pike and its investment banker. The price agreed upon was 125% of Pike's bool value as at December 31, 1986, plus 125% of the increase in net book value through March 31, 1987, with a cap of $42 per share. The cap was reached, and the price of $42 per share being offered to the shareholders represents approximately 124% of Pike's book value as at March 31, 1987. Applicant states that the consideration, including all fees, commissions, and other remuneration paid in connection with the proposed acquisition, is reasonable and bears a fair relation to the earning capacity of the utility assets of Pike.

Applicant anticipates acquiring all of the Pike Shares pursuant to the Tender Offer but requests that the authorization extend to any subsequent acquisition by Applicant of Pike Shares in the event that not all Pike shareholders tender their shares pursuant to the tender offer. Applicant expects to acquire such Pike Shares in private transactions or as a result of the merger or other combination of Pike with Applicant or a subsidiary of Applicant.

**Cal Gas Corporation (70-7381)**

Cal Gas Corporation ("Cal Gas"), P.O. Box 28397, 8401 Gerber Road, Sacramento, California 95828, has filed an application pursuant to section 2(a)(4) of the Act for an order declaring it not to be a gas utility company.

Section 2(a)(4) defines a gas utility company as "any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers . . .) of natural or manufactured gas for heat, light, or power." That section also provides that the Commission may declare a company not to be a gas utility company if it "finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors and consumers that such company be considered a gas utility company for the purposes of [the Act]. . . ."

Cal Gas is a national marketer of liquefied petroleum gas ("LPG") to residential, commercial, industrial, and agricultural users throughout the United States. It distributes the LPG in enclosed portable containers. Cal Gas states that an insignificant portion of its sales involves the use of pipes or pipelines owned by the company which run from storage tanks on or near the customer's premises to the customer's home or business. The company purchases LPG from a variety of suppliers from around the country and moves the product through a nationwide distribution system that employs proprietary rail car and truck fleets as well as common carrier haulers. In addition, the company is involved in other activities related to the sale of LPG, such as equipment and appliance sales and commodities trading.

Cal Gas' revenues from operations other than retail fuel sales were $325,380,000 in 1986, comprising 62.29 percent of the company's revenues. These revenues were derived principally from Cal Gas' trading activities in the commodities markets. Other revenues stemmed from the company's gas processing, transportation, wholesale fuel, and equipment sales and leasing operations. The balance of Cal Gas' 1986 revenues, $196,942,000 or 37.71 percent, were from retail LPG sales. LPG is delivered in large tank trucks or smaller "bobtail" trucks to or near the LPG is pumped into storage tanks. Sales also occur in small canisters or cylinders at retail station outlets. Customers whose storage tanks are not metered are billed on each delivery for the quantity of LPG delivered into the storage tank. Nometered sales, which were $185,874,158 in 1986, or 35.59 percent of total company sales, do not involve company pipes or pipelines.

Customers whose tanks are metered are billed for the LPG consumed according to meter readings. Metered sales were $11,068,093 in 1986 or 2.12 percent of total Cal Gas sales. These metered sales may involve the use of company-owned pipes or pipelines in the following ways.

First, pipes are used in metered sales to single family residences or single businesses. Under this method of delivery, LPG is delivered to a tank on the customer's premises and passes through a short pipe to a meter at the customer's residence or business. The customer is billed for the amount of gas passing through the meter. Traditionally,

the company owns the tank, the pipe leading to the residence, and the metering equipment.

Second, pipelines are used in sales to small residential subdivisions, mobile home parks, and industrial/commercial complexes. In each case, Cal Gas supplies LPG to a central tank, from which it flows through underground pipelines to individual customers where LPG usage is metered. Customarily, Cal Gas owns the central tank and the metering equipment and may own the pipelines leading to the customers' premises.

Third, Cal Gas pipes are sometimes used in sales to residents in apartment buildings. LPG is delivered to a central tank for the apartment building which, for safety reasons, is typically located a short distance from the building. The LPG then flows to the building through a main pipe and then to individual apartments through branch pipes. Customarily, the company owns the central tank, the metering equipment, and, in some cases, the pipe leading to the apartment building, but it does not, in any case, own the pipes contained within the apartment building.

It is stated that although Cal Gas does not maintain separate data for sales involving distribution through company pipes or pipelines, such sales constitute only a portion of metered sales and that, in any event, total metered sales constitute only $11.068 million or 2.12 percent of the company's 1986 revenues. It is further stated, moreover, that 1986 revenues from metered sales include approximatley $7.6 million in metered sales to nonresidential users of which many are industrial users. Finally, Cal Gas believes that metered sales to single family homes and to apartment buildings fall within the enclosed portable container exception in section 2(a)(4) and has included them only because of the difficulty in separating them from other metered sales.

**Consolidated Natural Gas Company, et al. (70-7393)**

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company, Four Gateway Center, Pittsburgh, Pennsylvania 15222, The Peoples Natural Gas Company, Two Gateway Center, Pittsburgh, Pennsylvania 15222, Consolidated Gas Transmission Corporation, Consolidated System LNG Company, 445 West Main Street, Clarksburg, West Virginia, 26301, CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130, West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802, CNG Development Company, CNG Trading Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street, Cleveland, Ohio 44115, and Hope Gas, Inc., Union National Center West, Clarksburg, West Virginia 26301 (collectively, "Subsidiary Companies"), have filed an application-declaration pursuant to sections 6(a), 6(b), 7, 9(a), 10, and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

Consolidated proposes, for intra-system financings through June 15, 1988: (1) To issue and sell up to $300 million of commercial paper to Merrill Lynch Money Market, Inc. or, alternatively, (2) to issue and sell up to $175 million unsecured short-term notes to banks, and (3) to make up to $560,500,000 in open account advances to the Subsidiary Companies. It is also proposed (i) that the Subsidiary Companies issue and Consolidated acquire up to $122,500,000 in long-term non-negotiable notes; (ii) that CNG Energy Company issue and Consolidated acquire long-term, non-negotiable notes up to $1.5 million; (iii) that Consolidated make revolving credit advances not to exceed $250 million to the Subsidiary Companies; (iv) that Consolidated purchase from, and CNG Coal Company, CNG Development Company, CNG Producing Company CNG Research Company issue, respectively, an aggregate of $41,100,000 million in common stock at $100 par value; and (v) that Consolidated purchase from CNG Trading Company up to 500 shares of common stock, $1.00 par, at $10,000 per share.

**Sierra Pacific Resources (70-7408)**

Sierra Pacific Resources ("Resources"), P.O. Box 30150, Reno, Nevada 89520, an exempt holding company, has filed an application pursuant to sections 9(a)(2) and 10 of the Act.

Resources proposes to acquire a 14.5% stock interest in a new company ("Enterprise") which is to be organized under the laws of the State of Nevada. Enterprise will construct and operate a 250 MW, coal-fired generating unit ("First Unit") to be located at the Thousand Springs Project ("Project") in Elko County in northeastern Nevada. Construction of the First Unit is scheduled to commence in 1989, with commercial operation expected to be in 1994. The Project may ultimately consist of the First Unit and seven other generating units, each of 250 MW.

In addition to Resources, there are ten other participants ("Non-Utility Participants") in the Project that will acquire the remaining ownership interests. No one of the Non-Utility Participants will acquire more than a 9.5% interest in Enterprise. None of them will be a holding company as defined in section 2(a)(7)(A) of the Act. These Non-Utility Participants and Resources will advance funds on a pro rata basis in accordance with their respective percentage ownership interests for preliminary activities (the total cost of which is expected to be approximately $15,000,000) to be conducted prior to commencement of construction of the First Unit.

Construction of the First Unit will be financed on a project finance basis. It is presently anticipated that the construction of the First Unit will be financed on an interim basis through a construction loan from banks or other financial institutions in the approximate amount of $360,000,000, the estimated construction cost. It is anticipated that the construction loan will be refinanced on or about the commencement of commercial operation on a permanent basis through the commitments of all of the eleven participants, made at the commencement of construction, to contribute an aggregate of 25% of the costs as equity, with the balance of the required financing achieved through the issuance of debt of Enterprise, secured by a first lien on the First Unit.

Sierra Pacific Power Company ("Power Company"), presently Resources' only public-utility subsidiary company, is expected to purchase at wholesale 25% of the electric energy generated by the First Unit. Power Company is engaged in the generation, purchase, transmission, sale, and distribution of electric energy in the western, central, and northeastern parts of Nevada (including the City of Reno) and in the eastern part of California (in the Lake Tahoe area). Power Company also provides retail gas service in the cities of Reno and Sparks, Nevada, and environs. Generation above the 25% will be sold by Enterprise at wholesale to privately owned and publicly owned electric utilities for sale at retail to consumers in the Western states. Enterprise's rates and charges for the wholesale sales of electric energy to Power Company and the other utilities, as well as the wheeling rates charged by others, will be subject to regulation by the Federal Energy Regulatory Commission under the Federal Power Act. The sales at retail by the purchasers of the energy will be

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regulated by the appropriate state regulatory authority.

Concurrently with this application, a "no action" letter has been submitted separately to the staff of the Commission's Division of Investment Management regarding the status of each of the Non-Utility Participants as a holding company under section 2(a)(7)(B) of the Act. Further, Resources has filed an amendment to its exemption statement pursuant to Rule 2 under the Act to maintain its exemption as a holding company with Enterprise included.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11468 Filed 5-19-87; 8:45am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0175]

### United Venture Capital, Inc.; Revocation of License

Notice is hereby given that the license to operate a small business investment company under the Small Business Investment Act of 1958, as amended (the Act), issued to United Venture Capital, Inc., 17117 West Nine Mile Road, Southfield, Michigan 48075 has been revoked. United Venture Capital Inc., was licensed by the Small Business Administration on April 2, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the revocation was effective on March 9, 1987, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 12, 1987.

Robert G. Lineberry,

*Deputy Associate Administrator for Investment.*

[FR Doc. 87-11532 Filed 5-19-87; 8:45 am]

BILLING CODE 8025-01-M

[License No. 01/01-0342]

### Milk Street Partners, Inc.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*) has been filed by Milk Street Partners, Inc., 45 Milk Street, Boston, Massachusetts 02109 (applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The officers, directors and shareholders of the Applicant are as follows:

| Name | Title | Percent of ownership |
|---|---|---|
| Richard A. Churchill, Jr., 14 Wheeler Road, Lincoln, MA 01773 | President, Director | 32 |
| Stephen F. Gormley, 23 Woodman Road, Chestnut Hill, MA 02167 | Vice President, Director | 24 |
| William P. Collatos, 25 Fountain Street, Newton, MA 02195 | Vice President, Director | 24 |
| James F. Wade, 6 Belle Isle Way, Andover, MA 01801 | Clerk, Director | 15 |
| Christopher S. Gaffney, 61 Prince Street, Unit 4A, Boston, MA 02113 | Assistant Clerk, Director | 5 |
| Marie T. Dixon, 9 Grace Road, Medford, MA 02155 | Treasurer | |

The Applicant, a Massachusetts Corporation, will begin operations with $1,000,000 paid in capital and paid in surplus. The Applicant will conduct its activities primarily in the New England area but will consider investments in business in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Boston, Massachusetts.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 12, 1987.

Robert G. Lineberry,

*Deputy Associate Administrator for Investment.*

[FR Doc. 87-11535 Filed 5-19-87; 8:45 am]

BILLING CODE 8025-01-M

### Region IV Advisory Council Meeting; Alabama Regional Advisory Council

The U.S. Small Business Administration, Region IV Advisory Council located in the geographical area of Birmingham, Alabama, will hold a public meeting 9:30 a.m.–1:30 p.m., on Wednesday, May 20, 1987, in the Board Room of the Montgomery Area Chamber of Commerce, 41 Commerce Street, Montgomery, Alabama 36104, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James C. Barksdale, District Director, above address, (205) 731–1341.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

May 12, 1987.

[FR Doc. 87-11533 Filed 5-19-87; 8:45 am]

BILLING CODE 8025-01-M

### Region VII Advisory Council; Public Meeting

The Small Business Administration Region VII Advisory Council will hold a public meeting at 9:00 a.m. on Thursday, May 21, 1987, at the Cedar Rapids District Office, 373 Collins Road NE., Cedar Rapids, Iowa 52402–3116, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Ralph W. Potter, District Director, United States Small Business Administration, 373 Collins Road NE.

Cedar Rapids, Iowa 52402-3118, telephone number (319) 399-2571.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

May 12, 1987.

[FR Doc. 87-11534 Filed 5-19-87; 8:45 am]

BILLING CODE 6025-01-M

## DEPARTMENT OF STATE

[Public Notice CM-8/1079]

### Chairman's Ad Hoc Group Communications Development of the National Committee of the U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Chairman's Ad Hoc Group on International Communications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet June 9, 1987 at 10:30 a.m. in Room 1406, Department of State, 2201 C Street, NW. Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCITT activities. The Ad Hoc Group on International Communications Development reviews issues pertaining to the improvement and/or expansion of the communications infrastructure in developing countries.

The purpose of the meeting on June 9 will be to review the results of the April 9-10 meeting of the Advisory Board of the Center for Telecommunications Development in Geneva. This meeting will also provide participants with an opportunity to learn about new USG initiatives in promoting communications development.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. All attendees must use the C Street entrance to the building. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. All persons wishing to attend should call (202) 647-1007.

Request for further information should be directed to Mr. D. Clark Norton, State Department, Washington, DC, telephone (202) 647-1007.

Dated: May 11, 1987.

Earl S. Barbely,

*Office of Technical Standards and Development.*

[FR Doc. 87-11482 Filed 5-19-87; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Advisory Circular 25.783-1, Fuselage Doors, Hatches, an Exits

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 25.783-1, Fuselage Doors, Hatches, and Exists. The AC sets forth acceptable means of compliance with the provisions of Part 25 of the Federal Aviation Regulations (FAR) dealing with the certification requirements for fuselage doors. Guidance information is provided for showing compliance with structure and functional safety standards for doors and their operating systems. The intent of the requirements and some acceptable means of compliance are discussed.

**DATE:** Advisory Circular 25.783-1 was issued by the Transport Airplane Certification Directorate in Seattle, Washington, on December 10, 1986.

How to Obtain Copies: A copy of AC 25.783-1 may be obtained by writing to the U.S. Department of Transportation, M-494.3, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on May 8, 1987.

Leroy A. Keith,

*Manager, Aircraft Certification Division Northwest Mountain Region.*

[FR Doc. 87-11436 filed 5-19-87; 8:45 am]

BILLING CODE 4910-13-M

### Federal Highway Administration

### Environmental Impact Statement; Lahaina District, HI

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in the Lahaina District, Island of Maui, State of Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Mr. William R. Lake, Division Administrator, Federal Highway Administration, 300 Ala Moana Boulevard, Box 50206, Honolulu, Hawaii 96850. Telephone (808) 541-2700.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the State of Hawaii, Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve about 8 miles of Honoapiilani Highway, FAP Route 30 from the Puamana Beach Park to the vicinity of Honokowai, in the Lahaina District, Island of Maui, State of Hawaii. The proposed improvements are considered necessary to reduce congestion, increase the highway corridor capacity, and to improve operational safety to meet current and future traffic demands.

Alternatives for this project include: (1) Do nothing; (2) widening Honoapiilani Highway; (3) adding a new alignment easterly of a portion of the existing route; and (4) a combination of widening and a new alignment. The build alternatives include improvement or replacement of the existing bridges and construction of new bridge structures as required at Kauaula, Kahoma and Honokowai Streams. A Notice of Intent was previously issued covering the section of this project from Puamana to the Kaanapali Parkway.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Also, a public hearing will be held. A public notice will be published in the local newspaper indicating the time and place for the hearing. In addition, the draft EIS will be available for public and agency review and comments. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, regarding State and local review of Federal and Federally assisted programs and projects apply to this program)

Issued on: May 12, 1987.

William R. Lake,

*Division Administrator, Honolulu Hawaii.*

[FR Doc. 87-11555 Filed 5-19-87; 8:45 am]

BILLING CODE 4910-22-M

## UNITED STATES INFORMATION AGENCY

### Advisory Board for Radio Broadcasting to Cuba; meeting

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on May 27, 1987, in Room 3557, 400 Sixth Street, SW., Washington, DC. Below is the intended agenda.

*Wednesday, May 27, 1987*

PART ONE—Closed to the Public

10:00 a.m. 1. Report by the Director of Radio Marti

11:00 a.m 2. Discussion of Radio Marti internal personnel rules and practices

PART TWO—Open to the Public

2:00 p.m. 3. Overview of Radio Marti Budget

3:00 p.m. 4. Status of Audience Research

4:00 p.m. 5. Public Testimony Period

Items 1 and 2, which will be discussed from 10:00 a.m. to 12:00 noon, will be closed to the public. Item 1 involves discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b (c)(1). Item 2 relates solely to internal personnel rules and practices. Authority for closing such deliverations is provided by 5 U.S.C. 552b (c)(2).

Members of the public interested in attending the meeting should contact Peggy Chu (202) 485-7011 to make prior arrangements, as access to the building is controlled.

Dated: May 18, 1987.

Charles Z. Wick,

*Director.*

[FR Doc. 87-11707 Filed 5-19-87; 11:00 am]

BILLING CODES 8230-01-M

## VETERANS ADMINISTRATION

### Veterans Administration Wage Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Veterans Administration Wage Committee for Fiscal Year 1986 has been issued.

The report summarizes activities of the Committee on matters related to wage surveys and pay schedules for Federal prevailing rate employees. it is available for public inspection at two locations:

Federal Advisory Committee Desk, Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540.

Veterans Administration, Office of the Committee Secretary, VA Wage Committee, Room 1108, 810 Vermont Avenue, NW., Washington, DC 20420

Dated: May 6, 1987.

By Direction of the Administrator.

Robe Maria Fontana,

*Committee Management Officer.*

[FR Doc. 87-11480 Filed 5-19-87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 97
Wednesday, May 20, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, May 12, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in the Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Matters relating to the possible failure of certain insured banks: Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshile Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 13, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 87-11556 Filed 5-15-87; 5:08 p.m.]

BILLING CODE 6714-01-M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

May 14, 1987.

**TIME AND DATE:** 10:00 a.m., Thursday, May 21, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTER TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *UMWA v. Ranger Fuel Corporation,* Docket No. WEVA 86-439-C. (Issues include Consideration of a petition of the United Mine Workers of America for interlocutory review).

2. *Dillard Smith v. Reco, Inc.,* Docket No. VA 86-9-D. (Issues include whether the judge erred in dismissing the discrimination complaint of Dillard Smith).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653-5629.

Jean H. Ellen,

*Agenda Clerk.*

[FR Doc. 87-11549 Filed 5-15-87; 4:47pm]

BILLING CODE 6735-01-M

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

May 15, 1987.

**TIME AND DATE:** 10:00 a.m., Thursday, May 21, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** In addition to the previously announced items, the Commission will consider and act upon the following:

3. *Alvis Ritchie v. Kodak Mining Co.,* Docket No. KENT 86-138-D. (Issues included consideration of a petition for discretionary review).

4. *Texasgulf, Inc.,* Docket Nos. WEST 85-148-M, WEST 86-83-M. (Issues include consideration of a petition for discretionary review).

It was determined by a unanimous vote of Commissioners that these items be included in this meeting and no earlier announcement of the additions was possible.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653-5629.

Jean H. Ellen,

*Agenda Clerk.*

[FR Doc. 87-11590 Filed 5-18-87; 10:42 am]

BILLING CODE 6735-01-M

**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Friday, May 22, 1987 at 10:00 a.m.

**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. TA-406-11 (Ammonium paratungstate and tungstic acid from the People's Republic of China)—briefing and vote on injury.
6. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

*Secretary.*

May 11, 1987.

[FR Doc. 87-11541 Filed 5-15-87; 4:28 p.m.]

BILLING CODE 7020-02-M

**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Wednesday, May 27, 1987 at 10:00 a.m.

**PLACE:** Room 117, 701 E Street NW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. TA-406-11 (Ammonium paratungstate and tungstic acid from the People's Republic of China—briefing and vote on remedy (if necessary).
6. Invs. 731-TA-341, 344, and 345 (Tapered roller bearings and parts thereof from Hungary, the People's Republic of China, and Romania)—briefing and vote.
7. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary, (202) 523-0160.

Kenneth R. Mason,

*Secretary.*

May 13, 1987.

[FR Doc. 87-11542 Filed 5-15-87; 4:28 pm]

BILLING CODE 7020-02-M

**NATIONAL MEDIATION BOARD**

**TIME AND DATE:** 2:00 p.m., Wednesday, June 3, 1987.

**PLACE:** Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Ratification of the Board actions taken by notation voting during the month of May, 1987.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

**SUPPLEMENTARY INFORMATION:** Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

**DATES OF NOTICE:** May 15, 1987.

**Charles R. Barnes,**

*Executive Director, National Mediation Board.*

[FR Doc. 87–11583 Filed 5–18–87; 10:41 am]

BILLING CODE 7550–01–M

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**NATIONAL TRANSPORTATION SAFETY BOARD**

**TIME AND DATE:** 9:30 a.m., Wednesday, May 27, 1987.

**PLACE:** NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

**STATUS:** The first four items will be open to the public the last item will be closed under Exemption 10 of the Government in the Sunshine Act.

**MATTERS TO BE CONSIDERED:**

1. *Highway Accident Report:* Charter Bus/Tractor-Semitrailer Rearend Collision Near Carney's Point, New Jersey, on September 29, 1986.

2. *Marine Accident Report:* Explosion Aboard the U.S. Tank Barge TTT 103, Pascagoula, Mississippi, July 31, 1986.

3. Safety Study Proposal on Airline Pilot Selection and Initial Training Procedures.

4. Withdrawal of Recommendation to Piper Aircraft Corporation re Incorporation of Rubber Fuel Liner on Piper Pawnee Model PA–25–150 and PA–25–235 Airplanes with Fiberglass Fuel Tanks.

5. *Opinion and Order:* Administrator v. Ramsay, Docket SE–7318; disposition of respondent's appeal.

**FOR MORE INFORMATION, CONTACT:** H. Ray Smith, (202) 382–6525.

**H. Ray Smith,**

*Executive Secretariat.*

May 13, 1987.

[FR Doc. 87–11607 Filed 5–18–87; 10:51 am]

BILLING CODE 7533–01–M

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**SECURITIES AND EXCHANGE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [52 FR 18045 May 8, 1987]

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Wednesday, May 13, 1987.

**CHANGE IN THE MEETING:** Rescheduling.

A open meeting scheduled for Thursday, May 21, 1987, at 10:00 a.m. has been rescheduled for Thursday, May 21 1987, at 1:00 p.m.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–3065.

**Jonathan G. Katz,**

*Secretary.*

May 13, 1987.

[FR Doc. 87–11675 Filed 5–18–87; 3:39 pm]

BILLING CODE 8010–01–M

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**TENNESSEE VALLEY AUTHORITY**

[Meeting No. 1386]

**TIME AND DATE:** 3 p.m. (e.d.t.), Friday, May 22, 1987.

**PLACE:** Chattanooga Office Complex Auditorium, Missionary Ridge Building, 1101 Market Street, Chattanooga, Tennessee.

**STATUS:** Open.

**Agenda**

Approval of minutes of meeting held on May 6, 1986.

*Action Items*

D—Personnel Items

1. Personal Services Contracts for Engineering Services at Browns Ferry Nuclear Plant, Requested by Office of Nuclear Power.

2. Employee Loan Agreement with G. L. Rogers Company, Inc., Bethesda, Maryland, for Services of G. L. Rogers.

**CONTACT PERSON FOR MORE INFORMATION:** Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: May 15, 1987.

**John W. Thompson,**

*Manager of Corporate Services.*

[FR Doc. 87–11562 Filed 5–18–87; 9:03 am]

BILLING CODE 8120–01–M

# Corrections

Federal Register
Vol. 52, No. 97
Wednesday, May 20, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 28

### Cotton Marketing Services; Regulatory Review

*Correction*

In proposed rule document 87-10113 beginning on page 16394, in the issue of Tuesday, May 5, 1987, make the following corrections:

1. On page 16394, in the second column, in the fifth line, "classification" should read "clarification".

§ 28.88 [Corrected]

2. On page 16396, in § 28.88, in the first column, in the 12th line, "F" should read "Form C".

3. On the same page, in the second column, in amendatory instruction 35, in the second line, "test" should read "text".

BILLING CODE 1505-01-D

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments; University of Nebraska et al.

*Correction*

In notice document 87-11059 beginning on page 18262 in the issue of Thursday, May 14, 1987, make the following correction:

On page 18263, in the first column, in the second complete paragraph, in the fourth line, "400EX" should read "4000EX".

BILLING CODE 1505-01-D

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton Textile Products From the Socialist Republic of Romania Effective on January 1, 1987

*Correction*

In notice document 86-29209 beginning on page 47050 in the issue of Tuesday, December 30, 1986, make the following corrections:

On page 47050, in the third column, in the table, the last two entries in the right column should read "483,871 numbers" and "852,174 pounds" respectively.

BILLING CODE 1505-01-D

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### 5 CFR Part 1605

### Error Correction Regulations

*Correction*

In rule document 87-11020 beginning on page 17919 in the issue of Wednesday, May 13, 1987, make the following correction:

§ 1605.3 [Corrected]

In § 1605.3(b)(5), on page 17921, in the first column, in the first line, insert "basic" after "percent".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Customs Service

[T.D. 87-67]

### Recordation of Trade Name; Snyder Laboratories, Inc.

*Correction*

In notice document 87-10963 beginning on page 18039 in the issue of Wednesday, May 13, 1987, make the following correction:

On page 18040, in the first column, the DATE paragraph should read "May 13, 1987".

BILLING CODE 1505-01-D

federal register

Wednesday
May 20, 1987

Part II

# Environmental Protection Agency

**Interagency Testing Committee; Receipt of Report and Request for Comments Regarding Priority List of Chemicals; Notice**

**40 CFR Parts 712 and 716**

**Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41027; FRL, 3203-9]

## Twentieth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Twentieth Report to the Administrator of EPA on May 1, 1987. This report, which revises and updates the Committee's priority list of chemicals, adds four chemicals to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act. The new chemicals are ethylbenzene; acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[2-bromo-4, 6-dinitro-phenyl]azo]-4-methoxy phenyl]-; acetamide, N-[5-[2-(acetyl-oxy ethyl]amino-2-[(2-chloro-4, 6-dinitrophenyl]azo]-4-methoxy phenyl]-; acetamide, N-[5-bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4, 6-dinitrophenyl]azo]-4-ethoxy phenyl]-. These chemicals are not designated for response within 12 months.

Two substances previously recommended with intent to designate, isopropanol and methyl *tert* butyl ether (51 FR 41417), are now designated for response within 12 months. The Twentieth Report is included in this notice. The Agency invites interested persons to submit written comments on the Report, and to attend a Focus Meeting to help narrow and focus the issues raised by the ITC's recommendations. Members of the public are also invited to inform EPA if they wish to be notified of subsequent public meetings on these chemicals. Additionally, EPA is soliciting interest in public participation in the consent agreement process for ethylbenzene.

DATES: Written comments should be submitted by June 19, 1987.

A Focus Meeting on ethylbenzene will be held on June 25, 1987. Submit written notice of interest in being designated an "interested party" in triplicate by June 19, 1987.

ADDRESSES: Send written submissions to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE G-004, 401 M Street, SW., Washington, DC 20460.

Submissions should bear the document control number (OPTS-41027).

The public record supporting this action, including comments, is available for public inspection in Rm. G-004 at the address noted above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays. The Focus Meeting will be held at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. Persons planning to attend the Focus Meeting and/or seeking to be informed of subsequent public meetings on these chemicals, should notify the TSCA Assistance Office at the address listed below. To ensure seating accommodations at the Focus Meeting, persons interested in attending are asked to notify EPA at least one week ahead of the scheduled date.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA has received the report of the TSCA Interagency Testing Committee to the Administrator.

### I. Background

TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq*; 15 U.S.C. 2601 *et seq*.) authorizes the Administrator of EPA to promulgate regulations under section 4(a) requiring testing of chemical substances and mixtures in order to develop data relevant to determining the risks that such chemical substances and mixtures may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA on chemical substances and mixtures to be given priority consideration in proposing test rules under section 4(a). Section 4(e) directs the Committee to revise its list of recommendations at least every 6 months as necessary. The ITC may "designate" up to 50 substances and mixtures at any one time for priority consideration by the Agency. For such designations, the Agency must within 12 months either initiate rulemaking or issue in the Federal Register its reasons for not doing so. The ITC's Twentieth Report was received by the Administrator on May 1, 1987, and follows this Notice. The Report adds four substances to the TSCA section 4(e) priority list.

### II. Written and Oral Comments and Public Meetings

EPA invites interested persons to submit detailed comments on the ITC's new recommendations. The Agency is interested in receiving information concerning additional or ongoing health and safety studies on the subject chemicals as well as information relating to the human and environmental exposure to these chemicals. A notice is published elsewhere in today's Federal Register adding the substances recommended in the ITC's Twentieth Report to the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) rule requires the reporting of unpublished health and safety studies on the listed chemicals. These chemicals will also be added to the TSCA section 8(a) Preliminary Assessment Information Rule (40 CFR Part 712) published elsewhere in this issue. The section 8(a) rule requires the reporting of production volume, use, exposure, and release information on the listed chemicals.

A Focus Meeting will be held to discuss relevant issues pertaining to ethylbenzene and to narrow the range of issues/effects which will be the focus of the Agency's subsequent activities in responding to the ITC recommendations. The Focus Meeting will be held on June 25, 1987 at 1 p.m. at EPA Headquarters, Rm. 103 NE Mall, 401 M St., SW., Washington, DC. This meeting is intended to supplement and expand upon written comments submitted in response to this notice. This notice serves to invite persons interested in participating in or monitoring negotiations for the development of a consent agreement to notify EPA at the address no later than June 19, 1987. The procedures for these negotiations are described in 40 CFR 790.22.

Persons wishing to attend this meeting or subsequent meetings on these chemicals should call the TSCA Assistance Office at the toll free number listed above at least one week in advance.

All written submissions should bear the identifying docket number (OPTS-41027).

### III. Status of List

In addition to adding the four recommendations to the priority list, the ITC's Twentieth Report notes that isopropanol and methyl *tert* butyl ether, which were originally recommended with intent to designate (51 FR 41417, November 19, 1986), have now been designated for response within 12 months by the ITC.

The current list contains five designated substances, one chemical recommended with intent-to-designate, and seven recommended substances.

Authority: 15 U.S.C. 2603.

Dated: May 12, 1987.

Frank D. Kover,

*Acting Director, Existing Chemical Assessment Division.*

## Twentieth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

### *Summary*

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee (ITC), composed of representatives from eight designated Federal agencies, to recommended chemical substances and mixtures (chemicals) to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules.

Section 4(e)(1)(A) of TSCA directs the Committee to recommend to the EPA Administrator chemicals to which the Administrator should give priority consideration for the promulgation of testing rules pursuant to section 4(a). The Committee is required to designate those chemicals, from among its recommendations, to which the Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. At least every 6 months, the Committee makes those revisions in the TSCA section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of four chemicals. The Committee also is designating two chemicals that had been recommended with intent-to-designate in the nineteenth report.

The Priority List is divided into three parts: Part A contains those recommended chemicals and groups designated for priority consideration and response by the EPA Administrator within 12 months. Part B contains chemicals and groups of chemicals recommended with intent-to-designate. This category was established by the Committee in its seventeenth report (50 FR 47603; November 19, 1985) to take advantage of rules promulgating automatic reporting requirements for non-designated ITC recommendations under the section 8(a) Preliminary Assessment rule and the TSCA section 8(d) Health and Safety Data Reporting rule. Information received following recommendation with intent-to-designate may influence the Committee to either designate or not designate the chemicals or groups of chemicals in a subsequent report to the Administrator. Part C contains chemicals and groups of chemicals that have been recommended for priority consideration by EPA without being designated for response within 12 months. The changes to the Proirity List are presented, together with the types of testing recommended, in the following Table 1:

TABLE 1.—ADDITIONS TO THE SECTION 4(E) PRIORITY LIST, MAY 1987

| Chemical/Group | Recommended studies |
|---|---|
| **A. Designated for response within 12 months:** | |
| Isopropanol [1] (CAS No. 67–63–0) | Health Effects: Genotoxicity, including tests for mutagenicity in mammalian systems and clastogenicity; chronic toxicity including oncogenicity. |
| Methyl *tert*-butyl ether [2] (CAS No. 1634–04–4) | Health Effects: Chronic inhalation toxicity including neurotoxic, hematologic and oncogenic effects.<br>Chemical Fate: Monitoring at representative gasoline terminals and service stations. |
| NOTE.—Isopropanol and methyl *tert*-butyl ether were recommended with intent-to-designate by the Committee in the nineteenth report (51 FR 41417; Nov. 14, 1986). | |
| **B. Recommended with Intent-to-designate:** | |
| Ethylbenzene [3] (CAS No. 100–41–4) | Ecological Effects: Acute toxicity to freshwater algae and aquatic invertebrates. Acute toxicity to saltwater algae, aquatic invertebrates and fish. |
| **C. Recommended Without Being Designated for Response Within 12 Months:** | |
| Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-(9CI) (CAS No. 3618–72–2);<br>Acetamide, N-[15-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxy phenyl]- (9CI) (CAS No. 3618–73–3); and<br>Acetamide, N-[5-[bis[2-(acetyloxyethyl)]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-ethoxy phenyl]- (9CI) (CAS No. 21429–43–6). | Health Effects: Subchronic toxicity; absorption and chemical disposition.<br>Chemical Fate: Solubility in water; biodegradation under aerobic and anaerobic conditions and the identification of any relatively persistent biodegradation intermediates.<br>Ecological Effects: Acute toxicity to fish, aquatic invertebrates, algae and benthic organisms (including filter feeders); bioconcentration in fish; chronic effects on aquatic and benthic biota, if the acute studies show toxicity at low mg/L concentration or if the dye does bioconcentrate. |

*CA Index Names* (9CI)
1. 2-Propanol.
2. Propane, 2-methoxy-2-methyl-.
3. Benzene, ethyl.

**TSCA Interagency Testing Committee**

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Council on Environmental Quality
Carroll Curtis, Member [1]
Department of Commerce
Patrick D. Cosslett, Member
Raimundo Prat, Alternate [2]
Environmental Protection Agency
John D. Walker, Member and Vice Chairperson
Laurence S. Rosenstein, Alternate
National Cancer Institute
Richard Adamson, Member
Elizabeth K. Weisburger, Alternate
National Institute of Environmental Health Sciences
James K. Selkirk, Member and Chairperson
National Institute for Occupational Safety and Health
Bryan D. Hardin, Member [3]
Rodger L. Tatken, Alternate [4]
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Arnold Borsetti
National Library of Medicine
Vera Hudson
National Toxicology Program
Dorothy Canter

*Committee Staff*

Robert H. Brink, Executive Secretary
Norma Williams, ITC Coordinator

*Support Staff*

Alan Carpien—Office of the General Counsel, EPA

*Notes*

(1) Appointed on October 6, 1986.
(2) Appointed on April 8, 1987.
(3) Appointed on March 10, 1987.
(4) Appointed on March 10, 1987.

The Committee acknowledges and is grateful for the assistance and support given the ITC by the staff of Dynamac Corporation (technical support contractor) and personnel of the EPA Office of Toxic Substances.

*Chapter 1—Introduction*

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469). The specific mandate of the Committee is to recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances and mixtures in commerce that should be given priority consideration for the promulgation of testing rules to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register**. The Committee is directed by section 4(e)(1)(A) of TSCA to designate those chemicals on the Priority List to which the EPA Administrator should respond within 12 months by either initiating a rulemaking proceeding under section 4(a) or publishing the Administrator's reason for not initiating such a proceeding. There is no statutory time limit for EPA response regarding chemicals that ITC has recommended but not designated for response within 12 months.

At least every 6 months, the Committee makes those revisions in the section 4(e) Priority List that it determines to be necessary and transmits them to the EPA Administrator.

The Committee is composed of representatives from eight statutory member agencies and seven liaison agencies. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and priority recommendations are described in previous reports (Refs. 1 through 4).

1.2 *Committee's previous reports.* Nineteen previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. 1 through 4). Ninety-four entries (chemicals and groups of chemicals) were recommended for priority consideration by the EPA Administrator and designated for response within 12 months. In addition, six chemicals and one group of chemicals were recommended without being so designated.

1.3 *Committee's activities during this reporting period.* Between October 1, 1986 and April 17, 1987, the Committee continued to review chemicals from its fourth and fifth scoring exercises, and from nominations by Member Agencies, Liaison Agencies and State Agencies.

The Committee contacted chemical manufacturers and trade associations to request information that would be of value in its deliberations. Most of those contacted provided unpublished information on current production, exposure, uses, and effects of chemicals under study by the Committee.

During this reporting period, the Committee reviewed available information on 23 chemicals and 5 classes of chemicals. Four were selected for addition to the section 4(e) Priority List, and five were deferred indefinitely. The remaining chemicals are still under study.

In January 1987, the Committee completed its sixth scoring exercise and selected 42 chemicals for detailed reviews. A list of the selected chemicals and a request for information was published in a **Federal Register** notice on April 1, 1987 (52 FR 10409). The Committee will hold a public meeting to describe the chemical scoring and selection process and to receive comments and information on the chemicals selected for review on June 18, 1987, in Washington, DC. Details on the meeting time and location are provided in the **Federal Register** notice cited above.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA directs the Committee to: ". . . make such revisions in the [priority] list as it determines to be necessary and . . . transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List by adding four chemicals: Ethylbenzene; *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-acetamide; *N*-[5-[bis[2-(acetyloxy) ethyl]amino]-2-[2-chloro-4,6-dinitrophenyl)azo]-4-methoxyphenyl]-acetamide; and *N*-[5-bis[2-(acetyloxy) ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-ethoxy phenyl]-acetamide. None of these chemicals is designated for response within 12 months but the Committee intends to designate ethylbenzene unless information received following recommendation influences the Committee to withhold designation. In addition, the Committee is designating for response within 12 months two chemicals that were recommended with intent-to-designate in the nineteenth report. The designated chemicals are isopropanol and methyl *tert*-butyl ether. The testing recommended for these chemicals and the rationales for the recommendations are presented in Chapter 2 of this report.

No chemicals are being removed from the Priority List at this time. Removal of

92 entries was noted in previous reports (Refs. 1 through 4).

Within the four recommendations noted in this report, thirteen entries now appear on the section 4(e) Priority List. The Priority List is divided in the following Table 2 into three parts; namely, A. Chemicals and Groups of Chemicals Designated for Response Within 12 Months, B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate, and C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months. Table 2 follows:

TABLE 2.—THE TSCA SECTION 4(e) PRIORITY LIST, MAY 1987

A. Chemicals and Groups of Chemicals Recommended and Designated for Response Within 12 Months

| Entry | Date of designation |
|---|---|
| 1. Cyclohexane | May 1986. |
| 2. 2,6-Di-tert-butylphenol | May 1986. |
| 3. Tributyl phosphate | Nov. 1986. |
| 4. Isopropanol | May 1987. |
| 5. Methyl *tert*-butyl ether | May 1987. |

B. Chemicals and Groups of Chemicals Recommended with Intent-to-Designate

| Entry | Date of recommendation |
|---|---|
| 1. Ethylbenzene | May 1987. |

C. Chemicals and Groups of Chemicals Recommended Without Being Designated for Response Within 12 Months

| Entry | Date of recommendation |
|---|---|
| 1. 3,4-Dichlorobenzotrifluoride | May 1984. |
| 2. Diisodecyl phenyl phosphite | Nov. 1985. |
| 3. C.I. Disperse Blue 79 | Nov. 1986. |
| 4. Methyl ethyl ketoxime | Do. |
| 5. *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-acetamide. | May 1987. |
| 6. *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[2-chloro-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-acetamide. | May 1987. |
| 7. *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-ethoxy phenyl]-acetamide. | May 1987. |

References

(1) Sixteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 21, 1985, 50 FR 20930–20939. Includes references to Reports 1 through 15 and an annotative list of removals.

(2) Seventeenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 19, 1985, 50 FR 47603–47612.

(3) Eighteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, May 19, 1986, 51 FR 18368–18375.

(4) Nineteenth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 14, 1986, 51 FR 41417–41432.

*Chapter 2—Recommendations of the Committee*

2.1 *Chemicals recommended for priority consideration by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following chemical substances to the section 4(e) Priority List: Ethylbenzene; *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[2-bromo-4,6-dinitrophenyl]azo]-4-methoxy phenyl]-acetamide; *N*-[5-bis[2-(acetyloxy)ethyl]amino]-2-[2-chloro-4,6-dinitrophenyl]-azo]-4-methoxy phenyl]-acetamide; and *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl]azo]-4-ethoxy phenyl]-acetamide. The recommendation of these chemicals is being made after considering the factors identified in section 4(e)(1)(A) and other relevant information, as well as the professional judgment of Committee members. In addition, the Committee is designating for response within 12 months two chemical substances that were recommended with intent-to-designate in the nineteenth report. The designated chemicals are isopropanol and methyl *tert*-butyl ether.

2.2 *Chemicals designated for response within 12 months*—2.2.a *Isopropanol.* In the nineteenth report to the Administrator of EPA (51 FR 41417), isopropanol was recommended with intent-to-designate. The rationale for that recommendation appears in the nineteenth report. Information reviewed by the Committee in response to the nineteenth report includes any public comments on the Committee's recommendations; production volume, use, exposure and release information reported by manufacturers of isopropanol under the TSCA section 8(a) Preliminary Assessment rule; health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Report rule; and any unpublished and published data available to the Committee.

After reviewing the information, the Committee concluded that data are still lacking on genotoxicity and chronic toxicity. For these reasons and for the reasons previously presented (51 FR 41417) the Committee is now designating isopropanol for response within 12 months and recommending that it be tested for the following:

1. *Health effects.* Genotoxicity, including tests for mutagenicity in mammalian systems and clastogenicity; chronic toxicity including oncogenicity.

2. *Ecological effects.* None.

3. *Chemical fate.* None.

2.2.b *Methyl tert-butyl ether.* In the nineteenth report to the Administrator of EPA (51 FR 41417), methyl *tert*-butyl ether was recommended with intent-to-designate. The rationale for that recommendation appears in the nineteenth report. Information reviewed by the Committee in response to the nineteenth report includes any public comments on the Committee's recommendations; production volume, use, exposure and release information reported by manufacturers of methyl *tert*-butyl ether under the TSCA section 8(a) Preliminary Assessment rule; health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Report rule; and any unpublished and published data available to the Committee.

After reviewing the information, the Committee concluded that data are still lacking on chronic toxicity and chemical fate. For these reasons and for the reasons previously presented (51 FR

41417) the Committee is now designating methyl *tert*-butyl ether for response within 12 months and recommending that it be tested for the following:

1. *Health effects.* Chronic inhalation toxicity including neurotoxic, hematologic and oncogenic effects.

2. *Ecological effects.* None.

3. *Chemical fate.* Monitoring at representative gasoline terminals and service stations.

2.3 *Chemicals recommended with intent-to-designate—*

2.3.a *Ethylbenzene—Summary of recommended studies.* It is recommended that ethylbenzene be tested for the following:

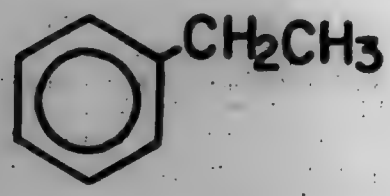
1. *Chemical fate:* None.

2. *Health effects:* None.

3. *Ecological effects:* Acute toxicity to freshwater algae and aquatic invertebrates. Acute toxicity to saltwater algae, aquatic invertebrates, and fish.

*Physical and Chemical Information*

CAS Number: 100-41-4
Synonyms: Phenylethane; ethylbenzol; benzene ethyl (9CI)
Structural Formula:



Empirical Formula: $CH_3CH_2C_6H_5$
Molecular Weight: 106.16
Melting Point: −95°C (Ref. 28, NRC, 1981)
Boiling Point: 136°C (Ref. 28, NRC, 1981)
Vapor Pressure: 9.57 mmHg at 25°C (Ref. 28, NRC, 1981)
Solubility in Water: 161 mg/L at 25°C (distilled water) (Ref. 28, NRC, 1981); 111 mg/L at 25°C (seawater) (Ref. 28, NRC, 1981)
Solubility in Organic Solvents: Miscible with common solvents (Ref. 26, Merck, 1983); soluble in alcohol, benzene, ether, and carbon tetrachloride (Ref. 16, Hawley, 1981)
Specific Gravity: 0.867 at 20/4°C (Ref. 37, Verschueren, 1983)
Log Octanol/Water Partition Coefficient (log P): 3.15 (Ref. 23, Leo et al., 1971)
Henry's Law Constant: $8.43 \times 10^{-3}$ atm $m^3$/mol at 25°C (experimental) (Ref. 24, Mackay et al., 1979)
Description of Chemical: Colorless liquid (Ref. 28, NRC, 1981)

*Rationale for Recommendations*

I. *Exposure information*—A. *Production/use.* An estimated 7.6 billion pounds (3.4 billion kg) of ethylbenzene were produced domestically in 1986 (Ref. 25, Mannsville, 1987). Domestic production capacity in 1986 was estimated to be 9.2 to 9.7 billion pounds (4.2 to 4.4 billion kg) (Ref. 33, SRI International, 1986; Ref. 25, Mannsville, 1987). Exports of the compound in 1986 were estimated to total 75 million pounds (Ref. 25, Mannsville, 1987). Ethylbenzene is produced commercially mainly by the catalytic alkylation of benzene with ethylene (Ref. 14, CEH, 1985). Ethylbenzene is also present at a 17–20 percent concentration in the $C_8$ aromatic catalytic reformate ("mixed xylene") stream produced by petroleum-reforming processes, and in pyrolysis gasoline produced as a byproduct of alkene production (Ref. 28, NRC, 1981).

Almost all of the domestic production of ethylbenzene is consumed captively, by the manufacturers of ethylbenzene, in the production of styrene (Ref. 14, CEH, 1985). In 1986, consumption of ethylbenzene in the production of styrene monomer was estimated to account for 99 percent of the 7.5 billion pound (3.4 billion kg) demand for the compound. The remaining 1 percent was consumed in solvent and miscellaneous chemical intermediate applications (Ref. 25, Mannsville, 1987). The mixed xylene and pyrolysis gasoline streams containing ethylbenzene are used as blending stocks for gasoline. Mixed xylenes are also used as solvents for paints and adhesives, and as diluents for pesticide sprays (Ref. 28, NRC, 1981).

B. *Environmental release.* Ethylbenzene has been detected in ambient air, surface waters, ground water, drinking water, rain and human milk (Ref. 28, NRC, 1981). The U.S. Environmental Protection Agency issued a Water Quality Advisory on ethylbenzene in September 1986 (Ref. 36, USEPA, 1986).

Alkylbenzenes are released mainly to the atmosphere from a number of point and nonpoint sources, including petrochemical manufacturing and processing operations, solvent uses, and fuel evaporation. Evaporation from fuel and solvent uses is probably the major source of alkylbenzenes in ambient air (Ref. 28, NRC, 1981). Smaller amounts of alkylbenzenes also may be released to water and land in oil spills, solvent discharges, landfill leachates, runoff from agricultural and urban areas, and pesticide applications (Ref. 28, NRC, 1981).

II. *Chemical fate information.* Although large amounts of ethylbenzene are released to the environment, the chemical fate processes are well studied and ethylbenzene will not persist in the environment. The principal concern is for ecological effects at locations where ethylbenzene is released to the environment where ethylbenzene may occur at significant steady-state concentrations. Therefore, chemical fate testing is not being recommended at this time.

III. *Biological effects of concern to human health.* The Committee reviewed the available information on the health effects of ethylbenzene. Planned and ongoing health effects testing by the NTP includes chemical disposition studies, subchronic and chronic oncogenicity studies and reproductive and developmental effects studies (contingent on the 90-day subchronic studies). Therefore, additional health effects testing is not being recommended at this time.

IV. *Ecological effects of concern*—A. *Acute and subchronic (short-term) effects.* Ethylbenzene is acutely toxic to freshwater organisms at concentrations of 2.1 to 210 mg/L (Ref. 2, Bobra et al., 1983; Ref. 3, Bringmann, 1973; Ref. 4, Bringmann and Kuhn, 1977a; Ref. 5, Bringmann and Kuhn, 1977b; Ref. 6, Bringmann and Kuhn, 1978a; Ref. 7, Bringmann and Kuhn, 1978b; Ref. 8, Bringmann and Kuhn, 1980a; Ref. 9, Bringmann and Kuhn, 1980b; Ref. 10, Bringmann and Kuhn, 1981; Ref. 11, Bringmann et al., 1980; Ref. 12, Buccafusco et al., 1981; Ref. 15, Geiger et al., 1986; Ref. 18, Hutchinson et al., 1979; Ref. 19, Hutchinson et al., 1980; Ref. 20, Johnson and Finley, 1980; Ref. 21, LeBlanc, 1980; Ref. 30, Pickering and Henderson, 1966).

Ethylbenzene also is acutely toxic to saltwater organisms, at concentrations of 0.42 to 323 mg/L Ref. 1, Benville and Korn, 1977; Ref. 13, Caldwell et al., 1977; Ref. 17, Heitmuller et al., 1981; Ref. 22, Legore, 1974; Ref. 27, Morrow et al., 1975; Ref. 31, Potera, 1975; Ref. 34, USEPA, 1978).

B. *Chronic (long-term) effects.* Embryo-larval forms of the fathead minnow (*Pimephales promelas)* were not adversely affected by test concentrations of 0.44 mg/L ethylbenzene (the highest concentration tested) (Ref. 35, USEPA, 1980). No other information was found regarding the chronic toxicity of ethylbenzene to aquatic organisms.

C. *Other ecological effects (biological, behavioral, or ecosystem processes).* No information was found.

D. *Bioconcentration and food-chain transport.* The bioconcentration factor for ethylbenzene is estimated to be 95, based on a log P value of 3.15.

Nunes and Benville (Ref. 29, 1979) exposed the Manila clam (*Tapes semidecussata*) to the water-soluble

fraction of Cook Inlet crude oil containing a mean concentration of 0.08 ppm ethylbenzene for 8 days in a continuous-flow bioassay. Ethylbenzene accumulated in clam tissues to a maximum concentration of 0.50 ppm. After 7 days depuration in clean water, the compound was no longer detected in the tissues (detection limit 0.13 ppm). Coho salmon (*Oncorhynchus kisutch*) and starry flounder (*Platichthys stellatus*) were exposed to the water-soluble fraction of Prudhoe Bay crude oil in flowing seawater for 6 and 2 weeks, respectively. The water-soluble fraction contained mean concentrations of 0.9 ppm total hydrocarbons, 0.005 ppm ethylbenzene, 0.2 ppm *m*-xylene, and 0.07 ppm *o*- and *p*-xylene. The maximum bioconcentration factors of the $C_2$-substituted benzenes (in Prudhoe Bay crude oil) were 2.4 in salmon muscle and 20 in flounder muscle. Following a depuration period of 2 weeks in clean seawater, $C_2$-substituted benzenes were not detected in the muscle tissue of either test organism (Ref. 32, Roubal et al., 1978).

E. *Rationale for ecological effects recommendations.* Most of the acute aquatic toxicity data were generated using static systems and nominal concentrations of ethylbenzene. If ethylbenzene volatilizes rapidly and extensively from static systems, the nominal concentrations overestimate (probably by one or two orders of magnitude) the actual LC50 or EC50 values. For example, the 48-hour daphnid LC50 for ethylbenzene was 75 mg/L when a loosely covered test vessel was used, and 2.1 mg/L when a system was used that minimized evaporation.

For some highly volatile, hydrolyzable, or degradable materials it is appropriate to use only results of flow-through tests in which the concentrations of test material in the test solutions were measured often enough using acceptable analytical methods. To provide more accurate aquatic toxicity data for assessing the acute hazards of ethylbenzene, it is recommended that acute toxicity tests be conducted with freshwater algae and aquatic invertebrates and saltwater algae, fish, and aquatic invertebrates using flow-through or static-renewal systems and measured concentrations of ethylbenzene. Also, more accurate aquatic toxicity data for ethylbenzene will be useful for the development of a revised Water Quality Advisory by the EPA Office of Water.

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(35) USEPA. "Ambient water quality criteria for ethylbenzene," EPA Report No. EPA 440/5-80-048. Washington, DC: U.S. Environmental Protection Agency, Office of Water Regulations and Standards (1980).

(36) USEPA. "Ambient water quality advisory for ethylbenzene." Washington, DC: U.S. Environmental Protection Agency, Office of Water Regulations and Standards (1986).

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2.4 *Chemicals and groups of chemicals recommended without being designated for response within 12 months*—2.4.a *N-[5-[bis[2-acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-acetamide; N-[5-[bis[2-(acetyloxy)ethyl]amino]—2-[(2-chloro-4,6,-dinitrophenyl)-azo-4-methoxy phenyl]-acetamide; and N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl) azo]4-ethoxy phenyl]-acetamide—Summary of recommended studies.* It is recommended that these chemicals be tested for the following:

1. *Chemical fate.* Solubility in water at 25°C. Biodegradation under aerobic and anaerobic conditions and the identification of any relatively persistent biodegradation intermediates.

2. *Health Effects.* Absorption and chemical disposition via oral route of administration. Subchronic toxicity (90-day study).

3. *Ecological Effects.* Acute toxicity to fish, aquatic invertebrates, algae, and benthic organisms, including filter feeders. Bioconcentration in fish. Chronic effects on aquatic and benthic biota if the acute studies show toxicity at low mg/L concentrations or if the chemical bioconcentrates.

*Rationale for Recommendations*

In the Nineteenth Report to the EPA Administrator (5) FR 41417, the Committee recommended testing of C. I. Disperse Blue 79 (CAS No. 3656-55-6). In that report it was noted that three closely related compounds, also used as dyes, raised similar concerns. However, those related compounds were not recommended in the nineteenth report because it appeared that none was being produced or imported in substantial quantities.

Subsequent to the Nineteenth Report, it was learned that one of the closely related compounds, the bromo, methoxy analog of Disperse Blue 79 (CAS No. 3618-72-2), is produced domestically with an annual production volume of nearly 2 million pounds ($9 \times 10^5$ kg) (Ref. 1, ETAD, 1987).

This new information has influenced the Committee to add the bromo, methoxy analog to the TSCA Section 4(e) Priority List. The Committee also is adding the chloro, methoxy and chloro, ethoxy analogs to the Priority List because they may be produced in significant quantities if used as substitutes for the bromo analogs in the production of commercial dyes. The Committee recommends that the three analogs be tested for the same chemical fate, health effects and ecological effects factors recommended for Disperse Blue 79 and for the same reasons presented in the Nineteenth Report.

As noted in the Nineteenth Report, there is potential for Disperse Blue 79 to be cleaved to released 2-bromo-4,6-dinitroaniline, both in the environment and *in vivo* following ingestion. The three disperse Blue 79 analogs being recommended in this Twentieth Report to the EPA Administrator have the same potential to be cleaved, releasing either 2-bromo-4,6-dinitroaniline or 2-chloro-4,6-dinitroaniline. These anilines, as noted in the Nineteenth Report, are among several anilines recommended and designated by the ITC in its Fourth Report to the EPA Administrator (44 FR 31867). If azo reduction of these dyes to yield the 2-halo-4,6-dinitroanilines is found to be a probable pathway in the environment or *in vivo*, the Committee recommends testing of the sort described by the EPA in the Advance Notice of Proposed Rulemaking (ANPR) on January 3, 1984 (49 FR 108).

**References**

(1) ETAD. Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry. Letter from E. A. Clarke, Executive Secretary, ETAD, to R. H. Brink, Executive Secretary, TSCA Interagency Testing Committee (February 12, 1987).

[FR Doc. 87-11478 Filed 5-19-87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 712 and 716

[OPTS-84026; FRL-3203-5]

## Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Interagency Testing Committee (ITC) in its Twentieth Report to EPA recommended that EPA give priority consideration to four chemical substances in proposing chemical test rules. To assist EPA in its determination of which, if any, tests are needed for these substances, EPA is adding the four substances to two model information-gathering rules: The Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information rule (PAIR), and the TSCA section 8(d) Health and Safety Data Reporting Rule. The substances being given priority consideration are: Ethylbenzene, CAS No. 100-41-4; Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-, CAS No. 3618-72-2; Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxy phenyl]-, CAS No. 3618-73-3; Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo[-4-ethoxy phenyl]-, CAS No. 21429-43-6.

DATE: This rule shall become effective on June 19, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404).

SUPPLEMENTARY INFORMATION: This rule adds four chemical substances to the PAIR and section 8(d) Health and Safety Data Reporting Rule. Manufacturers, processors, and importers of these chemicals will be required to report end use, exposure, volume, and unpublished health and safety data to the Agency.

### I. Background

Section 4(e) of TSCA established the ITC and authorized it to recommend to EPA chemical substances and mixtures to be given priority consideration in proposing chemical test rules. For some of these chemical substances the ITC may designate that EPA must respond to its recommendations within 12 months. In this time, EPA must either initiate a rulemaking to test the substance or publish in the Federal Register its reasons for not doing so. Elsewhere in today's issue of the Federal Register, EPA is announcing the receipt of the Twentieth Report of the ITC, which was transmitted to EPA on May 1, 1987. The Twentieth Report revises and updates the Committee's priority list of chemicals and adds four substances to the section 4(e) priority list. This rule adds these substances to the PAIR and section 8(d) Health and Safety Data Reporting Rule which will require manufacturers, importers, and processors to report volume, end use, exposure, and unpublished health and safety data to EPA. In addition, two chemical substances which had been recommended with intent-to-designate by the ITC in its Nineteenth Report, Isopropanol, CAS No. 67-63-0, and Methyl *tert*-butyl ether, CAS No. 1634-04-4, are now designated for response within 12 months. This revision does not trigger any new reporting requirements because following the recommendation with intent-to-designate, Isopropanol and Methyl *tert*-butyl ether, were added to the PAIR and the section 8(d) Health and Safety Data Reporting Rule, as published in the Federal Register of November 14, 1986 (51 FR 41328).

To assist EPA in responding to the ITC recommendations, EPA has developed two model information-gathering rules which provide for the automatic addition of ITC priority list substances. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time without notice and comment, amend the two model information-gathering rules by adding the recommended substances. The amendment adding these substances to the PAIR and the Health and Safety Data Reporting Rule becomes effective 30 days after publication.

EPA issued PAIR under section 8(a) of TSCA (15 U.S.C. 2607(a)), and it is codified at 40 CFR Part 712. This model section 8(a) rule established standard reporting requirements for manufacturers and importers of the chemicals listed in the rule. These manufacturers and importers are required to submit a one-time report on general volume, end use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA uses this model section 8(a) rule to gather current information on substances of concern quickly.

EPA issued the model Health and Safety Data Reporting Rule under section 8(d) of TSCA (15 U.S.C. 2607(d)), and it is codified at 40 CFR Part 716. EPA has recently revised the section 8(d) model rule on September 15, 1986 (51 FR 32720). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

### II. Chemicals To Be Added

The ITC priority list substances for which reporting is required under 40 CFR Parts 712 and 716 are listed in ascending Chemical Abstract Service (CAS) Registry Number:

| CAS No. | Name |
|---|---|
| 100-41-4 | Ethylbenzene |
| 3618-72-2 | Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]- |
| 3618-73-3 | Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxy phenyl]- |
| 21429-43-6 | Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-ethoxy phenyl]- |

### III. Reporting Requirements

#### *A. Preliminary Assessment Information Rule*

All persons who manufactured or imported the chemicals named in this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710-35) for each manufacturing or importing site at which they manufactured or imported a named substance. A separate form must be completed for each chemical and submitted to the Agency no later than August 18, 1987. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA should read § 712.30(a)(3). This section allows these persons to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this submission accepted in lieu of a current data submission.

Complete details of the reporting requirements, including exemptions and a facsimile of the reporting form, are fully described in 40 CFR Part 712. Copies of the form are available from the TSCA Assistance Office at the address which precedes Unit I.

*B. Health and Safety Data Reporting Rule*

Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process, or have manufactured, imported, or processed, the listed substance must submit to EPA:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of each health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of each health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is not complete—regardless of the completion date.

Detailed guidance for reporting unpublished health and safety data is provided in the section 8(d) Health and Safety Data Reporting Rule published in the Federal Register of September 15, 1986 (51 FR 32720). Also found there are the reporting exemptions.

*C. Submission of PAIR Reports and 8(d) Studies*

PAIR reports and section 8(d) health and safety studies must be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: (insert either PAIR or 8(d) Reporting).

*D. Removal of Chemicals From the Rules*

Any person who believes that section 8 (a) or (d) reporting required by this rule is unwarranted, should promptly submit to the Agency in detail the reasons for that belief. EPA may then remove the substance from this rule. When withdrawing a substance from the rule, EPA will issue a rule amendment for publication in the Federal Register.

## IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a rule related notice published in the Federal Register of June 13, 1983 (48 FR 27041). Included in the notice are procedures for requesting exemption from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than August 18, 1987.

## V. Economic Analysis

*A. Preliminary Assessment Information Rule*

EPA estimates the PAIR reporting cost of this rule is $54,796. To calculate this figure EPA used the TSCA Inventory to generate a list of manufacturers and importers of these substances. Since one company qualifies as a small business as defined in 40 CFR 712.25(c), EPA expects 38 firms to report a total of 38 reports.

*Reporting Cost (dollars)*

| | |
|---|---|
| (a) 38 reports expected at $786/report | $29,868 |
| (b) 38 familiarization cases at $656/case | 24,928 |
| Total | 54,796 |
| Average cost per site | 1,442 |
| Average cost per firm | 1,442 |

*Reporting Burden (hours)*

| | Hours |
|---|---|
| (a) Familiarization: 18 hours per site X 38 sites | 684 |
| (b) Reporting: 16 hours per report X 38 reports | 608 |
| Total | 1,292 |

*EPA Cost*

Processing Cost = 38 reports X $563/report = $3,344

*B. Health and Safety Data Reporting Rule*

EPA estimates the total reporting costs for establishing section 8(d) reporting requirements for these substances is $22,588. This cost estimate is relatively high, because the Agency is uncertain about the likely number of respondents to the rule. Although EPA has used the best available data to make its economic projections, much of the data is not current. Therefore, EPA intends to overestimate rather than underestimate the reporting burden.

Nevertheless, the cost of this proposed rule is low in comparison with its potential benefits. Health and safety studies concerning these substances would improve EPA's ability to identify potential public health and environmental problems with regard to these chemicals. The Agency therefore would be better able to determine whether further regulatory action would be necessary.

The estimated reporting costs are broken down as follows:

| | |
|---|---|
| Initial corporate review | $11,934 |
| Site identification | 1,836 |
| File searches at affected sites | 3,564 |
| Title listing | 228 |
| Photocopying | 742 |
| Managerial review | 3,672 |
| Ongoing reporting | 612 |
| Total | 22,588 |

## VI. Rulemaking Record

The following documents constitute the public record for this rule (docket control number OPTS–84026). All of these documents are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Rm. NE-G004, 401 M St., SW., Washington, DC.

1. This final rule.
2. The economic analyses for this rule.
3. The Twentieth Report of the Interagency Testing Committee.

## VII. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects deacribed in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review, because the automatic listing of designated substances is provided for in 40 CFR 712.30(c) and 716.18(b)—final rules which have been previously reviewed by OMB under the terms of the Executive Order.

### *B. Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C 3501 et seq. and have been assigned OMB control numbers 2070–0054 and 2070–0004.

## List of Subjects in 40 CFR Parts 712 and 716

Chemicals, Environmental protection, Hazardous substances, Health and safety data, Recordkeeping and reporting requirements.

Dated: May 12, 1987.

**Frank D. Kover,**

*Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.*

Therefore, 40 CFR Chapter I is amended as follows:

## PART 712—[AMENDED]

1. In Part 712:

a. The authority citation for Part 712 continues to read as follows:

**Authority:** 15 U.S.C. 2607(a).

b. Section 712.30 is amended by adding paragraph (u) to read as follows:

**§ 712.30 Chemical lists and reporting periods.**

* * * * *

(u) A Preliminary Assessment Information Manufacturer's Report must be submitted by August 18, 1987, for each substance listed below.

| CAS No. | Substance |
|---|---|
| 100-41-4 | Ethylbenzene |
| 3618-72-2 | Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]- |
| 3618-73-3 | Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxy phenyl]- |
| 21429-43-6 | Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-ethoxy phenyl]- |

## PART 716—[AMENDED]

2. In Part 716:

a. The authority citation for Part 716 continues to read as follows:

**Authority:** 15 U.S.C. 2607(d).

b. By adding the OMB control number to § 716.120 and by adding substances to paragraph (a)(1) numerically by CAS Number, and alphabetically to paragraph (a)(2) to read as follows:

**§ 716.120 Substances and listed mixtures to which this subpart applies.**

(a) * * *

(1) * * *

| CAS No. | Substance | Special exemptions | Effective date | Sunset date |
|---|---|---|---|---|
| 100-4-14 | Ethylbenzene | | 6/19/87 | 6/19/97 |
| 3618-72-2 | Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]- | | 6/19/87 | 6/19/97 |
| 3618-73-3 | Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxy phenyl]- | | 6/19/87 | 6/19/97 |
| 21429-43-6 | Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-ethoxy phenyl]- | | 6/19/87 | 6/19/97 |

(2) * * *

| Substance | CAS No. | Special exemptions | Effective date | Sunset date |
|---|---|---|---|---|
| Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-methoxy phenyl]- | 3618-72-2 | | 6/19/87 | 6/19/97 |
| Acetamide, N-[5-bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-ethoxy phenyl]- | 21429-43-6 | | 6/19/87 | 6/19/97 |
| Acetamide, N-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxy phenyl]- | 3618-73-3 | | 6/19/87 | 6/19/97 |
| Ethylbenzene | 100-41-4 | | 6/19/87 | 6/19/97 |

(Approved by the office of Management and Budget under control number 2070–0004)

[FR Doc. 87–11479 Filed 5–19–87; 8:45 am]

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Part III

# Department of the Interior

## Bureau of Land Management

**43 CFR Part 4100**

**Grazing Administration; Exclusive of Alaska; Proposed Rulemaking**

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DEPARTMENT OF INTERIOR

Bureau of Land Management

43 CFR Part 4100

[AA-220-87-4322-02]

Grazing Administration; Exclusive of Alaska

AGENCY: Bureau of Land Managment, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the regulations governing the administration of livestock grazing on the public lands by the Secretary of the Interior, through the Bureau of Land Management, in 2 principal ways. First, it would clarify the rule of land use plans as they relate to the authorization and modification of grazing use of the public lands. Second, it would provide for managment of livestock grazing in cooperation with grazing permittees and lessees. It would also clarify the provisions of the regulations on unauthorized grazing, and establish the value of forage consumed by unauthorized livestock consistent with current law for determining the value of forage on public lands. The proposed rulemaking would establish penalties to deter unauthorized grazing use.

The proposed rulemaking would amend the existing regulations in 43 CFR Group 4100 by: adding provisions for cancellation, suspension, and modification of Cooperative Management Agreements and Allotment Management Plans; requiring allotment management plans to prescribe livestock grazing practices that meet multiple use objectives; clarifying the relationship between the land use planning process and the livestock grazing program to ensure that land use plan objectives are achieved; reaffirming the position of the Department of the Interior on enforcement of environmental protection and conservation laws; and adding provisions for authorizing supplemental feeding as a term or condition of a grazing permit or lease, in accordance with the decision of the United States District Court for the Eastern District of California in the case of *Natural Resource Defense Council, Inc. et al. v. Hodel, et al.* The proposed rulemaking also would amend the provisions on base property and transfer of grazing preference to add procedures required in the decisions of the Office of Hearings and Appeals in the cases of *George Fosselin v. Bureau of Land Management, et al.*, and *Marius Henry Milly v. Bureau of Land Management, et al.*

DATE: Comments should be submitted, by July 20, 1987. Comments postmarked or received after the above date may not be considered in the decisionmaking process for the development of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240. Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wilton A. Peterson, (202) 653–8210.

SUPPLEMENTARY INFORMATION: The proposed rulemaking would make many important changes in how the Secretary of the Interior (Secretary) administers livestock grazing on the public lands through the Bureau of Land Management (BLW). Livestock are grazed on public land in accordance weith 3 statutes: The Taylor Grazing Act (TGA), the Federal Land Policy and Management Act (FLPMA), and the Public Rangelands Improvement Act (PRIA). The proposed rulemaking begins with a discussion of the context of the regulations.

Since the enactment of the TGA, Congress has increased the emphasis on other uses of the public rangelands besides grazing. The Bureau of Land Management has recognized this in its regulations, and has established a mechanism in its planning system to provide for multiple use and sustained yield of all the public land resources. Land use plans provide the opportunity for the BLM and the public to decide the proper mix between livestock grazing and other uses, and guide the management of the lands for present and future use.

Today, 5 policies guide the agency in managing livestock grazing on public rangelands.

The first is selective management, which concentrates available funding and personnel on areas where management action is most needed to improve resource conditions, to resolve serious resource-use conflicts, or to invest in range improvements yielding the greatest benefit. Selective management, as applied to livestock grazing, is essentially a land categorization process designed to help BLM personnel assign management priorities among allotments or groups of allotments in a planning area. To facilitate this approach, the BLM has developed 3 categories into which allotments are grouped according to their potential to respond to management. These categories are labeled "I" for "improve", which means that the allotments will be managed intensively for improvement, "M" for "maintain", which means that current management will be sufficient to maintain conditions that are satisfactory, and "C" for "custodial", which means that minimal management sufficient to protect existing resource values will be carried on. This potential to respond to management is determined by analyzing the allotment's range condition, resource potential, presence of resource-use conflicts or controversy, opportunity for positive economic return, the present management situation, and other criteria as appropriate. The 3 categories will encompass nearly all resource situations; however, special categories may be developed for allotments or areas requiring special attention. Proposed actions for managing allotments within each category are designed to meet the respective objectives. Generally, the categorization process takes place in land use planning. Categorization criteria are developed as a public process, involving consultation with those interested in the land use plan.

The second policy that guides agency action is management by objective. Simply stated, resource management objectives describe the condition or productivity of the resources that are needed to sustain the desired mix of uses. The BLM uses these objectives to develop appropriate management actions, such as the installation of rangeland improvements or the development of allotment management plans. The BLM also uses these objectives to determine what inventory and monitoring data are needed to determine whether progress toward their achievement is being made. Again, like selective management, the approach of management by objective is premised on land use plans.

Perhaps the most overriding policy guiding the BLM in managing livestock grazing is the reliance on inventories and monitoring. A range inventory is the process of gathering data needed to describe, characterize or quantify resources over the short term. The data produced from the inventories are the basis for land-use plans and for balancing public land resources and the demand for those resources through land-use planning. These data also identify the support needed management actions, establish a baseline for measuring changes in resource conditions, and establish a

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common basis for comparison among various land types and ownerships.

The inventories include soil survey and ecological site data. They identify the land according to its potential natural community and those specific physical site characteristics that make each area different from others in its ability to produce vegetation and to respond to management. The inventories, then, produce a baseline of data. In contrast, rangeland monitoring is a process for periodically observing or collecting resource data over the long term, in order to determine the effects of management actions on the rangeland resources and provide quantifiable data needed to support management decisions when alternative management actions are needed.

The studies used to monitor livestock grazing and rangeland condition fall into 4 broad categories:

Actual use data are collected to provide information concerning the actual amount of grazing use that has occurred on an area of rangeland during a specific period of time. Data on wildlife, wild horse and wild burro use also are collected. These data are essential in determining the need for, or amount of, adjustments in grazing use or in revising existing management plans.

Utilization data provide information concerning the percentage of forage that has been consumed or destroyed on an area of rangeland during a specific period of time and the grazing patterns on the allotment. Utilization data are important in evaluating the effects of grazing use on specific areas of rangeland and identifying areas of concentrated use that may be dispersed by some form of range improvement.

Trend is the directional change in kind, proportion and/or amount of plant species over time. Trend data provide information needed over the long term to determine the effectiveness of on-the-ground management actions and to evaluate progress in meeting management objectives. Trend data are useful in indicating progress in meeting management objectives. Trend data are useful in indicating whether the rangeland is moving toward or away from its potential or specific management objectives.

Climatic information is the fourth category of monitored data. Although soil, topography, and animals influence the kinds and amounts of vegetation, climate is regarded as the most important influence. Aspects of climate that might be studied include precipitation (amount, time of occurrence, and distribution), soil and air temperature, wind, and evaportranspiration rate. These data are combined with actual use, utilization and trend information to evaluate the effects of management on vegetation.

The BLM's fourth and fifth policies are range improvement and cooperative management. Range improvements have been an important part of the BLM's range management program since passage of the TGA. The policy today is straightforward: to initiate cost-effective range improvements that will improve rangeland condition for a variety of uses, including livestock grazing. The BLM is increasing funding available for new improvements by assigning maintenance responsibilities for most structural improvements to the primary beneficiaries of the improvement. Thus, if an improvement primarily benefits grazing management, the livestock operator is responsible for its maintenance. In addition, private investment in range improvements constructed on public land is encouraged.

Cooperative management, working together with rangeland users, has been part of the range management philosophy since informal boards of stockmen helped to implement the Taylor Grazing Act. Moreover, legislation passed since the TGA continues to contain language supporting cooperative range management. Other efforts at cooperative management have shown its success. Academicians and professionals support a program for cooperatively managing livestock grazing.

The proposed rulemaking would implement these 5 policies to manage livestock grazing on public lands.

The proposed rulemaking would clarify the role of land use plans in livestock grazing management as well as the appropriate considerations for establishing and changing livestock use. It would state the 3 determinations to be included in a land use plan under section 202 of the Federal Land Policy and Management Act, as it relates to livestock grazing on the public rangelands. A land use plan must first identify the current level of livestock grazing on the public rangelands. Second, a land use plan must set forth the agency's overall objectives for managing livestock grazing. Finally, a land use plan must outline generally how the agency intends to accomplish its objectives for managing livestock grazing. Its determinations on livestock grazing must be stated in a way that guides agency actions in managing the activity. A land use plan does not cast future action in concrete; rather, it provides guidance.

The proposed rulemaking would provide for the agency to specify the number of livestock and their season(s) of use by relating actual livestock use to either or both the utilization of key plant species and the trend of the rangelands' condition. The evaluation is required to produce an active use level that enables full productive use of available forage by livestock consistent with principles of multiple use and sustained yield. And, once an initial active use is specified, the agency would be required periodically to review its actual effects through rangeland studies. In this regard, the proposed rulemaking would further authorize the agency to adjust the number of livestock and the period of use where monitoring shows the actual livestock use is interfering with accomplishing management objectives. This authority would be exercised only if the agency determines that physical improvements or changes in grazing practice are either unavailable or will be ineffective in remedying the undue and unnecessary degradation the livestock use is causing.

The proposed rulemaking would also remove all references in the existing regulations to the terms "grazing capacity" and "forage allocations." Instead, it would provide for the fair apportionment among livestock operators of forage determined after land use planning to be available for grazing. However, it would retain the inherent authority of the Secretary and BLM to take whatever actions are necessary to prevent undue and unnecessary degradation of the public rangelands.

The proposed rulemaking thus would commit the BLM to supporting stability in the western livestock industry so long as livestock grazing does not cause undue and unnecessary degradation. The proposed rulemaking is designed to recognize that better range condition can be achieved by physical improvements to and more careful management of the public lands supporting livestock grazing.

The proposed rulemaking would make plain that, in the context of livestock grazing, land use plans would identify the proper mix of uses and set objectives for each of them. Plans guide rather than make decisions. Plans are not intended to set in concrete the day-to-day decisions that govern a particular use. Questions like the number of livestock to graze for a specified period on a particular allotment of the public lands under an individual permit or lease are ordinarily best left to later stages of decisionmaking. The later decisions would then be guided by a

specific activity plan, such as AMP, and by monitoring.

The proposed rulemaking would establish a new program for cooperatively managing livestock grazing with persons who are subject to the regulations of the agency. The proposed rulemaking would authorize agency personnel to enter into cooperative management agreements with qualified permittees and lessees.

The proposed rulemaking would establish incentives and rewards for permittees and lessees who agree to help make physical improvements or otherwise to assist the agency in managing livestock grazing on the public rangelands. For example, if a permittee or lessee agrees to build physical improvements on the rangelands that increase available forage for all uses there, the cooperative agreement may offer as a reward increased livestock use. Alternatively, if livestock grazing is causing undue or unnecessary degradation in part of an allotment, a cooperative agreement may require, as an alternative to reduction in livestock, that the permittee or lessee undertake a grazing prescription that rests the affected area. The rewards and incentives that may be considered in aid of cooperative relations through the agreements are purposely not defined, in order to allow the authorized officer and participating permittees or lessees the opportunity to explore any approach that makes management more effective. A cooperative management agreement as described in this paragraph would be effective legally when incorporated into a permit or lease.

Although the proposed rulemaking would convey substantial authority to work cooperatively with permittees and lessees, the agency's discretion would not be limited. First, neither the conditions that an agreement may impose on a permittee or lessee, nor the incentives or rewards provided through the document, would abrogate the agency's duty to specify the number of livestock that may graze or the season(s) of use. This duty would remain with the BLM. BLM has the authority to revise or terminate the cooperative agreement(s), or to develop new ones from time to time. This authority would be exercised in consultation and coordination with the affected party.

Both the section 2 of the Taylor Grazing Act and section 307(b) of the Federal Land Policy and Management Act expressly authorize cooperative agreements (43 U.S.C. 315a and 1737(b)). In both instances, the statutory authority is without any express limitation. The device of cooperative management is also endorsed throughout the legislative history of the Public Rangelands Improvement Act, the most recent congressional pronouncement on administering livestock grazing on the public rangelands.

A final rulemaking was published in the Federal Register on February 21, 1984 (49 FR 6446) which streamlined grazing regulations in 43 CFR Group 4100—Grazing Administration—Exclusive of Alaska. The effective date of that final rulemaking was March 22, 1984. The regulation changes made by the final rulemaking were challenged in the United States District Court for the Eastern District of California in the case of *Natural Resources Defense Council, Inc. et. al. v. Hodel, et. al.* No. CIV. S-84-646 RAR (1985), on the basis that the final rulemaking did not comply with statutory provisions of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 *et. seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et. seq.*), the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et. seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*), and did not adequately address public comments as required by the Administrative Procedure Act (5 U.S.C. 551, *et. seq.*) On August 30, 1985, the court enjoined the Secretary of the Interior and the Bureau of Land Management from implementing the following provisions which were included in the final rulemaking published in the Federal Register on February 21, 1984, and from deleting provisions which were not included in the final rulemaking. The sections covered by the court order are as follows:

1. Cooperative Management Agreement Program—§§ 4120.1 and 4170.1–4 (1984);
2. Dilution of Allotment Management Plans—§ 4120.2 (1984) and the deletion of § 4120.2–3(a) (1983);
3. Supplemental Feeding Amendments—§ 4140.1(a)(3) (1984) and the deletion of § 4140.1(a)(3) (1983);
4. Land Use Planning Amendment—§ 4130.6–3 (1984) and the deletion of §§ 4120.2–1(c) and 4130.2(d)(3) (1983); and
5. Operator Penalty Amendments—the deletion of § 4140.1(b) (7) and (8) (1985).

On December 18, 1986, the Bureau of Land Management published a Notice of Effect of Court Order in the Federal Register (50 FR 51522) with an effective date of December 20, 1986, to comply with the memorandum and order of the court. One of the purposes of this proposed rulemaking is to amend the sections identified by the court so that they comply with existing statutes and the provisions of the court order.

This rulemaking is also proposed in response to the decision of the Interior Board of Land Appeals in the cases of *George Fasselin* v. *Bureau of Land Management*, et. al, Utah 060–83–01 & 060–83–01 and *Marius Henry Mills* v. *Bureau of Land Management, et. al.* Utah 060–83–02 and 060–83–02. On September 11, 1985, the Office of Hearings and Appeals reversed a decision of Area Managers in the Moab and Vernal, Utah, BLM Districts dated April 6, 1983, that rejected transfer applications filed by Fasselin and Mills to transfer a grazing preference because the transferor did not own the base property at the time of application. The Administrative Law Judge ruled the Area Managers had relied on the Bureau Manual Handbook to conclude that the grazing preferences were automatically lost for failure to comply with Manual requirements. The Manual required that an application to transfer the grazing preferences from one base property to another must be filed prior to loss of the ownership or control of the original base property. The Administrative Law Judge found that this requirement has been deleted from the regulations in 1978 and that no specific regulatory provisions presently exist to support the decisions. Section 3 of the Taylor Grazing Act provides that preference shall be given to landowners or lessees engaged in the livestock business. Therefore, this proposed rulemaking also would amend §§ 4110.2–1 and 4110.2–3 on base property and transfer of grazing preference to clarify that the applicant transferring a grazing preference must own or control the base property at the time the application is filed.

The specific changes in the regulations are proposed as follows:

*Definitions—Section 4100.0–5*

The proposed rulemaking would add a definition for "active use", because the term is used in § 4110.3 and elsewhere as a baseline for making changes in grazing preferences, and because it is necessary to list the different types of grazing authorizations. Definitions of "monitoring," "rangeland studies," "actual use," "actual use report," "utilization," and "trend" would be added or amended. These terms are used in the portions of the proposed rulemaking dealing with changes in a grazing preference.

The proposed rulemaking would revise the definition of the term "range improvement" to conform with the definition in the Public Rangelands Improvement Act, and would amend the

definition of "cooperative management agreement" to include the continuing management role of the Bureau of Land Management, as well as the responsibilities of the grazier, as the subjects of these agreements. The proposed rulemaking also would include a technical amendment to make it clear that "land use plans" include only resource management plans or management framework plans, and would delete the definition of "livestock grazing capacity" because this term is not used in the proposal.

*Land Use Plans—Section 4100.0–8*

A new section would be added to make it clear that grazing is to be managed under the general guidance of land use plans prepared by BLM in accordance with the principles of multiple use and sustained yield.

*Base Property, Transfer of Grazing Preference—Sections 4110.2–1 and 4110.2–3*

Prior to July 5, 1978, the grazing regulations provided that "[i]f a licensee or permittee loses ownership or control of . . . [a]ll or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice . . . ." (43 CFR 4115.2–1(e)(8) (1977)); and "[a] license or permittee may request a transfer of the recognized qualifications of base property then owned or controlled by . . . to property owned or controlled by another person" (43 CFR 4115.2–2(b) (1977)). Accordingly, the loss of ownership or control of base property automatically resulted in the loss of a grazing preference attached thereto unless an application was filed on time for transfer of the preference to other qualifying base property. An application for transfer of grazing preference from original base property to new base property could only be made while the original base property was within the ownership or control of the permittee or lessee.

On July 5, 1978, the grazing regulations were changed and the above two cited provisions were deleted to streamline the regulations. At the time of the issuance of the July 5, 1978 final rulemaking, it was the intent of the Bureau of Land Management to retain the same regulatory procedure as had existed prior to this date. This was carried out by making the long existing policy a part of the Bureau's Manual Handbook. The regulations in effect at the time of the decision only required the transferee to file with the authorized officer a properly completed transfer application in advance for approval. Only the Bureau Manual Handbook stated that an applicant must own or control the base property at the time the transfer application is filed with the authorized officer. In the cases of *George Fasselin* and *Marius Henry Mills* v. *Bureau of Land Management, et. al.*, the Interior Board of Land Appeals held that the Bureau Manual Handbook does not have the force and effect of law and is not binding on anyone other than Bureau personnel. Therefore, the Bureau's decision was reversed because there were no regulatory provisions to support it. In the light of this finding, this proposed rulemaking would amend § 4110.2–1 of the existing regulations by adding new paragraph (d) which would require the termination of grazing preference upon loss of ownership or control of base property, and would amend § 4110.2–3(c) of the existing regulations to specify that a lessee will not be allowed to transfer grazing preference without written consent of the owner and/or person or entity holding any encumbrance of the base property, unless the lessee established the preference by his/her livestock operations.

*Specifying Grazing Preference—Section 4110.2–2*

The proposed rulemaking would amend this section to make it clear that a grazing preference attaches to the base property, and require that a lease or permit specify the grazing preference pertinent to it.

*Changes in grazing preference Section 4110.3*

The proposed rulemaking would amend this section to require periodic review by BLM of the grazing preference specified in each permit or lease. It would further provide for changes in active use if the need is identified in an existing land use plan or circumstances disclosed by monitoring, or if necesary to prevent unnecessary or undue degradation. Active use that is reduced is to be held in suspension.

Once identified in the pertinent land use plan, livestock forage would be apportioned among those holding the relevant preferences. Other sections would be amended editorially to conform to this change.

*Cooperative Management Agreements—Section 4120.1*

In *Natural Resources Defense Council, Inc. et al.* v. *Hodel, et al.*, which enjoined the Bureau of Land Management from implementing the provisions of the Cooperative Management Agreement program, the court decided that the agreements abdicated the Secretary of the Interior's authority to establish appropriate numbers of livestock and proper seasons of use, to cancel, suspend, or modify permits to enforce overgrazing prohibitions, and that the agreements effectively established a permanent system for continuing grazing permits. After considering the court's decision, the Department of the Interior determined that it was never intended that the Cooperative Management Agreement program would abdicate the Secretary's responsibility under existing statutes to manage livestock grazing on the public lands. Section 307(b) of the Federal Land Policy and Management Act and section 2 of the Taylor Grazing Act give the Secretary authority to enter into cooperative agreements involving the management, protection, and development of public lands. In accordance with section 307(b), the primary objective of the cooperative management agreement program is to provide various resource users with the opportunity to participate in land management efforts by involving them in actual on-the-ground management. The cooperative management agreement is a formal, written agreement between the Bureau of Land Management and a land user or user group for shared management of a resource. The agreement would be effective under the proposed rulemaking only when it has been incorporated in a permit of lease, and would be renewed concurrently with renewal of the permit or lease if evaluations and monitoring show that the terms and conditions of the agreement have been complied with. The objectives of the cooperative management agreement program with livestock operators are to recognize operators who have improved resource conditions within their allotments by conscientiously applying grazing management practices which also accommodate other uses, and to provide to those operators the opportunity to participate in selecting grazing management practices on their individual grazing areas. Eligibility for the program is based upon both the condition of the grazing allotment and the willingness of the livestock operator to cooperate. Allotment criteria are: (1) The allotment is in satisfactory condition with no serious conflicts among uses; (2) multiple-use and sustained yield objectives are being achieved through current Bureau of Land Management and operator management actions; and (3) the final grazing environmental impact statement for the area is completed and the associated land use plan approved. In approving an agreement, the Bureau

would retain its ultimate responsibility for the land through terms and conditions in each agreement, and periodic monitoring of resource conditions. A cooperative management agreement does not allow a cooperator to manage, limit, or exclude other uses of an area nor does it exempt the cooperator from complying with existing laws and regulations affecting public land use. The cooperative management agreement is another tool for the Bureau to involve both individual users and interest groups in a greater role in public land management. In response to the court's decision, the proposed rulemaking would include this interpretation of the cooperative management program.

*Section 4120.2—Allotment Management Plans*

The court ruled that changing the wording from "prescribe a system of grazing" to "describe livestock grazing practices" constituted a policy change which no longer permitted the Bureau of Land Management to provide specific conditions such as grazing systems, stocking rates, grazing season dates, etc.

The intent of the revisions made by the final rulemaking of March 22, 1984, was to provide for methods, in addition to rotation grazing systems, that may be used to achieve management objectives.

To make clear that the allotment management plan is intended to be the vehicle through which land use plan and management objectives are achieved, and that it is a document binding upon both the permittee and the agency, § 4120.2(a) of the final rulemaking of March 22, 1984, would be amended to change the word "describe" to "prescribe". However, the words "grazing management practices" would be retained. Each allotment may not need a specific pasture rotation system to achieve management objectives. In many cases, improved livestock distribution, reduced livestock numbers, or changes in grazing seasons will achieve the desired results.

The court also ruled that incorporating the provisions of § 4130.6 into the terms and conditions of an allotment management plan did not also incorporate the provisions of §§ 4130.6–1, 4130.6–2, and 4130.6–3, which provide for mandatory and other optional terms and conditions, and for their modification. Section 4120.2(a) would be amended to include these provisions.

*Assignment of Range Improvements—Section 4120.3–5*

The proposed rulemaking would amend this section to remove the term "fair market value" and the last sentence, which are unnecessary because the parties involved reach agreement on the value of the range improvements while contracting for the transfer of the grazing preference. Without such an agreement, there would not be a transfer or assignment application.

*Terms and Conditions—Section 4130.6*

In enjoining the Bureau of Land Management for deleting §§ 4120.2–1(c) and 4130.2(d)(3) of the grazing regulations as they existed prior to the effective date of the final rulemaking of March 22, 1984, which provided for the cancellation, suspension, or modification of permits or leases as required by land use plans, and enjoining the implementation of §§ 4130.6–3 as set fourth in the final rulemaking of March 22, 1984, the court found that the Bureau did not adequately explain or justify the purpose of the revision. The court held that the Bureau had not: (1) Responded to objections concerning elimination of authority to cancel or suspend permits when required by land use planning; (2) provided sufficient reasons for making consistency between land use plans and grazing permits discretionary rather than mandatory; and (3) explained the need for monitoring data before action can be taken to modify the permit or lease.

After reviewing the court's decision, the Department of Interior has decided to retain the wording in §§ 4130.6–3 of the final rulemaking of March 22, 1984, for the following reasons. The livestock grazing program must, as the court described, be conducted in a manner that will achieve land use plan objectives. Section 4120.3–1(c) of the regulations as they existed prior to the effective date of the final rulemaking of March 22, 1984, read as follows: "All permits and leases shall be made subject to cancellation, suspension, or modification as required by land use plans, and subject to applicable law." This language implies that when the terms and conditions of a permit or lease are not achieving the land use plan objectives, the permit or lease must be canceled, suspended, or modified. However, it is not always necessary to cancel, suspend, or modify a permit or lease to achieve land use plan objectives, because in actual practice, actions, such as land treatment, water development or fencing, will achieve land use plan objectives without requiring a change in the terms and conditions of the permit or lease. Where action, such as cancellation, suspension, or modification, is needed to achieve land use plan objectives, provisions exist in §§ 4130.6–1(b) of the existing regulations to make grazing management practices consistent with land use plan objectives. In addition, §§ 4130.6–3 of the final rulemaking of March 22, 1984, also contains authority to modify the terms and conditions of the permit or lease to achieve land use plan objectives. The word "may" rather than "shall" is used in that section to provide flexibility and consistent grazing management to achieve land use plan objectives. This flexibility is needed because there are instances where failure to achieve land use plan objectives may not be related to the terms and conditions of the permit or lease, but rather to lack of range improvements.

Monitoring data may indicate a need to modify the terms and conditions of a permit or lease if the data shows that grazing use is preventing the achievement of management objectives. There are 4 standard range studies that constitute monitoring: (1) Actual livestock numbers and grazing days of use; (2) climate; (3) the amount of forage utilized; and (4) trend. These studies are used individually or in combination to determine whether or not management objectives are being achieved.

Section 4130.2(d)(3) of the regulations as they existed prior to the effective date of the March 22, 1984, regulations reads: "Grazing permits or leases shall be modified, suspended, or cancelled as required by land use planning decisions." As pointed out earlier in this preamble, land use planning decisions do not always require modification, suspension, or cancellation of permits and leases. Modification, suspension, and cancellation are not the only means of achieving consistency with land use plan objectives. Adequate authority is provided in §§ 4130.6–1(b) and 4130.6–3 to ensure that land use plan objectives are achieved.

Section 4130.6–1 would also be amended to require that grazing permits or leases shall be subject to terms and conditions needed to prevent undue or unnecessary degradation of resource values.

*Payment of Fees—Section 4130.7–1*

This section would be amended to provide for a late fee assessment in cases where grazing bills are not paid on time.

*Acts Prohibited on the Public Lands—Section 4140.1*

The court enjoined the Bureau of Land Management from replacing § 4140.1(a)(3) of the regulations as it existed prior to the final rulemaking of

March 22, 1984, which prohibited placing supplemental feed on public lands "without authorization", with the language of § 4140.1(a)(3) of the final rulemaking of March 22, 1984, which prohibited placing supplemental feed on public lands "in violation of the terms and conditions of the lease or permit". The court found that the "final rulemaking enabled ranchers for the first time to use supplemental feeding techniques on their allotments without prior authorization", and the "modification represented a reversal of the Secretary's longstanding position on supplemental feeding on the public lands." Furthermore, the court held the reasoning and purpose for this change were not adequately explained in response to public comments. After reviewing the decision of the court, the Department of the Interior has decided to return to the wording of the regulations as it existed prior to March 22, 1984, which prohibits placing supplemental feed on public lands without authorization.

Supplemental feeding is needed only at a specific time of year and for a specific purpose. It is used when adequate native vegetation is available for roughage requirements of animals but lacking in protein or mineral content necessary for milk production or other animal needs. The authorized officer can make provisions in the terms and conditions of a grazing permit or lease or in an allotment management plan for proper kinds, seasons, and placement of supplements.

Supplemental feeding should not be confused with maintenance feeding. The latter would allow animals to remain on public land when native vegetation is no longer in adequate supply and is not authorized.

The court also enjoined the Bureau of Land Management from deleting provisions that penalized livestock operators who violate laws concerning the protection of wild horses and burros (§ 4140.1(b)(7)) and federal or state environmental laws relating to the conservation or protection of cultural resources, air and water quality, fish and wildlife, plants, and the use of chemical toxicants (§ 4140.1(b)(8)), under the title "Operator Penalties." The court also held that the Bureau ignored the requirements of the Administrative Procedure Act, by failing to respond to public comments or explain the basis and purpose of the policy reversal. However, the court did not question the authority of the Secretary of the Interior to delete the provisions.

After reviewing the court's decision, the Department of the Interior has determined that, unlike the Bald Eagle Protection Act (16 U.S.C. 668) and the Endangered Species Act (16 U.S.C. 1540), which are retained in the final regulations because Congress clearly intended that provisions of these Acts be enforced through penalties against Federal permittees and lessees if necessary, specific penalties for the violation of the Wild Horse and Burro Act and Federal and State environmental laws are provided for in the respective statutes and do not require penalties against permittees and lessees. Such provisions should, and can, be adequately enforced by various Federal and State agencies under specific regulations designed for the implementation of these laws. Based on this review, the Department has determined that it is unnecessary to include provisions for violations of these laws in § 4140.1.

*Settlement—Section 4150.3*

The proposed rulemaking would amend the provisions for settlement of unauthorized livestock grazing violations. First, the existing regulations address 4 types of violations: nonwillful, willful, repeated nonwillful, and repeated willful. The number of types of violations would be reduced to 3 by removing the repeated nonwillful category. A nonwillful violation, even though it is repeated, often is beyond the control of the livestock operator, and additional penalty would be inappropriate in most cases.

Second, the proposed rulemaking would change the method for determining the value of forage consumed by unauthorized livestock that would be assessed to the violator. The fee for authorized livestock grazing on public land is set annually by the Secretary. This is considered to be the value of forage on public land, and would be the base value used to determine the amount of money due the United States for forage consumed by unauthorized livestock. As a deterrent to unauthorized livestock grazing on the public land, the base value of the forage consumed by the unauthorized livestock would be multiplied by 5 when the violation is nonwillful. The basic penalty would then be doubled when the violation is willful, and tripled for each repeated willful violation. The result would be a penalty related to the value of the forage consumed, high enough to deter further violations, and consistent with most State and local practices.

In the case of a nonwillful violation, 5 times the base value of the forage consumed would be considered adequate to cover expenses incurred by the United States to resolve the case and to serve as an incentive for the violator to take corrective action to prevent further violations. In the case of willful and repeated willful violations, the settlement would also include full value for resource and property damages caused, and all expenses incurred by the United States in detecting, investigating, and resolving the violations.

The principal author of this proposed rulemaking is Wilton A. Peterson, Division of Rangeland Resources, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

Based upon an environmental assessment and a finding of no significant impact, it is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this proposed rulemaking will not have a negative effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The provisions of this proposed rulemaking are applicable to anyone who possesses a grazing permit or lease on the public lands, without regard to the size of the operation.

The information collection requirements contained in this rulemaking have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and have been assigned the following appoval numbers: Grazing Application 1004–0005, Range Improvement Permit 1004–0019; Exchange-of-Use Agreement 1004–0020; Grazing Preference Statement 1004–0041; Grazing Application-Preference Summary and Transfer 1004–0047; Actual Grazing Use Record, 1004–0051; and Cooperative Agreement 1004–0065.

**List of Subjects in 43 CFR Part 4100**

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315 et seq.), the Federal Land Policy and Management Act of 1976, as

amended (43 U.S.C. 1701 et seq.), and the Public Rangeland Improvement Act of 1978 (43 U.S.C. 1901 et seq.), it is proposed to amend Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

**PART 4100—[AMENDED]**

1. The authority citation for Part 4100 is revised to read.

**Authority:** 43 U.S.C. 315, 315a–315r, 43 U.S.C. 1701 et seq., 43 U.S.C. 1181d, unless otherwise noted.

2. Section 4100.0–5, is amended by revising the definitions of "actual use", "cooperative management agreement", "land use plan", "monitoring", and "range improvement" to read

**§ 4100.0–5 Definitions.**

* * * * *

"Actual; use report" means a report of the actual livestock grazing use certified to be accurate by the permittee or lessee.

* * * * *

"Cooperative managment agreement" means a document expressing a mutual understanding between a permittee or lessee and the authorized officer that identifies the responsiblities and performance standards of the parties to the agreement.

* * * * *

"Land use plan" means a resource management plan or management framework plan developed in accordance with the provisions of the Federal Land Policy and Management Act which establishes coordinated management direction for resource uses of public lands.

* * * * *

"Monitoring" means the periodic observation or collection of data to evaluate:

(1) Effects of management actions; and

(2) Effectiveness of actions in meeting management objectives.

"Range improvement" means an authorized activity or program on or relating to rangelands which is designated to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock, wild horses and burros, and other wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish the desired results.

* * * * *

3. Section 4100.0–5 is further amended by removing the definition for "livestock grazing capacity," and adding, in alphabetical order, the following definitions:

"Active use" means the current authorized livestock grazing use.

"Actual use" means where, how many, how long, and what kind of livestock graze on an allotment.

"Rangeland studies" means any methods accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend.

"Trend" means the direction of change in kind, proportion, or amount of plant species over time.

"Utilization" means the percentage and/or pattern of forage consumption or loss during a specified period on each allotment.

4. Section 4100.0–8 is added to read as follows:

**§ 4100.0–8 Land use plans.**

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, in accordance with applicable land use plans. (Land use plans set forth the overall objectives for managing livestock grazing. They also outline generally the means and methods for accomplishing the stated objectives in managing the activity. Land use plans, as they relate to the livestock grazing, are intended to guide the authorized officer. The regulations in Subpart 1600 of this title detail how land use plans are developed, maintained, and revised.)

5. Section 4110.2–1 is amended by adding new paragraphs (d) and (e) to read as follows:

**§ 4110.2–1 Base property.**

* * * * *

(d) If a permittee or lessee loses ownership or control of all or part of his/her base property, the permit or lease and grazing preference, to the extent it was based upon such lost property, shall terminate immediately without further notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner.

(e) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

6. Section 4110.2–2 is revised to read as follows:

**§ 4110.2–2 Specifying grazing preference.**

(a) Grazing preference shall be specified in all grazing permits or grazing leases. It shall include both active use and suspended use.

(b) The grazing preference specified shall attach to the base property supporting the grazing permit or grazing lease. The animal unit months of grazing preference are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

**§ 4110.2–3 [Amended]**

7. Section 4110.2–3 is amended by revising paragraph (c) to read:

* * * * *

(c) If a grazing preference is being transferred from one base property to another base property, the transferee shall file with the authorized officer a properly completed transfer application for approval. If the applicant leases the base property, no transfer will be allowed without the writtent consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made. Such consent will not be required where the applicant for such transfer is a lessee without whose livestock operations the grazing preference would not have been established.

* * * * *

8. Section 4110.2–3 is further amended in the first sentence of paragraph (e) by changing the word "deposition" to "disposition."

9. Section 4110.2–4 is added to read as follows:

**§ 4110.2–4 Allotments.**

After consultation, cooperation, and coordination with permittees or lessees, the authorized officer may designate and adjust allotment boundaries.

10. In § 4110.3 the section heading is revised and text is added to read as follows:

**§ 4110.3 Changes in grazing preference.**

The authorized officer shall periodically review the grazing preference specified in a grazing permit or grazing lease. Changes in active use shall be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either indicated in an applicable land use plan or necessary to prevent undue

or unnecessary degradation, as determined by the authorized officer.

11. Section 4110.3–1 is revised to read as follows:

**§ 4110.3–1 Increasing active use.**

Additional forage may be apportioned to qualified applicants for livestock grazing use consistent with multiple-use management objectives.

(a) Additional forage temporarily available for livestock grazing use, including forege which is temporarily available within an allotment because of a change in grazing use under § 4130.1–1, may be apportioned on a nonrenewable basis.

(b) Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in satisfaction of grazing preferences to the permittee(s) of lessee(s) authorized to graze in the allotment in which the forage is available.

(c) After consultation, cooperation, and coordination, additional forage on a sustained yield basis available for livestock grazing use over and above the preference(s) of the permittee(s) or lessee(s) in an allotment may be apportioned in the following priority to:

(1) Permittee(s) or lessee(s) in proportion to the contribution or efforts which resulted in increased forage production;

(2) Permittee(s) or lessee(s) in proportion to the amount of their grazing preference; and/or

(3) Other qualified applicants under § 4130.1–2 of this title.

12. Section 4110.3–2 is revised to read as follows:

**§ 4110.3–2 Modifying or suspending grazing preference.**

(a) Active use may be suspended in whole or in part on a temporary basis due to drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring shows actual use is causing an unacceptable level or pattern of utilization or a sustained downward trend, the authorized officer shall suspend the active use to the extent he or she deems necessary, unless implementation of rehabilitation, protection, range improvements and/or changes in grazing practices while the use continues is effective in remedying the undue or unnecessary degradation.

(c) Where active use is reduced it shall be held in suspension until the authorized officer determines that active use may resume.

13. Section 4110.3–3(a) is revised to read as follows:

**§ 4110.3–3 Implementing changes in grazing preference.**

(a) Changes in grazing preference in excess of 10 percent shall be implemented over a 5-year period, unless after consultation with the affected permittees or lessees and other affected interests, an agreement is reached to implement the increase or suspension in less than 5 years.

* * * * *

14. Section 4110.4–1 is revised to read as follows:

**§ 4110.4–1 Additional land acreage.**

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock may be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under § 4130.1–2 of this title.

15. Section 4120.1 is revised to read as follows:

**§ 4120.1 Cooperative management agreements.**

(a) The authorized officer may enter into a cooperative agreement with any permittee or lessee having an "M" or "I" category allotment for which there is no AMP. (Allotments are categorized into 1 of 3 types, M, I, or C. The purpose is to establish management priorities for allotments. I, M, and C is the usual order of priority for management action. To qualify for management under the terms and conditions of a cooperative management agreement, the current management on M and I allotments must be meeting or moving toward meeting the allotment management objectives.)

(b) A cooperative management agreement shall include the mutual understanding of the authorized officer and the qualified permittee or lessee about the terms and conditions that will govern livestock grazing for the duration of the permit or lease.

(c) A cooperative management agreement is of no binding effects on either party unless and until the authorized officer incorporates its provisions, in whole or in part, into the applicable permit or lease.

(d) A cooperative management agreement shall be consistent with the land use plan.

(e) A cooperative management agreement shall not empower the permittee or lessee to exceed the level or season of livestock use as specified in the agreement.

(f) The authorized officer may cancel, suspend, or modify a cooperative management agreement, in whole or in part, after consultation with the cooperating party.

(g) A cooperative management agreement is not transferable.

**§ 4120.2 [Amended]**

16. Section 4120.2(a) is amended by removing from where it appears in the second sentence the number "§ 4130.6" and replacing it with the numbers "§§ 4130.6, 4130.6–1, 4130.6–2 and 4130.6–3", by removing from where it appears in the second sentence the word "described" and replacing it with the word "prescribe", and by removing from where it appears in the last sentence the pharse "the collection of data that shall be used" and replacing it with the word "monitoring."

17. Section 4120.3–5 is revised to read as follows:

**§ 4120.3–5 Assignment of range improvements.**

The authorized officer shall not approve the transfer of a grazing preference under § 4110.2–3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for his/her interest in the authorized improvements within the allotment as of the date of the transfer.

18. Section 4130.1–2 introducing text is amended by removing from where it appears in the first sentence the phrase "livestock forage" and replacing it with "forage for livestock", by removing from where it appears in the first sentence the word "allocate" and replacing it with "authorize," and by revising paragraph (a) to read as follows:

**§ 4130.1–2 Conflicting applications.**

* * * * *

(a) Historical use of the public lands (see § 4130–2(d));

* * * * *

**§ 4130.6 [Amended]**

19. Section 4130.6 is amended by removing from where it appears the phrase "control identified in land use plans" and replacing it with the word "administration."

**§ 4130.6–1 [Amended]**

20. Section 4130.6–1(a) is amended by removing from where it appears in the second sentence the phrase "not exceed the livestock grazing capacity and may" and replacing it with the words "be subject to terms and conditions necessary to prevent undue or unnecessary degradation of the public lands. Livestock grazing may . . . ."

21. In § 4130.7–1, paragraph (e) is added to read as follows:

§ 4130.7–1 Payment of fees.

* * * * *

(e) Failure to pay the grazing bill on or before the date specified in the bill will result in a late fee assessment of $25.00 or 10 percent of the grazing bill, whichever is greater. Thirty days from the grazing bill due date will be allowed to make payment of the grazing bill and late fee. Failure to make payment within this 30 days may result in action by the authorized officer under § 4160.1–2.

22. Section 4140.1 is amended by reviewing paragraph (a)(3) to read:

§ 4140.1 Acts prohibited on public lands.

(a) * * *

(3) Placing supplemental feed on these lands without authorization.

* * * * *

23. Section 4150.3 is amended by revising the introductory paragraph and paragraphs (a), (b), and (c) to read as follows:

§ 4150.3 Settlement.

The authorized officer shall determine whether the violation is nonwillful, willful, or repeated willful. Where violations are repeated willful, the authorized officer may take action under § 4170.1–1 (a) or (b) of this title. The amount due for all settlements shall include the value of forage consumed as determined by paragraphs (a), (b), or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations.

(a) For nonwillful violation: 5 times the public land grazing fee per AUM established annually by the Secretary of the Interior for each AUM consumed.

(b) For willful violations: 2 times the penalty per AUM established annually for a nonwillful violation for each AUM consumed.

(c) For repeated willful violations: 3 times the penalty per AUM established annually for a nonwillful violation for each AUM consumed.

* * * * *

24. A new § 4170.1–3 is revised to read as follows:

§ 4170.1–3 Bald Eagle Protection Act and Endangered Species Act.

Violation of the Bald Eagle Protection Act or the Endangered Species Act may result in penalty under § 4170.1–1 where:

(a) Public land administered by the Bureau of Land Management is involved or affected;

(b) Such violation is related to grazing use authorized by permit or lease;

(c) The permittee or lessee has been convicted or otherwise found to be in violation of the law or regulations by a court or by final determination of any agency charged with the administration of the law where no further appeals are outstanding.

J. Steven Griles,

*Assistant Secretary of the Interior.*

April 23, 1987

[FR Doc. 87–11493 Filed 5–19–87; 8:45 am]

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Wednesday
May 20, 1987

Part IV

# Office of Management and Budget

## Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

**Cumulative Report on Rescissions and Deferrals**

May 1, 1987.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of May 1, 1987, of 57 deferrals contained in the five special messages of FY 1987. These messages were transmitted to the Congress on September 26, and December 15, 1986, and January 5 and 28, and March 4, 1987.

**Rescissions (Table A and Attachment A)**

As of May 1, 1987, there were no rescission proposals pending before the Congress.

**Deferrals (Table B and Attachment B)**

As of May 1, 1987, $6,660.8 million in 1987 budget authority was being deferred from obligation and $3.8 million in 1987 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1987.

**Information From Special Messages**

The special message containing information on the deferrals covered by this cumulative report is printed in the Federal Register listed below:

Vol. 51, FR p. 35976, Tuesday, October 7, 1986
Vol. 51, FR p. 47356, Wednesday, December 31, 1986
Vol. 52, FR p. 984, Friday, January 9, 1987
Vol. 52, FR p. 3552, Wednesday, February 4, 1987
Vol. 52, FR p. 8046, Friday, March 13, 1987.

James C. Miller III,
*Director.*

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1987 RESCISSIONS

| | Amount (In millions of dollars) |
|---|---|
| Rescissions proposed by the President | $5,835.8 |
| Accepted by the Congress | 0 |
| Rejected by the Congress | 5,835.8 |
| Pending before the Congress | 0 |

**********************************

TABLE B

STATUS OF 1987 DEFERRALS

| | Amount (In millions of dollars) |
|---|---|
| Deferrals proposed by the President | 11,457.6 |
| Routine Executive releases through May 1, 1987 (OMB/Agency releases of $4,765.9 million and cumulative adjustments of $0.7 million) | -4,765.2 |
| Overturned by the Congress | -28.6 |
| Currently before the Congress | 6,663.8 a/ |

a/ This amount includes $3.0 million in outlays for a Department of the Treasury deferral (D87-21).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF AGRICULTURE | | | | | | | | |
| Agricultural Research Service | | | | | | | | |
| Buildings and facilities | R87-1 | 28,000 | | 1-5-87 | | 28,000 | 3-16-87 | |
| | R87-1A | | | 1-28-87 | | | | |
| Agricultural Stabilization and Conservation Service | | | | | | | | |
| Rural clean water program | R87-2 | 6,000 | | 1-5-87 | | 6,000 | 3-16-87 | |
| Agricultural conservation program | R87-3 | 164,356 | | 1-5-87 | | 164,356 | 3-16-87 | |
| Water bank program | R87-4 | 8,166 | | 1-5-87 | | 8,166 | 3-16-87 | |
| Emergency conservation program | R87-5 | 10,000 | | 1-5-87 | | 10,000 | 3-16-87 | |
| Farmers Home Administration | | | | | | | | |
| Rural water and waste disposal grants | R87-6 | 79,500 | | 1-5-87 | | 79,500 | 3-16-87 | |
| Rural community fire protection grants | R87-7 | 2,300 | | 1-5-87 | | 2,300 | 3-16-87 | |
| Rural housing for domestic farm labor | R87-8 | 7,400 | | 1-5-87 | | 7,400 | 3-16-87 | |
| Mutual and self-help housing | R87-9 | 8,000 | | 1-5-87 | | 8,000 | 3-16-87 | |
| Very low income housing repair grants | R87-10 | 9,400 | | 1-5-87 | | 9,400 | 3-16-87 | |
| Compensation for construction defects | R87-11 | 500 | | 1-5-87 | | 500 | 3-16-87 | |
| Rural housing preservation grants | R87-12 | 14,400 | | 1-5-87 | | 14,400 | 3-16-87 | |
| Soil Conservation Service | | | | | | | | |
| Watershed and flood prevention operations | R87-13 | 96,000 | | 1-5-87 | | 96,000 | 3-16-87 | |
| Great Plains conservation program | R87-14 | 8,000 | | 1-5-87 | | 8,000 | 3-16-87 | |
| Resource conservation and development | R87-15 | 5,000 | | 1-5-87 | | 5,000 | 3-16-87 | |
| Forest Service | | | | | | | | |
| Land acquisition | R87-16 | 49,030 | | 1-5-87 | | 49,030 | 3-16-87 | |
| DEPARTMENT OF COMMERCE | | | | | | | | |
| Economic Development Administration | | | | | | | | |
| Economic development assistance programs | R87-17 | 169,718 | | 1-5-87 | | | | |
| | R87-17A | | -50 | 1-28-87 | | 169,668 | 3-16-87 | |
| International Trade Administration | | | | | | | | |
| Operations and administration | R87-18 | 11,400 | | 1-5-87 | | 11,400 | 3-16-87 | |
| National Oceanic and Atmospheric Administration | | | | | | | | |
| Operations, research, and facilities | R87-19 | 58,857 | | 1-5-87 | | 58,857 | 3-16-87 | |
| National Telecommunications and Information Administration | | | | | | | | |
| Public telecommunications facilities, planning and construction | R87-20 | 19,300 | | 1-5-87 | | 19,300 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br><br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF DEFENSE - MILITARY | | | | | | | | |
| Procurement | | | | | | | | |
| Procurement of weapons and tracked combat vehicles, Army | R87-21 | 15,000 | | 1-5-87 | | 15,000 | 3-16-87 | |
| Other procurement, Navy | R87-22 | 116,000 | | 1-5-87 | | 116,000 | 3-16-87 | |
| Military Construction | | | | | | | | |
| Military construction, Air Force | R87-23 | 2,750 | | 1-5-87 | | 2,750 | 3-16-87 | |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | |
| Corps of Engineers - Civil | | | | | | | | |
| Construction, general | R87-24 | 7,715 | | 1-5-87 | | 7,715 | 3-16-87 | |
| DEPARTMENT OF EDUCATION | | | | | | | | |
| Office of Elementary and Secondary Education | | | | | | | | |
| Compensatory education for the disadvantaged | R87-25 | 7,500 | | 1-5-87 | | 7,500 | 3-16-87 | |
| Impact aid | R87-26 | 17,500 | | 1-5-87 | | 17,500 | 3-16-87 | |
| Special programs | R87-27 | 54,980 | | 1-5-87 | | 54,980 | 3-16-87 | |
| Office of Bilingual Education and Minority Languages Affairs | | | | | | | | |
| Bilingual education | R87-28 | 45,886 | | 1-5-87 | | 45,886 | 3-16-87 | |
| Office of Special Education and Rehabilitative Services | | | | | | | | |
| Education for the handicapped | R87-29 | 288,659 | | 1-5-87 | | 288,659 | 3-16-87 | |
| Rehabilitation services and handicapped research | R87-30 | 127,455 | | 1-5-87 | | 127,455 | 3-16-87 | |
| Office of Vocational and Adult Education | | | | | | | | |
| Vocational and adult education | R87-31 | 432,319 | | 1-5-87 | | 432,319 | 3-16-87 | |
| Office of Postsecondary Education | | | | | | | | |
| Student financial assistance | R87-32 | 1,269,000 | | 1-5-87 | | 1,269,000 | 3-16-87 | |
| Higher education | R87-33 | 203,050 | | 1-5-87 | | 203,050 | 3-16-87 | |
| | R87-33A | | | 1-28-87 | | | | |
| Office of Educational Research and Improvement | | | | | | | | |
| Libraries | R87-34 | 34,500 | | 1-5-87 | | 34,500 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF ENERGY | | | | | | | | |
| Energy Programs | | | | | | | | |
| Energy supply, research and development activities | R87-35 | 81,800 | | 1-5-87 | | 81,800 | 3-16-87 | |
| Fossil energy research and development | R87-36 | 44,464 | | 1-5-87 | | 44,464 | 3-16-87 | |
| Energy conservation | R87-37 | 87,433 | | 1-5-87 | | | | |
| | R87-37A | -3500 | | 1-28-87 | | 83,933 | 3-16-87 | |
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | |
| Food and Drug Administration | | | | | | | | |
| Buildings and facilities | R87-38 | 500 | | 1-5-87 | | 500 | 3-16-87 | |
| Health Resources and Services Administration | | | | | | | | |
| Health resources and services | R87-39 | 161,210 | | 1-5-87 | | 161,210 | 3-16-87 | |
| | R87-39A | | | 1-28-87 | | | | |
| Indian health facilities | R87-40 | 57,100 | | 1-5-87 | | 57,100 | 3-16-87 | |
| | R87-40A | | | 1-28-87 | | | | |
| National Institutes of Health | | | | | | | | |
| National Library of Medicine | R87-41 | 5,405 | | 1-5-87 | | 5,405 | 3-16-87 | |
| Office of the Assistant Secretary of Health | | | | | | | | |
| Public health service management | R87-42 | 5,000 | | 1-5-87 | | 5,000 | 3-16-87 | |
| Departmental Management | | | | | | | | |
| Policy research | R87-43 | 2,200 | | 1-5-87 | | 2,200 | 3-16-87 | |
| DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT | | | | | | | | |
| Housing Programs | | | | | | | | |
| Annual contributions for assisted housing | R87-44 | 473,313 | | 1-5-87 | | 473,313 | 3-16-87 | |
| Housing counseling assistance | R87-45 | 3,500 | | 1-5-87 | | 3,500 | 3-16-87 | |
| Community Planning and Development | | | | | | | | |
| Community development grants | R87-46 | 375,200 | | 1-5-87 | | 375,200 | 3-16-87 | |
| Urban development action grants | R87-47 | 237,500 | | 1-5-87 | | 237,500 | 3-16-87 | |
| Management and Administration | | | | | | | | |
| Salaries and expenses | R87-48 | 19,042 | | 1-5-87 | | 19,042 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF THE INTERIOR | | | | | | | | |
| Bureau of Land Management | | | | | | | | |
| Management of lands and resources | R87-49 | 6,500 | | 1-5-87 | | 6,500 | 3-16-87 | |
| Construction and access | R87-50 | 1,600 | | 1-5-87 | | 1,600 | 3-16-87 | |
| Land acquisition | R87-51 | 2,700 | | 1-5-87 | | 2,700 | 3-16-87 | |
| Bureau of Mines | | | | | | | | |
| Mines and minerals | R87-52 | 16,594 | | 1-5-87 | | 16,594 | 3-16-87 | |
| United States Fish and Wildlife Service | | | | | | | | |
| Resource management | R87-53 | 20,500 | | 1-5-87 | | 20,500 | 3-16-87 | |
| | R87-53A | | | 1-28-87 | | | | |
| Construction | R87-54 | 23,200 | | 1-5-87 | | 23,200 | 3-16-87 | |
| Land acquisition | R87-55 | 26,762 | | 1-5-87 | | 26,762 | 3-16-87 | |
| National Park Service | | | | | | | | |
| Operation of the national park system | R87-56 | 7,950 | | 1-5-87 | | 7,950 | 3-16-87 | |
| Construction | R87-57 | 58,981 | | 1-5-87 | | 58,981 | 3-16-87 | |
| Land acquisition | R87-58 | 97,638 | | 1-5-87 | | 97,638 | 3-16-87 | |
| Historic preservation fund | R87-59 | 15,000 | | 1-5-87 | | 15,000 | 3-16-87 | |
| Bureau of Indian Affairs | | | | | | | | |
| Construction | R87-60 | 22,811 | | 1-5-87 | | 22,811 | 3-16-87 | |
| Territorial and International Affairs | | | | | | | | |
| Administration of territories | R87-61 | 2,500 | | 1-5-87 | | 2,500 | 3-16-87 | |
| DEPARTMENT OF JUSTICE | | | | | | | | |
| Immigration and Naturalization Service | | | | | | | | |
| Salaries and expenses | R87-62 | 24,598 | | 1-5-87 | | 24,598 | 3-16-87 | |
| DEPARTMENT OF LABOR | | | | | | | | |
| Employment and Training Administration | | | | | | | | |
| Training and employment services | R87-63 | 332,000 | | 1-5-87 | | 332,000 | 3-16-87 | |

Attachment A - Status of Rescissions - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Rescission Number | Amount Previously Considered by Congress | Amount Currently before Congress | Date of Message | Amount Rescinded | Amount Made Available | Date Made Available | Congressional Action |
|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF THE TREASURY | | | | | | | | |
| Federal Law Enforcement Training Center<br>Salaries and expenses | R87-64 | 8,450 | | 1-5-87 | | 8,450 | 3-16-87 | |
| Bureau of Alcohol, Tobacco, and Firearms<br>Salaries and expenses | R87-65 | 15,000 | | 1-5-87 | | 15,000 | 3-16-87 | |
| United States Customs Service<br>Salaries and expenses | R87-66 | 38,945 | | 1-5-87 | | 38,945 | 3-16-87 | |
| ENVIRONMENTAL PROTECTION AGENCY | | | | | | | | |
| Abatement, control, and compliance | R87-67 | 47,500 | | 1-5-87 | | 47,500 | 3-16-87 | |
| Buildings and facilities | R87-68 | 2,500 | | 1-5-87 | | 2,500 | 3-16-87 | |
| NATIONAL AERONAUTICS AND SPACE ADMINISTRATION | | | | | | | | |
| Research and development | R87-69 | 25,796 | | 1-5-87 | | 25,796 | 3-16-87 | |
| VETERANS ADMINISTRATION | | | | | | | | |
| Medical care | R87-70 | 75,000 | | 1-5-87 | | (See Note Below) | | |
| OTHER INDEPENDENT AGENCIES | | | | | | | | |
| Appalachian Regional Commission<br>Appalachian regional development programs | R87-71 | 31,059 | | 1-5-87 | | 31,059 | 3-16-87 | |
| National Endowment for the Humanities<br>National capital arts and cultural affairs | R87-72 | 4,000 | | 1-5-87 | | 4,000 | 3-16-87 | |
| Selective Service System<br>Salaries and expenses | R87-73 | 409 | | 1-5-87 | | 409 | 3-17-87 | |
| Total, rescissions | | 5,835,751 | 0 | | | 5,760,751 | | |

NOTE. - The $75 million proposed for rescission in Rescission Proposal No. R87-70 was never withheld from obligation. Therefore, there was no need to release the funds on March 16.

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 5-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| **FUNDS APPROPRIATED TO THE PRESIDENT** | | | | | | | | | |
| International Security Assistance | | | | | | | | | |
| Foreign military sales credit | D87-22 | 4,040,441 | | 12-15-86 | 1,855,000 | | | | 2,185,441 |
| Economic support fund | D87-1 | 95,000 | | 9-26-86 | | | | | |
| | D87-1A | | 2,351,470 | 12-15-86 | 1,413,633 | | | | 1,032,837 |
| Military assistance | D87-23 | 847,000 | | 12-15-86 | 381,750 | | | | 465,250 |
| International military education and training | D87-24 | 2,000 | | 12-15-86 | 2,000 | | | | 0 |
| Agency for International Development | | | | | | | | | |
| Functional development assistance | D87-32 | 2,278 | | 1-28-87 | | | | | 2,278 |
| International disaster assistance | D87-25 | 57,000 | | 12-15-86 | 47,566 | | | | 9,434 |
| Special Assistance for Central America | | | | | | | | | |
| Assistance for the Nicaraguan Democratic Resistance | D87-26 | 60,000 | | 12-15-86 | 60,000 | | | | 0 |
| Promotion of stability and security in Central America | D87-27 | 1,000 | | 12-15-86 | | | | | 1,000 |
| **DEPARTMENT OF AGRICULTURE** | | | | | | | | | |
| Commodity Credit Corporation | | | | | | | | | |
| Temporary emergency food assistance | D87-33 | 28,559 | | 1-28-87 | | 28,559 P.L. 100-6 | | | 0 |
| Rural Electrification Administration | | | | | | | | | |
| Reimbursement to the Rural electrification and telephone and revolving fund for interest subsidies and losses | D87-34 | 20,000 | | 1-28-87 | | | | | 20,000 |
| Forest Service | | | | | | | | | |
| State and private forestry | D87-35 | 797 | | 1-28-87 | | | | | 797 |
| Land acquisition | D87-36 | 27,070 | | 1-28-87 | | | | | 27,070 |
| Expenses, brush disposal | D87-2 | 111,202 | | 9-26-86 | | | | | |
| | D87-2A | | 1,534 | 3-4-87 | | | | | 112,736 |
| Timber roads, purchaser election | D87-37 | 11,900 | | 1-28-87 | | | | | 11,900 |
| Timber salvage sales | D87-3 | 29,731 | | 9-26-86 | 6,113 | | | 3 | 23,621 |
| Cooperative work | D87-4 | 526,938 | | 9-26-86 | | | | | |
| | D87-4A | | 8,336 | 3-4-87 | | | | | 535,275 |
| Gifts, donations, and bequests for forest and rangeland research | D87-5 | 200 | | 9-26-86 | 25 | | | | 175 |

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 5-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF DEFENSE - MILITARY | | | | | | | | | |
| Military Construction | | | | | | | | | |
| Military construction, Defense | D87-6 | 2,350 | | 9-26-86 | | | | | |
| | D87-6A | | 1,316,152 | 12-15-86 | 779,649 | | | | $38,853 |
| Family Housing | | | | | | | | | |
| Family housing, Defense | D87-7 | 76,943 | | 9-26-86 | | | | | |
| | D87-7A | | 190,022 | 12-15-86 | 121,758 | | | | 145,207 |
| DEPARTMENT OF DEFENSE - CIVIL | | | | | | | | | |
| Soldiers' and Airmen's Home | | | | | | | | | |
| Capital outlays | D87-38 | 1,132 | | 1-28-87 | | | | | 1,132 |
| Wildlife Conservation, Military Reservations | | | | | | | | | |
| Wildlife conservation | D87-8 | 1,065 | | 9-26-86 | | | | | |
| | D87-8A | | 25 | 1-5-87 | | | | | |
| | D87-8B | | 46 | 3-4-87 | 40 | | | | 1,096 |
| DEPARTMENT OF ENERGY | | | | | | | | | |
| Power Marketing Administration | | | | | | | | | |
| Alaska Power Administration, Operation and maintenance | D87-9 | 165 | | 9-26-86 | | | | | 165 |
| Southwestern Power Administration, | | | | | | | | | |
| Operation and maintenance | D87-10 | 7,554 | | 9-26-86 | | | | | |
| | D87-10A | | 6,106 | 1-5-87 | | | | | 13,660 |
| Western Area Power Administration, | | | | | | | | | |
| Construction, rehabilitation, operation and maintenance | D87-29 | 4,488 | | 1-5-87 | | | | | 4,485 |
| Departmental Administration | | | | | | | | | |
| Departmental administration | D87-30 | 24,182 | | 1-5-87 | | | | | 24,182 |

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 5-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF HEALTH AND HUMAN SERVICES | | | | | | | | | |
| Health Resources and Services Administration | | | | | | | | | |
| Indian catastrophic health emergency fund.. | D87-28 | 10,000 | | 12-15-86 | | | | | 10,000 |
| Centers for Disease Control | | | | | | | | | |
| Disease control, research, and training.... | D87-39 | 2,428 | | 1-28-87 | | | | | 2,428 |
| Alcohol, Drug Abuse, and Mental Health Administration | | | | | | | | | |
| Alcohol, drug abuse, and mental health... | D87-40 | 10,000 | | 1-28-87 | | | | | 10,000 |
| Office of Assistant Secretary for Health | | | | | | | | | |
| Scientific activities overseas (special foreign currency program)..... | D87-11 | 2,900 | | 9-26-86 | | | | | 2,900 |
| Social Security Administration | | | | | | | | | |
| Limitation on administrative expenses (construction)..... | D87-12 | 7,073 | | 9-26-86 | | | | | |
| | D87-12A | | 89 | 1-28-87 | | 12 | | | 7,151 |
| Limitation on administrative expenses (information technology systems)..... | D87-57 | 134,437 | | 3-4-87 | | | | | 134,437 |
| DEPARTMENT OF THE INTERIOR | | | | | | | | | |
| Bureau of Land Management | | | | | | | | | |
| Payments for proceeds, sale of Mineral Leasing Act of 1920, Section 40(d)..... | D87-31 | 49 | | 1-5-87 | | | | | 49 |
| DEPARTMENT OF JUSTICE | | | | | | | | | |
| Office of Justice Programs | | | | | | | | | |
| Crime victims fund..... | D87-13 | 70,000 | | 9-26-86 | | | | | 70,000 |
| DEPARTMENT OF LABOR | | | | | | | | | |
| Employment Standards Administration | | | | | | | | | |
| Salaries and expenses..... | D87-41 | 9,659 | | 1-28-87 | | | | | 9,659 |

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Attachment B - Status of Deferrals - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 5-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF STATE | | | | | | | | | |
| Bureau for Refugee Programs | | | | | | | | | |
| United States emergency refugee and migration assistance fund, executive | D87-14 | 6,100 | | 9-26-86 | | | | | |
| | D87-14A | | 14,000 | 1-5-87 | | | | | 20,100 |
| Other | | | | | | | | | |
| Assistance for implementation of a Contadora agreement | D87-15 | 2,000 | | 9-26-86 | 2,000 | | | | 0 |
| DEPARTMENT OF TRANSPORTATION | | | | | | | | | |
| Federal Railroad Administration | | | | | | | | | |
| Rail service assistance | D87-42 | 462 | | 1-28-87 | | | | | 462 |
| Railroad safety | D87-43 | 1,101 | | 1-28-87 | 1,101 | | | | 0 |
| Conrail labor protection | D87-44 | 646 | | 1-28-87 | | | | | 646 |
| Northeast corridor improvement program | D87-45 | 16,962 | | 1-28-87 | | | | | 16,962 |
| Conrail commuter transition assistance | D87-46 | 10,000 | | 1-28-87 | | | | | 10,000 |
| Urban Mass Transportation Administration | | | | | | | | | |
| Research, training and human resources | D87-47 | 4,336 | | 1-28-87 | | | | | 4,336 |
| Interstate transfer grants - transit | D87-48 | 51,800 | | 1-28-87 | | | | | 51,800 |
| Federal Aviation Administration | | | | | | | | | |
| Operation and maintenance, Metropolitan Washington Airports | D87-49 | 12,214 | | 1-28-87 | | | | | 12,214 |
| Facilities and equipment (Airport and airway trust fund) | D87-16 | 803,877 | | 9-26-86 | | | | | |
| | D87-16A | | 295,611 | 12-15-86 | 19,996 | | | | 1,079,492 |
| Coast Guard | | | | | | | | | |
| Research, development, test, and evaluation | D87-50 | 5,000 | | 1-28-87 | | | | | 5,000 |
| Offshore oil pollution compensation fund | D87-51 | 2,154 | | 1-28-87 | | | | | 2,154 |
| Deepwater port liability fund | D87-52 | 6,176 | | 1-28-87 | | | | | 6,176 |
| Office of the Secretary | | | | | | | | | |
| Payments to air carriers | D87-53 | 10,748 | | 1-28-87 | | | | | 10,748 |

Attachment B - Status of Deferrals - Fiscal Year 1987

| As of May 1, 1987<br>Amounts in Thousands of Dollars<br>Agency/Bureau/Account | Deferral Number | Amount Transmitted Original Request | Amount Transmitted Subsequent Change | Date of Message | Cumulative OMB/Agency Releases | Congressionally Required Releases | Congressional Action | Cumulative Adjustments | Amount Deferred as of 5-1-87 |
|---|---|---|---|---|---|---|---|---|---|
| DEPARTMENT OF THE TREASURY | | | | | | | | | |
| Office of Revenue Sharing | | | | | | | | | |
| Local government fiscal assistance trust fund | D87-17 | 74,149 | | 9-26-86 | 71,144 | | | | 3,005 |
| Local government fiscal assistance trust fund | D87-21 | 5,981 | | 9-26-86 | 3,714 | | | 723 | 2,990 |
| ENVIRONMENTAL PROTECTION AGENCY | | | | | | | | | |
| Research and development | D87-54 | 11,000 | | 1-28-87 | | | | | 11,000 |
| Abatement, control, and compliance | D87-55 | 11,400 | | 1-28-87 | | | | | 11,400 |
| OTHER INDEPENDENT AGENCIES | | | | | | | | | |
| Commission on the Ukraine Famine<br>Salaries and expenses | D87-18 | 100 | | 9-26-86 | | | | | 100 |
| Office of the Federal Inspector for the Alaska Natural Gas Transportation System,<br>Salaries and expenses | D87-19 | 411 | | 9-26-86 | 411 | | | | 0 |
| Pennsylvania Avenue Development Corporation<br>Land acquisition and development fund | D87-20 | 11,873 | | 9-26-86 | | | | | 11,873 |
| United States Railway Association<br>Administrative expenses | D87-56 | 1,155 | | 1-28-87 | | | | | 1,155 |
| TOTAL, DEFERRALS | | 7,274,185 | 4,183,392 | | 4,765,912 | 28,559 | | 726 | 6,663,832 |

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D87-21) of outlays only.

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Part V

# Environmental Protection Agency

**40 CFR Part 795 et al.**

**Toxic Substances; Testing Requirements; Final Rules and Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 796, 797, and 798

[OPTS-42079A; FRL 3233-1]

## Revision of TSCA Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the Toxic Substances Control Act (TSCA) test guidelines to provide more explicit guidance on the necessary minimum elements for each study.

DATE: This rule shall become effective on June 19, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is revising certain provisions in 40 CFR Parts 796, 797 and 798 of the TSCA test guidelines.

### I. Background

Section 4(b)(1) of TSCA requires that test rules include standards for the development of test data. In the Federal Register of September 27, 1985 (50 FR 39252), EPA issued guidelines to be used in developing test standards in TSCA section 4 test rules. The TSCA guidelines, which are at Parts 796 (chemical fate), 797 (environmental effects), and 798 (health effects) of Part 40 of the Code of Federal Regulations (CFR), had been previously prepared for publication by EPA as OTS test guidelines or were published as Organization for Economic Cooperation and Development (OECD) Guidelines for the Testing of Chemicals. The TSCA guidelines were developed to serve as a consensus document, reflecting expert scientific opinion, subject to peer and public review. They present generally formulated procedures for laboratory testing of an effect or characteristic deemed important for the evaluation of health and environmental hazards of a chemical. It is the intent of the Agency that when these guidelines are promulgated as standards in chemical-specific test rules they will become mandatory and enforceable.

The Agency reviewed the TSCA test guidelines of September 27, 1985, and found that certain of the suggested or recommended elements of these guidelines were often made minimum requirements for individual test rules. As a result, EPA proposed in the Federal Register of January 14, 1986 (51 FR 1522), that these elements be incorporated into the guidelines on a generic basis. The Agency believed that these revised guidelines would provide more explicit guidance on the minimum requirements for each study and would avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules under TSCA.

Elements for which the Agency proposed revisions pertained to minimum requirements for test procedures, analytical measurements, test conditions, animal selection (number of species to be tested, age of animals, sex, number of animals per dose level), use of controls, number of dose levels, facilities (test apparatus, dilution water, test substance delivery system, test parameters), observation period, administration of the substance, observation of animals, clinical exams, gross necropsy, histopathology, and reporting of data.

### II. Provisions of Final Rule

The codified portion of this rule indicates the specific sections and paragraphs where changes in the TSCA test guidelines in 40 CFR Parts 796, 797, and 798 are made. An annotated copy of the TSCA test guidelines marking these changes is in the docket for this rulemaking. The guidelines for which revisions are made in this document are the following:

§ 796.1550 Partition coefficient (n-octanol/water).
§ 796.1840 Water solubility.
§ 796.1860 Water solubility (generator column method).
§ 796.2750 Sediment and soil adsorption isotherm.
§ 796.3100 Aerobic aquatic biodegradation.
§ 796.3140 Anaerobic biodegradability of organic chemicals.
§ 797.1050 Algal acute toxicity test.
§ 797.1300 Daphnid acute toxicity test.
§ 797.1330 Daphnid chronic toxicity test.
§ 797.1400 Fish acute toxicity test.
§ 797.1520 Fish bioconcentration test.
§ 797.1600 Fish early life stage toxicity test.
§ 797.1800 Oyster acute toxicity test.
§ 797.1830 Oyster bioconcentration test.
§ 797.1930 Mysid shrimp acute toxicity test.
§ 797.1950 Mysid shrimp chronic toxicity test.
§ 797.2150 Mallard reproduction test.
§ 798.2250 Dermal toxicity.
§ 798.2450 Inhalation toxicity.
§ 798.2650 Oral toxicity.
§ 798.3300 Oncogenicity.
§ 798.4350 Inhalation developmental toxicity.
§ 798.4420 Preliminary developmental toxicity screen.
§ 798.4700 Reproduction and fertility effects.
§ 798.4900 Developmental toxicity study.
§ 798.5200 Mouse visible specific locus test.
§ 798.5265 *Salmonella typhimurium* reverse mutation assay.
§ 798.5275 Sex-linked recessive lethal test in *Drosophila melanogaster*.
§ 798.5300 Detection of gene mutations in somatic cells in culture.
§ 798.5375 *In vivo* mammalian cytogenetics.
§ 798.5385 *In vivo* mammalian bone marrow cytogenetics tests: Chromosomal analysis.
§ 798.5395 *In vivo* mammalian bone marrow cytogenetics test: Micronucleus assay.
§ 798.5450 Rodent dominant lethal assay.
§ 798.5460 Rodent heritable translocation assays.
§ 798.6050 Functional observational battery.
§ 798.6200 Motor activity.
§ 798.6400 Neuropathology.

To conserve publication costs, EPA is not including a detailed discussion of public comments on the proposal in this preamble. EPA considered the public comments made by the 17 commenters and modified the proposal when warranted. A summary of the comments with the EPA response to these comments is contained in a separate document, which has been placed in the public record and which may be inspected at EPA in Rm. NE-G004, 401 M St., SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. Copies of the response to public comments may be obtained by writing the Freedom of Information Officer, U.S. Environmental Protection Agency, Mail Stop (A-101), 401 M St., SW., Washington, DC 20460.

Several comments addressed issues not raised in the January 14, 1986 proposal. These comments will be retained for consideration in the update of the guidelines.

Codification of these guidelines does not impose any regulatory obligation on any person who may be subject to a test rule under section 4 of TSCA. Specific guidelines will not become mandatory test standards until they are promulgated as such in individual section 4 rulemakings. When promulgated in such test rules, the relevent TSCA test guidelines will

become test standards for only that particular section 4 rule and will not serve as generic test standards. EPA may propose modifications to the various guidelines as they are utilized for chemical-specific test rules. In each chemical-specific rule, the proposed test standards and any modifications will be subject to public comment.

### III. Rulemaking Record

EPA has established a record for this rulemaking [Docket number OPTS-42079], which is available for inspection in Rm. NE-G004 at 401 M St., SW., Washington, DC 20460 from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The record includes information EPA considered in developing this rule. The record includes:

1. **Federal Register** documents pertaining to this rule.
2. Public comments.
3. The document responding to public comments.

### List of Subjects in 40 CFR Parts 796, 797, and 798

Chemicals, Chemical fate, Environmental effects, Environmental protection, Health effects, Testing.

Dated: May 4, 1987.

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, 40 CFR Chapter I is amended as follows:

## PART 796—[AMENDED]

I. In Part 796:

1. The authority citation for Part 796 continues to read as follows:

Authority: 15 U.S.C. 2603.

2. The section heading "796.3100 Anaerobic Aquatic Biodegradation" in the Part 796 table of contents is revised to read "796.3100 Aerobic aquatic biodegradation."

### § 796.1550 [Amended]

3. Section 796.1550 *Partition coefficient (n-octanol/water)* is amended in paragraph (b) as follows:

a. By removing the phrase "it is recommended that" or "it is extremely important that" or "it is important that" and changing the word "be" to "shall be" wherever they appear in paragraphs (b)(1) (ii), (iii) first sentence, (iv), (vi), (ix)(A) second sentence, and (xi), and (b)(2)(i)(A) except for the first and fourth sentences.

b. By changing the word "should" to "shall" wherever it appears in paragraph (b)(3)(vii) and by revising paragraph (b)(1)(vii), to read as follows:

(vii) *Chemical analysis of the octanol and water phases.* In determining the $K_{ow}$ value for any given solute, both the octanol and water phases shall be analyzed unless analysis of the octanol phase indicates a $\log_{10} K_{ow} > 6$ for the chemical. An analytical method shall be selected that is most applicable to the analysis of the specific chemical. Chromatographic methods are preferable because of their compound specificity in analyzing the parent chemical without interference from impurities. Whenever practicable, the chosen analytical method shall have a precision with ±5 percent.

c. By changing the word "can" to "shall" wherever it appears in paragraphs (b)(2)(i) (A) and (C) and by revising paragraph (b)(1)(viii) to read as follows:

(viii) *Emulsion and ultracentrifugation.* Gentle shaking shall be used to minimize the formation of emulsions. Ultracentrifugation is necessary to separate troublesome emulsions and to separate the octanol and water phases unless turbidometric measurements are used to demonstrate that the emulsion is broken. Ultracentrifugation shall be carried out at 25 °C for 20 minutes in a temperature-controlled ultracentrifuge. The acceleration (G) value required to break the emulsion and to achieve complete separation of the octanol and water phases shall be determined by trial-and-error experimentation.

d. By changing the word "can" to "shall" in certain sentences in paragraph (b)(3)(iv), which is revised to read as follows:

(iv) Centrifuge the samples at 25 °C for 20 minutes to break any emulsion and to separate the octanol and water phases. Evidence for breaking the emulsion and separation of the water and octanol phases can be obtained using a turbidimeter. The acceleration (G) value required to break the emulsion and to achieve complete separation of the octanol and water phases shall be determined by trial-and-error experimentation.

e. By revising paragraph (b)(3)(ix) to read as follows:

(ix) For materials that reversibly ionize or protonate, determine $K_{ow}$ at pH 5.0, 7.0, and 9.0 as described in paragraph (b)(1)(x) of this section. Follow the steps in paragraph (b)(1) (i) through (vii) of this section using the buffered aqueous solutions described in paragraph (b)(2)(i)(B) of this section. Using the acid dissociation constant and the concentration of the chemical in the aqueous phase [$C_{water}$], the term [ALPHA] can be calculated. The concentration of undissociated chemical can be determined from [ALPHA] and $C_{water}$.

f. By removing the phrase "It is extremely important that" and "it is recommended that", and changing the word "be" to "shall be" and "can" to "shall" and changing the number "0.0" to "9.0", wherever they appear in paragraph (b)(1)(x)(D) which is revised to read as follows:

(D) If a molecule dissociates or associates in octanol and water, then equation 1 under paragraph (a)(2)(i) of this section shall be modified to take into account such speciation changes as ionization, aggregation, and hydration. For the special case where no association takes place in water, equation 3 under paragraph (a)(2)(ii) of this section shall be used. For chemicals that reversibly ionize or protonate (e.g., carboxylic acids, phenols, or anilines), use equation 3 under paragraph (a)(2)(ii) of this section with water buffered at pH 5.0, 7.0, 9.0. Buffers described in paragraph (b)(2)(i)(B) of this section shall be used.

### § 796.1840 [Amended]

4. Section 796.1840 *Water solubility* is amended as follows:

a. Paragraph (b) is amended as follows:

i. By removing the phrase "it is recommended that" or "it is important that" and changing the word "be" to "shall be" wherever they appear in paragraphs (b)(1) (iii), (v), (vi)(A) first and third sentences, and (vii) first sentence and (b)(2)(ii).

ii. By changing the word "should" to "shall" wherever it appears in paragraphs (b)(1)(ix) and (b)(3)(i)(B).

iii. By changing the word "will" to "shall" wherever it appears in paragraph (b)(3)(ii)(B).

iv. By removing the phrase "it is extremely important that" and adding the word "shall" in paragraph (b)(1)(vi)(B), which is revised to read as follows:

(B) Centrifugation shall be carried out at two or three different G values (minimum of 12,000 G) for at least 30 minutes at 25 °C until concentration changes are small. For hydrophobic compounds (solubility <10 ppm), the acceleration G values shall differ by 10,000 G and include a determination of 39,000 or higher.

v. By changing the word "should" to "shall" in certain sentences in paragraph (b)(3)(i)(A), which is revised to read as follows:

(A) Dissolve a sufficient amount of the solid compound in suitable volatile organic solvent and coat on the walls of

a vessel. Viscous liquids may be coated on vessels in a similar fashion: Nonviscous liquids do not require solvents. Remove the solvent under reduced pressure or with a pure nitrogen gas stream. When all the solvent is removed, add reagent-grade water or, for compounds which reversibly ionize or protonate, the appropriate buffer solution and slowly stir or agitate the mixture under temperature control. Mixing may be accomplished by use of a Teflon-coated stirring bar and shall be continued for a minimum of 24 hours before aliquots are withdrawn. Prior to taking aliquots, the mixture shall be left to stand at constant temperature for at least 1 hour to permit separation of any small particles. To determine the concentration of the compound in the aqueous phase, aliquots shall be centrifuged at two or three different G values (minimum of 12,000 G) for at least 30 minutes at 25 °C until concentration changes are small. The concentration value so obtained is plotted against the time of mixing. At a later time, aliquots are again taken and analyzed in the same fashion to produce another data point on a concentration versus time plot. When the concentration reaches a plateau, equilibrium is assumed. For hydrophobic compounds (solubility <10 ppm) it is extremely important that the acceleration (G) values differ by 10,000 G and include a determination at 39,000 G or higher.

**§ 796.1860 [Amended]**

5. Section 796.1860 *Water solubility (generator column method)* is amended as follows:

a. Paragraph (b) is amended as follows:

i. By changing the word "are" to "shall be" wherever it appears in paragraph (b)(1)(i)(A).

ii. By changing the words "is recommended" to "shall be used" wherever they appear in paragraph (b)(1)(ii).

iii. By revising paragraph (b)(1)(iii) to read as follows:

(iii) *Purity of solvents.* It is important that all solvents used in this method be reagent grade or better. Solvents shall contain no impurities which could interfere with the determination of the test compound.

iv. By changing the word "should" to "shall" wherever it appears in paragraph (b)(1)(iv) and by revising paragraph (b)(1)(v) to read as follows:

(v) *Effect of pH on solubility.* For chemicals that reversibly ionize or protonate with a $pK_a$ or $pK_b$ between 3 and 11, experiments shall be performed at pH 5.0, 7.0, and 9.0 using appropriate buffers.

v. By removing the phrase "It is important that" and by changing the words "be dissolved" to "shall be dissolved" wherever they appear in paragraph (b)(2)(ii).

**§ 796.2750 [Amended]**

6. Section 796.2750 *Sediment and soil adsorption isotherm* is amended in paragraph (b) as follows:

a. The proposed change to paragraph (b)(1)(i)(A) is not being made based on comments received.

b. By changing the words "that are" to "shall be" wherever they appear in paragraph (b)(1)(i)(B).

c. By removing the phrase "It is recommended that" and by changing the word "be" to "shall be" wherever they appear in paragraphs (b)(1) (ii), (iii), and (vii) and by revising paragraph (b)(1)(vi) to read as follows:

(vi) *Solid/solution ratio.* The solid/solution ratio shall be equal to or greater than 1/10. If possible, the ratios should be equal to or greater than 1/5. The sediment or soil dry weight after drying for a 24-hour minimum at 90 °C is recommended for use as the weight of the solid for ratio and data calculations. If an insufficient amount of chemical remains in the water phase for quantification, the solid/solution ratio should be adjusted so that measurable amounts of the test chemical remain in solution.

d. By changing the phrase "It is extremely important that these" to "The following" and by changing the word "be" to "shall be" wherever they appear in paragraphs (b)(1) (iv) and (v) introductory text.

e. By revising paragraph (b)(1)(x), to read as follows:

(x) *Solvents for extraction.* It is important that the solvent used to extract the chemical from the sediment or soil is reagent grade or better. Solvents shall contain no impurities which could interfere with the determination of the test compound.

**§ 796.3100 [Amended]**

7. Section 796.3100 *Aerobic aquatic biodegradation* is amended as follows:

a. By changing the word "should" to "shall" wherever it appears in paragraphs (a) (4) and (8), (b)(1)(iii) and (2)(ii), and (c)(1)(iv) and (2)(i).

b. By changing the word "should" to "shall" in certain sentences in paragraph (b)(2)(vi), which is revised to read as follows:

(vi) Flasks shall be incubated in the dark to minimize both photochemical reactions and algal growth. Appropriate sterile controls or controls containing a metabolic inhibitor, such as 50 mg/l $HgCl_2$, are needed to correct for interferences due to nonbiological degradation. With volatile organic materials, sparging with $CO_2$-free air is performed only once, just prior to addition of the test chemical. Analyses for $CO_2$ evolution and DOC removal are conducted within 2 to 3 hours of sampling to minimize interferences which may occur in storage. All glassware should be free of organic carbon contaminants.

c. By changing the words "in the range of 80 to 100 percent" to "of at least 80 percent" wherever they appear in paragraph (c)(1)(v).

**§ 796.3140 [Amended]**

8. Section 796.3140 *Anaerobic biodegradability of organic chemicals* is amended as follows:

a. Paragraph (a) is amended by changing the word "should" to "shall" wherever it appears in paragraphs (a) (3) and (5).

b. Paragraph (b) is amended by changing the word "should" to "shall" wherever it appears in paragraphs (b)(1)(iii)(C), (2)(iii)(B) and (G), and (3)(i).

c. Paragraph (c)(2) is amended by adding an introductory phrase, as follows:

(2) *Test report.* The following shall be reported:

## PART 797—[AMENDED]

II. In Part 797:

1. The authority citation for Part 797 continues to read as follows:

Authority: 15 U.S.C. 2603.

**§ 797.1050 [Amended]**

2. Section 797.1050 *Algal acute toxicity test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(4)(iii) and (v) and (6)(i)(A) and by revising paragraph (c)(4)(v)(B) introductory text to read as follows:

(B) In test concentrations where growth is maximally inhibited, algistatic effects may be differentiated from algicidal effects by the following two methods for *Skeletonema* and by the second method for *Selenastrum.*

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(ii), which is revised to read as follows:

(ii) Algae should be exposed to five or more concentrations of the test chemical in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32, and 64 mg/l). Algae shall be placed in a

minimum of three replicate test containers for each concentration of test chemical and control. More than three replicates may be required to provide sufficient quantities of test solution for determination of test substance concentration at the end of the test. Each test chamber should contain equal volumes of test solution and approximately $1\times10^4$ *Selenastrum* cells/ml or $7.7\times10^4$ *Skeletonema* cells/ml of test solution. The chemical concentrations should result in greater than 90 percent of algal growth being inhibited or stimulated at the highest concentrations of test substance compared to controls.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(iv), which is revised to read as follows: .

(iv) The test begins when algae from 5- to 10-day-old stock cultures are placed in the test chambers containing test solutions having the appropriate concentrations of the test substance. Algal growth in controls should reach the logarithmic growth phase by 96 hours. If logarithmic growth cannot be demonstrated, the test shall be repeated. At the end of 24, 48, 72, and 96 hours the algal growth response (number or weight of algal cells/ml) in all test containers and controls shall be determined by an indirect (spectrophotometry, electronic cell counters, dry weight, etc.) or a direct (actual microscopic cell count) method. Indirect methods shall be calibrated by a direct microscopic count. The percentage inhibition or stimulation of growth for each concentration, $EC_{10}$, $EC_{50}$, $EC_{90}$ and the concentration-response curves are determined from these counts.

iv. The proposed change to paragraph (c)(6)(ii) is not being made based on comments received.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1), (2) (iii) and (vi), and (3) (ii) and (v).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(v)(A), which is revised to read as follows:

(A) Formulation and sterilization of nutrient medium used for algal culture and preparation of test solutions should conform to those currently recommended by the U.S. EPA for freshwater and marine algal bioassays. No chelating agents are to be included in the nutrient medium used for test solution preparation. Nutrient medium should be freshly prepared for algal testing and may be dispensed in appropriate volumes in test containers and sterilized by autoclaving or filtration. The pH of the nutrient medium shall be 7.5 (±0.1) for *Selenastrum* and 8.1 (±0.1) for *Skeletonema* at the start of the test and may be adjusted prior to test chemical addition with 0.1N NaOH or HCl.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(i), which is revised to read as follows:

(i) The test temperature shall be 24 °C for *Selenastrum* and 20 °C for *Skeletonema*. Excursions from the test temperature shall be no greater than ±2 °C. Temperature should be recorded hourly during the test.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(iii), which is revised to read as follows:

(iii) Stock algal cultures should be shaken twice daily by hand. Test containers shall be placed on a rotary shaking apparatus and oscillated at approximately 100 cycles/minute for *Selenastrum* and at approximately 60 cycles/minute for *Skeletonema* during the test. The rate of oscillation should be determined at least once daily during testing.

v. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(iv) which is revised to read as follows:

(iv) The pH of nutrient medium in which algae are subcultured shall be 7.5 (±0.1) for *Selenastrum* and 8.1 (±0.1) for *Skeletonema*, and is not adjusted after the addition of the algae. The pH of all test solutions shall be measured at the beginning and end of the test.

c. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in the introductory text of paragraph (e).

ii. By revising paragraph (e)(4), to read as follows:

(4) The number of algal cells per milliliter in each treatment and control and the method used to derive these values at the beginning, 24, 48, and 72 hours, and end of the test; the percentage of inhibition or stimulation of growth relative to controls; and other adverse effect in the control and in each treatment.

iii. By revising paragraph (e)(5), to read as follows:

(5) The 96-hour $EC_{10}$, $EC_{50}$, and $EC_{90}$ values, and when sufficient data have been generated, the 24, 48, and 72 hour $LC_{50}$'s and 95 percent confidence limits, the methods used to derive these values, the data used to define the shape of the concentration-response curve and the goodness-of-fit determination.

**§ 797.1300 [Amended]**

3. Section 797.1300 *Daphnid acute toxicity test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(4) (iii) and (vi).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(viii), which is revised to read as follows:

(viii) The concentration of the test chemical in the chambers should be measured as often as is feasible during the test. In the static test the concentration of test chemical shall be measured, at a minimum, at the beginning of the test and at the end of the test in each test chamber. In the flow-through test the concentration of test chemical shall be measured at a minimum:

(A) In each chamber at the beginning of the test and at 48 hours after the start of the test;

(B) In at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system.

Among replicate test chambers of a treatment concentration, the measured concentration of the test chemical shall not vary more than ±20 percent.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(i), which is revised to read as follows:

(i) *Test chemical.* Deionized water should be used in making stock solutions of the test chemical. Standard analytical methods should be used whenever available in performing the analyses. The analytical method used to measure the amount of test chemical in a sample shall be validated before beginning the test by appropriate laboratory practices. Any analytical method is not acceptable if likely degradation products of the test chemical, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

iv. By changing the word "should" to "shall" wherever it appears in paragraph (c)(4)(iv) which is revised to read as follows:

(iv) The dissolved oxygen concentration, temperature and pH shall be measured at the beginning and end of the test in each chamber.

v. By changing the word "should" to "shall" wherever it appears in paragraph (c)(4)(v), which is revised to read as follows:

(v) The test duration is 48 hours. The test is unacceptable if more than 10 percent of the control organisms are immobilized during the 48-hour test period. Each test chamber shall be checked for immobilized daphnids at 24 and 48 hours after the beginning of the test. Concentration-response curves and 24-hour and 48-hour $EC_{50}$ values for immobilization shall be determined along with their 95 percent confidence limits.

vi. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(vii), which is revised to read as follows:

(vii) Test organisms shall be impartially distributed among test chambers in such a manner that test results show no significant bias from the distributions. In addition, test chambers within the testing area shall be positioned in a random manner or in a way in which appropriate statistical analyses can be used to determine the variation due to placement.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(ii), which is revised to read as follows:

(ii) *Numerical.* The number of immobilized daphnids shall be counted during each definitive test. Appropriate statistical analyses should provide a goodness-of-fit determination for the concentration-response curves. A 24- and 48-hour $EC_{50}$ and corresponding 95 percent interval shall be calculated.

viii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(ii), which is revised to read as follows:

(ii) A minimum of 20 daphnids per concentration shall be exposed to five or more concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32, and 64 mg/l). An equal number of daphnids shall be placed in two or more replicates. If solvents, solubilizing agents or emulsifiers have to be used, they shall be commonly used carriers and shall not possess a synergistic or antagonistic effect on the toxicity of the test chemical. The concentration of solvent should not exceed 0.1 mg/l. The concentration ranges shall be selected to determine the concentration-response curves and $EC_{50}$ values at 24 and 48 hours. Concentration of test chemical in test solutions should be analyzed prior to use.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1)(i)(C) and (iv), (d)(2)(i) (A) and (C), (iii) (B) and (C), and (d)(3).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(i)(B), which is revised to read as follows:

(B) Daphnids to be used in acute toxicity tests should be cultured at the test facility. Records should be kept regarding the source of the initial stock and culturing techniques. All organisms used for a particular test shall have originated from the same culture population.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(ii)(A), which is revised to read as follows:

(A) Brood daphnids shall be maintained in 100-percent dilution water at the test temperature for at least 48 hours prior to the start of the test. This is easily accomplished by culturing them in the dilution water at the test temperature. During production of neonates, daphnids should not be fed.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(iii)(A), which is revised to read as follows:

(A) Daphnids should be cultured in dilution water under similar environmental conditions to those used in the test. Organisms should be handled as little as possible. When handling is necessary it should be done as gently, carefully, and quickly as possible. During culturing and acclimation, daphnids should be observed carefully for ephippia and other signs of stress, physical damage and mortality. Dead and abnormal individuals shall be discarded. Organisms that touch dry surfaces or are dropped or injured in handling shall be discarded.

v. The proposed change to paragraph (d)(2)(ii)(A) is not being made based on comments received.

vi. The proposed change to paragraph (d)(2)(iii)(A) is not being made based on comments received.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(v), which is revised to read as follows:

(v) *Test subetance delivery system.* In flow-through tests, proportional diluters, metering pump systems, or other suitable devices should be used to deliver test chemical to the test chambers. The system shall be calibrated before each test. Calibration includes determining the flow rate through each chamber and the concentration of the test chemical in each chamber. The general operation of the test subetance delivery system should be checked twice during a test. The 24-hour flow through a test chamber shall be equal to at least 5 times the volume of the test chamber. During a test, the flow rates should not vary more than 10 percent from any one test chamber to another.

viii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(iii), which is revised to read as follows:

(iii) The number of daphnids placed in a test chamber shall not affect test results. Loading shall not exceed 40 daphnids per liter test solution in the static system. In the flow-through test, loading limits will vary depending on the flow rate of dilution water. Loading shall not cause the dissolved oxygen concentration to fall below the recommended levels.

ix. By changing the word "should" to "shall" wherever it appears in paragraph (d)(2)(iv), which is revised to read as follows:

(iv) *Cleaning.* All test equipment and test chambers shall be cleaned before each use using standard laboratory procedures.

x. By revising paragraph (d)(3)(i), to read as follows:

(i) The test temperature shall be 20 °C. Excursions from the test temperature shall be no greater than ±2 °C.

xi. By revising paragraph (d)(3)(iv), to read as follows:

(iv) Photoperiod of 16 hours light and 8 hours darkness.

c. Paragraph (e) is amended by changing the word "should" to "shall" wherever it appears in the introductory text of paragraph (e) and by revising paragraph (e)(4) as follows:

(4) Detailed information about the daphnids used as brood stock, including the scientific name and method of verification, age, source, treatments, feeding history, acclimation procedures, and culture method. The age of the daphnids used in the test shall be reported.

**§ 797.1330 [Amended]**

4. Section 797.1330 *Daphnid chronic toxicity test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraph (c)(4) and by revising paragraph (c)(4)(vii) to read as follows:

(vii) Test organisms shall be impartially distributed among test chambers in such a manner that test results show no significant bias from the distributions. In addition, test chambers within the testing area shall be positioned in a random manner as in a way in which appropriate statistical analyses can be used to determine the variation due to placement.

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6) (i) and (ii), which are revised to read as follows:

(i) *Test chemical.* Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be used whenever available in performing the analyses. The analytical method used to measure the amount of test substance in a sample shall be validated before beginning the test by appropriate laboratory practices. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

(ii) *Numerical.* The number of immobilized adults, total offspring per adult, and immobilized offspring per adult shall be counted during each test. Appropriate statistical analyses should provide a goodness-of-fit determination for the adult immobilization concentration-response curves calculated on day 21. A 21-day $EC_{20}$ based on adult immobilization and corresponding 95 percent confidence intervals shall also be calculated. Appropriate statistical tests (e.g., analysis of variance, mean separation test) should be used to test for significant chemical effects on chronic test criteria (cumulative number of immobilized adults, cumulative number of offspring per adult and cumulative number of immobilized offspring per adult) on day 21. An MATC shall be calculated using these chronic test criteria.

iii. By revising paragraph (c)(4)(v), to read as follows:

(v) The number of immobilized daphnids in each chamber shall be recorded on day 21 of the test. After offspring are produced, they shall be counted and removed from the test chambers every 2 or 3 days. Concentration-response curves, $EC_{20}$ values and associated 95 percent confidence limits for adult immobilization shall be determined for day 21. An MATC shall be determined for the most sensitive test criteria measured (number of adult animals immobilized, number of young per adult, and number of immobilized young per adult).

iv. By revising paragraph (c)(4)(ii), to read as follows:

(ii) A minimum of 20 daphnids per concentration shall be exposed to five or more concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32, 64 mg/l). An equal number of daphnids shall be placed in two or more replicates. The concentration ranges shall be selected to determine the concentration-response curves, $EC_{20}$ values and MATC. Solutions shall be analyzed for chemical concentration at designated times during the test.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1)(i)(B), (ii)(A), (iv), and (vi)(A), (2)(i)(A), (ii) (C) and (D), (iv) (B) and (C), and (3)(i)(B) and by revising paragraph (d)(1)(vi)(A) to read as follows:

(A) Based daphnids shall be maintained in 100 percent dilution water at the test temperature for at least 48 hours prior to the start of the test. This is easily accomplished by culturing them in dilution water at the test temperature. During acclimation, daphnids shall be fed the same food as will be used for the definitive test.

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(ii)(A), which is revised to read as follows:

(A) Daphnids to be used in chronic toxicity tests should be cultured at the test facility. Records should be kept regarding the source of the initial stock and culturing techniques. All organisms used for a particular test shall have originated from the same culture population.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(iv)(B), which is revised to read as follows:

(B) Organisms should be handled as little as possible. When handling is necessary it should be done as gently, carefully, and quickly as possible. During culturing and acclimation, daphnids should be observed carefully for ephippia and other signs of stress, physical damage, and mortality. Dead and abnormal individuals shall be discarded. Organisms that touch dry surfaces or are dropped or injured during handling shall be discarded.

iv. The proposed change to paragraph (d)(2)(iv)(A) is not being made based on comments received.

v. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(iii)(B), which is revised to read as follows:

(B) The test substance delivery system shall be calibrated before each test. Calibration includes determining the flow rate through each chamber and the concentration of the test substance in each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow rate through a test chamber shall be equal to at least five times the volume of the test chamber. During a test, the flow rates shall not vary more than 10 percent from any one test chamber to another. For the renewal test, test substance dilution water shall be completely replaced at least once every 8 days.

vi. The proposed change to paragraph (d)(3)(iv)(A) is not being made based on comments received.

vii. By changing the "should" to "shall" wherever it appears in paragraph (d)(3)(v), which is revised to read as follows:

(v) *Cleaning of test system.* All test equipment and test chambers shall be cleaned before each use following standard laboratory procedures. Cleaning of test chambers may be necessary during the testing period.

viii. By revising paragraph (d)(3)(vi)(A) to read as follows:

(A) The test temperature shall be 20 °C. Excursions from the test temperature shall be no greater than ±2 °C.

ix. By revising paragraph (d)(3)(vii)(A), to read as follows:

(A) The concentration of the test substance in the chambers shall be measured during the test.

x. By revising paragraph (d)(3)(viii)(B)(2) to read as follows:

(2) In at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system. Equal aliquots of test solution may be removed from each replicate chamber and pooled for analysis. Among replicate test chambers of a treatment concentration, the measured concentration of the test substance should not vary more than 20 percent.

xi. By revising paragraph (d)(3)(ix)(C), to read as follows:

(C) The dissolved oxygen concentration, temperature and pH shall be measured at the beginning of the test and on days 7, 14, and 21 in at least two chambers of the high, middle, low, and control test concentrations.

xii. By revising paragraph (d)(3)(x)(A)(2), to read as follows:

(2) An apparatus for providing a 16-hour light and 8-hour dark photoperiod.

xiii. By revising (d)(3)(x)(C), to read as follows:

(C) Photoperiod of 16 hours light and 8 hours darkness.

c. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraph (e).

ii. By revising paragraph (e)(6), to read as follows:

(4) Detailed information about the daphnids used as brood stock, including the scientific name and method of verification, age, source, treatments, feeding history, acclimation procedures, and culture methods. The age of the daphnids used in the test shall be reported.

iii. By removing the phrase "7, 14 or" wherever it appears in paragraph (e)(12).

iv. By removing the phrase "7, 14 and" wherever it appears in paragraph (e)(13).

v. By amending the phrase "days 7, 14 and 21" to read "day 21" wherever it appears in paragraph (e)(14).

**§ 797.1400 [Amended]**

5. Section 797.1400 *Fish acute toxicity test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c) (4)(iii) and (5) and by revising paragraph (c)(6)(iii)(A) to read as follows:

(iii) *Measurement of test substance.* (A) For static tests, the concentration of the test substance shall be measured at a minimum in each test chamber at each test concentration at the beginning (0-hour, before fish are added) and at the end of the test. During flow-through tests, the concentration of test substance shall be measured as follows:

(*1*) In at least the chamber of each test concentration at 0-hour.

(*2*) In at least the chamber of each test concentration at 96-hours and every 4 days thereafter, as long as the test is continued.

(*3*) In at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system.

(*4*) Equal aliquots of test solution may be removed from each replicate chamber and pooled for analysis.

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(ii), which is revised to read as follows:

(ii) For exposure to each concentration of a test substance, an equal number of test fish shall be placed in two or more replicate test chambers. Test fish shall be impartially distributed among test chambers in such a manner that test results show no significant bias from the distributions.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(iv), which is revised to read as follows:

(iv) Mortality data collected during the test are used to calculate a 96-hour $LC_{50}$. The 24-, 48-, and 72-hour values should be calculated whenever there is sufficient mortality data to determine such values. If the 96-hour $LC_{50}$ is less than 50 percent of the estimated 48-hour $LC_{50}$ in a flow-through test, the test shall be continued until the mean increase in mortality at any test concentration does not exceed 10 percent over a 24-hour period or until 14 days.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(v), which is revised to read as follows:

(v) Test fish shall not be fed while they are being exposed to the test substance under static conditions or during the first 96 hours of flow-through testing. If the test continues past 96 hours, the fish should be fed a suitable food at a maintenance level every other day beginning on test day 5. Any excess food and the fecal material should be removed when observed.

v. The proposed change to paragraph (c)(6)(i)(A) is not being made based on comments received.

vi. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(i)(B), which is revised to read as follows:

(B) During static tests, the dissolved oxygen concentration, temperature, and pH shall be measured in each test chamber at the beginning and end of the test. The test solution volume shall not be reduced by more than 10 percent as a result of these measurements.

vii. By changing the word "should" to "shall" wherever it appears in paragraph (c)(6)(i)(C), which is revised to read as follows:

(C) During flow-through tests, dissolved oxygen, temperature and pH measurements shall be made in each chamber at the beginning and end of the test.

viii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(iii)(C), which is revised to read as follows:

(C) The analytical methods used to measure the amount of test substance in a sample shall be validated before beginning the test. The accuracy of a method should be verified by a method such as using known additions. This involves adding a known amount of the test substance to three water samples taken from a chamber containing dilution water and the same number and species of fish as are used in the test. The nominal concentration of the test substance in those samples should span the concentration range to be used in the test.

ix. By changing the word "should" to "shall" in certain sentences of paragraph (c)(6)(iii)(G), which is revised to read as follows:

(G) Among replicate test chambers, the measured concentrations shall not vary more than 20 percent. The measured concentration of the test substance in any chamber during the test should not vary more than 30 percent from the measured concentration at time 0.

x. By changing the word "should" to "shall" wherever it appears in paragraph (c)(6)(iii)(H), which is revised to read as follows:

(H) The mean measured concentration of test substance shall be used to calculate all $LC_{50}$'s and to plot all concentration-response curves.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d) (1)(ii) (A), (C), and (3)(ii).

ii. By revising paragraph (d)(2)(iii) to read as follows:

(iii) *Test substance delivery system.* In flow-through tests, diluters, metering pump systems, or other suitable devices should be used to deliver the test substance to the test chambers. The system used should be calibrated before each test. Calibration includes determining the flow rate through each chamber and the concentration of the test substance delivered to each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow rate through a test chamber should be a minimum of 6 tank volumes. During a test, the flow rates should not vary more than 10 percent from one test chamber to another.

iii. The proposed change to paragraph (d)(2)(vi)(A) is not being made based on comments received.

iv. The proposed change to paragraph (d)(3)(i) is not being made based on comments received.

v. By revising paragraphs (d)(3) (iii) and (iv), to read as follows:

(iii) *Temperature.* The test temperature shall be 22 °C for rainbow trout. Excursions from the test temperature shall be no greater than ±2 °C. The temperature shall be measured at least hourly in one test chamber.

(iv) *Light.* A 16-hour light and 8-hour dark photoperiod should be maintained.

c. Paragraph (e) is amended by changing the word "should" to "shall" wherever it appears and by revising paragraph (e)(7) to read as follows:

(7) The concentrations of the test substance at each test concentration just before the start of the test and at all subsequent sampling periods.

**§ 797.1520 [Amended]**

6. Section 797.1520 *Fish bioconcentration test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(4)(i), (ii)(B), (iii)(C), (v)(B); (vi), (vii), and (viii)(C) and (5)(i) and (ii)(C).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(ii)(A), which is revised to read as follows:

(A) At least one concentration shall be tested to assess the propensity of the compound to bioconcentrate. The concentration selected should not stress or adversely affect the fish and should be less than one-tenth the 96-hour or incipient $LC_{50}$ determined from a flow-through test with fathead minnows. The test concentration shall be less than the solubility limit of the compound in water. The test concentration should be close to the potential or expected environmental concentration. The limiting factor of how low one can test is based on the detection limit of the analytical methods. The concentration of the test material in the test solution should be at least 5 times greater than the detection limit in water.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(iii)(A), which is revised to read as follows:

(A) An estimate of the length of the uptake and depuration phases should be made prior to testing. This will allow the most effective sampling schedule to be determined. The uptake phase shall continue until steady-state has been reached, but need not be longer than 28 days. The test shall continue for at least 4 days.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(iv)(A), which is revised to read as follows:

(A) The test shall not be started until the test substance delivery system has been observed to be functioning properly for at least 48 hours. This time should be sufficient to allow the test substance concentration to become equilibrated with the test exposure system. Analyses of two sets of test solution samples taken prior to test initiation should document this equilibrium [i.e., the concentrations do not vary more than 20 percent from each other]. At initiation [time 0], test solution samples shall be collected immediately prior to the addition of fish to the test chambers.

v. By changing the word "should" to "shall" in certain sentences in paragraph (c)(5)(i)(A), which is revised to read as follows:

(A) All samples shall be analyzed using EPA methods and guidelines whenever feasible. The specific methodology used shall be validated before the test is initiated. The accuracy of the method should be measured by the method of known additions. This involves adding a known amount of the test substance to three water samples taken from an aquarium containing dilution water and a number of fish equal to that to be used in the test. The nominal concentration of these samples should be the same as the concentration to be used in the test. Samples taken on 2 separate days should be analyzed. The accuracy and precision of the analytical method should be checked using reference or split samples or suitable corroborative methods of analysis. The accuracy of standard solutions should be checked against other standard solutions whenever possible.

vi. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(v)(A), which is revised to read as follows:

(A) Fish shall be fed once a day throughout the uptake and depuration phases. Feeding shall be done just after sampling to minimize the effects of the test substance present in the gut when sampling. Fish should be fed the same food at a similar quantity as they received during holding and acclimation.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(5)(ii)(D), which is revised to read as follows:

(D) When radiolabelled test compounds are used, total radioactivity shall be measured in all samples. At the end of the uptake phase, water and tissue samples should be analyzed using appropriate methodology to identify and estimate the amount of any major (>10 percent of the parent compound) degradation products or metabolites that may be present.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1)(i) (A), (C), and (D), and (iv), and (d)(2)(i)(A) and (3)(i).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(i)(B), which is revised to read as follows:

(B) Immature fish should be used. They shall be young enough so as not to mature during the test. Fish used in the same test should be as similar in size as possible to reduce variability. The standard deviation of the weight should be less than 20 percent of the mean (N=30).

iii. By changing the word "should" to "shall" in certain sentences in paragraphs (d)(1)(ii) (B) and (C), which are revised to read as follows:

(B) During holding, the fish should not be crowded and the dissolved oxygen concentration shall be above 60 percent saturation. Holding tanks should be kept clean and free of debris. Fish should be fed at least once a day with a food which will support their survival and growth.

(C) Fish shall be handled as little as possible. When handling is necessary, it should be done as gently, carefully, and quickly as possible using dip nets made of small mesh nylon, silk, bolting cloth, plankton netting, or other similar knotless materials. Handling equipment should be sterilized between uses by autoclaving, treating with an iodopher or with 200 mg hypochlorite/liter.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(iii), which is revised to read as follows:

(iii) *Acclimation.* If the holding water is not from the same source as the test dilution water, acclimation to the dilution water should be done over a period of 2 or more days. The fish should then be held an additional 14 days in the dilution water prior to testing. Any changes in water temperature should not exceed 3 °C per day over 72 hours. Fish shall be held for at least 2 days at the test temperature prior to testing.

v. The proposed change to paragraph (d)(2)(i)(E), is not being made based on comments received.

vi. The proposed change to paragraph (d)(3)(v) is not being made based on comments received.

vii. By changing the word "should" to "shall" in certain sentences in paragraphs (d)(2)(i) (B) and (C), which are revised to read as follows:

(B) The total hardness, alkalinity, pH, specific conductance, temperature and dissolved oxygen concentration of the dilution water shall be determined weekly. The pH should not vary more than 0.4 unit and the other parameters more than 10 percent on a monthly basis.

(C) Reconstituted soft water, if used, should be prepared by adding 4.8 g $NaHCO_3$, 3.0 g $CaSO_4 \cdot 2H_2O$, 2.0 g $MgSO_4$, and 200 mg KCl to each 100 L of deionized or glass-distilled water, or to dechlorinated tap water with a total residual chlorine concentration less than 1 µg/l. In all cases the specific conductance at 25 °C of the water source shall be less than 1 micromho/cm.

viii. By revising paragraph (d)(2)(ii) to read as follows:

(ii) *Temperature.* The test temperature shall be 22 °C. Excursions from the test

temperature shall be no greater than ± 2 °C.

c. Paragraph (e) is amended by changing the word "should" to "shall" whenever it appears.

**§ 797.1600 [Amended]**

7. Section 797.1600 *Fish early life stage toxicity test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(1)(iii) introductory text and (A); (4) (i)(A), (iii), (iv), (vii), (ix), and (x), (D), (E), and (G); (5) (i), (ii) introductory text, and (iii)(D); and (6)(iii).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(i)(D), which is revised to read as follows:

(D) When embryos are received from an outside culture source (i.e., rainbow and brook trout) at a temperature at variance with the recommended test temperature they shall be acclimated to the test temperature. When eggs are received, they should be immediately unpacked and the temperature of the surrounding water determined. Sudden temperature changes should be avoided. Acclimation to the appropriate test temperature should be accomplished within a period of 6 hours, and should incorporate the use of dilution water.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(i)(E) which is revised to read as follows:

(E) Embryos should be visually inspected prior to placement in the embryo cups or screen trays. All dead embryos shall be discarded. Dead embryos can be discerned by a change in coloration from that of living embryos (e.g., trout embryos turn white when dead). During visual inspection, empty shells, opaque embryos, and embryos with fungus or partial shells attached shall be removed and discarded. If less than 50 percent of the eggs to be used appear to be healthy, all embryos in such a lot shall be discarded.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(ii)(B), which is revised to read as follows:

(B) Each day until hatch the embryos are visually examined. Minnow embryos may be examined with the aid of a magnifying viewer. Trout embryos should not be touched. Trout embryos should be maintained in low intensity light or in darkness until 1-week post hatch, and are usually examined with the aid of a flashlight or under low intensity light. Dead embryos should be removed and discarded. Any embryos which are heavily infected with fungus shall be discarded and shall be subtracted from the initial number of embryos used as a basis for the calculations of percentage hatch.

v. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(v)(A), which is revised to read as follows:

(A) The fathead and sheepshead minnow fry shall be fed newly hatched brine shrimp nauplii for the duration of the test at approximately 4-hour intervals three times a day during the week and twice on the weekend after the first week. Trout fry shall be fed at similar intervals and may receive live brine shrimp nauplii in addition to the trout starter food after the first week. Between days 1 and 8 after first hatching, silverside fry are fed the rotifer, *Brachionus plicatilis*, three times daily at a concentration of 5,000 to 10,000 organisms per egg cup (based on 15 fish/cup). From days 9 to 11, the fry shall be fed approximately 2,500 newly hatched brine shrimp (*Artemia*) nauplii and 5,000 to 10,000 rotifers twice daily. For the remainder of the test, the fish will be fed brine shrimp exclusively. The number of organisms used should be gradually increased to approximately 5,000 nauplii by test day 28.

vi. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(viii), which is revised to read as follows:

(viii) *Randomization.* The location of all test chambers within the test system shall be randomized. A representative sample of the test embryos should be impartially distributed by adding to each cup or screen tray no more than 20 percent of the number of embryos to be placed in each cup or screen tray and repeating the process until each cup or screen tray contains the specified number of embryos. Alternatively, the embryos can be assigned by random assignment of a small group (e.g., 1 to 5) of embryos to each embryo cup or screen tray, followed by random assignment of a second group of equal number to each cup or tray, which is continued until the appropriate number of embryos are contained in each embryo cup or screen tray. The method of randomization used shall be reported.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(x)(F), which is revised to read as follows:

(F) At termination, all surviving fish shall be measured for growth. Standard length measurements should be made directly with a caliper, but may be measured photographically. Measurements shall be made to the nearest millimeter (0.1 mm is desirable). Weight measurements shall also be made for each fish alive at termination (wet, blotted dry, and to the nearest 0.01 g for the minnows and 0.1 g for the trout). If the fish exposed to the toxicant appear to be edematous compared to control fish, determination of dry, rather than wet, weight is recommended.

viii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(iv)(A), which is revised to read as follows:

(A) Prior to the addition of the test substance to the dilution water, it is recommended that the test substance stock solution be analyzed to verify the concentration. After addition of the test substance, the concentration of test substance should be measured at the beginning of the test in each test concentration and control(s), and at least once a week thereafter. Equal aliquots of test solution may be removed from each replicate chamber and pooled for analysis. If a malfunction in the delivery system is discovered, water samples shall be taken from the affected test chambers immediately and analyzed.

ix. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(v)(B), which is revised to read as follows:

(B) For measurement of the test substance, water samples shall be taken midway between the top, bottom, and sides of the test chamber and should not include any surface scum or material stirred up from the bottom or sides. Samples of test solutions shall be handled and stored appropriately to minimize loss of test substance by microbial degradation, photodegradation, chemical reaction, volatilization, or sorption.

x. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(v)(C), which is revised to read as follows:

(C) Chemical and physical analyses shall be performed using standardized methods whenever possible. The analytical method used to measure the concentration of the test substance in the test solution shall be validated before the beginning of the test. At a minimum, a measure of the accuracy of the method should be obtained on each of two separate days by using the method of known additions, and using dilution water from a tank containing test organisms. Three samples should be analyzed at the next-to-lowest test substance concentration. It is also desirable to study the accuracy and precision of the analytical method for test guideline determination by use of

reference (split) samples, or interlaboratory studies, and by comparison with alternative, reference, or corroborative methods of analysis.

xi. By revising paragraph (c)(1)(iii)(B) to read as follows:

(B) At least 60 embryos divided equally in such a manner that test results show no significant bias from the distributions, between the embryo incubation trays or cups for each test concentration and control (i.e., 30 per embryo cup with 2 replicates);

xii. By changing the word "should" to "shall" in certain sentences of paragraphs (c)(4)(x) (A) and (B), which are revised to read as follows:

(A) Death of embryos shall be recorded daily.

(B) When hatching commences, daily records of the number of embryos remaining in each embryo cup are required. This information is necessary to quantify the hatching success. A record of all deformed larvae shall be kept throughout the entire post-hatch exposure. Time to swim-up shall be recorded for the trout. Upon transfer of fry from the embryo cups to the test chambers, daily counts of the number of live fish should be made. At a minimum, live fish shall be counted on days 4, 11, 18, 25 and (weekly thereafter for the trout species) finally on termination of the test.

xiii. By changing the word "should" to "shall" in certain sentences of paragraphs (c)(6) (i) and (ii), which are revised to read as follows:

(i) *Analysis of water quality.* Measurement of certain dilution water quality parameters shall be performed every 6 months, to determine the consistency of the dilution water quality. In addition, if data in 30-day increments are not available to show that freshwater dilution water is constant, measurements of hardness, alkalinity, pH, acidity, conductivity, TOC or COD and particulate matter should be conducted once a week in the highest test substance concentration. Measurement of calcium, magnesium, sodium, potassium, chloride, and sulfate is desirable.

(ii) *Dissolved oxygen measurement.* The dissolved oxygen concentration shall be measured in each test chamber at the beginning of the test and at least once weekly thereafter (as long as live organisms are present) in two replicates of the control and the high, medium, and low test substance concentrations.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1)(ii) introductory text and (ii)(B); (2)(ii)(C), (iii)(A), (iv)(C), (vii)(C)(*1*); and (3) (i) and (iv) (A), (B), and (C).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(ii)(A), which is revised to read as follows:

(A) All embryos used in the test shall be from the same source. Embryos shall be obtained from a stock cultured in-house when possible, and maintained under the same parameters as specified for the test conditions. When it is necessary to obtain embryos from an external source, caution should be exercised to ensure embryo viability and to minimize the possibility of fungal growth. A description of the brood stock history or embryo source shall be made available to EPA upon request.

iii. The proposed change to paragraph (d)(1)(ii)(C) is not being made based on comments received.

iv. The proposed change to paragraph (d)(1)(ii)(E) is not being made based on comments received.

v. The proposed change to paragraph (d)(2)(i) is not being made based on comments received.

vi. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(iv)(A), which is revised to read as follows:

(A) The choice of a specific delivery system depends upon the specific properties and requirements of the test substance. The apparatus used should accurately and precisely deliver the appropriate amount of stock solution and dilution water to the test chambers. The system selected shall be calibrated before each test. Calibration includes determining the flow rate through each chamber, and the proportion of stock solution to dilution water delivered to each chamber. The general operation of the test substance delivery system shall be checked at least twice daily for normal operation throughout the test. A minimum of five test substance concentrations and one control shall be used for each test.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(vii)(A)(*1*), which is revised to read as follows:

(*1*) A constant supply of acceptable dilution water should be available for use throughout the test. Dilution water shall be of a minimum quality such that the test species selected will survive in it for the duration of testing without showing signs of stress (e.g., loss of pigmentation, disorientation, poor response to external stimuli, excessive mucous secretion, lethargy, lack of feeding, or other unusual behavior). A better criterion for an acceptable dilution water for tests on early life stages should be such that the species selected for testing will survive, grow, and reproduce satisfactorily in it.

viii. By changing the word "should" to "shall" in certain sentences in paragraphs (d)(2)(vii)(A) (*2*), and (*3*), which are revised to read as follows:

(*2*) The concentration of dissolved oxygen in the dilution water (fresh or salt) shall be between 90 percent and 100 percent saturation. When necessary, dilution water should be aerated by means of airstones, surface aerators, or screen tubes before the introduction of the test substance.

(*3*) Water that is contaminated with undesirable microoganisms (e.g., fish pathogens) shall not be used. If such contamination is suspected, the water should be passed through a properly maintained ultraviolet sterilizer equipped with an intensity meter before use. Efficacy of the sterilizer can be determined by using standard plate count methods.

ix. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(iii)(B), which is revised to read as follows:

(B) Excursions from the test temperature shall be no greater than ±2.0° C. It is recommended that the test system be equipped with an automatic alarm system to alert staff of instantaneous temperature changes in excess of 2 °C. If the water is heated (i.e., for minnow species), precautions should be taken to ensure that supersaturation of dissolved gases is avoided. Temperatures shall be recorded in all test chambers at the beginning of the test and weekly thereafter. The temperature shall be recorded at least hourly in one test chamber throughout the test.

x. Paragraph (d)(3)(iv)(E) is revised to read as follows:

(E) Light intensities ranging from 30 to 100 lumens at the water surface shall be provided; the intensity selected should be duplicated as closely as possible for all test chambers.

xi. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(ii)(B), which is revised to read as follows:

(B) A lower loading or higher flow rate or both shall be used if necessary to meet the following three criteria at all times during the test in each chamber containing live test organisms:

(1) The concentration of dissolved oxygen shall not fall below 75 percent saturation for the fathead and sheepshead minnows and 90 percent for the rainbow and brook trout;

(2) The concentration of un-ionized ammonia should not exceed 1 μg/1; and

(3) The concentration of toxicant should not be lowered (i.e., caused by uptake by the test organisms and/or materials on the sides and bottoms of the chambers) more than 20 percent of the mean measured concentration.

xii. Paragraph (e) introductory text is revised as follows:

(e) *Reporting.* A report of the results of an early life stage toxicity test shall include the following:

§ 797.1600 [Amended]

8. Section 797.1600 *Oyster acute toxicity test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(4) (iv), (viii), and (ix) (A), (B).

ii. By changing the word "should" to "shall" or "are" in certain sentences in paragraph (c)(4)(i), which is revised to read as follows:

(i) Oysters which meet condition criteria (age, size, reproductive status, health) and which have been acclimated to test conditions should have approximately 3 to 5 mm of the shell periphery, at the rounded (ventral) end, ground away with a small electric disc grinder or other appropriate device, taking care to uniformly remove the shell rim to produce a smooth, rounded, blunt profile. The oyster's valves should be held together tightly during grinding to avoid vibrating the shell and injuring the adductor muscle. Oysters of which so much of the shell rim has been removed that an opening into the shell cavity is visible shall not be used.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(vii), which is revised to read as follows:

(vii) Shell growth is the primary criterion used in this test guideline to evaluate the toxicity of the test chemical. Shell growth increments in all oysters shall be measured after 96 hours exposure. Record the length of the longest "finger" of new shell growth to the nearest 0.5 mm. Oysters should be handled very gently at this stage to prevent damage to the new shell growth.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (c)(5)(i), which is revised to read as follows:

(i) At the end of the test, appropriate statistical analysis should be conducted on the oyster shell deposition test data. The probit transformation should then be applied to the response variable and then regressed, using least squares regression, on dose or log dose. An F Test for linearity should be conducted to determine whether the chosen regression technique adequately describes the experimental data.

v. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(v), which is revised to read as follows:

(v) Test oysters shall be impartially distributed among test chambers in such a manner that test results show no significant bias from the distributions. The oysters should be spread out equidistantly from one another so that the entire test chamber is used. The oysters should also be placed with the left (capped) valve down and the open, unhinged ends all oriented in the same direction facing the incoming flow of test solution.

vi. By changing the word "should" to "shall" in certain sentences in paragraphs (c)(4)(ix) (C), (D), and (E), which are revised to read as follows:

(C) If evidence of spawning is observed, the test shall be repeated.

(D) There shall be evidence that the concentration of the substance being tested has been satisfactorily maintained over the test period. The concentration of the test substance should be measured:

(*1*) In each chamber at 0-hour;

(*2*) In each chamber at 96-hours; and

(*3*) In at least one appropriate chamber whenever a malfunction is detected in any part of the test chemical delivery system.

(E) Dissolved oxygen, temperature, salinity, and pH measurements shall be made at the beginning and end of the test in each chamber.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1)(i) (A), (C), and (D) and (d)(3)(i).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(iii)(A), which is revised to read as follows:

(A) Oysters should be attended to immediately upon arrival. Oyster shells should be brushed clean of fouling organisms and the transfer of the oysters to the holding water should be gradual to reduce stress caused by differences in water quality characteristics and temperature. Oysters shall be held for at least 12 to 15 days before testing. All oysters shall be maintained in dilution water at the test temperature for at least 2 days before they are used.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(iii)(B), which is revised to read as follows:

(B) During holding, the oysters should not be crowded, and the dissolved oxygen concentration shall be above 60-percent saturation. The temperature of the holding water shall be the same as that used for testing. Holding tanks should be kept clean and free of debris. Cultured algae may be added to dilution water sparingly, as necessary to support life and growth and such that test results are not affected as confirmed by previous testing.

iv. The proposed change to paragraph (d)(2)(f)(B) is not being made based on comments received.

v. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(ii), which is revised to read as follows:

(ii) *Dissolved oxygen.* The dissolved oxygen concentrations shall be at least 60 percent of the saturation value and should be recorded daily.

vi. By revising paragraph (d)(3)(iv) to read as follows:

(iv) *Temperature.* The test temperature shall be 20 °C. Temporary fluctuations (less than 8 hours) within ±5 °C are permissible. Temperature should be recorded continuously.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(i)(B), which is revised to read as follows:

(B) Oysters used in the same test shall be 30 to 50 mm in valve height and should be as similar in age and/or size as possible to reduce variability. The standard deviation of the valve height should be less than 20 percent of the mean.

viii. By revising paragraph (d)(1)(iii)(D) to read as follows:

(D) A batch of oysters is acceptable for testing if the percentage mortality over the 7-day period prior to testing is less than 5 percent. If the mortality is between 5 and 10 percent, acclimation should continue for 7 additional days. If the mortality is greater than 10 percent, the entire batch of oysters shall be rejected. Oysters which appear diseased or otherwise stressed or which have cracked, chipped, bored, or gaping shells shall not be used. Oysters infested with mudworms (*Poly dora sp.*) or boring sponges (*Cliona cellata*) should not be used.

ix. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(ii), which is revised to read as follows:

(ii) *Dilution water.* A constant supply of good quality unfiltered seawater should be available throughout the holding, acclimation and testing periods. Natural seawater is recommended, although artificial seawater with food added may be used. In either case, to ensure each oyster is provided equal

amounts of food, the water should come from a thoroughly mixed common source and shall be delivered at a flowrate of at least 1 and preferably 5 liters per hour per oyster. The flowrate should be ±10 percent of the nominal flow. A dilution water is acceptable if oysters will survive and grow normally for 14 days without exhibiting signs of stress; i.e., excessive mucus production (stringy material floating suspended from oysters), lack of feeding, shell gaping, poor shell closing in response to prodding, or excessive mortality. The dilution water shall have a salinity in excess of 12 parts per thousand, and should be similar to that in the environment from which the test oysters originated. A natural seawater should have a weekly range in salinity of less than 10 parts per thousand and a monthly range in pH of less than 0.8 unit. Artificial seawater salinity should not vary more than 2 parts per thousand nor more than 0.5 pH unit. Oysters shall be tested in dilution water from the same origin.

x. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(i), which is revised to read as follows:

(3) *Test parameters*—(i) *Carriers.* Stock solutions of substances of low aqueous solubility may be prepared by ultrasonic dispersion or, if necessary, by use of organic solvents, emulsifiers or dispersants of low toxicity to oysters. When such carriers are used the control oysters shall be exposed to the same concentration of the carrier as that used in the highest concentration of the test substance. The concentration of such carriers should not exceed 0.1 ml/l.

xi. By revising paragraph (d)(3)(v) to read as follows:

(v) *pH.* The pH shall be measured at the beginning and end of the test in each test chamber.

c. Paragraph (e) is amended by changing the word "should" to "shall" wherever it appears.

**§ 797.1830 [Amended]**

9. Section 797.1830 *Oyster bioconcentration test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(4)(i), (iv), (v) introductory text, (v)(B), and (C), (vi) introductory text, (vi)(C) and (F), and (vii)(A) and (B)(*1*) and (*3*); and (6)(iii) and (iv).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(ii), which is revised to read as follows:

(ii) At least one or more concentrations shall be tested to assess the propensity of the compound to bioconcentrate. The concentrations selected should not stress or adversely affect the oysters and should be less than one-tenth the $EC_{50}$ determined in either the rangefinding or 96-hour definitive test under § 797.1800 of this chapter. The test concentration shall be less than the solubility limit of the test substance in water and should be close to the potential or expected environmental concentration. The limiting factor of how low one can test is based on the detection limits of the analytical methods. The concentration of the test material in the test solution should be at least 10 times greater than the detection limit in water.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(iii), which is revised to read as follows:

(iii) If it is desirable to document that the potential to bioconcentrate is independent of the test chemical concentration, at least two concentrations shall be tested which are at least a factor of 10 apart.

iv. By revising paragraph (c)(4)(v)(A), to read as follows:

(A) If it is observed that the stability or homogeneity of the test chemical cannot be maintained, then care should be taken in the interpretation of the results and a note shall be made that these results may not be reproducible.

v. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(vi)(B), which is revised to read as follows:

(B) The appropriate number of oysters should be brushed clean and shall be impartially distributed among test chambers in such a manner that test results show no significant bias from the distributions. The oysters should be spread out equidistant from one another and placed with the left (cupped) valve down and the unhinged ends (opposite from umbo) all oriented in the same direction facing the incoming flow.

vi. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(vi)(D), which is revised to read as follows:

(D) Oysters shall be observed (and data recorded) at least daily for feeding activity (deposition of feces) or any unusual conditions such as excessive mucus production (stringy material floating suspended from oysters), spawning, or appearance of shell (closure or gaping). If gaping is noted, the oyster(s) should be prodded. Oysters which fail to make any shell movements when prodded are to be considered dead, and shall be removed promptly with as little disturbance as possible to the test chamber(s) and remaining live oysters.

vii. The proposed change to paragraph (c)(4)(vii)(B)(*2*) is not being made based on comments received.

viii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(i), which is revised to read as follows:

(i) All samples should be analyzed using USEPA methods and guidelines whenever feasible. The specific methodology used shall be validated before the test is initiated. The accuracy of the method should be measured by the method of known additions. This involves adding a known amount of the test chemical to three water samples taken from an aquarium containing dilution water and a number of oysters equal to that to be used in the test. The nominal concentration of these samples shall be the same as the concentration to be used in the test. Samples taken on two separate days shall be analyzed. The accuracy and precision of the analytical method shall be checked using reference or split samples or suitable corroborative methods of analysis. The accuracy of standard solutions should be checked against other standard solutions whenever possible.

ix. By revising paragraph (c)(4)(v)(E) to read as follows:

(E) If evidence of spawning is observed, the test shall be repeated.

x. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(vii)(C), which is revised to read as follows:

(C) If a radiolabeled test compound is used, a sufficient number of oysters shall also be sampled at termination to permit identification and quantitation of any major (greater than 10 percent of parent) metabolites present. It is crucial to determine how much of the activity present in the oyster is directly attributable to the parent compound, and to correct the bioconcentration factor appropriately.

xi. By changing the word "should" to "shall" in certain sentences in paragraph (c)(5)(ii), which is revised to read as follows:

(ii) If 95 percent elimination has not been observed after 14 days depuration then a depuration rate constant shall also be calculated. This rate constant should be based on the elimination of the parent compound.

xii. By revising paragraph (c)(4)(v)(D), to read as follows:

(D) There shall be evidence that the concentration of the chemical being

tested has been satisfactorily maintained over the test period.

xiii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(vi)(A), which is revised to read as follows:

(A) The test shall not be started until the test chemical delivery system has been observed to be functioning properly and the test chemical concentrations have equilibrated (i.e., the concentration does not vary more than 20 percent). Analyses of two sets of test solution samples taken prior to test initiation should document this equilibrium. At initiation (time 0), test solution samples shall be collected immediately prior to the addition of oysters to the test chambers.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1)(i), (iii), (iv), and (3)(i) and (iii).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(ii), which is revised to read as follows:

(ii) Oysters used in the same test should be 30 to 50 mm in valve height and should be as similar in age and/or size as possible to reduce variability. The standard deviation of the valve height shall be less than 20 percent of the mean.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(vi)(A), which is revised to read as follows:

(A) Oysters should be attended to immediately upon arrival. Oyster shells should be brushed clean of fouling organisms, and the transfer of the oysters to the holding water should be gradual to reduce stress caused by differences in water quality characteristics and temperature. Oysters shall be held for at least 12 to 15 days before testing. All oysters shall be maintained in dilution water at the test temperature for at least 2 days before they are used.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(vi)(B), which is revised to read as follows:

(B) During holding, the oysters should not be crowded, and the dissolved oxygen concentration shall be above 60-percent saturation. The temperature of the holding waters shall be the same as that used for testing. Holding tanks should be kept clean and free of debris. Cultured algae may be added to dilution water sparingly, as necessary to support life and growth, such that test results are not affected, as confirmed by previous testing. Oysters should be handled as little as possible. When handling is necessary, it should be done as gently, carefully, and quickly as possible.

v. The proposed change to paragraph (d)(2)(i)(B) is not being made based on comments received.

vi. The proposed change to paragraph (d)(2)(ii) is not being made based on comments received.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(iv), which is revised to read as follows:

(iv) *Temperature.* The test temperature shall be 20 °C. Temporary excursions (less than 6 hours) within ± 5 °C are permissible. Temperature should be recorded continually.

viii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(vi)(C), which is revised to read as follows:

(C) A batch of oysters is acceptable for testing if the percentage mortality over the 7-day period prior to testing is less than 5 percent. If the mortality is between 5 and 10 percent, acclimation shall continue for 7 additional days. If the mortality is greater than 10 percent, the entire batch of oysters shall be rejected. Oysters which appear diseased or otherwise stressed or which have cracked, chipped, bared, or gaping shells shall not be used. Oysters infested with mudworms (*Polydora sp.*) or boring sponges (*Cliona cellata*) should not be used.

ix. By changing the word "should" to "shall" wherever it appears in paragraph (d)(3)(ii), which is revised to read as follows:

(ii) *Dissolved oxygen.* This dissolved oxygen concentration shall be at least 60 percent of the air saturation value and should be measured weekly in each chamber.

x. By changing the word "should" to "shall" wherever it appears in paragraph (d)(3)(v), which is revised to read as follows:

(v) *pH.* The pH shall be measured weekly in each test chamber.

c. Paragraph (e) is amended by changing the word "should" to "shall" wherever it appears.

**§ 797.1930 [Amended]**

10. Section 797.1930 *Mysid shrimp acute toxicity test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(4)(ii), (iv), and (vii) and by revising paragraph (c)(4)(iii), to read as follows:

(iii) A minimum of 20 mysids per concentration shall be exposed to five or more concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32, and 64 mg/l). An equal number of mysids shall be placed in two or more replicates. If solvents, solubilizing agents or emulsifiers have to be used, they shall be commonly used carriers and shall not possess a synergistic or antagonistic effect on the toxicity of the test substance. The concentration of solvent shall not exceed 0.1 ml/1. The concentration ranges shall be selected to determine the concentration-response curves and $LC_{50}$ values at 48 and 96 hours.

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(3)(iii), which is revised to read as follows:

(iii) This test should be conducted with both newly hatched juvenile (< 24 hours old) and young adult (5 to 8 days old) mysids. For each age class (juvenile or young adult), a minimum of 10 mysids should be exposed to each concentration of test substance for up to 96 hours. The exposure period may be shortened if data suitable for the purpose of the range-finding test can be obtained in less time. The age class which is most sensitive to the test substance in the range-finding test shall be utilized in the definitive test. When no apparent difference in sensitivity of the two life stages is found, juveniles shall be utilized in the definitive test. No replicates are required, and nominal concentrations of the chemical are acceptable.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(ix), which is revised to read as follows:

(ix) The concentration of the test substance in the chambers should be measured as often as is feasible during the test. At a minimum, during static tests the concentration of test substance shall be measured at each concentration at the beginning and at the end of the test. During the flow-through test, the concentration of test substance should be measured at the beginning and end of the test and in at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system. Equal aliquots of test solution may be removed from each replicate chamber and pooled for analysis. Among replicate test chambers of a treatment concentration, the measured concentration of the test substance should not vary more than 20 percent.

iv. By changing the word "should" to "shall" in certain sentences in

paragraph (c)(6)(i), which is revised to read as follows:

(i) *Test chemical.* Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be used whenever available in performing the analyses. The analytical method used to measure the amount of test substance in a sample shall be validated before beginning the test by appropriate laboratory practices. Any analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

v. By revising paragraphs (c)(4) (v) and (vi), to read as follows:

(v) The dissolved oxygen concentration temperature, salinity, and pH shall be measured at the beginning and end of the test in each chamber.

(vi) The test duration is 96 hours. The test is unacceptable if more than 10 percent of the control organisms die or exhibit abnormal behavior during the 96 hour test period. Each test chamber should be checked for dead mysids at 24, 48, 72, and 96 hours after the beginning of the test. Concentration-response curves and 24-, 48-, 72- and 96-hour $LC_{50}$ values should be determined along with their 95 percent confidence limits.

vi. By revising paragraph (c)(4)(viii), to read as follows:

(viii) Test organisms shall be impartially distributed among test chambers in such a manner that test results show no significant bias from the distributions. In addition, test chambers within the testing area shall be positioned in a random manner or in a way in which appropriated statistical analyses can be used to determine the variation due to placement.

vii. By revising paragraph (c)(5)(ii), to read as follows:

(ii) *Numerical.* The number of dead mysids shall be counted during each definitive test. Appropriated statistical analyses should provide a goodness-of-fit determination for the concentration-response curves. A 48- and 96-hour $LC_{50}$ and corresponding 95 percent interval shall be calculated.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1) (i)(C) and (ii)(A); and (d)(2) (i)(B), (ii), and (iv) and (d)(3) introductory text and (ii).

ii. The proposed change to paragraph (d)(2)(iii)(A) is not being made based on comments received.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(4)(v), which is revised to read as follows:

(v) *Test substance delivery system.* In flow-through tests, proportional diluters, metering pumps, or other suitable systems should be used to deliver test substance to the test chambers. The system used shall be calibrated before each test. Calibration includes determining the flow rate through each chamber and the concentration of the test substance in each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow through a test chamber shall be equal to at least 5 times the volume of the test chamber. During a test, the flow rates should not vary more than 10 percent among test chambers or across time.

iv. By revising paragraph (d)(3)(iii), to read as follows:

(iii) The number of mysids placed in a test solution shall not be so great as to affect results of the test. Loading shall not exceed 30 mysids per liter for a static test. Loading requirements for the flow-through test will vary depending on the flow rate of dilution water. The loading shall not cause the dissolved oxygen concentration to fall below the recommended levels.

v. By revising paragraph (d)(1)(i)(B), to read as follows:

(B) Mysids to be used in chronic toxicity tests should originate from laboratory cultures in order to ensure the individuals are of similar age and experimental history. Mysids used for establishing laboratory cultures may be purchased commercially or collected from appropriate natural areas. Because of similarities with other mysids species, taxonomic verification should be obtained from the commercial supplier by experienced laboratory personnel or by an outside expert.

vi. By revising paragraph (d)(3)(i), to read as follows:

(i) The test temperature shall be 25°C. Excursions from the test temperature shall be not greater than ± 2°C.

c. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in the introductory text of paragraph (e) and in paragraph (e)(6).

ii. By revising paragraph (e)(7), to read as follows:

(7) The 96-hour $LC_{50}$ and when sufficient data have been generated, the 24-, 48-, and 72-hour $LC_{50}$'s and the corresponding 95-percent confidence limits and the methods used to calculate the values. These calculations shall be made using the average measured concentration of the test substance.

§ 797.1650 [Amended]

11. Section 797.1650 *Mysid shrimp chronic toxicity test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(4)(v), and (vi).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(viii), which is revised to read as follows:

(viii) The concentration of the test substance in the chambers should be measured as often as is feasible during the test. The concentration of test substance shall be measured:

(A) At each test concentration at the beginning of the test and on days 7, 14, 21, and 28; and

(B) In at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system.

Equal aliquots of test solutions may be removed from each test chamber and pooled for analysis. Among replicate test chambers of a treatment concentration, the measured concentration of the test substance should not vary more than 20 percent.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(i), which is revised to read as follows:

(i) *Test chemical.* Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be employed whenever available in performing the analyses. The analytical method used to measure the amount of test substance in a sample shall be validated before beginning the test by appropriate laboratory practices. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

iv. By changing the word "should" to "shall" wherever it appears in paragraph (c)(4)(iv), which is revised to read as follows:

(iv) The dissolved oxygen concentration, temperature, salinity, and pH shall be measured weekly in each chamber.

v. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(vii), which is revised to read as follows:

(vii) Test organisms shall be impartially distributed among test chambers in such a manner that test results show no significant bias from the distributions. In addition, test chambers within the testing area shall be positioned in a random manner or in a way in which appropriate statistical analyses can be used to determined the variation due to placement.

vi. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(ii), which is revised to read as follows:

(ii) *Numerical.* (A) The number of dead mysids, cumulative young per female, and body lengths of male and female myside shall be recorded during each definitive test. Appropriate statistical analyses shall provide a goodness-of-fit determination for the day 7, 14, 21 and 28 adult (Gl) death concentration-response curves.

(B) A 7-, 14-, 21- and 28-day $LC_{50}$, based on adult (Gl) death, and corresponding 95 percent confidence intervals shall be calculated. Appropriate statistical tests (e.g., analysis of variance, mean separation test) should be used to test for significant chemical effects on chronic test criteria (cumulative mortality of adults, cumulative number of young per female and body lengths of adult male and females) on designated days. An MATC shall be calculated using these chronic tests criteria.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(ii), which is revised to read as follows:

(ii) A minimum of 40 mysids per concentration shall be exposed to four or more concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32 and 64 mg/l). An equal number of mysids shall be placed in two or more replicates. If solvents, solubilizing agents or emulsifiers have to be used, they shall be commonly used carriers and shall not possess a synergistic or antagonistic effect on the toxicity of the test substance. The concentration of solvent should not exceed 0.1 ml/l. The concentration ranges should be selected to determine the concentration response curves, $LC_{50}$ values and MATC. Concentration of test substance in test solutions should be analyzed prior to use.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1)(i)(C) and (D), (2)(i)(C) and (iv), and (3) introductory text, (ii) and (iii).

ii. By revising paragraph (d)(1)(i)(B) to read as follows:

(B) Mysids to be used in chronic toxicity tests should originate from laboratory cultures in order to ensure the individuals are of similar age and experimental history. Mysids used for establishing laboratory cultures may be purchased commercially or collected from appropriate natural areas. Because of similarities with other mysid species, taxonomic verification should be obtained from the commercial supplier, by experienced laboratory personnel, or by an outside expert.

iii. The proposed change to paragraph (d)(1)(ii)(A) is not being made based on comments received.

iv. The proposed change to paragraph (d)(2)(ii)(A) is not being made based on comments received.

v. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(v), which is revised to read as follows:

(v) *Test substance delivery system.* Proportional diluters, metering pumps, or other suitable systems should be used to deliver test substance to the test chambers. The system used shall be calibrated before each test. Calibration includes determining the flow rate and the concentration of the test substance in each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow rate through a chamber shall be equal to at least 5 times the volume of the chamber. The flow rates should not vary more than 10 percent among chambers or across time.

vi. By changing the word "should" to "shall" wherever it appears in paragraph (d)(2)(ii), which is revised to read as follows:

(ii) *Cleaning.* Test substance delivery systems and test chambers shall be cleaned before each use following standard laboratory practices.

vii. By revising paragraph (d)(3)(i) to read as follows:

(i) The test temperature shall be 25°C. Excursions from the test temperature shall be no greater than ± 2°C.

c. Paragraph (e) is amended by changing the word "should" to "shall" wherever it appears in the introductory text and in paragraphs (e)(9) and (10) and in (e)(8), which is revised to read as follows:

(8) The MATC is calculated as the geometric mean between the lowest measured test substance concentration that had a significant ($P<0.05$) effect and the highest measured test substance concentration that had no significant ($P<0.05$) effect in the chronic test. The most sensitive of the test criteria for adult (Gl) mysids (cumulative number of dead mysids, body lengths of males and females or the number of young per female) is used to calculate the MATC. The criterion selected for MATC computation is the one which exhibits an effect (a statistically significant difference between treatment and control groups; $P<0.05$) at the lowest test substance concentration for the shortest period of exposure. Appropriate statistical tests (analysis of variance, mean separation test) should be used to test for significant chemical effects. The statistical tests employed and the results of these tests shall be reported.

**§ 797.2150 [Amended]**

12. Section 797.2150 *Mallard reproduction test* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the words "should be" to "are" wherever they appear in paragraph (c)(1)(i), (ii), (iv), and (vi).

ii. By changing the words "should be" to "is" wherever they appear in paragraph (c)(1)(v) and (ix).

iii. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(4) (i)(B), (ii), (iii)(A), (iv), (v)(A), (vi), (ix), and (x) and (6)(ii)(B).

iv. By changing the words "should be" to "is" or "are" in certain sentences in paragraph (c)(1)(iii), which is revised to read as follows:

(iii) The test substance is thoroughly and evenly mixed into the diet at concentrations specified in the test rule. All treatment levels are analyzed for test substance concentrations at the beginning and midway through the test.

v. By changing the words "should be" to "are" in certain sentences in paragraph (c)(1)(vii), which is revised to read as follows:

(vii) Eggs are removed daily and stored until there is a sufficient quantity for incubation. All eggs are candled for cracks, and cracked eggs are removed. Once every 2 weeks, all eggs produced that day are analyzed for eggshell thickness. Incubated eggs are candled on day 14 and day 21. Hatching should be completed by day 27.

vi. By changing the words "should be" to "is" or "are" in certain sentences in paragraph (c)(1)(viii), which is revised to read as follows:

(viii) Hatchlings are maintained in pens until they are 14 days old. Abnormal behavior or death is reported. Ducklings are weighed on day 14.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(1)(x), which is revised to read as follows:

(x) The report shall include all conditions, procedures, and results.

Data should be sufficiently detailed for an independent statistical analysis.

viii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(i)(A), which is revised to read as follows:

(A) The concentrations of test substance in the diet will be specified in the test rule. At least three treatment groups and a control group shall be used. The higher two treatment levels shall be multiples (often 5x, 10x, or 20x) of the lowest treatment level. The highest treatment levels shall usually be below lethal levels, unless predicted exposure levels are high enough to approximate lethal levels.

ix. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(vii), which is revised to read as follows:

(vii) *Egg collection, storage, and incubation.* All eggs shall be collected daily, marked according to the date collected and the parental pen from which collected, and should be stored at 16°C and 55 to 80 percent relative humidity. Storage in plastic bags may improve uniformity of hatching. Stored eggs should be turned daily. At biweekly intervals, eggs shall be removed for storage and be candled to detect eggshell cracks. Except for eggs with cracked shells and those eggs removed for eggshell thickness measurements, all eggs should be set after candling for incubation in a commercial incubator. If incubators are not equipped to automatically turn eggs, they should be turned daily by hand. During the incubation period, eggs should be maintained at 37.5°C and approximately 70-percent relative humidity. Eggs shall be candled again on day 14 of incubation to determine fertility and early death of embryos. A final candling shall be done on day 21 to measure embryo survival. On day 23, eggs shall be removed to a separate incubator or hatcher. Hatching will normally be complete by the end of day 27.

x. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(viii), which is revised to read as follows:

(viii) *Duckling maintenance.* By day 27 of incubation, the hatched mallard ducklings should be removed from the hatcher or incubator. Ducklings shall be either housed according to the appropriate parental pen group or individually marked (such as by leg bands) as to parental group and housed together. Ducklings should be maintained in commercial brooder pens or pens of similar construction. Pens should be constructed of galvanized metal or stainless steel. Temperature in the pens should be controlled, preferably by a thermostatic control device. A temperature gradient in the pen from approximately 35°C to approximately 22°C will allow young birds to seek a proper temperature. Temperature requirements for young birds typically decline over this range from birth through the first several weeks of life. Ducklings shall be provided a standard commercial duck starter ration, or its nutritional equivalent. No test substance may be added to the diets of ducklings. Ducklings shall be maintained until they are 14 days old.

xi. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(i)(A), which is revised to read as follows:

(A) Experimental groups should be individually compared to the control group by analysis of variance. Other accepted statistical methods may be used as long as they are documented and described. In particular, regression analysis is highly desirable if the data and number of dose levels allow the use of this technique. Sample units are the individual pens within each treatment level or control. Analysis shall include:

(*1*) Body weights of adults.

(*2*) Food consumption of adults.

(*3*) Percentage of hens laying eggs. This should always be determined when pens contain a single pair; if feasible, it should be determined when pens contain groups.

(*4*) Number of eggs laid per pen.

(*5*) Percentage of cracked eggs.

(*6*) Percent viable embryos of eggs set.

(*7*) Percent live 21-day embryos of viable embryos.

(*8*) Percent hatching of viable embryos.

(*9*) Percentage of hatchlings that are normal.

(*10*) Percent 14-day-old survivors of normal hatchlings.

(*11*) Number of 14-day-old survivors per hen.

(*12*) Body weights of 14-day-old survivors.

(*13*) Eggshell thickness.

xii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(ii)(A), which is revised to read as follows:

(A) Samples of treated diets shall be analyzed to confirm proper dietary concentrations of the test substance. If samples cannot be analyzed immediately, they should be stored appropriately (e.g., frozen at a temperature of −15°C or lower) until analysis can be performed. Analyses shall be conducted on all test substance concentrations at the beginning of the test period and again 10 to 12 weeks later. If not otherwise available, data shall be generated to indicate whether or not the test substance degrades or volatilizes. If the test substance is known or found to be volatile or labile to the extent that 25 percent or more loss occurs within 1 week, then test substance diets shall be prepared (freshly or from frozen concentrate) at a frequency that will prevent more than 25 percent loss of test substance.

xiii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(iii)(C), which is revised to read as follows:

(C) *Analysis of basal diet.* A nutrient analysis of the basal diet shall be included in the test report. For commercially prepared basal diets, the list of ingredients supplied by the manufacturer is normally sufficient, if it is detailed. The composition of any vitamin or other supplements should also be reported.

xiv. By changing the word "should" to "shall" wherever it appears in paragraph (c)(4)(iii)(B), which is revised to read as follows:

(B) Test birds shall be impartially distributed among test chambers in such a manner that test results show no significant bias from the distributions.

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraph (d)(1)(i) (C), (D), and (E) and (ii)(A)(*1*).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(i)(A), which is revised to read as follows:

(A) The mallard, *Anas platyrhynchos* L., is the test species. Test birds should be pen-reared. They may be reared in the laboratory or purchased from commercial breeders. Rearing stock and/or test birds shall be obtained only from sources that have met the requirements for "U.S. Pullorum-Typhoid Clean" classification under paragraph (f)(1) of this section. Birds shall be obtained only from sources whose colonies have known breeding histories. If possible, a history of rearing practices for test birds should be obtained and made available upon request. This history should include lighting practices during rearing, disease record, drug and any other medication administered, and exact age. Test birds shall be phenotypically indistinguishable (except for size) from wild stock. Conscientious breeders of such birds will periodically outbreed their flocks with genetically wild stock in order to maintain a genetic composition that approximates the

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heterogeneity of naturally occurring birds.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(i)(B), which is revised to read as follows:

(B) All control and experimental birds used in a test shall be from the same source and strain. If shipped, all birds shall be examined following shipment for possible physical injury that may have occurred in transit. All birds should have a health observation period of at least 2 weeks prior to selection for treatment. Birds should be in apparent good health. Deformed, abnormal, sick, or injured birds shall not be used. A population of birds shall not be used if more than 3 percent of either sex die during the health observation period. Birds shall not have been selected in any way for resistance to toxic substances. Birds shall not have been used in a previous test, either in control or treatment group. Offspring of birds used in a treatment group in a previous test shall not be used, but offspring of birds used as controls in a previous test are acceptable.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(ii)(A)(*2*), which is revised to read as follows:

(*2*) The test substance shall be mixed into the diet in a manner that will ensure even distribution of the test substance throughout the diet. If possible, the test substance should be added to the diet without the use of a carrier or diluent. If a diluent is needed, the preferred diluent is distilled water; but water shall not be used for test substances known to hydrolyze readily. When a test substance is not water soluble, it may be dissolved in a reagent-grade evaporative diluent (e.g., acetone, methylene chloride) and then mixed with the test diet. The solvent should be completely evaporated prior to feeding. Other acceptable diluents may be used, if necessary, and include table-grade corn oil, propylene glycol, and gum arabic (acacia). If a diluent is used, it shall constitute no more than 2 percent by weight of the treated diet, and an equivalent amount of diluent shall be added to control diets.

v. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(ii)(A)(*3*), which is revised to read as follows:

(*3*) Diets may be mixed by commercial or mechanical food mixers. Other means are acceptable as long as they result in even distribution of the test substance throughout the diet. Screening of the basal diet before mixing is suggested to remove large particles. For many test substances, it is recommended that diets be mixed under a hood. Frequently, the test substance is added to an aliquot of the basal diet to form a premix concentrate. The premix concentrate should be stored so as to maintain the chemical concentration. For final preparation of test diets, the premix is mixed with additional basal diet to form the proper concentrations. The frequency with which final treated diets are prepared will depend upon the stability and other characteristics of the test substance. Unless otherwise specified in the test rule or determined by degradation or volatility studies, it is recommended that final diets be prepared weekly, either fresh or from a concentrate. For volatile or labile test substances, test diets shall be mixed frequently enough so that the concentrations are not reduced from initial concentrations by more than 25 percent. Analysis of diets for test substance concentrations is required as specified in paragraph (c)(6)(ii) of this section.

vi. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(ii)(A)(*4*), which is revised to read as follows:

(*4*) Clean water shall be available *ad libitum*. Water bottles or automatic watering devices are recommended. If water pans or bowls are used, water shall be changed daily or more often.

vii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(1)(ii)(B), which is revised to read as follows:

(B) *Young birds.* Young birds produced during the test should be fed a commercial duck starter ration, or its nutritional equivalent. No test substance shall be added to the diets of young birds. No antibiotics or medication shall be used in the diet.

viii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(iii), which is revised to read as follows:

(iii) Pens should be kept indoors in order to better control lighting, temperature, humidity, and other factors. Outdoor pens may be used only during the normal breeding season. The photoperiod should be carefully controlled, preferably by automatic timers. A 15 to 30 minute transition period is desirable. The photoperiod regime is described under paragraph (c)(4)(v) of this section. Lights shall emit a spectrum simulating that of daylight. The use of shorter wave-length "cool-white" fluorescent lights that do not emit the daylight spectrum should be avoided. Illumination intensity should be about 6 foot-candles at the level of the birds.

ix. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(iv), which is revised to read as follows:

(iv) Temperature and humidity should be controlled during the study. Recommended levels are 21°C and 55 percent relative humidity. Temperature for indoor tests shall be recorded at least weekly at the same time of day and shall be reported. For tests conducted without temperature control, temperature minimums and maximums should be recorded daily. Continuous temperature monitoring is desirable. Temperature recording shall be made at levels of 2.5 to 4 cm above the floor of the cage. Recording of approximate humidity levels is also desirable. Good ventilation should be maintained. Suggested ventilation rates are 4 changes per hour in winter and 15 changes per hour in the summer.

b. Paragraph (e) is amended by changing the word "should" to "shall" wherever it appears.

## PART 798—[AMENDED]

III. In Part 798:

1. The authority citation for Part 798 continues to read as follows:

**Authority:** 15 U.S.C. 2603.

### § 798.2250 [Amended]

2. Section 798.2250 *Dermal toxicity* is amended as follows:

a. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e)(1) (ii), (iii), and (iv), (2), (6)(i), (8), (9) (ii), (iii), (iv), (v), and (vi), (10)(i) introductory text, (10)(ii)(A), (11), and (12).

ii. By changing the word "recommended" to "required" wherever it appears in paragraph (e)(2).

iii. By revising paragraph (e)(1)(i), to read as follows:

(i) *Species and strain.* A mammalian species shall be used for testing. The rat, rabbit, or guinea pig may be used, although the albino rabbit is preferred. The albino rabbit is preferred because of its size, skin permeability, and extensive data base. Commonly used laboratory strains shall be employed. If another mammalian species is used, the tester shall provide justification/reasoning for its selection.

iv. By changing the word "should" to "shall" in certain sentences in paragraph (e)(4)(i), which is revised to read as follows:

(i) In subchronic toxicity tests, it is desirable to have a dose-response relationship as well as a no-observed-

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toxic-effect level. Therefore, at least 3 dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) shall be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data shall be sufficient to produce a dose-response curve.

v. By revising paragraph (e)(6)(ii), to read as follows:

(ii) Animals in the satellite group scheduled for followup observations should be kept for at least 28 days further without treatment to detect recovery from, or persistence of, toxic effects.

vi. By changing the word "should" to "shall" in certain sentences in paragraph (e)(7)(i), which is revised to read as follows:

(i) Shortly before testing, fur shall be clipped from the dorsal area of the trunk of the test animals. Shaving may be employed, but it should be carried out approximately 24 hours before the test. Repeat clipping or shaving is usually needed at approximately weekly intervals. When clipping or shaving the fur, care should be taken to avoid abrading the skin, which could alter its permeability.

vii. By changing the words "at least five" to "all" wherever they appear in the introductory text of paragraph (e)(10)(i), and by changing the words "should be" to "shall be" or "are" in certain sentences in paragraph (e)(10)(i) (A) and (B), which are revised to read as follows:

(A) Certain hematology determinations shall be carried out at least two times during the test period: Just prior to initiation of dosing (baseline data), and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood shall be carried out at least two times: Just prior to initiation of dosing (if adequate historical baseline data are not available), and just prior to terminal sacrifice at the end of the test period. Test areas which are considered appropriate to all studies: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with the period of fasting appropriate to the species), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen blood creatinine, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: Analyses of lipids hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

viii. By changing the word "should" to "shall" in paragraph (e)(9)(i), which is revised to read as follows:

(i) Each animal shall be observed daily, and if necessary handled to appraise its physical condition.

ix. By revising the introductory text of paragraph (e)(10)(ii) to read as follows:

(ii) The following examinations shall be made on high dose and control groups. If changes in the eyes are detected all animals should be examined.

x. By revising paragraph (e)(11)(iii), to read as follows:

(iii) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: All gross lesions; lungs—which should be removed intact, weighed, and treated with a suitable fixative to ensure that lung structure is maintained (perfusion with the fixative is considered to be an effective procedure); nasopharyngeal tissues; brain—including sections of medulla/pons, cerebellar cortex, and cerebral cortex; pituitary; thyroid/parathyroid; thymus; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys; adrenals; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate, and, if present, seminal vesicles); aorta; (skin); gall bladder (if present); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland); (thigh musculature); peripheral nerve; (eyes); (femur—including articular surface); (spinal cord at three levels—cervical, midthoracic, and lumbar); and (zymbal and exorbital lachrymal glands).

b. Paragraph (f) is amended by changing the word "should" to "shall" wherever it appears in paragraphs (f)(1)(i) and (3) and by changing the word "time" to "date" wherever it appears in paragraph (f)(3)(ii) (A) and (B).

**§ 798.2450 [Amended]**

3. Section 798.2450 *Inhalation toxicity* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1) (ii), (iii), and (iv)(B), (2), (6)(i), (8) introductory text, and (iv), (10) (iii), (v), and (vi), (11)(i) introductory text, (11)(i)(B), (12) (i) and (ii), and (13).

ii. By revising paragraph (d)(1)(i), to read as follows:

(i) *Species and strain.* A mammalian species shall be used for testing. A variety of rodent species may be used, although the rat is the preferred species. Commonly used laboratory strains shall be employed. If another mammalian species is used, the tester shall provide justification/ reasoning for its selection.

iii. By changing the word "recommended" to "required" wherever it appears in paragraph (d)(2).

iv. By changing the word "should" to "shall" in certain sentences in paragraph (d)(4)(i), which is revised to read as follows:

(i) In subchronic toxicity tests, it is desirable to have a concentration-response relationship as well as a no-observed-toxic-effect level. Therefore, at least 3 concentration levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) shall be used. Concentrations should be spaced appropriately to produce test groups with a range of toxic effects. The data should be sufficient to produce a concentration-response curve.

v. By revising paragraph (d)(5), to read as follows:

(5) *Exposure conditions.* The animals should be exposed to the test substance, ideally for 6 hours per day on a 7-day per week basis, for a period of 90 days. However, based primarily on practical considerations, exposure on a 5-day-per-week basis for 6 hours per day is the minimum acceptable exposure period.

vi. By revising paragraph (d)(6)(ii), to read as follows:

(ii) Animals in a satellite group scheduled for followup observations should be kept for at least 28 days further without treatment to detect recovery from, or persistence of, toxic effects.

vii. By changing the word "should" to "shall" in certain sentences in

paragraphs (d)(7) (i) and (ii), which are revised to read as follows:

(i) The animals shall be tested in inhalation equipment designed to sustain a minimum dynamic air flow of 12 to 15 air changes per hour and ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. To ensure stability of a chamber atmosphere, the total "volume" of the test animals shall not exceed 5 percent of the volume of the test chamber. Oronasal or head-only exposure may be used if it is desirable to avoid concurrent exposure by the dermal or oral routes.

(ii) A dynamic inhalation system with a suitable flow control system shall be used. The rate of air flow shall be adjusted to ensure that conditions throughout the exposure chamber are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into surrounding areas.

viii. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(8) (i), (ii), and (iii), which are revised to read as follows:

(i) The rate of air flow shall be monitored continuously and recorded at least every 30 minutes.

(ii) The actual concentrations of the test substance shall be measured in the breathing zone. During the exposure period the actual concentrations of the test substance shall be held as constant as practicable, monitored continuously or intermittently depending on the method of analysis, and recorded at least at the beginning, at an intermediate time, and at the end of the exposure period.

(iii) During the development of the generating system, particle size analysis shall be performed to establish the stability of aerosol concentrations with respect to particle size. During exposure, analysis shall be conducted as often as necessary to determine the consistency of particle size distribution.

ix. By revising paragraphs (d)(9) and (10)(i) to read as follows:

(9) *Food and water during exposure period.* Food shall be withheld during exposure. Water may also be withheld during exposure.

(10) *Observation of animals.* (i) Each animal shall be observed daily and, if necessary, handled to appraise its physical condition.

x. By changing the words "should be" to "shall be" or "are" in certain sentences in paragraph (d)(11)(i)(A), which is revised to read as follows:

(A) Certain hematology determinations shall be carried out at least two times during the test period: just prior to initiation of dosing (if adequate historical baseline data are not available), and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

xi. By changing the word "three" to "two" and deleting the phrase "after approximately 30 days on test" in the first sentence in paragraph (d)(11)(i)(B).

xii. By changing the word "should" to "shall" in certain sentences in the introductory text of paragraph (d)(11)(ii) and in (d)(11)(ii)(A), which are revised to read as follows:

(ii) The following examinations shall be made on high dose and control groups. If changes in the eyes are detected, all animals shall be examined:

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, shall be made prior to exposure to the test substance and at the termination of the study.

xiii. By revising paragraph (d)(12)(iii), to read as follows:

(iii) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: All gross lesions; lungs—which should be removed intact, weighed, and treated with a suitable fixative to ensure that lung structure is maintained (perfusion with the fixative is considered to be an effective procedure); nasopharyngeal tissues; brain—including sections of medulla/pons cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys; adrenals; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate, and, if present, seminal vesicles); aorta; (skin); gall bladder (if present); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland); (thigh musculature); peripheral nerve; (eyes); (femur—including articular surface); (spinal cord at three levels—cervical, midthoracic, and lumbar); and (zymbal and exorbital lachrymal glands).

xiv. By revising paragraph (d)(1)(iv)(A) to read as follows:

(iv) *Numbers.* (A) At least 20 rodents (10 females and 10 males) shall be used for each test group. If another mammalian species selected (e.g. dog, rabbit, or non-human primate), at least 8 animals [4 males and 4 females] shall be used.

xv. By revising paragraph (d)(4)(iv) to read as follows:

(iv) Ideally, the intermediate concentration level(s) should produce minimal observable toxic effects. If more than one intermediate concentration level is used, the concentrations should be spaced to produce a gradation of toxic effects.

b. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e)(1)(i) and (3).

ii. By changing the word "time" to "date" wherever it appears in paragraph (e)(3)(iv).

§ 798.2650 [Amended]

4. Section 798.2650 *Oral toxicity* is amended as follows:

a. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e)(1) (ii), (iii) and (iv), (2), (6)(i), (7) (ii) and (iv), (8), (9)(i) introductory text and (ii), (10), and (11).

ii. By revising paragraph (e)(1)(i), to read as follows:

(i) *Species and strain.* A mammalian species shall be used for testing. A variety of rodent species may be used, although the rat is the preferred species. Commonly used laboratory strains shall be employed. The commonly used nonrodent species is the dog, preferably of a defined breed; the beagle is frequently used. If other mammalian species are used, the tester shall provide justification/reasoning for his or her selection.

iii. By changing the word "recommended" to "required" wherever it appears in paragraph (e)(2).

iv. By changing the word "should" to "shall" in certain sentences in paragraph (e)(4)(i), which is revised to read as follows:

(i) In subchronic toxicity tests, it is desirable to have a dose response relationship as well as a no-observed-toxic-effect level. Therefore, at least 3 dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) shall be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data

should be sufficient to produce a dose-response curve.

v. By revising paragraph (e)(6)(ii), to read as follows:

(ii) Animals in the satellite group scheduled for followup observations should be kept for at least 28 days further without treatment to detect recovery from, or persistence of, toxic effects.

vi. By changing the word "may" to "shall" wherever it appears in paragraph (e)(7)(iv) and by revising paragraph (e)(7)(v) to read as follows:

(v) For a substance administered by gavage or capsule, the dose shall be given at approximately the same time each day, and adjusted at intervals (weekly or bi-weekly) to maintain a constant dose level in terms of animal body weight.

vii. By changing the words "at least five" to "all" wherever they appear in the introductory text of paragraph (e)(9)(i), and by changing the words "should be" to "shall be" or "are" in certain sentences in paragraph (e)(9)(i) (A) and (B), which are revised to read as follows:

(A) Certain hematology determinations shall be carried out at least two times during the test period: Just prior to initiation of dosing (baseline data) and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood shall be carried out at least two times: Just prior to initiation of dosing (if adequate historical baseline data are not available) and just prior to terminal sacrifice at the end of the test period. Test areas which are considered appropriate to all studies: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with the period of fasting appropriate to the species), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen blood creatinine, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

viii. By revising paragraph (e)(8)(i) to read as follows:

(i) Each animal shall be observed daily and, if necessary, handled to appraise its physical condition.

ix. By revising the introductory text of paragraph (e)(9)(ii) to read as follows:

(ii) The following examinations shall be made on high dose and control groups. If changes in the eyes are detected, all animals should be examined.

x. By removing the sentence "If changes in the eyes are detected, all animals should be examined" in paragraph (e)(9)(ii)(A).

xi. By revising paragraph (e)(10)(iii), to read as follows:

(iii) The following organs and tissues, or representative samples thereof, shall be preserved in a suitable medium for possible future histopathological examination: All gross lesions; lungs—which should be removed intact, weighed, and treated with a suitable fixative to ensure that lung structure is maintained (perfusion with the fixative is considered to be an effective procedure); nasopharyngeal tissues; brain— including sections of medulla/pons, cerebellar cortex, and cerebral cortex; pituitary; thyroid/parathyroid; thymus; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys; adrenals; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate, and, if present, seminal vesicles); aorta; (skin); gall bladder (if present); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland); (thigh musculature); peripheral nerve; (eyes); (femur—including articular surface); (spinal cord at three levels—cervical, midthoracic, and lumbar); and (zymbal and exorbital lachrymal glands).

b. Paragraphs (f)(1)(i) and (3) are amended by changing the word "should" to "shall" wherever it appears and changing the word "time" to "date" wherever it appears in paragraph (f)(3)(ii).

**§ 798.3300 [Amended]**

5. Section 798.3300 *Oncogenicity* is amended as follows:

a. Paragraph (b) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (b)(1) (i), (ii), (iii) and (iv) (A) and (B), (2), (5), (6)(i)(B), (ii)(C), (iii)(C), (7)(ii), (iv), (v), and (vi), (8) (ii) and (iv), (9), (10), and (11).

ii. By removing the phrase "It is recommended that" in the first sentence of paragraph (b)(1)(i) and by removing the phrase "Equal numbers of" in the first sentence of paragraph (b)(1)(iii)(A).

iii. By changing the word "recommended" to "required" wherever it appears in paragraph (b)(2)(i).

iv. By removing the word "only" in the fourth sentence of paragraph (b)(9).

v. By changing the phrase "female mammary gland" to "mammary gland" and by removing the phrase "special studies such as" in paragraph (b)(10)(ii).

vi. By changing the phrase "a necessary requirement" to "required" in paragraph (b)(10)(iii).

vii. By changing the word "should" to "shall" in certain sentences in paragraph (b)(3)(i), which is revised to read as follows:

(i) For risk assessment purposes, at least 3 dose levels shall be used, in addition to the concurrent control group. Dose levels should be spaced to produce a gradation of chronic effects.

viii. The proposed change to paragraph (b)(6)(ii)(B) is not being made based on comments received.

ix. By changing the word "should" to "shall" in certain sentences in paragraph (b)(6)(iii)(A), which is revised to read as follows:

(A) The animals shall be tested with inhalation equipment designed to sustain a minimum dynamic air flow of 12 to 15 air changes per hour, ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. To ensure stability of a chamber atmosphere, the total "volume" of the test animals shall not exceed 5 percent of the volume of the test chamber. Alternatively, oro-nasal, head-only, or whole-body individual chamber exposure may be used.

x. The proposed change to paragraph (b)(6)(iii)(B) is not being made based on comments received.

xi. By changing the word "should" to "shall" in certain sentences in paragraph (b)(7)(iii), which is revised to read as follows:

(iii) Clinical signs and mortality shall be recorded for all animals. Special

attention should be paid to tumor development. The day of onset, location, dimensions, appearance and progression of each grossly visible or palpable tumor shall be recorded.

xii. By revising paragraph (b)(6)(i), to read as follows:

(i) The rate of air flow shall be monitored continuously and recorded at intervals of at least once every 30 minutes.

xiii. By changing the word "should" to "shall" in certain sentences in paragraph (b)(6)(i)(A), which is revised to read as follows:

(A) The animals shall receive the test substance in their diet, dissolved in drinking water at levels that do not exceed the maximum solubility of the test chemical under testing condition.

xiv. By changing the word "should" to "shall" wherever it appears in paragraph (b)(6)(iii)(D), which is revised to read as follows:

(D) A dynamic inhalation system with a suitable flow control system shall be used. The rate of air flow shall be adjusted to ensure that conditions throughout the equipment are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

xv. By changing the word "should" to "shall" wherever it appears in paragraph (b)(7)(i), which is revised to read as follows:

(7) *Observations of animals.* (i) Each animal shall be observed daily and if necessary should be handled to appraise its physical condition.

xvi. By changing the word "should" to "shall" wherever it appears in paragraph (b)(8)(iii), which is revised to read as follows:

(iii) During the development of the generating system, particle size analysis shall be performed to establish the stability of aerosol concentrations with respect to particle size. During exposure, analyses shall be conducted as often as necessary to determine the consistency of particle size, distribution, and homogeneity of the exposure stream.

b. Paragraph (c) is amended by changing the word "should" to "shall" wherever it appears in paragraphs (c)(1), (2) (i) and (iii), and (3) and by changing the words "is no less than" to "should be no less then" wherever they appear in paragraph (c)(2)(iii).

§ 798.4350 [Amended]

6. Section 798.4350 *Inhalation developmental toxicity study* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c) (1), (2), (3) (i), (ii), and (vi), (4), (5), (7) (i), (ii) and (iii), (8) (i), (iii), (vi), (vii) and (10).

ii. By changing the word "recommended" to "required" in paragraph (c)(1)(iv).

iii. By changing the word "should" to "shall" in certain sentences in paragraphs (c)(6)(i) (A) and (B), which are revised to read as follows:

(A) The animals shall be tested in inhalation equipment designed to substain a minimum dynamic air flow of 12 to 15 air changes per hour and ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. To ensure stability of a chamber atmosphere, the total "volume" of the test animals shall not exceed 5 percent of the volume of the test chamber.

(B) Pregnant animals shall not be subjected to beyond the minimum amount of stress. Since whole-body exposure appears to be the least stressful mode of exposure, it is the method preferred. In general oro-nasal or head-only exposure, which is sometimes used to avoid concurrent exposure by the dermal or oral routes, is not recommended because of the associated stress accompanying the restraining of the animals. However, there may be specific instances where it may be more appropriate than whole-body exposure. The tester shall provide justification/reasoning for its selection.

iv. By revising paragraph (c)(7)(iv), to read as follows:

(iv) Temperature and humidity shall be monitored continuously and be recorded at least every 30 minutes.

v. By changing the word "should" to "shall" in certain sentences in paragraph (c)(9)(iv), which is revised to read as follows:

(iv) Cage-side observations shall include, but not be limited to: Changes in skin and fur, eye and mucous membranes, as well as respiratory, autonomic and central nervous systems, somatomotor activity and behavioral pattern. Particular attention should be directed to observation of tremors, convulsions, salivation, diarrhea, lethargy, sleep, and coma.

vi. By changing the word "should" to "shall" wherever it appears in paragraph (c)(3)(iv), which is revised to read as follows:

(iv) Unless limited by the physical/chemical nature or biological properties of the substance, the highest concentration level shall induce some overt maternal toxicity such as reduced body weight or body weight gain, but not more than 10 percent maternal deaths.

vii. By changing the word "should" to "shall" wherever it appears in paragraph (c)(6)(ii), which is revised to read as follows:

(ii) A dynamic inhalation system with a suitable flow control system shall be used. The rate of air flow shall be adjusted to ensure that conditions throughout the exposure chamber are essentially the same. Test material distribution should be established before animals are committed to dosing. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

viii. By changing the word "should" to "shall" wherever it appears in paragraphs (c)(7) (ii) and (iii), which are revised to read as follows:

(ii) The actual concentration of the test substance shall be measured in the breathing zone. During the exposure period the actual concentrations of the test substance shall be held as constant as practicable, monitored continously or intermittently depending on the method of analysis and measured at least at the beginning, at an intermediate time and at the end of the exposure period.

(iii) During the development of the generating system, particle size analysis shall be performed to establish the stability of aerosol concentrations with respect to particle size. During exposure, analysis shall be conducted as often as necessary to determine the consistency of particle size distribution.

ix. By changing the word "should" to "shall" wherever it appears in paragraph (c)(10)(ii), which is revised to read as follows:

(ii) Immediately after sacrifice or death, the uterus shall be removed, weighed, and the contents examined for embryonic or fetal deaths and the number of viable fetuses. Gravid uterine weights should not be obtained from dead animals if autolysis or where decomposition has occurred. The degree of resorption shall be described in order to help estimate the relative time of death.

b. Paragraph (f) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (f) (1) and (3).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (f)(2), which is revised to read as follows:

(2) *Evaluation of results.* The findings of a developmental toxicity study shall be evaluated in terms of the observed effects and the exposure levels producing effects. It is necessary to consider the historical developmental toxicity data on the species/strain tested. A properly conducted developmental toxicity study should provide a satisfactory estimation of a no-effect level.

iii. By changing the word "time" to "date" wherever it appears in paragraphs (f)(3)(iii) (C) and (D).

**§ 798.4420 [Amended]**

7. Section 798.4420 *Preliminary developmental toxicity screen* is amended as follows:

a. Paragraph (c) is amended by changing the word "should" to "shall" wherever it appears in paragraph (c).

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1) (ii), (iii) and (iv), (2), (3) (ii) and (iv), (4), (5), (7) (i), (ii), (iii) and (iv) and (8).

ii. By changing the word "pregnant" to "bred" wherever it appears in paragraph (d)(1)(iv).

iii. By replacing the word "neurotoxic" with "other adverse clinical" wherever it appears in paragraph (d)(3)(iv)(A).

iv. By changing the figure "10" to "1" wherever it appears in paragraph (d)(3)(iv)(B).

v. By changing the words "at the same time" to "at approximately the same time" wherever they appear in paragraph (d)(5).

vi. By removing the phrase "During the treatment and observation periods," wherever it appears in paragraph (d)(7)(iii).

vii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(7)(v), which is revised to read:

(v) During the dosing period females that die or are sacrificed because they are moribund shall be examined for signs of pregnancy and details of the conditions of the uterus and/or its contents recorded. Animals that have not delivered two days after expected date of parturition should be sacrificed and similar examinations made.

viii. By revising paragraph (d)(9)(ii) to read as follows:

(ii) Dead pups shall be subjected to a thorough external examination and gross soft tissue abnormalities noted.

c. Paragraph (e) is amended by changing the word "should" to "shall" wherever it appears and by changing the word "time" to "date" wherever it appears in paragraphs (e)(3) (iii) and (iv).

**§ 798.4700 [Amended]**

8. Section 798.4700 *Reproduction and fertility effects* is amended as follows:

a. Paragraph (c) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (c) (1), (2), (3)(i), (4)(i), (5)(i)(B), (6)(i)(C), (7)(i), (ii), (iv), and (v), (8) and (9) and by revising paragraph (c)(2)(iii) to read as follows:

(iii) If a vehicle or other additive is used to facilitate dosing, it shall not interfere significantly with absorption of the test substance or produce toxic effects.

ii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(4)(ii)(A), which is revised to read as follows:

(A) All P males should be sacrificed at the end of the 3-week mating period, or may be retained for possible production of a second litter. If these animals are retained for a second litter, dosing shall be continued.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (c)(6)(i)(A), which is revised to read as follows:

(A) For each mating, each female shall be placed with a single male from the same dose level until pregnancy occurs or 1 week has elapsed. If mating has not occurred after 1 week, the female shall be placed with a different male. Paired matings should be clearly identified.

iv. By changing the word "should" to "shall" in paragraph (c)(6)(iii) which is revised to read as follows:

(iii) *Special housing.* After evidence of copulation, pregnant animals shall be caged separately in delivery or maternity cages. Pregnant animals shall be provided with nesting materials when parturition is near.

v. By changing the word "weekly" to "weekly except during the mating period" in the last sentence of paragraph (c)(7)(i).

vi. By revising paragraph (c)(7)(iii) to read as follows:

(iii) Each litter should be examined as soon as possible after delivery for the number of pups, stillbirths, live births, sex, and the presence of gross anomalies. Live pups should be counted and litters weighed at birth or soon thereafter, and on days 4, 7, 14, and 21 after parturition.

vii. By changing the word "animals" to "adult animals" wherever it appears in paragraph (c)(8)(i).

viii. By changing the words "target organ(s)" to "target organ(s) when previously identified" wherever they appear in paragraph (c)(8)(iii).

ix. By changing the word "should" to "shall" wherever it appears in the paragraph (c)(9) introductory text, which is revised to read as follows:

(9) *Histopathology.* Except if carried out in other studies of comparable duration and dose levels the following histopathology shall be performed:

b. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d) (1) and (3).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2)(i), which is revised to read as follows:

(i) An evaluation of test results, including the statistical analysis, based on the clinical findings, the gross necropsy findings, and the microscopic results shall be made and supplied. This should include an evaluation of the relationship, or lack thereof, between the animals' exposure to the test substance and the incidence and severity of all abnormalities.

iii. By changing the word "time" to "date" wherever it appears in paragraphs (d)(3) (iii) and (v).

**§ 798.4900 [Amended]**

9. Section 798.4900 *Developmental toxicity study* is amended as follows:

a. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e)(1), (2), (3)(i), (ii), and (iii), (4), (5), (7)(i), (ii), (iii), (iv), (vi), and (vii), and (8)(i), (iii), (iv), (v), (vi) and (vii).

ii. By changing the word "recommended" to "required" wherever it appears in paragraph (e)(1)(iv).

iii. By revising (e)(3)(iv), to read as follows:

(iv) Unless limited by the physical/chemical nature or biological properties of the substance, the highest dose level shall induce some overt maternal toxicity such as reduced body weight or body weight gain, but not more than 10 percent maternal deaths.

iv. By changing the words "at the same time" to "approximately the same time" wherever they appear in paragraph (e)(5).

v. By removing the phrase "During the treatment and observation period," wherever it appears in paragraph (e)(7)(iv).

vi. By revising paragraph (e)(8)(ii) as follows:

(ii) Immediately after sacrifice or as soon as possible after death, the uterus shall be removed and the contents

examined for embryonic or fetal deaths and the number of viable fetuses. The degree of resorption shall be described in order to help estimate the relative time of death of the conceptus. The weight of the gravid uterus should be recorded for dams that are sacrificed. Gravid uterine weights should not be obtained from dead animals if autolysis or decomposition has occurred.

b. Paragraph (f) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (f) (1) and (3).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (f)(2), which is revised to read as follows:

(2) *Evaluation of results.* The findings of a developmental toxicity study shall be evaluated in terms of the observed effects and the exposure levels producing effects. It is necessary to consider the historical developmental toxicity data on the species/strain tested. A properly conducted developmental toxicity study should provide a satisfactory estimation of a no-effect level.

iii. By changing the word "time" to "date" wherever it appears in paragraphs (f)(3) (iii) and (iv).

**§ 798.5200 [Amended]**

10. Section 798.5200 *Mouse visible specific locus test* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the words "are recommended" to "shall be used" in paragraph (d)(3)(i).

ii. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(3) (i), (ii) and (iv), and (4)(i).

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(5)(i), which is revised to read as follows:

(i) *Vehicle.* When possible, test chemicals should be dissolved or suspended in distilled water or isotonic saline buffered appropriately, if needed, for stability. Water-insoluble chemicals shall be dissolved or suspended in appropriate vehicles. The vehicle used shall neither interfere with the test compound nor produce major toxic effects. Fresh preparations of the test chemical should be employed.

iv. By revising paragraph (d)(5)(ii), to read as follows:

(ii) *Dose levels.* Usually, only one dose level need be tested. This should be the highest dose tolerated without toxic effects, provided that any temporary sterility induced due to elimination of spermatagonia is of only moderate duration, as determined by a return of males to fertility within 80 days after treatment. For evaluation of dose-response, it is recommended that at least two dose levels be tested.

b. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e)(1) and (2)(i) and by adding the following sentence to the end of paragraph (e)(1): "Repeated mating cycles should be conducted until the entire spermatogonial cycle has been evaluated and enough offspring have been obtained to meet the power criterion of the assay."

ii. By changing the word "should" to "shall" in certain sentences in paragraph (e)(2)(ii), which is revised to read as follows:

(ii) Nonmutant progeny should be discarded. Mutant progeny shall be subjected to genetic tests for verification.

c. Paragraph (f) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (f) (2) and (5).

ii. By changing the word "should" to "shall" wherever it appears in paragraph (f)(1), which is revised to read as follows:

(1) *Treatment of results.* Data shall be presented in tabular form and shall permit independent analysis of cell stage specific effects and dose dependent phenomena, The data shall be recorded and analyzed in such a way that clusters of identical mutations are clearly identified. The individual mutants detected shall be thoroughly described. In addition, concurrent positive and negative control data, if they are available, shall be tabulated so that it is possible to differentiate between concurrent (when available) and long-term accumulated mutation frequencies.

**§ 798.5265 [Amended]**

11. Section 798.5265 *Salmonella typhimurium reverse mutation assay* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(5) (i) and (ii) and (6)(ii)(B).

ii. By revising paragraph (d)(6)(i) to read as follows:

(6) *Test chemicals*—(i) *Vehicle.* Test chemicals and positive control reference substances should be dissolved or suspended in an appropriate vehicle and then further diluted in vehicle for use in the assay.

iii. By changing the word "should" to "shall" wherever it appears in paragraph (d)(6)(ii)(C), which is revised to read as follows:

(C) When appropriate, a single positive response shall be confirmed by testing over a narrow range of concentrations.

b. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e) (4) and (5).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (e)(1), which is revised to read as follows:

(1) *Direct plate incorporation method.* For this test without metabolic activation, test chemical and 0.1 ml of a fresh bacterial culture should be added to 2.0 ml of overlay agar. For tests with metabolic activation, 0.5 ml of activation mixture containing an adequate amount of postmitochendrial fraction should be added to the agar overlay after the addition of test chemical and bacteria. Contents of each tube shall be mixed and poured over the surface of a selective agar plate. Overlay agar shall be allowed to solidify before incubation. At the end of the incubation period, revertant colonies per plate shall be counted.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (e)(2)(i), which is revised to read as follows:

(i) For this test with metabolic activation, 0.5 ml of S–9 mix containing 150 ul of S–9 and 0.1 ml of bacterial culture should be added to a test tube kept on ice. One-tenth milliliter of chemical should be added, and the tubes should be incubated with shaking at 30° C for 20 min. At the end of the incubation period, 2.0 ml of agar should be added to each tube, the contents mixed and poured over the surface of a selective agar plate. Overlay agar shall be allowed to solidify before incubation. At the end of the incubation period, revertant colonies per plate shall be counted.

iv. By changing the word "should" to "shall" in certain sentences in paraqraph (e)(2)(ii), which is revised to read as follows:

(ii) For tests without metabolic activation, 0.5 ml of buffer should be used in place of the 0.5 ml of S–9 mix. All other procedures shall be the same as those used for the test with metabolic activation.

v. By revising paragraph (e)(6), to read as follows:

(6) *Number of cultures.* AE plating should be done at least in triplicate.

c. Paragraph (f) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (f)(1) and (5).

ii. By changing the words "revertants of a statistically" to "revertants or a statistically" in paragraph (f)(3)(ii).

iii. By revising paragraph (f)(5)(ii) to read as follows:

(ii) Metabolic activation system used (source, amount and cofactor); details of preparations of S-9 mix.

§ 798.5275 [Amended]

12. Section 798.5275 *Sex-linked recessive lethal test in Drosophila melanogaster* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraph (d)(4).

ii. By removing the last sentence of paragraph (d)(4)(iv), which is revised to read as follows:

(iv) *Negative controls.* Negative (vehicle) controls shall be included. The size of the negative (vehicle) control group shall be determined by the availability of appropriate laboratory historical control data.

iii. By revising paragraph (d)(5)(ii), to read as follows:

(ii) *Dose levels.* For the initial assessment of mutagenicity, it is sufficient to test a single dose of the test substance for screening purposes. This dose should be the maximum tolerated dose, or that which produces some indication of toxicity, or shall be the highest dose attainable. For dose-response purposes, at least three additional dose levels should be used.

b. Paragraph (e) is amended by changing the word "should" to "shall" wherever it appears in paragraphs (e) (1) and (2) and by changing the word "excess" to "appropriate number" wherever it appears in paragraph (e)(1).

c. Paragraph (f) is amended by changing the word "should" to "shall" wherever it appears in paragraphs (f) (1), (2), and (5).

§ 798.5300 [Amended]

13. Section 798.5300 *Detection of gene mutations in somatic cells in culture* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d) (3)(ii), (4), and (5).

ii. By revising paragraph (d)(6)(i), to read as follows:

(i) *Vehicle.* Test substances may be prepared in culture media or dissolved or suspended in appropriate vehicles prior to treatment of the cells. The final concentration of the vehicle shall not interfere with cell viability or growth rate. Treatment vessels should be chosen to ensure that there is no visible interaction, such as etching, between the solvent, the test chemical, and the vessel.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(6)(ii)(B), which is revised to read as follows:

(B) Several concentrations (usually at least 4) of the test substance shall be used. Generally, these shall yield a concentration-related toxic effect. The highest concentration shall produce a low level of survival (approximately 10 percent), and the survival in the lowest concentration shall approximate the negative control. Cytotoxicity shall be determined after treatment with the test substance both in the presence and in the absence of an exogenous metabolic activation system. Relatively insoluble substances should be tested up to their limit of solubility under culture conditions. For freely-soluble nontoxic substances the highest concentration used should be determined on a case-by-case basis.

b. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e) (1) and (2), and by changing the words "without metabolic" to "without exogenous metabolic" wherever it appears in paragraph (e)(1).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (e)(3), which is revised to read as follows:

(3) At the end of the expression period, which shall be sufficient to allow near optimal phenotypic expression of induced mutants, cells should be grown in medium with and without selective agent(s) for determination of number of mutants and cloning efficiency, respectively.

iii. By revising paragraph (e)(4) to read as follows:

(4) Results shall be confirmed in an independent experiment. When appropriate, a single positive response should be confirmed by testing over a narrow range of concentrations.

c. Paragraph (f) is amended by changing the word "should" to "shall" wherever it appears in paragraph (f) (1) and (5).

§ 798.5375 [Amended]

14. Section 798.5375 *In vitro mammalian cytogenetics* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d) (3)(ii), (4), and (5).

ii. By revising paragraph (d)(6)(i), to read as follows:

(i) *Vehicle.* Test substances may be prepared in culture media or dissolved or suspended in appropriate vehicles prior to treatment of the cells. Final concentration of the vehicle shall not interfere with cell viability or growth rate. Treatment vessels should be chosen to ensure that there is no visible interaction, such as etching, between the solvent, the test chemical, and the vessel.

iii. By replacing the phrase "The highest test substance concentration" with "Generally the highest test substance concentrations" and by changing the words "or cytotoxicity" to "of cytotoxicity" wherever they appear in paragraph (d)(6)(ii).

b. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e) (3) and (4), and by changing the phrase "absence of a metabolic" to "absence of an exogenous metabolic" wherever it appears in paragraph (e)(3).

ii. By revising paragraph (e)(5)(i) to read as follows:

(i) For established cell lines and strains, multiple harvest times are recommended. However, for screening purposes, a single harvest time may be appropriate. If the test chemical changes the cell cycle length, the fixation intervals should be changed accordingly. If a single harvest time is selected, supporting data for the harvest time should be presented in such a study.

iii. The proposed change to paragraph (e)(5)(ii) is not being made based on comments received.

iv. By revising paragraph (e)(5)(iii), to read as follows:

(iii) Cell cultures shall be treated with a spindle inhibitor, (e.g., colchicine or Colcemid®), 1 or 2 hours prior to harvesting. Each culture shall be harvested and processed separately for the preparation of chromosomes.

v. By revising paragraph (e)(7), to read as follows:

(7) *Analysis.* Slides shall be coded before analysis. In human lymphocytes, only cells containing 46 centromeres shall be analyzed. In established cell

lines and strains, only metaphases containing ±2 centromeres of the modal number shall be analyzed. Uniform criteria for scoring aberrations shall be used.

vi. By adding a new paragraph (e)(8) to read as follows:

(8) *Confirmatory tests.* When appropriate, a single positive response shall be confirmed by testing over a narrow range of concentrations.

c. Paragraph (f) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraph (f)(5) and by changing the word "time" to "date" wherever it appears in paragraph (f)(5)(vi).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (f)(1), which is revised to read as follows:

(1) *Treatment of results.* Data shall be presented in a tabular form. Different types of structural chromosomal aberrations shall be listed with their numbers and frequencies for experimental and control groups. Data should be evaluated by appropriate statistical methods. Gaps or achromatic lesions are recorded separately and not included in the total aberration frequency.

§ 798.5385 [Amended]

15. Section 798.5385 *In vivo mammalian bone marrow cytocenetics tests: Chromosomal analysis* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(3) (ii) and (iv) and (4).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(iii), which is revised to read as follows:

(iii) *Number and sex.* At least five female and five male animals per experimental and control group shall be used. Thus, 10 animals would be sacrificed per time per group treated with the test compound if several test times after treatment are included in the experimental schedule. The use of a single sex or smaller number of animals should be justified.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(5)(i), which is revised to read as follows:

(i) *Vehicle.* When possible, test chemicals shall be dissolved in isotonic saline or distilled water. Water insoluble chemicals may be dissolved or suspended in appropriate vehicles. The vehicles used shall neither interfere with the test chemical nor produce toxic effects. Fresh preparations of the test compound should be employed.

iv. By revising paragraph (d)(5)(ii), to read as follows:

(ii) *Dose levels.* For an initial assessment, one dose of the test substance may be used, the dose being the maximum tolerated dose (to a maximum of 5,000 mg/kg) or that producing some indication of cytotoxicity (e.g., partial inhibition of mitosis) or shall be the highest dose attainable (to a maximum of 5,000 mg/kg). Additional dose levels may be used. For determination of dose-response, at least three dose levels should be used.

b. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e) (1)(ii), (2), and (3) and by changing the word "should" to "shall" in certain sentences in paragraph (e)(1)(i), which is revised to read as follows:

(i) Animals should be treated with the test substance once at the selected dose(s). Samples should be taken at three times after treatment. For rodents, the central sampling interval is 24 hours. Since cell cycle kinetics can be influenced by the test substance, one earlier and one later sampling interval adequately spaced within the range of 6 to 48 hours shall be applied. Where the additional dose levels are tested in a subsequent experiment, samples shall be taken at the predetermined most sensitive interval or, if this is not established, at the central sampling time. If the most sensitive interval is known and documented with data, only this one time point shall be sampled.

ii. By changing the word "should" to "shall" in certain sentences in paragraph (e)(4), which is revised to read as follows:

(4) *Analysis.* The number of cells to be analyzed per animal should be based upon the number of animals used, the negative control frequency, the predetermined sensitivity, and the power chosen for the test. Slides shall be coded before microscopic analysis.

c. Paragraph (f) is amended by changing the word "should" to "shall" wherever it appears in paragraph (f)(5).

§ 798.5395 [Amended]

16. Section 798.5395 *In vivo mammalian bone marrow cytogenetics tests: Micronucleus assay* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(3) (iv) and (d)(4).

ii. By revising paragraph (d)(3)(ii), to read as follows:

(ii) *Age.* Young adult animals shall be used.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(iii), which is revised to read as follows:

(iii) *Number and sex.* At least five female and five male animals per experimental and control group shall be used. Thus, 10 animals would be sacrificed per time per group if several test times after treatment were included in the experimental schedule. The use of a single sex or a smaller number of animals should be justified.

iv. By changing the word "should" to "shall" in certain sentences in paragraphs (d)(5) (i) and (ii), which are revised to read as follows:

(i) *Vehicle.* When appropriate for the route of administration, solid and liquid test substances should be dissolved or suspended in distilled water or isotonic saline. Water insoluble chemicals may be dissolved or suspended in appropriate vehicles. The vehicle used shall neither interfere with the test compound nor produce toxic effects. Fresh preparations of the test compound should be employed.

(ii) *Dose levels.* For an initial assessment, one dose of the test substance may be used, the dose being the maximum tolerated dose (to a maximum of 5,000 mg/kg) or that producing some indication of cytotoxicity, e.g., a change in the ratio of polychromatic to normochromatic erythrocytes. Additional dose levels may be used. For determination of dose response, at least three dose levels shall be used.

v. By redesignating the text of paragraph (d)(1) as (d)(1)(i) and adding new paragraphs (d)(1) (ii) and (iii) to read as follows:

(d) *Test method*—(1) *Principle*—

(i) * * *

(ii) Micronuclei may also be detected in other test systems:

(A) Tissue culture.

(B) Plants.

(C) Blood smears.

(D) Fetal tissues.

(E) Meiotic cells.

(F) Hepatic cells.

(iii) The present guideline is based on the mammalian bone marrow assay.

b. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (e)(1) (ii) and (iii).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (e)(1)(i), which is revised to read as follows:

(i) Animals shall be treated with the test substance once at the highest tolerated dose. Sampling times should coincide with the maximum responses of the assay which 149 varies with the test substance. Therefore, using the highest dose, bone marrow samples should be taken at least three times, starting not earlier than 12 hours after treatment, with appropriate intervals following the first sample but not extending beyond 72 hours. When other doses are used sampling shall be at the maximum sensitive period, or, if that is not known, approximately 24 hours after treatment. Other appropriate sampling times may be used in addition. If the most sensitive interval is known and documented with data, only this one time point need be sampled.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (e)(2), which is revised to read as follows:

(2) *Analysis.* Slides shall be coded before microscopic analysis. At least 200 polychromatic erythrocytes per animal shall be scored for the incidence of micronuclei. The ratio of polychromatic to normochromatic erythrocytes should be determined for each animal by counting a total of 200 erythrocytes. To ensure consistency with OECD and other guidelines, 1,000 polychromatic erythrocytes are recommended. Additional information may be obtained by scoring normochromatic erythrocytes for micronuclei.

c. Paragraph (f) is amended by changing the word "should" to "shall" wherever it appears in paragraphs (f) (1) and (5).

d. Paragraph (g)(7) is added to read as follows:

(7) Heddle, J.A., Hite, M., Kurkhart, B., Mavournin, K., MacGregor, J.T., Newell, G.W., Salamone, M.F. "The induction of micronuclei as a measure of genotoxicity. A report of the U.S. Environmental Protection Agency Gene-Tox Program," *Mutation Research*, 123: 61–118 (1983).

**§ 798.5450 [Amended]**

17. Section 798.5450 *Rodent dominant lethal assay,* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(3) (ii) and (iv) and (4).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(3)(iii), which is revised to read as follows:

(iii) *Number.* An adequate number of animals shall be used taking into account the spontaneous variation of the biological characteristics being evaluated. The number chosen should be based on the predetermined sensitivity of detection and power of significance. For example, in a typical experiment, the number of males in each group shall be sufficient to provide between 30 and 50 pregnant females per mating interval.

iii. By changing the word "should" to "shall" in certain sentences in paragraphs (d)(5) (i) and (ii), which are revised to read as follows:

(i) *Vehicle.* When possible, test substances shall be dissolved or suspended in isotonic saline or distilled water. Water-insoluble chemicals may be dissolved or suspended in appropriate vehicles. The vehicle used shall neither interfere with the test chemical nor produce toxic effects. Fresh preparations of the test chemical should be employed.

(ii) *Dose levels.* Normally, three dose levels shall be used. The highest dose shall produce signs of toxicity (e.g., slightly reduced fertility and slightly reduced body weight). However, in an initial assessment of dominant lethality a single high dose may be sufficient. Nontoxic substances shall be tested at 5g/kg or, if this is not practicable, then as the highest dose attainable.

b. Paragraph (f) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (f) (2) and (5).

ii. By changing the word "should" to "shall" wherever it appears in paragraph (f)(1), which is revised to read as follows:

(1) *Treatment of results.* Data shall be tabulated to show the number of males, the number of pregnant females, and the number of nonpregnant females. Results of each mating, including the identity of each male and female, shall be reported individually. For each female, the dose level and week of mating and the frequencies of live implants and of dead implants shall be enumerated. If the data are recorded as early and late deaths, the tables shall make that clear. If preimplantation loss is estimated, it shall be reported. Preimplantation loss can be calculated as the difference between the number of corpora lutea and the number of implants or as a reduction in the average number of implants per female in comparison with control matings.

iii. By removing current paragraph (f)(5)(vi) and by revising paragraph (f)(5)(vii) to read as follows and by redesignating it as paragraph (f)(5)(vi):

(vi) Criteria for scoring dominant lethals including the number of early and late embryonic deaths.

iv. By redesignating paragraph (f)(5)(viii) as paragraph (f)(5)(vii).

**§ 798.5460 [Amended]**

18. Section 798.5460 *Rodent heritable translocation assays* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(3) (ii) and (iv) and (4).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(5)(i), which is revised to read as follows:

(i) *Vehicle.* When appropriate for the route of administration, solid and liquid test substances should be dissolved or suspended in distilled water or isotonic saline. Water-insoluble chemicals may be dissolved or suspended in appropriate vehicles. The vehicle used shall neither interfere with the test chemical nor produce toxic effects. Fresh preparations of the test chemical should be employed.

iii. By revising paragraph (d)(5)(ii), to read as follows:

(ii) *Dose levels.* At least two dose levels shall be used. The highest dose level shall result in toxic effects (which shall not produce an incidence of fatalities which would prevent a meaningful evaluation) or shall be the highest dose attainable or 5g/kg body weight.

b. Paragraph (e) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in the introductory text to paragraph (e)(2).

ii. By changing the words "should be" and "are" to "shall be" in certain sentences in paragraph (e)(1), which is revised to read as follows:

(1) *Treatment and mating.* The animals shall be dosed with the test substances 7 days per week over a period of 35 days. After treatment, each male shall be caged with 2 untreated females for a period of 1 week. At the end of 1 week, females shall be separated from males and caged individually. When females give birth, the day of birth, litter size, and sex of progeny shall be recorded. All male progeny should be weaned, and all female progeny should be discarded.

c. Paragraph (f) is amended by changing the word "should" to "shall" wherever it appears in paragraphs (f) (1), (2), and (5).

**§ 798.6050 [Amended]**

19. Section 798.6050 *Functional observational battery* is amended as follows:

a. Paragraph (d) is amended as follows:

i. By changing the word "should" to "shall" wherever it appears in paragraphs (d)(1), (ii) and (iii)(B), (3), and (8)(ii).

ii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(2), which is revised to read as follows:

(2) *Number of animals.* At least eight animals of each sex should be used at each dose level and should be designated for behavioral testing. If interim sacrifices are planned, the number should be increased by the number of animals scheduled to be sacrificed before the end of the study. Animals shall be randomly assigned to treatment and control groups.

iii. By changing the word "should" to "shall" in certain sentences in paragraph (d)(8)(i), which is revised to read as follows:

(i) All animals in a given study should be observed carefully by trained technicians who are blind with respect to the animals' treatments. Standard procedures to minimize observer variability shall be followed. Where possible, it is advisable that the same observer be used to evaluate the animals in a given study. If this is not possible, some demonstration of inter-observer reliability is required. All animals should be observed prior to initiation of exposure. Subsequent observations should be made with sufficent frequency to ensure the detection of behavioral and/or neurologic abnormalities, if present. At minimum, observations at 1 hour, 6 hours, 24 hours, 7 days, and 14 days and monthly thereafter are recommended. In a subchronic study, subsequent to the first exposure all observations should be made before the daily exposure. The animals should be removed from the home cage to a standard arena for observation. Effort should be made to ensure that variations in the test conditions are minimal and are not systematically related to treatment. Among the variables that can affect behavior are sound level, temperature, humidity, lighting, odors, time of day, and environmental distractions. Explicit, operationally defined scales for each function should be used. The development of objective quantitative measures of the observational endpoints specified is encouraged.

b. By changing the word "should" to "shall" in certain sentences in paragraph (e)(3), which is revised to read as follows:

(3) *Evaluation of data.* The findings of a functional/observational battery should be evaluated in the context of preceding and/or concurrent toxicity studies and any correlative histopathological findings. The evaluation shall include the relationship between the doses of the test substance and the presence or absence, incidence and severity of any neurotoxic effects. The evaluation should include appropriate statistical analyses. Choice of analyses should consider tests appropriate to the experimental design and needed adjustments for multiple comparisons.

**§ 798.6200 [Amended]**

20. Section 798.6200 *Motor activity* is amended in paragraph (d)(1)(iii)(B) by changing the word "should" to "shall" wherever it appears.

**§ 798.6400 [Amended]**

21. Section 798.6400 *Neuropathology* is amended as follows:

a. Paragraph (d) is amended by changing the word "should" to "shall" wherever it appears in paragraphs (d)(1)(i) and (iii), and (8)(ii)(C), (iii), and (iv)(B).

b. Paragraph (e) is amended by changing the word "should" to "shall" whenever it appears in the introductory text and in paragraph (e)(1).

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## 40 CFR Parts 795 and 798

**[OPTS-42038D; FRL 3203-3]**

## Cresols; Final Test Standards and Reporting Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing a final rule under section 4(a) of the Toxic Substances Control Act (TSCA) that specifies test standards and reporting requirements for testing of ortho (o), meta (m) and para (p) cresols (CAS 95-48-7, 108-39-4, 107-44-5).

**DATES:** In accordance with 40 CFR 23.5 (50 FR 7271, February 21, 1985), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on June 3, 1987. This rule shall become effective on July 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-545, 401 M St. SW., Washington, DC 20460, (202) 554-1404.

In the Federal Register of April 28, 1986 (51 FR 15771), EPA issued a final Phase I rule under section 4(a) of TSCA to require testing of cresols for mutagenic effects, developmental toxicity, and reproductive effects. Also in that issue of the Federal Register, EPA issued a proposed Phase II rule which named the test guidelines to be used for testing and proposed that tests be submitted within specific time frames (51 FR 15866; April 28, 1986). The Agency is now promulgating a final Phase II rule specifying these test standards and reporting requirements for this testing. This test rule for cresols is being promulgated under 40 CFR 799.1250.

### I. Background

The Phase I final rule specified the testing requirements for cresols: (1) Mutagenic effects studies (including tests for chromosomal aberrations, gene mutations, and cellular transformations) on specified cresol isomers; (2) a developmental toxicity study with each cresol isomer; and (3) a two-generation reproductive effects study with each cresol isomer.

Sections 790.93 and 790.95 of Title 40 of the Code of Federal Regulations (CFR) discuss the test standard rule development procedure. In the case of the cresols test rule, which was initiated under the two-phase process, EPA decided to propose the relevant TSCA test guidelines as the test standards. In addition, EPA proposed that the data from the required studies be submitted within certain time periods. These time periods serve as the data submission deadlines required by TSCA section 4(b)(1). The reasons for this change in the test rule development process for cresols were discussed in the proposed rule.

### II. Modifications to the Two-Phase Rulemaking Process

Because EPA proposed certain TSCA guidelines as the test standards and proposed data submission deadlines, persons subject to the Phase I final rule were not required to submit proposed study plans for the required testing or proposed dates for the initiation and completion of that testing. They were, however, still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45.

On July 6, 1986, the Cresols Program Panel (the Panel) of the Chemical Manufacturers Association (CMA) notified EPA of its intent to conduct the testing required in the Phase I test rule for cresols (Ref. 1). In addition, the

Procter and Gamble Co. and the Sigma-Aldrich Corp., processors of cresols, requested exemptions (Refs. 2 and 3, respectively). EPA is now requiring the test sponsor to conduct testing in accordance with specific test standards and reporting requirements. These standards and reporting requirements reflect the Agency's evaluation of comments received on the proposed rule. Moreover, once this Phase II final rule is promulgated, those persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each of the required tests.

## III. Proposed Phase II Test Rule

### *A. Test Standards*

In the proposed Phase II rule, the Agency proposed that testing of cresols be conducted using the following TSCA test guidelines as test standards:

1. *Mutagenicity.* Chromosomal effects.

a. *In vitro* mammalian cytogenetics test (40 CFR 798.5375).

b. *In vivo* mammalian bone marrow cytogenetics tests: chromosomal analysis (40 CFR 798.5385).

c. Rodent dominant lethal assay (40 CFR 798.5450).

2. *Mutagenicity.* Unscheduled DNA synthesis in mammalian cells in culture assay (40 CFR 798.5550).

3. *Mutagenicity.* Gene mutations.

a. Detection of gene mutations in somatic cells in culture assay (40 CFR 798.5300).

b. Sex-linked recessive lethal test in *Drosophila melanogaster* (40 CFR 798.5275).

4. *Mutagenicity.* Cellular transformations. Morphologic transformation of mammalian cells in culture assay (40 CFR 795.285).

5. *Developmental toxicity.* Developmental toxicity study (40 CFR 798.4900).

6. *Reproductive effects.* Reproduction and fertility effects study (40 CFR 798.4700).

EPA also proposed that the revisions to these guidelines, which were proposed in the Federal Register of January 14, 1986 (51 FR 1522), be adopted in the test standards for cresols. EPA has responded to comments concerning these guideline revisions in the record for rulemaking (Ref. 5). These guidelines are discussed and promulgated elsewhere in this issue of the Federal Register and are included in this rulemaking docket. In addition, EPA proposed several chemical-specific test standard modifications such as route of administration of test substances, multiple dosing, specific strains, cell lines and species, solvents, negative controls, and specific activation systems. For additional information on proposed test standards and supporting rationale for modifications, consult the proposed Phase II rule on cresols (51 FR 15803; April 28, 1986).

### *B. Reporting Requirements*

EPA proposed that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards (40 CFR Part 792). In addition, test sponsors are required to submit individual study plans at least 45 days prior to beginning each study. The Agency has modified this requirement in a procedural rule published in the Federal Register of June 30, 1986 (51 FR 23706). The Agency also proposed specific reporting requirements for each of the proposed tests. For additional information on proposed reporting requirements, consult the proposed Phase II rule on cresols (51 FR 15803; April 28, 1986).

## IV. Response to Public Comments

The Agency received comments from the CMA Cresols Program Panel (Ref. 4). The major issues identified during the comment period and EPA's responses to those comments are discussed below.

### *A. Reporting Requirements*

The Panel recommended that the reporting schedules proposed in the Phase II rule be reevaluated. It recommended that all the 12-month reporting schedules be extended to 18 months and that the 29-month reporting schedule for the reproductive effects test be extended to 36 months. The Agency disagrees with the Panel's comments and believes that the proposed reporting schedules are realistic because the Agency's schedule already takes into account the longest possible sequential route of testing, considering administrative and logistical variables specific to each test. These time variables were then added cumulatively to the time required to perform the tests. The Agency did extend the reporting deadline for the *in vivo* mammalian bone marrow cytogenetics test from 12 months to 14 months. This will allow for the *in vivo* testing to follow the negative *in vitro* tests.

### *B. Repeating Mutagenicity Assays*

The CMA Panel commented on the generic requirement to repeat all mutagenicity assays. In particular, the Panel commented on this requirement for the gene mutation in cells in culture assay, the cell transformation assay, and the sex-linked recessive lethal assay in *Drosophila*. The Panel argues that repetition of tests, in some cases, is redundant and would not yield more useful information.

The Agency agrees that a generic requirement to repeat all *in vivo* mutagenicity assays is not routinely necessary; however, the Agency believes that under certain conditions repeats of tests are appropriate and necessary. The Agency interprets any single positive finding at one dose level, but no dose response, as a positive mutagenic response in the absence of a repeat assay. The Agency is therefore not including a generic requirement for repeats of the following assays: *in vivo* mammalian cytogenetics, *Drosophila* sex-linked recessive lethal, and rodent dominant lethal. Because of the nature of *in vitro* tests in comparison to *in vivo* systems, the Agency believes that repeats of equivocal studies are appropriate and necessary for the evaluation of the *in vitro* mammalian cytogenetics, the gene mutation in somatic cells in culture, and the morphologic transformation of mammalian cells in culture assays. The Agency is thus requiring repeats of these *in vitro* assays over a narrow range of concentrations in the event a single, statistically significant increase is produced at one dose point without a dose response.

### *C. In Vivo Cytogenetics Assay*

The Panel recommended that, because there are available $LD_{50}$ data on cresols, the high dose of the three dose levels for this assay be one-tenth of the acute $LD_{50}$ for the test material in the mouse by the oral route. The middle and low test dose should be logarithmically placed.

The Agency believes that there is not adequate reason to proceed as the Panel recommended. This highest dose tested must be the maximum tolerable dose or that producing some indication of cytotoxicity. There is no reason to believe that one-tenth of the available $LD_{50}$ for cresols will be sufficient to cause some cytotoxicity. Therefore, the Agency does not agree with the Panel's suggested modification to the *in vivo* cytogenetics assay.

### *D. Detection of Gene Mutations in Somatic Cells in Culture*

The Panel recommended that cresols be tested in Chinese hamster ovary (CHO) cells rather than the L5178Y mouse lymphoma cells proposed by the Agency for this assay. The Agency specifically proposed the L5178Y cells because of the previous assays with a cresols mixture and with *o*-cresol using that cell line. EPA is interested in obtaining the clearest overall picture of

the mutagenic effects of each of the cresol isomers. Therefore, for the two isomers, *m*-cresol and *p*-cresol for which testing in this assay is required, the Agency disagrees with the Panel on the use of the CHO cells. The required testing should continue with the L5178Y cells which were used in previous gene mutation assays on cresols.

The Panel also recommended that as part of the test results criteria for this assay, a consideration of a dose dependent increase in mutation and an absolute increase in mutant colony number be included. The Panel stated that this increase should be statistically significant. The section of the TSCA test guideline for this assay that deals with the interpretation of results (40 CFR 798.5300) states that either of the above criteria could be used to determine positive test results.

*E. Morphological Transformation of Mammalian Cells in Culture*

The Panel recommended that the C3H10T½ mouse embryo cell is a more appropriate test system for this assay, and that this cell line be used instead of the Balb/c-3T3 mouse cells which the Agency proposed. Because of a previous positive result in a cellular transformation assay with a mixture of the three cresol isomers, the Agency proposed the use of Balb/c-3T3 cells. The Agency has determined that because of the existing data using this cell line with cresols, the cell line for this assay should continue to be the Balb/c-3T3 cells.

The test criteria for the cell transformation assay are based on those criteria which were used for previous Balb/c-3T3 cell transformation assays on an equimixture of the three cresol isomers, for which a positive result was obtained. The Agency is interested in continuity of test performance so that the existing results can be compared with future test results.

In addition, the Panel does not agree with some of the test criteria included in the standard for determining a positive result. While the Panel did agree with the need for demonstration of a dose-response as a criterion for a positive evaluation, the Panel did not believe that the detection of a reproducible and statistically significant positive response in only one of the test substance concentrations supports a positive finding. Instead, the Panel recommended that a determination of positive evidence for induction of transformation be the demonstration of a dose-related increase in the number of transformed foci and a six- to eightfold increase over identified background transformation rates. The Panel believes that if both conditions are met, the test substance should be considered positive for cell transformation. If neither condition is met, the test substance should be considered negative. If only one condition is met, the test substance is equivocal and should be repeated, perhaps utilizing more appropriate test concentrations.

The section of this guideline which addresses the interpretation of results states the two criteria suggested by the Panel. However, the Agency has determined that either a statistically significant concentration-related increase or a statistically significant and reproducible positive response at any one dose level will indicate a positive response in this test. As indicated in Unit IV.E., the Agency believes that repeats of equivocal studies are necessary for the evaluation of *in vitro* mutagenicity assays. An unusually elevated response in an *in vitro* assay at a single data point, in the absence of a dose response, warrants a repeat assay over a close range designed to bracket the dose of interest. If the repeat assay shows a statistically significant positive response for at least one of the test substance concentrations then the results are interpreted as positive.

## V. Final Phase II Test Rule

*A. Test Standards*

The mutagenicity, developmental toxicity, and reproductive effects test guidelines and chemical specific modifications proposed for cresols and finalized in this Federal Register shall be the test standards for the testing of cresols under 40 CFR 799.1250 (see Unit III. A. of this preamble). The Agency believes that the conduct of the required studies in accordance with these test standards is necessary to assure that the results are reliable and adequate.

*B. Reporting Requirements*

All data developed under this rule must be reported in accordance with the TSCA GLP Standards (40 CFR Part 792). In addition, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study in accordance with 40 CFR Part 790. This is a change from the proposed rule which stated 30 days (see 51 FR 23706, June 30, 1986).

The Agency is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. On the basis of the Agency's regulatory experience with the health effects tests required for cresols, as well as in response to certain public comments, EPA is adopting the reporting requirements in Table 1 of this preamble. Accordingly, results for the required tests must be reported as specified. After issuing the proposed rule for cresols, the Agency decided that interim reports for the testing required for substances under section 4 of TSCA should be submitted at 6-month intervals rather than at 3-month intervals. This reporting frequency will be sufficient to keep EPA informed of the current status of required testing and of any difficulties which the testing facility may encounter during testing. This change also lessens the reporting burden of test sponsors. Accordingly, the final reporting requirements for the testing required for cresols reflect a requirement for 6-month, rather than 3-month, interim reports.

TABLE 1.—REPORTING REQUIREMENTS FOR CRESOLS

| Test | Reporting deadline for final report (months after the effective date of final phase II rule) | Number of interim (6-month) reports required |
|---|---|---|
| *In vitro* mammalian cytogenetics test | 12 | 1 |
| *In vivo* mammalian bone marrow cytogenetics test | 18 | 1 |
| Rodent dominant lethal assay | 24 | 3 |
| Unscheduled DNA synthesis in mammalian cells in culture assay | 12 | 1 |
| Gene mutation in cells in culture assay | 12 | 1 |
| Sex linked recessive lethal test in *Drosophila* | 24 | 3 |
| Morphologic transformation of mammalian cells in culture assay | 12 | 1 |
| Oral developmental toxicity | 12 | 1 |
| Reproduction and fertility effects | 28 | 4 |

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

*C. Conditional Exemptions Granted*

The final rule for test rule development and exemption procedures (40 CFR 790.87) indicates that, when certain conditions are met, exemption applicants will be notified by certified mail or in the final Phase II test rule for a given substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption

to granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if the test sponsor has not complied with the test rule.

Since sponsors have indicated to EPA by letter of intent (Ref. 1), their agreement to sponsor all of the tests required for cresols in the final Phase I test rule for this substance (52 FR 15771; April 28, 1986) and EPA has established test standards and reporting requirements in this final Phase II rule for cresols, the Agency is hereby granting conditional exemptions to all exemption applicants (Refs. 2 and 3) for all of the testing.

*D. Judicial Review*

The promulgation date for the cresols Phase I final test rule was established as 1 p.m. eastern daylight time on May 12, 1986. To EPA's knowledge, no petitions for judicial review of that Phase I final rule. Any petition for judicial review of this Phase II final rule will be limited to a review of the test standards and reporting requirements for cresols established in this rule.

*E. Other Provisions*

Section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and the economic analysis are presented in the final Phase I rule for cresols (51 FR 15771).

*VI. Rulemaking Record*

EPA has established a record for this rulemaking [docket number (OPTS-42033D)]. This record includes basic information considered by the Agency in developing this final rule and appropriate Federal Register notices.

*A. Supporting Documentation*

The supporting documents for this final rulemaking consist of: The proposed and final Phase I test rule on cresols (46 FR 31812; July 11, 1983 and 51 FR 15771; April 28, 1986, respectively), the proposed Phase II test standards rule on cresols (51 FR 15803; April 28, 1986), and the notice of Revision of TSCA Test Guidelines published elsewhere in this issue of the Federal Register.

*B. References*

(1) CMA. Chemical Manufacturers Association. Letter of intent to conduct testing on behalf of Cresols Program Panel from Geraldine V. Cox, to TSCA Public Information Office, U.S. Environmental Protection Agency. July 8, 1986.

(2) The Procter and Gamble Company. Letter requesting exemption from the test rule for cresols from James T. O'Reilly to TSCA Public Information Office, U.S. Environmental Protection Agency. June 9, 1986.

(3) Sigma-Aldrich Corporation. Letter requesting exemption from the test rule for cresols from David R. Harvey to Document Control Office, U.S. Environmental Protection Agency. June 5, 1986.

(4) CMA. Chemical Manufacturers Association. Comments on the EPA Proposed Testing Standards on behalf of the Cresols Program Panel from Geraldine V. Cox to TSCA Public Information Office, U.S. Environmental Protection Agency. June 12, 1986.

(5) USEPA. "Response to Public Comments, Proposed Revision of TSCA Test Guidelines as published in 51 FR 1522 (January 14, 1986)". Test Rules Development Branch, Existing Chemicals Assessment Division, Office of Toxic Substances, Environmental Protection Agency. Washington, DC (January 1987).

The record (except for documents containing TSCA confidential business information) is open for inspection from 8 a.m. to 4 p.m., Monday through Friday except legal holidays, in Rm. G-004, Northeast Mall, 401 M St. SW., Washington, DC 20460.

**VII. Other Regulatory Requirements**

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of cresols is discussed in the Phase I test rule (51 FR 15771; April 28, 1986).

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments received from OMB, together with any EPA response to these comments, are included in the public record for this rulemaking.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are no small manufacturers of this substance.

(2) Small processors are not expected to perform testing themselves, or participate in the organization of the testing effort.

(3) Small processors are unlikely to be affected by reimbursement requirements.

*C. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final Phase II rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070-0033. No public comments on these requirements were submitted to the Office of Information and Regulatory Affairs of OMB.

**List of Subjects in 40 CFR Parts 795 and 799**

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: May 4, 1987.

John A. Moore,

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, Chapter I of Title 40 CFR is amended as follows:

**PART 795—[AMENDED]**

1. In Part 795:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding new § 795.205 to Subpart D, to read as follows:

**§ 795.205 Morphologic transformation of cells in culture.**

(a) *Purpose. In vitro* assays for cellular transformation are semi-quantitative assays for the ability of chemical agents to morphologically alter (transform) cells in culture. Such transformation is associated with certain phenotypic changes such as loss of contact inhibition and the ability to form colonies in soft agar medium. The process by which these changes occur is assumed to be closely related to the process of *in vivo* carcinogenesis. Morphologically transformed cells appear as foci of dense, piled-up, altered cells on an underlying monolayer of normal cells. Three types of foci have been recognized. Type III foci appear to be most closely correlated with *in vivo* tumor formation. The ultimate criterion for morphologic transformation is the ability of the transformed cells to induce tumors when inoculated into appropriate hosts. Not all cells which

appear to be morphologically transformed are capable of tumor formation. In general, there is reasonably good correlation between *in vitro* transformation and *in vivo* oncogenesis, although the correlation varies depending on the system being studied. These systems are believed to be reasonably good predictors of *in vivo* activity, and positive results are viewed as potential indications of *in vivo* carcinogenesis.

(b) *Definitions.* (1) Morphologic transformation is the acquisition of certain phenotypic characteristics, most notably loss of contact inhibition and loss of anchorage dependence, which are often but not always associated with the ability to induce tumors in appropriate hosts.

(2) Type III foci of transformed cells are multilayered aggregations of densely staining cells with random orientation and criss-cross arrays at the periphery of the aggregate. They appear as dark stained areas on a light staining background monolayer which is one-cell thick.

(c) *Reference substances.* Not applicable.

(d) *Test method*—(1) *Principle.* (i) Three systems for detecting chemically induced morphologic transformation have been described. They are:

(A) Systems which employ cell lines (cells with an indefinite lifespan).

(B) Systems which employ cell strains (cells with a finite or limited lifespan).

(C) Systems which detect the interaction between chemicals and oncogenic viruses.

(ii) This study shall employ an established cell line for detection of morphologic transformaton.

(2) *Description.* Cells in culture are exposed to the test subetance, both with and without metabolic activation, for a defined period of time. Cytotoxicity is determined by measuring the colony-forming ability and growth rate of the cultures after the treatment period. At the end of the treatment period, cultures are maintained in growth medium for a sufficient period of time to allow near-optimal expression of transformed foci.

(3) *Cells.* (i) Balb/c-3T3 mouse cells originally obtained from clone A-31 or its derivatives shall be used in the assay. Cells shall be checked for mycoplasm contamination prior to use in the assay and may be checked for karyotype.

(ii) Appropriate culture media and incubation conditions (culture vessels, $CO_2$ concentrations, temperature, and humidity) shall be used.

(4) *Metabolic activation.* Cells shall be exposed to test subetance both in the presence and absence of a metabolic activation system. The metabolic activation system shall be derived from primary cultures of rat hepatocytes.

(5) *Control groups.* Positive and negative (untreated and vehicle) controls shall be included in each experiment. 3-Methylcholanthrene is an example of a positive control for experiments without metabolic activation. Dimethylnitrosamine is an example of a positive control in experiments with metabolic activation.

(6) *Test chemicals*—(i) *Vehicle.* Test agents shall be dissolved in serum-complete culture medium prior to treatment of the cells.

(ii) *Exposure concentrations.* Several concentrations (usually at least four) of the test substance shall be used. These shall be selected on the basis of a preliminary cytotoxicity assay performed both with and without metabolic activation. The highest concentration shall produce a low level of survival (approximately 10 to 20 percent), and the survival in the lowest concentration shall approximate that of the negative control.

(e) *Test performance.* (1) Cells shall be exposed to the test substance both with and without metabolic activation. Exposure shall be for 72 hours for experiments without metabolic activation and for 48 hours for experiments with metabolic activation unless different exposure times are justified by the investigator.

(2) At the end of the exposure period, cells shall be washed and cultured to determine viability and to allow for expression of transformation.

(3) At the end of the incubation period (generally 4 to 6 weeks), cells shall be fixed and stained, and the number of transformed (Type III) foci shall be enumerated.

(4) All results shall be confirmed in an independent experiment if a single, statistically significant positive effect is produced at one dose point without a dose response. A positive response should be confirmed by testing over a narrow range of concentrations.

(5) Tumorigenic potential of isolated morphologically transformed foci may be determined by inoculation into suitable hosts.

(f) *Data and report*—(1) *Treatment of results.* (i) Data shall be presented in tabular form. Individual colony counts for the treated and control groups shall be presented for both transformation and survival.

(ii) Survival and cloning efficiencies shall be given as a percentage of the controls. Transformation shall be expressed as a number of foci per dish, the number of dishes with transformed foci, and the number of transformed foci per number of surviving cells.

(2) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant concentration-related increase in the number of transformed foci. Another criterion may be based upon the detection of a reproducible and statistically significant positive response for at least one of the test substance concentrations.

(ii) A test substance which does not produce either a statistically significant concentration-related increase in the number of transformed foci or a statistically significant and reproducible positive response at any one of the test points is considered to be negative in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(3) *Test evaluation.* (i) Positive results for an *in vitro* mammalian cell transformation assay indicate that, under the test conditions, the test substance induces morphologic transformation in the cultured mammalian cells used.

(ii) Negative results indicate that, under the test conditions, the test substance does not induce morphologic transformation in the cultured mammalian cells used.

(4) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792 Subpart J, the following specific information shall be reported:

(i) Cell type used, including subclone designation and passage number; number of cell cultures; methods used for maintenance of cell cultures.

(ii) Rationale for selection of concentrations and number of cultures.

(iii) Test conditions: Composition of media, $CO_2$ concentration, concentration of test substance, vehicle, incubation temperature, incubation time, duration of treatment, cell density during treatment, type of metabolic activation system, positive and negative controls, length of expression period (including number of cells seeded and subculture and feeding schedules, if appropriate).

(iv) Methods used to enumerate numbers of viable cells and transformed foci.

(v) Dose-response relationship, where possible.

(g) *References.* For additional background information on this test guideline, the following references should be consulted:

(1) Heidelberger, C., Freeman, A.E., Pienta, R.J., Sivak, A., Bertram, J.S., Castro, B.C., Dunkel, V.C., Francis,

M.W., Kakunaga, T., Little, J.B., Schechtman, L.M., "Cell transformation by chemical agents—a review and analysis of the literature: a report of the U.S. Environmental Protection Agency Gene-Tox Program." *Mutation Research* 114:283–385, 1983.

(2) Kakunaga, T. "A quantitative system for assay of malignant transformation by carcinogens using a clone derived from Balb-3T3." *International Journal of Cancer* 12:463–473, 1973.

(3) Reznikoff, C.A., Bertram, J.S., Brankow, D.W., Heidelberger, C. "Quantitative and qualitative studies of chemical transformation of cloned C3H mouse embryo cells sensitive to postconfluence inhibition of cell division." *Cancer Research* 33:3239–3249, 1973.

(4) Reznikoff, C.A., Brankow, D.W., Heidelberger, C. "Establishment and characterization of a cloned line of C3H mouse embryo cells sensitive to postconfluence inhibition of division." *Cancer Research* 33:3231–3238, 1973.

(5) Sivak, A., Charest, M.C., Dudenko, L., Silveira, D.M., Simons, L., Wild, A.W. "Balb/c-3T3 cells as target cells for chemically induced neoplastic transformation." In: *Advances in modern environmental toxicology, mammalian cell transformation by chemical carcinogens*, Vol. I. Mishra, N., Dunkel, V., Mehlman, M., eds. Princeton Junction, NJ: Senate Press, pp. 133–188, 1981.

(6) Sivak, A., Tu, A.S. "Factors influencing neoplastic transformation by chemical carcinogens in Balb/c-3T3 cells." In: *The predictive value of short-term screening tests in carcinogenicity evaluation*. Williams, G.M., Kroes, R., Waalkens, H.W., Van de Poll, K.W., eds. Amsterdam, New York, Oxford: Elsevier/North Holland Biomedical Press, pp. 177–190, 1980.

(7) Williams, G.M. "Detection of chemical carcinogens by unscheduled DNA synthesis in rat liver primary cell culture." *Cancer Research* 37:1845–1851, 1977.

**PART 799—[AMENDED]**

2. In Part 799:

a. The authority citation continues to read as follows:

**Authority:** 15 U.S.C. 2603, 2611, 2625.

b. In § 799.1250 by adding paragraphs (c)(1) (ii) and (iii), (2) (ii) and (iii), (3) (ii) and (iii), (4) (ii) and (iii), (5) (ii) and (iii), and (d), to read as follows:

**§ 799.1250 Cresols.**

* * * * *

(c) * * *

(1) * * *

(ii) *Test standards.* [A](*1*) *In vitro mammalian cytogenetics test.* This test shall be conducted individually with *ortho-*, *meta-*, and *para*-cresols in accordance with § 798.5375 of this chapter, except for the provisions in paragraphs (d) (3)(i) and (4) and (6) (i) and (ii).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Type of cells used in the assay.* *Ortho-*, *meta-*, and *para*-cresols shall be tested in established cell lines. The cell lines or strain shall be checked for *Mycoplasma* contamination.

(*ii*) *Metabolic activation.* The metabolic activation system for this assay shall be derived from Aroclor-1254 induced rat liver S–9 preparations.

(*iii*) *Test substance—Vehicle.* *Ortho-*, *meta-*, and *para*-cresols shall be dissolved in DMSO prior to treatment of the cells.

(*iv*) *Exposure concentrations.* At least three concentrations of the test substance over a range adequate to define the response curve shall be tested. The highest test concentration tested with and without metabolic activation shall be 5 milligrams per milliliter or that dose which shows evidence of cytotoxicity or reduced mitotic activity.

(B) (*1*) *In vivo mammalian bone marrow cytogenetics test.* This chromosomal analysis test shall be conducted with each *ortho-*, *meta-*, or *para*-cresol isomer which produces a negative result in the *in vitro* cytogenetics test conducted pursuant to paragraph (c)(1)(i)(A) of this section. This test shall be conducted in accordance with § 798.5385 of this chapter, except for the provisions in paragraphs (d) (3)(i) and (5) (ii) and (iii).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Animal selection—Species and strain.* The mouse shall be used. Commonly used laboratory strains should be employed. The test sponsor should provide justification/reasoning for its selection.

(*ii*) *Dose levels.* At least three dose levels shall be used. The highest dose tested shall be the maximum tolerated dose or that producing some indication of cytotoxicity, e.g., partial inhibition of mitosis, or shall be the highest dose attainable.

(*iii*) *Route of administration.* The test substance shall be administered only once by oral gavage.

(C) (*1*) *Rodent dominant-lethal assay.* This assay shall be conducted with *ortho-*, *meta-*, or *para*-cresols in accordance with § 798.5450 of this chapter, except for the provision in paragraphs (d) (3)(i) and (5)(iii) and (e)(1). The rodent dominant-lethal assay shall be conducted for each isomer which produces a positive result in either the *in vitro* or the *in vivo* cytogenetics test conducted pursuant to paragraphs (c)(1)(i) (A) and (B) of this section.

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Animal selection—Species.* The mouse shall be used. Commonly used laboratory strains should be employed. The test sponsor should provide justification/reasoning for its selection.

(*ii*) *Route of administration.* The test substance shall be administered by oral gavage.

(*iii*) *Test performance.* Each male shall be mated to no more than two, and preferably to only one, female per mating interval. Females shall be left with the males for no longer than 7 days, and mating shall continue for at least 6 weeks.

(iii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final results submitted to the Agency as follows:

(*1*) The *in vitro* and *in vivo* [conditional] tests within 12 and 14 months, respectively, of the effective date of the final Phase II test rule.

(*2*) The dominant lethal assay [conditional] within 24 months of the effective date of the final Phase II test rule.

(B) Progress reports shall be submitted to the Agency for the *in vitro* and *in vivo* cytogenetics assays and the dominant lethal assay at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(*2*) * * *

(ii) *Test standards.* (A)(*1*) *Unscheduled DNA synthesis in mammalian cells in culture assay.* This assay shall be conducted with *meta*-cresol in accordance with § 798.5550 of this chapter, except for provisions in § 798.5550(d) (3)(i) and (6)(i).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Cells—Types of cells used in the assay.* Primary cultures of rat hepatocytes shall be used.

(*ii*) *Test chemical—Vehicle.* *Meta*-cresol shall be dissolved in DMSO prior to treatment of cells.

(B)(*1*) *Detection of gene mutations in somatic cells in culture.* This assay shall be conducted individually with *meta-* and *para*-cresols in accordance with § 798.5300 of this chapter, except for provisions in § 798.5300(d)(3)(i), (4), (6)(i), and (e)(1).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Cells—Type of cells used in the assay.* L5178Y mouse lymphoma cells shall be used. Cells shall be checked for *Mycoplasma* contamination.

(*ii*) *Metabolic activation.* The metabolic activation system shall be derived from the postmitochondrial fraction (S–9) of rat livers pretreated with Aroclor 1254.

*(iii) Test chemical—Vehicle. Meta-* and *para*-cresols shall be dissolved in DMSO prior to treatment of the cells. The final concentration of the vehicle shall not interfere with cell viability or growth rate.

*(iv) Test performance—Exposure.* Exposure shall be for 4 hours unless a different exposure time is justified by the investigator.

(C) *(1) Sex-linked recessive lethal test in Drosophila melanogaster.* This test shall be conducted with *meta*-cresols in accordance with § 798.5275 of this chapter, except for the provisions in § 798.5275(d)(5)(iii). This sex-linked recessive lethal test shall be conducted with *meta*-cresol if it produces a positive result in either one of the assays conducted pursuant to paragraphs (c)(2)(i) (A) and (B) of this section.

(*2*) For the purposes of this section the following provision also applies: *Route of administration.* The oral route of administration shall be used.

(iii) *Reporting requirements.* (A) The genetic toxicity tests shall be completed and final results submitted to the Agency as follows:

(*1*) The unscheduled DNA synthesis in mammalian cells in culture assay within 12 months of the effective date of the final Phase II test rule.

(*2*) The detection of gene mutations in somatic cells in culture assay within 12 months of the effective date of the final Phase II test rule.

(*3*) The sex-linked recessive lethal test in *Drosophila melanogaster*, if required, within 24 months of the effective date of the final Phase II test rule.

(B) Progress reports shall be submitted to the Agency for the unscheduled DNA synthesis in mammalian cells in culture assay, gene mutation in mammalian cells in culture assay, and the *Drosophila* sex-linked recessive lethal test at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(3) * * *

(ii) *Test standards.* (A) *Morphologic transformation of mammalian cells in culture.* This test shall be conducted individually with *ortho-*, *meta-*, and *para*-cresols in accordance with § 795.285 of this chapter, except for provisions in § 795.285(d)(4).

(B) For the purposes of this section the following provision also applies: *Metabolic activation. Meta-* and *para*-cresol shall initially be tested in this assay performed without metabolic activation. Only if they produce negative results in the assay performed without activation will *meta-* and *para*-cresol then be tested in the assay with metabolic activation. *Ortho*-cresol shall only be tested in this assay performed with metabolic activation.

(iii) *Reporting requirements.* (A) The morphologic transformation of mammalian cells in culture assay shall be completed and final results submitted to the Agency within 12 months of the effective date of the final Phase II test rule.

(B) Progress reports shall be submitted to the Agency for the morphologic transformation assay at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(4) * * *

(ii) *Test standards.* (A) *Developmental toxicity.* This study shall be conducted individually with *ortho-*, *meta-*, and *para*-cresols in accordance with § 798.4900 of this chapter, except for provisions in § 798.4900(e)(5).

(B) For the purposes of this section the following provision also applies: *Administration of test substance.* The test substance shall be administered by oral gavage.

(iii) *Reporting requirements.* (A) The developmental toxicity study shall be completed and final results submitted to the Agency within 12 months of the effective date of the final Phase II test rule.

(B) Progress reports shall be submitted to the Agency for the developmental toxicity study at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(5) * * *

(ii) *Test standards.* (A) *Reproduction and fertility effects.* This study shall be conducted individually with *ortho-*, *meta-*, and *para*-cresols in accordance with § 798.4700 of this chapter, except for provisions in § 798.4700(c)(5)(i)(A).

(B) For the purposes of this section the following provision also applies: *Administration of the test substance—Oral studies.* The test substance shall be administered by oral gavage.

(iii) *Reporting requirements.* (A) The reproduction and fertility effects study shall be completed and final results submitted to the Agency within 29 months of the effective date of the final Phase II test rule.

(B) Progress reports shall be submitted to the Agency for the reproduction and fertility effects study at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(d) *Effective date.* The effective date of the final Phase II rule for cresols is July 6, 1987.

* * * * *

[FR Doc. 87–11125 Filed 5–19–87; 8:45 am]

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## 40 CFR Part 799

[OPTS–42036D; FRL 3202–2]

## Mesityl Oxide; Final Test Standards and Reporting Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On December 20, 1985, EPA issued a final Phase I test rule establishing testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of mesityl oxide (MO; CAS No. 141–97–7). At that time, EPA also proposed that certain TSCA health effects test guidelines be utilized as the test standards for the required studies and that test data be submitted within specified time frames. EPA has reviewed public comments on the proposal and has modified the test guidelines and time frames as appropriate. This final rule specifies these TSCA guidelines as the test standards and the reporting requirements for the testing of MO.

**DATES:** In accordance with 40 CFR 23.5 (50 FR 7271; February 21, 1985), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on June 3, 1987. This rule shall become effective on July 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460 (202–554–1404).

**SUPPLEMENTARY INFORMATION:** On December 20, 1985 EPA issued a final Phase I rule under section 4(a) of TSCA to require testing of MO for chronic effects, mutagenicity, and oncogenicity (conditional on the mutagenicity test results). The Agency is now promulgating a final Phase II rule specifying the test standards and reporting requirements for this testing. This test rule for MO is being promulgated under 40 CFR 799.2500.

## I. Background

The Phase I final test rule for MO specifies the following testing requirements: (1) Inhalation subchronic (90-day) toxicity; (2) mutagenicity (including tests for both gene mutations and chromosomal aberrations); and (3) oncogenicity (if certain mutagenicity test results are positive).

Once this Phase I test rule became effective, manufacturers and processors of MO would normally have been required (under the two-phase test rule development process) to submit proposed study plans for each of these required studies and proposed schedules for both the initiation of testing and the submission of study data. (See 40 CFR 790.30, published in the **Federal Register** of May 17, 1985 (50 FR 20658).) EPA would review the submitted study plans and schedules and would thereafter issue them (with any necessary modifications) in a Phase II test rule proposal. This proposal would request public comment on the ability of the proposed study plans to ensure that the resulting data would be reliable and adequate. After evaluating and responding to public comment, EPA would adopt the study plans, including the reporting schedules, in a Phase II final rule as the required test standards and data submission deadlines. (See 40 CFR 790.32, published in the **Federal Register** of May 17, 1985 (50 FR 20659).)

However, in the case of the MO test rule, which was initiated under the two-phase process, EPA decided to propose the relevant TSCA test guidelines as the test standards (50 FR 51888; December 20, 1985). In addition, EPA proposed that the data from the required studies be submitted within certain time periods, these time periods serving as the data submission deadlines required by TSCA section 4(b)(1). The reasons for this change in the test rule development process for MO were discussed in the proposed rule.

## II. Modifications to the Two-Phase Rulemaking Process

Because EPA proposed certain TSCA guidelines as the test standards and proposed data submission deadlines, persons subject to the Phase I final rule were not required to submit proposed study plans for the required testing or proposed dates for the initiation and completion of that testing. They were, however, still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.25.

On March 3, 1986, the Ketones Program Panel (the Panel) of the Chemical Manufacturers Association (CMA) notified EPA of its intent to conduct the testing required in the Phase I test rule for MO (Ref. 1). The Panel is composed of Exxon Chemical Americas, Eastman Kodak Co., Shell Chemical Co., and Union Carbide Corp. In addition, Aldrich Chemical Co., Inc., a processor, requested an exemption (Ref. 5). EPA is now promulgating a final Phase II rule requiring manufacturers and processors of MO who have not been granted exemptions from the rule to conduct testing in accordance with specified test standards and reporting requirements. These standards and requirements reflect the Agency's evaluation of comments received on the proposed rule. Moreover, once this Phase II final rule is promulgated, those persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each of the required tests.

## III. Proposed Phase II Test Rule

### *A. Test Standards*

The Agency proposed that testing of MO be conducted using the following TSCA test guidelines as test standards:

1. *Subchronic exposure:* Inhalation toxicity (40 CFR 798.2450).

2. *Mutagenicity:* Chromosomal effects.

i. First tier:

a. *In vitro* mammalian cytogenetics (40 CFR 798.5375).

b. *In vivo* mammalian bone marrow cytogenetics tests: Chromosomal analysis (40 CFR 798.5385).

ii. Second tier: Rodent dominant lethal assay (40 CFR 798.5450).

iii. Third tier: Rodent heritable translocation assay (40 CFR 798.5460).

3. *Mutagenicity:* Gene mutations.

i. First tier:

a. *Salmonella typhimurium* (40 CFR 798.5265).

b. Somatic cells in culture (40 CFR 798.5300).

ii. Second tier: Sex linked recessive lethal test (40 CFR 798.5275).

iii. Third tier: Mouse specific locus test (40 CFR 798.5200).

4. *Chronic Exposure:* Oncogenicity (40 CFR 798.3300).

EPA also proposed that the revisions to these guidelines, which were proposed in the **Federal Register** of January 14, 1986 (51 FR 1522), be adopted in the test standards for MO. In addition, EPA proposed several chemical-specific test standard modifications such as requiring inhalation testing, multiple doses, negative controls, specific strains, cell lines and species, and specific activation systems. For additional information on the proposed test standards and supporting rationale for modifications, consult the proposed Phase II rule on MO (50 FR 51888; December 20, 1985).

### *B. Reporting Requirements*

The Agency proposed the following specific reporting requirements:

The subchronic toxicity tests be completed and the final results submitted to the Agency within 15 months of the effective date of the final Phase II test rule.

The mutagenicity studies be completed and the final results submitted to the Agency as follows:

First tier gene mutation and chromosomal aberration tests be completed within 1 year of the effective date of the final Phase II test rule.

Second tier gene mutation and second tier chromosomal aberration tests be completed within 2 years of the effective date of the final Phase II test rule.

Third tier gene mutation and chromosomal effects tests be completed within 4 years of the effective date of the final Phase II test rule.

The oncogenicity tests, to be triggered if certain tier I or II mutagenicity tests are positive, be completed and the final results submitted to the Agency within 53 months after submission of positive mutagenicity test results from these tests. In addition, quarterly reports were proposed for all tests.

## IV. Responses to Public Comments

The Agency received comments from the Panel (Ref. 2). A public meeting was not requested. However, an extension of the comment period was requested (Ref. 4) to allow additional time to comment on the proposed revisions to the test guidelines published in the **Federal Register** of January 14, 1986 (51 FR 1522). The request was granted (51 FR 5370; February 13, 1986). The major issues identified during the comment period for the required and conditional tests are discussed below.

### *A. Subchronic Toxicity Test*

The Panel commented that continuous monitoring of air concentrations of the test material would preclude use of gas chromatography and that the term "continuous monitoring" should be clarified. Elsewhere in this issue of the **Federal Register** the Agency has issued a final rule revising the TSCA test guidelines. In response to public comment on this rule, the subchronic toxicity test standard has been modified to clarify "continuous monitoring" to include intermittent sampling dependent on the method of analysis. EPA acknowledges that when using gas

chromatography the recording capacity will depend on the retention time of the sample in the column. The method of analysis should be described in detail and specified in the study plan.

The Panel also commented that three animal bleedings (preexposure, day 30, and day 90) would overly stress the animals and are of questionable value since a concurrent control is being run. The Agency agrees that hematological and clinical biochemistry determinations in blood performed at the end of the test period (day 90) may be adequate in certain circumstances. However, the Agency does not believe that day 90 determinations are sufficient if a chemical, such as MO, is suspected of having hematological effects which mandate interim determinations. In addition, it is preferable to have baseline values for these determinations on the animals prior to their undergoing testing since normal range values can be highly variable. The Agency believes that for MO additional blood sampling will clarify apparent blood dyscrasia reported in the Ito study (Ref. 3) which raises concern for potential blood effects from chronic exposure to MO. Sampling only at day 90 would not detect age-dependent blood effects in the treatment groups. Furthermore, preexposure data are needed to ensure that there are no differences in blood parameters between test and control groups and to establish baseline data for each group. The bleedings at all three of these times are technically feasible and are far enough apart so as not to overly stress the animals. The Agency, therefore, has specified that these three animal bleedings be conducted on both exposed and control animals.

*B. In Vitro and In Vivo Cytogenetics Tests*

The Panel recommended that the Agency not specify DMSO as the solvent for the *in vitro* cytogenetics test and to allow scientific judgment on the selection of an appropriate solvent for this testing. The Agency specified DMSO since comparable testing of an analogue, isophorone, successfully utilized DMSO. A different solvent may be used as long as the sponsor demonstrates that the chosen solvent does not affect test results. The final test standard has been modified to reflect this recommendation.

The Panel also recommended that rats rather than mice be used in the *in vivo* cytogenetics test because rats are more commonly used in this test and rat chromosomes allow more accurate information to be obtained. The Agency proposed mice for this test so that correlations could be made between the lower and upper tier mutagenicity tests. Since correlations between mice and rats have not been established for the *in vivo* cytogenetics and rodent dominant lethal tests, the Agency proposed that mice be used. In addition, mice can successfully be used in this test, and their chromosomes can be equally well evaluated. However, since the Agency has accepted rats as the test species for *in vivo* cytogenetics testing required for other section 4 test rule chemicals and since the Agency has no data to suggest that mice are more sensitive than rats in their response to this test or to MO, mice have not been specified, and the test sponsor may select rats.

The Panel identified scheduling problems for conducting both these tests within 1 year of the effective date of the test rule and requested 3 additional months. Since issuing the proposed Phase II test rule for MO, the Agency has reevaluated the time periods it will specify for conducting these tests. The final reporting requirements have been modified, allowing 15 months to conduct these tests.

*C. Dominant Lethal Test*

The Panel recommended that the dominant lethal test be conducted in rats rather than mice because evaluation of ovarian corpora lutea is technically easier and more accurate in rats. The Agency proposed mice so that correlations can be made between lower and upper tier mutagenicity tests for MO. In addition, evaluation of ovarian corpora lutea to determine preimplantation loss is discretionary. The guideline states that preimplantation loss can be calculated as the difference between the number of corpora lutea and the number of implants or as a reduction in the average number of implants per female in comparison with control matings. The guideline allows for scientific judgment in selecting which evaluation method is most appropriate. As noted by the Panel, mice have successfully been used for this test, and the Agency has no reason to believe they cannot successfully be used for testing MO. However, since the Agency has accepted rats as the test species for the dominant lethal testing required for other section 4 test rule chemicals and since the Agency has no data that suggest mice are more sensitive than rats in their response to this test or to MO, mice have not been specified as the test species.

The Panel commented that the use of "slightly reduced fertility" at the highest exposure level as a study endpoint is impracticable and urged adoption of an alternative endpoint such as decreased body weight or clinical evidence of toxicity. Slightly reduced fertility is a recommended endpoint for this test. Other endpoints may be more appropriate for a given testing program. The test standard requires only that the highest dose produce signs of toxicity or is the highest dose attainable. Furthermore, the test standard requires that the dosing regimen, doses tested, and rationale for dosage selection be reported (see § 798.5460(f)(5)(iii)). The Agency has left endpoint selection to the scientific judgment of those conducting the test.

*D. Salmonella Reverse Mutation Assay*

The Panel recommended that the Agency not specify DMSO as the solvent for this assay. The final standard for this test has been modified to accommodate this recommendation. See the above response to the use of DMSO in the *in vitro* cytogenetics test for the rationale for this change.

*E. Detection of Gene Mutations in Somatic Cells in Culture*

The Panel recommended the forward gene mutation assay at the HGPRT locus in the Chinese hamster ovary cell culture (CHO test) for testing MO instead of the LK5178 mouse lymphoma assay proposed by EPA. The Panel commented that there was no evidence that isophorone (an MO analogue) demonstrated a mutagenic response in the mouse lymphoma assay and that this assay is subject to an inconsistent response. The Agency believes these two assays will be equally sensitive to MO and, as such, accepts the Panel's recommendation. The final test standard reflects this change.

The Panel also recommended that the Agency not specify DMSO as the solvent for this assay. The final test standard has been modified to accommodate this recommendation. See the above response to the use of DMSO in the *in vitro* cytogenetics test for the Agency's rationale for this change.

*F. Sex-Linked Recessive Lethal Test*

The Panel commented that the inhalation route for this test was inappropriate because arthropods *(Drosophila)* have totally different circulatory and respiratory systems than man. Such differences, they commented, preclude use of the data in risk assessment. Concern over differences in physiology and morphology between mammalian and nonmammalian species can be raised for any of the routes of administration for this test. The scientific community accepts *Drosophila* as an acceptable test species to detect both point mutations and small

deletions on the X chromosome which when expressed cause death to the carrier. Administration of MO via inhalation will ensure accurate quantification of dose. Furthermore, since it is technically feasible to conduct this test via the inhalation route of exposure, and since inhalation is the primary route of exposure to this chemical, the Agency believes conducting this test via inhalation is most appropriate. Therefore, the Agency does not agree with the Panel's suggested modification to allow an alternative route of exposure to be used.

*G. Mouse Visible Specific Locus Test*

The Panel commented that it was inappropriate for the Agency to establish standards for routes of administration and reporting requirements for this test. They recommended that the Agency should delete specific requirements for this assay until appropriate testing facilities have been identified, additional experience is gained with conducting this test, and there is consensus on the utility of this test.

EPA believes these concerns are appropriate topics to be discussed during EPA's public program review of all of the available mutagenicity data for MO, as described in the final Phase I test rule. Currently, Oak Ridge National Laboratory (ORNL) may be available for direct contracting of this testing (Ref. 7). A detailed discussion of ORNL's availability is provided in the final test rule for diethylenetriamine (52 FR 3230; February 3, 1987). Other laboratories may be available at the time this testing becomes necessary.

Before the third tier mutagenicity testing is to begin, EPA will hold a public review if the results of the previous tier tests are positive. If, after review of public comment, no change in the test sequence is deemed necessary, EPA will provide formal notification to the test sponsor that the next tier tests must be conducted. If, however, EPA believes additional testing is no longer warranted as a result of the earlier test results, public comment, scientific judgment, and/or other appropriate factors, EPA will issue a proposed amendment to rescind these requirements.

*H. Oncogenicity Test*

The Panel recommended that the final report be submitted 50 to 56 months after completion of the subchronic inhalation study. This extension, they stated, would accommodate the possible need for additional pathology and other technical or scheduling problems encountered. Based upon the Agency's experience, 53 months (the proposed reporting requirement) after submission of positive mutagenicity test results is sufficient to conduct both the 90-day subchronic study and the 2-year oncogenicity test in two species; prepare and evaluate slides for pathology; and submit the required reports. In the final Phase I rule a chronic bioassay is required if certain specified short term tests produce a positive result. If this occurs, EPA will notify the test sponsors to initiate the chronic study. Final results must then be submitted to the Agency within 53 months of this notification.

## V. Final Phase II Test Rule

*A. Test Standards*

The subchronic toxicity, first, second, and third tier mutagenicity, and oncogenicity test guidelines and chemical specific modifications proposed for MO (see Unit III.A. of this preamble) shall be the test standards for the testing of MO under 40 CFR 799.2500 with the following exceptions:

The subchronic toxicity test to be conducted in accordance with § 798.2450 clarifies the term "continuous monitoring" and the hematological, and clinical biochemistry determinations are required at preexposure, day 30 and day 90.

The *in vitro* cytogenetics test, *Salmonella* reverse mutation assay, and detection of gene mutations in somatic cells in culture test to be conducted in accordance with §§ 798.5375, 798.5265, and 798.5300 do not specify DMSO as the required solvent.

The *in vivo* cytogenetics test, the dominant lethal test, and rodent heritable translocation test to be conducted in accordance with §§ 798.5385, 798.5450, and 798.5460 do not specify mice as the required test species.

The detection of gene mutations in somatic cells in culture test to be conducted in accordance with § 798.5300 shall be conducted using either the HGPRT locus in the Chinese hamster ovary cell culture test or the proposed LK5178 mouse lymphoma assay.

The guideline revisions finalized elsewhere in this issue of the Federal Register for tests included in this Phase II rule are adopted in the test standards for the testing of MO. EPA has responded to comments concerning these guideline revisions in the record for that rulemaking (Ref. 8).

The Agency believes that the conduct of the required studies in accordance with these test standards is necessary to assure that the results are reliable and adequate.

*B. Reporting Requirements*

All data developed under this rule must be reported in accordance with the TSCA Good Laboratory Practice (GLP) Standards (40 CFR Part 792). In addition, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study in accordance with 40 CFR 790.50(a).

The Agency is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. On the basis of the Agency's regulatory experience with the health effects tests required for MO, as well as in response to certain public comments, EPA is adopting the reporting requirements specified in Table 1. Accordingly, results for the required tests must be reported as specified in the proposed rule (see Unit III.B. of this preamble) except: The final reports for the *in vitro* and *in vivo* cytogenetics tests must be submitted within 15 months of the effective date of this Phase II test rule instead of the proposed 12 months. In addition, the upper tier mutagenicity and oncogenicity test data must be submitted within the time specified after notification. Furthermore, subsequent to the issuance of the proposed test rule for MO, the Agency decided that interim reports for the testing required for substances under section 4 of TSCA be submitted at 6-month intervals rather than at 3-month intervals. This reporting frequency will be sufficient to keep EPA informed of the current status of required testing and of any difficulties which the testing facility may encounter during testing. This change also lessens the reporting burden of test sponsors. Accordingly, the final reporting requirements for the testing required for MO reflect a requirement for 6-month, rather than 3-month, interim reports.

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TABLE 1.—REPORTING REQUIREMENTS FOR MO

| Test | Reporting deadline for final report (months after the effective date of final phase II rule, except as indicated) | Number of interim (6-month) reports required |
|---|---|---|
| Subchronic toxicity | 15 | 2 |
| *Salmonella* reverse mutation assay | 12 | 1 |
| Gene mutation cells in culture assay | 12 | 1 |
| Sex-linked recessive lethal test in *Drosophila* | 25 | 3 |
| Mouse specific locus assay | [1]46 | 7 |
| *in vitro* cytogenetics test | 15 | 2 |
| *in vivo* cytogenetics test | 15 | 2 |
| Dominant lethal test | 24 | 3 |
| Heritable translocation assay | [1]24 | 3 |
| Oncogenicity | [2]53 | 8 |

[1] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following public program review of all of the then existing data for MO, the Agency has determined that the required testing must be performed.

[2] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that, following submission of positive mutagenicity test results, the Agency has determined that the required testing must be performed.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

*C. Conditional Exemptions Granted*

The final rule for test rule development and exemption procedures (49 FR 39774; October 10, 1984) indicates that, when certain conditions are met, exemption applicants will be notified by certified mail or in the final Phase II test rule for a given substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if any test sponsor has not complied with the test rule.

Since sponsors have indicated to EPA by letter of intent (Ref. 1) their agreement to sponsor all of the tests required for MO in the final Phase I test rule for this substance (50 FR 51857; December 20, 1985) according to the test standards and reporting requirements established in this final Phase II test rule for MO, the Agency is hereby granting conditional exemptions to all exemption applicants for all of the testing required for MO in 40 CFR 799.2500.

*D. Judicial Review*

The promulgation date for the MO Phase I final rule was established as 1 p.m. eastern standard time on January 6, 1986 (50 FR 51857; December 20, 1985). On March 7, 1986, a petition for review of that Phase I final rule was filed in the United States Court of Appeals for the Fifth Circuit (Ref. 6). Any petition for judicial review on this Phase II final rule will be limited to a review of the test standards and reporting requirements for MO established in this rule.

*E. Other Provisions*

Section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and the economic analysis are presented in the final Phase I rule for MO (50 FR 51857).

## VI. Public Record

EPA has established a record for this rulemaking [docket number (OPTS–42030D)]. This record includes basic information considered by the Agency in developing this final rule and appropriate **Federal Register** notices.

This record includes the following information:

*A. Supporting Documentation*

(1) **Federal Register** notices pertaining to this final rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(b) Notice of final rule on test rule development and exemption procedures (49 FR 39774; October 10, 1984).

(c) Notice of final rule concerning data reimbursement (48 FR 41786; July 11, 1983).

(d) Notice of interim final rule on test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(e) Notice of final Phase I rule on mesityl oxide (50 FR 51857; December 20, 1985).

(f) Notice of Proposed Phase II rule on mesityl oxide (50 FR 51868; December 20, 1985).

(g) Notice of proposed rule on revision of TSCA test guidelines (51 FR 1522; January 14, 1986).

(h) Notice of final rule on revision of TSCA test guidelines (this issue of the Federal Register).

(i) Notice of extension of comment period for mesityl oxide proposed test standards (51 FR 5378; February 13, 1986).

(j) Notice of final rules on Toxic Substances Control Act test guidelines (50 FR 39252; September 27, 1985).

(k) Notice of final rule on diethylenetriamine (52 FR 3230; February 3, 1987).

(2) Support documents consisting of the economic impact analysis of the final test rule for mesityl oxide.

(3) Communications consisting of:

(a) Written public comments.

(b) Summaries of phone conversations.

*B. References*

(1) CMA. Chemical Manufacturers Association. Letter of intent to conduct testing of MO from Geraldine Cox. Chemical Manufacturers Association, 2501 M St., NW., Washington, DC 20037, to TSCA Public Information Office, U.S. Environmental Protection Agency, Washington, DC 20460. (March 3, 1986).

(2) CMA. Chemical Manufacturers Association. "Comments of the Ketones Panel of the Chemical Manufacturers Association on EPA's proposed test standards for mesityl oxide." Chemical Manufacturers Association, 2501 M St., NW., Washington, DC 20037 (February 28, 1986).

(3) Ito, S. "Industrial Toxicological Studies on Mesityl Oxide." (translation from Japanese). Yokohama Igaku 20(b):253–269. (1969).

(4) CMA. Chemical Manufacturers Association. Letter requesting extension of comment period from Geraldine Cox. Chemical Manufacturers Association, 2501 M St., NW., Washington, DC to Don R. Clay, Director, Office of Toxic Substances, Environmental Protection Agency, Washington, DC (January 23, 1986).

(5) Aldrich Chemical Co., Inc. Letter requesting exemption from the test rule for mesityl oxide from Irwin L. Klundt, Ph.D. Vice President, Aldrich Chemical

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Company, Inc. P.O. Box 355, Milwaukee, WI. (January 27, 1986).

(6) Shell Chemical Co., Exxon Chemicals Americas, Eastman Kodak Co., Union Carbide Corp. and Chemical Manufacturers Association v. *Environmental Protection Agency.* "Petition for Review" filed with the United States Court of Appeals for the Fifth Circuit. (March 7, 1986).

(7) US EPA. US Environmental Protection Agency. Summary of Meeting with US Department of Energy on availability of Oak Ridge National Laboratory to conduct the mouse visible specific locus assay at Industry's expense for chemicals subject to a TSCA section 4 Test Rule requirement. Environmental Protection Agency, Washington, DC (October 1986).

(8) USEPA. "Response to Public Comments, Proposed Revision of TSCA Test Guidelines as published in 51 FR 1522 (January 14, 1986)". Test Rules Development Branch, Existing Chemicals Assessment Division, Office of Toxic Substances, Environmental Protection Agency, Washington, DC (January 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

## VIII. Other Regulatory Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of mesityl oxide is discussed in the Phase I test rule (50 FR 51857; December 20, 1985).

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are no small manufacturers of this chemical.

(2) Small processors are not expected to perform testing themselves, or participate in the organization of the testing effort.

(3) Small processors will experience only very minor costs, if any, in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements.

### *C. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final Phase II rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070-0033. No public comments on these requirements were submitted to the Office of Information and Regulatory Affairs of OMB.

### List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: May 8, 1987.

John A Moore,

*Assistant Administrator for Pesticides and Toxic Substances.*

## PART 799—[AMENDED]

Therefore, Part 799 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In § 799.2500 by adding paragraphs (c)(1) (ii) and (iii), (2) (ii) and (iii), (3) (ii) and (iii), (4) (ii) and (iii), and (d) to read as follows:

§ 799.2500 Mesityl oxide (MO).

* * * * *

(c) * * *

(1) * * *

(ii) *Test standard.* Inhalation subchronic toxicity testing shall be conducted with MO in accordance with § 798.2450 of this chapter, except for the provisions of § 798.2450 (d)(1)(i) and (d)(11)(i)(A).

(iii) For the purposes of this section the following provisions also apply:

(A) *Animal Selection—species and strain.* The rat shall be used. Commonly used laboratory strains should be employed. The tester should provide justification/reasoning for its selection.

(B) *Clinical examinations.* Certain hematological determinations shall be carried out at least three times during the test period: just prior to initiation of dosing (base line data), after approximately 30 days on test, and just prior to terminal sacrifice at the end of the test period. Hematology determinations which shall be appropriate to all studies include the following: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leucocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(iv) *Reporting requirements.* (A) The subchronic testing shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final Phase II test rule.

(B) Progress reports shall be provided every 6 months beginning 6 months after the effective date of the final Phase II test rule.

(2) * * *

(ii) *Test standard.* (A) (*1*) The *in vitro* mammalian cytogenetics test shall be conducted with MO in accordance with § 798.5375 of this chapter except for the provisions in § 798.5375 (d)(3)(i) and (d)(6)(ii).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Type of cells used in the assay.* MO shall be tested in established cell lines. The cell line or strain used shall be checked for *Mycoplasma* contamination and for karyotype stability.

(*ii*) *Exposure concentrations.* At least 3 concentrations of the test substance over a range adequate to define the response shall be tested. The highest test concentration tested with and without metabolic activation shall be 5 milligrams per milliliter or that dose which shows evidence of cytotoxicity or reduced mitotic activity.

(B) (*1*) The *in vivo* mammalian bone marrow cytogenetics test: Chromosomal analysis shall be conducted with MO in accordance with § 798.5385 of this chapter except for the provisions in § 798.5385(d)(5) (ii) and (iii).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Dose levels.* Three dose levels shall be used. The highest dose tested shall be the maximum tolerated dose or that producing some indication of cytotoxicity (e.g., partial inhibition of mitosis), or shall be the highest dose attainable.

(*ii*) *Route of administration.* The animals shall be exposed by inhalation for 6 hours/day for 5 consecutive days.

(C) (*1*) The rodent dominant lethal assay shall be conducted with MO in accordance with § 798.5450 of this chapter except for the provisions in § 798.5450(d)(5) (ii) and (iii).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Dose levels.* Three dose levels shall be used. The highest dose shall produce signs of toxicity (e.g., slightly reduced fertility or body weight) or shall be the highest attainable.

(*ii*) *Route of administration.* Exposure shall be by inhalation for 5 days for 6 hours/day.

(D) (*1*) The rodent heritable translocation test shall be conducted with MO in accordance with § 798.5460 of this chapter except for the provisions in § 798.5460(d)(5) (ii) and (iii).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Dose levels.* At least two dose levels shall be used. The highest dose shall result in toxic effects (which shall not produce an incidence of fatalities which would prevent a meaningful evaluation), or shall be the highest dose attainable.

(*ii*) *Route of administration.* Animals shall be exposed by inhalation.

(*iii*) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final results submitted to the Agency as follows:

(*1*) The *in vitro* and *in vivo* (conditional) tests within 15 months of the effective date of the final Phase II test rule.

(*2*) The dominant lethal assay (conditional) within 24 months of the effective date of the final Phase II test rule.

(*3*) The heritable translocation test (conditional) within 24 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

(B) Progress reports shall be submitted to the Agency for the *in vitro* and *in vivo* cytogenetics assays and the dominant lethal assay at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(C) Progress reports shall be submitted to the Agency for the heritable translocation assay at 6-month intervals, the first of which is due within 6 months of the date of EPA's notification of the test sponsor that testing shall be initiated.

(3) * * *

(ii) *Test standards*—(A)(*1*) The *Salmonella typhimurium* mammalian microsomal reverse mutation assay (Ames assay) shall be conducted with MO in accordance with § 798.5265 of this chapter except for the provisions in § 798.5265 (d)(5)(ii), (d)(6)(ii) (A) and (B), and (e)(1).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Strain specific positive controls.* Strain specific positive controls shall be included in the assay. The following controls are examples of those which may be used in the assay without metabolic activation: Strain TA 1535, sodium azide; strain TA 100, nitrofurantoin; strains TA 98 and TA 1537, 4-nitro-*o*-phenylenediamine.

(*ii*) *Exposure concentrations.* The test should initially be performed over a broad range of concentrations. Among the criteria to be taken into consideration for determining the upper limits of test chemical concentration are cytotoxicity and solubility. Cytotoxicity of the test chemical may be altered in the presence of metabolic activation systems. Toxicity may be evidenced by a reduction in the number of spontaneous revertants, a clearing of the background lawn or by the degree of survival of treated cultures. Relatively insoluble compounds should be tested up to the limits of solubility. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis. MO shall be tested up to 5 milligrams per plate or to the limits of solubility or toxicity. A suspected positive response not showing a clear dose-related response shall be confirmed by testing over a narrow range of concentrations.

(*iii*) *Test performance—Direct plate incorporation method.* The direct plate incorporation method shall be used for this test. For this test without metabolic activation, test chemical and 0.1 milliliter of a fresh bacterial culture should be added to 2.0 milliliter of overlay agar.

(B)(*1*) The detection of gene mutations in somatic cells in culture shall be conducted with MO in accordance with § 798.5300 of this chapter except for the provisions in § 798.5300 (d)(3)(i), (4), and (6)(i) and (e)(1).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Types of cells used in the assay.* MO shall be tested at the HGPRT locus in the Chinese hamster ovary cell culture test or in LK5178K mouse lymphoma cells.

(*ii*) *Metabolic activation.* Cells shall be exposed to MO both in the presence and absence of a metabolic activation system derived from the postmitochondrial fraction (S–9) of livers from rats pretreated with Aroclor 1254.

(*iii*) *Vehicle.* MO may be prepared in culture media or dissolved or suspended in appropriate vehicles prior to treatment of the cells. The final concentration of the vehicle shall not interfere with cell viability or growth rate.

(*iv*) *Test performance.* Cells shall be exposed to MO both with and without exogenous activation. Exposure shall be for 4 hours unless a different exposure time is justified by the investigator.

(C)(*1*) The sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with MO in accordance with § 798.5275 of this chapter except for the provisions in paragraph (d)(5)(iii).

(*2*) For the purposes of this section the following provisions also apply: *Route of administration.* Exposure shall be by exposure to MO vapors.

(D)(*1*) The mouse visible specific locus test shall be conducted with MO in accordance with § 798.5200 of this chapter except for the provisions in § 798.5200(d) (5) (ii) and (iii).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Dose levels.* A minimum of 2 dose levels shall be tested. Exposure shall be for 6 hours a day. Duration of exposure shall be dependent upon accumulated total dose desired for each group.

(*ii*) *Route of administration.* Animals shall be exposed to MO by inhalation.

(iii) *Reporting requirements*—(A) The gene mutation tests shall be completed and final results submitted to the Agency as follows:

(*1*) The *Salmonella typhimurium* mammalian microsomal reverse mutation assay and the gene mutation in somatic cells assay (conditional) within 12 months of the effective date of the final Phase II test rule.

(*2*) The sex-linked recessive-lethal test in *Drosophila melanogaster* (conditional) within 25 months of the effective date of the final Phase II test rule.

(*3*) The mouse specific-locus test (conditional) within 48 months of the date of EPA's notification of the test sponsor by certified letter or **Federal Register** notice that testing shall be initiated.

(B) Progress reports shall be submitted to the Agency for the *Salmonella typhimurium* mammalian reverse mutation microsomal assay, gene mutation in mammalian cells in culture assays, and *Drosophila* sex-linked recessive lethal test at 6-month intervals, the first of which is due within 6 months of the effective date of the final Phase II rule.

(C) Progress reports shall be submitted to the Agency for the mouse specific locus assay at 6-month intervals, the first of which is due within 6 months of the date of EPA's notification of the test sponsor that testing shall be initiated.

(4) * * *

(ii) *Test standard.* (A) (*1*) An oncogenicity bioassay shall be conducted by inhalation with MO in accordance with § 798.3300 of this chapter except for the provisions in § 798.3300(b) (1)(i), (4), and (6).

(*2*) For the purposes of this section the following provisions also apply:

(*i*) *Species and strain.* MO shall be tested in both rats and mice. Commonly used laboratory strains should be employed. The tester should provide justification/reasoning for their selection.

(*ii*) *Exposure conditions.* Animals shall be exposed to MO for at least 6 hours per day on a 5-day per week basis over a period of at least 24 months for rats and 18 months for mice.

(*iii*) *Administration of the test substance.* Animals shall be exposed to MO by the inhalation route.

(B) [Reserved]

(iii) *Reporting requirements.* (A) The oncogenicity tests shall be completed and final results submitted to the Agency 30 months after the date of EPA's notification of the test sponsor by certified letter or Federal Register notice that testing shall be initiated.

(B) Progress reports shall be submitted to the Agency at 6-month intervals, the first of which is due within 6 months after the date of EPA's notification of the test sponsor that testing shall be initiated.

(d) *Effective date.* The effective date of this final Phase II rule for mesityl oxide is July 6, 1987.

* * * * * *

[FR Doc. 87-11126 Filed 5-19-87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42094; FRL 3202-7]

# Cyclohexane; Proposed Test Standards and Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In response to the Interagency Testing Committee's (ITC) designation of cyclohexane (CAS No. 110–82–7) for health effects testing consideration, EPA is proposing under section 4(a)(1)(B) of the Toxic Substances Control Act (TSCA) that manufacturers and processors of cyclohexane be required to perform testing of this substance for subchronic toxicity, oncogenicity, reproductive toxicity, developmental toxicity, neurotoxicity, dermal absorption, and dermal sensitization.

DATES: Submit written comments on or before July 20, 1987. If persons request an opportunity to submit oral comments by July 6, 1987, EPA will hold a public meeting on this rule in Washington, DC. For further information on arranging to speak at the meeting see Unit VIII of this preamble.

ADDRESS: Submit written comments identified by the document control number (OPTS–42094) in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

A public version of the administrative record supporting this action is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460, 202–554–1404.

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule for cyclohexane under section 4(a) of TSCA in response to the ITC's designation of cyclohexane for health effects testing consideration. Testing is being proposed for cyclohexane under section 4(a)(1)(B) of TSCA because there is substantial production and there is or may be substantial human exposure. The Agency has concluded that existing data are inadequate to assess the risks to health posed by exposure to cyclohexane and that testing of cyclohexane is necessary to develop such data.

## I. Introduction

### *A. ITC Recommendation*

TSCA (Pub. L. 94–469, 90 Stat. 2003 *et seq.*; 15 U.S.C. 2601 *et seq.*) established the ITC under section 4(e) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC recommended cyclohexane with intent to designate for health effects testing in its 17th Report, published in the Federal Register of November 19, 1985 (50 FR 47803). The ITC designated cyclohexane for priority consideration in its 18th Report, published in the Federal Register of May 19, 1986 (51 FR 18369). The ITC recommended that cyclohexane be tested for chronic toxicity including oncogenicity and neurotoxicity, teratogenicity and reproductive toxicity. The rationale for recommending these tests was as follows: (1) The large production volume and many of the uses of cyclohexane indicating the potential for widespread human exposure; (2) the high number of workers occupationally exposed, and the possibility for general population exposure from cyclohexane's use as a solvent; (3) detection of cyclohexane in body fluids and in ambient air and water; (4) lack of data on chronic effects, including oncogenicity and neurotoxicity; and (5) lack of data on potential teratogenic and reproductive effects.

Ecological effects and chemical fate tests were not recommended because although several static acute toxicity tests with aquatic organisms have indicated moderate toxicity ($LC_{50}$ values greater than 10 and less than 100 mg/L), measured environmental concentrations (low µg/L or less) and expected rapid degradation in air and water suggest that cyclohexane will not cause adverse ecological effects at concentrations likely to be found in the environment.

### *B. Test Rule Development Under TSCA*

Under section 4(a) of TSCA, the EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Administrator finds that:

(A)(i) The manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) There are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) Testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) There are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) Testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine if there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under section 4(a)(1) (A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine if existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1) (A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules, published in the Federal Register of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 46 FR 48524 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

In evaluating the ITC's testing recommendations for cyclohexane, EPA considered all available relevant information including the following: Information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of cyclohexane under the TSCA section

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8(a) Preliminary Assessment Information Rule (40 CFR Part 712); health and safety studies submitted under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) for cyclohexane; information submitted by the Cyclohexane Program Panel of the Chemical Manufacturers Association and published; and unpublished data on cyclohexane available to the Agency. From its evaluation, as described in this proposed rule, EPA is proposing health effects testing requirements for cyclohexane under section 4(a)(1)(B).

## II. Review of Available Data

### A. Chemical Profile

Cyclohexane is a colorless, flammable, mobile liquid with a pungent sweet odor (Refs. 1 and 2). At 25 °C, cyclohexane has a moderate water solubility of 55 mg/L (Ref. 3). Its vapor pressure is 100 mm Hg at 25.5 °C (Ref. 4) and its specific gravity is 0.779 at 20/4 °C (Ref. 2). The log octanol/water partition coefficient ($K_{ow}$) was experimentally determined to be 3.44 (Ref. 5). A log soil/sediment-absorption coefficient ($K_{oc}$) is estimated as 3.25 (Ref. 6). Cyclohexane has an estimated Henry's Law constant of 0.196 atm-$m^3$/mole (Ref. 6). Because of its high volatility and moderate water solubility, cyclohexane is expected to partition into the atmosphere. An estimated atmospheric half-life of 2.83 days (Ref. 6) suggests that cyclohexane will not persist in the atmosphere. A steady state atmospheric concentration of cyclohexane may arise, however, because of the continued release of cyclohexane (Ref. 6).

### B. Production

1. *Production methods.* High purity cyclohexane is produced by the hydrogenation of benzene over nickel, palladium, or platinum catalysts in the liquid or vapor phase (Ref. 7). Formation of cyclohexane is greater at lower temperatures (Ref. 8). Hydrogenation is usually carried out at 20 to 30 atm and 300 to 350 °C, yielding cyclohexane containing <500 ppm benzene. Higher temperatures promote higher benzene concentrations and isomerization of cyclohexane to methylcyclopentane. Cyclohexane of 98 percent purity can be produced by the catalytic conversion of petroleum-derived cyclohexane to a mixture of benzene and methylcyclopentane followed by hydrogenation and isomerization, respectively (Ref. 8).

Cyclohexane occurs naturally in all crude oils at concentrations of 0.5 to 1.0 weight percent (Ref. 9). According to Kirk-Othmer (Ref. 7), the concentration range is 0.1 to 1.0 percent. A small amount of low purity cyclohexane is produced by fractional distillation of crude oil and from catalytic reformer effluent (Ref. 7). The cyclohexane recovered from petroleum is about 85 percent pure. Low purity cyclohexane is also derived from natural gas naphthas by fractionation and high-efficiency distillation to give an 85 percent pure product (Ref. 8).

2. *Domestic production.* Total U.S. production volume of cyclohexane from 1977 to 1982 ranged from 1.27 to 2.24 billion pounds per year (Ref. 9). The seven U.S. producers of cyclohexane reported 1.788 billion pounds of production in 1985 (Ref. 10). According to the chemical profile for cyclohexane in the Chemical Marketing Reporter of 1983, the projected production of cyclohexane in 1987 is 230 million gallons or 1.5 billion pounds (Ref. 11). It is expected that cyclohexane will be produced at 60 to 65 percent of plant capacity through 1990 (Ref. 11). According to the Chemical Manufacturers Association (CMA), in 1986, there were seven manufacturers of cyclohexane (Ref. 10).

3. *Imports.* Import volume of cyclohexane for the years 1980 to 1982 was 13.5 to 30.6 million pounds per year (Refs. 12 through 14). Imports of cyclohexane for the period January–July, 1985, were only 9,000 pounds compared to 21.1 million pounds for that period in 1984 (Ref. 15). The decline was attributed to increased imports of finished textile products, which lowered the demand for cyclohexane as a synthetic fiber intermediate (see Unit II.C).

4. *Anthropogenic sources—a. Sources from hydrocarbon processing.* Cyclohexane occurs in crude oils at concentrations of 0.5 to 1.0 weight percent (Ref. 9). Approximately 179 billion gallons of crude oil was used as feedstock in domestic refineries in 1983 (Ref. 20). The average specific gravity of Arabian crude oil is 0.86 (Ref. 7). From this value, a weight/gallon ratio of crude oil of 7.16 pounds/gallon was calculated. Assuming the latter value to be representative of crude oil in general, the amount of cyclohexane in the 179 billion gallons of crude oil feedstock was calculated to range from 6.41 to 12.82 billion pounds. Oil spills in the United States during 1981 released 10,697,000 gallons of crude oil to the environment (Ref. 16). Using the range of cyclohexane in crude oil and the average weight/gallon for crude oil given above, this translates into 382,000 to 766,000 pounds of cyclohexane released to the environment in 1981 by oil spills. About 0.2 percent of the annual production, or as much as 1 million pounds/year of cyclohexane may have been lost in the years 1979 to 1980 as fugitive emissions and evaporative losses from refineries, but an unspecified percentage of this cyclohexane is flared (Ref. 17). The amount of cyclohexane entering the atmosphere as a result of these losses, therefore, cannot be estimated. Volatile liquid hydrocarbon (VLH) cycloalkanes, including cyclohexane, are present in underwater vent plumes and formation water from offshore oil production operations (Ref. 18). The amount of cyclohexane released in this way cannot be estimated from the available information.

b. *Sources from the distribution and use of finished fuel products.* According to SRI International (Ref. 9), the concentration of cyclohexane in gasoline ranges from 5 to 15 percent. The concentration of cyclohexane in an unleaded gasoline composite used for comparing gasolines is 1.58 volume percent, and cyclohexane at 1.05 volume percent was detected in one unleaded gasoline (Ref. 19). The value of 1.58 volume percent was used for the following calculations since it probably reflects the cyclohexane concentration in a variety of gasolines. The 1983 production volume of gasoline was 97 billion gallons (Ref. 20). This translates into 1.53 billion gallons of cyclohexane or about 9.5 billion pounds of cyclohexane in finished gasoline in 1983. In 1980, an estimated 7.7 million tons of hydrocarbons were released by land transportation vehicles. Exhaust samples from a variety of automobiles without emission control devices were found to contain an average of 0.6 percent (weight/weight) of cyclohexane (Ref. 21). Cyclohexane has been detected but not quantified in the distillate fuel, JP–4 (Ref. 22). An estimate of the amount of cyclohexane released by the use of JP–4 cannot be made with the available information.

5. *Solvent related sources.* One pesticide grade *n*-hexane, used as a solvent in chemical analyses, contained 0.1 to 1.0 percent cyclohexane (Ref. 23). Hexane A, a relatively impure hexane, contains 0.78 volume percent cyclohexane (Ref. 7). No information on commercial uses of hexane A was available. Hexanes B and C, which are widely used, contain no measurable amounts of cyclohexane (Ref. 7). Release of cyclohexane due to the use of *n*-hexanes, therefore, is expected to be low. A Japanese study detected cyclohexane in only one of 1,179

samples of thinners, degreasers, and miscellaneous solvents. The unspecified thinner contained 21.0 percent cyclohexane (Ref. 24).

6. *Cyclohexane in biological materials.* Cyclohexane was detected but not quantified in the hydrocarbon fraction of cigarette smoke gases (Ref. 25). This study was designed to qualitatively identify hydrocarbon components, but semi-quantitative data were obtained that suggest cyclohexane is present only in trace amounts. The origin of the cyclohexane in the tobacco was not specified. Muscat oil (from muscat grapes) was analyzed by GLC and found to contain cyclohexane (Ref. 26). It was suggested that the cyclohexane found may have been due to unspecified solvents sprayed on the fruit before harvesting.

*C. Uses*

The primary use of cyclohexane is as a raw material in the production of Nylon-6 and Nylon-66 (Refs. 2 and 7). Cyclohexane is oxidized to cyclohexanol or cyclohexanone followed by conversion to adipic acid, which is used in the preparation of Nylon-66 (Ref. 8). Cyclohexane can also be oxidized solely to cyclohexanone, from which caprolactam is prepared and then used in the production of Nylon-6 (Ref. 8). Approximately 58.1 percent and 26.7 percent of the total 1981 United States production of cyclohexane was used for the production of nylon or nylon-related production via adipic acid and caprolactam, respectively (Ref. 9). According to a chemical profile for cyclohexane, 54 percent of the 1983 cyclohexane production volume was used for adipic acid for the production of Nylon-66 and 26 percent was used for caprolactam for the production of Nylon-6 (Ref. 11). Exports and miscellaneous uses accounted for 19 percent and 1 percent of 1983 cyclohexane production, respectively (Ref. 11). It is assumed that solvent uses including azeotroping medium compose the bulk of these miscellaneous uses (Ref. 6). Using a 1983 cyclohexane production volume of 2.1 billion pounds (Ref. 27), as much as 21 million pounds of cyclohexane, therefore, may have been used as solvent in 1983. A recent survey by the Chemical Manufacturers Association (Ref. 28) from 12 of 35 identified users, however, indicates that 1.66 billion pounds of cyclohexane was used as an intermediate and 42.1 million pounds as a solvent (Ref. 28). Cyclohexane was received by barge (65.1 percent), pipeline (18.9 percent), rail car (15.4 percent), tank truck (0.6 percent) and drum (<0.01 percent) (Ref. 28).

Cyclohexane is increasingly used to dehydrate ethyl and isopropyl alcohols (Ref. 28). Addition of cyclohexane to ethanol:water and isopropanol:water azeotropes breaks the azeotropes, allowing the pure alcohols to be isolated. Some important alcohol azeotropes are ethanol:cyclohexane (30:70) and isopropanol:cyclohexane (22:67). Consumption of cyclohexane for non-nylon uses was estimated to be 58 million pounds in 1985. This amount was estimated to be distributed among current uses as follows: high pressure polyethylene synthesis—2 million pounds; purification of ethanol—30 million pounds; purification of isopropanol—1.5 million pounds; catalyst carriers—25 million pounds (Ref. 28). Cyclohexane serves as the solvent for the catalyst used in the production of Shell Company's Kraton thermoplastic elastomer and the solvent for the polymerization process (Ref. 28).

Minor reported uses include solvent uses for cellulose ethers, fats, oil, waxes, bitumens, resins, and crude rubber; the extraction of essential oils; uses in organic syntheses and as a recrystallation medium; as a paint or varnish remover; in fungicides (Ref. 2); and in the manufacture of solid fuels for camp stoves (Ref. 1). It is not known to what extent these uses currently occur. Cyclohexane may be found in paint removers and rubber adhesives (Ref. 29). Cyclohexane was listed on the label as a component of two consumer spray adhesives (See Unit II.D.2.), Scotch Spraymount Art and Display Adhesive and Super 77 Spray Adhesive (Ref. 30).

*D. Human Exposure*

1. *Occupational exposure.* Provisional data from 1981 to 1983 from the National Occupational Exposure Survey (NOES) indicate that 42,558 workers, including 12,021 females, were exposed to cyclohexane at 985 plants (Ref. 31). The level of exposure and whether this exposure was routine or intermittent were not specified.

Worker exposure standards for atmospheric cyclohexane include the permissible exposure limit of 300 ppm established by OSHA (29 CFR 1910.1000, Table Z–1), which is also the threshold limit value/time-weighted average recommended by ACGIH (Ref. 32).

The Cyclohexane Program Panel (the Panel) of the Chemical Manufacturers Association (CMA) is composed of the seven U.S. cyclohexane producers, one of which is also a processor. The following information on the exposure of cyclohexane workers in manufacturing was developed by the Panel (Ref. 10). The survey covers 11 production units at 10 manufacturing locations.

The producers report that a total of 119 workers are exposed routinely (3 or more 8 or 12-hour work days per week) and an additional 62 persons are exposed intermittently (2 or fewer 8 or 12-hour work days per week) to cyclohexane. One producer has an internal exposure limit of 150 ppm per 12-hour time-weighted-average (TWA). The others operate under the Occupational Safety and Health Administration (OSHA) 300 ppm Permissible Exposure Limit (PEL). Four of these producers operate on 8-hour shifts for maintenance personnel and a 12-hour shift for operators.

Two of the seven producers reported that no respiratory protection is used at any of the sites to minimize exposure to cyclohexane. Five producers reported use of protective clothing such as goggles, face shields, gloves, and synthetic outer garments impervious to cyclohexane. Four producers report the use of formal training programs on hazard awareness and one producer minimizes exposure by adjustment of work assignments.

Four producers have conducted area monitoring for cyclohexane or volatile organic chemicals. Monitoring data from over 5,000 samples ranged from .001 to 4,171 ppm. The arithmetic average ranged from .3 to 20 ppm from 3 producers for 8 or 12 hour shifts. The other producer reported a geometric mean of .03 to 1.65 ppm.

Additional occupational exposure information from production facilities is as follows: About 48 operating, maintenance and supervisory personnel at Texaco are potentially exposed to cyclohexane (Ref. 33). These workers were monitored at an unspecified Texaco plant and the arithmetic mean for the 58 personal 8-hour TWA samples taken was 1.77 ppm. According to Walker (Ref. 27), the Texaco plant at Port Arthur, TX, was the site of data collection in the monitoring study above. Personal monitoring data (about 3,305 samples) from about 200 workers at three Phillips facilities ranged from undetectable levels to 112.97 ppm with a geometric mean of <0.29 ppm. According to Dynamac (Ref. 17), the three Phillips plants were the Borger and Sweeney refineries in Texas and the Puerto Rico Core Refinery.

Texaco (Ref. 34) provided monitoring data quantifying worker exposure to cyclohexane in its Port Arthur cyclohexane manufacturing plant. Worker exposure to cyclohexane ranged from an 8-hour time-weighted-average of 0.03 to one of 11.57 ppm. The mean cyclohexane concentration was 1.58 ppm. The minimum and maximum

exposure levels were associated with operators with an unknown type of respirator exposed to "running unknown spills." Cyclohexane concentrations ranged from 0.03 to 28.0 ppm with a mean concentration of 1.73 ppm in area samples. The maximum concentration resulted from a spill in an unknown location. Short-term samples for cyclohexane ranged from 0.08 to 180.0 ppm with a mean concentration of 9.25 ppm. The maximum value was associated with a pipefitter; no specific activity or location was reported.

In the CMA Panel User Survey (Ref. 28), to which 12 of 35 identified users and processors responded, a total of 1,368 employees (assigned to production units and/or involved in distribution) in 22 locations were potentially exposed to cyclohexane. Routine exposure to cyclohexane (3 or more work schedules/week) occurred in 477 persons and intermittent exposure (2 or less work schedules/week) in 577 persons. No information was offered about the remaining 334 potentially exposed persons or the workers employed by the remaining 23 identified uses. Personal monitoring data indicated that 8 or 12 hour TWAs ranged from 0 to 50 ppm. One of the companies had internal exposure guidelines of 150 ppm based on a 12-hour TWA. Nine of 12 companies used protective clothing including gloves, goggles or face shields, respirators, rubber boots, SCBA equipment, acid suits and fireproof suits. Engineering controls used to minimize exposure to cyclohexane were closed loading (10 companies), flow check valves (7 companies), closed-loop sampling (2 companies), remote atmosphere venting (4 companies), vent to flare (7 companies), local exhaust (6 companies), vapor recovery (7 companies), dripless, self-closing valves (2 companies), double mechanical seals (6 companies) and double-sealed valves (6 companies). Three other companies reported using a variety of exposure minimization techniques including catalytic incineration; seal, flush, vent through scrubber; minimum purge coupling; floating roofs and nitrogen blanket. Other minimization techniques included administrative controls (adjustment of work assignments) (2 companies) and formal hazard awareness training programs (11 companies). The parenthetical numbers correspond to the number of companies using the various techniques.

The levels of cyclohexane in all 55 samples of workplace atmospheres of seven Standard Industrial Code (SIC) industries taken from 1981 to 1984 were <300 ppm (4 codes N.D.; 2 codes <150 ppm) (Ref. 19). The samples were taken from the following SIC industries: (a) Commercial printing, lithographic; (b) miscellaneous plastic products; (c) gaskets, packing and sealing devices; (d) architectural and ornamental metal work; (e) semiconductors and related devices; (f) orthopedic prosthetic and surgical appliances and supplies; and (g) computer programming and software.

Worker exposures to cyclohexane are also possible through its use as a laboratory chemical, particularly as a solvent for extraction and separation in preparative and analytical chemistry. Cyclohexane is sold in bottles and drums by a number of chemical companies including Fisher and Aldrich Chemical Companies (Refs. 35 and 36).

A reasonable worst-case laboratory exposure estimate was created as follows by Syracuse Research Corporation (SRC) (Ref. 6): A 500 g quantity of cyclohexane was allowed to evaporate into an unventilated laboratory of dimensions 25 m x 10 m x 5 m (i.e., 1,250 $m^3$ volume). This created a cyclohexane concentration in air of 400 $mg/m^3$, or about 120 ppm. This is an unlikely event, but one that could occur through neglect or accident, such as failure to work in an operative fume hood, or otherwise vent solvent vapors during an evaporative operation. According to SRC laboratory personnel, the air in the SRC chemistry laboratories is completely exchanged about every 2 hours, exclusive of fume hood operation. This will significantly limit the levels of cyclohexane that can be achieved, even in case of grossly incompetent laboratory technique. NIOSH (Ref. 37) notes that the odor threshold of cyclohexane is 0.41 ppm and that 300 ppm (the OSHA PEL) is somewhat irritating to the eyes. Despite this, cyclohexane is classified by NIOSH as having poor warning properties because of the sweetish nature of the odor and insufficient irritancy.

EPA has estimated 8-hour TWAs for workers in various paint and glue formulation operations ranged from 2 to 26 ppm with an average value of 7.5 ppm (Ref. 29). Inhalation exposure to cyclohexane ranged from 0.1 to 0.9 ppm in spray painting and 3.5 to 5.7 ppm in glue spraying operations, based on personal monitoring data (Ref. 29). An 8-hour TWA of 2 to 7 ppm was obtained using the volatilization model of the Chemical Engineering Branch, Office of Toxic Substances, USEPA (Ref. 38), for exposure resulting from cyclohexane volatilization from open dip and brush paint and glue application equipment. It should be noted that EPA is uncertain that cyclohexane is used in paint and glue formulations and seeks additional information on these uses (See Unit V.3 of this document). Worker exposure to cyclohexane from gasoline was estimated to range from 0.001 to 1.02 ppm, based on the typical cyclohexane content of gasoline, 8 hours exposure and methylcyclopentane data submitted to the ITC (Ref. 29).

Exposure to cyclohexane from gasoline found in a survey of 231 workers in a variety of jobs ranged from an average of 0.02 to 2.36 ppm (Ref. 39). Although maximum exposure values ranged from .06 to 9.40 ppm, in three cases the average exposure value reported was higher than the corresponding maximum exposure level, a discrepancy that leaves this information open to question.

2. *Consumer exposure.* The cyclohexane content in three rubber solvents ranged from 1.18 to 1.83 percent, commercial hexane contained from 0.4 to 30 percent cyclohexane and textile spirit contained from 1.9 to 4.3 percent cyclohexane (Ref. 39). Cyclohexane was listed as a component on the label of two spray adhesives: Scotch Sprayment Art and Display Adhesive (Cat. No. 6080) and Super 77 spray adhesive (Ref. 30). Cyclohexane may also be present in paints, paint removers and rubber glues and other adhesives. [See Unit V.2 and V.3 of this document.]

3. *General population exposure.* Human milk from five of eight mothers contained cyclohexane at unquantitated levels (Ref. 40). The authors suggested that the cyclohexane in the milk resulted from the mothers' exposure to environmental pollutants since they resided near chemical manufacturing plants or industrial user facilities. Krotoszynski and O'Neill suggested that the cyclohexane found but not quantified in non-smokers by GC/MS was due to exposure to the compound in the environment (Ref. 41).

A number of studies have been conducted in which cyclohexane has been detected in ambient air. Concentrations of 0.1 to 31 parts per billion (ppb) have been reported in the atmosphere of seven U.S. cities (Ref. 6) indicating that cyclohexane is widespread in urban air. This is likely due to the presence of cyclohexane in automobile exhaust. The presence of cyclohexane in air samples from rural or remote areas may be due to nonanthropogenic sources, but the available information is equivocal. Arnts and Meeks presented monitoring data from six sites in Rio Blanco county in Colorado, an area containing shale oil deposits. Cyclohexane was found in

only one of the six sites, however, so the authors' conclusion that the hydrocarbons detected were not due to a distant urban source must be regarded as tentative (Ref. 42). No quantitative statements can be made about total human exposure to cyclohexane with the available information.

Thirteen of an unspecified number of surface water samples collected from 204 sites near industrial areas across the United States contained cyclohexane at unspecified concentrations (Ref. 43). Because of the expected rapid volatilization of cyclohexane, however, it is likely that human exposure to cyclohexane from this source will be insignificant. A cyclohexane concentration of 540 ppb was detected in a drinking water well in New York. It was not specified whether this was a maximum, minimum or average value, nor was the frequency with which cyclohexane was found in the samples taken (Ref. 44).

4. *Non-human populations.* No data were available which indicate the level of cyclohexane exposure in nonhuman populations. Since the majority of cyclohexane is released in urban areas and estimations suggest complete partitioning to the atmosphere, the cyclohexane levels to which organisms, particularly aquatic species, may be exposed are expected to be low.

*E. Environmental Releases*

Release of cyclohexane to the environment occurs mainly from the use of products in which cyclohexane is an inadvertent component. In 1980, an estimated 92.4 to 92.8 million pounds of cyclohexane was released primarily by hydrocarbon emissions from land transportation vehicles and to a lesser extent by oil spills (Ref. 8). About 0.2 percent of the annual production of cyclohexane or 1,050,000 pounds/year of cyclohexane may have entered the environment in the years 1979 to 1980 as fugitive emissions or evaporative losses from refineries, but an unspecified amount of this cyclohexane is flared (Ref. 17). The amount of cyclohexane released in this way cannot, therefore, be estimated.

The CMA provided the following estimates for environmental release of emissions from producers (Ref. 10). The CMA panel used EPA AP–42 equations (Ref. 45) and 600/2–79–044 (fugitive) guidelines (Ref. 46) to generate these numbers.

| Source | Emissions (metric tons/yr) |
|---|---|
| Fugitive | 147.21 |
| Storage | 25.59 |
| Production | 28.04 |
| Barge loading | 56.9 |
| Total | 257.44 |

In the same submission, the CMA reported that one producer reports a cyclohexane level of less than 1 ppm in the effluent from waste water treatment plants and one other reports a measured level less than 0.5 ppm (Ref. 10).

The CMA user survey (Ref. 28) provided the following information. Cyclohexane emissions were estimated at 372,000; 202,000; 970,000; and 1,053,000 kg/yr for fugitive, storage, production, and residuals in product, respectively. Disposal methods included off-site incineration (2,043,163.6 kg), flaring (1,198,181.82 kg), boiler fuel (13,636.6 kg), deep well injections (<454.5 kg), direct release to air (43,181.8 kg), and handling by a waste disposal firm followed by incineration or landfilling (1,363.6 kg). None of the companies supplied data on cyclohexane levels in waste water treatment plant effluents.

Potential sources of cyclohexane release that cannot be quantified are cigarette smoke, the deliberate venting of waste hydrocarbon gases and dumping of formation waters (water produced with oil and gas) associated with offshore crude oil production operations, and the use and disposal of solvents containing cyclohexane.

*F. Health Effects*

1. *Pharmacokinetics.* The Agency has reviewed several cyclohexane intravenous, oral, and inhalation absorption, distribution, metabolism and elimination studies (Refs. 47 through 60) and concluded that no further pharmacokinetic testing is necessary except for dermal absorption. However, it is possible that the chronic toxicity study proposed in this document will show some unusual target organ and/or possible mechanism of action that will require further metebolic studies.

Jeffcoat performed intravenous and oral studies on the absorption, distribution, metabolism and excretion of $^{14}C$-cyclohexane in adult male Fischer 344 rats (Ref. 47). The results indicated that cyclohexane had a short residence time. The elimination half-lives of total $^{14}C$ for plasma and tissues were on the order of 10 to 15 hours. Eighty percent of the intravenous dose was excreted via the lung in 24 hours. Greater than 61 percent of the oral dose was excreted via the lungs in 12 hours. Approximately 14 percent of the intravenously administered dose and from 12 to 29 percent of the oral dose was excreted via the urine in 72 hours. Cyclohexane, cyclohexanol and cyclohexanone were detected only as trace quantities in the urine. The chemical structures of the three major metabolites detected by HPLC were not determined, but the author stated that they elute from the column "in the region typical of conjugates."

Results from oral, inhalation and dermal toxicity studies of cyclohexane in rabbits by Treon et al. (Refs. 48 and 49) indicated that cyclohexane metabolites are excreted in the urine as sulfate and glucuronic acid conjugates.

Elliott et al. (Ref. 50) studied the urinary metabolites of $^{14}C$-cyclohexane in adult female chinchilla rabbits. The compound was administered in water by gavage. When a dose of 300 to 400 mg cyclohexane/kg (higher dose group) was administered, 35 to 45 percent of the dose was detected in expired air. Approximately 10 percent of the dose was detected as carbon dioxide; the remainder was unchanged cyclohexane. At a very small dose (0.3 mg/kg, low dose), 5.5 percent of the administered dose was detected in expired air as carbon dioxide. No unchanged cyclohexane was found. The two metabolites found in the urine were glucuronide conjugates of cyclohexanol, (30 to 40 percent of the high dose and 60 percent of the low dose) and (±) transcyclohexane-1,2-diol, (5 to 8 percent of the high dose and 17 percent of the low dose).

Cyclohexane has also been found in five out of eight human breast milk samples collected from women in Bayonne, NJ (2/2); Jersey City, NJ (1/2); Pittsburgh, PA (2/2); and Baton Rouge, LA (0/2) (Ref. 40).

2. *Acute toxicity.* Acute toxicity data for cyclohexane are summarized below. The data are sufficient to reasonably determine or predict the acute effects of cyclohexane except for dermal sensitization.

a. *Acute oral toxicity.* Phillips Petroleum Company has provided the results of an acute oral toxicity study performed with rats (in groups of five males, five females; strain not reported) conducted by Hazleton Laboratories (Ref. 61). A single oral dose of 5 g/kg body weight (bw) was administered to the animals by gavage, followed by observation at 1, 2 and 4 hours post-dosing. Animals were observed twice daily for a further 14 days. No animals died during the study, and all animals gained weight over the 14-day observation period. Clinical observations of depression, salivation

and soft feces seen 1, 2, and 4 hours post-dosing were not noted from day 2 through termination of the study. Necropsies performed on all 10 rats revealed no gross pathology findings in any animal. This result indicates that the acute oral lethal dose for cyclohexane is greater than 5 g/kg bw in the rat.

Kimura et al. (Ref. 62) investigated the acute oral toxicity of cyclohexane to rats of different age groups over a 7-day observation period. $LD_{50}$ values of <0.78, 6.2, 30.3, and 12.8 g/kg cyclohexane were reported for neonate (24 to 48 hours old), immature (14 days old), young adult (80 to 160 g) and adult (300 to 470 g) rats, respectively. Rabbits administered a single oral dose of 1 to 10 g/kg cyclohexane exhibited overt signs of intoxication including severe diarrhea and increased respiration (Ref. 48). The minimum lethal dose of cyclohexane was between 5.5 and 6 g/kg (Ref. 48).

b. *Acute inhalation toxicity.* Phillips provided the results for an acute inhalation toxicity study performed with rats (five/sex) conducted by Hazleton Laboratories (Ref. 64). The mean analytical concentration was reported to be 21,250.0 ppm (S.D. 925.82) in methane equivalents, or 4,044 ppm (13.9 mg/L) cyclohexane. The duration of exposure was 4 hours, and animals were observed for a further 14 days before sacrifice and necropsy. Over the 4-hour exposure, tremors, hyperactivity, rapid respiration and prostration were noted in all animals. Ataxia was observed in one animal. During the post-exposure observation period, all females appeared normal, one male exhibited localized alopecia (noted on days 1 to 10), and one male (the report does not state whether this is the same or a different animal) exhibited sores around the left eye (noted on days 8 to 10). No exposure-related trends were reported in either mean body weights or gross pathology. This result indicates that the acute inhalation lethal dose for cyclohexane is greater than 4,044 ppm (13.9 mg/L) in rats.

A precis of the acute toxic effects of inhalation exposures to cyclohexane reported in the earlier literature is presented in Patty (Ref. 65). Overt signs of intoxication exhibited in mice exposed to 18,000 ppm included trembling within 5 minutes, disturbed equilibrium within 15 minutes and complete recumbency within 25 minutes of continuous exposure. Atmospheric concentrations of 18,000 ppm cyclohexane produced slight trembling in guinea pigs over an unspecified period of exposure, disturbed equilibrium (11 minutes) and complete recumbency (18 to 25 minutes) in cats, and slight trembling (6 minutes), disturbed equilibrium (15 minutes) and complete recumbency (30 minutes) in rabbits. Following a single exposure of rabbits to cyclohexane vapors, Deichmann and LeBlanc (Ref. 66) reported no visible effects at 3,330 ppm and lethargy, narcosis, increased respiration and convulsions at 12,800 and 18,500 ppm over an 8-hour observation period. Death was observed within 1 hour in rabbits exposed to 28,572 ppm cyclohexane (Refs. 49 and 66). Rabbits exhibited severe, rapid, "running-like" movements of the feet, tremors and rapid narcosis preceding death.

c. *Acute dermal toxicity.* No mortality was reported following dermal application of cyclohexane to rabbits (Ref. 67). Six rabbits (New Zealand White/Dutchland strain; three per sex) were used. Cyclohexane was applied dermally to clipped skin under a non-absorbent binder at a dose level of 2,000 mg/kg bw. Animals were observed at 1, 2 and 4 hours post-application and then twice daily for 14 days. By 2 hours post-application, all animals were reported to appear normal and remained normal throughout the 14-day observation period. Animals gained weight during the observation period. No gross pathology was observed upon necropsy. This result indicates that the acute dermal lethal dose for cyclohexane is greater than 2,000 mg/kg bw in rabbits.

d. *Acute intravenous toxicity.* Braier (Ref. 68) reported the toxic effects of intravenous injections of cyclohexane to groups of 10 rabbits. Complete mortality was observed following a single injection of 0.23 g/kg, 10 percent mortality occurred at 0.15 g/kg, and no mortality occured at 0.12 g/kg. No clinical symptoms were reported prior to death.

e. *Acute subcutaneous toxicity.* Braier (Ref. 68) reported that a single subcutaenous injection of 0.78 g/kg in male and female rabbits caused granulopenia in all animals over a 6-day observation period, although bone marrow remained normal.

f. *Dermal irritation.* A primary skin irritation study in rabbits was also provided by Phillips Petroleum Company (Ref. 69). Six rabbits (three male, three female) were exposed to cyclohexane (0.5 mL under a non-absorbent binder) for 24 hours. An intact and an abraded skin site were employed on each animal. No erythema, edema or other dermal effects were reported at 24 or 72 hours after compound administration. The primary irritation score was reported to be zero.

Dermal irritation scores in rabbits were also presented as part of the acute dermal toxicity study by Phillips (Ref. 67). The dose was 2,000 mg/kg. Two out of three male rabbits exhibited very slight erythema on days 1 and 3 after application of cyclohexane. All three female rabbits exhibited erythema ranging from very slight (two out of three) to well-defined (one out of three) on day 1. On day 3, two females exhibited erythema. No erythema was noted in any rabbit on day 7. Very slight edema was observed in all female rabbits and one of three males on day 1. Slight edema was observed in one other male on day 1. No edema was observed on day 3. Epidermal scaling was reported in one female on day 10.

g. *Eye irritation.* Phillips Petroleum Company has submitted washed and unwashed primary eye irritation studies in rabbits (Refs. 70 and 71). Each study employed six rabbits (three male, three female). The dose of cyclohexane employed was 0.1 mL instilled into the conjunctival sac of the left eye. After cyclohexane administration, animals were observed and scored at 1, 24, 48 and 72 hours, and at 4 and 7 days. When eyes were washed (Ref. 70), conjunctival redness was observed in four animals (one male, three females) at the 1-hour observation period. This redness was not observed at 24 hours. No corneal opacity, iritis, conjunctival chemosis or discharge was observed in any of the animals. When eyes were not washed (Ref. 71), conjunctival redness was observed in five animals (three male, two female) at 1 hour after cyclohexane administration. Conjunctival chemosis was observed in one rabbit (male), corneal opacity involving ≤25 percent of the cornea was observed in another rabbit (male) and iritis was observed in another (male). No ocular lesions were observed at 24 hours. The overall eye irritation index was 1.3 for washed eyes and 3.7 for unwashed eyes at 1 hour. At 24 hours through 7 days, the primary irritation score was 0.0 for both washed and unwashed eyes.

h. *Dermal Sensitization.* No data on the dermal sensitization of cyclohexane have been found in the literature or have been reported under the TSCA section 8(d) rule (50 FR 47538) for this chemical.

3. *Subchronic toxicity.* The Agency has reviewed several subchronic studies on cyclohexane and found them insufficient to reasonably determine or predict the subchronic toxicity of cyclohexane. Treon et al. (Ref. 49) exposed rabbits (four/group) to cyclohexane by inhalation. Exposure concentrations ranged from 1.47 mg/L (435 ppm) for 1,040 hours (26 weeks) to 62.6 mg/L (18,600 ppm) for 60 hours. Exposure regimens were 6 or 8 hours/day, 5 days/week over a 2-, 5-, 10-, or 26-week period (see following Table 1).

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Table 1 -- MULTIPLE EXPOSURE INHALATION TOXICITY TESTS WITH CYCLOHEXANE (Ref. 49)

| Species | Exposure Level ppm | mg/l | Duration of Observation | Effects/Comments |
|---|---|---|---|---|
| Rabbits | 7400 | 25.1 | 6 hours/day, 5 days/week, 2 weeks | 7,400 ppm; lethargy, light narcosis, increased respiration and diarrhea. Mortality: 1/4; weight gain (16 g/animal). 12,600 ppm; spasmodic convulsions, lethargy, light narcosis, increased respiration, diarrhea and salivation. Mortality: 1/4; weight loss (260 g/animal). 18,600 ppm; rhythmic "running-like" movements of feet, tremors, spasmodic jerking, narcosis, paresis of legs, salivation, conjunctival congestion and labored respiration. Mortality: 3/4; weight loss (188 g/animal). |
| | 12,600 | 42.1 | | |
| | 18,600 | 62.6 | | |
| Rabbits | 9,200 | 31.1 | 6 hours/day, 5 days/week, 5 weeks | Tremors, lethargy, paresis of legs, incoordination, increased respiration and salivation. Mortality: 3/4; weight loss (311 g/animal). |
| Rabbits | 430 | 1.5 | 6 hours/day, 5 days/week 10 weeks | No grossly observable effects; minor microscopic changes detected in the liver and kidney at 790 ppm. No mortality; weight gain at 430 and 3,300 ppm (531 and 262 g/animal, respectively). Weight loss at 790 ppm (115 g/animal) considered not compound related. |
| | 790 | 2.7 | | |
| | 3,300 | 11.2 | | |
| Rabbits | 435 | 1.5 | 8 hours/day, 5 days/week, 26 weeks | No observable effects. Weight gain (531 g/animal). |
| Monkey | 1,200 | 4.2 | 6 hours/day, 5 days/week, 10 weeks | Weight loss: 333 g. Only one animal used; no other observable effects. |

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This study has a number of design flows that limit its usefulness including: (1) The small numbers of animals used (4/group; minimum requirement is 20/group); (2) survivors were sacrificed and necropsied 2 months after exposure ended rather than immediately allowing for possible recovery or reversibility of effects (3) while hemoglobin concentration and erythrocyte and leucocyte counts were measured, other important clinical markers (e.g., clinical biochemistry such as electrolyte balance and liver and kidney function) were not reported.

Treon et al. (Ref. 48) applied repeated doses of cyclohexane to the clipped anterior abdominal skin of a single rabbit for 14 days (total dose was 189.2 g/kg). Increased injury to the skin was noted during the exposure period. Within a week following the last application, healing had occurred. No narcosis or convulsions were observed. Upon autopsy, unspecified toxic changes in the heart, liver and kidney were noted, accompanied by chronic bronchitis and some vascular degeneration in the lung.

In a study reported by Naruse (Ref. 53), 20 mice (sex and strain not clear from the report, but probably male ddY mice), initial weight approximately 15 g each, were exposed to vapors of adhesive D (36.3 percent cyclohexane, 15.3 percent acetone, 7.1 percent isopropyl acetate, 6.8 percent *n*-hexane, 1.5 percent methylcyclopentane, 1.0 percent 3-methylpentane, 0.8 percent 2,3-dimethylbutane and 2-methylpentane, and 0.5 percent toluene) in air at 18 °C for 1 hour, 6 days/week over 120 days. Mice exposed to adhesive D exhibited a significant ($p<0.01$) inhibition of body weight gain and significantly ($p<0.01$) decreased food and water consumption when compared with controls. The liver/body weight ratio was significantly ($p<0.01$) increased with respect to controls; other organ/body weight ratios were not significantly different. No gross or microscopic abnormalities were reported in any organs. The significance of these findings with respect to cyclohexane is impossible to assess because cyclohexane was only one of several constituents of the chemical mixture tested.

4. *Neurotoxicity.* EPA concludes that the neurotoxicity data on cyclohexane are not sufficient to reasonably determine or predict the neurotoxicity of cyclohexane. The experimental evidence accumulated to date, relative to cyclohexane's neurotoxic potential, is very limited. Cyclohexane has been shown to be a central nervous system (CNS) depressant in rabbits (Ref. 48). Observed effects have included dizziness, nausea, and unconsciousness (Ref. 72). At high vapor concentrations, convulsions in rabbits have also been reported (Refs. 49 and 73). No definitive experimental data appear to exist in the published literature on the potential of cyclohexane to induce neuropathological changes, following long-term chronic exposure.

In one animal study (Ref. 74) six to nine rats were intermittently exposed to cyclohexane (9 to 10 hours/day, 5 to 6 days/week) via inhalation for up to 30 weeks at concentrations of 1,500 and 2,500 ppm. Post-exposure histologic examination of both tissue and sectionnl preparations from the peripheral nervous system did not reveal any pathologic alteration; however, the CNS was not examined. In the same study, rats treated with *n*-hexane at 2,500 ppm for 30 weeks and 5,000 ppm for 14 weeks developed solvent-induced giant axonal neuropathies.

This study indicates that cyclohexane did not induce neuropathic changes under experimental conditions in which *n*-hexane induced extensive peripheral neuropathy. Although the study design included use of a highly pertinent exposure route, monitoring of atmospheric test concentrations and exposure durations of up to 30 weeks, several important deficiencies must be noted. Numbers of test animals were somewhat low (6 to 9/treatment). Most important, the lack of weight gain effects or other evidence of signs of toxicity in the cyclohexane-treated group suggests that a high enough dose was not tested. Therefore, while it appears from the data that cyclohexane does not change the peripheral nerves of rats at exposure levels that produce extensive nerve damage in *n*-hexane-treated groups, it cannot be inferred that higher cyclohexane concentrations would be non-neurotoxic as well or that the tested exposure levels do not cause CNS effects (i.e. not examined). For any repeated exposure study to provide adequate evidence of a substance or mixture's lack of potential to cause a specific effect, EPA believes that a dose effect range should be obtained that demonstrates both frank toxicity and no effect levels. Because, no toxicity was demonstrated this study is inadequate to predict the neurotoxic potential of cyclohexane.

EPA has also reviewed four neurotoxicity studies where cyclohexane was a component of a mixture. EPA finds that these studies are inadequate. Egan et al. (Ref. 75) exposed male rats nearly continuously to vapors of a mixture of hexane isomers containing 209 mg/m³ cyclohexane (31.7 ppm) but only 5.3 mg./m³ (1.5 ppm) *n*-hexane for up to 6 months. The purpose of the study was to determine whether components of commercial hexane other than *n*-hexane contribute to the neuropathic properties of this mixture. The 6-month exposure failed to reveal any compound-related clinical or histopathological effects on the central or peripheral nervous systems.

EPA believes that this study is well-conducted. Egan et al. used appropriate control animals and carefully monitored actual exposure concentrations and other variables, such as diet. However, the study was not designed to investigate the chronic neurotoxic potential of cyclohexane itself. The presence of multiple hexane isomers allows the possibility of antagonistic interactions affecting expression of neurotoxicity. In addition, EPA believes that the doses used were too low to adequately demonstrate lack of neurotoxic potential of cyclohexane, in view of the lack of observable clinical effects obtained.

In two American Petroleum Institute (API) studies (Refs. 76 and 77) the general objective of both studies was to evaluate the potential synergistic effects of $C_6$ isomers found in commercial hexanes on the chronic inhalation toxicity of *n*-hexane, emphasizing neurotoxic effects. The use of test mixtures of hexane isomers precludes the use of these data to determine the toxicity of cyclohexane, which was a relatively minor component of the isomer mixture.

Franchini et al. (Ref. 78) exposed 49-day-old Ubbart chickens to five mixtures (A–E) containing 2.1 to 17.1 percent cyclohexane by painting on shaved thoracic skin (about 10 cm²) daily for up to 65 days (initially, 1 g/kg bw/day). All of the test mixtures contained *n*-hexane, a demonstrated neuropathic agent. Untreated animals (five) were used as controls. The report states that the dose was gradually increased as body weight increased, but no further explanation was given. Histological and microstructure analyses were made of spinal cord cervical and lumbar swellings and of sciatic nerves. Chickens from A and B groups showed no symptoms of paralysis. Microscopic examination of sciatic nerve fiber bundles, however, revealed ball-shaped swellings and demyelination. Four out of five chickens in C group (the only solvent containing tricresylphosphate, a known neurotoxin) were completely paralyzed by the treatment, and deterioration of the

myelin sheath was seen upon microscopic examination. In groups D and E also, four out of five animals were paralyzed. In group D, the myelin sheath was observed to be swollen and frequently broken. Microscopic findings for group E animals were not reported. The significance of these findings with respect to cyclohexane is difficult to assess since cyclohexane was only one component in the complex mixtures.

5. *Developmental toxicity.* No data on the developmental toxicity of cyclohexane have been found in the literature or have been reported under the TSCA section 8(d) rule (50 FR 47538) for this chemical.

6. *Reproductive toxicity.* No data on the reproductive effects of cyclohexane have been found in the literature or have been reported under the TSCA section 8(d) rule (50 FR 47538) for this chemical.

7. *Mutagenicity.* Negative results on cyclohexane were reported in the following: (a) Gene mutation assays in *S. typhimurium* reverse mutation assay with and without metabolic activation (Refs. 79 and 80) and in the mouse lymphoma forward mutation assay (Refs. 81 and 82); (b) in the *in vivo* bone marrow cytogenetics tests in rat: chromosomal analysis (Ref. 83); (c) in a sister chromatid exchange assay in Chinese hamster ovary (Ref. 84); (d) in an unscheduled DNA synthesis assay (Ref. 85); and (e) in a DNA binding assay at 10 nM (Ref. 86). An equivocal result was reported in the DNA binding assay at 100 nM (Ref. 86). EPA concludes that although there are some deficiencies in the reporting of some of the studies, these do not appear to be sufficient reason to question the results. Cyclohexane has not demonstrated mutagenic activity in any of the reported studies. The one equivocal report in the DNA binding assay (Ref. 86) is in a study whose overall use as a predictive assay for carcinogenesis has not been validated. Therefore, the reported equivocal response does not change the overall evaluation that cyclohexane is not mutagenic in these assays.

Given the negative results in all assays in which cyclohexane was tested, including the negative response in a rat bone marrow cytogenetics assay, EPA has concluded that it is not necessary to test cyclohexane for its ability to induce chromosomal aberrations *in vitro* in the *in vitro* mammalian cytogenetics test: chromosomal aberration in cultured mammalian cells. These tests fulfill the Agency's requirements for first tier mutagenicity testing. Therefore, no further mutagenicity testing for this agent is necessary.

8. *Carcinogenicity.* EPA concludes that existing data are not sufficient to reasonably predict the carcinogenicity of cyclohexane. There have been no carcinogenicity studies conducted using currently accepted standard testing protocols. It should be noted, however, that pure cyclohexane was used as a vehicle control in 3 dermal oncogenicity studies (Refs. 87 through 89). A 50/50 cyclohexane/acetone mixture was used as a vehicle control in one dermal oncogenicity study (Ref. 90) and cyclohexane mixed with test compound as a 80/20 percent mixture in another dermal oncogenicity study (Ref. 91). Three of these studies (Refs. 89 through 91) were submitted to EPA by the CMA. While no oncogenic response was reported for cyclohexane in these studies, a number of shortcomings prevent their use for judging oncogenicity.

These include small doses employed (less than 20 to 100 µl, 16–78 µg; 2 to 3 times per week), failure to use pure cyclohexane, use of insufficient number of animals, use of animals of only one sex, failure to expose animals for their entire lifetime, use of only one rodent species. More importantly, none of the investigations was designed to directly address the carcinogenicity of cyclohexane. Hence, because of the intended purpose of each study, these investigations must be considered inadequate for evaluating cyclohexane's carcinogenic potential. Table 2 lists summary of these studies.

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TABLE 2--SUMMARY OF EXISTING CYCLOHEXANE DATA

| Route | Species | Sex | Dose or Exp. level | Duration of Exposure | Comments | (Ref) |
|---|---|---|---|---|---|---|
| Dermal | C3Hf/Bd mice | 30 M, 30 F | 50 µl cyclohexane was vehicle control | 3x/wk for 60 weeks | Middle distillates were tested. Looked at nephrotoxicity. Cyclohexane was vehicle control. Skin tumor in 1/60 mice. No macroscopic renal lesions. 42 of 336 in treatment group had renal lesions. Exposure regimen not adequate. Animals not exposed during entire life span. | 87 |
| Dermal | C3H mice | 35 M | 0, 60 µl | 2x/wk 50 weeks | Promoting activity of pristine ($C_{19}H_{40}$) and several n-alkanes in cyclohexane. All animals were treated with the initiating carcinogen DMBA. Cyclohexane was vehicle control and solvent. Benign and malignant tumor rate of cyclohexane exposed animals not significant from controls. Animals not exposed during entire lifetime. Exposure regimen not adequate. Only male mice used. | 88 |
| Dermal | ICR/Ha Swiss mice | 50 F | 100 µl | 3x/wk 72 weeks | Carcinogenic activity of di- and trifunctional alpha-chlor ethers and 1,4-Dichlorobutene-2 in ICR/Ha Swiss mice Cyclohexane was vehicle control. Only female mice used. Exposure regimen not adequate. | 89 |
| Dermal | C0-1 and C3H/HeJ mice | 50 M | 50 µl Cyclohexane/ acetone | 2x/wk 18 months | Asphalt volatiles were applied as 50 percent solutions in cyclohexane/acetone. Cyclohexane/acetone vehicle control. Exposure regimen not adequate. Only male mice were used. | 90 |
| Dermal | Swiss mice | 50 F | 20 µl (one drop) of 20/ 80 mixture | 3x/wk 60 weeks | Promotion activity following single dose of DMBA of various alkanes and alkanols prepared as a 20 percent (w/v) solution in cyclohexane studied. Exposure regimen not adequate. Only female mice were used. 3 agents (n-hexane, octane, and hexanol) dissolved in cyclohexane were inactive | 91 |

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### III. Findings

Under TSCA section 4(a)(1)(B), EPA finds that cyclohexane is produced in substantial quantities and that there is or may be substantial human exposure from its manufacture, processing, and use. Approximately 1.8 billion pounds of cyclohexane was produced in 1985 (Ref. 10). In addition, according to the National Occupational Exposure Survey of 1981 to 1983 (NOES), 42,558 workers including 12,021 women were potentially exposed to the compound in the workplace at 985 plants in 1980 (Ref. 31). Cyclohexane is used as a solvent and may be a component of paint remover and rubber adhesives and textile solvents. It also appears on the label as a component of at least two spray adhesives, Scotch Sprament Art and Display Adhesive and Super 77 spray adhesive, and may occur in other consumer products. The above uses may result in widespread exposure to workers and consumers.

While EPA believes that there may be substantial human exposure to cyclohexane in finished gasoline, EPA is not considering exposure from finished gasoline as part of its basis for finding substantial human exposure to cyclohexane. The Agency believes that exposures associated with the manufacture and processing of cyclohexane, solvent uses and other uses provide sufficient basis for a finding of substantial human exposure under TSCA section 4(a)(1)(B)(i) for cyclohexane.

EPA finds, as discussed in Unit II of this document, that existing data are not sufficient to reasonably determine or predict the subchronic, oncogenic, reproductive, developmental, and neurotoxic effects as well as dermal absorption and dermal sensitization following exposure to cyclohexane resulting from its manufacture, processing, and use. EPA further finds that testing is necessary to develop such data. EPA believes that the data resulting from this testing will be relevant to a determination as to whether the manufacture, processing, and use of cyclohexane does or does not present an unreasonable risk of injury to human health.

### IV. Proposed Rule

#### *A. Proposed Testing and Test Standards*

The Agency is proposing that testing be conducted in accordance with specific test guidelines set forth in 40 CFR Parts 796, 797, and 798 of this chapter. Revisions to these guidelines are published elsewhere in this issue of the Federal Register. The test guideline cited under § 795.250 of this chapter was proposed in the Federal Register of May 15, 1986 (51 FR 17860). The test guideline in § 795.226 of this chapter is proposed and published with this rule for cyclohexane. All persons conducting tests must submit plans, and conduct tests in accordance with the TSCA Good Laboratory Practice (GLP) Standards (40 CFR Part 792).

On the basis of the findings presented above for health effects testing, the Agency is proposing that cyclohexane be tested under TSCA section 4(a)(1)(B) for: (1) Subchronic inhalation toxicity as specified in § 798.2450 of this chapter; (2) oncogenicity by inhalation as specified in § 798.3300 of this chapter; (3) reproductive toxicity by inhalation as specified in § 798.4700 of this chapter; (4) developmental toxicity by inhalation as specified in § 798.4350 of this chapter; (5) neurotoxicity by inhalation as specified in §§ 798.6050, 798.6200, 798.6400, 798.6500 and 795.250 of this chapter; (6) dermal absorption as specified in § 795.226 of this chapter; and (7) dermal sensitization as specified in § 798.4100 of this chapter.

Acute neurological effects are of concern because such effects may increase accident proneness, impair self-rescue, or reduce work efficiency (Ref. 92). This is of particular concern to the 42,558 workers potentially exposed to cyclohexane (Ref. 10). In order to assess the acute neurologic effects of inhaled cyclohexane at low levels on behavior, the Agency is proposing that the neurotoxicity testing include a schedule-controlled operant behavior study (§ 798.6500). In order to assess the effects of repeated inhalation exposures to cyclohexane, the Agency is proposing a subchronic neurobehavioral toxicity evaluation, consisting of a neuropathologic evaluation of tissues perfused *in situ* (§ 798.6400), a functional observation battery (§ 798.6050), and measurement of motor activity (§ 798.6200). Furthermore, EPA believes that cyclohexane's presence in breast milk samples raises concerns for neonates and children, whose developing neurological systems may be more susceptible to damage from exposure to cyclohexane than adults. Therefore, in order to assess potential functional and morphological hazards to the nervous system which may arise in neonates from exposure of the mother to cyclohexane during pregnancy and lactation, the Agency is proposing that cyclohexane be tested for developmental neurotoxicity (§ 795.250), if warranted after the results of the other neurotoxicity tests and the reproductive effects tests are reviewed by the Agency. If the Agency decides that the developmental neurotoxicity test is warranted, it will reopen the comment period, review the comments, and if the Agency still concludes that the testing is warranted, it will finalize the developmental neurotoxicity test in a separate Federal Register notice.

In order to assess the degree of toxicological activity of cyclohexane upon various target organs, the Agency is proposing that cyclohexane be tested for subchronic toxicity by inhalation (§ 798.2450). Because of the widespread exposures to cyclohexane, the Agency believes that it is necessary to assess the oncogenic potential of cyclohexane and is thus proposing a 2-year inhalation bioassay in two species (§ 798.3300). Testing for developmental toxicity (§ 798.4350) and reproductive effects (§ 798.4700) is being proposed because of widespread human exposure and lack of data to reasonably predict these effects. EPA is proposing that the above tests be done via inhalation because this is the major route of exposure. EPA is also proposing a dermal absorption test (§ 795.226) and dermal sensitization test (§ 798.4100). Dermal exposure to cyclohexane is of concern to EPA because of cyclohexane's solvent uses. No data are available on dermal sensitization and EPA believes that a dermal absorption test will be needed in its assessment of cyclohexane (see Unit II.E.1 of this document).

The Agency is proposing that the TSCA health effects test guidelines be employed as the test standards for the purposes of the proposed tests for cyclohexane. The TSCA test guidelines for health effects testing specify generally accepted minimal conditions for determining the health effects for substances like cyclohexane to which humans are expected to be exposed. The Agency's review of the TSCA Test Guidelines, which occurs on a yearly basis according to the process described at 47 FR 41857 (September 22, 1982), has found no reason to conclude that these guidelines need to be modified significantly.

#### *B. Test Substance*

EPA is proposing under TSCA section 4(a)(1)(B) that cyclohexane (CAS No. 110-82-7) of at least 99.9 percent purity be used as the test substance. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributable to cyclohexane itself. EPA believes that this grade of cyclohexane is readily available for testing purposes. Radiolabeled cyclohexane of greater than 99 percent purity will be needed for the dermal absorption test.

*C. Persons Required to Test*

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing ("process" is defined in section 3(10) of TSCA as the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce). Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects on human health of the manufacture, processing, and use of cyclohexane, EPA is proposing that persons who manufacture and/or process, or who intend to manufacture and/or process cyclohexane, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data, if more than 5 years, after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. The Agency anticipates that the current manufacturers of cyclohexane will form the reimbursement pool and sponsor the required testing. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers, including importers subject to this rule, are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the Federal Register to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for cyclohexane.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

*D. Reporting Requirements*

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed tests for cyclohexane in the following Table 3:

TABLE 3.—REPORTING REQUIREMENTS

| Test | Reporting deadline for final report[1] | Number of interim (6-mo) reports required |
|---|---|---|
| Testing for cyclohexane: | | |
| A. Subchronic inhalation toxicity: § 798.2450 | 15 | 2 |
| B. Oncogenicity: § 798.3300 | 53 | 8 |
| C. Reproduction and fertility effects: § 798.4700 | 29 | 4 |
| D. Inhalation developmental toxicity: § 798.4350 | 15 | 2 |
| E. Neurotoxicity tests: §§ 798.6050, 798.6200, 798.6400, and 798.6500 | 15 | 2 |
| F. Developmental neurotoxicity test: § 798.250 | [2] 15 | 2 |
| G. Dermal Sensitization: § 798.4100 | 12 | 1 |
| H. Dermal Absorption: § 798.220 | 12 | 1 |

[1] Number of months after the effective date of the final rule.

[2] Number of months after the effective date of the final rule which would require the developmental neurotoxicity test.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the Federal Register as required by section 4(d).

Persons who export a chemical substance or mixture which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR Part 707. In brief, as of the effective date of this test rule, an exporter of cyclohexane must report to EPA the first export or intended export of cyclohexane to a particular country in a calendar year. EPA will notify the foreign country concerning the test rule for the chemical.

*E. Enforcement Provisions*

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and

procedures outlined in TSCA section 11 by duly designated EPA representatives to determine compliance with any final rule for cyclohexane. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP standards under 40 CFR Part 792 and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of the TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violated section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions. This provision would also apply to processors who fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents as stated in 40 CFR 790.48(b). Knowing and willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

## V. Issues for Comment

1. The authors of the EPA monitoring study (Ref. 40) raised concerns that infants might be uniquely susceptible to some pollutants because of their small body weights and their metabolic systems which differ from those of adults. Is additional testing of cyclohexane needed to assess potential adverse health effects upon neonates, who may be exposed to cyclohexane through mother's milk, and whose developing neurological sytems may be more susceptible to damage from exposure to this compound? What test methods should be used for such testing?

2. Cyclohexane is listed as a component on the label of two spray adhesives, Scotch Sprament Art and Display Adhesive, Cat. No. 6060 and Super 77 spray adhesive [Ref. 30]. EPA seeks additional information on cyclohexane in these two consumer products or any other consumer products. EPA seeks information on how widespread consumer exposure to cyclohexane might be.

3. EPA is uncertain whether and to what extent cyclohexane is used in paint formulations, rubber glues, and paint removers. EPA seeks additional information on these uses. EPA also seeks additional information on human exposure to cyclohexane used as a laboratory solvent.

4. EPA solicits comments on whether or not manufacturers and processors of cyclohexane who do so in the course of producing gasoline or other motor or heating fuels should be subject to this rule.

5. This rule proposes oncogenicity testing for cyclohexane. EPA has often used a tiered approach to oncogenicity testing when making exposure findings under section 4(a)(1)(B). EPA and others have found shorter term tests, i.e. subchronic tests and mutagenicity screening tests, very useful for determining the priority of oncogenicity testing needs. However, EPA believes that in the case of cyclohexane, with its potential for substantial worker and consumer exposure, a 2-year bioassay is necessary to give the Agency the degree of assurance required for regulatory decision-making. EPA seeks comment on the appropriateness of this approach.

## VI. Economic Analysis of Proposed Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of cyclohexane: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If these indications are negative, no further economic analysis is performed. However, if the first level of analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Total testing costs for the proposed testing of cyclohexane are estimated to range from $2,052,300 to $2,651,650. In order to predict the financial decisionmaking practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year. The annualized testing costs range from $225,330 to $291,160, using a 7 percent cost of capital estimate over a period of 15 years.

Based on 1985 production of 1.8 billion pounds, the unit test costs range from $0.0001 to $0.0002 per pound. In relation to the selling price of $0.14 per pound for cyclohexane, these costs are equivalent to 0.09 to 0.12 percent of price.

Based on these costs and the uses of cyclohexane, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations:

1. The estimated unit test costs are very low, 0.12 percent of current price in the upper bound case.

2. The overall demand for cyclohexane appears relatively inelastic with respect to price in all of its major uses.

3. The market expectations for cyclohexane are moderate, with demand

projected to grow at a rate of 3 to 7 percent annually.

Refer to the economic analysis included in the rulemaking record for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

## VII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider ". . . the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the NTIS (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

## VIII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting after the close of the public comment period in Washington, D.C. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): (202) 554-1404 by July 6, 1987. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency would transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

## IX. Public Record

EPA has established a record for this rulemaking, (docket number OPTS-42094). This record contains the basic information considered by the Agency in developing this proposal, and appropriate Federal Register notices.

This record includes the following information:

### *A. Supporting Documentation*

(1) Federal Register notices pertaining to this proposed rule consisting of:

(a) Notice containing the ITC recommendation with intent to designate cyclohexane (50 FR 47603; November 19, 1985).

(b) Notice containing the ITC designation of cyclohexane to the Priority List (51 FR 18359; May 19, 1986).

(c) Rules requiring TSCA section 8(a) and 8(d) reporting on cyclohexane (50 FR 47538; November 18, 1985).

(d) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(e) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(f) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(g) Notice of final rule revising TSCA test guidelines.

(2) Support documents consisting of:

(a) Cyclohexane technical support document for proposed rule.

(b) Economic impact analysis of NPRM for cyclohexane.

(3) TSCA test guidelines cited as test standards for this rule.

(4) Communications before proposal consisting of:

(a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(5) Reports—published and unpublished factual materials.

### *B. References*

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## X. Other Regulatory Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

### *C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070-0033. Submit comments on these requirements to the Office of Information and Regulatory Affairs: OMB; 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

**List of Subjects in 40 CFR Parts 795 and 799**

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: May 1, 1987.

Victor J. Kimm,

*Acting Assistant Administrator for Pesticides and Toxic Substances.*

**PART 795—[AMENDED]**

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

1. In Part 795:

a. The authority citation continues to read as follows:

**Authority: 15 U.S.C. 2603, 2611, 2625.**

b. Section 795.226 is added to read as follows:

**§ 795.226 Dermal absorption for compounds that are volatile and metabolized to carbon dioxide.**

(a) *Purpose.* The purpose of these studies is to: Determine the extent of absorption of test substance after dermal administration.

(b) *Definitions.* Percent of dermal absorption is defined as 100 times the ratio between total excretion of compound following dermal administration and total excretion following intravenous administration.

(c) *Test Procedures*—(1) *Animal selection*—

(i) *Species.* The rat and guinea pig shall be used.

(ii) *Test animals.* Adult male and female Fischer 344 rats shall be used. At 7 to 9 weeks of age, the male rats should weigh 125 to 175 g and the female rats 110 to 150 g. Guinea pigs, 5 to 7 weeks old, shall also be used. The animals should be purchased from a reputable dealer and shall be identified upon arrival. The animals shall be selected at random for the testing groups and any animal showing signs of ill health shall not be used. In all studies, unless otherwise specified, each experimental group shall contain at least 4 animals of each sex for a total of at least 8 animals.

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(iii) *Animal care.* (A) Animal care and housing should be in accordance with DHEW Publication No. (NIH)–78–23, 1976, "Guidelines for the Care and Use of Laboratory Animals."

(B) The animals should be housed in environmentally controlled rooms with at least 10 air changes per hour. The rooms shall be maintained at a temperature of 25±2 °C and humidity of 50±10 percent with a 12-hour light/dark cycle per day. The animals shall be kept in a quarantine facility for at least 7 days prior to use.

(C) During the acclimatization period, the animals should be housed in suitable cages. All animals shall be provided with certified feed and tap water *ad libitum*. The guinea pig diet shall be supplemented with adequate amounts of ascorbic acid in the drinking water.

(2) *Administration of Test Substance*—(i) *Test compound.* The use of radioactive test substance is required for all studies outlined in paragraph (c)(2)(ii) of this section. Ideally, the purity of both radioactive and nonradioactive test substance should be greater than 99 percent. If the purity is less than 99 percent or if the radioactive and nonradioactive compounds differ significantly, the EPA should be consulted.

(ii) *Dosage and treatment*—(A) *Intravenous.* The "low" dermal dose of test substance, in an appropriate vehicle, shall be administered intravenously to four rats of each sex and to four guinea pigs of each sex.

(B) *Dermal.* For dermal treatment, the "low" and "high" doses shall be dissolved in a suitable vehicle and applied at a volume adequate to deliver the doses. The backs of the animals should be lightly shaved with an electric clipper 24 hours before treatment. The chemical shall be applied to the intact shaven skin (approximately 2 $cm^2$ for rats, 5 $cm^2$ for guinea pigs). To prevent losses of test substance by evaporation, the use of a stainless skin depot glued to the backs of the animals with a cyanoacrylate adhesive is recommended. The depot is fitted with a screw cap to prevent the escape of vapor and with a basket of activated charcoal to adsorb compound which vaporizes (Ref. 1).

(*1*) *Washing efficiency study.* Before initiation of the dermal absorption studies described in this section, an initial washing efficiency experiment shall be conducted to assess the removal of the applied test substance by washing the exposed skin area with soap and water and an appropriate solvent. The low dose of test substance shall be applied to 4 rats and 4 guinea pigs. After application (2 to 5 minutes), the areas shall be washed with soap and water and an appropriate solvent (2 rats, 2 guinea pigs). The amounts recovered in the washings shall be determined to assess efficacy of test substance removal by washing the skin.

(*2*) [Reserved].

(iii) *Dosing and sampling schedule*—(A) *Rat studies*—(*1*) *Intravenous study.* (*i*) Group A is to be dosed once intravenously at the low dose of test substance. The rats shall be placed in individual metabolic units (Ref. 2) for collection of urine, feces and expired air at 8, 24, 48, 72 and 96 hours after dosing. The metabolic units are to be cleaned after the final collection period to remove any excreta that might adhere to the units.

(*ii*) [Reserved].

(*2*) *Dermal studies* The test substance shall be kept on the skin for a minimum of 6 hours.

(*i*) Group B shall be dosed once dermally with the low dose of test substance.

(*ii*) Group C shall be dosed once dermally with the high dose of test substance. During and after the exposure period, each animal shall be placed in an individual metabolic unit for the collection of urine, feces and expired air at 8, 24, 48, 72 and 96 hours after dosing. The metabolic units are to be cleaned after the final collection period to remove any excreta that might adhere to the units. At the time of removal of the skin depot, the treated area and the steel depot shall be washed with an appropriate solvent to remove any test substance. Also, the test subetance shall be desorbed from the activated charcoal with a suitable solvent. The washings and extracts shall be assayed to recover residual test substance. At the termination of the experiments, each animal shall be sacrificed and the exposed skin area removed. The skin (or an appropriate section) shall be solubilized and assayed for radioactivity to ascertain if the skin acts as a reservoir for test substance.

(B) *Guinea pig studies.* (*1*) Group D is to be dosed once intravenously at the low dose of test substance. The guinea pigs shall be placed in individual metabolic units for the collection of urine, feces and expired air as for Group A.

(*2*) *Dermal studies.* The studies conducted on groups B and C as specified in paragraph (c)(2)(iii)(A)(*2*) of this section shall be repeated using four guinea pigs per group.

(*i*) Group E shall be dosed once dermally with the low dose of test substance.

(*ii*) Group F shall be dosed once dermally with the high dose of test substance.

(*iii*) *Measurements—Excretion.* The quantities of radioactivity excreted in the urine, feces, and expired air shall be determined at appropriate time intervals as described above and, if necessary, daily thereafter until at least 90 percent of the applied dose has been excreted or until 7 days after dosing (whichever occurs first).

(d) *Data and reporting*—(1) *Treatment of results.* Data shall be summarized in tabular form.

(2) *Evaluation of results.* All observed results, quantitative or incidental, shall be evaluated by an appropriate statistical method.

(3) *Test report.* In addition to the reporting requirements as specified in the EPA Good Laboratory Practice Standards (40 CFR Part 792, Subpart J) the following specific information shall be reported:

(i) Species and strains of laboratory animals;

(ii) Information on the site(s) and extent of test substance labeling, including specific activity, chemical purity, radiochemical purity and results of chromatography;

(iii) A full description of the sensitivity, precision, and accuracy of all procedures used to produce the data;

(iv) Percent of absorption of test substance after dermal exposures to rats and guinea pigs;

(v) Quantity and percent recovery of test substance in feces, urine, and expired air. In dermal studies on rats and guinea pigs, include recovery data for skin, skin washings, and residual compound in the skin depot and charcoal.

(e) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Susten, A.S., Dames, B.L., Niemeier, R.W., "In *vivo* percutaneous absorption studies of volatile solvents in hairless mice. I. Description of a skin-depot." *Journal of Applied Toxicology* 6:43–46. (1986).

(2) Jeffcoat, A.R. Research Triangle Institute. Absorption, distribution, metabolism and excretion of cyclohexane. Project report No. 5. Research Triangle Park, N.C. National Institute of Environmental Health Sciences. Contract NOI–ES–1–5007. (1984)

**PART 799—[AMENDED]**

2. In Part 799:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. Section 799.1235 is added to read as follows:

§ 799.1235 Cyclohexane.

(a) *Identification of test substance.* [1] Cyclohexane (CAS No. 110-82-7) shall be tested in accordance with this section.

(2) Cyclohexane of at least 99.5 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture or process, or intend to manufacture or process cyclohexane, other than as an impurity, from the effective date of this rule (90 days after the publication date of the final rule in the Federal Register) to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests in accordance with Part 792 of this chapter, and submit data or submit exemption applications as specified in this section, Subpart A of this Part, and Part 790 of this chapter for single-phase rulemaking.

(c) *Health effects testing.*—(1) *Subchronic inhalation toxicity.*—(i) *Required testing.* A subchronic inhalation toxicity test shall be conducted with cyclohexane in accordance with § 798.2450 of this chapter.

(ii) *Reporting requirements.* (A) The subchronic inhalation toxicity test shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final rule.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

(2) *Oncogenicity.*—(i) *Required testing.* An oncogenicity test shall be conducted by inhalation with cyclohexane in accordance with § 798.3300 of this chapter.

(ii) *Reporting requirements.* (A) The oncogenicity test shall be completed and the final results submitted to the Agency within 58 months of the effective date of the final rule.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

(3) *Reproduction and fertility effects.*—(i) *Required testing.* A reproduction and fertility effects test shall be conducted by inhalation with cyclohexane in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The reproduction and fertility effects test shall be completed and the final results submitted to the Agency within 29 months of the effective date of the final rule.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

(4) *Inhalation developmental toxicity.*—(i) *Required testing.* An inhalation developmental toxicity test shall be conducted with cyclohexane in accordance with § 798.4350 of this chapter.

(ii) *Reporting requirements.* (A) The inhalation developmental toxicity test shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final rule.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

(5) *Neurotoxicity.*—(i) *Required testing.* Inhalation neurotoxicity tests shall be conducted with cyclohexane in accordance with §§ 798.6050, 798.6200, 798.6400, and 798.6500 of this chapter.

(ii) *Reporting requirements.* [A] The neurotoxicity tests shall be completed and the final results submitted to the Agency within 25 months of the effective date of the final rule.

(B) Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final rule.

(6) *Developmental neurotoxicity.*—(i) *Required testing.* An inhalation developmental neurotoxicity test shall be conducted with cyclohexane in accordance with 798.4250 of this chapter.

(ii) *Reporting requirements.* (A) The developmental neurotoxicity test (conditional) shall be completed and the final results submitted to the Agency within 25 months of the effective date of the final rule (which would require the developmental neurotoxicity test.

(B) Progress reports shall be submitted to the Agency for the developmental neurotoxicity test (conditional) at 6-month intervals beginning 6 months after the effective date of the final rule (which would require the developmental neurotoxicity test.

(7) *Dermal Absorption.*—(i) *Required testing.* Dermal absorption test shall be conducted with cyclohexane in accordance with § 795.220 of this chapter.

(ii) *Reporting requirements.* (A) The dermal absorption test shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final rule.

(B) Progress reports shall be submitted 6 months from the effective date of the final rule.

(8) *Dermal Sensitization.*—(i) *Required testing.* (A) Dermal sensitization test shall be conducted with cyclohexane in accordance with § 798.4100 of this chapter.

(B) [Reserved].

(ii) *Reporting requirements.* [A] The dermal sensitization test shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final rule.

(B) Progress reports shall be submitted 6 months from the effective date of the final rule.

(d) *Effective date.* (44 days after publication of the final rule in the Federal Register).

(Approved by the Office of Management and Budget under control number 2070-0033)

[FR Doc. 87-11127 Filed 5-19-87; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
May 20, 1987

Part VI

# Department of Transportation

Federal Highway Administration, Research and Special Programs Administration

49 CFR Parts 171, 173, and 387

## Enforcement of Motor Carrier Financial Responsibility Requirements; Advance Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Research and Special Programs Administration

49 CFR Parts 171, 173 and 387

[Docket Nos. HM-129; Notice 87-5 and MC-129; Notice 87-5]

## Enforcement of Motor Carrier Financial Responsibility Requirements

AGENCY: Office of Hazardous Materials Transportation, Research and Special Programs Administration (RSPA); Office of Motor Carrier Standards, Federal Highway Administration (FHWA).

ACTION: Advance Notice of Proposed Ruelmaking (ANPRM).

SUMMARY: This notice solicits comments on the merits of a petition for rulemaking filed with RSPA and FHWA proposing to amend Title 49 of the Code of Federal Regulations to require each person offering a hazardous material for transportation, by highway, in cargo tanks to obtain documentary proof that the motor carrier possesses the minimum level of financial responsibility currently prescribed by regulation (49 CFR Part 387); that such persons maintain such proof for a certain period of time; and that such proof should be produced for review upon reasonable request by a member of the public. Comments are also sought on a corresponding amendment that would require such documentation be tendered by motor carriers to those shippers for whom they transport hazardous materials.

DATE: Comments must be submitted on or before August 18, 1987.

ADDRESS: All comments should refer to the docket numbers and notice numbers that appear at the top of this document and should be submitted, preferably in quadruplicate, to the Office of Hazardous Materials Transportation (OHMT), RSPA, Dockets Branch, DHM-62, Room 8426, 400 Seventh Street, SW., Washington, DC 20590. The Office of Hazardous Materials Transportation is compiling the information received in response to this notice, and written comments should be submitted to this office. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped post card. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday. Telephone (202) 366-5046.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Nalevanko, Policy Development and Information Systems Division, (202) 366-4484, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590, or Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-4009, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION

### Background

On February 17, 1986, the National Tank Truck Carriers, Inc. (NTTC) filed a petition for rulemaking under the provisions of 49 CFR 106.31 and 389.39. The petition is published verbatim in this notice. This ANPRM is issued to obtain comments on the merits of the petition from interested parties on one aspect of the Department's decision on whether to proceed with rulemaking. In requesting comments from parties interested in participating in this action, RSPA and FHWA have formulated a series of questions that are designed to assist in determining the potential costs and safety benefits associated with the NTTC petition. These questions follow immediately after the verbatim transcript of the NTTC petition. Additionally, without prejudice to the merits of the NTTC petition, we call attention to the following paragraph which appears in the petition:

*Another deficiency in this system is the unavailability of adequate enforcement staff to effectively determine carrier compliance. Under anticipated budgetary constraints, the level of enforcement staffing within DOT is unlikely to increase. A major benefit of the proposed amendments would be the creation of a ready mechanism for shippers to verify their carriers' compliance, without expenditure of any government resources.*

The FHWA has no authority over shippers. Therefore, this ANPRM does not propose to expand the authority of the FHWA over shippers in the area of hazardous materials regulation. The RSPA has authority to promulgate regulations governing the shipment and transportation of hazardous materials as they apply to both shippers and carriers.

The petition for rulemaking follows:

Before the Administrator, Federal Highway Administration and the Administrator, Research and Special Programs Administration, United States Department of Transportation, a Petition for Rulemaking in the Matter of

*Proposed Amendments to Current Regulations Dealing with Mandatory Evidence of Financial Responsibility*

Filed by National Tank Truck Carriers, Inc., 2200 Mill Road, Alexandria, Virginia 22314, (703) 838-1960, Clifford J. Harvison, Managing Director.

February 17, 1986.

This document is a petition by National Tank Truck Carriers, Inc. (NTTC) to amend the Federal Motor Carrier Safety Regulations (at 49 CFR Parts 387 and 390-397) and the Hazardous Materials Regulations (at 49 CFR Parts 170-178).

NTTC is the trade association of the for-hire tank truck industry and is composed of over 200 corporate members engaged in the transportation of hazardous and non-hazardous materials in intrastate, interstate and international commerce throughout the 48 Continental United States. As such our carrier/members are subject to the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations (which, with certain exceptions, have been adopted therein).

The objective of this petition is to amend Title 49 of the Code of Federal Regulations to require shippers of hazardous materials in cargo tanks to maintain documentary evidence of carrier compliance with regulatory requirements for so-called "mandatory evidence of financial responsibility", for those motor carriers they use to transport hazardous materials. Furthermore, we seek a corresponding amendment to the regulations to require that such documentation be tendered by motor carriers to those shippers for whom they transport hazardous materials.

### Background

Beginning in 1980 (and pursuant to Congressional passage of the Motor Carrier Act (MC Act)) all motor carriers were required to obtain evidence of financial responsibility in varying amounts and forms, usually by insurance and/or bonding. Subsequent to passage of the MC Act, the Federal Highway Administrator promulgated regulations which require all carriers to have appropriate evidence of financial responsibility available for public inspection at their principal place of business (see 49 CFR 387.7). Contemporaneously, the Interstate Commerce Commission (ICC) issued conforming regulations applicable to for-hire carriers of property, prescribing the use of Form BMC-90 which would be maintained within the carrier's public docket on file at the ICC).

In taking these actions, the Federal Highway Administrator and the ICC designed a two-pronged method whereby carriers could document for the

public and appropriate Federal and State enforcement personnel that they complied with Section 30 of the Motor Carrier Act.

**The Problem**

Given over 5 years of experience with this legislative and regulatory structure, it is evident that serious deficiencies in both compliance and enforcement still exist, and such deficiencies work to frustrate the objectives of Congress as stated on page 42 of the House of Representatives Report No. 96–1069, to-wit: "... to encourage the carriers to engage in the practices and procedures that will enhance the safety of their equipment so as to afford the best protection to the public."

The most serious deficiency in the present regulatory scheme is that the hazardous materials shipper—the entity which initiates the transportation—is not required to be included in the communications "loop" designed to assure compliance with section 30 of the MC Act. In other words, as the regulations are written today, a shipper would have to make a special effort to determine a carrier's compliance with the mandates of section 30 of the MC Act, by either physically checking the carriers' ICC file, or by requesting such information from individual carriers. The NTTC proposal (if adopted) would eliminate this shortcoming.

Another deficiency in this system is the unavailability of adequate enforcement staff to effectively determine carrier compliance. Under anticipated budgetary constraints, the level of enforcement staffing within DOT is unlikely to increase. A major benefit of the proposed amendments would be the creation of a ready mechanism for shippers to verify their carriers' compliance, without the expenditure of any government resources.

**The Proposed Solution**

This petition seeks to close this communications loop and to strengthen the compliance mechanism by amending the regulations to require carriers to give evidence of financial responsibility to hazardous materials shippers, prior to or at the time of loading. Furthermore, the proposed amendments would require hazardous materials shippers to keep copies of evidence of financial responsibility given to them by their carriers.

**DOT Jurisdiction**

Our proposal would amend both the Federal Motor Carrier Safety Regulations (promulgated under the jurisdiction of the Federal Highway Administrator) and the Hazardous Materials Regulations issued by the Administrator, Research and Special Programs Administration. Thus, we have elected the procedure of filing this petition jointly.

There can be no reasonable doubt that the Administrators have sufficient jurisdiction within which to act in accordance with this petition. Section 105 of the Hazardous Materials Transportation Act (HMTA) of 1974 specifies that the Secretary's regulations "... shall be applicable to any person who *transports*, or *causes to be transported or shipped*, a hazardous material ...." (emphasis supplied)

Additionally, the HMTA Act states that, "Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate. . ."

Therefore, there can be no dispute as to the Secretary's (and, hence, the Administrations') authority to promulgate more viable regulations in this area. Also, it is important to note that nothing in NTTC's proposal would impact ICC regulations or jurisdiction, since the Commission exercises no jurisdiction over the shipping community.

**Why These Amendments Are Sought**

Regardless of the current dislocations in the insurance market, NTTC suggests that significant post-1980 changes in the hazardous materials transportation marketplace mandate refinement of the current "insurance regulations", in order to better protect the public and carry out the intent of Congress. Ample evidence exists that noncompliance is widespread. Indeed, the Director of the Bureau of Motor Carrier Safety has stated publicly that 1980 and 1984 field audits of carriers' document that approximately 25% of audited carriers did not have appropriate evidence of financial responsibility to comply with current regulations.

Three of the more significant post-1980 changes in the motor carrier industry which prompt this petition are: (1) The expanded entry of new motor carriers into the field of the transportation of hazardous materials; (2) the increased use by shippers of socalled "customer pick-up" of hazardous materials in their own vehicles; and (3) the increase in the number of commodities regulated as "hazardous materials/hazardous substances/hazardous wastes" by the Department and EPA.

There can be little doubt that the number of individuals, corporations, partnership, etc., involved in interstate trucking has increased substantially. White Dun & Bradstreet estimates that some 3,400 carriers have exited the business since 1980, the ICC points out that (through 1984) some 10,000 certificates of public convenience and necessity have been issued to new entrants. Generally, such new entrants are small businessmen to whom economic survival dictates extensive backhauling with just about any type of load they can find. It is, therefore, quite reasonable to assume (particularly in view of the BMCS Director's remarks noted above) that many carriers transporting hazardous materials (in a variety of packaging) are doing so in noncompliance with current financial responsibility regulations.

It is impossible to calculate with any degree of precision the true impact of post-1980 entry into motor carriage. For instance, ICC decisions dealing with intercorporate hauling, so-called "Toto" transportation, relaxed leasing requirements, and ICC interpretations which have greatly expanded the scope of Certificates of Public Convenience and Necessity and Permits for Contract Carriage, tend to validate virtually any shipper/carrier arrangement as being in compliance with the MC Act.

While no regulatory action is going to correct every problem area, these proposed amendments would create a threshold requirement (passing of documentation from carrier to shipper) which would enhance public protection and safety, and ease enforcement burdens. This would establish a self-checking mechanism by both parties involved in the transportation.

Yet another significant change in the post-1980 period is the acceleration of so-called "customer pick-up". Typical of such a situation is the following:

The XYZ Company sells 6,000 gallons of a hazardous chemical to a customer. The customer specifies that it will use its own vehicle for transporting the product from the XYZ Company to final destination. Change of title for the product occurs at the loading of the customer's vehicle at the XYZ Company's loading point.

Since title was transferred "at the point of sale,(") (sic) it is unclear whether the XYZ Company is bound to perform the duties and accept the responsibilities of the role of a shipper (e.g., provide placards, product classification and description for the shipping papers, inspect the vehicle, etc.). This confusion has led many hazardous materials producers to think they have no regulatory responsibilities for loads that were picked up by their customers. As motor carriers of

hazardous materials, the customer is subject to the financial responsibility requirements under the MC Act.

This scenario is no rare exception to common transportation practices. Major chemical companies have indicated to NTTC that *up to 30 percent* of their total tank truck shipments involve so-called "customer pick-up". The proposed amendments would assure that any person offering hazardous materials to any motor carrier would have proof of the carrier's compliance with the law, before or at the time of loading.

While transportation lawyers and regulators may differ in their interpretations of lawful obligations by the parties (involved in customer pick-up), the issue of public safety may be somewhat compromised. The amendments, proposed by NTTC, would enhance public safety by requiring that minimum required evidence of financial responsibility for hazadous materials transportation be "in place" either prior to or at the time of loading.

Just as there can be no rational argument against the fact that motor carrier entry has expanded—so too must the same reality be applied to the considerable expansion of the list of commodities regulated (as hazardous materials, hazardous substances and hazardous wastes) by the Administrators and the Secretary.

Congressional passage of and subsequent amendments to the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Restoration and Clean-up Liability Act of 1980 (CERCLA) [Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)) (sic), created new classifications of measurement of transportation hazards and has led to much uncertainty and confusion in the transportation marketplace. For example, all hazardous substances are deemed by DOT regulation to be hazardous materials, yet not all hazardous materials are hazardous substances. The phrase "listed, but not regulated. . ." is in common usage, but is not commonly understood; and certain hazardous wastes are specified, while others may or may not fall within the "hazardous waste" classification (depending upon concentration, waste stream constituents, and other characteristics known only to the product shipper).

In light of the many regulatory anomalies created, NTTC respectfully suggests that most of the new entrants into motor carriage (and many of the established carriers) do not know and would be hard pressed to determine whether or not carriage of certain products would trigger the appropriate levels of "evidence of financial responsibility" necessary for compliance.

Historically, the Department has relied upon the shipper—the entity in the transportation chain most familiar with the hazard characteristics of the product—to properly classify and package the commodity placed in commerce as the first step to regulatory compliance. Yet, as the BMCS Director's comments noted above prove, a significant loophole in the regulatory scheme exists.

Adoption of the NTTC proposal would help close this loophole by requiring a very basic change of existing information proceeding or at the time of the shipment of a hazardous material, hazardous substances or hazardous waste. All the shipper need do is "cross-check" the hazard class of the shipment against the evidence of financial responsibility offered by the carrier to assure regulatory compliance.

Again, the regulatory goal of public protection would be served by assuring that properly insured carriers are handling sensitive products.

**Specific Relief Sought**

NTTC hereby petitions that the following sections of Title 49 CFR be amended to read:

At 49 CFR 387.7(e)—add the italicized language:

(e) The proof of minimum level of financial responsibility required by this section shall be considered public information, *and in the case of transportation in cargo tanks shall be provided to every person using the services of* the motor carrier. Such proof also shall be produced for review upon reasonable request by a member of the public.

At 49 CFR 171.2(b)—add the italicized language:

(b) No person may transport a hazardous materials in commerce unless that material is handled and transported in accordance with this subchapter, or an exemption issued under subchapter B of this Chapter. *Transportation in cargo tanks by highway must be conducted in accordance with minimum levels of financial responsibility required under 49 CFR Part 387.*

At 49 CFR 173.22—add new italicized paragraph (e):

(e) *A person offering a hazardous materials for transportation by highway in cargo tanks shall obtain proof that the motor carrier possesses the required minimum level of financial responsibility prescribed under 49 CFR Part 387* (sic).

At 49 CFR 177.804—amend the phrase ". . .shall comply with 49 CFR Parts 390 through 397" to read, "shall comply with 49 CFR Parts *387 and* 390 through 397. . ." (amendment italicized).

This petition (if granted) would impose minimal obligations on parties who "offer" hazardous materials for transportation by highway, and motor carriers engaged in such transportation. We have crafted our proposed amendments to reflect DOT jurisdiction over both shipper and carrier.

Adoption of the Proposal Would not be Burdensome to any Party Including the Government

NTTC is cognizant of the need to craft a regulatory structure that is effective, yet does not unduly burden the resources of either government or the regulated community.

Currently, the Department requires that carriers simply maintain "proof of financial responsibility" for public inspection. The NTTC proposal does not call for the creation of any new forms or documents.

In some cases, the "proof" may be in the form of a photocopied insurance (or bonding) binder, while in others it may be a photocopy of an ICC carrier's Form BMC-90 (already required by regulation). Where the shipper and carrier have an existing business arrangement, documentation could be filed by mail and maintained on file. Where the transportation arrangement is of a more immediate or temporary nature, such documentation could easily be carried on the vehicle and transferred at the point of loading. In short, the means of providing evidence of financial responsibility will be a matter between carrier and shipper.

This proposal does not intrude into normal business relationships or deviate from standard business practices. By requiring what is, in effect, the carrier's verification of his regulatory compliance, the NTTC proposal simply borrows a concept from other governmental programs. For instance, the Equal Employment Opportunity Commission requires persons engaged in business relationships to certify compliance with statutory requirements for non-discriminatory hiring and promotion practices, use of minority-owned firms for contracts, etc. The Internal Revenue Service is heavily reliant on self-certification of wages, fees, etc. paid to contractors and other independent businesspersons. The Environmental Protection Agency requires gasoline terminal loading points to maintain copies of a tank vehicle's most recent certification of leak tightness test conducted under the so-

called "Method 2" test—filed by the motor carrier.

At least two major shippers of hazardous materials—Texaco and the Mobil Oil Corporation—already require carriers to provide them with exactly the same information as would be required by the NTTC proposal.

The NTTC proposal would not create a paperwork burden. Shippers and carriers have long demonstrated that they have no aversion to generating paperwork *for their own protection.* Such may range from complex contracts—wherein obligations, terms and conditions and responsibilities are expressly outlined—to simple and standard lease forms, bills of lading, etc. Transferring a single piece of paper represents little more than minor inconvenience that is more than outweighed by the public benefit to be gained.

Given the fact that NTTC is simply proposing a mandated exchange of copies of existing information to be accomplished prior to or during the time of loading of hazardous materials, we stress the fact that this aspect of the regulatory program can be implemented and enforced at no cost to the government. These amendments would be entirely consistent with the Paperwork Reduction Act, because of the minimal photocopying obligation imposed on motor carriers, and the total lack of any paperwork burden on the shippers or government.

In conclusion, we respectfully submit this petition before the Administrator, Federal Highway Administration and the Administrator, Research and Special Programs Administration. We seek expeditious publication of this proposal as a "Notice of Proposed Rulemaking" and prompt handling under the Administrators' Rules of Procedure and the Administrative Procedures (sic) Act.

Respectfully submitted,

Clifford J. Harvison,

*Managing Director.*

To assist in the evaluation of the merits of the NTTC petition, RSPA and FHWA invite interested parties to comment on the petition, in particular, on the following questions.

**Questions**

1. The NTTC petition states that a "major benefit of the proposed amendments would be the creation of a ready mechanism for shippers to verify their carriers' compliance, without expenditure of any government resources." How would DOT enforce this proposal, if adopted, against *shippers?* Would there be any need for the government to inspect *shippers* for compliance with such a proposal, if adopted? What impact will this have for shippers?

2. The NTTC petition states that "In light of the many regulatory anomalies created, NTTC respectfully suggests that most of the new entrants into motor carriage (and many of the established carriers) do not know and would be hard pressed to determine whether or not carriage of certain products would trigger the appropriate levels of 'evidence of financial responsibility' necessary for compliance." If this suggestion is true for motor carriers, is there any reason to believe that it would not also be true for shippers of hazardous materials, especially for small shipper? Are there any grounds for believing that shippers, especially small shippers, ought to be or are *more knowledgeable* concerning the financial responsibility obligations of motor carriers than the motor carriers themselves?

3. A substantial number of instances involving motor carrier noncompliance with the minimum financial responsibility requirements involves operating without appropriate levels of financial responsibility; that is, these motor carriers had proof of financial responsibility (a Form MCS–90 endorsement) but, in fact, the level of financial responsibility carried was inappropriate or inadequate in terms of the motor carrier's activity or activities. Since an appropriate level of financial responsibility is a function of the hazardous material carried, the containment system, and whether the motor carrier operates in intrastate, interstate, or foreign commerce, what additional fact-finding mechanism will shippers have to employ in order to determine that the copy of the Form MCS–90 endorsement furnished to the shipper by the motor carrier does represent an appropriate level of financial responsibility for the motor carrier's activity, if the current instances of motor carriers having inappropriate or inadequate levels of financial responsibility are to be avoided?

4. Information submitted by the NTTC shows that a large percentage of the number of audits of motor carriers of hazardous materials in cargo tanks involves failure to maintain proof of financial responsibility at the motor carrier's principal business office. Yet, 49 CFR 387.7(d) states, in clear and unambiguous fashion, that "Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business." Would requiring shippers, as proposed by the NTTC, to obtain and maintain a copy of the motor carrier's proof of financial responsibility reduce the number of instances of motor carriers failing to maintain proof of their financial responsibility at the motor carrier's principal place of business? What are the resource implications for federal and state inspection efforts if 49 CFR 387.7(d) is still to be enforced on motor carriers and, if the NTTC proposal were adopted, on shippers as well?

5. Where would the shipper be required to maintain a motor carrier's proof of financial responsibility, at the principal place of business or at each shipping origin? What files should the proof be maintained in? How long would the shippers be required to keep the proof of financial responsibility for each motor carrier used? How often would shipper be required to obtain proof of financial responsibility? If the shipper and consignor are different, where should the evidence of financial responsibility be on file? How would a shipper be aware or notified if a motor carrier's financial responsibility coverage were canceled?

6. In light of the fact that motor carriers who are unable to obtain insurance in the voluntary insurance market may have to obtain coverage in the residual risk market, and that there may be less incentive for motor carriers insured through assigned risk premiums to maintain good safety records (since premium rates in the assigned risk market are not affected by a motor carrier's safety record), what safety benefit is achieved by the NTTC proposal that shippers be given proof of a motor carrier's financial responsibility?

7. The NTTC proposal would, as a practical matter, only affect for-hire "bulk" motor carriers of hazardous materials, and customers picking up hazardous materials in bulk in their own vehicles. A large percentage of "bulk" hazardous materials shipments are made by private motor carriers. (In one study, it was found that 78 percent of the liquid tank truck fleet was operated by private motor carriers.) From the standpoint of regulatory equity and nondiscriminatory competitive impact, is there a mechanism comparable to that proposed by the NTTC that could be applied to private bulk motor carriers? Should the requirement be applied to all motor carriers, transporters of explosives, poison A materials, and radioactive materials? What effect would this proposal have on the transportation by farmers that transport anhydrous ammonia or other products in nurse tanks, or other fertilizer application equipment? How would this

proposal be implemented in "Turn-Key" operations?

8. Because shippers of hazardous materials must decide from what plant or warehouse a shipment should be made to a customer's plant or warehouse, and must match shipment orders with appropriate motor carriers, what administrative and management information transaction costs would adoption of the NTTC proposal impose on shippers, especially where the transportation arrangement is of a more immediate or temporary nature?

9. Please summarize your understanding of the costs which adoption of the NTTC proposal would impose on your firm or industry in terms of the following categories and, if possible, provide substantiating data.

- Costs in checking the documentation of the financial responsibility provided by motor carriers.
- Costs in paper work in providing and maintaining such documentation.
- Costs, including litigation costs, associated with liability claims and counter-claims that might arise due to the adoption of the proposal.
- Costs to shippers and motor carriers due to delays in furnishing or properly checking the documentation or evidence provided by motor carriers to shippers.
- Costs in responding to requests from members of the public to review such documentation.
- Costs associated with enforcement penalties due to inadvertently being in noncompliance with the requirements of the NTTC proposal, if adopted.
- Costs of rule familiarization (managerial and technical).

10. How would the foregoing costs vary if the proposed requirement were applied only to "bulk" motor carriers? If applied to all motor carriers?

11. The American Bus Association has petitioned the FHWA to require a copy of the proof of financial responsibility be carried on each motor vehicle at all times. Would adoption of a requirement for motor carriers to maintain a copy of the proof of financial responsibility on all motor vehicles at all times satisfy the concerns expressed by NTTC in their petition for rulemaking? Are there other alternatives for improving the compliance record of motor carriers with the requirements for minimum levels of financial responsibility?

Commenters are not limited to responding to the questions raised above and may submit any facts and views consistent with the intent of this notice. In addition, commenters are encouraged to provide comments on "major rule" considerations under terms of Executive Order 12291, "significant rule" considerations under DOT regulatory procedures (44 FR 11034), information collection burdens which must be reviewed under the Paperwork Reduction Act, and economic impact on small entities subject to the Regulatory Flexibility Act. A draft regulatory evaluation will be prepared as this rulemaking action progresses, based upon the comments received in response to this notice.

**List of Subjects**

*49 CFR Parts 171 and 173*

General requirements, Shipper's responsibility, Motor carrier safety.

*49 CFR Part 387*

Highways and roads, Insurance, Motor carriers, Surety bonds.

(Catalogue of Federal Domestic Assistance Program Number 20.217)

Authority: 49 U.S.C. 10927 note; 49 CFR 1.48 and 301.60. 49 U.S.C. 1803, 1804, 1805, 1808, 1809; 49 CFR 1.53(e), 1.53, App. A to Part 1, 49 U.S.C. 1655, 1655(c).

Issued in Washington, DC on May 14, 1987.

R.A. Barnhart,
*Administrator, Federal Highway Administration.*

Alan I. Roberts,
*Director, Office of Hazardous Materials Transportation, Research and Special Programs Administration.*

[FR Doc 87-11482 Filed 5-19-87; 8:45 am]

BILLING CODE 4910-60-M

Wednesday
May 20, 1987

# federal register

Part VII

## The President

Proclamation 5657—Extending United States Copyright Protections to Works of the Republic of Singapore

Proclamation 5658—National Tourism Week, 1987

Federal Register
Vol. 52, No. 97
Wednesday, May 20, 1987

# Presidential Documents

Title 3—

The President

**Proclamation 5857 of May 18, 1987**

## Extending United States Copyright Protections to Works of the Republic of Singapore

By the President of the United States of America

A Proclamation

Section 104(b)(4) of Title 17 of the United States Code provides that when the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States of America or to works first published in the United States, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under that title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which are first published in that nation.

Satisfactory assurances have been received that as of April 10, 1987, the Republic of Singapore has granted to works of United States nationals and domiciliaries and works first published in the United States protection in Singapore on the same basis as works of Singaporean nationals and domiciliaries and works first published in Singapore, and that such protection also has been extended to works of United States nationals and domiciliaries and works first published in the United States, which were in the Singapore public domain on April 9, 1987, if such works still enjoy copyright protection in the United States.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by Section 104 of Title 17 of the United States Code, do declare and proclaim that the conditions specified in Section 104(b)(4) of Title 17 of the United States Code have been satisfied in the Republic of Singapore with respect to works of which one or more of the authors is, on the date of first publication, a national or domiciliary of the United States of America, or which are first published in the United States, and as of this day works of Singaporean nationals and domiciliaries and works first published in Singapore are entitled to protection under Title 17 of the United States Code.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of May, in the year of our Lord nineteen hundred and eighty-seven, and the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-11722
Filed 5-19-87; 11:44 am]
Billing code 3195-01-M

## Presidential Documents

**Proclamation 5852 of May 18, 1987**

# National Tourism Week, 1987

**By the President of the United States of America**

**A Proclamation**

Today, as always, travelers from our country and overseas cross the United States to meet the American people, to see our cities, plains, and natural wonders, and to visit the historic sites of our Nation. We do well each year to pay tribute to tourism for all it means to our way of life and to understanding and friendship among people of many lands.

Travelers in the United States truly have a panorama of opportunities before them. This year, as we celebrate the Bicentennial of the Constitution, let us remember that the record of the winning and keeping of our precious liberties is written all across the face of our beautiful land. In countless American places—courtyards and country lanes, fields and forts, monuments and memorials, battlefields and bridges, cemeteries and sanctuaries, hills and homes and halls—we can ever read the struggles and sacrifices of a people and a glorious cause. That is nowhere more true than in Philadelphia, the home of so much of the history of liberty and our headquarters for the Bicentennial of the Constitution.

Let us always be sure to offer heartfelt welcome to the tourists we meet as they discover for themselves how America became the land of the free and the home of the brave.

In recognition of the educational, economic, and recreational benefits of tourism, the Congress, by Public Law 99–394, has designated the week beginning May 17, 1987, as "National Tourism Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 17, 1987, as National Tourism Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-11723
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## LIST OF PUBLIC LAWS

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

**H.J. Res. 97 / Pub. L. 100–39**

To authorize and request the President to issue a proclamation designating May 3 through May 10, 1987, as "Jewish Heritage Week."

**H.R. 2990 / Pub. L. 100–40**

To provide for a temporary increase in the public debt limit. (May 15, 1987; 101 Stat. 308; 1 page) Price: $1.00

**S. 923 / Pub. L. 100–41**

To extend certain protections under title 11 of the United States Code, the Bankruptcy Code. (May 15, 1987; 101 Stat. 309; 1 page) Price: $1.00

## LIST OF ACTS REQUIRING PUBLICATION IN THE FEDERAL REGISTER, 1986

### Additions to Table III, February 27, 1986 through November 17, 1986

This table lists the subject matter, public law number, and citations to the U.S. Statutes at Large and U.S. Code for those acts of the second session of the 99th Congress which require Federal agencies to publish documents in the Federal Register. Table III appears in the CFR Index and Finding Aids volume revised as of January 1, 1987.

| *Description of Act* | *Citation* |
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| Petrified Forest National Park | Public Law 99–250; 100 Stat. 13; 16 U.S.C. 119a note. |
| White Earth Reservation Land Settlement Act of 1985 | Public Law 99–264; 100 Stat. 64, 65–68; 25 U.S.C. 331 note. |
| Consolidated Omnibus Budget Reconciliation Act of 1985 | Public Law 99–272; 100 Stat. 140; 100 Stat. 387; 38 U.S.C. 219 note. |
| Chilocco Indian School, OK, lands in trust | Public Law 99–283; 100 Stat. 404. |
| Designation of Patrick Henry's home, Red Hill, as a National Memorial | Public Law 99–296; 100 Stat. 429; 16 U.S.C. 431 note. |
| Firearms Owners' Protection Act | Public Law 99–308; 100 Stat. 461; 18 U.S.C. 921 note. |
| Protection and Advocacy for Mentally Ill Individuals Act of 1986 | Public Law 99–319; 100 Stat. 483; 42 U.S.C. 10822. |
| Safe Drinking Water Act Amendments of 1986 | Public Law 99–339; 100 Stat. 643, 648; 42 U.S.C. 300g–1. |
| Omnibus Diplomatic Security and Antiterrorism Act of 1986 | Public Law 99–399; 100 Stat. 861; 46 U.S.C. app. 1804. |
| Conservation Service Reform Act of 1986 | Public Law 99–412; 100 Stat. 936; 42 U.S.C. 8227. |
| Comprehensive Anti-Apartheid Act of 1986 | Public Law 99–440; 100 Stat. 1107; 22 U.S.C. 5061. |
| Education of the Handicapped Act Amendments of 1986 | Public Law 99–457; 100 Stat. 1162; 20 U.S.C. 1423; 100 Stat. 1163; 20 U.S.C. 1424a; 100 Stat. 1170; 20 U.S.C. 1441; 100 Stat. 1175; 20 U.S.C. 1418. |
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## OFFICE OF PERSONNEL MANAGEMENT

## 5 CFR Part 831

## Continuation of Retirement Coverage After the Leasing of Two Local Airports

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with request for comment.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing regulations on the continuation of civil service retirement coverage and benefits for career civilian employees of the Federal Aviation Administration permanently assigned to Washington National Airport and Dulles International Airport following the lease of the airports to the Metropolitan Washington Airports Authority.

**DATES:** Interim regulations effective May 1, 1987. Comments must be received on or before July 20, 1987.

**ADDRESSES:** Send written comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John A. Elliott, (202) 632–4682.

**SUPPLEMENTARY INFORMATION:** These regulations are required by Pub. L. 99–591 (enacted October 30, 1986), which gave the Secretary of Transportation authority to lease Washington National Airport and Dulles International Airport to the Metropolitan Washington Airports Authority for 50 years. As part of this legislation, civilian employees of the Federal Aviation Administration permanently assigned to the two airports, who became employees of the Authority without a break in service, retained their civil service retirement coverage and benefits. These employees have the same retirement coverage as if they were still employed by the Federal Government. Regulations on retaining coverage under the Fedeal Employees Retirement System will be issued separately.

### Employee Deductions

Payroll deductions for the employee contribution to the Civil Service Retirement and Disability Fund are the same as if the employees were still employed by the Federal Government.

### OPM and Airports Authority Responsibilities

OPM and the Metropolitan Washington Airports Authority signed an agreement that spells out their respective responsibilities. Their responsibilities are the same as exists between OPM and any employing agency with respect to the retirement system. For the Authority, this includes withholding employee deductions and making the required 7 percent employer contributions into the Civil Service Retirement and Disability Fund.

### Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days because the leasing of the airports will occur soon and the concerned parties need time to make the arrangements for handling the retirement system. The regulations are effective May 1, 1987.

### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

### Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because these regulations concern administrative practices and will affect only a small number of Federal employees and a single independent local agency.

### List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
**James E. Colvard,**
*Deputy Director.*

Accordingly, OPM is amending Part 831 of title 5 of the Code of Federal Regulations as follows:

## PART 831—RETIREMENT

1. The authority citation for Subpart C of Part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347.

2. Subpart C is amended to add a new § 831.308 to read as follows:

### Subpart C—Credit for Service

**§ 831.308 Continuation of service credit for employees of the Metropolitan Washington Airports Authority.**

(a) Permanent Federal Aviation Administration employees assigned to Washington National Airport or Dulles International Airport who elect to transfer to the Metropolitan Washington Airports Authority, retain their retirement coverage under subchapter III of chapter 83 of title 5, United States Code.

(b) *Eligibility requirements.* To be eligible for continuation of retirement coverage, an employee must (1) be a permanent Federal Aviation Administration employee assigned to the Metropolitan Washington Airports who elects to transfer to the Airports Authority; (2) be subject to subchapter III chapter 83 of title 5 United States Code on the day before the date the lease takes effect; and (3) become continually employed by the Airports Authority without a break in service. A "break in service" means a separation from employment of at least 3 calendar days.

(c) *Employee deductions.* Employees of the Airports Authority who have continuing coverage under title 5 retirement provisons are deemed to consent to deductions from their basic pay for the Civil Service Retirement and Disability Fund. The amounts deducted will be the same as if the employees were still employed by the Federal

Government. The Airports Authority must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from an employee's pay.

(d) *Employer contributions.* The Airports Authority must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions that would be required for employees covered by the Civil Service Retirement System.

(e) *Sick leave.* An employee who retires, or dies leaving a survivor entitled to an annuity, from the Airports Authority within the 5 year period beginning on the date the lease takes effect will be permitted to credit unused sick leave in his or her annuity computation. After the 5 year period, use of unused sick leave in the annuity computation will be permitted if the employee is under a formal leave system as defined in § 831.302.

[FR Doc. 87-11668 Filed 5-20-87; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 400

[Doc. No. 4133S]

### Food Security Act of 1985; Implementation

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby adopts as a final rule, with amendments as described herein, the interim rule published in the **Federal Register** on August 15, 1986 (51 FR 29202). The interim rule amended 7 CFR Part 400, General Administrative Regulations, by adding a new Subpart F, to be known as 7 CFR Part 400, Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits. The intended effect of this rule is to confirm the interim rule published in the **Federal Register** on August 15, 1986 at 51 FR 29202, to: (1) Deny crop insurance benefits to, (a) persons convicted of violations of Federal and State controlled substance statutes, (b) persons producing an agricultural commodity on a field on which highly erodible land is predominant, and (c) persons producing an agricultural crop on converted wetland; and (2) to make the requirements of the Food Security Act of 1985 (the Act), with respect to denial of insurance benefits to producers found in violation of the provisions of the Act, apply equally to policyholders of insurance companies under an Agency Sales and Service Contract with FCIC, and policyholders whose policies of crop insurance are reinsured by FCIC under a Standard Reinsurance Agreement.

One additional amendment to the rule made in response to public comment, and included herein, is to provide that reinsurance will continue for reinsured companies in compliance with the Corporation's regulations and procedures, unless it is shown that the company had knowledge of facts which would indicate ineligibility on the part of the insured but ignored those facts. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended; the Food Security Act of 1985; and 7 CFR 12 (51 FR 23495 et seq.).

**EFFECTIVE DATE:** May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 31, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On August 15, 1986, FCIC published an interim rule, effective upon publication in the **Federal Register** at 51 FR 29202, to implement the provisions of the Food Security Act of 1985 (Pub. L. 99-198, enacted December 23, 1985) (the Act), with respect to the denial of crop insurance benefits to any person convicted of violation of Federal or State statutes relative to controlled substances, or who are found in violation of the Highly Erodible Land Conservation and the Wetland Conservation provisions in the Act:

1. *Section 1211:* Provides that any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominant shall be ineligible for, as to any commodity produced during that crop year by such person, crop insurance under the Federal Crop Insurance Act.

2. *Section 1221:* Provides that any person who in any crop year produces an agricultural commodity on converted wetland shall be ineligible for, as to any commodity produced during that crop year by such person, crop insurance under the Federal Crop Insurance Act.

3. *Section 1764:* Provides that, if a person is convicted under Federal or State statutes of planting, cultivation, growing, producing, harvesting, or storing a controlled substance in any crop year, such person shall be ineligible for crop insurance benefits under the Federal Crop Insurance Act, as to any commodity produced during that crop year, and for the four succeeding crop years.

Departmental regulations implementing sections 1211 and 1221 of the Act were published as an interim rule by the Department on Friday, June 27, 1986 at 51 FR 23498 *et seq.* and will be codified in Part 12 of 7 CFR.

Written comments were solicited by FCIC for 60 days following publication of the rule in the **Federal Register** and the rule was scheduled for review so that any amendments made necessary by public comment could be published

in the Federal Register as quickly as possible.

Comments were received from the Crop Hail Insurance Actuarial Association (CHIAA) which expressed the concerns listed below. FCIC reviewed the CHIAA comments carefully, both in light of the requirements of the Act, and FCIC's compliance under the law.

*Comment 1:* The feasibility of enforcing the sodbuster/swampbuster provisions of the Act may remain in question until company policies specifically address the sodbuster/swampbuster issue.

The only existing crop policy provision related to this issue reads, . . . "we reserve the right to limit the insured acreage of said crop to any acreage limitations established under any Act of Congress, providing you are so notified in writing prior to planting of said crop."

However, producers found in violation of the Act will actually be denied crop insurance coverage rather than having their insurable acres limited. Thus, until new language can be written into crop policies, it is questionable whether companies will have any means by which to enforce the sodbuster/swampbuster provisions.

*FCIC Response:* As CHIAA recognizes in the comment, the provision of the policy relating to acreage limitations is not applicable to this rule. The provision quoted by CHIAA refers to the voluntary acreage diversion programs under various Federal statutes. The provision treated by this rule, however, is mandatory.

The Act specifically requires the Corporation to take the action set out in the interim rule. The Act was effective December 23, 1985, and the provisions in question were made effective upon enactment. The Department of Agriculture published an interim rule implementing these provisions of the Act on June 27, 1986 (51 FR 23496).

The interim rule provided at 7 CFR 12.7(a)(2) (51 FR 23505) that:

> The person applying for benefits must certify (Form AD–1026, Highly Erodible Land and Wetland Conservation Certification) that such person will not produce an agricultural commodity on highly erodible land or converted wetland during the crop year in which the person is seeking such benefits, unless such production is exempt, in accordance with § 12.5 of this part, from the provisions of § 12.4 of this part.

Section 12.4(a) provides:

> Except as provided in § 12.5, any person who, after December 23, 1985, produces an agricultural commodity on a field in which highly erodible land is predominant or on converted wetland shall be ineligible:
>
> * * * * *
>
> (iv) For crop insurance under the Federal Crop Insurance Act; . . .

Section 12.5 generally provides for relief from the provisions for any crop which was planted prior to June 27, 1986, the date of publication of the rule. The supplementary information to the Department's interim rule specifically provided that compliance for FCIC would not begin until the 1987 crop year because of policies already in effect.

FCIC's own implementing regulations (51 FR 29202, August 15, 1986) carried this forward. All applications accepted and contracts renewed for the 1987 crop year should have required evidence of certification by the insured on the appropriate Form AD–1026.

The statute and the implementing regulations are clear. The Corporation has no authority to allow benefits under the Federal Crop Insurance Act, either for premium subsidy, administrative expense subsidy, or indemnity payment to anyone in violation of the Act.

Implementation does not require a contract change. Payment of benefits under the Act is not legal. Payment of benefits in violation of the Act or these regulations is *ultra vires* and contrary to public policy. No contract entered into contrary to the regulations and subsequent to their promulgation can prevail against the command of the statute. State laws to the contrary do not apply (7 U.S.C. 1506(k)).

The rules were published in sufficient time to be effective for the 1987 crop year (fall-planted 1986 crops). The remedy is clear; a policy in effect will be terminated and an application for a new policy will not be accepted unless certification on the proper form (AD–1026) is made prior to the termination date or sales closing date, whichever is applicable.

*Comment 2:* Since coverage attaches when the crop is planted, some crop insurance policies for 1987 will have gone into effect before reinsured companies can properly notify their insureds of the sodbuster/swampbuster provisions. The companies will be obligated to provide insurance coverage to producers in this situation, regardless of the producer's status under the Act.

*FCIC Response:* As discussed in response to the first comment, the Act, and the regulations issued by the Department at 7 CFR Part 12, are clear. The regulations issued by the Corporation only reinforce the Departmental regulations. All policies where insurance attached on or after August 15, 1986, and which are in violation of the Act are invalid under the Federal Crop Insurance Act, as amended, and the Food Security Act of 1985. These statutory provisions and the regulations issued thereunder should be a defense in any legal action to enforce the insurance contract.

All policies where insurance had attached prior to August 15, 1986, will be considered valid under the provisions of this subpart until the next termination date.

*Comment 3:* The interim rule clearly states that the insurance company will not be eligible for reinsurance if they insure a producer who is in violation of the Act. But companies which follow the procedures set up for administering the Act should not be denied reinsurance, though they may become required to pay an insured found in violation of the Act. Companies will often times have little control over insured misrepresentation and judicial determinations.

*FCIC Response:* This comment has some validity. If the reinsured company follows the procedures of the Corporation and the requirements of the regulations, then reinsurance will be provided under the reinsurance agreement. The payments to the producer will still be invalid and the company must take all necessary steps to recover any payments made in violation of the Act and the regulations.

The Department has established a certification program. The company will be able to rely on that certification unless it has reason to believe that the certification is false. Any determination on the part of the company to terminate or cease collection efforts for recovery of amounts paid under the Act must be specifically approved by the Corporation.

*Comment 4:* Insurance companies are subject to the laws and regulations of the states in which they operate, as well as Federal laws and regulations. The interim rule will jeopardize the ability of companies to comply with state insurance regulations. The company may be contractually required to meet the policy obligations (i.e., pay a claim), but may be ineligible for reinsurance benefits from FCIC.

*FCIC Response:* The supremacy clause of the Constitution of the United States provides that Federal law controls in the event of conflict between Federal and State requirements. Additionally, if the reinsured companies have obtained the required certification from the insured, the fraud in obtaining the policy should provide adequate defense to the State requirements.

Here again the imperative requirement of the Act does not leave

the Corporation with much administrative discretion in this matter (see answer to #3 above).

*Comment 5:* The certification requirements of the Act could be met by using the regular insurance service documents already being used. Companies can ask the producer to certify compliance with the Act through a statement in the application for insurance and/or the annual acreage report. This would reduce the burden of the company agents to maintain an updated certification form on file for each insured.

*FCIC Response:* Certification of the controlled substance requirement could certainly be made on the application. However, the certification for controlled substance violations on the acreage report would not be acceptable since that report is filed after the termination date.

The Department of Agriculture has established one certification form for all of the government programs involved under the sodbuster/swampbuster provisions. In order to maintain this uniformity, and to make sure the insured is aware of what he is certifying, use of the Form AD–1026 is required for compliance with the sodbuster/swampbuster provisions.

The producer only has to certify one time, usually at the Agricultural Stabilization and Conservation Service (ASCS) or the Farmers Home Administration (FmHA) office. A copy of the certification is provided the producer for the Corporation.

If the producer loses the copy, or does not go to the ASCS or FmHA office first, all agents have been issued a supply of these forms and the insured may fill out the certification at the agent's office. However, the certification must be done on the Form AD–1026. The producer is then given the other copies of the certification for use under the other government programs involved. Because the insured is certifying to future performance, certification must be done each year for all programs.

*Comment 6:* It appears that to comply with the Act, the company service documents should also include a certification that the insured is not in violation of the controlled substance provision.

*FCIC Response:* See the response to comment #5 above.

To the extent that insurance may have attached for the 1987 crop year before the date of publication of the FCIC regulations implementing the Act, the comments by CHIAA would appear to be well taken. The final rule is altered accordingly. The rule is also clarified to make sure that compliance of the reinsured companies with the Corporation's regulations and procedures will continue reinsurance unless it is shown that the agent or company had knowledge of facts which would indicate ineligibility on the part of the insured but ignored those facts.

**List of Subjects in 7 CFR Part 400**

Crop insurance; Administrative Regulations—Food Security Act of 1985, Implementation; Denial of benefits.

**Final Rule**

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR Part 400, General Administrative Regulations, by making final an interim rule (published August 15, 1986; 51 FR 29202) by revising Subpart F, Food Security Act of 1985, Implementation; Denial of Benefits, to read as set forth below:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

### Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

Sec.


400.45 Applicability.
400.46 Definitions.
400.47 Denial of crop insurance.
400.48 Protection of interests of tenants, landlords or producers.
400.49 Certification.


Authority: Sections 1506, 1516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1501 et seq.); section 1244, Pub. L. 99–198.

### Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

**§ 400.45 Applicability.**

(a) The regulations in this subpart implement Chapter XII and section 1764 of the Food Security Act of 1985 (Pub. L. 99–198) (the Act) requiring the denial of crop insurance to persons who are determined to have performed certain practices prohibited by the Act or who have violated certain federal or State statutes or the regulations implementing the Act. The provisions of this subpart are applicable to all crop insurance policies written by the Federal Crop Insurance Corporation (the Corporation) or reinsured by the Corporation.

(b) The provisions of this subpart will be effective for the crop and crop year immediately following the first crop cancellation date occurring after the effective date of the Act for all crop policies reinsured by FCIC, and for all policies and regulations for crop insurance issued by FCIC.

**§ 400.46 Definitions.**

For the purpose of this regulation and in addition to the definitions included at 7 CFR 12.2, the following definitions are applicable:

(a) "Controlled substance" means any prohibited drug-producing plants including, but not limited to, cacti of the genus *lophophora*, coca bushes *(erythroxylum coca)*, marijuana *(cannabis sativa)*, opium poppies *(papauer somniferum)*, and other drug-producing plants, the planting and harvesting of which is prohibited by federal or State law.

(b) "Person" means any producer, tenant, or landlord, insured under a policy of crop insurance issued by FCIC, or by a multi-peril insurance company whose crop insurance policy is reinsured by FCIC.

(c) "State" means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific.

(d) "The Act" means the Food Security Act of 1985 (Pub. L. 99–198).

**§ 400.47 Denial of crop insurance.**

(a) Any person who, after December 23, 1985, is convicted under federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for crop insurance as to any commodity produced by such person during that crop year, and during the four succeeding crop years.

(b) Any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominant shall be ineligible for crop insurance as to any commodity produced by such person for that crop year, unless such person is exempt under the provisions of 7 CFR 12.5.

(c) Any person who in any crop year produces an agricultural commodity on converted wetland shall be ineligible for crop insurance as to any commodity produced by such person for that crop year, unless such person is exempt under the provisions of 7 CFR 12.5.

(d) The insurance of any person insured by FCIC who is ineligible under the provisions of this subpart will be null and void and any indemnity paid because of such insurance must be returned to FCIC. Any premium paid for insurance coverage declared null and void will be returned less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid.

(e) Any person ineligible for crop insurance under the provisions of this subpart may make application for crop insurance for the crop year following the applicable period of ineligibility by submitting a new application. The previous application and policy of insurance will be cancelled.

(f) Any insurance written by a multi-peril crop insurance company to any person who is ineligible under the provisions of this subpart is not eligible for reinsurance under the Corporation's standard reinsurance agreement. Any premium subsidy and expense allowance or loss paid by the Corporation because of such agreement will be immediately refunded to the Corporation. Notwithstanding any other provision of law, policies written by multi-peril crop insurance companies to any person ineligible under the provisions of this subpart are null and void. Premium paid for such policies will be refunded to the person applying for insurance, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid, and no indemnity will be paid unless the multi-peril company expressly agrees to continue such policy in effect without FCIC reinsurance. However, if the reinsured company follows the procedure of the Corporation and the requirements of the regulations, reinsurance will continue to be provided under the reinsurance agreement on the policy unless it is shown that the agent or company had knowledge of facts which would indicate ineligibility on the part of the insured and failed to act on that knowledge.

(g) The determinations of the Soil Conservation Service, the Agricultural Stabilization and Conservation Service and the Secretary of the Interior made within their designated areas of responsibility will be binding upon the Corporation and such determination is not subject to the Corporation's appeal process [7 CFR Part 400, Subpart J hereof) (See Part 12 of 7 CFR). Any person determined to be ineligible during any crop year by any other agency under the provisions of the Act will be conclusively presumed to be ineligible for FCIC benefits.

(h) FCIC employees or contractors are required to report all suspected cases of violation of the Act or the regulations to the appropriate agency for a determination of violation. Benefits shall not be paid in such cases pending a determination from the appropriate agency.

(i) Notwithstanding any other provision of this Subpart, any crop insurance policy where insurance attached to a crop prior to August 15, 1986, will continue in effect for that crop until the next termination date following August 15, 1986.

**§ 400.48 Protection of interests of tenants, landlords or producers.**

Any tenant, landlord or producer on the farm separate from the person declared ineligible for crop insurance under the provisions of § 400.47 of this part, will remain eligible for crop insurance on their insurable share in the crop, unless such tenant, landlord, or producer on the farm is:

(a) Also convicted of planting, cultivating, growing, producing, or storing a controlled substance;

(b) In violation of Chapter XII of the Act and the regulations issued thereunder; or

(c) Otherwise determined by FCIC to be ineligible for crop insurance.

**§ 400.49 Certification.**

Each applicant for insurance under the Federal Crop Insurance Act, as amended, is required to certify on Form AD–1026, Highly Erodible Land and Wetland Conservation Certification, prior to the sales closing date for the crop to be insured, that for that crop year such person will not produce an agricultural commodity on highly erodible land or converted wetland during the crop year unless such production is exempt in accordance with 7 CFR 12.5.

Done in Washington, DC on April 14, 1987.

**E. Ray Fosse,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 87–11561 Filed 5–20–87; 8:45 am]

BILLING CODE 3410–08–M

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 611

### Farm Credit System Capital Corporation Organization; Effective Date

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration published final amended regulations under Part 611 on April 15, 1987 (52 FR 12135). These regulations relate to matters involving the Farm Credit System Capital Corporation's (Capital Corporation) organization and exercise of powers conferred on the Capital Corporation by Congress to address the financial difficulties experienced by Farm Credit System institutions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 20, 1987.

**EFFECTIVE DATE:** May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Peoples, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(Secs. 5.17 (9) and (10), Pub. L. 92–181, as amended by Pub. L. 99–205, 12 U.S.C. 2252(a)(9)(1))

**William A. Sanders, Jr.,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87–11673 Filed 5–20–87; 8:45 am]

BILLING CODE 6705–01–M

### 12 CFR Part 614

### Loan Policies and Operations; Borrower Rights; Effective Date

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration published final amended regulations under Part 614 on April 15, 1987 (52 FR 12143). These regulations relate to matters involving the disclosure of interest rates and related information, practices relating to applications for extensions of credit, forbearance policies, notices of equity retirement, access to stockholders list, and the disclosure of loan documents. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 20, 1987.

**EFFECTIVE DATE:** May 20, 1987.

**FOR FURTHER INFORMATION CONTACT:** Nancy E. Lynch, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020.

(Secs. 5.17(9) and (10), Pub. L. 92–181, as amended by Pub. L. 99–205, 12 U.S.C. 2252(a)(9)(1))

**William A. Sanders, Jr.,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 87–11672 Filed 5–20–87; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-34; Amdt. 39-5591]

# Airworthiness Directives; Boeing Vertol Company Model 107-II and Kawasaki Heavy Industries, Ltd., Model KV107-II and KV107-IIA Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires different retirement times than are presently required for certain dynamic components in the main rotor head and drive train of the Boeing Vertol Model 107-II and Kawasaki Model KV107 II series helicopters. The AD is needed to reduce the retirement times in certain cases to prevent fatigue failure of the affected components which could result in loss of the helicopter and in other cases, to provide relaxation where the retirement time may be increased. The AD is prompted by an engineering reevaluation of the flight spectrum when the helicopters are used for "logging" operations.

This amendment supersedes five other AD's which pertain to this same subject and now become obsolete with the adoption of this amendment.

DATES: Effective date: May 14, 1987.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 14, 1987.

*Compliance:* Compliance required within the next 100 hours' time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Boeing Vertol Company, Boeing Center, P.O. Box 16858, Philadelphia, Pennsylvania 19142. A copy of the documents is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Joseph E. Chrastil, ANE-172, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-6221.

SUPPLEMENTARY INFORMATION: Upon reevaluation, the FAA has determined that a number of main rotor head and drive train dynamic components require either reduced or increased retirement times (or service lives) based on an analysis using data from a revised operational flight spectrum tailored to logging or frequent external load lifting operations of the Boeing Vertol Model 107-II helicopter. Exceeding these new and reduced retirement times could lead to certain component fatigue failures and possible loss of the helicopter. The increased retirement times for certain other components allow continued use beyond the present requirements. Several components did not experience a change from their previous retirement time. The original fatigue evaluation of the Model 107-II main rotor head and drive train considered an airline type operational flight spectrum. Subsequently, the Model 107-II helicopters were removed from airline operations and placed into a utility type of operation; i.e., logging/external load operations. After operating a number of years in the logging/external load mode, failures of several dynamic components occurred both in the drive train and the main rotor head. Corrective action was taken by the FAA by the issuance of five AD's from 1963 to 1983 to maintain an acceptable level of safety for the Boeing Vertol Model 107-II and the Kawasaki Model KV107 II and KV107 IIA helicopters.

Additionally, a new program was later initiated by Boeing Vertol Company in coordination with the FAA to reevaluate the previously established lives in the main rotor head and drive train of the Model 107-II helicopters. A revised flight or operational spectrum (logging) was established and a flight loads (strain) survey was conducted. Based on this spectrum and flight data, the reevaluation resulted in reduced or increased, as appropriate, retirement lives for several components. This AD is necessary to achieve compliance with the new lives established by the evaluation. In addition, a special inspection of the main rotor head, either forward or aft, is included in this AD to permit an extended life when the forward main rotor hub is inverted but installed on the aft rotor head or conversely, the aft main rotor hub is inverted and installed on the forward head.

With adoption of this new amendment, the following five AD's are obsolete and superseded:

(a) AD 63-26-04, Amendment 656 of Part 507 (28 FR 13931) as amended by Amendment 39-107 (30 FR 8963);

(b) AD 77-16-03, Amendment 39-2993 (42 FR 38868);

(c) AD 80-08-11, Amendment 39-3746 (45 FR 25050);

(d) AD 82-27-06, Amendment 39-4522 (47 FR 57484); and

(e) AD 83-22-02, Amendment 39-4757 (48 FR 50069).

These five AD's cover parts that are either obsolete and have been replaced by newer design parts, or parts for which the lives specified in the AD's are no longer current.

The Kawasaki Model KV107-II and KV107-IIA helicopters are manufactured in Japan under a license agreement with the Boeing Vertol Company and imported into the U.S. The Model KV107-II and KV107-IIA are identical in many respects to the Boeing Vertol Model 107-II helicopter. Both of these types of helicopters are presently used in the same manner by the only U.S. operator of these helicopters and allegedly common parts are interchanged between these types of aircraft. As stated previously, this AD is prompted by a reevaluation of typical logging operations in the United States.

The FAA contacted the Japanese Civil Aviation Bureau (JCAB) regarding this action. The JCAB, in a letter dated December 26, 1986, cited the excellent service history of the Kawasaki Model KV107-II and KV107-IIA helicopters used elsewhere in the world and recommended that any forthcoming FAA AD should be limited to severe logging operations or operations having frequent ground-air-ground cycles. The JCAB comment is appreciated and reflects the potential worldwide impact of any FAA AD action. Notwithstanding the JCAB's concern for applicability of the reduced component life to passenger carrying Kawasaki rotorcraft, this AD applies to the models noted regardless of types of operation. This is necessary since there is no practical FAA regulation process to assure proper tracking of parts and compliance with their life limits when transferred from passenger operations to external load operations and vice versa.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under

DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new AD.

**Boeing Vertol Company (Vertol) and Kawasaki Heavy Industries, Ltd.:** Applies to Model 107-II helicopters and Kawasaki Model KV107-II and IIA helicopters, certificated in any category.

Compliance is required within the next 100 hours' time in service after the effective date of this AD, unless already accomplished.

(a) To prevent hazards in flight associated with the fatigue failure of life limited components, the following retirement lives are imposed:

| Component part | Part No. | Life limit hours | Appendix |
|---|---|---|---|
| Alum Synch | 107D3141 | 9,940 | |
| Shaft Assembly | 107D3341 | 9,940 | |
| Steel Synch | 107D3140 | 7,950 | |
| Shaft Assembly | 107D3340 | 7,950 | |
| | A15D3840-1 | 24,750 | |
| Synchronizing | 107D3154-2 | 500 | No. 1. |
| Shaft Splined | 107D3154-3, -4 | 3,000 | |
| Adapter | 107D3144-1 | 14,615 | |
| Mix Box Collector Gear | 107D2066-10 thru -28. | 11,075 | |
| Fwd Rotor Shaft and Carrier Assy | A02D1259-3 | 2,100 | |
| | A02D1269-1 | 2,100 | |
| | A07D1269-1 | 2,100 | |
| | A02D1259-3SP | 13,580 | |
| | A02D1269-1SP | 13,580 | |
| | A07D1269-1SP | 13,580 | |
| | A02D1269-2 | 13,580 | |
| Quill Shaft | 107D2067-1, -3, -5 | 5,620 | No. 2. |
| Aft Transmission Planet Carrier | 107D2419 or A02D2419. | 8,700 | |
| Aft Rotor Drive Shaft upper extension | A02D3147 | 7,200 | |
| Aft Rotor Shaft | 107D3171-2, -3, -4, -5. | 15,860 | |
| Lower Section | A2D3171-3, -4, -6 | 15,860 | |
| Aft Rotor Shaft | 107D3151 | 19,140 | |
| Center Section | A02D3151 | 19,140 | |
| Fwd Hub | 107R2550 | 2,500/1,200 | No. 3. |
| Aft Hub | 107R2550 | 10,460/3,000 | |
| Fwd and Aft Connecting Link | 107R2551-1 or A02R2551-8. | 6,610 | |
| Fwd and Aft Hub | A02R2589-3 | 25,140 | |
| Horizontal Hinge Pin | 107R2589-3 | 25,140 | |
| Fwd and Aft Lag Damper Piston Rod End | 107R2601-1 | 4,670 | |

*Appendices*

No. 1. Synchronizing shaft splined adapter, Part Number (P/N) 107D3154-2, shall be repetitively inspected as specified in Boeing Vertol (BV) Service Bulletin 107-116 (R-1), Revision B, dated February 21, 1983, or FAA-approved equivalent. P/N 107D3154-3 and -4 require repetitive visual and dye check inspections as specified in the BV107-6 Maintenance Schedule, section 2, dated February 7, 1986, and Service Bulletin 107-116 (R-1)B.

No. 2. Quill shaft, P/N 107D2067-1, has a life limit of 120 hours unless the modifications specified in paragraph (e) of AD 63-24-04 revised October 15, 1964, Amendment 648 of Part 507 (28 FR 12014) as amended by Amendment 821 of Part 507 (29 FR 14169), are accomplished. (Also, reference Boeing Service Bulletins 107-113, Revision A, dated November 22, 1983, and 107-182, Revision B, dated July 28, 1965.)

No. 3. The life limit for the forward rotor hub spline is 2,500 hours. After 2,500 hours of service, the hub is to be magnetic particle inspected. If found to be free of cracks and not having a wear step on the profile face of the spline in excess of 0.002 inch, the hub may be inverted and installed on the aft rotor head for an additional 3,000 hours of use. On completion of the additional 3,000 hours, the hub is to be retired from service.

The life limit for the aft rotor hub spline is 10,460 hours. After 10,460 hours of use, the hub is to be magnetic particle inspected. If found to be free of cracks and not having a wear step on the profile face of the spline in excess of 0.002 inch, the hub may be inverted and installed on the forward rotor head for an additional 1,200 hours of use. On completion of the additional 1,200 hours, the hub is to be retired from service. (An acceptable procedure for measuring the 0.002-inch step wear is contained in Boeing Vertol Overhaul Manual 107-5, Chapter 60-20-1.)

Inverting and switching of main rotor hubs are permitted to the life limit stated above any number of times provided accurate records are maintained of the total hours the hubs are installed on an aft head and on a forward head.

(b) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

(c) Aircraft may be ferried to a base in accordance with FAR 21.197 and 21.199 where compliance can be accomplished.

The repair and inspection procedures in Boeing Vertol (BV) Service Bulletin (SB) 107-113, Revision A, dated November 22, 1983; BV SB 107-116 (R-1), Revision B, dated February 21, 1983; BV SB 107-182, Revision B, dated July 28, 1985, and BV 107-6 Maintenance Schedule, section 2, temporary Revision 31, dated February 7, 1986, incorporated by reference in this directive were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a)(1) and 1 CFR Part 51. Copies may be obtained from Boeing Vertol Company, Boeing Center, P.O. Box 16858, Philadelphia, Pennsylvania 19142. These documents may be examined at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106 or the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

This amendment supersedes the following:

Amendment 656 of Part 507 (28 FR 13931) as amended by Amendment 39-107 (30 FR 8963), AD 63-26-04;

Amendment 39-2993 (42 FR 38803), AD 77-16-03;

Amendment 39-3746 (45 FR 25050), AD 80-08-11;

Amendment 39-4522 (47 FR 57484), AD 82-27-06; and

Amendment 39-4757 (48 FR 50069), AD 83-22-02.

This amendment becomes effective May 5, 1987.

Issued in Fort Worth, Texas, on March 18, 1987.

Don P. Watson,

*Acting Director, Southwest Region.*

[FR Doc. 87-11622 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ANM-3]

## Alteration of Transition Area, Ontario, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Ontario, Oregon, transition area to provide controlled airspace for transition routes for arrivals executing the NDB Runway 32 Standard Instrument Approach Procedures to the Ontario Municipal Airport.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-534, Federal Aviation Administration, Docket No. 87-ANM-3, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2534.

SUPPLEMENTARY INFORMATION:

### History

On March 5, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace for the Ontario Municipal Airport (52 FR 6805). This additional airspace is needed to protect arrivals executing the NDB Runway 32 Standard Instrument Approach Procedures to the Ontario Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.161 of Part 71 of the Federal Aviation Regulations was republishing in Handbook 7400.6C dated January 2, 1987.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes additional controlled airspace for transition routes for arrivals executing the NDB Runway 32 Standard Instrument Approach Procedures to the Ontario Municipal Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### Adoption of the Amendment

## PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (52 FR 6805) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

### § 71.181 [Amended]

2. Section 71.181 is amended as follows:

### Ontario, Oregon, Transition Area (Amended)

Add the following: . . . RBN; and that airspace extending upward from 1,200 feet above the surface within 5 miles each side of the 085°T and 159°T bearing extending from the Ontario NDB to the northeast edge of V500 and the southeast edge of V269/southwest edge of V4-484.

Issued in Seattle, Washington, on May 11, 1987.

Temple H. Johnson, Jr.,

*Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 87-11564 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AGL-1]

## Alteration to Control Zone and Transition Area—Evansville, IN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects Federal Register Document 87-5109, in the issue of Monday, April 13, 1987. On page 11818 change "Evansville VORTAC" to read "Pocket City VORTAC".

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

Issued in Des Plaines, Illinois, on April 28, 1987.

Teddy W. Burdham,

*Manager, Air Traffic Division.*

[FR Doc. 87-11566 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-80]

## Amendment to Vandenberg Air Force Base, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of the Vandenberg AFB, California, control zone to include portions with R-2516 which are presently excluded. This will provide controlled airspace at Vandenberg AFB for conducting Special Visual Flight Rules, (SVFR) operations when visibility is less than 3 statute miles.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

### History

On February 11, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of the Vandenberg AFB, California, control

zone (52 FR 4348). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations amends the description of the Vandenberg AFB, California, control zone and includes portions within R–2516 which are presently excluded. This action will provide controlled airspace for SVFR flight operations when visibility is less than 3 statute miles. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zone, Transition area.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71), (52 FR 4348), is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Vandenberg AFB, CA [Amended]**

Remove "excluding that portion within R–2516" from the control zone description.

Issued in Los Angeles, California, on May 7, 1987.

Wayne C. Newcomb,

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 87–11507 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–13–M

## RAILROAD RETIREMENT BOARD

**20 CFR Part 359**

**Railroad Vacancy Reporting and Hiring Requirements**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Interim final rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby adds a new Part 359 to 20 CFR Chapter II. Part 359 is intended to give effect to the vacancy reporting and hiring requirements of section 704 of the Regional Rail Reorganization Act of 1973 and related legislation. Section 704, as amended, requires the Board to issue a warning and to assess a civil penalty when it finds that a railroad has failed to comply with the vacancy reporting requirements. In Part 359 the Board gives notice as to how a railroad may comply with the vacancy reporting and hiring requirements and under what circumstances a warning and/or penalty shall be imposed.

**DATES:** These regulations are effective as of May 21, 1987, and expire as of the close of business August 12, 1987, except § 359.7 (a) through (c) which continues in effect.

**ADDRESS:** Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Verplaetse, Director of Program Policy, Planning and Evaluation, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611; (312)751–4830 (FTS)386–4830.

**SUPPLEMENTARY INFORMATION:** The Consolidated Omnibus Budget Reconciliation Act of 1985, enacted April 7, 1986 as Pub. L. 99–272, amended section 704(f) of the Regional Rail Reorganization Act of 1973 to extend through August 12, 1987 the authority of the Railroad Retirement Board to carry out the provisions of section 704 of the Act. The Board's authority had elapsed August 13, 1985 with the expiration of the 4-year period originally provided for by section 704(f). Section 704 calls for the Board to maintain a central employment register for certain separated railroad employees who remain available for rail industry employment. Section 704 also requires each railroad company to report job vacancies to the Board so that furloughed and separated employees, including employees claiming a hiring preference, will have an opportunity to be considered for those vacancies.

In addition to extending the Board's authority through August 12, 1987, the Consolidated Omnibus Budget Reconciliation Act amended section 704(c) of the Regional Rail Reorganization Act by providing for the Railroad Retirement Board to issue a formal warning to any railroad that does not comply with the vacancy reporting requirements of section 704(c). That section also empowers the Board to impose a civil penalty with respect to any subsequent violation. As the amendments to section 704 were not enacted until April 7, 1986, the warning and penalty provisions of these regulations shall apply only with respect to violations occurring on or after that date. The Board's authority expires August 13, 1987 and with it the aforementioned warning and penalty provisions.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collection contemplated by this Part has been approved by the Office of Management and Budget.

**List of Subjects in 20 CFR Part 359**

Railroad employees, Railroad employment, Railroads, Railroad hiring.

Title 20 CFR Chapter II is amended as follows:

A new Subchapter E (currently designated as Reserved) consisting of Part 359 is added as follows:

**SUBCHAPTER E—RAILROAD VACANCY AND HIRING REQUIREMENTS**

**PART 359—RAILROAD HIRING**

Sec.

359.1 Purpose.
359.2 Definitions.
359.3 Reporting job vacancies.
359.4 Failure to report a vacancy.
359.5 First right of hire.
359.6 Resolution of disputes.
359.7 Central register.
359.8 Sunset provision.

Authority: 45 U.S.C. 362(l), 797, 997, 1004; Sec. 4011 of Pub. L. 99–272.

**§ 359.1 Purpose.**

These regulations set forth the duty of each railroad to comply with the

vacancy reporting and hiring requirements of section 704 of the Regional Rail Reorganization Act of 1973 and related legislation, and the method for complying. Effective April 7, 1986, a railroad that fails to comply with the vacancy reporting requirements is subject to a warning and a penalty with respect to any future violation, as explained in this Part.

**§ 359.2 Definitions.**

As used in this part—

*Act* means the Regional Rail Reorganization Act of 1973, as amended.

*Board* means the Railroad Retirement Board.

*Conrail* means the Consolidated Rail Corporation.

*Deprived of employment* has the meaning given in Part 395 of this Chapter.

*Employee* means an individual as defined in section 1(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 351(d)).

*Milwaukee Road* means the Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

*Non-agreement employee* has the meaning given in Part 395 of this Chapter.

*Railroad* means an employer or carrier subject to the Railway Labor Act, the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

*Rock Island Railroad* means the Chicago, Rock Island and Pacific Railroad Company.

**§ 359.3 Reporting job vacancies.**

(a) Each railroad shall provide timely notice to the Board of any employment vacancy for which the railroad plans to consider applications from persons other than its own employees. Notice to the Board is "timely" if it is received by the Board:

(1) At least 14 calendar days before the close of the application period;

(2) Prior to the date on which the railroad first takes applications for the vacancy; or

(3) Concurrently with the use of any other recruitment source or hiring effort.

(b) Notices of job vacancies shall be provided to the nearest Board district office. Notice may be given by telephone but shall then be followed by written notification released to the Board within 48 hours of the notice by telephone. Each notice shall provide the following:

(1) The number of vacancies;

(2) The location of the vacancies;

(3) The class or craft of the vacancy or a brief description of the work and job qualifications; and

(4) The name, address and telephone number of the appropriate railroad hiring official.

(c) The Board will use the information contained in job vacancy reports to select and refer for possible employment employees whose skills and/or experience may meet the railroads' job vacancy qualification requirements. The Board shall also promote the placement of employees by publication or distribution of job vacancy information.

(Approved by the Office of Management and Budget under control number 3220-0122)

**§ 359.4 Failure to report a vacancy.**

(a) When the Board becomes aware of a railroad's failure after April 7, 1986 to report a job vacancy as required by § 359.3 of this Part, the Board's Associate Executive Director for Unemployment and Sickness Insurance shall warn the railroad of its potential liability for a civil penalty under section 704(c)(2)(B) of the Act. Such warning shall be issued notwithstanding any assertion that the failure to report the vacancy was inadvertent or unintentional.

(b) After a warning has been issued pursuant to paragraph (a) of this section, a railroad that again fails to comply with the vacancy reporting requirements of § 359.3 of this Part shall be liable for a civil penalty of $500.00 for each subsequent instance of failure to report a vacancy to the Board. The railroad may also be required to suspend filling the vacancy and to comply with the provisions of these regulations.

(c) The warning notice called for by paragraph (a) of this section or notice of the penalty to be imposed under paragraph (b) of this section shall be issued to the railroad hiring official or other designated railroad contact official and shall set forth the specific reasons for the warning or penalty. The railroad shall have 30 days from the date of the notice to respond if the railroad believes the notice is not justified. If no response is received within 30 days of the date of the notice, the warning or penalty shall stand.

(d) After considering the railroad's response, the Associate Executive Director shall decide whether to affirm or cancel the notice and shall notify the railroad of the decision. The Associate Executive Director's decision shall be final and not subject to further review.

(e) Payment of a civil penalty imposed under paragraph (b) of this section shall be remitted by check made payable to the U.S. Railroad Retirement Board and shall be mailed to the Associate Executive Director for Unemployment and Sickness Insurance. Such payments shall be deposited to the credit of the railroad unemployment insurance administration fund. Payment shall be due within 30 days of the date that a railroad has been notified of the civil penalty.

**§ 359.5 First right of hire.**

(a) Any railroad that plans to fill a vacancy with an individual other than one of its own employees shall give a preference to certain former employees of the Milwaukee Road, the Rock Island Railroad and Conrail who are qualified for the vacancy, subject to the following provisions of this section.

(b) A former Milwaukee Road employee shall have a first right of hire if he or she:

(1) Was a Milwaukee Road employee on September 30, 1979;

(2) Was separated or furloughed from the Milwaukee Road prior to April 1, 1984 other than for cause; and

(3) Was separated or furloughed because of a reduction in service by the Milwaukee Road.

(c) A former Rock Island Railroad employee shall have a first right of hire if he or she:

(1) Was a Rock Island Railroad employee on August 1, 1979;

(2) Was separated or furloughed (other than for cause) from the Rock Island Railroad or from a railroad that provided temporary service over Rock Island Railroad lines prior to January 1, 1984; and

(3) Was separated or furloughed because of a reduction in service by either the Rock Island Railroad or the temporary service carrier.

(d) A former Conrail employee shall have a first right of hire if he or she:

(1) Had an employment relationship with Conrail on August 13, 1981;

(2) Was deprived of employment; and

(3) Had at least one year of service with Conrail or a predecessor railroad in the class or craft in which the vacancy exists. With respect to a non-agreement employee, the first right of hire applies to non-agreement vacancies in types of work in which the employee had at least one year of work experience with Conrail or a predecessor railroad.

(e) The foregoing first right of hire shall apply to any railroad job vacancy except when:

(1) The vacancy is being filled by the recall of a railroad's furloughed employee;

(2) The vacancy is filled with a member of a class protected under an affirmative action plan or other hiring plan designed to eliminate discrimination, if such plan is required by law or regulation or by an executive

order or a Federal court or agency decision; or

(3) The vacancy is filled with a member of a class protected under a permissible voluntary affirmative action plan.

**§ 359.6 Resolution of disputes.**

(a) An employee who believes that he or she has been aggrieved by a railroad's failure to report a job vacancy or to recognize a first right of hire granted him or her under § 359.5 of this Part may timely petition the Board to investigate his or her grievance. A petition is "timely" if received by the Board within two years of the date of the hiring which is the subject of the petition. An employee who does not file a timely petition with respect to the hiring forfeits his or her right to petition the Board.

(b) An employee's petition must identify the hiring action in dispute by providing the following information:

(1) The name of the employee who was hired or the approximate date of the hiring action;

(2) The location of the position;

(3) A description of the work or the name of the class or craft of the work;

(4) The name of the railroad that did the alleged illegal hiring;

(5) A statement of the petitioner's railroad work history and qualifications; and

(6) A statement explaining why the petitioner believes that his or her rights were violated.

(c) Following an investigation, the Board will report its findings to the employee and the appropriate railroad. If the Board finds that the railroad may have violated the employee's rights, the grievance is subject to resolution under section 3 of the Railway Labor Act. If the Board finds that no violation occurred, that finding shall be final and not subject to review or appeal.

(d) If the Board finds that a railroad may have violated an employee's rights, it shall be the employee's responsibility to prosecute his or her claim. The Board shall not act for or represent the employee in the prosecution of his or her claim.

**§ 359.7 Central register.**

(a) The Board shall maintain a central register of railroad employees with at least one year of service who have declared their current availability for rail industry employment. The register shall indicate which of those employees claims a first right of hire under § 359.5 of this Part.

(b) The central register shall be subdivided by class and craft of prior employment and shall be updated periodically to reflect current employee availability.

(c) Upon request, listings of employees named in the central register and selected on the basis of job experience, location of residence, claimed hiring preference, last railroad employer or other available selection criteria will be furnished to railroads. Railroads may provide written notice of job vacancies to selected employees listed on the register. The railroad notice to the employees should contain job qualification requirements and application instructions. If the railroad requests, the Board shall notify the employees of the vacancy.

(d) A railroad's use of the central register to fill a vacancy shall not excuse the railroad from the requirements of § 359.3 of this Part.

**§ 359.8 Sunset provision.**

These regulations shall cease to be effective as of the close of business August 12, 1987, except that the Board shall continue to maintain the central register and to publish job vacancy information for the convenience of railroad employers and employees.

By Authority of the Board.

Dated: May 13, 1987.

For the Board.

Beatrice Ezerski,

*Secretary to the Board.*

[FR Doc. 87-11563 Filed 5-20-87; 8:45 am]

BILLING CODE 7905-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 404

[Regulations No. 4]

## Federal Old-Age, Survivors, and Disability Insurance; Eligibility for Underpayment Due a Deceased Beneficiary

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** In these regulations, we are revising our rules to prohibit payment of an underpayment due a deceased person to any individual who intentionally and feloniously killed that person. This change is consistent with the regulation now in place which prevents an individual from receiving any survivor's benefits or payments on the earnings records of any person if he or she feloniously killed the worker on whose earnings record such benefits would be payable.

**EFFECTIVE DATE:** These rules are effective May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lawrence V. Dudar, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7459.

**SUPPLEMENTARY INFORMATION:**

### General

Section 404.305(b) of the regulations, 20 CFR 404.305(b), states the following:

(b) *Insured's death caused by an intentional act.*

You may not become entitled to or continue to receive any survivor's benefits or payments on the earnings record of any person if you were convicted of a felony or an act in the nature of a felony of intentionally causing that person's death . . .

The regulation thus prohibits the entitlement or continued entitlement of an individual to survivor's benefits or the lump-sum death payment on the earnings record of a worker whom that individual intentionally killed.

Section 404.305(b) does not, however, prohibit the payment of an underpayment due a deceased person to an individual who intentionally caused the underpaid decreased person's death.

We believe that expanding § 404.305(b) to prohibit an individual from receiving any underpayment due a person whom the individual killed is consistent with the well-established principle that an individual should not profit directly from intentionally causing another person's death.

We are amending § 404.305(b) to prohibit the payment of an underpayment due a deceased person to any individual who intentionally and feloniously killed that beneficiary.

### Comments

These rules were published as a Notice of Proposed Rulemaking at 51 FR 26717 of July 25, 1986. We received one comment which was favorable to the proposed change. In order to clarify and remove any possibility of misunderstanding as to the effect of the regulation, we have deleted references to an underpaid "beneficiary" and substituted, therefore, where appropriate, the word "person" to assure that no individual can receive an underpayment due a person whom the individual intentionally killed.

### Regulatory Procedures

*Executive Order 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 because there will be no significant costs in implementing these

regulations. Therefore, a regulatory impact analysis is not required.

*Paperwork Reduction Act*

These regulations impose no new reporting or recordkeeping requirements requiring OMB clearance.

*Regulatory Flexibility Act*

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security-Retirement Insurance)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: March 23, 1987.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

Approved: May 1, 1987.

**Otis R. Bowen, M.D.**

*Secretary of Health and Human Services.*

**PART 404—[AMENDED]**

Subpart D of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart D of Part 404 is revised to read as follows, and all other authority citations which appears throughout Subpart D are removed:

**Authority:** Secs. 202, 205, 216, 223, 225, 228, 1102 of the Social Security Act; Sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 425, 428, and 1302; and 5 U.S.C. Appendix.

2. In § 404.305 paragraph (b) is revised to read as follows:

**§ 404.305 When you may not be entitled to benefits.**

* * * * *

(b) *Person's death caused by an intentional act.* You may not become entitled to or continue to receive any survivor's benefits or payments on the earnings record of any person, or receive any underpayment due a person, if you were convicted of a felony or an act in the nature of a felony of intentionally causing that person's death. If you were subject to the juvenile justice system, you may become entitled to or continue to receive survivor's benefits or payments on the earnings record of any person, or receive any underpayment due a person, if you were found by a court of competent jurisdiction to have intentionally caused that person's death by committing an act which, if committed by an adult, would have been considered a felony or an act in the nature of a felony.

* * * * *

[FR Doc. 87-11677 Filed 5-20-87; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 301**

**[T.D. 8140]**

## Procedure and Administration; Returns Required on Magnetic Media

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the required use of magnetic media for filing certain returns. The regulations clarify that the failure to file an information return on a machine-readable form when required to do so is treated as a failure to file the return and may result in the imposition of a failure to file penalty. The regulations apply to persons required to file certain information returns on magnetic media or machine-readable forms.

**EFFECTIVE DATE:** The regulations are effective as of May 21, 1987, and apply to returns filed for a calendar year (or annual filing period) beginning after December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** See **SUPPLEMENTARY INFORMATION.**

**SUPPLEMENTARY INFORMATION:** 1. Magnetic Media Reporting, Internal Revenue Service, National Computer Center, P.O. Box 1359, Martinsburg, West Virginia 25401-1359, 304-263-8700 (not a toll-free call), if the inquiry relates to the waiver procedure.

2. The following regional magnetic media coordinators of the Social Security Administration, if the inquiry relates to magnetic media filing for returns required on Form W-2 or W-2P:

| SSA regional office | For persons residing in |
|---|---|
| Social Security Administration, J.F. Kennedy Building, Boston, Mass. 02203, ATTN: Joanne Shulman, Rm. 1109, 617-223-4375 (not a toll-free call). | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. |
| Social Security Administration, 26 Federal Plaza, New York, New York 10007, ATTN: Anne Coe, Rm. 4612, 212-264-0253 (not a toll-free call). | New Jersey, New York, Puerto Rico, and the Virgin Islands. |
| Social Security Administration, P.O. Box 8788, 3535 Market Street, Philadelphia, Penn. 19101, ATTN: Frank O'Brien, Rm. 8480, 215-596-0474 (not a toll-free call). | Delaware District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. |
| Social Security Administration, P.O. Box 1694, 101 Marietta Tower, Atlanta, Ga. 30301, ATTN: Pat McCarron, Suite 1804, 404-331-2507 (not a toll-free call). | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. |
| Social Security Administration, 300 South Wacker Drive, Chicago, Illinois 60606, ATTN: Jim Juntunen, 32nd Floor, 312-353-6717 (not a toll-free call). | Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. |
| Social Security Administration, 1200 Main Tower, Room 1535, Dallas, Texas 75202, ATTN: Pat Insko, 214-767-4311 (not a toll-free call). | Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. |
| Social Security Administration, 601 East 12th Street, Kansas City, Mo. 64106, ATTN: Dale Fick, 8th Floor East, 816-374-2095 (not a toll-free call). | Iowa, Kansas, Missouri, and Nebraska. |
| Social Security Administration, Federal Office Building, 1961 Stout Street, Denver, Col. 80294, ATTN: Rick Schramp, Rm. 1194, 303-837-2364 (not a toll-free call). | Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. |
| Social Security Administration, 100 Van Ness Avenue, San Francisco, Cal. 94102, ATTN: Bill Brees, Systems Branch, 415-556-4758 (not a toll-free call). | American Samoa, Arizona, California, Guam, Hawaii, and Nevada. |
| Social Security Administration, 2901 Third Avenue, Seattle, Wash. 98121, ATTN: Jan Hotson, M/S 302, 206-442-0408 (not a toll-free call). | Alaska, Idaho, Oregon, and Washington. |

**Background**

On March 25, 1986, the **Federal Register** published final regulations relating to section 6011 (e) of the Internal Revenue Code of 1986 (51 FR 10348). The regulations were adopted to reflect the addition to the Code of section 6011 (e) by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248, 96 Stat. 610) and its amendment by section 109 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98-67, 97 Stat. 383).

Under those regulations, any person that is required to use Form 1042S (Income Subject to Withholding under Chapter 3 of the Internal Revenue Code), 1098 (Mortgage Interest Statement), 5498 (Individual Retirement Arrangement Information), 6248 (Annual Information Return of Windfall Profit Tax), 8027 (Employer's Annual Information Return of Tip Income and Allocated Tips), W-2 (Wage and Tax Statement), W-2G (Statement for Recipients of Certain Gambling Winnings), W-2P (Statement for Recipients of Annuities, Pensions, Retired Pay, or IRA Payments) or any form in the 1099 series (Information Returns) for the purpose of making a return must provide the information required by such form on magnetic media, unless (1) the person is a low-

volume filer with respect to the return or (2) the person is granted a waiver with respect to the return by the Internal Revenue Service. Failure to file a return on magnetic media when required to do so by the regulations is treated as a failure to file the return and may result in the imposition of a failure to file penalty.

In the case of a return that may be filed on a paper form, the return must be filed on a machine-readable form if applicable revenue procedures provide for a machine-readable form. These amendments clarify that the failure to file an information return on a machine-readable form when required to do so is treated as a failure to file the return and may result in the imposition of a failure to file penalty. However, in the case of a return that may be filed on a paper form for the 1986 calendar year (or an annual filing period beginning in 1986), a failure to file penalty will not apply if such return is timely filed on a paper form that is not machine-readable.

### Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for final regulations subject to 5 U.S.C. 553 (b) (B). Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

### Drafting Information

The principal author of these regulations is C. Scott McLeod of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

### List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes. Disclosure of information, Filing requirements.

### Adoption of Amendments to the Regulations

For the reasons set out in the preamble, Title 26, Chapter 1, Subchapter F, Part 301 of the Code of Federal Regulations is amended as set forth below:

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The authority citation for Part 301 continues to read in part:

**Authority:** 26 U.S.C. 7805. * * * Section 301.6011–2 also issued under 26 U.S.C. 6011(e).

**Par. 2.** Section 301.6011–2 is amended by revising paragraph (f) to read as follows:

**§ 301.6011–2 Required use of magnetic media.**

* * * * *

(f) *Failure to file.* If a person fails to file a return on magnetic media when required to do so by section 6011(e) and this section, such person is deemed to have failed to file the return. In addition, if a person making returns on a paper form under paragraph (c) of this section for a calendar year (or annual filing period) beginning after December 31, 1986, fails to file a return on a machine-readable paper form when required to do so by this section, such person is deemed to have failed to file the return. See sections 6652, 6693, and 6721 for penalties for failure to file certain returns.

* * * * *

This Treasury decision clarifies that the failure to file an information return on a machine-readable paper form when required to do so is treated as a failure to file the return and may result in the imposition of a failure to file penalty. For this reason, it is found unnecessary to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

**Approved: April 30, 1987.**

**J. Roger Mentz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 87–11271 Filed 5–20–87; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

### 28 CFR Part 60

[Order No. 1168–87]

### Authorization of Federal Law Enforcement Officers To Request the Issuance of a Search Warrant

**AGENCY:** U.S. Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** Rule 41(h) of the Federal Rules of Criminal Procedure authorizes the Attorney General to designate categories of federal law enforcement officers who may request issuance of search warrants. Previous authorizations were made by Order No. 510–73 (38 FR 7244, March 19, 1973), as amended by Order No. 521–73 (38 FR 18380, July 10, 1973), Order No. 826–79 (44 FR 21785, April 12, 1989), Order No. 844–79 (44 FR 46459, August 8, 1979), Order No. 960–81 (46 FR 52360, October 27, 1981), Order No. 1026–83 (48 FR 37377, August 18, 1983), Order No. 1137–86 51 FR 22282, June 19, 1986) and Order No. 1143–86 (51 FR 26878, July 28, 1986). This Order amends 28 CFR Part 60 by adding special agents of the Investigations Division of the Office of Inspector General, Small Business Administration; special agents of the Diplomatic Security Service of the Department of State; and special agents of the Office of Investigations and the Office of Labor Racketeering of the Office of Inspector General, Department of Labor, to the list of federal law enforcement officers who are authorized to request the issuance of search warrants under Rule 41, Federal Rules of Criminal Procedure.

**EFFECTIVE DATE:** May 12, 1987.

**FOR FURTHER INFORMATION CONTACT:** Roger B. Cubbage, Deputy Chief, Stanley A. Rothstein, Senior Legal Advisor, or Donald B. Nicholson, Attorney, General Litigation and Legal Advice Section, Criminal Division, Department of Justice, Washington, DC 20530 (202–786–4827).

**SUPPLEMENTARY INFORMATION:** This Order adds a new § 60.2(j) to 28 CFR Part 60 to add special agents of the Investigations Division of the Office of Inspector General, Small Business Administration, and a new § 60.2(k) to add special agents of the Office of Investigations and the Office of Labor Racketeering of the Office of Inspector General, Department of Labor. It adds

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the Investigations Division of the Office of Inspector General, Small Business Administration as § 60.3(a)(10); the Diplomatic Security Service of the Department of State as § 60.3(a)(11); and the Office of Investigations and the Office of Labor Racketeering of the Office of Inspector General, Department of Labor, as § 60.3(a)(12). Because the material contained herein is a matter of Department of Justice practice and procedure, the provision of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date is inapplicable.

The Department of Justice has determined that this Order is not a major rule for purposes of either Executive Order 12291, or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The index term for Part 60 of Chapter I of Title 28 is as follows:

**List of Subjects in 28 CFR Part 60**

Search warrants.

By virtue of the authority vested in me by Rule 41(h) of the Federal Rules of Criminal Procedure, Part 60 of Chapter I of Title 28, Code of Federal Regulations, is hereby amended as follows:

**PART 60—[AMENDED]**

1. The authority citation of Part 60 continues to read as follows:

Authority: Rule 41(h), Fed.R.Crim.P.

**§ 60.2 [Amended]**

2. Section 60.2 is amended by adding a new paragraph (j), to read as follows:

* * * * *

(j) Any special agent of the Investigations Division of the Office of Inspector General, Small Business Administration.

3. Section 60.2 is amended by adding a new paragraph (k), to read as follows:

* * * * *

(k) Any special agent of the Office of Investigations and the Office of Labor Racketeering of the Office of Inspector General, Department of Labor.

**§ 60.3 [Amended]**

4. Section 60.3 is amended by adding a new paragraph (a)(10) to read as follows:

(a) * * *

(10) Small Business Administration: Investigations Division of the Office of Inspector General.

* * * * *

5. Section 60.3 is amended by adding a new paragraph (a)(11) to read as follows:

(a) * * *

(11) Department of State: Diplomatic Security Service.

* * * * *

6. Section 60.3 is amended by adding a new paragraph (a)(12) to read as follows:

(a) * * *

(12) Department of Labor: Office of Investigations and Office of Labor Racketeering of the Office of Inspector General.

* * * * *

Dated: May 12, 1987.

**Edwin Meese III,**

*Attorney General.*

[FR Doc. 87-11638 Filed 5-20-87; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 09-87-01]**

### Special Local Regulations; 1987 Put In Bay Air Show, South Bass Island, OH—Lake Erie

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** Special Local Regulations are being adopted for the Annual Put In Bay Air Show which is to be conducted adjacent to Put In Bay Airport, South Bass Island on the 14th of June, 1987. The regulations are needed to provide for the safety of life on navigable waters during the event.

**EFFECTIVE DATES:** These regulations become effective on 14 June, 1987, and terminate on 15 June, 1987.

**FOR FURTHER INFORMATION CONTACT:** CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

**SUPPLEMENTARY INFORMATION:** On April 6, 1987 the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations (52 FR 10906). Interested persons were requested to submit comments and no comments were received.

**Drafting Information**

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and LCDR M. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The 1987 Put In Bay Air Show will be conducted adjacent to Put In Bay Airport, South Bass Island on the 14th of June, 1987. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in this area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement prior to and during this event within this section of Put In Bay. A Coast Guard patrol vessel will be located at strategic locations along the regulated area to stop vessel traffic. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Commanding Officer, Coast Guard Station Marblehead, Ohio).

**Economic Assessment and Certification**

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Final Regulations.**

**PART 100—[AMENDED]**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 AND 33 CFR 100.35.

2. Part 100 is amended to add a termporary § 100.35-0901 to read as follows:

**§ 100.35-0901 Put In Bay Air Show, South Bass Island—Lake Erie.**

The following area will be closed to vessel navigation or anchorage from 12:00 P.M. (local time) until 4:00 P.M. on 14 June, 1987.

(a) *Restricted Area.* That portion of Lake Erie enclosed by a line running from a point at 41 degrees 38 minutes 18 seconds North, 82 degrees 49 minutes 25

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seconds West to a point at 41 degrees 38 minutes 04 seconds North, 82 degrees 49 minutes 04 seconds West to a point at 41 degrees 37 minutes 39 seconds North, 82 degrees 49 minutes 33 seconds West to a point at 41 degrees 37 minutes 53 seconds North, 82 degrees 49 minutes 53 seconds West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16(56.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessels; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(c) *Effective Dates.* These regulations will become effective on 14 June 1987 and terminate on 15 June 1987.

Dated: May 13, 1987.

**L.W. Garrett,**

*Capt, U.S. Coast Guard Chief of Staff, Ninth Coast Guard District.*

[FR Doc. 87-11653 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-14-M

## POSTAL RATE COMMISSION

### 39 CFR Part 3001

[Docket Nos. RM87-4 and MC87-1]

### Amendment to Domestic Mail Classification Schedule; Third-Class Mail Maximum Size, 1986

Issued: May 13, 1987.

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the May 5, 1987, adoption of the Postal Rate Commission's recommended Docket No. MC87-1 decision by the Governors of the Postal Service, the Commission is publishing the corresponding changes for the Domestic Mail Classification Schedule (DMCS). The DMCS is found as Appendix A to Subpart C of the Commission's rules of practice and procedure (39 CFR 3001.61 through 3001.68). This change enlarges by a small amount the maximum size limits for mail qualifying for carrier route presort third-class mail rates.

**EFFECTIVE DATE:** May 31, 1987.

**ADDRESSES:** Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268 (telephone: 202/789-6840).

**FOR FURTHER INFORMATION CONTACT:** David F. Stover, General Counsel, 1333 H Street, NW., Suite 300, Washington, DC 20268 (telephone: 202/789-6820).

**SUPPLEMENTARY INFORMATION:** On May 5, 1987, the Governors of the Postal Service approved a decision (Docket No. MC87-1) of the Commission recommending a change in section 300.030b of the Domestic Mail Classification Schedule (DMCS). The effective date for the change is May 31, 1987. Section 300.030b sets out the maximum size limitations for mail which can qualify for third-class carrier route presort rates.

On October 1, 1986, the Postal Service initiated a proceeding, pursuant to 39 U.S.C. 3623, requesting that the DMCS be amended to allow larger mail pieces to qualify for third-class carrier route presort rates. The Postal Service requested that the current limitations of 13.50 inches in length and 11.50 inches in width be increased to 14 inches in length and 11.75 inches in width. The Postal Service explained that the change was to accommodate mailers of total market coverage publications "plus issues," whose mailings exceeded the current size limits by small amounts.

The Commission invited interested parties to comment and participate in the proceeding. 51 FR 36764 (October 15, 1986). The parties submitted a nonunanimous settlement, and agreed upon the material to be entered into the evidentiary record. The Commission gave the parties an opportunity to file briefs and reply briefs. On April 2, 1987, the Commission issued a decision recommending the change.

The amendment to the DMCS which is published in this order reflects the Governors' May 5, 1987, decision. Consistent with the Commission's explanation in the rulemaking (Docket No. RM85-1) which led to the publication of the DMCS in the Federal Register, this addition is published as a final rule, since procedural safeguards and ample opportunities to have different viewpoints considered have already been afforded to all interested persons.

**List of Subjects in 39 CFR Part 3001**

Administrative practice and procedure, Postal Service.

### PART 3001—RULES OF PRACTICE AND PROCEDURE

**Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule**

**List of Changes**

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 3603, 3622, 3623, 84 Stat. 759-761; (5 U.S.C. 553), 80 Stat. 383, unless otherwise noted.

2. The following change in the Domestic Mail Classification Schedule published as Appendix A to Subpart C (39 CFR §§ 3001.61 through 3001.68) of the Commission's rules of practice and procedure is adopted:

Revise section 300.030b to read as follows:

* * * * *

b. Except as provided in section 300.030c, the maximum size for mail qualifying for the carrier route presort level is 14 inches in length, 11.75 inches in width, and 0.75 inch in thickness.

* * * * *

By the Commission.

**Charles L. Clapp,**

*Secretary.*

[FR Doc. 87-11594 Filed 5-20-87; 8:45 am]

BILLING CODE 7715-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL 3205-3]

### Vermont; Schedule of Compliance for Modification of Vermont's Hazardous Waste Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Vermont's compliance schedule to adopt program modifications.

**SUMMARY:** On September 22, 1986, EPA promulgated amendments to the deadlines for State program modfications, and published

requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Vermont to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

FOR FURTHER INFORMATION CONTACT: Dorothy Allen, USEPA, Room 1903, JFK Federal Building, Boston, MA 02203, (617) 223-4925.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1-271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Vermont

Vermont received final authorization of its hazardous waste program on January 21, 1985. See 50 FR 775, January 7, 1985. Today EPA is publishing a compliance schedule for Vermont to obtain program revisions for the following Federal program requirements:

(1) Biennial Report
48 FR 3977, January 28, 1983
(2) Permit Rules—Settlement Agreement
48 FR 39622, September 1, 1983
49 FR 17716, April 24, 1984
(3) Interim Status Standards—Applicability
48 FR 52718, November 22, 1983
49 FR 46095, November 21, 1984
(4) Chlorinated Aliphatic Hydrocarbon Listing
49 FR 5308, February 10, 1984
(5) National Uniform Manifest
49 FR 10490, March 20, 1984
(6) Listing Warfarin & Zinc Phosphide
49 FR 19922, May 10, 1984
(7) Lime Stabilized Pickle Liquor Sludge
49 FR 23284, June 5, 1984
(8) State Availability of Information HSWA § 3006(f), November 8, 1984
(9) Exclusion of Household Waste
49 FR 44980, November 13, 1984
(10) Corrections to Test Methods Manual
49 FR 47391, December 4, 1984
(11) Satellite Accumulation
49 FR 49571, December 20, 1984
(12) Redefinition of Solid Waste
50 FR 614, January 4, 1985
(13) Interim Status Standards for Landfills
50 FR 16044, April 23, 1985

The State has agreed to obtain the needed program revisions according to the following schedule:

(1) Statutory changes adopted.....June 15, 1987
(2) Draft rules and checklists submitted to EPA for review.....June 15, 1987
(3) Filing of proposed rules to adoption process.....Aug. 20, 1987
(4) Public hearing.....Oct. 1, 1987
(5) Rules submitted for legislative review.....Nov. 1, 1987
(6) Rules adopted/promulgated.....Jan. 1, 1987

Vermont expects to submit an application to EPA for authorization of the above mentioned program revisions by March 1, 1988.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: April 21, 1987.

Paul G. Keough,
*Regional Administrator.*

[FR Doc. 87-11041 Filed 5-20-87; 8:45 am]

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40 CFR Part 271

[FRL-3206-2]

## Alabama; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Alabama's Application for Final Authorization, Public Hearing, and Public Comment Period.

SUMMARY: Alabama has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Alabama's application and has tentatively determined that Alabama's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to the State to operate its program, subject to the limitations on its authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Alabama's application for final authorization is available for public review and comment, and a public hearing will be held to solicit comments on the application if significant public interest is expressed.

If significant public interest is expressed, a public hearing will be scheduled for June 25, 1987. EPA reserves the right to cancel the public hearing if significant public interest is not communicated to EPA by telephone or in writing by June 19, 1987. EPA will determine by June 23, 1987 whether there is significant interest in holding the public hearing. Alabama will participate if the public hearing is held by EPA on this subject. All written comments on the Alabama final authorization application should be mailed to Otis Johnson, Jr., Chief, Waste Planning Section, U.S., EPA. The comments must be received by the close of business on June 19, 1987.

ADDRESSES: Copies of Alabama's Final Authorization Application are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Alabama Department of Environmental Management, Land Division, 1751 Federal Drive, Montgomery, Alabama 36130; 205/271-7700; U.S., EPA Headquarters Library, PM 211A, 401 M Street, SW., Washington, DC 20460; 202/382-5026; U.S. Region IV, Library, 345 Courtland St., NE., Atlanta, Georgia 30365; 404/347-4216.

Written comments on the application and written or telephone communication of interest in EPA's holding a public hearing on the Alabama application must be sent to: Otis Johnson, Jr., Chief, Waste Planning Section, US EPA, 345 Courtland Street., NE, Atlanta, Georgia 30365; 404/347-3016. If significant interest is expressed, EPA will hold the public hearing on June 25, 1987, 7:00 p.m., Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109; 205/271-7700.

If you wish to find out whether or not EPA will hold a public hearing on Alabama's application, write or telephone the EPA contact person listed below after June 23, 1987, or telephone Mr. Daniel E. Cooper, Director, Land Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109; 205/271-7700.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section , Environmental Protection Agency, 345 Courtland St., NE., Atlanta, Georgia 30365; 404/347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program (Section 3006(c), 42, U.S.C. 6226(c)).

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42, U.S.C. 6226(b)). States need not have obtained Interim Authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR Part 271.

B. Alabama

On November 7, 1985, Alabama submitted an official application for final authorization. Alabama solicited public comment and held a public hearing May 15, 1986 on its revised application. The State received no written comments. Four oral comments were offered at the hearing. Two commenters expressed concern over the ADEM's authority to regulate radioactive material. Two others commended the ADEM for their diligence and efficiency in managing the program, and one of the two expressed concern over the State adopting regulations that are more stringent than EPA regulations.

In a letter dated May 27, 1986, the State offered the following responses to the comments: The ADEM was required to submit the State framework for managing all hazardous wastes as part of the application package, and was not attempting to regulate radioactive wastes in a manner inconsistent with EPA under the provisions of the RCRA as amended. In response to the comment concerning the State's adoption of regulations more stringent than EPA, the State responded that any inconsistencies with EPA are due to differences in State law. The nature of these comments did not require any change in the ADEM's application package.

EPA's comments on the final application were forwarded to the State on January 9, 1986. In its comments on the application, EPA requested that the State revise its "regulated unit" definition (§ 14.5-.06(1)(a)) to make it equivalent to the Federal standard (40 CFR 264.90(a)(2) as amended July 15, 1985). Alabama's regulation defines "regulated unit" as any unit that accepts hazardous waste after the effective date of the State's regulation, i.e., June 8, 1983. This definition needed to be changed to reflect the July 26, 1982 date in the Federal definition in order that Alabama might regulate the same universe as would EPA in the Federal program. The State agreed to make this regulatory change prior to EPA's final decision. Effective September 29, 1986, Alabama's regulations were changed to reflect the July 26, 1982 date.

EPA has tentatively determined that the State's program meets all the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Alabama to operate its program subject to the authority retained by EPA under HSWA.

In accordance with the regulatory requirements found at section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative determination on June 25, 1987 at 7:00 p.m., Alabama Department of Environmental Management in Montgomery, Alabama. The public may also submit written comments on EPA's tentative determination until June 19, 1987. Copies of Alabama's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice.

EPA will consider all public comments received at the hearing or during the public comment period. Issues raised by those comments may be the basis for a decision to deny final authorization to Alabama. EPA expects to make a final decision on whether or not to approve Alabama's program by [insert date 90 calendar days after date of publication in FR] and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

C. Effect of HSWA on Alabama's Authorization

Prior to the Hazardous and Solid Waste Amendments amending RCRA, a State with Final Authorization would have administered its hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under the amended section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized states. EPA is directed to carry out those requirements and prohibitions in authorized states, including the issuance of full or partial permits, until the State is granted authorization to do so. While states must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized states in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Alabama if final RCRA authorization is granted. To the extent the authorized state program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. To the extent HSWA-related requirements are in effect, EPA will administer and enforce these portions of the HSWA in Alabama until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State may assist EPA's implementation of the HSWA under a Cooperative Agreement.

Today's tentative determination does not include authorization of Alabama's program for any requirement implementing the HSWA. Any state requirement that is more stringent than a Federal HSWA provision will also remain in effect; thus, regulated handlers must comply with any more stringent State requirements.

EPA has published a **Federal Register** notice that explains in detail the HSWA and its effect on authorized states. That notice was published at 50 FR 28702-28755, July 15, 1985.

Compliance With Executive Order 12291

The Office of Management and Budget had exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this

authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Alabama's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 271**

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record-keeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 22, 1987.

**Jack E. Ravan,**

*Regional Administrator.*

[FR Doc. 87-11736 Filed 5-20-87; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 42 CFR Part 57

## Nursing Student Loan Program; Definition of Exceptional Financial Need

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final regulations.

**SUMMARY:** This rule amends existing regulations governing the Nursing Student Loan (NSL) program to include a definition of exceptional financial need. As required by Pub. L. 99-92, the Nurse Education Amendments of 1985, this definition is to be used to limit eligibility for NSL funds, for students who first enroll in the school of nursing after June 30, 1986, to those who exhibit exceptional financial need. A separate calculation, not affected by this regulation, is used to determine the amount, if any, of an NSL that an eligible student may receive.

**EFFECTIVE DATE:** These regulations are effective May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Room 8-48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443-4540.

**SUPPLEMENTARY INFORMATION:** Pub. L. 99-92, the Nurse Education Amendments of 1985, amended section 836(b) of the Public Health Service Act to require that students who enroll in a school of nursing after June 30, 1986, must be of exceptional financial need, as defined by regulations of the Secretary, to be eligible to receive NSL funds. Prior to this legislative amendment, NSL funds could be awarded to any eligible nursing student who demonstrated financial need. In accordance with this statutory requirement, the Department published a Notice of Proposed Rulemaking (NPRM) on September 12, 1986 (51 FR 32616), to establish a definition of exceptional financial need for the NSL program. The Department received 20 comments on this NPRM from schools and professional associations. These comments and the Department's responses follow.

Five respondents objected to the exceptional financial need requirement as a whole. Of these, several believed that implementing an exceptional financial need requirement for the NSL program was too restrictive and would create an additional barrier in the recruitment and enrollment of nursing students, thus compounding the existing problems of declining nursing enrollments and continued nursing shortages. There was also concern that the proposed definition would force the neediest students to receive NSL funds even if less expensive funds were available. Two respondents believed this requirement would create excessive burdens for institutions since it requires a deviation from the standard need analysis procedure. One respondent explained that financial aid offices currently must perform several different need analysis calculations to determine student eligibility for various financial aid programs, and that these regulations would add yet another calculation. One respondent indicated that at low-cost schools, most nursing students would no longer be eligible for NSL funds under this requirement. Finally, one respondent believed that since the NSL program does not receive new Federal capital contributions, there is no logical reason to preclude access by nursing students who have need but are not exceptionally needy. For these reasons, it was recommended that this proposed requirement not be implemented.

In response to these comments, the Department notes that the exceptional financial need requirement is mandated by Pub. L. 99-92 and therefore must be retained in these final regulations. The Department also clarifies that under this definition, a school is not required to give NSL funds to the neediest borrower if less expensive funds are available, but can instead use NSL funds for eligible borrowers who do not have access to less expensive aid. Finally, the Department notes that, to help keep the burden associated with this requirement to a minimum, the procedure for determining whether a borrower has exceptional financial need under these regulations is designed to use information already available to the school on the need analysis form.

Twelve respondents objected to making this requirement applicable to students who enroll after June 30, 1986. Most respondents noted that schools have already made awards to students for the 1986-87 academic year and that it would be burdensome, inappropriate, unfair, and unreasonable to require schools to recover awards already disbursed to students who are not eligible under the new regulations. Several alternatives to the June 30, 1986 effective date were recommended, including January 1, June 30, or July 1, 1987, or on or after the date the regulations are published. One respondent indicated that these regulations would burden financial aid offices by requiring them to monitor students' dates of entrance into the nursing school, and noted that the date of declaration of majors is not known to financial aid offices at 4-year liberal arts schools. It was therefore recommended that, if this requirement must be implemented, it should apply to all NSL recipients regardless of their date of entry into the school of nursing.

In response to these comments, the Department clarifies that the requirement that the exceptional financial need provision apply to students who enroll after June 30, 1986, is mandated by Pub. L. 99-92. The Department also notes that Policy Memorandum Number Nine, issued May 16, 1986, provided guidance for implementing this requirement until final regulations could be published. Since the June 30, 1986 date is required by statute, no change has been made in the final regulations. However, the Department further clarifies that the final regulations are not being implemented retroactively. Rather, schools must have complied with the "exceptional financial need" definition provided in Policy Memorandum Number Nine from June 30, 1986, until the effective date of these regulations,

and must comply with the requirements of these regulations thereafter.

Eleven respondents objected to the Department's proposed definition of "exceptional financial need." Four respondents preferred that the method for determining exceptional financial need be left to the professional judgment of the financial aid administrator. In response to these comments, the Department clarifies that Pub. L. 99-92 requires that a definition of exceptional financial need be established by the Secretary in regulations, and thus precludes the Department from leaving this definition entirely at the discretion of the financial aid administrator.

One respondent believed the neediest students should be those with the highest amounts of need once their resources are subtracted from the cost of attendance, and felt that whether resources are higher or lower than one-half the costs of attendance was irrelevant. This respondent proposed an exceptional financial need definition that gives highest NSL priority to students with the highest need, and indicated that such a definition would automatically exclude students with large resources and would be easy for schools to implement.

In response to this comment, the Department believes that this suggested definition of exceptional financial need is less desirable than the proposed definition, since a student who has a sizable amount of resources coupled with a high budget could be considered more needy than a student with no resources whose budget is lower. The Department continues to believe that determining exceptional financial need based on the amount of the student's resources generally is the best method of identifying the neediest students, and is therefore retaining this approach as proposed.

Four respondents believed that various exclusions—summer earnings, earnings during the school year, and veterans benefits—should be considered when determining the resources of a student, especially a graduate student, because they constitute a significant resource for students who receive them. One respondent believed that by excluding these earnings almost every student would be eligible. It was recommended that the Department include in the determination of resources all income and resources reported on the need analysis form, and use the need analysis calculation to determine the student/family contribution and the resulting financial need.

In response to the comment that summer and school year earnings should be considered in determining whether a student has exceptional need, the Department has excluded these earnings to assure that students who are able to work while pursuing their education are not denied eligibility for nursing student loans solely because they are working to contribute to their educational expenses. The Department has also retained the exclusion of veterans benefits since this exclusion assures that an educational benefit earned by serving in the United States Armed Forces would not deprive the student of eligibility for NSL funds. However, the Department reminds schools that in determining which eligible students will receive NSL funds, and the amount of NSL funds an eligible student will receive, the school must consider all resources of each student, including summer earnings, earnings during the school year, and veterans benefits.

Two other respondents suggested that the Department exclude resources available from Aid to Families with Dependent Children (AFDC) in determining whether a student has exceptional financial need. The Department agrees that exceptionally needy students should not be denied eligibility for NSL funds simply because they are receiving AFDC. Therefore, for purposes of determining eligibility, AFDC has been added as an exclusion in the final regulations.

One respondent supported the Department's intent to direct limited NSL funds to the highest need student, but noted that there may be occasions where a student who has resources that exceed one-half the cost of attendance does not have sufficient alternative sources of aid to fund his or her unmet need. This respondent suggested that if NSL funds are available after funding exceptionally needy students, financial aid administrators should have flexibility and discretion to use these funds to help a student who does not meet the exceptional need definition but whose circumstances may warrant special consideration. It was recommended that the regulations be modified to allow financial aid administrators discretion, provided that appropriate documentation is maintained.

The Department is sympathetic with this concern, but believes that Pub. L. 99-92, which requires exceptional financial need for students who enroll after June 30, 1986, and mandates that a definition of "exceptional financial need" be established in regulations, precludes an allowance in the regulations for exceptions to this requirement. Further, the Department expects that the exclusions that are to be made in determining exceptional financial need will help assure that this definition does not arbitrarily deny NSL funds to students who should be receiving them.

### Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in this regulation are minimal in comparison to the overall resources of nursing schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that this regulation will not have a significant impact on a substantial number of nursing schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

### Paperwork Reduction Act

This rule does not affect the recordkeeping, reporting, or disclosure/notification requirements for the NSL program.

### List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart D of 42 CFR Part 57 is amended as follows.

(*Catalog of Federal Domestic Assistance*, No. 13.364, Nursing Student Loan Program)

Dated: February 6, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

Approved: May 1, 1987.

**Otis R. Bowen,**

*Secretary.*

## PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

### Subpart D—Nursing Student Loans

1. The authority for Subpart D is revised to read as follows:

**Authority:** Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 67 Stat. 631, (42 U.S.C. 216); secs. 835-842, Public Health

Service Act, 78 Stat. 913–916, 99 Stat. 397–400 (42 U.S.C. 297a–l).

2. Section 57.306 is amended by revising paragraphs (a)(1) (iii) and (iv) and adding a new paragraph (a)(1)(v) as follows:

**§ 57.306 Eligibility and selection of nursing student loan applicants.**

(a) * * *

(1) * * *

(iii) In need of the amount of the loan to pursue the course of study at the school;

(iv) Capable, in the opinion of the school, of maintaining good standing in the course of study; and

(v) In the case of students who enroll in the school after June 30, 1986, of exceptional financial need. A student will be considered to demonstrate exceptional financial need if the school determines that the student's resources, as described in paragraph (b)(2)(i) of this section, do not exceed one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits, earnings during the school year, and Aid to Families with Dependent Children (AFDC) will not be considered as resources in determining whether an applicant meets the eligibility criteria for exceptional financial need, but will be considered in determining the amount of funds a student may receive.

* * * * *

[FR Doc. 87-11389 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-15-M

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**42 CFR Part 57**

## Grants for Residency Training in the General Practice of Dentistry

**AGENCY:** Public Health Service, HHS.

**ACTION:** Final regulations.

**SUMMARY:** These final regulations amend the regulations governing the program of "Grants for Residency Training in the General Practice of Dentistry" to include a definition of an "approved advanced educational program in the general practice of dentistry." They also conform the current regulations to amendments made by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, enacted on October 22, 1985, and by Pub. L. 99–239, the Compact of Free Association Act of 1985, enacted on January 14, 1986.

**EFFECTIVE DATE:** These regulations are effective on May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard G. Weaver, D.D.S., Chief, Dental Health Branch, Division of Associated and Dental Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–15, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: 301–443–6837.

**SUPPLEMENTARY INFORMATION:** On October 7, 1986, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (51 FR 35668), a Notice of Proposed Rulemaking (NPRM) to amend Subpart L of 42 CFR Part 57 to implement amendments to section 786(b) of the Public Health Service Act (the Act). Pub. L. 99–129, amended section 786(b) by including as an additional program an "approved advanced educational program in the general practice of dentistry." In accordance with the new provision, the Department proposed for inclusion in the regulations the following definition for an "approved advanced educational program in the general practice of dentistry:" an "approved advanced educational program in the general practice of dentistry" means an advanced educational program in general dentistry which has received an accreditation by the Commission on Dental Accreditation. This definition assures that programs of advanced education in general dentistry receiving grant support under section 786(b) of the Act will meet guidelines recognized and established by dental educators for content, structure, operation, staff and resources that are essential to program quality and achievement of objectives.

In the NPRM, the Department also proposed the following clarifying and ministerial revisions to the existing regulations:

1. Revise the title of 42 CFR Part 57, Subpart L, from "Grants for Residency Training in the General Practice of Dentistry" to "Grants for Residency Training and Advanced Education in the General Practice of Dentistry," and delete the word "resident(s)" and insert in lieu thereof the word "participant(s)" wherever it appears in the text.

2. Revise § 57.1102, *"Definitions."*, to reference the accrediting body by its new name and accreditation classifications, listed in two definitions within this section of the regulation, and add "Commonwealth of the" to the "Northern Mariana Islands" to the definition of "State."

3. Revise § 57.1104, *"How must an entity apply for a grant?"*, to substitute the word "stipend" for "salaries" in order to have consistency of terms in referencing the type of support of participants in the two types of programs which can now receive grant support.

4. Revise § 57.1107, *"How will grant awards be made?"*, to clarify that stipends for participants in an advanced educational program in general dentistry will be paid in accordance with Public Health Service postdoctoral stipend rates.

5. Revise the authority citation to correct a misprint in the *Code of Federal Regulations* and add the statutory citation from Pub. L. 99–129.

The public comment period on the proposed regulations closed on December 8, 1986. The Department received no comments. Accordingly, the amendments set out in the October 7, 1986 NPRM are adopted as proposed.

The final regulation also includes a number of additional technical and ministerial amendments to the existing regulations. These revisions are necessary in order to conform the regulations to amendments made by Pub. L. 99–129 and Pub. L. 99–239, and to incorporate current departmental boilerplate language. Since the amendments are of a ministerial and technical nature, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures. The revisions are summarized below according to the section numbers and titles of the regulations:

1. Revise § 57.1102, *"Definitions."*, to amend the following terms:

(a) the definition of "School of dentistry" by striking out the reference to section "772(b)" which was amended by Pub. L. 99–129, and insert in lieu thereof section "701(5);" and

(b) the definition of "State" by inserting after the "Trust Territory of the Pacific Islands" those entities which, for purposes of this grant program, are viewed as a State, "(the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.", in accordance with Pub. L. 99–239.

2. Revise paragraphs (a) and (b) in § 57.1109, *"Purposes for which grant funds may be spent."*, to reflect current departmental boilerplate language.

3. Delete § 57.1110, *"What nondiscrimination requirements apply to grantees?"*, in its entirety and substitute a new § 57.1110 specifying additional Department regulations that apply to grantees.

4. Delete § 57.1111, *"How must grantees account for grant funds received?"* and § 57.1112, *"Applicability of 45 CFR Part 74."* in their entirety.

5. Redesignate § 57.1113, *What recordkeeping, audit, and inspection requirements apply to grantees?*" as § 57.1111; and § 57.1114, *"What additional conditions apply to grantees?"* as § 57.1112.

6. Cite the Office of Management and Budget (OMB) approval numbers in those sections which contain recordkeeping and reporting requirements.

**Regulatory Flexibility Act and Executive Order 12291**

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

**Paperwork Reduction Act of 1980**

The recordkeeping and reporting requirements in § 57.1104 and § 57.1111 (formerly § 57.1113) and the application forms and instructions for this grant program have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (OMB approval numbers are 0915–0060 for the competing application form and 0915–0061 for the continuation application form).

**List of Subjects in 42 CFR Part 57**

Dental health, Education of the disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Student aid.

Accordingly, Subpart L of 42 CFR Part 57 is amended as set forth below:

(*Catalog of Federal Domestic Assistance*, No. 13.897, Grants for Residency Training in the General Practice of Dentistry)

Dated: April 8, 1987.

Robert E. Windom,

*Assistant Secretary for Health.*

Approved: May 5, 1987.

Otis R. Bowen,

*Secretary.*

## PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. The authority citation for Subpart L is revised to read as follows:

**Authority:** Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 788(b) of the Public Health Service Act, 58 Stat. 2317, as amended by 89 Stat. 340–341 (42 U.S.C. 295g–6(b)).

2. The title of 42 CFR Part 57, Subpart L, is revised to read as follows:

### Subpart L—Grants for Training and Advanced Education in the General Practice of Dentistry

3. Section 57.1101 is revised to read as follows:

**§ 57.1101 To what projects do these regulations apply?**

These regulations apply to the award of grants under section 788(b) of the Public Health Service Act to schools of dentistry and to accredited postgraduate dental training institutions to meet the cost of projects to:

(a) Plan, develop and operate an approved residency training program in the general practice of dentistry or an approved advanced educational program in the general practice of dentistry; and

(b) Provide financial assistance (in the form of traineeships and fellowships) to participants in such a program who are in need of financial assistance and who plan to practice general dentistry.

4. Section 57.1102 is amended by revising the following definitions as listed alphabetically and by adding the word "and" after the semicolon in paragraph (3) in the term "Practice of general dentistry."

**§ 57.1102 Definitions.**

* * * * *

"Accredited postgraduate dental training institution" means a public or private nonprofit institution which operates a postgraduate dental training program that has received an accreditation classification of "accreditation eligible," "preliminary provisional approval," "provisional approval," "conditional approval," or "approval" by the Commission on Dental Accreditation.

* * * * *

"Approved residency training program," "approved advanced educational program," or "program" means a general practice residency program or an advanced educational program in general dentistry which has received an accreditation classification of "accreditation eligible," "preliminary provisional approval," "provisional approval," "conditional approval," or "approval" by the Commission on Dental Accreditation.

* * * * *

"School of dentistry" means a public or private nonprofit school which provides training leading to a degree of doctor of dentistry or an equivalent degree and which is accredited as provided in section 701(5) of the Act.

* * * * *

"State" means, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

5. Section 57.1104 is amended by revising paragraph (c) and by adding the OMB approval number at the end of the section to read as follows:

**§ 57.1104 How must an entity apply for a grant?**

* * * * *

(c) In addition to other pertinent information that the Secretary may require, an application for a grant under this subpart must contain: (1) A full and adequate description of the proposed project and of the manner in which the applicant intends to conduct the project and carry out the requirements of this subpart, in particular the requirements of § 57.1105; and (2) A budget justification for the funds requested. If the applicant requests funds for stipend support of participants, the applicant must provide evidence showing that income available from other sources, including income derived from services of the participants in the program, will be insufficient to pay their stipends and that grant funds will not be used to supplant other available funds.

(Approved by the Office of Management and Budget under control number 0915–0060)

6. Section 57.1105 is amended by removing the periods at the end of each paragraph except paragraph (f) and

inserting semicolons, and by revising paragraphs (a), (b), (e), and (f) to read as follows:

**§ 57.1105 What requirements must a project meet?**

* * * * *

(a) The project staff must plan, develop, and/or operate an approved residency or advanced educational program in the general practice of dentistry;

(b) Each project must have at least two participants enrolled in the training program;

* * * * *

(e) Each participant who receives stipend support must sign a statement of intent to work in the practice of general dentistry; and

(f) The training program, the performance of each participant, and the quality of patient care must be evaluated.

7. Section 57.1106 is amended by removing "and" after the semicolon in paragraph (d); by adding "; and" at the end of paragraph (e); and by adding a new paragraph (f) to read as follows:

**§ 57.1106 What are the criteria for deciding which applications are to be funded?**

* * * * *

(f) The degree to which the proposed project proposes to attract, maintain and graduate minority and disadvantaged students.

8. Section 57.1107 is amended by revising paragraph (b) to read as follows:

**§ 57.1107 How will grant awards be made?**

* * * * *

(b) *Determination of grant amount.* The Secretary will determine the amount of any award under this subpart on the basis of his or her estimate of the sum necessary for the direct costs of the project plus an additional amount for indirect costs, if any, which the Secretary will calculate either: (1) On the basis of his or her estimate of the actual indirect costs of the project, or (2) on the basis of a percentage of all, or a portion of the estimated direct costs of the project when there are reasonable assurances that the use of the percentage will not exceed the approximate actual indirect costs. This award may include an estimated provisional amount for indirect costs or for designated direct costs (such as fringe benefit rates) subject to upward (within the limits of available funds) as well as downward adjustments to actual costs when the Secretary has determined the amount properly expended by the grantee for provisional items. In addition, in determining the amount of stipend support to be made available for the general practice residency program, the amount of any stipend must be limited to that portion of the annual amount normally paid to other residents by the applicant which the Secretary determines, on the basis of the documentation required in the application, cannot reasonably be paid from other available funds, including the incomes derived from the residents' services. For the advanced educational program in general dentistry, stipends for participants (who are postdoctoral students) must be paid in accordance with established Public Health Service postdoctoral stipend rates.

9. Section 57.1109 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 57.1109 Purposes for which grant funds may be spent.**

(a) A grantee shall only spend funds it receives under this subpart according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, applicable cost principles specified in Subpart Q of 45 CFR Part 74, and these regulations.

(b) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

* * * * *

10. Section 57.1110 is revised to read as follows:

**§ 57.1110 What additional Department regulations apply to grantees?**

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 83—Regulation for the administration and enforcement of section 799A and 845 of the Public Health Service Act [1]

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

**§§ 57.1111 and 57.1112 [Removed]**

11. Section 57.1111 *How must grantees account for grant funds received?* and § 57.1112 *Applicability of 45 CFR Part 74.* are removed in their entirety.

12. Section 57.1113 is redesignated as § 57.1111 and the OMB approval number is added at the end of the section to read as follows:

**§ 57.1111 What recordkeeping, audit, and inspection requirements apply to grantees?**

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0060.)

13. Section 57.1114 is redesignated as § 57.1112.

[FR Doc. 87-11380 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-15-M

[1] Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 60585-7090]

## Shrimp Fishery of the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule amending the regulations for the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). NOAA is modifying for 1987 the area off Texas closed to trawling. This action will enable fishermen to harvest marketable-sized shrimp from an area that was open last year but was closed in previous years and allow NMFS to collect current data on fishing effort and patterns to evaluate the impact of the seasonal closure. The intended effect is efficient management of the shrimp fishery.

**EFFECTIVE DATES:** This rule is effective May 21, 1987; except that § 658.25(a) is suspended, and § 658.25(c) is effective from May 15, 1987, through August 14, 1987, and § 658.5(c) which is being issued prior to approval by the Office of Management and Budget (OMB) of the information collection requirements in § 658.5(c). When OMB approval is received, a notice will be published in the **Federal Register** making this section effective.

**ADDRESSES:** Copies of documents supporting this action may be obtained from William R. Turner, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the reporting requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

**FOR FURTHER INFORMATION CONTACT:** W. Perry Allen, 813–893–3722.

**SUPPLEMENTARY INFORMATION:**

### Background

The FMP is implemented by regulations appearing at 50 CFR Part 658 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Section 658.25 provides for a 45- to 60-day closure to shrimping in the exclusive economic zone (EEZ) off Texas in conjunction with that State's closure of its waters. This cooperative closure is designed to delay harvest of juvenile brown shrimp, migrating from coastal estuaries to the deeper waters of the Gulf, until they reach a larger size, thus producing more pounds of more valuable shrimp.

The FMP permits the Director, Southeast Region, NMFS, to modify the geographical scope of the seasonal closure off Texas after consultation with the Gulf of Mexico Fishery Management Council (Council), consideration of specified criteria, and determination that benefits may be increased or adverse impacts decreased by the action. For the 1986 closure, the Council requested and NOAA issued emergency regulations which reduced the closure to 15 nautical miles from shore.

The proposed rule to reduce the closure to 15 nautical miles again in 1987 (52 FR 7283, March 10, 1987) contained an analysis and justification which is not repeated here.

### Comments and Responses

Three comments were received addressing three basic issues. Sources of the comments included the U.S. Department of the Interior, the Texas Shrimp Association, and the U.S. Coast Guard.

### Impact on Endangered Species

The U.S. Department of the Interior, Fish and Wildlife Service, stated that, due to the endangered status of the Kemp's ridley turtle, "the take and mortality of any adult ridley turtle from all causes must be eliminated." They further recommended that if the closure is reduced to 15 nautical miles, turtle excluder devices should be required in the full EEZ during the Texas closure. NOAA does not have authority under this regulatory amendment procedure to impose measures other than those needed to modify the geographical scope of the closure. However, the incidental take of turtles in shrimp trawls is being addressed by NOAA under the Endangered Species Act. Regulations being developed will require most vessels operating in less than ten fathoms off Texas to use turtle excluder gear in the near future. Since most of the waters inside the 10-fathom contour are within the 15-mile closed area, adverse impacts on turtles will be minimized.

### Support for the 15-Nautical Mile Closure

The Texas Shrimp Association commented in favor of the 15-mile closure. They believe the reduced closure will contribute to achievement of the goals of the shrimp plan and provide comparative data essential for evaluating future closure options. NOAA agrees that the proposed 1987 closure will provide data critical to the proper long-term management of the resource and is, therefore, warranted.

### Enforceability and Economic Benefits

The U.S. Coast Guard commented on the difficulty and expense of enforcing a 15-mile closure compared to closure of the entire EEZ off Texas. NOAA agrees that the partial closure is significantly more difficult to enforce and, thus, more expensive. The U.S. Coast Guard questioned whether the economic analysis of the 1986 closure considered the entire biological year for shrimp rather than just the May through August period. The economic analysis considered by the Council in the decisionmaking process included data showing a net economic benefit during the May through August 1986 period and a projection of net economic loss for the September through April period. That projection, however, was based, in part, on effort patterns in the fishery which may no longer be prevalent. Correction of this base-line data is one of the reasons for continuing the reduced closure in 1987. Concerns for enforceability and long-term net economic benefits notwithstanding, the Council concluded, and NOAA supports, that the overall benefits of a 15-mile closure for a second year in 1987 outweigh the costs. An analysis and justification for that conclusion was contained in the proposed rule.

### Changes from the Proposed Rule

The effective dates for the suspension of § 658.25(a) and the new § 658.25(c) are changed to May 15 through August 14, 1987. In the proposed rule, the effective dates ran through July 31, 1987. Extension of the effective dates was necessary to cover the unlikely possibility of a closure which commences on June 15 and lasts 60 days.

In § 658.5, a new paragraph (c) is added to specify reporting requirements for shrimp fishermen whenever an endangered or threatened sea turtle is incidentally taken while trawling off Texas outside the closed area. Reports are to be submitted upon return to port following each fishing trip. NMFS will supply shrimp vessel operators with reporting forms and provide sea turtle identification guides and resuscitation techniques upon request. Reporting forms must be returned to the Director, NMFS Laboratory, 4700 Avenue U, Galveston, TX 77550.

### Classification

The Assistant Administrator for Fisheries, NOAA, determined that this rule is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law.

The final environmental impact statement (EIS) for the FMP was filed with the Environmental Protection Agency; its notice of availability was published March 13, 1981 (46 FR 16720). The Assistant Administrator prepared an environmental assessment for this rule and concluded that there will be no significant impact on the human environment.

A draft supplemental regulatory impact review was prepared for this rule and the Assistant Administrator determined that it is not major under Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to OMB for review under section 3504(h) of the PRA.

The Assistant Administrator determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program. Texas, the only State involved, does not have an approved coastal zone management program.

The Administrative Procedure Act does not require that the effective date of this rule be delayed for 30 days. The only substantive change made by this rule relieves a restriction by reducing the geographical area subject to closure (5 U.S.C. 553(d)(1)).

**List of Subjects in 50 CFR Part 658**

Fisheries, Fishing.

Dated: May 18, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.*

## PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

For reasons set forth in the preamble, 50 CFR Part 658 is amended as follows:

1. The authority citation for Part 658 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. Section 658.1 is amended by removing the second sentence of paragraph (c) and adding a new paragraph (d) to read as follows:

**§ 658.1 Purpose and scope.**

* * * * *

(d) Regulations governing the taking of endangered and threatened marine mammals and sea turtles appear in 50 CFR Parts 222 and 227.

3. Section 658.2 is amended by revising the introductory text, removing the definitions for *Act* and *Fishery Conservation Zone (FCZ)*, and adding the definitions of *Endangered and threatened marine mammals and sea turtles* and *Exclusive economic zone (EEZ)* in alphabetical order, to read as follows:

**§ 658.2 Definitions.**

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings:

* * * * *

*Endangered and threatened marine mammals and sea turtles* means five whale species (sperm, fin, sei, humpback, and right) and five sea turtle species (Kemp's ridley, loggerhead, green, hawksbill, and leatherback).

*Exclusive economic zone (EEZ)* means the zone established by Presidential Proclamation 5030, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

* * * * *

4. In § 658.5, a new paragraph (c) is added, to be effective upon OMB approval until August 14, 1987, to read as follows:

**§ 658.5 Reporting requirements.**

* * * * *

(c) *Texas closure.* The owner or operator of any fishing vessel that fishes for, or lands, shrimp or any part thereof during the time of the Texas closure described at § 658.25(c), and who incidentally takes any endangered or threatened sea turtle, must provide the following information regarding any fishing trip to the Center Director or his designee within 24 hours after landing:

(1) Date;
(2) Shrimp vessel name;
(3) Species of turtle caught:
(i) Loggerhead;
(ii) Kemp's ridley; or
(iii) Other (specify, see turtle identification guide).
(4) Status of turtle when released:
(i) Alive; or
(ii) Dead.
(5) Did the turtle have a tag?
(6) If so, what was the tag number?
(7) Coordinates of capture (loran readings or latitude and longitude).
(8) Approximate tow time; and
(9) Additional comments.

5. Section § 658.7 is amended by revising the introductory text and designating it as paragraph (a), redesignating existing paragraphs (a) through (l) as (a)(1) through (a)(12), removing existing paragraph (m), and adding a new paragraph (b) to read as follows:

**§ 658.7 Prohibitions.**

(a) It is unlawful for any person to do any of the following:

* * * * *

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

6. Section 658.25 is amended by suspending paragraph (a) from May 15 through August 14, 1987, and adding a new paragraph (c), to be effective from May 15 through August 14, 1987, to read as follows:

**§ 658.25 Texas closure.**

* * * * *

(c) *Area and season restrictions.* Between June 1 and July 15, 1987, the area described in this paragraph is closed to all trawl fishing. The area is that part of the EEZ within 15 nautical miles of the baseline for the territorial sea (shore) off Texas west of a line connecting point A (29°32.1' N. latitude, 93°47.7' W. longitude) to point B (26°11.4' N. latitude, 92°52.0' W. longitude) as shown in Figure 3.

**§§ 658.6, 658.7, 658.21 through 658.26 [Amended]**

7. In addition to the amendments set forth above—

A. The words "fishery conservation zone" and the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places:

§ 658.6(a);
redesignated § 658.7(a) (3) and (4);
§ 658.21(b);
§ 658.22;
§ 658.23(a) and (b)(1)(i) introductory text and (i) (A) and (B), (b)(1)(ii), and (b)(1)(iii);
§ 658.24 (a) and (b);
§ 658.25(a) and
§ 658.26.

**§ 658.6 [Amended]**

B. The word "shall" is removed and the word "must" is added in its place in § 658.6 (a) and (b).

**§§ 658.2, 658.7, and 658.9 [Amended]**

C. The word "Magnuson" is added before the word "Act" in § 658.2 in paragraph (c) of the definition for *Authorized Officer;* in § 658.7 in the redesignated paragraphs (a)(1), (4), (6), and (8); and in § 658.9.

**§ 658.23 [Amended]**

D. In § 658.23, the introductory text is designated as paragraph (a).

[FR Doc. 87-11615 Filed 5-20-87; 8:45 am]
BILLING CODE 3510-22-M

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**50 CFR Part 661**

**[Docket No. 70845-7085]**

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Request for Comments on Closure

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure and request for comments.

**SUMMARY:** NOAA announces the closure of the commercial all-except-coho salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, at midnight, May 18, 1987, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife (ODFW), and the Washington Department of Fisheries (WDF), that the commerical quota of 42,400 chinook salmon will be reached by that time. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

**DATES:** Closure of the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, to commercial all-except-coho salmon fishing is effective at 2400 hours local time, May 18, 1987. Comments on this closure will be received until June 4, 1987.

**ADDRESS:** Comments may be submitted to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

**FOR FURTHER INFORMATION CONTACT:** Rolland A. Schmitten at 206-526-6150.

**SUPPLEMENTARY INFORMATION:** Regulations governing the ocean salmon fisheries specify at 50 CFR 661.21(a)(1) that "When a quota for the commerical or the recreational fishery, or both, for any salmon species in any portion of the fishery managment area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 8, 1987). The 1987 commercial season for all salmon except coho from the U.S.-Canada border to Cape Falcon, Oregon, began on May 1, 1987 in two separate subareas. North of the Queets River, the season extends through the earlier of June 15 or the attainment of a quota of 42,400 chinook salmon north of Cape Falcon. South of the Queets River, the season extends through the earlier of May 31 or the attainment of a quota of 42,400 chinook north of Cape Falcon.

Based on the best available information, the commercial fishery catch from the U.S.-Canada border to Cape Falcon is projected to reach the 42,400 chinook quota by midnight, May 18, 1987.

Therefore, NOAA issues this notice to close the commercial all-except-coho fishery in the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, effective midnight, May 18, 1987. This notice does not apply to treaty Indian fisheries nor to other fisheries which may be operating in other areas.

The Regional Director consulted with the Chairman of the Pacific Fishery Management Council and representatives of ODFW and WDF regarding a closure of the commercial all-except-coho fishery north of Cape Falcon. The representatives of ODFW and WDF confirmed that Oregon and Washington will close the commercial fishery in state waters adjacent to this area of the EEZ effective midnight, May 18, 1987.

### Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

### List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: May 18, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 87-11663 Filed 5-18-87; 4:46 pm]
BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 98
Thursday, May 21, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 831

### Retirement

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulations.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to revise its regulations concerning employee and annuitant deductions and agency contributions to the Civil Service Retirement and Disability Fund (Fund). The revisions are necessary to eliminate those instances when OPM does not receive the prescribed deduction or contribution because an agency has inadvertently failed to withhold some or all of the employee's retirement deductions or failed to reduce the salary of a reemployed annuitant.

**DATE:** Comments must be received on or before July 20, 1987.

**ADDRESS:** Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044, or delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rochester, (202) 632–4682.

**SUPPLEMENTARY INFORMATION:**

### Agency Contributions

In some circumstances, agencies inadvertently fail to withhold, from an individual's pay, some or all of the appropriate percentage of employee retirement deductions specified by 5 U.S.C. 8334(a)(1). These proposed regulations would require an agency that made such an error to compute and submit to OPM the correct agency contribution. More specifically, if the agency erred by taking only a partial employee deduction, and therefore submitted only a partial matching agency contribution, it must submit the unpaid portion of the required agency contribution (i.e., an amount equal to the difference between the partial agency contribution and the agency contribution that would have been submitted if the error had not made.)

If the agency neither withheld any employee deductions, nor made any agency contribution, it must submit the entire agency contribution (i.e., an amount equal to the full amount of the agency contribution that would have been submitted if the error had not been made). The agency must submit its contribution as soon as possible, but no later than 60 calendar days after determining the amount of the contribution due without regard to the employee's decision about the employee deductions.

In the past, we treated service for which employee retirement deductions were not taken through administrative error the same as we treated service for which the failure to take employee deductions was correct. However, we have reconsidered our past policy in light of recent changes in the law (e.g., deposits are now required before an individual can receive credit for nondeduction service) and several decisions by the General Accounting Office (see B–20220, dated December 23, 1981) holding that the employee's records should be corrected and the required deductions and contributions made to the Fund.

Based upon our reconsideration of this area, we concluded that an agency should not be excused from paying the agency contribution because of an administrative error. Accordingly, these regulations propose that the agency's submission of its contribution be independent of any election the employee makes about payment of the employee deduction.

### Employee Deductions—Some Deductions Versus No Deductions

Under these proposed regulations, agency action to collect the employee's retirement deductions would depend on whether the agency withheld some or none of the required employee deductions. When no employee deductions were withheld from an individual's basic pay, payment of the employee share is optional under 5 U.S.C. 8334(c0. These regulations propose a change in the method of getting the employee's deduction into the Fund. They would eliminate our past policy—requiring the employee to pay the deposit plus any interest directly to OPM by submitting the appropriate application, Standard Form 2803 (Application to Make Deposit or Redeposit). Instead, the employee could have the agency that employed him or her during the period when deductions were not withheld collect the overpayment of pay (if necessary), submit the deductions to OPM as paid, and correct his or her records in accordance with OPM procedures for adjusting errors in retirement deductions. (Note: Making a deposit directly to OPM remains an option, if the employee does not choose to have the agency correct his or her records.)

In those cases where repayment of a salary overpayment is necessary, if the employee has not completed the repayment to the agency so that his or her records can be corrected prior to the final adjudication of his or her application for annuity, the period of service will be treated like the nondeduction service described in § 831.303.

If the agency withheld some of the required deductions, if must submit the balance of the employee's deductions to OPM. Because the elective deposit provision in 5 U.S.C. 8334(c) has consistently been interpreted to apply only in situations where *none* of the employee's retirement deductions were withheld, the employee does not have any options regarding the payment of the employee deduction when the agency has made a partial withholding.

### Overpayments of Pay and Waivers Under 5 U.S.C. 5584

Ordinarily, when an agency fails to withhold the appropriate amount of deductions from basic pay, the employee receives an overpayment of pay. This is always the case when an agency errs by taking partial retirement deductions from an employee's basic pay. When an agency fails to take *any* deductions, however, there may or may not be an overpayment of pay. If the employee decides to have the period of service treated like nondeduction service described in § 831.303 rather than having the agency correct its administrative error, there will *not* be an overpayment of pay. Conversely, there will be an overpayment of pay if the employee wishes the agency to correct the error.

Overpayments are subject to collection under the procedures in 5 U.S.C. 55124, 5 CFR 550.1101 *et seq.*, and the Federal Claims Collection Standards (4 CFR 101.1 *et seq.*, or they may be considered for waiver under 5 U.S.C 5584 or any other applicable waiver statute. Whenever the resulting overpayment of pay it waived, however, these regulations would require the agency to submit the employee's share of the retirement contributions as well as the matching agency contribution.

This agency should correct the employee's records and post the total amount of the employee deductions paid on the SF 2806 (1) when the employee completes the repayment of any overpayment of pay that has occurred (when a waiver in not granted), or (2) when the employing agency waives the salary overpayment. Instructions for correcting the employee's records and submitting the deductions to OPM will be issued in a future FPM letter.

**Reemployed Annuitants**

Section 8344(a) of title 5, United States Code, requires that the salary of a reemployed annuitant be reduced by "an amount equal to the annuity allocable to the period of actual employment." The amount deducted must be remitted to OPM for deposit to the Fund.

When the employing agency fails to reduce the annuitant's pay as required, an overpayment of salary accrues. These proposed regulations would make it clear that the employing agency has the responsibility for collecting (or waiving) the salary overpayment. The agency is also responsible for submitting the proper deduction to OPM even when the overpayment is waived.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that, within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they would affect only Federal employees.

**List of Subjects in 5 CFR Part 831**

Administrative practice and procedures, Claims, Disability benefits, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.
**James E. Colvard,**
*Deputy Director.*

Accordingly, OPM proposes to amend 5 CFR Part 831 as follows:

## PART 831—RETIREMENT

1. The authority citation for Subpart A of Part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2).

### Subpart A—Administration and General Provisions

2. Subpart A of Part 831 is amended by adding a new § 831.111 to read as follows:

**§ 831.111 Employee deductions and agency contributions.**

(a) *Agency share.* When an agency fails to withhold some or all of an employee deduction under 5 U.S.C. 8334(a) for any pay period, the agency is still responsible for submitting the correct agency contribution to OPM. The agency must submit as the agency share, a payment equal to the amount that would have been submitted if the error had not been made (or a payment equal to the difference between the amount already submitted as the agency share and the amount that should have been submitted). The payment should be submitted to OPM via the SF 2812 as soon as possible, but no more than 60 days after determining the amount of the agency contribution due.

(b) *Employee share.* (1) If, through administrative error, an agency did not withhold any of the employee deductions required by 5 U.S.C. 8334(a) for any pay period, the employee may, at his or her option—

(i) Request the agency that employed him or her when the error was made to correct his or her records and arrange to pay any resulting overpayment of pay to the agency (unless it is waived);

(ii) Pay the deposit plus any applicable interest (under certain conditions, the deposit may be made at any time until the final adjudication of his or her application for retirement) directly to OPM by submitting SF 2803; or

(iii) Have the period of service treated like the nondeduction service described in § 831.303.

(2) when the agency withholds part of the required employee deductions, the balance must be submitted to OPM via SF 2812 as soon as possible, but no more than 60 days after determining the amount of contribution due. The agency must correct its error. The employee does not have the option to make a deposit to OPM when partial deductions have been withheld.

(3) If the agency waives the employee's repayment of the salary overpayment that resulted from the administrative error, the agency must also submit the employee's share of the unpaid contributions to OPM via SF 2812.

3. The authority citation for Subpart H of Part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347.

### Subpart H—Reemployment of Retired Employees

4. Subpart H of Part 831 is amended by redesignating §§ 831.802 and 831.803 as §§831.803 and 831.804 respectively and adding a new § 831.802, to read as follows:

**§ 831.802 Reduction in pay for reemployed annuitants.**

(a) Pursuant to § 8344(a) of title 5, United States Code, an employing agency must reduce the pay of a reemployed annuitant by the amount of annuity allocable to the period of actual employment and remit the dedected amounts to OPM via SF 2812.

(b) When the employing agency fails to withhold some or all of the deduction required by section 8344(a), the employee has received an overpayment of pay. The employing agency must collect the overpayment of pay (unless it is waived under 5 U.S.C. 5584 or some other applicable statute) and remit the proper funds to OPM via SF 2812 as soon as possible, but no more than 60 days after determining the amount of the deduction that should have been made.

(c) If the employing agency waives the annuitant's repayment of the salary overpayment, it must submit an amount equal to the correct deduction from pay (or the balance due in the case of a partial deduction) to OPM via SF 2812 as soon as possible, but no more than 60 days after determining the amount of the deduction that should have been made.

[FR Doc. 87-11089 Filed 5-20-87; 8:45 am]
BILLING CODE 6325-01-M

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**5 CFR Part 890**

**Credit for CHAMPUS Coverage for the Purpose of Continuing an FEHB Enrollment During Retirement**

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) is proposing to incorporate in the Federal Employees Health Benefits (FEHB) regulations a change in administrative practice concerning the crediting of coverage under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for the purpose of continuing an FEHB enrollment during retirement. For many years, OPM and its predecessor agency, the Civil Service Commission, counted CHAMPUS coverage toward the FEHB statutory participation requirements for continuing an FEHB enrollment during retirement. Since there appears to be no firm legal basis for ever having credited CHAMPUS time under the FEHB law for that purpose, OMP is proposing to discontinue that administrative practice after a lengthy phase-in period.

**DATE:** Comments must be received on or before July 20, 1987.

**ADDRESS:** Written comments may be sent to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington DC 20044, or delivered to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John Ray, (202) 632–4634.

**SUPPLEMENTARY INFORMATION:** OPM is proposing to incorporate in the FEHB regulations a change in administrative practice concerning the crediting of coverage under CHAMPUS for the purposes of section 8905(b) of Title 5, United States Code. Section 8905(b) of Title 5, United States Code, sets forth the enrollment or coverage requirements a retiring employee must meet in order to continue his or her FEHB coverage during retirement. Briefly, an employee, at the time of his or her retirement, must have been enrolled in an FEHB plan for at least 5 years immediately preceding retirement or for the full period(s) of time FEHB coverage was available, if enrolled for less than 5 years, including time covered by an FEHB enrollment as a family member.

The Civil Service Commission (the predecessor to OPM) broadly interpreted the enrollment or coverage requirements of section 8905(b) of Title 5 to include coverage under CHAMPUS as partially-qualifying time for the purpose of continuing FEHB enrollments during retirement. At the time the FEHB law was enacted in 1959, there were no Government-sponsored health programs other than the program of health benefits coverage for dependents of military personnel known subsequently as Military Medicare. The Civil Service Commission did not require an individual to have coverage under an FEHB plan for the 5 years or from the first opportunity specified in the FEHB law to continue coverage during retirement if that individual had been covered by Military Medicare (later referred to as CHAMPUS) for a portion of the time in question. Even though CHAMPUS time could be substituted for a portion of the 5 years required by the FEHB law, it could not replace FEHB participation entirely. At a minimum, the retiring employee had to be enrolled in an FEHB plan at the time of his or her retirement in order to "continue his enrollment" as specified in the law. The broad interpretation of permitting CHAMPUS coverage to be substituted, in part, for FEHB coverage, without any real legal basis, was continued by the Commission's successor agency, OPM until the present time.

OPM is proposing to discontinue the adminstrative practice of substituting CHAMPUS coverage for FEHB coverage, with respect to the requirements for continuation of FEHB coverage during retirement, after a considerable phase-in period. There is simply no legal basis for continuing this practice and no apparently overriding need to seek legislative authority to continue the practice.

OPM's proposal to eliminate CHAMPUS coverage from consideration of the requirements of section 8905(b) of Title 5 would not become effective until January 1, 1993. Therefore, individuals who are within 5 years of retirement and are relying in part on CHAMPUS coverage to retain their FEHB enrollments at the time of retirement will not be affected at all by this change. However, those individuals who retire on an immediate annuity which commences on or after January 1, 1993, more than 5 years from now, will have to take the necessary actions in the meantime to ensure they meet the specific participation requirements of section 8905(b) of Title 5 at the time of retirement.

*E.O. 12291, Federal Regulation*

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

*Regulatory Flexibility Act.*

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will affect only Federal employees seeking to continue their FEHB enrollments during retirement.

**List of Subjects in 5 CFR Part 890**

Administrative practice and procedure, Claims, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.
**James E. Colvard,**
*Deputy Director.*

Accordingly, OPM proposes to amend 5 CFR Part 890 as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; Sec. 890.102 also issued under 5 U.S.C. 1104 and sec. 3(5) of Pub. L. 95–454, 92 Stat. 1112; Sec. 890.301 also issued under 5 U.S.C 8905(b); Sec. 890.302 also issued under 5 U.S.C. 8901(5) and 5 U.S.C. 8901(9); Sec. 890.701 also issued under 5 U.S.C. 8902(n)(2); Subpart H also issued under Title I of Pub. L. 98–615, 98 Stat. 3195, and Title II of Pub. L. 99–251.

2. In § 890.303, a new paragraph (f) is added to read as follows:

**§ 890.303 Continuation of enrollment.**

* * * * *

(f) An employee who retires on an immediate annuity and meets the enrollment or coverage requirements of section 8905(b) of Title 5, United States Code, may continue his or her enrollment under this Part during retirement. However, individuals retiring on an immediate annuity which commences on or after January 1, 1993, will not be able count periods of coverage under CHAMPUS (the Civilian Health and Medical Program of the Uniformed Services) toward the enrollment or coverage requirements of section 8905(b) of Title 5, United States Code, for continuation purposes.

[FR Doc. 87–11690 Filed 5–20–87; 8:45 am]
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## NATIONAL CREDIT UNION ADMINISTRATION

**12 CFR Part 790**

**Freedom of Information Act; Description of Office, Disclosure of Official Records, Availability of Information, Promulgation of Regulations**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rules.

**SUMMARY:** This proposed regulation implements recent amendments to the Freedom of Information Act (FOIA). The

amendments concern exemption 7 of the FOIA (relating to law enforcement records) and the provisions of the FOIA concerning fees and fee waivers. The proposed regulation and NCUA's FOIA regulations in general, affect public disclosure of information by the NCUA, and have no effect on the daily operations of credit unions.

**DATE:** Comments must be received on or before June 23, 1987.

**ADDRESS:** Send comments to Becky Baker, Acting Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Hattie Ulan, Staff Attorney, NCUA, Office of General Counsel, at the above address, or telephone: (202) 357–1030.

**SUPPLEMENTARY INFORMATION:**

**Background and General Information**

The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) (FOIRA) amended the FOIA (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. FOIRA specifically required that Federal agencies issue regulations, pursuant to notice and public comment, specifying a schedule of fees and procedures for determining when fees should be waived or reduced. The fee schedule must conform to guidelines issued by the Office of Management and Budget (OMB).

FOIRA stated that agencies should promulgate regulations by April 25, 1987 (the 180th day after its enactment). Because of the date of publication of OMB guidelines (March 27, 1987), the NCUA Board's May 8 meeting was the earliest that a proposed regulation could be promulgated. A final rule will be issued expeditiously after the expiration of the 30-day comment period on the proposed regulation. Fees, fee waivers, and reductions of fees processed by NCUA on or after April 25, 1987, will be made pursuant to the current § 790.7 of NCUA's Rules and Regulations or this proposed regulation, whichever is more beneficial to the requester.

The change to exemption 7 of the Freedom of Information Act is incorporated verbatim into NCUA's Rules and Regulations (*see* proposed § 790.4(a)(7) of NCUA Regulations). Exemption 7 exempts from disclosure certain records or information compiled for law enforcement purposes under the FOIA. The amended version of exemption 7 adds language to allow for exemption based on a reasonable expectation of harm from disclosure. The amended exemption 7 also adds explanatory language describing a confidential source (amendment includes state, local, and foreign agencies and private institutions that have provided information on a confidential basis). Lastly, the proposed change provides for exemption from disclosure if it "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." Exemption 7 is rarely used by NCUA in processing FOIA requests.

The basic change made by the FOIRA to the fee provisions is the establishment of five classes of FOIA requesters: (1) Commercial; (2) educational institutions; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all others. Commercial requesters will be charged for the direct costs of review, search and duplication of records. Educational institutions, noncommercial scientific institutions and representatives of the news media will be charged fees for direct costs of duplication, with the first 100 pages provided free of charge. All other requesters will be charged fees for direct costs of search and duplication, with two hours of free search time and 100 pages of duplication provided free of charge. Prior to the FOIRA, requesters were not classified and charges were made in all cases for search and duplication.

Additionally, the FOIRA amended the FOIA with regard to waiver or reduction of fees. Under FOIRA, documents are to be furnished without a fee or with a reduced fee if "disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." Before the amendments, the waiver or reduction of fees occured when NCUA determined that such waiver or reduction was in the "public interest because furnishing the information can be considered as primarily benefitting the general public."

NCUA's proposed regulation is largely self-explanatory. The regulation contains the basic requirements of the FOIRA amendments and OMB's guidelines. Readers desiring further information are referred to the proposed and final guidelines issued by OMB (*see* 52 FR 10012, January 16, 1987 and March 27, 1987) for a full explanation of all sections except § 740.7(b)(7) (waiver and/or reduction of fees). While the numbering system and titles of some subsections in NCUA's proposed regulation differ from the OMB guidelines, the substance of the rule is generally the same. Proposed § 740.7(b)(7) is based upon guidelines issued by the Department of Justice. The Department of Justice guidelines were not published in the **Federal Register**, but are available upon request from NCUA at the address listed above.

**Regulatory Procedures**

*Regulatory Flexibility Act*

The NCUA Board has determined and certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). The proposed regulations do not place burdens on requesters of information under the FOIA. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

*Paperwork Reduction Act*

The proposed regulation does not contain any collection requirements. It does not impose burdens on requesters of information under the FOIA.

**List of Subjects in 12 CFR Part 790**

Credit unions, FOIA exemptions, Criminal investigations, Schedule of fees, Waiver or reductions of fees.

By the National Credit Union Administration on May 8, 1987.

**Becky Baker,**

*Acting Secretary, NCUA Board.*

Accordingly, NCUA proposes to amend its regulations as follows:

1. The authority citation for Part 790 continues to read as follows:

**Authority:** Sec. 120, 73 Stat. 635 (12 U.S.C. 1769), unless otherwise noted.

2. Section 790.4(a)(7) is revised to read:

**§ 790.4 Unpublished, confidential and privileged information.**

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information: (i) Could reasonably be expected to interfere with enforcement proceedings, (ii) would deprive a person of a right to a fair trial or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished

information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation on or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source, (v) would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual. This includes but is not limited to, information relating to enforcement proceedings upon which the Administration has acted or will act in the future.

3. Section 790.7 is revised to read:

**§ 790.7 Fees for Document Search, Review and Duplication; Waiver and Reduction of Fees.**

(a) *Definitions*—(1) *Direct costs* means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request.

(2) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) *Duplication* means the process of making a copy of a document necessary to respond to FOIA request.

(4) *Review* means the process of examining documents located in response to a request that is for a commercial use (*see* § 790.7(a)(5)) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(5) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in § 790.7(a)(5), and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public.

(b) *Fees to be charged.* NCUA will charge fees that recoup the full allowable direct costs it incurs. NCUA may contract with the private sector to locate, reproduce and/or disseminate records. Fees are subject to change as costs increase. In no case will NCUA contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(1) *Manual searches and review*—NCUA will charge fees at the following rates for manual searches for and review of records:

(i) If search/review is done by clerical staff the hourly rate for GS–5, step 1 plus 16 percent of the rate to cover benefits;

(ii) If search/review is done by professional staff the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits.

(2) *Computer searches*—NCUA will charge fees at the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits plus the hourly cost of operating the computer for computer searches for records.

(3) *Duplication of records*—

(i) The per-page fee for paper copy reproduction document is $.25;

(ii) The fee for documents generated by computer is the hourly fee for the computer operator plus the cost of materials (computer paper, tapes, labels, etc).

(iii) If any other method of duplication is used, NCUA will charge the actual direct cost of duplicating the documents.

(4) *Fees to exceed $25*—If NCUA estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. The requester will then have the opportunity to confer with NCUA personnel with the object of reformulating the request to meet his/her needs at a lower cost.

(5) *Other services*—Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

(6) *Restriction on assessing fees*—For all requesters except those seeking documents for a commercial use, NCUA will provide the first 100 pages of duplication and the first two hours of search time without charge. NCUA will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(7) *Waiving or reducing fees*—NCUA shall waive or reduce fees under this section whenever disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(i) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(D) The significance of the contribution to the public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(ii) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(iii) If the required public interest exists and the requester's commercial interest is not primary in comparison to it, NCUA will waive or reduce fees.

(c) *Categories of requesters*—(1) Commercial use requesters—NCUA will assess fees for commercial use requesters which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(2) Educational and non-commercial scientific institution requesters—NCUA shall provide documents to requesters in this category for the cost of reproduction alone, excluding fees for the first 100 pages.

(3) Requesters who are representative of the news media—NCUA shall provide documents to requesters in this category for the cost of reproduction alone, excluding fees for the first 100 pages.

(4) All other requesters—NCUA shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(5) All requesters must specifically describe records sought.

(d) *Interest on unpaid fees.* NCUA may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(e) *Fees for unsuccessful search and review.* NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(f) *Aggregating requests.* A requester(s) may not file multiple requests each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge accordingly.

(g) *Advance payment of fees.* NCUA will require a requester to make an assurance of payment or an advance payment only when:

(1) NCUA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. NCUA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion. NCUA may require the requester to pay the full amount owed plus any applicable interest as provided in § 790.7(d) or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NCUA begins to process a new request or a pending request from that requester.

(3) When NCUA acts under §§ 790.7(g) (1) or (2), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after NCUA has received the fee payments described.

[FR Doc. 87-11402 Filed 5-20-87; 8:45 am]
BILLING CODE 7535-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

### Business Loans; Small Business Lending Companies

**AGENCY:** Small Business Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule change would treat a Small Business Lending Company (SBLC) as other lenders which participate with the Small Business Administration (SBA) in making SBA guaranteed loans. It would also clarify that an SBLC could participate in the secondary market and could assemble pools comprised of SBA guaranteed portions of loans made by others as well as pools of loans it has generated.

**DATE:** Comments must be submitted on or before June 22, 1987.

**ADDRESS:** Comments should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Room 800, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Danny J. Gibb, Director, Office of Financial Institutions. 202-653-2585.

**SUPPLEMENTARY INFORMATION:** An SBLC is supervised and examined by SBA and is not subject to regulations by any other State or Federal regulatory authority. As of January 1982, SBA stopped approving entities as SBLCs, and as of December 31, 1986, there were sixteen (16) SBLCs, eight (8) of which are considered to be active SBA participating lenders. When SBLCs were first authorized, the Agency required them to be engaged solely in the making of SBA loans. By its nature, an SBLC is not a depository institution. Consequently, it partially renews its SBA lending funds by participating in the secondary market for SBA loans. When the Agency received statutory authority to allow lenders to pool the SBA guaranteed portions of loans, it included SBLCs in the definition of pool assembler (see § 120.702(f) of SBA regulations, 13 CFR 120.702(f)). This has resulted in an inadvertent inconsistency between the referenced pool assembler regulations and the narrow stated business purpose for an SBLC in § 120.302-1(a) of SBA regulations (13 CFR 120.302-1(a)) which limits an SBA to "making" SBA loans.

The Agency has determined that an SBLC should be treated similar to other SBA participating lenders in making, servicing and liquidating SBA guaranteed loans. The proposed regulation would accomplish this by deleting from the regulation the delimitation of being engaged "solely" in the making of SBA loans and inserting therein a general reference so that SBLCs would be treated as other SBA participating lenders, pursuant to their contractural arrangement (which incorporate the rules and regulations of the Agency). Further, the proposed regulations would recognize an SBLC's need to participate in the SBA secondary market (which they are already doing) and would conform the regulations on SBLCs to the regulation on assembling pools.

For the purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

SBA certifies that this proposed rule does not constitute a major rule for the purpose of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

### List of Subjects in 13 CFR Part 120

Loan programs—business, Small business.

Accordingly, pursuant to the authority contained in § 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

## PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

**Authority:** 15 U.S.C. 694(b)(8) and 636 (a) and (h).

2. Section 120.302–1 is amended by revising paragraph (a) to read as follows:

**§ 120.302–1 Small business lending companies.**

* * * * *

**(a) Business Purposes:** Be a corporation (profit or nonprofit) engaged in the making of loans under section 7(a) [except section 7(a)(13)] of the Act in participation with SBA pursuant to the terms and conditions contained in the Loan Guaranty Agreements (Deferred Participation), SBA Forms 750, 750B, 1186, and 1347, as applicable. An SBLC may also participate in the SBA secondary market as explained in §§ 120.701 and 120.801(b) of this Part 120 and may be a Pool Assembler (as defined in § 120.702(f)) of SBA guaranteed loans it has made or acquired.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: May 13, 1987

James Abdnor,

*Administrator.*

[FR Doc. 87–11887 Filed 5–20–87; 8:45 am]

BILLING CODE 8025–01–M

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**13 CFR Part 142**

**Program Fraud Civil Remedies Act Regulations**

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This regulation proposes to implement the Program Fraud Civil Remedies Act of 1986 (PFCRA) which established for certain agencies an administrative remedy for fraudulent claims or statements made to such agencies and required that agencies publish regulations by April 21, 1987. Since the PFCRA contemplated that the participating agencies promulgate substantially similar regulations, this regulation is, in large part, identical to a model developed for the participating agencies by a Task Force headed by the Department of Health and Human Services. The regulation establishes procedures for imposing liability under the PFCRA of up to $5,000 per claim and double damages on anyone who, with knowledge or reason to know, submits a false, fictitious or fraudulent claim or statement to the agency.

**DATES:** Comments must be submitted on or before June 22, 1987.

**ADDRESS:** Comments may be mailed to the General Counsel, Room 700, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Patricia K. Forbes, Attorney Adviser, (202)653–6573.

**SUPPLEMENTARY INFORMATION:** The structure of a PFCRA procedure under this regulation may be described as follows. The PFCRA authorizes investigations of false claims and statements by the Small Business Administration's (SBA) Inspector General (investigating official). Cases are initially referred to SBA's General Counsel (reviewing official) for evaluation and approval, then to the Attorney General for Department of Justice approval. The Department of Justice could elect to bring the case itself in court under the False Claims Act which would preclude SBA's further action on the matter. If the Department of Justice approves the use of PFCRA procedures, the case may be referred to an ALJ for a formal hearing on the record. The PFCRA provides for an appeal of the ALJ's decision to SBA's Administrator and then to the U.S. District Court.

Although many regulatory provisions came directly from the statute, the Task Force or SBA has interpreted the statute in areas where the statute was silent. These areas are discussed below.

*Section 142.2 Definitions*

Most of the definitions come directly from the statute.

The definition of "benefits" in the regulations is a very broad one for the purposes of describing the scope of the benefits in the context of false statements. Of particular interest to the Small Business Administration is the inclusion of loan guarantees in the definition of benefits. This broad definition of benefits should be distinguished from the limitations on coverage of the statute with respect to beneficiaries of specific benefit programs.

The definition of "person" incorporates the following additional entities: Sole proprietorship, state, political subdivision of a state, municipality, county, district, and Indian tribe. This broad definition of "person" in these regulations reflects the Agency's belief that Congress intended the PFCRA to be an administrative substitute for a civil action under the False Claims Act and should be available against the same persons that are subject to that statute.

The definition of "representative" allows only attorneys to serve as representatives. This is consistent with SBA practice in similar areas.

*Section 142.3 Basis for civil penalties and assessments*

This section largely comes directly from the statute or the legislative history. Liability for assessments, which are in lieu of damages, is joint and several, but liability for civil penalties may be imposed on each defendant separately up to the maximum.

*Section 142.4 Investigations*

The regulations provide that an investigating official must submit a report to the reviewing official only where he concludes that an action under PFCRA may be warranted. It was determined that any other reading of the statute could result in a significant waste of resources and time.

The regulation prescribes basic procedures for an investigating official to issue subpoenas under the new documentary subpoena authority granted by the statute. However, nothing prevents investigating officials from exercising the subpoena powers that they already have under the Inspector General Act of 1978. Likewise, the regulation underscores the investigating official's continuing discretion to refer matters to the Department of Justice for other civil action and to regulate the timing of referrals under PFCRA to the reviewing official, as well as his continuing obligation to refer criminal violations directly to prosecuting officials.

*Section 142.5 Review by the reviewing official*

This section comes largely from the statute, section 3803(a)(2). The statute, at section 3809, requires the reviewing official to determine that there is a reasonable prospect of collecting the amount of penalties and assessments for which a person may be liable. The regulations provide that, although the complaint to the defendant will not demand a specific amount of penalties and assessments (see § 142.7), the reviewing official is under no obligation to determine that a defendant can pay the statutory maximum, but only that an "appropriate amount" is collectible.

*Section 142.6 Prerequisites for issuing a complaint*

Most of this section derives directly from the statute. Beyond the discretion of the reviewing official and the Attorney General, the statute limits the types of cases that can be brought under its provisions. Also, any claim or "related group of claims submitted at the same time" for money, property or services in excess of $150,000 is beyond this statute's reach. The regulation

reflects a narrow interpretation of this restriction to prevent unwarranted attempts to avoid liability under PFCRA.

*Section 142.7 Complaint*

The complaint formally notifies the defendant of the allegations against him. It does not set out a specific amount of penalties and assessments, but states only the statutory maximum liability under the statute. This is the current practice at the Department of Justice with respect to False Claims Act suits.

*Section 142.9 Answer*

Any answer to the complaint will be deemed a request for hearing. This will allow the complaint and answer to be forwarded to the ALJ for the prompt issuance of a notice of hearing, the event that formally commences a proceeding under the statute. Sections 3803(d)(2), 3808(a).

*Section 142.10 Default upon failure to answer*

These regulations provide that a defendant's failure to file a timely answer, in the absence of extraordinary circumstances, will result in imposition of the statutory maximum penalties and assessments. The case is referred to the ALJ for a decision that can become final agency action and thus enforceable, but the ALJ's discretion is limited to a determination of whether the facts stated in the complaint would, if true, establish liability. There is no discretion on the amount of penalties and assessments to be imposed.

This procedure was adopted to discourage defaults and to obviate the need for the government to try its case without the defendant. The defendant has the opportunity to show to the ALJ, the SBA Administrator, and a district court any extraordinary circumstances excusing his failure to file an answer.

*Section 142.12 Notice of Hearing*

It is generally the issuance of the notice of hearing that commences the PFCRA proceeding for the purposes of the statute of limitations. See § 142.47 below. Most of the requirements for the contents of the notice are statutory.

*Section 142.13 Parties to the hearing*

The only parties to the hearing are the defendants and SBA. There is no Provision for intervention or joinder. The recent amendments to the False Claims Act provide that a *qui tam* plaintiff in a proceeding under that Act may participate in PFCRA proceedings.

*Section 142.14 Separation of functions*

Subsections (a) and (b) are required by statute, section 3803(g)(2)(D).

Subsection (c) reflects that the representative for SBA may be employed anywhere in the agency. This would permit an attorney for the Inspector General to participate in the representation of the agency in certain cases.

*Section 142.15 Ex parte contacts*

The prohibition against ex parte contacts derives for the most part from the Administrative Procedure Act, 5 U.S.C. 557(d). There is an express limited exception for inquiries relating to the status of a case or procedures.

*Section 142.16 Disqualification of reviewing official or ALJ*

The statute requires that participating agencies provide in regulations for the disqualification of a reviewing official or an ALJ. Section 3803(g)(2)(G). If a reviewing official is determined by the ALJ to be disqualified, the complaint will be dismissed, but the case could be reconsidered by another reviewing official. There is no interlocutory appeal of a denial of a motion for disqualification.

*Section 142.19 Prehearing conference*

The ALJ may order a prehearing conference but shall order one on the request of either party. Experience has shown that such prehearing conferences are extremely valuable in expediting and simplifying the issues at an evidentiary hearing. At the prehearing conference, the defendant may waive the oral hearing and elect to proceed on the written record alone. The prehearing conferences may be held over the telephone at the ALJ's discretion. If neither party nor the ALJ wishes a prehearing conference, then none need be held.

*Section 142.20 Disclosure of documents*

The statute requires the disclosures of certain types of documents to defendants. Section 3803(c) (1)(A), (2). Such mandatory disclosure has been limited to the extent consistent with the statute and legislative history. Although the defendant has the right to access to the types of documents described in the statute and regulations at any time after service of the complaint, until defendant files an answer and the case is referred to an ALJ, there is no impartial person to decide any disputes over access. Therefore, the regulations provide that the resolution of any disputes over access to particular documents must await such referral to the ALJ. This should not prejudice the defendant, since the case is referred to the ALJ upon the filing of an answer.

*Section 142.21 Discovery*

The statute provides only for such discovery as the ALJ determines is necessary for the expeditious, fair and reasonable consideration of the issues. The legislative history, S. Rep. No. 99–212, *supra*, at 15, indicates that:

> In the ordinary case, the committee anticipates that the timely exchange of proposed exhibits, witness lists and witness statements will constitute sufficient discovery. It is clearly the committee's hope that this alternative administrative mechanism will not become entangled in the unchecked, 'discovery wars' that render many court cases excessively costly and time-consuming.

In order to ensure that discovery is controlled, and to prevent abuse, all discovery must be approved by the ALJ, absent agreement of the Parties. The burden of proof is on the proponent of discovery and the ALJ may order discovery only upon making the findings specified in the regulations. The ALJ may also allow discovery subject to protective orders (§ 142.42).

*Section 142.22 Exchange of witness lists, statements, and exhibits*

The regulations provide for the exchange of certain documents before the hearing, including witness lists, copies of prior statements of witnesses and copies of hearing exhibits. The ALJ may exclude witnesses and documents of which the other parties have not received such notice, and documents so exchanged will be deemed authentic for the purposes of admissibility at the hearing unless a party objects in advance.

*Section 142.23 Subpoenas for attendance at the hearing*

Subpoenas are not issued ex parte, and parties as well as subpoenaed witnesses may move to quash.

*Section 124.25 Fees*

Although there is no express statutory authorization for paying witness fees, it is implicit within the ALJ's subpoena authority. To ensure uniformity among the agencies, the model regulation provided for witnesses to be paid at the same rate as is applicable to proceedings in the United States district courts. SBA adopted the model regulation verbatim.

*Section 142.28 Motions*

All requests to an ALJ are to be by motion. Other parties are given 15 days to respond. The ALJ may deny (but may not grant) a motion prior to the time for response.

*Section 142.29 Sanctions*

The regulations expressly recognize an ALJ's authority to impose sanctions upon Parties and their representatives for violating regulations or orders. These sanction provisions are modeled on those of the Merit Systems Protection Board, 5 CFR 1201.43.

*Section 142.30 The hearing and burden of proof*

This provision recognizes that SBA has the burden of proof on the issues of liability and the existence of factors in aggravation, and that the defendant has the burden of proof on affirmative defenses and mitigating factors.

*Section 142.30 Determining the amount of penalties and assessments*

The statute authorizes the imposition of penalties of up to $5,000 per claim and assessments of up to twice the amount of the claim or the portion thereof that violates the Act. Unlike the False Claims Act that provides a fixed penalty and treble damages for each false claim, PFCRA requires an ALJ to exercise discretion in setting the amount of penalties and assessments for each violation at or below a statutory maximum. However, the statute is silent on how this amount should be determined. The regulations contain a non-exclusive list of factors that the ALJ and the Administrator should consider in exercising their discretion to determine the amount. Some of these factors may serve to aggravate the violation; other may serve to mitigate it.

The value in considering aggravating and mitigating factors in fixing the amount of penalties and assessments is that it helps to rationalize the exercise of discretion, and will help to justify the decision on judicial review. *See, e.g., Mayers* v. *United States Department of Health and Human Services*, No. 85–3803 (11th Cir., Dec. 22, 1986) (affirming a civil penalty and assessment of $1.79 million under 42 U.S.C. 1320a–7a (Civil Monetary Penalties Law for Medicare and Medicaid false claims). In this case, the court discussed with approval the aggravating circumstances in the case that supported the large penalty.

The list of factors is not exclusive. The ALJ and Administrator remain free to consider factors that may aggravate or mitigate the amount of penalties and assessments as they are presented in particular cases.

*Section 142.32 Location of hearing*

Section 3803(g)(4) of the statute provides that the *defendant* and the *ALJ* may agree on the place for the hearing. However, the regulations give the agency an opportunity to present argument on the issue.

*Section 142.33 Witnesses*

At the discretion of the ALJ, testimony can be in the form of a written statement or deposition so long as opposing parties have sufficient opportunity to subpoena the person whose statement is being offered.

Cross-examination may, at the discretion of the ALJ, exceed the scope of direct examination. The provisions in § 142.33 (c) and (e) are derived from Rule 611 of the Federal Rules of Evidence.

*Section 142.34 Evidence*

Sections 142.34(a)–(d) were included to be largely consistent with the recommendation of the Administrative Conference of the United States, in Recommendation 86–2, 1 CFR 305.86–2, 51 FR 25641 (July 16, 1986). The Federal Rules of Evidence are not, with some exceptions, binding on the ALJ, who has the authority to determine the admissibility of evidence.

*Section 142.35 The record*

The record will generally be open to the public. The availability of the transcript is governed by the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 11, which requires the provision of transcripts to the parties and public at the cost of duplication.

*Section 142.36 Post-hearing briefs*

The ALJ may fix the time for filing post-hearing briefs, not to exceed 60 days from the date the parties receive the transcript or the stipulated record. In the experience of the Task Force, most cases involving fraud are factually complicated and post-hearing briefs will be helpful to the presentation of the case.

*Section 142.37 Initial decision*

A hortatory time limit for the ALJ's issuance of an initial decision has been included. The limit is 90 days from the close of the hearing or the time for submission of post-hearing briefs.

*Section 142.38 Reconsideration of initial decision*

The statute authorizes appeal of the ALJ decision to the Administrator only by the defendant. A provision for a motion to the ALJ for reconsideration of the initial decision has been included in the regulations to give the authority an opportunity to seek correction of errors in that decision.

*Section 142.39 Appeal to authority head*

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the authority head by filing a notice of appeal with the Administrator in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under section 38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The authority head may extend the initial 30 day period for an additional 30 days if the defendant files with the authority head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Administrator, the ALJ shall forward the record of the proceeding to the Administrator.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Administrator.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Administrator shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Administrator that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Administrator shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

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(k) The Administrator shall promptly serve each party to the appeal with a copy of the Administrator's decision. At the same time, the Administrator shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Administrator serves the defendant with a copy of the Administrator's decision, a determination that a defendant is liable under section 3 is final and is not subject to judicial review.

*Section 142.40 Stays ordered by the Department of Justice*

This provision comes directly from the statute. Section 3803(b)(3).

*Section 142.41 Stay pending appeal*

This provision makes clear that the ALJ's opinion is stayed pending appeal to the Administrator, but that any further stay of the effectiveness of an agency decision must be sought from the courts.

*Section 142.46 Compromise or settlement*

This section has collected in one place the various provisions in the statute to compromise and settle cases under PFCRA.

*Section 142.47 Limitations*

It should be noted that the proceeding under PFCRA commences for statute of limitations purposes not when the complaint is served, but when the ALJ serves a notice of hearing (§ 142.12). In the event that the defendant fails to file an answer, the regulations provide that a notice under § 142.10(b) shall be deemed a notice of hearing for statute of limitations purposes. This provision was included because where no answer and request for hearing are filed, no notice of hearing would be issued. Congress could not have intended a defendant to escape liability under the statute simply by ignoring the complaint.

*Compliance With the Administrative Procedure Act (5 U.S.C. 551. et seq., Regulatory Flexibility Act 5 U.S.C. 601, et seq.), Executive Order 12291, and the Paperwork Reduction Act (44 U.S.C. Ch. 35).*

This regulation is procedural in nature and as such, the Administrative Procedure Act does not require it to be published for public comment prior to its promulgation as a final regulation. 5 U.S.C. 553(b)(3)(A). Therefore, in order to comply with the statutory deadline of April 21, 1987, SBA is publishing this regulation in interim final form with a 30 day public comment period following the effective date of the interim final rule.

SBA certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Although the procedures enable certain penalties to be assessed where false or fictitious statements have been made to SBA, SBA does not anticipate that a substantial number of small businesses will be affected by these procedures.

In addition, SBA finds that this regulation is not a major rule under Executive Order 12291, as the procedures it establishes are not expected to result in an annual effect on the economy of $100 million or more. Since the PFCRA does not expand the investigative jurisdiction of the SBA, the economic effect of these procedural regulations is not expected to approach the $100 million level.

These procedural regulations do not require any additional reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act.

**List of Subjects in 13 CFR Part 142**

Administrative practice and procedure, Investigations, Small businesses.

Accordingly, pursuant to section 3803(g)(2) of the Program Fraud Civil Remedies Act, 31 U.S.C. Ch. 38, the Administrator is amending Chapter I of Title 13 CFR by adding a new Part 142.

## PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

Sec.


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Authority: 31 U.S.C. 3803(g)(2), 15 U.S.C. 634(b)(6).

**§ 142.1 Basis and purpose.**

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. 99–509, secs. 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part: (1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

**§ 142.2 Definitions.**

*Administration* means the Small Business Administration.

*ALJ* means an Administrative Law Judge in the authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

*Authority* means the Small Business Administration.

*Authority head* means the Administrator of the Small Business Administration.

*Benefits* means, except as the context otherwise requires, anything of value,

including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

*Claim* means any request, demand, or submission—

(a) Made to the authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the authority or to a party to a contract with the authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

*Complaint* means the administrative complaint served by the reviewing official on the defendant under § 142.7.

*Defendant* means any person alleged in a complaint under § 142.7 to be liable for a civil penalty or assessment under § 142.3.

*Government* means the United States Government.

*Individual* means a natural person.

*Initial decision* means the written decision of the ALJ required by § 142.10 or § 142.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

*Investigating official* means the Inspector General of the Small Business Administration or an officer or employee of the Office of Inspector General as designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

*Knows or has reason to know*, means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth of falsity of the claim or statement.

*Makes*, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made*, shall likewise include the corresponding forms of such terms.

*Person* means any individual, sole proprietorship, partnership, corporation, association, private organization, State, political subdivision of a State, municipality, county, district, and Indian tribe, and includes the plural of that term.

*Presiding officer* means an administrative law judge appointed pursuant to section 3105 of Title 5, United States Code and serving in the Office of Hearings and Appeals of the Small Business Administration or detailed to such office pursuant to section 3344 of Title 5, United States Code.

*Representative* means an attorney.

*Reviewing official* means the General Counsel of the Administration or his designee who is—

(1) Not subject to supervision by, or required to report to, the investigating official; and

(2) Not employed in the organizational unit of the authority in which the investigating official is employed.

*SBA* means the Small Business Administration.

*Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim; or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from, the authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, of if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

**§ 142.3 Basis for civil penalties and assessments.**

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any remedy that may be prescribed by law, to a civil penalty or not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to the Administration, recipient, or party to a contract with the Administration when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to an authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

**§ 142.4. Investigation.**

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) He or she may designate a person to act on his behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

**§ 142.5. Review by the reviewing official.**

(a) If, based on the report of the investigating official under § 142.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 142.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 142.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 142.3 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

**§ 142.6. Prerequisites for issuing a complaint.**

(a) The reviewing official may issue a complaint under § 142.7 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 142.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 142.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

**§ 142.7 Complaint.**

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 142.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

**§ 142.8 Service of complaint.**

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his representative.

**§ 142.9 Answer.**

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

**§ 142.10 Default upon failure to file an answer.**

(a) If the defendant does not file an answer within the time prescribed in § 142.9(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on defendant in the manner prescribed in § 142.8, a notice that an initial decision will be issued under this section.

(c) If the defendant fails to answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 142.3, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) of this section is not subject to reconsideration under § 142.38.

(h) The defendant may appeal to the Administrator the decision denying a motion to reopen by filing a notice of appeal with the Administrator within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Administrator decides the issue.

(i) If the defendant files a timely notice of appeal with the Administrator, the ALJ shall forward the record of the proceeding to the Administrator.

(j) The Administrator shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Administrator decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Administrator shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Administrator decides that the defendant's failure to file a timely answer is not excused, the Administrator shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the Administrator issues such decision.

**§ 142.11 Referral of complaint and answer to the ALJ.**

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

**§ 142.12 Notice of hearing.**

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed in § 142.8. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

**§ 142.13 Parties to the hearing.**

(a) The parties to the hearing shall be the defendant and the Administration.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

**§ 142.14 Separation of functions.**

(a) The investigating official, the reviewing official, and any employee or agent of the Administration who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the authority head, except as a witness or a representative in public proceedings;

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the Administration, including in the offices of either the investigating official or the reviewing official.

**§ 142.15 Ex parte contacts.**

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 142.16 Disqualification of reviewing official or ALJ.**

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by

a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

**§ 142.17 Rights of parties.**

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

**§ 142.18 Authority of the ALJ.**

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the Proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to decide upon the validity of Federal statutes or regulations.

**§ 142.19 Prehearing conferences.**

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness1 lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order continuing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

**§ 142.20 Disclosure of documents.**

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 142.4(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 142.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such motion may only be filed with the ALJ following the filing of an answer pursuant to § 142.9.

**§ 142.21 Discovery.**

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 142.22 and 142.23, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) Motions for discovery: (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 142.24.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 142.24.

(e) Depositions: (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 142.8.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copy.

(f) Each party shall bear its own costs of discovery.

**§ 142.22 Exchange of witness lists, statements and exhibits.**

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 142.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

**§ 142.23 Subpoenas for attendance at hearing.**

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 142.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

**§ 142.24 Protective order.**

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

**§ 142.25 Fees.**

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

**§ 142.26 Form, filing and service of papers.**

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (*e.g.*, motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting

forth the manner of service, shall be proof of service.

**§ 142.27 Computation of time.**

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

**§ 142.28 Motions.**

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

**§ 142.29 Sanctions.**

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

**§ 142.30 The hearing and burden of proof.**

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 142.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

**§ 142.31 Determining the amount of penalties and assessments.**

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the Administrator, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the Administrator in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.* the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the Property services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

**§ 142.32 Location of hearing.**

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in the claim or statement in issue was made; or

(3) In such other Place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

**§ 142.33 Witnesses.**

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 142.22(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

**§ 142.34 Evidence.**

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, *e.g.*, to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 142.24.

**§ 142.35 The record.**

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Administrator.

(c) The record may be inspected and copied upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 142.24.

**§ 142.36 Post-hearing briefs.**

The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

**§ 142.37 Initial decision.**

(a) The ALJ shall issue an initial decision based on only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 142.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 142.31.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after close of the hearing or after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Administrator. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Administrator, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Administrator and shall be final and binding on the parties 30 days after it is issued by the ALJ.

**§ 142.38 Reconsideration of initial decision.**

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon authorization of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) When a motion for reconsideration is made, the time periods for appeal to the Administrator contained in § 142.38, and for finality of the initial decision in § 142.36(d), shall begin on the date the ALJ issues the denial of the motion for reconsideration or a revised initial decision, as appropriate.

**§ 142.39 Appeal to the Administrator.**

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Administrator by filing a notice of appeal with the Administrator in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 142.38 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The Administrator may extend the initial 30 day period for an additional 30 days if the defendant files with the Administrator a request for an extension within the initial 30-day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Administrator, the ALJ shall forward the record of the proceeding to the Administrator.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Administrator.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Administrator shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Administrator that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Administrator shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Administrator may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The Administrator shall promptly serve each party to the appeal with a copy of the decision of the Administrator. At the same time, the Administrator shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Administrator serves the defendant with a copy of the Administrator's decision, a determination that a defendant is liable under § 142.3 is final and is not subject to judicial review.

**§ 142.40 Stays ordered by the Department of Justice.**

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmit to the Administrator a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Administrator shall stay the process immediately. The Administrator may order the process resumed only upon receipt of the written authorization of the Attorney General.

**§ 142.41 Stay pending appeal.**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Administrator.

(b) No administrative stay is available following a final decision of the Administrator.

**§ 142.42 Judicial review.**

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Administrator imposing penalties or assessments under this part and specifies the procedures for such review.

**§ 142.43 Collection of civil penalties and assessments.**

Sections 3806 and 3806(b) of Title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

**§ 142.44 Right to administrative offset.**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 142.42 or § 142.43, or any amount agreed upon in a compromise or settlement under § 142.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

**§ 142.45 Deposit in Treasury of United States.**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

**§ 142.46 Compromise or settlement.**

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settlement a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Administrator has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 142.42 or during the pendency of any action to collect penalties and assessments under § 142.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 142.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Administrator, or the Attorney General, as appropriate. The reviewing official may recommend

settlement terms to the Administrator, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 142.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 142.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 142.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

Dated: April 14, 1987.

James Abdnor,

*Administrator.*

[FR Doc. 87-11531 Filed 5-20-87; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### 14 CFR Part 39

[Docket No. 87-NM-46-AD]

### Airworthiness Directives; Boeing Model 747 Series Airplanes Modified With Heath Tecna "SuperBins" in Accordance With STC SA2365NM

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes equipped with Heath Tecna "SuperBins," which would require chafe protection for wire bundles located between ceiling panels and Heath Tecna "SuperBin" overhead bins. This proposal is prompted by reports of chafing and/or burning of these wire bundles, caused by contact between the outboard edges of the ceiling panels and the bin back panels. This condition, if not corrected, could result in fires.

**DATE:** Comments must be received no later than July 13, 1987.

**ADDRESSES:** Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-46-Ad, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Heath Tecna Aerospace Company, 19819 84th Avenue South, Kent, Washington 98032. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Rees, Aerospace Engineer, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1941. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public docket concerned with the substance of this proposal will be filed in the Rules Docket.

#### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-46-AD, 17900 Pacific Highway South, C-68966, Seattle Washington 98168.

DISCUSSION: An operator of Boeing Model 747 airplanes has reported two cases of chafing and/or burning of the ceiling light wire bundles that rest atop the Heath Tecna "SuperBins" installed in accordance with Supplemental Type Certificate SA2365NM. The chafing is caused by the close proximity or contact between the outboard edges of the ceiling panels and the "SuperBin" back panels. This condition can result from an incorrect installation, or from a subsequent and undetected loosening of a ceiling panel. Chafing of these wire bundles will eventually result in arcing and burning of the bundle, with the potential of involving adjacent insulation material. Smoke and/or fire that emanates from this portion of an airplane, above the ceiling panels, would probably not be detected until combustion was well-developed, and it would then be extremely difficult to isolate and extinguish.

The FAA has reviewed and approved Heath Tecna Service Bulletin 74000-25-007, dated March 6, 1987, which describes the installation of spacer blocks atop the bins to prevent the ceiling panels from contacting the wire bundles. The service bulletin also lists the affected Boeing Model 747 airplanes.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require the wire bundle protection modification in accordance with the service bulletin previously mentioned.

It is estimated that 57 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The average cost of materials per airplane is estimated to be $84. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,748.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not a major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### The Proposed Amendment

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

1. The authority citation for Part 39 continues to read as follow:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**HEATH TECNA:** Applies to Boeing Model 747 airplanes, certificated in any category, that have been modified in accordance with Supplemental Type Certificate SA2985NM, listed in Heath Tecna Service Bulletin 74000-25-007, dated March 6, 1987. Compliance required as indicated, unless previously accomplished.

To minimize fire hazard caused by chafing of ceiling light wire bundles, accomplish the following:

A. Within 60 days after the effective date of this AD, inspect the ceiling light wire bundles that rest atop the Heath Tecna "SuperBins" for evidence of damage or chafing, and repair, if necessary, before further flight; and accomplish either 1. or 2., below:

1. Install spacers to protect lighting wire bundles from chafing in accordance with Heath Tecna Service Bulletin 74000-25-007, dated March 6, 1987, or later FAA-approved revision; or

2. Trim the outboard edges of the ceiling panels in accordance with paragraph 2C of Heath Tecna Service Bulletin 74000-25-007, dated March 6, 1987, or later FAA-approved revision.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufactnrer may obtain copies upon request to Heath Tecna Aerospace Company, 19819 84th Avenue South, Kent, Washington 98032. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington 98106.

Issued in Seattle, Washington, on May 14, 1987.

**Frederick, M. Isaac,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-11565 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Parts 404, 410, and 416

### Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Federal Mine Safety and Health Act of 1977; Own-Motion Review of Fee Determinations

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Withdrawal of Notice of Proposed Rulemaking.

**SUMMARY:** We are withdrawing the proposed amendment to the regulations entitled "Own-Motion Review of Fee Determinations" which was published in the **Federal Register** of August 12, 1986 (51 FR 28834).

**DATE:** The withdrawal is effective May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Duane Heaton, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-6629.

**SUPPLEMENTARY INFORMATION:** The Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on August 12, 1986 proposed revising the regulations on review of fee determinations to allow the Social Security Administration (SSA) on its own motion to review and revise fee determinations which are based on improper application of the statute or regulations, or on an error of fact. The current regulations provide that either the claimant or representative may request administrative review of a fee determination. The current regulations do not provide SSA the authority to correct errors that are inequitable to either a claimant or representative unless the claimant or representative requests administrative review.

We have reviewed the comments received in response to the NPRM. Generally, the comments were negative towards the proposed regulation change. Moreover, a review of these comments indicates that there was a basic minunderstanding of what SSA intended to achieve. In view of these developments, we have determined that continued rulemaking action on the proposed NPRM entitled "Own-Motion Review of Fee Determinations" is not now appropriate and that the NPRM should be withdrawn.

The withdrawal of this proposal, however, does not preclude us from considering similar notices in the future or commit us to any specific future course of action.

Accordingly the NPRM published in the **Federal Register** at 51 FR 28834 on August 12, 1986, entitled "Own-Motion Review of Fee Determinations," is hereby withdrawn.

Dated: April 3, 1987.

**Dorcas R. Hardy,**

*Commissioner of Social Security.*

Approved: May 1, 1987.

**Otis R. Bowen,**

*Secretary of Health and Human Services.*

[FR Doc. 87-11078 Filed 5-20-87; 8:45 am]

BILLING CODE 4190-11-M

## Food and Drug Administration

### 21 CFR Part 146

**[Docket No. 86P-0338]**

### Pineapple Juice; Proposal To Amend U.S. Standards of Identity and Quality

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the U.S. standard of identity for pineapple juice to permit the addition of concentrated pineapple juice in an amount not to exceed 15 percent of the total pineapple juice soluble solids to improve the flavor and palatability of pineapple juice and to amend the U.S. standard of quality to provide for nutritive carbohydrate sweeteners for consistency with the U.S. standard of identity. This action responds to a petition filed by the Pineapple Growers Association of Hawaii and would promote honesty and fair dealing in the interest of consumers.

**DATE:** Comments by July 20, 1987.

The agency proposes that any final rule that may be issued based on this proposal become effective 60 days after date of publication of the final rule in the **Federal Register**.

**ADDRESS:** Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Anderson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0118.

SUPPLEMENTARY INFORMATION: The Pineapple Growers Association of Hawaii (PGAH), 1150 South King St., Honolulu, HI 96814, has submitted a petition requesting that FDA amend the U.S. standard of identity for pineapple juice (21 CFR 146.185(a)) to permit the use in "pineapple juice" of concentrated pineapple juice in an amount not to exceed 15 percent of the total pineapple juice soluble solids in the finished food.

The U.S. standard of identity for pineapple juice states in § 146.185(a)(2) that the name of the food is "Pineapple juice" if the juice from which it is prepared has not been concentrated and/or diluted with water. The standard further states that the name of the food is "Pineapple juice from concentrate" if the finished juice has been concentrated and later reconstituted with water suitable for the purpose of maintaining essential composition and quality factors of the juice.

PGAH asserts that there is considerable variation in the Brix and acidity of single-strength pineapple juice. PGAH further points out that occasionally the fresh juice obtained from the pineapple fails to comply with the minimum soluble solids requirement of 10.5 ° Brix and the maximum acidity requirement of 1.35 grams of anhydrous citric acid per 100 milliliters of juice in the U.S. standard of quality for pineapple juice (§ 146.185(b)(1)). PGAH contends that permitting the addition of concentrated pineapple juice to pineapple juice with a low soluble solids content will bring the juice into compliance with the current minimum Brix requirement and improve the flavor. PGAH also contends that the addition of low acid concentrated pineapple juice to pineapple juice with a high acidity will bring it into compliance with the acidity requirement and make the juice more palatable.

PGAH further requests that the reference to sugars in § 146.185(b)(1) of the U.S. standard of quality for pineapple juice be changed to sweeteners.

FDA believes that there is merit to PGAH's contentions and that it would promote honesty and fair dealing in the interest of consumers to amend the existing standard to provide for the addition of concentrated pineapple juice in an amount not to exceed 15 percent of the total pineapple juice soluble solids in the finished food. FDA also believes that the reference to sugars in § 146.185(b)(1) should be changed to nutritive carbohydrate sweeteners, consistent with the provision for nutritive carbohydrate sweetener as an optional ingredient of pineapple juice in § 146.185(a)(1).

FDA also believes that this is an opportune time to make minor editorial changes in the format of the U.S. standard of identity for pineapple juice for consistency with other recently revised U.S. standards of identity.

FDA, therefore, Proposes to amend the U.S. standards of identity and quality for pineapple juice in § 146.185 by (1) permitting the adjustment of the pineapple juice soluble solids content by the addition of concentrated pineapple juice in such quantity that the added concentrate does not contribute more than 15 percent of the total pineapple juice soluble solids in the finished food, (2) providing for concentrated pineapple juice (pineapple juice from which part of the water has been removed) as an optional ingredient in pineapple juice, and (3) replacing the word "sugars" with "nutritive carbohydrate sweeteners," as appropriate.

## Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601), FDA has reviewed this proposal to determine its impact on small businesses. The proposal permits the use of concentrated pineapple juice for the improvement in flavor and palatability of pineapple juice low in soluble solids or high in acidity. The agency believes that this proposal provides increased flexibility to producers of pineapple juice and will not impose an additional burden on the industry. Therefore, FDA certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

## Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## Comments

Interested persons may, on or before July 20, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

## List of Subjects in 21 CFR Part 146

Fruit juices, Food standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 146 be amended as follows:

## PART 146—CANNED FRUIT JUICES

1. The authority citation for 21 CFR Part 146 is revised to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

2. Section 146.185(a) is revised to read as follows:

### § 146.185 Pineapple juice.

(a) *Identity*—(1) *Description.* Pineapple juice is the juice, intended for direct consumption, obtained by mechanical process from the flesh or parts thereof, with or without core material, of sound, ripe pineapple (*Ananas comosus* L. Merrill). The juice may be adjusted by the addition of the optional concentrated pineapple juice ingredient, specified in paragraph (a)(2) of this section, in such quantity that the added concentrate does not contribute more than 15 percent of the total pineapple juice soluble solids in the finished food. The juice may have been concentrated and later reconstituted with water suitable for the purpose of maintaining essential composition and quality factors of the juice. Pineapple juice may contain finely divided insoluble solids, but it does not contain pieces of shell, seeds, or other coarse or hard substances or excess pulp. The food may contain one or any combination of the safe and suitable optional ingredients specified in paragraph (a)(2) of this section. Pineapple juice, as defined in this paragraph, may be preserved by heat sterilization (canning), refrigeration, or freezing. When sealed in a container to be held at ambient temperatures, it is so processed by heat, before or after sealing, as to prevent spoilage.

(2) *Optional ingredients.* The optional safe and suitable ingredients referred to in paragraph (a)(1) of this section are:

(i) Concentrated pineapple juice (pineapple juice from which part of the water has been removed).

(ii) Water.

(iii) Dry nutritive carbohyrate sweeteners except that if the pineapple juice is prepared from concentrate, such sweeteners in liquid form may be used.

(iv) Vitamin C in a quantity such that the total vitamin C content in each 4

fluid ounces of the finished food amounts to not less than 30 milligrams and not more than 60 milligrams.

(v) Dimethylpolysiloxane in an amount not greater than 10 parts per million by weight of the finished food as a defoaming agent.

(3) *Labeling.* (i) The name of the food is:

(*a*) "Pineapple juice" if (*1*) the juice from which it is prepared has not been concentrated and/or diluted with water; or (*2*) the juice is prepared from unconcentrated, undiluted liquid extracted from sound, ripe pineapples to which concentrated pineapple juice is added to adjust the soluble solids as provided for in paragraph (a)(1) of this section.

(*b*) "Pineapple juice from concentrate" if the finished juice is prepared with more than 15 percent pineapple juice soluble solids from pineapple juice concentrate.

(ii) The statement "Sweetener added" shall be included as part of the name or in close proximity to the name of the food if a nutritive carbohydrate sweetener is added. The word "Unsweetened" may immediately precede or follow the words "Pineapple juice" or "Pineapple juice from concentrate," if no nutritive carbohydrate sweetener is added.

(iii) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

* * * * *

**§ 146.185 [Amended]**

3. Section 146.185(b)(1) is amended by replacing the word "sugars" with "nutritive carbohydrate sweeteners" wherever it occurs.

Dated: May 11, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-11509 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-01-M

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 926

### Public Comment Period and Opportunity for Public Hearing on an Amendment to the Montana Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing procedures for a public comment period and for a public hearing on the substantive adequacy of amendments submitted by the State of Montana to amend its permanent regulatory program (hereinafter referred to as the Montana Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Montana regulatory program concerning remining, coal processing, reclamation fee records, and permit application fees.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

**DATES:** Comments not received on or before 4:00 p.m., June 22, 1987, will not necessarily be considered

If requested, a public hearing on the proposed modifications will be held on June 15, 1987, beginning at 10:00 a.m. at the location shown below under "ADDRESSES".

**ADDRESSES:** Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918.

If a public hearing is held, its location will be at: The Montana Capitol Building, Helena, Montana 59601.

See "SUPPLEMENTARY INFORMATION" for addresses where copies of the Montana program amendment and administrative record on the Montana program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSMRE Casper Field Office listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jerry R. Ennis, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776.

**SUPPLEMENTARY INFORMATION:**

#### Availability of Copies

Copies of the Montana program amendment, the Montana program and the administrative record on the Montana program are available for public review and copying at the OSMRE offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601–1918; Telephone: (307) 261–5776

Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Room 5131, Washington, DC 20240; Telephone: (202) 343–5447

Montana Department of State Lands, Reclamation Division, Capitol Station, 1625 Eleventh Avenue, Helena, Montana 59620; Telephone: (406) 444–2074.

#### Written Comments

Written comments should be specific, pertain only to those issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Casper, Wyoming, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

#### Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business June 5, 1987. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the result of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

#### Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed in "Addresses" by contacting the person listed under "For Further Information Contact".

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

**Background**

On August 3, 1979, the Secretary of the Interior received a proposed regulatory program from the State of Montana. On April 1, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Montana program (45 FR 21560).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the condition of approval of the Montana program, can be found in the April 1, 1980 Federal Register. Subsequent actions concerning the Montana program are identified in 30 CFR 926.15.

**Proposed Amendment**

On April 23, 1987, the State of Montana submitted to OSMRE amendments to its approved permanent regulatory program. The amendments consist of proposed modifications to Montana statute concerning remining, coal processing, reclamation fee records, and permit application fees.

The proposed changes are summarized briefly below.

1. Section 82–4–203 MCA, Definitions. As they apply, definitions are provided for coal preparation, coal preparation plant, operation, operator, remining and strip mining.

2. Section 82–4–222 MCA, Permit Application. Language added stating applicants must supply information on whether the applicant has a record of outstanding reclamation fees with federal coal regulatory authority.

3. Section 82–4–223 MCA, Permit Fee and Surety Bond. The application fee necessary before the permit required in this part is issued was raised from $50.00 to $100.00 and new subsection 4—Extension of Authority is added to this part.

Therefore, the Director, OSMRE is seeking public comment on the adquacy of the proposed program amendments. Comments should specifically address whether the proposed amendments are as stringent as SMCRA and no less effective than its implementing regulations.

**Additional Determinations**

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 926**

Coal mining, Intergovernmental relations, Surface mining, Undergroumd mining.

Dated: May 8, 1987.

**Raymond L. Lowrie,**

*Assistant Director, Western Field Operations, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87–11661 Filed 5–20–87; 8:45 am]

BILLING CODE 4310-05-M

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## DEPARTMENT OF TRANSPORTATION

**Coast Guard**

**33 CFR Part 117**

**[CGD7–87–12]**

**Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Georgia**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of Chatham County, the Coast Guard is considering a change to the regulations governing the Causton Bluff drawbridge at Causton Bluff, Georgia, by extending the hours during which bridge openings are limited. This proposal is being made because of complaints about highway traffic delays during morning and evening peak-travel periods. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

**DATE:** Comments must be received on or before July 6, 1987.

**ADDRESS:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130–1608. The comments and other materials referenced in this notice will be availiable for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne Lee, Chief, Bridge Section, Seventh Coast Guard District, telephone (305) 536–4103.

**SPPPLEMENTARY INFORMATION:** Interested persons are invited to particpate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

**Drafting Information**

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

**Discussion of Proposed Regulations**

Opening of the Causton Bluff bridge presently is restricted from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except federal holidays. The county has submitted vehicular traffic counts which show an increase in the duration of peak travel periods. We propose to extend the periods of restricted openings by one hour during the morning "rush-hour" and by 30 minutes in the evening, with scheduled openings at 8 a.m. and 5:30 p.m. to allow accumulated vessels to pass. The changes should reduce highway traffic congestion with minimal additional delay to vessels.

**Economic Assessment and Certification**

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.353(b) is revised to read as follows:

**§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St Marys River.**

* * * * *

(b) *Causton Bluff (SR26) bridge across the Wilmington River, mile 579.9 near Causton Bluff.* The draw shall open on signal; except that from 6:30 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday, except federal holidays, the draw need open only at 8 a.m. and 5:30 p.m.

* * * * *

Dated May 8, 1987.

**M. J. O'Brien,**

*Captian, U.S. Coast Guard Commander, Seventh Coast Guard District.*

[FR Doc. 87–11654 Filed 5–20–87; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 117**

**[CGD5–87–025]**

**Drawbridge Operation Regulations; Kent Island Narrows, Maryland**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Public hearing of proposed regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has authorized a public hearing to be held to receive comments on a proposed regulation governing the operation of the U.S. Route 50/301 bridge across Kent Island Narrows near Grasonville, Maryland. This hearing is being held to gather information and data necessary to attempt to resolve differences between various factions who support or oppose the proposed regulation.

**DATE:** The hearing will be held at 7:00 p.m. on June 4, 1987.

**ADDRESS:** Location: The hearing will be at the Stevensville Middle School, Stevensville, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, at the Office of Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or telephone (804) 398–6222.

**SUPPLEMENTARY INFORMATION:** This proposal was published in the **Federal Register** on May 7, 1987, and was distributed as Public Notice 5–627 by the Commander, Fifth Coast Guard District on May 1, 1987. Written comments may be submitted on or before July 6, 1987. They will be available for examination from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, at the office of the Commander (oan), Room 609, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. Comments may also be hand-delivered to this address.

The hearing will be informal. A Coast Guard representative will preside at the hearing, make a brief opening statement describing the proposed regulation, and announce the procedures to be followed at the hearing. Each person who wishes to make an oral statement should notify the Contact Officer listed above by June 1, 1987. Such notification should include the approximate time required to make the presentation.

A transcript will be made of the hearing and may be purchased by the public. Interested persons who are unable to attend this hearing may also participate in the consideration of this proposed regulation by submitting their comments in writing. Each comment should state reasons for support or opposition, suggest any proposed changes to the regulation, and include the name and address of the person or organization submitting the comment. All comments received will be considered before final action is taken on the proposed regulation. After the time set for the submission of comments, the Commander, Fifth Coast Guard District will determine a final course of action.

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

Dated: May 12, 1987.

**R.F. Hollingsworth**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 87–11655 Filed 5–20–87; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 162**

**[CGD 86–066]**

**York Spit Channel, Chesapeake Bay; Navigation**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This Notice of Proposed Rulemaking (NPRM) proposes to delete the regulations governing navigation through the York Spit Channel, Chesapeake Bay. This notice is necessary to inform the public and interested parties the navigation regulations governing this waterway are no longer in effect and are deleted from the regulations. The intended effect of this notice is to remove restrictions to navigation through York Spit Channel and update existing federal regulations.

**DATE:** Comments must be received by July 6, 1987.

**ADDRESSES:** Comments may be mailed to Commandant (G–CMC/44) (CGD 86–066), U.S. Coast Guard, Washington, DC 20593. Comments may be delivered to and will be available for inspection or copying at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, (202) 267–1477, between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael J. Powers, Office of Navigation, Navigation Systems Safety Division, (202) 267–0415.

**SUPPLEMENTARY INFORMATION:** The regulations governing Inland Waterway Navigation (IWN) of vessels were transferred for administrative and enforcement purposes to the Coast Guard from the U.S. Army Corps of Engineers (COE) by a Memorandum of Understanding signed on May 5, 1977. Discussion between the Coast Guard, pilot associations, local maritime interests, and the COE questioned the purpose, intent, and present usage/usefulness of the York Spit Channel navigation regulation. This regulation was originally developed to restrict the movement of vessels through a hazardous navigation area during a period when vessel traffic was much

greater than traffic levels have been over the past few years. Coast Guard and maritime interests agree the present Inland Navigation Rules provide sufficient guidance to insure navigation safety in the York Spit Channel and surrounding area. Therefore, it is proposed the regulation be deleted from the IWN regulations.

Removal of the York Spit Channel Navigation regulation will inform vessel operators the channel is no longer restricted to entering or departing at the ends of the channel and that administration and enforcement activities associated with this regulation are being terminated. Navigation aids through York Spit Channel will remain in place.

**Drafting Information**

The principal persons involved in drafting this final rule are Mr. Michael J. Powers, Project Manager, and Lt. Sandra Sylvester, Project Counsel, office of Chief Counsel.

**Regulatory Evaluation**

This notice is considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; FEb. 26, 1979). The economic impact of this notice has been found to be so minimal that further evaluation is unnecessary. Sufficient guidance to insure navigation safety in the York Spit Channel and surrounding area is provided through the Inland Navigation Rules. It is expected waterborne commerce will continue to use the York Spit Channel for navigation. Since the economic impact is expected to be minimal, the Coast Guard certifies this rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 162**

Navigation (water), vessels.

**PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS**

In consideration of the foregoing, Part 162 of Title 33 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

**§ 162.45 [Removed]**

2. Section 162.45 is removed.

Dated: May 18, 1987.

**Martin H. Daniell,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.*

[FR Doc. 87-11656 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-14-M

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**VETERANS ADMINISTRATION**

**38 CFR Part 21**

**Payments to Dependents of Veterans in Training**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendments.

**SUMMARY:** It is proposed to amend existing rules governing the payment of monthly benefits to the dependents of veterans in training under the rehabilitation program authorized under Chapter 31. The purpose of these amendments is to provide more detailed instructions regarding the beginning date of payments for veterans' dependents, particularly dependents the veteran acquires after he or she begins training under Chapter 31. The beginning date of payment for dependents the veteran acquires after he or she begins training may not be made earlier than the date the dependent's existence is established. The amendment should eliminate any misinterpretation of this rule.

**DATES:** Comments must be received on or before June 22, 1987. It is proposed to make this amendment effective the date of final publication.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs, 180 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection in the Veterans Services Unit, Room 132, at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until *July 3, 1987.*

**FOR FURTHER INFORMATION CONTACT:** Morris Triestman, 202-233-5449.

**SUPPLEMENTARY INFORMATION:** The rehabilitation program authorized under Chapter 31, Title 38, United States Code, provides training and other benefits and services to veterans who become disabled as a result of service in the Armed Forces. The VA pays the cost of training and other services to service providers, including schools and rehabilitation facilities. During the period of the veteran's training, he or she receives a monthly living allowance to meet regular living expenses. This monthly living allowance includes payment for the veteran and his or her dependents. Benefits for dependents are payable from the date training begins if evidence establishes their existence at the time training begins. In the Case of dependents acquired after the beginning of the rehabilitation program, payment is authorized from the time dependents' existence is established. The proposed amendments add new provisions to assure that the intent of policy is adhered to in authorizing dependency benefits and provides a definition of the term "dependent." the definition of "dependent" is the same as under other education programs administered by the VA.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RAF), 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604. The reason for this certification is that the proposed changes only concern the rights and responsibilities of individual VA beneficiaries under Chapter 31. Thus, no regulatory burdens are imposed on small entities by these changes.

The Catalog of Federal Domestic Assistance Number is 64.116.

**List of Subjects in 38 CFR Part 21**

Civil rights, claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 29, 1987.

**Thomas K. Turnage,**

*Administrator.*

**PART 21—[AMENDED]**

38 CFR Part 21, *Vocational Rehabilitation and Education,* is proposed to be amended as follows:

1. In § 21.260, paragraph (d) is added to read as follows:

**§ 21.260 Subsistence allowance.**

* * * * *

(d) *Dependents.* The term "dependent" means a spouse, child or dependent parent who meets the definition of relationship specified in §§ 3.50, 3.51, 3.57 or 3.59 of this chapter. (38 U.S.C. 1508(b))

2. In § 21.322, paragrapgh (c) is revised and a new cross-reference is added to read as follows:

**§ 21.322 *Commencing dates of subsistence allowance.***

* * * * *

(c) *Increases for dependents*—(1) *Dependency exists at the time of entrance or reentrance into a rehabilitation program.* A veteran may have one or more dependents on or before the date he or she enters or reenters a rehabilitation program. When this occurs, the following rules apply:

(i) The effective date of the increase will be the date of entrance or reentrance if:

(A) The VA receives the claim for the increase within one year of the date of entrance or reentrance; and

(B) The VA receives any necessary evidence within one year of its request.

(ii) The effective date of the increase will be the date the VA receives notice of the dependent's existence if:

(A) The VA receives the claim for the increase more than one year after the date of entrance or reentrance, and

(B) The VA receives any necessary evidence within one year of its request.

(iii) The effective date of the increase will be the date the VA receives all necessary evidence if that evidence is received more than one year from the date the VA requested the evidence.

(2) *Dependency arises after entrance of reentrance into a rehabilitation program.* If the veteran acquires a dependent after he or she enters or reenters a rehabilitation program, the increase will be effective on the latest of the following dates:

(i) *Date of claim.* This term means the following listed in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within 1 year from the date of the VA request for this evidence;

(B) Date notice is received of the dependent's existence if evidence is received within 1 year from the date of the VA request for this evidence;

(C) Date the VA receives evidence of the dependent's existence if this date is more than 1 year after the VA request for this evidence;

(ii) *Date dependency arises.*

(3) *Increased award not permitted.* No increased award for dependency may be paid prior to the date the law permits benefits for dependents generally. (38 U.S.C. 1508(b)).

* * * * *

**Cross-Reference.** See § 21.260(c) for definition of dependents.

[FR Doc. 87-11668 Filed 5-20-87; 8:45 am]

BILLING CODE 8320-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 3204-3]

### Approval and Promulgation of Implementation Plans, Massachusetts; Group III CTG Regulation

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Massachusetts. This revision requires reasonably available control technology (RACT) to reduce volatile organic compound (VOC) emissions from synthetic organic chemical and polymer manufacturing equipment. The intended effect of this action is to reduce statewide ozone levels as required under Section 110 and Part D of the Clean Air Act.

**DATE:** Comments must be received on or before June 22, 1987. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

**ADDRESSES:** Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2311, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2311, JFK Federal Building, Boston, MA 02203; and the Division of Air Quality Control, Department of Environmental Quality Engineering, One Winter Street, Eighth Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Lynne A. Hamjian (617) 565-3248; FTS 835-3248.

**SUPPLEMENTARY INFORMATION:** As a 1987 extension area for ozone, the State of Massachusetts is required to adopt reasonably available control technology (RACT) regulations for all source categories covered under EPA's Control Techniques Guideline (CTG) documents. The Massachusetts 1982 Ozone Attainment Plan was approved with a schedule for adopting the Group III CTG control measures. On November 5, 1986, the Department of Environmental Quality Engineering (DEQE) submitted a revision to the Massachusetts State Implementation Plan (SIP) to add Regulation 310 CMR 7.18(19), "Synthetic Organic Chemical Manufacture." This regulation requires synthetic organic chemical manufacturing (SOCM) facilities to implement a quarterly leak detection and repair program to control fugitive volatile organic compound (VOC) emissions. This regulation also requires each source to keep a detailed inspection log and to submit quarterly reports to DEQE.

The final regulation formally submitted by the DEQE is consistent with the following CTG document: *Control of VOC Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment (EPA-450/3-83-006).*

### Proposed Action

EPA is proposing to approve 310 CMR 7.18(19) as a revision to the Massachusetts SIP. This regulation requires a control program for fugitive VOC leaks from synthetic organic chemical manufacturing facilities in Massachusetts.

A more detailed description of EPA's evaluation of the above regulatory change is presented in the Technical Support Document that has been prepared for this revision. That document is available for public inspection at the locations listed in the **ADDRESSES** section of this notice.

EPA is soliciting public comments on this notice and on issues relevant to today's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking process by submitting written comments to the EPA Regional Office listed at **ADDRESSES**, above.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of sections 110(a)(2)(A) through (K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: January 12, 1987.

Michael R. Deland,

*Regional Administrator, Region I.*

[FR Doc. 87–11643 Filed 5–20–87; 8:45 am]

BILLING CODE 6560-50-M

## LEGAL SERVICES CORPORATION

### 45 CFR Part 1602

### Procedures for Disclosure of Information Under the Freedom of Information Act

**AGENCY:** Legal Services Corporation.

**ACTION:** Proposed Regulation.

**SUMMARY:** This proposed rule revises Part 1602 of the Legal Services Corporation's regulations, 45 CFR 1602, governing the disclosure of information under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552 *et seq.* First, these revisions implement the Freedom of Information Reform Act of 1986 ("Reform Act") which requires that each entity subject to the FOIA shall promulgate regulations containing a schedule of fees in accordance with the guidelines issued by the Office of Management and Budget ("OMB"). Second, this proposed rule changes paragraph (a)(6) of 45 CFR 1602.9 to give the Legal Services Corporation ("LSC" or "Corporation") greater discretion when making a determination whether to withhold law enforcement records in conformance with the Reform Act's revisions to subsection (b)(7) of the FOIA. Third, this proposed rule changes certain administrative provisions, such as the Corporation's address, and conforms the regulation to current corporate policy that all FOIA requests are handled through LSC's Headquarters, in Washington, DC.

**DATE:** Comments must be received on or before June 22, 1987.

**ADDRESS:** Comments may be submitted to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024–2751.

**FOR FURTHER INFORMATION CONTACT:** Mr. Timothy B. Shea, General Counsel, Office of the General Counsel, (202) 863–1823.

**SUPPLEMENTARY INFORMATION:** Although under the Legal Services Corporation Act ("Act"), 42 U.S.C. 2996 *et seq.*, the Corporation is not considered an agency of the Federal government, 42 U.S.C. 2996d(g), section 1005(g) of the Act, provides that the Corporation, its officers and employees shall be subject to the FOIA. Pursuant to Pub. L. 99–570, section 552(a)(4)(A) of the FOIA now requires covered agencies to create fee schedules in conformance with guidelines promulgated by the Director of the OMB. Because the Corporation is subject to the FOIA, the proposed rule conforms fee and fee waiver provisions to OMB's guidelines.

Section 1602(a)(6) of this regulation has been revised in accordance with the amendments made to section 552(b)(7) of the FOIA. Those portions of the new law which specifically address criminal law enforcement authorities have not been included in this proposed rule as they are not pertinent to the Corporation's work.

In 1976, the Corporation promulgated Part 1602 of its regulations to implement section 1005(g) of its Act. Some of the information contained in Part 1602, such as the Corporation's address, is no longer accurate. Changes such as these are also included in the revisions set forth below.

The major change in Part 1602 is the revision of the fee schedule to conform to the Reform Act and the guidelines issued by OMB. For the first time the FOIA establishes categories of requesting parties. The four groups of FOIA requesters are: (1) Commercial use requesters, (2) educational and non-commercial scientific institutions, (3) representatives of the news media, and (4) all other requesters. When determining a requesting party's proper category the Corporation shall look at the use to which a requester will put the documents. Requesters should reasonably describe the records sought and the use for which they are requested. The former fee schedule is changed to permit the Corporation to charge fees for document search, duplication and review for commercial use requesters. When requests are received from educational institutions, non-commercial scientific institutions, or news media representatives, the Corporation shall charge only for document duplication. For all other requesters, the Corporation shall charge for the costs of document search and duplication. The definitions of what constitutes "commercial users", "educational institutions", "non-commercial scientific institutions" and "news media representatives" are contained in § 1612.2 of the text.

The new fee schedule sets forth corporate staff categories to reflect the direct labor costs attributable to a document search or review. Accordingly, definitions for "direct costs," "search," "duplication," and "review" have been added. In addition, the proposed rule will permit the Corporation to charge for the cost of mailing FOIA responses. The costs incurred by the Corporation for the first two hours of search time and the first 100 pages of duplication will not be charged to the requesting party.

Fee waivers will be warranted if the requester can satisfactorily demonstrate that the disclosure of requested information is in the public interest because it is likely to significantly contribute to the public's understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

The Corporation may require full advance payment of a fee if it is estimated to exceed $250 or if the requester has failed to pay a previously owed fee in a timely manner. In addition, the Corporation may charge interest if a fee has not been paid within 31 days of dispatch of the FOIA response.

Section 1602.9(a)(6) has been changed to add a "reasonableness" test which the Corporation shall apply when making a determination whether to release law enforcement information. The requested information may be withheld if the Corporation determines that its disclosure could reasonably be expected to constitute an unwarranted invasion of privacy, disclose a confidential source, endanger the life or physical safety of any individual, or, in the case of law enforcement investigations, risk circumvention of the law.

In sum, the changes proposed in this document are:

1. The Table of Contents of Part 1602 is revised by removing § 1602.6 entitled, "Regional records room," to reflect the abolition of the Corporation's regional offices as a source of FOIA records. To avoid renumbering the remaining sections, § 1602.6 is reserved for future use.

2. Sections 1602.1 and 1602.2 are amended by removing the phrase "as amended in 1974" as unnecessary.

3. The definitions "Clerical", "Professional Support", "Professional Staff", and "Management" have been added to § 1602.2 to explain the categories used in the fee schedule set forth in § 1602.13.

4. The definitions "Commercial use request", "Educational institution", "Non-commercial scientific institution", and "Representatives of the news

media" have been added to § 1602.2 to reflect statutory changes made in the FOIA and to conform to the OMB guidelines

5. The definitions in § 1602.2 have been arranged alphabetically for simplicity and the former alphabetical numbering system has been removed.

6. The references to the regional offices in §§ 1602.4 and 1602.7 have been corrected and in § 1602.6 have been removed to reflect the fact that all record requests are being processed in Washington, DC.

7. Section 1602.5(a) is revised to reflect the Corporation's new address.

8. Section 1602.9(a)(6) is revised to conform with section 1802(a) of Pub. L. 99-570, the Reform Act. Paragraph (b) of Section 1802 of Pub. L. 99-570 is not included in these revisions because the Corporation has no involvement in criminal law enforcement proceedings.

9. Paragraphs (b) through (j) of § 1602.13 have been revised to implement section 1803 of the Reform Act in accordance with the OMB guidelines. Former paragraph (h) has been renamed paragraph (k).

For the reasons set out above, it is proposed that Part 1602 of Title 45 of the Code of Federal Regulations be amended as follows:

## PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for Part 1602 continues to read as follows:

**Authority:** Sec. 1005(g), 42 U.S.C. 2996d(g).

1a. The table of contents of Part 1602 is revised as follows:

Sec.
1602.1 Purpose.
1602.2 Definitions.
1603.3 Policy.
1602.4 Index of records.
1602.5 Central records room.
1602.6 [Reserved]
1602.7 Use of records room.
1602.8 Availability of records on request.
1602.9 Invoking exemptions to withhold a requested record.
1602.10 Officials authorized to grant or deny requests for records
1602.11 Denials.
1602.12 Appeals of denials.
1602.13 Fees.

### § 1602.1 [Amended]

2. Section 1602.1 is amended by removing the phrase "as amended in 1974."

3. Section 1602.2 is revised to read as follows:

### § 1602.2 Definitions.

As used in this part—

"Clerical" means secretaries and clerks.

"Commercial use request" means request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a specific category. If still in doubt, the Corporation will make the determination based on the factual circumstances surrounding the request, including the identity of the requester.

"Direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

"Duplication" means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

"Educational institution" means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

"FOIA" means the Freedom of Information Act, 5 U.S.C. 552;

"Management" means unit managers, office directors, and corporation officers.

"Non-commercial scientific institution" means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

"Professional Staff" means assistants to directors, staff attorneys, monitoring analysts, auditors, and computer programmers/analysts.

"Professional Support" means administrative assistants and junior accountants.

"Records" means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include *inter alia*, books, magazines, or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

"Representative of the news media" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

"Review" means the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

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"Search" means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The search should be conducted in the most efficient and least expensive manner. Searches may be done manually or by computer using existing programming.

**§ 1602.4 [Amended]**

4. Section 1602.4, is amended by removing the words "and at each regional office" after the words "D.C.".

**§ 1602.5 [Amended]**

5. Section 1602.5(a), "Central records room," is amended by removing the phrase "733 Fifteenth Street, NW., Suite 700, Washington, DC 20005, (202) 376–5100" and substituting "400 Virginia Avenue, SW., Washington, DC 20024–2751, (202) 863–1820".

**§ 1602.6 [Removed]**

6. Section 1602.6, "Regional records rooms," is removed and reserved.

**§ 1602.7 [Amended]**

7. Section 1602.7(a), is amended by removing the words "or a regional" after the word "central." It is further amended by removing the words "although persons wishing to make extended use of regional office facilities should take account of the possible limitations in these facilities" after the word "required".

8. Paragraph (a)(6) of § 1602.9 is revised to read as follows:

**§ 1602.9 Invoking exemptions to withhold a requested record.**

(a) * * *

(6) Records or information compiled for enforcing the act or any other law, but only to the extent that the production of such law enforcement records or information (i) could reasonably be expected to interfere with enforcement proceedings, (ii) would deprive a person of a right to a fair trial or an impartial adjudication, (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, (v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (vi) could reasonably be expected to endanger the life or physical safety of any individual;

* * * * *

**§ 1602.10 [Amended]**

9. Section 1602.10 is amended by removing the words "each Regional Director," and "each Regional Records Officer."

10. Paragraphs (b), (c), (d), (e)(1) (i) through (iii) are revised; (e)(1)(iv), (6) and (7) are added; (f) through (h) are revised and (i) through (k) are added to § 1602.13 to read as follows:

**§ 1602.13 Fees.**

* * * * *

(b) Fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(c) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or non commercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(d) For any request not described in paragraph (b) or (c) of this section, fees shall be limited to reasonable standard charges for document search and duplication.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Search for records and production of information is based on the following schedule of direct labor charges:

(i) Clerical=$2.77/quarter hour.

(ii) Professional Support=$3.45/quarter hour.

(iii) Professional Staff=$4.99/quarter hour.

(iv) Management=$8.37/quarter hour.

* * * * *

(6) Packing and mailing records: Actual charges as incurred.

(7) Special delivery or express mail: Actual charges as incurred.

(f) Documents shall be furnished without any charge or at a charge reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(g) No fee will be charged under this section—

(1) If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(2) For any request described in paragraphs (b), (c), or (d) of this section for the first two hours of search time or for the first one hundred pages of duplication.

(h) No requester will be required to make an advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or the Corporation has determined that the fee will exceed $250.

(1) In the event that a requester has previously failed to pay a required fee (within 30 days of the date of billing), an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. The request will not be deemed to have been received by the Corporation until such payment is made.

(2) In the event that the Corporation determines that an estimated fee will exceed $250, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requesting party the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost. The request will not be deemed to have been received by the Corporation until an advance payment of the entire fee is made.

(i) Interest will be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(j) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly.

(k) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Dated: May 19, 1987.

Timothy B. Shea,

*General Counsel.*

[FR Doc. 87–11560 Filed 5–20–87; 8:45 am]

BILLING CODE 6820-36-M

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-04; Notice 2]

Federal Motor Vehicle Safety Standards; Air Brake Systems

**AGENCY:** National Highway Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Response to petition for extension of time to comment; Extension of comment period.

**SUMMARY:** This notice responds to a petition, submitted by International Transquip Industries, asking that the comment period be extended on a notice of proposed rulemaking (NPRM) to amend the parking brake requirements of Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. The comment period was scheduled to close on May 18, 1987. The closing date is extended to June 17, 1987.

**DATE:** The comment period for Docket No. 87-04, Notice 1, is extended so that it closes June 17, 1987.

**ADDRESS:** Comments should refer to Docket 87-04 and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5273).

**SUPPLEMENTARY INFORMATION:** On March 17, 1987, NHTSA published in the **Federal Register** (52 FR 8317) a notice of proposed rulemaking (NPRM) to amend Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. The notice summarized the proposal as follows:

> False parking occurs where, subsequent to the application of a vehicle's parking brakes by the driver, the design of the vehicle's parking brake system permits the parking brake force to gradually decrease, creating a risk of the vehicle rolling away after the driver has left the vehicle. The proposed amendments would ensure that systems which result in "false parking" are prohibited. As part of this action, the agency is also proposing to require that vehicles be capable of meeting requirements related to parking brake retardation force within two seconds of the time the parking brakes are actuated. This rulemaking action was initiated in response to a petition for rulemaking submitted by the California Highway Patrol.

International Transquip Industries submitted a petition asking for a 180-day extension of the 60-day comment period for the NPRM. The petitioner stated that adoption of the proposal would have a substantial impact on it and that, given finite resources, the company cannot respond properly within the 60-day period.

The company stated, in the petition and/or in a subsequent meeting with NHTSA representatives, that the purpose of the requested extension was to enable it to conduct testing to evaluate the premise of the proposal, whether the proposal balance safety issues such as stopping distance and shop safety, and what potential design ramifications the proposal would have on that company's products. The company stated that it was requesting a 180-day extension because it needs time to develop specific test plans, to schedule the tests at a test track, to lease vehicles for the tests, to conduct the tests, and to evaluate the test results. Also, in a letter dated May 12, 1987, International Tansquip suggested that NHTSA's decision to issue the NRPM may have been based on old data from tests "several years olds" performed by the agency or others on that company's brake. The company argued that equity and fariness demand that a rulemaking be based on the most current data available to the agency.

Petitions for extension of time to comment are only granted if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest. See 49 CFR 553.19.

NHTSA believes that the 60-day comment period has provided sufficient time for interested persons, including International Transquip, to submit meaningful comments. Even if that company has not been able to conduct a test program within the 60 days, it can provide qualitative comments on the issues it wishes to address. For example, it can present arguments about the premise of the proposal and whether safety issues are appropriated balanced. Similarly, through use of engineering analysis, the petitioner can identify and discuss the potential impacts adoption of the proposal could have on its products, while arguing that more precise analysis would require lengthy testing.

The agency notes that the decision to isue an NPRM was based on a general concern about false parking and not on test data for International Transquip's brake. Moreover, to the extent that company believes that information in the docket concerning its brake, whatever the source, may be insufficiently up-to-date, it can demonstrate that point without conducting a test program.

Given that NHTSA believes that the 60-day comment period has provided a sufficient opportunity for International Transquip and others to prepare and submit meaningful comments and that the proposal was issued in light of an agency concern about the safety hazards of certain braking systems already installed on some vehicles and being sold for installation of new vehicles, the agency concludes that a several month extension of the comment period is not consist with the public interest. The agency also notes that if, after consideration of all the comments, it concludes that reopening the comment period would be in the public interest, it could take that action.

While NHTSA declines to adopt a several month extension of the comment period, it has concluded that a 30-day extension is appropriate. The extension will ensure that to the extent that International Transquip may not have prepared the type of comments discussed above, it can still do so. The new closing date for comments is June 17, 1987.

International Tansquip remains free, of course, to conduct testing. As indicated in the NPRM, NHTSA considers to the extent possible comments filed after the closing date. Also, comments received too late for consideraiton in regard to a final rule are consistent as suggestion for further rulemaking action.

NHTSA notes that a number of arguments made in International Transquip's petiton address the merits of the proposal and the sufficiency of the agency's analyses. These comments will be fully considered by the agency in the course of the rulemaking, in accordance with statutory criteria.

For the reasons discussed above, International Tansquip's petition for extension of time to comment is granted only to the extent of a 30-day extension, and otherwise denied.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Issued on: May 15, 1987.

Marilynne Jacobs,

*Acting Associate Administrator for Rulemaking.*

[FR Doc. 87-11601 Filed 5-18-87; 11:19 am]

BILLING CODE 4910-59-M

# Notices

Federal Register
Vol. 52, No. 98
Thursday, May 21, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

May 15, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service

OMB Circular A–102; Financial Status Report
SF–269; SF–270
Recordkeeping, quarterly
State or local governments; 985 responses; 1,489 hours; not applicable under 3504(h)
Juanita Johnson (703) 756–3100

- Forest Service

Application for Prospecting Permit
R1–FS–3820–12
On occasion
Individuals or households; Small businesses or organizations; 50 responses; 12 hours; not applicable under 3504(h)
W. Mark Weber (406) 585–3502

Jane A. Benoit,
*Departmental Clearance Officer.*

[FR Doc. 87–11019 Filed 5–20–87; 8:45 am]
BILLING CODE 3410–01–M

## Soil Conservation Service

### Finding of No Significant Impact; Elton Creek #1 Critical Area Treatment RC&D Measure, New York

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Elton Creek #1 Critical Area Treatment RC&D Measure, Cattaraugus County, New York.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan for reducing critical erosion along a streambank in the Town of Freedom which results from high flows, stream degradation, and non-cohesive soils. The integrity of the existing levee will be assured through the installation of project measures. The planned works of improvement include the repair of the existing levee, construction of additional levee, installation of 3 sills, removal of gravel bars, installation of filter cloth, installation of riprap, and seeding and mulching of all disturbed areas.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: May 8, 1987.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials)

Paul A. Dodd,
*State Conservationist.*

[FR Doc. 87–11508 Filed 5–20–87; 8:45 am]
BILLING CODE 3410–16–M

### Finding of No Significant Impact; Glimmerglen Roadbank Critical Area Treatment RC&D Measure, New York

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pusuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR

Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Gilmantown Roadbank Critical Area Treatment RC&D Measures, Hamilton County, New York.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260; telephone (315) 423–5521.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an environmental impact statement is not needed for this project.

The measure concerns a plan for reducing critical erosion along a series of roadbanks in the Town of Wells which results from surface runoff, steep unstable slopes, and lack of protective vegetative cover. The amount of sediment entering Elbow Creek will be reduced through the installation of project measures. The planned works of improvement include the installation of surface water control, the installation of a gabion revetment along the lower portion of each slope, and the reshaping and seeding of the banks.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic date developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: May 8, 1987.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials)

[FR Doc. 87–11569 Filed 5–20–87; 8:45 am]

BILLING CODE 3410–16–M

## Findings of No Significant Impact; Wolf Creek Road Critical Area Treatment RC&D Measure, New York

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statment is not being prepared for the Wolf Creek Road Critical Area Treatment RC&D Measure, Allegany County, New York.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Dodd, State Conservationist, Soil Conservation Service, James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260, telephone (315) 423–5521.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul A. Dodd, State Conservationist, has determined that the preparation of an evnironmental impact statement is not needed for this project.

The measure concerns a plan for reducing critical erosion along a streambank in the Town of Genesee which results from high flows and stream alignment. The amount of sediment entering Dodge Creek will be reduced through the installation of project measures. The planned works of improvement included the installation of heavy rock rip-rap, the installation of filter fabric along the bank, and grading, shaping, and seeding of the eroding bank.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment is on file and may be reviewed by contacting Paul A. Dodd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: May 8, 1987

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and Local officials)

**Paul A. Dodd,**

*State Conservationist.*

[FR Doc. 87–11570 Filed 5–20–87; 8:45 am]

BILLING CODE 3410–16–M

## COMMISSION ON CIVIL RIGHTS

### Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Georgia Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 6:30 p.m. on June 8, 1987, at the Holiday Inn Downtown, Ellis Room, 175 Piedmont Avenue, NE., Atlanta Georgia. The purpose of the meeting is to collect information on and discuss the reporting of incidents of bigotry and hate motivated violence in Georgia and to plan activities for FY 87–88.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson, Elaine Alexander or John I. Brinkley, Director of the Eastern Regional Division at (202) 523–5264, (TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 13, 1987.

**Susan J. Prado,**

*Acting Staff Director.*

[FR Doc. 87–11628 Filed 5–20–87; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–351–607]

### Final Determination of Sales at Not Less Than Fair Value; Paint Filters and Strainers From Brazil

**AGENCY:** International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that disposable paint filters and strainers (paint filters and strainers) from Brazil are not being, nor are likely to be, sold in the United States at less than fair value. We have also determined that critical circumstances do not exist in this investigation.

EFFECTIVE DATE: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–5332 or 377–3268.

SUPPLEMENTARY INFORMATION:

## Final Determination

We have determined that paint filters and strainers from Brazil are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on virtually all of the sales of paint filters and strainers to the United States during the period of investigation, February 1 through July 31, 1986. Comparisons were based on United States price and foreign market value, based on third country sales. The weighted-average margin is 0.03 percent. This is *de minimis*.

## Case History

On December 22, 1986, we made an affirmative preliminary determination (51 FR 47037, December 30, 1986). Since then, the following events have occurred:

On December 23, 1986, the respondent requested a postponement of the final determination. We granted this request and postponed the due date for the final determination until no later than May 15, 1987 (52 FR 3158, February 2, 1987).

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments addressing the issues arising in this investigation. On April 10, 1987, we held a public hearing to allow parties to address the issues.

## Scope of Investigation

The products covered by this investigation are disposable paint filters and strainers of paper, containing cotton gauze, provided for in item 256.9060 of the *Tariff Schedules of the United States Annotated* (TSUSA), disposable paint filters and strainers of cotton gauze, containing paper, provided for in item 386.5300 of the TSUSA, and disposable paint filters and strainers of nylon mesh, containing paper, provided for in item 389.6270 of the TSUSA.

## Fair Value Comparisons

In order to determine whether sales of the subject merchandise to the United States were made at less than fair value, we compared the United States price with the foreign market value, based on third country prices.

## United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price since the merchandise was purchased by the unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated the purchase price based on the packed, c.&f. price to unrelated purchasers in the United States. We made deductions for port charges, foreign inland freight, ocean freight and bank handling charges.

## Foreign Market Value

In accordance with section 773(a) of the Act, we have determined that Cia. Industrial Celulose e Papel Guaiba (CELUPA) had no sales of paint filters and strainers in Brazil during the period of investigation. The petitioner alleged that sales to third countries were at prices below the cost of producing the merchandise. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. We found sufficient sales in Switzerland above the cost of production to allow us to use Swiss prices in accordance with section 773(a)(1)(B) for foreign market value.

We calculated third country price on the basis of the packed, c&f. prices to unrelated customers in Switzerland. We made deductions for port charges, foreign inland freight, ocean freight and bank handling charges. We made adjustments for differences in circumstances of sales in accordance with section 353.15 of our regulations for differences in credit expenses and commissions between the two markets. We made adjustments to similar merchandise to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

We deducted Swiss market packing costs and added the packing costs incurred on sales to the United States.

Pursuant to § 353.56 of Commerce's Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

## Negative Determination of "Critical Circumstances"

Petitioners alleged that imports of paint filters and strainers present "critical circumstances," as defined by section 733(e) of the Act. Since we have determined that paint filters and strainers have not been sold in the United States at less than fair value, the issue of "critical circumstances" is moot in this determination.

## Verification

As provided in section 776(a) of the Act, we verified all information provided by the respondent, using standard verification procedures, including examination of accounting records and original source documents containing relevant information on selected sales.

### *Petitioner's Comments*

*Comment 1:* Petitioner argues that the Department should base foreign market value on constructed value because CELUPA has engaged in predatory pricing in the U.S. and European markets. The Department has the authority to disregard third country prices and should do so here, in petitioner's view, because (1) the purpose of the antidumping law is to ensure that prices to the United States are not less than they would be in the home market and prices in Brazil boomed during the period, and (2) third country sales are a small proportion of total exports.

*DOC Position:* While the Department does have the authority to disregard third country prices as the basis for calculating foreign market value, § 353.4 of our regulations expresses a preference for using third country prices when possible. We have determined that there are adequate sales to the third country, that those third country sales were not made at a prices below the cost of production and that there was no price discrimination between the third country and the United States. For these reasons, we do not agree that foreign market value should be based on hypothetical prices that might have existed in the home market.

*Comment 2:* Petitioner asserts that CELUPA and its subcontractor, Riedus, are related parties, as defined in section 773(e)(3) of the Act. Petitioner bases its assertion of relationship on the facts that: (1) The establishment of Riedus was at the direction of Celupa; (2) a company like Riedus, capitalized at less than $100, cannot produce tens of

millions of strainers by itself; (3) Riedus is owned by Mrs. Santos; (4) under Brazilian law, a married couple own together all property owned by the other, and (5) as Administrative Director of CELUPA, Mr. Santos runs that company.

Because of this relationship, petitioner asks that the Department disregard prices between CELUPA and Riedus. Moreover, because Reidus did not submit cost information on its operations, the Department should construct an arm's length price between the two companies based on petitioner's data, including a profit of 24.2 percent, the reported profit margin for the Brazilian paper and pulp industry during the period of investigtion.

*DOC Position:* We do not find that CELUPA and Riedus are related parties within meaning of 773(e)(3). There was considerable confusion concerning the status of Mr. Santos with CELUPA, who has been described variously as an officer, director, member of the diretoria, and department head. Petitioner would have the Department believe that he is an officer, while respondent describes him as an employee, and attributes the resulting confusion to translation difficulties and unfamiliarity with Brazilian corporations. We have determined that Mr. Santos was appointed on April 30, 1986 to the CELUPA Board of Directors, after the contract was signed with Riedus. Moreover, the evidence in the record concerning communal ownership by spouses is conflicting. Given the conflicting nature of the evidence on communal property and the fact that Mr. Santos was not on the Celupa Board of Directors at the time of the contract with Riedus we do not find the parties related.

Secondly, under section 773(e)(2), the Department may disregard transactions between related parties if the price does not fairly reflect the amount usually reflected on sales of the merchandise under consideration. Because CELUPA did not subcontract similar work from the other companies, it was not possible to ascertain whether the price between Riedus and CELUPA was similar to prices other subcontractors would charge. However, based on its financial statements, Riedus is a profitable company. Moreover, Riedus performs work only for CELUPA and, thus, its profits derive from its work for CELUPA. Given Riedus' profitability and the fact its prices are not below cost, it is reasonable to assume that the prices between Riedus and CELUPA are at a fair value.

Finally, we note that were we to find a relationship between CELUPA and Riedus our normal practice would be to "collapse" the two companies and calculate a single cost of production, based on the cost of the combined entity. Hence, we would not impute a profit of Riedus' activities and the resulting cost of production would likely have been lower than the cost of production we calculated treating the two companies as not being related.

*Comment 3:* Petitioner argues that in calculating CELUPA's cost of production, depreciation and labor for the paint filter paper should be specifically identified and allocated to paint filter paper rather than allocating costs over total production, including coffee filters.

*DOC Position:* We agree.

*Comment 4:* The petitioner argues that is would be improper to allocate commercial, general and administrative expenses for CELUPA based on percentage of sales rather than cost of sales.

*DOC Position:* We agree. See our reply to respondent's comment 8.

*Comment 5:* The petitioner argues that the monetary correction, losses for holding inventory and replacement costs for all inventory should be utilized in calculating CELUPA's cost of production.

*DOC Position:* See our reply to respondent's comment 5.

*Comment 6:* The petitioner argues that financial expenses and income should not be netted and monetary variation of the loan principal should not be included in cost of production.

*DOC Position:* We agree that financial income should not be netted against financial expenses to the extent that the income is the result of long term investments. We also agree that monetary variation of the loan principal is not a cost of production.

*Comment 7:* The petitioner argues that transportation, handling, quality control, supervisory expenses and waste should be included in the cost of production.

*DOC Position:* We agree and they are included in the cost of production. Transportation and handling are included in Riedus' billings to CELUPA. Quality control is included as a factory overhead expense. CELUPA supervisory expenses are included in general and administrative expenses. Waste is included in the yields from production.

*Comment 8:* The Petitioner argues that the Department should use the profit margin (24.2%) for the pulp and paper industry in determining constructed value for CELUPA.

*DOC Position:* Because we used third country sales as the basis for calculating foreign market values, this issue is moot.

*Comment 9:* Corrections should be made to Swiss and U.S. prices for port charges, credit expenses and bank handling charges as indicated in the verification report.

*DOC Position:* We agree. Corrections have been made.

*Comment 10:* Petitioner argues that double commissions were paid and that an additional deduction must be made for commissions paid. Petitioner further alleges that respondent misled the Department, and that the Department should not base its determination on such submissions pursuant to 18 U.S.C. 1001 (Fraud and False Statement).

*DOC Position:* During the verification, the Department found that a single commission was paid to a single commissionaire. This was established in a contract between CELUPA and the commissionaire.

*Comment 11:* Petitioner argues that discrepancies exist for packing costs between CELUPA and Riedus, and suggests these costs should be reconciled upward as appropriate.

*DOC Position:* We verified the actual elements of cost related to packing. We used the actual packing cost, for both the European and U.S. sales.

*Comment 12:* All information submitted by respondent, particularly verification information, should be made available to counsel for petitioner under protective order.

*DOC Position:* Our longstanding administrative practice given the highly sensitive nature of the verification exhibits is not to show them to petitioner. We have maintained our normal practice in this case. Petitioner has had access to all other proprietary information under an appropriate administrative protective order.

*Comment 13:* Petitioner asserts that false information was submitted to the Department.

*DOC Position:* Finding omissions or errors in responses is common during verification. While the deficiencies in CELUPA's response were found at verification, the nature, magnitude and number of these problems were not sufficient to invalidate or discredit the response itself.

*Respondent's Comments*

*Comment 1:* Respondent argues that we should use third country sales to determine foreign market value.

*DOC Position:* We agree. See response to petitioner's comment 1.

*Comment 2:* Respondent argues that CELUPA and Riedus are not related parties.

*DOC Position:* We agree. See our response to petitioner's comment 2.

*Comment 3:* The respondent argues that the exchange fees and bank charges should not be included in credit expenses. This is because exchange fees are incidental to overall exports. Moreover, the Department does not allow credit for gains from the foreign exchange contracts and, therefore, should not include the costs of those contracts.

*DOC Position:* We agree and have deducted the exchange fees and bank charges from U.S. and Swiss sales. In this investigation, the amount of the exchange fees and bank charges can be tied to each transaction. The deduction of such fees is unrelated to foreign market exchange gains. The fees are actual costs incurred in selling in the United States and Switzerland. The gains are only nominal gains—any increased amount of cruzados received by waiting ten days to repatriate dollars will be offset by the decreased purchasing power of the cruzados.

*Comment 4:* The respondent argues the Department should not, and does not have the authority to, expand the scope of this investigation to include paint strainers made of man-made fibers because they were not exported to the United States.

*DOC Position:* We disagree. The Department has the authority not only to define the scope but also to clarify the statement of a scope of investigation. Paint strainers made of man-made fibers are the same class or kind of merchandise as cotton and paper strainers which have the same uses and functions.

*Comment 5:* The respondent argues that the Department should not include monetary correction in the cost of production because the monetary correction applies only to one month during the period of investigation. The respondent further states that CELUPA did not produce papers for paint strainers during that month.

*DOC Position:* We disagree. The monetary correction of the balance sheet was not included. However, monetary correction was appropriately captured, when necessary, in the cost of production by using replacement value for paper used in paint strainers produced prior to the end of the hyperinflation period.

*Comment 6:* The respondent argues that the Department should make difference in merchandise adjustments based on differences in printing costs.

*DOC Position:* We disagree. The billings from Riedus do not distinguish between printed and imprinted paint strainers. Therefore, CELUPA does not experience different costs for imprinted and non-imprinted filters.

*Comment 7:* The respondent argues that the Department should use actual costs, not replacement costs, as a basis for determining the cost of paper for paint strainers. The respondent further states that it is the Department's policy to use replacement cost only when the inflation rate exceeds 50 percent during the period of investigation. The Brazilian inflation rate was less than 25 percent.

*DOC Position:* We disagree. The Cruzado plan was introduced as of February, 1986, and marked the end of the hyperinflationary period. Paper produced in December, 1985 and January, 1986 was used for production in February and March, 1986. The cost of paper produced in the period prior to February, 1986 was adjusted to reflect the replacement cost when used in a later month's production.

*Comment 8:* The respondent argues that the Department should not allocate administrative expenses mechanically on the basis of cost of goods sold. In this case, CELUPA's subcontractor, Riedus, incurs many of the labor, material and administrative expenses for paint strainers. Other of CELUPA's products are manufactured entirely by CELUPA. Therefore, the cost of paint filters sold is inflated compared to the costs of other goods sold. As such, allocating administrative expenses on the basis of cost of sales leads to assigning a disproportionate share of administrative expenses to paint filters. To remedy this, administrative expenses should be allocated on the basis of the number of employees in the paper production part of the manufacturing process.

*DOC Position:* We disagree. Costs associated with contractor services become part of the cost of goods sold at the time of sale of the product; the same as material and labor used for other products. There are elements of supplier administrative expenses in other materials purchased. It is impractical to allocate based on these estimated elements. If allocation were based on number of employees in paper production, the total cost of the paint strainers would not be represented in the allocation.

### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is being published pursuant to sectin 735(d) of the Act (19 U.S.C. 1673d(d)).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

May 14, 1987.

[FR Doc. 87-11669 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-603]

## Final Negative Countervailing Duty Determination; Paint Filters and Strainers From Brazil

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of paint filters and strainers as described in the "Scope of Investigation" section of this notice. We have notified the U.S. International Trade Commission (ITC) of our determination.

**EFFECTIVE DATE:** May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bradford Ward or Thomas Bombelles, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2239 or 377-3174.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

Based upon our investigation, we determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of paint filters and strainers.

### Case History

On July 15, 1986, we received a petition in proper form from the Louis M. Gerson Co., Inc., a domestic producer of paint filters and strainers. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of paint filters and strainers receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 4, 1986, we initiated an investigation (51 FR 28739, August 11, 1986). On August 12, 1986, petitioner amended its petition to allege critical circumstances and requested clarification of the class or kind of merchandise to be included in the scope of investigation.

Since Brazil is entitled to an injury determination under section 701(b) of the Act, petitioner is required to allege that, and the ITC is required to determine whether, imports of the subject merchandise from Brazil cause or threaten material injury to a U.S. industry. On August 29, 1986, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil of the subject merchandise (51 FR 32257, September 10, 1986).

We presented a questionnaire to the Government of Brazil later requested additional information, and received severaal responses to our inquiries.

There is one known producer and exporter in Brazil of paint filters and strainers that exported to the United States during the review period. That producer is Cia. Industrial Celulose e Papel Guaiba (CELUPA). According to the Government of Brazil, CELUPA accounts for substantially all exports of paint filters and strainers to the United States.

On October 8, 1986, we issued a preliminary negative determination in this investigation (51 FR 36734, October 15, 1986). We preliminarily determined that no benefits constituting subsidies within the meaning of the Act are being provided to manufacturers, producers, or exporters in Brazil of the subject merchandise.

On October 22, 1986, petitioner filed a request for extension of the deadline date for the final determination in the countervailing duty investigation to correspond with the date of the final determination in the companion antidumping duty investigation under section 705(a)(1) of the Act, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573) (the 1984 Act) (19 U.S.C. 1671d(a)(1)). Pursuant to this provision, the Department granted an extension of the deadline for the final determination in this investigation to March 6, 1987, the original deadline for the final determination in the antidumping duty investigation (51 FR 40241, November 5, 1986).

On December 23, 1986, counsel for respondent in the antidumping duty investigation requested that the Department postpone the antidumping duty final determination to 135 days from the publication date of our preliminary antidumping duty determination, in accordance with section 735(a)(2) of the Act. We granted this request and postponed our final antidumping duty determination until May 15, 1987. Pursuant to section 705(a)(1) of the Act, as amended by section 606 of the 1984 Act, the deadline for this determination was also postponed until May 15, 1987, to coincide with the revised date of the final antidumping duty determination (52 FR 3158, February 2, 1987).

Verification of the questionnaire response in this investigation was held from February 9 through 13, and also on March 27, 1987. At the request of petitioner, a public hearing was held on April 10, 1987, to afford interested parties an opportunity to present views orally, in accordance with § 355.35 of our regulations.

## Scope of Investigation

The products covered by this investigation are disposable paint filters and strainers, of paper, containing cotton gauze, provided for in item 256.9060 of the *Tariff Schedules of the United States Annotated* (TSUSA); disposable paint filters and strainers of cotton gauze, containing paper, provided for in item 366.5300 of the TSUSA; and disposable paint filters and strainers of nylon mesh, containing paper, provided for in item 389.6270 of the TSUSA.

## Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is calendar year 1985. Based upon our analysis of the petition, the response to our questionnaire, our verification, and comments filed by petitioner and respondents, we determine the following:

## I. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Brazil of paint filters and strainers did not use the following programs which were listed in our notice of initiation:

*A. Income Tax Exemptions for Export Earnings*

Under Decree-Laws 1158 and 1721, Brazilian exporters are eligible for an exemption from income tax on a portion of profits attributable to export revenue. We verified that the respondent company did not receive benefits under this program during the review period.

*B. Preferential Working-Capital Financing for Exports*

The Carteira do Comercio Exterior (Foreign Trade Department, or CACEX) of the Banco do Brasil administers a program of short-term working capital financing for the purchase of inputs. During the review period, these loans were provided under Resolution 950, as amended by Resolution 1009.

Under Resolution 950, as amended, the Banco do Brasil pays the lending institution an equalization fee of up to 15 percent of the interest (after monetary correction). The lending bank passes the 15 percent equalization fee on to the borrower in the form of a reduction of the interest due. Receipt of the equalization fee by the borrower reduces the interest rate on these working capital loans below the commercial rate of interest. Resolution 950 loans are also exempt from the Imposto Sobre Operacoes Financeiras (Tax on Financial Operations, or IOF), a tax charged on all domestic financial transactions in Brazil. We verified that the respondent company did not receive benefits under this program during the review period.

*C. Export Financing Under the CIC–CREGE 14–11 Circular*

Under its CIC–CREGE 14–11 Circular (14–11), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. Loans under this program are also exempt from the IOF. We verified that the respondent company did not receive benefits under this program during the review period.

*D. Resolution 330 of the Banco Central do Brasil*

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. We verified that the respondent company did not receive benefits under this program during the review period.

*E. The BEFIEX Program*

The Comissao para a Concessao de Beneficios Fiscais a Programas Especiais de Exportacao (Commission for the Granting of Fiscal Benefits to Special Export Program, or BEFIEX)

grants at least seven categories of benefits to Brazilian exporters:

- First under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the Imposto sobre Produtos Industrializados (Tax on Industrial Products, or IPI) on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Second, under article 13 of Decree No. 72.1219, BEFIEX may extend the carry-forward period for tax losses from four to six years;
- Third, under Article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved products;
- Fourth, pursuant to long-term contracts under the BEFIEX program, the Government of Brazil may continue to provide, and certain exporting companies may continue to receive, the IPI Export Credit Premium beyond the termination date of that program;
- Fifth, a total exemption from import duties, IPI, and a tax on distribution of goods may be provided for specially approved export programs;
- Sixth, reduction of federal tax liability through use of a supplementary income tax exemption on dividends from export income; and
- Seventh, the "law of similars," which prohibits importation of products competitive with Brazilian-made products, may be waived.

We verified that the respondent company did not receive benefits under this program during the review period.

*F. The CIEX Program*

Decree-Law 1428 authorized the Comissao para Incentive a Exportacao (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. We verified that the respondent company did not receive benefits under this program during the review period.

*G. Accelerated Depreciation for Brazilian-Made Capital Equipment*

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the Conselho do Desenvolvimento Industrial (Industrial Development Council or CDI) may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that the respondent company did not receive benefits under this program during the review period.

*H. Incentives for Trading Companies*

Under Resolution 634, as amended by Resolutions 950 and 1009, of the Banco Central do Brasil, trading companies can obtain export financing similar to that obtained by manufactuers under Resolution 950. We verified that the respondent company did not receive benefits under this program during the review period.

*I. The PROEX Program*

Short-term credits for exports are available under the Programa de Financiamento a Producao para A Exportacao (Export Production Financing Program, or PROEX), a loan program operated by Banco Nacional do Desenvolvimento Economico e Social (National Bank of Economic and Social Development, or BNDES). We verified that the respondent company did not receive benefits under this program during the review period.

*J. Resolutions 68 and 509 (FINEX) Financing*

Resolutions 68 and 509 of the Conselho Nacional do Comercio Exterior (National Foreign Trade Council, or CONCEX) provide that CACEX may draw upon the resources of the Fundo de Financiamento a Exportacao (Export Financing Fund, or FINEX) to extend dollar-denominated loans to both exporters and foreign buyers of Brazilian goods. Financing is granted on a transaction-by-transaction basis. We verified that the respondent company did not receive benefits under this program during the review period.

*K. Loans Through the Apoio o Desenvolvimento Tecnologica a Empresa Nacional (ADTEN)*

Petitioner alleges that the Government of Brazil maintains, through the Financiadora de Estudos Projectos (Financing of Research Projects, or FINEP), a loan program, ADTEN (Support of the Technological Development of National Enterprises), that provides long-term loans on terms inconsistent with commercial considerations to encourage the growth of industries and development of technology. We verified that the respondent company did not receive benefits under this program during the review period.

**II. Program Determined to Have Been Terminated**

*IPI Export Credit Premium*

Until May 1, 1985, Brazilian exporters of manufactured products were eligible for a tax credit on the IPI. The IPI export credit premium, a cash reimbursement paid to the exporter upon the export of otherwise taxable industrial products, was found to constitute a subsidy in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the Government of Brazil reinstated it on April 1, 1981.

Subsequent to April 1, 1981, the credit premium was gradually phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). Under the terms of "Portaria" (Notice of the Minstry of Finance) No. 176 of September 12, 1984, the credit premium was eliminated effective May 1, 1985.

Accordingly, we determine that this program has been terminated, and no benefits under this program are accruing to current exports of paint filters and strainers.

*Petitioner's Comments*

*Comment 1:* Petitioner contends that, CELUPA received IPI export credit premium payments for a short period beyond the official termination date of that program, the Department should countervail in our final determination the total amount received during the review period. Petitioner asserts that the Department has no statutory discretion, except under the suspension agreement provision, to decline to countervail benefits provided to respondent companies during the review period pursuant to countervailable subsidy programs.

*DOC Position:* We disagree. The IPI export credit premium was terminated effective May 1, 1985 which was prior to the initiation of this case, and the company did not qualify for benefits under this program on exports after that date. We have consistently calculated the benefit under this program based on the date the premium was earned, not on the date it was received. All funds received under this program were earned before May 1, 1985 and did not benefit exports made after that date.

When a subsidy program is terminated prior to our initiation, and companies may no longer receive benefits as of the date of termination nor would any entries potentially subject to duties benefit from this program, we do not include the value of the benefits received under such terminated programs in our subsidy calculations. Also, such treatment

encourages the termination of subsidy programs by countries subject to investigation.

This case is distinguishable from prior cases where we have included the benefits received pursuant to terminated programs in our calculation of the estimated net subsidy since in those cases, the program has been terminated prior to our preliminary determination but *after* our initiation. Also, those program terminations generally applied only to the product under investigation or only to exports to the United States. In those cases, the programs appeared to have been terminated in direct response to the initiation of specific investigations. In the instant case, the IPI export credit premium program was terminated on May 1, 1985, long before the initiation of this investigation and it has consistently been verified to no longer confer benefits.

*Comment 2:* Petitioner argues in the alternative that the Department's program-wide change policy is inapplicable to the IPI export credit premium program because the program allegedly has been discontinued and resurrected repeatedly by the Government of Brazil.

*DOC Position:* Where a program has been terminated prior to the date of the initiation we will not include benefits from that program in our final calculation of the net subsidy. (See our response to Petitioner's Comment 1.)

We have no evidence indicating, nor has petitioner alleged, that the IPI export credit premium has been reinstated. We have also verified that CELUPA is not a party to a BEFIEX contract and, therefore, is not eligible to receive IPI export credit premiums pursuant to a preexisting contract. Therefore, there is no basis for countervailing this program at this time.

*Comment 3:* Petitioner contends that the Department should rescind its preliminary negative determination in this investigation because CELUPA received a countervailable subsidy during a portion of the review period (IPI export credit premiums), and issue an affirmative determination retroactive to the date of our preliminary determination.

*Doc Position:* We disagree. The Department does not believe that it has the authority to suspend liquidation retroactively under these circumstances, nor has petitoner cited any statutory provision which might confer such authority. Furthermore, the Department does not consider the IPI export credit premium program to have bestowed countervailable benefits on the respondent since the date of our preliminary determination for the reasons stated in our responses to Petitioner's Comments 1 and 2. Therefore, it would be inappropriate to impose a duty.

*Comment 4:* Petitioner contends that non-use of the BEFIEX and CIEX programs was insufficiently verified because the verification team was permitted to examine only a list of contracts and no other documents which allegedly prevents "meaningful judicial review."

*DOC Position:* We disagree. The Verification team examined the Government of Brazil's list of companies participating in these programs, reviewed company documents, and questioned government and company offiicals about CELUPA's non-participation. We are satisfied that the company did not participate in these programs.

*Comment 5:* Petitioner contends that Melitta do Brasil and Riedus should have been issued separate questionnaries and been investigated because of an alleged close "relationship" with CELUPA through which they might be passing subsidies to CELUPA

*DOC Position:* We disagree. Petitioner has not made a sufficiently detailed allegation either that countervailable benefits are accruing to Melitta do Brasil or Riedus, or of how any countervailiable benefits might be accuring to CELUPA through either of these two companies. Our verification showed that CELUPA and Melitta do Brasil are simply "sister" companies owned by a single parent, Melitta-Werke Bentz & Sohn, a multinational corporation based in the Federal Republic of Germany.

Similarly, petitioner has failed to make any detailed allegations that Riedus is receiving countervailable benefits or that such benefits are accruing to CELUPA. Riedus is an unrelated subcontractor supplying labor services to CELUPA for assembly of the subject merchandise. We discovered no evidence which would lead us to believe that the relationship between CELUPA and Riedus is other than an arm's-length, business one. This conclusion is consistent with the Final Determination of Sales at Less Than Fair Value involving the same products from Brazil published concurrently with this notice. We are satisfied from our discussions with Brazilian government officials, our review of Brazilian legislation, and our examination of Riedus source documents that the product under investigation is not being subsidized.

*Comment 6:* Petitioner contends that a loan to CELUPA by its sister corporation, Melitta do Brasil, should be countervailed if the interest charged is less than our benchmark rate.

*DOC Position:* We disagree. Petitioner's allegations of the nature of alleged subsidization of CELUPA thorugh Melitta do Brasil or other members of the "Melitta group" have been vague and speculative. Petitioner has made no specific allegation that funds transferred to CELUPA thorugh Melitta do Brasil originated with or were made under a program of the Government of Brazil. We found no evidence of such involvement by the government at verification. Accordingly, there is no basis for countervailing this loan.

*Comment 7:* Petitioner, citing *Atlas Copco, Inc. v. United States*, Slip Op. 86-132 (Court of International Trade, December 12, 1986), contends that Riedus is the "manufacturer" of the subject merchandise, CELUPA being only the exporter of record, and therefore, Riedus should be the proper subject of the Department's investigation.

*DOC Position:* We disagree. The case cited by petitioner in support of its contention is inapposite. We have verified that CELUPA, not Riedus, is both the manufacturer and the exporter of record of the subject merchandise and that the companies are not related. CELUPA, therefore, is the proper subject of our investigation. Additionally, we examined Riedus' source documents and found no indication that it receives any countervailable subsidies or passes them on to CELUPA.

*Comment 8:* Petitioner contends that verification of Riedus was insufficient and best information available should be used to determine the value of countervailable subsidies provided to Riedus.

*DOC Position:* We disagree. We verified that CELUPA and Riedus are not related, that Riedus was not an exporter or manufacturer of the subject merchandise, and the terms of Riedus' subcontractor agreement with CELUPA. Absent an upstream subsidy allegation then, the Department had no authority, obligation, or grounds to seek further information from Riedus. However, we examined certain financial and other records of Riedus and satisfied ourselves that the company received no countervailable benefits.

*Comment 9:* Petitioner contends that certain tax credits (amounts invested by CELUPA in government-approved development funds which reduce the company's effective corporate income tax rate) should be countervailed. Petitioner also argues that these tax credits should be countervailed because

they provide CELUPA an incentive to acquire its own source of raw materials.

*DOC Position:* We disagree. In prior cases, the Department has found this tax credit program to be not limited to a specific enterprise, industry, or group thereof and therefore not countervailable. *See, Certain Carbon Steel Products from Brazil: Final Affirmative Countervailing Duty Determination* (49 FR 17988, April 26, 1984). The issues is irrelevant here, however, since CELUPA did not avail itself of this program on taxes paid during the review period.

*Comment 10:* Petitioner contends that any subsidies received by CELUPA should be countervailed, regardless of whether they amount to less than the Department's *de minimis* standard of 0.50 percent. Petitioner futher argues that the *de minimis* standard is particularly inappropriate in an investigation such as this one involving an allegedly price-sensitive product.

*DOC Position:* Since we have determined that there are no countervailable subsidies being provided to CELUPA, this issue is moot.

*Comment 11:* Petitioner contends that CELUPA and/or Riedus may be eligible for FINSOCIAL (similar to Social Security in the United States) tax exemptions. Petitioner also contends that the Department should impose a countervailing duty based on real estate tax exemptions allegedly provided to CELUPA based on property located in an industrial district.

*DOC Position:* These general allegations were received long after our preliminary determination and shortly before verification. As such, they were too insubstantial and it was too late for us to investigate these alleged programs. However, at verification we saw no evidence of any exemptions granted to CELUPA.

*Comment 12:* Petitioner contends that certain short-term bank loans to CELUPA are countervailable because they do not carry any interest charges, regardless of whether they are part of a government program. Petitioner contends that there has been no verification of the "offsetting" deposits with and payments through the lending banks by CELUPA which purportedly constitute consideration to the banks. Petitioner also argues that because the submission of the CELUPA loan data was too late to permit meaningful comment or rebuttal, the Department is required to reject it and rely upon best information available.

*DOC Position:* We disagree. CELUPA received several private bank loans without interest charges. These working capital loans were for periods of less than 30 days. Such loans are provided by commercial banks in Brazil on an informal basis to any customer who agrees to pay their payroll and various taxes through the lending bank. The IOF tax and a tax on collection were charged on these loans. Preferential government credit in Brazil is usually exempt from the IOF tax. Without evidence to the contrary, the Department presumes loans from commercial banks to unrelated parties to be made on commercial terms. Absent some evidence of government involvement or direction in these loans, we do not consider them to provide a countervailable subsidy to CELUPA.

*Comment 13:* Petitioner criticizes the Department's conduct of verification and general information gathering as inadequate in this countervailing duty investigation (and by implication others) on two grounds; (1) government-to-government communication rather than government-to-company communication permits the Department to be deceivedby unscrupulous parties, and (2) verification at a central location other than respondent company facilities is insufficient to meet statutory requirements.

*DOC Postion:* We disagree. We are satisfied that our verification and information gathering procedures are adequate and correct. In this investigation, we examined all necessary documents and sufficiently verified the information relied upon in the final determination.

*Respondents' Comments*

*Comment 1:* Respondents contend that the Department has verified that CELUPA recieves no countervailable subsidies from the Government of Brazil.

*DOC Position:* We agree. See our responses to Petitioner's Comments 1, 2, 3, 6, 9, and 12.

*Comment 2:* Respondents contend that Riedus is not a manufacturer, producer, or exporter of the subject merchandise but rather a subcontractor to CELUPA and, as such, should not be included in this investigation. Respondents contend that the cases cited by petitioner in this regard do not construe the countervailing duty law but, rather, Customs statutes irrelevant to our investigation.

*DOC Position:* We agree. See our responses to Petitioner's Comments 7 and 8.

*Comment 3:* Respondents contend that (a) the Department has verified that Riedus received no subsidies, (b) Riedus is not related to CELUPA, and (c) there has been no showing of an indirect private subsidy passed through Riedus at government direction as required by the statute when private indirect subsidies are alleged.

*DOC Position:* See our responses to Petitioner's Comments 5 and 7.

*Comment 4:* Respondents content that no countervailable subsidies have been provided to CELUPA through Melitta because (a) it is legally impossible for the German parent company to provide countervailable subsidies; and (b) Melitta do Brasil has not provided any countervailable subsidies and Department practice is not to assume, without further evidence, that related parties provide such benefits.

*DOC Position:* We have found no countervailable subsidies provided to CELUPA from any source.

*Comment 5:* Respondents content that it would be inappropriate for the Department to issue a countervailing duty order, require cash deposits, and subsequently find no subsidy in an administrative review, all on the basis of a program previously and consistently found to be terminated. Receipt of IPI credit premiums during the review period does not justify issuance of a countervailing duty order. Receipt of IPI credit premiums for a short time after the official termination of the program does not indicate that the program was not eliminated.

*DOC Position:* We have not countervailed the IPI export credit premium program in this case pursuant to our program-wide change policy. See our responses to Petitioner's Comments 1, 2, and 3.

*Comment 6:* Respondents content that the Department has sufficiently verified that CELUPA did not participate in the BEFIEX program.

*DOC Position:* We agree. See our response to Petitioner's Comment 4.

*Comment 7:* Respondents content that the FINSOCIAL tax exemptions for exports is the exemption of an indirect tax relating to exported products and is therefore not a subsidy according to the Subsidies Code Illustrative List of Export Subsidies.

*DOC Position:* See our response to Petitioner's Comment 11.

*Comment 8:* Respondents content that the income tax credits identified in Petitioner's Comment 9 are irrelevant to this investigation because the Department has found such generally-available programs not to be countervailable and because neither CELUPA nor Riedus used the program during the review period.

*DOC Position:* We agree.

*Comment 9:* Respondents content that the law is silent as to the method of verification required in countervailing

duty investigations and the Department has found verification conducted at central locations and even in the United States to be sufficient.

*DOC Position:* See our response to Petitioner's Comment 13.

*Comment 10:* Respondents content that none of the companies received the real estate tax exemptions alleged by petitioner.

*DOC Position:* See our response to Petitioner's Comment 11.

*Negative Final Determination of Critical Circumstances:* On August 12, 1986, petitioner amended the July 15, 1986 petition to allege that, pursuant to section 703(e) of the Act, critical circumstances exist with respect to paint filters and strainers from Brazil.

Under section 705(a)(2) of the Act as amended by section 605(a)(1) of the 1984 Act, critical circumstances exist if we find that:

(A) the alleged subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of investigation over a relatively short period.

Because our final determination is negative, we have determined that manufacturers, producers, or exporters in Brazil of paint filters and strainers do not receive any subsidies inconsistent with the Subsidies Code. Accordingly, we do not need to consider whether there have been massive imports over a relatively short period of time.

Therefore, we determine there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of paint filters and strainers from Brazil.

### Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, and tracing information in the response to source documents, accounting ledgers, and financial statements.

### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination.

### Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with section 355.34 of our regulations (19 CFR 355.34). We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing held on April 10, 1987, in accordance with § 355.35 of our regulations (19 CFR 355.35).

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

May 15, 1987.

[FR Doc. 87-11670 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DS-M

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## State University of New York et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-050. Applicant: State University of New York, New York, NY 10010. Instrument: Joyce Display Monitor, Type DM2 WA Phosphor. Manufacturer: Joyce Electronics Ltd., United Kingdom. Intended use: See notice at 51 FR 44825, December 12, 1986. Reasons for this decision: The foreign instument provides high luminance (mean of 300 candelas per square meter) and raster rotation through 360 degrees. Advice submitted by: National Institutes of Health, April 9, 1987.

Docket No.: 87-051. Applicant: Mayo Foundation, Rochester, MN 55905. Instrument: Mass Spectrometer System, Model Bin-10K. Manufacturer: Bio-Ion Nordic AB, Sweden. Intended use: See notice at 51 FR 44825, December 12, 1986. Reasons for this decision: The foreign instrument provides a mass range to 15,000 amu and a mass precision of 0.1%. Advice submitted by: National Institute of Health, April 9, 1987.

Docket No.: 87-052. Applicant: University of Hawaii, Coconut Island, HI 96744. Instrument: Ultrasonic Transmitter with Electromyogram Transduction Capabilities. Manufacturer: VBMCO, Canada. Intended use: See notice at 51 FR 44825, December 12, 1986. Reasons for this decision: The foreign instrument provides underwater acoustic telementry of electromyographic signals from electrodes attached to research animals. Advice submitted by: National Oceanic Atmospheric Administration, February 24, 1987.

Docket No.: 87-054. Applicant: Howard Hughes Medical Institute, Houston, TX 77030. Instrument: Mass Spectrometer, Model ZAB-SEQ. Manufacturer: VG Analytical Ltd., United Kingdom. Intended use: See notice at 51 FR 45792, December 22, 1986. Reasons for this decision: The foreign instrument provides resolution to 125,000 (10% valley), mass range to 15,000 amu at an accelerating potential of 8kV, and FAB capability. Advice submitted by: National Institutes of Health, April 9, 1987.

Docket No.: 87-062. Applicant: University of Florida, Gainesville, FL 32611. Instrument: Nanosecond Fluorescence Spectrometer System 2000. Manufacturer: Photochemical Research Associates, Canada. Intended use: See notice at 51 FR 45793, December 22, 1986. Reasons for this decision: The foreign instrument provides time-correlated single photon counting and a stable light source with a pulse frequency variation less than 0.3 percent. Advice submitted by: National Institutes of Health, April 9, 1987.

Docket No.: 87-101. Applicant: Case Western Reserve University, Cleveland, OH 44106. Instrument: Fluorescence Lifetime Instrument. Manufacturer: Edinburgh Instruments Ltd., United Kingdom. Intended use: See notice at 52 FR 7916, March 13, 1987. Reasons for this decision: The foreign instrument provides nanosecond to millisecond time resolution and time-correlated single photon counting using a pulsed light mode. Advice submitted by: National Institutes of Health, April 9, 1987.

Comments: None received.

Decison: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health and National Oceanic and Atmospheric Administration advise in the respectively cited memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 87-11671 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Intent to Approve Incorporation of the Chesapeake Bay Critical Areas Protection Program Act and Amending Regulations into the Maryland Coastal Zone Management Program (MCZMP)

**AGENCY:** National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), Commerce.

**ACTION:** Approval of the proposed amendment.

**SUMMARY:** The Office of Ocean and Coastal Resource Management National Oceanic and Atmospheric Administration (NOAA) received a request from the state of Maryland to amend its Coastal Zone Management Program (MCZMP). The proposed amendment to the MCZMP includes the incorporation of the Chesapeake Bay Critical Area Protection Program Act (Chapter 794–1984), the Criteria for Local Critical Area Program Development adopted pursuant to the Chesapeake Bay Critical Area Act (COMAR 14.15.01–11) and the Laws amending the CBCAA: (i) Quorum Requirement (Chapter 601–1986); (ii) Growth allocation (Chapter 602–1986); (iii) Intra-Family Transfers (Chapter 603–1986); and (iv) Impervious Surfaces (Chapter 604–1986). These laws and regulations reflect the State's interest in fostering more sensitive development activity in a consistent and uniform manner along the Chesapeake Bay shoreline and its tributaries by minimizing damage to water quality and natural habitats through the development and implementation of this protection program on a cooperative basis between the State of Maryland and the affected local governments.

The State's request was made pursuant to section 306(g) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1455(g) and implementing regulations at 15 CFR 923.81. The proposed amendment allows for increased predictability and efficiency in the management of the MCZMP.

The Director of the Office of Ocean and Coastal Resource Management has reviewed the amendment request and has made a preliminary determination that it should be approved, and that the MCZMP, as amended, will still constitute an approvable program under § 923.82, and the procedural requirements of section 306(c) of the CZMA will have been met.

The Director also determined that approval of the proposed change does not constitute a major Federal action having a significant effect on the environment. Therefore, an environmental impact statement on the approval of the MCZMP amendment under the National Environmental Policy Act of 1969, as amended, will not be required. Copies of the Finding of No Significant Impact (FONSI), including the supporting Environmental Assessment (EA), and the Director's preliminary determination of approvability are available at the address below.

Comments on the Preliminary Determination to approve the Maryland amendment request and on the EA and FONSI should be made within 30 days from the date of this notice. Address comments to: James P. Burgess, Chief, Coastal Programs Division, Office of Ocean and Coastal Resource Management, 1825 Connecticut Avenue NW., Washington, DC 20235 (202) 673–5158.

Dated: May 12, 1987.

James P. Blizzard,

*Acting Director, Office of Ocean and Coastal Resource Management.*

[FR Doc. 87-11661 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-08-M

### Marine Mammals; Issuance of Permit; to Jolly Roger Amusement Park (P391)

On April 2, 1987, notice was published in the Federal Register (52 FR 10604) that an application had been filed by Jolly Roger Amusement Park, P.O. Box 572, Ocean City, Maryland 21842 to import two (2) Atlantic bottlenose dolphins (*Tursiops truncatus*) and (1) California sea lion (*Zalophus californianus*) for public display.

Notice is hereby given that on *May 13, 1987* as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: May 13, 1987.

Dr. Nancy Foster,

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87-11616 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products From the Dominican Republic

May 18, 1987.

The Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs, effective June 1, 1987. For further information, contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota reopenings, please call (202) 377–3715.

**Background**

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1983, as amended, between the Governments of the United States and the Dominican Republic establishes specific limits for cotton and man-made fiber textile products in Categories 351 (cotton nightwear and pajamas), 639 (man-made fiber knit shirts and blouses) and 649 (man-made fiber brassieres and body supporting garments), produced or manufactured in the Dominican Republic and exported to the United States during the agreement year beginning on June 1, 1987 and extending through May 31, 1988.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of

December 18, 1986 establishes, among other things, a designated consultation level for cotton textile products in Category 340 (cotton shirts, not knit), produced or manufactured in the Dominican Republic and exported during the same twelve-month period.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports of cotton and man-made fiber textile products in Categories 340, 351, 639 and 649 at the designated levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 18, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements of December 30, 1983, as amended, and December 18, 1986 between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340, 351, 639 and 649, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on June 1, 1987 and extending through May 31, 1988, in excess of the following restraint limits:

| Category | 12-mo limit |
|---|---|
| 340 | 150,000 doz. |
| 351 | 467,816 doz. |
| 639 | 473,197 doz. |
| 649 | 2,424,972 doz. |

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in the Dominican Republic, which have been exported to the United States, in the case of Categories 351, 639, and 649, on and after June 1, 1986; and, in the case of Category 340, on and after December 1, 1986; and extending through May 31, 1987, shall, to the extent of any unfilled balances, be charged to the levels established for those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of December 30, 1983 between the Governments of the United States and the Dominican Republic which provide, in part, that: (1) Specific limits may be exceeded by designated percentages to account for swing, provided that an equal amount in equivalent square yards is deducted from another specific limit; and (2) specific limits may also be increased for carryover and carryforward. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622); July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11087 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DR-M

## Amendment to the Export Visa Requirement for Certain Cotton Textile Products Produced or Manufactured in Hong Kong

May 18, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 19, 1987. For further information contact Janet Heinzen, International Trade Specialist (202) 377-4212.

**Background**

A CITA directive was published in the Federal Register (48 FR 2400) on January 19, 1983, as amended, which established export visa requirements for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported to the United States.

A further directive dated April 1, 1987 amended the export visa arrangement with Hong Kong to include the part category designation 314/320-B. The directive further stated that shipments of cotton broadcloth and poplin visaed as Category 314/320-X, exported from Hong Kong between the period January 1, 1987 through February 8, 1987, shall not be denied entry.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the export visa requirement to allow entry of cotton broadcloth and poplin visaed as Category 314/320-X, exported from Hong Kong between the period January 1, 1987 through March 8, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 Fr 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 18, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended on April 1, 1987, by the Chairman of the Committee for the Implementation of Textile Agreements that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Hong Kong which were not properly visaed.

Effective on May 19, 1987 the directive of January 14, 1983, as amended, is hereby

further amended to permit entry of cotton broadcloth and poplin, visaed as Category 314/320-X, which are exported from Hong Kong between the period January 1, 1987 through March 8, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11068 Filed 5-20-87; 8:45 am]

BILLING CODE 3510-DR-M

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade; Application for Designation as Contract Market in Long Term Japanese Government Bond Futures

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contract.

**SUMMARY:** The Chicago Board of Trade ("CBT") has applied for designation as a contract market in long term Japanese government bond futures. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATE:** Comments must be received on or before July 20, 1987.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT long term Japanese government bond contract.

**FOR FURTHER INFORMATION CONTACT:** Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed CBT futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.6 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by [sixty (60) days after publication].

Issued in Washington, DC, on May 15, 1987.

Paula A. Tosini,

*Director, Division of Economic Analysis.*

[FR Doc. 87-11014 Filed 5-20-87; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Military Traffic Management Command (MTMC)

**ACTION:** International/domestic rate application for personal property shipments.

**SUMMARY:** As a result of varying rates on file for multiple areas controlled by a single shipping office area of responsibility, an agreement was reached between the General Services Administration and MTMC which changes the application of rates for both domestic and international personal property shipments.

MTMC plans to remedy this situation by changing the application of line-haul rates (a percentage for domestic and a single-factor rate for international shipments) to the rate applicable to the destination shown at block 18 of the Personal Property Government bill of lading (PPGBL) (Standard Form 1203).

**DATES:** Domestic Shipments: November 1, 1987; International Shipments: October 1, 1987.

**ADDRESS:** Comments on this issue must be received by June 19, 1987, and may be addressed to: Headquarters, Military Traffic Management Command, ATTN: MT-PPC, Room 408, Falls Church, VA 22041-5050.

**FOR FURTHER INFORMATION CONTACT:** Ms. Eunice Anderson at (202) 765-2385 or Ms. Janet Phillips at (202) 756-1190.

**SUPPLEMENTARY INFORMATION:** This change eliminates the possibility of a higher cost carrier being used as a result of storage in transit at a different location. The current application of rates, based on the service member's residence or storage warehouse location resulted, in several cases, in excessive costs to the Government and an off-set action to the carrier. The charges will apply as follows:

(a) Domestic—Mileage will apply from the original point to the destination residence or storage warehouse, as applicable. The applicable line haul rate will be the percentage filed to the location shown in block 18 of the PPGBL.

(b) International—The single factor rate from the origin rate area to the destination rate area, as shown in block 18 of the PPGBL will apply for both household goods and unaccompanied baggage.

Joseph R. Marotta,

*Colonel, GS, Director of Personal Property.*

[FR Doc. 87-11571 Filed 5-20-87; 8:45 am]

BILLING CODE 3710-08-M

### Defense Logistics Agency

### Privacy Act of 1974; Amendment of an Existing Computer Matching Program Between Department of Defense and U.S. Postal Service

**AGENCY:** Defense Manpower Data Center (DMDC), Defense Logistics Agency, Department of Defense.

**ACTION:** This action constitutes public notice for comment on a proposed amendment to an existing ongoing computer matching program between the Department of Defense (DoD) and the U.S. Postal Service (USPS).

**SUMMARY:** On March 29, 1985 at 50 FR 12606, the DoD gave public notice of a continuing Computer Matching Program between DoD and USPS. This matching program currently consisting of two specific programs: (1) To identify those Postal Service employees in the Ready Reserve so as to allow the USPS to determine if any such reservist would be critical to the USPS effort in time of national emergency and should not be retained in the Ready Reserve; and (2) to

identify and locate Postal Service employees indebted to the Department of Defense. This computer matching program is now being amended to add another additional continuing matching program between DoD and USPS. The new third matching program will match USPS employee records with the DoD military retired pay records to determine if their Postal Service salary makes them subject to restrictions on earnings imposed by the Dual Compensation Act. The purpose of this document is to provide information for public comment concerning the DoD proposal to amend the existing computer matching program between the DoD and USPS by adding a new third continuing matching program mentioned above. The amended matching report is set forth below.

**DATE:** The proposed action will be effective, without further notice on June 22, 1987, unless comments are received which would result in a contrary determination.

**ADDRESS:** Send written comments to Mr. Stewart Reiman, Defense Manpower Data Center, Suite 200, 550 Camino El Estero, Monterey, CA 93940-3231. Telephone: (408) 646-2951; Autovon: 878-2951.

**FOR FURTHER INFORMATION CONTACT:** Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202. Telephone: (202) 694-3027; Autovon: 224-3027.

**SUPPLEMENTARY INFORMATION:** Set forth below is an amended matching report containing the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, dated May 11, 1982, issued by the Office of Management and Budget and published in the **Federal Register** at 47 FR 21656, May 19, 1982. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget on May 13, 1987, pursuant to Appendix I of OMB Circular No. A-130-"Federal Agency Responsibilities of Maintaining Records About Individuals" dated December 12, 1985 and published in the **Federal Register** at 50 FR 52730 on December 24, 1985.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

May 18, 1987.

Reporting of a Continuing Computer Matching Program: The Department of Defense and the U.S. Postal Service.

a. *Authority:* 5 U.S.C. 552a; Title 10 U.S.C. Section 136 and Section 271; Debt Collection Act of 1982 (Pub. L. 97-365); Executive Order 11190; Dual Compensation Act (Pub. L. 88-448) codified as amended at 5 U.S.C. 5532.

b. *Programs description:* Under written agreements, the Department of Defense as the matching agency will receive, upon request on a periodic basis, a magnetic tape from the U.S. Postal Service, the source agency, listing the names, home addresses, Social Security Account Numbers, and salaries of current, or former U.S. Postal Service employees for the purpose of the following computer matching programs:

(1) To identify and locate those U.S. Postal Service members who are indebted to the United States under programs administered by the Department of Defense pursuant to the Debt Collection Act of 1982. The records provided by U.S. Postal Service will be matched with the Department of Defense debtor records and the "hits" will be referred to the Postal Service which will provide the home and work address of each debtor to the Department of Defense. These records will be used to contact the debtor to request payment of the debt.

(2) To identify those Postal Service employees who are Ready Reservists for the purposes of updating the Department of Defense's listings of Ready Reservists and reporting reserve status information under E.O. 11190 to the Postal Service and Congress. The Postal Service will be furnished the "hits" so as to allow that agency to determine if any identified employee would be critical to the U.S. Postal Service effort in time of national emergency and should not be retained in the Ready Reserve.

(3) To match records of U.S. Postal Service employees, or former employees, with the retired military personnel records to determine if their Postal Service salary makes them subject to restrictions on earnings imposed by the Dual Compensation Act (5 U.S.C. 5532). If the individual "hits" are subject to a pay cap or dual compensation offset from their retired military pay, the records will be referred to the appropriate military service finance center for an offset determination.

c. *Records to be matched:* (1) Department of Defense System of Records.

The Department of Defense system of records to be used in this match is identified as S322.10 DLA-LZ, entitled: Defense Manpower Data Center Data Base. This record system notice can be located in the **Federal Register** at 51 FR 30104, August 22, 1986.

No amendment to this notice is required. The disclosure of information from this system of records, for the purpose of the matching program, is permitted by the existing routine uses.

(2) U.S. Postal Service System of Records.

The U.S. Postal Service system of records to be used in this match is identified as USPS 050.020, entitled: Finance Records-Payroll System. This records system can be located in the **Federal Register** at 52 FR 2777, January 28, 1987. No amendment to this notice is required and the routine uses, paragraph 30, 31 and 33, permit the disclosure for these matches.

d. *Period of the match:* The initial matching will begin when this notice becomes effective as set forth under "*DATE*" in the preamble of this notice. All three matches will be a continuing program.

e. *Security safeguards:* Tapes containing personal data are stored in a secure computer data processing facility at the W.R. Church Data Processing Center, Naval Postgraduate School, Monterey, California. Access to the tapes is by authorized personnel only. The data will be used only for the purposes stated above and data on nonmatching records will not be used for any purpose. All matching records (hits) will be examined further for accuracy and any action taken will conform to all applicable due process standards.

f. *Retention and disposition of records:* The records furnished by the U.S. Postal Service are only loaned to the Department of Defense and, while in the temporary custody, and release of information from the files will be made in accordance with established procedures and approval of the U.S. Postal Service. The Postal Service may either request return of the data furnished or direct its destruction at any time. Any records on individuals of interest to the Department of Defense will be collected and maintained in appropriate Department of Defense systems of records subject to the Privacy Act of 1974, as amended, and may be disseminated or disclosed under established procedures only for a lawful purpose. Likewise, any individual "hits" furnished to U.S. Postal Service, the source agency, will be collected and maintained in appropriate U.S. Postal Service systems of records subject to the Privacy Act of 1974, as amended, and may be disseminated or disclosed under established procedures only for a lawful purpose and will conform to all applicable due process standards. Upon completion of the comparison process, the Department of Defense will destroy or return the uncopied computer tape to

the Postal Service as directed by that agency.

[FR Doc. 87-11680 Filed 5-20-87; 8:45am]
BILLING CODE 3810-01-M

## Corps of Engineers, Department of the Army

### Intent To Prepare a Draft Supplement to the final Environmental Impact Statement (FEIS) for the Metro Atlanta Area Water Resource Study (MAAWRS)

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent to prepare a draft supplement to the final environmental impact statement (FEIS) for the Metro Atlanta area water resource study (MAAWRS)

**SUMMARY:** 1. The proposed action consists of the construction of a reregulation dam on the Chattahoochee River and the results of environmental studies conducted subsequent to the FEIS. The reregulation dam was identified as the recommended plan in the MAAWRS and is proposed to be constructed 0.3 miles below Buford Dam on the Chattahoochee River. Selection of the reregulation dam as the recommended plan was contingent upon additional environmental and engineering studies; the results of which will be presented in the Draft Supplement to the FEIS for the MAAWRS. The proposed project will meet future water supply for the Metropolitan Atlanta area.

2. Reasonable alternatives: Plan B, reallocation of storage, from the MAAWRS is retained as an alternative to construction of the reregulation dam, Plan A. Also, offstream storage, while not an economically viable alternative is carried through as representing a base condition.

3. a. This Draft Supplement is an extension of the MAAWRS which included an extensive public involvement program.

b. At the recommendation of the MAAWRS Executive Group, additional studies were conducted to better assess the environmental effects of the reregulation dam.

The additional studies are: (1) An instream flow study, (2) a math model water quality study, (3) zoological and botanical studies, and (4) recreation studies. Also included in the Draft Supplement is a draft coordination act report from the U.S. Fish and Wildlife Service with mitigation recommendations.

The Draft Supplement presents the results of these studies and compares the effects of the reregulation dam to alternative Plan B, reallocation of storage.

4. No scoping meetings will be held since the MAAWRS had extensive public involvement and participation. The Draft Supplement presents data called for by this extensive public participation.

5. The Draft Supplement to the FEIS should be available in the fall of 1987.

6. Questions about the proposed action can be answered by calling Mr. Tom Yourk at (912) 944-5793 or FTS 248-5793, or writing:

U.S. Army Engineer District, Savannah, ATTN: SASPD-EI/Mr. Tom Yourk, P.O. Box 889, Savannah, GA 31402-0889.

**Stanley G. Genega,**
*Colonel, Corps of Engineers Commanding.*
[FR Doc. 87-11621 Filed 5-20-87; 8:45 am]
BILLING CODE 3710-HP-M

## Department of the Navy

### Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Training Task Force will meet June 2-3 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting will include an examination of Navy training to assess how best to organize and manage training to accommodate future requirements, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: May 15, 1987.
**Harold L. Steller,**
*Commander, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.*
[FR Doc. 87-11609 Filed 5-20-87; 8:45 am]
BILLING CODE 3810-AE-M

### Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Constrained Resources Task Force will meet June 18-19, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's approaches to maritime operations and readiness in the management of resources, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret is the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated May 15, 1987.
**Harold L. Steller,**
*Commander, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.*
[FR Doc. 87-11610 Filed 5-20-87; 8:45 am]
BILLING CODE 3810-AE-M

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Outer ASW Battle will meet on June 18 and 19, 1987. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 18 and 19,

1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to compare the elements of the Outer ASW Battle with the elements of the Outer Air Battle and determine if platforms and sensors can be coordinated to provide information to ASW forces; review and address command, control and communication aspects; review information received from sensor systems, and assess efforts in defensive systems. The agenda will include technical briefings and discussions related to the Outer Air Battle Study, sensor correlation and networking, intelligence support and Soviet concept of operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 15, 1987.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, U.S. Navy Federal Register Liaison Officer.*

[FR Doc. 87–11611 Filed 5–20–87; 8:45 am]

BILLING CODE 3810-AE-M

## Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Outer ASW Battle will meet on June 4 and 5, 1987. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:30 a.m. and terminate at 5:00 p.m. on June 4; and commence at 9:30 a.m. and terminate at 4:30 p.m. on June 5, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to compare the elements of the Outer ASW Battle with the elements of the Outer Air Battle and determine if platforms and sensors can be coordinated to provide information to ASW forces; review and address command, control and communications aspects; review information received from sensor systems, and assess efforts in defensive systems. The agenda will include technical briefings and discussions related to the Outer Air Battle Study, sensor correlation and networking, intelligence support and Soviet concept of operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 15, 1987.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, U.S. Navy Federal Register Liaison Officer.*

[FR Doc. 87–11612 Filed 5–20–87; 8:45 am]

BILLING CODE 3810-AE-M

## Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committe Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on U.S. Marine Corps Command and Control Systems Interoperability will meet on June 3 and 4, 1987, at the Marine Corps Development and Education Command, Quantico, Virginia. The meeting will commence at 9:00 a.m. and terminate at 3:30 p.m. on June 3; and commence at 9:00 a.m. and terminate at 3:00 p.m. on June 4, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review interservice command and control systems requirements for naval forces in the near and mid–term, and identify future communications and command and control systems architecture features with a view toward improving interoperability. The agenda will include executive sessions to discuss technical briefings received to date which addressed development programs and interoperability procedures, and begin preparation of a final report. These discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably interwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 15, 1987.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, U.S. Navy Federal Register Liaison Officer.*

[FR Doc. 87–11613 Filed 5–20–87; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER83–297–000]

### Arkansas Power & Light Co.; Filing

May 14, 1987.

Take notice that on March 11, 1987, Arkansas Power & Light Company (AP&L) tendered for filing redetermined formula rates, revenue comparisons, and supporting workpapers for the Cities of Campbell and Thayer, Missouri.

AP&L asks that the updated rates supersede those effective on March 1, 1986, and that they become effective for service on and after March 1, 1987, subject to refund in accordance with the provisions of the Power Coordination, Interchange and Transmission Service Agreement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this motion are on file with the Commission are are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11505 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. ER82-705-000, ER83-230-000]

## Arkansas Power & Light Co.; Filing

May 14, 1987.

Take notice that on March 11, 1987, Arkansas Power & Light Company (AP&L) tendered for filing redetermined formula rates, revenue comparisons, and supporting workpapers for the Cities of Conway, West Memphis, Osceola, and Jonesboro, and the Arkansas Electric Cooperative Corporation.

AP&L asks that the updated rates supersede those effective on March 1, 1986, and that they become effective for service on and after March 1, 1987, subject to refund in accordance with the provisions of the Power Coordination, Interchange and Transmission Service Agreements.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this motion are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11506 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. EL87-37-000]

## California Sportfishing Protection Alliance v. Oroville-Wyandotte Irrigation District; Complaint

May 14, 1987.

Take notice that on April 10, 1987, the California Sportfishing Protection Alliance (Alliance) filed with the Commission pursuant to § 385.206 of the Commission's regulations (Rule 206) a complaint (Complaint) against Oroville-Wyandotte Irrigation District (OWID). The Alliance filed a further pleading entitled "Complaint and Further Comments of [the Alliance] Concerning the Commission's Order of March 30, 1987," (Comments) on April 27, 1987. OWID is the licensee for the South Fork hydroelectric project, FERC Project No. 2088, located on the South Fork Feather River and other streams in Butte, Plumas, Sierra and Yuba counties, California.

In its Complaint, the Alliance alleges that OWID has violated provisions of the license for Project No. 2088 that concern the Lost Creek Dam. The Alliance states that Article 58 of the license for Project No. 2088 requires OWID to maintain an interim continuous minimum streamflow from the Lost Creek Dam of 1 cubic feet per second (cfs) or the inflow of Lost Creek Reservoir, whichever is less, for the purpose of protecting fish and wildlife resources. In addition, according to the Alliance, Article 57 of the license requires OWID to conduct a study of the minimum flow releases needed at the Lost Creek Dam and to report the results of the study to the Commission along with recommendations for approval of a permanent minimum flow release from the dam.

The Alliance further states in its Complaint that OWID failed to meet its minimum flow requirement at Lost Creek Dam for a period of 69 days in water year (WY) 1981; 24 days in WY 1982; 31 days in WY 1982; and 101 days in WY 1984. The Alliance also states that the Commission has failed to order a permanent increased flow at Lost Creek despite recommendations to do so by the California Department of Fish and Game (CDFG) and the U.S. Forest Service (FS), resulting significant degradation of the fishery resources of Lost Creek. In particular, the Alliance alleges that prior to project construction, Lost Creek had significant populations of rainbow and brown trout which have been degraded due to high water temperatures and low flows.

The Alliance requests that the Commission (1) immediately order minimum streamflow requirements for Lost Creek as recommended by CDFG and FS in 1982; (2) investigate non-compliance of the minimum flow requirement at Lost Creek and take appropriate enforcement actions in accordance with the Electric Consumers Protection Act (ECPA); and (3) investigate its Office of Hydropower Licensing and determine the reasons why permanent minimum flow requirements were not recommended to the Commission by its staff for Lost Creek.

In its Comments, the Alliance states that on March 30, 1987, the Commission ordered additional mandatory interim streamflow requirements and an additional fishery study on Lost Creek to determine the permanent minimum streamflow requirements. According to the Alliance, the Commission ordered a minimum streamflow release from Lost Creek of 5 cfs from April 1 to October 31, and 3 cfs from November 1 to March 31 annually, even though both CDFG and FS recommended a release of 10 cfs from November 1 through July 15; 5 cfs from July 16 through September 30; and 3 cfs from October 1 through October 31 annually.

In its Comments, the Alliance further requests that the Commission (1) immediately order interim minimum streamflow requirements for Lost Creek as recommended by FS; (2) investigate OWID's non-compliance and take appropriate enforcement actions in accordance with ECPA; (3) impose penalties for each day of non-compliance with the Commission's March 30, 1987, order; (4) require OWID to submit daily gauging records below Lost Creek Dam beginning with April, 1987; and (5) require OWID to answer the Complaint filed by the Alliance.

On May 5, 1987, OWID filed with the Commission an answer to the Alliance's Complaint. In addition to alleging procedural deficiencies in the Complaint, in its answer, OWID denies that it was required to maintain a mandatory interim continuous streamflow from Lost Creek of 1 cfs at all times, denies that there was a significant population of rainbow and brown trout prior to project construction, denies that it was not in compliance with Article 58 of its license, states that the gauge below Lost Creek Dam is grossly unreliable and hence that the USGS gauging records for Lost Creek Reservoir are inaccurate, contends that the Complaint should be rejected as procedurally deficient, and moves that the requested relief be denied and that

the Commission order sanctions against the Alliance for failure to comply with the Commission's rules and regulations.

Any person desiring to protest or to be heard on this Complaint should file a protest or motion to intervene in accordance with Rules 211 or 214, respectively, of the commission's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Motions to intervene or protests should be filed not later than 30 days following publication of this notice in the Federal Register. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the Complaint, Comments and answer filed in this proceeding are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-11682 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 1235-000]

## City of Radford, VA; Issuance of Annual License

May 19, 1987.

On October 3, 1986, the City of Radford, Virginia, licensee for the Radford Municipal Power Plant Project No. 1235, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 1235 is located on the Little River in Montgomery and Pulaski Counties, Virginia.

The license for Project No. 1235 was issued for a period ending December 7, 1983. In order to authorize the continued operation and maintenance of the project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to the City of Radford, Virginia.

Take notice that the project is being operated and maintained under an annual license which is effective until December 7, 1987, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1235, subject to the terms and conditions of the original license.

Take further notice that if issuance of a new license does not take place on or before December 7, 1987, an annual license will be issued each year thereafter, effective December 8 of each year, until such time as a new license is issued, without further notice being given by the Commission.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-11683 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. ER87-426-000]

## Southern California Edison Co.; Filing

May 18, 1987.

Take notice that, on May 8, 1987, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, the following Agreement, which has been executed by Edison and the City of Riverside, California ("Riverside"):

Edison-Riverside, Desert Firm Transmission Service Agreement

Under the terms and conditions of the Agreement, Edison will make available to Riverside firm transmission service for its purchases of nonintegrated capacity and energy from Desert Generation and Transmission Cooperative, Inc. ("Desert"); to the Point of Delivery at the Riverside City Limits, Riverside, California.

The Agreement is proposed to become effective when executed by the Parties and accepted for filing by the Commission (without changes unacceptable to either party); and as such, Edison requests, to the extent necessary, waiver of notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Riverside, California.

Any person desiring to be heard or to present this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-11684 Filed 5-20-87; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-140062; FRL-3204-7]

## Confidential Business Information Access by the Chemical Abstracts Service

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized Chemical Abstracts Service (CAS) of Columbus, Ohio for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

**SUPPLEMENTARY INFORMATION:** Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Inventory of Chemical Substances, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA.

Under contract no. 68-01-7380, CAS, 2540 Olentangy River Road, Columbus, Ohio will assist the Ofice of Toxic Substances' Information Management Division by providing technical assistance in developing and operating the TSCA Chemical Substances Inventory. Specifically, CAS will assist the Office of Toxic Substances' Information Management Division in processing Inventory reports; in determining whether substances described in Premanufacture Notifications, Bona Fide submissions, Test Market Exemption Applications, and Ploymer and Low Volume

Exemption submissions are on the Inventory; responding to inquiries from EPA; and operating the Master Inventory File.

In accordance with 40 CFR 2.306(j) EPA has determined that CAS will require access to CBI submitted to EPA under TSCA to develop and operate successfully the TSCA Chemical Substances Inventory. Authorization for access by CAS to TSCA CBI for similar purposes under contract no. 68–01–6814 was previously announced in the Federal Register of February 15, 1984 (49 FR 5830). Under contract no. 68–01–7380, CAS personnel will require access to CBI data submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide CAS access to these CBI materials at CAS facilities on a need-to-know basis. All access to TSCA CBI under this contract will take place at CAS's Columbus, Ohio site. Upon completing review of the CBI materials, CAS will return all transferred materials to EPA. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1987.

CAS has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved the CAS security plan, has performed the required inspection of its facilities, and has found them to be in compliance with the requirements of the manual. CAS personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: May 12, 1987.

Charles L. Elkins,

*Director, Office of Toxic Substances.*

[FR Doc. 87–11648 Filed 5–20–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 87–124]

### Request for Comments on Assisting Hearing Impaired and Other Disabled People in Obtaining Reasonable Access to Telecommunications Services

The Commission is seeking information concerning the telecommunications needs of the deaf and hearing impaired, so it can examine in detail the effectiveness of its rules for providing the disabled reasonable access to telecommunications services.

On December 1, 1983, the FCC adopted rules to improve access to telecommunications services and equipment by hearing impaired and other disabled people. At an informal meeting on telecommunications needs of the hearing impaired and other disabled people sponsored by the Common Carrier Bureau on December 5, 1986, some contended that additional steps needed to be taken.

Several options have been suggested by those who claim the hearing impaired do not have adequate access to telephone service. One option would required all telephones manufactured after a certain date to be hearing-aid compatible. This approach would not require the removal of existing non-compatible telephones or modification. Comments are requested on the costs of modifying non-hearing-aid compatible telephone manufacturing processes to make them hearing-aid compatible. Also, commenters are requested to provide data on the percentage of telephones that are currently hearing-aid compatible, as well as information about future trends.

Additionally, information is requested on the (1) total number of hearing aid users; (2) number of hearing aids equipped with telecoils (a built-in telephone pickup); (3) number of users requiring the use of hearing aids equipped with telecoils; (4) number of "in-the-ear" units equipped with telecoils; and (5) number of users employing the "in-the-ear" model.

Other issues for consideration include the impact of technological advances in hearing aids and telephone designs. Comments are requested on the future need for telecoil hearing-aid compatible telephones and the impact of imposing current telephone hearing-aid compatibility technology on future telephone system designs. Also, what are the special requirements, if any, of hearing impaired persons who use non-telecoil equipped hearing aids, and would a universal compatibility requirement impede technological developments in terminal equipment or the telephone network?

Another option would be the creation of a committe consisting of representatives from the hearing aid and telephone industries and from hearing impaired and other disabled groups. Comments are requested on the merits of such a committee and whether it should be coordinated under the auspices of some existing organization, such as the Exchange Carriers Association's T–1 Committee.

Action by the Commission April 24, 1987, by Notice of Inquiry (FCC 87–150). Commissioners Patrick (Chairman), Quello, Dawson and Dennis.

News Media contact: Audrey Spivack at (202) 632–5050. Common Carrier Bureau contact: Robert James at (202) 634–1831.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87–11515 Filed 5–20–87; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under OMB Review

May 15, 1987.

### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and rquirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

**DATE:** Comments must be received within fifteen working days of the date of publication in the Federal Register.

**ADDRESS:** Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45

BEST COPY AVAILABLE

a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below:

Federal Reserve Board Clearance Officer—Nancy Steele—Divisions of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

*Proposal to approve under OMB delegated authority the discontinuance of the following reports:*

1. *Report title:* Monthly Survey of Commercial and Industrial Loan Commitments Agency form number: FR 2039
OMB Docket number: 7100-0065
Frequency: monthly
Reporters: Selected large U.S. commercial banks
Annual reporting hours: 7906 hours
Small businesses are not affected
General description of the report:

This survey provides information on the volume and composition of loan commitments at selected large U.S. commercial banks, used in analysis of banking developments and credit market conditions. The report is proposed to be discontinued in view of financial market changes that reduce the need for this information.

This report is voluntary and authorized by law [12 U.S.C. 248(a)]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(4) and (8)].

2. *Report title:* Monthly Report on the Maturity Distribution of Negotiable Certificates of Deposit of $100,000 or More
Agency form number: FR 2078
OMB Docket number: OMB No. 7100-0179
Frequency: monthly
Reporters: certain large commercial banks
Annual reporting hours: 456
Small businesses are not affected
General description of the report:

This report provides data used to monitor bank funding strategy and liquidity pressure. It is proposed to be discontinued in view of changes in bank funding strategy which reduce the need for this information.

This report is voluntary and authorized by law [12 U.S.C. 225(a) and 248(a)]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(4) and (8)].

Board of Governors of the Federal Reserve System, May 15, 1987

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87-11602 Filed 5-20-87; 8:45 am]

BILLING CODE 6210-01-M

## Acquisitions of Shares of Banks or Bank Holding Companies; John C. Jennings et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 1987.

**A. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *John C. Jennings,* Gainesville, Florida, and Asa G. Candler, Jacksonville, Florida; to acquire 23.77 percent of the voting shares of First City Bancorp, Inc., Gainsville, Florida, and thereby indirectly acquire First City Bank Gainesville, Florida.

**B. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Davis S. and Karen G. Woronoff,* Windsor, Colorado; to acquire 50 percent of the voting shares of Platteville Capital Corp., Platteville, Colorado, and thereby indirectly acquire Platteville State Bank, Platteville, Colorado.

**C. Federal Reserve Bank of Dallas** (W. Athur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *James Aubrey Cardwell,* El Paso, Texas; to acquire 35.10 percent of the voting shares of Continental National Bancshares, El Paso, Texas, and thereby indirectly acquire Continental National Bank, El Paso, Texas.

Board of Governors of the Federal Reserve System, May 15, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-11603 Filed 5-20-87; 8:45 am]

BILLING CODE 6210-01-M

## Application to Engage de Novo in Permissible Nonbanking Activities; Central Wisconsin Bankshares, Inc.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than June 11, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bankshares, Inc.*, Wausau, Wisconsin; to engage de novo through its subsidiary, CWB Mortgage, Inc., Wausau, Wisconsin, in mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 15, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11605 Filed 5-20-87; 8:45 am]

BILLING CODE 6210-01-M

## Formation of, Acquisition by, or Merger of Bank Holding Companies; Hometown Bancorporation, Inc.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 12, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hometown Bancorporation, Inc.*, Darien, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Darien, Darien, Connecticut.

Board of Governors of the Federal Reserve System, May 15, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11604 Filed 5-20-87; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

[Wildlife Order 162; 4-J-FL-758A]

## Forfeited Property, Golden Gate Road, Osceola County, FL; Conveyance of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By deed from the General Services Administration dated December 12, 1986, the property, consisting of 2,021 acres of unimproved land, known as Forfeited Property, Golden Gate Road, Osceola County, Florida (4-J-FL-758A), has been transferred to the State of Florida, Florida Game and Fresh Water Fish Commission.

2. The above described property was conveyed for wildlife conservation in accordance with the provisions of section 2 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: May 8, 1987.

Earl E. Jones,

*Commissioner, Federal Property Resources Service.*

[FR Doc. 87-11626 Filed 5-20-87; 8:45 am]

BILLING CODE 6820-24-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committees; Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

### Vaccines and Related Biological Products Advisory Committee

*Date, time, and place.* June 15 and 16, 8:30 a.m., Bldg. 1, Wilson Hall, third floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

*Type of meetings and contact person.* Open public hearing, June 15, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 10:30 a.m.; closed committee deliberations, 10:30 a.m. to 5 p.m.; closed committee deliberations, June 16, 8:30 a.m. to 4:30 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN-31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or threatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

*Agenda-Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

*Open committee discussion.* On June 15, the committee will be briefed on current agency programs concerning vaccines and related biological products.

*Closed committee deliberations.* The committee will review trade secret and/or confidential commercial information relevant to pending license applications and status of investigational new drugs (IND's) in the Office of Biologics Research and Review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

### Allergenic Products Advisory Committee

*Date, time, and place.* June 25, 8:30 a.m., Lister Hill Auditorium, National Library of Medicine, National Institutes of Health, Bethesda, MD; June 26, Rm. 115, Bldg. 29, Office of Biologics Research and Review, 8800 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, June 25, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; closed committee discussion , 4 p.m. to 5 p.m.; open committee discussion, June 26, 8:30 a.m. to 2:30 p.m.; closed committee discussion, 2:30 p.m. to 3:30 p.m.; Clay Sisk, Center for Drugs and Biologics (HFN-32), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational allergenic biological products administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease.

*Agenda-Open public haring.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

*Open committee discussion.* The committee will discuss the following: (1) Safety considerations for the aluminum component of alum-precipitated allergenic extracts, (2) license application from Allergy Laboratories of Ohio for polymerized short and giant ragweed pollen extracts, and (3) considerations on licensing and labeling of allergenic extract products which are compositionally different.

*Closed committee discussion.* The committee will review trade secret and/or confidential commercial information relevant to pending biological product license applications and IND's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

**Immunology Devices Panel**

*Date, time, and place.* June 29 and 30, Rm. 503A–529A, Hubert H. Humphrey Bld., 200 Independence Ave. SW., Washington, DC.

*Type of meeting and contact person.* Open public hearing, June 29, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open committee discussion, June 30, 9 a.m. to 10 a.m.; closed presentation of data, 10 a.m. to 12 m.; closed committee deliberations, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Srikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

*General function of the committee.* The committee reveiws and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

*Agenda-Open public hearing.* Interested persons may present data, information, or views, orally or in wirting, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 15, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss premarket approval applications for a tumor marker test kit for the monitoring of cancer and a test kit for the detection of neural tube defects.

*Closed presentation of data.* Trade secret and/or confidential commercial information will be presented to the committee regarding the above premarket approval applications. This portion of the meeting will be closed to permit discussion of the information (5 U.S.C. 552b(c)(4)).

*Closed committee deliberations.* The committee will review trade secret and/or confidential commercial information regarding the above premarket approval applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contract person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFW–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal

nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: May 13, 1987.

**John A. Norris,**

*Acting Commissioner of Food and Drugs, Food and Drug Administration.*

[FR Doc. 87-11600 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 86P-0404]

## Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit; Kelley-Clarke, Inc.

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit to market test canned skinless and boneless chunk salmon packed in water is being amended to increase the quantity of test product to be distributed and the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the test product.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration 200 C Street SW., Washington, DC 20204, 202-485-0110.

**SUPPLEMENTARY INFORMATION:** A temporary permit was issued under the provisions of 21 CFR 130.17 to Kelley-Clarke, Inc., Seattle, WA 98124, to market test canned skinless and boneless chunk salmon packed in water to test consumer acceptance of the new style pack. The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Kelley-Clarke, Inc., was published in the **Federal Register** of November 17, 1986 (51 FR 41538).

Kelley-Clarke, Inc., is requesting that the permit be amended to (1) increase the quantity of test product to 108,000 cases containing twenty-four 6½-ounce cans each and (2) expand the area of distrubution to include Alaska and Hawaii. The company states that these changes are necessary in order to collect adequate data to complete the market test. Accordingly, FDA, under the provisions of 21 CFR 130.17(f), is amending the temporary permit to increase the quantity of test product to 108,000 cases and to include Alaska and Hawaii in the test market area.

Therefore, FDA is amending the permit to change the quantity of product to be market tested and the area of distribution. All other conditions and terms of this permit remain the same.

Dated: May 11, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-11597 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 86P-0405]

## Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit; Peter Pan Seafoods, Inc.

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a temporary permit to market test canned skinless and boneless chunk salmon packed in water is being amended to increase the quantity of test product to be distributed and the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the test product.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0110.

**SUPPLEMENTARY INFORMATION:** A temporary permit was issued under the provisions of 21 CFR 130.17 to Peter Pan Seafoods, Inc., Seattle, WA 98121, to market test canned skinless and boneless chunk salmon packed in water to test consumer acceptance of the new style pack. The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Peter Pan Seafoods, Inc., was published in the **Federal Register** of January 8, 1987 (52 FR 705).

Peter Pan Seafoods, Inc., is requesting that the permit be amended to (1) increase the quantity of test product to 108,000 cases containing twenty-four 6½-ounce cans each and (2) expand the area of distribution to include Alaska and Hawaii. The company states that these changes are necessary in order to collect adequate data to complete the market test. Accordingly, FDA, under the provisions of 21 CFR 130.17(f), is amending the temporary permit to increase the quantity of test product to 108,000 cases and to include the State of

Alaska and Hawaii in the test market area.

Therefore, FDA is amending the permit to change the quantity of product to be market tested and the area of distribution. All other conditions and terms of this permit remain the same.

Dated: May 11, 1987.

Richard J. Ronk,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-11598 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-01-M

## Health Resources and Services Administration

### Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1987:

Name: Subcommittee on Physician Manpower of the Council on Graduate Medical Education
Time: June 29, 1987 8:00 a.m.-5:30 p.m.
Place: Stouffers Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia 22202

Purpose: The subcommittee reviews and analyzes currently applicable studies of under and oversupply of physician manpower giving special attention to number and distribution of specialists, primary care physicians and residents. It also is concerned with studies and recommendations regarding the number of undergraduate medical students as well as the need for improving physician manpower data.

The subcommittee will draft a chapter for the first report of the Council. Recommendations will likely concern the outlook for supply, appropriate federal policies and suggestions for voluntary action by hospitals, medical and osteopathic schools and accrediting bodies regarding physician supply, and shortages and excesses.

Agenda: Agenda items include: (1) Discussion of Physician Specialty Requirements Paper: Resolution and Recommendations to the Council on Short-term Options to Respond to Issue of Specialty-Specific Assessment of Balances, Shortages and Excesses; (2) Trends in General Surgery Supply and Issue of Use of Board Certifications Numbers in Supply-Requirements Assessments; (3) Trends in Primary Care Physician Supply, and Observations and Requirements; (4) Geographic Distribution Issues and Status: Trends and status in the Geographic Distribution of Physicians; (5) Areawide Health Education Center Program and Distribution Issues and Experiences; (6) the National Health Service Corps Program and Issues of Geographic Physician Manpower Distribution; (7) the Status of Minority Physicians in the Delivery of Health Care and (8) Physician Manpower Needs in the Military.

Anyone requiring information regarding the subject Subcommittee should contact Jerald Katzoff, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 30857 Telephone (302) 443-6364.

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Name: Subcommittee on Foreign Medical Graduates of the Council on Graduate Medical Education
Time: June 19, 1987 8:30 a.m.-5:00 p.m.
Place: Stouffers Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia 22202

Purpose: The Subcommittee reviews and analyzes existing data and information on alien and U.S. foreign medical graduates in training and in practice regarding adequacy of existing data bases, effect of existing policies and procedures regarding distribution, service delivery and international relations.

The Subcommittee will draft a chapter for the first report of the Council. Recommendations will likely concern the appropriate Federal policies and efforts to be carried out voluntarily by hospitals, schools of medicine and osteopathy, licensing, certifying, and accrediting bodies with respect to issues relating to foreign medical graduates.

Agenda: Agenda items include Panel presentations on (1) Impact to services when residency programs are reduced or eliminated and (2) the Legal, moral or ethical implications regarding different treatment of medical graduates (i.e., U.S. medical school graduates and foreign medical school graduates).

Anyone requiring information regarding the subject Subcommittee should contact Magdalena Miranda, Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 30857 Telephone (301) 443-6364.

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Name: Subcommittee on Graduate Medical Education Programs and Financing of the Council on Graduate Medical Education
Time: June 29, 1987 8:30 a.m.-5:00 p.m.
Place: Stouffers Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia 22202

Purpose: The subcommittee identifies the issues and problems in current methods of financing and support. Assesses the implications of alternative financing policies on medical education programs, service delivery, cost containment, physician supply & distribution, and shortages and excesses of physicians.

Analyzes existing information and data on current and alternative medical education programs of hospitals, schools of medicine and osteopathy, and accrediting bodies; federal policies regarding medical education programs; and their impact on the supply and distribution of physicians.

The subcommittee will draft a chapter for the first report of the Council. Recommendations will likely concern the appropriate Federal policies and efforts to be carried out voluntarily by hospitals, schools of medicine and osteopathy and accrediting bodies with respect to medical education programs and financing.

Agenda: Agenda items include Discussions of (1) Private Payer Plans and Financing of GME; (2) Veterans Administration and Dept. of Defense Financing of GME; (3) Medical Center Financing of GME; (4) Financing of GME in Osteopathic Teaching Hospitals; (5) Overview and Future Directions of Faculty Practice Plans in GME; and (6) Medical Center Governance and Operations. The agenda is also scheduled to include a panel on Faculty Practice Plans and Discussion by the Subcommittee to establish principles and outline of chapter for the first report.

Anyone requiring information regarding the subject Subcommittee should contact F. Lawrence Clare, M.D., Subcommittee Principal Staff Liaison, Division of Medicine, Bureau of Health Professions, Room 4C-25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 30857 Telephone (301) 443-6364.

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Name: Council on Graduate Medical Education—Plenary Session
Time: June 30, 1987 8:30 a.m.-4:30 p.m.
Place: Stouffers Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia 22202

Open for entire meeting.

Purpose: Provide advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and

Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: Agenda items include review of Council list of issues, presentations on "Health Policy agenda for the American People" and on "Physician Manpower Issues". Reports from the Administrator, Health Resources and Services Administration, update on legislative developments, and reports from the three subcommittees. A Public comment period is also included as part of the agenda.

Anyone requiring information regarding the subject Council should contact Mr. Paul Schwab, Executive Secretary, Council on Graduate Medical Education, Health Resources and Services Administration, Room 14-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2083.

Agenda items are subject to change as priorities dictate.

Dated: May 15, 1987.

Jackie E. Baum,

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 87-11581 Filed 5-20-87; 8:45 am]

BILLING CODE 4160-15-M

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## National Institutes of Health

### Recombinant DNA Advisory Committee; Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Recombinant DNA Advisory Committee, June 15, 1987, National Institutes of Health, Bethesda, Maryland, which was published in the Federal Register on March 11, 1987 (52 FR 7525).

The meeting was cancelled due to lack of agenda items and has been rescheduled on September 21, 1987.

Dated: May 15, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87-11582 Filed 5-20-87; 8:45 am]

BILLING CODE 4140-01-M

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### Division of Research Resources; National Advisory Research Resources Council; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Research Resources Council (NARRC), Division of Research Resources (DRR), June 4–5, 1987, 9 a.m., Wilson Hall, James A. Shannon Building, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 which was published in the Federal Register on May 1, (52 FR 15991).

The meeting was to have been open to the public on June 5 from 9 a.m. to approximately 10:45 a.m. and closed from 10:45 a.m. until adjournment, but this has been changed.

The meeting now is scheduled to be closed to the public on June 5 from 8:30 a.m. to approximately 10:45 a.m. for review, discussion and evaluation of individual grant applications and open from 10:45 a.m. until adjournment.

Dated: May 15, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87-11583 Filed 5-20-87; 8:45 am]

BILLING CODE 4140-01-M

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## Public Health Service

### Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1987:

*Name:* Health Services Developmental Grants Review Subcommittee.

*Date and Time:* June 18–19, 1987, 8:30 a.m.

*Place:* Linden Hill Hotel, Sea Pines Room, 5400 Pooks Hill Road, Bethesda, Maryland.

Open June 18, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

*Purpose:* The Subcommittee is charged with the initial review of grant applications proposing to do analysis of data derived from experiments and demonstrations designed to test the cost-effectiveness and efficiency of particular methods of health services delivery and financing, for the research grants program administered by the National Center for Health Services Research and Health Care Technology Assessment.

*Agenda:* The open session of the meeting of June 18 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Acting Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. Hoke S. Glover, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-3091.

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*Name:* Health Services Research Review Subcommittee.

*Date and Time:* June 11–12, 1987, 8:00 a.m.

*Place:* Holiday Inn—Crowne Plaza, Woodmont Room, 1750 Rockville Pike, Rockville, Maryland.

Open June 11, 8:00 a.m. to 9:00 a.m.

Closed for remainder of meeting.

*Purpose:* The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grants program administered by the National Center for Health Services Research Care Technology Assessment.

*Agenda:* The open session of the meeting of June 11 from 8:00 a.m. to 9:00 a.m. will be devoted to a business meeting covering administration and reports. There will also be a presentation by the Acting Director, NCHSR. During the closed sessions, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Acting

Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Anthony Pollitt, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

* * * * *

*Name:* Health Care Technology Study Section.

*Date and Time:* June 8–9, 1987, 8:30 a.m.

*Place:* Holiday Inn of Bethesda, Montgomery Room, 8120 Wisconsin Avenue, Bethesda, Maryland.

Open June 8, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

*Purpose:* The Study Section is charged with conducting the initial review of health services research grant applications addressing the effects of health care technologies and procedures, including those in the area of information sciences, as well as those addressing the process of diffusion and adoption of new technologies and procedures.

*Agenda:* The open session from 8:30 a.m. to 9:30 a.m. on June 8 will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Acting Director, NCHSR. The closed sessions of the meeting will be devoted to review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), the Acting Director, National Center for Health Services Research and Health Care Technology Assessment has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Services Research and Health Care Technology Assessment, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Dated: May 8, 1987.

**Samuel Lin,**

*Assistant Surgeon General, Acting Director, National Center for Health Services Research and Health Care Technology Assessment.*

[FR Doc. 87–11651 Filed 5–20–87; 8:45 am]

BILLING CODE 4160–17–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Plan for the Use and Distribution of the Rincon Band of Mission Indian Judgment Funds in Docket 80–A Before the United States Claims Court

May 12, 1987.

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

**EFFECTIVE DATE:** This plan was effective on April 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lynn Forcia, Tribal Services Specialist, Bureau of Indian Affairs, Branch of Acknowledgment and Research, Mail Stop 32–SIB, 1951 Constitution Avenue NW., Washington, DC 20245.

**SUPPLEMENTARY INFORMATION:** The Act of October 19, 1973, (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on October 18, 1985, in satisfaction of the award granted to the Rincon Band of Mission Indians before the United States Claims Court in Docket 80–A. The plan for the use and distribution of the funds as recorded in the Congressional Record was submitted to Congress with a letter dated October 2, 1986 and was received by the Senate on October 9, 1986 and by the House of Representatives on January 6, 1987. The plan became effective on April 2, 1987 as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

### For the Use and Distribution of the Rincon Band of Mission Indians Judgment Funds in Docket 80–A Before the United States Claims Court

The funds apropriated October 18, 1985 in satisfaction of an award granted to the Rincon Band of Mission Indians in Docket 80–A, less attorney fees and litigation expenses, including all interest and investment income accrued, shall be used and distributed as herein provided.

#### Per Capita Aspect

Eighty (80) percent of the funds shall be distributed in the form of per capita payments, by the Secretary of the Interior, in sums as equal as possible, to all tribal members born on or prior to and living on the effective date of this plan.

#### Programing Aspect

Twenty (20) percent of the funds, and any amount remaining from the per capita payment provided above, shall be invested by the Secretary and utilized by the tribal governing body on a budgetary basis for programing purposes, subject to the approval of the Secretary. None of the programing funds shall be available for per capita or dividend payments.

#### General Provisions

The per capita shares of living, competent adults shall be paid directly to them. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR Part 4, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in the Act of October 19, 1973, 87 Stat. 466, as amended January 12, 1983, 96 Stat. 2512.

None of the funds made available under this plan for programing or per capita distribution shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita shares or dividend payments in excess of $2,000, any Federal or federally assisted program.

**Ronald L. Esquerra,**

*Acting Assistant Secretary: Indian Affairs.*

[FR Doc. 87–11573 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–02–M

## Bureau of Land Management

[NV-930-87-4214-24; N-43266]

### Partial Termination of Airport Lease Application Involving Lands in Clark County, NV

Notice is hereby given that a portion of the lands involved in airport lease application N–43266 as described below, have been withdrawn.

Mount Diablo Meridian, Nevada

T.13S. R.71E.,
Sec. 9, NE¼,
Sec. 10, Lots 5 and 6, W½NW¼.

The segregative effect of the airport lease application as it pertains to the above-described lands only, is hereby removed upon publication of this notice in the Federal Register.

Charles Frost,
*Acting District Manager.*
May 12, 1987.

[FR Doc. 87–11576 Filed 5–20–87; 8:45 am]
BILLING CODE 4310–HC–M

[ID-050-87-4410-09]

### Terminology Change From Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC); Idaho Falls District

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Designation change in the Draft Pocatello Resource Management Plan/Environmental Impact Statement.

To comply with 1623-Supplemental Program Guidance for Land Resources, the Proposed Research Natural Areas (RNA) identified in the Draft Pocatello Resource Management Plan/Environmental Impact Statement would carry a dual designation, Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This dual designation applies to the following proposed RNAs:

The designation of Cheatbeck Canyon, 100 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This proposed RNA/ACEC contains an excellent mixed stand of boxelder and bigtooth maple. These two maples, boxelder and bigtooth maple, occur naturally only in the Southeastern part of the state. The management objectives would be: (1) Close this area to ORV use, and (2) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location.

The designation of Dairy Hollow, 45 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This tract was picked because of its good stand of Wyoming sagebrush and needle-and-thread grass habitat type. Only one other area, in another geomorphic province, has this habitat type, and on that one, the stand is too small to manage. In addition, the area contains interesting columns and bluffs of conglomerate capped with red sandstone. One ferruginous hawk nest with three young was located in the area. A rare plant, *Astragalus Spatulatus* (spoonleaf milkvetch), also occurs within the area proposed. The management objectives would be: (1) close the area to ORV use, (2) eliminate livestock grazing by fencing, and (3) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location.

The designation of Formation Cave, 70 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This is an area of travertine terraces, that were once ponds, and broad, gently sloping outwash plains. The terraces maintain pristine stands of bitterbrush, Nevada bluegrass, and shrubby cinquefoil. Along the old stream channel and where the watertable is close to the surface, water birch is predominate. The management objectives would be: (1) Close the area to ORV use, and (2) require No-Surface-Occupancy stipulations on leasable milneral activities and withdrawal from mining claim location.

The designation of Oneida Narrows, 617 acres as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). Oneida narrows contains a narrow band of boxelders along the Bear River with adjacent northwesterly and southeasterly facing slopes of mountain mohogany, bigtooth maple, Rocky Mountain juniper, and bluebunch wheatgrass communities. Small stands of aspen dot the slopes. Near vertical limestone cliffs containing grottos and caves provide a haven for a variety of birds and uniquely adapted plants. The area is quite undisturbed and diverse. The management objectives would be: (1) Close the area to ORV use, and (2) require No-Surface-Occupancy stipulation on leasable mineral activities and withdrawal from mining claim location.

The designation of Pine Gap, 232 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). This very uniform area of calcareous soil near Pine Gap is covered with a community of black sagebrush and bluebunch wheatgrass. It shows signs of past grazing, yet is in very good condition. Its uniformity is an outstanding feature. It also contains a rare plant, *Astragalus Spatulatus* (spoonleaf milkvetch). The management objectives would be: (1) Close the area to ORV use, (2) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location, and (3) eliminate livestock grazing by fencing.

The designation of Robbers Roost Creek, 400 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC) Robbers Roost Creek provides an unrepresented sample of shrub communities in good condition. If accepted it would provide a very good undisturbed reference and study area. The management objectives would be: (1) Close the area to ORV use, and (2) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location.

The designation of Travertine Park, 30 acres, as a Research Natural Area (RNA)/Area of Critical Environmental Concern (ACEC). The area considered is a small area of relatively undisturbed mixed-shrub vegetation, protected by the river on the north, by cliffs and rough talus. This mixed-shrub community is isolated and exhibits features not found elsewhere in Idaho. Management objectives for this area would be: (1) Close to ORV use, (2) require No-Surface-Occupancy stipulations on leasable mineral activities and withdrawal from mining claim location, and (3) eliminate livestock grazing by fencing.

The total geographical area considered for the seven described RNA/ACECs would equal 1,494 acres of BLM managed land in the Pocatello Resource Area. These lands have already been proposed as RNAs in the Draft Pocatello Resource Management Plan/Environmental Impact Statement (comment period ended April 30, 1987). We are reintroducing the above described areas for a 60 day public comment period as a result of the proposed additional ACEC designation (43CFR1610.7–2).

**DATES:** Written comments on dual designation (RNA/ACEC) should be submitted within 60 days of this notice.

**ADDRESS:** Written comments should be submitted to District Manager, Attn: RNA/ACEC, Bureau of Land Management, 940 Lincoln Rd., Idaho Falls, ID 83401; telephone: (208) 523–1020.

**SUPPLEMENTAL INFORMATION:** This notice only relates to those RNAs described in the Draft RMP/EIS being

proposed for dual designation. The Draft RMP/EIS is not reopened for comment.

Lloyd H. Ferguson,
*District Manager.*
May 13, 1987.

[FR Doc 87-11631 Filed 5-20-87: 8:45 am]
BILLING CODE 4310-00-M

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[OR-020-07-4212-08: GP7-164]

## Intent to Amend Land Use Plans; Burns District, OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Opportunity for Public Comment—Notice of Intent to Amend the Andrews and Drewsey land use plans in the Burns District, Oregon.

**SUMMARY:** In accordance with 43 CFR 1601.3–1, notice is hereby given that the Bureau of Land Management, Burns District, Oregon intends to amend the Andrews and Drewsey land use plans regarding land tenure adjustments. The Plan Amendment includes the entire Andrews Planning Unit (1.6 million acres) and approximately 200,000 acres in the southern portion of the Drewsey Planning Unit. The subject area is located in southeastern Oregon, more specifically in the southern and southwestern portions of Harney and Malheur Counties, respectively.

The purpose of the Amendment is to specifically identify public land for retention, exchange, or other disposal (by sale or other authorities which transfer title out of public ownership), and generally, areas where acquisition of private land could enhance public land management.

The Amendment is needed to update the existing Andrews and Drewsey land use plans which do not adequately identify public lands for disposal nor the method of disposal. This is a requirement of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701).

**FOR FURTHER INFORMATION CONTACT:** Joshua L. Warburton, District Manager, Burns District Office, 74 South Alvord, Burns, Oregon 97720 (Telephone 503–573–5241).

**SUPPLEMENTARY INFORMATION:** Major issues involved in the Plan Amendment are the identification of those public lands which: (1) Are to be retained for multiple use management; (2) are uneconomical or difficult to manage, and could be disposed of through sale or other authorities; or (3) may be exchanged if certain resource criteria are met.

Disciplines to be represented on the interdisciplinary team preparing the Plan Amendment and Environmental Assessment (EA) are: wildlife, wild horses, recreation, wilderness, archaeology, watershed, minerals, lands and realty, range, threatened and endangered plants and animals, and land use planning.

More detailed information on planning criteria, issues and preliminary management alternatives is available at the Burns District Office and has also been mailed to known interested parties. The comment period on preliminary issues and planning criteria for the Plan Amendment and associated EA will close June 22, 1987. Other public participation activities will include a 45-day review of the Proposed Plan Amendment/EA and an open house or public meeting to receive comments and answer questions. Dates, times and location will be announced through local media and mailed to interested parties. Planning documents are available for inspection at the Burns District Office during normal working hours.

Dated: May 7, 1987.
Mark E. Johnson,
*Acting Associate District Manager.*
[FR Doc. 87–11627 Filed 5–20–87; 8:45 am]
BILLING CODE 4310-33-M

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## Intent To Amend the Clear Lake Management Framework Plan; California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notices of intent and availability.

**SUMMARY:** Pursuant to 43 CFR 1601.2(c) notice is hereby given that the Clear Lake Resource Area, Ukiah District, California is amending the Clear Lake Management Framework Plan (MFP); pursuant to 43 CFR 1610.4–2 notice is hereby given that proposed planning criteria for the amendment are available for public review and comment.

**DATE:** Comments on the intent to amend and the proposed planning criteria will be accepted for thirty (30) days from the date of publication of these notices in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Smyth, Clear Lake Resource Area Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482. Telephone (707) 462–3873.

**SUPPLEMENTARY INFORMATION:** The intent of this amendment is to add additional lands to the Cache Creek Area of Critical Environmental Concern (ACEC). This ACEC was originally designed in 1984 in the Clear Lake MFP and includes all federal lands within a mile-wide corridor centered on Cache Creek in T. 12N, R. 4W; T. 12N, R. 5W; T. 13W; and T. 13N, R. 6W, Mount Diablo Meridian.

The management plan for the ACEC and the Cache Creek Tule Elk Wildlife Habitat Management Plan (HMP) both recognize use of critical wildlife habitat here by the endangered Southern Bald Eagle and the state-protected Tule Elk. For this reason the Bureau recently acquired 1510 acres of private land within the river corridor and has plans for future acquisitions of additional critical habitat here. This amendment clarifies the Bureau's intent to include within the ACEC the recent and all future acquisitions within the legal descriptions above. Also added to the ACEC are those federal lands within the mile-wide river corridor found in T. 12N., R. 6W; T. 13N., R. 4W.; and those federal lands found in T. 13N, R. 6W, Sections 8, 9, and 10 located within a mile-wide corridor of the *North Fork* from the State Highway 20 bridge downstream to the confluence with Cache Creek, as well as any future acquisitions by the Bureau in this stretch of the North Fork.

The approved HMP and the draft ACEC plans both are detailed management plans for the area and contain detailed planning criteria. This planning amendment will not change the actions specified in these plans; only the formal designation of additional lands as a part of the ACEC is at issue. Opportunities for public input and comment will be announced through the media, mailings, and personal contacts.

Dated: May 15, 1987.
Alfred W. Wright,
*District Manager.*
[FR Doc. 87–11577 Filed 5–20–87; 8:45 am]
BILLING CODE 4310-GD-M

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[NM-010-07-4332-10]

## District Advisory Council Meeting; Albuquerque District, NM

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice of District Advisory Council Meeting.

**SUMMARY:** The Bureau of Land Management's Albuquerque District Advisory Concil will meet on Monday, June 15, 1987, at 10 a.m., in the BLM District Office Building located at 435 Montano N.E. in Albuquerque, New Mexico.

The Council will address the following issues:

1. A review of Activity Plans, currently being drafted, to manage recently designated Areas of Critical Environmental Concern (ACECs) in the RIO Puerco Resource Area.
2. Results of Public Participation efforts in the Taos and Farmington Resource Management Planning efforts.
3. Current efforts in the Albuquerque District involving Volunteers.
4. Reports for Council Subcommittees:
—Taos RMP Land Disposal Issue
—De-Na-Zin Wilderness Management Plan
—Rio Puerco ORV Implentation.
5. Program Updates:
—El Malpais Legislation
—Rio Puerco Legislation
—Statewide Wilderness Study Process.

Time will be provided for public comments during the appropriate agenda items. The Albuquerque District Advisory Council is managed in accordance with the Federal Land Policy and Management Act of 1979. Minutes of the meeting will be made available for review within 30 days following the meeting. For additional information, contact Alan Hoffmeister, Public Affairs Specialist, 435 Montano N.E., Albuquerque, New Mexico 87107, (505) 766–4504.

Richard Fagan,
*Acting District Manager.*
[FR Doc. 87–11632 Filed 5–20–87; 8:45 am]
BILLING CODE 4310-FB-M

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[NM–060–07–4341–02]

## Roswell District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Roswell District Advisory Council meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Roswell District Advisory Council.

**DATE:** Wednesday, June 24, 1987, beginning at 10 a.m. A public comment period will be held following the last agenda item.

Location: BLM Roswell District Office, 1717 West Second St., Roswell, NM 88201.

**FOR FURTHER INFORMATION CONTACT:** David L. Mari, Associate District Manager, or Terry Keim, Acting Public Affairs Specialist, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201, (505) 622–9042.

**SUPPLEMENTARY INFORMATION:** The proposed agenda will include: (1) Roads Policy Status; (2) Minerals Material Appraisal; (3) Painting NTL; (4) RMP Status; (5) FOGRMA Regulations; (6) Sikes Act Program. The meeting is open to the public. Interested persons may make oral statements to the Council during the public comment period or may file written statements. Anyone wishing to make an oral statement should notify the Associate District Manager by June 15, 1987. Summary minutes will be maintained in the District Office and will be available for public inspection during regular business hours within 30 days following the meeting. Copies will be available for the cost of duplication.

Francis R. Cherry, Jr.,
*District Manager.*
[FR Doc. 87–11578 Filed 5–20–87; 8:45 am]
BILLING CODE 4310-FB-M

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[AA–48785–AP]

## Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48785–AP has been received covering the following lands:

Fairbanks Meridian, Alaska
T. 21 S., R. 10 E.,
Sec. 14, S½ NE¼.
(80 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from September 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48785–AP as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective September 1, 1986, subject to the terms and conditions cited above.

Dated: May 14, 1987.

Kay F. Kletka,
*Chief, Branch of Mineral Adjudication.*
[FR Doc. 87–11633 Filed 5–20–87; 8:45 am]
BILLING CODE 4310-JA-M

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[AZ–940–07–4212–14; A–20295 thru A–20300]

## Sale of Public Land; Arizona

May 13, 1987

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Sale of public land.

**SUMMARY:** Notice is hereby given that six parcels of public land near Oatman, Arizona were sold by direct sale as follows:

Gila and Salt River Meridian, Arizona
T. 19 N., R. 20 W.,
Sec. 23.
Donald Craig Smith and Christine Forster Warren
Lot 1, containing 0.62 acre
Ruth Kunkel
Lots 12 and 13, containing 2.13 acre
Gable P. and Angela Boudreaux
Lot 14, containing 0.71 acre
Anne E. Smith
Lot 16, containing 0.60 acre
Patricia Loesch
Lot 17, containing 0.90 acre
Jimmy M. King and Carol L. Stetser
Lot 12, containing 0.41 acre.

The purpose of this notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,
*Chief, Branch of Lands and Minerals Operations.*
[FR Doc. 87–11634 Filed 5–20–87; 8:45 am]
BILLING CODE 4310-32-M

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[CA–010–87–4212–11; CA–18749]

## Proposed Lease and Conveyance for Health Clinic in Mono County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; amendment to proposal to lease and then convey public lands.

**SUMMARY:** The following land is proposed as suitable for lease and conveyance to the Toiyabe Indian Health Project for use as a community health clinic under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, et seq.).

Mt. Diablo Meridian, California
T.8N., R.23E.,
A portion of the NW ¼ NE ¼ Sec. 21.
Containing 7.16 acres, more or less.

The above described land is immediately north of a five acre site proposed for this use in the Federal Register on October 15, 1986. The

proponent amended the original application to change the location in reaction to adverse public comments.

**SUPPLEMENTARY INFORMATION:** The lands are not needed for Federal purposes. Lease and conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. All valid and existing rights.

Upon publication of this notice in the Federal Register, the lands will be segregated from all other forms of appropriation under the public land laws including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments.

**ADDRESS:** Written comments should be sent to the District Manager, Bureau of Land Mangement, 800 Truxtun Ave., Room 311, Bakersfield, CA 93301. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

**FOR FURTHER INFORMATION:** Contact James Morrison, Bishop Area Manger, Bureau of Land Management, 873 N. Main St., Suite 201, Bishop, CA 93514; phone: (619) 872–4881.

Dated: May 13, 1987.

**James S. Morrison,**

*Area Manager.*

[FR Doc. 87–11635 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–40–M

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[CA–060–07–4212–11; CA 15529]

## Classification of Public Lands for Recreation and Public Purposes; Los Angeles and Ventura Counties, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described public land has been examined and found suitable for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et. seq.) and the regulations thereunder (43 CFR Parts 2740 and 2912):

San Bernardino Meridian, California

T. 8N., R. 18W.
Section 32: NE¼NE¼;
containing 40 acres, more or less in Los Angeles County

San Bernardino Meridian, California

T. 8N., R. 19W.
Section 16: SW¼NE¼, N½SE¼, SW¼SE¼;
Section 27: SE¼NW¼;
Section 34: N½SW¼NW¼;
containing 220 acres, more or less in Ventura County

**SUPPLEMENTARY INFORMATION:** The State of California, Department of Parks and Recreation has filed an application to purchase the above described public land under authority of the Act of June 14, 1926, as amended. The proposed public use is for the lands to become a part of the Hungry Valley State Vehicular Recreation Area, which provides a facility of OHV recreational activity to serve the greater Los Angeles metropolitan area.

The classification is consistent with the regulations set forth in 43 CFR Parts 2410 and 2430. The lands are located adjacent to the existing Hungry valley State Vehicular Recreation Area, and the land is physically suitable for the proposed OHV use.

The lease and/or sale, when issued, will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. Right-of-way for the telephone line, BLM Serial No. S–3460, and all appurtenances thereto, constructed by the United States through, over, or upon the land so patented, and the right of the United States, its agents or employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

2. All mineral deposits in the land so leased and/or sold, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may proscribe.

3. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

A portion of the subject lands applied for cannot be conveyed to the applicant due to encumbrances of record which preclude disposal under the R&PP Act. Therefore, for the subject lands described below, application for purchase is denied and a lease will be offered:

San Bernardino Meridian, California

T. 8N., R. 19W.
Section 16: N½SE¼;

The land is not required for any federal purposes. The lease and/or sale is consistent with the objectives and recommendations of the Indio Resource Area—Southern California Metropolitan Project Area's Management Action Summary.

Publication of this notice in the Federal Register segregates the public lands from the operation of other public land laws, and the mining laws, except for mineral leasing. The segregative effect will end either upon issuance of patent, or, failing the consummation of a lease, 18 months from the date of publication, whichever occurs first.

**FOR FURTHER INFORMATION CONTACT:** Mike Selman, Indio Resource Area, (619) 323–4421. Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Dessert District Office, 1695 Spruce Street, Riverside, California 92507.

**DATE:** For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

Dated: May 14, 1987.

*Gerald E. Hillier,*

District Manager.

[FR Doc. 87–11579 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–40–M

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[CA–940–07–4212–13; CA 19519]

## Exchange of Public and Private Lands in Nevada and Fresno Counties, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of issuance of land conveyance document.

**SUMMARY:** The purpose of this exchange was to acquire the non-federal lands because of their high values for wildlife habitat and recreational use.

particularly hunting, hiking, and primitive camping. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola A Andrade, California State Office, (916) 978–4815.

The United States issued an exchange conveyance document to the Southern Pacific Land Company on April 2, 1987, under section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described land:

Mount Diablo Meridian, California

T. 14 N., R. 8 E.,
Sec. 9, Lots 11 to 13, inclusive, NW¼SE¼, N½SW¼SE¼, and SE¼SW¼SE¼;

containing 77.50 acres of public land in Nevada County.

In exchange for these lands, the United States acquired the following described land from the Southern Pacific Land Company:

Mount Diablo Meridian, California

T. 19 S., R. 14 E.,
Sec. 3, S½S½;
Sec. 5, All;

Subject to: 1. The reservation of all oil, gas, and other minerals and mineral ores within or underlying the above-described real property, and those rights of ingress, egress and other rights necessary for the development, exploration and removal of same, as described in and conveyed by Deed to Bravo Oil Company, a corporation, recorded December 29, 1965, in Book 5257, Part 19, of Official Records, Document No. 104215;

2. Those rights for a right-of-way of lawful width for any and all county roads, heretofore lawfully established and now put in use upon and across any of said lands, as reserved in the Deed dated March 6, 1912, from Southern Pacific Railroad Company, a corporation, et al, to Southern Pacific Land Company, a corporation, recorded March 22, 1912, in Book 492, Page 413, of Official Records;

3. All other matters of record;

containing 861.60 acres of non-Federal land in Fresno County.

The values of the public land and non-Federal land in this exchage were equal.

At 10:00 a.m. on June 23, 1987, the non-Federal lands described above shall be open to the operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10:00 a.m. on June 23, 1987, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the undersigned officer of the Bureau of Land Management, Room E–2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: May 14, 1987.

Sharon E. Janis,
*Chief, Branch of Adjudication and Records.*

[FR Doc. 87–11580 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–40–M

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[CO–050–07–4212–14; C–35430, C–35431, C–44122(a), C–44122(b), C–44125]

## Notice of Realty Action; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, C–35430, C–44122(b), and C–35431, Modified Competitive Sales; C–44122(a) and C–44125, Direct Sales. Segregation from all forms of appropriation under the public land laws.

SUMMARY: The following described public lands have been examined and identified as suitable for disposal by sale and under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1701, 1713) at no less than the appraised fair market value (minimim bid price):

Las Animas County, Colorado
Sixth Principal Meridian

| Case file | Legal description | Acreage |
|---|---|---|
| C–35430 | T. 30 S., R. 51 W., Sec. 23, SE¼NW¼. | 40.00 |
| C–35431 | T. 31 S., R. 52 W., Sec. 2, lot 1. | 47.73 |
| C–44122(a) | T. 34 S., R. 55 W., Sec. 26, NW¼NE¼. | 40.00 |
| C–44122(b) | T. 34 S., R. 55 W., Sec. 26, NW¼SE¼. | 40.00 |
| C–44125 | T. 30 S., R. 56 W., Sec. 10, SE¼NE¼. | 40.00 |

The total acreage in this sale offering is 207.73 acres.

These lands are hereby segregated from appropriation under the public land laws, including the general mining laws, pending decision and action on the sale proposal.

Parcel C–35430 will be offered to Danny Johnson, Viola Chappell and Mable Peoples by modified competitive procedures at not less than fair market value.

Parcel C–35431 will have bids accepted only from Boyd Rose, Lawrence Jordan, and Dollie Couchman by modified competitive procedures at not less than fair maket value.

Parcel C–44122(a) will be offered directly to Lester Gegenheimer at not less than fair market value.

Parcel C–44122(b) will be offered to Lester Gegenheimer or Joe Whittenburg by modified competitive procedures at not less than fair market value.

Parcel C–44125 will be offered directly to Robert Rynard at not less than fair market value.

Sale Procedures: Designated bidders will be notified directly of specific sale procedures. Any of the parcels not sold on the initial sale day will be reoffered for sale by competitive bidding to the general public on the first and third Wednesday each month thereafter until sold or the sale is canceled. Bidding will be by sealed bid only. No bids will be accepted for less than the minimum bid price for each parcel. Bid opening will be at 2 p.m. on the sale day at the Canon City District Office.

A more detailed sales prospectus providing specific information on each sale parcel, including any patent reservations and restrictions will be available upon request after the initial sale day.

DATES: Comment period ends 45 days from this publication.

FOR FURTHER INFORMATION AND PUBLIC COMMENT: Contact the District Manager, Canon City District Office, 3170 East Main Street, P.O. Box 311, Canon City, CO 81212. Interested parties should submit comments within 45 days of this notice. Comments will be evaluated by the District Manager, who may cancel or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Donnie R. Sparks,
*District Manager.*

[FR Doc. 87–11636 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–JB–M

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[NV–020–07–4212–11; N–43020]

## Notice of Realty Action; Nevada

ACTION: Notice of realty action.

SUMMARY: Lease/Conveyance of Public Lands for Recreation and Public Purposes: N–43020.

DATE: May 15, 1987.

The following public lands in Pershing County, Nevada have been identified as suitable and will be classified for lease or sale under the Recreation and Public

Purpose Act, as amended (43 U.S.C. 869, et seq.):

Mount Diablo Meridian, Nevada

T. 27 N., R. 31 E.,
Sec. 20, NE¼NE¼.
Containing 40 acres more or less.

The Lovelock Racing Association proposes to use the land for a stock car racing track, motocross motorcycle track and BMX bicycle track.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public's interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purpose Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for highway purposes which have been granted to Nevada Department of Transportation, its successors or assigns, by Permit No. NEV–048800, under the Act of November 9, 1921 (23 U.S.C. Sec. 18).

2. Those rights for transmission line purposes which have been granted to Sierra Pacific Power Company, its successors or assigns, by Permit No. NEV–066620, under the Act of March 4, 1911 (43 U.S.C. 961).

3. Those rights for communication line purposes which have been granted to Bell Telephone Company of Nevada, its successors or assigns, by Permit No. N–12799, under the Act of March 4, 1911 (43 U.S.C. 961).

4. Those rights for water pipeline purposes which have been granted to Lovelock Meadows Water District, its successors or assigns, by Permit No. N–43894, under the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for highway purposes which have been granted to Pershing County, its successors or assigns, pursuant to Sec. 8 of the Act of July 26, 1866 (43 U.S.C. 932).

6. An easement 100 feet in width along the northern boundary of the parcel. The easement will be for road and public utility purposes.

Detailed information concerning this action is available for review of the office of the Bureau of Land Management, Winnemucca District, 705 E. 4th Street, Winnemucca, Nevada 89445.

Upon publication of this notice of Federal Register the above described lands will be segregated from all forms of appropriations under the public land laws and the general mining laws, but not the Recreation and Public Purposes Act and the mineral leasing laws.

For a period of 45 days from the date of publication of this Notice in the Federal Register, interested persons may submit comments to the Bureau of Land Management, District Manager, Winnemucca District Office, 705 E. 4th Street, Winnemucca, Nevada 89445. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Dated: May 15, 1987.

Frank C. Shields,

*District Manager, Winnemucca.*

[FR Doc. 87–11637 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–HC–M

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[NM–040–07–5420–10–ZGKE; OK NM 63441]

## Issuance of Disclaimer of Interest to Lands in Oklahoma

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to issue disclaimer of surface interest.

**SUMMARY:** Notice is hereby given that the United States of America, pursuant to the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976 Section 315, 43 U.S.C. 1745 (1976) does hereby disclaim and release to Allen E. Greer all interest in the surface estate only in the land described below.

**DATE:** Comments should be received by August 19, 1987.

**ADDRESS:** Comments should be sent to: Bureau of Land Managment, 9522-H East 47th Place, Tulsa, OK 74145.

**FOR FURTHER INFORMATION CONTACT:** Hans Sallani, Oklahoma Resource Area Headquarters, 405–231–5491.

The following is a metes and bounds description of the SW¼ of Section 20 and that portion of the accretion and riparian acreage to Lots 8 and 9, Section 29, and Lot 1, Section 30 in the ancient riverbed in Section 29 west of a fence, T. 10 N., R. 4 W., Indian Meridian, located along the Canadian River, McClain County, Oklahoma.

Beginning at the ancient meander corner on the ancient right bank between Sections 29 and 30; Thence N. 0°11'6" W., 1,937.25 feet to the ancient meander corner on the ancient left bank between Sections 19 and 20; Thence with the West line of said Section 20 North 627.00 feet to the Northwest corner of Lot 1, Section 20; Thence East 2,640.00 feet to center of said Section 20; Thence South 2,606.15 feet to the Southeast corner of Lot 2, Section 20; Thence with the South line of said Section 20 West 383.22 feet to the ancient meander corner on the ancient left bank between Sections 20 and 29; Thence N. 86°13'10" W., 270.62 feet to a point; Thence South 2,101.64 feet to a point on the ancient right bank; thence with the ancient right bank the following courses and distances: N. 49°30' 00" W., 271.25 feet; N. 23°00'00" W., 660.00 feet; N. 40°00'00" W., 1,122.00 feet; N. 58°45' 00" W., 930.09 feet to the point of beginning and containing 194.74 acres more or less of land.

After review of the official records, it has been determined by the Bureau of Land Managment that all of the land is accreted, due to the movement of the South Canadian River to the north. The applicant is entitled to a disclaimer because the land under application is accreted to private lands, and therefore the lands are not owned by the United States.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments on the above disclaimer may present their views in writing to the District Manager at the address indicated above. If no protests are received the disclaimer will become effective on or about July 30, 1987.

Dated: April 20, 1987.

Larry L. Woodard,

*State Director.*

[FR Doc. 87–11691 Filed 5–20–87; 8:45 am]

BILLING CODE 4310–FB–M

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## Exchange of Public Lands in Jackson County, OR

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 35 S., R. 2 W.:
Sec. 29, SE¼NE¼
T. 35 S., R. 4 W.:
Sec. 5, NW¼SE¼
T. 35 S., R. 4 W.:
Sec. 17, SW¼NW¼
T. 40 S., R. 2 E.:

Sec. 20, NW¼NW¼

The area described aggregates approximately 160 (±) acres in Jackson County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from Thomas Terbeck:

Willamette Meridian

T. 35 S., R. 2 E.:
Sec. 30, SW¼NE¼, SE¼SW¼, W½SE¼

The area described above aggregates approximately 160 (±) acres in Jackson County, Oregon.

The purpose of the land exchange (identified by serial No. OR 41809) is to facilitate resource management opportunities in the Butte Falls Resource Area. The private land being offered has very important values for wildlife in protection of critical deer winter range. The public interest will be highly served by making this exchange.

The value of the lands to be exchanged is approximately equal, and upon completion of the final appraisal of the lands, cash equalization payments will be made if the values are within twenty-five percent (25%).

The exchange will be subject to:

1. The reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The reservation of leasable minerals on the parcel in T. 40 S., R. 2 E., Sec. 20, NW¼NW¼ until the termination of oil and gas lease OR 28963. The lease shall remain in effect until expiration.

3. All other valid existing rights, including but not limited to any right-of-way, easement or lease of record.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the Medford District Office, 3040 Biddle Rd., Medford, OR 97501.

For a period of 45 days from the date of publication of this notice in the **Federal Register** interested parties may submit comments to the Medford District Manager at the above address.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date of issue: May 11, 1987.

**David A. Jones,**

*District Manager.*

[FR Doc. 87-11581 Filed 5-20-87; 8:45 am]

BILLING CODE 4310-40-M

## Fish and Wildlife Service

### Availability of a Final Environmental Impact Statement on the Great Swamp, National Wildlife Refuge Master Plan

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Final Environmental Impact Statement (FEIS) on the Master Plan for the Great Swamp National Wildlife Refuge in Morris County, New Jersey is available for public review. The statement discusses four alternatives for the future management of the refuge.

**DATE:** Written comments are requested by June 26, 1987.

**ADDRESS:** Comments should be addressed to: Howard N. Larsen, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

**FOR FURTHER INFORMATION CONTACT:** Individuals who need additional copies of the FEIS should contact Curtis A. Laffin, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158, (617) 965-5100, X-222. Copies have been sent to all agencies and organizations that participated in review of the Draft EIS. Copies will be available for examination at FWS in Newton Corner, Massachusetts and at the Great Swamp National Wildlife Refuge Headquarters, Pleasant Plains Road, Harding Township, New Jersey.

**SUPPLEMENTARY INFORMATION:** This draft environmental impact statement addresses a comprehensive land use plan setting forth long-term (ten to 20 years) objectives for resource management and public use on the refuge. Highlights of the alternatives that are analyzed and evaluated are:

1. *No Action*—perpetuates current management practices and levels of public use, habitat and wildlife population protection, water management in the refuge's impoundments, management of upland field and forest habitat, wildlife surveys and bird banding.

2. *Proposed Action*—emphasizes wetland and upland habitat improvement for important wildlife species and many other species. Other enhancements will expand wildlife education, interpretation and wildlife oriented recreation. Specific actions include: additional grassland, brush and timber management to provide habitat and wildlife diversity, raccoon population control, trail system expansion, land acquisition, addition of a Wildlife Interpretive Center, closing Pleasant Plains Road to through traffic, upgrading water management capabilities, increased production and management of selected wildlife species, and actions to minimize impacts of watershed development outside the refuge.

3. *Public Use Alternative*—expands options for public access and for wildlife education and interpretation while maintaining a wildlife habitat diversity through moderate management activities. Proposed public uses include canoeing, fishing, horseback riding trails, a tour route and observation blinds, new visitor contact points and additional parking spaces. Land acquisition includes floodplains of some streams which flow into the refuge. A trail system through the refuge between two county environmental centers will be constructed.

4. *Wildlife Management Alternative*—closes Pleasant Plains Road to through traffic and intensifies most wildlife management activities, especially for woodcock and waterfowl. Raccoon management to reduce the population will be implemented. Major management changes include acquisition of land which may be flooded by raising dikes and woodcock habitat management which would set back successional types of upland habitat.

**Robert L. Miller,**

*Acting Regional Director.*

[FR Doc. 87-11620 Filed 5-20-87; 8:45 am]

BILLING CODE 4310-55-M

## Minerals Management Service

### Development Operations Coordination Document; Tenneco Oil Exploration and Production

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4231, Block 181, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore based located at Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 14, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 15, 1987.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87–11562 Filed 5–20–87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL BOUNDARY AND WATER COMMISSION

### Availability of Final Environmental Assessment and Finding of no Significant Impact

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico.

**ACTION:** Notice of availability of final environmental assessment and finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR Parts 1500–1508); and the U.S. Section's Operational Procedures for Implementing section 102 of the National Environmental Policy Act (NEPA), published in the **Federal Register** September 2, 1981 (46 FR 44083); the U.S. Section hereby gives notice that the Final Environmental assessment and Finding of No Significant Impact for an international agreement for a joint project for improvement of the quality of the waters of New River at Calexico, California and Mexicali, Baja California are available. A notice of finding of no significant impact dated February 27, 1987 provided a thirty (30) day comment period before making the finding final. The Notice was published in the **Federal Register** on March 16, 1987 (52 FR 8118).

**FOR FURTHER INFORMATION CONTACT:** Mr. M.R. Ybarra, U.S. Section Secretary; International Boundary and Water Commission, United States and Mexico, United States Section; The Commons, C–310; 4171 North Mesa; El Paso, Texas 79902. Telephone: (915) 534–6698, FTS 570–6698.

**SUPPLEMENTARY INFORMATION:**

**Proposed Action**

The action proposed is that the Government of the United States enter into an agreement with the Government of Mexico, through the International Boundary and Water Commission (Commission), to provide for a joint project for improvement of the quality of the waters of New River. The agreement provides for construction, operation, and maintenance of the joint project in Mexico in such manner to reduce discharges of untreated sewage into New River crossing the boundary into the United States at Calexico, California.

**Alternatives Considered**

Four alternatives were considered: The Proposed Action Alternative provides for the Governments of the United States and Mexico to enter into an agreement for Mexico to (1) construct a new pumping plant of adequate capacity to handle the sewage load of Mexicali, (2) acquire three standby pumps for two existing pumpingh plants, and (3) acquire mobile sewer line cleaning equipment. Mexico would also proceed concurrently with rehabilitation of collector lines in Mexicali as well as a regualr maintenance program for the Mexicali sanitation works.

Other recommendations of the Proposed Action Alternative include sharing equally by the two governments the cost of these features and that Mexico will pay any additional cost over the estimate for the new pumping plant, timely implementation of the recommended features, and finally Commission supervision over construction, operation, and maintenance of the project.

Two alternatives, construction of a separate line for collection of industrial waste discharges and installation of additional booster pumps in existing pressure lines, were considered but were eliminated from further consideration either due to excessive cost or impracticality.

The No Action Alternative will result in no anticipated change in existing conditions. In the event Mexico constructs, operates, and maintains the proposed project features at its own cost and without the proposed agreement, there will be no firm means to assure that this construction, operation, and maintenance will reduce pollution in U.S. territory. The risk is great that sewage will continue to cross the boundary and potential significant pollution of New River and other health hazards will continue without a firm basis for obtaining immediate and effective corrective actions.

**Availability**

Single copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained by request at the above address.

Dated: May 7, 1987.

Suzette Zabenski,

*Staff Counsel.*

[FR Doc. 87-11679 Filed 5-20-87; 8:45 am]

BILLING CODE 4910-60-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-1 (Sub-No. 192X)]

### Chicago and North Western Transportation Co. Abandonment Exemption; Guthrie and Dallas Counties, IA

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of interim trail use or abandonment.

**SUMMARY:** The Commission issues a Notice of Interim Trail Use or Abandonment in response to a joint petition by Central Iowa Energy Cooperative and the Iowa Trails Council, Inc., that was supported by Chicago and North Western Transportation Company.

**DATE:** This notice will be effective May 21, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** The exemption noticed at 52 FR 710 (January 8, 1987) is modified to allow parties to negotiate a final Interim Trail Use Agreement within 180 days from the effective date of this decision. The public use condition imposed in the exemption proceeding is also modified to expire upon execution of a final Interim Trail Use Agreement by the parties.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area).

Decided: May 7, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11658 Filed 5-20-87; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 31031]

### Merchants Grain and Transportation, Inc.; Continuance in Control Exemption

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts: (a) Merchants Grain & Transportation, Inc. (Merchants) from the requirements of 49 U.S.C. 11343 to continue in control of Poseyville and Owensville Railroad Company, Inc. (P&O), subject to employee protective conditions; and (b) P&O from the requirements of 49 U.S.C. 10746 with regard to the transportation of traffic in which Merchants may have an interest.

**DATES:** This exemption will be effective on May 26, 1987. Petitions to reopen must be filed by June 10, 1987.

**ADDRESSES:** Send petitions referring to Finance Docket No. 31031 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter A. Greene, 1920 N Street NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Joseph Dettmar, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area).

Decided: May 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley dissented in part with a separate expression.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11657 Filed 5-20-87; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 31032]

### Wisconsin and Calumet Railroad Co., Inc.; Modified Rail Certificate

On April 14, 1987, a notice was filed by the Wisconsin and Calumet Railroad Company, Inc. (W&C), for a modified certificate of public convenience and necessity under 49 CFR 1150.23. By contract with the Wisconsin River Rail Transit Commission (WRRTC), W&C is authorized to operate the 41-mile rail line in the State of Wisconsin between Waukesha (milepost 20.5) and Milton Junction (milepost 61.5).

Prior to abandonment, the line was owned and operated by the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor (MILW). The line was authorized for abandonment by the Commission's decisions in Docket No. AB-7 (Sub-No. 59), served June 13, 1979 and October 24, 1979.

In Finance Docket No. 29237, *State of Wisconsin Acquisition of Certain Lines of Railroad* (not printed), served February 29, 1980, the State of Wisconsin was authorized to acquire the involved rail line. Operation of the line is the responsibility of the WRRTC, a public agency within the State of Wisconsin. WRRTC contracted with W&C to operate the line.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: May 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

*Acting Secretary.*

[FR Doc. 87-11659 Filed 5-20-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with the Department policy, 28 CFR 50.7, notice is hereby given that on May 8, 1987, a proposed consent decree in *United States v. Kurdziel Iron Industries, Inc.*, was lodged with the United States District Court for the Western District of Michigan. The proposed consent decree resolves a judicial enforcement action brought by the United States against Kurdziel for violations of the Resource Conservation and Recovery Act at its Rothbury, Michigan gray iron foundry.

The proposed consent decree requires Kurdziel to conduct sampling and analyses of specified land disposal units and to close all such units which are found to contain hazardous wastes. In addition, the consent decree requires Kurdziel to pay a civil penalty of $82,034.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC, and should refer to *United States v. Kurdziel Iron Industries*, D.J. Ref. 90-7-1-358.

The proposed consent decree may be examined at the office of the United States Attorney, 399 Federal Building,

Grand Rapids, Michigan 49503, and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

*Assistant Attorney General, Land & Natural Resources Division.*

[FR Doc. 87-11630 Filed 5-20-87; 8:45 am]

BILLING CODE 4410-01-M

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[AAG/A Order No. 4-87]

## Privacy Act of 1974; Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify the system of records entitled "Witness Immunity Records (JUSTICE/CRM 022)" which is maintained by the Criminal Division.

This is a system of records for which notice was published in the Federal Register on September 30, 1977, consistent with provisions of 5 U.S.C. 552a(e) (4) and (11). However, the Criminal Division now proposes to automate certain summary-type data, e.g., name of individual, immunity request number, date of receipt, etc., to assist in its efforts to track and control the immunity requests and to improve its ability to determine the status thereof. Revisions are being made to various sections of the notice to reflect changes due to the automation effort. The "Storage" and "Retrievability" sections indicate that certain summary data will be stored on magnetic disks and retrieved by on-line searches of individual names and request numbers to locate the required file; and, the "Safeguards" section reflects increased security for the automated system. Minor editorial changes have also been made to the system notice for clarity purposes.

The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the proposal to partially automate this system. Therefore, OMB, the Congress, and the public are invited to submit written comments on this system. Comments should by addressed to J. Michael Clark, Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 6402, 601 D Street, NW., Washington, DC 20530. If no comments are received from either the public, OMB, or the Congress by July 20, 1987, the proposed modifications will be implemented without further notice in the Federal Register.

Dated: May 8, 1987.

Harry H. Flickinger,

*Acting Assistant Attorney General for Administration.*

JUSTICE/CRM-022

SYSTEM NAME:

Witness Immunity Records.

SYSTEM LOCATION:

U.S. Department of Justice: Criminal Division: 10th Street and Constitution Avenue NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential or actual witnesses for whom immunity (pursuant to 18 U.S.C. 6001–6005) is proposed.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains background information on the individual and the case of matter in which he is expected to testify in a processing before or ancillary to a court or grand jury of the United States or an agency of the United States. The information maintained in the system is entered from DOJ Form-LAA–111, "Request for Immunity Authorization.", which is completed by the United States Attorneys, or from other formal requests for immunity from Federal agencies. The system also contains a record of action taken by the Criminal Division on the request.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101. The system is also maintained to implement the provisions of 18 U.S.C 6001–6005 and 18 U.S.C. 2514.

PURPOSE OF THE SYSTEM:

The system is essential to the Division's efforts in granting immunity requests as stated in 18 U.S.C. 6001–6005. Requests for immunity may be made by a United States Attorney or a Federal agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record may be disseminated to a federal, state, local, or foreign law enforcement agency to alert such agency to the proposed immunity or, to the extent necessary for identification purposes, to elicit information concerning the potential or actual witness which may be necessary to an evaluation of the proposed immunity; (2) a record relating to a proposed immunity that has been referred to the Department of Justice for approval, may be disseminated to the referring agency to notify such agency of the status of the referral or of any decision or determination that has been made.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in file folders in locked cabinets; selected summary data are stored on magnetic disks and on manual index cards which are also kept in locked cabinets.

RETRIEVABILITY:

Summary data, e.g., names, request numbers, dates of receipt and completion are retrieved from manual index cards for requests received prior to June 1986; for June 1986 and subsequent years, summary data are retrieved from magnetic disks. File folders are accessed through the manual or automated indexes.

SAFEGUARDS:

The records are safeguarded and protected in accordance with applicable Departmental rules. Security for the automated records include strictly controlled access codes and passwords. Only authorized Criminal Division employees will have access to the system.

RETENTION AND DISPOSAL:

Dispose 10 years after close of request.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General; Criminal

Division; U.S. Department of Justice; 10th Street and Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2) or (k)(2). Inquiry concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

The major part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2) or (k)(2). To the exent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request". Include in the request the name of the individual involved, his birth date and place, or other identifying number of information which may be of assistance in locating the record, the name of the case or matter involved, if known, and the name of the judicial district involved, if known. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

1. Federal government prosecutors; 2. Federal agencies; 3. Department of Justice attorneys and personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (2), (3) and (e)(4) (G), (H) and (I), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register**.

[FR Doc. 87-11640 Filed 5-20-87; 8:45 am]

BILLING CODE 4410-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Generalized System of Preferences (GSP) Subcommittee; Notice of Results of Reviews of Petitions Requesting Changes in the List of Articles Eligible for Duty-Free Treatment Under the GSP

This publication provides the disposition of the petitions accepted for review in the 1986 annual review of the GSP program. These petitions requested changes in the list of imported articles eligible for duty-free treatment under the U.S. Generalized System of Preferences (GSP). The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465). The review was conducted pursuant to regulations codified as 15 CFR 2007. Results of the review will be implemented by a proclamation, which will be issued shortly. These changes will take effect on July 1, 1987. All communications with respect to this notice should be addressed to the Executive Director, Generalized System of Preferences, Room 517, 600 17th St., NW., Washington, DC 20506. Questions may be directed to any member of the GSP Information Center at (202) 395-6971.

**Donald M. Phillips,**

*Chairman, Trade Policy Staff Committee.*

| Case No. | TSUS or TSUSA | Article | Petitioner | Action taken |
|---|---|---|---|---|
| | | A. Petitions to add products to the list of eligible articles for the Generalized System of Preferances. | | |
| 86-1 | 145.18 | Filberts, not shelled | Government of Turkey | Petition denied. |
| 86-2 | 145.46 | Filberts, shelled | Government of Turkey | Petition denied. |
| 86-3 | 146.30 | Avocados | Government of Mexico | Petition denied. |
| 86-4 | 146.40 | Olives | Government of Mexico | Petition denied. |
| 86-5 | 146.95 | Pineapples, fresh | Government of Colombia | Petition denied. |
| 86-6 | 170.40 | Filler Tobacco, not stemmed | Cigar Association of America, Washington, DC. | Petition granted. |
| 86-7 | 170.45 | Filler Tobacco, stemmed | Cigar Association of America, Washington, DC. | Petition granted. |
| 86-8 | 315.35 | Abaca Cordage | Government of the Philippines | Petition granted. |
| 86-9 | 402.56 | Benzyl Chloride | Compania Quimica, Ameyal, Mexico. | Petition withdrawn. |
| 86-10 | 403.45 | Benzyl Alcohol | Compania Quimica, Ameyal, Mexico. | Petition withdrawn. |
| 86-11 | 404.16 | Terephthalic Acid | Celanese Fibers, Charlotte, NC | Petition withdrawn. |
| 86-12 | 405.44 | Toluenediisocyanates, unmixed | Industrias Cydsa Bayer, Mexico | Petition withdrawn. |
| 86-13 | 406.39pt | Orgacel T | Quimica Organica de Mexico, Mexico. | Petition withdrawn. |
| 86-14 | 409.78 | Direct Dyes, black | Government of Argentina | Petition denied. |
| 86-15 | 409.82 | Direct Dyes | Government of Argentina | Petition denied. |
| 86-16 | 410.28 | Color Pigments | Government of Argentina | Petition denied. |
| 86-17 | 425.9960pt | Purified Fumaric Acid | Government of Colombia | Petition granted for purified fumaric acid only. |
| 86-18 | 533.30 | Earthenware Mugs | Russ Berrie and Company, Oakland, NJ. | Petition granted graduate Korea, Taiwan, Brazil. |
| 86-19 | 533.64 | Household Ware | Government of the Philippines | Petition granted. |
| 86-20 | 540.27 | Enamels | Government of Mexico | Petition withdrawn. |

| Case No. | TSUS or TSUSA [1] | Article | Petitioner | Action taken |
|---|---|---|---|---|
| 86-21 | 632.46 | Strontium, unwrought | Government of Mexico, Fomento y Desarrollo de Pequenos Mineros, Mexico. | Petition granted. |
| 86-22 | 681.0410 | Pillow Blocks | Government of Mexico, LKS Rodamientos y Equipos, Mexico. | Petition denied. |
| 86-23 | 715.62 | Time Switches | Admiral Division of Magic Chef Inc., Galesburg, IL. | Petition granted. |
| 86-24 | 715.64 | Refrigerator Defrost Timer | Admiral Division of Magic Chef Inc., Galesburg, IL. | Petition granted. |
| | | B. Petitions to remove products from the list of eligible articles for the Generalized System of Preferences. | | |
| 86-47 | 402.12 | Phthalic Anhydride | USX Corporation, Pittsburg, PA | Petition denied. |
| 86-25 | 409.3410 | Dioctyl Phthalate | USX Corporation, Pittsburg, PA | Petition denied. |
| 86-26 | 532.22 | Mosaic Tile | Tile Council of America, Washington, DC. | Graduated Taiwan. |
| 86-27 | 610.8413 | Steel Flanges | American Pipe Fittings | Graduated Korea, Taiwan, Brazil. |
| 86-28 | 610.8415 | Flanges | American Pipe Fittings Association, Washington, DC. | Graduated Korea, Taiwan, Brazil. |
| 86-29 | 610.8418 | Flanges | American Pipe Fittings Association, Washington, DC. | Graduated Korea, Taiwan, Brazil. |
| 86-30 | 610.8421 | Flanges | American Pipe Fittings Association, Washington, DC. | Graduated Korea, Taiwan, Brazil. |
| 86-31 | 610.8424 | Flanges | American Pipe Fittings Association, Washington, DC. | Graduated Korea, Taiwan, Brazil. |
| 86-32 | 610.8428 | Flanges | American Pipe Fittings Association, Washington, DC. | Graduated Korea, Taiwan, Brazil. |
| 86-33 | 610.86 | Steel Pipe Couplings | Picoma Industries, Houston, TX | Graduated Korea, Taiwan. |
| 86-34 | 688.32 | Steel Pipe Fittings | Picoma Industries, Houston, TX | Graduated Korea. |
| 86-35 | 732.3875 | Caliper Brakes | Dia Compe Inc., West Palm Beach, FL. | Petition withdrawn. |
| | | C. Petitions to remove duty-free status from a beneficiary developing country[2] for a product on the list of eligible articles for the Generalized System of Preferences. | | |
| 86-36 | 252.75 (Brazil, Mexico). | Writing Paper | Stationery International Trade Committee, Washington, DC. | Petition denied. |
| 86-37 | 256.9044 (Brazil, Mexico). | Filler Paper | Stationery International Trade Committee, Washington, DC. | Petition denied. |
| 86-38 | 256.52 (Brazil, Mexico). | Other Memo Pads | Stationery International Trade Committee, Washington, DC. | Petition denied. |
| 86-39 | 256.9080 (Brazil). | Paint Strainers | Louis M. Gerson Company, Middleboro, MA. | Petition granted. |
| 86-40 | 410.72 (Turkey). | Aspirin | Monsanto Corporation, St. Louis, MO. | Petition granted. |
| 86-48 | 421.06 | Sodium Hydrosulfite | Virginia Chemicals, Portsmouth, VA. | Petition granted. |
| 86-41 | 426.52 (Taiwan). | Butyl Acetate | Celanese Chemical Company, Washington, DC, BASF Corporation, Washington, DC. | Petition denied. |
| 86-42 | 647.03 (Taiwan). | Butt Hinges | Stanley Hardware, New Britain, CT | Petition granted. |
| 86-43 | 835.00 (Singapore, Taiwan). | Steel Hangers | American Institute of Steel Construction, Washington, DC. | Petition granted. |
| 86-44 | 654.08 (Mexico). | Steel Cookingware | General Housewares Corporation, Washington, DC. | Petition granted. |
| 86-49 | 725.46 (Korea, Taiwan). | Guitars | Peavey Electronics, Meridian, MS | Petition granted. |
| 86-50 | 727.23 (Thailand). | Directors Chairs | American Furniture Manufacturers Association, Washington, DC. | Petition denied. |
| 86-51 | 727.29 (Yugoslavia, Singapore). | Non-folding Chairs | American Furniture Manufacturers Association, Washington, DC. | Petition granted on Yugoslavia, petition denied on Singapore. |

| Case No. | TSUS or TSUSA [1] | Article | Petitioner | Action taken |
|---|---|---|---|---|
| 86-52 | 727.35 (Taiwan, Singapore, Yugoslavia). | Wood Furniture | American Furniture Manufacturers Association, Washington, DC. | Petition granted on Taiwan, petition denied on Singapore and Yugoslavia. |
| 86-53 | 727.40 (Taiwan, Yugoslavia). | Furniture Parts | American Furniture Manufacturers Association, Washington, DC. | Petition granted on Taiwan, Yugoslavia graduated on chair parts only. |
| 86-54 | 727.70 (Taiwan). | Other Furniture | American Furniture Manufacturers Association, Washington, DC. | Petition granted. |
| 86-55 | 735.0965 (Korea, Taiwan). | Inflatable Balls | National Latex Products Company, Ashland, OH. | Petition on Taiwan denied, petition on Korea withdrawn. |
| 86-56 | 737.9535 (Korea, Taiwan). | Toy Balloons | National Latex Products Company, Ashland, OH. | Petition denied. |
| 86-45 | 751.2015 (Taiwan). | Umbrella Frames | Almet/Lawnlite, Portland, TN, California Umbrella, Pomona, CA. | Petition granted. |
| 86-57 | 772.06pt (Taiwan). | Melamine Tableware | American Melamine Institutional Tableware Association, Washington, DC. | Petition denied. |
| 86-58 | 772.09pt (Taiwan). | Melamine Trays | American Melamine Institutional Tableware Association, Washington, DC. | Petition denied. |
| | | D. Petition to waive competitive need limits for a beneficiary country for a product on the list of eligible articles for the Generalized System of Preferences. | | |
| 86-46 | 465.05 (The Philippines). | Fatty Acid Esters | Government of the Philippines | Petition withdrawn. |

[1] Tariff Schedules of the United States annotated (19 U.S.C. 1202).
*Countries subject to petition are identified under TSUS Number.

[FR Doc. 87-11660 Filed 5-20-87; 8:45 am]
BILLING CODE 3190-01-M

## Section 203 Investigation Regarding Specialty Steel Import Relief

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the United States Trade Representative (USTR), on behalf of the President, has received a report and recommendation regarding the extension of import relief for stainless steel and alloy tool steel from the United States States International Trade Commission (USITC) pursuant to section 203 of the Trade Act of 1974. Public comments related to such import relief are due by 12:00 noon, Thursday, June 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joe Papovich or Elena Bryan, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506, (202) 395-4510. Copies of the USITC's report will be available from the Secretary, USITC, Room 156, 701 E Street, NW., Washington, DC 20436.

**SUPPLEMENTARY INFORMATION:** On May 15, 1987, the United States International Trade Commission (USITC) reported its findings in an investigation of Stainless Steel and Alloy Tool Steel, Inv. No. TA-203-16, to the President through the United States Trade Representative (USTR) pursuant to section 203 of the Trade Act of 1974 (19 U.S.C. 2253). The USITC advised that the program of import relief granted by the President to the specialty steel industry on July 19, 1983, for a period of four years, should be extended for certain specialty steel products.

Pursuant to section 203(i)(3), the USITC reported the following findings:

Chairman Susan Liebeler and Vice Chairman Anne E. Brunsdale provided general advice on the probable economic effects of terminating import relief provided to domestic producers of certain stainless steel and alloy tool steel products. They also provided general advice on the considerations set forth in section 202(c) of the Trade Act of 1975.

Commissioners Alfred Eckes and Seeley G. Lodwick advised the President that termination of the import relief program with respect to stainless steel sheet and strip, and stainless steel plates would not have an adverse effect on the domestic industries producing those products, assuming the continued administration of voluntary restraint agreements at present levels. They also advised that termination of the import relief program would have an adverse effect on the industries producing stainless steel bars, stainless steel wire rod, and alloy tool steel.

Commissioner David B. Rohr advised the President that, with respect to stainless steel sheets and strip, and stainless steel plates, termination of the import relief program would not have a significant adverse economic effect on the industries producing these products, assuming the continued administration of the voluntary restraint agreements at present levels. With respect to stainless steel bars and stainless steel wire rod, termination of the import relief program would have a significant adverse economic effect on the industries producing these products. With respect to alloy tool steel, Commissioner Rohr advised that, while termination of the import relief program would have some adverse economic effects on the operation of the industry, he finds little indication that firms in this industry have any significant plans to use any further period of relief to further adjust to import competition.

After receiving the USITC's advice and recommendations, the President must determine what method and amount of import relief he will provide, unless he determines that the extension of import relief is not in the national

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economic interest. Any extension of import relief can be at a level no more restrictive than that in effect immediately before such extension and can be of no longer than 3 years duration. The existing import relief program expires on July 19, 1987.

In determining whether to continue import relief, and if so, what form of relief he will provide, the President must take into account, in addition to other considerations he may deem relevant, the following factors:

(1) The probable effectiveness of the import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition and other considerations relevant to the position of the industry in the nation's economy;

(2) The effect of import relief on consumers and on competition in the domestic market for such products;

(3) The effect of import relief on the international economic interest of the United States;

(4) The impact on the United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the United States' market is a focal point for exports of such articles by reason of restraints on exports of such articles to, or on imports of such articles into, third country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities, and workers if an extension of import relief was or was not provided.

Particular emphasis should be given to point (1) concerning the effectiveness of relief to promote adjustment, and industry's efforts/plans to adjust.

Following interagency review and advice, the USTR will make a recommendation to the President regarding the appropriate form an extension of import relief should take, or, alternatively, whether it would be contrary to the economic interests of the United States to extend such import relief.

USTR welcomes briefs and comments from interested parties and interested members of the public regarding the extension of import relief. Due to the time constraints of a section 203 case, briefs or comments must be succinct and presented as early as possible, in no event later than 12:00 noon, Thursday, June 4, 1987. Twenty (20) copies of any brief or comment must be filed in conformity with 15 CFR Part 2003 with the Secretary, Trade Policy Staff Committee, Room 521, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506. Any information to be treated as "business confidential" must be so marked on the first page and on each succeeding page, and be accompanied by a non-confidential summary thereof.

**Donald M. Phillips,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 87-1171 Filed 5-20-87 8:45 am]

BILLING CODE 3190-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC-15735; 812-6673]**

## Bankers Security Life Insurance Society et al.

May 13, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* Bankers Security Life Insurance Society ("Bankers Security"), Bankers Security Variable Life Separate Account III, Bankers Security Variable Life Separate Account IV ("BSL Accounts III and IV"), United Services Life Insurance Company ("United Services"), United Services Variable Life Separate Account I, United Services Variable Life Separate Account II, United Services Variable Life Separate Account III and United Services Variable Life Separate Account IV ("USL Accounts I, II, III and IV"), USLICO Securities Corporation ("USLICO Securities"), and Bankers Centennial Management Corp. ("BCMC").

*Relevant 1940 Act sections:* Exemption requested *under* section 6(c) *from* Sections 2(a)(32) and (a)(35), 18(i), 22(c), (d) and (e), 26(a) (1) and (2), 27(c) (1) and (2), 27(f), 27(h) and 27(h)(1) of the 1940 Act, and Rules 6e-2(b)(1), (b)(10), (b)(12), (b)(13), and (c), 22c-1 and 27f-1 thereunder.

*Summary of application:* Applicants seek an order to permit the issuance and funding of certain single premium variable life insurance contracts issued by Bankers Security ("BSL contract") and by United Services ("USL contract") which may be considered to impose a contingent deferred sales charge ("CDSL"), and which use the 1980 Commissioners Standard Ordinary Mortality Tables ("CSO Tables") instead of the 1958 CSO Tables to measure the cost of insurance charge in determining what is deemed to be a sales load.

*Filing date:* The application was filed on April 2, 1987.

*Hearing or notification of hearing:* If no hearing is ordered, the application will be granted. Any interested person may request hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 4601 Fairfax Drive, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Margaret Warnken, Financial Analyst, (202) 272-2058 or Lewis B. Reich, Special Counsel, (202) 272-2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

### Applicants' Representations

1. Bankers Security is a stock life insurance company organized under the laws of the State of New York in 1917 under the name The Morris Plan Insurance Society and it adopted its present name in 1946. BSL Accounts III and IV were established in January, 1986, under the provisions of the New York Insurance Law and each is registered as an open-end management investment company under the 1940 Act. United Services is a stock life insurance company organized under the laws of the District of Columbia in 1937, and redomesticated under the laws of Virginia in 1984. USL Accounts I, II, III and IV were established in September, 1986, under the provisions of the Virginia Insurance Law and each is registered as an open-end management investment company under the 1940 Act. USLICO Securities, the principal underwriter of the contracts, is a registered broker/dealer under the Securities Exchange Act of 1934. BCMC is the investment adviser for BSL

Accounts III and IV and USL Accounts I, II, III and IV. Bankers Security, United Services, USLICO Security and BCMC are affiliated companies, and are, either directly, or indirectly, wholly owned by USLICO Corporation.

2. Bankers Security presently issues the BSL contract funded by Bankers Security Variable Life Separate Accounts I and II ("BSL Accounts I and II"), which are also segregated accounts registered as open-end management investment companies under the 1940 Act. Bankers Security, *et al.* received exemptive relife to issue and fund the BSL contract through BSL Accounts I and II on March 12, 1986, Release No. IC–14982. BSL Account I primarily invests in stocks; BSL Account II is a money market account. BSL Account III will invest primarily in bonds; BSL Account IV is an asset allocation account, which may invest in stocks, bonds and/or money market instruments. BSL Accounts III and IV fund the *same contract*, the BSL contract, thereby allowing the owner the choice of four investment options through a single contract. The Applicants request that the Commission extend to BSL Accounts III and IV the same relief extended to BSL Accounts I and II.

3. United Services proposes to issue the USL contract funded by USL Accounts I, II, III and IV. The USL contract is substantially the same single premium variable life insurance contract as the BSL contract, but because United Services sells in a specialized military market, it requires products under its own name. A description of the BSL contract may also serve to describe the USL contract, so that at times "single premium contract" is used to refer to both. The investment options of the USL Accounts follow those of BSL Accounts: I (stocks), II (money market), III (bonds) and IV (asset allocation).

4. No front-end sales charges are deducted from the single premium payment to purchase the contract. During the contract's first ten years, the cash surrender value will be lower than its benefit base, a value used to calculate death benefits and cash surrender values. Surrender values are structured in a manner that may be considered to impose a CDSL. Applicants request exemptive relief to eliminate any doubt regarding full compliance with the 1940 Act and the rules thereunder in light of the CDSL. Cash surrender values under the contract are structured so that they are less than the benefit base for the first ten years of the contract. Assuming a net investment return of 4-½%, the benefit base will be the net single premium for the attained age (found in the single premium contract) multiplied by the guaranteed insurance amount under the contract. Using the same investment return assumption, the cash surrender value would always equal the tabular cash value. The relationship between the tabular cash value and the benefit base in such that at the end of the first contract year it equals 91% of the benefit base. At the end of each subsequent contract year it increases by 1% until at the end of the tenth year, and thereafter, it is always 100%. The CDSL will not exceed 9% of the single premium paid by the contractowner. It will apply upon the full surrender of a contract and upon an exchange of a contract for a fixed-benefit policy.

5. The language and the history of Rule 6e–2 anticipated variable life insurance contracts with CDSLs, and the sales load under the contracts is consistent with the rule in terms of amount and timing. Owners benefit from CDSLs in that the net amount invested is increased, and the elimination of the front-end sales load permits higher minimum death benefits for the same premium.

6. Sections 2(a)(35) and 27(h) contemplate a sales load that is deducted at the time payment for the securities is made, and Rule 6e–2, paragraphs (6)(1) and (c)(4) may not cover a CDSL. Applicants seek exemptive relief to permit such a sales load on the grounds that it is consistent with the intent of the 1940 Act and that the timing of the deduction does not change the basic nature of the charge, which is in every other respect a sales charge.

7. Applicants seek exemptive relief from sections 2(a)(32) and (27(c)(1) and from Rule 6e-2, paragraphs (b)(12) and (b)(13)(iv), to the extent that such provisions do not recognize a sales charge at redemption. Deferral of a sales load does not restrict to owner from receiving his proportionate value of the account on redemption.

8. Applicants request exemption from section 22(c) of the 1940 Act and from Rules 6e–2(b)(12) and 22c–1 to the extent necessary to permit a CDSL. Rule 6e–2(b)(12) was intended to afford exemptive relief from Rule 22c–1 with respect to redemption procedures in the context of variable life insurance, including surrender and exchange procedures, but Rule 6e–2(b)(12) could be read as not recognizing a CDSL. Rules 22c–1 was intended to minimize dilution of interests and unfair speculative trading. A CDSL would not have a dilutive effect and would actually discourage speculative short-term trading.

9. With regard to rule 6e–2(c)(1)(i), which defines "variable life insurance contract" in terms of cash surrender values which vary to reflect investment experience, the single premium contract provides for a cash surrender value that also varies. Applicants seek relief from section 22(d) and Rule 6e–2(b)(12)(ii), which concern uniform price requirements. Although the exemption afforded in the rule may not contemplate situations where separate accounts fund variable life insurance contracts, one with a front-end sales load and the other with a CDSL, any variation is reasonable, fair and non-discriminatory to the owners of the same class.

10. Applicants also request relief from section 27(h)(1) and Rules 6e–2(b)(1), (b)(13) and (c)(4) to the extent necessary to permit the use of the 1980 CSO Tables instead of the 1958 CSO Table to measure the cost of insurance charge in determining what is deemed to be sales load. Separate 1980 CSO Tables will be used in computing sales load for male and female insureds and these tables correspond to those guaranteed by the single premium contracts. The 1980 CSO Tables reflect more contemporary mortality assumptions and, in most cases, the use of these tables will result in lower cost of insurance deductions than would the use of the 1958 CSO Table. However, for owners between ages 17 and 22 inclusive, the 1980 CSO Tables result in higher cost for the purchase of insurance. In addition, Applicants request relief from sections 26(a)(1), 26(a)(2) and 27(c)(2) and Rule 6–2(b)(13)(iii) to permit the deduction of insurance charges from the benefit base value. The request for relief is consistent with amendments to Rule 6e–2 proposed in Investment Company Act Release 14421 (March 15, 1985).

11. Applicants request exemption from sections 22(e), 27(c)(1), and 27(f), and from Rules 6e–2(b)(12), (b)(13)(iv), (b)(13)(viii)(C), (c)(1)(i), and (c)(4), and 22c–1 and 27f–1 to the extent necessary to permit them to use the structure of cash surrender values under the contract. They also request exemption from 18(i) and Rule 6e–2(b)(10) to allow voting rights based on the value of the benefit base rather than the cash surrender value of the single premium contract. The calculation of the benefit base reflects the investment experience of the separate account to determine death benefits and cash surrenders values. Voting rights based on the owner's participation in the separate

account are the most appropriate way to determine voting rights.

**Applicants' Conditions**

Applicants represent they will conform to any rules and amendments the Commission may adopt under Rule 6e–2, or will seek exemptive relief from such amendments. They represent that they will not solicit or sell the BSL contract funded by BSL Accounts III or IV or the USL contract funded by USL Accounts I, II, III or IV until they receive the exemptive relief requested by this application. Applicants further agree that if the requested relief is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–11467 Filed 5–20–87; 8:45 am]

BILLING CODE 8010–01–M

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[Release No. 35–24382]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

May 14, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 8, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**New England Power Company (70–7288)**

New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts 01582, a wholly owned electric utility subsidiary of New England Eelotric System, a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7, 9(a), 10 and 12(c) of the Act, and Rule 42 thereunder.

By order dated May 29, 1986 (HCAR No. 24115) NEP was authorized, among other things, to issued and sell up to $550 million of genral and refunding mortgage bonds ("G&R Bonds") for refinancing purposes. NEP now proposes that it be authorized to issue and sell up to $35 million of the $550 million of G&R Bonds to finance its $35 million share of the construction of pollution control and solid waste disposal facilities for the Seabrook, New Hampshire nuclear project. The G&R Bonds would have a variable interest rate not in excess of 14% and would be issued simultaneously with, and on the same terms as, pollution revenue control bonds to be issued by the Industrial Development Authority of the State of New Hampshire.

**Ohio Power Company, et al. (70–7387)**

Ohio Power Company, ("Ohio Power"), a wholly owned electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Ohio Power's subsidiaries, Central Ohio Coal Company ("COCCo"), Southern Ohio Coal Company, and Windsor Power House Coal Company (collectively, "the coal mining subsidiaries") all of 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration pursuant to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

The coal mining subsidiaries propose to enter into a renewable master leasing agreement with a nonaffiliate, the Connecticut Bank and Trust Company ("Connecticut"), whereby Connecticut will lease to the coal mining subsidiaries, between July 1, 1987 and June 30, 1988, mining equipment with a total aggregate acquisition cost not exceeding $22,000,000. All cost of operation, maintenance, taxes, insurance and other costs are to be borne by the lessees.

Ohio Power will execute a guaranty agreement to unconditionally and irrevocably guarantee COCCo's payment obligations in connection with the lease in light of COCCo's partial assignment to nonaffiliates of revenues received under its coal supply agreement with Ohio Power.

**Clearfield Ohio Holdings, Inc. (70–7389)**

Clearfield Holdings, Inc. (the "Applicant"), Radnor Corporate Center 5, Suite 400, 100 Matsonford Road, Radnor, Pennsylvania 19087, has filed an application pursuant to sections 9(a) (2) and 10 of the Act.

Applicant is an Ohio corporation, organized in 1986, and a holding company claiming an exemption pursuant to section 3 (a)(1) of the Act and Rule 2 thereunder from all the provisions of the Act, except section 9(a)(2). Applicant owns all of the outstanding common stock of two gas distribution companies, Southeastern Natural Gas Company ("Southeastern") and Eastern Natural Gas Company ("Eastern"), both of which are Ohio corporations and provide a natural gas distribution services exclusively within the state of Ohio. Applicant has no other subsidiaries and is not a public-utility company itself.

Applicant proposes to acquire all of the outstanding shares of common stock, par value $3.00 per share, (the "Pike Shares"), of Pike Natural Gas Company ("Pike"), an Ohio corporation and a public-utility company within the meaning of the Act. The Acquisition is to be effect pursuant to a cash tender offer. The tender offer is not conditioned upon the receipt of tenders for a minimum number of shares.

Southeastern provides natural gas services to other utilities, to industrial customers for their own use, and to residential customers. It presently has approximately 50 customers. All gas is transmitted over leased lines in Washington, Athens, Morgan, Perry, Hocking, and Fairfield Counties, all in Ohio. At the present time, Southeastern owns no producing fields, gas manufacturing plants, or gas distribution facilities, other than certain service lines to residential customers. Eastern provides natural gas services through its own lines to approximately 5,700 residential, commercial, industrial, and public-utility customers, in Trumbull and Ashtabula Counties, Ohio. As the present time, Eastern owns no producing fields or gas manufacturing plants.

Pike, an Ohio corporation, provides natural gas services exclusively within the State of Ohio to approximately 5,300 residential, commercial, industrial, and public-authority customers in Clinton, Highland, Pike, Jackson, and Ross Counties. At the present time, Pike owns no producing fields; it owns two small propane peak shaving facilities. Pike's system is divided into two physically

separate operations of approximately equal size. The Hillsboro Division, serving Highland and Clinton Counties, is supplied by Columbia Gas Transmission Corporation; the Waverly Division, serving Ross, Pike, and Jackson Counties, is supplied by Tennessee Gas Pipeline Company. Pike employs some 20 persons in the two divisions.

Applicant asserts that the acquisition will serve the public interest by tending towards the economical and efficient development of an intergrated public-utility system. It is stated that the economies resulting from the combination of the three companies as part of an integrated system will benefit investors and consumers. Applicant believes that its greater size and extensive contracts with Ohio producers may enable it to obtain gas supplies at a more favorable price than Eastern and Pike alone would be able to. Applicant expects to achieve significant operating economies in these operations by eliminating duplicated overhead activities and reducing Pike's operating work force. Applicant also expects that lower gas costs to customers will result.

The authorized capital stock of Pike consists of 450,000 shares of common stock, of which 84,711 shares were issued and outstanding on December 31, 1986. The Pike Shares were formerly registered with the Commission pursuant to the Securities Exchange Act of 1934 but were deregistered in 1984 when the number of shareholders was reduced to fewer than 300 as a result of a reverse stocksplit.

Applicant has entered into agreements with the three principal shareholders of Pike, The Ohio Company, Alice H. Reilly, and St. Clair Oil Company, who in the aggregate own 53,701 Pike Shares, or approximately 63% of the outstanding shares, pursuant to which such shareholders have agreed to tender their shares in response to the tender offer (the "Shareholder Agreements"). In addition, the board of directors of Pike has considered the terms of the proposed tender offer and has recommended that the other shareholders tender their Pike Shares in response to it. The Shareholder Agreements are the result of arms'-length negotiations. The terms of the tender offer were negotiated with the officers and directors of Pike and its investment banker. The price agreed upon was 125% of Pike's book value as at December 31, 1986, plus 125% of the increase in net book value through March 31, 1987, with a cap of $42 per share. The cap was reached, and the price of $42 per share being offered to the shareholders represents approximately 124% of Pike's book value as at March 31, 1987. Applicant states that the consideration, including all fees, commissions, and other remuneration paid in connection with the proposed acquisition, is reasonable and bears a fair relation to the earning capacity of the utility assets of Pike.

Applicant anticipates acquiring all of the Pike Shares pursuant to the Tender Offer but requests that the authorization extend to any subsequent acquisition by Applicant of Pike Shares in the event that not all Pike shareholders tender their shares pursuant to the tender offer. Applicant expects to acquire such Pike Shares in private transactions or as a result of the merger or other combination of Pike with Applicant of a subsidiary of Applicant.

**Cal Gas Corporation (70–7391)**

Cal Gas Corporation ("Cal Gas") P.O. Box 26397, 8401 Gerber Road, Sacramento, California 95828, has filed an application pursuant to section 2(a)(4) of the Act for an order declaring it not to be a gas utility company.

Section 2(a)(4) defines a gas utilituy company as "any company which owns or operates facilites used for the distribution at retail (other than distribution only in enclosed portable containers . . .) of natural or manufactured gas for heat, light, or power." That section also provides that the Commission may declare a company not to be a gas utility company if it "finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors and consumers that such company be considered a gas utility company for the purposes of [the Act] . . . ."

Cal Gas is national marketer of liquefied petroleum gas ("LPG") to residential, commercial, industrial, and agricultural users throughout the United States. It distributes the LPG in enclosed portable containers. Cal Gas states that an insignificant portion of its sales involves the use of pipes or pipelines owned by the company which run from storage tanks on or near the customer's premises to the customer's home or business. The company purchases LPG from a variety of suppliers from around the country and moves the product through a nationwise distribution system that employs proprietary rail car and truck fleets as well as common carrier haulers. In addition, the company is involved in other activities related to the sale of LPG, such as equipment and applicance sales and commodities trading.

Cal Gas' revenues from operations other than retail fuel sales were $325,380,000 in 1986, comprising 62.29 percent of the company's revenues. These revenues were derived principally from Cal Gas' trading activities in the commodities markets. Other revenues stemmed from the company's gas processing, transportation, wholesale fuel, and equipment sales and leasing operations. The balance of Cal Gas' 1986 reavenues, $196,942,000 or 37.71 percent, were from retail LPG sales. LPG is delivered in large tank trucks or smaller "bobtail" trucks to or near the customer's premises where the LPG is pumped into storage tanks. Sales also occur in small canisters or cylinders at retail station outlets. Customers whose storage tanks are not metered are billed on each delivery for the quantity of LPG delivered into the storage tank. Nonmetered sales, which were $185,874,158 in 1986, or 35.59 percent of total company sales, do not involve company pipes or pipelines.

Customers whose tanks are metered are billed for the LPG consumed according to meter readings. Metered sales were $11,068,083 in 1986 or 2.12 percent of total Cal Gas sales. These metered sales may involve the use of company-owned pipes or pipelines in the following ways.

First, pipes are used in metered sales to single family residences or single businesses. Under this method of delivery, LPG is deliverd to a tank on the customer's premises and passes through a short pipe to a meter at the customer's residence or business. The customer is billed for the amount of gas passing through the meter. Traditionally, the company owns the tank, the pipe leading to the residence, and the metering equipment.

Second, pipelines are used in sales to small residential subdivisions, mobile home parks, and mindustrial/commercial complexes. In each case, Cal Gas supplies LPG to a central tank, from which it flows through underground pipelines to individual customers where LPG usage is metered. Customarily, Cal Gas owns the central tank and the metering equipment and may own the pipelines leading to the customers' premises.

Third, Cal Gas pipes are sometimes used in sales to residents in apartment buildings. LPG is delivered to a central tank for the apartment building which, for safety reasons, is typically located a short distance from the building. The

LPG then flows to the building through a main pipe and then to individual apartments through branch pipes. Customarily, the company owns the central tank, the metering equipment, and, in some cases, the pipe leading to the apartment building, but it does not, in any case, own the pipes contained within the apartment building.

It is stated that although Cal Gas does not maintain separate data for sales involving distribution through company pipes or pipelines, such sales constitute only a portion of metered sales and that, in any event, total metered sales constitute only $11.068 million or 2.12 percent of the company's 1986 revenues. It is further stated, moreover, that 1986 revenues from metered sales include approximately $7.6 million in metered seles to nonresidential users of which many are industrial users. Finally, Cal gas believes that metered sales to single family homes and to apartment buildings fall within the enclosed portable container exception in section 2(a)(4) and has included them only because of the difficulty in separating them from other metered sales.

**Consolidated Natural Gas Company, et al. (70-7383)**

Consolidated Natural Gas Company ("Consolidated") a registered holding company, and its subsidiaries, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Energy Company, CNG Research Company, Four Gateway Center, Pittsburgh, Pennsylvania 15222, The Peoples Natural Gas Company, Two Gateway Center, Pittsburgh, Pennsylvania 15222, Consolidated Gas Transmission Corporation, Consolidated System LNG Company, 445 West Main Street, Clarksburg, West Virginia 26301, CNG Producing Company, One Canal Place, Suite 3100, New Orleans, Louisiana 70130, West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802, CNG Development Company, CNG Trading Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, The East Ohio Gas Company, The River Gas Company, 1717 East Ninth Street, Clevelend, Ohio 44115, and Hope Gas, Inc., Union National Center West, Clarksburg, West Virginia 26301 (collectively, "Subsidiary Companies"), have filed an application-declaration pursuant to sections 6(a), 6(b), 7, 9(a), 10, and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

Consolidated proposes, for intra-system financings through June 15, 1988: (1) to issue and sell up to $300 million of commercial paper to Merrill Lynch Money Market, Inc. or, alternatively, (2) to issue and sell up to $175 million unsucured short-term notes to banks, and (3) to make up to $500,500,000 in open account advances to the Subsidiary Companies. It is also proposed (i) that the Subsidiray Companies issue and Consolidated acquire up to $122,500,000 in long-term non-negotiable notes; (ii) that CNG Energy Company issue and Consolicated acquire long-term, non-negotiable notes up to $1.5 million; (iii) that Consolidated make revolving credit advances not to exceed $250 million to the Subsidiary Companies; (iv) that Consolidated purchase from, and CNG Coal Company CNG Development Company, CNG Producing Company and CNG Research Company issue, respectively, an aggregate of $41,100,000 million in common stock at $100 par value; and (v) that Consolidated purchase from CNG Trading Company up to 500 shares of common stock, $1.00 par, at $10,000 per share.

**Sierra Pacific Resources (70-7408)**

Sierra Pacific Resources ("Resources"), P.O. Box 30150, Reno, Nevada 89520, an exempt holding company, has filed an aplication pursuant to sections 9(a)(2) and 10 of the Act.

Resources purposes to acquire a 14.5% stock interest in a new company ("Enterprise") which is to be organized under the laws of the State of Nevada. Enterprise will construct and operate a 250 MW, coal-fired generating unit ("First Unit") to be located at the Thousand Springs Project ("Project") in Elko County in northeastern Nevada. Construction of the First Unit is scheduled to commence in 1989, with commercial operation expected to be in 1994. The Project may ultimately consist of the First Unit and seven other generating units, each of 250 MW.

In addition to Resources, there are then other participants ("Non-Utility Participants") in the Project that will acquire the remaining ownership interests. No one of the Non-Utility Participants will acquire more than a 9.5% interest in Enterprise. None of them will be a holding company as defined in section 2(a)(7)(A) of the Act. These Non-Utility Participants and Resources will advance funds on a pro rata basis in accordance with their respective percentage ownership interests for preliminary activities (the total cost of which is expected to be approximately $15,000,000) to be conducted prior to commencement of construction of the First Unit.

Construction of the First Unit will be financed on a project finance basis. It is presently anticipated that the construction of the First Unit will be financed on an interim basis through a construction loan from banks or other financial institutions in the approximate amount of $600,000,000, the estimated construction cost. It is anticipated that the construction loan will be refinanced on or about the commencement of commercial operation on a permanent basis through the commitments of all of the eleven participants, made at the commencement of construction, to contribute an aggregate of 25% of the costs as equity, with the balance of the required financing achieved through the issuance of debt of Enterprise, secured by a first lien on the First Unit.

Sierra Pacific Power Company ("Power Company"), presently Resources' only public-utility subsidiary company, is expected to purchase at wholesale 20% of the electric energy generated by the First Unit. Power Company is engaged in the generation, purchase, transmission, sale, and distribution of electric energy in the western, central, and northeastern parts of Nevada (including the City of Reno) and in the eastern part of California (in the Lake Tahoe area). Power Company also provides retail gas service in the cities of Reno and Sparks, Nevada, and environs. Generation above the 20% will be sold by Enterprise at wholesale to privately owned and publicly owned electric utilities for sale at retail to consumers in the Western states. Enterprise's rates and charges for the wholesale sales of electric energy to Power Company and the other utilities, as well as the wheeling rates charged by others, will be subject to regulation by the Federal Energy Regulatory Commission under the Federal Power Act. The sales at retail by the purchasers of the energy will be regulated by the appropriate state regulatory authority.

Concurrently with this application, a "no action" letter has been submitted separately to the staff of the Commission's Division of Investment Management regarding the status of each of the Non-Utility Participants as a holding company under section 2(a)(7)(B) of the Act. Further, Resources has filed an amendment to its exemption statement pursuant to Rule 2 under the Act to maintain its exemption as a holding company with Enterprise included.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR.Doc. 87-11606 Filed 5-20-87;8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-15744; 811-3776]

## Tax-Exempt Equity Fund, Inc.; Application for Investment Company Deregistration

May 15, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Tax-Exempt Equity Fund, Inc.

*Relevant 1940 Act Section:* Section 8(f).

*Summary of Application:* Applicant seeks an order declaring that it has ceased to be an investment company.

*Filing Date:* The application was filed on March 17, and amended on May 6, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interest person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 100 East Campus View Boulevard, Suite 360, Columbus, Ohio 43085.

**FOR FURTHER INFORMATION CONTACT:** Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application on Form N-8F is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

*Applicant's Representations:* 1. Applicant registered under the Act on Form 8-A on June 21, 1983, and filed a registration statement pursuant to section 8(b) of the Act of April 4, 1983. Such registration statement became effective September 9, 1983, and an initial public offering commenced immediately thereafter. However, no shares of Applicant were actually sold as described below.

2. Pursuant to the terms of its public offering, Applicant placed all funds received from subscribers into an escrow account maintained by Bradford Trust Company (the "Escrow Agent"). Applicant was unable to sell the minumum number of shares required to terminate the escrow arrangement. Consequently, no shares of Applicant were ever sold and the funds deposited by subscribers were refunded in full, together with a proportionate share of any interest earned thereon, less any expenses attributable to receiving, holding and returning such funds. On December 9, 1983, the termination date of the offering, 1,004 subscribers had deposited $6,446,775 with the Escrow Agent. On December 22, 1983, the Escrow Agent mailed checks to the subscribers aggregating $6,446,775 as a return of their subscription deposits.

3. On March 2, 1987, the sole director of Applicant gave its written consent to dissolve Applicant, adopt a plan of liquidation, distribute the remaining assets to the stockholders, and apply for an order pursuant to Section 8(f) of the 1940 Act declaring that Applicant has ceased to be an investment company. On the same date, the sole stockholder of Applicant gave its written consent for Applicant's dissolution and the filing of the application.

4. Applicant is a Delaware corporation currently in good standing under the laws of the State of Delaware. Concurrently with this application, Applicant filed a Certificate of Dissolution with the State of Delaware to authorize the dissolution, liquidation and winding-up of the affairs of the Applicant.

5. Within the last 18 months, Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are security-holders of Applicant. In addition, Applicant has retained no assets, is not a party to any litigation or administrative proceeding, and is not now engaged and does not propose to engage in any business activities other than those necessary for winding up its affairs. Furthermore, Applicant incurred legal expenses in the amount of $1,000 in connection with its liquidation; such expenses were paid by its investment advisor.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 87-11570 Filed 5-20-87; 8:45 am]
BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

[Public Notice CM-3/1595]

## Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on June 11, 1987 in the first floor Theater, Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 4 deals with matters relating to systems of radiocommunications for the fixed service using satellites. The purpose of the meeting will be to continue the plan of work for the Study Group during the 1986–1990 period.

Members of the general public may attend the meeting and join in the discussions, subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Dated: May 12, 1987.

Richard E. Shrum,
*Chairman, U.S. CCIR National Committee.*

[FR Doc. 87-11565 Filed 5-20-87; 8:45 am]
BILLING CODE 4710-07-M

[Public Notice CM-3/1592]

## Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT)—Study Group XVIII (non-ISDN) will meet on June 10, 1987 at 9:00 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The subjects to be discussed are as follows:

Speech processing, digital hierarchies and performance.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is

controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advice the office of Mr. Earl Barbely, State Department, Washington, DC.; telephone (202) 653–6102. All attendees must use the C Street entrance to the building.

Dated: May 12, 1987.

**Earl S. Barbely,**

*Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.*

[FR Doc. 87–11586 Filed 5–20–87; 8:45 am]

BILLING CODE 4710–07–M

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**[Public Notice CM–8/1081]**

## Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on June 18, 1987 and July 22, 1987 at 9:30 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meeting is to discuss the status of the work on CCITT restructure in CCITT Special Study Group S to begin to establish U.S. positions for the final international meeting on the subject in November/December, 1987. There will be a series of meetings culminating in July 1987 on this matter.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC; telephone (202) 635–6102. All attendees must use the C Street entrance to the building.

Dated: May 12, 1987.

**Earl S. Barbely,**

*Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.*

[FR Doc. 87–11587 Filed 5–20–87; 8:45 am]

BILLING CODE 4710–07–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

## Flight Service Station at Dupage Airport West Chicago, IL; Closing

Notice is hereby given that on or about April 30, 1987, the present Flight Service Station at Chicago, Illinois, will be closed. Services to the general public of Chicago, Illinois Flight Plan Area, formerly provided by this office, will be provided by the New Automated Flight Service Station in Kankakee, Illinois. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Des Plaines, Illinois, on May 15, 1987.

**William H. Pollard,**

*Director, Great Lakes Region.*

[FR Doc. 87–11588 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–13–M

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### Federal Highway Administration

## Environmental Impact Statement: San Mateo County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in San Mateo County, California.

**FOR FURTHER INFORMATION CONTACT:** D.L. EYRES, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95809, Telephone: (916) 551–1314.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with Caltrans will prepare an environmental impact statement (EIS) on a proposal to widen State Route 92 in San Mateo County to provide necessary safety improvements. The study limits are from Route 1 in Half Moon Bay to Route 280 (Post Miles 0.0/7.3).

Possible project alternatives include the following:

- Two lanes from Route 1 to Pilarcitos Creek and two lanes with continuous uphill slow vehicle lanes between Pilarcitos Creek and I–280.
- Two lanes between Route 1 and Pilarcitos Creek and two lanes with continuous uphill and downhill slow vehicle lanes from Pilarcitos Creek to I–280. This four-lane section would include a median barrier.
- Do nothing or the No Build Alternative.

The proposed scoping process includes the distribution of the Notice of Preparation to each responsible agency, publication of the Notice of Intent in the National Register, and scoping meetings as needed. The next meeting is scheduled for Wednesday, June 17, 1987, at 7:00 p.m. in the Recital Studio, located in building #2, at the College of San Mateo, 1700 W. Hillsdale, Blvd. in San Mateo.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Program and activities apply to this program.

**D. L. Eyres,**

*District Engineer, Sacramento, California.*

[FR Doc. 87–11589 Filed 5–20–87; 8:45 am]

BILLING CODE 4910–22–M

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## Environmental Impact Statement; St. Charles County, Missouri

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in St. Charles County, Missouri.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert Anderson, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO 65102, Telephone Number 314–636–7104

Mr. James F. Roberts, Surveys and Plans Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2876.

**SUPPLEMENTARY INFORMATION:** (1) The proposed highway project will be a new fully access controlled right-of-way facility extending Route 115 west from Route 94 in St. Charles City through the Mississippi River bottom and roughly paralleling the existing Norfolk and Western Railway to a location on Route I–70 at or near the existing Missouri Highway and Transportation Department (MHTD) Official Weight Scales in the city of St. Peters.

(2) The proposed highway project is entirely on new alignment and will provide vehicular access to and from Route I–70 and the city of St. Charles to a new bridge over the Missouri River into St. Louis County. The proposed facility will provide a 24-foot pavement in each direction separated by a depressed 46-foot median. Five points of ingress and egress are proposed in the project's 7.75 miles length. The only other alternate being considered is the do-nothing alternate.

(3) The scoping process will be implemented following publication of this Notice of Intent in the Federal Register. A prelocation meeting will be advertised and conducted in accordance with FHWA and MHTD policies and procedures.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearing house review of Federal and federally assisted programs and projects apply to this program.)

Issued on: May 14, 1987.

Robert G. Anderson,

*District Engineer, Jefferson City.*

[FR Doc. 87–11624 Filed 5–20–87; 8:45 am]

BILLING CODE 4910-22-M

## Environmental Impact Statement; St. Louis and St. Charles Counties, Missouri

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in St. Louis and St. Charles Counties, Missouri.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Anderson, Federal Highway Administration, P.O. Box 1787, Jefferson City, Mo 65102, Telephone Number 314–636–7104.

Mr. James F. Roberts, Surveys and Plans Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO 65102, Telephone Number 314–751–2878.

**SUPPLEMENTARY INFORMATION:** (1) The project begins in St. Louis County at the terminus of present Rout D or Bennington Avenue extending northwesterly on new location to cross the Missouri River near Hemsath Road in St. Charles County to Route 94, then westerly along present Route 94 to Missouri Highway Route N and then on a new location to near the intersection of Missouri Highway Route N and Missouri Highway Route K. It then follows near Route N to its intersection with U.S. Highway 40–61.

The proposed project will consist of a six-lane controlled acess divided highway to Missouri Route N in St. Charles County and a four-lane controlled-access divided highway for the remaining part in St. Charles County. This improvement will serve to reduce the heavy traffic congestion on the Missouri River crossings between St. Louis and St. Charles Counties.

(2) Three alternates will be considered at the east end of the project near Creve Coeur Lake Memorial Park as well as two alternate crossings of the Missouri River. Three alternate locations for connection to Route 94 in St. Charles County will also be considered.

The "no build" alternative as well as the upgrading of existing facilities will be addressed.

(3) To date, a preliminary reconnaissance study has been furnished to local officials, legislators, and other interested parties. Presentation of the study has been made at the local level and input received. The scoping process will be initiated with Federal, State, and local agencies as the study progresses. Further public hearings will also be held.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: May 14, 1987

Robert G. Anderson,

*District Engineer, Jefferson City.*

[FR Doc. 87–11625 Filed 5–20–87; 8:45 am]

BILLING CODE 4910-22-M

## Maritime Administration

[Docket S–808]

## Lykes Bros. Steamship Co., Inc.; Application To Incorporate the U.S. Pacific Coast as a Privilege on Trade Route 13 (U.S. Gulf and South Atlantic/Mediterranean) and as a Dual Service Privilege in Conjunction With Trade Route 22 (U.S. Gulf/Far East)

Lykes Bros. Steamship Co., Inc. (Lykes) by letter of May 4, 1987, requests that the U.S. Pacific coast be incorporated into its Operating-Differential Subsidy Agreement, Contract MA/MSB–451 as a privilege on its Line C, TR 13 (U.S. Gulf and South Atlantic/Mediterranean) service, and as a dual service privilege in conjunction with its Line D, TR 22 (U.S. Gulf/Far East) service. Lykes states that the first sailing with such a privilege would be the SS SUE LYKES (ex-PRESIDENT WILSON) of which it will take delivery from American President Lines, Ltd. (APL) in Seattle. On May 8, 1987, the Maritime Subsidy Board approved Lykes' application for one sailing only for the SUE LYKES, Voyage 1 to provide this privilege service.

In support of its request, Lykes states that there is currently no all-water U.S.-flag service offered from Pacific coast ports and the flexibility offered by breakbulk service would allow Lykes to position ships as needed to provide such a service. Vessels operating homebound from the Mediterranean could carry import cargo for the Pacific coast to position themselves for outward cargo. Vessels operating inbound on Line D from the Far East could stop to pick-up outbound Mediterranean cargo.

Lykes avers that there will be no subsidy impact since it would use existing vessels. Lykes believes that approval of its proposal is in keeping with the purposes and policies of the Merchant Marine Act, 1936, as amended (Act), since it will ensure that more cargo will move on U.S.-flag vessels. It will also add to the flexibility and viability of Lykes' conventional service.

Since no other line serves the Mediterranean from the Pacific coast, Lykes argues, there is no competitive implication and its proposal embraces the philosophy that spawned the idea to revise the trade route system.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 P.M. on June 22, 1987. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: May 18, 1987.

By Order of the Maritime Subsidy Board.

James E. Saari,

*Secretary*

[FR Doc. 87–11674 Filed 5–20–87; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular; Public Debt Series—No. 14-87]

## Treasury Notes of May 31, 1989, Series Y-1989

Washington, May 14, 1987.

### 1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of May 31, 1989, Series Y-1989 (CUSIP No. 912827 UX 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

### 2. Description of Securities

2.1. The Notes will be dated June 1, 1987, and will accrue interest from that date, payable on a semiannual basis on November 30, 1987, and each subsequent 6 months on May 31 and November 30 through the date that the principal becomes payable. They will mature May 31, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

### 3. Sale Procedure

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Pulic Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 20, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, May 19, 1987, and received no later than Monday, June 1, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all other must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when

the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Monday, June 1, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, May 28, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, June 1, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

**6. General Provisions**

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

**Bartlett A. Derrick,**

*Acting Fiscal Assistant Secretary.*

[FR Doc. 87-11710 Filed 5-19-87; 11:17 am]

BILLING CODE 4810-40-M

## UNITED STATES INFORMATION AGENCY

### Cultural Property Advisory Committee; Subcommittee Meeting

A subcommittee of the Cultural Property Advisory Committee will conduct a meeting in Room 335, 301 4th Street, SW., Washington, DC on June 3, 1987.

The meeting will be closed to the public in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. 552 App. 2), the Government in the Sunshine Act (5 U.S.C. 552b), and the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et seq.). The session will be closed because the discussion will involve investigative techniques and information the premature disclosure of which would be likely to frustrate significantly implementation of proposed actions and policies. Disclosure of information at this time identifying specific cultural property is likely to frustrate the imposition of import restrictions on such property. Also, the Committee will discuss recommendations to the President as to appropriate U.S. action regarding a request from the Government of El Salvador for a U.S. cultural property agreement with El Salvador under the terms of the Cultural Property Implementation Act. (5 U.S.C. 552b(c)(1), 5 U.S.C. 552b(c)(2), 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605).

Dated: May 15, 1987.

**Marvin L. Stone,**

*Acting Director, United States Information Agency.*

[FR Doc. 87-11662 filed 5-20-87; 8:45 am]

BILLING CODE 8230-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 98
Thursday, May 21, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:31 a.m. on Monday, May 18, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to the possible failure of certain insured banks: Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: May 19, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

FR Doc. 87-11756 Filed 5-19-87; 8:45 am]

BILLING CODE 6714-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Tuesday, May 26, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposed Board comments on legislation regarding delayed funds availability (H.R. 28 and S. 79).

2. Federal Reserve Bank and Branch director appointments.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 19, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87-11704 Filed 5-19-87; 10:48 am]

BILLING CODE 6210-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 10:00 a.m., Wednesday, May 27, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Fedreal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 19, 1987.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 87-11778 Filed 5-19-87; 3:30 pm]

BILLING CODE 6210-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [52 FR 18645 May 8, 1987].

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Wednesday, May 13, 1987.

**CHANGE IN THE MEETING:** Additional item.

The following item will be considered at an open meeting for Thursday, May 21, 1987, at 1:00 p.m.

Consideration of whether to issue a release publishing for public comment proposed amendments: (1) To eliminate filing requirements for preliminary proxy and information statements under certain circumstances and (2) to make clarifying and other changes to Rule 14a-8, the shareholders proposal rule. For further information, please contact Caroline W. Dixon or Barbara J. Green at (202) 272-2589.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272-3085.

**Jonathan G. Katz,**

*Secretary.*

May 19, 1987.

[FR Doc. 87-11792 Filed 5-19-87; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [52 FR 18645 May 8, 1987].

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Wednesday, May 13, 1987.

**CHANGE IN THE MEETING:** Additional item.

The following item will be considered at an open meeting for Thursday, May 21, 1987, at 1:00 p.m.

Consideration of whether to amend the Commission's Rules of Practice relating to general organization and

program management. The amendment will give delegated authority to the Director of the Division of Market Regulation to grant exemptive orders pursuant to Rule 10b–7(o) under the Securities Exchange Act of 1934 ("Exchange Act"). The Commission also will consider a technical corrective amendment to the rule delegating exemptive authority to the Director of the Division of Market Regulation with respect to Rule 10b–6 under the Exchange Act. For further information, please contact Elizabeth Jacobs at (202) 272–3048.

Commissioner Peters, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–3085.

Jonathan G. Katz,

*Secretary.*

May 19, 1987.

[FR Doc. 87–11811 Filed 5–19–87; 5:06 pm]

BILLING CODE 8010-01-M

federal register

Thursday
May 21, 1987

Part II

# Office of Personnel Management

**5 CFR Part 846**

**Federal Employees Retirement System; Electing Coverage; Interim Regulations With Request for Comments**

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 846

Federal Employees Retirement System; Electing Coverage

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the provisions of the Federal Employees' Retirement System (FERS) Act of 1986 (as amended by the Federal Employees' Retirement System Technical Corrections Act of 1986) allowing employees to transfer from the Civil Service Retirement System (CSRS) to FERS. These regulations identify the employees who may transfer to FERS, give the time periods when they may make elections to transfer, and set forth the method of computing the annuities of employees who transfer.

DATES: Interim regulations are effective June 30, 1987. Comments must be received on or before July 20, 1987.

ADDRESS: Send comments to Frank D. Titus, Director, FERS Implementation Task Force, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margaret Sears, (202) 632–5560.

SUPPLEMENTARY INFORMATION: Under the FERS (Pub. L. 99–335) employees who are covered by CSRS and certain others who have performed service that is creditable under CSRS may elect to change to the new retirement system. These regulations give the circumstances under which employees may elect FERS coverage and explain how their old service is credited under the new system.

## I. Elections

The law provides that employees who are covered under CSRS on June 30, 1987, may elect to transfer to FERS during the open season from July 1 through December 31, 1987. In addition, certain officials who were brought under social security coverage on January 1, 1984, by the Social Security Amendments of 1983 and who elected not to be covered by CSRS may elect FERS coverage during the open season if they continued to hold the same type of position through December 31, 1986. (Such officials and similar officials who elected full CSRS coverage may instead elect coverage under CSRS offset provisions.)

These regulations also provide for elections by persons who are not covered by CSRS on June 30, 1987. When these persons later become covered by CSRS (either because they are rehired or because they are converted to CSRS coverage) they have 6 months to elect FERS coverage. In addition, employees who are excluded from CSRS by regulation but are not excluded from FERS by regulation are deemed eligible to elect FERS coverage.

Certain employees are not eligible to convert to FERS because their employment is not subject to FERS coverage. For example, employees of the District of Columbia government may not elect FERS coverage even though they have CSRS coverage.

Employees who have former spouses who are entitled to a portion of their retirement benefit or to survivor benefits based on the employee's service must have the consent of the former spouse in order to elect FERS coverage. The regulations provide for an extension of the election period for employees who need extra time to obtain modifications of court orders so that they can obtain the former spouse's consent to the election. The regulations also provide for a waiver of the consent requirement when the former spouse's whereabouts are unknown or when some other circumstance makes the requirement unreasonable.

Elections of FERS coverage are effective with the first pay period beginning after the employing office receives the election. Thus, coverage for employees who make elections at the beginning of the open season will begin promptly rather than being postponed until the open season ends.

## II. Employing Agency Responsibilities

These regulations make clear that it is the agencies' responsibility to insure that every eligible employee receives an election form and to document receipt of the election form in the employee's personnel folder.

## III. Belated Elections and Correction of Administrative Errors

These regulations provide that agencies may accept a belated election of FERS coverage up to 6 months after an employee's election opportunity ends in cases where the FERS transfer handbook (issued by OPM) is not available to the employee in a timely manner or the employee is unable to make an election due to a cause beyond his or her control. Employing offices may also make prospective corrections of administrative errors regarding an employee's opportunity to elect FERS coverage within 6 months after the individual's election opportunity ends. For example, if an employee shows that he or she was not notified of the opportunity to elect FERS coverage, the agency can accept the employee's election of FERS coverage after the 6-month period has passed. However, coverage under FERS cannot begin before the pay period beginning after the employing agency receives the election form.

## IV. Reconsideration and Appeals Rights

Under these regulations, an employee who is dissatisfied with an agency decision about accepting the employee's election or the effective date of the election may request that OPM review the agency's decision. OPM's decision after reviewing the agency decision may be appealed to the Merit Systems Protection Board. The law provides that an election of FERS coverage is irrevocable.

## V. Effect of an Election of FERS Coverage

A. *Credit for service (general).* Under the FERS Act of 1986, an employee who elects FERS coverage becomes subject to all provisions of law related to FERS; however, the employee's service before the election may be credited under FERS only as specified by title 3 of the FERS Act of 1986. Generally, all of the employee's prior service that was creditable under CSRS provisions is creditable toward length of service requirements for title to an annuity under FERS. Credit for prior service in computing a basic annuity under FERS depends on the type and amount of service before the election to transfer.

B. *Service subject to both CSRS and social security.* For computation purposes, civilian service performed before FERS coverage begins which is subject to both CSRS deductions (generally at 1.3 percent of pay) and social security deductions is generally creditable under FERS. However, the employee must pay 1.3 percent of basic pay (or the withholding rate under FERS, if different) into the retirement fund if deductions were not made from pay or if they were made and later refunded. This provision applies only to service performed after December 31, 1983, which was subject to both CSRS and social security deductions. Federal service subject only to CSRS deductions or only to social security deductions is creditable as described in the following paragraph, regardless of when it was performed.

C. *"All FERS" computation.* Crediting civilian service that was performed before the effective date of the election and that was subject to either CSRS or social security, but not both, depends on the length of such service. If the total amount of such service is less than 5 years, the service is creditable under FERS for computation purposes. Generally, any military service the employee may have is also creditable under the FERS computation. However, any applicable deposit must be made to the retirement fund for the service before it can actually be credited. (In most cases, when a retiring employee who owes a deposit for civilian service elects an alternative form of annuity, OPM will deem the deposit to have been made.) If the employee has already paid a deposit under CSRS for the military service or if full CSRS deductions were made from pay during all or some of the civilian service, the employee can get a refund of the difference between the amount paid at the CSRS rate and the amount due for the service at the FERS rate. OPM will issue guidance separately explaining how employees may obtain this refund.

In most cases, transferring employees whose entire service is creditable under FERS computation rules can make deposits for service performed before they transferred, including deposits for service refunded to the individual during a period of separation occurring after transfer to FERS. However, an individual who, after transferring to FERS, receives (1) a full refund for a period of service that was subject to full CSRS deductions, or (2) a refund of a deposit for a period of nondeduction service, may not make a deposit for that service. Also, there is no provision under the FERS Act of 1986 whereby a former Federal employee who becomes subject to FERS after 1988 may make a deposit for temporary Federal service performed after 1988.

D. *"Combined" CSRS/FERS benefit computation.* Civilian service performed before the effective date of FERS coverage that was subject to either CSRS or social security, but not both, totaling 5 or more years, is generally computed under CSRS provisions for benefit purposes. Benefits for prior military service in such cases are also computed under CSRS provisions. Benefits for service after the effective date of the election of FERS and any service subject to both CSRS and social security are computed under FERS provisions. The annuity resulting from combining the two computations is considered a basic annuity under FERS. Disability benefits and survivor benefits are determined under FERS regardless of the length of service or when it was performed (subject to the 18-month civilian service requirement for entitlement). However, when a basic annuity is computed under the FERS disability or survivor provisions it is computed as described above, based on the amount and type of service.

The civilian service subject to CSRS computation is creditable toward the minimum length of service required for entitlement to any type of annuity under FERS, except that only service as a law enforcement officer, firefighter, or air traffic controller can be counted toward entitlement to the special annuity provisions for those professions. Such prior CSRS service also counts toward the 20-year requirement for mandatory separation purposes. However, prior CSRS service is not included in the 20 years of service subject to a 1.7 percent computation rate under FERS.

The average pay for both FERS and CSRS portions of the annuity is the average for the highest 3 consecutive years of service, regardless of whether the service was subject to computation under FERS or CSRS provisions. Since the high-3 average salary generally occurs during an employee's last 3 years of service, the average pay used in computing the CSRS portion of the annuity may cover a period of service that is partially or wholly subject to FERS.

The portion of the annuity computed under CSRS provisions includes credit for sick leave. However, the amount of credit is limited to the lesser of the amount of accrued sick leave available for use when an employee transfers to FERS or the amount at retirement.

These regulations clarify how "combined" annuities are reduced for age. When an employee retires under a FERS provision that requires a reduction for age, the reduction applies to the entire annuity, not just the portion computed under FERS provisions. However, when a FERS provision does not require a reduction for age and the CSRS counterpart does require an age reduction, only the portion of the annuity computed under CSRS provisions is reduced.

The cost-of-living provisions under CSRS apply to the portion of the annuity computed under CSRS, while FERS cost-of-living provisions apply to the portion of the annuity computed under the FERS provisions. Basic annuities for surviving spouses (or former spouses) of deceased annuitants include any cost-of-living increases that the annuitant received.

An annuity supplement due a retiree under FERS (if any) is computed as if the civilian service used in the FERS portion of the basic annuity computation were the retiree's only Federal service.

These regulations also clarify that when the alternative form of annuity is computed for a basic annuity that is a "combined" benefit, the alternative form of annuity is also a "combined" benefit, with each portion computed under the appropriate CSRS or FERS provisions.

E. *Voluntary contribution accounts.* Individuals who have voluntary contribution accounts under CSRS and who elect FERS coverage cannot continue to make payments to their accounts because FERS has no provision for such accounts. Employees may withdraw their voluntary contributions at any time or may leave them to earn interest until they retire under FERS. At that time these accounts may be used to purchase additional annuity as if the employee had remained subject to CSRS.

F. *Disability retirement.* The disability retirement requirements under FERS are similar to those under CSRS (except that only 18 months of service is required under FERS); however, the computation of benefits is quite different. Unless an employee is eligible for an immediate unreduced voluntary retirement benefit or is age 62 or older at the time of retirement for disability, the FERS benefit for the first year of disability is generally 60 percent of the high-3 average pay less 100 percent of an "assumed" social security disability benefit if the annuitant is or becomes entitled to a social security disability benefit. After the first year, the benefit is generally 40 percent of the average salary less 60 percent of the "assumed" social security disability benefit (if any). At age 62, the annuity payable to the disability annuitant is reduced for the "assumed" social security benefit (regardless of whether the individual is entitled to a social security benefit), unless the following computation produces a *lower* benefit: A basic annuity computation under FERS with the employee's high-3 average salary increased by the cost-of-living adjustments that occurred since retirement and the employee's years of FERS service extended to age 62, plus any benefits accrued on CSRS service (using the same average salary as for the FERS portion). However, in no case is the disability benefit less than the basic annuity benefit the employee had earned (including the portion computed under CSRS).

G. *Death benefits.* If an employee changes to FERS and later dies in service, any survivor benefits are paid under FERS provisions. If, at the time of

death, the employee's marriage had lasted at least 9 months and he or she had at least 18 months of civilian service, the surviving spouse would be entitled to a payment of 50 percent of the deceased employee's final pay (or average pay, if higher) plus $15,000. (The $15,000 amount will be increased by the amount of cost-of-living adjustments made under CSRS after January 1, 1987, the effective date of the FERS Act of 1986.) If the employee had 10 years of service (including any prior CSRS service), the surviving spouse would also be entitled to an annuity in the amount of 50 percent of the basic annuity the employee had earned by the time of death. If the deceased employee had less than 10 years of service, no survivor annuity is payable to a spouse or former spouse.

Eligible children of deceased employees are entitled to survivor annuities if the employee had at least 18 months of civilian service.

An individual who transfers to FERS and is married at retirement will receive a reduced annuity with a survivor benefit for the spouse unless the spouse waives his or her right to survivor benefits. The retiree's basic annuity would be reduced 10 percent to provide a survivor benefit of 50 percent of the retiree's annuity rate before the reduction. If the employee's basic annuity was computed with combined CSRS/FERS service, the 10-percent reduction would be applied to the entire annuity, not just the portion computed under FERS rules. In the case of a disability annuitant who dies before reaching age 62, the survivor benefit is 50 percent of the amount the retiree would have received as a basic annuity if he or she had been age 62 on the date of death, except that credit is allowed for the length of time between the date of death and the date the retiree would have reached age 62.

FERS supplemental survivor annuities are available only to spouses of deceased retirees, and only if the retiree had earned enough social security credit for the spouse to be entitled to social security survivor benefits. The supplemental survivor annuity is not payable if the spouse is actually eligible to receive social security payments based on the earnings of the deceased retiree. The amount of the supplemental survivor annuity is the lesser of (1) the amount by which the survivor benefit, computed as if the retiree had retired under CSRS, exceeds the FERS survivor benefit, and (2) the amount of the social security survivor benefit.

A former spouse may receive all or a portion of the survivor benefit that would otherwise be payable to a current spouse if a qualifying court order awards this benefit to the former spouse.

The amount of survivor annuity payable to each surviving child is the difference between the total amount of all surviving children's benefits under CSRS provisions and the total amount payable for all surviving children under social security, divided by the number of children. However, children's annuities must be reduced by the amount of children's benefits paid by social security.

Any balance left in an individual's retirement account when he or she dies and there are no survivors eligible for an annuity (or after any survivor annuities payable have ended) is payable under FERS provisions.

H. *Reemployed CSRS annuitants who transfer to FERS.* Under the law, when reemployed CSRS annuitants elect FERS coverage, the CSRS annuity stops with the effective date of the election. These regulations clarify how benefits for service prior to the election of FERS are computed. Generally, the CSRS portion of the "combined" benefit is computed as if the person had simply quit the reemployment on the day before FERS coverage began. However, the CSRS portion would be computed without (1) reduction to provide survivor benefits, (2) the 50-percent guaranteed minimum for air traffic controllers, and (3) credit for service covered by both CSRS and social security. Unless the CSRS portion represents an annuity redetermination under CSRS, the CSRS portion based on the original retirement date is increased by the total percentage of cost-of-living adjustments the person received as a CSRS annuitant; then any supplemental annuity due the person is added. The FERS portion of the annuity includes any service during which the person had both CSRS and social security coverage.

I. *Designation of beneficiary.* These regulations provide for cancelling any existing designation of beneficiary of an employee who transfers to FERS coverage. An employee who wants to designate a beneficiary for his or her retirement account must make the designation in a form prescribed by OPM. The designation applies to a lump-sum payment of all monies in the person's retirement account, whether they were withheld from or deposited by the employee under CSRS provisions or FERS provisions, or deposited for military or civilian service credit. The designation also applies to any annuity accrued but unpaid at the time a FERS annuitant dies.

J. *Refunds of CSRS contributions.* Under the FERS Act of 1986, an individual who elects FERS coverage is entitled to a refund of excess contributions (deductions, deposits, or redeposits) for service that is subject to computation under FERS provisions. Excess contributions occur in cases where the contributions were made at the full CSRS rate (usually 7 percent of pay). The refund consists of the difference between the amount of contributions made at the CSRS rate and the amount due at the FERS rate, including interest.

An employee who separates from service and who is not entitled to an immediate annuity may obtain a refund of all contributions or of CSRS contributions only. If the employee is later reemployed, he or she may make a redeposit for service subject to computation under CSRS and for service that was subject to both CSRS and social security deductions, but cannot make a redeposit for other service subject to FERS computation.

**Waiver of Notice of Proposed Rulemaking**

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. OPM must issue regulations to implement an entire new retirement system that was effective January 1, 1987. In addition, clear rules must be in place to allow preparation of materials and world-wide distribution of them to employees who are eligible to elect FERS coverage during the "open season" between July 1 and December 31, 1987. These tasks, along with the necessity to prepare, publish, and distribute necessary forms and informational materials make it impractical to publish proposed rules.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and agencies only.

**List of Subjects in 5 CFR Part 846**

Administrative practice and procedure, Government employees, Pensions, Retirement.

Office of Personnel Management.
**Constance Horner,**
*Director.*

Accordingly, OPM is amending Title 5 of the Code of Federal Regulation to add Part 846 to read as follows:

## PART 846—FEDERAL EMPLOYEES RETIREMENT SYSTEM—ELECTING COVERAGE

### Subpart A—General Provisions

Sec.
846.101 Purpose.
846.102 Definitions.

### Subpart B—Elections

846.201 Elections to become subject to FERS.
846.202 Condition for making an election.
846.203 Agency responsibilities.
846.204 Belated elections and correction of administrative errors.
846.205 Reconsideration and appeal rights.

### Subpart C—Effect of an Election to Become Subject to FERS

846.301 General rules.
846.302 Crediting civilian service.
846.303 Crediting military service.
846.304 Computing FERS annuities for persons with CSRS service.
846.305 Special rules regarding reemployed annuitants.
846.306 General inapplicability of CSRS provisions.

### Subpart D—Refunds of CSRS Contributions.

846.401 Refunds of excess contributions.
846.402 Refunds of all CSRS contributions.

### Subpart E—Cancellation of Designations of Beneficiary

846.501 Cancellation upon transfer to FERS.

**Authority:** 5 U.S.C. 8461(g); § 846.202 also issued under section 301(d)(3) of Pub. L. 99-335.

### Subpart A—General Provisions

#### § 846.101 Purpose.

This part identifies the employees who may transfer to the Federal Employees Retirement System (FERS), gives the conditions under which they may transfer, and sets forth the method of computing the annuities of employees who transfer to FERS.

#### § 846.102 Definitions.

In this part—

*CSRS* means subchapter III of chapter 83 of title 5, United States Code.

*CSRS/SS service* means service subject to both CSRS deductions (or deductions under another retirement system for Federal employees if such service is creditable under CSRS) and social security deductions as a result of the Social Security Amendments of 1983. For this purpose, the service of an individual is considered CSRS/SS service if the service would have been covered under CSRS except for an election under section 208(a)(1)(A) of the Federal Employees Retirement Contribution Temporary Adjustment Act of 1983 to have no CSRS coverage.

*Employee* means an employee as defined by § 842.102 of this chapter.

*Employing office* means the office of an agency to which jurisdiction and responsibility for retirement matters for an employee have been delegated.

*FERS* means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.

*Former spouse* means a former spouse as defined in § 831.1703 of this chapter.

*Member* means a Member of Congress as defined in section 2106 of title 5, United States Code.

*OPM* means the Office of Personnel Management.

*Qualifying court order* means a court order as defined by § 831.1703 of this chapter that meets the requirements of § 831.1704 of this chapter.

*Social security* means coverage under the Old Age, Survivors, and Disability Insurance programs of the Social Security Act.

### Subpart B—Elections

#### § 846.201 Elections to become subject to FERS.

(a) *Employees and Members subject to CSRS on June 30, 1987.* An individual who, on June 30, 1987, is employed in the Federal service or is a Member and who is covered by CSRS may elect to become subject to FERS. An election under this paragraph may not be made before July 1, 1987, or after December 31, 1987.

(b) *Separated employees who are reemployed.* A former employee who, after June 30, 1987, becomes reemployed and subject to CSRS may elect, during the 6-month period beginning on the date he or she becomes subject to CSRS, to become subject to FERS.

(c) *Employees and Members not subject to CSRS.* (1) An employee or Member who is excluded from FERS coverage on January 1, 1987, by § 842.104 (d) or (f) of this chapter and who, on December 31, 1986, is not subject to CSRS may elect to become subject to FERS. An election under this paragraph (c)(1) may not be made before July 1, 1987, or after December 31, 1987.

(2) An employee who, on June 30, 1987, is not covered by CSRS, but later becomes so covered, may elect to become subject to FERS. An election under this paragraph (c)(2) must be made during the 6-month period beginning on the date he or she becomes subject to CSRS.

(3) An employee who would be subject to CSRS except for the exclusions in § 831.201 of this chapter, but is not excluded from FERS by 5 U.S.C. 8401 nor by § 842.105 of this chapter, is deemed eligible to make an election of FERS coverage under this section. An election under this paragraph (c)(3) must be made during the period beginning July 1, 1987, and ending December 31, 1987, or, if later, during the 6-month period beginning on the date the employment described in this paragraph (c)(3) begins.

(d) *Exceptions.* (1) An individual who is an employee of the government of the District of Columbia may not elect to become subject to FERS.

(2) A Member who has irrevocably elected, by written notice to the official by whom the Member is paid, not to participate in FERS may not elect to become subject to FERS during the same continuous period of service.

(3) An employee or reemployed annuitant whose appointment is excluded from FERS coverage by law or regulation may not become subject to FERS by reason of an election under this section except as specified in paragraph (c) of this section or as otherwise provided by law.

(4) An election under this section may not be made by an individual who is ineligible for social security coverage.

(e) *Effective date.* An election made under this section is effective with the first pay period beginning after the date the election is properly filed with the employing office.

(f) *Irrevocability.* An election made under this section is irrevocable.

#### § 846.202 Condition for making an election.

(a) An election under § 846.201 of this part may not become effective unless the election is made with the written consent of any former spouse(s) entitled to benefits under Part 831, Subpart F or Q of this chapter. As provided in section 301(d)(2)(A) of the FERS Act of 1986, this section applies only if OPM has been duly notified concerning any qualifying court order and has received the documentation required in § 831.1705 of this chapter. This section does not apply with respect to a former spouse who has ceased to be so entitled because of remarrying before age 55.

(b) OPM may waive the requirement of paragraph (a) of this section upon a showing that the former spouse's whereabouts cannot be determined. A request for waiver on this basis must be accompanied by—

(1) A judicial or administrative determination that the former spouse's whereabouts cannot be determined; or

(2)(i) Affidavits by the employee or Member and two other persons, at least one of whom is not related to the employee or Member, attesting to the inability to locate the former spouse and

stating the efforts made to locate the spouse; and

(ii) Documentary corroboration such as newspaper reports about the former spouse's disappearance.

(c) OPM may waive the requirement of paragraph (a) of this section based on exceptional circumstances if the employee or Member presents a judicial determination regarding the former spouse that would warrant waiver of the consent requirement based on exceptional circumstances.

(d)(1) OPM shall, upon application of an individual, grant an extension for such individual to make an election under § 846.201 of this part, if the individual—

(i) Files an application for the extension with OPM before the end of the period during which the individual would otherwise be eligible to make the election; and

(ii) Demonstrates to OPM's satisfaction that the extension is needed to secure the modification of a decree of divorce or annulment (or court ordered or court-approved property settlement incident to any such decree) on file at OPM in order to satisfy the consent requirement under paragraph (a) of this section.

(2) The application for extension is deemed to be filed with OPM on the date it is received in the employing office.

(3) An extension granted under this paragraph expires 6 months after the date it was granted. OPM may grant one further extension upon application by the individual seeking to make an election of FERS coverage.

(e) An electing individual who has a former spouse who may be entitled to benefits as described in paragraph (a) of this section must submit with the election either—

(1) The consent of the former spouse in a form prescribed by OPM,

(2) A request for an extension as described in paragraph (f) of this section,

(3) A request for a waiver of the consent requirement and the documentation to support the request as described in paragraph (d) or (e) of this section, or

(4) A request for a determination as to whether a qualifying court order as described in paragraph (a) of this section is on file with OPM.

(f) The request for waiver or extension described in paragraphs (b), (c), and (d) of this section must be in a form prescribed by OPM. The employing office must forward the request to OPM promptly.

(g) If OPM does not have a copy of a qualifying court order in its possession, OPM's notice to the agency that it has no qualifying court order is deemed to complete the individual's election of FERS, which becomes effective with the first pay period after the employing office receives OPM's notification.

(h) If OPM has a copy of a qualifying court order, OPM will notify both the individual and the employing agency of its determination regarding a request for extension.

(i) If OPM has a copy of a qualifying court order in its possession and grants a waiver of the requirement of paragraph (a) of this section, OPM will notify both the individual and the employing office of its decision. OPM's notice to the employing office is deemed to complete the individual's election, which becomes effective with the first pay period after the employing office receives OPM's notice that the waiver is granted.

### § 846.203 Agency responsibilities.

(a) Employing offices must distribute the election forms provided by OPM to each eligible individual, including all individuals in a nonduty status.

(b) An employing office must obtain documentation of the individual's receipt of the election form specified in paragraph (a) of this section and retain the documentation permanently in the individual's official personnel folder (or the equivalent). Acceptable documentation includes—

(1) A statement of receipt signed by the individual, or

(2) A signed postal return receipt showing that the election form was received at the individual's address.

### § 846.204 Belated elections and correction of administrative errors.

(a) *Belated elections.* On determination by an employing office that the FERS transfer handbook issued by OPM was not available to an individual in a timely manner or an individual was unable, for cause beyond his or her control, to elect FERS coverage within the prescribed time limit, the employing office may, within 6 months after the expiration of the individual's opportunity to elect FERS coverage under § 846.201, accept the individual's election of FERS coverage.

(b) *Correction of administrative errors related to election.* During the 6-month period after the expiration of an individual's opportunity to elect FERS coverage under § 846.201, the employing office may make prospective corrections of administrative errors regarding an individual's opportunity to elect FERS coverage, including failure to provide the election form specified in § 846.203(a) to an individual.

(c) *OPM's reconsideration.* An agency decision concerning an individual's opportunity to elect FERS coverage or the effective date of an election of FERS coverage is subject to reconsideration by OPM under § 846.205.

(d) *Correction of other administrative errors.* Failure to begin employee deductions and Government contributions on the effective date of coverage must be corrected in accordance with § 841.505 of this chapter.

### § 846.205 Reconsideration and appeal rights.

(a) *Who may file.* An individual may request OPM to reconsider a decision of an employing office affecting his or her election of coverage under FERS. A request for reconsideration of a decision by OPM regarding extension of the time limit or a waiver under § 846.202 or refunds under § 846.401 must be made in accordance with § 841.305 of this chapter.

(b) *Reconsideration.* A request for reconsideration of an agency decision must be filed within the time limit given in paragraph (c) of this section. A request for reconsideration must be made in writing and must include the claimant's name, address, date of birth, and the reason for the request.

(c) *Time limit.* A request for reconsideration of an agency decision must be filed within 30 calendar days from the date of the agency's decision stating the right to reconsideration. OPM may extend the time limit on filing when a person shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(d) *OPM's decision.* After reconsideration, OPM issues its final decision in writing, setting forth its findings and conclusions.

(e) *Appeals to MSPB.* A person whose rights or interests under this part are affected by OPM's decision under paragraph (d) of this section may request the Merit Systems Protection Board (MSPB) to review such decision in accord with procedures prescribed by MSPB.

## Subpart C—Effect of an Election to Become Subject to FERS

### § 846.301 General rules.

(a) An individual who becomes covered by FERS as a result of an election under § 846.201 is subject to the provisions of chapter 84 of title 5, United States Code and Parts 841 through 845 of

this chapter, except as provided in this part.

(b) Civilian service performed before the effective date of the election under § 846.201 is not creditable under FERS except as provided in this part.

**§ 846.302 Crediting civilian service.**

(a) Civilian service performed before the effective date of FERS coverage which is CSRS/SS service is creditable under FERS if—

(1) For service performed before January 1, 1987, 1.3 percent of basic pay was withheld as CSRS deductions (or if not withheld or if withheld and later refunded, 1.3 percent of basic pay for the period is deposited with interest computed under § 831.105(e) of this chapter); and

(2) For service performed after December 31, 1986, and before the effective date of the election, the employee contributes an amount equal to the percentage of basic pay for such service required to be withheld under Part 841, Subpart E of this chapter, whether by withholdings from pay or by later deposit (if not withheld or withheld and later refunded) with interest computed under § 831.105(e) of this chapter.

(b) Civilian service performed before the effective date of the FERS coverage which is not CSRS/SS service is creditable under FERS (subject to the deposit requirements of Part 842, Subpart C of this chapter) if—

(1) The service would be creditable under CSRS except for § 846.306 (determined without regard to whether the service was performed before, on, or after January 1, 1989, and without regard to the provisions of Part 842, Subpart C of this chapter requiring that deposit be made for nondeduction or refunded service to be credited); and

(2) The service, in the aggregate, is equal to less than 5 years.

(c) Civilian service performed before the effective date of FERS coverage which is not CSRS/SS service is creditable under FERS only for the purposes specified in paragraph (d) of this section if—

(1) The service would be creditable under CSRS except for § 846.306 (determined without regard to whether the service was performed before, on, or after January 1, 1989, and without regard to the provisions of Part 842, Subpart C of this chapter, requiring that deposit be made for nondeduction or refunded service to be credited); and

(2) The service, in the aggregate, is equal to 5 years or more.

(d) The service described in paragraph (c) of this section is creditable under FERS for the following purposes:

(1) The 5 years of civilian service required to be eligible for a basic annuity under FERS as set forth in § 842.203 of this chapter.

(2) The minimum period of service for entitlement to—

(i) An immediate voluntary annuity under FERS as set forth in § 842.204 of this chapter;

(ii) An early retirement under FERS as set forth in § 842.205 of this chapter;

(iii) An involuntary retirement under FERS as set forth in § 842.206 of this chapter;

(iv) A Member retirement under FERS as set forth in § 842.209 of this chapter;

(v) A military reserve technician retirement under FERS as set forth in § 842.210 of this chapter;

(vi) A Senior Executive Service, Defense Intelligence Senior Executive Service, or Senior Cryptological Executive Service retirement under FERS as set forth under § 842.211 of this chapter;

(vii) A deferred annuity under FERS as set forth in § 842.212 of this chapter;

(viii) A survivor annuity under FERS based on the death in service of an employee with at least 10 years of service as set forth in § 843.310 of this chapter, but only if the survivor is entitled to the basic employee death benefit described in § 843.309 of this chapter;

(ix) A disability retirement under FERS as set forth in Subchapter V of Chapter 84 of Title 5 United States Code;

(x) A firefighter or law enforcement annuity under FERS as set forth in § 842.208 of this chapter, but only to the extent that the service was as a law enforcement officer or firefighter as described in § 842.809(b) of this chapter;

(xi) An air traffic controller annuity under FERS as set forth in § 842.207 of this chapter, but only to the extent that the service was as an air traffic controller as described in § 842.809(a) of this chapter;

(3) The computation of benefits under § 846.304(b); and

(4) The computation of average salary under § 846.304(d).

**§ 846.303 Crediting military service.**

(a) Military service performed before the effective date of the election under § 846.201 creditable as provided under FERS, except as provided in paragraphs (b) and (c) of this section.

(b) Military service described in paragraph (a) of this section which would be creditable under CSRS except for the provisions of § 846.306 and performed by an individual who is subject to an annuity computation under § 846.304(b) is creditable for—

(1) The minimum period for entitlement to an annuity under FERS based on—

(i) The immediate voluntary retirement provisions under § 842.204 of this chapter;

(ii) The early retirement provisions under § 842.205 of this chapter;

(iii) The involuntary retirement provisions under § 842.206 of this chapter;

(iv) The Member retirement provisions under § 842.209 of this chapter;

(v) The military reserve technician retirement provisions under § 842.210 of this chapter;

(vi) The Senior Executive Service, Defense Intelligence Senior Executive Service, or the Senior Cryptological Executive Service retirement provisions under § 842.211 of this chapter; or

(vii) The deferred retirement provisions under § 842.212 of this chapter.

(2) Computation of benefits under § 846.304(b).

(c) If the effective date of the election of FERS by an individual who is subject to annuity computation under § 846.304(b) occurs when the individual is in non-pay status and is performing active military service, benefits for the military service performed before the effective date of the election are computed under CSRS, and benefits for the military service performed after the effective date are computed under FERS. The period of military service is considered to be two separate full periods of service, one ending the day before the effective date of FERS and one beginning on the effective date of FERS. The deposit for the period of service before the effective date of FERS coverage is computed under CSRS provisions set forth in Part 831, Subpart U of this chapter. The deposit for the period of service beginning on the effective date of FERS coverage is computed under FERS provisions set forth in Part 842, Subpart C of this chapter.

**§ 846.304 Computing FERS annuities for persons with CSRS service.**

(a)(1) The basic annuity of an employee who elected FERS coverage is an amount equal to the sum of the accrued benefits under CSRS as determined under paragraph (b) of this section and the accrued benefits under FERS as determined under paragraph (c) of this section.

(2) The computation method described in paragraph (a)(1) of this section is used in computing basic annuities under Part 842, Subpart D of this chapter, survivor

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annuities under Part 843, Subpart C of this chapter, and the basic annuities for disability retirement under Subchapter V of Chapter 84 of Title 5 United States Code.

(3) An annuity computed under this paragraph is deemed to be the individual's annuity under FERS.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section and § 846.305, accrued benefits for civilian service as described in § 846.302(c), and military service as described in § 846.303(b) are computed under CSRS provisions.

(2) Reductions to provide survivor benefits required under Part 831, Subpart F of this chapter, and the 50-percent minimum annuity for air traffic controllers described in 5 U.S.C. 8339(e) do not apply to accrued benefits under this paragraph.

(3) Sick leave creditable under § 831.302 of this chapter is equal to the number of days of unused sick leave to an individual's credit as of the day of retirement, death, or as of the effective date of the election of FERS coverage, whichever is the lesser amount of sick leave, for an individual who—

(i) Retires under §§ 842.204, 842.205, 842.206, 842.207, 842.208, 842.209, 842.210, or 842.211 of this chapter;

(ii) Dies leaving a survivor eligible for a monthly FERS survivor annuity under § 843.310 or § 843.311 of this chapter; or

(iii) After retiring for disability, becomes entitled to an annuity computation under Part 842, Subpart D of this chapter.

(c) Accrued benefits are computed under FERS for the following service:

(1) Creditable civilian service performed on or after the effective date of the election of FERS coverage;

(2) Creditable civilian service other than as described in § 846.302(c); and

(3) Creditable military service other than that described in § 846.303 (b) and (c).

(d)(1) Except as specified in § 846.305, the average pay for computations under paragraphs (b) and (c) of this section is the largest annual rate resulting from averaging the individual's rates of basic pay in effect over any 3 consecutive years of creditable service or, in the case of an annuity based on service of less than 3 years, over the total period of creditable service, with each rate weighted by the period it was in effect.

(2) For the purposes of paragraph (d)(1) of this section, service is considered creditable if it is creditable under either CSRS or FERS.

(e)(1) The cost-of-living adjustments for the annuities of individuals electing FERS coverage are made as follows:

(i) The portion of the annuity computed under paragraph (b) of this section is adjusted as provided under CSRS.

(ii) The portion of the annuity computed under paragraph (c) of this section is adjusted as provided under FERS.

(2) An annuity initially payable to an annuitant's survivor (other than a child under Part 843, Subpart D of this chapter) is increased by the total percent by which the annuitant's annuity was increased under this paragraph. Thereafter, the survivor annuity is adjusted for cost-of-living increases under 5 U.S.C. 8462.

(f) In computing an annuity under paragraph (a) of this section for an employee retiring under § 842.204(a)(1) or § 842.212(b) of this chapter, any reduction for age required by § 842.404 of this chapter applies to the sum computed under paragraph (a) of this section. No reduction under CSRS is applicable.

(g) In computing an annuity under paragraph (a) of this section for an employee retiring early under § 842.205 of this chapter or involuntarily under § 842.206 of this chapter, the reduction for age required by 5 U.S.C. 8339(h) applies to the portion of the annuity computed under CSRS provisions.

(h) In computing an annuity under paragraph (a) for an employee retiring as a firefighter or law enforcement officer under § 842.208 of this chapter or as an air traffic controller under § 842.207 of this chapter, there is no applicable reduction for age.

(i) An annuity supplement under Part 842, Subpart E of this chapter, is computed using the same civilian service used for the computation under paragraph (c) of this section.

(j) An alternative form of annuity for a basic annuity computed under paragraph (a) of this section is computed as follows:

(1) The alternative benefit for the portion of the annuity computed under paragraph (b) of this section is computed under CSRS as provided in Part 831, Subpart V of this chapter, except that a refund of CSRS contributions based on a refund application filed after the individual elects FERS coverage may not be deemed to be redeposited under § 831.2206 of this chapter if the individual is entitled to a deferred annuity under § 842.212 of this chapter.

(2) The alternative benefit for the portion of the annuity computed under paragraph (c) of this section is computed under FERS as provided in Part 842, Subpart G of this chapter.

### § 846.305 Special rules regarding reemployed annuitants.

(a) If a reemployed annuitant elects FERS coverage, the CSRS annuity terminates as of the effective date of the election.

(b) Accrued benefits under § 846.304(a) for a reemployed annuitant electing FERS coverage are computed as follows:

(1) For an individual who is entitled to and elects a redetermined annuity under Part 831, Subpart H of this chapter, the benefits for service performed before the effective date of the FERS election is computed in accordance with § 846.304(b) using an average salary based on service before the effective date of the election. Benefits for the balance of the creditable service are computed under § 846.304(c).

(2) For an individual entitled to a supplemental annuity under Part 831, Subpart H (except an individual described in paragraph (b)(1) of this section), accrued benefits are computed in accordance with § 842.304(b) of this chapter to the date of retirement under CSRS, using the same average salary as was used in computing the CSRS annuity. The benefit is increased by the total percent of cost-of-living increases that were applied to the CSRS annuity to the date it ceased under paragraph (a) of this section. Accrued benefits for service as a reemployed annuitant are computed under Part 831, Subpart H of this chapter, and are included in the CSRS portion of the combined benefit. Accrued benefits for any other creditable service are computed under § 846.304(c).

(3) For an individual not entitled to a supplemental annuity under Part 831, Subpart H of this chapter, accrued benefits are computed as described in paragraph (b)(2) of this section, except that no benefits accrue for the service as a reemployed annuitant.

### § 846.306 General inapplicability of CSRS provisions.

(a) Except as provided by this part, CSRS provisions are not applicable with respect to an individual who elects FERS coverage.

(b) An employee (or an employee's survivor for the purposes of a survivor annuity) may make a deposit under CSRS for any civilian service under § 846.302(c) of this part or military service under § 846.303.

(c) Nothing in paragraph (a) of this section precludes the payment of any lump-sum credit (as defined in 5 U.S.C. 8331(8)) in accordance with Part 831, Subpart T of this chapter.

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## Subpart D—Refunds of CSRS Contributions

### § 846.401 Refunds of excess contributions.

(a) An individual who elects FERS coverage is entitled to a refund of CSRS contributions made prior to the effective date of the election for service that is subject to FERS computation under § 846.304(c) (if not already refunded) which exceed the contributions required under FERS, as provided by this section.

(b) The refund is equal to—

(1) For service described in § 846.302(a) and performed on or after January 1, 1984, and before January 1, 1987, the amount by which the amount contributed exceeds 1.3 percent of basic pay;

(2) For service described in § 846.302(a) and performed on or after January 1, 1987, the amount by which the amount contributed exceeds the amount required under § 841.503 of this chapter; and

(3) For service described in § 846.302(b), the amount by which the amount contributed exceeds 1.3 percent of basic pay.

(c) A refund made under this section is payable with interest computed as prescribed under § 831.105 (d) and (e) of this chapter. Interest is payable regardless of the length of the period of service for which refund is being made or the total amount of service the employee has.

(d) A refund described in this section is payable upon the receipt of an application by OPM or its designee.

### § 846.402 Refunds of all CSRS contributions.

(a) An individual who elects to transfer to FERS is entitled to a refund of all CSRS contributions in accordance with the provisions of Part 831, Subpart T of this chapter.

(b) An application for refund of FERS retirement contributions under § 843.202 of this chapter is deemed to also be an application for refund of CSRS retirement contributions under Part 831, Subpart T of this chapter.

## Subpart E—Cancellation of Designations of Beneficiary

### § 846.501 Cancellation upon transfer to FERS.

A designation of beneficiary made under § 831.2005 of this chapter is cancelled on the effective date of an election of FERS coverage. Designations of beneficiary under FERS must be made in accordance with § 843.205 of this chapter and apply to an employee's contributions under both CSRS and FERS.

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Part III

# Office of Personnel Management

**5 CFR Part 841**

**Federal Employees Retirement System—General Administration; General Provisions; Interim Rule With Request for Comments**

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 841

Federal Employees Retirement System—General Administration; General Provisions

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on these rules to implement the Federal Employees Retirement System (FERS) Act of 1986. These rules set up the regulatory framework for implementing FERS and contain rules of general application.

DATES: Interim rules effective June 22, 1987, except for § 841.102(d) which will become effective when Part 844 is added. OPM will publish a document in the Federal Register announcing the effective date of § 841.102(d); comments must be received on or before July 20, 1987.

ADDRESS: Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, created a new retirement system for many Federal employees. Employees who are covered by FERS will be covered by the basic retirement benefit, social security, and the thrift savings plan. OPM is responsible for administration of the basic retirement benefits. Social security benefits are administered by the Social Security Administration. The savings plan is administered by the Federal Retirement Thrift Investment Board.

Subpart A contains the administrative rules governing the operation of FERS that have general application to the basic benefits under FERS, including the regulatory structure that OPM is using to implement FERS, and general and specific definitions of terms.

Subpart B states the general requirement that no benefits are payable under FERS without an application for benefits, and contains rules concerning withdrawal of applications. Generally, applications for one-time or continuing benefits may be withdrawn up to the point that OPM authorizes payment. We want to emphasize that this rule applies to applications for payment of FERS basic benefits. It does not affect an otherwise proper separation from an employing agency, and a separated employee should not expect to regain employment by withdrawing his/her application for benefits.

This general rule has two exceptions. The first is that an application for continuing benefits may not be withdrawn if OPM has received a court order affecting the benefits. The second is back pay situations in which an "appropriate authority" determines that a separation was an "unjustified or unwarranted personnel action" as these terms are used in the back pay provisions (5 CFR Part 550). In this case, a recipient of benefits has 60 days from the date of the decision by an appropriate authority to withdraw his or her application.

Subpart C contains general instructions on filing claims and administrative review rights under FERS.

Under section 553(b)(3)(B) of Title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. Delaying implementation of these regulations could delay payment to applicants and generate confusion about when and where to file applications. Such delay would be contrary to the public interest.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal agencies and retirement payments to retired Government employees.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

Accordingly, OPM is amending 5 CFR Part 841 to add Subparts A, B, and C to read as follows:

## PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

### Subpart A—General Provisions

Sec.
841.101 Purpose.
841.102 Regulatory structure for the Federal Employees Retirement System.
841.103 Definitions.
841.104 Special terms defined.
841.105 Administration of FERS.
841.106 Basic records.
841.107 Computation of interest.
841.108 Disclosure of information.
841.109 Computation of time.
841.110 Payments when insufficient funds are available.

### Subpart B—Applications for Benefits

841.201 Purpose.
841.202 Applications required.
841.203 Withdrawal of applications.

### Subpart C—Claims Processing

841.301 Purpose.
841.302 Definitions.
841.303 Applications filed with agencies.
841.304 Applications filed with OPM.
841.305 Decisions subject to reconsideration.
841.306 Reconsideration.
841.307 Final decisions without reconsideration.
841.308 Appeals to MSPB.
841.309 Competing claimants.

### Subpart A—General Provisions

Authority: 5 U.S.C. 8461; Section 841.108 also issued under 5 U.S.C. 552a.

**§ 841.101 Purpose.**

The purpose of this subpart is to state the administrative rules governing the operations of the Federal Employees Retirement System (FERS) that have general application to the basic benefits under FERS.

**§ 841.102 Regulatory structure for the Federal Employees Retirement System.**

(a) This part contains the following subparts:

(1) General provisions (Subpart A);

(2) Applications for benefits (Subpart B);

(3) Claims processing (Subpart C);

(4) Government costs (Subpart D);

(5) Employee deductions and Government contributions (Subpart E);

(6) Computing interest (Subpart F);

(7) [Reserved] (Subpart G);

(8) Waiver, allotment, or assignment of benefits (Subpart H);

(9) Court orders affecting benefits (Subpart I); and

(10) State income tax withholding (Subpart J).

(b) Part 842 of this chapter contains information about basic annuity rights of employees and Members under FERS.

(c) Part 843 of this chapter contains information about death benefits and employee refunds under FERS.

(d) Part 844 of this chapter contains information about disability retirement benefits under FERS.

(e) Part 845 of this chapter contains information about debt collection.

(f) Part 846 of this chapter contains information about election rights available to employees who are eligible to join FERS.

**§ 841.103 Definitions.**

In this subpart—

"CSRS" means the Civil Service Retirement System as described in Subchapter III of Chapter 83 of Title 5, United States Code.

"FERS" means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.

**§ 841.104 Special terms defined.**

(a) Unless otherwise defined for use in any subpart, as used in connection with FERS (Parts 841 through 846 of this chapter), terms defined in section 8401 of Title 5, United States Code, have the same meanings assigned to them by that section.

(b) Unless otherwise defined for use in any subpart, as used in connection with FERS (Parts 841 through 846 of this chapter)—

"Agency" means an executive agency as defined in section 105 of Title 5, United States Code; a legislative branch agency; a judicial agency; and the U.S. Postal Service and Postal Rate Commission.

"Associate Director" means the Associate Director for Retirement and Insurance in OPM, or his or her designee.

"OPM" means the Office of Personnel Management.

**§ 841.105 Administration of FERS.**

(a) OPM has charge of the adjudication of all claims for basic benefits arising under FERS and of all matters directly or indirectly concerned with these adjudications.

(b) In the adjudication of claims arising under FERS, OPM will consider and take appropriate action on counterclaims filed by the Government as set-offs against amounts payable from the Civil Service Retirement Fund.

**§ 841.106 Basic records.**

(a) Agencies having employees or Members subject to FERS must establish and maintain retirement accounts for those employees and Members.

(b)(1) The individual retirement record required by § 841.504(c) is the basic record for action on all claims for annuity or refund, and those pertaining to deceased employees, deceased Members, or deceased annuitants.

(2) When an agency certifies that records maintained by that agency are lost, destroyed, or incomplete, the agency will request the General Accounting Office, through OPM, to furnish the data that OPM considers necessary for a proper determination of the rights of the claimant. When an official record cannot develop the required information, OPM will accept such inferior or secondary evidence that it considers appropriate under the circumstances, and such inferior or secondary evidence is then admissible.

(3) Except as provided in paragraph (b)(2) of this section, inferior or secondary evidence will not be considered.

**§ 841.107 Computation of interest.**

Interest, when applicable, will be computed under Subpart F of this part.

**§ 841.108 Disclosure of information.**

(a)(1) Except as provided in section 8461 of Title 5, United States Code, OPM has in its possession or under its control records containing the following types of information:

(i) Documentation of Federal service subject to FERS.

(ii) Documentation of service credit and refund claims made under FERS.

(iii) Retirement and death claims files, including documents supporting the retirement application, health benefits and life insurance eligibility, medical records supporting disability claims, and designations of beneficiaries.

(iv) Claims review and correspondence files pertaining to benefits under the Federal Employees Health Benefits Program.

(v) Documentation of claims made for life insurance and health benefits by annuitants under a Federal Government retirement system other than FERS.

(2) These records may be disclosed to the individual to whom the information pertains, or, with prior written consent of the individual, to any agency or other person, except that medical evidence about which a prudent physician would hesitate to inform the individual, will be disclosed only to a licensed physician designated in writing for that purpose by the individual or by his or her representative.

(3) Federal employee retirement records will be disclosed consistent with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), including, but not limited to, disclosures pursuant to a routine use promulgated for such records and printed in OPM's periodic publication of notices of systems of records. However, a beneficiary designated in accordance with FERS (5 U.S.C. 8424(c)) will, during the lifetime of the designator, be disclosed to the designator only, at his or her signed written request. Such beneficiary designations that may appear in records being disclosed to other than the designator must be removed before the record is disclosed. If information pertaining to a designation of beneficiary is specifically asked for by a court of competent jurisdiction, it may be released to the court, but with a written notice that it is released under protest.

(4) Except as provided in paragraphs (a)(2) and (a)(3) of this section, OPM will not disclose information from the files, records, reports, or other papers and documents pertaining to a claim filed with OPM, whether potential, pending, or adjudicated. This information is privileged and confidential.

(b) On written request OPM will return, to the person entitled to them, certificates of discharge, adoption papers, marriage certificates, decrees of divorce, letters testamentary or of administration, when they are no longer needed in the settlement of the claim. If papers returned constitute part of the material and essential evidence in a claim, OPM will retain copies of them or of the parts of them that appear to be of evidentiary value.

**§ 841.109 Computation of time.**

In computing a period of time for filing documents, the day of the action or event after which the designated period of time begins to run is not included. The last day of the period is included unless it is a Saturday, a Sunday, or a legal holiday; in this event, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

**§ 841.110 Payments when insufficient funds are available.**

Except as provided in Part 581 of this chapter, when a retiree's or survivor's annuity is not sufficient to satisfy all claims against it, the claims will be satisfied in the following order of precedence:

(a) First, Federal Employees Health Benefits Premiums; then,

(b) Federal Employees Group Life Insurance Premiums, which include—

(1) Premiums for insurance under Part 870 of this chapter; then,

(2) Premiums for insurance under Part 871 of this chapter; then,

(3) Premiums for insurance under Part 872 of this chapter; then,

(4) Premiums for insurance under Part 873 of this chapter; then,

(c) Premiums for Medicare; then,
(d) Amounts due to the Civil Service Retirement Fund; then,
(e) (1) Amounts due to the United States that have been reduced to judgment and Federal tax liens in the order that OPM receives certification of the debt under Part 845 of this chapter; then,
(2) Other amounts due to the United States in the order that OPM receives certification of the debt under Part 845 of this chapter; then,
(f) Amounts due to a former spouse based on a qualifying court order under Subpart I of this part; then,
(g) Amounts withheld for Federal income taxes; then
(h) Amounts withheld for State income taxes; then
(i) Amounts withheld to satisfy court orders under Part 581 of this chapter; then
(j) Payment to the retiree or survivor.

### Subpart B—Applications for Benefits

**Authority:** 5 U.S.C. 8461.

**§ 841.201 Purpose.**

This subpart states the general application requirement applicable under the Federal Employees Retirement System (FERS). Specific application requirements for particular benefits are contained with the regulations concerning those benefits.

**§ 841.202 Applications required.**

(a) No benefit is payable under FERS, until after the claimant has applied for the benefit in the form prescribed by OPM.

(b) An employee, Member, or survivor may exercise any option or make any election authorized by FERS only in the form prescribed by OPM.

**§ 841.203 Withdrawal of applications.**

(a) Except as provided in paragraphs (b) and (c) of this section, an applicant for benefits under FERS may withdraw his or her application for benefits until a payment based on that application has been authorized, but not thereafter.

(b) An applicant for benefits under FERS may not withdraw his or her application for benefits after OPM has received a certified copy of a court order (under Part 581 of this chapter or Subpart I of this part) affecting the benefits.

(c) When an "appropriate authority" determines that the separation upon which payment has been based is an "unjustified or unwarranted personnel action" as these terms are defined in § 550.804 of this chapter, an individual may withdraw his/her application for FERS benefits within 60 days of the decision. As provided in § 550.805, any FERS payments must be deducted from any back pay award.

### Subpart C—Claims Processing

**Authority:** 5 U.S.C. 8461.

**§ 841.301 Purpose.**

(a) This subpart explains—
(1) The procedures that employees, separated employees, retirees, and survivors must follow in applying for benefits under FERS;
(2) The procedures that OPM will generally follow in determining eligibility for benefits under FERS;
(3) The appeal rights available to claimants adversely affected by OPM decisions under FERS; and
(4) The special rules for processing competing claimant cases under FERS.
(b) This subpart does not apply to processing—
(1) Forfeiture of annuity for conviction of certain criminal offenses relating to national security under Subchapter II of Chapter 83 of Title 5, United States Code (processed under Subpart K of Part 831 of this chapter);
(2) Court orders affecting FERS benefits (processed under Subpart I of this part); or
(3) Collection of debts due to the United States (processed under Part 845 of this chapter).

**§ 841.302 Definitions.**

In this subpart—
"Employee" means an employee as defined in section 8401(11) of Title 5, United States Code, and a Member as defined in section 8401(20) of title 5, United States Code. "Employee" includes a person who had applied for retirement under FERS but had not been separated from the service prior to his or her death even if the person's retirement would have been retroactively effective upon separation.
"FERS" means the Federal Employees Retirement System as described in Chapter 84 of Title 5, United States Code.
"MSPB" means the Merit Systems Protection Board described in Chapter 12 of Title 5, United States Code.
"Retiree" means a former employee or Member who is receiving recurring payments under FERS based on service by the employee or Member. "Retiree," as used in this subpart, does not include a current spouse, former spouse, child, or person with an insurable interest receiving a survivor annuity. "Retiree" for purposes of determining a person's status at the time of death means that the person had been separated from the service and had met all the requirements to receive an annuity including having filed an application for the annuity prior to his or her death.
"Separated employee" means a former employee or Member who has been separated from the service but who has not met all the requirements for retirement under FERS or who has not filed an application for retirement under FERS.
"Survivor" means a person entitled to benefits under Part 843 or 846 of this chapter based on the death of an employee, separated employee, retiree, or survivor.

**§ 841.303 Applications filed with agencies.**

(a) Employees filing applications for retirement or to make deposits or redeposits under FERS (including applications for disability retirement) and separating employees filing applications for refunds of contributions must file their applications with their employing agencies.
(b) Survivors filing applications for death benefits based on the death of an employee may file their applications with the employee's employing agency.

**§ 841.304 Applications filed with OPM.**

(a) Separated employees filing applications for retirement or refunds of contributions; survivors filing applications for death benefits based on the deaths of separated employees, retirees, or survivors; and retirees making elections or seeking to change information in their retirement records must file their applications with OPM.
(b) Survivors filing applications for death benefits based on the death of an employee may file their applications with OPM.

**§ 841.305 Decisions subject to reconsideration.**

(a) A OPM decision under FERS is subject to reconsideration by OPM, whenever the decision is in writing and states the right to reconsideration.
(b) OPM will reconsider a decision subject to reconsideration under § 841.306. A decision subject to reconsideration is not subject to appeal under § 841.306.

**§ 841.306 Reconsideration.**

(a) *Who may file.* Except as noted in paragraph (b) of this section, any individual whose rights or interests under FERS are affected by an OPM decision (under § 841.305) stating the right to request reconsideration may request OPM to review its initial decision.

(b) *Actions covered elsewhere.* (1) A request for reconsideration of termination of annuity payments under 5 U.S.C. 8311 through 22 will be made in

accordance with the procedures set out in Subpart K of Part 831 of this chapter.

(2) A request for reconsideration of a decision to collect a debt will be made in accordance with § 845.204(b).

(3) A decision on court orders affecting FERS benefits will be made in accordance with Subpart I of this part.

(c) *Reconsideration.* A request for reconsideration, when applicable, must be in writing, must include the applicant's name, address, date of birth and claim number, if applicable, and must state the basis for the request.

(d) *Time limits on reconsideration.* (1) A request for reconsideration must be received by OPM within 30 calendar days from the date of the initial decision.

(2) The Associate Director's representative responsible for reconsiderations may extend the time limit for filing when the requestor shows that he or she was not notified of the time limit and was not otherwise aware of it, or that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(e) *Final decision.* After any applicable reconsideration, the Associate Director's representative will issue a final decision that must be in writing, must fully set forth the findings and conclusions of the reconsideration, and must contain notice of the right to request an appeal provided in § 841.306. Copies of the final decision must be sent to the individual, to any competing claimants and, where applicable, to the agency.

**§ 841.307 Final decisions without reconsideration.**

OPM may issue a final decision providing the opportunity to appeal under § 841.306 rather than an opportunity to request reconsideration under § 841.306. Such a decision must be in writing and state the right to appeal under § 841.306.

**§ 841.308 Appeals to MSPB.**

Except as noted in this paragraph, an individual whose rights or interests under FERS are affected by a final decision of OPM may request MSPB to review the decision in accord with procedures prescibed by MSPB. Decisions made in accord with the procedures referenced in § 841.306(b)(1) are made under Subchapter II of Chapter 83, Title 5, United States Code. Such decisions are not appealable to MSPB under section 8461(e) of Title 5, United States Code.

**§ 841.309 Competing claimants.**

(a) Competing claimants are applicants for survivor benefits based on the service of an employee, separated employee, or retiree when—

(1) A benefit is payable based on the service of the employee, separated employee, or retiree; and

(2) Two or more claimants have applied for benefits based on the service of the employee, separated employee, or retiree; and

(3) An OPM decision in favor of one claimant will adversely affect another claimant(s).

(b) In cases involving competing claimants, the Associate Director or his or her designee will issue a final decision that will be in writing, will fully set forth findings and conclusions, and will contain notice of the right to appeal provided in § 841.306. Copies of the final decision will be sent to all competing claimants.

(c)(1) When OPM receives applications from competing claimants before any payments are made based on the service of the employee or Member, OPM will begin payments to the claimant(s) found entitled in the decision issued under paragraph (b) of this section.

(2) When OPM does not receive an application from a competing claimant(s) until after another person has begun to receive payments based on the service of the employee or Member, the payments will continue until a decision is issued under paragraph (b) of this section. When a decision is issued under paragraph (b) of this section, OPM will—

(i) If OPM affirms its earlier decision, continue payments to the claimant(s) OPM originally determined to be entitled; or

(ii) If OPM reverses its earlier decision, suspend payment to the claimant(s) OPM originally determined to be entitled and immediately begin payment to the claimant(s) OPM determines to be entitled in its decision under paragraph (b) of this section. OPM will not take action to collect the overpayment until the time limit for filing an appeal has expired or the MSPB has issued a final decision on a timely appeal, whichever comes later.

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Part IV

# Department of Justice

## Office of Juvenile Justice and Delinquency Prevention

## Minorities in the Juvenile Justice System; Issuance of Solicitation for Applications to Conduct Research; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Minorities in the Juvenile Justice System; Issuance of Solicitation for Applications to Conduct Research

AGENCY: Office of Juvenile Justice and Delinquency Prevention, DOJ.

ACTION: Notice of issuance of a solicitation for applications to conduct research on minorities in the juvenile justice system.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Part C, section 243 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces a new OJJDP program entitled "Minorities in the Juvenile Justice System." This study is being undertaken for the purpose of developing a series of well justified policies and program recommendations addressing the issue of disproportionate involvement of minorities in the juvenile justice system. The results of this study are intended to improve our understanding of both the extent and nature of the problem; inform the development of a well defined research agenda; and contribute to the development of policy and program recommendations.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public or private agencies to submit applications to assess research and other relevant literature and programs focused on the processing of minority juvenile offenders in the juvenile justice system; identify gaps in existing information; and develop recommendations for policies, programs and/or research which would address the differential penetration and/or treatment of minorities in the juvenile justice system. For the purposes of this program announcement, minority populations are defined as members of the following groups: (1) Asian Pacific Islanders; (2) Blacks; (3) Hispanics; and (4) American Indians. The project period will be twelve months during which the study will be conducted and a final report completed. OJJDP has allocated $100,000 for this program. One grant will be awarded.

DATE: The deadline for receipt of applications is June 30, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah Wysinger, Research and Program Development Division, National Institute for Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Room 784, Washington, DC 20531, Telephone (202) 724-5929.

SUPPLEMENTARY INFORMATION:

**Program Announcement—Minorities in the Juvenile Justice System**

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## I. Introduction and Background

Like other social institutions, the justice system is not blind to ethnic and racial differences. In considering the disproportionately high involvement of minorities in the juvenile justice system, we may turn to the disparate status of minorities in the larger society. Inequality and disparity are part of the fabric of our society, and juvenile justice agencies are no less a part of that society than any other institution.

In 1985, Black youth (aged 13 to 17 years old) comprised approximately 15 percent of the country's youth population, while accounting for more than 25 percent of all youth arrested for property crimes and representing more than half of all juvenile offenders arrested for violent crimes. Black youth are over-represented in detention, correctional, and shelter facilities as well. According to the 1985 Children in Custody census of public juvenile facilities, 37 percent of all youth in these facilities were Black. A report prepared by the Hubert Humphrey Institute of Public affairs and the National Council on Crime and Delinquency indicates that in 1979, the incarceration rates for Black, Hispanic, and American Indian males in public correctional institutions was approximately two to four times higher than the incarceration rate for Whites. An obvious question then is whether this disparity reflects differences in individual behavior or in the juvenile justice system responses to behavior. If minorities have a greater involvement in delinquent and criminal behavior, it would be anticipated to result in more frequent arrests, more frequent juvenile court appearances, and higher incarceration rates. The hypothesis that the high minority youth incarceration rates is a function of their greater involvement in delinquent and criminal behavior is not conclusively supported by available data. Rather, the data on arrests and self-reported crime raise further questions about the policies and practices at each stage of the juvenile justice process that may contribute to the higher rates of minority youth incarceration.

Although the empirical evidence is not definitive, it suggests that the accumulation of a juvenile record (central to the issue of differential treatment) appears to be a process which is differentiated by race, possibly accounting, in part, for the disproportionate minority representation in the juvenile justice system. Studies suggest that bias may exist in the charging decisions at the time of arrest and in the detention decision, both of which have implications for subsequent decisions by the system. For example, a study completed by the URSA Institute in 1986, examined racial disparities at six points in juvenile justice processing, from apprehension through judicial commitment decisions. Race was found to be a direct, indirect, and interactive influence at various decision points. The results suggest that the juvenile justice system reflects social and economic disparities endemic in other societal institutions.

Numerous other studies have examined this issue. To date, these studies have yielded ambiguous results, with findings complicated by methodological shortcomings, divergent research strategies and design artifacts. Further, there are few recommendations on policies or programs that would address this issue.

Before conducting further studies that may help to clarify the ambiguities presently complicating efforts to form a consensus on the issues or the solutions, a thorough review of existing information is essential. Completion of the review will facilitate the development of policy and program recommendations.

## II. Program Goals and Objectives

This program will assess the definitiveness of existing information on the extent and reasons for the disproportionate involvement of minorities in the juvenile justice system. The goal of this study is to develop well justified policy and program recommendations aimed at reducing disproportionate minority involvement in the juvenile justice system, and research recommendations to improve understanding of the reasons and implications of disproportionate minority involvement in the juvenile justice system.

The major objectives of this assessment are to: (1) Evaluate the

findings from existing research and other relevant literature focused on the processing of minority juvenile offenders in the juvenile justice system from delinquent behavior, through the point of arrest, to disposition, to identify the soundest knowledge base possible, and critical gaps in existing information; (2) conduct necessary additional secondary analyses of relevant data sets; (3) identify existing programs/policies that jurisdictions may have designed to address this problem; and (4) develop recommendations for policies, programs and research that would address the differential penetration of minorities in the juvenile justice system.

**III. Program Strategy**

The program strategy consists of three components: literature review, secondary analysis, program assessment and recommendations. The product of the three components will form the basis of an agenda for the symposium.

*A. Literature Review*

This component will consist of a comprehensive review of relevant literature to identify issues related to the disproportionate involvement of minority juveniles in all phases of the juveniles justice system. A thorough assessment of studies focused on the processing of minorities in the systems, and on the involvement of minorities in delinquent behaviors should be conducted to determine the validity and reliability of the results.

Comparisons among findings from different studies will be difficult because of their diversity: some are primarily statistical; others are narrative or qualitative; some have large sample sizes and others are small; some have controlled research designs, others do not. The applicant should describe how they will evaluate the merits of various findings drawn from diverse studies.

*B. Secondary Analysis*

The literature review can be supplemented by secondary analyses of existing data. If secondary analyses are proposed, the applicant must provide justification for how particular data set(s) will address the research goals and objectives of this program; assure researchers access to the data base(s); determine the appropriateness of the sampling design, data collection instruments and protocols of the original data base for answering the specific research questions. Specific hypotheses should be stated and data analyses strategies and specific procedures should be detailed.

*C. Program Assessment*

The literature review should be supplemented by efforts to identify jurisdictions that have examined the issues of disproportionate representation in their juvenile justice system. The strategies used to examine the issues, the conclusions, proposed policy or program recommendations, and policy or program modifications which were implemented should be described. The applicant should explain how they would seek to identify jurisdictions and how activities aimed at addressing the issue of disproportionate minority involvement would be documented.

*D. Consensus/Recommendations*

Based on the successful completion of the review and the completion of a report which meets accepted standards of research and is acceptable to the OJJDP, the grantee will convene a symposium of criminologists, representatives of law enforcement, courts, corrections and policy makers to review the findings and comment on the feasibility of implementing the recommended policies and programs, and on the usefulness and feasibility of recommended research. The symposium should be structured and designed to address issues regarding possible strategies that police, courts, corrections, and policy makers could implement to minimize disproportionate representation and differential treatment of minorities in the juvenile justice system.

**IV. Dollar Amount and Duration**

Up to $100,000 has been allocated for award in Fiscal Year 1987. One grant will be awarded competitively. The project period for this program will be twelve (12) months.

**V. Eligibility Requirements**

Eligible applicants include public and private agencies or organizations. In order to maximize competition in the award of this research program, "for-profit" organizations are eligible to apply provided they certify compliance with the following two agency policy requirements:

1. The OJJDP grant award must not be used to support the normal profit-making operations of the organization, but must serve to support or stimulate the legislatively authorized research and evaluation objectives of NIJJDP; and

2. For at least one year following the termination of this award, the recipient will not compete for or accept any procurement or assistance award supported by OJJDP funds which may have resulted or been derived from the original award under this program.

Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. The applicant and any co-applicants must have the management and financial capability to effectively implement this research project. Applicants who fail to demonstrate that they have the capability to manage this project will be ineligible for funding consideration.

The applicant must have experience in the following areas to be eligible for consideration:

A. Prior experience in the area of research design and methodology and,

B. Demonstrated knowledge of the issues associated with disproportionate minority involvement in the juvenile justice system.

**VI. Major Responsibilities of the Successful Applicant**

The organization selected to conduct this research project will be responsible for all aspects of the project, including the development of all products on time, according to the approved workplan.

The successful applicant will have specific responsibility for developing a research methodology that is responsive to the goals and objectives of the study as outlined in this solicitation. A project advisory board will be appointed with the concurrence of OJJDP. It will meet at least twice during the course of the project to critically review the research design and methodology, interim findings and recommendations and provide overall guidance on the development of the symposium.

In addition to submitting all financial and progress reports required by this agency, the grantee will be responsible for completing the following tasks:

1. Development of a comprehensive research design;

2. Completion of the literature search within four months of the award;

3. Completion of final report by the sixth month of the project which includes a summary of relevant literature, identification of significant issues to be resolved and a set of well justified policy program, and/or research recommendations to be considered by OJJDP and other Federal, State and local agencies is developing future programs focused on this issue;

4. Conduct a three day symposium by the ninth month of the award;

5. Preparation of a summary of the symposium proceeding by the twelfth month of the project.

**VII. Application Requirements**

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. In submitting joint applications, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. This organizations that are primarily procuring services for products from other organizations would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following must be included in the application:

A. A clear statement of the problem to be addressed, including evidence of knowledge of related literature and identification of significant issues to be resolved.

B. A complete discussion that demonstrates the applicant(s) understanding the goals and objectives of the study and the nature of the phenomenon under investigation.

C. A complete discussion of the proposed research design and methodology. This section should clearly demonstrate the applicant's understanding of the study including presentation of your specific study's goals, objectives, and research questions to be addressed; specification of data sources and verification of data access; plans for data collection and the provision of a detailed analysis plan.

D. A discussion of the implementation plan that includes:

1. Identification of major milestones and designation of organizational responsibility;

2. Identification of prospective advisory board members and their roles and qualifications;

3. Presentation of plans for implementing the literature review, secondary analysis, program assessment and symposium. (See Section III A–D.);

4. Discussion of the products that will be developed and the potential contribution to the body of knowledge about the extent and the nature of the problem;

5. Description of the final report in terms of the audience targeted and the types of journals and other potential vehicles for dissemination for which it will be developed.

E. A description of the project management structure that includes a proposed staffing plan, position descriptions that delineate roles and responsibilities, description of relevant staff experience and expertise, and resumes of key project staff (include as an appendix to the application).

F. An organizational capability statement that describes relevant organizational experience and demonstrates that the applicant has the substantive and financial capability to effectively administer the project.

G. A detailed budget of the program activities for the entire twelve months.

**VIII. Selection Procedures and Criteria**

All applications received in response to this solicitation will be evaluated by an external peer review panel. The applications will be reviewed in terms of their responsiveness to the specifications in the solicitation. Specially, they will be rated according to the following criteria and weights:

*A. Problem Statement (10 Points)*

The problem to be addressed is clearly stated, including knowledge of related literature. (Refer to Section VII A.)

*B. Goals and Objectives (15 Points)*

An understanding of the goals and objectives of this program is clearly articulated, including how applicant's specific study goals and objectives will meet the goals of this study. (Refer to Section VII B.)

*C. Research Design (30 Points)*

The research design is sound and contains program elements directly linked to the achievement of project objectives, including a discussion of accessibility of data. (Refer to Section VII C.)

*D. Implementation Plan (30 Points)*

The implementation plan is adequate, clear and appropriate to support the development of useful products. (Refer to Section VII D.)

*E. Organizational Capability (10 Points)*

Organizational and staff capability is demonstrated at a level sufficient to successfully support the project. (Refer to Section VII E and F.)

*F. Budget (5 Points)*

Budget costs are reasonable, complete and appropriate in comparison to the activities proposed to be undertaken. (Refer to Section VII G.)

Applications receiving the highest total score on the above criteria will be recommended for funding to the Administrator, OJJDP. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator's consideration of competing applications and selection of applications for funding. The final award decisions will be made by the OJJDP Administrator.

**IX. Deadline for Submission of Applications**

Deadline for submission is June 30, 1987. One signed original and five copies of the application must be mailed or delivered to the Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Room 784, 633 Indiana Avenue NW., Washington, DC 20531, by 5:30 p.m. on that day. Those applications mailed to the above address must be postmarked on or *before* June 30, 1987. The necessary forms for applications may be obtained by writing to OJJDP. Questions regarding the solicitation may be directed to Deborah Wysinger, (202) 724–7580, or at the above address. Those intending to submit an application are requested to mail a letter of intent to the above address by June 15, 1987.

**X. Civil Rights Compliance**

A. All recipients of OJJDP assistance, including contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the

Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request, timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

**Verne L. Speirs,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 87-11652 Filed 5-20-87; 8:45 am]

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Part V

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 93**

**Portland International Airport, Oregon; Removal of Special Airport Traffic Area Provisions; Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24867; Amdt. No. 93-55]

Portland International Airport, Portland, OR; Removal of Special Airport Traffic Area Provisions

AGENCY: Federal Aviation Administration (FAA).

ACTION: Final rule.

SUMMARY: This action deletes the special Airport Traffic Area (ATA) at Portland International Airport, Portland, OR. An Airport Radar Service Area (ARSA) was established at Portland International Airport effective January 16, 1986, and makes it unnecessary to have special airport traffic rules at the airport.

EFFECTIVE DATE: 0901 u.t.c. June 15, 1987.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch, ATO-230, Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (FAR) (14 CFR Part 93) to delete the rules and procedures of Subpart H of FAR Part 93, Portland International ATA (51 FR 15013). The Portland International Airport, Portland, OR, special ATA was established under 14 CFR Part 93 (32 FR 12747, September 6, 1967) and amended in 1976 (41 FR 5386, February 6, 1976) and 1980 (45 FR 73653, November 6, 1980). Together FAR sections 93.101 to 93.105, organized as Subpart H of Part 93, established certain traffic patterns to be flown for arrivals and departures operating at Pearson Airpark, Portland, OR, and established certain communications requirements for those operations.

On December 9, 1985, (50 FR 50254) the FAA designated an ARSA at Portland International Airport, Portland, OR, which became effective January 16, 1986. The configuration of the Portland ARSA in the vicinity of Pearson Airpark coupled with the requirement for pilots to establish two-way radio communications with Portland Approach Control prior to entering designated ARSA airspace removes the need for the special ATA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA. The Air Line Pilots Association responded in support of the proposal. No other comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This rule deletes the rules and procedures of the special ATA at Portland International Airport, OR, as contained in FAR Part 93, Subpart H. The provisions of the ARSA Program utilized at Portland International Airport provide an adequate level of safety with respect to arrival and departure air traffic at Pearson Airpark. Subpart H of Part 93 is hereby reserved for future use. The removal of these special airport traffic rules should have no effect on operators to or from Pearson Airpark. Aircraft complying with the Part 93 special air traffic rules provisions were required to follow specific routes and altitudes to and from Pearson Airpark. Since this airspace around Pearson is partially excluded from the surface area of the ARSA, the basic procedures for operating to and from this airport under ARSA rules will be approximately the same as under the previous Part 93 rule.

The FAA has determined that this action: (1) Is not a major rule under Executive Order 12291; (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a full regulatory evaluation as the anticipated impact is so minimal. For the reasons set forth above, it is certified that this rule will not have significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 93

Airport traffic area; Traffic patterns.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 93 of the Federal Aviation Regulations (14 CFR Part 93) is hereby amended as follows:

PART 93—[AMENDED]

1. The authority citation for Part 93 continues to read:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revise Pub. L. 97-449, January 12, 1983).

Subpart H—[Removed and reserved]

§§ 93.101 through 93.105

2. Part 93, Subpart H (§§ 93.101 through 93.105) is removed and reserved.

Issued in Washington, DC, on May 7, 1987.

Donald D. Engen,

*Administrator.*

[FR Doc. 87-11623 Filed 5-20-87; 8:45 am]

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Part VI

# The President

**Proclamation 5659—Death of American Servicemen on Board United States Ship STARK**

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# Presidential Documents

Title 3—

## The President

Proclamation 5859 of May 19, 1987

## Death of American Servicemen on Board United States Ship STARK

By the President of the United States of America

A Proclamation

As a mark of respect for the American servicemen who died as the result of the attack on United States Ship STARK, which was struck by a missile on May 17, 1987, while on patrol in the Persian Gulf to keep vital sea-lanes open, I hereby order, by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal government in the District of Columbia and throughout the United States and its Territories and Possessions through Monday, Memorial Day, May 25, 1987. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

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# Presidential Documents

Title 3—

The President

Proclamation 5660 of May 19, 1987

## Amending the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to Title V of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2461 *et seq.*), in Proclamation 5365 of August 30, 1985 (50 FR 36220), I designated specified articles provided for in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries. I also designated certain such countries as least-developed beneficiary developing countries, pursuant to section 504(c)(6) of the Trade Act, as amended (19 U.S.C. 2464(c)(6)), in order to afford such preferential tariff treatment without regard to the limitations imposed in section 504(c), as amended.

2. Pursuant to section 504(c) of the Trade Act, as amended, those beneficiary countries not designated as least-developed beneficiary developing countries are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the Trade Act, as amended, a country that has not been treated as a beneficiary developing country with respect to an eligible article may be redesignated with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year. Further, pursuant to section 504(d)(1) of the Trade Act, as amended (19 U.S.C. 2464(d)(1)), the limitation provided in section 504(c)(1)(B) shall not apply with respect to an eligible article if a like or directly competitive article was not produced in the United States on January 3, 1985.

3. Pursuant to sections 503(a) and 504(a) of the Trade Act, as amended (19 U.S.C. 2463(a) and 2464(a)), in order to subdivide and amend the nomenclature of existing items for the purposes of the GSP, I have determined, after taking into account information and advice received under section 503(a), that the TSUS should be modified to adjust the original designation of eligible articles. I have also determined, pursuant to section 504(a) and (c)(1) of the Trade Act, that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles. Further, I have determined, pursuant to section 504(c)(5) of the Trade Act, that certain countries should be redesignated as beneficiary developing countries with respect to specified previously designated eligible articles. These countries have been excluded from the benefits of the GSP with respect to such eligible articles pursuant to section 504(c)(1) of the Trade Act. Last, I have determined that section 504(c)(1)(B) of the Trade Act should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985.

4. In order to reflect correctly the names of certain previously designated beneficiary developing countries, I have determined, pursuant to section 502(a) of the Trade Act, that general headnote 3(e)(v)(A) to the TSUS should be modified.

5. Section 604 of the Trade Act (19 U.S.C. 2483) confers authority upon the President to embody in the TSUS the substance of the relevant provisions of

that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Title V and section 604 of the Trade Act of 1974, do proclaim that:

(1) In order to provide preferential tariff treatment under the GSP to certain designated eligible articles, and to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to certain eligible articles for purposes of the GSP, the TSUS are modified as provided in Annex I to this Proclamation.

(2) In order to provide preferential tariff treatment under the GSP to certain countries that have been excluded from the benefits of the GSP for certain eligible articles imported from such countries, following my determination that a country not previously receiving such benefits should again be treated as a beneficiary developing country with respect to such article, the Rates of Duty Special for the TSUS items enumerated in Annex II to this Proclamation is modified: (a) by deleting from such column for such such item the symbol "A*" in parentheses, and (b) by inserting in such column the symbol "A" in lieu thereof.

(3) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, the Rates of Duty Special column for the TSUS items enumerated in Annex III to this Proclamation is modified: (a) by deleting from each such item the symbol "A" in parentheses, and (b) by inserting in such column the symbol "A*" in lieu thereof.

(4)(a) General headnote 3(e)(v)(A) to the TSUS, listing the designated beneficiary developing countries for the purposes of the GSP, is modified as provided in section (a) of Annex IV to this Proclamation.

(b) General headnote 3(e)(v)(D) to the TSUS, listing those articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite the enumerated TSUS items for those articles, is modified as provided in section (b) of Annex IV to this Proclamation.

(5)(a) The eligible articles imported from designated beneficiary developing countries and provided for in TSUS item 632.46 shall not be subject to the limitations of section 504(c)(1)(B) of the Trade Act, as amended.

(b) Presidential Proclamation 5453 of March 31, 1986, is modified by inserting in numerical sequence in Annex IV TSUS item "632.46".

(6) Effective with respect to articles the product of Israel that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex V to this Proclamation, the rate of duty set forth in the Rates of Duty Special column followed by the symbol "I" in parentheses for each of the TSUS items enumerated in such Annex shall be stricken and the rate of duty provided in such Annex inserted in lieu thereof.

(7) The amendments made by this Proclamation shall be effective with respect to articles both: (a) imported on or after January 1, 1976, and (b) entered, or withdrawn from warehouse for consumption, on or after July 1, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

Billing code 3195-01-M

ANNEX I

Notes:

1. Bracketed matter is included to assist in the understanding of ordered modifications.
2. The following supersedes matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form, and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", "Rates of Duty Special", and "Rates of Duty 2", respectively.

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this proclamation.

1. Item 136.80 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Vegetables, . . .:] | | | |
| | "Okra: | | | |
| 136.77 | If entered during the period from July 1 to October 31, inclusive, in any year..... | 25% ad val. | Free (A*,E) 8% ad val.(I) | 50% ad val. |
| 136.79 | Other..... | 25% ad val. | Free (A,E) 8% ad val.(I) | 50% ad val." |

2. Item 192.21 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Cut . . .:] | | | |
| "192.23 | Chrysanthemums, standard carnations, anthuriums, and orchids..... | 8% ad val. | Free (A*,E,I) | 40% ad val. |
| 192.24 | Other..... | 8% ad val. | Free (A,E,I) | 40% ad val." |

Conforming change: Items 192.22 and 192.25 are redesignated as 192.27 and 192.29, respectively.

3. Items 207.00 and 207.01 are superseded by:

| | | | | |
|---|---|---|---|---|
| | "Articles not specially provided for, of wood: | | | |
| 207.05 | Christmas ornaments..... | 5.1% ad val. | Free (A,E,I) | 33-1/3% ad val. |
| 207.09 | Other..... | 5.1% ad val. | Free (A*,E,I) | 33-1/3% ad val. |
| 207.10 | If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)..... | Free" | | |

4. Item 256.90 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Articles, . . .:] | | | |
| | [Other:] | | | |
| | "Other: | | | |
| 256.91 | Paint filters and strainers..... | 5.3% ad val. | Free (A*,E,I) | 35% ad val. |
| 256.95 | Other..... | 5.3% ad val. | Free (A,E,I) | 35% ad val." |

5. Item 386.13 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Articles . . .:] | | | |
| | [Lace . . .:] | | | |
| | [Other:] | | | |
| "386.12 | Wall banners, of man-made fibers... | 10% ad val. | Free (A,E,I) | 90% ad val. |
| 386.14 | Other..... | 10% ad val. | Free (A*,E,I) | 90% ad val." |

6. Item 425.99 is superseded by:

| | | | | | |
|---|---|---|---|---|---|
| | [Acids:] | | | | |
| "425.77 | Fumaric | 4.2% ad val. | Free | (A,E,I) | 25% ad val. |
| | [Other enumerated acids] | | | | |
| 425.97 | Other | 4.2% ad val. | Free | (E,I) | 25% ad val." |

7. Items 684.40, 684.41, and 684.42 are superseded by:

| | | | | | |
|---|---|---|---|---|---|
| | [Electric . . .:] | | | | |
| | [Other:] | | | | |
| | "Furnaces, heaters, and ovens, and parts thereof: | | | | |
| 684.35 | Portable space heaters | 3.7% ad val. | Free | (A*,E,I) | 35% ad val. |
| 684.36 | If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free | | | |
| 684.37 | Other | 3.7% ad val. | Free | (A,E,I) | 35% ad val. |
| 684.38 | If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free | | | |
| 684.39 | Furnaces, heaters, and ovens, if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6) | Free | | | 35% ad val." |

8. Item 685.32 is superseded by:

| | | | | | |
|---|---|---|---|---|---|
| | [Radiotelegraphic . . .:] | | | | |
| | [Radiotelegraphic . . .:] | | | | |
| | [Other:] | | | | |
| | [Other:] | | | | |
| | "Other, including parts: | | | | |
| 685.31 | Antennas | 6% ad val. | Free | (A*,E,I) | 35% ad val. |
| 685.33 | Other | 6% ad val. | Free | (A*,E,I) | 35% ad val." |

9. Items 685.70, 685.71, and 685.72 are superseded by:

| | | | | | |
|---|---|---|---|---|---|
| | "Bells, sirens, indicator panels, burglar and fire alarms, and other sound or visual signalling apparatus, all the foregoing which are electrical, and parts thereof: | | | | |
| 685.65 | Sound signalling apparatus | 2.7% ad val. | Free | (A*,E,I) | 35% ad val. |
| 685.66 | If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6) | Free | | | |
| 685.67 | If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6) | Free | | | 35% ad val. |

| | | | | |
|---|---|---|---|---|
| | "Bells, sirens, indicator panels, etc. (con.): | | | |
| 685.73 | Other..... | 2.7% ad val. | Free (A*,E,I) | 35% ad val. |
| 685.74 | If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)..... | Free | | |
| 685.75 | Bells, sirens, indicator panels, burglar and fire alarms, and other visual signalling apparatus, if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)... | Free | | 35% ad val." |

10. Item 727.40 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Furniture, . . .:] | | | |
| | [Of wood:] | | | |
| | [Other:] | | | |
| | "Parts of furniture: | | | |
| 727.39 | Parts of chairs..... | 5.3% ad val. | Free (A*,E,I) | 40% ad val. |
| 727.41 | Other..... | 5.3% ad val. | Free (A*,E,I) | 40% ad val." |

11. Item 737.15 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Model . . .:] | | | |
| | [Other . . .:] | | | |
| "737.14 | Articles described in item 737.07, made to a scale of the actual article at a ratio larger than 1 to 85..... | 7.8% ad val. | Free (A*,E)<br>3.1% ad val.<br>(I) | 70% ad val. |
| 737.16 | Other..... | 7.8% ad val. | Free (A*,E)<br>3.1% ad val.<br>(I) | 70% ad val." |

12. Item 737.95 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Toys, . . .:] | | | |
| | [Other:] | | | |
| "737.93 | Toys having an electric motor..... | 7% ad val. | Free (A*,E,I) | 70% ad val. |
| 737.96 | Toys wholly or almost wholly of rubber or plastics, not inflatable..... | 7% ad val. | Free (A*,E,I) | 70% ad val. |
| 737.98 | Other..... | 7% ad val. | Free (A*,E,I) | 70% ad val." |

13. Item 740.38 is superseded by:

| | | | | |
|---|---|---|---|---|
| | [Jewelry . . .:] | | | |
| | [Valued . . .:] | | | |
| "740.39 | Parts of watch bracelets, valued not over $12 per dozen..... | 11% ad val. | Free (A*,E,I) | 110% ad val. |
| 740.41 | Other..... | 11% ad val. | Free (A*,E,I) | 110% ad val." |

14. Item 751.20 is superseded by:

| | | | | | |
|---|---|---|---|---|---|
| | [Parts . . .:] | | | | |
| | [Other:] | | | | |
| | "Of metal: | | | | |
| | Umbrella frames and skeletons: | | | | |
| 751.21 | For hand-held umbrellas chiefly used for protection against rain..... | 12% ad val. | Free (A,E)<br>4.8% ad val. (I) | | 60% ad val. |
| 751.22 | Other..... | 12% ad val. | Free (A*,E)<br>4.8% ad val. (I) | | 60% ad val. |
| 751.24 | Other..... | 12% ad val. | Free (A,E)<br>4.8% ad val. (I) | | 60% ad val." |

15. Item 772.15 is superseded by:

| | | | | | |
|---|---|---|---|---|---|
| | [Articles . . .:] | | | | |
| "772.13 | Picture frames..... | 3.4% ad val. | Free | (A,E,I) | 80% ad val. |
| 772.16 | Other..... | 3.4% ad val. | Free | (A*,E,I) | 80% ad val." |

16. Item 774.55 is superseded by:

| | | | | | |
|---|---|---|---|---|---|
| | [Articles . . .:] | | | | |
| | "Other: | | | | |
| 774.51 | Copper clad laminates..... | 5.3% ad val. | Free | (A*,E,I) | 80% ad val. |
| 774.53 | Flexible plastic document binders with tabs, rolled or flat..... | 5.3% ad val. | Free | (A*,E,I) | 80% ad val. |
| 774.56 | Empty cartridges and cassettes for typewriter and machine ribbons..... | 5.3% ad val. | Free | (A*,E,I) | 80% ad val. |
| 774.58 | Other..... | 5.3% ad val. | Free | (A*,E,I) | 80% ad val." |

ANNEX II

ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE GSP WHEN IMPORTED FROM ANY BENEFICIARY DEVELOPING COUNTRY

| | | | |
|---|---|---|---|
| 136.00 | 315.35 | 652.70 | 737.47 |
| 136.79 | 386.12 | 684.15 | 737.49 |
| 170.40 | 419.10 | 684.37 | 737.51 |
| 170.45 | 420.82 | 715.62 | 748.20 |
| 192.17 | 425.77 | 715.64 | 748.21 |
| 192.24 | 465.05 | 737.07 | 751.21 |
| 206.60 | 533.64 | 737.21 | 751.24 |
| 207.05 | 534.94 | 737.28 | 772.13 |
| 256.95 | 632.46 | 737.40 | |

ANNEX III

ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE GSP WHEN IMPORTED FROM BENEFICIARY DEVELOPING COUNTRIES OTHER THAN THOSE SPECIFIED IN GENERAL HEADNOTE 3(a)(v)(D) OF THE TSUS

| | | | |
|---|---|---|---|
| 136.61 | 547.37 | 674.42 | 734.77 |
| 136.77 | 609.14 | 680.19 | 734.88 |
| 137.04 | 610.84 | 680.25 | 734.91 |
| 146.12 | 610.86 | 683.32 | 735.10 |
| 148.30 | 618.47 | 683.60 | 737.14 |
| 149.50 | 626.40 | 684.35 | 737.16 |
| 152.54 | 632.42 | 685.06 | 737.65 |
| 168.98 | 642.45 | 685.22 | 737.93 |
| 192.23 | 646.30 | 685.31 | 737.96 |
| 202.66 | 646.65 | 685.33 | 737.98 |
| 206.30 | 646.95 | 685.39 | 740.39 |
| 207.09 | 646.97 | 685.65 | 740.41 |
| 240.14 | 647.03 | 685.73 | 741.50 |
| 256.91 | 647.05 | 686.18 | 745.45 |
| 315.25 | 648.80 | 686.90 | 750.47 |
| 386.14 | 648.85 | 688.32 | 750.65 |
| 406.96 | 648.95 | 690.15 | 750.70 |
| 408.72 | 650.21 | 696.50 | 751.22 |
| 410.72 | 651.31 | 703.72 | 756.15 |
| 412.80 | 651.48 | 705.82 | 770.40 |
| 420.60 | 651.55 | 706.45 | 772.06 |
| 421.06 | 652.60 | 711.31 | 772.16 |
| 425.82 | 653.35 | 723.30 | 772.20 |
| 427.84 | 653.37 | 725.46 | 772.80 |
| 428.58 | 653.96 | 727.11 | 772.95 |
| 439.50 | 654.00 | 727.25 | 772.97 |
| 445.46 | 654.25 | 727.39 | 773.10 |
| 470.85 | 654.35 | 727.41 | 774.50 |
| 490.94 | 654.45 | 727.59 | 774.51 |
| 533.30 | 654.75 | 727.65 | 774.53 |
| 534.11 | 657.40 | 727.86 | 774.56 |
| 534.81 | 660.67 | 730.29 | 774.58 |
| 535.12 | 660.71 | 731.70 | 790.35 |
| 540.21 | 661.20 | 732.52 | 790.60 |
| 542.77 | 661.35 | 732.62 | 791.27 |
| 544.51 | 664.08 | 734.20 | 791.60 |
| 545.67 | 674.34 | 734.42 | |

ANNEX IV

MODIFICATIONS TO GENERAL HEADNOTE 3(e)(v) OF THE TSUS
GSP WHEN IMPORTED FROM ANY BENEFICIARY DEVELOPING COUNTRY

(a) General headnote 3(e)(v)(A) is modified--

(1) by deleting "Gambia" from the enumeration of independent countries and territories and by inserting "The Gambia" in lieu thereof, and by deleting "Gambia" from the enumeration of least-developing beneficiary developing countries and by inserting "The Gambia" in lieu thereof;

(2) by deleting "Ivory Coast" from the list of independent countries and territories and by inserting "Cote d'Ivoire" in alphabetical order in that enumeration;

(3) by inserting after "Trust Territory of the Pacific Islands" in the enumeration of non-independent countries and territories the parenthetical "(Palau)".

(b) General headnote 3(e)(v)(D) to the TSUS is modified--

(1) by deleting the following TSUS item numbers and the countries set opposite these numbers:

| | |
|---|---|
| 136.00 | Dominican Republic |
| 136.80 | Mexico |
| 192.17 | Colombia |
| 192.21 | Colombia |
| 206.60 | Mexico |
| 207.00 | Taiwan |
| 386.13 | Taiwan |
| 419.10 | Chile |
| 420.82 | Israel |
| 465.05 | Philippines |
| 534.94 | Taiwan |
| 652.70 | Rep. of Korea |
| 684.15 | Singapore |
| 685.32 | Hong Kong<br>Rep. of Korea<br>Singapore<br>Taiwan |
| 685.70 | Singapore |
| 727.40 | Taiwan |
| 737.07 | Hong Kong |
| 737.15 | Hong Kong |
| 737.21 | Hong Kong |
| 737.28 | Rep. of Korea<br>Taiwan |
| 737.40 | Hong Kong<br>Rep. of Korea |
| 737.47 | Rep. of Korea |
| 737.49 | Hong Kong<br>Taiwan |
| 737.51 | Rep. of Korea |
| 737.95 | Hong Kong<br>Taiwan |
| 740.38 | Hong Kong<br>Taiwan |
| 748.20 | Taiwan |
| 748.21 | Taiwan |
| 772.15 | Taiwan |
| 774.55 | Taiwan |

(2) by adding in numerical sequence, the following TSUS item numbers and countries set opposite them:

| | |
|---|---|
| 136.61 | Mexico |
| 136.77 | Mexico |
| 137.04 | Mexico |
| 146.12 | Argentina |
| 148.30 | Mexico |
| 149.50 | Mexico |
| 152.54 | Brazil |
| 168.98 | Mexico |
| 192.23 | Colombia |
| 202.66 | Taiwan |
| 206.30 | Taiwan |
| 207.09 | Taiwan |
| 240.14 | Taiwan |
| 256.91 | Brazil |
| 315.25 | Mexico |
| 386.14 | Taiwan |
| 406.96 | Brazil |
| 408.72 | Taiwan |
| 410.72 | Turkey |
| 412.80 | Mexico |
| 420.60 | Mexico |
| 421.06 | Taiwan |
| 425.82 | Brazil |
| 427.84 | Brazil |
| 428.58 | Brazil |
| 439.50 | Singapore |
| 445.46 | Mexico |
| 470.85 | Mexico |
| 490.94 | Brazil |
| 533.30 | Brazil<br>Rep. of Korea<br>Taiwan |
| 534.11 | Taiwan |
| 534.81 | Taiwan |
| 535.12 | Mexico |
| 540.21 | Mexico |
| 542.77 | Mexico |
| 544.51 | Taiwan |
| 545.67 | Taiwan |
| 547.37 | Taiwan |
| 609.14 | Brazil |
| 610.84 | Brazil<br>Rep. of Korea<br>Taiwan |
| 610.86 | Rep. of Korea<br>Taiwan |
| 618.47 | Brazil |
| 626.40 | Mexico |
| 632.42 | Brazil |
| 642.45 | Mexico |
| 646.30 | Rep. of Korea |
| 646.65 | Taiwan |
| 646.95 | Taiwan |
| 646.97 | Taiwan |
| 647.03 | Taiwan |
| 647.05 | Taiwan |
| 648.80 | Hong Kong |
| 648.85 | Taiwan |
| 648.95 | Taiwan |
| 650.21 | Taiwan |
| 651.31 | Taiwan |
| 651.48 | Taiwan |
| 651.55 | Taiwan |
| 652.60 | Taiwan |
| 653.35 | Taiwan |
| 653.37 | Taiwan |
| 653.96 | Taiwan |
| 654.00 | Taiwan |
| 654.25 | Taiwan |
| 654.35 | Taiwan |
| 654.45 | Taiwan |
| 654.75 | Taiwan |
| 657.40 | Taiwan |
| 660.67 | Brazil<br>Mexico |
| 660.71 | Brazil |
| 661.20 | Mexico |
| 661.35 | Rep. of Korea |
| 664.08 | Brazil |
| 674.34 | Taiwan |
| 674.42 | Taiwan |
| 680.19 | Taiwan |
| 680.25 | Taiwan |
| 683.32 | Hong Kong |
| 683.60 | Mexico |
| 684.35 | Hong Kong |
| 685.06 | Taiwan |
| 685.22 | Hong Kong<br>Rep. of Korea |
| 685.31 | Rep. of Korea<br>Taiwan |
| 685.33 | Mexico<br>Rep. of Korea<br>Singapore<br>Taiwan |
| 685.39 | Hong Kong<br>Rep. of Korea |
| 685.65 | Singapore |
| 685.73 | Hong Kong |
| 686.18 | Taiwan |
| 686.90 | Rep. of Korea |
| 688.32 | Rep. of Korea |
| 690.15 | Mexico |
| 696.50 | Rep. of Korea |
| 703.72 | Taiwan |
| 705.82 | Taiwan |
| 706.45 | Hong Kong |

(2) by adding in numerical sequence, the following TSUS item numbers and countries set opposite them (con.)

| | |
|---|---|
| 711.31 | Brazil |
| 723.30 | Brazil |
| 725.46 | Rep. of Korea |
| | Taiwan |
| 727.11 | Taiwan |
| 727.25 | Taiwan |
| 727.39 | Taiwan |
| | Yugoslavia |
| 727.41 | Taiwan |
| 727.59 | Taiwan |
| 727.65 | Taiwan |
| 727.86 | Taiwan |
| 730.29 | Brazil |
| 731.70 | Taiwan |
| 732.52 | Taiwan |
| 732.62 | Taiwan |
| 734.20 | Taiwan |
| 734.42 | Brazil |
| 734.77 | Rep. of Korea |
| 734.88 | Taiwan |
| 734.91 | Taiwan |
| 735.10 | Taiwan |
| 737.14 | Hong Kong |
| 737.16 | Hong Kong |
| 737.65 | Taiwan |
| 737.93 | Taiwan |
| 737.96 | Hong Kong |
| | Mexico |
| 737.98 | Hong Kong |
| | Mexico |
| | Taiwan |
| 740.39 | Taiwan |
| 740.41 | Hong Kong |
| | Rep. of Korea |
| | Taiwan |
| 741.50 | Hong Kong |
| 745.45 | Taiwan |
| 750.47 | Taiwan |
| 750.65 | Taiwan |
| 750.70 | Taiwan |
| 751.22 | Taiwan |
| 756.15 | Hong Kong |
| 770.40 | Mexico |
| 772.06 | Taiwan |
| 772.16 | Hong Kong |
| | Taiwan |
| 772.20 | Taiwan |
| 772.80 | Taiwan |
| 772.95 | Taiwan |
| 772.97 | Taiwan |
| 773.10 | Taiwan |
| 774.50 | Taiwan |
| 774.51 | Taiwan |
| 774.53 | Taiwan |
| 774.56 | Taiwan |
| 774.58 | Taiwan |
| 790.55 | Taiwan |
| 790.60 | Taiwan |
| 791.27 | Brazil |
| 791.60 | Taiwan |

(3) by deleting the following countries opposite the following TSUS items:

| | |
|---|---|
| 155.20 | Philippines |
| 676.56 | Singapore |
| 684.58 | Hong Kong |
| 685.14 | Singapore |
| 685.25 | Hong Kong |
| 688.30 | Costa Rica |
| 737.23 | Taiwan |
| 737.30 | Taiwan |
| 737.60 | Hong Kong |

(4) by adding, in alphabetical order, the following countries opposite the following TSUS items:

| | |
|---|---|
| 532.22 | Taiwan |
| 535.31 | Brazil |
| 545.53 | Taiwan |
| 610.82 | Taiwan |
| 612.03 | Mexico |
| 650.89 | Taiwan |
| 653.00 | Singapore |
| | Taiwan |
| 654.08 | Mexico |
| 654.60 | Taiwan |
| 661.06 | Mexico |
| 664.10 | Mexico |
| 676.15 | Rep. of Korea |
| 676.30 | Hong Kong |
| 678.50 | Brazil |
| 684.48 | Taiwan |
| 685.40 | Hong Kong |
| 688.18 | Taiwan |
| 688.30 | Rep. of Korea |
| 688.42 | Mexico |
| | Rep. of Korea |
| 692.32 | Rep. of Korea |
| 724.45 | Mexico |
| 727.29 | Yugoslavia |
| 735.20 | Rep. of Korea |
| 737.60 | Taiwan |
| 740.14 | Thailand |
| 750.45 | Taiwan |
| 772.51 | Taiwan |

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ANNEX V

Effective with respect to articles the product of Israel which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following items created by Annex I of this Proclamation the rate of duty in the Rates of Duty Special column that is followed by the symbol "I" in parentheses is deleted and the following rate of duty is inserted on the date specified in lieu thereof followed by the symbol "I" in parentheses.

| TSUS ITEM | January 1, 1988 | January 1, 1989 |
|---|---|---|
| 136.77 | 8% | Free |
| 136.79 | 8% | Free |
| 737.14 | 3.1% | Free |
| 737.16 | 3.1% | Free |
| 751.21 | 4.8% | Free |
| 751.22 | 4.8% | Free |
| 751.24 | 4.8% | Free |

[FR Doc. 87-11868
Filed 5-20-87; 3:10 pm]
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## Presidential Documents

**Memorandum of May 19, 1987**

### Actions Concerning the Generalized System of Preferences

**Memorandum for the United States Trade Representative**

Pursuant to section 504(f) of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2464(f)), I am hereby acting to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to certain beneficiary developing countries. Such countries are Bahrain, Bermuda, Brunei Darussalam, and Nauru.

Specifically, I have determined, under the provisions of section 504(f), that the per capita gross national product for each such country for calendar year 1985, calculated on the basis of the best available information, exceeds the applicable limit provided in section 504(f)(2). Accordingly, pursuant to section 504(f)(1)(A), beginning on July 1, 1986, and continuing through June 30, 1988, the limitations on preferential treatment provided under section 504(c)(1)(B) of the Act (19 U.S.C. 2464(c)(1)(B)) shall be applied substituting "25 percent" for "50 percent." Furthermore, pursuant to section 504(f)(1)(B), effective July 1, 1988, such countries shall no longer be treated as beneficiary developing countries, and articles the product of any such country shall no longer receive preferential treatment under the GSP.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
*Washington, May 19, 1987.*

[FR Doc. 87-11887
Filed 5-20-87; 3:11 pm]
Billing code 3195-01-M

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# Rules and Regulations

Federal Register
Vol. 52, No. 99
Friday, May 22, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

## Categorical Eligibility for Free Meals and Milk in Schools for Children Receiving Assistance Under the Food Stamp and AFDC Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations governing the determination of eligibility for free and reduced price meals and free milk in schools to provide categorical free meal and milk eligibility and simplified eligibility and verification procedures for children in Aid to Families with Dependent Children (AFDC) assistance units. This rule implements the provisions of the School Lunch and Child Nutrition Amendments of 1986, as reflected in Pub. L. 99–500 and Pub. L. 99–591, which mandate categorical eligibility for free meals under the Child Nutrition Programs and simplified verification of such eligibility for children in food stamp households and AFDC assistance units. Since the regulations already allow simplified application and verification for food stamp households, this rule deals essentially with AFDC. However, some changes have been made in the regulatory provisions dealing with food stamp households to further simplify application procedures and to make it clear that such eligibility and verification determinations, as in AFDC, will be on a "child" rather than household basis. This rule will make it easier for households to apply for free meal and milk benefits for children who are members of food stamp households or AFDC assistance units and will facilitate eligibility and verification determinations at the school or School Food Authority level.

DATES: This rule is effective May 22, 1987, however, State agencies and School Food Authorities shall implement the provisions of this rule no later than the school year beginning on July 1, 1987. Comments must be received on or before July 21, 1987, to be assured of consideration.

ADDRESS: Comments should be submitted to Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. Copies of all written comments on the interim rule will be available for review during the normal business hours at 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura, at the above address, or telephone (703) 756–3620.

SUPPLEMENTARY INFORMATION:

### Classification

This interim rule implements a nondiscretionary provision of Pub. L. 99–500 and Pub. L. 99–591. For this reason, the Acting Administrator of the Food and Nutrition Service has determined pursuant to 5 U.S.C. 553 (b) and (d) that prior notice of proposed rulemaking and public comment are unnecessary and contrary to the public interest and that good cause exists for making this rule effective on publication. In addition, since this rule merely implements cited statutory provisions, it constitutes an interpretative rule for which notice and comment rulemaking and a 30-day period before taking effect are not required by 5 U.S.C. 553. However, since a substantial number of households will be affected by the revised application and verification procedures in the rule, the Department is requesting comments on these procedures in order that any potential discrepancies may be resolved in the final rule.

This interim rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

This rule affects the School Breakfast Program, National School Lunch Program and Special Milk Program which are listed in the Catalog of Federal Domestic Assistance under 10.553, 10.555 and 10.556. These programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

This rule imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

### Background

The School Lunch and Child Nutrition Amendments of 1986 as reflected in Pub. L. 99–500 and Pub. L. 99–591 provide categorical eligibility for free meals under the Federal Child Nutrition Programs for children from households receiving food stamps or from "assistance units" receiving AFDC benefits, provided that the AFDC benefits are not made available to assistance units with income greater than 130 percent of the Federal poverty guidelines. Currently, no State AFDC needs standards exceed this level. Consequently, receipt of AFDC will automatically qualify children to receive free meal benefits in all States and territories where the National School Lunch Program and School Breakfast Program are administered. The categorical eligibility provisions are intended to simplify free meal application procedures for children from households whose need for food assistance has already been established

by their participation in other Federal assistance programs.

The categorical eligibility provisions will necessitate several changes to the way in which childrens' eligibility for free meal benefits is determined in the school lunch and breakfast progams. Until now, eligibility determinations for free or reduced price benefits have been made only on a household basis. That is, based on information submitted for the entire household, an eligibility determination was made that applied to all schoolchildren in the household. Generally, households were required to provide information which included names of all household members, social security members of all adult household members, and income received by each household member identified by source.

Eligibility for free or reduced price meals or free milk was determined based on the household's total income as compared to the Department's Income Eligibility Guidelines. Since School Year 1984–85, Federal regulations have given households the option of providing a food stamp case number in lieu of income information on free and reduced price applications in order to establish eligibility for free meals. However, all other information on the application, including the names of all household numbers and the social security members of all adult members, has been required of these households. The Department recognized that the child nutrition definition of "household" was not entirely consistent with the more complex definition of "household" utilized in the Food Stamp Program but, to maintain a simple application and eligibility determination process in schools, decided to treat both types of households the same in determining free meal or milk eligibility.

The Department believes that the law's intent was to simplify application procedures as well as provide automatic free meal eligibility for children receiving food stamp and AFDC benefits. Therefore, the Department is amending the regulations to authorize School Food Authorities to accept abbreviated applications from households for children who are members of food stamp households or AFDC assistance units. In order to establish the eligibility of these children in the simplest manner possible, School Food Authorities will accept a current food stamp or AFDC case number to establish a child's eligibility without requiring any additional information concerning other household members or income. In such cases, eligibility for free meals or milk will be determined on a "child" rather than "household" basis. However, if an application for free or reduced price benefits is made for any child who is *not* a member of a food stamp household or AFDC assistance unit, even if that child resides in a larger household with other children who are food stamp or AFDC recipients, such application must include all household income including the amount of any AFDC or other welfare grant and other information for *all* household members. In other words, a parent can complete an abbreviated application for a child for whom AFDC is received. However, if another child in the household does not come under an AFDC grant, and free or reduced price lunches are desired for that child, a full application must be completed for that child and all household income must be listed. Whenever special application procedures apply only to children who are members of food stamp households or AFDC assistance units, they are clearly spelled out in the regulatory language. In connection with this, this rule defines "food stamp household" and "AFDC assistance unit" for purposes of the application of the rule.

The Department believes that the new application procedures for households on behalf of children who are members of food stamp households or AFDC assistance units will substantially simplify the eligibility process for those children who are designated as categorically eligible under Pub. L. 99–500 and Pub. L. 99–591. At the same time, the continuation of current application procedures for households on behalf of all other children will ensure that categorical eligibility is not inadvertently extended to persons other than those specified by law. In order to assist School Food Authorities in implementing the new application procedures under this rule, the Department will revise and reissue the Eligibility Guidance for School Meal Programs.

In addition to mandating categorical free meal eligibility for children in food stamp households and AFDC assistance units, section 323 of Pub. L. 99–500 and Pub. L. 99–591 also mandates that "proof of receipt" of food stamp or AFDC benefits be accepted as adequate verification of eligibility to receive free school meal benefits. Thus, regardless of whether or not application for free meal or milk benefits was made under the categorical eligibility procedures, eligibility for free meals or milk for any child can be verified by documenting that the child is a member of a household or assistance unit that is currently certified to participate in the Food Stamp or AFDC Program. To emphasize the requirement that current certification for participation in these programs be verified, the regulatory language specifies that program identification cards are not acceptable sources for verification unless they contain an expiration date. This provision restates current policy concerning this issue.

Finally, this rule applies to free milk benefits under the Special Milk Program as well as free or reduced price meal benefits under the National School Lunch and School Breakfast programs. Although the categorical eligibility and simplified verification provisions of the School Lunch and Child Nutrition Amendments of 1986 only address meals, the Department believes they should be extended to milk in order to provide consistency in administration between all of the school nutrition programs and to ensure equity of treatment for all program recipients.

**List of Subjects in 7 CFR Part 245**

Food assistance programs, Grant programs—Social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Reporting and recordkeeping requirements.

Accordingly, Part 245 is amended as follows:

## PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 60 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 9–12, 60 Stat. 230, as amended (43 U.S.C. 1751–60), unless otherwise noted.

2. In § 245.2: a. Paragraphs (a–1), (a–2) and (a–3) are redesignated (a–2), (a–3) and (a–4), respectively and a new paragraph (a–1) is added.

b. Newly redesignated paragraph (a–4) is amended by removing, in paragraph (a–4)(3), the words "or in lieu of income information, the Food Stamp Program case number for those households currently receiving food stamps;" and by adding a new sentence to the end of paragraph (a–4).

c. A new paragraph (b–1) is added.

d. Paragraph (k) is revised.

The additions and revisions specified above read as follows:

**§ 245.2 Definitions.**

* * * * *

(a) * *

(a–1) "AFDC Assistance Unit" means any individual or group of individuals

which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income eligibility guidelines for free meals or free milk under this Part.

* * * * *

(a–4) * * * Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced price application: the name and appropriate food stamp or AFDC case number for the child and the name and signature of an adult member of the household.

* * * * *

(b) * * *

(b–1) "Food Stamp Household" means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

* * * * *

(k) "Verification" means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. Verification shall include confirmation of income eligibility and, at State or local discretion, may also include confirmation of any other information required in the application which is defined as documentation in § 245.2(a–4). Such verification may be accomplished by examining information provided by the household such as wage stubs, or by other means as specified in § 245.6a(b). However, if a food stamp or AFDC case number is provided for a child, verification for such child shall only include confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit.

3. In § 245.5, paragraphs (a)(1)(iii), (a)(1)(iv) and (a)(1)(vi) are revised to read as follows:

**§ 245.5 Public announcement of the eligibility criteria.**

(a) * * *

(1) * * *

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete "documentation" as defined in § 245.2(a–4).

(iv) An explanation that households with children who are members of currently certified food stamp households or AFDC assistance units may submit applications for such children with the abbreviated information described in § 245.2(a–4).

* * * * *

(vi) An explanation that households receiving free or reduced price benefits must notify school officials during the school year of any decreases in household size and any increases in income of over $50 per month or $600 per year (or a lesser amount if established by the State) or, in the case of households that provided a food stamp or AFDC case number to establish eligibility for free meals or milk for a child, of any termination of certification for receipt of benefits for such children under the Food Stamp or AFDC Programs

* * * * * *

4. In § 245.6—a. The fifth sentence of introductory paragraph (a) is removed and a new sentence is added before the last sentence.

b. The first and fifth sentences of paragraph (a)(1) are revised.

The addition and revision specified above read as follows:

**§ 245.6 Application for free and reduced price meals and free milk.**

(a) * * * However, if application is being made for a child who is a member of a food stamp household or an AFDC assistance unit, the application shall enable the household to provide the appropriate food stamp or AFDC case number in lieu of income information and names and social security numbers of all household members. * * *

(1) Section 9 of the National School Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced price meals. * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. * * *

* * * * *

5. In § 245.6a, the second sentence of paragraph (a)(1); paragraphs (a)(2) and (a)(3); and the second sentence of paragraphs (b)(3) are revised to read as follows:

**§ 245.6a Verification requirements.**

(a) * * *

(1) *Confirmation of income information.* * * * An application must be approved if it contains the essential information specified in § 245.2(a–4) and, if applicable, the household meets the income eligibility criteria for free or reduced price benefits. * * *

(2) *Notification of selection.* Households selected to provide verification shall be provided written notice that their applications have been selected for verification and that they required, by such date as determined by the School Food Authority, to submit the requested verification information to confirm eligibility for free or reduced price meals. These households shall be informed of the type or types of information and/or documents acceptable to the school and the name and phone number of a school official who can assist in the verification effort. Selected households shall also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp of AFDC Program certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp household or AFDC assistance unit. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in the termination of benefits.

(3) *Food stamp of AFDC recipients.* On applications where households have furnished food stamp or AFDC case numbers, verification shall be accomplished either by confirming with the local food stamp or welfare office that each child, for whom application was made and a number provided, is a member of a currently certified food stamp household or AFDC assistance unit; or by obtaining from the household a copy of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by the food stamp or welfare office which confirms that the child is a member of a currently certified food stamp household or AFDC assistance unit. An identification card for either program is *not* acceptable as verification unless it contains an expiration date. If it is not established that the child is a member of a currently certified food stamp household or AFDC assistance unit, the procedures for adverse action specified at § 245.6a(e) shall be followed. The notification of forthcoming termination of benefits provided to such households shall include a request for household income information and for written evidence which confirms household income to assist those households in establishing continued eligibility for free meal benefits.

* * * * *

(b) *Sources of information.* * * *
(3) *Agency records.* * * * Information concerning income, household size or food stamp/AFDC eligibility maintained by other government agencies to which the State agency, School Food Authority, or school can legally gain access may be used to confirm a household's income, size or receipt of benefits.* * *
* * * * *

§ 245.11 [Amended]

6. In § 245.11, the first sentence of paragraph (a)(2) is amended by adding a period after the word "standards" and removing the words "which shall be applicable to all families, including welfare and other families receiving public assistance."

Dated: May 18, 1987.

S. Anne Koselnitus,
*Acting Administrator.*

[FR Doc. 87-11665 Filed 5-21-87; 8:45 am]
BILLING CODE 3410-30-M

## Agricultural Marketing Service

### 7 CFR Part 910

[Lemon Regulation 562]

### Lemons Grown in California and Arizona; Limitation of Handling

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Regulation 562 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 345,000 cartons during the period May 24–30, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

**DATES:** Regulation 562 (§ 910.862) is effective for the period May 24–30, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on May 19, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 1 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is very active.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

### List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, and Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.862 is added to read as follows:

§ 910.862 Lemon Regulation 562.

The quantity of lemons grown in California and Arizona which may be handled during the period May 24, 1987, through May 30, 1987, is established at 345,000 cartons.

Dated: May 20, 1987.

Ronald L. Cioffi,
*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87-11691 Filed 5-21-87; 8:45 am]
BILLING CODE 3410-02-M

### 7 CFR Part 908

[Valencia Orange Regulation 381]

### Valencia Oranges Grown in Arizona and Designated Part of California; Minimum Size Limitation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a minimum size requirement of 2.32 inches in diameter for fresh domestic shipments of California-Arizona Valencia oranges during the 1986–87 season. This action recognizes the anticipated size composition of the 1986–87 California-Arizona Valencia orange crop and current and prospective market conditions.

**EFFECTIVE DATE:** May 22, 1987 through December 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202/447–5697.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been designated a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act", and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Valencia oranges regulated under Marketing Order No. 908 are grown in Arizona and designated parts of California. For marketing order purposes, the production area is divided into three districts: District 1, representing Central California; District 2, representing Southern California; and District 3, representing Arizona and the southeastern desert area of California. In recent seasons, District 1 has accounted for around 40 percent of total production, District 2 over 50 percent, and District 3 around 7 percent.

The three basic outlets for California-Arizona Valencia oranges are domestic fresh, export, and processing markets. The domestic fresh market is fairly static and is the preferred market for Valencia oranges, receiving around 23,000 cars per year unless unusual conditions such as poor quality and/or abnormal crop sizes exist. Quantities utilized in the export market have ranged from 9,208 cars to over 13,000 cars in the past five years. Exports vary depending on factors such as the foreign monetary exchange rate, orange quality, orange sizes, and trade practices. The processing market is basically a residual outlet. Valencia oranges not sold fresh are either disposed of or utilized for products, such as orange juice. Estimated crop utilization for the 1986–87 season is currently 18,000 cars (34 percent) for domestic fresh markets 11,000 cars (21 percent) export, with the remaining 24,000 (45 percent) going to processed and other outlets. Such estimates are based on the Valencia Orange Administrative Committee's (VOAC) current crop estimate, the anticipated supply of Valencia oranges available for market during the 1986–87 season, and the demand in such outlets for Valencia oranges. These figures reflect a change from that which was contained in the proposal, because of a downward revision in the tree crop estimate for the 1986–87 season from 59,000 cars to 53,000 cars.

It is estimated that 115 handlers of California-Arizona Valencia oranges will be subject to regulation during the course of the current season. There are approximately 3,500 growers of California-Arizona Valencia oranges. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those growers having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms have been defined as those whose gross annual receipts are less than $3,500,000. The majority of growers and handlers of California-Arizona Valencia oranges may be classified as small entities.

The minimum size regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and a designated part of California. The order is effective under the Act. A proposed rule was issued on April 17, 1987 (52 FR 12536) and provided interested persons the opportunity for public comment through April 27, 1987. One comment was received from the VOAC in support of the minimum size regulation. However, the VOAC comment pointed out that the proposed size regulation was intended to be effective for the entire shipping season. Indeed that was clearly stated in the proposal. In addition, VOAC indicated that the October 31, 1987, termination date set forth in the proposal was inadequate to cover shipments for the 1986–87 season. Therefore, the VOAC recommended that the proposed rule be revised to establish a December 31, 1987, termination date for this rule in order to cover end of the season shipments. Based on the above, this rule establishes a minimum size regulation for the entire 1986–87 Valencia orange season. Consequently, the termination date of this rule will be established at December 31, 1987.

The VOAC met publicly on March 10, 1987, and recommended the establishment of a minimum size regulation for the 1986–87 season. The rule is consistent with the marketing policy for 1986–87. This action will proscribe the domestic shipment of small sized California-Arizona Valencia oranges during the 1986–87 season. This action is based upon the recommendation and information submitted by the VOAC and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

Valencia oranges are classified into categories which indicate the number of oranges packed in a standard carton of 37.5 pounds. For instance, a size category designating very large size oranges would be 56's and very small sizes, 180's or 210's. This regulation will prohibit the shipment of size 180's and smaller. It is difficult to ascertain the exact amount of oranges that this will preclude from shipment to the domestic fresh market because oranges tend to get larger as the season progresses, if left on the tree. Another factor complicating the exact estimation of the quantity of small sized Valencia oranges is that 1986–87 production is expected to be high, and there is generally a larger proportion of small fruit in larger crops.

The VOAC reports that growth tests indicate that the Valencia oranges have not been sizing as rapidly as normal, thus making it more difficult to predict actual outturn. The sizes precluded from shipment (180's and smaller) are estimated to represent approximately 18 to 30 percent of the crop. Although the percentage of Valencia oranges estimated to be precluded for use in domestic fresh markets because of this regulation appears to be high, the percentage of the crop expected to go to outlets other than domestic fresh is expected to total 66 percent. A good portion of such percentage traditionally includes small sized oranges. Thus, ample markets exist for the small sized oranges.

Implementation of this regulation will require the handling of larger sized oranges, thus, improving grower returns and aiding in strengthening the price patterns of all sizes. This regulation applies only to domestic shipments, including Canada. Smaller sized Valencia oranges may be processed, exported and otherwise shipped in accordance with § 908.67. As not all of the crop will be utilized in domestic fresh markets, the result of the regulation will be to move toward an economic utilization which is expected to result in higher overall grower revenue.

Consequently, when weighing costs and benefits derived from the use of size regulations, it seems highly probable that the benefits of this rule will far outweigh the costs.

Based on the above, the Administrator of the AMS has determined that issuance of this size regulation will not have a significant economic impact on a substantial number of small entities.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because this rule should be issued as soon as possible since shipments of 1986–87 crop Valencia oranges have already begun and are expected to continue through December 1987.

**List of Subjects in 7 CFR Part 908**

Marketing agreements and orders, California, Arizona, Oranges, Valencia.

For the reasons set forth in the preamble, 7 CFR Part 908 is amended as follows:

**PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA**

**Subpart—Rules and Regulations**

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: Secs 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.681 is added to read as follows: (The following section will not be published in the Code of Federal Regulations)

**§ 908.681 Valencia Orange Regulation 381.**

During the period beginning with May 22, 1987 through December 31, 1987, no handler shall handle any Valencia oranges which are of a size smaller than 2.32 inches in diameter, such diameter to be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the oranges in any container may measure smaller than 2.32 inches in diameter.

Dated: May 18, 1987.

Ronald L. Cioffi,

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 87–11797 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Parts 959 and 980**

**Onions Grown in South Texas; Amendment No. 5 to Handling Regulation; Vegetable Import Regulations; Onions**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule will permit handlers to pack onions in 40- or 50-pound cartons in addition to other previously authorized containers. In addition, the rule will allow handlers to designate onions three inches or larger in diameter as "Jumbo" or "Large." It will also provide a new size designation of "Extra Large" for onions having a diameter of 3–¾ inches and larger. It changes the termination date of inspection requirements from June 15 to May 31 to relieve restrictions on handlers in a small production area far from the primary production area, and will also shorten the period for inspection requirements on handlers in the primary production area. Finally, the rule changes the termination date of grade, size, inspection, and Sunday shipment requirements from June 1 to May 31. Conforming changes to the import regulation for onions are made to reflect applicable changes in the effective period of the domestic regulation. The rule is designed to lessen the regulatory requirements on handlers and to provide them with additional flexibility in their selection of shipping containers while assuring the condition and quality of onions in the marketplace during the 1987 and subsequent seasons.

**EFFECTIVE DATE:** The final rule becomes effective May 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400, (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules issued thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 40 handlers of onions will be subject to regulaton under the South Texas Onion Marketing Order during the course of the current season. In addition, there are about 160 producers of onions in South Texas. There are approximately 28 onion importers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000 agricultural service firms, which include handlers and importers, are defined as those whose gross annual receipts are less that $3,500,000. The majority of producers, handlers, and importers may be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this rule on small entities. The regulatory action in this instance is a rule: (1) Allowing onions to be shipped in 40- or 50-pound cartons on a regular commercial basis not subject to the experimental/special purpose shipment safeguards currently applied to handlers utilizing such cartons; (2) allowing handlers to designate onions three inches or larger in diameter as "Jumbo" or "Large" (currently the designation for such onions is limited to "Jumbo"); (3) providing a new size designation of "Extra Large" for onions having a diameter of 3–¾ inches or larger; (4) changing the termination date of inspection requirements from June 15 to May 31 to relieve handlers in a small producing area from these requirements while also shortening the period for inspection requirements on handlers in the primary production area; (5) changing the termination date of grade, size, inspection, and Sunday shipment handling requirements applicable to all handlers in the production area so the requirements end on May 31 rather than June 1; and (6) changing both § 959.322(f) and § 980.117 to clarify that the South Texas handling requirements apply to imports during the March 10—May 31 period each season.

The primary production area for South Texas onions is the lower Rio Grande Valley. Onion production in the entire production area in 1986 was 4.2 million hundredweight with harvested acreage amounting to 12,000 acres. The percentage of the crop marketed fresh has not fallen below 92.6 percent since 1977.

Allowing onions to be shipped in 40- or 50-pound cartons on a regular commercial basis without regard to the experimental/special purpose shipment safeguards currently applied to handlers utilizing such cartons will reduce the regulatory burden on handlers desiring to ship onions in cartons. Moreover, the handling of gift packages of onions, not exceeding 25 pounds per package, individually addressed to the buyer and not for resale, and export shipments are exempt from the container requirements of the handling regulation. Special purpose shipments for charity, relief, canning, or freezing are exempt from the grade, size, container, and inspection requirements of the handling regulation if they are handled in accordance with the safeguards established in

§ 959.322(g). Moreover, regulation exemptions for experimental onion shipments can be authorized by the committee provided the shipments are made in accordance with safeguards established in § 959.322(g). Finally, any handler may handle, other than for resale, up to 110 pounds of onions per day without regard to the handling requirements.

The additional size designations "Large" and "Extra Large" will bring these designations into conformity with industry marketing terminology. Another action changes the termination date of inspection requirements from June 15 to May 31 to relieve an undue inspection cost in a minor production area. The area is the "Winter Garden" area of Texas which produces a very small part of the South Texas onion production each season and is located far from the primary production area inspection facilities. This date is also when the primary production area handlers usually complete their operations. Inspection requirements for these handlers also will be terminated on May 31 each season.

A final change is made to both § 959.322(i) and § 980.117 to clarify that the beginning of the effective regulation period for imports begins March 10, the same date as the beginning of the handling regulation for domestic onions grown in South Texas and ends May 31 of each season. This change provides importers with adequate notice as to when the South Texas requirements apply each year and allows them to plan accordingly.

It is the Department's view that the impact of the changes upon growers and handlers and importers will be favorable. The changes relieve restrictions and make clarifications. Thus they will not impose any additional costs.

This rule is issued under marketing agreement and Order No. 959, both as amended, regulating the handling of onions grown in designated counties in South Texas. The program is effective under the Act. Shipments of these onions are regulated under a handling regulation contained in § 959.322. Section 959.322 was amended and published in the **Federal Register** on March 5, 1986 (51 FR 7547). The South Texas Onion Committee, established under the order, is responsible for its local administration.

In October 1981 the committee recommended, and the Secretary approved, a handling regulation (47 FR 8551) which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

A proposed rule inviting comments on this action was published in the March 11, 1987, **Federal Register** (52 FR 7431). Interested persons were given until March 26, 1987, to file written comments. Subsequently the comment period was extended to April 15, 1987, to provide interested persons additional time to submit comments. This extension was published in the March 27, 1987, **Federal Register** (52 FR 9870). A total of 17 comments were received on the proposal. A majority of the comments pertained to the proposed requirement in § 959.322(c) that handlers pack three- to four-inch (jumbo) Texas Grano 1015Y onions in cartons, the size specifications (diameter ranges) proposed for "jumbo" and "Colossal" onions in § 959.322(b) (4) and (5), the proposed use of the term "Colossal" as a size designation, and a recommendation that the size designations and diameter ranges should apply to both white and yellow varieties of onions.

The proposed amendment to the handling regulations requiring Texas Grano 1015Y onions which are three-to four-inches in diameter to be packed in 40- and 50-pound cartons for the 1987 and subsequent seasons was recommended by the South Texas Onion Committee. According to the committee, this onion bruises more easily than other varieties of onions. The purpose of the requirement was to protect these onions from bruising during packaging and transportation and thereby assure their quality and condition in the marketplace. The goal was to provide consumers with reliable consistent quality to foster repeat purchases, reduce shrinkage, and improve the industry's economic returns.

Three of the commenters supported the mandatory use of cartons for the Jumbo Texas Grano 1015Y onion for the reasons stated in the proposal. Thirteen commenters opposed the mandatory use of containers at this time but 12 of them supported the discretionary use of 40- and 50-pound cartons for all onion varieties on a commercial basis. Some of these commenters indicated that the exclusive use of cartons as proposed was not in the best interest of growers at this time because the shipping season has already begun and handlers did not have adequate time to prepare for shipping onions in cartons.

The benefits of cartons were determined based on industry experience during the 1986 season, when carton shipments were authorized on a special purpose/experimental shipment basis. Many of the commenters believe that one season's experience in handling onions in cartons is insufficient to mandate a switch to handling the Texas Grano 1015Y exclusively in cartons. One commenter indicated that less than one percent of the total industry shipments were made in cartons last year and that such was not an adequate sample to show that cartons work better than mesh bags. These commenters also pointed out that some handlers are not equipped to properly handle onions in cartons and the mandatory carton requirement would result in added expenses in setting the necessary equipment required to handle the onions in cartons. Others indicated that mesh bags have been the traditional container in which onions have been handled and that there is a reluctance to switch to cartons for the short Texas Grano 1015Y season (approximately two months.

One commenter indicated that his firm helped pioneer the use of the carton last season in shipping Texas Grano 1015Y's and that they were very successful. However, this commenter also indicated that the use of the carton will never eliminate the use of the mesh bag, and there are certain types of users who will always need to use bags. In other words, allowing the handlers to pack all onions, regardless of variety, in 40- and 50-pound cartons and/or 50-pound mesh bags would allow each handler to decide which packing is better for his/her needs.

Two commenters indicated that onions in cartons would only be shipped in refrigerated containers and that once onions are refrigerated they must remain refrigerated or they will sweat. This sets up conditions for mold and decay and reduced shelf life and would be counterproductive to the anticipated quality improvements expected by the committee. Currently the majority of onions are shipped in open top trucks with no refrigeration, and many receivers have limited refrigeration space.

Success in using cartons can only be achieved through additional exprience in harvesting and packing more of these onions in cartons. The exclusive use of cartons for these onions should only be decided after the industry has acquired firsthand experience.

Based on the information presented in the comments and the background and supporting information submitted by the committee on the mandatory carton proposal, the Department has determined that additional experience is needed to determine whether mandatory use of cartons would be beneficial. The information submitted does not adequately justify the exclusive use of

cartons. However, it does support a regulation which allows handlers to pack all varieties of onions in 40- and 50-pounds cartons free of the experimental/special purpose reporting and safeguard requirements applied last season on such shipments, in addition to the existing container requirements. Therefore, this rule will change paragraphs (c), (f), and (g) of § 959.322 accordingly.

In the proposal, "Jumbo" onions were defined in § 959.322(b)(4) as onions 3 to 4 inches in diameter, and "Colossal" onions were defined in § 959.322(b)(5) as onions 4 inches or larger in diameter. Several commenters pointed out that the size designation of "Colossal" could be confused with the onion variety of the same name and recommended that the term "Colossal" be changed to "Extra Large." These commenters also pointed out that it would be difficult to size onions in normal packing operations according to the proposed size specifications. To overcome this, commenters recommended that § 959.322(b)(4) be changed to "Jumbo" or "Large—3 inches or larger. In addition, many suggested that the proposed "Colossal" size designation be changed to "Extra Large" and that the size specification be changed to 3–3/4 inches or larger in diameter. These comments have substantial merit and have been incorporated in the final rule. In addition, some commenters, apparently believing that the proposal included a varietal distinction, suggested that the additional size designation apply to yellow varieties in addition to white varieties. The proposal did not make a varietal distinction and, therefore, this rule will apply to both yellow and white varieties.

None of the commenters opposed the amendment that will relieve handlers in a small volume production area from an inspection burden. Previously, the minimum grade and size requirements and the prohibition against Sunday packaging, loading, and handling onions terminated on June 1 of each season. The container and inspection requirements continue in effect until June 15, the end of the effective period of the handling regulation. This amendment will include the inspection requirements in the list of provisions that are terminated before June 15 in order to relieve the "Winter Garden" area of Texas, which usually begins shipping in early June, from such requirements. This change relieves an undue inspection cost in a minor production area. The area produces a very small part of the South Texas onion production each season and is located far from the primary production area inspection facilities. Few onions are shipped during the June 1 to June 15 period. This relaxation in requirements should not adversely affect the program's effectiveness.

None of the commenters opposed the amendment to change the June 1 termination date for grade, size, inspection, and Sunday shipment handling requirements to May 31 so that requirements cease at the final day of the month rather than the first day of the following month.

Section 8e of the Act provides that whenever a Federal marketing order is in effect for onions, the importation of onions shall be prohibited unless the onions meet the grade, size, quality, and maturity provisions of the order which as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in direct competition. Accordingly, § 959.322(i) of the handling regulation contains provisions which apply to imports during the approximately mid-March through May period of each year. The import regulation appears in § 980.117. While the earlier change in the termination date of May 31 from June 1 for grade and size will not require a change to these provisions, a change is made to both § 959.322(i) and § 980.117 to clarify that the beginning of the effective period for imports begins March 10, the same date as the beginning of the handling regulation for domestic onions grown in South Texas and ends May 31 of each season (the ending date of the South Texas handling regulation).

Furthermore, section 8e provides that whenever two marketing orders regulating onions produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces onions in most direct competition with the imported onions. Currently, onions are regulated on a twelve-month basis each season (August 1 to July 31) under the Idaho-Eastern Oregon Order No. 958. The South Texas Order No. 959 has historically been the dominant shipper and has been found to be in most direct competition with imported onions during the period March 10 through June 1 each season. With the change in the termination date of the effective period for the South Texas onion handling regulation, it is found that South Texas Order No. 959 is the dominant shipper and is in most direct competition with imported onions during the revised period March 10 through May 31. Accordingly, the importation requirements for onion imports during the period June 1 through March 9 will be those found in Order No. 958. A change to § 980.117 is made which will make the above changes to the applicable effective periods for imports. In addition, § 980.118 *Onion Import Regulation* is removed from the regulations because it is obsolete. The effective period for that regulation ended on April 30, 1978. None of the commenters opposed the above changes in the import regulation and some specifically supported such changes.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the committee, the comments received, and other information, it is hereby found and determined that the amendments, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553). The harvest and shipment of 1987 crop onions has already started. Hence, this action must be made effective promptly to be in effect during the 1987 shipping season. Moreover, the provisions in the final rule are substantially less restrictive than those contained in the proposal which was published in the Federal Register on March 11, 1987. Handlers have been using various cartons, subject to committee approval, and may now use the 40- and 50-pound cartons at their discretion. Therefore, handlers do not require any additional time for preparation. No useful purpose would be served by delaying the effective date of these actions.

**List of Subjects**

*7 CFR Part 959*

Marketing agreements and orders, Onions, Texas.

*7 CFR Part 980*

Marketing agreements and orders, Imports, Onions.

For the reasons set forth in the preamble, 7 CFR Parts 959 and 980 are amended as follows:

1. The authority citation for 7 CFR Parts 959 and 980 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**PART 959—ONIONS GROWN IN SOUTH TEXAS**

2. Section 959.322 (47 FR 8551, March 1, 1982; 48 FR 7427, February 22, 1983; 48

FR 25169, June 6, 1983; 49 FR 4931, February 9, 1984; and 51 FR 7547, March 5, 1986) is hereby further amended by revising the introductory text of § 959.322, by revising paragraph (b)(4), redesignating paragraph (b)(5) as paragraph (b)(6), and adding a new paragraph (b)(5); by revising the introductory text of paragraph (c), revising (c)(4), and by adding new paragraphs (c)(5) and (c)(6); by revising paragraph (d)(1); by revising paragraphs (f)(2) through (f)(5), and removing paragraph (f)(6); by revising the introductory text of paragraph (g) and revising paragraph (i) as follows:

**§ 959.322 Handling regulation.**

During the period beginning on the effective date of this rule and ending on June 15 for the 1987 season and during the period beginning March 10, and ending on June 15 each season, no handler shall package or load onions on Sunday, or handle any onions, except red varieties, unless they comply with paragraphs (a) through (d), or (e), or (f) of this section. However, the requirements of paragraphs (a), (b), (d), and the Sunday prohibition shall terminate at 11:59 p.m. on May 31 of each season.

* * * * *

(b) * * *

(4) "Jumbo" or "Large"—3 inches or larger in diameter; or

(5) "Extra Large"—3¾ inches or larger in diameter.

(6) Tolerances for size in the U.S. onion standards shall apply except that for "repacker" and "medium" sizes not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified. Application of tolerances in the U.S. onion standards shall apply.

(c) *Container requirements.* Except as provided in paragraph (f) of this section, only the following containers shall be used:

* * * * *

(4) 40-pound cartons, with an average net weight in any lot of not more than 45 pounds per carton; or

(5) 50-pound cartons, with an average net weight in any lot of not more than 55 pounds per carton.

(6) These container requirements shall not be applicable to onions sold to Federal agencies or for export.

(d) *Inspection.* (1) No handler may handle any onions regulated hereunder, except pursuant to paragraphs (e), (f)(1), or (f)(3)(ii) of this section unless an inspection certificate has been issued by the Texas-Federal Inspection Service covering them and the certificate is valid at the time of shipment. City destinations shall be listed on inspection certificates and release forms.

* * * * *

(f) * * *

(1) * * *

(2) *Gift packages.* The handling to any person of gift packages of onions not exceeding 25 pounds per package, individually addressed to such person and not for resale, is exempt from the container requirements of paragraph (c) of this section, but shall conform to all assessment requirements of § 959.42 and inspection requirements of paragraph (d) of this section, if such onions were not previously handled by a first handler. All such onions shall meet the grade and size requirements of paragraphs (a) and (b) of this section.

(3) *Experimental shipments.* (i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Each container shall have a new perforated polyethylene liner at least 2 mils in thickness. Also, onions may be shipped in 25- and 20-pound cartons, upon approval of the committee. Such experimental shipments shall be exempt from paragraph (c) of this section but shall be handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section. The committee shall be notified of carton size and furnished a container manifest, and shippers must furnish the committee with outturn reports on such shipments.

(ii) Upon approval by the committee, onions may be shipped for other experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52, and 959.60, provided they are handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section.

(iii) Upon approval of the committee, onions may be shipped for testing in types and sizes of containers other than those specified in paragraphs (c) and (f)(2) of this section, provided that the handling of onions in such experimental containers shall be under the supervision of the committee.

(4) *Export shipments.* (i) Upon approval of the committee, the prohibition against packaging or loading onions on any Sunday may be modified or suspended to permit the handling of onions of export provided that such handling complies with the procedures and safeguards specified by the Committee.

(ii) Following approval, if the handler grades, packages, and ships onions for export on any Sunday, such handler shall on the first weekday following shipment, cease all grading, packaging, and shipping operations for the same length of time as the handler operated on Sunday. Upon completion of such shipments, the handler shall report thereon as prescribed by the committee.

(iii) Export shipments shall also be exempt from all container requirements of this section.

(5) *Onions failing to meet requirements.* Onions failing to meet the grade, size, and container requirements of this section, and not exempt under paragraphs (e) or (f) of this section, may be handled only pursuant to § 959.126. Such onions not handled in accordance with paragraph (g) of this section shall be mechanically mutilated at the packing shed rendering them unsuitable for fresh market.

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, canning, freezing, or experimental purposes shall: * * *

* * * * *

(i) *Applicability to Imports.* During the period beginning on March 10 and ending May 31, of each year, * * *

* * * * *

## PART 980—VEGETABLES; IMPORT REGULATIONS; ONIONS

**§ 980.116 [Removed]**

3. Section 980.116 is removed.

4. Section 980.117 Import Regulations; Onions (43 FR 5499, February 9, 1978; 52 FR 8672, March 20, 1987) is amended by revising paragraphs (a)(2) and (b)(1) and (2) to read as follows:

**§ 980.117 Import regulations; onions.**

(a) * * *

(2) Therefore, it is hereby determined that: Imports of onions during the June 1 through March 9 period are in most direct competition with the marketing of onions produced in designated counties of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR Part 958), and during the March 10 through May 31 period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Marketing Order No. 959, as amended (7 CFR Part 959).

(b) * * *

(1) During the period June 1 through March 9 of each marketing year, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

(2) During the period March 10 through May 31 of each marketing year, whenever onions grown in designated counties in South Texas are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality and maturity requirements imposed under that order.

* * * * *

Dated: May 18, 1987.

Ronald L. Cioffi,

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87-11708 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-02-M

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**Farmers Home Administration**

**7 CFR Parts 1924, 1822, 1924, 1933, 1944, and 1980**

**Revision and Redesignation; Planning and Performing Site Development Work**

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) has revised and renumbered its regulation pertaining to planning and performing site development work. This final rule implements statutory changes, and proposed rule comments and recommendations concerning the review and approval of subdivision and scattered site locations and development. The intended effect is to provide procedures and guidelines for preparing site development plans that will be consistent with Federal laws, regulations and Executive Orders. Also, it directs FmHA's financial assistance towards orderly development of rural areas and provides a planning process which considers impacts on the environment and existing development to formulate actions that advance FmHA program goals and protect, enhance and restore environmental quality.

**EFFECTIVE DATE:** June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** James A. Weibel, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250. Telephone (202) 382-1486.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor, because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A proposed rule was published in the Federal Register Vol. 50, No. 4, Monday, January 7, 1985, on pages 815-834. Interested persons were invited to submit written comments, suggestions, or data for consideration by the Agency in the development of the final rule. Comments were received from 23 respondents. The respondents were comprised of builders, consumer advocates, USDA Office of Inspector General, American Congress on Surveying and Mapping, National Association of Home Builders, Housing Assistance Council, Inc., National Housing Law Project, and numerous FmHA State and District Offices. The written and oral comments of all these respondents have been carefully considered and evaluated, and many of the recommendations adopted, either in whole or in part, in this final rule.

The respondents commented on 148 specific sections or paragraphs that involved 11 different areas within the proposed regulation. The frequency of those comments occurred most often within three areas: Section 1924.102 General Policy, paragraphs (a) Rural development, and (d) Reciprocity of subdivision acceptance among Federal agencies; § 1924.105 Definitions, paragraphs, (c) Community, and (n) Subdivision; § 1924.107 Location, paragraph (d)(1).

The following revisions made to the proposed regulation are attributable to the comments received: The reciprocity provision was relocated to the subdivision review § 1924.119; a definition was added for "partially completed" as it pertains to existing subdivisions; the subdivision review § 1924.119 was divided into three different categories—new and less than partially completed subdivisions, existing subdivisions partially or more completed, and reciprocity among Federal agencies; addition of the provision for an abbreviated review process for subdivisions that are partially or more completed; reduction in the percentage of lots located within an existing subdivision that must be improved with residential dwellings, also a provision was added to consider both residential and nonresidential sites within an existing subdivision; the scattered site definition was expanded to include existing residential buildings; addition of a location and feasibility review to the scattered site § 1924.117; clarification and specificity were added concerning the location of subdivisions near the periphery of nonrural areas; addition of an exception by the State Director of the Covenants, Conditions, and Restrictions (CC&R) requirement; provision for FmHA to be a co-obligee on a local entity bonding or similar assurance requirement; clarification of the qualifications for professionals certifying documentations; and deletion or reduction of many of the requirements in Exhibit B. Also, there are numerous editorial and minor changes made to the proposed regulation and exhibits.

The area which generated the most interest and number of comments was § 1924.107, paragraph (d)(1) requiring that subdivisions be located within, or as an integral part of an eligible rural community identified and listed by the State Director. Several unfavorable comments were received on the proposed identification and listing of eligible rural communities. One industry respondent commented on that section:

* * * The paragraph is, in a sense, a contradiction. I agree that the subdivision must serve residents of communities within eligible rural areas, but the way the section is written, some communities within eligible rural areas would be excluded. The elimination of sites near the periphery of nonrural areas is vague, not specifically identifying such sites, and it should be noted that to identify such site would effectively be to move the boundary lines of eligible areas on the maps.

I would suggest that it would be much fairer to the areas in question, and much more consistent with regard to the maps which now exist, to require that the market studies or demand studies on FmHA forms demonstrate demand from only within the eligible area, excluding data from the ineligible areas.

FmHA agrees with much of the concern raised about this section and has rewritten the language to clarify subdivision locations near the periphery of nonrural areas. Also, the requirement that the State Director identify and list eligible rural communities within a State Supplement has been deleted. The Agency further agrees with the comment that market or demand studies for subdivision location and size would be more consistent and fair. Therefore, that concept has been incorporated in the final rule. However, the Agency continues to believe subdivisions should be located within, or an integral part of

a community to promote orderly development of rural areas which will best serve the interest of the borrower and the Government.

The National representative for the housing industry submitted a comment and suggestion that the Agency: "* * * eliminate the subdivision approval procedure. Local and state standards can be maintained. * * *"

There are some areas, such as, the State of California which have subdivision standards very similar to FmHA that do expedite the review and approval process.

In an effort to eliminate duplication of review and to encourage local entities to enforce satisfactory minimum standards for subdivision development this regulation contains a local entity designation provision. Under this procedure, FmHA will conduct an abbreviated review for any subdivision submittal from within the jurisdiction of a local entity designated by the State Director.

Agency experience has been that many rural areas served by our programs do not have adequate existing local or state standards and, in some areas, there are no standards whatsoever. Because of that deficiency FmHA developed subdivision regulations in 1973 to provide uniform and consistent guidance to eliminate the recurring problems in those areas without adequate standards. Since that time few rural areas have moved towards self regulation and subdivision standards which would allow FmHA to reduce or eliminate their standards.

Several general comments were received suggesting that the Agency deregulate. In response to those comments Exhibit B was revised deleting or reducing many of the requirements for residential block design, lot layout, street patterns and construction, hillside development, and grading and drainage design.

Finally, in the proposed regulation the number of lots necessary to be a subdivision was ten. This was an increase from the existing five lot requirement and was done in part to be consistent with the Department of Housing and Urban Development (HUD) definition of a subdivision. Since that time HUD has changed their requirements which are now different than FmHA's. In addition, Subpart G of Part 1940 of this chapter, "Environmental Program" requires an environmental assessment for financial assistance which involves at least five lots. Therefore, to be consistent with Subpart G of Part 1940 of this chapter, the subdivision definition was changed back to include development of five or more lots.

Also, Subpart A of Part 1924–A of this chapter was amended to conform with the requirements of this final rule.

This activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983). The FmHA programs and projects which are affected by this instruction and also subject to intergovernmental consultation are listed by the Catalog of Federal Domestic Assistance titles and numbers as follows:

Low Income Housing Loans (section 502 Rural Housing Loans)—10.410, Farm Labor Housing Loans and Grants—10.405, Rural Housing Site Loans (sections 523 and 524 Site Loans)—10.411, Rural Rental Housing Loans—10.415, Very Low Income Housing Repair Loans—10.417, and Rural Self-Help Housing Technical Assistance—10.420.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

**List of Subjects in Parts 1804, 1822, 1924, 1933, 1944, and 1965**

Housing standards, Low and moderate income housing, Rural areas.

For reasons set out in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

## PART 1804—PLANNING AND PERFORMING DEVELOPMENT WORK [REMOVED AND RESERVED]

1. Part 1804 is removed and reserved.

## PART 1822—RURAL HOUSING LOANS AND GRANTS

1a. The authority citation for Part 1822 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

### Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

2. Section 1822.267, paragraph (e), and § 1822.271 paragraph (b)(3)(v) are revised to read as follows:

**§ 1822.267 Special conditions.**

* * * * *

(e) *Development Policies.* Development will be planned and performed in accordance with Subparts A and C of Part 1924 of this chapter, and certain information in a guide entitled "Planning and Development Building Sites" available at all FmHA offices.

* * * * *

**§ 1822.271 Processing applications.**

* * * * *

(b) * * *

(3) * * *

(v) Proposed subdivisions will comply with the local codes and ordinances and also meet the requirements of Subpart C of Part 1924 of this chapter.

* * * * *

## PART 1924—CONSTRUCTION AND REPAIR

3. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Planning and Performing Construction and Other Development

**§ 1924.5 [Amended]**

4. Section 1924.5, paragraph (d)(2) is amended by removing the words "§ 1804.74 of Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subpart C of Part 1924 of this chapter."

5. Section 1924.5, paragraph (e)(2) is amended by removing the words "should also be guided by the requirements of Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "must meet the requirements of Subpart C of Part 1924 of this chapter."

6. Section 1924.5, paragraph (e)(4) is amended by removing the words "be guided by Exhibit J of this subpart." and inserting in their place, the words "meet the requirements of Exhibit J of this subpart and Subpart C of Part 1924 of this chapter."

**Exhibit I—Part 1924 [Amended]**

7. Exhibit I, Sections 301–2 and 301–3 are amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subpart C of Part 1924 of this chapter."

**Exhibit J—Part 1924 [Amended]**

8. Exhibit J of Subpart A is amended by revising the definition for manufactured home subdivision in paragraph A III, and by revising

paragraphs A V B1, BIF, BIH, BIIA introductory text, BIIA6, BIIB4, BIIIA, CIII, and CIV.

Part A—Introduction

* * * * *

III. * * *

* * * * *

*Manufactured Home Subdivisions.* Five or more contiguous (developed or undeveloped) lots, or building sites that meet the requirements of Subpart C of Part 1924 of this chapter.

V. * * *

* * * * *

B. * * *

1. Subpart C of Part 1924 of this chapter, "Planning and Performing Development Work."

* * * * *

Part B— * * *

I. * * *

* * * * *

F. The requirements for streets shall be those found in Subpart C of Part 1924 of this chapter.

* * * * *

H. Utilities for each manufactured home site, rental housing project or subdivision shall be designed and installed in accordance with Subpart C of Part 1924 of this chapter; and the State health authority having jurisdiction, and all local laws and regulations requiring approval prior to construction.

* * * * *

II. * * *

A. *General.* Scattered sites and subdivision developments will be planned and constructed in accordance with specific requirements of this subpart, Subpart C of Part 1924, and Subpart G of Part 1940 of this chapter, and the applicable FmHA/MPS or Model Building Codes acceptable to FmHA. Manufactured homes for development in a manufactured home community shall:

* * * * *

6. Have a manufactured home site, site improvements, and all other features of the mortgaged property not addressed by the Federal Manufactured Home Construction and Safety Standards, meet or exceed applicable requirements of this subpart and Subpart C of Part 1924 of this chapter, the FmHA adopted MPS except paragraph 31–2.2 or a Model Building Code acceptable to FmHA:

* * * * *

B. * * *

4. *Lot Size.* The size of manufactured home lots (scattered sites and subdivision) shall be determined by § 1944.11(e) of Subpart A of Part 1944 and Subpart C of Part 1924 of this chapter.

* * * * *

III. * * *

A. *General.* Manufactured housing rental developments shall be planned and constructed in accordance with requirements of Subpart C of Part 1924; this subpart; Subpart G of Part 1940, the FmHA/MPS; and the requirements of Subpart E of Part 1944 of this chapter.

* * * * *

Part C— * * *

* * * * *

III. *Subdivisions.* Subpart C of Part 1924 of this chapter will be used in preparing and providing supporting documents.

IV. *Rental Housing Projects.* Subpart C of Part 1924 of this chapter will be used in preparing and providing supporting documents.

* * * * *

Subpart C is added and reads as follows:

## Subpart C—Planning and Performing Site Development Work

Sec.


1924.101 Purpose.
1924.102 General policy.
1924.103 Scope.
1924.104 [Reserved]
1924.105 Definitions.
1924.106 Planning development.
1924.107 Location.
1924.108 Utilities.
1924.109 Grading and drainage.
1924.110 Performing development.
1924.111–1924.113 [Reserved]
1924.114 Multiple family housing.
1924.115 New and less than partially completed subdivisions.
1924.116 Existing subdivisions partially or more completed.
1924.117 Scattered site.
1924.118 Modification of requirements and recommendations in this subpart.
1924.119 Subdivision reviews.
1924.120 Local entity designation.
1924.121 Approval authority.
1924.122 Exception authority.
1924.123 State supplements and exhibits.
1924.124 Exhibits.
1924.125–1924.149 [Reserved]
1924.150 OMB control number.
Exhibit A—Checklist of Visual Exhibits and Documentation for Subdivisions
Exhibit B—Site Development Design Requirements
Exhibit C—Checklist of Visual Exhibits and Documentation for RRH, RCH, and LH Proposals


## Subpart C—Planning and Performing Site Development Work

### § 1924.101 Purpose.

This subpart establishes the basic Farmers Home Administration (FmHA) policies for planning and performing site development work. It also provides the procedures and guidelines for preparing site development plans consistent with Federal laws, regulations and Executive Orders.

### § 1924.102 General policy.

(a) *Rural development.* This subpart provides for the orderly location and development of building sites and related facilities in rural areas. It is designed to:

(1) Establish standards for building-site design which will encourage and lead to the development of economically stable communities, and the creation of attractive, healthy, and permanent living environments.

(2) Provide for the consideration of energy-efficient land use practices in planning development. Such planning will include an evaluation of proven methods that will reduce the energy needed to install site improvements and to maintain the site and improvements.

(3) Encourage improvements planned for the site to be the most cost-effective of the practicable alternatives. Encourage utilities and services utilized to be reliable, efficient and available at reasonable costs.

(4) Provide for a planning process that will consider impacts on the environment and existing development in order to formulate actions that both advance FmHA program goals and protect, enhance, and restore environmental quality.

(5) Assure that all planned development will be integrated into the existing transportation systems to prevent traffic hazards and establish safe, convenient access to community services and facilities and provide for the efficient movement of individuals and goods.

(6) Assure that the proposed development by the applicant or developer will comply with the standards prescribed by this subpart.

(b) *Development related costs.*—(1) *Applicant.* The applicant is responsible for all costs associated with planning, technical services, and actual construction that have taken place before loan and/or grant closing. These costs may be included in the FmHA loan/grant as authorized by FmHA regulations.

(2) *Developer.* The developer is responsible for payment of all costs associated with development under this subpart.

(c) *Local regulations.* (1) The proposed development must comply with all applicable planning ordinances, codes, and regulations of the local, regional, or State planning agencies having jurisdiction.

(2) In addition to, or in the absence of local, regional or State regulations, the proposed development must meet the requirements of this subpart.

(3) In those areas where the FmHA State Director determines a local entity has site development design standards equal to or exceeding those of this

subpart and has proven capability to enforce those standards, the submittal requirements will be abbreviated under this subpart. This will eliminate duplication of local reviews and associated costs and time delays. (See § 1924.120 of of this subpart.)

**§ 1924.103 Scope.**

This subpart is to be used by FmHA personnel when the proposed development includes planning and performing site development work for Rural Housing (RH) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, Farm Labor Housing (LH) loans and grants, and Rural Housing Site (RHS) loans. In addition, FmHA will consult with appropriate Federal, State, and local agencies, other organizations, and individuals to implement the provisions of this subpart.

**§ 1924.104 [Reserved]**

**§ 1924.105 Definitions.**

For the purposes of this subpart, the following definitions apply:

(a) *Applicant.* Any person, partnership, limited partnership, trust, consumer cooperative, corporation, public body or association that has filed a preapplication, or in the case of FmHA programs that do not require a preapplication, an official application with FmHA in anticipation of receiving or utilizing FmHA financial assistance.

(b) *Community.* A community includes cities, towns, boroughs, villages, and unincorporated places which have the characteristics of incorporated areas with support services such as shopping, post office, schools, central sewer and water facilities, police and fire protection etc., and are easily identifiable as established concentrations of inhabited dwellings and private and public buildings.

(c) *Contiguous.* Sharing a boundary, adjoining or adjacent. A lot or subdivision is considered to be continguous to other lots or subdivisions if it is adjoining, touching or adjacent. Lots or building sites which are in close proximity, but separated by streets, roads, driveways, or other open spaces are considered contiguous.

(d) *Construction or development.* Construction or development is the act of building structures and installing site improvements. Development may also refer to a site, a group of sites, a subdivision, rural rental housing, or some other group of dwelling units.

(e) *County Supervisor.* FmHA County Supervisor or Area Loan Specialist or their authorized representative, such as Assistant County Supervisor or Assistant Area Loan Specialist.

(f) *Developer.* Any person, partnership, public body or corporation which intends to develop a site(s) which will be acceptable for FmHA financing.

(g) *District Director.* FmHA District Director or his/her authorized representative, such as Assistant District Director or Area Loan Specialist.

(h) *Local entity.* Any city, town, village, county, borough, or parish which has legal authority to develop and enforce site development design standards.

(i) *Scattered site.* An individual single family dwelling site, with or without an existing residential building which may be located as an isolated site, or one of up to four contiguous sites in open country or a site within a subdivision or community.

(j) *Street surfaces.* Streets may be hard or all weather surfaced.

(1) *Hard surface.* A street with a portland cement concrete, asphaltic concrete, or bituminous wearing surface. Other hard surfaces may be used when acceptable to the local public body and suitable for use with local climate, soil, gradient, and volume and character of traffic as determined by the State Director.

(2) *All-weather.* A street that can be used year-round with a minimum of maintenance, such as the use of a grader and minor application of surface material. Surface material must be suitable for use with local climate, soil, gradient, and volume and character of traffic as determined by the State Director.

(k) *Subdivision.* Five or more contiguous (developed or undeveloped) lots, or building sites. Subdivisions may be new or existing.

(1) *New Subdivision.* Any planned division or contiguous development of land into lots or building sites. This applies to original subdividing and resubdividing, or the expansion of an existing subdivision.

(2) *Existing Subdivision.* Developed contiguous lots or building sites (with or without improvements).

(i) Partially or more completed—as it pertains to a subdivision means that:

(A) The local government has accepted the subdivision plan, its principal developments and right-of-ways;

(B) The construction of the streets, water and sewage systems and utilities are at the point which precludes any major changes; and

(C) Provisions are in place for continuous maintenance of the streets and water and sewage systems.

(ii) Less than partially completed—as it pertains to a subdivision means: the planning, construction and development of the subdivision does not meet the requirements of paragraph (k)(2)(i) of this section.

**§ 1924.106 Planning development.**

Planning is an evaluation of specific development for specific land uses. Planning must take into consideration topography, soils, climate, adjacent land use, environmental impacts, energy efficiency, local economy, aesthetic and cultural values, public and private services, housing and social conditions and a degree of flexibility to accommodate changing demands. Although all planning is the responsibility of the applicant or developer, close coordination must occur with local planning officials and with the respective FmHA office.

(a) *FmHA advice and assistance.* Applicants and developers shall be encouraged to seek the advice and assistance of FmHA before significant expenditures are made. Actions taken which are not in accordance with this subpart may jeopardize the possibility of receiving future financial (or other) assistance from FmHA. When receiving an inquiry about site development, the County Supervisor or District Director will:

(1) Discuss the requirements of FmHA with respect to compliance with local, regional, and State regulations; construction practices; energy efficiency; and, as applicable, those requirements with respect to nondiscrimination; market analysis; good house planning; and location.

(i) Requests for subdivision location and feasibility reviews for the development of new subdivisions must be in accordance with Subpart J of part 1940 of this chapter, (available in any FmHA Office.) "Intergovernmental Review of Farmers Home Administration Programs and Activities."

(ii) Whenever appropriate, applicants or developers must submit their proposals to the State Single Point of Contact for review and consideration prior to submittal to FmHA. The name of the Point of Contact is available from the FmHA State Office.

(2) Provide Form FmHA 1940-20, "Request for Environmental Information," and explain the requirements for compliance with Subpart G of Part 1940 of this chapter, as well as the limitations on applicants

during the application review process as prescribed in § 1940.309 of Subpart G of Part 1940 of this chapter.

(3) Provide information regarding publications, site planning, engineering data, environmental data, soils data, and other technical advice and assistance which are available through local, State, and Federal agencies, planning commissions, and private institutions and organizations.

(4) Provide the following assistance for proposals to develop a new subdivision or for approval of an existing subdivision:

(i) Explain to the applicant or developer the need to complete Form FmHA 1924–20, "Request for Subdivision Location and Feasibility Analysis," to obtain FmHA assistance. Also, provide and explain Form FmHA 400–4, "Assurance Agreement," Form FmHA 400–1, "Equal Opportunity Agreement," and HUD Form 935.2, "Affirmative Fair Housing Marketing Plans," and

(ii) Provide this subpart including Exhibits A and B to the applicant or developer.

(iii) Explain to the applicant or developer it is their responsibility to comply with the Interstate Land Sales Full Disclosure Act. (15 U.S.C. 1701 *et seq.*)

(5) For multiple family housing projects, provide Exhibit C of this subpart to the applicant or developer.

(b) *Technical services.* (1) Professional assistance is available from the Soil Conservation Service (SCS) and the Cooperative Extension Service.

(2) An applicant or developer proposing a new subdivision, completing or expanding an existing subdivision, or proposing a multiple family housing project which requires architectural services under § 1924.13(a) of Subpart A of this part, must contract for the technical services of an architect, engineer, land surveyor, landscape architect, or site planner, as appropriate, to provide complete planning, drawings, and specifications. Such services may be provided by the applicant's or developer's "in house" staff subject to FmHA concurrence. Technical services must be performed by professionals who are qualified and authorized to provide such services in the State in which the project would be developed. All technical services must be provided in accordance with the requirements of professional registration or licensing boards. For payments for technical services, follow § 1924.102(b) of this subpart.

(3) For developments not specifically required to have technical services under paragraph (b)(2) of this section, such services may be required by the State Director when construction of streets or installation of utilities is involved.

(4) At completion of all construction or completion of a phase or phases of the total project, the person or persons providing technical services under this section must notify the FmHA County or District Office in writing that all work has been completed in substantial conformance with the approved plans and specifications.

(c) *Drawings, specifications, contract documents, and other documentations.* Adequate drawings and specifications must be provided by the applicant or developer to fully describe the work. Required drawings and specifications are described in Exhibits A and C and supplemented by Exhibit B of this subpart. Contract documents must be prepared under § 1924.6 or, in the case of more complex construction, § 1924.13 of Subpart A of this part.

(1) Exhibit A of this subpart should be used as a guide by the applicant or developer in preparing a proposal, and in providing supporting documents for a site development of 5 or more sites.

(2) Exhibit A will also be used by FmHA County Supervisors, District Directors and State Directors in checking subdivision submissions.

(3) Other documents listed as additional supplemental information may be included in the proposals to illustrate and further clarify difficult areas of development and to help reduce possible misunderstandings.

(4) Exhibit C of this subpart should be used as a guide by the applicant or developer in preparing a proposal and supporting documents for multiple family housing projects which require architectural services.

**§ 1924.107 Location.**

Site selection is the most important phase of development. It is imperative that the applicant or developer conduct preliminary site investigations before purchasing the land. These investigations should be conducted with an understanding of FmHA policies regarding site selection. Stated in this subpart and in Subpart G of Part 1940 of this chapter are several key site selection criteria. (See § 1940.304 for a summary of pertinent locational requirements.) For example, FmHA will not fund any proposal which will convert floodplains, wetlands, important farmlands, prime forestlands or prime rangelands unless there is no practicable alternative to such conversion. Developments adversely affecting properties listed or eligible for listing on the National Register of Historic Places are to be avoided. No development will be approved within a Coastal Barrier Resource System and development on those portions of barrier islands not within the System is to be avoided. A site will not be selected for the purpose of excluding any group of individuals because of their race, color, national origin, sex, age, religion or handicap. In order to be eligible for FmHA participation:

(a) The proposal must be coordinated with the planning agency having jurisdiction.

(b) The site must be located in an eligible area as defined in the program regulations under which the development is being funded.

(c) The proposal must comply with the applicable environmental laws, Executive Orders, and Subpart G of Part 1940 of this chapter.

(d) The proposal must comply with the following, when the applicant or developer intends to develop a subdivision:

(1) The subdivision must be located within, or as an intergral part of, rural community and have access to all essential services available to the general population within the community.

(2) The subdivision must serve residents of eligible rural communities. Subdivisions proposed near the periphery or nonrural areas that are not part of, or associated with eligible rural communities will not be approved.

(3) The subdivision location must provide a desirable, safe, functional, and attractive living environment for the residents and be convenient to services such as shopping, schools, churches, employment opportunities, recreation and communications.

(4) The subdivision must be located and planned to ensure long-term market demand and acceptability. The size and location of the subdivision will be based primarily upon the need and demand from permanent residents of the area the subdivision will serve.

(5) For subdivisions of more than 25 new residential housing sites applicants or developers shall make a complete market analysis showing the need and demand for sites and housing within the community and surrounding trade area in which the subdivision will be located. The information needed in the market analysis includes:

(i) Identification of the specific boundaries of the market area analyzed.

(ii) Estimate of the number of housing sites currently available.

(iii) Average size and cost of available housing sites.

(iv) Estimate of the number of existing housing stock, also an indication of the quality, size, and age of the structures.

(v) Estimate of the number of houses currently on the market for sale and average number of days on the market before selling.

(vi) Complete documentation and supporting material outlining how the market analysis was conducted and how the estimated amounts used were obtained.

(vii) Any other physical, economic, or sociological factors which may affect the size or location of the subdivision.

(e) A scattered site must be planned and developed under this subpart, Subpart A of Part 1944, and Subpart G of Part 1940, with particular emphasis on location as specified in § 1940.304. Random development of sites in open country is not an acceptable alternative to orderly growth within established communities. A scattered site must comply with all of the following:

(1) The site: (i) May be a separate lot or one of up to four contiguous lots which may be develped or undeveloped, which is not contiguous to a subdivision. Strategic placement of a lot(s) such as across the street, across an intersection, or separated only by minor open spaces from other lots is not to be used to circumvent this subpart, or

(ii) May be a lot within an existing subdivision where 60 percent or more of all the residential lots have existing single family dwellings. In this instance, an existing subdivision should generally conform with the requirements for subdivisions in § 1924.115 of this subpart; however, complete conformance is not mandatory. Building site(s) within subdivisions previously rejected by FmHA may be considered for financial assistance provided the conditions for which the subdivision was rejected have been removed or the conditions no longer apply for subdivision eligibility, or

(iii) May be a site located within a subdivision which has HUD or VA acceptance that meets the requirements of § 1924.119(c) of this subpart.

(2) The site must be located to provide a desirable, safe, functional, convenient, and attractive living environment for the residents.

(3) The site must be located to insure long-term market demand and acceptability.

**§ 1924.106 Utilities.**

Adequate, economic, safe, energy efficient, dependable utilities with sufficient easements for installation and maintenance are required.

(a) *Water and wastewater disposal systems.* (1) All developed sites shall be served by centrally owned and operated water and wastewater disposal systems unless such systems are determined by FmHA to be economically or environmentally unfeasible and the alternate solution developed and documented by the applicant's or developer's technical consultant is determined economically and environmentally acceptable and consistent with the intent of this subpart.

(2) All central systems, whether they are public, community or private, shall meet the design requirements of the State Department of Health or other comparable reviewing and regulatory authority. The regulatory authority will verify in writing that the water and wastewater systems comply with, or have an approved plan to bring the systems into compliance with the current provisions of the Safe Drinking Water Act and the Clean Water Act, respectively.

(3) Developments which are not presently served by a central system, but which are scheduled for tie-in to the central system within 2 years should have all lines installed during the initial construction. Such developments must have an approved interim water supply or wastewater disposal system installed capable of satisfactory service until the scheduled tie-in occurs.

(4) In addition to written assurance of compliance with State and local requirements, there must be assurance of continuous service at reasonable rates for central water and wastewater disposal systems. Public ownership is preferred whenever possible. In cases where interim facilities are installed pending extension or construction of permanent public services, the developer must assume responsibility for the operation of the interim facility or establish an acceptable entity for its operation. If a system is not or will not be publicly owned and operated it must comply with one of the following:

(i) Be an organization that meets the ownership and operating requirements for a water or wastewater disposal system that FmHA could finance under Subpart A of Part 1942 of this chapter or be dedicated to and accepted by such an organization.

(ii) Be an organization or individual that meets other acceptable methods of ownership and operation as outlined in HUD Handbook 4075.12, "Ownership and Organization of Central Water and Sewerage Systems." FmHA should be assured that it has the right, in its sole discretion, to enforce the obligation of the operator of water and/or sewerage systems to provide satisfactory continuous service at reasonable rates. The advice and assistance of the Regional Attorney should be obtained in preparing any necessary agreement wtih the organization or individual supplying water and/or sewerage systems.

(iii) Be adequately controlled as to rates and services by a public body (Unit of Government or public services commission).

(5) When central systems are not available, the approving official will thoroughly evaluate the proposed individual systems for economic and environmental feasibility. Information and guidance for site evaluation and design of individual water and wastewater systems is contained in EPA publications "Manual of Individual Water Supply Systems", and "Design Manual, Onsite Wastewater Treatment and Disposal Systems", respectively. For new or the expansion of existing subdivisions of more than 25 residential building sites, National Office concurrence is required before the State Director may approve the use of individual systems. A request for concurrence must contain written recommendations from the State Director and the technical staff in addition to the full documentation listed in paragraph (a) of this section. The State Director's evaluation must consider at least the following items:

(i) Statements from local health and regulatory authorities indicating specifically why connection to or installation of a central system is not feasible at this location.

(ii) A thorough State Office technical staff review of the proposal to use individual systems to determine whether central systems might be feasible considering the market for homes over a two- or three-year period at the proposed location. Generally, more lots of higher values will result when central systems are provided. This review will include an economic feasibility analysis which considers the differences in number of lots, value of lots, initital construction costs, and operating costs of central systems versus individual systems. The analysis must take into account the possible uses of all land under the developer's control in the immediate area. Where comparable costs are found, central systems should be requried and appraisal allowances made to reflect the appropriate value of lots so served.

(iii) Information prepared by the local, county or State health authority and the County Supervisor, with written opinions of the Technical Staff of the State Office indicating whether individual systems are feasible on all the building sites in question. Supporting

Factual data should include evidence that clearly shows that individual systems will perform satisfactorily for a reasonable period of time with reasonable maintenance cost. Reasonable time and reasonable cost can be equated with the cost and expected life of a central system if one were available. An individual wastewater disposal system that requires cleaning or repairs every few months cannot be considered as giving satisfactory service or an individual water system that requires extensive treatment equipment to provide an acceptable safe, potable water supply cannot be considered as within reasonable cost. All documentation, calculations and written opinions substantiating the decision shall remain in the subdivision file.

(iv) Supporting information for the proposed individual water systems covering the following points:

(A) Documentation of how individual water supplies can be developed with satisfactory water production at a reasonable cost. In areas where difficulty is anticipated in developing an acceptable water supply and FmHA is providing financial assistance for site development, contingency funds must be included in the original loan estimate. Contingency funds may be necessary for items such as drilling to a greater depth than is common to other wells in the area, providing additional storage to supplement a limited source of water, or providing treatment to soften or correct some other quality defect. It is a good practice to confirm that an acceptable water supply is available early in the site development process. In extreme cases, the water supply should be developed before any other construction is started.

(B) Documentation that the quality of the supply must meet the chemical, physical and becteriological standards of the health authority having jurisdiction. The maximum contaminant levels of U.S. EPA shall apply. Individual water systems must be tested for quantity and bacteriological quality. Where problems are anticipated with chemical quality partial chemical tests may be required. Those tests would be limited to analysis for the defects common to the area such as iron and manganese, hardness, nitrates, pH, turbidity, color, or other undesirable elements. Polluted or contaminated water supplies are unacceptable.

(v) Supporting information for individual wastewater disposal systems with subsurface discharge as reported by a soil scientist, geologist, soils engineer, or other person recognized by the State regulatory authority. This data should include the following:

(A) Assurance of nonpollution of ground water. State Health authorities must be consulted to ensure that installation of individual wastewater systems will not pollute ground water sources or create other health hazards.

(B) Description of exploratory pit observations.

(C) Determination of soil types and description. The assistance of the SCS should be obtained for soil type determination and a copy of their recommendations included in the documentation.

(D) Description of ground water elevations showing seasonal variations.

(E) Records of percolation tests. Guidance for performing these tests is included in the EPA design manual, "Onsite Wastewater Treatment and Disposal Systems."

(F) Confirmation of space allowances. An accurate drawing to indicate that there is adequate space available on the site to satisfactorily locate the individual water and/or wastewater disposal systems, likewise, documented assurance of compliance with all local requirements. Structures served by wastewater disposal systems with subsurface discharge require larger sites than those structures served by another type system.

(vi) Supporting information for individual wastewater disposal systems with surface discharge covering the following points:

(A) Effluent standards issued by the appropriate regulatory agency that controls the discharge of the proposed individual systems.

(B) Assurance from the health authority having jurisdiction that the individual systems being proposed will not pollute the environment in excess of the limitation described in paragraph (a)(5)(v)(A) of this section.

(C) Program of maintenance, parts and service available to the system-owner for upkeep of the system.

(b) *Electric service.* The power supplier will be consulted by the applicant or developer to assure that there is adequate service available to meet the needs of the proposed development.

(1) Within subdivisions, lines must be placed underground where required by local regulatory authorities and, in other cases, where economically feasible.

(2) Where lines are installed above ground, they should be located in rear lot easements, wherever practicable. In all cases, the poles, guy wires, braces, transformers, etc., will be located so as not to unnecessarily detract from the appearance of the property.

(c) *Gas service.* Gas distribution facilities if provided will be installed according to local requirements where adequate and dependable gas service is available.

(d) *Telephone service.* Telephone service will be available at all dwelling units and other structures as applicable. Facilities will be located in accordance with paragraphs (b)(1) and (b)(2) of this section.

(e) *Outdoor lighting.* Outdoor lighting will be provided when required by local authorities or when necessary to provide adequate safety, and provisions have been made to assure permanent operation and maintenance of the facilities.

(f) *Other utilities.* Other utilities, if available, will be installed according to local requirements.

**§ 1924.109 Grading and drainage.**

(a) Soil and geologic conditions must be suitable for the type of construction proposed. In questionable or unsurveyed areas, the applicant or developer will provide an engineering report with supporting data sufficient to identify all pertinent subsurface conditions which could adversely affect the structure and show proposed solutions.

(b) The applicant or developer must seek the advice of SCS regarding identification of soils and its characteristics that may cause problems in grading and drainage. Where soil and drainage difficulties are identified, SCS recommendations will be considered during preparation of the development plan.

(c) Grading must conform to all State and local regulations and, where applicable, a grading certificate shall be obtained and established procedures followed.

(d) Site grading will promote drainage of surface water away from buildings and foundations, minimize earth settlement and erosion, and assure that drainage from adjacent properties onto the site or from the site to adjacent properties does not create a health hazard or other undesirable conditions.

(e) Sites requiring extensive earthwork, cuts and fills of 4 feet or more, shall be designed by a duly licensed or registered engineer. Where topography requires fills of extensive earthwork that must support structures and building foundations, these must be controlled fills designed, supervised and tested by a qualified soils engineer.

(f) All slopes must be protected from erosion by planting or other means. Slopes may require temporary cover if

exposed for long periods during construction.

(g) The design of storm water systems must consider convenience and property protection both at the individual site level and the drainage basin level. Storm water systems should be compatible with the natural features of the site.

(h) In areas with inadequate natural and/or manmade drainage systems, permanent and/or temporary storm water storage shall be an integral part of the overall development plan. Design of these facilities shall consider safety, appearance and economical maintenance operations.

**§ 1924.110 Performing development.**

All development will be arranged and completed by the applicant or developer according to applicable local, State or Federal regulations including applicable health and safety standards pertaining to building construction or development, and requirements of this subpart.

(a) The FmHA will not become a party to any construction or development contract. The applicant or developer will contract only with competent contractors. Contractors will provide the required bonding and insurance acceptable to FmHA and the applicant or developer under § 1924.6 of Subpart A of this part.

(b) The work will be performed in accordance with drawings and specifications approved by FmHA.

(c) Written assurance of completion from the responsible public authority will be required when local, city, county, State or other public authority codes, regulations and ordinances require inspections prior to final acceptance. Written assurance of completion and notification of completion from the person(s) providing technical services under § 1924.106(c) of this subpart is required prior to final acceptance by the FmHA.

**§§ 1924.111–1924.113 [Reserved]**

**§ 1924.114 Multiple family housing.**

Multiple housing developments will be planned and constructed under the appropriate requirements of this subpart, Subpart A of this part, and the requirements of the applicable program regulations.

**§ 1924.115 New and less than partially completed subdivisions.**

New and less than partially completed subdivisions must be planned and developed under the requirements of this subpart. The development of housing sites must also comply with the following:

(a) *Streets.* (1) Streets must conform to master street plans, design standards, and construction specifications of the local entity or State and the requirements of this subpart. Developments with more than 25 dwelling units must have two accesses available, unless after considering the safety and convenience aspects of the proposal an exception is granted by the State Director.

(2) Streets must be dedicated to and accepted by a public body which shall be responsible for continuous maintenance, except in multiple family housing projects where streets within the development may not be able to be publicly owned and maintained. Variations of this requirement shall not be authorized by the State Director without prior approval of the National Office.

(3) Hard-surfaced streets are mandatory. However, the State Director may make an exception to this requirement when *all* of the following conditions exist:

(i) They are not required by local ordinance and codes.

(ii) The property or subdivision is not adjacent to streets that are or soon will be hard-surfaced.

(iii) The street has an all-weather surface approved by and maintained by a public body.

(iv) The local authority to whom the street is to be dedicated does not have available the required equipment necessary for maintenance and will not accept dedication and be responsible for maintenance of hard-surfaced streets notwithstanding the fact that the hard surfacing would be provided initially by the applicant or developer in accordance with standard local requirements and practices.

(v) Other lending institutions and agencies active in the area will make housing loans or insure mortgages in the subdivision when it is provided only with all-weather streets.

(4) Any deviation from the requirements indicated in paragraph (a)(3) of this section will require an exception from the National Office. The request to the National Office must include documentation as to how many of the requirements of paragraph (a)(3) of this section are met and the following additional information:

(i) Map indicating location of subdivision or project site in relation to other subdivisions and the community with types of surfacing present on the access streets or roads to the proposed subdivision or project.

(ii) Complete street layout plan.

(iii) Street cross-sections with other necessary details.

(iv) Topographic maps.

(v) Drainage plans.

(iv) All specifications for proposed street construction.

(vii) Other pertinent information.

(5) Streets must have curbs or curbs and gutters for pavement edging to prevent ravelling of the wearing surface and shifting of the pavement base. The State Director may grant an exception to this requirement if adequate shoulders are provided.

(6) Preferably, dwelling units should be occupied after street hard surfacing is completed; however, occupancy may occur after the pavement base is in place and property cured. In cases of delays due to unsuitable weather conditions or when hard surfacing is not done by the developer but by the local public body, an all-weather street acceptable to the local public body shall be provided prior to occupancy.

(i) When the developer is responsible for providing street surfacing, a performance and payment bond, escrow agreement, irrevocable letter of credit, or similar assurance acceptable to the State Director must be provided by the developer to assure that the required street work will be completed within 1 year from the date dwelling construction is started. This assurance will remain in effect until the streets are accepted by the entity responsible for continuous maintenance. The State Director shall establish a policy for handling these matters according to local regulatory practice or requirements. Any such assurance will specifically name the United States of America acting through FmHA as an obligee in order to give FmHA the ability to enforce the assurance or collection of the bond if the streets are not properly surfaced. If a local entity requires similar assurance that a developer complete street or road surfacing as discussed in this paragraph, and if the local entity requires that it be named obligee, then the requirements of this paragraph may be satisfied by naming FmHA as a co-obligee to such assurance.

(ii) Where local public bodies provide final surfacing, the subgrade and base shall be prepared according to the specifications of the local body. Written assurance must be obtained from the public body that suitable hard surface will be provided within a reasonable period usually not more than one year.

(b) *Lot layout.* (1) All lots shall be surveyed and platted. Permanent markers shall be placed at all lot corners.

(2) Lots shall meet all requirements of State and local entities and the FmHA.

(3) Lot arrangement should provide for the most effective use of building sites. Street lengths and utility runs should be minimized.

(4) Lot layout should encourage orientation of the dwelling units for solar access.

(5) Unacceptable lots. Any review of the proposed development will include all the proposed lots. Those lots determined unacceptable because of unsuitable soils, exposure to noise, flooding, etc., shall be combined with acceptable lots, redesigned to eliminate the unacceptable conditions through the use of barriers or building orientation, or made a part of a common area to be dedicated to and maintained by a public body or homeowners association in order to prevent development financed elsewhere from adversely affecting the housing financed by FmHA.

(c) *Covenants, conditions and restrictions.* Covenants, conditions and restrictions (CC&R's) shall be developed to preserve the character, value and amenities of the residential community and to avoid or mitigate potential environmental impacts unless, an exception is granted by the State Director after considering the suitability of local ordinances, zoning, and other land use controls.

(1) CC&R's shall be recorded in the public land records and specifically referenced in each deed.

(2) It is the intent that through the CC&R's the:

(i) Developers will be assured the purchasers will use the land in conformance with the planned objectives for the community, and

(ii) Purchasers are assured the developer will proceed to use the land as planned and that other purchasers will use and maintain the land as planned to prevent changes in the character of the neighborhood that would adversely impact values or create a nuisance.

(3) The CC&R's recommended in HUD Data Sheet 40 should be considered as a starting point for developing CC&R's for a specific development. Due to the unique quality and character of each development the CC&R's should be submitted to FmHA for comment prior to recording.

(4) In order to permit the use of dwellings with passive or active solar systems, consideration should be given to including a covenant to protect the solar rights of the individual property owners.

**§ 1924.116 Existing subdivisions partially or more completed.**

Existing subdivisions partially or more completed must comply with § 1924.107 of this subpart and all other requirements in this section to be acceptable for FmHA financing except as provided in § 1924.119(c) for existing subdivisions which have been and still are accepted by HUD or VA. Subject to § 1944.10(g) of Subpart A of Part 1944 of this chapter, those subdivisions approved under prior FmHA regulations that do not meet the general policy of § 1944.102 of this subpart and the requirements of this section are acceptable for further development only for a period of two years after the effective date of this regulation. All subdivision plats recorded or subdivisions developed after the effective date of this regulation must be processed under § 1924.115 of this subpart unless an exception is granted by the State Director on the basis that the subdivision was not previously submitted for review for reasons other than circumventing the requirements of this subpart. Those granted exceptions will meet the requirements of development in § 1924.115 (a) and (b) of this subpart with only the following modifications:

(a) *Utilities.* (1) Written verification must be obtained from the appropriate regulatory agency that any existing central water or waste-water disposal system is operating in compliance with all State and local regulations and has sufficient capacity to serve the proposed development. If a system is not publicly owned and operated it must comply with § 1924.106(a)(4) of this subpart.

(2) If individual water or wastewater disposal systems have been in use and it is not feasible to convert to central systems, determine the following and process according to § 1924.106(a)(5) of this subpart.

(i) The residents of the subdivision will not be forced to install central systems within a year or two.

(ii) Verify that the existing individual systems are operable and giving satisfactory service at a reasonable maintenance cost. The local regulatory authority should assist in making this determination.

(3) Other utilities such as electricity, telephone, gas, outdoor lighting that were previously installed should be providing reliable, efficient service.

(b) *Streets.* If the streets within the existing neighborhood are soon to be paved and the local authorities will assess such costs to the homeowners, the applicant or developer shall inform FmHA and prospective purchasers of these intentions. Sites must be served by streets as provided in § 1924.115(a) of this subpart.

(c) *Lot layout.* Lots must continue to be developed according to the size and design of the existing development except where the prior design has proven uneconomical, unfeasible or unmarketable.

(d) *Covenants, conditions and restrictions.* Existing CC&R's must be carefully reviewed to ensure they generally conform to those required for subdivisions. It may be necessary to request assistance from the Office of General Counsel to complete the review. Any unacceptable language within the CC&R's must be modified as requested by FmHA before sites in the subdivision are acceptable.

**§ 1924.117 Scattered site.**

Scattered sites (developed or undeveloped) will be evaluated by the loan approval official to determine that the location and market are acceptable. A scattered site must be planned and developed under the applicable requirements of this subpart, Subpart A of this part, Subpart A of Part 1944, Subpart G of Part 1940, Subpart B of Part 1806 (FmHA Instruction 426.2) and State and local regulations.

(a) *Location and feasibility reviews.* All requests for FmHA financing for the development or purchase of scattered site(s) will be submitted to the County Supervisor and processed in accordance with this section.

(1) The County Supervisor will review the proposal and site(s) to determine if the scattered site(s) conforms with the applicable requirements of this subpart.

(2) When the District Director's review of a scattered site within a subdivision is required, the District Director will review the subdivision and site to determine acceptability. Site and subdivision acceptability will be documented in the county office operational subdivision file.

(b) *Utilities.* All essential utilities will be provided. If central water or wastewater disposal services are not available, individual systems must be feasible and supporting factual data should include evidence that clearly shows the system(s) will perform satisfactorily for a reasonable period of time at a reasonable maintenance cost (see § 1924.106, paragraphs (a)(5)(iv), (a)(5)(v), and (a)(5)(vi) for suggested evidence that should be required). Onsite water or wastewater disposal systems must pass required tests. Also, there must be no evidence of well or wastewater treatment system failures on other sites nearby which may adversely affect the subject site.

(c) *Streets or roads.* All scattered sites shall be contiguous to and have direct access from a(n):

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(1) Hard surfaced or all-weather street or road which has been dedicated to and accepted by a public body which is responsible for continuous maintenance, (unless an exception is granted by the National Office), or

(2) Extended driveway which connects with a hard surface or all weather street or road that meets the requirements of paragraph (c)(1) of this section, and:

(i) The driveway has an all-weather or hard surface.

(ii) The driveway does not potentially serve more than two individual dwellings, and

(iii) The property includes title to or an easement to the driveway and it is included in the security for the loan. An extended driveway will normally not exceed three hundred (300) feet in length or be used to circumvent the development of publicly-owned streets or roads.

**§ 1924.118 Modification of requirements and recommendations in this subpart.**

Higher standards than outlined in this subpart may be required. The site development requirements of this subpart have been adopted as minimum standards. State or local authorities or the FmHA, however, many find it necessary to require standards above those in this subpart when the public health, safety or welfare would be better served by more stringent standards. Some examples of considerations for justification for higher standards are:

(a) The site cannot be served adequately and economically with such public and central facilities and services as are normally required. For example, if the local minimum lot size of 10,000 square feet does not provide an adequate absorption field area for individual subsurface wastewater disposal systems according to professional analysis of percolation tests and soil types on a particular site, the State Director may raise the minimum requirement to that which will be safe and sanitary.

(b) Land proposed for building sites may not be safely used because of danger from flood or other inundation or as a result of natural conditions which are a menace to health, safety or public welfare. For example, where the local public body does not, in the opinion of FmHA, have adequate drainage requirements, the State Director may require more rigid specific drainage standards than requested locally or than provided in this subpart. Another example would be that in certain cases the street drainage system must be tied in with irrigation or storm drainage systems to provide storm drainage in a controlled manner.

**§ 1924.119 Subdivision reviews.**

The review of subdivisions is divided into three subsections: New and less than partially completed, existing partially or more completed, and reciprocity of acceptance among Federal agencies. The applicable review subsection will be followed to determine subdivision acceptability. The inoffice processing times in this section are guidelines for timely processing of properly prepared submissions, and are not intended to delay the handling of reviews or discourage proper reviews of complex submissions. Unresponsive submittals will cause delays. Requests for exceptions must be forwarded to the approving officials as soon as possible after the need is identified and the documentation is assembled.

(a) *New and less than partially completed subdivisions.*—(1) *Location and feasibility submission.* When Form FmHA 1924–20 with attachments is received from an applicant or developer:

(i) The County Supervisor will:

(A) Handle inquiries and provide basic information about subdivisions processing.

(B) In those cases subject to intergovernmental review, assure that the requirements of Subpart J of Part 1940 of this chapter have been met.

(C) Immediately forward any submission to the District Director for review and advise the applicant or developer of the limitations on their actions that apply during the application review process, pursuant to § 1940.309 (e) of Subpart G of Part 1940 of this chapter, and that further processing will be handled by the District Office. The County Supervisor must include comments and recommendations in the remarks section of Form FmHA 1924–20 or on attached separate sheets.

(ii) Upon receiving a location and feasibility submission, the District Director must:

(A) In those cases subject to intergovernmental review, assure that the requirements of Subpart J of Part 1940 of this chapter have been met.

(B) Discuss with the applicant or developer Form FmHA 1924–20 and required documents to determine the completeness of the submission and the possible need for further information.

(C) Make a field visit or accompany the applicant or developer to the proposed site to review the feasibility of the location and to become familiar with the natural and fixed features influencing the site.

(D) If the proposal is within his/her approving authority under § 1924.121 of this subpart, make a comprehensive study to assure compliance with all local, regional and State regulations, codes, ordinances, plans for future development and compliance with this subpart. It may be necessary to contact the State Office Architect, Engineer or Environmental Coordinator during this review.

(E) When possible, the review should be completed within 30 days and a written analysis including recommendations or conditions provided the applicant or developer with a copy mailed to the County Supervisor.

(F) If beyond his/her approving authority, forward to the State Director with written comments and recommendations as soon as possible.

(iii) When the State Director's review of the location and feasibility submission is required, the State Director will:

(A) Make a comprehensive study to assure compliance with all local, regional and State regulations, codes, ordinances, plans for future development and compliance with this subpart. In making this study, the State Director will use the services of State Office personnel including the Architect, Engineer, and the State Environmental Coordinator as well as ensure that the personnel required by Subpart G of Part 1940 of this chapter undertake and complete the proper environmental review for the submittal.

(B) Provide a written analysis and guidance for further processing to the District Director with a copy to the County Supervisor.

(C) Whenever possible, complete this review within 30 days.

(iv) If the submission requires National Office review, the applicant or developer should be informed. In most cases, the State Director can expect a response within 45 days of the date of a routine request for review.

(2) *Preliminary submission.* When it has been determined by FmHA that the project is feasible and the location conforms with the intent of the funding program, the applicant or developer will submit the required additional information as pursuant to Exhibit A II of this Subpart.

(i) Upon receiving a preliminary submission, the District Director will:

(A) Review the comments concerning this development which were made at the time of location and feasibility analysis and verify conformance with any conditions imposed during the initial review.

(B) Review the drawings and specifications item by item with the

applicant or developer to avoid any misunderstandings as to intent, extent, kind and quality of work to be performed and materials to be used. The District Director may find it necessary to contact the State Office technical staff in order to complete this review.

(C) Offer suggestions to the applicant or developer, when appropriate, as to how the design, drawings and specifications may be altered to improve the facilities and better serve the needs of the public. For revisions that require technical determinations, the applicant or builder-developer may be requested to obtain additional technical assistance.

(D) Act as outlined in paragraphs (a)(1)(ii)(D), (a)(1)(ii)(E), and (a)(1)(ii)(F) of this section.

(ii) When the State Director's review of the preliminary submission is required, the State Director must consider all recommendations made on the location and feasibility submission and act as outlined in paragraphs (a)(1)(iii)(A), (a)(1)(iii)(B), and (a)(1)(iii)(C) of this section.

(3) *Final submission.* (i) Upon receiving a final submission, the District Director will:

(A) Review the submission to determine the completeness of the drawings and specifications.

(B) Determine that approvals have been received for local, regional and State authorities having jurisdiction.

(C) Determine compliance with FmHA regulations, and

(D) Act as outlined in paragraphs (a)(1)(ii)(D), (a)(1)(ii)(E), and (a)(1)(ii)(F) of this section.

(ii) After approval, one copy of the final submission and evaluation will be forwarded to the County Supervisor. One copy should be placed in the District file. All additional copies, as appropriate, will be returned to the applicant or developer after the final review and a determination has been reached.

(iii) When the State Director's review of the final submission is required, the State Director must consider all previous recommendations and act as outlined in paragraphs (a)(1)(iii)(A), and (a)(1)(iii)(B), and (a)(1)(iii)(C) of this section.

(4) *Notification letters for subdivision review.* (i) The District Director will notify the applicant or developer in writing concerning the status of the proposal at the completion of each of the processing review stages. This notification will consist of either:

(A) A letter of acceptance suggesting that the applicant or developer continue with preparation of the materials for further submission to FmHA (See Guide Letter No. 1924–2) available in any FmHA office, or

(B) A letter explaining why the proposal is unacceptable. Possible reasons for rejecting the proposal may include, but are not limited to a proposed site location that would result in:

(*1*) The unnecessary conversion of important farmland, prime forestlands, prime rangelands, floodplains, or wetlands,

(*2*) The destruction of a property listed or eligible for listing on the National Register of Historic Places, and

(*3*) The isolation of housing and its residents from necessary services and utilities (See Guide Letter No. 1924.2), or

(C) Letter of approval (See Guide Letter No. 1924.4).

(ii) Before proceeding to the next submittal level, the applicant or developer must modify the proposal in accordance with FmHA recommendations, or provide acceptable alternatives.

(b) *Existing subdivisions, partially or more completed.* The review of existing subdivisions that are partially or more complete will follow the two-step process outlined below:

(1) *Location and feasibility submission.* The applicant or developer will submit FmHA Form 1924–20 and all information listed in Exhibit A, Section I of this subpart to the County Supervisor. The submittal will be processed in accordance with the procedure in § 1924.119(a)(1)(i) of this subpart.

(2) *Final submissions.* The applicant or developer will submit to the District Director all information listed in Exhibit A, Sections II and III of this subpart. The approval official may waive the requirements to submit any of the documentation listed in Exhibit A, Sections II and III, if such information is not available and is not necessary to verify that the subdivision conforms with the FmHA requirements in this subpart. The submittal will be processed in accordance with the procedure in § 1924.119(a)(3).

(c) *Reciprocity of subdivision acceptance among Federal agencies.* Subdivisions which the Department of Housing and Urban Development (HUD) or the Veterans Administration (VA) have determined acceptable will be processed under this section. The letter of subdivision acceptance used by those agencies are: HUD form 92258 and VA form FL 26–803A. HUD has two procedures for determining subdivision acceptance. Developer Certification (DC) and Local Area Certification (LAC). The DC procedure requires that the development meet HUD subdivision standards. In both cases, the developer certifies to HUD the development meets the applicable standards and any conditional requirements that were necessary for acceptance.

(1) Upon receiving a request for subdivision reciprocity acceptance for a subdivision which HUD or VA has determined acceptable:

(i) The County Supervisor or District Director will obtain from the applicant or developer a copy of the letter of acceptance (HUD form 92258 or VA form FL 26–803A). If HUD or VA issued a conditional acceptance or LAC certification, evidence must be included that those conditions have been satisfied. This informaiton along with appropriate comments will be forwarded to the State Director.

(ii) The State Director or a member of the State staff will immediately contact the issuing agency to determine if the letter of acceptance or LAC is still in effect, to verify any conditional requirements have been met, and to the extent practical, discuss and address any local problems pertaining to that subdivision. In the case of a Planned Unit Development (PUD), review of the Home Owners Association documents and covenants would be required. Responsibility for monitoring and completing subdivision improvements will remain with the agency issuing the approval.

(iii) When the State Director has determined that the subdivision is accepted by the issuing agency, the State Director will notify the County Supervisor or District Director the subdivision is acceptable and individual sites within that subdivision may be considered for financing. Each site must be considered individually and meet the conditions applicable to scattered sites under § 1924.117 of this subpart, Subpart A of this part, Subpart A of Part 1944, and Subpart B of Part 1806 (FmHA Instruction 426.6). Conditional commitments issued for sites within such a subdivision will contain a list of the specific improvements that must be completed under the issuing agency's requirements.

(iv) If a HUD or VA accepted subdivision contains uncompleted road(s) or street(s) that serve the site to be developed or financed, no financing will be approved until (A) the uncompleted streets or roads are completed or (B) FmHA is named as an obligee on a performance and payment bond, a completion bond, escrow agreement, irrevocable letter of credit, or similar assurance acceptable to the State Director that the roads and streets will be completed within one year from the date the financing is approved. If the

streets or roads within the subdivision are all-weather surfaced which are satisfactory under § 1924.117(e), then a loan may be approved on the individual site without obtaining the bonding or other assurances required in (B) of the preceding sentence provided that for valuation purposes the site is valued based on the road surfaces then existing in the subdivision. Any bonds obtained under this subpart may name FmHA as an additional obligee on an existing bond favor of HUD or VA if the bond is otherwise satisfactory. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the subdivision is located.

(2) Upon request the state Director will provide evidence to HUD or VA of FmHA subdivision acceptance.

**§ 1924.120 Local entity designation.**

To eliminate duplication of review and to encourage local entities to adopt and enforce satisfactory minimum standards for subdivision development, FmHA will practice an abbreviated subdivision review procedure for any submittal from within the jurisdiction of a local entity designated by the State Director under this paragraph.

(a) *Determination.* A local entity with site development design standards equal to or exceeding those in this subpart and with the proven capability to enforce those standards shall be considered for designation. The State Director's determination for possible designation will be based on the successful completion of one or more developments under the jurisdiction of the local entity. The State Director will notify the local entity in writing of a favorable determination and indicate such to the appropriate District and county offices. This designation will be withdrawn immediately upon the local entity taking action to reduce its design standards or failing to enforce the standards. It should be clearly understood that FmHA reserves the right to make all decisions with regard to the eligibility of a proposed development for financing.

(b) *Subdivision reviews.* All site developments will be processed as outlined in § 1924.119(a)(1) of this subpart. This initial phase contains many items that cannot be delegated by FmHA. When FmHA determines the Subdivision Location and Feasibility Analysis submission is acceptable and a National Office waiver is not required, the applicant or developer will not be required to submit any additional documents for FmHA review until the development is complete. Upon completion of all development work, the local entity will provide FmHA written confirmation that the development was completed in accordance with approved drawings and specifications and is in compliance with their site design standards. If a local entity approved subdivision contains uncompleted road(s) or street(s) bonding or escrow funds must be provided in accordance with § 1924.115(a)(6).

**§ 1924.121 Approval authority.**

The State Director is responsible for implementing the authorities in this subpart. Tables 1 and 2 of this section summarize scattered site and subdivision review and approval authority of the County Office, District Office, State Office, and the National Office.

(a) *Subdivision approval or acceptance authority.* Subdivision approval or acceptance will be in accordance with Table 1 of this section.

(b) *Scattered site approval authority.* Scattered site approval will be in accordance with Table 2 of this section.

(c) *Redelegation of authority.* The State Director may redelegate review and approval authority to appropriate FmHA State Office employees under the following conditions:

(1) The employees have had sufficient training and have demonstrated the capability to perform the required actions, and

(2) A procedure is established to ensure the necessary input from the State Office Engineer/Architect/Environmental Coordinator, and

(3) Any redelegation must be in writing in accordance with FmHA Instruction 2006–F (available in any FmHA office).

SUBDIVISION APPROVAL OR ACCEPTANCE AUTHORITY

| No. of sites [1] | County supervisor | District director | State director | National office |
|---|---|---|---|---|
| #Sites: | | | | |
| 5–25 | No—Forward to District Director with recommendations. | Yes—If central water and sewer [2]. If individual water and/or wastewater systems are proposed, or unusual conditions exist forward to State Director. | Yes—Additional assistance may be requested. | Provide special assistance. |
| More than 25 | No—Forward to District Director with recommendations. | No—Forward to State Director with recommendations. | Yes—Unless National Office concurrence or waiver is required. | Yes—All proposals where authority has not been delegated to State Director or when special assistance is requested. |
| 5 or more HUD or VA accepted. | No—Forward to District Director with comments.. | No—Forward to State Director with comments. | Yes—See § 1924.119(e)... | Provide special assistance. |

NOTES:

[1] Strategic placement of lots, groupings and subdivisions will not be used to impair or circumvent these approval authorities. The approval authority for a phased project shall be determined by the size of the total proposal. Likewise, when only a portion of the site owned by the applicant is to be used, the approval authority shall be based on the total development capacity of the site.

[2] The District Director is responsible for obtaining the necessary technical assistance from the State Office Architect/Engineer in processing the proposal.

SCATTERED SITES APPROVAL AUTHORITY

| Location [1] | County supervisor | District director | State director | National office |
|---|---|---|---|---|
| Open Country and Communities 1–4 Contiguous | Yes | Yes | Yes | |
| Subdivisions 60% or more filled out within or part of a community | Yes | Yes | Yes | |
| Subdivisions 60% or more filled out which are not within or part of a community. | Yes [2] | Yes | Yes | |
| FmHA accepted HUD or VA approved subdivisions | Yes | Yes | Yes | |

[1] NOTES: It is the policy of the agency to encourage new FmHA financed development to take place within or in close association with existing communities and to have access to all services available within the community.

[2] Scattered sites within unapproved subdivisions, which are 60 percent or more filled out located outside communities, must be reviewed by the District Director prior to approval by the County Supervisor (See §1924.117(a)(2)).

**§ 1924.122 Exception authority.**

The Administrator may in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

**§ 1924.123 State supplements and exhibits.**

State Directors will obtain and issue National Office clearance for all State supplements and exhibits. These will be in accordance with FmHA Instruction 2006–B (available in any FmHA office).

(a) *State supplements.* State Directors may supplement this subpart only to meet State and local laws and regulations and to provide for orderly processing of submittals.

(b) *State exhibits.* State Directors may develop exhibits for use by applicants or developers if the exhibits to this subpart are not adequate for use in the State. Those exhibits may be developed to further explain the items needed within the various submittals; organization of those items; and coordination of this subpart with the requirements of the FmHA program(s) providing the financial assistance.

**§ 1924.124 Exhibits.**

State Directors may requisition additional copies of the exhibits to this subpart from the Finance Office for use by FmHA offices in assisting applicants and developers with site development.

**§§ 1924.125–1924.149 [Reserved]**

**§ 1924.150 OMB control number.**

The collection of information requirements in this regulation was approved by the Office of Management and Budget and assigned OMB control number 0575–0099.

**Exhibit A—Checklist of Visual Exhibits and Documentation for Subdivisions**

*U.S. Department of Agriculture*

Farmers Home Administration

This Exhibit lists visual exhibits and documentation necessary for FmHA to properly evaluate proposed development. Intermediate consultation by the applicant or developer with the FmHA County, District or State Offices should be as frequent as necessary to reduce chances of misunderstandings and limit the amount of nonproductive time and expense for all parties concerned.

I—*Location and Feasibility Exhibits:* The applicant or developer will submit the following information to the District Director to determine feasibility of the project and general conformance with FmHA policy:

A—*Form 1924–20, "Request for Subdivision Location and Feasibility Review."* The applicant or developer should fully complete the form and attach any information in addition to that listed herein that is essential in creating a clear understanding of the proposed development. This form is available at any FmHA office.

B—*Form 1940–20, "Request for Environmental Information."* Portions of the form must be completed when the submission contains more than 4 dwelling units and the entire form must be completed when the submission contains more than 25 dwelling units. The form and guidance concerning assembly of the information is available at any FmHA office.

C—*Form—400–1, "Equal Opportunity Agreement," and Form 400–4, "Assurance Agreement" (When applicable).*

D—*Location Map.* A general site location map of the area indicating the adjacent land uses and zoning, the present and future access roads to the site as well as the proximity to shopping, schools, churches, and major transportation facilities with note of traffic volumes. If a satisfactory map of the locality is not available, a clear and preferably scaled rough sketch map that provides the required information will be sufficient.

E—*Property Survey Map.* A current survey (where 1-inch represents no more than 100-feet) of the project site showing the boundaries as well as all existing known features specifically including utilities, easements, access roads, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees. If a current survey does not exist, the most accurate document which is available will be submitted.

F—*Soils Map and Report.* A complete soils map and report, including "site specific" interpretations and recommendations, from the local or county representative of the U.S. Department of Agriculture, Soil Conservation Service (SCS) Office will be included with the location and feasibility submission. A determination of whether or not any lands described in USDA Regulation No. 9500–3 are impacted by the proposed development should also be included. The local SCS office may provide recommendations for the development of suitable drainage and landscaping plans later in the planning process.

G—*Market Survey.* Applicants or developers should conduct a market survey showing the need and demand for sites and housing within the community and surrounding trade area. Subdivision development of more than 25 new residential sites must have a complete market analysis completed in accordance with § 1924.107(d)(4).

H—*Request for Exceptions.* Any need for State or National Office exception(s) should be identified at this stage in the processing. Appropriate exception(s) should be requested and obtained prior to the preliminary submission.

I—*Other.* Optional information the applicant or developer of the project may wish to present such as:

1. Engineering report relative to the feasibility of central utilities by extension or creation of same onsite.

2. Dwelling drawings and specifications.

3. Site development information.

II—*Preliminary Submission Exhibits:* After it is determined by FmHA that the project is feasible and the location conforms with the intent of the funding program, the applicant or developer will submit the following information to the District Director in addition to those materials submitted previously:

A—*Property Survey.* A survey (were 1 inch represents no more than 100 feet) of the property and each individual lot showing the exact boundaries and corners of the property accompanied by a written description of said boundaries. Also, locations of predominant features such as utilities, easements, access points, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees affecting the proposed development must be included. This document shall bear the seal of a professional licensed to provide surveying services in the State in which the subdivision would be located. This survey could be a part of item D below of this paragraph.

B—*Topographic Map.* An accurate topographic map showing existing and proposed contours with a scale compatible with the size of the project. The site shall be shown at a reasonable scale, usually 1"=100' with 5-foot contour intervals. Where the site is unusually level or steep, the contour intervals may be varied accordingly.

C—*Preliminary Subdivision Plan.* A line drawing, to scale, showing proposed street locations with profiles and widths, lot layouts, major drainageways, and other development planned. Preliminary sections and details shall be provided for the street construction, curbs and gutters, drainageways, and other physical improvements.

D—*Preliminary Dwelling Drawings and Specifications.* If the applicant or developer intends to construct the dwelling units, preliminary floor plans and specifications, elevations and sample site plans showing the placement of the unit on the individual lots should be submitted.

E—*Statement of Planning and Zoning Compliance.* A statement must be submitted which sets forth local, county and State approvals as applicable. If change of zoning or variance is required, the status of the variance or change of zoning shall be documented.

F—*Technical Service Contracts.* Executed contracts for the professional services of a site planner, architect, landscape architect, engineer, or soil engineer will be submitted as appropriate for the planning of the proposed development.

G—*Utility Approvals.* Statements of approval and feasibility for utility systems as follows:

1. Verification of adequate capacity and approval to tie in with local existing water, wastewater disposal, electric, telephone, and other utility systems as appropriate.

2. Tentative approval of local or State health authority for individual waste disposal systems when it is clear a central system is unfeasible at that time. Use §1924.108 (a)(5) of this subpart when preparing information required.

H—*Facility Acceptance.* Evidence that the appropriate public body will accept and maintain streets, common areas, street lighting, side walks, and drainageways, when such facilities are to be dedicated to a public body.

I—*Preliminary Specifications.* Outline specifications describing all the proposed materials to be used and how they are to be applied. These are only the materials used in the land development and construction of the streets, drainage, and utility work.

J—*Conditions, Covenants and Restrictions.* A copy of the convenants prior to recording. Use HUD–FHA Date Sheet 40 as a guide for developments of single family detached dwellings. For those proposals including Planned Unit Developments (PUD) or homeowners' associations, the applicant or developer should contact the District Director for guidance.

K—*Incremental Slopes Plan.* If areas of common slope are not identified elsewhere in adequate detail, this information should be provided in a separate plan.

L—*Preliminary Grading Plan.* This plan will indicate degree of work required to provide positive drainage of all building sites and control measures to be taken to eliminate soil erosion. Dwelling locations may be shown if they can be predetermined.

M—*Plat.* A copy of the subdivision plat prior to recording.

III—*Final Submission Exhibits:* All decisions regarding the conceptual design of the proposed project should be made prior to this submission. This effort is mainly to demonstrate that those agreed upon concepts have been transformed into construction documents and the necessary approvals have been granted. All items requiring revision or more detailed information as determined by the review of the preliminary submission will be resolved before the applicant or developer prepares the final submission. All documents shall be executed in a professional manner and shall carry the appropriate designation attesting to the professional qualifications of the architect, engineer, land surveyor or planner. All documents will be accurately drawn at an appropriate scale. The submittal should include 3 copies of each item. Exhibits will include those items in paragraphs I–A, B, C, E and II–A previously submitted and at least the following additional items.

A—*Drawings and Specifications.* These documents will be complete, and suitable for construction. They will be identical to those approved by the regulatory authorities having jurisdiction over the project and include all the following.

1. Site plan showing the location of streets, alleys, easements, water supply and wastewater disposal systems, drainage structures, lot lines, etc. Include recreational and the special purpose or common areas.

2. Grading plan with any special instructions and appropriate cross-sections for street construction, curbs and gutters, retaining walls, sidewalks, etc.

3. Drainage plan showing all improvements designed to control on-site and off-site storm water including swales, culverts, retention basins, catch basins, drainage piping, manholes, and associated details necessary for construction.

4. Utility plans and related details for installation of water supply and wastewater disposal systems, natural gas lines, district heating lines, telephone and electric services, street lighting, as applicable, indicating associated permanent and construction easements.

5. Landscaping plan detailing the existing trees to be preserved and the methods by which this and the proper development of common areas and protective screens will be accomplished.

6. Complete specifications for all proposed development.

B—*Individual Lot Plans.* A typical dwelling site plan for each site involving a characteristic situation will be included. Drawings should normally be at a scale of 1" = 20' or 1/8" = 1'0". These typical plans should illustrate mixing of homes and varying setbacks.

Dwelling location for all lots are not mandatory; however, they may be shown on Item III A 1. in lieu of individual plot plans if dwelling locations can be determined and the plan scale is 1" =40' or larger. Individual site plans will be required as part of the individual applications before the development of a lot begins.

C—*Written Approvals.* Written statements will be included which verify the regulatory authorities having jurisdiction over the development have granted the necessary approvals. These approvals shall include at least the following:

1. Local, regional or State planning authority.

2. All utilities including water supply, liquid and solid waste disposal, electric, telephone, etc.

3. Common areas and similar facilities dedicated to and accepted by the public body which shall have the responsibility for continuous maintenance, or if National Office approval has been obtained, deeded to a properly organized home owners' association.

4. Streets dedicated to and accepted by the public body which shall have the responsibility for continuous maintenance, except for those cases waived by the State Director or the National Office.

D. *Recorded Subdivision Plat.*

E. *Recorded Covenants.*

F. *Surety.* If applicable, evidence that the sponsor will provide bonding or escrow funds in accordance with § 1924.115 (a)(6)(i).

G. *Affirmative Fair Housing Marketing Plan.* Housing and Urban Development (HUD) Form, 935.2 will be completed and signed by the applicant or developer prior to submission. The plan will be reviewed for adequacy by the District Director and signed by the appropriate approving official. This plan will remain in effect until the last lot or site to be developed has sold.

H. *Other.* Pertinent items that may be required in any particular situation such as homeowner association documents, special environmental clearances, etc.

**Exhibit C—Site Development Design Requirements**

This Exhibit prescribes site development requirements to be used in developing residential sites in all housing programs. These requirements cover only those areas which involve health and safety concerns. They are not intended to cover all aspects of site development. Applicants and developers are expected to follow local practice, as a minimum, in all areas of site development not addressed in this Exhibit. When State, local, or other requirements are applicable in addition to FmHA's requirements, the most stringent requirement shall apply.

Proper integration of the natural features of a site with the manmade improvements is one of the most critical aspects of residential development. Poor site planning in large scale subdivisions, rental projects and individual sites, has resulted in a loss of valuable private and public natural resources and caused economic burdens and conditions unsuitable for healthy and pleasant living. Proper site design can preserve desirable natural features of the site, minimize expenses for streets and utilities, and provide a safe and pleasant living environment.

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*I. Streets*

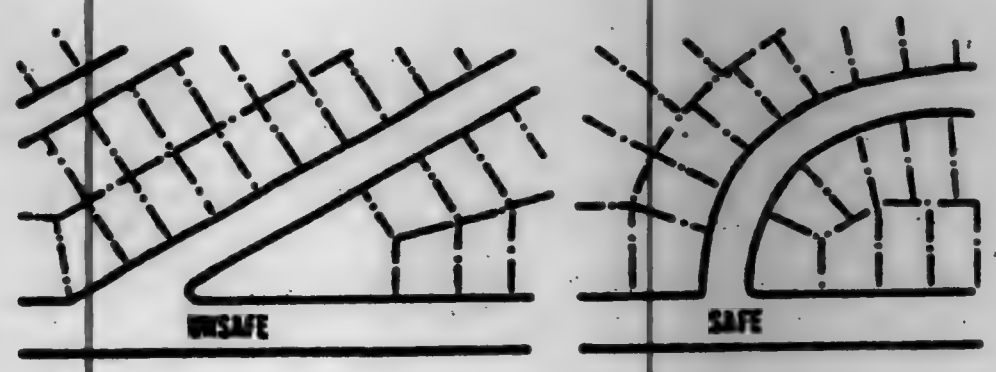
A. *Types*—1. *Collector streets.* Collector streets are feeder streets which carry traffic from local streets to the major system of arterial streets and highways. They include the principal entrance streets of residential developments and streets for circulation within such developments.

2. *Local streets.* Local streets are minor streets used primarily for access to abutting properties. These include drives serving multi-family housing units.

B. *Design Features*—1. *Emergency Access.* Access for fire equipment and other emergency vehicles shall be within 100 feet of main building entrances.

2. *Cul-de-sacs.* Cul-de-sac streets shall have a turn-around with an outside roadway diameter of at least 80 feet, and a right-of-way diameter of at least 100 feet.

3. *Intersection Angle.* Streets shall be laid out to intersect as nearly as possible at right angles and no street shall intersect any other street at an angle less than 75 degrees. Curb radii shall be a minimum of 20 feet for street intersections.



4. *Intersection Sight Distance.* Adequate distances must be maintained at intersections. Vehicles must be visible when within 75 feet of the centerlines of uncontrolled intersecting streets.

C. *Street Geometry*—1. *Definitions.* The definitions in Sections I.C.1.a and I.C.1.b. apply to the requirements in Section I.C.2.

a. *Terrain Classifications.*
(1) Ordinary—Slope less than 8%.
(2) Rolling—Slope range of 8% to 15%.
(3) Hilly—Slope greater than 15%.

b. *Development Density* (Number of Lots). (land Area minus Undeveloped Areas greater than Average Lot Size)
(1) Low—Less than 2 lots per acre.
(2) Medium—2 to 6.0 lots per acre.
(3) High-More than six lots per acre.

2. *Design Requirements.* Collector streets and local streets shall comply with the requirements in Tables 1 and 2 unless an exception is granted by the State Director. These requirements may need modification in localities having winter icing conditions.

TABLE 1.—PAVEMENT WIDTHS (FEET)

| Street type | On-street parallel parking | Development density | | |
|---|---|---|---|---|
| | | Low | Medium | High |
| Collector | Prohibited | 26 | 32 | 36 |
| Collector | No Restrictions | 36 | 36 | 40 |
| Local | Prohibited | 18 | 18 | 20 |
| Local | Partial, One Side [1] | 18 | 20 | 26 |
| Local | Partial, One Side [1] | 22 | 26 | 32 |
| Local | Total, One Side [2] | 22 | 26 | 26 |
| Local | Total, Both Sides [2] | 26 | 32 | 36 |

(1) At least one parking space per dwelling is provided off-street.
(2) No parking spaces are provided off-street.

TABLE 2.—STREET DESIGN (FEET)

| | Terrain | | |
|---|---|---|---|
| | Ordinary | Rolling | Hilly |
| (1) *Collector street* | | | |
| (a) Minimum centerline radius of curvature | 300 | 225 | 150 |
| (b) Minimum sight distance | 250 | 200 | 150 |
| (c) Minimum right-of-way width | 60 | 60 | 60 |
| (2) *Local Street* | | | |
| (a) Minimum centerline radius of curvature | 200 | 150 | 100 |
| (b) Minimum sight distance | 200 | 150 | 100 |
| (c) Minimum right-of-way width [1] | 50 | 50 | 50 |

(1) For cul-de-sac streets, the minimum right-of-way width is 40 feet.

D. *Construction.* Street configuration and wearing surfaces must provide safe and economical access to all building sites. The design and construction of the street shall be appropriate for all anticipated traffic, climatic and soil conditions. Streets shall meet or exceed all local, county, and State requirements.

*II. Walks and Steps*

A. *Walks.* Where walks are provided, they shall be located to assure a minimum vertical clearance of 7 feet from all permanent or temporary obstructions. Walks shall have a slip resistant surface.

B. *Exterior Steps Not Contiguous to Dwelling or Building.*—1. *Flight.* a. Single steps or flights of steps exceeding a vertical height of 12 feet shall not be accepted.

b. Steps shall be set back from an intersecting walk or drive a minimum of 1 foot at a retaining wall and 2 feet at slopes.

2. *Risers and Treads.* a. Risers shall be a maximum of 6 inches, a minimum of 3 inches and uniform throughout the flight.

b. Treads shall be a minimum of 12 inches and uniform throughout the flight.

c. Treads shall have a slip resistant surface.

d. Treads shall be pitched appropriately to ensure drainage.

3. *Landings.* a. Minimum length shall equal 3 feet or walk width whichever is greater.

b. A change in direction in a flight of stairs shall be accomplished only at a landing or by a winder which has a tread width at a point 18 inches from the converging end, equal to the full straight stair tread width.

4. *Handrails.* Stairways having a flight rise exceeding 30 inches shall have a 36 inch high handrail located on one side for stairs 5 feet or less in width and on both sides of stairways over 5 feet wide.

*III. Grading*

A. *Compaction*—All fill for street or home construction shall have compaction of not less than 95 percent maximum density, as determined by proctor or other accepted testing methods. Maximum thickness of compaction layers shall be 6 inches except where compaction equipment of demonstrated capability is used under the direction of a qualified soils engineer. Earth fill used to support a building foundation shall be a controlled fill which is designed, supervised, and tested by a qualified soils engineer in accordance with good practice.

B. *Grodients.* Grading design shall be arranged to assure safe and convenient all-weather pedestrian and vehicular access to residential buildings and to all other necessary site facilities. Site grading shall be designed to establish building floor elevations and ground surface grades which allow drainage of surface water away from buildings and adjacent sites. Grading design shall conform with Tables 3 and 4.

TABLE 3.—ACCESS AND PARKING GRADIENTS [1]

[In percent]

| | Minimum | | Maximum | |
|---|---|---|---|---|
| | Center line | Crown or cross slope | Center line | Crown or cross slope |
| Streets | 0.5 | 1.0 | 14.0 | 5.0 |
| Street intersections | 0.5 | 1.0 | [2]5.0 | 5.0 |
| Driveways (*) | .05 | 1.0 | 14.0 | 5.0 |

TABLE 3.—ACCESS AND PARKING GRADIENTS [1]—Continued

[In percent]

| | Minimum | | Maximum | |
|---|---|---|---|---|
| | Center line | Crown or cross slope | Center line | Crown or cross slope |
| Sidewalks [2]: | | | | |
| Concrete | | 0.5 | | |
| Bituminous | | 1.0 | | |
| Building Entrances & Short Walks | 1.0 | | 12.0 | 5.0 |
| Main Walks | 0.5 | | 10.0 | 5.0 |
| Adjoining Steps | | | 2.0 | |
| Landings | | 1.0 | | |
| Stepped Ramp Treads | 1.0 | | 2.0 | 5.0 |
| Parking | | 0.5 | 5.0 | 5.0 |

[1] Approximate Equivalents: .5% = 1/16"/ft., 1.0 = 1/8"/ft., 2.0% = 1/4"/ft., 5.0% = 5/8"/ft., 10.0% = 1 1/4"/ft., 12.0% = 1 1/2"/ft., 21% = 2 5/8"/ft.

[2] Grades approaching intersections shall not exceed 5 percent for a distance of not less than 100 feet from the centerline of the intersection.

[3] Vertical transitions shall percent contact of car undercarriage of bumper with driveway surface.

[4] Five percent maximum for major use by elderly tenants.

TABLE 4.—SLOPE GRADIENTS [1]

[In percent]

| | Minimum | Maximum |
|---|---|---|
| Slope Away From Foundations: | | |
| Pervious Surfaces | [2] 5.0 | [3] 21.0 |
| Impervious Surfaces | [3] 1.0 | 21.0 |
| Pervious Surfaces: | | |
| Ground Frost Area | 2.0 | |
| Non-Ground Frost Areas | [4] 1.0 | |
| Impervious Surfaces | 0.5 | |
| Slopes to be maintained by Machine | | [3] 33.0 |

[1] See Table 3, footnote (1).

[2] Minimum length of 10 feet or as limited by property lines.

[3] Minimum length of 4 feet.

[4] The minimum is 2.0% if the annual precipitation is more than 50 inches.

*IV. Drainage*

1. *General—1. Collection and Disposal.* Surface and subsurface drainage systems shall be provided, as appropriate, for collection and disposal of storm drainage and subsurface water. These systems shall provide for the safety and convenience of occupants. They shall protect dwellings, other improvements and useable lot areas from water damage, flooding, and erosion.

2. *Concentrated Flow.* Where storm drainage flow is concentrated, permanently maintained facilities shall be provided to prevent significant erosion and other damage or flooding on site or on adjacent properties.

B. *Drainage Design and Flood Hazard Exposure—1. Storm Frequency.* Drainage facilities shall be designed for a 10 year storm frequency of 24-hour duration. Full potential development of all contributing areas shall be used as a basis for this determination.

2. *Street Drainage.* Streets shall be useable during runoff equivalent to a 10-year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10-year return frequency from ponding over 6 inches deep, streets shall be made passable for local commonly used emergency vehicles during runoff equivalent to a 25-year return frequency except where an alternative access street not subject to such ponding is available.

3. *Foundation Drainage.* Appropriate crawl space and foundation drainage shall be provided for the removal of subsurface moisture.

C. *Primary Storm Sewer—1. Pipe Size.* Pipe size for the primary storm sewer (any storm sewer or inlet lateral located in a street or other public right-of-way) shall have an inside diameter based on design analysis but not less than 15 inches. Where anticipated runoff from the five year return frequency rainfall will not fill a 15 inch pipe, a primary storm sewer system usually is unnecessary.

2. *Minimum Gradient.* Minimum gradient shall be selected to provide for self-scouring of the conduit under low-flow conditions and for removal of sediments foreseeable from the drainage area.

3. *Easements.* Easements for storm sewers shall be a minimum of 10 feet in width.

D. *Drainage Swals and Gutters—1. Design.* Paved gutters shall have a minimum grade of 0.5 percent. Paved gutters and unpaved drainage swales shall have adequate depth and width to accommodate the maximum foreseeable runoff without overflow. Swales and gutters shall be seeded, sodded, sprigged or paved as appropriate to minimize potential erosion. Side slopes shall be no steeper than 2:1.

2. *Easements.* Surface channels shall have an easement which is at least the width of the channel plus 10 feet.

E. *Downspouts—1. Outfall.* Where downspouts are provided, they shall either be connected to an available storm sewer, provided with suitable splash blocks, or empty at acceptable locations onto paved areas so that water drains away from buildings. Downspouts shall not connect to sanitary sewers.

2. *Piped Drainage.* Piped roof drainage from buildings shall be connected to available storm sewers or empty at locations where no erosion or other damage will be caused.

F. *Storm Inlets and Catch Basins—1. Openings.* Where inlets are accessible to small children, openings shall have one dimension limited to 6 inch access. Inlet openings in paved areas shall be designed to avoid entrapment or impedence of bicycles, baby carriages, etc.

2. *Access.* Access for cleaning shall be provided to all inlet boxes and catch basins.

G. *Drywells*—Drywells for the disposal of water from foundation drains, crawl spaces, and other small quantity sources shall be permissible where the bottom of drywells project into strata of undistributed porous soil at a level where the bottom of the drywell will be above the ground water table at its highest seasonal elevation.

*V. Water Supply Systems*

A. *Individual Water Systems—1. General.* a. In this subpart, an individual water system is a system which serves fewer customers or connections than the lower threshold for community systems stated in the Safe Drinking Water Act.

b. The system for an individual household should be capable of delivering a sustained flow of 5 gpm. A system supplying water to multiple household shall be designed by a Professional Engineer and have sufficient capacity to serve estimated demand. A test of at least 4 hours duration shall be conducted to determine the yield and maximum drawdown for all wells developed as part of an individual water system. This test may be waived by the State Office based on the hydrologic and geologic conditions in the area.

c. Water that requires continual or repetitive treatment to be safe bacterially is not acceptable.

d. After installation, the system should be disinfected in accordance with the recommendations of the health authority. In the absence of a health authority, system cleaning and disinfection should conform with the current EPA Manual of Individual Water Supply Systems.

e. Any method for individual water supply contained herein which is not permitted by the local health authority having jurisdiction shall not be used.

2. *Well Location*—a. A well located within the foundation walls of a dwelling is not acceptable except in arctic and sub-arctic regions.

b. Water which comes from soil formation which may be polluted or contaminated or is fissured or creviced or which is less than 20 feet below the natural ground surface (subject to the requirements of the local health authority) is not acceptable.

c. Individual water supply systems are not acceptable for individual lots in areas where chemical soil poisoning is practiced if the overburden of soil between the ground surface and the water bearing strata is coarse-grained sand, gravel, or porous rock, or is creviced in a manner which will permit the recharge water to carry the toxicants into the zone of saturation.

d. Table 5 shall be used in establishing the minimum acceptable distances between wells and sources of pollution located on either the same or adjoining lots. These distances may be increased by either the health authority having jurisdiction or the FmHA State Director.

TABLE 5.—DISTANCE FROM SOURCE OF POLLUTION

| Source of pollution | Minimum horizontal distance (feet) |
|---|---|
| Property Line | 10 |
| Septic Tank | 50 |
| Absorption field | [1]100 |
| Seepage pit | [1]100 |
| Absorption Bed | [1]100 |
| Sewer Lines w/Permanent Watertight Joints | 10 |
| Other Sewer Lines | 50 |
| Chemically Poisoned Soil | [1]100 |
| Dry Well | 50 |
| Other | ([2])— |

NOTES:

[1] The horizontal distance between the sewage absorption system and the well, or the chemically poisoned soil and the well, may be reduced to 50 feet only where the ground surface is effectively separated from the water bearing formation by an extensive, continuous impervious strata of clay, hard-pan, or rock. The well shall be constructed so as to prevent the entrance of surface water and contaminants.

[2] Other sources of pollution could be fuel oil or gasoline storage tanks, farm yards or chemical storage tanks, etc. The well should be separated from these sources of pollution a distance recommended by the local health authority.

3. *Well Construction*—a. The well shall be constructed to allow the pump to be easily placed and to function properly.

b. All drilled wells shall be provided with a sound, durable and watertight casing capable of sustaining the loads imposed. The casing shall extend from a point several feet below the water level at drawdown or from an impervious strata above the water level, to 12 inches above either the ground surface or the pump room floor. The casing shall be sealed at the upper opening.

c. Bored wells shall be lined with concrete, vitrified clay, or equivalent materials.

d. The space between the casing or liner and the wall of the well hole shall be sealed with cement grout.

e. The well casing shall not be used to convey water except under positive pressure. A separate drop pipe shall be used for suction line.

f. When sand or silt is encountered in the water-bearing formation, the well shall either be gravel packed, or a removable strainer or screen shall be installed.

g. The surface of the ground above and around the well shall be graded to drain surface water away from the well.

h. Openings in the casing, cap, or concrete cover for the entrance of pipes, pump or manholes, shall be made watertight.

i. If a breather is provided, it shall extend above the highest level to which surface water may rise. The breather shall be watertight, and the open end shall be screened and positioned to prevent entry of dust, insects and foregin objects.

4. *Pumps and Equipment*—a. Pumps shall be capable of delivering the volume of water required herein under normal operating pressures within the living unit. Well pump capacity shall not exceed the output of the well.

b. Pumps and equipment shall be mounted to be free of objectionable noises, vibrations, flooding, pollution, and freezing.

c. Suction lines shall terminate below maximum drawdown of the water level in the well.

d. Horizontal segments of suction line shall be placed below the frost line in a sealed casing pipe or in at least 4 inches of concrete. The distance from suction line to sources of pollution shall be not less than shown in Table 5.

5. *Storage Tanks*—a. A system for an individual household shall include a pressure tank having a minimum capacity of 42 gallons. However, prepressured tanks and other pressurizing devices are acceptable provided that delivery between pump cycles equals or exceeds that of a 42 gallon tank. Storage capacity on a system for multiple households must be sufficient to meet estimated peak demands.

b. Tanks shall be equipped with a clean-out plug at the lowest point, and if pressurized, a suitable pressure relief value.

c. When additional storage is necessary because the well yield will not meet the system peak demands, all nonpressurized intermediate tanks shall be designed and installed in a manner that will prevent the pollution or degradation of the water supply.

B. *Community Water Systems*—1. *Definition.* In this subpart, a community water system is a system which meets the definition in the Safe Drinking Water Act.

2. *Design.* A community water system shall be designed by a qualified, professional engineer licensed in the state in which the water system will be located. Community water systems shall comply with all Federal and State laws.

*VI. Wastewater Disposal Systems*

Each dwelling shall be provided with a water-carried system adequate to dispose of domestic wastes in a manner which will not create a nuisance, contaminate any existing or prospective water source or water supply, or in any way endanger the public health.

A. *Individual Wastewater Disposal Systems*—1. *General.* a. In this subpart, an individual wastewater disposal system is a sewage disposal system which serves only 1 dwelling unit.

b. When service from an acceptable public or community system is not available or feasible, and ground water and soil conditions are acceptable, an individual system may be used.

c. Each individual wastewater disposal system shall consist of a house sewer, a pretreatment unit (e.g. septic tank, individual package treatment plant), and acceptable absorption system (subsurface absorption field, seepage pit(s), or subsurface absorption bed). The system shall be designed to receive all sanitary sewage (bathrooms, kitchen and laundry) from the dwelling, but not footing or roof drainage. It shall be designed so that gases generated anywhere in the system can easily flow back to the building sewer stack.

2. *Percolation Tests*—a. Percolation tests are required unless a waiver is granted by the National Office. Waivers may be granted on a statewide or local

basis in cases where an onsite evaluation of soils would be performed by a qualified soil technician, soil scientist, or engineer. Requests for waivers must describe the qualifications of the person evaluating the soils and discuss the criteria to be used in designing the absorption system.

b. In uniform soils one percolation test shall be made within each area proposed for an absorption system. If significant soil variations are encountered or expected, additional tests shall be made for each variation.

c. Percolation tests shall be conducted in accordance with good practice. Guidance for performing these tests is included in the EPA design manual, "Onsite Wastewater Treatment and Disposal Systems."

3. *Subsurface Absorption System*—a. Where percolation rates, soil characteristics and site conditions are acceptable, an absorption system may be installed in an area which is well drained, has an acceptable slope,and is acceptable for excavation.

b. Soils with percolation rates less than 1 minute per inch may be used if the soil is replaced with a layer of loamy or fine sand at least 2 feet thick. (Refer to the EPA Design Manual, "Onsite Wastewater Treatment and Disposal System").

c. soils with percolation rates greater than 60 minutes per inch are not acceptable for subsurface wastewater disposal systems.

B. *Community Wastewater Disposal Systems*—1. *Definition.* In this subpart, a community wastewater disposal system is any wastewater disposal system which serves more than 1 dwelling unit.

2. *Design.* A community wastewater disposal system shall be designed by a qualified, professional engineer licensed in the state in which the system will be located.

**Exhibit C—Checklist of Visual Exhibits and Documentation for RRH, RCH, and LH Proposals**

*U.S. Department of Agriculture*

Farmers Home Administration

This Exhibit lists visual exhibits and documentation necessary for FmHA to properly evaluate proposed development. Intermediate consultation by the applicant, builder-developer and others hereafter referred to as the sponsor with the FmHA District or State Offices should be as frequent as necessary to reduce chances of misunderstandings and limit the amount of non-productive time and expense for all parties concerned.

I—*Preapplication Submission Documents:* The sponsor will submit the following information to the District Director to determine feasibility of the project and general conformance with FmHA policy:

A—*Form 1940–20, "Request for Environmental Information."* Portions of the form must be completed when the submission contains more than 4 dwelling units and the entire form must be completed when the submission contains more than 25 dwelling units. The form and guidance concerning assembly of the information is available at any FmHA office.

B—*Location Map.* A general site location map of the area indicating the adjacent land zoning and uses, the present and future access roads to the site as well as the proximity to shopping, schools, churches, and major transportation facilities with note of traffic volumes. If a satisfactory map of the locality is not available, a clear and preferably scaled rough sketch map that provides the required information will be sufficient.

C—*Property Survey Map.* A current survey map of the project site showing the boundaries as well as all existing known features specifically including utilities, easements, access roads, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees. If a current survey does not exist, the most accurate document which is available will be submitted.

D—*Soils Map and Report.* A complete soils map and report, including "site specific" interpretations and recommendations, from the local or county representative of the U.S. Department of Agriculture, Soil Conservation Service (SCS) Office will be included with the location and feasibility submission. A determination of whether or not any lands described in USDA Regulation 9500–3 are impacted by the proposed development should also be included. The local SCS office may provide recommendations for the development of suitable drainage and landscaping plans later in the planning process.

E—*Market Survey.* A market survey will be submitted in accordance with the requirements of the respective loan program as indicated in Part 1944, Subparts D and E and Part 1822, Subpart F (FmHA Instruction 444.7) of this chapter.

F—*Request for Exceptions.* Any need for State or National Office exception(s) should be identified at this stage in the processing. Appropriate exception(s) should be requested and obtained before proceeding to the preliminary submission.

G—*Other.* The applicant will need to submit any additional information that may be needed as indicated in Subpart D or Exhibit A–6 of Subpart E of Part 1944 of this chapter. This may include but is not limited to:

1. Schematic design drawings showing the proposed plot plan, typical unit plans, and elevations. If available, the proposed preliminary drawings and specifications may be submitted. This would be of assistance if it is determined that the loan must receive National Office authorization.

2. Type of construction.

3. The total number of living units and the number of each type of living unit proposed.

4. Type of utilities such as water, sewer, gas, and electricity and whether each is public, community, or individually owned.

II—*Application Submission Documents:* After it is determined by FmHA that the project is feasible and the location conforms with the intent of the funding program, the sponsor will submit the following information to the District Director in addition to those materials submitted previously.

A—*Property Survey.* A survey (where 1 inch represents no more than 100 feet) of the property lot showing the exact boundaries and corners of the property accompanied by a written description of said boundaries. Also, locations of predominant features such as utilities, easements, access points, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees affecting the proposed development must be included. This document shall bear the seal of a professional licensed to provide surveying services in the State in which the project will be located. This survey could be a part of item D below.

B—*Topographic Map.* An accurate topographic map showing existing and proposed contours with a scale compatible with the size of the project. The site shall be shown at a reasonable scale with 5-foot contour intervals. Where the site is unusually level or steep, the contour intervals may be varied accordingly.

C—*Preliminary Site Plan.* A line drawing, to scale, showing proposed street locations with profiles and widths, lot layouts, major drainageways, and other development planned. Preliminary sections and details shall be provided for the street construction, curbs and gutters, drainageways, and other physical improvements.

D—*Preliminary Dwelling Drawings and Specifications.* Drawings of the dwelling units, preliminary floor plans

and specifications, elevations and sample site plans showing the placement of the individual buildings should be submitted.

E—*Statement of Planning and Zoning Compliance.* Local, county and State approvals as applicable. If change of zoning or variance is required, the status of the variance or change of zoning shall be documented.

F—*Technical Service Contracts.* Executed contracts for the professional services of an architect, engineer, land surveyor, landscape architect, site planner and/or soil engineer will be submitted as appropriate for the planning of the proposed development.

G—*Utility Approvals.* Statements of approval and feasibility for utility systems as follows:

1. Verification of adequate capacity and approval to tie-in with local existing water, wastewater disposal, electric, telephone, and other utility systems, as appropriate.

2. Tentative approval of local or State health authority for individual water and/or wastewater disposal systems when it is clear that central systems are unfeasible at this time. Use § 1924.108(a)(5) of this subpart when preparing information required.

H—*Facility Acceptance.* Evidence that the appropriate public body is willing to accept and maintain streets, common areas, lighting, fire hydrants, sidewalks, drainageways, and utilities, as appropriate, when dedicated to said body.

I—*Preliminary Specifications.* Outline specifications describing all the proposed materials to be used and how they are to be applied. These are only the materials used in the land development and construction of the streets, drainage, and utility work.

J—*Incremental Slopes Plan.* If areas of common slope are not identified elsewhere in adequate detail, this information should be provided in a separate plan.

K—*Preliminary Grading Plan.* This plan will indicate degree of work required to provide positive drainage of all building sites and control measures to be taken to eliminate soil erosion. Dwelling locations may be shown if they can be predetermined.

L—*Other.* The applicant will need to submit any additional information that may be needed as indicated in the respective loan program regulations as indicated in Part 1944, Subparts D and E and Part 1822 Subpart F this chapter (FmHA Instruction 444.7). This may include but, not be limited to:

1. A detailed trade-item cost breakdown of the project for such items as land and right-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and both on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

2. Information on the method of construction, on the proposed contractor if a construction contract is to be negotiated and on the architectural, engineering, and legal services to be provided.

3. For all projects containing over four units the applicant will submit an Affirmative Fair Housing Marketing Plan for approval by FmHA in accordance with § 1901.203 of Subpart E to Part 1901 of this chapter. The Affirmative Fair Housing Marketing Plan must be prepared in a complete, meaningful, responsive and detailed manner.

4. A description and justification of any related facilities (including but not limited to workshops, community buildings, recreation center, central cooking and dining facilities, or other similar facilities to meet essential needs) to be financed wholly or in part with loan funds.

III—*Technical Documents Necessary for the Obligation of Funds.* All decisions regarding the conceptual design of the proposed project should be made prior to this submission. This effort is mainly to demonstrate that those agreed upon concepts have been transformed into construction documents and the necessary approvals have been granted. All items requiring revision or more detailed information as determined by the review of the preliminary submission will be resolved before the sponsor prepares the final submission. All documents shall be executed in a professional manner and shall carry the appropriate designation attesting to the professional qualifications of the architect, engineer, land surveyor or site planner. All documents will be accurately drawn at an appropriate scale.

## PART 1933—LOAN AND GRANT PROGRAM (GROUP)

9. The authority citation for Part 1933 is revised to read as follows:

**Authority:** 42 U.S.C. 1480; 7 CFR 2.73; 7 CFR 2.70.

### Subpart I—Self-Help Technical Assistance Grants

10. Section 1933.412 is revised to read as follows:

**§ 1933.412 Planning and performing development work.**

The development work will be planned and completed in accordance with Subparts A and C of Part 1924 of this chapter.

## PART 1944—HOUSING

11. The authority citation for Part 1944 continues to read as follows:

**Authority:** 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

12. Section 1944.11, paragraph (b) is revised to read as follows:

**§ 1944.11 Property requirements.**

* * * * *

(b) The property must be contiguous to and have direct access from a street, road, or driveway that meets the applicable requirements of § 1924.115 (New or less than partially completed subdivisions), § 1924.116 (Existing subdivisions partially or more completed), and § 1924.117 (Scattered Site) of Subpart C of Part 1924 of this chapter. For properties having access from a driveway, the maintenance cost for the driveway must be considered when determining the applicant's repayment ability.

* * * * *

**§ 1944.24 [Amended]**

13. Section 1944.24, paragraph (b) is amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place the words "Subpart C of Part 1924 of this chapter."

14. Section 1944.45, paragraph (f)(3)(ii) is revised to read as follows:

**§ 1944.45 Conditional commitments.**

* * * * *

(f) * * *

(3) * * *

(ii) Determine whether the dwelling and site meet the requirements of this subpart and Subparts A and C of Part 1924 of this chapter and will comply with all local codes and ordinances.

* * * * *

### Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

**§ 1944.184 [Amended]**

15. In § 1944.184, paragraphs (j)(2)(i) and (j)(2)(ii) are amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and

inserting in their place the words "Subpart C of Part 1924 of this chapter."

**Exhibit A–3 to Part 1944 [Amended]**

16. Exhibit A–3 to Subpart D, Paragraph II a.1. is amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place the words "Subpart C of Part 1924 of this chapter."

**Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations**

**§ 1944.212 [Amended]**

17. Section 1944.212, paragraph (p)(3) is amended by removing the words "Subpart A of Part 1924 and Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subparts A and C of Part 1924 of this chapter."

**§ 1944.222 [Amended]**

18. Section 1944.222, paragraphs (c)(1) and the introductory text of paragraph (d)(1) are amended by removing the words "Subpart A of Part 1924 and Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subparts A and C of Part 1924 of this chapter."

**Subpart J—Section 504 Rural Housing Loan and Grants**

19. In § 1944.456 the introductory text of paragraph (a) is revised to read as follows:

**§ 1944.456 Loan and grant purposes.**

* * * * *

(a) Installation and/or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements. Water supply and sewage disposal systems should be determined acceptable in accordance with Subparts A and C of Part 1924 of this chapter. The requirements of Subparts A and C of Part 1924 of this chapter may be waived by the State Director provided:

* * * * *

**PART 1980—GENERAL**

20. The authority citation for Part 1980 is revised to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

**Subpart D—Rural Housing Program Loans**

**§ 1980.307 [Amended]**

21. Section 1980.307, paragraph (d)(1) and § 1980.307 *administrative;* paragraph A are amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subpart C of Part 1924 of this chapter."

22. Section 1980.327(b)(1) is revised to read as follows:

**§ 1980.327 Acquisition, construction, and development.**

* * * * *

(b) * * *

(1) Subpart C of Part 1924 of this chapter is used as a guide for planning and performing development work.

* * * * *

Dated: March 6, 1987.

**Vance L. Clark,**

*Administrator, Farmers Home Administration.*

[FR Doc. 87–11530 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–07–M

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**Food Safety and Inspection Service**

**9 CFR Part 318**

**[Docket No. 86–028F]**

## Silicon Dioxide as a Processing Aid in the Dispersion of Tocopherol in Pump Curing Solutions

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of silicon dioxide as a processing aid in dry bacon curing premixes for tocopherol dispersion in pump curing solutions. The Food and Drug Administration (FDA) has determined this substance to be generally recognized as safe (GRAS) at levels of up to 4.0 percent in a premixed curing base to disperse tocopherol in the pump cure solution for bacon. FSIS has determined that it is now appropriate to add silicon dioxide as a processing aid to the list of acceptable ingredients in the Federal meat inspection regulations.

**EFFECTIVE DATE:** June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ashland Clemons, Acting Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Agency has made a determination that this final rule is not a major rule under Executive Order 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The final rule provides for the use of silicon dioxide as a processing aid at a level of up to 4.0 percent in dry tocopherol containing bacon curing premixes. The current Federal meat inspection regulations do not provide for the use of silicon dioxide in bacon. Industry may benefit from this action through the ability to use a processing aid which helps to achieve greater and more uniform dispersion of tocopherol in pump cured bacon. Consumers may benefit from this action since nitrosamine formation in bacon is reduced when tocopherol is used and is more evenly dispersed throughout the bacon pump cure solution.

**Effect on Small Entities**

The Administrator has determined that this rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking imposes no new requirement on industry; rather, it permits the meat industry to use a processing aid in bacon curing premixes to assist in the dispersion of tocopherol in pump cure solutions. Use of this processing aid substance is voluntary.

**Background**

FSIS was petitioned by Diamond Crystal Salt Company to amend the Federal meat inspection regulations to allow the use of silicon dioxide as a processing aid in dry curing premixes containing tocopherol. The request was a followup to the final rule on alpha-tocopherol published in the **Federal Register** July 5, 1985 (50 FR 27573).

The dry bacon curing premixes consist of salt, tocopherol, silicon dioxide, and lecithin. Silicon dioxide acts as a dispersant for dry mixes. It improves the flow properties and increases the rate of dispersion by keeping particles separated and permitting water to wet them individually versus forming lumps. This is necessary since alpha-tocopherol is a water-insoluble substance. At a level of 4.0 percent of the dry curing base, silicon dioxide provides optimum dispersability to attain a near 100 percent dispersion of tocopherol in

pump cured bacon. The pump cured bacon using such a premix would contain 500 ppm of tocopherol.

The petitioner supplied analytical data supporting its claims and indicating that wholesomeness is not affected when bacon is processed with this substance. The quantity of substance required to maximize dispersion of tocopherol in bacon pump cure solutions is not more than 4.0 percent of the dry bacon curing premix at formulation. Data are available from the Standards and Labeling Division at the address given under "FOR FURTHER INFORMATION CONTACT."

FDA advised FSIS that it considers silicon dioxide as GRAS at levels not to exceed 4.0 percent of the premix and under the use of conditions proposed.

**Proposed Amendment**

The Administrator finds that (1) the proposed use of this substance is in compliance with applicable FDA requirements, (2) its use is functional and suitable for the products intended, (3) the substance is used at the lowest level necessary to accomplish its intended technical effect, and (4) the use of this substance in products does not render them adulterated, misbranded, or otherwise not in accordance with the requirements of the Federal Meat Inspection Act.

Therefore, on December 16, 1986, FSIS proposed amending the table of approved substances in 9 CFR Part 318 to include the use of silicon dioxide as a processing aid in tocopherol-containing bacon curing premixes for the dispersion of tocopherol in pump cured bacon (51 FR 44994). FSIS received one comment in response to the proposed rule from a chemical supply company. The company supports the proposal based on the belief that inhibition of nitrosamine formation in bacon through the use of alpha-tocopherol is beneficial to consumers and silicon dioxide is safe and effective for dispersing tocopherol in bacon processing.

**Final Rule**

**List of Subjects in 9 CFR Part 318**

Food additives, Meat inspection.

**PART 318—[AMENDED]**

For the reasons set out in the preamble, Title 9, Subchapter A, Part 318 of the Code of Federal Regulations is amended as set forth below.

**PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS**

1. The authority citation for Part 318 continues to read as follows:

**Authority:** 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*) unless otherwise noted.

2. Section 318.7(c)(4) is amended by adding the substance "silicon dioxide" to the chart of substances approved for use in the preparation of products. This substance is placed in alphabetical order under the class of substances titled "Miscellaneous".

**§ 318.7 Approval of substances for use in the preparation of products.**

* * * * *

(c) * * *

(4) * * *

| Class of substance | Substance | Purpose | Products | Amount |
|---|---|---|---|---|
| • | • | • | • | • |
| Miscellaneous | Silicon dioxide | Processing aid/ dispersant. | Tocopherol-containing bacon curing premixes. | At level not to exceed 4.0 percent in the dry premix. |
| • | • | • | • | • |

Done at Washington, DC, on May 19, 1987.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 87-11796 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-DM-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 50 and 51

### Domestic Licensing of Production and Utilization Facilities; Communications Procedures Amendments; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule amending 10 CFR Part 50 and 51 with regard to procedures for submitting correspondence, reports, applications, and other written communications pertaining to the domestic licensing of production and utilization facilities. The final rule was published on November 6, 1986 (51 FR 40303) and inadvertently omitted a recently published revision of one of the affected sections. This action is necessary to return the omitted information and to inform the public and licensees of this omission.

**FOR FURTHER INFORMATION CONTACT:** Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7211.

In FR Doc. 86-25045, published in the **Federal Register** of Thursday, November 6, 1986, make the following correction:

1. On page 40309, in the first column (containing the revision to § 50.54(f)), in the fifth line ending with the word "revoked.", insert the following words after the period:

Except for information sought to verify licensee compliance with the current licensing basis for that facility, the NRC must prepare the reason or reasons for each information request prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such justification provided for an evaluation performed by the NRC staff must be approved by the Executive Director for Operations or his or her designee prior to issuance of the request.

Dated at Bethesda, Maryland, this 18th day of May 1987.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Acting Deputy Executive Director for Operations.*

[FR Doc. 87-11794 Filed 5-21-87; 8:45 am]

BILLING CODE 7590-01-M

### 10 CFR Parts 70 and 74

### Reporting of Special Nuclear Material Physical Inventory Summary Results

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations on special nuclear material control and accounting to require the reporting of the summary results of physical inventories of special nuclear material. The affected licensees have been providing this information on a voluntary basis since 1975. These amendments will establish a regulatory basis for the reporting of special nuclear material physical inventory data by licensees so that greater assurance can be provided that timely, reliable information will be made available to the public and the NRC licensing and inspection programs. Incorporating the

special nuclear material physical inventory reporting into the NRC regulations is the most cost-effective way to obtain the necessary information.

**EFFECTIVE DATE:** June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Darrell A. Huff, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4770.

**SUPPLEMENTARY INFORMATION:**

## Background

In 1975, the Office of Inspection and Enforcement (IE) instituted a voluntary reporting system known as the Safeguards Status Report System (SSRS) whereby licensees were requested to report to the NRC physical inventory results in a prescribed format. Currently, 12 licensees make a voluntary commitment as part of their operating plan to report physical inventory results to the appropriate NRC regional office. The information provided by these voluntary reports is used by the NRC to monitor and assess the material control and accounting performance of licensees and as input for NUREG–0430, "Licensed Fuel Facility Status Report/ Inventory Difference Data," which was initiated by the Director of IE in 1977 in response to congressional and public concerns. NUREG–0430 reports licensed fuel facilities' physical inventory difference data following agency review of the information and completion of any related investigations.

Recognizing the need for the reporting of physical inventory results, IE requested an explicit regulatory basis for this physcial inventory reporting system. On August 23, 1976 (41 FR 35537), the NRC published in the **Federal Register** proposed amendments to 10 CFR Part 70 that would have required the reporting of the results of each ending physical inventory and the associated material accounting and measurement error data. The proposed amendments were published for a 60-day public comment period, and seven letters were received on the proposed rule. Final action on the reporting requirements was postponed, pending initiation of a separate but related rulemaking effort (the MC&A reform amendments). The dalay in implementing the MC&A reform amendments caused IE to request, in a memo dated June 2, 1982, that the Office of Nuclear Regulatory Research (RES) publish an amendment to 10 CFR Part 70 requiring reporting of physical inventories of SNM. However, due to the unavailability of resources within RES, completion of this rulemaking was referred back to IE by the EDO in a memo dated May 21, 1986.

Because of the time lapse since the reporting requirements were published as a proposed rule, the NRC republished the requirements in proposed form on October 23, 1986 (51 FR 37578). The proposed amendments reflected comments and suggestions received when the amendments were first proposed in 1976 as well as comments and suggestions that were solicited from the NRC regional offices in 1983 and 1984. Public comments on the proposed rule were requested to be submitted by November 24, 1986.

In 1983, a decision was made to create a new Part 74 which would pertain solely to MC&A safeguards requirements. When 10 CFR Part 74 was published on February 28, 1985 (50 FR 7575), it contained the MC&A regulatory requirements for licensees authorized to possess and use more than one effective kilogram of special nuclear material of low strategic significance. Certain safeguards-related recordkeeping and reporting requirements, formerly found in Part 70, were also moved to Part 74 in order to separate them from safety reporting requirements. Therefore, the reporting requirement for SNM physical inventory results is also being included in Part 74.

## Comments on the Proposed Rule

The Commission received one letter from a licensee and one from a citizens group commenting on the proposed rule. Copies of these letters are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street NW., Washington, DC 20555.

The licensee's response stated the opinon that, since a voluntary reporting approach has been satisfactory for the past 10 years, a regulation is not needed. Although the voluntary system succeeded in collecting physical inventory data, the timeliness and consistency of this data was often inadequate. Confusion has also existed over the intended form and content of this information. Promulgation of this rule will provide greater assurance of data timeliness and consistency and eliminate the form and content problems by standardizing the reporting of physical inventory information on NRC Form 327. Hence, the Commission continues to believe that a rule requiring this reporting is in the best interest of the public.

The comments received from the citizens group were merely supportive of the need for the rule and requested no changes. Therefore, no specific response is necessary; however, such comments are always appreciated and welcomed by the Commission.

In summary, no changes have been made to the rule, as proposed, as a result of the public comments received. However, due to the recent approval of a new material control and accounting rule for fuel facilities licensed to possess and use formula quantities of strategic special nuclear material, a paragraph has been added to 10 CFR 74.17 that references the appropriate sections of this new rule.

## Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

## Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0139.

## Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the analysis may be obtained from Darrell A. Huff, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4770.

## Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. Currently, 12 licensees, who are composed of low enriched uranium and high enriched uranium fuel manufacturing facilities, will be affected by these amendments. This rule codifies a reporting procedure that has been a licensee practice since 1975. Accordingly, there is no new, significant economic impact on these licensees, nor are the licensees within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or

within the Small Business Size Standards set forth in 13 CFR Part 121.

**Backfit Analysis**

The staff has determined that a backfit analysis is not required for this rule since these amendments do not apply to 10 CFR Part 50 licensees.

**List of Subjects**

*10 CFR Part 70*

Hazardous materials-transportation, Material Control and Accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and reocrdkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

*10 CFR Part 74*

Accounting, Material control and accounting, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 70 and 74.

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 70.8, paragraph (c)(6) is added to read as follows:

**§ 70.8 Information collection requirements: OMB approval.**

* * * * *

(c) * * *

(6) In § 70.53, NRC Form 327 is approved under control number 3150–0139.

3. In § 70.53, paragraph (b) is revised to read as follows:

**§ 70.53 Material status reports.**

* * * * *

(b) Each licensee subject to the requirements of § 70.51(e) shall follow the requirements set out in §§ 74.13(b) and 74.17(b) of this chapter.

* * * * *

## PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

4. The authority citation for Part 74 is revised to read as follows:

**Authority:** Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 74.17, 74.31, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and 2201(i)); and §§ 74.11, 74.13, 74.15, and 74.17 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. In § 74.8, paragraph (c)(4) is added to read as follows:

**§ 74.8 Information collection requirements: OMB approval.**

* * * * *

(c) * * *

(4) In § 74.17, NRC Form 327 is approved under Control No. 3150–0139.

6. In Subpart B, § 74.17 is added to read as follows:

**Subpart B—General Reporting**

* * * * *

**§ 74.17 Special nuclear material physical inventory summary report.**

(a) Each licensee subject to the requirements of § 74.31 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calender days from the start of the physical inventory required by § 74.31(c)(5). The licensee shall report the inventory results by plant and total facility to the appropriate NRC regional office listed in Appendix A of Part 73 of this chapter.

(b) Each licensee subject to the requirements of § 70.51(e) of this chapter shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 30 calendar days from the start of the physical inventory required by § 70.51(e)(3) of this chapter. The licensee shall report the inventory results by plant and total facility to the appropriate NRC regional office listed in Appendix A of Part 73 of this chapter.

(c) Each licensee subject to the requirements of § 74.51 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 45 calendar days from the start of the physical inventory required by § 74.59(f). The licensee shall report the inventory results by plants and total facility to the appropriate NRC regional office listed in Appendix A of Part 73 of this chapter.

Dated at Bethesda, Maryland, this 27th day of April, 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

*Executive Director for Operations.*

[FR Doc. 87–11793 Filed 5–21–87; 8:45 am]

BILLING CODE 7590–01–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 87–NM–52–AD; Amdt. 39–5625]**

## Airworthiness Directives; Aerospatiale Model ATR–42 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR–42 series airplanes, which requires isolation of the Number 1 (Captain's side) Attitude and Heading Reference System (AHRS) from the System Avionics Standard Communications Bus (ASCB). This amendment is prompted by two reports of dual, simultaneous and unannunciated failures of the ATR–42's primary attitude and heading displays. This condition, if not corrected, could result in the simultaneous presentation, without failure flags, of incorrect attitude and heading information on both pilots' primary displays. The display effectively "freezes" (no response, or intermittent and inaccurate response, to airplane maneuvers) to the display present at the time of failure.

**EFFECTIVE DATE:** June 8, 1987.

**ADDRESSES:** The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Art Scholes, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the

FAA of an unsafe condition which may exist on Aerospatiale Model ATR-42 airplanes. It has been reported that some anomalous information on the system ASCB may affect both the pilot's and copilot's AHRS; in this case, Electronic Flight Instrument System (EFIS) displays may effectively "freeze" at the attitude and heading of the condition existing when the anomaly occurs. As both AHRS are affected at the same time, no disagreement exists between the displays. The severity of the situation is increased because no annunciation of the fault is generated.

Aerospatiale has issued Service Bulletin ATR-42-34A0016, dated March 23, 1987, which describes isolation of the pilot's AHRS from the System ASCB, limits the use of the autopilot to altitudes greater than 200 feet above ground level (AGL), and suspends Category II Approach operation. The DGAC has classified the service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an airworthiness directive is necessary to require U.S. operators to accomplish the actions described above, in accordance with the Aerospatiale service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

**Aerospatiale:** Applies to Model ATR-42 series airplanes certificated in any category, unless the equivalent of Production Modification 1397 was installed prior to delivery. Compliance is required as indicated, unless previously accomplished.

To prevent simultaneous loss of both pilots' primary attitude and heading information generated by Attitude and Heading Reference Systems (AHRS), accomplish the following:

A. Within 15 days after the effective date of this AD, isolate the pilots' AHRS (AHRS Number 1) from the System Avionics Standard Communications Bus (ASCB) in accordance with Aerospatiale Service Bulletin ATR-42-34A-0016, dated March 23, 1987, and ensure that Electronic Flight Instrument System (EFIS) Symbol Generators having part number 700544-411, Mod-level U or subsequent, have been installed.

B. Insert the following into the Airplane Flight Manual (AFM) Limitations Section 2. This can be accomplished by inserting a copy of this AD into the AFM and into the Flight Crew Operations Manual (FCOM), if used.

1. "Disconnect autopilot at or above 200 feet above ground level (AGL)."

2. "Approach operations are limited to Category I or higher weather minima."

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 8, 1987.

Issued in Seattle, Washington, on May 15, 1987.

Frederick M. Isaac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-11605 Filed 5-21-87; 8:45 am]

BILLING CODE 4910-13-M

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 145**

**Fees for Requests of Commission Records**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** On March 27, 1987, the Office of Management and Budget published a final fee schedule and guidelines implementing the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). The Commission is now publishing revisions to its own regulations to implement those guidelines. The revised regulations establish four categories of requesters, each of which is charged differently. In addition, based on a review of actual costs during FY 1986 the Commission is revising the costs of staff time for reviewing and searching records, as well as the per page cost of duplicating for requests under the Freedom of Information Act (Part 145, Appendix B).

**EFFECTIVE DATE:** June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stacy Dean, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone number 202-254-7360.

**SUPPLEMENTARY INFORMATION:** The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amends the Freedom of Information Act (5 U.S.C. 552) by supplying new provisions relating to the charging and waiving of fees. Pursuant to the Reform Act, the Office of Management and Budget published a Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10011 (March 27, 1987). The Commission is now implementing the OMB guidelines.

The OMB guidelines establish three levels of fees that may be charged, depending on the identity of the requester and the intended use of the information by the requester. Fees may be charged for document duplication, for search time and for time spent in

reviewing documents to determine if the material is exempt from disclosure. The Commission is revising Section 145.7 of its regulations to indicate that a requester should reasonably identify the category into which the requester falls and the use to which the information will be put, since this will, in part, determine the fees which the requester must pay. In addition, the Commission is amending Part 145, Appendix B, to describe the categories of requesters and the types of charges applicable to each. The Commission is also amending Part 145 to raise charges to reflect the Commission's current direct costs for duplication, search time and review time for FOIA requests.

Specifically, the Commission has recalculated its direct costs, defined by OMB for the purpose of FOIA fees as salary plus 16 percent for search or review time, and has concluded that direct costs are $3.42 per quarter hour for clerical time and $4.67 per quarter hour for professional time. These amounts will be rounded in the regulations to $3.00 per quarter hour for clerical time and $4.50 per quarter hour for professional time. Duplication costs, which include personnel and equipment costs are estimated at $0.15 per page, which is the same amount contained in the Commission's current regulations. Computer searches include a cost of $24.00 per quarter hour for central processing unit (CPU) time. Computer operator or programmer time will be charged at the rate of $4.50 per quarter hour. Certification of records as true copies will continue to cost $3.00 per certification and sending records by express or overnight mail will continue to be $10.00 per package mailed. Fees may be charged even where there is ultimately no disclosure of information.

A "commercial use request" is defined as a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. Note that inclusion in this category is determined by the use to which the information will be put rather than the identity of the requester. Such requesters will be charged for all search time, review time and duplication costs.

An "educational institution" is defined as a school which offers a program or programs of scholarly research. This may include preschools, a public or private school whether elementary or secondary, an institute of graduate or undergraduate higher education, or an institute or professional or vocational education. A "noncommercial scientific institution" is defined as an organization which is not operated on a commercial basis and operates solely for the purpose of scientific research, the results of which are not intended to promote any particular product of industry. Both educational institutions and noncommercial scientific institutions will only be charged for document duplication, and no charge will be made for the first 100 pages copied.

A "representative of the news media" incudes any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. This definition is intended to encompass nontraditional electronic means of news dissemination and free lance journalists who can show a solid basis for expecting publication through a news organization. Representatives of the news media are charged only reproduction costs, excluding the first 100 pages copied.

Other requesters not covered by the above categories can be charged for search time and reproduction costs. However, the first two hours of search time and the first 100 pages of copies are furnished without charge. If the search is for records stored in a computer format, a combination of computer operation charges and search time charges will be allowed up to the equivalent of two hours of professional staff time. These requesters will not be charged for review time. Note that requesters making requests under the Privacy Act will continue to be charged only for duplication and will not be covered by the 100-page exemption.

For purposes of determining the waiver of time or duplication charges, the Commission may aggregate requests if multiple, reasonably-related requests are made within a 30-day period or if there is some solid basis for believing that multiple requests were made solely to avoid fees. However, in no case will the agency aggregate multiple requests on unrelated subjects from the same requester.

The agency may also waive or reduce fees "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(A)(iii). The Commission is revising Appendix B to Part 145 to specify that, if both of these conditions are met, the Commission will grant waiver or reduction of fees. Fees may also be waived if the administrative costs to the agency of collecting the fee would be greater than the fee itself. The Commission has determined that fees which amount to less than $5.00 may be waived.

The Commission will continue to notify parties if fees are expected to exceed $25.00 and will not proceed with the request without written authorization. A party may also specify a limit beyond which notification is required.

The advance payment provision of the regulations is being amended to conform to the new OMB guidelines. The agency will notify requesters when costs are expected to exceed $250, and will require advance payment when costs are likely to exceed $250 or where a requester has previously failed to pay a fee.

Bills which are not paid by the 31st day following the day the billing was sent will be charged interest on the full amount of the unpaid bill from the date of billing.

**List of Subjects in 17 CFR Part 145**

Freedom of Information Act, Fees.

For the reasons set out in the preamble, Title 17, Part 145 is amended as set forth below:

## PART 145—COMMISSION RECORDS AND INFORMATION

1. The authority for Part 145 is revised to read as follows:

**Authority:** Pub. L. 89-554, 80 Stat. 383, Pub. L. 90-23, 81 Stat. 54, Pub. L. 93-502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 99-570.

2. Section 145.7 is amended by redesignating paragraphs (e) through (i) as paragraphs (f) through (j) and by adding a new paragraph (e) to read as indicated below.

**§ 145.7 [Amended]**

* * * * *

(e) *Description of requester and intended use of requested records.* In each request for records, requesters shall reasonable identify themselves as a commercial user, educational institution, noncommercial scientific institution, or representative of the news

media if one of these categories is applicable. The requester shall describe the use to which the records will be put.

* * * * *

3. Appendix B to Part 145 is revised to read as follows:

**Appendix B—Schedule of Fees**

(a) *Charges for requests.* The following charges may be made where applicable for responding to requests for records.

(1) Three dollars for each one-quarter hour spent by clerical personnel in searching for or reviewing records.

(2) where a search or review cannot be performed by clerical personnel, $4.50 for each quarter hour spent by professional personnel in searching for or reviewing records.

(3) For searches of records stored in computer formats, the operation of the central processing unit will be charged at a rate of $24.00 per quarter hour and operator/programmer search time will be charged at $4.50 per quarter hour.

(4) Document duplication, including computer printouts, will be charged at $0.15 per page.

(5) For copies of materials other than paper records, such as computer tapes or cassette tapes, the requsting party shall be charged the actual cost of materials and reproduction, including the time of clerical personnel at a rate of $3.00 per quarter hour.

(6) When, in accordance with § 145.7(f), a request has been made and granted to examine Commission records at an office of the Commission other than the office in which the records are routinely maintained, the requesting party (i) shall reimburse the Commission for the actual cost of transporting the records and (ii) shall be charged at a rate of $3.00 for each quarter hour devoted by clerical personnel in preparing the records for transit.

(7) For certifying that requested records are true copies, the charge will be $3.00 per certification.

(8) Upon request, records will be mailed by means of overnight or express mail at the fee of $10.00 per package mailed.

(b) *Waiver or reduction of fees.* Fees shall be waived or reduced by the Commission if (i) the fees is less than $5.00, the approximate cost to the Commission of collecting the fee; or, (ii) if the Commission determines that the disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(c) *Applicability of fees.* Fees shall be charged even if no records are ultimately furnished to the requester. Fees apply to various types of requests as follows.

(1) *Commercial use request.* Fees for search time, review time and duplication of records will be charged to requests from or on behalf of one who seeks information for a user or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made.

(2) *Educational institution or noncommercial scientific institution.* Only duplication fees will be charged to schools or to organizations which operate solely for the purpose of scientific research, the results of which are not intended to promote any particular product or industry. No charge will be made for the first 100 pages duplicated or for search or review time.

(3) *Representative of the news media.* Only duplication fees will be charged to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. No charge will be made for the first 100 pages duplicated or for search or review time.

(4) *Other requesters.* Fees for search time and duplication will be charged to requesters who are not covered by one of the categories above. No charge will be made for the first two hours of search time, the first 100 pages of duplication, or for review time. If the search is for records stored in a computer format a combination of computer operation charges and search time charges will be waived up to the equivalent of two hours of professional search time.

(d) *Aggregation of requests.* For purposes of determining fees, the Commission may aggregate reasonably related requests if multiple requests are made within a 30-day period or if there is a solid basis for believing that multiple requests were made solely to avoid fees.

(e) *Notification of fees.* A request for Commission records may state that the party is willing to pay fees up to a stated limit for services to be provided in searching, reviewing and duplicating requested records. If such a statement is made, no work will be done that will result in fees beyond the stated limit without written authorization. If no limit is stated, no work will be done that will result in fees in excess of $25.00 without written authorization from the requester.

(f) *Advance payment of fees.* The Commission may request advance payment of all or part of the fee (i) when fees are expected to exceed $250; or (ii) when a requester has previously failed to pay fees in a timely fashion.

(g) *Payment of fees.* Payment should be made by check or money order payable to the Commodity Futures Trading Commission.

(h) *Interest on fees.* The Commission will begin charging interest on unpaid bills starting on the 31th day following the day on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(i) *Collection of fees.* If fees not paid, the Commission may disclose debts to appropriate authorities for collection or to consumer reporting agencies.

4. The authority cite following Appendix B to Part 145 is deleted.

Issued in Washington, DC, on May 13, 1987, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87-11386 Filed 5-21-87; 8:45 am]

BILLING CODE 6351-01-M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 2**

**[Docket No. RM87-16-000; Order No. 471]**

**Public Utilities Policies Act: Primary Energy Source for Qualifying Small Power Production Facilities; Interpretation of "Waste Natural Gas"**

Issued: May 18, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is announcing its interpretation of how the Commission will determine whether natural gas may be considered "waste" within the meaning of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796(17)(A)(i) (1982), and therefore eligible as a primary energy source for a qualifying small power production facility. In order to be classified as waste, a material must be a by-product and currently have little or no commercial value. This final rule establishes guidelines for determining whether gas is unmarketable. Under the rule, the Commission will divide the gas into three categories based on heating values. The rule sets forth objective criteria under each category which the Commission will use to determine whether the gas is unmarketable.

**EFFECTIVE DATE:** This rule will be effective May 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Martha M. Poindexter, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8426.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

## I. Introduction

The Commission is announcing its interpretation of how to determine whether natural gas may be classified as "waste" within the meaning of section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA),[1] and therefore eligible as a primary energy source for a qualifying small power production facility.

## II. Background

Waste is included as an allowable primary energy source for qualifying small power production facilities in

[1] 16 U.S.C. 796(17)(A)(i) (1982).

section 201 of PURPA. The statute, however, does not define "waste." In *Kenvil Energy Corporation*, 23 FERC ¶ 61,139 (1983), the Commission explained that in order to be classified as "waste," a material must be both a by-product of a commercial or industrial process and currently have little or no commercial value. The by-product requirement is contained in § 292.202(b) of the Commission's regulations which defines "waste" as "by-product materials other than biomass."[2]

In *Pynoyl Corporation*, 38 FERC ¶ 61,138 (1987), the Commission found that low quality natural gas which had little or no commercial value could be considered waste. The applicant's low quality natural gas was produced in association with distillates which were being removed and sold commercially. The Commission concluded that the applicant's low quality gas was a by-product of the distillate recovery process. It further found that the low quality natural gas (300 Btu per standard cubic foot (scf)) had little or no commercial value and therefore qualified as waste. In that order, the Commission recognized that, as a result of its finding, there may be an increased number of applications which will propose to use low quality natural gas as the primary energy source of a small power production facility. In anticipation of these applications, the Commission stated its intent to establish criteria for determining the quality of the gas which may be considered waste.

## III. Discussion

In order to be classified as waste, a material must be both a by-product material and have little or no current commercial value. This rule establishes guidelines for determining commercial marketability of natural gas. The goal of this rule is to make use of resources that would not otherwise be used, and to satisfy PURPA's requirement that otherwise useful resources are not diverted to small power production facilities.

The marketability of natural gas is determined by two factors—the market price and the cost of production of gas.

The subject of the market price is complicated by the current disequilibrium of natural gas markets. The Commission's recent policies have attempted to permit competitive forces to play a greater role in determining natural gas prices. To achieve this objective, the Commission has sought to remove or modify regulatory barriers that impede development of a competitive gas marketplace. However, the Commission has recognized that its policies should not be designed solely to address the current natural gas supply surplus. Indeed, large quantities of gas that are unmarketable today could become marketable in the future. Thus, the Commission's rule should be sufficiently flexible to accommodate changes in the market.

The cost of production is the second major factor in determining the marketability of gas. The cost of production is influenced by a number of variables: Chemical composition, wellhead pressure, flow rate, and distance to a pipeline or other market.[3] Chemical composition affects the cost of production and thus marketability of gas in that impure gas must be upgraded to pipeline quality for sale.[4] Wellhead pressure also affects the cost of production since compression represents both a fixed and variable cost of delivering gas to a pipeline. Flow rate and distance to the nearest buyer affect the cost of production in that they affect the type and size of the gathering system needed to connect the gas supply to the buyer. All of these factors must be considered jointly since each affects the cost impact of the others.

The Commission recognizes that wide variation within these variables and the need to consider them jointly make it very difficult to develop a precise generic policy for determining whether natural gas is unmarketable. Generic estimates of the cost of upgrading are further complicated by the depressed condition of natural gas markets in the past several years. Few upgrading plants have been built recently. Thus, sufficient cost and performance data to support a generic standard of marketability are unavailable. Therefore, the Commission is promulgating this rule to establish generic standards for certain categories of natural gas.

The Commission is adopting a specific standard for defining the clearest cases of unmarketable gas. For others, the Commission is describing the factors that will be considered in determining whether gas is unmarketable. The Commission is dividing natural gas into three categories, based on heating values.

*Category 1* will consist of natural gas with a heating value of 300 Btu per scf and below. Natural gas which falls within this category will automatically be considered unmarketable.

*Category 2* will consist of natural gas with heating values above 300 Btu, but not more than 800 Btu per scf. In determining whether such gas is unmarketable, the Commission will consider the following factors: (1) The percentages of chemical components, wellhead pressure, and flow rate; (2) whether the applicant offered the gas to all potential buyers located within 20 miles of the wellhead under terms and conditions commensurate with those prevailing in the region and that such potential buyers refused to by the gas; and (3) a study, which may be submitted by an applicant, that evaluates the economics of upgrading the gas for sale and transporting the gas to a pipeline. The study should include estimates of the revenues which could be derived from the sale of the gas and the fixed and variable costs of upgrading.

*Category 3* will consist of natural gas with a heating value above 800 Btu per scf. In determining whether such gas is unmarketable, the Commission will consider the same factors as in Category 2. In addition, the Commission will consider whether: (1) The gas has actually been flared, vented to the atmosphere, or continuously injected into a non-producing zone for a period of one year, pursuant to legal authority; or (2) the gas has been certified as waste, *i.e.*, suitable for disposal, by an appropriate state authority.[5]

In setting the limit for the first category (low-Btu gas), the Commission notes that for gas with a heating value of 300 Btu per scf and below, only extraordinary circumstances would make the gas worth upgrading.[6] The

[2] 18 CFR 292.202(b) (1986).

[3] The cost of drilling is not relevant to the question of gas marketability verses use in a small power production facility because drilling costs are incurred regardless of how the gas is used.

[4] Different types of separation processes are used to remove different impurities. For example, cryogenic cooling processes are used to remove nitrogen. Carbon dioxide and hydrogen sulfide, two other common impurities, are typically recovered by absorption processes. The cost of upgrading varies with the chemical composition of the gas. Factors such as wellhead pressure and flow rate affect the choice of upgrading technology, and therefore, the cost of upgrading. Moreover, some of the impurities themselves have significant market values. Carbon dioxide can be used for enhanced oil recovery. Hydrogen sulfide can be converted to sulfur which also has a market value. The sale of these residuals complicates the economic analysis of natural gas upgrading because the market prices of carbon dioxide and sulfur vary widely by region.

[5] In states that do not have permitting procedures for the disposal of gas, the Commission will consider approving applications after notifying the state authorities and allowing them to comment.

[6] A significant exception to this general observation is the commercial development of low-Btu gas in the Moxa Arch area in Wyoming and Utah. This project includes upgrading to pipeline quality for gas sales to interstate pipelines. The Big Piney-LaBarge (250 Btu per scf) gas reserve, a reserve in the Moxa Arch area which is presently being upgraded to pipline quality and sold to ANR

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applicant in *Pynoyl Corporation* stated that the subject gas would not even burn under normal conditions. If such gas has a relatively low wellhead pressure, upgrading would require an external energy source. This would very likely be uneconomical.[7]

The Commission notes that available statistics indicate that natural gas with heating values above 800 Btu per scf is currently being marketed. However, the Commission believes that such gas should be considered unmarketable if it has been flared, vented to the atmosphere, or continuously injected into a non-producing zone for a period of one year. In order to avoid encouraging actual waste of such gas, the Commission will consider certification by appropriate state authorities that the gas is suitable for disposal.

Beween the low-Btu gas in the first category and the high-Btu gas in the third category, lies a middle ground. Statistics indicate that gas in this category is not currently being marketed. However, technology exists for upgrading the gas for sale. Therefore, the Commission believes that the criteria set forth herein for this category are appropriate for determining whether such gas may be considered waste.

The Commission's regulations require that applications for certification include a copy of a notice of such application for publication in the Federal Register.[8] In notices for certification of facilities using waste gas which falls within the seond or third category the Commission intends to include the identifying characteristics of the gas resource and a statement regarding whether there were buyers willing to purchase the gas, and encourages applicants to file this information. The Commission intends to add this information to notify potential buyers that may have been overlooked by an applicant of the opportunity to purchase the gas and to ensure that potential buyers that were notified were not willing to purchase the gas under reasonable terms and conditons.

The Commission believes that this approach strikes a balance between the administrative burden imposed on applicants for qualifying status and the Commission's objectives of utilizing wastes, while preventing otherwise useful gas from being diverted to small power production facilities.

## IV. Effective Date

The Administrative Procedure Act exempts interpretative rules from both the notice and comment requirements of section 4(b) of the Administrative Procedure Act [9] and the requirement that publication be made thirty days before the effective date of the rule.[10] This interpretative rule will become effective upon publication in the Federal Register, without prior notice and comment.

## List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

*Secretary.*

1. The authority citation for Part 2 continues to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR Part 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16b U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 4321–4361 (1976), unless otherwise indicated.

2. The Table of Contents for Part 2 is amended by adding a new heading and new § 2.400 to follow § 2.300 and to read as set forth below:

**PART 2—STATEMENT OF INTERPRETATION UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978**

* * * * *

2.400 Statement of interpretation of waste concerning natural gas as the primary energy source for qualifying small power production facilities.

3. Part 2 is amended by adding a new § 2.400 to read as follows:

**§ 2.400 Statement of interpretation of waste concerning natural gas as the primary energy source for qualifying small power production facilities.**

For purposes of deciding whether natural gas may be considered as waste as the primary energy source pursuant to § 292.204(b)(1)(i) of this chapter, the Commission will use the criteria described in paragraphs (a), (b) and (c) of this section.

(a) *Category 1.* Except as provided in paragraph (b) of this section, natural gas with a heating value of 300 Btu per standard cubic foot (scf) or below will be considered unmarketable.

(b) *Category 2.* In determining whether natural gas with a heating value above 300 Btu but not more than 800 Btu per scf and natural gas produced in the Moxa Arch area is unmarketable, the Commission will consider the following information:

(1) The percentages of the chemical components of the gas, the wellhead pressure, and the flow rate;

(2) Whether the applicant offered the gas to all potential buyers located within 20 miles of the wellhead under terms and conditions commensurate with those prevailing in the region and that such potential buyers refused to buy the gas; and

(3) A study, which may be submitted by an applicant, that evaluates the economics of upgrading the gas for sale and transporting the gas to a pipeline. The study should include estimates of the revenues which could be derived from the sale of the gas and the fixed and variable costs of upgrading.

(c) *Category 3.* In determining whether natural gas with a heating value above 800 Btu per scf is marketable, the Commission will consider the information included in paragraph (b) of this section and whether:

(1) The gas has actually been flared, vented to the atmosphere, or continously injected into a non-producing zone for a

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Pipeline Company, represents an estimated recoverable reserve of seven trillion cubic feet (TCF). *See* ANR Pipline Company, *et al.*, 32 FERC ¶ 61,313 (1985) (order granting certificates for construction and operation of a pipeline and authority to transport gas from the LaBarge reserve to the ANR Pipeline Company). The sale of helium, sulfur, and carbon dioxide by-products has allowed this reserve to be developed commercially. Because the Moxa Arch reserve is being developed commercially, we will exclude it from Category 1. Natural gas from this reserve will be placed in Category 2. For purposes of this rule, the Moxa Arch area is the area enclosed by the Department of Interior Survey coordinates: T12N through T32N and R109W through R115W in Wyoming, and T2N through T3N and R14E through R20E in Utah.

[7] The Commission also considered requiring that gas in this category have a wellhead pressure of less than 1,500 psig. The rationale for a pressure standard is the apparent low cost of upgrading high-pressure gas for sale to pipelines. Wellhead pressures of 1,500 psig and are sufficiently above pipeline operating pressures (1,000 psig) so that no external input of energy may be required to drive a separation process. Without a pressure standard for low-Btu gas, some otherwise marketable gas could be automatically declared unmarketable. Nevertheless, the Commission concluded that more harm than good would result from requiring a pressure standard. Every source of gas is different. A pressure standard of 1,500 psig would likely prevent automatic qualification of some gas that could not be marketed. Since the probable impact of a pressure standard is not known at this time, the Commission decided not to adopt one.

[8] 18 CFR 292.207(b)(ii) (1986).

[9] 5 U.S.C. 553(b) (1982).

[10] 5 U.S.C. 553(d) (1982).

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period of one year, pursuant to legal authority; or

(2) The gas has been certified as waste, *i.e.*, suitable for disposal, by an appropriate state authority.

[FR Doc. 87-11705 Filed 5-21-87; 8:45 am]
BILLING CODE 6717-01-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Parts 19, 25, 70, 170, 179, 194, 197, 240, 250, 251, 270, 275, 285, 290, 295, and 296

[T.D. ATF-251]

## Change in the Filing of Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Treasury decision, Final rule.

**SUMMARY:** This final rule amends regulations to require alcohol, tobacco and certain firearms excise tax returns, claims and related documents previously filed with the Internal Revenue Service (IRS) to be filed with ATF. The Treasury decision will also transfer from IRS to ATF the functions associated with the deposit and assessment of such excise taxes. All special (occupational) tax and domestic excise tax returns will be mailed to a special purpose post office box indicated on the return form, while Puerto Rican excise tax returns will be filed with the Chief, Puerto Rico Operations, ATF. All claims will be filed with the appropriate regional director (compliance). For Puerto Rican excise taxpayers, the bonds previously filed with and approved by the Officer-in-Charge, IRS, will now be approved by the regional director (compliance), and maintained on file by the Chief, Puerto Rico Operations. However, bonds previously approved by IRS remain valid. The tax stamps issued to special (occupational) taxpayers by IRS will be issued by ATF. Furthermore, certain conforming procedural and administrative rules are being transferred from IRS regulations in 26 CFR Parts 301 and 601 to ATF regulations in 27 CFR Part 70. These changes in the filing of alcohol, tobacco and firearms tax returns, claims and related documents and in the issuance of special tax stamps will reduce the time in responding to affected taxpayers and reduce processing costs for the Government.

**EFFECTIVE DATE:** Amendatory paragraphs 7–13, 34–42, 46–63, 67–69, 71–83, 90–94, 106, 132, and 135 are effective May 22, 1987. Amendatory paragraphs 1–6, 14–33, 43–45, 64–66, 70, 84–89, 95–105, 107–131, 133–134, and 136–189 are effective on July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Manfred Roesler, Coordinator, Procedures Branch, (202) 566–7602, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 1, 1972, the Bureau of Alcohol, Tobacco and Firearms (ATF) was established by Treasury Department Order No. 120–01 (formerly Order No. 221). This order transferred from IRS to the newly-formed Bureau the functions, powers and duties relating to alcohol, tobacco, firearms, and explosives laws. The order specifically stated that "all existing activities relating to the collection, processing, depositing, or accounting for taxes . . . shall continue to be performed by the Commissioner of Internal Revenue to the extent not now performed by the Alcohol, Tobacco and Firearms Division . . . until the Director shall otherwise provide with the approval of the Secretary." Since the inception of the Bureau, ATF has continued to rely upon IRS to perform these functions.

Prior to the Tax Reform Act of 1986, existing law, 26 U.S.C. 6091, required all returns of tax, including special occupational tax, under the Internal Revenue Code of 1954, to be filed in an internal revenue district or at an Internal Revenue Service Center serving an internal revenue district.

The Tax Reform Act of 1986 amended section 6091 of the Internal Revenue Code to provide for the filing of certain excise tax returns with the Bureau rather than with IRS. Present law now vests in the Secretary the authority to prescribe the place for filing tax returns required under subtitle E of the Internal Revenue Code.

This final rule will transfer the functions associated with returns or other documents required to be filed with IRS to the Bureau. More specifically, this rule will require all alcohol, tobacco and certain firearms excise tax returns, claims, and related forms previously filed with IRS to be filed with ATF. The instructions on each form will include the address to which that form is to be mailed.

### Transfer of Certain Regulations From 26 CFR Parts 301 and 601 to 27 CFR Part 70

In the past, many of the procedural and administrative rules listed in 26 CFR Parts 301 and 601 of the IRS regulations also applied to ATF because ATF did not have the means to independently perform certain deposit and accounting functions concerning the deposit and collection of excise taxes, including special (occupational) taxes. However, the recent enactment of the Tax Reform Act of 1986 (Pub. L. 99–514) now makes it possible for ATF to assume responsibility over deposit and accounting for excise taxes, including special (occupational) taxes. ATF has decided to recodify into 27 CFR Part 70 those provisions of 26 CFR Parts 301 and 601 which specifically apply to ATF, or specifically pertain to ATF matters. Presently, all deposit, assessment and collection functions with respect to the taxes administered by the Bureau are performed by the Internal Revenue Service. This Treasury decision will transfer from the Internal Revenue Service to ATF the authority to perform all functions associated with the deposit and assessment of such excise taxes. ATF anticipates that at a later date, it will also assume responsibility for all collection functions under Chapter 64 of the Internal Revenue Code now performed by IRS with respect to the alcohol, tobacco and certain firearms excise taxes administered by ATF.

### Regulatory and Forms Changes

The change in the location for filing alcohol, tobacco and certain firearms tax returns, claims and related documents require many regulatory changes. Every regulation in Title 27 of the Code of Federal Regulations referring to the filing of ATF-related documents with IRS has been amended. In addition, since claims for the redemption of stamps and for the refund and abatement of such excise taxes will be filed with ATF instead of IRS, the sections of regulations which prescribe the use of IRS Form 843, Claim, have been amended to show ATF F 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. IRS Form 11, Special Tax Return and Application for Registry, has been redesignated ATF F 5630.5, Annual Special Tax Registration and Return, and this is also reflected in the regulations. ATF forms which have been revised to show that they will be filed with ATF instead of IRS are:

ATF F 5000.24—Excise Tax Return
ATF F 5110.52—Deferred Tax Return—Distilled Spirits (Puerto Rico)

ATF F 5110.53—Prepayment Tax Return—Distilled Spirits (Puerto Rico)
ATF F 2927 (5120.33)—Deferred Tax Return—Wine (Puerto Rico)
ATF F 2928 (5120.34)—Prepayment Tax Return—Wine (Puerto Rico)
ATF F 2929 (5130.17)—Deferred Tax Return—Beer (Puerto Rico)
ATF F 2930 (5130.21)—Prepayment Tax Return—Beer (Puerto Rico)
ATF F 487–B (5170.7)—Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States
ATF F 2988 (5200.5)—Deferred Tax Return—Puerto Rican Cigars and Cigarettes
ATF F 3073 (5200.8)—Prepayment Tax Return—Puerto Rican Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes
ATF F 2897 (5120.32)—Tax Deferral Bond—Wine (Puerto Rico)
ATF F 2898 (5130.16)—Tax Deferral Bond—Beer (Puerto Rico)
ATF F 2986 (5210.12)—Deferral Bond—Cigars and Cigarettes (Puerto Rico)
ATF F 5110.50—Tax Deferral Bond—Distilled Spirits (Puerto Rico)
ATF F 5110.51—Application, Permit, and Report—Distilled Spirits Products (Puerto Rico)
ATF F 2900 (5100.21)—Application, Permit, and Report—Wine and Beer (Puerto Rico)

Three forms have been eliminated. ATF F 4640 (5600.5), Remittance Transmittal (ATF), was used by export warehouse proprietors to pay taxes on tobacco products and cigarette papers and tubes for which evidence of exportation was not timely furnished as provided in 27 CFR 290.67. ATF F 5000.24, Excise Tax Return, has been revised and will be used whenever this tax is required to be paid. ATF F 5620.3, Notice of Adjustment of Claim for Abatement, and ATF F 5620.5, Notice of Adjustment of Claim, have also been eliminated because IRS is no longer involved in the refund process. The claimant will now be advised of adjustments directly by ATF on the copy of the ATF F 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, that is returned to the taxpayer.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

**Executive Order 12291**

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The requirement to file a tax return has been previously approved by the Office of Management and Budget under Control Number 1512–0467.

**Administrative Procedure Act**

Because this final rule merely recodifies existing requirements relating to deposit, assessment and place of filing ATF tax returns and other documents from the Internal Revenue Service under Title 26 of the Code of Federal Regulations to ATF under Title 27 of such Code, it is found to be unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

**Drafting Information**

The principal authors of this document are James A. Hunt and Robert L. White of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects**

*27 CFR Part 19*

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

*27 CFR Part 25*

Administrative practice and procedure, Authority delegations (Government agencies), Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

*27 CFR Part 70*

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Tobacco.

*27 CFR Part 170*

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

*27 CFR Part 179*

Administrative practice and procedure, Arms and munitions, Authority delegations (Government agencies), Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

*27 CFR Part 194*

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

*27 CFR Part 197*

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Drugs, Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

*27 CFR Part 240*

Administrative practice and procedure, Authority delegations (Government agencies), Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

*27 CFR Part 250*

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds,

Transportation, Virgin Islands, Warehouses, Wine.

*27 CFR Part 251*

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Cosmetics, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

*27 CFR Part 270*

Administrative practice and procedure, Authority delegations (Government agencies), Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

*27 CFR Part 275*

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

*27 CFR Part 285*

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

*27 CFR Part 290*

Administrative practice and procedure, Aircraft, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses.

*27 CFR Part 295*

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

*27 CFR Part 296*

Cigarette papers and tubes, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

**Issuance**

Title 27 CFR is amended as follows:

**PART 19—[AMENDED]**

**Paragraph 1.** The authority citation for Part 19 continues to read as follows:

**Authority:** 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271–5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6005, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 19.44 [Amended]**

**Para. 2.** Section 19.44 is amended by replacing the first and second sentence with the sentence "All claims filed under this part shall be filed on Form 2635 (5620.8)."

**§ 19.519 [Amended]**

**Para. 3.** Section 19.519 is amended by replacing the phrase "district director" with the phrase "regional director (compliance)" and the citation "26 CFR 301.6311–1" with the citation "§ 70.66" in the second and next to the last sentences and the phrase "Internal Revenue Service" with the phrase "Bureau of Alcohol, Tobacco and Firearms" in the last sentence.

**§ 19.524 [Amended]**

**Para. 4.** Section 19.524(c)(1) is amended by replacing the phrase "the director of the service center, district director, or regional director (compliance)," with the word "ATF."

**§ 19.525 [Amended]**

**Para. 5.** Section 19.525(a) is amended by replacing the phrase "the district director, director of the service center, or regional director (compliance)," with the word "ATF."

**PART 25—[AMENDED]**

**Para. 6.** The authority citation for Part 25 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

**§§ 25.116, 25.122, 25.125, and 25.126 [Amended]**

**Para. 7.** Sections 25.116, 25.122, 25.125, and 25.126 are amended by replacing the phrase "IRS Form 11" wherever it appears with the phrase "Form 5630.5."

**§ 25.117 [Amended]**

**Para. 8.** Section 25.117 is amended by replacing the second sentence of paragraph (a) with the sentence "The return will be filed, with payment of tax, with ATF in accordance with the instructions on the form.", by replacing the second sentence of paragraph (b)(1) with the sentence "The return will be filed with ATF in accordance with the instructions on the form; and", by replacing the phrase "IRS Form 11" wherever it appears with the phrase "Form 5630.5", and by removing paragraph (c).

**§ 25.119 [Amended]**

**Para. 9.** Section 25.119 is amended by replacing in paragraph (c) the phrase "internal revenue" with the word "ATF" and by replacing the phrase "IRS Form 11" wherever it appears in the heading and paragraph with the phrase "Form 5630.5."

**§ 25.121 [Amended]**

**Para. 10.** Section 25.121 is amended by replacing in the second sentence the citation "26 CFR 301.6676–1" with the citation "§ 70.105" and by replacing the phrase "IRS Form 11" wherever it appears with the phrase "Form 5630.5."

**Para. 11.** Section 25.131 is revised to read as follows:

**§ 25.131 Change in name.**

If there is a change in the corporate or firm name, or in the trade name, the brewer shall, within 30 days after the change, file an additional return on Form 5630.5 covering the new corporate or firm name, or trade names. The brewer shall forward the special tax stamp or stamps with the additional return for appropriate notation with respect to the change in name.

**§ 25.132 [Amended]**

**Para. 12.** Section 25.132(b) is amended by removing from the first sentence the phrase "with the director of the service center who issued the stamp" and by replacing the phrase "IRS Form 11" with the phrase "Form 5630.5."

**§ 25.134 [Amended]**

**Para. 13.** Section 25.134 is amended by removing in the first sentence the phrase "with the director of the service center who issued the stamp", by replacing in the first sentence the phrase "IRS Form 11" with the phrase "Form 5630.5," and

by replacing in the second sentence the phrase "to the director of the service center" with the phrase "with the amended return."

Para. 14. Section 25.163 is revised to read as follows:

**§ 25.163 Method of tax payment.**

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.173 and 25.175. The brewer shall pay the tax by remittance at the time the tax return is rendered, and the remittance will be by check or money order payable to the "Bureau of Alcohol, Tobacco and Firearms" and mailed with the return, or will be effected by an electronic fund transfer. In paying the tax, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

Para. 15. Section 25.164(e)(1) is revised to read as follows:

**§ 25.164 Semimonthly return.**

* * * * *

(e) *Timely filing.* (1) When the brewer sends the semimonthly tax return, Form 5000.24, by U.S. mail, in accordance with the instructions on the form, as required by this section, with remittance as provided for in this section, or without remittance as provided for in § 25.165, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

* * * * *

**§ 25.165 [Amended]**

Para. 16. Section 25.165(c)(1) is amended by replacing the phrase "the director of the service center, district director, or regional director (compliance)" with the word "ATF".

**§ 25.166 [Amended]**

Para. 17. Section 25.166(b) is amended by replacing the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

**§ 25.173 [Amended]**

Para. 18. Section 25.173(b) is amended by replacing the citation "26 CFR 301.6311–1" with the citation "§ 70.86."

**§ 25.175 [Amended]**

Para. 19. Section 25.175 is amended by removing from paragraph (b)(1) the phrase "or delivering to the district director, or director of the service center", by replacing in the first sentence of paragraph (b)(2) the phrase "delivering or forwarding it to the district director, director of the service center or regional director (compliance)" with the phrase "forwarding it", and removing from paragraph (b)(3) the phrase "to the district director or director of the service center."

**§ 25.283 [Amended]**

Para. 20. Section 25.283(d) is amended by replacing the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

**§ 25.285 [Amended]**

Para. 21. Section 25.285(a) is amended by replacing the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)" and by replacing the citations "26 CFR 301.6511(a)–1 and 301.6511(b)–1" with the citations "§§ 70.82 and 70.83."

## PART 70—[AMENDED]

Para. 22. The authority citation for Part 70 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5148, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6155, 6201, 6203, 6204, 6311, 6313, 6314, 6401, 6402, 6404, 6407, 6423, 6501, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6662, 6671, 6672, 6676, 6701, 6801, 6862, 6863, 7011, 7601–7606, 7608, 7622, 7623, 7653, 7805.

Para. 23–24. Section 70.1 is revised to read as follows:

**§ 70.1 General.**

This part sets forth the procedural and administrative rules of the Bureau of Alcohol, Tobacco and Firearms for:

(a) The issuance and enforcement of summonses, examination of books of account and witnesses, administration of oaths, entry of premises for examination of taxable objects, granting of rewards for information, canvass of regions for taxable objects and persons, and authority of ATF officers.

(b) The use of commercial banks for payment of excise taxes imposed by 26 U.S.C. Subtitles E and F.

(c) The preparing or executing of returns; deposits; payment on notice and demand; assessment; abatements, credits, and refunds; limitations on assessment; limitations on credit or refund; periods of limitation in judicial proceedings; interest; additions to the tax, additional amounts, and assessable penalties; authority for establishment, alteration, and distribution of stamps, marks, or labels; jeopardy assessment of alcohol, tobacco, and firearms taxes; and registration of persons paying a special tax.

(d) Distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, and certain firearms and explosives.

Para. 25. Subpart E is added immediately following the regulations in Subpart D to read as follows:

### Subpart E—Procedural and Administrative Rules Relating to Collection of Excise and Special (Occupational) Taxes

#### Miscellaneous Provisions


Sec.
70.61 Returns prepared or executed by regional directors (compliance) or by other ATF officers.
70.62 Payment on notice and demand.


#### Assessment


70.63 Assessment authority.
70.64 Method of assessment.
70.65 Supplemental assessments.


#### Receipt of Payment


70.66 Payment by check or money order.
70.67 Fractional parts of a cent.
70.68 Receipt for taxes.


#### Abatements, Credits, and Refunds

*Procedure In General*


70.70 Amounts treated as overpayments.
70.71 Authority to make credits or refunds.
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70.73 Payments in excess of amounts shown on return.
70.74 Abatements.
70.75 Date of allowance of refund or credit.


*Rule of Special Application*


70.76 Conditions to allowance.


#### Limitations

*Limitations on Assessment*


70.79 Period of limitations upon assessment.
70.80 Time return deemed filed for purposes of determining limitations.
70.81 Exceptions to general period of limitations on assessment and collection.


*Limitations on Credit or Refund*


70.82 Period of limitation on filing claim.
70.83 Limitations on allowance of credits and refunds.
70.84 Special rules applicable in case of extension of time by agreement.
70.85 Time return deemed filed and tax considered paid.
70.86 Credits or refunds after period of limitation.
70.87 Credit against barred liability.


*Periods of Limitation in Judicial Proceedings*


70.88 Periods of limitation on suits by taxpayers.
70.89 Periods of limitation on suits by the United States.


#### Interest


70.90 Interest on underpayments.
70.91 Interest on erroneous refund recoverable by suit.
70.92 Interest on overpayments.
70.93 Interest rate.
70.94 Interest compounded daily.

**Additions to the Tax, Additional Amounts, and Assessable Penalties**

*Additions to the Tax and Additional Amounts*

Sec.
70.95 Scope
70.96 Failure to file tax return or to pay tax.
70.97 Failure to pay tax.
70.98 Penalty for underpayment of deposits.
70.99 Penalty for overstated deposit claims.
70.100 Bad checks.
70.101 Coordination with title 11.
70.102 Failure to pay tax.

*Assessable Penalties*

70.103 Rules for application of assessable penalties.
70.104 Failure to collect and pay over tax, or attempt to evade or defeat tax.
70.105 Penalty for failure to supply taxpayer identification number.
70.106 Penalties for aiding and abetting understatement of tax liability.

**General Provisions Relating to Stamps, Marks, or Labels**

70.107 Authority for establishment, alteration, and distribution of stamps, marks, or labels.

**Jeopardy Assessment**

70.108 Jeopardy assessment of alcohol, tobacco, and firearms taxes.

**Registration**

70.109 Registration of persons paying a special tax.

**Subpart E—Procedural and Administrative Rules Relating to Collection of Excise and Special (Occupational) Taxes**

**Miscellaneous Provisions**

**§ 70.61 Returns prepared or executed by regional directors (compliance) or by other ATF officers.**

(a) *Preparation of returns—(1) General.* If any person required by Subtitle E of the Internal Revenue Code (or by any provision of Subtitle F which relates to Subtitle E) or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the regional director (compliance) or other authorized officer of the Bureau of Alcohol, Tobacco and Firearms provided such person consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the regional director (compliance) as the return of such person.

(2) *Responsibility of person for whom return is prepared.* A person for whom a return is prepared in accordance with paragraph (a)(1) of this section shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by such person.

(b) *Execution of returns—(1) General.* If any person required by Subtitle E of the Internal Revenue Code (or by any provision of Subtitle F which relates to Subtitle E) or by the regulations prescribed thereunder to make a return fails to make such return at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the regional director (compliance) or other authorized officer of the Bureau of Alcohol, Tobacco and Firearms shall make such return from the persons own knowledge and from such information as such person can obtain through testimony or otherwise.

(2) *Status of returns.* Any return made in accordance with paragraph (b)(1) of this section and subscribed by the regional director (compliance) or other authorized officer of the Bureau of Alcohol, Tobacco and Firearms shall be prima facie good and sufficient for all legal purposes.

(c) *Cross references.* (1) For provisions that the return executed by a regional director (compliance) or other authorized officer of the Bureau of Alcohol, Tobacco and Firearms will not start the running of the period of limitations on assessment and collection, see section 6501(b)(3) of the Internal Revenue Code and § 70.80(b) of this part.

(2) For additions to the tax and additional amounts for failure to file returns, see section 6651 of the Internal Revenue Code.

(3) For additions to the tax for failure to pay tax, see sections 5684, 5761, and 6653 of the Internal Revenue Code.

(4) For failure to make deposit of taxes or overstatement of deposit claims, see section 6656 of the Internal Revenue Code.

(5) For an additional penalty for tendering a bad check or money order, see section 6657 of the Internal Revenue Code.

(6) For certain failures to pay tax with respect to cases pending under Title 11 of the United States Code, see section 6658 of the Internal Revenue Code.

(7) For failure to supply identifying numbers, see section 6676 of the Internal Revenue Code.

(8) For penalties for aiding and abetting understatement of tax liability, see section 6701 of the Internal Revenue Code.

(9) For criminal penalties for willful failure to make returns, see sections 7201, 7202, and 7203 of the Internal Revenue Code.

(10) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207 of the Internal Revenue Code.

(11) For authority to examine books and witnesses, see section 7602 of the Internal Revenue Code and § 70.22.

(26 U.S.C. 6020)

**§ 70.62 Payment on notice and demand.**

Upon receipt of notice and demand from the regional director (compliance), there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to the tax, and assessable penalties) stated in such notice and demand.

(26 U.S.C. 6155)

**Assessment**

**§ 70.63 Assessment authority.**

(a) *General.* The regional director (compliance) is authorized and required to make all inquiries necessary to the determination and assessment of all taxes which are administered by the Bureau of Alcohol, Tobacco and Firearms under Subtitle E of the Internal Revenue Code or under any provision of Subtitle F which relates to Subtitle E or any prior internal revenue law. The regional director (compliance) is further authorized and required to make the determinations and the assessments of such taxes. The term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the regional director (compliance) to make assessment includes the following:

(b) *Taxes shown on return.* The regional director (compliance) shall assess all taxes determined by the taxpayer or by the regional director (compliance) and disclosed on a return or list.

(c) *Unpaid taxes payable by stamp.* (1) If without the use of the proper stamp:

(i) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(ii) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs; The regional director (compliance), upon such information as can be obtained, must estimate the amount of the tax which has not been paid and the regional director (compliance) must make assessment therefor upon the person the regional director (compliance) determines to be liable for the tax. However, the regional director (compliance) may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(2) If a taxpayer gives a check or money order as a payment for stamps but the check or money order is not paid upon presentment, then the regional director (compliance) shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the regional director (compliance).

(26 U.S.C. 6201)

**§ 70.84 Method of assessment.**

The regional director (compliance) shall appoint one or more assessment officers. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, the taxpayer shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

(26 U.S.C. 6203)

**§ 70.85 Supplemental assessments.**

If any assessment is incomplete or incorrect in any material respect, the regional director (compliance), subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

(26 U.S.C. 6204)

**Receipt of Payment**

**§ 70.86 Payment by check or money order.**

(a) *Authority to Receive*—(1) *General.* (i) Regional directors (compliance) may accept checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or money orders in payment for internal revenue taxes, provided such checks or money orders are collectible in U.S. currency at par, and subject to the further provisions contained in this section. The Director may accept such checks or money orders in payment for internal revenue stamps [authorized under Subtitle E of the Internal Revenue Code or any provision of Subtitle F which relates to Subtitle E) to the extent and under the conditions prescribed in paragraph (a)(2) of this section. A check or money order in payment for internal revenue taxes or internal revenue stamps should be made payable to the Bureau of Alcohol, Tobacco and Firearms. A check or money order is payable at par only if the full amount thereof is payable without any deduction for exchange or other charges. As used in this section, the term "money order" means:

(A) U.S. postal, bank, express, or telegraph money order; and

(B) Money order issued by a domestic building and loan association (as defined in section 7701(a)(19) of the Internal Revenue Code) or by a similar association incorporated under the laws of a possession of the United States;

(C) A money order issued by such other organization as the Director may designate; and

(D) A money order described in paragraph (a)(1)(ii) of this section in cases therein described. However, the regional director (compliance) may refuse to accept any personal check whenever there is good reason to believe that such check will not be honored upon presentment.

(ii) An American citizen residing in a country with which the United States maintains direct exchange of money orders on a domestic basis may pay his/her tax by postal money order of such country. For a list of such countries, see section 171.27 of the Postal Manual of the United States.

(iii) If one check or money order is remitted to cover two or more persons' taxes, the remittance should be accompanied by a letter of transmittal clearly identifying—

(A) Each person whose tax is to be paid by the remittance;

(B) The amount of the payment on account of each such person; and

(C) The kind of tax paid.

(2) *Payment for internal revenue stamps—In general.* The Director may accept checks and money orders described in paragraph (a)(1) of this section, in payment for internal revenue stamps authorized under Subtitle E of the Internal Revenue Code or under any provision of Subtitle F which relates to Subtitle E. However, the Director may refuse to accept any personal check whenever there is good reason to believe that the check will not be honored upon presentment.

(3) *Payment of tax on distilled spirits, wine, beer, tobacco products; proprietor in default.* Where a check or money order tendered in payment for taxes on distilled spirits, wine or beer products (imposed under Chapter 51 of the Internal Revenue Code), or tobacco products (imposed under Chapter 52 of the Internal Revenue Code) is not paid on presentment, or where a taxpayer is otherwise in default in payment of such taxes, any remittance for such taxes made during the period of such default, and until the regional director (compliance) finds that the revenue will not be jeopardized by the acceptance of personal checks, shall be in cash, or shall be in the form of a certified, cashier's, or treasurer's check, drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State or possession of the United States, or a money order as described in paragraph (a)(1) of this section.

(b) *Checks or money orders not paid*—(1) *Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check) or money order in payment for taxes is not released from liability until the check or money order is paid; and, if the check or money order is not duly paid, the person shall also be liable for all legal penalties and additions, to the same extent as if such check or money order had not been tendered. For the penalty in case a check or money order is not duly paid, see section 6657 of the Internal Revenue Code. For assessment of the amount of a check or money order not duly paid see section 6201(a)(2)(B) of the Internal Revenue Code.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check (or other guaranteed draft) or money order is not duly paid, the United States shall have a lien for the amount of such check upon all assets of the bank or trust company on which drawn or for the amount of such money order upon the assets of the issuer thereof. The unpaid amount shall be paid out of such assets in preference to any other claims against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank. In addition, the Government has the right to exact payment from the person required to make the payment.

(26 U.S.C. 6311)

**§ 70.67 Fractional parts of a cent.**

In the payment of any tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. Fractional parts of a cent shall not be disregarded in the computation of taxes.

(26 U.S.C. 6313)

**§ 70.68 Receipt for taxes.**

The regional director (compliance) shall, upon request, issue a receipt for each tax payment made (other than a payment for stamps sold or delivered). In the case of payments made by check, the canceled check is usually a sufficient receipt. No receipt shall be issued in lieu of a stamp representing a tax, whether the payment is cash or otherwise.

(26 U.S.C. 6314)

**Abatements, Credits, and Refunds**

*Procedure in General*

**§ 70.70 Amounts treated as overpayments.**

(a) The term "overpayment" includes any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

(26 U.S.C. 6401)

**§ 70.71 Authority to make credits or refunds.**

The regional director (compliance), within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to section 6402 (c) and (d) of the Internal Revenue Code and the regulations thereunder, to such person by the regional director (compliance).

(26 U.S.C. 6402)

**§ 70.72 Claims for credit or refund.**

(a) *Requirement that claim be filed.* (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422 of the Internal Revenue Code, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) All claims relating to Subtitle E of the Internal Revenue Code (or to any provision of Subtitle F which, relates to Subtitle E), together with appropriate supporting evidence, shall be filed with the regional director (compliance), for the region in which the claimant is located. As to interest in the case of credits or refunds, see section 6611 of the Internal Revenue Code. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on a Saturday, Sunday, or legal holiday.

(b) *Grounds set forth in claim.* (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which credit or refund is claimed and facts sufficient to apprise the regional director (compliance) of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for the refund or credit.

(2) The regional director (compliance) does not have authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* All claims by taxpayers for the refunding of taxes, interest, penalties, and additions to tax shall be made on Form 2835 (5820.8).

(d) *Proof of representative capacity.* If a return is filed by an individual and, after the individuals death, a refund claim is filed by a legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney must accompany the claim.

(e) *Mailing of refund check.* (1) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and, except as provided in paragraph (e)(2) of this section, the checks may be sent direct to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing the attorney or agent to receive such checks.

(2) Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money and will be sent to the Assistant Attorney General, Tax Division, Department of Justice, for delivery to the taxpayer or the counsel of record in the court proceeding.

(3) For restrictions on the assignment of claims, see 31 U.S.C. 3727.

(26 U.S.C. 6402)

**§ 70.73 Payments in excess of amounts shown on return.**

In certain cases, the taxpayer's payments in respect of a tax liability, made before the filing of the taxpayers return, may exceed the amount of tax shown on the return. In any case in which the regional director (compliance) determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, the regional director (compliance) may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of § 70.72 are applicable to such overpayment, and taxpayers should submit claims for refund to protect themselves in the event the regional director (compliance) fails to make such determination and credit or refund.

(26 U.S.C. 6402)

**§ 70.74 Abatements.**

(a) The regional director (compliance) may abate the unpaid portion of any assessment or liability, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitation

applicable thereto, or if the assessment has been erroneously or illegally made.

(b) If more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to the regional director (compliance), the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 2635 (5620.8) in accordance with the instructions on the form. All such claims shall be filed with the regional director (compliance).

(c) The Director may issue uniform instructions to regional directors (compliance) authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

(26 U.S.C. 6404)

**§ 70.75 Date of allowance of refund or credit.**

The date on which the regional director (compliance), or an authorized certifying officer designated by the regional director (compliance), first certifies the allowance of an overassessment in respect of any internal revenue tax imposed by Subtitle E of the Internal Revenue Code (or by any provision of Subtitle F which relates to Subtitle E) shall be considered as the date of allowance of refund or credit in respect of such tax.

(26 U.S.C. 6407)

*Rule of Special Application*

**§ 70.78 Conditions to allowance.**

For regulations under section 6423 of the Internal Revenue Code, see Part 170 of this chapter, relating to distilled spirits, wine, and beer; and Part 296 of this chapter, relating to tobacco products, and cigarette papers and tubes.

(26 U.S.C. 6423)

**Limitations**

*Limitations on Assessment*

**§ 70.79 Period of limitations upon assessment.**

(a) The amount of any tax imposed by the Internal Revenue Code (other than a tax collected by means of stamps) shall be assessed within 3 years after the return was filed. For rules applicable in cases where the return is filed prior to the due date thereof, see section 6501(b) of the Internal Revenue Code. In the case of taxes payable by stamps, assessment shall be made at any time after the tax becomes due and before the expiration of 3 years after the date on which any part of the tax was paid. For exceptions and additional rules, see subsections (b) and (c) of section 6501 of the Internal Revenue Code.

(b) No proceeding in court without assessment for the collection of any tax shall be begun after the expiration of the applicable period for the assessment of such tax.

(26 U.S.C. 6501)

**§ 70.80 Time return deemed filed for purposes of determining limitations.**

(a) *Early Return.* Any return filed prior to the last day prescribed by law or regulations for the filing thereof (determined without regard to any extension of time for filing) shall be considered as filed on such last day.

(b) *Returns executed by regional directors (compliance) or other ATF officers.* The execution of a return by a regional director (compliance) or other authorized officer or employee of the Bureau of Alcohol, Tobacco and Firearms under the authority of section 6020(b) of the Internal Revenue Code shall not start the running of the statutory period of limitations on assessment and collection.

(26 U.S.C. 6501)

**§ 70.81 Exceptions to general period of limitations on assessment and collection.**

(a) *False return.* In the case of a false or fraudulent return with intent to evade any tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after such false or fraudulent return is filed.

(b) *Willful attempt to evade tax.* In the case of a willful attempt in any manner to defeat or evade any tax imposed by Subtitle E of the Internal Revenue Code (or any provision of Subtitle F which relates to Subtitle E), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *No return.* In the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after the date prescribed for filing the return.

(d) *Extension by agreement.* The time prescribed by section 6501 for the assessment of any tax imposed by Subtitle E of the Internal Revenue Code (or any provision of Subtitle F which relates to Subtitle E) may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the regional director (compliance). The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(26 U.S.C. 6501)

*Limitations on Credit or Refund*

**§ 70.82 Period of limitation on filing claim.**

(a) In the case of any tax (other than a tax payable by stamp):

(1) If a return is filed, a claim for credit or refund of an overpayment must be filed by the taxpayer within 3 years from the time the return was filed or within 2 years from the time the tax was paid, whichever of such periods expires the later.

(2) If no return is filed, the claim for credit or refund of an overpayment must be filed by the taxpayer within 2 years from the time the tax was paid.

(b) In the case of any tax payable by means of a stamp, a claim for credit or refund of an overpayment of such tax must be filed by the taxpayer within 3 years from the time the tax was paid. For provisions relating to redemption of unused stamps, see section 6805 of the Internal Revenue Code.

(c) For limitations on allowance of credit or refund, special rules, and exceptions, see subsections (b) and (c) of section 6511 of the Internal Revenue Code. For rules as to time return is deemed filed and tax considered paid, see section 6513 of the Internal Revenue Code.

(26 U.S.C. 6511)

**§ 70.83 Limitations on allowance of credits and refunds.**

(a) *Effect of filing claim.* Unless a claim for credit or refund of an overpayment is filed within the period of limitation prescribed in section 6511(a), no credit or refund shall be allowed or made after the expiration of such period.

(b) *Limit on amount to be credited or refunded.* In the case of any tax (other than a tax payable by stamp):

(1) If a return was filed, and a claim is filed within 3 years from the time the return was filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

(2) If a return was filed, and a claim is filed after the 3 year period described in paragraph (b)(1) of this section, but within 2 years from the time the tax was paid, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(3) If no return was filed, but a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(4) If no claim is filed, the amount of the credit or refund allowed or made by the regional director (compliance) shall not exceed the amount that would have been allowable under the preceding subparagraphs if a claim had been filed on the date the credit or refund is allowed.

(c) *In the case of a tax payable by stamp.* (1) If a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(2) If no claim is filed, the amount of the credit or refund allowed or made by the regional director (compliance) shall not exceed the portion of the tax paid within the 3 years immediately preceding the allowance of the credit or refund. For provisions relating to redemption of unused stamps, see section 6805 of the Internal Revenue Code.

(26 U.S.C. 6511)

**§ 70.84 Special rules applicable in case of extension of time by agreement.**

(a) *Scope.* If, within the period prescribed in section 6511(a) of the Internal Revenue Code for the filing of a claim for credit or refund, an agreement extending the period for assessment of a tax has been made in accordance with the provisions of section 6501(c)(4) of the Internal Revenue Code, the special rules provided in this section become applicable. This section shall not apply to any claim filed, or credit or refund allowed if no claim is filed, either (1) prior to the execution of an agreement extending the period in which assessment may be made, or (2) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(b) *Period in which claim may be filed.* Claim for credit or refund of an overpayment may be filed, or credit or refund may be allowed if no claim is filed, at any time within which an assessment may be made pursuant to an agreement, or any extension thereof, under section 6501(c)(4), and for 6 months thereafter.

(c) *Limit on amount to be credited or refunded.* (1) If a claim is filed within the time prescribed in paragraph (b) of this section, the amount of the credit or refund allowed or made shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(2) If no claim is filed, the amount of credit or refund allowed or made within the time prescribed in paragraph (b) of this section shall not exceed the portion of the tax paid after the execution of the agreement and before the making of the credit or refund, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(d) *Effective date of agreement.* The agreement referred to in this section shall become effective when signed by the taxpayer and the regional director (compliance).

(26 U.S.C. 6511)

**§ 70.85 Time return deemed filed and tax considered paid.**

For purposes of section 6511 of the Internal Revenue Code, a return filed before the last day prescribed by law or regulations for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b) (2) and (c), payment of any portion of the tax made before the last day prescribed for payment shall be considered made on such last day. An extension of time for filing a return or for paying any tax shall not be given any effect in determining under this section the last day prescribed for filing a return or paying any tax.

(26 U.S.C. 6513)

**§ 70.86 Credits or refunds after period of limitation.**

(a) A refund of any portion of any internal revenue tax (or any interest, additional amount, addition to the tax, or assessable penalty) shall be considered erroneous and a credit of any such portion shall be considered void:

(1) If made after the expiration of the period of limitation prescribed by section 6511 of the Internal Revenue Code for filing claim therefor, unless prior to the expiration of such period claim was filed, or

(2) In the case of a timely claim, if the credit or refund was made after the expiration of the period of limitation prescribed by section 6532(a) for the filing of suit, unless prior to the expiration of such period, suit was begun.

(b) For procedure by the United States to recover erroneous refunds, see sections 6532(b) and 7405 of the Internal Revenue Code.

(26 U.S.C. 6514)

**§ 70.87 Credit against barred liability.**

Any credit against a liability in respect of any taxable year shall be void if the collection of such liability would be barred by the applicable statute of limitations at the time such credit is made.

(26 U.S.C. 6514)

*Periods of Limitation in Judicial Proceedings*

**§ 70.88 Periods of limitation on suits by taxpayers.**

(a) No suit or proceeding under section 7422(a) of the Internal Revenue Code for the recovery of any internal revenue tax, penalty, or other sum shall be begun until whichever of the following first occurs:

(1) The expiration of 6 months from the date of the filing of the claim for credit or refund, or

(2) A decision is rendered on such claim prior to the expiration of 6 months after the filing thereof. Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any internal revenue tax, penalty, or other sum may be brought after the expiration of 2 years from the date of mailing, by either registered or certified mail, by a regional director (compliance) to a taxpayer of a notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) The 2-year period described in paragraph (a) of this section may be extended if an agreement to extend the running of the period of limitations is executed. The agreement must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary on behalf of the taxpayer. If the agreement is signed by a person other than the taxpayer, it shall be accompanied by an authenticated copy of the power of attorney or other legal evidence of the authority of such person to act on behalf of the taxpayer. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature of a duly authorized officer of the corporation. The agreement will not be effective until signed by a regional director (compliance).

(c) The taxpayer may sign a waiver of the requirement that the taxpayer be mailed a notice of disallowance. Such waiver is irrevocable and will commence the running of the 2-year period described in paragraph (a) of this

section on the date the waiver is filed. The waiver shall set forth:

(1) The type of tax and the taxable period covered by the taxpayer's claim for refund;

(2) The amount of the claim;

(3) The amount of the claim disallowed;

(4) A statement that the taxpayer agrees the filing of the waiver will commence the running of the 2-year period provided for in section 6532(a)(1) as if a notice of disallowance had been sent the taxpayer by either registered or certified mail.

The filing of such a waiver prior to the expiration of 6 months from the date the claim was filed does not permit the filing of a suit for refund prior to the time specified in section 6532(a)(1) and paragraph (a) of this section.

(d) Any consideration, reconsideration, or other action with respect to a claim after the mailing, by either registered or certified mail, of a notice of disallowance or after the execution of a waiver referred to in paragraph (c) of this section, shall not extend the period for bringing suit or other proceeding under section 7422(a) of the Internal Revenue Code.

(26 U.S.C. 6532)

**§ 70.89 Periods of limitation on suits by the United States.**

The United States may not recover any erroneous refund by civil action under section 7405 of the Internal Revenue Code unless such action is begun within 2 years after the making of such refund. However, if any part of the refund was induced by fraud or misrepresentation of a material fact, the action to recover the erroneous refund may be brought at any time within 5 years from the date the refund was made.

(26 U.S.C. 6532)

**Interest**

**§ 70.90 Interest on underpayments.**

(a) *General rule.* Interest at the underpayment rate referred to in the regulations at 26 CFR 301.6621–1 shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received.

(b) *Interest on penalties, additional amounts, or additions to the tax*— (1) *General.* Interest shall be imposed on any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1) of the Internal Revenue Code) only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(2) *Interest on certain additions to tax.* Interest shall be imposed under this section on any addition to tax imposed by section 6651(a)(1) of the Internal Revenue Code for the period which (i) begins on the date on which the return of the tax with respect to which such addition to tax is imposed is required to be filed (including any extensions), and (ii) ends on the date of payment of such addition to tax.

(c) *Payments made within 10 days after notice and demand.* If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(d) *Satisfaction by credits.* If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under section 6601 of the Internal Revenue Code on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(e) *Last date prescribed for payment.* (1) In determining the last date prescribed for payment, any extension of time granted for payment of tax shall be disregarded. The granting of an extension of time for the payment of tax does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension. Thus, except as provided in paragraph (d) of this section, interest at the underpayment rate referred to in the regulations at 26 CFR 301.6621–1 is payable on any unpaid portion of the tax for the period during which such portion remains unpaid by reason of an extension of time for the payment thereof.

(2) In the case of taxes payable by stamp and in all other cases where the last date for payment of the tax is not otherwise prescribed, such last date for the purpose of the interest computation shall be deemed to be the date on which the liability for the tax arose. However, such last date shall in no event be later than the date of issuance of a notice and demand for the tax.

(26 U.S.C. 6601)

**§ 70.91 Interest on erroneous refund recoverable by suit.**

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by a civil action pursuant to section 7405 of the Internal Revenue Code, shall bear interest at the underpayment rate referred to in the regulations at 26 CFR 301.6621–1 from the date of the payment of the refund.

(26 U.S.C. 6602)

**§ 70.92 Interest on overpayments.**

(a) *General rule.* Except as otherwise provided, interest shall be allowed on any overpayment of any tax at the overpayment rate referred to in the regulations at 26 CFR 301.6621–1 from the date of overpayment of the tax.

(b) *Date of overpayment.* Except as provided in section 6401(a) of the Internal Revenue Code, relating to assessment and collection after the expiration of the applicable period of limitation, there can be no overpayment of tax until the entire tax liability has been satisfied. Therefore, the dates of overpayment of any tax are the date of payment of the first amount which (when added to previous payments) is in excess of the tax liability (including any interest, addition to the tax, or additional amount) and the dates of payment of all amounts subsequently paid with respect to such tax liability.

(c) *Period for which interest allowable in case of refunds.* If an overpayment of tax is refunded, interest shall be allowed from the date of the overpayment to a date determined by the regional director (compliance) which shall be not more than 30 days prior to the date of the refund check. The acceptance of a refund check shall not deprive the taxpayer of the right to make a claim for any additional overpayment and interest thereon, provided the claim is made within the applicable period of limitation. However, if a taxpayer does not accept a refund check, no additional interest on the amount of the overpayment included in such check shall be allowed.

(d) *Period for which interest allowable in case of credits*—(1) *General rule.* If an overpayment of tax is credited, interest shall be allowed from the date of overpayment to the due date (as determined under paragraph (d)(2) of this section of the amount against which such overpayment is credited.

(2) *Determination of due date*— (i) *General.* The term "due date", as used in this section, means the last day fixed by law or regulations for the payment of the tax (determined without regard to any extension of time), and not the date on which the regional director (compliance) makes demand for the

payment of the tax. Therefore, the due date of the tax is the date fixed for the payment of the tax;

(ii) *Tax not due yet.* If a taxpayer agrees to the crediting of an overpayment against tax and the schedule of allowance is signed prior to the date on which such tax would otherwise become due, then the due date of such tax shall be the date on which such schedule is signed;

(iii) *Assessed interest.* In the case of a credit against assessed interest, the due date is the date of the assessment of such interest;

(iv) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an amount assessed as an additional amount, addition to the tax, or assessable penalty, the due date is the date of the assessment.

(26 U.S.C. 6611)

**§ 70.93 Interest rate.**

Adjusted interest rates are periodically announced by the Commissioner of Internal Revenue in accordance with section 6621 of the Internal Revenue Code. The regional director (compliance) will provide information, when requested, regarding interest rates applicable to specific time periods.

(26 U.S.C. 6621)

**§ 70.94 Interest compounded daily.**

In computing the amount of any interest required to be paid under Title 26 of the United States Code by the regional director (compliance) or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

(26 U.S.C. 6622)

**Additions to the Tax, Additional Amounts, and Assessable Penalties**

*Additions to the Tax and Additional Amounts*

**§ 70.95 Scope.**

For purposes of the administration of excise taxes by the Bureau of Alcohol, Tobacco and Firearms in accordance with Title 26 of the United States Code, the penalties prescribed in §§ 70.96 through 70.106 shall apply.

**§ 70.96 Failure to file tax return or to pay tax.**

(a) *Addition to the tax*— (1) *Failure to file tax return.* In the case of failure to file a return required under authority of,

(i) Chapter 61 of the Internal Revenue Code, relating to returns and records;

(ii) Chapter 51 of the Internal Revenue Code, relating to distilled spirits, wines and beer;

(iii) Chapter 52 of the Internal Revenue Code relating to tobacco products, and cigarette papers and tubes; or

(iv) Chapter 53 of the Internal Revenue Code, relating to machine guns, destructive devices, and certain other firearms; and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent thereof if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The amount of any addition under this subparagraph shall be reduced by the amount of the addition under paragraph (a)(2) of this section for any month to which an addition to tax applies under both paragraphs (a)(1) and (2) of this section.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on any return (required to be filed after December 31, 1969, without regard to any extension of time for filing thereof) specified in paragraph (a)(1) of this section, on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), there shall be added to the tax shown on the return the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 0.5 percent of the amount of tax shown on the return if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(3) Failure to pay tax not shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return specified in paragraph (a)(1) of this section, which is not so shown (including an assessment made pursuant to section 6213(b)) within 10 days from the date of the notice and demand therefor, there shall be added to the amount stated in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than one month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The maximum amount of the addition permitted under this subparagraph shall be reduced by the amount of the addition under paragraph (a)(1) of this section, which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days from the date of notice and demand. The preceding sentence applies to amounts assessed on or before December 31, 1986.

(4) For increases in penalties for failure to pay tax in certain cases, see section 6651(d) of the Internal Revenue Code.

(b) *Month defined.* (1) If the date prescribed for filing the return or paying tax is the last day of a calendar month, each succeeding calendar month or fraction thereof during which the failure to file or pay tax continues shall constitute a month for purposes of section 6651.

(2) If the date prescribed for filing the return or paying tax is a date other than the last day of a calendar month, the period which terminates with the date numerically corresponding thereto in the succeeding calendar month and each such successive period shall constitute a month for purposes of section 6651. If, in the month of February, there is no date corresponding to the date prescribed for filing the return or paying tax, the period from such date in January through the last day of February shall constitute a month for purposes of section 6651. Thus, if a return is due on January 30, the first month shall end on February 28 (or 29 if a leap year), and the succeeding months shall end on March 30, April 30, etc.

(3) If a return is not timely filed or tax is not timely paid, the fact that the date prescribed for filing the return or paying tax, or the corresponding date in any succeeding calendar month, falls on a Saturday, Sunday, or legal holiday is immaterial in determining the number of months for which the addition to the tax under section 6651 applies.

(c) *Showing of reasonable cause.* A taxpayer who wishes to avoid the addition to the tax for failure to file a

tax return or pay tax must make an affirmative showing of all facts alleged as a reasonable cause for the taxpayers failure to file such return or pay such tax on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the regional director (compliance) with whom the return is required to be filed. In addition, where special tax returns of liquor dealers are delivered to an ATF officer working under the supervision of the regional director (compliance), such statement may be delivered with the return. If the regional director (compliance) determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that the taxpayer exercised ordinary business care and prudence in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship (as described in 26 CFR 1.6161-1(b)) if paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of a tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) the taxpayer could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, for example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of assets and anticipated income will be insufficient to pay the tax, has not exercised ordinary business care and prudence in providing for the payment of a tax liability. Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of a tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay the tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if such taxpayer made reasonable efforts to conserve sufficient assets in marketable form to satisfy a tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

(d) *Penalty imposed on net amount due*—(1) *Credits against the tax.* The amount of tax required to be shown on the return for purposes of section 6651(a)(1) and the amount shown as tax on the return for purposes of section 6651(a)(2) shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.

(2) *Partial payments.* (i) The amount of tax required to be shown on the return for purposes of section 6651(a)(2) of the Internal Revenue Code shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid after the date prescribed for payment and on or before the first day of such month, and

(ii) The amount of tax stated in the notice and demand for purposes of section 6651(a)(3) of the Internal Revenue Code shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the first day of such month.

(e) *No addition to tax if fraud penalty assessed.* No addition to the tax under section 6651 of the Internal Revenue Code shall be assessed with respect to an underpayment of tax if an addition to the tax for fraud is assessed with respect to the same underpayment under section 6653(b). See section 6653(d) of the Internal Revenue Code.

(26 U.S.C. 6651)

**§ 70.97 Failure to pay tax.**

(a) *Negligence*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to the sum of 5 percent of the underpayment, and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to the portion of such underpayment which is attributable to negligence for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or if earlier, the date or the payment of the tax).

(2) Underpayment taken into account reduced by a portion attributable to fraud. There shall not be taken into account under paragraph (a) of this section any portion of an underpayment attributable to fraud with respect to which a penalty is imposed under paragraph (b) of this section.

(3) *Negligence.* For purposes of paragraph (a) of this section, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of the Internal Revenue Code, and the term "disregard" includes any careless, reckless, or intentional disregard.

(4) The provisions of paragraph (a) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(b) *Fraud*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) The provisions of paragraph (b) of this section apply to returns the due date for which (determined without regard to extensions) is on or before December 31, 1986.

(c) *Fraud*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to the sum of 75 percent of the portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) Determination of portion attributable to fraud. If the regional director (compliance) establishes that any portion of an underpayment is

attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes is not attributable to fraud.

(3) The provisions of this paragraph (c) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(d) *Definition of underpayment.* For purposes of this section, the term "underpayment" means the amount by which such tax imposed by the Internal Revenue Code exceeds the excess of—

(1) The sum of,

(i) The amount shown as the tax by the taxpayer upon the taxpayers return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205(a) and 6413(a) of the Internal Revenue Code), if a return was made by the taxpayer within the time prescribed for filing such return (determined with regard to any extension of time for such filing) and an amount was shown as the tax by the taxpayer thereon, plus;

(ii) Any amount, not shown on the return, paid in respect of such tax, over—

(2) *The amount of rebates made.* For purposes of paragraph (d) of this section, the term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in paragraph (d)(1) of this section over the rebates previously made.

(e) *No delinquency penalty if fraud assessed.* If any penalty is assessed under paragraph (b) or (c) of this section (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 of the Internal Revenue Code (relating to failure to file such return or pay tax) shall be assessed with respect to the portion of the underpayment which is attributable to fraud.

(f) *Failure to pay stamp tax.* Any person who willfully fails to pay any tax which is payable by stamp or willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

(g) *Additional penalty.* For additional penalty for failure to pay certain liquor and tobacco taxes, see 27 CFR 70.102.

(26 U.S.C. 6653)

### § 70.53 Penalty for underpayment of deposits.

(a) *General rule.* If any person is required by the Internal Revenue Code or regulations prescribed thereunder to deposit any tax in a government depository that is authorized under section 6302(c) of the Internal Revenue Code to receive the deposit, and fails to deposit the tax within the time prescribed therefor, a penalty shall be imposed on such person unless the failure is shown to be due to reasonable cause and not due to willful neglect. The penalty shall be 5 percent of the amount of the underpayment without regard to the period during which the underpayment continues, except that, for penalties assessed after October 21, 1986, the penalty shall be 10 percent of the amount of the underpayment. For purposes of this section, the term "underpayment" means the amount of tax required to be deposited less the amount, if any, that was deposited on or before the date prescribed therefor. Section 7502(e) of the Internal Revenue Code applies in determining the date a deposit is made.

(b) *Assertion of reasonable cause.* To show that the underpayment was due to reasonable cause and not due to willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made under the penalties of perjury. The statement must be filed with the regional director (compliance) of the region in which the taxpayer is located. If the regional director (compliance) determines that the underpayment was due to reasonable cause and not due to willful neglect, the penalty will not be imposed.

(26 U.S.C. 6656)

### § 70.99 Penalty for overstated deposit claims.

(a) *General rule.* Any person who makes an overstated deposit claim on a return is subject to a penalty equal to 25 percent of such claim, unless it is shown that the overstated deposit claim is due to reasonable cause and not due to willful neglect. This penalty is in addition to any other penalty provided by law, such as the penalty provided by section 6656(a) of the Internal Revenue Code, relating to underpayment of deposits.

(b) *Overstated deposit claim.* An overstated deposit claim is the excess of—

(1) The amount of any internal revenue tax for any period that a person claims, in a return (including an amended return) filed after August 13, 1981, to have deposited in a government depositary authorized under section 6302(c) of the Internal Revenue Code to receive the deposit, over

(2) The aggregate amount for that period that the person has deposited, on or before the date such return for that period is filed, in a government depositary authorized under section 6302(c) to receive the deposit. An overstated deposit claim includes a claim that deposits have been made when no deposits have been made in an authorized government depositary. The existence or amount of an overstated deposit claim is not limited even though the amount described in paragraph (b)(1) of this section or the amount described in paragraph (b)(2) of this section exceeds the actual tax liability. For purposes of this paragraph, the date a return is considered to be filed is the later of the date the return is due to be filed (not including extensions) or the date the return is actually filed. Section 7502(e) of the Internal Revenue Code applies in determining the date a deposit is made.

(c) *Assertion of reasonable cause.* To show that an overstated deposit claim was due to reasonable cause and not due to willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that is made under the penalties of perjury. The statement must be filed with the regional director (compliance) of the region in which the taxpayer is located. If the regional director (compliance) determines that the overstated deposit claim was due to reasonable cause and was not due to willful neglect, the penalty will not be imposed. The fact that a correct amended return has been filed may in some cases be evidence that an overstated deposit claim on the original return was due to reasonable cause and not due to willful neglect, but is not determinative of that issue.

(26 U.S.C 6656)

### § 70.100 Bad checks.

If any check or money order in payment of any amount receivable under Title 26 of the United States Code is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon notice and demand, in the same manner as tax, an amount equal to 1 percent of the amount of such check, except that if the amount of such check is less than $500, the penalty under this section shall be $5 or the amount of such check, whichever is the lesser. This section shall not apply if the person establishes to the satisfaction

of the regional director (compliance) that such check was tendered in good faith and that such person had reasonable cause to believe that such check would be duly paid.

(26 U.S.C. 6657)

**§ 70.101 Coordination with Title 11.**

(a) *Certain failures to pay tax.* No addition to the tax shall be made under section 6651 of the Internal Revenue Code for failure to make timely payment of tax with respect to a period during which a case is pending under Title 11 of the United States Code—

(1) If such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses, or

(2) If such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee and

(i) The petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) The date for making the addition to the tax occurs on or after the day on which the petition was filed.

(b) *Exception for collected taxes.* Paragraph (a) of this section shall not apply to any liability for an addition to the tax which arises from the failure to pay or deposit a tax withheld or collected from others and required to be paid to the United States.

(26 U.S.C. 6658)

**§ 70.102 Failure to pay tax.**

Whoever fails to pay any tax imposed by part I of Subchapter A of Chapter 51 of the Internal Revenue Code (liquor taxes) or by Chapter 52 (tobacco taxes) at the time prescribed shall, in addition to any other penalty provided in the Internal Revenue Code, be liable to a penalty of 5 percent of the tax due but unpaid. For additional penalties for failure to pay tax, see 27 CFR 70.97.

(26 U.S.C. 5684(a) and 5761(b))

*Assessable Penalties*

**§ 70.103 Rules for application of assessable penalties.**

(a) *Penalty assessed as tax.* The penalties and liabilities provided by Subchapter B, Chapter 68, of the Internal Revenue Code shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Internal Revenue Code to "tax" imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by Subchapter B of Chapter 68.

(b) *Person defined.* For purposes of Subchapter B of Chapter 68 of the Internal Revenue Code, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(26 U.S.C. 6671)

**§ 70.104 Failure to collect and pay over tax, or attempt to evade or defeat tax.**

Any person required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 of the Internal Revenue Code applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account for, and pay over such taxes. No penalty under section 6653 of the Internal Revenue Code, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

(26 U.S.C. 6672)

**§ 70.105 Penalty for failure to supply taxpayer identification number.**

(a) *In general.* Except as provided in paragraph (b) of this section, any person who is required by the regulations under section 6109 of the Internal Revenue Code to include the taxpayer identification number in any return, statement, or other document, fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of $5 for each such failure, except that the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000. For returns having a due date (determined without regard to extensions) after December 31, 1986, the total amount imposed on such person for all such failures during any calendar year shall not exceed $100,000. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(b) *Reasonable cause.* If any person who is required by the regulations under section 6109 of the Internal Revenue Code to supply a taxpayer identification number fails to comply with such requirement at the time prescribed by such regulations, but establishes to the satisfaction of the regional director (compliance) that such failure was due to reasonable cause, the penalty set forth in paragraph (a) of this section shall not apply.

(c) *Persons required to supply taxpayer identification numbers.* For regulations under section 6109 of the Internal Revenue Code relating to persons required to supply an identifying number, see the regulations relating to the particular tax.

(26 U.S.C. 6676)

**§ 70.106 Penalties for aiding and abetting understatement of tax liability.**

(a) *Imposition of penalty.* Any person—

(1) Who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document in connection with any matter arising under the internal revenue laws,

(2) Who knows that such portion will be used in connection with any material matter arising under the internal revenue laws, and

(3) Who knows that such portion (if so used) will result in an understatement of the liability for tax of another person, shall pay a penalty with respect to each such document in the amount determined under paragraph (b).

(b) *Amount of penalty*—(1) *General.* Except as provided in paragraph (b)(2) of this section, the amount of the penalty imposed by paragraph (a) of this section shall be $1,000.

(2) *Corporations.* If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by paragraph (a) of this section shall be $10,000.

(3) *Only one penalty per person per period.* If any person is subject to a penalty under paragraph (a) of this section with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under paragraph (a) of this section with respect to any other document relating to such taxpayer for such taxable period (or event).

(c) *Activities of subordinates*— (1) *General.* For purpose of paragraph (a) of this section, the term "procures" includes,

(i) Ordering (or otherwise causing) a subordinate to do an act, and

(ii) Knowing of, and not attempting to

prevent, participation by a subordinate in an act.

(2) For purposes of paragraph (c)(1) of this section, the term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(d) *Taxpayer not required to have knowledge.* Paragraph (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) *Certain actions not treated as aid or assistance.* For purposes of paragraph (a)(1) of this section, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(f) *Penalty in addition to other penalties.* The penalty imposed by this section shall be in addition to any other penalty provided by law.

(26 U.S.C. 6701)

**General Provisions Relating to Stamps, Marks, or Labels**

**§ 70.107 Authority for establishment, alteration, and distribution of stamps, marks, or labels.**

The Director may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the law relating to Subtitle E of the Internal Revenue Code (or to any provision of Subtitle F which relates to Subtitle E).

(26 U.S.C. 6801)

**Jeopardy Assessment**

**§ 70.108 Jeopardy assessment of alcohol, tobacco, and firearms taxes.**

(a) If the regional director (compliance) believes that the collection of any tax imposed under Subtitle E of the Internal Revenue Code (or any provision of Subtitle F which relates to Subtitle E) will be jeopardized by delay, the regional director (compliance) shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. A regional director (compliance) will make an assessment under this section if collection is determined to be in jeopardy because at least one of the conditions described in 26 CFR 1.6851-1(a)(1) (i), (ii), or (iii) (relating to termination assessments) exists.

(b) The tax, interest, additional amounts, and additions to the tax will, upon assessment, become immediately due and payable, and the regional director (compliance) shall, without delay, issue a notice and demand for payment thereof in full.

(c) See section 7429 of the Internal Revenue Code with respect to requesting the regional director (compliance) to review the making of the jeopardy assessment.

(d) For provisions relating to stay of collection of jeopardy assessments, see 26 CFR 301.6863-1.

(26 U.S.C. 6862 and 6863)

**Registration**

**§ 70.109 Registration of persons paying a special tax.**

(a) *Persons required to register.* Every person engaged in a trade or business in respect of which a special tax is imposed by one of the following sections of the Internal Revenue Code is required to register with the Bureau of Alcohol, Tobacco and Firearms.

(1) Section 5091 (relating to special tax on brewers);

(2) Section 5111 (relating to special tax on wholesale dealers in liquors and wholesale dealers in beer);

(3) Section 5121 (relating to special tax on retail dealers in liquors and retail dealers in beer); or

(4) Section 5802 (relating to importers, manufacturers and dealers of National Firearms Act weapons). For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5122 of the Internal Revenue Code and 27 CFR Part 197 (Regulations on Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products).

(b) *Procedure for registration.* The registration required of a person by reason of the person being engaged in a trade or business in respect of which one of the special taxes listed in paragraphs (a) (1) to (3) of this section is imposed shall be accomplished by executing and filing, in accordance with the instructions relating thereto, ATF F 5630.5, Annual Special Tax Registration and Return.

(26 U.S.C. 7011)

**Para. 26.** Subpart F is added immediately following the regulations in Subpart E to read as follows:

**Subpart F—Procedural Rules Relating to Alcohol, Tobacco, Firearms, and Explosives**

**Provisions Relating to Distilled Spirits, Wines, and Beer**

Sec.

70.111 Imposition of taxes, qualification requirements, and regulations.
70.112 Excise taxes.
70.113 Claims.
70.114 Preparation and filing of claims.
70.115 Offers in compromise.
70.116 Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.
70.117 Rulings.
70.118 Conformers.
70.119 Representatives.
70.120 Forms.

**Provisions Relating to Tobacco Products, and Cigarette Papers and Tubes**

70.131 Imposition of taxes; regulations.
70.132 Qualification and bonding requirements.
70.133 Collection of taxes.
70.134 Assessments.
70.135 Claims.
70.136 Offers in compromise.
70.137 Rulings.
70.138 Forms.

**Provisions Relating to Firearms and Explosives**

70.141 Applicable laws.
70.142 Taxes relating to machine guns, destructive devices, and certain other firearms.
70.143 Commerce in firearms and ammunition.
70.144 Importation of arms, ammunition, and implements of war.
70.145 Commerce in explosives.
70.146 Rulings.
70.147 Assessments.
70.148 Claims.
70.149 Offers in compromise.

**Seized Property**

70.150 Seizure and forfeiture of personal property.

**Offers in Compromise**

70.151 Offers in compromise.

**Rulings**

70.152 Rulings.

## Subpart F—Procedural Rules Relating to Alcohol, Tobacco, Firearms, and Explosives

### Provisions Relating to Distilled Spirits, Wines, and Beer

**§ 70.111 Imposition of taxes, qualification requirements, and regulations.**

(a) *Imposition of taxes.* Subchapter A of Chapter 51 of the Internal Revenue Code of 1954 imposes taxes on distilled spirits (including alcohol), wine and beer. Occupational taxes are imposed upon brewers, dealers in liquors, and as a prerequisite for drawback under

section 5134 of the Internal Revenue Code, upon manufacturers of nonbeverage products.

(b) *Qualification requirements.* Distillers, winemakers, brewers, warehousemen, rectifiers, bottlers, dealers in specially denatured alcohol, users of tax-free and specially denatured alcohol, and wholesalers and importers of liquors, are required to qualify with ATF usually by filing notice or application and bond with, and procuring permit from, the regional director (compliance), of the ATF region in which operations are to be conducted. Detailed information respecting such qualification, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in paragraph (c) of this section.

(c) *Regulations.* The procedural requirements with respect to matters relating to distilled spirits, wines, and beer which are within the jurisdiction of the ATF are published in the regulations described in this paragraph. These regulations contain full information as to the general course and method by which the functions concerning liquors are channeled and determined, including the nature and requirements of formal and informal procedures, the forms, records, reports, and other documents required, and the contents of applications, notices, registrations, permits, bonds, and other documents. Supplies of prescribed forms may be obtained from the office of any regional director (compliance). ATF Publication 1322.1, which contains a listing of alcohol, tobacco, and firearms public-use forms, may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. The following is a brief description of the several regulations arranged according to the principal subjects and operations concerned:

(1) *Establishment and operation of distilled spirits plants.* Part 19 of Title 27 CFR contains the regulations relating to the location, qualification, construction, arrangement, equipment, and operations (including activities incident thereto) of distilled spirits plants for the production and/or warehousing (including denaturation), and bottling (including bottling in bond) of distilled spirits. Part 19 also contains the regulations relating to distilled spirits for fuel use and the production of vinegar by the vaporizing process.

(2) *Miscellaneous liquor transactions.* Part 170 of Title 27 CFR contains miscellaneous regulations relative to:

(i) Returns and records of the disposition of articles from which distilled spirits may be recovered, or substances of the character used in the manufacture of distilled spirits, and of containers of the character used for the packaging of distilled spirits;

(ii) Refunds of tax and duty paid on distilled spirits, wines, and beer lost as a result of floods, hurricanes, or other disasters;

(iii) Application of section 6423, Internal Revenue Code of 1954, as amended, to refund or credit of tax on distilled spirits, wines, and beer;

(iv) Manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements therefor;

(v) Manufacture and sale of certain compounds, preparations, and products containing alcohol;

(vi) Floor stocks tax on distilled spirits and imported perfumes held for sale on October 1, 1985; and

(vii) Temporary regulations respecting the withdrawal free of tax from bonded wine cellars, of wine, or wine products made from wine, when rendered unfit for beverage use.

(3) [Reserved]

(4) *Gauging of distilled spirits.* Part 30 of Title 27 CFR contains the regulations that prescribe the gauging instruments, and methods or techniques to be used in measuring distilled spirits (including denatured spirits). Tables are provided for use in making the necessary computation from gauge data.

(5) *Rules of practice in permit proceedings.* Part 200 of Title 27 CFR contains the rules governing the procedure and practice in connection with the disapproval of applications for basic permits, and for the issuance of citations for the suspension, revocation, and annulment of such permits under sections 3 and 4 of the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*), and disapproval, suspension, and revocation of industrial use, operating, withdrawal, and tobacco permits under the Internal Revenue Code. Such rules also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to oe determined on the record, after opportunity for hearing, under laws administered by the Bureau of Alcohol, Tobacco and Firearms.

(6) *Basic permit requirements under the Federal Alcohol Administration Act.* 27 CFR Part 1, issued pursuant to the Federal Alcohol Administration Act, as amended, contains the requirements relative to the issuance under the Act of basic permits to producers, rectifiers, blenders, bottlers, warehousemen, importers, and wholesalers of distilled spirits, wine, or beer, and the amendment, duration, revocation, suspension, or annulment of such permits.

(7) *Bulk sales and bottling of distilled spirits.* 27 CFR Part 3, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk.

(8) *Labeling and advertising of distilled spirits.* 27 CFR Part 5, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of distilled spirits under the Federal Alcohol Administration Act, including standards of identity for distilled spirits, standards of fill for bottles of distilled spirits, withdrawal of bottled imported distilled spirits from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(9) *American viticultural areas.* Part 9 of Title 27 CFR contains the regulations that relate to American viticultural areas. The viticultural areas described in these regulations are approved for use as appellations of origin in accordance with 27 CFR Part 4.

(10) *Production and removal of wine.* Part 240 of Title 27 CFR contains the regulations relative to the establishment and operation of bonded wine cellars, including bonded wineries, for the production, cellar treatment, and storage of wines, including amelioration, sweetening, addition of volatile fruit flavor concentrates, addition of wine spirits (including distillates containing aldehydes), blending, and other cellar treatment; removals; taxpayment; return of unmerchantable taxpaid wine; use of wine for distilling material and manufacture of vinegar; and record and report requirements.

(11) *Bottling or Packaging of taxpaid wine.* Part 231 of Title 27 CFR contains the regulations relative to the establishment, qualification, and operations of taxpaid wine bottling houses on premises other than those of a plant operated under Part 19 of Title 27 CFR, and to the bottling and packaging of taxpaid United States and foreign wines at such premises.

(12) *Nonindustrial use of distilled spirits and wine.* 27 CFR Part 2, issued under the Federal Alcohol Administration Act, as amended, specifies what uses of distilled spirits and wine are considered "nonindustrial," as that term is used in section 17 of the Federal Alcohol Administration Act.

(13) *Labeling and advertising of wine.* 27 CFR Part 4, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of wine under the Federal Alcohol Administration Act, including standards of identity for wine, standards of fill for containers of wine, the withdrawal of imported wine from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(14) *Establishment and operations of breweries and experimental breweries.* Part 25 of Title 27 CFR contains the regulations relating to the production (including concentration and reconstitution incident thereto) and removal of beer and cereal beverages. The regulations cover the location, construction, equipment, and operations of breweries; and the qualification of such establishments, including the ownership, control, and management thereof, and the establishment and operations of experimental breweries.

(15) *Labeling and advertising of malt beverages.* 27 CFR Part 7, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of malt beverages (beer) under the Federal Alcohol Administration Act, including withdrawal of imported malt beverages from customs custody, and the issuance of certificates of label approval.

(16) *Liquor dealers.* Part 194 of Title 27 CFR contains the regulations relative to the special (occupational) taxes imposed on wholesale and retail dealers in liquors, wholesale and retail dealers in beer, and limited retail dealers; restrictions on purchases of distilled spirits; reuse or refilling of liquor bottles; sale or possession of refilled or used liquor bottles; repackaging of alcohol for industrial use; recordkeeping and reporting requirements; and provisions relating to entry of premises and inspection of records by ATF officers.

(17) *Drawback of tax on spirits used in nonbeverage products.* Part 197 of Title 27 CFR contains the regulations which relate to obtaining drawback of internal revenue tax on distilled spirits used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes.

(18) *Production of volatile fruit-flavor concentrates.* Part 18 of Title 27 CFR contains the regulations relating to the manufacture, removal, sale, storage, transfer in bond, transportation, recordkeeping and reporting requirements, and use of volatile fruit flavor concentrates. It includes provisions regarding the location, qualification, use, and operations of concentrate plants.

(19) *"Tied-House."* 27 CFR Part 6, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (b) of section 5 of the Act and provides the exception to these prohibitions. This part applies only to transactions between industry members and retailers.

(20) *Exclusive outlets.* 27 CFR Part 8, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (a) of section 5 of the Act. This part applies only to transactions between industry members and retailers.

(21) *Commercial bribery.* 27 CFR Part 10, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (c) of section 5 of the Act. This part applies to transactions between industry members and employees, officers, or representatives of trade buyers.

(22) *Consignment sales.* 27 CFR Part 11, issued under the Federal Alcohol Administration Act, as amended, specifies sales arrangements prohibited by subsection (d) of section 5 of the Act and contains guidelines concerning the return of distilled spirits, wines, and malt beverages from a trade buyer. The regulations in this part apply to transactions between industry members and trade buyers.

(23) *Distribution and use of denatured alcohol and rum.* Part 20 of Title 27 CFR contains the regulations relating to the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits; and includes requirements in respect to industrial use and withdrawal permits; and the packaging, labeling, sales, rebottling, and reprocessing of articles containing specially denatured spirits.

(24) *Formulas for denatured alcohol and rum.* Part 21 of Title 27 CFR contains the regulations relating to the formulation of completely denatured alcohol, specially denatured alcohol, and specially denatured rum; to the use of specially denatured spirits; and to the specifications for denaturants. The procedural requirements relative to the production of denatured alcohol and specially denatured rum are prescribed in Part 19 of Title 27 CFR, and those relative to the distribution and use of denatured alcohol and specially denatured rum are prescribed in Part 20 of Title 27 CFR.

(25) *Distribution and use of tax-free alcohol.* Part 22 of Title 27 CFR contains the regulations relating to tax-free alcohol and covers the procurement, storage, use, and recovery of such alcohol; and included requirements in respect to industrial use and withdrawal permits.

(26) *Liquors and articles from Puerto Rico and the Virgin Islands.* Part 250 of Title 27 CFR contains the regulations relating to the production, bonded warehousing, and withdrawal of distilled spirits, and denatured spirits, and the manufacture of articles in Puerto Rico and the Virgin Islands to be brought into the United States free of tax and the collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands. Regulations respecting spirits produced in Puerto Rico or the Virgin Islands and brought into the United States and transferred from customs custody to internal revenue bond are also contained in this part.

(27) *Importation of liquors.* Part 251 of Title 27 CFR contains the substantive and procedural requirements relative to the importation of distilled spirits, wines, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, and labeling of containers and packages.

(28) *Exportation of liquors.* Part 252 of Title 27 CFR contains the regulations relating to exportation including, where applicable, lading for use on vessels and aircraft, transfer to a foreign-trade zone, or transfer to a manufacturing bonded warehouse, Class 6, of distilled spirits (including specially denatured spirits), beer (including beer concentrate), and wine, and transfer of distilled spirits and wine for deposit in a customs bonded warehouse, whether without payment of tax, free of tax, or with benefit of drawback. It includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

**§ 70.112 Excise taxes.**

(a) *Collection.* Taxes on distilled spirits, wines, and beer are paid by returns. If the person responsible for paying the taxes has filed a proper bond with the regional director (compliance), such person may file semimonthly returns, with proper remittances, to cover the taxes incurred on distilled spirits, wines, and beer during such semimonthly period. Payment must accompany the return unless required to be made by electronic fund transfer (EFT). If the taxpayer is not qualified to

defer taxpayment, or has been placed on a prepayment basis by the regional director (compliance), the taxpayer must prepay the tax on the distilled spirits, wines, or beer. Distilled spirits, wines, and beer tax returns are filed in accordance with the instruction on the return forms, which are furnished to industry members by ATF. Special tax stamps are issued to denote the payment of special (occupational) taxes by liquor dealers, brewers, and manufacturers of nonbeverage products. Detailed information respecting the payment of tax on liquors and the payment of occupational taxes, including the forms to be used and procedures to be followed, is contained in the respective regulations described in § 70.111(c).

(b) *Assessment.* If additional or delinquent tax liability is disclosed by an investigation, or by an examination of records, of a qualified plant or permittee, a notice (except where delay may jeopardize collection of the tax, or where the amount involved is nominal or the result of an evident mathematical error) is sent to the taxpayer advising of the basis and amount of the liability and affording the taxpayer an opportunity to submit a protest, with supporting facts, or to request a conference.

**§ 70.113 Claims.**

(a) *Claims for remission.* When distilled spirits (including distilling material and denatured spirits), wine, or beer on which the tax has not been paid or determined is lost, and the person liable for payment of the tax thereon desires to be relieved from such liability, such person may file claim on Form 5620.8 for remission of tax on the quantity that was lost. The regional director (compliance) may, in any event, require such a claim to be filed, and will require it if circumstances indicate that the loss was caused by theft or, in the case of distilled spirits (including distilling material), unauthorized voluntary destruction. On receipt of a claim the regional director (compliance) makes a factual determination, and notifies the claimant of allowance or rejection of the claim. If the claim is rejected, and circumstances so warrant, the regional director (compliance) will take appropriate steps to collect the tax.

(b) *Claims for abatement.* When the tax on distilled spirits, wines, or beer is assessed and the taxpayer thinks that the tax is not due under the law, such taxpayer may file a claim for abatement of the tax on Form 5620.8 with the regional director (compliance). Form 5620.8 may be procured from the regional director (compliance). The regional director (compliance) may call upon the taxpayer to file a bond in double the amount of the tax in order to insure collection of the tax if the claim is rejected. When the claim is acted upon, the taxpayer is notified of the allowance or rejection of the claim. If the claim is rejected, the regional director (compliance) will initiate action to collect the tax.

(c) *Claims for refund*—(1) *Taxes illegally, erroneously, or excessively collected.* A claim on Form 5620.8 for refund of taxes illegally, erroneously, or excessively collected may be filed by the taxpayer with the regional director (compliance). Such claim must be filed within three years (two years under certain circumstances) after the date of payment of the tax. If the claim is rejected, the taxpayer is notified of the rejection by registered or certified mail, and the taxpayer may then bring suit in the U.S. District Court or the Court of Claims for recovery of the tax. Such suits must be filed generally within two years from the date of mailing of the rejection notice. If the claim is allowed, a check for the amount of the refund and allowable interest is forwarded to the taxpayer; however, if there are other unpaid taxes outstanding against the taxpayer, the overpayment may be applied to the outstanding taxes and the balance, if any, refunded.

(2) *Taxes on liquors lost, destroyed, returned to bond, or taken as samples by the United States.* A taxpayer may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 with the regional director (compliance) for refund of tax paid on:

(i) Spirits returned to bonded premises, lost by accident or disaster, or taken as samples by the United States, or

(ii) Wine returned to bond as unmerchantable, or lost by disaster, or

(iii) Beer returned to a brewery or voluntarily destroyed, or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. If the claim is allowed, a check for the amount of the refund is forwarded to the claimant; except, that where there are any unpaid taxes outstanding against the claimant, the refund may be applied to the outstanding taxes and a check for the balance, if any, forwarded to the claimant. If the claim is rejected, a copy of the claim giving the reasons for rejection is forwarded to the claimant.

(d) *Claims for allowance, credit, or relief.* A qualified permittee, manufacturer, or proprietor may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 with the regional director (compliance) for allowance of loss, credit of tax, or relief from tax liability, as applicable, on

(1) Spirits returned to bonded premises, lost or destroyed on bonded premises, or in transit thereto, or lost by accident or disaster;

(2) Wine lost or destroyed on bonded premises or in transit thereto and unmerchantable domestic wine returned to bond;

(3) Beer returned to a brewery or voluntarily destroyed, or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God;

(4) Denatured spirits lost or destroyed in bond, or lost on the premises of a qualified dealer or user or in transit to such premises; and

(5) Tax-free spirits lost on the premises of a qualified user or in transit to such premises.

(e) *Claims for payment-disaster losses.* When distilled spirits, wines, rectified products, or beer held or intended for sale is lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States, the person holding such product for sale at that time may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 with the regional director (compliance) of the region in which the product was lost, rendered unmarketable, or condemned, for payment of an amount equal to the internal revenue taxes paid or determined and any customs duties paid thereon. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Preparedness, identifies the specific disaster area.

**§ 70.114 Preparation and filing of claims.**

(a) *Distilled spirits at distilled spirits plants.* Procedural instructions in respect of claims for remission, abatement, credit, or refund of tax on spirits (including denatured spirits) lost or destroyed on or lost in transit to, or on spirits returned to, the premises of a distilled spirits plant are contained in Part 19 of Title 27 CFR or, as applicable, in Parts 170 and 19 of Title 27 CFR for Puerto Rico or Virgin Islands spirits lost in internal revenue bond. It is not necessary to file a claim for credit of tax on taxpaid samples taken by ATF officers from distilled spirits plants, as the regional director (compliance) will allow credit, without claim, for tax on such samples.

(b) *Specially denatured spirits.* Procedural instructions in respect of claims for allowance of loss on specially denatured spirits lost on the premises of a bonded dealer or user, or while in transit to such premises, are contained in Part 20 of Title 27 CFR.

(c) *Tax-free alcohol.* Procedural instructions in respect of claims for allowance of loss on tax-free alcohol lost on the premises of a qualified user, or while in transit to such premises, are contained in Part 22 of Title 27 CFR.

(d) *Wine spirits and wine at bonded wine cellar.* Procedural instructions in respect of claims for:

(1) Remission of tax on wine spirits lost on the premises of a bonded wine cellar or in transit thereto,

(2) Allowance of losses of wine in bond, and

(3) Credit or refund of tax paid on unmerchantable domestic wine returned to bond are contained in Part 240 of Title 27 CFR.

(e) *Beer.* Procedural instructions in respect of claims for refund or credit of tax which has been paid (or allowance, credit, or relief of tax liability if the tax has not been paid) on domestic beer returned to a brewery or voluntarily destroyed; or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God are contained in Part 25 of Title 27 CFR.

(f) *Distilled spirits, wines, or beer for export.* Procedural instructions in respect of claims for:

(1) Drawback of internal revenue tax on distilled spirits, wines, or beer for export, use as supplies on certain vessels or aircraft, or deposit in a foreign-trade zone, or deposit of distilled spirits or wine in a customs bonded warehouse, and

(2) Remission of tax on distilled spirits, specially denatured spirits, wines, or beer, withdrawn without payment or free of tax and lost during transportation to the port of export, customs bonded warehouse (distilled spirits and wine only), manufacturing bonded warehouse, vessel or aircraft, or foreign-trade zone, as applicable, are contained in Part 252 of Title 27 CFR. Procedural instructions as to claims respecting export with benefit of drawback of tax on domestic distilled spirits products containing spirits from Puerto Rico or the Virgin Islands are contained in Parts 19 and 252 of Title 27 CFR.

(g) *Miscellaneous.* Procedural instructions are contained in Part 170 of Title 27 CFR in respect of claims for—

(1) Refund or credit of tax on distilled spirits, wines, or beer where such refund or credit is claimed on the grounds that tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive, and where such refund or credit is subject to the limitations imposed by section 6423 of the Internal Revenue Code.

(2) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a major disaster occurring in the United States after June 30, 1959.

(h) *Special taxes.* Procedural instructions in respect of claims for abatement of assessments or refund of overpayments of liquor dealers occupational taxes and penalties are contained in Part 194 of Title 27 CFR. When claim is filed for refund of an occupational tax for which a stamp was issued, the stamp (or a Certificate in Lieu of Lost or Destroyed Special Tax Stamp, accompanied by affidavits attesting to loss or destruction of the stamp) must be surrendered with the claim. Such claims must be submitted within 3 years from the date of payment of the tax.

(i) *Low wines at vinegar plants.* Procedural instructions in respect of claims for remission of tax on low wines (distilled spirits) lost at vinegar plants producing vinegar by the vaporizing process are contained in Part 19 of Title 27 CFR.

(j) *Distilled spirits used in nonbeverage products.* Procedural instructions in respect of claims:

(1) For drawback of tax on distilled spirits used in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, and

(2) For refund or adjustment of special (occupational) tax, are contained in Part 197 of Title 27 CFR.

(k) *Reopening claims.* A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the regional director (compliance) for reconsideration of the claim. Such application must show that the additional evidence to be presented is new and material, and that such evidence was unknown to the claimant, or unobtainable by the claimant, when the claim was previously under consideration.

(l) *Claimant's rights under law and regulations.* Before final action has been taken on a claim, a claimant who, by reason of an oversight, misunderstanding of law and regulations, miscalculation, or other cause, did not claim the full amount of abatement, refund, credit, or drawback, as the case may be, of tax to which the claimant is legitimately entitled, may amend a valid claim, and statements filed in support thereof, in instances where such a claim is deficient in establishing the claimants eligibility to the rights extended to such claimant under law and regulations.

### § 70.115 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under chapter 51 of the Internal Revenue Code and of penalties for violation of the Federal Alcohol Administration Act, is set forth in § 70.151.

### § 70.116 Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.

Any person who is an officer or director of a corporation now engaged in business as a distiller, rectifier, or blender of distilled spirits, or of an affiliate thereof, who desires to take office in other companies similarly engaged, must obtain permission to do so from the Director. Applications for such permission to take office shall be prepared and filed in accordance with instructions available from the regional director (compliance) or from the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

### § 70.117 Rulings.

The procedure for rulings in alcohol tax matters is set forth in § 70.152.

### § 70.118 Conferences.

Any person desiring a conference in the office of the regional director (compliance) of the region in which such person is located or of the Director, in Washington, relative to any matter arising in connection with such person's operations, will be accorded such a conference upon request. No formal requirements are prescribed for such conference.

### § 70.119 Representatives.

Subpart E of Part 601, 26 CFR, conference and practice requirements, is applicable to all representatives of the taxpayer, in the office of the Director, or in the office of the regional director (compliance).

### § 70.120 Forms.

For forms to be used, see § 70.111(c).

Provisions Relating to Tobacco Products, and Cigarette Papers and Tubes

§ 70.131 Imposition of taxes; regulations.

(a) *Taxes.* Subchapter A of chapter 52 of the Internal Revenue Code of 1954, as amended, imposes taxes on tobacco products, and cigarette papers and tubes manufactured in or imported into the United States. Subchapter D of chapter 78 of the Internal Revenue Code imposes a tax (equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture) on tobacco products, and cigarette papers and tubes of Puerto Rican and Virgin Islands manufacture brought into the United States and withdrawn for consumption or sale.

(b) *Regulations.* The procedural requirements with respect to matters relating to tobacco products, and cigarette papers and tubes are contained in the regulations listed below:

(1) Part 200 of Title 27 CFR relates to the procedure and practice in connection with the disapproval of applications for permits, and the suspension and revocation of permits, under chapter 52 of the Internal Revenue Code.

(2) Part 270 of Title 27 CFR relates to the manufacture of tobacco products, the payment by manufacturers of tobacco products of internal revenue taxes imposed by chapter 52 of the Internal Revenue Code, and the qualification of and operations by manufacturers of tobacco products.

(3) Part 275 of Title 27 CFR relates to tobacco products, and cigarette papers and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of cigars from a customs bonded manufacturing warehouse, Class 6; and the release of such articles from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

(4) Part 285 of Title 27 CFR relates to the manufacture of cigarette papers and tubes, the payment by manufacturers of cigarette papers and tubes of internal revenue taxes imposed by chapter 52 of the Internal Revenue Code, and the qualification of and operations by manufacturers of such articles.

(5) Part 290 of Title 27 CFR relates to the exportation (including supplies for vessels and aircraft and transfers to a foreign-trade zone) of tobacco products, and cigarette papers and tubes, without payment of tax, or with benefit of drawback of tax, and the qualification of and operations by export warehouse proprietors.

(6) Part 295 of Title 27 CFR relates to the removal of tobacco products, and cigarette papers and tubes, without payment of tax, for use of the United States.

(7) Part 296 of Title 27 CFR relates to the provisions of a miscellaneous nature or not of continuing application. Included are regulations relating to:

(i) Limitations imposed by section 6423 of the Internal Revenue Code on the refund or credit of tax paid or collected on tobacco products, and cigarette papers and tubes;

(ii) Losses of tobacco products, and cigarette papers and tubes caused by disasters occurring in the United States on or after September 3, 1958; and

(iii) Purchase, receipt, possession, offering for sale, or sale or other disposition of tobacco products by dealers in such products.

§ 70.132 Qualification and bonding requirements.

(a) *Manufacturers of tobacco products and proprietors of export warehouses.* Every person, before commencing business as a manufacturer of tobacco products or as a proprietor of an export warehouse, is required to qualify with the Bureau of Alcohol, Tobacco and Firearms by making application for a permit and filing bond and other required documents with, and obtaining a permit from, the regional director (compliance) for the region in which operations are to be conducted.

(b) *Manufacturers of cigarette papers and tubes.* Every person, before commencing business as a manufacturer of cigarette papers and tubes, is required to qualify with the Bureau of Alcohol, Tobacco and Firearms by filing bond and other required documents with the regional director (compliance) for the region in which operations are to be conducted.

(c) *Puerto Rican manufacturers of tobacco products.* Every manufacturer of tobacco products in Puerto Rico who desires to defer payment in Puerto Rico of the internal revenue tax imposed by section 7652(a) of the Internal Revenue Code on tobacco products of Puerto Rican manufacture coming into the United States must file a bond with the regional director (compliance). Such bond is conditioned on the principal's paying, at the time and in the manner prescribed in the regulations, the full amount of tax computed on the tobacco products which are released for shipment to the United States. No bond is required if the tax is prepaid.

(d) *Proprietors of customs warehouses.* Every proprietor of a customs bonded manufacturing warehouse, Class 6, who desires to remove under Part 290 tax-exempt cigars for exportation (including supplies for vessels and aircraft), or for delivery for subsequent exportation, is required to file a bond with the regional director (compliance) for the region in which the customs warehouse is located. However, removal of cigars for sale or consumption in the United States is subject to customs regulations.

(e) *Drawback of tax.* Taxpaid tobacco products, and cigarette papers and tubes may be exported with benefit of drawback of tax. Drawback may be allowed only to the person who paid the tax on such articles and who files claim and otherwise complies with the provisions contained in the applicable regulations referred to in § 70.131. As a condition precedent to the allowance of any drawback claim, the claimant is required to file a bond in an amount not less than the amount of tax covered in the claim.

(f) *General.* Detailed information relating to the qualification and bonding requirements, including the forms to be used and the procedure to be followed, is fully set forth in the regulations referred to in § 70.131.

§ 70.133 Collection of taxes.

(a) *Tobacco products.* Taxes on tobacco products are paid by the manufacturer on the basis of a return. If the manufacturer has filed a proper bond, such manufacturer may defer payment at the time of removal and file semimonthly returns to cover the taxes. If the manufacturer has not filed such a bond or if the manufacturer has defaulted in any way in paying the taxes, the manufacturer is required to file a prepayment return prior to removal of such products, and to continue so doing until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment. Tax returns, with remittances, are filed by the domestic manufacturer with the appropriate regional director (compliance). Taxes on cigars produced in a customs bonded manufacturing warehouse, Class 6, are paid on the basis of a return to the director of customs in accordance with customs procedures and regulations. Taxes on tobacco products imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid by the importer to the director of customs on the basis of a return made on the customs form by which release from customs custody is to be effected. However, taxes on tobacco products manufactured in Puerto Rico and brought into the United

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States may be prepaid in Puerto Rico on the basis of a return. If a Puerto Rican manufacturer has filed a proper bond, such manufacturer may defer payment at the time of release for shipment to the United States and file a semimonthly return to cover the taxes. If the manufacturer has not filed such a bond or if such manufacturer has defaulted in any way in payment of taxes, the manufacturer must file a prepayment return prior to removal of such products for shipment to the United States, and continue to do so until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment. Tax returns in Puerto Rico, with remittances, are filed with the Chief, Puerto Rico Operations, in the Bureau of Alcohol, Tobacco and Firearms.

(b) *Cigarette papers and tubes.* Taxes on cigarette papers and tubes are paid by the manufacturer on the basis of a semimonthly return. Such returns, with remittances, are filed with the regional director (compliance) for the region in which the factory is located. Taxes on cigarette papers and tubes imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid to the director of customs before removal on the basis of a return made on the customs form by which release from customs custody is effected. However, taxes on cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the United States may be prepaid in Puerto Rico on the basis of a return.

(c) *General.* Detailed information about the payment of taxes on tobacco products, and cigarette papers and tubes, including the forms to be used, records to be kept, and reports and inventories to be filed, is contained in the respective regulations referred to in § 70.131.

**§ 70.134 Assessments.**

When additional or delinquent tax liability on tobacco products, and cigarette papers and tubes is disclosed by an investigation or by an examination of the taxpayer's records, a notice (except where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error) is forwarded to the taxpayer indicating the basis for, and amount of, the liability and affording the taxpayer an opportunity to show cause, in writing, against assessment.

**§ 70.135 Claims.**

(a) *General.* Detailed requirements, including the procedure to be followed in the filing of a claim, the form to be used, the supporting documents which must be submitted, the time within which a claim may be filed, and any other limitations or instructions are contained in the applicable regulations referred to in § 70.131.

(b) *Abatement of assessment.* Abatement of the unpaid portion of an assessment of any tax on tobacco products, and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed.

(c) *Allowance of tax.* Relief from the payment of tax on tobacco products, and cigarette papers and tubes may be extended to a manufacturer by approval of a claim for allowance where such articles, after removal from the factory upon determination of tax and prior to the time for payment of such tax, are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by the manufacturer from the market.

(d) *Remission of tax liability.* Remission of the tax liability on tobacco products, and cigarette papers and tubes may be extended to a manufacturer or export warehouse proprietor liable for the tax, where such articles in bond are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer or export warehouse proprietor.

(e) *Refund of tax.* Taxes paid on tobacco products, cigarette papers and tubes lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, importer, or export warehouse proprietor, or withdrawn from the market, may be refunded. Refunds may also be made within certain limitations for overpayments of tax on tobacco products, and cigarette papers and tubes.

(f) *Losses caused by disaster.* Payment of an amount equal to the amount of internal revenue taxes paid or determined and customs duties paid on tobacco products, and cigarette papers and tubes removed from the factory or released from customs custody, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States may be made only if, at the time of the disaster, such articles were being held for sale by the claimant. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Preparedness, identifies the specific disaster area.

(g) *Drawback of tax.* Drawback may be allowed to the person who paid the tax on tobacco products, and cigarette papers and tubes which are shipped to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States.

(h) *Credit of tax.* Taxes paid on tobacco products, and cigarette papers and tubes lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, or withdrawn from the market, may be credited upon approval of a claim.

(i) *Reopening claims.* A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the regional director (compliance) for reconsideration of the claim. Such application must show that the additional evidence to be presented is new and material, and that such evidence was unknown to the claimant, or unobtainable by the claimant, when the claim was previously under consideration.

(j) *Claimant's rights under law and regulations.* Before final action has been taken on a claim, a claimant who, by reason of an oversight, misunderstanding of law and regulations, miscalculation, or other cause, did not claim the full amount of abatement, refund, credit, or drawback, as the case may be, of tax to which the claimant is legitimately entitled, may amend a valid claim, and statements filed in support thereof, in instances where such a claim is deficient in establishing the claimants eligibility to rights extended under law and regulations.

**§ 70.136 Offers in compromise.**

Procedure in the case of offers in compromise of liabilities under chapter 52 of the Internal Revenue Code is set forth in paragraph (a) of § 70.151.

**§ 70.137 Rulings.**

The procedure for rulings in tobacco tax matters is set forth in § 70.152.

**§ 70.138 Forms.**

Detailed information as to all forms prescribed for use in connection with tobacco taxes is contained in the

regulations referred to in § 70.131(b). Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from regional directors (compliance). ATF Publication 1322.1, which contains a listing of alcohol, tobacco, and firearms public-use forms, may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. Such publication is available, for reference purposes, in Bureau of Alcohol, Tobacco and Firearms reading rooms.

**Provisions Relating to Firearms and Explosives**

**§ 70.141 Applicable laws.**

(a) Chapter 53 of the Internal Revenue Code (26 U.S.C. 5801–5872), the provisions of which are derived from the National Firearms Act Amendments of 1968 (82 Stat. 1227), imposes a tax on the making and transfer in the United States of machine guns, destructive devices, and certain other types of firearms, and an occupational tax upon every importer and manufacturer of, and dealer in, such firearms. Section 1(b) (2) of the act of August 9, 1939 (52 Stat. 1291; 49 U.S.C. 781–788), makes provision for the seizure and forfeiture of vessels, vehicles, and aircraft which are used to transport, carry, or possess, or to facilitate the same, any firearms with respect to which there has been committed any violation of the National Firearms Act or any regulations issued pursuant thereto.

(b) Title I, State Firearms Control Assistance (18 U.S.C., Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213), as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766) and Pub. L. 99–408 (100 Stat. 920), provides for the licensing of manufacturers and importers of firearms and ammunition, collectors of firearms, and dealers in firearms, and establishes controls for firearms and ammunition acquisitions and dispositions.

(c) Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449) and Pub. L. 99–360 (100 Stat. 766), provides that no person may ship or transport any firearms or ammunition in interstate or foreign commerce, or receive any firearms or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearms or ammunition in or affecting commerce, who (1) has been convicted of a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802), (4) has been adjudicated as a mental defective or has been committed to a mental institution, (5) is an alien illegally or unlawfully in the United States, (6) has been discharged from the Armed Forces under dishonorable conditions, or (7) having been a citizen of the United States, has renounced citizenship.

(d) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder and Part 47 of this chapter are applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war. The Secretary of the Treasury is authorized to control, in furtherance of world peace and the security and foreign policy of the United States, the import of articles enumerated on the U.S. Munitions Import List.

(e) Title XI, Regulation of Explosives (18 U.S.C. chapter 40) of the Organized Crime Control Act of 1970 (84 Stat. 922) provides for the licensing of manufacturers, importers, and limited manufacturers of, and dealers in, explosives in interstate or foreign commerce, and for issuance of permits for users who buy or transport explosives in interstate or foreign commerce.

**§ 70.142 Taxes relating to machine guns, destructive devices, and certain other firearms.**

Part 179 of Title 27 CFR contains the regulations relative to the:

(a) Payment of special (occupational) taxes by manufacturers and importers of and dealers in, machine guns, destructive devices, and certain other types of firearms,

(b) Payment of the tax on the making or transfer of such firearms,

(c) Registration, identification, importation, and exportation of such firearms,

(d) Keeping of books and records and rendering of returns, and

(e) The forfeiture and disposition of seized firearms under the provisions of the National Firearms Act.

**§ 70.143 Commerce in firearms and ammunition.**

Part 178 of Title 27 CFR contains the regulations relative to:

(a) The licensing of importers and manufacturers of firearms and ammunition, collectors of firearms, and dealers in firearms,

(b) The identification of firearms,

(c) The acquisition and disposition of firearms and ammunition,

(d) The records required to be kept by licensees, and

(e) The forfeiture and disposition of seized firearms and ammunition, under the provisions of title I of the Gun Control Act of 1968, as amended, and also

(f) The restrictions regarding the receipt, possession, or transportation of firearms by certain persons.

**§ 70.144 Importation of arms, ammunition, and implements of war.**

Part 47 of Title 27 CFR implements Executive Order 11958 and supplements the import provisions contained in Parts 178 and 179 of Title 27 CFR. Part 47 establishes the U.S. Munitions Import List and contains the regulations relative to:

(a) The registration of importers in arms, ammunition, and implements of war,

(b) Import permit requirements,

(c) Import certification and verification,

(d) Import restrictions applicable to certain countries, and

(e) The forfeiture of seized arms, ammunition, and implements of war under the Arms Export Control Act.

**§ 70.145 Commerce in explosives.**

Part 55 of Title 27 CFR contains the regulations relative to:

(a) Licensing of manufacturers, importers, and limited manufacturers of, and dealers in, explosives,

(b) Permits for users who buy or transport explosives in interstate or foreign commerce,

(c) Construction of different types of storage facilities for three classes of explosive material,

(d) The identification of explosives,

(e) the acquisition and disposition of explosives,

(f) The records required to be kept by licensees and permittees,

(g) The forfeiture and disposition of seized explosive material, under the provision of Title XI of the Organized Crime Control Act of 1970,

(h) Operations by licensees or permittees and hearings procedure after denial or revocation of license or permit, and also

(i) Restrictions regarding the receipt, possession, or transportation of explosives by certain persons under the provisions of Title XI of the Organized Crime Control Act of 1970.

**§ 70.146 Rulings.**

The procedure for rulings in matters in the firearms and explosives area is set forth in § 70.152.

**§ 70.147 Assessments.**

Where the evidence disclosed by investigation establishes that additional

or delinquent tax liability has been incurred and not paid, the regional director (compliance) will list the tax as an assessment. Notification and demand for payment of assessed taxes will be issued to the taxpayer by the regional director (compliance).

**§ 70.148 Claims.**

The procedures applicable to the filing of claims under chapter 53 of the Internal Revenue Code are set forth below:

(a) Claims for refund of the making and transfer taxes, and of occupational taxes, whether paid pursuant to assessment or voluntarily paid, and claims for redemption of "National Firearms Act" stamps, are prepared and filed in accordance with the procedures set forth in Part 179 of Title 27 CFR.

(b) Claims for abatement of making and transfer taxes, and claims for abatement of occupational taxes and penalties erroneously assessed, are prepared and filed in accordance with the procedures set forth in § 70.113(b).

(c) Claims may be reopened or amended in accordance with the provisions of § 70.114 (k) and (l).

**§ 70.149 Offers in compromise.**

The procedure in the case of offers in compromise of liability under chapter 53 of the Internal Revenue Code is set forth in paragraph (a) of § 70.151.

**Seized Property**

**§ 70.150 Seizure and forfeiture of personal property.**

Part 72 of Title 27 CFR contains the regulations relative to the personal property seized by officers of the Bureau of Alcohol, Tobacco and Firearms as subject to forfeiture as being used, or intended to be used, to violate certain Federal laws; the remission or mitigation of such forfeiture; and the administrative sale or other disposition, pursuant to forfeiture, of such seized property other than firearms seized under the National Firearms Act and firearms and ammunition seized under title I of the Gun Control Act of 1968, as amended. For disposal of firearms under the National Firearms Act, see 26 U.S.C. 5872(b). For disposal of firearms and ammunition under title I of the Gun Control Act of 1968, see 18 U.S.C. 924(d). For disposal of explosives under title XI of Organized Crime Control Act of 1970, see 18 U.S.C. 844(c).

**Offers in Compromise**

**§ 70.151 Offers in compromise.**

(a) *Liabilities (other than forfeiture) under Internal Revenue Code.* Persons desiring to submit offers in compromise in order to avoid prosecution proceedings, and taxpayers who disclaim liability in whole or in part for taxes or claim inability to pay the taxes in full, may submit offers in compromise to the regional director (compliance). If the offer in compromise is based on inability to pay, the proponent should include in the financial statement on Form 433 (see 26 CFR 601.203(b)) appropriate amounts to reflect an interest, if any, in jointly owned property, the loan value of life insurance, and future income from trusts and similar sources. Each regional director (compliance) has the authority to accept or reject offers in compromise of:

(1) Tax liabilities arising from:

(i) The illegal production of untaxpaid distilled spirits, wines, or beer,

(ii) The failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, or firearms, and

(iii) The failure to pay firearms making or transfer taxes; and

(2) Criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles. The Associate Director (Compliance Operations), has the authority to accept or reject offers in compromise of civil liability (of less than $100,000) and criminal liability arising under chapters 51, 52, and 53 of the Internal Revenue Code in cases not subject to compromise by regional directors (compliance). The Director accepts or rejects all other offers in compromise except those in compromise of liabilities listed in paragraphs (b) and (c) of this section. In civil cases involving liability of $500 or over and in criminal cases the functions of the General Counsel under section 7122(b) of the Internal Revenue Code are performed by the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms. Form 5640.1 is used in all cases arising under this paragraph, regardless of whether the amount of the offer is tendered in full at the time the offer is filed or the amount of the offer is to be paid by deferred payment or payments. When final action has been taken, the regional director (compliance), when applicable, and the proponent are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer is returned to the proponent, and prosecution or collection proceedings are resumed. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

(b) *Violations of Federal Alcohol Administration Act.* The Federal Alcohol Administration Act provides penalties for violations of its provisions. The Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms is authorized to compromise such liabilities. Persons desiring to submit offers in compromise may submit such offers on Form 5640.2 to the regional director (compliance) or an ATF officer. Such offers are considered by the regional director (compliance) and are forwarded to the Associate Director (Compliance Operations) for final action. When the offer is acted upon, the proponent and the regional director (compliance) are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed.

(c) *Forfeiture liabilities.* The Director or his delegate is authorized to compromise liabilities to administrative forfeiture of personal property seized under the laws administered and enforced by the Bureau of Alcohol, Tobacco and Firearms. Persons desiring to submit offers in compromise of such liabilities may submit such offers on Form 656–E to the Director or his delegate. When the offer is acted upon, the proponent is notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

**Rulings**

**§ 70.152 Rulings.**

(a) *Requests for rulings.* Any person who is in doubt as to any matter arising in connection with:

(1) Operations or transactions in the alcohol tax area or under the Federal Alcohol Administration Act,

(2) Operations or transactions in the tobacco tax area, or

(3) The taxes relating to machine guns, destructive devices, and certain other firearms imposed by chapter 53 of the Internal Revenue Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; the licensing of importers and

manufacturers of, and dealers in, firearms and ammunition, and collectors of firearms and ammunition curios and relics under chapter 44 of title 18 of the United States Code; the licensing of manufacturers, importers, limited manufacturers of, and dealers in, explosives and issuance of permits for users of explosives under chapter 40 of title 18 of the United States Code; and registration of Importers of, and permits to import, arms, ammunition, and implements of war, under section 38 of the Arms Export Control Act of 1976, may request a ruling thereon by addressing a letter to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, or to the regional director (compliance), of the ATF region in which the inquirer's business is located. Since a ruling can issue only from the Bureau Headquarters, any such request made to the regional director (compliance) will be referred to the Director for reply unless the issues involved are clearly covered by currently effective rulings or come within the plain intent of the statutes or regulations. If a request for a ruling is signed by a representative, or if the representative is to appear before the Bureau of Alcohol, Tobacco and Firearms, such representative must present a tax information authorization or a power of attorney, signed by the taxpayer, authorizing the representative to receive or inspect confidential information in the matter. (See Subpart E, 26 CFR Part 601.) All rulings will be published in the Alcohol, Tobacco and Firearms Quarterly Bulletin as provided in 26 CFR 601.601.

(b) *Routine requests for information.* Routine requests for information should be addressed to the regional director (compliance) of the region in which the inquirer is located.

## PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUORS

**Para. 27.** The authority citation for Part 170 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5111, 5121, 5171, 5205, 5291, 5301, 5362, 7805; 31 U.S.C. 9304, 9306.

### § 170.77 [Amended]

**Para. 28.** Section 170.77(a) is amended by replacing in the second sentence the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

### § 170.91 [Amended]

**Para. 29.** Section 170.91 is amended by replacing in the first sentence the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

### § 170.305 [Amended]

**Para. 30.** Section 170.305(a) is amended by replacing the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

### § 170.305a [Amended]

**Para. 31.** Section 170.305a is amended by replacing in paragraphs (a)(1), (b)(1) and (c)(1) the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

### § 170.306 [Amended]

**Para. 32.** Section 170.306(b) is amended by replacing the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

## PART 179—[AMENDED]

**Para. 33.** The authority citation for Part 179 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5011, 5012, 5021, 5022, 5041–5049, 5051–5054, 5061, 5071, 5072.

### §§ 179.35, 179.36, 179.42, 179.46 and 179.47 [Amended]

**Para. 34.** Sections 179.35, 179.36, 179.42, 179.46, and 179.47 are amended by replacing the phrases "Form 11" and "IRS Form 11" wherever they appear in the sections with the phrase "Form 5630.5."

### § 179.34 [Amended]

**Para. 35.** Section 179.34 is amended by removing "(a) *General.*" from the beginning of the paragraph, by replacing in the second sentence of the paragraph the phrase "with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business is located" with the phrase "with ATF in accordance with the instructions on the form", by removing paragraph (b), and by replacing the phrase "IRS Form 11" or "Form 11" wherever it appears with the phrase "Form 5630.5".

### § 179.37 [Amended]

**Para. 36.** Section 179.37 is amended by replacing in the first and second sentence of the paragraph the phrase "Director of the Service Center" with the phrase "regional director (compliance)."

### § 179.38 [Amended]

**Para. 37.** Section 179.38 is amended by replacing in the last sentence of the paragraph the phrase "Director of the Service Center serving the internal revenue district" with the phrase "regional director (compliance) for the region."

### § 179.42 [Amended]

**Para. 38.** Section 179.42 is amended by replacing in the second sentence of the paragraph the phrase "the director of the service center serving the internal revenue district in which the business is located" with the phrase "ATF in accordance with the instructions on the form", and by removing the third sentence of the paragraph.

### § 179.43 [Amended]

**Para. 39.** Section 179.43 is amended by replacing in the last sentence of the paragraph the phrase "the Director of the Service Center serving the internal revenue district in which the business is located" with the word "ATF."

### § 179.46 [Amended]

**Para. 40.** Section 179.46 is amended by replacing in the first sentence of the paragraph the phrase "the Director of the Service Center serving the internal revenue district in which the special tax stamp was issued" with the word "ATF", and in the second sentence of the paragraph the phrase "Director of the Service Center" with the phrase "regional director (compliance)."

### § 179.47 [Amended]

**Para. 41.** Section 179.47 is amended by replacing in the first sentence of the paragraph the phrase "the Director of the Service Center serving the internal revenue district in which the special tax stamp was issued" with the word "ATF", and in the second sentence of the paragraph the phrase "Director of the Service Center" with the phrase "regional director (compliance)."

### § 179.50 [Amended]

**Para. 42.** Section 179.50 is amended by replacing in the first sentence of the paragraph the phrase "District Director or the Director of the Service Center, whichever is designated to receive the return (Form 11)," with the phrase "regional director (compliance)", and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

### § 179.171 [Amended]

**Para. 43.** Section 179.171 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "ATF Form 2635 (5620.8)."

### § 179.172 [Amended]

**Para. 44.** Section 179.172 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "ATF Form 2635 (5620.8)" and in the fourth sentence of the paragraph the phrase "Director of the Service Center serving the internal revenue district in which the tax was paid" with the phrase "regional director (compliance)."

## PART 194—[AMENDED]

**Para. 45.** The authority citation for Part 194 continues to read as follows:

**Authority:** 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5205–5207, 5301, 5352, 5555, 5613, 5661, 5691, 6001, 6011, 6051, 6061, 6065, 6071, 6091, 6109, 6311, 6314, 6402, 6511, 6801, 6857, 6676, 7011, 7805.

**Para. 46.** The table of contents to 27 CFR Part 194 is amended by removing 194.106d. In addition, the undesignated center heading preceeding § 194.106 and the heading to section 194.107 are amended by replacing the phrase "Form 11" with the phrase "Form 5630.5."

### §§ 194.104, 194.106a, 194.106b, 194.107, 194.109, 194.121, 194.121a, 194.135, and 194.106 [Amended]

**Para. 47.** Sections 194.104, 194.106a, 194.106b, 194.107, 194.109, 194.121, 194.121a, 194.135, and the heading in Subpart H before section 194.106 are amended by replacing the phrases "Form 11" and "IRS Form 11" wherever they appear in the sections or headings with the phrase "Form 5630.5."

**Para. 48.** Section 194.27 is amended by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5" and by revising the last two sentences of the paragraph to read as follows:

### § 194.27 Limited retail dealer; persons eligible.

* * * Application on Form 5630.5 and payment of special tax at the rate specified in § 194.101 shall be submitted to ATF in accordance with the instructions on the form before any sales are made. If requested on Form 5630.5, ATF may issue the special tax stamp under the designation of (a) limited retail dealer in distilled spirits, if distilled spirits only are to be sold, (b) limited retail dealer in wine, if wine only is to be sold, or (c) limited retail dealer in beer, if beer only is to be sold.

### § 194.94 [Amended]

**Para. 49.** Section 194.94 is amended by replacing in the first sentence of the paragraph the phrase "the director of the service center who issued the stamp" with the word "ATF."

**Para. 50.** Section 194.104a is revised to read as follows:

### § 194.104a Place for filing return.

Form 5630.5 with remittance of tax shall be filed with ATF in accordance with the instructions on the form.

### § 194.105 [Amended]

**Para. 51.** Section 194.105 is amended by replacing in the first sentence of the paragraph the phrase "Internal Revenue Service" with the phrase "Bureau of Alcohol, Tobacco and Firearms."

### § 194.106 [Amended]

**Para. 52.** Section 194.106 is amended by removing from the first sentence of the paragraph the phrase "from the director of the service center, from any internal revenue district director, or" and by replacing the phrase "IRS Form 11" and "Form 11" wherever it appears with the phrase "Form 5630.5."

### § 194.106a [Amended]

**Para. 53.** Section 194.106a is amended by replacing the citation "§ 301.7701–12 of this chapter" with the citation "26 CFR 301.7701–12", and by replacing the citation "§ 301.6676–1 of this chapter" with the citation "§ 70.105."

### § 194.106d [Removed]

**Para. 54.** Section 194.106d is removed from the part.

**Para. 55.** Section 194.111 is amended by removing the third sentence of the paragraph and revising the fourth sentence to read as follows:

### § 194.111 Waiver of penalties.

* * * If the regional director (compliance) determines that the delinquency was due to a reasonable cause and not to willful neglect or gross negligence, the addition to the tax will not be assessed. * * *

### § 194.121a [Amended]

**Para. 56.** Section 194.121a is amended by replacing in the second sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)" and by replacing in the last sentence of the paragraph the phrase "the director of the service center" with the word "ATF."

### § 194.123 [Amended]

**Para. 57.** Section 194.123 is amended by replacing in the first sentence of the paragraph the phrase "Directors of service centers" with the phrase "Regional directors (compliance)."

### § 194.124 [Amended]

**Para. 58.** Section 194.124 is amended by replacing in the third sentence of the paragraph the phrase "the Internal Revenue Service" with the word "ATF" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

### § 194.126 [Amended]

**Para. 59.** Section 194.126 is amended by replacing in the paragraph the phrase "the Internal Revenue Service" with the word "ATF" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

### § 194.127 [Amended]

**Para. 60.** Section 194.127 is amended by replacing in the last sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)."

### § 194.132 [Amended]

**Para. 61.** Section 194.132 is amended by replacing in the first and second sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)."

### § 194.133 [Amended]

**Para. 62.** Section 194.133 is amended by replacing in the first sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)."

### § 194.134 [Amended]

**Para. 63.** Section 194.134 is amended by replacing in each sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

### § 194.136 [Amended]

**Para. 64.** Section 194.136 is amended by replacing in the first sentence of the paragraph the phrase "the district director or director of the service center with whom the original Form 11 was filed" with the phrase "ATF in accordance with the instructions on the Form 5630.5" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

### § 194.137 [Amended]

**Para. 65.** Section 194.137 is amended by replacing in the last sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

### § 194.139 [Amended]

**Para. 66.** Section 194.139 is amended by replacing in the first and second sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)", by replacing in the second sentence of the paragraph the phrase "Form 843" with the phrase "ATF Form 2635 (5620.8)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

**Para. 67.** Section 194.151 is amended by revising the section heading, by revising paragraph (a), by replacing in two places in paragraph (b) the phrase "director of the service center" with the phrase "regional director (compliance)," by replacing in five places in paragraph (b) the phrase "Form 4440" with the phrase "Form 5100.29", and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5." As revised, § 194.151 heading and paragraph (a) reads as follows:

**§ 194.151 Amended return, Form 5630.5; endorsement on stamp.**

(a) *General.* A dealer who, during the taxable period for which special tax was paid, removes the business to a place other than that specified on the original special tax return on Form 5630.5, and stated on the special tax stamp, shall, within 30 days from the date the dealer begins to carry on such business at the new location, register the change with ATF by filing a new return on Form 5630.5, designated "Amended Return", setting forth the time when and the place to which such removal was made, and shall surrender the special tax stamp with the Form 5630.5 for endorsement of the change in location: *Provided,* That a dealer who filed an original return, Form 5630.5, under the provisions of § 194.106(b) may deliver the amended return and the stamp at any ATF office, or to any ATF officer inspecting the business, in lieu of mailing them to ATF: *Provided further,* That a dealer who filed an original return under the provisions of § 194.106(c) shall forward with the amended return an attachment showing both the old and new address of any place of business which has been relocated, and the special tax stamp covering the location from which the business was removed. The regional director (compliance) or the ATF officer receiving such return or stamp shall, if the return is submitted within the 30-day period, enter the proper endorsement on the stamp and return it to the taxpayer.

**§ 194.152 [Amended]**

**Para. 68.** Section 194.152 is amended by replacing in the first sentence of the paragraph the phrase "the director of the service center who issued the stamp" with the word "ATF."

**Para. 69.** Section 194.169 is amended by revising the concluding paragraph of the section as follows:

**§ 194.169 Change of control, persons having right of succession.**

* * * * *

In order to secure such right, the person or persons continuing the business shall file with ATF, within 30 days from the date on which the successor begins to carry on the business, an amended special tax return on Form 5630.5, showing the basis of the succession, and shall surrender the unexpired special tax stamp or stamps for endorsement of the change in control: *Provided,* That, if the original return, Form 5630.5, was filed under the provisions of § 194.106(b), the person succeeding to the business may deliver the amended return and stamp to any ATF office, or to any ATF officer inspecting the business, in lieu of mailing them to ATF. If the applicant has the right of succession and the return and stamp are submitted on time, the regional director (compliance) or other ATF officer receiving them will enter the proper endorsement on the stamp and return it to the successor.

**Para. 70.** Section 194.201 is revised as follows:

**§ 194.201 Claims.**

Claims for abatement of assessment of special tax (including penalties and interest), or for refund of an overpayment of special tax (including interest and penalties), shall be filed on Form 2635 (5620.8). Claims shall be filed with the regional director (compliance) serving the region in which the special tax was paid or assessed. Each claim shall set forth in detail each ground on which it is made and shall contain facts sufficient to apprise the Bureau of Alcohol, Tobacco and Firearms of the exact basis thereof. If the claim is for refund of special tax for which a stamp was issued, such stamp shall be attached to and made a part of the claim, or the claimant shall include in the claim evidence satisfactory to the Bureau of Alcohol, Tobacco and Firearms that the stamp cannot be submitted.

## PART 197—[AMENDED]

**Para. 71.** The authority citation for Part 197 continues to read as follows:

**Authority:** 5 U.S.C. 552; 26 U.S.C. 5131–5134, 5143, 5146, 5206, 5273, 6065, 6091, 6109, 6402, 6511, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**Para. 72.** The table of contents to 27 CFR Part 197 is amended by removing § 197.29d.

**§§ 197.29a, 197.29b, 197.30, 197.31, 197.40, and 197.40a [Amended]**

**Para. 73.** Sections 197.29a, 197.29b, 197.30, 197.31, 197.40, 197.40a, and the undesignated center heading preceding section 197.29 are amended by replacing the phrases "Form 11" and "IRS Form 11" wherever they appear in the sections and in the heading with the phrase "Form 5630.5."

**§ 197.28 [Amended]**

**Para. 74.** Section 197.28 is amended by replacing in paragraph (a) the phrase "the director of the service center serving the internal revenue district in which the place of manufacture is located" with the phrase "ATF in accordance with the instructions on the form," and in paragraph (b) by replacing the phrase "the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located" with the phrase "ATF in accordance with the instructions on the form", and by replacing the phrases "Form 11" and "IRS Form 11" wherever they appear with the phrase "Form 5630.5."

**§ 197.29 [Amended]**

**Para. 75.** Section 197.29 is amended by replacing in the introductory text the phrase "director of the service center or from any district director" with the phrase "regional director (compliance)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

**§ 197.29a [Amended]**

**Para. 76.** Section 197.29a is amended by replacing in the first sentence of the paragraph the citation "§ 301.7701–12 of this chapter" with the citation "26 CFR 301.7701–12", and by replacing in the second sentence of the paragraph the citation "§ 301.6676–1 of this chapter" with the citation "§ 70.105."

**§ 197.29d [Amended]**

**Para. 77.** Section 197.29d is removed from the part.

**§ 197.41 [Amended]**

**Para. 78.** Section 197.41 is amended by replacing in the first sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)."

**§ 197.42 [Amended]**

**Para. 79.** Section 197.42 is amended by replacing in four places in the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

**§ 197.43 [Amended]**

**Para. 80.** Section 197.43 is amended by replacing in two places in the paragraph the phrase "the director of the service center who issued the stamp" with the

word "ATF" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 197.46 [Amended]

Para. 81. Section 197.46 is amended by replacing the phrase "the director of the service center" with the word "ATF."

§ 197.48 [Amended]

Para. 82. Section 197.48 is amended by replacing in the second sentence of the paragraph the phrase "the director of the service center who issued the stamp" with the word "ATF" and by replacing the phrase "Form 11" with the phrase "Form 5630.5."

§ 197.50 [Amended]

Para. 83. Section 197.50 is amended by replacing the phrase "the director of the service center" with the word "ATF."

Para. 84. Section 197.55 is revised to read as follows:

§ 197.55 Change to higher rate.

A manufacturer of nonbeverage products who pays a special tax of $25 per annum and has filed or intends to file a claim or claims for drawback covering distilled spirits in excess of 25 proof gallons used during the tax year for which the special tax was paid shall pay special tax of $50 or $100, as the case may be, and obtain a stamp therefor. On payment of the special tax at the higher rate, the manufacturer may surrender the special tax stamp showing payment of $25, with a claim on Form 2635 (5620.8) for refund. Claims shall be filed with the regional director (compliance) serving the region in which the special tax was paid. Similar procedure will govern in the case of a manufacturer of nonbeverage products who pays special tax of $50 and has filed or intends to file claim for drawback covering distilled spirits used in excess of 50 proof gallons.

§ 197.56 [Amended]

Para. 85. Section 197.56 is amended by replacing in the first sentence of the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

Para. 86. Section 197.58 is revised to read as follows:

§ 197.58 Filing of claims.

Claim for refund of special tax shall be filed on ATF Form 2635 (5620.8). Claims shall be filed with the regional director (compliance) serving the region in which the special tax was paid. The claim shall set forth in detail and state each ground upon which it is made, and facts sufficient to apprise the regional director (compliance) of the exact basis thereof. The special tax stamp shall be attached to the claim.

§ 197.106 [Amended]

Para. 87. Section 197.106 is amended by replacing in the first sentence of the paragraph the phrase "Form 843 (original only)" with the phrase "Form 2635 (5620.8)."

Para. 88. Section 197.111 is revised to read as follows:

§ 197.111 Identification of special tax stamp.

If special tax has been paid, the claim shall be accompanied by a statement identifying the special tax stamp by serial number, denomination, and fiscal year for which issued.

PART 240—[AMENDED]

Para. 89. The authority citation for Part 240 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 90. The table of contents to 27 CFR Part 240 is amended by removing § 240.345.

§ 240.340 [Amended]

Para. 91. Section 240.340 is amended by replacing the phrase "Form 11" in the section with the phrase "Form 5630.5."

Para. 92. Section 240.343 is revised to read as follows:

§ 240.343 Annual special tax.

The special tax year commences on July 1 and ends on June 30 of the next year. All persons liable for special tax shall file Form 5630.5 in accordance with the instructions on the form and pay the special tax on or before July 1 of each tax year. If the Form 5630.5, with remittance, is not actually delivered on or before July 1, the date of the postmark stamped on the cover in which such return is mailed, if made by a United States post office, shall be deemed to be the date of filing.

Para. 93. Section 240.344 is revised to read as follows:

§ 240.344 Business commenced after July.

Where business is commenced after July, the tax will be prorated from the first day of the month in which the business was commenced to June 30 following. In such case, if the Form 5630.5, with remittance, is not actually delivered on or before the day on which the business was commenced, the date of the postmark stamped on the cover in which such return is mailed, if made by the United States Postal Service, shall be deemed to be the date of filing.

§ 240.345 [Removed]

Para. 94. Section 240.345 is removed from the part.

§ 240.591 [Amended]

Para. 95. Section 240.591 is amended by replacing in paragraph (a) the citation "26 CFR 301.6311–1" with the citation "§ 70.66."

§ 240.591a [Amended]

Para. 96. Section 240.591a(c)(1) is amended by replacing in the sentence the phrase "the director of the service center, district director, or regional director (compliance)" with the word "ATF."

§ 240.594 [Amended]

Para. 97. Section 240.594 is amended by replacing in the second sentence of paragraph (a) the phrase "filed by forwarding or delivering it to the district director or the director of the service center" with the phrase "mailed to ATF" and by replacing in paragraph (b) the phrase "the district director, the director of the service center, or the regional director (compliance)" with the word "ATF."

Para. 98. Section 240.594c is amended by revising the second sentence of the paragraph to read as follows:

§ 240.594c Execution of Form 88–4. * * *

* * * The application shall be filed with the director of the service center as instructed on the Form 88–4.

§ 240.595 [Amended]

Para. 99. Section 240.595 is amended by replacing in the paragraph the citation "26 CFR 301.6311–1" with the citation "§ 70.66."

§ 240.596 [Amended]

Para. 100. Section 240.596 is amended by replacing in the first sentence of paragraph (a) the phrase "with remittance to the office of the district director or without remittance to the director of the service center" with the phrase "with or without remittance to ATF."

§ 240.807 [Amended]

Para. 101. Section 240.807 is amended by replacing in the third sentence of the paragraph the phrase "Form 843 (original only)" with the phrase "Form 2635."

PART 250—[AMENDED]

Para. 102. The authority citation for Part 250 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5140, 5205, 5207, 5232, 5301,

5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**Para. 103.** The table of contents to 27 CFR Part 250 is amended by revising the title to section 250.37 to read as follows:

**PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS**

**Subpart A—Introduction**

Sec.

* * * * *

250.37 *United States Bureau of Alcohol, Tobacco and Firearms office.*

* * * * *

**Para. 104.** Section 250.11 is amended by removing from the definitions *Officer-in-Charge* and *United States Internal Revenue Service Office* and adding a definition *United States Bureau of Alcohol, Tobacco and Firearms office* to read as follows:

**§ 250.11 Meaning of terms.**

* * * * *

*United States Bureau of Alcohol, Tobacco and Firearms office.* The Bureau of Alcohol, Tobacco and Firearms office in Puerto Rico operating under the direction of the Regional Director (Compliance), North Atlantic Region, New York, NY 10048.

* * * * *

**Para. 105.** Section 250.37 is revised to read as follows:

**§ 250.37 United States Bureau of Alcohol, Tobacco and Firearms office.**

The United States Bureau of Alcohol, Tobacco and Firearms office is authorized to collect internal revenue taxes on liquors and articles subject to tax, which are to be shipped to the United States. Whenever the internal revenue tax is paid in Puerto Rico, other than by tourists in accordance with Subpart F of this part, the tax shall be paid to the United States Bureau of Alcohol, Tobacco and Firearms office as defined in this part and as provided in Subpart E of this part.

**§ 250.44 [Amended]**

**Para. 106.** Section 250.44 is amended by replacing in the paragraph the phrase "the director of the service center serving the internal revenue district in which the business is located" with the phrase "ATF in accordance with the instructions on the form" and the phrase "IRS Form 11" with the phrase "Form 5630.5."

**§ 250.52 [Amended]**

**Para. 107.** Section 250.52(c) is amended by replacing the term "quintuplicate" with the term "quadruplicate" and by removing the phrase "forward one copy to the Officer-in-Charge,."

**§ 250.54 [Amended]**

**Para. 108.** Section 250.54 is amended by replacing in the first sentence of the paragraph the term "quintuplicate" with the term "quadruplicate" and by removing in the second sentence the phrase "one copy to the Officer-in-Charge,."

**Para. 109.** Section 250.61 is revised to read as follows:

**§ 250.61 General.**

Every person filing a bond under this subpart, or consent of surety on such bond, shall file it with the regional director (compliance). Any bond or consent of surety approved prior to July 1, 1987, by the Officer-in-Charge, United States Internal Revenue Service shall continue to be valid until terminated as provided in this subpart.

**§ 250.62a [Amended]**

**Para. 110.** Section 250.62a is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

**§ 250.65 [Amended]**

**Para. 111.** Section 250.65 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

**§ 250.70 [Amended]**

**Para. 112.** Section 250.70 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)" in the first sentence.

**§ 250.70a [Amended]**

**Para. 113.** Section 250.70a is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

**§ 250.71 [Amended]**

**Para. 114.** Section 250.71 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

**§ 250.72 [Amended]**

**Para. 115.** Section 250.72 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

**§ 250.74 [Amended]**

**Para. 116.** Section 250.74 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

**§ 250.75 [Amended]**

**Para. 117.** Section 250.75 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)" in the first and third sentence of the paragraph and by removing the second sentence of the paragraph.

**§ 250.78 [Amended]**

**Para. 118.** Section 250.78 is amended by replacing in the first sentence the term "sextuplicate" with the term "quintuplicate."

**§ 250.79 [Amended]**

**Para. 119.** Section 250.79 is amended by replacing in paragraph (a) the term "quintuplicate" with the term "quadruplicate."

**§ 250.81 [Amended]**

**Para. 120.** Section 250.81 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "Chief, Puerto Rico Operations."

**§ 250.93 [Amended]**

**Para. 121.** Section 250.93 is amended by replacing in the first sentence the term "sextuplicate" with the term "quintuplicate" and by replacing in the last sentence the phrase "four copies" with the phrase "three copies."

**§ 250.98 [Amended]**

**Para. 122.** Section 250.98 is amended by replacing wherever it appears the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations" and by replacing at the end of the last sentence in paragraph (b) the phrase "each form for his files" with the phrase "Form 2928."

**§ 250.102 [Amended]**

**Para. 123.** Section 250.102 is amended by replacing in the first sentence the term "sextuplicate" with the term "quintuplicate" and by replacing in the last sentence the phrase "four copies" with the phrase "three copies."

**§ 250.105 [Amended]**

**Para. 124.** Section 250.105 is amended by replacing wherever it appears the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations" and by replacing at the end of the last sentence in paragraph (b) the phrase "each form for his files" with the phrase "Form 2930."

**§ 250.110 [Amended]**

**Para. 125.** Section 250.110 is amended by replacing wherever it appears the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations", by removing at the end of the second sentence the phrase "of each for his file", and by removing the third sentence.

Para. 126. Section 250.112 is amended by revising paragraphs (e) and (g) to read as follows:

§ 250.112 Taxes to be collected by returns for semimonthly periods.

* * * * *

(e) *Filing.* (1) The original and two copies of returns on Forms 5110.52, 2627 (5120.23), or 2629 (5130.17), with remittance covering the full amount of the tax, shall be filed with the Chief, Puerto Rico Operations not later than the 14th day after the last day of the return period, except as provided by paragraph (f) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

(2) The tax shall be paid in full by remittance at the time the return is filed, unless the proprietor is required to make remittances by electronic fund transfer in accordance with § 250.112a.

(3) The remittance may be in any form the Chief, Puerto Rico Operations is authorized to accept under the provisions of § 70.66 (payment by check or money order) and which is acceptable to the Chief, Puerto Rico Operations. A remittance by check or money order shall be made payable to the "Bureau of Alcohol, Tobacco and Firearms."

(4) When the return and remittance are delivered by U.S. Mail to the office of the Chief, Puerto Rico Operations, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return and remittance were mailed shall be treated as the date of delivery.

* * * * *

(g) *Default.* Where a taxpayer has defaulted in any payment of tax under this section, during the period of such default and until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment of tax under this section, the tax shall be prepaid by such taxpayer in accordance with the provisions of § 250.113. During such period, distilled spirits, wine, or beer shall not be released from bonded premises before the proprietor of the bonded premises has paid the tax thereon. In the event of default, the Chief, Puerto Rico Operations shall immediately notify the Secretary and the revenue agent at the premises that the tax is to be prepaid until further notice, and upon a finding that the revenue will not be jeopardized by resumption of deferred payment of tax under this section, the Chief, Puerto Rico Operations shall notify the Secretary and the revenue agent that deferred payment may be resumed.

§ 250.112a [Amended]

Para. 127. Section 250.112a(c)(1) is amended by replacing in the paragraph the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations."

§ 250.113 [Amended]

Para. 128. Section 250.113(a) is amended by replacing in the paragraph the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations."

§ 250.119 [Amended]

Para. 129. Section 250.119 is amended by replacing in the paragraph the phrase "U.S. Internal Revenue Service officer" and "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations."

§ 250.126 [Amended]

Para. 130. Section 250.126 is amended by replacing the phrase "U.S. Internal Revenue Service office" wherever it appears with the phrase "Chief, Puerto Rico Operations", and by replacing in the second sentence of the paragraph the phrase "internal revenue receipt" with the phrase "an ATF receipt."

Para. 131. Section 250.128 is revised to read as follows:

§ 250.128 Taxpayment at port of arrival.

If the internal revenue tax on liquors and articles is not paid in Puerto Rico, it shall be paid by the tourist at the port of arrival prior to release of the liquors or articles from customs custody. The tax may be paid to the regional director (compliance), and an ATF receipt obtained, or the tax may be paid to the director of customs, who will issue a customs receipt. If payment is to be made to the regional director (compliance), the director of customs will notify the region of the amount of tax due. On payment of the tax to the director of customs, or on submission of the ATF receipt for the tax, the director of customs will release the liquors or articles.

§ 250.210 [Amended]

Para. 132. Section 250.210 is amended by replacing in the paragraph the phrase "the director of the service center serving the internal revenue district in which the business is located" with the phrase "ATF in accordance with the instructions on the form", and by replacing the phrase "IRS Form 11" with the phrase "Form 5630.5."

## PART 251—[AMENDED]

Para. 133. The authority citation for Part 251 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 66, 1202; 26 U.S.C. 5001, 5002, 5004, 5101, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5123, 5124, 5207, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

§ 251.11 [Amended]

Para. 134. Section 251.11 is amended by removing the definitions for *Director of the service center and District director.*

§ 251.30 [Amended]

Para. 135. Section 251.30 is amended by replacing in the paragraph the phrase "the director of the service center serving the internal revenue district in which the business is located" with the phrase "ATF in accordance with the instructions on the form" and by replacing the phrases "IRS Form 11" and "Form 11" wherever they appear with the phrase "Form 5630.5."

## PART 270—[AMENDED]

Para. 136. The authority citation for Part 270 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703, 5704, 5705, 5707, 5711, 5712, 5713, 5721, 5722, 5723, 5741, 5751, 5753, 5761, 5762, 6102, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 270.44 [Amended]

Para. 137. Section 270.44 is amended by replacing in the fourth sentence of the paragraph the phrase "district director" with the phrase "regional director (compliance)."

§ 270.162 [Amended]

Para. 138. Section 270.162 is amended by replacing in the second sentence of the paragraph the phrase "the district director or the director of the service center" with the word "ATF."

Para. 139. Section 270.165 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 270.165 Times for filing semimonthly return.

* * * * *

(c) *Postmark.* The official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if the return was accompanied by a remittance, the date of delivery of the remittance.

§ 270.165a [Amended]

Para. 140. Section 270.165a(c)(1) is amended by replacing in the paragraph the phrase "the director of the service center, district director, or regional director (compliance)" with the word "ATF."

**§ 270.165 [Amended]**

**Para. 141.** Section 270.165 is amended by replacing in the last sentence of the paragraph the citation "26 CFR 301.6311–1" with the citation "§ 70.66."

**§ 270.167 [Amended]**

**Para. 142.** Section 270.167 is amended by replacing in paragraph (a) the phrase "the district director, director of the service center, or regional director (compliance)" with the word "ATF" and by replacing in paragraph (b) the phrase "and filing it, as instructed on the return, with the district director, director of the service center, or regional director (compliance)" with the phrase "and filing it with ATF."

**§ 270.168 [Amended]**

**Para. 143.** Section 270.168 is amended by replacing in the second sentence of the paragraph the phrase "district director" with the phrase "regional director (compliance)" and the citation "26 CFR 301.6311–1" with the citation "§ 70.66" and by replacing in the third sentence of the paragraph the phrase "Internal Revenue Service" with the phrase "Bureau of Alcohol, Tobacco and Firearms."

**§ 270.281 [Amended]**

**Para. 144.** Section 270.281 is amended by replacing in the second sentence of the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

**Para. 145.** Section 270.283 is amended by replacing in the paragraph the phrase "Form 843" wherever it appears with the phrase "Form 2635 (5620.8)" and by revising the second sentence of the paragraph to read as follows:

**§ 270.283 Credit or refund of tax.**

* * * Any claim for credit or refund under this section shall be prepared on Form 2635 (5620.8), in duplicate. * * *

**§ 270.286 [Amended]**

**Para. 146.** Section 270.286 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

**Para. 147.** Section 270.311 is amended by revising the second sentence of paragraph (b) to read as follows:

**§ 270.311 Action by claimant.**

* * * * *

(b) * * * For each claim involving large cigars withdrawn from the market the manufacturer shall include a certification on either Form 3069 (5200.7) or Form 2635 (5620.8) to read as follows:

* * * * *

**Para. 148.** Section 270.313 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)" and revising the last sentence of the paragraph to read as follows:

**§ 270.313 Disposition of cigars and cigarettes and schedule.**

* * * In connection with a claim for allowance the officer shall return one copy of the schedule to be included in the manufacturers records, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to the claim, Form 2635 (5620.8), filed under § 270.283.

## PART 275—[AMENDED]

**Para. 149.** The authority citation for Part 275 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703, 5704, 5705, 5706, 5722, 5723, 5741, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7806, 7862, 7652(a), 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 275.11 [Amended]**

**Para. 150.** Section 275.11 is amended by revising the definition for *Officer-in-Charge*.

**§ 275.105 [Amended]**

**Para. 151.** Section 275.105 is amended by removing the definition for *Officer-in-Charge*" wherever it appears with the phrase "Chief, Puerto Rico Operations", replacing the term "triplicate" with the term "duplicate" in the first sentence of the paragraph, and replacing at the end of the second sentence of the paragraph the phrase "retain one copy, and forward the remaining copy to the Regional Director (compliance), Bureau of Alcohol, Tobacco and Firearms, New York, NY" with the phrase "and retain one copy."

**§ 275.108 [Amended]**

**Para. 152.** Section 275.108 is amended by replacing the phrase "Regional Director (compliance), Alcohol, Tobacco and Firearms, New York, New York" with the phrase "Chief, Puerto Rico Operations."

**§ 275.109 [Amended]**

**Para. 153.** Section 275.109 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

**§ 275.110 [Amended]**

**Para. 154.** Section 275.110 is amended by replacing in the first sentence of the paragraph the phrase "six copies of Form 2987" with the phrase "five copies of Form 2987 (5210.8)."

**§ 275.111 [Amended]**

**Para. 155.** Section 275.111 is amended by replacing in the first sentence of the paragraph the phrase "six copies of the Form 2987" with the phrase "five copies of the Form 2987 (5210.8)", by removing paragraph (a), by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d) respectively, and by replacing in the redesignated paragraph (d) the words "one copy" with the words "the original."

**Para. 156.** Section 275.112 is amended by revising the second sentence of the paragraph to read as follows:

**§ 275.112 Tax return.**

* * * The bonded manufacturer of such products shall prepare ATF Form 2988 in duplicate, and file the original with the Chief, Puerto Rico Operations, and maintain one copy for the file for each semimonthly return period. * * *

**Para. 157.** Section 275.114 is amended by revising paragraph (c) to read as follows:

**§ 275.114 Time of filing.**

* * * * *

(c) *Postmark.* If the return, and remittance as the case may be, are delivered by U.S. Mail to the office of the Chief, Puerto Rico Operations, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return, and remittance as the case may be, were mailed shall be treated as the date of delivery.

* * * * *

**§ 275.114a [Amended]**

**Para. 158.** Section 275.114a is amended by replacing in paragraphs (a) and (c) the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

**§ 275.115 [Amended]**

**Para. 159.** Section 275.115 is amended by replacing the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations." and the citation "26 CFR 301.6311–1" with the citation "§ 70.66."

**§ 275.115a [Amended]**

**Para. 160.** Section 275.115a is amended by replacing in paragraph (c)(1) the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations."

**§ 275.116 [Amended]**

**Para. 161.** Section 275.116 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

**§ 275.118 [Amended]**

**Para. 162.** Section 275.118 is amended by replacing the phrase "Regional Director (compliance), Alcohol, Tobacco and Firearms, New York, New York" with the phrase "Chief, Puerto Rico Operations."

**§ 275.123 [Amended]**

**Para. 163.** Section 275.123 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

**§ 275.125 [Amended]**

**Para. 164.** Section 275.125 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

**§ 275.126 [Amended]**

**Para. 165.** Section 275.126 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

**§ 275.127 [Amended]**

**Para. 166.** Section 275.127 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

**§ 275.129 [Amended]**

**Para. 167.** Section 275.129 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

**§ 275.137 [Amended]**

**Para. 168.** Section 275.137 is amended by replacing in the fourth sentence of the paragraph the phrase "Supervisor in Charge, Alcohol and Tobacco Tax, Puerto Rico" with the phrase "Chief, Puerto Rico Operations."

**§ 275.161 [Amended]**

**Para. 169.** Section 275.161 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

**§ 275.163 [Amended]**

**Para. 170.** Section 275.163 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

**§ 275.170 [Amended]**

**Para. 171.** Section 275.170(b) is amended by removing from the paragraph the phrase "For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7), ATF Form 2635 (5620.8), or IRS Form 843, to read as follows:" with the phrase "For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:"

**§ 275.172 [Amended]**

**Para. 172.** Section 275.172(b) is amended by removing from the paragraph the phrase "For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7), ATF Form 2635 (5620.8), or IRS Form 843, to read as follows:" with the phrase "For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:".

## PART 285—[AMENDED]

**Para. 173.** The authority citation for Part 285 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6302, 6402, 6404, 6676, 7212, 7325, 7342, 7606; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 285.25 [Amended]**

**Para. 174.** Section 285.25(d) is amended by replacing in the paragraph the phrase "the district director, director of the service center, or regional director (compliance)" with the word "ATF."

**§ 285.26 [Amended]**

**Para. 175.** Section 285.26 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

**§ 285.27 [Amended]**

**Para. 176.** Section 285.27(c) is amended by replacing in the paragraph the phrase "the director of the service center, district director, or regional director (compliance)" with the word "ATF."

**§ 285.34 [Amended]**

**Para. 177.** Section 285.34 is amended by replacing in the fourth sentence of the paragraph the phrase "district director" with the phrase "regional director (compliance)."

**§ 285.171 [Amended]**

**Para. 178.** Section 285.171 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

**Para. 179.** Section 285.173 is amended by revising the second and fifth sentence of the paragraph to read as follows:

**§ 285.173 Credit or refund.**

* * * Any claim for credit or refund under this section shall be prepared on Form 2635 (5620.8), in duplicate. * * * The original and one copy of Form 2635 (5620.8) shall be filed with the regional director (compliance) for the region in which the tax was paid, or where the tax was paid in more than one region with the regional director (compliance) for any one of the regions in which the tax was paid. * * *

**Para. 180.** Section 285.185 is amended by revising the fourth sentence of the paragraph to read as follows:

**§ 285.183 Disposition of cigarette papers and tubes and schedule.**

* * * In connection with a claim for credit or refund, the manufacturer shall attach the original of the schedule to the claim, Form 2635 (5620.8), filed under § 285.173. * * *

## PART 290—[AMENDED]

**Para. 181.** The authority citation for Part 290 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6301, 6302, 6313, 6402, 6404, 6676, 7101, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 290.67 [Amended]**

**Para. 182.** Section 290.67 is amended by replacing in the second sentence of paragraph (a) the phrase "the district director of internal revenue, for the district in which the factory or export warehouse is located" with the word "ATF" and by replacing the phrase "ATF Form 4040 (5000.5)" with the phrase "ATF Form 5000.24" in the last sentence of paragraph (a).

**§ 290.153 [Amended]**

**Para. 183.** Section 290.153 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

**§ 290.154 [Amended]**

**Para. 184.** Section 290.154 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

## PART 295—[AMENDED]

**Para. 185.** The authority citation for Part 295 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6301, 6302, 6313, 6402, 6404, 6676, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 295.36 [Amended]**

**Para. 186.** Section 295.36 is amended by replacing in the first sentence of the paragraph the phrase "district director, for the district" with the phrase "regional director (compliance), for the region."

**PART 296—[AMENDED]**

**Para. 187.** The authority citation for Part 296 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6301, 6302, 6313, 6402, 6404, 6676, 7101, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 296.7 [Amended]**

**Para. 188.** Section 296.7 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

**§ 296.74 [Amended]**

**Para. 189.** Section 296.74 is amended by replacing in the paragraph the phrase "Internal Revenue Service Form 843" with the phrase "Form 2635 (5620.8)."

Signed: April 23, 1987.

**W.T. Drake,**

*Acting Director.*

Approved: May 1, 1987.

**John P. Simpson,**

*Acting Assistant Secretary (Enforcement).*

[FR Doc. 87–11152 Filed 5–21–87; 8:45 am]

BILLING CODE 4310-21-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 7

### Buffalo National River, Arkansas; Fishing Regulations

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** These special regulations allow fishing activities to continue at Buffalo National River in the traditional manner in accordance with State of Arkansas regulations except when the Superintendent may designate otherwise. It will allow the gigging of rough fish, use of attended trot lines, and noncommercial capture of bait fish, using traps or seines. It will also allow the collection and possession of terrestrial and acquatic insects by hand or hand net for use as bait. It will allow the taking of frogs, turtles and crayfish by traditional methods as designated by the Superintendent. These traditional activities were no longer allowed after April 30, 1984, when the new general regulations for the National Park Service became effective. These special regulations permit a level of public use and enjoyment of park resources consistent with the establishment of Buffalo National River to provide for both preservation and recreational use.

**EFFECTIVE DATE:** June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Alec Gould, Superintendent, Buffalo National River, P.O. Box 1173, Harrison, Arkansas 72602–1173, Telephone: (501) 741–5443.

**SUPPLEMENTARY INFORMATION:**

**Background**

These regulations authorize recreational fishing methods that are now prohibited by the general regulations. In order to relax restrictions on fresh water recreational fishing, the regulations apply fishing methods that are allowed under State laws as appropriate. They allow visitors to Buffalo National River to continue the traditional, recreational activities that have occurred along the Buffalo River for many years. These activities are consistent with the purposes for which the park was established and will not, in the opinion of the National Park Service, have an adverse impact on the ecosystem, other species of wildlife or the reproductive potential of the species involved. These activities were legitimate recreational activities until the revised general regulations of the National Park Service became effective on April 30, 1984.

This regulation will allow the use of trot lines and limb lines along the river as long as the owner of these lines is present in the area and the lines are not placed in a manner hazardous to canoeists and are removed when the owner leaves. It will also allow the continued use of seines and minnow traps to capture native bait fish for bait. This will help prevent the introduction of exotic fish species into the river since most commercial bait fish dealers do not sell native minnows. It will not allow commercial bait fish operations to operate within the park. They will also authorize the capture of crayfish and both terrestrial and aquatic insects for use as bait, and the gigging of rough fish as defined by State regulations. Visitors will also be permitted to capture frogs, turtles and crayfish for personal consumption as well.

Conditions for collection of insects will restrict capture techniques to hand capture or the use of hand nets. Similar restrictions will be applied to the capture of crayfish which can be captured by hand, hand-held net or seine or by baited hand lines. Neither insects, frogs, turtles nor crayfish can be captured for commercial purposes and the Superintendent may restrict these activities as necessary.

Also, as part of this rulemaking, the National Park Service is redesignating as Paragraph (c) the existing text in § 7.35 that pertains to the use of motors on boats. Although some editorial changes have been made for the purpose of clarification, the regulatory provisions remain the same and do not constitute new provisions.

The National Park Service, Department of the Interior, published in the Federal Register (51 FR 23616) on October 20, 1986, and provided a 30-day public review and comment period. No comments were received. As a result, the proposed rule is published unchanged as a final rule.

**Drafting Information**

The following persons participated in the writing of these regulations: Carl E. Hinrichs, Chief, Resource Management and Visitor Protection, and Keith A. Whisenant, Resource Management Specialist, both of Buffalo National River.

**Paperwork Reduction Act**

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**Compliance with Other Laws**

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are negligible. The regulations do not impose additional costs on individuals using Buffalo National River.

The Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

a. Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it.

b. Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it.

c. Conflict with adjacent ownerships or land uses; or

d. Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM6, (49 FR 21438). As such, neither an Environmental Assessment nor an

Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter 1, is amended as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for 36 CFR, Part 7 Continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); §7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By revising §7.35 to read as follows:

### § 7.35 Buffalo National River.

(a) *Fishing.* (1) Unless otherwise designated by the Superintendent, fishing in a manner authorized under applicable State law is allowed.

(2) The Superintendent may designate times when and locations where and establish conditions under which the digging of bait for personal use is allowed.

(3) The Superintendent may designate times when and locations where and establish conditions under which the collection of terrestrial and aquatic insects for bait for personal use is allowed.

(4) Violating a designation or condition established by the Superintendent is prohibited.

(b) *Frogs, Turtles* and *Crayfish.* (1) The Superintendent may designate times and locations and establish conditions governing the taking of frogs, turtles and crayfish for personal use.

(2) Violating a designation or condition established by the Superintendent is prohibited.

(c) *Motorized Vessels.* (1) Except for a vessel propelled by a gasoline, diesel or other internal combustion engine with a rating of 10 horsepower or less, operating a motorized vessel from Erbie Ford to the White River is prohibited.

(2) Operating a vessel propelled by a motor is prohibited above Erbie Ford.

(3) The provisions of Paragraph (c) do not apply to a vessel operated for official use by an agency of the United States, the State of Arkansas or one of its political subdivisions.

Dated: May 5, 1987.

Susan Recce

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–11770 Filed 5–21–87; 8:45 am]

BILLING CODE 4310-70-M

## 36 CFR Part 7

## Shenandoah National Park, Fishing Regulation

**AGENCY:** National Park Service, Interior.

**ACTION:** Final Rule.

**SUMMARY:** On October 1, 1986, the National Park Service, Department of the Interior, published in the **Federal Register** (51 FR 35009) a proposed rule to change the fishing regulations at Shenandoah National Park. This proposal was made available for public review and comment for a period of thirty (30) days ending on November 1, 1986. These revisions will (1) close to public fishing all streams except those designated in the park's Fishery Management Plan as having sufficient year-round flow of water and populations of native brook trout to sustain both the expected fishing pressure and natural population pressures, e.g., drought, flood, predation; (2) add the North Fork of the Moormans River to the Park's fish-for-fun program; and (3) allow the removal of non-native game fishes from designated trout streams in Shenandoah National Park consistent with applicable state fishing regulations. The need to change the park's fishing regulations was determined when the park's active stream monitoring program identified several preservation concerns. With these revisions in place, Shenandoah National Park will be able to better manage the fishery resources.

**EFFECTIVE DATE:** June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** David A. Haskell, Resource Management Specialist, Shenandoah National Park, Rt. 4, Box 292, Luray, Va. 22835, Telephone 703–999–2243, ext. 404.

**SUPPLEMENTARY INFORMATION:**

### Background

This rulemaking revises the fishing regulations for Shenandoah National Part (36 CFR Part 7.15(a)). These regulations had been in effect since 1965 and permitted only trout fishing in all waters of the park and limited the fish-for-fun program to the Rapidan and Staunton Rivers.

Since 1982, the National Park Service (NPS) has been engaged in the sampling of all streams having a trout population. Forty-five streams were identified and sampled. Prior to 1982 only sporadic monitoring of the trout streams had been conducted by the U.S. Fish and Wildlife Service (USFWS) and the Virginia Commission of Game and Inland Fisheries (VCGIF). Qualitative date from the recent sampling such as relative abundance, age class distribution, and growth rates have been analyzed.

The findings of the latest analysis are that most of the park's larger streams are highly productive and are capable of sustaining a limited native brook trout harvest; however, some of the smaller or less productive streams are severely influenced by natural pressures (drought, floods, natural predators) and do not consistently produce sufficient exess native brook trout to allow harvest by angling. The few fish present in these marginal streams are needed to maintain the ecological balance of the aquatic ecosystems. Natural predators such as mink, raccoons, watersnakes, and kingfishers are dependent on these fish for their survival. Fishing of these streams could, during years of low native brook trout production, cause an unacceptable disruption of ecosystem dynamics, and could contribute to the total loss of a stream's native brook trout population during extreme conditions.

The goal of Shenandoah National Park's fishery management program is two-fold: (1) To preserve and perpetuate the native brook trout as an integral component of the park's aquatic ecosystems; and (2) to provide quality angling experiences. Therefore, angling will be permitted only on those streams which consistently sustain adequate native brook trout populations. The park's current fish-for-fun program is one way to provide a quality angling experience while serving to protect the native brook trout population from excessive harvest. Fish returned to the stream are available to be caught by other anglers, thus enhancing overall angling success.

The park's two fish-for-fun streams (Rapidan and Staunton Rivers) were established in 1968. Since that time, the popularity of these streams as quality native brook trout fishing waters has greatly increased. These two streams are utilized heavily on a daily basis during the spring and early summer. The popularity of angling for its sport and recreational experience has continued to grow to the point that an additional fish-for-fun stream is desirable to accomodate public demand. This will disperse anglers over more miles of stream, reduce the handling of trout, reduce soil compaction along stream banks and lessen other ecological impacts.

Eastern brook trout is the only species of trout native to Shenandoah waters. The exotic brown trout and rainbow trout have been found in park streams during recent years. These exotic species of trout are being found in

increasing numbers and may be threatening the existence of the native brook trout in parts of certain streams. In other eastern national parks, such as the Great Smoky Mountains National Park, these exotic species of trout have successfully replaced the native brook trout in many streams in spite of all efforts to control their spread. Of special concern is the spread of these exotic trout species in Shenandoah's fish-for-fun streams.

In other cases, exotic species of warm water game fishes are found in the boundary sections of some park streams. Smallmouth bass and sunfish are the most common species found. Although these species pose little threat to native brook trout populations, they do interact with other species of native fishes, resulting in a disruption of the natural stream ecosystem. Current regulations prohibit the harvest of these exotic warm water fishes. It is the policy of the National Park Service to protect native flora and fauna from encroachment by exotic species and to eradicate exotic species which pose any possible threat to native species or park ecosystem balances.

This rulemaking will permit the removal of exotic fish from Park trout streams according to size and creel limits established by applicable State law. Removal of exotics will reduce their competition with the native brook trout populations.

### Summary of Comments

The National Park Service received a total of four written comments during the 30-day comment period. Of these, two were from private individuals, one from the Virginia Game Commission, and one from the Virginia Chapter of Trout Unlimited. One individual supported the proposed rule. The other three respondents supported all of the rule except that portion concerning the closure of all streams except those listed in Shenandoah's Fisheries Management Plan.

The objections to the open waters section were all very similar in that the respondents held that there is no scientific proof that legal angling pressure has any significant impact on native brook trout populations in park streams. They further stated that closing the very marginal streams which routinely exhibit very poor water levels and are subject to extreme natural fluctuations in trout populations would make matters even worse by enhancing the possibility that illegal fish poachers could operate with less likelihood of being seen. One respondent also commented that the number of fish caught and removed from these marginal streams was so small that it would have very little impact on the natural predators which rely, in part, on these fish for food.

The response of the National Park Service to these comments is as follows: There have been very few scientific studies on naturally reproducing native brook trout populations in streams similar to those found in Shenandoah National Park. Most of the research in the field of native brook trout population dynamics has been done on larger and more productive streams. Consequently, although there may be little scientific information in the existing literature to indicate that legal harvest might have an impact on marginal streams, there also is very little data to support the belief that the harvest of the larger fish will *not* have an impact under some circumstances. The native brook trout population monitoring program, which has been conducted on park streams annually since 1982, has shown that at least two streams have developed abnormally low native brook trout populations that cannot be explained by activities of natural processes alone. One stream, Lands Run, has shown such a drastic reduction in population that even after being closed to fishing in 1985, the stream's native trout population has yet to recover. The National Park Service may never be able to scientifically determine for certain what has caused the drastic population decline in Lands Run; however, management steps must be taken to assure that this and other similar streams which, at the best, contain only marginal trout populations will eventually be reopened to recreational fishing.

The few marginal streams which are proposed to be closed make up a very small percentage of the available park trout waters. The National Park Service feels that the addition of another major park stream to the current fish-for-fun program more than compensates for the small loss of fishable waters which have been proposed to be closed.

The question as to whether the closure of a stream would make it more vulnerable to illegal poaching has been carefully considered. Park Ranger patrols of these marginal streams indicate that legal fishing activity is very light. The number of anglers is so small that they could not have had any appreciable effect on the level of fish poaching by keeping the illegal poachers away. Most of the documented illegal fishing activity in the park has been found on the large popular streams where large numbers of fish can be caught. The presence of legal anglers on these large popular streams does not seem to have been any deterrent to illegal activity in the past. Therefore, we feel that this concern is unfounded.

The last concern to be addressed is whether the removal of some of the larger adult trout from a very small population would have any effect on the total aquatic ecosystem, especially the fish predators. One respondent stated that the number of fish removed from these streams was small and that the predators were not completely dependent on them for survival; that they could find other prey. The NPS agrees with the fact that the number of fish removed might be small, however, they are often the largest and most dominant fish. Aside from these fish being prey for larger animals, it is quite possible that these dominant trout may be quite important to the long term maintenance of aquatic ecosystems by functioning in the role of predator themselves. Mountain streams are complex ecosystems. It is very risky to assume that the removal of the largest individuals of the most prominent species will not effect ecosystem balance. In a national park setting where the protection and perpetuation of natural systems is the dominant management objective, the National Park Service must, whenever possible or feasible, act in the best interest of the resource. In this case there is enough information to seriously doubt the desirability of allowing recreational angling to remove fish from these marginal streams.

After careful consideration of all of the respondents' comments, the National Park Service finds no new information that would lead to any changes in the original proposed rulemaking.

### Drafting Information

The following persons participated in the writing of these regulations: Larry L. Hakel, Chief Park Ranger and David A. Haskell, Resource Management Specialist, both of Shenandoah National Park.

### Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

### Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certified that this document will not have a significant economic effect on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public angling to the extent of adversely affecting the aquatic ecosystem;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants. Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

**Lists of Subjects in 36 CFR Part 7**

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SERVICE

1. The authority citation continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By revising paragraph (a) of § 7.15 to read as follows:

**§ 7.15 Shenandoah National Park.**

(a) *Fishing*—(1) *Open Waters.* All streams are closed to fishing except those designated by the superintendent as trout streams.

(2) *Applicability.* The provisions of paragraphs (a)(3) through (a)(7) and (a)(9) of this section apply to all designated trout streams except fish-for-fun streams and portions of streams that form the park boundary line. Fishing in fish-for-fun streams is subject to the provisions of paragraphs (a)(4), (a)(8) and (a)(9) of this section and fishing in portions of streams that form the park boundary is governed solely by applicable State law.

(3) *Season.* The opening date of the trout season and the hours during which trout fishing is allowed are those established by applicable State law. trout season closes October 15 except for designated fish-for-fun streams.

(4) *License.* Fishing license requirements imposed by applicable State law apply to persons fishing in park waters.

(5) *Size limit.* Trout eight (8) inches or longer may be retained. Trout under eight (8) inches in length shall be immediately and carefully returned to the water. There is no size limit on other species of game fishes.

(6) *Creel limits.* No person may retain more than five (5) trout per day nor have more than five (5) trout in possession. Creel limits on other species of game fishes are those established by applicable State law.

(7) *Lures; bait.* Fishing is restricted to an artificial fly or lure having a single hook.

(8) *Fish-for-fun.* Trout streams managed in the fish-for-fun program are designated by the superintendent. These streams are open to trout fishing all year. Fishing is governed by applicable State law except as follows:

(i) Fishing is restricted to an artificial fly or lure having a single barbless hook;

(ii) No trout of any size may be retained. All trout caught shall be handled carefully and returned immediately to the water; and

(iii) All other species of game fishes may be kept. The season and creel limit for species other than trout are governed by applicable State law.

(9) The following are prohibited:

(i) Violating a fishing closure, designation, use or activity restriction or condition or limit established in this paragraph;

(ii) Violating a provision of applicable State law.

* * * * *

Dated: May 1, 1987.

**William P. Horn,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–11771 Filed 5–21–87; 8:45 am]

BILLING CODE 4310-70-M

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## 36 CFR Part 7

### Yellowstone National Park, Fishing Regulations

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service has modified the fishing regulations in Yellowstone National Park. The rule changes allow fishing in streams and lakes in Yellowstone National Park as designated by the Superintendent pursuant to authority provided by National Park Service general regulations. The park's active monitoring program has identified preservation concerns. The changes to the regulations address these concerns and will correct on an annual basis, problems identified with the current regulations. With these changes in place, the park staff will be able to more effectively manage the fishery resources. Effects of the rules are expected to be minimal. This rulemaking will not alter to any degree the number of angler days presently occurring.

**EFFECTIVE DATE:** June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Czarnowski, Resource Management Specialist, P.O. Box 168, Yellowstone National Park, Wyoming 82190, Telephone (307) 344–7381, ext. 2238.

**SUPPLEMENTARY INFORMATION:**

**Background**

The present Yellowstone National Park fishing regulations are codified in 36 CFR 7.13(e). They permit fishing in selected waters of the park with a variety of regulations covering specific lakes and streams.

Technical fishery assistance has been provided to Yellowstone National Park by the U.S. Fish and Wildlife Service and its predecessors for 96 years. The present objectives have evolved since the late 1930's to closely coincide with the park's primary purpose, which is to preserve natural environments and native plant and animal life, and to provide for the enjoyment of the same in ways that maintain natural conditions. Thus, the specific objectives of the park's fishery program are:

1. To manage the fishery as an integral part of the park's ecosystem

2. To preserve and restore native species and aquatic habitats.

3. To provide recreational fishing for the enjoyment of the park visitors when consistent with the two previous objectives.

Attainment of these objectives requires that angler harvests do not alter natural replenishment rates or age structure, or significantly reduce numbers, biomass, or sizes, from those occurring in unfished populations. This management policy necessitates both a philosophical and literal distinction between recreational angling and removing fish for consumption. Protective policies of the National Park Service that have prevented significant degradation of the aquatic habitat have also restricted the use of maintenance stocking in park waters. Given these constraints, special angling regulations

have become the primary means to accomplish park fishery objectives.

Regulations used to protect fish and maintain angling quality have included manipulating season dates, bait and terminal gear restrictions, and the use of creel and size limits (including catch-and-release). Additionally, seven waters have been closed to angling in order to protect public water supply facilities, threatened species, nesting birds, or provide scenic vistas with undisturbed wildlife and fish.

Of 120 lakes and streams which are annually utilized by park anglers, 30 incur most of the fishing pressure. The quality of at least six of these fisheries has gained national recognition.

Because of the extremely heavy fishing pressure on Yellowstone's waters, the park staff must be able to respond rapidly to changes that occur in a dynamic ecosystem resulting from human activities.

The new park fishing regulations allow the Superintendent the ability to make routine changes in the regulations locally and in a timely manner. This will afford greater protection to the park's fishery resources, be more responsive to public needs, and allow the park managers greater flexibility in responding to specific situations. Permanent closures of park waters will continue to be listed in Title 36, Sec. 7.13 of the Code of Federal Regulations and will be subject to the rulemaking requirements of that process as described in 36 CFR 1.5(b).

The National Park Service published a proposed rulemaking in the **Federal Register** on February 17, 1987 (52 FR 4785) and provided a 30-day period for public comments on the proposed revisions. No comments were received. Therefore, the proposed rules are published, unchanged, in final.

The park's fishing regulations will be reviewed at least annually by park staff and the U.S. Fish and Wildlife Service, and recommendations for changes, if any, will be made to the Superintendent.

**Drafting Information**

The primary authors of these regulations were Dan Sholly, Chief Park Ranger, and Ken Czarnowski, Resource Management Specialist, both of Yellowstone National Park.

**Paperwork Reduction Act**

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**Compliance with Other Laws**

The Department of Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public angling to the extent of impacting the aquatic ecosystem.

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it.

(c) Conflict with adjacent ownerships or land uses.

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

**List of Subjects in 36 CFR Part 7**

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

**Authority:** 16 U.S.C 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By revising paragraph (e) of § 7.13 to read as follows:

**§ 7.13 Yellowstone National Park.**

* * * * *

(e) *Fishing.* (1) Fishing restrictions, based on management objectives described in the park's Resources Management Plan, are established annually by the superintendent.

(2) The superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, on my activity pertaining to fishing, including, but not limited to, seasons and hours during which fishing may take place, size, creel and possession limits, species of fish that may be taken and methods of taking.

(3) *Closed waters.* The following waters of the park are closed to fishing and are so designated by appropriate signs:

(i) Pelican Creek from its mouth to a point two miles upstream.

(ii) The Yellowstone River and its tributary streams from the Yellowstone Lake outlet to a point one mile downstream.

(iii) The Yellowstone River and its tributary streams from the confluence of Alum Creek with the Yellowstone River upstream to the Sulphur Caldron.

(iv) The Yellowstone River from the top of the Upper Falls downstream to a point directly below the overlook known as Inspiration Point.

(v) Bridge Bay Lagoon and Marina and Grant Village Lagoon and Marina and their connecting channels with Yellowstone Lake.

(vi) The shores of the southern extreme of the West Thumb thermal area along the shore of Yellowstone Lake to the mouth of Little Thumb Creek.

(vii) The Mammoth water supply reservoir.

(4) Fishing in closed waters or violating a condition or restriction established by the superintendent is prohibited.

* * * * *

Dated: May 6, 1987.

**William P. Horn,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–11772 Filed 5–21–87; 8:45 am]

BILLING CODE 4310-70-M

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 261

### Possession, Storage, and Transportation of Food Materials; Prohibitions

**AGENCY:** Forest Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** Part 261 of Title 36 of the Code of Federal Regulations sets forth acts that are prohibited within the National Forest System. This final rule amends Part 261 to provide forest officers authority to prohibit or regulate the possession, storage, or transport of food, refuse, and plant and animal

material that attracts bears. The rule is particularly needed in National Forest areas inhabited by grizzly bears, a threatened species. The rule may also be used to manage black bears, or other resources in specific areas. The intended effect is to reduce conflicts between bears and National Forest users and the unacceptable risk to each that results when such conflicts occur.

**EFFECTIVE DATE:** June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Glen Contreras, Threatened and Endangered Species Program Manager, Wildlife and Fisheries Staff (703) 235–8015.

**SUPPLEMENTARY INFORMATION:** On April 17, 1986 at 51 FR 12291, the Forest Service published an interim rule to authorize forest officers to prohibit or otherwise regulate the possession, storage, or transport of food, refuse and plant and animal material that attracts bears. Public comment was invited. Only one written comment was received—a very general statement of support for the rule.

Part 261 lists prohibited acts within the National Forest System that are necessary to protect public health, safety, and forest resources. Subpart B authorizes Forest Service line officers to close or restrict the use of specific areas under their jurisdiction. Section 261.58 sets forth the various activities involved in occupancy and use of National Forest System lands that a line officer may prohibit.

This rule amends the list of prohibited acts to permit forest officers to prohibit the storage of animals or animal parts and tree or plant material and to prohibit the possession or storage of any food or refuse in designated areas, as specified in the order.

The absence of these prohibitions from the rule is a long-standing oversight which has come to the agency's attention as forest officers have sought effective means of reducing conflicts between humans and bears in National Forests. This need is particularly critical for reducing conflicts between forest users and recovery management for the grizzly bear.

The grizzly bear is listed as a Federally threatened species and as such requires affirmative management action by the Forest Service to protect the bear. The Forest Service is equally responsible for protecting public health and safety on National Forest lands. An inportant aspect of meeting both responsibilities is to reduce the likelihood of conflicts between bears and humans. This rule provides the necessary mechanism to restrict or prohibit altogether and enforce how hunters, campers, and other National Forest users store and transport materials that are a food source for bears, and therefore, attractive to them. The authority provided by the rule will play an important role in providing public safety and meeting recovery efforts for the grizzly bear in the Yellowstone grizzly bear ecosystem and in other National Forest areas where conflicts with other species of bear require administrative action. When needed, these orders will be posted for public review at access points to bear use areas, Forest Supervisor, and Ranger District offices.

In view of the fact that no suggestions for revising the rule were received, and feedback from Forest Service personnel following the 1986 field season indicated that the interim rule was effective, the provisions of the final rule are identical to those of the interim rule.

### Regulatory Impacts and Review

This rule has been reviewed for its regulatory impact pursuant to E.O. 12291, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and implementing Departmental procedures. The Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this regulation is not a major rule and will not have a significant economic impact on a substantial number of small entities. To the best of the agency's knowledge, this rule will have, at most, only minor economic effect on the public or user groups as a result of requirements to store or move food and refuse. Basically, the rule fills an enforcement gap that resource management and public safety needs now dictate be corrected.

It has also been determined that this rule will not have any significant impact on the quality of the environment and that this determination is categorically excluded from documentation in an environmental assessment or impact statement.

This rule contains no information collection requirements as defined in 5 CFR Part 1320.

### List of Subjects in 36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth above, Part 261 of Title 36 of the Code of Federal Regulations is amended as follows:

## PART 261—PROHIBITIONS

1. The authority citation for Part 261 continues to read as follows:

**Authority:** 30 Stat. 35, as amended (16 U.S.C. 551); 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 526, as amended (7 U.S.C. 1011(f)); 62 Stat. 916 (16 U.S.C. 1281); 82 Stat. 955, (16 U.S.C. 1246 (i)) 92 Stat. 1660, as amended (16 U.S.C. 1133(c)–(d)(1)), unless otherwise noted.

### § 261.58 Occupancy and use.

2. In § 261.58, revise paragraphs (s), (t) and (cc) so that these paragraphs read as follows:

* * * * *

(s) Possessing, storing, or transporting any bird, fish, or other animal or parts thereof, as specified in the order.

(t) Possessing, storing, or transporting any part of a tree or other plant, as specified in the order.

* * * * *

(cc) Possessing or storing any food or refuse, as specified in the order.

* * * * *

Dated: May 11, 1987.

**Douglas W. MacCleery,**

*Deputy Assistant Secretary for Natural Resources and Environment.*

[FR Doc. 87–11801 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–11–M

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## VETERANS ADMINISTRATION

### 38 CFR Part 3

### Evidence Other Than Evidence of Service—Acceptability of Photocopies

**AGENCY:** Veterans Administration.

**ACTION:** Final rule.

**SUMMARY:** The Veterans Administration (VA) has amended its adjudication regulations to permit the acceptance of photocopies of documentary evidence in certain cases. These amendments are necessary to alleviate the burden and reduce the cost to claimants and beneficiaries who are required to submit documentary evidence to establish birth, death, marriage or relationship in connection with claims for veterans' benefits. The effect of these amendments will be to increase the sources of acceptable photocopied evidence while clarifying the categories of individuals who will be authorized to perform the certification function.

**DATE:** These regulations are effective June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** On pages 35667–68 of the Federal Register of October 7, 1986, the VA published proposed regulatory amendments on the

acceptability of photocopied evidence of birth, death, marriage and relationship. Interested persons were invited to submit comments, suggestions or objections by November 5, 1986. The proposal erroneously indicated that the amendments were proposed to be effective on November 6, 1986. The notice of proposed rulemaking should have provided that the amendments would be effective 30 days after the date of publication of the final rules.

A total of 15 comments were received, all of which supported the proposal to varying degrees. Along with the support, however, were a number of suggestions for further amendment which we have carefully considered.

One commenter suggested that certifying officials at educational institutions and rehabilitation facilities be issued standardized instruments, such as stamps, for certifying documents. While this suggestion is procedural in nature and does not affect the actual regulation change, it would be costly to implement and would not be necessary. Certifying officials at such institutions and facilities are only permitted to certify documents submitted with claims for benefits because of training. If the signature on the enrollment certificate is the same as that on the photocopied evidence, a separate stamp is not necessary.

Another commenter suggested that VA should accept any photocopied evidence. We cannot agree as this would seriously impact on program integrity.

In the same vein, however, eight other commenters suggested expansion of the list of those individuals authorized to certify photocopies. They suggested that State, County, Municipal, Chapter, and Post Service Officers and Office Managers of the Veterans Administration Readjustment Counseling Service (VET Center Program) be allowed to certify photocopies. We cannot agree with respect to State, County, Municipal, Chapter and Post Service Officers who are not accredited under 38 CFR Part 14, nor with notarized photocopies in general. As indicated in the notice of proposed rulemaking this expansion of acceptable sources of photocopied evidence should be limited, for purposes of program integrity, to those against whom administrative sanctions, such as adverse personnel actions or derecognition of their status as claims representatives, can be readily invoked by the VA. State, County, Municipal Chapter and Post Service Officers who are not accredited under 38 CFR Part 14 and notaries public in general are not readily subject to such sanctions by the VA.

We do not believe that Vet Center Office Managers require independent recognition as individuals authorized to certify photocopies. Such individuals are VA employees who are under the jurisdiction of specific VA Medical Center Directors. If a Medical Center Director authorizes a Vet Center Office Manager to administer oaths, then such a person would clearly fall within the first category of individuals authorized to certify photocopies.

One commenter suggested clarification of which veterans' service organization representatives were accredited under 38 CFR Part 14. It was suggested that clarification would reduce misinterpretation by VA employees as to who, in fact, is authorized to certify photocopies. We do not believe further clarification is necessary for the following reason. In January of each year, the VA General Counsel publishes an information bulletin containing the names of all service representatives who are accredited under 38 CFR Part 14. Supplements are issued monthly listing new accreditations and cancellations.

The latest edition of this Information Bulletin is IB 2–151 with its subsequent monthly supplements, and it is available at all VA Regional Offices. While we do not believe that clarifying language is necessary in the actual regulation, we will, nevertheless, make special reference to the information bulletin in the transmittal sheet that will accompany the VA's loose-leaf printing of the final rules. This should virtually eliminate any misinterpretation by VA employees.

The same commenter also suggested clarification of whether the term "original documents," as used in the proposed rule, included certified copies of official documents issued by custodians of public records. Such certified copies are already acceptable as evidence and in many cases are the most official documents obtainable. We agree that photocopies of such documents certified by one of the four categories of authorized individuals would be acceptable as evidence, and we have amended the proposed rule by adding paragraph (c)(3) to § 3.204 to indicate that certified copies of official documents issued by a custodian of public records are included in the term "original documents."

The proposed amendment, as modified herein, is adopted. We appreciate the suggestions and support received in connection with this rule change.

The Administrator hereby certifies that these final regulations will not have a sufficient economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these final regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these final regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.109, 64.110, 64.115, 64.117 and 64.125.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

Approved: April 27, 1987.

Thomas K. Turnage,

*Administrator.*

**PART 3—[AMENDED]**

38 CFR Part 3, Adjudication, is amended to read as follows:

1. In § 3.202 paragraph (c) is amended to read as follows:

**§ 3.202 Evidence from foreign countries.**

* * * * *

(c) Photocopies of original documents meeting the requirements of this section will be accepted if certified in accordance with § 3.204(c) of this part. (38 U.S.C. 210(c)

2. In § 3.204 paragraph (c) is revised to read as follows:

**§ 3.204 Evidence other than evidence of service.**

* * * * *

(c) *Acceptability of photocopies.* (1) Photocopies of original documents necessary to establish birth, death,

marriage or relationship under the provisions of §§ 3.205 through 3.215 of this part are acceptable as evidence if an individual described in paragraph (c)(2) of this section has viewed the original document to be copied, is satisfied as to the document's genuineness and freedom from alteration, and certifies that the photocopy submitted as evidence is a true and exact copy of the original document viewed.

(2) For purposes of this paragraph, individuals authorized to certify photocopies of original documents are limited to:

(i) Any VA employee who is authorized to administer oaths.

(ii) Any representative of a veterans' service organization who is accredited under the provisions of Part 14 of this title.

(iii) Military personnel appointed on orders for this purpose by the commander of a military installation.

(iv) Any official of an approved educational institution or rehabilitation facility who is authorized to certify enrollments when such documentary evidence is submitted in connection with a claim for benefits under 38 U.S.C. chapters 30, 31 or 34.

(3) For purposes of this paragraph, the term "original documents" includes certified copies of official documents issued by custodians of public records. (38 U.S.C. 210(c))

**§§ 3.205, 3.206 and 3.214 [Amended]**

3. In §§ 3.205(c), 3.206 and 3.214 remove the words "widow or widower," "widows," or "widow" wherever they appear and add, in their place, the words "surviving spouse".

**§ 3.209 [Amended]**

4. In § 3.209 remove the words "Secondary evidence" in the cross reference at the end of the section and add, in their place, the words "Evidence other than evidence of service."

5. In § 3.210 paragraph (c)(2) is revised to read as follows:

**§ 3.210 Child's relationship.**

* * * * *

(c) * * *

(2) As to a child adopted by the veteran's surviving spouse after the veteran's death, the statement of the adoptive parent or custodian of the child will be accepted in absence of information to the contrary, to show that the child was a member of the veteran's household at the date of the veteran's death and that recurring contributions were not being received for the child's maintenance sufficient to provide for the major portion of the child's support, from any person other than the veterans or surviving spouse or from any public or private welfare organization which furnished services or assistance to children. (Pub. L. 88–195)

* * * * *

**§ 3.212 [Amended]**

6. In § 3.212(a) remove the word "his" wherever it appears and add, in its place, the words "his or her".

7. In § 3.213, paragraphs (a)(1), (a)(2) and (a)(3) are revised to read as follows:

**§ 3.213 Change of status affecting entitlement.**

(a) * * *

(1) *Veteran.* A statement by the veteran setting forth the month and year of death of a spouse, child, or dependent parent.

(2) *Surviving Spouse.* A statement by the surviving spouse or remarried surviving spouse setting forth the month and year of remarriage and any change of name. (An award for a child or children who are otherwise entitled may be made to commence the day following the date of discontinuance of any payments to the surviving spouse.)

(3) *Child.* A statement by the veteran or surviving spouse (where an additional allowance is being paid to the veterans or surviving spouse for a child), or fiduciary, setting forth the month and year of the child's death, marriage, or discontinuance of school attendance. A similar statement by a child who is receiving payments direct will be accepted to establish the child's marriage or the discontinuance of school attendance. Where appropriate, the month and year of discontinuance of school attendance will be required in addition to the month and year of death or marriage of a child. (38 U.S.C. 210(c))

* * * * *

8. Section 3.215 is revised to read as follows:

**§ 3.215 Termination of marital relationship or conduct.**

On or after January 1, 1971, benefits may be resumed to an unmarried surviving spouse upon filing of an application and submission of satisfactory evidence that the surviving spouse has ceased living with another person and holding herself or himself out openly to the public as that person's spouse, or that the surviving spouse has terminated a relationship or conduct which had created an inference or presumption of remarriage of related to open or notorious adulterous cohabitation or similar conduct. Such evidence may consist of, but is not limited to, the the surviving spouse's certified statement of the fact. (38 U.S.C. 103(d); sec. 5, Pub. L. 91–376)

**§§ 3.205, 3.206, 3.207, 3.208, 3.210, 3.211, 3.212, 3.213, 3.214, and 3.215 [Amended]**

9. In §§ 3.205, 3.206, 3.207, 3.208, 3.210, 3.211, 3.212, 3.213, 3.214, and 3.215 add the following cross reference after the section or at the end of the existing cross references:

**Cross Reference:** Evidence other than evidence of service. See § 3.204

[FR Doc. 87–11665 Filed 5–21–87; 8:45 am]
BILLING CODE 8320-01-M

## POSTAL SERVICE

## 39 CFR Part 111

## Second-Class In-County Rates

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends § 482.1, Domestic Mail Manual, to provide express notice that publishers are responsible for ensuring that all second-class in-county postal rates claimed are correct and that all copies qualify for the rates claimed. Requirements which had been proposed for submission of additional information to the Postal Service to establish compliance are not adopted .

**EFFECTIVE DATE:** August 7, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ernest Collins, (202) 268–5316.

**SUPPLEMENTARY INFORMATION:** On March 14, 1986, the Postal Service published for comment a proposed change in section 482, Domestic Mail Manual, to require publishers of second-class publications to file a Form 3541–B at the time of mailing (50 FR 8857–8859). Interested persons were invited to submit written comments concerning the proposed change by April 14, 1986.

The proposed change in procedures was to facilitate the enforcement of the additional statutory restrictions of Pub. L. No. 99–190 (described below) that were placed on the copies that can be mailed at second-class in-county rates, which are preferred rates supported by appropriations. It was believed that the change would help the Postal Service to determine at the time of mailing whether copies of an issue qualify for mailing at the second-class in-country rates, and thus to avoid the creation of postage deficiencies by publishers who incorrectly claim the in-county rates at the time of mailing.

A Continuing Resolution for Fiscal Year 1986, Pub. L. No. 99–190, established new requirements for in-

county second-class rates of postage. It specified that copies of an issue of a second-class publication could qualify for the rates only if the total paid circulation of such issue was less than 10,000 copies, or if the number of paid copies of such issue distributed within the county of publication was at least two more than one-half of the total paid circulation of such issue. In addition, it specified that during a calendar year the total weight of nonsubscriber copies mailed at the in-county rates might not exceed 10 percent of the weight of subscribers' copies of the publication mailed at the in-county rates.

Written comments were received from one trade association and four individuals. All respondents opposed requiring the completion of an additional form to establish or certify eligibility for the in-county rates.

Two commenters suggested that the reporting requirements be incorporated in an existing form. One commenter stated that the proposed form appeared to be a burden for the publications that do qualify for the in-county rates, and that the burden should be directed instead toward those publications which are unqualified or have doubtful qualifications. One commenter suggested that the Postal Service simply require the publisher to sign an affidavit stating that the issue qualifies for in-county rates. One commenter stated that many items of information requested on the proposed Form 3541–B were no longer needed because the subsequent passage of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, significantly changed the requirements from those that were in the Continuing Resolution, Pub. L. 99–190.

Current § 411.32 Domestic Mail Manual, which became effective April 20, 1986, contains the applicable provisions of Pub. L. 99–272:

*411.32 In-County rates.*

.321 Subscriber Copies. In-county rates apply to subscribers' copies of any issue of a second-class publication (except a requester publication) when they are entered within the county of publication for delivery to addresses within that county if either of the following conditions is met:

a. The total paid circulation of such issue is less than 10,000 copies.

b. The number of copies of such issue distributed within the county of publication is at least one more than one-half of the total paid circulation of such issue.

.322 Nonsubscriber Copies. During a calender year, the total number of nonsubscriber copies mailed at the in-county rates may not exceed 10 percent of the number of the subscribers' copies of the publication mailed at the in-county rates.

In order to determine at the time of mailing whether copies of an issue of a second-class publication can qualify for in-county rates under these new restrictions, the Postal Service must rely on information maintained and furnished by the publisher. This reliance is complicated by the fact that qualification for in-county rates is based on the total circulation of an issue, regardless of method. When a mailer distributes copies of a second-class publication at postage rates other than second-class rates, or by means outside the mailstream such as newspaper carriers, newsstands, or news agents, the Postal Service has no way to determine at the time of mailing how many copies are distributed outside the mailstream, how many copies are nonsubscribers' copies, and where the copies are distributed, whether within or outside the county of publication. The Postal Service periodically verifies the circulation of a randomly-selected issue of each second-class publication, but is is not feasible for the Postal Service to verify all issues of every second-class publication.

The Postal Service recognizes that the enactment of Pub. L. 99–272 has modified the types of information necessary to establish a publication's eligibility for in-county rates. In particular, the 10 pecrent limitation on in-county nonsubscriber copies is now based on the number, not the weight, of in-county subscribers' copies. The Postal Service also desires, to the extent consistent with responsible financial practices, to minimize the official paperwork burden imposed on publishers. After consideration of the comments received in response to its proposed rule, the Postal Service believes that this objective can be attained by proper screening by the mailer to assure that mailings are entitled to the rates claimed, and by a closer, and in some cases more frequent, scrutiny by the Postal Service of the record already maintained by publishers, coupled with diligent enforcement of the penalties for supplying false information to secure more favorable postage rates.

Accordingly, instead of requiring a new form to be completed for each mailing, the Postal Service is adding at the end of § 482.1 of the Domestic Mail Manual the following sentence: "The publisher is responsible for ensuring that all postal rates claimed on Form 3541 or 3541–A are correct and that all copies qualify for the rates claimed." This is consistent with the commenters' request that no new forms be required and the suggestion that mailers certify that a mailing qualifies for the rates claimed. The forms are being revised to require certification that the information submitted is accurate and truthful and that the matter submitted for mailing qualifies for the rates of postage claimed.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

CHAPTER 4—SECOND-CLASS MAIL

* * * * *

PART 480—PAYMENT OF POSTAGE

In 482, revise 482.1 to read as follows:

482 Mailing Statement (See Exhibit 482).

*482.1 Computing postage.*

Second-class postage is computed on Form 3541, *Statement of Mailing-Second-Class Publications* or Form 3541–A, *Statement of Mailing-Second-Class (Requester) Publications.* These mailing statements must be submitted by the publisher with the first mailing of each issue, except that postmasters will, upon request, authorize publishers of publications which are regularly printed on sheets of uniform weight to submit one mailing statement at the end of each calendar month for mailings made during that month. The publisher is responsible for ensuring that all postal rates claimed on Form 3541 or 3541–A are correct, and that all copies qualify for the rates claimed.

A transmittal letter making this change in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87-11758 Filed 5-21-87; 8:45 am]

BILLING CODE 7710-12-M

BEST COPY AVAILABLE

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6646

[AK-960-07-4220-10; A-062396]

## Partial Revocation of Public Land Order No. 3776 for Selection of Lands by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order insofar as it affects 43.3 acres of national forest land withdrawn for use by the Forest Service, Department of Agriculture as the administrative site for the Maybeso Experimental Forest. This action makes the land available for selection by the State of Alaska, if the land is otherwise available. If the land is not selected by the State, this order opens the lands to the mining laws.

EFFECTIVE DATE: May 22, 1987.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2571, 43 U.S.C. 1701, 1714(a), it is ordered as follows:

1. Public Land Order No. 3776, dated August 10, 1965, which reserved land in the Tongass National Forest for an administrative site for the Maybeso Experimental Forest, is hereby revoked as to the following described lands:

Tongass National Forest

*Maybeso Experimental Forest Administrative Site; Cooper River Meridian, AK*

Located within Section 4, T. 74 S., R. 84 E., and Section 33, T. 73 S., R. 84 E. more specifically described as:

Commencing at U.S. Coast and Geodetic Triangulation Station "FLEA" located at latitude 55°26'30.282" N., and longitude 132°37'30.258" W., proceed N. 57°19'38" W., 69.40 chains to W.C.M.C. for corner No. 1, U.S. Survey No. 6640, thence N. 9°25' W. 1.06 chains to a point on the south right-of-way of the Hollis Highway which is corner No. 1, the true point of beginning of this description:

thence N. 9°25' W., 34.62 chains to corner No. 2, identical to corner No. 2 of PLO No. 3776;

thence N. 86°15' W., 10.10 chains to corner No. 3, identical to corner No. 3 of PLO No. 3776;

thence S. 10°20' W., approximately 20 chains to a point 1 chain past the centerline of the Hollis Highway on the south right-of-way of the highway which is corner No. 4;

thence approximately S. 42°50' E. approximately 12.5 chains to a point which is S. 47°10' W. 1 chain from corner No. 3 of U.S. Survey 6640, said point is corner No. 5;

thence a curve curving to the left having a radius of 8.06 chains and an arc distance of approximately 9.12 chains and closing on corner No. 1, the true point of beginning.

The area described contains approximately 43.3 acres.

2. Subject to valid existing rights, the land described above is hereby made available for selection by the State of Alaska under the provisions of section 6(a) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, *et seq.*; 48 U.S.C. prec. 21, if such land is otherwise available.

3. Under the provisions of section 6(g) of the Alaska Statehood Act, supra, the State of Alaska is provided a preference right of selection for the land herein described for a period of ninety-one (91) days from the date of publication of this order. Any land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest reservation and any other withdrawals of record.

4. At 10:00 a.m. on Aug. 21, 1987, subject to valid existing rights, the provisions of existing withdrawals and the requirement of applicable laws, the land described in paragraph one above will be opened to such forms of disposition as may by law be made of national forest lands, including location and entry under the United States mining laws. Appropriation of any land described in this order under the general mining laws prior to the date and the time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

J. Steven Griles,

*Assistant Secretary of the Interior.*

May 11, 1987.

[FR Doc. 87-11575 Filed 5-21-87; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6647

[AK-932-07-4220-10; F-013883, F-014046]

## Revocation of Public Land Order Nos. 1491 and 1641 for Selection of Lands by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two public land orders (PLO's) insofar as they affect approximately 1,015.10 acres of public land withdrawn for military purposes. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. The land will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, pursuant to PLO 5187, as amended.

EFFECTIVE DATE: May 22, 1987.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 1491, dated September 9, 1957, and PLO No. 1641, dated May 22, 1958, as corrected, which withdrew land for use by the military, are hereby revoked insofar as they affect the following described lands:

Fairbanks Meridian

T. 1N., R. 1 W.,

Sec. 32, that portion of the W½W½, described by metes and bounds as follows:

Starting at the common corner of Sections 29, 30, 31, and 32 thence 900 feet South following the section line between Sections 32 and 31 to the point of beginning;

Thence 1,000 feet East on a line parallel to the section line common to Sections 29 and 32;

Thence 2,400 feet South following a line parallel to the section line common to Sections 31 and 32;

Thence 1,000 feet West on a line parallel to the section line common to Sections 29 and 32;

Thence 2,400 feet North following the section line common to Sections 31 and 32 to the point of beginning.

T. 2 N., R. 2 W.,
Sec. 22, E½E½SE¼;
Sec. 23, S½N½, S½NE¼NW¼, S½N½NE¼, SW¼, S½SE¼, W½NW¼SE¼;
Sec. 24, S½NW¼NW¼, SW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, W½SW¼, NW¼SE¼SW¼;
Sec. 25, NW¼NW¼NW¼;
Sec. 26, N½NE¼NE¼, NW¼NE¼, N½NW¼, NW¼SE¼NW¼;
Sec. 27, NE¼NE¼NE¼, SE¼NE¼, S½NE¼NE¼, N¼NE¼SE¼.

The lands described aggregate approximately 1,015.10 acres.

2. Subject to valid existing rights, the lands described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat., 2437–2430.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described above for a period of ninety-one (91) days from the date of publication of this order, if the lands are otherwise available. Any of the lands described herein that are not selected by the State of Alaska will continue to be subject to the terms and conditions of PLO 5187, as amended, and other withdrawals of record.

J. Steven Griles,
*Assistant Secretary of the Interior.*
May 11, 1987.
[FR Doc. 87–11574 Filed 5–21–87; 8:45 am]
BILLING CODE 4310–JA–M

## 43 CFR Public Land Order 6644

[OR–943–07–4220–10; OR–36355]

## Public Land Order No. 6624, Correction; Withdrawal of Public Lands for the Burns Junction Administrative Site, Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order corrects an error in the land description contained in Public Land Order No. 6624 of September 18, 1986.

**EFFECTIVE DATE:** May 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6624 of September 18, 1986, in FR Doc. 86–21673, published on page 34086 in the issue of Thursday, September 25, 1986, is hereby corrected as follows:

In paragraph 1 under T. 32 S., R. 40 E., Sec. 18, which reads "E½NW¼, N½NE¼SE¼" is corrected to read "E½NW¼, N½NE¼SW¼,."

April 30, 1987.
J. Steven Griles,
*Assistant Secretary of the Interior.*
[FR Doc. 87–11629 Filed 5–21–87; 8:45 am]
BILLING CODE 4310–JA–M

## 43 CFR Public Land Order 6645

[OR–943–07–4220–10; GP–07–085; OR–38420(WASH)]

## Public Land Order No. 6632, Correction; Withdrawal of Mineral Estate for Protection of the Department of Energy Hanford Site

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order corrects errors in the land description contained in Public Land Order No. 6632 of November 17, 1986.

**EFFECTIVE DATE:** May 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6632 of November 17, 1986, in FR Doc. 86–26717, published on page 43003 in the issue of Friday, November 28, 1986, is hereby corrected as follows:

In paragraph 1 under T. 13 N., R. 25 E., which reads "Sec. 20, lots 1 and 3, and E½NW¼." is corrected to read "Sec. 30, lots 1 and 2, and E½NW¼."

April 30, 1987.
J. Steven Griles,
*Assistant Secretary of the Interior.*
[FR Doc. 87–11630 Filed 5–21–87; 8:45 am]
BILLING CODE 4310–33–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 652

[Docket No. 61109–7026]

## Atlantic Surf Clam and Ocean Quahog Fisheries

**AGENCY:** National Marine Fisheries Services (NMFS), NOAA, Commerce.

**ACTION:** Notice of adjustment in surf clam fishing time.

**SUMMARY:** NOAA issues this notice to increase allowable fishing time for surf clams to 30 hours for the second quarter of 1987 for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. This action will provide flexibility to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

**EFFECTIVE DATE:** April 5 through July 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bruce Nicholls, 617–281–3600 ext. 263.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. The Regional Director during the first quarter of 1987 decided, with the unanimous support of the Council, to allocate fishing time by quarter and allow each operator the maximum flexibility possible to schedule that time to his best advantage. That program was continued in the second quarter with some modifications required to promote enforcement.

At the start of the second quarter, 24 hours of fishing time was allocated, with the provision that, should harvest rates allow, additional time would be provided. Landings from the fishery through May 2, 1987, indicate that an additional 6 hours can be allocated. Thus, by this notice, each operator is allotted a total of 30 hours of fishing time for the second quarter. That time must be scheduled in five 6-hour fishing periods, which, counting those already taken since April 5, may be taken on any five separate days during the normal surf clam fishing times. The procedures specified at the beginning of the second quarter (52 FR 10763, April 3, 1987) for selection and confirmation of fishing periods continue to apply.

### Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

### List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: May 19, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 87-11805 Filed 5-19-87; 4:31 pm]

BILLING CODE 3510-22-M

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## 50 CFR Part 661

[Docket No. 70485-7085]

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of 1987 fishery management measures and request for comments; correction and clarification.

**SUMMARY:** This document clarifies ambiguous language and corrects an error which appeared in Table 1 of the final 1987 fishery management measures for the ocean salmon fisheries off the coasts of Washington, Oregon, and California, which appear in the **Federal Register** on May 6, 1987 (52 FR 17422).

**EFFECTIVE DATE:** May 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Rolland A. Schmitten at 206-526-6150; or E. Charles Fullerton at 213-514-6196.

In rule document 87-10247 beginning on page 17264, the following corrections are made to Table 1 under the "Restrictions and exceptions" heading, in the last column:

1. On page 17268 for the area from Cape Falcon to Cascade Head, during the all-species season beginning July 15, in the last column, line 13 of that entry after "chinook-only loads" insert "south of Cape Falcon. See footnote [b] for restrictions on deliveries north of Cape Falcon."

2. On the same page for the area from Cascade Head to Cape Perpetua, during the all-species season beginning July 15, in the last column, line 9 of that entry after "chinook-only loads" insert "south of Cape Falcon. See footnote [b] for restrictions on deliveries north of Cape Falcon."

3. On page 17269 for the area from Cape Blanco to Point Delgada, during the all-species season beginning June 1, in the last column, line 4 of that entry "2 coho" should read "1 coho".

4. On the same page, for the area from Cape Blanco to Point Delgada, under the subheading Trinidad Head to Punta Gorda, in the last column, line 1 of that entry after "Barbless Hooks." the sentence should read "Open only within 6 nautical miles of the shore." On line 3 of this same entry after "this" insert "period as".

5. On the same page, footnote [b], line 4 after "that" insert "chinook". On line 5 after north insert "of Cape".

### Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

Authority: 16 U.S.C. 1801 *et seq.*

### List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: May 18, 1987.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.*

[FR Doc. 87-11804 Filed 5-19-87; 4:32 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 98
Friday, May 22, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 226

### Child Care Food Program; Documentation and Verification of Eligibility

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Department proposes to amend the regulations governing the documentation and verification of eligibility for free and reduced price meal benefits in the Child Care Food Program (CCFP). Specifically, the Department proposes: (1) To provide automatic free meal eligibility and simplified verification procedures for children from households receiving food stamps or from "assistance units" receiving Aid to Families with Dependent Children (AFDC) benefits; (2) to make several discretionary changes to the procedures governing the application for free or reduced price benefits and verification of eligibility in the CCFP; and (3) to eliminate "institution visits" as a means of verifying applicants' income information. The first action is necessary to implement the categorical eligibility provisions mandated by the School Lunch and Child Nutrition Amendments of 1986; and discretionary changes proposed in this rulemaking are necessary to bring about greater consistency between the documentation and verification procedures used in the CCFP and the comparable procedures used in the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and the Special Milk Program (SMP).

**DATE:** To be assured of consideration comments must be postmarked on or before July 21, 1987.

**ADDRESS:** Comments should be addressed to Mr. Lou Pastura, chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756–3620.

**SUPPLEMENTARY INFORMATION:**

#### Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million; will not cause a major increase in costs or prices for program participants, individual industries, Federal agencies, State or local government agencies, or geographic regions; and will have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Pursuant to this review, Ms. S. Anna Kondratas, the Acting Administrator of the Food and Nutrition Service, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in §§ 226.9, 226.15, 226.17, 226.19 and 226.23 of this proposed rule have been approved by the Office of Management and Budget (OMB) under clearance 0584–0055.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate, and any subsequent notices that may apply.)

#### Background

The School Lunch and Child Nutrition Amendments of 1986, as reflected in Pub. L. 99–500 and Pub. L. 99–591, mandate changes in the procedures used to document and verify eligibility for free meal benefits under the CCFP and other child nutrition programs. Applications for free and reduced price meal benefits are taken in child care centers and outside-school-hours care centers where meal reimbursements to institutions are based on the income eligibility of participating children. In addition, such applications are taken in day care homes when providers wish to receive meal benefits for their own children. This proposed rulemaking deals with the mandated changes in the CCFP; a separate rulemaking action will incorporate the mandatory changes in the free meal application procedures for the NSLP, the SBP, and the SMP. Because the Department is proposing a number of other discretionary changes to the application/verification process, this rule is issued as a proposed rule. Implementation of the categorical eligibility requirements of Pub. L. 99–500 and Pub. L. 99–591 is nondiscretionary. Commenters should be aware of the mandatory nature of these provisions.

This rulemaking also proposes several discretionary changes to the procedures used to document and verify eligibility for free or reduced price meal benefits in the CCFP. Since the publication of a final rulemaking on documentation and verification of eligibility in the CCFP (50 FR 19305, May 8, 1985), changes to the procedures for documenting and verifying eligibility in the school programs (the NSLP, SBP, and SMP) have created areas of inconsistency between the CCFP and these programs. These inconsistencies present problems in 39 of the 53 States or territories offering the CCFP, where the same State agency administers both the CCFP and the school programs. For these State agencies, administrative efficiency could be improved, administrative costs and burden lowered, and cross-training of State personnel facilitated by the elimination of unnecessary procedural discrepancies between the CCFP and the school programs.

#### Proposed Changes to Application and Documentation Requirements

##### *I. Categorical Eligibility and Application Requirements*

Section 323 of Pub. L. 99–500 and Pub. L. 99–591 provide categorical eligibility

for free CCFP meal benefits to children from households receiving food stamps of from "assistance units" receiving AFDC benefits, provided that the latter benefits are not made available to assistance units with income greater than 130 percent of the poverty level. Currently, no State's AFDC "need standard" or AFDC payments exceeds 130 percent of poverty. Consequently, AFDC recipiency will automatically qualify children to receive free meal benefits in all States and territories where the CCFP operates. The law's categorical eligibility provisions are intended to simplify free meal application procedures for children from households whose need for food assistance has already been established by their participation in other Federal assistance programs. The categorical eligibility provisions will necessitate several changes to the way in which childrens' eligibility for free meal benefits is determined in the CCFP. Currently, households are required to provide, at a minimum, information which includes the names of all household members, the social security numbers of all adult household members, and the total income received by the household. Eligibility determinations for free or reduced price meals are based on the household's total income as compared to the Department's income Eligibility Guidelines. The Department recognizes, however, that this definition of "household" is not entirely consistent with the definition of "household" utilized in the Food Stamp Program or the definition of an "assistance unit" in the AFDC program.

The Department believes that the law's intent was to provide simplified application procedures as well as automatic free meal eligibility for children from households or assistance units receiving food stamp or AFDC benefits. Therefore, the Department proposes to authorize institutions to begin accepting abbreviated applications from households on behalf of children who are members of food stamp households and AFDC assistance units. In order to establish these children's eligibility in the simplest manner possible, the Department proposes to authorize institutions to accept current food stamp or AFDC case numbers to document a child's eligibility without requiring any additional information concerning other household members or income. In such cases, eligibility for free meals will be determined on a "child" rather than a "household" basis. The decision to apply for free meal benefits for a child by providing a food stamp or AFDC case number would rest entirely with the household.

However, if an application for free or reduced price benefits is made for any child who is *not* a member of a food stamp household or an AFDC assistance unit, even if that child resides in a household with other children who are food stamp or AFDC recipients, such application must include income information for *all* household members. In these cases, the value of welfare benefits paid in cash (such as AFDC) shall be counted as income in determining the child's eligibility for free or reduced price benefits; however, as provided in section 8(b) of the Food Stamp Act (Pub. L. 95–113), the value of food stamp benefits shall *not* be counted as income. Accordingly, this rulemaking proposes to add definitions of an "AFDC assistance unit" and a "Food Stamp household" to § 226.2 so that special application and verification procedures for them can be easily described in § 226.23. Thus, whenever special procedures apply to food stamp households or AFDC assistance units, the food stamp household and AFDC assistance unit are specifically mentioned in the regulatory language.

In addition, this rulemaking proposes to amend §§ 226.23(c) and 226.23(d) in regard to pricing institutions' free and reduced price policies and media releases and to amend § 226.23(e) in regard to the required methods of establishing eligibility for free meal benefits in the CCFP. These latter changes merely reflect the special procedures which apply to children who are categorically eligible for free meal benefits. Finally, a number of other conforming amendments have been made (see §§ 226.4, 226.6, 226.9, 226.11, 226.15, 226.17, 226.18 and 226.19 below) to reflect that, instead of basing free and reduced price eligibility on the Secretary's income standards alone, there is now an additional means of determining eligibility for some (i.e., categorically eligible) free meal recipients.

The Department believes that these new procedures will provide simplified procedures for households applying on behalf of those children who are designated as automatically eligible in Pub. L. 99–500 and Pub. L. 99–591. At the same time, the continuation of current application procedures for households on behalf of all other children will ensure that automatic eligibility is not inadvertently extended to persons other than those specified by these laws. In order to assist in implementing the new application procedures under this rule, the Department will revise and reissue the handbook entitled "Verification Guidance in the Child Care Food Program."

*II. Discretionary Changes to Applications and Documentation Requirements*

In addition to those changes necessitated by the implementation of categorical eligiblity, the Department is also proposing several discretionary changes to the procedures governing application and documentation of eligibility for free and reduced price DDFP benefits. These changes are designed to eliminate unnecessary procedural differences between the CCFP and the school programs.

The most important of these proposed changes will affect applicants for free or reduced price CCFP meal benefits by requiring that they provide more information concerning their household income. Because most households applying for these benefits participate in non-pricing programs (i.e., institutions in which there is no separate identifiable charge made for meals served to enrolled children), it was originally thought that obtaining more income information was unnecessary since households paying one overall child care fee would have no incentive to under-report their income. Thus, the final CCFP documentation and verification regulation published in 1985 required only that households list all members and their total current income.

In contrast, the regulations governing applications for free and reduced price benefits in the school programs (see § 245.6(a)) require applicants to provide "total household income and the income received by each household member identified by source of income." Thus, each household member receiving income must show specifically how that income is obtained (e.g., as wages, interest and dividends, cash welfare payments, pensions, etc.). This provides a more complete and accurate picture of household income than if only total income is requested.

Requiring CCFP applicants to report income by source will accomplish three purposes. First, the 39 States agencies currently administering both the CCFP and the school programs will not be able to use a single, standard application form for all of the child nutrition programs which they administer. Second, requesting income by source is helpful to both applicants and institutions as a reminder of the various types of income that must be counted in determining eligibility for free or reduced price meal benefits. Although

applicants in non-pricing situations may have little personal incentive to under-report income, requiring households to report income by source should produce more accurate income information, thus minimizing any inadvertent under-reporting which could lead to overpayment of meal benefits by the Department to institutions. Third, under current regulations, State agencies are permitted to verify income information on applications in non-pricing programs just as they are required to do in pricing situations (see § 226.23(h)(1)). However, without a listing of income by source for each household member, it is not likely that the State would be able to verify eligibility easily and accurately for free or reduced price benefits in non-pricing situations if they chose to do so. Accordingly, this rulemaking proposes to amend the definition of "Documentation" in § 226.2 and to amend § 226.23(e)(11)(D) to require that applicants provide income by source on their free and reduced price applications.

Along with this proposed change, it is also necessary to add to the regulations a requirement that the CCFP application include a certification that the information provided is true and correct and a statement that deliberate misrepresentation may subject the applicant to prosecution under applicable State or Federal laws. Since some applicants participate in pricing programs and are subject to the same type of verification procedures used in the school programs, the certification and statement are necessary to ensure the veracity of the eligibility information provided. In addition, the certification and statement will also help to underscore the importance of providing full and accurate information to those households participating in a non-pricing program and filling out the application for free and reduced price benefits. Finally, the addition of the certification and statement will make the CCFP and school programs applications fully compatible, thus allowing States to use a single application for all of the Child Nutrition Programs. Accordingly, this rulemaking proposes to amend § 226.23(e)(11)(G) by adding such a certification to the free and reduced price application.

**Proposed Changes to Verification Requirements**

In addition to mandating automatic free meal eligibility for children in food stamp households and AFDC assistance units, section 323 of Pub. L. 99–500 and Pub. L. 99–591 also mandated that proof of receipt of food stamp or AFDC benefits be accepted as adequate verification of eligibility to receive free meal benefits. Thus, regardless of whether a household applies for free meal benefits under the categorical eligibility procedures described in proposed § 226.23(e)(iii), it may verify its eligibility for free meals by documenting that the child is a member of a household or assistance unit that is currently authorized to participate in the Food Stamp or AFDC Program. Such documentation would generally consist of a Notice of Eligibility, issued by the appropriate agency, which would show that the child was a member of a household or assistance unit currently certified to participate in either the Food Stamp or AFDC Program. To emphasize the requirement that current certification to participate in these programs be properly verified, the regulatory language specifies that program identification cards are not acceptable sources for verification unless they contain an expiration date. This provision re-states current policy concerning this issue.

Accordingly, the Department proposes to amend § 226.23(h)(2) to incorporate the simplified verification methods mandated for Food Stamp and AFDC recipients by the School Lunch and Child Nutrition Act Amendments of 1986. In addition, the definition of "verification" in § 226.2 is slightly modified to incorporate specific procedures pertaining to categorically eligible participants and to include specific examples of the ways in which income eligibility may be verified for other pricing program participants.

The Department also proposes to make two discretionary changes to the regulations governing verification of eligibility for free or reduced price benefits in the CCFP. The first of these changes involves re-organizing the material presented in § 226.23(h)(2). This material has been divided into a number of topical paragraphs to facilitate reference to the specific aspects of verification in pricing programs being discussed in § 226.23(h)(2).

The second discretionary change involves the types of sources which States may use to verify eligibility for free or reduced price meal benefits. Currently, State agencies may conduct their required verification of applicants in pricing programs by using any combination of four verification sources: Written evidence; collateral contacts; institution conferences; and systems of records. This rulemaking proposes to eliminate "institution conferences", which involve the State requesting the adult member(s) of a household to visit the institution in order to discuss the information contained on the application. The Department believes that, although informal discussions between parents and State reviewers may expedite the verification process, such "institution conferences" do not constitute a means of independently verifying the information provided on the application. A similar provision was removed from the school programs regulations when final verification rules were issued. Accordingly, the Department proposes to amend § 226.23(h)(2) to limit the sources of verification information to those utilized in the school programs: written evidence; collateral contacts; and systems of records.

**List of Subjects in 7 CFR Part 226**

Day care, Food assistance programs, Grant programs—Health, Infants and Children, Surplus agricultural commodities.

Accordingly, for the reasons set forth in the preamble, the Department is proposing to amend 7 CFR Part 226 as follows:

## PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 is revised to read as follows:

**Authority:** Secs. 323, 328, and 361, Pub. L. 99–500 (42 U.S.C. 1758, 1760, and 1766); secs. 323, 328, and 361 of Pub. L. 99–591 (42 U.S.C. 1758, 1760, and 1766); secs. 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 171779), unless otherwise noted.

2. In § 226.2:

a. New definitions of "AFDC Assistance Unit" and "Food Stamp Household" are added in alphabetical order.

b. The definitions of "Documentation", "Free Meal", and "Verification" are revised.

The revisions and additions specified above read as follows:

**§ 226.2 Definitions.**

* * * * *

*AFDC Assistance Unit* means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income standards for free meals under this part.

* * * * *

*Documentation* means the completion of the following information on a free

and reduced price application: (a) Names of all household members; (b) social security number of each adult household member or an indication that an adult household member does not possess one; (c) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; and (d) the signature of an adult member of the household. Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced price application: the names and food stamp or AFDC case numbers for the child(ren); and the signature of an adult member of the household.

* * * * *

*Food Stamp Household* means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

*Free meal* means a meal served under the Program to (a) a child from a family which meets the income standard for free school meals, or to (b) a child who is automatically eligible for free meals by virtue of food stamp or AFDC recipiency. Regardless of whether the child qualifies for free meals by virtue of (a) or (b), neither the child nor any member of his family shall be required to pay or to work in the food service program in order to receive a free meal.

* * * * *

*Verification* means: (a) A review of the information reported by institutions to the State agency regarding the eligibility of enrolled children for free or reduced price meals; and (b) in addition, for a pricing program, confirmation of eligibility for free or reduced price benefits under the Program. Verification for a pricing program shall include confirmation of income eligibility or current certification to participate in the Food Stamp or AFDC Program. Such verification may be accomplished by examining information (e.g., wage stubs, etc.) provided by the household; other sources of income as specified in § 226.23(h)(2)(iv); and, at State discretion, any other information required on the application which is defined as documentation in § 226.2.

**§ 226.4 [Amended]**

3. In § 226.4, paragraphs (b)(1) through (b)(3) and (b)(5) through (b)(9) are amended by removing the word "income" and adding in its place the word "eligibility."

**§ 226.5 [Amended]**

4. In § 226.6:

a. Paragraph (b)(2) is amended by removing the words "family size and income" and adding in their place the word "eligibility."

b. Paragraph (e)(7) is amended by removing the words "Secretary's income."

**§ 226.9 [Amended]**

5. In § 226.9, paragraph (b)(1) is amended by removing the words "family-size and income" and adding in their place the word "eligibility".

**§ 226.11 [Amended]**

6. In § 226.11, paragraph (c)(1) is amended by removing the words "from families meeting the family-size and income standards for" and adding in their place the words "eligible to receive".

7. In § 226.15:

a. Paragraph (e)(2) is amended by adding a third sentence.

a. Paragraph (e)(3) is amended by adding a third sentence.

The additions specified above read as follows:

**§ 226.15 Institution provisions.**

* * * * *

(e) * * *

(2) * * * However, when a household applies for free meal eligibility on behalf of a child who is a member of a food stamp household or AFDC assistance unit in accordance with § 226.23(e)(1)(iii), such information shall consist of the food stamp or AFDC case number of the child(ren) for whom free meal benefits are being claimed.

(3) * * * However, when a provider's own child is a member of a food stamp household or an AFDC assistance unit and free meal benefits have been applied for in accordance with § 226.23(e)(1)(iii), such information shall consist of the child(ren)'s food stamp or AFDC case number.

* * * * *

7. In § 226.17, paragraph (b)(17) is amended by adding a second sentence to read as follows:

**§ 226.17 Child care center provisions.**

* * * * *

(b) * * *

(7) * * * However, for households applying for free meal eligibility on behalf of children from food stamp households or AFDC assistance units in accordance with § 226.23(e)(1)(iii), child care centers shall collect and maintain food stamp or AFDC case numbers in lieu of family-size and income information and social security numbers.

* * * * *

**§ 226.18 [Amended]**

8. In § 226.18, paragraph (e)(3) is amended by removing the words "meet the family-size income standards for" and adding in their place the words "are eligible to receive".

9. In § 226.19, paragraph (b)(9)(i) is revised to read as follows:

**§ 226.19 Outside-school-hours care center provisions.**

* * * * *

(b) * * *

(9) * * *

(i) Documentation of enrollment for all children, including information sufficient to establish the eligibility of children classified as free or reduced price meal receipients;

* * * * *

10. In § 226.23:

a. Paragraph (c)(2) is amended by changing the semi-colon to a period and adding a second sentence.

b. Paragraph (d) is amended by revising the fourth sentence.

c. Paragraph (e)(1)(i) is amended by adding a fifth sentence.

d. Paragraph (e)(1)(ii) is amended by adding the words, "Except as provided in paragraph (e)(1)(ii) of this section," at the beginning of the first sentence.

e. Paragraphs (e)(1)(ii)(D) and (e)(1)(ii)(G) are revised.

f. Paragraph (e)(1)(ii)(F) is amended by revising the first and fifth sentences.

g. Paragraph (e)(1)(iii) is revised.

h. Paragraphs (e)(2)(iii) and (e)(2)(vii) are revised.

i. Paragraph (h)(2) is revised.

j. Paragraph (h)(5) is amended by changing the words "paragraph (h)(2)(i)" to read "paragraph (h)(2)(vii)", and by changing the words "paragraph (h)(2)(ii)" to read "paragraph (h)(2)(viii)".

The revisions and additions specified above read as follows:

**§ 226.23 Free and reduced price meals.**

* * * * *

(c) * * *

(2) * * * Such methods will ensure that applications are accepted from households on behalf of children who are members of AFDC assistance units or food stamp households;

* * * * *

(d) * * * The release issued by institutions which charge separately for meals shall announce the availability of free and reduced price meals to children

meeting the approved eligibility criteria, and shall also announce that children who are members of AFDC assistance units or food stamp households are automatically eligible to receive free meal benefits. * * *

(e)(1) * * *

(i) * * * However, such forms and materials shall state that, if a child is a member of a food stamp household or an AFDC assistance unit, the child is automatically eligible to receive free CCFP meal benefits, subject to completion of the application as described in § 226.23(e)(1)(iii) of this part.

(ii) * * * (D) The total current household income and the income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources.) * * * (F) a statement which includes substantially the following information: "Section 9 of the National School Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced price meals. * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. * * * (G) the signature of an adult member of the household immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(iii) If they so desire, households applying on behalf of children who are members of food stamp households and AFDC assistance units may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide:

(A) The names and food stamps or AFDC case numbers of the child(ren) for whom automatic free meal eligibility is claimed; and

(B) The signature of an adult member of the household below the certification provided in § 226.23(e)(ii)(G). In accordance with § 226.23(e)(ii)(F), if a food stamp or AFDC case number is provided, it may be used to verify the current food stamps or AFDC certification for the child(ren) for whom free meal benefits are being claimed. Whenever households apply for benefits for children not receiving food stamp or AFDC benefits, they must apply in accordance with the requirements set forth in § 226.23(e)(1)(ii).

(2) * * *

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete "documentation" as defined in § 226.2.

* * * * *

(vii) An explanation that households receiving free and reduced price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income of over $50 per month or $600 per year or, in the case of households that provided a food stamp or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp or AFDC Programs.

(h) * * *

(2) *Verification procedures for pricing programs.* (1) For pricing programs, in addition to the verification procedures described in paragraph (h)(1) of this section, State agencies shall also conduct verification of the income or food stamp/AFDC case number information provided on the approved application for free and reduced price meals. At State agency discretion, verification may also include confirmation of other information required on the application.

(ii) State agencies shall perform verification on a random sample of no less than 3 percent of the approved free and reduced price applications in an institution which is a pricing program.

(iii) Households shall be informed in writing that they have been selected for verification and that they are requird to submit the requested verification information to confirm their eligibility for free or reduced price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. Households selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp or AFDC Program, they may submit proof of that certification in lieu of income information. In these cases, such proof shall consist of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp or AFDC Programs. An identification card for either program is not acceptable as verification unless it contains an expiration date. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(iv) Sources of verification may include written evidence, collateral contacts, and systems of records.

(A) *Written evidence* shall be used as the primary source of verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, letters from employers, and current certification to participate in the Food Stamp or AFDC Program. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

(B) *Collateral contact* is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made in person or by phone and shall be authorized by the household. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. The household shall be informed that its eligibility for free or reduced price meals shall be terminated if it refuses to choose one of these options.

Termination shall be made in accordance with paragraph (h)(2)(vii) of this section. Collateral contacts could include employers, social service agencies, and migrant agencies.

(C) *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income, family size, or food stamp/AFDC certification which is maintained by other government agenices and to which the State agency can legally gain access, may be used to confirm a household's eligibility for CCFP meal benefits. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure.

(v) Verification by State agencies of receipt of food stamps or AFDC benefits shall be limited to a review to determine that the period of Food Stamp or AFDC Program eligibility is current. If the food stamp or AFDC certification period is found to have expired, or if the household's certification has been terminated, the household shall be required to document their income eligibility.

(vi) The State agency may work with the institution to verify the documentation submitted by the household on the application; however, the responsibility to complete the verification process may not be delegated to the institution.

(vii) If a household refuses to cooperate with efforts to verify, or the verification of income indicates that the household is ineligible to receive benefits or is eligible to receive reduced benefits, the State agency shall require the pricing program institution to terminate or adjust eligibility in accordance with the following procedures. Institution officials shall immediately notify families of the denial of benefits in accordance with paragraphs (e)(4) and (5) of this section. Advance notification shall be provided to families which receive a reduction of termination of benefits 10 calendar days prior to the actual reduction or termination. The 10-day period shall begin the day the notice is transmitted to the family. The notice shall advise the household of:

(A) The change; (B) the reasons for the change; (C) notification of the right to appeal the action and the date by which the appeal must be requested in order to avoid a reduction or termination of benefits; (D) instructions on how to appeal; and (E) the right to reapply at any time during the year. The reasons for ineligibility shall be properly documented and retained on file at the institution.

(viii) When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing:

(A) Households which have been approved for benefits and which are subject to a reduction or termination of benefits later in the same year shall receive continued benefits if they appeal the adverse action within the 10-day advance notice period; and

(B) Households which are denied benefits upon application shall not receive benefits.

* * * * *

Dated: May 18, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87-11686 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-30-M

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## Animal and Plant Health Inspection Service

## 9 CFR Parts 1 and 2

**[Docket No. 87-028]**

## Animal Welfare; Definition of Terms and Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of extension of comment period for proposed rule.

**SUMMARY:** This document extends the comment period by 30 days until July 1, 1987, for proposed rules entitled "Animal Welfare: Definition of Terms and Regulations." This action will provide interested persons with additional time to prepare comments on the proposed rule.

**DATE:** Comments must be postmarked on or before July 1, 1987.

**ADDRESS:** Send written comments to Dr. R.L. Crawford, Animal Care Staff, Veterinary Services, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 84-010 and 84-027. Comments received may be inspected in Room 756 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Senior Staff Veterinarian, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, Hyattsville, MD 20782, Area Code (301) 436-7833.

**SUPPLEMENTARY INFORMATION:** On March 31, 1987, the Animal and Plant Health Inspection Service published in the **Federal Register** (52 FR 10292-10322, Docket Number 84-010 and 84-027), a proposal which would amend Animal Welfare—Definition of Terms (9 CFR Part 1) and the Regulations (9 CFR Part 2) in order to comply with the amendment to the Animal Welfare Act contained in Pub. L. 99-198, "The Food Security Act of 1985" enacted December 23, 1985, and to expand the list of definitions and revise the current regulations in order to facilitate enforcement of the Act.

The proposed rule provided that written comments would be accepted for 60 days until June 1, 1987. We have received 13 requests that we extend the comment period for 60 days to provide interested persons with adequate time to prepare comments.

We believe it is in the public interest to extend the comment period; however, in order to proceed with the rulemaking process in a timely manner, we have determined that a 30-day extension is appropriate. Accordingly, we will extend this comment period for 30 days until July 1, 1987.

Done in Washington, DC, this 19th day of May, 1987.

**William W. Bulech,**

*Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87-11728 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-34-M

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## 9 CFR Parts 160 and 161

**[Docket No. 87-054]**

## Standards for Accredited Veterinarians

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Withdrawal of a proposed rule.

**SUMMARY:** We are withdrawing a proposed rule that would have prohibited accredited veterinarians from performing official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest. We received over 600 comments on this proposal, most in opposition. Based on our review of these comments, we have decided to withdraw the proposed rule. We are currently studying alternatives. If we determine at a later date that regulatory action is necessary, we will publish a new proposal.

FOR FURTHER INFORMATION CONTACT:
Dr. W.E. Ketter, Chief Staff Veterinarian, Regulatory Communications and Compliance Staff, Veterinary Services, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-8595.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 24, 1986 [51 FR 46685-46687, Docket No. 86-048], we published a proposal to prohibit accredited veterinarians from performing official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest. We received over 600 comments on the proposed rule, most in opposition.

Although it is impractical here to discuss all of the comments we received, following are some of the most frequently repeated assertions: (1) The proposed prohibition would create an economic hardship for accredited veterinarians and their clients who live in sparsely populated areas because, in these areas, only one accredited veterinarian is available for many miles and, in many cases, he or she is related to many of his or her clients; (2) family relationships are no more likely than business relationships to create conflicts of interest or the appearance of conflict of interest; (3) our proposal would not stop any dishonest accredited veterinarian from continuing to abuse his or her office, but would only hurt the majority of honest accredited veterinarians; (4) our proposed prohibition should be limited to accredited veterinarians performing official duties associated with cattle intended for export; (5) we should withdraw the proposal and, instead, strengthen our rules for identifying and penalizing those who engage in illegal activities; and (6) our proposal is unnecessary because our current regulations allow us to penalize those accredited veterinarians who commit illegal activities in performing their official duties.

Our options now are: (1) To adopt as a final rule the proposed rule as published; (2) to publish a final rule that would be a modification of the proposed rule based on the comments we received; (3) to withdraw the proposed rule and publish a new proposal; and (4) to withdraw the proposed rule and take no regulatory action.

Based on our review of all the comments, we have decided not to adopt the proposed rule as published. Furthermore, because of the strong interest shown in the proposed rule, we believe that accredited veterinarians and other interested parties should have an opportunity to comment on any changes we would make. We have therefore decided against option (2). That leaves options (3), and (4). Because of the number of comments we received, and because many of the comments require additional study, we have not yet decided on a specific course of action. Under most circumstances, we would wait until that decision was made before publishing it in the Federal Register. However, because of the interest in this proposal, and because either option (3) or (4) would involve a withdrawal, we are withdrawing the proposed rule now. If we determine at a later date that regulatory action is necessary, we will publish a new proposal. In the meantime, we welcome public comment on how to prevent conflict of interest or the appearance of conflict of interest.

Done at Washington, DC, this 19th day of May, 1987.

William W. Bulsch,

*Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.*

[FR Doc. 87-11725 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 86-ACE-04]

## Proposed Alteration of Control Zone and Transition Area—Garden City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the control zone and the 700-foot transition area at Garden City, Kansas. The Holcomb Non-Directional Beacon (NDB), located northwest of the Garden City Municipal Airport, has been decommissioned, and the instrument approach procedure has been canceled. As a result, this proposed action is necessary to redefine controlled airspace at Garden City, Kansas.

DATES: Comments must be received on or before June 29, 1987.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:
Dale Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

### Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

### Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### Discussion

The FAA is considering amendments to Subpart F, §71.171, of the Federal Aviation Regulations [14 CFR 71.171] and Subpart G, § 71.181 of the Federal Aviation Regulations [14 CFR 71.181], by altering the control zone and 700-foot transition area at Garden City, Kansas. The Holcomb Non-Directional Beacon (NDB), located northwest of the Garden

City Municipal Airport, has been decommissioned, and the instrument approach procedure canceled. Therefore, the control zone and transition area at this location are being redefined as set forth in this proposed airspace action. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C, dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffice procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones, Transition areas.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.171 as follows:

**Garden City, Kansas [Revised]**

Within a 5-mile radius of the Garden City Municipal Airport (lat. 37°55'36"N, long. 100°43'29"W), and within 2-½ miles each side of the 004° radial of the Garden City VORTAC extending from the 5-mile radius zone to 8 miles north of the VORTAC; and within 2-½ miles each side of the 171° radial of the Garden City VORTAC extending from the 5-mile radius zone to 5 miles south of the VORTAC.

3. Additionally, by amending § 71.181 as follows:

**Garden City, Kansas [Revised]**

That airspace extending upward from 700 ft. above the surface within a 7-mile radius of the Garden City Municipal Airport (lat. 37°55'36"N, long. 100°43'29"W), and 4-½ miles east and 9-½ miles west of the 004° radial of the Garden City VORTAC extending from the 7-mile radius to 18-½ miles north of the VORTAC.

Issued in Kansas City, Missouri, on May 14, 1987.

T.R. Beckloff, Jr.,

*Manager, Air Traffic Division.*

[FR Doc. 87-11696 Filed 5-21-87; 8:45 am]

BILLING CODE 4910-13-M

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 68**

**[DoD Directive 1342.xx]**

## Provision of Free Public Education for Eligible Dependent Children

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule would implement Pub. L. 81-874, as amended ("section 6"), and section 505(c) of Pub. L. 97-35. Section 6 authorizes the establishment of "arrangements" for the education of certain federally-connected children when prescribed conditions are met. These arrangements may include the establishment of schools within the United States and specified possessions. The proposed rule establishes Department of Defense policies and prescribed procedures for the Secretary of Defense to make arrangements for the provision of free public education for eligible dependent children of United States military personnel and federally employed civilian personnel.

**DATE:** Comments must be received by June 22, 1987.

**ADDRESS:** Dependents Support Policy Directorate, (FSE&S) (FM&P), Room 3C965, The Pentagon, Washington, DC 20301-4000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hector O. Nevarez, 202-697-0481.

**SUPPLEMENTARY INFORMATION:** Assistant Secretary of Defense (Force Management and Personnel) Memorandum, Education of Handicapped Students in Section 6 Schools Operated by the Department of Defense," December 10, 1986 is hereby cancelled.

**List of Subjects in 32 CFR Part 68**

Education, Dependents.

Accordingly, Title 32 is proposed to be amended by adding Part 68 as follows:

**PART 68—PROVISIONS OF FREE PUBLIC EDUCATION FOR ELIGIBLE DEPENDENT CHILDREN PURSUANT TO SECTION 6, PUBLIC LAW 81-874, AS AMENDED**

Sec.

68.1 References.
68.2 Purpose.
68.3 Applicability and scope.
68.4 Policy.
68.5 Definitions.
68.6 Responsibilities.
68.7 Section 6 school board elections.
68.8 Effective date and implementation.

Authority: 20 U.S.C. 241

**§ 68.1 References.**

(a) Section 505(c), Pub. L. 97-35, August 13, 1981 (20 U.S.C. 241 note).

(b) Public Law 874, 81st Congress, section 6, as amended (20 U.S.C. 241).

(c) Sections 1009, 1031(a), Pub. L. 95-561, (20 U.S.C. 241).

(d) Memorandum of Understanding Between The Department of Defense and The Department of Education, August 16, 1982.

(e) Notice entitled, "Process for Section 6 Schools Operated by the Department of Defense," Federal Register, Vol. 49, No. 82, page 18028, April 26, 1984.

(f) [Reserved]

(g) Public Law 94-142, as amended (20 U.S.C. 1401 *et seq.*).

(h) DoD Directive 1020.1, "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense," March 31, 1982.

(i) DoD 7220.9-M, "DoD Accounting Manual," October 22, 1981.

(j) DoD Directive 7600.6, "Audit of Nonappropriated Funds and Related Activities," January 4, 1974.

(k) DoD Directive 5500.7, "Standard of Conduct," May 6, 1987.

**§ 68.2 Purpose.**

This part establishes policies and procedures for the Department of Defense to make arrangements (as defined in § 68.5) for the provision of free public education to eligible children as authorized by § 68.1 (a), (b), and (c). This part implements references (a), (b), (d), and (e).

**§ 68.3 Applicability and scope.**

(a) The provisions of this part apply to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies.

(b) The provisions apply to schools operated by the Department of Defense within the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the

Northern Mariana Islands, and the Virgin Islands.

**§ 68.4 Policy.**

(a) In conformity with the provisions of § 68.1 (a), (b), and (c), it is the policy of the Department of Defense that dependent children of United States military personnel and federally employed civilian personnel residing on federal property be educated, whenever suitable, in schools operated and controlled by local public school systems.

(b) When it is not suitable for the children of United States military personnel and federally employed civilian personnel to attend a locally operated public school, the Secretary of Defense, or his designee, shall make arrangements for the free public education of such children. These arrangements may include the establishment of schools within the United States and specified possessions.

(c) The arrangements for such free public education will be made by the Secretary of Defense, or designee, either with a local educational agency, or with the head of a Federal Department or Agency, whichever in the judgment of the Secretary, or designee, appears to be more appropriate. If such an arrangement is made with the head of a Federal Department or Agency, either it must administer the property on which the children to be educated reside or, if the local schools are unavailable to the children of members of the Armed Forces on active duty because of official State or local action and no suitable free public education can be provided by a local educational agency, the Department or Agency must have jurisdiction over some or all of such children.

(d) Section 6 School Arrangements, by law, are required, to the maximum extent practicable, to provide educational programs comparable to those being provided by local public educational agencies in comparable communities in the state where the Section 6 School Arrangement is located. If the Section 6 School Arrangement is outside the Continental United States, Alaska, or Hawaii, it shall, to the maximum extent practicable, provide educational programs that are comparable to the free public education provided by the District of Columbia.

(e) Section 6 School Arrangements operated by the Department of Defense under § 68.1(a), (b), and (d) will comply, except as provided below, with § 68.1(g). If the state or other jurisdiction upon which a Section 6 School Arrangement's educational comparability is based has adopted a "state plan" for the implementation of § 68.1(g), that Section 6 School Arrangement shall provide its handicapped students a free appropriate public education, as defined in § 68.1(g), that, except as follows, is consistent with such state plan. To satisfy this responsibility, Section 6 School Arrangements will conform to the substantive and procedural provisions of § 68.1(g), except for those relating to impartial due process hearings in section 1415 of § 68.1(g). The procedures of such Section 6 School Arrangements for the identificaton, assessment, and programming of handicapped students in special education and related services must conform to the comparable state's regulatory guidelines. Complaints with respect to the identification, evaluation or educational placement of, or the free appropriate public education provided to, students in such a Section 6 School Arrangement who are or may be handicapped shall be investigated under enclosure 5 of DoD Directive 1020.[1] (§ 68.1(h)). If the state upon which a Section 6 School Arrangement's comparability is based has not adopted a state plan, the state plan of an adjacent state must be followed. If no adjacent state has adopted a state plan, the state plan of another state that is similar to the state in which the Section 6 School Arrangement is located shall be selected.

(f) After consultation with the Military Departments, funds will be made available for the operation and maintenance of Section 6 School Arrangements, on either a direct or reimbursable basis, to the comptroller at the respective military installation. These funds will remain separate and distinct from the funds of the individual Military Services.

(g) Attendance in Section 6 School Arrangements within the Continental United States, Alaska, and Hawaii is limited to eligible dependent children under § 68.1(b). Guidance, consistent with § 68.1(b) and (c), for student eligibility for Section 6 School Arrangements located outside the continental United States, Alaska, and Hawaii shall be established by the Military Department concerned after coordination and approval by the General Counsel, DoD, or designee, and the ASD(FM&P), or designee.

(h) Where a member of the Armed Forces is transferred or retires and his/her family moves after the start of the school year from on-base (post) housing, his/her children shall be permitted to continue in attendance at the Section 6 School Arrangement for the remainder of the school year during which the transfer or retirement occurred, providing the child is residing with a parent or legal guardian or another person acting *in loco parentis*.

(i) Where a member of the Armed Forces is assigned to an installation on which there is a Section 6 School Arrangement and is assigned on-base (post) family housing which is expected to be available for occupancy and to be occupied within ninety (90) school days from the reporting date, his/her children may be permitted to attend the school while residing in an area adjacent to such federal property. Transportation for children attending a Section 6 School Arrangement under these conditions is the responsibility of the parent.

(j) Senior students in good standing, residing with a parent or legal guardian or another person acting *in loco parentis*, may complete the current school year regardless of residence. For the purposes of this paragraph, "senior students" means persons in a high school who ordinarily would be graduated during the current school year.

**§ 68.5 Definitions.**

*Adjacent Area.* A geographic location that is next to or near by federal property. This would normally include a student commuting area within 45 minutes of the federal property, unless another area identified as adjacent is specifically designated by an administrator of the federal property, i.e., the installation commander.

*Arrangements.* Actions taken by the Secretary of Defense to provide a free public education to dependent children pursuant to Pub. L. 874 through paragraph (a) Section 6 School Arrangements or paragraph (b) Section 6 Special School Arrangements of the following:

(a) Section 6 School Arrangement—A situation whereby a Department of Defense operated school is established on federal property to provide a free public education for eligible children or, if not established on such property, the eligible child resides on such property.

(b) Section 6 Special Arrangement—An agreement, pursuant to § 68.1(b), between the secretary of defense, or designee, the ASD(FM&P), or designee, or the Secretary of a Military Department, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attention: Code 301, 5801 Tabor Avenue, Philadelphia PA 19120.

dependent children of United States military personnel and federally employed civilian personnel. Arrangements result in partial or total federal funding to the local public education agency for the educational services provided.

*Comparability.* Comparability is the act of demonstrating that the educational services and programs, school plant and facilities, budget and per pupil expenditures, and all associated activities and services provided in Section 6 School Arrangements for the free public education of eligible dependent children are, to the maximum extent practicable, equivalent in quality and availability to those provided by school districts in the State in which the Section 6 School Arrangement is located or the district(s) to which it is compared. Each Section 6 School Arrangement, in coordination with the Military Department concerned, will provide an annual statement, with supporting documentation, which demonstrates its comparability.

*Dependent Children.* Children who reside on federal property, or are minor dependents who are the children, stepchildren, adopted children, or wards of United States military sponsors of federally employed sponsors, or who are residents in the households of bona-fide sponsors who stand *in loco parentis* to such individuals and who receive one-half or more of their support from such sponsors, and are within the age limits for which the applicable state provides free public education.

*Federal Property.* Real property which is owned or leased by the United States.

*Free Public Education.* Education which is provided at public expense, under public supervision and direction, and without charge to the sponsor of a child, and which is provided at the elementary or secondary school level of the applicable state. The term does not include any education provided beyond grade 12, except in the case of state policy regarding the education of handicapped students, nor does it preclude the collecting of tuition from an agency responsible for the assignment of a child's sponsor resulting in the attendance of the child of a Section 6 School Arrangement.

*Local Educational Agency.* A board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a state. Such term includes any State Agency which directly operates and maintains facilities for providing free public education.

*Parent.* Includes a legal guardian or another person standing *in loco parentis.*

*State.* A state, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

*State Educational Agency.* The officer or agency primarily responsible for the state supervision of public elementary and secondary schools.

### § 68.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel (ASD FM&P))*, or designee, shall:

(1) Ensure the development of policies and procedures for the operation, management, budgeting (in accordance with guidance provided by the ASD (Comptroller)), construction and financing of Section 6 Schools and for Section 6 Special Arrangements.

(2) Ensure that arrangements are made for the free public education of eligible dependent children in the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, under the provisions of § 68.1 (a), (b), and (c).

(3) Ensure the establishment of elected School Boards in Section 6 School Arrangements operating under the provisions of § 68.1 (a) and (b).

(4) Ensure that the free public education being provided is, to the maximum extent practicable, of the kind and quality as that being provided by comparable public school districts in the state in which the Section 6 School Arrangement or Section 6 Special Arrangement is located or, if outside the Continental United States, Alaska, and Hawaii, as that being provided by the District of Columbia Public Schools.

(5) Ensure the establishment of audit procedures for reviewing funding of Section 6 School Arrangements and Section 6 Special Arrangements pursuant to § 68.1 (a), (b), and (c).

(6) Ensure timely and accurate preparation of budget execution reports and full compliance with accounting requirements in accordance with DoD 7220.9–M [2] (§ 68.1(i)).

(7) Approve guidance for student eligibility established by a Military Department for Section 6 School Arrangements located outside the Continental United States, Alaska, and Hawaii.

(b) The *General Counsel of the Department of Defense, (GC, DOD)*, or designee, shall:

(1) Approve guidance established by a Military Department for student eligibility for Section 6 School Arrangements located outside the Continental United States, Alaska, and Hawaii.

(2) Provide legal advice for the implementation of this part.

(c) The *Secretaries of the Military Departments*, or designees, shall:

(1) Comply with this part, including policies and procedures promulgated under § 68.5(a)(1), and ensure that Section 6 School Arrangements on their respective installations or under their jurisdiction are maintained and operated in accordance with this part.

(2) Submit to the Assistant Secretary of Defense (FM&P) an operation and maintenance budget, a procurement budget, and a military construction budget for each Section 6 School Arrangement and each Section 6 Special Arrangement, in accordance with OSD guidelines, as required.

(3) Ensure that there is an elected School Board at each Section 6 School Arrangement.

(4) Ensure the establishment of a means for employing personnel and, as required, for programming manpower spaces for such employees, all subject to applicable laws and regulations.

(5) Ensure that each Section 6 School Arrangement has an up-to-date set of guidelines for operation.

(6) Ensure that nonappropriated funds and related activities of Section 6 School Arrangements are reviewed in accordance with DoD Directive 7600.6 [1] (§ 68.1(j)).

(7) Establish guidance, consistent with § 68.1 (b) and (c), for student eligibility to attend Section 6 School Arrangements located outside the Continental United States, Alaska, and Hawaii and operated by the Military Department concerned. Gain the approval of the ASD(FM&P), or designee, and the General Counsel, DoD, or designee, before implementation.

(c) The *Installation Commanders*, or in the case of Puerto Rico, the *Area Coordinator* shall:

(1) Provide resource and logistics support at each Section 6 School Arrangement located on the installation.

(2) Ensure the establishment and operation of an elected School Board at the Section 6 School Arrangement.

(3) Ensure the implementation of DoD Directive 5500.7 [1] § 68.1(k)) and that all Section 6 School Arrangement personnel

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[2] Copies may be obtained, at cost from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[1] See footnote 1 to § 68.3(e)

are counseled and familiarized with its contents.

(4) Provide installation staff personnel to advise the School Board in budget, civil engineering, law, personnel, procurement, and transportation matters, when appropriate.

(5) Disapprove actions of the School Board which conflict with applicable statutes or regulations. Disapprovals must be in writing to the School Board and shall note the specific reasons for the disapprovals. A copy of this action shall be forwarded through channels of the Military Department concerned to the ASD(FM&P), or designee.

(6) Ensure the safety of students traveling to-and-from the on-base (post) school(s).

(7) Ensure that comptrollers and other support elements comply with the authorized execution of funds for Section 6 School Arrangements in accordance with the budget approved by the ASD(FM&P), or designee.

(d) The *Section 6 Dependents School Board* shall:

(1) Review and monitor school expenditures and operations, subject to audit procedures established under this Part and consistent with § 68.1 (a) and (b).

(2) Conduct meetings, approve agendas, prepare minutes, and conduct other activities incident to and associated with the provisions of Section 6 School Arrangements.

(3) Recruit and select a Superintendent for the Section 6 School Arrangement under the Board's jurisdiction.

(4) Provide the Superintendent regular constructive written and oral evaluations of the Superintendent's performance in an ongoing effort which should be linked to goals established by the Board with the assistance of the Superintendent.

(5) Provide the Superintendent the benefit of the Board's counsel in matters related to individual Board members' expertise.

(6) Ensure the attendence of the Superintendent or his/her designee at all School Board meetings.

(7) Review and approve school budgets prior to submission to the ASD(FM&P), or designee, through channels of the Military Department concerned.

(8) Establish policies and procedures for the operation and administration of the Section 6 School Arrangement(s).

(9) Provide guidance and assistance to the Superintendent in the execution and implementation of School Board policies, rules and regulations.

(10) Consult with the Superintendent on pertinent school matters, as they arise, that concern the school and on which the School Board may take action.

(11) Channel communications with school employees that require action through the Superintendent, and refer all applications, complaints, and other communications, oral or written, to the Superintendent in order to assure the appropriate processing of such communications.

(12) Establish policies and procedures for the effective processing of, and response to, complaints.

(e) *The Section 6 School Arrangement Superintendent* shall:

(1) Serve as the Chief Executive Officer to the School Board to ensure the implementation of the Board's policies, rules, and regulations.

(2) Attend all School Board meetings, or send a designee when unable to attend, sitting with the Board as a non-voting member.

(3) Provide advice and recommendations to the School Board and the installation Commander or Area Coordinator on all matters and policies concerning the operation and administration of the school system.

(4) Recruit, select, and assign all professional and support personnel required for the school system. Teachers and school administrators shall hold, at a minimum a current and appropriate teaching or supervisory certificate, respectively, from any of the 50 states, Puerto, Rico, the District of Columbia, or the Department of Defense Dependents Schools system. Additional certification may be necessary to comply with respective state or national accreditation association standards and requirements.

(5) Determine retention or termination of employment of all school personnel in accordance with applicable federal regulations.

(6) Organize, administer, and supervise all school personnel to ensure that the curriculum standards, specialized programs, and level of instruction are comparable to accepted educational practices of the state or the District of Columbia, as appropriate.

(7) Be responsible for the fiscal management and operation of the school system to include execution of the budget as approved by the ASD(FM&P), or designee, and in accordance with School Board guidance.

(8) Ensure the evaluation of all school employees on a regular basis.

(9) Ensure the maintenance of all school buildings, grounds, and property accounting records.

(10) Ensure the procurement of necessary school supplies, equipment, and services.

(11) Ensure the preparation of the annual Section 6 School Arrangement budget as approved by the School Board, and as required by the ASD(FM&P), or designee, and the Military Department concerned, in accordance with guidance provided by the ASD (Comptroller), or designee.

(12) Ensure the maintenance of a professional relationship with local and state school officials.

(13) Ensure, wherever, practicable, the maintenance of accreditation of the Section 6 School Arrangement by the state and/or appropriate regional accreditation agencies.

(14) Operate the school consistent with applicable federal statutes and regulations, and with state statues and regulations that are made applicable to the Section 6 School Arrangement by this part.

(15) Ensure the submission of an annual statement to the Military Department concerned demonstrating comparability of the free public education provided in the Section 6 School Arrangement(s).

(16) Ensure the implementation of the local state plan or regulatory guidelines for compliance with § 68.1(g). If the state upon which a Section 6 School Arrangement's comparability is based has not adopted a state plan, the responsible Section 6 School System Superintendent will choose the state plan of an adjacent state to follow: If no adjacent state has adopted a state plan, the Superintendent will select the state plan of another state that is similar to the state in which the Section 6 School Arrangement is located.

### § 68.7 Section 6 school board elections.

A School Board for a Section 6 School Arrangement, as authorized by section 1009(d) of § 68.1(c), shall be empowered to oversee school expenditures and operations, subject to audit procedures established by the Secretary of Defense and the other provisions of § 68.1(b). The Secretary of the Military Department concerned shall:

(a) Ensure that the School Board is composed of a minimum of three (3) members elected only by parents or legal guardians (military or civilian) of students who are attending the school at the time of the election. School Board members will serve on the School Board for a term covering one school year.

(b) Ensure the following procedures with respect to a School Board election are observed:

(1) The parents must have adequate notice of the time and place of the election.

(2) The election must be conducted by secret ballot. The candidate(s) receiving the greatest number of votes shall be elected as Board member(s).

(3) Personnel employed in the school system may not be Board members, except for the Superintendent, who serves as a non-voting member.

(4) Nominations must be by petition of parents of students who are attending the school at the time of the election.

(5) The election process shall provide for the continuity of School Board opertions.

(6) Vacancies that occur among members of the elected School Board shall be filled to complete the current term by a special election.

(7) The responsibility for developing the plans for and conducting the School Board election rests with the Superintendent and the School Board.

**§ 60.9 Effective date and implementation.**

This part is effective June 22, 1987. The Secretary of each Military Department will forward two copies of the Military Department's implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

**Linda M. Lawson,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

May 19, 1987.

[FR Doc. 87-11727 Filed 5-20-87;9:58 am]

BILLING CODE 3810-01-M

## VETERANS ADMINISTRATION

**38 CFR Part 4**

**Evaluation of Hearing Loss**

**AGENCY:** Veterans Administration.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On pages 17607 through 17611 of the **Federal Register** of May 11, 1987, the Veterans Administration (VA) published a notice of proposed rulemaking to amend the Schedule of Rating Disabilities (38 CFR Part 4) to implement a new method for evaluating the degree of disability attributable to hearing loss. This notice is to correct two typographical errors and to publish a conforming amendment to Appendix C which was inadvertently omitted from the proposed rule.

**EFFECTIVE DATE:** The correction is effective May 11, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233-3005.

**List of Subjects in 38 CFR Part 4**

Handicapped, Pensions, Veterans.

Dated: May 12, 1987.

**Priscilla B. Carey,**

*Chief, Directives Management Division.*

FR Document 87-10514, published in the **Federal Register**, of May 11, 1987 on pages 17607 through 17611 is corrected as follows:

1. On page 17607 under **SUPPLEMENTARY INFORMATION**, the citation in the first sentence which reads "39 CFR 4.85 through 4.87a" is corrected to read "38 CFR 4.85 through 4.87a".

**§ 4.85 [Corrected]**

2. On page 17608, in 38 CFR 4.85(c), in the third line remove the word "an" and add, in its place, the word "and".

**Appendix—[Amended]**

3. Appendix C—Alphabetical Index of Disabilities is revised by removing Deafness—Table II, diagnostic code numbers 6277 through 6297 and inserting new information to read as follows:

DEAFNESS

| | | |
|---|---|---|
| 0% | Evaluation based on Table VII | 6100 |
| 10% | Evaluation based on Table VII | 6101 |
| 20% | Evaluation based on Table VII | 6102 |
| 30% | Evaluation based on Table VII | 6103 |
| 40% | Evaluation based on Table VII | 6104 |
| 50% | Evaluation based on Table VII | 6105 |
| 60% | Evaluation based on Table VII | 6106 |
| 70% | Evaluation based on Table VII | 6107 |
| 80% | Evaluation based on Table VII | 6108 |
| 90% | Evaluation based on Table VII | 6109 |
| 100% | Evaluation based on Table VII | 6110 |

[FR Doc. 87-11378 Filed 5-21-87; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Ch. II**

**[Docket No. 51079-7030]**

**United States Standards for Grades of Breaded Catfish Products and Surimi-based Products; Determination**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of determination.

**SUMMARY:** On the basis of comments received, NOAA announces its decision that at this time there is insufficient interest to warrant the development of U.S. Standards for Grades of Breaded Catfish Products. NOAA has also decided, on the basis of comments received and other information, to table development of U.S. Standards for Grades of Surimi-based Products.

**ADDRESS:** Gail Blaufarb, National Fishery Products Program, Office of Utilization Research, National Marine Fisheries Service, Washington, DC 20235.

**FOR FURTHER INFORMATION CONTACT:** Gail Blaufarb, 202-673-5374.

**SUPPLEMENTARY INFORMATION:** In response to two petitions received from Singleton Seafood Company, Tampa, Florida, and International Multifoods, Motley, Minnesota, NMFS published a **Federal Register** notice on November 22, 1985, (50 FR 48236) inviting written comments on the desirability and scope for two new voluntary U.S. Standards for Grades: breaded catfish products and surimi-based products. To allow receipt of a broad base of comments, the notice was distributed to the major fish processing, trade and marketing associations, as well as current and potential users of the commodities.

Breaded Catfish Products: We received two comments on the proposal to develop a grade standard for breaded catfish products. One was from a USDC inspector saying there was no need for a specific standard for these products. The other was a letter from Singleton Seafood reiterating their original letter requesting the standard. We have decided that at this time there is not sufficient interest to warrant a U.S. Grade Standard for breaded catfish products.

Surimi-based Products: We received six comments on the proposal to develop U.S. Standards for Grades for Surimi-based products. These comments offered a range of perspectives on the proposal. Four commenters said we should establish U.S. Grade Standards for surimi-based products. One of these four specified imitation crab legs, chunk style crab meat and scallops as the products for which standards are needed.

One commenter recommended that the grade standard apply to the surimi base material rather than the finished analog products. The other commenter stated that although grade standards may eventually be needed for surimi-based products, their development at

this time would be premature. They felt that grade standards could limit future developments by U.S. food processors.

Two of the six commenters discussed the quality criteria which needed to be measured. Neither discussed how to measure these criteria.

Other events in the U.S. surimi industry have been considered by this agency in deciding on the desirability of U.S. Grade Standards for surimi analog products. One is the question of "nutritional equivalency."

The Food and Drug Administration has stated that surimi-based products must be labeled "imitation" when formulated to resemble a "natural" product (crab legs, scallops) and when they are not nutritionally equivalent in certain nutrients to the natural product. NMFS is now funding a Saltonstall-Kennedy research project which will determine the nutritional profiles of certain natural products which surimi-based products are formulated to resemble. This project is expected to be completed in late 1987. At the same time, U.S. surimi processors are exploring the feasibility of fortifying surimi-based products to achieve "nutritional equivalency."

The Alaska Fisheries Development Foundation is drafting a Standard of Identity for surimi. Another S–K project is exploring the feasibility of making surimi from menhaden. In short, the U.S. surimi industry is in a dynamic state at this time. There is no consensus on what the significant quality criteria are, or how to measure them.

For these reasons, NMFS has decided to table development of U.S. Grade Standards for surimi-based products at this time. We feel that once a number of these issue is resolved, the resulting information can be incorporated into a comprehensive U.S. Standard for Grades.

Date: May 14, 1987.

**Joseph W. Angelovic,**

*Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.*

[FR Doc. 87–11806 Filed 5–21–87; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 99
Friday, May 22, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and Place: Americana Host Inn, 4751 Lindle Road, Harrisburg, PA 17171.

Status: Open.

Matters To Be Considered: On June 3, the Commission will hold a public hearing to receive testimony on the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm.

Written Statements May Be Filed Before or After the Meeting With: Contact person named below.

Contact Person for More Information: Mr. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave., NW., Suite 1100, Washington, DC 20005, [202] 638–5222.

Signed at Washington, DC, this 15th day of May 1987.

David R. Dyer,

*Executive Director, National Commission on Dairy Policy.*

[FR Doc. 87–11735 Filed 5–21–87; 8:45 am]

BILLING CODE 3410-XX-M

### Agricultural Marketing Service

### Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

*Name:* Flue-Cured Tobacco Advisory Committee.

*Date:* June 4, 1987.

*Time:* 1 p.m.

*Place:* Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Caroline 27605.

*Purpose:* To discuss the establishment of marketing areas, submarketing areas, selling schedules, opening dates, and related matters for the 1987 flue-cured marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, DC 20250, (202) 447–2567, prior to the meeting. Written statements may be submitted to the Committee prior to or at the meeting.

Dated: May 19, 1987.

J. Patrick Boyle,

*Administrator.*

[FR Doc. 87–11864 Filed 5–21–87; 8:45 am]

BILLING CODE 3410-02-M

### Forest Service

### Transfer of Administrative Jurisdiction; Laurel River Lake, KY

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of joint interchange of lands.

**SUMMARY:** On February 13, 1987, and January 2, 1987, the Secretary of the Army and the Secretary of Agriculture respectively signed a joint interchange order agreeing to the transfer of administrative jurisdiction of 639.50 acres, more or less, from the Department of Agriculture to the Department of the Army and 2,195.45 acres of fee lands, more or less, and 1.65 acres, more or less, of perpetual road easements from the Department of the Army to the Department of Agriculture within and adjacent to the exterior boundaries of the Daniel Boone National Forest, Kentucky. The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656, 16 U.S.C. 505a, 505b) has been met. A copy of the Joint Order, as signed, appears at the end of this notice.

**EFFECTIVE DATE:** The order is effective upon publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** James M. Dear, Lands Staff, Room 1010–RP–E, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, Telephone: (703) 235–2403.

George M. Leonard,

*Associate Chief.*

May 15, 1987.

**Department of Defense**

**Department of the Army**

*Laurel River Lake, Kentucky, Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands*

By virtue of the authority vested in the Secretary of the Army and in the Secretary of Agriculture by the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b), it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit A attached hereto and made a part hereof, which lands are within and adjacent to the exterior boundaries of the Daniel Boone National Forest, Kentucky, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture, subject to outstanding rights or interests of records and to such continued use by the Corps of Engineers of all of these lands which are necessary for the construction, operation, and maintenance of the Laurel River Lake Project for its intended purposes, other than for recreation and fish and wildlife, as presently authorized, or as may be authorized in the future, including but not limited to the right to perform timber clearing, flooding of the area, to construct and maintain transmission lines and utilities, access roads, and to make improvements in the aid of navigation, and to a reservation by the Corps of Engineers of the privilege of outgranting rights-of-way for power and telephone lines, for roads and pipelines, etc., as necessary to accommodate such facilities as are relocated and reconstructed under certain relocation contracts between the Corps of Engineers and owners thereof. Administration of licenses, permits, and easements for such outgrants of right-of-way will be transferred to the Secretary of Agriculture.

(2) The National Forest lands described in Exhibit B, attached hereto and made a part hereof, which are a part of the Daniel Boone National Forest, Kentucky, are hereby transferred from the jurisdiction of the Secretary of

Agriculture to the jurisdiction of the Secretary of the Army, subject to outstanding rights or interests of records, and to a reservation for and on behalf of the United Stated Forest Service of the right of access and use necessary to provide for required other uses of National Forest lands, including the sale of timber therefrom prior to clearing activities of the Corps of Engineers and access for National Forest purposes.

(3) Pursuant to Section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to the laws applicable to the Department of the Army lands comprising the Laurel River Lake Project. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereby subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of date of publication in the Federal Register.

Dated: February 13, 1987.

John O. Marsh,

*Secretary of the Army, Jr.*,

Dated: January 2, 1987.

Richard E. Lyng,

*Secretary of Agriculture.*

EXHIBIT A

Lands transferred from the Secretary of the Army to the Secretary of Agricultural.

The following listed tracts acquired by the Department of the Army for or in connection with the Laurel River Lake project in Whitley and Laurel Counties, Kentucky:

Segment 1—Portion of Tract A, Tracts 114, 115, 116, 117, 118E, 119E, 121
Segment 2—Tracts 202C, 204, 205, 206
Segment 3—Tracts 300, 302C
Segment 4—Tracts 407, 409, 411
Segment 5—Tracts 502, 505, 507C, 509
Segment 6—Tracts 610, 606, 613C, 614C, 620
Segment 7—Tracts 700, 707, 707C, 711, 719–1, 719–2, 720, 722, 723, 724, 726, 727, 728, 731
Segment 8—Tracts 803, 804C, 806C, 808C
Segment 9—Tracts 904, 905, 907–1, 907–2, 911, 912–1, 912–2, 913, 916, 921, 927, 292
Segment 10—Tracts 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1008, 1014–1, 1014–2, 1016, 1018, 1020, 1022, 1024, 1027, 1028, 1030, 1031, 1032, 1033 ,1034, 1035, 1039, 1040, 1041, 1042, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1056, 1062, 1063, Portion of Tract 1037
Mineral Interests—Tracts 130M–1, thru M–17, 131M, 132M, 250M–1 thru M–9, 251M, 252M, 351M, 352M, 650M, 651M, 750M, 750M–1, 750M–2 850M–1 thru M–8, 851M, 951M, 952M, 953M, 954M–1, 954M–2, 1080M, 1081M

The surface lands listed above consist of 2,195.45 acres, more or less, in fee and 1.65 acres, more or less, in perpetual road easements. Legal descriptions and acquisition documents of the transferred tracts and Real Estate Segment Maps depicting their location are on file in the office of the District Engineer, Nashville District, Corps of Engineers, Nashville, Tennessee, and the office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky.

Not all mineral interests in lands of the Laurel River Lake project were owned by the Federal government at the time of their transfer to the Secretary of Agriculture in the previous partial interchange. Those interests have since been acquired by the Secretary of the Army. This final interchange of lands includes (a) all mineral interests acquired for the lands listed above and (b) all mineral interests acquired for project lands previously transferred from the Department of the Army to the Department of Agriculture.

Exhibit B

Lands transferred from the Secretary of Agriculture to the Secretary of the Army.

The following listed tracts acquired by the Department of Agriculture for or in connection with the Daniel Boone National Forest project in Whitley and Laurel Counties, Kentucky:

Portions of Tracts 1371 Ac, 1520i, and 1863 consisting of 639.50 acres, more or less.

Legal descriptions and acquisition documents of the transferred tracts and maps depicting their location are on file in the office of the District Engineer, Nashville District, Corps of Engineers, Nashville, Tennessee; and the Office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky.

[FR Doc. 87–11802 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Quarterly Survey of Residential Alterations and Repairs.

Form Number: Agency—CE–701, CE–702; OMB—0607–0130.

Type of Request: Revision of a currently approved collection.

Burden: 2,700 respondents; 1,800 reporting hours.

Needs and Uses: This survey is needed to upkeep and improve data for a nationwide sample of rental and vacant residential housing units. These statistics are used extensively by the Federal Government in making policy decisions and they become a part of the gross national product. They are also used by the private sector for market analysis and other research.

Affected Public: Individuals or households, state or local governments, businesses or other for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: May 18, 1987.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87–11788 Filed 5–21–87; 8:45 am]

BILLING CODE 3510–07–M

## Bureau of the Census

### Census Advisory Committees of the Black, Hispanic, Asian and Pacific Islander, and American Indian and Alaska Native Populations for the 1990 Census; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), and Office of Management and Budget Circular A–63 of March 1974, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Census Advisory Committees of the Black, Hispanic, Asian and Pacific Islander, and American Indian and Alaska Native Populations for the 1990 Census is in the public interest in connection with the performance of duties imposed on the Department by law.

These committees were originally established in May 1985. The

Department of Commerce last renewed each committee on May 7, 1987.

The committees will continue to provide advice to the Director, Bureau of the Census, on such matters as improving the accuracy of the population count, recommending subject content and tabulations of particular use to all populations, expanding the dissemination of census results to all users of census data, suggesting areas of research, and generally improving the usefulness of the census product.

Each committee will have a balanced representation of 12 members. The committees will continue to report and be responsible to the Director, Bureau of the Census, and will function soley as an advisory body in compliance with the Federal Advisory Committee Act.

The Department of Commerce will file copies of the committees' revised charters with appropriate committees in Congress.

You may address inquiries or comments to Mr. Russell Valentine, Committee Coordinator, Bureau of the Census, Room 3779, FB 3, Washington, DC 20233; telephone (301) 763–5189, or Ms. Suzette Kern, Committee Management Analyst, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–3743.

Dated: May 18, 1987.

**John G. Keane,**

*Director, Bureau of the Census.*

[FR Doc. 87–11807 Filed 5–21–87; 8:45 am]

BILLING CODE 3510–07–M

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## International Trade Administration

**[A–401–803]**

## Certain Stainless Steel Hollow Products From Sweden; Preliminary Determination of Sales at Less Than Fair Value

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that certain stainless steel hollow products (SSHP) from Sweden are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by July 29, 1987.

**EFFECTIVE DATE:** May 22, 1987.

**FOR FURTHER INFORMATION:**
Contact Mary S. Clapp (202) 377–1769 or Gregory C. Borden (202) 377–3003, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Preliminary Determination

We have preliminary determined that SSHP from Sweden are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 167b) (the Act). The margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

### Case History

On October 17, 1986, we received a petition in proper form filed by the Specialty Tubing Group (which was amended to include the United Steelworkers of America on February 6, 1987) on behalf of the U.S. industry producing SSHP. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Sweden are being, or likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on November 7, 1986 (51 FR 33286, November 19, 1986), and notified the ITC of our action.

On November 28, 1986, the ITC determined that there is a reasonable indication that imports of SSHP are materially injuring a U.S. industry (U.S. ITC Pub. No. 1919, December 1986).

On January 6, and January 7, 1987, questionnaires were presented to Sandvik AB (SAB) and Avesta Sandvik Tube AB (AST), respectively, which account for virtually all of the exports to the United States during the period of investigation.

On February 20, 1987, we received a questionnaire response from SAB. On February 23, 1987, we received a questionnaire response from AST. A supplementary response from AST was received on March 5, 1987. We sent deficiency letters to SAB on March 17, 1987, and to AST on March 18, 1987.

On March 5, 1987, petitioners requested a postponement of the preliminary determination. On March 10, 1987, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to May 15, 1987, (52 FR 8089, March 16, 1987).

On April 17, 1987, petitioners alleged that sales of seamless redraw hollows to the Federal Republic of Germany (FRG) were below the cost of production.

### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230. Additionally, all Customs office have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are certain stainless steel hollow products including pipes, tubes, hollow bars and blanks therefor, of circular cross-section, containing over 11.5 percent chromium by weight, as provided for under TSUSA item numbers 610.3701, 610.3727, 610.3741, 610.3742, 610.5130, 610.5202, 610.5229, 610.5230, and 610.5231, and currently classifiable under HS item numbers 7304.41.00–0, 7304.49.00–0, 7306.40.10–0, and 7306.40.50–2.

### Fair Value Comparisons

To determine whether sales of the SSHP in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

We made comparisons on over 60 percent of the sales of the products during the period of investigation, May 1, 1986 through October 31, 1986.

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**United States Price**

For SAB and AST, we based United States price on exporter's sales price (ESP) when those sales were made after importation, in accordance with section 772(c) of the Act. For those sales by SAB and AST to the United States which were made prior to importation, we determined that the merchandise had been purchased from the manufacturer or producer and, therefore, based the United States price on purchase price in accordance with section 772(b) of the Act. A majority of these sales which we have treated as purchase price transactions involved a related U.S. sales agent. We used purchase price for those sales based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price and ESP based on the packed, duty paid, f.o.b. or c.i.f., delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, as appropriate. For ESP sales, we also deducted credit and other expenses normally incurred in selling the merchandise in the United States.

For SAB, the Department additionally deducted the costs presented in the responses which represented those incurred for additional processing to the product sold in the United States by Sandvik Steel Company, Inc. (a subsidiary of SAB).

**Foreign Market Value**

*SAB*

In accordance with section 773(a)(1)(B) of the Act, we determined that there were insufficient home market sales of seamless redraw hollows and finished pipes and tubes to be used as a basis for detetermining foreign market value. The third country market with the largest volume of sales of the most similar merchandise is the FRG. On April 17, 1987, petitioners alleged that third country prices of seamless redraw hollows were below the cost of production. We did not have sufficient time to develop data for purposes of the preliminary determination. The issue will be addressed in the final determination.

We made deductions from delivered prices for discounts and for foreign inland freight betwen Sweden and the FRG. We deducted third country packing costs and added U.S. packing costs. For comparisons to ESP, we made a circumstance of sale adjustment for difference in credit expenses and an offset to indirect selling expenses on the U.S. sales, in accordance with § 353.15(b) of Commerce's regulations.

We found sufficient sales of hollow bar in the home market to form the basis of comparison and used delivered home market prices. We made deductions for inland freight. We deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, we deducted selling expenses incurred on home market sales up to the amount of indirect selling expenses incurred for sales to the U.S. market, as an offset in accordance with § 353.15(c) of our regulations. We made an adjustment for differences in credit terms in accordance with § 353.15 of our regulations.

*AST*

We found sufficient sales in the home market to form the basis of comparison and used delivered home market prices. We made deductions for foreign inland freight and discounts. We deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, AST has claimed no offsets for the selling expenses incurred in the U.S., in accordance with § 353.15(c) of our regulations. We made an adjustment for difference in credit terms in accordance with § 353.15 of our regulations.

Respondents have made claims for differences in quantities, level of trade and physical characteristics. These claims have not been sufficiently quantified. We will seek further information and consider these claims for purposes of the final determination.

*Currency Conversion*

For ESP comparisons, we used the official exchange rate for the date of sales since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

For purchase price comparisons, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

**Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of SSHP from Sweden that are entered, or withdrawn form warehouse, for consumption, on or after the date of publication of this notice in the Federal Register.

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market values of the merchandise subject to this investigation exceed the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

| Manufacturer/Producer/Exporter | Weighted-average margin percentage |
|---|---|
| Sandvik AB | 31.46 |
| Avesta Sandvik Tube AB | 60.65 |
| All Others | 36.48 |

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**ITC Notification**

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

**Public Comment**

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on June 29, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW. Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 22, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

*Deputy Assistant Secretary for Import Administration.*

May 15, 1987.

[FR Doc. 87-11780 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 87-00004]

**Export Trade Certificate of Review**

**AGENCY:** Department of Commerce, International Trade Administration.

**ACTION:** Notice of issuance of an Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an export trade certificate of review to the National Machine Tool Builders' Association ("NMTBA"). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct**

*Export Trade*

1. Products

Machine tools, including metal cutting machine tools (SIC code 3541), metal forming machine tools (SIC code 3542), woodworking machinery (SIC code 3553), and special industry machinery (SIC code 3559); tooling, dies, jigs, and fixtures for machine tools (SIC code 3544); machine tool accessories (SIC code 3545); assembly, measuring, and inspection machines; computer controls for machine tools (including computer programs); robotics, industrial laser equipment; materials handling equipment; welding apparatus (SIC code 3623); wire-guided vehicles; and other machine tool related equipment.

2. Services

Engineering and architectural services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Export Trade Facilitation Services (as they relate to the export of Products and Services).

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

4. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works.

*Export Markets*

The Export Markets include all parts of the world except (a) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and (b) Canada.

*Export Trade Activities and Methods of Operation*

1. NMTBA and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of NMTBA and/or its Members;

f. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

g. License associated Technology Rights in conjunction with the sale of

Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with NMTBA or any other Member;

h. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. NMTBA and/or its Members may enter into agreements wherein NMTBA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) NMTBA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through NMTBA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. When acting as an Export Intermediary, NMTBA shall make its services available to any Member on non-discriminatory terms.

3. NMTBA and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided however that exchanges of information and discussions as to Product quantity, source, and delivery dates must be on a transaction-by-transaction basis only;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by NMTBA and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulation affecting sales in Export Markets; and

h. Information about NMTBA's or its Members' export operations, including without limitation sales and distribution networks established by NMTBA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. NMTBA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by NMTBA itself, or by agreement with Members or other parties.

5. NMTBA and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. NMTBA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

*Definitions*

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sale or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of NMTBA, subject to the provisions of this paragraph. A list of current NMTBA members is attached hereto as Attachment A and is incorporated herein by reference. New NMTBA members may be incorporated in this certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Department of Commerce and the Department of Justice stating changes in NMTBA membership, identifying all new NMTBA members that desire to become a Member under this certificate pursuant to the abbreviated amendment procedure, and certifying for each new NMTBA member so identified its sales of Products in its prior fiscal year. Notice of new members so identified shall be published in the **Federal Register**. However, NMTBA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the certificate of the new members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the certificate of review to incorporate such new members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the certificate of review, such amendment must be sought through the nonabbreviated amendment procedure.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, and/or Export Trade Facilitation Services, whether a Member or nonmember.

*Terms and Conditions of Certificate*

Any agreements, discussions, or exchanges of information under this certificate relating to quantities of Products available for Export Markets shall be in connection only with actual or potential bona fide export transactions and shall be on a transaction-by-transaction basis only.

Participation by a Member in any Export Trade Activity or Method of Operation under this certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments. A Member may withdraw from coverage under this certificate at any time by giving written notice to NMTBA, a copy of which NMTBA shall promptly transmit to the Departments of Commerce and Justice.

A copy of this certificate will be kept in the International Trade Administration's Freedom of

Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 19, 1987.

George Muller,

*Acting Director, Office of Export Trading Company Affairs.*

**Appendix**

*Members of Applicant*

Abrasive Engineering & Manufacturing (Division of Acrometal Companies, Inc.); Acme Manufacturing Co.; Acme-Cleveland Corporation; Acro Automation Systems, Inc.; Advanced Assembly Automation, Inc.; Advanced Machine Design Company; The Ajax Manufacturing Company; Chas. G. Allen Co.; Almco Inc.; Alpha Machine, Inc.; AMAF Industries, Inc.; American Broach and Machine Company; American GFM Corporation; American Pfauter Limited; Anocut, Inc.; Anorad Corporation; APEC—Guill Technologies; Apex Corporation; Armstrong-Blum Mfg. Co.; Automated Machine Tool Technology, Inc.; Automated Process Inc.; Automatic Feed Co.; Automation Associates, Inc.; Autonumerics, Inc.; Autospin, Inc.; B & H Tool and Machine Corporation; Bardons & Oliver, Inc.; Barker Milling Machine Company; Barnes Drill Company; Bayer Industries, Inc.; Beatty Machine & Manufacturing Company; Belden Tools, Inc.; Benchmaster Products Inc.; E.W. Bliss Company; The Bodine Corporation; Bohle Machine Tools, Inc.; Boston Digital Corporation; Bracker Corporation; Bridgeport Machines, Inc.; Brown & Sharpe Manufacturing Co.; Buffalo Forge Company; Cam-Apt, Inc.; Cammann, Inc.; Cargill Detroit Corporation; Centro-Morgardshammar, Inc.; Chemtool Deburring Systems; The Cincinnati Gilbert Mach. Tool Co.; Cincinnati Milacron Inc.; Clausing Industrial, Inc.; Clearing; Cleveland Punch and Shear (Division of Bath Iron Works); The Cleveland Tapping Machine Company; CM Systems, Inc.; Colt Industries, Inc.; Continental MDM, Inc.; Cooper-Weymouth, Peterson (Division of Reed National Corp.); Crankshaft Machine Company; Deke; Danley Machine Division (Division of Avondale Industries, Inc.); Davenport Machine Tool Division (Division of Dover Corp.); DeHoff Incorporated; Demmer Corporation; DeVlieg Machine Company; DoALL Company; Drake Manufacturing Services, Inc.; Dreis & Krump Mfg. Co.; The Dunham Tool Company, Inc.; Dustvent, Inc.; Dyna Mechtronics Inc.; Dynamic Feeds, Inc.; Dynetics Corporation; Eaton Leonard Technologies, Inc.; Eitel Presses, Inc. (Division of Transamerica Corporation); Ekstrom, Carlson & Company; Elb-Florida, Inc.; Electro Arc Manufacturing Co., Inc.; Eltec Pulsitron; Engis Corporation; Erie Press Systems; Es-Tech; Esterline Corporation; Ex-Cell-O Corporation; Extrude Hone Corporation; Fairfield Machine; Farrel Company; Federal Press Company; Fellows Corporation; Foster-Miller Inc.; Fusion Incorporated; G.T. Acoustical Technologies (Division of G.T. Safety Equipment Co.); Gallmeyer & Livingston Company; Gehring LP; Geometric Tool; Giddings & Lewis; Gleason Corporation; Glendo Corporation; GM Industries, Inc.; The Goss & De Leeuw Machine Company; Gould & Eberhardt Gear Machy. Corp.; Greenerd Press & Machine Company, Inc.; Grinders for Industry, Inc.; Grinding Technology Inc.; Grotnes Metalforming Systems, Inc.; Hammond Machinery, Inc.; Hansvedt EDM Division; Hardinge Brothers, Inc.; Harper Buffing Machine (Division of the Harper Company); Harvill Machine, Inc.; Hausermann Abrading Process Co.; HE&M Saw; Hegenscheidt Corporation; Heim Corporation; Hertlein Special Tool Co., Inc.; The Hill Acme Company; Hitachi Seiki USA, Inc.; C.O. Hoffacker Company (Division of the Hoff Corp.); P. R. Hoffman; Hoglund Tri-Ordinate Corporation; Houdaille Industries, Inc.; S.E. Huffman Corporation; Hybco Products, Inc.; Hydra-Tool Corp.; Hydromat Inc.; Imperial Stamp & Engraving Company; Industrial Development System; Intertech Automation Company; IRD Mechanalysis, Inc.; ITW Illitron; Jacobson Tool & Manufacturing Corp.; Jarvis Corporation; Kasper Machine Company; Katy Industries, Inc.; Kaufman Mfg. Co.; Kayex-Spitfire Tool & Machine Company (Division of Kayex Unit of General Signal); Kinefac Corporation; Kingsbury Machine Tool Corporation; H.R. Krueger Machine Tool, Inc.; L & F Industries; L & J Press Corporation; Lamb Technicon Corp.; Landis Tool Co.; Laser Industries, Inc.; Laser Systems Division (Division of Combustion Engineering); Laserdyne Division (Division of Data Card Corporation); LeBlond Makino Machine Tool Company; K. O. Lee Company; Lehmann (Division of Smith International, Inc.); Leland-Gifford, Inc.; Louis Levin & Son Inc.; Livernois Automation Company; The Lodge & Shipley Company; Lyon Machine Builders Div. (Division of Shawmith Corporation); Masco Machine, Inc.; Mattison Machine Works; Mazak Corporation; Met/Coil Systems Corporation; MG Cutting Systems (Division of MG Industries); MHP Machines, Inc.; Miller Fluid Power Corporation; The Minister Machine Company; George A. Mitchell Co.; Modern Machine Works, Inc.; Moline Tool Company, Inc.; The Monarch Machine Tool Company; Moore Special Tool Co., Inc.; Morey Machinery, Inc.; Morgan Industries, Inc.; Multipress Incorporated; National Automatic Tool Co., Inc.; National Broach & Machine (Division of Lear-Siegler, Inc.); National Machinery Co.; Newcor, Inc.; Niagara Machine & Tool Works; Normac Incorporated; The O. K. Tool Company, Inc.; Oak Products Incorporated; Oerlikon Motch Corporation; The Ohio Broach Machine Co.; Oliver Instrument Company; The Olofsson Corporation; Onsrud Machine Corporation; P/A Industries; Pacific Press & Shear Corp.; Parker Hannifin Corporation; Parket-Majestic Inc.; Peerless Saw Division (Division of Medalist Industries); Pefacto Industries, Inc.; Perfekt Precision Mfg. Co., Inc.; PMC Industries; Pneumo Precision, Inc.; Pope Machinery Inc.; Process Equipment Company; The Producto Machine Company; Quamco, Inc.; R D & D Corporation; Redin Corporation; Remmele Engineering, Inc.; Reno Machinery and Engineering Co.; Republic Lagun Machine Tool Company; Reynolds Machine & Tool Corp.; Roberts Machine Corp.; Roto Finish Company, Inc.; Royal Master Grinders, Inc.; S-P Manufacturing Corporation; Saginaw Machine Systems Inc.; Sandvik Coromant Company; W. J. Savage Company, Inc.; Geo T. Schmidt Division (Division of Product Identification Corp.); Schreiber Manufacturing Co., Inc.; Schuler Incorporated; Sciaky Bros., Inc.; Scotchman Industries, Inc.; Sheffield Machine Tool Company; Sierra Machinery, Inc.; Simmons Machine Tool Corporation; South Bend Lathe, Inc.; SpeedFam Corporation; Standard Tool & Manufacturing Co.; Star Cutter Company; Stoelting, Inc.; R. Howard Strasbaugh, Inc.; Sunnen Products Company; Superior Die Set Corporation; Surf/Tran (Division of Robert Bosch Corporation); Swanson-Erie Corporation; Sweco, Inc.; T-Drill; Tannewitz, Inc.; Teknics Industrial Systems, Inc.; Teledyne Landis Machine; Tenco Industries, Inc.; Themac Inc.; Thielenhaus Microfinish Corp.; Toyoda Machinery USA; Tree Machine Tool Co., Inc.; Trumpf Inc.; Turchan Enterprises, Inc.; Ty-Miles, Inc.; U.S. Amada, Ltd.; The U.S. Baird Corporation; Uni-Tek Manufacturing Company; Unipunch Products, Inc.; United States Drill Head Co.; Universal Automatic Corp.; Universal Engineering (Division of Stanwich Industries); The V & O Press Company Inc.; Valenite-Kamset

(Division of GTE Corp.); Vapor Blast Manufacturing Company; Versa-Mil, Inc.; Vulcan Tool Company; Wadell Equipment Company, Inc.; O. S. Walker Company Inc.; Wallace Coast Machinery Company; Walter Grinders, Inc.; Wardwell Mfg. Co. Inc.; Weldon Machine Tool, Inc.; Wesel Manufacturing Company; Western Machine Tool Works; The Wheelabrator Corporation; White Consolidated Industries; Whitnon Spindle Division (Division of Emhart Corp.); Williams, White & Co.; Wotan Machine Tools (Division of Hunter Douglas N.V.); Wysong & Miles Company; Zagar, Inc.; Zero Manufacturing Co.

[FR Doc. 87-11777 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-DR-M

## The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held June 11, 1987, 9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

Agenda

*Open Session*

1. Opening remarks by the Chairman
2. Introduction of Public Attendees
3. Introduction of Invited Guests
4. Presentation of Papers or Comments by the Public
5. Briefing by Defense on the National Security Decision Directive (NSDD) 145 and Related Controls on Technical Information
6. Presentation and Discussion of Policy Issues Regarding Controls on Networking
7. Approach for Determining Controls on Technical Data Under § 374.4(d)

*Executive Session*

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisons of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217). For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: May 19, 1987.

**Margaret A. Cornejo,**

*Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 87-11790 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-DT-M

## Semiconductor Technical Advisory Committee; Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and Place: June 17, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Ave., NW., Washington, DC.

Agenda: The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act.

A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217.

For further information call Ruth D. Fitts at 202-377-2583.

Dated: May 19, 1987.

**Margaret A. Cornejo,**

*Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 87-11791 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-DT-M

## National Oceanic and Atmospheric Administration

[P135]

## Marine Mammals, Issuance of Permit; Mystic Marinelife Aquarium

On June 23, 1986, notice was published in the Federal Register (51 FR 22846) that an application had been filed by Mystic Marinelife Aquarium, 55 Coogan Blvd., Mystic, Connecticut 06355 for a permit to permanently remove from the wild four (4) Atlantic bottlenose dolphins (*Tursiops truncatus*) for captive maintenance.

Notice is hereby given that on May 11, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: May 11, 1987.

**Dr. Nancy Foster,**

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87-11751 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textiles and Textile Products From the Dominican Republic

May 19, 1987.

The Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Speical Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs, effective June 1, 1987. For further information, contact Janet Heinzen, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377–4212.

**Background**

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 18, 1986 establishes, among other things, guaranteed access levels for cotton and man-made fiber textile products in Categories 340 (men's and boys' cotton shirts, not knit) and 644 (women's, girls' and infants' man-made fiber suits) assembled in the Dominican Republic from fabric formed and cut in the United States, which have been properly certified under the Special Access Program, and exported from the Dominican Republic during the twelve-month period beginning on June 1, 1987 and extending through May 31, 1988.

Textile products in Categories 340 and 644 exported from the Dominican Republic, qualifying for the Special Access Program for entry under TSUSA 807.0010, exported on or after June 1, 1987 must be accompanied by a properly completed CBI Export Declaration (Form ITA–370P).

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish guaranteed access levels for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic in Categories 340 and 644.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 19, 1987

Commissioner of Customs,
*Department of Treasury, Washington, DC 20229*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 18, 1986 between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program as set forth in 51 FR 21208 (June 11, 1986).

The following guaranteed access levels have been established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic during the period June 1, 1987 through May 31, 1988.

| Category | 12-Mo. |
|---|---|
| 340 | 645,000 dozen. |
| 644 | 200,000 dozen. |

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreement has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements*

[FR Doc. 87–11788 Filed 5–21–87; 8:45 am]

BILLING CODE 3510–DR–M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987; Addition and Deletions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicaped.

**ACTION:** Addition to and deletions from Procurement List.

**SUMMARY:** This action adds to and deletes from Procurement List 1987 a commodity and services to be provided by workshops for the blind and other severely handicapped.

**EFFECTIVE DATE:** June 22, 1987.

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

**FOR FURTHER INFORMATION CONTACT:** C.W. Fletcher, (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** On March 11, 1987 and March 31, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (52 FR 7468 and 52 FR 10251) of addition to and deletions from Procurement List 1987, November 3, 1986 (51 FR 39945).

**Additions**

After consideration of the relevant matter presented, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987:

*Service*

Completion of Form DD 1574 and Form DD 1574-1.

(Requirements for Robins Air Force Base, Georgia only)

**Deletions**

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48C, 85 Stat. 77 and 41 CFR 51–2.6.

*Commodity*

Cable Assembly, Power
6150-00-935-8799
6150-00-507-8852

*Services*

Repair of Rubberized Items:
Mattress Pneumatic
(Noninsulated 8465-00-254-8887)
(Insulated 8465-00-516-2781)
Ponchos (8405-00-935-3257)
Bag Clothing, Waterproof (8465-00-261-5909)
Fort Bliss, Texas

Repair Services of the following items at Fort Bliss, Texas only.

Bag, Sleeping
8465-00-242-7885
8465-01-049-0085
Case, Sleeping Bag
8465-00-237-8717
Liner, Field Jacket
8415-00-782-2886
Bag, Barracks
8465-00-890-3692
Bag, Duffel
8465-00-241-0952
Grounds Maintenance, Recreation Areas, Naval Air Station, Lemoore, California
Janitorial Service, USDA Forest Service Sequoia National Forest, Porterville, California at: Supervisor's Office, 900 W. Grand Avenue, Warehouse Complex, 480 N. Hemelian
Shrink Wrapping Gift Packages, U.S. Postal Service, Washington, DC

C.W. Fletcher,
*Executive Director.*
[FR Doc. 87–11754 Filed 5–21–87; 8:45 am]
BILLING CODE 6820-33-M

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**Procurement List 1987; Proposed Additions and Deletions**

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to Procurement List 1987 commodities and services to be produced by workshops for the blind or other severely handicapped.

Comments Must be Received on or Before: June 22, 1987

**ADDRESS:** Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

**FOR FURTHER INFORMATOIN CONTACT:** C.W. Fletcher, (703) 557–1145.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

**Additions**

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1987, November 3, 1986 (51 FR 39965).

*Commodities*

Test Set, Lead
6625-01-121-6510
(50% of the Government's requirements)
Folder, File, Kraft
7530-00-985-7097
Shirt, Women's Utility
8410-01-058-9394
8410-01-058-9395
8410-01-058-9396
8410-01-058-9397
8410-01-058-9398
8410-01-058-9399
8410-01-058-9400
8410-01-058-9401
8410-01-058-9402
8410-01-058-9403
8410-01-058-9404
8410-01-058-9405
8410-01-058-9406
8410-01-058-9407
8410-01-058-9408
8410-01-058-9409
8410-01-058-9410
8410-01-058-9411
8410-01-058-9412
8410-01-058-9413
8410-01-058-9414
8410-01-058-9415
8410-01-058-9416
8410-01-058-9417
8410-01-058-9418
8410-01-058-9419
8410-01-058-9420
8410-01-182-7982
8410-01-182-7983
8410-01-182-7984
8410-01-182-7985
8410-01-182-7986
8410-01-182-8987
8410-01-182-7988

*Services*

Commissary Warehouse Service, Robins Air Force, Georgia
Commissary Shelf Stocking, Branch Commissary Store, Naval Support Activity, New Orleans, Louisiana
Food Service Attendant, Homestead Air Force Base, Florida
Janitorial Service, Brickell Federal Building, Miami, Florida
Janitorial/Custodial, Officer's Open Mess, Building 542; NCO Open Mess, Building 958, Robins AFB, Georgia
Janitorial Service, John F. Kennedy Federal Building, Low Rise, Boston, Massachusetts
Operatoin of the Postal Service Center, Maxwell AFB and Gunter Air Force Station, Alabama

C.W. Fletcher,
*Executive Director.*
[FR Doc. 87–11755 Filed 5–21–87; 8:45 am]
BILLING CODE 6820-33-M

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**DEPARTMENT OF DEFENSE**

**Department of the Air Force**

**Ground Wave Emergency Network (GWEN); Draft Environmental Impact Statement (DEIS)**

To all interested government agencies, public groups and concerned citizens: The United States Air Force will hold an additional public hearing on June 8, 1987 to receive public and agency comments on the GWEN DEIS which addresses the proposed action of expanding the GWEN program to its final operational capability. The no action alternative was also considered.

The Environmental Protection Agency previously announced in the Federal Register on April 17, 1987 (52 FR 592) that the DEIS was filed. Subsequently public hearings were held in Atlanta, GA on May 4, 1987, in Dallas, TX on May 6, 1987, and in Sausalito, CA on May 8, 1987.

This public hearing will be held at the William Green Federal Building, Rm. 3308, 600 Arch St., Philadelphia, PA 19106. The meeting will start at 10:00 a.m. and continue until all comments are heard or until 2:00 p.m., whichever occurs first.

Both written and oral comments will be accepted, and transcripts of the

hearings will be made. Lengthy or technically complex statements should be summarized for oral presentation. Oral statements will be limited to five minutes.

Written comments will be accepted any time until June 23, 1987 which is the end of the public comment period for the DEIS (changed from the previously announced deadline of June 1, 1987).

Written comments should be forwarded to: Mr. Chris Perkins, ESD/DEP, Hanscom AFB, MA 01731-5000.

Copies of the DEIS will be available upon request from Mr. Perkins at the above address.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-11728 Filed 5-21-87; 8:45 am]

BILLING CODE 3910-01-M

## USAF Scientific Advisory Board; Meeting

May 13, 1987.

The USAF Scientific Advisory Board's Ad Hoc Committee on Space-Based Radar will conduct a meeting at the ANSER facility, 1215 Jefferson Davis Hwy., Crystal Gateway 3, Arlington, VA, June 24-25, 1987, from 8:00 A.M. to 5:00 P.M.

The purpose of this meeting is to discuss technology issues relevant to Air Force requirements for a space-based radar system.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-11702 Filed 5-21-87; 8:45 am]

BILLING CODE 3910-01-M

## USAF Scientific Advisory Board; Meeting

May 18, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Airships will meet on June 9th and 10th, 1987, at the Pentagon, room 5D982, from 8:00am to 5:00pm each day. The purpose of the meeting is to review, discuss and evaluate the suitability of airships to perform certain Air Force roles and missions.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-11693 Filed 5-21-87; 8:45 am]

BILLING CODE 3910-01-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATE:** Interested persons are invited to submit comments on or before June 22, 1987.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 732-3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 18, 1987.

Carlos U. Kim,

*Director for Information Technology Services.*

### Office of Postsecondary Education

*Type of Review:* Revision
*Title:* Guarantee Agency Monthly Claims and Collections Report
*Agency Form Number:* ED 1189
*Frequency:* Monthly
*Affected Public:* State or local government; non-profit institutions
*Reporting Burden: Burden Hours:* 1,020, *Responses:* 708
*Recordkeeping Burden: Burden Hours:* 4.72, *Recordkeepers:* 59

*Abstract:* This form is used by a guarantee agency to request payments of reinsurance for default, bankruptcy, death and disability claims paid to lenders, and for costs incurred for supplemental preclaims assistance. In addition, an agency may use this form to make payments for amounts due the Department for collections on defaulted loans on which reinsurance has been paid, and for refuding amounts previously paid for reinsurance claims. The Department uses this information to administer the Department's loan guarantee program operated by guarantee agencies.

*Type of Review:* Revision
*Title:* Lender's Annual Call Report on Guaranteed Student Loans Outstanding
*Agency Form Number:* ED 799-1
*Frequency:* Annually
*Affected Public:* Businesses or other for profit
*Reporting Burden: Burden Hours:* 6,000, *Responses:* 12,000
*Recordkeeping Burden: Burden Hours:* 960, *Recordkeepers:* 12,000

*Abstract:* This report is used by all lenders participating in the Guaranteed Student Loan Program to provide the Department with information regarding the lender's loan portfolio. The Department uses this information for internal financial reporting and budgetary projects.

*Type of Review:* Revised

*Title:* Application for Grants and Contracts Under the Veterans Education Outreach Program
*Agency Form Number:* ED 239
*Frequency:* Annually
*Affected Public:* Non-profit institutions
*Reporting Burden: Burden Hours:* 800, Responses: 283
*Recordkeeping Burden: Burden Hours:* 0, Recordkeepers: 0

*Abstract:* This application will be used by institutions of higher education to apply for grants under the Veterans Education Outreach Program. The Department uses the data collected to award grants to all eligible institutions that provide special educational services to veterans.

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement
*Title:* Annual Client Assistance Program Report
*Agency Form Number:* ED 227
*Frequency:* Annually
*Affected Public:* State or local governments; non-profit institutions
*Reporting Burden:* Burden Hours: 171, Responses: 57
*Recordkeeping Burden:* Burden Hours: 0, Recordkeepers: 0

*Abstract:* Agencies designated to administer the Client Assistance Program (CAP) provide assistance in informing and advising all clients and client applicants of the available benefits under the Rehabilitation Act of 1973, as amended. These agencies use this form to report to the Department on their progress in administering the CAP. In turn, the Department uses the information to evaluate the program and make recommendations to the Congress.

*Type of Review:* New
*Title:* State Plan Supplement for Supported Employment Services under Title IV, Part C of the Rehabilitation Act, as amended
*Agency Form Number:* E20–27P
*Frequency:* Every three years
*Affected Public:* State or local governments
*Reporting Burden:* Burden Hours: 172, Responses: 56
*Recordkeeping Burden:* Burden Hours: 0, Recordkeepers: 0

*Abstract:* This State plan supplement is used by the States to report to the Department information about their goals and plans for supported employment services offered under Title IV, Part C of the Rehabilitation Act, as amended. The Department uses this information to monitor and evaluate the States' performance in providing the service.

*Type of Review:* New
*Title:* Report of the Estimated Total Number of Handicapped Children Ages 3–5 Expected to be Receiving Special Education and Related Services
*Agency Form Number:* E20–25P
*Frequency:* One time only
*Affected Public:* State or local governments
*Reporting Burden: Burden Hours:* 208, *Responses:* 57
*Recordkeeping Burden: Burden Hours:* 0, *Recordkeepers:* 0

*Abstract:* This form will be used by State educational agencies to report the estimated number of children ages 3–5 years old, who will be receiving special education and related services under the Education of the Handicapped Act in the 1987–88 school year. The Department will use the data collected to award preschool grants for the 1987–88 school year based on the number of eligible children reported.

**Office of Educational Research and Improvement**

*Type of Review:* Extension
*Title:* Application for Grants Under the Strengthening Research Library Resources Program
*Agency Form Number:* ED 592
*Frequency:* Annually
*Affected Public:* State or local governments; non-profit institutions
*Reporting Burden: Burden Hours:* 1,606, *Responses:* 100
*Recordkeeping Burden: Burden Hours:* 0, *RecordKeepers:* 0

*Abstract:* This application will be used by institutions and non-profit organizations to apply for funds under the Strengthening Research Library Resources Program. The Department evaluates the data submitted to determine the significance of the applicant's facility as a major research library and the quality of the proposed project. Grants are awarded on a competitive basis.

*Type of Review:* Revision
*Title:* Final Financial Status and Performance Report for Higher Education Act Programs—Titles II–B and II–C
*Agency Form Number:* ED 606
*Frequency:* Annually
*Affected Public:* Non-profit institutions
*Reporting Burden: Burden Hours:* 320, *Responses:* 80
*Recordkeeping Burden: Burden Hours:* 80, *Recordkeepers:* 80

*Abstract:* This report form is used by institutions of higher education, library organizations and agencies to report to the Department on the use of grant funds awarded under the Library Programs Titles I–B and II–C. The Department uses the information collected to monitor project performance.

[FR Doc. 87-11779 Filed 5-21-87; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

**Economic Regulatory Administration**

**[ERA Docket No. 87-25-NG]**

**Chevron Natural Gas Services, Inc.; Application To Import Natural Gas From Canada**

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 22, 1987, of an application filed by Chevron Natural Gas Services, Inc. (Chevron Gas), for blanket authorization to import Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 73 Bcf for a two-year term beginning on the date of the first delivery. The gas would be sold on a short-term or spot basis to U.S. purchasers including pipelines, local distribution companies, and commercial and industrial end-users. Chevron Gas would import gas for its own account or act as a broker for U.S. purchasers as well as Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis, including price and volumes. Chevron Gas intends to utilize existing pipeline facilities for transportation of the volumes imported. The firm proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fules programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.d.t., June 22, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Chevron Gas' application is available for inspection and coping in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 14, 1987.

Constance L. Buckley,

*Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-11712 Filed 5-21-87; 8:45 am]

BILLING CODE 6450-01-M

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[ERA Docket No. 87-07-NG]

## Methon Gas Marketing (U.S.) Inc.; Order Granting Blanket Authorization To Import Canadian Natural Gas

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of Order Granting Blanket Authorization to Import Canadian Natural Gas.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order granting blanket authorization to Methon Gas Marketing (U.S.) Inc. (Methon) to import natural gas from Canada. The order issued in ERA Docket No. 87-07-NG authorizes Methon to import up to 100 Bcf over a two-year period, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 15, 1987.

Constance L. Buckley,

*Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-11713 Filed 5-21-87; 8:45 am]

BILLING CODE 6450-01-M

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## Federal Energy Regulatory Commission

[Docket Nos. CP87-337-000 et al.]

## Natural Gas Certificate Filings; Natural Gas Pipeline Company of America et al.

Take notice that the following filings have been made with the Commission:

### 1. Natural Gas Pipeline Company of America

[Docket No. CP87-337-000]

May 11, 1987.

Take notice that on May 4, 1987, Natural Gas Pipeline Company of America [Natural], 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87-337-000 an application pursuant to section 7[c] of the Natural Gas Act for a certificate of public convenience and necessity authorizing Natural to transport natural gas on an interruptible basis under a gas transportation agreement with Transcontinental Gas Pipe Line Corporation (Transco), from an existing receipt point in Mills County, Iowa, to existing delivery points in Cameron and Vermillion Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it has entered into a gas transportation agreement with Transco to provide on an interruptible basis transportation of up to a maximum of 34,375 MMBtu of natural gas per day for Transco for an additional term of one year, ending May 9, 1988. Natural would receive the gas at an existing receipt point in Mills County, Iowa, from Northern Natural Gas Company, a Division of Enron Corp. (Northern). The gas transported is synthetic natural gas produced at the Great Plains coal gasification plant located in Beulah, North Dakota. Northern Border Pipeline receives the gas at the plant and delivers it to Northern near Ventura, Hancock County, Iowa. Natural's

grandfathered transportation service for Transco expires May 9, 1987.

Natural proposes to extend the transportation service for Transco for one year, expiring on May 9, 1988, pursuant to the same terms and conditions set forth in Docket No. ST85–1089. Natural proposes to charge Transco a transportation rate of 14.3 cents per MMBtu. Natural also proposes to reduce the volumes of gas redelivered for the account of Transco by five-tenths percent per MMBtu for gas lost and unaccounted for and gas used as fuel. It is stated that no additional facilities would be required to continue such service.

Comment date: May 26, 1987, in accordance with Standard Paragraph F at the end of this notice.

**2. Florida Gas Transmission Company**

[Docket No. CP87–316–000

May 13, 1987.

Take notice that on April 30, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP87–316–000 an application pursuant to section 7(c) of the Natural Gas act for authorization to transport gas for American Distribution Company (American), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, FGT states that American and FGT have entered into an interruptible gas transportation agreement dated March 16, 1987, which provides for the receipt by FGT for the account of American up to five billion Btu of gas per day, and for the redelivery of equivalent volumes for American's account, less American's pro rata share of any gas vented or lost for any reason from that portion of FGT's facilities being utilized for American at the time of such loss. FGT states that the gas would be received at the existing point of interconnection between FGT and American in Mobile County, Alabama, and would be redelivered at existing points of interconnection between FGT and Texas Eastern Transmission Corporation, Sabine Pipe Line Company and Enron Industrial Natural Gas Company in Texas and Louisiana. FGT is not proposing herein to install any new facilities.

For this transportation service, FGT proposes to charge a facility charge of 7.5 cents per million Btu delivered and 1.46 cents per million Btu for the Gas Research Institute surcharge. FGT also requests permission to discount its facility charge but to a level not less than a minimum rate of 0.7 cent per million Btu, which FGT alleges is necessary to permit FGT to remain competitive with any alternative transportation available to American.

FGT states that the term of the transportation agreement is for a period of five years from the date of initial deliveries under the contract, and from year-to-year thereafter.

Additionally, FGT states that downstream transportation services would be provided pursuant to section 311 of the Natural Gas Policy Act of 1978, or under section 1(c) of the Natural Gas Act. It is indicated that upstream transportation services would be provided by American under a certificate issued in Docket No. CP84–474–000.

FGT states that since the transportation service would be fully interruptible and would be contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers, the transportation service proposed herein would not have an adverse impact on FGT's existing customers.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

**3. Northern Natural Gas Company, Division of Enron Corporation**

[Docket No. CP87–325–000

May 13, 1987.

Take notice that on April 30, 1987, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–325–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas by Northern for the account of Panhandle Eastern Pipe Line Company (Panhandle Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis for Panhandle Eastern's account up to 100,000 MMBtu per day of natural gas produced in Matagorda Island Area Blocks 622C, 623A, and 623B, (MAT 622C, MAT 623A, and MAT 623B) in offshore Texas. It is stated that Panhandle Eastern would cause the designated production to be delivered to Northern immediately upstream of the measurement facilities on the production platform in each of the above designated blocks. Northern explains that it would then transport and redeliver thermally equivalent volumes to: (1) The existing interconnection of Northern's and Seagull Shoreline System's (Seagull Shoreline) facilities in Texas state waters in Matagorda Island Block 624, or (2) at such other point(s) as Northern and Panhandle Eastern mutually may agree. It is further explained that additional downstream transportation for Panhandle Eastern's account would be provided by Seagull Shoreline, Houston Pipe Line Company, Texas Eastern Transmission Corporation, and Trunkline Gas Company.

For the proposed service, Northern proposes to charge Panhandle Eastern maximum rates of 7.02 cents, 2.01 cents, and 3.38 cents per MMBtu for MAT 623A gas, MAT 623–B gas, and MAT 622-C gas, respectively.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

**4. Northwest Pipeline Corporation**

[Docket No. CP87–335–000]

May 13, 1987.

Take notice that on April 30, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–335–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate certain natural gas facilities and the transportation of natural gas for direct sale to Exxon Company U.S.A. (Exxon) for use during emergency shut-downs at Exxon's Dry Piney Dehydration Plant and during facility malfunction at Mountain Fuel Resources, Inc.'s (MFR) Dry Piney Gas Conditioning Plant, both in Sublette County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the Dry Piney Dehydration Plant was constructed by Exxon to treat natural gas from the LaBarge Anticline located in southwestern Wyoming. It is then stated that the natural gas treated in the Dry Piney Dehydration facility is transported through Exxon's facilities to the inlet of Exxon's Shute Creek Processing Plant. Northwest states that ANR Pipeline Company (ANR) then purchases the processed gas for its general system supply requirements. It is indicated that by order dated January 24, 1985, in Docket No. CP84–758–000, MFR was granted authorization to deliver natural gas to its affiliated local distribution company for ultimate delivery to Exxon for base load requirements at Exxon's Dry Piney Dehydration Plant. Northwest states that the supply source from which MFR provides base load requirements to Exxon is MFR's Dry Piney Gas

Conditioning Plant. MFR has indicated to Northwest that the current production at the tailgate of its plant is approximately 8,500 MMBtu of natural gas per day (MMBtu/d).

Exxon has stated to Northwest that in the event of a plant upset at the Dry Piney Dehydration Plant, its needs for instantaneous emergency gas would be approximately 29,000 MMBtu/d, an amount that is in excess of the present capacity of MFR's plant. In the event that Exxon's Dry Piney facility experienced failure, it is stated, MFR would be unable to supply a sufficient source of pipeline quality gas to provide flare assistance volumes to Exxon, thus creating a potentially hazardous situation because Exxon would be unable to flare the unprocessed gas within the plant site because the raw gas contains lethal amounts of hydrogen sulphide, thus, the limited venting of this gas could create a safety hazard for field employees. It is further stated that in the event MFR's facility failed to operate at capacity or to otherwise function properly, MFR would be unable to supply Exxon's Dry Piney facility with its entire base load requirements.

It is stated that to insure an ample supply of emergency shut-down gas to Exxon for use in flare assistance procedures and to supply base load protection, Exxon and Northwest have entered into an emergency gas sales agreement (Agreement) dated July 28, 1986, under which Northwest would provide on a firm basis up to 29,000 MMBtu/d of pipeline quality gas for use as emergency fuel gas for emergency shut-down operations at Exxon's Dry Piney Dehydration Plant. It is maintained that in the event that MFR cannot provide adequate base load volumes due to a facility malfunction, Northwest would supply a portion of Exxon's base load requirements until MFR is able to correct the facility malfunction. It is maintained that such sales under the Agreement would be used only to backstop MFR's base load supplies to Exxon's plant whenever MFR may be unable to provide sufficient supplies, and, in the event of an Exxon plant failure, would be used as flare assistance gas and as purge and pack gas to restart the plant. It is stated that the Agreement is effective for a primary term of five years and from year-to-year thereafter until terminated upon six months written notice. It is stated that Exxon estimates that for each plant failure the emergency gas volumes would be requried for a period of 4–5 hours for flare assistance and for a period of 24 hours maximum to purge and repack the plant. Northwest states that Exxon indicates that plant upsets would probably occur no more than twice a year.

Northwest states that it is currently delivering for Exxon's account any requested emergency gas to MFR for subsequent redelivery by MFR's affiliated local distribution company to Exxon's Dry Piney plant by utilizing facilities initially installed pursuant to § 157.53 of the Commission's Regulations to deliver testing gas to Exxon. Northwest proposes in Docket No. CP87–335–000 to replace such temporary facilities with 4.53 miles of 6-inch pipeline, one meter station consisting of a 6-inch meter run, a 3-inch meter and a 2-inch meter, and miscellaneous facilities. It is explained that the proposed line would be constructed from the discharge side of Northwest's existing Big Piney compressor station located in Sublette County, Wyoming, extending in a southwesterly direction to a point of interconnection with the proposed meter station located adjacent to Exxon's Dry Piney Dehydration Plant.

It is stated that for all volumes of natural gas sold to Exxon under the terms of the Agreement, Northwest would charge a rate equal to its IOS–1 rate which currently is 23.577 cents per therm as set forth on Sheet 10 in Northwest's FERC First Revised Volume No. One Tariff. In accordance with the approved settlement of Northwest's rate proceeding in Docket No. RP85–13–000, Northwest states that it would retain all revenues received from Exxon.

Northwest states that the estimated cost of installing the 4.53 miles of 6-inch pipeline, the meter station and miscellaneous appurtenant facilities would be $741,000. Northwest further states that Exxon would reimburse Northwest for the total cost of installing such facilities. It is stated that Northwest would retain title and operational control of the facilities consistent with Northwest's policy on sales laterals.

Comment date: June 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

### 5. Trunkline Gas Company

[Docket No. CP87–332–000]

May 13, 1987.

Take notice that on April 30, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–332–000 an application pursuant to section 7(c) of the Natural Gas Act and the regulations thereunder for a limited-term certificate of public convenience and necessity authorizing the receipt, transportation, and redelivery of natural gas on an interruptible basis on behalf of Northern Natural Gas Company (Northern) and pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement between Trunkline and Northern dated February 26, 1987, Turnkline has agreed to receive for transportation a volume of natural gas of up to 10,000 Mcf per day on an interruptible basis on behalf of Northern for Northern's system supply. Trunkline states that Trunkline would receive volumes for Northern's account from Northern in Grand Isle Block 52, Offshore Louisiana and redeliver to United Gas Pipe Line Company (United), on Northern's behalf, thermally equivalent volumes, less 1.0 percent and 1.5 percent for fuel at existing points of pipeline interconnection located in St. Mary and La Salle Parishes, Louisiana, respectively. It is indicated that Northern would pay Truckline 10.66 cents per Mcf of natural gas redelivered to St. Mary Parish and 43.22 cents per Mcf of natural gas redelivered to La Salle Parish and reimburse Trunkline for any filing fees incurred.

Trunkline states that it would perform the proposed service using existing facilities. Trunkline proposes to perform the service for a limited-term expiring on the earlier of February 25, 1988, or thirty days following the date Trunkline accepts an Order No. 436 blanket certificate.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 6. Trunkline Gas Company

[Docket No. CP87–334–000]

May 13, 1987.

Take notice that on April 30, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–334–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the receipt, transportation and redelivery of natural gas on an interruptible basis on behalf of Panhandle Eastern Pipe Line Company (Panhandle) and pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline indicates that pursuant to a transportation agreement between Trunkline and Panhandle dated February 23, 1987, Trunkline has agreed to receive for transportation a volume of

natural gas of up to 2,500 Mcf per day on an interruptible basis on behalf of Panhandle. It is stated that Trunkline would receive volumes for Panhandle's account from High Island Block A–542 offshore Texas. It is stated that Trunkline would use its capacity in the systems of High Island Offshore System (HIOS), U–T Offshore System (U–T), and Natural Gas Pipeline Company of America (Natural) to transport the gas to its onshore facilities. Trunkline then states that it would redeliver to Panhandle thermally equivalent volumes, less 4 percent fuel and less any fuel and unaccounted-for losses on the systems of HIOS, U–T, Natural or any other system through which the volumes would be transported, at an existing point of pipeline interconnection located near Tuscola in Douglas County, Illinois. Trunkline states that for this transportation service, Panhandle would pay Trunkline 70.44 cents per Mcf of natural gas received and would reimburse Trunkline for any filing fees incurred.

Trunkline indicates that the proposed service may be performed through existing facilities. Trunkline proposes a limited-term certificate with pregranted abandonment authorization expiring on the earlier of February 22, 1988, or thirty days following the date Trunkline accepts an Order No. 436 blanket certificate.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 7. Trunkline Gas Company

[Docket No. CP87–333–000]

May 13, 1987.

Take notice that on April 30, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–333–000 an application pursuant to section 7(c) of the Natural Gas Act and the regulations thereunder for a limited-term certificate of public convenience and necessity authorizing the receipt, transportation, and redelivery of natural gas on an interruptible basis on behalf of Southern Natural Gas Company (Southern) and pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline indicates that pursuant to a transportation agreement between Trunkline and Southern dated March 2, 1987, Trunkline has agreed to receive for transportation a volume of natural gas of up to 50,000 Mcf per day on an interruptible basis on behalf of Southern at existing points of receipt in Waller County, Texas and Allen and Beauregard Parishes, Louisiana. It is indicated that Trunkline would redeliver thermally equivalent volumes to Southern at an existing point of interconnection located in St. Mary Parish, Louisiana. For this transportation service, it is indicated that Southern would pay Trunkline 10.06 cents per Mcf of natural gas received, and would reimburse Trunkline for any filing fees incurred.

Trunkline states that no new facilities are required to implement the service. Trunkline proposes a term to expire on the earlier of March 1, 1989, or thirty days following the date Trunkline accepts an Order No. 436 blanket certificate.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 8. Texas Eastern Transmission Corporation

[Docket No. CP87–311–000]

May 13, 1987.

Take notice that on April 29, 1987, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252–2521, filed in Docket No. CP87–311–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transportation of natural gas by Texas Eastern for the account of Panhandle Eastern Pipe Line Company (Panhandle Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to transport for Panhandle, on an interruptible basis, up to 100,000 Dekatherms (dth) of natural gas per day, the Maximum Daily Receipt Quantity (MDRQ), and such additional quantities in excess of the MDRQ as Texas Eastern in its sole judgment determines it is able to receive, transport and deliver, pursuant to a gas transportation agreement (Agreement) dated March 30, 1987. It is stated that the gas proposed to be transported by Texas Eastern for Panhandle would be from reserves dedicated to Panhandle in the matagorda Island area of offshore Texas and that such gas would be utilized by Panhandle as part of its long-term system supply.

Texas Eastern states that it would receive the stated quantities of natural gas, for Panhandle's account, from either Seagull Shoreline System (Seagull Shoreline) at a proposed point of receipt and/or from Houston Pipe Line Company (Houston Pipe Line) at an existing point of receipt, in Matagorda County, Texas. It is indicated that Texas Eastern would then transport and deliver equivalent quantities, less applicable shrinkage, to Trunkline Gas Company (Trunkline) for the account of Panhandle at existing interconnections between the pipeline facilities of Texas Eastern and Trunkline in Allen and Beauregard Parishes, Louisiana and at a proposed interconnection in Wharton County, Texas. It is further indicated that subsequent transportation of the gas from these delivery points to Panhandle's pipeline system would be provided by Trunkline.

It is explained that Seagull Shoreline would own the measurement facilities at the proposed point of receipt in Matagorda County, Texas. It is further explained that Panhandle would install and own the measurement facilities at the proposed point of delivery to Trunkline in Wharton County, Texas.

Texas Eastern proposes to provide such transportation service for a primary period of twelve years and from year-to-year thereafter subject to mutual agreement.

Texas Eastern states that it proposes to charge Panhandle each month a charge equal to the product of the posted TS–3 rate in effect during such month times the quantity of gas delivered by Texas Eastern during such month. Texas Eastern further proposes to retain .01 percent for shrinkage.

Comment date: June 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

### 9. Williams Natural Gas Company

[Docket No. CP87–302–000]

May 13, 1987.

Take notice that on April 22, 1987, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87–302–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to abandon, in place, measuring, regulating and appurtenant facilities which previously served nine domestic customers in Jackson, Atchinson, and Brown Counties, Kansas, under the authorization issued in Docket No. CP82–479–000, pursuant to section 7 of the Natural Gas Act, as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that it previously sought authorization to abandon approximately 0.6 miles of 4-inch pipeline by reclaim and approximately 6.7 miles of 4-inch pipeline in place, and to relocate nine domestic customers to an existing 6-inch pipeline. WNG states that after the

domestic customers were relocated and it began to reclaim the pipeline, many of the landowners protested the pipeline removal. WNG avers by the time WNG had reached an agreement with the landowners, the completion date of the proposed abandonment had lapsed. WNG is therefore seeking permission and approval to abandon those facilities in this proceeding. WNG further states that the facilities were originally constructed in 1931, and certificated in Docket No. G–298 (4 FPC 471). WNG states that the cost to reclaim is approximately $10,380 with an estimated salvage value of $960.

Comment date: June 29, 1987, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

P. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person of the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–11773 Filed 5–21–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CI87–480–000]

## Big Run Production Co.; Application for Abandonment

May 18, 1987.

Take notice that on April 10, 1987, as amended May 1 and 8, 1987, Big Run Production Company (Big Run) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules for abandonment of its sale of gas to United Gas Pipe Line Company from the Greenwood-Waskom Field, Caddo Parish, Louisiana.

In support of its application Big Run states that it is subject to substantially reduced takes without payment. The contract will terminate effective with the date of a Commission abandonment order herein, pursuant to an agreement between the parties dated April 1, 1987. The gas is NGPA section 104 1973–74 biennium gas. Deliverability is estimated to be 150 Mcf/d. The gas will be sold in intrastate commerce.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–11774 Filed 5–21–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. SA87–44–000]

## Florida Gas Transmission Co.; Petition for Adjustment

May 18, 1987.

Take notice that on April 28, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001, filed in Docket No. SA87–44–000 for an adjustment under Section 502(c) of the Natural Gas Policy Act of 1978, wherein FGT seeks (1) an adjustment in the provision of § 281.204(b)(2) of the Commission's Regulations to permit FGT to file a triennial update of its Priority 2 entitlements in lieu of an annual update, and (2) permanent authorization to file its triennial update of its essential agricultural requirements on October 15 instead of September 15, with a designated effective date of November 15, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The procedures applicable to the conduct of this adjustment are found in Subpart K of the Commission's rules of practice and procedure.

Any person desiring to participate in the adjustment proceeding shall file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication in the Federal Register.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–11775 Filed 5–21–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87-483-000]

## Kaiser-Francis Oil Co., Application for Abandonment With Pregranted Limited-Term Abandonment for Sales Under Small Producer Certificate

May 19, 1987.

Take notice that on April 13, 1987, as supplemented on April 17, and May 4, 1987, Kaiser-Francis Oil Company (Kaiser-Francis) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules Kaiser-Francis requests abandonment of its sale of gas to Lone Star Gas Company, a Division of ENSERCH Corp. from the L. Akers A-3 well, Doyle Field, Stephens County, Oklahoma, and requests pregranted abandonment authorization for a limited term of three years for sales of such gas under its small producer certrificate in Docket No. CS73-605.

Kaiser-Francis states in support of its application that there has been a consistent reduction in the level of takes by Lone Star; the gas volumes taken by Lone Star have been substantially less than the deliverability of the wells. Lone Star has notified Kaiser-Francis by letter dated April 7, 1987, that the January 1, 1973, Gas Purchase Agreement is terminated effective February 1, 1987. The estimated deliverability of the L. Akers A-3 well is 180 Mcf/d and the well produces NGPA section 104 flowing gas. Kaiser-Francis anticipates selling the gas to a new purchaser.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-11778 Filed 5-21-87; 8:45 am]
BILLING CODE 6717-01-M

## Office of Hearings and Appeals

### Cases Filed Week of April 24 Through May 1, 1987

During the Week of April 24 through May 1, 1987, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,
*Director, Office of Hearings and Appeals.*
May 14, 1987.

### List of Cases Received by the Office of Hearings and Appeals

[Week of April 25 through May 1, 1987]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Apr. 27, 1987 | South Dakota, SD Pierre | KEG-0006 | Petition for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for Stripper-Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy. |
| Apr. 28, 1987 | Bigheart Pipeline Corporation, Washington, DC | KEF-0092 | Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the November 9, 1983 Consent Order entered into with Bigheart Pipeline Corporation. |
| Apr. 28, 1987 | Shell Oil Company, Washington, DC | KEF-0093 | Petition for implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the March 28, 1987 Consent Order entered into with Shell Oil Company. |
| May 1, 1987 | Economic Administration, Washington, DC | KRR-0024 | Request for modification/rescission. If granted: The March 27, 1987, Remedial Order issued to Pel-Star Energy, Inc. would be modified regarding the joining of James C. Stevens and John H. Harvison as parties in the proceeding. |

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 4/21/87 | Farmer's Oil Company | RF225-10791. |
| 4/21/87 | Farmer's Oil Company | RF225-10792. |
| 5/23/86 | J-D Oil Company | RF225-10771. |
| 7/29/86 | Mauger Sons, Inc. | RF225-10774. |
| 7/29/86 | Mauger Sons, Inc. | RF225-10775. |
| 7/29/86 | Mauger Sons, Inc. | RF225-10776. |
| 7/29/86 | Mauger Sons, Inc. | RF225-10777. |
| 7/29/86 | Well Oil Company | RF225-10778. |
| 7/29/86 | Ravenna Oil Company | RF225-10779. |
| 8/1/86 | C.O. Glenn | RF225-10772. |
| 8/1/86 | C.O. Glenn | RF225-10773. |
| 8/1/87 | Slover Oil Company | RF225-10780. |
| 8/4/86 | Hill Park Mobil Service Station. | RF225-10770. |
| 4/2/87 | Henry's Texaco | RF272-445. |
| 4/4/87 | Southwest Airlines Company | RF272-444. |
| 4/4/87 | Hannah Marine Corporation | RF225-10783. |
| 4/4/87 | Key Energy Enterprises | RF250-2722. |
| 4/17/87 | Canton Regional Transit Authority. | RF272-442. |
| 4/24/87 thru 5/1/87 | Getty Refund Applications | RF265-1180 thru RF265-1215. |
| 4/24/87 | E.B.T., Inc. | RF272-440. |
| 4/24/87 | Edward Ciardillo | RF276-174. |
| 4/27/87 | Cherokee Brick & Tile Company. | RF277-1. |
| 4/27/87 | Lillian Longo | RF276-176. |
| 4/27/87 | F. Wilfrid Bernard | RF276-177. |
| 4/27/87 | Bethlehem Steel Corporation | RF272-436. |
| 4/27/87 | Foster Wheeler Energy Corp. | RF272-437. |

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 4/27/87 | Talons Bakers | RF272-438. |
| 4/27/87 | Bendix Transportation Corp | RF272-439 |
| 4/29/87 | Rocco Pezzullo | RF276-178. |
| 4/29/87 | Rocco Pezzullo | RF276-179. |
| 4/29/87 | Joseph DeSisto | RF276-180. |
| 4/29/87 | Anthony Cambio | RF276-181. |
| 4/30/87 | Brewer Titchener | RF272-441. |
| 4/30/87 | Jiano's Gulf Service | RF40-3689. |
| 4/30/87 | Bob Davis Gulf | RF40-3690. |
| 4/30/87 | Gulf Service Station | RF40-3691. |
| 4/30/87 | Arnold Barfield Dist. Co., Inc | RF40-3692. |
| 4/30/87 | Archer Bros. Garage | RF40-3693. |
| 4/30/87 | Bennett's Gulf | RF40-3694. |
| 4/30/87 | Cashion Gulf Service | RF40-3695. |
| 4/30/87 | Yellemont Gulf Service | RF40-3696. |
| 4/30/87 | Blue Flame Gas Co., Inc | RF40-3697. |
| 4/30/87 | Scott Fuel, Inc | RF40-3698. |
| 4/30/87 | Alexco/Indiana | RX2251-357. |
| 5/1/87 | C. Lester Moultrop | RF276-182. |
| 5/1/87 | Joseph Viola | RF276-183. |
| 5/1/87 | The Webster Press | RF276-184. |
| 5/1/87 | Mid-America Dairymen, Inc | RF272-443. |
| 5/1/87 | Otis Elevator Company | RF277-2. |
| 5/1/87 | Mendocino Butane Gas and Equipment. | RF106-34. |
| 5/1/87 | White Brothers Gas Company. | RF120-167. |
| 5/1/87 | North Middletown Gulf | RF40-3687. |
| 5/1/87 | Duke's Gulf | RF40-3688. |

[FR Doc. 87-11714 Filed 5-21-87; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Decisions and Orders; Week of April 27, Through May 1, 1987

During the week of April 27 through May 1, 1987, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

May 12, 1987.

### Supplemental Order

*South Central Terminal Co., Inc., 4/30/87; KCX-0014*

The Federal Energy Regulatory Commission issued an order styled as a "Partial Affirmance and Remand" with respect to a Remedial Order issued in *South Central Terminal Co.*, 13 DOE ¶ 83,002 (1985). In that order, FERC affirmed the RO's findings that South Central had improperly increased the price of its gasoline, but asked that DOE reconsider the question of the exact amount of South Central's liability for those increases. During the course of this proceeding, South Central and the DOE's Economic Regulatory Administration agreed on an exact amount of the firm's liability, and DOE approved that agreement.

### Refund Applications

*Arkla Chemical Corp./Dan Glover Trucking Co., 4/30/87; RF153-28*

The DOE issued a Decision and Order concerning an Application for Refund filed by Dan Glover Trucking Co., a purchaser of Arkla refined petroleum products. Dan Glover applied for a refund from the Arkla I escrow account for the amount listed in the audit file. *Arkla Chemical Corp.*, 13 DOE ¶ 85,043 (1985). Dan Glover was an end-user and therefore was presumed to have been injured by Arkla's pricing practices. After examining the application and supporting evidence, the DOE approved a refund of $2,127 ($1,147 in principal plus $980 in interest).

*Beacon Oil Company/Doug's Beacon Service et al., 4/29/87; RF238-6 et al.*

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers of Beacon Oil Company petroleum products. Each firm applied for a refund based on the procedures outlined in *Beacon Oil Co.*, 14 DOE ¶ 85,011 (1986), as modified by *Beacon Oil Co.*, 14 DOE ¶ 85,508 (1986), governing the disbursement of settlement funds received from Beacon pursuant to a December 17, 1979 consent order. Since all of the applicants claimed refunds of $5,000 or less, they were presumed to have been injured by Beacon's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $27,907, representing $14,474 in principal and $13,433 in accrued interest.

*Eagle Petroleum Company/Warren Petroleum Company, 5/1/87; RF121-1*

Warren Petroleum Company filed an Application for Refund, seeking a portion of the funds remitted by Eagle Petroleum Company, pursuant to a consent order that Eagle entered into with the DOE. Warren purchased 9,915,936 gallons of propane, butane and natural gasoline from Eagle during the consent order period. The DOE applied the competitive disadvantage test by comparing the prices that Eagle charged Warren with average market prices. Based on the price comparisons, the DOE granted Warren a refund of $16,566.66, which equals the number of gallons that Warren purchased at above market prices multiplied by the per gallon refund rate. Warren will also receive $9,579.00 in interest.

*Eastern of New Jersey, Inc./Pharmachem Labs, Inc., et al., 5/1/87; RF232-208 et al.*

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were end-users that purchased No. 4 residual fuel oil from Eastern. The DOE granted the three applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds totaled $1,578, representing $961 in principal and $617 in interest.

*Getty Oil Company/Edra Houlage, Inc., et al., 4/30/87; RF265-454 et al.*

The DOE issued a Decision and Order concerning six Applications for Refund filed by end-users of products covered by a consent order that the agency entered into with Getty Oil Company. The Applications were evaluated in accordance with the procedures set forth in *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). The sum of the refunds approved in this Decision is $17,811, representing $9,108 in principal and $8,703 in interest.

*Getty Oil Company/Missouri Pacific Railroad Company, Sebago Lake Garage, 4/29/87; RF265-941, RF265-942*

The DOE issued a Decision and Order granting two Applications for Refund filed by end-users of product covered by a consent order that the agency entered into with Getty Oil Company. The Applications were evaluated in accordance with the procedures set forth in *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). The sum of the refunds approved in this Decision is $20,809, representing $10,594 in principal and $10,215 in interest.

*Gulf Oil Corporation/Goddis-Tate Oil Co., Inc., Pilato's Graymont Gulf Service Station, 4/28/87; RF40-3637, RF40-3642*

The DOE issued a Decision and Order concerning two Applications for Refund filed by resellers and retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based upon the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the amount of refund claimed. After examining the Applications and supporting documentation submitted by the applicants, the DOE concluded that each should receive a refund. The total amount of refunds approved in this Decision is $5,072, representing $4,098 in principal and $974 in interest.

*Gull Industries, Inc./Maxwell Oil Co., Inc., 5/1/87; RF260-16, RF259-19*

The DOE issued a Decision and Order granting two Applications for Refund from the Gull Industries, Inc. escrow account under the provisions outlined in *Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). The applicant, Maxwell Oil Co., Inc., was a reseller of Gull petroleum products and was listed in the Appendix to the *Gull* decision as being eligible for refunds in two of the Gull consent order proceedings. In case No RF260-17, Maxwell was eligible for a refund of $1,387.70 in principal. Since this amount is less than the threshold amount, no further proof of injury was required. In Case No. RF259-19, the firm's level of purchases made it potentially eligible for a refund greater than $5,000. Since Maxwell failed to submit proof of injury, however, its refund was limited to the $5,000 threshold amount.

The DOE determined that it was inappropriate to disburse the refunds directly to Maxwell because the firm was in arrears for payments that it was obligated to make under a consent order that it had entered into with the DOE. The DOE determined that the refunds to which Maxwell would generally be entitled should more properly be used to fund the empty Maxwell escrow account. The DOE also ordered the Economic Regulatory Administration to file a Petition for the Implementation of Subpart V Procedures with regard to the newly-funded Maxwell escrow account. The refunds transferred to the Maxwell escrow account totaled $9,709.03, representing $8,337.70 in principal and $1,378.33 in interest.

*Gull Industries, Inc. Steve Wescott, 5/1/87; RF250-13, RF250-14*

The DOE issued a Decision and Order granting two Applications for Refund from the Gull Industries, Inc. escrow account under the provisions outlined in *Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). The applicant, Steve Wescott, was a reseller of Gull petroleum products and was listed in the Appendix to the *Gull* decision as being eligible for refunds in two of the Gull consent order proceedings. In Case No. RF250-12, Wescott limited his claim to the $5,000 threshold amount rather than attempt to prove that he was eligible for the full potential refund amount stated in Appendix A to the *Gull* Decision. Similarly, in Case No. RF250-14, Wescott limited his claim to the threshold amount although his level of purchases made him potentially eligible for a greater refund. Since Wescott limited his claim to $5,000 in each of the proceedings, no further proof of injury was required. The refunds approved in the Decision totaled $15,287, representing $10,000 in principal and $5,287 in interest.

*Husky Oil Company/Nevada Power Company, 4/27/87; Rf161-04*

The DOE issued a Decision and Order concerning an Application for Refund filed by the Nevada Power Company in the Husky Oil Company special refund proceeding. The applicant is a public utility that had purchased refined petroleum products from Husky during the consent order period. As a public utility, the applicant applied for a refund based on the procedures and presumption for utilities outlined in *Husky Oil Co.*, 13 DOE ¶ 85,045 (1985); it adequately documented its purchases from Husky and certified that it would pass any refund received to its customers in the form of fuel costs adjustments. The applicant was granted a refund of $12,078 based on its volumetric per gallon refund amount, representing $8,396 in principal and $3,682 in interest.

*Marathon Petroleum Company/Dan-D-Service, 4/29/87; RF250-2710*

Dan-D-Service (Dan) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). Dan demonstrated that it purchased 704,778 gallons of refined petroleum covered products from Marathon during the consent order period. Using a volumetric methodology, the DOE determined that Dan's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Dan a refund of $299.81 in principal and $17.18 in accrued interest for a total refund of $317.19.

*Marathon Petroleum Company/Marclay Oil Company, 4/27/87; RF250-991*

The DOE issued a Decision and Order granting a refund from the Marathon Petroleum Company despoilt escrow account to Marclay Oil Company, a retailer of Marathon motor gasoline. The applicant submitted a claim for less than the $5,000 threshold, and was therfore not required to provide a detailed showing of injury. Marclay was granted a total refund of $706, representing $649 in principal and $57 in interest.

*Marathon Petroleum Company/Merle E. Schoon & Son, 4/29/87; RF250-2688, RF250-2689*

Merle E. Schoon & Son (Schoon) filed two Applications for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). Schoon demonstrated that it purchased 196,540 gallons of refined petroleum covered products from Marathon during the consent order period. Using a volumetric methodology, the DOE determined that Schoon's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Schoon a refund of $82.56 in principal and $5.06 in accrued interest for a total refund of $88.69.

*Marathon Petroleum Company/Rainwater Gas & Oil Company, Inc., 4/29/87; RF250-2688, RF250-2689*

The DOE issued a Decision and Order concerning two Applications for Refund filed by Rainwater Gas & Oil Company, Inc. (Rainwater), a reseller of Marathon covered products. Although the firms's purchase of diesel and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986), Rainwater elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the *Marathon* decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Rainwater should receive a refund of $16,727.40 in principal and $1,198.51 in accrued interest for a total refund of $17,920.91.

*Marathon Petroleum Company/Sears, Roebuck and Co., 4/29/87; RF250-2298, RF250-2299*

The DOE issued a Decision and Order concerning Applications for Refund filed by Sears, Roebuck and Co. (Sears), a retailer of Marathon covered products. Although the firm's purchase of diesel and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986), Sears elected to file its refund applications in accordance with procedures for filing claims of less than $50,000 under the 35 percent presumption method outlined in the *Marathon* decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Sears should receive a refund of $49,999.90 in principal and $3,587.93 in accrued interest for a total refund of $53,587.82.

*Mobil Oil Corporation/Agway Petroleum Corporation, 4/27/87; RF225-6184, RF225-6187*

The DOE issued a Decision granting in part an Application for Refund from the Mobil Oil Corporation escrow account filed by Agway Petroleum Corporation, an agricultural cooperative headquartered in Syracuse, New York. In reaching its determination, the DOE noted that Agway was ineligible to receive a refund based on its spot market purchases of 10,500,000 gallons of Mobil motor gasoline for resale to entities other than cooperative members because Agway had not attempted to rebut the presumption that, as a spot purchaser, it was not inured on those purchases. However, Agway was deemed eligible to receive a refund based on its other refined product purchases from Mobil, including contractual purchases of Mobil motor gasoline for resale to Agway members. The total refund granted in the Decision was $879 ($724 in principal plus $155 in interest).

*Mobil Oil Corporation/Cochran Oil Company, 4/30/87; RF225-10751*

The DOE issued a supplemental Decision and Order granting Cochran Oil Company an additional refund from the Mobil Oil Corporation deposit escrow account. Cochran received an additional amount of $343 in principal and $53 in interest after the DOE concluded that the firm had been underpaid in a Decision and Order issued by the DOE on March 31, 1987.

*Mobil Oil Corporation/Hensley's Consumers Oil Co., 4/29/87; RF225-10751*

The DOE issued a supplemental Decision and Order concerning an Application for Refund filed on behalf of Hensley's Consumers Oil Company by Bassman, Mitchell & Alfano in the Mobil special refund proceeding. The applicant received a refund in *Mobil Oil Corp./Buford M. Musser*, 15 DOE ¶ 85,419 (1987). However, the level-of-distribution percentage that was incorrectly listed in the Appendix to the Decision resulted in a $142 overpayment to Hensley's. Therefore, the DOE determined that Bassman, Mitchell & Alfano, representing Hensley's, should remit the overpayment to the DOE.

*Pacific States Transport, Inc., 4/29/87; RF250-2381*

The DOE issued a Decision and Order approving a trucking company for a refund from the Surface Transporters Escrow. Pacific States Transport, Inc. documented its purchases of diesel fuel between August 19, 1973 and January 27, 1981 for use in its fleet of trucks. The DOE found that the firm had mailed the application on the deadline date and therefore had made a good-faith effort to comply with that deadline. Accordingly, the DOE granted the application and approved the firm for a refund based on 3,189,809 gallons. The DOE stated that because the size

of a surface transporter applicant's refund will depend upon the total amount of gallons ultimately approved, the actual amount of the firm's refund will be determined at a later date.

*Texas Gas Exploration/Chevron U.S.A. Inc., 4/27/87; RF44-4*

Chevron U.S.A. Inc. filed an Application for Refund in the Texas Gas Exploration refund case. The DOE noted that Chevron's claim was based on spot purchases. The DOE stated that a spot purchaser is generally presumed not to have been injured, and is therefore ineligible for a refund. Chevron was given an opportunity to rebut the no-injury presumption. To rebut that presumption, an applicant must show that the purchases were made solely for maintaining the refund applicant's base period customers' ongoing needs, and that the applicant sustained a loss in those transactions. Chevron failed to make such a showing. The DOE therefore denied Chevron's refund request.

*Trans County Van Lines Et Al., 4/27/87; RF270-782 Et Al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by six trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the six firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the six firms' refunds will be determined at a later date. The total number of gallons approved in this Decision is 4,304,867.

*Western Iowa Park Co. Et Al., 5/1/87; RF270-783 Et Al.*

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by four trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the six firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be determined at a later date. The total number of gallons approved in this Decision is 7,842,825.

*Yellow Cab Company of Gaston, Inc., Et Al., 4/29/87; RF270-2269 Et Al.*

The DOE issued a Decision and Order concerning six Applications for Refund from the Surface Transporters Escrow. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it is a "for hire" carrier for the purposes of this proceeding. In addition, each applicant demonstrated that it purchased a certain volume above the 250,000 gallon minimum established in the *Order Establishing Surface Transporters Escrow and Prescribing Provision for Administration of the Fund*, ¶ 16. Accordingly, all six Applications were approved, and the respective volumes will be used to calculate each company's final refund. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the firms' refunds will be determined at a late date. The total number of gallons approved in this Decision is 3,536,024.

**Dismissals**

The following submissions were dismissed:

*Name and Case No.*

Enterprise Beacon Service; RF238-24
Nice Community School District; RF270-500
School District of Westfield—Charles Street; RF270-389
Shell Oil Company; HRO-0271; KRD-0002, KRD-0016

[FR Doc. 87-11715 Filed 5-21-87; 8:45 am]
BILLING CODE 6450-01-M

## Issuance of Proposed Decisions and Orders; Week of April 27 Through May 1, 1987

During the week of April 27 through May 1, 1987, the proposed decision and order summarized below was issued by the Office of Hearing and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,
*Director, Office of Hearings and Appeals.*
May 12, 1987.

*Ackerman Oil Company, Jasper, IN; KEE-0110, Reporting Requirements*

Ackerman Oil Company filed an Application for Exception from the requirement to complete the file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Products Sales Report". On April 27, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 87-11716 Filed 5-21-87; 8:45 am]
BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3306-5]

## Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed May 11, 1987 through May 15, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870163, DSuppl, FHW, MN, MN-TH-33 Improvements, I-35 to US TH-53, Urban Section Alternatives, Carlton and St. Louis Counties, Due: July 6, 1987, Contact: Lawrence Brown, (612) 290-3230.

EIS No. 870166, Draft, FHW, WI, WI-TH-83 Improvement, I-94 to Cardinal Lane/WI-TH-16, Waukesha County, Due: July 6, 1987, Contact: Robert Cooper, (608) 264-5956.

EIS No. 870167, Revised DSuppl, COE, AL, GA, Alabama-Coosa Rivers Navigation Channel, Operation and Maintenance, Due: July 6, 1987, Contact: Michael Eubanks, (205) 694-3901.

EIS No. 870168, Final, AFS, MT, Gallatin National Forest, Noxious Weed Control Program, Due: June 22, Contact: Richard Inman, (406) 587-6705.

EIS No. 870169, FSuppl, CDB, CA, Santa Maria Town Center Expansion and Development, CDBG, Santa Barbara County, Due: June 22, 1987, Contact: William Orndorff, (805) 925-0951.

EIS No. 870170, FSuppl, FHW, CA, CA-15 Reconstruction, I-805 to I-8, New Preferred Alternative, San Diego

County, Due: June 22, 1987, Contact: Michael Cook, (916) 551-2307.

EIS No. 870171, Final, BRC, CA, Humboldt Bay Power Plant, Unit 3 Decommissioning, Approval, Humboldt County, Due: June 22, 1987, Contact: Peter Erickson, (301) 492-8124.

EIS No. 870172, FSuppl, CDB, AZ, Rio Nuevo-North Development, Land Use Changes and New Information, CDBG, Pima County, Due: June 22, 1987, Contact: William Mosher, (602) 623-5427.

EIS No. 870173, Final, SCS, MS, South Delta Watershed Protection and Flood Prevention, Humphreys, Sharkey and Yazoo Counties, Due: June 22, 1987, Contact: L. Pete Heard, (601) 606-6205.

EIS No. 870174, Draft, COE, IN, Fort Wayne and Vicinity Flood Control Plan, Allen County, Due: July 6, 1987, Contact: Florence Bissell, (313) 226-3819.

EIS No. 870175, Draft, FWS, Yukon Delta National Wildlife Refuge, Long-Term Management Plan and Wilderness Review, Due: July 6, 1987, Contact: William Knauer, (907) 786-3388.

EIS No. 870176, Final, FWS, NJ, Great Swamp National Wildlife Refuge, Master Plan, Morris County, Due: June 26, 1987, Contact: Curtis A. Laffin, (617) 965-5100 Ext. 222.

EIS No. 870177, Final, AFS, MT, 1987 Deerlodge National Forest, Noxious Weed Control Program, Due: June 22, 1987, Contact: Dave Leppert, (406) 496-3368.

EIS No. 870178, Final, NOA, PAC, Japanese Salmon Fishery, 1987 Through 1991 Incidental Take of Dall's Porpoise, United States Exclusive Economic Zone, General Permit, Due: June 22, 1987, Contact: Nancy M. Foster, (202) 673-5351.

**Amended Notice**

EIS No. 870152, Draft, COE, CA, Coyote and Berryessa Creeks Flood Control Improvement, Santa Clara County, Due: July 6, 1987, Published in the Federal Register May 8, 1987—Review period extended.

Dated: May 19, 1987.

Barbara Bouchman,

*Acting Deputy Director, Office of Federal Activities.*

[FR Doc. 87-11533 Filed 5-21-87; 8:45 am]

BILLING CODE 6560-50-M

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[ER-FRL-3265-6]

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 4, 1987 through May 8, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/78. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

**Draft EISs**

*ERP No. D-DOE-H22000-MO*, Rating 3, Weldon Spring Site, Remedial Action, Long-Term Mgmt. of Contaminated Materials, MO. Summary: EPA does not believe the draft EIS adequately identified or evaluated the impacts of the proposed action nor does it fulfill the conditions set forth in the DOE/EPA Federal Facilities Agreement. The Agreement called for the completion of all investigations and studies related to the Remedial Investigation/Feasibility Study process before issuance of the draft EIS. The information presented in the draft EIS does not provide a basis for either developing an appropriate remedial action plan or an adequate draft EIS. EPA has requested the draft EIS be supplemented or revised. Due to the significant potential issues remaining to be resolved, this proposal could be a candidate for referral to the Council on Environmental Quality.

*ERP No. D-FHW-B40051-MA*, Rating EC1, MA-2/Alewife Brook Parkway Improvement, MA-2/Pleasant Street to Alewife Brook Parkway/Fresh Pond Parkway, Sect. 404 and 10 Permits, MA. Summary: EPA has expressed concerns regarding the protection of special aquatic sites including wetlands, and non-degradation of water quality. EPA believes Alternative 3 to be the preferred build alternative with respect to EPA's Clean Water Act (CWA) section 404(b)(1) Guidelines. However, EPA will continue to evaluate project refinements that reduce wetland losses throughout the NEPA and section 404 processes. Finally, EAP requests that FHWA commit to implementing the mitigation measures identified in the EIS.

*ERP No. D-FHW-D40225-VA*, Rating EC2, VA-28/Sully Rd. Improvements, I-66 at Centreville in Fairfax County to VA-7 at Leesburg Pike in Loudon County, VA. Summary: EPA identified a number of conditions which would require further information. These are lack of discussion of alternatives, insufficient information regarding the wetlands, air, and noise impacts, and incomplete discussion of the impacts to parallel roads.

*ERP No. D-FHW-E40005-KY*, Rating EC2, US 127 Improvements, Anderson County Line to I-64, Construction, KY. Summary: EPA's concerns involved the alternative analysis, noise, karst geologic features, and the possible presence of wetland areas. Additional information and/or impact avoidance/mitigation were therefore requested.

*ERP No. D-SCS-H36039-NE*, Rating LO, Middle Big Nemaha Watershed Protection and Flood Prevention Plan, NE. Summary: EPA has no objections to the project as proposed.

*ERP No. D-USA-K11031-CA*, Rating LO, Presidio Army Barracks Number 098, 118, and 124, CA. Summary: EPA expressed a lack of objections to the proposed project, but requested additional information on whether construction activities could impact surface or ground water quality. EPA also commended the Army for locating residential barracks near duty stations, which would benefit air quality by eliminating the need for daily commutes.

*ERP No. D-USN-K80015-AZ*, Rating EC2, Joint Guayule Rubber Program, Processing Operations, Prototype Rubber Extraction Facility, Construction/Operations, Gila R. Indian Reservation, AZ. Summary: EPA expressed environmental concerns because the project may generate hazardous waste, an issue not discussed in the draft EIS. EPA requested that the final EIS provide more information on hazardous waste characterization, and whether a permit is needed under the US Resource Conservation and Recovery Act.

**Final EISs**

*ERP No. F-APH-A82116-00*, 1987 Rangeland Grasshopper Cooperative Mgmt. Program, CA, WA, UT, AZ, AR, CO, NM, WY, ID, TX, ND, SD, OR, MT, KS, NB, NV, and OK. Summary: Most of EPA's concerns with the draft EIS have been addressed. However, EPA still believes APHIS should design a procedure for evaluating current program objectives and achievements.

*ERP No. F-BLM-K61073-00*, Benton—Owens Valley and Bodie Coleville Study Areas, Wilderness Recommendations, Designation, Partial or Non-Designations, CA and NV. Summary: EPA noted that the final EIS did not discuss potential water quality impacts. EPA requested that the Record of Decision commit to monitoring to ensure that water quality, beneficial uses and riparian areas are fully protected.

*ERP No. F-FUS-E81027-GA*, Jesup Federal Correctional Institution Complex, Construction and Operation, GA. Summary: The final EIS adequately

addressed EPA's draft EIS comments regarding air, noise, and wetland mitigation. Copies of the site and mitigation plans and the Record of Decisions were requested.

**Amended Notices**

The following reviews should have appeared in the FR Notice published on May 15, 1987.

*ERP No. D-COE-G28011-TX*, Rating LO, Applewhite Dam/Reservoir and Leon Creek Diversion Dam/lake Water Supply Project, Permit Application, Sect. 404 and 10 Permits, TX. Summary: EPA expressed no objections to the proposed action as described.

*ERP No. D-SFW-F84003-00*, Rating LO, Upper Mississippi River Nat'l Wildlife and Fish Refuge, Master Plan, IA, MN, WI, and IL. Summary: EPA's review resulted in no objections to implementation of the preferred alternative. EPA noted that coordination must continue during planning of specific elements of the master plan.

Dated: May 19, 1987.

**Barbara Bonnomer,**

*Acting Deputy Director, Office of Federal Activities.*

[FR Doc. 87-11810 Filed 5-21-87; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3205-7]

**Test Method Equivalency Petitions; Availability of Guidance Document**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Availability of Guidance Document.

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**SUMMARY:** The Environmental Protection Agency (EPA) announces the availability of a guidance document entitled "Test Method Equivalency Petitions: A Guidance Manual" (EPA/530-SW-87-008). The purpose of this document is to provide guidance to parties who wish to prepare a petition for submission to EPA for an equivalent test method (40 CFR 260.21). The document explains, in detail, the information a test method equivalency petition must include. Topics covered include the following:

- An explanation of the RCRA regulations that require a test method equivalency petition.
- A discussion of the process and procedures by which a petition is submitted to, and reviewed by, EPA.
- A description of basic statistical procedures to be used for evaluating test method equivalency.
- A description of how to prepare a petition, with a suggested petition format.
- A checklist to help ensure the completeness of the petition.
- A discussion of proper experimental designs and statistical analyses for more complex petitions.
- An example of a test method equivalency petition.

The document is currently available for purchase from the National Technical Information Service (NTIS) either as a paper copy ($18.95) or as a microfiche ($6.50).

**ADDRESS:** National Technical Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Telephone: (703) 487-4650. NTIS Order No. PB-87-17-8349.

Requestors should cite the title, NTIS order number, and the EPA document number.

**FOR FURTHER INFORMATION:** Contact RCRA Hotline at (800) 424-9346 (toll free), or (202) 382-3000. For technical information contact Florence M. Richardson at (202) 382-4701.

Dated: May 11, 1987.

**J.W. McGraw,**

*Acting Assistant Administrator for Solid Waste and Emergency Response.*

[FR Doc. 87-11737 Filed 5-21-87; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3206-1]

**Science Advisory Board; Radiation Advisory Committee; National Radon Survey Design Subcommittee; Two Open Meetings—June 10-11, 1987 and June 12, 1987**

Under Pub. L. 92-463, notice is hereby given that a meeting of the National Radon Survey Design Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. On Wednesday, June 10th, the meeting will be held in the Administrator's Conference Room 1101 West Tower. On Thursday, June 11th, the meeting will be held in Room #2, South Conference Area, Washington Information Center, Waterside Mall, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. Wednesday and adjourn no later than 5:00 p.m. Thursday.

The Subcommittee will review the *Design of the National Survey of Radon Levels in Residential Structures* for the Office of Radiation Programs. Copies of the documents being reviewed may be obtained by calling or writing Mr. Barry Parks (202) 475-9605 at the Office of Radiation Programs, ANR-460, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The Science Advisory Board's Radiation Advisory Committee will meet Friday, June 12, 1987, in the Administrator's Conference Room 1101 West Tower. The meeting will begin at 8:00 a.m. and adjourn no later than 5:00 p.m.

The Committee will hear the report of the National Radon Survey Design Subcommittee and will complete its review of the Office of Radiation Program's *EPA Idaho Radionuclide Exposure Study*. Copies of this document may be obtained by calling or writing Wayne Bliss (702) 798-2478 at the Office of the Radiation Programs, Post Office Box 18416, Las Vegas, NV 89114. The Committee will be briefed on April 1987 *Report on Congress on Indoor Air Pollution and Radon* prepared under Title IV Superfund Amendments and Reauthorization Act of 1986. Copies of this document may be obtained by calling or writing Ms. Stephany DeScisciolo (202) 475-9605 at the Office of Radiation Programs, ANR-460, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Office of Environmental Engineering and Technology Demonstration has requested the Committee review *EPA's Engineering Research Program on Indoor Air Quality: Radon Reduction Research and Development, Program Description and Plans*. The Committee will consider this request and hear briefings on the document. Copies can be obtained from Mr. Paul Shapiro (202) 382-2583 at the Office of Environmental Engineering and Technology Demonstration (RD-681), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Both meetings are open to the public; however, seating is limited. Any member of the public wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on Friday, June 5, 1987. The telephone number is (202) 382-2552.

Dated: May 18, 1987.

**Terry F. Yosie,**

*Director, Science Advisory Board.*

[FR Doc. 87-11736 Filed 5-21-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51675; FRL]

## Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences Statutory requirements for section 5(a)(1) permanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-three such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-1054, 87-1055, 87-1056, 87-1057, 87-1058, 87-1059, 87-1060 and 87-1061—August 1, 1987.

P 87-1062, 87-1063, 87-1064, 87-1065, 87-1066, 87-1067, 87-1068, 87-1069, 87-1070, 87-1071, 87-1072, 87-1073, 87-1074, 87-1075, 87-1076, 87-1077, 87-1078, 87-1079, 87-1080, 87-1081, 87-1082, and 87-1083—August 2, 1987.

P 87-1084, 87-1085 and 87-1086—August 3, 1987.

Written comments by:

P 87-1054, 87-1055, 87-1056, 87-1057, 87-1058, 87-1059, 87-1060 and 87-1061—July 2, 1987.

P 87-1062, 87-1063, 87-1064, 87-1065, 87-1066, 87-1067, 87-1068, 87-1069, 87-1070, 87-1071, 87-1072, 87-1073, 87-1074, 87-1075, 87-1076, 87-1077, 87-1078, 87-1079, 87-1080, 87-1081, 87-1082 and 87-1083—July 3, 1987.

P 87-1084, 87-1085 and 87-1086—July 4, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51675]" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemcial Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidenital document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m. Monday through Friday, excluding legal holidays.

P 87-1054

*Manufacturer.* E.I. du Pont de Nemours and Company, Inc.
*Chemical.* (G) Catalyst.
*Use/Production.* (G) Catalyst. Prod. range: Confidential.

P 87-1055

*Manufacturer.* E.I. du Pont de Nemours and Company, Inc.
*Chemical.* (G) Catalyst.
*Use/Production.* (G) Catalyst. Prod. range: Confidential.

P 87-1056

*Manufacturer.* E.I. du Pont de Nemours and Company, Inc.
*Chemical.* (G) Catalyst.
*Use/Production.* (G) Catalyst. Prod. range: Confidential.

P 87-1057

*Importer.* Sherex Chemical Company, Incorporated.
*Chemical.* (G) Polyamide resin.
*Use/Import.* (S) Industrial hot melt adhesive. Import range: Confidential.

P 87-1058

*Manufacturer.* Confidential.
*Chemical.* (G) Urethane diol.
*Use/Production.* (S) Industrial, commercial and consumer intermediate for urethane polymers. Prod. range: Confidential.

P 87-1059

*Importer.* Sherex Chemical Company.
*Chemical.* (G) Alkylaluminum halide.
*Use/Import.* (G) Plating aid. Import. range: Confidential.

P 87-1060

*Manufacturer.* W.R. Grace and Company.
*Chemical.* (S) Vermiculite concentrate, containing ammonium.
*Use/Production.* (G) Raw material for use as an intumescent agent for various heat and fire protection systems. Prod. range: Confidential.

P 87-1061

*Manufacturer.* E.I. du Pont de Nemours and Company, Inc.
*Chemical.* (G) Zirconium (4+) alkanolamine polyol complex.
*Use/Production.* (G) Non-dispersive use. Prod. range: Confidential.
*Toxicity Data.* Acute oral: 5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; $LC_{50}$ 96hr (Fathead Minnow): 10,000 mg/L.

P 87-1062

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Aromatic carboxylic acid.
*Use/Production.* (S) Site-limited chemical intermediate. Prod. range: Confidential.

P 87-1063

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Solid bisphenol A type epoxy resin.
*Use/Production.* (S) Industrial and commercial binding agent cured with epoxy cross-linking agents for pigmented epoxy powder coatings. Prod. range: Confidential.

P 87-1064

*Manufacturer.* Cavedon Chemical Company, Incorporated.
*Chemical.* (G) Amino functional zircoaluminate chloride hydroxide polymer.
*Use/Production.* (S) Industrial adhesion promoter. Prod. range: Confidential.

P 87-1065

*Manufacturer.* Wilmington Chemical Corporation.
*Chemical.* (G) Aqueous aliphatic polyurethane dispersion.
*Use/Production.* (S) Coating, open, non-dispersive use. Prod. range: Confidential.

P 87-1066

*Importer.* Confidential.
*Chemical.* (G) Alkanolamidethersulfate.
*Use/Import.* (S) Emulsifier for the leather and fur industry. Import range: Confidential.

P 87-1067

*Manufacturer.* Confidential.
*Chemical.* (G) Styrenated acrylate ester polymer.
*Use/Production.* (G) Paint non-volatile vehicle. Prod. range: 975,000 to 1,000,000 kg/yr.

P 87-1068

*Manufacturer.* Genesee Polymers Corporation.
*Chemical.* (S) 2-Propenoic acid, 2-methyl-3(methyl diethoxysilyl) propyl ester.
*Use/Production.* (G) Silane coupling agent. Prod. range: 5,454 to 20,000 kg/yr.

P 87-1069

*Manufacturer.* W.R. Grace & Company.

BEST COPY AVAILABLE

*Chemical.* (S) N-octylammonium phosphate.
*Use/Production.* (G) Foaming agent. Prod. range: 1,300 to 4,800 kg/yr.

P 87-1070

*Manufacturer.* W.R. Grace & Company
*Chemical.* (S) Aluminum silicate-clay prills.
*Use/Production.* (G) Aggregate in a spray-on fire proofing product for structural steel in high rise building construction. Prod. range: 106,000 to 398,000 kg/yr.

P 87-1071

*Manufacturer.* Confidential.
*Chemical.* (G) Modified maleated metal resinate.
*Use/Production.* (S) Industrial publication gravure printing inks. Prod. range: Confidential.

P 87-1072

*Manufacturer.* General Electric Company.
*Chemical.* (G) Aromatic sulfonate ester.
*Use/Production.* (S) Consumer UV-light screening agent additive for polycarbonate film and sheet protective coating. Prod. range: Confidential.

P 87-1073

*Importer.* EMS American Grilon, Inc.
*Chemical.* (G) Copolyester resin.
*Use/Import.* (S) Polymer as a component for producing fine powder with hardeners for metal coating by electrostatical.

P 87-1074

*Importer.* EMS American Grilon, Inc.
*Chemical.* (G) Copolyester resin.
*Use/Import.* (S) Polymer as a component for producing fine powder with hardeners for metal coating by electrostatical spraying and cross-linking by heat. Import range: Confidential.

P 87-1075

*Importer.* EMS American Grilon, Inc.
*Chemical.* (G) Copolyester resin.
*Use/Import.* (S) Polymer as a component for producing fine powder with hardeners for metal coating by electrostatical spraying and cross-linking by heat. Import range: Confidential.

P 87-1076

*Importer.* EMSER Industries.
*Chemical.* (G) Polyetheramide based on nylon 6-monomers.
*Use/Import.* (G) Technical plastic parts in different applications

P 87-1077

*Importer.* EMSER Industries.
*Chemical.* (G) Polyetheramide based on nylon 120-monomers.
*Use/Import.* (G) Technical plastic parts in different applications. Import range: Confidential.

P 87-1078

*Importer.* EMSER Industries.
*Chemical.* (G) Polyetheramide based on nylon 12-monomers.
*Use/Import.* (G) Technical plastic parts in different applications. Import range: Confidential.

P 87-1079

*Importer.* EMSER Industries.
*Chemical.* (S) Nylon 22 (poly condensate based on ethylene diamine and oxalic acid).
*Use/Import.* (G) Compounding additives for Nylon 6 and 12. Import range: Confidential

P 87-1080

*Manufacturer.* Reichhold Chemicals, Inc.
*Chemical.* (G) Terpene/vinyl aromatic resin.
*Use/Production.* (S) Industrial adhesive tackifiers. Prod. range: Confidential.

P 87-1081

*Manufacturer.* Confidential.
*Chemical.* (G) Vegetable oil soap.
*Use/Production.* (G) Ink coatings. Prod. range: Confidential.

P 87-1082

*Importer.* CIBA-Geigy Corporation.
*Chemical.* (G) Substituted azo triazine naphthalenedisulfonic acid.
*Use/Import.* (G) Textile dye. Import range: Confidential.
*Toxicity Data.* Acute oral: 5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative, Skin Sensitization: Non-sensitizer, $LC_{50}$ 96hr (Zebra fish): >1,000 mgl;. $EC_{50}$ 24hr (Daphnia magna): >1,000 mg/L.

P 87-1083

*Manufacturer.* Reichhold Chemicals, Inc.
*Chemical.* (G) Terpene-styrene resin.
*Use/Production.* (S) Industrial adhesive tackifiers. Prod. range: Confidential.

P 87-1084

*Importer.* Tioxide America Inc.
*Chemical.* (S) 2-propanolato, 2-methyl-1-propanolato, bis (2,4-pentanedionato) titanium.
*Use/Import.* (S) Industrial cross-linking agent for water-based well fracturing fluids and adhesion promoter and heat stabilizer for printing inks. Import range: Confidential.

P 87-1085

*Manufacturer.* Confidential.
*Chemical.* (G) Isocyanate terminated urethane prepolymer.
*Use/Production.* (S) Industrial, commercial and consumer hot melt (solvent-free) adhesive. Prod. range: Confidential.

P 87-1086

*Importer.* TAKASAGO USA Inc.
*Chemical.* (S) Isopropoxyethyl salicylate.
*Use/Import.* (S) Site-limited perfume. Import range: 200 to 500 kg/yr.
*Toxicity Data.* Acute dermal: 0.02 ml; Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.

Dated: May 11, 1987.

Denise Devoe,

*Acting Division Director, Information Management Division.*

[FR Doc. 87-11080 Filed 5-21-87; 8:45 am]

BILLING CODE 6560-50-M

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[OPTS-59817; FRL 3204-8]

## Short Oil Alkyd Resin; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 48006) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides the summary.

DATES: Close of Review Period:

Y 87-145—May 25, 1987

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection

Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-145

*Manufacturer.* Confidential.
*Chemical.* (G) Short oil alkyd resin.
*Use/Production.* (S) Industrial component of industrial paint binder. Prod. range: 4,500 to 7,300 kg/yr.

Dated: May 11, 1987.

Denise Devon,

*Acting Division Director, Information Management Division.*

[FR Doc. 87-11649 Filed 5-21-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### A Closed Circuit Test of the Emergency Broadcast System During the Week of June 8, 1987

May 15, 1987.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of June 8, 1987. Only ABC, AP Radio, CBS, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Program for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

THIS IS A CLOSED CIRCUIT TEST AND WILL NOT BE BROADCAST OVER THE AIR.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-11743 Filed 5-21-87; 8:45 am]

BILLING CODE 6712-01-M

### Technical Subgroup of Radio Advisory Committee To Hold Meeting Thursday, June 11, 1987

The Technical Subgroup of the Advisory Committee on Radio Broadcasting will resume its continuing meeting on Thursday, June 11, 1987 at 10:00 a.m. in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

The Subgroup will consider the following matters:

—Synchronous transmitters;

—Other technical issues identified by the Commission's review of the AM broadcast rules;

—Technical issues relating the preparations for the upcoming Second Session of the Region 2 Conference on the Planning of the Expansion of the AM band;

—Other business.

The Subgroup's meetings are continuing ones, and may be resumed after the June 11, 1987 session at such time and place as may be decided at that session.

All meetings of the Technical Subgroup are open to the public. All interested persons are invited to participate in these meetings.

For further information, please call the Subgroup Chairman, Wallace E. Johnson, at (703) 841-0050.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-11744 Filed 5-21-87; 8:45 am]

BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Hawkeye Broadcasting Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant | City/State | File No. | Mill Docket No. |
|---|---|---|---|
| A. Hawkeye Broadcasting Limited Partnership | Waterloo, Iowa | BPCT-881014KJ | 87-142 |
| B. William D. Silverman d/b/a Waterloo Television | Waterloo, Iowa | BPCT-881216KJ | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

| Issue Heading | Applicant(s) |
|---|---|
| Satellite | A |
| Air Hazard | A, B |
| Comparative | A, B |
| Ultimate | A, B |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 87-11746 Filed 5-21-87; 8:45 am]

BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Betty N Nolder et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/State | File No. | Mill Docket No. |
|---|---|---|---|
| A. Betty N. Nolder | Mexico Beach, Florida | BPH-8501114MA | 87-141 (Dismissed) |
| B. Mexico Beach FM Group Limited Partnership | Mexico Beach, Florida | BPH-860711NC | |

| Applicant | City/State | File No. | MM Docket No. |
|---|---|---|---|
| C. Robert G., Kerrigan | Mexico Beach, Florida | BHP-850711ND | |
| D. PN Radio Company | Mexico Beach, Florida | BPH-850711CN | (Dismissed) |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

| Issue Heading | Applicant(s) |
|---|---|
| 1. Main Studio | C |
| 2. Comparative | B, C |
| 3. Ultimate | B, C |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC. 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87-11747 Filed 5-21-87; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Ocean Corp et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant | City/State | File No. | MM Docket No. |
|---|---|---|---|
| A. Ocean Corporation | Brunswick, Georgia | BPCT-861029KI | 87-144 |
| B. DHA Broadcasting, Inc. | Brunswick, Georgia | BPCT-861216KK | |
| C. Coastal Com, Inc | Brunswick, Georgia | BPCT-861216IL | |
| D. Sunbelt Broadcast Systems of Georgina, Inc. | Brunswick, Georgia | BPCT-861216IL | |

2. Pursuant to section 309(e) of the Communication Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standarized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue Heading | Applicant(s) |
|---|---|
| Air Hazard | A, B, C, D |
| Comparative | A, B, C, D |
| Ultimate | A, B, C, D |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transportation Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 87-11748 Filed 5-21-87; 8:45 am]

BILLING CODE 6712-01-M

## Applications for Consolidated Hearing; Sudduth Media, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant | City/State | File No. | MM Docket No. |
|---|---|---|---|
| A. Sudduth Media, Inc | Paris, Texas | BPH-880118MH | 87-145 |
| B. Douglas Reesno | Paris, Texas | BPH-880122MB | |
| C. Matthew Murillo, Jr. d/b/a Blacksmith Broadcasting | Paris, Texas | BPH-880122MC | |
| D. Dwight R. Magnuson | Paris, Texas | BPH-880122MD | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

| Issue Heading | Applicant(s) |
|---|---|
| 1. Site Availability | C |
| 2. Air Hazard | D |
| 3. Comparative | A-D |
| 4. Ultimate | A-D |

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The

complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–11749 Filed 5–21–87; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Application Pursuant to section 19 of the Federal Deposit Insurance Act (OMB No. 3064–0016).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

**ADDRESS:** Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

**COMMENTS:** Comments on this collection of information should be submitted on or before June 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation , Washington, DC 20429, telephone (202) 898–3810.

**SUMMARY:** The FDIC is requesting OMB approval to extend for a three-year period, the expiration date of form FDIC 6710/07 used by FDIC-insured banks to obtain consent from the FDIC to employ persons who have been convicted of crimes involving dishonesty or breach of trust. Such consent is required under section 19 of the Federal Deposit Insurance Act (12 USC 1829). It is estimated that the annual burden on banks, collectively, to prepare the form is 1,056 hours.

Dated: May 18, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 87–11808 Filed 5–21–87; 8:45 am]

BILLING CODE 6714–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–792–DR]

### Major Disaster and Related Determinations; New York

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New York, (FEMA–792–DR), dated May 15, 1987, and related determinations.

**DATED:** May 15, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice: Notice is hereby given that, in a letter of May 15, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.* Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe flooding during the period April 3 to 7, 1987, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 480(b) of Pub. L. 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Michael J. Chivinski of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster and are designated eligible as follows:

Delaware, Greene, Montgomery, Schoharie, and Ulster Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

*Director*

[FR Doc. 87–11709 Filed 5–21–87; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communciating with the Commission regarding a pending agreement.

*Agreement No.:* 217–010051–012.

*Title:* Mediterranean Force Majeure Agreement.

*Parties:*

Compania Transatlantica Espanola (Spanish Line)
Costa Container Line
Farrell Lines, Inc.
Italia Di Navigazione, S.P.A.
Jugolinija
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
Zim Isreal Navigation Co., Inc.

*Synopsis:* The proposed amendment would admit A.P. Moller-Maersk Line as a party to the agreement. The parties

have requested a shortened review period.

*Agreement No.:* 202–011102.

*Title:* U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement.

*Parties:*

Costa Line
Farrell Lines, Inc.
Nedlloyd Lines
Sea-Land Service, Inc.
Trans Freight Lines

*Synopsis:* The proposed agreement would permit the parties to publish rates and agree upon other terms and conditions of service with regard to the movement of cargo from U.S. Atlantic and Gulf ports, and from U.S. coastal or interior points via such ports, to ports of Italy, Spain, Portugal and the Mediterranean coast of France, and to all points in Italy, Spain, Portugal, France, Switzerland, Austria, Czechoslovakia and Hungary via such ports.

Dated: May 19, 1987.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

*Assistant Secretary.*

[FR Doc. 87–11757 Filed 5–21–87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Donald L. Sturm*, Omaha, Nebraska; Robert B. Sturm Irrevocable Trust; and Melanie L. Sturm Irrevocable Trust; to acquire 61.1 percent of the voting shares of American Bank Corporation, Omaha, Nebraska, and thereby indirectly acquire American Bank of Afton, Afton, Wyoming; American Bank of Cheyenne, Cheyenne, Wyoming; and American Bank of Evanston, Evanston, Wyoming.

Board of Governors of the Federal Reserve System, May 18, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87–11697 Filed 5–21–87; 8:45 am]

BILLING CODE 6210-01-M

### Key Atlantic Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Key Atlantic Bancorp*, Albany, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Key Bancshares of New York, Inc., Albany, New York, and thereby indirectly acquire Key Bank N.A., Albany, New York; Key Bank of Central New York, Syracuse, New York; Key Bank of Northern New York N.A., Watertown, New York; Key Bank of Southeastern New York N.A., Chester, New York; Key Bank of Western New York N.A., Jamestown, New York; Key Bank of Long Island, Sayville, New York; and Key Bank USA N.A., Albany, New York, a *de novo* bank; and Key Bancshares of Maine Inc., Augusta, Maine, and thereby indirectly acquire Key Bank of Central Maine, Augusta, Maine; Key Bank of Southern Maine, Portland, Maine; Key Bank of Eastern Maine, Bangor, Maine; and Key Bank of Northern Maine, Presque Isle, Maine.

In connection with this application, Applicant has also applied to acquire Key Trust Company, Key Trust Company of Florida N.A., and Key Trust Company of Maine, and thereby engage in fiduciary, agency and custodial activities pursuant to § 225.25(b)(3); Key Financial Services, Inc. and Key Commercial Corp., and thereby engage in leasing personal property pursuant to § 225.25(b)(5); Key Bank Life Insurance Ltd., and thereby engage in underwriting credit life, accident and health insurance pursuant to section 225.25(b)(8); Key Mortgage Funding, Inc., and thereby engage in making and servicing mortgage loans pursuant to section 225.25(b)(1); Key Services Corporation, and thereby engage in data processing activities pursuant to § 225.25(b)(7); Key Advisory Services, Inc. and Howe and Rusling, Inc., and thereby engage in investment and financial advisory services pursuant to § 225.25(b)(4); and Key Brokerage Company, Inc., and thereby engage in securities brokerage pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 18, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87–11698 Filed 5–21–87; 8:45am]

BILLING CODE 6210-01-M

**O'Neill Properties, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *O'Neill Properties, Inc.*, Minneapolis, Minnesota; to acquire Meierhenry Agency, Inc., O'Neill, Nebraska, and thereby engage in the sale of general insurance in the town of O'Neill, Nebraska, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 18, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11099 Filed 5-21-87; 8:45 am]

BILLING CODE 6210-01-M

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[Docket No. R-0603]

**Proposed Guidelines Regarding the Bank Bribery Act**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed guidelines.

**SUMMARY:** the Bank Bribery Amendments Act of 1985 requires that Federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institution officials in complying with this law. The proposed guidelines were developed by the Interagency Bank Fraud Enforcement Working Group. In accordance with a recommendation from the Federal Financial Institutions Examination Council, the guidelines proposed by the Board of Governors of the Federal reserve System (the "Board of Governors") encourage all state member banks and bank holding companies to adopt codes of conduct or written policies that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the Board of Governors, do not constitute violations of the Federal bank bribery law.

The proposed guidelines suggest, *inter alia*, that state member banks and bank holding companies themselves establish, in their own codes of conduct or written policies, a range of internally acceptable dollar amounts for the various benefits that their officials may receive from those doing or seeking to do business with them. In the proposed guidelines, the Board of Governor has not set any specific dollar amounts for entertainment, meal or gift expenses. With regard to this issue, the Board of Governors seeks comment from the public concerning whether the establishment by the Board of Governors of specific dollar limits or ranges will further assist compliance with the requirements of the Bank Bribery Act and, if so, what amounts should be set. The Board of Governors would also be interested in knowing whether the location, size and nature of a financial institution's business should be taken into consideration in the establishment of appropriate dollar limits or ranges.

**DATE:** Comments must be received on or before July 21, 1987.

**ADDRESS:** Interested parties are invited to submit written comments to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, or to deliver such comments to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.). Written comments should refer to Docket No. R-0603. Comments received may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays, except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

**FOR FURTHER INFORMATION CONTACT:** Herbert A. Biern, Assistant Director, Enforcement Section, Division of Banking Supervision and Regulation (202/452-2620); Mary P. Johannes, Attorney, Enforcement Section, Division of Banking Supervision and Regulation (202/452-3953); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Comprehensive Crime Control Act of 1984 (Pub. L. 98-473, Title 11, October 12, 1984) amended the Federal Bank bribery law, 18 U.S.C. 215, to prohibit employees, officers, directors, agents and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. (The definition of a "financial institution" under the law includes a bank and a bank holding company.) The amended law also prohibited anyone from offering or giving anything of value to employees, officers, directors, agents or attorneys of financial institutions for or in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under section 215, and indicated that cases to be considered for prosecution under the new bribery law entail breaches of fiduciary duty or dishonest efforts to undermine financial institution

transactions. Because the statute was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift giving or entertaining that does not involve a breach of fiduciary duty or dishonesty.

Congress decided that the broad scope of the statute provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99-370, August 4, 1986) to narrow the scope of 18 U.S.C. section 215 by adding a new element, namely, an intent to corruptly influence or reward an officer in connection with financial institution business. As amended, section 215 provides in pertinent part:

Whoever—

"(1) corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) as an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be guilty of an offense"

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. This exception is set forth in subsection 215(c).

The penalty for a violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds $100, the offense is a felony punishable by up to five years imprisonment and a fine of $5,000 or three times the value of the bribe or gratuity. If value does not exceed $100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of $1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents and attorneys of financial institutions to comply with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to but not dispositive of any prosecutive decision the Department of Justice may make in any particular case. 132 Cong. Rec. 5044 (daily ed. Feb. 4, 1986). Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standards set forth in the statute. Nonetheless, in adopting its own prosecution policy under the bank bribery statute, the Department of Justice can be expected to take into account the financial institution regulatory agency's expertise and judgment in defining those activities or practices that the agency believes do not undermine the duty of an employee, officer, director, agent or attorney to the financial institution. *United States Attorneys' Manual* section 9-40.439.

## Proposed Guidelines

The proposed guidelines encourage all state member banks and bank holding companies to adopt internal codes of conduct or written policies or amend their present codes of conduct or policies to include provisions that explain the general prohibitions of the bank bribery law. The proposed guidelines relate only to the bribery law and do not address other areas of conduct that a state member bank or bank holding company would find advisable to cover in its code of conduct or written policy. The code or policy should prohibit, consistent with the statute, any employee, officer, director, agent or attorney of a state member bank or bank holding company (hereinafter "Bank or Bank Holding Company Official" or "Bank or Bank Holding Company Officials") from (1) soliciting for themselves or for a third party (other than the bank or bank holding company itself) anything of value from anyone in return for any business, service or confidential information of the bank or bank holding company and from (2) accepting anything of value (other than normal authorized compensation) from anyone in connection with the business of the bank or the bank holding company, either before or after a transaction is discussed or consummated.

The state member banks' and bank holding companies' codes or policies should be designed to alert Bank or Bank Holding Company Officials about the bank bribery statute, as well as to establish and enforce standards relating to acceptable business practices.

In its code of conduct or written policy, the state member bank or bank holding company may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with bank or bank holding company business. There are a number of instances where a Bank or Bank Holding Company Official, without risk of corruption or breach of trust, may accept something of value from one doing or seeking to do business with the bank or bank holding company. The most common examples are the business luncheon or the holiday season gift from a customer. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the Bank or Bank Holding Company Official; or if the benefit would be paid for by the bank or bank holding company as a reasonable business expense if not paid for by another party. Indeed, by adopting a code of conduct or written policy with appropriate allowances for such circumstances, a state member bank or bank holding company recognizes that acceptance of certain benefits by its Bank or Bank Holding Company Officials does not amount to a corrupting influence on the bank's or bank holding company's transactions.

In issuing guidance under the statute in the area of business propose entertainment or gifts, it is not advisable for the Board of Governors to establish rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. A state member bank or bank holding company should seek to embody the highest ethical standards in its code of conduct or written policy. In doing this, a state member bank or bank holding company may establish in its own or policy a range of dollar values which cover the various benefits that its Bank or Bank Holding Company Officials may receive from those doing or seeking to do business with the bank or bank holding company.

The code of conduct or written policy should provide that, if a Bank or Bank Holding Company Official is offered, receives, or anticipates receiving something of value from a customer beyond what is expressly authorized in the bank's or bank holding company's code of conduct or written policy, the Bank or Bank Holding Company Official must disclose that fact to an appropriately designated official of the financial institution. The state member bank or bank holding company should keep contemporaneous written reports of such disclosures. An effective reporting and review mechanism should serve to prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the bank or bank holding company to better protect itself from self-dealing. However, a Bank or Bank Holding Company Official's full disclosure evidences good faith only when such disclosure is made in the context of properly exercised

supervision and control. Thus, the prohibitions of the bank bribery statute cannot be avoided by simply reporting to management the acceptance of various gifts unless management reviews the disclosures and determines that what is accepted is reasonable and does not pose a threat to the integrity of the state member bank or bank holding company.

The Board of Governors recognizes that a serious threat to the integrity of a state member bank or bank holding company occurs when its Bank or Bank Holding Company Officials become involved in outside business interests or employment that gives rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, state member banks or bank holding companies are encouraged to prohibit, in their codes of conduct or policies, their Bank or Bank Holding Company Officials from self-dealing or otherwise trading on their positions with the bank or bank holding company or accepting from one doing or seeking to do business with the bank or bank holding company a business opportunity not generally available to the public. In this regard, a state member bank's or bank holding company's code of conduct or policy should require that its Bank or Bank Holding Company Officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed due to either business or personal relationships with customers, suppliers, business associates, or competitors of the bank or bank holding company.

**Exceptions**

In its code of conduct or written policy, a state member bank or bank holding company may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with bank or bank holding company business. These exceptions may include those that:

(a) Permit the acceptance of gifts, gratuities, amenities or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a Bank or Bank Holding Company Official) where the circumstances make it clear that it is those relationships rather than the business of the bank or bank holding company concerned which are the motivating factor;

(b) Permit acceptance of meals, refreshments or entertainment of reasonable value in the course of a meeting or other occasion the purpose of which is to hold bona fide business discussions (the bank or bank holding company may establish a specific dollar limit for such an occasion);

(c) Permit acceptance of loans from other banks or financial institutions on customary terms to finance proper and usual activities of Bank or Bank Holding Company Officials, such as home mortgage loans, except where prohibited by law;

(d) Permit acceptance of advertising or promotional material of nominal value, such as pens, pencils, note pads, key chains, calendars and similar items;

(e) Permit acceptance of discounts or rebates on merchandise or services that do not exceed those available to other customers;

(f) Permit acceptance of gifts of modest value that are related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, Christmas or bar or bat mitzvah (the bank or bank holding company may establish a specific dollar limit for such an occasion); or

(g) Permit the acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the bank or bank holding company may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case by case basis, a state member bank or bank holding company may approve of other circumstances, not identified above, in which a Bank or Bank Holding Company Official accepts something of value in connection with bank or bank holding company business, provided that such approval is made in writing on the basis of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

**Disclosures and Reports**

To make effective use of these guidelines, the Board of Governors recommends the following additional procedures:

(a) The state member bank or bank holding company should maintain a copy of any code of conduct or written policy it establishes for its Bank or Bank Holding Company Officials, including any modification thereof.

(b) The state member bank or bank holding company should require periodic written acknowledgment from its Bank or Bank Holding Company Officials of its code or policy and the Bank or Bank Holding Company Officials' agreement to comply therewith.

(c) The state member bank or bank holding company should maintain contemporaneous written reports of any disclosures made by its Bank or Bank Holding Company Officials in connection with a code of conduct or written policy.

Board of Governors of the Federal Reserve System.

**William W. Wiles,**

*Secretary of the Board.*

May 18, 1987.

[FR Doc. 87-11304 Filed 5-21-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Social Services Policy; Applications for Grants on Long Term Care Research

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of long term care from States, public and other organizations.

**A. Type of Application Requested**

This announcement seeks applications for projects to develop and conduct a program of research and analysis pertaining to long term care.

The Department seeks to advance the state of knowledge principally in the following issue areas: (a) Characteristics of older persons with long term care needs (b) patterns of long term care (c) nursing home use (d) use of home and community based services (e) informal caregiving (f) long term care costs and (g) catastrophic long term care expenditures.

These issue areas may be combined and other areas may be proposed if they are clearly demonstrated to be relevant to long term care. The following sections list the kinds of questions envisioned under each issue area.

*1. Issue Areas*

(a) Characteristics of Older Persons with Long Term Care Needs

What is the health and functional status of the elderly who require long-term care services? How does their status change over time? What are the rates of such change? How does the experience of the current cohort of the elderly compare with past cohorts and what implications does this have for future cohorts?

How are the impaired elderly distinguished by subgroups, based on such factors as age, sex, ethnicity, marital status and living arrangements? What are the incidence and prevalence of different kinds of disabilities and functional impairments for subgroups of the elderly?

What are the most appropriate ways of measuring functional capacity, whether physical or mental? For example, what is the most valid and reliable way to measure performance under the Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL)?

In what ways, if any, does greater longevity affect the onset and duration of health and functional limitations? What are the implications of this for planning long-term care services? In particular, how are the "oldest old", those age 85 and over, affected?

What types of living arrangements characterize people with long term care needs? What changes in living arrangements occur for the impaired elderly population over time and what characteristics are associated with these changes?

(b) Patterns of Long Term Care

Who uses long-term care services, both institutional and non-institutional? What factors are associated with different patterns of service use? What determines the decision to institutionalize an individual?

How does the supply of nursing home beds and community-based services affect the use of these types of care? How will the demand for long-term care services be affected by the growth of the elderly population?

To what extent are the elderly and their caregivers aware of long term care services and financing options? To what extent are long term care needs being met satisfactorily and what service gaps persist?

(c) Nursing Home Use

Who uses nursing home care? What characteristics distinguish short-stayers, long-stayers and the terminally ill?

What is the relative impact on nursing home use of such factors as (a) nursing home bed supply (b) availability of formal community-based services (c) patient characteristics (d) caregiver characteristics and (e) costs of services? In light of these (or other) factors, how can one identify target groups of persons at high risk of nursing home placement?

(d) Use of Home and Community-Based Services

Describe the types, patterns and costs of formal community service use. What are the characteristics of community service users? What are the characteristics of service provider organizations and their personnel?

Under what conditions can lower levels of service substitute for a higher level of care (e.g., homemaker for home health services or board and care settings for nursing home care)?

What variations in community service use exist by subgroups of the impaired elderly, geography or other factors?

Describe the role of case management in increasing access to formal community services. Which models of case management appear cost-effective in increasing access and assuring quality of service?

(e) Informal Caregiving

Under what conditions do caregivers decide to obtain increased formal services? How are service options identified and evaluated? What formal services do informal caregivers view as most important?

What is the full extent of informal caregiving? How does the availability of formal services affect the source, types and levels of informal care provided? To what extent does substitution of formal for informal care occur? Where it occurs, what are the characteristics of caregivers and clients associated with substitution?

What are the characteristics of informal caregivers? To what extent is informal caregiving a function of such factors as family size, geographic proximity, income and ethnicity?

How do the characteristics of informal caregivers and the caregiving process change over time? What can be projected about the size and characteristics of future cohorts of caregivers?

What are the effects of informal caregiving on caregivers themselves? For example, are there effects related to employment, income, social activity and stress? What patterns exist in the relationships between caregivers and care recipients?

(f) Long Term Care Costs

How are expenditures for long-term care distributed between public and private sources? How does the distribution vary by institutional and non-institutional services? What are past and projected trends for long term care expenditures?

What factors explain the variations in service use and expenditures for long-term care among States and across communities?

What are the likely effects of various public financing options on long-term care expenditures? For example, how might expenditures be affected by (a) changes in current Medicaid eligibility rules, covered services and vendor payment levels (b) cap on Medicaid expenditures (c) long-term care block grant to States (d) tax subsidies, like Individual Medical Accounts (IMA) and (e) expanded Medicare coverage of nursing home and home health care? What are the interaction effects of public and private financing options?

(g) Catastrophic Long Term Care Expenditures

What groups of impaired elderly persons are at high risk of catastrophic out-of-pocket long-term care expenditures? Describe their characteristics. Under what conditions are their expenditures likely to become catastrophically high? In particular, what is the cumulative effect of acute, post-acute and long term care costs?

Describe and analyze the Medicaid spend-down process. What impact does Medicaid spend-down have on public and private expenditures for nursing home care? What are the characteristics of those who spend down? How does the spend-down process affect spouses and other non-institutionalized family members?

To what extent can high out-of-pocket expenditures be reduced by private long-term care insurance? What is the effect on out-of-pocket expenditures of other private financing options such as continuing care retirement communities, home equity conversions, employee benefit options for retirees, and social health maintenance organizations? What are the characteristics of those likely to participate in these various options? What are the probable effects of such participation on public programs?

*2. Critical Elements*

Several elements are critical to the program of research solicited.

a. Knowledge of Prior Research

Grantee must demonstrate knowledge of past and current research relating to long term care. This includes empirical studies, surveys, evaluations of demonstration projects and long-term care modeling.

b. Policy-relevance

The applicant should indicate how the questions to be investigated will yield results relevant to long term care policy and program development in the near term.

For example, there is concern with alleviating catastrophic expenses among the elderly for long term care,

particularly through private financing options. A research project that addressed the extent and distribution of out-of-pocket costs for long term care would consequently be policy-relevant.

c. Familiarity With Departmental and Other Data Bases

The applicant should demonstrate familiarity with the data base(s) available for analysis and their applicability to the applicant's proposed research.

The principal public use data sets available for analysis at present are the 1977 Nursing Home Survey, the 1982 Long-Term Care Survey and data from the National Long-Term Care Channeling Demonstration. However, applicants are not limited to these data sources.

In addition to the Channeling and NLTCS data sets, there are a number of other data sources that can be considered. These include, but are not limited to: (a) Census data (b) Current Population Surveys (c) Survey of Income and Program Participation (SIPP) (d) National Medical Care Expenditure Survey (e) National Medical Care Utilization and Expenditure Survey and (f) National Health Interview Survey/ Supplement on Aging.

Data sets from States and from demonstration projects may also be used.

The applicant should also be familiar with data bases that will become available in the future insofar as they may permit further development of the applicant's project. Examples include the combined file of the 1982 and 1984 National Long Term Care Surveys with Medicare Part A and Part B bill data appended, which will become available in the near future and, over the longer term, the National Medical Expenditure Survey.

*3. Potential Users*

Potential users of the research include Federal and State officials involved in long term care policy, program development, program administration and financing. Additionally, research findings may be used by hospital and nursing home administrators, social service providers, home health agencies, and the insurance industry.

*4. Type of Projects Excluded*

Applications that are limited to theoretical development or include new data collection efforts will not be considered.

*5. Content and Organization of the Application*

The application must begin with a cover sheet followed by the required application forms and an abstract of the application that does not exceed two pages. Each application should include the background and significant of the issue, the specific questions to be investigated, the data sources to be used, the methodologies proposed for conducting the investigation and the policy issues which the research will help illuminate.

B. Applicable Regulations

1. "Grant Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), which was published in the Code of Federal Regulations, October 1, 1980.

2. "Administration of Grants" (45 CFR Part 74).

C. Effective Date and Duration

1. The initial grant awards pursuant to this announcement are expected to be made by September 30, 1987. It is expected that six to eight grants will be made by that date. An additional two to four grants may be made in Fiscal Year 1988 as funds become available.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately.

3. Applicants may present a work plan and budget covering a one to two year period. After the initial time period, grants may be refunded.

D. Statement of Funds Available

1. A total of $310,000 in FY 87 funds has been set aside for grants to be awarded as a result of this announcement. Organizations submitting applications may propose a project at the dollar level they consider appropriate.

2. Nothing in this application should be construed as committing the Assistant Secretary to dividing available funds among all qualified applicants or to make any award.

E. Application Processing

1. Applications will be screened initially for relevance to the needs identified in Section A. If judged relevant the application will then undergo review by a government review panel, possibly augmented by outside experts.

2. Applications will be judged as to eligibility, quality and relevance, according to the criteria set forth in item 5.

3. A rating of "unacceptable" on any individual criterion may render the entire application unacceptable. Applicants should therefore make sure that all criteria are fully addressed.

4. Applications should be as concise as possible, consistent with the information requirements of reviewers.

Applications should be limited to 25 double-spaced typed pages, exclusive of forms, resumes, and budget. They should avoid being unduly elaborate or containing voluminous supporting documentation.

5. The evaluation of applications will be carried out in terms of the following criteria. The weights for the criteria are shown in parentheses.

a. The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organizations and individuals concerned with the issues discussed in Section A with improved bases for making decisions about these issues. (20 POINTS)

b. The potential usefulness of the proposed project for the advancement of scientific knowledge. (15 POINTS)

c. The clarity of the statement of objectives, methods and anticipated results. (15 POINTS)

d. The appropriateness and soundness of the methodology, including research design, statistical techniques, modeling strategies, selection of data and other procedures. (30 POINTS)

e. The qualifications and experience of the project personnel. (20 POINTS)

F. Deadline for Applications

The deadline for applications is COB, Friday, July 31, 1987.

Mailed applications may be sent by U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application is sent by first class, registered or certified mail not later than July 27, 1987 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the Post Office.

Applications sent by commercial carrier will be considered received on time by the Grants Officer if sent not later than July 27, 1987 as evidenced by a receipt from the commercial carrier.

An application to be hand-delivered must be taken to the Grants Officer at the address listed below. Hand-delivered applications will be accepted daily between 8:00 am and 4:30 pm, Washington, DC time, except Saturdays, Sundays and Federal holidays. Applications will not be accepted after close-of-business on July 31, 1987.

G. Disposition of Applications

1. On the basis of the review of the application, the Assistant Secretary will either (a) approve the application whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or need for further review.

2. The Assistant Secretary will notify applicants of the disposition of their application. A signed notification of the grant award will be issued to the person listed in Block 4 of the application to notify the applicant of the approved award.

H. Application Instructions and Forms

Copies of the application should be requested from the Grants Officer at the address given below. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after July 6, 1987.

Three (3) copies of each application are required. Applicants are encouraged to send in up to four additional copies to facilitate processing. However, applicants will not be penalized if these extra copies are not sent. Send applications by the deadline to:

Mr. Albert A. Catino, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, Room 426–F, 200 Independence Avenue SW., Washington, DC 20201, Phone: (202) 245–1794

I. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

J. Intergovernmental Review of Federal Programs

This announcement is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs", nor its implementing regulations at 45 CFR Part 100.

Dated: May 18, 1987.

**Robert B. Helms,**

*Assistant Secretary for Planning and Evaluation.*

[FR Doc. 87–11783 Filed 5–21–87; 8:45 am]

BILLING CODE 4150–01–M

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## Health Policy; Applications for Grants on Hospital Performance

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of health policy from States, public and other organizations.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research and analysis pertaining to the effect of competition on hospital performance. The research should advance knowledge of the response of hospitals to reimbursement systems introduced or expanded during the 1980s. These systems include the Medicare Prospective Payment System (PPS); innovations introduced by States to reimburse hospitals for Medicaid and other welfare recipients; and contract negotiations, utilization review or financial incentives introduced by HMOs, PPOs and other third-party private payers. In particular, the research should address whether and how the degree of competition for patients in hospital's market area influences the hospital's behavior.

The research should determine whether the degree of competition in hospital markets influences:

- The level or the rate of growth of hospital utilization, costs and revenues;
- The substitution of outpatient for inpatient services;
- Specialization in delivery of services or type of patient served as distinguished by source of reimbursement (Federal, State or Private) or by diagnostic group;
- The quality of care or outcomes.

The research should attempt to disentangle the independent effects of competition for different types of patients as defined by type of payer (federal, state and local government, or private) or by type of service offered. As an example, two hospitals in relatively close proximity to each other may not be competing if they specialize in different services, predominantly serve different types of patients (Medicare, other public, private pay) or are jointly owned or closely affiliated.

The conventional structural measures of competition, such as concentration ratios or the Herfandahl index, provide unidimensional summaries of competition. Yet two hospitals with the same market competition index may be quite different in terms of their market share, size, services offered and revenue shares by type of payer. The research should investigate whether such hospital characteristics independly influence hospital's response to market competition.

*1. Background*

The effects of market competition on costs in the health care system have frequently been regarded as negligible or even perverse. In fact, studies using pre-1980 data have found higher utilization and higher cost per stay or per day in areas with higher bed-to-population ratios.[1] The findings are usually attributed to third party insurance payments which reduce the marginal out-of-pocket cost to patients and to cost reimbursement of hospitals, both of which encourage non-price competition. Rather than cut costs to compete, hospitals were perceived to invest in cost-increasing, specialized facilities and equipment in order to attract physicians and patients.

In response to the continual rise in medical costs at rates exceeding general price inflation, governments, employers and other third-party payers took steps to control the rising health care costs. Changes in reimbursement methods and development of alternative delivery systems radically altered the financial incentives for hospitals to control costs.

The Medicare Prospective Payment System replaced cost reimbursement with essentially fixed payments per case to reimburse hospitals for operating costs (capital reimbursement remains on a cost basis). States are experimenting with a number of reforms including introduction of all-payer hospital rate systems and with negotiation and competition among hospitals for contracts to serve welfare recipients. Recent changes in laws and regulations of some States enhance the formation of HMOs, and Preferred Provider Organizations and the ability of third-party payers to contract for hospital services. Other private payers are reputed to engage in more effective utilization control than was their previous practice.[2] As a result of these

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[1] Farley, Dean E. "Competition Among Hospitals: Market Structure and Its Relation to Utilization, Costs and Financial Position." Research Note 7, Hospital Studies Program, National Center for Health Services Research and Health Care Technology Assessment, 1985.

Joskow, Paul L., "The Effects of Competition and Regulation on Hospital Bed Supply and the Reservation Quality of the Hospital." *The Bell Journal of Economics*, Vol. 11, Autumn 1980.

Robinson, James C. and Harold S. Luft, "The Impact of Market Structure on Patient Volume, Average Length of Stay, and the Cost of Care," *Journal of Health Economics*, Vol. 4 1985.

[2] Aquilina, David, and James B. Stowe, "Increasingly Sophisticated Consumers Forcing PPOs To Address Market Needs," *Modern Healthcare*, 15(23) (1985), pp. 125–126.

Drury, Sallie J., "PPO's Efficiency, Not Their Discounts, Is Prime Drawing Card for Enrollees," *Modern Healthcare*, 14(9) (1984), pp. 76–78.

"Physicians Cost Cuts Spur PPO's Success," *Hospitals*, 59(6) (1985), p. 64.

Wallace, Cynthia, "Agreement Cuts Costs, Draws Business," *Modern Healthcare*, 15(10) (1985), pp. 42–43.

changes, the response of hospitals to competition may have changed in recent years.

As an example, Medicare statistics suggest that introduction of PPS may have influenced the rate of growth and the distribution of Medicare expenditures. Since 1980, the real rate of growth (actual rate adjusted for inflation) of total Medicare expenditures per enrollee and of reimbursement for inpatient hospital care per enrollee have both declined. The decline in the real rates of growth accelerated after the introduction of PPS in 1983. From 1984 to 1985 the real rate for inpatient hospital expenditures declined slightly from 1.5 percent to 1.3 percent. In contrast, the growth rate in total medical expenditures increased from under 2 percent in 1984 to 6.5 percent in 1985.[5] The aggregate data do not distinguish the behavior by hospital market.

*2. Critical Elements*

Several critical elements, most relevant to the program of research solicited, are briefly discussed below. Research applications should address but not be limited to the critical elements identified here.

a. Knowledge of Research

Applicants must demonstrate knowledge of past and current research relating to the effect of competition in health care markets generally and hospital markets particularly. They should demonstrate knowledge of the potential of and the limitations of structural measures of market competition traditionally used in industrial organization studies such as market concentration ratios and the Herfindahl index. They should demonstrate knowledge of methods used to evaluate quality of care and outcomes in hospitals, particularly as they may relate to the present study.

b. Determination of Market Areas and Empirical Measures of Competition

Catchment regions of hospital markets are irregular in shape and undoubtedly overlap. Some community hospitals may serve a relatively compact, well-defined market area. Some larger tertiary hospitals draw patients from all parts of a State, a census region or even the nation. The grantee must develop an appropriate method for defining and measuring the extent of each hospital's market and, simultaneously, a measure to characterize the extent of competition faced by each hospital.

The effort is expected to require experimentation to derive appropriate empirical measures for theoretical concepts such as market boundaries and measures of market concentration. Location of residence of hospital patients should be sufficiently precise (e.g., 5-digit zip-code area) to develop a basic geographic unit for market analysis. The basic units can then be aggregated up to appropriate market areas for each hospital.

The empirical market area of a hospital should reflect the actual geographic area from which the hospital attracts patients. The empirically defined market for each hospital should include primarily areas relevant for evaluating the effect of competition on the hospital; the defined market may exclude areas from which the hospital draws an insignificant share of its patients.

The market and competition measures should distinguish proximity from effective competition. The measures should be disaggregate enough to identify whether hospitals are actually competing for the same patients as distinguished by source of reimbursement (Federal, State or Private) and by diagnostic group or service provided. It would also be useful to identify hospitals which are jointly owned or affiliated in ways which reduce effective competition.

Convenient measures frequently used to characterize hospital markets in previous studies, such as counties, MSAs or all of the hospitals within a specified distance or travel time will not be acceptable for this study.

c. Measures of Performance

The grantee should estimate the effect of competition on such aggregate measures of hospital performance as the level and trends in the rate of change of:

- Inpatient admissions and days;
- Outpatient visits;
- Reimbursement and cost per case and per visit.

The analysis should be sufficiently detailed to identify the intensity of competition for types of patients as distinguished by source of payment, service required or diagnostic group. The analysis should also investigate possible differential response to competitive pressure of hospitals in the same or similar markets but which are distinguished by their initial market position, relative size, ownership or specialty. A partial list of more disaggregate analyses include:

- Are reductions in admissions concentrated in specific DRGs, types of service, or types of hospitals?
- Are there identifiable trends in specialization of services offered or case mix treated by: market competition, type of payor, hospital characteristics, ownership and profitability?
- Do trends in specilization reflect comparative advantage or relative profitability of treating certain diagnostic groups?
- Can we estimate the effect of Preferred Provider Organization and Health Maintenance Organization contracts on hospital behavior (status and volume) and identify the more effective contract structures?

The grantee should also explore the effect of competitive pressure on the quality of care and patient outcomes. Given the constraints on funding this analysis will probably be limited to use of administrative data or, perhaps, information on quality of care collected for other purposes. Such measures may include mortality rates within a fixed period after admission and readmission rates within a fixed period after discharge. Data collected by Peer Review Organizations on Generic Quality Screens may be available for hospitals in some States during the period of the study.[6] Ideally, outcome measures should be adjusted for differences in severity of illness and diagnostic mix of cases treated. In contrast to the other performance measures, the analysis of quality of care may be limited to the Medicare population because of insufficient data for the non-aged population.

Analysis of the effect of hospital competition on these various measures of hospital performance and outcomes should also consider the independent effect of other market characteristics such as the availability of physicians, availability of alternative sources of care, and socio-economic characteristics of the population.

d. Private Contracts

Characteristics of the Medicare Prospective Payment System and State reimbursement policies are matters of public record. Provisions of

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[5] Prospective Payment Assessment Commission, *Medicare Prospective Payment and the American Health Care System: Report to the Congress*, February 1987, pp. 12–13.

[6] Generic Quality Screens include: adequacy of discharge planning; medical stability of the patient at discharge; deaths; nosocomial infections; unscheduled return to surgery; and trauma suffered in the hospital. A summary of the criteria for the screens can be obtained from the Grants Officer (address in Section I). Applicants should contact the appropriate Peer Review Organization to determine the availability of hospital-specific information on Generic Quality Screens for their proposed sample of hospitals. The HCFA will not collect hospital-specific information on the quality screens.

reimbursement contracts between hospitals and private-payers are less well known. Where possible, the grantee should obtain information on contract provisions and attempt to determine the impact of those provisions on hospital behavior and performance.

e. Data

The grantee must demonstrate access to data adequate to conduct this study. Medicare discharge data can be obtained from the annual MEDPAR file maintained by the Health Care Financing Administration (the 100 percent file might be required). Information on deaths during a specified period after initial admission can be obtained from the HCFA Health Insurance Eligibility Master file. It is expected that data on non-Medicare discharges, and on hospital utilization, revenue, and cost will be obtained, e.g., from a State Hospital Association, State Rate-Setting commission or similar organization. Information on the geographic distribution of physicians should also be available from State medical associations or State government agencies. Applicants should contact the appropriate Peer Review Organization to determine the availability of hospital-specific information on Generic Quality Screens for their proposed sample of hospitals.

The grant will not cover costs of primary data collection for information on utilization, costs and revenues of hospitals. Information on private hospital reimbursement contracts might not be routinely collected and generally available. The proposal should provide a plan for acquisition of such data.

Conduct of the study will require aggregate data on hospital utilization, costs and revenues. Data on each discharge are required including, but not limited to, indicators of patients' residence, type of payer, length of stay and diagnoses and procedure codes. The Medicare files, MEDPAR and HIE Master, provide sufficient information to construct mortality rates and readmission rates for each hospital. Similar data are not routinely available for non-Medicare patients and will not be required for this study.

The sample of hospitals may consist of the population of hospitals from one or more States. The applicant should provide a statistical power analysis to demonstrate that the relevant statistics will be estimated with sufficient precision.

f. Products

The applicant should present a schedule for delivery of interim progress reports and a final report. A well documented public use file should also be prepared. The file should include, but not be limited to, such derived variables as market area, market share, and the measures of market competition for each sample hospital.

*3. Potential Users*

Potential users of the research include Federal and State health policy makers involved in the evaluation and development of health care reimbursement systems. Managers of HMOs, PPOs and insurance companies would find the information on private contracts and the efficacy of particular provisions helpful. Hospital administrators could compare their performance with that of sample hospitals, in similar circumstances.

*4. Types of Projects Excluded*

In consideration of the intent of this announcement, applications concentrating primarily on case studies focused on a few hospitals or hospital markets, or applications which use countries, MSAs or States as the basic unit of analysis for the statistical analysis of average hospital performance will not be considered for funding.

In addition, this announcement seeks empirical analysis of geographic variation of health care expenditure using existing data. Applications that are limited to theoretical development or include new data collection efforts, expect for information on hospital reimbursement contracts, will not be considered.

*5. Content and Organization of the Applications*

The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than two pages) of the application. Failure to include the abstract may result in delays in processing the application. Each application should include a description of the models to be analyzed, the data sources to be used, and the methodologies proposed to test the models. The methodologies should include approaches to empirically defining market areas and measuring the degree of competition in each market. Resumes of staff should be included, as should a full budget and a schedule of tasks for the proposed projects.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaulation" (45 CFR Part 63), Code of Federal Regulations, October 1, 1980.

2. "Administration of Grants" (45 CFR Part 74), Code of Federal Regulations on June 9, 1981.

C. Effective Date and Duration

1. The grant awarded pursuant to this announcement is expeced to be made on or about September 30, 1987.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Section F and G below.

3. Applicants may present a work plan and budget covering an eighteen month to two year period.

D. Statement of Funds Available

1. Approximately $750,000 has been estimated for this research grant.

2. Funds may be obligated fully at the time of award of this grant or incrementally over the following 18 to 24 months.

3. No more than one award will be made. However, nothing in this application should be construed as committing the Assistant Secretary to make any award.

E. Application Processing

1. Applications will be initially screened for relevance to the need defined in section A (as well as additional areas of interest persuasively shown to be relevant by the grantee). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. *Three (3) copies* of each application are required. Applicants are encouraged to send an additional *seven (7) copies* of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in item 5.

3. An unacceptable rating on an individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the imformation requirements of the reviewers. Applications should be limited to 50 doubled-spaced typed pages, exclusive of forms, abstract, resumes, and proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. *Knowledge.* The applicant should provide evidence of understanding and knowledge of prior work in the area and how their proposals would contribute to the advancement of knowledge. Pertinent subjects include, but are not limited to, hospital markets, hospital behavior and performance, effects of public policy on hospital behavior, theoretical and empirical approaches to characterizing markets and measuring competition. (15 points)

b. *Experience and Qualifications of Personnel.* Principal Investigator's and other key staff's experience in this or related areas and indications of innovative approaches and creative potential. Is evidence presented in the application which indicates the ability of key staff to produce publishable quality reports or articles? (20 points)

c. *Research Design.* The clarity of statement of objectives, methods, and anticipated results. The adequacy and creativity of the research design and hypotheses and appropriateness of the methods. Is the proposed project's methodology precise and consistent with what is generally agreed to be the state-of-the-art in project design and analytical methods. (25 points)

d. *Adequacy of Data.* Validity and appropriateness of the data to support the proposed research. Reasonableness of the proposed approach to acquiring and processing the data. Necessary letters of agreement concerning data acquisition. (20 points)

e. *Production Capability.* Reasonableness of the proposal. Can it be done? Are the person-hour effort and types of personnel reasonable? Are professional, support staff and subcontractor arrangements sufficient or planned for? Is assurance given for timely and acceptable performance via Gantt chart(s) or work plan schedule(s)? Are there provisions for providing interim findings at appropriate intervals? Is there documentation of a commitment of the parties other than the applicants staff that is necessary to carry out the project? Availability of necessary facilities and equipment. (15 points)

**F. Applications Sent by Mail**

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application was sent by first class, registered or certified mail not later than July 31, 1987, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service. Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than July 31, 1987 as evidenced by a receipt from the commercial carrier.

**G. Hand-Delivered Applications**

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this announcement. Hand-delivered applications will be accepted daily between 9:00 am and 4:30 pm, Washington, D.C., time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on August 4, 1987.

**H. Disposition of Applications**

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed in block 4 of the application to notify the applicant of the approved application.

**I. Application Instructions and Forms**

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 428F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after July 7, 1987. A description of the generic quality screens, *Quality of Care Review; Use of Generic Quality Screens,* is available on request from the Grants Officer.

**J. Federal Domestic Assistance Catalog**

This announcement is not listed in the Federal Domestic Assistance Catalog.

**K. Intergovernmental Review of Federal Programs**

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs" or its implementing regulations 45 CFR Part 100.

Dated: May 18, 1987.

Robert B. Helms,

*Assistant Secretary for Planning and Evaluation.*

[FR Doc. 87-11784 Filed 5-21-87; 8:45 am]

BILLING CODE 4110-84-M

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## Centers for Disease Control

### Availability of Funds for Fiscal Year 1987; Cooperative Agreements To Support Demonstration Projects for the Surveillance of Severe Pediatric Undernutrition

**Introduction**

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for Cooperative Agreements with State health departments to support demonstration projects for the surveillance of seven pediatric undernutrition.

**Authority**

This program is authorized under section 301(a) of the Public Health Service Act [42 U.S.C. 241 (a)], as amended. The catalog of Federal Domestic Assistance Number is 13.283.

**Program Background and Objectives**

The occurrence of severe pediatric undernutrition and its effect on morbidity, growth, and development is an important public health issue. Moreover, severe pediatric undernutrition has long been recognized as an indicator of inadequacy in the social environment or of deficits in essential nutrition and health care services. In recent years, concern has been expressed throughout this country about undernutrition among children and underprivileged segments of the U.S. population and about the adequacy of nutrition and health services for the poor.

This concern for undernourished children has made evident the need for data to characterize more clearly the prevalence, risk factors, and etiologies of severe pediatric undernutrition as well as the need for a consensus definition of this condition. It has also demonstrated the critical need to carry out surveillance for children with severe pediatric undernutrition using not only the traditional public facility reporting systems but also information on children treated in hospitals, other acute care facilities, or by private practitioners.

The long term goal of this initiative is to build State capacity to establish

ongoing surveillance of severe undernutrition among low income, high-risk children using State and local resources.

The short term objectives of this program are to assist 2–3 States to:

1. Demonstrate the use of a population-based surveillance system (including hospital sources of cases) for identifying preschool children with severe undernutrition, including the collection and analysis of information on prevalences, etiologies, and associated risk factors; and

2. Facilitate the referral of children confirmed with severe pediatric undernutrition to appropriate intervention sources. The practical usefulness of various surveillance models will be evaluated for implementation in additional States and localities.

Three practical planning activities have also been identified which bear on ability to successfully carry out this program. One is the development of an objective, scientifically credible, and specific case definition for severe pediatric undernutrition that is measurable in the typical hospital emergency room, public health clinic or primary medical care facility. The second is the clear identification of a population base which will become the prevalence rate denominator for severe pediatric undernutrition. The third activity is the inclusion of multiple reporting sources within the surveillance population in order to estimate the true prevalence of severe pediatric undernutrition.

**Eligible Applicants**

Because the purpose of this program is to build state capacity to monitor the prevalence and determine the etiologies and risk factors for severe pediatric undernutrition, competition will be limited to the official health departments of any State, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. No other applications will be accepted.

**Availability of Funds**

It is expected that approximately $600,000 will be available in Fiscal Year 1987 to fund two or three awards ranging from $200,000 to $250,000. The award will be funded with 12-month annual budget periods with a 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and the availability of funds. The funding estimate outlined above may vary and is subject to change.

**Application Submission and Deadline**

*1. Copies—Place of Submission*

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before July 15, 1987 to: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305.

*2. Deadline*

Applications shall be considered as meeting the deadline if they are either:

a. Received at the above address on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*3. Late Application*

Applications which do not meet the criteria in either paragraph 2.a. or b. immediately above are considered later and will not be included in the current competition but returned to the applicant.

**Other Submission and Review Requirements**

Applicants are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Where to Obtain Additional Information**

Copies of application forms, this program announcement, and other material may be obtained from Nealean Austin, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575 or FTS 236–6575.

Technical assistance may be obtained from Faye L. Wong, Field Services Branch, Division of Nutrition, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Rd., NE., Atlanta, Georgia 30333, or by calling (404) 329–3075 or FTS 236–3075.

Dated: May 18, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87–11693 Filed 5–21–87; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

[Docket No. 87N–0189]

## Drug Export Application; Bevantolol Hydrochloride (Bulk)

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Warner-Lambert Company has filed an application requesting approval for the export of the human drug Bevantolol Hydrochloride (Bulk) to Denmark.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Center for Drugs and Biologics (HFN–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Warner-Lambert Company, 2800 Plymouth Road, Ann Arbor, Michigan 48105, has filed an application requesting approval for the export of the drug Bevantolol Hydrochloride (Bulk) to Denmark. The drug is indicated for use in arteriel hypertension and angina pectoris. The application was received and filed in the Center for Drugs and Biologics on May 11, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 1, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: May 14, 1987.

Bernard E. Young,

*Acting Director, Office of Compliance, Center for Drug and Biologics.*

[FR Doc. 87-11753 Filed 5-21-87; 8:45 am]

BILLING CODE 4160-01-M

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## Health Resources and Services Administration

### "Low Income Levels" for Health Careers Opportunity Program, Financial Assistance for Disadvantaged Health Professions Students, Nursing Special Project Grants, and Area Health Education Centers

This Notice updates the income levels that are used of define a "low income family" for the support of training for individuals from disadvantaged backgrounds as provided for under section 787, Health Careers Opportunity Program, and the program of Financial Assistance for Disadvantaged Health Professions Students, section 820, Nursing Special Project Grants and section 781, Area Health Education Centers of the Public Health Service Act as amended.

Sections 57.18004(b)(2) and 57.1905(b)(2) of the program regulations (42 CFR Part 57, Subparts S and T) require that the Secretary publish periodically in the Federal Register the low income levels which will be used for Public Health Service grants to institutions which provide training for individuals from disadvantaged backgrounds.

The Health Professions Training Assistance Act of 1985, enacted on October 22, 1985, amended section 787 to include stipends under subsections (a)(2)(F) and (b) to individuals from disadvantaged backgrounds and of exceptional financial need (as defined by regulations issued by the Secretary under section 758), who are students at schools of medicine, osteopathy or dentistry.

The income figures below were taken from low income levels, published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to health professions grant programs for which traning for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1986.

| Size of parents family: [1] | *Income level* [2] |
|---|---|
| 1 | $7,400 |
| 2 | 9,500 |
| 3 | 11,400 |
| 4 | 14,500 |
| 5 | 17,200 |
| 6 or more | 19,300 |

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to $100. Adjusted gross income for calendar year 1986.

Dated: May 18, 1987.

David N. Sundwall,

*Administrator, Assistant Surgeon General.*

[FR Doc. 87-11752 Filed 5-21-87; 8:45 am]

BILLING CODE 4160-15-M

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## National Organ Transplant Act; Grants for Organ Procurement Organizations

**AGENCY:** Health Resources and Services Administration, PHS, DHHS.

**ACTION:** Notice of availability of grant funds.

**SUMMARY:** The Bureau of Resources Development (BRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1987 funds are available for grants for assistance for Organ Procurement Organizations (OPOs). The grants are authorized by sections 371 and 374 of the Public Health Service (PHS) Act, as amended by section 201 of the National Organ Transplant Act, Pub. L. 98-507.

**DATE:** To receive consideration, grant applications (PHS Form 5161-1, Standard Form 424) must be received by the close of business July 21, 1987. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

**FOR FURTHER INFORMATION CONTACT:** Requests for technical or programmatic information should be directed to Ms. Linda D. Sheaffer, Acting Director, Office of Organ Transplantation, Parklawn Building, Room 9-31, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443-7577). Grant application kits and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from Mr. Donald C. Perks, Grants Management Officer, Bureau of Resources Development, Parklawn Building, Room 9-03, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443/2630).

**SUPPLEMENTARY INFORMATION:**

### Background

The National Organ Transplant Act, Pub. L. 98-507, amended the PHS Act to authorize the establishment of a program of grants for the planning, establishment, initial operation and expansion of Organ Procurement Organizations (OPOs).

Sections 371 and 374 of the PHS Act state that in awarding OPO grants the Secretary shall:

1. Take into consideration any recommendations made by the Task Force on Organ Transplantation established under section 101 of the National Organ Transplant Act.

2. Given special consideration to applications which cover geographical areas which are not adequately served by existing OPOs.

3. Give priority to any applicant which has a formal agreement of cooperation with all the transplant centers in its proposed service area.

4. Given special consideration to organizations which met the requirements of a qualified OPO as defined in section 371(b) before the enactment of Pub. L. 98-507.

5. Not discriminate against an applicant solely because it provides health care services other than those related to organ procurement.

Section 374 of the Act also states that the Secretary may not make a grant to more than one OPO which serves the

same service area. Section 9318 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) requires that the Secretary certify OPOs every 2 years in order for the OPOs to be eligible for payments under Medicare and Medicaid. Section 9318 also states that only one OPO may be certified within the same service area. An OPO does not have to be certified to participate in the grants program of this Notice. Furthermore, applicants should be aware that as a qualified grant recipient under section 371(b), they are eligible to participate in Medicare and Medicaid. However, once they are no longer a grantee, they will be subject to the certification requirement in order to receive Medicare or Medicaid payments.

**Program Objectives**

The principal purpose of the grant program is to increase the availability of donor organs in this country by improving the overall organ procurement system. The Task Force on Organ Transplantation recommended that the program emphasize the need to increase substantially the number of organ donors an to encourage innovations which could be readily duplicated for national application. The Task Force recommended the following three priorities for the program:

1. Proposals to consolidate and coordinate organ procurement efforts where multiple programs currently exist.
2. Proposals to develop new approaches (for the applicant) to improve the efficiency and effectiveness of an existing program so as to increase the number of organ donors within a service area, e.g., professional education.
3. Proposals to expand present efforts to increase the number of organ donors within a service area, e.g., satellite programs, computerization of data, expanding services to serve dispersed rural areas.

**Types of Grants**

To accomplish the above objectives, the Secretary will award planning, initial operation and expansion grants consistent with the statutory guidelines and Task Force Recommendations as spelled out in this Notice.

*Planning grants* will be available to organizations capable of conducting a feasibility study and preparing a detailed plan of how they will carry out the functions of a qualified OPO as described in section 371(b).

*Initial operation grants* will be available for organizations capable of operating as a qualified OPO and in need of financial assistance for the establishment and/or the initial operation of a qualified OPO as defined in section 371(b) of the PHS Act.

*Expansion grants* will be available for organizations that meet the statutory requirements of a qualified OPO as defined in section 371(b).

**Availability of Funds**

Public Law 99-591 appropriated $7.4 million for the Organ Transplant Program in FY 1987. Of this amount, $2,940,000 has been allocated to OPOs. Because of the limited funds available in FY 1987 and the priorities determined by the Secretary, grant awards will be less than the maximum amount permitted in section 374 of the Act. This will permit the Department to provide assistance to a large number of organizations.

*Planning grants* will be for a period of one year and will not exceed $50,000.

*Initial operation grants* will be for a project period of up to two years and will not exceed $350,000 for the period of performance.

*Expansion grants* will be for a project period of up to two years and will not exceed $250,000 for the period of performance.

**Eligibility for Grants**

As noted above, grants will be available to organizations that have the capability to be a qualified OPO as defined in section 371(b) or that meet the statutory requirements of a qualified OPO as defined in that section. Section 371(b)(1) and (2) of the Act specifies the requirements of a qualified OPO as follows:

(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under Title XVIII of the Social Security Act for the procurement of kidneys,

(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

(E) has a defined service area which is a geographical area of sufficient size which (unless the service area comprises an entire State) will include at least 50 potential organ donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(G) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability,

(IV) a physician with knowledge, or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) with the organization, a member who is a surgeon who has practicing privileges in such centers and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2) and

(iii) has no authority over any other activity of the organization.

(2) An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

(B) conduct and participate in systematic efforts, including professional education, to acquire all usable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 372(b)(2)(D),

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs among transplant centers and patients according to established medical criteria,

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

(H) participate in the Organ Procurement and Transplantation Network established under section 372,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all usable tissues are obtained from potential donors, and

(J) evaluate annually the effectiveness of the organization in acquiring available organs.

Since the grants will be awarded to non-profit organizations, the administrative requirements specified in OMB Circular A-110 will apply.

**Review and Evaluation Criteria**

In selecting recipients for grant awards, the Secretary intends to follow

the statutory guidelines as discussed in the Background section of this Notice and the recommendations of the Task Force on Organ Transplantation as described in the Program Objective section of this Notice. The Secretary will give first priority for funding to planning grants followed by initial operation grants and then followed by expansion grants.

In the awarding of expansion grants, priority will be given to (1) organizations that propose new approaches (for the applicant) to improve the efficiency and effectiveness of an existing program so as to increase the number of organ donors in a service area; and (2) organizations that propose to expand present efforts to increase the number of organ donors within a service area, e.g., satellite programs, computerization of data, and expanding services to serve dispersed rural populations.

Grant applications will be reviewed according to the established Bureau objective review procedures. The following criteria will be considered:

—The consistency with the program objectives and priorities;
—The adequacy of the method proposed to carry out the project;
—The appropriateness of the work plan and schedule for organizing and completing the project;
—The capability of the organization to complete the project as proposed;
—The adequacy of supporting documentation justifying the proposal;
—The reasonableness of the budget;
—The qualifications of the project director and staff; and
—The plan to continue beyond the grant period the activity or activities initiated under this grant including plans to secure other funding sources.

### Allowable Costs

A successful applicant under this notice must spend the funds it receives according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award and the cost principles specified in 45 CFR Part 74, Subpart Q.

### Executive Order 12372

Grant awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages to be made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants should promptly contact their State Single Point of Contact (SPOC) and follow its instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalogue of Federal Domestic Assistance Number for this program is 13.134.

Dated: March 31, 1987.

David N. Sundwall,

*Administrator, HRSA.*

[FR Doc. 87-11701 Filed 5-21-87; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. N-87-1700]

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* Advances for Public Works Planning (PWP) Programs.

*Office:* Community Planning and Development.

*Description of the Need for the Information and its Proposed Use:* HUD makes planning advances to public agencies to finance the cost of plan preparation for public works. The agency repays HUD when construction of the project begins. To determine if construction has begun, HUD annually sends Form HUD-4435, Report of Construction Status of Advance Planning Project, to the public agency.

*Form Number:* HUD-4435.

*Respondents:* State or Local Governments.

*Frequency of Response:* Annually.

*Estimated Burden Hours:* 240.

*Status:* Reinstatement.

*Contact:* Stanley F. Victor, HUD, (202) 755-6182; John Allison, OMB, (202) 395-6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* 1. Statement of Facts. 2. Supplements to Statement of Facts.

*Office:* Housing.

*Description of the need for the Information and its Proposed Use:* The Interstate Land Sales Full Disclosure Act requires that developers of certain types of subdivision offerings must register with the U.S. Department of Housing and Urban Development or take other steps to comply with the Federal statute prior to commencing sales. Data defining the type and size of the offering are used to determine

whether or not a developer's subdivision is subject to the Act and, if so, whether it is eligible for an exemption from the Act's registration requirement.

*Form Number:* HUD-9928, 9928-A, 9928-B, and 9929-C.

*Respondents:* Business or Other For-Profit and Small Businesses or Organizations.

*Frequency of Response:* On Occasion.

*Estimated Burden Hours:* 450

*Status:* Reinstatement.

*Contact:* Roger G. Henderson, HUD, (202) 755-0502; John Allison, OMB, (202) 395-6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: May 11, 1987.

John T. Murphy,

*Director, Information Policy and Management Division.*

[FR Doc. 87-11700 Filed 5-21-87; 8:45 am]

BILLING CODE 4210-01-M

## INTERSTATE COMMERCE COMMISSION

### Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Ashland Oil, Inc., 1000 Ashland Drive, Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

*Subsidiary and jurisdiction of Incorporation*

Ashland Chemical, Inc.—Delaware
Ashland Development, Inc.—Delaware
Ashland Ethanol, Inc.—Delaware
Ashland Oil and Transportation Company—Kentucky
Ashland Petroleum, Inc.—Delaware
Ashland Pipe Line Company.—Ohio
Inland Towing Company—Delaware
Mid-Valley Supply Co.—Kentucky
Southern Oil Company of New York, Inc.—New York
Tri-State Marketing Services, Inc.—Delaware
APAC—Alabama, Inc.—Delaware
APAC—Arkansas, Inc.—Delaware
APAC—Carolina, Inc.—Delaware
APAC—Florida, Inc.—Delaware
APAC—Georgia, Inc.—Delaware
APAC—Inc.—Delaware
APAC—Kansas, Inc.—Delaware
APAC—Mississippi, Inc.—Delaware
APAC—Oklahoma, Inc.—Delaware
APAC—Texas, Inc.—Delaware
APAC—Virginia, Inc.—Delaware
Reg X Condor, Inc.—Delaware
Scurlock Oil Company—Delaware
TAP-CO, Inc.—North Carolina
Algonquin Pipe Line Company—Illinois
Ohio River Pipe Line Company—Delaware
Owensboro-Ashland Company—Delaware
SOCO Pipeline Company—Texas

B. 1. Parent Corporation and address of principal office:

A. Burlington Industries, Inc., 3330 West Friendly Avenue, P.O. Box 21207, Greensboro, NC 27420

2. Wholly owned subsidiaries which will participate in the operation, address of its principal offices, and state and country of incorporation:

A. B.I. Transportation, Inc., Tucker Street Extension, P.O. Box 991, Burlington, NC 27216-0991, Incorporated in the State of Delaware
B. Burlington Canada Inc., 205 Bouchard Boulevarad, Dorvale, Quebec H9S 1A9, Incorporated in Canada
C. Texile Morelos, S.A. de C.V., San Juan del Aguila No. 401, Cuetnazaca, Moteles, Mexico, Incorporated in Mexico
D. Noblies-Lees, S.A. de C.V., Calzada Ermita-Ixtapalapa, No. 401 Local "C", Colonial Unidad Modelo, Mexico 13 D.F. Mexico, Incorporated in Mexico
E. C.H. Masland & Sons, Spring Road 1 Box 40, Carlisle, PA 17013, Incorporated in the State, of Pennsylvania
F. Georgia Commercial Carpets, Inc., 444 North Hamilton Street, P.O. Box 13, Dalton, GA 30720, Incorporated in the State of Delaware

C. 1. Parent Corporation and address of principal office: Kraft, Inc., Kraft Court, Glenview, IL 60025.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

A. American Fruit & Produce Co., Inc. (Minnesota)
B. Duracell, Inc. (Delaware)
C. Duracell International, Inc. (Delaware)
D. Celestial Seasonings, Inc. (Delaware)
E. Celestial Transport, Inc. (Colorado)
F. Consolidated Distribution Center, Inc. (Delaware)
G. Craig Distributing Company (Missouri)
H. I. Feldman & Sons (Washington, D.C.)
I. Holleb & Company (Illinois)
J. Pollio Dairy Products Corporation (New York)
K. Sagecoach Express, Inc. (Illinois)
L. Tombstone Pizza Corporation (Wisconsin)
M. Westman Commission Company (Colorado)

D. 1. Parent corporation and address of principal office: Philips Industries Inc., an Ohio corporation, P.O. Box 943, 4801 Springfield Street, Dayton, OH 45401.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Carroll Shelby Industries, Inc. (California)
(ii) Frenkin Corporation (Washington)
(iii) Hytec, Inc. (Washington)
(iv) Industrial Air, Inc. (Ohio)
(v) Phillips Industrial Components, Inc. (Ohio)
(vi) Shelby Advanced Automotive Technology, Inc. (Texas)

E. 1. Parent corporation and address of principal office: Reckitt & Colman North America Inc., 1 Mustard Street, Rochester, New York 14609

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Airwick Industries, Inc., 111 Commerce Road, Carlstadt, New Jersey 07072, State of Incorporation: New Jersey
(b) Durkee Famous Foods Inc., 24600 Center Ridge Road, Westlake, Ohio 44145-5617, State of Incorporation: Delaware
(c) R.T. French Inc., 1 Mustard Street, Rochester, New York 14609, State of Incorporation: Delaware

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11781 Filed 5-21-87; 8:45 am]

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[Ex Parte No. 388 (Sub-No. 5)]

### Intrastate Rail Authority; Indiana

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Revocation of certification and assumption of jurisdiction.

**SUMMARY:** The Commission is revoking the certification of the Public Service Commission of Indiana to regulate intrastate rail rates. The Commission is also assuming jurisdiction over Indiana intrastate rail matters as requested by the Indiana Department of Transportation.

**DATE:** This decision is effective on June 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** The parties to No. 38056S, *Indianapolis*

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*Power & Light Co. v. Consolidated Rail Corp. et al.*, should consult with the Chief Administrative Law Judge regarding further proceedings in that case.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area)

Decided: May 15, 1987

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, And Simmons.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11729 Filed 5-21-87; 8:45 am]

BILLING CODE 7035-01-M

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[Docket No. AB-287X]

## Port Huron and Detroit Railroad Company—Exemption—Abandonment in St. Clair County, MI

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Pursuant to 49 U.S.C. 10505, the Commission exempts the Port Huron and Detroit Railroad Company (PH&D) from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, to abandon a 4.35-mile line of railroad in St. Clair County, MI, between Valuation Station 600+00 (milepost 14.64) at or near Belle River, and the end of the line at or near Valuation Station 829+55 (milepost 18.99) in Marine City, subject to the employee protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

**DATES:** This exemption will be effective on May 2, 1987. Petitions to stay must be filed by June 8, 1987. Petitions for reconsideration must be filed by June 16, 1987.

**ADDRESSES:**

Send pleadings referring to Docket No. AB-287X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area).

Decided: May 15, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, And Simmons. Vice Chairman Lamboley concurred in the result.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11730 Filed 5-21-87; 8:45 am]

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[Finance Docket No. 31028]

## Carolina and Northwestern Railway Co.; Merger and Assignment of Lease Exemption; Danville and Western Railway Co.; Exemption

Carolina and Northwestern Railway Company (C&NW) and Danville and Western Railway Company (D&W) have filed a notice of exemption in connection with an agreement which involves the (a) merger of D&W into C&NW and (b) assignment of D&W's operating lease with Norfolk and Western Railway Company (NW) to C&NW.[1] The merger will be effected on or after June 1, 1987. D&W and C&NW are wholly owned subsidiaries of Southern Railway Company. Norfolk Southern Corporation owns all the common stock of Southern Railway Company and wholly owns NW. The proposed transaction is intended to simplify Southern Railway Company's corporate structure, and results in various efficiencies and economies.

The merger of D&W into C&NW is a transaction within a corporate family of the type specifically exempted under 49 CFR 1180.2(d)(3), from prior approval. This transaction will not result in any adverse changes in the level of service to shippers, or significant operational changes. Nor will it have any impact on the competitive balance with carriers outside the corporate family. Because NW already has been authorized to operate the facilities of D&W pursuant to a lease arrangement, assignment of that lease from D&W to C&NW, with NW continuing to provide operations under the lease, does not require approval under 49 U.S.C. 11343. Therefore, an exemption of that lease assignment is unnecessary. To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under sections 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will be imposed.[2]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: J. Gary Lane, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

Dated: May 12, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

*Acting Secretary.*

[FR Doc. 87-11733 Filed 5-21-87; 8:45 am]

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## Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register** and I.C.C. *Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the preceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and

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[1] The lease of D&W's properties by NW was approved by the Commission in Finance Docket No. 30508, *Carolina & N. Ry. Co. and Norfolk & W. Ry. Co.—Lease Exemption—Danville & W. Ry. Co.*, served February 12, 1985.

[2] The Railway Labor Executives' Association (RLEA) filed a request for labor protection. The United Transportation Union has asked to become a party to this protest. Since this transaction involves an exemption from 49 U.S.C. 11343, the imposition of the labor protective condition is mandatory and it has been imposed above.

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payment to applicant of $10.00, in accordance with 49 CFR 1102.2(d).

*Amendments to the request for authority will not be accepted after the date of this application.* However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

*We find:* with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1985.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,
*Secretary.*

MC–F–18277, filed March 20, 1987, published April 28, 1987 and Republished, as corrected, this issue.

*MC–F–18277,* filed March 20, 1987. *Funbus Systems, Inc.* (FunBus) (304 Katella Way, Anaheim, CA 92802)—*Purchase—Airport Service, Incorporated* (Airport) (851 East Cerritos Avenue, Anaheim, CA 92805). Representatives: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, and Eldon Johnson, 625 Van Ness Avenue, Suite 601, San Francisco, CA 94102.

FunBus (MC–145682) and Michael L. Valen, an individual and majority stockholder, seek authority to acquire the interstate and California intrastate operating rights of Airport (MC–176193) and California Public Utilities Decisions 83743 as amended in 84583, 82–03–028, Resolution PE 489 and 90383 as restated in 91578 (PSC 389) and TCP 183A), as well as specified non-operating rights properties. Airport's interstate certificate authorizes the transportation of passengers, in charter and special operations, beginning and ending at points in Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, CA, and extending to points in the United States (except HI). Its California intrastate rights authorize the transportation of passengers, in general, over specified routes in Los Angeles and Orange Counties, CA, to and from Los Angeles International Airport, Lockheed Air Terminal, Long Beach Municipal Airport, John Wayne (Orange County) Airport, and Ontario International Airport.

Note: FunBus has filed an application for temporary authority to lease the above operating rights of Airport pending the final disposition of this application.

Note: The purpose of this republication is to include the wording "as well as specified non-operating rights properties," in the caption.

[FR Doc. 87–11732 Filed 5–21–87; 8:45 am]
BILLING CODE 7035–01–M

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[Finance Docket No. 31042]

**Lewis & Clark Railway Co.; Exemption Operation; Chelatchie Prairie Railroad, Inc.**

Lewis & Clark Railway Company has filed a notice of exemption to acquire by lease and to operate the entire line of Chelatchie Prairie Railroad, Inc., between Rye, WA (milepost 3.62), and Chelatchie, WA (milepost 33.10), a distance of 29.5 miles in Clark County, WA. Any comments must be filed with the Commission and served on Edward M. Berntsen, President, Lewis & Clark Railway Company, 5224 12th Street East, Post Office Box No. 4, Tacoma, WA 98401, (206) 922–1700, and on Fritz R. Kahn, Esq., Suite 1000, 1660 L Street NW, Washington, DC, 20036, (202) 775–1064.[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 14, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
*Secretary.*

[FR Doc. 87–11734 Filed 5–21–87; 8:45 am]
BILLING CODE 7035–01–M

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[No. MC–F–18280]

**MNVA Railroad, Inc.; Continuance in Control Exemption**

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: MNVA Railroad, Inc. (MNVA), a rail carrier, has filed a petition under 49 U.S.C. 11343(e). MNVA seeks an exemption from the requirement of prior regulatory approval for its institution of operations as a motor carrier pursuant to its application in No. MC–187080. In that proceeding, it seeks authority as a contract carrier of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii), serving the class of commercial shippers or receivers of such commodities. MNVA will conduct motor carrier operations under the name "MNVA Trucking Co."

MNVA is a shortline railroad operating approximately 146 miles of trackage between Minneapolis and Hanley Falls, MN. Ninety-six percent of its stock is owned by Larry Wood and Diane Wood, of Morton, MN. Larry Wood is MNVA's president. Because MNVA is a rail carrier that has applied for motor carrier authority, the proposed transaction appears to fall under *Motor Carrier Operating Authority—Railroads,* 132 M.C.C. 978 (1982).

Under 49 U.S.C. 11343(a)(3), the Commission's prior approval is required for the acquisition of control of a carrier by any number of carriers. Thus, the transaction is subject to our jurisdiction and can be carried out only under our

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[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied, because the requisite showing has been made. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 1 I.C.C. 2d 810 (1985).

regulation or an exemption from regulation.

MNVA argues that its entry into regulated motor carrier transportation will promote the National Transportation Policy by allowing a more responsive intermodal service to be offered, inuring to the benefit of area consumers by affording its existing rail shippers an expanded service. MNVA asserts that the transaction is of limited scope in that it will start operations with only two tractors and two trailers. It argues that because of the competitive transportation environment in which it operates, the transaction will have a minimal overall economic impact. Thus, petitioner concludes, there will be no potential for abuse of market power.

**DATES:** Comments must be received by June 22, 1987.

**ADDRESSES:** Send comments (an original and 10 copies), referring to Docket No. MC–F–18099, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Robert E. Gillespie, P.O. Box 3854, Sioux City, IA 51102.

**FOR FURTHER INFORMATION CONTACT:** Marion E. Guyton (202) 275–7965.

**SUPPLEMENTARY INFORMATION:** Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemption Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: May 15, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley, joined by Commissioner Simmons dissented in part with a separate expression.

Noreta R. McGee,

*Secretary.*

*Vice Chairman Lamboley, joined by Commissioner Simmons,* dissenting in part:

I would consider this exemption under section 10505. As I have stated many times previously, I do not believe that section 11343(e) was intended to apply and to impart antitrust immunity to intermodal transactions such as this.

[FR Doc. 87–11731 Filed 5–21–87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31033]

## The Baltimore and Ohio Railroad Company and the Chesapeake and Ohio Railway Co.; Notice of Merger Exemption

CSX Corporation (CSX), The Baltimore and Ohio Railroad Company (B&O), and The Chesapeake and Ohio Railway Company (C&O) have filed a notice of exemption for B&O to merge into C&O on April 30, 1987. The merger participants are part of the CSX System and have been commonly controlled and managed since 1963. *See Chesapeake & O. Ry. Co.—Control—Baltimore and O. R. Co.*, 317 I.C.C. 261 (1962) and *CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 363 I.C.C. 518 (1980).

C&O owns approximately 95 percent of the outstanding common shares of B&O and approximately 99.9 percent of B&O's outstanding preferred shares. CSX owns 100 percent of the voting equity securities of C&O. This merger constitutes one aspect in an overall process of consolidating the CSX rail companies into a single, efficient operating company. Consummation of the merger will eliminate the inefficiencies inherent in maintaining two carrier entities, particularly with regard to record keeping, and through coordination and consolidation improve the efficiency of the operations and services now being provided by the carriers as separate entities. No adverse changes in the level of transportation services or significant operational changes are contemplated to result from the merger.

Under the merger plan, B&O will cease to exist as a separate entity and C&O will succeed to all of its rights, assets, liabilities, and obligations. All shares of B&O stock held by C&O will be cancelled. All shares of B&O stock held by others will be automatically converted into a right to receive cash pursuant to the plan of the merger.

This is a transaction within a corporate family[1] of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction which will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees affected by the merger shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979).

Petitions to revoke this exemption under 49 U.S.C. 10505(d) may be filed at any time.[2] The filing of a petition to revoke will not stay the transaction.[3] Pleadings must be filed with the Commission and served on: Peter J. Shultz, 100 North Charles Street, Baltimore, MD 21201.

Decided: May 19, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–11909 Filed 5–21–87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Commission has recognized the existence of a corporate family relationship in situations involving less than 100 percent ownership of an affected entity. *See* Finance Docket No. 28757, *Colorado and Southern Railway Co.—Merger into Burlington Northern Railroad Company—Exemption and Request for Determination of Fairness* (not printed) served December 31, 1981, in which a carrier controlled by BN for more than 70 years with 92.6 percent of its voting stock held by BN was acknowledged to be within the BN corporate family. Here C&O has controlled B&O for 24 years and owns approximately 95 percent of B&O's common shares.

[2] On April 14, 1987, a petition to partially revoke this notice of exemption was filed by Eric Ryback. On April 28, 1987, a petition to revoke this notice of exemption was filed by Margaretha Walk, an individual; Maurice Walk, Trustee for the Cynthia Walk Trust, the Dinand M. Walk Trust, and the Margaretha Walk Trust; and Vincent Ciarlante. B&O stock filed a petition to join in the Ryback petition. When filed these petitions were assigned to Finance Docket No. 31035. Petitioners are owners of B&O stock, part of the minority shareholder interest, who seek clarification of the forum that will determine the fair value of their B&O shares. The issues raised by these petitioners will be considered in a subsequent decision to be issued by the Commission.

[3] On April 29, 1987, Acting Chairman Lamboley denied a petition for stay filed by Mr. Ryback. Stay is no longer available.

## DEPARTMENT OF JUSTICE

### Antitrust Division

## United States v. The Dow Chemical Co. and Ethyl Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois, Eastern Division, in *United States v. The Dow Chemical Company and Ethyl Corporation.*

The Complaint of the United States alleges that the proposed acquisition by Ethyl of Dow's Bromine and Brominated

Chemicals Division would violate section 7 of the Clayton Act, 15 U.S.C. 18, because it may substantially lessen competition in the United States in the manufacture and sale of bromides used in brominated clear brine fluids ("brominated CBFs").

Brominated CBFs are dense fluids that are used in the oil and gas industry to counterbalance the downhole pressure of oil and gas wells during completion and workover procedures in order to prevent blowouts or geyseers. In 1986, sales to the U.S. oil and gas industry, which currently is depressed, of bromides used in brominated CBFs totaled over $30 million, a decline from about $60 million in sales in 1984. Dow is the second largest producer of these bromides and Ethyl is the third largest. Only one other domestic company (Great Lakes Chemical Corporation) and one foreign company (Dead Sea Bromine Company Limited, an Israeli firm) compete for U.S. sales of bromides used in brominated CBFs.

Under the proposed Final Judgment, an independent trustee, Oppenheimer & Co., Inc. of New York City (telephone: 212/667-5036), has been appointed to divest the assets included in Dow's brominated CBF business. Oppenheimer will have six months to find a purchaser for the business. The proposed Final Judgment contemplates that the divestiture will be made to a purchaser that intends to and can compete effectively in the market for bromides used in brominated CBFs. The proposed Final Judgement is structured to permit a purchaser of Dow's brominated CBF business to begin competing immediately in the sale of bromides used in brominated CBFs at costs no greater than Dow would have if it were to remain in the business.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Kent Brown, Chief, Midwest Field Office, Antitrust Division, Department of Justice, Room 3820, Kluczynski Building, 230 South Dearborn Street, Chicago, Illinois 60604 (312/353-7530).

Joseph H. Widmar,

*Director of Operations, Antitrust Division.*

**United States District Court, Northern District of Illinois, Eastern Division**

*United States of America,* Plaintiff, v. *The Dow Chemical Company and Ethyl Corporation,* Defendants.

[Civil Action No.]

Filed———

*Satipulation*

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice wih the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: ———

Charles F. Rule,

*Acting Assistant Attorney General,*

Judy Whalley,

Kent Brown,

Mary E. Jones,

*Attorneys, United States Department of Justice, Antitrust Division.*

Barry J. Kaplan,

Ann M. Gales,

Sarah L. Grieb,

Christopher J. Kelly,

Mark R. Ortlieb,

Gregory J. Scandaglia,

*Attorneys, United States Department of Justice, Antitrust Division, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-7530*

For the Defendant the Dow Chemical Company:

Shearman & Sterling, (by) James T. Halverson, *a Member of the Firm, 53 Wall Street, New York, New York 10005.*

For the Defendant Ethyl Corporation:

Hunton & Williams, (by) Daniel A. Carrell, *a Member of the Firm, 707 East Main Street, Richmond, Virginia 23213.*

**United States District Court, Northern District of Illinois, Eastern Division**

*United States of America,* Plantiff, v. *The Dow Chemical Company and Ethyl Corporation,* Defendants.

[Civil Action No. ——

Filed: ———

*Final Judgment*

Whereas plaintiff, United States of America, has filed its Complaint herein on May ——, 1987, and plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

And Whereas the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas prompt divestiture is the purpose of this Final Judgment;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

*Definitions*

As used in this Final Judgment:

A. "Dow" means the Dow Chemical Company, each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. "Ethyl" means Ethyl Corporation, each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "Defendants" means Dow and Ethyl.

D. "Asset purchase agreement" means the agreement between Dow and Ethyl dated September 11, 1986, whereby Ethyl agreed to purchase Dow's worldwide bromine and bromine derivatives business.

E. "Bromides" means bromide salts, specifically sodium bromide, calcium bromide, and zinc bromide, used in blending brominated clear brine fluids.

which are clear brine fluids containing one of more bromides.

F. "Clear brine fluids" or "CBFs" means solids-free brine (*i.e.*, salt) solutions used as weighting fluids during drilling, completion and workover operations on oil and gas wells.

G. "CBF business" means the following assets:

(1) The Magnolia calcium bromide plant, as described in section II.M.;

(2) All other tangible assets solely dedicated, or anticipated to be solely dedicated, to Dow's business operation of researching, developing, engineering, testing, manufacturing, or selling bromides, which may be reasonably necessary for the purchaser to operate the Magnolia calcium bromide plant as a commercially viable, independent business operation; provided, however, that such assets do not include real property and stationary, nonmovable buildings located in or near Midland, Michigan, cash and checks on hand or on deposit, accounts and notes receivable or inventories of the CBF business;

(3) The Crone Option, as defined in section II.J. and described in Schedule 1 to this Final Judgment, and Dow's lease rights to subsurface minerals in portions of the western one-half of sections 8, 17, and 20 of Township 17 South, Range 21 West, Columbia County, Arkansas, constituting approximately seven hundred (700) acres adjoining the Crone Option area;

(4) All intangible assets, wherever located (except that if the purchaser is Dead Sea, Dow may limit such assets to those applicable to North America), that relate in any way to the assets described in sections II.G.(2) and II.G.(3), including but not limited to: Exclusive, assignable rights to all proprietary technology and other proprietary business information solely dedicated to the tangible assets; nonexclusive rights to all related proprietary technology and other proprietary business information not solely dedicated to the tangible assets; nonexclusive rights to any available space included in rights-of-way or easements between the Magnolia calcium bromide plant and the Crone Option area that were held by Dow as of April 14, 1987; and Dow's lease rights to personal property, such as trucks, storage facilities and equipment. As to any nonassignable rights described in this section II.G.(4), Dow shall grant licenses to such rights, on the same terms and conditions as the licenses conveying such rights to the purchaser, to any person who is a successor to the purchaser's entire rights to the CBF business.

The assets described in this section II.G. must be accompanied by a commitment by Dow to defend and indemnify the purchaser against any liability arising from or attributable in any way to any use of the assets by Dow at any time before the purchaser take possession of them.

H. "CBF employees" means all of the employees listed in Schedule 2 to this Final Judgment.

I. "CBF-related employees" means all of the employees listed in Schedule 3 to this Final Judgment.

J. "Crone Option" means Dow's option to purchase rights to subsurface minerals from the persons listed in Schedule 1 to this Final Judgment, for the tracts of land described therein.

K. "Dead Sea" means Dead Sea Bromine Company Limited, each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

L. "Disposal property" means the three injection wells described in Schedule 4 to this Final Judgment, finished pipelines and any other appurtenances relating to the injection wells, and sufficient nonexclusive rights-of-way or easements as may be reasonably necessary for the purchaser to construct such additional improvements as pipelines that might help the purchaser to use or maximize the use of the disposal property and to have reasonable access to the disposal property and any additional improvements. The property described in this section II.L. must be accompanied by a commitment by defendants to defend and indemnify the purchaser against any liability arising from or attributable in any way to any use of the property at any time before the purchaser takes possession of it. If the purchaser conveys property to Ethyl pursuant to section IX.D.(2), the purchaser must commit to defend and indemnify Ethyl against any liability arising from or attributable in any way to any use of the conveyed property by the purchaser.

M. "Magnolia calcium bromide plant" means the Dow tangible and intangible assets that were designed or constructed for use in the production of calcium bromide in or near Magnolia, Arkansas, including but not limited to exclusive, assignable rights to all proprietary technology and other proprietary business information solely dedicated to the assets or the operation of the assets and nonexclusive rights to all related proprietary technology and other business information not solely dedicated to the assets or the operation of the assets. Unless Dow shall give its prior consent, which Dow shall not withhold if the purchaser offers reasonable terms and conditions, the exclusive and nonexclusive rights described in this section II.M. may be limited to the use of the pertinent technology or other business information in connection with the researching, developing engineering, testing, manufacturing, or selling of bromides and brominated CBFs. Unless Dow shall give its prior consent, the assignability of any such assignable rights described in this section II.M. may be limited to an assignment to any person who is a successor to the purchaser's entire rights to the Magnolia calcium bromide plant. As to any nonassignable rights described in this section II.M., Dow shall grant licenses to such rights, on the same terms and conditions as the licenses conveying such rights to the purchaser, to any person who is a successor to the purchaser's entire rights to the Magnolia calcium bromide plant.

N. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

O. "Purchaser" means a person obtaining ownership of assets pursuant to this Final Judgment and any successor to, or assignee of, all or substantially all of the assets obtained by the purchaser pursuant to this Final Judgment.

P. "Qualified purchaser" means a prospective purchaser for whom it is demonstrated to plaintiff's satisfaction that:

(1) The purchase is for the purpose of competing effectively in the production and sale of bromides;

(2) The prospective purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of bromides; and

(3) the prospective purchaser can reasonably be anticipated to operate the CBF business in a responsible and lawful manner.

## III

A. The provisions of this final Judgment shall apply to defendants, each of their successors and assigns, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Except for section IV.E., with respect to prospective purchasers, and sections II.M., VIII., IX., X., XI., and XIII., with respect to the purchaser, nothing herein contained shall suggest that any portion of this Final Judgment is or has

been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Each defendant shall require, as a condition of the sale of all or substantially all its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

A. Dow is hereby ordered and directed to divest to a qualified purchaser, if any, all of its direct and indirect ownership and control of the CBF business.

B. Dow may divest less than all of the CBF business but only with the written approval of the plaintiff. In the event that the plaintiff approves a sale to a purchaser pursuant to this section IV.B., such sale shall fully discharge Dow's obligation to divest the CBF business under section IV.A.

C. The divestiture shall be made to the qualified purchaser that offers the highest price for the CBF business. The divestiture shall not be made to Ethyl or to Great Lakes Chemical Corporation or to any division, subsidiary or affiliate (including Arkansas Chemicals, Inc.) of Great Lakes Chemical Corporation and shall not be made, without plantiff's permission, to any other producer of bromides.

D. Until the divestiture contemplated by section IV.A. is completed, Dow:

(1) May, at its option, operate all or part of the CBF business as a going business;

(2) Shall take all steps necessary to assure that the CBF business is fully maintained in operable condition at the current capacity configuration;

(3) Shall take all steps necessary to assure that none of its proprietary technology and other proprietary business information specific to the CBF business is transferred, or otherwise becomes known or available, to Ethyl or any other person, except as provided in this Final Judgment;

(4) Shall take no steps, other than ceasing operations, with respect to the CBF business that in any way would negatively affect the purchaser's ability to operate the CBF business, regardless of any actual or possible negative impact on Ethyl's or Dow's profits;

(5) Shall maintain and adhere to normal repair and maintenance schedules for the CBF business and at least preserve and adhere to such schedules as they existed on December 1, 1986;

(6) Shall refrain from altering or selling any assets of the CBF business, other than in the ordinary course of business

(7) Shall refrain from taking any action that would jeopardize the sale of the CBF business as a viable competitor in any market in which it participated in 1986;

(8) Shall not terminate or reduce one or more current employment, salary, or benefit agreements for any CBF-related employees without prior approval of plaintiff.

E. Subject to the provisions set out in section IV.F., DOW shall:

(1) Furnish to all bona fide prospective purchasers who so request all pertinent information regarding the CBF business and the advice, assistance and services defendants shall provide pursuant to sections VIII. and IX.D.;

(2) Provide such information to the plaintiff at the time it furnishes such information to any other person;

(3) Permit all bona fide prospective purchasers to have access to Dow personnel who have had responsibilities for any part of Dow's CBF business, and to make such inspection of the physical assets of the CBF business, and any and all financial and operation records, documents, and information as may be relevant to a divestiture under section IV.A

F. Dow may refuse to furnish or grant any prospective purchaser access to the assets of the CBF business or to any confidential or proprietary information relating to the CBF business, unless such person shall have executed an appropriate confidentiality agreement that shall prohibit such person from disclosing or using (except for purposes of evaluating the acquisition of the assets to be divested pursuant to the terms of this Final Judgment, or unless such person purchases the assets to be divested pursuant to the terms of this Final Judgment) any confidential information of Dow for a period of ten (10) years from the date of the confidentiality agreement.

V

A. Oppenheimer & Co., Inc. shall act as a trustee with full power and authority to carry out the divestiture ordered in section IV.A. at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of section VI., and shall have such other powers as the Court deems appropriate. Only the trustee, and not defendants, shall have the right to effect divestiture under section IV.A., but defendants shall use all reasonable efforts to assist the trustee in accomplishing a divestitute. Except as permitted in the next sentence, Ethyl and Dow may not object to a proposed divestiture pursuant to this Final Judgment, but Ethyl and Dow may provide plaintiff with any views or information (in addition to information that the plaintiff may request pursuant to section VI.) that may be pertinent to plaintiff's evaluation of a proposed divestiture. Dow shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by Dow must be conveyed in writing to the plaintiff and the trustee within fifteen (15) days after the trustee has notified Dow of the proposed sale.

B. The trustee shall commence efforts to find a bona fide prospective purchaser and to effect a divestiture immediately after the date of the filing of the Complaint in this civil action. The trustee shall at all times use its best efforts to effect divestiture of the CBF business. Each defendant shall promptly notify the trustee of any contact it has had with any person that has made an offer or expressed an interest or desire to acquire the CBF business together with full details of the same.

C. The trustee shall serve at the cost and expense of Dow and shall account of all monies derived from a sale of the CBF business and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to Dow and the trust shall be terminated. The compensation of the trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The trustee shall have full and complete access to the personnel, books, records, and facilities of the defendants related to the CBF business, and Dow shall develop such financial or other information relevent to the CBF business as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's efforts to accomplish a divestiture.

E. In an effort to accomplish a divestiture, the trustee shall make known in the United States and elseqhere, by usual and customary means, the availability of the CBF business for sale. The trustee shall notify any person making an inquiry regarding the possible purchase of the CBF business that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. The trustee, with defendants' cooperation, also shall furnish to all bona fide prospective purchasers who so request, and subject to confidentiality assurances of the type specified in section IV.F., all pertinent

information and inspections regarding the CBF business. At the time it furnishes such information to any person, the trustee shall notify plaintiff of the name, address, and telephone number of the person to whom the information was provided.

F. Thirty (30) days from the date of the filing of the Complaint in this civil action and every thirty (30) days thereafter until a divestiture has been completed, the trustee shall submit a confidential report to the parties and the Court setting forth the trustee's efforts to accomplish a divestiture. If the trustee has not accomplished such divestiture within one hundred and eighty (180) days after the date of the filing of the Complaint in this civil action, the trustee shall thereupon promptly file with the Court a report setting forth: (1) The trustee's effort to accomplish a divestiture, (2) the reasons, in the trustee's judgment, why a divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, which shall each have the right to be heard and to make additional recommendations consistent with this Final Judgment. The Court shall thereafter enter such orders as it shall deem appropriate, which shall include extending the term of the trustee's appointment if the trustee is in active negotiations with a prospective purchaser or if the Court finds that either or both of the defendants have failed to comply with their obligations under this Final Judgment, or, in the alternative, shall include an order: (1) Deeming this Final Judgment to have been fully complied with by the efforts made by the trustee through such date, (2) vacating at the time of the order sections IV., V., VII., VIII., IX. and XI. of this Final Judgment, and (3) vacating the remainder of this Final Judgment two (2) years after the date of the order.

## VI

At least thirty (30) days prior to the scheduled closing date of the proposed divestiture pursuant to section IV.A., the trustee shall notify the plaintiff and defendands of the proposed divestiture. The notice shall set forth the details of the proposed transaction and, for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the CBF business, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed divestiture, the plaintiff may request from defendants and the proposed purchaser additional information concerning the proposed divestiture. Each defendant and the proposed purchaser shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Until plaintiff certifies in writing that it is satisfied that the proposed purchaser has provided the additional information requested from it, the divestiture shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from defendants and the proposed purchaser, whichever is later, unless defendants shall agree to extend the time, plaintiff shall notify in writing defendants and the trustee if it objects or does not object to the proposed divestiture. If plaintiff does not object, the divestiture may be consummated, subject only to Dow's right to object to the sale under the provision in section V.A. Upon objection by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Court. Upon objection by Dow under section V.A., the proposed divestiture shall not be consummated unless approved by the Court. The one hundred and eighty (180) day time period set forth in section V.F. shall be tolled from the time either the plaintiff or Dow files with the Court such an objection to the proposed divestiture, until the conclusion of any Court proceeding relating to such objection. In any such proceeding involving any objection by Dow, Dow shall have the burden of proof.

## VII

Neither defendant shall finance without the plaintiff's permission all or any part of the purchase of the CBF business pursuant to the divestiture.

## VIII

A. Not later than thirty (30) days after the closing date of the divestiture, Dow shall take, at its own expense, all steps, listed in Schedule 5 of this Final Judgment, that it has identified as of March 25, 1987, as actions to improve the operating efficiency of the Magnolia calcium bromide plant at the current capacity and product quality configuration.

B. Upon the request of the purchaser, Dow shall use its best efforts to provide in an expedient manner, at any time within a period not to exceed four (4) years from the closing date of the divestiture, such advice and engineering, management and contracting services as the purchaser may seek or specify in an effort to enhance the operation capabilities (including capacity, efficiency and product quality) of the Magnolia calcium bromide plant.

C. Upon the request of the purchaser, defendants shall use their best efforts to provide in an expedient manner, at any time within a period not to exceed four (4) years from the closing date of the divestiture, such advice and engineering, management and contracting services of defendant's personnel specifically excluding the provision of equipment, machinery, construction materials, supplies and other tangible property), as the purchaser may seek or specify in connection with the operation of the CBF business, with respect to any or all of the following:

(1) Drilling production and reinjection brine wells;

(2) Constructing pipelines for transporting brine, natural gas and waste materials;

(3) Advising the purchaser in negotiating for and obtaining certain property rights, including such rights-of-way or easements as may be reasonably necessary for the construction and maintenance of wells and pipelines;

(4) Constructing facilities for the treatment, storage and disposal of waste;

(5) Constructing facilities necessary for the pretreatment of brine, including but not limited to wellhead equipment for separating brine from hydrogen sulfide, natural gas or other minerals, a stripping facility, a sodium hydrosulfide facility (or "NaSH unit"), an amine facility (or "sweetener"), and pipes for carrying materials to and from the pretreatment facilities.

D. Upon request of the purchaser, defendants shall use their best efforts to make available, at a reasonable time and place and for a period not to exceed four (4) years from the closing date of the divestiture, those CBF employees and other qualified technical personnel employed by the defendants to assist the purchaser it its efforts to operate and maximize the profitability of the CBF business.

E. If the purchaser elects to relocate the Magnolia calcium bromide plant to some other location, upon request of the purchaser made within three (3) years from the closing date of the divestiture, defendants shall use their best efforts to make available, at a reasonable time and place and until two hundred (200) days following the request, qualified technical personnel to advise the purchaser on transferring and reassembling the production equipment. In the event that the purchaser chooses to transfer the Magnolia calcium bromide plant to some other location

pursuant to this section VIII.E., and at the request of the purchaser, the time periods provided for in sections VIII.B., VIII.C., VIII.D., VIII.G. and IX.D. shall be tolled from the time the purchaser requests assistance in relocating the facility until such time as the relocated facility is operable, but the tolling shall not exceed one (1) year.

F. The purchaser, at its option, may request advice, assistance or services under sections VIII.C., VIII.D. and VIII.E from either or both defendants, and the purchaser in all cases may enforce the obligations created by sections VIII.C., VIII.D., and VIII.E. against either or both defendants, jointly or individually, except that neither defendant may be required to engage the services of third parties, hire employees, or develop or acquire new capabilities to provide any such requested advice, assistance or services.

G. If, purusant to the divestiture, the purchaser acquires any assets of the CBF business that are located in or near Midland, Michigan, Dow shall use its best efforts, for a period not to exceed one (1) year from the closing date of the divestiture, to assist the purchaser in removing such assets from Midland to a location to be designated by the purchaser.

H. The purchaser may request advice, assistance or services pursuant to sections VIII.B., VIII.C., VIII.D., VIII.E. and VIII.G. by providing notice to the defendant from which advice, assistance or services are requested at least twenty (20) days before the defendant must begin providing the requested advice, assistance or services. In the event of an emergency relating to the Magnolia calcium bromide plant, the defendants shall use their best efforts to provide the requested advice, assistance or services as soon as possible. The total number of man-hours of advice, assistance and services that the defendants may be required to provide under sections VIII.B., and VIII.C., and VIII.D. to any purchaser other than Dead Sea shall not exceed seventeen thousand (17,000) hours. If the purchaser is Dead Sea, the total number of man-hours of advice, assistance and services that the defendants may be required to provide under section VIII. shall not exceed five thousand (5,000) hours. The advice, assistance and services made available to the purchaser pursuant to sections VIII.B., VIII.C., VIII.D., VIII.E. and VIII.G. shall be subject to the following limitations:

(1) The first two hundred (200) man-hours of such advice, assistance and services shall be provided at no cost to the purchaser;

(2) The remainder of such advice, assistance and services shall be provided at cost, determined in accordance with generally accepted accounting principles;

(3) If the purchaser is Dead Sea, any such advice, assistance and service, including the first two hundred (200) man-hours, shall be provided at fair market value;

(4) With respect to CBF employees, the total number of man-hours of advice, assistance and services that the defendants may be required to provide shall not exceed fifteen thousand (15,000) hours;

(5) With respect of CBF employees, six (6) months from the date that any requested advice, assistance or services are first provided to the purchaser, the defendants shall not thereafter be required to provide the advice, assistance or services of more than three (3) CBF employees at any one time;

(6) With respect to persons other than CBF employees, the total number of man-hours of advice, assistance and services that each defendant may be required to provide shall not exceed two thousand five hundred (2,500) hours;

(7) Other than CBF employees, no individual employee of either defendant shall be required to provide advice, assistance or services for more than one-third (1/3) of the individual's normal working hours in any three (3) month period;

(8) All such advice, assistance and services shall be provided with the good faith belief that it is sound, reliable and representative of current technology known to the defendant providing such advice, assistance or services; however, such advice, assistance and services shall be provided without warranty of any kind, express or implied;

(9) Any controversy concerning the cost (or with respect to Dead Sea, the fair market value) or the number of man-hours of such advice, assistance or services shall be settled by arbitration.

I. For each CBF-related employee:

(1) No later than twenty (20) days before the closing date of the divestiture, Dow shall identify the employee to the purchaser and shall provide the purchaser, on a confidential basis and as permitted by law, with information disclosing the employee's job description (if any), salary or wages and other benefits, and any other information that the employee may authorize to be disclosed;

(2) Upon the request of the purchaser at any time within a period not to exceed ninety (90) days from the closing date of the divestiture, Dow shall provide the purchaser with an opportunity, during regular office hours, to meet in private with the employee for the purpose of discussing the purchaser's potential hiring of the employee, and Dow shall encourage the employee to participate in any such meeting with the purchaser.

J. As soon as practicable and in accordance with applicable law, but no later than one and one-half (1½) years after the closing date of the divestiture, if the purchaser maintains, or within one (1) year after such closing has adopted, a defined benefit plan that is qualified under section 401(a) of the Internal Revenue Code of 1986 ("the Purchaser's plan"), Ethyl shall cause a transfer of assets from the Retirement Income Plan for the Employees of Ethyl Corporation and the Ethyl Corporation Retirement Income Plan for the Hourly Employees at Magnolia, Arkansas ("the Ethyl plans") to the Purchaser's plan. The amount to be transferred shall equal the portion of the Transferred Amount (as defined in the Asset purchase agreement) applicable to those CBF employees who terminate their employment with Ethyl in order to accept employment with the purchaser within ninety (90) days of the closing date of the divestiture. No assets shall be transferred, however, unless the Purchaser's plan recognizes employee service with Dow prior to the closing date of the divestiture for all purposes. If the closing date of the divestiture occurs before the transfer of assets to the Ethyl plans from the Dow Chemical Company Employees' Retirement Plan ("the Dow plan"), then in lieu of a transfer to the Purchaser's plan from the Ethyl plans, Dow shall cause the transfer to the Purchaser's plan of assets contemplated by this section VIII.J. The defendants, the Dow plan and the Ethyl plans shall have no further obligations with respect to the CBF employees' pension or other employee benefits following a transfer of assets from the Ethyl plans or the Dow plan to the Purchaser's plan in accordance with this section VIII.J.

K. Ethyl shall only be required to disclose to the purchaser proprietary technology or other proprietary business information pursuant to this section VIII. if such technology or information relates to the assets included in the CBF business or if such disclosure is necessary for Ethyl to fulfill its obligations under section VIII.C., but nothing herein shall be construed to require Ethyl to disclose proprietary technology or other proprietary business information of persons other than Ethyl (except Dow) if Ethyl is contractually

bound not to disclose such technology or information.

IX

A. Ethyl is hereby enjoined from:

(1) Acquiring any direct or indirect ownership or control of all or any part of the CBF business without prior approval of the plaintiff;

(2) Taking any action that would restrict the purchaser's reasonable access to all or any part of the CBF business or any disposal facilities used in connection with the operation of the CBF business;

(3) Taking any action for the purpose of preventing the purchaser from constructing pipelines for use in connection with the operation of the CBF business along the most direct and reasonable routes.

B. For each CBF employee and CBF-related employee that Ethyl may hire:

(1) Ethyl shall use its best efforts to make the employee available to Dow, under such terms and conditions as Ethyl and Dow may agree among themselves or, in the absence of such an agreement, as the Court may prescribe, for such time and at such place as may be reasonably necessary for Dow to fulfill its obligations under sections VIII.A. and VIII.B.;

(2) Except for CBF-related employees, prior to the closing date of the divestiture, Ethyl shall not, without prior approval of the plaintiff, relocate, offer to relocate, or suggest the possibility of relocating the employee to any location other than Magnolia, Arkansas;

(3) No later than twenty (20) days before the closing date of the divestiture, Ethyl shall identify the employee to the purchaser and shall provide the purchaser, on a confidential basis and as permitted by law, with information disclosing the employee's job description (if any), salary or wages and other benefits, and any other information that the employee may authorize to be disclosed;

(4) Upon the request of the purchaser at any time within a period not to exceed ninety (90) days from the closing date of the divestiture, Ethyl shall provide the purchaser with an opportunity, during regular office hours, to meet in private with the employees for the purpose of discussing the purchaser's potential hiring of the employee, and Ethyl shall encourage the employee to participate in any such meeting with the purchaser.

C. Ethyl shall take all steps necessary to assure that:

(1) It does not receive, except as a result of arm's length bargaining with the purchaser conducted after the divestiture has been accomplished, any proprietary technology or other proprietary business information specific to the CBF business, other than the technology and other information that Ethyl may already have received prior to February 13, 1987;

(2) No proprietary technology and other business information specific to the CBF business that Ethyl may have received prior to February 13, 1987, is further disseminated within Ethyl or used to compete with the purchaser of the CBF business.

(D) Upon the request of any purchaser other than Dead Sea, Ethyl shall enter into a supply agreement with the purchaser. The terms of the supply agreement shall be subject to the plaintiff's approval, and shall include the following provisions:

(1) A provision obligating Ethyl, for a period not to exceed three and one-half (3½) years from the closing date of the divestiture, to provide, at the location of the Magnolia calcium bromide plant as of April 14, 1987, from the developed and undeveloped portions of the brine field held by Dow as of the date of consummation of the Asset purchase agreement, all of the purchaser's requirements of pretreated brine ready for use in the purchaser's production of bromides, except that, in any calendar year or portion thereof, Ethyl need not provide more pretreated brine than the purchaser would require if it were to operate the Magnolia calcium plant at approximately sixty (60) percent of the original design capacity;

(2) A provision obligating Ethyl to convey to the purchaser the disposal property for the consideration of $10.00, with the provision that, within ninety (90) days after either the termination of the supply agreement or the purchaser's permanent abandonment of the disposal property for use in the disposal of spent brine, whichever is the first to occur, the purchaser shall convey and Ethyl shall purchase the disposal property, together with such improvements as pipelines, but specifically excluding holding ponds or any improvements located on the real property listed in Schedule 6 to this Final Judgment that the purchaser may elect to convey, or equivalent terms and conditions as the property was conveyed to the purchaser and for the consideration of $10.00 plus the lesser of (a) the cost of such improvements to the purchaser less depreciation or (b) the reasonable replacement cost of improvements of like utility less depreciation (both as determined in accordance with generally accepted accounting principles) of any improvements that the purchaser elects to convey to Ethyl, except that Ethyl shall not be required to purchase any property or improvements that are at the time of the proposed conveyance contaminated as determined in accordance with, or not operable in conformance with, all applicable federal and state environmental law;

(3) A provision obligating Ethyl, for a period not to exceed nine (9) months from the closing date of the divestiture, to provide all of the purchaser's requirements of calcium bromide, sodium bromide and zinc bromide for reesale (and not for storage or inventory accumulation) by the purchaser;

(4) A provision that the supply by Ethyl of pretreated brine and bromides pursuant to sections IX.D.(1) and IX.D.(3) shall be at cost, as determined in accordance with generaly accepted accounting principles, such cost to be invoiced monthly by Ethyl, upon terms of payment of net ten (10) days, with interest charged against delinquent amounts at five (5) percent per annum above the Federal Reserve Discount Rate at the time of the delinquency;

(5) A provision stating that in the event of a breach by either party of any of its obligations under the supply agreement, in addition to actual damages, the damaged party shall be entitled to any other appropriate relief, such as the right of specific performance;

(6) A provision stating that any controversy between Ethyl and the purchaser relating to the performance of Ethyl's or the purchaser's obligations under the supply agreement shall be settled by arbitration.

X

A. The purchaser of the CBF business must consent to be bound by the provisions of this Final Judgment.

B. If the purchaser acquires the disposal property, the purchaser shall make a reasonable effort to enter into an agreement with Ethyl providing for the use of the disposal property (including any improvements thereto) in coordination with the operation of the developed and undeveloped portions of the brine field held by Dow as of the date of consummation of the Asset purchase agreement, except that the purchaser shall not agree to use the disposal property in a manner that: (1) Conflicts with federal or state environmental law; (2) would be more costly than the purchaser's minimum cost of compliance with all federal or state laws if the property were used in the absence of an agreement; or (3) would otherwise impose any limits on the purchaser's production of bromides.

C. In the event of a divestiture, Ethyl and the purchaser each shall exercise

reasonable efforts in the operation of its respective business in and around the Magnolia, Arkansas area to minimize disruption to the physical operation of the other's business in and around such area, provided, however, that this section X.C. shall not be construed to impose any obligations or to immunize any conduct that might in any way reduce competition between Ethyl and the purchaser or tend to frustrate accomplishment of any other purposes of this Final Judgment.

D. Ethyl and the purchaser of the CEF business must consent to the inclusion of mutually enforceable covenants running with the real property listed in Schedule 6 to this Final Judgment, such covenants to be enforceable by Ethyl (which for purposes of the covenants shall include any successor to, or assignee of, all or substantially all of the Magnolia, Arkansas, assets conveyed to Ethyl under the the Asset purchase agreement) or by the purchaser, to the effect that:

(1) If the purchaser proposes to convey such property to a bona fide purchaser who does not intend to use the property in connection with the researching, developing, engineering, testing, manufacturing or selling of bromides, the purchaser shall give Ethyl the right to acquire the property by meeting or exceeding the provisions of the offer that the purchaser proposes to accept;

(2) If the purchaser moves the Magnolia calcium bromide plant from its location at the date of consummation of the Asset purchase agreement to another location and does not intend to use the real property listed in Schedule 6 in connection with operations of a chemical manufacturing facility in the Magnolia, Arkansas, area, and if Ethyl conducts at the time of the move any operations on the Magnolia, Arkansas, real property conveyed to Ethyl under the Asset purchase agreement, the purchaser shall sell to Ethyl and Ethyl shall purchase from the purchaser the real property listed in Schedule 6, together with any remaining improvements thereon that have related to the operation of a chemical manufacturing facility, at the fair market value of such property based upon the average of three (3) appraisals of which one appraisal each shall be obtained by Ethyl and the purchaser, and the third provided by an appraiser mutually acceptable to the first two appraisers; provided, however, that Ethyl shall not be required to purchase such property if at the time of the proposed conveyance to Ethyl the property is contaminated as determined in accordance with, or not operable in conformance with, all applicable federal and state environmental law.

XI

A. At the time of the divestiture, the defendants shall enter into a reasonable arbitration agreement with the purchaser concerning controversies to be settled by arbitration pursuant to this Final Judgment. The agreement shall provide that:

(1) Any arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. 1, *et seq.*;

(2) Any controversy to be settled by arbitration shall be submitted to the American Arbitration Association;

(3) Any such controvery shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and the Expedited Procedures of the Commercial Arbitration Rules shall be followed at least with respect to the requirements for notice, appointment of the arbitrator, and the time period (after the conclusion of any hearings) in which the arbitrator must make an award;

(4) Any award made pursuant to any arbitration shall be final and binding on the parties to the arbitration.

B. When any controversy is submitted to arbitration, Dow or Ethyl, whichever is a party to the arbitration, shall promptly notify plaintiff in writing of the controversy being arbitrated and shall promptly serve a copy of the final award on plaintiff.

XII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant or to the purchaser made to its principal office, be permitted:

(1) Access during the office hours of such defendant or purchaser to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant or purchaser, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant or purchaser and without restraint or interference from it, to interview officers, employees and agents of such defendant or purchaser, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant or to the purchaser's principal office, such defendant or purchaser shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section XII. shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant or purchaser to plaintiff, such defendant or purchaser represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant or purchaser marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant or purchaser prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessarry or apropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIV

This Final Judgment will expire on the tenth anniversary of its date of entry.

XV

Entry of this Final Judgment is in the public interest.

_____

United States District Judge.

Dated: _____

**Schedule 1.—Description of Crone Option**

| Description | | | | | Surface acres owned by— | |
|---|---|---|---|---|---|---|
| Tracts and subsection | Section | Township (South) | Range (West) | CO | Seral Crone | S.T. Crone, Ltd. |
| 1. NW.NE less 8.867 A in E½ | 6 | 17 | 22 | COL | | [1] 31.133 |
| 2. SW.NE | 6 | 17 | 22 | COL | | 40 |
| 3. W½.SE | 6 | 17 | 22 | COL | | 80 |
| 4. N¾ NE.SE less 5.349 A NE cor. | 6 | 17 | 22 | COL | | [1] 24.651 |
| 5. NE.SW | 6 | 17 | 22 | COL | | 40 |
| 6. S½.SW | 6 | 17 | 22 | COL | | 80 |
| 7. NE¼ | 7 | 17 | 22 | COL | | 160 |
| 8. S½.SE | 7 | 17 | 22 | COL | 80 | |
| 9. SE.SW | 7 | 17 | 22 | COL | 40 | |
| 10. W½.SW | 7 | 17 | 22 | COL | 80 | |
| 11. NE.NW | 7 | 17 | 22 | COL | | 40 |
| 12. W.½.NW | 7 | 17 | 22 | COL | 80 | |
| 13. W½.NW | 8 | 17 | 22 | COL | 80 | |
| 14. NE.NW less 18.417 A NE cor. | 8 | 17 | 22 | COL | [1] 21.583 | |
| 15. SE.NW | 8 | 17 | 22 | COL | 40 | |
| 16. NW.NW | 17 | 17 | 22 | COL | 40 | |
| 17. N½.NE | 18 | 17 | 22 | COL | 80 | |
| 18. SW.NE | 18 | 17 | 22 | COL | 40 | |
| 19. E½.SW | 18 | 17 | 22 | COL | | 80 |
| 20. NE.NW | 18 | 17 | 22 | COL | 40 | |
| 21. SE.NW | 18 | 17 | 22 | COL | 40 | |
| 22. W½.NW | 18 | 17 | 22 | COL | 80 | |
| 23. E½.NE | 12 | 17 | 23 | COL | 80 | |
| 24. SW.NE | 12 | 17 | 23 | LAF | 40 | |
| 25. NW.NE | 12 | 17 | 23 | LAF | 40 | |
| 26. SE.SE | 12 | 17 | 23 | COL | 40 | |
| 27. SW.SE | 12 | 17 | 23 | LAF | 40 | |
| 28. NE.NE | 12 | 17 | 23 | COL | 40 | |
| 29. W½.NE | 13 | 17 | 23 | LAF | 80 | |
| 30. NE.SE | 13 | 17 | 23 | COL | 40 | |
| 31. SE.SE | 13 | 17 | 23 | COL | 40 | |
| 32. W½.SE | 13 | 17 | 23 | LAF | 80 | |
| 33. NE.SW | 13 | 17 | 23 | LAF | 40 | |
| 34. SE.SW | 13 | 17 | 23 | LAF | 40 | |
| 35. NE.NW | 24 | 17 | 23 | COL | 40 | |
| 36. 5 A NE corner SW.NE | 24 | 17 | 23 | COL | | 5 |
| 37. E.½.SE | 20 | 17 | 22 | COL | | 80 |
| Subtotal of Acreage, more or less | | | | | 1,001.583 | 660.764 |
| 38 Owned by Magnolia Municipal Water System [1] | | | | | 18.417 | 14.216 |
| Total acreage, more or less | | | | | 1,400.000 | 675.000 |

[1] Means balance of 40 surface acres owned by Magnolia Municipal Water System.

COL means located in Columbia County, Arkansas.
LAF Means located in Lafayette County, Arkansas.

**Persons Who Own the Crone Option**

1. S. T. Crone, Ltd., c/o John T. Crone, 351 Terrell Road, San Antonio, Texas 78209
2. Cronest, Ltd., c/o Woodward, Kinard and Epley, 118 E. Calhoun Street, Magnolia, Arkansas 71753
3. Cynthia and Steve Brown, 366 Jefferson Street, Natchitoches, Louisiana 71457
4. Jose Amaya, Attorney-in-Fact for Sylvia T. Amaya and Mario Amaya, c/o Cynthia Brown, 366 Jefferson Street, Natchitoches, Louisiana 71457
5. Roberta Q. Evans, 1 Melborn Place, Vicksburg, Mississippi 39180
6. Rosemary Sorrels Cole and William S. Cole, 1961 Bayou Drive, Shreveport, Louisiana 71102
7. Samuel S. Sorrels and Margie Day Sorrels, c/o Rosemary S. Cole, 1961 Bayou Drive, Shreveport, Louisiana 71102
8. Tom Sorrels/Laverna Sorrels, c/o Rosemary S. Cole, 1961 Bayou Drive, Shreveport, Louisiana 71102

**Schedule 2.—CBF Employees**

*Employee Name and Position*

R.W. Menzel, Jr., Superintendent
M.D. Aldridge, Operations Superviser
M.J. Shemas, Sr. Process Engineer
J.G. Taylor, Engineer
J.L. Ford, Gen. Maintenance Technician
J.W. Moore, Gen. Maintenance Technician
J.E. Souter, General Technician
J.L. Goddard, General Technician
S. Yates, General Technician
D.M. Colten, Unit Technician
W.L. Grant, Unit Technician
M.L. Henry, Unit Technician
C.L. Jones, Unit Technician
T.D. Wooley, Unit Technician
P.S. Hughes, Production Clerk

**Schedule 3.—CBF-Related Employees**

*Name and Position*

Richard Aiken, Midland Calcium Bromide Plant Supt.

E.H. Beadle, Reservoir Engineer
John Belleau, Industry Sales Manager
Paul Cicio, Marketing Manager
Roger Daniels, Commercial Director
D.W. Evans, Mod V
Marilyn Hanover, Midland Zinc Bromide and Sodium Bromide Plant Supt.
John Kalvins, Development Chemist
John Krekosky, Development Chemist
Nancy Lindley, Product Marketing Manager
J.F. Lynn, Project Manager
Ed Newlin, Sr. Sales Specialist
Chuck Peil, Technical Service and Development
T.C. Perilloux, Magnolia Site Manager
Paul I. Reis, Project Manager
Jim Snyder, District Sales Manager
Gordon Thompson, Sales Specialist
J.C. Walling, Project Manager

**Schedule 4.—Disposal Property**

1. The cased hole equipped for brine infection known as the Parham No. 1 Well, located in the NE ¼ NW ¼, Section 17, Township 17 South, Range 21 West, Columbia County, Arkansas.
2. The cased hole equipped for brine injection known as the Whitehead No. 1 Well, located in the SW ¼ SE ¼, Section 8, Township 17 South, Range 21 West, Columbia County, Arkansas.
3. The cased hole equipped for brine injection known as the Dow Fee No. 1 Well, located in the SW ¼ NE ¼, Section 18, Township 17 South, Range 21 West, Columbia County, Arkansas.

**Schedule 5.— Steps to be Taken by Dow to Improve the Operating Efficiency of the Magnolia Calcium Bromide Plant at Its Current Capacity and Product Quality Configuration**

1. Repack the bottom section with one-inch packing.
2. Redesign the air inlet sparger for better distribution.
3. Connect additional chlorine entry point in the mid-section at the bottom packing.

**Schedule 6.—Real Property Referenced in Sections IX and X of Final Judgment***

*Area C*

Pt. of the SW¼NE¼ of section 18, Township 17S; Range 21W, Columbia County, Arkansas

Described as: Commencing at the Northeast corner of said section 18, run S-0°41'W—1715.56'; thence run N-89°23'W—1428.32' to the point of beginning; thence run S-0°37'W—393.08'; thence run N-89°23'W—296.49'; thence run N-0°37'E—393.07'; thence run S-89°23'E—296.49' to the point of beginning, containing *2.68* AC.

*Area D*

Pt. of the NW¼SE¼ and SW¼NE¼ of Section 18, Township 17S; Range 21W, Columbia County, Arkansas

Described as: Commencing at the Northwest corner of the NW¼SE¼ of said Section 18, run N-88°53'E—663.85' to the point of beginning; thence run S-70°49'E—175.00'; thence run S-19°11'W—550.00'; thence run N-70°49'W—175.00'; thence run N-19°11'E—550.00'; to the point of beginning, containing *2.21* AC.

*Surveys for the real property described in Area C and Area D were performed on March 12, 1987, by Crisp Surveying Service, P.O. Box 812, Magnolia, Arkansas 71753.

**United States District Court, Northern District of Illinois, Eastern Division**

*United States of America*, Plaintiff, v. *The Dow Chemical Company and Ethyl Corporation*, Defendants.

[Civil Action No. ——]

Filed: ——

*Competitive Impact Statement*

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of the defendants in this civil antitrust proceeding.

I

*Nature and Purpose of the Proceedings*

On May ——, 1987, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, U.S.C. 25, challenging the acquisition of the bromine and brominated products business of The Dow Chemical Company ("Dow") by Ethyl Corporation ("Ethyl") as a violation of section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the United States market for the production and sale of bromides, such as calcium bromide, sodium bromide, and zinc bromide. Bromides are blended with other substances to produce clear brine fluids ("CBFs"), which are used as weighting fluids during completions and workover operations on oil and gas wells. The complaint requests that Dow and Ethyl be enjoined from carrying out any agreement or plan, the effect of which would be to combine or otherwise reduce the competitive viability of the bromide business of Dow or Ethyl.

The United States and defendants have stipulated that the proposed Final judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, unless the United States withdraws its consent. Entry of the proposed Final judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed judgment and to punish violations of the proposed judgment.

II

*Events Giving Rise to the Alleged Violation*

1. Introduction

On September 11, 1986, Ethyl agreed to acquire Dow's bromine and brominated products business for approximately $55 million. Pursuant to the agreement, Ethyl would acquire: (a) Substantialy all of Dow's real property and equipment used or to be used in the production of bromine, bromides, and other brominated products in Arkansas, (b) an option to take possession of much of Dow's equipment used in the production of bromides and other brominated products in or near Midland, Michigan, (c) Dow's inventories of bromine, bromides, and other brominated products, and (d) a variety of intangible assets including copyrights, patents, technology and know-how. After consummation of the agreement, Dow would no longer produce or sell bromides, and following a transition period, Dow would cease its production of bromine (except as a by-product) and other brominated products in Arkansas and Midland, Michigan.

Dow, which produces and sell chemicals, plastic materials, and a variety of pharmaceutical, agricultural, and consumer products, reported net sales of about $11.5 billion in 1985. Dow's Basic Chemicals Segment, which had about $5.2 billion in sales to unaffiliated customers in 1985, produces and sells inorganic and organic chemicals, including bromine and bromides. Ethyl is a diversified producer of performance chemicals for the petroleum industry, high technology chemicals, plastics and aluminum products, and has interests in oil, gas and coal. It reported net sales of about $1.5 billion in 1985. Its Special, Industrial and Bromine Chemicals Division, which accounted for about $500 million in net sales in 1985, produces a broad range of chemicals, including bromine and bromides.

Five companies produce virtually all of the bromine that is sold, or used in brominated products that are sold, in the

United States. These companies are Dow, Ethyl, Great Lakes Chemical Corporation ("Great Lakes") (the largest domestic bromine producer), Arkansas Chemicals, Inc. ("ACI") (an affiliate of Great Lakes that is managed and fifty-percent owned by Great Lakes), and Dead Sea Bromine Company Limited ("Dead Sea") (the only foreign firm that participates in the sale of bromine and brominated products in the United States).

Bromine has no significant use in and of itself. Rather, it is an intermediate product which must be processed into an end product, such as bromides, before it has commercial significance. Dow, Ethyl, Great Lakes and Dead Sea are vertically integrated into the production of such products and are the major producers of such products. ACI conveys the bromine it produces to Great Lakes.

2. Effect of the Proposed Acquisition in the United States Bromide Market

The complaint alleges that the production and sale of bromides comprises a relevant product market for antitrust purposes and that the effect of Ethyl's proposed acquisition may be substantially to lessen competition in the production and sale of bromides in the United States in violation of section 7 of the Clayton Act.

Both Dow and Ethyl produce bromides for use in CBFs. The CBFs serve as weighting fluids that totally or partially counterbalance an oil or gas well's down-hole pressure and thereby prevent, or reduce the potential for, a blowout. Drilling muds are also used as weighting fluids, and in most completions and workover operations, operators of oil and gas wells use drilling muds or CBFs that do not include bromides. Because CBFs that include bromides ("brominated CBFs") generally are the most expensive weighting fluids, operators use brominated CBFs only when they determine that the physical characteristics of a well's geological formation require the use of a CBF with properties that only the bromides can provide. Thus, other CBF ingredients and drilling muds do not serve as viable substitutes for bromides in CBFs for those wells.

Brominated CBFs are used as weighting fluids primarily in high pressure oil or gas producing formations that consist of highly unconsolidated sands or shale or that contain a significant amount of hydratable clays. In the United States, these formations are concentrated primarily in the coastal areas around the Gulf of Mexico, offshore in the Gulf of Mexico, and offshore near California. In these wells, the use of brominated CBFs in lieu of drilling muds in completions and workover operations helps the operator to maximize oil or gas production, minimize formation damage, reduce the necessity and frequency of subsequent workover operations on the well, and protect the capital investment in the well.

Dow and Ethyl produce bromides in solution and concentrate forms and sell them as commodity products to oilfield service companies. Oilfield service companies then blend the bromides with other CBF ingredients to form brominated CBFs having the precise densities and crystallization temperatures desired by operators for completion and workover operations on particular oil and gas wells. The service companies sell the brominated CBFs to the operators, which include major oil companies and independent oil exploration firms.

The complaint alleges that the United States bromide market is highly concentrated. Only two firms other than Dow and Ethyl, Great Lakes and Dead Sea, produce bromides for sale in the United States. Dead sea produces bromides in Israel and exports them to the United States for sale through a wholly-owned subsidiary. Dead Sea has only a very small presence in the United States market. Of about $50 million in total 1985 sales in the United States bromide market, Dow had about 24 percent, and Ethyl had about 17 percent, making them the second and third largest firms in the market, respectively. Based on 1985 sales, the combination of the two firms would increase the Herfindahl-Hirschman Index ("HHI"), a measure of market concentration, by about 816, from 3710 to about 4526. Based on projected 1986 sales in the market, of which Dow was projected to have about 30 percent, and Ethyl about 16 percent, the combination of the two firms would increase the HHI by about 960, from 3582 to about 4542.

The complaint alleges that a *de novo* entrant into the production of bromides for sale in the United States bromide market would need to invest significant amounts of time and money to become a significant competitor. In addition to constructing one or more bromide processing facilities and developing commercially acceptable products, a new entrant would incur other costs in the storage, transportation, and marketing of bromides. In order to secure a supply of bromine-bearing brines or other bromine-bearing raw materials independent of its competitors, and in order to be cost-competitive with other producers of bromides, a new entrant would also need to develop its own brine field, and possibly a bromine processing plant.

Due to currently depressed conditions in the oil and gas industry, the number of completions and workover operations has declined considerably, and the demand for brominated CBFs has been sharply reduced. Sales of bromides in the United States dropped from about $59 million in 1984 to a projected $31 million in 1986. The decline in sales of bromides has depressed the United States bromide market and created substantial excess production capacity in the market. The depressed condition of the United States bromide market and the substantial excess production capacity in the market serve as significant disincentives to *de novo* entry into the production of bromides.

The bromine industry in general also is depressed, and significant excess production capacity exists in that industry. The depressed condition of the bromine industry and the excess production capacity in that industry create additional disincentives for *de novo* entry into the United States bromide market.

*Explanation of the Proposed Final Judgment*

As described above, the United States brought this action because the effect of Ethyl's acquisition of Dow's bromine and brominated products business may be substantially to lessen competition in violation of section 7 of the Clayton Act in the production and sale of bromides. The United States believes that there may be other potential purchasers of Dow's bromide business that would not pose the same competitive concerns.

The 1970's and early 1980's, Dow developed a new proprietary process for producing calcium bromide, by far the largest selling bromide, directly from bromine-bearing brines. In 1986, Dow completed construction of a new calcium bromide processing plant near Magnolia, Arkansas that incorporates Dow's new process technology. A purhaser of the assets to be divested, by using Dow's new process technology, could limit its investment and the scope of its entry to the bromide market. Unlike a producer that might rely on the traditional technology for processing calcium bromide, a producer that uses Dow's new technology would not be required to construct a bromine processing plant and possibly to enter into the production and sale of brominated products other than calcium bromide.

The purposes of the proposed Final Judgement are twofold: First, the

proposed Judgment seeks to transfer Dow's new process technology, as well as its new calcium bromide plant and certain other assets, to a buyer that has the capability of participating in the market as an independent producer of bomides; second, pending the purchaser's development of a compeletly independent business operation, the proposed Judgment seeks to provide the purchaser with a temporary means of competing in the supply of calcium bromide and other bromides at a cost that is no higher than the costs Dow would have if it were to remain in the market.

As to the first purpose, section IX.A. of the proposed Judgment enjoins Ethyl from acquiring Dow's CBF business, and section IV requires Dow to divest its CBF business to a purchaser for whom it is demonstrated to the United States' satisfaction that: The purchase is for the purpose of permitting the purchaser to compete effectively in the production and sale of bromides; the purchaser has the capabilities to complete effectively in the production and sale of bromides; and the purchaser can be anticipated to operate the CBF business in a responsible and lawful manner. Included in the CBF business to be divested are rights to Dow's proprietary technology (including its new process technology) and other intangible assets that relate to Dow's CBF business; Dow's new calcium bromide plant in Magnolia, Arkansas; the other tangible assets in Midland, Michigan and elsewhere that Dow has dedicated to its CBF business; the Crone Option; and Dow's lease rights to subsurface minerals in approximately 700 acres of land adjoining the Crone Option. The Crone Option is Dow's option to purchase rights to subsurface minerals in an area in Arkansas that comprises about 2045 acres. The purchaser of Dow's CBF business could develop the Crone Option area and the 700 adjoining acres as a brine field to supply bromine-bearing brine for the calcium bromide plant. All available information shows that the brine field has sufficient reserves to supply Dow's calcium bromide plant at its current capacity for at least ten years. Moreover, the purchaser could elect to expand the brine field by leasing additional rights to subsurface minerals in an area adjoining the Crone Option area.

The divestiture will be carried out by a trustee, Oppenheimer & Co., Inc., which will start its efforts to divest the CBF business immediately after the filing of the complaint. Section V of the proposed Judment provides that only the trustee, and not Dow or Ethyl, shall have the right to effect the divestiture, but Dow and Ethyl are required to use all reasonable efforts to assist the trustee in fulfilling its responsibilities. Section V.F. provides that, if the trustee has not accomplished the divestiture within one hundred and eighty days after the complaint is filed, the Court will have the power to enter any appropriate orders, which may include extending the term of the trustee's appointment if it is in active negotiations with a purchaser or if Dow Ethyl have not complied with the Judgment, or, in the alternative, vacating Dow's obligation to divest the CBF business and terminating the injunction preventing Ethyl from acquiring it.

Section VI of the proposed Final Judgment provides the United States with an opportunity to review any proposed divestiture before it occurs. If the United States objects to a divestiture, it may not be completed unless approved by the Court.

Pending the divestiture, section IV.D. requires Dow to preserve and maintain its CBF business in operable condition. After the divestiture, the purchaser will need to construct or develop a number of supporting assets before the calcium bromide plant can be operated as a completely independent business operation. These assets include brine production wells, injection wells for disposing spent brine, brine pretreatment facilities, a holding pond for spent brine, and pipelines. Moreover, over time, the purchaser may want to take steps to improve the operating efficiency or change the capacity of the calcium bromide plant. Because the plant is new, the purchaser may perceive that certain adjustments could be made to improve its efficiency. Indeed, Dow has already identified several such adjustments, and section VIII.A. requires Dow to make those adjustments at no cost to the purchaser. Because of the currently depressed condition of the CBF industry, Dow has adjusted the plant to operate at approximately sixty percent of its original design capacity. Over time, the purchaser may want to make other adjustments to the plant's capacity.

Section VIII requires the defendants to provide the purchaser engineering, management and contracting advice and services with respect to the CBF business. The purchaser may seek advice and services both with respect to the supporting assets that it will need to construct or develop and with respect to any changes or improvements it may seek for the calcium bromide plant. The purchaser generally may seek advice and services under section VIII for a period of four years, and such advice and services generally will be available at Dow's or Ethyl's cost.

The assets that the purchaser must construct or develop to operate the CBF business as an independent operation are not technically complex or difficult to construct or develop. However, because of the currently depressed condition of the CBF industry, the purchaser may choose not to develop immediately all of the necessary assets. The second purpose of the proposed Judgment is to provide the purchaser with a temporary means of competing in the supply of calcium bromide and other bromides at a cost no higher than the cost Dow would have if it were to remain in the market.

Section IX.D. implements this purpose by requiring Ethyl to enter into a supply agreement with the purchaser. Under the supply agreement, Ethyl will be required, for three and one-half years, to supply the purchaser's requirements of pretreated brine ready for use in the production of bromides. The purchaser may require Ethyl to supply as much brine as it would require to operate the calcium bromide plant at its current sixty percent capacity configuration. In addition, Ethyl will be required to convey to the purchaser for a nominal sum ($10.00), during the term of the supply agreement, three injection wells and connecting pipleline that the purchaser may use to dispose of its spent brine.

With the supply of pretreated brine and the injection wells, the purchaser can begin operation of the calcium bromide plant immediately after it constructs a holding pond and some additional pipeline connecting the holding pond to the plant and the injection wells. During this construction period, which should not take more than a few months, the purchaser will have bromides to sell because the supply agreement also will require Ethyl, for a period of nine months, to supply the purchaser's requirements for resale of calcium bromide, sodium bromide, and zinc bromide. Under the supply agreement, Ethyl must supply the purchaser's requirements of pretreated brine and finished bromides at cost.

Because of the close physical proximity of the CBF business to be divested and the other bromine-related assets that Ethyl plans to purchase from Dow, section X requires Ethyl and the purchaser to exercise reasonable efforts in the operation of their respective businesses to minimize disruption to the physical operation of the other's business. In addition, section X provides that Ethyl and the purchaser must

consent that the conveyance of the real property included in the CBF business be subject to mutually enforceable covenants, which will provide the purchaser with an opportunity to sell the property to Ethyl if the property will no longer be used in connection with the operation of a chemical manufacturing facility.

The proposed Judgment provides that controversies concerning the supply agreement or the provision of advice or services under section VIII shall be settled by arbitration. Section XI requires the defendants and the purchaser to enter into a reasonable arbitration agreement concerning those controversies that are to be settled by arbitration.

## IV

*Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

## V

*Procedures Available for Modification of the Proposed Final Judgment*

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Kent Brown, Chief, Midwest Office, Antitrust Division, United States Department of Justice, Room 3820, Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.

Under section XIII of the proposed Judgment the Court will retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

## VI

*Alternatives to the Proposed Final Judgment*

The proposed Final Judgment will provide all of the relief necessary to address the violation alleged in the complaint. The proposed Judgment provides an independent trustee with a significant time period (six months) to locate a purchaser of Dow's CBF business that would be preferable to Ethyl from a competitive standpoint. Moreover, it also assures that any purchaser of the CBF business can participate immediately in the market for bromides at costs no greater than Dow would have if it were to remain in the business.

The United States considered, and rejected, two alternatives to the Final Judgment. Initially, the United States considered whether to file suit and seek a preliminary injunction to enjoin Ethyl's proposed acquisition of Dow's bromine and brominated products business. The United States rejected this alternative because the divestiture required under the Final Judgment should establish an independent viable competitor in the bromide market and prevent the merger from having any anticompetitive effect in that market.

The other alternative considered by the United States would have required including additional assets in the divestiture package. Under this alternative, in addition to Dow's calcium bromide plant, the divestiture package would have included other assets in Magnolia, Arkansas, including Dow's entire brine field (which, for geological reasons, cannot be divided), its production and injection wells, its brine pretreatment facilities, and its holding ponds. The purpose of requiring the divestiture of these additional assets would be to provide the purchaser with the means to begin the immediate production of calcium bromide without having to enter into any supply agreement.

Ordinarily, the United States does not consider a supply agreement to be an acceptable alternative to a divestiture that immediately results in a completely independent competitor. Divestitures without supply agreements create completely independent businesses, eliminate any need for interaction between competitors, and reduce the prospects that the United States or the Court will become involved as a referee in future disputes in the industry.

In this case, however, the United States concluded that the divestiture and supply agreement provided for by the proposed Judgment were the best solution for promptly establishing an independent competitor in the United States bromide market. Inclusion of the additional assets in the divestiture package would significantly increase the necessary cost and scope of entry into the bromine industry by a prospective purchaser. These assets were designed for operation in connection with, and are partially integrated into, Dow's elemental bromine production plant, and are much larger than necessary for use only with the calcium bromide plant. The costs of operating these larger assets would be much higher than the costs of operating assets specifically designed for use with the calcium bromide plant. In the context of the depressed conditions of the bromide market and the overall bromine industry, the United States concluded that increasing the necessary cost and scope of entry by a purchaser would decrease the attractiveness of the divestiture package and thereby reduce the prospects for a successful divestiture. The United States believes that the better alternative is to have the purchaser of the CBF business construct or develop supporting assets that are appropriately scaled to its own operations. This is the result contemplated by the proposed Judgment.

## VII

*Determinative Documents*

Two documents, a letter from counsel for Dow dated May 8, 1987 and a letter from Ethyl dated May 7, 1987, were determinative in the formulation of the proposed Final Judgment. These two letters are attached to this Competitive Impact Statement.

Dated: _____

Respectfully submitted,
Barry J. Kaplan,
Ann M. Gales,
Sarah L. Grieb,
Christopher J. Kelly,
Mark R. Ortlieb,
Gregory J. Scandaglia,
*Attorneys, Department of Justice, Room 3820, John C. Kluczynski Bldg. Chicago, Illinois 60604, (312) 353–7530.*

May 8, 1987.

Barry J. Kaplan, Esq.,
*U.S. Department of Justice, Antitrust Division, Room 3820, Kluczynski Fed. Bldg., 230 South Dearborn Street, Chicago, IL 60604.*

Re: Ethyl Corporation Acquisition of Dow Chemical Brominated Chemicals Business

Dear Mr. Kaplan: As part of the settlement negotiations between The Dow Chemical Company ("Dow") and the United States Department of Justice, Antitrust Division, in this matter, Dow makes the following representations, based on all current information known to Dow:

A. With respect to the Crone Option, as defined in section II.J. and described in Schedule 1 to the proposed Final Judgment:

(1) The Crone Option comprises an area of about two thousand and forty-five (2045) acres;

(2) If exercised, the Crone Option comprises an area that qualifies under all applicable statutes and regulations as a "lease block" for a producing bromine-bearing brine field;

(3) When supplemented by Dow's rights to subsurface minerals in the adjoining approximately seven hundred (700) acres described in section II.G. (3) to the proposed Final Judgment, the Crone Option will have sufficient, bromine-bearing brine reserves in commercially recoverable quantities to operate the Magnolia calcium bromide plant at approximately sixty (60) percent of the original design capacity for a period of ten (10) years;

(4) Rights to subsurface minerals with bromine-bearing brine reserves in commercially recoverable quantities are available for leasing in the area adjoining and extending to the west of the Crone Option;

B. With respect to disposal property, as defined in section II.L. and described in Schedule 4 to the Proposed Final Judgment:

(1) The injection wells included in the disposal property are equipped and suitable for handling the disposal of all spent brine to be generated by the Magnolia calcium bromide plant while operating at approximately sixty (60) percent of the original design capacity for a period of at least four (4) years;

(2) The injection wells, pipelines, and all other appurtenances thereto included in the disposal property are not contaminated as determined in accordance with, and are operable in conformance with, all applicable federal and state environmental law;

(3) The pipelines included in the disposal property are now equipped and suitable for transporting to two of the injection wells, for all but approximately one thousand eight hundred (1800) feet of the distance between the proposed location for the purchaser's holding pond and the injection wells, all of the spent brine to be generated by the Magnolia calcium bromide plant while operating at approximately thirty-five (35) percent of the original design capacity for at least four (4) years.

Further, Dow represents that all the assets defined in Section II.G.(2) of the proposed Final Judgment consist of the assets described in Attachment A to this letter.

Sincerely,
James T. Halverson.
Enclosure.
cc: Kevin W. Johnson, Esq.

**Attachment A.—Tangible Assets Dedicated to CBF Business**

*A. Real Property for the CBF Business.**

*Area C*

Pt. of the SW¼NE¼ of Section 18, Township 17S; Range 21W, Columbia County, Arkansas

Described as: Commencing at the Northeast corner of said Section 18, run S–0°41'W—1715.58'; run N–89°23'W—1420.32' to the point of beginning; thence run S–0°37'W—393.06'; thence run N–89°23'W—296.48'; thence run N–0°37'E—393.07'; thence run S–89°23'E—296.49' to the point of beginning, containing *2.68* AC.

*Area D*

Pt. of the NW¼SE¼ and SW¼NE¼ of Section 18, Township 17S; Range 21W, Columbia County, Arkansas

Described as: Commencing at the Northwest corner of the NW¼SE¼ of said Section 18, run N–89°53'E—583.66' to the point of beginning; thence run S–70°49'E—175.00'; thence run S–19°11'W—550.00'; thence run N–70°49'W—175.00'; thence run N–19°11'E—550.00'; to the point of beginning, containing *2.21* AC.

*B. CBF Equipment in Midland*

| Bldg. No. | Process | System | No. |
|---|---|---|---|
| 1026 | $CaBr_2$ tanks | Reactor system—brick lined steel | 1 |
| 1026 | $CaBr_2$ | 6,000 gal. lead lined storage tanks | 2 |
| 1026 | $CaBr_2$ tanks | Tabor bromine sump pumps—nickel | 2 |
| 1026 | | Liquification/Purification system (System components: 1. 2 carbon steel carbon beds; 2. 2 gas coolers; 3. 12" dia. × 14' stainless steel purification column; 4. 2 HBr gas filters, 12" dia. × 3', 304 stainless steel with Hastelloy demister pad; 5. Condenser; 6. Liquid AHBr storage tank; 7. Reveaporizer system; 8. Vaporizer). | |
| 1026 | | Refrigeration system, (System components: 1. Screw compressor; 2. 3 700 VMC reciprocation compressors) | 1 |
| 1026 | $CaBr_2$ | Hoesch Filter Press | 1 |
| 794 | NaBr-KBr tanks | Reactor System—brick lined steel | 2 |
| 794 | NaBr-KBr | Crystallizer—nickel clad tank with titanium heating coils | 1 |
| 794 | NaBr-KBr | Rotary Dryer—direct fired nickel dryer with internal recycle screw | 1 |
| 794 | $ZnBr_2$ tanks | Reactor system—brick lined steel | 2 |
| 794 | | Stainless steel Tolhurst centrifuge | 1 |
| 794 | | Nickel wet hopper and nickel screw feeder | 1 |
| 794 | | 6' × 6'9" Flaudor vessel | 1 |
| 794 | | 316 stainless steel heat exchanger, 8.625" × 7' 4.5" | 1 |

May 7, 1987

Barry J. Kaplan, Esq.,
*U.S. Department of Justice, Antitrust Division, Room 3820, Kluczynski Fed. Bldg., 230 South Dearborn Street, Chicago, IL 60604.*

Re: Ethyl Corporation Acquisition of Dow Chemical Brominated Chemicals Business

Dear Mr. Kaplan: As part of the settlement negotiations between Ethyl Corporation ("Ethyl") and the United States Department of Justice, Antitrust Division in this matter, Ethyl makes the following representations, based on all current information known to Ethyl:

A. With respect to the Crone Option, as defined in section II.J. and described in Schedule 1 to the proposed Final Judgment:

(1) The Crone Option comprises and area of about two thousand and forty-five (2045) acres;

(2) If exercised, the Crone Option comprises an area that qualifies under all applicable statutes and regulations as a

* Surveys for the real property described in Area C and Area D were performed on March 12, 1987, by Crisp Surveying Service, P.O. Box 812, Magnolia, Arkansas 71753.

"lease block" for a producing bromine-bearing brine field;

(3) When supplemented by Dow's rights to subsurface minerals in the adjoining approximately seven hundred (700) acres described in section II.G. (3) to the proposed Final Judgment, the Crone Option will have sufficient, bromine-bearing brine reserves in commercially recoverable quantities to operate the Magnolia calcium bromide plant at approximately sixty (60 percent of the original design capacity for a period of ten (10) years;

(4) Rights to subsurface minerals with bromine-bearing brine reserves in commercially recoverable quantities are available for leasing in the area adjoining and extending to the west of the Crone Option.

B. With respect to disposal property, as defined in section II.I. and described in Schedule 4 to the proposed Final Judgment:

(1) The injection wells included in the disposal property are equipped and suitable for handling the disposal of all spent brine to be generated by the Magnolia calcium bromide plant while operating at approximately sixty (60) percent of the original design capacity for a period of at least four (4) years;

(2) The injection wells, pipelines, and all other appertenances thereto included in the disposal property are not contaminated as determined in accordance with, and are operable in conformance with, all applicable federal and state environmental law;

(3) The pipelines included in the disposal property are now equipped and suitable for transporting to two of the injection wells, for all but approximately one thousand eight hundred (1800) feet of the distance between the proposed location for the purchaser's holding pond and the injection wells, all of the spent brine to be generated by the Magnolia calcium bromide plant while operating at approximately thirty-five (35) percent of the original design capacity for a period of at least four (4) years.

Sincerely,

Ethyl Corporation.

Ray Wilkins, Jr.,

[FR Doc. 87-11719 Filed 5-21-87; 8:45 am]

BILLING CODE 4410-01-M

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## Office of Justice Programs

### Office of Juvenile Justice and Delinquency Prevention; Missing Children's Assistance Act Program Priorities Proposed

**AGENCY:** Office of Juvenile Justice And Delinquency Prevention.

**ACTION:** Notice of Proposed Program Priorities for Missing Children's Assistance Act.

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**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention is publishing for public comment a notice of proposed program priorities for making grants and contracts under the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act for 1974, in Fiscal Year 1987.

**DATE:** Comments are due on or before July 21, 1987.

**ADDRESS:** Send comments to Verne L. Speirs, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7751.

**FOR FURTHER INFORMATION CONTACT:** Michelle Easton, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7655.

**SUPPLEMENTARY INFORMATION:** Responsibility for establishing annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. As required by the Act, the Administrator has consulted with the Advisory Board on Missing Children and is, therefore, announcing his proposed priorities and inviting public comment on these priorities for sixty days.

The new proposed priorities are as follows:

1. Prevention. A variety of programs are currently used to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children. As few programs target the broad range of children's ages, standards for curricula need to be developed for pro-active prevention education programs that would apply to children of all ages.

2. Training for Local Officials on Exploitation of Children. Current emphasis on training in this area has been primarily at the State and Federal levels. It is important that local officials become better informed on issues relating to child exploitation, including how best to deal with those who exploit children and the children harmed by the exploitation.

3. Training and Policy Development for Law Enforcement Administrators on Missing and Exploited Children Policies and Procedures. Expansion of current training programs in this area is needed to further educate elected officials appointed managers, judges and district attorneys, in addition to law enforcement officials.

4. Comparative Systems Responses to the Return of Missing Children to Their Families. The project would examine the processes, and improvements that could be made in the processes, for returning missing children to their families.

The following programs, already published for comment in the Federal Register in 1985 and 1986, are also programs that we anticipate will be funded with 1987 funds.

5. The Child Victim as Witness Research and Development Program. This study will design, implement and test new strategies to be used to improve court policies and practices for handling child victim witnesses.

6. Families of Missing Children: Psychological Consequences and Promising Interventions.

This research will increase our knowledge of and develop effective treatment of alternatives for the psychological consequences of families with missing and exploited children.

7. Public Awareness Campaign. This will be a public campaign of education and awareness focusing on prevention of missing and exploited children.

Pusuant to section 404(a) and (b), the following programs were awarded or will be awarded with FY 1987 Missing Children's funds:

1. The National Center for Missing and Exploited Children to: a. Provide the information derived from the National Toll-Free telephone line to appropriate law enforcement entities and to enable individuals to report information regarding the location of any missing child, or child 13 years of age or younger, whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite such children with such child's legal custodian. (Section 404(a)(3), 404(b)(1))

b. Serve as a national resource center and clearinghouse. (Section 404(b)(2))

2. Institute for Non-profit Organization Management (INPOM) to: Serve as a national resource center and clearinghouse that focus on providing technical assistance to private voluntary organizations working on the issue of missing and exploited children. (Section 404(b)(2))

3. National Incidence Study: Having completed several pilot studies, funding of the first national incidence study will begin in 1987. Result of the study are anticipated in 1988. (Section 404(b)(3))

Dated: May 15, 1987.

Approved:

**Verne L. Speirs,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 87-11692 Filed 5-21-87; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

#### Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

#### List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

#### Revision

Bureau of Labor Statistics
Standard Industrial Classification Refiling Forms
1220-0032; BLS-3023R
Once
All public and private employers, including small businesses, whose industrial classification may change due to the 1987 revision of the *Standard Industrial Classification Manual*
800,000 responses; 91,200 hours; 1 form

A special version of the Industry Classification Statement (SIC Refiling Form) is being used by the Bureau of Labor Statistics and its cooperating State Employment Security Agencies to obtain information necessary to assign 1987 codes to employers whose SIC code may change due to the 1987 revision of the *SIC Manual* (See Federal Register, Wednesday, October 1, 1986, pp. 35170-35188).

#### Extension

Employment and Training Administration
Disaster Unemployment Assistance (DUA) Handbook Program Operating Forms 1205-0051; ETA 81, 81A, 82, 83, 84
On occasion; Weekly
Individuals or households
11,000 respondents; 12,483 hours; 5 forms

Pub. L. 93-288 (Sec. 407) provides for benefit assistance to "any individual unemployed as a result of a major disaster." The forms in Chapters II to VII of the DUA Handbook are used by State agencies in connection with the provision of this benefit assistance.

#### Extension

Employment and Training Administration
Disaster Payment Activities under the Disaster Relief Act of 1974
1205-0254 ETA 90-2
Monthly
State or local governments
50 respondents; 150 burden hours; 1 form

Data on disaster unemployment assistance (DUA) activity are needed for timely program evaluation necessary for competent administration of section 407 of the Act. Workload items are also used with fiscal reports to estimate the cost of administering the Act.

#### Extension

Occupational Safety and Health Administration
Temporary Labor Camps
1218-0096; OSHA 165
On occasion
Farms; Businesses or other for profit
1,379 responses; 136 hours

This information is required to safeguard the health of temporary labor camp residents. The information is used to reduce the incidence of communicable disease among temporary labor camp residents.

Signed at Washington, DC, this 19th day of May, 1987.

Paul E. Larson,
*Departmental Clearance Officer.*

[FR Doc. 87-11759 Filed 5-21-87; 8:45 am]
BILLING CODE 4510-30-M

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## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; ADCO Babcock Industries, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 11th day of May 1987.

Glen M. Zech,

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| ACCO Babcock Industries, Inc. (UAW) | South Bend, IN | 5/11/87 | 4/28/87 | 19,651 | Wire. |
| A.P. Green Refractories (A.B.G.W) | Pueblo, CO | 5/11/87 | 4/29/87 | 19,652 | Refractories. |
| AT&T Information Systems (CWA) | New Brighton, MN | 5/11/87 | 4/28/87 | 19,653 | Telephone apparatus. |
| American Tubular Systems, Inc. (Company) | Oklahoma City, OK | 5/11/87 | 4/29/87 | 19,654 | Oil Country tubular goods. |
| Amoco Production Co. (workers) | Houston, TX | 5/11/87 | 4/24/87 | 19,655 | Crude oil. |
| Arco Oil and Gas (workers) | Odessa, TX | 5/11/87 | 3/25/87 | 19,656 | Oil & Gas. |
| Bayly Corp. (workers) | Pleasant Grove, UT | 5/11/87 | 4/30/87 | 19,657 | Men's/boys pants. |
| Bonanza Packing Co. (CWU) | Spokane, WA | 5/11/87 | 4/29/87 | 19,658 | Processed meat. |
| Borg Warner Automotive (workers) | Decatur, IL | 5/11/87 | 5/1/87 | 19,659 | Air-conditioning compressors. |
| Burton/Hawks, Inc (workers) | Casper, WY | 5/11/87 | 4/23/87 | 19,660 | Crude oil. |
| Calloy Corp. (U.E.) | Pittsburgh, PA | 5/11/87 | 4/27/87 | 19,661 | Steel castings. |
| Carborundum Abrasives Co. (OCAW) | Niagara Falls, NY | 5/11/87 | 4/28/87 | 19,662 | Sandpaper. |
| Carroll Shoe Co. (workers) | Mont Alto, PA | 5/11/87 | 4/6/87 | 19,663 | Canvas shoes. |
| Coastline, Inc. (workers) | Bronx, NY | 5/11/87 | 5/4/87 | 19,664 | Cosmetic accessories. |
| Chevron U.S.A., Inc. (workers) | Lafayette, LA | 5/11/87 | 4/27/87 | 19,665 | Crude oil. |
| Chevron Overseas Petroleum, Inc. (workers) | San Ramon, CA | 5/11/87 | 4/27/87 | 19,666 | Crude oil. |
| Crown Cork and Seal (workers) | Baltimore, MD | 5/11/87 | 4/29/87 | 19,667 | Bottle caps. |
| Detroit Gasket (workers) | Marine City, MI | 5/11/87 | 5/1/87 | 19,668 | Fiberglass headliners. |
| Dressecraft Co, Inc. (ILGWU) | Union City, NJ | 5/11/87 | 4/30/87 | 19,669 | Dresses. |
| General Well Service (workers) | Duchesne, UT | 5/11/87 | 4/21/87 | 19,670 | Oil & gas. |
| Hobart Corp., Dayton Commercial Equipment Division & Service Center (IUE). | Dayton, OH | 5/11/87 | 4/23/87 | 19,671 | Grocery scales. |
| Jantzen, Inc (workers) | Hood River, OR | 5/11/87 | 5/1/87 | 19,672 | Sports/swimwear tops. |
| Island Leather & Tweed Corp. (company) | Plainview, NY | 5/11/87 | 4/15/87 | 19,673 | Jackets and coats. |
| Koch Exploration (workers) | Buffalo, OK | 5/11/87 | 1/30/87 | 19,674 | Crude oil. |
| L & L Manufacturing Corp. (KGWU) | Avon, MA | 5/11/87 | 4/24/87 | 19,675 | Womens' apparel. |
| Lamb Grays Harbor, Co. (IAMAW) | Hoquiam, WA | 5/11/87 | 4/25/87 | 19,676 | Paper making machinery. |
| Metaremics (workers) | Sunnyvale, CA | 5/11/87 | 4/30/87 | 19,677 | Micro-electronic packages. |
| National Forge Co. (workers) | Irvine, PA | 5/11/87 | 4/27/87 | 19,678 | Pressure vessels. |
| Omega Mud Logging, Inc (company) | Corpus Christi, TX | 5/11/87 | 4/28/87 | 19,679 | Oil & gas. |
| Purolator Products (company) | Edison, NJ | 5/11/87 | 4/27/87 | 19,680 | Auto filters. |
| Reading & Bates (workers) | Lafayette, LA | 5/11/87 | 4/24/87 | 19,681 | Oil and gas. |
| Stocker & Siller (workers) | New Philadelphia, OH | 5/11/87 | 5/5/87 | 19,682 | Crude oil. |
| Stockpole Carbon Co. (IUE) | St. Marys, PA | 5/11/87 | 4/22/87 | 19,683 | Power generator bushes. |
| Telesciences, Inc (workers) | Fairfield, NJ | 5/11/87 | 5/4/87 | 19,684 | Computer. |
| Union Carbide Corp; Linde Division (OCAW) | Tonawanda, NY | 5/11/87 | 4/27/87 | 19,685 | Cryogenic processing equipment. |
| V&O Press Co., Inc. (The) (IUE) | Hudson, NY | 5/11/87 | 4/28/87 | 19,686 | Metal-forming presses. |
| Wainoco Oil & Gas Co. (workers) | Houston, TX | 5/11/87 | 4/14/87 | 19,687 | Oil & gas. |
| Whirlpool Corp. (AM) | St. Joseph, MI | 5/11/87 | 4/28/87 | 19,688 | Washer parts. |

[FR Doc. 87-11760 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,782]

## Atlas Chain Co., West Pittston, PA; Voiding

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 25, 1987 applicable to all workers of the Atlas Chain Company, West Pittston, Pennsylvania who became totally or partially separated from employment on or after December 13, 1985 and before April 21, 1986. The Certification was published in the Federal Register on March 24, 1987 (52 FR 9364).

The subject certification was issued in error as all workers at Atlas Chain Company, West Pittston, Pennsylvania were already covered under certification TA-W-15,261. The certification period covering worker separations under TA-W-15,261 was from March 19, 1983 until July 25, 1986. The plant closed on March 21, 1986 within the coverage period of TA-W-15,261.

Consequently, Certification TA-W-18,782 is voided.

Signed at Washington, DC, this 12th day of May, 1987.

Harold A. Bratt,

*Deputy Director, Office of Program Management, UIS.*

[FR Doc. 87-11761 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-30-M

## Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Lingl Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 4, 1987–May 8, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-18,284; Lingl Corporation, Paris, TN;*

*TA–W–19,240; Lake Shore, Inc., Kingsford, Mi;*
*TA–W–19,306; Kofabco, Inc., Peru, IN;*
*TA–W–19,268; Clicker City Corp., Haverhill, MA;*
*TA–W–19,220; Roper Eastern Products, Baltimore, MD;*
*TA–W–19,297; Gilman Engineering & Manufacturing C., Janesville, WI;*
*TA–W–19,317; Riddle Oil Co., San Antonio TX;*
*TA–W–19,296; FMC Corporation, Citrus Machinery Div., Lakeland, FL;*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

*TA–W–19,287; Carville National Leather Corp., Johnstown, NY*

U.S. imports of tanned and finished cattlehides decreased in 1986 compared to 1985.

*TA–W–19,459; Amboy Terminating Co., Inc., Perth Amboy, NJ*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–19,376; Gilbert Development Corporation, Cedar City, UT*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,374; G.R. Manufacturing, Grand Rapids, MI*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–19,307; Louisiana Pacific Corp., Ridgeway, PA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,280; Zale Corp., International Diamond Div. (AMANTA), New York, NY*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,331; Zale Manufacturing Division, New York, NY*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,259; C.E. Natco, New Iberia, LA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,260; C.E. Natco, Harvey, LA*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,261; C.E. Natco, Electra, TX*

Increased imports did not contribute importantly to workers separations at the firm.

*TA–W–19,262; C.E. Natco, Tulsa, OK*

Increased imports did not contribute importantly to workers separations at the firm.

**Affirmative Determinations**

*TA–W–19,325; U.S. Shoe Corp. Womens Shoe Manufacturing Div., Harrison, OH*

A certification was issued covering all workers of the firm separated on or after February 23, 1986.

*TA–W–19,301; J.I. Case Co., Bettendorf, IA*

A certification was issued covering all workers of the firm separated on or after February 25, 1986.

*TA–W–19,302; J.I. Case Co., Rock Island, IL*

A certification was issued covering all workers of the firm separated on or after February 26, 1986.

*TA–W–19,333; Hagglunds-Denison Corp., Delaware, OH*

A certification was issued covering all workers of the firm separated on or after March 5, 1986.

*TA–W–19,283; The Black Clawson Co., Shartle-Pandra Div., Middletown, OH*

A certification was issued covering all workers of the firm separated on or after February 24, 1986.

*TA–W–19,411; Smith Valve Corp., Westboro, MA*

A certification was issued covering all workers of the firm separated on or after February 26, 1986.

*TA–W–19,267; Davis Cabinet Co., Nashville, TN*

A certification was issued covering all workers of the firm separated on or after February 18, 1986.

*TA–W–19,266; Davis Cabinet Co., Portland, TN*

A certification was issued covering all workers of the firm separated on or after February 18, 1986.

*TA–W–19,235; Olla Industries, Inc., Fairview, NJ and Union City, NJ*

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

*TA–W–19,282; Bestform Corp., Johnstown, PA*

A certification was issued covering all workers of the firm separated on or after February 18, 1986.

*TA–W–19,467; Bandera Energy Co., Midland, TX*

A certification was issued covering all workers of the firm separated on or after March 11, 1986.

*TA–W–19,316; Rex Sportswear, Irvington, NJ*

A certification was issued covering all workers of the firm separated on or after February 26, 1986.

*TA–W–19,236; Posh & Associates, Inc., Miami, FL*

A certification was issued covering all workers of the firm separated on or after February 4, 1986.

*TA–W–19,322; Total Petroleum, Inc., Oil and Gas Div., Exploration & Production Group, Denver, CO*

A certification was issued covering all workers of the firm separated on or after March 3, 1986.

*TA–W–19,322A; Total Petroleum, Inc., Oil and Gas Div., Exploration & Production Group, Houston, TX*

A certification was issued covering all workers of the firm separated on or after March 3, 1986.

I hereby certify that the aforementioned determinations were issued during the period May 4, 1987–May 8, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 12, 1987.

**Glenn M. Zech,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87–11702 Filed 5–21–87; 8:45 am]
BILLING CODE 4510–30–M

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**[TA–W–19,030]**

**Optimized Gas Systems, Inc., Tulsa, OK; Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18 an application for administative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Optimized Gas Systems, Incorporated, Tulsa, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–19,030; Optimized Gas Systems, Inc. Tulsa, Oklahoma (May 15, 1987)

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Signed at Washington, DC, this 15th day of May 1987.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-11763 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-30-M

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## Employment Standards Administration, Wage and Hour Division

## Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisons are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to labors and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purposes of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Divison of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Realted Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

*Volume I*

Florida:
- FL87-1 (Jan. 2, 1987) ..... pp. 111-112.

Georgia:
- GA87-10 (Jan. 2, 1987)..... p. 245.

New York:
- NY87-0 (Jan. 2, 1987)..... p. 728.

Pennsylvania:
- PA87-5 (Jan. 2, 1987) ..... p. 885.
- PA87-6 (Jan. 2, 1987) ..... pp. 888-890.
- PA87-14 (Jan. 2, 1987) ..... pp. 948-951.

Listing by Location (index)..... pp. xxiii-xxiv.

*Volume II*

Illinois:
- IL87-1 (Jan. 2, 1987) ..... p. 68.
- IL87-2 (Jan. 2, 1987) ..... p. 96.
- IL87-4 (Jan. 2, 1987) ..... p. 120.
- IL87-6 (Jan. 2, 1987) ..... p. 132.
- IL87-7 (Jan. 2, 1987) ..... p. 136.
- IL87-8 (Jan. 2, 1987) ..... p. 142.
- IL87-9 (Jan. 2, 1987) ..... p. 148.

Kansas:
- KS87-8 (Jan. 2, 1987)..... p. 350.

Michigan:
- MI87-3 (Jan. 2, 1987)..... p. 439.

Missouri:
- MO87-2 (Jan. 2, 1987)..... p. 602.
- MO87-9 (Jan. 2, 1987)..... p. 645.
- MO87-11 (Jan. 2, 1987)..... p. 658.

Nebraska:
- NE87-1 (Jan. 2, 1987) ..... p. 667.

Oklahoma:
- OK87-18 (Jan. 2, 1987)..... p. 912h.

Listing by Location (index)..... pp. xxxv-xxxvi.

*Volume III*

Montana:
- MT87-1 (Jan. 2, 1987)..... pp. 166-182.

Oregon:
- OR87-1 (Jan. 2, 1987)..... p. 285.

Washington:
- WA87-2 (Jan. 2, 1987) ..... p. 354.

Listing by Location (index)..... p. xxix.

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Governmental Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 15th Day of May 1987.

Alan L. Moss,

*Director, Division of Wage Determinations.*

[FR Doc. 87-11564 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-27-M

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## Mine Safety and Health Administration

[Docket No. M-87-101-C]

### C & B Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

C & B Coal Company, Inc., Route 1, Box 507, Norton, Virginia 24273 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Run Coal No. 2 Mine (I.D. No. 15-15274) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the cabs or canopies would limit the equipment operator's visibility. Due to uneven roof and soft and uneven bottom, the cabs or canopies could strike and dislodge roof support, thereby creating chances of an accident.

3. For these reasons, petitioner requests a modification of the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-1764 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-87-99-C]

### Davidson Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Davidson Mining, Inc., 41 Eagles Road, Beckley West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 1 Mine (I.D. No. 46-06898) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 209 feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. Petitioner requests a modification of the standard to allow mining to within 100 feet of the Quinland No. 1 Mine North Limits, without the drilling of boreholes. In support of this request, petitioner states that:

(a) North Limits of the Quinland No. 1 Mine are being ventilated and evaluated by bleeder evaluation points;

(b) North Limits of Quinland No. 1 Mine do not contain dangerous accumulations of either water or gas;

(c) Davidson and Quinland employ the same engineering firm for engineering services (spades and maps) which gives assurance that the mine maps of the Quinland No. 1 and Davidson No. 1 Mines are compatible and contain consistent references to each mine since both mines are on the same coordinate system;

(d) The North Limits of Quinland No. 1 Mine are higher than the elevations of the Davidson No. 1 Mine working sections; therefore, these areas will not impound water; and

(e) The North Limits of Quinland No. 1 Mine were never roomed nor pillared, therefore, all underground workings in the area have been mapped.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-11765 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-87-11-M]

### Empire Sand & Gravel Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Empire Sand & Gravel Company, Inc., P.O. Box 1215, Billings, Montana 59103 has filed a petition to modify the application of 30 CFR 56.12028 (testing grounding systems) to its Base Crusher (I.D. No. 24-01360), its Billings Crusher (I.D. No. 24-01665), both located in Yellowstone County, Montana and its Wyoming Pit (I.D. No. 48-01464) located in Sheridon County, Wyoming. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that continuity and resistance grounding systems be tested immediately after installation, repair, and modification, and annually thereafter.

2. Petitioner requests a modification of the standard as it pertains to the testing of the resistance of the grounding electrodes where the portable plants relocate.

3. In support of this request, petitioner states that—

(a) When a grounding electrode system is made, one or more of the electrodes specified below will be imbedded below the permanent moisture level;

(b) Made electrodes will be free from nonconductive coatings such as paint or enamel;

(c) Where more than one electrode system is used (including those used for lightning rods), each electrode of one system will not be less than 6 feet from the other electrode of another system;

(d) Rod and pipe electrodes will not be less than 8 feet in length;

(e) Electrodes of pipe or conduct will not be smaller than ¾ inch trade size

and, where of iron or steel, shall have the outer surface galvanized or otherwise metal-coated for corrosion protection;

(f) Electrodes of rods of steel or iron shall be at least ¾ inch diameter. Nonferrous rods or their equivalent will not be less than ½ inch in diameter;

(g) Where rock bottom is not encountered, the electrodes will be driven to a depth of 8 feet. Where rock bottom is encountered at a depth of less than 8 feet, electrodes not less than 8 feet long will be buried in a trench;

(h) The ground rods and associated bonds will be visually inspected for physical deterioration and mechanical bonding each time a portable operation is relocated;

(i) Annual ground bed measurements shall be performed at the site where any portable plant remains in the same location for more than one calendar year; and

(j) The grounding conductor is most susceptible to breaking due to flexing and disconnecting/reconnecting during these moves. Therefore, equipment grounding conductor continuity measurements will be performed after each relocation of a portable plant.

4. For these reasons, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-11768 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-87-116-C]

**Greenwich Collieries; Petition for Modification of Application of Mandatory Safety Standard**

Greenwich Collieries, P.O. Box 387, Ebensburg, Pennsylvania 15931 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (quantity and location of firefighting equipment—belt conveyors) to its No. 1 Mine (I.D. No. 36-02405) located in Indiana County, Pennsylvania and its Mine No. 2 (I.D. No. 36-02404) located in Cambria County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be installed parallel to the entire length of belt conveyors and be equipped with firehose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces. At least 500 feet of firehose with fittings suitable for connection with each belt conveyor waterline system shall be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry.

2. Petitioner states that due to the extremely cold weather experienced during the winter months, the waterlines used for fire protection freeze and become inoperative.

3. As an alternate method, petitioner proposes to install a dry waterline system with automatic and manual water-charging capabilities. In support of this request, petitioner states that:

(a) The waterlines will be maintained along the No. 1 belt in each mine, from the surface to the belt tail (approximately 2,000 feet);

(b) An automatic actuating valve will be connected to the automatic fire sensors, and when activated will send a signal to the actuator valve, causing the valve to open, allowing the waterlines to be pressurized with water for fire protection. Manual bypass valves will also be installed in the system to allow the waterlines to be pressurized; and

(c) All persons located in the vicinity of the No. 1 belt in each mine will be instructed as to the operation of the dry waterline system.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-11769 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-87-115-C]

**The Morie Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard**

The Morie Company, Inc., 1207 N. High Street, Millville, New Jersey 08332 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Morie Division (I.D. No. 28-00526) located in Cumberland County, New Jersey. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

2. Petitioner has received numerous complaints from community residents concerning the noise of the back-up alarms and the time of day it occurs. Presently, operations extend from 6 a.m. until 10 p.m., but plans are being made to operate the plant 24 hours per day.

3. As an alternate method, petitioner proopses to install and use strobe light back-up devices to front-end loaders from 6:00 p.m. to 6:00 a.m. From 6:00 p.m. to 6:00 a.m., the strobes will be used in addition to the back-up alarms.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 14, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-11768 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-87-56-C]

## Turris Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.319-1 (mechanized mining section) to its Elkhart Mine (I.D. No. 11-02684) located in Logan County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the term "mechanized mining seciton" means an area of a mine in which coal is mined with one set of production equipment, characterized in a conventional mining section by a single loading machine, or in a continuous mining section by a single continuous mining machine, and which is comprised of a number of contiguous working places.

2. Petitioner requests a modification of the standard to allow the use of a second continuous miner for clean-up of previously cut faces on a single split of air.

3. In support of this request, petitioner states that:

(a) Perceptible movement of ventilation will be maintained in the previously-mined area to prevent methane accumulations;

(b) A scrubber and water sprays will be used to minimize dust being suspended. The continuous miners have water-cooled tram motors, and water has to be on to tram the machine;

(c) This will provide a cleaner area for the bolters to support the roof in a more timely manner, which is critical in roof control;

(d) Eliminating a third piece of equipment, such as a scoop, reduces the amount of exposure persons have to equipment. In addition, a scoop can only clean 11 feet into a cut; and

(e) Methane monitors are used as an extra assurance to monitor the level of methane.

4. In addition, petitioner proposes a clean-up plan using the second miner on a supersection as follows:

(a) After completing the cut of coal, the miner operator will communicate by permissible radio with the second miner operator to start advancing with the second miner;

(b) The #1 miner will back up and proceed to clean up the loose coal, shale and gob;

(c) Perceptible movement of ventilation will still be maintained in the area to prevent methane accumulation;

(d) Water sprays will be utilized to reduce dust suspension; and

(e) After clean-up, the miner will move to the next face to be cut and wait for the cycle to be prepared with the other miner.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine and Safety and Health.*

[FR Doc. 87-11769 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

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## NUCLEAR REGULATORY COMMISSION

## Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, WM 503-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Calculation of Radon Flux Attenuation by Earthen Uranium Mill Tailings Covers" and is intended for Division 3, "Fuels and Materials Facilities." The guide is being developed to describe methods acceptable to the NRC staff for calculating radon fluxes through earthen tailings covers and for calculating the resulting minimum cover thickness needed to meet NRC and EPA standards.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 6:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by July 24, 1987.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 18th day of May 1987.

For the Nuclear Regulatory Commission.
Guy A. Arlotto,
*Director, Division of Engineering, Office of Nuclear Regulatory Research.*
[FR Doc. 87-11705 Filed 5-21-87; 8:45 am]
BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15748; 812-6810]

## ASW Residential Mortgage Financial Corp.; Application

May 15, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* ASW Residential Mortgage Financial Corporation.

*Relevant 1940 Act Section:* Exemption requested under Section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order conditionally exempting Applicant from all provisions of the 1940 Act for the limited purpose of issuing collateralized mortgage obligations and investing in certain mortgage certificates.

*Filing Date:* The application was filed January 30, 1987, and amended on April 3 and April 28, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, an order disposing of the application will be issued. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on June 8, 1987. Requests must be in writing, setting forth the nature of your interest, the reasons for the request, and the issues contested. Applicant should be served with a copy of the request, either personally or by mail, and the request should also be sent to the Secretary of the SEC, along with proof of service (by affidavit or, in the case of an attorney-at-law, by certificate). Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 15650 North Black Canyon Hwy, Suite 128, Phoenix, Arizona 85023.

**FOR FURTHER INFORMATION CONTACT:** Special Counsel Curtis R. Hilliard (202) 272-3026, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

*Applicant's Representations*

1. Applicant is an Arizona corporation incorporated on May 13, 1986, as a limited purpose finance corporation wholly owned by limited purpose financing companies (the "Finance Companies"), each of which is principally owned by or otherwise affiliated with one or more concerns engaged in the homebuilding business (the "Builders"), or is a mortgage banking or other financial institution providing financing or other services to Builders. None of such Finance Companies owns more than five percent of the Applicant. Applicant was incorporated to facilitate the long-term financing of residential mortgage loans through the direct or indirect reinvestment on Bond Proceeds in housing or housing-related assets, and will not engage in any other unrelated business activities.

2. Each Series of Bonds will be either registered under the Securities Act of 1933, as amended (the "1933 Act"), or sold in transactions exempt from registration pursuant to section 4(2) of the Securities Act. Each Series of Bonds will be issued pursuant to an indenture (the "Indenture") between Applicant and an independent trustee (the "Bond Trustee") as supplemented by one or more supplemental indentures.

3. Each Series of Bonds will consist of one or more classes ("Classes"), which may include one or more Classes of Bonds bearing fixed interest rates and one or more Classes of Bonds bearing variable interest rates. A variable interest rate Bond is one on which the interest rate adjusts periodically according to a fixed index set forth in the Prospectus Supplement and the Indenture with respect to such Series of Bonds.

4. The Mortgage Collateral securing a Series of Bonds will consist of one or more of the following: Conventional mortgage loans secured by first liens on single (one-to-four) family residential properties, mortgage loans insured by the Federal Housing Administration ("FHA Loans") or partially guaranteed by the Veterans Administration ("VA Loans") (collectively "Pledged Loans"), fully-modified pass-through certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA") mortgage pass-through certificates ("FNMA Certificates") guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA"), mortgage participation certificates ("Freddie Mac Certificates") guaranteed as to timely payment of interest and ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("Freddie Mac") and other types of mortgage collateral including mortgage pass-through certificates, mortgage-collateral obligations, or other interests in mortgages that are first liens on single (one-to-four) family residential properties ("Other Mortgage Certificates"). (As used herein, the term "Mortgage Certificates" includes GNMA Certificates, FNMA Certificates, Freddie Mac Certificates and Other Mortgage Certificates, and the term "Mortgage Collateral" includes Mortgage Certificates and Pledged Loans.) Each Series of Bonds also may be secured by certain funds and accounts (including proceeds accounts, debt service funds, reserve funds and over-collateralization funds) and by servicing agreements, insurance policies and other credit enhancement devices described in the Prospectus Supplement for such Series of Bonds.

5. The Mortgage Collateral securing each Series of Bonds will have scheduled cash flows sufficient (together with cash available to be withdrawn from any debt service funds, reserve funds, over-collateralization funds or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds of such Series ("Rating Agency") to make timely payments of principal of and interest on the Bonds of such Series in accordance with their terms and to pay all of the fees and expenses of the issuance of such Series of Bonds. The Outstanding Bond value of the Collateral securing a Series of Bonds will be described in the Indenture for such Series and will be at least equal to the initial principal amount of such Bonds on their date of issuance.

6. The Collateral securing each Series of Bonds will be owned either by Applicant or by the Finance Companies and pledged to secure such Series of Bonds pursuant to funding agreement with respect to such Series of Bonds (the "Funding Agreements"). Such Collateral will consist of or include mortgage loans (1) that were initially originated by or on behalf of an affiliate of a Finance Company participating in such series of Bonds or (2) that were purchased by Applicant or an affiliate of a Finance Company participating in such Series of Bonds in the mortgage market. The Bond

Trustee for such Series of Bonds will be granted a first priority perfected security or lien interest in and to all Mortgage Collateral and other items of Collateral securing such Series of Bonds.

7. Each Finance Company participating in a Series of Bonds will enter into a Funding Agreement with respect to such Series of Bonds pursuant to which the Finance Company will (i) borrow a portion of the proceeds of the sale of such Series of Bonds; (ii) repay such loan by causing payments to be made to the Bonds Trustee for such Series of Bonds in such amounts as are necessary to pay the accrued interest on such loan and to repay the principal amount of such loan; and (iii) pledge Mortgage Collateral to the Applicant as security for its loan. Applicant will assign to the Bond Trustee for such Series of Bonds as security for such Series of Bonds its entire right, title and interest in the collateral and all proceeds thereof pledged under the Funding Agreements (except for its right to receive certain fees and reimbursement for certain expenses and its right to indemnification).

8. The Bonds of a Series may be subject to redemption by Applicant under the circumstances set forth in the Prospectus Supplement for such Series of Bonds. Such redemption, if provided, will not render the Bonds of such Series "redeemable securities" within the meaning of section 2(a)(32) of the Act. The Bonds of a Series will not be redeemable at the option of holders of Bonds of such Series except that certain Series of Bonds may provide for the establishment of a redemption fund and, subject to the limitations and priorities set forth in the Prospectus Supplement for each such Series of Bonds, requests for redemption by holders of such Bonds will be honored to the extent funds are available in such redemption fund. Unless an event of default with respect to a Series of Bonds has occurred and is continuing, the holders of Bonds of such Series will not be entitled to accelerate payment of the Bonds of such Series or otherwise to compel the liquidation of the remaining Collateral.

*Applicant's Conditions*

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds of each Series will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the Mortgage Collateral directly securing each Series of Bonds (whether owned by the Applicant or pledged pursuant to the Funding Agreements) will be limited to Pledged Loans, GNMA Certificates, FNMA Certificates, Freddie MAc Certificates and Other Mortgage Certificates.

(3) If new Mortgage Collateral is substituted as security for a Series of Bonds, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraph 2, 4 and 6. In addition, new collateral may not be substituted for more than 20% of the aggregate face amount of the Pledged Loans initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. New Pledged Loan may be substituted for Pledged Loan initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the Mortgage Collateral being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral. New Funding Agreements may be substituted for Funding Agreements initially pledged only if the substitution of Mortgage Collateral underlying those instruments would be permitted under this condition.

(4) The Mortgage Collateral and other items of Collateral securing a Series of Bonds will be assigned to and held by the Bond Trustee for such Series of Bonds, or on behalf of such Bond Trustee by an independent custodian, pursuant to the Indenture under which such Bonds were issued. Neither the Bond Trustee nor the custodian for a Series of Bonds may be an affiliate (as the term "affiliate" is defined in 1933 Act Rule 405, 17 CFR 230.405) of the Applicant, the master servicer for such Series of Bonds or the originator of any Pledged Loan securing such Series of Bonds. The Bond Trustee for such Series of Bonds will be granted a first priority perfected security or lien interest in and to all Mortgage Collateral securing such Series of Bonds.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds of each Series will not be considered redeemable securities within the meaning of section 2(a)(32) of the 1933 Act.

(6) The master servicer of the Pledged Loans securing a Series of Bonds may not be an affiliate of the Bond Trustee for such Series of Bonds. If there is no master servicer for the Pledged Loans securing a Series of Bonds, no servicer of such pledged loans may be an affiliate of the Bond Trustee for such Series of Bonds. Each such master servicer and servicer will be approved by FNMA or Freddie Mac as an "eligible seller/servicer" of conventional, residential mortgage loans. The servicing agreements covering each Pledged Loan securing a Series of Bonds will obligate the servicer to provide substantially the same services with respect to such Pledged Loans as the servicer is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or Freddie Mac.

(7) No less often than annually, an independent public accountant will audit the books and records of the Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral securing each Series of bonds continue to be adequate to pay the principal of and interest on the Bonds of each such Series in accordance with their terms. Upon completion of such audits, copies of the accountants' report will be provided to the Bond Trustee for each Series of Bonds.

(8) Each Class of Bonds of a Series bearing a variable interest rate will have a set maximum interest rate.

(9) At the time of the deposit of the collateral for a Series of Bonds, as well as during the life of the Bonds, the Mortgage Collateral securing such Series of Bonds will have scheduled cash flows sufficient (together with cash available to be withdrawn from any debt service funds, reserve funds, overcollateralization funds or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to each Rating Agency rating the Bonds of such Series, to make all payments of principal and interest on the Bonds of such Series in accordance with their terms and to pay all of the fees and expenses of the Applicant with respect to such Series of Bonds, assuming the maximum interest rate on each Class of Bonds bearing a variable interest rate. Such Collateral will be paid down as the mortgages underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to payment of the Bonds.

(10) The election by any Issuer to be treated as a real estate mortgage

investment conduit (a "REMIC") will have no effect on the level of the expenses that would be incurred by any such Issuer. Any Issuer that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the issuance of a Series of Bonds will be paid or provided for in a manner satisfactory to the Rating Agency rating such Series of Bonds.

If any issuer elects to be treated as a REMIC, such Issuer will provide for the payment of the administrative fees and expenses incurred in connection with the issuance of a Series of Bonds by one of the following methods or a combination of one or more of such methods:

(a) A third party, whose credit is acceptable to the Bond Trustee and to the Rating Agency rating the Series of Bonds, will guarantee the payment of such fees and expenses.

(b) One or more reserve funds will be established to provide for the payment of such fees and expenses, which fees typically shall be projected, assuming current inflation factors scenarios required by the Rating Agency rating the Bonds, at the time of the issuance of such Bonds and at the time of the establishment of such reserve funds. Thereafter, the Bond Trustee will look solely to such reserve funds for the payment of certain fees and expenses.

(c) The Bonds will be secured by Collateral the value of which will be in excess of the amount necessary to make payments of principal of and interest on the Bonds. Such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with any of the other methods described herein. In no event shall any Issuer pledge Collateral with a Collateral Value which exceeds 120% of the aggregate principal amount of the related Bonds.

Applicant hereby represents that the anticipated level of fees and expenses will be more than adequately provided for regardless of which of the above methods (which methods may be used in combination) are reflected by such Issuer to provide for the payment of such fees and expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11721 Filed 5-21-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15741; 812-6705]

## The First Boston Corp.; Issuance of Stripped Certificates Representing Interests in Bonds Held in the Custody of a Bank

Dated: May 15, 1987.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* The First Boston Corporation.

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant requests an exemption from all provisions of the 1940 Act so that it can issue "stripped" certificates representing interests in the principal or interest payments due on certain bonds held in the custody of a major commercial bank.

*Filing Date:* The application was filed on May 4, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Park Avenue Plaza, New York, New York 10055. Attention: Michael G. Zeiss, Esq.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Hutchins, Staff Attorney at (202) 272-2799 or Brion R. Thompson, Special Counsel at (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300)).

### *Applicant's Representations*

1. Applicant is a Massachusetts corporation and a wholly-owned subsidiary of First Boston, Inc. Applicant also is registered as a broker-dealer under the Securities Exchange Act of 1934.

2. Applicant proposes to offer for sale component parts of interest-bearing bonds (the "Bonds") issued or to be issued by an international financial institution (e.g., the World Bank, the Inter-American Development Bank or the Asian Development Bank), foreign sovereign government, or corporation (the "Obligor"). Applicant anticipates that the Bonds will be intermediate term securities with maturities ranging from five to eight years.

3. Applicant or an affiliate thereof (as "Depositor") will purchase directly from the Obligor, or in the secondary market, some or all of the Bonds of a single series and deposit them with a bank (the "Custodian"). The Bonds will be held in the Custodian's name pursuant to a custody and agency agreement (the "Custody Agreement") meeting the requirements for unit investment trusts in section 26(a) of the 1940 Act.[1] Applicant proposes that the corporate trust department of a major commercial bank (with total assets of not less than $500,000,000) act as its Custodian, and states that it will pay the annual fee and certain expenses of the Custodian.

4. Upon deposit of the Bonds, the Custodian will deliver to Applicant certain deposit receipts (the "Certificates") representing interests in the serially maturing interest and principal payments on the Bonds. Thereafter, the Certificates will be offered only to institutional investors who are "accredited investors" for purposes of Regulation D under the Securities Act of 1933 ("1933 Act"), 17 CFR 230.501-506 (as now or hereafter in effect), and who have knowledge and experience in financial and business matters to be able to evaluate the risks associated with investing in instruments, such as the Certificates, that are not redeemable and represent interests in the principal or interest payments on the underlying Bonds. The Certificates will not be offered to individuals. The minimum purchase price for Certificates will be $150,000. Since Certificates will be sold at a discount, such minimum purchase price

[1] Section 26(a) requires, among other things, the custodial arrangement to provide that the Custodian may not make any payment to the Depositor except for payments not exceeding what the Commission may prescribe as a reasonable amount for providing bookkeeping and other administrative services; the Custodian shall have possession of all the securities in which the assets of the trust are invested; and the Custodian shall not resign until the trust is liquidated or a successor Custodian has been designated.

will correspond to a face amount in excess of $150,000.

5. Applicant further expects to (but is not required to) maintain a secondary market for the Certificates. Each Certificate will be transferable and represent the right to receive the single payment of interest or principal to which such Certificate relates at the date of maturity of the Certificate, the payment being equal to the face amount of the Certificate.

6. The issue price of each Certificate will be equal to the present value of the face amount of such Certificate. Each series of Certificates will be offered pursuant to an offering circular containing appropriate disclosure of all material aspects of the Certificates and relevant information concerning the Bonds and the Obligor, the custodial arrangement and tax consequences. If the Certificates are issued in connection with a primary distribution of Bonds that is required to be registered under the 1933 Act, the offering circular may be in the form of, or accompanied by, the Bond prospectus.

7. The Bonds may or may not be exempt from the registration provisions of the 1933 Act. In the case of Bonds that are so exempt (for example, obligations issued by certain international financial institutions of which the United States is a member), no trustee typically is appointed or indenture entered into with respect to the initial issuance of the Bonds. For exempt Bonds, however, there is typically a fiscal agency agreement pursuant to which a bank as agent for the Obligor of the Bonds agrees to disburse principal and interest to holders. Bonds that are registered will generally be issued pursuant to an indenture qualified under the Trust Indenture Act of 1939 ("1939 Act").

8. Under the proposed arrangement, the Bonds will be held in the name of the Custodian for the benefit of the Certificateholders. The Obligor will pay all interest and principal payments due on the Bonds held in custody directly to the Custodian. The Custodian will disburse the payments to holders of the Certificates to which such payments relate upon their presentation and surrender. In addition, a holder owning Certificates evidencing beneficial ownership of the entire principal amount of a Bond and the remaining unpaid interest due thereon ("Whole Certificate") will be entitled to surrender such Whole Certificate to the Custodian and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of a Bond in an aggregate principal amount corresponding to the Whole Certificate so surrendered. The Custodian will, in effect, act as both the receiving and disbursing agent, and may appoint sub-paying agents.

9. The Custody Agreement will provide that Certificateholders, as owners of direct interests in the Bonds, will possess all of the rights and privileges of owners of the Bonds, except that the Custodian shall have the sole and exclusive right to hold the underlying Bonds on behalf of Certificateholders and to act on behalf of the Certificateholders in the event of a default should they so request (as described below). The Custodian will acknowledge in writing in the Custody Agreement that the Bonds are held for the accounts of Certificateholders and will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Custodian or any person claiming through it. All payments received by the Custodian will be immediately available upon receipt to holders of Certificates entitled to such payments, and the Custodian will not be authorized to exercise, with regard to any such payment received, any investment discretion whatsoever.

10. Applicant's compensation for its activities in connection with the proposed issuance of the Certificates will be an amount equal to the difference between the aggregate amount it receives from the sale of the Certificates and the cost of acquiring the underlying Bonds and the related transaction expenses (including the expenses and charges of the Custodian), and the profits realized, if any, as a result of trading Certificates in the secondary market. Applicant asserts that the purpose of the proposed arrangement is to provide a more flexible market for debt securities of the Obligor, thereby increasing liquidity and assisting financially sophisticated institutional investors in matching their portfolio requirements with such available investments.

11. The indentures governing the issuance of the Bonds will contain provisions permitting acceleration of interest and principal payments upon the occurrence of certain events. Acceleration provisions contained in Bond indentures generally provide that if the Obligor is in default for a given period on the payment of the principal or interest on any bonds or notes (including the Bonds) or of certain other obligations, then the holder of any of the Bonds may elect to accelerate the principal of the Bonds held by him, and the Obligor must pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured.

12. In the aggregate, the Certificateholders' rights in the event of a default on the underlying Bonds will be the same as direct holders of the Bonds, i.e., to elect to accelerate the principal of the Bonds, and thereby make the Obligor pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured. However, under the proposed arrangement, individual Certificateholders will have to notify the Custodian of such holders' election to accelerate and the Custodian will only notify the Obligor that the principal on all of the Bonds represented by a specific Certificate is accelerated if a stated percentage of holders so notify it. Moreover, in the event of such a default by the Obligor, a holder of a Whole Certificate representing ownership of all the principal and remaining unpaid interest due on a Bond will continue to have the above-mentioned right to surrender such Whole Certificate and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holders of such Bond in the appropriate aggregate principal amount. Such Whole Certificateholder will have the same rights with regard to the defaulted Bond as any other Bondholder.

13. If the Obligor fails to make any payment due on the bonds, the holder of any Certificate not paid by virtue of such default may sue the Obligor directly, or, if not permitted to maintain such an action under applicable law, he may cause the Custodian to commence or join such an action against the Obligor to recover the amount due on such Certificate at the holder's expense. Also, in the event of a default on any Bonds which triggers acceleration (e.g., non-payment which continues beyond the specified cure period), the holders of 25 percent in the aggregate of "amortized face amount" (as defined in the application) of Certificates then outstanding may direct the Custodian to take such action as such holders deem appropriate with regard to all of the Bonds of the defaulting Obligor then held by the Custodian.

14. In the case of an acceleration, the Custodian, as representative of the Certificateholders, will have the same rights as any other Bondholder to deliver notice to the Obligor (or to the Bond trustee, in a case of Bonds issued pursuant to an indenture qualified under the 1939 Act) stating that the Custodian elects to declare the principal of all of the Bonds then held by the Custodian to be immediately due and payable. At such time as the Bonds are accelerated,

the interest of each holder of Certificates in the Bonds would be transformed into an undivided interest in all of the proceeds thereafter received on such Bonds, allocated in proportion to the relative amortized face amounts of the respective Certificates.

15. Without conceding the applicability of the 1940 Act to the proposed offering of the Certificates (absent an acceleration of the obligation to pay the principal and interest on the underlying Bonds upon a default), Applicant asserts that it would be appropriate in the public interest and consistent with the protection of investors and the purposes of the 1940 Act to exempt the proposed arrangement from all provisions of the 1940 Act. Applicant submits that, except in the event of an acceleration of principal and interest payments on the bonds, the Certificates will represent a direct ownership interest in the principal or interest in the underlying Bonds. Applicant further submits that neither the structure nor the mode of operations of the proposed arrangement resembles a typical investment company, and that offering the Certificates to financially sophisticated institutional investors is not the type of transaction that needs to be regulated under the 1940 Act. Applicant contends that the Custodian will not be trading, dealing, or generally investing in securities and, thus, will not exercise any investment discretion, but will perform only administrative and mechanical functions.

16. Applicant asserts that the selection of the underlying securities will be made prior to the purchase of Certificates, and, thus, will be known by the purchaser at the time of purchase. Morever, since the Certificates will be sold on the basis of the credit of the Obligor on the underlying Bonds, Applicant asserts that the Certificateholders will look ultimately to the Obligor for their assurance of repayment, not to the Applicant, Depositor or Custodian. Applicant further asserts that even if an investment company is formed upon acceleration of interest and principal payments on the Bonds, such company would be engaged in activities associated with its liquidation and, thus, should be deemed exempt from all provisions of the 1940 Act under section 7(b) of the 1940 Act.

17. In addition, Applicant represents that each Certificate and the Custody Agreement will provide that the Certificateholder is the real party in interest and shall have the right upon default to proceed directly and individually against the Obligor (to the extent permitted by law) in the manner such holder deems appropriate. Because of the structure of the proposed arrangement and the nature of the direct interests represented by Certificates, Applicant asserts that the arrangement will present no risk of loss separate from or in addition to that presented by the underlying investment in the Bonds themselves. Applicant believes that the Custodian's obligation under the Custody Agreement to enforce the Certificateholders' rights will provide a sufficient safeguard against the potential problems associated with a pool of liquid assets that are the principal concern of the 1940 Act and, more generally, will provide adequate assurance that the Certificates will be paid in accordance with their terms.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11720 Filed 5-21-87; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-15742; 812-6689]

## Investment Company Institute; Application for Order Permitting Organization of Captive Mutual Fund Insurance Co.

Dated: May 15, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption Under the Investment Company Act of 1940 ("the 1940 Act").

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*Applicant*: Investment Company Institute ("ICI").

*Relevant 1940 Act Sections*: Order pursuant to section 17(d) and Rule 17d-1 thereunder.

*Summary of Application*: Applicant seeks an order permitting ICI members which are investment companies registered under the Act, their principal underwriters and all affiliated persons of such companies and underwriters (collectively, "ICI Members") to become members of a captive mutual insurance company ("Company") sponsored by the ICI, and to purchase fidelity bonds and/or directors and officers and errors and omissions liability insurance therefrom and, for that purpose, to pay annual and reserve premiums and make secured and unsecured commitments for assessments to the Company as described below.

*Filing Date*: The application was filed on April 20, 1987, and amended on May 14, 1987.

*Hearing or Notification of Hearing*: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicant, 1600 M Street, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Brion R. Thompson, Special Counsel (202) 272-3016 or Curtis R. Hilliard, Special Counsel (202) 272-3026 (Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from either the Commission's Public Reference Branch in person, or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

*Applicant's Representations*: 1. The ICI is the national association for the American mutual fund industry. Its members include investment companies, their investment advisers and principal underwriters, and sponsors of unit investment trusts which account for over 90 percent of the funds invested in such trusts. Its mutual fund members have assets accounting for over 90 percent of total industry assets and approximately 27 million shareholders. In addition, the ICI has over 450 associate members which render investment advisory services exclusively to noninvestment company clients.

2. The Company is to be formed as a mutual company, under Vermont law unless the Commission is notified otherwise by amendment to the application, and acting as primary insurer would offer members and associate members of the ICI initially up to $10 million of fidelity bond coverage and up to $10 million of directors and errors and omissions ("D&O/E&O") liability insurance. Membership in the Company would not be a requirement of ICI membership. Such fidelity bond coverage would be issued on an "each and every occurrence" basis, which

absent formation of the company the ICI believes may not generally be available in the commercial insurance market.

3. To be eligible to purchase fidelity bonds or D&O/E&O liability insurance from the Company, an ICI Member will be required, in addition to paying an annual premium, to become a member of the Company by paying the Company a reserve premium equal to 100 percent of its initial annual premium (for ICI Members applying for membership in the Company during the Enrollment Period as defined below), and by committing to provide up to 300 percent of its initial annual premium to the Company if and when called by the Company's Board of Directors; two-thirds of the commitment would be secured by letters of credit. Because not all ICI Members will purchase both fidelity bonds and D&O/E&O insurance from the Company, calls on the asset commitment would be prioritized depending upon the nature of the losses giving rise to the call.

4. The Company would be organized in mutual form with perpetual existence and would issue no stock or other instrument evidencing an interest in the Company. Each ICI Member's interest in the Company would be non-transferable, except in the case of merger or other form of reorganization. Memberships in the Company will only be offered to, and reserve premiums will only be accepted from, members and associate members of the ICI which obtain insurance from the Company. Upon termination of membership, reserve premiums will be returned to ICI Members, subject to such restrictions as may be set by the Company's Board of Directors. Such restrictions may include deferral of the return of a reserve premium for up to five years, in order to provide stability to the Company, without which the Company might be unable to offer the proposed insurance coverage to ICI Members. Commitments for assessments, both secured and unsecured, will expire upon an ICI Member's termination of membership in the Company except as may be necessary to cover losses of the Company prior to such termination or, to avoid jeopardizing the Company's capital, to comply with insurance regulatory requirements. If the Company should be liquidated, its assets will be distributed to its members in proportion to their interests in the Company's premium reserves, surplus, and other assets. Voting for the election of directors and on other membership matters may be on a weighted basis depending on the amount of total premiums, except that regardless of the volume of their premiums and commitments, no investment company, together with its investment adviser, principal underwriter, and any affiliated persons of such company, adviser or underwriter identified to the Company, will be entitled to cast, in the aggregate, five percent or more of the eligible votes.

5. Because the Company must have the initial capital outlined above to commence operations, reserve premiums and commitments must be obtained from a large percentage of the ICI Members during the Company's organizational period (the "Enrollment Period"). Accordingly, the Company anticipates providing some financial disincentive for ICI Members which do not apply for membership in the Company until after the specified Enrollment Period. Such a disincentive may, for example, be an increase in their reserve premium requirement from 100% to up to 125% of their initial annual premium. The ICI's insurance consultant, which has broad experience in organizing captive insurance companies, advises that such disincentives for late application (or, conversely, financial incentives for early application) are highly desirable and prevalent features of start-up captives. The alternative might be to close the Company to memberships after the Enrollment Period; that alternative would be extremely harmful to the investment management industry and to the Company, whose growth would thereby be precluded. No such disincentive will be applied to ICI Members which were not in existence during the Enrollment Period.

6. During the Enrollment Period, applications will be sought from all ICI Members, including members whose current insurance coverage does not lapse until well after the Enrollment Period. All applicants who sign up to purchase insurance coverage during the Enrollment Period, regardless of the effective date of the Company's insurance coverage, will be required to accept or reject the Company's premium quotation within a specified period after receipt and to pay its reserve premium at the time of such acceptance. The Company, however, intends to pay or credit each member with interest on its reserve premium, calculated on a uniform basis, to the date the Company's insurance coverage becomes effective. Thus, ICI Members who choose to keep their current insurance coverage until it lapses will not be disadvantaged over those who choose to cancel their existing insurance coverage as of the effective date of the Company's coverage.

7. In order to justify granting an order under section 17(d) and Rule 17d–1 approving a joint transaction between a registered investment company and an affiliated person it must be demonstrated that the proposed transaction is consistent with the provisions, policies, and purposes of the 1940 Act and that the participation of the investment company in the transaction will not be on a basis different from or less advantageous than that of other participants. For the following reasons, Applicant argues that participation of ICI Member investment companies in a joint arrangement to become members of and purchase insurance from the Company will be consistent with the provisions, policies, and purposes of the 1940 Act. The purpose of establishing the Company is to provide ICI Members with the opportunity to obtain stable and reliable fidelity bond and D&O/E&O liability insurance coverage at reasonable rates. Fidelity bond coverage is required under Rule 17g–1, adopted pursuant to section 17(g) of the 1940 Act. D&O/E&O liability insurance coverage is in many cases necessary for ICI Members to attract experienced, qualified persons to serve as officers or directors, including as independent directors or trustees of investment companies. The commercial insurance market has historically been cyclical in nature, subject to radical changes in the availability, type, and cost of insurance coverages. In contrast, the Company should be a dependable insurance provider in which the investment management industry will have a voice, dedicated to offering insurance meeting regulatory requirements and tailored to industry needs, at premiums which reflect actual industry experience. The ICI's independent insurance consultants expect that the Company's expense ratios will be appreciably lower than those of commercial insurance companies. These savings are expected to result in lower annual premiums for the Company's members even in initial years. If and to the extent that the Company's actual loss experience results in additional savings, annual premiums may be reduced or coverages increased or both. Accordingly, any such savings will directly benefit ICI Member investment companies and their shareholders.

8. For the following reasons, Applicant argues that participation by ICI Member investment companies in a joint arrangement to become members of and purchase insurance from the

Company will be essentially on the same basis as, and no less advantageous than, that of other participants. Each ICI Member, whether an investment company, investment adviser or principal underwriter, will obtain insurance from the Company and make its reserve premium payment and commitments on the same basis as every other ICI Member. In each case, an ICI Member's application will be independently evaluated by the Company's insurance underwriter. That insurance underwriter, on the basis of information in the application, will determine whether to accept an ICI Member and will set the initial annual premium for the desired insurance coverage. Every ICI Member will pay a reserve premium, will make a commitment secured by letters of credit for 200 percent of its initial annual premium, and will make an unsecured commitment for 100 percent of its initial annual premium. The Company initially expects to offer essentially the same form of fidelity bond and the same form of D&O/E&O liability policy to every ICI Member, subject to risk distinctions which the insurance underwriter may make applicable uniformly to certain classes of ICI Members. Premiums will be determined by the Company's insurance underwriter on the basis of its risk evaluations in accordance with the commercial insurance industry standards. Every ICI Member will have a equal opportunity to apply for membership in the Company during the Enrollment Period, regardless of when its then current insurance coverage lapses. ICI Members who apply for membership on this basis, and who pay their reserve premiums before their current coverage lapses and their new insurance becomes effective will receive interest calculated on a uniform basis on their reserve premiums. The financial disincentive to encourage ICI Members to apply for membership in the Company during the Enrollment Period will not be applied to ICI Members which were not in existence during the Enrollment Period.

8. Because the aggregate reserve premiums and commitments for additonal funding required for membership in the Company during the Enrollment Period will not be applied to ICI Members which were not in existence during the Enrollment Period.

9. Because the aggregate reserve premiums and commitments for additional funding required for membership in the Company will never exceed 400 percent of the initial annual premium (or 425 percent for those ICI Members that apply for membership after the Enrollment Period), in virtually every case the dollar amount of the reserve premiums and commitments of an ICI Member investment company will be *de minimis* in proportion to the dollar amount of the ICI Member's assets. The only exceptions are likely to be temporary, such as when new investment companies purchase insurance from the Company prior to a substantial offering of their shares.

*Applicant's Conditions:* If the requested order is granted, the Applicant agrees that the following requirements may be made formal conditions to the order:

1. With respect to joint fidelity bonds, the Company will abide by the provisions of Rule 17g–1(j), insofar as it requires that the terms and provisions of the bonds will comply with the provisions of Rule 17g–1. The Company will require a representation from ICI Members that are insured parties to a joint fidelity bond that they will enter into the agreement referred to in Rule 17g–1(j).

2. With respect to each D&O/E&O liability insurance policy purchased by one ICI Member in a joint arrangement with one or more other ICI Members, the Company will require as a condition to the issuance of such a policy a representation by each ICI Member investment company purchasing such a policy from the Company that its board of directors or trustees, including a majority of the directors or trustees who are not interested persons with respect thereto, will determine no less frequently than annually that the standards described in paragraphs (i) and (ii) of Rule 17d–1(d)(7) have been satisfied.

3. The Company will require as a condition to the issuance of a joint fidelity bond or a D&O/E&O insurance policy purchased by one ICI Member in a joint arrangement with one or more other ICI Members a certification by each ICI Member investment company to be covered by such bond or policy that its board of directors or trustees, including a majority of the directors or trustees who are not interested persons with respect thereto, has determined that the benefits of obtaining the joint fidelity bond and/or such D&O/E&O liability insurance policy from the Company, including the opportunity to obtain stable, low-cost insurance coverage from the Company, justify paying reserve premiums and making commitments for additional payments to the Company, including acceptance of restrictions upon the withdrawal of reserve premiums.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 87–11604 Filed 5–21–87; 8:45 am]
BILLING CODE 8010-01-M

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[Rel. No. IC–15743; 812–6762]

## Goldman, Sachs & Co.; Issuance of Stripped Certificates Representing Interests in Bonds Held in the Custody of a Bank

Dated: May 15, 1987.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Goldman, Sachs & Co.

*Relevant 1940 Act Section:* Exemption requested under Section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant requests an exemption from all provisions of the 1940 Act so that it can issue "stripped" certificates representing interests in the principal or interest payments due on certain bonds held in the custody of a major commercial bank.

*Filing Date:* The application was filed on May 1, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 5, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Sullivan & Cromwell, 125 Broad Street, New York, New York 10004. Attention: Charles F. Rechlin, Esq.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Hutchins, Staff Attorney at (202) 272–2799 or Brion R. Thompson, Special Counsel at (202) 272–3016, Office of Investment Company Regulation, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the

application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300)).

**Applicant's Representations:**

1. Applicant is a limited partnership organized under the laws of New York. Applicant also is registered as a broker-dealer under the Securities Exchange Act of 1934.

2. Applicant proposes to offer for sale component parts of interest-bearing bonds (the "Bonds") issued or to be issued by an international financial institution (e.g., the World Bank, the Inter-American Development Bank or the Asian Development Bank), foreign sovereign government, or corporation (the "Obligor"). Applicant anticipates that the Bonds will be intermediate term securities with maturities ranging from five to eight years.

3. Applicant or an affiliate thereof (as "Depositor") will purchase directly from the Obligor, or in the secondary market, some or all of the Bonds of a single series and deposit them with a bank (the "Custodian"). The Bonds will be held in the Custodian's name pursuant to a custody and agency agreement (the "Custody Agreement") meeting the requirement for unit investment trusts in Section 26(a) of the 1940 Act.[1] Applicant proposes that the corporate trust department of a major commercial bank (with total assets of not less than $500,000,000) act as its custodian, and states that it will pay the annual fee and certain expenses of the Custodian.

4. Upon deposit of the Bonds, the Custodian will deliver to Applicant certain deposit receipts (the "Certificates") representing interests in the serially maturing interest and principal payments on the Bonds. Thereafter, the Certificates will be offered only to institutional investors who are "accredited investors" for purposes of Regulation D under the Securities Act of 1933 ("1933 Act"), 17 CFR 230.501-506 (as now or hereafter in effect), and who have knowledge and experience in financial and business matters to be able to evaluate the risks associated with investing in instruments, such as the Certificates, that are not redeemable and represent interests in the principal or interest payments on the underlying Bonds. The Certificates will not be offered to individuals. The minimum purchase price for Certificates will be $150,000. Since Certificates will be sold at a discount, such minimum purchase price will correspond to a face amount in excess of $150,000.

5. Applicant further expects to (but is not required to) maintain a secondary market for the Certificates. Each Certificate will be transferable and represent the right to receive the single payment of interest or principal to which such Certificate relates at the date of maturity of the Certificate, the payment being equal to the face amount of the Certificate.

6. The issue price of each Certificate will be equal to the present value of the face amount of such Certificate. Each series of Certificates will be offered pursuant to an offering circular containing appropriate disclosure of all material aspects of the Certificates and relevant information concerning the Bonds and the Obligor, the custodial arrangement and tax consequences. If the Certificates are issued in connection with a primary distribution of Bonds that is required to be registered under the 1933 Act, the offering circular may be in the form of, or accompanied by, the Bond prospectus.

7. The Bonds may or may not be exempt from the registration provisions of the 1933 Act. In the case of Bonds that are so exempt (for example, obligations issued by certain international financial institutions of which the United States is a member), no trustee typically is appointed or indenture entered into with respect to the initial issuance of the Bonds. For exempt Bonds, however, there is typically a fiscal agency agreement pursuant to which a bank as agent for the Obligor of the Bonds agrees to disburse principal and interest to holders. Bonds that are registered will generally be issued pursuant to an indenture qualified under the Trust Indenture Act of 1939 ("1939 Act").

8. Under the proposed arrangement, the Bonds will be held in name of the Custodian for the benefit of the Certificateholders. The Obligor will pay all interest and principal payments due on the Bonds held in custody directly to the Custodian. The Custodian will disburse the payments to holders of the Certificates to which such payments relate upon their presentation and surrender. In addition, a holder owning Certificates evidencing beneficial ownership of the entire principal amount of a Bond and the remaining unpaid interest due thereon ("Whole Certificate") will be entitled to surrender such Whole Certificate to the Custodian and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of a Bond in an aggregate principal amount corresponding to the Whole Certificate so surrendered. The Custodian will, in effect, act as both the receiving and disbursing agent, and may appoint sub-paying agents.

9. Custody Agreement will provide that Certificateholders, as owners of direct interests in the Bonds, will possess all of the rights and privileges of owners of the Bonds, expect that the Custodian shall have the sole and exclusive right to hold the underlying Bonds on behalf of Certificateholders and to act on behalf of the Certificateholders in the event of a default should they so request (as described below). The Custodian will acknowledge in writing in the Custody Agreement that the Bonds are held for the accounts of Certificateholders and will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Custodian or any person claiming through it. All payments received by the Custodian will be immediately available upon receipt to holders of Certificates entitled to such payments, and the Custodian will not be authorized to exercise, with regard to any such payment received, any investment discretion whatsoever.

10. Applicant's compensation for its activities in connection with the proposed issuance of the Certificates will be an amount equal to the difference between the aggregate amount it receives from the sale of the Certificates and cost of acquiring the underlying Bonds and the related transaction expenses (including the expenses and charges of the Custodian), and the profits realized, if any, as a result of trading Certificates in the secondary market. Applicant asserts that the purpose of the proposed arrangement is to provide a more flexible market for debt securities of the Obligor, thereby increasing liquidity and assisting financially sophisticated institutional investors in matching their portfolio requirements with such available investments.

11. The indentures governing the issuance of the Bonds will contain provisions permitting acceleration of interest and principal payments upon the occurrence of certain events. Accelaration provisions contained in Bond indentures generally provide that if the Obligor is in default for a given period on the payment of the principle or interest on any bonds or notes

[1] Section 26(a) requires among other things, the custodial arrangement to provide that the Custodian may not make any payment to the Depositor except for payments not exceeding what the Commission may prescribe as a reasonable amount for providing bookkeeping and other administrative services; the Custodian shall have possession of all the securities in which the assets of the trust are invested; and the Custodian shall not resign until the trust is liquidated or a successor Custodian has been designated.

(including the Bonds) or of certain other obligations, then the holder of any the Bonds may elect to accelerate the principal of the Bonds held by him, and the Obligor must pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured.

12. In the aggregate, the Certificateholders' rights in the event of a default on the underlying Bonds will be the same as direct holders of the Bonds, i.e., to elect to accelerate the principal of the Bonds, and thereby make the Obligor pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured. However, under the proposed arrangement, individual Certificateholders will have to notify the Custodian of such holders' election to accelerate and the Custodian will only notify the Obligor that the principal on all of the Bonds represented by a specific Certificate is accelerated if a stated percentage of holders so notify it. Moreover, in the event of such a default by the Obligor, a holder of a Whole Certificate representing ownership of all the principal and remaining unpaid interest due on a Bond will continue to have the above-mentioned right to surrender such Whole Certificate and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of such Bond in the appropriate aggregate principal amount. Such Whole Certificateholder will have the same rights with regard to the defaultled Bond as any other Bondholder.

13. If the Obligor fails to make any payment due on the Bonds, the holder of any Certificate not paid by virtue of such default may sue the Obligor directly, or, if not permitted to maintain such an action under applicable law, he may cause the Custodian to commence or join such an action against the Obligor to recover the amount due on such Certificate at the holder's expense. Also, in the event of a default on any Bonds which triggers accelaration (*e.g.*, non-payment which continues beyond the specified cure period), the holders of 25 percent in the aggregate of "amortized face amount" (as defined in the application) of Certificates then outstanding may direct the Custodian to take such action as such holders deem appropriate with regard to all of the Bonds of the defaulting Obligor then held by the Custodian.

14. In the case of an acceleration, the Custodian, as representative of the Certificateholders, will have the same rights as any other Bondholder to deliver notice to the Obligor (or to the Bond trustee, in a case of Bonds issued pursuant to an indenture qualified under the 1939 Act) stating that the Custodian elects to delare the principal of all of the Bonds then held by the Custodian to be immediately due and payable. At such time as the Bonds are accelerated, the interest of each holder of Certificates in the Bonds would be transformed into an undivided interest in all of the proceeds thereafter received on such Bonds, allocated in proportion to the relative amortized face amounts of the respective Certificates.

15. Without conceding the applicability of the 1940 Act to the proposed offering of the Certificates (absent an acceleration of the obligation to pay the principal and interest on the underlying Bonds upon a default), Applicant asserts that it would be appropriate in the public interest and consistent with the protection of investors and the purposes of the 1940 Act to exampt the proposed arrangement from all provisions of the 1940 Act. Applicant submits that, except in the event of an acceleration of principal and interest payments on the Bonds, the Certificates will represent a direct ownership interest in the principal or interest in the underlying Bonds. Applicant further submits that neither the structure nor the mode of operations of the proposed arrangement resembles a typical investment company, and that offering the Certificates to financially sophisticated institutional investors is not the type of transaction that needs to be regulated under the 1940 Act. Applicant contends that the Custodian will not be trading, dealing, or generally investing in securities and, thus, will not exercise any investment discretion, but will perform only administrative and mechanicial functions.

16. Applicant asserts that the selection of the underlying securities will be made prior to the purchase of Certificates, and, thus, will be known by the purchaser at the time of purchase. Moreover, since the Certificates will be sold on the basis of the credit of the Obligor on the underlying Bonds, Applicant asserts that the Certificateholders will look ultimately to the Obligor for their assurance of repayment, not to the Applicant, Depositor or Custodian. Applicant further asserts that even if an investment company is formed upon acceleration of interest and principal payments on the Bonds, such company would be engaged in activities associated with its liquidation and, thus, should be deemed exempt from all provisions of the 1940 Act under section 7(b) of the 1940 Act.

17. In addition, Applicant represents that each Certificate and the Custody Agreement will provide that the Certificateholder is the real party in interest and shall have the right upon default to proceed directly and individually against the Obligor (to the extent permitted by law) in the manner such holder deems appropriate. Because of the structure of the proposed arrangement and the nature of the direct interests represented by Certificates, Applicant asserts that the arrangement will present no risk of loss separate from or in addition to that presented by the underlying investment in the Bonds themselves. Applicant believes that the Custodian's obligation under the Custody Agreement to enforce the Certificateholders' rights will provide a sufficient safeguard against the potential problems associated with a pool of liquid assets that are the principal concern of the 1940 Act and, more generally, will provide adequate assurance that the Certificates will be paid in accordance with their terms.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11603 Filed 5-21-87; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

### Bureau of Consular Affairs

[Public Notice 1011]

### Termination of Stateside Criteria Program (SCP)

**ACTION:** Notice.

**SUMMARY:** Given the very generous legalization and other provisions in Pub. L. 99-603, the Immigration Reform and Control Act of 1986 (IRCA), the Department is terminating its Stateside Criteria Program (SCP). The program has become an anomaly, keeping open a "back door" into the United States in direct contradiction to the goals of the landmark IRCA legislation. While the SCP program is not a regulatory one and is based solely upon administative decisions, the Department is providing for notice and comment on this change since the SCP program constitutes a benefit to aliens within its terms.

**DATE:** Interested parties are invited to submit, in duplicate, comments relevant to this determination on or before June 12, 1987.

**ADDRESS:** Send comments to the Assistant Secretary of State for Consular Affairs, Room 6811, Department of State, Washington, DC. 20520.

**FOR FURTHER INFORMATION CONTACT:** Cornelius D. Scully III, Director, Office of Legislation, Regulations and Advisory Assistance, Visa Office, Department of State, Room 1330, SA–1, Department of State, Washington, DC 20520, (202) 663–1104.

**SUPPLEMENTARY INFORMATION:** The SCP program constitutes an administrative exception to the general rule that an alien physically present in the United States shall process his or her immigrant visa application at the immigrant visa issuing office having jurisdiction over his or her last place of foreign residence prior to entry into the United States. Aliens who meet the requirements for this benefit are permitted to file their application at one of four posts in Canada (Vancouver, Calgary, Toronto or Montreal) or one of two posts in Mexico (Tijuana or Ciudad Jaurez). The specific SCP post to which the alien should address himself is based upon the alien's nationality and place of residence in the United States.

Initially, the SCP program was established by circular instruction to immigrant visa issuing offices abroad and information concerning the program was disseminated to the interested public informally. In 1978, the general criteria for eligibility for the program were incorporated into Volume 9—Visas, Foreign Affairs Manual, Part III, Immigrant Visas (but not published in the Federal Register). The specific operational details were made available to the interested public in a Visa Office Bulletin. Visa Office Bulletin, Volume V, Number 38 of May 24, 1983 contains the currently applicable operational information.

In substance, the SCP program derives from the enforcement policy of the Immigration and Naturalization Service toward aliens illegally in the United States who have become entitled to immigrant status on the basis of a close relationship (parent, spouse, child, or adult unmarried son or daughter) to a United States citizen or permanent resident, but who are statutorily ineligible to adjust status under section 245 of the Act to that of an alien lawfully admitted for permanent residence. If the Service authorizes such an alien to remain in the United States while his or her immigrant visa application is being processed by a consular office abroad, the alien may have his or her application processed by the appropraite SCP post, rather than by the immigrant visa issuing office having jurisdiction over the alien's last foreign residence prior to arrival in the United States.

An important collateral benefit for an alien entitled to process through the SCP program is a guarantee that the alien will be allowed to return to the United following the immigrant visa interview, even if the visa application is refused. This so-called "letter of guarantee" clearly operates to the benefit of the alien although it has been included as a element in the program to assure the governments of the countries concerned (initially, Canada; more recently, Canada and Mexico) that refusal of a visa applciation in an individual SCP case would not result in the refused applicant's being stranded in its territory. This benefit is not extended to an alien in the United States whose visa application is being processed by the visa issuing office located in his or her country of last foreign residence.

Additionally, over the last three to five years the Department has been increasingly concerned that our visa issuing offices could not cope with mounting workloads. This concern was substantially heightened by the constraints imposed on Fiscal Year 1987 and 1988 budget levels and, more recently by the passge of IRCA. We need the space, facilities, and personnel devoted to SCP to carry out the Department's requirements under IRCA and to meet other high priority needs.

The Department recognizes that transferring applications already of record at the six designated offices to the office in the country of last foreign residence would result in administrative delays and could work a hardship on some SCP aliens whose plans had been made on the basis of SCP processing. The Department therefore, plans to terminate the program July 1, 1987, allowing those applications already in process at one of the six designated offices to be processed to completion by the office in question.

(Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), Pub. L. 99–105, 91 Stat. 847.)

Dated: May 18, 1987.

**Joan M. Clark,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 87–11750 Filed 5–21–87; 8:45 am]

BILLING CODE 4710–06–M

## UNITED STATES INFORMATION AGENCY

### Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Winchester, Virginia, on Friday, June 10, 1987, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Corps of Engineers, 385 Bataille Drive, Ingram Building (Executive Conference Room). The meeting will begin at 9 a.m. Point of contact for the meeting is Cathy Haynes, telephone (202) 485–8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the testing of 500 kw high frequency broadcasting transmitters, the status of site negotiations and major construction projects and other technical and regulatory issues relating to VOA modernization.

This meeting will be closed to the public because issues relating to future site negotiations for VOA relay stations will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is: (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (B) in fact, is properly classified pursuant to such Executive Order (5 U.S.C. 552b(c)(1)).

Dated: May 18, 1987.

**Charles Z. Wick,**

*Director.*

[FR Doc. 87–11709 Filed 5–21–87; 8:45 am]

BILLING CODE 8230–01–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 99
Friday, May 22, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., June 3, 1987.
PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.
STATUS: Open.
MATTERS TO BE CONSIDERED:

Oral arguments—Sansom Refining Company v. Drexel Burnham Lambert, Inc. and Grabarnick v. National Futures Association.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*
[FR Doc. 87–11876 Filed 5–20–87; 3:00 pm]
BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., June 5, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*
[FR Doc. 87–11877 Filed 5–20–87; 3:00 pm]
BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 12, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*
[FR Doc. 87–11878 Filed 5–20–87; 3:00 pm]
BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 19, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*
[FR Doc. 87–11879 Filed 5–20–87; 3:00 pm]
BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 26, 1987.
PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
*Secretary of the Commission.*
[FR Doc. 87–11880 Filed 5–20–87; 3:00 pm]
BILLING CODE 6351–01–M

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FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Friday, May 22, 1987, 9:00 a.m.
PLACE: 1776 G Street, NW., Washington, DC, Conference Room 8C.
STATUS: Closed.
CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013, (202) 789–5097.
MATTERS TO BE CONSIDERED:

Closed: President's Report
Closed: Financial Report
Closed: Corporate Dividends

Date sent to Federal Register: May 20, 1987.

Maud Mater,
*Secretary.*
[FR Doc. 87–11855 Filed 5–20–87; 12:06 pm]
BILLING CODE 6710–01–M

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NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:00 p.m., Wednesday, May 27, 1987.
PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.
STATUS: Closed.
MATTER TO BE CONSIDERED:

1. Applications under Section 201 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Personnel actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Acting Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,
*Secretary of the Board.*
[FR Doc. 87–11866 Filed 5–20–87; 2:16 pm]
BILLING CODE 7535–01–M

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NATIONAL CREDIT UNION ADMINISTRATION

The National Credit Union Administration Board determined that its business required that the previously announced closed meeting (Federal Register, Volume 52, No. 89, page 17502, Friday, May 8, 1987) on May 18, 1987, include an additional item, which was closed to public observation:

Waivers under § 701.27(d)(6) of NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).

The Board unanimously voted to add this item to the closed agenda. Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.
2. Administrative Actions under section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Board Briefings. Closed pursuant to exemptions (2), (8), (9)(A)(ii), and (9)(B).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 1:05 p.m., in the Filene Board Room 7th Floor, 1776 G Street, NW., Washington, DC.

FOR MORE INFORMATION CONTACT: Becky Baker, Acting Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,
*Secretary of the Board.*
[FR Doc. 87–11867 Filed 5–20–87; 2:16 pm]
BILLING CODE 7535–01–M

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UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the

Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, June 2, 1987, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, June 1, 1987, but it will consist entirely of briefings and is not open to the public.

**Agenda**

*Tuesday Session*

June 2, 1987–8:30 a.m. (Open)—

1. Minutes of the Previous Meeting, May 4–5, 1987.
2. Remarks of the Postmaster General.
3. Consideration of Code of Ethical Conduct for Postal Service Governors.
4. Briefing on the Origin-Destination Information System (ODIS).
5. Annual Report by the Chief Postal Inspector.
6. Chief Postal Inspector's Report on Consumer Protection (Pub. L. 98–186).
7. Capital Investment: Alhambra, California (General Mail Facility).
8. Tentative agenda for July 6–7, 1987, meeting in Washington, DC.

David F. Harris,

*Secretary.*

[FR Doc. 87-11816 Filed 5-20-87; 10:02 am]

BILLING CODE 7710-12-M

# Corrections

Federal Register
Vol. 52, No. 99
Friday, May 22, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE

## VETERANS ADMINISTRATION

### 38 CFR Part 21

### Veterans Education; Entitlement Charges for Overpayments Under VEAP

*Correction*

In proposed rule document 87-10710 beginning on page 17990 in the issue of Wednesday, May 13, 1987, make the following correction:

On page 17990, in the third column, in the **SUMMARY**, in the third line "not" should read "now".

BILLING CODE 1505-01-D

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1658]

### Petitions for Reconsideration of Actions in Rulemaking Proceedings

*Correction*

In notice document 87-11375 appearing on page 18739 in the issue of Tuesday, May 19, 1987, make the following correction:

In the second column, in the 12th line, "May 19," should read "June 3,".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Project Grants for Preventive Health Services-Immunization; Program Announcement; Program Guidelines

*Correction*

In notice document 87-10083 beginning on page 16451 in the issue of Tuesday, May 5, 1987, make the following corrections:

1. On page 16451, in the third column, under **National Program Goals**, in paragraph 5, in the third line, "of more" should read "or more".

2. On the same page, in the same column, under *C. Budget Information*, in the fifth and sixth lines from the bottom, "or" should read "of" in both instances.

3. On page 16453, in the second column, in paragraph 6, in the first line, insert a comma between "Supply" and "Delivery".

4. On page 16454, in the third column, in the first complete paragraph, in the eighth line, "an" should read "and".

5. On page 16455, in the first column, in paragraph D, in the eighth line, "it" should read "its".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Great Basin National Park, NV; Legal Description

*Correction*

In notice document 87-11153 appearing on page 18462 in the issue of Friday, May 15, 1987, make the following correction:

In the third column, in the second paragraph, in the sixth line, "May" should read "Map".

BILLING CODE 1505-01-D

federal register

Friday
May 22, 1987

Part II

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 23**

## Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Sixth Regular Meeting; Notice of Proposed Amendments to Appendices and Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Sixth Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth proposed U.S. negotiating positions for the sixth regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Comments or other relevant information concerning these proposed negotiating positions are solicited.

A public meeting to discuss these proposed negotiating positions as well as proposals to amend the Appendices to the Convention also will be held.

ADDRESS: Information and comments should be communicated to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 621, Arlington, Virginia 22201, telephone (703) 235–2418. Information and comments are available for public inspection at that office from 8:00am to 4:15pm, Monday through Friday except holidays.

DATES: The cited public meeting will be held on May 29, 1987, from 1:00-4:00pm, in the North Penthouse of the Main Interior Building, 18th and C Streets, NW., Washington, DC 20240.

The Service will consider information and comments received by close of business June 15, 1987.

FOR FURTHER INFORMATION CONTACT: Earl B. Baysinger, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 621, Arlington, Virginia 22201, telephone (703) 235–1937.

## Background

The United States is a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as CITES or the Convention), an international agreement designed to control international trade in certain species of animals and plants. The purpose of such control is to ensure that no species becomes extinct or threatened with extinction due to trade. CITES provides for biennial (regular) meetings of the Conference of the Parties (COP) at which its implementation is reviewed.

This notice is the second in a series intended to inform the public of preparations for the sixth regular meeting (COP6) to be held in Ottawa, Canada, on July 12 through July 24, 1987. The first notice, published on January 13, 1987 (52 FR 1387), set forth the provisional agenda for COP6 (subsequently revised) and an explanation of most of the items on that agenda. The U.S. Fish and Wildlife Service (Service) invited the public to provide information and comments on that provisional agenda and also announced a public meeting to receive information and comments. This meeting was held on January 21, 1987.

## Proposed Negotiating Positions

In this notice the Service summarizes proposed negotiating positions for COP6. Numerals next to each summary correspond to the numbers used in the first notice to denote provisional agenda items. Some additional agenda items not treated in the January 13 notice are addressed herein under the heading "Additional Issues." A summary of any information and comments received at the January 21 public meeting or submitted in writing to the Service, as well as a brief rationale, follow each proposed negotiating position. In some instances, no proposed negotiating position is stated, but an explanation is given for not developing one.

If necessary, one should consult the January 13 notice cited above to gain a better understanding of the issues at which the following negotiating positions are directed.

*I. Opening Ceremony by the Authorities of Canada*

*Proposed Negotiating Position:* No position necessary.

*Information and Comments:* None received.

*Rationale:* Not an issue for negotiation.

*II. Welcoming Addresses*

*Proposed Negotiating Position:* No position necessary.

*Information and Comments:* None received.

*Rationale:* Not an issue for negotiation.

*III. Adoption of the Rules of Procedure*

1. Rule 5—Election of Chairman and Vice-Chairman

*Proposed Negotiating Position:* Do not oppose the proposed rule that would provide that candidates for these positions are to be nominated by the Bureau in consultation with the host government.

*Information and Comments:* No comments received opposed this provisional rule.

*Rationale:* Adoption of this new provisional rule should help assure the selection of a chairman and vice-chairman capable of impartially expediting the business of COP6 while continuing the role of the host government in the selection process.

2. Rule 7—Bureau

*Proposed Negotiating Position:* Support specifying in the rules of procedure that the Bureau (composed of the Standing Committee, the Presiding Officer, the sessional committee chairmen and the Secretariat) be given specific authority to forward certain aspects of the business of the Conference including altering the timetable or structure of the meeting and, as a last resort, limiting the time for debate.

*Information and Comments:* None received specific to this issue, but several comments favored expediting the conduct of COP business.

*Rationale:* This proposed rule change would make express that which was implied in the old rule, that is that the Bureau has the authority to take measures to expedite the business of the Conference.

3. Rule 23—Establishment of Sessional Committees and Working Groups

*Proposed Negotiating Position:* Do not oppose establishment of sessional Committee I as a "science committee" whose function would be the review of proposals to amend the Appendices of the Convention and to make recommendations concerning matters of a primarily biological nature. Seek assurance that effective coordination of matters considered in Committee II is provided for.

*Information and Comments:* Two commenters supported the view that establishment of Committee I (essentially the old "screening committee" expanded to deal with other matters of a "scientific" nature) would help further the business of the meeting.

*Rationale:* COP's normally have worked on the basis of 2 major committees feeding recommendations to the Plenary for decision. A point of concern about this proposed rule change is that the new Committee I would address some of the same issues that Committee II would be addressing (see item VI below), but from a scientific rather than a technical perspective. Close coordination would be required to prevent confusion and duplication of effort. It is not clear how that coordination would be provided.

4. Rule 13—Arrangements for Debates

*Proposed Negotiating Position:* Seek amendment of this new provisional rule

in order to make it easier to open recommendations of Committee I and Committee II for additional discussion in Plenary.

*Information and Comments:* Commenters favored varying degrees of relaxation of proposed procedures for permitting discussion of Committee I and Committee II recommendations by the Plenary.

*Rationale:* The United States is not opposed in principle to debating important or controversial issues twice, once in committee and once in Plenary. The United States does favor measures that would forward the business of the meeting if they don't result in undesirable curtailment of debate that could result in defective decisions or substantial restriction of the rights of delegates or observers to participate effectively.

5. Rule 15—Majority

*Proposed Negotiating Position:* Do not oppose changing the present simple majority rule to requiring a two-thirds majority for approval of most substantive proposals that do not involve amendments to the Appendices.

*Information and Comments:* Three commenters supported making most decisions based on a two-thirds majority.

*Rationale:* Since most decisions of the COP are nonbinding recommendations to the Parties, a two-thirds majority requirement might help insure wider implementation of CITES recommendations.

6. Rule 14—Methods of Voting

*Proposed Negotiating Position:* Support retention of the secret ballot as expressed in the rules of procedure for previous COP's. A request for a secret ballot should take precedence over a request for a roll-call vote.

*Information and Comments:* Most comments favored limiting use of the secret ballot to the election of Conference officials and determining the host country for the next COP. One commenter supported this view citing procedures of other international organizations and a possible lack of accountability or susceptibility to pressure under secret voting.

*Rationale:* The argument put forth for restricting the use of the secret ballot has been based upon the rationale that delegates who cast secret ballots may deviate from their government's instructions or may be subject to generally unspecified "undue pressure" to vote for or against specific subjects. This rationale is not clear enough to support restricting the use of an accepted voting technique. It is reasonable to expect that governments would select persons responsible enough that they could be relied upon to carry out any instructions they have received from their government. It also seems reasonable that a secret ballot would relieve a delegate from being subjected to any "undue pressure" to vote in any specific way since whoever was exerting such pressure would be unable to monitor the delegate's secret ballot whereas a non-secret ballot would be subject to such monitoring.

7. Rule 9—Seating, Quorum

*Proposed Negotiating Position:* Do not oppose requiring an observer to first receive an invitation from a delegate before entering the area reserved to delegations while a meeting is in session. Favor a 50 percent quorum for Plenary and Committee I and Committee II sessions.

*Information and Comments:* Most commenters favored some limitation on observer access to delegates when they were in session so that the sessions would be more orderly. Some suggested that "lobbying" pressures would be reduced.

*Rationale:* The ability of approved observers to participate (except for voting) in the COPs is provided for in Article XI. The United States historically has strongly defended this right since much of the expertise needed to make the CITES effective is to be found among the specialized organizations that attend as observers. It is the United States position that interchanges between delegates and such specialists should be encouraged and made as simple as possible. However, it is recognized that some order should be maintained and the requirement for an observer to receive an invitation before entering the area occupied by delegations, while a meeting is in session, is a reasonable compromise.

*IV. Election of Chairman and Vice-Chairman of the Meeting and of Chairman of Committees I and II*

*Proposed Negotiating Position:* Support the election of chairmen who can further the business of the meeting while allowing for a full and fair airing of the issues.

*Information and Comments:* Two commenters were specifically in favor of the provisional rule to give the Bureau a strong role in the selection of COP6 chairmen.

*Rationale:* Experience has shown that the success of COP meetings is dependent on the quality of the chairmen. The United States is a member of the Standing Committee. As such it will play a role in the selection of COP6 chairmen.

*V. Adoption of the Agenda and Working Programme*

*Proposed Negotiating Position:* Support adoption of the provisional agenda (Doc 6.1 (Rev.2)).

*Information and Comments:* None received.

*Rationale:* Usually, adoption of the Agenda and Working Programme is pro forma. The order that agenda items are addressed is contained in the Working Programme. The United States has not yet received a copy of that Programme.

*VI. Establishment of the Credentials Committee and Sessional Committees I and II*

Proposed Negotiating Position

*—Credentials Committee:* The United States should support the establishment of this committee.

*—Committees I and II:* The United States should not oppose establishment of these two committees provided: that all Parties participating in the COP have been able to send at least two delegates; or that the rule governing the debate of Committee Recommendations in the Plenary has been relaxed sufficiently to ensure that any delegate who was unable to participate in committee deliberations will have the opportunity to debate such recommendations exhaustively in Plenary before a decision is made.

*Information and Comments:* Two commenters expressed the view that establishment of Committees I and Committee II would help further the business of the Conference. Others expressed concern that Parties unable to send large enough delegations to participate effectively in the concurrent sessions of Committees I and II would be deprived of their ability to participate unless the recommendations of the Committees were subject to further debate in Plenary.

Rationale:

*—Credentials Committee:* Establishment of this Committee simply would satisfy a perceived need and help further the business of the Conference.

*—Committees I and II:* It is envisioned that most of the substantive discussion of issues presented to the COP will take place in these Committees which will meet concurrently. Recommendations from the Committees are envisioned as being subject to little if any subsequent debate in Plenary. Since the Committees will meet concurrently, Parties able to field only small (sometimes a single person) delegations or those with

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limited technical expertise on their delegation (such as those represented by staff of their embassy) will be prevented from effective participation unless they are provided an opportunity to open an issue for further debate in Plenary. Observers who send small delegations also would be similarly restricted.

If all participants sent at least two delegates and thereby ensured their ability at least to be present in all Committee sessions, the size and expenses associated with a COP will be increased significantly. It is U.S. policy to minimize the expenses associated with such meetings.

*VII. Report of the Credentials Committee*

*Proposed Negotiating Position:* Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries party to CITES. Representatives whose credentials are not in order should be afforded observer status under Article XI.7(a). If credentials have been delayed, representatives should be allowed to vote on a provisional basis. A liberal interpretation of the rules of procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate.

*Information and Comments:* None received.

*Rationale:* Adoption of the report usually is *pro forma*. Exclusion of representatives whose credentials are in order could undermine cooperation among parties which is essential to the effective implementation of CITES.

*VIII. Admission of Observers*

*Proposed Negotiating Position:* The United States supports the admission as observers of all representatives of agencies or bodies who meet the technical requirements specified in the CITES and are qualified in protection, conservation or management of wild fauna and flora.

*Information and Comments:* One commenter expressed some concerns about limitation on the admission of observers.

*Rationale:* Participation by qualified nongovernmental organizations at COP's is specifically provided by Article XI. The United States historically has supported the opportunity of all technically qualified observers to participate to the maximum extent. Such participation has, on the whole, proven beneficial.

*IX. Matters Related to the Standing Committee*

1. Report by the Chairman

*Proposed Negotiating Position:* None necessary.

2. Election of New Members of the Standing Committee

*Proposed Negotiating Position:* Support re-election of any of the retiring Standing Committee members who are willing to be re-appointed.

*Information and Comments:* None received. United States will continue as North American Regional Representative through COP7. India (presently chairman of the Standing Committee), Kenya and Costa Rica will finish their terms and be either re-elected or succeeded at COP8.

*Rationale:* Retiring members have been effective.

*X. Report of the Secretariat*

*Proposed Negotiating Position:* None possible.

*Information and Comments:* None received. Report has not been received.

*XI. Permanent CITES Committees*

*Proposed Negotiating Position:* Partial support and partial opposition to the proposal as submitted. Oppose establishment of the proposed Scientific Committee. Seek establishment of a smaller "Screening Committee" comprised of representatives of the National Scientific Authorities in lieu thereof. Functions of the "Screening Committee" would be to screen proposals to modify Appendices to the CITES. Support use of existing, technically qualified organizations, on contractual basis or otherwise, to monitor data relating to the conservation status of species of interest to the CITES and to summarize those data into a form useable by the "Screening Committee." Support proposed modifications to what now is the Standing Committee provided a responsibility for the Committee's preparation of a biennial report to the Executive Director of the United Nations Environment Programme concerning the effectiveness of the Secretariat is clearly stated. Push for delay in formalizing any modifications to the existing Technical Committee until the above changes have been implemented.

*Information and Comments:* No comments formally received, however the paper outlining the proposal was not received in time for distribution and study prior to close of comment period.

*Rationale:* The existing proposal would establish a very large committee structure with a large number of associated meetings. The costs would be significant and the commensurate benefits are not apparent. It is not realistic to expect a Scientific Committee, as proposed, to be able to monitor the conservation status of the multitude of floral and faunal taxa of interest to the CITES. However, there do exist scientific organizations which do have such capability. It is realistic to expect a small group of representatives of National Scientific Authorities to review summaries of data prepared by such a technical group, measure their findings against CITES approved criteria and recommend for or against proposals to amend the Appendices.

There presently is no mechanism whereby the Parties can express to the UNEP (the organization charged by the CITES with providing Secretariat services) their view concerning the manner in which this charge is being carried out. This seems a logical function for the Standing Committee or its successor.

*XII. Financing and Budgeting of the Secretariat*

*Proposed Negotiating Position:* Oppose any substantial increase in the Secretariat's budget; recommend that the Secretariat work with the Standing Committee to impose economies. Make it clear that the newly effective financial amendment allows Parties to characterize their contributions as mandatory or voluntary. Support a direction to the Secretariat requiring a detailed report on "external funding" on an annual basis.

*Information and Comments:* None received.

*Rationale:* The Secretariat's proposed budget for 1988–89 represents a very substantial increase over 1986–87. The Secretariat has had to rely upon reserves to meet 1986 obligations and has requested similar authority for 1987. The impetus for the adoption of the Article XI financial amendment was to accommodate some Parties' domestic law to enable them to make financial contributions. External funding has become a significant part of the Secretariat's budget and no effective mechanism to provide overview of the solicitation or utilization of such funding exists.

*XIII. Committee Reports and Recommendations*

1. Technical Committee Report

*Proposed Negotiating Position:* None.

*Information and Comments:* None received.

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2. Identification Manual Committee

*Proposed Negotiating Position:* Foster development of the identification manual so that it is geared for use by port and border field enforcement officials. Try to get feedback on its usefulness.

*Information and Comments:* One commenter wanted an evaluation of the identification manual to be done. Another reported that some developing countries find it useful.

*Rationale:* Enough of the identification manual has been produced and distributed to enable an assessment of its usefulness.

3. Nomenclature Committee

*Proposed Negotiating Position:* Support the continuation of work by the Nomenclature Committee.

*Information and Comments:* None received.

*Rationale:* The COP established the Nomenclature Committee to develop a standardized list of scientific names for species in order to improve the implementation of CITES. The United States originally called for the establishment of this committee and subsequently supported its work on checklists. Thus far the Parties have approved checklists for mammals and amphibians. The next lists to be produced will be for turtles and crocodiles.

*XIV. Interpretation and Implementation of the Convention*

1. Report on National Reports (for issues concerning European Community's annual reports see "Additional Issues")

*Proposed Negotiating Position:* Support measures to encourage and require Parties to submit their annual reports.

*Information and Comments:* None received.

*Rationale:* Currently, only approximately one half of the Parties submit their annual reports. Annual report data are necessary to gauge the impact of international trade on the species and can be a useful enforcement tool.

2. Review of Alleged Infractions

*Proposed Negotiating Position:* Support necessary and appropriate measures designed to obtain wider compliance with the terms of the Convention.

*Information and Comments:* None received.

*Rationale:* The Service has not received information from the Secretariat indicating which countries will be included in its report on infractions. Article XIII provides for COP review of alleged infractions. The COP may make whatever recommendations it deems appropriate.

3. Implementation of the Convention in Certain Countries

*Proposed Negotiating Position:* Support continuation of the ban on trade with Bolivia until such time as Bolivia demonstrates to the COP or the Standing Committee that it has adopted all necessary measures to adequately implement the Convention. Consider carefully any similar measures with regard to Paraguay.

*Information and Comments:* None received.

*Rationale:* Since around 1982, the Secretariat has held discussions with the Bolivian authorities about Bolivia's inadequate implementation of CITES. A hotly debated COP5 resolution called on Bolivia to demonstrate to the Standing Committee that it has adopted all necessary measures to adequately implement the Convention. The resolution provided that if such demonstration was not made to the Standing Committee within 90 days, the Parties should refuse to accept all shipments of CITES specimens accompanied by Bolivian documents or originating in Bolivia.

The 14th meeting of the Standing Committee (Ottawa, October 1986) agreed that Bolivia had not demonstrated that the necessary measures had been adopted. The Standing Committee recommended that any export of CITES specimens be refused. At that meeting it was alleged that persons in Paraguay were implicated in some of the wrongdoing which has plagued Bolivia for so long. The Service has not received any other information from the Secretariat indicating which other countries will be considered under this agenda item.

4. Trade in Ivory from African Elephant

*Proposed Negotiating Position:* Oppose amnesty for illegally acquired or traded African elephant ivory. Oppose any recommendation that diminishes the right of a Party to take stricter domestic measures regarding trade in African elephant ivory. Draw the attention of the Parties to the growing concern about the current biological and trade status of the African elephant.

*Information and Comments:* One commenter stated that recently 700 ivory tusks were confiscated in northern Tanzania just before they went into Burundi. Another commenter stated that we need to get as tough as possible on elephant ivory. Five commenters stated that they supported continuation of the quota system for African elephant ivory.

*Rationale:* The Lacey Act Amendments of 1981 make it illegal to import wildlife taken, transported or sold in violation of law or regulation of any foreign country. Article XIV of the CITES allows any Party to take stricter domestic measures regarding the conditions for trade, taking, possession or transport of CITES specimens including the complete prohibition thereof. Recent action taken by CITES Secretariat in which known illegal ivory was "amnestied" creates serious problems for the United States since that ivory still is not "legal" within the intent of the Lacey Act Amendments. Marking and tracking systems for ivory developed by Secretariat appear to be very vulnerable. Recent data on conservation status of African elephant in the wild indicates a decline to fewer than a million animals in the wild—much lower than previous estimates. The ivory trade controls should be carefully examined for effectiveness as should the current status of the elephant in the wild.

5. Trade in Rhinoceros Products

*Proposed Negotiating Position:* Support any proposals to further restrict trade in rhino horn and its products.

*Information and Comments:* None received.

*Rationale:* Recent U.S. Congressional hearings have highlighted the continuing problem of illegal trade in rhinoceros horn which has been seriously depleting already endangered species of rhinoceros. All species are listed as endangered under the U.S. Endangered Species Act.

Despite a domestic ban on the import of rhino horn (used primarily for ceremonial knife handles), North Yemen continues to be the world's largest consumer of rhino horn. Singapore, the largest importer of Asian rhino horn, recently became a member of CITES and has pledged to end its trade in the horn. The People's Republic of China, a CITES Party, continues to import rhino horn and reexport it as medicinal products.

6. Trade in Leopard Skins

*Proposed Negotiating Position:* Advocate stricter controls, if necessary, to prevent quota violations. Oppose any further increases in quotas without supporting data that includes well documented studies based on sound scientific principles.

*Information and Comments:* Five commenters stated that they supported

continuation of the quota system for leopard skins.

*Rationale:* There is some question as to whether the quota for each country includes or is in addition to exported sport hunted trophies and that quotas may have been exceeded.

7. Trade in Plant Specimens

*Proposed Negotiating Position:* Support a technical resolution that would assure that *future* listings of Appendix II and III plants do not include pollen (including pollinia), flasked seedling cultures and certain other parts and derivatives unless specifically included in the listing proposal. Favor some method of facilitating trade in hybrids artificially propagated for commercial purposes which have an Appendix I species in their ancestry. Support a resolution requesting the Nomenclature Committee to prepare a standardized nomenclatural reference for Cactaceae to the extent possible to the level of species, subspecies and botanical variety, with full synonymy and the countries of distribution.

*Information and Comments:* None received.

*Rationale:* COP5 decided with certain categorical exceptions, to regulate most parts and derivatives of Appendix II plants then currently listed. This proposal would apply those exceptions to future Appendix II and III plant listings. Some way needs to be found to make the mechanics of trade easier for traders of plant hybrids artificially propagated for commercial purposes that contain an Appendix I specimen somewhere in their ancestry. Current practice requires traders to obtain an export permit under Article IV which limits their permits to single shipments.

The Cactaceae family contains many species and is heavily traded. There currently is no credible nomenclatural reference for the Family. To improve controls and statistical reporting and to provide a better picture of how trade is impacting the species, the Nomenclature Committee will recommend that a standardized nomenclatural reference be produced.

8. Controls on Trade in Ranched, Captive-Bred, Lookalike and Quota Species

*Proposed Negotiating Position:* Support proposals that would insure that Appendix I specimens traded as Appendix II under certain exceptions will not diminish protection of those species that cannot be so traded.

*Information and Comments:* None received.

*Rationale:* A working group of the Technical Committee has produced three draft resolutions. The first would require marking procedures for registered captive breeding operations; the second would provide for Secretariat oversight of ranching operations and the third would require a tagging system for saltwater and Nile crocodiles transferred to Appendix II under an annual quota. These proposals would help ensure that specimens of similar Appendix I species are not allowed in international commerce.

9. Significant Trade in Appendix II Species

*Proposed Negotiating Position:* Seek to have the so-called "C2" species studies expeditiously completed.

*Information and Comments:* None received.

*Rationale:* The C2 species are being traded commercially and there is serious question whether they can stand current levels of trade. This lends urgency to the C2 studies.

10. Retrospective Issuance of CITES Documentation

*Proposed Negotiating Position:* Support agreement on a common policy of whether and under what circumstances Parties should issue and accept CITES documents after trade has occurred. Oppose general increase in number of situations in which retrospective issuance would be permissible.

*Information and Comments:* None received.

*Rationale:* A standardized common policy would be better understood and more easily implemented. However a general acceptance of retrospective issuance could lead to serious weakening of the Treaty and an additional threat to species on its Appendices.

11. Travelling Fur Trade Shows

*Proposed Negotiating Position:* Support principles in Canadian proposal that would allow use by travelling shows of export permits as reexport certificates if they are properly validated by the reexporting country. Seek simpler solution.

*Information and Comments:* One commenter supported this proposal.

*Rationale:* Reuse of the export permit for reexport would provide travelling shows with more assurance that they could observe reexport requirements and arrive at their next appointment in a timely fashion. Advance issuance of reexport certificates is another possible way of meeting a show's time requirements.

12. Interpretation of Article XIV, Paragraph i, of the CITES

*Proposed Negotiating Position:* Do not oppose the concept of reasonable consultation with range States before implementing stricter domestic measures. Encourage reasonable consultation, at the request of range States, concerning stricter domestic measures already promulgated. Oppose proposals to make such consultations a prerequisite to adoption of stricter domestic measures.

*Information and Comments:* One commenter supported the concept of consultation with regard to stricter domestic measures.

*Rationale:* The concept of consultation was the result of a compromise to a proposal by certain African Parties to restrict the right of a Party to take stricter domestic measures with regard to CITES-controlled species. Endangered Species Act already requires United States to consult with Range States before adding species to lists. However that Act does not require concurrence of Range States.

13. Transport of Live Species

*Proposed Negotiating Position:* Support the following TEC2 recommendations:

1. As a condition of issuance of an export permit, permittees should be required to prepare and ship live specimens in accordance with the International Air Transport Association (IATA) Live Animals Regulations as a minimum.

2. A crating, health and welfare checklist (now in draft form) should accompany permits and be used to check a shipment of live animals immediately prior to and after shipment.

3. Parties should be encouraged to provide animal holding facilities at designated ports of exit and entry.

4. New acclimatization periods before shipment for certain groups of species should be developed by the Working Group in conjunction with the Live Animals Board.

5. Air carriers normally should not accept for shipment wild animals that are evidently pregnant, or females with young who are not yet weaned or are otherwise incapable of feeding themselves or such young travelling alone.

6. IATA should develop for its regulations a list of airports with animal facilities and a statement that airline carriers should route live animal shipments via such airports whenever possible.

7. Containers for live animals must provide facilities for appropriate feeding and watering the animals.

Also, support efforts to obtain useful information regarding transit mortality.

Advocate that airlines allow government officials and other qualified persons to inspect animal holding areas.

*Information and Comments:* Three commenters urged that CITES should focus on species of animals that are vulnerable in transport. Another supported the TEC2 resolutions.

*Rationale:* Mortality among wild animals during transit is high. Since many individuals are killed or die for each individual that survives to the point at which it enters transit, each in-transit death represents many wild individuals and any action that reduces in-transit mortality has a favorable impact on wild populations. The TEC2 proposals, if implemented, would improve the conditions of transport for live animals in international trade and thereby reduce mortality. Inspection of airline animal holding facilities would help improve the conditions of transport by making airline personnel aware of transport norms and holding requirements and also reduce mortality.

14. Designation of Scientific Authorities

*Proposed Negotiating Position:* Advocate adoption of a U.S. proposal urging Parties that have not yet notified the Secretariat of their designated Scientific Authority to do so within 180 days after COP6.

*Information and Comments:* One commenter favored the U.S. proposal.

Two queried whether the same entity could operate as both Management and Scientific Authority.

*Rationale:* Listings for 28 Parties in the Secretariat's Directory do not indicate the identity or existence of a designated Scientific Authority. CITES requires the designation of a Scientific Authority, but not notification of its existence. This proposal would encourage those Parties that have not designated Scientific Authorities to do so.

*XV. Consideration of Proposals for Amendment of Appendices I and II*

This item is not a substantive subject of this notice. The Service is publishing elsewhere in today's **Federal Register** a notice concerning proposed positions on proposals to amend Appendices I and II.

*XVI. Conclusion of the Meeting*

1. Determination of the Time and Venue of the Next Regular Meeting of the Conferences of the Parties

*Proposed Negotiating Position:* Favor holding COP7 in the Pacific Area (provided adequate funding is available and all Parties will be admitted to the country without political difficulties).

*Information and Comments:* None received.

*Rationale:* As yet, the Pacific area has not hosted a COP. It is an important wildlife and plant area with significant trade problems. Holding the COP there would help focus attention on CITES and stimulate interest in its goals and work.

2. Closing Remarks

*Proposed Negotiating Position:* None necessary.

*Information and Comments:* None received.

*Rationale:* Normally, this agenda item consists of summing up statements and expressions of appreciation directed at the host government.

*XVII. Additional Issues*

The Service has received information from the CITES Secretariat indicating that COP6 also will consider the following issues. Where possible, the Service will indicate the proposed negotiating position.

1. Trade in Crocodilian Quota Species

*Proposed Negotiating Position:* Support a Secretariat proposal that would apply trade controls similar to those on the Nile crocodile trade to South American crocodilian species.

*Information and Comments:* None received.

*Rationale:* The South American caiman trade apparently is subject to enforcement related problems similar to those that were related to the African Crocodile Trade. The proposed controls appear to be acceptable, effective and have been found to be workable.

2. The Biological and Trade Status of Chelonia Mydas and Eretmochelys Imbricata

*Proposed Negotiating Position:* Carefully examine a biological and trade study of the green and hawksbill sea turtles to be considered at COP6 evaluate its methods and data.

*Information and Comments:* None received.

*Rationale:* This study could influence the outcome of the French (Reunion Island) sea turtle ranching proposal. (That proposal is discussed in the separate **Federal Register** publication dealing with proposals to amend the CITES Appendices.)

3. Status of Captive Bred Populations of the Chinchilla (Chinchilla spp.) Occurring Outside of South America.

*Proposed Negotiating Position:* Support Canadian proposal in principle providing it is changed so that part of the language (". . . Population of South America. Populations outside South America are not included in the Appendices") is placed in the "Interpretation" section of the Appendices rather than adjacent to the species entry in the Appendices themselves.

It should be stressed that the chinchilla is a very unique situation and that there is no intent that this deferential treatment of captive populations outside their normal range be considered a precedent or used with other taxa.

*Information and Comments:* None received.

*Rationale:* In February 1977, the entire species of chinchilla was placed on Appendix I. Prior to that date only the questionable sub-species *C. brevicaudata boliviana* was on that Appendix. The 1977 action specified that only South American populations were intended to be placed on Appendix I. Thus, domesticated populations of chinchilla in other countries would not be considered Appendix I species but those in the wild in South America would receive the full Appendix I protection. Persons who had established closed system, self-sustaining captive populations of chinchilla in South America could utilize the exemption provided for in Article VII (which was developed with the South American chinchilla industry in mind) and still be able to export specimens of their animals for commercial purposes under certificates as provided for in Article VII. This complex situation has not been fully understood by all Parties and the Canadian proposal is intended to clarify that situation.

Placement of the proposed Canadian language in the "Interpretation" section rather than in the Appendix itself is the standard procedure that has been followed and prevents the already complex Appendices from becoming further cluttered.

4. Implementation of the Convention with Regard to Personal and Household Effects

*Proposed Negotiating Position:* Oppose proposals that would encourage Parties to remove their "stricter domestic measures" with regard to the personal and household effects exemptions. Oppose proposals that

would allow the exemption of unaccompanied shipments such as occasional, non-commercial mailed items under the "personal and household effects" exemption. Oppose proposals that would extend the personal and household effects exemptions to living Appendix III specimens.

*Information and Comments:* None received.

*Rationale:* The proposal to expand the scope of the personal and household effects exemptions would be a reversal of the spirit and intent of Resolution Conf. 4.12 which encouraged elimination of the personal and household effects exemptions for heavily traded species thereby allowing the acquisition of data on the impact of trade. This proposal also would be an impingement of the rights of Parties to take stricter domestic measures—a contradiction of Article XIV. Providing personal or household exemptions for non accompanied items (eg: mailed packages etc.) would significantly increase enforcement problems and reduce effectiveness of the CITES.

5. Relationship Between CITES and the European Economic Community

*Proposed Negotiating Position:* United States should continue to press vigorously for country by country reporting of CITES-related trade. Alternate proposals that could provide trade statistics without requiring border checks should be carefully considered and, if the end result is the same, supported.

*Information and Comments:* None received.

*Rationale:* Article VIII para. 7 requires each Party to prepare and transmit to the Secretariat annual reports setting forth specified information concerning its implementation of the CITES. The EC has refused to permit EC members who are Party to the CITES to submit such reports arguing that to do so would be in contravention of the Treaty of Rome. Instead, EC has prepared and submitted a single, consolidated report intended to cover all trade in which EC members are involved. Whether allowing individual national reports as required by the CITES is, in fact, in conflict with the Treaty of Rome is a matter of dispute among qualified legal experts. However, the submission of a single report covering all EC members make the data in that report much less useable to those who need them and diminishes the possibility of effective enforcement of the CITES in one of the major consuming areas of the world. It is recognized that the "disappearance of the frontiers" as the EC matures will make reporting based upon within the EC, cross border commerce impossible. However, CITES specimens that move intra-EC are accompanied by so-called "blue certificates" and there should be some acceptable method of monitoring and reporting upon those specimens based upon the issuance and ultimate disposition of those certificates which would provide the needed data without being an actual or perceived violation of the Treaty of Rome.

*XVIII. Requests for Additional Agenda Items*

One commenter requested that item XIV.3 be expanded to include a discussion of trade in sea turtle products by Parties and non-Parties alike. Additional issue item number 2, above, is broad enough to include a discussion of trade in sea turtle products.

*XIX. Request for Information and Comments and Announcement of Public Meeting*

Information and comments related to these proposed negotiating positions and/or the additional issues summarized above hereby are solicited. Such information and comments should be forwarded to: Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201.

A public meeting will be held Monday, May 18, 1987, from 1:00 pm to 4:00 pm, in the North Penthouse, U.S. Department of the Interior (Main Building), 18th and C Streets NW., Washington, DC, for purposes of receiving information and comments on the proposed negotiating positions summarized above, as well as proposals to amend the CITES Appendices I and II. As noted above, those proposals will be published separately in the Federal Register.

Written statements may be submitted at or before the May 18 meeting.

Appointments to speak may be made with the Fish and Wildlife Service, Federal Wildlife Permit Office, telephone (703) 235–2418. Following speakers with appointments and to the extent time allows, participants without appointments will be given an opportunity to speak. It is planned that this meeting will be conducted in an informal manner and that participants also will be provided opportunities, to the extent that time permits, to comment as each point is raised.

*XX. Observers*

Article IX, Paragraph 7 of the Convention provides:

"Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by the observers, shall be admitted unless at least one-third of the Parties object:

(a) International agencies or bodies, either government or non-governmental, and national governmental agencies and bodies; and

(b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted these observers shall have the right to participate, but not to vote."

Persons wishing to be observers representing United States national non-governmental organizations must receive prior approval of the Fish and Wildlife Service. Requests for such approval should include evidence of technical qualification in protection, conservation or management of wild fauna or flora and should be sent to the Federal Wildlife Permit Office (see "ADDRESS" above). Copies of letters of approval should be used by these organizations to inform the Secretariat of their wish to send observers to the meeting. In the past, the Secretariat has required such information to be received at least 1 month prior to the meeting. The Secretariat may be contacted at the following address: CITES Secretariat, 6 rue du Maupas, Case postale 78, CH–1000 LAUSANNE 9 Chauderon, Switzerland.

This notice was prepared by Earl Baysinger and Arthur Lazarowitz of the Federal Wildlife Permit Office under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531–43.

Dated: May 18, 1987.

Frank Dunkle,

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 87–11717 Filed 5–21–87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

## Foreign Proposals To Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of proposed amendments to appendices.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to CITES. Any nation that is a Party to CITES may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces proposals submitted by Parties other than the United States, and invites information and comments on them in order to develop negotiating positions for the United States delegation. The proposals will be considered in July 1987 at the sixth regular meeting of the Conference of the Parties.

**DATE:** The U.S. Fish and Wildlife Service (Service) will consider all comments received by June 15, 1987, in developing negotiating positions. The Service plans to publish a notice of its decisions on the positions prior to the meeting of the Parties.

**ADDRESS:** Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 527, Matomic Building; U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 537, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC, telephone (202) 653–5048.

**SUPPLEMENTARY INFORMATION:**

### Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatend species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses and the Secretariat's own findings and recommendations to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

### Information Sought

This notice announces proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties, and sets forth tentative negotiating positions of the United States delegation on them. The Service solicits comments on the biological status of these species, on the amount and type of trade in specimens of these species, and on the impact of trade on the populations, especially on the survival of the species. Comments that relate this information to the criteria for adding or removing species from the Appendices would be especially helpful.

It is neither practical nor in the best interests of the United States to establish inflexible negotiating positions on proposals in advance of the meeting. The Service based the present tentative positions mainly on a review of information presented by proponents in terms of criteria adopted at previous meetings of the Conference of the Parties of CITES. Some of the proposals have not yet been translated into English from Spanish or French (also official languages under CITES) and some have not been received. These proposals have been identified in the accompanying tables. The Service has been assured that all except one of the proposals will be available by May 11, 1987. The Service had also expected, at this same time, the English version of those 12 proposals originally submitted in Spanish or French, but we now understand that these will be provided by the CITES Secretariat at a later date. However, the Service will provide translations for specific proposals upon request. The Service has not yet developed a tentative negotiating position on these proposals and a few others as explained in the following table.

Because information provided in many of the proposals and otherwise currently available to the Service is too incomplete to allow clear judgments about their merits, several of the tentative negotiating positions presented are likely to be revised as further biological and trade data are obtained. Final guidance for the delegation is to be based on the best available biological and trade information, including comments received in response to this notice.

### Proposals

In accordance with the provisions of Article XV, paragraph 1(a), of the Convention, Argentina, Australia, Botswana, Brazil, United Republic of Cameroon, Chile, Congo, Ecuador, France, India, Indonesia, Italy, Kenya, Madagascar, Malawi, Malaysia, Mozambique, Netherlands, Pakistan, Papua New Guinea, Paraguay, Peru, Spain, Sudan, Suriname, Switzerland, United Republic of Tanzania, United Kingdom of Great Britain and Northern Ireland, Uruguay, and Zambia, all Parties to the Convention, have communicated to the Secretariat the following proposals for amendment of Appendices I and II of the Convention. These proposals will be considered at the sixth meeting of the Conference of the Parties to the Convention, to be held in Ottawa, Canada, from July 12–24, 1987.

About half the proposals listed were submitted by Switzerland, usually alone, but in two instances with a supporting proposal from Australia. All except three of these entries are recommendations based on a 10-year review of the listings that was promulgated at the 1981 Conference of the Parties in New Delhi. Most (61 of 67) of the proposals by Switzerland and recommendations to remove those species from Appendix II that have never been reported in trade and which the chairman of the 10-year review committee believed should be considered for deletion from the Appendices, unless the species have or should be included in Appendix II

because they are very similar in appearance to related taxa that do appear in trade.

We point out, however, that the lack of reported trade for some species proposed for removal from appendix II may be due to (1) their rarity, (2) the possibility that their listing in this appendix has inhibited trade, or (3) the lack of proper documentation or reporting of trade. Consequently, the Service does not believe lack of appearance in trade in itself is sufficient to warrant the removal of a taxon from Appendix II. In establishing the tentative negotiating position of these 10-year review, delisting proposals, the Service considered the degree of vulnerability of the species and the possibility of its being in trade.

Proposals by Parties other than the United States are listed in the following table. Tentative negotiating positions of stipulations and the basis for them also are indicated. These positions were taken largely on the basis of the information contained in the proposal. If inadequate population and/or trade information was provided, the Service's position was usually opposed to the proposal. However, the Service was slightly more accepting of limited data and of data from other sources when considering uplisting proposals. The complete text of each proposal will be available for public inspection at the Service's Office of Scientific Authority (see address above).

| Species | Proposed amendment | Proponent | Tentative U.S. position [1] |
|---|---|---|---|
| MARSUPIALIA | | | |
| *Burramys parvus* (Mountain pygmy possum). | Remove from II | Switzerland | Support (3). |
| *Myrmecobius fasciatus* (Marsupial anteater). | Add to I | Australia | (2). |
| *Phalanger lullulae* (Woodlark Island cuscus). | do | Papua New Guinea | (2). |
| Insectivora: | | | |
| *Erinaceus frontalis* (African hedgehog) | Remove from II | Switzerland | Support (3). |
| Lagomorpha: | | | |
| *Nesolagus netscheri* (Sumatran short-eared rabbit). | do | do | Oppose (1). |
| Rodentia: | | | |
| *Dipodomys phillipsii phillipsii* (Phillips' kangaroo rat). | do | do | Do. |
| *Lariscus hosei* (Four-striped or Borneon black-striped ground squirrel). | do | do | Do. |
| *Notomys spp.* (Hopping mouse) | do | Australia | Oppose (4,5). |
| *Pseudomys fumeus* (Smoky mouse) | Remove from I | do | Oppose (4,8) |
| *Pseudomys shortridgei* (Heath rat, Shortridge's native mouse). | Remove from II | do | Oppose (4). |
| Carnivora: | | | |
| *Cynogale bennettii* (Otter civet) | do | Switzerland | Oppose (1). |
| *Dusicyon gymnocercus* (Pampas fox) | Add to II | Uruguay | (7). |
| *Eupleres goudotii* (Malagasy mongoose). | Remove from II | Switzerland | Support (8). |
| *Felis yagouaroundi* (Jaguarundi) | Inclusion in II (inclusion of the populations of Central and North America in I in lieu of *Felis yagouaroundi cacomitli, F. y. fossata, F. y. panamensis,* and *F. y. Tolteca*). | do | Support (9). |
| *Panthera tigris altaica* (Siberian tiger | Transfer from II to I | do | Support (3). |
| Pinnipedia: | | | |
| *Odobenus rosmarus* (Walrus) | Add to II | Netherlands | Oppose (10) |
| Sirenia: | | | |
| *Trichechus senegalensis* (West African manatee). | Remove from II or transfer from II to I | Switzerland | Oppose (8, 16) Oppose (11). |
| Artiodactyla: | | | |
| *Catagonus wagneri* (Chacoan or giant peccary). | Add to I | Paraguay | Support (3). |
| *Pudu mephistophiles* (Northern Pudu) | Remove from II | Switzerland | Oppose (1) |
| *Tayassu spp.* (Peccary) | Add to II (Similarity of appearance) | Peru | Support (3,16). |
| *Vicugna vicugna* (Vicuna) | Transfer of part of the population of Parinacota Province, Ia. Region of Tarapaca from I to II (under special conditions—export of cloth only?). | Chile | (7). |
| *Vicugna vicugna* (Vicuna) | Transfer of the populations of Pampa Galeras National Reserve and Nuclear Zone, Pedregal, Cacconta y Sawacocha (Province of Lucanas), Sals Picotani (Province of Azangaro), Sals Tupac Amaru (Province of Junin), and of Salinas Aguada Blanca National Reserve (provinces of Arequipa and Calloma) from I to II (under specific conditions—export of cloth only?). | Peru | Support (7, 16). |

| Species | Proposed amendment | Proponent | Tentative U.S. position [1] |
|---|---|---|---|
| **BIRDS** | | | |
| Order Ciconiiformes: | | | |
| *Balaeniceps rex* (Whale-headed stork) | Add to I | Netherlands | Oppose (4, 12). |
| *Eudocimus ruber* (Scarlet ibis) | Add to II | France, Suriname | Oppose (4, 11). |
| *Mycteria cinerea* (Milky wood stork) | Add to I | Malaysia | Oppose (11, 12). |
| Order Anseriformes: | | | |
| *Anas bernieri* (Madagascan teal) | Remove from II | Switzerland | Oppose (1). |
| Order Galliformes: | | | |
| *Francolinus ochropectus* (Djibouti francolin). | ...do | ...do | Do. |
| *Francolinus swierstrai* (Swierstra's francolin). | ...do | ...do | Do. |
| Megapodius freycinet abbotti (Abbott's megapode). | ...do | ...do | Do. |
| *Megapodius freycinet nicobariensis* (Nicobar megapode). | ...do | ...do | Do. |
| *Tetrao mlokosiewiczi* (Caucasian black grouse). | ...do | ...do | Do. |
| *Rheinartia ocellata* (Crested argus pheasant). | Add to I | Malaysia | Oppose (4, 12). |
| Order Gruiformes: | | | |
| *Otididae spp.* (Bustards) | Add to II (all species not already on appendices). | United Kingdom | Support (3). |
| *Pedionomus torquatus* (Plains wanderer). | Remove from II | Switzerland | Do. |
| Order Charadriiformes: | | | |
| *Larus brunnicephalus* (Brown-headed gull). | ...do | Switzerland | Support (8). |
| *Numenius minutus* (Little whimbrel) | ...do | ...do | Do. |
| Order Psittaciformes: | | | |
| *Anodorhynchus hyacinthinus* (Hyacinth macaw). | Transfer from II to I | Brazil | (7, 13). |
| *Ara militaris* (Military macaw) | ...do | Argentina | Oppose (4, 14). |
| *Probosciger aterrimus* (Palm cockatoo) | ...do | Papua New Guinea | Support (2). |
| Order Apodiformes: | | | |
| *Trochilidae spp.* (Hummingbirds) | Add to II | Ecuador | (2). |
| Order Piciformes: | | | |
| *Picus squamatus flavirostris* (Common scaly-bellied woodpecker). | Remove from II | Switzerland | Support (8). |
| Order Passeriformes: | | | |
| *Meliphaga (Lichenostomus melanops) cassidix* (*Helmeted honeyeater*). | Remove from I | Australia | Oppose (4). |
| *Psophodes nigrogularis* (Western whipbird). | Remove from II | Australia, Switzerland | Support (3). |
| *Pitta brachyura nympha* (Fairy pitta) | ...do | Switzerland | Oppose (1). |
| *Pseudochelidon sirintarae* (White-eyed river martin). | ...do | ...do | Support (8). |
| *Niltava ruecki* (Rueck's blue flycatcher) | ...do | ...do | Oppose (1). |
| *Carduelis yarrelli* (Yarrell's siskin) | ...do | ...do | Do. |
| *Emblema oculata* (Red-eared firetail finch). | ...do | ...do | Do. |
| *Gubernatrix cristata* (Yellow cardenal) | Add to I | Argentina | (7). |
| *Paroaria capitata* (Yellow-billed cardenal). | Add to II | ...do | (7). |
| *Paroaria coronata* (Red-crested cardenal). | ...do | ...do | (7). |
| **REPTILIA** | | | |
| Order Crocodylia: | | | |
| *Crocodylus cataphractus* (African slender-snouted or African dwarf crocodile). | Transfer of the Congolese population from I to II, subject to an annual Export quota of 600 specimens. | Republic of Congo | Oppose (4). |
| Order Crocodylia: | | | |
| *Crocodylus niloticus* (Nile crocodile) | Maintenance of the population of Botswana in II, subject to an annual export quota of 2,000 specimens. | Botswana | (2). |
| | Maintenance of the Cameroonian population in II, subject to an annual export quota of 100 specimens. | Cameroon | (7). |
| | Maintenance of the Congolese population in II, subject to an annual export quota of 1,000 specimens. | Republic of Congo | Oppose (4). |

| Species | Proposed amendment | Proponent | Tentative U.S. position [1] |
|---|---|---|---|
| | Maintenance of the Kenyan population in II, subject to an annual export quota of 5,000 specimens. | Kenya | Do. |
| | Maintenance of the Malagasy population in II, subject to an annual export quota of 5,500 specimens. | Madagascar | (7). |
| | Maintenance of the Malawian population in II, subject to an annual export quota of 800 specimens. | Malawi | (2). |
| | Maintenance of the population of Mozambique in II, subject to an annual export quota of 1,000 specimens. | Mozambique | Oppose (4). |
| | Maintenance of the Sudanese population in II, subject to an annual export quota of 5,000 specimens. | Sudan | (2). |
| | Maintenance of the Tanzanian population in II, subject to an annual export quota of 1,000 specimens. | Tanzania | Support (3). |
| | Maintenance of the Zambian population in II, subject to an annual export quota of 2,000 wild specimens and an unspecified quota to be set annually by the Zambian Management Authority of ranched specimens. | Zambia | Oppose (4). |
| *Crocodylus niloticus* (Nile crocodile) | Transfer of the populations of Botswana, Cameroon, Congo, Kenya, Madagascar, Malawi, Mozambique, Sudan, United Republic of Tanzania and Zambia from II to I. | Switzerland | Support (17). |
| *Crocodylus porosus* (Saltwater crocodile). | Retention of the Indonesian population in II, without being subject to an annual export quota. | Indonesia | Oppose (4). |
| | Transfer of the population of Indonesia from II to I. | Switzerland | Support (17). |
| *Osteolaemus tetraspis* (Dwarf crocodile). | Transfer of the Congolese population from I to II, subject to an annual export quota of 1,000 specimens. | Republic of Congo | Oppose (4). |
| Order Testudinata: | | | |
| *Chelonia mydas* (Green sea turtle) | Transfer of the populations of Europa and Tromelin Islands from I to II (ranching proposal). | France | Oppose (11). |
| | Transfer of the Indonesian population from I to II. | Indonesia | Oppose (4). |
| *Eretmochelys imbricata* (Hawksbill sea turtle). | Transfer of the Indonesian population from I to II. | ....do | Do. |
| *Clemmys muhlenbergii* (Bog turtle) | Remove from II | Switzerland | Oppose (1). |
| Order Squamata: | | | |
| *Boa constrictor occidentalis* (Argentine boa constrictor). | Transfer from II to I | Uruguay | (7). |
| *Gallotia aff. simonyi* (Hierro giant lizard) | Add to I | Spain | Support (3). |
| *Paradelma orientalis* (Flap-footed legless lizard). | Remove from II | Australia, Switzerland | Do. |
| *Phrynosoma coronatum blainvillei* (San Diego horned lizard). | ....do | Switzerland | Oppose (1). |
| *Podarcis lilfordi* (Lilford's wall lizard) | Add to II | Spain | Support (3). |
| *Podarcis pityusensis* (Ibiza wall lizard) | ....do | ....do | Support (3,5). |
| *Thamnophis couchi hammondi* (Two-striped garter snake). | Remove from II | Switzerland | Oppose (1) |
| *Vipera ursinii* (Orsini's viper) | Add to I | France, Italy | Oppose (4,8,12). |
| AMPHIBIANS | | | |
| Order Caudata: | | | |
| *Ambystoma lermaense* (Lake Lerma salamander). | Remove from II | Switzerland | Oppose (1). |
| Order Anura: | | | |
| *Dendrobates altobuyensis* (Golden poison-arrow frog). | Add to I | Netherlands | Oppose (4,12). |
| *Dendrobates spp.* (Poison-dart frogs) | Add to II | Suriname | Support (3). |
| *Dyscophus antongili* (Tomato frog) | Add to I | Netherlands | Do. |
| *Mantella auranliaca* (Golden frog) | ....do | ....do | Oppose (4,12). |
| *Phyllobates spp.* (Poison arrow frogs) | Add to II | ....do | Support (3). |

| Species | Proposed amendment | Proponent | Tentative U.S. position [1] |
|---|---|---|---|
| **FISH** | | | |
| Order Osteoglossiformes: | | | |
| *Scleropages formosus* (Asian bonytongue). | Transfer of the Indonesian population from I to II. | Indonesia | Oppose (4,11). |
| Order Coelacanthiformes: | | | |
| *Latimeria chalumnae* (Coelacanth) | Remove from II | Switzerland | Support (8). |
| Order Salmoniformes: | | | |
| *Salmo chrysogaster* (Mexican golden trout). | do | do | Do. |
| *Stenodus leucichthys leucichthys* (White salmon). | do | do | Do. |
| Order Cypriniformes: | | | |
| *Caecobarbus geertsi* (African blind barb fish). | do | do | Oppose (1). |
| *Plagopterus argentissimus* (Woundfin) | do | do | Support (8). |
| *Ptychocheilus lucius* (Colorado River Squawfish). | do | do | Do. |
| Order Atheriniformes: | | | |
| *Cynolebias constanciae* (Pearl fishes) | do | do | Do. |
| *Cynolebias marmoratus* (Pearl fishes) | do | do | Do. |
| *Cynolebias minimus* (Pearl fishes) | do | do | Do. |
| *Cynolebias opalescens* (Pearl fishes) | do | do | Do. |
| *Cynolebias splendens* (Pearl fishes) | do | do | Do. |
| *Xiphophorus couchianus* (Monterre platyfish). | do | do | Oppose (1). |
| **MOLLUSCS** | | | |
| Class Pelecypoda (=Bivalvia): | | | |
| *Choromytilus* (=Mytilus) *chorus* (Choro). | do | do | Support (8). |
| *Cyprogenia aberti* (Pearly mussels) | do | do | Oppose (1). |
| *Epioblasma torulosa rangiana* (Pearly mussels). | do | do | Do. |
| *Fusconaia subrotunda* (Pearly mussels) | do | do | Do. |
| *Lampsilis brevicula* (Pearly mussels) | do | do | Do. |
| *Lexingtonia dolabelloides* (Pearly mussels). | do | do | Do. |
| *Pleurobema clava* (Pearly mussels) | do | do | Do. |
| Class Gastropoda: | | | |
| *Achatinella* spp. (Oahu tree snails) | Add to I | Netherlands | Support (3). |
| *Paryphanta* spp. | Remove from II | Switzerland | Support (8). |
| *Coahuilix milleri* (Cuatro Cienega snails). | do | do | Oppose (1). |
| *Cochliopina milleri* (Cuatro Cienega snails). | do | do | Do. |
| *Durangonella coahuilae* (Cuatro Cienega snails). | do | do | Do. |
| *Mexipyrgus carranzae* (Cuatro Cienega snails). | do | do | Do. |
| *Mexipyrgus churincsenus* (Cuatro Cienega snails). | do | do | Do. |
| *Mexipyrgus escobedae* (Cuatro Cienega snails). | do | do | Do. |
| *Mexipyrgus lugoi* (Cuatro Cienega snails). | do | do | Do. |
| *Mexipyrgus mojarralis* (Cuatro Cienega snails). | do | do | Do. |
| *Mexipyrgus multilineatus* (Cuatro Cienega snails). | do | do | Do. |
| *Mexithauma quadripaludium* (Cuatro Cienega snails) | do | do | Do. |
| *Nymphophilus minckleyi* (Cuatro Cienega snails). | do | do | Do. |
| *Paludiscala caramba* (Cuatro Cienega snails). | do | do | Do. |
| **INSECTS** | | | |
| Class Insecta: | | | |
| *Bhutanitis* spp. (Bhutan Glory swallowtails). | Add to II | United Kingdom | Support (3). |
| *Ornithoptera alexandrae* (Queen Alexandra's birdwing butterfly). | Transfer from II to I | do | Do. |
| *Papilio chikae* (Luzon peacock swallowtail). | Add to I | do | Oppose (4, 12). |
| *Papilio homerus* (Homerus swallowtail) | do | do | Support (3). |
| *Papilio hospiton* (Corsican swallowtail) | do | do | Oppose (4, 12). |

| Species | Proposed amendment | Proponent | Tentative U.S. position [1] |
|---|---|---|---|
| *Teinopalpus spp.* (Kaiser-I-Hind butterflies). | Add to II | do | Support (3). |
| **FLAT WORMS** | | | |
| Order Hirudinea: *Hirundo medicinalis* (Medicinal leech) | do | do | Oppose (4). |
| **CORALS** | | | |
| Class Anthozoa: *Corallium rubrum* (Precious red coral) | do | Spain | (7). |
| **PLANTS** | | | |
| Family Cactaceae: *Astrophytum asterias* (Sea urchin or star cactus). | Transfer from II to I | United Kingdom | Support (3). |
| Family Compositae (=Asteraceae): *Saussurea lappa* (Costus or Kuth root) | Transfer from I to II | Pakistan | Oppose (4, 11). |
| Family Cupressaceae: *Fitz-Roya cupressoides* (Alerce or Fitz-roya). | Transfer of the coastal population of Chile from II to I. | Argentina | Support (3). |
| Family Cycadaceae: *Cycas beddomei* (Beddome cycad) | Transfer from II to I | India | Oppose (8). |
| Family Liliaceae: *Iphigenia stellata* (Starry iphigenia) | Add to II | do | Oppose (8). |
| Family Nepenthaceae: *Nepenthes khasiana* (Indian tropical pitcher plant). | Add to I | do | Support (3). |
| *Nepenthes spp.* (Tropical pitcher plants). | Add to II all species not already on an appendix. | Malaysia | Support (3,5,16). |
| Family Orchidaceae: *Dendrobium pauciflorum* (Few-flowered dendrobium). | Transfer from II to I | India | Support (3). |
| *Paphiopedilum druryi* (Drury tropical lady's slipper). | do | do | Do. |
| Family Palmae (=Arecaceae): *Chrysalidocarpus lutescens* (Areca palm). | Remove from II | Netherlands | Do. |

[1] The basis for the tentative U.S. position on each proposal or the reason for no position being taken is indicated by number in the table:

(1) The proposal for delisting appears based on lack of appearance in trade, but it appears that there is a sufficient threat of trade relative to the status of the species and other threats to warrant retention on Appendix II.

(2) This proposal has not been received, but we anticipate that it will be available for comment by May 11. However, the information to support the export quota for the Nile Crocodile population in Sudan will not be available until later.

(3) Listing or delisting of the taxon, as proposed, appears to be justified by information currently available to the Service.

(4) The population status (i.e., degree of threat of extinction) of the entire species or geographically separate population addressed by the proposal does not appear to warrant listing or delisting as proposed.

(5) Listing of this species, or one or more of a species group, appears justified because of the similarity of appearance of this species or one or more of the species group to others that are subject to trade.

(6) The Service would support downlisting to Appendix II.

(7) The original proposal is in Spanish or French. The Service will provide an English translation upon request.

(8) Available evidence suggests there is little likelihood that there has been or will be any significant international trade in this species.

(9) This is a technical change so that the appendices will better conform to the original intent of the listing.

(10) The Service does not believe that the Pacific walrus (*Odobenus rosmarus divergens*) warrants listing under Article II 2(a) of the convention and is awaiting further information on the status of the Atlantic walrus (*O. r. rosmarus*) from Canada.

(11) The trade status (i.e., the degree to which the species is subject to and threatened by international trade) does not warrant supporting the proposed listing.

(12) The Service does not have sufficient reason to believe that the species is in imminent danger of extinction but would support listing this species on Appendix II.

(13) The report of the group working on significant trade in endangered species on Appendix II leads us to believe that the Service eventually will support this proposal.

(14) The data presented in the proposal do not indicate that this species is currently threatened with extinction; the Service would entertain listing specific populations of the species on Appendix I.

(15) Not used.

(16) If the Parties accept that one rationale for listing a species in Appendix II for reasons of similarity of appearance, is to protect species in Appendix I, then we support the proposals for retention in or addition to Appendix II. Although, the Convention does not specifically provide for this basis of listing, resolutions from Conferences of the Parties, as well as, CITES and Service documents appear to support this rationale for listing in Appendix II.

(17) The intention of this proposal is to transfer to Appendix I those populations of crocodiles for which information is not provided to support the desired export quota.

(18) Based upon the statements about the recovery of some populations, and the intention to roundup vicuna herds for shearing, to release the animals back to the wild, and to allow only the export of vicuna cloth (as presented at the second Technical Committee Meeting of CITES in June 1986), the United States tentatively supports the proposal.

**List of Subjects in 50 CFR Part 23**

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

This notice is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884, as amended). It was prepared by Dr. Charles W. Dane, Office of Scientific Authority.

Dated: May 18, 1987.

**Frank Dunkle**

*Director, U.S. Fish and Wildlife Service.*

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Friday
May 22, 1987

Part III

# Department of Agriculture

**Foreign Agricultural Service**

**7 CFR Part 6**

**Section 22 Dairy Import Quotas for the European Economic Community and Portugal; Interim Rule**

**Cheese Import License Special Application Period; Notice**

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

## Section 22 Dairy Import Quotas for the European Economic Community and Portugal

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations governing the importation under license of certain dairy products which are subject to quantitative limitations in order to implement Presidential Proclamation No. 5618 of March 16, 1987, which modified such quantitative limitations by transferring to the European Economic Community quotas previously allocated to Portugal and by providing for the importation of an additional 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community. A special application period for the 1987 quota year is being established for importers who desire to receive import licenses for the importation of that quantity of Italian-type cow's milk cheese in original loaves from the European Economic Community.

DATES: This interim rule is effective May 22, 1987. Comments on this interim rule must be received on or before June 22, 1987 in order to be assured of consideration.

ADDRESSES: Mail comments to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, DC 20250. Copies of all written comments received will be available for examination by interested persons in Room 6622 of the South Building, Department of Agriculture (14th and Independence Avenue, SW.), Washington, DC during regular business hours (8:15AM–4:45PM weekdays).

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, DC 20250 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4706 of December 11, 1979, established quantitative limitations on imports of certain dairy articles in accordance with section 701 of the Trade Agreements Act of 1979 (Pub. L. 96–39) and section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). These quantitative limitations were amended by Presidential Proclamations No. 4811 of December 30, 1980, and No. 5425 of January 6, 1986. Pursuant to those proclamations, the Department of Agriculture issued regulations providing that the dairy articles subject to such quantitative restrictions could be entered into the United States only by or for the account of a person or firm to which a license has been issued by or under the authority of the Secretary of Agriculture and only in accordance with the terms of such license.

Presidential Proclamation No. 5618 of March 16, 1987, modified such quantitative limitations by providing for additional imports of up to 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community and by transferring quota allocations totaling 581 metric tons of cheese from Portugal to the European Economic Community. However, 353 metric tons of this 581 metric ton allocation are reserved for Portugal.

The purpose of this interim rule is to amend the regulations governing the importation of dairy articles subject to quotas in order to implement Presidential Proclamation No. 5618. This interim rule amends 7 CFR Part 6, Subpart—Section 22 Import Quotas by:

(1) Revising Appendix 1, "Articles subject to the historical and nonhistorical licensing provisions of Import Regulation 1, Revision 7 and respective annual import quotas for each quota year" to transfer quota allocations totaling 228 metric tons of cheese from Portugal to the European Economic Community;

(2) Revising Appendix 2, "Articles subject to the historical and supplementary licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year" (i) to provide for additional imports of 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community and (ii) to transfer the quota allocations totaling 353 metric tons of cheese from Portugal to the European Economic Community;

Redefining "EC" to include Portugal and Spain which have acceded to the European Economic Community;

(4) Amending section 6.26(c) to permit an appropriate official of the Government of Portugal to endorse applications for Other Cheese Not Specially Provided For (Tariff Schedules of the United States Appendix Number 950.10D), thereby permitting the Government of Portugal to name preferred importers for this item only; and

(5) Adding section 6.34 to include Office of Management and Budget control number 0551–0001 for the application forms for import licenses.

Licenses for the importation of the additional quota quantity of 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community will be issued on the following basis:

(1) 786 metric tons will be divided on a prorated basis among persons currently holding historical import licenses authorizing them to import Italian-type cow's milk cheese from the European Economic Community. In addition to the basic annual allocation in Appendix 1, this will constitute a new basic annual allocation under Appendix 2; and

(2) 786 metric tons will be divided in accordance with 7 CFR 6.26(c) among applicants who qualify for supplementary licenses to import such cheese.

The application period for import licenses for the 1987 quota year was from August 1, 1986 through November 1, 1986. However, since there has been no opportunity for applicants to qualify for supplementary import licenses for the additional 786 metric tons of cheese that may be imported from the European Economic Community, it has been determined that a special application period for such licenses shall be initiated.

Persons who desire to receive supplementary import licenses for the importation of Italian-type cow's milk cheese in original loaves from the European Economic Community during the 1987 quota year must submit their application in writing to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616-South Building, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, during the 10-day application period which begins on June 1, 1987 and ends on June 10, 1987.

Eligibility to receive such licenses and the allocation of such licenses will be determined in accordance with established rules and procedures in 7 CFR 6.20–6.34. The application period for supplementary import licenses to import these items during the 1988 quota year and subsequent quota years will be governed by 7 CFR 6.25(b)(4).

See the notice for this special application period in today's issue of the Federal Register.

Since the 1987 quota year has begun, it is important that licenses to import the specified quantity of cheeses be issued

as quickly as possible so that importers will have sufficient time to import such cheeses during the 1987 quota year. Accordingly, it has been determined that this interim rule shall become effective on May 22, 1987. However, comments from interested persons are requested. Comments must be received by June 22, 1987, in order to be assured of consideration. After comments have been received and reviewed, a final rule will be published setting forth any changes which may be necessary in these regulations.

This interim rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and had been classified as "not major" since this interim rule will not have any of the significant effects specified in those documents.

Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this rule, the Administrator, Foreign Agricultural Service (FAS), hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities since the import licensing system allows equal access to the system for all applicants regardless of the size of the applying firms. This interim rule will enhance the capability of both large and small firms to import certain cheeses from the European Economic Community. The public is invited to comment on the impact of this interim rule on small entities, and the Administrator, FAS, will review this determination in light of those comments.

**List of Subjects in 7 CFR Part 6**

Section 22, Import quotas, Dairy products.

**PART 6—[AMENDED]**

Accordingly, 7 CFR Part 6, Subpart—Section 22 Import Quotas, is amended as follows:

1. The authority citation for 7 CFR Part 6, Subpart—Section 22 Import Quotas, continues to read as follows:

**Authority:** Section 3, Pub. L. 80–897, Stat. 1248, as amended (7 U.S.C. 624); Secs. 701, 702, Pub. L. 98–39, 93 Stat. 288, 272 (19 U.S.C. 1202 note); Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202); Sec. 501, Pub. L. 82–137, 65 Stat. 290, as amended (31 U.S.C. 9701).

**§ 6.21 [Amended]**

2. Paragraph (m) of § 6.21 is amended by deleting the word "ten" and inserting the word "twelve" in its place and inserting the words "Portugal, Spain" between the words "the Netherlands," and "and the United Kingdom."

3. Section 6.26 is amended by revising the introductory text of paragraphs (c)(2) and (3) to read as follows:

**§ 6.26 Allocation of annual quota and issuance of licenses.**

* * * * *

(c) * * *

(2) A supplementary quota share for an article in Appendix 2 from the EC, other than a share for the quantity reserved for Portugal in Group V(c), will be determined on the following basis:

* * * * *

(3) A supplementary quota share for an article in Appendix 2 from a particular country of origin, other than those provided for in paragraph (2), will be determined on the following basis:

* * * * *

4. By adding a new § 6.34 to read as follows and removing the OMB control number following § 6.28:

**§ 6.34 Paperwork Reduction Act assigned number.**

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 25 and has assigned OMB number 0551–0001 expiring November 30, 1988.

**Appendix 1—[Amended]**

5. Group V (b) of Appendix 1—Articles subject to the historical and nonhistorical licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year, is amended by removing the line beginning with "Portugal" and revising the line beginning with "EC" to read as follows:

| | | |
|---|---|---|
| "EC | 2,603,000 | 5,738,573" |

6. Group V (c) of Appendix 1—Articles subject to the historical and nonhistorical licensing provision of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year, is amended by deleting the line beginning with "Portugal" and changing the line beginning with "EC" to read as follows:

| | | |
|---|---|---|
| "EC | 10,724,000 | 23,642,128" |

**Appendix 2—[Amended]**

7. Group IV (a) of Appendix 2—Articles subject to the historical and supplementary licesning provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year, is amended by adding the following new line immediately after the line beginning with "Argentina":

| | | |
|---|---|---|
| "EC | 1,572,000 | 3,465,631" |

8. Group V (c) of Appendix 2—Articles subject to the historical and supplementary licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year, is amended by deleting the line beginning with "Portugal" and changing the line beginning with "EC" to read as follows:

| | | |
|---|---|---|
| "EC | 9,732,000 (of which 353,000 are reserved for Portugal). | 21,455,166 (of which 778,223 are reserved for Portugal)" |

Signed this 14th day of May, 1987.

**Thomas O. Kay,**

*Administrator, Foreign Agriculture Service.*

[FR Doc. 87–11799 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Cheese Import License Special Application Period

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice is to advise applicants for supplementary import licenses for Italian-type cow's milk cheese in original loaves from the European Economic Community of the special 19-day application period which begins on June 1, 1987 and ends on June 19, 1987.

DATES: License applications must be postmarked June 1, 1987 through June 19, 1987.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6618-South Building, Department of Agriculture, Washington, DC 20250, Telephone (202) 447-5270.

Presidential Proclamation No. 5618 of March 19, 1987 modified the quantitative limitations on cheese which may be imported into the United States in part by providing for the importation of an additional 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community. In accordance with 7 CFR 6.26(a)(3), one-half to this amount has been allocated on a historical basis. The remaining one-half, 786 metric tons, will be allocated to applicants for supplementary licenses. A special application period for the 1987 quota year is being established for importers who desire to receive supplementary import licenses for one-half of the quantity of cheese specified in Group IV (a) of Appendix 2 to 7 CFR 6.20-6.34, as amended by certain rule published elsewhere in today's issue of the Federal Register. Therefore the purpose of this notice is to advise all applicants that applications for supplementary licenses will only be accepted if postmarked during the 19-day application period which will begin on June 1, 1987 and end on June 19, 1987. Licenses will be awarded as set forth in 7 CFR 6.28(c)(2).

Signed this 19th day of May, 1987.

Thomas O. Kay,

*Administrator, Foreign Agricultural Service.*

[FR Doc. 87-11200 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-10-M

federal register

Friday
May 22, 1987

Part IV

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 312**

**Investigational New Drug, Antibiotic, and Biological Drug Product Regulations; Treatment Use and Sale; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 83N-0294]

# Investigational New Drug, Antibiotic, and Biological Drug Product Regulations; Treatment Use and Sale

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final procedures under which promising investigational new drugs may be made available to desperately ill patients before general marketing begins. These new procedures are intended to facilitate the availability of promising new drugs to patients as early in the drug development process as possible, and to obtain additional data on the drug's safety and effectiveness. The new procedures apply to patients with serious and immediately life-threatening diseases for which no comparable or satisfactory alternative drug or other therapies exist. FDA has clarified the final rule to strengthen the policy objectives of the reproposal while safeguarding against the proliferation of fraudulent products and ensuring the integrity and vitality of controlled clinical trials. FDA is also defining the conditions under which drug manufacturers may charge for investigational new drug products. These procedures are intended to provide sufficient incentives for drug manufacturers to make investigational new drugs available to patients before general marketing begins, but under sufficient safeguards so as to prevent commercialization of the product as well as to ensure the integrity of clinical trials. These actions are based on comments received on the March 19, 1987, reproposal.

DATE: The regulation will become effective on June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 19, 1987 (52 FR 8850), FDA published reproposed regulations governing the conditions under which patients could obtain investigational drugs primarily for treatment use, and the conditions under which investigational drugs could be sold. FDA provided 30 days for public comment and, upon request, extended the comment period for an additional 15 days until May 5, 1987. In addition to the many written comments received, the FDA Commissioner held a number of meetings during the comment period with health care professionals, consumer group leaders, representatives from orphan drug organizations, clinicians and clinical investigators from academia, and representatives from the pharmaceutical industry, including those specializing in biotechnology. FDA has benefitted immensely from this full and forthright public discussion of these issues, and the agency has revised portions of the final regulation to reflect the many comments received on the reproposal.

Highlights of the final rule are summarized below, followed by a more detailed response to comments and discussion of the final rule.

## I. Highlights of the Final Rule

### A. Introduction

FDA received over 300 comments on the reproposal, representing virtually every affected constituency. These included consumers, consumer group leaders, health professionals and health care providers, representatives of specific disease and orphan drug organizations, State and local health departments, clinical investigators and research institutions, institutional review boards, pharmaceutical manufacturers, and former FDA officials. These comments reflect a broad public acceptance and earnest support for the goal of providing promising new drugs to desperately ill patients as early in the drug development process as possible, and of obtaining additional data on the drug's safety and effectiveness. For this reason, FDA has inserted a statement of this purpose directly into the regulation itself (§ 312.34(a)) to ensure that the regulation is interpreted and applied in a manner consistent with its intended purpose.

There were also a number of specific questions or concerns raised. These fall under four main categories: (1) Protecting against health fraud or premature exposure of patients to untested drugs; (2) ensuring the integrity of clinical trials; (3) ensuring the ethical underpinnings of the drug development process; and (4) providing a clearer description of which costs can be considered in setting the price that could be charged for investigational drugs. Most of these comments were directed towards preventing possible abuses that some believed might have occurred under the reproposal. However, a number of these comments also suggested the addition of specific safeguards which, if adopted, could serve both to support and strengthen the principal policy goals of the reproposal while minimizing the likelihood of possible abuse. As described below, FDA has made the necessary refinements to the final rule to accomplish these dual objectives.

### B. Treatment Use of Investigational Drugs.

Like the reproposal, the final rule regarding treatment use provides general criteria for allowing an investigational new drug to be made available to desperately ill patients primarily for treatment use. Minor modifications have been made to these criteria to read as follows: (1) The drug is intended to treat a serious or immediately life-threatening disease; (2) there is no comparable or satisfactory alternative drug or other therapy available to treat that stage of the disease in the intended patient population; (3) the drug is under investigation in a controlled clinical trial under an IND in effect for the trial, or all clinical trials have been completed; and (4) the sponsor of the controlled clinical trial is actively pursuing marketing approval of the investigational drug with due diligence (§ 312.34(b)(1)).

Also like the reproposal, in the case of a drug intended to treat a "serious" disease, the final rule provides that the Commissioner may deny a request for treatment use if there is insufficient evidence of safety and effectiveness to support such use (§ 312.34(b)(2)).

In response to comments, FDA has revised the criteria for the granting of a treatment IND for drugs intended to treat immediately life-threatening diseases. In this situation, under the final rule, the Commissioner may deny a request for treatment use if the available scientific evidence, taken as a whole, fails to provide reasonable basis for concluding that the drug: (1) May be effective for its intended use in its intended patient population: or (2) would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury (§ 312.34(b)(3)(i) (A) and (B)).

FDA has also added into the regulation a definition of "immediately life-threatening" to mean a stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment (§ 312.34(b)(3)(ii)).

The final rule also clarifies that treatment use of an investigational drug is conditioned on the sponsor and investigator complying with the safeguards of the IND process, including the regulations governing informed consent (21 CFR Part 50) and institutional review boards (21 CFR Part 56) and the applicable provisions of Part 312, including distribution of the drug through qualified experts, maintenance of adequate manufacturing facilities, and submission of IND safety reports (§ 312.34(c)).

Finally, like the reproposal, the final rule contains provisions for placing a proposed or ongoing treatment protocol or treatment IND on clinical hold (§§ 312.34(d) and 312.42).

*C. Charging for Investigational Drugs.*

Under the final rule, FDA would continue to presume that supplying investigational drugs to subjects participating in clinical trials without charge is part of the normal cost of doing business, and that FDA approval for charging would only be granted upon a showing of why charging is needed for the sponsor to undertake or continue the clinical trial (§ 312.7(d)(1)).

With respect to drugs provided under treatment IND's, the final rule has been revised to authorize sponsors to charge for investigational drugs provided there is adequate enrollment in the ongoing clinical investigations under the authorized IND. This provision is in addition to the three other conditions contained in the reproposal, namely, that the sale does not constitute commercial marketing of a new drug for which a marketing application has not been approved; the drug is not being commercially promoted or advertised; and the sponsor of the drug is actively pursuing marketing approval with due diligence (§ 312.7(d)(2)).

In all cases, the final rule provides that the sponsor may not commercialize an investigational drug by charging a price larger than that necessary to recover costs of manufacture, research, development, and handling of the investigational drug (§ 312.7(d)(3)). This is the same standard currently applied to charging for investigational medical devices.

Finally, like the reproposal, the new rules would allow FDA to withdraw authorization for charging if the conditions underlying the initial authorization were no longer satisfied (§ 312.7(d)(4)).

*D. Effective Date.*

This regulation will become effective for treatment IND/protocols submitted after June 22, 1987.

## II. Responses to Comments

*A. Treatment Use of Investigational Drugs*

1. Scope and Criteria

1. *Definitions.* Many comments requested clarification of the term immediately life-threatening disease. Some were concerned that the term "immediately" might literally mean within several days, while other comments were concerned that, as defined, any disease that ultimately could end in death, no matter how many years into the future, could be classified under this category. Comments also requested clarification of the term "serious."

In response to the comments, FDA has defined an immediately life-threatening disease in the regulation as being a stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment. This does not mean that a clinician would have to make a prognosis with exact precision, but only to provide a general yardstick for decision-making purposes (for example, a reasonable expectation of death within 6 months). FDA will apply a common sense interpretation of the term so that death within more than a year would not normally be considered immediately life-threatening, but also that death within several days or even several weeks would be overly restrictive.

The phrase "or in which premature death is likely without early treatment" is intended to describe those fatal illnesses where death itself may not be imminent but where immediate treatment is necessary to prevent premature death. For example, an anti-retroviral drug might be found on the basis of Phase 2 studies, when used early after infection, to delay progression from the asymptomatic state to AIDS-Related Complex (ARC) and then Acquired Immune Deficiency Syndrome (AIDS). Although this progression would ordinarily take more than 12 months to occur in most patients, this circumstance would be interpreted as fitting the definition of immediately life-threatening.

In the reproposal, FDA identified two disease categories as being immediately life-threatening (advanced cases of AIDS and certain uncontrollable cardiac arrhythmias) and two diseases as being serious (Alzheimer's and multiple sclerosis). FDA received comments that some diseases, particularly multiple sclerosis, become serious only in later stages of the disease and should not be considered serious for these purposes during its earlier stages. Clarification on this point was requested.

FDA agrees that the stage of a disease is important in determining whether it is immediately life-threatening, serious, or not serious within the context of this treatment IND regulation. For diseases such as multiple sclerosis, where some stage of the disease would not be considered serious, the regulation would not be applicable to those stages. In approving an investigational drug for a treatment IND, FDA will seek to define the intended patient population and, in medically appropriate cases, will limit treatment use to particular stages of a disease or to patients with a particular set of symptoms.

To illustrate these categories further, the following diseases or stages of diseases would normally be considered to be immediately life-threatening:

a. Advanced cases of AIDS;
b. Advanced congestive heart failure (New York Heart Association Class IV);
c. Recurrent sustained ventricular tachycardia or ventricular fibrillation;
d. Herpes simplex encephalitis;
e. Most advanced metastatic refractory cancers;
f. Far advanced emphysema;
g. Severe combined immunodeficiency syndrome;
h. Bacterial endocarditis; and
i. Subarachnoid hemorrhage.

In addition, the following would normally be considered serious diseases or stages of diseases:

a. Alzheimer's disease;
b. Advanced multiple sclerosis;
c. Advanced Parkinson's disease;
d. Transient ischemic attacks;
e. Progressive ankylosing spondylitis;
f. Active advanced lupus erythematosus;
g. Certain forms of epilepsy;
h. Nonacidotic or hyperosmolar diabetes; and
i. Paroxysomal supraventricular tachycardia.

FDA recognizes these are illustrative and not complete lists.

2. *No alternative therapy.* A number of comments addressed the proposed criterion that there be no satisfactory alternative drug or other therapy available to treat the disease. Many comments supported this criterion as a necessary prerequisite to allowing treatment use of an investigational drug. Several comments, however, requested clarification of this criteria. Specifically, these comments were concerned that FDA should not interpret this criterion in an overly restrictive way so as, for example, to preclude granting of a

treatment IND where there is any approved drug or therapy available to treat the disease in question.

FDA continues to believe that the absence of alternative therapy should be prerequisite to granting a treatment IND, because one of the major principles underlying the treatment IND policy is that these drugs would be necessary to fill an existing gap in the medical therapies available. However, FDA agrees that there should be flexibility in applying this concept so as best to serve desperately ill patients. For example, the mere fact that the disease in question has existing approved therapy does not mean that the approved treatments are satisfactory for all patients.

Accordingly, FDA has clarified this criterion in the final rule by stating that there is no comparable or satisfactory alternative drug or other therapy available to treat that stage of the disease in the intended patient population (§ 312.34(b)(1)(i)). The word "comparable" has been included in the criterion of no alternative therapy, as have the phrases "that stage of" the disease and "in the intended patient population" to emphasize that FDA will not be unduly restrictive in interpreting this criterion. FDA would therefore view the criterion of no comparable or satisfactory alternative therapy as being met when there are patients who are not adquately treated by available therapies, even if the particular disease does respond in some cases to available therapy. This criterion would be met, for example, if the intended population is for patients who have failed on an existing therapy (i.e., the existing therapy did not provide its intended therapeutic benefit or did not fully treat the condition); for patients who could not tolerate the existing therapy (i.e., it caused unacceptable adverse effects); or for patients who had other complicating diseases that made the existing therapy unacceptable (e.g., concommitant disease making available therapy contraindicated) for the patient population.

3. *Criteria for immediately life-threatening disease.* Virtually all the comments supported the criteria for drugs intended to treat serious diseases. Many comments, however, objected to the proposed criteria for drugs intended to treat immediately life-threatening diseases, especially as those criteria related to evidence of therapeutic benefit. Although many of these comments agreed with having separate criteria for immediately life-threatening (versus serious) diseases, many interpreted the wording of the reproposal as requiring the Commissioner to prove a negative, i.e., the lack of effectiveness, a burden that the Commissioner, according to these comments, would unlikely be able to meet. Other comments stressed the need to emphasize that the Commissioner needs to have sufficient information to make the specified determinations, as had been stated in the preamble to the reproposal. Most of the comments addressing this issue recommended that the criterion be changed to require that there be some evidence of possible effectiveness (e.g., a reasonable scientific basis for believing that the drug may be effective) before allowing treatment use of an investigational drug for an immediately life-threatening disease. Otherwise, these comments argued, the regulation could have the unintended effect of allowing worthless, dangerous, or fraudulent drugs to be marketed to victims of life-threatening illnesses. Finally, some comments questioned the need to provide separate criteria for immediately life-threatening diseases and proposed, instead, adoption of the criteria proposed for serious diseases (e.g., sufficient evidence of safety and effectiveness) for both disease categories.

Because of the different risk-benefit considerations involved in treating such diseases, FDA continues to believe there needs to be a separate standard for drugs intended to treat immediately life-threatening diseases. However, FDA also is persuaded that, to ensure that the intended policy of providing only truly "promising" drugs to desperately ill patients is met, it is necessary to clarify the language in the final rule to require evidence that provides a reasonable basis for believing that the investigational drug may be effective. FDA emphasizes that this standard needs to be interpreted in the context of a treatment IND to treat patients suffering from immediately life-threatening illnesses so that the level of evidence needed is well short of that needed for new drug approval—and may be less than what would be needed to support treatment use in diseases that are serious but not immediately life-threatening. What the final rule does provide for is a standard of medical and scientific rationality—a requirement for sufficient scientific evidence on the basis of which experts could reasonably conclude that the drug may be effective in the intended patient population.

Such scientific evidence coud arise from a variety of sources. As stated in the preamble to the reproposal, FDA expects that data from controlled clinical trials will ordinarily be available at the time a treatment IND is requested. However, FDA is committed to reviewing and considering all available evidence, including results of domestic and foreign clinical trials, animal data, and, where pertinent, *in vitro* data. FDA will also consider clinical experience from outside a controlled trial, where the circumstances surrounding an experience provide sufficient indicia of scientific value.

As stated in the preamble to the reproposal, in making such a determination, the Commissioner obviously must have sufficient information, and must make use of all available information. It follows that, under the final rule, it is expected that the Commissioner will be provided with sufficient data to make the specified determination.

Accordingly, the final rule has been revised to provide that the Commissioner may deny a request for treatment use of an IND for an immediately life-threatening illness if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug (1) may be effective for its intended use in its intended patient population; or (2) would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury (§§ 312.34(b)(3)(i)(A) and (B)).

2. Safeguards

4. *Overview.* FDA's objectives in regulating the clinical testing of new drugs are to protect the rights and safety of human subjects of such testing while, at the same time, facilitating the development and marketing of beneficial drug therapies. In reproposing rules on treatment uses for investigational drugs, FDA was aware of the need to safeguard these objectives even while promoting the availability for treatment use of promising new therapies. Some of these safeguards—particularly those designed to protect the rights and safety of human subjects—were already in place as part of the general IND and related regulations; other safeguards were specifically designed to complement the reproposed treatment IND rules.

The most significant of these safeguards, all of which are retained in this final rule, include the following:

a. *Informed consent.* Authorization to use an investigational drug for treatment is conditioned on the licensed practitioner obtaining the legally effective informed consent of the patient. Informed consent is critical to the protection of the rights and safety of

the human subjects. There are clearly significant risks in taking all experimental drugs, including drugs intended for treatment use. Patients must be informed about the potential benefits and risks of drug use to help them decide whether the risks are appropriate and acceptable in their particular situation. Of course, this decision must be made under appropriate medical supervision. The regulations governing informed consent, 21 CFR Part 50, apply to the administration of drugs under an authorized treatment IND/protocol.

b. *The IND system.* It is important to emphasize that the treatment IND process takes place within the larger IND system. This means, for example, that the obligations and responsibilities of the sponsor of a clinical trial also apply to a sponsor of a treatment protocol or treatment IND. This would include, for example, the obligation to submit important adverse reactions to FDA in IND safety reports. Of equal importance, the responsibilities of the licensed medical practitioner using an investigational drug for treatment use are the same as those imposed on an investigator conducting a clinical trial. In addition, as for all investigational drugs, an investigational drug for treatment use must be manufactured in adequate manufacturing facilities to ensure good quality control.

c. *Protection of the integrity of the clinical testing process.* The final rule incorporates a number of safeguards that are intended to ensure that the premarketing availability of drugs for treatment use does not create incentives for delay in the timely testing, development, and submission for marketing approval of promising therapies. FDA is keenly aware that it can not let the treatment IND process become either a substitute for the research necessary to bring a drug to commercial marketing or a substitute for marketing itself.

FDA received a number of the comments on the adequacy of the safeguards discussed in the reproposal. These comments and agency responses are discussed below.

5. *Licensed medical practitioner.* Under the reproposal, drugs for treatment use are provided to "licensed medical practitioners" or "treating physicians." Some comments suggested that the obligations of the "licensed medical practitioner" or "treating physician" were not adequately delineated in the reproposal and therefore requested such clarification.

The "licensed medical practitioner" or "treating physician" is the "investigator" for purposes of the treatment protocol regulations and may, under some circumstances, be the "sponsor-investigator" for purposes of treatment IND's. As an investigator, the licensed medical practitioner must comply with all investigator responsibilities described in the IND regulations (Part 312) and in Parts 50 and 56. This means that under a treatment protocol the practitioner must, among other responsibilities, assure that the investigational drug is used in compliance with the treatment protocol, promptly report to the sponsor (or, if the practitioner is also the sponsor of the IND, to FDA) all reportable adverse drug experiences, and take all other necessary steps to safeguard the handling and distribution of the investigational drug. For treatment IND's the licensed medical practitioner is the sponsor-investigator. As sponsor-investigator, the licensed practitioner is responsible for meeting all applicable sponsor and investigator responsibilities under Parts 50, 56, and 312.

6. *Qualifications of practitioners.* Several comments questioned whether the proposed regulation provided adequate assurances of the qualifications of the licensed medical practitioners. One comment observed that section 505(i) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 355(i)) limits distribution of investigational drugs to experts qualified by scientific training and experience to investigate the safety and efficacy of drugs. The comment contended that "licensed medical practitioners" are not necessarily experts qualified within the meaning of the statutory language.

FDA believes that the regulatory scheme adopted in this final rule adequately ensures that practitioners who obtain drugs for treatment use are well qualified. A sponsor who wants to provide an investigational drug to a practitioner for treatment use under a treatment protocol is obliged to select only those practitioners who are qualified by training and experience to use the investigational drug (21 CFR 312.53(a)). A sponsor must obtain a signed investigator statement from the licensed practitioner containing a full statement of the practitioner's training and experience to qualify the practitioner to use the investigational drug. FDA expects sponsors to exercise care in selecting practitioners to take part in a treatment protocol. When a licensed practitioner is the sponsor-investigator of a treatment IND (i.e., when there is no commercial sponsor to evaluate the qualifications of the practitioners), FDA will conduct its own assessment of the practitioner's qualifications.

7. *Informed consent.* Several comments expressed uncertainty about the applicability of the informed consent requirements to treatment IND's and treatments protocols. In addition, comments asked whether, when granting a waiver of Institutional Review Board (IRB) review requirements, FDA was also waiving informed consent requirements.

Under FDA regulations, 21 CFR Part 50, informed consent of the patient or the patient's legally authorized representative is required prior to the administration of an investigational drug. In obtaining the patient's informed consent, the physician must provide the patient with information in lay language that truthfully explains the possible benefits and potential risks involved in receiving the investigational drug. (The other items of information that must be provided the patient are enumerated in the informed consent regulations in Part 50 (see 21 CFR 50.25).) FDA regards the informed consent of the patient receiving a drug for treatment use as a crucially important safeguard of the patient's rights, safety, and welfare.

To emphasize the importance of informed consent, the final rule has been revised to make clear that authorization to use an investigational drug for treatment is conditioned on the sponsor and all licensed practitioners meeting the requirements of the agency's informed consent regulations.

Finally, with respect to the concern expressed about informed consent in the context of an IRB waiver, it is worth repeating that FDA requires assurances that adequate informed consent is obtained, whether or not IRB review is waived. The requirement for informed consent is independent of the requirement for IRB review and is not subject to waiver.

8. *IRB Review.* A number of comments expressed concern about the agency's stated willingness to waive IRB review for treatment protocols and treatment IND's. In both the original June 1983 proposal and the March 1987 reproposal, FDA asserted that IRB waiver would frequently be appropriate in the treatment use context because there would be adequate guarantees of subject protection through the informed consent process. Many comments disputed this assertion. These comments contended that, even if some of the functions of the local IRB could be performed by FDA (or by a central or "national" IRB), many important responsibilities within the province of

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the IRB could only adequately be exercised by a local IRB.

FDA has reconsidered its previous decision to encourage requests for waiver of IRB review for treatment IND's and treatment protocols. The agency agrees with those comments that contended that there is much to be gained in having a local IRB conduct an initial and continuing review of the treatment of an investigational drug. IRB's are well placed to determine the adequacy of informed consent. Knowledgeable about the reputation and competence of local practitioners whose work they oversee, these IRB's may also be better able to provide greater insight into the potential benefits of treatment than can be gained by review by a distant IRB or by FDA. Also the need for review may be greater when practitioners are permitted to charge for investigational drugs. For these reasons, FDA has removed the presumption of IRB review waiver from the final rule.

It should be emphasized, however, that although the treatment IND provisions do not solicit waiver requests, waivers in appropriate cases are still available from FDA under the IRB regulations (21 CFR 56.105). As noted above, the waiver provisions do not apply to the informed consent requirement.

FDA anticipates using the waiver provision only where it would be in the best interest of subjects and where alternative mechanisms for assuring the protection of subjects are adequate. In the past, waivers have not ordinarily been granted for IND's when local IRB's are available to review the research. Most waiver requests have been for research conducted outside the United States, and, in those cases, the waiver requests have usually been to waive part, but not all, of the IRB requirements.

In the past, FDA has considered a waiver request to be in the best interest of subjects when preliminary results of clinical studies demonstrate strong initial support for the effectiveness of the drug; when patients must have immediate access to the drug; and when requiring local IRB review is not feasible. Any such waiver would require a finding of adequate alternative mechanisms to protect human subjects. These adequate alternative mechanisms might entail the initial and continuing review and approval of the IND by a committee that does not meet all of the IRB requirements, but that assumes those responsibilities normally held by local IRB's. Finally, any such waiver would require FDA's review and acceptance of the protocol and the model informed consent form.

Finally, FDA has always stated that its grant of a waiver request does not preclude a local IRB from exercising its prerogative to initiate its own review.

9. *Drug quality control.* Several comments asked whether the current good manufacturing practice (GMP) regulations applied to investigational drugs intended for treatment use.

FDA is committed to ensuring that drugs distributed under a treatment IND or treatment protocol are manufactured under adequate manufacturing facilities to ensure good quality control. In this regard, it should be emphasized that investigational drugs, like drugs approved for marketing, have always been subject to the agency's GMP inspection requirements (21 CFR Parts 210, 211, 606 et seq.). This is so even though investigational drugs are often produced in small batches in laboratories or pilot plant settings.

In the past, FDA has not routinely inspected clinical production runs in small laboratory settings or in pilot plants, although it has occasionally conducted inspections of large-scale operations that manufacture batches of drug for the larger Phase 3 studies and treatment IND's. In expanding the availability of investigational drugs for treatment uses, FDA believes that it is appropriate as an additional safeguard of the quality of such drugs to increase its monitoring of clinical batch production. Under this new policy, FDA will conduct an assessment of current good manufacturing practices at the plant where the investigational drug is produced whenever there is good cause to believe that the existing facilities may not be sufficient to ensure the quality and consistency of the investigational drug. The assessment will focus on the nature of the process to be employed in the manufacture of the treatment drug. In cases "for cause," FDA may delay authorization to distribute a drug for treatment use until a GMP plant inspection has been satisfactorily concluded. Where such an inspection is necessary, FDA will conduct it expeditiously.

10. *Active pursuit of marketing approval.* The reproposal conditioned the authorization to distribute a drug for treatment use on the investigational drug being subject to a controlled clinical trail and on the sponsor's active pursuit of marketing approval of that drug with due diligence. A number of comments asked FDA to clarify these provisions. One comment noted that the pursuit of marketing approval with due diligence would be difficult to enforce, observing that marketing approval is a necessarily complex procedure with many opportunities for delay.

In making treatment IND/protocol authorization contingent on the existence of an ongoing control clinical trail and on the sponsor's active pursuit marketing approval, FDA intended to assure that the treatment IND process would not create disincentives to the expeditious development and marketing of promising therapies. In the words of the reproposal, these provisions were designed to ensure that the drug developer make a good faith effort to seek timely and expeditious marketing approval through actions meant to advance the progress of the IND and subsequent marketing approval.

In interpreting this provision further, it is not only important that the drug developer's efforts be taken in good faith; it is also important that the sponsor's efforts stand a chance of being successful. In particular, FDA expects that the sponsor's clinical studies will be the kind of adequate and well-controlled studies that can reasonably be expected to provide data acceptable to FDA in determining the safety and efficacy of the investigational drug. The agency will, therefore, interpret the final rule to mean that the controlled trials that serve as the underpinning for the treatment IND must meet FDA's regulatory standards for adequate and well-controlled studies (21 CFR 314.126). This means that the controlled clinical trial should be designed in such a way as to reflect those attributes of an adequate and well-controlled study that are enumerated in § 314.126.

For purposes of this rule, the phrase "activity pursuing marketing approval with due diligence" is intended to encompass a drug developer's good faith effort to pursue drug development and marketing approval in a timely manner. In determining whether a sponsor is actively pursuing marketing approval, FDA will take into consideration all relevant factors. For example, in FDA's view, a necessary component of marketing approval with due diligence is the sponsor's compliance with all IND obligations, especially adverse reactions and annual reporting obligations. In addition, "actively pursuing marketing approval with due diligence" will be measured by the sponsor's success in meeting whatever developmental goals are part of the sponsor's own drug development plan. Particular attention will be paid to the speed with which subjects are enrolled in ongoing clinical trials. The agency will also focus on the sponsor's success in reaching the other major milestones of drug development. These milestones would ordinarily include timeliness in the completion of animal studies, establishment of a full-

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scale manufacturing facility, and preparation and submission of a complete marketing application.

FDA is aware that "active pursuit" of marketing approval and "due diligence" are terms found in other regulatory schemes under FDA's jurisdiction. Specifically, "active pursuit" of marketing approval is a condition of approval to export unapproved new drugs and biologics under the Drug Export Amendments of 1986, and a "due diligence" standard is applied to applicants for patent term restoration under the Drug Price Competition and Patent Term Restoration Act of 1984. FDA advises that the meaning of "actively pursuing marketing approval with due diligence" under this final rule, though related to the drug export and patent term restoration contexts, is fully governed by the discussion of this concept in this preamble. This discussion is not intended to affect the interpretation of these related phrases under the other regulatory provisions noted above.

Finally, FDA notes that under the reproposal, both the sale and the treatment IND provisions contained a due diligence requirement, but expressed in slightly different words. In this final rule, in the interest of uniformity, both provisions require that the sponsor be "actively pursuing marketing approval with due diligence."

11. *Completed studies.* Several comments suggested that the reproposal might be read as prohibiting FDA from authorizing a treatment use after completion of all controlled clinical studies.

Clearly, drugs that have completed the clincial trial process, but have not yet been approved for marketing, should be eligible for consideration for a treatment IND/protocol. FDA, therefore, agrees with these comments and has revised § 314.34(b)(1)(iii) accordingly.

3. Legal Authority

12. In response to the reproposal, several comments asserted that FDA does not have authority under the act to permit the use of investigational drugs for treatment purposes. These comments asserted that such use is inconsistent with the grant of authority in section 505(i) of the act allowing FDA to exempt from otherwise applicable provisions of the law new drugs intended "solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs." Several comments stated also that treatment IND/protocols are inconsistent with the holding of the Supreme Court in *United States* v. *Rutherford*, 442 U.S. 554 (1979) that the new drug approval requirements of the act encompass drugs intended for treating terminal diseases.

Most of the comments questioning the legality of the treatment IND/protocol provisions did so in the context of challenging the standard for obtaining approval of a treatment IND/protocol for an immediately life-threatening disease. These comments stated that, as drafted, the proposal appeared to require approval of a treatment IND/protocol when there was no evidence of the drug's safety or effectiveness. As described above, however, the final rule has been revised to make clear that a request for a treatment IND/protocol may be denied if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug (1) may be effective for its intended use in its intended patient population; or (2) would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury.

In response to those comments asserting that, regardless of the criteria for approval, FDA in general lacks authority to permit treatment INDs/protocols, the agency continues to adhere to the position expressed in the preamble to the reproposal (52 FR 8851), that there is adequate authority under the act to provide for a treatment IND/protocol. Section 505(i) of the act confers broad authority upon the Secretary (by delegation to FDA) to promulgate regulations governing the clinical investigation of new drugs to protect the rights, safety, and welfare of human subjects and otherwise to promote the public health. The language of section 505(i) of the act authorizing regulations for drugs intended solely for investigational use is intended to ensure that unapproved drugs are not commercialized before marketing approval, and not to prohibit some use of an investigational drug in a treatment-investigational setting. The treatment IND/protocol serves an investigational purpose by generating information on matters concerning the drug's safety and efficacy. For example, information about less common side effects may be revealed during study under a treatment IND/protocol and can be used to write more informative labeling for the product at the time of its approval. The requirements for a treatment IND/protocol include submission of information in advance of treatment, the submission of safety reports and other information following drug administration, informed consent, IRB review and adherence to other applicable provisions of Part 312, including distribution of drugs through qualified experts and maintenance of adequate manufacturing facilities. Thus, FDA continues to believe that there are sufficient investigational aspects to these treatment IND/protocols to justify agency authorization of such uses.

The treatment IND/protocol provisions of the final rule, including the provisions for immediately life-threatening diseases, do not violate the Supreme Court's holding in *Rutherford*. The provisions of the final rule governing treatment IND/protocol clearly continue to extend to patients suffering from terminal diseases the protections inherent in the new drug provisions of the act. The court in *Rutherford* noted that the act explicitly provides for the carefully regulated use of drugs not yet proven safe and effective. The treatment IND/protocol provisions of this final rule provide for such carefully regulated use in an investigational/treatment setting. Thus, the treatment IND final rule is not inconsistent with but rather supported by the holding in *Rutherford*.

One comment noted that under the Supreme Court's opinion in *Hynson, Westcott & Dunning*, all evidence other than evidence from adequate and well-controlled clinical investigations is anecdotal and as such may not be relied on to support new drug approval. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973). The comment contended, therefore, that such evidence should not be relied upon to permit treatment use. *Hynson* describes the standard of evidence necessary to support new drug approval—that is, approval for commercial marketing. *Hynson* does not establish an evidentiary standard for approval of an IND or a treatment IND. Further, an important goal of the treatment IND/protocol provisions is to facilitate the availability of promising new drugs to patients with serious and immediately life-threatening disease conditions for whom there are no comparable or satisfactory alternative drug or other therapies. Adoption of criteria for approval of a treatment IND/protocol that would restrict the evidence that the agency could consider solely to evidence from adequate and well-controlled clinical trials, which may be available only at the end of the development process, would not serve the purpose of allowing treatment use at an earlier stage than that provided by commercially approved drugs. Therefore, for this reason and for the reasons stated in the preamble to the reproposal (52 FR 8851), the agency disagrees with this comment.

4. Other Issues

13. *Indications for Treatment Use.* A comment asked whether treatment IND/protocols would be available for indications other than those being studied under clinical trials.

FDA expects that drugs for treatment use will only be offered for indications that are the same as, or very similar to, those under study in a controlled clinical trial. As noted previously, the decision to permit an investigational drug for treatment use is based, in large part, on the data that emerge from these clinical trials. In determining whether a treatment IND/protocol should be authorized, the available data most be relevant to the proposed treatment use. Although FDA is not establishing a requirement that the treatment use be for an indication that is identical to that in the controlled study, the need for relevant data will mean that treatment uses will only be available for indications the same as or very similar to those that are under study in the clinical trial. The intended use of the drug is one of the items that needs to be identified in the treatment protocol or treatment IND application.

14. *FDA's review.* Under the reproposal, a treatment use under a treatment IND or treatment protocol may begin 30 days after the submission is received from the sponsor. No affirmative FDA approval of the sponsor's request is required. Several comments suggested that no treatment use should be allowed until FDA has had the opportunity to complete its review and affirmatively "approve" the sponsor's request.

The 30-day review period has been part of the IND review process since the adoption of the IND regulations in 1963. FDA believes that the 30-day period available for review under the final rule will be adequate time to complete a review of a submission.

15. *Other IND's.* Several comments identified a number of categories of drugs that the agency has previously authorized for distribution to treat patients that, according to the comments, would not satisfy some or all of the technical criteria required for a treatment IND or treatment protocol. Drugs that have been so distributed include orphan drugs for non-serious diseases, "compassionate" IND's, and IND's for drugs where marketing is not likely to be pursued, such as for drugs intended to treat certain tropical diseases. The comments asked that the final rule be revised expressly to authorize the continued distribution of these drugs under an IND.

FDA believes that these concerns raise issues that are beyond the scope of this rulemaking. This final rule is not intended to restrict the premarketing availability of the categories of investigational drugs that are identified in the comments. FDA will conduct a review of this issue as necessary.

16. *Status of an investigational drug for treatment under the Controlled Substances Act.* A comment from the Administrator of the Drug Enforcement Administration (DEA) asked FDA to reaffirm that investigational drugs, including investigational drugs authorized for distribution for treatment uses, are not drugs in "currently accepted medical use in treatment in the United States" within the meaning of the Controlled Substances Act.

In scheduling a substance for control under the Controlled Substances Act, the Administrator of the DEA must make a finding as to whether that substance has a "currently accepted medical use in treatment in the United States" [21 U.S.C. 812(b)]. DEA has relied upon the recommendations of the Assistant Secretary for Health in making such determinations. In making its recommendation to the Assistant Secretary, FDA has consistently interpreted " currently accepted medical use in treatment in the United States" to mean lawfully marketed in the United States under the Federal Food, Drug, and Cosmetic Act. Nothing in this final rule alters FDA's position, nor does FDA interpret "currently accepted medical use in treatment in the United States" to include use of investigational drugs as provided for in this final rule. FDA has stated repeatedly that drug availability under a treatment IND serves an investigational as well as a treatment purpose (§ 312.34(a)). Moreover, FDA's insistence on adequate informed consent in all cases underscores the significant difference between drugs approved for marketing and those available only under a treatment IND.

*B. Charging for Investigational Drugs*

17. *Overview.* FDA received a large number of comments on the sale provision in § 312.7(d) of the reproposal. Some of these comments, primarily from newer, smaller pharmaceutical firms, supported the sale provisions as reproposed. However, the majority of comments expressed varying degrees of concern as to how the sale provision would be implemented and its potential effect on patients, their families, and on the practical and ethical aspects of drug research. These concerns focused, for example, on whether allowing for sale of investigational drugs would help promote health fraud; whether sale would make it more difficult to enroll patients in clinical trials; whether the price charged should be reduced or eliminated; whether the analysis of "manifestly unfair" would lead to price setting by FDA; and whether charging for investigational drugs would present ethical difficulties for local institutional review boards. Some comments also questioned FDA's legal authority in this area. Comments expressing such concerns came from a wide variety of groups, including pharmaceutical firms, clinical research institutions, associations representing patients with serious and life-threatening diseases, consumer groups, and institutional review boards.

FDA's policy on sale of investigational drugs was discussed in the March 19, 1987, reproposal. That reproposal sought to define the circumstances under which it would be appropriate for drug sponsors to charge patients for investigational drugs, both during clinical trials and under a treatment IND. FDA continues to believe that appropriate circumstances can be so defined, and that these criteria should be less restrictive for investigational drugs being made available under a treatment IND than for those utilized in a clinical trial. In response to comments, however, FDA has revised the final rule so that charging for an investigation under a treatment IND would be conditioned upon adequate enrollment of ongoing clinical investigations, and to provide that the sponsor, under either a clinical trial or treatment IND, may not commercialize the drug by charging a price larger than that necessary to recover the costs associated with the manufacture, research, development, and handling of the investigational drug. FDA believes these refinements should remove the major concerns expressed by the various comments. These refinements are discussed below.

18. *Legal Authority.* In response to the reproposal, several comments asserted that FDA lacks authority to permit or regulate the sale of investigational drugs. These comments asserted that sale of an investigational drug is contrary to the statutory scheme in section 505 of the act prohibiting the commercial marketing of unapproved new drugs. A number of comments stated that the combination of the provisions in the reproposal expanding treatment use and allowing sale of investigational drugs is contrary to the intent of Congress in enacting the 1962 Drug Amendments to require prior approval of the safety and effectiveness of a drug before marketing. One comment noted that, although not

explicitly prohibiting the sale of an investigational drug, in enacting the 1962 Drug Amendments Congress plainly contemplated continuation of the pre-1962 practice of disallowing such sale.

The agency believes that it has authority under the act to permit charging for an investigational new drug as set forth in this final rule. Charging for investigational new drugs is not prohibited by the act, and there is authority to permit charging for an investigational drug in appropriate circumstances. As stated in the preamble to the reproposal, there are compelling public health reasons that justify permitting sponsors to charge for investigational drugs distributed under an approved treatment IND/protocol. As explained further below, the reproposal, which allowed sale at a price not manifestly unfair, has been changed so that a sponsor may only recover costs. Therefore, unless indicia of commercialization are present, such as, for example, promotion or advertising, the agency concludes that it is consistent with the statutory scheme and the language of section 505 to permit sponsors to charge for the costs of investigational drugs distributed under a treatment IND/protocol, under the provisions of the final rule.

With respect to congressional intent in enacting the 1962 Drug Amendments, the legislative history of the amendments reveals, among other things, an intent to avoid repetition of another tragedy similar to thalidomide. The focus of congressional debate and inquiry was not on sale per se of investigational drugs, but rather on ways to ensure adequate animal testing of drugs prior to human administration and to ensure that new drugs are adequately tested and approved for safety and effectiveness prior to commercial distribution. The final treatment IND/protocol regulation, as revised, contains adequate safeguards against such premature release of drugs.

In addition, during passage of the 1962 Amendments, Congress was aware of FDA's then proposed IND regulations. 108 Cong. Rec. 17378 (1962) (statement of Sen. Hruska). Those proposed regulations included a sale provision stating the presumption that sale is commercialization. However, the proposed regulations also offered sponsors the opportunity to demonstrate why sale of a particular investigational drug should not be regarded as commercialization. Thus, Congress was aware that there were circumstances under which sale would not be considered commercialization and, nevertheless, refrained from amending the act to explicitly prohibit sale.

One comment contended that any sale of an investigational biological product is expressly prohibited by section 351 of the Public Health Service Act (42 U.S.C. 262), which states that no person may "sell, barter, exchange, or offer for sale" any unlicensed biological products. However, biological products undergoing development, but not yet ready for a product license, are regulated under section 505(i) of the act (21 CFR 601.21). As described above, there is authority in section 505(i) to permit sale of an investigational drug, when such sale does not constitute commercialization. Thus, the prohibition against sale of an unlicensed biological product does not preclude the sale of an investigational biological product for which an IND has been submitted when such sale is in conformance with the regulations governing investigational new drugs at 21 CFR Part 312.

Several comments stated that the interplay of the provisions in the reproposal permitting sale of an investigational drug prior to final new drug approval with the provisions for approval of treatment IND's for life-threatening diseases with less than the substantial evidence of safety and effectiveness necessary for new drug approval create an opportunity for the marketing of governmentally sanctioned quack remedies which is inconsistent with the Supreme Court's opinion in *United States* v. *Rutherford*, 442 U.S. 544 (1979). In *Rutherford*, the Court held that the new drug approval requirements of the act applied to drugs intended to treat persons with terminal diseases and upheld FDA's determination that Laetrile was an unapproved new drug that could not be shipped in interstate commerce. *Rutherford* at 2475. However, the treatment IND/protocol and sale provisions of the final rule are not inconsistent with *Rutherford*. The Court in *Rutherford* noted that application of the new drug approval provisions to therapies for terminal diseases did not foreclose resort to experimental drugs by patients for whom conventional therapy was unavailable. *ID.* at 2478. The Court noted that the act makes explicit provision for carefully regulated use of certain drugs not yet demonstrated safe and effective. *Id.* at 2479. The final rule, while permitting cost recovery for certain investigational drugs, maintains the prohibition against commercialization; distribution of a drug under an approved treatment IND/protocol, therefore, continues to be a carefully regulated distribution. Treatment use of an investigational drug is conditioned on the sponsor complying with all the safeguards inherent in the IND process including informed consent, IRB review and the applicable provisions of Part 312, such as distribution of the drug through qualified experts, maintenance of adequate manufacturing facilities, and submission of IND safety reports. The treatment IND/protocol provisions and the provisions for cost recovery, operating together, are consistent with the Court's opinion in *Rutherford*.

One comment stated that under section 704 of the act (21 U.S.C. 374), FDA lacks authority to inspect the financial records of companies. The agency disagrees that it lacks authority to inspect data and information relevant to the cost recovery provisions of the final rule. In any event, however, the agency will consider a sponsor's request for or notification of the sale of an investigational drug as a consent by the sponsor to inspection and copying of information and data relevant to a verification that the charge for the investigational drug is restricted to the cost of the drug's manufacture, research, development, and handling.

19. *Protection against health fraud.* A number of comments were concerned that sale of investigational drugs would provide an unintended opportunity for the proliferation of health fraud. These comments were based largely on the interplay of the proposed criteria for treatment IND's for immediately life-threatening illnesses (discussed above) and the proposed provision on sale.

As noted above, because FDA has revised the criteria for permitting a treatment IND for immediately life-threatening illnesses, the agency believes concerns over potential health fraud have been fully addressed. As revised, § 312.34(b)(3)(1) now provides that the Commissioner may deny a request for treatment use of an investigational drug for an immediately life-threatening illness under a treatment protocol or treatment IND if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug (1) may be effective for its intended use in its intended patient population; or (2) would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury.

20. *Recoverable costs.* A number of comments addressed to what extent, if any, FDA should restrict the price charged for investigational drugs. Some comments argued that any degree of price control by FDA was a matter for concern as the agency lacked the

necessary expertise to exercise such authority properly and that it would be misuse of the agency's resources to seek to develop such expertise. Other comments favored an FDA mechanism for limiting the cost of investigational drugs, adding that the costs of investigational drugs should be reasonable and must be effectively controlled or eliminated. Many of the comments expressed concern that the "manifestly unfair" standard of the reproposal was too vague to enforce and would likely result, however unintentionally, in patients being charged excessive prices for investigational drugs.

FDA agrees that any charges for investigational drugs should not be excessive. The agency also agrees, however, that it should not be put in a position of being a price regulator and has, therefore, drafted the final rule to minimize the degree to which it will have to act in this area. Accordingly, the agency has added to § 312.7(d)(3) to the final rule, which states that a sponsor may not commercialize an investigational drug by charging a price larger than that necessary to recover the costs associated with the manufacture, research, development and handling of the investigational drug. This provision is the same as that applicable to investigational medical device area since 1980 (21 CFR 812.7(b)) and provides a preferable standard to "manifestly unfair" which has been deleted from the regulation. The standard in the final rule would apply to charges under both a clinical trial and under a treatment IND. FDA would limit its expenditure of resources by requesting sponsors to include in their requests for prior approval (clinical trials) or prior notifications (treatment IND) a certified statement that, consistent with generally accepted accounting principles, the requested price is not greater than that necessary to recover the costs associated with the manufacture, research, development, and handling of the investigational drug.

21. *Incentives to pursue marketing approval.* Some comments questioned whether a sponsor or investigator, if allowed to sell drugs for treatment use, would have less incentive to pursue marketing approval.

FDA believes there are three provisions in the final rule that greatly reduce or eliminate this possibility. First, the requirement for "active pursuit" (discussed earlier) requires that the sponsor make timely progress towards submission of a marketing application. Second, the provision in § 312.7(d)(2) specifies that sponsors can charge for investigational drugs under a treatment IND provided there is adequate enrollment of the ongoing clinical trials. Finally, as noted above, the final rule limits sponsors to recovery of specified costs. Accordingly, FDA believes that drug sponsors, for many reasons, will have the incentive to pursue marketing approval as quickly as possible.

22. *Procedures.* Several comments argued that the procedures for requesting authorization to sell an investigational drug should be the same for a treatment IND as for a clinical trial. Other comments stated that the final regulation should specify a period of time, preferably within 30 days, for FDA to respond to request to sell drugs in clinical trials.

FDA believes that because of the different considerations underlying charges for an investigational drug in a clinical trial and a treatment IND, different procedures are warranted. Under the final rule, charging for investigational drugs during a clinical trial would normally not be allowed, and, to do so, the sponsor must obtain prior FDA approval upon a showing of why such charges are necessary to undertake or continue the clinical trial. As stated in the reproposal, obtaining such prior approval requires the sponsor to overcome the presumption that providing investigational drugs during clinical trials is normally considered part of the cost of doing business. In contrast, providing an investigational drug to patients under a treatment IND is in addition to the normal clinical trial process necessary to gain marketing approval. In these circumstances, FDA believes that charging should be allowed provided adequate enrollment of ongoing clinical trials has occurred. Because the presumption under a treatment IND is in favor of charging, FDA believes that only prior notification to the agency, not prior approval, is warranted.

As for specifying in the regulations that FDA should respond within a specified period of time to requests to charge for drugs used in clinical trials, FDA does not agree that such an approach is warranted. As explained above, such requests must show why cost recovery is necessary to assure development of the drug. The agency expects this documentation will be prepared differently in different instances and will vary in content and amount. Therefore, setting a time limit might not allow for adequate review. In any event, if the drug is intended to treat a serious or life-threatening illness, FDA will give high priority to responding promptly to a request to charge for the drug in a clinical trial.

23. *Sale during clinical trials.* Some comments suggested that the provision for sale of investigational drugs in clinical trials, as described in the preamble to the reproposal, discriminated in favor of smaller and newer pharmaceutical firms.

FDA did not intend to discriminate in favor of smaller and newer firms with respect to charging for investigational drugs in clinical trials. As stated previously, FDA believes that cost recovery is justified in clinical trials only when necessary to further the study and development of promising drugs that might otherwise be lost to the medical armamentarium. The agency believes that this situation is most likely to arise in the context of new products derived through biotechnology which are produced by small, medium, and large firms alike.

24. *Equitable Distribution of Investigational New Drugs and Equitable Selection of Test Subjects.* A number of comments raised concerns that charging for investigational drugs used in either clinical trials or in a treatment IND would be unfair for patients who could not afford the drugs.

FDA recognizes that in some instances, when a drug is particularly expensive to manufacture and a sponsor either demonstrates the necessity to charge for the drug in clinical trials or decides to charge for the drug under a treatment IND, certain members of the patient population may not be able to afford the drug. FDA notes that the opportunity to charge for investigational drugs has existed in FDA's regulations since 1963. These concerns are not new. No significant problems have arisen in the past, however. FDA would also point out that sponsors are not required to charge, and several pharmaceutical manufacturers have indicated that they probably will not charge, regardless of the sale provision. Lastly, the concern that some patients would not have earlier access to promising new drugs fails to recognize that in some instances, without the authority to recover costs, no one would have access to these new drugs and no one would benefit from the additional information gained in a treatment IND. For all of these reasons, FDA believes it is appropriate to authorize sale, with the safeguards provided in the final rule.

Several comments suggested that permitting sale of investigational new drugs raises a question of the equitable selection of subjects. Specifically, this comment questioned whether the Institutional Review Board (IRB) would

be able to determine whether selection of subjects was equitable if only those who could afford to pay were included in research involving promising experimental drugs or, conversely, if only those who could not afford to pay for the drug under treatment IND were included in the research.

With regard to concerns if charges are imposed for clinical trial participants, FDA notes that under the final rule, charging for an investigational drug in a clinical trial will only be permitted if the sponsor can demonstrate that such charges are necessary to undertake or continue the clinical trial.

With regard to concerns if there are charges for treatment use drugs, FDA believes they are addressed adequately by the new proposed Federal Policy for Protection of Human Subjects (51 FR 20204). Under this policy, an IRB is advised to be "particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disturbed persons, or economically or educationally disadvantaged persons." Thus, a major role in ensuring equitable selection will be played by the local IRB (21 CFR 56.111(a)(3)).

These concerns are also addressed by the final rule's provisions that sale authorization under a treatment IND is contingent on adequate enrollment in clinical trials, and that treatment IND's are contingent on the sponsor's active pursuit of marketing approval with due diligence.

25. *Safeguards against promotion.* Several comments requested clarification of certain language in § 312.7(d)(2), which outlines conditions under which a sponsor or investigator may charge for an investigational drug for a treatment use under a treatment protocol or treatment IND—specifically, the terms "commercial marketing," "commercially promoted or advertised," and "due diligence." The comments believed that clarification of these terms was necessary to prevent misinterpretation or abuse. A comment suggested that FDA provide publicly available guidelines to define the term "commercially promoted or advertised." One comment argued that prohibitions against commercial marketing and advertising would be meaningless in context of the publicity surrounding treatments developed for AIDS, for example.

Informal guidance with respect to what would constitute commercial promotion and advertising for investigational drugs has been issued in the past by the Division of Drug Advertising and Labeling in FDA's Office of Drug Standards—most recently in August 1986. FDA believes that updated guidance in this area may be needed with the publication of this regulation and will take action to develop such guidance as may be appropriate.

FDA's understanding of commercial promotion does not place limits on the free exchange of scientific information (e.g., publishing results of scientific studies, letters to the editor in defense of public challenges, investigator conferences). However, responses by sponsors or investigators to unsolicited media inquiries or statements made in the exchange of scientific information should (1) make clear that the drug is investigational; (2) make no claims that the drug has been proven to be safe or effective; and (3) be truthful and nonmisleading when measured against available information on the drug—and fairly represent available information—as set forth in materials such as investigators' brochures and patients' informed consent sheets.

FDA emphasizes its willingness to discuss with sponsors and investigators any questions they may have as to whether contemplated activities may amount to commercial promotion.

Finally, the term "due diligence" in the regulations at §§312.7 and 312.34 is discussed earlier in this preamble.

26. *Third-party reimbursement.* Comments were divided on the issue of whether patients should absorb the cost of investigational drugs. Some comments felt that it would be fair to charge patients for experimental therapies. The majority, however, noting that third party payors do not normally reimburse for experimental therapies, expressed concern as to the effect charging would have on patients and on their families. A number of comments stressed the precarious financial positions—and consequent inability to pay for investigational drugs—of many patients with life-threatening illnesses such as AIDS. Others were concerned that families of desperately ill patients could be bankrupted by the cost of experimental therapies. Several comments stated that the Federal Government should reimburse these costs. Two comments requested that FDA defer final action until the Health Care Financing Administration (HCFA) has addressed the issue of Medicare and Medicaid reimbursement for experimental therapies.

FDA is mindful of the straitened financial circumstances of many desperately ill patients; however, the subject of third party reimbursement is outside the agency's jurisdiction and expertise. The agency notes that one pharmaceutical firm commented on its willingness as a sponsor to assist patients in finding possible third party reimbursement through such sources as health insurance carriers, government grants, and philanthropic foundations.

27. *Withdrawal of authorization for sale.* Finally, several comments argued that FDA should establish procedures for withdrawing authorization for sale of an investigational drug. Some of the comments argued that withdrawal of permission to sell is analogous to termination of an IND and should be subject to similar procedures, i.e., provide notice to the sponsor with an opportunity for the sponsor to supply an explanation in response justifying the pricing, either in writing or during an informal conference; and provide an opportunity for a regulatory hearing if FDA does not accept the sponsor's explanation.

FDA does not agree that withdrawal of authorization for sale of an investigational drug is analogous to the withdrawal of an IND. In the context of a treatment IND, the sponsor would still be able to provide the investigational drugs to patients, so that authorization for sale is independent of the authorization for the treatment IND itself. The ability of a sponsor to be able to continue distributing the drug without charging is at least plausible since the criteria for charging in this situation do not include economic need. FDA is not persuaded of the need to include formal procedures for withdrawal of sale authorization in the regulations. In instances where the agency finds compelling reason to withdraw sale authorization, FDA will take such action in a manner appropriate to the particular instance, taking into consideration the condition or conditions underlying the authorization that are no longer being met, and giving prior notice to the sponsor. Moreover, FDA will proceed with the utmost caution in situations where withdrawing authorization for sale might have a direct adverse effect on the patients themselves.

## III. Economic Impact

In accordance with Executive Order 12291, FDA has previously considered the potential economic effects of this final rule. As announced in the reproposal, the agency has determined that the rule is not a major rule as determined by the Order. Similarly, under the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section

605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determinations.

### IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### V. Paperwork Reduction Act of 1980

Sections 312.7(d) and 312.35 contain collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0014.

### List of Subjects in 21 CFR Part 312

Drugs, Medical research.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, Part 312 is amended as follows:

## PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR Part 312 continues to read as follows:

**Authority:** Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); 21 CFR 5.10, 5.11.

2. In § 312.7 by revising the section title, by revising paragraph (d) and by adding a parenthetical statement at the end of the section to read as follows:

### § 312.7 Promotion and charging for investigational drugs.

* * * * *

(d) *Charging for and commercialization of investigational drugs*—(1) *Clinical trials under an IND.* Charging for an investigational drug in a clinical trial under an IND is not permitted without the prior written approval of FDA. In requesting such approval, the sponsor shall provide a full written explanation of why charging is necessary in order for the sponsor to undertake or continue the clinical trial, e.g., why distribution of the drug to test subjects should not be considered part of the normal cost of doing business.

(2) *Treatment protocol or treatment IND.* A sponsor or investigator may charge for an investigational drug for a treatment use under a treatment protocol or treatment IND provided: (i) There is adequate enrollment in the ongoing clinical investigations under the authorized IND; (ii) charging does not constitute commercial marketing of a new drug for which a marketing application has not been approved; (iii) the drug is not being commercially promoted or advertised; and (iv) the sponsor of the drug is actively pursuing marketing approval with due diligence. FDA must be notified in writing in advance of commencing any such charges, in an information amendment submitted under § 312.31. Authorization for charging goes into effect automatically 30 days after receipt by FDA of the information amendment, unless the sponsor is notified to the contrary.

(3) *Noncommercialization of investigational drug.* Under this section, the sponsor may not commercialize an investigational drug by charging a price larger than that necessary to recover costs of manufacture, research, development, and handling of the investigational drug.

(4) *Withdrawal of authorization.* Authorization to charge for an investigational drug under this section may be withdrawn by FDA if the agency finds that the conditions underlying the authorization are no longer satisfied.

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0014)

3. By adding regulatory text to § 312.34 to read as follows:

### § 312.34 Treatment use of an investigational new drug.

(a) *General.* A drug that is not approved for marketing may be under clinical investigation for a serious or immediately life-threatening disease condition in patients for whom no comparable or satisfactory alternative drug or other therapy is available. During the clinical investigation of the drug, it may be appropriate to use the drug in the treatment of patients not in the clinical trials, in accordance with a treatment protocol or treatment IND. The purpose of this section is to facilitate the availability of promising new drugs to desperately ill patients as early in the drug development process as possible, before general marketing begins, and to obtain additional data on the drug's safety and effectiveness. In the case of a serious disease, a drug ordinarily may be made available for treatment use under this section during Phase 3 investigations or after all clinical trials have been completed; however, in appropriate circumstances, a drug may be made available for treatment use during Phase 2. In the case of an immediately life-threatening disease, a drug may be made available for treatment use under this section earlier than Phase 3, but ordinarily not earlier than Phase 2. For purposes of this section, the "treatment use" of a drug includes the use of a drug for diagnostic purposes.

(b) *Criteria.* (1) FDA shall permit an investigational drug to be used for a treatment use under a treatment protocol or treatment IND if:

(i) The drug is intended to treat a serious or immediately life-threatening disease;

(ii) There is no comparable or satisfactory alternative drug or other therapy available to treat that stage of the disease in the intended patient population;

(iii) The drug is under investigation in a controlled clinical trial under an IND in effect for the trial, or all clinical trials have been completed; and

(iv) The sponsor of the controlled clinical trial is actively pursuing marketing approval of the investigational drug with due diligence.

(2) *Serious disease.* For a drug intended to treat a serious disease, the Commissioner may deny a request for treatment use under a treatment protocol or treatment IND if there is insufficient evidence of safety and effectiveness to support such use.

(3) *Immediately life-threatening disease.* (i) For a drug intended to treat an immediately life-threatening disease, the Commissioner may deny a request for treatment use of an investigational drug under a treatment protocol or treatment IND if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug:

(A) May be effective for its intended use in its intended patient population; or

(B) Would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury.

(ii) For the purpose of this section, an "immediately life-threatening" disease means a stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment.

(c) *Safeguards.* Treatment use of an investigational drug is conditioned on the sponsor and investigators complying with the safeguards of the IND process, including the regulations governing

informed consent (21 CFR Part 50) and institutional review boards (21 CFR Part 56) and the applicable provisions of Part 312, including distribution of the drug through qualified experts, maintenance of adequate manufacturing facilities, and submission of IND safety reports.

(d) *Clinical hold.* FDA may place on clinical hold a proposed or ongoing treatment protocol or treatment IND in accordance with § 312.42.

4. By adding § 312.35 to Subpart B to read as follows:

**§ 312.35 Submissions for treatment use.**

(a) *Treatment protocol submitted by IND sponsor.* A sponsor of a clinical investigation of a drug who intends to sponsor a treatment use for the drug under § 312.34 shall submit to FDA a treatment protocol. A treatment use under a treatment protocol may begin 30 days after FDA receives the protocol or on earlier notification by FDA that the treatment use described in the protocol may begin.

(1) A treatment protocol is required to contain the following:

(i) The intended use of the drug.

(ii) An explanation of the rationale for use of the drug, including, as appropriate, either a list of what available regimens ordinarily should be tried before using the investigational drug or an explanation of why the use of the investigational drug is preferable to the use of available marketed treatments.

(iii) A brief description of the criteria for patient selection.

(iv) The method of administration of the drug and the dosages.

(v) A description of clinical procedures, laboratory tests, or other measures to monitor the effects of the drug and to minimize risk.

(2) A treatment protocol is to be supported by the following:

(i) Informational brochure for supplying to each treating physician.

(ii) The technical information that is relevant to safety and effectiveness of the drug for the intended treatment purpose. Information contained in the sponsor's IND may be incorporated by reference.

(iii) A commitment by the sponsor to assure compliance of all participating investigators with the informed consent requirements of 21 CFR Part 50.

(3) A licensed practioner who receives an investigational drug for treatment use under a treatment protocol is an "investigator" under the protocol and is responsible for meeting all applicable investigator responsibilities under this part and 21 CFR Parts 50 and 56.

(b) *Treatment IND submitted by licensed practitioner.* (1) If a licensed medical practitioner wants to obtain an investigational drug subject to a controlled clinical trial for a treatment use, the practitioner should first attempt to obtain the drug from the sponsor of the controlled trial under a treatment protocol. If the sponsor of the controlled clinical investigation of the drug will not establish a treatment protocol for the drug under paragraph (a) of this section, the licensed medical practitioner may seek to obtain the drug from the sponsor and submit a treatment IND to FDA requesting authorization to use the investigational drug for treatment use. A treatment use under a treatment IND may begin 30 days after FDA receives the IND or on earlier notification by FDA that the treatment use under the IND may begin. A treatment IND is required to contain the following:

(i) A cover sheet (Form FDA 1571) meeting § 312.23(g)(1).

(ii) Information (when not provided by the sponsor) on the drug's chemistry, manufacturing, and controls, and prior clinical and nonclinical experience with the drug submitted in accordance with § 312.23. A sponsor of a clinical investigation subject to an IND who supplies an investigational drug to a licensed medical practitioner for purposes of a separate treatment clinical investigation shall be deemed to authorize the incorporation-by-reference of the technical information contained in the sponsor's IND into the medical practitioner's treatment IND.

(iii) A statement of the steps taken by the practitioner to obtain the drug under a treatment protocol from the drug sponsor.

(iv) A treatment protocol containing the same information listed in paragraph (a)(1) of this section.

(v) A statement of the practitioner's qualifications to use the investigational drug for the intended treatment use.

(vi) The practitioner's statement of familiarity with information on the drug's safety and effectiveness derived from previous clinical and nonclinical experience with the drug.

(vii) Agreement to report to FDA safety information in accordance with § 312.32.

(2) A licensed practitioner who submits a treatment IND under this section is the sponsor-investigator for such IND and is responsible for meeting all applicable sponsor and investigator responsibilities under this part and 21 CFR Parts 50 and 56.

(Collection of information requirements approved by the Office of Management and Budget under number 0910-0014)

5. In § 312.42 by adding paragraph (b)(3) to read as follows:

**§ 312.42 Clinical holds and requests for modification.**

* * * * *

(b) * * *

(3) Clinical hold of a treatment IND or treatment protocol.

(i) *Proposed use.* FDA may place a proposed treatment IND or treatment protocol on clinical hold if it is determined that:

(A) The pertinent criteria in § 312.34(b) for permitting the treatment use to begin are not satisfied; or

(B) The treatment protocol or treatment IND does not contain the information required under § 312.35 (a) or (b) to make the specified determination under § 312.34(b).

(ii) *Ongoing use.* FDA may place an ongoing treatment protocol or treatment IND on clinical hold if it is determined that:

(A) There becomes available a comparable or satisfactory alternative drug or other therapy to treat that stage of the disease in the intended patient population for which the investigational drug is being used;

(B) The investigational drug is not under investigation in a controlled clinical trial under an IND in effect for the trial and not all controlled clinical trials necessary to support a marketing application have been completed, or a clinical study under the IND has been placed on clinical hold;

(C) The sponsor of the controlled clinical trial is not pursuing marketing approval with due diligence;

(D) If the treatment IND or treatment protocol is intended for a serious disease, there is insufficient evidence of safety and effectiveness to support such use; or

(E) If the treatment protocol or treatment IND was based on an immediately life-threatening disease, the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug:

(*1*) May be effective for its intended use in its intended population; or

(*2*) Would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury.

* * * * *

Frank E. Young,

*Commissioner of Food and Drugs.*

Dated: May 20, 1987.

Don M. Newman,

*Acting Secretary of Health and Human Services.*

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# federal register

Tuesday
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# federal register

Tuesday
May 26, 1987

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**RESERVATIONS:** Call the Chicago Federal Information Center, 312-353-0339.

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**WHERE:** Main Auditorium, Federal Building,
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Boston, MA.
**RESERVATIONS:** Call the Boston Federal Information Center, 617-565-8129

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# Presidential Documents

Title 3—

## The President

**Proclamation 5661 of May 21, 1987**

### Prayer for Peace, Memorial Day, 1987

**By the President of the United States of America**

**A Proclamation**

Any American who has ever listened to a bugler sound Taps, the last salute, whether on a green and grassy hillside, a muddy field halfway around the world, or a lonely tarmac stateside or anywhere freedom is cherished and defended, knows exactly why we set aside a special day each year to honor those who have died for our country and to pray for permanent peace.

We do so for the sons and daughters of our land who have perished in the cause of liberty, country, and peace, the cause that has called Americans from generation to generation. We do so for the Nation that was home to these heroes and heroines, the Nation that gave them their birthright of freedom. We do so for the sacred trust they have left us, to revere, defend, and preserve all that they have revered, defended, and preserved for us.

And we pray for our dead; we ask God to bless them and take them to Himself and reward their patriot's love. We pray for those who gave their lives in the hope of a future of freedom and peace for their countrymen. We pray for peace and for the devotion and strength of soul to build it and to protect it always. We pray and we resolve to keep holy the memory of those who have died for our country and to make their cause inseparably our own. We pray and we promise, so that one day Taps will sound never again for the young and the brave and the good.

In recognition of those brave Americans to whom we pay tribute today, the Congress, by joint resolution approved May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling upon the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate Memorial Day, Monday, May 25, 1987, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at eleven o'clock in the morning of that day as a time to unite in prayer. I urge the press, radio, television, and all other information media to cooperate in this observance.

I also direct all appropriate Federal officials and request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff during this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control, and I request the people of the United States to display the flag at half-staff from their homes on this day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-12286
Filed 5-23-87; 11:18 am]
Billing code 3195-01-M

VOL 52 ISS 100 MAY 26 1987 UMI

# Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-1; Amdt. 39-5607]

## Airworthiness Directives; Bell Helicopter Textron, Inc., Model 214ST, 214B, and 214B-1 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires replacement of the scissors and sleeve locking plates on certain Bell Helicopter Textron, Inc. (BHTI), Model 214ST, 214B, and 214B-1 helicopters with a new design that provides a higher degree of locking protection. This AD is required to prevent failure of the main rotor collective control which could result in loss of the helicopter.

When compliance with the requirements of this AD has been accomplished, the requirements of a previously issued AD on this subject are no longer necessary.

EFFECTIVE DATE: May 28, 1987.

The incorporation by reference of certain publication listed in the regulations is approved by the Director of the Federal Register as of May 28, 1987.

*Compliance*: As prescribed in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained form Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas. 76101, Attention: Customer Support.

Copies of the applicable service bulletins are contained in the Rules Docket, Office of the Regional Counsel, FAA Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Mr. T. K. Henry, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624-5168.

SUPPLEMENTARY INFORMATION: In May 1986, a Model 214ST experienced loss of collective control forcing a rapid, but successful, ditching at sea. Subsequent investigation revealed that loss of collective control resulted from failure of the collective hub bearing retention nut lower locking plate which allowed the collective hub nut to unscrew. Priority letter Airworthiness Directive Number 86-12-01, issued June 6, 1986, required a periodic visual inspection to check for defective locking plates on the main rotor scissors and sleeve assembly.

When the requirements of this AD have been accomplished, compliance with the priority letter is no longer necessary.

As a result of damage studies on the lower locking plates, BHTI issued Alert Service Bulletins (ASB) 214-86-36, dated October 8, 1986, and 214ST-86-37, Revision A, dated November 3, 1986, which call for replacement of the upper and lower locking plates with a single-piece stainless steel locking plate having three tangs and an increased thickness. The ASB's also require a 25-hour periodic inspection of the hub and lower nut for evidence of movement and a 500-hour periodic inspection of the hub nut locking plate and retorque of the lower hub nut.

The FAA has carefully reviewed the manufacturer's redesign and has determined that the new design of the locking plate for the Models 214ST, 214B, and 214B-1 is necessary to assure the continued airworthiness of these helicopters. Failure of the collective control assembly could result in loss of the helicopter.

Since this condition is likely to develop on other aircraft of the same type design, an airworthiness directive is being issued which requires removal of the upper and lower locking plates P/N's 214-010-231-101 and 214-010-232-101 and replacement with locking plate P/N 214-010-569-101.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

### Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 34.13 [Amended]

2. By adding the following new AD:

**Bell Helicopter Textron, Inc.:** Applied to Bell Helicopter Textron, Inc., Model 214ST helicopters, S/N's 28101 through 28159, and Models 214B and 214B-1, S/N's 28001 through 28070, certificated in any category, equipped with upper and lower locking plates, P/N's 214-010-231-101 and 214-010-232-101.

Compliance is required as indicated, unless already accomplished.

(a) To prevent failure of the collective hub locking plate, on the Model 214ST, 214B, and 214B-1 helicopters, replace the P/N 214-010-232-101 lower locking plate and the P/N 214-010-231-101 upper locking plate with locking

plate P/N 214-010-569-101 in accordance with Part I of BHTI ASB 214-86-36, dated October 8, 1986, or ASB 214ST-86-37, Rev. A, dated November 3, 1986, within the next 50 hours' time in service or within 30 days after the effective date of this AD, whichever comes first.

(b) Within the next 25 hours' time in service after completing the requirements of paragraph (a) and thereafter at intervals not to exceed 25 hours' time in service from the last inspection, visually inspect the hub and lower hub nut assembly for slippage in accordance with Part II of BHTI ASB 214-86-36, dated October 8, 1986, as ASB 214ST-86-37, Rev. A, dated November 3, 1986.

(c) Within the next 500 hours' time in service after completing the requirements of paragraph (a) and thereafter at intervals not to exceed 500 hours' time in service from the last inspection, perform the following in accordance with Part III of BHTI ASB 214-86-36, dated October 8, 1986 or ASB 214ST-86-37, Rev. A, dated November 3, 1986:

(1) Inspect the hub locking plate, P/N 214-010-556-101, for cracks.

(2) If a crack is found during this inspection, replace the hub locking plate with a serviceable part.

(3) Retorque the lower hub nut and install locking plate, P/N 214-010-569-101, as detailed in paragraph (a).

(d) Installation instructions for the scissors and sleeve may be found in the BHTI-214ST Maintenance Manual, Chapter 62-21-00, and 214B Maintenance Manual, Chapter 65-20-00.

(e) Upon compliance with this airworthiness directive, the inspections and actions required by priority letter Airworthiness Directive No. 86-12-01, issued June 6, 1986, may be discontinued.

(f) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76105.

The procedure shall be done in accordance with BHTI ASB 214-86-36, dated October 8, 1986, or ASB 214ST-86-37, Rev. A., dated November 3, 1986.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)(1). Copies may be obtained upon request to Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support.

Copies may be inspected at the Office of Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401 Washington, DC.

This amendment becomes effective May 26, 1987.

Issued in Fort Worth, Texas, on April 8, 1987.

Roger G. Knight,

*Acting Director, Southwest Region.*

[FR Doc. 87-11936 Filed 5-22-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-11; Amdt. 39-5618]

## Airworthiness Directives; Glasflugel Model Kestrel Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Glasflugel Model Kestrel gliders which requires an initial visual inspection and replacement of the rudder actuating arm. This action was prompted by the determination that the rudder actuating arm can fail from fatigue damage incurred by handling the aircraft using the rudder. This condition, if not corrected, could result in the glider becoming uncontrollable.

DATE: *Effective:* May 29, 1987.

*Compliance schedule.* As prescribed in the body of the AD.

*Incorporation by Reference.* Approved by the Director of the Federal Register on May 29, 1987.

ADDRESS: The technical information and modification parts specified in this AD may be obtained from Hansjorg Streifeneder, Glasfaser-Flugzeugbau, Hofaner Weg, D-7431 Grabenstetten, Germany; telephone (07382) 1032. A copy of the technical note is contained in the Rules Docket, Federal Aviation Administration, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Mr. Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone 513.38.30 Ext. 2710, or John J. Maher, ANE-172, Federal Aviation Administration, New England Region, New York Aircraft Certification Office, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone 516-791-6221.

SUPPLEMENTARY INFORMATION: It has been determined that failure may occur in the rudder actuating arm from fatigue damage incurred by mishandling the aircraft by the rudder. The manufacturer (Hansjorg Streifeneder) has issued Technical Note No. 401-19, dated September 12, 1986, which requires replacement of the rudder actuating arm. The Luftfahrt-Bundesamt (LBA), who has responsibility and authority to maintain the continuing airworthiness of these gliders in the Federal Republic of Germany, has issued an AD requiring compliance with the provisions of Technical Note No. 401-19 on gliders operated under Federal Republic of Germany registration. The FAA relies upon the certification of the LBA combined with FAA review of pertinent documentation, in finding compliance of the design of these gliders with the applicable United States airworthiness requirements, and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA has examined the available information related to the issuance of Hansjorg Streifeneder Technical Note No. 401-19 and the issuance of AD No. 86-221 Kestrel by the LBA. Based on the foregoing, the FAA has determined that the condition addressed by Hansjorg Streifeneder Technical Note No. 401-19 is an unsafe condition that may exist on other products of the same type design certificated for operation in the United States. Therefore, an AD is being issued to require an initial inspection and replacement of the rudder actuating arm on Glasflugel Model Kestrel gliders.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference.

**Adoption of the Amendment**

**PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding to Part 39 the following new airworthiness directive (AD):

**Glasflugel:** Applies to Model Kestrel gliders, all serial numbers, certificated in any category.

Compliance is required as indicated unless already accomplished.

To prevent the failure of the rudder actuating arm, P/N 301-45-10, which could result in the glider becoming uncontrollable, accomplish the following:

(a) Within the next 10 hours time-in-service after the effective date of this AD, unless compliance with paragraph (c) has been accomplished, visually inspect the rudder actuating arm, P/N 301-45-10, using a 10 power or greater magnifying glass, for cracks.

(b) If a cracked arm is found during the inspection required by paragraph (a) of this AD, before further flight, replace the rudder actuating arm with a serviceable arm, new P/N 301-45-13, in accordance with the action instructions of Hansjorg Streifeneder Technical Note No. 401-19, dated September 12, 1986.

(c) Prior to July 31, 1987, replace any rudder actuating arm, not replaced in accordance with paragraph (b) of this AD, with a serviceable rudder actuating arm, new P/N 301-45-13, in accordance with the action instructions of Hansjorg Streifeneder Technical Note No. 401-19, dated September 12, 1986.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B-1040 Brussels, Belgium; telephone 513.38.30 ext. 2710 or the Manager, New York Aircraft Certification Office, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone 516-791-5550.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Brussels Aircraft Certification Office or the Manager, New York Aircraft Certification Office, may adjust the compliance time specified in this AD.

Hansjorg Streifeneder Technical Note No. 401-19, dated September 12, 1986, identified and described in this document, is incorporated herein by reference and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Hansjorg Streifeneder, Glasfaser Flugzeugbau, Hofaner Weg, D-7431 Grabenstetten, Germany; telephone no. (07382) 1032. This document also may be examined at the Office of Regional Counsel, ANE-7, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 87-ANE-11, between the hours of 8:00 a.m. and 4:30 p.m.; Monday through Friday, except Federal holidays.

This amendment becomes effective on May 29, 1987.

Issued in Burlington, Massachusetts, on April 24, 1987.

**Clyde DeHart Jr.,**

*Acting Director, New England Region.*

[FR Doc. 87-11802 Filed 5-22-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket Number 86-ANE-4; Amdt. 39-5819]**

## Airworthiness Directives; Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that requires inspection of the combustion chamber outer case for cracks adjacent to the rear flange and around the periphery of the PS4 and drain boss welds on certain PW JT8D engines. This AD supersedes AD 86-04-01, Amendment 39-5236 (51 FR 5311), by requiring inspection of combustion chamber outer cases for cracks adjacent to the rear flange at reduced threshold cycles, and includes inspection of PS4 and drain boss welds on certain PW JT8D engines. The AD is needed to prevent rupture of the combustion chamber outer case due to fatigue cracking that can originate at the PS4 and drain boss welds, as well as in the rear flange bolt holes, which could result in uncontained case rupture, inflight shutdowns, engine cowl release, and airframe damage.

**DATES:** *Effective.* June 29, 1987.

*Compliance Schedule.* As prescribed in the body of the AD.

*Incorporation by Reference.* Approved by the Director of the Federal Register on June 29, 1987.

**ADDRESSES:** The applicable alert service bulletin (ASB) may be obtained from Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457.

A copy of the ASB is contained in Rules Docket Number 86-ANE-4, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** James Jones, Engine Certification Branch, ANE-141, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7121.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include a new AD requiring inspection of the combustion chamber outer case for cracks adjacent to the rear flange and around the periphery of PS4 and drain boss welds on certain PW JT8D engines was published in the Federal Register on July 8, 1986, (51 FR 24716). The proposal was developed when the FAA determined that combustion chamber outer cases develop cracks during service. These cracks result from low cycle fatigue initiating in high stressed areas of the case. Analytical studies, substantiated by service experience, identify the high stressed areas to be in the periphery of the PS4 and drain boss welds, and the rear flange bolt holes. Cracks which develop along the circumference of the PS4 or drain boss welds or at the rear flange bolt holes can result in combustion chamber outer case ruptures.

There have been a total of ten reported combustion chamber outer case ruptures, four of which occurred during 1985 and one in 1986. Two of the ten ruptures occurred from a PS4 boss weld crack, and six occurred from drain boss weld cracks. The remaining two ruptures resulted from rear flange cracking, which prompted AD 86-04-01, Amendment 39-5236 (51 FR 5311). These ruptures caused both engine cowling and airframe damage.

On February 13, 1986, AD 86-04-01, Amendment 39-5236 (51 FR 5311), was published in the Federal Register requiring initial and repetitive visual inspections of the combustion chamber outer case for cracks adjacent to the rear flange bolt holes on certain PW JT8D engines. Fatigue cracks, which initiate in the rear flange bolt holes, can

propagate into the wall of the case and progress in an axial direction until the case ruptures. The purpose of the inspection is to identify and remove from service, combustion chamber outer cases which have developed rear flange bolt hole cracks. This AD adjusts the requirements of Amendment 39–5236 by reducing the initial threshold levels from 35,000 cycles to 30,000 cycles for JT8D–1 through –7B engines; 30,000 cycles to 25,000 cycles for JT8D–9 through –11 engines; and 25,000 cycles to 20,000 cycles for JT8D–15 through –17AR engines. The repetitive inspection intervals remain unchanged from those of Amendment 39–5236. An alternate rear flange inspection, using an eddy current procedure, has been added that allows increased repetitive inspection intervals of 12,000 cycles for JT8D–1 through –11 engines and 8,000 cycles for JT8D–15 through –17AR engines.

Notes (1) and (2) of this amendment have been reworded for clarification and consistency with the engine manual. Note (1) considers case boss fluorescent penetrant and eddy current inspection methods accomplished in the shop, in accordance with PW JT8D engine manual, P/N 481672, as an equivalent means of inspection to Appendix B of PW ASB 5676. The rear flange visual in shop inspection and Appendix A references have been deleted. Note (2) considers in shop fluorescent penetrant inspection (FPI) of the rear flange as an equivalent means of inspection to Appendix C of PW ASB 5676. The reference to eddy current inspection has been deleted.

Two additional notes have been added. Note (5) adds provisions for not reinspecting engines inducted into the shop for other causes whose cases were recently inspected in accordance with this AD within a limited period of time. Note (6) allows visual inspection of case boss welds (in accordance with PW ASB 5676) to identify previously weld repaired cases, if records are not available.

A portion of paragraph (d)(3) was inadvertently omitted in the **Federal Register** (51 FR 24718). However, since the intent of the paragraph was clear as published, the complete wording is being adopted without further notice. In addition, the ASB referenced in this final rule has been revised since issuance of the notice of proposed rulemaking (NPRM), however, the changes do not reflect additional requirements beyond those proposed in the NPRM.

Since this condition is likely to exist or develop on other engines of the same type design, this AD supersedes AD 86–04–01, Amendment 39–5236 (51 FR 5311), and requires initial and repetitive inspections of the combustion chamber outer case for cracks adjacent to the rear flange bolt holes, as well as around the periphery of the PS4 and drain boss welds, on certain PW JT8D engines in accordance with PW ASB 5676, Revision 1, dated September 24, 1986.

Interested persons have been afforded the opportunity to participate in the making of this amendment, and due consideration has been given to all relevant data and comments received. Several comments were received concerning the proposed rule.

**Discussion of Comments**

One commenter questioned the reliability of the on-wing white light and extended mirror inspection method, and recommended limiting the rear flange reinspection interval to 200 cycles.

The FAA considers the on-wing white light and extended mirror inspection method to be a viable inspection technique that has been successfully used by the industry for over a year. The reinspection intervals resulted from an analytical model based on service experience, shop visit rates, missed inspections, and crack propagation data. The analysis indicates that crack propagation rates for combustion case flange bolt hole initiated cracks are relatively low and can be detected in time to maintain a sufficient margin of safety.

One commenter requested reduction of the JT8D–9 inspection threshold to address a combustion case failure that ruptured at 11,417 cycles.

The FAA has determined that the evidence concerning that combustion case failure is somewhat inconsistent with the service history and engineering analysis of the other failed combustion cases. This was a first run case that had never been removed from the airplane. Cause of the crack initiation has not been established. However, the FAA will continue to review the data associated with this isolated event and, if necessary, will adjust the compliance schedule by amending this AD.

Six commenters requested an extension to the comment period until delivery of the inspection equipment. One of those commenters also requested deletion of the rear flange reinspection requirements until the rear flange eddy current inspection is proven to be viable.

The inspection equipment has been delivered to the industry, with adequate time for comment, and has proven to be effective. The rear flange reinspection requirements remain as published.

Three commenters questioned the justification for inspection of the PS4 boss.

Justification for the PS4 boss inspection requirement is addressed in the "SUPPLEMENTARY INFORMATION" paragraph above. It is significant to note that a PS4 boss failure occurred in December 1986.

Two commenters stated that, since a requirement never existed for identification of repaired cases, many operators did not keep records on previous boss weld repairs. They suggested that the proposed rule may require some operators to inspect to the more stringent compliance times of paragraph (c). One of the commenters proposed the establishment of a category for cases with previously weld repaired bosses, subsequently inspected in the shop and found crack free.

The FAA disagrees due to variability of shop welding practices as compared to original manufacture. Available evidence does not support that repaired cases are equivalent to non-repaired cases. Therefore, on that basis, a separate category was established. Guidelines for identification of weld repaired cases with no records are addressed in *Note* (6) of this AD.

One commenter requested an extended compliance period for case bosses inspected in the shop in light of the extended compliance period provided for rear flanges inspected in the shop.

The rear flange has an extended compliance period for those cases inspected in the shop in accordance with the engine manual because the inspection is of a higher quality than the on-wing extended mirror and light method. Hence, the rear flange compliance schedule for the shop inspection is of a longer inspection interval than the on-wing inspection. The case boss on-wing ultrasonic and shop inspections performed in accordance with the engine manual are considered equivalent and carry the same compliance schedule. *Note* (1) in this AD addresses case boss inspection equivalency.

Two commenters indicated that *Note* (2) of the NPRM referenced a nonexistent rear flange eddy current requirement in the engine manual.

The FAA agrees and has deleted the rear flange eddy current manual reference.

One commenter stated that the inspection limits for cases which have operated in different rated engines, as defined in the proposed *Note* (4) should be restricted to the initial inspection only. Therefore, the repeat inspection

should be based on its operation in the current engine. The commenter further stated that some operators are using higher rated cases on derated engines, and recommends that the compliance times should apply for the engine on which the case is actually installed.

Paragraph (e), formerly proposed *Note* (4), requires a case which has been operated in more than one model engine to be inspected to the criteria for the highest rated model engine in which it has ever been operated. This requirement was established because a significant reduction in total case life occurs during its initial operation on the higher rated model engine. The case life reduction is related to the stresses and increased temperatures imposed on the case by the higher rated model engine. The reduction in case life cannot be restored and is difficult to quantify by engineering analysis. Subsequent operation on a lower rated engine model does not take into account the distress that occurred during the previous operation on the higher rated model engine. Those operators who have higher rated engines that are presently installed and operated as lower rated engines and were never operated as a higher rated engine, may request an exemption from the higher rated engine model category through their cognizant FAA principal maintenance inspector, if proper documentation is presented.

One commenter stated that the latest definition of a "shop visit" in the "World Airline Technical Operations Glossary" does not include a gearbox or fuel nozzle removal. The commenter suggested that PW did not include these removals in their risk analysis, and requested deletion of the gearbox and fuel nozzle requirement from *Note* (4). Two other commenters stated that the gearbox and fuel nozzle removals were too restrictive.

The FAA disagrees that gearbox and fuel nozzle removals were not included in the PW risk analysis. Both were included in the engineering analysis. PW ASB 5676 includes the gearbox, but does not specifically reference fuel nozzle removal in the definition of a shop visit. However, the separation of a major engine flange is referenced. Fuel nozzles cannot be removed without separating a major engine flange.

Several commenters stated that the NPRM conflicted with the PW ASB regarding equivalency of the rear flange and case boss inspection methods.

The *Notes* provide clarification of the various inspection "equivalent means" in the AD.

One commenter stated that previous case shop inspections should be given extra credit based on the fact that shop inspections per the engine manual are of higher quality than the PW ASB procedures. The commenter suggested that the initial inspection should be established at an inspection interval that coincides with the longer reinspection interval.

The initial case inspection intervals were established to account for missed inspections. There is evidence of a case that was returned to service with a crack that was not detected during the shop inspections. The shorter initial inspection intervals are designed to identify and remove from service that population of cases with existing cracks.

One commenter stated that the inspection requirement at each shop visit, regardless of previous inspections, was too restrictive in that an inspection may have been accomplished in a relatively short time before the current shop visit.

The FAA agrees and, based on engineering analysis of fracture mechanics data, has provided relief for the above situation in *Note* (5) of this AD.

One commenter objected to the proposed rule in light of the operator's present combustion case maintenance program.

As stated above, the requirements of the NPRM were based on an engineering analysis to determine the service life of the case. The data used during the analysis included service history provided by the industry which indicates that current maintenance practices are not adequate to prevent case rupture. Operators whose maintenance programs are consistent with the inspection requirements of this AD should experience minimal impact.

One commenter questioned the reliability of the existing and new inspection equipment to detect cracks.

Crack detection capability has been satisfactorily demonstrated to the FAA and was included in the analysis that developed the inspection requirements of this AD. The AD contains a reporting requirement to determine if further action is required.

One commenter indicated that additional guidelines should be incorporated into the AD regarding owners with no engine records.

*Note* (3) of this AD provides guidelines for total cycle determination for operators with no engine history.

## Conclusion

The FAA has determined that this regulation involves approximately 6,367 engines at an approximate total cost of 2.2 million dollars. It has also been determined that few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected since the rule affects only operators using aircraft in which PW JT8D engines are installed, none of which are believed to be small entities. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption: "FOR FURTHER INFORMATION CONTACT".

## List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

## Adoption of the Amendment

## PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

## § 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD) which supersedes AD 86-04-01, Amendment 39-5236 (51 FR 5311).

**Pratt & Whitney:** Applies to Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent combustion chamber outer case rupture, inspect combustion chamber outer case assembly Part Numbers (P/N) 490547, 542155, 616315, 728823, 730613, 730614, 767187, and 767279, in accordance with PW Alert Service Bulletin (ASB) 5676, Revision 1, dated September 24, 1986, as follows:

(a) Inspect combustion chamber outer case PS4 boss, drain bosses, and rear flange for cracks at each engine shop visit.

(b) Inspect combustion chamber outer case PS4 boss and drain bosses, which have not been weld repaired, for cracks in accordance with the following schedule:

(1) PW JT8D-1, -1A, -1B, -7, -7A, and -7B engine cases with 24,000 total cycles in service (CIS) or more on the effective date of this AD; inspect within the next 2,500 CIS, or within 6,000 CIS since last inspection (SLI).

whichever occurs later. Thereafter, reinspect at intervals not to exceed 6,000 CIS SLI.

(2) PW JT8D–1, –1A, –1B, –7, –7A, and –7B engine cases with less than 24,000 total CIS on the effective date of this AD; inspect before the accumulation of 26,500 total CIS, or within 8,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 6,000 CIS SLI.

(3) PW JT8D–9, –9A, and –11 engine cases with 16,000 total CIS or more on the effective date of this AD; inspect within the next 2,500 CIS, or within 6,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 6,000 CIS SLI.

(4) PW JT8D–9, –9A, and –11 engine cases with less than 16,000 total CIS on the effective date of this AD; inspect before the accumulation of 18,500 total CIS, or within 6,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 6,000 CIS SLI.

(5) PW JT8D–15 and –15A engine cases with 12,000 total CIS or more on the effective date of this AD; inspect within the next 1,000 CIS, or within 4,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 4,000 CIS SLI.

(6) PW JT8D–15 and –15A engine cases with less than 12,000 total CIS on the effective date of this AD; inspect before the accumulation of 13,000 total CIS, or within 4,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 4,000 CIS SLI.

(7) PW JT8D–17, –17A, –17R, and –17AR engine cases with 9,800 total CIS or more on the effective date of this AD; inspect within the next 1,800 CIS, or within 4,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 4,000 CIS SLI.

(8) PW JT8D–17, –17A, –17R, and 17AR engine cases with less than 9,800 total CIS on the effective date of this AD; inspect before the accumulation of 11,200 total CIS, or within 4,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 4,000 CIS SLI.

(c) Inspect combustion chamber outer case PS4 boss and drain bosses, which have been weld repaired, for cracks in accordance with the following schedule:

(1) PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, and –11 engine cases regardless of total CIS; inspect within the next 1,500 CIS or within 3,500 CIS since weld repair or SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 3,500 CIS SLI.

(2) PW JT8D–15, –15A, –17A, –17R, and 17AR engine cases regardless of total CIS; inspect within the next 1,000 CIS or within 2,500 CIS since weld repair or SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 2,500 CIS SLI.

(d) Inspect combustion chamber outer case rear flange for cracks in accordance with the following schedule:

(1) PW JT8D–1, –1A, –1B, –7, –7A, and –7B engine cases with 30,000 total CIS or more on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, within the next 200 CIS, or within 3,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 3,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 12,000 CIS SLI.

(2) PW JT8D–1, –1A, –1B, –7, –7A and –7B engine cases with less than 30,000 total CIS on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, before the accumulation of 30,200 total CIS, or within 3,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 3,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 12,000 CIS SLI.

(3) PW JT8D–9, –9A, and –11 engine cases with 25,000 total CIS or more on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, within the next 200 CIS, or within the next 2,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 2,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 12,000 CIS SLI.

(4) PW JT8D–9, –9A and –11 engine cases with less than 25,000 total CIS on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, before the accumulation of 25,200 total CIS, or within 2,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 2,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 12,000 CIS SLI.

(5) PW JT8D–15 and –15A engine cases with 20,000 total CIS or more on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, within the next 200 CIS, or within 1,500 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 1,500 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 8,000 CIS SLI.

(6) PW JT8D–15 and –15A engine cases with less than 20,000 total CIS on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, before the accumulation of 20,200 total CIS, or within 1,500 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 1,500 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 8,000 CIS SLI.

(7) PW JT8D–17, –17A, –17R, and –17AR engine cases with 20,000 total CIS or more on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, within the next 200 CIS, or within 1,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 1,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection per Appendix C requirements may be accomplished at intervals not to exceed 8,000 CIS SLI.

(8) PW JT8D–17, –17A, –17R, and –17AR engine cases with less than 20,000 total CIS on the effective date of this AD; inspect in accordance with Appendix A of PW ASB 5676, before the accumulation of 20,200 total CIS, or within 1,000 CIS SLI, whichever occurs later. Thereafter, reinspect at intervals not to exceed 1,000 CIS SLI. As an alternate means of compliance, the case may be inspected in accordance with Appendix C of PW ASB 5676, and reinspection in accordance with Appendix C requirements may be accomplished at intervals not to exceed 8,000 CIS SLI.

(e) Inspect cases which have been operated in more than one model engine in accordance with the criteria for the highest rated model engine in which it was operated.

(f) Remove cracked cases from service prior to further flight.

(g) Report the following information in writing, if a case is found to be cracked, within 30 days of the inspection, to the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Telex Number 948301 FAANE BURL. Reporting approved by the Office of Management and Budget (OMB) under OMB Number 2120–0056:

(1) Engine serial number (S/N)
(2) Inspection date
(3) Case P/N and S/N
(4) Case total time and cycles (if estimate, so note)
(5) Case time and cycles since last inspection
(6) Method of inspection used
(7) Crack location and size

Note: (1) Inspection at shop visit of the case PS4 and drain boss welds by fluorescent penetration or eddy current, in accordance with PW JT8D Engine Manual, P/N 481672, is considered an equivalent means of inspection to Appendix B of PW ASB 5676.

(2) Fluorescent penetrant inspection at shop visit of the rear flange in accordance with the PW JT8D Engine Manual, P/N 481672, is considered an equivalent means of inspection to Appendix C of PW ASB 5676.

(3) Cases for which the total cycles in service cannot be determined from engine records or manufacturer's production records must be assigned a total cycle count equal to the highest cycle engine of that model in the owners'/operators' fleet.

(4) Shop visit is defined as the input of an engine to a repair shop where the subsequent engine maintenance entails any of the following:

(a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or

reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit".

(b) Removal of a disk, hub, or spool.

(c) Removal of the main or angle gearbox.

(d) Removal of the fuel nozzle.

(5) Engines inducted into the shop for other causes within 1,000 cycles of a previous case inspection, do not require reinspection, and may continue to complete the appropriate reinspection interval.

(6) If records are not available, a visual inspection of the case boss welds in accordance with PW ASB 5676, should be used to identify previously weld repaired cases.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD may be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

PW ASB 5676, Revision 1, dated September 24, 1986, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Publication Department, P.O. Box 611, Middletown, Connecticut 06457. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; Rules Docket Number 86-ANE-4, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on June 29, 1987.

This amendment supersedes Amendment 39-5236 (51 FR 5311), AD 86-04-01.

Issued in Burlington, Massachusetts, on April 24, 1987.

Clyde DeHart, Jr.,

*Acting Director, New England Region.*

[FR Doc. 87-11893 Filed 5-22-87; 8:45 am]

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1261

### Processing of Monetary Claims (General)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA amends 14 CFR Part 1261 by revising Subpart 1261.4, "Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration," and by adding Subpart 1261.5, "Administrative Offset," and Subpart 1261.6, "Salary Offset." The regulations reflect changes pursuant to the Debt Collection Act of 1982 (Pub. L. 97-365, enacted October 25, 1982), as implemented by the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101 through 105), and by the Office of Personnel Management (5 CFR Part 550, Subpart K, §§ 550.1101 through 550.1107, as finalized on May 6, 1986, 51 FR 16669).

**EFFECTIVE DATE:** May 26, 1987.

**ADDRESS:** Office of General Counsel, Code G, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Sara Najjar, 202-453-2432.

**SUPPLEMENTARY INFORMATION:** These regulations have been updated to comply with the joint regulation of the General Accounting Office (GAO) and the Department of Justice (DJ), and the regulation of the Office of Personnel Management (OPM). NASA received no comments on its proposed regulations, which were published in 50 FR 13228, April 3, 1985. With modifications reflecting the changes in the OPM regulations, the final NASA regulations are set forth in this final rule.

These regulations do not constitute a major rule for the purpose of Executive Order 12291 (46 FR 13193, February 19, 1981).

These regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980; 5 U.S.C. 601 *et seq.*).

### List of Subjects in 14 CFR Part 1261

Administrative practice and procedures, Claims, Debt collections, Administrative offset, Government employees, Pay administration, Salary offset, Wages.

## PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

For reasons set out in the Preamble, 14 CFR Part 1261 is amended as follows:

1. The authority for 14 CFR Part 1261, Subparts 1261.4, 1261.5, and 1261.6 reads as follows:

**Authority:** 42 U.S.C. 2473(c); 31 U.S.C. 3711 *et seq.*; 5 U.S.C. 5514; 4 CFR Parts 101-105; 5 CFR Part 550 Subpart K, §§ 550.1101-550.1107.

2. Subpart 1261.4 is revised, and subparts 1261.5 and 1261.6 are added to read as follows:

### Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration (NASA)

Sec.

1261.400 Scope of subpart.
1261.401 Definitions.
1261.402 Delegation of authority.
1261.403 Consultation with appropriate officials; negotiation.
1261.404 Services of the Inspector General.
1261.405 Subdivision of claims not authorized; other administrative proceedings.
1261.406 Aggressive collection action; documentation.
1261.407 Demand for payment; limitation periods.
1261.408 Use of consumer reporting agency.
1261.409 Contracting for collection services.
1261.410 Suspension or revocation of license or eligibility; liquidation of collateral.
1261.411 Collection in installments.
1261.412 Interest, penalties, and administrative costs.
1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.
1261.414 Compromise of claims.
1261.415 Execution of releases.
1261.416 Suspending or terminating collection action.
1261.417 Referral to Department of Justice (DJ) or General Accounting Office (GAO).

### Subpart 1261.5—Administrative Offset of Claims.

1261.500 Scope of subpart.
1261.501 Definition.
1261.502 Notification procedures.
1261.503 Agency records inspection; hearing or review.
1261.504 Interagency requests.
1261.505 Multiple debts.
1261.506 Limitation periods.
1261.507 Civil Service Retirement and Disability Fund.
1261.508 Offset against a judgment.

### Subpart 1261.6—Collection by Offset from Indebted Government Employees.

1261.600 Purpose of subpart.
1261.601 Scope of subpart.
1261.602 Definitions.
1261.603 Procedures for salary offset.
1261.604 Nonwaiver of rights by involuntary payoff.
1261.605 Refunds.

Sec.

1261.406 Salary offset request by a creditor agency other than NASA (the current paying agency).
1261.407 Obtaining the services of a hearing official.

**Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration (NASA)**

**§ 1261.400 Scope of subpart.**

(a) These regulations do the following:

(1) Prescribe standards for the administrative collection, compromise, suspension or termination of collection, and referral to the General Accounting Office (GAO), and/or to the Department of Justice (DJ) for litigation, of civil claims as defined by 31 U.S.C. 3701(b), arising out of the activities of NASA;

(2) Designate the responsible NASA officials authorized to effect actions hereunder; and

(3) Require compliance with the GAO/DJ joint regulations at 4 CFR Parts 101 through 105 and the Office of Personnel Management (OPM) regulations at 5 CFR Part 550, Subpart K.

(b) Failure to comply with any provision of the GAO/DJ or OPM regulations shall not be available as a defense to any debtor (4 CFR 101.8).

(c) These regulations do not include any claim based in whole or in part on violation of the anti-trust laws; any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim; tax claims; or Federal interagency claims (4 CFR 101.3).

**§ 1261.401 Definitions.**

(a) *Claim and debt.* The terms denote a civil claim arising from the activities of NASA for an amount of money, or return or value of property (see 4 CFR 101.5), owing to the United States from any person, organization, or entity, except another Federal agency. The words "claim" and "debt" have been used interchangeably and are considered synonymous.

(b) *Delinquent debt.* The debt is "delinquent" if it has not been paid by the date specified in the initial written notification (e.g., § 1261.407) or applicable contractual agreement, unless other acceptable (to NASA) payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy an obligation under the payment agreement.

(c) *Referral for litigation.* Referral through the NASA installation's legal counsel to the Department of Justice (Main Justice or the United States Attorney, as appropriate) for legal proceedings.

**§ 1261.402 Delegation of authority.**

The following NASA officials are delegated authority, as qualified by § 1261.403, to take such action as is authorized by these regulations to collect, compromise, suspend/terminate collection, and upon consultation with and through legal counsel, to refer the claim (as applicable) to the GAO or Department of Justice:

(a) For field installations, with regard to Subpart 1261.4 and Subpart 1261.5: The Director of the Installation or a designee who reports directly to the Installation Director. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(b) For Headquarters, with regard to Subpart 1261.4 and Subpart 1261.5: The Associate Administrator for Management or a designee who reports directly to the Associate Administrator for Management. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(c) With respect to the analysis required by § 1261.413: The NASA Comptroller or designee.

(d) NASA wide, with regard to Subpart 1261.6: The NASA Comptroller or designee.

(e) NASA wide, for complying with pertinent provisions under these regulations for agency hearing or review (see § 1261.406(b), § 1261.503, and § 1261.603(c)): The NASA General Counsel or designee.

**§ 1261.403 Consultation with appropriate officials; negotiation.**

(a) The authority pursuant to § 1261.402 to determine to forego collection of interest, to accept payment of a claim in installments, or, as to claims which do not exceed $20,000, exclusive of interest and related charges, to compromise a claim or to refrain from doing so, or to refrain from, suspend or terminate collection action, shall be exercised only after consultation with legal counsel for the particular installation and the following NASA officials or designees, who may also be requested to negotiate the appropriate agreements or arrangements with the debtor:

(1) With respect to claims against contractors or grantees arising in connection with contracts or grants—the contracting officer and the financial management officer of the installation concerned.

(2) With respect to claims against commercial carriers for loss of or damage to NASA freight shipment—the cognizant transportation officers or the official who determined the amount of the claim, as appropriate, and the financial management officers of the installation concerned.

(3) With respect to claims against employees of NASA incident to their employment—the personnel officer and the financial management officer of the installation concerned.

(b) The appropriate counsel's office shall review and concur in the following:

(1) All communications to and agreements with debtors relating to claims collection.

(2) All determinations to compromise a claim, or to suspend or terminate collection action.

(3) All referrals of claims, other than referrals to the Department of Justice pursuant to § 1261.404(b)(1).

(4) All documents releasing debtors from liability to the United States.

(5) All other actions relating to the collection of a claim which in the opinion of the official designated in or pursuant to § 1261.402 may affect the rights of the United States.

**§ 1261.404 Services of the Inspector General.**

(a) At the request of an official designated in or pursuant to § 1261.402, the Office of the Inspector General will, where practicable, conduct such investigations as may assist in the collection, compromise, or referral of claims of the United States, including investigations to determine the location and financial resources of the debtors.

(b) Any claim which, in the opinion of an official designated in or pursuant to § 1261.402 or § 1261.403, may indicate fraud, presentation of a false claim, or misrepresentation, on the part of the debtor or any other party having an interest in the claim, shall be referred by the designated official to the Inspector General (IG), NASA Headquarters, or to the nearest office of the NASA IG. After an investigation as may be appropriate, the IG shall:

(1) Notice the official, from whom the claim was received, of the findings and refer the claim to the Department of Justice in accordance with the provisions of 4 CFR 101.3; or

(2) If it were found that there is no such indication of fraud, the presentation of a false claim, or misrepresentation, return the claim to the official from whom it was received.

**§ 1261.406 Subdivision of claims not authorized; other administrative proceedings.**

(a) *Subdivision of claims.* Claims may not be subdivided to avoid the $20,000 ceiling, exclusive of interest, penalties, and administrative costs, for purposes of compromise (§ 1261.414) or suspension or termination of collection (§ 1261.416). The debtor's liability arising from a particular transaction or contract shall be considered a single claim [4 CFR 101.6].

(b) Required administrative proceedings. Nothing contained in these regulations is intended to require NASA to omit, foreclose, or duplicate administrative proceedings required by contract or other applicable laws and implementing regulations [4 CFR 101.7].

**§ 1261.407 Aggressive collection action; documentation.**

(a) NASA shall take aggressive action, on a timely basis with effective followup, to collect all claims of the United States for money or property arising out of NASA activities, and to cooperate with the other Federal agencies in debt collection activities.

(b) All administrative collection action shall be documented and the bases for compromise, or for termination or suspension of collection action, should be set out in detail. Such documentation, including the Claims Collection Litigation Report under § 1261.417(e), should be retained in the appropriate claims file.

**§ 1261.407 Demand for payment; limitation periods.**

(a) Appropriate written demands shall be made promptly upon a debtor of the United States in terms which inform the debtor of the consequences of failure to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, NASA will give due regard to the need to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions, including immediate referral for litigation.

(b) The initial demand letter should inform the debtor of:

(1) The basis for the indebtedness and whatever rights the debtor may have to seek review within the agency;

(2) The applicable standards for assessing interest, penalties, and administrative costs (§ 1261.412); and

(3) The date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand delivered. The responsible official should exercise care to ensure that demand letters are mailed or hand delivered on the same day that they are actually dated. Apart from these requirements, there is no prescribed format for demand letters. However, as appropriate to the circumstances, the responsible official may consider including, either in the initial demand letter or in subsequent letters, such items the NASA's willingness to discuss alternative methods of payment, or intentions with respect to referral of the debt to the Department of Justice for litigation.

(c) NASA should respond promptly to communications from the debtor, within 30 days whenever feasible, and should advise debtors who dispute the debt to furnish available evidence to support their contentions.

(d) If either prior to the initiation of, any time during, or after completion of the demand cycle, a determination to pursue offset is made, then the procedures specified in Subparts 1261.5 and 1261.6, as applicable, should be followed. The availability of funds for offset and NASA's determination to pursue it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of § 1261.502 or § 1261.603(a), as applicable.

(e) NASA should undertake personal interviews with its debtors whenever this is feasible, having regard for the amounts involved and the proximity of agency representatives to such debtors; and may attempt to effect compromise of the claim in accordance with § 1261.414.

(f) When a debtor is employed by the Federal government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with Subpart 1261.6, the employing agency will be contacted for the purpose of arranging with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222, May 8, 1965, 30 FR 6469, which provides that: "An employee is expected to meet all just financial obligations, especially those—such as Federal, State, or local taxes—which are imposed by law" [4 CFR 102.81].

**§ 1261.408 Use of consumer reporting agency.**

(a) The term "consumer reporting agency" has the meaning provided in the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)):

(1) A consumer reporting agency as that term is defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)); or

(2) A person that, for money or on a cooperative basis, regularly—

(i) Gets information on consumers to give the information to a consumer reporting agency; or

(ii) Serves as a marketing agent under an arrangement allowing a third party to get the information from a consumer reporting agency.

(b) NASA Headquarters Financial Management Division, shall be the focal contact between NASA and consumer reporting agencies. The following procedures shall apply when such agencies are employed by NASA:

(1) After the appropriate notice pursuant to 5 U.S.C. 552a(e)(4) has been published, NASA may disclose, in accordance with 5 U.S.C. 552a(b)(12), information about a debtor to a consumer reporting agency. Such information may include:

(i) That a claim has been determined to be valid and is overdue (including violation by debtor of a repayment plan or other claim settlement agreement);

(ii) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual responsible for the claim;

(iii) Amount, status, and history of the claim;

(iv) Program or pertinent activity under which the claim arose.

(2) Before disclosing the information specified in paragraph (b)(1) of this section, NASA shall comply with 31 U.S.C. 3711(f) by:

(i) Taking reasonable action to locate the individual if a current address is not available;

(ii) If a current address is available, noticing the individual by certified mail, return receipt requested, that: The designated NASA official has reviewed the claim and determined that it is valid

and overdue; within not less than 60 days after sending this notice, NASA intends to disclose to a consumer reporting agency the specific information to be disclosed under paragraph (b)(1) of this section; the individual may request a complete explanation of the claim, dispute the information in the records of NASA about the claim, and file for an administrative review or repeal of the claim or for reconsideration of the initial decision on the claim.

(3) If an administrative review or reconsideration is requested, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for an impartial review and determination by counsel or designee based on the entire written record. If the reviewer cannot resolve the question of indebtedness based upon the available documentary evidence, verified written statements by the debtor or the responsible official may be requested on any pertinent matter not addressed by the available record.

(c) If the information is to be submitted to a consumer reporting agency, the responsible official shall obtain a verified statement from such agency which gives satisfactory assurances that the particular agency is complying with all laws of the United States related to providing consumer credit information; and thereafter ensure that the consumer reporting agency is promptly informed of any substantial change in the condition or amount of the claim, or, on request of such agency, promptly verify or correct information about the claim.

**§ 1261.409 Contracting for collection services.**

(a) When NASA determines that there is a need to contract for collection services, the following conditions must attach:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation must be retained by NASA.

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices—for example, the Fair Debt Collection Practices Act (15 U.S.C. 1692), and 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service;

(3) The contractor must be required to account strictly for all amounts collected; and

(4) The contractor must agree to provide any data contained in its files relating to collection actions and related reports, current address of debtor, and reasonably current credit information upon returning an account to NASA for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) NASA may fund a collection service contract on a fixed-fee basis—that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. However, such contract may be entered into only if and to the extent provided in the appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute. Accordingly, payment of the fixed-fee must be charged to available agency appropriations. See 4 CFR 102.6(b) (1) and (3).

(2) NASA may also fund a collection service contract on a contingent-fee basis—that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice. See 4 CFR 102.6(b)(2).

(3) Except as authorized under paragraph (b)(2) of this section, or unless otherwise specifically provided by law, NASA must deposit all amounts recovered under collection service contracts (or by NASA employees on behalf of the agency) in the Treasury Department as miscellaneous receipts pursuant to 31 U.S.C. 3302. See 4 CFR 102.6(b)(4).

**§ 1261.410 Suspension or revocation of license or eligibility; liquidation of collateral.**

(a) In seeking the collection of statutory penalties, forfeitures, or debts provided for as an enforcement aid or for compelling compliance, NASA will give serious consideration to the suspension or revocation of licenses or other privileges for any inexcusable, prolonged, or repeated failure of a debtor to pay such a claim. In the case of a contractor under 48 CFR Chapter 18, NASA will comply with the debarment, suspension, and ineligibility requirements of the NASA Federal Acquisition Regulation Supplement (NASA/FAR Supplement) at 48 CFR 1609.4. Likewise, in making, guaranteeing, insuring, acquiring, or participating in loans, NASA will give serious consideration to suspending or disqualifying any lender, contractor, broker, borrower, or other debtor from doing further business with it or engaging in programs sponsored by it if such a debtor fails to pay its debts to the Government within a reasonable time. The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 must be reported to the Treasury Department at once. Notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited by the Treasury Department will be forwarded by that Department to all interested agencies.

(b) If NASA is holding security or collateral which may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, it should do so by such procedures if the debtor fails to pay the debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure. NASA will provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by applicable contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

**§ 1261.411 Collection in installments.**

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest penalties, and administrative costs as required by § 1261.412, should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Debtors who represent that they are unable to pay the debt in one lump sum must submit financial statements. If NASA agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not

more than 3 years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the claim is unsecured, an executed confess-judgment note, comparable to the Department of Justice Form USA–79a, should be obtained from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, the debtor should be provided with written explanation of the consequences of signing the note, and documentation should be maintained sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. NASA, at its option, may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

**§ 1261.412 Interest, penalties, and administrative costs.**

(a) Pursuant to 31 U.S.C. 3717, NASA shall assess interest, penalties, and administrative costs on debts owed to the United States. Before assessing these charges, NASA must mail or hand deliver a written notice to the debtor explaining the requirements concerning the charges (see § 1261.407(b)).

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand delivered to the debtor (on or after October 25, 1982), using the most current address that is available to the agency. If an "advance billing" procedure is used—that is, a bill is mailed before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. Designated officials should exercise care to ensure that the notices required by this section are dated and mailed or hand delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. NASA may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, NASA may set a new interest rate which reflects the current value of funds to the Treasury Department at the time the new agreement is executed. Interest should not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) NASA shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incurred in processing and handling the debt because it became delinquent as defined in § 1261.401(b). Calculations of administrative costs should be based upon actual costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(e) NASA shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent as defined in § 1261.401(b) for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) NASA must waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. NASA may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, NASA may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs (assessed under this section) under the criteria specified in § 1261.414 relating to the compromise of claims (without regard to the amount of the debt), or if NASA determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. See 4 CFR 101.13(g). Such optional waivers should be handled on a case-by-case basis, in consultation with officials designated under § 1261.403. Examples of situations in which NASA may consider waiving interest and other related charges are:

(1) Pending consideration of a request for reconsideration or administrative review;

(2) Acceptance of an installment plan or other compromise agreement, where there is no indication of lack of good faith on the part of the debtor in not repaying the debt, and the debtor has provided substantiating information of inability to pay or other unavoidable hardship which reasonably prevented the debt from being repaid.

(h) Where a mandatory waiver or review statute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under § 1261.416(c)(3).

(i) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply:

(i) To debts owed by any State or local government;

(ii) To debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of) October 25, 1982;

(iii) To debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts involved; or

(iv) Debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(2) NASA may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

**§ 1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.**

The Office of the NASA Comptroller will:

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(a) Issue internal procedures to provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, and assist in evaluating offers in compromise.

(b) Consider the need, feasibility, and cost effectiveness of automated debt collection operation.

(c) Establish internal controls to identify causes, if any, of overpayments, delinquencies, and defaults, and establish procedures for corrective actions as needs dictate.

**§ 1261.414 Compromise of claims.**

(a) Designated NASA officials (see § 1261.402 and § 1261.403) may compromise claims for money or property arising out of the activities of the agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed $20,000, prior to the referral of such claims to the General Accounting Office, or to the Department of Justice for litigation. The Comptroller General may exercise such compromise authority with respect to claims referred to the General Accounting Office (GAO) prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the GAO in the account of an accountable officer, including a claim against the payee, prior to its referral by the GAO for litigation.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds $20,000, the authority to accept the compromise rests solely with the Department of Justice. NASA should evaluate the offer, using the factors set forth in paragraphs (c) through (f) of this section, and may recommend compromise for reasons under one, or more than one, of those paragraphs. If NASA then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 4 CFR 105.2(b). Claims for which the gross amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the agency's recommendation. If NASA has a debtor's firm written offer of compromise which is substantial in amount and the agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the General Accounting Office or to the Department of Justice. The General Accounting Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice. If NASA wishes to reject the compromise, GAO or Department of Justice approval is not required.

(c) A claim may be compromised pursuant to this section if NASA cannot collect the full amount because of the debtor's inability to pay the full amount within a reasonable time, or the refusal of the debtor to pay the claim in full and the Government's inability to enforce collection in full within a reasonable time by enforced collection proceedings. In determining the debtor's inability or refusal to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor;

(5) The availability of assets or income which may be realized by enforced collection proceedings; and

(6) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at forced sale may properly be considered in determining the Government's ability to enforce collection. The compromise should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time which collection will take.

(d) A claim may be compromised if there is a real doubt concerning the Government's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases should fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment, paying due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. In determining the litigative risks involved, proportionate weight should be given to the probable amount of court costs and attorney fees pursuant to the Equal Access to Justice Act which may be assessed against the Government if it is unsuccessful in litigation. See 28 U.S.C. 2412.

(e) A claim may be compromised if the cost of collecting the claim does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, paying heed to the time which it will take to effect collection. Costs of collecting may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collecting justifies enforced collection of the full amount, it is legitimate to consider the positive effect that enforced collection of some claims may have on the collection of other claims. Since debtors are more likely to pay when first requested to do so if an agency has a policy of vigorous collection of all claims, the fact that the cost of collection of any one claim may exceed the amount of the claim does not necessarily mean that the claim should be compromised. The practical benefits of vigorous collection of a small claim may include a demonstration to other debtors that resistance to payment is not likely to succeed.

(f) *Enforcement policy.* Statutory penalties, forfeitures, or debts established as an aid to enforcement and to compel compliance may be compromised pursuant to this part if the agency's enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon. Mere accidental or technical violations may be dealt with less severely than willful and substantial violations.

(g) Compromises payable in installments are to be discouraged. However, if payment of a compromise by installments is necessary, a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 1261.411, in every case in which this is possible.

(h) If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal, such information may be

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obtained from the individual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income, and expenses. Forms such as Department of Justice Form OBD–500 or OBD–500B may be used for this purpose. Similar data may be obtained from corporate debtors using a form such as Department of Justice Form OBD–500C or by resort to balance sheets and such additional data as seems required. Samples of the Department of Justice forms are available from the Office of the NASA General Counsel. Neither a percentage of a debtor's profits nor stock in a debtor corporation will be accepted in compromise of a claim. In negotiating a compromise with a business concern, consideration should be given to requiring a waiver of the tax-loss-carry-back rights of the debtor.

(i) *Joint and several liability.* When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. NASA will not attempt to allocate the burden of paying such claims as between the debtors but will proceed to liquidate the indebtedness as quickly as possible. Care should be taken that a compromise agreement with one such debtor does not release the agency's claim against the remaining debtors. The amount of a compromise with one such debtor shall not be considered a precedent or as morally binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

**§ 1261.415 Execution of releases.**

Upon receipt of full payment of a claim, or the amount in compromise of a claim as determined pursuant to § 1261.414, the official designated in § 1261.402 will prepare and execute, on behalf of the United States, an appropriate release, which shall include the provision that it shall be void if procured by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

**§ 1261.416 Suspending or terminating collection action.**

(a) The standards set forth in this section apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. NASA may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of the agency, prior to the referral of such claims to the General Accounting Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the General Accounting Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the designated official believes suspension or termination may be appropriate, the matter should be evaluated using the factors set forth in paragraphs (c) and (d) of this section. If the agency concludes that suspension or termination is appropriate, it must refer the matter, with its reasons for the recommendation, to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 4 CFR 105.2(b). If NASA decides not to suspend or terminate collection action on the claim, Department of Justice approval is not required; or if it determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

(c) *Suspension of collection activity—*(1) *Inability to locate debtor.* Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim, with due consideration for the size and amount which may be realized thereon. The following sources may be of assistance in locating missing debtors: Telephone directories; city directories; postmasters; drivers' license records; automobile title and registration records; state and local government agencies; the Internal Revenue Service (see 4 CFR 102.18); other Federal agencies; employers, relatives, friends; credit agency skip locate reports, and credit bureaus. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of the applicable statute of limitations, such as 28 U.S.C. 2415, to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of the debtor's missing status.

(2) *Financial condition of debtor.* Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in realty or personal property and is unable to make payments on the Government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action, and:

(i) The applicable statute of limitations has been tolled or started running anew; or

(ii) Future collection can be effected by offset, notwithstanding the statute of limitations, with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or

(iii) The debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principle amount of the debt with interest at a later date.

(3) Request for waiver or administrative review. If the statute under which waiver or administrative review is sought is "mandatory," that is, if it prohibits the agency from collecting the debt prior to the agency's consideration of the request for waiver or review (see *Califano* v. *Yamasaki,* 422 U.S. 682 (1979)), then collection action must be suspended until either: The agency has considered the request for waiver/review; or the applicable time limit for making the waiver/review request, as prescribed in a written notice, has expired and the debtor, upon notice, has not made such a request. If the applicable waiver/review statute is "permissive," that is, if it does not require all requests for waiver/review to be considered, and if it does not prohibit collection action pending consideration of a waiver/request (for example, 5 U.S.C. 5584), collection action may be suspended pending agency action on a waiver/review request based upon appropriate consideration, on a case-by-case basis, as to whether:

(i) There is a reasonable possibility that waiver will be granted or that the debt (in whole or in part) will be found not owing from the debtor;

(ii) The Government's interests would be protected, if suspension were granted, by reasonable assurance that the debt could be recovered if the debtor does not prevail; and

(iii) Collection of the debt will cause undue hardship.

(4) If the applicable statutes and regulations would not authorize refund by the agency to the debtor of amounts collected prior to agency consideration of the debtor's waiver/review request (in the event the agency acts favorably on it), collection action should ordinarily be suspended, without regard to the factors specified for permissive waivers, unless it appears clear, based on the request and the surrounding circumstances, that the request is frivolous and was made primarily to delay collection. See 4 CFR 104.2.

(d) *Termination of collection activity.* Collection activity may be terminated and NASA may close its file on the claim based on the following:

(1) Inability to collect any substantial amount. Collection action may be terminated on a claim when it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, may be considered: Age and health of the debtor; present and potential income; inheritance prospects; the possibility that assets have been concealed or improperly transferred by the debtor; the availability of assets or income which may be realized by enforced collection proceedings.

(2) *Inability to locate debtor.* Collection action may be terminated on a claim when the debtor cannot be located, and either:

(i) There is no security remaining to be liquidated; or

(ii) The applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim.

(3) *Cost will exceed recovery.* Collection action may be terminated on a claim when it is likely that the cost of further collection action will exceed the amount recoverable thereby.

(4) *Claim legally without merit.* Collection action should be terminated immediately on a claim whenever it is determined that the claim is legally without merit.

(5) *Claim cannot be substantiated by evidence.* Collection action should be terminated when it is determined that the evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to reduce voluntary payment are unavailing.

(e) *Transfer of claim.* When NASA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the General Accounting Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government sponsored program, NASA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under paragraphs (d)(1) and (2) of this section. Claims on which NASA holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this section.

### § 1261.417 Referral to Department of Justice (DJ) or General Accounting Office (GAO).

(a) *Prompt referral.* Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken in accordance with § 1261.406 and which cannot be compromised, or on which collection action cannot be suspended or terminated, in accordance with § 1261.414 and § 1261.416, shall be promptly referred to the Department of Justice for litigation.

(1) Claims for which the gross original amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive agency collection action and the observance of the regulations contained in this subpart, and in any event, well within the period for bringing a timely suit against the debtor. Ordinarily, referrals should be made within 1 year of the agency's final determination of the fact and the amount of the debt.

(3) *Minimum amount.* NASA is not to refer claims of less than $600, exclusive of interest, penalties, and administrative costs, for litigation unless:

(i) Referral is important to a significant enforcement policy; or

(ii) The debtor not only has the clear ability to pay the claim but the Government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government.

(b) Claims arising from audit exceptions taken by the GAO to payments made by agencies must be referred to the GAO for review and approval prior to referral to the Department of Justice for litigation, unless NASA has been granted an exception by the GAO. Referrals shall comply with instructions, including monetary limitations, contained in the GAO Policy and Procedures Manual for Guidance to Federal Agencies and paragraphs (e) and (f) of this section.

(c) When the merits of the claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the designated official should refer the matter to the General Accounting Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to GAO or to the Department of Justice pursuant to this section, NASA shall refrain from having any contact with the debtor about the pending claim and shall direct the debtor to GAO or to the DJ, as appropriate, when questions concerning the claim are raised by the debtor. GAO or the DJ, as appropriate, shall be immediately notified by NASA of any payments which are received from the debtor subsequent to referral of a claim under this section.

(e) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by the Department of Justice in consultation with the General Accounting Office, the Claims Collection Litigation Report (CCLR), which was officially implemented by NASA, effective March 1, 1983, shall be used with all referrals of administratively uncollectible claims. As required by the CCLR, the following information must be included:

(1) *Report of prior collection actions.* A checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the administrative collection actions have been omitted, the reason for their omission must be provided. GAO, the United States Attorney, or the Civil Division of the Department of Justice may return claims at their option when there is insufficient justification for the omission of one or more of the

administrative collection actions enumerated in this subpart (see 4 CFR Part 102).

(2) *Current address of debtor.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the commencement of foreclosure of other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* Reasonably current credit data which indicates that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the Government. Such credit data may take the form of:

(i) A commercial credit report;

(ii) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(iii) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(iv) An audited balance sheet of a corporate debtor.

(4) Reasons for credit data omissions. The credit data may be omitted if:

(i) A surety bond is available in an amount sufficient to satisfy the claim in full;

(ii) The forced sale value of the security available for application to the Government's claim is sufficient to satisfy the claim in full;

(iii) NASA wishes to liquidate loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(iv) The debtor is in bankruptcy or receivership;

(v) The debtor's liability to the Government is fully covered by insurance, in which case NASA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage; or

(vi) The status of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of State or local government.

(f) *Preservation of evidence.* Care will be taken to preserve all files, records, and exhibits on claims referred or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or the United States Attorney without specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

## Subpart 1261.5—Administrative Offset of Claims.

### § 1261.500 Scope of subpart.

(a) This subpart applies to collection of claims by administrative offset under section 5 of the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authority, or the common law; it does not include "Salary Offset," which is governed by Subpart 1261.6, infra. Consistent with 4 CFR 102.3, collection by administrative offset will be undertaken by NASA on all liquidated or certain in amount claims in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(b) Whether collection by administrative offset is feasible is a determination to be made by NASA on a case-by-case basis, in the exercise of sound discretion. NASA will consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, NASA may give due consideration to the debtor's financial condition; or whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate.

(c) NASA is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to:

(1) Debts owed by any State or local Government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(3) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

### § 1261.501 Definition.

"Administrative offset"—the term, as defined in 31 U.S.C. 3701(a)(1), means "withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government."

### § 1261.502 Notification procedures.

(a) Before collecting any claims through administrative offset, a 30-day written notice must be sent to the debtor by certified mail, return receipt requested. The notice must include:

(1) The nature and amount of the debt;

(2) NASA's intention to collect by administrative offset; and

(3) An explanation of the debtor's rights under 31 U.S.C. 3716(a), or other relied upon statutory authority, which must include a statement that the debtor has the opportunity, within the 30-day notice period, to:

(i) Inspect and copy records of NASA with respect to the debt;

(ii) Request a review by NASA of its decision related to the claim; and

(iii) Enter into a written agreement with the designated official (see § 1261.402) to repay the amount of the claim. However, sound judgment should be exercised in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, NASA should accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(b) NASA may effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (a) of this section if:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(3) In cases where the procedural requirements of paragraph (a) of this section had previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to

a notice of audit disallowance or salary offset under § 1261.603, the agency is not required to duplicate those requirements before taking administrative offset.

**§ 1261.503 Agency records inspection; hearing or review.**

(a) NASA shall provide the debtor with a reasonable opportunity for an "oral hearing" when:

(1) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although significant matters discussed at the hearing should be carefully documented. See 4 CFR 102.3(c)(1). Such hearing may be an informal discussion/interview with the debtor, face-to-face meeting between debtor and cognizant NASA personnel, or written formal submission by the debtor and response by the NASA cognizant personnel with an opportunity for oral presentation. The hearing will be conducted before or in the presence of an official designated by the NASA General Counsel or designee on a case-by-case basis. The decision of the reviewing/hearing official should be communicated in writing (no particular form is required) to the affected parties, and will constitute the final administrative decision of the agency.

(b) Paragraph (a) of this section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and NASA has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity. See 4 CFR 102.3(c)(2).

(c) In those cases where an oral hearing is not required or granted, NASA will nevertheless accord the debtor a "paper hearing"—that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the available written record. See 4 CFR 102.3(c)(3). In such case, the responsible official or designee shall refer the request to the appropriate NASA legal counsel for review and determination by counsel or designee.

(d) A request to inspect and/or copy the debtor's own debt records or related files, and/or for a hearing or review accompanied by a statement of the basis or grounds for such hearing or review, must be submitted within 30 calendar days of the receipt of the written notice under § 1261.502(a). A reasonable time to inspect and copy records will be provided during official working hours, but not to exceed 5 business days, unless a verified statement showing good cause requires a longer period. Any suspension of collection or other charges during the period of the inspection, or hearing or review, shall comply with § 1261.412 and § 1261.416. Requests for or consideration of compromising the debt must comply with § 1261.414.

**§ 1261.504 Interagency requests.**

(a) Requests to NASA by other Federal agencies for administrative offset should be in writing and forwarded to the Office of the NASA Comptroller, NASA Headquarters, Washington, DC 20546.

(b) Requests by NASA to other Federal agencies holding funds payable to the debtor should be in writing and forwarded, certified return receipt, as specified by that agency in its regulations; however, if such rule is not readily available or identifiable, the request should be submitted to that agency's office of legal counsel with a request that it be processed in accordance with their internal procedures.

(c) Requests to and from NASA should be processed within 30 calendar days of receipt. If such processing is impractical or not feasible, notice to extend the time period for another 30 calendar days should be forwarded 10 calendar days prior to the expiration of the first 30-day period.

(d) Requests from or to NASA must be accompanied by a certification that the debtor owes the debt (including the amount) and that the provisions of (or comparable to) Subpart 1261.5 or Subpart 1261.6, as applicable, have been fully complied with. NASA will cooperate with other agencies in effecting collection.

**§ 1261.505 Multiple debts.**

When collecting multiple debts by administrative offset, NASA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

**§ 1261.506 Limitation periods.**

NASA may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. Determination of when the debt first accrued is to be made in accordance with existing law regarding the accrual of debts, such as under 28 U.S.C. 2415. See 4 CFR 102.3(b)(3).

**§ 1261.507 Civil Service Retirement and Disability Fund.**

(a) Unless otherwise prohibited by law, NASA may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management (OPM) in accordance with the OPM regulations (see 5 CFR 831.1801, *et seq.*).

(b) When making a request for administrative offset under paragraph (a) of this section, NASA shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) NASA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) NASA has complied with the requirements of this Subpart 1261.5 which implements 4 CFR 102.3, including any required hearing or review.

(c) Once NASA has decided to request administrative offset under this section, the request should be made as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request

was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If NASA collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the designated official should act promptly to modify or terminate the agency's request to OPM for offset.

(e) OPM is not required or authorized by 4 CFR 102.4 to review the merits of NASA's determination with respect to:

(1) The amount and validity of the debt;

(2) Waiver under an applicable statute; or

(3) Provide or not provide an oral hearing.

**§ 1261.508 Offset against a judgment.**

Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

## Subpart 1261.6—Collection by Offset From Indebted Government Employees

**§ 1261.600 Purpose of subpart.**

This subpart implements 5 U.S.C. 5514 in accordance with the OPM regulation and establishes the procedural requirements for recovering pre-judgment debts from the current pay account of an employee through what is commonly called salary offset, including a situation where NASA (the current paying agency) is not the employee's creditor agency. Salary offset to satisfy a judgment or a court determined debt is governed by section 124 of Pub. L. 97-276 (October 2, 1982), 5 U.S.C. 5514 *note*.

**§ 1261.601 Scope of subpart.**

(a) Coverage. This subpart applies to agencies and employees as defined in § 1261.602.

(b) Applicability. This subpart and 5 U.S.C. 5514 apply in recovering certain prejudgment debts by administrative offset except where the employee consents to the recovery, from the current pay account of an employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in 5 U.S.C. 5514 and this subpart should be consistent with Subpart 1261.5.

(1) Excluded debts or claims. The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705, employee training expenses in 5 U.S.C. 4108, and debts determined by a court as provided in 5 U.S.C. 5514 *note*).

(2) Waiver requests and claims to the General Accounting Office. This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

**§ 1261.602 Definitions.**

For purposes of this subpart:

(a) "Agency" means:

(1) An Executive agency as defined in section 105 of title 5, United States Code, including U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined in section 102 of Title 5, United States Code;

(3) An agency or court in the judicial branch, including a court as defined in section 610 of Title 28, United States Code, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

(b) "Creditor agency" means the agency to which the debt is owed.

(c) "Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(d) "Disposable pay" means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. NASA must exclude deductions listed in OPM's garnishment regulations at 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

(e) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(f) "Paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

(g) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(h) "Waiver" means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584(b), or any other law.

**§ 1261.603 Procedures for salary offset.**

If NASA is both the paying and creditor agency, the following requirements must be met before a deduction is made from the current pay account of an employee.

(a) *Written notice.* The employee must be sent a minimum of 30 days written notice, which specifies:

(1) The origin, nature and amount of the indebtedness, and the official to contact within the agency (ordinarily, the designated financial management official for the particular installation);

(2) The intention of the agency to initiate collection of the debt through salary offset by deductions from the employee's current disposable pay, stating the amount, frequency, proposed beginning date, and duration of intended deductions (the amount to be de 'ucted for any period, without the consent of the employee, may not exceed 15 percent of disposable pay);

(3) An explanation of any interest, penalties, or administrative costs included in the amount, and that such assessment must be made unless excused in accordance with 24 CFR 1261.612;

(4) The right for an opportunity (which does not toll the running of the 30-day period) to inspect and copy NASA records relating to the debt or to request and receive (if reasonable) a copy of such records, provided that such opportunity must be exercised on or before the 15th day following receipt of the notice and can be conducted only during official working hours for a reasonable period of time not to exceed 5 working days;

(5) If not previously provided, the opportunity (under terms agreeable to NASA) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the authorized agency official (see 14 CFR 1261.402) and documented in NASA's files (see 14 CFR 1261.407(d));

(6) An opportunity for a hearing, as provided in paragraph (c) of this section, on the agency's determination concerning the existence and amount of the debt, and the terms of the repayment schedule (in the case of an employee whose repayment schedule is established other than by written agreement);

(7) The hearing request should be addressed to the Office of the NASA General Counsel or to the Office of Chief Counsel of the NASA installation involved, as appropriate; counsel's name and address will be as stated in the notice.

(8) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(9) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) *Exception to entitlement to written notice.* NASA is not required to comply with paragraph (a) of this section for any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(c) *Petition filing; hearing; decision and review.* The notice described in paragraph (a) of this section should include the following provisions, which may be copied and attached to the notice.

(1) The employee may petition for a hearing, but such petition must be in writing and received by NASA on or before the 15th day following receipt of the notice, and include a statement of the reasons for such hearing. No particular form is required, and a timely, legible letter request (with the stated reasons) will suffice; however, the employee must sign the petition and include with it, with reasonable specificity, all the supporting facts and evidence, including a list of the witnesses, if any.

(2) The petition should be addressed to the agency counsel designated in the notice, but the hearing will be conducted by an official not under the supervision or control of the NASA Administrator or by appointment of an administrative law judge. Notice of the name and address of the hearing official will be sent to the employee within 10 days of receipt of petition. A hearing official will be designated on a case-by-case basis under reimbursable arrangements or through direct payment as events may warrant.

(3) The timely filing of the petition will stay the commencement of collection; and the final decision on the hearing will be issued at the earliest practicable date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings.

(4) Any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of Title 5, United States Code, 5 CFR Part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of Title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code, or any other applicable statutory authority.

(5) The form and content of the hearing will be determined by the hearing official depending on the nature and complexity of the transaction giving rise to the debt. The hearing is not an adversarial adjudication, and need not take the form of an evidentiary hearing. However, depending on the particular facts and circumstances, the hearing may be analogous to a fact-finding proceeding with oral presentations; or an informal meeting with or interview of the employee; or formal written submissions, with an opportunity for oral presentation, and decision based on the available written record. Ordinarily, hearings may consist of informal conferences before the hearing official in which the employee and agency officials will be given full opportunity to present evidence, witnesses, and argument. The employee may represent himself or herself or be represented by an individual of his or her choice. The hearing official must maintain a summary record of the hearing provided under this subpart. For additional guidance, see 14 CFR 1261.503.

(6) The decision will be in writing and state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The respective positions of the agency and of the employee;

(iii) The hearing official's analysis (which address the employee's/agency's grounds, the amount and validity of the alleged debt, and, where applicable, the repayment schedule); and

(iv) The hearing official's findings and conclusions.

(7) The hearing official will notify the employee, the NASA Comptroller or designee, and the designated agency counsel of the decision.

(8) The decision of the hearing official shall constitute the Final Administrative Decision of the agency.

(d) Petition after time expiration. No petition for a hearing is to be granted if made after the 15-day period prescribed in paragraph (c)(1) of this section, unless the employee can show to the satisfaction of the agency official indicated on the notice that the delay was caused by circumstances beyond his or her control (for example, proven incapacity, illness, or hospitalization), or that the agency did not give notice of the time limit and the employee was otherwise unaware of such limit.

(e) *Limitation on amount and duration of deductions.* Ordinarily, debts must be collected in one lump-sum payment. However, if the employee is financially unable to pay in one lump sum or if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see 14 CFR 1261.411), but the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made (unless the employee has agreed in writing to the deduction of a greater amount). Deduction must commence with the next full pay interval (ordinarily, the next biweekly pay period). Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraph (f) of this section.

(f) *Determining ability to pay.* An offset may produce an extreme financial hardship for an employee if it prevents the employee from meeting costs necessarily incurred for essential subsistence expenses for food, reasonable housing, clothing, transportation, and medical care. In determining whether an offset would prevent the employee from meeting the

essential subsistence expenses, the employee may be required to show income from all sources (including spouse and dependents, if applicable), list all known assets, explain exceptional expenses, and produce any other relevant factors.

(g) *Liquidation from final check; other recovery.* If the employee retires or resigns from Federal service, or if his or her employment or period of active duty ends before collection of the debt is completed, the balance may be deducted from the final salary payment and any remaining balance from the lump-sum leave, if applicable. If the debt is not fully paid by offset from any final payment due the former employee as of the date of separation, offset may be made from later payments of any kind due the former employee from the United States (as provided in 14 CFR Part 1261 Subpart 1261.5, including offset from the Civil Service Retirement and Disability Fund under 14 CFR 1261.507).

(h) *Interest, penalties, and administrative costs.* Assessment of interest, penalties, and administrative costs, on debts being collected under this subpart, shall be in accordance with 14 CFR 1261.412 which implements 4 CFR 102.13.

**§ 1261.604 Nonwaiver of rights by involuntary setoff.**

The employee's involuntary payment of all or any portion of the debt, being collected under this subpart, must not be construed as a waiver of any rights which the employee may have under an existing written contract applicable to the specific debt or under any other pertinent statutory authority for the collection of claims of the United States or the agency.

**§ 1261.605 Refunds.**

(a) NASA will promptly refund to the employee amounts paid or deducted under this subpart when:

(1) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds are not to bear any interest unless the law applicable to that particular debt specifically requires or permits a stated interest amount on refunds.

**§ 1261.606 Salary offset request by a creditor agency other than NASA (the current paying agency).**

(a) *Format of the request.* Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency must:

(1) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is/are due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM;

(2) If the collection must be made in installments, the creditor agency must also advise NASA of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required; and

(3) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim request, the creditor agency must also indicate the action(s) taken under 5 U.S.C. 5514(a)(2) and give the date(s) the action(s) was/were taken.

(b) *Limitation period.* The creditor agency may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, except as provided in 14 CFR 1261.506, which implements 4 CFR 102.3(b)(3).

(c) *Employees who are separating or have separated*— (1) *Employees who are in the process of separating.* If the employee is in the process of separating, the creditor agency must submit its debt claim to the employee's paying agency for collection as provided in 5 CFR 550.1104(1) of the OPM regulations (14 CFR 1261.603(f)) for "liquidation from final check." NASA must then certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (c)(3) of this section. If NASA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it should notify the creditor agency and forward the copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. However, the creditor agency, not NASA, must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(2) *Employees who have already separated.* If the employee is already separated and all payments due from NASA have been paid, NASA must return the claim to the creditor agency for any further collection, indicating the employee's date of separation and the current employment and mailing address(es), if known.

(3) Employee who transfers from NASA to another Federal agency.

(i) *Certification of amount collected.* If, after the creditor agency has submitted the debt claim to NASA, the employee transfers to another Federal agency before the debt is collected in full, NASA must then certify the total amount of the collection made on the debt. A copy of the certification should be furnished the employee, and another copy furnished to the creditor agency along with notice of the employee's transfer.

(ii) *Official personnel folder insertion; new paying agency.* Information on the debt claim must be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency must resume the collection from the employee's current pay account and notify the employee and the creditor agency of the resumption. It will not be necessary for the creditor agency to repeat the due process procedures described by 5 U.S.C. 5514 of this subpart in order to resume the collection. However, it will be the responsibility of the creditor agency to review the debt upon receiving NASA's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) *Processing the debt claim upon receipt*— (1) *Incomplete claim.* If NASA receives incomplete debt claim information, it must return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and complete debt claim information received before action will be taken to collect from the employee's current pay account.

(2) *Complete claim.* If NASA receives a properly documented debt claim, deductions should be scheduled to begin prospectively at the next officially established pay interval. A copy of the debt claim request must be given to the debtor, along with notice of the date deductions will commence if different from that stated on the debt claim request.

(3) NASA is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim request.

**§ 1261.607 Obtaining the services of a hearing official.**

(a) When the debtor does not work for the creditor agency and the creditor agency cannot provide a prompt and appropriate hearing before an administrative law judge or before a hearing official furnished pursuant to another lawful arrangement, the creditor agency may contact an agent of the paying agency designated in Appendix A of 5 CFR Part 581 to arrange for a hearing official, and the paying agency must then cooperate as provided by 4 CFR 102.1 and provide a hearing official.

(b) When the debtor works for the creditor agency, the creditor agency may contact any agent (of another agency) designated in Appendix A of 5 CFR Part 581 to arrange for a hearing official. Agencies must then cooperate as required by 4 CFR 102.1 and provide a hearing official.

May 14, 1987.

**James C. Fletcher,**

*Administrator.*

[FR Doc. 87-11606 Filed 5-22-87; 8:45 am]

BILLING CODE 7510-01-M

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Part 11**

**Publication of Appendix Setting Forth Informal Procedure Relating to the Recommendation of Enforcement Proceedings**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of informal procedure.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") hereby adopts Appendix A to Part 11 of the Commission's Regulations, setting forth an informal procedure regarding the submission of voluntary written statements by persons who may be named in proposed enforcement proceedings. The procedure is intended to inform the public that the Division of Enforcement ("Division") will review information submitted by potential respondents and forward it to the Commission upon request before the Commission votes to commence an enforcement action. The purpose of this procedure is to make information available to assist in the Division's determination to recommend the action and, ultimately, in the Commission's determination whether and in what manner it is in the public interest to commence an enforcement proceeding.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ray Sandona, Esq., Chief Counsel, Division of Enforcement, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581 (202) 254-7424.

**SUPPLEMENTARY INFORMATION:** The Commission has adopted Appendix A to Part 11 of its Regulations, the rules relating to investigations. Adopted at the recommendation of its Division of Enforcement ("Division"), Appendix A provides an informal procedure for persons who may be named in proposed enforcement proceedings to submit written statements on matters relevant to the recommendation of the proposed proceeding. The Commission adopts Appendix A upon the completion of a one-year operation of an interim informal procedure adopted April 15, 1986. *See* 51 FR 13548 (April 21, 1986).

The Commission contemplates that the procedure set forth in Appendix A will be the sole vehicle for communications regarding proposed enforcement proceedings between the Commission and persons who may be named in such proceedings. The procedure is intended to inform the public that the Division will review information submitted by potential respondents and forward it to the Commission upon request before the Commission votes to commence an enforcement action. In addition, this release highlights aspects of the procedure that may affect an individual's decision to submit such a statement.

The Division, in its discretion, may orally inform persons who may be named in a proposed enforcement proceeding of the nature of the proposed allegations pertaining to them. The decision whether to inform such persons of a proposed enforcement proceeding is entirely within the discretion of the Division. There is no obligation that the Division inform anyone of the proposed proceeding. In many cases, premature disclosure to the persons suspected of a violation could inhibit effective Commission action. Moreover, notwithstanding any representation of the staff, the Commission may commence an action against any persons before a written submission is made. Applicable provisions of the Procedure, *e.g.*, page limits, should also be followed by persons involved in a Division investigation who wish to submit a statement on their own initiative.

Appendix A provides that a succinct written statement of no more than 20 pages may be submitted to the Director, Division of Enforcement, with copies to the staff conducting the investigation. All submissions should refer clearly to the specific investigation to which they relate. Any submission is voluntary and while it may include a statement of the events, factual circumstances or other matters relevant to the commencement of a proposed enforcement action, the Commission is more interested in a submission that focuses upon legal and policy argument.[1] Any statement of fact must be sworn to by a person with personal knowledge of such fact and may not simply be made by counsel upon information and belief. In this regard, it should be noted that submission of a written statement may result in the use of the statement, including factual admissions, in an administrative or judicial proceeding by the Commission, as well as use by another governmental agency or even by a private party who may obtain the statement under the Freedom of Information Act or pursuant to subpoena.[2]

The purpose of this procedure is to make information available to assist in the Division's determination to recommend the action and, ultimately, in the Commission's determination whether and in what manner it is in the public interest to commence an enforcement proceeding. The procedure permits a written statement only and neither creates a right nor an obligation to make such a statement. In adopting Appendix A, the Commission is not soliciting any presentation from any member of the public. Moreover, Appendix A does not in any way affect the Commission's right to act prior to receipt of a statement or prior to notification pursuant to the procedure. A written statement with supporting

[1] The Commission does not envision use of a submission to resolve factual representations between the staff and a potential respondent. As noted by the Securities and Exchange Commission in connection with its Wells procedure, *see* Sec. Act Release No. 5310 (September 27, 1972), disagreements as to factual matters are best left to be resolved through litigation because the Commission is not well positioned to adjudicate factual disputes in the absence of a fully developed factual record. Accordingly, the Commission anticipates that submissions under this procedure will in general be confined to matters of law or policy directly bearing on the question of whether an enforcement action should be authorized with respect to the person or entity on whose behalf the submission is made.

[2] The requirement that any statement of fact submitted on behalf of a proposed respondent be made under oath by persons with personal knowledge is one substantive difference from the SEC's Wells procedure. In addition, unless otherwise provided for by the Director of the Division, all submissions must be no longer than 20 pages and must be provided within 14 days of notice.

documentation, in conformance with Appendix A, submitted to the Director of the Division of Enforcement prior to the commencement of an enforcement proceeding will, upon request, be forwarded to the Commission along with the Division's recommendation and any response thereto.[3] However, as noted above, no rights or obligations are created by Appendix A, and the Commission has no obligation to consider a written statement or any part thereof.

The Freedom of Information Act, 5 U.S.C. 552, and the Commission's rules thereunder, 17 CFR Part 145, may require disclosure of any statement or part thereof. Also, the Commission may, in its discretion, release any statement or part thereof received unless release is prohibited by the Commodity Exchange Act or other statute or regulation concerning the privacy of information. *See* Commission Rules 11.3, 145.5(g) and 145.7, 17 CFR 11.3, 145.5(g) and 145.7.

**List of Subjects in 17 CFR Part 11**

Administrative practice and procedure, Commodity futures, Investigations.

For the reasons set out in the preamble, Title 17, Part 11 of the Code of Federal Regulations, is amended as set forth below.

**PART 11—RULES RELATING TO INVESTIGATIONS**

1. The authority citation for Part 11 continues to read as follows:

**Authority:** 7 U.S.C. 4a(j), 9, 12, 12a(5).

2. Appendix A to Part 11 is added to read as follows:

**Appendix A—Informal Procedure Relating to the Recommendation of Enforcement Proceedings**

The Division of Enforcement ("Division"), in its discretion, may inform persons who may be named in a proposed enforcement proceeding of the nature of the allegations pertaining to them. The Division, in its discretion, may advise such persons that they may submit a written statement prior to the consideration by the Commission of any staff recommendation for the commencement of such proceeding. Unless otherwise provided for by the Director of the Division, such written statements shall be submitted within 14 days after persons are informed by the Division of Enforcement of the nature of the proposed allegations pertaining to them and shall be no more than 20 pages, double spaced on 8½ by 11 inch paper, setting forth their views of factual, legal or policy matters relevant to the commencement of an enforcement proceeding. Any statement of fact included in the submission must be sworn to by a person with personal knowledge of such fact. Statements shall be forwarded to the Director, Division of Enforcement, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, with copies to the staff conducting the investigation, shall clearly identify the specific investigation, and, if desired, may request that the statement be forwarded to the Commission. Similarly, persons who become involved in an investigation, and submit a written statement on their initiative, should follow the relevant procedures described herein. In the event the Division recommends the commencement of an enforcement proceeding to the Commission, any written statement will be forwarded to the Commission if so requested. The Commission may, in its discretion, consider all, any portion or none of the submission when it considers the staff recommendation to commence an enforcement proceeding.

Issued in Washington, DC on May 19, 1987, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 87-11840 Filed 5-22-87; 8:45 am]

BILLING CODE 6351-01-M

[3] This procedure of Commission consideration of written submissions from proposed respondents in enforcement proceedings is analogous to that followed in Commission Rule 10.108, 17 CFR 10.108, which provides that if a respondent is informed by the Division of Enforcement that the Division will not recommend that the Commission accept an offer of settlement, such offer shall not be presented to the Commission unless the respondent so requests.

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 510**

**New Animal Drugs; Change of Sponsor Address**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect and change of sponsor address for Zenith Laboratories, Inc.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** David L. Gordon, Center for Veterinary Medicine (HVF-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

**SUPPLEMENTARY INFORMATION:** Zenith Laboratories, Inc., sponsor of two approved new animal drug applications, advised FDA of a change of address from 140 LeGrand Ave., Northvale, NJ 07647, to 50 Williams Dr., Ramsey, NJ 07446. The agency is amending 21 CFR 510.600 to reflect the change.

**List of Subjects in 21 CFR Part 510**

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

**PART 510—NEW ANIMAL DRUGS**

1. The authority citation for 21 CFR Part 510 continues to read as follows:

**Authority:** Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

**§ 510.600 [Amended]**

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Zenith Laboratories, Inc.," and in paragraph (c)(2) in the entry for "000172" by amending the sponsor address to read "50 Williams Dr., Ramsey, NJ 07446."

Dated: May 18, 1987.

Richard A. Carnevale,

*Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.*

[FR Doc. 87-11837 Filed 5-22-87; 8:45 am]

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**21 CFR Part 522**

**Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Oxytetracycline Injection**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc., providing for safe and effective use in cattle of a 200-milligram-per-milliliter oxytetracycline injection for treatment of infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 113–232 providing for an additional use in beef cattle and nonlactating dairy cattle of a 200-milligram-per-milliliter oxytetracycline base injection for treating infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*. The supplemental NADA is approved and 21 CFR 522.1660 (c)(1)(i) and (c)(1)(ii) are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

**List of Subjects in 21 CFR Part 522**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

**PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION**

1. The authority citation for 21 CFR Part 522 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

**§ 522.1660 [Amended]**

2. Section 522.1660 *Oxytetracycline injection* is amended in paragraph (c)(1)(i) by removing the period at the end, replacing it with a semicolon, and adding after it the phrase "9 milligrams per pound of body weight as a single dosage for treatment of infectious bovine keratoconjunctivitis." and in paragraph (c)(1)(ii) by removing the "and" after *"pomona,"* and by inserting a comma after *"Streptococcus* spp.", and adding after it the phrase "and infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*."

Dated: May 14, 1987.

Gerald B. Guest,

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–11638 Filed 5–22–87; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 916

### Approval of Permanent Program Amendments From the State of Kansas Under the Surface Mining Control and Reclamation Act of 1977

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Final rule.

**SUMMARY:** OSMRE is announcing the approval of program amendments submitted by Kansas as modifications to the State's permanent regulatory program (hereinafter referred to as the Kansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on April 23, 1986, with additional materials subsequently submitted on November 7, 1986. The amendments pertain to: Definitions, application for a mining permit, public hearings, permit review, coal exploration, bonding procedures, performance standards, underground mining, small operator assistance program, lands unsuitable for surface mining and inspection and enforcement.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Kansas program was conditionally approved by the Secretary of the Interior on January 21, 1981, and published in the Federal Register on the same date (46 FR 5892). Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kansas program can be found in the January 21, 1981 Federal Register. Subsequent actions concerning the conditions of approval and program amendments may be found at 30 CFR 916.11 and 916.15, respectively.

**II. Submission of Program Amendments**

In accordance with the provisions of 30 CFR 732.17 (d) through (f), on December 17, 1985, the Director notified Kansas of the changes necessary to ensure that the approved regulatory program was in accordance with SMCRA and no less effective than its implementing regulations as revised since January 21, 1981.

To comply with this letter, the Kansas Mined Land Conservation and Reclamation Board submitted program amendments to OSMRE on April 23, 1986. The proposed amendments are to the Kansas Permanent Administrative Regulations and include amendments to Articles 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12 and 15.

The Director announced receipt of these proposed amendments in the June 19, 1986 Federal Register (51 FR 22300) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on their substantive adequacy. No public comments were received by August 4, 1986, the close of the comment period, and since no one requested an opportunity to testify, the public hearing, scheduled for July 29, 1986, was not held.

Following a thorough review of the Kansas amendments, OSMRE notified the State on October 1, 1986, of its concerns regarding some of the amendments. OSMRE's concerns arose from the decisions of the U.S. District Court for the District of Columbia on challenged Federal regulations, *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action 79–1144, D.D.C. 1984 and 1985).

By letter dated November 7, 1986, Kansas informed OSMRE of the actions it had taken to remedy the deficiencies OSMRE found in its review of the

proposed amendments. Kansas submitted policy statements, modifications to the proposed amendments and other clarifying materials designed to address all OSMRE concerns. OSMRE announced receipt of these materials in the December 15, 1986 **Federal Register** (51 FR 44927) and, in the same notice, reopened the public comment period until December 30, 1986.

**III. Director's Findings**

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Kansas on April 23 and November 7, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII, except as discussed below. Findings on each section of the rules are discussed below. Only those provisions of particular interest are discussed in the specific findings which follow, and lack of discussion of a specific provision does not indicate or imply any deficiency in the provision. The provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal rules.

*1. Kansas Administrative Regulations (K.A.R.) 47–1–4*

The amendment to K.A.R. 47–1–4 *Sessions* provide that rescheduling of sessions of the Mined Land Conservation and Reclamation Board must be done pursuant to the notice requirements of K.A.R. 47–1–10. There is no counterpart to this requirement in SMCRA or the Federal regulations. The Director finds that inclusion of amendments to K.A.R. 47–1–4 does not render the Kansas program less effective than that required by SMCRA and the Federal regulations and is therefore approving the provisions.

*2. K.A.R. 47–2–7, 47–2–17, 47–2–44, 47–2–53, 47–2–53a, and 47–2–75*

Sections K.A.R. 47–2–7, 47–2–17 and 47–2–44 have been removed from the Kansas regulations. The definitions for "applicant", "disturbed area", and "performance bond", respectively, have been moved to K.A.R. 47–2–75. The definitions of "applicant", "disturbed area", and "performance bond" contained in K.A.R. 47–2–75(b) are the same as those contained in the Federal regulations at 30 CFR 701.5.

Section K.A.R. 47–2–53 has been amended to add "or its authorized representative" to the definition of "regulatory authority". The amended definition is identical to the Federal definition found at 30 CFR 700.5.

Kansas has added a new section, K.A.R. 47–2–53a, to define the term "regulatory program". The definition proposed by Kansas is identical to the Federal definition found at 30 CFR 700.5.

The amendments to section 47–2–75(a) incorporate by reference the definitions contained in 30 CFR 700.5 as they existed on October 1, 1985, except: "regulatory authority", "surface coal mining operations", and "surface coal mining and reclamation operations". Definitions for these terms can be found at K.A.R. 47–2–53a, Kansas Statutes Annotated (K.S.A.) 49–403(s), and 49–403(r). These definitions are identical to those previously approved in the original Kansas regulatory program approval and have not been amended.

Section 47–2–75(b) contains the definitions found in the Federal regulations at 30 CFR 701.5 as they existed on October 1, 1985, except "affected area", "imminent danger to the health and safety of the public", "operator", "permit", and "significant, imminent environmental harm to land, air, or water resources" which are defined in K.S.A. 49–403. These definitons are identical to those previously approved in the original Kansas regulatory program approval and have not been amended. Several definitions have been deleted because they do not pertain to mining in Kansas. They are "agricultural activities or farming", "alluvial valley floors", "arid and semiarid area", "essential hydrologic functions", "flood irrigation", "materially damage the quality and quantity of water", "rangeland", "special bituminous coal mines", "subirrigation", "undeveloped rangeland" and "upland areas".

Section 47–2–75(c) incorporates by reference the definitions of 30 CFR 705.5 except for "employee" and "State regulatory authority" which are defined at K.A.R. 47–2–21 and 47–2–53, respectively.

With the exceptions listed below the definitions found at K.A.R. 47–2–7, 47–2–17, 47–2–44, 47–2–53, 47–2–53a and 47–2–75, incorporate the Federal definitions by reference and other definitions are already part of the approved State program; therefore, the Director finds them no less effective than the Federal regulations.

The Federal "road" definition at 30 CFR 701.5 was suspended (50 FR 7274, February 21, 1985) as were the roads regulations at 30 CFR 816.150/817.150 and 816.151/817.151 because OSMRE had not allowed proper notice and comment on the suggested changes. The Kansas program amendments incorporate by reference the suspended Federal regulations at 30 CFR 701.5 as they existed on October 1, 1985, and 30 CFR 816.150, 817.150, 816.151 and 817.151 as they existed on July 1, 1985. Thus, the Kansas amendments do not contain a definition or performance standards for roads. At such time as OSMRE adopts new regulations, Kansas will be required to adopt a definition of "road".

Some of OSMRE's definitions at 30 CFR 701.5 have been suspended due to court rulings (51 FR 41952). Kansas has incorporated the suspended rules in K.A.R. 47–2–75(b). "Previously mined area" was suspended insofar as it applies to any area upon which operations were previously conducted which were required to comply with the Act's approximate original contour and highwall elimination requirements (51 FR 41952, November 20, 1986). Under this suspension, the remining of any area which was previously subject to a complete highwall elimination requirement will continue to be subject to such a requirement. Kansas has incorporated the suspended language in its proposed definitions. Therefore, the Director finds the incorporated definition of "previously mined area" to be less effective than the Federal regulations, and is disapproving the definition of "previously mined area". Kansas will be required to amend its definition of "previously mined area" to comply with the court's ruling.

On January 3, 1985, OSMRE suspended its definition of "adverse physical impact" (50 FR 257). Kansas' rules incorporate this suspension. On November 18, 1985, OSMRE published final rules concerning the definition of "adverse physical impact" (51 FR 41734). OSMRE has removed the definition of "adverse physical impact" from the Federal provisions. Kansas has merely suspended its definition. The Director finds that this Kansas rule is less effective than the Federal provisions. Therefore, the Director is requiring Kansas to remove its definition of "adverse physical impact".

The Director finds that the amendments to K.A.R. 47-Article 2 *meaning of terms*, with the exception of "previously mined area" and "adverse physical impact" mentioned above, are no less effective than the Federal provisions. The Director is requiring Kansas to remove the definition of "adverse physical impact" from its program and amend the definition of "previously mined area."

*3. K.A.R. 47–3–2, 47–3–3, 47–3–3a, 47–3–4, 47–3–21, 47–3–40, 47–3–42*

These sections establish the requirements for applications for mining permits. Section 47–3–2 incorporates by reference the following Federal regulations, 30 CFR 777.11, 777.13, 777.14

and 777.15. Section 47–3–3 has been deleted. The requirements it contained pertaining to permit maps have been moved to 47–3–42. Section 47–3–3a sets forth the color code to be used to indicate critical features of the permit area on maps, plans and cross-sections certified by a qualified licensed engineer and required in the mining permit application. Sections 47–3–4, 47–3–21 and 47–3–40 have been deleted and the requirements contained in them have been moved to 47–3–42.

Section 47–3–42 incorporates the following Federal regulations as they existed on July 1, 1985, 30 CFR 778.13, 778.14, 778.15, 778.16, 778.17(a), 778.18, 778.21, 778.22, 779.4, 779.11, 779.12, 779.18, 779.19, 779.20, 779.21, 779.22, 779.24, 779.25, 780.11, 780.12, 780.13, 780.14, 780.15, 780.16, 780.18, 780.21, 780.22, 780.23, 780.25, 780.27, 780.29, 780.31, 780.33, 780.35, 780.37, 785.13, 785.17, 785.18, 785.20, 785.21, 785.22, 773.13, 773.15, 773.19, 701.11 and 773.12. With the exception of § 780.21(f), they are identical to the Federal regulations and, therefore, no less effective than the Federal program. OSMRE suspended 30 CFR 780.21(f) insofar as the section limits the regulatory authority from requiring a permit applicant to address life-of-the-mine hydrologic consequences determination (51 FR 41952, November 20, 1986). This means that the regulatory authority must determine the appropriate scope of a probable hydrologic consequences (PHC) determination on a case-by-case basis. That is, whether and to what degree a permit applicant should include hydrologic information for operations conducted outside the permit area during the entire life of the operation. The Kansas regulations limit the regulatory authority's authority to require life-of-the-mine PHC determination.

Therefore, the Director is disapproving K.A.R. 47–3–42(a)(26) and requiring a progam amendment. The Director finds that all other regulations contained in this chapter of the Kansas regulations are no less effective than the Federal regulations, are not inconsistent with SMCRA and the Director is approving these regulations.

*4. K.A.R. 47–4–14 and 47–4–15*

*K.A.R.* 47 Article 4 sets forth the regulations governing public hearings. Section 47–4–14 incorporates by reference rules for the State corporation commission, burden of proof in administrative hearings. The incorporated regulations are those that existed on May 1, 1985 including K.A.R. 82–1–204, 82–1–207, 82–1–212, 82–1–214, 82–1–215, 82–1–216, 82–1–217, 82–1–218, 82–1–219, 82–1–221, 82–1–222, 82–1–223, 82–1–224, 82–1–225, 82–1–226, 82–1–227, 82–1–228, 82–1–229, 82–1–230, 82–1–232, 82–1–234a, 82–1–235, 82–1–237(a) and 82–1–238.

Section 47–4–15 incorporates by reference the Federal rules and regulations of the Department of the Interior's Office of Hearings and Appeals as they existed on October 1, 1984. The regulations concern the discovery process. This section incorporates the following Federal regulations 43 CFR 4.1130, 4.1131, 4.1132, 4.1133, 4.1134, 4.1135, 4.1136, 4.1137, 4.1138, 4.1139, 4.1140 and 4.1141.

K.A.R. 47–4–15(b) places the burden of proof at administrative hearings of the board on the party seeking to reverse the decision of the board. These regulations are amended versions that have been previously approved in the Kansas program. They have been found to be no less stringent than SMCRA and no less effective than the Federal regulations. Therefore, the Director is approving the amendments.

*5. K.A.R. 47–6–3, 47–6–4, 47–6–5 and 47–6–6*

K.A.R. Article 6 sets forth the permit regulations. Section 47–6–3 incorporates by reference the permit renewal Federal regulation at 30 CFR 774.15 as it existed on July 1, 1985. Kansas' counterpart regulations to 30 CFR 774.11 and 774.13 have not been amended and may be found at K.A.R. 47–6–1 and 47–6–2 respectively. Section 47–6–4 sets forth regulations governing permit transfers, assignments and sales including requiring the person succeeding to a permit by transfer, sale or assignment to file an application for a new permit with the Board no later than 30 days after the succession is approved. This section also incorporates by reference 30 CFR 774.17.

Section 47–6–5 has been deleted and the contents of this section have been incorporated at 47–3–42(a)(44).

Section 47–6–6 incorporates by reference the Federal rule at 773.17 concerning permit conditions as it existed on July 1, 1985.

These regulations are identical to the Federal regulations; therefore, the Director finds them to be no less effective than the Federal provisions.

*6. K.A.R. 47–7–2*

This section incorporates by reference the Federal regulations concerning coal exploration as they existed on July 1, 1985. They include 30 CFR 772.11, 772.12, 772.13, 772.14 and 772.15.

Subsequent to Kansas' submittal of these program amendments OSMRE suspended parts of 30 CFR 772.11 and 772.12 in response to the district court's decision (51 FR 41952, November 20, 1986). Specifically, OSMRE has suspended § 772.11(a) insofar as it limits the responsibility to submit a notice of intent to explore to those persons who will substantially disturb the natural land surface. OSMRE also suspended §§ 772.11(b)(3) and 772.12(b)(3), insofar as they allow a coal exploration notice or application to be submitted which does not include a narrative describing the exploration area. Therefore, OSMRE finds that Kansas regulations K.A.R. 47–7–2 (a) and (b) are less effective than the Federal regulations insofar as they incorporate the suspended language discussed above, is disapproving them, and requiring a program amendment. This means that all persons conducting coal exploration in Kansas will be required to submit a notice of intent to explore whether or not they will substantially disturb the natural land surface and will be required to submit a narrative describing the exploration area.

Because these regulations are identical to the Federal regulations with the exceptions discussed above, the Director finds them no less effective than the Federal provisions.

*7. K.A.R. 47–8–2, 47–8–9, 47–8–9a, 47–8–10*

Kansas has amended Article 8 on bonding procedures by deleting 47–8–2, 47–8–9a and 47–8–10. The provisions formerly contained in these sections have been moved to 47–8–9 (j, k, o and m).

Section 47–8–9 incorporates the following Federal bonding regulations as they existed on July 1, 1985, 30 CFR 800.4, 800.5, 800.11, 800.12, 800.13, 800.14, 800.15, 800.16, 800.17, 800.20, 800.21, 800.23, 800.30, 800.40, 800.50 and 800.60.

OSMRE has suspended portions of its bonding regulations in compliance with decisions by the district court (50 FR 7274, February 21, 1985). The supended sections, §§ 800.11(b) and 800.13(a)(2), dealt with incremental and phase bonding, respectively. Kansas has incorported the supension. Therefore, K.A.R. 47–8–9(c) and (e) are not inconsistent with the Act and no less effective than the Federal regulations.

The regulations discussed above are identical to the Federal regulations and the Director, therefore, finds them no less effective than the Federal regulations.

*8. K.A.R. 47–9–1, 47–9–3 and 47–9–4*

Section 47–9–1 incorporates by reference the Federal surface and underground coal mining performance

standards, coal exploration performance standards, and performance standards for special categories of mining as they existed on July 1, 1985. They include 30 CFR 810.2, and all of Parts 815, 816, 817, 823, 828, and 827 as they existed on October 1, 1985.

The Kansas regulations at K.A.R. 47–9–1(c) and (d) incorporate several sections that were remanded by the district court and have since been suspended by OSMRE. Thus, OSMRE may not approve them as part of the Kansas program unless they provide for more stringent land use or environmental controls. The specific sections affected are discussed below.

K.A.R. 47–9–1(c) incorporates OSMRE's surface mining performance standards and 47–9–1(c) incorporates underground performance standards of the Federal regulations at 30 CFR Parts 816 and 817, respectively as they existed on July 1, 1985. The following remanded sections of the Federal regulations apply to both surface and underground performance standards. The State's regulation counterparts can be found in K.A.R. 47–9–1(c) and (d).

Section K.A.R. 47–9–1(d) incorporates OSMRE's underground mining performance standards including § 817.41(b)(2). OSMRE suspended this section on February 21, 1986 (50 FR 7274). Kansas has incorporated the rule as suspended which does not require underground mine operators to restore hydrologic recharge capacity (50 FR 7274, February 21, 1985). Thus, OSMRE is approving the Kansas regulation.

OSMRE has suspended 30 CFR 816.46(b)(2) and 817.46(b)(2) insofar as they require use of a siltation structure in every instance (51 FR 41952, November 20, 1986). K.A.R. 47–9–1 incorporates these suspended regulations but since Kansas may require the more stringent standards of the use of siltation structure in every instance, OSMRE is approving the Kansas regulation.

OSMRE has suspended §§ 816.49(a)(3), 816.49(a)(5)(i), 817.49(a)(3) and 817.49(a)(5)(i) insofar as they apply to small sedimentation ponds (51 FR 41952). Small sedimentation ponds are those ponds in which no embankment is more than 20 feet in height, measured from the upstream toe of the embankment to the crest of the emergency spillway and with a storage volume of less than 20 acre feet. Federal sections 30 CFR 816.49(a)(3) and 817.49(a)(3) impose a minimum static safety factor of 1.5 and seismic safety factor of 1.2 for all impoundments. Federal §§ 816.49(a)(5)(i) and 817.49(a)(5)(i) establish stability requirements for foundation abutments and require sufficient foundation investigation and laboratory testing to determine design requirements for foundation stability. However, Kansas may require small sedimentation ponds to meet the more stringent static safety factors of 1.5 and the seismic safety factor of 1.2, and the stability requirements for foundation abutments and require sufficient foundation investigation and laboratory testing for design stability. Therefore, OSMRE is approving these regulations.

OSMRE has suspended §§ 816.49(a)(9), 816.84(b)(2), 817.49(a)(8) and 817.84(b)(2) insofar as they require separate principal and emergency spillways where one spillway may safely pass the design storm event (51 FR 41952). However, Kansas may require two separate spillways. Therefore, the Director finds that the Kansas regulations are no less effective than the Federal provisions and is approving these regulations.

OSMRE has suspended §§ 816.49(a)(9) and 817.49(a)(8) insofar as they permit the retention of highwalls in permanent impoundments (51 FR 41952). This means that underwater highwalls may not be retained in permanent impoundments. The requirement to eliminate highwalls underwater does not mean that the approximately premining contour must be achieved within the impoundment; only the appropriate contour is required within the impoundment as long as highwalls are eliminated.

OSMRE is disapproving the Kansas regulation to the extent it is inconsistent with the suspended regulations. Therefore, Kansas will be required to amend its program to eliminate underwater highwalls in permanent impoundments.

OSMRE has suspended §§ 816.81(a) and 817.81(a) insofar as end dumping or side dumping of coal waste is allowed (51 FR 41952). OSMRE is disapproving the Kansas regulation because allowing end or side dumping is inconsistent with the Federal provisions. Therefore, Kansas will be required to amend its program to prohibit end or side dumping of coal waste.

OSMRE has also suspended §§ 816.81(c)(2) and 817.81(c)(2) insofar as they permit coal waste refuse piles to be constructed or modified with less compaction than necessary to attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method (51 FR 41950). Therefore, OSMRE is disapproving the Kansas regulation and will require Kansas to amend its program to use the previous standard (1979 rules) until OSMRE adopts a further rule change.

OSMRE has suspended §§ 816.83 and 817.83 insofar as they allow coal waste refuse piles to be constructed in lifts larger than two feet in thickness (51 FR 41952). OSMRE is disapproving the Kansas regulation and is requiring Kansas to amend its program to employ a maximum two foot lift standard in its reviewing coal refuse pile designs until a new Federal rule is promulgated.

The district court ruled that OSMRE had promulgated §§ 816.89(d) and 817.89(d) (hazardous waste) without notice and comment. However, Kansas has followed its rulemaking procedures allowing for adequate public notice and comment. Therefore, the Director finds this section to be in accordance with SMCRA.

OSMRE suspended §§ 816.106(b) and 817.106(b) as part of a settlement agreement (51 FR 257, January 3, 1986). Therefore, all surface coal mining and reclamation operations including remaining operations in Kansas must use all reasonably available spoil to backfill highwalls. On November 18, 1986, OSMRE published new rules at 30 CFR 816.106 and 817.106 (51 FR 41734). The new Federal regulations remove paragraph (b) that had previously been suspended. Kansas' amendments had suspended this section; however, Kansas must remove from K.A.R. 47–9–1 (c) and (d) the counterparts to §§ 816.106(b) and 817.106(b) to be no less effective than the Federal provisions. Therefore, the Director is disapproving the Kansas regulations and requiring Kansas to remove them.

OSMRE has suspended §§ 816.116(b)(3)(ii) and 817.116(b)(3)(ii) insofar as they authorize the inclusion of trees and shrubs which have been in place less than the full period of responsibility in determining the success of stocking (51 FR 41952). This means that trees and shrubs in place for less than the full applicable period of liability may not be counted in determining revegetation or reclamation success or for authorizing release of bond.

OSMRE has also suspended §§ 816.116(c)(4) and 817.116(c)(4) insofar as they allow the repair of rills and gullies to occur without restarting the period of responsibility for the areas of repair (51 FR 41952).

These two issues are related insofar as the court ruled that the record did not show that the repair of rills and gullies is a normal conservation practice or the replanting of trees is a normal husbandry practice. Kansas' administrative and rulemaking records may show that the repair of rills and gullies and replanting of trees are

normal conservation and husbandry practices in the State. Kansas may, at a later date, submit these proposed rules along with the appropriate records for the Director's review. However, until such a demonstration is made, the Director is disapproving these Kansas regulations to the extent they would allow restocking of trees or shrubs or repair of rills and gullies without restarting the responsibility period. Kansas may not include any trees or shrubs that have been in place less than the full responsibility period for determining the success of stocking nor may the State allow the repair of rills and gullies without restarting the responsibility period.

OSMRE has suspended §§ 816.116(c)(2) and 817.116(c)(2) insofar as these sections permits the determination of revegetation success to be measured over less than the growing seasons of the last two years of the responsibility period in areas with 26 inches or more of rainfall per year (51 FR 41952). Therefore, the Director is disapproving the Kansas regulations incorporating these sections and requiring Kansas to amend its program to determine revegetation success by measuring over no less than the growing seasons of the last two years of the responsibility period.

OSMRE suspended §§ 785.16, 816.133(d), and 817.133(d) insofar as they permit the granting of variances from AOC for surface coal mining operations in non-steep slope areas (51 FR 41952). Kansas has not incorporated by reference 30 CFR 785.16 which allowed for variances from the requirement to return mined lands to approximate original contour (AOC), making this portion of its program no less effective than the Federal provisions. However, when Kansas incorporated 30 CFR Parts 816 and 817 into its rules, it incorporated §§ 816.133(d) and 817.133(d) which set the criteria for a variance from AOC. The Director believes that Kansas inadvertently incorporated §§ 816.133(d) and 817.133(d). However, the Director is disapproving the Kansas regulations that incorporate §§ 816.133(d) and 817.133(d) and requiring Kansas to remove them.

The Kansas program amendments incorporate by reference the Federal regulations at §§ 816.150, 816.151, 817.150, 817.151, as they existed on July 1, 1985. OSMRE suspended these sections on February 21, 1985 (50 FR 7274). Thus, the Kansas amendments do not contain performance standards for roads. At such time as OSMRE adopts new regulations, Kansas will be required to adopt performance standards for roads.

OSMRE has suspended 30 CFR 823.11(a) found at K.A.R. 47–9–1(f) insofar as it allowed facilities used in surface coal mining to be exempt from the prime farmland performance standards (50 FR 7274). The suspension, which was incorporated by Kansas, means that prime farmland occupied by all coal preparation plants, support facilities and roads that are associated with surface mines must meet the applicable prime farmland performance standards. Therefore, the Director finds that the Kansas rule is no less effective than the Federal provisions.

OSMRE suspended 30 CFR 823.11(b) because it was found to have an impermissibly broad variance from the post-mining use of prime farmland (50 FR 7274). Kansas has incorporated this suspension. The suspension of this rule means that the regulatory authority cannot approve the retention of impoundments as satisfying the operator's obligation to restore prime farmland to premining equivalent levels of yield. Therefore, the Director finds that the Kansas rule is no less effective than the Federal provisions.

Kansas has deleted section 47–9–3 which contained performance standards for alternative designs. The Kansas program has gained greater flexibility with the incorporation of the Federal performance standards, making this section redundant; therefore, the Director is approving the amendment.

Kansas has added a new section incorporating interim permit performance standards. Section 47–9–4 includes the following Federal regulations as they existed on July 1, 1985, 30 CFR 710.5 710.11(a), 715.12, 715.13, 715.14, 715.15, 715.16, 715.17, 715.18, 715.20, 715.200 and 716.7. Section 47–9–4(c) contained the phrase "other applicable substantive rule and regulations". OSMRE informed the State that the phrase was too vague and needed clarification before it could be approved. Kansas elected to delete this phrase in its final rule. Until the amendment can be revised, the State will interpret the regulation as requiring compliance with either the interim or permanent regulations.

Because these rules are identical to the Federal regulations with the exceptions discussed above, the Director finds them to be in accordance with SMCRA and no less effective than the Federal regulations.

*9. K.A.R. 47–10–1*

Article 10 of Chapter 47 of Kansas' administrative rules concern underground mining. K.A.R. 47–10–1 incorporates by reference OSMRE's underground mining permit application regulations as they existed on July 1, 1985. They include the following: 30 CFR 783.11, 783.12, 783.18, 783.19, 783.20, 783.21, 783.22, 783.24, 783.25, 784.11, 784.12, 784.13, 784.14, 784.15, 784.16, 784.17, 784.18, 784.19, 784.20, 784.21, 784.22, 784.23, 784.24, 784.25, 784.26, 784.29 and 784.300.

OSMRE has suspended 30 CFR 784.14, (e) for which the Kansas equivalent is K.A.R. 47–10–1(a)(2) (51 FR 41952). This rule is the underground permitting requirement counterpart to § 780.21(f)/ K.A.R. 47–3–42(a)(26). A discussion of its suspension can be found in the section discussing 47–3–42 above.

Because these regulations are identical to the Federal regulations, the Director finds them to be no less effective than the Federal provisions.

*10. K.A.R. 47–11–8*

Kansas chapter 47 article 11 sets forth the regulations for the small operator assistance program (SOAP). Section 47–11–8 incorporates by reference the Federal regulations pertaining to SOAP as they existed on July 1, 1985. They include 30 CFR 795.3, 795.6, 795.7, 795.8, 795.9, 795.10, 795.11 and 795.12.

Because these rules are identical to the Federal regulations, the Director finds them to be no less effective than the Federal provisions.

*11. K.A.R. 47–12–4*

This section of the Kansas program incorporates by reference the Federal regulations concerning lands unsuitable for mining as they existed on July 1, 1985. They include 30 CFR 761.5, 761.11, 761.12, 762.5, 762.11, 762.13, 762.14, 764.13, 764.15, 764.17, 764.19, 764.21, 764.23 and 764.25.

OSMRE has promulgated new final rules and suspended sections of the Federal rules incorporated by Kansas into K.A.R. 47–12–4. These rules and their impact on the Kansas program are discussed below.

OSMRE promulgated a new definition of "cemetery" at 30 CFR 761.5, on February 10, 1987 (52 FR 4244). A "cemetery" is defined as any place where human bodies are interred and includes private family burial grounds. The Kansas regulation incorporates the Federal definition of "cemetery" as it existed on July 1, 1985, which excludes private family burial grounds. Therefore, OSMRE is disapproving K.A.R. 47–12–4 to the extent it excludes private family burial grounds from the definition of "cemetery" and requiring Kansas to amend its program.

OSMRE suspended its 1983 definition of "valid existing rights" (VER) at 30 CFR 761.5 in response to a district court order (51 FR 41952). The suspension has the effect of leaving in place the VER test as it existed prior to the promulgation of the 1983 definition.

That VER test was the 1979 test, including the "needed for and adjacent" test, as modified by the August 4, 1980 suspension notice which implemented the district court's February 1980 opinion in *In Re: Permanent (I)* (the 1980 test). That suspension notice stated that pending further rulemaking, OSMRE would interpret the regulation as including the court's suggestion that a good faith effort to obtain all permits would establish VER. The Kansas regulation incorporates the Federal definition as it existed on July 1, 1985. Therefore, OSMRE is disapproving Kansas' definition of VER at K.A.R. 47–12–4 and requiring Kansas to amend its program.

OSMRE promulgated revised rules at 30 CFR 761.11(c) and 761.12(f)(1) on February 10, 1987 (52 FR 4244) which extended the protections offered by section 522(e)(3) to both privately owned and publicly owned places listed on the National Register of Historic Places. The incorporation by Kansas of 30 CFR 761.11(c) and 761.12(f)(1) as they existed on July 1, 1985, are disapproved to the extent that these rules limit the protections of section 522(e)(3) of SMCRA to publicly owned properties listed on the National Register. Kansas will be required to amend its program accordingly.

OSMRE suspended § 761.11(h); however, OSMRE will continue to implement the section 522(e)(1) prohibition on mining within areas protected by Congress. Kansas has incorporated by reference this suspended section of the Federal regulations. The Director finds this to be less effective than the Federal provisions. The Director is disapproving K.A.R. 47–12–4(b)'s counterpart to 30 CFR 761.11(h). Kansas must amend its program to be no less effective than the Federal regulations.

OSMRE suspended portions of the definitions of "fragile lands" and "historic lands" contained in 30 CFR 762.5 on January 9, 1985 (50 FR 257). The phrase "beyond an operator's ability to repair or restore" is suspended. This means that instead of requiring a showing of irreparable or permanent damage to the lands to allow for designation of an area as unsuitable for mining, a showing of significant damage will be sufficient. Kansas incorporated these rules as they existed on July 1, 1985. Therefore, the Director finds the Kansas definitions of "fragile lands" and "historic lands" to be no less effective than the Federal provisions.

OSMRE suspended § 764.15(a)(3) which provides for petition suspensions by State regulatory authorities; and § 764.15(a)(8) which provides for the resumption of processing of petitions where suspension has occurred and a permit application has since been filed (51 FR 41952). These suspensions mean that the regulatory authority may not suspend the processing of petitions to designate lands unsuitable. Therefore, the Director is disapproving K.A.R. 47–12–4(i) insofar as it incorporates the suspended language and is requiring Kansas to amend its program.

With the exceptions discussed above, the Kansas rules at KAR 47–12–4 are identical to the Federal regulations; therefore, the Director finds them to be no less effective than the Federal provisions.

*12. K.A.R. 47–15–1a*

This section incorporates by reference the Federal regulations concerning inspection and enforcement as they existed on July 1, 1985. Kansas had submitted these regulations to OSMRE for approval as a program amendment on April 4, 1985. OSMRE approved this amendment on November 15, 1985, and it became part of the approved Kansas program as codified at 30 CFR 916.15(e). No changes have been made in this rule since it received final approval from OSMRE on November 15, 1985; therefore, the Director finds it to be no less effective than the Federal provisions. See November 15, 1985 Federal Register notice (50 FR 47218).

## IV. Public Comments

As discussed above, the Director solicited public comment and provided opportunity for a public hearing on the proposed amendments. No comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA, 30 CFR 732.17(h)(10)(i), 884.14(a)(2) and 884.15, comments were also solicited from various Federal agencies with an actual or potential interest in the Kansas program. The Environmental Protection Agency concurred in the amendments. A summary of other comments received and the Director's responses to them appears below.

The U.S. Fish and Wildlife Service praised Kansas' efforts to revise its regulations; however, it had some reservations concerning Kansas' implementation of its program regarding fish and wildlife resources. These comments are outside the scope of this rulemaking as they apply to the implementation of the rules and not the adequacy of the rules themselves. The Director has taken note of these concerns and will monitor compliance with all requirements of the Kansas program as part of his ongoing oversight of this program.

## V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted by Kansas on April 23, 1986, with additional materials submitted on November 7, 1986, with the exception of those provisions determined to be inconsistent with SMCRA, the Federal regulations or court decisions concerning those regulations.

The Federal rules at 30 CFR Part 916 codifying decisions concerning the Kansas program are amended to implement this decision. The final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Kansas has incorporated by reference OSMRE's revised rules. Through subsequent litigation some of the Federal regulations have been suspended in whole or in part. The following list of disapproved regulations will contain both the Kansas and Federal regulatory citation.

The Director is disapproving the following provisions of the proposed amendments:

(1) As discussed in finding 2, the definition of "previously mined area" in K.A.R. 47–2–75(b) which incorporates 30 CFR 701.5.

(2) As discussed in finding 3, section K.A.R. 47–3–42(a)(28) (30 CFR 780.21(f)) concerning life-of-mine hydrologic consequences determination.

(3) As discussed in finding 6, K.A.R. 47–7–2(a) and (b) as they affect coal exploration notices of intent and applications (30 CFR 772.11(a), 772.11(b)(3), and 772.12(b)(3)).

(4) As discussed in finding 8, sections 47–9–1(c), (d) and (f) insofar as they incorporate by reference suspended sections of the following Federal regulations: 30 CFR 816.49(a)(9), 817.49(a)(9), 816.81(a), 817.81(a), 816.81(c)(2), 817.81(c)(2), 816.83, 817.83, 816.106(b), 817.106(b), 816.116(b)(3)(ii), 817.116(b)(3)(ii), 816.116(c)(4), 817.116(c)(4), 816.116(c)(2), 817.116(c)(2), 816.133(d), and 817.133(d).

(5) As discussed in finding 9, section 47–10–1(a)(2) (30 CFR 784.14(e)).

(6) As discussed in finding 11, section 47–12–4(a), (b), (c) and (i) insofar as they incorporate by reference the suspended sections of the following Federal regulations: 30 CFR 761.5, definitions of "cemetery" and "valid existing rights", § 761.11(h), § 784.15(a)(3), § 784.15(a)(8), 30 CFR 761.11(c) and 761.12(f)(1).

*Effect of Director's Decision*

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Kansas program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kansas of only such provisions.

**VI. Additional Determinations**

*1. Compliance with the National Environmental Policy Act*

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*2. Executive Order 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*3. Paperwork Reduction Act:*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 916**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 19, 1987.

**James W. Workman,**

*Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.*

**PART 916—KANSAS**

30 CFR Part 916 is amended as follows:

1. The authority citation for 30 CFR Part 916 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 916.15 is amended by adding new paragraph (f) as follows:

**§ 916.15 Approval of regulatory program amendments.**

* * * * *

(f) The following amendments submitted to OSMRE on April 23, 1986, with additional materials subsequently submitted on November 7, 1986, are approved effective May 26, 1987:

Revisions to the Kansas Administrative Regulations in Chapter 47, Article 1—General 47–1–4, Article 2—Meaning of Terms 47–2–7, 47–2–17, 47–2–44, 47–2–53, 47–2–53a, 47–2–75, Article 3–Application for Mining Permit 47–3–2, 47–3–3, 47–3–3a, 47–3–4, 47–3–21, 47–3–40, 47–3–42, Article 4—Public Hearings 47–4–14, 47–4–15, Article 6—Permit Review 47–6–3, 47–6–4, 47–6–5, 47–6–6, Article 7—Coal Exploration 47–7–2, Article 8—Bonding Procedures 47–8–2, 47–8–9, 47–8–9a, 47–8–10, Article 9—Performance Standards 47–9–1, 47–9–3, 47–9–4, Article 10—Underground Mining 47–10–1, Article 11—Small Operators Assistance Program 47–11–8, Article 12–Lands Unsuitable for Surface Mining 47–12–4, Article 15—Inspection and Enforcement 47–15–1a.

3. 30 CFR Part 916 is amended to add § 916.12 to read as follows:

**§ 916.12 State program provisions and amendments disapproved.**

(a) The following provisions of the surface coal mining regulations promulgated pursuant to K.S.A. 49–401 *et seq.*, as submitted on April 23, 1986, with additional materials subsequently submitted on November 7, 1986, are hereby disapproved:

(1) K.A.R. 47–2–75(b) "previously mined area", insofar as it applies to any area upon which operations were previously conducted which were required to comply with SMCRA's approximate original contour and highwall elimination requirements.

(2) K.A.R. 47–3–42(a)(26), which incorporates by reference 30 CFR 780.21(f), insofar as this section limits the regulatory authority from requiring a permit applicant to address life-of-mine hydrologic consequences determination.

(3) K.A.R. 47–7–2(a) which incorporates by reference 30 CFR 772.11(a) insofar as it limits the responsibility to submit a notice of intent to explore to those operations that will substantially disturb the natural land surface and 30 CFR 772.11(b)(3) insofar as it allows a coal exploration notice or application for less than 250 tons to be submitted without including a narrative describing the exploration area. K.A.R. 47–7–2(b) which incorporates by reference 30 CFR 772.12(b)(3) insofar as it allows a coal exploration notice or application for more than 250 tons to be submitted without a narrative describing the exploration area.

(4) K.A.R. 47–9–1(c) and (d) insofar as they incorporate by reference the suspended sections of the following Federal regulations: 30 CFR 816.49(a)(9) and 817.49(a)(9) insofar as they permit the retention of highwalls in impoundments; 30 CFR 816.81(a) and 817.81(a) insofar as end dumping or side dumping of coal waste is allowed; 30 CFR 816.81(c)(2) and 817.81(c)(2) insofar as they permit coal waste refuse piles to be constructed or modified with less compaction than necessary to attain 90 percent of the maximum dry density determined in accordance with the standard Proctor method; 30 CFR 816.83 and 817.83 insofar as they allow coal waste refuse piles to be constructed in lifts larger than two feet in thickness; 30 CFR 816.106(b) and 817.106(b); 30 CFR 816.116(b)(3)(ii) and 817.116(b)(3)(ii) insofar as they authorize the inclusion of trees and shrubs which have been in place less than the full period of responsibility in determining the success of stocking; 30 CFR 816.116(c)(4) and 817.116(c)(4) insofar as they allow the repair of rills and gullies to occur without restarting the period of responsibility for the areas of repair; 30 CFR 816.116(c)(2) and 817.116(c)(2) insofar as they permit the determination of revegetation success to be measured over less than the growing seasons of the last two years of the responsibility period in areas with 26 inches or more of rainfull per year, and 30 CFR 816.133(d) and 817.133(d).

(5) K.A.R. 47–10–1(a)(2) which incorporates by reference 30 CFR 784.14(e), insofar as this section limits the regulatory authority from requiring a permit applicant to address life-of-mine hydrologic consequences determination.

(6) K.A.R. 47–12–4(a), insofar as it incorporates by reference the suspended portions of the definition contained in 30 CFR 761.5, "valid existing rights".

(7) K.A.R. 47–12–4(a) which incorporates by reference the Federal definition of "cemetery" (30 CFR 761.5) as it existed on July 1, 1985, insofar as it excludes private family burial grounds.

(8) K.A.R. 47–12–4 (b) and (c) which incorporate by reference 30 CFR 761.11(c) and 761.12(f) as they existed on July 1, 1985, insofar as they limit the protections of section 522(e)(3) of the Act to publicly owned places on the National Register of Historic Places.

(9) K.A.R. 47–12–4(b) which incorporates by reference 30 CFR 761.11(h).

(10) K.A.R. 47–12–4(i) which incorporates by reference 30 CFR 764.15(a)(3) which allows the regulatory authority to suspend the processing of unsuitability petitions and 30 CFR 764.15(a)(8) which provides for the resumption of petition processing when a permit application is filed.

4. 30 CFR 916.16 added to read as follows:

**§ 916.16 Required program amendments.**

(a) Pursuant to 30 CFR 732.17, Kansas is required to submit for OSMRE's approval the following amendments by the dates specified.

(1) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–2–75 to remove the definition of "adverse physical impact" and amend the definition of "previously mined area" to be no less effective that 30 CFR 701.5.

(2) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–3–42(a)(6) to allow the regulatory authority to require a permit applicant to address life-of-the-mine hydrologic impacts in the probable hydrologic consequences determination to be no less effective than 30 CFR 780.21(f).

(3) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–7–2(a) and (b) to require all persons conducting coal exploration to submit a notice of intent to explore to be no less effective than 30 CFR 772.11(a), and to require applications for a coal exploration permit or notices of intent to explore to have naratives describing the exploration area to be no less effective than 30 CFR 772.11(b)(3) and 772.12(b).

(4) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–9–1 (c) and (d) to require the elimination of underwater highwalls, to be no less effective than 30 CFR 816.49(a)(9) and 817.49(a)(9).

(5) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–9–1 (c) and (d) to prohibit end or side dumping to be no less effective than 30 CFR 816.81(a) and 817.81(a).

(6) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–9–1 (c) and (d) to require a 90 percent compaction standard to be no less effective than 30 CFR 816.81(c)(2) and 817.81(c)(2).

(7) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–9–1 (c) and (d) to require a maximum of 2-foot lifts to be no less effective than 30 CFR 816.83 and 817.83.

(8) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–9–1 (c) and (d) to remove the suspended counterpart to 30 CFR 816.106(b) and 817.106(b) to be no less effective than the Federal regulations.

(9) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–9–1 (c) and (d) to measure revegetation success to be no less effective than 30 CFR 816.116(c)(2) and 817.116(c)(2).

(10) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–9–1 (c) and (d) to remove the incorporation by reference of 30 CFR 816.133(d) and 817.133(d).

(11) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–10–1(a)(2) to allow the regulatory authority to require a permit applicant to address life-of-the-mine hydrologic impacts in the probable hydrologic consequences determination to be no less effective than 30 CFR 784.14(e).

(12) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–12–4(a) to include definitions of "cemetery" and "valid existing rights" no less effective than those found at 30 CFR 761.5.

(13) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–12–4 (b) and (c) to extend the protections of section 522(e)(3) of SMCRA to all properties listed on the National Register of Historic Places to be no less effective than 30 CFR 761.11(c) and 761.12(f)(1).

(14) By May 26, 1988, Kansas shall amend its program at K.A.R. 47–12–4(i) so that the regulatory authority may not suspend the processing of petitions to declare lands unsuitable for mining to be no less effective than 30 CFR 764.15(a)(3) and 764.15(a)(8).

(b) [Reserved]

[FR Doc. 87–11875 Filed 5–22–87; 8:45 am]
BILLING CODE 4310–05–M

## 30 CFR Part 938

## Permanent State Regulatory Program of Pennsylvania; Modification of Deadline

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Final rule.

**SUMMARY:** This document amends 30 CFR Part 938 by modifying the deadline for Pennsylvania to amend its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Pennsylvania requested an extension of time necessary to revise its State program regulations to be no less effective than the Federal regulations and consistent with SMCRA. After providing opportunity for public comment, the Director has decided to extend the deadline for the State to adopt four amendments as required under 30 CFR 938.16(c), (d), (e) and (f) until August 24, 1987. The amendments would revise the State program regulations pertaining to prime farmland.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 Federal Register notice (47 FR 33050).

**II. Background on the Required Amendments**

The four required amendments were necessary to remedy minor deficiencies identified in an earlier Pennsylvania amendment approved by OSMRE. The Secretary's findings and decision on the amendment were published in the Federal Register on May 19, 1986 (51 FR 18314). The required amendments listed in the approval notice at 30 CFR 938.16(c), (d), (e) and (f) required that by January 31, 1987, Pennsylvania complete the following:

(c) Amend its program regulations to be consistent with the Federal regulations at 30 CFR Part 823 as remanded by the U.S. District Court for the District of Columbia on October 1, 1984, by deleting the language at 8.32(b)(4) which provides an exemption to the prime farmland requirements if "the area of the prime farmland is minimal in size (less than 5 acres) and has been or will be in use for an extended period of time (more than 10 years)."

(d) Amend its program regulations at 88.32(e) and 88.491(k)(4) or otherwise amend its program to be no less effective than 30 CFR 785.17(c)(1)(ii) in requiring approval by the U.S. Department of Agriculture Soil Conservation Service of alternative soil profile descriptions for prime farmland soils included in the permit application.

(e) Amend its program regulations at 88.61 or otherwise amend its program to be consistent with section 510(d) of SMCRA to: (a) Establish criteria for evaluating the applicant's operation and reclamation plan to determine whether the productivity standard for mined prime farmland set forth under Chapter 88 can be achieved following mining; (b) require the applicant to submit a plan to establish his technological capability to comply with the requirements for restoring prime farmland productivity; and (c) require the applicant to submit information on productivity prior to mining.

(f) Amend its regulations at 88.129(f)(1) and (2) and the corresponding provision under Chapter 88, Subchapters C, D, and F (88.217, 88.330 and 88.491) or otherwise amend its program to be consistent with section 510(d) of SMCRA by requiring that the restoration of prime farmland soil productivity shall be determined on the basis of measurement of crop yields.

On December 22, 1986, Pennsylvania requested additional time to develop and adopt the required amendments at 30 CFR 938.16(c), (d), (e) and (f). Pennsylvania requested a minimum extension of 90 days to satisfy the required amendments (Administrative Record No. PA–690).

On March 5, 1987, OSMRE invited public comment on the State's request for additional time to amend its program (52 FR 6828). No comments were submitted to OSMRE during the comment period.

**III. Director's Decision**

The Director has decided to grant Pennsylvania's request and extend the deadline for the State to satisfy the requirements set forth under 30 CFR 938.16(c), (d), (e) and (f) until August 24, 1988.

This extension will enable Pennsylvania to coordinate the adoption of amendments to satisfy these requirements with other regulatory reform efforts currently being undertaken by the State.

**IV. Additional Determinations**

*1. Compliance with the National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*2. Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*3. Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

**List of Subjects in 30 CFR Part 938**

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: May 19, 1987.

James W. Workman,

*Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.*

**PART 938—PENNSYLVANIA**

1. The authority citation for Part 938 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

**§ 938.16 [Amended]**

2. Sections 938.16(c), (d), (e) and (f) are amended by substituting August 24, 1987 for January 31, 1987, each time that date appears in those paragraphs.

[FR Doc. 87–11874 Filed 5–22–87; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF EDUCATION

**34 CFR Parts 605, 606, 705, and 728**

**Removal of Miscellaneous Regulations**

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends Title 34 of the Code of Federal Regulations (CFR) by removing certain obsolete parts. These CFR parts are no longer needed for the reasons stated in this document. The Secretary takes this action as part of the deregulation review to eliminate unnecessary regulations.

**EFFECTIVE DATE:** These regulations take effect May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** A. Neal Shedd, 400 Maryland Avenue, SW. (Room 2131, FOB–6), Washington, DC 20202. Telephone: (202) 732–2887.

**SUPPLEMENTARY INFORMATION:** Under Executive Order 12291, effective February 17, 1981, the Department of Education (ED) is reviewing and, where possible, eliminating unnecessary regulations.

**Part 605—Continuing Education Outreach—State Administered Program and Part 606—Continuing Education Outreach—Special Projects Program**

Parts 605 and 606 are removed because they have been superseded by new legislation. The Higher Education Amendments of 1986, Pub. L. 99–498, enacted October 17, 1986, amended the legislation authorizing the Continuing Education Outreach Program to establish a new program. The Continuing Education Outreach Program was eliminated.

**Part 705—Government in the Sunshine Act Regulations**

These regulations apply only to the National Council on Educational Research (NCER). The regulations are obsolete because the NCER has been replaced by the National Advisory Council on Educational Research and Improvement. See section 1401, Pub. L. 99-498, enacted October 17, 1986.

**Part 726—Capacity-Building for Statistical Activities in State Agencies**

This program is not required by statute. As a result of a change in Department policy, the Secretary no longer funds projects under this program. These regulations are therefore unnecessary.

Grants previously awarded by the Secretary under 34 CFR Parts 605, 606, and 726 remain subject to the regulations in effect at the time the grants were made.

**Waiver of Proposed Rulemaking**

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the removal of these obsolete regulations is purely technical and does not establish new substantive policy. Therefore, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on these regulations is unnecessary and contrary to the public interest.

**List of Subjects**

*34 CFR Part 605*

Colleges and Universities, Education, Grant programs—education.

*34 CFR Part 606*

Education, Educational facilities, Government contracts, Grant programs—education.

*34 CFR Part 705*

Education Department, Sunshine Act.

*34 CFR Part 726*

Computer technology, Education, Grant programs—education, Intergovernmental relations, Statistics.

Dated: May 8, 1987.

(Catalog of Federal Domestic Assistance Numbers do not apply.)

William J. Bennett,

*Secretary of Education.*

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

**PART 605—CONTINUING EDUCATION OUTREACH—STATE ADMINISTERED PROGRAM [REMOVED]**

1. Part 605 is removed.

**PART 606—CONTINUING EDUCATION OUTREACH—SPECIAL PROJECTS PROGRAM [REMOVED]**

2. Part 606 is removed.

**PART 705—GOVERNMENT IN THE SUNSHINE ACT REGULATIONS [REMOVED]**

3. Part 705 is removed.

**PART 726—CAPACITY-BUILDING FOR STATISTICAL ACTIVITIES IN STATE AGENCIES [REMOVED]**

4. Part 726 is removed.

[FR Doc. 87-11882 Filed 5-22-87; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[FRL-3206-4]

**National Emission Standards for Hazardous Air Pollutants and Standards of Performance for New Stationary Sources Delegation of Authority to the State of New York**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; Delegation of authority.

**SUMMARY:** This notice announces the delegation of authority by the Environmental Protection Agency to the State of New York to implement and enforce additional source categories of the Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards of Hazardous Air Pollutants (NESHAPS) along with revisions and amendments to the NSPS and the NESHAPS. The delegation was requested by the New York State Department of Environmental Conservation (NYSDEC). NSPS and NESHAPS are air pollution control requirements set under the Clean Air Act. This action informs all affected sources of the need to submit to the State, in addition to the EPA, all the information required pursuant to the delegated subparts. NSPS are applicable to certain categories of new air pollution sources. NESHAPS are applicable to certain categories of both new and existing sources.

**EFFECTIVE DATE:** The action is effective on May 26, 1987. This action became applicable on December 17, 1986.

**FOR FURTHER INFORMATION CONTACT:** Francis W. Giaccone, Chief Air Compliance Branch, Air & Waste Management Division, EPA Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-0627.

**SUPPLEMENTARY INFORMATION:** Sections 111(c) and 112(d) of the Clean Air Act directs the Administrator of the Environmental Protection Agency (EPA) to delegate EPA's authority to implement and enforce Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) to any state which has submitted adequate procedures. Nevertheless, the Administrator still retains concurrent authority to enforce the standards following delegation of authority to a state.

On July 14, 1983 EPA and the New York State Department of Environmental Conservation (DEC) entered into a delegation agreement whereby, among other things, EPA would offer, every six months, delegation of those new categories of NSPS and NESHAPS standards that were promulgated by EPA during that six month peirod and that EPA found DEC had the authority to implement and enforce. Additionally by this July 14, 1983 delegation agreement, EPA was to inform DEC of any changes or revisions to previously delegated NSPS or NESHAPS categories. Subsequently, DEC would accept delegation of these changes and revisions if DEC did not decline such delegation.

On July 14, 1986 EPA offered for delegation to the State of New York seven new NSPS categories. On December 17, 1986, DEC accepted delegation of these new Subparts. The following provides a listing of new NSPS and NESHAPs delegated to the DEC.

**NSPS Delegation**

AAa Steel plants: Electric Arc Furnaces and AODs
LL Metallic Mineral Processing Plants
FFF Flexible Vinyl & Urethane Coast & Print
JJJ Petroleum Dry Cleaners
LLL $SO_2$ Emissions from Onshore Natural Gas Plants
OOO Nonmetallic Mineral Processing Plants

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**PPP Wool Fiberglass Manufacturing Plants**

**NESHAPS Delegation**

**No additional Categories**

**EPA's Findings**

EPA's determination that the delegation be approved is based on the Agency's review of New York's statutory authority contained in 6 NYCRR, Chapter III of the New York Code. Based on that review, EPA concluded that this statutory authority is adequate to enforce the delegated NSPS/NESHAPS standards through NYSDEC's permit system. EPA has reviewed 6 NYCRR, Chapter III, Parts 200 and 201 and has concluded that these regulations will enable EPA to fully delegate NSPS/NESHAPS implementation and enforcement authority to NYSDEC for those NSPS and NESHAPS identified in this notice and that such delegation is, therefore, appropriate. EPA notified the Commissioner of these findings in a letter dated July 14, 1986.

The delegation is based upon the same conditions as those stated in the agreement of July 14, 1983 between EPA and DEC. Copies of all correspondence and EPA's delegation letter are available for public inspection in the Office of Air Compliance Branch at the Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

**Consequences of EPA's Action**

Effective December 17, 1986 all correspondence, reports, notifications required by the delegated NSPS and NESHAPS should be submitted to the New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, NY 12223-0001.

The Office of Management and Budget has exempted this action from the requirements of section 3 of Executive Order 12291.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. section 7411).

Dated: May 6, 1987.

Christopher J. Daggett,

*Regional Administrator.*

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Title 40, Chapter I, Subchapter C, Part 60, Code of Federal Regulations is amended as follows:

### Subpart A—General Provisions

1. The authority citation for Part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 60.4 paragraph (b)(FF)(1) is revised to read as follows:

**§ 60.4 Address.**

* * * * *

(b) * * *

* * * * *

(FF) * * *

(1) The following table lists the specific source and pollutant categories that have been delegated to the states in Region II. The (X) symbol is used to indicate each category that has been delegated.

| | Subpart | State | | | |
|---|---|---|---|---|---|
| | | New Jersey | New York | Puerto Rico | Virgin Islands |
| D | Fossil-Fuel Fired Steam Generators for Which Construction Commenced After August 17, 1971 (Steam Generators and Lignite Fired Steam Generators). | X | X | X | X |
| Da | Electric Utility Steam Generating Units for Which Construction Commenced After September 18, 1978 | X | | X | X |
| Db | Industrial-Commercial-Institutional Steam Generating Units | X | X | X | X |
| E | Incinerators | X | X | X | X |
| F | Portland Cement Plants | X | X | X | X |
| G | Nitric Acid Plants | X | X | X | X |
| H | Sulfuric Acid Plants | X | X | X | X |
| I | Asphalt Concrete Plants | X | X | X | X |
| J | Petroleum Refineries—(All Categories) | X | X | X | X |
| K | Storage Vessels for Petroleum Liquids Constructed After June 11, 1973, and prior to May 19, 1978 | X | X | X | X |
| Ka | Storage Vessels for Petroleum Liquids Constructed After May 18, 1978 | X | X | X | |
| L | Secondary Lead Smelters | X | X | X | X |
| M | Secondary Brass and Bronze Ingot Production Plants | X | X | X | X |
| N | Iron and Steel Plants | X | X | X | X |
| O | Sewage Treatment Plants | X | X | X | X |
| P | Primary Copper Smelters | X | X | X | X |
| Q | Primary Zinc Smelters | X | X | X | X |
| R | Primary Lead Smelters | X | X | X | X |
| S | Primary Aluminum Reduction Plants | X | X | X | X |
| T | Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants | X | X | X | X |
| U | Phosphate Fertilizer Industry: Superphosphoric Acid Plants | X | X | X | X |
| V | Phosphate Fertilizer Industry: Diammonium Phosphate Plants | X | X | X | X |
| W | Phosphate Fertilizer Industry: Triple Superphosphate Plants | X | X | X | X |
| X | Phosphate Fertilizer Industry: Granular Triple Superphosphate | X | X | X | X |
| Y | Coal Preparation Plants | X | X | X | X |
| Z | Ferroally Production Facilities | X | X | X | X |
| AA | Steel Plants: Electric Arc Furnaces | X | X | X | X |
| AAa | Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels in Steel Plants | X | X | X | |
| BB | Kraft Pulp Mills | X | X | X | |
| CC | Glass Manufacturing Plants | X | X | X | |
| DD | Grain Elevators | X | X | X | |
| EE | Surface Coating of Metal Furniture | X | X | X | |
| GG | Stationary Gas Turbines | X | X | X | |
| HH | Lime Plants | X | X | X | |
| KK | Lead Acid Battery Manufacturing Plants | X | X | | |
| LL | Metallic Mineral Processing Plants | X | X | X | |
| MM | Automobile and Light-Duty Truck Surface Coating Operations | X | X | | |
| NN | Phosphate Rock Plants | X | X | | |
| PP | Ammonium Sulfate Manufacturing Plants | X | X | | |
| QQ | Graphic Art Industry Publication Rotogravure Printing | X | X | X | X |
| RR | Pressure Sensitive Tape and Label Surface Coating Operations | X | X | X | |
| SS | Industrial Surface Coating: Large Appliances | X | X | X | |
| TT | Metal Coil Surface Coating | X | X | X | |
| UU | Asphalt Processing and Asphalt Roofing Manufacture | X | X | X | |
| VV | Equipment Leaks of Volatile Organic Compounds in Synthetic Organic Chemical Manufacturing Industry | X | | X | |
| WW | Beverage Can Surface Coating Industry | X | X | X | |
| XX | Bulk Gasoline Terminals | X | X | X | |

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| | Subpart | State | | | |
|---|---|---|---|---|---|
| | | New Jersey | New York | Puerto Rico | Virgin Islands |
| FFF | Flexible Vinyl and Urethane Coating and Printing | X | X | X | |
| GGG | Equipment Leaks of VOC in Petroleum Refineries | X | | X | |
| HHH | Synthetic Fiber Production Facilities | X | | X | |
| JJJ | Petroleum Dry Cleaners | X | X | X | |
| KKK | Equipment Leaks of VOC from Onshore Natural Gas Processing Plants | | | | |
| LLL | Onshore Natural Gas Processing Plants; $SO_2$ Emissions | | X | | |
| OOO | Nonmetallic Mineral Processing Plants | | X | X | |
| PPP | Wool Fiberglass Insulation Manufacturing Plants | | X | X | |

* * * * *

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# Proposed Rules

Federal Register
Vol. 52, No. 100
Tuesday, May 26, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 272 and 278

[Amdt. No. 291]

### Food Stamp Program, Sales Tax Provision Clarifications; Sequencing of Food Stamp Transactions and Compliance Enforcement

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule contains proposed regulations for the Food Stamp (FS) Program to implement a method to allocate food stamps in store transactions where an individual pays with both food stamps and cash and some of the eligible food items purchased are taxed. Implementing these changes will allow stores to simply and efficiently conduct food stamp transactions under the sales tax provision. This rule would also clarify the mothod that will be used to enforce compliance with the sales tax provision.

**DATE:** Comments on this proposed rulemaking must be received on or before July 27, 1987 to be assured of consideration.

**ADDRESS:** Comments should be submitted in writing to M. Patricia Warner, Chief, Administration and Design Branch Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 716.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this proposed rulemaking should be directed to Mr. O'Connor at the above address or by telephone at (703) 756–3385.

**SUPPLEMENTARY INFORMATION:**

**Classification**

*Executive Order 12291*

The Department has reviewed this proposed rule under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has classified it as "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. The rule would not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although this rule will affect the business community, this effect is not expected to be significant. The sequencing provision will affect approximately 100,000 approved retail stores, but the change in operating procedures it requires is minor. Potential penalties will affect only those stores that fail to comply with the sales tax exemption requirements.

*Executive Order 12372*

The Food Stamp Program is listed in the *Catalog of Federal Domestic Assistance* under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983 or 48 FR 54317, December 1, 1983, as appropriate and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

The proposed rule has also been reviewed with regard to the requirements of Pub. L. 96–354 and S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The rule proposes to simplify the procedures stores use in the acceptance of food stamps and to clarify the manner in which complaince with the sales tax provision will be enforced.

*Paperwork Reduction Act*

There are no reporting or recordkeeping provisions included in this proposed rule.

**Background**

Section 4(a) of the Food Stamp Act, as amended by section 1505 of Pub. L. 99–198, prohibits participation in the Food Stamp Program by States in which State or local sales taxes are collected on food stamp purchases. On April 1, 1986 the Department issued final rules (at 51 FR 11009) which implemented the sales tax provision. Since that time, as States and retailers began their planning for implementation, it was discovered that certain technical aspects of retailer acceptance of food stamps were affected by the sales tax provision. Neither the statute nor the April 1 regulations contained specific guidance on how these problems should be addressed. The Department decided that proposed regulations were needed to elicit comments from State agencies, retailers, and the general public on resolving these technical problems.

The April 1, 1986 publication reiterated the statute when it stated that the failure of a State or local government to change its sales tax law would result in the State no longer participating in the Food Stamp Program. Those rules did not establish how this penalty would be imposed. This proposal would establish how compliance with the sales tax provision will be enforced.

*Sequencing of Food Stamp Transactions (§ 272.1(b)(2))*

In planning for the implementation of the sales tax provision two problems came to our attention with regard to how the prohibition against charging sales taxes on food stamp purchases should be applied at the check-out counter. The first problem is with the sequencing of purchases. Sequencing refers to the order in which food stamps are applied to eligible items in a food order containing both taxable and non-taxable items when the recipient presents both food stamps and cash to pay for the order. The following example illustrates the problem:

A recipient arrives at the check-out with a $50 order consisting entirely of eligible food. However, $10 of the food is taxable under State (soda, gum, candy,

etc.). The remainder is not taxed. The recipient gives the cashier $10 in food stamps and $40 in cash to pay for the order. If the $10 in food stamps is considered payment for the $10 worth of taxable food, no tax would be charged. However, if the $10 in food stamps is considered payment for a portion of the non-taxable food, the recipient will be charged tax for the items paid for with cash.

Our regulations do not clearly address this situation. The rules issued April 1, 1986 state that: "Although a food stamp recipient may use a combination of cash and food stamps in making a food purchase, only the dollar amount represented by the food coupons needs to be exempt from taxation" (§ 272.1(b)). The preamble discussion of this provision states, in part that ". . . a recipient paying for $25 worth of groceries with $10 in coupons and $15 in cash, must have sales taxes exempted on $10 worth of the purchase" (51 FR 11010).

The second problem that came to our attention is double-sorting. Double-sorting is the need for checkers in stores without sophisticated electronic checkout machines to physically sort the groceries into two piles *a second time.* Currently, one physical sort separates eligible from non-eligible items; the second sorting procedure would separate the eligible pile into two further sub-piles: Taxable items and non-taxable items. This procedure is confusing and could increase considerably the time needed for each food stamp transaction.

The sequencing and double-sorting problems occur only in partial-tax States; i.e., in those States which tax some food items but not others and only in transactions where food stamp recipients have insufficient stamps to cover all their eligible food purchases. Neither problem occurs in States where *no* eligible food is taxed or where *all* eligible food is taxed. Sequencing is an implementation-related problem only; i.e., once a sequencing method is chosen and implemented no further problem exists. Double-sorting is an ongoing problem, intrinsic to the sales tax provision in partial-tax States in stores lacking top-line electronic checkout machines.

There are 28 partial-tax jurisdicitons according to our most recent information. There are: California, Connecticut, District of Columbia, Florida, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Washington, West Virginia, Maine, Massachusetts, New Hampshire, Colorado, Alaska, Arizona, and Wisconsin. Of these, Alaska, Colorado and Arizona, do not have Statewide taxes but some of their municipalities do have taxes, and some of these municipalities tax some food items but not others. Of the 28 partial-tax jurisdictions, four implemented the sales tax provision October 1, 1986. These were Maryland, Kentucky, Indiana, and Alaska. Wisconsin, because of a State law passed some years ago, is already in compliance with the sales tax provision.

The double-sorting problem can be accommodated by stores with electronic checkout machines capable of both storing taxable and non-taxable totals and manipulating these. The machines' software programs thus perform the double-sort function electronically. However, many small stores and some mid-size stores in the 28 partial-tax States, because they lack these expensive machines and must do the double-sort manually, could eventually face one of these choices: Dropping voluntarily from the Food Stamp Program, purchasing the equipment needed to accommodate the double-sorting problem, being forced off the program due to compliance violations, or losing food stamp business to rival stores.

A store that attempts to manually perform the double-sort will nearly double the time needed for food stamp recipients to buy their groceries, irritating both food stamp customers and non-food stamp customers and giving them a strong incentive to shop elsewhere. In addition, the volume of customers they can handle per hour will decrease, further increasing their costs and pinching their profits. A small store that wants to buy the necessary machine (which costs thousands of dollars) may not be able to afford it. The above problems could force a store off the program. A store that chooses not to perform the double-sort would automatically be in violation of the sales tax provisions. Likewise, a store that buys the equipment may have to raise all food prices to cover the cost of this capital investment, a result which could negate the Congressional purpose of relieving food stamp recipients of the burden of paying State and local taxes on purchases made with food stamps.

The Department proposes to give State agencies a choice of two ways to address the sequencing and double-sorting problems. The first method results in both problems being eliminated. The Department recommends that this method be followed. The second choice given to State agencies is a method to solely address the sequencing problem. State agencies that did not choose to adopt method one would be required to follow method two.

One of the two methods being proposed in this rule for resolving the sequencing problem is to eliminate the problem entirely by mandating by law that no sales tax be charged on any eligible items in any transaction in which an individual uses any amount of food stamps. Since no tax is charged, there is nothing to sequence. This method also simultaneously solves the double-sorting problem-because taxable and non-taxable distinctions become irrelevant to the sales tax provision.

While this comprehensive solution might seem to be one which could cost a State a significant sum of money in 'lost' sales tax receipts, on careful examination the amount of lost State tax dollars is likely to be quite small. The amount of tax collected on a transaction in a partial-tax State is relatively small. Typically, the partial-tax States tax only such items as soda pop and/or candy and a few miscellaneous items such as seeds, ice, etc. These items generally constitute only a small percentage of a household's total food purchases. According to data from a Department of Agriculture Economic Report (1979) on the monthly food consumption of food stamp recipients, the dollar percentage represented by soft drinks was 1.7 percent and candy 1.3 percent. Because taxable items constitute such a small proportion of food stamp households' monthly purchases, the vast majority of participating households will be using food stamps to cover the entire cost of the items and not paying tax anyway. Thus, it is likely that under this option a State's only revenue loss will be from households receiving low benefit levels. This is because the "loss" will occur only when taxable items are purchased with a combination of cash and food stamps.The State of Maryland, which implemented the sales tax provision on October 1, 1986 chose this innovative solution by having its revenue department issue the appropriate directive to all stores in the State.

In implementing the comprehensive method there should not be any limiting provisions, such as tying the exclusion to the proportion of food stamps versus cash proferred in the transaction. FNS believes an administrative solution such as this must be straightforward and uncomplicated to make it workable. Otherwise it becomes burdensome for retailers, and equitable and efficient

compliance monitoring by the State or FNS are impossible.

The other method being proposed in this rule for resolving the sequencing problem is the option by which food stamps are allocated *first* to *taxable* items. States that do not choose the first method would be required to follow this second method.

In analyzing how a food stamp transaction might be sequenced, the Department identified three potential methods that could be followed: (1) Allocate stamps first to taxable eligible items, (2) allocate stamps first to non-taxable eligible items, and (3) allocate stamps proportionally to the taxable and non-taxable eligible items. Using the following example these methods will be described in detail: A food stamp recipient wishes to purchase $50 worth of eligible foods and has $5 in food stamps and $45 in cash; of the $50, $44 worth of the items is non-taxable and $6 is taxable. The applicable sales tax is 5 percent.

The first method for allocating food stamps is to apply them first to the taxable portion of the transaction. Using this method in the example above, the dollar value ($5) of the food stamps is *first* applied against the cost of the taxable food items ($6). The recipient would pay 5 cents in sales tax on the one dollar's worth of taxable items not purchased with food stamps.

We believe this method comports most closely with the intent of Congress in protecting recipient food stamp benefits, and is administratively simple for retailers to implement. Wisconsin, the only "partial-tax" State to have implemented the sales tax provision prior to October 1, 1986, uses this sequencing option. Alaska and Kentucky implemented the sales tax provision on October 1, 1986 using this option. Any State law which implements this provision must be specific, e.g., it cannot use permissive language, such as by saying that retailers would be *permitted* to apply food stamps first against taxable items. Such a directive would not meet the requirements of the proposed rule, i.e., individual *retailers* are not to be allowed discretion, a mandated uniform procedure must be applied. (Although the above discussion identified only "retailers" by name, the sales tax provision applies equally to approved wholesalers, such as those who sell taxed food in bulk to institutions like drug and alcohol treatment facilities which purchase them with food stamps, acting as authorized representatives for the institution's individual residents.)

The second method for allocating food stamps is to apply them first to the nontaxable items in the transaction. Using this method in the example above, the dollar value ($5) of the food stamps is applied *first* against the $44 worth of *nontaxable* food items. The result is that the food stamp recipient pays sales tax on 100 percent of the items bought with food stamps and would pay 30 cents in sales tax. We believe this method would undermine the purpose of Congress by effectively reducing the food purchasing power of food stamps as can be seen in the example. This allocation method would indirectly tax those benefits.

A third method for allocating food stamps is to apply them to taxable items according to the proportion of the total payment the food stamps comprise. Using this method the cashier must first determine what *proportion* of the total purchase is represented by the food stamps. Sales tax is then *excused* on that *proportion* of the total purchase. In the example, the recipient has $5 in food stamps. The cashier therefore determines the *proportion to excuse* as 10 percent ($5/$50=1/10). Sales tax is therefore charged against 90 percent of the taxable total (which is $6). The recipient thus pays 27 cents tax.

The major problem with this method is its complexity. A small and medium size store would need a separate pocket calculator to do the proportion and allocation computations, which would be time-consuming and significantly increase each transaction time. Moreover, some of the companies that make the most sophisticated electronic point of sale equipment have told us of "dry runs" and simulations they have performed to see if they could handle the allocation scheme. The conclusion so far is that even the most sophisticated machines do not have the necessary technical capability. In addition, this method would impose a higher tax on recipients.

Since the first method is, administratively, the simplest, the second method violates the intent of the statutory provision, and the third method is far to complex, the Department is proposing the first method. Therefore, the proposed regulations offer States a choice of the comprehensive option or the sequence option under which food stamps are allocated first to taxable items.

*Double Allocation*

A further complication to the allocation issue has been raised. It arises where States have different sales tax rates on different eligible food items. For example, candy might be taxed at 5 percent, while fruit juice is taxed at 3 percent. We know that the States of Illinois, New York and Vermont have multiple tax rates on eligible foods, and there may be others with such multiple rates, especially where localities levy sales taxes in addition to those imposed by the States.

The Department has examined this problem and decided that States and localities must decide for themselves how best to resolve it. Their resolution would have to be within the framework of the two options for solving sequencing problems established in this rule. In providing guidance to affected States and localities, the Department would like to point out that the administrative complexity raised by the existence of multiple sales tax rates argues in favor of adopting our recommended solution: the dropping of all sales tax on transactions where food stamps are used.

*Compliance With the Sales Tax Provision (§§ 272.1(b)(3); 278.1(l)(1)(iv) and (2); 278.6(e)(7))*

The Food Security Act of 1985 clearly states what is supposed to occur should a State or locality fail to change its sales tax laws to prohibit the collection of sales taxes on food stamp purchases. In such a circumstance, the States is to no longer participate in the Food Stamp Program. As noted earlier, the April 1, 1986 regulations restated the legislation. Since their issuance, however, some questions have arisen as to how the Department would invoke the penalty.

The Department proposes to enforce compliance with two general actions. First the administrative funding provided to the affected State as well as the distribution of food stamps in the affected State would be stopped. Second, the authorization to accept and redeem food stamps would be withdrawn from all retail and wholesale food concerns located in the affected State. Essentially, the Department would not consider the participation of these stores in the Program as effectuating the purposes of the program since they would be required under State or local law to collect sales taxes on food stamp purchases. Effectuating the purpose of the program is one of the criteria that a store must meet under Section 9(a) of the Food Stamp Act in order to be authorized to participate in the program (7 U.S.C. 2018(a)). This action would be taken to ensure that people from outside the affected State would not bear the sales tax burden in the affected State. This would also prevent food stamp purchases from being taxed and thereby augmenting the tax collections of the affected State. Preventing food stamp benefits form serving as an indirect Federal subsidy to State and local governments is one of the reasons why Congress enacted the sales tax

provision (see Senate Report 99–145, p. 252).

A related compliance issue has also arisen. The issue is what action needs to be taken if an authorized store is found to be collecting sales taxes on food stamp purchases even though the State or locality where the store is located has changed its sales tax law to prohibit such a practice. The Department proposes to consider such action by an authorized firm to be a potential violation of the rules governing its participation in the program. Such a violation when detected would result in the store being issued a warning letter and notification sent to the appropriate State revenue office.

**Implementation**

The Department is proposing to make the comprehensive exemption/sequencing provision effective 30 days after publication of the final rule in the Federal Register for all States and localities which have already implemented the sales tax prohibition. All others would implement on or before October 1, 1987. The store warning/penalty provisions will be effective October 1, 1987.

**List of Subjects**

*7 CFR Part 272*

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

*7 CFR Part 278*

Administrative practice and procedure, Banks, Banking, Claims, Food Stamps, Groceries-retail, Groceries, general line—wholesaler, Penalties.

Accordingly, Parts 272 and 278 are proposed to be amended as follows:

1. The authority citation for Parts 272 and 278 continues to read:

**Authority:** 7 U.S.C. 2011–2029.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1:

(a) The text of paragraph (b) is redesignated (b)(1).

(b) New paragraphs (b)(2) and (b)(3) are added.

The revision and additions read as follows:

**§ 272.1 General terms and conditions.**

* * * * *

(b) No Sales Taxes on Food Stamp Purchases. (1) * * *

(2) In applying the sales tax provision, a State or local area which taxes some, but not all, eligible food items shall mandate that all eligible items purchased in transactions in which food stamps are used are exempt from sales tax regardless of the amount of the food stamps, or mandate that food stamps be allocated first to taxable eligible items.

(3) States shall ensure that no State or local law permitting the imposition of tax on food paid for with food stamps is in effect at any time after September 30, 1987. If a State fails to comply with this requirement, FNS may terminate the issuance of food stamps in that State and disallow administrative funds otherwise payable pursuant to Part 277. Disallowance actions shall be undertaken pursuant to the procedures set forth in § 276.4.

* * * * *

## PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

3. In § 278.1, paragraph (l) is revised to read as follows:

**§ 278.1 Approval of retail food stores and wholesale food concerns.**

* * * * *

(l) *Withdrawing authorization.* (1) FNS shall withdraw the authorization of any firm authorized to participate in the program for any of the following reasons.

(i) The firm's continued participation in the program will not further the purposes of the program;

(ii) The firm fails to meet the specifications of paragraphs (b), (c), (d), or (e) of this section;

(iii) The firm has been found to be circumventing a period of disqualification or a civil money penalty through a purported transfer of ownership; or

(iv) The firm is required under State or local law to charge sales tax on food stamp purchases at any time after September 30, 1987.

(2) The FNS officer in charge shall issue a notice to the firm by certified mail or personal service to inform the firm of the determination and of the review procedure. FNS shall remove the firm from the program if the firm does not request review within the period specified in § 279.5.

* * * * *

4. In § 278.2, the first sentence of paragraph (b) is revised. The revision reads as follows:

**§ 278.2 Participation of retail food stores.**

* * * * *

(b) *Equal treatment for coupon customers.* Coupons shall be accepted for eligible foods at the same terms and conditions applicable to cash purchases of the same foods at the same store except that sales tax shall not be charged on eligible foods purchased with food stamps. * * *

* * * * *

5. In § 278.6, paragraph (e)(7) is revised as follows:

**§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.**

* * * * *

(e) *Penalties.* * * *

(7) Send the firm a warning letter if violators are too limited to warrant a disqualification or a firm has been found to be charging sales tax on purchases made with food stamps where State or local law forbids such a practice. Any sales tax warning sent to a store must be reported to the appropriate State revenue office.

* * * * *

Dated: May 18, 1987.

**S. Anna Kondratas,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 87–11873 Filed 5–22–87; 8:45 am]

BILLING CODE 3410-30-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Parts 21 and 23

**[Docket No. 087CE, Notice No. 23–ACE–33]**

### Special Conditions; Ballistic Recovery System, Inc., Modified Cessna 150/A150 Series Airplanes and 152/A152 Model Airplanes to Incorporate the GARD–150 System

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Special Conditions.

**SUMMARY:** This notice proposes special conditions for the supplementary type certification of the Ballistic Recovery Systems, Inc. General Aviation Recovery Device (GARD) in Cessna 150/A150 Series and 152/A152 Model Airplanes. This system is referred to as the GARD–150. This modification will have novel or unusual design features associated with a parachute recovery system for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the safety standards which the Administrator finds necessary to establish a level of safety equivalent to the original certification basis for these airplanes.

**DATE:** Comments must be received on or before June 25, 1987.

**ADDRESS:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 037CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 037CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ronald K. Rathgeber, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested parties both before and after the closing date for submission of comments.

**Type Certification Basis**

The type certification basis (TC 3A19) for the Cessna Aircraft Company 150/A150 Series Airplanes and 152/A152 Model Airplanes is Part 3 of the Civil Air Regulations dated May 15, 1956, through Amendment 3-4; § 23.1559, effective March 1, 1978 for S/N 15282032 and on of the model 152 and S/N 681, A1520809 and on of the model A152; Part 36, dated December 1, 1969, plus Amendments 36-1 through 36-5 for the model 152 only; and any special conditions which result from this proposal.

**Background**

On January 12, 1987, Ballistic Recovery Systems, Inc. (BRS), 9242 Hudson Boulevard, Lake Elmo, Minnesota 55042, filed an application for a supplemental type certificate (STC) to install the GARD-150 parachute recovery system on Cessna 150/A150 Series and 152/A152 Model Airplanes. The applicant proposes to certificate a parachute recovery system which is intended to recover an airplane in emergency situations; such as mid-air collision, loss of engine power, loss of airplane control, severe structural failure, pilot disorientation, or pilot incapacitation. The GARD-150 system, which is only to be used as a last resort, is intended to prevent serious injuries to the airplane occupants by parachuting the airplane to the ground.

The GARD-150 system consists of a parachute with a canopy approximately 50 feet in diameter, which is packed in a canister mounted in the left aft portion of the baggage compartment. A solid propellant rocket motor, located at the left side of the canister and attached to the canopy sleeve, is used to deploy the canopy. A door is postioned above the canister to seal the canister, parachute canopy, and rocket motor from the elements and provide free exit when the canopy is deployed. The GARD-150 is deployed by a mechanical pull handle mounted on the pilot side of the airplane trim wheel pedestal.

The rocket motor initiator is a mechanical device, and the GARD-150 system requires no electrical power. The system is dormant in the normal configuration since the rocket motor is unarmed. At least two separate and independent pilot actions are required to deploy the system.

A four-cable bridle attaches the canopy bridle to the airplane primary structure at wing and main landing gear bulkheads. The cable lengths are designed to provide the best airplane touchdown attitude. The cables are routed externally on each side of the fuselage from the door to the attach points. The cables are covered with small frangible fairings.

The applicant intends to provide a supplement to the FAA-approved Airplane Flight Manual as part of the STC for those airplanes which have such a manual. The supplement will describe the system, define the operating envelope with appropriate warnings, and define required system maintenance and inspection information. A separate FAA approved GARD-150 Operating Manual will be provided for those airplanes which do not have an FAA-approved Airplane Flight Manual.

The GARD-150 system includes a placard located near the pull handle in clear view of the pilot to identify the system and operating envelope, state deployment actions, and provide appropriate warnings. A warning placard is located on the canister near the rocket motor.

**Discussion**

The installation of GARD-150 parachute recovery system in Cessna 150/A150 Series and 152/A152 Model Airplanes was not envisioned when the certification basis for these airplanes was established. In addition, the Administrator has determined that the current Part 23 does not contain adequate or appropriate safety standards for the GARD-150 system; therefore, this system is considered a novel and unusual design feature.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplanes. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.101(b)(2).

Special conditions are proposed for special flight test demonstrations. These requirements would assure that the GARD-150 system will perform its intended function without exceeding the strength capabilities of the system. These requirements would also require that demonstrations be made to show that the parachute will deploy in various specified flight conditions.

Special conditions are proposed for the occupant restraint provisions. These requirements would assure that airplanes modified with the GARD-150 system would be equipped with a restraint system designed to protect the occupants from injury during parachute deployment and ground impact.

Special conditions are proposed for the GARD-150 parachute performance. The requirements would assure that: (1) The parachute complies with applicable section of TSO-C23c (SAE AS8015A) at the critical airplane weights, (2) the parachute deployment loads do not exceed the structural strength of the airplane, (3) the system will provide a ground impact which does not result in serious injury of the passengers, and (4) the system will operate in adverse weather conditions.

Special conditions are proposed for the functions and operations of the GARD-150 system. These requirements would assure that: (1) There is no fire hazard associated with the system, (2)

the system has adequate reliability, (3) the sequence of arming and activating the system will prevent inadvertent deployment, (4) the system can be activated from either the pilot's or copilot's seat by various sized people, (5) the system will be labeled to show its identification functions and operating limitations, and (6) the parachute can be jettisoned after impact in adverse weather conditions.

Special conditions are proposed for protection of the GARD–150 system. These requirements would assure that the system is protected from deterioration due to weathering, corrosion, abrasion, and other causes; and that provisions are made to the parachute canister to provide adequate ventilation and drainage.

Special conditions are proposed for system inspection provisions. These requirements would assure that adequate means are available to permit close examination of the GARD–150 system components and that instructions for continued airworthiness are provided.

Special conditions are proposed for the operating limitations of the GARD–150 system. These requirements would assure that the system operating limitations are within the approved flight envelope of the airplane and that operating limitations require that the parachute is inspected and repacked each 120 days.

The FAA has considered the features proposed by Ballistic Recovery Systems, Inc. for the GARD–150 installation in the Cessna 150/A150 Series and 152/A152 Model Airplanes and has concluded that, notwithstanding the existing requirements applicable to these airplanes, which did not envision the use of each system, special conditions should be promulgated for such systems to provide the necessary level of safety. Accordingly, special conditions are proposed.

**List of Subjects in 14 CFR Parts 21 and 23**

Aviation safety, Aircraft, Air transportation, Safety, and Tires.

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.29(a).

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for Cessna 150/A150 Series and 152/A152 Model Airplanes modified to incorporate the Ballistic Recovery Systems, Inc. GARD–150 parachute recovery system.

*1. Flight Test Demonstration*

(a) The GARD–150 system must be demonstrated in flight to satisfactorily perform its intended function, without exceeding the system deployment limit load factors, for the critical flight conditions.

(b) Satisfactory deployment of the GARD–150 parachute must be demonstrated, at the most critical airplane weight and balance, for the following flight conditions:

(i) Power off stall with slow entry,

(ii) Spin with deployment at one turn,

(iii) Normal cruise at 100 knots and 1G normal load,

(iv) Maneuvering speed with 2G normal load, and

(v) Never exceed speed with 1G normal load.

*2. Occupant Restraint*

Each seat in an airplane modified with the GARD–150 system must be equipped with a restraint system, consisting of a seat belt and shoulder harness, which will protect the occupants from head and upper torso injuries during parachute deployment and ground impact at the critical load conditions.

*3. Parachute Performance*

(a) The GARD–150 parachute must comply with the applicable requirements of TSO–C23c, or an approved equivalent, for the critical airplane weights.

(b) The GARD–150 system limit load factor for deployment must not exceed 80 percent of the airplane ultimate load factor.

(c) It must be shown that, although the airplane structure may be damaged, the airplane impact during touchdown will result in an occupant environment in which serious injury to the occupants is improbable.

(d) It must be shown that, with the GARD–150 parachute deployed, the airplane can impact the ground in various adverse weather conditions, including winds up to 15 knots, without endangering the airplane occupants.

*4. System Functions and Operations*

(a) It must be shown that there is no fire hazard associated with activation of the GARD–150 system.

(b) The GARD–150 system must be shown to function reliably and to adequately perform its intended function.

(c) It must be shown that arming and activating the GARD–150 system can only be accomplished in a sequence which makes inadvertent deployment extremely improbable.

(d) It must be demonstrated that the GARD–150 system can be activated without difficulty by various sized people, from a 10th percentile female to a 90th percentile male, while sitting in the pilot or copilot seat.

(e) The GARD–150 system must be labeled to show its identification, function and operating limitations.

(f) It must be shown that, after impact, the parachute can be jettison under various adverse weather conditions, including high winds.

*5. System Protection*

(a) All components of the GARD–150 system must provide protection against deterioration due to weathering, corrosion, abrasion, and other causes.

(b) Adequate provisions must be made for ventilation and drainage of the parachute canister and associated structure to ensure the sound condition of the system.

*6. System Inspection Provisions*

(a) Instructions for continued airworthiness must be prepared for the GARD–150 system which meet the requirements of § 23.1529 of this chapter.

(b) Adequate means must be provided to permit the close examination of the parachute and other system components to ensure proper functioning, alignment, lubrication, and adjustment during any required inspection of the GARD–150 system.

*7. Operating Limitations*

(a) Operating limitations must be prescribed to ensure proper operation of the GARD–150 system within the approved flight envelope of the airplane.

(b) Operating limitations must be prescribed to require that the GARD–150 parachute be inspected and repacked each 120 days. This parachute must be considered an auxiliary parachute in the context of § 105.43(a)(2) of this chapter.

Issued in Kansas City, Missouri, on May 3, 1987.

**Jerold M. Chavkin,**

*Acting Director, Central Region.*

[FR Doc. 87–11695 Filed 5–22–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 21 and 25

[Docket No. NM-23; Notice No. SC-87-3-NM]

Special Conditions: McDonnell Douglas DC-9-80 and MD-80 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the McDonnell Douglas DC-9-80 and MD-80 series airplanes. These series airplanes will have novel or unusual design features associated with the installation of new electronic systems for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards for protection from the indirect effects of lightning. This notice contains the safety standards which the Administrator finds necessary, because of these added design features, to ensure that the functions of these systems, which are critical and essential, are addressed.

DATE: Comments must be received on or before July 10, 1987.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-23 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-23. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168, telephone (206) 431-2114.

SUPPLEMENTARY INFORMATION:

## Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-23." The postcard will be date/time stamped, and returned to the commenter.

## Background

On March 10, 1986, the Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, California 90846, made an application to the Federal Aviation Administration (FAA), for an amended type certificate for the MD-88 airplane.

The MD-88 is a 172 passenger (maximum), fuel efficient, low noise (Stage 3) MD-80 series derivative with JT8D-217C or JT8D-219 engines. The MD-88 would be the freighter version incorporating the main cabin cargo door and cargo flooring of previously certificated freighters. The MD-88 weights will be the same as those approved for the MD-82, i.e., 150,500 pounds maximum ramp weight (MRW), 149,500 pounds maximum takeoff weight (MTOW), 130,000 pounds maximum landing weight (MLW) and 122,000 pounds maximum zero fuel weight (MZFW).

The overall exterior configuration and the basic airplane structure will be the same as the MD-80 series currently being delivered. New electronic systems which will be incorporated in the MD-88 include, for example, a flat panel display for showing engine parameters and another flat panel for displaying failure annunciations. These systems are also expected to become available as options for other MD-80 series airplanes. They will also be available for retrofit on in-service airplanes.

Because the current regulations address only structural and fuel tank/fuel vapor ignition lightning protection (direct effects), but do not address lightning indirect effects, protection for electronic control or display systems, special conditions are necessary to provide an equivalent level of safety when compared to traditional designs. These special conditions specify the level of protection required based on the criticality of the function performed by the system. For this reason, these special conditions will be applicable to all of the DC-9-80 and MD-80 series airplanes which incorporate these (or other future) electronic systems, whose functions have been determined to be critical or essential.

## Type Certification Basis

The type certification basis for the McDonnell Douglas MD-80 series airplanes is Part 25 of the FAR effective February 1, 1965, as amended by Amendments 25-1 through 25-40, with certain exceptions which are identified in the Model DC-9 series Airplane Type Certificate No. A6WE. These exceptions are not pertinent to the subject of lightning protection for electronic devices.

## Conclusion

This action affects only certain unusual or novel design features on McDonnell Douglas DC-9-80 and MD-80 series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

## List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety.

## The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes, in addition to §§ 25.581 and 25.954 for the structure and fuel system, the following special conditions for the McDonnell Douglas DC-9-80 and MD-80 series airplanes incorporating these types of electronic systems.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Each system, whose failure to function properly would prevent the continued safe flight and landing of the airplane, must be designed and installed to ensure that its operation and operational capabilities are not affected when the airplane is exposed to lightning.

3. Systems, whose failure to function properly would reduce the capability of the airplane or the ability of the flightcrew to cope with adverse operating conditions, must be designed and installed to ensure that they can perform their intended functions after the airplane is exposed to lightning.

Issued in Seattle, Washington, on May 13, 1987.

Frederick M. Isaac,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 87-11800 Filed 5-22-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 87-ASW-16]**

## Proposed Removal of Transition Area; Manila, AR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to remove the transition area at Manila, AR. The intended effect of the proposed action is to release controlled airspace no longer required for aircraft executing standard instrument approach procedures (SIAP's) to the Manila Municipal Airport, Manila, AR. This action is necessary due to the shutdown of the nondirectional radio beacon (NDB) serving the airport and the subsequent cancellation of SIAP's to the Manila Municipal Airport. This proposed action will also change the airport status from instrument flight rules (IFR) to visual flight rules (VFR).

**DATE:** Comments must be received on or before July 13, 1987.

**ADDRESSES:** Send comments on the proposal in triplicate to: Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** David J. Souder, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5535.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-ASW-16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to remove the transition area at Manila, AR. This action is necessary since the NDB has been shutdown due to its age and the inability to obtain necessary repair parts. With the shutdown of the NDB, the existing SIAP has been canceled, thereby canceling the need for a 700-foot transition area. Coincident with this proposed action the airport status will change from IFR to VFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

### The Proposed Amendment

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 Continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

Manila, AR [Removed]

Issued in Fort Worth, TX, on May 12, 1987.

Larry L. Craig,

*Assistant Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 87-11804 Filed 5-22-87; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 87-AGL-7]**

## Proposed Control Zone Designation Revocation; Various Locations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revoke the control zones designated for Ironwood, Michigan; Menominee, Michigan; and Manitowoc, Wisconsin. This action also cancels Airspace Docket No. 85-AGL-13.

The intended effect of this action is to return the designated airspace to a non-controlled status.

**DATE:** Comments must be received on or before June 29, 1987.

**ADDRESS:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 87-AGL-7, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

**SUPPLEMENTARY INFORMATION:** To justify and retain a designated control zone requires, in part, that hourly and special weather observations be taken at the primary airport in the control zone during the times and dates that the control zone is designated. Recent surveys for Ironwood, Michigan, disclosed that the weather observation requirement was not being met by the responsible party. The percentage of hourly reports received out of the total number required for Ironwood was as follows: January 8-14, 1987—82%; January 27-30, 1987—83%. Special weather observations would be in addition to these reports, but it is unknown what that total number would have been. Airlines that currently serve Menominee, Michigan, and Manitowoc, Wisconsin, have indicated no interest in providing weather observations for anyone other than their own aircraft. Efforts to obtain a commitment from other interested parties have been unsuccessful. As a result, it was concluded that the weather reporting at the locations identified was unacceptable for retention of the designated airspace status, that the control zone designations should be revoked, and that aeronautical charts should be amended to reflect the revocations.

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AGL-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the control zone designations for the following locations: Ironwood, Michigan, Menominee, Michigan, and Manitowoc, Wisconsin.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation Safety, Control zones.

**The Proposed Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

Ironwood, MI [Revoked]

Menominee, MI [Revoked]

Manitowoc, WI [Revoked]

Issued in Des Plaines, Illinois, on May 13, 1987.

Teddy W. Burcham,

*Manager, Air Traffic Division.*

[FR Doc. 87-11897 Filed 5-22-87; 8:45 am]

BILLING CODE 4910-13-M

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## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Parts 3, 4 and 140**

**Relief From Regulation as a Commodity Trading Advisor for Certain Persons; Relief From Compliance With Subpart B of Part 4 for Certain Commodity Pool Operators; Disclosure Documents and Annual Reports**

**AGENCY:** Commodity Futures Trading Commission .

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission (the "Commission") is proposing to exclude certain otherwise regulated persons, such as State-regulated insurance

companies, from the definition of the term "commodity trading advisor" ("CTA") and to exempt certain other persons, such as registered investment advisers ("IAs"), from registration as a CTA. To implement these peoposals, certain other amendments would be made to the Commission's regulations. The Commission also is proposing relief from specific compliance with the disclosure, reporting and recordkeeping requirements of Part 4 for registered commodity pool operators ("CPO") who operate pools which, among other things, trade generally and routinely in securities instruments and who intend to commit no more than 10 percent of the fair market value of their pools' assets as intital margin or as option premiums for commodity interest trading. Finally, the Commission is proposing certain technical amendments to the Disclosure Document required of registered CPOs and CTAs and the Annual Report required of registered CPOs.

**DATE:** Comments must be submitted on or before July 10, 1987.

**ADDRESS:** Comments should be sent to: Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581. Attention: Secretariat.

**FOR FURTHER INFORMATION CONTACT:** With respect to §§ 3.16, 4.6, 4.12, 4.14 and 140.93, Barbara R. Stern, Assistant Chief Counsel, and with respect to §§ 4.21, 4.22 and 4.31, Patricia N. Gillman, Senior Special Counel, Division of Trading and Markets, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–8955.

**SUPPLEMENTARY INFORMATION:**

## I. Relief From CTA Regulation

### *A. Introduction*

The term "commodity trading advisor" is defined in section 2(a)(1)(A) of the Commodity Exchange Act, as amended (the "Act"), 7 U.S.C. 2 (1982), to mean:

> [A]ny person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market, any commodity option authorized under section 4c, or any leverage transaction authorized under section 19, or who, for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning any of the foregoing: but such term does not include (i) any bank or trust company or any person acting as an employee thereof, (ii) any news reporter, news columnist, or news editor of the print or electronic media, or any lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher or producer of any print or electronic data of general and regular dissemination, including its employees, (v) the fiduciary of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, (vi) any contract market, and (vii) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession * * *.

Section 4m(1) of the Act, 7 U.S.C. 6m(1) (1982), generally makes it unlawful for any person to engage in business as a CTA without being registered as such. Part 4 of the Commission's regulations, 17 CFR Part 4 (1986), governs the operations and activities of CTAs.[1]

In connection with the adoption of the Futures Trading Act of 1986, Pub. L. 99–641, 100 Stat. 3558 *et seq.* (1987), the House of Representatives Committee on Agriculture (the "Committee") considered a proposal to exclude certain persons from the CTA definition.[2] As the Committee report states:

> Representatives of the life insurance industry have proposed that the definition of "commodity trading advisor" in the Act be amended to exclude any investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 whose advice concerning commodity interests is solely in connection with the management of institutional securities portfolio(s). The life insurance industry urged that such an exclusion is necessary to avoid duplicative and inappropriate regulation, and to put institutional investment advisers such as insurance companies on a par with banks and trust companies, which are already excluded from the definition of commodity trading advisor if their commodity advisory activities are solely incidental to the conduct of their business as banks and trust companies. Other witnesses supported the insurance companies' proposal. H.R. Rep. No. 624, 99th Cong., 2d Sess. 46–47 (1986).

The Committee Report then noted the Commission's objections to the breadth of the proposal. It further noted the Commission's questioning of the need for a statutory amendment to the CTA definition in light of existing authority in section 2(a)(1)(A) of the Act,[3] and the Commission's prior responsiveness and stated preparedness to the requests of insurance companies regarding some of the problemns that would have been addressed by the proposed amendment.

In light of the foregoing, the Committee declined to adopt the proposed amendment. Instead, the Committee urged the Commission to issue regulations in this regard. As the Committee Report states:

> The Committee believes that any insurance company subject to regulation by State insurance departments (including any wholly owned subsidiary or employee thereof), provided its commodity advisory activities are solely incidental to the conduct of the business of the insurance company as such, generally is not within the intent of the definition of the term "commodity trading (advisor)." The Committee similarly believes that any person who is excluded from the definition of the term "commodity pool operator" by Commission Rule 4.5 should be excluded from the commodity trading advisor definition, provided its commodity advisory activities are solely incidental to its operation of those trading vehicles for which Rule 4.5 provides relief. Relatedly, where the advisor advises an entity that is excluded form registration as a commodity pool under Rule 4.5 or is a Rule 4.5 qualifying entity and such advisor is subject to appropriate regulation under the Investment Advisers Act, that advisor should ordinarily be exempted from commodity trading advisor registration if its commodity advice is solely incidental to its business of providing securities advice to such entity and the advisor is not otherwise holding itself out as a commodity trading advisor. Therefore, the Committee urges the Commission to exercise its authority to adopt regulations in regard to these matters.
>
> Should the Commission determine that registration as a commodity trading advisor is required, the Committee expects that the Commission will use the existing authority to consider other appropriate relief. In this regard, the Committee is aware that the Commission has exercised its authority to limit, by exemption, those employees of otherwise regulated entities who must register as an associated person of a commodity trading advisor. The Committee further understands that the Commission has coordinated its activities with the Securities and Exchange Commission to eliminate duplicative requirements, for example, by deeming in appropriate cases compliance

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[1] Part 4 also governs the operations and activities of commodity pool operators ("CPOs"). For the purpose of this Federal Register release, reference to a particular Part 4 regulation may be found at 17 CFR Part 4 (1986).

[2] As interested persons will recall, in connection with the adoption of the Futures Trading Act of 1982, the Senate Committee on Agriculture, Nutrition and Forestry similarly considered a proposal to provide relief from CPO regulation for certain otherwise regulated persons. *See* S. Rep. No. 384, 97th Cong., 2d Sess. 79–80 (1982). Pursuant to the language in the Report of that Committee, the Commission adopted Rule 4.5, which makes an exclusion from the definition of the term "commodity pool operator" available to the "eligible persons" specified in the rule with respect to their operation of certain "qualifying entities." To claim that relief, generally a Notice of Eligibility, containing specified representation on how the qualifying entity will be operated, must be filed with the Commission. *See* 50 FR 15868 (April 22, 1985).

[3] As stated above, section 2(a)(1)(A) provides the Commission with authority to exclude or exempt from the CTA definition "such (other) persons not within the intent of this definition as the Commission may specify by rule, regulation, or order."

with SEC disclosure, recordkeeping, and reporting requirements as sufficient compliance with the Commission's corresponding commodity pool operator requirements. The Committee intends that the Commission will continue to provide this and such other relief as may be appropriate to applicants for registration as a commodity trading advisor or in any other registration category.

On the other hand, the Committee does not expect the Commission to grant exempted commodity trading advisors any relief from the antifraud provisions of section 4*o* of the Act.

The Committee understands that rulemaking addressing these concerns may take some time for the Commission to develop and promulgate. Individual requests for exclusions or exemptions, consistent with the above guidelines, however, should be processed by the Commission as expeditiously as practicable. The Commission's experience with individual cases should facilitate the formulation of more general rulemaking. *Id.* at 47–48.

In response to the Committee Report language, then, by this **Federal Register** release the Commission is proposing § 4.6, § 4.14(a)(8) and certain related amendments to its regulations.

*B. Proposed § 4.6: Exclusion for Certain Otherwise Regulated Persons from the Definition of the Term "Commodity Trading Advisor"*

Paragraph (a) of the proposed rule specifies the persons who would be eligible for exclusion from the CTA definition and the activities for which such relief would be available. The Commission has strictly followed the Committee Report language in specifying these persons and activities. Thus, the proposal would provide relief for: (1) A State-regulated insurance company, or any wholly-owned subsidiary or employee thereof, and (2) a person who is excluded from the definition of the term "commodity pool operator" by § 4.5 under certain circumstances.[4] In particular, the commodity interest advisory activities of these persons would be subject to a "solely incidental" test—*i.e.*, in the case of an insurance company (or wholly-owned subsidiary or employee thereof) those activities must be "solely incidental to the conduct of the insurance business of the insurance company as such" and in the case of a person excluded from the CPO definition by § 4.5 those activities must be "solely incidental to its operation of those trading vehicles for which § 4.5 provides relief." [5] Paragraph (b) of the rule would require each person claiming an exclusion from the CTA definition to submit to special calls to demonstrate its compliance with the terms of paragraph (a).[6] This proposal is intended to permit the Commission to monitor whether persons claiming the exclusion are properly entitled to do so. Paragraph (c) would provide that an exclusion under the rule would cease to be effective "upon any change which would render the person claiming the exclusion ineligible under paragraph (a)."

Interested persons will note that proposed § 4.6 follows the format of § 4.5 with one significant exception. The CTA exclusionary rule, unlike the CPO exclusionary rule, would not require that a notice be filed with the Commission to claim the exclusion.[7] Thus, the exclusion provided by § 4.6 would be available without any action on the part of a person claiming that relief—subject, of course, to the person meeting the requirements of paragraph (a). The Commission has not proposed a notice requirement because (1) with respect to insurance companies, pursuant to the Committee Report the proposal follows the exclusionary language in section 2(a)(1)(A) for such persons as banks (who do not have to file any notice), and (2) with respect to those persons who are excluded under § 4.5 from the CPO definition, the Commission will, in fact, be receiving an identifying notice under the rule. The Commission nonetheless seeks comment on whether a notice should be required to be filed to claim relief under § 4.6 and, if so, what information the notice should contain.[8]

As noted above, the one criterion to which persons claiming relief under § 4.6 would be subject is that their commodity interest advisory activities must be "solely incidental" to their insurance business or § 4.5 activities. In this regard, pending the proposal of § 4.6 and pursuant to the Committee Report language, Commission staff has received and responded to several requests for interpretation on the meaning of the "solely incidental" criterion in the context of the activities of State-regulated insurance companies and their wholly-owned subsidiaries.[9] Specifically, staff found that this condition of the exclusion would be met where commodity interest trading advice would be provided—

> to persons to whom [the insurance company] (or a subsidiary insurance company) has issued a[n] * * * insurance contract and, thus, with whom [the insurance company] (or a subsidiary insurance company) has established a relationship through the issuance of that contract.[10]

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[4] Section 4.5(a) specifies the persons eligible for that relief as follows:

(1) An investment company registered as such under the Investment Company Act of 1940;

(2) An insurance company subject to regulation by any State;

(3) A bank, trust company or any other such financial depository institution subject to regulation by any State or the United States; and

(4) A trustee or named fiduciary of a pension plan that is subject to Title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That for purposes of this § 4.5 the following pension plans shall not be construed to be pools:

(i) A noncontributory plan, whether defined benefit or defined contribution, covered under Title I of the Employee Retirement Income Security Act of 1974;

(ii) A contributory defined benefit plan covered under Title IV of the Employee Retirement Income Security Act of 1974; *Provided, however,* That with respect to any such plan to which an employee may voluntarily contribute, no portion of an employee's contribution is committed as margin or premiums for futures or options contracts; and

(iii) A plan defined as a governmental plan in section 3(32) of Title I of the Employee Retirement Income Security Act of 1974.

[5] Section 4.5(b) lists the following trade vehicles as qualifying entities:

(1) With respect to any person specified in paragraph (a)(1) of this section, and investment company registered as such under the Investment Company Act of 1940;

(2) With respect to any person specified in paragraph (a)(2) of this section, a separate account established and maintained or offered by an insurance company pursuant to the laws of any State or territory of the United States, under which income gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against any account, without regard to other income, gains, or losses of the insurance company;

(3) With respect to any person specified in paragraph (a)(3) of this section, the assets of any trust, custodial account or other separate unit of investment for which it is acting as a fiduciary and for which it is vested with investment authority; and

(4) With respect to any person specified in paragraph (a)(4) of this section, and subject to the proviso thereof, a pension plan that is subject to Title I of the Employee Retirement Income Security Act of 1974 * * *.

Moreover, where necessary, before it provides such advice to any such qualifying entity, the person must file a notice of eligibility. (As stated in n. 4, *supra*, certain trading vehicles are deemed under § 4.5 to be "non-pools" and, thus, no notice is required to be filed with respect to their operation.)

[6] The Commission is proposing in § 140.93(a)(6) to delegate to the Director of the Division of Trading and Markets, or the Director's designee, the authority to make such special calls. The Division of Trading and Markets is responsible for, among other things, administering and interpreting the Part 4 regulations.

[7] *See* paragraphs (c) through (f) of §4.5.

[8] *Cf.* proposed § 4.14(a)(8), which would require the persons eligible under that section to file a notice of exemption to claim relief from registration as a CTA. As explained below, such a notice would be needed to identify those persons—who otherwise would not be known to the Commission.

[9] *See, e.g.*, Division of Trading and Markets Interpretative Letter No. 86-34, Comm. Fut. L. Rep. [CCH] ¶23,252 (Oct. 1, 1986).

[10] *Id.* at p. 32,798.

Conversely, staff found that this condition would not be met where—

certain State-regulated insurance companies (or a wholly-owned subsidiary thereof) have established and serve as the registered investment adviser to a mutual fund complex into which persons who are not policyholders of the insurance company and who have no other relationship with the company may invest.[11]

As for the other persons proposed to be excluded from the CTA definition by § 4.6, the Commission believes that the requirement that the excluded person's advisory activities be "solely incidental" to certain other activities could only be met where such a person served as the operator of the § 4.5 trading vehicle *and* provided securities investment advice to it and commodity interest advice consistent with strategies permitted under § 4.5.[12]

Absent comment which suggests how to further articulate this standard in proposed § 4.6(a), the Commission expects to interpret the condition flexibly following prior interpretations and to further delineate the words "solely incidental" based on specific fact situations.

*C. Proposed § 4.14(a)(8): Exemption for Certain Persons from Registration as a CTA*

Section 4.14(a) currently contains seven various provisions pursuant to which a person who comes within the statutory definition of the term "commodity trading advisor" may nonetheless claim exemption from registration as a CTA. In response to the Committee Report, the Commission is proposing to add certain other CTA registration exemptions in § 4.14(a)(8).[13]

Like § 4.6, this proposed rule similarly would closely follow the language of the Committee Report in specifying the persons who would be eligible for relief thereunder—*e.g.*, persons who are registered as an IA under the Investment Advisers Act of 1940 (the "IAA"), 15 U.S.C. 80b *et seq.* (1982). In addition, the Commission also is proposing to make § 4.14(a)(8) available to persons who are excluded from the definition of the term "investment adviser" by sections 202(a)(2) and 202(a)(11) of the IAA [14]—essentially certain banks of the nature described in those sections. Without such a proposal, those banks—because of the very fact that they statutorily are excluded from the IA definition—would be ineligible for the relief that persons who must register as an IA could claim.[15]

Further similar to proposed § 4.6, the criteria for relief under proposed § 4.14(a)(8) would closely follow the Committee Report language. Specifically, the criteria that a person who sought to claim exemption from CTA registration under § 4.14(a)(8) would have to meet is proposed to be as follows:

(i) The person's commodity trading advice:

(A) Is directed solely to, and for the sole use of, entities which are excluded from the definition of the term "pool" under § 4.5 or are qualifying entities under § 4.5 for which a notice of eligibility has been filed;

(B) Is solely incidental to its business of providing securities advice to each such entity; and

(C) Employs only such strategies as are consistent with eligibility status under § 4.5.

(ii) The person is not otherwise holding itself out as a commodity trading advisor * * *.

Pending the proposal of § 4.14(a)(8) and pursuant to the Committee Report, staff also has had occasion to interpret the exemption criteria of the Report.[16] As staff stated:

As for the * * * condition * * * that (no registered IA) will otherwise hold itself out as a CTA with respect to those activities for which a "no-action" position from CTA registration has been issued herein * * * we believe that further discussion is necessary and appropriate to ensure compliance with that condition. In this regard, you asserted that (a registered IA) "should, however, be allowed to describe to existing and potential clients the limited commodities advice it may provide in accordance with the terms of this letter and how it believes that such advice may be used to benefit its clients"—which, you noted, would parallel the disclosures the Commission has said would be appropriate for the purpose of the "marketing" representation under Rule 4.5. *See* 50 FR 15868 at 15879, [April 23, 1985]. We further note that in discussing this representation the Commission stated that it intends the term "marketing" to include oral, written and electronic promotional materials and that an entity would be "marketing participations" in a manner inconsistent with the required representation if (a trading vehicle) was actively promoted as "a hybrid—*e.g.*, a securities *and* a commodities—trading vehicle or as an investment vehicle in which commodity futures and options trading was particularly significant and critical to the growth of its assets, as opposed to being incidental to protecting those assets against a decline in value." *Id.*

Thus, the marketing materials to be used should state, with respect to transactions in commodity interests, only that strategies consistent with eligibility status under Rule 4.5 may be used. These strategies may, of course, be described in the marketing materials. Further in this regard, we believe that [the IA]: (1) Should market its ability to manage an actual or prospective client's securities portfolio, not a commodity interest trading vehicle; and (2) should not represent that it has any unique expertise or ability in providing commodity interest trading advice.[17]

Here, too, absent comment that would indicate otherwise, the Commission intends to interpret this criteria of § 4.14(a)(8) in accord with the foregoing staff position. As staff explained, however, and by this Federal Register notice we repeat, the foregoing position is not intended to be an all inclusive discussion but, rather, an attempt to identify activities which we believe would be consistent—or inconsistent—with the Committee Report. As the Commission gains more experience in this area, we expect to identify such other activities.

Unlike proposed § 4.6, however, proposed § 4.14(a)(8) would require a notice of exemption to be filed with the Commission to claim the relief available

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[11] Division of Trading and Markets Interpretative Letter No. 86-18, Comm. Fut. L. Rep. (CCH) ¶ 23,201 (July 23, 1986) at p. 32,531, n. 6. As discussed below, however, the Commission is proposing in § 4.14(a)(8) to exempt from registration as a CTA persons who are registered as an investment adviser and who provide commodity interest trading advice to § 4.5 trading vehicles. *See also* Interpretative Letter No. 86-24, n. 9, *supra*, at p. 32,950.

[12] To date, the Commission has not received any requests for interpretation on this issue.

[13] The Commission similarly is proposing to amend § 3.10(a)(3) of its regulations to provide exemption from registration for the associated persons of these exempt CTAs.

[14] 15 U.S.C. 80b-2(a)(2) and 2(a)(11) (1982).

[15] *See* Division of Trading and Markets Interpretative Letter No. 86-31, Comm. Fut. L. Rep. (CCH) ¶23,416 (Dec. 11, 1986), wherein staff stated that, based upon the facts at issue, it would not recommend that the Commission take any enforcement action for failure to register as a CTA against a bank that provided "outside" advisory services to a §4.5 registered investment company. *Cf.* proposed § 4.6, which would provide an exclusion from the CTA definition for the bank if the bank was an eligible person under § 4.5(a)(3) and the trading vehicle was a qualifying entity under § 4.5(b)(3).

[16] Interpretative Letter No. 86-24, n. 9, *supra*. In that letter staff also stated that, based upon the facts at issue, it would not recommend that the Commission take any enforcement action for failure to register as a CTA against certain registered IAs—*i.e.*, the insurance company and certain of its wholly-owned subsidiaries.

[17] *ID.* at pp. 32,800-01.

Upon request the Division subsequently clarified its position as follows: [W]e wish to emphasize that for a registered investment adviser to be exempt from CTA registration under the House Committee Report language it must, among other things, provide commodity interest trading advice to a trading vehicle specified in Rule 4.5 in a manner solely incidental to its business of providing securities advice to the trading vehicle—regardless of whether that vehicle is a "non-pool" under Rule 4.5(a)(4)(i), (ii) or (iii) or a "qualifying entity" under Rule 4.5(b). Division of Trading and Markets letter dated Nov. 12, 1986.

under the rule (§ 4.14(a)(8)(iii)).[18] Such a requirement would be necessary because the securities investment advisory professionals who could claim relief under the rule would not otherwise be known to the Commission. Thus, the purpose of this notice requirement, which is patterned after that contained in § 4.5, would be to enable the Commission to know the identities of those persons claiming relief under § 4.14(a)(8) and to monitor their compliance with the criteria of the rule.[19] Further similar to § 4.5, a supplemental notice would be required to be filed in the event of changed circumstances—*i.e.*, registration as a CTA (§ 4.14(a)(8)(iv)).

Finally, the Commission wishes to emphasize that, in accord with the Committee Report language, each person who could claim exemption from CTA registration under proposed § 4.14(a)(8) would continue to be subject to the antifraud provisions of section 4*o* of the Act, 7 U.S.C. 6*o* (1982).

*D. "No-Action" Position*

The Commission recognizes that in light of the foregoing proposals there may be uncertainty with respect to the application of the term "commodity trading advisor" on the part of certain interested persons or the availability of an exempt from registration as a CTA on the part of certain other interested persons. To alleviate that uncertainty, the Commission has determined that it will not take enforcement action solely for failure to register as a CTA against any person who meets the criteria of proposed § 4.6 or § 4.14(a)(6), as that criteria has been stated in those proposals and interpreted in this Federal Register release.[20] This position is, of course, subject to the condition that any person who claims such "no-action" relief must comply in full with whatever regulations the Commission in fact adopts to implement the exclusion of certain persons from the CTA definition and the exemption of certain other persons from CTA registration.[21]

The Commission further recognizes that a person who qualifies for relief under the foregoing "no-action" position, and subsequently under § 4.6 or § 4.14(a)(8), as such rules may be adopted, may at a later date decide to engage in activities which require registration as a CTA and, accordingly, for which it in fact registers as such.[22] As a registered CTA that person will be required, among other things, under § 4.31 to distribute a Disclosure Document to prospective managed account clients. Section 4.31(a)(3) requires the Document to include the past performance record of the commodity interest accounts traded by the CTA (and each of its principals) for the three years preceding the date of the Document. In this regard, the Commission specifically seeks comment on whether the information required under § 4.31(a)(3) should include the past performance record of the commodity interest accounts that have been traded by that person (or any of its principals) during the three years preceding the date of the Document but for which that person has been excluded from the CTA definition or exempt from CTA registration in connection with such trading.

**II. Proposed § 4.12(b): Relief from Subpart B of Part 4 for Certain Registered CPOs.**

*A. Introduction*

When the Commission proposed § 4.5 it also sought comment on whether it should adopt a rule which would provide relief from CPO regulation for certain persons who could not claim relief under § 4.5—*e.g.*, persons who were not eligible persons under the rule or who did not operate qualifying entities. As the Commission stated:

> [T]he Commission has strictly followed the Senate Report in specifying the persons and qualifying entities who would be eligible for exemption under proposed § 4.5 * * *.
>
> The Commission wishes to make clear that it does not believe that the mere liability of a person or entity to its participants under * * * other Federal or State regulation would be sufficient to make the proposed exemption appropriate. Rather, such person or entity must be subject to ongoing regulation of its activities with respect to its participants in a manner generally equivalent to the regulation of a CPO's activities as provided for under the Part 4 regulations.
>
> In this connection, the Commission is aware that in the course of administering Part 4, its staff has issued certain exemptions [under § 4.12] from the disclosure requirements of § 4.21 and the reporting requirements of § 4.22 to persons and entities who would not be eligible for exemption under proposed § 4.5. These exemptions were conditioned upon effectiveness of such persons' registration as a CPO and were based upon, among other things, representations that: (1) The entity was organized and would be operated for a purpose other than commodity interest trading; (2) the entity was restricted by its enabling documents to committing a small percentage of its net assets—*e.g.*, 10%—as initial margin and option premium deposits; (3) the entity had not been, and would not be, marketed as a commodity pool; (4) the entity would disclose the purpose of and limitations on its commodity interest trading to its participants; and (5) the entity was required by its enabling documents to furnish certified financial statements to its participants on an annual basis. Upon such representations, the staff has exempted these persons from the specific requirements of §§ 4.21 and 4.22 and and has accepted in lieu thereof the disclosure and reporting documents that they intended to provide to their participants under the regulations which address the primary purpose of the entity's operation. The staff required such persons, however, to remain subject to the recordkeeping requirements of § 4.23.
>
> The Commission is considering adopting a rule that would codify both the relief accorded under these exemptions and the representations upon which such relief was based. The Commission requests comments on this proposal * * *. 49 FR 4778 at 4784–4785 (February 8, 1984).

In light of generally favorable comments, the Commission today is proposing to adopt such a rule.[23]

Currently, § 4.12 provides the commission with general authority to exempt "any person or any class or classes of persons" from Part 4.[24] The

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[18] The Commission previously has provided in this Federal Register release its reasons for not proposing such a notice requirement in § 4.6.

[19] Section 4.14(a) currently contains various provisions which exempt certain commodity professionals from registration as a CTA. It should be noted that by their very terms those provisions refer to persons who have been identified to the Commission—either through registration (as other than a CTA) (§§ 4.14(a)(3), (4), (6) and (7)) or through the filing of a notice of exemption from CPO registration (§ 4.14(a)(5)).

[20] Similarly, the Commission will not take enforcement action for failure to register as an associated person of a CTA against any person who meets the requirements of § 3.12(a)(3) as proposed to be revised.

[21] This "no-action" position is consistent with the language in the Committee Report that "[R]ulemaking addressing these concerns may take some time for the Commisson to develop and promulgate. Individual requests * * * should be processed by the Commission as soon as possible."

[22] *See* proposed § 4.14(a)(8)(iv), which would require a person who has filed a notice of exemption from CTA registration to supplement the notice in the event the person subsequently registered as a CTA.

[23] This action also is in furtherance of the Committee Report, which, as stated above, acknowledges the actions that have been taken in this area and expresses the intention "that the Commission will continue to provide this and such other relief."

[24] Specifically, § 4.12 currently provides: The Commission may exempt any person or any class or classes of persons from any provision of this Part 4 if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which the exemption is sought. The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

By § 140.93(a)(1) the Commission has delegated its authority under § 4.12 to the Director of the Division of Trading and Markets, or the Director's designee.

Commission is proposing that this general authority would be retained in § 4.12(a) and that specific authority concerning Subpart B would be contained in § 4.12(b).[25]

At the outset, the Commission wishes to emphasize that in proposing § 4.12(b) it is not intending to set forth the sole basis for granting relief from Subpart B of Part 4, that is from the disclosure, reporting and recordkeeping requirements of §§ 4.21, 4.22 and 4..23, respectively. Rather, the Commission is intending to codify in a rule those situations for which it has routinely granted relief and with which it has become most familiar and, thus, for which it is best equipped to propose a specific rule. All other requests for exemption from Subpart B—and from any other provision of Part 4—would continue to be eligible for consideration under § 4.12(a) on a case-by-case basis.[26]

*B. The Proposed Rule*

Proposed § 4.12(b) also would follow the format of § 4.5. Thus, paragraph (1) of the proposal sets forth the persons who would be eligible for relief—*i.e.*, any person who is registered as a CPO or who has applied for such registration—and the criteria pursuant to which their commodity pools would be required to be operated. Briefly stated, any such pool for which a registered CPO seeks to claim relief under § 4.12(b) would be required: (1) To be offered and sold in compliance with the Securities Act of 1933, 15 U.S.C. 77a *et seq.* (Supp. III 1985), or an exemption from that Act; (2) to be generally and routinely engaged in securities transactions; (3) to restrict to 10 percent of the fair market value of its assets the amount it could commit to initiate its commodity interest transactions; and (4) to trade commodity interests in a manner solely incidental to its securities trading activities—*i.e.*, that commodity interest trading would not be an integral part of the pool's trading strategy and that the pool's trading strategy could, in fact, be accomplished without the use of commodity interests.[27] Moreover, the CPO would be required to advise its existing and prospective participants of the restrictions on the pool's commodity interest trading prior to the date the pool commences trading commodity interests.

Paragraph (2) of proposed § 4.12(b) sets forth the relief that would be available under the rule.[28] First, in the case of § 4.21(a), that the Commission accept in lieu and in satisfaction of the Disclosure Document specified by that section an offering memorandum as described in the proposal (§ 4.12(b)(2)(i)). Specifically, such an offering memorandum would not be required to include the past performance records of the pool's CPO and CTA nor the Risk Disclosure and Cautionary Statements.[29] The Memorandum would, however, be required to be prepared in compliance with the Securities Act of 1933 and to include the other information required by § 4.21(a). In this regard, the term "responds" as used in the proposal is intended to clarify that the specific negative disclosures which otherwise would be required by § 4.21(a) would not need to be made.[30] Second, in the case of § 4.22(a) through (e), that the Commission accept in lieu and in satisfaction of the Account Statement and Annual Report required by those sections the financial reports specified in the proposal (§ 4.12(b)(2)(ii) and (iii), respectively). With respect to the Account Statement, these financial reports would be a statement which indicates the net asset value of the pool as of the end of the reporting period and the change in net asset value from the end of the previous reporting period—which must be prepared and distributed at least quarterly. The term "net asset value" would refer to the total operations of the pool and the term "indicates" would mean that this information could be presented in either narrative or tabular format. With respect to the Annual Report, these financial reports would include, at a minimum, a Statement of Financial Condition as of the close of the pool's fiscal year and a Statement of Income (Loss) for that year. These statements would be required to be prepared according to generally accepted accounting principles and to be certified by an independent public accountant. Moreover, these substitute financial reports would continue to be subject to all of the other requirements of the rules to which they pertain.[31] Third, and last, in the case of § 4.23(a)(10) and (a)(11), to exempt the CPO from the requirements of those sections to respectively make and keep Statements of Financial Condition and of Income (Loss) for the pool (§ 4.12(b)(iv)).[32] The Commission is proposing this relief because these Statements would otherwise provide specific supporting data for the Account Statement—from which, as discussed above, an exemption has been proposed The Commission believes that the data necessary to verify the financial reports which would substitute for the Account Statement generally should be available from the other books and records the CPO is required to keep.[33]

The next two provisions of the proposal are technical in nature. They would specify the manner in which a request for relief under § 4.12(b) would be required to be made (§ 4.12(b)(3)) and would impose certain continuing obligations on each CPO to whom an exemption had been issued under the rule (§ 4.12(b)(4)). The final provision would make clear the extent of an exemption issued under §4.12(b)—*i.e.*, that it would be effective only with respect to the pool for which relief had been requested and, further, that it would not affect the applicability of any other provisions of Part 4, the Act or the Commission's regulations with respect to that pool and any other pool the pool operator operates or intends to operate.

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[25] It is the Commission's intent that staff continue to act upon all requests for exemption from Part 4. Since § 140.93(a)(1) refers to § 4.12, the former regulation includes *all* provisions of the latter. Thus, it has not been necessary for the Commission to propose to revise § 140.93(a)(1) to effectuate this intent.

[26] Similarly, the Commission previously has stated in connection with its adoption of revisions to the Part 4 rules that: The Commission recognizes that in the past its staff has issued interpretations of the Part 4 rules. Consistent with that practice, the Commission invites interested persons to seek such staff interpretations of § 4.10(d) (, which defines the term "pool",) and of all the other Part 4 rules. 46 FR 26004 at 26006 (May 8, 1981).

[27] *Cf.* § 4.5(c)(2)(i), which requires a qualifying entity to trade commodity interests for hedging purposes within §1.3(z)(1) or, with respect to certain long strategies, for incidental purposes where the underlying commodity value of its long contracts at all times will not exceed the sum of certain specified items.

[28] It should be noted that a CPO may request any or all of the relief available under the rule.

[29] This information would otherwise be required by § 4.21 (a)(4), (a)(5), (a)(17) and (a)(18), respectively.

[30] *See* § 4.21 (a)(3), (a)(6), (a)(8), (a)(10), (a)(13), and (a)(15). For example, under the proposal an offering memorandum would respond to the requirements of § 4.21(a)(13) if it disclosed information on certain litigation concerning certain persons associated with the pool. Unlike the Disclosure Document specified by § 4.21(a), then, the memorandum would not also be subject to the requirement that "if there has been no such action against any of the foregoing persons the pool operator must make a statement to that effect with respect to each such person."

[31] For example, they would continue to be subject to the oath or affirmation requirement of § 4.22(h).

[32] Unlike the other documents subject to the proposal, the books and records required under these sections are not required to be filed with the Commission. Thus, the Commission does not "accept" them.

[33] *See, e.g.*, § 4.23(a)(6) and (a)(8), which respectively require the CPO to make and keep a general ledger and "all other records" generated for the pool.

## III. Proposed Technical Amendments to §§ 4.21, 4.22 and 4.31

### *A. Section 4.21(a)(17): The Risk Disclosure Statement*

Section 4.21 requires each registered CPO to distribute and to file with the Commission a Disclosure Document containing specified information. (Rule 4.31 places a similar requirement on certain registered CTAs.[34])

Section 4.21(a)(17)(i) currently requires the Risk Disclosure Statement to appear by itself on the first page of the Disclosure Document. The Commission recognizes, however, that certain CPOs also must comply with requirements imposed by such other regulatory authorities as the National Futures Association ("NFA") [35] and the Securities and Exchange Commission ("SEC") [36]. Accordingly, § 4.21(a)(17)(i) is proposed to be amended to clarify existing Commission policy that the Statement must appear by itself on the page immediately following any disclosures which otherwise are mandated by the Commission or NFA to appear on the cover of the Document, or immediately following any disclosures explicitly required in the forepart of a securities prospectus pursuant to applicable securities laws. This proposal is supported by the history of the Part 4 regulations, which encouraged accommodation between Commission and SEC regulations in this area. In adopting Part 4 in 1979, the Commission noted that "[i]n those cases where a CPO chooses to provide (an SEC) prospectus to prospective pool participants, the Commission will permit that prospectus to be supplemented to comply with the specific requirements of § 4.21." 44 FR 1918, 1922 (January 8, 1979).

Consistent with this language, in reviewing CPO Disxlosure Documents since the adoption of Part 4, Commission staff has not objected to placing the Risk Disclosure Statement behind cover page material required by other regulators. Recently, however, staff has received a number of inquiries seeking a formal statement of the Commission's position. Accordingly, the Commission is proposing an amendment to end any confusion in this area.

### *B. Section 4.22(c): The Annual Report*

Section 4.22(c) requires each registered CPO to distribute and file an Annual Report for each pool that it operates within 90 calendar days after the end of the pool's fiscal year. The Commission is proposing to amend this regulation to clarify when the Annual Report must be filed if a pool permanently ceases operations before the end of the pool's fiscal year.

One of the purposes of the Annual Report requirement is to enable pool participants to receive financial information in a timely manner. However, under ther current rule, this purpose is defeated in cases where the pool stops trading before the end of its fiscal year. Accordingly, the proposal would require that the Report be distributed and filed within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event later than 90 days after funds are returned to pool participants. Permanent cessation of trading would be determined by reference to objective indication such as, but not limited to, the date notice is sent to pool participants advising that the pool has ceased trading or the date the CPO states in writing to the Commission, National Futures Association ("NFA") or other party that the pool has ceased operation. In any event, the Annual Report would be required to be filed with the Commission and distributed to pool participants no later than 90 days after funds are returned to the participants. As a result of this proposal, a participant would never have to wait more than 90 days from the end of the pool's operation to receive his final Annual Report.

### *C. Sections 4.21(g), 4.22(c) and 4.31(f): Numbers of Copies of Documents to be filed*

Sections 4.21(g) and 4.31(f) would be amended to reduce to two from three the number of copies of the Disclosure Document that a CPO or a CTA must file with the Commission. Likewise, § 4.22(c) would be amended to require that only two copies of the Annual Report be filed with the Commission. In these cases, staff has found that it was using the third copy so infrequently as to no longer justify the three copy requirement. Because this regulation change would not be required to be published for comment,[37] the Commission will not take any enforcement action against any person filing only two copies of a Disclosure Document or pool Annual Report prior to the adoption of these proposals.

## IV. Related Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* (1982), requires that agencies, in proposing rules, consider the impact of those rules on small business. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[38]

These definitions do not address the persons set forth in proposed §§ 4.6 and 4.14(a)(8) because, by the very nature of these proposals, the operations and activities of such persons generally are regulated by Federal and State authorities other than the Commission.[39] Assuming, arguendo, that such persons and entities would be "small entities" for purposes of the RFA, the Commission does not believe that proposed §§ 4.6 and 4.14(a)(8) would have a significant economic impact on them because it merely would require in the case of the former rule certain information upon special call and in the case of the latter rule the filing of a notice with the Commission, the documentation for either of which should be pre-existing. Moreover, the proposals would relieve these persons from the requirement to register as a CTA and from the disclosure and recordkeeping requirements applicable to registered CTAs.[40]

As for these proposals which address registered CPOs,[41] the Commission has determined that registered CPOs are not small entities for the purpose of the RFA.[42] Thus, no economic analysis of these proposal as they relate to registered CPOs is required.[43]

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[34] Specifically, those registered CTAs who seek to direct or to guide client accounts are subject to § 4.31.

[35] *See e.g.*, NFA Guideline for the Disclosure by CPOs and CTAs of "Up Front" Fees and Organizational and Offering Expenses, NFA Manual ¶10,097.

[36] *See e.g.*, regulation S-K, items 501, 502 and 503, 17 CFR 229.501–229.503 (1986).

[37] *See* 5 U.S.C. 553(d) (1982).

[38] 47 FR 18618–18621 (April 30, 1982).

[39] For example, § 4.6 would apply to, among other persons, "an insurance company subject to regulation by any State" and § 4.14(a)(8) would apply to investment advisers who are registered with, and subject to the supervision of, the SEC.

[40] Proposed § 3.10(a)(3) would exempt from registration as an AP of a CTA an AP of a person exempt under § 4.14(a)(8). An AP must be an individual. *See* section 4k of the Act, 7 U.S.C. 6k (1982). Because the RFA does not apply to "individuals," no economic analysis of proposed § 3.10(a)(3) is required.

[41] *See* proposed § 4.12(b) and the proposed revisions to §§ 4.21(a)(17)(i), 4.21(g) and 4.22(c).

[42] 47 FR 18619–18620.

[43] It should be noted, however, that these proposals do not impose any new requirements on

Continued

As for the proposal which addresses registered CTAs,[44] the Commission has stated that it is more appropriate to consider on a case-by-case basis which CTAs should be deemed small under the RFA.[45] However, since the proposal would reduce an existing burden on those registered CTAs to which it would apply, the Commission believes the proposal would not have a significant economic impact on any of those CTAs—regardless of whether any such CTA would be a small entity for the purpose of the RFA.

Thus, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any CTA or CPO which believes that these rules would have a significant impact on its operations.

*B. Paperwork Reduction Act*

The Commission has submitted to the Director of the Office of Management and Budget ("OMB"), pursuant to the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35, an explanation and details of the information collection and recordkeeping requirements which would be necessary to implement these proposals.[46] Since all the information collection proposals contained herein consist of proposed amendments to Parts 3 and 4, which have already been assigned an OMB control number, the Commission understands that these proposals will be assigned the same OMB control number.[47]

Interested members of the public may obtain a complete copy of the information collection proposals relating to the proposed rules contained herein by contacting Joseph Salazar at (202) 254–9735. Persons wishing to comment are asked to send a copy of their comments to Mr. Salazar at the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, and to the OMB Desk Officer for the agency, Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**List of Subjects**

*17 CFR Part 3*

Registration, Associated persons, Commodity futures.

*17 CFR Part 4*

Commodity pool operators, Commodity trading advisors, Commodity futures.

*17 CFR Part 140*

Authority delegation (Government agencies), Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4k, 4*l*, 4m, 4n, 4*o*, and 8a, 7 U.S.C. 2, 6k, 6*l*, 6m, 6n, 6*o*, and 12a and in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

**Authority:** 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6*i*, 6k, 6m, 6n, 6*o*, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23; 5 U.S.C. 552 and 552b.

2. Section 3.16(a)(3) is proposed to be revised to read as follows:

**§ 3.16 Registration of associated persons of commodity trading advisors and commodity pool operators.**

(a)* * *

(3) Is exempt from registration as a commodity trading advisor pursuant to the provisions of § 4.14(a)(1), § 4.14(a)(2) or § 4.14(a)(8) of this chapter or is associated with a person who is so exempt from registration: *Provided,* That the provisions of this paragraph (a)(3) shall not apply to the solicitation of a client's or prospective client's discretionary account, or the supervision of any person or persons so engaged, by, for, or on behalf of a commodity trading advisor,

(i) Which is not exempt from registration pursuant to the provisions of §4.14(a)(1), §4.14(a)(2) or § 4.14(a)(8) of this chapter or

(ii) Which is registered as a commodity trading advisor notwithstanding the availability of that exemption;

* * * * *

## PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

3. The authority citation for Part 4 continues to read as follows:

**Authority:** 7 U.S.C. 2, 6b, 6c, 6*l*, 6m, 6n, 6o, 12a, and 23; 5 U.S.C. 552 and 552b.

4. Section 4.6 is proposed to be added to read as follows:

**§ 4.6 Exclusion for certain otherwise regulated persons from the definition of the term "commodity trading advisor".**

(a) Subject to compliance with the provisions of this section, the following persons, and any principal or employee thereof, shall be excluded from the definition of the term "commodity trading advisor":

(1) An insurance company subject to regulation by any State, or any wholly-owned subsidiary or employee thereof: *Provided, however,* That its commodity interest advisory activities are solely incidental to the conduct of the insurance business of the insurance company as such; and

(2) A person who is excluded from the definition of the term "commodity pool operator" by § 4.5; *Provided, however,* That:

(i) Its commodity interest advisory activities are solely incidental to its operation of those trading vehicles for which § 4.5 provides relief; and

(ii) Where necessary, prior to providing any commodity interest trading advice to any such trading vehicle the person files a notice of eligibility as specified in § 4.5 to claim the relief available under that section.

(b) Any person who has claimed an exclusion under this § 4.6 must submit to such special calls as the Commission may make to require the person to demonstrate compliance with the provisions of paragraph (a) of this section.

(c) An exclusion claimed under this § 4.6 shall cease to be effective upon any change which would render the person claiming the exclusion ineligible under paragraph (a) of this section.

5. Section 4.12 is proposed to be amended by redesignating the current paragraph as paragraph (a) and by adding paragraph (b) to read as follows:

**§ 4.12 Exemption from provisions of Part 4.**

(a) *In general.* (1) The Commission may exempt any person or any class or classes of persons from any provision of this Part if it finds that the exemption is not contrary to the public interest and the purposes of the provision from which the exemption is sought.

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registered CPOs. In fact, certain of the proposals would relieve existing requirements. *See, e.g.*, §§ 4.12(b) and 4.21(g).

[44] *See* The proposed revision to § 4.31(f).

[45] 47 FR 18620.

[46] As is explained above, these proposals significantly would reduce the paperwork requirements with which the CPOs and CTAs subject thereto otherwise would be required to compy. For example, in the case of proposed § 4.14(a)(8), relief from CTA registration—and thus from the disclosure and recordkeeping requirements of §§ 4.31 and 4.32, respectively—would be available upon the filing of a notice with the Commission.

[47] The OMB control numbers are 3038-0021 and 3038-0005, respectively.

(2) The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

(b) *Exemption from Subpart B for certain commodity pool operators.* (1) Any person who is registered as a commodity pool operator, or has applied for such registration, may request from the Commission any or all of the relief available under paragraph (b)(2) of this section if:

(i) The pool for which it makes such request:

(A) Will be offered and sold pursuant to the Securities Act of 1933 or pursuant to an exemption from said Act;

(B) Will generally and routinely engaged in the buying and selling of securities and securities derived instruments;

(C) Will not enter into commodity futures and commodity options contracts for which the aggregate initial margin and premiums exceed 10 percent of the fair market value of the pool's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided, however,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) may be excluded in computing such 10 percent; and

(D) Will trade such commodity interests in a manner solely incidental to its securities trading activities.

(ii) Each existing participant and prospective participant in the pool for which it makes such request is informed in writing of the restrictions set forth in § 4.12(b)(1)(i)(C) and (D) prior to the date the pool commences trading commodity interests. The pool operator may furnish this information by way of the pool's Disclosure Document, a separate notice or other similar means.

(2) The commodity pool operator of a pool which meets the criteria of paragraph (b)(1) of this section may request the following relief:

(i) In the case of § 4.21(a), that the Commission accept in lieu and in satisfaction of the Disclosure Document specified by that section an offering memorandum for the pool which does not contain the information required by § 4.21(a)(4), (a)(5), (a)(17) and (a)(18); *Provided, however,* That the offering memorandum:

(A) Is prepared pursuant to the requirements of the Securities Act of 1933 or the exemption from said Act pursuant to which the pool is being offered and sold; and

(B) Responds to the information requirements of § 4.21(a)(1) through (a)(3) and (a)(6) through (a)(16).

(ii) In the case of § 4.22(a) and (b), that the Commission accept in lieu and in satisfaction of the Account Statement and prescribed frequency respectively specified by those sections a statement which indicates the net asset value of the pool as of the end of the reporting period and the change in net asset value from the end of the previous reporting period, to be prepared and distributed no less frequently than quarterly; *Provided, however,* That each such statement complies with the other requirements of § 4.22(a) and (b), including the references in those sections to § 4.22(g) and (h).

(iii) In the case of § 4.22(c) through (e), that the Commission accept in lieu and in satisfaction of the financial information and statements in the Annual Report specified by those sections an annual report for the pool which contains, at a minimum, a Statement of Financial condition as of the close of the pool's fiscal year and a Statement of Income (Loss) for that year; *Provided, however,* That:

(A) Each such annual report complies with the other requirements of § 4.22(c), including the reference in that section to §4.22(h) and the requirement in §4.22(c)(5) that the annual report must contain appropriate footnote disclosure and further material information; and

(B) The financial statements in such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be certified by an independent public accountant.

(iv) In the case of § 4.23(a)(10) and (a)(11), to exempt the pool operator from the requirements of those sections with respect to the pool.

(3) A request for the relief available under this § 4.12(b) must be made to the Commission at the address specified in § 4.2. Such request must:

(i) Specify the names of the registered commodity pool operator, or applicant for such registration, making the request and the pool for which the request is being made;

(ii) Contain representations that the pool will be operated in compliance with § 4.12(b)(1)(i) and the pool operator will comply with the requirements of § 4.12(b)(1)(ii);

(iii) Specify the relief sought under § 4.12(b)(2); and

(iv) Be signed by the pool operator, as follows: If the pool operator is a sole proprietorship, the request must be signed by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer.

(4)(i) If relief is granted with respect to § 4.12(b)(2)(i), the commodity pool operator must attach a copy of the order granting such relief to each offering memorandum, or amendment thereto, that it is required to file with the Commission pursuant to § 4.21(g).

(ii) If relief is granted with respect to § 4.12(b)(2)(iii), the pool operator must attach a copy of the order granting such relief to each annual report that it is required to file with the Commission pursuant to § 4.22(c).

(5)(i) Any relief granted hereunder shall be effective only with respect to the pool for which it has been requested.

(ii) Such relief shall not affect the obligations of the commodity pool operator to comply with all other applicable provisions of this Part 4, the Act and the Commission's rules and regulations issued thereunder with respect to the pool and any other pool operator operates or intends to operate.

6. Section 4.14 is proposed to be amended by adding paragraph (a)(8) to read as follows:

**§ 4.14 Exemption from registration as a commodity trading adviser.**

(a) * * *

(8) It is registered as an investment adviser under the Investment Advisers Act of 1940 or is excluded from the definition of the term "investment adviser" pursuant to the provisions of sections 202(a)(2) and 202(a)(11) of that Act; *Provided, however,* That:

(i) The person's commodity interest trading advice:

(A) Is directed solely to, and for the sole use of, entities which are excluded from the definition of the term "pool" under § 4.5 or are qualifying entities under § 4.5 for which a notice of eligibility has been filed;

(B) Is solely incidental to its business of providing securities advice to each such entity; and

(C) Employs only such strategies as are consistent with eligibility status under § 4.5.

(ii) The person is not otherwise holding itself out as a commodity trading adviser; and

(iii) Prior to the date upon which such person intends to engage in business as a commodity trading adviser, the person files a notice of exemption with the Commission.

(A) The notice must state the name of such person.

(B) The notice must represent that the person qualified for exemption under this § 4.14(a)(8) and that it will comply with the criteria of this section.

(C) The notice shall be effective upon filing.

(iv) In the event a person who has filed a notice of exemption under this § 4.14(a)(8) subsequently becomes registered as a commodity trading adviser, the person must file a supplemental notice of that fact.

(v) Any notice required to be filed hereunder must be:

(A) In writing;

(B) Signed by a duly authorized representative;

(C) Filed with the Commission at the address specified in § 4.2; and

(D) Filed with the National Futures Association at its headquarters office (ATTN: Director of Compliance, Compliance Department).

* * * * *

7. Section 4.21 is proposed to be amended by revising paragraphs (a)(17)(i), (g)(1) and (g)(2) to read as follows:

**§ 4.21 Disclosure to prospective pool participants.**

(a) * * *

(17)(i) The following Risk Disclosure Statement, to be prominently disclosed on, and as the only language on, the page immediately following any disclosures required to appear on the cover page as provided by the Commission or any registered futures association, or immediately following the disclosures explicitly required in the forepart of a securities prospectus pursuant to any regulations promulgated under applicable securities laws.

* * * * *

(g)(1) The commodity pool operator must file with the Commission two copies of the Disclosure Document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver the Document to a prospective participant in the pool.

The commodity pool operator must file with the Commission two copies of all subsequent amendments to the Disclosure Document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

* * * * *

8. Section 4.22 is proposed to be amended by revising the first sentence of paragraph (c) to read as follows:

**§ 4.22 Reporting to pool participants.**

(c) Each commodity pool operator registered or required to be registered under the Act must distribute an Annual Report to each participant in each pool that it operates, and must file two copies of the Report with the Commission, within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event longer than 90 days after funds are returned to pool participants; *Provided, however,* that if during any calendar year the commodity pool operator did not operate a commodity pool, the pool operator must so notify the Commission within 30 calendar days after the end of such calendar year. * * *

9. Section 4.31 is proposed to be amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

**§ 4.31 Disclosure to prospective clients.**

* * * * *

(f)(1) The commodity trading adviser must file with the Commission two copies of the Disclosure Document for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading adviser first intends to give the Document to a prospective client in the trading program.

(2) The commodity trading advisor must file with the Commission two copies of all subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading adviser first knows or has reason to know of the defect requiring the amendment.

## PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

10. The authority citation for Part 140 continues to read as follows:

**Authority:** 7 U.S.C. 2, 4, 4a(c), 4a(j), 6, 6c, 6d, 6e, 6f, 6g, 6k, 6l, 6m, 6n, 6p, 7, 7a, 8, 8a, 12, 12a, 18 and 23; 5 U.S.C. 552 and 552b.

11. Section 140.93(a) is proposed to be amended by adding paragraph (a)(6) to read as follows:

**§ 140.93 Delegation of authority to the Director of the Division of Trading and Markets.**

(a) * * *

(6) all functions to the Commission in § 4.6(b) of this chapter.

* * * * *

Issued in Washington, DC, on May 19, 1987 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 87-11839 Filed 5-22-87; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 9

**[Notice No. 632]**

### Sierra Foothills Viticultural Area; California

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms proposes to establish in the foothills of eight counties in northeast-central California, an American viticultural area to be known by the appellation "Sierra Foothills." The proposal is the result of a petition filed by the Sierra Foothills Winery Association of Somerset, California.

The use of the name of an approved viticultural area as an appellation of origin in the labeling and advertising of wine allows the proprietor of a winery to designate the area as the locale in which grapes used in the production of a wine are grown and enables the consumer to identify and to differentiate between that wine and other wines offered at retail.

**DATE:** Written comments must be received by July 27, 1987.

**ADDRESS:** Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, REF: Notice No. 632, P.O. Box 385, Washington, DC 20044-0385.

Copies of this proposal, the petition, the appropriate maps, and the written comments are available for public inspection during normal business hours at: ATF Reading Room, Ariel Rios Federal Building, Room 4408, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Breen, Coordinator, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, Room 6237, Washington, DC 20226, Telephone: (202) 566-7626.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American

viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1) of Title 27, Code of Federal Regulations, Part 4, defines an American viticultural area as a delimited grape growing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition shall include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked.

**Petition**

By letter dated July 8, 1985, the Sierra Foothills Winery Association of Somerset, California, filed a petition for the establishment of a "Sierra Foothills" viticultural area in portions of the counties of Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne and Mariposa.

The petition covers the foothills "belt" of the Sierra Nevadas. The petitioned area is located approximately 40 miles to the east and northeast of Sacramento and Stockton and extends in a northwest to southeast orientation approximately 160 miles from Nevada County to Mariposa County. Much of the petitioned area is bisected by State Highway 49, the "Golden Chain Highway."

The area, as proposed in this notice, includes the petitioned area as well as the northernmost extension of the foothills region of the Sierra Nevadas in Yuba County which is directly north of Nevada County. In 1986, ATF established the North Yuba viticultural area in the Sierra foothills in Yuba County. The southern leg of the boundary of this viticultural area abuts the Nevada County line. ATF notes that the North Yuba viticultural area shares many of the characteristics of the petitioned area. Accordingly, ATF has drafted a boundary description which includes the North Yuba viticultural area.

Within the proposed area there are approximately 150 vineyards totaling 3,000 acres planted in wine grapes, 35 premises registered for the production of wine and the approved American viticultural areas of "North Yuba", "El Dorado", "California Shenandoah Valley" and "Fiddletown."

**Name**

In the mid-1770's a Spanish exploration party, looking westward from its position in the Great California Valley, gave the descriptive "una gran sierra nevada" to the great snowy inland mountain range which today we know as the Sierra Nevadas. With the discovery of gold in 1848 and the sudden and chaotic migration of up to 50,000 prospectors in succeeding years, the western foothills of the Sierra Nevadas gained national attention as the California Gold Country.

The gold rush attracted miners in search of the *veta madre*, the "mother lode." Historically, the foothills region became known as the Mother Lode or Mother Lode Country. Mining gave the foothills their identity as "Gold Country" and strongly influenced the course of long-term development. Agriculture, livestock ranching and timber production emerged in response to the miners' needs for food and shelter.

The petition notes that "although the historical term 'Mother Lode' is sometimes used synonymously with the Sierra Foothills, the latter * * * more accurately defines the area." The petition documents the use of the name "Sierra Foothills" in wine texts and magazine articles. Leon Adams, in *Wines of America* (1973), refers to plantings of vineyards in the "historic Mother Lode gold-mining country of the Sierra foothills." Sunset Magazine's *Guide to California's Wine Country* states that the "vineyards and wineries in the Mother Lode country have established an identity of their own under the general district name of Sierra Foothills."

The petition documents use of the appellation "Sierra Foothills" by State and quasi-governmental bodies. The California Department of Food and Agriculture identifies the grouping of the seven counties of Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne, and Mariposa as Grape District 10. Yuba County and other Sierra foothill counties to the north of the proposed area are in Grape District 9 and Madera County immediately south of Grape District 10 is part of Grape District 13.

Since 1978, the University of California Cooperative Extension Service and the farm advisors of Nevada, Placer, El Dorado, Amador and Calaveras counties have organized an annual "Sierra Nevada Foothill" Wine Grape Day.

Of the nine viticultural regions established by the 1985 California State Fair, the six counties of Nevada, Placer, El Dorado, Amador, Calaveras, and Tuolumne are grouped in a "Sierra Foothills" region.

**History**

The California Gold Rush of 1849 spawned viticulture in the western foothills of the Sierra Nevadas. Some of the prospectors possessed knowledge about grape tending and winemaking and turned to a more settled way of life, planting orchards and vineyards, as placer mining diminished.

In 1855, the State legislature passed a law which exempted from taxation all newly planted grape vines for four years. The number of grape vines in El Dorado County jumped from 24,000 in 1856 to 77,500 1858; in Tuolumne County from 9,000 to 50,000 between 1857 and 1858. The first foothills winery was established in 1856 near Plymouth in Shenandoah Valley, California. This winery is the fourth oldest in the State of California. In 1861, the *San Francisco Bulletin* featured a front page story titled "Vineyards in the Foothills."

The foothill counties ranked among California's major wine producers during the 1870's and 1880's. In *Wines of America*, Leon Adams states that "by 1890, more than 100 wineries were operating at such locations as Nevada City, Colfax, Lincoln, Penryn, Auburn, Placerville, Coloma, Shingle Springs, Ione, Volcano, Jackson, San Andreas, Sonora, Columbia, and Jamestown."

In the 1890's, viticulture had become established as a major industry. El Dorado County alone had approximately 8,000 of the 10,000 acres in vineyards at the peak of grape growing in the foothills counties. However, the decline of gold mining at the turn of the century, followed by a loss in population, phylloxera vine disease, and National Prohibition, contributed to the eventual abandonment of all but a few vineyards.

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The 1960's marked a resurgence of viticulture in this region. In the early 1970's, there were just two wineries in the area. Today, there are 35 premises and 150 vineyards totalling approximately 3,000 acres.

**Geography**

The gently sloping foothills are segmented laterally by deep river canyons and steep ridges. The principal rivers that drain the petitioned area are the Yuba, the Bear, the American, the Cosumnes, the Mokelumne, the Calaveras, the Stanilaus, the Tuolumne and the Merced. These rivers flow southwesterly into the Great Valley of California which is comprised of the Sacramento and San Joaquin valleys. The land drained by these streams is distinguished from neighboring areas by name, history, soil, geology, climate, rainfall and temperature.

The boundary of the proposed viticultural area encompasses approximately 4,200 square miles or 2.6 million acres. The width of the area ranges from approximately 5 to 35 miles and the length is approximately 170 miles from Yuba County to Mariposa County.

The petitioner states that "viticulture above (the 4,000-foot elevation) is difficult or impossible due to climatic extremes and mountainous terrain." With the exceptions of vineyards in Jackson Valley and Auburn Ravine which are 500 feet above sea level, vineyards are planted principally on land between 1,000 and 3,000 feet in elevation.

The petition states that "most of the historic and current premium wine grape growing is above (the 1,000-foot elevation and) * * * many geographical characteristics distinguish the area above 1,000 feet from the valley regions below."

**Distinguishing Characteristics**

According to the petition, the characteristics, in addition to name, history and geography, which distinguish the foothills region from neighboring areas are:

(1) The region is part of the Sierra Nevada geomorphic province, with different geology and soils than the Great Valley province; and,

(2) Climatically, the region has warm summer days and cool nights, with lower temperatures and higher rainfall than the Central Valley and higher temperatures and lower rainfall than the mountainous uplands of the Sierra Nevadas.

**Topography and Elevation**

The topography of the proposed viticultural area ranges from gently rolling hills to gorges and progressively steeper slopes and ridges along canyons and drainageways. Lying between the uplands and peaks of the Sierra Nevadas to the east and the lowlands of the Great Valley of California to the west, the proposed viticultural area defines a region well suited for viticulture. Topography and elevation ensure adequate ventilation for viticulture. The irregular relief of the western foothills provides excellent air drainage. The area escapes both the early frosts and snow of the mountainous uplands of the Sierra Nevadas and the heat, humidity and fog common to the lowlands in the Great Valley, especially the marshy "Delta" area at the confluence of the Sacramento and San Joaquin rivers.

**Geology**

The area is an example of a gently rolling lower and middle foothill mountain landscape that has been formed during a long period of geologic time. It is geologically well defined by the high country of the Sierra Nevadas to the east and by the marshes and plains of the Great Valley to the west. Compared with the mountainous uplands of the Sierra Nevadas, the foothills are not as deeply gouged by river canyons and drainageways. The bedrock of the Sierra Nevadas is dominated by steeply dipping, faulted, and folded metamorphic rock that has been intruded by several types of igneous rock. Overlying the bedrock in many places are mantles of river gravel and volcanic debris.

**Soil Characteristics**

The three major physiographic units in the eight counties are the lowlands of the Great Central Valley, the mountainous uplands of the Sierra Nevadas, and the foothills which lie between the valley and the mountains. There are soil associations common to the valley lands, to the foothills region, and to the mountainous uplands. A review of the general soil maps prepared by the Soil Conversation Service of the U.S. Department of Agriculture for the counties of Butte south to Madera (excluding Calaveras County) shows the common character of the soil associations found in the lower and middle foothills of Yuba County south to Mariposa County. The foothills soils are basically shallow to moderately deep, medium textured, well-drained, gently sloping to moderately steep, rocky soils and gravelly to gritty sandy loams, formed in material weathered from basic igneous rocks and metasedimentary rocks overlying granitic rock but also in some places overlying volcanic rock and metamorphic rock.

Data from the soil survey of Yuoa County supports the inclusion of the foothills of Yuba County within the boundary for the proposed viticultural area.

**Climatological Characteristics**

The lower to middle foothills of Yuba, Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne, and Mariposa counties experience a *warm summer subtropical (Mediterranean)* climate consisting of warm to hot, dry summers from May to October and mild to cold, wet winters from November to April.

Geographical location, elevation, and weather patterns interact to distinguish the foothills "belt" from neighboring areas. Warm sunny fog-free days moderated by Delta breezes and cool nighttime breezes from the High Sierras facilitate viticulture.

General weather patterns result in dry summers and relatively warm winters. The western foothills of the Sierra Nevadas catch the winter storms which move easterly from the Pacific Ocean across California. Most of the precipitation falls in winter with less than three percent occurring in the summer, principally as thunderstorms in the uplands. The amount of precipitation generally increases with an increase in elevation.

Increased elevation leads to greater temperature extremes with large fluctuations between daytime highs and nighttime lows. Summer nights are generally cool above the 2,500 foot elevation. In general, temperature decreases with an increase in altitude, but in low, sheltered areas such as Jackson Valley and Auburn Ravine cold air tends to accumulate.

Most of the precipitation comes in the six months of winter with seasonal totals ranging as follows:

Precipitation (measured as inches of rainfall)—

| County | Foothills | Uplands |
|---|---|---|
| Yuba | 20 | More than 80. |
| Nevada | 26 | Less than 60. |
| Placer | 18 | About 60. |
| El Dorado | 23 | About 60. |
| Amador | 20 | More than 40. |
| Calaveras | 21 | About 45. |
| Tuolumne | 19 | More than 45. |
| Mariposa | Less than 15 | About 50. |

The average of the above figures is 20 inches. The foothills of Nevada County have the highest average rainfall of 26

inches and Mariposa County the lowest at less than 15 inches.

Average annual temperatures for each county are as follows:

| County | Foothills | Uplands |
|---|---|---|
| Yuba | 69 °F | 59 °F. |
| Nevada | 69 °F | 58 °F. |
| Placer | 66 °F | 55 °F. |
| El Dorado | 69 °F | 65 °F. |
| Amador | 65 °F | 58 °F. |
| Calaveras | 60 °F | 54 °F. |
| Tuolumne | 62 °F | 57 °F. |
| Mariposa | 55 °F | Below 45 °F. |

With the exception of Mariposa County, the averages range from 60° to 65° in the "foothills" region.

During the summer growing season, temperatures of 100 °F occur nearly every year and the sun shines more than 90 percent of the day. Average maximum readings for July are in the 90's and range from about 92 °F at higher elevations to 98 °F at lower elevations with occasional highs ranging from 110 °F to 115 °F.

The growing season ranges for each county are as follows:

| | |
|---|---|
| Yuba | 185 to 273 days. |
| Nevada | 140 to 295 days. |
| Placer | 180 to 280 days. |
| El Dorado | 180 to 275 days. |
| Amador | 200 to 300 days. |
| Calaveras | 154 to 244 days. |
| Tuolumne | 170 to 255 days. |
| Mariposa | 100 to 250 days. |

The relatively long growing season of Amador County compared to the other seven counties is attributed to the location of Amador County directly east of Sacramento. Amador County's climate is tempered by the influence of warm moist breezes from the marshy "delta" area at the confluence of the Sacramento and San Joaquin rivers.

The growing season in Mariposa County ranges from 100 to 250 days due to the sharp changes in elevation from the lowlands of the San Joaquin valley to the high Sierran uplands in Sierra National Forest and Yosemite National Park. Compared to the other seven counties, the southernmost extension of the foothills "belt" narrows sharply in Mariposa County.

The location of the proposed "Sierra Foothills" viticultural area in the low to middle foothills "belt" approaching the mountainous upland terrain of the Sierra Nevadas allows a distinction in climatological characteristics from areas to the east and west in that the area escapes both the heat and fog common to the lowland plains and marshes of the Great Valley and the early frosts and snow at higher elevations of the High Sierras.

The climate of the area is characterized by cool summer night temperatures, often dropping to 30 degrees below daytime highs.

Foothill winds are an additional cooling factor in summer. These cooling winds are distinguished from those of the valley to the west. In the valley, prevailing southwesterly winds are due to the north-south orientation and heating of the Great Valley, which deflects the westerly winds coming through the Carquinez Straits northward. At the higher elevations, however, the winds conform more closely with the free-flowing westerly winds over northern California.

### Proposed Boundary

The boundary of the proposed Sierra Foothills viticultural area may be found on four United States Geological Survey maps scale 1:250,000. The boundary is described in proposed § 9.120.

### Executive Order 12291

It has been determined that this proposed regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

### Public Participation

ATF requests comments from all interested parties. Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

The petition contains adequate documentation of viticulture and winemaking but has limited data supporting the inclusion of the southernmost county, Mariposa County. ATF requests the submission of any additional data which would support the inclusion of Mariposa County in the proposed area.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

### Drafting Information

The principal author of this document is Michael J. Breen, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

### List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

### Authority

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas is amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

*Par. 1.* The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

*Par. 2.* The table of contents in Subpart C is amended to add the title of § 9.120 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

Sec.
9.120 Sierra Foothills.

*Par. 3.* Subpart C is amended by adding § 9.120 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.120 Sierra Foothills.

(a) *Name.* The name of the viticultural area described in this section is "Sierra Foothills."

(b) *Approved maps.* The appropriate maps for determining the boundary of Sierra Foothills viticultural area are four U.S.G.S. topographical maps of the 1:250,000 scale:

(1) "Chico" (NJ 10–3), edition of 1958, revised 1970.

(2) "Sacramento" (NJ 10–6), edition of 1957 revised 1970.

(3) "San Jose" (NJ 10–9), edition of 1962, revised 1969.

(4) "Mariposa" (NJ 11–7), edition of 1957, revised 1970.

(c) *Boundary.* The Sierra Foothills viticultural area is located in portions of the counties of Yuba, Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne and Mariposa, in the State of California. The boundary is as follows:

(1) Beginning on the "Chico" map at the point of intersection of the north border of T(ownship) 18 N(orth), R(ange) 6 E(ast), with S. Honcut Creek, the boundary proceeds approximately 3.5 miles, in a generally south and southwesterly direction, along the eastern bank of S. Honcut Creek to the point where S. Honcut Creek meets the western border of T. 18 N., R. 6 E.;

(2) Then south, approximately 15 miles, along the western borders of T. 18 N., T. 17 N., and T. 16 N. in R. 6 E., to the point where the western border of T. 16 N., R. 6 E. meets the northernmost perimeter of Beale Air Force Base in the southwestern corner of T. 16 N., R. 6 E.;

(3) Then east, south and west along the perimeter of Beale Air Force Base to the point where the perimeter of Beale Air Force Base intersects the western border of R. 7 E. in T. 14 N.;

(4) Then south, approximately 24 miles, along the western borders of T. 14 N., T. 13 N., T. 12 N., and T. 11 N. in R. 7 E., to the southwestern corner of T. 11 N., R. 7 E. (see "Sacramento" map);

(5) Then east, approximately six miles, along the south border of T. 11 N., R. 7 E., to the southeastern corner of T. 11 N., R. 7 E.;

(6) Then in a south southeasterly direction, in a straight line, approximately three miles, to the northeasternmost corner of Sacramento County in T. 10 N., R. 8 E.;

(7) Then continuing in a south southeasterly direction, in a straight line, along the Sacramento County—El Dorado County line, approximately 15 miles, to the point where the county line meets the Cosumnes River in the southwestern corner of T. 8 N., R. 9 E.;

(8) Then south, in a straight line, approximately 14.1 miles, along the Sacramento County—Amador County line, to the point where the county line meets Dry Creek in the northwestern corner of T. 5 N., R. 9 E.;

(9) Then in a south southeasterly direction, in a straight line, approximately 5.4 miles, along the San Joaquin County—Amador County line, to the point where the Mokelumne River forms the Amador County—Calaveras County line in T. 4 N., R. 9 E.;

(10) Then continuing in a south southeasterly direction, in a straight line, approximately 10.4 miles, along the San Joaquin County—Calaveras County line, to the point where the power line meets the western border of T. 3 N., R. 10 E.;

(11) Then in a southeasterly direction, in a straight line, approximately 22.4 miles, along the Calaveras County—Stanislaus County line to the point where the county line meets the Stanislaus River in T. 1 S., R. 12 E. (see "San Jose" map);

(12) Then in a southeasterly direction, in a straight line, approximately 20 miles, along the Tuolumne County—Stanislaus County line to the point where the county lines of Tuolumne, Mariposa, Stanislaus and Merced counties meet in the southeast corner of T. 3 S., R. 14 E.;

(13) Then continuing along the Mariposa County—Merced County line in a generally southeasterly direction, approximately 37 miles, to the point where the county lines of Mariposa, Merced and Madera counties meet in the northwestern corner of T. 9 S, R. 16 E.;

(14) Then northeasterly in a straight line, approximately 23 miles, along the Mariposa County-Merced County line to the point, approximately one mile west of Miami Mountain, where the Mariposa County-Merced County line meets the western border of the boundary of the Sierra National Forest in T. 6 S., R. 20 E. (see "Mariposa" map);

(15) Then in a generally northerly and westerly direction, along the western borders of the Sierra and Stanislaus National Forests in Mariposa County (see "San Jose" map);

(16) Then in a generally northerly and westerly direction, along the western border of the Stanislaus National Forest in Tuolumne County (see "Sacramento" map);

(17) Then in a generally northerly and westerly direction, along the western border of the Stanislaus National Forest in Calaveras and Amador counties;

(18) Then in a generally northerly and westerly direction, along the western border of the El Dorado National Forest in Amador, El Dorado and Placer counties (see "Chico" map);

(19) Then in a generally northerly and westerly direction, along the western border of the Tahoe National Forest in Placer, Nevada and Yuba counties to the point south of Ruef Hill where the western border of the Tahoe National Forest intersects the northeast corner of T. 18 N., R. 6 E.;

(20) Then west, approximately five miles, along the north border of T. 18 N., R. 6 E., to the point of beginning.

Signed: May 14, 1987.

W.T. Drake,
*Acting Director.*

[FR Doc. 87–11842 Filed 5–22–87; 8:45 am]

BILLING CODE 4810–31–M

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27 CFR Part 9

[Notice No. 631]

Middle Rio Grande Valley Viticultural Area: New Mexico

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF), is considering the establishment of a viticultural area in Sandoval, Bernalillo, Valencia, and Socorro Counties, New Mexico, to be known as Middle Rio Grande Valley. The proposed viticultural area is located in central New Mexico (near Albuquerque) along the Rio Grande River and surrounding irrigated land. The petition was submitted by a wine society located in Albuquerque. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to further specify the origin of wines they offer for sale to the public. The establishment of viticultural areas will help consumers identify the wines they may purchase.

DATE: Written comments must be received by July 10, 1987.

**ADDRESS:** Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC, 20044-0385 (Notice No. 631).

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226, (202) 566-7626).

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguished by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

**Petition**

ATF has received a petition proposing a viticultural area encompassing a narrow valley (no wider than 19 miles) along the Rio Grande River from just north of Albuquerque, New Mexico southward for approximately 106 miles to San Antonio, New Mexico. The proposed viticultural area is to be known as Middle Rio Grande Valley. The petition was submitted by the Middle Rio Grande Chapter of the New Mexico Vine & Wine Society located in Albuquerque. The proposed area consists of an irrigated valley of approximately 435 square miles. There are 6 bonded wineries in the proposed viticultural area with others planned for the near future.

**Local Viticultural History**

According to Leon D. Adams in *The Wines of America* (Houghton Mifflin Co., Boston, 1973), winemaking from grapes of the Mission variety began in the Middle Rio Grande Valley of New Mexico with the establishment of Franciscan missions in the Seventeenth Century. According to Phyllis Reiche in *The Days of Wine and Vintners* (Univ. Oklahoma Press, 1979), grapes were first planted near Socorro (Socorro County) around 1630 by Fray Garcia de Zuniga. W.H. Davis wrote a book in 1857, titled *El Gringo*, that described a favorable claret that came from Bernalillo (Sandoval County). A U.S. Department of Agriculture census of viticulture in the U.S. in 1880 listed New Mexico as fifth in the nation in wine production, with 3,150 acres of vineyards producing 908,500 gallons of wine. Governor William G. Ritch wrote of the grape growing belt along the Rio Grande in *The History, Resources and Attractions of New Mexico* (1885).

According to other information gathered by the petitioner, winemaking continued in the Middle Rio Grande Valley until Prohibition in 1920 when most vineyards were replaced by other crops. After repeal of Prohibition in 1933, viticulture was revived on a smaller scale.

According to the petitioner, the six bonded wineries within the proposed boundaries of the Middle Rio Grande Valley viticultural area have a total capacity in excess of 216,500 gallons of wine per year. At least two more wineries are in the planning or construction phases. There are twenty growers with more than one acre of wine grapes in the proposed area with a total acreage of approximately 458 acres.

Grape varieties grown in the Middle Rio Grande Valley, in descending order of acreage, include Vidal Blanc, Chancellor, Seyval Blanc, Villard Blanc, Chelois, Leon Millot, Pinot Chardonnay, De Chaunac, Baco Noir, Steuben and others.

**Evidence of Name.**

According to the petitioner, the name Middle Rio Grande Valley has been in use for many years to identify this area of New Mexico. In a Report of the Chief Engineer on the Chronological Development of the Rio Grande Basin, the name Middle Valley and Middle Rio Grande Valley were used to describe the settlement and agricultural attributes of the area. The report stated that the Middle Rio Grande Valley is probably one of the oldest irrigated areas in the United States. According to this report, the name Middle Rio Grande Valley applied to the area from Santa Fe, New Mexico southward to Socorro, New Mexico. Attached to the above described report was a map titled Rio Grande Valley which specifically identified an area of land between Albuquerque and Socorro as the Middle Rio Grande Conservancy District.

According to the publication *Water Resources of New Mexico, Settlement, Development and Water Use, Rio Grande Basin* by E.F. Sorensen, and L. Dee (Santa Fe, 1967), the Rio Grande River basin is divided into three sections known as the upper, middle and lower valleys. The book states that the Middle Rio Grande Valley extends from Otowi Bridge at the head of White Rock Canyon (northeast Sandoval County) to Elephant Butte Reservoir (Sierra County).

Historical or current evidence that the proposed boundaries of the viticultural area are correct.

The U.S.G.S. quadrangle maps indicate the proposed boundary for the Middle Rio Grande Valley appellation which begins at a point near Algodones Dam in Sandoval County and proceeds south along the east side of the Rio Grande River to New Mexico 380 west to the town of San Antonio, west on N.M. 85 and then north on the west side of the Rio Grande River and east to the point of origin. The exact maps and boundaries are described in the regulation portion of this document.

Evidence Relating to the Geographic Features such as Climate, Soil, Elevation, Physical Features, etc., which set the proposed Middle Rio Grande Valley viticultural area apart from the surrounding areas.

*(a) Climate*

The proposed Middle Rio Grande Valley viticultural area is located between latitudes of 34 degrees and 36 degrees North in central New Mexico. The climate is classified as arid continental type and it is characterized by low rainfall, warm summers, and mild winters. Most precipitation occurs during summer months as brief thunder showers. Snow occurs occasionally in the winter but accumulations are small. Winds are light to moderate and usually stronger during Spring months. The average number of days without killing frost ranges between 180 to 200 days in this belt. Minimum and maximum daily temperatures fluctuate 30 to 35 degrees.

The following two tables show climate comparisons between the Middle Rio Grande Valley and the surrounding areas:

TABLE 1.—CLIMATE CONDITIONS WITHIN THE PROPOSED MIDDLE RIO GRANDE VALLEY

| Site | Elevation | Area | Temperature (F.) | | Average (in.) | | Degree days | |
|---|---|---|---|---|---|---|---|---|
| | | | Maximum | Mean | Minimum | Rain | Heat | Cool |
| Bernalillo | 5,045 | N | 71.8 | 54.6 | 37.3 | 8.20 | 4,709 | 994 |
| Albuquerque | 5,311 | N | 70.3 | 56.6 | 42.1 | 8.12 | 4,292 | 1,016 |
| Socorro | 4,585 | S | 73.2 | 57.8 | 40.5 | 8.63 | 3,815 | 1,325 |
| Bosque | 4,520 | S | 75.7 | 57.7 | 39.3 | 8.20 | 3,931 | 1,269 |

TABLE 2.—CLIMATIC CONDITIONS AT FOUR SITES OUTSIDE THE PROPOSED MIDDLE RIO GRANDE VALLEY VITICULTURAL AREA

| Site | Elevation | Area | Temperature (F.) | | Average (in.) | | Degree days | |
|---|---|---|---|---|---|---|---|---|
| | | | Maximum | Mean | Minimum | Rain | Heat | Cool |
| Jemez Dam | 6,250 | N | 60.7 | 52.0 | 37.3 | 16.37 | 5,330 | 538 |
| Magdalena | 6,549 | W | 71.7 | 52.4 | 33.6 | 10.41 | 5,112 | 650 |
| Truth or Con. | 4,820 | E | 73.6 | 58.9 | 45.7 | 8.39 | 3,382 | 1,888 |
| Cabello | 4,190 | S | 76.4 | 60.4 | 44.2 | 8.23 | 3,195 | 1,890 |

Source: Monthly Normals of Temperature, Precipitation, and Heating and Cooling Degree Days 1941–1970, U.S. Department of Commerce, NOAA, Environmental Data Service, Publication No. 81 (Rev), August 1973, Asheville, N.C.

*(b) Soils*

The proposed Middle Rio Grande Valley viticultural area is located in a Basin province of the Warm Desertic Region of New Mexico. The Rio Grande River is the principal drainage for the Middle Rio Grande River Valley. Soils within the proposed viticultural area are on the nearly level floodplain adjacent to the river and are deep, highly stratified and typically non-gravelly. The Typic Torrifluvent association is developed in alluvium of mixed origin. Most of the soil within this association is medium, moderately fine or fine textured, and a high percentage of it is well suited to irrigation for a wide variety of crops. Subsurface layers are similar but may range in texture from sand to clay. Representative soil series are of Gila, Glendale or Vinton series.

By contrast, soils adjacent to the viticultural area that occur on the strongly sloping uplands north of the Rio Grande plain have soils of the Typic Torriorthents which have gravelly, sandy surface layers and coarse textured subsurface layers. Soil series in this area are Bluepoint and Caliza. Higher soils are rough broken lands of Nickel and Canutio series and include a layer of gravel with subsurface caliche and clay layers. Steep side slopes cut with streambeds often show exposed areas of bedrock in the eroded hilly areas.

*(c) Distinct Valley Area*

The proposed viticultural area follows the Rio Grande River and surrounding irrigated land for the length of 105 miles. Elevations within the proposed area range from approximately 4,800 feet to 5,200 feet above sea level. The surrounding mountain areas located to the north, east, west and southwest have much higher elevations. There soils, water availability and climates differ from the proposed Middle Rio Grande Valley area.

In a Report of the Chief Engineer describing the chronological development of the Rio Grande Basin and the Middle Rio Grande Conservancy District, the proposed viticultural area as well as the area north to Santa Fe, New Mexico was identified as the Middle Valley and the Middle Rio Grande Valley. The U.S. Department of Commerce (National Oceanic and Atmospheric Administration) published a State Climatic Divisions Map. The map identifies a general area which takes in the proposed boundaries of the viticultural area. The area is called the Central Valley. The general area to the north of the proposed Rio Grande Valley viticultural area is identified on the map as the Northern Mountains (Jemez Mountains, San Pedro Mountains and Sangre Cristo Mountains). The general area to the east is called the Central Highlands (Manzano Mountains and Sandia Mountains) and the area to the southwest is called the Southwestern Mountains (Gallinas Mountains, Datil Mountains, San Mateo Mountains and Continental Divide).

According to the petitioner, proceedings of the annual New Mexico Grape Growers and Wine Makers Conferences have data presented by regions and the Middle Rio Grande Valley region has only data from growers in this proposed viticultural area. Based on the petitioner's evidence provided in this notice, it is his opinion, that the proposed Middle Rio Grande Valley viticultural area defines a region with unique climate and growing conditions different from the surrounding areas.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this notice of proposed rulemaking because the proposal is not expected (1) to have significant economic impact, secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant

economic impact nor place compliance burdens on a substantial number of small entities.

**Executive Order 12291**

It has been determined that this proposed rulemaking is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

**Public Participation—Written Comments**

ATF requests comments from all interested persons concerning this proposed viticultural area. The document proposes possible boundaries for the area named "Middle Rio Grande Valley" viticultural area. However, comments concerning other possible boundaries or names for this viticultural area will be given full consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

**List of Subjects in 27 CFR Part 9**

Administrative practice and procedure, Viticultural areas, Consumer protection, Wine.

**Drafting Information**

The principal author of this document is Edward A. Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**Authority and Issuance**

**PART 9—[AMENDED]**

27 CFR Part 9—American Viticultural areas is amended as follows:

**Paragraph 1.** The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

**Par. 2.** The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.119 to read as follows:

**Subpart C—Approved American Viticultural Areas**

* * * * *

Sec.
9.119 Middle Rio Grande Valley

**Par. 3.** Subpart C is amended by adding § 9.119 to read as follows:

**Subpart C—Approved American Viticultural Areas**

**§ 9.119 Middle Rio Grande Valley.**

(a) *Name.* The name of the viticultural area described in this section is "Middle Rio Grande Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the "Middle Rio Grande Valley" viticultural area are 24 U.S.G.S. Quadrangle (7.5 Minute Series) maps and 1 (15 Minute Series) U.S.G.S. map. They are titled:

(1) Abeytas, N. Mex. (1952), revised 1979.
(2) Alameda, N. Mex. (1960), revised 1967 and 1972.
(3) Albuquerque East, N. Mex. (1960), revised 1967 and 1972.
(4) Albuquerque West, N. Mex. (1960), revised 1967 and 1972.
(5) Belen, N. Mex. (1952), revised 1971.
(6) Bernalillo, N. Mex. (1954), revised 1972.
(7) Dalies, N. Mex. (1952), revised 1971.
(8) Isleta, N. Mex. (1952), revised 1967 and 1974.
(9) La Joya, N. Mex. (1952), revised 1971.
(10) Lemitar, N. Mex. (1952), revised 1971.
(11) Loma De Las Canas, N. Mex. (1959), revised 1979.
(12) Loma Machete, N. Mex. (1954), revised 1972.
(13) Los Griegos, N. Mex. (1960), revised 1967 and 1972.
(14) Los Lunas, N. Mex. (1952), revised 1971 and 1974.
(15) Mesa Del Yeso, N. Mex. (1959).
(16) Placitas, N. Mex. (1954).
(17) San Acacia, N. Mex. (1952), revised 1971.
(18) San Antonio, N. Mex. (1946)—15 minute series.
(19) San Felipe Pueblo, N. Mex. (1954), revised 1978.
(20) Santa Ana Pueblo, N. Mex. (1954), revised 1978.
(21) Socorro, N. Mex. (1959), revised 1971.
(22) Tome, N. Mex. (1952), revised 1979.
(23) Turn, N. Mex. (1952), revised 1979.
(24) Veguita, N. Mex. (1952), revised 1979.
(25) Wind Mesa, N. Mex. (1952), revised 1967.

(c) *Boundaries.* The boundaries of the proposed Middle Rio Grande Valley viticultural area are as follows:

The beginning point is at the transmission line tower in the middle of Section 34, T14N, R4N, of the Santa Ana Pueblo, N. Mex. U.S.G.S. map.

(1) The boundary runs east on the power transmission line for 2.5 miles until it converges with New Mexico State Route 25/Interstate 85 (now known as Interstate 25) at Sec. 1, T13N, R4E on the San Felipe Pueblo, N. Mex. U.S.G.S. map;

(2) It follows I–25 southwest for 1.2 miles until it arrives at an unimproved dirt road approx. .2 mile east of Algodones Cemetery, at Sec. 11, T13N, R4E on the Placitas, N. Mex. U.S.G.S map;

(3) The boundary follows the unimproved dirt road southeast for 5.5 miles until it meets another unimproved dirt road at Tecolote, NM, south of Sec. 27 and 28, T13N, R5E;

(4) It travels southwest on the unimproved dirt road .7 mile until it meets NM–44 approx. 100 feet northwest of BM 6,075 in Placitas, NM, at T13N, R5E;

(5) It then goes southeast on NM–44 for approx. 250 feet until it intersects the 6,100 foot elevation contour line approx. 250 feet southeast of BM 6,075, at T13N, R5E;

(6) It then travels west for 3.5 miles on the 6,100 feet elevation contour line until it reaches a light-duty road on the Huertas Grant/Cibola National Forest Boundary at Sec. 6, T12N, R5E;

(7) The boundary runs north to northwest on the light-duty road for approx. .9 mile until it meets NM–44 next to BM 5,875 in Sec. 31, T13N, R5E;

(8) It travels west 5.2 miles on NM–44 until it arrives at I–25 (southbound interchange) near the Bernalillo

Cemetery at T13N, R4E on the Bernalillo, N. Mex. U.S.G.S. map;

(9) It proceeds south on I–25 for approx. 6.6 miles until it intersects with NM–556 at the east bound interchange at Sec. 1, T11N, R3E on the Alameda, N. Mex. U.S.G.S. map;

(10) The boundary goes east approx. 5 miles on NM–556 until it intersects the 106°30' longitude meridian, T11N, R4E;

(11) Then it goes south on the 106°30' longitude meridian for approx. 4.5 miles until it arrives at Montgomery Blvd. at Sec. 34, T10/11N, R4E;

(12) The boundary travels west on Montgomery Blvd. for approx. 6.1 miles until it meets the south exit ramp of I–25 in Sec. 34, T11N, R3E;

(13) Then it travels south on I–25 for approx. 13.3 miles (through Albuquerque, N.M). until it intersects with NM–47 at Sec. 6, T8N, R3E on the Isleta, N. Mex. U.S.G.S. map;

(14) It heads south on NM–47 for approx. 3.2 miles until it converges with the 4,900 foot elevation contour line at Isleta Pueblo, NM, in Sec. 24, T8N, R2E;

(15) The boundary follows the 4,900 foot elevation contour line south for approx. 25 miles until it arrives at a point north of Madron, NM, at the Atchison, Topeka and Santa Fe Railroad (AT&SF RR) tracks, approx. 250 feet east of elevation mark 4,889 feet on the Turn, N. Mex. U.S.G.S. map;

(16) It then travels north on the AT&SF RR tracks for approx. 350 feet until it intersects NM–47 approx. 350 feet north of elevation mark 4,880 feet;

(17) The boundary goes southwest on NM–47 (through Turn, N.M.) for approx. 2.4 miles until it reaches the 106°45' longitude meridian between the Turn, N. Mex. & Vequita, N. Mex. U.S.G.S. maps;

(18) Then it travels south on the 106°45' longitude meridian for approx. 4.7 miles until it meets the 34°30' latitude parallel on the Vequita, N. Mex. U.S.G.S. map;

(19) It then proceeds west on the 34°30' latitude parallel for approx. 1 mile until it arrives at NM–47 approx. .75 mile south of San Juan Church;

(20) Then it moves south on NM–47 for approx. 13.2 miles until it reaches an improved light-duty road at La Joya, NM, approx. 500 feet west of La Joya Cemetery on the La Joya, N. Mex. U.S.G.S. map;

(21) It then travels south on the improved light-duty road for approx. 450 feet until it intersects another improved light-duty road;

(22) Then it goes 500 feet west on the improved light-duty road until it reaches a north-south unimproved road at a point approx. .9 mile east, of the AT&SF RR tracks;

(23) The boundary heads south on the unimproved road for approx. 7.9 miles until it reaches the 34°45' latitude parallel on the La Joya, N. Mex. U.S.G.S. map;

(24) It travels west on the 34°15' latitude parallel for approx .9 mile until it intersects the 106°52'30" longitude meridian on the Mesa Del Yeso, N. Mex. U.S.G.S. map;

(25) It then goes south on the 106° 52' 30" longitude meridian for approx. 3.3 miles until it intersects the south section line of Sec. 19, T1S, R1E;

(26) It then runs east for approx. 1.25 miles until it reaches the east section line (marked altitude 5,068 feet) of Sec. 20, T1S, R1E;

(27) It travels south on the section line for approx. 7.1 miles, until it meets the Grant Boundary at altitude mark 4,734 feet at Sec. 32/33, T2S, R1E on the Loma De Las Canas, N. Mex. U.S.G.S. map;

(28) It proceeds east on the Grant Boundary for .25 mile until it arrives at the section line (Grant Boundary at Sec. 32/33, T2S, R1E;

(29) The boundary moves south on the Grant Boundary for approx. 5.2 miles until it meets the (Grant Boundary) section line near altitude spot 4,702 feet at Sec. 28/29, T3S, R1E;

(30) The boundary goes west on the section line (Grant Boundary) for approx. .25 mile until it arrives at the section line at Sec. 28/29, T3S, R1E;

(31) Then it moves south on the section line for approx. 5.7 miles until it meets an unimproved dirt road at Bosquecito, N.M. on the west section line of Sec. 8, T4S, R1E on the San Antonio, N. Mex. (15 minute series) U.S.G.S. map;

(32) It heads south on the unimproved dirt road for approx. 2 miles until it changes to a light-duty road at Padilla Ranch in Sec. 21, T4S, R1E;

(33) It follows the light-duty road for 2.25 miles until it intersects US–380/85, in Sec. 33, T4S, R1E;

(34) Then it follows US–380/85, first west then it loops north for approx. 8 miles until it meets the 34°00' latitude parallel;

(35) The boundary moves west on the 34°00' latitude parallel of the Socorro, N. Mex. U.S.G.S. map for approx. .75 mile until it meets the 4,800 foot elevation contour line in Sec. 35;

(36) It meanders north on the 4,800 foot elevation contour line for approx. 9 miles until it meets the 34°07' 30" latitude parallel;

(37) It travels east for approx. .2 mile on the 34°07'30" latitude parallel until it meets I–25 (US–60/85);

(38) It goes north on I–25 (US–60/85) for approx. 27.8 miles until it meets the Belen Highline Canal levee approx 1.6 mile south of San Antonio Church on the Veguita, N. Mex. U.S.G.S. map;

(39) Then the boundary follows the Belen Highline Canal north for approx. 9.4 miles until it intersects I–25, approx. .5 mile west of Bacaville, NM, on the Belen, N. Mex. U.S.G.S. map;

(40) Then it travels north on I–25 for approx. 16 miles until it meets the 34°52' 30" latitude parallel on the Isleta, N. Mex. U.S.G.S. map;

(41) The boundary goes west on the 34°52'30" latitude parallel for approx. 1 mile until it arrives at the 106°45' longitude meridian;

(42) Then it moves north on the 106°45' longitude meridian for approx. 16.5 miles until it reaches the 35°07'30" longitude meridian on the Albuquerque West, N. Mex. U.S.G.S. map;

(43) At this point it heads east for approx. 1.2 mile along the 35°07'30" latitude parallel until it reaches the power transmission line towers at Sec. 3/4, T10N, R2E of the Los Griegos, N. Mex. U.S.G.S. map; and finally

(44) From there it travels north and northeast along the power transmission line towers (and for 1 mile along a connecting unimproved road) for a total of approx. 24.4 miles to the point of beginning at Sec. 34, T14N, R4E, of the Santa Ana Pueblo, N. Mex. U.S.G.S. map.

Approved: May 12, 1987.

W.T. Drake,

*Acting Director.*

[FR Doc. 87-11941 Filed 5-22-87; 8:45 am]

BILLING CODE 4310-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-4-FRL-3286-8; NC-021]

### Approval and Promulgation of Implementation Plans; North Carolina; Stack Height Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** In this action, EPA is proposing to approve revisions to the North Carolina State Implementation Plan (SIP) submitted to EPA on February 25, 1986, and August 1, 1986. North Carolina has revised its SIP to include Good Engineering Practice Stack Height regulations. These regulations are equivalent to EPA requirements promulgated at Part 51 of Chapter I, Title 40 of the Code of Federal Regulations.

**EFFECTIVE DATE:** To be considered, comments must be submitted on or before June 25, 1987.

**ADDRESSES:** Written comments should be addressed to Beverly A. Thomas of EPA Region IV's Air Programs Branch (see EPA Region IV address below.) Copies of the material submitted by North Carolina may be examined during normal business hours at the following locations:

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365

North Carolina Department of Natural Resources and Community Development, 512 North Salisbury Street, Raleigh, North Carolina 27611

**FOR FURTHER INFORMATION CONTACT:** Beverly A. Hudson, EPA, Region IV, Air Programs Branch at above listed address, telephone 404/347-2864 or FTS 257-2864.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of July 8, 1985 (50 FR 27892), EPA published final regulations to implement Section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. These regulations limit the amount of stack height or dispersion credit (dispersion techniques) a source can claim in the process of establishing its emission limitation. Dispersion techniques include the use of stack heights greater than 65 meters and use of other techniques to increase the dispersion of emissions rather than continuously reducing emissions from a source.

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, all states were required to (1) review and revise, as necessary, their State implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by section 406 of Pub. L. 95-95.

The North Carolina Department of Natural Resources and Community Development has submitted their State Implementation Plan revisions for Good Engineering Practice (GEP) Stack Height. A public hearing was held on these revisions on November 15, 1985. North Carolina has not yet adopted the definition of "emission limitation" found at 40 CFR 51.100(z) (formerly 40 CFR 51.1(z)), and until officially adopted, the State will use EPA's definition as part of their stack height regulation. The present proposal is made on the assumption that the State will adopt the definition of emission limitation. The State has made a commitment to adopt and use the definition of emission limitation in letters dated July 9, 1986, and August 1, 1986. At the time EPA takes final rulemaking on this action, the commitment letter will be incorporated by reference into the SIP.

EPA has proposed to approve previous versions of North Carolina's stack height rule on March 29, 1983 (48 FR 3052) and October 17, 1984 (49 FR 40607). Today, EPA is also proposing to approve new revisions to the stack height rule which were submitted on February 25, 1986 and August 1, 1986. The final action will include all three proposal notices and public comments.

In other respects, the State deemed its existing stack height language to be in accordance with EPA's regulation. North Carolina's regulations define a number of specific terms including "excessive concentration," "dispersion techniques," "nearby" and other important concepts. The regulation applies to both new and existing sources, thereby satisfying requirements for state new source review regulations 40 CFR 51.164. The State will submit their final revised emission limits for those sources affected under the new stack height regulations at a later date.

## Proposed Action

EPA has reviewed the submittal and found it to be equivalent to EPA's stack height requirements. Therefore, EPA today proposes to approve North Carolina's stack height regulations based on the assumption that the State will adopt the definition of "emission limitation."

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

## List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

**Authority:** 42 U.S.C. 7401-7642.

Dated: September 10, 1986.

**Editorial Note:** This document was received in the Office of the Federal Register on May 20, 1987.

Jack E. Ravan,

*Regional Director.*

[FR Doc. 87-11859 Filed 5-22-87; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 52**

**[A-4-FRL-3206-5; TN-032]**

## Approval and Promulgation of Implementation Plans; Tennessee; Stack Height Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** In this action, EPA is proposing, through parallel processing, to approve revisions to the Tennessee State Implementation Plan (SIP) submitted to EPA on August 18, 1986. Tennessee has revised its SIP to include Good Engineering Practice Stack Height regulations. These regulations are equivalent to EPA requirements promulgated at Part 51 of Chapter I, Title 40 of the Code of Federal Regulations.

**EFFECTIVE DATE:** To be considered, comments must be submitted on or before June 25, 1987.

**ADDRESSES:** Written comments should be addressed to Beverly A. Thomas of EPA Region IV's Air Programs Branch (see EPA Region IV address below.) Copies of the material submitted by Tennessee may be examined during normal business hours at the following locations:

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Health and Environmental Control, Customs House, 701 Broadway, Nashville, Tennessee 37219-5403.

**FOR FURTHER INFORMATION CONTACT:** Beverly A. Thomas, EPA, Region IV, Air Programs Branch at above listed address, telephone 404/347-3286 or FTS 257-3286.

**SUPPLEMENTARY INFORMATION:** On August 18, 1986, the Tennessee Department of Health and Environmental Control (DHEC) informally submitted their State Implementation Plan revisions for Good Engineering Practice Stack Height. A public hearing was held on these revisions on March 10, 1986. The revisions are not yet in effect in the

State because of Tennessee's administrative procedures. These procedures include an internal review process which can be quite lengthy. The present proposal is made on the assumption that the revisions will not change significantly before they become State-effective and are formally submitted.

In the Federal Register of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. These regulations limit the amount of stack height or dispersion credit (dispersion techniques) a source can claim in the process of establishing its emission limitation. Dispersion techniques include the use of stack heights greater than 65 meters and use of other techniques to increase the dispersion of emissions rather than continuously reducing emissions from a source.

Pursuant to section 406(d)(2) of the Clean Air Act Amendments of 1977, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by section 406 of Pub. L. 95-95.

The State has revised its existing stack height language in accordance with EPA's regulation. The regulation applies to both new and existing sources, thereby satisfying requirements for state new source review regulations at 40 CFR 51.164 as well as to CFR 51.118. Tennessee's regulations defined a number of specific terms including "excessive concentration," "dispersion techniques," "nearby" and other important concepts. The State will submit their final revised emission limits for those sources affected under the new stack height regulations at a later date.

### Proposed Action

EPA has reviewed the submittal and found it to be equivalent to EPA's stack height requirements. Therefore, EPA today proposes to approve Tennessee's stack height regulations under the parallel processing procedures.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

### List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: September 4, 1986.

Editorial Note: This document was received in the Office of the Federal Register on May 20, 1987.

Lee A. [redacted],

*Acting Regional Administrator.*

[FR Doc. 87-11660 Filed 5-22-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-4-FRL-3196-7; NC-007, 016]

## Approval and Promulgation of Implementation Plans; North Carolina; Proposed Partial Approval of Particulate Regulation for Electric Utility Boilers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve portions of, and disapprove other portions of regulation 15 NCAC 2D.0536 (Particulate Emissions from Electric Utility Boilers) which North Carolina submitted to EPA as a State Implementation Plan (SIP) revision on January 24, 1983, and February 21, 1983, as it was subsequently revised in a submittal to EPA on December 17, 1986. The regulation and its revisions prescribe relaxed particulate emission limits for twelve electric utility power plants in the State belonging to Duke Power Company (Duke) and Carolina Power and Light Company (CP&L). The portions of the regulations proposed for approval set new short-term emissions limits for eight of the twelve plants retaining, although recodifying, the emission limit for a thirteenth plant. Also proposed for approval are stack testing requirements, opacity monitoring requirements, and requirements for submittal of malfunction abatement plans. EPA is proposing to disapprove other portions of the regulation, which set annual opacity limits for those nine plants. For the remaining four plants, all belonging to CP&L, the State has not submitted the required air quality analyses which demonstrate protection of the NAAQS and PSD increments. EPA has taken action in a separate Federal Register notice to propose disapproval of both the short-term limits and annual limits for those four plants.

The plants for which approval of the emission limits in the new regulation is being proposed are the Duke Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall and Riverbend Plants, and the CP&L Cape Fear and Roxboro Plants. The approvals for the CP&L Roxboro Plant and the Duke Allen and Dan River Plants are contingent upon the State submitting additional PSD increment analyses showing no increment violations.

DATE: To be considered, comments must be received on or before June 25, 1987.

ADDRESSES: Written comments should be addressed to Roger Pfaff of the EPA Region IV Air Programs Branch. (See Region IV address below.) Copies of the State's submittal are available for review during normal business hours at the following locations:

Air Quality Section, Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611.

Air Programs Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Comments which were received on EPA's original proposal of these regulations will also be addressed in EPA's final action on this proposal.

FOR FURTHER INFORMATION CONTACT: Roger O. Wolf of the EPA Region IV Air Programs Branch, at the above address and telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On January 24, 1983, and February 21, 1983, North Carolina submitted a new regulation (15 NCAC 2D.0536—Particulate Emissions from Electric Utility Boilers) to EPA for approval as part of the federally-approved State Implementation Plan (SIP). The purpose of this new regulation was to prescribe new particulate emission limits for each of the Duke and CP&L electric utility boilers in the State. These boilers were previously regulated under 15 NCAC 2D.0509—Control of Particulates from Fuel Burning Sources. The new regulation (2D.0536) relaxed the allowable particulate emission limits that applied to boilers at twelve power plants by a minimum of 0.01 pounds per million BTU (lb/mmBTU) of heat input and a maximum of 0.23 lb/mmBTU. For one Duke plant (Riverbend) the new limit was the same as the old. Seven of these plants (22 boilers units) are operated by Duke and six of the plants (16 boiler units) are operated by CP&L.

On December 24, 1985 (49 FR 49122), EPA proposed to approve the short-term mass emission limits contained in new regulation 2D.0536. At that time, EPA also proposed to take no action on the annual particulate emission limits contained in 2D.0536 because they did not protect the short-term NAAQS and PSD increments. In that notice, EPA stated that final approval of the new mass emission limits would not be granted until the State submitted documentation to show that the relaxation would cause no exceedance of the allowable PSD increments for particulate matter. This PSD demonstration is required by EPA regulations at 40 CFR 51.166(a)(2). Several comments were received on that proposal.

On September 20, 1984, North Carolina sent EPA a document titled "Case for Non-consumption of PSD Increment by the Adoption of 15 NCAC 2D.0536." The purpose of this paper was to show that the power companies had not increased their actual emissions and that, therefore, no PSD increment consumption analysis was necessary. EPA reviewed this submittal, and found it to be inadequate to satisfy the requirements of 40 CFR 51.166. By letter of February 19, 1985, EPA requested that a PSD increment consumption analysis be provided to validate the SIP revision. This February 19, 1985, letter also outlined how to determine the degree of increment consumption caused by the emission limit relaxation. Since that time, EPA has conducted numerous meetings with the State, Duke, and CP&L, and has issued further guidance on how to perform an increment analysis for the SIP revision.

On December 17, 1985, North Carolina submitted a major revision to 2D.0536 to EPA for approval. This submittal contained essentially the same short-term emission limits as the original version of 2D.0536. A few limits were lowered. However, new annual limits and annual opacity limits were prescribed for the boilers at each of the thirteen power plants. One part of the revision, including the annual emission limits, became effective in the State on August 1, 1986. The second part, which replaces the annual emission limits with annual opacity limits, becomes effective on August 1, 1987. Since no PSD increment analysis accompanied this December 17, 1985, submittal, the revised 2D.0536 contained the same deficiency as the original submittal of the rule. In addition to this shortcoming, EPA also determined that the State must provide an up-to-date modelling demonstration which shows that the new mass emission limits (in both the original and the revised version of 2D.0536) will not violate the NAAQS for particulate matter. Since modelling techniques have improved greatly since the time the original NAAQS demonstration was perpared (in approximately 1978), the original analysis is no longer valid. This analysis is required before EPA can approve any SIP revision pursuant to section 110(a)(3)(A) of the Clean Air Act.

On February 14, 1986, EPA notified the State by letter that the Agency must take action on 2D.0536 without further delay. The State was asked to submit both the PSD and NAAQS analyses within 20 days, thus completing the January 24, 1983, February 21, 1983, and December 17, 1985, submittals. If the State did not oblige by meeting that request, or did not withdraw the submittals by March 20, 1986, EPA would proceed to disapprove both versions of the regulation.

The State did not withdraw the submittals or complete the modelling by the March 20, 1986, deadline. The State, however, with the assistance of the affected utilities, proceeded with preparing the required documentation and indicated that an acceptable modelling demonstration would be submitted shortly. In March 1986, and May 1986, the required PSD increment analyses were submitted. Because EPA was aware that the State was completing the required analysis, EPA decided to delay proceeding with the full disapproval.

On October 15, 1986, EPA received the required NAAQS modeling analysis for six Duke Power plants and two CP&L plants. For the Duke Riverbend plant, no analysis was required, since the emission limits do not increase. The State did not submit NAAQS analyses for the other four CP&L plants.

The modeling techniques used in the demonstration supporting this revision are, for the most part based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models" (1978). Since that time, revisions to modeling guidance have been promulgated by EPA (51 FR 32176, September 9, 1986). Because the modeling analysis was underway prior to publication of the revised guidance, EPA accepts the analysis.

EPA has fully evaluated the new modelling analyses and has concluded that, for seven Duke plants, and two CP&L plants, the new emission limits in revised 2D.0536 are adequate to protect the annual and 24-hour NAAQS and PSD increments, except as noted below. It should be noted that for one CP&L plant (Roxboro) no PSD increment analysis was required in mid-1986, although some increment is consumed by the relaxed limits. This is because EPA guidance set out at 45 FR 52715 exempts SIP revisions from increment analysis if approval of the revision is pending at the time the PDS baseline is triggered. The baseline was triggered in Person County on December 30, 1985, at a time when action on the revision was pending.

Although no increment analysis was submitted by the State for the CP&L Roxboro plant (exempted from analysis in Person County) and the Duke Allen and Dan River Plants (located in counties where the baseline is not triggered), EPA discovered during its review of the modeling that an analysis should have been submitted for the effects of these three plants in neighboring counties where the baseline had already been triggered. In light of the fact that the CP&L Roxboro Plant must now be analyzed for its effects on increment in neighboring counties, an increment analysis will also be done for Person County where the plant is

located but was previously exempted. Since the magnitude of air quality impacts decreases with increasing distance. It is unlikely that any increment would be exceeded in neighboring counties. Therefore, EPA is today proposing to approve the new emission limits, contingent upon the State submitting air analyses showing no violations of increments in the affected counties before EPA takes final approval action on the limits for those three plants.

The table below illustrates the effects of the SIP revision on emissions and air quality. The first column lists the previous emission rate for each boiler, under 15 NCAC 2D.0503. The second column lists the emission rate on the baseline date, if applicable. The third column lists the new emission limit being proposed for approval today. The fourth column lists the maximum percent of 24-hour Class II increment consumption which will be used by the relaxation at each plant and all other increment consumption in the area for those plants where an increment analysis was performed. The fifth column lists the total 24-hour ambient air quality levels in the area of each plant after the relaxation. The annual air quality values are not listed here, because the 24-hour values are generally the closest to the maximum allowable. It should be noted that the actual amount of increment being used in the future is based upon future actual emissions, and not allowable emissions, which must be used in this analysis. If the boilers operate at lower than allowable emission rates, less increment may be used.

EMISSION AND AIR QUALITY SUMMARY

| Boiler | Old limit lb/mmBTU | Baseline emission lb/mmBTU | New limit lb/mmBTU | Total class II increment consumption percent | Total air quality ug/m³ |
|---|---|---|---|---|---|
| CP&L: | | | | | |
| Cape Fear | | | | 70 | 112 |
| Unit 5 | .13 | .14 | .20 | | |
| Unit 6 | .13 | .26 | .20 | | |
| Roxboro | | | | N/A [1] | 121 |
| Unit 1 | .10 | | .25 | | |
| Unit 2 | .10 | | .16 | | |
| Unit 3 | .10 | | .10 | | |
| Duke: | | | | | |
| Allen | | | | N/A | 134 |
| Unit 1 | .10 | N/A | .25 | | |
| Unit 2 | .10 | N/A | .25 | | |
| Unit 3 | .10 | N/A | .25 | | |
| Unit 4 | .10 | N/A | .25 | | |
| Unit 5 | .10 | N/A | .25 | | |
| Belews Creek | | | | 86 | 144 |
| Unit 1 | .10 | .10 | .15 | | |
| Unit 2 | .10 | .05 | .15 | | |
| Buck | | | | 73 | 138 |
| Boiler 5 | .13 | .07 | .15 | | |
| Boiler 6 | .13 | .10 | .15 | | |
| Boiler 7 | .13 | .10 | .15 | | |
| Boiler 8 | .13 | .08 | .15 | | |
| Boiler 9 | .13 | .05 | .15 | | |
| Cliffside | | | | 86 | 138 |
| Unit 1 | .11 | .11 | .25 | | |
| Unit 2 | .11 | .18 | .25 | | |
| Unit 3 | .11 | .10 | .25 | | |
| Unit 4 | .11 | .13 | .25 | | |
| Unit 5 | .11 | .14 | .25 | | |
| Dan River | | | | N/A | 139 |
| Unit 1 | .14 | N/A | .15 | | |
| Unit 2 | .14 | N/A | .15 | | |
| Unit 3 | .14 | N/A | .25 | | |
| Marshall | | | | 95 | 148 |
| Unit 1 | .10 | .12 | .20 | | |
| Unit 2 | .10 | .18 | .20 | | |
| Unit 3 | .10 | .09 | .18 | | |
| Unit 4 | .10 | .07 | .18 | | |

[1] N/A—Not yet available.

The Cliffside and Marshall plants also impact the Class I increments at Linville Gorge National Wilderness Area. The twenty-four hour Class I increment consumption for these two plants is 20% and 40%, respectively. These contributions, when added to existing increment consuming sources in the area, do not exceed Class I increments.

For more details concerning ambient analysis and EPA's review of the effect of this SIP revision, the reader may obtain a Technical Support Document from EPA's Region IV office listed

above. Although EPA (in the December 21, 1983, Federal Register) proposed to take no action on the annual emission limits contained in the original 2D.0536.

Since the annual mass emission limits initially contained in 2D.0536 are not, in EPA's opinion, limits for which compliance can accurately be determined, EPA concludes that the yearly mass emission standards are unenforceable. Further, the purported purpose of the annual opacity standards, contained in the revision to 2D.0536, is to indirectly protect the short-term NAAQS (by encouraging good operation and maintenance procedures.) The annual opacity limits are also more directly intended to protect the long-term ambient particulate standard. EPA concludes that the annual opacity standards contained in 2D.0536 do not accomplish either objective. Because the enforcement of those yearly standards by EPA would be manpower intensive and because those standards are unnecessary (due to the fact that federally-enforceable short-term mass and opacity standards already exist for the sources in question), EPA has decided not to propose to approve them. However, the annual mass emission limits will expire on August 1, 1987, and be replaced by the annual opacity limits. Since EPA will not be able to complete its rulemaking action before that time, today's proposal is to disapprove the annual opacity limits.

The regulation requires the utility owners to perform an annual stack test of each unit and report the results to the State within 30 days. Stack test methods are specified by State regulations, and are generally the same as EPA's test methods in 40 CFR Part 60.

The regulation requires an opacity monitoring system which meets the requirements of 40 CFR Part 60, Appendix B, as well as an approved quality assurance program for the opacity monitoring system.

The regulation requires the utility to have on file with the State an approved malfunction abatement plan for each unit subject to the regulation. The utility is also required to submit a monthly on malfunctions and other equipment failures.

### Proposed Action

EPA proposes to approve North Carolina's regulation 15 NCAC 2D.0536 as it will become effective on August 1, 1987, with the exception of the emission limits for CP&L plants Asheville, Lee, Sutton and Weatherspoon, and with the exception of the average annual opacity limits applicable to all plants. EPA proposes to disapprove the annual opacity limits for all seven Duke plants and CP&L plants Roxboro and Cape Fear. The emission and opacity limits for CP&L plants Asheville, Lee, Sutton and Weatherspoon are being acted upon in another notice.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the Administrator must assess the economic impact of proposed rules on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) Disapproval of the opacity regulations will not have a significant impact on a substantial number of small entities since it will simply maintain the status quo.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

### List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter.

Authority: 42 U.S.C. 7401–7642
Dated: February 24, 1987.

Donald J. Guinyard,
*Acting Regional Administrator.*

[FR Doc. 87–11883 Filed 5–22–87; 8:45 am]
BILLING CODE 6560–50–M

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

[Gen. Docket No. 87–112; FCC 87–132]

### Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821–824/866–869 MHz Bands by the Public Safety Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes policies and rules which will form a plan to accommodate the communication requirements of State and local public safety authorities. In particular, we are proposing service rules and standards for the 821–824/866–869 MHz bands that will provide the principal spectrum resource for public safety. This action is necessary to comply with a directive from the United States Congress to establish a plan which adequately ensures that the needs of these authorities would be taken into account in making allocations of the electromagnetic spectrum.

**DATES:** Comments are due July 6, 1987; reply comments are due July 21, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Fred Thomas, telephone (202) 653–8112; Joe Levin, telephone (202) 632–3906.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making in General Docket 87–112, FCC 87–132, adopted April 16, 1987, and released May 15, 1987.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Summary of the Notice of Proposed Rule Making

1. In this rule making, the Commission proposes policies and rules designed to accommodate present and future mobile communication requirements of state and local public safety authorities. This is in response to a Congressional directive to the Commisson, through the *Federal Communications Commission Authorization Act of 1983*, to develop a plan to ensure that the present and future electromagnetic spectrum requirements of State and local public safety authorities are considered in allocation of the spectrum.

2. In particular, the Commission proposes service rules and technical standards for the 821–824/866–869 MHz bands, which will provide the principal spectrum resource for the National Plan for public safety. In these bands, the Commission proposes a 12.5 kHz channeling plan and that a number of channels be set aside nationwide to provide for coordination and intercommunications among public safety agencies. Except for the channeling plan and intercommunication channels, the Commission proposes to use the same regulatory structure currently employed for the 806–821/851–866 MHz public safety channels for these bands. Standards for emission and bandwidth limitations would conform to the

proposed 12.5 kHz channeling plan. The loading standards and processing procedures that apply to existing 800 MHz public safety channels would also apply on these new channels. The Commission also proposes that APCO be designated as the coordinator for these new frequencies.

3. The Commission stated that in developing the National Plan, it expects to rely heavily upon the information that will be provided by the National Public Safety Planning Advisory Committee (NPSPAC). NPSPAC is a technical advisory committee established by the Commission in December 1986, to assist the Commission in developing the National Plan. This Committee has already met three times and submitted its *Initial Report* to the Commission. The Commission has attached the *Initial Report* as Appendix B to the *Notice* and is requesting comments on it and on any other issues regarding the National Plan.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. This proceeding suggests a proposal which may significantly impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, public comment is requested on the initial regulatory flexibility analysis set out in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 6, 1987, and reply comments on or before July 21, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in the proceeding.

**Ordering Clause**

8. This action is taken pursuant to 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 332.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-11741 Filed 5-22-87; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 52, No. 100
Tuesday, May 26, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Commodity Supplemental Food Program; Elderly Poverty Income Guidelines

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Department announces adjusted poverty income guidelines to be used by State agencies in determining the income eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program (CSFP). These poverty income guidelines are to be used in conjunction with the CSFP Regulations, 7 CFR Part 247.

**EFFECTIVE DATE:** July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Barbara Hallman, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, Park Office Center, Alexandria, Virginia 22302, (703) 756–3730.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under Executive Order 12291 and has been determined to be *not major*. The Department does not anticipate that this notice will have an annual effect on the economy of $100 million or more. This action will not result in a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. Nor will this action have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The action has been reviewed in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that the action will not have a significant economic impact on a substantial number of small entities. This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112).

On December 23, 1985 the President signed the Food Security Act of 1985 (Pub. L. 99–198). This legislation amends section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c *note*) to require that the Department establish procedures allowing agencies administering the CSFP to serve elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandated establishment of eligibility requirements for elderly participation. Prior to enactment of Pub. L. 99–198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

In order to implement the CSFP mandates of Pub. L. 99–198, the Department published interim rules on September 17, 1986 at 51 FR 32895. These regulations defined "elderly persons" as those who are 60 years of age or older. The rule further stipulated that elderly persons certified on or after the date of publication must have "household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services." 7 CFR 247.7(a)(3).

These poverty income guidelines (PIG) are revised annually to reflect changes in the Consumer Price Index. The revision for 1987 was published by the Department of Health and Human Services at 52 FR 5340 on February 20, 1987. At this time the Department is publishing the income limit of 130 percent of the PIG by household size to be used for elderly certification in the CSFP for the period July 1, 1987 through June 30, 1988.

The PIG were multiplied by 1.30 and the results rounded up to the next whole dollar. The first table in this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all the territories, including Guam. Because the poverty income guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

EFFECTIVE JULY 1, 1987—JUNE 30, 1988

| Family size | Annual FNS poverty income guidelines for elderly in CSFP (130 percent of PIG) |
|---|---|
| 48 States, District of Columbia, Puerto Rico, Virgin Islands, and Territories, including Guam: | |
| 1 | 7,150 |
| 2 | 9,620 |
| 3 | 12,090 |
| 4 | 14,560 |
| 5 | 17,030 |
| 6 | 19,500 |
| 7 | 21,970 |
| 8 | 24,440 |
| For each additional family member add: | 2,470 |
| Alaska: | |
| 1 | 8,918 |
| 2 | 12,012 |
| 3 | 15,106 |
| 4 | 18,200 |
| 5 | 21,294 |
| 6 | 24,388 |
| 7 | 27,482 |
| 8 | 30,576 |
| For each additional family member add: | 3,094 |
| Hawaii: | |
| 1 | 8,203 |
| 2 | 11,050 |
| 3 | 13,897 |
| 4 | 16,744 |
| 5 | 19,591 |
| 6 | 22,438 |
| 7 | 25,285 |
| 8 | 28,132 |
| For each additional family member add: | 2,847 |

**Authority:** Sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c *note*).

**Dated:** May 19, 1987.

**S. Anna Kondratas,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 87–11852 Filed 5–22–87; 8:45 am]

BILLING CODE 3410–30–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket No. 4-87]

### Proposed Foreign-Trade Zone, Knoxville, TN; Port of Entry Area; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Industrial Development Board of Blount County, Tennessee, a Tennessee public corporation, requesting authority to establish a general-purpose foreign-trade zone at sites in Knox, Blount and Anderson Counties, Tennessee, adjacent to the Knoxville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 12, 1987. The applicant is authorized to make this proposal under Chapter 41 of the Public Acts of the State of Tennessee 1981.

The proposed foreign-trade zone would cover 14.3 acres on three sites. Site 1 is a 120,000 square foot warehouse within the Bill Mullins Warehouse Park on Prosser Road, Knoxville, Knox County. Valley Storage, Inc., the park operator, will operate the zone. Site 2 comprises 5.1 acres within the Blount County Industrial Park on State Route 321, 1 mile west of Route 129 in Blount County, 5 miles south of McGhee Tyson Airport. The park is owned by the applicant. Site 3 comprises 6.5 acres within the Valley Industrial Park, State Route 62 and Union Valley Road, Oak Ridge, Anderson County. The park is owned by the City of Oak Ridge.

The application contains evidence of the need for zone services in the Knoxville port of entry area. Several firms have indicated an interest in using zone procedures for the storage/distribution of products such as automotive components, industrial tools and machinery, electronic items, and apparel. No requests for manufacturing approval are being sought at this time. Such requests will be made to the Board on a case by case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr., (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel R. Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, New Orleans, LA 70130; and Colonel Edward A. Starbird, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, TN 37202.

As part of its investigation, the examiners committee will hold a public hearing on June 26, 1987, beginning at 9:00 a.m., in the Small Assembly Room of the City-County Building, 400 Main Street, Knoxville, TN 37902.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377–2862) by June 19, 1987. Instead of a oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through August 10, 1987.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Knoxville Chamber of Commerce, Reference Library, 301 Church Avenue, Knoxville, TN 37901

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, Washington, DC 20230

Dated: May 18, 1987.

Dennis Puccinelli,

*Acting Executive Secretary.*

[FR Doc. 87-11804 Filed 5-23-87; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

[C-301-001]

### Leather Wearing Apparel From Colombia; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia. The review covers the period July 1, 1984 through December 31, 1985 and ten programs.

As a result of the review, the Department has preliminarily determined that Confecciones Amazonas Orinoco, the signatory to the suspension agreement that was in effect during the review period, did not account for over 85 percent of Colombian leather wearing apparel exports to the United States because it had gone out of business and did not export. Therefore, because Confecciones Amazonas Orinoco did not export, it did not make use of any programs on exports to the United States during the review period. We entered into a revised suspension agreement with Astrakan Ltda., which did account for over 85 percent of Colombian exports of leather wearing apparel to the United States during the review period. The revised agreement became effective December 8, 1986. The agreement includes any programs that were used by Colombian leather wearing apparel exporters, but were not part of the original agreement, and any programs that we consider countervailable or potentially countervailable. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** May 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Susan Silver or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 8, 1986, the Department of Commerce ("the Department") published in the Federal Register (51 FR 44099) the final results of its last administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia (46 FR 19663, April 2, 1981). In that review, we found that Confecciones Amazonas Orinoco ("CAO"), the original signatory to the agreement had gone out of business and, thus, no longer accounted for 85 percent of Colombian leather wearing apparel exports to the United States. We entered into a revised agreement with Astrakan Ltda., which now accounts for over 85 percent of Colombian leather wearing apparel exports to the United States. In the revised suspension agreement, we included any programs that were used by Colombian leather wearing apparel exporters, but were not part of the original agreement, and any programs that we consider countervailable or potentially countervailable. The agreement includes programs found countervailable in the suspended countervailing duty investigation on certain textile mill products and apparel from Colombia (50 FR 9663, March 12,

1985) ("the textiles suspension of investigation").

Specifically, the agreement requires Astrakan not to apply for or receive any short-term or long-term export financing at preferential rates from the Export Promotion Agency ("PROEXPO"), an agency of the Colombian government. This includes loans received under Resolutions 59 and 19. For any such loans that are outstanding, Astrakan is required to repay them immediately or renegotiate the loans at interest rates at or above the most recent short-term benchmark interest rate determined by the Department. Astrakan is also required to renounce import duty and tax exemptions under the Plan Vallejo, benefits provided to Free Industrial Zones, and export credit insurance. Although Decree 1459 eliminated the Special Systems of Commercial Exchange effective May 8, 1986, Astrakan is required to notify the Department prior to applying for approval for any future countertrade transactions.

In addition, the Colombian Department of Commerce, the Central Bank, PROEXPO, and any other administering authority voluntarily agree to ensure that remuneration of benefits by Astrakan is effectively implemented and monitored.

On September 27, 1985 and April 30, 1986, we received requests in accordance with § 355.10 of the Commerce Regulations for an administrative review of the suspension agreement from a domestic interested party, the Amalgamated Clothing and Textile Workers Union. We published the initiation of review on May 20, 1986 (51 FR 18575). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

## Scope of Review

Imports covered by the review are shipments of Colombian men's, boys', women's, girls, and infants' leather coats and jackets, and other leather wearing apparel (such as vests, pants and shorts), as well as parts and pieces thereof. Such merchandise is currently classifiable under items 791.7630, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. The review covers the period July 1, 1984 through December 31, 1985, a period prior to the effective date of the revised agreement, and ten programs.

## Analysis of Programs

During the current administrative review, we found that CAO did not export leather wearing apparel to the United States.

PROEXPO certified on March 10, 1986, that CAO had not exported to the United States since October 1, 1984. We found, by reviewing the export licenses granted to leather wearing apparel exporters in the questionnaire response, that CAO had not exported since July 1, 1984. Since CAO did not export, it could not make use of any programs on exports of leather wearing apparel to the United States.

*(1) CERT*

On April 1, 1984, the Columbian government established in Law 48/83 the Tax Rebate Certificate ("CERT"). The CERT is intended to rebate all or part of the indirect taxes paid by exporters. The CERT is freely negotiable on the stock market and can be used for paying a variety of taxes.

The Banco de la Republica, Columbia's central bank, certified to the Department on March 5, 1986 and March 10, 1986 that it had not provided CERT payments to CAO on shipments to the United States and Puerto Rico for the period of review. Although CERT payments were provided to other Colombian exporters, they were not parties to the original agreement that was in effect during the review period. This program is included in the revised agreement. In addition, the Banco de la Republica certified, effective March 1, 1986, that it would begin withholding CERT payments to Astrakan and other Colombian leather wearing apparel exporters on exports of leather wearing apparel to the United States.

*(2) Resolution 59*

Resolution 59, which has was passed by the Monetary Board of Colombia on August 30, 1972, and administered by PROEXPO, provides working capital financing at preferential rates to all firms (except producers of coffee, petroleum and petroleum by-products) that manufacture, store, or sell products destined for export. The loans are for 180 days and interest is paid quarterly, in advance. In February 1986, the maximum annual interest rate was 22 percent. CAO paid off its loans under this program prior to going out of business (a period prior to the period of review). Other Colombian exporters of leather wearing apparel received working capital loans under Resolution 59 during the period of review. In our final results of administrative review (51 FR 44990, December 8, 1986), we found that the most recent short-term benchmark interest rate was 28.99 percent. On this basis, we preliminarily determine the current interest rate differential to be 6.99 percent. Since we found this program countervailable in the textiles suspension of investigation, we have included it in the revised suspension agreement, which requires Astrakan, the signatory to the revised agreement, not to apply for or receive Resolution 59 loans at preferential rates.

*(3) Resolution 19*

Resolution 19, which was adopted by PROEXPO on November 15, 1984, provides short-term financing at preferential rates to exporters who participate in trade fairs. Resolution 19 loans are for periods up to one year with interest paid quarterly, in advance. In February 1986, the maximum annual interest rate was 18 percent. Colombian exporters of leather wearing apparel received short-term financing under Resolution 19 during the period of review.

The short-term benchmark interest rate (28.99 percent) is the same as for Resolution 59 loans. On this basis, were preliminarily determine the current interest rate differential to be 6.99 percent. Since we consider this program to be potentially countervailable, we have included it in the revised agreement, which requires Astrakan not to apply for or receive Resolution 19 loans at preferential rates.

*(4) Special Systems of Commercial Exchange ("Countertrade") under Decrees 370 and 3707*

Decrees 370 of 1984 and 3707 of 1985 encouraged and regulated countertrade transactions involving private-sector firms. Exporters of certain products received tax credit certificates in exchange for the foreign currency earned on exports. These certificates were used to pay income and sales taxes on customs duties and could be freely negotiated on the stock exchange. CAO did not participate in this program during the period of review. Astrakan and another leather wearing apparel exporter participated in countertrade transactions during the period of review.

On May 8, 1986, the Colombian Government's Decree 1459 eliminated the Special Systems of Commercial Exchange under Decrees 370 and 3707. Since we consider such a program to be potentially countervailable, we have included in the revised suspension agreement a requirement that Astrakan notify the Department prior to applying for approval for any future countertrade transactions.

*(5) Other Programs*

We examined the following programs and preliminarily determine that

exporters of leather wearing apparel did not use them during the period of review:

(A) Resolution 22 loans;
(B) Resolution 42 loans;
(C) Decree 2366 loans;
(D) Duty and tax exemptions under the Plan Vallejo;
(E) Benefits to Free Industrial Zones; and
(F) Export Credit Insurance.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that CAO did not account for 85 percent of Colombian leather wearing apparel exports to the United States during the review period because it had gone out of business and did not export. We also preliminarily determine that Astrakan accounted for over 85 percent of Colombian leather wearing apparel exports to the United States during the review period. On December 8, 1986, in conjunction with our last administrative review, we revised the suspension agreement to substitute Astrakan for CAO.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday following. Any request for an administrative protective order must be made not later than 5 days after the date of publication. The Department wil publish the final results of this administrative review, including the results of its analysis of any issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: May 19, 1987.

Gilbert B. Kaplan,

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 87-12008 Filed 5-22-87; 8:45 am]

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[A-428-801]

## Urea From the German Democratic Republic, Final Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that urea from the German Democratic Republic (GDR) is being, or is likely to be, sold in the United States (U.S.) at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and we have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise as described in the "Continuation of Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 377-1769.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

We have determined that urea from the GDR is being sold in the U.S. at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The weighted-average margin of sales at less than fair value is 44.80 percent.

### Case History

On December 23, 1986, we preliminarily determined that urea is being sold at less than fair value (52 FR 121, January 2, 1987). A case history is included in the notice of preliminary determination. On February 12, 1987, we postponed the final determination until not later than May 18, 1987, at the request of the respondent (52 FR 5322, February 20, 1987). On April 29, 1987, we held a hearing to address the issues arising in this investigation.

### Scope of Investigation

The merchandise covered by this investigation is solid urea as currently provided for in item 480.30 of the *Tariff Schedules of the United States.*

### Fair Value Comparisons

To determine whether sales in the U.S. of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value. Because Chemie accounted for all exports of this merchandise to the United States, we limited our investigation to that firm. We investigated all sales of urea for the period January 1, 1986, through June 30, 1986.

### United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Chemie because the merchandise was sold to unrelated purchasers prior to its importation into the U.S.

We calculated the purchase price based on the f.o.b. price to unrelated purchasers. We made deductions for inland freight, port handling and port loading charges.

In accordance with the policy set forth in our final determination in the investigation of *Carbon Steel Wire Rod from Poland* (49 FR 29434, July 20, 1984), we based the port handling deductions upon costs in a non-state-controlled-economy country, the Federal Republic of Germany (FRG), for the reasons stated in the "Foreign Market Value" section.

### Foreign Market Value

Petitioner alleged that the GDR is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value (FMV) under section 773(a) of the Act. Our analysis of issues relating to the GDR's characterization as a state-controlled-economy country and our selection of a surrogate country are discussed in the notice of preliminary determination. As a result, we determined that section 773(c) of the Act applies to this investigation.

We sent questionnaires requesting assistance from producers in all chosen surrogates, the FRG, the most appropriate surrogate, and the Belgium, the Netherlands, France and Italy as alternate surrogates. However, we were unable to obtain costs or prices from producers in any of the surrogate countries.

Therefore, we calculated constructed value based on the factors of production reported by Chemie or, where the response was not sufficient, or not adequately verified, we used information provided by petitioner or otherwise available to the Department. We valued labor in the FRG from public sources. Where either the response did not report factors, or where FRG values were not available from public sources, we used factors and cost data from the petition relative to the production in the GDR.

Certain factors could not be quantified and other factors could not be appropriately valued with prices from the FRG. In these cases, the Department sought the most reliable objective information contained in the record of investigation. Therefore, for certain data the Department relied upon supplemental reports provided by the

petitioner. This included the *Fertilizer Manual* which was published prior to the Department's investigation by the International Fertilizer Development Center of the United Nations' International Development Organization, *Energy Prices and Taxes*, Fourth Quarter 1986.

To value natural gas, we used a tariff set by Gasunie N.V., the Gas Board in the Netherlands. The catagory F of the tariff, the so-called "F" price, is an established gas price which is available to large industrial users in the European Communities (EC). All major fertilizer producers in the EC qualify for the F price because of their high gas usage. The F price is a maximum price established for each quarterly period. Since the F price declined during the period of investigation, we calculated the difference in F price in two succeeding quarters and allocated that difference over the intervening months in order to derive monthly gas prices which we then weight-averaged. We used this monthly weight average F price in order to most closely approximate the price actually paid for gas by market economy countries during the time period when production of the urea subject to our investigation would have occurred. Therefore, we believe that the F price represents the most accurate, verifiable gas price for the Fertilizer sector in the FRG.

The labor rates were obtained in the FRG from public sources. Although some individual items included as factory overhead were verified, others could not be sufficiently quantified or valued. Therefore, for factory overhead the Department developed a ratio of the factory overhead costs to the gas costs from the petition. The Department reviewed the petition, and determined that such costs were representative of average costs for developed countries. However, the individual components of the factory overhead costs were based on a utilization of plant capacity which was less than the utilization of capacity determined to exists in the GDR. Therefore, the Department made appropriate adjustments to account for the higher capacity utilization rate in the GDR.

Because of the unavailability of industry data in the FRG, we used the statutory minimum of 10 percent of the sum of material and production costs for general expenses and the statutory minimum of eight percent for profit.

We made currency conversions in accordance with 19 CFR 353.56(a)(1) using certified exchange rates as furnished by the Federal Reserve Bank of New York.

**Negative Determination of Critical Circumstances**

The petitioner alleges that "critical circumstances" exist within the meaning of section 735(a)(3) of the Act with respect to imports of urea from the GDR. In determining whether critical circumstances exists, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of investigation at less than fair value; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM 146 trade statistics on imports of this merchandise for equal periods immediately preceding and following the filing of the petition, from March through December 1986. While there was an increase in imports over previous years during 1986, the average monthly imports in the period immediately following the filing of the petition were lower than those in the period immediately preceding the filing. Based on this analysis combined with a consideration of seasonal trends, we find that imports of the subject merchandise have not been massive over a short period.

Since we do not find that there have been massive imports, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of urea from the GDR.

**Verification**

In accordance with section 776(a) of the Act, we verified the information submitted in the response by using standard verification procedures, including on-site examination of records and selection of original source documentation containing relevant information.

**Comment Section**

*Petitioner's Comments*

*Comment #1:* Petitioner argues that the Department has correctly chosen the FRG as a surrogate country and must proceed to use publicly available data from the FRG in determining foreign market value for purposes of this determination.

*DOC response:* We agree. To the extent possible, the Department used the most reliable and specific information for the FRG, the surrogate country selected, according to our methodology.

*Comment #2:* Petitioner argues that in the absence of verified data from a surrogate producer in a country at a comparable level of economic development, the Department must determine foreign market value by using factors of production valued in the FRG from reliable, publicly published data providing evidence of costs in the FRG rather than rely on average import prices as suggested by respondents. Petitioner contends that the volume of urea exported from the USSR, the GDR and Romania has depressed prices from all sources. Petitioner states that since urea is a fungible commodity, prices from all sources move together

*DOC response:* We agree that it would not be appropriate to base foreign market value on import prices. We reached this conclusion based on a variety of factors suggesting that the pricing of urea internationally was influenced by imports from the countries under investigation.

Urea is a fungible commodity traded throughout the world. As a result, the level of market share of a specific group of importers tends to affect sales elsewhere.

Non-market-economy producers, and in particular those subject to our investigations, have become major participants in world urea trade. There is evidence that these producers' ability to separate pricing/supply decisions from market demand conditions has significantly contributed to the distortion of urea prices worldwide. As a result, we concluded that determining foreign market value on the basis of prices in any market would be inappropriate.

Moreover, even if we had attempted to use U.S. import prices, we would have had difficulty isolating a sufficiently large basket of prices during the period of investigation to provide a reliable basis for comparison. Besides eliminating the three countries under investigation, we also would have had to disregard nearly all of the remaining foreign suppliers on the grounds of minimal exports, that they were subject to foreign antidumping investigations on urea, or that their governments were known to provide export subsidies. In

addition, it would have been impossible to identify sales of solid urea within the basket of urea imports reported in the statistics in order to make the appropriate adjustments.

*Comment #3:* Petitioner argues that the Department should not assume that the 10 percent statutory minimum for the general selling and administrative (GS&A) expenses is appropriate, but should quantify each individual cost item and value each appropriately. For example, petitioner claims that rents, taxes and insurance, since they are incurred by non-state-controlled-economy companies, should be included and valued. Additionally, it contends that the costs of selling expenses incurred by the GDR trading company, such as selling salaries, brochures and catalogues, should be valued using FRG prices. Further, petitioner contends that interest expense should be calculated on the basis of interest rates in the FRG applied to the total value of the GDR facilities, which were allegedly supplied and financed by western companies through a mix of foreign debt and/or counter trade buy-back arrangements.

*DOC response:* We agree that no assumptions should be made with regard to the extent of GS&A involved in production and distribution of urea. Section 353.8(c) of our regulations directs us to add "an amount of general expenses and profit as required by section 773(e)(1)(B) of the Act" to the values obtained on the basis of the GDR factors of production and valued in an appropriate surrogate country. Section 773(e)(1)(B) of the Act in turn requires us to determine GS&A expenses in the amount "equal to that usually reflected in sales of merchandise . . . in the country of exportation" 19 U.S.C. S1677b(e)(1)(B). The country of exportation in this case is determined to be state-controlled to an extent that the normal costs, expenses, and profits (including GS&A expenses for purposes of constructed value calculations) cannot be determined in that country. At the same time, our regulations do not include GS&A expenses in the category of "sepcific objective components or factors" to be obtained from the state controlled-economy country under investigation and valued in a surrogate country. Therefore, we must determine the amount of GS&A expenses as they are reflected in sales of merchandise of the same class or kind in the surrogate country without reference to specific factors or components of the GS&A expenses in the GDR. The method of financing of the GDR facilities involved in production of the subject merchandise, therefore, cannot be relied upon for purposes of our calculations, and the amount of usual general expenses involved in production and distribution of urea must be determined on the basis of normal costs and expenses in the FRG. We do not have any indication that GS&A expenses involved in production and distribution of urea in the FRG are above the statutory minimum of 10 percent. Therefore, we applied this statutory minimum in our calculations according to section 773(e)(1)(B) of the Act.

*Comment #4:* Petitioner states that the Department should adjust its calculation of the cost of natural gas by using published data for the first two quarters of 1986 which represent the price to industrial users in the FRG during the period of investigation.

*DOC response:* For our determination of foreign market value, we used updated prices for gas. In fact, we used 1986 gas prices which included the third quarter of 1986 to allow for the production of urea sold during the period of investigation which was produced and exported through the third quarter.

*Comment #5:* Petitioner argues that water usage was not accounted for in the Department's preliminary determination calculation. Petitioner contends that water used free of charge in the CDR must be valued on the basis of utility rates in the FRG.

*DOC response:* Water was not valued in the preliminary determination because it was considered to be recycled. However, for the final determination water was included in factory overhead under the methodology as explained in the "Foreign Market Value" section.

*Comment #6:* Petitioner argues that chemicals, catalysts, steam indirect materials used in the production of urea must be valued in the FRG.

*DOC response:* Values for these items in the FRG were not readily available. These factors are individual costs included in factory overhead. Therefore, they were accounted for and valued as described in the "Foreign Market Value" section.

*Comment #7:* Petitioner contends that the cost of labor was significantly undervalued in our preliminary calculations because (1) only direct labor usage was considered and (2) the 1981 FRG labor cost obtained from publishing sources were not indexed to account for inflation.

*DOC response:* For labor costs, we used only direct labor hours. Costs per hour were obtained from the "Hourly Compensation Costs for Production Workers in U.S. Dollars" (U.S. Bureau of Labor Statistics, February, 1987). The data for West Germany is from 1986. The cost information is included in petitioner's pre-hearing brief. Only direct labor usage was considered as a labor cost, since other types of labor usage are considered indirect expenses and are included in other cost components of factory overhead. See the "Foreign Market Value" section.

*Comment #8:* Petitioner argues that the depreciation of GDR plant and equipment should be based on the costs of plant and equipment purchased from market economy companies or on the costs incurred by comparable facilities in other countries which were built at the same time as the GDR facility.

*DOC response:* The estimated costs presented by the petitioner could not be used for depreciation. Depreciation was considered to be part of factory overhead and included as described in the "Foreign Market Value" section.

*Comment #9:* Petitioner argues that depreciation should be included in factory costs rather than in general expenses.

*DOC response:* We agree. The Department relied on the petition for its preliminary determination. For the final determination it has reclassified this amount as factory overhead.

*Comment #10:* Petitioner contends that the credit for sales of carbon dioxide in the final determination should be based on GDR actual quantities which were sold to unrelated parties.

*DOC response:* We disagree. Transfers to other plants can be a reduction of cost of production, therefore a credit was allowed for carbon dioxide and other by-products transferred to other plants within the Piesteritz plant complex.

*Comment #11:* Petitioner argues that interest expenses incurred relative to Chemie's sales to the U.S should be deducted from United States price.

*DOC response:* We disagree. In this investigation the Department has valued factors of production in a comparable surrogate country using the best information available. The specificity of the data obtained for valuing the factors is not sufficient for us to identify the directly related selling expense adjustments which would have to be made to foreign market value for both U.S. price and constructed value. Absent specific information that the respondent incurs extraordinary directly related selling expenses for its U.S. sales, the Department assumed, as best information available, that ordinary and similar selling expenses occur in both markets and, as such, they offset one another.

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*Comment #12:* Petitioner argues that the Department erred in finding that critical circumstances do not exist for purposes of the preliminary determination. Petitioner claims that the decision concerning massive imports did not include analysis of the seasonal nature of urea sales.

*DOC Response:* For a discussion of this subject, refer to the "Negative Determination of Critical Circumstances" section of this notice.

*Comment #13:* Petitioner argues that the deductions from United States price for inland freight, brokerage and loading charges should be based on the cost of comparable elements in the FRG.

*DOC response:* We have made such deductions as described in the "United States Price" section.

*Respondent's Comments*

*Comment #1:* Respondent claims that the Department erred in differentiating between the GDR and the other countries subject to investigation, the USSR and Romania, for purposes of selecting a surrogate. Respondent claims that the Department drew an artificial distinction between the captive gas supplies in the various countries. This claim is based on the fact that the GRD and USSR are participating in a joint venture which guarantees a gas supply for the GDR in exchange for labor, captial and equipment necessary to develop Russian gas fields and construct pipelines. Respondent argues that, based on natural gas supplies and income comparability, appropriate surrogates are Saudi Arabia, Qatar, Kuwait, Trinidad and Tobago, Venezuela, Mexico, Malaysia, Indonesia, the United Arab Emirates and Egypt. Respondent claims that the melding of raw material supplies and income comparability is especially proper in a situation such as this involving a capital intensive industry. Respondent also relies on the size of the agricultural sectors of these nations which create a home market demand for urea. Respondent states that, although there are more appropriate surrogates than the UK, given the surrogates chosen by the Department, the most appropriate of these is the UK.

*DOC response:* We disagree. No matter how certain the contractual terms may appear, we believe there remains a substantive distinction between a country which has a contractual arrangement to obtain gas and one which has its own captive gas supplies. Our selection of the FRG as a surrogate for the GDR was based on the close comparability of their economic and demographic statistics as well as on the fact that neither country is a major natural gas producer. Moreover, in light of the methodology we ultimately deemed most appropriate to determine foreign market value, respondent's concerns should have been addressed. The method we selected for valuing natural gas applies equally to the UK and FRG contexts, whereas, those FRG values which were used in this case for other factors related more directly to the macroeconomic criteria we considered in selecting a surrogate.

*Comment #2:* Respondent argues that the Department has a strong preference for using prices rather than costs as the basis for determining foreign market value. Repondent argues that the average U.S. import price of urea from other sources is the appropriate basis for foreign market value. Respondent claims that this information is the most current verifiable data available and is supported by the preference for prices. If prices from all sources are not used, respondent states that import prices from the selected surrogates should be used.

*DOC response:* We disagree. Refer to our response to petitioner's comment #2.

*Comment #3:* Respondent contends that for purposes of the preliminary determination the Department understated United States price by deducting documentation and plant loading expenses which are improper and by overstating deductions for inland freight and handling expenses.

*DOC response:* Respondent's claim that a deduction for loading charges is improper is based on the fact that loading charges are included in the cost of producing urea, a fact that was discovered at verification. The Department would normally adjust the foreign market value by deducting the charges from the costs so that the foreign market value and the United States price would be at a comparable level. In this instance, we cannot separate loading costs from the other costs of manufacture. Therefore, we have left these costs in the foreign market value and have made no deduction from the U.S. price for plant loading charges so that they are still at the same level of comparison.

We have made no separate deduction for documentation charges since the port loading charges used for this determination include all documentation expenses. Concerning inland freight, we used an FRG rail tariff for the determination, rather than the United Kingdom tariff used in the preliminary determination.

*Comment #4:* Respondent claims that the Department overstated foreign market value in the preliminary determination due to the over valuation of the main component of urea, natural gas, as well as electricity and labor. In addition, respondent claims that the failure to give a credit for by-products resulted in a portion of the overstatement of foreign market value.

*DOC response:* For this determination we adjusted the methodology used in the preliminary with respect to these factors. For a discussion of gas costs, refer to the "Foreign Market Value" section. Concerning labor rates, refer to the "DOC Response" to petitioner's comment #7. Electricity was included in factory overhead, also discussed in the "Foreign Market Value" section.

*Comment #5:* Respondent argues that credit for the by-products of carbon dioxide, electricity, steam and condensate transferred to plants other than ammonia and urea should be allowed at their commercial value.

*DOC response:* We agree that a credit should be allowed for transfers of by-products to other plants. The transfer value to the other plants should be at cost. Therefore, for the final determination, we have used the commercial value less the eight percent statutory minimum for profit.

*Comment #6:* Respondent argues that the petitioner double counted fringe benefits by including them in direct labor cost and overhead computed at 100 percent of direct labor cost. Respondent further states that the Department should reduce the final overhead accordingly.

*DOC Response:* The elements in the overhead and included in the petition and *The Fertilizer Manual* could not be fully ascertained. Therefore, the overhead category in question was included in the 10 percent for general expenses. See Foreign Market Value section.

**Continuation of Suspension of Liquidation**

We are directing the United States Customs Service to continue to suspend liquidation, in accordance with section 733(d) of the Act, of all entries of urea from the GDR that are entered or withdrawn from warehouse, for consumption, on or after January 2, 1987. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which, on or after the date of publication of this notice in the Federal Register, was 44.80 percent. This suspension of liquidation will remain in effect until further notice.

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**ITC Notification**

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. The ITC will determine whether these imports are causing material injury, or threaten material injury, to a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs Officers to assess an antidumping duty on urea from the GDR entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price

This determination is being published pursuant to secton 735(d) of the Act (19 U.S.C. 1673d(d)).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

May 18, 1987.

[FR Doc. 87-11905 Filed 5-22-87; 8:45 am]

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[A-485-001]

## Urea From the Socialist Republic of Romania; Final Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that urea from the Socialist Republic of Romania (Romania) is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise as described in the "Continuation of Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 377-1769.

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

We have determined that urea from Romania is being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The weighted-average margin of sales at less than fair value is 90.71 percent.

**Case History**

On December 23, 1986, we preliminarily determined that urea is being sold at less than fair value (52 FR 122, January 2, 1987). A case history is included in the notice of preliminary determination. On February 12, 1987, we postponed the final determination until not later than May 18, 1987, at the request of the respondent (52 FR 5323, February 20, 1987). On May 1, 1987, we held a hearing to address the issues arising in this investigation.

**Scope of Investigation**

The merchandise covered by this investigation is solid urea as currently provided for in item 480.30 of the *Tariff Schedules of the United States.*

**Fair Value Comparisons**

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value.

Because I.C.E. Chemica (Chimica) accounted for all exports of this merchandise to the United States, we limited our investigation to that firm. We investigated all sales of urea for the period July 1, 1985, through December 31, 1985, because there were no sales during the first half of 1986.

**United States Price**

As provided in section 772 of the Act, we used the purchase price to represent the United States price for sales by Chimica when the merchandise was sold to unrelated purchasers prior to its importation into the United States. We used the exporter's sales price (ESP) as the United States price for sales made after importation to an unrelated purchaser.

We calculated the purchase price based on the f.o.b. price to unrelated purchasers. We made deductions for inland freight, port handling, and loading charges. The verified distance from the plants to the port of exportation was almost three times greater than that reported. In calculating ESP, we made an additional deduction for the selling expenses incurred by the related U.S. importer. Because such expenses were not reported, we deducted a commission paid to the U.S. importer by Chimica as the best information otherwise available, as representing U.S. sales expenses.

In accordance with the policy set forth in our final determination in the investigation of *Carbon Steel Wire Rod from Poland* (49 FR 29434, July 20, 1984), we based the port deductions upon costs in a non-state-controlled economy country, the United Kingdom (UK), for the reasons stated in the "Foreign Market Value" section.

**Foreign Market Value**

Petitioner alleged that Romania is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a) of the Act. Our analysis of issues relating to our determination that Romania is a state-controlled-economy country and our selection of a surrogate country are discussed in the notice of preliminary determination.

As noted in the preliminary determination, we sent a questionnaire to, and received an incomplete response from, a major producer of urea in the UK, Imperial Chemical Industries PLC (ICI). We attempted to supplement the information in this response while visiting ICI's facility in the UK.

Our analysis indicated that additional information was needed from ICI. We attempted to obtain these additional data in order to verify all of ICI's necessary information prior to the final determination. However, we were unsuccessful in obtaining these data for the record in this investigation. Lacking this information at this time, we find it inappropriate to use the ICI data for this determination.

Therefore, we calculated constructed value based on natural gas and labor inputs reported by the Romanian producer which were verified, and we used best information available for factory overhead from the petition. The factors of production were based on the weighted average of the ammonia-urea plant complexes selected by the Department for its determination.

For factory overhead, the Department developed a ration based on factory overhead and gas prices from the petition, appropriately adjusted for Romanian gas prices.

To value natural gas, we used a tariff set by Gasunie N.V., the Dutch Gas Board in the Netherlands. The category "F" of the tariff, the so-called "F" price, established gas prices which are available to large industrial users throughout the European Communities (EC). All major fertilizer producers in the EC qualify for the F price because of

their high gas usage. While the F price was established as the result of an EC complaint brought by German, French, and Belgian fertilizer producers in those countries, evidence in the record indicates that gas prices to large industrial users in the UK, such as ICI, reported to be the largest gas user in the UK, was linked to the F price during the period of investigation.

The F price is a maximum price established for each quarterly period. Since the F price declined during the preiod of investigation, we calculated the difference in F price in two succeeding quarters and allocated that difference over the intervening months in order to derive monthly gas prices which were then weight-averaged. We used this monthly weighted-average F price in order to most closely approximate the price actually paid for gas in market economy countries during the time period when production of the urea subject to our investigation would have occurred. Therefore, we believe that the F price represents the most accurate gas price for the fertilizer sector in the UK.

Labor rates were obtained in the UK from public sources. For factory overhead, certain factors could not be quantified or verified, and other factors could not be appropriately valued with prices from the United Kingdom. In these cases, the Department sought the most reliable objective information contained in the record of the investigation. Therfore, for certain data the Department relied upon supplemental reports provided by the petitioner. This included the *Fertilizer Manual* which was published prior to the Department's investigation by the International Fertilizer Development Center of the United Nations' International Development Organization; *Energy Prices and Taxes*, Fourth Quarter 1985.

Because of the unavailability of industry data in the UK, we used the statutory minimum of 10 percent of the sum of material and fabrication costs for general expenses and the statutory minimum of eight percent for profit.

For purchase price comparisons, we made currency conversions in accordance with 19 CFR 353.56(a)(1), using certified exchange rates as furnished by the Federal Reserve Bank of New York.

For ESP comparisons, we used the official exchange rate on the date of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the law supersedes that section of the regulations.

**Negative Determination of Critical Circumstances**

The petitioner alleges that "critical circumstances" exist within the meaning of section 735(a)(3) of the Act with respect to imports of urea from Romania. In determining whether critical circumstances exist, we must examine whether:

(A) (i) There is a history of dumping in the united States or elsewhere of the class or kind of merchandise which is the subject of investigation at less than fair value; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM 146 trade statistics on imports of this merchandise for equal periods immediately preceding and following the filing of the petition, from March through December 1986. While there was an increase in imports over previous years during 1986, and the average monthly imports in the period immediately following the filing of the petition were higher than those in the period immediately preceding the filing, the post filing increase can be attributed to seasonal trends in imports of urea. Based on this analysis, we find that imports of the subject merchandise have not been massive over a short period.

Since we do not find that there have been massive imports, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of urea from Romania.

**Verification**

In accordance with section 776(a) of the Act, we verified the information submitted in the response by using standard verification procedures, including on-site examination of records and selection of original source documentation containing relevant information.

**Comments Section**

***Petitioner's Comments***

*Comment #1:* Petitioner argues that the Department has correctly chosen the UK as a surrogate country and must proceed to use data from the UK in determining foreign market value for purposes of this determination.

DOC response: We agree. To the extent possible, the Department used the most reliable and specific information available for the UK, the surrogate country selected, according to our methodology. See our response to Respondent's Comment #1.

*Comment #2:* Petitioner argues that if the Department has verified information from the surrogate respondent, ICI, foreign market value should be based on that data. To the extent that ICI has allowed the Department to ascertain the reliability of the aggregate data furnished, petitioner further argues that we should consider the data without having supporting documents put on the record in the investigation. Finally, petitioner contends that, if the Department has reliable verified information on ICI's production costs, we must use that data as the basis of constructed value without resorting to the Romanian production factors.

*DOC response:* If the Department could have obtained complete and verifiable information from ICI, we would have based foreign market value on that data. In this case, however, we determined that we could not legitimately construct a foreign market value solely on the basis of the aggregate data furnished by ICI. As petitioner has pointed out, the cost of natural gas accounts for a significant portion of the total cost of producing urea. The Department was unable to obtain from ICI the price it pays for this critical input. This unknown value, together with the other specific information which either could not be verified or obtained from ICI, represents a substantial proportion of the constructed value and would have rendered that value unreliable and meaningless.

Since we concluded that foreign market value could not reasonably be constructed on the basis of ICI data, the Department resorted to the alternative method of constructed value calculation based on factors of production in the country of exportation as valued in the UK.

*Comment #3:* Petitioner argues that in the absence of verified data from a surrogate producer in a country at a comparable level of economic development, the Department must

determine foreign market value using factors of production valued in the UK from reliable public data, rather than rely on average import prices. Petitioner contends that the volume of urea exported from the USSR, the GDR and Romania has depressed prices from all sources. Petitioner states that since urea is a fungible commodity, prices from all sources move together.

*DOC response:* We agree that it would not have been appropriate to base foreign market value on import prices. We reached this conclusion based on a variety of factors suggesting that the pricing of urea internationally was influenced by imports from the countries under investigation.

Urea is a fungible commodity traded throughout the world. As a result, the level of market share of a specific group of imports tends to affect sales elsewhere.

Nonmarket economy producers, and in particular those subject to our investigations, have become major participants in world urea trade. There is evidence that these producers' ability to separate pricing/supply decisions from market demand conditions has significantly contributed to the distortion of urea prices worldwide. As a result, we concluded that determining foreign market value on the basis of prices in any market would be inappropriate.

Moreover, even if we had attempted to use U.S. import prices, we would have had difficulty isolating a sufficiently large basket of prices during the period of investigation to provide a reliable basis for comparison. Besides eliminating the three countries under investigation, we also would have had to disregard nearly all of the remaining foreign suppliers on grounds of minimal exports, that they were subject to foreign antidumping investigations, or that their governments were known to provide export subsidies. In addition, it would have been impossible to identify sales of solid urea within the basket of urea imports reported in the statistics in order to make the appropriate adjustments.

*Comment #4:* Petitioner states that because the Department was unable to verify all of the factors of production information which was submitted by Chimica, and because Chimica failed to supply information with regard to some other factors, the Department is required to base the foreign market value calculation on the best information otherwise available. In addition, petitioner maintains that the Department must not use data obtained at verification to "fill in" gaps in Chimica's response, nor should the Department use verification as a means of correcting significant errors in data submitted by Chimica.

*DOC response:* We agree that the use of best information available is appropriate in this case. We believe, however, that the Department has broad discretion to determine the nature and extent of best information to be used. Various circumstances of each case may be considered by the Department including, but not limited to, the degree of good faith cooperation by the respondent, whether information missing renders the Department unable to analyze effectively the information submitted and verified, and the nature of inaccuracies discovered in the response during verification.

After careful consideration of the relevant facts in this case, we determined that the factors of production such as consumption of natural gas and labor were adequately verified and should be used for purposes of the foreign market value calculation. We used the best information otherwise available including that provided by petitioner for those factors which could not be quantified or appropriately valued.

*Comment #5:* Petitioner argues that the Department should not assume that the 10 percent statutory minimum for general, selling, and administrative (GS&A) expenses is appropriate but must measure each significant element of GS&A and individually value each GS&A element, such as interest expense, rents, taxes, insurance and selling expenses. Petitioner states that such expenses are incurred in all countries and, as such, are a normal cost to producers.

*DOC response:* We agree that no assumptions should be made with regard to the extent of GS&A involved in production and distribution of urea. Section 353.8(c) of our regulations [19 CFR 353.8(c)] directs us to add "an amount of general expenses and profit as required by section 773(e)(1)(B) of the Act" to the value obtained on the basis of the Romanian factors of production and valued in an appropriate surrogate country. Section 773(e)(1)(B) of the Act in turn requires us to determine GS&A expenses in the amount "equal to that usually reflected in sales of merchandise . . . in the country of exportation" 19 U.S.C. 1677b(e)(1)(B). The country of exportation in this case is determined to be state-controlled to an extent that the normal costs, expenses, and profits (including GS&A expenses for purposes of constructed value calculations) cannot be determined in that country. At the same time, our regulations do not include GS&A expenses in the category of "specific objective components or factors" to be obtained from the state-controlled-economy country under investigation and valued in a surrogate country.

Therefore, we must determine the amount of GS & A expenses as they are reflected in sales of merchandise of the same class or kind in the surrogate country without reference to specific factors or components of the GS&A expenses in Romania. The method of financing of the Romanian facilities involved in production of the subject merchandise, therefore, cannot be relied upon for purposes of our calculation, and the amount of usual GS&A expenses involved in production and distribution of urea must be determined on the basis of normal costs and expenses in the UK. We do not have any indication that general expenses involved in production and distribution of urea in the UK are above the statutory minimum of 10 percent. Therefore, we applied this statutory minimum in our calculations according to section 773(a)(1)(B) of the Act.

*Comment #6:* Petitioner states that the Department should adjust its calculation of the cost of natural gas by using published data for the last two quarters of 1985 which represent the price to industrial users in the UK during the period of investigation.

*DOC response:* For our determination of foreign market value, we used updated gas prices. In fact, we used gas prices for the last two quarters of 1985 and the first quarter of 1986 to allow for the production of urea sold during the period of investigation which was produced and exported during those three quarters of 1985 and 1986. The use of the 1985 data on gas price resulted in a higher gas cost than that used in the preliminary determination, the latter being based on 1986 prices which were declining.

*Comment #7:* Petitioner argues that water usage was not accounted for in the Department's preliminary determination calculation. Petitioner contends that water used free of charge in Romania must be valued on the basis of utility rates in the UK.

*DOC response:* Water was not valued in the preliminary determination because it was considered to be recycled. However, for the final determination a water expense was included in factory overhead under the methodology explained in the "Foreign Market Value" section.

*Comment #8:* Petitioner argues that steam and indirect materials used in the production of urea must be included in the Department's calculation of urea

production cost. It maintains that the Department omitted such items in its preliminary calculations.

*DOC response:* These factors are individual costs included in factory overhead. Therefore, they are accounted for and valued as described in "Foreign Market Value" section of this notice.

*Comment #9:* Petitioner contends that the cost of labor was significantly undervalued in our preliminary calculations because (1) only direct labor usage was considered and (2) the 1981 UK labor costs obtained from published sources were not indexed to account for inflation.

*DOC response:* For purposes of our final determination we used direct labor hours which were obtained at verification. Costs per hour were obtained from the "Hourly Compensation Costs for Production Workers in U.S. Dollars" (U.S. Bureau of Labor Statistics, February 1987) which reflects the data for the United Kingdom in 1980. The cost information is included in petitioner's pre-hearing brief. Direct labor usage was considered in the final determination because other indirect labor expenses are included in our calculation of the overall factory overhead based on the petitioner's excerpt from the *Fertilizer Manual*.

*Comment #10:* Petitioner argues that the depreciation of Romanian plants and equipment should be included within the factory overhead rather than general expenses and should be based on the costs of plants and equipment purchased from market economy countries or on the costs incurred by other countries for comparable facilities.

*DOC response:* Depreciation was considered to be a part of factory overhead and was included within the overall amount as described in the "Foreign Market Value" section.

*Comment #11:* Petitioner contends that the credit for sales of carbon dioxide in the preliminary calculations was improper since the Romanian producers do not sell carbon dioxide.

*DOC response:* We agree. During the verfication no information on the quarterly sales of carbon dioxide was presented. Therefore, no credit was allowed.

*Comment #12:* Petitioner contends that the U.S. price of the sales which involve countertrade transactions as reported by Chimica and verified by the Department should be used as best information otherwise available because the Department does not have adequate information to adjust the U.S. price for the effects of countertrade. As the same time, however, petitioner contends that certain adjustments for credit and guarantee expenses incurred by respondent with regard to the countertrade transactions should be made by the Department.

*DOC response:* It would be distortive and inappropriate to make some adjustments while disregarding other adjustments related to countertrade. We did not make any adjustments to the U.S. price to account for the effects of the countertrade method involved in the sale of urea to the United States, because we do not have adequate means to measure those effects. In addition, some adjustments advocated by petitioner do not appear appropriate because they do not seem to related directly to, or have an effect on, the sales of urea.

*Comment #13:* Petitioner argues that the Department must value its inland freight calculation to account for revised distances from plant to port as determined during verification.

*DOC response:* We made such deductions in accordance with the plant to port distances revised at verification.

*Comment #14:* Petitioner contends that all port, brokerage and loading charges should be valued in the UK, or based on U.S. producers' costs, and deducted from U.S. price.

*DOC response:* We valued such costs in the UK. Refer to the section on "United States Price."

*Comment #15:* Petitioner argues that U.S. sales through a party related to Chimica should properly be considered exporter's sales price sales, not purchase price transactions. Because Chimica has not reported U.S. selling expenses, the amounts reported in the petition may be used as the best information available and deducted from U.S. price.

*DOC response:* We agree. Refer to the "United States Price" section of this notice.

*Respondent's Comments*

*Comment #1:* Respondents claim that the choice of the UK as a surrogate for Romania is not supported by substantial evidence in the record. They state that by using the data cited by the Department with respect to macroeconomic criteria, Romania and the UK cannot be regarded as being at a comparable stage of economic development.

*DOC response:* We disagree. Our selection of the UK as a surrogate for Romania was based on the relative comparability of economic and demographic statistics, as well as on the fact that these two countries are major producers of natural gas. Based on the macroeconomic indicators we reviewed, we could find no meaningful disparities between the two countries relative to comparisons made with other major urea-producing nations.

*Comment #2:* Respondents argue that there were no Romanian sales of urea to the U.S. during the Department's standard six-month period of investigation, and that the Romanian respondents have actually withdrawn from the market because of falling prices. Respondents therefore request an explanation as to why the Department has proceeded with the investigation.

*DOC response:* The Department may alter the period of investigation in accordance with 19 CFR 353.38 and has done so in this investigation.

*Comment #3:* Respondents argue that the values which the Department assigned to catalyst chemical inputs in its preliminary determination were overstated. They request that the Department adjust these values to reflect their verified rate of consumption.

*DOC response:* We have not valued such inputs individually for this determination but have included such materials in the factory overhead. Refer to the "Foreign Market Value" section of this notice for a further discussion of factory overhead.

*Comment #4:* Respondents also argue that the value assigned by the Department to formaldehyde anticaking agents in its preliminary determination was overstated. They note that these agents represent less than one percent by volume of the finished product but that the value assigned represented nearly two percent of the per ton purchase price. The claim that this ratio is too high and request that the value for these agents be adjusted downward.

*DOC comment:* We have also included this element in factory overhead. Refer to the "Foreign Market Value" section of this notice for a further discussion of factory overhead.

*Comment #5:* Respondents urge the Department to take account of variables affecting the "true cost" of inland rail freight, such as variable rates for distance travelled, in assigning values to the transportation factor for purposes of calculating U.S. price for the final determination.

*DOC response:* We have taken into account such variables. We used the rail rate which reflected distances from the plants to the port in Romania.

**Continuation of Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of urea from Romania that are entered, or

withdrawn from warehouse, for consumption, on or after January 2, 1987. The Customs Service shall continue to require a cash deposit or the posting of a bond for all entries or withdrawals from warehouse on or after the date of publication of this notice in the Federal Register, equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 90.71 percent. This suspension of liquidation will remain in effect until further notice.

**ITC Notification**

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. The ITC will determine whether these imports are causing material injury, or threaten material injury, to a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will isue an antidumping duty order, directing Customs Officers to assess an antidumping duty or urea from Romania entered, or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price.

The determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

May 18, 1987.

[FR Doc. 87-11906 Filed 5-22-87; 8:45 am]

BILLING CODE 3510-DS-M

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[A-461-601]

## Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that urea from the Union of Soviet Socialist Republics (USSR) is being, or is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise as described in the "Continuation of Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, (202) 377-1769, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

We have determined that urea from the USSR is being sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The weighted-average margins of sales at less than fair value are summarized in the "Continuation of Suspension of Liquidation" section of this notice.

### Case History

On December 23, 1986, we preliminarily determined that urea is being sold at less than fair value (52 FR 124, January 2, 1987). A case history is included in the notice of preliminary determination. On February 12, 1987, we postponed the final determination until not later than May 18, 1987, at the request of the respondent (52 FR 5323, February 20, 1987). On April 28, 1987, we held a hearing to address the issues arising in this investigation.

### Scope of Investigation

The merchandise covered by this investigation is solid urea as currently provided for in item 480.30 of the *Tariff Schedules of the United States*.

### Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value. We limited our investigation to Sojuzpromexport (SPE) and Philipp Brothers, Inc. and Philipp Brothers, Ltd. (Phibro), which together accounted for all exports of this merchandise to the United States. We investigated all sales of urea for the period January 1, 1986, through June 30, 1986.

### United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by SPE to U.S. importers other than Phibro, because the merchandise was sold to unrelated purchasers prior to its importation into the United States. For sales to Phibro, we used exporter's sales price (ESP) as the basis of United States price because SPE did not know the destination of the merchandise at the time of sale and Phibro resold the merchandise to unrelated U.S. purchasers after importation.

We calculated the purchase price and ESP based on the f.o.b. price to unrelated purchasers. We made deductions for port handling and loading charges. For ESP sales we deducted credit and other expenses incurred in selling the merchandise in the U.S.

In accordance with the policy set forth in our final determination in the investigation of *Carbon Steel Wire Rod from Poland* (49 FR 29434, July 20, 1984), we based the port handling deductions upon costs in a non-state-controlled-economy country, the United Kingdom (UK), for the reasons stated in the "Foreign Market Value" section.

### Foreign Market Value

Petitioner alleged that the USSR is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value (FMV) under section 773(a) of the Act. Our analysis of issues relating to the USSR's characterization as a state-controlled-economy country and our selection of a surrogate country are discussed in the notice of preliminary determination. As a result, we determined that section 773(c) of the Act applies to this investigation.

As noted in the preliminary determinaton, we sent a questionnaire to, and received a response from, a major producer of urea in the UK, Imperial Chemical Industries PLC (ICI). We attempted to supplement the information in this response while visiting ICI's facility in the UK. Our analysis indicated that additional information was needed from ICI. We attempted to obtain the additional data in order to verify all of ICI's necessary information prior to the final determination. However, we were unsuccessful in obtaining these data for the record in this investigation. Lacking this information at this time, we find it inappropriate to use the ICI data for this determination.

Therefore, we calculated the constructed value based on the factors of production of the Soviet producers. At verification, certain factors could not be sufficiently quantified or valued. For these factors, we used information provided by petitioner or otherwise available to the Department.

Urea is produced in thirty-six plant complexes throughout the Soviet Union as reported by the Tennessee Valley

Authority's *World Fertilizer Capacity* report. The Department selected six locations as its sample base for its determination. Two of the six plant complexes were chosen by the Department for verification. During the verification it became apparent that the information for all six plant complexes in the questionnaire response were budgeted factors. Since these budgeted factors could be higher or lower than the actual factors, the Department is using the weighted-average actual factors of the two plants which were verified for the purpose of this final determination. Certain factors could not be quantified and other factors could not be appropriately valued from the United Kingdom. In these cases, the Department used the most reliable objective information contained in the record of the investigation. For certain data the Department relied upon supplemental reports provided by the petitioner. These included the *Fertilizer Manual*, which was published prior to the Department's investigation by the International Fertilizer Development Center of the United Nations' International Development Organization, *Energy Prices and Taxes* (Fourth Quarter 1985, International Energy Agency, for West Germany) and the *Hourly Compensation Costs for Production Workers in Chemicals and Allied Products Manufacturing* (U.S. Department of Labor, Bureau of Labor Statistics, Office of Productivity and Technology, August 1985).

To value natural gas, we used a tariff set by Gasunie N.V., the Gas Board in the Netherlands. The category F of the tariff, the so-called "F" price, is established for large industrial users applicable throughout the European Communities (EC). All major fertilizer producers in the EC, qualify for the F price because of their high gas usage. While the F price was established as the result of an EC complaint brought by German, French, and Belgian fertilizer producers, and directly links prices available to fertilizer producers in those countries to the Dutch tariff, evidence in the record indicates that gas prices to large industrial users in the UK, such as ICI, reported to be the largest gas user in the UK, was linked to the F price during the perod of investigation.

The F price is a maximum price established for each quarterly period. Since the F price declined during the period of investigation, we calculated the difference in F price in two succeeding quarters and allocated that difference over the intervening months, in order to derive monthly gas prices which we then weight averaged. We used this monthly weighted-average F price in order to most closely approximate the price actually paid for gas in market economy countries during the time period when production of the urea subject to our investigation would have occurred. Therefore, we believe that the F price represents the most accurate, verifiable gas price for the fertilizer sector in the UK.

The UK labor rates were obtained from public sources. Although some of the individual items included as factory overhead were verified, others could not be sufficiently quantified or valued. Therefore, for factory overhead the Department developed a ratio of the factory overhead costs to the gas costs as provided in the petition. The individual components of the factory overhead costs were based on a utilization of plant capacity which was less than the utilization of capacity determined to exist in the USSR. The Department thus made appropriate adjustments to account for the higher capacity utilization rate in the USSR.

Because of the unavailability of industry data in the UK, we used the statutory minimum of 10 percent of the sum of material and production cost for general expenses and the statutory minimum of eight percent for profit.

We made currency conversions in accordance with 19 CFR 353.56(a)(1) using certified exchange rates as furnished by the Federal Reserve Bank of New York. For ESP comparisons, we used the official exchange rate on the date of sale since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the law supersedes that section of the regulations.

**Negative Determination of Critical Circumstances**

The petitioner alleges that "critical circumstances" exist within the meaning of section 735(a)(3) of the Act with respect to imports of urea from the USSR. In determining whether critical circumstances exist, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of investigation at less than fair value; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM 146 trade statistics on imports of this merchandise for equal periods immediately preceding and following the filing of the petition, from March through December 1986. While there was an increase in imports over previous years during 1986, and the average monthly imports in the period immediately following the filing of the petition were higher than those in the period immediately proceeding the filing, the post filing increase can be attributed to seasonal trends in imports of urea. Based on this analysis, we find that imports of the subject merchandise have not been massive over a short period.

Since we do not find that there have been massive imports, we do not need to consider whether there is a history of dumping or whether importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of urea from the USSR.

**Verification**

In accordance with section 776(a) of the Act, we verified the data used in making this determination by using standard verification procedures, including on-site examination of records and selection of original source documentaton containing relevant information.

**Comments Section**

***Petitioner's Comments***

*Comment #1:* Petitioner argues that the Department has correctly chosen the UK as a surrogate country and must proceed to use data from the UK in determining foreign market value for purposes of this determination.

*DOC response:* We agree. To the extent possible, the Department used the most reliable and specific information available for the UK, the surrogate country selected, according to our methodology.

*Comment #2:* Petitioner argues that if the Department has verified information from the surrogate respondent, ICI, foreign market value should be based on that data. To the extent that ICI has allowed the Department to ascertain the reliability of the aggregate data furnished, petitioner farther argues that

we should consider the data without having supporting documents put on the record in the investigation. Finally, petitioner contends that, if the Department has reliable verified information on ICI's production costs, we must use that data as the basis of constructed value without resorting to the Soviet production factors.

*DOC response:* If the Department could have obtained complete and verifiable information from ICI, we would have based foreign market value on that data. In this case, however, we determined that we could not construct a foreign market value solely on the basis of the aggregate data furnished by ICI. As petitioner has pointed out, the cost of natural gas accounts for a significant porton of the total cost of producing urea. The Department was unable to abtain from ICI the price it pays for this critical input. This unknown value, together with the other specific information which either could not be satisfactorily verified or obtained from ICI, represents a substantial proportion of the constructed value and would have rendered that value unreliable and meaningless.

Since we concluded that foreign market value could not reasonably be constructed based solely on ICI data, the Department resorted to the alternative method of constructed value calculation based on factors of production in the country of exportation as valued in the UK.

*Comment #3:* Petitioner argues that in the absence of verified data from a surrogate producer in a country at a comparable level of economic development, the Department must determine foreign market value by using factors of production valued in the UK from reliable public data rather than rely on an average import price as suggested by respondents. Petitioner contends that the volume of urea exported from the USSR, the German Democratic Republic (GDR) and Romania has depressed prices from all sources. Petitioner states that since urea is a fungible commodity, prices from all sources move together.

*DOC response:* We agree that it would not be appropriate to base foreign market value on import prices. We reached this conclusion based on a variety of factors suggesting that the pricing of urea internationally was influenced by imports from the countries under investigation.

Urea is a fungible commodity traded throughout the world. As a result, the level of market share of a specific group of importers tends to affect sales elsewhere.

Non-market-economy producers, and in particular those subject to our investigations, have become major participants in world urea trade. There is evidence that these producers' ability to separate pricing/supply decisions from market demand conditions has significantly contributed to the distortion of urea prices worldwide. As a result, we concluded that determining foreign market value on the basis of prices in any market would be inappropriate.

Moreover, even if we had attempted to use U.S. import prices, we would have had difficulty isolating a sufficiently large basket of prices during the period of investigation to provide a reliable basis for comparison. Besides eliminating the three countries under investigation, we also would have had to disregard nearly all of the remaining foreign suppliers on the grounds of minimal imports, that they were subject to foreign antidumping investigations, or that their governments were known to provide export subsidies. In addition, it would have been impossible to identify sales of solid urea within the basket of urea imports reported in the statistics in order to make the appropriate adjustments.

*Comment #4:* Petitioner argues that the Department should not assume that the 10 percent statutory minimum for general, selling and administrative (GS&A) expenses is appropriate, but should quantify each individual cost item and value each appropriately. For example, petitioner claims that rents, taxes and insurance, since they are incurred by companies in non-state-controlled economy countries, should be included and valued. Additionally, it contends that the costs of selling expenses incurred by the Soviet trading company, such as selling salaries, brochures and catalogues, should be valued at UK prices. Further, petitioner contends that interest expense should be calculated on the basis of interest rates in the UK applied to the total value of the Soviet facilities which were allegedly supplied and financed by western companies through a mix of foreign debt and/or counter-trade buy-back arrangements.

*DOC response:* We agree that no assumptions should be made with regard to the extent of GS&A involved in the production and distribution of urea. Section 353.8(c) of our regulations [19 CFR 353.8(c)] directs us to add "an amount of general expenses and profit as required by section 773(e)(1)(B) of the Act" to the values obtained on the basis of the Soviet factors of production and valued in an appropriate surrogate country. Section 773(e)(1)(B) in turn requires us to determine GS&A expenses in the amount "equal to that usually reflected in sales of merchandise . . . in the country of exportation" 19 U.S.C. 1677b(e)(1)(B). The country of exportation in this case is determined to the state-controlled to an extent that the normal costs, expenses, and profits (including GS&A expenses for purposes of constructed value calculations) cannot be determined in that country. At the same time, our regualtions do not include GS&A expenses in the category of "specific objective components or factors" to be obtained from the state-controlled economy country under investigation and valued in a surrogate country. Therefore, we must determine the amount of GS&A expenses as they are reflected in sales of merchandise of the same class or kind in the surrogate country without reference to specific factors or components of the GS&A expenses in the Soviet Union. The method of financing of the Soviet facilities involved in production of the subject merchandise, therefore, cannot be relied upon for purpose of our calculations, and the amount of usual GS&A expenses involved in production and distribution of urea must be determined on the basis of normal costs and expenses in the UK. We do not have any indication that general expenses involved in production and distribution of urea in the UK are above the statutory minimum of 10 percent. Therefore, we applied this statutory minimum in our calculations according to section 773(e)(1)(B) of the Act.

*Comment #5:* Petitioner states that the Department should adjust its calculation of the cost of natural gas by using published data for the first two quarters of 1986 which represent the price to industrial users in the UK during the period of investigation.

*DOC response:* For our determination of foreign market value, we used updated gas prices. In fact, we used gas prices for the first three quarters of 1986 to allows for the production of urea sold during the period of investigation which was produced and exported during these three quarters.

*Comment #6:* Petitioner argues that water usage was not accounted for in the Department's preliminary determination calculation. Petitioner contends that water used free of charge in the USSR must be valued on the basis of utility rates in the UK.

*DOC response:* Water was not valued in the preliminary determination because it was considered to be recycled. However, for the final determination water was included in

factory overhead under the methodology explained in "Foreign Market Value".

*Comment #7:* Petitioner argues that chemicals, catalysts, steam and indirect materials used in the production of urea must be valued in the UK.

*DOC response:* We included these factors as part of the overall factory overhead as described in the "Foreign Market Value" section of this notice.

*Comment #8:* Petitioner contends that the cost of labor was significantly undervalued in our preliminary calculations because (1) only direct labor usage was considered and (2) the 1981 UK labor costs obtained from published sources were not indexed to account for inflation.

*DOC response:* For purposes of our final determination, we used direct labor hours which were obtained at verification. Valuation costs per hour were obtained from the "Hourly Compensation Costs for Production Workers in U.S. Dollars," (U.S. Bureau of Labor Statistics, February, 1987), which reflect the data for the United Kingdom in 1986. The cost information is included in petitioner's per-hearing brief. Only direct labor usage was considered to be labor factor, since indirect labor, e.g. engineer's labor, is included in other cost components of factory overhead. See the "Foreign Market Value" section of this notice.

*Comment #9:* Petitioner argues that the depreciation of Soviet plants and equipment should be included in factory overhead rather than general expenses and should be based on the costs of plants and equipment purchased from market-economy countries or on the costs incurred by other countries to acquire comparable facilities.

*DOC response:* Depreciation has been considered to be part of factory overhead and is included in this overall amount as described in the "Foreign Market Value."

*Comment #10:* Petitioner contends that the credit for sales of carbon dioxide in the preliminary calculations was improper since the Soviet producers do not sell carbon dioxide but release it into the atmosphere.

*DOC response:* We agree. During the verification no information on sales of carbon dioxide was presented. Therefore, we did not offset costs with credit for such sales.

*Comment #11:* Petitioner contends that Phibro's sales of Soviet urea in the United States were made at less than Phibro's costs of acquisition, transportation and marketing. Petitioner argues, therefore, that the Department should apply its middleman dumping methodology and base the U.S. price on sales from Phibro to the first unrelated U.S. customers, regardless of whether the Soviet producer knew that its sales to Phibro were destined for the United States. Petitioner also argues that Phibro's allegation that its sales of Soviet urea to third countries should be used for purposes of FMV calculations is contrary to section 773(c) of the Act [19 U.S.C. 1677b(c)], which requires the FMV of the merchandise from a state-controlled-economy to be ascertained by reference to an appropriate surrogate country methodology.

*DOC response:* We determine that the Soviet producers do not know at the time of sale to Phibro that the urea will be destined for the U.S. market. We reach this conclusion on the following bases: (1) The contract between the Soviet producers and Phibro indicates several possible destinations of the merchandise, only one of which is the United States; (2) Phibro does in fact sell urea to locations other than the United States. Therefore, we determine that the appropriate U.S. sale price is the price from Phibro to the United States, not the price at which the Soviets sell the merchandise to Phibro. Because we determine that the appropriate U.S. sale is the sale by Phibro to unrelated purchases, it is unnecessary to address petitioner's allegation that Phibro is selling urea below its cost of acquisition.

We agree that section 773(c) requires that the FMV of merchandise from a state-controlled economy country should be ascertained by reference to an appropriate surrogate country methodology. Therefore, since urea sold by Phibro was exported directly from the Soviet Union, we determine that Phibro's foreign market value is the foreign market value determined by reference to our factors methodology, as described above. We also note that it would be inappropriate to use Phibro's third-country sales or its acquisition costs to determine foreign market value in this case given our determination that world-market prices of urea are depressed.

*Comment #12:* Petitioner argues that interest expenses for the period between SPE's payment to the suppliers and payment by the U.S. purchaser must be calculated on the basis of interest rates in the UK and that such interest expenses must be accounted for in our calculation of margins for the final determination.

*DOC response:* We disagree. In this investigation the Department has valued factors of production in a comparable surrogate country using the best information available. The specificity of the data obtained for valuing the factors is not sufficient for us to identify the directly related selling expense adjustments which would have to be made to foreign market value for both U.S. price and constructed value. Absent specific information that the respondent incurs extraordinary directly related selling expenses for its U.S. sales, the Department assumed, as best information available, that ordinary and similar selling expenses occur in both markets and, as such, they offset one another.

*Comment #13:* Petitioner argues that the Department erred in finding that critical circumstances do not exist for purposes of the preliminary determination. Petitioner claims that the decision concerning massive imports was based on an analysis of value instead of volume of imports. Petitioner also contends that our analysis should have included October imports to reflect the lag time in reporting imports. Petitioner also claims that there is a history of dumping of urea from the USSR.

*DOC response:* For this determination we analyzed the volume of imports. For a further discussion of critical circumstances, refer to the "Negative Determination of Critical Circumstances" section of this notice.

*Respondents' Comments*

*Comment #1:* Respondents claim that, in choosing the appropriate surrogate country, the Department should be cautious in applying numerical criteria such as GNP without considering its acceptability in comparison to other factors. For instance, respondents state that while the USSR has a relatively high GNP, other characteristics make the USSR more similar to lesser developed countries. Respondents state that macroeconomic considerations such as self-sufficiency of natural gas needs should be given primary consideration. Respondents argue that, based on natural gas supplies and income comparability, appropriate surrogates are Saudi Arabia, Qatar, Kuwait, Trinidad and Tobago, Venezuela, Mexico, Malaysia, Indonesia, the United Arab Emirates and Egypt. Respondents claim that the melding of raw material supplies and income comparability is especially proper in a situation such as this involving a capital intensive industry. Respondents also rely on the size of the agricultural sectors of these nations which create a home market demand for urea.

*DOC response:* Our selection of the UK as a surrogate for the USSR was based on economic and demographic statistics as well as the fact that both of these countries are major producers of natural gas. We believe that our

dismissal of macroeconomic comparability criteria would have conflicted with our regulatory guidelines and resulted in an inappropriate selection.

*Comment #2:* Respondents argue that the Department has a strong preference for using prices rather than costs as the basis for determining foreign market value. Since the prices of ICI, the sole urea producer in the UK, are significantly distorted by a number of factors, respondents argue that the average U.S. import price of urea from other surrogate countries is the appropriate basis for foreign market value. Respondents claim that U.S. import prices are the most current verifiable data available and their use is supported by the preference for prices.

*DOC response:* We disagree. See our response to petitioner's comment #3.

*Comment #3:* Respondent Phibro argues that as an independent exporter of Soviet urea it should have a separate antidumping margin calculated on the basis of its sales in the United States and third countries. In particular, Phibro contends that its sales of Soviet urea to third countries should be used for purposes of foreign market value calculations because Phibro is a market-oriented entity not subject to Soviet state controls. Furthermore, Phibro claims that the U.S. price should be based on its sales to first unrelated purchasers in the United States, instead of the sales by the Soviet agencies to Phibro, because the Soviet suppliers had no knowledge at the time of sale whether urea was destined for the United States.

*DOC response:* We agree that Phibro should have a separate antidumping margin calculated on the basis of its sales in the U.S. and the appropriate foreign market value. However, we disagree that Phibro's sales to third countries should be used for purposes of foreign market value calculations. See our response to Petitioner's comment #11.

*Comment #4:* Phibro argues that the publicly available data used by the Department in its preliminary determination to value gas, labor and electricity factors were overstated. Phibro claims that ICI, as the largest natural gas purchaser in the UK, pays a substantially lower price than the price to industrial users which formed the basis for valuing gas in the preliminary determination calculations. Phibro claims the labor rate used in our calculations for the preliminary determination includes training, clothing, insurance, social welfare costs and other items which are part of general expenses. Phibro claims that the electricity rate used is not applicable to chemical producers. It argues that, if the Department bases foreign market value for the final detemination upon factors of production, the cost used should be actual costs, in the UK, not broadly based, unreliable statistics.

*DOC response:* For this determination we adjusted the methodology used in the preliminary determination with respect to the valuation of these factors. For a discussion of the gas costs, refer to the "Foreign Market Value" section. Concerning labor rates, refer to the "DOC Response" to petitioner's comment #10. The value of electricity was included in factory overhead, as discussed in the "Foreign Market Value" section of this notice.

*Comment #5:* Phibro argues that, when calculating financing costs for urea plants in the USSR, the Department should take into account time for construction of the plants and should assume that variable rate financing would have been used for such projects.

*DOC response:* The Department included the financing costs in the 10 percent statutory minimum for general expenses. See our response to petitioner's Comment #6.

*Comment #6:* Phibro argues that an inland freight component for shipment to the port in the USSR should not be deducted from the United States price since all the urea which was exported to the United States was produced in the urea plant located at the port.

*DOC response:* As we have determined that the U.S shipments were produced at the port plant, we have not deducted any charges for inland freight or loading to rail cars from the U.S. price.

## Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, in accordance with section 733(d) of the Act, of all entries of urea from the USSR that are entered, or withdrawn from warehouse, for consumption, on or after January 2, 1987. The Customs Service shall continue to require a cash deposit or the posting of a bond for entries for consumption made on or after the date of publication of this notice in the Federal Register equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted average margin is shown below.

| Manufacturer/Producer Exporter | Weighted-average margin percent |
|---|---|
| Soguzpromexport (SPE) | 59.20 |
| Philipp Brothers, Ltd., and Philipp Brothers, Inc. (Phibro) | 59.20 |
| All other | 59.20 |

## ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. The ITC will determine whether these imports are causing material injury, or threaten material injury, to a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs Officers to assess an antidumping duty on urea from the USSR entered, or withdrawn from warehouse, for consumption, after the suspension of liquidation equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

May 18, 1987.

[FR Doc. 87-11907 Filed 5-22-87; 8:45 am]

BILLING CODE 3510-DS-M

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## National Oceanic and Atmospheric Administration

### Application for Marine Mammals Permit; USN—Naval Facilities Engineering Command (P8D)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant: Natural Resources Management Branch, Western Division, Naval Facilities Engineering Command (NFEC), P.O. Box 727, San Bruno, California 94066
2. Type of Permit: Scientific Research/ Scientific Purposes
3. Name and Number of Marine Mammals: Gray whale (*Eschrichtius robustus*), 1,000
4. Type of Take: Intentional and unintentional harassment to determine the effects of Landing Craft Cushion on gray whales and ways to mitigate those effects.
5. Location of Activity: Waters off San Diego County, California
6. Period of Activity: 3 Years

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: May 20, 1987.

Nancy Foster,

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87–11868 Filed 5–22–87; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishing an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Burma

May 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 27, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715. For information on categories on which consultations have been requested call (202) 277–3740.

### Background

A CITA directive published in the Federal Register on February 27, 1987 (52 FR 6061) announced that, on January 30, 1987, the United States, in accordance with section 204 of the Agricultural Adjustment Act of 1956, had requested the Government of Burma to enter into consultations concerning exports to the United States of men's and boys' woven cotton and man-made fiber shirts in Category 340/640.

The United States has decided, inasmuch as no solution has been reached in consultations with the Government of Burma on a mutually satisfactory limit for this category, to control imports of cotton and man-made fiber textile products in Category 340/640, produced or manufactured in Burma and exported during the twelve-month period which began on January 30, 1987 and extends through January 29, 1988, at a level of 93,876 dozen.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in Category 340/640 during the twelve-month period which began on January 30, 1987 and extends through January 29, 1988, in excess of the designated level or restraint.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Burma, further notice will be published in the Federal Register.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987)*.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

May 20, 1987.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 27, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Category 340/640, produced or manufactured in Burma and exported during the twelve-month period which began on January 30, 1987 and extends through January 29, 1988, in excess of 93,876 dozen[1].

Textile products in Category 340/640 which have been exported to the United States prior to January 30, 1987 shall not be subject to this directive.

Textile products in Category 340/640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754),

[1] The limit has not been adjusted to account for any imports exported after January 29, 1987.

November 8, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987)*.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11901 Filed 5-22-87; 8:45 am]

BILLING CODE 3510-DR-M

## Establishment of an Import Limit for Certain Cotton Textile Products From the Republic of El Salvador

May 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 27, 1987. For further information contact William Dawson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

During recent consultations between the Governments of the United States and the Republic of El Salvador, agreement was reached to establish designated consultation levels for certain cotton textile products in Category 300/301 (carded and combed cotton yarn), produced or manufactured in El Salvador and exported during the period January 1, 1987 through December 31, 1988.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports of cotton textiles and textile products in Category 300/301, produced or manufactured in El Salvador and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987, at the designated level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 8, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987)*.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

Committee for the Implementation of Textile Agreements

May 20, 1987.

Commissioner of Customs,
*Department of the Treasury Washington, DC*

[redacted]

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of April 30, 1987 between the Governments of the United States and the Republic of El Salvador; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 27, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 300/301 (carded and combed cotton yarn), produced or manufactured in the Republic of El Salvador and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987, in excess of 8,500,000 pounds.[1]

Textile products in Category 300/301 which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in Category 300/301 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 8, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987)*.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textiles Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11902 Filed 5-22-87; 8:45 am]

BILLING CODE 3510-DR-M

## Amendment to the Export Visa Requirement for Certain Cotton, Wool and Man-Made Fiber Textile Products From the Republic of Korea

May 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the Bilateral Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, has issued the directive published below to the Commission of Customs to be effective on May 27, 1987. For further information contact Eve Anderson, International Trade Specialist (202) 377-4212.

### Background

CITA directives dated May 19, 1972, as amended, and November 4, 1982, as amended, (37 FR 10606 and 47 FR 50940), established export visa and exempt certification requirements for certain cotton, wool and man-made fiber, silk blend and other vegetable fiber textiles and textile products from Korea. The Governments of the United States and the Republic of Korea have reached agreement to further amend the visa and exempt certification requirements to include amended language regarding information required on the visa and exempt certification stamp as described in the letter published below to the Commissioner of Customs.

The two governments also agreed to further amend the visa and exempt certification system to include part and merged categories for certain cotton,

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea.

A complete list of merged and part-categories and a list of exempt products are published as enclosures to the letter to the Commissioner of Customs.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1987).*

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 20, 1987

*Commissioner of Customs, Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives of May 19, 1972, as amended, and November 4, 1982, as amended, which established an export visa and exempt requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea.

Effective on May 27, 1987, the directives of May 19, 1972 and November 4, 1982 are further amended to include the following revised language:

"A shipment shall be visaed or certified by the placing of original stamped markings (the visa or certification) in blue ink on the front of the invoice (Special Customs Invoice Form 5515, successor document or commercial invoice when such form is used). Each visa and certification will include its number and date and the signature of the issuing official. The visa number shall be nine digits and letters, beginning with the numeric digit for the last digit of the date of export, the two character alpha county code specified by the International Organization for Standardization (ISO), and a six digit numeric serial number identifying the shipment; e.g., 7 KR123456). Each visa will also indicate the correct category of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products involved; the appropriate quantity and unit or units; and the authorized signature of the official using the visa.

"Annex B lists all the exempt products which will require a 'Non-Quota, Exempt Certification.' Annex A lists all the part-category and merged category visas required for entry. Products covered by merged category quotas must be accompanied by either a merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota category 338/339 may be visaed as 'Category 338/339' or if the shipment consists solely of Category 338 merchandise, the shipment may be visaed as 'Category 338' but not as 'Category 339.')"

The directives of May 19, 1972 and November 4, 1982 are further amended to include part and merged categories as listed in Annex A, as well as a list of exempt products in Annex B for goods exported on or after January 1, 1987.

Categories 640–DO, 640–DY, 640–OO and 640–OY are subject to this directive for goods exported on or after March 31, 1987. Goods exported prior to March 31, 1987 shall be subject to the January 28, 1987 directive which required visas for Categories 640–D, 640–DY, 640–O and 640–OY.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386 and July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

## ANNEX A—PART CATEGORIES

| Category | TSUSA No. |
|---|---|
| 359–H (Headwear) | 702.0600 and 702.1200. |
| 359–O (Other) | All TSUSAs except 702.0600 and 702.1200. |
| 369–L (Luggage) | 706.3210, 706.3650 and 706.4111. |
| 369–O (Other) | All TSUSA's except 706.3210, 706.3650 and 706.4111. |
| 459–W (Woven headwear). | 702.7500 and 702.8000. |
| 459–O (Other) | All TSUSA's except 702.7500 and 702.8000. |

## ANNEX A—PART CATEGORIES—Continued

| Category | TSUSA No. |
|---|---|
| 605–C (Cordage) | 316.5500 and 316.5600. |
| 605–O (Other) | All TSUSA's except 316.5500 and 316.5600. |
| 614–W (Man-made fiber/Wool blended fabrics). | 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568 and 338.1572. |
| 614–O (Other) | All TSUSA's except 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568 and 338.1572. |
| 640–DY (Dress shirts made from fabric with two or more colors in the warp and/or the filling). | 381.3132 and 381.9535. |
| 640–DO (Dress shirts—other). | 381.3134 and 381.9540. |
| 640–OY (Other shirts made from fabric with two or more colors in the warp and/or filling). | 381.3142, 381.3152, 381.9547 and 381.9550. |
| 640–OO (Other shirts—other). | 381.3144, 381.3154, 381.3333, 381.3558, 381.6972, 381.6666, 381.9305, 381.9400, 381.9549, 381.9844 and 381.9968. |
| 641–Y (Blouses made from fabric with two or more colors in the warp and/or filling). | 384.9110 and 384.9120. |
| 641–O (Blouses—other). | All TSUSA's except 384.9110 and 384.9120. |

ANNEX A—PART CATEGORIES—Continued

| Category | TSUSA No. |
|---|---|
| 659–C (Coveralls) | 381.3325, 381.9905, 384.2205, 384.2530, 384.8806, 384.8807 and 384.9310. |
| 659–H (Headwear) | 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650. |
| 659–S (Swimwear) | 381.2340, 381.3170, 381.9100, 381.9570, 381.1920, 381.2339, 381.8300, 381.8400 and 381.9353. |
| 659–O (Other) | All TSUSA's except: (coveralls) 381.3325, 381.9905, 384.2205, 384.2530, 384.8806, 384.8807 and 384.9310 (headwear) 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650 (Swimwear) 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9353. |
| 669–C (Cordage) | 348.0065, 348.0075, 348.0565 and 348.0575. |
| 669–F (Fishnets) | 355.4520 and 355.4530. |
| 669–P (Man-made fiber bags). | 365.5300. |
| 669–T (Tents and Tarpaulins). | 366.1105 and 369.6210. |

ANNEX A—PART CATEGORIES—Continued

| Category | TSUSA No. |
|---|---|
| 669–O | ALL TSUSA's except: (Cordage) 348.0065, 348.0075, 348.0565 and 348.0575 (Fishnets) 355.4520 and 355.4530 (Man-made fiber bags) 365.5300 (Tents) 366.1105 and 369.6210. |
| 670–L (Luggage) | 706.3415, 706.4130 and 706.4135. |
| 670–O (Other handbags and flatgoods). | All TSUSA's except 706.3415, 706.4130 and 706.4135. |

Annex A—Merged Categories

330/331
310/318
333/334
337/637
338/339
347/348
353/353/653/654
433/434
445/446
633/634/635
638/639
645/646
847/648
670–L/670[1]

Annex B—Exempt Products Requiring Exempt Certification

1. *Chima*—The long, formless and ample skirt portion of the traditional Korean Chima-chogori dress set.

2. *Chogori*—The short halter-type blouse or top portion of the traditional Korean chima-chogori dress set.

3. *Bosun*—An ankle boot-type article, wholly of cloth, worn by Korean women indoors.

4. *Fabrics*—not to exceed 24x48 inches in size, containing hand-embroidered or handpainted Korean scenes, and used primarily as decorations or art objects.

5. *Handmade carpets*, i.e., in which the pile was inserted or knotted by hand and classified by the U.S. Customs Service under TSUSA Numbers 360.0800, 360.1015, 360.1515, 360.7800 or 360.7820.

6. *Korean-style handbags*—and other flatgoods of the type considered by the U.S. Custom Service to be classified as luggage: women's and children's handbags, and billfolds, card cases, coin purses, eyeglass cases and similar flatgoods.

7. *Martial Arts Uniforms.*

8. *Toys for animals.*

[1] In Category 670, only TSUSA numbers 706.3415, 706.4130 and 706.4135.

[FR Doc. 87–11806 Filed 5–22–87 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Price Redetermination.

**ADDRESS:** Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781.

**SUPPLEMENTARY INFORMATION:**

**a. Purpose**

Fixed price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs.

**b. Annual Reporting Burden**

The annual reporting burden is estimated as follows: Respondents, *3,5000*; response per respondent, *2*; total annual responses, *7,000*; hours per response, *1*; and total burden hours, *7,000*.

**Obtaining Copies of Proposals**

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0071, Price Redetermination.

Dated: May 11, 1987.

Margaret A. Willis,

*FAR Secretariat.*

[FR Doc. 87–11817 Filed 5–22–87; 8:45 am]

BILLING CODE 6820–61–M

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**Federal Acquisition Regulation (FAR); Information Collection Under OMB Review**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Contract Cost Principles and Procedures (FAR 31.205–2, Automatic Data Processing Equipment Leasing Costs).

**ADDRESS:** Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781.

**SUPPLEMENTARY INFORMATION:**

**a. Purpose**

FAR Part 31, Contract Cost Principles and Procedures, contains cost principles and procedures for (a) the pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed and (b) the determination, negotiation, or allowance of costs when required by a contract clause. However, certain cost elements that are reviewed pursuant to this part, require supporting documentation. One of these involves a justification of automatic data processing equipment leasing costs under FAR 31.205–2.

**b. Annual Reporting Burden**

The annual reporting burden is estimated as follows: Respondents, *3,172;* responses per respondent, *1;* total annual responses, *3,172;* hours per response, *.5;* and total burden hours, *1,586.*

**Obtaining Copies of Proposals**

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0072, Contract Cost Principles and Procedures.

Dated: May 11, 1987.

Margaret A. Willis,

*FAR Secretariat.*

[FR Doc. 87–11818 Filed 5–22–87; 8:45 am]

BILLING CODE 6820–61–M

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**Federal Acquisition Regulation (FAR); Information Collection Under OMB Review**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Indirect Cost Rates.

**ADDRESS:** Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781.

**SUPPLEMENTARY INFORMATION:**

**a. Purpose**

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices. The contractor's execution of Certificate of Current Cost or Pricing Data is required for defense contracts by Pub. L. 87–653 Truth in Negotiations Act (10 U.S.C. 2306(f)) and for nondefense contracts by Federal acquisition policy.

**b. Annual Reporting Burden**

The annual reporting burden is estimated as follows: Respondents, *600;* responses per respondent, *1;* total annual responses, *600;* hours per response, *1;* and total burden hours, *600.*

**Obtaining Copies of Proposals**

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0069, Indirect Cost Rates.

Dated: May 11, 1987.

Margaret A. Willis,

*FAR Secretariat.*

[FR Doc. 87–11819 Filed 5–22–87; 8:45 am]

BILLING CODE 6820–61–M

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**Federal Acquisition Regulation (FAR); Information Collection Under OMB Review**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Advance Payments.

**ADDRESS:** Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. F. Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781.

**SUPPLEMENTARY INFORMATION:** Advance payments may be authorized under federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determinations by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized.

**b. Annual reporting burden:**

The annual reporting burden is estimated as follows: Respondents, *500;* responses per respondent, *1;* total annual responses, *500;* hours per response, *1;* and total burden hours, *500.*

**Obtaining Copies of Proposals**

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041,

Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0073, Advance Payments.

Dated: May 11, 1987.

Margaret A. Willis,

*FAR Secretariat.*

[FR Doc. 87–11820 Filed 5–22–87; 8:45 am]

BILLING CODE 6820–61–M

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## Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Economic Price Adjustment.

**ADDRESS:** Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781.

**SUPPLEMENTARY INFORMATION:**

**a. Purpose**

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government.

**b. Annual Reporting Burden**

The annual reporting burden is estimated as follows: Respondents, *7,200;* response per respondent, *1;* total annual responses, *7,200;* hours per response, *.25;* and total burden hours, *1,800.*

**Obtaining Copies of Proposals**

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0068, Economic Price Adjustment.

Dated: May 11, 1987.

Margaret A. Willis,

*FAR Secretariat.*

[FR Doc. 87–11821 Filed 5–22–87; 8:45 am]

BILLING CODE 6820–61–M

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## Department of the Air Force

## USAF Scientific Advisory Board; Meeting

May 18, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Airships will meet on June 23rd and 24th, 1987, at the Pentagon, room 5D982, from 8:00 am to 5:00 pm each day. The purpose of the meeting is to review, discuss and evaluate the suitability of airships to perform certain Air Force roles and missions.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–4811.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-11834 Filed 5-22-87; 8:45am]

BILLING CODE 3910-01-M

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## Delivery of Personal Mail at Air Force Installations

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** This notice serves to advise the private sector of United States Air Force policy for delivering mail from private sources to individual members or employees of the Air Force. It only applies to mail received in quantities of 50 or more on the same day from the same mailer and addressed to individuals by name at their duty office. It does not apply to personal mail addressed to family housing areas on Air Force installations, to properly addressed mail sent to unit mail rooms, or mail intended for final delivery by the United States Postal Service. Additionally all mail, regardless of source or quantity, addressed to an Air Force operated Postal Service Center will be delivered as long as the name of the addressee and the receptacle (box) number are correct.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Major R. E. Hudson, Chief of Administrative Communications, Directorate of Information Management and Administration, Office of the Administrative Assistant to the Secretary of the Air Force, Washington, DC 20330–1000. Telephone (202) 695–2165.

**SUPPLEMENTARY INFORMATION:** The Air Force has a general policy that individual members and employees are not to use their office address for the receipt of personal mail. This policy has been difficult to enforce as it's often subjective if mail from private sources is intended for people as individuals or as officials of the Air Force. At times though it's obvious, due to the nature of the mail piece and the quantities received, that the mailing can be reasonably considered to be personal. Regardless, the Air Force attempts to deliver such mail if it contains a correct name and office address. Since the Air Force and not the Postal Service sorts and delivers mail internally on all Air Force installations, the receipt of large volumes of personal mail can tax available equipment and staffing resources. Several Air Force installations have recently requested permission to refuse to deliver large volumes of personal mail addressed to individuals at their office. In accordance with Department of Defense policy regarding installation management, the Air Force has approved these requests on an individual basis. At these installations unofficial mail (from private sources) addressed to individuals by name received in quantities of 50 or more on the same day from the same mailer may be refused and returned to the Postal Service. An exception was made for mailings of less than 50 pieces since such a low volume would have a negligible impact. Any mailer in the private sector intending to make such a mailing to an Air Force installation should first contact the Chief, Base Administration, at that installation to verify local delivery policy.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87–11824 Filed 5–22–87; 8:45 am]

BILLING CODE 3910–01–M

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## Department of the Army

## Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeeting: 17–18 June 1987.

Times of Meeting: 0800–1830, 17 June 1987; 0800–1500, 18 June 1987.

Place: 1745 Jeff Davis Highway, Crystal Square #4, Arlington, VA.

Agenda: The Army Science Board 1987 Summer Study on Lightening the Force will meet in executive session for the purpose of developing and discussing Subgroup and Panel recommendations, and for preparing and rehearsing the Panel's briefing of those recommendations. The first day will be devoted primarily to Subgroup preparation of their recommendations and presentation of those recommendations. On the second day the Subgroup presentations will be combined into an overall Panel presentation and plans will be developed for the report writing meeting in July. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sandra F. Genfeast,

*Administrative Assistant, Army Science Board.*

[FR Doc. 87–11925 Filed 5–22–87; 8:45 am]

BILLING CODE 3710-08-M

## Corps of Engineers, Department of The Army

### Final Selection; Fort Gibson Dam Units 5 and 6; Hydroelectric Power Project; Fort Gibson, OK

**AGENCY:** U.S. Army Corps of Engineers, DOD, Tulsa District, DOD.

**ACTION:** Notice of final selection of the Grand River Dam Authority as the financial sponsor and preference customer for the proposal Fort Gibson Dam Units 5 and 6, Hydroelectric Power Project, Fort Gibson, Oklahoma.

**SUMMARY:** The tentative selection of the Grand River Dam Authority (GRDA), an agency of the State of Oklahoma, as the financial sponsor and preference customer for the proposed Fort Gibson Dam Units 5 and 6, Hydroelectric Power Project, Fort Gibson, Oklahoma was announced in the **Federal Register**, 52 FR 8099 (1987). This announcement also stated that any subsequent proposals and/or applications for financial sponsorship or scheduling and receiving of power and energy from the project received prior to April 15, 1987, would be considered in the final selection process.

No subsequent proposals or applications for financial sponsorship or scheduling and receiving of power and energy from the project were received during the above mentioned public comment period which closed on April 15, 1987. Because no additional proposals were received and because the previously announced proposal submitted by GRDA met or exceeded all financial sponsor and preference criteria, notice is hereby given that GRDA is selected as the financial sponsor and preference customer for the proposed Fort Gibson Dam Units 5 and 6, Hydroelectric Power Project, Fort Gibson, Oklahoma.

**ADDRESSES:** For futher information about the proposed project design, construction, and financing, please contact:

Welden M. Gamel, Chief, Engineering Division, Tulsa District, Corps of Engineers, P.O. Box 61, Tulsa, OK 74121-0061.

For futher information about the proposed marketing of the power and energy from the proposal project, please contact:

Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, P. O. Box 1619, Tulsa, OK 74101–1619.

Alan G. Smith,

*LTC, Corps of Engineers, Acting District Engineer.*

[FR Doc. 87-11572 Filed 5-22-87; 8:45am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Research in Education of the Handicapped; Proposed Annual Funding Priority; Correction

**AGENCY:** Department of Education.

**ACTION:** Correction notice.

**SUMMARY:** On May 5, 1987, a notice of proposed annual funding priority for the Early Childhood Research Institute—Policy under the Research in Education of the Handicapped Program was published in the **Federal Register**. On page 16766, in the third column, the first sentence under period of award should read: "The Secretary will approve one cooperative agreement with a project period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards." Also, in the third column, the catalog of Federal domestic assistance number should read:

"(Catalog of Federal Domestic Assistance Number 84.023: Research in Education of the Handicapped Program)"

Dated: May 20, 1987.

Madeleine Will,

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–11861 Filed 5–22–87; 8:45 am]

BILLING CODE 4000-01-M

## National Council on Vocational Education; Public Meeting

**AGENCY:** National Council on Vocational Education.

**ACTION:** Notice of public meeting of the Council.

**SUMMARY:** This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

**ADDRESS:** Arkansas Excelsior Hotel, Three Statehouse Plaza, Little Rock, Arkansas 72201 (501) 375–5000.

**DATE:** June 12, 1987 2:30–4:30 p.m.

**SUPPLEMENTARY INFORMATION:** The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90–576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Education concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

**AGENDA:** The proposed agenda will include: Project Catalyst, Trade Assoc/

Occupational Competencies, Other Council Business.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Winterton, Executive Director, 2000 L Street NW., Suite 580 Washington, DC 20036, (202) 634-6110.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC, May 20, 1987.

Joyce Winterton,

*Executive Director.*

[FR Doc. 87-11857 Filed 5-22-87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[ERA Docket No. 87-09-NG]

### Tex-Ana Gas Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada and/or Mexico

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada and/or Mexico.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada and/or Mexico to Tex-Ana Gas Company, Gas Division of Agronomics, Inc. (Tex-Ana). The order issued in ERA Docket No. 87-09-NG authorizes Tex-Ana to import up to 100 Bcf of natural gas from Canada and/or Mexico over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC, on May 15, 1987.

Constance L. Buckley,

*Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-11821 Filed 5-22-87; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

### Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) [Pub. L. 95-621] signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective June 1, 1987. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Department of Energy, Energy Information Administration, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586-6077

### Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

| State | Dollars per million BTU's |
|---|---|
| Alabama | 2.16 |
| Arizona [1] | 1.96 |
| Arkansas [1] | 2.80 |
| California [1] | 1.96 |
| Colorado [2] | 1.97 |
| Connecticut [1] | 2.00 |
| Delaware [1] | 2.11 |
| Florida | 2.14 |
| Georgia | 2.30 |
| Idaho [2] | 1.97 |
| Illinois | 1.97 |
| Indiana | 2.09 |
| Iowa [1] | 1.80 |
| Kansas [1] | 1.80 |
| Kentucky [1] | 2.13 |
| Louisiana | 2.57 |
| Maine | 1.97 |
| Maryland [1] | 2.11 |
| Massachusetts | 1.96 |
| Michigan | 2.12 |
| Minnesota | 1.68 |
| Mississippi | 2.21 |
| Missouri [1] | 1.80 |
| Montana [2] | 1.97 |
| Nebraska [1] | 1.80 |
| Nevada [1] | 1.96 |
| New Hampshire [1] | 2.00 |
| New Jersey [1] | 2.11 |
| New Mexico [2] | 2.80 |
| New York | 2.06 |
| North Carolina [1] | 2.34 |
| North Dakota [1] | 1.80 |
| Ohio | 1.96 |
| Oklahoma [1] | 2.80 |
| Oregon | 1.90 |
| Pennsylvania [1] | 2.11 |
| Rhode Island [1] | 2.00 |
| South Carolina [1] | 2.34 |
| South Dakota [1] | 1.80 |
| Tennessee [1] | 2.34 |
| Texas | 2.58 |
| Utah [2] | 1.97 |
| Vermont [1] | 2.00 |
| Virginia | 2.23 |
| Washington | 1.96 |
| West Virginia [1] | 2.13 |
| Wisconsin [1] | 2.13 |
| Wyoming [2] | 1.97 |

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM-79-21.

[2] Region based price computed as the weighted average price of Regions E, F, G and H.

### Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during March 1987 was $20.61 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for

which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending May 14, 1987, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of March 1987. This lag adjustment factor was applied to the March price yielding $21.17 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective June 1, 1987, is $4.74 per million BTU's.

## Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 28, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

### *A. Data Collected*

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of January 1987, February 1987, and March 1987.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

### *B. Method Used to Determine Alternative Price Ceilings*

#### (1) Calculation of Volume-Weighted Average Price

The prices which will become effective June 1, 1987, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, January 1987, February 1987, and March 1987. Reported prices for sales in January 1987 were adjusted by the percent change in the nationwide volume-weighted average price from January 1987 to March 1987. Prices for February 1987 were similarly adjusted by the percent change in the nationwide volume-weighted average price from February 1987 to March 1987. The volume-weighted 3-month average of the adjusted January 1987 and February 1987, and the reported March 1987 prices were then computed for each State.

#### (2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

#### (3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of January 1987, February 1987, and March 1987. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

#### (4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 6 residual oil in 19 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending May 14, 1987, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of March 1987. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

## Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

| *Region A* | *Region B* |
|---|---|
| Connecticut | Delaware |
| Maine | Maryland |

| | |
|---|---|
| Massachusetts | New Jersey |
| New Hampshire | New York |
| Rhode Island | Pennsylvania |
| Vermont | |
| *Region C* | *Region D* |
| Alabama | Illinois |
| Florida | Indiana |
| Georgia | Kentucky |
| Mississippi | Michigan |
| North Carolina | Ohio |
| South Carolina | West Virginia |
| Tennessee | Wisconsin |
| Virginia | |
| *Region E* | *Region F* |
| Iowa | Arkansas |
| Kansas | Louisiana |
| Missouri | New Mexico |
| Minnesota | Oklahoma |
| Nebraska | Texas |
| North Dakota | |
| South Dakota | |
| *Region G* | *Region H* |
| Colorado | Arizona |
| Idaho | California |
| Montana | Nevada |
| Utah | Oregon |
| Wyoming | Washington |

Issued in Washington, DC, May 19, 1987.

Dr. H. A. Merklein,

*Administrator, Energy Information Administration.*

[FR Doc. 87-11953 Filed 5-21-87; 11:07 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Docket No. TA87-4-21-004]

## Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 20, 1987.

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 4, 1987, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1987:

Substitute One hundred and fifteenth Revised Sheet No. 16
Substitute Seventh Revised Sheet No. 16A2
Substitute Forty-eighth Revised Sheet No. 64
Substitute Thirty-second Revised Sheet No. 64A

Columbia states the foregoing tariff sheets are being filed in compliance with Ordering Paragraph (D) of the Commission's Order issued March 30, 1987, which directs Columbia to refile PGA tariff sheets to be effective April 1, 1987 which reflect the total elimination of the $18,092,620 amount contained in the February 27, 1987 PGA filing attributable to the amortization of producer payments. The result of this adjustment is a reduction to the sales commodity rate of 8.34 cent per dth, which together with a reduction in the projected cost of certain other purchased gas results in a reduction in the sales commodity rate of 8.60 cents per dth, as reflected on Substitute One hundred and fifteenth Revised Sheet No. 16.

Columbia further states that in the event that the Commission grants rehearing of its March 30 order in Columbia's PGA filing and determines that the subject payments constitute gas costs and may be properly included within the PGA, Columbia reserves the right to adjust its rates effective April 1, 1987.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before May 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11870 Filed 5-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-365.000]

## Southern California Edison Co.; Filing

May 20, 1987.

Take notice that on March 31, 1987 Southern California Edison Company ("Edison") tendered for filing copies of revised tariff sheets reflecting reduced Edison resale rates due to the Tax Reform Act of 1986. Edison requests that these rates be made effective January 1, 1987, in accordance with the terms of the Settlement Agreement in Docket No. ER86-271-000.

Edison states that its filing is being made pursuant to Settlement Agreement in Docket No. ER86-271-000.

Copies of Edison's letter and all enclosures have been served on all of tis customers and other intervening parties in Docket No. ER86-271-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 of 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests shall be filed on or before May 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11871 Filed 5-22-87; 8:45 am]

BILLING CODE 6717-01-M

## Southwestern Power Administration

## Final Selection; Fort Gibson Dam Units 5 and 6, Hydroelectric Power Project, Fort Gibson, OK

**AGENCY:** Department of Energy, Southwestern Power Administration.

**ACTION:** Notice of final selection of the Grand River Dam Authority as the financial sponsor and preference customer for the proposed Fort Gibson Dam Units 5 and 6, Hydroelectric Power Project, Fort Gibson, Oklahoma.

**SUMMARY:** The tentative selection of the Grand River Dam Authority (GRDA), an agency of the State of Oklahoma, as the financial sponsor and preference customer for the proposed Fort Gibson Dam Units 5 and 6, Hydroelectric Power Project, Fort Gibson, Oklahoma was announced in the **Federal Register**, 52 FR 8523 (1987). This announcement also stated that any subsequent proposals and/or applications for financial sponsorship or scheduling and receiving of power and energy from the project received prior to April 17, 1987, would be considered in the final selection process.

One letter requesting additional information was received. Three letters were received supporting the selection of GRDA. No subsequent proposals or applications for financial sponsorship or scheduling and receiving of power and energy from the project were received during the above mentioned public comment period which closed on April 17, 1987. Because no additional proposals were received and because the previously announced proposal submitted by GRDA met or exceeded all financial sponsor and preference criteria, notice is hereby given that GRDA is selected as the financial

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sponsor and preference customer for the proposed Fort Gibson Dam Units 5 and 6, Hydroelectric Power Project, Fort Gibson, Oklahoma.

ADDRESSES: For further information about the proposed project design, construction, and financing, please contact: Waldon M. Gamel, Chief, Engineering Division, Tulsa District, Corps of Engineers, P.O. Box 61, Tulsa, OK 74121-0061.

For further information about the proposed marketing of the power and energy from the proposed project, please contact: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101-1619.

Issued in Tulsa, Oklahoma, the 4th day of May 1987.

Ronald H. Wilkerson,

*Administrator, Southwestern Power Administration.*

[FR Doc. 87-11529 Filed 5-25-87; 8:45 am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3284-7]

### Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the Federal Register a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

### Office of Pesticides and Toxic Substances

Title: TSCA Section 4 Test Rules and Exemptions (EPA ICR #1139). (This is an extension without change of a currently approved collection.)

Abstract: under TSCA section 4, EPA issues test rules and consent orders that require manufacturers and processors of chemicals to test their products and report the results to the Agency. EPA requires this testing whenever there is insufficient data with which to evaluate a chemical's effects on human health and the environment. Those subject to this section may apply for an exemption whenever another party performs the testing.

Frequency: Testing performed as required; test reports submitted semiannually.

Estimated Annual Burden: 31,823 hours.

Title: Section 24(c) Special Local Needs Registration (EPA ICR #0595). (Extension of an existing collection without change.)

Abstract: In order to meet special local needs, a State may register additional uses for Federally-registered pesticides under section 24(c) of FIFRA. An applicant must complete EPA's form "Application for Notification of State Registration of a Pesticide to Meet a Special Local Need." Once it approves a form, the State sends it to EPA, which reviews it for compliance with FIFRA and the Federal Food, Drug, and Cosmetic Act.

Respondents: Individuals or businesses using Federally-registered pesticides to meet special local needs.

Estimated Annual Burden: 2,490 hours.

Title: Pretest of section 313 Toxic Chemical Release Inventory Form Under SARA, Title III ((EPA ICR #1366). (This is a new collection.)

Abstract: Under section 313, owners or operators of facilities in SIC codes 20-39 must report the release of toxic chemicals. EPA must prepare a toxic chemical release form for reporting releases. This pretest of 40 selected facilities subject to 313 reporting will identify problems in reading, understanding, and completing the form.

Respondents: Forty facilities subject to section 313 reporting.

Estimated Annual Burden: 3,120 hours.

* * * * *

### Agency PRA Clearance Requests Completed by OMB

None received since the last Federal Register notice.

* * * * *

Send comments on the above abstract(s) to:

Patricia Minami, PM-223, U.S. Environmental Protection Agency, Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503

Dated: May 19, 1987.

Daniel J. Fiorino,

*Director, Information and Regulatory Systems Division.*

[FR Doc. 87-11861 Filed 5-22-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3208-4]

### California Marine Sanitation Device Standard; Receipt of Petition

Notice is hereby given that a petition has been received from the State of California requesting a determination by the Assistant Administrator for Water, Environmental Protection Agency, pursuant to section 312(f)(3) of Pub. L. 92-500, as amendd by Pub. L. 95-217, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Richardson Bay, an embayment on the northern half of San Francisco Bay. The waters of Richardson Bay covered by this petition are defined as that portion of Richardson Bay bounded by the shore and by a line bearing 257 degrees from Peninsula Point to the shore at Sausalito.

The State of California has certified that there are six pumpout facilities available to service vessels in Richardson Bay. All six facilities are on the western shore of Richardson Bay, and discharge directly to sewers served by the Sausalito-Marin City Sanitary District's sewage treatment plant. The six pumpout facilities are located at the following locations, and provide service on the specified days at the specified times. Also included in the following information is the cost per pumpout and the controlling depth at each facility for vessels that may be excluded

(1) *Kappas Yacht Harbor*—Located just outside the city limits of Sausalito, at the end of Gate Six Road.

—One pumpout facility
—Available seven days a week, 24 hours a day
—Cost per pumpout: $1.00
—Can accept vessels with a draft of up to seven feet

(2) *Clipper Yacht Harbor*—located on the fuel dock in Clipper Basin No. 2, near the end of Harbor Drive in Sausalito.

—One pumpout facility
—Available seven days a week, 24 hours a day
—Cost per pumpout: Free
—Can accept vessels with a draft of up to 10 feet

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(3) *Marina Plaza Marina*—located in Sausalito, off the foot of Testa Street.

—One pumpout facility
—Available by appointment seven days a week, 24 hours a day.
—Cost per pumpout: $4.00
—Can accept vessels with a draft of up to 10 feet.

(4) *Pelican Yacht Harbor*—located in Sausalito, near the foot of Johnson Street.

—One pumpout facility
—Available Tuesday through Saturday, 9:00 A.M. to 5:00 P.M.
—Cost per pumpout: $10.00–15.00 for small holding tanks, and $20.00–25.00 for larger tanks.
—Can accept vessels with a draft of up to 10 feet.

(5) *Sausalito Yacht Harbor*—located in Sausalito, alongside Bay Street.

—Two pumpout facilities
—Available Monday through Friday, 9:00 a.m. to 3:00 p.m. throughout the year, and additionally on Sundays from April to October, from 3:00 p.m. to 7:00 p.m.
—Cost per pumpout: Free to marina tenants, or for those vessel owners who can operate the facility without assistance. Those vessel owners who require assistance in the use of the facility are charged at a rate of $45.00 per hour for the time of the marine personnel.

The State of California has also certified that there are presently 1852 recreational vessel berths in Richardson Bay, which results in approximately 310 vessel berths per pumpout facility. Further, of the 1852 vessel berths reported, from two to six percent of these are occupied as permanent residences. The State of California has additionally certified that the staff of the San Francisco Regional Board has determined that each pumpout facility can serve 300 vessel berths, and that this number is sufficient to handle current peak demand. The State of California has further certified that 550 houseboats are berthed in Richardson Bay, and that of these, approximately 450 currently have sewer connections. In addition, the State of California has certified that approximately 120 vessels anchor in Richardson Bay during the summer months.

Finally, the State of California has certified that a survey conducted by the San Francisco Regional Water Quality Control Board revealed that the average pumpout time at the six identified pumpout facilities varied from three to fifteen minutes, depending primarily on the tank size and the pumping rate. The State of California also certified that pumpout facility operators indicated that there was typically no problem in meeting the demand for service.

Comments and views regarding this Notice of Receipt may be filed within 30 days of the date of publication of this notice. Any such communications, or requests for information, should be addressed to Jonathan E. Amson, Marine Operations Division (WH-556F), Office of Marine and Estuarine Protection, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Mr. Amson's telephone number is 202/475–7125.

Dated: April 28, 1987.

Larry Jensen,

*Assistant Administrator for Water.*

[FR Doc. 87–11862 Filed 5–22–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 83–869; FCC 87–141]

## Multipoint Distribution Service (MDS); Interpretation of Commission Declaratory Ruling and Order

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion, Declaratory Ruling and Order.

SUMMARY: The Commission has granted, in part, a Petition for Declaratory Ruling filed by Multipoint Distribution Systems, Inc. in order to clarify that MDS common carriers may refuse to allow their facilities to be used to transmit obscene or otherwise unlawful material.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon B. Kelley, Office of General Counsel, (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion, Declaratory Ruling and Order* in Gen. Docket No. 83–869: In the Matter of Enforcement of Prohibitions Against the Use of Common Carriers for the Transmission of Obscene Materials. Adopted April 13, 1987, and released May 15, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

*Summary of Memorandum Opinion, Declaratory Ruling and Order*

1. In this proceeding, the Commission addressed the issue of whether multipoint distribution service (MDS) common carriers may, consistent with the Communications Act (Act), Commission regulations and policies, deny customers the use of their facilities for unlawful purposes, which includes the transmission of obscene materials. This issue arose from a Petition for a Declaratory Ruling (Petition) filed with the Commission by Multipoint Distribution Systems, Inc. (MDSI). MDSI alleged that its customer, San Antonio Home Entertainment, breached their Programming Agreement by distributing certain "indecent and extremely offensive" unrated movies over MDSI's facilities in violation of a prohibition contained therein. Although the Programming Agreement between these parties has since been terminated, the Commission relied on the facts of this case to illustrate the general principles that MDS common carriers are expected to follow should they include similar provisions governing obscenity in their tariffs filed with the Commission.

2. While acknowledging that common carriers have a general statutory obligation to hold out their services to the public on a first-come, first-served basis without regard to content of transmissions, the Commission recognized that most authorities follow an exception to this general rule. The Commission followed such an exception in a previous case, *Humane Society* v. *Western Union, International, Inc.*, 30 FCC 2d 711, 713 (1971), in which it observed that satellite common carriers have the right to prohibit the use of their facilities for illegal purposes. In that case, the Commission emphasized that the proper course of action by a common carrier who desires to prohibit the carriage of illegal material would be to petition the "affected jurisdictions" [e.g., United States Attorney] for a determination as to whether the programming "is or would be, in violation of local, state or federal law." *Id.* The Commission concluded therein that if the governing authority determines that the transmissions are unlawful, the common carrier could take steps to prevent such transmissions over its facilities. In this proceeding, the Commission extended the application of this ruling to MDS common carriers.

3. The Commission also addressed the question of whether an MDS common carrier may face liability if its facilities are being used for illegal purposes. In response to this question, the

Commission applied to MDS common carriers the same law applicable to telephone common carriers. It held that before any liability is likely to attach to an MDS common carrier for carrying unlawful transmissions, the carrier, to a high degree, must be actually involved in or have actual notice of the illegal use, and it must also fail to take steps to prevent the illegal use. At the same time, however, the Commission was reluctant to place MDS common carriers in the uncertain position of watching all programming and assessing, in each instance, whether to engage the legal machinery for interpretive rulings under *Humane Society* procedures. The Commission therefore concluded that to the extent that an MDS common carrier confines itself to operation under § 21.903(b)(1) of the Commission's rules and the Act, it will not be subject to adverse agency action, unless the MDS common carrier has actual notice that a program has been adjudicated obscene.

4. The Commission applied its analysis to the facts of MDSI's Petition, but found insufficient evidence to conclude that all x-rated or unrated movies are necessarily obscene. The Commission therefore concluded that the prohibition contained in the Programming Agreement went beyond merely forbidding the use of MDSI's facilities for the transmission of illegal material. The Commission stated that it would reject this type of prohibition from a tariff filing, absent a strong showing that such a prohibition would ban only the transmission of illegal material. An overly broad prohibition would be inconsistent with a carrier's obligation under FCC rules and the Act to offer service without substantial involvement in influencing the content of material transmitted over its facilities.

5. In addition, the Commission stated that its ruling is not intended to prohibit MDS common carriers from taking unilateral action to restrain the transmission of program content that such carriers believe to be unlawful. The Commission concluded that MDS common carriers may prohibit such transmissions without first following the procedures articulated in *Humane Society* and securing a ruling from the appropriate legal authority as to whether or not a program is obscene, but cautioned that if such a ruling is not obtained the carrier might later be subject to legal action if the transmissions in question were found to be lawful.

6. Accordingly, *it is ordered* that the Petition for Declaratory Ruling filed by *MDSI is granted* to the limited extent indicated herein and in all other respects *is Denied*.

7. *It is further ordered* that this proceeding *is terminated* to the extent indicated herein.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-11742 Filed 5-22-87; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL HOME LOAN BANK BOARD

[No. AC-619]

### CK Federal Savings and Loan Association, Concord, NC; Final Action; Approval of Conversion Application

Dated: May 18, 1987.

Notice is hereby given that on May 13, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of CK Federal Savings and Loan Association, Concord, North Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

*Acting Secretary.*

[FR Doc. 87-11846 Filed 5-22-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-617]

### First Federal Savings and Loan Association of East Hartford, East Hartford, CT; Final Action; Approval of Conversion Application

Dated: May 13, 1987.

Notice is hereby given that on May 8, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings and Loan Association of East Hartford, East Hartford, Connecticut, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Boston, One Financial Center, 20th Floor, Boston, Massachusetts 02110.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

*Acting Secretary.*

[FR Doc. 87-11847 Filed 5-22-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-618]

### Parkvale Savings Association, Pittsburgh, PA; Final Action; Approval of Conversion Application

Dated: May 13, 1987.

Notice is hereby given that on May 8, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Parkvale Savings Association, Pittsburgh, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

*Secretary.*

[FR Doc. 87-11848 Filed 5-22-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-616]

### Raleigh Federal Savings Bank, Raleigh, NC; Final Action; Approval of Conversion Application

Dated: May 13, 1987.

Notice is hereby given that on May 7, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Raleigh Federal Savings Bank, Raleigh, Carolina for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at

the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.
Jeff Sconyers,
*Secretary.*
[FR Doc. 87-11849 Filed 5-22-87; 8:45 am]
BILLING CODE 6720-01-M

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[No. AC-830]

**Security Federal Savings and Loan Association of Virginia, Richmond, VA; Final Action; Approval of Conversion Application**

Dated: May 18, 1987.

Notice is hereby given that on May 7, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Security Federal Savings and Loan Assoication of Virginia, Richmond, Virginia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30348.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
*Acting Secretary.*
[FR Doc. 87-11850 Filed 5-22-87; 8:45am]
BILLING CODE 6720-01-M

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## FEDERAL MARITIME COMMISSION

**Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)**

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Bermuda Star Line, Inc., 10666 Teaneck Road, Teaneck, New Jersey 07666

Morgan Leisure, Ltd. (d/b/a Astor Cruises), Century House, North Station Road, Colchester, Essex, England CO1 1RE

Dated: May 20, 1987.
Joseph C. Polking,
*Secretary.*
[FR Doc. 87-11868 Filed 5-22-87; 8:45 am]
BILLING CODE 6730-01-M

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**Security for the Protection of the Public To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)**

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passenger or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Bermuda Star Line, Inc., 10666 Teaneck Road, Teaneck, New Jersey 07666

Morgan Leisure, Ltd. (d/b/a Astor Cruises), Century House, North Station Road, Colchester, Essex, England CO1 1RE

Dated: May 20, 1987.
Joseph C. Polking,
*Secretary.*
[FR Doc. 87-11869 Filed 5-22-87; 8:45 am]
BILLING CODE 6730-01-M

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## FEDERAL RESERVE SYSTEM

**Acquisitions of Shares of Banks or Bank Holding Companies; Royce Flaming, et al.**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 10, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Royce Flaming* and Wilda Flaming, Cherokee, Oklahoma; to acquire 4.94 percent of the voting shares of Alfalfa County Bancshares, Inc., Cherokee, Oklahoma, and thereby indirectly acquire Alfalfa County Bank, Cherokee, Oklahoma.

2. *Leland Burke Peterson*, Healdton, Oklahoma; to acquire 100 percent of the voting shares of First Healdton Bancorproation, Inc., Healdton, Oklahoma, and thereby indirectly acquire Bank of Healdton, Healdton, Oklahoma.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Roland Walters*, Camp Verde, Texas; to acquire 74.80 percent of the voting shares of Bank of Kerrville, Kerrville, Texas.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101Market Street, San Francisco, California 94105:

1. *David F. Stein*, Laguna Beach, California; to acquire 1140 percent of the voting shares of PNB Financial Group, Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

Board of Governors of the Federal Reserve System, May 20,1987.
James McAfee,
*Associate Secretary of the Board.*
[FR Doc. 87-11825 Filed 5-22-87; 8:45 am]
BILLING CODE 6210-01-M

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**Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Merchants National Corp., et al.**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 15, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to merge with Ohio Valley Bancorp, Madison, Indiana, and thereby indirectly acquire Madison Bank and Trust Company, Madison, Indiana.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Midlothian Bank Shares Corporation*, Midlothian, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Midlothian National Bank, Midlothian, Texas. Comments on this application must be received by June 18, 1987.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *CommerceBancorp*, Newport Beach, California; to become a bank holding company by acquiring 100 percent of the voting shares of CommerceBank, Newport Beach, California.

Board of Governors of the Federal Reserve System, May 20, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11826 Filed 5-22-87; 8:45 am]

BILLING CODE 6210-01-M

## Application To Engage de Novo in Permissible Nonbanking Activities; Valley Capital Corp.

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consumation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Valley Capital Corporation*, Las Vegas, Nevada; to engage *de novo* through its subsidiary, Valley Electronic Services, Inc., Las Vegas, Nevada, in data processing and transmission activities and the issuance of money orders pursuant to § 225.25 (b)(7) and (b)(12) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 20, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-11827 Filed 5-22-87; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 25]

## Federal Travel Regulations

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Notice of changes to the Federal Travel Regulations.

**SUMMARY:** GSA has issued GSA Bulletin FPMR A-40, Supplement 25, to transmit a change to the Federal Travel Regulations (FTR), FPMR 101-7, implementing new procedures and tax tables for computing the relocation income tax (RIT) allowance.

**EFFECTIVE DATE:** The revised provisions transmitted by Supplement 25 are effective January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Staff members, Regulations and Policy Division, FTS 557-1253, 557-1256, or 557-7525 (for non-FTS use AC 703).

**SUPPLEMENTARY INFORMATION:** GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

### Background Information

Pub. L. 98-151 (97 Stat. 977), November 14, 1983, and Pub. L. 98-473 (98 Stat. 1969), October 12, 1984, amended the statutory authority for reimbursement of the employee relocation expenses contained in Subchapter II of Chapter 57, Title 5, United States Code, by adding a new section 5724b which authorizes agencies to reimburse transferred employees for the additional income tax liability incurred by them as a result of certain relocation expense reimbursements. Policies and procedures for the calculation and payment of a relocation income tax (RIT) allowance were implemented in the FTR, Chapter 2, Part 11 effective for transferred employees whose effective date of transfer was on or after November 14, 1983.

The Tax Reform Act of 1986 (Pub. L. 99-515, 100 Stat. 2085), October 22, 1986, created substantial changes to the Federal tax rate structure for 1987 and subsequent tax years. Consequently, new procedures for calculating the RIT allowance were developed in coordination with the Internal Revenue Service (IRS) and are incorporated in the FTR along with specifically developed tax tables for 1986 and 1987.

### Notice to Agencies

The new procedures transmitted by Supplement 25 require the use of two combined marginal tax rates (CMTR's) to calculate any RIT allowance claim paid in 1987—one CMTR for Year 2 (1987) using the Federal tax table for 1987 contained in Appendix 2-11.C and one CMTR for Year 1 using the appropriate Federal tax table contained in Appendix 2-11.A that is applicable for the calendar year (Year 1) during which the employee received reimbursement for relocation expenses.

The procedures (and formula) in effect prior to January 1, 1987, *shall not* be used for RIT allowances paid in 1987 even though the related moving expense reimbursements may have been paid to an eligible employee in prior tax years 1983–1985. For example, if an employee received reimbursement for moving expenses which were reported as income for calendar year 1984 and has not been paid a RIT allowance until 1987, the 1987 Federal tax table will be used in the CMTR formula for 1987 (Year 2) and the 1984 Federal tax table will be used in the CMTR formula for Year 1 (1984).

**Explanation of Changes**

Supplement 25 transmits an amendment to the FTR to provide new procedures and formulas for calculating the RIT allowance, to include a Federal tax table for calendar year 1987, and Federal and State tax tables for calendar year 1986. Several editorial and clarifying changes also have been made throughout FTR Part 2–11; consequently, the entire Part 2–11 is reissued except for the examples in Figures 2–11.8a, b and c (pages 2–153 through 2–154.2) and the Federal and State tax tables for calendar years 1983 through 1985 in Appendices 2–11.A and B. These examples and tax tables are to be retained in the regulation.

Accordingly, the FTR are amended as follows:

**CHAPTER 2. RELOCATION ALLOWANCES**

1. Authority. Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 5 U.S.C. 5707; E.O. 11609, July 22, 1971, and E.O. 12486, February 27, 1984.

2. Chapter 2, Part 11 of the FTR is amended by revising the text of Part 11 and Example 4 in Figure 2–11.8d to read as follows:

**Part 11. Relocation Income Tax (RIT) Allowance**

*2–11.1. Authority*

Payment of a relocation income tax (RIT) allowance is authorized to reimburse eligible transferred employees for substantially all of the additional Federal, State, and local income taxes incurred by the employee, or by the employee and spouse if a joint tax return is filed, as a result of certain travel and transportation expenses and relocation allowances which are furnished in kind, or for which reimbursement or an allowance is provided by the Government (5 U.S.C. 5724b, as amended). The RIT allowance shall be calculated and paid as provided in this Part 11.

*2–11.2. Coverage*

a. Eligible Employees

Payment of a RIT allowance is authorized for employees transferred on or after November 14, 1983, in the interest of the Government from one official station to another for permanent duty. The effective date of an employee's transfer is the date the employee reports for duty at the new official station as provided in paragraph 2–1.4j.

b. Individuals Not Covered

The provisions of this Part 11 are not applicable to the following individuals or employees:

(1) New appointees as defined in 2–1.5e, including those covered under 2–1.5f (i.e., new appointees to shortage category or Senior Executive Service positions, and new Presidential appointees) and 2–1.5g(2) (i.e., new appointees to overseas posts of duty);

(2) Employees assigned under the Government Employees Training Act (see 5 U.S.C. 4109); or

(3) Employees returning from overseas assignments for the purpose of separation.

*2–11.3. Types of Moving Expenses or Allowances Covered and General Limitations*

The RIT allowance is by law limited as to the types of moving expenses that can be covered. The law authorizes reimbursement of additional income taxes resulting from certain moving expenses furnished in kind or for which reimbursement or an allowance is provided to the transferred employee by the Government. However, such moving expenses are covered by the RIT allowance only to the extent that they are (1) actually paid or incurred, and (2) are not allowable as a moving expense deduction for tax purposes. The types of expenses or allowances listed in a through i, below, are covered by the RIT allowance within the limitations discussed.

a. En Route Travel

Travel (including per diem) and transportation expenses of the transferred employee and immediate family for en route travel from the old official station to the new official station. (See FTR Part 2–2.)

b. Household Goods Shipment

Transportation (including temporary storage) expenses for movement of household goods from the old official station to the new official station. (See FTR Part 2–8.)

c. Nontemporary Storage Expenses

Allowable expenses for nontemporary storage of household goods belonging to an employee transferred on or after November 14, 1983, through October 11, 1984, to an isolated location in the conterminous United States. (See FTR 2–9.1.) Nontemporary storage expenses are not covered by the RIT allowance for transfers on or after October 12, 1984 (see 2–11.4c).

d. Mobile Home Movement

Expenses for the movement of a mobile home for use as a residence when movement is authorized instead of shipment and temporary storage of household goods. (See FTR Part 2–7.)

e. Househunting Trip

Travel (including per diem) and transportation expenses of the employee and spouse for one round trip to the new official station to seek permanent residence quarters. (See FTR Part 2–4.)

f. Temporary Quarters

Subsistence expenses of the employee and immediate family during occupancy of temporary quarters. (See FTR Part 2–5.)

g. Real Estate Expenses

Allowable expenses for the sale of the residence (or expenses of settlement of an unexpired lease) at the old official station and for purchase of a home at the new official station for which reimbursement is received by the employee. (See FTR Part 2–6.)

h. Miscellaneous Expense Allowance

A miscellaneous expense allowance for the purpose of defraying certain expenses associated with discontinuing a residence at one location and establishing a residence at the new location in connection with an authorized or approved permanent change of station. (See FTR 2–3.)

i. Relocation Services

Payments, or portions thereof, made to a relocation service company for services provided to a transferred employee (see FTR Part 2–12), subject to the conditions stated below and within the general limitations of this paragraph applicable to other covered expenses.

(1) *For employees transferred on or after November 14, 1983, through October 11, 1984.* The amount of a broker's fee or real estate commission, or other real estate sales transaction expenses which normally are reimbursable to the employee under FTR 2–6.2 but have been paid by a relocation service company incident to

an assigned sale from the employee, provided that such payments constitute income to the employee. For the purposes of this regulation, an assigned sale occurs when an employee obtains a binding agreement for the sale of his/her residence and assigns the inherent rights and obligations of that agreement to a relocation company that is providing services under contract with the employing agency. For example, if the employee incurs an obligation to pay a specified broker's fee or real estate commission under the terms of the sales agreement, this obligation along with the sales agreement is assigned to the relocation company and may, upon payment of the obligation by the relocation company, constitute income to the employee. (See FTR 2–12.7 entitled "Income tax consequences of using relocation companies.")

(2) *For employees transferred on or after October 12, 1984.* Expenses paid by a relocation company providing relocation services to the transferred employee pursuant to a contract with the employing agency to the extent such payments constitute income to the employee. (See FTR 2–12.7.)

Note.—See FTR reference shown in parentheses for reimbursement provisions for each allowance listed in a through i, above. See Section 217 of the Internal Revenue Code (IRC) and Internal Revenue Service (IRS) Publication 521 entitled "Moving Expenses" and appropriate State and local tax authority publications for additional information on the taxability of moving expense reimbursements and the allowable tax deductions for moving expenses.

*2–11.4. Exclusions From Coverage*

The provisions of this Part 11 are not applicable to the following:

a. Any tax liability that may result from payments by the Government to relocation companies on behalf of employees transferred on or after November 14, 1983, through October 11, 1984, other than the payments for those expenses specified in 2–11.3i(1).

b. Any tax liability incurred for local income taxes other than city income tax as a result of moving expense reimbursements for employees transferred on or after November 14, 1983, through October 11, 1984. (See definition in 2–11.5b.)

c. Any tax liability resulting from reimbursed expenses for any nontemporary storage of household goods except as specifically provided for in 2–11.3c.

d. Any tax liability resulting from paid or reimbursed expenses for shipment of a privately owned automobile.

e. Any tax liability resulting from an excess of reimbursed amounts over the actual expense paid or incurred. For instance, if an employee's reimbursement for the movement of household goods is based on the commuted rate schedule and his/her actual moving expenses are less than the reimbursement, the tax liability resulting from the difference is not covered by the RIT allowance. (See 2–11.8c(2)(e).)

f. Any tax liability resulting from an employee's decision not to deduct moving expenses for which a tax deduction is allowable under the Internal Revenue Code or appropriate State and local tax codes. (See 2–11.8b(1) and 2–11.8c(2).)

*2–11.5. Definitions and Discussion of Terms*

For purposes of this part, the following definitions will apply:

a. State Income Tax

A tax imposed by a State tax authority, that is deductible for Federal income tax purposes as a State income tax under section 164(a)(3) of the IRC. "State" means any one of the several States of the United States and the District of Columbia.

b. Local Income Tax

A tax imposed by a recognized city or county tax authority, that is deductible for Federal income tax purposes as a local (city or county) income tax under section 164(a)(3) of the IRC; except, that for employees transferred on or after November 14, 1983, through October 11, 1984, local income tax shall be construed to mean only city income tax. For purposes of this regulation:

(1) "City" means any unit of general local government which is classified as a municipality by the Bureau of the Census, or which is a town or township that in the determination of the Secretary of the Treasury possesses powers and performs functions comparable to those associated with municipalities, is closely settled, and contains within its boundaries no incorporated places as defined by the Bureau of the Census (31 CFR 215.2(b)(1)).

(2) "County" means any unit of local general government which is classified as a county by the Bureau of the Census (31 CFR 215.2(e)).

c. Covered Moving Expense Reimbursements or Covered Reimbursements

As used herein, these terms include those moving expenses listed in 2–11.3 as being covered by the RIT allowance and which may be furnished in kind, or for which reimbursement or an allowance is provided by the Government.

d. Covered Taxable Reimbursements

Covered moving expense reimbursements minus the tax deductions allowable under the IRC and IRS regulations for moving expenses. (See determination in 2–11.8c.)

e. Year 1 or Reimbursement Year

The calendar year in which reimbursement or payment for moving expenses is made to, or for, the employee under the provisions of the FTR, Chapter 2. All or part of these reimbursements (see 2–11.6) are reported to the IRS as income (wages, salary or other compensation) to the employee for that tax year under the provisions of the IRC and IRS regulations, and are subject to Federal tax withholding. The withholding tax allowance (WTA) (see 1, below) is calculated in Year 1, to cover the employee's Federal tax withholding obligations each time covered moving expense reimbursements are made that result in a Federal tax withholding obligation. For purposes of this regulation, an advance of funds for any of the covered moving expenses is not considered to be a reimbursement or a payment until the travel voucher settlement for such expenses takes place. If an employee's reimbursement for moving expenses is spread over more than one year, he/she will have more than one Year 1.

f. Year 2

The calendar year in which a claim for the RIT allowance is paid.

(1) Generally, Year 2 will be the calendar year immediately following Year 1 and in which the employee files a tax return reflecting his/her tax liability for income received in Year 1. However, there may be instances where the employee's claims submission and/or payment of the RIT allowance is delayed beyond the calendar year immediately following Year 1. (Year 1 will always be the calendar year that reimbursements are received; see e, above.) Year 2 will be the calendar year in which the RIT allowance is actually paid.

(2) The RIT allowance is calculated in Year 2 and paid to cover the additional tax liability (resulting from moving expense reimbursements received in Year 1) not covered by the WTA paid in Year 1. If an employee's covered taxable reimbursements are spread over more than one year, he/she will have more than one Year 2.

g. Federal Withholding Tax Rate (FWTR)

The tax rate applied to incremental income to determine the amount to be withheld for Federal income tax from salary or other compensation such as moving expense reimbursements. Because moving expense reimbursements constitute supplemental wages for Federal income tax purposes, the 20 percent flat rate of withholding is generally applicable to such reimbursements (see 2-11.7c). Agencies should refer to the Treasury Fiscal Requirements Manual, TFRM 3-5000, and applicable IRS regulations for complete and up-to-date information on this subject.

h. Earned Income

For purpose of the RIT allowance, "earned income" shall include only the gross compensation (salary, wages, or other compensation such as reimbursement for moving expenses and the related WTA (see n, below) and any RIT allowance (see m, below) paid for moving expense reimbursement in a prior year) that is reported as income on IRS Form W-2 for the employee (employee and spouse, if filing jointly), and if applicable, the net earnings (or loss) for self-employment income shown on Schedule SE of the IRS Form 1040. Earned income may be from more than one source. (See 2-11.8d.)

i. Marginal Tax Rate (MTR)

The tax rate (for example 25 percent) applicable to a specific increment of income. The Federal and State marginal tax rates to be used in calculating the RIT allowance are provided in appendices 2-11.A, B, and C. See 2-11.8e(3) for instructions on local marginal tax rate determinations.

j. Combined Marginal Tax Rate (CMTR)

A single rate determined by combining the applicable marginal tax rates for Federal, State and local income taxes, using the formulas provided in 2-11.8e(4).

k. Gross-up

Payment for the estimated additional income tax liability incurred by an employee as a result of reimbursements or payments by the Government for the covered moving expense reimbursements listed in 2-11.3.

l. Gross-up Formulas

The formulas used to determine the amount of the gross-up for the WTA and the RIT allowance. The formulas used herein (see 2-11.7d and 2-11.8f) compensate the employee for the initial tax, the tax on tax, etc. Note that the WTA gross-up formula in 2-11.7d is different than the RIT gross-up formula prescribed in 2-11.8f.

m. RIT Allowance

The amount of payment computed and paid in Year 2 to cover substantially all of the estimated additional tax liability incurred as a result of the covered moving expense reimbursements received in Year 1.

n. Withholding Tax Allowance (WTA)

The withholding tax allowance (WTA), paid in Year 1, covers the employee's Federal tax withholding liability on covered taxable reimbursements received in Year 1. The amount is computed by applying the withholding gross-up formula prescribed in 2-11.7d (using the Federal withholding tax rate) each time that a Federal withholding obligation is incurred on covered moving expense reimbursements received in Year 1. Grossing-up the Federal withholding amount protects the employee from having to use part of his/her moving expense reimbursement to pay Federal withholding taxes. (See 2-11.7.)

*2-11.6. Procedures in General*

a. This regulation sets forth procedures for the computation and payment of the RIT allowance and defines agency and employee responsibilities. This regulation does not require changes to those internal fiscal procedures established by the individual agencies pursuant to IRS regulations, or the Treasury Fiscal Requirements Manual, provided that the intents of the statute authorizing the RIT allowance and this regulation are not disturbed.

b. The total amount reimbursed or paid to the employee, or on his/her behalf, for travel, transportation and other relocation expenses and allowances is includable in the employee's gross income pursuant to the IRC and certain State or local government tax codes. Some moving expenses for which reimbursements are received may be deducted from income by the employee as moving expense deductions, subject to certain limitations prescribed by the IRS or pertinent State or local tax authorities. Reimbursements for nondeductible moving expenses are subject to income tax. (See IRS Publication 521 entitled "Moving Expenses" and the appropriate State and local tax codes for detailed information.)

c. Usually, if the employee is reimbursed for nondeductible moving expenses, the amount of these reimbursements is subject to withholding of Federal income tax in accordance with IRS regulations at the time of reimbursement. Under existing fiscal procedures, the amount of the employee's withholding obligation is usually deducted either from reimbursements for the moving expenses at the time of reimbursement or from the employee's salary. (See Treasury Fiscal Requirements Manual for Federal Agencies.)

d. Payment of a WTA established herein will offset deductions for the Federal withholding taxes, on moving expense reimbursements and on the WTA itself, from the employee's moving expense reimbursements or from salary.

e. The total amount of the RIT allowance can be computed after the end of Year 1 as soon as the earned income level, income tax filing status, total covered taxable reimbursements, and the applicable marginal tax rates can be determined.

f. Procedures are prescribed in 2-11.7 and 2-11.8 for computation and payment of the WTA and the RIT allowance. These procedures are built on existing fiscal procedures and IRS regulations regarding reporting of employee income from reimbursements and withholding of taxes on supplemental wages.

*2-11.7. Procedures for Determining the WTA in Year 1*

a. General Rules

The WTA is designed to cover the employee's Federal withholding tax obligation for income resulting from covered moving expense reimbursements. Withholding tax obligations, if any, for State and/or local income taxes on moving expense reimbursements shall not be included in the calculation of the WTA payment. The amount of the WTA is equal to the Federal withholding tax obligation incurred by the employee on covered moving expense reimbursements (which are not offset by deductible moving expenses) and on the WTA itself. The WTA shall be calculated, accounted for, and reported as provided in b through f, below.

b. Determination of Amount of Reimbursement Subject to Withholding

Each time that moving expenses are reimbursed to the employee, or paid on behalf of the employee, IRS regulations require that the agency determine the amount of those reimbursements that it reasonably believes will be deductible moving expenses. Reimbursements for nondeductible moving expenses are then subject to withholding of Federal income tax. Since there are some relocation expenses which may be

reimbursed but are not covered reimbursements under the RIT allowance, such as nontemporary storage of household goods (HHG) (see exclusions in 2–11.4), the amount of the nondeductible moving expenses per IRS regulations may be different than the actual amount of covered taxable reimbursements which is subject to withholding. Because the difference in these amounts should not be substantial, the amount of nondeductible moving expenses subject to Federal withholding tax, as determined by the agency pursuant to IRS regulations, may be used in computing the WTA.

c. Determination of Federal Withholding Tax Rate (FWTR)

Because moving expense reimbursements constitute supplemental wages for Federal income tax purposes, the 20 percent flat rate of withholding is generally applicable to income generated by such reimbursements. The 20 percent rate should be used in calculating the WTA unless under an agency's internal fiscal (withholding) procedures a different withholding rate is used pursuant to IRS tax regulations. In such cases, the applicable withholding rate shall be substituted for the 20 percent rate in the calculation shown in d, below.

d. Calculation of The WTA

The WTA is calculated by substituting the amounts determined in 2–11.7b and c, above, into the WTA gross-up formula shown below:

$$\text{Formula: } Y = \frac{X}{1-X}(N)$$

where:
Y = WTA
X = FWTR (generally, 20 percent)
N = nondeductible moving expenses

Example: If
X = 20 percent
N = $21,800

Then
Y = .20/1.00 − .20 ($21,800)
Y = .25 ($21,800)
Y = $5,450

e. WTA Payment and Employee Agreement for Repayment

(1) The WTA may be calculated several times within Year 1 if reimbursements for moving expenses are made on more than one travel voucher. Each time an employee is reimbursed for moving expenses which are subject to Federal tax withholding in accordance with the IRS regulations, the WTA will be calculated and paid unless the employee fails to comply with the requirements in (2), below.

(2) The employee shall be required to agree in writing to (a) repay any excess amount paid to him/her in Year 1 (see 2–11.8f(4) and 2–11.9b(3)), and (b) submit the required certified tax information and claim for his/her RIT allowance within a reasonable length of time (as determined by the agency) after the close of Year 1. Failure of the employee to comply with this requirement will preclude the agency's payment of the WTA.

f. Determination of Employee's Withholding Tax on WTA

Since the amount of the WTA is considered income to the employee, it is subject to the same tax withholding requirements as all other moving expense reimbursements.

g. End of Year Reporting

At the end of the year, agencies generally are required to issue IRS Forms W–2 for each employee showing total gross compensation (including moving expense reimbursements) and the applicable amount of Federal taxes withheld. For tax reporting purposes, the WTA is to be treated as a moving expense reimbursement. The total amount of the employee's WTA's paid during the year as well as the amount of moving expense reimbursements should be included as income on the employee's Form W–2. The Federal tax withholding amount applicable to the moving expense reimbursements and the WTA should also be included on the employee's Form W–2. The amount of the WTA's also will be furnished to the employee along with the amount of moving expense reimbursements on IRS Form 4782 or another itemized listing provided for the employee's use in preparing his/her tax return (see IRS regulations for further guidance) and in claiming the RIT allowance as provided in 2–11.8.

*2–11.8. Rules and Procedures for Determining the RIT Allowance in Year 2*

a. Summary/Overview of Procedures

The RIT allowance will be calculated and claimed in Year 2 (see definition in 2–11.5g). This can be accomplished, as soon as the employee can determine earned income (as defined herein), income tax filing status, covered taxable reimbursements for Year 1 (see definition in 2–11.5e) and the applicable marginal tax rates. The RIT allowance is then calculated using the gross-up formula under procedures prescribed herein. Since the RIT allowance is considered income, appropriate withholding taxes on the RIT allowance are deducted and the balance constitutes the net payment to the employee. Rules, procedures, examples, and prescribed tax tables for these calculations are provided in b through h, below, and in the figures and appendices to this Part 11.

b. General Rules and Assumptions

(1) The procedures prescribed herein for calculations and payment of the RIT allowance are based on certain assumptions jointly developed by GSA and IRS, and tax tables developed by IRS. This approach avoids a potentially controversial and administratively burdensome procedure requiring the employee to furnish extensive documentation, such as certified copies of actual tax returns and reconstructed returns, in support of a claim for a RIT allowance payment. Specifically the following assumptions have been made:

(a) The employee will claim allowable moving expense deductions for the same tax year in which the corresponding moving expense reimbursements are included in income;

(b) The employee will claim the maximum amount of deductible moving expenses allowable under the IRS tax rules when filing his/her tax return; and

(c) Prior to the Tax Reform Act of 1986, it was assumed that the employee's (and spouse's, if a joint return is filed) earned income, filing status, and CMTR determined for Year 1 (and used in determining the RIT allowance in Year 2) would remain the same or would not be substantially different in the second and subsequent tax years. However, the Tax Reform Act of 1986 substantially changed the Federal tax rates scheduled for 1987 and subsequent years. Therefore, it is necessary to compute a separate CMTR for Year 1 and for Year 2 (see e, below) and a new formula is prescribed to calculate any RIT allowances paid in 1987 (see f, below). It is assumed that within the accuracy of the calculation, the State and local tax rates for Year 1 and Year 2 will remain the same or will not be substantially different. Therefore, the State and local tax rates for Year 1 shall be used in calculating the CMTR for year 2.

(2) The prescribed procedures which yield an estimate of an employee's additional tax liability due to moving expense reimbursements are to be used uniformly. They are not to be adjusted to accommodate an employee's unique circumstance which may differ from the

assumed circumstances stated in (1), above.

(3) An adjustment of the RIT allowance paid in Year 2 for the covered taxable reimbursements received in Year 1 is required if the tax information certified to on the RIT allowance claim is different than that shown on the actual Federal tax return filed with IRS for Year 1 or changed for any reason after filing of the tax return, so as to affect the CMTR's used in the RIT allowance calculation. (See 2–11.10 for claims procedures.)

c. Determination of Covered Taxable Reimbursements

(1) Generally, the amount of the covered taxable reimbursements is the difference between (a) the amount of covered moving expense reimbursements for the allowances listed in 2–11.3 that was included in the employee's income in Year 1, and (b) the maximum amount of allowable moving expenses that may be claimed as a moving expense deduction by the employee on his/her Federal tax return under IRS tax regulations to offset the income resulting from moving expense reimbursements for Year 1. If the employee is precluded from claiming moving expense deductions because he/she does not meet IRS requirements for the distance test, then the amount of covered taxable reimbursements is the same as the amount of covered moving expenses (see 2–11.5d).

(2) For purposes of calculating the RIT allowance, the following special rules apply to the determination of moving expense deductions to offset moving expense reimbursements reported as income:

(a) The total amount of reimbursement (which was reported as income) for the expenses of en route travel for the employee and family (see 2–11.3a) and transportation (including up to 30 days temporary storage) of household goods (see 2–11.3b) to the new official station shall be used as a moving expense deduction. (See also 2–11.4e and f.)

(b) The total amount of reimbursement for a househunting trip, temporary quarters (up to 30 days at new station) and real estate transaction expenses (see 2–11.3e, f, g, and i), up to the maximum allowable deduction under IRS tax regulations, shall be used as a moving expense deduction. For example, an employee and spouse filing a joint return for the 1986 tax year and residing in the same household at the end of the tax year may deduct up to $3,000 for these expenses. (No more than $1,500 of the $3,000 may be claimed for a househunting trip and temporary quarters expenses combined.) If the employee was reimbursed $1,350 for a househunting trip and temporary quarters expenses and $9,000 for real estate expenses, the moving expense deductions would be $1,350 for the househunting trip and temporary quarters expenses and $1,650 for real estate expenses. If the employee's reimbursement was $1,650 for the househunting trip and temporary quarters expenses and $9,000 for real estate expenses, the moving expense deductions would be $1,500 for the househunting trip and temporary quarters expenses and $1,500 for real estate expenses. If the employee had no reimbursement for a househunting trip and temporary quarters, the full $3,000 would be applied to the $9,000 reimbursement for real estate expenses. (See IRS Publication 521, "Moving Expenses," for these and other maximums which vary by situation and filing status.)

(3) Procedures and examples are provided herein as if all moving expense reimbursements are received in one year with all moving expense deductions applied in that same year to arrive at the covered taxable reimbursements. However, when reimbursements span more than one year, the amount of covered taxable reimbursements must be determined separately for each reimbursement year (Year 1). The maximum moving expense deductions apply to the entire move. Under IRS tax regulations the employee has some discretion as to when he/she claims these deductions (e.g., in the year of the move when the expense was paid or in the year of reimbursement, if these actions do not occur in the same year). However, for purposes of the RIT allowance procedures, the moving expense deductions will be applied in the year that the corresponding reimbursement is made. For example, if an employee incurred and was reimbursed $1,000 for a househunting trip and temporary quarters in 1985 and an additional $1,000 for temporary quarters in 1986, this employee, according to his/her particular situation and tax filing status, may deduct $1,500 of these expenses in moving expense deductions. In calculating the RIT allowance for 1985, $1,000 of the $1,500 deduction is used to offset the $1,000 reimbursement in 1985 resulting in zero covered taxable reimbursements for the househunting trip and temporary quarters for 1985. The remaining $500 (balance of the $1,500 not used in determining covered taxable reimbursements for 1985) will be used to offset the $1,000 temporary quarters reimbursement in 1986 (second Year 1), leaving $500 of the temporary quarters reimbursement as a covered taxable reimbursement for 1986.

(4) Although the WTA amount is included in income (see 2–11.7), it shall not be included in the amount of covered taxable reimbursements. Under the procedures and formulas established herein, the proper amount of the RIT allowance is calculated using the RIT gross-up formula with the WTA excluded from covered taxable reimbursements.

(5) Agencies are cautioned that there may be moving expenses reimbursed to the employee that are not covered by the RIT allowance. (See exclusions in 2–11.4; also see discussion in 2–11.7 regarding covered taxable reimbursements versus nondeductible expenses.)

(6) An example showing how to calculate covered taxable reimbursements is illustrated in Figure 2–11.8a. Also, Figures 2–11.8b and 2–11.8c show an example of completed IRS Form 4782 (Employee Moving Expense Information) and of IRS Form 3903 (Moving Expense Adjustment) with dollar amounts which correspond to those shown in Figure 2–11.8a.

d. Determination of Income Level and Filing Status

In order to determine the CMTR's needed to calculate the RIT allowance, the employee must determine the appropriate amount of earned income (as prescribed herein) that was or will be reported on his/her Federal tax return for the tax year in which the covered taxable reimbursements were received (Year 1). Such amount will also include the spouse's earned income if a joint filing status is claimed. For purposes of this regulation, appropriate earned income shall include only the amount of gross compensation reported on IRS Form(s) W–2, and, if applicable, the net earnings (or loss) from self-employment income as shown on Schedule SE of IRS Form 1040 (see 2–11.5h). (Note that moving expense reimbursements including the WTA amounts are to be included in earned income and should be shown as income on the Form W–2; if they are not, other appropriate documentation shall be furnished by the agency (see 2–11.7g).) The amount of earned income as determined under this paragraph and the tax filing status (for example, from lines 1 through 5 on the 1986 IRS Form 1040) shall be contained in a certified statement on, or attached to, the voucher claiming the RIT allowance (see 2–11.10).

e. Determination of the CMTR's

The gross-up formula used to calculate the RIT allowance in *f*, below, requires the use of two CMTR's—one for Year 1 in which reimbursements were received and the other for Year 2 in which the RIT allowance is paid. CMTR's are single tax rates calculated to represent the Federal, State and/or local tax rates applicable to the earned income determined in d, above, for Year 1. The CMTR's will be determined as provided in (1) through (4), below.

(1) *Federal marginal tax rates.* The Federal marginal tax rates for Year 1 and Year 2 are determined by using the income level and filing status determined under 2–11.8d and contained in the certified statement by the employee on his/her RIT allowance claim, and applying the prescribed Federal tax tables contained in appendices 2–11.A and C. For example, if the income level for 1986 tax year (Year 1) was $65,000 for a married employee filing a Federal joint return, the Federal marginal tax rate would be 38 percent for Year 1 (1986) and 35 percent for Year 2 (1987). These rates would be used regardless of how much of the $65,000 was attributable to reimbursement for the employee's relocation expenses. (Note that these marginal rates are different from the withholding tax rate used for the WTA.) If the employee incurs only Federal income tax (i.e., there are no State or local taxes), the Federal marginal tax rates determined from appendices 2–11.A and C are the CMTR's to be used in the RIT gross-up formula provided in 2–11.8f. In such cases, the provisions of (2) and (3), below, do not apply.

(2) *State marginal tax rate.* (a) If the employee incurs an additional State income tax (see definition in 2–11.5a) liability as a result of moving expense reimbursements, the appropriate State tax table in appendix 2–11.B is to be used to determine the applicable State marginal tax rate that will be substituted into the formula for determining the CMTR for both Year 1 and Year 2. The appropriate State tax table will be the one that corresponds to the tax year in which the reimbursements are paid to the employee (Year 1). The income level determined in 2–11.8d for Federal taxes shall be used to identify the appropriate income bracket in the State tax table. The applicable State marginal tax rate is obtained from the selected income bracket column for the State where the employee is required to pay State income tax on moving expense reimbursements. The tax rates shown in the table apply to all employees regardless of their filing status, except where a separate rate is shown for a single filing status.

(b) The lowest income bracket shown in the State tax table in appendix 2–11.B is $20,000–$24,999. In cases where the employee's (employee's and spouse's, if filing jointly) earned income as determined under 2–11.8d is less than this income bracket, an appropriate State marginal tax rate shall be established by the employing agency from the applicable State tax code or regulations issued pursuant thereto. Such State marginal tax rate shall be representative of the earned income level in question but in no case more than the marginal tax rate established in appendix 2–11.B for the $20,000–$24,999 income bracket for the particular State in which an additional tax obligation has been incurred.

(c) The prescribed State marginal tax rates generally are expressed as a *percent of taxable income.* However, if the applicable State marginal tax rate is stated as a *percentage* of the *Federal income tax liability,* the State tax rate must be converted to a *percent of taxable income* to be used in the CMTR formulas in 2–11.8e(4). This is accomplished by multiplying the applicable Federal tax rate for Year 1 by the applicable State tax rate. For example, if the Federal tax rate is 38 percent for Year 1 and the State tax rate is 25 percent of the *Federal income tax liability,* the State tax rate stated as a *percent of taxable income* would be 9.5 percent. The State tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(d) An employee may incur a State income tax liability on moving expense reimbursements in more than one State at the same or different marginal tax rates. Nevertheless, a single State marginal tax rate must be determined for use in the CMTR formulas in 2–11.8e(4). The following general rules shall apply in determining the applicable single rate.

(i) In the tax year during which the transfer actually takes place, the employee may incur a State income tax obligation at both the old and new location. However, most moving expense reimbursements will be taxed at the new location. Although the employee may receive some reimbursements (e.g., for a house-hunting trip) prior to the actual transfer which would be credited as income at the old location, these types of expenses generally are tax deductible and would not generate an additional State tax liability for the employee. In addition, procedures inherent in the travel voucher reimbursement system tend to cause most reimbursements which may be taxable to occur after the actual transfer. Therefore, the State marginal tax rate determined under 2–11.8e(2) (a) through (c) for the new location will be used in the CMTR formulas.

(ii) There may be other situations where the employee is subject to taxes on moving expense reimbursements in two States, for instance, in one State because of State residency and in another because a particular State taxes income earned within its jurisdiction irrespective of whether the employee is a resident. If the two States involved recognize such situations by allowing an adjustment or credit for taxes paid to the other State, the employee's State marginal tax rate for the State where income tax on moving expense reimbursements is actually paid will be determined and used in the CMTR formulas. However, in those situations where there is in fact double taxation on income from moving expense reimbursements and the taxes imposed by both States qualify as a State income tax (as defined in 2–11.5a), the sum of the State marginal tax rates for the two States as determined under 2–11.8e(2) (a) through (c) shall be used in the CMTR formulas.

(3) *Local marginal tax rate.* Because of the impracticality of establishing a single marginal tax rate table for local income taxes that could be applied uniformly on a nationwide basis, appropriate local marginal tax rates shall be determined as provided in (a) through (c), below.

(a) If the employee incurs an additional local income tax (see definition 2–11.5b) liability as a result of moving expense reimbursements, he/she shall certify to such fact when claiming the RIT allowance (see certification statement in 2–11.10) by specifying the name of the locality imposing the income tax and the applicable marginal tax rate determined from the actual marginal tax rate table or schedule prescribed by the taxing locality. The marginal tax rate shall be the one applicable to the taxable income portion of the amount of earned income determined under 2–11.8d for the employee (and spouse, if filing jointly). The same tax rate shall be used in calculating the CMTR for both Year 1 and Year 2. The employing agency shall establish procedures to determine whether the employee certified local marginal tax rate is appropriate for the employee's income level and filing status and approve its use in the CMTR formulas. (See also 2–11.10b(2).)

(b) If the local marginal tax rate is stated as a percentage of Federal or State income tax liability, such rate must be converted to a percent of taxable income for use in the CMTR formulas. This is accomplished by multiplying the applicable Federal or State tax rate for Year 1 as determined in 2–11.8e(1) or (2) by the applicable local tax rate. For example, if the State tax rate for Year 1 is 6 percent and the local tax rate is 50 percent of State income tax liability, the local tax rate stated as a percentage of taxable income would be 3 percent. The local tax rate thus determined for Year 1 will be used in determining the CMTR for both Year 1 and Year 2.

(c) The situations described in 2–11.8e(2)(d) with respect to State income taxes may also be encountered with local income taxes. If such situations do occur, the rules prescribed for determining the single State marginal tax rate shall also be applied to determine the single local marginal tax rate for use in the CMTR formulas.

(4) *Calculation of the CMTR's.* As stated above, the gross-up formula for calculating the RIT allowance requires the use of two CMTR's. However, the required CMTR's cannot be calculated by merely adding the Federal, State and local marginal tax rates together because of the deductibility of State and local income taxes from income for Federal income tax purposes. The State tax tables prescribed in appendix 2–11.B are designed to use the same income amount as that determined for the Federal taxes, which reflects, among other things, State and local tax deductions. The formulas prescribed below for calculating the CMTR's are designed to adjust the State and local tax rates to compensate for their deductibility from income for Federal tax purposes.

(a) *Calculation of the CMTR for Year 1.* The following formula shall be used to calculate the CMTR for Year 1.

CMTR Formula: $X=F+(1-F)S+(1-F)L$

where

X=CMTR for Year 1
F=Federal tax rate for Year 1
S=State tax rate for Year 1
L=local tax rate for Year 1

(i) *Federal, State and local taxes incurred.* If the employee incurs Federal, State and local taxes on moving expense reimbursements, the CMTR formula may be solved as follows:

Example: If
F=38 percent of income
S=6 percent of income
L=2 percent of income
Then

$X=.38+(1.00-.38).06+(1.00-.38).02$
$X=.4296$

(ii) *Federal and State income tax only.* If the employee incurs tax liability on moving expense reimbursements for Federal and State income tax but none for local income tax, the value of "L" is zero and the CMTR formula may be solved as follows:

Example: If
F=38 percent of income
S=6 percent of income
L=Zero
Then

$X=.38+(1.00-.38).06$
$X=.4172$

(iii) *Federal and local income tax only.* If the employee incurs a tax liability on moving expense reimbursements for Federal and local income tax but none for State income tax, the value of "S" is zero and the CMTR formula may be solved as follows:

Example: If
F=38 percent of income
S=Zero
L=2 percent of income
Then

$X=.38+(1.00-.38).02$
$X=.3924$

(b) Calculation of the CMTR for Year 2. The calculation of the CMTR for Year 2 is the same as described in (a), above, for Year 1 except that the Federal tax rate for Year 2 is used in place of the Federal tax rate for Year 1. State and local tax rates remain the same as for Year 1. The following formula shall be used to determine the CMTR for Year 2:

CMTR Formula: $W=F+(1-F)S+(1-F)L$

where

W=CMTR for Year 2
F=Federal tax rate for Year 2
S=State tax rate for Year 1
L=local tax rate for Year 1

f. Determination of the RIT Allowance

The RIT allowance to cover the tax liability on additional income resulting from the covered taxable reimbursements received in Year 1 is calculated in Year 2 as provided below:

(1) The RIT allowance is calculated by substituting the amount of covered taxable reimbursements for Year 1 (see 2–11.8c), the CMTR's for Year 1 and Year 2, and the total amount of the WTA's paid in Year 1 into the gross-up formula as follows:

Formula:
$Z=X/1-W\ (R)-1-X/1-W\ (Y)$
where

Z=RIT allowance payable in Year 2
X=CMTR for Year 1
W=CMTR for Year 2
R=covered taxable reimbursements
Y=total WTA's paid in Year 1

Example: If
X=.4296
W=.4020
R=$21,800
Y=$5,450
Then

$Z=.4296/1.00-.4020\ ($21,800)-1.00-.4296/1.00-.4020\ ($5,450)$
$Z=.7184\ ($21,800)-.9638($5,450)$
$Z=$15,661.12-$5,198.21$
$Z=$10,462.91$

(2) There may be instances when a WTA was not paid in Year 1 at the time moving expense reimbursements were made. In cases where there is no WTA to be deducted, the value of "Y" is zero and the formula stated in (1), above, for calculating the amount of the RIT allowance (Z) due the employee in Year 2 may be solved as shown in the following example:

Example: If
X=.4296
W=.4020
R=$21,800
Y=Zero
Then

$Z=.4296/1.00-.4020\ ($21,800)$
$Z=.7184\ ($21,800)$
$Z=$15,661.12$

(3) If the amount of the RIT allowance is greater than zero, it is payable to the employee on the travel voucher as a relocation or moving expense allowance. The RIT allowance amount is included in the employee's gross income for Year 2 and, therefore, subject to appropriate withholding taxes (see net payment to employee in 2–11.8g). The RIT allowance amount will be reported on IRS Form W–2 for Year 2 and on IRS Form 4782 for the employee's information.

(4) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government (see 2–11.7e(2) and 2–11.9b).

(5) Any changes to the employee's income level or filing status for Year 1 that would affect the marginal tax rates (Federal, State, or local) used in calculating the RIT allowance must be reported to the agency by the employee as provided in 2–11.9b(2). (See also 2–11.10 for certified statement regarding these changes.)

g. Determination of the Net Payment Due Employee in Year 2

Since the amount of the RIT allowance is income to the employee in Year 2, it is subject to the same tax withholding requirements as all other moving expense reimbursements. Agencies should determine the appropriate amounts for withholding taxes under their internal tax

withholding procedures. The amount of withholding taxes is deducted from the RIT allowance to arrive at the net payment to the employee.

h. Summary Example

The procedures provided in a through g, above, for calculating the RIT allowance and in 2–11.7 for calculating the WTA are summarized and illustrated for a hypothetical situation in Figure 2–11.8d.

*2–11.9. Responsibilities*

a. Agency

Finance offices will calculate the amount of the gross-up for the WTA in Year 1 in accordance with procedures outlined herein and credit this amount to the employee at the time of reimbursement as provided in 2–11.7e. The WTA will be reflected on the employee's Form W–2 for Year 1. The RIT allowance may be calculated in Year 2 either by the employee or by the agency finance office based on information provided by the employee on the voucher, as directed by the agency's implementing policies and procedures. In addition, agencies shall prescribe appropriate and necessary implementing procedures as provided elsewhere in this Part 11.

b. Employee

(1) The employee is required to submit a claim for the RIT allowance and to file the tax information for Year 1 specified in 2–11.10 with his/her agency in Year 2, regardless of whether any additional reimbursement for the RIT allowance is owed the employee.

(2) If any action occurs (i.e., amended tax return, tax audit, etc.) that would change the information provided in Year 2 by the employee to his/her agency for use in calculating the RIT allowance due the employee for Year 1 taxes, this information must be provided by the employee to his/her agency under procedures prescribed by the agency. (See 2–11.10.)

(3) If the calculation of the RIT allowance results in a negative amount, the employee is obligated to repay this amount as a debt due the Government (see 2–11.7e(2) and 2–11.8f(4)).

*2–11.10. Claims for Payment and Supporting Documentation and Verification*

a. Claims Forms

Claims for payment of the RIT allowance shall be submitted by the employee in Year 2 on SF 1012 (Travel Voucher) or other authorized travel voucher form. When claiming payment for the RIT allowance, the employee shall furnish and certify to certain tax information that has been or will be shown on his/her actually prepared tax returns. This information shall be contained in a certified statement on, or attached to, the SF 1012 reading essentially as follows:

I certify that the following information, which is to be used in calculating the RIT allowance to which I am entitled, has been (or will be) shown on the income tax returns filed (or to be filed) by me (or by my spouse and me) with the applicable Federal, State, and local (specify which) tax authorities for the 19__ tax year.

—Gross compensation as shown on attached IRS Form(s) W–2 and, if applicable, net earnings (or loss) from self-employment income shown on attached Schedule SE (Form 1040):

| | Forms W–2 | Schedule SE |
|---|---|---|
| Employee ..... | $_____ | $_____ |
| Spouse (if filing jointly) ..... | $_____ | $_____ |
| Total (both columns) .. | $_____ | |

Filing status: _____

(Specify one of the filing status items that was (or will be) claimed on IRS Form 1040.)

Marginal tax rates from FTR appendices 2–11.A, B and C and local tax tables derived under procedures prescribed in FTR Part 2–11:

Federal for Year 1 _____
Federal for Year 2 _____
State (specify which): _____
Local (specify which): _____

The above information is true and accurate to the best of my knowledge. I (we) agree to notify the appropriate agency official of any changes to the above (i.e., from amended tax returns, tax audit, etc.) so that appropriate adjustments to the RIT allowance can be made. The required supporting documents are attached. Additional documentation will be furnished if requested.

I (we) further agree that if the 12-month service agreement required by 2–1.5a(1) is violated, the total amount of the RIT allowance will become a debt due the United States Government and will be repaid according to agency procedures pursuant to FTR 2–11.11.

_____
Employee's signature
Date _____

_____
Spouse's signature (if filing jointly)
Date _____

b. Supporting Documentation/ Verification

The claim for the RIT allowance shall be supported by documentation attached to the voucher and by verification of State and local tax obligations as provided below:

(1) Copies of the appropriate IRS Forms W–2 and, if applicable, the completed IRS Schedule SE (Form 1040) shall be attached to the voucher to substantiate the income amounts shown in the certified statement. Employee (and spouse, if filing jointly) must agree to provide additional documentation to verify income amounts, filing status, and State and local income tax obligations if requested by the agency.

(2) In order to determine or verify whether a particular State or local tax authority imposes a tax on moving expense reimbursements, it is incumbent upon the appropriate agency officials to become familiar with the State and local tax laws that affect their transferring employees. In cases where the taxability of moving expense reimbursements is not clear, an agency may pay a RIT allowance which reflects only those State and local tax obligations that are clearly imposed under State and local tax law. Once the questionable State or local tax obligations are resolved, agencies may recompute the RIT allowance and make appropriate payment adjustments.

c. Fraudulent Claims

A claim against the United States is forfeited if the claimant defrauds or attempts to defraud the Government in connection therewith (28 U.S.C. 2514). In addition, there are two criminal provisions under which severe penalties may be imposed on an employee who knowingly presents a false, fictitious, or fraudulent claim against the United States (18 U.S.C. 287 and 1001). The employee's claim for payment of the RIT allowance shall accurately reflect the facts involved in every instance so that any violation of these provisions will be avoided.

*2–11.11. Violation of Service Agreement*

In the event the employee violates the terms of the service agreement required under 2–1.5a(1), no part of the RIT allowance or the WTA will be paid, and any amounts paid prior to such violation shall be a debt due the United States until they are repaid by the employee.

*2–11.12. Advance of Funds*

No advance of funds is authorized in connection with the allowance provided in this part.

*2–11.13. Source References*

The following references or publications have been used as source material for this Part 11.

a. Internal Revenue Code (IRC), section 164(a)(3) (26 U.S.C. 164(a)(3)) pertaining to the deductibility of State and local income taxes, and section 217 (26 U.S.C. 217), pertaining to moving expenses.

b. Internal Revenue Service Publication 521, "Moving Expenses."

c. Internal Revenue Service, Circular E, "Employer's Tax Guide."

d. Department of the Treasury Fiscal Requirements Manual for Federal Agencies, ITFRM 3–5000.

e. 31 CFR 215.2 (5 U.S.C. 5516, 5517, and 5520).

* * * * *

Example 4. Summary of RIT Allowance Procedures

*Year 1:* In 1986, the employee received $31,050 in covered moving expense reimbursements. After subtracting $9,250 of deductible moving expenses, $21,800 of the reimbursements (nondeductible moving expenses) were subject to Federal tax withholding. (No State or local tax withholding in this case.) This example assumes that all reimbursements were paid on one voucher.

Apply WTA formula:
Y=X/1−X (N)
where
Y=WTA
X=Federal withholding tax rate (.20)
N=nondeductible moving expenses ($21,800)
Then
Y=.20/1−.20 ($21,800)
Y=$5,450

Compute net payment to employee in Year 1:

| | |
|---|---|
| Total moving expense reimbursement in year 1 | $31,050 |
| *Less deductible moving expenses* | −9,250 |
| Nondeductible moving expenses subject to withholding | $21,800 |
| *Plus WTA on $21,800* | +5,450 |
| Amount subject to withholding | $27,250 |
| *Less Federal tax withholding ($27,250×.20)* | −5,450 |
| Balance after withholding | $21,800 |
| *Plus deductible moving expenses* | +9,250 |
| Net payment in year 1 | $31,050 |

*Year 2:* In 1987, the amount of the RIT allowance is determined on the basis of covered reimbursements in Year 1. Assume that $21,800 of nondeductible moving expenses is the same as the covered taxable reimbursements. Also, assume that employee and spouse (married, filing jointly) have combined earned income of $65,000. Thus, Federal marginal tax rates would be 38% for Year 1 (from app. 2–11.A) and 35% for Year 2 (from app. 2–11.C). Also assume the applicable State and local marginal tax rates are 6% and 2%, respectively, of taxable income.

Apply CMTR formula for Year 1:
X=F+(1−F)S+(1−F)L
where
X=CMTR for Year 1
F=Federal tax rate for Year 1 (.38)
S=State tax rate for Year 1 (.06)
L=local tax rate for Year 1 (.02)
Then
X=.38+(1−.38).06+(1−.38).02
X=.38+.0372+.0124
X=.4296

Apply CMTR formula for Year 2:
W=F+(1−F)S+(1−F)L
where
W=CMTR for Year 2
F=Federal tax rate for Year 2 (.35)
S=State tax rate for Year 1 (.06)
L=local tax rate for Year 1 (.02)
Then
W=.35+(1−.35).06+(1+.35).02
W=.35+.0390+.0130
W=.4020

Apply RIT gross-up formula: Z=X/1−W (R)−1−X/1−W (Y)
where
Z=RIT allowance
X=CMTR for Year 1 (.4296)
W=CMTR for Year 2 (.4020)
R=covered taxable reimbursements for Year 1 ($21,800)
Y=WTA paid in year 1 ($5,450)
Then
Z=.4296/1−.4020 ($21,800)−1−.4296/1−.4020 ($5,450)
Z=.7184 ($21,800)−.9638 ($5,450)
Z=$15,661.12−$5,198.21
Z=$10,462.91

Compute net payment to employee in Year 2:

| | |
|---|---|
| RIT allowance payable | $10,462.91 |
| Less Federal withholding tax | −2,092.58 |
| Less State and local withholding | −0.00 |
| Net amount paid to employee | [1]$8,370.33 |

[1] If no WTA's had been paid in this example, the RIT allowance would be $15,661.12. The Federal withholding tax would be $3,132.22, leaving a net payment to the employee of $12,528.90.

3. The appendices following Part 11, Chapter 2 of the FTR are amended by adding the Federal tax table for 1986 to Appendix 2–11.A, the State tax table for 1986 to Appendix 2–11.B, and Federal tax table for 1987 as Appendix 2–11.C, reading as follows:

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FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS - TAX YEAR 1986

The following table is to be used to determine the Federal marginal tax rate for Year 1 for computation of the RIT allowance as prescribed in FTR 2-11.8e(1). This table is to be used for employees who received covered taxable reimbursements during calendar year 1986.

| Marginal Tax Rate | Single Taxpayer | | Heads of Household | | Married Filing Jointly/Qualifying Widows & Widowers | | Married Filing Separately | |
|---|---|---|---|---|---|---|---|---|
| | Over | But not over | Over | But not over | Over | But not over | Over | But not over |
| 11% | $6,180 | $7,370 | $6,782 | $9,533 | $9,670 | $11,795 | $5,840 | $7,879 |
| 12% | 7,370 | 8,450 | 9,533 | 10,523 | 11,795 | 13,739 | 7,879 | 9,665 |
| 14% | 8,450 | 10,710 | 10,523 | 12,705 | 13,739 | 18,356 | 9,665 | 11,000 |
| 15% | 10,710 | 11,775 | N/A | N/A | N/A | N/A | N/A | N/A |
| 16% | 11,775 | 13,197 | N/A | N/A | 18,356 | 23,068 | 11,000 | 11,600 |
| 17% | N/A | N/A | 12,705 | 16,050 | N/A | N/A | N/A | N/A |
| 18% | 13,197 | 15,648 | 16,050 | 19,764 | 23,068 | 27,963 | 11,600 | 13,947 |
| 20% | 15,648 | 18,108 | 19,764 | 23,841 | N/A | N/A | N/A | N/A |
| 22% | N/A | N/A | N/A | N/A | 27,963 | 33,533 | 13,947 | 16,843 |
| 23% | 18,108 | 22,040 | N/A | N/A | N/A | N/A | N/A | N/A |
| 24% | N/A | N/A | 23,841 | 29,849 | N/A | N/A | N/A | N/A |
| 25% | N/A | N/A | N/A | N/A | 33,533 | 40,202 | 16,843 | 20,297 |
| 26% | 22,040 | 28,198 | N/A | N/A | N/A | N/A | N/A | N/A |
| 28% | N/A | N/A | 29,849 | 35,320 | 40,202 | 46,870 | 20,297 | 22,659 |
| 30% | 28,198 | 33,918 | N/A | N/A | N/A | N/A | N/A | N/A |
| 32% | N/A | N/A | 35,320 | 41,715 | N/A | N/A | N/A | N/A |
| 33% | N/A | N/A | N/A | N/A | 46,870 | 59,477 | 22,659 | 30,364 |
| 34% | 33,918 | 40,741 | N/A | N/A | N/A | N/A | N/A | N/A |
| 35% | N/A | N/A | 41,715 | 54,643 | N/A | N/A | N/A | N/A |
| 38% | 40,741 | 47,419 | N/A | N/A | 59,477 | 76,132 | 30,364 | 44,795 |
| 42% | 47,419 | 64,468 | 54,643 | 74,430 | 76,132 | 104,120 | 44,795 | 55,653 |
| 45% | N/A | N/A | 74,430 | 112,442 | 104,120 | 128,224 | 55,653 | 69,383 |
| 48% | 64,468 | 96,172 | 112,442 | 129,934 | N/A | N/A | N/A | N/A |
| 49% | N/A | N/A | N/A | N/A | 128,224 | 183,988 | 69,383 | 106,160 |
| 50% | 96,172 | --- | 129,934 | --- | 183,988 | --- | 106,160 | --- |

N/A means tax rate not applicable for filing status.

Appendix 2-11.A. Federal Tax Table for RIT Allowance

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL - TAX YEAR 1986

The following table (pages 9 thru 12) is to be used to determine State marginal tax rates for calculation of the RIT allowance as prescribed IN FTR 2-11.8e(2). This table is to be used for employees who received covered taxable reimbursements during calendar year 1986.

| State (or district) | Marginal tax rates (stated in percents) for the earned income amounts specified in each column. 1/ 2/ | | | |
|---|---|---|---|---|
| | $20,000-24,999 | $25,000-49,999 | $50,000-74,999 | $75,000 & OVER |
| 1. Alabama | 5% | 5% | 5% | 5% |
| 2. Alaska | 0 | 0 | 0 | 0 |
| 3. Arizona | 8 | 8 | 8 | 8 |
| 4. Arkansas | 6 | 7 | 7 | 7 |
| 5. California | 3 | 7 | 11 | 11 |
| if single status 3/ | 8 | 11 | 11 | 11 |
| 6. Colorado | 8 | 8 | 8 | 8 |
| 7. Connecticut | 0 | 0 | 0 | 0 |
| 8. Delaware | 6.9 | 9.0 | 9.7 | 9.7 |
| 9. District of Columbia | 10 | 11 | 11 | 11 |
| 10. Florida | 0 | 0 | 0 | 0 |
| 11. Georgia | 6 | 6 | 6 | 6 |
| 12. Hawaii | 8.5 | 10.0 | 10.5 | 11 |
| if single status 3/ | 10.5 | 11 | 11 | 11 |
| 13. Idaho | 7.5 | 7.5 | 7.5 | 7.5 |
| 14. Illinois | 2.5 | 2.5 | 2.5 | 2.5 |
| 15. Indiana | 3 | 3 | 3 | 3 |
| 16. Iowa | 0 | 11 | 12 | 13 |
| 17. Kansas | 7.5 | 9 | 9 | 9 |
| 18. Kentucky | 6 | 6 | 6 | 6 |
| 19. Louisiana | 4 | 4 | 6 | 6 |
| 20. Maine | 7 | 9.2 | 10 | 10 |
| if single status 3/ | 9.2 | 10 | 10 | 10 |
| 21. Maryland | 5% | 5% | 5% | 5% |
| 22. Massachusetts | 5.19 | 5.19 | 5.19 | 5.19 |
| 23. Michigan | 4.725 | 4.725 | 4.725 | 4.725 |
| 24. Minnesota | 11 | 14 | 14 | 14 |
| if single status 3/ | 14 | 14 | 14 | 14 |

Appendix 2-11.B. State Tax Table for RIT Allowance

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL - TAX YEAR 1985 (cont'd.)

Marginal tax rates (stated in percents) for the earned income amounts specified in each column. 1/ 2/

| State (or district) | $20,000-$24,999 | $25,000-49,999 | $50,000-74,999 | $75,000 & OVER |
|---|---|---|---|---|
| 25. Mississippi | 5 | 5 | 5 | 5 |
| 26. Missouri | 6 | 6 | 6 | 6 |
| 27. Montana | 9 | 10 | 11 | 11 |
| 28. Nebraska | *tax 19% of Federal income tax liability 4/ | | | |
| 29. Nevada | 0 | 0 | 0 | 0 |
| 30. New Hampshire | 0 | 0 | 0 | 0 |
| 31. New Jersey | 2 | 2.5 | 3.5 | 3.5 |
| 32. New Mexico | 4.8 | 6.9 | 7.7 | 8.5 |
| 33. New York | 11 | 13.5 | 13.5 | 13.5 |
| 34. North Carolina | 7 | 7 | 7 | 7 |
| 35. North Dakota | 6 | 8 | 9 | 9 |
| 36. Ohio | 4.513 | 5.415 | 6.318 | 9.025 |
| 37. Oklahoma | 6 | 6 | 6 | 6 |
| 38. Oregon | 9.75 | 9.75 | 9.75 | 9.75 |
| 39. Pennsylvania | 2.167 | 2.167 | 2.167 | 2.167 |
| 40. Rhode Island | *tax 22.21% of Federal income tax liability 4/ | | | |
| 41. South Carolina | 7 | 7 | 7 | 7 |
| 42. South Dakota | 0 | 0 | 0 | 0 |
| 43. Tennessee | 0 | 0 | 0 | 0 |
| 44. Texas | 0 | 0 | 0 | 0 |
| 45. Utah | 7.75 | 7.75 | 7.75 | 7.75 |
| 46. Vermont | *tax 26.5% of Federal income tax liability 4/ | | | |
| 47. Virginia | 5.75 | 5.75 | 5.75 | 5.75 |
| 48. Washington | 0 | 0 | 0 | 0 |

STATE MARGINAL TAX RATES BY EARNED INCOME LEVEL - TAX YEAR 1986 (cont'd)

| State (or district) | Marginal tax rates (stated in percents) for the earned income amounts specified in each column. 1/ 2/ | | | |
|---|---|---|---|---|
| | $20,000-24,999 | $25,000-49,999 | $50,000-74,999 | $75,000 & OVER |
| 49. West Virginia | 3.5 | 7.4 | 10.5 | 13 |
| if single status 3/ | 8.2 | 12.6 | 12.9 | 13 |
| 50. Wisconsin | 9.1 | 9.5 | 10 | 10 |
| 51. Wyoming | 0 | 0 | 0 | 0 |

1/ Earned income amounts that fall between the income brackets shown in this table (e.g., $24,999.45, $49,999.75, etc.) should be rounded to the nearest dollar to determine the marginal tax rate to be used in calculating the RIT allowance.

2/ If the earned income amount is less than the lowest income bracket shown in this table, the employing agency shall establish an appropriate marginal tax rate as provided in FTR 2-11.8e(2)(b).

3/ This rate applies only to those individuals certifying that they will file under a single status within the States where they will pay income taxes. All other taxpayers, regardless of filing status, will use the other rate shown.

4/ Rates shown as a percent of Federal income tax liability must be converted to a percent of income as provided in FTR 2-11.8e(2).

Appendix 2-11.B.

FEDERAL MARGINAL TAX RATES BY EARNED INCOME LEVEL AND FILING STATUS - TAX YEAR 1987

The following table is to be used to determine the Federal marginal tax rate for Year 2 for computation of the RIT allowance as prescribed in FTR 2-11.8e(1). This table is to be used for employees whose Year 1 occurred during calendar years 1983, 1984, 1985, and 1986.

| Marginal Tax Rate | Single Taxpayer | | Heads of Household | | Married Filing Jointly/Qualifying Widows & Widowers | | Married Filing Separately | |
|---|---|---|---|---|---|---|---|---|
| | Over | But Not over | Over | But Not over | Over | But Not over | Over | But Not over |
| 11% | $4,650 | $6,481 | $7,763 | $10,309 | $10,400 | $13,719 | $5,811 | $7,081 |
| 15% | 6,481 | 21,979 | 10,309 | 31,379 | 13,719 | 40,020 | 7,081 | 19,602 |
| 28% | 21,979 | 33,433 | 31,379 | 47,903 | 40,020 | 58,705 | 19,602 | 31,572 |
| 35% | 33,433 | 58,810 | 47,903 | 88,015 | 58,705 | 101,432 | 31,572 | 54,120 |
| 38.5% | 58,810 | --- | 88,015 | --- | 101,432 | --- | 54,120 | --- |

Appendix 2-11.C Federal Tax Table for RIT Allowance - Year 2

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Dated: May 11, 1987.

T.C. Golden,

*Administrator of General Services.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Income Security Policy; Applications for Grants

May 19, 1987.

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of income security policy from States and public and other organizations.

**A. Type of Application Requested**

This announcement seeks applications for projects to develop and conduct a program of research relating to national policy concerns in the area of income security policy. The following paragraphs describe this general area of interest in greater detail by enumerating high priority areas of research. The questions they contain are intended as illustrations of specific concerns. Applications should be for projects that will address one or more of the priority areas discussed below; other, closely related issues may also be included if they are shown to be relevant to the general area of interest.

A broad range of methodologies are acceptable for the purpose of this grant competition. However, all proposed projects should embody a sound theoretical base upon which new and original empirical work, employing the most useful and relevant data bases, is built. Applicants must demonstrate knowledge of past and current research relating to the priority area under consideration, and they must also demonstrate access to data adequate to conduct a proposed study.

*1. The high priority research areas* for which applications for the proposed program of research are most desired are as follows:

*a. The relationship of availability of medical services to welfare dependency.* Disincentives affecting the movement of individuals from public program dependency to economic self-sufficiency are an unintended and undesirable (albeit inevitable) complement to all means-tested governmental income transfer programs. The work disincentives which strike at the margin of economic behavior (i.e. "notches") for programs such as Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI), are familiar to both policy makers and researchers. For the latter group, the literature devoted to econometric studies and evaluations of negative income tax demonstrations, is massive. Despite this previous analytic effort, we continue to have an inadequate understanding of both the way in which notches theoretically affect behavior, and how they work in practice.

This lack of knowledge is particularly true for the notch surrounding the availability of medical services in general, and the Medicaid program in particular. Because of a belief that health insurance was unavailable for many entry level jobs and that the prospect of losing health coverage that would accompany leaving AFDC was preventing many families from looking for and taking jobs that would allow them to become economically self-sufficient, "transitional" Medicaid Coverage provisions have been enacted. Current law requires States to provide 9 months of Medicaid coverage to all families who lose eligibility for AFDC due to the termination of the "one-third" income disregard. States have the option of extending this coverage for an additional 6 months in the case of a family that would be eligible for AFDC if the $30 plus one-third disregard were applied. Families who lose AFDC due to an increase in earnings continue to be eligible for 4 months of Medicaid benefits.

Given the above, resolution to questions such as the following are relevant to acquiring an understanding of notches that involve the availability of medical services and welfare dependency:

- How does the theory of preferences for cash wages vs. non-cash benefits relate to the notch effect for Medicaid?
- Does the Medicaid notch differ from other, similar work disincentive notches, and if so, how? How does the interaction of Medicaid with other major low-income support programs, AFDC & SSI, distinguish the Medicaid notch?
- What effect does the insurance nature of the program, especially concerning the individual-specific valuation of this insurance, have on differentiating the Medicaid notch? How do these valuations compare with the characteristics of the program recipients? Can the Medicaid notch be systematically related to the distribution of these program user characteristics? What issues of selection bias (e.g. those with actual or anticipated large medical expenses over using the program) are involved?
- What is the effect of nominally free health care availability on individuals' responses to the accompanying non-price costs (e.g. time, dignity, perceived quality)?
- What are the theoretical and practical effects of current "transition" provisions on willingness to take employment without health insurance benefits? To what extent is transition coverage used by people exiting from AFDC? When the transition benefits end, what is the subsequent health care financing behavior of the formerly assisted family unit? What is the availability of health care coverage for AFDC participants exiting to gainful employment?

Several data bases are clearly relevant for effective research in this priority area. Examples are the Survey of Income and Program Participation (SIPP) and the Current Population Survey (CPS), which since 1979 contains information on the availability of health insurance for low paying jobs. More detailed medical data bases such as the National Medical Care Utilization and Expenditure Survey will be relevant depending on the method chosen for analysis. Additionally, use of data stemming from the period following enactment of the Omnibus Budget Reconciliation Act (OBRA) of 1981, may enable new research costs to be decreased while simultaneously enhancing the product.[1]

*b. Effects and efficiency of transfers on growth and income distribution.* The effects that government transfer payments, and the taxes which are needed to finance these expenditures, have on economic growth, factors which lead to growth, and the distribution of personal income, are the source of great analytical debate in the field of economics. It has been argued that transfers inhibit economic growth, and even more strongly, that the same transfers intended as a means of moving the distribution of personal income towards greater equality, have instead, produced a more skewed income distribution. While we have a massive literature and an accompanying solid understanding of the transfer costs

[1] See for example, Research Triangle Institute, "Follow-Up Study of the 1981 AFDC Amendments", Final Report submitted to the Office of Family Assistance, Social Security Administration, Department of Health and Human Services, Research Triangle Park, NC, 1984. (This report can be obtained by writing to: Policy Information Center, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.)

associated with decreased labor supply, our knowledge concerning the effects of transfers on capital formation and hence long-run economic growth, is quite limited. What are the macroeconomic processes associated with and affected by the overall government transfer structure? The impact that transfers have on economic growth (i.e. the costs in terms of foregone growth due to transfers) and the resultant distribution of personal income (the "efficiency" of these transfers) sets the general study context for more specific research questions including:

- What are the most appropriate and accurate means of measuring personal income distribution and the degree of inequality? How is the behavior of the government, i.e. transfers and taxes, explicitly accounted for and integrated into the proper measurement framework?
- What is the relationship between changes in income distribution and transfer efforts through time (e.g. over the last 20 years) and across countries (including high/low income, and market/non-market economies)? Is there an identifiable trade-off between costs of transfers and changes in income distribution across time and countries? If so, can this relationship be quantified with time series data?
- What are the specific effects of the tax-transfer structure through time on the lowest population quintile, and what are the costs (in a general equilibrium setting) associated with altered savings, capital formation, labor supply, and productivity behavior, for the increased equality bought by these transfers?
- What other more general effects through time can be determined concerning trends in Lorenz curves, Gini coefficients, or other measures of inequality, as specifically related to income transfer efforts?

Corresponding to the large range of possible topics in this priority area, no single data set will have all the desired characteristics for this study. Investigators are encouraged to explore possibilities for combining and piecing together information from a variety of sources.

*c. Measurement of poverty: Optimal accounting periods and development of consumption-based poverty standards.* The measurement of poverty has been a research issue of great importance generating intense controversy for many years. It has been a policy issue, however, only since the birth of the Great Society's War on Poverty when separating the non-poor, program-ineligible population from the poor, program-eligible population became fundamental to anti-poverty policies for some of the relevant populations. A completely satisfactory method of performing this demarcation has not been devised. Sources of complexity for this type of calculation include:

- Determining the appropriate subject economic unit;
- Varying sizes and composition of these units however defined;
- Diverse geographic locations and regional economic conditions facing these units; and
- Continually changing individual and societal perceptions concerning the definition of minimum standards of living.

This priority area is concerned with research which will increase our understanding of the most appropriate measure of poverty in the context of the American economy in the late 1980s. Two themes, from a large list of valuable potential questions underlying the measurement of poverty, are emphasized here as comprising complex and contentious aspects of the larger problem:

(1) What are optimal accounting time periods?

(2) Can appropriate consumption-based poverty standards be devised?

(1) The accounting period is the time period over which income is counted for the determination of benefits for various means-tested income support programs. Short accounting periods will be more responsive to income changes, while longer accounting periods may generate benefit distributions that are generally regarded as more equitable. This is because under a short accounting period, families with relatively high incomes on an annual basis may qualify for benefits in some months if their incomes are irregular or seasonal. Thus horizontal inequity is a common result between equal-income units with steady vs. fluctuating incomes when short accounting periods are used. In the context of global questions concerning the measurement of poverty and optimal accounting periods, specific questions that arise include:

- What are the effects of alternative accounting periods on program eligibility and participation, poverty rates, and the distribution of personal income? Can poverty rates be determined for different accounting periods as an analog to different policy prescriptions being designed for differentiated poverty population segments?
- What are these effects specifically for multi-year over annual periods (i.e. employing an "averaging" concept)?
- Conversely, using e.g. the Survey of Income and Program Participation data base, what are the effects encountered by use of single or averaged (e.g. moving averaged) sub-annual accounting periods?

Use of both multi- and sub-annual accounting periods will directly address the consequences of the adoption of an altered definition of need for the programs under review. Moreover, these research questions dictate an investigation of optimal accounting time periods as fundamentally linked to individual program purposes, themselves a function of the degree to which recipient population categories have been successfully identified and defined. The proposed research is closely analogous to poverty spell and poverty turnover analysis as it relates to the study of welfare dynamics and dependency.

(2) In the current official calculation of the poverty population and hence poverty rate (for varying demographic groups), poverty thresholds are used to delineate poor from non-poor. The "Orshansky" measure in its current official usage combines elements of both a relative and absolute poverty definition. The thresholds are absolute to the extent that they reflect an earlier attempt to measure average food expenditure as a share of after-tax income combined with a measure of a minimum food consumption budget. They are relative since they were calculated in relation to an entire population at a specific time. The growth of income over time has altered the proportion of after-tax income spent on food, and large price change adjustments have been made which were calibrated to an overall consumption basket rather than a need-based one. Accordingly, the following questions arise in regard to changing this measure:

- What are the prospects for development of appropriate consumption-based poverty standards—ruling out those standards based solely on food—which would thus provide an updated, absolute poverty measure?
- An anomaly may arise when poverty measurement is directly linked to consumption of a good whose price is distorted by being set in an imperfect market. The phenomenon of "Ricardian rents" refers to a situation where an inelastically supplied good such as housing commands an "economic rent", i.e. the excess of actual price over the minimum price necessary to bring forth various supplies by owners. This situation could theoretically have a dramatic effect on the measurement of poverty in the case where welfare dollars are perceived to inflate housing

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prices (because of the rent), which then "feedback" into the poverty measure.

Can this effect be empirically quantified and estimated? What can be determined regarding measures such as the "transfer elasticity of discretionary spending" (which underlies the extent to which housing prices are bid up by transfer income)? Can consumption-based poverty standards be adjusted to correct for this class of distortions?

• Can consumption-based standards be designed to accommodate differing consumption patterns for alternative age groups, family composition and regional location? Determination of equivalence scales would appear to be an integral component of the research.

• How would (non-human) capital asset holding be integrated into an investigation of consumption-based poverty standards? Can the ASPE-funded 1983 and 1986 Survey of Consumer Finances or the Survey of Income and Program Participation serve as the basis for novel research which integrates wealth accumulation and asset ownership into a broader framework of relative economic status?

As stated above, these two issues have been emphasized as being important and unresolved ones. Other relevant issues are not excluded from research for this priority area.

*d. The Economic Attainment of Blacks and Puerto Ricans* . Immigrant groups in the past have typically done well in the U.S. economy, rising from the bottom of the economic heap to at least an average (and in many cases, above average) position in a relatively short while. It appears that these trends have not applied to the overall American black and Puerto Rican populations. Moreover, for specific segments of these two populations there appears to be a worsening economic and socio-cultural condition. Several questions arise from this observation:

• To what extent is the overall appearance of differential progress borne out by careful examination? What hypotheses can be empirically tested to provide solid explanations for this occurrence if it is demonstrated to be true?

• In comparing and contrasting the economic experiences of blacks and Puerto Ricans, both against other minority groups and among segments of poor blacks and Hispanics respectively, can we gain a better understanding of why economic progress has differential effects on varying population segments? What factors are responsible for differential group economic status?

• What are the socio-economic and cultural causes, correlates, and consequences of the high incidence of poverty in large central cities? Is there a highly disadvantaged population among the poor residing in central cities whose condition deserves special analytic explanation (e.g. deficiency of positive social values vs. limited opportunities and barriers to the achievement of self-sufficiency) and special intensive anti-poverty remedial efforts?

As can be seen from the above, a particular focus of this priority area concerns the so-called "underclass" population. Though this poverty segment defies clear definition, and the underclass term itself elicits significant controversy, many analysts have demonstrated the existence of a severely handicapped group of poor fitting some or all of the prominent characteristics associated with this classification. One aspect of this area relates to certain segments of the AFDC population about which little is known. A significant proportion of those who leave the rolls exit because the youngest child reaches eighteen, i.e., becomes "overaged". Another group is thought to "recycle" poverty, i.e. transmit poverty intergenerationally. Concerns are increasingly voiced that those who are long-term users of AFDC belong to these groups.

Of the many questions that arise in this context; the following seem among the most salient:

• Very little data is available on this group of welfare dependents, and therefore little is known regarding changes in its size and composition over time. To what extent is it possible to use various data sources, such as the decennial census or State welfare agency case data files, for learning more about the supposed growth in this population in absolute numbers over a time period such as twenty years? Can data be found that would illustrate its growth relative to other AFDC users?

• Is it possible to address questions regarding the rural-urban composition or the racial make-up of this group? Such data are crucial to shedding light on the standard presumption that this group of people is predominantly minority and inner city.

• Can such data regarding the changes in worst-case poverty be used to illustrate some of the effects of the wider social disintegration that has occurred in many areas over the last twenty years or so?

Due to the obvious need for detailed breakdowns of characteristics, and specific comparisons between the characteristic groupings, the appropriate data base would likely be the decennial Censuses.

*e. The incidence and implications of the growth of sub-families.* Recent research demonstrates that the growth of related sub-families, defined as including families of two or more persons within a larger household, whose head is a relative of the household head, in the past 10 years represents a significant new demographic trend in household formation and structure. Due to technical changes occurring in 1981 and 1982 in the way subfamilies were recorded in the Current Population Survey (CPS), over 1 million subfamilies were newly identified (CPS counting of non-related "secondary" families does not appear to be suspect). This finding clearly demonstrates that the number of sub-families identified previous to the CPS coding change grossly undercounted the true population.[2] Three sets of issues immediately present themselves regarding this discovery:

• Taking the new CPS coding as accurate, what is the historical pattern of sub-families prior to 1981?

• What are the characteristics of these subfamilies (e.g. race, age of head and children, total income and sources of this income, asset ownership, and education), and in particular how do these characteristics compare with other categories of families such as various government program recipients?

• How can the growth of sub-families be explained, what are its causes, and what can be projected into the future about the number and composition of these sub-families?

Overall, changes to this sub-family population appear to have profound consequences for income security issues concerning both elderly and non-elderly populations. These issues include:

• To the extent that previously unidentified sub-families are categorically eligible for government programs, especially AFDC, and further that the characteristic? of AFDC eligibles are altered with the addition of the sub-families, it is likely that historical studies of the low-income population which are run on multiple CPS files using the family as the basic unit of analysis will be impaired (preliminary evidence supports this thesis). Can these multiple effects regarding our understanding of the low-income population be sorted out? Do

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[2] Ruggles, Patricia & Richard C. Michel, "Participation Rates in the Aid to Families with Dependent Children Program: Trends for 1967 Through 1984", The Urban Institute, Washington, DC, April 1987, Contract HHS-100-84-0021, Task Order No. 5. (This report can be obtained by writing to: Policy Information Center, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.)

these effects include estimates of the number of families in poverty, and hence poverty rates?

- What relationships exist between the growth of sub-families and the incidence of teenage pregnancy?
- What is the interaction between large numbers of sub-families and the provision of child care?
- What can be said concerning altered living arrangements, in general, and their effects on education, work and welfare receipt?

The relevant data base for this project would most likely be the decennial Censuses, though this may possibly be substituted (or complemented) by newly enhanced Panel Study of Income Dynamics (PSID) data, produced by the University of Michigan's Survey Research Center, or DHHS in-house Integrated Quality Control (IQC) data. The research difficulty involves the complex process of identifying related sub-families when located in a multi-generational household unit. For both the PSID and IQC data bases, recently implemented changes will allow more precise identification of sub-families.

*f. Unemployment spell dynamics and displacement.* For over twenty years Federal government labor policy has actively promoted education and training programs devoted to increasing the labor market prospects for workers who lack adequate human capital. A central analytical question behind these direct job creation and training program activities involves a better understanding of employee displacement and corresponding unemployment dynamics resulting from this form of labor market intervention. This understanding is germane to defending the continuance or alteration of these programs.

Our ignorance concerning this priority area is illustrated by two facts: There have been almost no employment or training programs run on an experimental basis; and when there has, non-experimental comparative studies—the overwhelming majority of research in this area—have generated different results than the 'true' experimentally determined ones.

The following questions represent some of the important issues connected with this priority area:

- The "stylized" policy view that permeates many areas, from training programs to immigration laws, is that entry into the labor force of trainees or migrants causes displacement of current workers. The concern of many is that such displacement leads to a permanent increase in unemployment. Economic growth theory, and empirical applications thereof, tells us that this view is false, because labor supply growth is associated with an increase in the rate of growth of per capita income over time. Therefore, displacement, in so far as it ever occurs, can only be a short-run phenomenon; in other words, every entry into the labor force may or may not initiate an unemployment spell for someone already working. The relevant question therefore, is what can be discerned regarding the short-term displacement that occurs from training the AFDC population? To the extent that training of welfare dependents leads to successful job placement, does this occur at the cost of displacement? What are the prospects for the development of an appropriate model that can be used to properly evaluate the effects of training activities in the AFDC area in particular?
- What are the empirical determinants of displacement (e.g. job categories, employee characteristics, wages, and lengths of resulting unemployment spells associated with labor force participation of different population segments (e.g. immigrants; and current and potential welfare recipients))? What types of jobs do originally displaced workers eventually find? Are there differential union/non-union effects relative to displacement of program participants?
- What other displacement effects occur (e.g. on capital formation, moving costs, types of jobs provided by the economy, local labor movements, etc.)? How is displacement affected by national/regional unemployment rates or vacancy rates?

It appears that a carefully done unemployment spell-based analysis in this context would be very useful even if well-specified displacement estimation proved to be elusive. Clearly a better understanding of both long- and short-run effects of job creation and training programs is needed to design programs with a sound analytic foundation and hence which are cost-effective. This priority area covers an extremely broad set of issues. Investigators are encouraged to explore possibilities for combining and piecing together information from a variety of sources.

*g. The transfer society: Growth, composition (cash v. in-kind expenditures), and political-economic explanations and implications.* In the past 25 years, there has been a massive growth in the level of means-tested in-kind benefits to the point that they currently dwarf means-tested cash benefits. In fact, the Bureau of the Census has estimated that when in-kind benefits are counted, poverty rates are between 8 and 33 percent lower than those based solely on money income, depending on the income definition used to evaluate these non-cash benefits. A major change such as this in the nature of transfers stimulates questions such as the following:

- Why as a nation have we witnessed such a proliferation of in-kind benefits?
- What political and economic factors account for this behavior?
- What effects does this transfer structure have on poverty and the personal distribution of income?
- It is claimed by some researchers that political economic constraints account for the presumed "inefficiency" of in-kind over cash grants. What are these constraints? Is the assertion of inefficiency overstated? If, in fact, these constraints lead to a significant welfare loss, what changes would promote a more efficient transfer structure?
- Are there indirect effects of growth on the level of transfers, i.e. in a "donor—recipient" model, does economic growth affect the decisions on the part of the "donors" to change both the level and/or composition of benefits to the "recipients"?
- With the unprecedented growth of in-kind benefits, the importance of deriving proper in-kind benefit evaluation methodologies is increased for both poor and non-poor populations. Can consistent evaluation techniques be devised? Can these techniques be applied to the parallel issue of the measurement and growth of non-cash fringe benefits and the degree to which these benefits have substituted for cash remuneration? What is the relevance of a single poverty index once a "full" evaluation has been performed?

Research in this overall area would necessarily encompass work positing varied explanations and arising from several disciplines, be intended to inform an understanding of the political structure and its changes over the last 25 years, and would attempt to link these political changes to the significant changes which have occurred in the overall transfer structure.

Despite the apparent thematic nature of the proposed research, offerors are encouraged to devise empirical tests for the competing explanations of the time series changes in the level and composition of transfers.

2. *Products.* The applicant should present a schedule for delivery of interim progress reports and a final report. For any project which significantly enhances a data base in the course of the work, a well-documented public use file should also be prepared.

3. *Potential users.* Potential users of the research include policy makers at Federal, State and local levels of

government, employers, unions, financial institutions, investors, and providers of health insurance, pensions and other fringe benefits. Because many of those who will be interested in this research lack advanced technical training, it is important that the results of projects be presented in a fashion accessible to such and audience.

4. *Types of projects excluded.* In consideration of the intent of this announcement, applications concentrating on a narrow programmatic or policy focus, or on one which is not directed to concerns of national interest, will not be considered for funding.

In addition, this announcement seeks empirical analysis of the individual issues which is founded on a sound theoretical base. Applications that are limited to theoretical development or include new data collection efforts, will not be considered.

5. *Content and organization of the applications.* The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than two pages) of the application. Failure to include the abstract may result in delays in processing the application. Each application should include a discussion of the relevant literature, a description of the models to be analyzed, the data sources to be used, and the methodologies proposed to test the models. Resumes of staff should be included, as should a full budget and a schedule of tasks for the proposed projects.

**B. Applicable Regulations**

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), *Code of Federal Regulations*, October 1, 1980.

2. "Administration of Grants" (45 CFR Part 74), *Code of Federal Regulations* on June 9, 1981.

**C. Effective Data and Duration**

1. The grants awarded pursuant to this announcement are expected to be made on or about September 30, 1987, however some may be made subsequent to this data (see Section D below).

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Sections F and G below.

3. Applicants may present a work plan and budget covering a twelve to eighteen month period.

**D. Statement of Funds Available**

1. $400,000 has been set aside for grants to be awarded as a result of this announcement. Specifically, $100,000 is for grants covering priority area a. *The Relationship of Availability of Medical Services to Welfare Dependency.* Applications in this priority area may be for a single project costing approximately $100,000 or for smaller projects costing approximately $50,000. For the remaining six priority areas, applications may be for single projects costing as much as $150,000, but it is expected that most awards will be for single projects of $50,000 to $75,000. Up to $150,000 of additional funds (utilizing fiscal year 1988 policy research funds), may be made available for unfunded proposals which are of exceptional quality in these priority areas (b. through g.).

Applicants are encouraged to seek additional funds from other sources for this project. Applicants should discuss any commitments, plans, or hopes for additional funds, including size and sources. When it is judged that successful completion of a proposed project depends on outside funding, this office's funding commitment will be made contingent on complete demonstration of that outside funding.

2. Funds may be obligated fully at the time of award of these grants or incrementally over the following 12 to 18 months.

3. The government reserves the right to select for funding more than one application in a given priority area. Further, the selection of the priority areas from the entire set, for which awards will be made, will be made in accordance with the quality of proposals received. However, nothing in this application should be construed as committing the Assistant Secretary to make any award.

**E. Application Processing**

1. Applications will be initially screened for relevance to the needs defined in section A (as well as additional areas of interest persuasively shown to be relevant by the grantee). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. *Three (3) copies* of each application are required. Applicants are encouraged to send an additional *seven (7) copies* of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in Item 5.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the information requirements of the reviewers. Applications should be limited to 25 doubled-spaced typed pages, exclusive of forms, abstract, résumés, and proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. *Usefulness.* The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organizations concerned with the issues discussed in Section A above with improved bases for making decisions about these issues. The potential usefulness of the proposed project for the advancement of science. (25 points)

b. *Clarity and understanding.* Understanding and knowledge of prior work in the area. The cost effectiveness of the proposal and the clarity of statement of objectives, methods, and anticipated results. (15 points)

c. *Research design.* The appropriateness and soundness of methodology (which may include an interdisciplinary approach), including overall research design, statistical techniques, modeling strategies, choice of data, and other proposed procedures. Probability of successful completion of the study. (30 points)

d. *Experience and qualifications of personnel.* Principal Investigator's and other key staff's experience in this or related areas and indications of innovative approaches and creative potential. Indication of the ability of key staff to produce publishable quality reports or articles. (30 points)

**F. Applications Sent by Mail**

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application was sent by first class, registered or certified mail not later than August 3, 1987, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service.

Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than August 3, 1987, as evidenced by a receipt from the commercial carrier.

**G. Hand-Delivered Applications**

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this announcement. Hand-delivered applications will be accepted daily between 9:00 am and 4:30 pm, Washington, DC, time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close of business on August 6, 1987.

**H. Disposition of Applications**

*1. Approval, Disapproval, or Deferral*

On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

*2. Notification of Disposition*

The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed in block 4 of the application to notify the applicant of the approved application.

**I. Application Instructions and Forms**

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 426F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after July 17, 1987.

**J. Federal Domestic Assistance Catalog**

This announcement is not listed in the Federal Domestic Assistance Catalog.

**K. Intergovernmental Review of Federal Programs**

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs" or its implementing regulations 45 CFR Part 100.

Dated: May 19, 1987.

**Robert B. Helms,**

*Assistant Secretary for Planning and Evaluation.*

[FR Doc. 87–11884 Filed 5–22–87; 8:45 am]

BILLING CODE 4130-04-M

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**Centers for Disease Control**

## Availability of Funds for Fiscal Year 1987; Cooperative Agreements to Support State Pregnancy Risk Assessment Surveillance

**Introduction**

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for cooperative agreements to provide assistance only to State health departments for the purpose of undertaking one or both components of a pregnancy risk assessment surveillance system. The components of the system include development and initation of a population-based surveillance system, Pregnancy Risk Assessment Monitoring System (PRAMS) and enhancement and expansion of the existing Pregnancy Nutrition Surveillance System (PNSS).

**Authority**

These programs are authorized under section 301(a) of the Public Health Service Act (42 U.S.C. 241 (a)), as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

**Program Background and Objectives**

During recent years, the U.S. infant mortality rate has ceased to decline rapidly. Moreover, the prevalence of low birthweight, the major determinant of infant mortality, has declined very little over the past 20–30 years. Regional studies have suggested that at least part of the failure to improve infant birthweight and reduce infant mortatity is related to both the prevalence of maternal factors which increase the infant's risk, including smoking during pregnancy and poor nutritional status, and to problems that result from pregnant women failing to receive adequate prenatal care. State-specific analysis from the National Infant Mortality Surveillance (NIMS) project revealed major differences among the States in infant survival rates. However, there are no State-specific data to examine how much of this differential is related to behavioral or programmatic factors. Such data could be very useful for planning and evaluating programs aimed at reducing behavioral risk factors during pregnancy and at improving prenatal programs. Through this activity, CDC proposes to assist the States to develop pregnancy surveillance through two complementary system. The Pregnancy Risk Assessment Monitoring System (PRAMS) is a population-based survey of a sample of all women who have recently given birth in the State to evaluate risk factors which are associated with infant mortality and low birth weight. The Pregnancy Nutrition Surveillance System (PNSS), which is already established in several States to collect nutritional information on low income pregnant women who attend public prenatal clinics, will be expanded to obtain additional behavioral risk factor data (e.g., smoking and alcohol use).

CDC envisions that both PRAMS and PNSS will become ongoing State surveillance systems. The State participating in this initial stage will make major contributions to the protocol development of both systems. Applications should reflect plans for progressive reliance on independent financing sources as the systems are made fully operational.

The purposes of these Cooperative Agreements are to:

•Promote the development and use of standardized pregnancy surveillance methods in support of State MCH and WIC program efforts to reduce pregnancy-related health risks and adverse pregnancy outcomes.

•Assist States in monitoring trends in the prevalence of prenatal risk factors (smoking, nutrition, alcohol, prenatal care, etc.), which are major predictors of infant mortality and low birtheweight, and in linking these risk factors to the incidence of adverse pregnancy outcomes.

•Provide information needed to the States to assess coverage, targeting, and effectiveness of prenatal care programs; to redirect health services accordingly; and evaluate the extent to which program redirections result in improved health outcomes.

**Eligible Applicants**

Because the intent of these cooperative agreements is to develop State capacity to conduct pregnancy risk assessment surveillance, competiton is restricted to the official public health agencies of States including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. No other applications will be accepted.

**Availability of Funds**

Appoximately $325,000 will be available for the Pregnancy Risk Assessment Monitoring System and $325,000 will be available for the Pregnancy Nutrition Surveillance System. Up to 10 awards will be made for the PRAMS and up to 10 awards for the PNSS. Applicants may apply and receive funding for either or both programs. The awards will be funded 12 months of a 3-year project period for PRAMS and for 12 months of a 2-year project period for PNSS.

**Applications Submission and Deadline**

The original and two copies of the application must be submitted to Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Places Ferry Road NW, Room 321, Atlanta, Georgia 30305 on or before July 17, 1987.

*1. Deadline:*

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely application.

*2. Late Application:*

Applications which do not meet the criteria in 1.a or b. above are considered late applications. Late application will not be considered in the current competiton and will be returned to the applicant.

**Other Submission and Review Requirements**

Applications are not subject to review as governed by Executive Order 12372, entitled "Intergovernmental Review of Federal Programs."

**Where to Obtain Additional Information**

Information on application procedures, copies of application forms, program announcement, and other materials may be obtained from Nealean Austin, Grants Management Specialist, Centers for Disease Control, Room 315, 255 East Paces Ferry Road NE, Atlanta, Georgia 30305 or by calling (404) 262–6575 or FTS 236–6575. Technical assistance may be obtained for PRAMS from Melissa Adams, Ph.D., Pregnancy Surveillance Branch, Division of Reproductive Health, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333 or by calling (404) 329–3131 or for PNSS from Gary Hogelin, Division of Nutrition, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Road NE, Atlanta, GA 30333, or by calling (404) 329–3075.

Dated: May 19, 1987.

**Robert L. Foster,**

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87–11815 Filed 5–22–87; 8:45 am]

BILLING CODE 4160–18–M

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**National Institutes of Health**

**Division of Research Resources; Meeting of the Minority Biomedical Research Support Subcommittee of the General Research Support Review Committee**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Minority Biomedical Research Support Subcommittee (MBRSS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), July 20–21, 1987, Building 31, Conference Room 4, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on July 21, from 1:30 p.m. to adjournment to discuss policy matters relating to the Minority Biomedical Research Support Program (MBRSP). Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 20, from 8:30 a.m. to 5 p.m. and on July 21, 8:30 a.m. to 12:30 p.m. for the review, discussion, and evaluation of individual grant applications.

The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, National Institutes of Health, Building 31, Room 5B10, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting, and a roster of the committee members upon request. Dr. Lawrence J. Alfred, Executive Secretary, (301) 496–4360, will provide substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.375, Minority Biomedical Research Support, National Institutes of Health).

Dated: May 14, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87–11926 Filed 5–22–87; 8:45 am]

BILLING CODE 4140–01–M

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**National Institute of Allergy and Infectious Diseases; Meeting; Allergy and Clinical Immunology Subcommittee Allergy, Immunology, and Transplantation Research Committee**

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on June 16, 1987, in Conference Room 4, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m. on June 16, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Allergy and Clinical Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10:30 on June 16, until adjournment. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and

Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 14, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–11928 Filed 5–22–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Allergy and Infectious Diseases; Meeting; Microbiology and Infectious Diseases Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on June 11, and 12, 1987, in Building 31C, Conference Room 8, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 9 a.m. to 12 p.m. on June 11, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Microbiology and Infectious Diseases Research Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 12 p.m. until recess on June 11, and from 9 a.m. until adjournment on June 12. These applications, proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. M. Sayeed Quraishi, Executive Secretary, Microbiology and Infectious Disease Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301–496–7966), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: May 14, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–11929 Filed 5–22–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Allergy and Infectious Diseases; Transplantation Biology and Immunology Subcommittee Allergy, Immunology, and Transplantation Research Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on June 22, 1987, in Conference Room 10, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 10:30 a.m. on June 22, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Transplantation Biology and Immunology Subcommittee will be closed to the public for the review, discussions, and evaluation of individual grant applications and contract proposals from 10:30 a.m. on June 22, until adjournment. These applications, proposals, and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda Maryland 20892, telephone (301–496–7966), will provide substantive program information.

Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.

Dated: May 14, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87–11930 Filed 5–22–87; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Environmental Health Sciences; Meeting; Environmental Health Sciences Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on July 27–28, 1987, in Building 101 Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina. This meeting will be open to the public on July 27 from 9 a.m. to approximately 10:30 a.m. for general discussion. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on July 27, from 10:30 a.m. to adjournment on July 28, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Drs. John Braun or Carol Shreffler, Executive Secretaries, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7820), will provide summaries of meeting and rosters of committee members.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113,

Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: May 14, 1987.

**Betty J. Beveridge,**

*Committee Management Officer, NIH.*

[FR Doc. 87-11927 Filed 5-22-87; 8:45 am]

BILLING CODE 4140-01-M

## Public Health Service

### Public Health Conference on Records and Statistics

The Assistant Secretary for Health announces the dates and other information for the following conference scheduled to assemble during the month of July 1987:

Name: Public Health Conference on Records and Statistics

Date and time: July 13–15, 1987, 9:00 a.m.

Place: The Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Open to the Public (Registration required; however, there is no registration fee.)

Purpose: The Twenth-first National Meeting of the Public Health Conference on Records and Statistics (PHCRS) is cosponsored by the National Center for Health Statistics, the National Institute on Aging, and the U.S. Bureau of the Census. This national Conference is recognized as one of the paramount meetings for workers in the field of public health statistics. The theme of the 1987 PHCRS is "Data for an Aging Population, Issues in Health, Research, and Public Policy, Now and Into the 21st Century." Older Americans comprise an increasingly larger segment of the population. This unprecedented increase forecasts changes of major consequence in the social and economic composition of the Nation. Nowhere is this more apparent than in the area of health—life expectancy has increased dramatically, but so have the use and cost of health care. How will we plan for the health needs of an aging America? What data and analyses will be important to addressing issues of health, research, and public policy in an aging America? What long-range plans and policies will help meet the challenges? This conference on data on aging was developed to provide answers to these questions, answers relevant now and into the 21st Century. This Conference is structured around three themes: Issues in measurement and metholodology; issues in public policy; and issues in analyses, trends, and projections.

Anyone wishing to obtain a program, registration information, or other relevant information concerning the Conference should contact: Program Development Staff, National Center for Health Statistics, Room 2–28, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7122.

**Robert A. Israel,**

*Deputy Director, National Center for Health Statistics.*

[FR Doc. 87-11854 Filed 5-22-87; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

### Contracting for Central Valley Project Water South of the Sacramento-San Joaquin Delta, CA

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS) on contracting for Central Valley Project Water South of the Sacramento-San Joaquin Delta.

**SUMMARY:** Pursuant to section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Department of the Interior proposes to prepare an Environmental Impact Statement (EIS) on reinitiating long-term contracting for Central Valley Project (CVP) water south of the Sacramento-San Joaquin Delta. This Delta Export Water Contracting EIS will identify the site specific and cumulative impacts of allocating available CVP water for different purposes (agriculture, municipal and industrial, fish and wildlife, and recreation) in the Delta export service area. This will not affect any water currently under contract. Existing and potential water users have been asked to identify their additional water demands. The EIS will include an analysis of actual water needs considering water conservation and conjunctive use of available surface and ground-water supplies.

Three scoping workshops have been scheduled to solicit information from interested public entities and persons in determining the scope and the significant issues of concern. Public participation is an integral part of the NEPA process and the public is encouraged to participate to ensure that consideration is given to all significant issues.

Written comments from those unable to attend the workshops and from those wishing to supplement their oral presentation should be submitted by June 23, 1987 to the Bureau of Reclamation address provided below.

**DATES:** The workshops will be held June 10, 11, and 16, 1987, 7:30 p.m. to 10:30 p.m.

**ADDRESSES:** The workshops will be held at:

June 10, 1987, 7:30 p.m.–10:30 p.m., Fresno Hilton Inn, North Ballroom, 1055 Van Ness, Fresno, CA

June 11, 1987, 7:30 p.m.–10:30 p.m., Bakersfield Hilton Inn, Ballroom, 3535 Rosedale Hwy., Hwy. 99 and 58 West, Bakersfield, CA

June 16, 1987, 7:30 p.m.–10:30 p.m., Holiday Inn Holidome, Sierra Room, 5321 Date Ave., Madison and Hwy. 80, Sacramento, CA

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Solbert, Environmental Specialist, Bureau of Reclamation, Mid-Pacific Region (MP–750), 2800 Cottage Way, Sacramento, CA 95825–1898; telephone (916) 978–5131.

**SUPPLEMENTARY INFORMATION:** The Delta Export Water Contracting EIS will include the geographic area currently served or proposed to be served by CVP water pumped from the Sacramento-San Joaquin Delta. The area under consideration generally lies between the Delta and the portion of the Tehachapi Range in Kern County and includes the San Joaquin Valley and the Santa Clara Valley.

On May 29, 1986, Reclamation published a Notice of Intent to prepare an EIS for the San Joaquin Valley Conveyance Study (51 FR 19420). The purpose of the study is to investigate means to provide an additional water supply to the San Joaquin Valley to relieve the present groundwater overdraft. Reclamation now will include the environmental analysis of the San Joaquin Valley Conveyance Study in the Delta Export Water Contracting EIS. In addition, the EIS also will discuss the impacts of the Department of the Interior and the State of California entering into a conveyance and water purchase agreement, pursuant to the Coordinated Operations Agreement. Such an agreement is expected to increase the capability of the CVP to export water from the Delta. Consequently, the EIS will also deal with proposed purchases of water from the CVP for use in the State Water Project service area.

Water needs for wildlife refuges in the San Joaquin Valley and information from Reclamation's Refuge Water Supply Study will be included in this analysis. The water for wildlife refuges in the Sacramento Valley will be

included in the Sacramento River Water Contracting EIS.

Primary impacts which will be evaluated in the EIS include potential effects on water quality, land use, fish and wildlife, recreation, and socioeconomic parameters. Environmental review and consultation requirements that will be met concurrently with the NEPA process include applicable requirements of the Clean Water Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Endangered Species Act, and Executive Orders 11988 and 11990 regarding flood plains and wetlands.

Reclamation's activities to reinitiate long-term contracting in the Mid-Pacific Region are designed to meet the following objectivies: Provide an equitable allocation of the remaining project yield; repay the costs of the Central Valley Project; optimize the amount of water available for beneficial use and the economic returns at the local, regional, and national level; maximize conjunctive use of surface and ground water; and comply with applicable State and Federal environmental protection policies.

A full range of allocation alternatives will be analyzed in the EIS, including:

1. Service of municipal, industrial, agricultural, fish and wildlife and recreation needs. Representative combinations of these principal needs would be analyzed based on alternatives which are identified during the scoping process.

2. Taking no action to increase the quantity of water presently under Federal contract.

Dated: May 20, 1987.

C. Dale Duvall,

*Commissioner.*

[FR Doc. 87-11872 Filed 5-22-87; 8:45 am]

BILLING CODE 4310-09-M

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## Fish and Wildlife Service

## Revised List of Species Covered by the U.S./Japan Migratory Bird Treaty

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Service proposes, in conjunction with the Government of Japan, to revise the Annex to the Convention Between the United States of America and Japan for Protection of Migratory birds and Birds in Danger of Extinction and Their Environment. The Annex lists bird species covered by the Convention. A revision is necessary to bring the Annex up-to-date. The Service proposes to add certain species and delete others from the current Annex and the revise the English (common) and/or scientific names of some previously listed species as necessary to conform with the most recent accepted terminology. Only those species being added or deleted, or undergoing a name change, are listed here. After consideration of comments received on this proposed action, a final species list will be prepared and the Treaty will be revised by exchange of Diplomatic Notes with Japan.

**DATE:** Comments must be submitted on or before July 10, 1987.

**ADDRESS:** Comments may be mailed to Director (IA), U.S. Fish and Wildlife Service, Room 2058, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Edward J. McCrea, Senior Staff Specialist, Office of International Affairs, U.S. Fish and Wildlife Service, Room 2058, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, telephone 202/343-3895.

**SUPPLEMENTARY INFORMATION:** The Covention Between the United States of America and Japan for the Protection of Migratory Birds and Birds in Danger of Extinction and Their Environment (hereinafter referred to as the U.S./Japan Treaty) of 1974 protects any migratory bird common to both the United States and Japan. The Treaty is implemented through the Migratory Bird Treaty Act (16 U.S.C. 703 through 712) which regulates most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds. (The list of species covered under the U.S./Japan Treaty is contained in 50 CFR Part 10.)

Because of taxonomic changes and new distributional records, there is a need to redefine and reconsider the species to be afforded protection under the U.S./Japan Treaty. In addition, the status of several of the Trust Territories has changed recently. The new independent or free association status of these areas necessitates delisting of certain species for which the only U.S. records were from these Territories.

Since this action involves foreign affairs functions of the U.S., it is not subject to 5 U.S.C. 553, 601, or Executive Order 12291.

### Summary of Changes

51 additionals to the list:
- 33 because of new distributional records in the United States
- 12 because of new distributional records in Japan
- 2 because of new distributional records in both countries
- 2 because of changes in nomenclature
- 1 because of reevaluation of old information
- 1 because of a taxonomic decision

14 deletions from the list:
- 8 because of exclusion of U.S. Trust Territories in Pacific
- 6 because of the lack of valid records

19 changes nomenclature

82 total changes in list

37 net additions to the list

### Environmental Effects

Based on the fact that the proposed action does not significantly alter the scope, intent, and coverage of the existing Treaty, the Service has determined that revision of the Annex is not a major Federal action with would significantly affect the quality of the human environment within the meaning of section 101(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an environmental impact statement on such revisions is not required.

### Endangered Species Act Consideration

A number of species appearing in the Annex are also designated as Endangered or Threatened Under the Endangered Species Act (16 U.S.C. 1531 through 1543). No legal complications arise from the dual listing inasmuch as the two lists are developed by separate authorities and for different purposes.

### Primary Authors

The primary authors of this proposed revision are Richard C. Banks, Division of Wildlife and Contaminant Research; and Edward J. McCrea, Office of International Affairs.

### Public Comments Invited

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in proposed Federal actions. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposal to the location identified in the address section above. Comments must be received on or before July 10, 1987. Following review and consideration of the comments, the Service will initiate formal revision of the Annex by an exchange of diplomatic notes with Japan.

**Proposed Revision**

Accordingly, it is hereby proposed to amend the Annex to the U.S./Japan Treaty as set forth below:

Frank Dunkle,

*Director, U.S. Fish and Wildlife Service.*

Dated: May 12, 1987.

Add: Pacific Loon, *Gavia pacifica* ..... S
Delete: Horned Grebe, *Podiceps auritus.* N
Add: Streaked Shearwater, *Calonectris leucomelas.* U
Add: Dark-rumped Petrel, *Pterodroma phaeopygia.* J
Delete: Cattle Egret, *Bubulcus ibis*..... T
Add: Chinese Egret, *Egretta eulophotes*.. U
Change: Reef Heron, *Demigretta sacra,* to Pacific Reef Heron, *Egretta sacra.* S
Delete: Japanese Night-Heron, *Gorsachius goisagi.* T
Delete: Malay Night-Heron, *Gorsachius melanolophus.* T
Delete: Schrenk's Little Bittern, *Ixobrychus eurhythmus.* T
Add: Tundra Swan, *Cygnus columbianus.* B
Add: Spot-billed Duck, *Anas poecilorhyncha.* U
Change: European Wigeon, *Mareca penelope,* to *Anas penelope.* S
Change: Shoveler, *Spatula clypeata,* to Northern Shoveler, *Anas clypeata.* S
Add: Ring-necked Duck, *Aythya collaris.* J
Delete: Baer's Pochard, *Aythya baeri*..... N
Add: Greater Scaup, *Aythya marila*..... B
Add: King Eider, *Somateria spectabilis*.. J
Add: Surf Scoter, *Melanitta perspicillata.* J
Delete: Rough-legged Hawk, *Buteo lagopus.* N
Change: Japanese Sparrow Hawk, *Accipiter virgatus* to *Accipiter gularis.* S
Delete: Black Kite, *Milvus migrans*..... T
Delete: Osprey, *Pandion haliaetus*..... N
Add: Eurasian Kestrel, *Falco tinnunculus.* U
Delete: Common Gallinule or Moorhen, *Gallinula chloropus.* N
Add: Northern Lapwing, *Vanellus vanellus.* U
Change: (Eurasian) Dotterel, *Eudromias morinellus* to *Charadrius morinellus.* S
Change: Wandering or Polynesian Tattler, *Tringa incana* (incl. *T. brevipes*) to Wandering Tattler, *Tringa* (3Heteroscelus) *incana* and Polynesian Tattler, *Tringa* (Heteroscelus) *brevipes.* S
Add: Marsh Sandpiper, *Tringa stagnatilis.* U
Add: Green Sandpiper, *Tringa ochropus* (=ocrophus). U
Add: Black-tailed Godwit, *Limosa limosa.* U
Add: Terek Sandpiper, *Xenus cinereus* .. U
Change: Least Whimbrel (Curlew), *Numenius minutus* to exclude Eskimo Curlew, *Numenius borealis.* S*
Add: Western Sandpiper, *Calidris mauri.* J
Change: Sanderling, *Crocethia alba,* to *Calidris alba.* S
Add: Stilt Sandpiper, *Calidris* (*Micropalama*) *himantopus.* J
Add: Pin-tailed Snipe, *Gallinago stenura.* U
Add: Eurasian Woodcock, *Scolopax rusticola.* R
Add: Oriental Pratincole, *Glareola maldivarum.* U
Change: Northern Phalarope, *Lobipes lobatus,* to Red-necked Phalarope, *Phalaropus lobatus.* S
Change: Skua, *Catharacta skua,* to South Polar Skua, *Catharacta maccormicki.* S*
Add: Common (Mew) Gull, *Larus canus.* U
Delete: Black-tailed Gull, *Larus crassirostris.* N
Add: Red-legged Kittiwake, *Larus* (*Rissa*) *brevirostris.* J
Add: Ross' Gull, *Larus* (*Rhodostethia*) *rosea.* J
Add: Caspian Tern, *Sterna caspia*..... J
Change: Least or Little Tern, *Sterna albifrons,* to Little Tern. S*
Change: Black Noddy, *Anous tenuirostris,* to *Anous minutus.* S
Change: Tufted Puffin, *Lunda cirrhata,* to *Fratercula* (*Lunda*) *cirrhata.* S
Delete: Hawk Cuckoo, *Cuculus fugax*..... T
Add: Oriental Scops-Owl, *Otus scops* (=*sunai*).. U
Add: White-throated Needletail, *Chaetura* (*Hirundapus*) *caudacuta.* U
Add: Hoopoe, *Upupa epops*..... U
Add: Horned Lark, *Eremophila alpestris.* U
Add: Pechora Pipit, *Anthus gustavi* ..... U
Change: White or Pied Wagtail to *Motacilla alba* (including *lugens*). S
Add: Brown Shrike, *Lanius cristatus*..... U
Add: Bluethroat, *Erithacus* (*Luscinia*) *svecicus.* J
Add: Siberian Blue Robin, *Erithacus* (*Luscinia*) *cyane.* U
Add: Northern Wheatear, *Oenanthe oenanthe.* U
Add: Dusky Thrush, *Turdus naumanni*... U
Add: Fieldfare, *Turdus pilaris*..... U
Add: Red-brested Flycatcher, *Ficedula parva.* U
Delete: Narcissus Flycatcher, *Muscicapa narcissina.* T
Change: Chinese Gray-spotted Flycatcher, *Muscicapa gilselsticta,* to Gray-spotted Flycatcher.
Add: Sooty Flycatcher, *Muscicapa sibirica.* U
Add: Brown Flycatcher, *Muscicapa latirostris.* U
Add: Lanceolated Warbler, *Locustella lanceolata.* U
Change: Redpoll (incl. common and Hoary Redpoll), *Carduelis flammea* (incl. *C. hornemanni*), to Common Redpoll, *Carduelis flammea* and Hoary Redpoll, *Carduelis hornemanni.* S
Add: Oriental Greenfinch, *Carduelis sinica.* U
Add: Common Rosefinch, *Carpodacus erythrinus.* U
Add: Little Bunting, *Emberiza pusilla* ..... U
Add: Gray Bunting, *Emberiza variabilis.* U
Add: Pallas' Bunting, *Emberiza pallasi*... U
Add: Reed Bunting, *Emberiza schoeniculus.* U
Add: Lapland Longspur (Bunting), *Calcarius lapponicus.* U
Add: Snow Bunting, *Plectrophenax nivalis.* J
Add: Savannah Sparrow, *Passerculus sandwichensis.* J
Delete: Violet-backed Starling, *Sturnus philippensis.* T
Change: Ashy Starling, *Sturnus cineraceus,* to Grey Starling.

Code:

S—Change for systematic or taxonomic reason; name change not resulting in an addition or deletion to the list
S*—Change for systematic or taxonomic reason; change in coverage resulting from division of species with only one of the new species covered
J—Addition because of new distribution record in Japan
U—Addition because of new distribution record in United States
B—Addition because of new records in both countries
R—Addition because of reevaluation and acceptance of previous record
N—Deletion because of lack of valid record of mutual (sub)species
T—Deletion because of exclusion of U.S. Trust Territories

Note.—Where Japanese and U.S. use of generic names differ, the more inclusive name is given followed by the less inclusive name in parentheses.

[FR Doc. 87-11822 Filed 5-22-87; 8:45 am]
BILLING CODE 4310-55-M

## National Park Service

### Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Prince William Travel Trailer Village, authorizing it to continue to provide travel trailer camping facilities and services for the public at Prince William Forest Park, Virginia, for a period of ten (10) years from January 1, 1987, through December 31, 1996.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1986, and therefore, purusant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, Prince William Forest Park, Triangle, Virginia, for information as to the requirements of the proposed contract.

Dated: May 14, 1987.

**Manus J. Fish, Jr.,**

*Regional Director, National Capital Region.*

[FR Doc. 87-11814 Filed 5-22-87; 8:45 am]

BILLING CODE 4310-70-M

## Chesapeake and Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, June 20, 1987 at the Mather Training Center, Harpers Ferry, West Virginia.

The Commission was established by *Pub. L. 91-663* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

**The Members of the Commission are as Follows**

Miss Carrie Johnson, Chairman, Arlington, Virginia
Mr. Carl L. Shipley, Washington, DC
Ms. Polly Bloedorn, Bethesda, Maryland
Mr. James B. Coulter, Annapolis, Maryland
Mrs. Constance Lieder, Baltimore, Maryland
Mr. William H. Ansel, Jr., Romney, West Virginia
Mr. Silas Starry, Shepherdstown, West Virginia
Mr. John D. Millar, Cumberland, Maryland
Mr. Howard Buchanan, Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry Passett, Washington, DC
Ms. Barbara Yeaman, Brookmont, Maryland
Ms. Joan LaRock, Lovettsville, Virginia
Ms. Elise Heinz, Arlington, Virginia
Ms. Marjorie Stanley, Silver Spring, Maryland
Mrs. Minny Pohlmann, Dickerson, Maryland
Dr. James H. Gilford, Frederick, Maryland
Mr. R. Lee Downey, Williamsport, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland

**Matters to be Discussed at This Meeting Include**

1. Old and new business
2. Superintendent's report
3. Committee reports
   Plans and Projects Committee
   Recreation Policies and Issues Committee
   Resource Protection Committee
4. Public comments

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Richard L. Stanton, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: May 14, 1987.

**Robert Stanton,**

*Regional Director, National Capital Region.*

[FR Doc. 87-11813 Filed 5-22-87; 8:45 am]

BILLING CODE 4310-70-M

## National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 16, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 10, 1987.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**ALABAMA**

**Jefferson County**

Birmingham, *Chestnut Hill Historic District*, Roughly bounded by Highland Ave. and Thirty-first St.

**Mobile County**

Mobile, *Ashland Place Historic District*, Bounded by Springhill and Ryan Aves., Old Shell Rd., and Levert Ave.
Mobile, *Leinkauf Historic District*, Bounded by Government, S. Monterey, Eslava, Lamar, and S. Monterey Sts.
Mobile, *Patton, Dave, House*, 1252 Martin Luther King, Jr. Ave.

**ALASKA**

*Yukon-Koyukuk Division*
*Mount McKinley National Park Headquarters District*, Mi. 3.4, McKinley Park Hwy.

**CALIFORNIA**

**Los Angeles County**

Beverly Hills, *Beverly Wilshire Hotel*, 9528 Wilshire Blvd.
Pasadena, *First Trust Building and Garage*, 587—611 E. Colorado Blvd., and 30—44 N. Madison Ave.

**Napa County**

St. Helena, *Chateau Chevalier*, 3101 Spring Mountain Rd.

**DELAWARE**

**New Castle County**

Wilmington, *Church Street Historic District*, Bounded by Eighth, Locust, Seventh, and Church Sts.

**GEORGIA**

**Bibb County**

Macon, *Macon Railroad Industrial District*, Roughly bounded by Fifth, Sixth, and Seventh Sts., Central of Georgia, Southern, and Seaboard RR tracks

**Bulloch County**

Statesboro, *Raines, William G., House*, 106 S. Main St.

**Fulton County**

Atlanta, *Atlanta Stockade*, 760 Glenwood Ave.

**INDIANA**

**Johnson County**

Franklin, *Martin Place Historic District*, N and S sides of Martin Pl. between Graham Ave. and Water St., 500, 498, and 450 N. Main Sts.

**Marion County**

Indianapolis, *Indiana Avenue Historic District*, 500 Blk. Indiana Ave. between North St., Central Canal, Mighigan, and West Sts.
Indianapolis, *Seville, The*, 1701 N. Illinois St.

**Parke County**

Mecca, *Wabash Township Graded School*, S. Montezuma St.

**KANSAS**

**Bourbon County**

Fort Scott, *Fort Scott Public Carnegie Library (Carnegie Libraries of Kansas TR)*, 201 S. National

**Butler County**

El Dorado, *El Dorado Carnegie Library (Carnegie Libraries of Kansas TR)*, 101 S. Star

**Cherokee County**

Columbus, *Columbus Public Carnegie Library (Carnegie Libraries of Kansas TR)*, 205 N. Kansas

**Clay County**

Clay Center, *Clay Center Carnegie Library (Carnegie Libraries of Kansas TR)*, 706 Sixth St.

**Coffey County**

Burlington, *Burlington Carnegie Free Library (Carnegie Libraries of Kansas TR)*, 201 N. Third

**Crawford County**

Girard, *Girard Carnegie Library (Carnegie Libraries of Kansas TR)*, 128 W. Prairie

**Dickson County**

Herington, *Herington Carnegie Public Library (Carnegie Libraries of Kansas TR)*, 102 S. Broadway

**Harper County**

Anthony, *Anthony Public Carnegie Library (Carnegie Libraries of Kansas TR)*, 104 N. Springfield

**Kingman County**

Kingman, *Kingman Carnegie Library (Carnegie Libraries of Kansas TR)*, 455 N. Main

**Labette County**

Oswego, *Oswego Public Carnegie Library (Carnegie Libraries of Kansas TR)*, 704 Fourth St.

**Lincoln County**

Lincoln, *Lincoln Carnegie Library (Carnegie Libraries of Kansas TR)*, 203 S. Third

**Lyon County**

Emporia, *Anderson Carnegie Memorial Library (Carnegie Libraries of Kansas TR)*, 1300 W. Twelfth Ave., The way College of Emporia

**Marion County**

Peabody, *Peabody Township Carnegie Library (Carnegie Libraries of Kansas TR)*, 214 Walnut

**McPherson County**

Canton, *Canton Township Carnegie Library (Carnegie Libraries of Kansas TR)*, 300 N. Main

**Montgomery County**

Cherryvale, *Cherryvale Carnegie Free Library (Carnegie Libraries of Kansas TR)*, 329 E. Main

Coffeyville, *Coffeyville Carnegie Public Library Building (Carnegie Libraries of Kansas TR)*, 415 W. Eighth

**Morris County**

Council Grove, *Council Grove Carnegie Library (Carnegie Libraries of Kansas TR)*, 303 W. Main

**Neosho County**

Chanute, *Chanute Public Carnegie Library (Carnegie Libraries of Kansas TR)*, 102 S. Lincoln

**Osage County**

Lyndon, *Lyndon Carnegie Library (Carnegie Libraries of Kansas TR)*, 127 E. Sixth

**Osborne County**

Downs, *Downs Carnegie Library (Carnegie Libraries of Kansas TR)*, 504 S. Morgan

Osborne, *Osborne Public Carnegie Library (Carnegie Libraries of Kansas TR)*, Third and Main

**Reno County**

Hutchinson, *Hutchinson Public Carnegie Library (Carnegie Libraries of Kansas TR)*, 427 N. Main

**Rice County**

Sterling, *Sterling Free Public Carnegie Library (Carnegie Libraries of Kansas TR)*, 132 N. Broadway

**Riley County**

Manhattan, *Manhattan Carnegie Library Building (Carnegie Libraries of Kansas TR)*, Fifth and Poyntz

**Sedgwick County**

Wichita, *Wichita City Carnegie Library Building (Carnegie Libraries of Kansas TR)*, 220 S. Main

**Shawnee County**

Topeka, *Washburn University Carnegie Library Building (Carnegie Libraries of Kansas TR)*, Off Seventeenth St. and Washburn Ave., Washburn University of Topeka

**Sumner County**

Wellington, *Wellington Carnegie Library (Carnegie Libraries of Kansas TR)*, 121 W. Seventh

**Woodson County**

Yates Center, *Yates Center Carnegie Library (Carnegie Libraries of Kansas TR)*, 218 N. Main

**MAINE**

**Aroostook County**

Houlton, *Cary Library*, 107 Main St.

Houlton, *Cleveland, Edward L., House*, 87 Court St.

Houlton, *Unitarian Church of Houlton*, Military St.

Washburn, *Wilder, Benjamin C. House*, Main St.

Oakfield, *Oakfield Station*, Station St.

**Cumberland County**

South Bridgton, *South Bridgton Congregational Church*, Foetterville Rd.

**Kennebec County**

Augusta, *Saint Mary's Church*, 30 Western Ave.

**Lincoln County**

Boothbay vicinity, *Damariscove Lifesaving Station*, Damariscove Island

North Edgecomb, *Congregational Church of Edgecomb*, Cross Point Rd.

**Penobscot County**

Hampden, *Hampden Congregational Church*, Main Rd. N.

**Sagadahoc County**

*Pejepscot Site*

**Washington County**

Danforth, *Union Hall*, Near jct. US 1 and ME 109

**MICHIGAN**

**Lapeer County**

Imlay City, *Palmer, Charles, House*, 249 N. Main St.

**Oakland County**

Commerce vicinity, *Andrews—Leggett House*, 722 Farr St.

**Washtenaw County**

Chelsea, *Michigan Central Railrood Chelsea Depot*, 150 Jackson St.,

**Wayne County**

Detroit, *King, L.B., and Co. Building*, 1274 Library

Detroit, *The Players*, 3321 E. Jefferson Ave.

**NEBRASKA**

**Jefferson County**

Fairbury, *IOOF Temple Building*, 523 E St.

**NORTH CAROLINA**

**Rockingham County**

Eden, *Mt. Sinai Baptist Church*, 512 Henry St.

[FR Doc. 87-11938 Filed 5-22-87 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

### Agricultural Cooperative Intent to Perform Interstate Transportation for Certain Nonmembers

Dated: May 19, 1987.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interestate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning

officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Intermountain Milk Producers Association
(2) 175 South West Temple G.L. #30, P.O. Box 2730, Salt Lake City, UT 84110-2730
(3) 175 South West Temple G.L. #30, Salt Lake City, UT 84101
(4) Scott Brown or Dave Williams, P.O. Box 2730, Salt Lake City, UT 84110-2730

(1) Land O'Lakes, Inc.
(2) P.O. Box 116, Minneapolis, MN 55440
(3) 4001 Lexington Ave. No., Arden Hills, MN 55112
(4) Herb Sorvik, P.O. Box 116, Minneapolis, MN 55440

(1) Norpac Services, Inc./dba North Pacific Canners & Packers, Inc.
(2) P.O. Box 2249, Lake Oswego, OR 97035-0657
(3) 18053 SW Lower Boones Ferry Rd., Durham, OR 97062
(4) Bill Chaplin, P.O. Box 2249, Lake Oswego, OR 97035-0657

(1) Northwest Agricultural Cooperative Assn., Inc.
(2) P.O. Box 1, Ontario, OR 97914
(3) 920 Southeast Ninth Ave, Ontario, OR 97914
(4) Ted Hoots, P.O. Box 1, Ontario, OR 97914

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-11760 Filed 5-22-87; 8:45 am]

BILLING CODE 7035-01-M

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Internal Revenue Service Building, 1111 Constitution Avenue NW., in Washington, DC on June 22 and 23, 1987. The meeting will be in Room 3313 beginning at 8:30 a.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 5 U.S. Code, section 1242(a)(1)(B) and to review the May 1987 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass scores. Topics for inclusion on the syllabus for the Joint Board's 1987 pension examination also will be discussed. In addition, the Society of Actuaries has requested consideration of its proposal that the Joint Board recognize successful completion of Society of Actuaries' examinations in the mathematics of life contingencies and compound interest, other than those the Society of Actuaries offers jointly with the Joint Board, as satisfying part of the basic actuarial knowledge requirement of the Joint Board's regulations governing eligibility for enrollment to perform actuarial services under the Employee Retirement Income Security Act of 1974. This matter is being placed on the agenda.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1987 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the Joint Board examination syllabus and Society of Actuaries' request will commence at 1:30 p.m. on June 22 and will continue for as long as necessary to complete the discussion, but not beyond 3:30 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program by Committee members, interested persons may make statements germane to these subjects. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 8, 1987 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: May 20, 1987.

**Leslie S. Shapiro,**

*Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 87-11851 Filed 5-22-87; 8:45 am]

BILLING CODE 4810-25-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 87-23]

### Charles J. Aswell, Jr., M.D., Ville Platte, LA; Hearing

Notice is hereby given that on February 5, 1987, the Drug Enforcement Administration, Department of Justice, issued to Charles J. Aswell, Jr., M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not deny his Application for Registration dated October 22, 1986.

Thirty days having elaped since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, June 2, 1987, in Courtroom 211, United States Tax Court, U.S. Custom House, 423 Canal Street, New Orleans, Louisian.

Dated: May 18, 1987.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87-11828 Filed 5-22-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-60]

### Raymond A. Carlson, M.D., Vinton, LA; Hearing

Notice is hereby given that on May 27, 1986, the Drug Enforcement Administration, Department of Justice, issued to Raymond A. Carlson, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AC3408374, and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, June 3, 1987, in Courtroom 211, United States Tax Court, U.S. Customs House, 423 Canal Street, New Orleans, Louisiana.

Dated: May 18, 1987.

John C. Lawn,

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87-11829 Filed 5-22-87; 8:45 am]

BILLING CODE 4410-09-M

## Importation of Controlled Substances; Application; McNeilab, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General shall provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulation (CFR), notice is hereby given that on December 11, 1986, McNeilab, Inc., Welsh and McKean Roads, Spring House, Pennsylvania 19477, made application to the Drug Enforcement Administration to be registered as an importer of Difenoxin (9168), a basic class of controlled substance in Schedule I.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than June 25, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 CFR U.S.C. 958(a), 21 U.S.C. 823(a), and 21 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: May 14, 1987.

Gene R. Haislip,

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87-11830 Filed 5-22-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-39]

## Kurt H. Rotermund, DO., Albuquerque, NM; Hearing

Notice is hereby given that on April 3, 1987, the Drug Enforcement Administration, Department of Justice, issued to Kurt H. Rotermund, D.O. and Order to Show Cause as to why the Drug Enforcement Administration should not revoke this DEA Certification of Registration, AR9286556, and deny any pending applications for renewal.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and writtten request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, June 2, 1987, in Courtroom 11-West, United States District Court, 500 Gold, S.W., Albuquerque, New Mexico.

Dated: May 18, 1987.

John C. Lawn,

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87-11831 Filed 5-22-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-74]

## Steven M. Simon, M.D., Kansas City, KS; Hearing

Notice is hereby given that on September 2, 1987, the Drug Enforcement Administration, Department of Justice, issued to Steven M. Simmon, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not deny his application for registration dated April 20, 1986.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and writtten request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, June 17, 1987, in Courtroom 829, United States Court of Appeals, 811 Grand Avenue, Kansas City, Missouri.

Dated: May 18, 1987.

John C. Lawn,

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87-11832 Filed 5-22-87; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

[Application No. D-6815 et al.]

### Proposed Exemptions; SEI Property Fund, et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public

Documents Room of Pension and Welfare Benefits Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

**Notice of Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**SEI Property Fund (the Fund)**

**Located in Chicago, IL.**

**[Application No. D–6815]**

*Proposed Exemption*

**Section I. Exemption for Certain Transactions Involving the Fund**

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Fund: General.* Any transaction between a Party in interest with respect to a plan which has an interest in the Fund (a Participating Plan) and the Fund, or any acquisition of holding by the Fund of employer securities or employer real property, if the party in interest is not SEI Corporation (SEI), the investment manager for the Fund (the Investment Manager), or one of the affiliates of SEI or the Investment Manager), or one of the affiliates of SEI or the Investment Manager or any other Fund maintained by the SEI, Investment Manager, or one of their Affiliates, and if, at the time of the transaction, acquisition or holdings, the interest of the Participating Plan, together with the interests of all other Participating Plans maintained by the same employer or employee organization in the Fund, does not exceed 10 percent of the total of all assets in the Fund.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Fund.*

Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Fund, or any acquisition or holding by the Fund of employer securities or employer real property, if at the time of the Transaction, acquisition of holding—

The interest of the multiemployer plan in the Fund exceeds 10 percent of the total assets in the Fund, but the employer is not a "substantial employer" with respect to plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(b) The restrictions of section 406(a)(1)(A) through (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the transactions described below, if the conditions of section III are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Fund by a party in interest with respect to a Participating Plan or the leasing of real property owned by the Fund to such party in interest and the incidental furnishing of goods to such party in interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party in interest is not SEI, the Investment Manager, or any affiliate of SEI or the Investment Manager, or one of the other Funds; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party in interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party in interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Fund and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Partticipating Plan, or solely by reason of a relationship to a service provider described in section 3(14)(F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Fund;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Fund, does not exceed 20 percent of the total of all assets in the Fund; and

(3) The person is not SEI, the Investment Manager, or an affiliate of SEI or the Investment Manager.

(d) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Fund if no more than a reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of SEI, the Investment Manager, or any of the affiliates of SEI or the Investment Manager, and the

applicable conditions of section III are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of section 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Fund) by a Participating Plan if: (1) The acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Fund; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of section I of this exemption are met; and (3) the applicable conditions set forth in section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of SEI, the Investment Manager or an affiliate of SEI or the Investment Manager, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) SEI, the Investment Manager, or the affiliates of SEI or the Investment Manager, maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this section III to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SEI, the Investment Manager, or an affiliate of SEI or the Investment Manager, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provision of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiducary of a Participating Plan who has authority to acquire or dispose of the interests in the Fund of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of SEI, the Investment Manager, or any affiliate of SEI or the Investment Manager, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Fund" shall include any collective investment fund that may hereafter be established by SEI or any affiliate of SEI, and which will be operated and managed by the Investment Manager or any affiliate of the Investment Manager in essentially the same manner as the SEI Property Fund.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and (I)(c) at such time as the interest of the Participatting Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Fund by the Participating Plan. For this purpose, assets allocated do not include the investment of Fund earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms

of the transactions to be consummated pursuant to this proposed exemption.

*Preamble*

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80–51 (PTE 80–51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans participate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicants have requested relief are those which, in part, are the subject of PTE 80–51.

The Department stated in PTE 80–51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and the relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

*Summary of Facts and Representations*

1. The Fund is a group trust described in Rev. Rul. 81–100, 1981–1 C.B 326. The Fund will provide qualified employee benefit plans and certain governmental plans with a medium for pooling portins of their funds for investment primarily in income-producing real property. The Fund is intended to be exempt from Federal income taxes under section 501(a) of the Code as a qualified trust under section 401(a) of the Code.

2. SEI is a Pennsylvania corporation registered as an investment adviser under the Investment Advisers Act of 1940. SEI is the leading supplier of information, financial, and evaluation services to the financial community in the United States. SEI offers plan sponsors and money managers all the objective information and professional guidance for monitoring and evaluating the investment performance of pension plans. SEI claims thirty percent of the nation's larger trust departments as clients. SEI's financial services include a wide range of investment products that total more than $5 billion in managed assets.

The Fund will be established by SEI. The Investment Manager will be selected by SEI to manage the assets of the Fund, pursuant to a written investment management agreement entered into with the trustees of the Fund (the Trustees). The Investment Manager will be unrelated to SEI and its affiliates. The applicant represents that each Investment Manager will either qualify as a qualified professional asset manager (QPAM) under Prohibited Transaction Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984, as amended on October 10, 1985, 50 FR 41430) or would be so qualified but for the $750,000 equity requirement under Part V(a)(4) of PTE 84–14.

SEI will receive fees for the formation of the Fund and for monitoring the performance of the Investment Manager as well as for serving as Trustee of the Fund. However, any Trustee who is an officer, director or employee of SEI will not be compensated by the Fund. SEI will also select an independent real estate appraiser to value the property in the Fund. the applicant states that all fees received by SEI will be based on individual, arm's-length negotiations with the Participating Plan and will be reasonable in amount.[1]

3. Interests in the Fund (the Units) will be offered pursuant to an offering memorandum (the Memorandum) which describes the Investment Manager, the investment objectives, operations, and management of the Fund. The Memorandum will precisely set out the maximum extent to which the Fund may borrow to invest in real estate. Copies of the Memorandum will be attached to the group trust agreement, the investment management agreement, and the participation agreement which will further describe the management and operations of the Fund as well as the respective rights and obligations of the participating parties. The applicant states that each subscriber must have net assets of at least $50,000,000 and the subscriber's total ownership of equity interest in real estate (including its investment in the fund) must not exceed 30% of its total net assets. The applicant states further that the subscribers' equity investment in the Fund shall not exceed five percent (5%) of plan assets. The Units are offered for a price of $250,000. Each Participating Plan must purchase a minimum of eight Units (i.e. $2,000,000).

The Units will be privately offered and will not be registered under the Securities Act of 1933. Neither the Units nor any interest therein may be resold, transferred, assigned, or otherwise disposed of or encumbered by Practicipating Plans, as required by Rev. Rul. 81–100. However, the Units may be redeemed and concurrently reissued by the Fund.

4. The decision of any plan to invest in the Fund will be made by fiduciaries of the plan which will be independent of SEI, the Investment Manager, or their affiliates. The Trustees may reject a subscription for any reason. SEI or its affiliates have traditionally acted as investment advisers and investment managers for plan assets with respect to the investment of such assets in securities and will expand to provide real estate investment advisory services to such plans in the future. With respect to its investment management duties under the Fund, the Investment Manager will exercise discretion only for a discrete portion of a Participating Plan's assets as defined in the investment management agreement. None of the individual Trustees of the Fund, nor any of the employees, officers, directors, or shareholders of SEI, the Investment Manager, or the affiliates of SEI or the Investment Manager, will exercise and discretionary authority over or otherwise particpate in the decision of any plan to invest in the Fund. Specifically, the applicant states that assets over which SEI or the Investment Manager, or any affiliate of SEI or the Investment Manager, acts as an investment manager will not be eligible for investment in the Fund. Similarly, none of the individual Trustees of the Fund, nor any of the employees, officers, directors, or shareholders of SEI, the Investment Manager or the affiliates of SEI or the Investment Manager, will serve as a director or officer of any sponsor of any Participating Plan. SEI or the Investment Manager, or any affiliate of SEI or the Investment Manager, will not within the scope of their investment advisory duties with respect to any plan, recommend the investment of such plan's assets in the Fund. SEI or the Investment Manager, if outside of the scope of any investment advisory duties or any investment management duties which SEI, the Investment Manager or their affiliates currently provide such plans, may provide the plans for which it acts as an investment adviser or an investment manager with the Memorandum and other information describing available investments in the Fund, provided that the Memorandum and information do not contain and are

[1] The Department is not proposing an exemption for the receipt by SEI of any fees beyond that provided by section 408(b)(2) of the Act.

not accompanied by any recommendation to purchase.[2]

If SEI or its affiliates provide real estate advisory services with respect to a plan, and if SEI or its affiliates recommend that such plan increase its allocation of assets in real estate, the assets of such plan shall not be eligible for investment in the Fund. In addition, the applicant states that if the Investment Manager or any affiliate provides real estate advisory or management services with respect to a plan, and if the Investment Manager or such affiliate recommends that the plan increase its allocation of assets in real estate, the assets of such plan shall not be eligible for investment in the Fund.

5. Although the Memorandum advises fiduciaries of Participating Plans that investment in the Fund should be considered on a long-term basis only, if a Participating Plan desires to dispose of its investment, it may apply to the Trustees for redemption of its Units. At the option of the Trustees, the remaining Participating Plans may be given an opportunity to purchase all or part of the withdrawing Plan's Units provided that a Participating Plan qualified under section 401(a) of the Code may not own more than a ten percent (10%) interest in the Fund. Alternatively, new investors may purchase Units in the Fund concurrently with a redemption of the Unit. In the event that a Participating Plan wishes to engage SEI to find a buyer for the Units, SEI may negotiate a fee with the Participating Plan for the sale of the Units to another qualified buyer. In such event, SEI would receive compensation from the redeeming Participating Plan on a negotiated basis that is reasonable in amount, provided that the employer or governmental units maintaining such Participating Plan may elect to directly pay SEI's compensation.

6. The Trustees, in their sole discretion, may terminate the Fund at any time. Pursuant to the group trust agreement, the Fund may be terminated by the vote of Participating Plans holding more than fifty percent of the number of Units the outstanding. In addition, SEI's role in the ongoing evaluation of the Investment Manager will be subject to the approval of the Participating Plans. The Participating Plans may replace SEI, the Investment Manager, or the appraiser with a majority vote of the Units.

7. The Fund will maintain such reserves as the Investment Manager deems appropriate. These reserves, along with any subscription proceeds not immediately used to acquire real estate, will be temporarily invested in liquid investments, including short-term United States government securities,' interest-bearing deposits, bankers' acceptances, or other short-term money market instruments, including short-term debt and commercial paper issued by major corporations some of which may be sponsors of Participating Plans. Selection of such short-term investments will be within the discretion of the Investment Manager.

8. Fees paid to the Investment Manager will be determined in negotiations between SEI and the Investment Manager. If the Investment Manager, or any affiliate, performs services beyond those provided for in the investment management agreement between SEI and the Investment Manager, the Investment Manager's, or such affiliate's, compensation will be limited to the reimbursement for direct costs for the provision of such services. The applicant states that in some instances, the property manager for the Fund will be the Investment Manager, and in other cases the Investment Manager will contract to have these duties performed by an unrelated party. In all events, the selection of the property manager will be made by SEI.[3]

9. Because each Participating Plan will incorporate as part of such plan the terms, provisions, and conditions of the group trust agreement, the Fund will occupy a position equivalent to the trust created under the Participating Plan. Accordingly, pursuant to Revenue Ruling 81–100, it is the position of the Department that a "party in interest" as defined in the Act, or a "disqualified person" as defined in the Code, with respect to a Participating Plan may be viewed as a party in interest or disqualified person with respect to the Fund. Thus, a transaction between such party and the Fund may be viewed as a prohibited transaction as described in section 406(a) of the Act, section 4975(c) of the Code, or both. The applicant represents that if the Fund is unable to enter into transactions with certain persons because such persons are parties in interest with respect to Participating Plans, the Fund's ability to prudently make its investments and conduct its operations solely for the benefit of the Participating Plans will be unduly restricted. In addition, the purchase and sale of the Units may be considered a prohibited sale or transfer of assets between a Participating Plan and the Trustees that is not exempted by operation of the statutory exemption provided in section 408(b)(8) of the Act because the Fund is not maintained by a bank or an insurance company.

10. The applicant requests prospective exemptive relief for many of those classes of transactions between the Fund and certain parties in interest which were afforded exemptive relief in PTE 80–51. The applicant proposes that such classes of transactions be subject to similar conditions, limitations, and restrictions as those delineated for the transactions afforded exemptive relief in PTE 80–51.

11. The books and records of the Fund will be audited by an independent public accountant each fiscal year. A copy of such reports, along with any other pertinent information, will be forwarded to the fiduciaries and sponsors of each Participating Plan. At the end of each of the first three quarters of each fiscal year, the Investment Management will prepare and send a detailed report of the business transacted by the Fund during such quarter. The quarterly reports will not be audited.

12. In summary, the applicant represents that the proposed exemption for certain transactions between the Fund and certain parties in interest satisfies the criteria of section 408(a) of the Act because: (a) The proposed exemption would allow the Fund to enter into transactions which, although prohibited, are necessary for the Fund to prudently make its investments and conduct its operations solely for the benefit of its Parcticipating Plans and their participants and beneficiaries; (b) the proposed exemption would only apply to various classes of prohibited transactions which were afforded relief in PTE 80–51 and would be subject to similiar conditions, limitations and restrictions as those delineated for the transactions afforded relief in PTE 80–51; and (c) independent fiduciaries, unrelated to the Fund, the Trustees, SEI, the Investment Manager, or any of their affiliates, will maintain complete discretion with respect to investment of

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[2] To the extent that, in the ordinary course of business, SEI or any of its affiliates provides "investment advice" to a Participating Plan within the meaning of regulation 29 CFR 2510.3–21(c)(1)(ii)(B) and recommends an investment of the plan's assets in the Fund, the presence of an unrelated second fiduciary acting on the consultant/investment adviser's recommendations on behalf of the plan is not sufficient to insulate the advisers from fiduciary liability under section 406(b) of the Act. (See Advisory Opinions 84–03A and 84–04A, issued by the Department on January 4, 1984.) The Department is unable to conclude the fiduciary self dealing of this type (if present) is in the interest or protective of plans and their participants and beneficiaries and, accordingly, has limited exemptive relief for the acquisition or sales of interests in the Fund to section 406(a) violations only.

[3] The Department is not proposing an exemption for the receipt by the Investment Manager, or any affiliate, of any fees beyond that provided by section 408(b)(2) of the Act.

the Participating Plans' assets in the Fund.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**InterFirst Corporation Profit Sharing and Savings Plan (the Plan), Located in Dallas, TX**

[Application No. D-7077]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed extension of credit to the Plan by InterFirst Corporation (the Employer), the sponsor of the Plan and a party in interest with respect to the Plan.

*Summary of Facts and Representations*

1. The Employer is a bank holding company which has 68 wholly-owned banking subsidiaries and five wholly-owned banking-related subsidiaries located in 39 cities in Texas. The Employer has approximately $22.1 billion in assets, as of December 31, 1985. A proposed merger of the Employer with Republic Bank Corporation, a bank holding company, incorporated in Texas and slightly larger than the Employer, has been announced. The proposed merger is pending while regulatory approval in obtained. It is anticipated that the merger will not be completed before June 1987.

2. The Plan is a profit sharing plan with 8,232 participants, as of April 30, 1986, who are employees of the Employer and its subsidiaries. As of December 31, 1986, there were total assets of $45,335,489 in the Plan. Contributions to the Plan are made by the Employer and Plan participants and are invested, as directed by participants, in six different funds (the Funds). One of the Funds is the Real Estate Fund which has its assets invested in a unit of a group trust, maintained by a subsidiary of the Employer and designated as the InterFirst Corporation Investment Trust for Employee Benefits Plans (the Collective Trust). The segment of the Collective Trust in which the Real Estate Fund is invested is designated as the Real Estate Collective Investment Fund (RECIF). The RECIF is an open-end fund with 179 investors consisting of 71 different defined benefit plans and 108 different defined contribution plans. The Trustee for the Plan, the Funds, and the Collective Trust is a national bank, InterFirst Bank Dallas, N.A. (the Trustee), that is a wholly-owned subsidiary of the Employer. Participants in exercising their discretionary power have the right each month to change their investments within the Funds by written application to the Plan; however, changes out of the Real Estate Fund are only effective when cash is available from the RECIF.

3. The total assets of the RECIF, equaling $85,385,000 as of June 30, 1986, were invested in commercial properties located in regions experiencing adverse economic problems. These problems have resulted in an unrealized depreciation in the value per unit of the RECIF as well as a decline in the number of units outstanding. New appraisals of all RECIF properties are made by MAI appraisers every three years, and, in interim years, updates by the last appraiser are obtained annually.

New investments in RECIF have been negligible, totaling only $5,000 during the first nine months of 1986. As of June 30, 1986, the Plan has been amended to prohibit further investments in the Real Estate Fund. In addition, the Plan has requested a complete withdrawal of its investment in RECIF. Requests for withdrawals from RECIF have increased from $10,000,000 as of December 31, 1985, to a total of $34,400,000, as of June 30, 1986. On September 23, 1986, RECIF was terminated and all requests for withdrawal, which had been paid sequentially, are now being paid on a pro rata basis in accordance with the amount invested in RECIF. Requests for withdrawal from RECIF have increased to a point that the Trustee believes that there could be a significant adverse impact upon the Plan.

4. The applicant represents that, as of March 31, 1987, the remaining units in RECIF held by the Plan have a fair market value of $2,220,704 and have a cost to the Plan of $2,301,190. Since June 30, 1986, the fair market value of the units held by the Plan has declined from $3,210,281 as a result of cash distributions and decreases in property values. The Employer proposes to loan $2,856,391 to the Plan,[1] solely to permit the Employer to protect retirement benefits of its employees from losses resulting from the slipping real estate market in the region where the RECIF commercial properties are located.[2] No interest charges nor any other expense will be incurred by the Plan from the proposed loan, and no collateral for the loan will be required.[3] The loan will be in the form of a note with principal repaid by the Plan from cash obtained only from RECIF when it liquidates its properties and honors withdrawal requests. No other Plan assets can be used to pay off the loan. To the extent the Plan receives more than the amount of the loan from RECIF upon the liquidation of RECIF, such proceeds will be retained by the Plan and allocated to the accounts of the respective Plan participants. To the extent the Plan receives less than the amount of the loan upon liquidation of the RECIF units, repayment of the loan will be waived. The proceeds of the loan from the Employer will be transferred, as directed by Plan participants, to other investments in the Funds. The applicant represents that the proposed loan from the Employer to the Plan will not result in any expense to the Plan nor risk to participants of the Plan and will facilitate the participants obtaining better investment media.

5. In summary, the applicant represents and the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The loan is evidenced in written documentation and does not provide for the payment of interest by the Plan; (b) the proposed transaction protects the Plan participants and their beneficiaries from the decline in the value of the RECIF properties and permits new, higher yielding investments without expense or penalty; (c) the terms for the repayment of the loan is limited to cash proceeds received from liquidation of RECIF commercial properties and no other assets of the Plan will be used or affected; and (d) upon liquidation of Plan investments in RECIF, any proceeds in excess of the loan will be retained by the Plan and allocated to the accounts of Plan participants.

For Further Information Contact: Mr. C.E. Beaver of the Department,

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[1] This amount represents the fair market value of $3,210,281 in the units of RECIF, on June 30, 1986, less cash distributions received by the Plan since that date.

[2] The applicant represents that the proposed loan will not cause a violation of section 415 of the Code.

[3] The applicant represents that the Prohibited Transaction Class Exemption 80-26 (45 FR 28545, April 29, 1980) cannot be relied upon with respect to the proposed loan because the proceeds of the loan are to be used by Plan participants for transfers between investment media. Class Exemption 80-26, in relevant part, provides exemptive relief where the proceeds of the loan or extension of credit are used only for payment of ordinary operating expenses of the plan, including the payment of benefits and periodic premiums under an insurance or annuity contract.

telephone (202) 523–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of May 1987.

**Elliot I. Daniel,**

*Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 87–11931 Filed 5–22–87; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement/Organizations Section) to the National Council on the Arts will be held on June 9–10, 1987, from 9:00 a.m.–6:00 p.m. and June 11, 1987, from 9:00–3:30 p.m. in Room M–17 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 11, 1987 from 1:30 p.m.–3:30 p.m. The topics for discussion will include policy issues.

The remaining sessions of this meeting on June 9–10, 1987 from 9:00 a.m.–6:00 p.m. and June 11, 1987 from 9:00 a.m.–12:30 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

May 18, 1987.

**John H. Clark,**

*Office of Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 87–11823 Filed 5–26–87; 8:45 am]

BILLING CODE 7537–01–M

### Visual Arts Advisory Panel; Printmaking/Drawing Section; National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Printmaking/Drawing Section) to the National Council on the Arts will be held on June 8–11, 1987, from 9:00 a.m.–6:00 p.m. and June 12, 1987 from 9:00 a.m.–6:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

May 18, 1987.

[FR Doc. 87–11824 Filed 5–22–87; 8:45 am]

BILLING CODE 7537–01–M

### National Endowment for the Humanities Panel Meetings

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including duscussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged

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or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authoirty to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552(b) of Title 5, United States Code.

1. *Date:* June 8, 1987
   *Time:* 8:30 a.m. to 5 :00 p.m.
   *Room:* 315
   *Program:* This meeting will review applications in the fields of the humanities submitted to the Publication Subvention category of the Texts Program, Division of Research Programs, for projects beginning after October 1, 1987.
2. *Date:* June 11–12, 1987
   Time: 9:00 a.m. to 5:00 p.m.
   *Room:* M–07
   *Program:* This meeting will review applications in the fields of the humanities submitted to the Conferences category of the Regrants Program, Division of Research Programs, for projects beginning after September 1, 1987.
3. *Date:* June 15, 1987
   *Time:* 8:30 a.m. to 5:00 p.m.
   *Room:* 415
   *Program:* This meeting will review Biennial Proposals submitted by State humanities councils to the Division of State Programs, for projects beginning after November 1, 1987.
4. *Date:* June 22, 1987
   *Time:* 8:30 a.m. to 5:00 p.m.
   *Room:* 415
   *Program:* This meeting will review Biennial Proposals submitted by state humanities councils to the Division of State Programs, for projects beginning after November 1, 1987.
5. *Date:* June 11–12, 1987
   *Time:* 9:00 a.m. to 5:00 p.m.
   *Room:* 315
   *Program:* This meeting will review Higher Education Programs applications, submitted to the Division of Education Programs, for projects beginning after October 1, 1987.

Stephen J. McCleary,
*Advisory Committee Management Officer.*
[FR Doc. 87–11885 Filed 5–22–87; 8:45 am]
BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

### Northeast Nuclear Energy Co.; Millstone Nuclear Power Station Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.49 to Northeast Nuclear Energy Company (the licensee) for the Millstone Nuclear Power Station, Unit No. 1 (Millstone 1), located in Waterford, Connecticut.

### Environmental Assesment

*Identification of Proposed Action*

The licensee would be exempted from the requirements of 10 CFR 50.49, "Environmental qualification of electric equipment important to safety for nuclear power plants," in that seven of nine requested valve motor operators would not be qualified for the harsh environment of the design basis accident (DBA). One motor operator would be qualified for a DBA environment and one is outside the scope of equipment required to be environmentally qualified.

*The Need for the Proposed Action*

The proposed exemption is needed for continued operation of Millstone 1 beyond the June-July 1987 refueling outage with seven of nine valve motor operators that do not satisfy the requirements of 10 CFR 50.49, "Environmental qualification of electric equipment important to safety for nuclear power plants." One of the nine valve motor operators must be replaced with an environmentally qualified motor operator during the June-July 1987 refueling outage and one motor operator is outside the scope of equipment required to be environmentally qualified. According to the licensee, the installed motor operators, though not fully qualified for a harsh accident environment, satisfy the underlying purpose of the rule and literal compliance would not significantly enhance plant safety, enhance the health and safety of the public, or significantly reduce core melt frequency.

*Environmental Impact of the Proposed Action*

The proposed exemption, except for one of the nine motor operators, would not impact the ability to effect safe shutdown of the plant in the event of a DBA and would provide an acceptable level of safety, equivalent to that attained by compliance with 10 CFR 50.49. The request for exemption of the motor operator in the isolation condenser supply line piping, valve IC–2, will be denied; the motor operator in the emergency condensate transfer pump discharge piping, valve MV–96A, is outside the scope of equipment required to be environmentally qualified. On this basis, the Commission concludes there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since we have concluded that the environmental effects of the proposed action are negligible, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny all of the requested exemptions. Except for one motor operator this would not reduce the environmental impacts associated with installing environmentally qualified motor operators and compliance with the rule would not significantly enhances plant safety. Denial of the exemption request for the IC–2 valve motor operator exemption from the rule, the staff has concluded, enhance safety, i.e., the motor operator must be qualified for operation in the accident environment.

*Alternative Use of Resources*

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for Millstone 1.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and consulted with its contractors at Science Applications International Corporation.

### FINDING OF NO SIGNIFICANT IMPACT

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude

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that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the exemption requests dated January 17, 1986 and March 12, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 19th day of May 1987.

For the Nuclear Regulatory Commission.

**Cecil O. Thomas,**

*Director, Integrated Safety Assessment, Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 87-11918 Filed 5-22-87; 8:45 am]

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## Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 4–6, 1987, in Room 1046, 1717 H Street NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on April 20, 1987.

**Thursday, June 4, 1987**

*8:30 a.m.–8:45 a.m.: Report of ACRS Chairman* (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

*8:45 a.m.–10:45 a.m.: NRC Severe Accident Policy* (Open)—Consider proposed NRC generic letter regarding implementation of the NRC severe accident policy statement for existing nuclear power plants.

*11:00 a.m.–12:00 Noon: Foreign Nuclear Power Plant Safety Features* (Open/Closed)—Discuss proposed ACRS report to NRC regarding safety features in foreign nuclear plants.

Portions of this session will be closed as required to discuss information provided in confidence by a foreign source.

*1:00 p.m.–2:15 p.m.: Improved Safety for Future Light Water Reactors* (Open)—Discussion with NRC Executive Director for Operations regarding proposed NRC Staff resolution of recommendations of the ACRS in its report dated January 15, 1987, Subject: ACRS Recommendations on Improved Safety for Future Light Water Reactor Plant Design.

*2:15 p.m.–3:45 p.m.: Improved Safety for Future Light Water Reactors* (Open)—Discuss proposed ACRS response to NRC request for additional information regarding the feasibility, benefit, and cost effectiveness of systems recommended in its report of January 15, 1987, Subject: ACRS Recommendations on Improved Safety for Future Light Water Reactor Plant Design.

*4:00 p.m.–6:00 p.m.: Preparation of ACRS Reports to the NRC* (Open/Closed)—Discuss proposed ACRS reports to the NRC regarding: Foreign Nuclear Power Plant Safety Features; Development and Utilization of NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants (NUREG–1226), proposed NRC rule on Loss of Alternating Current Power at Nuclear Power Plants, and the high-level radioactive waste program.

Portions of this session will be closed as required to discuss information provided in confidence by a foreign source.

**Friday, June 5, 1987**

*8:30 a.m.–11:30 a.m.: Operating Experience at Nuclear Power Plants* (Open/Closed)—Briefing and discussion of recent incidents and events at nuclear facilities.

Portions of this session will be closed as appropriate to discuss applicable Proprietary Information and/or detailed security arrangements at the facility being considered.

*11:30 a.m.–12:00 Noon: Future ACRS Activities* (Open)—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*1:00 p.m.–2:15 p.m.: Long Range Planning* (Open)—Briefing and discussion regarding proposed NRC Strategic Plan for agency activities.

*2:30 p.m.–3:30 p.m.: Renewal of Nuclear Power Plant Licenses* (Open)—Briefing and discussion regarding proposed NRC policy for renewal of nuclear power plant licenses.

*3:30 p.m–6:00 p.m.: ACRS Subcommittee Activities* (Open)—Hear and discuss reports of ACRS subcommittee activities in assigned areas, including radioactive waste management, resolution of generic issues, and reliability of nuclear power plant components.

**Saturday, June 6, 1987**

*8:30 a.m.–12:00 Noon: Preparation of ACRS Reports* (Open/Closed)—Discuss proposed ACRS reports to NRC regarding items considered during this meeting and a proposed reply to a Congressional inquiry regarding the Nuclear Protection and Safety Act of 1987.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

*1:00 p.m.—2:00 p.m.: ACRS Subcommittee Activities* (Open/Closed)—Hear and discuss reports of ACRS subcommittee activities in assigned areas, including nuclear power plant containment spray systems, fission-product removal/cleanup, the NRC SIMS program, and seismic qualification of nuclear power plant components. The qualifications of proposed new ACRS members will also be discussed.

Portions of this session will be closed as necessary to discuss information that would represent a clearly unwarranted invasion of personal privacy.

*2:00 p.m.—2:30 p.m.: Quality Assurance in Nuclear Facilities* (Open)—Discuss proposed ACRS recommendations regarding a review of quality assurance practices in foreign countries.

*2:00 p.m.—3:00 p.m.: Miscellaneous* (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion

picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss information provided in confidence by a foreign source [5 U.S.C. 552b(c)(4)], Proprietary Information [5 U.S.C. 552b(c)(4)], safeguards information related to physical security of nuclear facilities [5 U.S.C. 552b(c)(3)], and information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Dated: May 20, 1987.

John C. Hoyle,

*Advisory Committee Management Officer.*

[FR Doc. 87–11915 5–22–87; 8:45 am]

BILLING CODE 7590–01–M

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## Advisory Committee on Reactor Safeguards; Subcommittee on Regulatory Policies and Practices; Cancellation of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices scheduled for May 28, 1987 have been cancelled. Notice of this meeting was previously published Wednesday, May 13, 1987 (52 FR 18036).

Dated: May 18, 1987.

Morton W. Libarkin,

*Assistant Executive Director for Project Review.*

[FR Doc. 87–11913 Filed 5–22–87; 8:45 am]

BILLING CODE 7590–01–M

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[Docket Nos. 50–250–OLA–2; 50–251–OLA–2; ASLBP No. 84–504–07 LA (Spent Fuel Pool Expansion)]

## Atomic Safety and Licensing Board; Order Establishing Schedule for Hearing; Florida Power and Light Co. (Turkey Point Plant, Units 3 & 4)

May 15, 1987.

### Order Establishing Schedule for Hearing (Expansion of Spent Fuel Pool Storage Capacity)

Before Administrative Judges: Dr. Robert M. Lazo, Chairman, Dr. Richard F. Cole, and Dr. Kenneth A. Luebke.

Based on agreement reached among the parties, the following schedule is hereby established for conduct for the above-captioned license amendment proceeding:

*Tuesday, June 23, 1987*—Deadline for each party to identify the witnesses who will testify with respect to each contention.

*Monday, July 20, 1987*—Last day for filing written testimony.

*Tuesday, September 15, 1987*—Hearing to commence at 9:30 a.m. in North Court Room, Second Floor, United States District Courthouse, Old Building, 300 NE First Avenue, Miami, Florida 33101 and remain in continuous sessions day to day until completed or until continued by further order of the Board.

It is so ordered.

Dated at Bethesda, Maryland, this 15th day of May 1987.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

*Chairman, Administrative Judge.*

[FR Doc. 87–11912 Filed 5–22–87; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–460–OL (ASLBP No. 82–479–04 OL)]

## Washington Public Power Supply System, et al.; WPPSS Nuclear Project No. 1; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for *Washington Public Power Supply System, et al.* (WPPSS Nuclear Project No. 1), Docket No. 50–460–OL, is hereby reconstituted by appointing Administrative Judge Peter B. Bloch in place of Administrative Judge Herbert Grossman who has resigned.

As reconstituted, the Board is comprised of the following Administrative Judges:

Peter B. Bloch, Chairman
Glenn O. Bright
Jerry Harbour

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is:

Administrative Judge Peter B. Bloch, Chairman, U.S. Nuclear Regulatory Commission, Atomic Safety and Licensing Board, Washington, DC 20555.

B. Paul Cotter, Jr.,

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

Dated at Bethesda, Maryland, this 19th day of May 1987.

[FR Doc. 87–11911 Filed 5–22–87; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 30–11982, License No. 25–16883–01, EA 86–196]

## Yellowstone County Surveyor's Office; Order Imposing Civil Monetary Penalty

I

Yellowstone County Surveyor's Office (licensee), Attn: Mr. Harlan M. Lund, County Surveyor, Room 312, Courthouse, Billings, Montana 59101 is the holder of Materials License No. 25–16883–01 issued by the Nuclear Regulatory Commission on April 6, 1981 and last amended on April 15, 1983. The license authorizes the licensee to possess and use cesium-137 and americium-241 in Troxler gauges to measure properties of materials in accordance with the conditions specified therein.

II

A routine inspection of the licensee's activities was conducted on October 21, 1986. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated February 9, 1987. The Notice stated the nature of the violations, NRC requirements that were violated, and the amount of civil penalty proposed. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated March 2, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and mitigation contained therein, the Deputy Executive Director for Regional Operations, has determined as set forth in the appendix to this Order that the violations occurred as stated.

However, because of the licensee's corrective actions the penalty proposed for the violations described in the Notice of Violation of Proposed Imposition of Civil Penalty should be mitigated by 50 percent.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The licensee pay a civil penalty in the amount of Two Hundred Fifty Dollars ($250) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above and

(b) Whether, on the basis of such violations, this Order should be sustained.

For The Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 12th day of May 1987.

James M. Taylor,

*Deputy Executive Director for Regional Operations.*

**Appendix—Evaluations and Conclusions**

On February 9, 1987 a Notice of Violation and Proposed Imposition of Civil Penalty (NOV) was issued for violations identified during a routine NRC inspection. Yellowstone County Surveyor's Office (licensee) responded to the Notice on March 2, 1987. The licensee neither specifically admitted nor denied the violations; however, it described corrective steps taken to ensure compliance now and in the future. The licensee requested that the violations be reclassified at a lower severity level and the civil penalty be mitigated to zero. The NRC's evaluation and conclusion regarding the licensee's request are as follows:

*Summary of Licensee's Request for Mitigation*

The licensee argued: (1) That the instrument users are trained, certified, and aware of safety procedures, (2) that the instrument was used very little, (3) that the citations basically were for record keeping oversights, (4) that use of the instrument presented no threat to any person's health or welfare, and (5) that the licensee took prompt corrective action and cooperated fully with NRC. The licensee's corrective measures included immediately placing the instrument in storage, obtaining dosimetry film badges for all personnel, advising all personnel of requirements for use and storage of the instrument, establishing a record of radiation exposure, establishing a physical inventory book, confirming HKM Engineering as an authorized user, completion of a leak test, obtaining a Type A Shipping Package Certificate, preparing a Shipper's Certificate, and establishing future management controls that includes a review of documentation and operator education. In addition, the licensee requested that the violations be reclassified to a lower severity level and that the civil penalty be dropped.

*NRC Evaluation of Licensee's Request for Mitigation*

Although the licensee contends that instrument users are trained, certified, and aware of safety procedures, the fact that the violations occurred is strong evidence that users were not sufficiently qualified at the time of the inspection. The staff acknlowledges the licensee's assertion that the instrument was used very little, and recognizes that this situation may have contributed to the licensee's inattention to regulatory matters; however, the NRC expects a high level of compliance with its requirements. The NRC does not accept the licensee's characterization of the violations as "basically * * * record keeping oversights." In these instances poor record keeping was symptomatic of a generally weak program for complying with regulatory requirements. In addition, the NRC does not agree that there was "no threat to any person's health or welfare." The violations involving the failure to provide personnel dosimetry and the failure to perform leak tests provide the potential for safety problems to have gone unrecognized, thus increasing the safety significance of the violations. For these reasons, the violations have been appropriately categorized at Severity Level III.

Regarding the licensee's request for mitigation of the civil penalty based on its corrective actions, the Enforcement Policy allows mitigation up to 50% for unusually prompt and extensive corrective actions. In this case, the licensee promptly put the licensed source into storage, performed a leak test, obtained dosimetry and a shipping certification, and established a training program and a periodic management audit.

*NRC Conclusion*

The NRC staff concludes that the licensee's request to reclassify the violations at a lower severity level is not supported by the licensee's arguments made in its March 2, 1987 response. However, the licensee's corrective actions do warrant reduction of the base civil penalty by 50 percent. Therefore, a civil penalty in the amount of $250.00 should be imposed.

[FR Doc. 87–11917 Filed 5–22–87 8:45 am]

BILLING CODE 7590–01–M

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## Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 9, No. 3).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC had made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant

reduction in the degree of protection against radioactive properties of source, special nuclear, and byproducts materials are abnormal occurrences.

The report to Congress is for the third quarter of 1986. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were four abnormal occurrences at the nuclear power plants licensed to operate. The events were (1) a differential pressure switch problem in safety systems at LaSalle facility, (2) abnormal cooldown and depressurization transient at Catawba Unit 2, (3) significant safeguards deficiencies at Wolf Creek and Fort St. Vrain, and (4) significant deficiencies in access controls at River Bend Station. There was one abnormal occurrence at the other NRC licensees; it involved a therapeutic medical misadministration. There was one abnormal occurrence reported by an Agreement State; it involved a therapeutic medical misadministration.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW., Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of microfiche of NUREG–0090, Vol. 9, No. 3 (or any of the previous reports in this series), may be purchased by calling (202) 275–2060 or (202) 275–2171, or by writing to the Superintendent of Documents, U.S Government Printing Office, Post Office Box 37082, Washington, DC 20012–7982. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, Mastercard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC, this 14th day of May 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 87–11910 Filed 5–22–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–456 and 50–457]

**Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board**

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members: Gary J. Edles, Chairman, Dr. W. Reed Johnson, Christine N. Kohl.

Dated: May 18, 1987.

Barbara A. Tompkins,

*Secretary to the Appeal Board.*

[FR Doc. 87–11916 Filed 5–22–87; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Cole, (202) 632–6817.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on April 28, 1987 (52 FR 15403). Individual authorities established or revoked under Schedule A, B, or C between April 1, 1987, and April 30, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

### Schedules A and B

No Schedule A or B exceptions were established or revoked during April.

### Schedule C

*Department of Agriculture*

One Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs. Effective April 3, 1987.

One Private Secretary to the Deputy Secretary. Effective April 14, 1987.

One Secretary (Typing) to the Director, Executive Secretariat. Effective April 14, 1987.

One Confidential Assistant to the Assistant Secretary for Food and Consumer Services. Effective April 16, 1987.

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective April 17, 1987.

*Department of Commerce*

One Confidential Assistant to the Deputy Assistant Secretary for Trade Information and Analysis, International Trade Administration. Effective April 8, 1987.

One Confidential Assistant to the Director of Legislative Affairs, National Oceanic and Atmospheric Administration. Effective April 22, 1987.

One Deputy Director to the Director, Office of Public Affairs. Effective April 14, 1987.

*Department of Defense*

One Private Secretary to the Deputy Under Secretary of Defense (Research and Advanced Technology). Effective April 3, 1987.

*Department of Education*

One Special Assistant to the Chief of Staff/Counselor to the Secretary. Effective April 3, 1987.

One Executive Secretary to the Chief of Staff/Counselor to the Secretary. Effective April 3, 1987.

One Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective April 14, 1987.

One Special Assistant to the Administrator for Management Services. Effective April 21, 1987.

One Staff Assistant to the Deputy Secretary. Effective April 3, 1987.

*Department of Health and Human Services*

One Special Assistant to the Commissioner (Systems), Social Security Administration. Effective April 3, 1987.

*Department of Housing and Urban Development*

One Special Assistant to the Executive Vice President, Government National Mortgage Association. Effective April 2, 1987.

One Staff Assistant to the Deputy Assistant Secretary for Multifamily

Housing Programs. Effective April 14, 1987.

*Department of the Interior*

One Public Affairs Specialist to the Director, Office of Public Affairs. Effective April 14, 1987.

One Public Affairs Specialist (Speechwriter) to the Director, Office of Public Affairs. Effective April 21, 1987.

*Department of Justice*

One Special Assistant to the Director, Bureau of Justice Assistance. Effective April 6, 1987.

One Special Assistant to the Director, Office of Public Affairs. Effective April 10, 1987.

One Confidential Assistant to the Assistant Attorney General. Effective April 21, 1987.

One Assistant Director to the Director, Asylum Policy and Review Unit, Office of Legal Policy. Effective April 24, 1987.

*Department of Labor*

One Special Assistant to the Secretary. Effective April 17, 1987.

One Assistant to the Secretary's Representative. Effective April 22, 1987.

*Department of State*

One Secretary (Steno) to the Deputy Assistant Secretary for Policy and Counter Terrorism. Effective April 10, 1987.

One Policy and Press Advisor to the U.S. Permanent Representative to the U.S. Mission to the Organization of American States. Effective April 21, 1987.

One Director of Programs to the Assistant Secretary for Human Rights and Humanitarian Affairs. Effective April 21, 1987.

*Department of Transportation*

One Director, Executive Secretariat to the Administrator, National Highway Traffic Safety Administration. Effective April 10, 1987.

One Supervisory Public Affairs Specialist to the Director, Office of Public and Consumer Affairs, National Highway Traffic Safety Administration. Effective April 10, 1987.

*Department of the Treasury*

One Special Assistant to the Assistant Secretary (Public Affairs and Public Liaison). Effective April 3, 1987.

One Staff Assistant to the Director of the Mint. Effective April 3, 1987.

One Staff Assistant to the Director of the Mint. Effective April 7, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Administration. Effective April 24, 1987.

*Administrative Conference of the U.S.*

One Secretary (Steno) to the Chairman. Effective April 14, 1987.

*Commission on Civil Rights*

One Special Assistant to the Staff Director. Effective April 24, 1987.

*Consumer Product Safety Commission*

One Special Assistant (Legal) to a Commissioner. Effective April 7, 1987.

*Federal Home Loan Bank Board*

One Secretary (Steno) to the Director, Office of District Banks. Effective April 8, 1987.

One Secretary to the Deputy Chief of Staff. Effective April 14, 1987.

*General Services Administration*

One Special Assistant to the Regional Administrator. Effective April 3, 1987.

One Director, Office of the Executive Secretariat to the Administrator. Effective April 10, 1987.

*International Trade Commission*

One Staff Assistant (Legal) to the Chairman. Effective April 14, 1987.

*Office of Management and Budget*

One Public Affairs Specialist to the Assistant Director of Public Affairs. Effective April 22, 1987.

One Writer to the Director, Office of Management and Budget. Effective April 23, 1987.

One Secretary to the Director, Effective April 23, 1987.

*Office of Personnel Management*

One Confidential Assistant to the Assistant Director for Congressional Relations. Effective April 3, 1987.

One Confidential Assistant to the Director, Office of Public Affairs. Effective April 14, 1987.

*Office of Science and Technology Policy*

One Confidential Secretary to the Director. Effective April 22, 1987.

*President's Commission on Executive Exchange*

One Confidential Assistant to the Executive Director. Effective April 17, 1987.

One Special Assistant to the Executive Director. Effective April 23, 1987.

*Selective Service System*

One Deputy Director, Congressional and Intergovernmental Affairs, to the Assistant Director. Effective April 14, 1987.

*Small Business Administration*

One Confidential Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective April 14, 1987.

*United States Tax Court*

Two Secretaries (Confidential Assistants) to a Judge. Effective April 16, 1987.

U.S. Office of Personnel Management.

Authority: 5 U.S.C. 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

James E. Colvard,

*Deputy Director.*

[FR Doc. 87–11812 Filed 5–22–87; 8:45 am]

BILLING CODE 6325–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Services Policy and Investment Policy Advisory Committees; Meetings and Determination of Closing of Meetings

The meetings of the Services Policy Advisory Committee to be held Friday, June 5, 1987, from 9:30 a.m. to 12:00 noon; the Investment Policy Advisory Committee to be held Friday July 17, 1987, from 9:30 a.m. to 12:00 noon in Washington, DC, will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Inquiries may be directed to Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20500.

Clayton Yeutter,

*United States Trade Representative.*

[FR Doc. 87–11850 Filed 5–22–87; 8:45 am]

BILLING CODE 3190–01–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24475; File No. SR-DTC-87-05]

### Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Depository Trust Company

On April 7, 1987, the Depository Trust Company ("DTC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act") to

permit the National Securities Clearing Corporation ("NSCC") branch facility located in London to act for DTC as a depository facility. The proposal includes a Depository Facility Agreement between NSCC and DTC, and a Regional Facilities Agreement between NSCC and the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited ("ISE") pursuant to which ISE operates the NSCC London facility.

Under the Depository Facility Agreement, NSCC's London branch will act as a depository facility for DTC, accepting securities and transmitting or delivering them to DTC in accordance with DTC's procedures then in effect. NSCC will have no title to or interest in the securities by virtue of the agreement but will accept securities for transmittal to DTC after DTC has confirmed that the securities are in acceptable form.[1] The agreement requires NSCC to provide adequate insurance to cover losses on securities prior to delivery to any carrier, and to provide, or require the carrier to provide, adequate insurance to cover losses occurring in transit. The agreement may be terminated by mutual consent of DTC and NSCC or by either party on not less than 60 day's written notice to the other party. In addition, upon receiving notice of an amendment to DTC's procedures, NSCC could terminate the agreement prior to the effective date of the amendment. Termination would not release either party from any liability or obligation arising from transactions prior to termination. Finally, DTC will instruct NSCC regarding the disposition of securities held by NSCC at least 30 days before termination of the agreement (or a lesser period if NSCC terminates the agreement after receiving notice of an amendment to DTC's procedures).

In addition to the Depository Facility Agreement, the proposal includes a Regional Facilities Agreement between NSCC and ISE whereby ISE operates a branch facility for NSCC in London for comparsion, clearance and settlement of securities transactions in accordance with procedures set forth in NSCC's Regional Facilities Operating Procedures Manual. Under the agreement, NSCC would indemnify ISE for all losses incurred as a result of its securities processing operation except losses resulting from the negligence of ISE's agents or employees. In this connection, ISE agrees to notify NSCC of any action or proceeding so that NSCC could assume control of the defense. If, within, 30 days after being notified of the action, NSCC does not assume control of the defense, NSCC will be bound by any defense or settlement that ISE may make. The agreement further provides that NSCC agrees to maintain insurance coverage in an amount not less than $15 million (U.S.) to insure against risks arising out of this agreement, and ISE likewise agrees to maintain coverage in an amount not less than $10 million (U.S.). The agreement also provides that termination of the contract is by mutual consent of ISE and NSCC or by either party by giving the other at least 90 days written notice. Moreover, the parties agree that the contract is to be governed by and construed in accordance with New York law. In this regard, ISE has appointed, and agrees to maintain, an agent for service of process in New York in the event of a dispute between the parties arising out of the agreement.[2] Finally, amendments to the agreement must be in writing and signed by both NSCC and ISE.

DTC states in its filing that the proposed rule change is consistent with section 17A of the Act. DTC believes that the proposal promotes the prompt and accurate clearance and settlement of securities transactions by permitting greater accessibility of the depository services offered by DTC to its Participants and other users of the system in the prompt transmittal and delivery of securities traded on international markets.

The foregoing rule has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purpose of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number in the caption above and should be submitted by June 15, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: May 19, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11899 Filed 5-22-87; 8:45 am]

BILLING CODE 8010-01-M

[1] NSCC may refrain from delivering securities affected by a notice of levy, seizure, order or judgment issued by a government agency or court pending further direction by the agency or court.

[2] Under the terms of the agreement, the parties also waive any objection to the laying of venue in the courts of New York, and agree that any action or proceeding to enforce a judgment related to this agreement may be brought in any jurisdiction where the parties or any of their property may be found.

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[Release No. 34-24468; File No. SR-Phlx-87-15]

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Change

On May 4, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that would modify the bid-ask differential applicable to equity options and index options.

Phlx Rule 1014(c)(i) sets forth maximum bid-ask differentials for single equity options, using integers of $1, $5, and $10. Phlx Rule 1000(a) does the same for index options. Currently, an option trading at or below a given integer is subject to a specified maximum bid-ask differential. Accordingly, each option is subject to a maximum bid-ask differential of ⅛ of $1 if its prevailing bid does not exceed $1, ⅜ of $1 if its prevailing bid is more than $1 and does not exceed $5, ½ of $1 if its prevailing bid is more than $5 and does not exceed $10, ¾ of $1 if its prevailing bid is more than $10 and does not exceed $20, and $1 if its prevailing bid exceeds $20. The proposed rule change

[1] 15 U.S.C. 78s(b)(1) 1984).

[2] 17 C.F.R. 240.19–4 (1986).

would modify the parameters so that the ¼ of $1 limit would apply only to options for which the prevailing bid is less than $1, the ⅜ of $1 limit would apply to options for which the prevailing bid is $1 or more and less than $5, the ½ of $1 limit would apply to options for which the prevailing bid is $5 or more and less than $10, the ⅝ of $1 limit would apply to options for which the prevailing bid is $10 or more and less than $20, and the $1 limit would apply to options for which the prevailing bid is $20 or more.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[3] and the rules and regulations thereunder. The revised rule, which will subject an option trading at or above a given integer to a certain maximum bid-ask differential, will make it easier for options specialists, registered options traders, and floor brokers to keep track of the applicable maximum spread. This will contribute to the efficient functioning of the marketplace.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the proposal in the Federal Register. Effectuation of the rule change will involve modifications of the Phlx's overhead computer screens, which also will have to be modified in connection with a pending Phlx proposal respecting expansion of its near-term expiration month pilot program.[4] The Phlx has requested accelerated approval of this rule change so that it can make both modifications at the same time. As the proposed rule change is minor and technical in nature, the Commission assents to accelerated approval in order to facilitate the Phlx's operational needs.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[6]

Dated: May 18, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11900 Filed 5-22-87; 8:45 am]

BILLING CODE 8010-01-M

[3] 15 U.S.C. 78f (1984).

[4] File No. SR-Phlx-87-12.

[5] 15 U.S.C. 78s(b)(2) (1984).

[6] 17 CFR 200.30-3(a)(12) (1986).

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Advisory Circular 25-10; Guidance for Installation of Miscellaneous, Nonrequired, Electrical Equipment

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of issuance of advisory circular.

**SUMMARY:** This notice announces the issuance of Advisory Circular (AC) 25-10; Guidance for Installation of Miscellaneous, Nonrequired, Electrical Equipment, which sets forth a method of compliance with the requirements of Part 25 of the Federal Aviation Regulations (FAR) pertaining to installations of miscellaneous, nonrequired, electrical equipment in transport category airplanes.

**DATE:** Advisory Circular 25-10 was issued by the Transport Airplane Certification Directorate in Seattle, Washington, on March 6, 1987.

How to Obtain Copies: A copy of AC 25-10 may be obtained by writing to the U.S. Department of Transportation, M-494.3, Subsequent Distribution Unit, Washington, DC 20590.

Issued in Seattle, Washington, on May 14, 1987.

Darrell M. Pederson,

*Acting Manager Aircraft Certification Division, Northwest Mountain Region.*

[FR Doc. 87-11898 Filed 5-22-87; 8:45 am]

BILLING CODE 4910-13-M

### Federal Highway Administration

### Environmental Impact Statement; Calhoun County, MI

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed improvements and relocation of I-94BL (Michigan Avenue) from the M-66/Dickman Road interchange east of Columbia Avenue in Calhoun County, Michigan.

**FOR FURTHER INFORMATION CONTACT:** Mr. James A. Kirschensteiner, District Engineer, Federal Highway Administration, P.O. Box 10147, Lansing, Michigan 48901, Telephone (FTS) 374-1851 or (Commerical) (571) 377-1851 or Mr. Ross E. Lowes, Manager, Social and Economic Studies Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 335-2905.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation within the Michigan Department of Transportation (MDOT), is preparing an Environmental Impact Statement (EIS) for the proposed improvements and relocation of I-94BL in the City of Battle Creek, Calhoun County, Michigan. The proposed action will include the reconsideration, widening, and extension of Dickman Road from M-66 easterly to Gilbert and the widening of existing I-94BL (Michigan Avenue) form Gilbert to Columbia Avenue. A detour would be required for through traffic using existing I-94BL. The proposed project is approximately 2.2 miles long and a 5-lane facility is planned.

Alternatives under consideration include (1) No Action, (2) the At Grade Alternative, and (3) the Grade Separation Alternative. Alternatives (2) and (3) would both require the acquisition of right-of-way and relocation of residential and commercial properties. Approximately 95 to 109 residential, commercial units would be affected. Two schemes for the acquisition of right-or-way at the east end of the project are being considered under each of these alternatives.

The At Grade Alternate (2) would also require the relocation of the Grand Trunk Western and Conrail railroad tracks. Changes in the local street system to access the Kellogg Plant, limit the number of railroad crossings and maintain traffic circulation are also proposed.

The Grade Separation Alternate (3) proposes the construction of an 1100 foot-long overpass to carry the proposed I-94BL over Michigan Avneu, the Conrail railroad tracks and the Grand Trunk Western railroad spur tracks into the General Foods plant. Two other structures to carry the proposed I-94BL over Elm Street and the Conrail tracks are planned. Greenville Street would be extended north from Michigan Avenue to provide access to the General Foods plant. No railroad track relocations are proposed under Alternate (3).

A scoping document describing the alternatives under consideration and potential effects of the proposed action is available for review. No significant issues other than relocation have been identified. Accordingly, no federal agency scoping meeting is planned at this time. Comments on the scoping document are invited from all interested parties. Requests for a copy of the scoping document or any comments concerning the proposed action or issues involved should be addressed to the

above contact persons. The closing date for comment is June 30, 1987.

The Draft EIS is scheduled for completion in late 1987 and will be made available for public and agency review and comment.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding inter-governmental consultation of Federal programs and activities apply to this program)

Issued on: May 19, 1987.

James A. Kirschensteiner,

*District Engineer, Lansing, MI.*

[FR Doc. 87-11923 Filed 5-22-87; 8:45 am]

BILLING CODE 4910-22-M

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## Federal Railroad Administration

[FRA Docket No. 87-2, Notice No. 1]

## Automatic Train Control on Northeast Corridor Carriers; Report of Investigative Findings, Proposed Orders and Public Hearing

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Report and proposed orders of particular applicability.

**SUMMARY:** FRA is reporting its findings regarding the need for automatic train control (ATC) devices on Northeast Corridor (NEC) trains. Based on those findings, FRA is proposing to issue carrier-specific orders requiring that all trains operating on the NEC be controlled by locomotives equipped with ATC. FRA is requesting comments from the public and affected parties regarding the proposed orders and is scheduling a public hearing concerning its contemplated action.

**DATES:** (1) A public hearing in this proceeding will begin at 10:00 a.m. on Wednesday, June 24, 1987. Any persons who desire to make a statement at the hearing should submit their prepared statements to the Docket Clerk at least five days before the hearing date.

(2) Written comments must be received not later than June 25, 1987. Comments received after that date will be considered to the extent possible without incurring additional delay.

**ADDRESSES:** (1) Hearing location—Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

(2) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** S.H. Stotts, Jr., Chief, Standards Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366-0495), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366-0628).

**SUPPLEMENTARY INFORMATION**

### Statutory Authority

The Federal Railroad Administration has both discrete and plenary legal authority to require that all trains operating on the NEC be equipped with automatic train control devices. Under the Federal Railroad Safety Act of 1970, FRA has broad legal authority to "prescribe, as necessary, appropriate rules, regulations, orders, and standards for all areas of railroad safety * * *." 45 U.S.C. Section 431(a). Section 25 of the Interstate Commerce Act (49 U.S.C. Section 26) specifically provides that FRA may, "after investigation, if found necessary in the public interest, order any carrier within a time specified in the order to install * * * automatic train stop, train control, and/or cab-signal devices, and/or other similar appliances, methods, and systems intended to promote the safety of railroad operation * * *." This authority has been previously invoked to require the installation of systems on 49 specific railroads and to require all railroads desiring to operate at high speeds to install signal systems of varying degrees of sophistication consonant with those higher speeds.

### Background

The NEC is a high speed corridor serving more than 28,000 intercity railroad passengers every day on 97 trains operating at speeds up to 125 mph. In addition, three freight carriers operate approximately 40 trains per day (many of which carry hazardous materials) at speeds up to 50 mph. Further adding to the operational mix on the NEC are various communter carriers operating more than 750 trains carrying at least 220,000 passengers daily. The extent of this operational and speed mix is unique in this country.

FRA has for a number of years worked to reduce the volume of freight traffic on the NEC. That effort and others, such as scheduling freight trains for off-peak hours, have reduced the problems associated with the NEC operational mix. However, given the constraints on further change of the mix and on varying the speeds on the NEC, FRA has determined that public safety can and should be increased by ensuring, to the extent technologically feasible, that all trains obey signal indications.

The only system now capable of ensuring that a train is operated in conformity with signal indications is the automatic train control system.[1] When a locomotive equipped with an ATC device encounters a more restrictive indication and the engineer fails to reduce speed to the prescribed limit, the system brings the train to a stop.[2]

At present, all Amtrak locomotives used in passenger service on the NEC are equipped with ATC devices, and the limited number of locomotives currently used for work train service soon will be equipped with ATC devices. All Massachusetts Bay Transportation Authority, Maryland Department of Transportation, and most Metropolitan Transportation Authority (New York City communter railroad system) trains operating on the NEC are equipped with ATC devices, while a portion of New Jersey Transit's NEC fleet is also ATC-equipped. The remaining NEC users (Conrail, Delaware and Hudson Railway, the Providence and Worcester Railroad, and the Southeastern Pennsylvania Transportation Authority) have a combination of automatic train stop and automatic cab signal-equipped locomotives.

There are two "hardware" elements to the ATC system—a signal transmission system, set in the roadbed, and ATC receiver units built into the locomotives and power units. The principal cost of installing the system—up to $240,000 a mile for double track line—lies in installation of the roadbed transmission network. The "receiving" units are far less expensive, ranging between $25,000 and $40,000 per unit.

The practical problem with attempting to install ATC on a nationwide basis lies in the fact that installation cost for the system is so prohibitive that it at least approaches and possibly exceeds the net worth of the railroads themselves. At the same time, a more modern, more effective, and less costly system—ATCS—is being field tested, and should be available to the industry within the next few years.

The Northeast Corridor, however, presents a very different situation. The most expensive part of the system—the roadbed transmission network—is

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[1] Automatic train stop systems, while capable of stopping a train whose operator has not acknowledged a more restrictive signal, will not stop a train whose engineer acknowledges a more restrictive signal but who fails to reduce speed.

[2] There is one exception. If an engineer has properly acknowledged signal indications and reduced speed to 20 mph or less, the ATC system will impose no further restrictions, and thus would not prevent the train from running through a stop signal at that speed.

already in the track. That system has recently been modernized and extended by FRA as part of the Northeast Corridor Improvement Project. The cost of equipping all power units operating on the NEC with receiver units is comparatively small, particularly when viewed in the context of the losses sustained in a single high speed accident such as that which occurred at Chase, Maryland in January 1987.

**Investigations**

The advisability of requiring all trains operating on the NEC to be ATC-equipped has been the subject of numerous investigations by FRA and other agencies since the late 1970's.

The idea of mandating ATC on the Corridor is not a new one. Both FRA and the National Transportation Safety Board (NTSB) at one time proposed such installation, but each agency drew back from those proposals in the face of strong opposition from the affected parties.

In 1978, following an accident at Seabrook, Maryland, NTSB recommended that all trains operating on the NEC be ATC-equipped (Recommendation-78-39). FRA considered a similar proposal in a 1979 proceeding under the Signal Inspection Act (Block Signal Application No. 1588) (BS-AP-1588). The FRA Safety Board held public hearings on BS-AP-1588 in Philadelphia, Pennsylvania (October 16, 1979), Boston, Massachusetts (October 18, 1979), and Washington, DC (August 26, 1980).

Block Signal Application No. 1588 drew opposition from railway labor and all Northeast Corridor railroads except Amtrak. In 1982, Amtrak altered its position, withdrawing its support for and application in BS-AP-1588 and offering a scaled down proposal for NEC signalling that did not include mandatory ATC installation.

On September 30, 1982, NTSB altered its position, closing the recommendation for mandatory ATC installation and concluding that Amtrak had operating rules that were an "acceptable alternative." FRA took similar action in August 1983. In the course of the investigation into the January 4 accident at Chase, Maryland, both agencies reopened their consideration of the issue.

During its Chase investigation, as well as its previous proceedings under the Signal Inspection Act, FRA has thoroughly examined the merits and feasibility of an ATC mandate for the NEC. We believe that the evidence is clear in establishing the public safety benefit of such mandate, as well as its positive cost benefit.

During FRA's investigations relating to BS-AP-1588, freight carriers expressed concern that full service brake applications initiated by ATC systems could cause derailments of freight trains of the tonnage typically carried on the NEC. There is certain evidence that in some situations involving rolling terrain and long, heavy trains, application of automatic train control devices could create dangerous buff (cars bunched together) and draft (cars stretched out) forces in the train. This concern is limited to freight trains because of their greater length and carrying capacity. FRA, in its extensive investigations under BS-AP-1588, concluded that there was some legitimacy to the freight carriers' concerns, and formed a Special Task Force Committee to study the problem. Representatives of both Amtrak and Conrail were included on this Committee. Computer simulations of train handling problems were conducted and the results analyzed. Approximately 18 tests were performed. These tests confirmed that there was indeed a potential problem in certain instances when conventionally programmed ATC initiated a full service brake application on a heavy freight. After study and deliberations, the Special Task Force Committee agreed on a technical solution to the problem, consisting of design and program modifications to existing equipment. However, it should be noted that freight railroads elsewhere in the country have operated very safely for many years with ATC systems, demonstrating the safety of such devices on freight operations. FRA will shortly begin testing NEC equipment under actual work conditions to ensure the validity of the conclusions reached by the Task Force Committee. At the conclusion of the testing program, details regarding the necessary equipment modifications will be shared with railroads and equipment manufacturers.

**Findings**

After lengthy investigations, FRA finds it necessary in the public interest to propose requiring that every locomotive used as a controlling locomotive on the NEC main line be equipped with a functioning automatic train control device.

**Proposed Orders**

With respect to freight trains, the orders we propose to issue would provide for notice of required modifications of the devices, if necessary, and would require progressive implementation of ATC on the NEC over the next 24 months. The schedule would also provide for phasing in installation of receiver units on passenger locomotives. The timetable would be as follows:

*June 15, 1987—October 15, 1987*

Construction/procurement of test ATC systems modified in accordance with FRA specifications.

*October 16, 1987—December 15, 1987*

Service testing of prototype systems.

*December 15, 1987*

FRA will issue notice of modifications required to adapt ATC devices to freight operations.

*January 15, 1988*

All freight and passenger carriers operating on the NEC must have completed ordering "receiver units" for all power units that will operate as lead locomotives on the NEC.

**Implementation**

Each carrier will, in carrier-specific orders, be given 6 to 24 months to complete retrofitting of existing power units. The time period will begin to run on the date of delivery of the first unit. Installation must proceed at a pace no slower than one-third implementation over the initial one-third of the designated implementation period, two-thirds implementation over the initial two-thirds of the designated implementation period, and complete installation by the expiration of the installation period.

The orders would apply only to carriers operating on the Northeast Corridor. FRA estimates the number of locomotives affected by this order to range from a minimum of 456 to a maximum of 763, depending on operational decisions of the affected carriers. The orders would require railroads to document their compliance, by indicating the purchase contract date, delivery schedules, and monthly progress reports. The proposed orders are included as an appendix to this Notice.

**Regulatory Impact**

FRA has evaluated the proposed action and its potential impacts in accordance with existing regulatory policies.

The cost of equipping each locomotive depends on the type of signal equipment already installed on the unit; thus, the cost of equipping one locomotive can range from $25,000 to $40,000. When both the cost range and the possible numbers of locomotives to be equipped is calculated, the potential cost of these

orders ranges from $17.5 million to a maximum of approximately $90.5 million.

The technology used in ATC devices is not new and has been thoroughly tested and refined over the years. While we do not anticipate any reliability problems or more than minimal maintenance costs associated with these devices, we invite comment from current ATC users regarding these costs.

FRA is constrained in its analysis of the benefits of its proposed orders because of the impossibility of predicting with any degree of accuracy the occurrence of an accident absent these devices. Of the three percent of reported railroad accidents that were investigated by the FRA during a recent six-year period (1980–1985), there were approximately 95 accidents nationwide that could have been avoided had ATC been installed. Fortunately, the vast majority of these accidents involved only freight trains and thus resulted in the relatively low number of 29 deaths and 477 injuries. The eight accidents involving passenger trains during the 1980 to 1985 period resulted in a disportionate number of injuries (over 300 injuries and one death). The devastating results from just one passenger or commuter train accident is made even more evident from the 16 deaths and 170 injuries caused by the Chase, Maryland accident.

We are limiting these orders to a heavily travelled passenger corridor constituting less than two percent of Amtrak's trackage, yet carrying more than 25 percent of Amtrak's passenger traffic (1.3 billion passenger-miles). The high number of passengers carried over a relatively short distance, when combined with heavy commuter and freight service, presents risks we need not accept. Fortunately, because the large costs involved in installing the track infrastructure have already been borne, the cost of reducing the risks of a catastrophic accident is relatively small. We note that the accident on January 4, 1987 at Chase, Maryland would have been avoided if the Conrail locomotive had been equipped with ATC equipment. Preliminary estimates indicate the cost of that accident to approximate $40 to $50 million.

FRA has therefore tentatively concluded that the benefits of installation of ATC devices on all controlling locomotives on the NEC outweigh the costs associated with their purchase and installation. FRA solicits the opinions of the public regarding the need for these devices and especially requests information related to the costs and benefits of such devices. Public comments on costs and benefits will be considered before final action is taken.

The five carriers affected by these orders include two large regional transit authorities and two Class I railroads, Consolidated Rail Corporation and Delaware and Hudson Railway Company. The only arguably "small entity," the Providence and Worcester Railroad Company, would have to equip seven of its 15 locomotives at a cost of approximately $175,000.

Based on the facts set forth in this Notice, it is certified that these orders will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

FRA has concluded that the proposed actions will have no significant impact on the environment.

**Public Participation**

Interested parties are invited to participate in this proceeding by submitting to the Docket Clerk written data, views, or comments and this proposal, and the proposed implementing orders that appear in the Appendix to this Notice, may be changed in light of the comments received. In addition, FRA is scheduling a public hearing to permit all interested parties to furnish FRA with information concerning its proposed action. This hearing is scheduled to begin at 10:00 a.m. on Wednesday, June 24, 1987 in Room 2230 of the Nassif Building in Washington, D.C.

**Authority:** The Signal Inspection Act (49 U.S.C. sec. 26), and the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. sec. 431 *et seq.*), delegated to the Federal Railroad Administrator by the Secretary of Transportation (49 CFR 1.49(f), (g), and (m)).

Issued in Washington, DC on May 20, 1987.

**John H. Riley,**

*Administrator.*

**Appendix—Proposed Report and Orders**

*Affected Party:* Consolidated Rail Corp. (Conrail)

*Findings:* Based on investigation and after opportunity for comment, the Federal Railroad Administration (FRA) has determined that the party noted above operates freight service over portions of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control (ATC) devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with automatic train control devices.

FRA has further determined that field testing of equipment is necessary to assure the establishment of safe braking specifications for such ATC devices on freight trains, and therefore will conduct appropriate tests. If found to be necessary, FRA will issue revised ATC specifications to all interested parties prior to January 15, 1988.

*Therefore:* 1. No later than January 15, 1988, Conrail shall execute a contract for acquisition of sufficient numbers of automatic train control devices to comply with this Order. The initial delivery of automatic train control devices shall be at the earliest practical date achievable by the device manufacturer. Conrail's purchasing program and delivery schedule should, at a minimum, be at a pace consistent with the installation requirements set forth in Paragraph 2 below.

2. a. No later than 18 months after delivery of the first automatic train control devices purchased pursuant to this Order, any train operated by or on behalf of Conrail, its successors and assigns, that operates on or over any portion of the Northeast Corridor trackage between Washington, DC and Boston, Massachusetts, shall have as its controlling locomotive a unit equipped with an automatic train control device.

b. Installations of automatic train control devices shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of automatic train control devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. The automatic train control devices installed on locomotives pursuant to this Order shall comply with the minimum standards set forth in 49 CFR Part 236, Subpart E.

4. FRA shall be notified (i) when the contract for acquisition of automatic train control devices is executed, indicating the date of the contract and the terms of the planned delivery schedule, and (ii) when the installation of the devices commences. FRA shall be sent monthly progress reports which shall include delivery and installation information.

5. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

6. This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the

Federal Railroad Administration within thirty days of the effective date of this Order.

*Affected Party:* Delaware and Hudson Railway Co. (D&H)

*Findings:* Based on investigation and after opportunity for comment, the Federal Railroad Administration (FRA) has determined that the party noted above operates freight service over portions of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control (ATC) devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with automatic train control devices.

FRA has further determined that field testing of equipment is necessary to assure the establishement of safe braking specifications for such ATC devices on freight trains, and therefore, will conduct appropriate tests. If found to be necessary, FRA will issue revised ATC specifications to all interested parties prior to January 15, 1988.

*Therefore:* 1. No later than January 15, 1988, D&H shall execute a contract for acquisition of sufficient numbers of automatic train control devices to comply with this Order. The initial delivery of automatic train control devices shall be at the earliest practical date achievable by the device manufacturer. D&H's purchasing program and delivery schedule should, at a minimum, be at a pace consistent with the installation requirements set forth in Pargraph 2 below.

2. a No later than 12 months after delivery of the first automatic train control devices purchased pursuant to this Order, any train operated by or on behalf of D&H, its successors and assigns, that operates on or over any portion of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusets, shall have as its controlling locomotive a unit equipped with an automatic train control device.

B. Installation of automatic train control devices shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of automatic train control devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. The automatic train control devices installed on locomotives pursuant to this Order shall comply with the minimum standards set forth in 49 CFR Part 236, Subpart E.

4. FRA shall be notified (i) when the contract for acquisition of automatic train control devices is executed, indicating the date of the contract and the terms of the planned delivery schedule, and (ii) when the installation of the devices commences. FRA shall be sent monthly progress reports which shall include delivery and installation information.

5. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

6. This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thirty days of the effective date of this Order.

*Affected Party:* Providence and Worcester Railroad Co. (P&W)

*Findings:* Based on investigation and after opportunity for comment, the Federal Railroad Administration (FRA) has determined that the party noted above operates freight service over portion of the Northeast Corridor trackage between Washington, DC and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control (ATC) devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with automatic train control devices.

FRA has further determined that field testing of equipment is necessary to assure the establishment of safe braking specifications for such ATC devices on freight trains, and therefore will conduct appropriate tests. If found to be necessary, FRA will issue revised ATC specifications to all interested parties prior to January 15, 1988.

*Therefore:* 1. No later than January 15, 1988, P&W shall execute a contract for acquisition of sufficient numbers of automatic train control devices to comply with this Order. The initial delivery of automatic train control devices shall be at the earliest practical date achievable by the device manufacturer. P&W's purchasing program and delivery schedule should, at a minimum, be at a pace consistent with the installation requirements set forth in Paragraph 2 below.

2. a. No later than six months after delivery to your railroad of the first automatic train control devices purchased pursuant to this Order, any train operated by or on behalf of P&W, its successors and assigns, that operates on or over any portion of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusetts, shall have as its controlling locomotive a unit equipped with an automatic train control device.

b. Installation of automatic train control devices shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of automatic train control devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. the automatic train control devices installed on locomotives pursuant to this Order shall comply with the minimum standards set forth in 49 CFR Part 236, Subpart E.

4. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

5. FRA shall be notified (i) when the contract for acquisition of automatic train control devices is executed, indicating the date of the contract and the terms of the planned delivery schedules, and (ii) when the installation of the devices commences. FRA shall be sent monthly progress reports which shall include delivery and installation informtion.

6. This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administrator within thirty days of the effective date of this Order.

*Affected Party:* New Jersey Transit Rail Operations, Inc. (New Jersey Transit).

*Findings:* Based on investigation and after opportunity for comment, the Federal Railroad Administration has determined that the party noted above operates passenger service over portions of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with automatic train control devices.

*Therefore:* 1. No later than January 15, 1988, New Jersey Transit shall execute a contract for acquisition of sufficient numbers of automatic train control devices to comply with this Order. The initial delivery of automatic train control devices shall be at the earliest practical date achievable by the device

manufacturer. New Jersey Transit's purchasing program and delivery schedule should, at a minimum, be at a pace consistent with the installation requirements set forth in Paragraph 2 below.

2. a. No later than 20 months after delivery of the first automatic train control devices purchased pursuant to this Order, any train operated by or on behalf of New Jersey Transit, its successors and assigns, that operates on or over any portion of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusetts, shall have as its controlling locomotive a unit equipped with an automatic train control device.

b. Installation of automatic train control devices shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of automatic train control devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. The automatic train control devices installed on locomotives pursuant to this Order shall comply with the minimum standards set forth in 49 CFR Part 236, Subpart E.

4. FRA shall be notified(i) when the contract for acquisition of automatic train control devices is executed, indicating the date of the contract and the terms of the planned delivery schedule, and (ii) when the installation of the devices commences. FRA shall be sent monthly progress reports which shall include delivery and installation information.

5. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

6. This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thrity days of the effective date of this Order.

*Affected Party:* Southeastern Pennsylvania Transportation Authority (SEPTA).

*Findings:* Based on investigation and after opportunity for comment, the Federal Railroad Administration has determined that the party noted above operates passenger service over portions of the Northeast Corridor trackage between Washington, DC and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control devices and it is necessary in the public interest that all trains operating on this trackage be equipped with automatic train control devices.

*Therefore:* 1. No later than January 15, 1988, SEPTA shall execute a contract for acquisition of sufficient numbers of automatic train control devices to comply with this Order.

The initial delivery of automatic train control devices shall be at the earliest practical date achievable by the device manufacturer. SEPTA's purchasing program and delivery schedule should, at a minimum, be at a pace consistent with the installation requirements set forth in Paragraph 2 below.

2. a. No later than 24 months after delivery of the first automatic train control devices purchased pursuant to this Order, any train operated by or on behalf of SEPTA, its successors and assigns, that operates on or over any portion of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusetts, shall have as its controlling locomotive a unit equipped with an automatic train control device.

b. Installation of automatic train control devices shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of automatic train control devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. The automatic train control devices installed on locomotives pursuant to this Order shall comply with the minimums standards set forth in 49 CFR Part 236, Subpart E.

4. FRA shall be notified (i) when the contract for acquisition of automatic train control devices is executed, indicating the date of the contract and the terms of the planned delivery schedule, and (ii) when the installation of the devices commences. FRA shall be sent monthly progress reports which shall include delivery and installation information.

5. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

6. This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thrity days of the effective date of this Order.

*Affected Party:* National Railroad Passenger Corp.

*Findings:* Based on investigation and after opportunity for comment, the Federal Railroad Administration has determined that the National Railroad Passenger Corporation operates passenger service and permits other railroads to operate passenger for freight service over portions of the Northeast Corridor trackage between Washington, DC, and Boston Massachusetts; some of the locomotives employed to provide that service are not currently equipped with automatic train control devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with automatic train control devices.

*Therefore:* Effective July 1, 1990, the National Railroad Passenger Corporation, its successors and assigns, shall not permit any train to be operated on or over any portion of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusetts subject to its operational control, unless that train has as its controlling locomotive a unit equipped with an automatic train device in compliance with the minimum standards set forth in 49 CFR Part 236, Subpart E.

This Order is effective thrity days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thirty days of the effective date of this Order.

*Affected Party:* Metro North Commuter Railroad Co.

*Findings:* Based on investigation and after opportunity for comment, the Federal Railroad Administration has determined that Metro North Commuter Railroad Company operates passenger service and permits other railroads to operate passenger or freight service over portions of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusetts; some of the locomotives employed to provide that service are not currently equipped with automatic train control devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with automatic train control devices.

*Therefore:* Effective July 1, 1990, Metro Northeast Commuter Railroad Company, its successors and assigns, shall not permit any train to be operated on or over any portion of the Northeast Corridor trackage between Washington, DC, and Boston, Massachusetts subject to its operational control, unless that train has as its controlling locomotive a unit equipped with an automatic train control device in compliance with the minimum standards set forth in 49 CFR Part 236, Subpart E.

This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thrity days of the effective date of this Order.

[FR Doc. 87-11889 Filed 5-22-87; 8:45 am]
BILLING CODE 4910-62-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: May 18, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Comptroller of the Currency**

*OMB number:* 1557-0142.
*Form number:* None.
*Type of review:* Extension.
*Title:* Recordkeeping and Confirmation Requirements for Security Transactions.
*Description:* Requirement provides record of information relevant to purchase or sale of security by national bank or national bank trust department for a customer.
*Respondents:* Businesses.
*Estimated burden:* 153,671 hours.
*Clearance officer:* John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
*OMB reviewer:* Robert Fishman (202) 395-7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

**Internal Revenue Service**

*OMB number:* 1545-0015.
*Form number:* 706.
*Type of review:* Revision.
*Title:* United States Estate (and Generation-Skipping Transfer) Tax Return.
*Description:* Form 706 is used by executors to report and compute the Federal Estate Tax imposed by Internal Revenue Code section 2001, the Federal Generation-Skipping Transfer tax imposed by Internal Revenue Code section 2601 and the additional Estate Tax imposed by Code section 4981A. IRS uses the information to enforce these taxes and to verify that the tax has been properly computed.
*Respondents:* Individuals or households, Businesses.
*Estimated burden:* 2,349,024 hours.
*OMB number:* New.
*Form numbers:* None.
*Type of review:* New Collection.
*Title:* 1987 General Purpose Taxpayer Opinion Survey.
*Description:* This project is designed to collect information concerning taxpayer behavior that cannot be obtained through other data colleciton means, but which is central to the mission of the agency. The last IRS Public Opinion Survey was conducted in 1984.
*Respondents:* Individuals or households.
*Estimated burden:* 2,500 hours.
*Clearance officer:* Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
*OMB reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
*Department Reports Management Officer.*

[FR Doc. 87-11835 Filed 5-22-87; 8:45 am]
BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Dated: May 19, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB number:* New.
*Form number:* None.
*Type of review:* New Collection.
*Title:* Focus Group Interviews on Federal Tax Forms.
*Description:* The group interviews are necessary to obtain public input on some of the major tax forms that have been revised or developed due to the Tax Reform Act of 1986. The results will be used to further simplify and improve the forms so that they will be more easily understood by taxpayers.
*Respondents:* Individuals or households, Farms, Businesses.
*Estimated burden:* 180 hours.
*Clearance officer:* Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
*OMB reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
*Departmental Reports Management Officer.*

[FR Doc. 87-11836 Filed 5-22-87 8:45 am]
BILLING CODE 4810-25-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 100
Tuesday, May 26, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Thursday, May 28, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings:

Application for Federal deposit insurance:

Silvergate Thrift and Loan Association, a proposed new industrial loan company to be located at 5119 Jackson Drive, La Mesa, California.

Application for Federal Deposit Insurance and for consent to merge and establish twenty-two branches:

Barnett Bank of Pinellas County, a proposed new bank to be located at 1901 Central Avenue, St. Petersburg, Florida, for Federal deposit insurance, for consent to merge, under its charter and title, with Barnett Bank of Pinellas County, National Association, Clearwater, Florida, and for consent to establish twenty-one existing and one approved, but unopened, offices of Barnett Bank of Pinellas County, National Association as branches of Barnett Bank of Pinellas County.

Applications for Federal deposit insurance and for consent to purchase assets and assume liabilities:

First State Bank, Elkins, Inc., a proposed new bank to be located at the southeast corner of Davis Avenue and Fifth Street, Elkins, West Virginia, for federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in the Elkins, West Virginia, branch of Fed One Savings Bank, FSB, Wheeling, West Virginia, a non-FDIC-insured institution.

Application for consent to merge:

The First National Bank of Manchester, Manchester, Tennessee, for consent to merge, under its charter and title, with The Meltons Bank, Cassaway, Tennessee, a non-FDIC-insured institution.

Application for consent to merge and establish one branch:

Mercer County Bank, Princeton, West Virginia, and insured State nonmember bank, for consent to merge, under its charter and title, with Bank of Athens, Athens, West Virginia, and for consent to establish the sole office of Bank of Athens as a branch of the resultant bank.

Application for consent to purchase assets and assume liabilities:

The First National Bank of Boston, Boston, Massachusetts, for consent to purchase certain assets of and assume the liability to pay deposits made in the Star Market, Harvard Square, Alewife, Marlborough, Newton, Westborough, and Quincy Branches of Northeast Savings, F.A., Hartford, Connecticut, a non-FDIC-insured institution.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

Bank of America National Trust and Savings Association, San Francisco, California, for consent to transfer certain assets to Home Federal Savings and Loan Association, San Diego, California, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits in the Julian Branch of Bank of America National Trust and Savings Association.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Monthly Report of Actions Approved Under Delegated Authority by the Committee on Liquidations, Loans and Purchases of Assets March 16, 1987–April 30, 1987

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
Bank of Kiowa, Kiowa, Kansas (6716), (Memo dated April 20, 1987).
Summary Audit Report re:
Union Deposit Bank, Union, Kentucky (6708), (Memo dated April 20, 1987).
Summary Audit Report re:
Albany State Bank, Albany, Missouri (2594), (Memo dated April 20, 1987).
Summary Audit Report re:
Western Bank, Midland, Texas (2596), (Memo dated April 20, 1987).
Summary Audit Report re:
Travel Voucher Claims, (Memo dated March 31, 1987).

Discussion Agenda

Memorandum re: Statement of Policy regarding Applications for Federal Deposit Insurance by Operating Non-FDIC-Insured Institutions, which policy statement sets forth specific guidelines that would apply to all applications for Federal deposit insurance which must be considered by the FDIC.

Recommendation regarding the continuation of the Corporation's Boston Regional Office.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: May 21, 1987.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
*Executive Secretary.*
[FR Doc. 87-11983 Filed 5-21-87; 3:12 pm]
BILLING CODE 6714-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Thursday, May 28, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or

assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(6), and (c)(9)(A)(ii).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

**Discussion Agenda**

Recommendation regarding the Corporation's liquidation activities.

Report of the Director, Division of Accounting and Corporate Services:

Memorandum re: Investment Management Report March 31, 1987.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the Sixth Floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: May 21, 1987.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 87–11984 Filed 5–21–87; 3:12 pm]

BILLING CODE 6714–01–M

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**FEDERAL ENERGY REGULATORY COMMISSION**

May 20, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B.

**TIME AND DATE:** May 27, 1987, 10:00 a.m.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

**Consent Power Agenda, 857th Meeting—May 27, 1987, Regular Meeting (10:00 a.m.)**

CAP–1.
Project No. 10341–002, Gem Irrigation District

CAP–2.
Project No. 6727–006, Northwest Power Company, Inc

CAP–3.
Project No. 405–021, Philadelphia Electric Power Company and the Susquehanna Power Company

CAP–4
Project No. 9090–001, Orange and Rockland Utilities, Inc.

CAP–5.
Project No. 2849–012, East Columbia Basin Irrigation District, South Columbia Basin Irrigation District and Quincy Columbia Basin Irrigation district

CAP–6.
Docket No. UL87–6–001, Cliffs Electric Service Company

CAP–7.
Project No. 2068–017, Oroville-Wyandotte Irrigation District

CAP–8.
Project No. 8488–001, Cosumnes River Water and Power Authority
Project No. 8722–001, Mr. David O. Harde

CAP–9.
Omitted

CAP–10.
Project No. 8136–003, Friends of Keeseville, Inc.
Project No. 9817–001, Cash Flow Systems

CAP–11.
Project Nos. 2101–011 and 013, Sacramento Municipal Utility District

CAP–12.
Project No. 486–002, Thermalito Irrigation District and Table Mountain Irrigation District

CAP–13.
Docket No. ER87–240–002, Carolina Power & Light Company

CAP–14.
Docket No. ER87–283–002, Cambridge Electric Light Company

CAP–15.
Docket Nos. ER87–352–000 and ER87–354–000, Consumers Power Company

CAP–16.
Docket No. ER79–97–006, Alamito Company

CAP–17.
Docket No. ER78–71–001, Pennsylvania Power & Light Company

CAP–18.
Docket No. ER86–721–002, Central Power & Light Compnay

CAP–19.
Docket No. ER86–721–003, Central Power & Light Company

CAP–20.
Docket Nos. ER86–585–001 and EL86–29–001, Public Service Company of New Hampshire v. UNITIL Power Corporation, Concord Electric Company and Exeter and Hampton Electric Company

CAP–21.
Docket No. ER85–720–001, Connecticut Light and Power Company
Docket No. ER85–707–001, Western Massachusetts Electric Company
Docket No. ER86–669–001, Holyoke Water Power Company and Holyoke Power & Electric Company

CAP–22.
Docket No. QF85–536–000, General Conservation Company of Sparrows Point, Inc.

CAP–23.
Docket No. QF86–864–000, First American Energy Company/Culmtech, Ltd.

CAP–24.
Project No. 3228–005, Atlantic Power Development Corporation

CAP–25.
Project No. 8662–001, Nockamixon Hydro Associates

*Consent Miscellaneous Agenda*

CAM–1.
Docket No. RM81–7–000, Exemption from Licensing Requirements of Part I of the Federal Power Act of a Category of Small Hydroelectric Power Projects with an Installed Capacity of 5 Megawatts or Less

CAM–2.
Docket No. FA85–30–000, Utah Power and Light Company

CAM–3.
Docket No. FA85–67–000, Southern California Edison Company

CAM–4.
Docket No. RM87–21–000, Revision of Freedom of Information Act Rules

CAM–5.
Docket No. GP87–43–000, NGPA Section 102 Determination, Floyd A. Gearhart-Stanley K. Odell, Albert H. Elliott No. 1, JD81–38020, Donal Minich No. 2, JD81–41712

CAM–6.
Docket No. GP85–34–000, Sohio Alaska Petroleum Company

CAM–7.
Docket No. RA81–69–001, Chevron U.S.A., Inc.

*Consent Gas Agenda*

CAG–1.
Docket Nos. TA87–4–49–000 and 001 (PGA87–2), Williston Basin Interstate Pipeline Company

CAG–2.
Docket No. TA87–3–55–000 and 001, Mountain Fuel Resources, Inc.

CAG–3.
Omitted

CAG–4.
Docket Nos. TA87–3–38–000 and 001, Ringwood Gathering Company

CAG–5.
Docket Nos. TA87–2–56–000, 001, TA87–1–55–000 and 001, Valero Interstate Transmission Company

CAG–6.

Docket Nos. TA87–2–57–000 and 001, Western Transmission Corporation.
CAG–7.
Docket Nos. RP86–33–002 and RP86–61–002, Midwestern Gas Transmission Company
CAG–8.
Omitted
CAG–9.
Docket No. RP87–63–000, Western Gas Interstate Company
CAG–10.
Docket No. RP87–64–000, Trunkline Gas Company
CAG–11.
Omitted
CAG–12.
Docket No. RP82–56–020, Northwest Pipeline Corporation
CAG–13.
Docket No. RP87–43–001, MIGC, Inc.
CAG–14.
Docket Nos. RP86–166–009 and 010, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
CAG–15.
Docket Nos. TA82–2–9–017, 018, TA83–1–9–005 and 006, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG–16.
Docket No. TA87–3–33–002, El Paso Natural Gas Company
CAG–17.
Docket Nos. TA87–4–37–002 and 003, Northwest Pipeline Corporation
CAG–18.
Docket No. TA87–4–21–003, Columbia Gas Transmission Corporation
CAG–19.
Docket Nos. TA87–1–11–004, 005, 006 and 007, United Gas Pipe Line Company
CAG–20.
Docket Nos. TA87–1–46–002 and RP87–12–001, Kentucky West Virginia Gas Company
CAG–21.
Docket No. TA87–2–41–002, Southwest Gas Corporation
CAG–22.
Docket No. RP87–36–000, Carnegie Natural Gas Company
CAG–23.
Docket Nos. TA87–3–34–000 and TA87–4–34–000, Florida Gas Transmission Company
CAG–24.
Docket No. RP86–113–000, Gas Transport, Inc.
CAG–25.
Docket No. TA87–1–53–000, K N Energy, Inc.
CAG–26.
Docket Nos. ST86–2571–000 and ST86–2711–000, Dow Pipeline Company
CAG–27.
Docket Nos. ST87–452–000 and 001, Five Flags Pipe Line Company
CAG–28.
Docket No. RP83–109–004, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Complainant V. Pan-Canadian Petroleum Company, *et al.*, Respondents
CAG–29.
Docket No. RI84–9–002, Grace Petroleum Corporation
CAG–30.
Docket Nos. CI85–29–008 and 009, Odeco Oil & Gas Company, *et al.*
Docket No. CI87–308–000, ARCO Oil and Gas Company, Division of Atlantic Richfield Company
Docket No. CP83–452–049, Columbia Gas Transmission Corporation
CAG–31.
Docket No. CI86–7–003, Seagull Marketing Services, Inc. and Seagull Energy E&P Inc.
Docket No. CI87–89–001, EnTrade Corporation
Docket No. CI85–673–003, UER Marketing Company
Docket No. CI86–27–004, Transco Energy Marketing Company
Docket No. CI86–26–004, Yankee Resources, Inc.
CAG–32.
Docket No. CI87–384–000, Phillips Petroleum Company
Docket No. CI87–385–000, Phillips 66 Natural Gas Company
CAG–33.
Docket No. CI87–380–000, Coastal Oil & Gas Corporation
Docket No. CI87–399–000, Union Oil Company of California and Union Exploration Partners, Ltd.
CAG–34.
Docket No. CP82–342–004, Consolidated Gas Company of Florida, Inc. v. Florida Gas Transmission Company
CAG–35.
Docket No. CP87–122–002, Williston Basin Interstate Pipeline Company
CAG–36.
Docket No. CP86–643–005, K N Energy, Inc.
CAG–37.
Docket No. CP87–123–000, Northwest Pipeline Corporation
CAG–38.
Docket No. CP86–536–000, Granite State Gas Transmission, Inc.
CAG–39.
Docket No. CP84–706–002, Washington Gas Light Company

**I. Licensed Project Matters**

P–1.
Project No. 9556–001, Kamargo Corporation
Project No. 9557–001, Black River Hydro Corporation
Project No. 9564–001, Norwood Hydro Corporation
Project No. 9565–001, Raymondville Hydro Corporation
Project No. 9566–001, East Norfolk Hydro Corporation
Project No. 9553–001, School Street Hydro Corporation
Project No. 9563–001, Herrings Hydro Corporation
Project No. 9552–001, Deferiet Corporation
Project No. 9554–001, Colton Hydro Corporation
Project No. 9555–001, Higley Corporation
Project No. 9567–001, Hannawa Corporation
Project Nos. 2320–001, 2330–001, 2539–001 and 2569–001, Niagara Mohawk Power Corporation. Requests for rehearing of order denying applications for preliminary permits for un-utilized capacity at licensed hydroelectric projects.

**II. Electric Rate Matters**

ER–1.
Reserved

*Miscellaneous Agenda*

M–1.
Docket No. RM87–19–000, Technical Amendments to Part 12, Classification of Dams. Notice of Proposed Rulemaking.
M–2.
Docket No. RM86–6–000, Construction Work in Progress—Anticompetitive Implications. Final Rule.
M–3.
Reserved
M–4.
Reserved
M–5.
Docket No. RM87–3–000, Annual Charges Under the Omnibus Budget Reconciliation Act of 1986. Final Rule.

**I. Pipeline Rate Matters**

RP–1.
Docket Nos. TA85–1–26–006, 007, 008, 009, 010, 011, 012 and 013, Natural Gas Pipeline Company of America. Order on rehearing of Opinion No. 256 concerning "as billed" treatment of Canadian gas costs.
RP–2.
Docket Nos. TA85–2–37–002, TA85–1–37–000, TA85–2–37–000, TA85–3–37–003, TA85–3–37–004, and 002, Northwest Pipeline Corporation. Order on initial decision, rehearing petitions and motion to dismiss concerning "as billed" treatment of Canadian gas costs.
RP–3.
Docket No. TA87–2–51–003, Great Lakes Transmission Company. Order on rehearing concerning "as billed" treatment of Canadian gas costs.
RP–4.
Docket Nos. TA87–4–002, and 003, Great Lakes Transmission Company. Order on rehearing concerning "as billed" treatment of Canadian gas costs.
RP–5.
Docket No. RP85–112–000, Boundary Gas, Inc. Order on initial decision concerning "as billed" treatment of Canadian gas costs.
RP–6.
Docket No. TA81–1–21–022, Columbia Gas Transmission Corporation. Order on remand concerning Columbia's gas acquisition practices and cutback policy.
RP–7.
Docket Nos. TA82–1–21–012, 013, 014, 018 and 020, Columbia Gas Transmission Corporation. Order on rehearing concerning settlement.
RP–8.
Docket Nos. TA81–1–21–019 and 020 (Severed NGPA Title I Issues), Columbia Gas Transmission Corporation.
Docket No. IN84–3–001, Columbia Gas Transmission Corporation and Exxon Corporation. Order on settlement concerning NGPA Title I violation.
RP–9.
Docket No. GP83–35–000, Southern Natural Gas Company. Declaratory order concerning NGPA Title I.

II. Producer Matters

CI. 1.

Docket Nos. CI86–166–000, 001 and 002, Tenngasco Corporation and Tenngasco Exchange Corporation. Order on rehearing concerning marketing affiliate.

CI. 2.

Docket No. GP87–48–000, Minerals Management Service, Louisiana 102(d) NGPA Determination, Conoco, Inc., OCS–0129 No. D–11 Well, MMS Docket No. G5–4802. Notice of preliminary finding concerning MMS determination.

III. Pipeline Certificate Matters

CP–1.

Docket No. GP87–16–000, Yukon Pacific Corporation. Request for declaratory order on NGA section 3 and 7 jurisdiction over proposed project to export Alaskan Natural Gas.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–11968 Filed 5–21–87; 1:53 pm]

BILLING CODE 6717–01–M

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## NATIONAL TRANSPORTATION SAFETY BOARD

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 19017, Wednesday, May 20, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE:** 9:30 a.m., Wednesday, May 27, 1987.

**CHANGE IN MEETING:** A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was added to the open session of the agenda:

6. *Public Hearing:* Recommendation for No Hearing re Aircraft Accident Involving Northwest Orient Air Link, Flight 2268, CASA C–212–CC, N160FB, Detroit, Michigan, March 4, 1987.

**FOR MORE INFORMATION, CONTACT:** Ray Smith (202) 382–6525.

**Ray Smith,**

*Executive Secretariat, Federal Register Liaison Officer.*

May 21, 1987.

[FR Doc. 87–11976 Filed 5–21–87; 2:02 pm]

BILLING CODE 7533–01–M

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## SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 26, 1987:

A closed meeting will be held on Wednesday, May 27, 1987, at 3:00 p.m. An open meeting will be held on Friday, May 29, 1987, at 2:00 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording securities will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, May 27, 1987, at 3:00 p.m., will be:

Formal orders of investigation.
Settlement of injunctive action.
Institution of injunctive action.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Friday, May 29, 1987, at 2:00 p.m., will be:

1. Consideration of whether to approve or disapprove proposed rule changes submitted by the New York and Pacific Stock Exchanges relating to the listing of stock having unequal voting rights, and whether to adopt a rule pursuant to section 19(c) of the Securities Exchange Act of 1934 which would amend the rules of national securities exchanges and associations concerning the listing or authorization for quotation or reporting of securities of an issuer that has issued any security having unequal voting rights. For further information, please contact Sharon Lawson at (202) 272–2910 or Ellen K. Dry at (202) 272–2843.

2. Consideration of a release approving proposed rule changes by the American and New York Stock Exchanges that would permit the exchanges to waive or modify certain of their listing standards for foreign companies. For further information, please contact Robert J. Sevigny at (202) 272–2409.

3. Consideration of rule amendments governing the designation of National Market System Securities and changes to the National Association of Securities Dealers Transaction Reporting Plan, including the additon of certain corporate governance requirements. For further information, please contact William M. Harter, Jr. at (202) 272–2414.

4. Consideration of a release announcing amendments to the Commission's financial responsibility rules involving the treatment of repurchase and reverse repurchase agreements by registered broker-dealers. The amendments affect Securities Exchange Act Rules 15c3–1, 15c3–3, 17a–3 and 17a–13. For further information, please contact Michael P. Jamroz at (202) 272–2398 or Michael A. Macchiaroli at (202) 272–2904.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Patrick Daugherty at (202) 272–3077.

**Jonathan G. Katz,**

*Secretary.*

May 21, 1987.

[FR Doc. 87–11982 Filed 5–21–87; 2:54 pm]

BILLING CODE 8010–01–M

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## TENNESSEE VALLEY AUTHORITY

[Meeting No. 1387]

**TIME AND DATE:** 10:00 a.m. (e.d.t.), May 27, 1987.

**PLACE:** Regional High Technology Training Center Auditorium (Haywood Technical College), 10 Industrial Park Drive, Waynesville, North Carolina.

**STATUS:** Open.

Agenda

Approval of minutes of meetings held on May 22, 1987.

*Discussion Item*

1. Swannanoa Valley Project.

*Action Items*

B—Purchase Awards

B1. Req. 60— Long Term Spot Coal for Johnsonville Steam Plant.

B2. Request for Proposal MA–37902A— Requirements Contract for Rapid Dewatering System and Associated Containers, Casks, and Transportation for Browns Ferry Nuclear Plant

C—Power Items

C1. Renewal Power Contract with City of Tullahoma, Tennessee.

D—Personnel Items

* D1. Revision of Management and Physician Staffing Arrangement Guidelines.

D2. Supplement No. 5 to Personal Services Contract No. TV–64447A with Science Applications International Corporation, Erwin, Tennessee, for Technical Assistance at the Browns Ferry Nuclear Plant, Requested by the Office of Nuclear Power.

D3. Supplement No. 3 to Consulting Contract No. TV–71028A with Aptech Engineering Services, Palo Alto, California, to Provide Consulting Services in Connection with Issues Related to Welding Review Activity at Watts Bar Nuclear Plant, Requested by Office of Nuclear Power.

D4. Supplement No. 1 to Personal Services Contract No. TV–70530A with Manpower Temporary Services, Chattanooga, Tennessee, for Temporary Clerical Services, Requested by Division of Property and Services.

E—Real Property Transactions

E1. Filing of Condemnation Cases

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* Item approved by individual Board members. This would give formal ratification to the Board's action.

F—Unclassified

F1. Supplement No. 5 to Agreement No. TV-[illegible]A with Tennessee State University, Nashville State Technical Institute, and the State of Tennessee Board of Regents for Coordination and Administration of the Craft/Skill Upgrade Training Program at the Industrial Training Center at Cockrill Bend in Nashville, Tennessee.

F2. Supplement No. 2 to Agreement No. TV-67766A with Tennessee State University for TVA to Assist the University in Administering the Craft/Skill Upgrade Training Program at the Industrial Training Center of the Nashville Project.

F3. Project Order Under Memorandum of Understanding (TV-71249A) Between TVA and Directorate of Engineering and Housing for TVA Support to the United States Army Forces Command at Fort Sam Houston, Texas, in Connection with Energy Resources Management.

**CONTACT PERSON FOR MORE INFORMATION:** Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 20, 1987.

**W.F. Willis,**

*General Manager.*

[FR Doc. 87-11935 Filed 5-21-87; 9:34 am]

BILLING CODE 8120-01-M

# Corrections

Federal Register
Vol. 52, No. 100
Tuesday, May 26, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 929

### Cranberries Grown in the States of Massachusetts et al.; Order Directing That A Referendum Be Conducted, Determination of Representative Period for Voter Eligibility, and Designation of Referendum Agents To Conduct the Referendum

*Correction*

In proposed rule document 87-11179 appearing on page 18369 in the issue of Friday, May 15, 1987, make the following correction:

In the first column, in the **SUPPLEMENTARY INFORMATION**, in the tenth line, "1987" should read "1986".

BILLING CODE 1505-01-D

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2200

### Rules of Procedure

*Correction*

In rule document 87-9277 beginning on page 13831 in the issue of Monday, April 27, 1987, make the following corrections:

1. On page 13831, in the second column, in the first complete paragraph, in the third line, "1987" should read "1986".

2. On the same page, in the third column, in amendatory instruction 9, in the third line, "factor" should read "fact or".

3. In the same column, in amendatory instruction 15, in the first line, "33" should read "13".

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Part II

# Department of the Treasury

**Office of the Assistant Secretary (Domestic Finance)**

**17 CFR Ch. IV**

**Implementation of Regulations; Government Securities Act of 1986; Temporary Rule With Request for Comments**

BEST COPY AVAILABLE

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary (Domestic Finance)

17 CFR Ch. IV

**Implementation of Regulations; Temporary Issuance With Request for Comments; Government Securities Act of 1986**

**AGENCY:** Office of the Assistant Secretary (Domestic Finance), Treasury.

**ACTION:** Temporary rule with request for comments.

**SUMMARY:** The Department of the Treasury is issuing temporary regulations as required by the Government Securities Act of 1986 (the "Government Securities Act" or "GSA"). These temporary regulations reflect proposed regulations issued by the Treasury on February 25, 1987 (52 FR 5660) and the Treasury's response to comments received thereon.

The GSA requires the Secretary of the Treasury (the "Secretary") to adopt rules and regulations concerning the financial responsibility, protection of investor securities and funds, recordkeeping, reporting and audit of brokers and dealers in government securities. The GSA also requires the Secretary to adopt regulations relating to the custody of government securities held by depository institutions. The temporary regulations are designed to enhance the protection of investors in government securities while maintaining a fair, honest and liquid market in such securities. Subchapter A of the temporary regulations covers government securities brokers and dealers. Subchapter B of the temporary regulations deals with custody of government securities by depository institutions, including those that are government securities brokers or dealers.

Under the GSA, the Department must publish final regulations by July 25, 1987. Moreover, the GSA requires that all government securities brokers and dealers either be registered with the Securities and Exchange Commission ("Commission" or "SEC") by July 25, 1987, or have provided notice of their status as a government securities broker or dealer to either the SEC (in the case of registered brokers or dealers) or the appropriate federal financial institution supervisory agency (in the case of commercial banks and thrift institutions) by July 25, 1987.

**DATES:** Temporary rule effective May 26, 1987; comments must be submitted on or before June 10, 1987. No extensions of time for comment will be provided.

**ADDRESSES:** Send comments to: The Government Securities Regulations Project, Department of the Treasury, Room 4417, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Copies of all written comments will be available for public inspection and copying from 9:00 a.m. to 5:30 p.m. at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**FOR FURTHER INFORMATION CONTACT:** Ellen Seidman (Special Assistant to the Under Secretary), Room 4414, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566–2276, or Anne Meister (Federal Reserve Liaison Officer), Room 553, Bureau of Public Debt, Department of the Treasury, 999 E Street, NW., Washington, DC 20239, (202) 376–4304.

For information concerning financial responsibility (capital) and Form G–405, contact: Norman Carleton (Assistant Director, Office of Government Finance & Market Analysis), Room 3044, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 566–2330.

For information concerning possession or control of customer securities and Part 450, contact: Virginia Rutledge (Attorney-Advisor), Room 2025, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, (202) 535–4890, or Cindy Reese (Senior Attorney and Special Assistant), Room 503, Bureau of Public Debt, Department of the Treasury, 999 E Street NW., Washington, DC 20239, (202) 376–4320.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The GSA establishes, for the first time, a Federal system for regulation of brokers and dealers who transact business exclusively in government securities, or a government securities business combined with business in non-security financial instruments, exempted securities and/or futures and other commodity interests regulated by the Commodity Futures Trading Commission ("CFTC"). The Secretary is to adopt rules and regulations concerning the financial responsibility, protection of investor securities and balances, recordkeeping, reporting and audit of government securities brokers and dealers.[1] Previously unregulated government securities brokers and dealers must also register with the SEC and join a self-regulatory organization.[2]

Enforcement of the Secretary's regulations with respect to newly registered government securities brokers and dealers will be carried out by the SEC and the appropriate self-regulatory organizations.[3] The GSA also provides for regulation of all other brokers and dealers in government securities, all of whom must, by July 25, 1987, notify their principal regulatory agency of their status as government securities brokers or dealers.[4] Enforcement of the regulations for such entities will be carried out by the appropriate regulatory agencies.[5]

The purpose of such registration and regulation is to enhance the protection of investors in government securities by establishing and enforcing appropriate financial responsibility and custodial standards for government securities brokers and dealers. At the same time, the standards must respect and protect the integrity, liquidity and efficiency of the world's largest securities market, which is vital to the effective implementation of fiscal and monetary

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[1] Section 15C(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78o–5(b)]. All citations to the Securities Exchange Act (hereinafter the "Act") will refer to the section of the Act followed by the parallel citation to the United States Code in brackets. Title I of the GSA, which provides for regulation of government securities brokers and dealers, amends the Act, in part by adding section 15C.

[2] Section 15C(a)(1)(A), (c) [15 U.S.C. 78o–5(a)(1)(A), (c)]. Currently unregulated entities that believe they are government securities brokers or dealers are urged to contact the appropriate self-regulatory organization, in most cases the National Association of Securities Dealers ("NASD"), for membership information as soon as possible. The NASD has informed the Department that it will make every effort to expedite membership processing before the July 25, 1987 deadline, but because of the number and complexity of pending and anticipated applications, it is essential that all potential registrants who have not already filed applications do so immediately. Currently unregulated persons (including subsidiaries and affiliates of financial institutions) and registered brokers or dealers uncertain of their status as government securities brokers or dealers are urged to contact the Office of the Chief Counsel, Division of Market Regulation, Mail Stop 5–1, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, as soon as possible. Financial institutions uncertain of their status should contact their appropriate regulatory agency or the SEC.

[3] Sections 15C(c)(1), 19(g)(1) [15 U.S.C. 78o–5(c)(1), 78s]. The Act also contains criminal penalties enforced by the Department of Justice. Section 32 [15 U.S.C. 78ff].

[4] Section 15C(a)(1)(B), (b) [15 U.S.C. 78o–5(a)(1)(B), (b)].

[5] Generally, the appropriate regulatory agency for a financial institution is that institution's federal supervisory agency and it is the SEC for all others, including brokers and dealers registered with the SEC under sections 15 or 15B of the Act. Section 3(a)(34)(G) [15 U.S.C. 78c(a)(34)(G)].

policy in the United States.[6] In adopting regulations concerning those entities that are already regulated, such as brokers and dealers registered under sections 15 or 15B of the Securities Exchange Act of 1934 (the "Act") and financial institutions, the Secretary of the Treasury is to take into consideration already existing regulation with a view toward preventing overly burdensome or duplicative regulation.[7]

The temporary regulations constitute the Secretary's second response to these mandates. As required by the GSA, they become effective on May 26, 1987.[8] The Treasury will publish final regulations to take effect on July 25, 1987 by that date. All government securities brokers and dealers must register or give notice by July 25, 1987, and must be in compliance with the regulations that will become final on that date.[9]

The Department recognizes that those affected by the regulations require a degree of certainty so that operations may be brought into compliance with the regulations before July 25. The more than 70 comments the Department received on the proposed regulations were generally favorable but provided extremely useful and in general consistent suggestions for changes in a number of areas, to which the Department has responded in these temporary regulations. Therefore, although comments on the temporary regulations are invited, it is the intention of the Department to change the temporary regulations in the final regulations only in response to comments demonstrating serious and widespread operational difficulties in implementing the temporary regulations. On the other hand, development of the regulatory scheme is a continuing process, and the Department invites comments and suggestions for future changes or modifications to the regulations.

### *Consultation and Comments*

As discussed in the preamble to the proposed regulations, in developing that proposal the Department consulted extensively with other Federal regulators, affected parties, and trade and professional associations. During the period since publication of the proposed regulations, that process has continued. In addition, representatives of the Department have participated in a number of conferences and seminars to discuss the proposed regulations, and have met with representatives of the North American Association of Securities Administrators.

The Department received over 70 written comments from 65 entities in response to the proposed regulations. Among the commenters were two government agencies, four self-regulatory organizations, 21 of the 40 primary dealers, seven other dealers (or their representatives), four brokers, eleven other banks and two futures commission merchants ("FCMs"). The Department also received comments from eleven trade or professional associations including the Public Securities Association, the Securities Industry Association, the American Bankers Association, the Bank Capital Markets Association (formerly Dealer Bank Association), the Credit Union National Association, the United States League of Savings Institutions, the Government Finance Officers Association and the American Institute of Certified Public Accountants.

In general the comments were supportive of the approach taken in the regulations. The comments generally supported the decision to adopt by reference many of the applicable regulations of the SEC, with which the industry is familiar, although many of those commenting on this issue emphasized the need for continuous formal and informal coordination between the Treasury and the SEC to assure consistency in interpretation of the regulations. Many of the comments pointed out areas where clarification was needed, and there was also a general concern that delayed effective dates were needed in several of the areas where the regulations would require substantial operational changes. The major areas in which commenters requested significant changes to the proposed regulations were (i) the financial institution dealer exemption (§ 401.4); (ii) whether a choice of capital regulations was appropriate (Part 402); and (iii) the treatment of hold in custody repurchase agreements, particularly with respect to intra-day segregation of securities and prior notification of substitutions. Each of these areas, as well as other comments and the Department's response, is discussed in the appropriate part of the following section-by-section analysis of the temporary regulations.

A number of the comments requested that the Treasury exercise its exemptive authority to delay the statutory deadline for registration, and either in concert or in the alternative, to recommend that the SEC grant temporary exemptions from the requirement that new registrants become members of a self-regulatory organization. Other comments requested a moratorium on enforcement (i.e., no penalties for good faith attempts at compliance) for a limited period after the regulations become fully effective.

The Department believes that it is unnecessary and inappropriate at this time to provide for a delay in registration. The GSA was enacted after eighteen months of Congressional debate, during which it was unchallenged that it was necessary that, as soon as possible, all brokers and dealers in government securities become known to the federal government and subject to federal oversight.[10] Congress therefore established the tight schedule for regulations and set an explicit date in the statute for registration.[11] In recognition of some of the operational difficulties arising out of the proposed regulatory scheme, and the fact that final regulations will not be effective until the date set for registration, the temporary regulations include delayed effective dates for many provisions. As a result, it will not be necessary for firms to demonstrate compliance with,

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[6] Government Securities Act of 1986, Pub. L. 99-571, section 1, 100 Stat. 3208 (1986) (hereinafter cited as *GSA*).

[7] Section 15C(b)(3)(C) [15 U.S.C. 78o-5(b)(3)(C)]; 132 Cong. Rec. H9251 (Oct. 6, 1986).

[8] The requirement that the temporary regulations become effective immediately results from the confluence of the statutory requirements of section 402 of the GSA, mandating the date on which the rules are to take effect, and of the Administrative Procedure Act to receive and take into account comments on the proposed regulations published February 25, 1987. See 5 U.S.C. 553(b), (c). The Department notes, however, that since section 401 of the GSA provides that the statutory requirements of the GSA do not become effective until July 25, 1987, as a practical matter the temporary rules will be effective only to allow the completion of registration procedures until they are superseded by the final rules on July 25. Moreover, the effective date of a number of the most difficult requirements in the temporary rules is delayed beyond July 25. The Department therefore finds that there is good cause to provide for immediate effectiveness of the temporary rules. 5 U.S.C. 553(d)(3).

[9] *GSA, supra* note 6, section 402. Because of the difficulties of achieving compliance with several of the regulations in the maximum of 15 days that will be available between May 26 and June 10, 1987, the date on which entities must file registration applications with the SEC in order to assure registration before July 25, several of the regulations, in particular the market risk ("haircut") calculations of Part 402 relating to financial responsibility, and related possession or control, reporting and audit rules, will not become fully effective until the end of October 1987. In addition, the regulations in Part 403 relating to hold in custody repurchase agreements take effect in stages and become fully effective on January 31, 1988.

Previously unregulated government securities brokers and dealers are reminded that, in addition to the regulations to be promulgated under the GSA, they are subject to the provisions of sections 10(b), 15(c)(1), 17(f)(1) and 17(f)(2) of the Act and the regulations promulgated by the SEC thereunder.

[10] See H.R. Rep. No. 99-258, 99th Cong., 1st Sess. at 15 (1985); S. Rep. No. 99-426, 99th Cong., 2d Sess. at 10 & n.28 (1986).

[11] *GSA, supra* note 6, Title IV.

for example, the ultimate possession or control rules, in order to register. On the other hand, firms will be required to gather and submit the required information about the firm and associated persons, as well as to have the required minimum dollar amounts of liquid capital and to establish an audit relationship with an independent public accountant. These are not unreasonable requirements within the statutory time frame.[12]

The Department has been and will continue to be in continuous contact with both the SEC and the NASD, both of which have assured the Department of their intention to act reasonably with respect to both registration and enforcement to assure that the purposes of the GSA are achieved without unnecessary disruption in the market.

## II. Section-by-Section Analysis of Proposed Regulations

### *A. Part 400. Rules of General Application*

1. *Section 400.1.* This section notes the requirements of the Act, as amended by the GSA, for regulation, registration and notice of status. It cross-references the SEC and Federal Reserve regulations and forms providing for registration and notice.

2. *Section 400.2.* This section specifies the Office of the Deputy Assistant Secretary (Federal Finance) as the office within Treasury responsible for the regulations, and discusses interpretations of the regulations.

A number of the major comment letters specifically requested that the Treasury establish by May 26, 1987 an office empowered to give definitive interpretations of the regulations and to grant exemptions. Additional letters emphasized the need for coordination between Treasury and the SEC in light of the adoption by reference but with modifications of SEC regulations, as well as for rules of precedence in the case of conflict.

The temporary regulations amend the proposed regulations by adding new paragraphs (c) and (d) to § 400.2 to deal with official interpretations. Paragraph (c) establishes the procedures under which the Department will provide exemptions, classifications and formal advice. These procedures are effective starting May 26, 1987. The Department has consulted with the SEC and the other appropriate regulatory agencies, and the regulation reflects the Department's understanding that the Department's interpretations will be given deference by those agencies. The procedures, which generally follow SEC procedures for no action letters with modifications appropriate to the non-collegial structure of the Treasury, require a written request from an affected party, with full description of the relevant facts, a clear and concise statement of the request, a proposed response and analysis of why the proposed response is appropriate.[13] Consistent with the SEC's policy on no action letters, the regulations provide that such requests and their responses will be made public 30 days after the response, but provide for a potential delay of an additional 90 days.[14] Paragraph (c) also provides that the Department will give informal oral and written advice. However, because of the extremely informal nature of such advice, including the lack of full information, such advice is not binding on the Department or any other agency.

The temporary regulations provide that the Office of the Deputy Assistant Secretary (Federal Finance) is the office responsible for interpretations and exemptions. However, it is the intention of the Department to transfer this function to the Office of the Commissioner, Bureau of the Public Debt when the final regulations become effective in July.

Paragraph (d) deals with the question of the effect of SEC interpretations. SEC interpretations of statutes and regulations arise through formal releases adopted by the Commission and, more commonly, through advice from the staff that is not binding on the Commission.[15] Therefore, paragraph (d) simply states that the effect of an SEC interpretation of an SEC regulation adopted by the Treasury by reference is the same as if the SEC regulation were considered in isolation. If Treasury issues a contradictory binding interpretation as provided in paragraph (c), the Treasury expects that the SEC will give that interpretation deference in subsequent no-action positions and with respect to the continued validity of previous no-action positions. Treasury intends to work closely with the SEC to minimize situations of this sort. As stated in the preamble to the proposed regulations, the Department "intends to enable newly registered entities to rely on SEC interpretations of the rules."[16] The Department recognizes the need for constant coordination, not only with the SEC but also with the appropriate regulatory agencies and the self-regulatory organizations. To date the Treasury has found a generous willingness on the part of those agencies to operate in a cooperative manner, and the Department expects that to continue.

3. *Section 400.3.* This section provides definitions for the purpose of these regulations. Nine comments were received concerning the definition of "associated person," at § 400.4(e)(1) in the proposed regulations, but moved to § 400.3(c) in the temporary regulations. The comments from banks and bank trade associations asserted that the definition in the proposed regulation was overbroad primarily in two areas: (i) It covered trust personnel, whose activities in a non-dealer bank would not require registration and who are already well regulated; and (ii) in contrast to Rule D–11 of the Municipal Securities Rulemaking Board and Appendix C of the NASD Rules of Fair Practice, there was no exemption for employees whose functions were solely clerical or ministerial. In connection with the second issue, the commenters requested clarification of the status of branch bank personnel who provide customers with the terms and conditions of, and accept customer funds for, investment in government securities, and asserted that these people should not be covered. The NASD requested that the definition of associated person, which in the proposed regulations applied only to financial institution personnel, be expanded to cover other government securities brokers and dealers. Several commenters also requested that the definition of "fiduciary capacity" in § 450.2(d) of the proposed regulations also be made applicable to Subchapter A, particularly since the term is used in the financial institution dealer exemption in § 401.4.

New paragraph (c) defines "associated person" for all government securities brokers and dealers. The definition provides an explicit exception for persons whose functions are solely clerical or ministerial. For financial institutions, three additional exceptions are provided: (i) For those who function solely in a fiduciary capacity; (ii) for those whose only government securities activities are to act as non-discretionary order-takers, without giving investment advice or receiving transaction-based compensation, and (iii) for directors and

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[12] The Department has, however, provided for a delay to October 31, 1987 for registration of FCMs because of the continuing uncertainty over their status, combined with the existing scheme of federal regulation to which they are subject. See § 401.8, and the section-by-section analysis related thereto.

[13] See Exchange Act Release 34-9005, 36 FR 2600 (Jan. 25, 1971), 6 CCH Fed. Sec. L. Rep. ¶ 80461.10.

[14] See 17 CFR 200.81.

[15] See 17 CFR 202.1(d); Securities Act Release 33-6253, 1 CCH Fed. Sec. L. Rep. ¶ 134A.

[16] 52 FR 5661 (February 25, 1987).

senior officers who set broad policy guidelines for the firm as a whole.

New paragraph (d) defines "Board" to mean the Board of Governors of the Federal Reserve System. New paragraph (e) defines "branch or agency of a foreign bank" to mean Federal or State branches or agencies, as those terms are used in the International Banking Act of 1978. New paragraph (f) defines "CFTC" to mean the Commodity Futures Trading Commission. New paragraph (i) incorporates the definition of "fiduciary capacity" from Part 450 into the Subchapter A regulations, for use in, among other places, the definition of "associated person" and the financial institution dealer exemption, § 401.4. Former paragraph (l) (now paragraph (q)) has been amended to provide explicitly that the term "Treasury" or "Department" includes the Bureau of the Public Debt.

4. *Section 400.4.* This section deals with the filing of information by associated persons of financial institutions in order to determine the possibility of statutory disqualifications. In addition to the comments on "associated person" discussed above, the Department received one comment asserting that if an associated person of a financial institution ceases to be such but remains employed by the financial institution, the financial institution should have the option to maintain and update that person's Form G–FIN–4 rather than being required to file a Form G–FIN–5.

New paragraph (d)(2)(ii) provides a financial institution with the option to maintain and update a Form G–FIN–4 for an associated person whose functions change but who remains employed by the financial institution in lieu of filing a Form G–FIN–5. This should facilitate the movement of personnel within the financial institution with no loss of information to the regulatory system. Once the associated person ceases employment with the financial institution, a Form G–FIN–5 must be filed within 30 days.

The Department expects that the self-regulatory organizations will amend their rules to require associated persons of registered government securities brokers and dealers (as well as such persons who are affiliated with government securities brokers and dealers that are registered broker-dealers but who have not previously been required to file a Form U–4) to provide, through filing of a Form U–4 or otherwise, the necessary information to determine whether any statutory disqualifications might apply.

5. *Sections 400.5 and 400.6.* No comments were received in connection with these sections, which deal with updating information and notices of withdrawal from government securities broker or dealer status of a financial institution. These sections as proposed are therefore adopted as the temporary regulations.

*B. Part 401. Exemptions*

Section 15C(a)(4) of the Act authorizes the Secretary to exempt any government securities broker, government securities dealer or class of such brokers and dealers from any provision of section 15C (a), (b) and (d) of the Act or the regulations issued under those subsections. Any exemption must be consistent with the public interest, the protection of investors, and the purposes of the GSA.

The proposed regulations contained an exemption from all relevant portions of the Act and regulations for entities engaged in Savings Bond transactions, and four additional exemptions for depository or financial institutions and corporate credit unions performing limited activities that could be deemed to make them government securities brokers or dealers.[17] The Department received a number of comments on the exemptions proposed, mainly asking for clarification of a number of points in §§ 401.3, 401.4 and 401.5, respectively the exemptions for brokerage activities of financial institutions, dealer activities of financial institutions, and repurchase and reverse repurchase transactions of corporate credit unions with other credit unions.

In addition, a number of comments requested exemptions from registration and all other requirements for CFTC-registered entities, small arbitrageurs, brokers of repurchase transactions, and government securities brokers and dealers winding down their business. In general, these requests for total exemption were coupled with requests for accommodations under specific regulations, particularly the capital rules.

1. *Section 401.1.* Section 401.1 of the proposed rules provided an exemption from the provisions of the GSA and regulations thereunder for those organizations whose government securities transactions are limited to savings bond transactions and any other activity as provided in Part 401. Two comments concerning this exemption were received, both supportive.

As stated when this rule was proposed, thousands of organizations handle transactions in United States Savings Bonds ("savings bonds"). The Department determined that these organizations should be exempt because savings bonds offer terms and conditions that protect investors from risk.

Additionally, the organizations that handle most of these transactions have been qualified by the Department to act as savings bond issuing and paying agents pursuant to 31 CFR Parts 317 and 321 and are governed by those regulations. The remaining organizations that handle savings bond transactions do so as an accommodation to customers and employees and must forward requested savings bond transactions to qualified issuing and paying agents or the Department. Therefore § 401.1 as proposed is adopted as the temporary rule.

2. *Section 401.2.* Section 401.2 of the proposed rules provided an exemption for depository institutions whose government securities transactions are limited to submitting tenders on a fully disclosed basis for customers for the purchase on original issue of United States Treasury securities. While the comments received supported the exemption, two comments requested that the exemption be expanded.

One comment requested that the activity of submitting tenders by any depository institution government securities broker or dealer be exempt from any of the provisions of the rules. The problem raised by the commenter appears to relate to the status of those acting as "order takers" for such transactions as "associated persons," and the revised definition of "associated person" in § 400.3(c) of the temporary regulations should resolve the difficulty.

A second comment requested that the exemption be expanded to include issues of securities by government sponsored agencies. The process by which sponsored agency securities are sold on original issue differs from the process by which Treasury securities are sold on original issue. On original issue of Treasury securities, depository institutions submit tenders for securities directly to the Treasury or to its fiscal agent, the Federal Reserve System, neither of which compensates the depository institution. Sponsored agency securities, on the other hand, are marketed through selling groups that actively promote their sale and earn fees paid by the sponsored agency issuer in connection with their sale. Sales on original issue of agency securities therefore resemble traditional underwritings rather than the incidental customer accommodation transactions

[17] The exemptions for depository institutions were conditioned upon those organizations' agreement to comply with the custody requirements of Part 450 of the regulations.

encompassed by the proposed rule, and the Department therefore believes that expansion of the exemption would be inappropriate. Financial institutions that effect limited numbers of brokerage transactions in sponsored agency securities as an accommodation to customers may be exempt from the GSA and regulations thereunder under § 401.3.

The wording of paragraph (b) requiring that an entity taking advantage of this exemption comply with the regulations in Part 450 concerning custodial holdings of customer securities, has been revised. The previous language required a financial institution to "agree" to comply with Part 450, raising such questions as with whom the institution would agree and what the effect of such agreement would be. The revised wording states simply that a depository institution relying on the exemption is subject to Part 450. Parallel changes have been made in the exemptions contained in §§ 401.3, 401.4 and 401.5.

3. *Section 401.3.* In the proposed regulations, this section provided an exemption for financial institutions (including federal credit unions) that did not hold themselves out as government securities brokers or engaged in fewer than 500 solicited government securities brokerage transactions per year or performed such transactions through a networking arrangement with a government securities broker or dealer required to be registered or give notice pursuant to section 15C(a)(1) of the Act.

The Department received five comments from banks and bank trade associations that were generally supportive but requested clarification that (i) if a financial institution does not actively solicit brokerage transactions, it is not limited by the 500 transaction limitation; (ii) inclusion of this service on a summary list of services available to customers and providing it on customer request constitutes neither "active solicitation" nor "holding out"; (iii) a financial institution's purchase or sale of a government security in a brokerage transaction on the order of a customer is a single transaction even though the financial institution must initially take delivery of the security before transferring it to the customer; (iv) the 500 transaction limitation applies to each member of a holding company group; (v) the 500 transaction limit can include networking transactions but does not include other exempt transactions; and (vi) the financial institution may network with more than one government securities broker or dealer. One comment also requested that the rule be changed to provide that disclosure for the purpose of the networking exemption requires only that the customer know the name of the transacting government securities broker or dealer and not that the broker or dealer know the name of the customer.

The Department also received a request to raise the transaction limit to 1000, a request to lower it to 50, two requests to extend it to federally insured and/or state chartered non-federally insured credit unions, and a request to extend it to registered broker-dealers.

Minor adjustments have been made in § 401.3(a)(2) to clarify the intention of the scope of the exemption. First, the words "Notwithstanding the provisions of paragraph (a)(1) of this section" have been added to the start of the paragraph to make clear that if a financial institution does not hold itself out as a government securities broker or actively solicit brokerage transactions, it is not limited by the 500 transaction or networking limitations. The Department suggests, however, that even though inclusion of brokerage services on a summary list of services available to customers would not be considered "holding out," any financial institution that performs substantially more than 500 such transactions per year may wish to analyze carefully whether it is in fact actively soliciting such transactions.

Second, paragraph (a)(2)(ii), concerning networking, has been revised to make clear that a financial institution may network with more than one government securities broker or dealer. The Department intends that the 500 transaction limitation apply to each corporate entity within a holding company group and that the networking exemption may be used by members of such a group to network with another member that is a government securities broker or dealer that has registered or given notice under section 15C(a)(1) of the Act. Any networking transactions count against the 500 transaction limitation, but transactions exempt under §§ 401.1 and 401.2 do not.

Paragraph (a)(2)(ii)(D), concerning disclosure, has been retained but rewritten for clarity. Disclosure of customer names to the transacting broker or dealer is essential if that broker or dealer is properly to take responsibility for the customer and to meet his own responsibilities concerning, for example, limitations on exposures to single customers.

The characterization of a transaction as a brokerage transaction rather than a dealer transaction can be difficult, particularly in a book entry environment where all customer securities must be held on the books of another entity, often one from, to or through whom the customer has purchased or sold the security. Two major characteristics of a brokerage transaction are that the transacting broker purchases or sells a security on the order of the customer, not from or to its own inventory, and that the customer is charged an explicit transaction-based fee or commission. It should be noted that the counterparty of the transacting broker need not and indeed usually does not know that the transaction is a brokerage rather than a dealer transaction except perhaps by the size of the order.

Therefore, a purchase by a transacting broker for the account of a customer with an essentially contemporaneous transfer of the security to the account of the customer is a single transaction. By the same token, since fiduciary transactions are undertaken not on the order of a customer but rather by a financial institution in its fiduciary role, such transactions are not in general brokerage transactions, but rather reflect the financial institution acting as an investor. Based on these clarifications, the 500 transaction limitation is an appropriate line of demarcation between accommodating customers and being in the brokerage business.

The Department has also concluded that the exemption should be broadened to include federally insured credit unions (including federally insured corporate credit unions), which are subject to the examination authority of the National Credit Union Administration ("NCUA"). A major tenet of the GSA is the recognition of the special importance of federal regulation of entities that are transacting business in government securities.[18] The Department notes that § 401.3 is essentially a safe harbor provision. Any credit union following the requirements of NCUA Interpretive Ruling and Policy Statement 85-1 (November 15, 1985), concerning self-directed IRA accounts, would not be considered a government securities broker in any event. The Department has decided not to extend the exemption to registered broker-dealers, both because of the difficulty of applying it in the context of a general securities business and because of the minimal burden the regulations place on such entities. In addition, for reasons described in the discussion of new § 401.6 below, the Department has

[18] See, for example, H.R. Rep. No. 99-358, 99th Cong., 1st Sess. at 13-15 (1985); 132 Cong. Rec. S15795 (Oct. 9, 1986, remarks of Senator D'Amato).

deleted branches and agencies of foreign banks from the class of financial institutions to which this exemption is available.

4. *Section 401.4.* In the proposed regulations, this section provided an exemption for financial institutions whose only government securities dealer activities were activities in a fiduciary capacity, sales and subsequent repurchases pursuant to a repurchase agreement, and up to 500 purchases and subsequent resales pursuant to a reverse repurchase agreement per year. The exemption was conditioned on an agreement to comply with the custody rules of Part 450 of the proposed regulations, and was not available to financial institutions that engaged in other traditional dealer activities.

The Department received ten comments on this section. Most of the comments requested clarification of a number of issues concerning how to count reverse repurchase transactions for the purposes of determining compliance with the 500 transaction annual limitation. Five comments, including comments from the American Bankers Association and the Bank Capital Markets Association, requested an explicit exemption for transactions by a financial institution for its own account as an investor. In addition, the NCUA, Credit Union National Association and the Missouri Credit Union League all requested that the exemption be made applicable to some or all credit unions. Finally, the NASD requested that the reverse repurchase limitation be lowered to 50 and made applicable to registered broker-dealers.

In the preamble to the proposed regulations, the Department noted that as part of the regular business of being a bank or a thrift institution, almost all financial institutions engage in a variety of activities that could, under traditional interpretations of the term "dealer" under the Act, cause them to be regarded as government securities dealers. The Department noted that since the financial institutions eligible for the exemption were all subject to federal supervision and to the custody rules of Part 450, it was neither necessary for investor protection nor within the intent of Congress to subject all financial institutions to regulation as government securities dealers. However, the Department was concerned that financial institutions that truly were acting as government securities dealers be regulated as such. The proposed regulations attempted to achieve this result through the limitation on reverse repurchase transactions.

The comments and further discussion with the federal financial institution supervisory agencies have raised significant issues concerning both the need for and efficacy of the reverse repurchase limitation. For example, loans by a bank that are secured by government securities, a normal banking activity, are the financial equivalent of reverse repurchase agreement transactions. There are also definitional issues, such as the treatment of reverse repurchase agreements with government securities dealers and the treatment of "good until canceled" repurchase agreements.

The temporary regulations therefore delete the 500 transaction limitation on reverse repurchase transactions. However, in recognition of the fact that this would result in allowing non-dealer banks to do unlimited hold-in-custody repurchase transactions with full right of substitution without the protections of § 403.5(d), any entity relying on the exemption must comply with the written agreement and disclosure requirements of § 403.5(d) with respect to hold-in-custody repurchase transactions if it retains the right of substitution. This will also provide consistency in counterparty protection no matter what type of entity a counterparty does a repurchase transaction with—a dealer, a dealer bank or a non-dealer bank.[19]

The FFIEC policy guidelines already urge banks entering into repurchase transactions to do so pursuant to a written agreement. Section 403.5(d) would impose custody and disclosure requirements for repurchase transactions where securities transferred to customers are held by the financial institution outside of its trust or safekeeping functions or where, although the security is transferred to safekeeping, the financial institution retains a right of substitution. Although the regulations of Part 450 will adequately protect securities subject to repurchase agreements when they are in safekeeping, the securities may not be in safekeeping during the trading day if substitution is allowed. Existing financial institution capital rules, as well as the current proposed risk-based capital rules, should discourage financial institutions from using the repurchase and reverse repurchase exemptions to operate matched books for non-banking purposes, as no netting is permitted for purposes of determining capital requirements.

New § 401.4(c) extends the availability of the dealer exemption to federal and federally insured credit unions for the reasons noted under the discussion of the broker exemption. The reserve requirements applicable to natural person federally insured credit unions, like those applicable to commercial banks and thrift institutions, discourage operation of matched books for non-banking purposes. For the reasons discussed in connection with § 401.6, the Department has deleted branches and agencies of foreign banks from the class of financial institutions to which this exemption is available.

The Department has decided not to include an explicit exemption for financial institutions engaging in proprietary trading in government securities. This is an issue that arises for all persons engaging in transactions in government securities. The line between an investor or trader—who would not be required to register or give notice as a government securities dealer—and a dealer is one that has been the subject of a number of SEC staff no-action positions.[20] The SEC staff has taken the position that an entity may be regarded as a trader even if it buys and sells a high volume of government securities on a fairly regular basis, as long as the transactions are done by the entity as principal and not directly or indirectly for or at the request of customers, and the entity does not hold itself out or otherwise act as a dealer. Like other institutions that have concerns about their status as traders or dealers, financial institutions should address their concerns to the Chief Counsel of the SEC's Division of Market Regulation under SEC staff no-action procedures.

The Department wishes to emphasize that the exemption provided in this section is not meant to insulate government securities dealers from regulation as such simply because they are financial institutions. Congress made a considered decision in section 3(a)(44) of the Act (defining

[19] Several comments stated that the Federal Financial Institutions Examining Council ("FFIEC") guidelines on repurchase agreements, when coupled with the proposed regulations, appeared to place an uneven burden on dealer banks and non-dealer banks who did the same repurchase transactions with customers. See Office of the Comptroller of the Currency BC 210, October 31, 1985; Federal Deposit Insurance Corporation, BL-43-85, November 1, 1985; 50 FR 46704 [December 4, 1985, Board of Governors of the Federal Reserve System]; 50 FR 44460 [December 6, 1985, Federal Home Loan Bank Board proposed rule]. With the change noted above, this discrepancy is eliminated. The Department notes that the FFIEC guidelines serve different purposes than the requirements of § 403.5(d), such as protection of banks as customers with respect to marking to market, and also that those guidelines apply to all repurchase transactions, not just hold-in-custody transactions.

[20] See, for example, United Savings Association of Texas, SEC No-Action Letter, April 2, 1987; National Council of Savings Institutions, SEC No-Action Letter, June 28, 1986; First National Bank of Allentown, SEC No-Action Letter, April 28, 1982.

"government securities dealer"), unlike section 3(a)(5) (defining "dealer"), to include banks within the definition. Any financial institution that advertises or otherwise holds itself out as a government securities dealer (as for example by holding itself out as being willing to buy and sell particular government securities on a continuous basis), that purchases or sells government securities from or to customers other than pursuant to a repurchase or reverse repurchase agreement, participates in a selling group or underwrites government securities, carries a dealer inventory, or quotes a market in government securities must file notice that it is a government securities dealer pursuant to section 15C(a)(1)(B) of the Act.

5. *Section 401.5.* This section of the proposed regulations provided an exemption for corporate credit unions (including non-federally insured corporate credit unions) whose sole government securities dealer activities are other exempt activities and engaging in repurchase and reverse repurchase transactions with other credit unions. The Department received a comment requesting that the exemption be broadened to include repurchase transactions by a corporate credit union with a government securities dealer.

The Department believes that the requested exemption is unnecessary and may prove confusing. A corporate credit union engaging in a government securities transaction with a government securities broker or dealer, be it a repurchase transaction or an outright purchase or sale, is acting as an investor or customer. As long as the corporate credit union engages only in transactions with government securities brokers or dealers, the repurchase and reverse repurchase transactions described in this section, and other exempt transactions, it would not be considered to be a dealer. The rule has been amended, however, in the manner described in connection with §§ 401.2 and 401.4, to revise paragraph (b) relating to conditions of exemption.

6. *Section 401.6.* The Department received a request from the Institute of Foreign Bankers to exempt branches and agencies of foreign banks [21] that are government securities brokers or dealers from the capital rules of Part 402 and related recordkeeping rules. The comment notes that these branches and agencies are subject to supervision and examination by federal financial institution supervisory agencies, and states that an exemption from the capital rules is warranted because the capital regulations of the home countries of the branches (combined with U.S. supervision and examination) provide adequate protection to investors.

The Department has discussed this request with the federal financial supervisory agencies and has conducted its own investigation. Regulation of foreign banks in the United States follows principles of national treatment, under which foreign banks are accorded "equality of competitive opportunity with domestic institutions in similar circumstances, even if some specific regulations or requirements applied to foreign banks differ from those affecting domestic banks." [22] Based on this principle, the Department has determined that equality of competitive opportunity for domestic banks and branches and agencies of foreign banks requires slightly different regulatory approaches.

First, in recognition that the government securities activities of many branches and agencies are solely for the purpose of serving the needs of foreign governments and other foreign customers, which entities do not expect the protection of the United States securities laws in dealing with a home country bank, new § 401.6 exempts from the Act and all government securities broker or dealer regulations under the Act branches and agencies all of whose customers for government securities transactions are non-United States citizens resident abroad. (These branches and agencies will still be subject to the Part 450 regulations relating to custodial holdings of government securities which are not part of the securities laws and which apply to all depository institutions regardless of their status as government securities brokers or dealers.) An exempt branch or agency would be able to transact business with United States government securities brokers and dealers.

Second, with respect to branches and agencies that engage in government securities transactions with United States customers, the Department is concerned that, unlike domestic banks, these entities are required to have little or no (in the case of agencies) capital in the United States that would be available to United States securities customers in the event of a failure. The Department considered whether imposition of the Part 402 capital requirements would be an appropriate response to this situation and concluded that it was not. Therefore, the Department has adopted the request of the Institute of Foreign Bankers concerning capital and related recordkeeping requirements in Parts 402 and 404. However, as described below, § 403.5 has been amended to provide that a branch or agency of a foreign bank that acts as a non-exempt government securities broker or dealer will be subject to a modified version of the reserve requirement applicable to non-bank brokers and dealers. This requirement is meant to provide a degree of assurance to securities customers to whom the branch or agency owes money that such funds would be available in the United States in the event of a failure.

7. *Section 401.7.* The Department received two comments requesting an exemption from registration for a brief period after July 25, 1987 for government securities brokers and dealers that are being folded into affiliated entities, either registered brokers or dealers or other government securities brokers or dealers, but that have non-assignable open contractual commitments entered into prior to July 25. The Department understands that the major problem arises with respect to forward commitments for mortgage-backed securities.

New § 401.7 provides an exemption from registration and all regulations for the period ending October 31, 1987 for entities that are affiliated with registered brokers or dealers or government securities brokers or dealers that have registered or filed notice under section 15C(a)(1) of the Act, whose sole government securities business consists of meeting contractual obligations entered into prior to July 25, 1987, and who cease to be government securities brokers or dealers on or before October 31, 1987. Because the market risk ("haircut") feature of the financial responsibility rules, as well as related possession or control rules, do not become effective until that date and because the entity would be entering into no new transactions, the major effects of this exemption are to avoid the need for short-term registration and not to place regulatory capital requirements on entities with respect to transactions with counterparties who

[21] Branches and agencies of foreign banks are unincorporated offices of foreign banks. They may be federally or State licensed, and a limited number are insured by the FDIC. Federally licensed branches and agencies are subject to examination by the Office of the Comptroller of the Currency; State-licensed branches and agencies are subject to state oversight with additional examination authority in the Federal Reserve Board.

[22] Department of the Treasury, National Treatment Study (1988 Update), at 1 (1988).

did not rely on such requirements being in place.

The Department notes that the exemption is very limited, and that since dealing with customers in order to provide financing for the open commitments would be prohibited, entities contemplating consolidation may wish to start moving their government securities business into the registered broker or dealer or registering government securities broker or dealer substantially before July 25. Moreover, this exemption is not meant to provide a general three-month delay in the registration requirement; any entity that does not register relying on this exemption and that continues to enter into transactions as a government securities broker or dealer after July 25, 1987, will be in violation of the Act after July 25 as an unregistered government securities broker or dealer.

8. *Section 401.8.* The Department received seven comments concerning the effect of the regulations on CFTC-regulated entities, four of which specifically asked that such entities be exempt from registration and/or other specific requirements in the regulations. Three of the comments came from designated self-regulatory organizations, and one from the Commodity Futures Trading Commission.

The question whether any CFTC-regulated entity should be regulated as a government securities broker or dealer was one that was considered by Congress as the GSA was nearing final passage. Rejecting the request of the futures industry for a complete exemption, Congress provided in sections 3(a)(43)(B) and 3(a)(44)(D) of the Act that CFTC-regulated entities whose government securities business was "incidental" to their futures related business, as determined by the SEC in consultation with the CFTC, would not be considered to be government securities brokers or dealers. As the Senate Committee Report noted, "[i]f it is found [by the SEC] that firms under the CFTC's jurisdiction are acting as government securities dealers, then the regulatory provisions of the bill would apply to their activities." [23]

On February 25, 1987, the SEC published a proposed rule defining the term "incidental" for purposes of sections 3(a)(43)(B) and 3(a)(44)(D) of the Act.[24] The Commission received a number of comments suggesting that the proposed rule was not broad enough to cover fully all incidental transactions. The Department has consulted with the Commission and is confident that, with the benefit of the comments received on its proposed rule, the Commission will be able effectively to distinguish government securities brokers and dealers who happen also to be CFTC-regulated entities from CFTC-regulated entities whose government securities transactions are incidental to their futures related business.

The Department is of the opinion that if Congress had regarded it as proper for the Department to exempt all CFTC-regulated entities from registration, not only would sections 3(a)(43)(B) and 3(a)(44)(D) of the Act have been unnecessary, but the task of defining "incidental" would have been assigned to the Department rather than the Commission. The Department therefore is not providing such an exemption. However, in recognition of the uncertainty that has necessarily been created by the need for the Commission to issue its rule and the fact that CFTC-regulated entities are in fact subject to federal regulation, new § 401.8 of the temporary regulations provides that government securities brokers and dealers that are CFTC-regulated entities not currently the subject of any disciplinary action shall not be required to register and shall be exempt from all GSA regulations until October 31, 1987. The Department expects that this delay will provide an opportunity for the NASD and the National Futures Association and other CFTC designated self-regulatory organizations to develop a set of procedures that will minimize the paperwork and examination burden on entities that must register under the GSA.

Issues concerning capital, segregation and reporting and audit requirements applicable to government securities brokers and dealers that are CFTC-regulated are discussed in the section-by-section analysis of Parts 402, 403 and 405 respectively. The Department has acceded to requests to allow CFTC-regulated entities to compute capital using the methodology of the CFTC and the SEC, rather than the methodology of § 402.2, but is requiring compliance with the Treasury's possession or control rules for the non-futures related portion of such an entity's business.

9. *Other exemption requests.* Five comments were received concerning "small arbitrageurs," four of which asked for an exemption from registration. The entities at issue are described as firms that "carry a substantial inventory and bid and offer securities in order to invest their assets or put on the desired arbitrages," and that do business with both brokers and dealers and large investors. All five comments suggested that, because of several features of the capital requirements, the firms could be put out of business if required to register, thereby harming the liquidity of the market.

As noted in the discussion of offset haircut factors in the analysis of Part 402 below, the Department has determined to lower the offset haircut factors. The Department believes that, as a result, the dire consequences of regulation predicted by the comments are unlikely. Moreover, an exemption from registration would be inappropriate in any event. The purpose of the GSA was to make certain that those who trade government securities with customers are subject to Federal registration, oversight and regulation.[25] The entities harmed by the dealer failures that led to passage of the GSA were not small individuals but institutions controlling large sums of money. To the extent the arbitrageurs are acting solely as traders, they are not dealers and not subject to registration.[26] If they are dealing with customers, however, they must register.

Two entities that broker repurchase transactions also requested registration exemptions. The Department believes that the business of such entities, even if done on a fully-disclosed basis, is brokerage business within the definition of the Act and that such entities should be registered. The Department notes, however, that neither the capital nor the possession or control rules will be particularly burdensome on entities that do business on a fully disclosed basis and do not clear transactions or hold customer securities.

### *C. Part 402. Financial Responsibility*

1. *Section 402.1.* This section provides that certain government securities brokers and dealers are not subject to this part, provides a special capital rule that certain government securities brokers may elect, and states the effective date of the part.

#### Futures Commission Merchants

Several commenters pointed out that futures commission merchants that may be required to register as government securities brokers or dealers are already

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[23] See S. Rep. No. 99-426, 99th Cong., 1st Sess. at 20 (1985).

[24] Securities Exchange Act Release No. 34-24135 (February 25, 1987), 52 FR 6940 (March 3, 1987).

[25] Unlike financial institutions, the arbitrageurs are not subject to any system of federal supervision.

[26] See SEC No-Action Letters cited at note 20 above.

subject to the capital requirements of the Commodity Futures Trading Commission and felt that an additional capital rule was unnecessary. One commenter suggested that futures commission merchants that are also government securities brokers or dealers be required to meet the higher of the CFTC's capital rule (17 CFR 1.17) or the Treasury capital rule (§ 402.2).

The temporary regulations amend the proposed regulations by adding new paragraph (d) stating that the capital rule applicable to a government securities broker or dealer which is also a futures commission merchant subject to the CFTC's capital rule is the higher of the requirement of the CFTC's Rule at 17 CFR 1.17 or the SEC's Rule 15c3–1.[37] Forcing already federally regulated entities to calculate haircuts on government securities two different ways is needlessly burdensome. The SEC and the CFTC impose identical haircuts on positions in government securities, and new paragraph (d) puts the same capital requirement on newly registered government securities brokers and dealers that are also futures commission merchants as applies to currently registered broker-dealer/futures commission merchants.

### Branches and Agencies of Foreign Banks

One commenter requested that branches and agencies of foreign banks be exempt from this part. As discussed above in connection with § 401.6, the Department has acceded to that request.

### Interdealer Brokers

One commenter requested that the definition of "government securities interdealer broker" be broadened to include brokers that provide brokerage services for entities other than dealers. Also, several commenters requested that the definition be changed to allow such brokers to engage in overnight repurchase and reverse repurchase agreements for certain purposes. These commenters suggested in addition that "give-up receivables," "net pair-off receivables," and "money differences" be allowed a grace period before being deducted as unsecured receivables and that a grace period longer than five days be given for fails to deliver of mortgage-backed securities and zero-coupon instruments.

The Department is aware that there are government securities brokers who will not be covered by the definition of government securities interdealer broker because their client base includes non-dealers. Under the temporary regulations such brokers will be subject to § 402.2 rather than § 402.1(e). Neither of these two rules, however, may be entirely appropriate for these brokers. If the definition of brokers eligible to elect § 402.1(e), which incorporates much of SEC Rule 15c3–1, were broadened to include brokers that have non-dealer counterparties, such brokers could find that the definition of aggregate indebtedness would cause them difficulty. The Treasury understands that when a "customer" of a broker, as distinguished from a counterparty who is a dealer or broker, does not deliver a security to the broker on the settlement date, the resulting customer payable is included in aggregate indebtedness.

The Department was reluctant, in the short time available to prepare these temporary regulations, to make alterations to basic SEC concepts or to broaden the definition of government securities interdealer broker without having adequate time to study the implications of such changes. However, the Department is aware of the significant contribution to market liquidity of certain government securities brokers and plans to continue discussing their concerns with them. The Department will consider whether the more appropriate response to these concerns, if some accommodation is necessary, is a change in the rule or exemptions from certain requirements of the rule on a case-by-case basis.

A significant change in the government securities interdealer broker rule from the version in the proposed rule is the introduction of a counterparty exposure haircut. This haircut, which is the same as the one now in § 402.2 (discussed below), results in a five percent deduction for a government securities interdealer broker's exposure to counterparties. This net exposure does not include the deductions taken from net worth for unsecured receivables, repurchase and reverse repurchase agreement deficits, aged fails to deliver, and aged fails to receive. The net exposure to different counterparties may not be netted against each other.

An example of net exposure is a broker fail to deliver outstanding for less than five days. If the price of the underlying security has dropped below the contract price, the difference in the two prices is the exposure. The Department believes that the greatest exposure of government securities interdealer brokers is during the when-issued period for Treasury securities and believes that this five percent haircut will serve to encourage brokers to monitor more carefully what their counterparties are doing. While Treasury does not want to contract the when-issued market, government securities interdealer brokers should be encouraged to monitor risk. The counterparty exposure haircut should thus serve to reduce the risks inherent in the type of blind brokering engaged in by the government securities interdealer brokers and will ensure that these brokers have some capital to serve as a cushion in case of unexpected developments.

The temporary regulations allow a grace period of one business day for government securities interdealer brokers for net pair-off receivables and money differences. A pair-off is the offsetting with the same counterparty of contracts for identical par amounts of the same security, and a net pair-off receivable is the amount owed by the counterparty after taking into account all pair-offs. Since pair-offs reduce the number of transfers of securities, including transfers over the book-entry system for Treasury and other government securities, and since exposure while a net pair-off receivable is outstanding is similar to exposure due to fails, a one-day grace period seemed reasonable to grant government securities interdealer brokers. The Department's understanding is that many of the firms likely to qualify as government securities interdealer brokers do substantial pairing off of government securities transactions. The Department understands that the NASD will modify its interpretation concerning the required bookkeeping with respect to pair-offs in light of the substantial volume of pair-offs done by government securities brokers. The Department also deemed it reasonable to grant the same treatment for money differences, which arise from various types of errors.

A 30-day grace period from the billing date for give-up receivables is also granted to government securities interdealer brokers in these temporary regulations. The billing date may not be later than the last day of the month in which the transaction in question arose. Give-up receivables arise from the practice of brokers of giving up the names of parties to a trade in mortgage-backed securities after a certain amount of time has elapsed. The principals settle the trade with each other and the broker bills the principals for its commission. This commission is the "give-up receivable." Since the SEC grants 30 days for commissions receivable from other brokers or dealers before requiring a deduction from net worth, it seemed reasonable that government securities interdealer brokers also have 30 days. The distinction, due to the nature of the

[37] 17 CFR § 240.15c3–1.

transaction, in that while under the SEC rule, the 30-day period commences on the date on which the receivable arose, the temporary regulations begin the period from the billing date, since the broker has no part in the transfer of the funds or the securities in connection with the transaction.

Since the SEC only grants five days grace for fails to deliver on mortgage-backed securities and zero-coupon instruments based on Treasury securities, it was not deemed appropriate to grant a longer grace period in this rule. If a longer grace period is needed for these instruments, the Department believes that this should be granted all brokers and dealers at the same time and hence such action should be taken in coordination with the SEC.

Changes were made in the definition of government securities interdealer broker in order to describe better their activities and to permit them to engage in repurchase and reverse repurchase transactions in limited circumstances. The Treasury plans to review the capital rule for government securities interdealer brokers at a later date in light of possible changes in the business of these entities and in order to ascertain whether a rule based on a volume to capital ratio test might be more appropriate.[28]

Paragraph (f) concerning exemptions has been deleted as redundant with § 400.2.

### Effective Date

Several commenters suggested that the Treasury rule exempt from the haircut calculations positions entered into before the effective date of the rule. The Department has decided not to follow that suggestion. It is felt that the changes in the offset haircut factors, discussed below, will mitigate some of the concerns of arbitrage houses that are government securities brokers or dealers, that there is sufficient time to adjust positions in order to be in compliance with the rule, and that "grandfather" provisions add an extra, and unnecessary, layer of complexity to the capital rule and its enforcement.

The effective date of the capital rule, except for certain minimum liquid capital requirements effective July 25, 1987, has been changed from October 25, 1987 to the last business day in October 1987.

2. *Sections 402.2 and 402.2a.* Section 402.2 is the capital rule for government securities brokers and dealers, and § 402.2a (Appendix A) is the detailed description of the calculation of the market risk haircut.

### Option To Use SEC Capital Rule

Several commenters advocated that a choice be allowed between this capital rule and SEC Rule 15c3–1. The Department considers this rule more appropriate to firms specializing in government securities both because of the ratio requirements and the risk measurement principles.

The Treasury haircut methodology provides a more accurate system for recognizing the reduced risk of hedged positions than the SEC methodology, which in some cases is more generous and in other cases less generous than the Treasury rule. Also, the inclusion of financings, mainly repurchase and reverse repurchase agreements, in the total haircut calculation in the temporary rule is a recognition of the importance of a major financing technique in the market and a recognition that term repurchase and reverse repurchase agreements can serve to offset the risk in the position being financed.

Linking capital requirements to aggregate indebtedness or aggregate debit items as computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to SEC Rule 15c3–3)[29] may not be appropriate in all cases for specialized firms. The activities of government securities brokers and dealers may generate very little aggregated indebtedness or aggregate debit items. Consequently, the Department believes that the direct link between liquid capital and measured risk of the Treasury rule serves better to focus a government securities broker's or dealer's attention on the amount of liquid capital needed in order to undertake prudentially a given level of risk.

Since many SEC concepts are incorporated in this rule, the major innovation and element of complexity is the haircut calculation. However, the haircut calculation is in fact simpler than it appears on the surface, and it is relatively simple to write a computer program to calculate the numbers. In fact, most of the complexity once that is done is the same as with the SEC Rule and revolves around definitional issues. There seems no way around this problem for a financial responsibility rule that is meant to apply to a complex and fast changing business.

Some commenters emphasized that there should be a goal of having a uniform capital rule for all brokers and dealers. The Department agrees with that goal and intends to work with other government agencies and market participants towards that end.

### Definition of Liquid Capital

Three additional modifications, not in the proposed rule, have been made to SEC net capital in order to arrive at liquid capital. The temporary rule clarifies that the deduction for securities that are Treasury market risk instruments that are not delivered to "customers" 5 days after the settlement date is based on the appropriate haircut factors of § 402.2(f)(2). The same provision made for government securities interdealer brokers regarding net pair-off receivables, give-up receivables and money differences is granted here. The Department intends, for this purpose, to make no distinction between dealers and customers. Also, as discussed below, the treatment of unlisted options that are Treasury market risk instruments has been modified.

### "Excess" Margin on Reverse Repurchase Agreements

In response to the specific question concerning whether "excess" margin on reverse repurchase agreements is better treated in the financial responsibility rule or in the possession and control rules, no commenter favored capturing excess margin in the Reserve Formula of

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[28] The Department received one comment from a large non-primary dealer requesting that the Department require open trading access to interdealer brokers in its regulations. Section 101 of the GSA requires the General Accounting Office (GAO) to study and report to Congress on this issue.

The Department has concluded that Treasury does not have the authority to require open access. In mandating the study, the House Banking Committee stated that "the issues relating to blind brokering are complex. Therefore, on the basis of the existing record, a final resolution of this issue is premature." H. Rep. No. 99 296, 99th Cong., 1st Sess. at 36 (1985). It is highly unlikely that Congress nevertheless intended to give the Department the authority to resolve the issue. Moreover, the extent of the Department's rulemaking authority under the GSA is limited, and is restricted to the items listed in section 15C(b)(1) of the Act, none of which in any way suggests the authority to require any government securities broker to trade with any given party or group of parties. Section 15C(b)(2), cited by the commenter as providing such authority, is "not intended, however, either to expand or to limit the scope of the Secretary's rulemaking authority under the bill." 132 Cong. Rec. S15796 (Oct. 9, 1986, remarks of Senator D Amato).

[29] 17 CFR 240.15c3–3a. Under SEC rules, aggregated indebtedness may not be greater than 15 times the amount of "net capital," the determination of which includes all securities haircuts and other deductions. For broker-dealers electing the alternative net capital requirement of Rule 15c3–1, net capital must be the greater of $100,000 or 2 percent of aggregate debit items in the Reserve Formula. Electing the alternative has the effect of increasing the amount of funds a broker-dealer is required to maintain in a "Special Reserve Account for the Exclusive Benefit of Customer."

SEC Rule 15c3–3.[30] The Department posed the question because, in general, the financial responsibility rules treat risk that the dealer or broker bears, including exposure to others, while risk that customers are exposed to is dealt with in the possession and control rules. Incorporating excess margin on reverse repurchase agreements in the capital rules, such margin being the dealer's counterparty's, not the dealer's, exposure, is a departure from this normal distinction. However, the Department appreciates that market participants do not wish this particular element of risk to counterparties to be included in the Reserve Formula. As these temporary rules are being prepared, the SEC is preparing to issue its rule on this subject. After the Department has a chance to study the SEC rule regarding excess margin on reverse repurchase agreements, it will decide whether some variant of the rule should be incorporated in Treasury,s capital rule.

Repurchase Agreement and Reverse Repurchase Agreement Deficits

Because § 402.2 starts with a calculation of net capital as defined in Rule 15c3–1(c)(2), SEC charges for repurchase agreement and reverse repurchase agreement deficits will be picked up by this rule. The Department understands that the SEC will be giving a grace period for margin calls, as two commenters to Treasury's proposed regulations mentioned should be done. The Department hence plans to allow the SEC changes to affect government securities brokers and dealers subject to the Treasury rule. Treasury plans, when the SEC promulgates its rule, to clarify that tests involving repurchase agreement deficits and tentative net capital should be made with respect to a preliminary determination of liquid capital for those subject to the Treasury capital rule.

Fails To Deliver on Mortgage-Backed Securities

The Department has decided not to grant a longer grace period than the SEC allows for fails to deliver on mortgage-backed securities. The Department believes that such action should be undertaken in coordination with the SEC in order to assure comparable treatment for those covered by the Treasury capital rule and the SEC capital rule.

Unlisted Options

It was pointed out by several commenters that the treatment of unlisted options in the proposed rule contained a double charge. Since the proposed rule incorporated SEC Rule 15c3–1(c)(2)(i)(B) (*1*) and (*2*),[31] the time value of an unlisted option was disallowed in determining net worth. For a long position in an unlisted option, this meant that there was in effect a deduction of the time value of an unlisted option in determining liquid capital and in addition a haircut, which could be the market value of the option. Moreover, short positions in unlisted options received favorable treatment under the proposed rule, because only the intrinsic value, not the market value, was counted as a liability.

This unintended treatment of unlisted options has been changed in these temporary regulations. Unlisted options which are Treasury market risk instruments are evaluated the way listed options are for the determination of net worth and liquid capital (i.e., unlisted options which are Treasury market risk instruments are removed from Rule 15c3–1(c)(2)(i)(B)(*2*) and put in (B)(*1*)). Unlisted options which are not Treasury market risk instruments are treated as before, i.e., they are evaluated as set forth in Rule 15c3–1(c)(2)(i)(B)(*2*) and the haircut is as specified in Appendix A to 15c3–1.[32]

The haircut scheme for unlisted options that are Treasury market risk instruments is the same as in the proposed regulations, and such options can be used to hedge other positions for haircut purposes. In addition, long positions in unlisted options which are Treasury market risk instruments are subject to a new five percent counterparty exposure haircut, which is discussed below.

Commenters are again invited to address the capital treatment of options, both listed and unlisted. Would a more sophisticated and complex measurement of risk be desirable? Should unlisted options be treated significantly differently because of the difficulty of realizing more than the intrinsic value of long positions in a liquidation situation and the absence of a readily available market, or should they be in the same framework as listed options in order that the risk reduction of hedging between the two can be recognized?

REMICs, CMOs and Stripped Mortgage-Backed Securities

Several commenters advocated that all mortgage-backed instruments that are government securities, including real estate mortgage investment conduits, collateralized mortgage obligations, and stripped mortgage-backed securities be included in the definition of Treasury market risk instruments. Some argued that not including these securities in the definition of Treasury market risk instruments constituted unfair treatment.

The Department does not believe that the exclusion of certain mortgage-backed securities from the definition of Treasury market risk instrument is unwarranted or prejudicial.

The Treasury market risk haircut is designed to measure market risk. Conventional mortgage-backed securities which are government securities are included in the Treasury market risk haircut framework. Other types of mortgage-backed securities are accorded the haircuts found in the SEC Rule. The new mortgage-backed instruments that the market is creating have substantially different market risk profiles than conventional mortgage-backed securities or Treasury securities. In fact, a primary reason that these new types of securities have been developed has been to alter the market risk profile that attaches to conventional mortgage-backed securities. Inclusion of these instruments in the Treasury market risk haircut framework, which not only applies haircuts to positions in securities but also attempts to quantify the reduction in risk for hedged positions, would require a rule of much greater complexity than the present one. Moreover, new instruments are being created all the time in this area and it would be impossible for the rule to keep up with the new products.

Given this, there is no perfect solution as to how to treat positions in these instruments for purposes of the capital rule. It was decided to accord government securities brokers and dealers the same treatment for positions in these instruments as is accorded registered broker-dealers under the SEC Rule. In fact, for many of these instruments the treatment is quite favorable since the haircuts for these instruments under the SEC Rule are the same as for Treasury securities despite greater market risk. Furthermore, if it serves to lower the haircut on other securities, Treasury market risk instruments may be removed from the Treasury market risk haircut scheme and placed in the SEC framework. Hence, reduction in haircuts permitted under the SEC rule for offsetting positions of Treasury market risk instruments and other instruments, including mortgage-backed securities that are not Treasury market risk

[30] 17 CFR 240.15c3–3.

[31] 17 CFR 240.15c3–1(c)(2)(i)(B)(*1*), (*2*).

[32] 17 CFR 240.15c3–1a.

instruments, is allowed under the Treasury rule.

Money Market Instruments

One commenter suggested that the maximum permitted maturity of money market instruments that are included in the definition of Treasury market risk instrument be no more than one year rather than less than one year. This change has been made.

When-Issued Positions

Commenters that addressed the Department's question whether there should be a valuation method given in the rule for when-issued positions in Treasury securities before the coupon is known responded in the negative. Accordingly, no valuation methodology for such positions is given in the temporary regulations. It is expected that the designated examining authority can ascertain whether a government securities dealer's or broker's valuation methodology is reasonable.

In response to one commenter's question whether when-issued positions may give rise to a deduction as an unsecured receivable to the extent that the position shows an unrealized gain, the answer is no. When-issued positions are, however, included in net credit exposure for purposes of the counterparty exposure and concentration of credit haircut calculations discussed below. When-issued positions in Treasury market risk instruments are treated as net immediate positions for purposes of the Treasury market risk haircut calculations, and when-issued positions in other securities are treated as open contractual commitments.

Haircut Factors

A number of commenters criticized the futures and options offset haircut factor of twenty percent as too high; however, there was less comment about the category offset haircut factors. To compare the category offset haircut factors and the futures and options offset haircut factor, which is applied to a haircut rather than a position, the category offset haircut factors need to be expressed in terms of a percentage of the net position haircut factors. Comparing the factors in this way, it will be apparent that the futures and options offset haircut factor was lower than the category offset haircut factors in the proposed rule.

Nevertheless, the Department has concluded that the category offset haircut factors were too high. These have been significantly lowered as a result of study of the correlation of yields of various maturities within the maturity categories over various time periods. The revised category offset haircut factors expressed as in the rule and as a percentage of the net position haircut factor for their respective categories are given in the table below:

| Category | Offset haircut factor (percent) | Offset haircut factor as a percent of net position haircut factor (percent) |
|---|---|---|
| A | ([1]) | ([2]) |
| B | 0.02 | 15 |
| C | .03 | 15 |
| D | .07 | 15 |
| E | .22 | 20 |
| F | .44 | 20 |
| G | .50 | 15 |
| H | 1.00 | 20 |
| I | 1.55 | 20 |
| J | 3.38 | 30 |
| MB | .66 | 20 |
| AR | .22 | 20 |

[1] None.
[2] Not meaningful.

However, study of the correlation of the implied yields of futures prices with yields on cash market instruments has led the Department to conclude that the futures and options offset haircut factor of 20 percent is appropriate. With the reduction in the category offset haircut factors, the futures and options haircut factor is at a comparable level.

The Department is cognizant that the offsetting methodology within categories does not give relative credit for the reduction in risk due to duration-based hedging. To better deal with duration-based hedging would require either more categories or a more complicated offsetting procedure within categories. If a significant number of government securities brokers and dealers feel that a more complicated methodology for recognizing hedges would be beneficial to them and worth the extra complexity, the Department will consider the possibility of providing a more complex rule as an alternative to the present rule for those desiring it.

The hedging disallowance haircut factors have been revised by examining yield volatilities over a longer time period and, hence, a wider range of market conditions. Greater weight, however, has been given to recent market conditions. Compared to the factors in the proposed rule, six factors have been decreased, three factors have been increased, one has been added and one has been disallowed. In general, the revised hedging disallowance factors increase the recognition of the reduction in risk obtained by hedging between categories.

A number of commenters expressed concern about the frequency of changes in haircut factors. The Department does not intend to change haircut factors unless there is a significant change in market conditions and will provide government securities brokers and dealers notice of changes before they become effective and a chance to comment.

Changes in haircut factors would most likely become appropriate if there is a significant change in the level of interest rates. Other things equal, an increase in interest rates would justify lowering the net position haircut factors. The reason is that the "duration" of fixed income instruments decreases as interest rates increase; in other words, the price of a bond moves less to effect a given change in yield at a higher level of interest rates than at a lower level. Of course, if higher rates are accompanied by significantly increased volatility in yields, the two effects could cancel out, leading to no reason to change net position haircut factors. Also, higher interest rates will mean that the mapping of zero-coupon instruments into the categories will have to be changed. The reason is that the aforementioned effect of an increase in rates does not apply to zero-coupon instruments since the duration of such an instrument is always its maturity. Of course, lower rates would, other things being equal, imply that the net position haircut factors should be increased and would also affect the mapping of zero-coupon instruments into the categories.

The Department believes it would be useful to provide government securities brokers and dealers with a more detailed discussion of the derivation of the net position and category pair hedging disallowance haircut factors than was presented in the preamble to the proposed rule. Such a description is included in Appendix B to this preamble.

The Department has considered the request of some primary dealers that they be granted a 25 percent reduction in haircuts in recognition of their large size and frequency of turnover of positions. The Department has decided not to include such a reduction in the temporary regulations. The Department does not believe that the capital requirement of firms in a similar business should differ depending on whether they have a business relationship with the Federal Reserve Bank of New York. The significant reduction in offset haircut factors in the temporary regulations from the proposed regulations should meet much

of the concern of primary dealers of excessive haircuts.

"Synthetic Futures"

Several commenters urged special treatment for identified synthetic forward transactions. The Department believes that a special rule for identified offsetting positions introduces an unwarranted element of complexity. Moreover, it is not immediately apparent that a synthetic forward has exactly the same risk characteristics as an actual forward or futures position. Composed of more than one transaction, it would appear that a synthetic forward would be more difficult to liquidate, if that should prove necessary, than a forward or futures position. The Department believes that arbitrage firms concerned about this will find that the reduction in offset haircut factors meets many of their concerns.

Category Placement of Options

With respect to options in the haircut framework, the temporary regulations have been clarified to indicate that an option on a futures contract is placed in the category in which the underlying instrument, in this case the futures contract, would be placed. This becomes important in the case of options on futures on Treasury bills.

Repurchase and Reverse Repurchase Agreements to Maturity

One commenter said that the treatment of repurchase and reverse repurchase agreements to maturity is inappropriate under the proposed rule. However, the Department understands that the SEC views a repurchase agreement that matures on the same day as the underlying security as a sale and a reverse repurchase agreement that matures on the same day as the underlying security as a purchase. The Department expects that these transactions will be viewed in this manner by the SEC and the designated examining authority for the purposes of this rule.

Concentration of Credit and Counterparty Exposure Haircuts

Several commenters criticized the concentration of credit haircut as applying to credit exposure to counterparties for which a capital charge had already been taken. The temporary regulations provide that net credit exposure to a counterparty does not include the deductions taken from net worth for unsecured receivables, repurchase and reverse repurchase agreement deficits, aged fails to deliver, and aged fails to receive in connection with the counterparty.

In addition, the definition of net credit exposure has also been changed to include exposure to all banks, except for demand deposits at commercial banks. Custodial holdings of securities at a clearing bank or clearing broker of a government securities dealer or broker are removed from net credit exposure. In response to the comment of a clearing bank, the reference made in the rule to clearing banks and brokers no longer contains the modifier "principal." It is expected that the designated examining authority can ascertain whether a clearing relationship is "genuine."

As indicated above, the credit risk ascribable to long positions in unlisted options which are Treasury market risk instruments is measured by including the market value of such positions in the calculation of net credit exposure to the writer of the unlisted option.

The elimination of double counting of exposure in the definition of net credit exposure allows the introduction into the rule of the counterparty exposure haircut contained in the FRBNY capital adequacy guidelines and not included in the proposed regulations because of the double counting problem. The temporary regulations provide that net credit exposure to a counterparty is assessed a five percent haircut. This new counterparty exposure haircut is assessed on net credit exposure to a single counterparty of less than or equal to 15 percent of liquid capital. When the net credit exposure to a single counterparty is greater than 15 percent of liquid capital, the counterparty exposure haircut of 5 percent is calculated on the amount equal to 15 percent of liquid capital and a concentration of credit haircut factor of 25 percent is applied to the net credit exposure in excess of 15 percent of liquid capital.

The Department believes that the counterparty exposure and concentration of credit haircuts are an important innovation to securities market regulation. While these haircuts are much less onerous than 100 percent capital charges, they reinforce the prudent discipline of monitoring exposure to all counterparties. There is no grace period before the exposure is included in these haircut calculations. Thus these haircuts both reaffirm the principle that greater risk requires greater capital and require firms to have systems in place enabling them to monitor net credit exposure to counterparties at all times.

3. *Section 402.2c.* Appendix C has been rewritten to clarify that when consolidation of subsidiaries or affiliates is required in the case of a guarantee, or desired in order to obtain flow through capital benefits which is permitted under certain conditions, the entire consolidated entity (parent, subsidiaries, and affiliates) must as a whole meet the liquid capital to total haircut requirement. In addition, any subsidiary or affiliate that is a government securities broker or dealer must meet the liquid capital or net capital requirement to which it is subject.

4. *Section 402.2d.* Appendix D relates to satisfactory subordination agreements. No comments were received, and no modifications have been made to this section and the proposed regulations are adopted as the temporary regulations.

*D. Part 403. Protection of Customer Securities and Balances*

Of the more than 70 comment letters that the Department received on the proposed regulations, 32 included comments specifically on Part 403. Most of these comments related to the provisions governing the treatment of securities that are the subject of hold-in-custody repurchase transactions.

1. *Section 403.1.* This section sets forth the applicability of Part 403 to registered brokers and dealers. Technical changes have been made to this section to make applicable to registered brokers and dealers the various Treasury modifications to SEC rules that are contained in Part 403. As stated in the preamble to the proposed regulations, many of these modifications are expected ultimately to be unnecessary as the SEC adopts amendments to its rules concerning hold-in-custody repurchase transactions.[33] In addition, as provided in § 400.2(d) of these temporary regulations, interpretations of the Commission are expressly adopted by reference. Thus, for example, the written consent of a customer to the hypothecation and commingling of securities referred to in SEC Rule 8c–1(a)(1) and § 403.2 need be only a one-time consent. Similarly, in conformity with SEC interpretations, securities acquired by a broker or dealer that are subject to a reverse repurchase agreement transaction are not required to be taken into account in the reserve formula in Rule SEC 15c3–3.[34]

2. *Section 403.2.* This section makes SEC Rule 8c–1 [35] governing

[33] See Exchange Act Release 34–22602, 51 FR 32658 [September 15, 1986].

[34] 17 CFR 240.15C3–3.

[35] 17 CFR 240.8c–1.

hypothecation of customer securities applicable to registered government securities brokers and dealers. A minor change has been made in paragraph (b) of this section to take into account the fact that a loan incidental to clearing services is extended on the date of settlement for the purchase of securities, rather than on the date of the trade.

3. *Section 403.3.* This section makes SEC Rule 15c3–2 [36] applicable to registered government securities brokers and dealers. With the addition of a clarification of terminology, the proposed rule has been adopted as the temporary rule.

4. *Section 403.4.* Section 403.4 contains the rules concerning protection of customer funds and securities that are applicable to registered government securities brokers and dealers. With the exception of § 403.4(e), which governs hold-in-custody repurchase transactions, the rule requires compliance generally with SEC Rule 15c3–3.[37]

One commenter requested that the segregation rule applicable to brokers and dealers be amended to permit an exception similar to § 450.4(a), which permits liens expressly agreed to in writing by the customer for whose account securities are held. As explained below in the discussion of the revisions to § 450.4, that exception was not intended to represent a general exemption from the lien-free possession or control requirements based solely on the written agreement of the customer. It was intended to permit liens directly between a depository institution and its customer. Section 450.4 has been restructured to clarify this by deleting the reference to liens agreed to by a customer and providing that customer securities must be kept free of liens of third parties.

For ease of reference, discussion of other issues in this section has been organized under appropriate subparagraph headings.

Section 403.4 (a)–(d)

Paragraphs (a)–(d) contain technical modifications to the SEC rule that were necessary for applicability to registered government securities brokers and dealers. No changes from the proposed were made to these paragraphs in the temporary rule.

In the commentary to the proposed rule, the Department invited comments on subparagraph (d), which defines "excess margin securities." Specifically, the Department questioned whether, for government securities, 140% of a customer's total debit balance is the appropriate cut-off between margin and excess margin securities. Only three commenters responded to this question directly, although a number of commenters indicated general support for the Public Securities Association's (PSA) comment letter, which did address this issue. The PSA indicated that 140% is appropriate and that, in any case, Treasury should not adopt a percentage below 125%. One dealer also expressed agreement with the 140% and the NASD indicated that the issue requires further study. The Department has decided to retain the 140% in the temporary regulations but may examine the issue further to determine if a lower percentage would be appropriate.

Section 403.4(e)

*Exemption for Certain Dealers.* A few commenters requested that the Department clarify whether government securities brokers and dealers that engage in hold-in-custody repurchase transactions are subject to all the requirements of SEC Rule 15c3–3. They noted that Rule 15c3–3 contains an exemption in paragraph (k)(2)(i) for brokers and dealers who do not hold funds or securities for customers.

The Department has clarified the applicability of the exemption by adding the language "notwithstanding paragraph (k)(2)(i) of this section" at the beginning of § 403.4(e). The effect of this clarification is that registered government securities brokers or dealers that would otherwise be exempt from the requirements of Rule 15c3–3 by virtue of the fact that they hold no customer securities or funds, but that engage in hold-in-custody repurchase transactions, must comply only with new paragraph (b)(4) of SEC Rule 15c3–3 as set out in § 403.4(e), which is specifically applicable to such repurchase transactions. The Department understands from the SEC and the NASD that a specific request for an exemption under paragraph (k)(2)(i) is not required.[38]

One commenter who does hold-in-custody repurchase transactions also urged that it be eligible for the (k)(2)(i) exemption as discussed above if it also performs a non-proprietary function of acting as escrow agent for foreign entities. The Department has concluded that there does not appear to be a sufficient basis for extending the (k)(2)(i) exemption to this escrow agent activity.

*Issues common to §§ 403.4(e) and 403.5(d) relating to hold-in-custody repurchase transactions.* The majority of comments received on § 403.4 relate specifically to § 403.4(e), which governs hold-in-custody repurchase transactions of registered government securities brokers and dealers and § 403.5(d), which governs hold-in-custody repurchase transactions of financial institutions that are government securities brokers and dealers. Common issues raised on both of these sections are discussed jointly here.

In brief, the proposed regulations contained provisions that required (1) that hold-in-custody repurchase agreements be in writing; (2) that the agreements contain specified disclosure language; (3) that the broker or dealer maintain 24-hour possession or control of securities that are the subject of a hold-in-custody repurchase agreement, except under specific circumstances; and (4) that confirmations identifying the subject securities be provided to the counterparty at the initiation of a hold-in-custody repurchase transaction and on any day on which substitutions of the subject securities occur. The comments received on §§ 403.4(e) and 403.5(d) are grouped by issue for discussion below.

Requirement for Written Repurchase Agreement

All but one of those specifically commenting on the proposed rule's requirement that investor hold-in-custody repurchase agreements be in writing agreed with this requirement. Only one commenter objected to it. Two other commenters felt that the broker or dealer should be required to offer a written agreement but the counterparty should be left the option of entering into repurchase transactions without signing a written agreement.

The Department believes that it is important that hold-in-custody repurchase agreements be in writing to reduce the opportunity for misunderstanding the terms under which the transaction will be conducted. The requirement for a written agreement, particularly when combined

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[36] 17 CFR 240.15c3–2.

[37] 17 CFR 240.15c3–3. The Department is aware that, for certain brokers whose counterparties include both dealers and other investors, but that ordinarily do not maintain securities or funds of such investors, the reserve requirement of Rule 15c3–3(e) may not be appropriate. The Department anticipates discussing this issue further to determine if either a class exemption or exemptions granted on a case-by case basis would be appropriate.

[38] It is the Department's understanding that the NASD requires a broker or dealer to declare its qualification for the (k)(2)(i) exemption but does not require prior application and approval by the NASD. However, if a broker or dealer qualifying for the exemption wishes to begin activities that will result in its no longer being qualified for the exemption, it must obtain the prior approval of the NASD.

with the required disclosure language, should provide greater protection for the counterparty to a hold-in-custody repurchase transaction by providing the counterparty with more information on which to make a decision about the risks involved. The Department understands that the master repurchase agreement designed by the PSA is coming into standard use by the industry and that the PSA is preparing to undertake the necessary revisions to meet other provisions of this rule. This effort should substantially reduce the difficulties in implementing the requirement for a written agreement. While this requirement of the rule only applies to hold-in-custody repurchase transactions, the Department believes that, as a good business practice, repurchase agreements involving third-party custody or delivery of securities should also be reduced to writing to evidence clearly the terms of the agreement.

### General Concept of Special Restrictions for Certain Hold-in-Custody Repurchase Transactions

The Department's proposed rule required a broker or dealer to maintain possession or control at all times of securities subject to hold-in-custody repurchase transactions and to obtain the prior consent of its counterparty to each substitution of securities, if the aggregate contract price of all currently outstanding repurchase transactions with that counterparty was less than $5,000,000. When the aggregate outstanding repurchase transactions with a single counterparty exceeded $5,000,000, the proposed rule required possession or control of the securities only at the end of the trading day, provided certain other requirements were met.

Twenty-one commenters responded to this issue generally, fourteen of whom also provided specific alternative recommendations for determining transactions or investors that would be subject to the additional prior consent requirements. Nearly all of the commenters felt that it would be preferable not to place any special restrictions on a particular segment of the repurchase transaction market. These commenters stated that the disclosures proposed by the Department would provide sufficient protection and would enable all repurchase counterparties to make informed decisions about the risks involved in consenting to intra-day use of securities by the broker or dealer. They further noted that the regulated environment now being imposed on all government securities brokers and dealers will also provide additional protection for all customers and counterparties.

Most of the commenters on this issue suggested that any special restrictions for smaller-volume repurchase transactions would probably exclude certain investors from the repurchase market altogether. They felt that most brokers and dealers would simply discontinue offering hold-in-custody repurchase transactions to any investors who could not meet the minimum dollar threshold described above, rather than incur additional operational costs that may be associated with the more restricted transactions. They also suggested that these smaller investors would not be willing or able to enter into repurchase transactions involving third-party custody or actual delivery because of the higher transaction costs associated with these types of arrangements. Out of concern for this potential result, one commenter, the Government Finance Officers Association, a professional association representing state and local government investors, requested that Treasury "revisit this issue." Finally, many of the commenters objected to the imposition of a minimum dollar threshold on the basis that any dollar amount would be arbitrary and would not provide an accurate measure of an investor's ability to understand the risks being undertaken.

The Department recognizes that many other measures being adopted under these regulations, such as the broadening of registration requirements and the financial responsibility, recordkeeping and audit rules, will provide substantial additional protection for government securities investors beyond that which exists currently. However, the Department continues to believe that some additional protection is necessary for the small and possibly less experienced investor in hold-in-custody repurchase transactions.

As noted in the preamble to the proposed rule, it was in large part congressional concern for losses experienced by these investors that resulted in the legislation under which these regulations are promulgated. The Department continues to believe that less experienced investors may not fully appreciate the risks they assume with hold-in-custody repurchase transactions. Although the Department has expanded the disclosures to be required in connection with such transactions, as discussed below, in an effort to describe these risks more explicitly, the Department is unwilling to rely solely on the required disclosure language as an assurance that all investors will understand fully the ramifications of such transactions and will be able adequately to assess both the risks and the benefits. Therefore, the Department has chosen to continue to require stricter possession or control of securities that are the subject of smaller volume repurchase transactions. The Department expects to monitor the efficacy of all of the measures adopted in these regulations, with the assistance of the appropriate regulatory agencies, and may consider modifications to the requirements of the rule at some future date.

### Specific Recommendations for Determining Transaction Levels or Classes of Investors Subject to Additional Consent Requirements

Although as noted above, most commenters opposed any special restrictions for smaller repurchase transactions, fourteen commenters, recognizing that the Department might conclude that some additional restrictions would be appropriate for some class of repurchase transactions, suggested alternatives to the $5,000,000 cut-off described above. A number of commenters indicated their preference for the $1,000,000 transaction threshold suggested by the SEC in its proposed rule governing hold-in-custody repurchase transactions.[39] This proposed rule provided that, for repurchase agreements with a contract price of $1,000,000 or more, possession or control by the broker or dealer is not required during the trading day. Although a few commenters recommended that a $1,000,000 threshold be applied to aggregate outstanding transactions, most commenters opposed any type of threshold based on an aggregate of repurchase transactions. The aggregation concept was viewed by these commenters as too complex and difficult to administer, particularly where overnight or open repurchase transactions are involved and therefore the amount outstanding may be changing daily. Several commenters also indicated that it would be difficult for these purposes to define what constituted a single counterparty, particularly where parent companies, affiliates and subsidiaries of a counterparty may all be doing business with the same dealer.

Several commenters also proposed a variation of the SEC proposed rule that would be based on a dollar threshold

[39] Exchange Act Release No. 34-23652, 51 FR 32656 (September 15, 1986)

during a specified time period. For example, the requirements for 24-hour segregation would not apply if a counterparty had entered into a single repurchase transaction exceeding the minimum threshold amount at any time within a specified period preceding the transaction in question.

One commenter proposed a combination of an "accredited investor" exemption with a minimum dollar threshold applicable to those who would not be exempt as accredited investors. This proposal would adopt a test similar to the accredited investor test of SEC Regulation D under the Securities and Exchange Act of 1933,[40] but would exclude individuals from the list of accredited investors and would raise the required asset size to $20,000,000 for certain categories of accredited investors. This commenter felt that its proposal would identify more accurately those investors who should be considered sophisticated enough to have no additional restrictions placed on their repurchase transactions, regardless of the size of the transaction. Several commenters also suggested adoption of an "accredited investor" exemption alone.

Lower transaction levels of both $500,000 and $250,000 were also proposed by two commenters. Finally, one commenter recommended that dealers with regulatory capital in excess of $200 million and whose volume of activity in the government securities market would entitle them to be considered primary dealers should be exempt from special restrictions on hold-in-custody repurchase transactions.

The Department considered but rejected the proposals that would attempt to distinguish between types of investors as difficult to administer fairly and consistently. Proposals that would test the level of activity over a prescribed period of time were also rejected because the Department felt that such proposals also would be more difficult to administer and would significantly weaken the intent of the rule. Similarly, the Department believes that setting a threshold at an amount significantly less than $1,000,000 is not appropriate in view of the dollar size of the hold-in-custody repurchase transactions involved in some of the losses that led to passage of the GSA.

Furthermore, based on the comments described above, the Department has eliminated from §§ 403.4(e) and 403.5(d) reliance on a measure based on the aggregate of outstanding transactions conducted under a repurchase agreement with a single counterparty because of the administrative difficulties of applying the aggregation concept. Instead, the temporary regulations provide that special restrictions apply for hold-in-custody repurchase transactions with a contract price of less than $1,000,000.

In lowering the limit from the $5,000,000 threshold of the proposed rule, the Department was influenced in part by the fact that many of the commenters felt that disclosure alone would be sufficient protection for investors. Based on these comments, the Department decided to lower the limit and thereby expand the number of investors for whom disclosure would be the primary means of protection. However, as already described, the Department is unwilling to conclude at this time that sole reliance on disclosure is sufficient for all investors. Given the number of commenters that favor the $1,000,000 transaction size limit, the Department believes that this limit would provide adequate protection, when combined with the other measures adopted in these regulations, including the expanded disclosures described below, without eliminating completely a significant group of investors from the hold-in-custody repurchase transaction market or otherwise unnecessarily disrupting the market.

### Right of Substitution

For hold-in-custody repurchase transactions, the Department's proposed rule required consent of the counterparty to limited possession or control of the subject securities by the broker or dealer. This consent, if given, was to be obtained in the repurchase agreement. In addition, for counterparties whose transactions did not, in the aggregate, meet the $5,000,000 threshold of the proposed rule, substitution of securities could occur only with the prior agreement of the counterparty to each specific substitution.

Most commenters supported the requirement for general consent in the repurchase agreement. The PSA suggested that Treasury permit this general consent to be in the form of a notice to customers as to which no objection is made within a reasonable period of time specified in such notice. The Department believes that this proposal is fraught with a number of problems, such as the timing of the notice relative to the occurrence of a substitution, the possibility of non-receipt, the creation of additional paperwork, and most importantly, the fact that the assumption of additional risk would result from the inaction of the counterparty rather than affirmative agreement to those risks. The temporary regulations retain the limitation that substitution of securities subject to hold-in-custody repurchase transactions is not permitted unless the counterparty has granted to the broker or dealer a right of substitution in the written repurchase agreement.

Most of those commenting on this section opposed any additional requirement for specific prior consent to each substitution for smaller transactions. The commenters felt that this additional requirement was unnecessary, extremely burdensome and would likely force most brokers and dealers to stop dealing with counterparties affected by this requirement.

A few commenters also expressed the view that the requirement for confirmation of substitute securities would serve the same purpose as a specific prior consent requirement. One commenter proposed, as an alternative, a requirement for initial consent with recurring confirmation required at specified intervals, such as every two years. The commenter felt that this would address concerns that turnover of personnel might result in the continuation of a practice which new personnel were not aware of or did not fully understand. The commenter also noted that this proposal would reduce the administrative burden and expense of a prior consent requirement.

The Department has retained the concept of an additional consent to substitutions of securities for investors whose transactions fall below a certain threshold. As incorporated in the temporary regulations this rule requires that, if the contract price of a hold-in-custody repurchase transaction is less than $1,000,000, the broker or dealer may not, on any given trading day, substitute or commingle the subject securities with its own securities unless it has received the counterparty's specific consent to substitution for that trading day and has kept a record of such consent. It is the Department's expectation and intent that substitution involving these smaller transactions will not become a routine occurrence and that securities that are the subject of transactions with a contract price of less than $1,000,000 will, for the most part, be kept continuously in the broker or dealer's possession or control. The Department does not intend for a right of substitution for transactions of less than $1,000,000 to be used as a means of circumventing the basic requirement for 24-hour possession or control. The Treasury anticipates that all agencies

[40] 17 CFR 230.501(a).

responsible for enforcement will monitor broker and dealer practices for abuse of the substitution provisions and is prepared to modify the rule if necessary. It is the Department's hope that the additional consent requirements will serve as a reminder to smaller investors of the risks incurred with consent to substitution; additionally, these investors will be afforded the opportunity to refuse substitution for any given trading day. The Department does not agree that the same protection is afforded by after-the-fact confirmations of substitutions.

As a point of clarification, the Department recognizes that once substitution is permitted on a given trading day, as a practical matter there may be multiple substitutions of the subject securities occurring that day. The Department has modified the wording of the consent requirement slightly to reflect that it does not intend that separate consent be required for each separate occurrence of substitution on the same day.

### Required Disclosures

Nearly all commenters agreed with the requirement of the proposed rule for uniform disclosures concerning hold-in-custody repurchase transactions. A few comments suggested some minor language changes.

One commenter felt that the disclosure language regarding coverage of the Securities Investor Protection Act of 1970 ("SIPA") [41] could be "affirmatively misleading" as to registered brokers and dealers in light of a recent court decision in which the court concluded that counterparties to hold-in-custody repurchase transaction are customers that may be eligible for coverage under SIPA. The Department notes that the matter is still pending in the District Court and may be subject to appeal once a final order is entered.[42] Furthermore, the Department understands that, in spite of the decision just described, the Securities Investor Protection Corporation has taken the position that SIPA protection is inapplicable to counterparties to repurchase transactions. Another commenter felt that the language in the proposed regulations indicating that SIPA protection may not apply was confusing as applied to registered government securities brokers and dealers, since they clearly are not eligible for SIPA insurance. In response to these comments, the Department has modified the SIPA disclosure language, providing one statement for use by registered brokers and dealers which discloses the SIPC position with respect to repurchase transactions and another statement for use by registered government securities brokers and dealers.

Two commenters who are major clearing banks urged the Department to adopt a mandatory disclosure requirement, such as that proposed by the SEC in Release No. 34-23602, which would require disclosure of the rights and liabilities of the parties to the arrangement. These commenters felt that the disclosure requirements proposed by the Department would provide a false sense of security regarding the nature of "bulk" segregation accounts used by brokers and dealers to meet requirements for segregating hold-in-custody repurchase transaction securities from the broker's or dealer's own securities. These commenters indicated that, since clearing banks do not recognize any property or other interest of "customers" in the contents of such segregated accounts and the disposition of securities in these accounts is entirely within the control of the broker or dealer, repurchase counterparties need to receive more specific disclosures "setting forth the significant risks that attend such transactions."

Although clearing banks may not recognize interests of individual customers in segregated securities, the Department notes that, pursuant to Parts 403 and 450 of this chapter, both the clearing bank and its dealer customer have certain responsibilities with respect to customer securities. See also the discussion below relating to § 450.2. Furthermore, the Department believes that it is well-recognized that hold-in-custody arrangements generally carry greater risk than a third-party custody or delivery arrangement, based on the fact that the securities are left in the dealer's possession or control. The Department also believes, however, that many counterparties do not understand the full meaning of and the risks associated with standard language contained in most repurchase agreements that provides for substitution of the securities. The Department notes that the SEC proposed rule contained only a general requirement that "the rights and liabilities" of the parties to the transaction be disclosed. In view of a number of legal uncertainties still surrounding various aspects of repurchase transactions, the Department felt that a general requirement for disclosure would lead to broad and varying responses to this requirement. The Department feels that it is preferable to require standard disclosure language that clearly describes the consequences of substitution.

In the temporary regulations, the Department has restructured the proposed disclosure language relating to substitution and intra-day use of the securities into a single statement and has expanded the disclosure language to explain more fully the risks that a counterparty undertakes when it agrees to limited possession or control in a hold-in-custody repurchase transaction. Certain terms ("buyer", "seller") in the required disclosure language appear in brackets. The broker or dealer is permitted to substitute other terms to conform the disclosure language to the terminology used in the repurchase agreement to identify these same parties. However, no discretion is permitted to change any other language in the statements.

### Applicability of Requirements to Overnight Repurchase Transactions

One commenter suggested that overnight repurchase transactions, including those that may be rolled over solely at the customer's specific direction (not automatically as in a sweep arrangement) should be exempt from all of the requirements of the rule relating to hold-in-custody repurchase transactions. This proposed exemption is based on the view that the investor's funds are at risk only overnight, rather than for a specified term.

In a single overnight hold-in-custody repurchase transaction, the counterparty sends funds to the broker or dealer for the securities during the trading day and the broker or dealer segregates the securities for the benefit of the customer at the close of the trading day; at the start of the next trading day, the securities are removed from segregation and funds are then returned to the counterparty. In this scenario, the counterparty is exposed to risk during the time on both trading days that the securities are commingled with the dealer's own securities and the dealer retains control of the funds. In an arrangement in which a counterparty agrees to the "rollover" of an overnight repurchase agreement, either for a specified period of time or under a "good until canceled" agreement, the counterparty bears the additional risk described above for each trading day that the arrangement continues unless

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[41] Public Law 91-598, 84 Stat. 1636, as amended (codified at 15 U.S.C. 78aaa-eee.

[42] *In re Bevill, Bresler & Schulman Asset Management Corp.*, 67 B.R. 557 (D.N.J. 1986) (denying in part cross-motions for summary judgment).

the funds are returned to the counterparty each trading day.

The Department has concluded that such overnight transactions should not be exempt from the possession or control requirements of Part 403. An exemption for overnight transactions, if granted, could encourage the conversion of term repurchase transactions to rolling overnight repurchase transactions, as a means of avoiding the consent and disclosure requirements. Since the counterparty would continue to be exposed to the same risks with overnight as well as term transactions, the counterparty should receive the required disclosures in either case. For these reasons, the Department has not chosen to include in the temporary regulations an exemption for overnight repurchase transactions.

Pool Repurchase Transactions; Specificity of Confirmations

Four commenters suggested that the proposed regulations should not eliminate the possibility of a dealer's entering into hold-in-custody repurchase transactions in which the segregation of collateral is in pooled or bulk form. The Department's understanding is that, under this practice, a dealer will set aside a pool of securities with an aggregate value at least equal to the amount of its outstanding repurchase transactions. The dealer does not identify specific securities as belonging to specific counterparties, and confirmations for these repurchase transactions do not include a description of specific collateral. Instead, the confirmation would only refer to "various securities." Although not always explicitly stated, these comments appear to be directed primarily to the requirement in the proposed rule to confirm the securities that are the subject of a repurchase transaction.

The primary justification given for the practice of pool repurchase transactions is that it relieves the dealer from the operational burden and cost of identifying specific securities to specific transactions. Most of the commenters indicated that they believed that the counterparties to these transactions are no less protected than when specific securities are allocated to their transactions.

A fifth commenter indicated that its practice for some repurchase transactions was to confirm only "various collateral" but nevertheless to allocate specific securities to a specific counterparty at the end of each trading day. This commenter therefore merely suggested that the requirement for confirming securities that are the subject of a repurchase transaction permit confirming "various securities" so long as the dealer maintains records that permit identification of the interest of a counterparty in a specific security.

In addition to the comments just described, other commenters requested clarification of the degree of specific information that must be included in the required confirmation of securities subject to a repurchase transaction. Some of these commenters suggested that the confirmations be required to specify only the issuer, the maturity and the coupon rate, but not either a CUSIP number or, for GNMA mortgage-backed securities, a specific pool number.

The Department has serious questions whether any type of property interest in securities is conveyed to a counterparty when specific securities are not allocated to that counterparty's repurchase transactions. Under the recently proposed TRADES regulations [43] that will govern the majority of transactions in Treasury book-entry securities, the proposed rule of 31 CFR 357.12(a)(3) for transferring securities would require identification of a specific security. The proposed general provision governing transfers of limited interests, located in 31 CFR 357.12(a)(4), does not explicitly require identification of a specific security. However, that provision was drafted on the assumption that whenever a dealer marked its books to show a limited interest in a security in favor of a transferee, it logically would be necessary to identify the specific security in which the limited interest is being granted. Therefore, whether a repurchase transaction is characterized as a secured loan, as an outright sale of a security accompanied by the obligation to later repurchase that security, or as a transaction conveying some other type of limited interest in the underlying securities, under the proposed TRADES regulations, it does not appear that the described practice of segregating collateral for repurchase transactions in pooled or bulk form is effective to transfer an interest in securities.

Furthermore, it is not clear that interests would be conveyed under the existing Treasury and other agency regulations governing transactions in book-entry securities or under other law applicable to government securities not subject to such regulations. If this is the case, then it appears that a counterparty to a pool repurchase transaction would have no greater rights than a general creditor in the event of a failure of its dealer counterparty with respect to a hold-in-custody repurchase transaction.

Given these concerns, the Department has concluded that bulk segregation or pooling of repurchase collateral without identification of specific securities should not be permitted and that the practice of confirming only "various securities" in connection with repurchase transactions is not sufficient to comply with the requirements of §§ 403.4(e) and 403.5(d).

All government securities brokers and dealers are reminded that, aside from the requirements of the temporary rules, they are required to comply with section 10(b) of the Act and all of the rules promulgated thereunder, including SEC Rule 10b–10 concerning issuance of confirmations to customers for security transactions.[44] Under that rule a broker or dealer is required to include in the confirmation, among other items, the identity of the security purchased or sold. The Department believes that confirmations for hold-in-custody repurchase transactions should generally comply with the same standards of specificity as the confirmations required by Rule 10b–10.

To clarify that specific information is required, §§ 403.4(e) and 403.5(d) have been amended to state that a confirmation must include, at a minimum, the issuer, maturity date and coupon rate of the security that is the subject of a repurchase transaction and that the confirmation also must include a CUSIP or GNMA pool number unless other records of the broker-dealer are maintained that identify the interest of the counterparty in a specific security. In addition, the rule now requires that the confirmation also specify the market value of the securities being confirmed. The Department believes that, particularly since market value is the primary basis for determining if substitute securities are acceptable, it should be included on all confirmations relating to a repurchase transaction. Furthermore, since it is information that must be available in any case, requiring its inclusion on the confirmation should not create a substantial burden to the broker or dealer. In connection with this requirement, the Department notes that the PSA standard repurchase agreement incorporates a definition of market value that requires the parties to the agreement to agree on an appropriate source for the determination of market value, which could serve as a basis for

[43] 51 FR 43027 (November 28, 1986). It is anticipated that, when the *Trades* regulations are finalized, other government agencies will adopt similar regulations for their own securities.

[44] 17 CFR 240.10b–10.

the market value reported on the confirmation.

One commenter also inquired whether multiple confirmations would be required where more than one type of security was included in a single repurchase transaction. The Department believes that, as long as all relevant securities are specifically identified, it would be acceptable simply to attach to a single confirmation and incorporate by reference a listing of those securities. The listing, of course, would be required to include all specific information required by §§ 403.4(e) and 403.5(d) for each security.

For purposes of the confirmation requirement, if several substitutions are made during the course of a single trading day, the broker or dealer is required to confirm only the final substitution, i.e., those securities that are being segregated for the counterparty under the transaction at the end of the trading day. As a point of clarification, the reference to confirmation "at the initiation of a transaction" has been modified in the temporary rule to indicate that such confirmation is required at the end of the day on which the transaction is initiated.

Finally, one comment was made to the effect that the rules should specify whether all of the information required to be shown on the confirmations of substitutions must also be included on month-end statements. These rules only address confirmations. Also it is unclear to what requirement the comment refers. Neither the SEC nor the NASD has such a requirement, although the New York Stock Exchange (NYSE) does and the Department understands that many firms not subject to the NYSE rule send such statements to their customers. Except under the NYSE rule, the content of the statements is determined by the individual firm.

Timing of Segregation

Two commenters requested that the rule requiring segregation of securities make clear that segregation of securities that are the subject of hold-in-custody repurchase agreements could occur promptly after the close of the Federal Reserve's securities transfer network. The Department does not believe that it is appropriate as a general matter to attempt to specify the time at which segregation must occur. However, the Department believes that the commenters' concerns in requesting more specificity are adequately covered by § 403.5(b), which allows temporary lags in segregation resulting from normal business operations.[45]

Delivery of Securities to an Affiliate; Delivery to Safekeeping or Trust Departments

Since both §§ 403.4(e) and 403.5(d) impose requirements on hold-in-custody repurchase transactions, certain questions have arisen as to whether a repurchase transaction in which a government securities broker or dealer delivers the subject securities to an affiliated entity would be considered a hold-in-custody repurchase transaction. Since a major purpose of the provisions governing hold-in-custody repurchase transactions is to assure to the extent possible that the securities are handled in a manner that recognizes the interest of the broker's or dealer's counterparty in those securities, the Department is of the view that delivery of the securities to an affiliate allows the transaction to fall outside the requirements of § 403.4(e) or § 403.5(d) only if the counterparty is or becomes a direct customer of the affiliate and the affiliate is then subject either to the requirements of SEC Rule 15c3–3 or the provisions of Part 450 with respect to such securities. If, on the other hand, the affiliate holds the securities for the government securities broker or dealer so that those securities would be subject to disposition solely on the instruction of the government securities broker or dealer, then the government securities broker or dealer would be viewed as "retaining" the securities for purposes of §§ 403.4(e) and 403.5(d) and the transaction would be subject to the hold-in-custody rules.

A related question arises with respect to securities that are the subject of a repurchase transaction between a financial institution and an investor when the securities are delivered to the financial institution's own safekeeping or trust department. The Department is of the view that, if the securities are delivered to a trust function of the financial institution so that the securities are held for the benefit of the counterparties to the repurchase transactions in a manner that would qualify for exemption under § 450.3, then the financial institution would not be viewed as retaining the securities for purposes of § 403.5(d). The Department is also of the view that, if securities are delivered to ordinary safekeeping or custody, then the financial institution would not be viewed as retaining the securities for purposes of § 403.5(d) unless the financial institution also retained the right to substitute securities.

Acceptable Control Locations

Some commenters noted that § 403.4(e) limited acceptable control locations for hold-in-custody repurchase transactions to certain locations described in Rule 15c3–3 and the clearing bank location described in proposed § 403.4(f). The commenters suggested that the other acceptable control locations listed in Rule 15c3–3 (possession or control by another broker or dealer; bona fide items of transfer; and foreign control locations) might also be relevant, though rarely used, and suggested that they not be excluded. The Department has concluded that the control location described in SEC Rule 15c3–3(c)(2), which permits a registered broker or dealer to serve as an acceptable control location, could be an appropriate location for securities that are the subject of a hold-in-custody repurchase transaction. However, the SEC Rule links this control location with an omnibus account for customer securities that is maintained pursuant to Regulation T of the Board of Governors of the Federal Reserve System. Since a registered government securities broker or dealer will not be subject to the requirements of Regulation T, the temporary rule includes a modified version of this control location in § 403.4(f)(2).

However, the Department continues to believe that the other control locations are not relevant or appropriate to hold-in-custody repurchase transactions and has therefore not incorporated them into the temporary regulations. Paragraph (c)(3) of SEC Rule 15c3–3 is a control location for certificated securities that have been forwarded to a transfer agent to record the transfer and issuance of a new certificate. Since government securities are generally not maintained in this manner, the control location would not likely ever be relevant. Even if it were, the Department does not believe that securities that have been forwarded to record a transfer should be the subject of hold-in-custody repurchase transactions. Ordinarily, a hold-in-custody repurchase transaction should be done using only a dealer's own securities. The control location described in paragraph (c)(4) of SEC Rule 15c3–3 includes only foreign entities that have been approved by the SEC as satisfactory control locations. It is the Department's understanding that the SEC has only approved such locations for purposes of maintaining possession or control of foreign

[45] SEC Rule 15c3–3(b)(2) contains a similar provision for non-bank dealers.

securities. Therefore, the control location would not be relevant for hold-in-custody repurchase transactions involving government securities.

Section 403.4(f)

No changes have been made in the temporary rule to the provision that addresses a clearing bank segregated account as a control location, which is now § 403.4(f)(1) (formerly § 403.4(f)). One commenter stated that all depository institutions maintaining securities accounts at a Federal Reserve Bank should qualify as acceptable control locations under proposed § 403.4(f). The Department notes that SEC Rule 15c3–3(c)(5) already generally recognizes such institutions as acceptable control locations. Proposed paragraph (f) was explicitly added to the Treasury rule because the Department felt that the SEC's list of acceptable control locations does not clearly include segregation accounts maintained by brokers and dealers at clearing banks.

One clearing bank commenter noted that agreements with a dealer concerning a segregated account that may qualify as an acceptable control location, as described in proposed paragraph (f), are often handled in side letters rather than directly in the dealer's clearing agreement. The commenter suggested that this subparagraph be amended to permit the segregated account to be established pursuant to a written agreement other than the clearing agreement. Because of the importance of the segregated account as a means of assuring that securities are free of clearing and other liens when required, the Department believes that the provisions necessary to qualify as an acceptable control location, as described in § 403.4(f)(1), should be part of the clearing agreement itself to avoid any ambiguity.

Section 403.4(g)

Paragraph (g) has been modified slightly, in response to a comment, to clarify that a broker or dealer's obligation to give telegraphic notice of its clearing bank's refusal to place securities in a segregated account does not arise unless the clearing bank refuses to segregate the securities by the end of the day on which the broker or dealer instructed such segregation.

Section 403.4(h)

No changes have been made to paragraph (h), regarding delivery or disposition of securities. One commenter requested confirmation that government securities brokers and dealers are permitted to retain as much collateral as they believe reasonably necessary to collateralize indebtedness of their customers. The Department believes that this is already made clear from the wording of the last clause of paragraph (h) which refers to excess margin securities not reasonably required for collateral.

Sections 403.4(i) and 403.5(c)(1)

Paragraph (i) of the proposed regulations made applicable to government securities paragraph (m) of Rule 15c3–3 requiring a buy-in of securities after ten days to complete a sell order of a customer (other than a short sale). This provision had been suspended indefinitely by the SEC in 1973 with respect to certain securities, including government securities, because of the difficulty of obtaining these securities and the operational hardships that could result from the buy-in requirement of paragraph (m), particularly with respect to municipal obligations.[46]

The preamble to the proposed regulations also asked specifically whether the time frame for this buy-in requirement or any other time frames in Rule 15c3–3 were longer than necessary. One of these is found in the requirement in paragraph (d)(2) of Rule 15c3–3 that a broker or dealer take action to acquire securities shown as "failed to receive" for more than thirty days.

The commenters who addressed the appropriateness of making paragraph (m) of Rule 15c3–3 applicable to government securities opposed its inclusion, particularly with respect to mortgage-backed securities. They stated that fails of long duration are common in the case of mortgage-backed securities, and that it is likely to be very difficult to buy in a particular security, given the necessity of obtaining a security with a particular pool number.

With respect to paragraph (d)(2) of Rule 15c3–3 (and the similar principle incorporated in § 403.5(c) of the proposed regulations that is applicable to financial institutions that are government securities brokers or dealers), commenters suggested that the thirty-day time frame generally should not be shortened and that it is already too short for mortgage-backed securities, for the reasons cited above. Two of the commenters seemed to suggest that any buy-in requirements for the government securities market could affect its liquidity, although others appeared to support the buy-in requirements in general except for the operational problems with specific securities already mentioned. Two of the commenters suggested some sort of requirement for confirmation of fails as an alternative.

The temporary regulations retain the expansion of paragraph (m) of Rule 15c3–3 with certain modifications. The basic rationale for this provision, along with certain other provisions in Rule 15c3–3, is to require the close-out of transactions after a given period of time. The provision also tends to discourage customers from "playing the market" against a broker when the price of a security goes up after a sell order (other than a short sale) has been executed. The Department believes that these goals are also appropriate for the government securities market, although the provision may be of limited applicability in a market that is primarily a dealer market and where short sales are common practice. The modifications in these regulations make clear that to be deemed a "short sale" for purposes of the rule, the customer must so indicate to the broker or dealer. Also, a longer time period is provided for the buy-in procedure in the case of certain government securities that are more difficult to obtain.

Several commenters indicated that fails of sixty days or more are not uncommon with respect to mortgage-backed securities and suggested that a sixty-day buy-in period be allowed. The Department notes that this situation is likely to improve if the conversion of all mortgage-backed securities to book-entry form is successful. Rule 15c3–3(n) provides authority for an extension of the time periods of both paragraphs (d)(2) and (m), commensurate with the circumstances, upon application of a broker or dealer. For these reasons, the Department has concluded that a thirty-day period is sufficient for these securities for purposes of paragraph (m).

For the same reasons, the Department has concluded that the thirty-day time frame in paragraph (d)(2) of Rule 15c3–3 is appropriate. However, in § 403.5, which contains similar provisions applicable to government securities brokers and dealers that are financial institutions, the Department concluded that it would be appropriate to extend the buy-in period for fails of mortgage-backed securities to forty-five days since the appropriate regulatory agencies for financial institutions do not have authority to grant extensions of time on a case-by-case basis.

The Department plans to monitor the practices in this area with the assistance of the appropriate regulatory agencies and may propose modifications in the future, if appropriate.

[46] 38 FR 12103 (May 9, 1973).

With respect to the suggestion that a confirmation of fails-to-receive be required, the Department believes that it would generally be unworkable. Since a dealer may have several transactions at a time in any given security, questions would arise regarding which customer or customers should be treated as affected by the fail.

Sections 403.4 (j) and (k)

No changes have been made in the temporary rule to these paragraphs relating to the computation of reserve deposits other than technical changes to bring them into conformity with the "liquid capital" references in § 402.2 for registered government securities brokers and dealers other than government securities interdealer brokers or government securities brokers and dealers that are futures commission merchants registered with the CFTC.

One commenter requested confirmation that a government securities broker or dealer that is an affiliate of a financial institution may maintain its reserve deposits at its affiliated financial institution. The Department views this as acceptable, provided that the reserve account at the affiliated financial institution has been established in accordance with all of the requirements of SEC Rule 15c3–3 and of this part, including the requirement in 15c3–3(f) for notification from the financial institution that the reserve account is held for the exclusive benefit of customers of the broker or dealer and that it is not subject to any lien of the financial institution.

4. *Section 403.5.* This section sets forth the possession or control requirements applicable to financial institutions that are government securities brokers and dealers. It incorporates provisions applicable to hold-in-custody repurchase transactions that parallel the requirements of § 403.4(e) discussed above.

Three bank commenters requested that the proposed rules be clarified to indicate that the requirements for possession or control under §§ 403.5 and 450.4 do not prohibit the issuance of "due bills" which are permitted under Regulation D of the Federal Reserve Board, which prescribes reserve requirements for depository institutions.[47] A "due bill" is the obligation that results when a bank sells a security and receives payment but does not deliver the security to the purchasing customer. Section 204(a)(1)(iv) of Regulation D defines "deposit" to include due bills if, after three days from issuance of the due bill, the depository institution has not delivered the securities to the customer or collateralized the due bill with a security of the same type and comparable maturity to that purchased by the customer.

According to one commenter, due bills provide liquidity for the government securities market since a depository institution can offer a security to a customer at a time when the security is unavailable in the market. All three of the commenters on this issue suggested that the provisions of Regulation D provide adequate protection for customers receiving due bills instead of the actual security purchased and that the Department should not adopt duplicative regulations in this area.

The Department notes that Regulation D was issued "for the purpose of facilitating the implementation of monetary policy of the Federal Reserve System," [48] and is not a customer protection rule. Therefore, the Department does not believe that the proposed rules, insofar as they would apply to due bill transactions, constitute duplicative or contradictory regulation.

Under SEC Rule 15c3–3 and under § 403.4, a broker or dealer is precluded from creating a position similar to a due bill with respect to a customer and at the same time accepting and using the customer's funds in its business. The Department believes that banks should be subject to similar constraints. However, because banks are not subject to the provisions of Rule 15c3–3 that require setting aside funds to cover certain broker or dealer obligations to customers,[49] a somewhat different approach is necessary. To assure that good faith efforts are made to obtain the security sold to a customer, § 403.5 is amended in the temporary rules to provide that if the purchase of the security has not been initiated within 24 hours of receipt of the customer's funds, the depository institution is required to place the customer's funds in a deposit account belonging to such customer. It should be noted that if the depository institution has placed an order for the necessary security but the seller fails to deliver it, then the position would be subject to the 30-day possession or control requirement of § 403.5(c)(1)(iii).

Section 403.5(e) is new and is part of the Department's response to the issues discussed above in connection with new § 401.6. As explained above, branches and agencies of foreign banks that do not qualify for the exemption of § 101.6 must comply generally with the provisions of § 403.5 regarding custody of customer securities and securities that are the subject of a hold-in-custody repurchase transaction. In addition, under new § 403.5(e) a branch or agency is required to pledge assets in an amount that represents the net amounts relating to government securities owed to its securities customers.

In calculating the required pledge, the branch or agency may take into account amounts already pledged pursuant to Federal or state banking regulations with respect to customer deposits and other liabilities of the branch or agency, including securities-related third-party liabilities. The amount that must be pledged under § 403.5(e) is to be calculated in accordance with the provisions of SEC Rule 15c3–3(e) and Exhibit A thereto, except that customer credit balances are to be taken into account only to the extent that they relate to or arise from government securities activities.

One commenter pointed out that the terms "fully paid securities" and "excess margin securities" are defined for purposes of § 403.4 but not for this section. A new § 403.5(f)(1) has been added to incorporate the definitions of these terms set out in § 403.4 (b), (c), and (d). In addition, § 403.5(f)(2) includes a definition of the term "customer" that is similar to the definition in SEC Rule 15c3–3 but does not include a customer for which a financial institution holds funds but does not effect securities transactions or maintain securities on the customer's behalf. Another commenter also suggested that the terms "fully-paid" and "excess margin" securities in fact are inapplicable to banks, which do not extend margin to customers. The Department recognizes that in the past the terminology may not have been applied to financial institutions, given their limited securities activities. The Department nevertheless believes the concepts may be relevant, particularly as modified in § 403.4.

This commenter also suggested more generally that § 403.5 appeared not to recognize that broker-dealers and financial institutions function differently and have developed significantly different accounting structures. The Department believes that, since many of the entities involved in the government securities market, whether or not they are financial institutions, engage primarily in dealer activities rather than brokerage, the suggested differences are not as great as suggested by this

[47] 12 CFR Part 204.

[48] 12 CFR 204.1(b).

[49] Section 403.5(c) of the temporary rules, which makes provisions similar to SEC Rule 15c3–3 applicable to government securities brokers and dealers that are financial institutions, does not include the reserve requirement of SEC Rule 15c3–3(e).

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commenter. The Department also understands that as a general proposition there may be differences in accounting structures depending on whether an entity is primarily a dealer or a broker. However, the Department also believes that the requirements of § 403.5, which parallel the basic concepts of SEC Rule 15c3–3 that apply to both brokers and dealers, are necessary to assure protection of customer securities to whatever extent they are held by a broker or dealer.

This same commenter stated that although securities are sold "from position to customer," they are not retained for customer accounts. The Department assumes that this comment means that the securities are not maintained for the customer by the bank's dealer function but are delivered to the bank's custody or safekeeping department, unless a customer specifically requests delivery to a third party. The Department continues to believe that the requirements of § 403.5 and Part 450 are appropriate to assure that customer securities are properly handled.

One commenter also suggested that the Department define specifically *when* a security becomes fully-paid. The Department does not believe that, as a general proposition, a definition more specific than the one already incorporated into both §§ 403.4 and 403.5 is feasible. As already noted, these definitions parallel the definitions found in SEC Rule 15c3–3.

5. *Section 403.6.* Section 403.6 is new. It is added simply to make clear that a registered futures commission merchant ("FCM") that is also a government securities broker or dealer must comply with the provisions of Part 403 with respect to all customer funds or securities except those that are incidental to the FCMs futures-related business. What constitutes customer funds or securities incidental to the futures-related business is defined in proposed SEC Rule 3a43–1, which provides that an FCM will not be a government securities broker or dealer if it affects certain specified transactions in government securities only as an incident to its futures-related business.

6. *Section 403.7.* Most commenters requested delayed effective dates to implement various provisions of this part. Many commenters requested a delay generally to implement the system modifications required to comply with SEC Rule 15c3–3. These commenters pointed out that, in contrast to the capital rule, where additional capital can be maintained to avoid violations, any inadvertent malfunctions in the systems required by Rule 15c3–3 could result in technical non-compliance with the rule.

Nearly all commenters requested a delay in the requirement to obtain a written repurchase agreement where the broker or dealer retains custody of the securities subject to the repurchase agreement. They stated that since the disclosure language to be included in the agreement will not be available until the final regulations are published in July, it would be desirable to delay preparation and distribution of the agreements until that time. Also, they indicated that based on their experience, it is a time-consuming process to obtain written agreements from customers, particularly where the customer must obtain approval of its board of directors or other managing authority. In this regard, a suggestion was also made that a written agreement should not be required before an initial repurchase transaction with a counterparty, provided it is obtained within thirty days after the first transaction.

Proposals for a delayed effective date for the requirement of obtaining a written agreement varied widely, with most suggesting some type of disclosure agreement in the interim. The PSA indicated that it was planning to revise its prototype master repurchase agreement as necessary to conform to these rules, and suggested that beginning August 25, 1987, new customers be required to execute repurchase agreements. PSA further proposed that in the case of existing customers, an agreement be in place by January 31, 1988, with a disclosure letter containing the disclosures required by these rules in the interim.

A few commenters requested a delay in the requirement to send confirmations of substitutions of securities subject to hold-in-custody repurchase agreements, based on changes that would be required in their current practice.

Section 403.7 is new. In response to the concerns in the comments about the time needed to develop systems that would enable compliance with SEC Rule 15c3–3, § 403.7 provides that such systems must be in place by the last business day of October. With respect to written repurchase agreements, the section essentially follows the PSA proposal and requires that for existing customers, a written agreement containing the provisions required by §§ 403.4(e) and 403.5(d) need not be in place until January 31, 1988, but that disclosures must be provided in the interim based on the disclosure language that appears in these temporary regulations. For new customers after July 25, 1987, written agreements are required beginning October 31, 1987, with disclosure required in the interim period. Although it may be current practice for some entities to engage in hold-in-custody repurchase transactions before an agreement is in place, the Department is of the opinion that an advance written agreement is desirable to assure proper consideration is given to the advisability of such transactions based on the required disclosures. The Department has therefore not adopted the proposal to allow an initial transaction without a written agreement, once the written agreement requirement becomes effective.

In the case of confirmations of substitttions, the Department has concluded that there is insufficient evidence of operational difficulties that will be incurred by a significant number of government securities brokers or dealers to provide a delayed effective date. Thus, the confirmation requirement will be effective July 25, 1987.

### *E. Part 404. Recordkeeping and Record Preservation*

Part 404 of the proposed regulations responded to the requirement of the Act that government securities brokers and dealers be required to make, keep current and preserve records relating to the operation of their businesses. The proposed rules on recordkeeping were not the subject of adverse comment except for the provisions pertaining to financial institutions that are government securities brokers or dealers.

1. *Section 404.4.* Seven comments addressed the requirement in § 404.4(a)(2)(i) that financial institution government securities brokers and dealers make and keep current a securities position ledger. Five comments questioned the necessity and/or appropriateness of this requirement. The comments made several arguments: (1) These institutions are already subject to appropriate regulatory agency reporting requirements that are adequate and therefore should not be burdened with additional requirements; (2) to the extent that there are perceived deficiencies in this area, the appropriate regulatory agency regulations should be changed; (3) the manner in which these financial institutions operate would make it difficult and costly to construct position records of the type required; and (4) a position record would serve no useful purpose because the proportion of an institution's position attributable to customers is small. The sixth comment did not object to the requirement but

pointed out that activities of a financial institution in its fiduciary capacity should be exempt from the recordkeeping requirements for the same reasons that activities in a fiduciary capacity are exempt under Part 450. The seventh comment did not object to the requirement, but requested a six month delay in the effective date of this requirement. Of the five comments that question this requirement, three requested a delayed effective date if the requirement is adopted.

The Department has carefully considered these comments and has modified § 404.4(a)(2)(i) to take into consideration what these comments have indicated concerning how financial institutions operate their dealer activities. It appears that the dealer area of the institution does not usually hold securities but instead transfers securities to safekeeping. Once securities are in safekeeping, that area of the institution is responsible for the specific location of the securities.

The rule as modified would limit the requirement for position records to those securities carried for the bank's own account or for the account of customers or others, such as affiliates. The dealer-bank would not be required to keep position records of the location of securities that had been transferred to safekeeping other than to note the safekeeping location. With regard to customer securities that the dealer has transferred to safekeeping, the financial institution government securities broker and dealer is required to comply with the Part 450 requirements concerning records, counts and reconciliations. In addition, the rule has been modified to make clear that it does not apply to securities held in a fiduciary capacity as defined in § 403.3(i) of these temporary rules. Finally, institutions subject to this securities position recordkeeping requirement will have until October 31, 1987 to develop systems to keep such records.

This modification would be consistent with the Municipal Securities Rulemaking Board Rule G–3(a)(iii), while assuring adequate records of the location and movement of customer securities by the requirement that the bank dealer comply with the Part 450 rules for securities held in safekeeping. The bank dealer would still be required to maintain a record of its own positions and the positions of customer securities that have not been transferred to safekeeping. The requirement that a financial institution dealer maintain a record of positions carried for its own account is intended to capture the financial institution's dealer inventory as well as all repurchase and reverse repurchase positions of the financial institution.

The Department also received a comment from the Institute of Foreign Bankers requesting that the exemption from the recordkeeping and record preservation requirements of §§ 404.2 and 404.3 for certain financial institutions be clarified and/or extended to cover all United States branches and agencies of foreign banks, to the extent that these entities comply with the recordkeeping requirements of their supervisory agency. The comment stated that branches and agencies of foreign banks are effectively subject to the rules of the Comptroller of the Currency and of the FDIC and that while uninsured state licensed branches and agencies are not subject to FRB recordkeeping requirements, they are subject to FRB supervision.

After consultation with the appropriate regulatory agencies, the Department has modified the rule to make clear that branches and agencies of foreign banks that comply with the recordkeeping requirements of the bank regulatory agency responsible for their supervision are exempt from the recordkeeping requirements of §§ 404.2 and 404.3.

2. *Section 404.6.* Three comments stated that the requirement in § 404.6 of the proposed rule that financial institutions that are government securities brokers and dealers conduct annual counts of customer securities that are not held in a fiduciary capacity is unnecessary. The comments also stated that the requirements of the appropriate regulatory agencies for these institutions were adequate.

The Department has deleted § 404.6 of the proposed rule as redundant. The Department notes that § 403.5 of these temporary rules requires financial institutions holding customer securities to comply with requirements of Part 450. Section 450.4(c) requires that securities held for customers be counted at least annually.

3. *Other portions of Part 404.* Sections 404.2 and 404.3 have been modified to reflect the different capital rules applicable to certain interdealer brokers and to CFTC-regulated entities. Except for these changes and clarifications of language, these sections and §§ 404.1 and 404.5 are adopted as proposed.

### *F. Part 405. Reporting and Audit Requirements*

The reporting and audit regulation generally follows the provisions of SEC Rules 17a–5, 17a–6 and 17a–11. Registered government securities brokers and dealers, except for interdealer brokers and CFTC-regulated entities, will be required to file reports on Form G–405, which is similar to the SEC FOCUS report. Interdealer brokers and CFTC-regulated entities will be required to file FOCUS reports. The Department received two general comments on Part 405, both favorable, and the temporary regulations reflect minimal changes from the proposed regulations, as noted below.

1. *Section 405.2.* This section requires registered government securities brokers and dealers to follow the requirements of SEC Rule 17a–5, concerning financial reporting and audits.[50] The rule as originally proposed is now paragraph (a) of the section and new paragraphs (b) and (c) have been added to apply to interdealer brokers and CFTC-regulated entities, respectively. These entities are required by § 402.1 (d) and (e) to follow capital rules that are more closely related to SEC Rule 15c3–1 than to § 402.2 of these rules. Therefore, they should file FOCUS reports, rather than reports on Form G–405, and other minor modifications are needed to conform the rule to their requirements.

2. *Section 405.3.* This section requires registered government securities brokers and dealers to follow the requirements of SEC Rule 17a–11, relating to supplementary "early warning" financial reports.[51] As is the case with § 405.2, modifications were needed to accommodate the special capital rules applicable to interdealer brokers and CFTC-regulated entities. The original proposal is now paragraph (a) and paragraphs (b) and (c) have been added to provide, respectively, the interdealer broker and CFTC-regulated entity modifications.

3. *Section 405.4.* This section requires government securities brokers and dealers to comply with the reporting, recordkeeping and record retention requirements of the Currency and Foreign Transaction Reporting Act of 1970. The Department received several comments suggesting that, at least as to financial institutions and registered brokers and dealers, the requirement was surplusage. After discussions with the Office of the Assistant Secretary of the Treasury (Enforcement), which is responsible for enforcement of these requirements, the Department has concluded that the section should be limited to registered government securities brokers and dealers. This will allow the SEC to use its authority under the Act to enforce the Currency and

[50] 17 CFR 240.17a–5.
[51] 17 CFR 240.17a–11.

Foreign Transaction Reporting Act requirements administratively against registered government securities brokers and dealers, as it may against registered brokers and dealers under Commission Rule 17a–8.[52]

*G. Part 450. Custodial Holdings of Government Securities by Depository Institutions*

This part governs the custody of government securities by financial institutions that are not government securities brokers or dealers. In addition, § 403.5 of Subchapter A of the regulations provides that financial institutions that are government securities brokers or dealers must comply with this part with respect to customer securities and, more particularly, securities that are the subject of hold-in-custody repurchase transactions.

One commenter stated that new federal regulation of nondealer depository institutions is unnecessary and inappropriate. Another commenter suggested that regulation in the area of custody and safekeeping of customers government securities by nondealer depository institutions should be promulgated by bank regulatory agencies rather than by the Department.

The Department disagrees with both of these comments. The Department has consulted with the bank regulatory agencies and has concluded, based upon information they have supplied as well as the Department's own analysis, that there is no explicit regulatory or supervisory framework governing the practices of depository institutions providing custodial or safekeeping services for customers except where securities are held in a fiduciary capacity. Furthermore, the GSA mandates that the Department prescribe the standards for the custody of government securities for nondealer financial institutions, taking into account existing regulation.

1. *Section 450.1.* This section describes the scope of Part 450. No comments were received on this section and no changes have been made.

2. *Section 450.2.* This section defines various terms for the purposes of the subchapter including "customer" and "fiduciary capacity." As to the definition of "customer," two clearing bank commenters stated that they only recognize as "customers" those persons or entities with whom they have a direct contractual relationship. They therefore requested that the definition be amended to provide that depository institutions cannot be responsible for the interests or rights of anyone with whom they have no direct contractual relationship.

In light of the discussion below concerning clearing banks and correspondent banks, the Department does not believe such a statement is appropriate or necessary. The responsibility set forth in this rule of a depository institution for securities belonging to customers of another entity is necessary to assure adequate protection of customer securities in general and is crucial to the acceptance of depository institutions as acceptable control locations for customer securities for purposes of SEC Rule 15c3–3 and Part 403. However, § 450.4 does not create contractual or other liabilities of the depository institution to the individual customers of the entity for which it is holding securities. Rather the requirement is intended to assure that the holding financial institution recognizes that securities that are identified to it in bulk as customer securities are to be kept free of liens and segregated from its own assets.

Another comment was made generally to the effect that a depository institution should not be required to investigate whether the securities it maintains for a broker or dealer are customer securities. For purposes of Part 450, a depository institution may rely on statements made by another entity as to what portion of the securities held at the depository institution represent securities of customers of such other entity. The depository institution is not required by the provisions of this part to initiate an investigation into the status of such securities.

The PSA requested clarification as to how the definition of "customer" would be applied in practice because it would seem to include a government securities broker or dealer when the depository institution holds securities of the customers of the broker or dealer. The PSA interpretation, which parallels a similar concept in the definition of customer in SEC Rule 15c3–3, is correct. To express this idea more clearly and avoid ambiguity, § 450.2(b) has been modified and a new paragraph (d) has been added to § 450.4 that affirmatively states that a depository institution shall treat a government securities broker or dealer, including a financial institution government securities broker or dealer, as a customer with respect to securities the government securities broker or dealer identifies as customer securities pursuant to Part 403. Note that under both the proposed rule and the modified temporary rule, a depository institution that is not a government securities broker or dealer is not excluded from the definition of customer.

Another commenter, without explanation, suggested that "fiduciary capacity" be expanded by adding "safekeeping agent" to the definition. The Department's purpose in defining "fiduciary capacity" was to distinguish fiduciary activities from purely custodial activities. Since the term "safekeeping agent" appears to denote a person or entity acting in a custodial capacity and the commenter provided no explanation of the need for its suggested addition, the Department has concluded that the amendment to the definition is inappropriate.

3. *Section 450.3.* This section provides an exemption for government securities held in a fiduciary capacity in a trust department, as well as custodial holdings in a trust department so long as the depository institution subjects such holdings to fiduciary standards. Several commenters suggested that this exemption be broadened because fiduciary activities and custodial services are not necessarily limited to a single trust department but are carried out in other departments or organizational units within the depository institution. One commenter suggested that the exemption be expanded to include such activities, regardless of location in the depository institution, as long as the institution agrees to and abides by all regulatory requirements applicable to fiduciary accounts. Another commenter asked what form the agreement to subject custodial arrangements to fiduciary standards must take in order to qualify for the exemption.

In response to these comments, § 450.3(a) has been amended to expand the exemption to include fiduciary and custodial activities conducted throughout a depository institution as long as (1) the depository institution has adopted policies and procedures applying fiduciary standards to such activities and (2) such activities are subject to examination for compliance with such standards by the appropriate regulatory agency. The Department notes that, in order to assist depository institutions in meeting this second requirement, it will be necessary for all of the appropriate regulatory agencies for financial institutions to adopt by October 31, 1987, appropriate procedures in their examination guidelines.

4. *Section 450.4.* This proposed rule required a depository institution to segregate customer securities from proprietary assets of the depository institution and to keep such securities

[52] 17 CFR 240.17a–8.

free of any charge, lien, or claim, unless agreed to in writing by the customer. Where customer securities are held by a depository institution through a correspondent bank or other custodian institution, the depository institution would be in compliance with this requirement if it had instructed the custodian to maintain the securities free of liens. The temporary rule contains essentially the same provisions with the additions and modifications noted below.

Segregation at FRB Level

Several commenters requested clarification as to whether this provision would require a depository institution that maintains an account at a Federal Reserve Bank to segregate customer securities in a separate account at the Federal Reserve Bank. These commenters pointed out that if such segregation were required, the volume of transactions on the Federal Reserve wire system ("Fedwire") would increase, creating problems at peak times of the day and increasing the operational costs. It was also noted that a requirement of segregation of customer securities at the Federal Reserve Bank level could potentially put bank dealers at a disadvantage in relation to other dealers who maintain accounts of securities at a depository institution, since the recording of transactions on the books of the dealer's depository institution can be completed at a later time, i.e., after the close of Fedwire.

The Department is of the opinion that segregation of customer securities at all levels of the book-entry system is desirable both as a means of assuring that such securities are kept free of liens and as a means of assuring that there are adequate internal controls to assure that customer securities positions are covered at all times. These aspects of the requirements of § 450.4 are especially important since banks are the primary acceptable control locations for customer securities under Part 403 of subchapter A and SEC Rule 15c3–3.

It is recognized, however, that to require segregation of customer securities at the Federal Reserve Bank level would require significant operational changes, which cannot practically be achieved in the short term. For the present, § 450.4(a) (formerly § 450.4(b)) has been modified with respect to depository institutions that maintain accounts at a Federal Reserve Bank. Such depository institutions will be deemed to have complied with the possession or control requirement if any lien granted to a Federal Reserve Bank in securities other than proprietary securities of the depository institution expressly excludes securities that the depository institution is required to keep free of liens pursuant to this part.

Applicability to Correspondent Banks

As noted in the discussion of the proposed rule, where government securities are being maintained by a depository institution for its customers (including counterparties to repurchase transactions) at a correspondent bank or other custodian institution, the depository institution would be required to instruct that entity to maintain possession or control of such securities free of all liens. It was the intention of the proposed rule that, to the extent it has received such an instruction, the correspondent bank or other custodian institution would be required to treat those securities as customer securities and likewise comply with the requirements of § 450.4 with respect to those securities. However, as one commenter noted, the applicability of the possession and control requirements in these circumstances was not clearly stated in the proposed rule.

Section § 450.4 has been restructured to set forth more clearly its applicability to correspondent banks and other custodian entities that hold securities for customers of another depository institution. New § 450.4(a)(2) of the temporary rules describes more specifically how a depository institution complies with the basic requirements for custody of customer securities when another custodian institution is involved in the chain of ownership. Note that neither this provision nor the recordkeeping requirements of § 450.4(b) require the custodian institution to keep records identifying the individual customers of the depository institution.

Applicability to Clearing Banks

As one clearing bank commenter noted, as applied to banks providing clearing services for government securities dealers, the requirements of § 450.4 would mean that a clearing bank would be required to move securities from the dealer clearance account to a segregated account whenever the dealer gives the clearing bank an instruction to do so. However, since clearing banks rely on securities in the dealer clearance account as collateral for all extensions of credit to the dealer to finance its daily trading activities, the result of requiring segregation at the direction of a dealer gives the dealer and not the clearing bank control over the amount of collateral available to secure that credit. This result would place a clearing bank in the untenable position of not being able to assure that its extensions of credit to a dealer were adequately secured.

For this reason, the Department has concluded that it is necessary to provide an exception from the requirements of Part 450 for securities maintained by a bank for a dealer for whom it provides clearing services. The Department believes that such an exception will not detract from the basic goal of protecting customer securities since the dealer involved will itself be subject to the possession and control requirements of proposed Part 403. Therefore, if a clearing bank fails to segregate securities at the end of a trading day because such securities continue to be required as collateral by the clearing bank, the dealer will be in violation of the Part 403 requirement to obtain possession or control of customer securities and will be required to send a notice of the failure to segregate to its regulatory agency. To further assure proper oversight in this area, Part 450 has been amended to require that the clearing bank itself also provide a notice to the dealer's appropriate regulatory agency.

Other Liens of Depository Institutions

Two clearing banks commented that the requirements of proposed § 450.4 appeared to preclude certain liens that traditionally have been recognized in favor of depository institutions. According to the commenters, a bank may hold customer securities in custody which have not been fully paid for and for which credit has been extended, or for which custodial fees are owed. In addition, one commenter stated that the provision does not recognize "traditional common law clearing liens" held by depository institutions or their custodians. Another commenter requested that the Department clarify and delay the application of this provision.

The proposed rule specifically permitted liens to which a customer had agreed in writing. In conformity with the basic structure of SEC Rule 15c3–3, this provision was intended to make clear that liens directly between a depository institution and its customer would be permitted and that the possession or control requirements were aimed at precluding rehypothecation. Since one commenter viewed the language as providing a broader exemption from possession or control requirements based solely upon the agreement of a customer, § 450.4(a) has been modified to make clear that customer securities must be kept free of liens of third parties, i.e., any entities other than the

depository institution holding the securities directly for such customer. The reference to liens agreed to in writing has been deleted. A new § 450.4(a)(5) has been added to make clear that, for depository institutions that are subject to Part 408, the prohibition against third-party liens applies only to fully paid and excess margin securities as defined in § 403.5(f)(1). In conformity with SEC Rule 15c3–3, where a financial institution that is a government securities broker or dealer extends credit to finance the purchase of a government security, it may rehypothecate that security to another entity that in turn is providing credit to the financial institution broker or dealer.

The Department believes that these changes respond to the concerns noted regarding the effect of the rule on liens for custodial fees as well as other liens between the depository institution and its customer.

### Securities Lending

A new § 450.4(a)(6) has been added to permit loans of customer securities by financial institutions if the transactions are carried out pursuant to the written agreement of the customer and in full compliance with the securities lending guidelines of the appropriate regulatory agencies.

### Recordkeeping Requirements

Section 450.4(b) also imposes a number of recordkeeping requirements on depository institutions holding securities for customers. Several commenters objected to the recordkeeping requirements. Two commenters felt that the fiduciary activities of depository institutions are supervised adequately by regulatory agencies and that, therefore, there is no need for recordkeeping requirements. However, the rule imposes recordkeeping requirements on custodial activities other than fiduciary activities. As described above, the Department has discussed this requirement with the appropriate regulatory agencies and determined that such requirements were needed in the area of custodial holdings of customer securities.

Two commenters indicated that the requirement that records of government securities held for customers be kept separate from other records is overly burdensome. One commenter stated that government security positions are part of computerized record facilities and that it would be impossible to keep records physically separate without great waste, duplication and unnecessary expense. Another commenter requested clarification of the provision as to whether the separation of records requires separation of government securities from other securities.

The Department's requirement that records of holdings of customer securities should be kept separate from other records of the depository institution does not require placement in a separate physical location. The provision is intended to require that records of customer securities be easily accessible and readable and that they be in a form that permits immediate location of any particular record. Furthermore, the rule does not require that a customer's government securities be kept separate from other securities of the customer as long as the securities are kept free of any charge, lien or claim as provided in the rule.

Section 450.4(b) (formerly § 450.4(c)) requires that a depository institution provide a system for identifying each government security held for a customer. Note that, as mentioned above, pursuant to new § 450.4(d) a government securities broker or dealer is to be treated as a customer with respect to securities that the government securities broker or dealer identifies as customer securities and with respect to securities it maintains in a Segregated Account as defined in § 403.4(f)(1). However, as explicitly stated in new paragraph (d), the depository institution maintaining such securities for the government securities broker or dealer is not required to keep records identifying individual customers of the government securities broker or dealer. Because of this addition and the modifications incorporated in § 450.4(a) as described above, language included in § 450.4(b)(1) of the proposed rule, which provided an exception for depository institutions holding securities for customers of other depository institutions or government securities brokers or dealers, has been eliminated as unnecessary.

One commenter pointed out that the majority of government securities are issued only in book-entry form and therefore records will only identify the amount of a given issue that is held for a particular customer. The rule has been modified to clarify that such records will satisfy the recordkeeping requirements.

Section 450.4(b) also requires that the depository institution keep records describing a customer's interest in a government security. One commenter pointed out that a depository institution will not necessarily know the nature of a customer's interest in a given security.

This requirement was not intended to place an affirmative duty on a depository institution to determine the exact extent of a customer's interest. It was, however, intended to require that a depository institution's records concerning a customer's securities contain any relevant information the depository institution actually has as to any limitations on a customer's interest, either because the depository institution itself has an interest in the security or because the depository institution has notice of another interest as may be the case pursuant to 31 CFR 357.12 of the Department's proposed regulations governing transfers of limited interests in Treasury book-entry securities.[53]

This section also requires that a depository institution's records "indicate all receipts and deliveries of government securities and all receipts and disbursements of cash in connection with such securities." The language parallels language found in regulations of the Federal financial institution supervisory agencies concerning securities transactions for customers.[54] Two commenters stated that a depository institution cannot link receipts and disbursements of cash with specific receipts and deliveries of securities.

The purpose of the provision in § 450.4(b) is to assure that a record is kept that reflects proper crediting of all principal and interest payments with respect to customer securities and also reflects the debit or credit, as appropriate, of proceeds in connection with a purchase or sale of such securities by a customer. It is unclear how this information could not be available with respect to a particular customer's account and the Department continues to believe that such records should be maintained by the depository institution.

For the most part, the monthly statement for a customer's demand deposit account and the associated debit and credit memoranda prepared by the bank as a result of a securities transaction or the payment of principal or interest to the customer will satisfy the requirements of this section regarding receipts and disbursements of cash. The section is not intended to suggest that the depository institution determine whether every receipt or disbursement initiated solely by the customer relates to a securities transaction, nor is it intended to suggest that the depository institution must keep records relating to any receipts and disbursements made in connection with such securities outside of the depository institution.

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[53] 51 FR 43027 (November. 28, 1986).

[54] See 12 CFR 12.2(b); 12 CFR 344.3(b).

Section 450.4(b) also requires that a safekeeping receipt or a confirmation be issued for every government security held for a customer. Several commenters indicated that the requirement is impractical and unworkable and suggested that the provision be modified to permit periodic account statements or listings instead of individual confirmations. Others requested that the requirement should be negotiable with the customer and that the customer should be able to waive the requirement.

The Department has determined that periodic account statements are not an adequate substitute for individual safekeeping receipts and confirmations particularly where the bank has no responsibility to the customer except as a custodian. The Department, therefore, has not modified the proposed rule. In addition, the Department determined not to permit general customer waiver of confirmations because such a waiver would likely become a standard part of the depository institution's custodial agreements.

The Department recognizes that depository institutions may also be subject to regulations relating to confirmations that have been promulgated by the institution's appropriate regulatory agency and the question has arisen how those regulations affect the requirement of § 450.4(b). It is the Department's understanding that those regulations deal primarily with the timing, form and content of confirmations issued by financial institutions. Since § 450.4(b) does not contain such specific detail, it is the Department's view that those regulations complement the basic requirement of § 450.4(b). It should be noted, however, that for any depository institution subject to § 450.4(b), the provision must be complied with regardless of whether any other regulations are applicable.

One commenter noted that the requirement duplicated the requirement to send a confirmation that is included in 31 CFR 357.16 of the Department's proposed TRADES regulations that will govern generally transactions in Treasury book-entry securities.[55] This commenter suggested that the requirement in § 450.4 be retained with modifications and that the requirement in the proposed *Trades* regulations be eliminated. In preparing the TRADES regulations for publication in final form, the Department may consider whether it is appropriate to retain the requirement given the applicability of other regulations, including § 450.4, that also impose such a requirement.

One clearing bank commenter requested that the Department clarify whether it would be sufficient for purposes of § 450.4(b) (formerly § 450.4(a)) for records to show transactions processed (listing "purchases," "sales" and "reversals") and pending transactions (listing "sales due to settle," "purchases due to settle," "pending free delivery" and "fails"). Without additional detail it is difficult to be certain, but it appears possible that these listings would have sufficient specificity to indicate receipts and deliveries for purposes of § 450.4(b)(3).

Section 450.4(b)(5) requires that the depository institution's records provide an adequate basis for audit. Two commenters requested clarification as to who will perform the "audit" and what constitutes "adequacy." The person who is to perform the audit on behalf of the depository institution and what constitutes "adequacy" are to be determined by the appropriate examining regulatory agency.

Section 450.4(c) requires that counts of government securities held for customers be conducted annually and reconciled with customer account records. One commenter requested clarification as to what constitutes "counts" of government securities sufficient for compliance with the proposed provision. Another felt that the requirement should be eliminated because account positions of customers holding book-entry securities show only a single aggregate figure comprised of many different pieces.

Finally, § 450.4(d) has been added to clarify the duties of a depository institution with respect to securities identified as customer securities, or placed in a Segregated Account, by a government securities broker or dealer, including a financial institution government securities broker or dealer.

Some additional details concerning procedures to be used in a securities count have been included in this section. These procedural requirements were formerly included in § 404.6 of the proposed regulations, which has been deleted because it duplicated the requirements of this part. Periodic counts in both physical and book-entry form are needed to ensure that the government securities back the customer's position. Any further clarification as to procedures for counts are to be determined by the appropriate examining agency.

4. *Section 450.5.* This section is new. It provides that Part 450 will be effective October 31, 1987. Two commenters requested that the Department delay effectiveness of the regulation to allow financial institutions and systems vendors time to develop the necessary recordkeeping systems and procedures. The Department believes that a delayed effective date would be appropriate in recognition of the systems changes that financial institutions may be required to make in order to comply with Part 450. This provision parallels the delayed effective date for the general possession or control requirements of Part 403 specified in § 403.7(a).

### III. Executive Order 12291; Regulatory Flexibility Act; Burden on Competition

As noted in the preamble to the proposed regulations, the statutory timetable under which the Department is required to develop and publish these regulations provides no opportunity for a systematic study of the effect of the regulations on the economy, on small entities and on competition. The Department stated in that preamble that "based on discussions with government securities brokers and dealers, including those currently subject to federal regulation and those that are not, it is the Department's view that the proposed regulations will not impose any significant cost on those affected or affect the economy in a manner other than that explicitly required by the GSA. In addition, the Department believes that the proposed regulations will not have an unnecessary or inappropriate differential impact on classes of government securities brokers or dealers such as to create a burden on competition."[56] The Department did, however, ask for comments on these issues.

The Department received five comments that specifically mentioned issues related to the Regulatory Flexibility Act and several others that raised those issues by implication. In addition, the Department received eight comments on a related issue—the incorporation of SEC rules by reference—seven of which (including comments from the NASD, Public Securities Association and American Association of Certified Public Accountants) were favorable.

The two major issues cited with respect to the potential impact of the proposed regulations on small entities were their potential effect on small arbitrageurs and the possibility that the regulations concerning hold-in-custody repurchase agreements, which were designed to protect small investors,

[55] 51 FR 43027 (November. 28, 1987).

[56] 52 FR 5678 (February 25, 1987).

would instead make such investments unavailable to such investors.

The Department believes both issues have been dealt with in the temporary regulations in a manner that minimizes these impacts. First, with respect to small arbitrageurs, the major complaint was that the market risk factors of § 402.2 were so high that the arbitrageurs would be put out of business. The Department recognizes that the offset haircut factors, which are the ones that most impact arbitrage positions, were too high and has lowered them substantially, particularly for securities at the short end of the maturity spectrum. The Department believes that, as a result, these entities will be required only to be capitalized adequately to cover their risk to customers and to the market—an impact required by the GSA. Second, as discussed in the section-by-section analysis of Part 403, the Department has substantially limited the scope of transactions subject to strict rules concerning intra-day segregation of securities sold subject to hold-in-custody repurchase agreements. At the same time, the temporary regulations increase the required degree of disclosure for all such transactions with customers. As a result, the transactions will still remain available for small entities, who will be further benefited over the current situation by being given more complete information about precisely the degree of safety provided by the transactions.

For the above reasons, the Department concludes that the temporary regulations do not constitute a major regulation for purposes of Executive Order 12291 and that a regulatory impact analysis is not required. Similarly, it is hereby certified that the temporary regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The collection of information requirements contained in the proposed rules were submitted to the Office of Management and Budget ("OMB") pursuant to section 3504(h) of the Paperwork Reduction Act.[57] The Department received a few comments on those requirements as noted above.

No comments were received on any of the forms. However, after discussions with OMB, the Department has agreed to delete the requirement for information about educational background on Form G–FIN–4 as unnecessary to meet the statutory purposes of the form. The instructions to that form have also been modified to take into account the revised definition of "associated person" in § 400.3(c). Minor modifications have also been made in Form G–405 to correct errors and to take into account minor alterations in the capital rules. The collection of information requirements, as amended in the temporary regulations, have been approved by OMB.

[57] 44 U.S.C. 3504(h).

## Appendix A—Example of Capital Computation

*Example (1)*

On October 31, 1986 firm A's proprietary position contains a long position of Treasury notes due November 15, 1991 with a market value of $20 million and a short position of Treasury notes due October 15, 1990 with a market value of $30 million. The short position is financed through a reverse repurchase agreement with a contract value of $30 million. The reverse repurchase agreement terminates on January 30, 1987. The firm would enter these holdings on Schedule B,[1] "Calculation of Net Immediate Positions in Securities and Financings," the financing in row B (45–134 day maturity category) and the short and long positions in row F (3.5–7.5 year maturity category for conventional securities), as follows:

[1] Because Schedule A can only be filled out after the haircut calculations are completed, it is discussed in the last of these examples.

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITION IN SECURITIES AND FINANCINGS

[In millions of dollars]

| Maturity category | Financings | | Securities positions | | Total securities and financing positions | | Offset portions | Net immediate positions |
|---|---|---|---|---|---|---|---|---|
| | Long | Short | Long | Short | | | | |
| | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| B 45–134 days | +30 | | | | +30 | | 0 | +30 |
| F 3.5–7.5 yr. (3–5.5 yr.) | +20 | −30 | +20 | +30 | 20 | −10 | | |
| Column # | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | (1+3) | (2+4) | | (5+6) |

where the net immediate position is the sum of the positive and negative entries under "Total Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Total Securities and Financing Positions."

*Example (2)*

On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Example 1, a long position of Treasury bills due September 3, 1987 with a market value of $50 million. This bill position has been financed by a $50 million repurchase agreement terminating on August 14, 1987. The firm would enter these holdings on Schedule B, "Calculation of Net Immediate Positions in Securities and Financings," in row D (9–18 month maturity category for conventional securities) as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITION IN SECURITIES AND FINANCINGS

[In millions of dollars]

| Maturity category | Financings | | Securities positions | | Total securities and financing positions | | Offset portions | Net immediate positions |
|---|---|---|---|---|---|---|---|---|
| | Long | Short | Long | Short | | | | |
| | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| D 9–18 mn | | −50 | +50 | | +50 | −50 | 50 | 0 |
| Column # | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | (1+3) | (2+4) | | (5+6) |

where the net immediate position is the sum of the positive and negative entries under "Total Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Total Securities and Financing Positions."

*Example (3)*

On October 31, 1986 firm A's proprietary position contains, in addition to the position given in Examples 1 and 2, a long position in commercial paper which has received a rating in one of their three highest categories from two nationally recognized statistical rating organizations and has a market value of $70 million, and a long position in a Eurodollar certificate of deposit with a market value of $80 million. The commercial paper matures on January 30, 1987, and the Eurodollar CD matures on February 13, 1987. The firm's proprietary position also contains short positions in a Treasury bill maturing on November 28, 1986 with a market value of $100 million, a domestic negotiable certificate of deposit maturing on March 31, 1987 with a market value of $90 million, and commercial paper which has not received a rating in one of their three highest categories from a least two nationally recognized statistical rating organizations. This commercial paper has a market value of $40 million and matures on May 15, 1987. These short positions are being financed by overnight reverse repurchase agreements with contract values of $99 million, $39.5 million, and $39.9 million, respectively. The firm would enter the reverse repurchase agreements, the holdings of the Treasury bill, the highly-rated commercial paper, and the domestic and Eurodollar CDs on Schedule B, "Calculation of Net Immediate Positions in Securities and Financings," in rows A, B, and C (0–44 day, 45–134 day, and 135 day–9 month maturity categories for conventional securities) as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

| Maturity category | Financings | | Securities positions | | Total securities and financing positions | | Offset portions | Net immediate positions |
|---|---|---|---|---|---|---|---|---|
| | Long | Short | Long | Short | Long | Short | | |
| | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| A 0–44 days | +228.5 | | | −100 | +228.5 | −100 | 100 | +128.5 |
| B 45–134 days | +30 | | +150 | | +180 | 0 | 0 | +180 |
| C 135 days-9 mn | | | | −90 | 0 | −90 | 0 | −90 |
| Column # | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | (1+3) | (2+4) | | (5+6) |

where the net immediate position is the sum of the positive and negative entries under "Total Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Total Securities and Financing Positions." The $40 million position in commercial paper which is not rated in one of their three highest categories by at least two rating agencies is not entered on this schedule because it is not a qualified money market instrument. The haircut on this position should be calculated as specified by the Security and Exchange Commission's Rule 15c3–1 and entered on Schedule A under "Other securities haircut (use SEC factors)." The long position in category B is combined with the financing entered in category B in Example 1 to calculate the net immediate position of +$180 million.

*Example (4)*

On October 31, 1987 firm A's proprietary position contains, in addition to the positions given in Example 1 through 3, long positions in a coupon stripped from a U.S. Treasury bond through the STRIPS program and due November 15, 1995 with a market value of $50 million, and a coupon physically stripped from a Treasury security in bearer form due November 15, 1988 with a market value of $15 million. It also contains a short position in a receipt based on a single coupon or principal payment from a Treasury security. The payment is due on November 15, 2001 and has a market value of $45 million. The short position is being financed by a overnight reverse repurchase agreement with a contract value of $43 million. The firm would enter the reverse repurchase agreement and these holdings of zero-coupon securities on schedule B, "Calculation of Net Immediate Positions in Securities and Financings," in row A, H, E, and I (9–12 years, 1.5–3 years, and 12–21 years maturity categories for zero-coupon instruments), respectively, as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

| Maturity category | Financings | | Securities positions | | Total securities and financing positions | | Offset portions | Net immediate positions |
|---|---|---|---|---|---|---|---|---|
| | Long | Short | Long | Short | | | | |
| | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| A 0–44 days | +271.5 | | | −100 | +271.5 | −100 | 100 | +171.5 |
| E 1.5–3.5 yr. (1.5–3 yr.) | | | +15 | | +15 | 0 | 0 | +15 |
| H 15–30 yr (9–12 yr.) | | | +50 | | +50 | 0 | 0 | +50 |
| I (12–21 yr.) | | | | −45 | 0 | −45 | 0 | −45 |
| Column # | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | (1+3) | (2+4) | | (5+6) |

where the net immediate position is the sum of the positive and negative entries under "Total Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Total Securities and Financing Positions." The reverse repurchase agreement is combined in category A with the financings and securities positions entered in Example 3.

*Example (5)*

On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 4, a long position in FNMA mortgage-backed securities with a market value of $30 million, and a short position in GNMA I adjustable rate mortgage-backed securities with a market value of $20 million. This short position is being financed by an overnight reverse repurchase agreement with a contract value of $19.5 million. The firm would enter the financing and these holdings of mortgage-backed securities on Schedule B, "Calculation of Net Immediate Positions in Securities and Financings," in the rows marked A, MB, and AR (the categories for mortgage-backed and adjustable rate mortgage-backed securities), respectively, as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

| Maturity category | Financings | | Securities positions | | Total securities and financing positions | | Offset portions | Net immediate positions |
|---|---|---|---|---|---|---|---|---|
| | Long | Short | Long | Short | | | | |
| | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| A 0–44 days | +291 | | | −100 | +291 | −100 | 100 | +191 |
| MB mortgage backed | | | +30 | | +30 | 0 | 0 | +30 |
| AR adjustable rate mortgage-backed | | | | −20 | 0 | −20 | 0 | −20 |
| Column # | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | (1+3) | (2+4) | | (5+6) |

where the net immediate position is the sum of the positive and negative entries under "Total Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Total Securities and Financing Positions." The reverse repurchase agreement is combined in category A with the financings and securities positions entered in Example 3 and 4.

*Example (6)*

On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 5, a short position in the Treasury bond due November 15, 1996 with a market value of $30 million. The firm has partially financed the short position by borrowing $25 million of the bonds (market value). The borrowing arrangement will terminate on April 30, 1987. The firm would enter this short position and its financing on schedule B, "Calculation of Net Immediate Positions in Securities and Financings," in rows G and C (7.5–15 year and 4.5–9 month maturity categories for conventional securities), respectively, as follows:

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

| Maturity category | Financings | | Securities positions | | Total securities and financing positions | | Offset portions | Net immediate positions |
|---|---|---|---|---|---|---|---|---|
| | Long | Short | Long | Short | Long | Short | | |
| | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| C 135 days—9 mn. | +25 | | | −90 | +25 | −90 | 25 | −65 |
| G 7.5–15 yr. (5.5–9 yr.) | | | | −30 | 0 | −30 | 0 | −30 |
| Column # | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| | | | | | (1+3) | (2+4) | | (5+6) |

where the net immediate position is the sum of the positive and negative entries under "Total Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Total Securities and Financing Positions." The financing in category C is combined with the short position entered in category C in Example 3 to calculate the net immediate position of −$65 million

*Example (7)*

On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 6, a long when-issued position in the Treasury note due October 31, 1988. (Although this note was issued on October 31, 1986, in order to show an example of a when-issued position, it is postulated that the note has not yet been issued.) The position was put on at par for $50 million, but its market value has since increased to $50.1 million. The firm would enter this position as a immediate position on Schedule B, "Calculation of Net Immediate Positions in Securities and Financings," in row E (1.5–3.5 year maturity category for conventional securities) as follows:

SCHEDULE B.—CALCULATION OF IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

[In millions of dollars]

| Maturity category | Financings | | Securities positions | | Total securities and financing positions | | Offset portions | Net immediate positions |
|---|---|---|---|---|---|---|---|---|
| | Long | Short | Long | Short | Long | Short | | |
| | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| E 1.5–3.5 (1.5–3 yr.) | | | +65.1 | | +65.1 | | 0 | 0 | +65.1 |
| | 1 | 2 | 3 | 4 | 5 | | 6 | 7 | 8 |
| | | | | | (1+3) | | | | (5+6) |

where the net immediate position is the sum of the positive and negative entries under "Total Securities and Financing Positions" and the offset portion is the lesser of the absolute values of the positive and negative entries under "Total Securities and Financings Positions." The entry of $65.1 million is the sum of this $50.1 million when-issued position and the $15 million position entered in category E in Example 4.

**Schedule C**

*Example (8)*

To calculate the net immediate position interim haircuts and the governments offset portion haircuts on the positions given in Examples 1 through 7, the offset portions and the net immediate positions are carried to Schedule C and entered in columns 7 and 8 in their respective maturity categories. The governments offset portion haircuts are determined by multiplying each governments offset portion by the corresponding governments offset portion factor. The governments offset portion haircut for maturity category C is $25 million×0.0003=$0.0075 million, or $7.5 thousand. The net immediate position interim haircuts are determined by multiplying each net immediate position by the corresponding net immediate position factor. The net immediate position interim haircut for maturity category C is −$65 million×0.002.0=−$0.13 million, or −$130 thousand. The completed Schedule C, "Governments Offset Portion and Net Immediate Position Interim Haircuts Calculation," reads as follows:

SCHEDULE C.—GOVERNMENTS OFFSET PORTION AND NET IMMEDIATE POSITION INTERIM HAIRCUTS CALCULATION

[In millions of dollars]

| Maturity category | Governments offset portion | | | Net immediate position | | |
|---|---|---|---|---|---|---|
| | Dollar amounts | Factors | Haircuts | Dollar amounts | Factors | Interim haircuts |
| | (+) | | (+) | (+/−) | | (+/−) |
| A 0-44 day | 100 | (1) | 0.0000 | +191 | (1) | 0.0000 |
| B 45-134 days | 0 | 0.0002 | .0000 | +180 | 0.0012 | +0.2160 |
| C 135 days-9 mn | 25 | 0003 | .0075 | −65 | .0020 | −.1300 |
| D 9-18 mn | 50 | .0007 | .0350 | 0 | .0045 | .0000 |
| E 1.5-3.5 yr. (1.5-3 yr.) | 0 | .0022 | .0000 | +65.1 | .0110 | +0.7161 |
| F 3.5-7.5 yr. (3-5 yr.) | 20 | .0044 | .0880 | −10 | .0220 | −0.2200 |
| G 7.5-15 yr. (5.5-9 yr.) | 0 | .0050 | .0000 | −30 | .0330 | −0.9900 |
| H 15-30 yr. (9-12 yr.) | 0 | .0100 | .0000 | +50 | .0500 | +2.5000 |
| I (12-21 yr.) | 0 | .0155 | .0000 | −45 | .0775 | −3.4875 |
| J (21 yr. & over) | 0 | .0338 | .0000 | 0 | .1125 | .0000 |
| MB mortgage-backed | 0 | .0066 | .0000 | +30 | .0330 | +0.9900 |
| AR adjustable rate mortgage-backed | 0 | .0022 | .0000 | −20 | .0110 | −0.2200 |
| Total Governments offset portion haircut | | | .1305 | | | |
| Column # | 7 | 9 | 10 (7×9) | 8 | 11 | 12 ((8×11) |

[1] None.

**Schedule D**

*Example (9)*

On October 31, 1986 firm A's proprietary position contains, in addition to the immediate positions given in Examples 1 through 7, a short position in forward contracts in GNMA I mortgage-backed securities with a market value of $5 million. The forward contracts mature January 15, 1987. The gross futures and forward interim haircut would be calculated by taking the negative of the product of 0.0330 (the net position haircut factor for mortgage-backed securities) and the market value of the position, −($5 million × 0.0330) = −$0.1650 million, or −$165 thousand. This haircut is then entered on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in the row marked MB (the category for mortgage-backed securities) as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

| Maturity category | Net immediate position interim haircuts | Gross interim haircuts | | | | Aggregate interim haircuts | | Futures and options offset portions | Residual position interim haircuts |
|---|---|---|---|---|---|---|---|---|---|
| | | Futures and forward | | Options | | | | | |
| | (+/−) | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| MB mortgage-backed | +990.0 | | −165.0 | | | +990.0 | −165.0 | 165.0 | +825.0 |
| Column # | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 (17+18) |

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category MB, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category MB. The futures and options offset portion (column 19) is the smaller of the absolute values of the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

*Example (10)*

On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 9, a long position of 25 futures contracts on Treasury bills with a closing price of $94.88. The futures contracts mature in March 1987. The market value of the 25 contracts is $24.68 million. The gross futures and forward interim haircut is calculated by multiplying 0.0012 (the net position haircut factor for maturity category B, 45–135 days) by the market value of the position, $24.68 million x 0.0012=$0.0296 million, or $29.6 thousand. Since the sum of the remaining time to maturity of the futures contract and the maturity of the underlying security is about 7.5 months, this haircut is entered in row C (4.5–9 month maturity category for

conventional securities) of Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

| Maturity category | Net immediate position interim haircuts | Gross interim haircuts | | | | Aggregate interim haircuts | | Futures and options offset portions | Residual position interim haircuts |
|---|---|---|---|---|---|---|---|---|---|
| | | Futures and forward | | Options | | | | | |
| | 1(+/−) | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| C 135 days-9 mn | −130.0 | +29.6 | | | | +29.6 | −130.0 | 29.6 | −100.4 |
| Column # | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 (17+18) |

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category C, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category C. The futures and options offset portion (column 19) is the smaller of the absolute values of the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

*Example (11)*

On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 10, 25 purchased put option contracts on Treasury bill futures. The options expire in March 1987 and have an exercise price of 94.75. The closing premium on these options for October 31, is $0.19. The interim haircut on a purchased put is the lesser of the market value of the option contracts or the gross futures and forward interim haircut on the underlying bill futures contracts. The market value of the option contracts is found by multiplying the premium per $100 par value times the total par value of the underlying futures contracts, ($0.19/$100) x $25 million=$0.475 million, or $47.5 thousand. The gross futures and forward interim haircut on the underlying futures contract was calculated in Example 9 to be $29.6 thousand. The interim haircut on these purchased puts is equal to the negative of the lesser of these two values, −$29.6 thousand. This haircut is entered as follows on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in the row C (4.5–9 month maturity category for conventional securities) as were the underlying bill futures contracts:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

| Maturity category | Net immediate position interim haircuts | Gross interim haircuts | | | | Aggregate interim haircuts | | Futures and options offset portions | Residual position interim haircuts |
|---|---|---|---|---|---|---|---|---|---|
| | | Futures and forward | | Options | | | | | |
| | (+/−) | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| C 135 days-9 mn | −130.0 | +29.6 | | | −29.6 | +29.6 | −159.6 | 29.6 | −130.0 |
| Column # | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 (17+18) (17+18) |

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category C, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category C. The futures and options offset portion (column 19) is the smaller of the absolute values of the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

*Example (12)*

On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 11, 40 purchased call option contracts on Treasury bonds due May 2016. The call options expire in December 1986 and have an exercise price of $94. The cash price of the bond is $95.78125. The closing premium on these options for October 31 is $2–18/32 ($2.5625 in decimals). The interim haircut on purchased calls is the lesser of the market value of the option contracts or the net immediate position interim haircut on the underlying bonds. The market value of the option contracts is found by multiplying the premium per $100 par value of the bond times the total par value of the underlying bonds ($2.5625/$100) x $4 million=$0.1025 million, or $102.5 thousand. The net immediate position interim haircut on the underlying bonds is found by multiplying 0.0500 (the net position haircut factor for maturity category H, 15–30 years for conventional securities) by the market value of the bonds, 0.0500 x 40 x $100,000 x $95.78125/$100=$191.6 thousand. The interim haircut on these purchased calls is equal to the lesser of these two values, $102.5 thousand. This haircut is entered on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in row H (15–30 year maturity category for conventional securities) as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

| Maturity category | Net immediate position interim haircuts | Gross interim haircuts | | | | Aggregate interim haircuts | | Futures and options offset portions | Residual position interim haircuts |
|---|---|---|---|---|---|---|---|---|---|
| | | Futures and forward | | Options | | | | | |
| | (+/−) | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| H 15–30 yr. (9–12 yr.) | +2,500.0 | | | +102.5 | | +2,602.5 | 0.0 | 0.0 | +2,602.5 |
| Column # | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 (17+18) |

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category H, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category H. The futures and options offset portion (column 19) is the smaller of the absolute values of the positive and negative aggregate interim haircuts, and the residual position interim haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedule C.

*Example (13)*

On October 31, 1986 firm A's proprietary position contains, in addition to the positions given in Examples 1 through 12, a long unlisted call on $7 million of the 7⅛ percent Treasury notes due August 15, 1991. The option contract expires January 15, 1987 and has an exercise price of $100. The cash price of the note is $102.34. The interim haircut on a long call position is the lesser of the market value of the option contract or the net immediate position interim haircut on the underlying notes. The market value of the option contract is $192.5 thousand. The net immediate position interim haircut on the underlying notes is found by multiplying 0.0220 (the net position haircut factor for maturity category F, 3.5–7.5 years for conventional securities) by the market value of the notes, 0.0220 x $102.34/$100 x $7 million = $0.1576 million, or $157.6 thousand. The interim haircut on this unlisted option is the lesser of these two values, $157.6 thousand. This haircut is entered on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," in row F (3.5–7.5 year maturity category for conventional securities) as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

| Maturity category | Net immediate position interim haircuts | Gross interim haircuts | | | | Aggregate interim haircuts | | Futures and options offset portions | Residual position interim haircuts |
|---|---|---|---|---|---|---|---|---|---|
| | | Futures and forward | | Options | | | | | |
| | (+/−) | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) |
| F 3.5–7.5 yr. (3–5.5 yr.) | −220.0 | | | +157.6 | | +157.6 | −220.0 | 157.6 | −62.4 |
| Column # | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 (17+18) |

where the positive aggregate interim haircut is the sum of all positive net immediate position, gross futures and forward, and gross options interim haircuts in category F, and the negative aggregate interim haircut is the sum of all negative net immediate position, gross futures and forward, and gross options interim haircuts in category F. The futures and options offset portion (column 19) is the smaller of the absolute values of the positive and negative aggregate interim haircuts, and the residual position haircut (column 20) is the sum of the positive and negative aggregate interim haircuts. The net immediate position interim haircut is carried over from column 12 of Schedules C.

**Example (14)**

To calculate the total futures and options offset haircut, the futures and options offset haircut factor of 20 per cent is multiplied by the sum of all the futures and options offset portions, which have been entered in column 19. This calculation would be entered on Schedule D, "Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts," as follows:

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

| Maturity category | Futures and options offset portions | Residual position interim haircuts |
|---|---|---|
| | (+) | (+/−) |
| B 45–134 days | 0.0 | +216.0 |
| C 135 days-9 mn. | 29.6 | −130.0 |
| D 9–18 mn. | 0.0 | 0.0 |
| E 1.5–3.5 yr. (1.5–3 yr.) | 0.0 | +716.1 |
| F 3.5–7.5 yr. (3–5.5 yr.) | 157.6 | −62.4 |
| G 7.5–15 yr. (5.5–9 yr.) | 0.0 | −990.0 |
| H 15–30 yr. (9–12 yr.) | 0.0 | +2,602.5 |
| I (12–21 yr.) | 0.0 | −3,487.5 |
| J (21 yr. and over) | 0.0 | 0.0 |
| MB mortgage-backed | 165.0 | +825.0 |
| AR adjustable rate mortgage-backed | 0.0 | −220.0 |
| Total Futures and Options Offset Portion: | $352.2 | |
| Factor: | ×20% | |
| Total Futures and Options Offset Haircut: | $70.4 | |
| Column # | 19 | 20 (17+18) |

**Schedule E**

*Example (15)*

[i] Schedule E is used to calculate the hedging disallowance haircuts, the net residual position interim haircuts, the total hedging disallowance haircut, and the residual net position haircut. The residual position interim haircut for each category is carried forward from Schedule D, column 20 to Schedule E, column 20. Categories between which a 20% hedging disallowance is permitted are the first to be paired. For firm A's positions given in Examples 1 through 13, categories E and F, with residual position interim haircuts of +$716.1 thousand and −$62.4 thousand, are first offset, leaving a net residual position interim haircut of +$653.7 thousand (+$716.1 thousand + −$62.4 thousand) in category E and a hedging disallowance haircut of $12.5 thousand in category F (20% × $62.4 thousand=$12.5 thousand). The second offset is between categories H and I with residual position interim haircuts of +$2,602.5 thousand and −$3,487.5 thousand, leaving a net residual position interim haircut of −$885.0 thousand in cateogry I and a hedging disallowance haircut of $520.5 thousand in category H. The results of these calculations would be recorded in rows E, F, H, and I of the 20% disallowance category of Schedule, E, "Calculation of Hedging Disallowance Haircuts When Netting Haircuts Across Categories," as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

| Maturity category | Residual position interim haircuts (+/−) | 20 percent disallowance | |
|---|---|---|---|
| | | Hedging disallowance haircuts (+) | Net residual position interim haircuts (+/−) |
| E 1.5–3.5 yr. (1.5–3 yr.) | +716.1 | 0.0 | +653.7 |
| F 3.5–7.5 yr. (3–5.5 yr.) | −62.4 | 12.5 | 0.0 |
| H. 15–30 yr. (9–12 yr.) | +2,602.5 | 520.5 | 0.0 |
| I (12–21 yr.) | −3,487.5 | 0.0 | −885.0 |
| Column # | 20 | 21 | 22 |

[ii] With completion of offsetting of category pairs to which the 20% hedging disallowance is applicable, categories between which the 30% hedging disallowance is applicable are offset. Category E's net residual position interim haircut of +$653.7 thousand is first offset against category G's residual position interim haircut of −$990 thousand, leaving a net residual position interim haircut of −$336.3 thousand in category G and a hedging disallowance haircut of $196.1 thousand in category E. The results of this first offset would be shown in rows E and G of Schedule E, "Calculation of Hedging Disallowance Haircuts when Netting Haircuts across Categories," as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

(In thousands of dollars)

| Maturity category | Residual position interim haircuts (+/−) | 20 percent Disallowance: Net residual position interim haircuts (+/−) | 30 percent Disallowance: Hedging disallowance haircuts (+) | 30 percent Disallowance: Net residual position interim haircuts (+/−) |
|---|---|---|---|---|
| E 1.5–3.5 yr. (1.5–3 yr.) | +716.1 | +653.7 | 196.1 | 0.0 |
| G (7.5–15 yr.) (5.5–9 yr.) | −990.0 | | 0.0 | −336.3 |
| Column # | 20 | 21 | 22 | 23 |

The net residual position interim haircut of −$336.3 thousand in category G can be further offset against the residual position interim haircut of +$825.0 in category MB at this 30% level. This offsetting leaves a new net residual position interim haircut of +$488.7 in category MB. Category G's net residual position interim haircut becomes $0.0, but it receives a hedging disallowance haircut of $100.9. Finally, categories B and C with residual position interim haircuts of +$216.0 and −$130.0, respectively, can also be offset at the 30% level. This offsetting leaves a net residual position interim haircut of +$86.0 thousand in category B and a hedging disallowance haircut of $39.0 thousand in category C. The final results of all these calculations would be shown in rows B, C, E, G, and MB of Schedule E, "Calculation of Hedging Disallowance Haircuts when Netting Haircuts across Categories," as follows:

SCHEUDLE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

| Maturity category | Residual position interim haircuts | 20 percent Disallowance | | 30 percent Disallowance | |
|---|---|---|---|---|---|
| | | Net residual position interim haircuts | | Hedging disallowance haircuts | Net residual position interim haircut |
| | (+/−) | (+/−) | | (+) | (+/−)* |
| B 45–134 days | +216.0 | | | 0.0 | +86.0 |
| C 135 days-9 mn | −130.0 | | | 39.0 | 0.0 |
| E 1.5–3.5 yr. (1.5–3 yr.) | +716.1 | +663.7 | | 196.1 | 0.0 |
| G 7.5–15 yr. (5.5–9 yr.) | −990.0 | | | 100.9 | 0.0 |
| MB mortgage-backed | +825.0 | | | 0.0 | +466.7 |
| Column # | 20 | | 22 | 23 | 24 |

[iii] At the 40% level there are no pairs remaining for which offsetting is both permissible and possible.

[iv] Calculation of the total hedging disallowance haircut and the residual net position haircut is shown on Schedule E in the last two columns, "Hedging Disallowance Haircuts" and "Qualified Netting Interim Haircuts," where the hedging disallowance haircut and the qualified netting interim haircut for each category are entered as follows:

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES

[In thousands of dollars]

| Maturity category | Hedging disallowance haircuts | Qualified netting interim haircuts |
|---|---|---|
| | (+) | (+) |
| B 45–134 days | 0.0 | 86.0 |
| C 135 days-9 mn | 39.0 | 0.0 |
| D 9–18 mn | 0.0 | 0.0 |
| E 1.5–3.5 yr (1.5–3 yr.) | 196.1 | 0.0 |
| F 3.5–7.5 yr (3–5.5 yr.) | 12.5 | 0.0 |
| G 7.5–15 yr (5.5–9 yr) | 100.9 | 0.0 |
| H 15–30 yr (9–12 yr.) | 520.5 | 0.0 |
| I (12–21 yr) | 0.0 | 985.0 |
| J (21 yr. and over) | 0.0 | 0.0 |
| MB mortgage-backed | 0.0 | 466.7 |
| AR adjustable rate mortgage-backed | 0.0 | 220.0 |
| Total hedging disallowance haircut | 869.0 | |
| Residual net position haircut | | 1,579.7 |
| Column | 27 | 28 |

**Schedule A**

**Example (16)**

On Schedule A haircuts from Schedules C through E and the elements of the liquid capital calculation are entered. Liquid capital and the capital-to-risk ratio are then calculated. On October 31, 1986, firm A has total ownership equity of $12,123.2 thousand and subordinated liabilities of $2,000.0 thousand, of which $853.3 thousand are non-allowable, or illiquid, assets. These amounts with various deductions and credits give firm A liquid capital of $13,121.4 thousand.

The sum of firm A's net credit exposure to each of its customers is $4,464 thousand. Included in this net credit exposure are firm A's exposure of $100 thousand on its when-issued position (the $50.1 million market value minus the $50 million contract value) and the market value of $192.5 thousand on the long unlisted option. Excluded from this figure is any net credit exposure, or portion thereof, which has already been deducted from or charged against liquid capital. Also excluded is the $80 thousand of excess exposure to a single counterparty used in calculating the concentration of credit haircut below. The counterparty exposure haircut of $223.2 thousand is found by taking five percent of the net credit exposure.

With one of its counterparties firm A has a net credit exposure of $2,048.2 thousand. This is in excess of 15 per cent of firm A's liquid capital of $13,121.4 thousand, so a concentration of credit haircut of $20 thousand is found by multiplying the excess, $80 thousand, by 25 per cent. A credit volatility haircut of $225 thousand is found by multiplying the larger of the qualifying long or short

money market positions, $150 million, by 0.15 per cent.

Since the $40 million commercial paper position is rated in one of the four highest rating categories (though not in one of the three highest) by two nationally recognized statistical rating organizations, it has a haircut of 2% x $40 million = $800 thousand according to SEC Rule 15c3–1.

The haircuts and the elements making up liquid capital are entered on Schedule A, "Liquid Capital Requirement Summary Computation," as follows:

**Schedule A.—*Liquid capital requirement summary computation***

[In thousands of dollars]

| | |
|---|---|
| 1. Liquid capital [1] | 13,121.4 |
| 2. Haircuts on security and financing positions including contractual commitments: | |
| a. Total governments offset portion haircut (Schedule C) | 130.5 |
| b. Total futures and options offset haircut (Schedule D) | 70.4 |
| c. Toital hedging disallowance haircut (Schedule E) | 869.0 |
| d. Residual net position haircut (Schedule E) | 1,679.7 |
| e. Other securities haircut (use SEC factors) | 800.0 |
| 3. Haircuts on credit exposure: | |
| a. Total counterparty exposure haircut | 223.2 |
| b. Total concentration of credit haircut | 397.9 |
| c. Total credit volatility haircut | 325.0 |
| 4. Total haircuts (sum of lines 2a through e, 3a, b, and c) | 4,017.6 |
| 5. Capital-to-risk ratio (line 1 divided by line 4) | 3.3:1 |

[1] Identical to the amount reported on line 3040 of the Report on Finances and Operations of Government Securities Brokers and Dealers, Form G–405.

A completed set of the remaining schedules, using firm A's positions from the examples above, follows.

SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

| | Maturity category [1] | Financings | | Securities positions | | Total securities and financing positions | | Offset portions (+) | Net immediate positions (+/−) |
|---|---|---|---|---|---|---|---|---|---|
| | | Long [2] (+) | Short [2] (−) | Long (+) | Short (−) | (+) | (−) | | |
| A | 0–44 days | +291 | | | −100 | +291.0 | −100 | 100 | +191.0 |
| B | 45–134 days | +30 | | +150.0 | | +180.0 | 0 | 0 | +180.0 |
| C | 135 days–9 months | +25 | | | −90 | +25.0 | −90 | 25 | −65.0 |
| D | 9–18 months | | −50 | +50.0 | | +50.0 | −50 | 50 | 0 |
| E | 1.5–3.5 years (1.5–3 years) | | | +65.1 | | +65.1 | 0 | 0 | +65.1 |
| F | 3.5–7.5 years (3–5.5 years) | | | +20.0 | −30 | +20.0 | −30 | 20 | −10.0 |
| G | 7.5–9 years (5.5–9 years) | | | | −30 | 0 | −30 | 0 | −30.0 |
| H | 15–30 years (9–12 years) | | | +50.0 | | +50.0 | 0 | 0 | +50.0 |
| I | (12–21 years) | | | | −45 | 0 | −45 | 0 | −45.0 |
| J | (21 years and over) | | | | | | | | |
| MB | Mortgage-backed | | | +30.0 | | +30.0 | 0 | 0 | +30.0 |
| AR | Adjustable rate mortgage-backed. | | | | −20 | 0 | −20 | 0 | −20.0 |
| | Column Number | 1 | 2 | 3 | 4 | 5 (1+3) | 6 (2+4) | [3] 7 (Note 1) | [3] 8 (5+6) |

[1] The categories are designated in section 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in that category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

[2] Long financings are financings which provide securities to a broker or dealer; short financings are those which provide funds.

[3] Carry forward to Schedule C.

NOTE 1: The offset portion (Column 7) is the smaller of Columns 5 and 6.

SCHEDULE C.—GOVERNMENTS OFFSET PORTION AND NET IMMEDIATE POSITION INTERIM HAIRCUTS CALCULATION

| | Maturity category [1] | Governments offset portion | | | Net immediate position | | |
|---|---|---|---|---|---|---|---|
| | | Amounts (+) | Factors | Haircuts (+) | Amounts (+/−) | Factors | Interim haircuts (+/−) |
| A | 0–44 days | $100 | None | 0.0000 | +$191 | None | 0.0000 |
| B | 45–134 days | 0 | 0.0002 | 0.0000 | +180 | 0.0012 | +0.02160 |
| C | 135 days–9 months | 25 | 0.0003 | 0.0075 | −65 | 0.0020 | −0.1300 |
| D | 9–18 months | 50 | 0.0007 | 0.0350 | 0 | 0.0045 | 0.0000 |
| E | 1.5–3.5 years (1.5–3 years) | 0 | 0.0022 | 0.0000 | +65.1 | 0.0110 | +0.7161 |
| F | 3.5–7.5 years (3–5.5 years) | 20 | 0.0044 | 0.0880 | −10 | 0.0220 | −0.2200 |
| G | 7.5–15 years (5.5–9 years) | 0 | 0.0050 | 0.0000 | −30 | 0.0330 | −0.9900 |
| H | 15–30 years (9–12 years) | 0 | 0.0100 | 0.0000 | +50 | 0.0500 | +2.5000 |
| I | (12–21 years) | 0 | 0.0155 | 0.0000 | −45 | 0.0775 | −3.4875 |
| J | (21 years and over) | 0 | 0.0335 | 0.0000 | 0 | 0.1125 | 0.0000 |
| MB | Mortgage-backed | 0 | 0.0066 | 0.0000 | +30 | 0.0330 | +0.9900 |
| AR | Adjustable rate mortgage-backed | 0 | 0.0022 | 0.0000 | −20 | 0.0110 | −0.2200 |

SCHEDULE C.—GOVERNMENTS OFFSET PORTION AND NET IMMEDIATE POSITION INTERIM HAIRCUTS CALCULATION—Continued

| Maturity category [1] | Governments offset portion | | | Net immediate position | | |
|---|---|---|---|---|---|---|
| | Amounts (+) | Factors | Haircuts (+) | Amounts (+/−) | Factors | Interim haircuts (+/−) |
| Total Governments offset portion haircut | | | $0.1305 | | | |
| Column number | 7 (Note 1) | 9 | [3] 10 (7 x 9) | 8 (Note 1) | 11 | [3] 12 (8 x 11) |

[1] The categories are designated in section 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

[2] Carry to Schedule A, line 2a.

[3] Carry forward to Schedule D (or Schedule E, if no forwards, futures, or options).

NOTE 1.—From Schedule B.

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

| | Maturity category [1] | Net immediate position interim haircuts (+/−) | Gross interim haircuts: Futures and forward (+) | Gross interim haircuts: Futures and forward (−) | Gross interim haircuts: Options (+) | Gross interim haircuts: Options (−) | Aggregate interim haircuts (+) | Aggregate interim haircuts (−) | Futures and options offset portions [2] (+) | Residual position interim haircuts (+/−) |
|---|---|---|---|---|---|---|---|---|---|---|
| B | 45–134 days | +216.0 | | | | | | | | +216.0 |
| C | 135 days-9 months | −130.0 | +29.6 | | | −29.6 | +29.6 | −159.6 | 29.6 | −130.0 |
| D | 9–18 months | 0.0 | | | | | | | | 0.0 |
| E | 1.5–3.5 years 1.5–3 years | +716.1 | | | | | | | | +716.1 |
| F | 3.5–7.5 years (3–5.5 years) | −220.0 | | | +157.6 | | +157.6 | −220.0 | 157.6 | −62.4 |
| G | 7.5–15 years (5.5–9 years) | −990.0 | | | | | | | | −990.0 |
| H | 15–30 years (9–12 years) | +2,500.0 | | | +102.5 | | +2,602.5 | 0.0 | 0.0 | +2,602.5 |
| I | (12–21 years) | −3,487.5 | | | | | | | | −3,487.5 |
| J | (21 years and over) | 0.0 | | | | | | | | 0.0 |
| MB | Mortgage-backed | +990.0 | | −165.0 | | | +990.0 | −165.0 | 165.0 | +825.0 |
| AR | Adjustable rate mortgage-backed | −220.0 | | | | | | | | −220.0 |
| | Total Futures and Options Offset: Portion | | | | | | | | $352.2 | |
| | Factor | | | | | | | | X20% | |
| | Total Futures and Options Offset Haircut | | | | | | | | $70.44 | |
| | Column Number | 12 (Note 1) | 13 | 14 | 15 | 16 | 17 | 18 | 19 (Note 2) | [4] 20 (17+18) |

[1] The categories are designated in section 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year is always considered to be 6 months.

[2] The total futures and options haircut is calculated from the total of column 19.

[3] Carry to Schedule A, line 2b.

[4] Carry forward to Schedule E.

NOTE 1: From Schedule C.

NOTE 2: Column 19 is the smaller of columns 17 and 18.

SCHEDULE E.—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES [1]

[In thousands of dollars]

| | Maturity category [2] | Residual position interim haircuts (+/−) | 20% disallowance | | 30% disallowance | | 40% disallowance | | Hedging disallowance haircuts (+) | Qualified netting interim haircuts (+) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | Hedging disallowance haircuts (+) | Net residual position interim haircuts (+/−) | Hedging disallowance haircuts (+) | Net residual position interim haircuts (+/−) | Hedging disallowance haircuts (+) | Net residual position interim haircuts (+/−) | | |
| B | 45–134 days | +216.0 | | | 0.0 | +88.0 | | | 0.0 | 88.0 |
| C | 135 days-9 months. | −130.0 | | | 39.0 | 0.0 | | | 39.0 | 0.0 |
| D | 9–18 months | 0.0 | | | | | | | 0.0 | 0.0 |
| E | 1.5–3.5 years (1.5–3 years). | +716.1 | 0.0 | +659.7 | 196.1 | 0.0 | | | 196.1 | 0.0 |
| F | 3.5–7.5 years (3–5.5 years). | −62.4 | 12.5 | −0.0 | | | | | 12.5 | 0.0 |
| G | 7.5–15 years (5.5–9 years). | −990.0 | | | 100.9 | 0.0 | | | 100.9 | 0.0 |
| H | 15–30 years (9–12 years). | +2,602.5 | 520.5 | 0.0 | | | | | 520.5 | 0.0 |
| I | (12–21 years) | −3,487.5 | 0.0 | −885.0 | | | | | 0.0 | 885.0 |
| J | (21 years and over). | 0.0 | | | | | | | 0.0 | 0.0 |
| MB | Mortgaged-backed. | +825.0 | | | 0.0 | +488.7 | | | 0.0 | 488.7 |
| AR | Adjustable rate mortgage-backed | −220.0 | | | | | | | 0.0 | 220.0 |
| | Total Hedging Disallowance Haircut. | | | | | | | | 869.9 | |
| | Residual Net Position Haircut | | | | | | | | | 1,879.7 |
| | Column Number | 20 (Note 1) | 21 | 22 (Note 2) | 23 | 24 (Note 2) | 25 | 26 (Note 2) | [3] 27 (Note 3) | [4] 28 |

[1] See section 402.2(f)(3) for category pair hedging disallowance haircut factors.
[2] The categories are designated in section 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same as all other instruments. A half year (.5) is always considered to be 6 months.
[3] Column 27 carries forward to Schedule A, line 2c.
[4] Column 28 total carries forward to Schedule A, line 2d.
NOTE 1: From Schedule D (or Schedule C, if no forwards, futures, or options).
NOTE 2: Net of two offsetting haircuts of paired maturity categories.
NOTE 3: For every entry in column 20 there should be an entry in either column 27 or 28 (but never both).

## Appendix B—Treasury Market Risk Haircut Factor Derivations

The three major sets of haircut factors used in calculation of the Treasury market risk haircut capture in three different ways the market risk of positions in most government securities. The derivations of these three sets of factors is discussed below.

*Net Position Haircuts Factors*

Net position haircuts, found at § 402.2(f)(2) of the temporary rule, measure the market risk to a dealer with a net (long or short) position in U.S. Government and agency securities (including zero-coupon and mortgage-backed securities) and other high quality money market instruments. Securities are grouped into categories defined by their remaining term to maturity and each category is assigned a net position haircut factor based on the price risk of benchmark securities within the category. To account for risk, a dollar estimate of potential losses is computed by applying the net position haircut factor to the dollar size of the net position in the securities in a category.

Categories B, C, D, and G bracket a benchmark "on the run" security corresponding to a regularly issued Treasury security. Category H uses the 30-year bond as the benchmark since the Treasury no longer issues a 20-year bond at its regular auctions. Categories E and F contain more than one "on the run" security. For Category E the average of the 2- and 3-year securities is used as the benchmark security. For Category F the 5-year note is used as the benchmark since it more closely aligns with the midpoint of the category.

Net position haircuts for Treasury categories B through H were derived using weekly (Tuesday-to-Tuesday) Treasury yield curve data for each of the calendar years 1982 through 1986. The annual average price for each security was calculated using the average coupon (the weighted average coupon of the "on the run" securities for the year)

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and the average yield (the average of Tuesday yields for the year). To measure price volatility for the haircuts, the price for each benchmark was recomputed using the average yield plus 2.5 times the standard deviation of the year's weekly changes in yields.[1] The percentage change in price represents the haircut factor. The final haircut factors were based on 1986 data, but these figures were checked against the factors of previous years in order to take into account a wider range of possible market conditions.

The same yield-to-price procedure was used to calculate haircuts for the two zero-coupon categories as was used for Treasuries. The yields for the zero-coupon benchmark securities were theoretical zero-coupon yields derived from the Treasury constant maturity yield curve.

The net position haircut for fixed-rate mortgage-backed securities was derived by correlating price movements of mortgage-backed securities with those of Treasuries. In the interest of simplicity, only one fixed-rate haircut was established, even though mortgage-backed securities trade differently depending on how close they are to par. The haircut was set for fixed-rate mortgage-backed securities trading at or close to par. In 1984, 1985, and 1986 the highest R-squares (squared correlation coefficients) between GNMA, FHLMC, and FNMA fixed-rate mortgaged-backed securities and Treasuries were in the seven- to ten-year maturity range. Thus the haircut for fixed-rate mortgage-backed securities was set equal to that of Category G.

The net position haircuts for adjustable-rate mortgage-backed securities were set using the same method as for fixed-rate securities. Correlations of price movements for Treasuries and adjustable-rate mortgage-backed securities were the highest in 1986 for the maturities in Category E. Thus the haircut for the AR category was set equal to that of Category E.

*Offset Haircut Factors*

Since only a long and a short position in the same security will exactly offset each other in terms of price movements, the net position haircut factors, which are applied only to the net position within a category, do not measure all the risk of the positions in that category.

[1] The standard deviations of the week-to-week changes in the yields for each benchmark security are used as the basic measure of yield volatility. Assuming a normal distribution, a range of plus or minus 2.5 standard deviations of the changes in yields will encompass approximately 99 percent of the week-to-week changes that might occur.

The offset haircut factors reflect the risk inherent in a hedge between any two securities within a category and the range of price volatility that can reasonably be expected within a category. The factors, which are found at § 402.2(f)(2) of the temporary rule, were based on the correlations (R-squared) between weekly yield changes in the benchmark and endpoint securities of the maturity categories using data from 1982 through 1986. The weekly yield changes in the "endpoint securities" are the changes in each Tuesday's constant maturity yields for the maturities corresponding to the endpoints of the categories.

Each benchmark to endpoint correlation was subtracted from one and converted to percentage terms to create a "disallowance factor," measuring lack of correlation between the two parts. Based on these figures a percentage disallowance was determined for each category and multiplied by the corresponding net position haircut factor to obtain the offset haircut factor.

*Hedging Disallowance Haircut Factors*

Hedging across maturity classes can reduce total risk. As the distance between maturity classes increases, however, the risk of unexpected variations in prices associated with the variability of the yield curve also increases. Reduction of total haircuts for hedging is permitted only if yield changes in the two categories are sufficiently well correlated. Even when hedging between two categories is permitted, the haircut on a net long position in one maturity category is not permitted to offset one for one the haircut for a net short position in another category. The hedging disallowance haircut factor determines the percent of the offset that is not permitted. The factors, which are found at § 402.2(f)(3) of the temporary rule, were derived from the correlations (R-squared) between weekly yield changes in the benchmark securities of the maturity categories using data from 1982 through 1986.

To compute the factors, the amount by which the movements in yields in one category do not correspond to movements in another category was determined. This non-correspondence factor for each pair of categories was found by subtracting the correlation factor from one and converting it to percentage form. Another ten percent was added to reflect the imperfections inherent in any hedge. The results were grouped into four classes according to the percent of the hedge, or offset, being disallowed: 20, 30, and 40 percent and no offset permitted. Hedging of the haircuts in any two categories is only allowed if the correlation between the category benchmarks is at least 65 to 70 percent (the 40 percent disallowance level).

**List of Subjects in 17 CFR Chapter IV**

Accounting, Accountants, Banks, banking, Brokers, Credit unions, Dealers, Federal home loan banks, Government securities, Government securities brokers and dealers, Investments, National banks, Savings and loan associations, Securities.

For the reasons set out in the preamble, Chapter IV of Title 17, *Code of Federal Regulations*, is added as set forth below.

**CHAPTER IV—DEPARTMENT OF THE TREASURY**

**Subchapter A—Regulations Under Section 15C of the Securities Exchange Act of 1934**

Part
400—Rules of General Application
401—Exemptions
402—Financial Responsibility
403—Protection of Customer Securities and Balances
404—Recordkeeping and Preservation of Records
405—Reports and Audit
449—Forms, Section 15C of the Securities Exchange Act of 1934

**Subchapter B—Regulations Under Title II of the Government Securities Act of 1986**

450—Custodial Holdings of Government Securities by Depository Institutions

**Subchapter A—Regulations Under Section 15C of the Securities Exchange Act of 1934**

**PART 400—RULES OF GENERAL APPLICATION**

Sec.
400.1 Scope of regulations.
400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations, and of other materials.
400.3 Definitions.
400.4 Information concerning associated persons of financial institutions that are government securities brokers or dealers.
400.5 Amendments to application for registration and to notice of status as a government securities broker or dealer.
400.6 Notice of withdrawal from business as a government securities broker or dealer by a financial institution.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5).

**§ 400.1 Scope of regulations.**

(a) Title I of the Government Securities Act of 1986 (Pub. L. 99–571, 100 Stat. 3208) amends the Securities Exchange Act of 1934 (48 Stat. 881–905; 15 U.S.C. Chapter 2B) ("Act") by adding section 15C, authorizing the Secretary of the Treasury to promulgate regulations

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concerning the financial responsibility, protection of customer securities and balances, recordkeeping and reporting of brokers and dealers in government securities. Those regulations constitute subchapter A of this chapter. Unless otherwise explicitly provided, all regulations in this subchapter apply to all government securities brokers or dealers, including registered brokers or dealers and financial institutions.

(b) Section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) requires all government securities brokers and government securities dealers, except those who are brokers or dealers registered pursuant to section 15 or section 15B of the Act or financial institutions, to register with the Securities and Exchange Commission ("Commission"). Regulations concerning registration are at § 240.15Ca2–1 *et seq.* of this title. The Commission is responsible for the interpretation of the definitions of government securities broker and government securities dealer and of the regulations at § 240.15Ca2–1 *et seq.*

(c) Section 15C(a)(1)(B)(i) of the Act (15 U.S.C. 78o–5(a)(1)(B)(i)) requires all government securities brokers or dealers that are also registered brokers or dealers to notify the Commission of their status as government securities brokers or dealers. Regulations concerning notice are at § 240.15Ca1–1 of this title.

(d) Section 15C(a)(1)(B)(i) of the Act also requires all government securities brokers or dealers that are financial institutions to notify the appropriate regulatory agency, as defined in section 3(a)(34)(G) of the Act (15 U.S.C. 78c(a)(34)(G)), of their status as government securities brokers or dealers. The form of notice, Form G–FIN, is at § 449.1 of this chapter. Forms are available from the appropriate regulatory agency.

**§ 400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations and of other materials.**

(a) *Office responsible.* The regulations in this chapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for implementation of the regulations, including interpretations and action on requests for exemption, classification or modification, is the Office of the Deputy Assistant Secretary (Federal Finance).

(b)(1) *Exemptions and classifications.* Section 15C(a)(4) of the Act (15 U.S.C. 78o–5(a)(4)) authorizes the Secretary to exempt any government securities broker or dealer or class thereof, conditionally or unconditionally, from the requirements of registration or regulations promulgated under section 15C. In addition, section 15C(b)(3) of the Act (15 U.S.C. 78o–5(b)(3)) provides for classification, by the Secretary, of government securities brokers or dealers and authorizes the whole or partial exemption of classes from rules under section 15C or the application of different standards to different classes.

(2) *Interpretations.* Although the appropriate regulatory agencies, as defined in § 400.3, and the self-regulatory organizations, as defined in section 3(a)(26) of the Act (15 U.S.C. 78c(a)(26)), have enforcement responsibility under section 15C of the Act, Treasury is responsible for interpretation and amendment of the regulations under this chapter (with the exception of Forms G–FIN and G–FINW, §§ 449.1 and 449.2 of this chapter, which are the responsibility of the Board of Governors of the Federal Reserve System).

(c) *Requests for interpretations, exemptions, classifications.* (1) Interpretations under section 15C(b) of the Act (15 U.S.C. 78o–5(b)) and related sections and Treasury regulations thereunder may be provided, at the discretion of the Department, to firms or individuals actually or potentially affected by the Act or regulations, or to their representatives.

(2) Exemptions and classifications under sections 15C(a), (b) and (d) of the Act (15 U.S.C. 78o–5(a), (b), and (d)) and related sections and Treasury regulations thereunder may be provided at the discretion of the Department and after consultation with the SEC and the Board, to firms or individuals actually or potentially affected by the Act or regulations, or to their representatives.

(3) All requests for exemptions and classifications, and all requests for binding interpretations, shall be in writing, and shall conform to the following procedures.

(i) The names of the company or companies and all other persons involved shall be stated. Letters pertaining to unnamed companies or persons or hypothetical situations will not be answered.

(ii) The letter must contain a concise but complete statement of all material facts, a complete and accurate description of the entire transaction if the request is transactional (even though a request may apply to only a portion of a transaction), and a concise and unambiguous statement of the request, including precise statutory and regulatory citations.

(iii) The letter should indicate why the writer believes a problem exists or interpretation is needed, the writer's opinion on the matter, and the basis for such opinion.

(iv) If the writer requests confidential treatment of all or a portion of the request or response, this request and the basis therefor shall be included in a separate letter submitted at the same time as the request letter. If confidential treatment of a portion of a letter is requested, a copy of the letter with the portions for which such treatment is requested blocked out shall also be submitted.

(v) An original and two copies of each request letter shall be submitted to the Deputy Assistant Secretary (Federal Finance), Room 2334, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The letter shall indicate in the upper right hand corner the particular sections of the Act and of the regulations at issue.

(4) A written response by the Department to a request filed as stated in paragraph (c)(3) of this section shall be binding, with respect to the requester, on the Department, but shall cease to be binding if the facts are not as stated in the request or, prospectively, if the Department issues a superseding interpretation. The Department understands that the appropriate regulatory agencies and self-regulatory organizations will give appropriate deference to binding interpretations of the Department. The Department also expects the SEC staff to reflect such interpretations in responding, pursuant to the established procedures of the Commission, to no-action requests concerning rules the SEC enforces.

(5) The Department may decline to issue an interpretation for any reason and, in particular, may require that a requester make inquiry of its appropriate regulatory agency, the Commission or designated examining authority before the Department responds to a request.

(6) The Department will also provide informal oral and written advice, but such advice is not binding on the Department or on any other agency or organization.

(7) (i) Except as provided in paragraph (c)(7)(ii) of this section, every letter or other written communication requesting the Department to provide interpretive legal advice under the Act or to grant, deny or modify an exemption, classification or modification of regulations, together with any written response thereto, shall be made available upon request for inspection and copying by any person 30 days after the response has been sent or given to the person requesting it.

(ii) Any person submitting a letter or communication may also submit therewith a request that it be accorded confidential treatment for a specified period of time, not exceeding 90 days after the expiration of such 30 days, together with a statement setting forth the considerations upon which the request for such treatment is made. If the Department determines that the request for confidential treatment should be denied, the requester will be given 30 days to withdraw the request.

(d) *Effect of Commission interpretations.* Interpretations of the Commission and its staff (including no-action positions) and of the designated examining authorities, of any Commission regulation expressly adopted by reference in these regulations shall be of the same effect as if the regulation being interpreted were solely the Commission's regulation. However, in the event the Treasury has issued a formal interpretation on the subject, the Treasury understands that the Commission will give that interpretation appropriate deference, particularly with respect to both subsequent no-action positions and the continued validity of prior no-action positions.

**§ 400.3 Definitions.**

Unless otherwise explicitly provided, in this subchapter and for the purposes of these regulations:

(a) "Act" means the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. chapter 2B, as amended);

(b) "Appropriate regulatory agency" has the meaning set out in section 3(a)(34)(G) of the Act (15 U.S.C. 78c(a)(34)(G)), except that the appropriate regulatory agency for an entity insured by the Federal Savings and Loan Insurance Corporation is in all cases the Federal Home Loan Bank Board, and, with respect to a financial institution for which an appropriate regulatory agency is not explicitly designated, the appropriate regulatory agency is the SEC;

(c) "Associated person" means a person other than a person whose functions are solely clerical or ministerial:

(1) Directly engaged in any of the following activities in either a supervisory or non-supervisory capacity:

(i) Underwriting, trading or sales of government securities;

(ii) Financial advisory or consultant services for issuers in connection with the issuance of government securities;

(iii) Research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section;

(iv) Activities other than those specifically mentioned which involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section; or

(2) Directly engaged in the following activities in a supervisory capacity:

(i) Processing and clearance activities with respect to government securities;

(ii) Maintenance of records involving any of the activities described in paragraph (c)(1);

*provided, however,*

(3) That in the case of a financial institution,

(i) Persons who function solely in a fiduciary capacity shall not be considered "associated persons";

(ii) Persons whose sole government securities activities are, without exercising any investment discretion and solely at the direction of customers, to receive and/or transmit customer orders to purchase or sell government securities, but who do not give investment advice or receive transaction-based compensation shall not be considered "associated persons"; and

(iii) Directors and senior officers of the financial institution who may from time to time set broad policy guidelines affecting the financial institution as a whole that are not directly related to the conduct of the financial institution's government securities business are not considered to be "directly engaged" in the activities described in this paragraph (c);

(d) "Board" means the Board of Governors of the Federal Reserve System;

(e) "Branch or agency of a foreign bank" means a Federal branch or Federal agency of a foreign bank or a State branch or State agency of a foreign bank as such terms are used in the International Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607;

(f) "CFTC" means the Commodity Futures Trading Commission;

(g) "Commission" or "SEC" means the Securities and Exchange Commission;

(h) "Designated examining authority" and "Examining Authority" mean (1) in the case of a registered government securities broker or dealer that belongs to only one self-regulatory organization, such self-regulatory organization, and (2) in the case of a registered government securities broker or dealer that belongs to more than one self-regulatory organization, the self-regulatory organization designated by the Commission pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) as the entity with responsibility for examining such registered government securities broker or dealer;

(i) "Fiduciary capacity" includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole or shared exercise of discretion by a financial institution having fiduciary powers that is supervised by a federal or state financial institution regulatory agency;

(j) "Financial institution" has the meaning set out in section 3(a)(46) of the Act (15 U.S.C. 78c(a)(46)), and such term explicitly does not include a subsidiary or affiliate of an institution described in such section;

(k) "Government securities broker" has the meaning set out in section 3(a)(43) of the Act (15 U.S.C. 78c(a)(43)), and explicitly includes not only registered government securities brokers, but also registered brokers and financial institutions;

(l) "Government securities dealer" has the meaning set out in section 3(a)(44) of the Act (15 U.S.C. 78c(a)(44)), and explicitly includes not only registered government securities dealers, but also registered dealers and financial institutions;

(m) "Government securities" has the meaning set out in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42));

(n) "Registered broker or dealer" means a broker or dealer registered pursuant to section 15 or section 15B of the Act (15 U.S.C. 78o, 78o–4));

(o) "Registered government securities broker or dealer" means a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A));

(p) "Secretary" means the Secretary of the Treasury; and

(q) "Treasury" or "Department" means the Department of the Treasury, including in particular the Bureau of the Public Debt.

**§ 400.4 Information concerning associated persons of financial institutions that are government securities brokers or dealers.**

(a) Every associated person of a financial institution that is a government securities broker or dealer that is not exempt pursuant to Part 401 of this chapter shall file with such financial institution a completed Form G–FIN–4 (§ 449.4 of this chapter) unless such person has on file with such financial institution a completed and current Form U–4 (promulgated by a self-

regulatory organization) or Form MSD–4 (as required for associated persons of bank municipal securities dealers).

(b) To the extent any information furnished by an associated person pursuant to paragraph (a) of this section (including information on a Form U–4 or Form MSD–4) is or becomes materially inaccurate or incomplete, such associated person shall promptly furnish in writing to such financial institution, in a form acceptable to the appropriate regulatory agency for such financial institution, a statement correcting such information.

(c) For the purpose of verifying the information furnished by an associated person pursuant to paragraph (a) of this section, every government securities broker or dealer that is a financial institution shall make inquiry of all other employers of such associated person during the immediately preceding three years concerning the accuracy and completeness of such information.

(d) Every government securities broker or dealer that is a financial institution not exempt from this section pursuant to Part 401 of this chapter shall:

(1) Promptly obtain and, within 10 days thereafter, file with the appropriate regulatory agency, in a form acceptable to such appropriate regulatory agency, the information required by paragraphs (a) and (b) of this section; and

(2) File with the appropriate regulatory agency within 30 days after the termination of the status of an individual as an associated person a Form G–FIN–5 (§ 449.4 of this chapter), unless

(i) The financial institution is required to and has filed a Form U–5 or Form MSD–5 with respect to such person; or

(ii) The financial institution notifies the appropriate regulatory agency that the individual will remain in the financial institution's employment and the financial institution will continue to update the information about such individual as provided in paragraph (b) of this section and will file a Form G–FIN–5 within 30 days after the termination of such individual's employment with the financial institution.

(e) Every notice and form filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

(Approved by the Office of Management and Budget under control number 1505–0100)

### § 400.5 Amendments to application for registration and to notice of status as a government securities broker or dealer.

(a) (1) If the information contained in any application for registration as a government securities broker or dealer (other than the statements required by § 240.15Ca2–2 of this title) or in any amendment thereto, becomes inaccurate for any reason, the registered government securities broker or dealer shall file within 30 days thereafter an amendment on Form BD (§ 249.501 of this title) correcting such information, in accordance with the instructions provided therein.

(2) If the information contained in any notice of status as a government securities broker or dealer filed by a registered broker or dealer, or in any amendment thereto, becomes inaccurate for any reason, the registered broker or dealer shall file within 30 days an amendment on Form BD (§ 249.501 of this title) correcting such information, in accordance with the instructions provided therein.

(b) If the information contained in any notice of status as a government securities broker or dealer filed by a financial institution, or any amendment thereto, becomes inaccurate for any reason, the financial institution shall file within 30 days an amendment on Form G–FIN (§ 449.1 of this chapter) correcting such information, in accordance with the instructions provided therein.

(c) Every amendment filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

(Approved by the Office of Management and Budget under control number 1505–0100)

### § 400.6 Notice of withdrawal from business as a government securities broker or dealer by a financial institution.

(a) Whenever a financial institution that is a government securities broker or dealer that is not exempt from the notice requirements of § 400.5 pursuant to Part 401 of this chapter, ceases to act as a government securities broker or dealer, it shall file with the appropriate regulatory agency notice of such cessation on Form G–FINW (§ 449.2 of this chapter) in accordance with the instructions contained therein.

(b) Except as provided in paragraph (c) of this section, a notice that a financial institution has ceased to act as a government securities broker or dealer shall become effective for all purposes on the 60th day after the filing thereof with the appropriate regulatory agency or within such shorter period of time as the appropriate regulatory agency determines.

(c) If the notice described in paragraph (a) of this section is filed with the appropriate regulatory agency any time after the date of the issuance of a notice or order by the appropriate regulatory agency instituting proceedings pursuant to section 15C(c)(2)(A) of the Act (15 U.S.C. 78o–5(c)(2)(A)) to censure, suspend, limit, or bar from acting as a government securities broker or government securities dealer the entity filing such notice, or if the appropriate regulatory agency has instituted any action against the entity filing such notice pursuant to section 15C(2)(B) of the Act (15 U.S.C. 78o–5(c)(2)(B)), the notice shall become effective pursuant to paragraph (b) of this section at such time and upon such terms and conditions as the appropriate regulatory agency deems necessary or appropriate in the public interest for the protection of investors.

(d) Every notice filed pursuant to this section shall constitute a "report" within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

(Approved by the Office of Management and Budget under control number 1505–0100)

## PART 401—EXEMPTIONS

Sec.

401.1 Exemption for organizations handling transactions in United States Savings Bonds.
401.2 Exemption for depository institutions that submit tenders for the account of customers for purchase on original issue of United States Treasury securities.
401.3 Exemption for financial institutions that are engaged in limited government securities brokerage activities.
401.4 Exemption for financial institutions engaged in limited government securities dealer activities.
401.5 Exemption for corporate credit unions transacting limited government securities business with other credit unions.
401.6 Exemption for branches and agencies of foreign banks that deal solely with non-United States citizens resident offshore.
401.7 Temporary exemption for certain government securities brokers and dealers terminating business on or before October 31, 1987.
401.8 Temporary exemption for government securities brokers and dealers that are futures commission merchants registered with the CFTC.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(a)(4)).

**§ 401.1 Exemption for organizations handling transactions in United States Savings Bonds.**

An organization that handles United States Savings Bond transactions, including a qualified issuing or paying agent or an organization that accommodates customers or employees by forwarding requested transactions to qualified issuing or paying agents or the Treasury and whose transactions in government securities are limited to these transactions and such other activities that are exempted by the regulations under this subchapter, shall be exempt from the provisions of section 15C (a), (b) and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter. For the purposes of this section, the term "United States Savings Bond" means any savings-type security offered by the Treasury, including all series of United States Savings Bonds, United States Savings Notes and United States Savings Stamps.

**§ 401.2 Exemption for depository institutions that submit tenders for the account of customers for purchase on original issue of United States Treasury securities.**

(a) Subject to the requirements of paragraph (b) of this section, a depository institution that submits tenders or subscriptions for purchase on original issue of United States Treasury securities for the account of customers on a fully disclosed basis, whose transactions in government securities are limited to such transactions and such other activities as have been exempted by regulation under this subchapter shall be exempt from the provisions of section 15C (a), (b) and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter.

(b) A depository institution that relies on the exemption contained in paragraph (a) of this section is required to comply with the regulations of Part 450 of this chapter concerning custodial holdings of government securities.

(c) For the purposes of this section, "depository institution" has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A) (i) through (vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607).

**§ 401.3 Exemption for financial institutions that are engaged in limited government securities brokerage activities.**

(a)(1) Subject to the requirements of paragraph (b) of this section, a financial institution shall be exempt from the provisions of sections 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter, unless it acts as a government securities broker by:

(i) Holding itself out as a government securities broker or interdealer broker; or

(ii) Actively soliciting purchases or sales of government securities on an agency basis;

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a financial institution shall not be regarded as acting as a government securities broker within the meaning of this section if it:

(i) Effects fewer than 500 government securities brokerage transactions (other than transactions described in § 401.1 or § 401.2) per year; or

(ii) Effects all such transactions (other than transactions described in § 401.1 or § 401.2) pursuant to a contractual or other arrangement with one or more government securities brokers or dealers each of which has registered or filed notice pursuant to section 15C(a)(1) of the Act (15 U.S.C. 78o–5(a)(1)) (each referred to as the "transacting government securities broker or dealer") under which the transacting government securities broker or dealer will offer securities services on or off the premises of the financial institution, provided that:

(A) The transacting government securities broker or dealer is clearly identified to customers as the person performing the securities services;

(B) Financial institution employees perform only clerical and ministerial or order-taking functions in connection with government securities transactions unless such employees are associated persons (as defined in § 400.3(c) of this chapter) or registered representatives of the transacting government securities broker or dealer;

(C) Financial institution employees do not receive compensation for government securities activities other than clerical or ministerial functions unless such employees are associated persons (as defined in § 400.3(c) of this chapter) or registered representatives of the transacting government securities broker or dealer; and

(D) Such services are provided on a fully disclosed basis by the transacting government securities broker or dealer, i.e., the transacting government securities broker or dealer receives and maintains all required information concerning each customer, its trading and account.

(b) A financial institution that relies on the exemption contained in paragraph (a) of this section is required to comply with the regulations of Part 450 of this chapter concerning custodial holdings of government securities for customers.

(c) For the purposes of this section,

(1) "Financial institution" includes an insured credit union, as defined in 12 U.S.C. 1752(7); but

(2) "Financial institution" does not include a branch or agency of a foreign bank.

**§ 401.4 Exemption for financial institutions engaged in limited government securities dealer activities.**

(a) Subject to the requirements of paragraph (b) of this section, a financial institution shall be exempt from the provisions of sections 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter if its government securities dealer activities are limited to one or more of the following activities:

(1) Sales or purchases in a fiduciary capacity;

(2) The sale and subsequent repurchase and the purchase and subsequent resale of government securities pursuant to a repurchase or reverse repurchase agreement; and

(3) Such other activities as have been exempted by regulation under this subchapter.

(b) A financial institution that relies on the exemption contained in paragraph (a) of this section is required to comply with:

(1) The regulations of Part 450 of this chapter concerning custodial holdings of government securities for customers; and

(2) Section 403.5(d) concerning certain repurchase transactions with customers.

(c) For the purposes of this section,

(1) "Financial institution" includes an insured credit union, as defined in 12 U.S.C. 1752(7); but

(2) "Financial institution" does not include a branch or agency of a foreign bank.

**§ 401.5 Exemption for corporate credit unions transacting limited government securities business with other credit unions.**

(a)(1) Subject to the requirements of paragraph (b) of this section, a corporate credit union shall be exempt from the provisions of section 15C (a), (b) and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations thereunder if its government securities dealer activities are limited to the sale and subsequent repurchase and the purchase and subsequent resale, each pursuant to a repurchase or reverse repurchase agreement, of government securities to

other credit unions and such other activities as have been exempted by regulation under this part.

(2) For the purposes of this section, "corporate credit union" means a credit union whose membership consists primarily of other credit unions and that is (i) a Federal credit union as defined in 12 U.S.C. 1752(1), (ii) an insured credit union as defined in 12 U.S.C. 1752(7), or (iii) a member of the National Credit Union Administration Central Liquidity Facility.

(b) A credit union that relies on the exemption contained in paragraph (a) of this section is required to comply with:

(1) The regulations of Part 450 of this chapter concerning custodial holdings of government securities; and

(2) Section 405.3(d) concerning certain repurchase transactions with customers.

**§ 401.6 Exemption for branches and agencies of foreign banks that deal solely with non-United States citizens resident offshore.**

(a) Subject to the requirements of paragraph (b) of this section, a branch or agency of a foreign bank shall be exempt from the provisions of section 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter, if all the customers with or on behalf of whom it engages in government securities transactions are limited to foreign governments, agencies of foreign governments and other persons and entities who are not citizens of the United States and who reside or, in the case of a corporation, partnership or other entity, have their principal place of business, outside of the United States.

(b) A branch or agency that relies on the exemption contained in paragraph (a) of this section is required to comply with the regulations of Part 450 of this chapter concerning custodial holdings of government securities.

**§ 401.7 Temporary exemption for certain government securities brokers and dealers terminating business on or before October 31, 1987.**

During the period ending October 31, 1987, a government securities broker or dealer shall be exempt from the provisions of section 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter if:

(a) Its government securities broker or dealer activities are limited to the performance of contractual obligations entered into prior to July 25, 1987;

(b) It is the subsidiary or affiliate of a government securities broker or dealer that has registered or given notice pursuant to section 15C(a)(1) of the Act (15 U.S.C. 78o–5(a)(1)); and

(c) It ceases all government securities broker or dealer activities on or before October 31, 1987.

**§ 401.8 Temporary exemption for government securities brokers and dealers that are futures commission merchants registered with the CFTC.**

During the period ending October 31, 1987, a government securities broker or dealer that is a futures commission merchant shall be exempt from the provisions of section 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter if:

(a) It is registered with the Commodity Futures Trading Commission under § 4f of the Commodity Exchange Act (7 U.S.C. 6f) and the regulations thereunder; and

(b) It is not currently the subject of any disciplinary action by any Federal or State entity regulating persons dealing in securities or commodities.

## PART 402—FINANCIAL RESPONSIBILITY

Sec.

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Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(A), (b)(2)).

**§ 402.1 Application of part to registered brokers and dealers and financial institutions; effective date.**

(a) *Application of part.* This part applies to all government securities brokers and dealers, except as otherwise provided herein.

(b) *Registered brokers or dealers.* This part does not apply to a registered broker or dealer that is subject to § 240.15c3–1 of this title (SEC Rule 15c3–1).

(c) *Financial institutions.* This part does not apply to a government securities broker or dealer that is a financial institution and that is:

(1) Subject to the rules and regulations of its appropriate regulatory agency concerning capital requirements, or

(2) A branch or agency of a foreign bank subject to regulation, supervision, and examination by State or Federal authorities having regulatory or supervisory authority over commercial bank and trust companies.

(d) *Futures commission merchants.* A futures commission merchant subject to § 1.17 of this title that is a government securities broker or dealer but is not a registered broker or dealer shall not be subject to the limitations of this Part 402 but rather to the capital requirement of § 1.17 or § 240.15c3–1 of this title, whichever is greater.

(e) *Government securities interdealer broker.* (1) A government securities interdealer broker, as defined in paragraph (e)(2) of this section, may, with the prior written consent of the Secretary, elect not to be subject to the limitations of this Part 402 but rather to be subject to the requirements of § 240.15c3–1 of this title (SEC Rule 15c3–1) except paragraph (c)(2)(ix) thereof, and paragraphs (e) (3), (4), (5), (6), and (7) of this section by filing such election in writing with its designated examining authority. A government securities interdealer broker may not revoke such election without the written consent of its designated examining authority.

(2)(i) "Government securities interdealer broker" means an entity engaged exclusively in business as a broker effecting transactions in government securities, on a fully disclosed or partially disclosed basis, for counterparties that are government securities brokers or dealers who have registered or given notice pursuant to section 15C(a)(1) of the Act (15 U.S.C. 78o–5(a)(1)), and that promptly transmits all funds and delivers all securities received in connection with its activities as a government securities interdealer broker and does not otherwise hold funds or securities for or owe money or securities to its counterparties and, except as provided in paragraph (e)(2)(ii) of this section, does not have or maintain any government securities in its proprietary or other accounts. For the purpose of this paragraph (e)(2)(i), "partially disclosed basis" means that the counterparties, if not aware of the exact identity of each other, have the right to obtain such information, or are aware and have consented to the identity of the specific group of entities from which the other counterparty is chosen.

(ii) A government securities interdealer broker may have or maintain government securities in its proprietary or other accounts only as a result of:

(A) Engaging in overnight reverse repurchase or securities borrowed transactions solely for the purpose of facilitating the process of clearing government securities transactions;

(B) Engaging in overnight repurchase or securities loaned transactions solely for the purpose of reducing its financing expense in connection with the clearance of government securities transactions;

(C) Subordinated loans subject to satisfactory subordination agreements pursuant to § 240.15c3–1(d) of this title;

(D) Collateral or depository requirements of a clearing corporation or association with which it participates in the clearance of government securities transactions; or

(E) The investment of its excess cash. The maturities of any government securities held or maintained under paragraphs (e)(2)(ii) (C), (D), or (E) of this section may not exceed one year.

(3) In order to qualify to operate under this paragraph (e), a government securities interdealer broker shall at all times have and maintain net capital, as defined in § 240.15c3–1(c)(2) of this title with the modifications of this paragraph (e), of not less that $1,000,000.

(4) For purposes of this paragraph (e), a government securities interdealer broker need not deduct net pair-off receivables and money differences outstanding no more than one business day and give-up receivables outstanding no more than 30 days from the billing date, which shall be no later than the last day of the month in which they arise, as otherwise would be required under § 240.15c3–1(c)(2)(iv)(B) of this title.

(5) For purposes of this paragraph (e), a government securities interdealer broker shall deduct from net worth ¼ of 1 percent of the contract value of each government securities failed-to-deliver contract which is outstanding 5 business days or longer. Such deduction shall be increased by any excess of the contract price of the failed-to-deliver contract over the market value of the underlying security.

(6) For purposes of this paragraph (e), a government securities interdealer broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by government securities outstanding for not more than one business day and offset by government securities failed to deliver of the same issue and quantity. In no event may a government securities interdealer broker exclude any overnight bank loan attributable to the same government securities failed-to deliver contract for more than one business day. A government securities interdealer broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receive as required by § 240.15c3–1(c)(2)(iv)(E) of this title.

(7)(i) For purposes of this paragraph (e), a government securities interdealer broker shall deduct from net worth 5 percent of its net credit exposure to each counterparty.

(ii) *Net exposure.* For purposes of this paragraph (e), net exposure shall equal:

(A) The sum of the dollar amount of funds, debt instruments, other securities, and other inventory at risk, in the first instance, to the government securities interdealer broker in the event of the counterparty's default,

(B) Reduced, but not to less than zero, by the sum of:

(*1*) The dollar amount of funds, debt instruments, other securities, and other inventory at risk, in the first instance, to the counterparty in the event of the government securities interdealer broker's default;

(*2*) The deductions taken from net worth for unsecured receivables, repurchase and reverse repurchase deficits, aged fails to deliver, and aged fails to receive arising from transactions with the counterparty;

(*3*) Demand deposits in the case where the counterparty is a commercial bank;

(*4*) Custodial holdings of securities in the case where the counterparty is a clearing bank or clearing broker of the government securities interdealer broker; and

(*5*) Exposure to a counterparty due to holding marketable instruments subject to market risk haircuts under Appendix A to this section (§ 402.2a) for which the counterparty is the obligor.

(8) On the application of the government securities interdealer broker, the designated examining authority may extend the periods of time in this paragraph (e) if it determines that the extension is warranted because of exceptional circumstances and that the government securities interdealer broker is acting in good faith.

(f) *Effective Date.* This part shall be effective July 25, 1987, *Provided however*, that until the last business day in October 1987, registered government securities brokers and dealers need not comply with § 402.2(a), (b), and (c) as long as:

(1) A registered government securities broker or dealer that acts solely as an introducing broker within the meaning of § 240.15c3–1(a)(2) of this title has and maintains liquid capital, as defined in § 402.2(d), in an amount of not less than $5,000; and

(2) Any other registered government securities broker or dealer has and maintains liquid capital, as defined in § 402.2(d), in an amount of not less than $50,000.

**§ 402.2 Capital requirements for registered government securities brokers and dealers.**

(a) *General rule.* No government securities broker or dealer shall permit its liquid capital to be below an amount equal to 120 percent of total haircuts as defined in paragraph (g) of this section.

(b) *Minimum liquid capital.* Notwithstanding the provisions of paragraph (a) of this section, a government securities broker or dealer shall have and maintain liquid capital in an amount not less than $25,000, after deducting total haircuts as defined in paragraph (g) of this section.

(c) *Minimum liquid capital for introducing brokers.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, a government securities broker or dealer that acts solely as an introducing broker within the meaning of § 240.15c3–1(a)(2) of this title, shall maintain liquid capital in an amount not less than $5,000, after deducting total haircuts as defined in paragraph (g) of this section.

(d) *Liquid capital.* "Liquid capital" means net capital as defined in § 240.15c3–1(c)(2) of this title with the following modifications:

(1) The percentages used to calculate the deductions for failed to deliver contracts required by § 240.15c3–1(c)(2)(ix) of this title when the underlying instrument is a Treasury market risk instrument as defined in paragraph (e) of this section are the appropriate net position haircut factors specified in paragraph (f)(2) of this section;

(2) The percentages used to calculated deductions required by § 240.15c3–1(c)(2)(iv)(B) of this title for securities that are Treasury market risk instruments are the appropriate net position haircut factors specified in paragraph (f)(2) of this section;

(3) The deductions from net worth required by § 240.15c3–1 (c)(2)(vi) and (c)(2)(viii) of this title and the adjustments to net worth set forth in § 240.15c3–1a and § 240.15c3–1b of this title (Appendices A and B to SEC Rule 15c3–1) are omitted;

(4) Net pair-off receivables and money differences outstanding no more than one business day and give-up receivables outstanding no more than 30 days from the billing date, which shall be no later than the last day of the month in which they arise, need not be deducted as otherwise would be

required under § 240.15c3–1(c)(2)(iv)(B) of this title; and

(5) In determining net worth, all long and short positions in unlisted options that are Treasury market risk instruments shall be evaluated in the manner set forth in § 240.15c3–1(c)(2)(i)(B)(*1*) and not in the manner set forth in § 240.15c3–1(c)(2)(i)(B)(*2*) of this title.

(e) *Treasury market risk instruments.* (1) For purposes of this part, the term "Treasury market risk instrument" means the following dollar-denominated securities, debt instruments, and derivative instruments:

(i) Government securities, except equity securities and those mortgage-backed securities described in paragraph (e)(2) of this section;

(ii) Zero-coupon receipts or certificates based on marketable Treasury notes or bonds;

(iii) Certificates of deposit of no more than one year to maturity;

(iv) Bankers acceptances;

(v) Commercial paper of no more than one year to maturity rated in one of the three highest categories by at least two nationally recognized statistical rating organizations;

(vi) Futures, forwards, and options on Treasury market risk instruments described in paragraphs (e)(1) (i) through (v) of this section or on time deposits whose changes in yield are closely correlated with the Treasury market risk instruments described in paragraph (e)(1)(iii) of this section, settled on a cash or delivery basis; and

(vii) Options on those futures contracts described in paragraph (e)(1)(vi) of this section, settled on a cash or delivery basis.

(2) "Treasury market risk instrument" does not include mortgage-backed securities that do not pass through to each security holder on a pro rata basis a distribution based on the monthly payments and prepayments of principal and interest on the underlying pool of mortgage collateral less fees and expenses.

(f)(1) *Haircut categories.* For purposes of this part, the applicable catgories within which non-zero-coupon and zero-coupon Treasury market risk instruments are classified are:

| Category | Term or type for non-zero-coupon instruments | Term for zero-coupon instruments |
|---|---|---|
| A | Less than 45 days | Less than 45 days. |
| B | At least 45 days but less than 135 days | At least 45 days but less than 135 days. |
| C | At least 135 days but less than 9 months | At least 135 days but less than 9 months. |
| D | At least 9 months but less than 1 year, 6 months | At least 9 months but less than 1 year, 6 months. |
| E | At least 1 year, 6 months but less than 3 years, 6 months | At least 1 year, 6 months but less than 3 years. |
| F | At least 3 years but less than 7 years, 6 months | At least 3 years, 6 months but less than 5 years, 6 months. |
| G | At least 7 years, 6 months but less than 15 years | At least 5 years, 6 months but less than 9 years. |
| H | 15 years and over | At least 9 years, but less than 12 years. |
| I | | At least 12 years but less than 21 years. |
| J | | 21 years and over. |
| MB | All fixed rate mortgage-backed securities that are Treasury market risk instruments. | |
| AR | All adjustable rate mortgage-backed securities that are Treasury market risk instruments. | |

(2) *Haircut factors.* For purposes of this part, the applicable net position and offset haircut factors to be used in the calculation of the Treasury market risk haircut are as follows:

| Category | Haircut factors | |
|---|---|---|
| | Net position haircuts (percent) | Offsets (percent) |
| A | (1) | (1) |
| B | 0.12 | 0.02 |
| C | 0.20 | 0.03 |
| D | 0.45 | 0.07 |
| E | 1.10 | 0.22 |
| F | 2.20 | 0.44 |
| G | 3.30 | 0.50 |
| H | 5.00 | 1.00 |
| I | 7.75 | 1.55 |
| J | 11.25 | 3.38 |
| MB | 3.30 | 0.66 |
| AR | 1.10 | 0.22 |

(3) *Category pair hedging disallowance haircut factors.* For purposes of this part, the applicable category pair hedging disallowance haircut factors to be used in the calculation of the Treasury market risk haircut are as follows:

| Category | Percent disallowed | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | C | D | E | F | G | H | I | J | MB |
| B | 30 | 40 | | | | | | | |
| C | | 20 | 30 | | | | | | |
| D | | | 20 | 30 | 40 | | | | |
| E | | | | 20 | 30 | 40 | | | |
| F | | | | | 20 | 30 | 40 | | 30 |
| G | | | | | | 20 | 30 | | 30 |
| H | | | | | | | 20 | 40 | 40 |
| I | | | | | | | | 40 | |

(g) *Total haircuts.* "Total haircuts" equals the sum of the credit risk haircut and the market risk haircut.

(1) *Credit risk haircut.* The "credit risk haircut" equals the sum of the total counterparty exposure haircut, the total concentration of credit haircut and the credit volatility haircut.

(i) *Net credit exposure.* For purposes of this part, net credit exposure shall equal:

(A) The sum of the dollar amount of funds, debt instruments, other securities, and other inventory at risk to the government securities broker or dealer in the event of the counterparty's default and the market value of purchased unlisted options written by the counterparty that are Treasury market risk instruments,

(B) Reduced, but not to less than zero, by the sum of:

(1) The dollar amount of funds, debt instruments, other securities, and other inventory at risk to the counterparty in the event of the government securities broker's or dealer's default and the market value of unlisted options written by the government securities broker or dealer and held by the counterparty that are Treasury market-risk instruments;

(2) The deductions taken from net worth for unsecured receivables, repurchase and reverse repurchase agreement deficits, aged fails to deliver, and aged fails to receive arising from transactions with the counterparty;

(3) Demand deposits in the case where the counterparty is a commercial bank;

(4) Custodial holdings of securities in the case where the counterparty is a clearing bank or clearing broker of the government securities broker or dealer; and

(5) Exposure to a counterparty due to holding marketable instruments subject to market risk haircuts under Appendix A to this section (§ 402.2a) for which the counterparty is the obligor.

(ii) *Total counterparty exposure haircut.* The "total counterparty exposure haircut" equals the sum of the counterparty exposure haircuts taken for all counterparties of the government securities broker or dealer. The "counterparty exposure haircut" equals the product of a counterparty exposure haircut factor of 5 percent and the net credit exposure to a single counterparty not in excess of 15 percent of the government securities broker's or dealer's liquid capital.

(iii) *Total concentration of credit haircut.* The "total concentration of credit haircut" equals the sum of the concentration of credit haircuts taken for all counterparties of the government securities broker or dealer. The "concentration of credit haircut" equals the product of a concentration of credit haircut factor of 25 percent and the amount by which the net credit exposure to a single counterparty is in excess of 15 percent of the government securities broker's or dealer's liquid capital.

(iv) *Credit volatility haircut.* The "credit volatility haircut" equals the product of a credit volatility haircut factor of 0.15 percent and the dollar amount of the larger of the gross long position or gross short position in those Treasury market risk instruments described in paragraphs (e)(1) (iii), (iv) and (v) of this section that have a term to maturity greater than 45 days, including futures, forwards and options thereon, settled on a cash or delivery basis.

(2) *Market risk haircut.* The "market risk haircut" equals the sum of the Treasury market risk haircut and the other securities haircut, calculated in accordance with the provisions of Appendix A of this section, § 402.2a.

(h) *Debt-equity requirements.* No government securities broker or dealer shall permit the total of outstanding principal amounts of its satisfactory subordination agreements as defined in § 240.15c3–1d of this title (Appendix D to SEC Rule 15c3–1) modified as provided in Appendix D to this section, § 402.2d, to exceed the allowable levels set forth in § 240.15c3–1(d) of this title.

(i) *Limitation on withdrawal of equity capital.* No equity capital of the government securities broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix C to this section, § 402.2c, may be withdrawn by action of a stockholder or partner, or by redemption or purchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in § 240.15c3–1d of this title, Appendix D to SEC Rule 15c3–1, modified as provided in Appendix D to this section, § 402.2d) under satisfactory subordination agreements which are scheduled to occur within six months following such withdrawal, advance or loan, either:

(1) The ratio of liquid capital to total haircuts, determined as provided in § 402.2, would be less than 150 percent; or

(2) Liquid capital minus total haircuts would be less than 120 percent of the minimum capital required by § 402.2(b) or § 402.2(c) as applicable; or

(3) In the case of any government securities broker or dealer included in such consolidation, the total outstanding principal amounts of satisfactory subordination agreements of the government securities broker or dealer (other than such agreements which qualify as equity under § 240.15c3–1(d) of this title) would exceed 70% of the debt-equity total as defined in such § 240.15c3–1(d).

The term equity capital includes capital contributions by partners, par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions. This provision shall not preclude a government securities broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation.

(j) *Modification of appendices to § 240.15c3–1 of this title.* For purposes of this section, Appendix C to this section (§ 402.2c) is substituted for Appendix C to Rule 15c3–1 (§ 240.15c3–1c of this title), and Appendix D to Rule 15c3–1 (§ 240.15c3–1d of this title), relating to Satisfactory Subordination Agreements, is modified as provided in Appendix D to this section (§ 402.2d).

### § 402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).

The market risk haircut is the sum of the Treasury market risk haircut and the other securities haircut, calculated as follows.

(a) *Treasury market risk haircut.* The "Treasury market risk haircut" equals the sum of the total governments offset portion haircut, the total futures and options offset haircut, the total hedging disallowance haircut, and the residual net position haircut, calculated with respect to financings and positions in Treasury market risk instruments, except to the extent that a permissible election is made pursuant to paragraph (b)(1) of this section to include qualified positions in the calculation of the other securities haircut.

(1) *Total governments offset portion haircut.* The "total governments offset portion haircut" equals the sum of the governments offset portion haircuts calculated for each category in § 402.2(f)(1). The "governments offset portion haircuts" equal, for each category in § 402.2(f)(1), the product of the offset haircut factor for that category set out in § 402.2(f)(2) and the smaller of the absolute values of the gross long immediate position or gross short immediate position for that category. Schedules B and C in paragraph (c) of this Appendix can be used to make this calculation.

(i)(A) The "gross long immediate position" for purposes of this part equals, for each category except categories MB and AR in § 402.2(f)(1), the sum of the market values of each long immediate position in Treasury market risk instruments with a term to maturity (or, in the case of a floating rate note, the time to the next scheduled interest rate adjustment or the term to maturity, whichever is less) corresponding to such category, the contract values of each reverse repurchase agreement with a term to maturity or time to the next scheduled

interest rate adjustment, whichever is less, corresponding to that category, and the values of the cash collateral of each security borrowing with a term to maturity or time to next scheduled interest rate adjustment, whichever is less, corresponding to such category.

(B) In the case of category MB, the "gross long immediate position" equals the sum of the market values of all long immediate positions in fixed rate mortgage-backed securities which are Treasury market risk instruments.

(C) In the case of category AR, the "gross long immediate position" equals the sum of the market values of all long immediate positions in adjustable rate mortgage-backed securities which are Treasury market risk instruments.

(ii)(A) The "gross short immediate position" for purposes of this section equals, for each category except categories MB and AR in § 402.2(f)(1), the sum of the market values of each short immediate position in Treasury market risk instruments with a term to maturity (or, in the case of a floating rate note, the time to the next scheduled interest rate adjustment or the term to maturity, whichever is less) corresponding to such category, and the values of funds received from each financing transaction (including repurchase agreements, securities lending secured by cash collateral, and bank loans, but excluding subordinated debt which meets the requirements of § 240.15c3–1d of this title modified as provided in § 402.2d) with a term to maturity or time to the next scheduled interest rate adjustment, whichever is less, corresponding to that category.

(B) In the case of category MB, the "gross short immediate position" equals the sum of the market values of all short immediate positions in fixed rate mortgage-backed securities which are Treasury market risk instruments.

(C) In the case of category AR, the "gross short immediate position" equals the sum of the market values of all short immediate positions in adjustable rate mortgage-backed securities which are Treasury market risk instruments.

(iii) The term "long immediate position" in a Treasury market risk instrument means, for purposes of this part:

(A) The net long position in a Treasury market risk instrument as of the trade date, except when the settlement date, in the case of a Treasury market risk instrument except a mortgage-backed security, is scheduled more than five business days in the future, and, in the case of a mortgage-backed security, more than thirty calendar days in the future;

(B) The net long when-issued position in a marketable U.S. Treasury security between announcement and issue date; and

(C) The net long when-issued position in a government agency or a government sponsored agency debt security between release date and issue date.

(iv) The term "short immediate position" on a Treasury market risk instrument means, for purposes of this part:

(A) The net short position in a Treasury market risk instrument as of the trade date, except when the settlement date, in the case of a Treasury market risk instrument except a mortgage-backed security, is scheduled more than five business days in the future, and, in the case of a mortgage-backed security, more than thirty calendar days in the future;

(B) The net short when-issued position in a marketable U.S. Treasury security between announcement and issue date; and

(C) The net short when-issued position in a government agency or a government sponsored agency debt security between release date and issue date.

(2) *Net immediate position interim haircut.* The "net immediate position interim haircut" equals, for each category in § 402.2(f)(1), the product of the net position haircut factor for that category and the sum of the gross long immediate position and the gross short immediate position for that category. For purposes of this part, a gross long immediate position shall be a positive number and a gross short immediate position shall be a negative number. Schedules B and C in paragraph (c) of this appendix can be used to make this calculation.

(3) *Total futures and options offset haircut.* The "total futures and options offset haircut" equals the sum of the futures and options offset haircuts calculated for each category in § 402.2(f)(1). The "futures and options offset haircut" equals, for each category in § 402.2(f)(1), the product of a futures and options offset factor of 20 percent and the smaller of the absolute values of the positive and negative aggregate interim haircuts for that category. Schedule D in paragraph (c) of this appendix can be used to make this calculation.

(i) *Positive aggregate interim haircut.* The "positive aggregate interim haircut" equals, for each category in § 402.2(f)(1), the sum of the positive net immediate position interim haircut (see paragraph (a)(2) of this appendix), the gross long futures and forward interim haircut, and the positive gross options interim haircut for that category. Schedule D in paragraph (c) of this appendix can be used to make this calculation.

(A) *Gross long futures and forward interim haircut.* The "gross long futures and forward interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each long futures position and long forward position placed, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each long futures position and each long forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type, of Treasury market risk mortgage-backed security and the value of the long futures position or long forward position evaluated at the current market price for such contract.

(*2*) For purposes of this part, the gross long futures and forward interim haircut shall be a positive number.

(B) *Positive gross options interim haircut.* The "positive gross options interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each purchased call and sold put placed in the category in which the underlying instrument would be placed.

(*1*) For purposes of this part, the "interim haircut on each purchased call and sold put" equals the lesser of the market value of the option or, (*i*) in the case of an option on a cash instrument, the product of the net position haircut factor for the category to which the underlying cash instrument corresponds and the market value of the underlying cash instrument or, (*i* ) in the case of an option on a futures contract, the interim haircut on the underlying futures contract.

(*2*) For purposes of this part, the positive gross options interim haircut is a positive number.

(ii) *Negative aggregate interim haircut.* The "negative aggregate interim haircut" equals, for each category in § 402.2(f)(1), the sum of the negative net immediate position interim haircut (see paragraph (a)(2) of this appendix), the gross short futures and forward interim haircut, and the negative gross options interim haircut for that category. Schedule D in paragraph (c) of this appendix can be used to make this calculation.

(A) *Gross short futures and forward interim haircut.* The "gross short futures and forward interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each short futures position and short forward position placed, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, in the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the "interim haircut on each short futures position and each short forward position" is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract on Treasury market risk instruments except mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the short futures position or short forward position evaluated at the current market price for such contract.

(*2*) For purposes of this part, the gross short futures and forward interim haircut is a negative number.

(B) *Negative gross options interim haircut.* The "negative gross options interim haircut" equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each sold call and purchased put placed in the category in which the underlying instrument would be placed.

(*1*) For purposes of this part, the "interim haircut on each sold call and purchased put" equals the lesser of the market value of the option or, (*i*) in the case of an option on a cash instrument, the product of the net position haircut factor for the category to which the underlying cash instrument corresponds and the market value of the underlying cash instrument or, (*ii*) in the case of an option on a futures contract, the interim haircut on the underlying futures contract.

(*2*) For purposes of this part, the negative gross options interim haircut is a negative number.

(4) *Total hedging disallowance haircut.* The "total hedging disallowance haircut" equals the sum of the hedging disallowance haircuts calculated pursuant to each netting of qualified netting interim haircuts. The "hedging disallowance haircut" equals the absolute value of the product of the applicable category pair hedging disallowance haircut factor specified in § 402.2(f)(3) and the smaller in absolute value of any two qualified netting interim haircuts, netted in accordance with the provisions of this paragraph. Schedule E in paragraph (c) of this appendix can be used to make this calculation.

(i) *Qualified netting interim haircut.* The term "qualified netting interim haircut" means a residual position interim haircut or a net residual position interim haircut.

(A) *Residual position interim haircut.* The "residual position interim haircut" equals, for each category in § 402.2(f)(1), the sum of the positive aggregate interim haircut and the negative aggregate interim haircut corresponding to the category, calculated in accordance with the provisions of paragraph (a)(3) of this appendix.

(B)(*1*) *Net residual position interim haircut.* The "net residual position interim haircut" equals, for any two categories between which netting is permitted, the sum of (*i*) the residual position interim haircuts calculated for those categories, in the case of the category of the larger in absolute value of the two residual position interim haircuts being netted, and (*ii*) zero, in the case of the category of the smaller in absolute value of the two residual position interim haircuts being netted.

(*2*) For the purposes of this paragraph (a)(4), netting is permitted only between categories for which a category pair hedging disallowance haircut factor has been specified in paragraph § 402.2(f)(3).

(ii) Net residual position interim haircuts shall be substituted for the residual position interim haircuts in the respective categories in which they have been placed and shall be considered as if they were residual position interim haircuts. New net residual position interim haircuts may continue to be calculated until for each category pair for which netting is permitted at least one of the two qualified netting interim haircuts is zero or both qualified netting interim haircuts are of the same sign.

(5) *Residual net position haircut.* The "residual net position haircut" equals the sum of the absolute values of all qualified netting interim haircuts remaining in each category after the completion of the calculation of permissible nettings described in paragraph (a)(4) of this section. Schedule E in paragraph (c) of this appendix can be used to make this calculation.

(b) *Other securities haircut.* The "other securities haircut" equals the sum of all deductions specified in § 240.15c3–1 (c)(2)(vi) and (c)(2)(viii) of this title and §§ 240.15c3–1a and 240.15c3–1b of this title for long and short positions in securities, futures contracts, forward contracts, options, and other inventory which are not Treasury market risk instruments as defined in § 402.2(e).

(1) A registered government securities broker or dealer may elect to exclude from its calculation of the Treasury market risk haircut and include in its calculation of the other securities haircut long and short positions in Treasury market risk instruments if such positions form part of a hedge against long and short positions in securities, futures contracts, forward contracts, or options which are not Treasury market risk instruments. The market value of each position or portion of a position in Treasury market risk instruments excluded from the calculation of the Treasury market risk haircut and included in the calculation of the other securities haircut may not exceed the market value of the position which it offsets as part of a hedge.

(2) For purposes of this paragraph (b), a gross long or short position in Treasury market risk instruments shall be considered part of a hedge if the inclusion of such position in the calculation of the other securities haircut would serve to reduce said haircut.

(c) *Schedules.* This paragraph sets forth schedules which may be used by government securities brokers or dealers in the calculation of total haircuts as required by this Part 402. The appropriate regulatory agency or designated examining authority may specify other substantially similar forms required to be used by government securities brokers or dealers in the calculation of such haircuts.

### SCHEDULE A.—LIQUID CAPITAL REQUIREMENT SUMMARY COMPUTATION

[In thousands of dollars]

| | |
|---|---|
| 1. Liquid capital [1] | |
| 2. Haircuts on security and financing positions including contractual commitments: | |
| a. Total governments offset portion haircut (Schedule C) | |
| b. Total futures and options offset haircut (Schedule D) | |
| c. Total hedging disallowance haircut (Schedule E) | |

### SCHEDULE A.—LIQUID CAPITAL REQUIREMENT SUMMARY COMPUTATION—Continued

[In thousands of dollars]

| | |
|---|---|
| d. Residual net position haircut (Schedule E) | |
| e. Other securities haircut (use SEC factors) | |
| 3. Haircuts on credit exposure: | |
| a. Total counterparty exposure haircut | |
| b. Total exposure concentration haircut | |

### SCHEDULE A.—LIQUID CAPITAL REQUIREMENT SUMMARY COMPUTATION—Continued

[In thousands of dollars]

| | |
|---|---|
| c. Credit volatility haircut | |
| 4. Total haircuts (sum of lines 2 a through e, 3 a, b, and c) | |
| 5. Capital-to-risk ratio (line 1 divided by line 4) | |

[1] Identical to the amount reported on line 3640 of the Report on Finances and Operations of Government Securities Brokers and Dealers, Form G-405.

### SCHEDULE B.—CALCULATION OF NET IMMEDIATE POSITIONS IN SECURITIES AND FINANCINGS

| | Maturity category [1] | Financings | | Securities positions | | Total securities and financing positions | | Offset portions | Net immediate positions | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Long [2] | Short [2] | Long | Short | | | | | |
| | | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) | |
| A | 0–44 days | | | | | | | | | A |
| B | 45–134 days | | | | | | | | | B |
| C | 135 days-9 months | | | | | | | | | C |
| D | 9–18 months | | | | | | | | | D |
| E | 1.5–3.5 years (1.5–3 years) | | | | | | | | | E |
| F | 3.5–7.5 years (3–5.5 years) | | | | | | | | | F |
| G | 7.5–15 years (5.5–9 years) | | | | | | | | | G |
| H | 15–30 years (9–12 years) | | | | | | | | | H |
| I | (12–21 years) | | | | | | | | | I |
| J | (21 years and over) | | | | | | | | | J |
| MB | Mortgage-backed | | | | | | | | | MB |
| AR | Adjustable rate mortgage-backed. | | | | | | | | | AR |
| | Column Number | 1 | 2 | 3 | 4 | 5 | 6 (1+3) | 7# (2+4) | 8# (Note 1) | (5+6) |

#Carry forward to Schedule C.

Note 1: The offset portion (Column 7) is the smaller of Columns 5 and 6.

[1] The categories are designated in section 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in that category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

[2] Long financings are financings which provide securities to a broker or dealer; short financings are those which provide funds.

### SCHEDULE C.—GOVERNMENTS OFFSET PORTION AND NET IMMEDIATE POSITION INTERIM HAIRCUTS CALCULATION

| | Maturity category [1] | Governments offset portion | | | Net immediate position | | |
|---|---|---|---|---|---|---|---|
| | | Dollar amounts | Factors | Haircuts | Dollar amounts | Factors | Interim haircuts |
| | | (+) | | (+) | (+/−) | | (+/−) |
| A | 0–44 days | | None | | | None | |
| B | 45–134 days | | 0.0002 | | | 0.0012 | |
| C | 135 days-9 months | | .0003 | | | .0020 | |
| D | 9–18 months | | .0007 | | | .0045 | |
| E | 1.5–3.5 years (1.5–3 years) | | .0022 | | | .0110 | |
| F | 3.5–7.5 years (3–5.5 years) | | .0044 | | | .0220 | |
| G | 7.5–15 years (5.5–9 years) | | .0050 | | | .0330 | |
| H | 15–30 years (19–12 years) | | .0100 | | | .0500 | |
| I | (12–21 years) | | .0155 | | | .0775 | |
| J | (21 years and over) | | .0338 | | | .1125 | |
| MB | Mortgage-backed | | .0066 | | | .0330 | |
| AR | Adjustable rate mortgage-backed | | .0022 | | | .0110 | |
| | Total Governments Offset Portion Haircut | | | | | .0110 | |

| | Maturity category[2] | Government offset portion | | | Net immediate position | | |
|---|---|---|---|---|---|---|---|
| | | Dollar amounts (+) | Factors | Haircuts (+) | Dollar amounts (+/−) | Factors | Interim haircuts (+/−) |
| | Column Number | 7 | 9 | 10# | 8 | 11 | 12=8 |
| | | (Note 1) | | (7x9) | (Note 1) | | (8x11) |

# Carry to Schedule A, line 2a.
## Carry forward to Schedule D (or Schedule E, if no forwards, futures, or options).
NOTE 1: From Schedule B.
[2] The categories are designated in section 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

## SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS

[In thousands of dollars]

| | Maturity category [1] | Net immediate position interim haircuts (+/−) | Gross interim haircuts: Futures and forward (+) | Futures and forward (−) | Options (+) | Options (−) | Aggregate interim haircuts (+) | Aggregate interim haircuts (−) | Futures and options offset portions [2] (+) | Residual position interim haircuts (+/−) | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| B | 45–134 days. | | | | | | | | | | B |
| C | 135 days–9 months. | | | | | | | | | | C |
| D | 9–18 months. | | | | | | | | | | D |
| E | 1.5–3.5 years (1.5–3 years). | | | | | | | | | | E |
| F | 3.5–7.5 years (3–5.5 years). | | | | | | | | | | F |
| G | 7.5–15 years (5.5–9 years). | | | | | | | | | | G |
| H | 15–20 years (9–12 years). | | | | | | | | | | H |
| I | (12–21 years). | | | | | | | | | | I |
| J | (21 years and over). | | | | | | | | | | J |

SCHEDULE D.—CONSOLIDATION OF NET IMMEDIATE POSITION INTERIM HAIRCUTS WITH GROSS FUTURES AND OPTIONS INTERIM HAIRCUTS—Continued

[In thousands of dollars]

| | Maturity category [1] | Net immediate position interim haircuts | Gross interim haircuts | | | | Aggregate interim haircuts | | Futures and options offset portions [2] | Residual position interim haircuts | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | Futures and forward | | Options | | | | | | |
| | | (+/−) | (+) | (−) | (+) | (−) | (+) | (−) | (+) | (+/−) | |
| MB | Mortgage-backed. | | | | | | | | | | MB |
| AR | Adjustable rate mortgage-backed. | | | | | | | | | | AR |
| | Total Futures and Options Offset Portion. | | | | | | | | $ | | |
| | Factor | | | | | | | | ×20% | | |
| | Total Futures and Options Offset Haircut. | | | | | | | | $ # | | |
| | Column Number. | 12 (Note 1) | 13 | 14 | 15 | 16 | 17 | 18 | 19 (Note 2) | 20## (17+18) | |

# Carry to Schedule A, line 2b.
## Carry forward to Schedule E.
Note 1: From Schedule C.
Note 2: Column 19 is the smaller of columns 17 and 18.

[1] The categories are designated in section 401.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year is always considered to be 6 months.

[2] The total futures and options haircut is calculated from the total of column 19.

SCHEDULE E—CALCULATION OF HEDGING DISALLOWANCE HAIRCUTS WHEN NETTING HAIRCUTS ACROSS CATEGORIES [1]

[In thousands of dollars]

| | Maturity category [2] | Residual position interim haircuts | 20 percent disallowance | | 30 percent disallowance | | 40 percent disallowance | | Hedging disallowance haircuts | Qualified netting interim haircuts | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | (+/−) | Hedging disallowance haircuts (+) | Net residental position interim haircuts (+/−) | Hedging disallowance haircuts (+) | Net residual position interim haircuts (+/−) | Hedging disallowance haircuts (+) | Net Residual position interim haircuts (+/−) | (+) | (+) | |
| B | 45–134 days. | | | | | | | | | | B |
| C | 135 days–9 months. | | | | | | | | | | C |
| D | 9–18 months. | | | | | | | | | | D |
| E | 1.5–3.5 years (1.5–3 years). | | | | | | | | | | E |
| F | 3.5–7.5 years (3–5.5 years). | | | | | | | | | | F |
| G | 7.5–15 years (5.5–9 years). | | | | | | | | | | G |
| H | 15–30 years (9–12 years). | | | | | | | | | | H |
| I | (12–21 years). | | | | | | | | | | I |
| J | (21 years and over). | | | | | | | | | | J |
| MB | Mortgage-backed. | | | | | | | | | | MB |
| AR | Adjustable rate mortgage-backed. | | | | | | | | | | AR |
| | Total Hedging Disallowance Haircut. | | | | | | | | | | |
| | Residual Net Position Haircut. | | | | | | | | | | |
| | Column Number. | 20 (Note 1) | 21 | 22 (Note 2) | 23 | 24 (Note 2) | 25 | 26 (Note 2) | 27# (Note 3) | 28## | |

#Column 27 carries forward to Schedule A, line 2c.

##Column 28 total carries forward to Schedule A, line 2d.

Note 1: From Schedule D (or Schedule C, if no forwards, futures, or options).

Note 2: Net of two offsetting haircuts of paired maturity categories.

Note 3: For every entry in column 20 there should be an entry in either column 27 or 28 (but never both).

[1] See Section 402.2(f)(3) for category pair hedging disallowance haircut factors.

[2] The categories are designated in section 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

**Instructions to Schedules A through E**

Schedules A through E may be used by government securities brokers or dealers subject to 17 CFR Part 402 to determine the firm's capital-to-risk ratio. Section 402.2 provides that a government securities broker or dealer must meet the applicable minimum dollar liquid capital requirement and that the firm's ratio of liquid capital to risk (total haircuts) must be at least 1.2:1; liquid capital must exceed risk by at least 20 percent. Total haircuts is the risk measure used in the ratio; it is made up of measures of market risk and measures of credit risk. The market risk of a government securities broker's or dealer's positions is accounted for through the Treasury market risk haircut and the other securities haircut. Credit risk is accounted for in the counterparty exposure, concentration of credit, and credit volatility haircuts and in the computation of liquid capital through the various deductions and charges.

Only positions in Treasury market risk instruments and financings may be used in the calculation of the Treasury market risk haircut. Treasury market risk instruments and financings are described in 17 CFR 402.2 and in the instructions to the schedule where they are to be first entered. All other types of financial instruments are to be included in the calculation of the other securities haircut. Calculation of the other securities haircut is based on the SEC's Rule 15c3–1 (17 CFR 240.15c3–3).

Treasury market risk instruments may be excluded from the calculation of the Treasury market risk haircut if they are included as part of a hedge against long and short positions in securities, futures contracts, forward contracts, or options that are not Treasury market risk instruments in the calculation of the other securities haircut. The market value of the Treasury market risk instruments excluded may not exceed the market value of the position(s) against which they are being hedged. The result of this transfer of the Treasury market risk instruments must be a reduction in the other securities haircut.

The categories for classifying Treasury market risk instruments are designated in 17 CFR 402.2(f)(1). The categories, which are designated by a maturity range, contain all securities with remaining terms to maturity greater than or equal to the lower end of the range but less than the higher. A half year is always considered to be 6 months. In categories A through D, zero-coupon instruments are to be treated in the same manner as all other instruments. In categories E through J, the maturity designations in parentheses give the maturities of the zero-coupon instruments to be placed in that category. All mortgage-backed securities that are Treasury market risk instruments are to be placed in category MB or category AR, depending on whether they are backed by conventional or adjustable-rate mortgages.

All haircuts may be calculated to the nearest hundred dollars, unless such rounding would materially affect the liquid capital calculation.

Appendix A to the Preamble published with the temporary regulations for 17 CFR Part 402 (52 FR ———, May 26, 1987) contains an example of the capital calculation. It may also be used as an aid in completing these schedules.

*Schedule A—Liquid Capital Requirement Summary Computation*

Schedule A is used to determine the capital-to-risk ratio by comparing liquid capital to total haircuts. Schedule A will be the last schedule completed as many of the haircuts entered on Schedule A are calculated on Schedules B through E.

Line 1—Enter liquid capital, which is identical to the amount reported on line 3640 of the Report on Finances and Operations of Government Securities Brokers and Dealers, Form G–405.

Line 2—Haircuts on "Security and Financing Positions" including contractual commitments:

a. Enter the Total Governments Offset Portion Haircut from column 10 of Schedule C.

b. Enter the Total Futures and Options Offset Haircut from column 19 of Schedule D.

c. Enter the Total Hedging Disallowance Haircut as calculated in Schedule E, column 27.

d. Enter the Residual Net Position Haircut as given in column 28 of Schedule E.

e. Enter the other securities haircut as determined by applying the SEC haircut factors to securities, futures contracts, forward contracts, options and other inventory that are not Treasury market risk instruments as defined in 17 CFR 402.2(e) or financings used in the calculation of the Treasury market risk haircut. The other securities haircut is the sum of all applicable deductions as specified in 17 CFR 240.15c3–1(c)(2)(vi) and (c)(2)(viii) and in 17 CFR 240.15c3–1a and 240.15c3–1b. Any position(s) in Treasury market risk instruments that have been excluded from the calculation of the Treasury market risk haircut because they are part of a hedge with these other instruments are to be included in the calculation of this haircut.

Line 3—Haircuts on credit exposure:

a. Enter the total counterparty exposure haircut which is the sum of the counterparty exposure haircut with each counterparty. A counterparty exposure haircut is equal to 5 percent of the net credit exposure to a single counterparty which is not in excess of 15 percent of the government securities broker's or dealer's liquid capital. If the net credit exposure to a counterparty does exceed 15 percent of liquid capital, the excess will be used in calculating the total concentration of credit haircut on line 3b.

Net credit exposure equals the difference between the government securities broker's or dealer's exposure to a single counterparty and that counterparty's exposure to the government securities broker or dealer. The government securities broker's or dealer's exposure to a counterparty is equal to the sum of the dollar amount of funds, debt instruments, other securities, and other inventory at risk to the government securities broker or dealer in the event of the counterparty's default and the market value of purchased unlisted options that are Treasury market risk instruments and were written by the counterparty. It does not include, however, (1) the deduction taken from net worth for unsecured receivables, repurchase and reverse repurchase agreement deficits, aged fails to deliver, and aged fails to receive arising from transactions with the counterparty, (2) demand deposits in the case where the counterparty is a commercial bank, (3) custodial holdings of securities in the case where the counterparty is a clearing bank or clearing broker of the government securities broker or dealer; or (4) exposure to the counterparty due to holding marketable instruments for which the counterparty is the obligor.

The counterparty's exposure to the government securities broker or dealer equals the dollar amount of funds, debt instruments, other securities, and other inventory at risk to the counterparty in the event of the government security broker's or dealer's default and any unlisted options written by the government securities broker or dealer and held by the counterparty.

b. Enter the total concentration of credit haircut which is the sum of all concentration of credit haircuts applied in cases where the net credit exposure (as defined above) to a single counterparty is in excess of 15 percent of the government securities broker's or dealer's liquid capital. The

concentration of credit haircut is 25 percent of the amount of net credit exposure in excess of 15 percent of the government securities broker's or dealer's liquid capital.

c. Enter the credit volatility haircut which equals a factor of 0.15 percent applied to the larger of the gross long or gross short immediate position in money market instruments qualifying as Treasury market risk instruments which mature in more than 45 days, and in futures, forwards and options on these instruments that are settled on a cash or delivery basis. Money market instruments qualifying as Treasury market risk instruments are (1) certificates of deposit with no more than one year to maturity, (2) bankers acceptances, and (3) commercial paper which has no more than one year to maturity and is rated in one of the three highest categories by at least two nationally recognized statistical rating organizations.

Line 4—Enter total haircuts which is the sum of lines 2 a through e, and 3 a, b, and c.

Line 5—Enter the capital-to-risk ratio which is found by dividing line 1, "Liquid capital," by line 4, "Total haircuts." The capital-to-risk ratio must be at least equal to 1.2:1.

*Schedule B—Calculation of Net Immediate Position in Securities and Financings*

Schedule B is used to calculate the net immediate position in and offset portion of securities and financings. The results are then carried over to Schedule C for initial haircut calculations. Futures, forwards and options which are Treasury market risk instruments are to be entered on Schedule D.

Positions in and financings on debt instruments other than mortgage-backed or adjustable rate mortgage-backed securities should be place in the category corresponding to their remaining term to maturity. In the case of a floating rate note, however, the note should be placed in the category corresponding to the time to the next scheduled interest rate adjustment or remaining term to maturity, whichever is less.

Column 1—Under "Financings-Long" report in the appropriate category the contract value of reverse repurchase agreements and the value(s) of cash collateral on security borrowings. Financings so reported should be placed in the category corresponding to the remaining term to maturity or time to the next scheduled interest rate adjustment, whichever is less.

Column 2—Under "Financings-Short" report in the appropriate category as a negative number the values of funds received from financing transactions. Include repurchase agreements, securities lending secured by cash collateral, and bank loans, but exclude subordinated debt which meets the requirements of 17 CFR 240.15c3–1d as modified by 17 CFR 402.2d. Financings so reported should be placed in the category corresponding to the remaining term to maturity or time to the next scheduled interest rate adjustment, whichever is less.

Columns 3 and 4—Report in the appropriate column by maturity or type of mortgage-backed security under "Securities Positions" the sum of the market values of immediate positions in Treasury market risk instruments. The net position in each individual Treasury market risk instrument is to be appropriately reported as a long (+) or short (−) position in summation with all other positions of the same category and type (long/short). Short positions are assigned a negative value. Treasury market risk instruments are defined in 17 CFR 402.2(e). Those to be reported in Schedule B are:

(1) Government securities as defined in 17 CFR 400.3(j) except equity securities and mortgage-backed securities which do not pass through to the security holder on a pro rata basis a distribution based on the monthly payments and prepayments of principal and interest on the underlying pool of mortgage collateral less fees and expenses;

(2) Zero-coupon receipts or certificates based on marketable Treasury notes or bonds;

(3) Certificates of deposit of no more than one year to maturity;

(4) Bankers acceptances; and

(5) Commercial paper of no more than one year to maturity rated in one of the three highest categories by at least two nationally recognized statistical rating organizations.

Report all positions as of the trade date. If the settlement date is scheduled for more than five business days in the future (or, in the case of a mortgage-backed security, more than thirty calendar days in the future), then report the position as a forward contract on Schedule D. Also, under "Securities Positions" in the appropriate column and category, report any when-issued position in a marketable Treasury security between announcement and issue date and any when-issued position in a government agency or a government sponsored agency debt security between release date and issue date.

Exclude positions in Treasury market risk instruments which form part of a hedge against long and short positions in securities, futures contracts, forward contracts, or options that are not Treasury market risk instruments and are to be included in the calculation of the other securities haircut. A position in a Treasury market risk instrument may only be included in the calculation of the other securities haircut to the extent that its market value does not exceed the market value of the position which it offsets as part of a hedge and the inclusion of the Treasury market risk instruments reduces the other securities haircut.

Column 5—Under "Total Securities and Financing Positions (+)" report in the appropriate category the sum of the long financings (column 1) and long securities positions (column 3).

Column 6—Under "Total Securities and Financing Positions (−)" report in the appropriate category the sum of the short financings (column 2) and short securities positions (column 4).

Column 7—Under "Offset Portions" report in the appropriate category the lesser of the absolute values of the positive (column 5) or negative (column 6) total securities and financing positions.

Column 8—Under "Net Immediate Positions" report in the appropriate category the sum, or net value, of the positive (column 5) and negative (column 6) total securities and financing positions.

Columns 7, "Offset Portions," and 8, "Net Immediate Positions," are to be carried to Schedule C.

*Schedule C—Governments Offset Portion and Net Immediate Position Interim Haircuts Calculation*

Schedule C is used to calculate the total governments offset portion haircut and net immediate position interim haircuts by applying offset and net position haircut factors to the offset portions and net immediate positions and offset portions in Treasury market risk instruments and financings. The total governments offset portion haircut is then carried to Schedule A, and the net immediate position interim haircuts are carried to Schedule D or E.

Column 7—Transfer to column 7, "Governments Offset Portion-$ Amounts," column seven from Schedule B, "Offset Portions."

Column 9—These are the governments offset portion haircut factors given at 17 CFR 402.2(f)(2). They may be updated from time to time.

Column 10—Under "Governments Offset Portion-Haircuts" report in the appropriate category the product of the corresponding values in column 7, "$ Amounts," and in column 9, "Factors."

To determine the total governments offset portion haircut, sum the values under "Governments Offset Portion-Haircuts" in column 10, and enter this number in the appropriate space. Carry this value to Schedule A, line 2a, converting from millions to thousands of dollars.

Column 8—Transfer to column 8, "Net Immediate Positions-$ Amounts," column eight from Schedule B, "Net Immediate Positions."

Column 11—These are the net immediate position haircut factors given at 17 CFR 402.2(f)(2). They may be updated from time to time.

Column 12—Under "Net Immediate Positions-Interim Haircuts" place in the appropriate category the product of the corresponding values in column 8, "$ Amounts," and in column 11, "Factors." A haircut on a short position remains negative.

Carry column 12 to Schedule D, or, if there are no futures or options positions, to Schedule E.

*Schedule D—Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts*

Schedule D is used to enter haircuts on futures, forwards and options positions and to calculate the total futures and options offset haircut and the residual position interim haircuts as needed for Schedules A and E respectively. If there are no futures and options positions, it is not necessary to fill out Schedule D.

Report as a forward contract any position for which the time between trade date and settlement date is more than five business days (30 calendar days for a mortgage-backed security). Any when-issued position in a marketable Treasury security established between announcement and issue date and any when-issued position in a government agency or a government sponsored agency debt security established between release date and issue date is reported in the appropriate category on Schedule B under "Securities Positions."

Column 12—Transfer to column 12, "Net Immediate Position Interim Haircuts," column 12 from Schedule C, "Net Immediate Positions-Interim Haircuts," converting from millions to thousands of dollars.

Columns 13 and 14—Under "Gross Interim Haircuts—Futures and Forward" enter in the appropriate category the sum of the interim haircuts on the futures or forward positions belonging to that category. The interim haircut on a futures or forward position equals the product of the value of the position evaluated at the current market price for such contract and the net position haircut factor that corresponds to either the term to maturity of the underlying instrument or, for mortgage-backed securities, the type of security. The term to maturity of the underlying instrument is the term to maturity of the deliverable security at the time of the maturity of the futures or forward contract. The haircut on a futures or forward position on a non-mortgaged-backed instrument is to be entered in the category corresponding to the sum of the remaining time to maturity of the futures or forward contract and the maturity of the underlying instrument. Haircuts on futures and forwards on mortgage-backed securities are to be entered in the appropriate mortgage-backed securities category. The interim haircuts on long futures and forwards are positive (column 13), and on short futures and forwards, negative (column 14).

Columns 15 and 16—Under "Gross Interim Haircuts—Options" enter, in the category in which the instrument directly underlying the contract would be entered, the lesser of (1) the market value of the option or (2) the net immediate position interim haircut on the underlying cash instrument or gross futures interim haircut on the underlying futures contract. Note that in the case of an option on a futures contract the category in which the option contract is to be entered is the sum of the remaining time to maturity of the futures or forward contract and the maturity of the instrument underlying the futures or forward contract. The haircut factor used to determine the gross futures interim haircut is that factor corresponding to the term to maturity of the deliverable security at the time of the maturity of the futures or forward contract. Gross option haircuts on purchased calls and sold puts are positive, those on sold calls and purchased puts are negative.

Column 17—Under "Aggregate Interim Haircuts (+)" enter in the appropriate category, the sum of any positive net immediate position interim haircut (column 12) and the positive gross option (column 15) and gross futures and forward (column 13) interim haircuts for that category.

Column 18—Under "Aggregate Interim Haircuts (−)" enter in the appropriate category, the sum of any negative net immediate position interim haircut (column 12) and the negative gross option (column 16) and gross futures and forward (column 14) interim haircuts for that category.

Column 19—Under "Futures and Options Offset Portions" enter, in the appropriate category, the lesser of the absolute values of the positive and negative aggregate interim haircuts (columns 17 and 18) for that category.

The total futures and options offset portion is the sum of the values in column 19 under "Futures and Options Offset Portions."

The total futures and options offset haircut is the total futures and options offset portion multiplied by a factor of 20 percent and is carried to line 2b, Schedule A.

Column 20—Enter in the appropriate category under "Residual Position Interim Haircuts" the sum, or net value, of the positive and negative aggregate interim haircuts. Carry this to column 20 on Schedule E.

*Schedule E—Calculation of Hedging Disallowance Haircuts when Netting Haircuts Across Categories*

Schedule E is used to calculate the hedging disallowance and residual net position haircuts which are then carried to Schedule A. The purpose of Schedule E is to hedge positions in different categories in order to reduce total haircuts. Netting the residual position interim haircuts reflects the risk reduction inherent in hedges between positions in different categories where the price volatility is reasonably well correlated.

Section 402.2(f)(3) of the rule specifies the hedging disallowance haircut factors for the category pairs. Netting of residual position interim haircuts is permitted only between any two categories for which a hedging disallowance haircut factor is specified. Hedging disallowance haircuts are similar to offset haircuts in that they are applied to the smaller of the two residual position interim haircuts and represent the portion of the hedge being "disallowed." A hedging disallowance is determined each time two residual position interim haircuts are netted.

Column 20—Transfer from column 20, "Residual Position Interim Haircuts," from Schedule D. If there are no futures or options positions, transfer instead column 12, "Net Immediate Positions-Interim Haircuts," from Schedule C.

Column 21—Use the matrix at 17 CFR 402.2(f)(3) to determine the categories from which the residual position interim haircuts can be paired at the 20 percent level. For each pair multiply the smaller of the absolute values of the two residual position interim haircuts by the hedging disallowance haircut factor of 20 percent, and, in the category of the smaller, enter the resulting hedging disallowance haircut.

Column 22—For each pair being netted at this level, enter under "Net Residual Position Interim Haircuts" (1) the sum, or net value, of the two residual position interim haircuts (and/or net residual position interim haircuts) in the category of the larger (in absolute value) of the two interim haircuts that were netted, and (2) a zero in the category of the smaller.

These net residual position interim haircuts replace the residual position interim haircuts (or net residual position interim haircuts) from which they were derived. Net residual position interim haircuts can in turn be used in any other allowable netting exactly as residual position interim haircuts would be. If further netting of that category at the same level is permissible and possible, it will be necessary to replace the net residual position interim haircut involved with a new (and smaller) net residual position interim haircut in column 22.

Since the net residual position interim haircut in any category containing a hedging disallowance haircut is zero, further netting with any such category is impossible.

After all possible netting has been completed for category pairs with a 20 percent hedging disallowance haircut factor, move on to column 23.

Column 23—Use the matrix at 17 CFR 402.2(f)(3) to determine the categories from which the residual position interim haircuts and/or net residual position interim haircuts can be paired at the 30 percent level. In each category, the newest (and smallest) net residual position interim haircut determined by netting at the 20 percent level replaces the old value and must be used in hedging in that category at higher levels. For each pair being netted, multiply the smaller of the absolute values of the two (net) residual position interim haircuts by the hedging disallowance haircut factor of 30 percent, and in the category of the smaller, enter the resulting hedging disallowance haircut.

Column 24—For each pair being netted at this level, enter under "Net Residual Position Interim Haircuts" (1) the sum, or net value, of the two residual position interim haircuts and/or net residual position interim haircuts in the category of the larger (in absolute value) of the two interim haircuts that were netted, and (2) a zero in the category of the smaller.

Once again, these net residual position interim haircuts replace the residual position interim haircuts (or net residual position interim haircuts) from which they were derived. Net residual position interim haircuts can in turn be used in any other allowable netting exactly as residual position interim haircuts would be. If further netting of that category at the same level is permissible and possible, it will be necessary to replace the net residual position interim haircut involved with a new (and smaller) net residual position interim haircut.

After all possible netting has been completed for category pairs with a 30 percent hedging disallowance haircut factor, continue to column 25.

Column 25—Use the matrix at 17 CFR 402.2(f)(3) to determine the categories from which the residual position interim haircuts and/or net residual position interim haircuts can be paired at the 40 percent level. In each category, any new net residual position interim haircut determined by netting at the 20 or 30 percent level replaces the old value and must be used in hedging with that category at the 40 percent level. For each pair being netted, multiply the smaller of the absolute values of the two (net) residual position interim haircuts by the hedging disallowance haircut factor of 40 percent and, in the category of the smaller, enter the resulting hedging disallowance haircut.

Column 26—For each pair being netted at this level, enter under "Net Residual Position Interim Haircuts" (1) the sum, or net value, of the two (net) residual position interim haircuts in the category of the larger (in absolute value) of the two interim haircuts that were netted, and (2) a zero in the category of the smaller. If further netting of that category at the same level is permissible and possible, it will be necessary to replace the net residual position interim haircut involved with a new (and smaller) net residual position interim haircut.

Column 27—When all possible (net) residual position interim haircuts have been netted, enter under "Hedging Disallowance Haircuts" all hedging disallowance haircuts calculated in the netting procedures, each in its appropriate category.

Enter under "Total Hedging Disallowance Haircut" the sum of all the hedging disallowance haircuts entered in column 27. Carry to Schedule A, line 2c.

Column 28—Under "Qualified Netting Interim Haircuts" enter in the appropriate category the absolute value of the haircut given under "Net Residual Position Interim Haircut" at the highest hedging disallowance factor for that category (columns 26, 24, or 22). This value will also be the smallest of the net residual position interim haircuts in that category. If the position in a given category was not used in hedging then enter the absolute value of the residual position interim haircut from column 20.

Sum the qualified netting interim haircuts, enter this value under "Residual Net Position Haircut," and carry to Schedule A, line 2d.

**§ 402.2b [Reserved]**

**§ 402.2c Appendix C—Consolidated computations of liquid capital and total haircuts for certain subsidiaries and affiliates.**

(a) *Flow through capital benefits.* (1) Every government securities broker or dealer subject to the liquid capital requirement of this section shall, in computing its liquid capital, include the assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses, or assumes directly or indirectly the obligations or liabilities and shall, in computing its total haircuts, include the total haircuts of such subsidiary or affiliate computed in accordance with the provisions of this Part 402.

(2) A government securities broker or dealer may, in computing its liquid capital, include the assets and liabilities of subsidiaries or affiliates for which it does not guarantee, endorse or assume directly or indirectly the obligations or liabilities and for which an opinion of counsel is obtained as provided in paragraph (b) of this appendix. Any government securities broker or dealer which includes the assets and liabilities of such subsidiaries or affiliates shall, in computing its total haircuts, include the total haircuts of such subsidiaries or affiliates computed in accordance with the provisions of this Part 402.

(b) *Required counsel opinion.* Inclusion of assets, liabilities and total haircuts of any subsidiary or affiliate in the capital computation of a parent government securities broker or dealer shall be permitted with respect to any subsidiaries or affiliates which are majority owned or controlled by the parent government securities broker or dealer and for which the parent government securities broker or dealer can demonstrate to the satisfaction of the Commission, through the Designated Examining Authority, by an opinion of counsel that net asset values, or the portion thereof related to the parent government securities broker's or dealer's ownership interest in the subsidiary or affiliate, may be caused by the parent government securities broker or dealer or an appointed trustee to be distributed to the parent government securities broker or dealer within 30 calendar days. Such opinion shall also set forth the actions necessary to cause such a distribution to be made, identify

the parties having the authority to take such actions, identify and describe the rights of other parties or classes of parties, including but not limited to customers, general creditors, subordinated lenders, minority shareholder employees, litigants and governmental or regulatory authorities, who may delay or prevent such a distribution and such other assurances as the Commission or the Designated Examining Authority by rule or interpretation may require. Such opinion shall be current and periodically renewed in connection with the parent government securities broker's or dealer's annual audit pursuant to § 240.17a–5 of this title, as made applicable to government securities brokers or dealers by § 405.2 of this chapter, or upon any material change in circumstances.

(c) *Principles of inclusion.* The following minimum and non-exclusive requirements shall govern the inclusion of assets, liabilities, and total haircuts of a subsidiary or affiliate in the computation of total liquid capital and total haircuts of a government securities broker or dealer pursuant to this Part 402:

(1) The total liquid capital of the government securities broker or dealer shall be reduced by the estimated amount of any taxes reasonably anticipated to be incurred upon distribution of the assets of the subsidiary or affiliate.

(2) Liabilities of a consolidated subsidiary or affiliate which are subordinated to the claims of present and future creditors pursuant to a satisfactory subordination agreement that does not also extend to the claims of present or future creditors of the parent government securities broker or dealer and all consolidated subsidiaries shall be subtracted from the parent government securities broker's or dealer's liquid capital.

(3) Subordinated liabilities of a consolidated subsidiary or affiliate which are consolidated in accordance with paragraph (a)(2) of this section may not be prepaid, repaid or accelerated if any of the entities included in such consolidation would otherwise be unable to comply with the provision of § 240.15c3–1d of this title, as modified by Appendix D of this part, § 402.2d.

(4) Each government securities broker or dealer included within the consolidation shall at all times be in compliance with the liquid capital or net capital requirement to which it is subject.

**§ 402.2d Appendix D—Modification of § 240.15c3–1d of this title, relating to satisfactory subordination agreements, for purposes of § 402.2.**

Section 240.15c3–1d of this title shall apply to government securities brokers and dealers subject to the requirements of § 402.2 with the following modifications.

(a) References to "broker or dealer" include government securities brokers and dealers.

(b) References to "17 CFR 240.15c3–1" mean § 402.2.

(c) Section 240.15c3–1d(a)(2)(iii) is modified to read as follows:

"(iii) The term "Collateral Value" of any securities pledged to secure a secured demand note shall mean the market value of such securities after giving effect to the haircuts specified in § 402.2a of this title."

(d) References to "17 CFR 240.15c3–1d" mean that section as modified by this section.

(e) Section 240.15c3–1d(b)(6)(iii) is modified to read as follows:

"(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender, with the prior written consent of the government securities broker or dealer and the Examining Authority for such broker or dealer, may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction, the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer may not be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title. No single secured demand note shall be permitted to be reduced by more than 15% of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, liquid capital after deducting total haircuts would be less than 120% of the minimum dollar amount required by § 402.2(b) or § 402.2(c) of this title as applicable."

(f) Section 240.15c3–1d(b)(7) is modified to read as follows:

"(7) A government securities broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c)(5) of this Appendix D. No Prepayment shall be made if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturities or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the government securities broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer would be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such government securities broker or dealer."

(g) Section 240.15c3–1d(b)(8) is modified to read as follows:

"(i) The Payment Obligation of the government securities broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation), either the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer would be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title, or the government securities broker's or dealer's liquid capital after deducting total haircuts would be less than 120% of the minimum dollar amount required by § 402.2(b) or § 402.2(c) of this title, as applicable. The subordination agreement may provide that if the Payment Obligation of the government securities broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of

not less than six months, the government securities broker or dealer shall thereupon commence the rapid and orderly liquidation of its business but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3-1 and 240.15c3-1d."

(h) Section 240.15c3-1d(b)(10)(ii)(B) is modified to read as follows:

"(B) The liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer being less than 120% of total haircuts, as defined in § 402.2(g) of this title, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the government securities broker or dealer, or the Examining Authority or the Commission first determines and notifies the government securities broker or dealer of such fact;".

(i) Section 240.15c3-1d(c)(2) is modified to read as follows:

"(2) *Notice of Maturity or Accelerated Maturity.* Every government securities broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of such government securities broker or dealer, would be less than 150% of total haircuts, as defined in § 402.2(g) of this title."

(j) Section 240.15c3-1d(c)(5)(i) is modified to read as follows:

"(i) For the purpose of enabling a government securities broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the capital requirements of § 402.2 of this title, a government securities broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a government securities broker or dealer if, at such time, it is subject to any of the reporting provisions of § 405.3 of this title, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement, the liquid capital, as defined in § 402.2(d) of this title, of such broker or dealer would be less than 150% of total haircuts, as defined in § 402.2(g) of this title, or the amount of its then outstanding subordination agreements exceeds the limits specified in § 240.15c3-1(d). Such temporary subordination agreement shall be subject to all other provisions of this Appendix D."

(k) Section 240.15c3-1d(c)(5)(ii)(A) is modified to read as follows:

"(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the government securities broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of such broker or dealer, would be less than 180% of total haircuts, as defined in § 402.2(g) of this title."

## PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

Sec.
403.1 Application of part to registered brokers and dealers.
403.2 Hypothecation of customer securities.
403.3 Use of customers' free credit balances.
403.4 Customer protection—reserves and custody of securities.
403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.
403.6 Compliance with part by futures commission merchants.
403.7 Effective dates.

**Authority:** Sec. 101, Pub. L. 99-571, 100 Stat. 3209 (15 U.S.C. 78o-5 (b)(1)(A), (b)(2)).

### § 403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with § 240.8c-1 of this title (SEC Rule 8c-1), as modified by § 403.2 (a), (b) and (c), with § 240.15c2-1 of this title (SEC Rule 15c2-1), with § 240.15c3-2 of this title (SEC Rule 15c3-2) as modified by § 403.3, and with § 240.15c3-3 of this title (SEC Rule 15c3-3) as modified by § 403.4 (a) through (i) constitutes compliance with this part.

### § 403.2 Hypothecation of customer securities.

Every registered government securities broker or dealer shall comply with the requirements of § 240.8c-1 of this title concerning hypothecation of customer securities with the following modifications:

(a) In § 240.8c-1(a), the words "no government securities broker or dealer" shall be substituted for the words "no member of a national securities exchange, and no broker or dealer who transacts a business in securities through the medium of such member."

(b) Section 240.8c-1(d) is modified to read as follows:

"(d) *Exemption for clearing liens.* The provisions of paragraphs (a)(2), (a)(3) and (f) of this section shall not apply to any lien or claim of a clearing bank, or the clearing corporation (or similar department or association) of a national securities exchange or a registered national securities association, for a loan made to acquire the securities subject to said lien and to be repaid on the same calendar day, which loan is incidental to the clearing of transactions in securities or loans through such bank, corporation, department or association: *Provided, however,* that for the purpose of paragraph (a)(3) of this section, 'aggregate indebtedness of all customers in respect of securities carried for their accounts' shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph."

(c) References to "member, broker or dealer" mean "government securities broker or dealer."

### § 403.3 Use of customers' free credit balances.

Every registered government securities broker or dealer shall comply with the requirement of § 240.15c3-2 of this title concerning the use of customer free credit balances. For purposes of this section, all references to "broker or dealer" in § 240.15c3-2 shall include government securities brokers and dealers.

### § 403.4 Customer protection—reserves and custody of securities.

Every registered government securities broker or dealer shall comply with the requirements of §§ 240.15c3-3 and 240.15c3-3a of this title (SEC Rule 15c3-3 and Exhibit A thereto), with the following modifications:

(a) References to "broker or dealer" include government securities brokers and dealers.

(b) "Fully paid securities," as defined in § 240.15c3-3(a)(3) of this title,

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includes all securities held by a government securities broker or a government securities dealer for the account of a customer who has made full payment for such securities.

(c) "Margin securities," as defined in § 240.15c3–3(a)(4) of this title, includes any securities for which a customer has not made full payment and for which the customer has received an extension of credit by a government securities broker or government securities dealer for a portion of the purchase price.

(d) "Excess margin securities," as defined in § 240.15c3–3(a)(5) of this title, includes margin securities carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer's account or accounts with the broker or dealer.

(e) For purposes of this section, § 240.15c3–3(b) of this title shall include a new paragraph (4) as follows:

"(4)(i) Notwithstanding paragraph (k)(2)(i) of this section, a broker or dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a person other than another broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) shall:

"(A) Obtain the repurchase agreement in writing;

"(B) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the trading day on which the transaction is initiated and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date or coupon rate as specified in the previous confirmation;

"(C)(*1*)For registered brokers and dealers, advise the counterparty that the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 do not protect the counterparty with respect to the repurchase agreement;

(*2*) For registered government securities brokers and dealers, advise the counterparty that the Securities Investor Protection Act of 1970 will not provide protection to the counterparty with respect to the repurchase agreement.

"(D) Maintain possession or control of securities that are the subject of the agreement.

"(ii) For purposes of this paragraph (4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3–3(c)(1), (c)(5), (c)(6), or § 403.4(f) of this title.

"(iii) A broker or dealer shall not be in violation of the requirement to maintain possession or control pursuant to paragraph (b)(4)(i)(D) during the trading day if:

"(A) In the written repurchase agreement, the counterparty grants the broker or dealer the right to substitute other securities for those subject to the agreement;

"(B) In the case of a repurchase transaction with a contract price of less than $1,000,000, the broker or dealer additionally has obtained, on any trading day on which a substitution is to occur, the prior consent of the counterparty, orally or in writing, to such substitutions and has kept a record of each such consent obtained, including the identities of the individuals requesting and agreeing to such consent; and

"(C) In all cases, the provision in the written repurchase agreement governing the right, if any, to substitute is immediately preceded by the following disclosure statement, which must be prominently displayed:

**'Required Disclosure**

**The [seller] is not permitted to substitute other securities for those subject to this agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute other securities. If the [buyer] grants the right to substitute, this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day. In the case of a repurchase transaction of less than $1,000,000, the [seller] is not permitted to substitute securities unless it has additionally obtained the [buyer's] prior consent to substitution on each trading day on which the [seller] wishes to make substitution. Regardless of the amount of the transaction, the [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities.'**

"(iv) A confirmation issued in accordance with paragraph (b)(4)(i)(B) of this section shall specify the issuer, maturity date, coupon rate and market value of the security and shall further identify a CUSIP or GNMA pool number, as appropriate, unless other records of the broker or dealer issuing such confirmation identify the specific security in which the counterparty has an interest."

(f)(1) Securities under the control of a broker or dealer, as described in § 240.15c3–3(c) of this title, shall include securities maintained by a broker or dealer in an account at a depository institution, as defined in section 19(b)(A)(i) through (vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A) (i) through (vi)), which depository institution has a book–entry securities account at a Federal Reserve Bank through which it provides clearing services ("clearing bank"), provided the securities are maintained in a Segregated Account of the government securities broker or dealer. For purposes of these paragraphs (f)(1) and (g) of this section, a Segregated Account is an account (other than a clearing account) of the government securities broker or dealer maintained on the books of a clearing bank pursuant to a written clearing agreement with such clearing bank which provides that:

(i) Such account is established for the purpose of segregating securities of counterparties or customers of such broker or dealer from proprietary securities of the broker or dealer;

(ii) The broker or dealer is entitled to direct the disposition of the securities; and

(iii) The clearing bank does not have, and will not assert, any claim or lien against such securities nor will the clearing bank grant any third party, including any Federal Reserve Bank, any interest in such securities so long as they are maintained in the segregated account.

(2) For purposes of this section, § 240.15c3–3(c)(2) of this title is redesignated as paragraph (c)(2)(i) and new paragraph (c)(2)(ii) is added to read as follows:

"(ii) are carried for the account of any customer by a government securities broker or dealer in an account designated exclusively for customers of the government securities broker or dealer with a registered broker or dealer or another registered government securities broker or dealer (the "carrying broker or dealer") in compliance with instructions of the registered government securities broker or dealer to the carrying broker or dealer that the securities are to be maintained free of any charge, lien or claim of any kind in favor of the carrying broker or dealer or any persons claiming through such carrying broker or dealer; or"

(g) In addition to the notification required by § 240.15c3–3(i) of this title, whenever any government securities broker or dealer instructs its clearing bank to place securities in a Segregated Account (as defined in paragraph (f)(1) of this section), and the clearing bank refuses to do so by the end of that day, the broker or dealer shall, in accordance with § 240.17a–11(f) of this title, give telegraphic notice of the notification by the clearing bank within 24 hours and within 48 hours of the telegraphic notice, file a report stating what steps are being taken to correct the situation.

(h) For purposes of this section, § 240.15c3–3(f) of this title is modified to read as follows:

"(1) *Delivery or disposition of securities.* Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

"(1) Fully-paid securities to which the customer is entitled;

"(2) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

"(3) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer."

(i) For purposes of this section, § 240.15c3–3(m) shall apply to government securities, notwithstanding the May 9, 1973, order of the Commission (38 FR 12103) suspending such applicability, except that:

(1) In the case of mortgage-backed securities the words "ten business days" shall be replaced by the words "thirty calendar days"; and

(2) "An order to execute a sale of securities which the seller does not own" shall mean that the customer placing the sell order has identified the sale as a short sale to the broker or dealer.

(j) Except with respect to a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) and a government securities broker or dealer that is a futures commission merchant registered with the CFTC, § 240.15c3–3(e)(3) is modified for purposes of this section to read as follows:

"(3) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than 1 hour after the opening of banking business on the second following business day; provided, however, a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) which has a ratio of liquid capital to total haircuts (calculated in accordance with Part 402 of this chapter) of 1.8 or greater and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding $1 million, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 percent of the amount so computed no later than 1 hour after the opening of banking business on the second following business day. If a registered government securities broker or dealer, computing on a monthly basis, has, at the time of any required computation, a ratio of liquid capital to total haircuts of less than 1.8, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when its ratio of liquid capital to total haircuts was less than 1.8. Computations in addition to the computation required in this paragraph (3), may be made as of the close of any other business day, and the deposits so computed shall be made no later than 1 hour after the opening of banking business on the second following business day. The registered government securities broker or dealer shall make and maintain a record of each such computation made pursuant to this paragraph (3) or otherwise and preserve such record in accordance with § 240.17a–4."

(k) Except with respect to a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) and a government securities broker or dealer that is a futures commission merchant registered with the CFTC, Note E(5) of § 240.15c3–3a of this title is modified for purposes of this section to read as follows:

"(5) Debit balances in margin accounts (other than omnibus accounts) shall be reduced by the amount by which any single customer's debit balance exceeds 25% (to the extent such amount is greater than $50,000) of the government securities broker's or dealer's liquid capital unless such broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula. Related accounts (e.g., the separate accounts of an individual, accounts under common control or subject to cross guarantees) shall be deemed to be a single customer's accounts for purposes of this provision."

**§ 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.**

(a) A government securities broker or dealer that is a financial institution shall:

(1) Comply with Part 450 with respect to all government securities held for the account of customers of the financial institution in its capacity as a fiduciary or custodian (unless otherwise exempt pursuant to § 450.3); and

(2) Comply with Part 450 and with paragraphs (c) and (d) of this section with respect to all fully paid and excess margin government securities held for customers of the financial institution in its capacity as government securities broker or dealer, and government securities that are the subject of a repurchase agreement between the financial institution and certain counterparties as described in paragraph (d) of this section.

(b) A financial institution shall not be in violation of the possession or control requirements of paragraphs (c) and (d) of this section if, solely as the result of normal business operations, temporary lags occur between the time when a security is first required to be in the financial institution's possession or control and the time when it is actually placed in possession or control, provided that the financial institution takes timely steps in good faith to establish prompt possession or control. In the event that a financial institution has accepted funds from a customer for the purchase of securities and the financial institution does not initiate the purchase of the specified securities by the close of the next business day after receipt of such customer's funds, the financial institution shall immediately deposit or redeposit the funds in an account belonging to such customer and send the customer notice of such deposit or redeposit.

(c)(1) On each business day a financial institution shall determine the quantity and issue of such securities, if any, that are required to be but are not in the financial institution's possession

or control. As appropriate to bring such securities into possession or control, the financial institution shall promptly:

(i) Obtain the release of any lien, charge, or other encumbrance against such securities,

(ii) Obtain the return of any securities loaned;

(iii) Obtain possession or control of securities failed to receive for more than 30 days, or in the case of mortgage-backed securities, more than 45 days;

(iv) Buy in securities as necessary to the extent any shortage of securities in possession or control cannot be resolved by any of the above procedures.

(2) The financial institution shall prepare and maintain a current and detailed description of the procedures and internal controls that it utilizes to comply with the possession or control requirements of this paragraph (c), which shall be made available upon request to its appropriate regulatory agency.

(3) Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

(i) Fully-paid securities to which the customer is entitled;

(ii) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

(iii) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.

(d)(1) A financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a counterparty other than another broker or dealer that is registered pursuant to sections 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)), and that retains the right to substitute other securities for the securities that are the subject of such repurchase agreement, shall:

(i) Obtain the repurchase agreement in writing;

(ii) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the day of initiation of the transaction and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date or coupon rate specified in the previous confirmation;

(iii) Advise the counterparty in the repurchase agreement that the funds held by the financial institution pursuant to a repurchase transaction are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, as applicable;

(iv) Include in the written repurchase agreement the provision by which the financial institution retains the right to substitute securities and further provide that, in the case of a repurchase transaction with a contract price of less than $1,000,000, the financial institution additionally will obtain, orally or in writing, on any trading day on which a substitution is to occur, the prior consent of the counterparty to such substitution, and will keep a record of each such consent obtained, including the identities of the individuals requesting and agreeing to such substitution; and

(v) Include in the written repurchase agreement the following disclosure statement, which must be prominently displayed in the written repurchase agreement immediately preceding the provision governing the right to substitution:

**Required Disclosure**

The [seller] is not permitted to substitute other securities for those subject to this agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute other securities. If the [buyer] grants the right to substitute, this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day.

However, in the case of a repurchase transaction of less than $1,000,000, the [seller] is not permitted to substitute securities unless it has additionally obtained the [buyer's] prior consent to substitution on each trading day on which the [seller] wishes to make substitution. Regardless of the amount of the transaction, the [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they may be subject to liens granted by the [seller] to third parties and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy any lien or to obtain substitute securities.

(vi) Maintain possession or control of securities that are the subject of the agreement in accordance with § 450.4(a) and (b) of this chapter, except when exercising its right of substitution in accordance with the provisions of the agreement and paragraph (d)(1)(iv) of this section.

(2) A confirmation issued in accordance with paragraph (d)(1) of this section shall specify the issuer, maturity date, coupon rate and market value of the security and shall further identify a CUSIP or GNMA pool number, as appropriate, unless other records of the broker or dealer issuing such confirmation to identify the specific security in which the counterparty has an interest.

(e)(1) A government securities broker or dealer that is a branch or agency of a foreign bank shall keep on deposit with an insured bank (as that term is defined in 12 U.S.C. 1813(h)) an amount equal to the amount that would be required to be set aside pursuant to § 240.15c3–3(e)(1) of this title with respect to government securities of customers of such branch or agency. The amount required to be deposited pursuant to this § 403.5(e)(1) may be reduced by the amount of assets pledged or deposited by the branch or agency pursuant to regulations promulgated by a Federal or State banking regulatory agency that are attributable to liabilities to customers which are included both in the calculation of the required pledge or deposit of assets and in the calculation of the amount to be set aside pursuant to § 240.15c3–3(e)(1) of this title.

(2) The amount deposited in accordance with this section shall be pledged to the appropriate regulatory agency of the branch or agency making the deposit for the exclusive benefit of the customers to whom the credit balances are owed.

(3) For purposes of making the calculation pursuant to § 240.15c3–3(e)(1) of this title, the terms "free credit balances" and "other credit balances" shall include only liabilities of the branch or agency to customers that arise from transactions in government securities for or with such customers or that represent principal, interest or other proceeds of such securities.

(f)(1) For purposes of this section, the terms "fully paid securities," "margin securities," and "excess margin securities" shall have the meanings described in § 403.4(b), (c) and (d).

(2) For purposes of this section, the term "customer" shall include any person from whom or on whose behalf a financial institution that is a government securities broker or dealer has received

or acquired or holds securities for the account of that person or funds resulting from transactions in securities for or with such person or that represent principal, interest, or other proceeds of such securities. The term shall not include a broker or dealer that is registered pursuant to sections 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) except with respect to securities maintained by such broker or dealer in a Segregated Account as defined in § 403.4(f)(1) and with respect to securities otherwise identified by such broker or dealer as customer securities for purposes of maintaining possession or control of such securities as required by this part.

**§ 403.6 Compliance with part by futures commission merchants.**

A government securities broker or dealer that is also a futures commission merchant registered with the CFTC shall comply with the provisions of this Part with respect to all customer funds and securities except those that are incidental to the broker's or dealer's futures-related business, as defined in § 240.3a43–1(b) of this title. For purposes of the preceding sentence, the term "customer" shall have the meaning set forth in § 240.15c3–3(a)(1) of this title.

**§ 403.7 Effective dates.**

(a) *General.* Except as provided in paragraphs (b) and (c), this Part shall be effective on the last business day in October 1987.

(b) *Confirmations.* The requirements of § 403.4(e) and § 403.5(d) to provide confirmations of substitution of securities subject to a repurchase agreement shall be effective July 25, 1987.

(c) *Written repurchase agreements.* In the case of existing customers as of July 25, 1987, the requirement to obtain a repurchase agreement in writing that contains the provisions required by § 403.4(e) or § 403.5(d) shall be effective January 31, 1988, provided the disclosures described in such sections of the temporary regulations are furnished to such customers by July 25, 1987. In the case of new customers after July 25, 1987, the requirements of §§ 403.4(e) and 403.5(d) to obtain a repurchase agreement in writing shall be effective on October 31, 1987, provided that during the period starting July 26, 1987 and ending October 31, 1987, the disclosures described in such sections of the temporary regulations are furnished to such customers before the first hold-in-custody repurchase transaction with such customers. For purposes of providing the disclosures to counterparties prior to October 31, 1987, the initial sentence of the required disclosure language of §§ 403.4(e) and 403.5(d) may be modified as follows if a written agreement is not in place:

"The [seller] is not permitted to substitute securities for those subject to a repurchase transaction and therefore must keep the buyer's securities segregated at all times, unless the [buyer] grants the [seller] the right to substitute other securities."

## PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

Sec.

404.1 Application of part to registered brokers and dealers.

404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

404.3 Records to be preserved by registered government securities brokers and dealers.

404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.

404.5 Securities counts by registered government securities brokers and dealers.

**Authority:** Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(2)).

**§ 404.1 Application of part to registered brokers and dealers.**

Compliance by a registered broker or dealer with:

(a) Section 240.17a–3 of this title, pertaining to records to be made, modified as provided in § 404.2(a) (3), (4) and (5);

(b) Section 240.17a–4 of this title, pertaining to preservation of records;

(c) Section 240.17a–13 of this title, pertaining to quarterly securities counts, modified as provided in § 404.5(b); and

(d) Section 240.17a–7 of this title, pertaining to records of non-resident brokers or dealers,

shall constitute compliance with this part.

**§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.**

(a) Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–3 of this title (SEC Rule 17a–3), with the following modifications:

(1) References to "broker or dealer" and "broker or dealer registered pursuant to section 15 of the Act" include registered government securities brokers or dealers.

(2) References to §§ 240.17a–3, .17a–4, .17a–5, and .17a–13 mean such sections as modified by this part and Part 405 of this chapter.

(3) Section 240.17a–3(a)(4) is revised by adding paragraph (a)(4)(vii) to read as follows:

"(vii) Repurchase and reverse repurchase agreements."

(4) Section 240.17a–3(a)(5) is modified to read as follows:

"(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker, or dealer for his account or for the account of his customers or partners or others and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried."

(5) Section 240.17a–3(a)(8) is modified to read as follows:

"(8) Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer."

(6) (i) Except in the case of a government securities interdealer broker who is subject to the financial responsibility rules of § 402.1(c) of this chapter and a government securities broker or dealer that is a futures commission merchant registered with the CFTC, § 240.17a–3(a)(11) is modified to read as follows:

"(11) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of liquid capital and total haircuts, as of the trial date, determined as provided in § 402.2 of this title; *Provided however,* that such computation need not be made by any registered government securities broker or dealer unconditionally exempt from Part 402 of this title by § 402.1(f) of this title. Such trial balances and

computations shall be prepared currently at least once a month."

(ii) For a government securities interdealer broker who is subject to the financial responsibility rules of § 402.1(e) of this chapter, references to § 240.15c3-1 include modifications contained in § 402.1(e) of this chapter.

(7) Paragraph 240.17a-3(b)(1) is modified to read as follows:

"(1) This section shall not be deemed to require a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o-5(a)(1)(A)) to make or keep such records of transactions cleared for such government securities broker or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a-3 and 240.17a-4: *Provided*, That the clearing broker or dealer has and maintains net capital of not less than $25,000 (or, in the case of a clearing broker or dealer that is a registered government securities broker or dealer, liquid capital less total haircuts, determined as provided in § 402.2 of this title, of not less than $25,000) and is otherwise in compliance with § 240.15c3-1, § 402.2 of this title, or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3-1 by paragraph (b)(2) of this part."

(8) The undertaking in § 240.17a-3(b)(2) is modified to read as follows:

"The undersigned hereby undertakes to maintain and preserve on behalf of [registered government securities broker or dealer] the books and records required to be maintained by [registered government securities broker or dealer] pursuant to 17 CFR 404.2 and 404.3 and Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 and to permit examination of such books and records at any time or from time to time during business hours by examiners or other representatives of the Securities and Exchange Commission, and to furnish to said Commission at its principal office in Washington, DC, or at any regional office of said Commission specified in a demand made by or on behalf of said Commission for copies of books and records, true, correct, complete, and current copies of any or all, or any part, of such books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned."

(9) Section 240.17a-3(c) is modified to read as follows:

"(c) This section shall not be deemed to require a government securities broker or dealer to make or keep such records as are required by paragraph (a) reflecting the sale and redemption of United States Savings Bonds, United States Savings Notes and United States Savings Stamps."

(b) (1) Every non-resident government securities broker or dealer registered or applying for registration pursuant to section 15C of the Act shall comply with § 240.17a-7 of this title, *Provided That* in such section references to "broker or dealer" shall include government securities brokers or dealers.

(2) The term "non-resident government securities broker or dealer" means

(i) In the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States;

(ii) In the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; and

(iii) In the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

(Approved by the Office of Management and Budget under control number 1505-0020)

**§ 404.3 Records to be preserved by registered government securities brokers and dealers.**

(a) Every registered government securities broker or dealer, except a government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) and a government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a-4 of this title (SEC Rule 17a-4), with the following modifications:

(1) References to "broker or dealer" and "broker and dealer" include registered government securities brokers or dealers.

(2) References to §§ 240.17a-3, 240.17a-4, and 240.17a-5 mean such sections as modified by this part and Part 405 of this chapter.

(3) References to § 240.15c3-1, relating to net capital, and "Computation for Net Capital" thereunder mean § 402.2 of this chapter and the computation of the ratio of liquid capital to total haircuts required thereunder.

(4) References to § 240.15c3-3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(5) References to Form X-17A-5 mean Form G-405 (§ 449.5 of this chapter).

(6) The computation described in § 240.17a-4(b)(8)(x) is not required.

(b) A government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) and a government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a-4 of this title (SEC Rule 17a-4), with the following modifications:

(1) References to "broker or dealer" and "broker and dealer" include registered government securities brokers or dealers.

(2) References to §§ 240.17a-3, 240.17a-4, and 240.17a-5 mean such sections as modified by this part and Part 405 of this chapter.

(3) With respect to a government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) of this chapter, references to § 240.15c3-1, relating to net capital, and "Computation for Net Capital" thereunder include the modifications contained in § 402.1(e) of this chapter.

(4) References to § 240.15c3-3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(Approved by the Office of Management and Budget under Control No. 1505-0100)

**§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.**

(a) *Records to be made and kept.* Every financial institution that is a government securities broker or dealer and that is not exempt from this part pursuant to Part 401 of this chapter shall comply with the requirements of §§ 404.2 and 404.3 unless such financial institution:

(1) Is subject to 12 CFR Part 12 (relating to national banks), 12 CFR Part 208 (relating to state member banks of the Federal Reserve System) or 12 CFR Part 344 (relating to state banks that are not members of the Federal Reserve System), or is a United States branch or agency of a foreign bank and complies with 12 CFR Part 12 (for federally licensed branches and agencies of foreign banks) or 12 CFR Part 208 (for uninsured state-licensed branches and agencies of foreign banks) or 12 CFR Part 344 (for insured state licensed branches and agencies of foreign banks). *Provided However*, that the records required to be made and kept by those regulations shall be made or kept without regard to the exemptions for

transactions in U.S. government or federal agency obligations provided in 12 CFR 12.2(a), 12 CFR 208.8(k)(6)(i), and 12 CFR 344.7(a); and

(2) Makes and keeps current:

(i)(A) A securities record or ledger reflecting separately for each government security as of the settlement dates all "long" or "short" positions (including government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institution for its own account or for the account of its customers or others (except securities held in a fiduciary capacity) and showing the location of all government securities long and the offsetting position to all government securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried;

(B) A complete and current Form G–FIN–4 (§ 449.3 of this chapter) or Form U–4 (promulgated by a self-regulatory organization) or Form MSD–4 (as required for associated persons of bank municipal securities dealers) for each associated person as defined in § 400.3(c) of this chapter;

(C) A Form G–FIN–5 (§ 449.4 of this chapter) or Form U–5 (promulgated by a self-regulatory organization) or Form MSD–5 (as required for associated persons of bank municipal securities dealers) for each associated person whose association has been terminated as provided in § 400.4(d)(2) of this chapter; and

(D) A complete and current Form G–FIN (§ 449.1 of this chapter) and, if applicable, a Form G–FINW (§ 449.2 of this chapter).

(ii) For purposes of paragraph (a)(2)(i)(A) of this section, "safekeeping" may be shown as a location of any securities long as long as the financial institution complies with the requirements of Part 450 of this chapter with respect to such securities.

(b) *Preservation of records.* (1) The records required by paragraph (a)(2)(i)(A) of this section shall be preserved for not less than six years, the first two years in an easily accessible place.

(2) The records required by paragraphs (a)(2)(i)(B) and (C) of this section shall be preserved for at least three years after the person who is the subject of the record has terminated his employment and any other association with the government securities broker or dealer function of the financial institution.

(3) The records required by paragraph (a)(2)(i)(D) of this section shall be preserved for at least three years after the financial institution has notified the appropriate regulatory agency that it has ceased to function as a government securities broker or dealer.

(c) *Effective date.* This section shall be effective on July 25, 1987, *except that* until October 31, 1987, a financial institution government securities broker or dealer is not required to make and keep current the securities position record required by paragraph (a)(2)(i)(A) of this section.

(Approved by the Office of Management and Budget under control number 1505–0100)

### § 404.5 Securities counts by registered government securities brokers and dealers.

Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–13 of this title (Commission Rule 17a–13), with the following modifications:

(a) References to "broker or dealer" and "broker and dealer" include registered government securities brokers or dealers.

(b) Sections 240.17a–13(b) (1), (2), and (3) are modified to read as follows:

"(1) Physically examine and count all securities held, including securities that are the subject of repurchase or reverse repurchase agreements;

"(2) Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

"(3) Verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than thirty days;".

(Approved by the Office of Management and Budget under control number 1505–0100)

## PART 405—REPORTS AND AUDIT

Sec.

405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.

405.2 Reports to be made by registered government securities brokers and dealers.

405.3 Supplemental current financial and operational reports to be made by certain registered government securities brokers and dealers.

405.4 Financial recordkeeping and reporting of currency and foreign transactions by registered government securities brokers and dealers.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(b)(1)(B), (b)(1)(C), (b)(2)).

### § 405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.

(a) Compliance by registered brokers or dealers with §§ 240.17a–5, 240.17a–8, and 240.17a–11 of this title (Commission Rules 17a–5, 17a–8 and 17a–11) constitutes compliance with this part.

(b) A government securities broker or dealer that is a financial institution and is subject to financial reporting rules of its appropriate regulatory agency is exempt from the provisions of §§ 405.2 and 405.3.

(c) This part shall be effective July 25, 1987, *Provided however,*

(1) That registered government securities brokers or dealers shall first be required to file the reports required by § 240.17a–5(a), by virtue of § 405.2, for the month and the quarter during which they were first required to comply with Part 402 of this chapter; but that

(2) For any quarter ending prior to the quarter during which they were first required to comply with Part 402 of this chapter, registered government securities brokers or dealers shall file with the designated examining authority for such registered broker or dealer, within 17 business days after the close of the quarter, an unaudited balance sheet (with appropriate notes) for such quarter, prepared in accordance with generally accepted accounting principles.

### § 405.2 Reports to be made by registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer, except a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) of this chapter and a government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a–5 of this title (SEC Rule 17a–5), with the following modifications:

(1) References to "broker or dealer" include registered government securities brokers and dealers.

(2) References to "rules of the Commission" or words of similar import

include, where appropriate, the regulations contained in this subchapter.

(3) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(4) For the purposes of § 240.17a–5(a)(4) of this title, the Commission may, on the terms and conditions stated in that subparagraph, declare effective a plan with respect to Form G–405, in which case, that plan shall be treated the same as a plan approved with respect to Form X–17A–5.

(5) References to "net capital" mean "liquid capital" as defined in § 402.2(d) of this chapter.

(6) References to § 240.15c3–1, relating to net capital, mean § 402.2 of this chapter.

(7) Section 240.17a–5(c)(2)(ii) is modified to read as follows:

"(ii) A footnote containing a statement of the registered government securities broker's or dealer's liquid capital, total haircuts, and ratio of liquid capital to total haircuts, determined in accordance with § 402.2 of this title. Such statement shall include summary financial statements of subsidiaries consolidated pursuant to Appendix C of § 240.15c3–1 modified as provided in § 402.2c of this title, where material, and the effect thereof on the liquid capital, total haircuts and ratio of liquid capital to total haircuts of the registered government securities broker or dealer."

(8) References to § 240.15c3–3 and the exhibits thereto, relating to possession or control of customer securities and reserve requirements, mean § 403.4 of this chapter.

(9) The reference to § 240.15b1–2 of this title, relating to financial statements to be filed upon registration, means § 240.15Ca2–2.

(10) The supplemental report described in § 240.17a–5(e)(4) of this title, concerning the Securities Investor Protection Act, is not required.

(11) The statement described in § 240.17a–5(f)(2) of this title shall be headed "Notice Pursuant to § 405.2," and shall be filed within 30 days following the effective date of registration as a government securities broker or dealer.

(12) References in § 240.17a–5(h)(2) of this title to § 240.17a–11 mean § 405.3 of this chapter.

(b) A government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) of this chapter shall comply with the requirements of § 240.17a–5 of this title (SEC Rule 17a–5), with the following modifications:

(1) References to "broker or dealer" include central market government securities brokers;

(2) References to "rules of the Commission" or words of similar import include, where appropriate, the regulations contained in this subchapter.

(3) References to "net capital" mean net capital calculated as provided in § 401.1(e) of this chapter.

(4) References to § 240.15c3–1, relating to net capital, include the modifications contained in § 401.1(e) of this chapter.

(5) References to § 240.15c3–3 and the exhibits thereto, relating to possession or control of customer securities and reserve requirements, mean § 403.4 of this chapter.

(6) The reference to § 240.15b1–2 of this title, relating to financial statements to be filed upon registration, means § 140.15Ca2–2.

(7) The supplemental report described in § 240.17a–5(e)(4) of this title, concerning the Securities Investor Protection Act, is not required.

(8) The statement described in § 240.17a–5(f)(2) of this title shall be headed "Notice Pursuant to § 405.2" and shall be filed within 30 days following the effective date of registration as a government securities broker.

(9) References in § 240.17a–5(h)(2) of this title to § 240.17a–11 mean § 405.3(b) of this chapter.

(c) A government securities broker or dealer that is also a futures commission merchant registered with the CFTC shall comply with the requirements of § 240.17a–5 of this title (SEC Rule 17a–5), with the following modifications:

(1) References to "broker or dealer" include registered government securities brokers and dealers.

(2) References to "rules of the Commission" or words of similar import include, where appropriate, the regulations contained in this subchapter.

(3) References to § 240.15c3–3 and the exhibits thereto, relating to possession or control of customer securities and reserve requirements, mean § 403.4 of this chapter.

(4) The reference to § 240.15b1–2 of this title, relating to financial statements to be filed upon registration, means § 240.15Ca2–2.

(5) The supplemental report described in § 240.17a–5(e)(4) of this title, concerning the Securities Investor Protection Act, is not required.

(6) The statement described in § 240.17a–5(f)(2) of this title shall be headed "Notice Pursuant to § 405.2," and shall be filed within 30 days following the effective date of registration as a government securities broker or dealer.

(7) References in § 240.17a–5(h)(2) of this title to § 240.17a–11 mean § 405.3 of this chapter.

(Approved by the Office of Management and Budget under Control number 1505–0100)

**§ 405.2 Supplemental current financial and operational reports to be made by certain registered government securities brokers and dealers.**

(a) Every registered government securities broker or dealer, other than a government securities interdealer broker that is subject to the financial responsibility requirements of § 402.1(e) and a government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a–11 of this title (SEC Rule 17a–11), with the following modifications:

(1) References to "broker or dealer" include registered government securities brokers and dealers.

(2) References to § 240.15c3–1, relating to net capital, mean § 402.2 of this chapter.

(3) References to "net capital" mean "liquid capital" as defined in § 402.2 of this chapter.

(4) References to § 240.15c3–1d, relating to subordination agreements, mean that section as modified by § 402.2d of this chapter.

(5) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(6) References to § 240.17a–5, relating to reports and audit, mean § 405.2 of this chapter.

(7) Section 240.17a–11(b)(1), for the purposes of this section, is modified to read as follows:

"(1) If a computation made by a registered government securities broker or dealer pursuant to the requirements of § 402.2 of this title shows, at any point during the month, that his liquid capital is less than 150 percent of total haircuts, determined in accordance with § 402.2 of this title, such person shall file a report on Part II or Part IIA of Form G–405 (§ 449.5 of this title) as determined in accordance with the standards set forth in § 240.17a–5(a)(2) (ii) and (iii), within 15 calendar days after the end of each month thereafter until 3 successive months shall have elapsed during which liquid capital does not fall below 150 percent of total haircuts."

(8) References to § 240.17a–3, relating to records, mean § 404.2 of this chapter.

(b) A government securities interdealer broker that is subject to the financial responsibility requirements of § 402.1(e) of this chapter shall comply with the requirements of § 240.17a–11 of this title (SEC Rule 17a–11), with the following modifications:

(1) References to "broker or dealer" include government securities interdealer brokers;

(2) References to § 240.15c3–1, relating to net capital, include the modifications contained in § 401.1(e) of this chapter.

(3) References to "net capital" mean net capital calculated as provided in § 401.1(e) of this chapter.

(4) References to § 240.17a–5, relating to reports and audit, mean § 405.2(b) of this chapter.

(5) References to § 240.17a–3, relating to records, mean § 404.2 of this chapter.

(c) A government securities broker or dealer that is also a futures commission merchant registered with the CFTC shall comply with the requirements of § 240.17a–11 of this title (SEC Rule 17a–11), with the following modifications:

(1) References to "broker or dealer" include government securities brokers and dealers.

(2) References to § 240.15c3–1, relating to net capital, mean either § 240.15c3–1 or § 1.17 of this title, depending on which computation results in the higher net capital requirement.

(3) References to "net capital" mean the higher of net capital calculated under § 240.15c3–1 or § 1.17 of this title.

(4) References to § 240.17a–5, relating to reports and audit, mean § 405.2 of this chapter.

(5) A new paragraph § 240.17a–5(b)(5) is added, to read as follows:

"(5) If a computation made by a government securities broker or dealer that is not a registered broker or dealer but that is also a futures commission merchant registered with the Commodity Futures Trading Commission shows that:

(i) The adjusted net capital of such entity is less than the greater of:

(A) 150 percent of the appropriate minimum dollar amount required by § 1.17(a)(1)(i);

(B) 6 percent of the following amount: The customer funds required to be segregated pursuant to section 4d(2) of the Commodity Exchange Act and § 1.17 of this title, less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, *Provided,* however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or

(ii) At any point during the month, aggregate indebtedness is in excess of 1200 percent of net capital or total net capital is less than 120 percent of the minimum net capital required,

then such person shall file a report on Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter) as determined in accordance with the standards set forth in § 240.17a–5(a)(2) (ii) and (iii), within 15 calendar days after the end of each month thereafter until three successive months have elapsed during which none of the conditions described in this paragraph (b)(5) shall have occurred."

(Approved by the Office of Management and Budget under Control number 1505–0100)

**§ 405.4 Financial recordkeeping and reporting of currency and foreign transactions by registered government securities brokers and dealers.**

Every registered government securities broker or dealer who is subject to the requirements of the Currency and Foreign Transactions Reporting Act of 1970 shall comply with the reporting, recordkeeping and record retention requirements of 31 CFR Part 103. Where 31 CFR Part 103 and § 404.3 of this chapter require the same records to be preserved for different periods of time, such records or reports shall be preserved for the longer period of time.

## PART 449—FORMS, SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

Sec.

449.1 Form G–FIN, notification by financial institutions of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934.

449.2 Form G–FINW, notification by financial institutions of cessation of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.6 of this chapter.

449.3 Form G–FIN–4, notification by persons associated with financial institutions that are government securities brokers and dealers pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

449.4 Form G–FIN–5, notification of termination of association with a financial institution that is a government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

449.5 Form G–405, information required of registered government securities brokers and dealers pursuant to section 15C of the Securities Exchange Act of 1934 and §§ 405.2 and 405.4 of this chapter.

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3208 (15 U.S.C. 78o–5 (a), (b)(1)(B), (b)(2)).

**§ 449.1 Form G–FIN, notification by financial institutions of status as Government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934.**

This form is to be used by financial institutions that are government securities brokers and dealers not exempt under Part 401 of this chapter to notify their appropriate regulatory agency of their status. The form is promulgated by the Board of Governors of the Federal Reserve System and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

**§ 449.2 Form G–FINW, notification by financial institutions of cessation of status as Government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.6 of this chapter.**

This form is to be used by financial institutions that are government securities brokers or dealers to notify their appropriate regulatory agency that they have ceased to function as a government securities broker or dealer. The form is promulgated by the Board of Governors of the Federal Reserve System and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

**§ 449.3 Form G–FIN–4, notification by persons associated with financial institutions that are government securities brokers and dealers pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.**

This form is to be used by associated persons of financial institutions that are government securities brokers or dealers to provide certain information to the financial institution and the appropriate regulatory agency concerning employment, residence, and statutory disqualification. The form is promulgated by the Department of the Treasury and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

**§ 449.4 Form G–FIN–5, notification of termination of association with a financial institution that is a government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.**

This form is to be used by financial institutions that are government securities brokers or dealers to notify the appropriate regulatory agency of the fact that an associated person is no longer associated with the government securities broker or dealer function of the financial institution. The form is promulgated by the Department of the Treasury and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the

Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board and the SEC.

**§ 449.5 Form G-405, information required of registered government securities brokers and dealers pursuant to section 15C of the Securities Exchange Act of 1934 and §§ 405.2 and 405.4 of this chapter.**

This form is to be used by registered government securities brokers and dealers to make the monthly, quarterly and annual financial reports required by Part 405 of this chapter. The form is promulgated by the Department of the Treasury and is available from the SEC and the designated examining authorities.

**Subchapter B—Rules and Regulations Under Title II of the Government Securities Act of 1986**

## PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

Sec.

450.1 Scope of regulations; office responsible.
450.2 Definitions.
450.3 Exemption for holdings subject to fiduciary standards.
450.4 Custodial holdings of government securities.
450.5 Effective date.

**Authority:** Sec. 101, Pub. L. 99-571, 100 Stat. 3208 (15 U.S.C. 78o-5(b)(1)(A), (b)(2), (b)(3)(B)); sec. 201, Pub. L. 99-571, 100 Stat. 3222-23 (31 U.S.C. 3121, 9110).

**§ 450.1 Scope of regulations; office responsible.**

(a) This part applies to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of a customer, and that are not government securities brokers or dealers, as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)-(44)). Depository institutions exempt under Part 401 of this chapter from the requirements of Subchapter A of this chapter must comply with this part. Certain depository institutions that are government securities brokers or dealers must also comply with this part, as well as with additional requirements set forth in § 403.5.

(b) The regulations in this subchapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for the regulations is the Office of the Deputy Assistant Secretary (Federal Finance).

**§ 450.2 Definitions.**

For purposes of this subchapter:

(a) "Appropriate regulatory agency" has the meaning set out in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G)), except that the appropriate regulatory agency for—

(1) An institution insured by the Federal Savings and Loan Insurance Corporation is the Federal Home Loan Bank Board;

(2) A federal credit union as defined in 12 U.S.C. 1752(1) and an insured credit union as defined in 12 U.S.C. 1752(7) is the National Credit Union Administration; and

(3) Any depository institution for whom an appropriate regulatory agency is not explicitly specified by either section 3(a)(34)(G) or this paragraph, is the SEC;

(b) "Customer" includes, but is not limited to, the counterparty to a transaction pursuant to a repurchase agreement for whom the depository institution retains possession of the security sold subject to repurchase, but does not include a broker or dealer that is registered pursuant to sections 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o-4, 78o-5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o-5(a)(1)(B)) except as provided in § 450.4.

(c) "Depository institution" has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A) (i) through (vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978, Pub. L. 95-369, 92 Stat. 607);

(d) "Fiduciary capacity" includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole or shared exercise of discretion by a depository institution having fiduciary powers that is supervised by a Federal or State financial institution regulatory agency; and

(e) "Government securities" means those obligations described in subparagraphs (A), (B), or (C) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42) (A) through (C)).

**§ 450.3 Exemption for holdings subject to fiduciary standards.**

(a) The Secretary has determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation governing the holding of government securities in a fiduciary capacity by depository institutions subject thereto are adequate. Accordingly, such depository institutions are exempt from this part with respect to their holdings of government securities in a fiduciary capacity and their holdings of government securities in a custodial capacity, *Provided* that

(1) Such institution has adopted policies and procedures that would apply to such custodial all the requirements imposed by its appropriate regulatory agency that are applicable to government securities held in a fiduciary capacity, and

(2) Such custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements.

(b) The Secretary expects that each appropriate regulatory agency will notify the Department if it materially revises its rules and standards governing the holding of government securities in a fiduciary capacity.

**§ 450.4 Custodial holdings of government securities.**

Depository institutions that are subject to this part shall observe the following requirements with respect to their holdings of government securities for customer accounts:

(a)(1) Except as otherwise provided in this section, a depository institution shall maintain possession or control of all government securities held for the account of customers by segregating such securities from the assets of the depository institution and keeping them free of any lien, charge or claim of any third party granted or created by such depository institution.

(2)(i) Where customer securities are maintained by a depository institution at another depository institution, including but not limited to a correspondent bank or a trust company ("custodian institution"), the depository institution shall be in compliance with paragraph (a)(1) of this section if:

(A) The depository institution notifies the custodian institution that such securities are customer securities;

(B) The custodian institution maintains such securities in an account that is designated for customers of the depository institution and that does not contain proprietary securities of the depository institution; and

(C) The depository institution instructs the custodian institution to maintain such securities free of any lien, charge, or claim of any kind in favor of

such custodian institution or any persons claiming through it.

(ii) To the extent that a custodian institution holds securities that have been identified as customer securities by a depository institution in accordance with paragraph (a)(2)(i) of this section, the custodian institution shall treat such securities as customer securities separate from any other securities held for the account of the depository institution.

(3) Where customer securities are maintained by a depository institution at a Federal Reserve Bank, the depository institution shall be in compliance with paragraph (a)(1) of this section provided that any lien, charge or other claim of such Federal Reserve Bank or any person claiming through it against securities (other than proprietary securities of the depository institution) expressly excludes securities that, pursuant to this Part 450, the depository institution is required to keep free of all liens, charges, or other claims.

(4)(i) To the extent that a depository institution holds securities that have been identified to such depository institution as customer securities by a government securities broker or dealer, or that the government securities broker or dealer has instructed the depository institution to place in a segregated account, in accordance with Part 403 of Subchapter A of this chapter, the depository institution shall treat such securities as customer securities separate from any other securities held for the account of the government securities broker or dealer and shall comply with all of the provisions of this section with respect to such customer securities, except as provided in paragraph (a)(4)(ii) of this section.

(ii) A clearing bank that provides clearing services for a government securities broker or dealer and that maintains a segregated account as described in § 403.4 of this chapter shall not be required to transfer securities to such account upon the instruction of the broker or dealer for whom such account is maintained if the clearing bank determines as of the close of business that such securities continue to be required as collateral for an extension of clearing credit to such dealer. Whenever a clearing bank does not segregate securities upon the instruction of such broker or dealer, it shall send a notification to the appropriate regulatory agency of the broker or dealer for whom such account is maintained. Such securities shall thereafter be segregated pursuant to the instruction of the broker or dealer as soon as they are no longer required by the clearing bank as collateral for the extension of clearing credit.

(5) A depository institution that is subject to Part 403 is not required to maintain possession or control of margin securities as that term is defined in § 403.5(f)(1).

(6) Notwithstanding the requirement of paragraph (a)(1) of this section to maintain possession or control of customer securities, a depository may lend such securities to a third party pursuant to the written agreement of the customer, if such loan of securities is carried out in full compliance with supervisory guidelines of its appropriate regulatory agency that expressly govern securities lending practices.

(b) Records of government securities held for customers shall be kept separate and distinct from other records of the depository institution. Such records shall:

(1) Provide a system for identifying each customer, and each government security (or the amount of each issue of a government security issued in book-entry form) held for the customer;

(2) Describe the customer's interest in the government security;

(3) Indicate all receipts and deliveries of government securities and all receipts and disbursements of cash by the depository institution in connection with such securities;

(4) Include a copy of the safekeeping receipt or a confirmation issued for each government security held; and

(5) Provide an adequate basis for audit of such information.

(c) Counts of government securities held for customers in both definitive and book-entry form shall be conducted at least annually and such counts shall be reconciled with customer account records.

(1) Counts of book-entry securities and of definitive securities held outside the possession of the depository institution shall be made by reconciliation of the records of the depository institution with those of any depository, depository institution, or Federal Reserve Bank on whose books the depository institution has securities accounts.

(2) The depository institution conducting the count shall also verify any such securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to the depository institution's control or direction that are not in its physical possession, where the securities have been in such status for longer than thirty days.

(3) The dates and results of such counts and reconciliations shall be documented with differences noted in a security count difference account not later than seven business days after the date of each required count and verification as provided in this paragraph (c).

(d) For purposes of this section, a depository institution shall treat a government securities broker or dealer as a customer with respect to securities maintained by such government securities broker or dealer in a Segregated Account as defined in § 403.4(f)(1) of this chapter and with respect to securities otherwise identified to the depository institution as customer securities for purposes of maintaining possession or control of such securities as required by Part 403 of this chapter. The recordkeeping requirements of paragraph (b) of this section require the depository institution to treat such securities as customer securities separate from any other securities held for the account of the government securities broker or dealer, but do not require the depository institution to keep records identifying individual customers of the government securities broker or dealer.

(Approved by the Office of Management and Budget under Control number 1505-0100)

**§ 450.5 Effective date.**

This Part shall be effective October 31, 1987.

Dated: May 19, 1987.

**Charles O. Sethness,**

*Assistant Secretary for Domestic Finance.*

[FR Doc. 87-11724 Filed 5-22-87; 8:45 am]

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federal register

Tuesday
May 26, 1987

Part III

# Federal Reserve System

## Financial Institutions Acting as Government Securities Dealers; Adoption of Forms; Notice

## FEDERAL RESERVE SYSTEM

[Docket No. R-0586]

### Financial Institutions Acting as Government Securities Brokers or Government Securities Dealers; Adoption of Forms

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of adoption of forms.

**SUMMARY:** Under section 15C(a)(1)(B) of the Securities Exchange Act of 1934, 15 U.S.C. 78o–5(a)(1)(B), as amended by the Government Securities Act of 1986 (Pub. L. 99–571), all financial institutions that act as government securities brokers or government securities dealers must notify their designated Federal supervisory agencies of their broker/dealer activities, unless exempted from the notice requirement by Treasury Department regulation. The Board of Governors has the responsibility for establishing the form for this notice, as well as the form of the notice to be filed by financial institutions that are no longer acting as government securities brokers or government securities dealers. The proposed forms were published for comment on February 25, 1987, 52 FR 5724. After a review of comments, the Board has adopted Form G–FIN (notification by financial institution of status as government securities broker or dealer) and Form G–FINW (notification by financial institution of termination of status as government securities broker or dealer), substantially as proposed.

This action constitutes final approval under the Paperwork Reduction Act (Chapter 35 of 44 U.S.C.) and OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320).

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert S. Plotkin, Assistant Director (202–452–2782), or Susan S. Meyers, Senior Securities Regulation Analyst (202–452–2781), Division of Banking Supervision and Regulation; or, for the hearing impaired *only:* Telecommunications Device for the Deaf (202–452–3544), Earnestine Hill or Dorothea Thompson, Board of Governors of the Federal Reserve System. Federal Reserve Paperwork Clearance Officer: Nancy Steele, Division of Research and Statistics (202–452–3822).

**SUPPLEMENTARY INFORMATION:** The Board has adopted forms G–FIN and G–FINW as the vehicles for financial institutions to submit the notices of status as government securities brokers and government securities dealers required by the Government Securities Act of 1986, 15 U.S.C. 78o–5(a)(1)(B). The Board proposed these forms for comment on February 25, 1987, FR 5724. All six comments received (four from Federal Reserve Banks, two from commercial banks) generally supported the proposed forms. One bank saw no need to file an amendment to Form G–FIN because such amendment would merely duplicate the filings made on Forms G–FIN–4 or G–FIN–5. Amended G–FINs, however, are required by Treasury Department regulations, and the Form G–FIN is a public document while Forms G–FIN–4 and G–FIN–5 are not.

All financial institutions (generally Federal and state chartered commercial banks, foreign banks, savings banks, and savings and loan associations, but not credit unions) that act or cease to act as government securities brokers or government securities dealers are required by section 78o–5(a)(1)(B) to file these notices with their appropriate regulatory agencies unless exempted from the notice requirement by Treasury Department rule. Financial institutions that are currently acting as government securities brokers or government securities dealers and not otherwise exempt must file a notice on Form G–FIN by July 25, 1987. Financial institutions that intend to begin engaging in these activities after that date must file a notice prior to commencement of these operations. Financial institutions acting as government securities brokers or government securities dealers that cease engaging in these activities must file a notice on Form G–FINW with their appropriate regulatory agencies.

In general, the appropriate regulatory agency for national banks is the Comptroller of the Currency; for State member banks, the Board of Governors of the Federal Reserve System; for insured non-member State banks, the Federal Deposit Insurance Corporation; for federally insured savings and loans associations, the Federal Home Loan Bank Board; and for non-federally isured financial institutions, the Securities and Exchange Commission. A foreign bank should refer to section 3(a)(34) of the Securities Exchange Act (15) U.S.C. 78c(a)(34)) as amended by section 102 of the Government Securities Act to determine its appropriate regulatory agency.

The Board estimates that for the first year, approximately 350 financial institutions will be required to file Form G–FIN and that the paperwork burden for each institution will not be greater than an average of one hour. Thus for all financial institutions, the total burden associated with these forms is estimated at 350 hours. The Board estimates that approximately 50 state member banks will be required to file such forms; thus the total burden added to the Board's information collection budget is an estimated 50 hours. The Board does not anticipate any institutions that will be filing Form G–FIN will cease to act as government securities brokers or dealers during the next year, thus the Board estimates that there will be no paperwork burden associated with Form G–FINW for this time.

In a related action the Treasury Department has adopted temporary rules under the Government Securities Act, that, among other things, establish exemptions from the notice requirement for certain classes of financial institutions. (See 17 CFR Part 401.) In addition, the Treasury Department has adopted a rule requiring the filing of an amendment to the notice if any information contained therein becomes inaccurate. (See 17 CFR 400.5(b).)

Reference to the Forms G–FIN and G–FINW will be at 17 CFR 449.1 and 449.2.

Board of Governors of the Federal Reserve System, May 21, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87–12021 Filed 5–22–87; 9:46 am]

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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# Rules and Regulations

Federal Register
Vol. 52, No. 101
Wednesday, May 27, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### 7 CFR Part 701

### Conservation and Environmental Programs

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS), USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this final rule is to amend the regulations governing the Conservation and Environmental Programs found at 7 CFR Part 701, Subpart—Agricultural Conservation Program, to change the maximum amount which a person participating in an Agricultural Conservation Program (ACP) long-term agreement (LTA) may earn in any year. The annual cost-share payment limitation under an LTA has been $3500. However, the Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, as included in Pub. L. 99–500 and Pub. L. 99–591, increases the existing payment limitation for LTA's. The new maximum amount of cost-share assistance which may be received by a person who has entered into a long-term agreement under the ACP shall not exceed the annual payment limitation multiplied by the number of years of the LTA.

**EFFECTIVE DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O Box 2415, Washington, DC 20013, telephone 202–447–6221.

**SUPPLEMENTARY INFORMATION:** Information collection requirements contained in this regulation (7 CFR Part 701) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0012.

This final rule has been reviewed for compliance with Executive Order 12291 and Departmental Regulation No. 1521–1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Title—Agricultural Conservation Program (ACP), Number 10.063; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The ACP is authorized generally by Sections 7–17 of the Soil Conservation and Domestic Allotment Act of 1936, as amended (16 U.S.C. 590g *et seq.*) The program provides financial incentives and technical assistance to encourage agricultural producers to voluntarily perform enduring soil and water conservation and pollution abatement measures, including practices or programs which are deemed essential to maintain soil productivity, prevent soil depletion, or prevent increased cost of production.

The Secretary of Agriculture is authorized to enter into annual or long-term agreements (LTA's) under the ACP with eligible owners and operators to carry out enduring soil and water conservation and pollution abatement measures. LTA's as defined by current regulations are contracts of 3 to 10 years under which farmers and ranchers agree to complete needed conservation practices in accordance with a conservation plan of operations developed in cooperation with the Soil and Water Conservation District and approved by the Secretary.

In return for such agreement by the landowner or operator, the Secretary agrees to share the cost of carrying out those conservation practices set forth in the contract.

Funding for ACP cost-share assistance including funding for LTA's, is made available through the annual appropriations for agencies of the Department of Agriculture. In the past appropriation acts have limited the maximum amount of cost-share assistance which a person may receive under ACP to $3,500 per year. However, the Agriculture, Rural Development, and Related Agencies Appropriation Act, 1987, as included in Pub. L. 99–500 and Pub. L. 99–591, in making appropriations for fiscal year 1987 for this program, provides for an exception to this limitation where a participant has a long-term agreement, in which case the the total payment shall not exceed the annual payment limitation of $3,500 multiplied by the number of years of the agreement. This regulation amends the program provisions in 7 CFR 701.23 to provide for this exception and makes several changes in the language for the purpose of clarification. Since the substantive change made by this amendment merely increases the cost-share assistance which may be made available under this program, it has been determined that no further public rulemaking is required. Accordingly, the provisions of this regulation shall become effective upon publication in the Federal Register.

### List of Subjects in 7 CFR Part 701

Disaster assistance, Forests and forest products, Grant programs, Natural resources, Rural areas, Soil conservation, Water resources, Wildlife.

Final Rule

**PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS**

Accordingly, 7 CFR Part 701, Subpart—Agricultural Conservation Program, is amended as follows:

1. The authority citation for Part 701 is revised to read as follows:

**Authority:** Pub. L. 74–76, secs. 5, 7–15, 16(a), 16(f), 16A, 17, 49 Stat. 163, as amended (16 U.S.C. 590d, 590g–590o, 590p(a), 590q); Pub. L. 95–28, secs. 1001–1008, 97 Stat. 341 (16 U.S.C. 1501–1510); Pub. L. 95–313, secs. 4, 8(a), 10, 92 Stat. 365 (16 U.S.C. 1510, 1606, 2101–2111); Pub. L. 95–334, secs. 401–405, 92 Stat. 429 (16 U.S.C. 2201–2205); Pub. L. 99–500 and Pub. L. 99–591.

2. Section 701.23 is revised to read as follows:

**§ 701.23 Maximum cost-share limitation.**

For each program year the total amount which may be received by any person under this subpart for approved practices shall not exceed $3,500 except that (a) the total amount received for approved practices, including those carried out under pooling agreements, shall not exceed $10,000 and (b) the total amount received under an ACP long-term agreement (LTA) shall not exceed the annual payment limitation ($3,500) multiplied by the number of years of the LTA.

Signed at Washington, DC, on May 20, 1987.

**Milton J. Hertz,**

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 87–11955 Filed 5–26–87; 8:45 am]

BILLING CODE 3410-05-M

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**Agricultural Marketing Service**

**7 CFR Part 905**

**Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of Minimum Grade and Size Requirements of Florida Oranges and Grapefruit**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule relaxes the minimum external grade requirements for shipments of domestice, export, and imported white and pink seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet and relaxes the minimum size requirement for domestic and imported white seedless grapefruit from size 48 (3⁹⁄₁₆ inches) to size 56 (3⁵⁄₁₆ inches). In addition, the minimum size requirement for domestic shipments of Temple oranges is relaxed from size 125 (2⁹⁄₁₆ inches) to size 163 (2¹⁄₁₆ inches). This rule also relaxes the minimum external grade requirements for domestic shipments of Valencia oranges from U.S. No. 1 to U.S. No. 1 Golden. These relaxations in the grade and size requirements for Florida citrus recognize the grade and size composition of the remaining available citrus crop and the current and prospective demand conditions for this fruit. Grapefruit import regulation 6 is applicable to white and pink seedless grapefruit imported into the United States, and is required under § 8e of the Act.

**DATES:** Seedless grapefruit and Temple orange relaxations are effective for the period May 21, 1987 through August 22, 1987; and the Valencia orange relaxation is effective for the period July 1, 1987, through September 27, 1987. Comments which are received by June 26, 1987 will be considered prior to issuance of the final rule.

**ADDRESSES:** Comments should be sent to: Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250–1400. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. Comments should reference the date and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400; telephone: (202) 475–3914.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are an estimated 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos subject to regulation under the marketing order for these citrus fruits grown in Florida, and an estimated 26 importers who import grapefruit into the United States. There are approximately 15,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers, importers, and producers may be classified as small entities.

The Administrator of Agricultural Marketing Service has considered the economic impact on small entities. This rule relaxes the minimum grade and size requirements for Florida oranges and grapefruit grown in the production area in Florida shipped to the fresh domestic and export markets and the minimum grade and size requirements for grapefruit imported into the United States. The relaxation of these requirements will help ensure that such requirements do unduly restrict the available supply of such fruit, and should make additional supplies of fruit available to consumers. The relaxation of such requirements is only for the remainder of the 1986–87 shipping seasons for these fruits. The resumption of tighter requirements for 1987–88 season shipments is based upon the maturity, size, quality, and flavor characteristics of these fruits early in the shipping season.

Some Florida orange and grapefruit shipments are exempt from the minimum grade and size requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to 2 standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

The Department's view is the impact of the relaxed handling requirements upon producers, handlers, and importers

would be beneficial, and that this action should improve returns to orange and grapefruit producers. The application of minimum grade and size requirements to Florida oranges, grapefruit, tangerines, and tangelos, and to imported grapefruit over the past several years has helped to assure that only fruit of acceptable quality and size are shipped to fresh markets.

This rule is issued under the Marketing Agreement and Order No. 905 (7 CFR Part 905), both as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. The agreement and order are effective under the Act. This action was unanimously recommended by the Citrus Administrative Committee at its May 8, 1987, meeting. The committee works with USDA in administering the marketing agreement and order program.

The handling regulation for Florida citrus fruit covered under this maketing order is specified in § 905.306 Florida Orange, Grapefruit, Tangerine, and Tangelo Regulation 6 (46 FR 60170), December 8, 1981). This regulation was issued on a continuing basis subject to modification, suspension, or termination upon recommendation by the committee and approval by the Secretary. Section 905.306(a) provides that no handler shall ship between the production area and any point outside thereof, in the continental United States, Canada, or Mexico, specified varieties of oranges, grapefruit, tangerines and tangelos unless such varieties meet the minimum grade and size requirements prescribed in Table I. Section 905.306(b) provides that no handler shall ship fruit to any destination outside the continental United States, other than Canada or Mexico, unless the specified varieties meet the requirements prescribed in Table II.

The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy in the Act.

The minimum grade and size requirements, specified herein, reflect the committee's and the Department's appraisal of the need to relax the minimum grade and size requirements applicable to domestic, export, and import shipments of seedless grapefruit; the minimum grade requirements applicable to the domestic shipments of Valencia oranges; and the minimum size requirements applicable to domestic shipments to Temple oranges. This rule recognizes current and prospective supply and demand for such fruit and is necessary to permit handlers to ship the remaining supply of marketable fruit to meet market needs. As of May 4, 1987, less than five percent of the seedless grapefruit and Temple orange crops remains available for sale, and it is projected that only a small portion of the Valencia orange crop will remain on July 1, 1987, the effective date of the grade change for that commodity. No problems with fruit quality, maturity, and size are expected in the marketplace because of the relaxations.

This rule temporarily relaxes the minimum external grade requirement for domestic, export, and import shipments of white and pink seedless grapefruit from Improved No. 2 to U.S. No. 2 Russet while the minimum internal requirement remains U.S. No. 1, and the minimum size requirement for domestic and import shipments of white seedless grapefruit from size 48 (3⁹⁄₁₆ inches in diameter) to size 56 (3⁹⁄₁₆ inches in diameter). Also, the minimum size requirement for domestic shipments of Temple oranges is relaxed from size 125 (2¹³⁄₁₆ inches in diameter) to size 163 (2¹⁄₁₆ inches in diameter). The relaxations for grapefruit and Temple oranges are to remain in effect through August 23, 1987, by which time this season's shipments will be finished. In addition, this rule lowers the minimum external grade requirements for domestic shipments of Valencia oranges from U.S. No. 1 to U.S. No. 1 Golden while the minimum internal grade requirement will remain U.S. No. 1 during the period from July 1, 1987, through September 27, 1987. The effective dates for the relaxed requirements for Valencia oranges recognize the late shipping season for this fruit, and the presence of late-bloom fruit which will mature late in the season.

Section 8e of the Act (7 U.S.C. 608e–1) provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Since this action relaxes the minimum grade and size requirements for domestically produced seedless grapefruit, this change would also be applicable to imported seedless grapefruit.

Grapefruit import requirements are specified in § 944.106 (7 CFR Part 944) which requires that the various varieties of imported grapefruit meet the same grade and size requirements as those specified for Florida grapefruit in Table 1 of paragraph (a) in § 905.306. An exemption provision in the grapefruit import regulation permits persons to import up to 10 standard packed 4/5 bushel cartons exempt from the import requirements.

After consideration of the information and recommendation submitted by the committee, and other available information, it is found that amendment of § 905.306 will tend to effectuate the declared policy of the Act.

Pursuant to U.S.C. 553, it is hereby found that it is impracticable, unnecessary, contrary to the public interest to give preliminary notice and to engage in public rulemaking procedure with respect to this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes handling requirements currently in effect for Florida grapefruit, Temple oranges, and Valencia oranges; (2) handlers of these fruits are aware of this action which was recommended by the committee at a public meeting, and they will need no additional time to comply with the requirements; (3) shipment of the 1986–87 season Florida orange and grapefruit crop is nearly finished; (4) the grapefruit import requirements are mandatory under section 8e of the Act; and (5) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

**List of Subjects in 7 CFR Part 905**

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, Part 905 is amended as follows:

**PART 905—[AMENDED]**

1. The authority citation for 7 CFR Part 905 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The provisions of § 905.306 (46 FR 60170, December 8, 1981) are amended by revising the following entries in Table I of paragraph (a), applicable to domestic shipments, and Table II of

paragraph (b), applicable to export shipments, to read as follows:

**§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation 6, Amendment 44.**

(a) * * *

TABLE I

| Variety (1) | Regulation period (2) | Minimum grade (3) | Minimum diameter (in.) (4) |
|---|---|---|---|
| Grapefruit: | | | |
| Seedless, white | May 21, 1987–8/23/87 | U.S. No. 2, Russet (External), U.S. No. 1 (Internal). | 3-5/16 |
| | On & after 8/24/87 | Improved No. 2 (External), U.S. No. 1 (Internal). | 3-9/16 |
| Grapefruit: | | | |
| Seedless, pink | May 21, 1987–8/23/87 | U.S. No. 2, Russet (External), U.S. No. 1 (Internal). | 3-5/16 |
| | On & after 8/24/87 | Improved No. 2 (External), U.S. No. 1 (Internal). | 3-9/16 |
| Oranges: | | | |
| Valencia and other late types | 7/1/87–8/27/87 | U.S. No. 1, Golden (External), U.S. No. 1 (Internal). | 2-8/16 |
| | On & after 8/28/87 | U.S. No. 1 | 2-8/16 |
| Oranges: | | | |
| Temple | May 21, 1987–8/23/87 | U.S. No. 1 | 2-4/16 |
| | On & after 8/24/87 | U.S. No. 1 | 2-8/16 |

TABLE II

| Variety (1) | Regulation period (2) | Minimum grade (3) | Minimum diameter (in.) (4) |
|---|---|---|---|
| Grapefruit: | | | |
| Seedless, white | May 21, 1987–8/23/87 | U.S. No. 2, Russet (External), U.S. No. 1 (Internal). | 3-5/16 |
| | On & after 8/24/87 | Improved No. 2 (External), U.S. No. 1 (Internal). | 3-5/16 |
| Grapefruit: | | | |
| Seedless, pink | May 21, 1987–8/23/87 | U.S. No. 2, Russet (External), U.S. No. 1 (Internal). | 3-5/16 |
| | On & after 8/24/87 | Improved No. 2 (External), U.S. No. 1 (Internal). | 3-5/16 |

* * * * *

Dated: May 21, 1987.

Ronald L. Cioffi,

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87-12020 Filed 5-26-87; 8:45 am]

BILLING CODE 3410-02-M

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Parts 101 and 341**

**[INS Number: 1014-87]**

**Application for Certificate of Citizenship, Form and Fee Cancellation**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Form N-400, Application to File Petition for Naturalization, instructions, and the fee schedule of the Immigration and Naturalization Service. The change will cancel Form N-604, Application for a Certificate of Citizenship (made on Form N-400), to be replaced by Form N-600, Application for Certificate of Citizenship.

**EFFECTIVE DATE:** Final rule effective June 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Cook, Senior Immigration Examiner, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-5016.

**SUPPLEMENTARY INFORMATION:** Service efforts in recent years have been aimed at streamlining benefit application procedures. The Form N-604 is currently used to apply for a certificate of citizenship in behalf of a child, and is submitted as part of the Form N-400, Application To File Petition for Naturalization. A child deriving citizenship through the naturalization of his or her parents is a citizen by law.

A certificate of citizenship is merely evidence of such citizenship. For example, the issuance of a United States passport would also be evidence of citizenship. If Form N-604 is not filed concurrently with the parent's Form N-400, a certificate will not be issued, and a Form N-600, Application for Certificate of Citizenship, must be filed in behalf of the child to obtain a Certificate of Citizenship.

To streamline processing, the N-604 procedure will be replaced with the filing of the N-600. The N-604 and N-600 are both applications for the same benefit and each require a $35.00 filing fee. One advantage to the public is that an interview is not required in conjunction with the adjudication of an N-600. In addition, the N-600 can be adjudicated at alternate Service locations to better utilize Service resources in reducing processing time. The advantage to the Service is that one form will be used to apply for a benefit where now two are allowed. The savings in interview time from N-600 cases that are remoted to alternate locations can be applied toward reducing other casework processing, thereby benefiting the Service and the public.

The rule change is being published as a final rule to coordinate with the publication of the revised Form N-400. In addition, the revision was approved by the Naturalization Automated Casework System (NACS) user group, which represents 18 Service officers and 87% of naturalization work Servicewide. Further, the Service has determined that notice and public comment regarding this final rule are unnecessary under 5 U.S.C. 553(d)(B). These changes will reduce unnecessary and duplicative reporting burdens.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule does not have significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

**List of Subjects**

*8 CFR Part 103*

Administrative practice and

procedures, Archives and records, Authority delegation and records.

*8 CFR Part 341*

Citizenship, Naturalization.

Accordingly, Chapter I, Title 8 of the Code of Federal Regulations is amended as follows:

## PART 103—POWER AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

**Authority:** Secs. 103 and 501 of the Immigration and Nationality Act; 66 Stat. 173 and 290; 8 U.S.C. 1103; 31 U.S.C. 483a.

**§ 103.7 [Amended]**

2. In § 103.7, paragraph (b)(1) is amended as follows; Remove "Form N–604. For filing application for a certificate of citizenship (made on Form N–400) under section 341 of the Act—$35.00."

## PART 341—CERTIFICATE OF CITIZENSHIP

1. The authority citation of Part 341 continues to read as follows:

**Authority:** Secs. 103, 309, 332, 333, 337, 341, and 344 of the Immigration and Nationality Act; 66 Stat. 173, 236, 252, 254, 258, 263, 264, as amended; 8 U.S.C. 1103, 1409, 1443, 1444, 1448, 1452, 1455.

2. Section 341.1 is revised to read as follows:

**§ 341.1 Application.**

*Form N–600.* An application for a certificate of citizenship by or in behalf of a person who claims to have acquired United States citizenship under section 309(c) or to have acquired or derived United States citizenship as specified in section 341 of the Act shall be submitted on Form N–600 in accordance with the instructions thereon, accompanied by the fee specified in § 103.7(b)(1) of this chapter. The application shall be supported by documentary and other evidence essential to establish the claimed citizenship, such as birth, adoption, marriage, death, and divorce certificates.

(Approved by the Office of Management and Budget under control number 1115–0018)

Dated: May 18, 1987.

**Richard E. Norton,**

*Associate Commissioner, Examinations, Immigration and Naturalization Service.*

[FR Doc. 87–11890 Filed 5–26–87; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 74

[Docket No. 85C–0283]

## Listing of Color Additives for Coloring Contact Lenses; D&C Violet No. 2

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 for coloring contact lenses. This action responds to a petition filed by Optacryl, Inc.

**DATES:** Effective June 29, 1987, except as to any provisions that may be stayed by the filing of proper objections; objections by June 26, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

In a notice published in the **Federal Register** of July 12, 1985 (50 FR 28477), FDA announced that a color additive petition (CAP 5C0190) had been filed by Optacryl, Inc., 2890 South Tejon St., Englewood, CO 80110, proposing that Part 74 (21 CFR Part 74) be amended to provide for the safe use of D&C Violet No. 2 as a color additive in contact lenses. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

### II. Regulatory History

In the **Federal Register** of April 12, 1974 (39 FR 13286), in response to color additive petition 3C0106, FDA issued a final rule listing D&C Violet No. 2 for use in coloring polygalactin 910 synthetic absorbable surgical sutures, including sutures for ophthalmic use (21 CFR 74.1602). In the 1974 final rule, FDA also established specifications for D&C Violet No. 2, FDA is incorporating those specifications in the regulation (§ 74.3602 (21 CFR 74.3602)) that permanently lists this color additive for use in contact lenses.

In the **Federal Register** of November 19, 1976 (41 FR 51007), in response to color additive petition 3C0037, FDA issued a final rule permanently listing D&C Violet No. 2 for use in externally applied drugs and in cosmetics (21 CFR 74.1602 and 74.2602).

In the **Federal Register** of September 23, 1980 (45 FR 62978), in response to color additive petition 9C0142, FDA issued a final rule listing D&C Violet No. 2 for coloring polydioxanone synthetic absorbable sutures for use in general and ophthalmic surgery at a level not to exceed 0.3 percent by weight of the suture material (21 CFR 74.1602).

### III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 to the act (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices where the color additive comes in direct contact with the body for a significant period of time (21 U.S.C. 376(a)). The use of the color additive presented in the petition now before the agency is subject to this listing requirement. The color additive is added to contact lenses in such a way that at least some of the additive will come in contact with the eye when the lenses are worn. In addition, the lenses are intended to be placed in the eye for several hours a day each day for 1 year or more. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

### IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4- [(4-methylphenyl)amino]-9, 10-anthracenedione (CAS Reg. No. 81–48–1). It is typically manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-4-halogenoanthraquinone with *p*-toluidine. Because no chemical reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger, et al., have demonstrated that *p*-toluidine is a carcinogen in mice (Ref. 3).

Residual amounts of reactants, such as *p*-toluidine and other manufacturing aids, are commonly found among the impurities of many color additives. The presence of such impurities is not unique to color additives, however. Numerous impurities are present in all chemical

products, even in highly purified reagent grade chemicals.

**V. Analysis of Data**

*A. Safety of the Color Additive*

1. Legal Standard

Under section 706(b)(4) of the act, the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless the data presented to FDA establish that the color additive is safe for that use. Although what is meant by "safe" is not explained in the general safety clause, the legislative history of the Color Additive Amendments of 1960 (Pub. L. 86-618) makes clear that this word is to have the same meaning for color additives as for food additives.

"Safe" is defined in the legislative history of the Food Additives Amendment of 1958 as a "reasonable certainty that no harm will result from a proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (S. Rept. 2422, 85th Cong., 2d Sess. 6 (1958).) This concept of safety is incorporated in FDA's color additive regulation (21 CFR 70.3(f)).

In addition, the anticancer or Delaney Clause of the Color Additive Amendments (section 706(b)(5)(B) of the act) provides that a noningested color additive shall be deemed unsafe and shall not be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to cause cancer in man or animal.

2. Exposure to the Color Additive

FDA concludes from the data submitted and from other relevant information that the upper limit of exposure to D&C Violet No. 2 from its use in coloring contact lenses is 275 nanograms per day. The agency calculated this upper limit of exposure based on two factors. First, based on the information submitted by the petitioner, FDA estimated that the maximum use level of D&C Violet No. 2 is 50 micrograms per lens (Ref. 1). Second, the agency made two worst-case assumptions: (1) That a user will replace lenses tinted with D&C Violet No. 2 once each year with a new pair of lenses tinted with D&C Violet No. 2 at the maximum use level, and (2) that 100 percent of the color additive will migrate from these lenses into the eye over the 1-year period. Because these assumptions are worst case, exposure to D&C Violet No. 2 from its use for coloring contact lenses is likely to be far less than 275 nanograms per day.

3. Toxicology

When presented with a substantive whose use will result in the extremely low levels of exposure that the agency estimates will result from the use of D&C Violet No. 2 in contact lenses, FDA does not ordinarily consider chronic toxicity testing to be necessary to determine the safety of use (Ref. 2). FDA has not required such testing here, and no data have been submitted that show that this color additive is a carcinogen. Therefore, the Delaney Clause has no application to this proceeding.

FDA did require the petitioner to conduct an in vitro cytotoxicity test on D&C Violet No. 2 and primary ocular irritation studies in rabbits with saline and cottonseed oil extracts of the tinted lens material. These studies showed no ocular irritation from these extracts and no adverse effects in the in vitro cytotoxicity testing. The studies demonstrated that the no-effect level for D&C Violet No. 2 is 500 micrograms per milliliter.

To relate this no-effect concentration for D&C Violet No. 2 to the maximum concentration level in the eye that would result from the use of the color additive in contact lenses, the agency estimated that the daily exposure of the color additive in each eye (140 nanograms) will be diluted by the average daily volume of tears produced in each eye (1.66 milliliters). This concentration is equal to a maximum daily concentration of 0.0833 microgram of color additive per milliliter in the tear flow and eye area. This concentratioin is over 6,000 times less than the no-effect dose for D&C Violet No. 2 found in ocular irritation and in in vitro cytotoxicity tests.

*B. Carcinogenic Impurity*

1. p-Toluidine

Although D&C Violet No. 2 itself has not be shown to cause cancer, it does contain minor amounts of a carcinogenic impurity, *p*-toluidine. The carcinogenicity of *p*-toluidine was discussed in the agency's April 2, 1982, final rule permanently listing D&C Green No. 6 for use in externally applied drugs and cosmetics (47 FR 14138). As stated in that document, data reported by the National Cancer Institute demonstrated that *p*-toluidine was carcinogenic for male and female Charles River CD-1 (Ham/ICR derived) mice, causing an increased incidence of hepatomas (liver tumors) (Ref. 3).

In addition, the Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on *p*-toluidine. FDA used data from the National Cancer Institute's study to estimate the lifetime risk of cancer from *p*-toluidine when D&C Violet No. 2 is used to color contact lenses.

2. Prior Action

In the past, FDA often refused to list a color additive that contained or was expected to contain minor amounts of a carcinogenic chemical, even if the additive as a whole had not been shown to cause cancer. The agency now believes, however, that scientific developments and experience with risk assessment procedures make it possible for FDA to approve the use of an additive that contains a carcinogenic chemical but that has not itself been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has listed, on the same basis, the uses of several other color additives that contain carcinogenic impurities, including the use of D&C Green No. 6 for coloring contact lenses (48 FR 13020; March 29, 1983), and the use of D&C Green No. 5 (47 FR 24278; June 4, 1982) and of D&C Red No. 6 and D&C Red No. 7 (47 FR 57661; December 28, 1982) for coloring drugs and cosmetics. (See also the advance notice of proposed rulemaking published in the Federal Register of April 2, 1982 (47 FR 14464).)

The agency now considers the Delaney anticancer clause to be applicable only when the color additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, is properly evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has not itself been shown to cause cancer. Relying heavily on the reasoning in the agency's decision, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge

to FDA's action and affirmed the listing regulation.

3. Risk Assessment

Using risk assessment procedures to estimate the upper limit lifetime risk presented by the use of D&C Violet No. 2, with its expected impurity, to color contact lenses, the agency has concluded that the color additive is safe under the proposed conditions of use. The risk evaluation consists of two parts:

(1) Estimation of exposure to *p*-toluidine from the use of D&C Violet No. 2 for coloring contact lenses, and (2) extrapolation of the risk from *p*-toluidine observed in the bioassay of that substance to the conditions of exposure in humans.

*A. Exposure*

As explained above, FDA estimates that the maximum level of exposure to D&C Violet No. 2 from its use in coloring contact lenses is 275 nanograms per day. Under the current specifications for D&C Violet No. 2, the level of *p*-toluidine in the color additive is not to exceed 0.2 percent. Thus, the maximum exposure to *p*-toluidine that will result from the daily use of contact lenses that are colored with D&C Violet No. 2 that complies with the applicable specifications is 0.55 nanogram per day.

*B. Risk Extrapolation*

FDA has estimated the risk from the *p*-toluidine impurity from use of D&C Violet No. 2 for coloring contact lenses by extrapolating from the risk observed at the level of exposure in the NCI-sponsored animal studies to the very low levels of estimated exposure for humans. In this extrapolation, the agency has used a quantitative risk assessment procedure (linear proportional model) similar to the methods used to examine the risk associated with the presence of minor carcinogenic impurities in D&C Green No. 6 and the other color additives mentioned above. This procedure is not likely to underestimate the actual risk from the very low doses. In fact, the estimate of the risk may be exaggerated because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the use of this color additive.

Based on this risk assessment procedure and a worst case daily exposure estimate of 0.55 nanograms of *p*-toluidine, FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to *p*-toluidine from the use of D&C Violet No. 2 is $4\times10^{-11}$ or one in 25 billion.

Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to *p*-toluidine is expected to be substantially less than the estimated daily intake, and, therefore, the actual risk would be expected to be less than the calculated individual lifetime risk. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to the *p*-toluidine that results from the use of D&C Violet No. 2 in contact lenses.

*C. Specifications*

Based upon the low level of exposure to *p*-toluidine that results under the current specifications for D&C Violet No. 2, the agency concludes that these specifications are adequate to assure the safe use of this color additive and to control the amount of *p*-toluidine that may exist as an impurity in the color additive when used in contact lenses.

The agency, therefore, concludes that it is not necessary to amend the current specifications for this color additive when it is used to color contact lenses.

VI. Conclusion

Based upon the available toxicity data, the small amount of the color additive added to the contact lens, the agency's exposure calculation, and the extremely low risk from the presence of the impurity, FDA finds that the color additive D&C Violet No. 2 is safe for use in contact lenses. FDA further concludes that the safety margin is sufficiently large that a limitation on the amount of the color additive that may be present in the lens is not required, beyond the limitation that only the amount necessary to accomplish the intended technical effect may be used. In addition, based upon the data it considered, the agency finds that D&C Violet No. 2 is suitable for use in coloring contact lenses.

In accordance with § 71.15(a) (21 CFR 71.15(a)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15(b), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VII. Environmental Assessment

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for CAP 5C0190 (July 12, 1985, 50 FR 28477). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VIII. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated February 18, 1985, from the Food Additive Chemistry Evaluation Branch, Re: "Color Additives in Contact Lenses."

2. Kokoski, C. J., "1985 Regulatory Food Additive Toxicology" *in* "Chemical Safety Regulation and Compliance," edited by F. Homburger and J. K. Marquis, pp. 24–33, S. Karger, New York, NY.

3. Weisburger, E. K., et al., "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicology or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:225–356, 1978.

IX. Objections

Any person who will be adversely affected by this regulation may at any time on or before June 26, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has

received or lack thereof in the Federal Register.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 74 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); 21 CFR 5.10.

2. By adding new § 74.3602 to Subpart D, to read as follows:

§ 74.3602 D&C Violet No. 2.

(a) *Identity and specifications.* The color additive D&C Violet No. 2 shall conform in identity and specifications to the requirements of § 74.1602(a)(1) and (b).

(b) *Uses and restrictions.* (1) The color additive, D&C Violet No. 2, may be safely used for coloring contact lenses in amounts not to exceed the minimum reasonably required to accomplish the intended coloring effect.

(2) Authorization for this use shall not be construed as waiving any of the requirements of section 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the contact lens in which the color additive is used.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 70.25 of this chapter.

(d) *Certification.* All batches of D&C Violet No. 2 shall be certified in accordance with regulations in Part 80 of this chapter.

Dated: May 15, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–11378 Filed 5–26–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 176

[Docket No. 80F–0396]

**Indirect Food Additives: Paper and Paperboard Components**

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations by providing for the use of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride as a preservative for latex and pigment slurries used as components of coatings for paper and paperboard when used in contact with food. This action responds to a petition filed by the Dow Chemical Co.

DATES: Effective May 27, 1987; objections by June 26, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFT–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of October 24, 1980 (45 FR 70573), FDA announced that a petition (FAP 9B3440) had been filed by the Dow Chemical Co., Midland, MI 48640, proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended by revising the regulation for 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride to provide for its use as a preservative for latex and pigment slurries as components of coatings for paper and paperboard used in contact with food.

In this final rule, FDA is amending the food additive regulations by providing for the use of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride, at the specified levels as a preservative for latex and pigment slurries used as components of coatings for paper and paperboard in contact with food, without restriction on food types or conditions of use.

FDA reviewed the safety of both the additive and the starting materials used to manufacture the additive. Although 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride has not been found to cause cancer, it may contain minute amounts of methylene chloride as a byproduct of its production. This chemical has been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as methylene chloride, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical, but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6 published in the Federal Register of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent.

Since that decision, FDA has approved the use of other color additives and food additives on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for these decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, published in the Federal Register of April 2, 1982 (47 FR 14464).

The agency now believes that the Delaney anticancer clause is applicable only when the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures

to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

## II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride in paper and paperboard products that contact aqueous and fatty foods will result in extremely low levels of exposure to this additive. The agency has calculated an estimated daily intake of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride based on consideration such as the migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles that contain this substance. The estimated daily intake for the additive is 0.015 milligram per person per day, which is equivalent to 0.0025 milligram per kilogram per day for a 60 kilogram person.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and has not required such testing in this case. However, the petitioned request was supported by two 90-day studies in the rat and dog. Neither study showed any adverse effects.

FDA has found 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride to be safe and effective for the intended use based upon the extremely low levels of exposure to this substance and upon its evaluation of the data furnished on this substance in the petition.

The available data revealed no adverse effects from 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride. However, this additive may contain methylene chloride, a substance that has been shown to cause cancer in test animals. The agency has tentatively concluded that methylene chloride is a carcinogen in a proposed rule published in the Federal Register of December 18, 1985 (50 FR 51551). The agency is currently reviewing the comments received on that proposal and will respond to them in a future Federal Register document. For the purposes of the current rulemaking, however, the agency is assuming, without deciding, that methylene chloride is a carcinogen in its evaluation of the safe use of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride.

This impurity may be present as a result of the manufacturing procedures used to produce the additive. Nonetheless, because 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride has not been shown to cause cancer, the anticancer clause does not apply to it.

FDA has evaluated the safety of this additive under the general safety clause, using risk assessment procedures to estimate the upper bound limit of risk presented by the carcinogenic chemical that may be present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 12018, 12019; April 2, 1984). This risk evaluation of the carcinogenic impurity methylene choloride has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk from methylene chloride observed in the National Toxicology Program (NTP) bioassay to the conditions of probable exposure to humans.

### *A. Methylene Chloride*

Based on the fraction of the daily diet that may be in contact with surfaces containing 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride, as well as the level of methylene chloride that may be present in the additive, FDA estimated the hypothetical worst-case exposure to methylene chloride from the petitioned use of the additive to be 0.2 microgram per person per day (Ref. 3). As discussed in the methylene chloride proposed rule published in the Federal Register of December 18, 1985 (50 FR 51555), the agency used data from an NTP-sponsored inhalation study on methylene chloride in mice (Ref. 4) to estimate the upper bound level of lifetime human risk from exposure to methylene chloride. The results of the bioassay on methylene chloride indicated that the material was carcinogenic for male and female mice under the conditions of the study. The test material caused an increased incidence of liver cell neoplasms and lung neoplasms in male and female mice.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on methylene chloride. The committee further concluded that an estimate of the upper bound level of lifetime human risk from potential exposure to methylene chloride stemming from the proposed use of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride could be calculated from the bioassay (Ref. 5). The agency used the female mouse data for risk assessment because the female gave a somewhat stronger response than the male.

Based on the worst-case exposure of 0.2 microgram per person per day, FDA estimates that the upper bound limit of individual lifetime risk from potential exposure to methylene chloride from the additive is $1.5 \times 10^{-9}$ or less than 1 in 666 million (Ref. 6). Because of numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to methylene chloride is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper bound risk would be expected to be less than $1.5 \times 10^{-9}$. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to methylene chloride that results from the use of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride.

### *B. Need for Specifications*

The agency has also considered whether a specification is necessary to control the amount of the methylene chloride impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the level at which methylene chloride is produced as a byproduct in the production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 1 in 666 million.

*C. Conclusion on Safety*

Regardless of the agency's decision on the 1985 proposed rule concerning methylene chloride, FDA finds that final action now can be taken on the use of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride containing minute amounts of methylene chloride.

FDA has evaluated the available toxicity data and the exposure calculation for the additive and has determined that the additive is safe for its proposed use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 9B3440 (October 24, 1980; 45 FR 70573). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

**References**

The following references have been placed on display in the Dockets Management Branch (address above) and may be reviewed in that office between 9 a.m. and 4 p.m. Monday through Friday.


1. Carl, G. M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 89, July 1979.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology" presented at the "Second International Conference on Safety Evaluation and Regulation of Chemicals," Cambridge, MA, October 24, 1983.
3. Memorandum dated February 13, 1986, from Regulatory Food Chemistry Branch to Indirect Additives Branch, "Methylene Chloride (MC) Exposure."
4. "Technical Report on the Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) in F344/N Rats and B6C3F1 Mice," NTP Draft Report, NTP–TR–306, National Institutes of Health Publication No. 85–2562, 1985.
5. Cancer Assessment Committee, Memorandum of Conferences, "Methylene Chloride," January 20, 1983, August 8, 1984, and June 13, 1985.
6. Memorandum dated June 12, 1986, from Quantitative Risk Assessment Committee to Director of the Office of Toxicological Sciences, "Impurities of Methylene Chloride in These Indirect Additives."


**Objections**

Any person who will be adversely affected by this regulation may at any time on or before June 26, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on the objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 176**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 176 is amended as follows:

## PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 210(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 176.170(b)(2) by revising the item "1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride," to read as follows:

**§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.**

* * * * *

(b) * * *

(2) * * *

| List of substances | Limitations |
|---|---|
| * * * * * | |
| 1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride (CAS Reg. No. 4080-31-3). | For use only:<br>1. As a preservative at a level of 0.3 weight percent in latexes used as pigment binders in paper and paperboard intended for use in contact with nonaqueous, nonlipophilic food and under the conditions of use described in paragraph (e) of this section, Table 2, conditions of use E, F, and G.<br>2. As a preservative at a level not to exceed 0.07 weight percent in latexes and 0.05 weight percent in pigment slurries used as components of coatings for paper and paperboard intended for use in contact with food. |
| * * * * * | |

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Dated: May 20, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-11979 Filed 5-26-87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 882

[Docket No. R-87-1337; FR-2363]

### Section 8 Housing Assistance Payments Program—Existing Housing; Technical Amendment

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule; technical amendment.


**SUMMARY:** This rule corrects an erroneous cross reference in the text of 24 CFR Part 882—Section 8 Housing Assistance Payments Program—Existing Housing.


**DATE:** Effective June 10, 1987.


**FOR FURTHER INFORMATION CONTACT:** Grady J. Norris, Assistant General Counsel for Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-7055. (This is not a toll-free number.)


**SUPPLEMENTARY INFORMATION:** Section 882.408(c)(1) contains an erroneous cross reference to "paragraph (a)(2)" which is supposed to refer to "paragraph (c)(2)". This final rule corrects the error.

This rule does not constitute a "major rule" as that term is defined in section

1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause major increase in costs or prices for consumers, individual industries, agencies, or geographic regions; or (3) competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1987, under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule is technical and changes no program requirements.

**List of Subjects in 24 CFR Part 882**

Grant programs—housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

Accordingly, 24 CFR Part 882 is amended as set forth below:

**PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING**

1. The authority citation for 24 CFR Part 882 continues to read as follows:

Authority: Sections 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c and 1437(f); section 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. Section 882.408 is amended by revising paragraph (c)(1) as follows:

**§ 882.408 Initial contract rents.**

* * * * *

(c) *Determination Initial Contract Rents.* (1) The initial Contract Rent and base rent for each unit must be computed in accordance with HUD requirements. These amounts may be determined in accordance with paragraph (c)(2), or in accordance with an alternative method prescribed by HUD. However, the initial Contract Rent may in no event be more than—

(i) The Moderate Rehabilitation Fair Market Rent or exception rent applicable to the unit on the date that the Agreement is executed, minus

(ii) Any applicable allowance for utilities and other services attributable to the unit.

* * * * *

Dated: May 20, 1987.

James E. Schoenberger,

*Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 87-12022 Filed 5-26-87; 8:45 am]

BILLING CODE 4210-27-M

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

**[CGD 05-87-27]**

**Special Local Regulations for Marine Events Norfolk/Portsmouth**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** Permanent Special Regulations are adopted for marine events to be held on the Elizabeth River in the vicinity of the "Waterside" area of downtown Norfolk, Virginia, and the "Portside" area of downtown Portsmouth, Virginia. The area is the site of several large marine events each year, including Norfolk Harborfest, Portsmouth Seawall Festival, Independence Day Celebration, power boat races, and boat parades. These regulations govern vessel activities during those events. Notices of the precise dates and times that regulations are effective will be published in the Local Notice to Mariners and Federal Register. These special local regulations are considered necessary to control vessel traffic and provide safety of life and property on the navigable waters within the immediate vicinity of the event.

**EFFECTIVE DATE:** May 27, 1987. Compliance with this regulation will be required at different dates and times. The Commander, Fifth Coast Guard District publishes notices in the Local Notice to Mariners and Federal Register that announce the times and dates when the regulation is in effect.

**FOR FURTHER INFORMATION CONTACT:** Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705, (804) 398-6204.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published a notice of proposed rule making in the Federal Register on March 3, 1986, (51 FR 7286) and supplemental notice of proposed rulemaking in Federal Register on November 6, 1986, (51 FR 40341). Interested persons were requested to submit comments. No comments were received on either the notice of proposed rulemaking or supplemental notice of proposed rulemaking.

**Drafting Information**

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

**Discussion of Proposed Regulation**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Its economic impact is expected to be minimal since, as in the past, closure of the waterway for any extended period is not anticipated and thus commercial traffic should not be severely disrupted at any given time. Comments received concerning past events indicate that commercial interests normally using the waterways can adapt to the minor restrictions they may encounter. Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Final Regulations**

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.501 is added to read as follows:

**§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth, Virginia.**

(a) *Definitions*—(1) *Regulated Area:* The waters of the Elizabeth River and its branches from shore to shore, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50'51.0" North, longitude 76°18'09.0" West and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51'00.0" North, longitude

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76°17'52.0" West; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50'50.0" North, longitude 76°18'10.0" West, to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50'29.0" North, longitude 76°17'52.0" West; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50'10.0" North, longitude 76°17'47.0" West, and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50'08.0" North, longitude 76°17'39.0" West; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50'08.0" North, longitude 76°17'39.0" West, and Norfolk at latitude 36°50'08.0" North, longitude 76°17'39.0" West.

(2) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a Coast Guard commissioned, warrant, or petty officer who has been designated by Commander, Coast Guard Group, Hampton Roads.

(b) *Special local regulations.* (1) Except for participants registered with the event sponsor and vessels that are moored to a pier, dock or shore, no person or vessel may enter or remain in the regulated area without permission of the Coast Guard Patrol Commander.

(2) The operator of any vessel in the regulated areas shall:

(i) Stop the vessel immediately when directed to do so by any Coast Guard commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign; or

(ii) Proceed as directed by any Coast Guard commissioned, warrant or petty officer.

(3) Spectator vessels may anchor outside the regulated area specified in paragraph (a)(1) of this section, but may not block the channel.

(4) The Coast Guard Patrol Commander may stop the event to assist the transit of marine traffic through the regulated area.

(c) *Effective Period.* This regulation is effective at different times and dates throughout the year. The Commander, Fifth Coast Guard District publishes a notice in the Fifth Coast Guard District Local Notice to Mariners and in the Federal Register that announces the time and dates when the regulations are in effect.

Dated: May 15, 1987.

P.A. Welling,

*Captain, U.S. Coast Guard, Commander, Fifth Coast Guard District, Acting.*

[FR Doc. 87-11886 Filed 5-26-87; 8:45 am]

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33 CFR Part 183

[CGD 85-098]

## Boating Safety; Fuel System Standard

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Fuel System Standard in Subpart J of Part 183 by requiring that gasoline fuel hose installed in new recreational boats be tested under SAE Standard J1527DEC85 instead of SAE Standard J30C. The increasing level of aromatics in gasoline and the use of alcohols in gasoline have raised safety questions over the permeation rates and longevity of hose meeting SAE Standard J30C. The purpose of these amendments is to specify four grades of fuel hose that are more resistant to alcohol permeation. Additional editorial changes to Subpart A of Part 183 reflect changes to the names and addresses of organizations whose standards are incorporated by reference in Part 183.

**DATES:** Effective November 23, 1987. The incorporation by reference of SAE Standard J1527DEC85 in Subpart J of Part 183 of Title 33, Code of Federal Regulations is approved by the Director of the Federal Register as of November 23, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alston Colihan (202) 267-0961.

**SUPPLEMENTARY INFORMATION:** The Coast Guard published a notice of proposed rulemaking in the Federal Register on March 20, 1986 (51 FR 9689). Interested persons were invited to participate in this rulemaking by submitting relevant comments. All of the comments received were carefully considered. The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G-BBS), U.S. Coast Guard, Washington, DC 20593-0001.

### Drafting Information

The principal persons involved in drafting these amendments are Mr. Alston Colihan, Project Manager, Office of Boating, Public, and Consumer Affairs, and LT. Sandra Sylvester, Project Attorney, Office of the Chief Counsel.

### Discussion of Comments

Eighteen comments were received, primarily from boat manufacturers. Of these, twelve comments supported the proposed amendments.

Several comments questioned the validity of the use of American Society for Testing and Materials (ASTM) Reference Fuel "C" as a test fuel in SAE Standard J1527DEC85, since it does not contain any alcohol. Unfortunately, at the present time there is no alcohol blended test fuel which has been accepted as a consensus standard and it may be several years before this occurs. This reflects the wide diversity in the use of alcohol in gasoline. Not only do different refineries use different blends, but a given blend of gasoline may vary geographically and regionally. The Coast Guard is closely following efforts to develop a standard alcohol blend test fuel and will consider further rulemaking to adopt a suitable standard when one is developed.

Reference Fuel "C", used in the tests required by SAE Standard J1527DEC85, contains a higher percentage of toluene than the test fuels used in SAE Standard J30C (1977). Use of this fuel and stricter permeation standards results in a permeation rate six times better than that of hose meeting SAE Standard J30C. Data from a number of tests considered in conjunction with the development of SAE Standard J1527DEC85 indicates that ethanol blended fuels (gasohol) may cause permeation in marine hoses approximately double that of fuels not containing alcohol, and methanol blended fuels may increase permeation about two and one-half times. Therefore, with the alcohol-blended gasoline currently found at the retail level, fuel distribution lines meeting the permeation rates established by the rules, when tested under SAE Standard J1527DEC85, should be more than two and one-half times as resistant to permeation than hose meeting the requirements of SAE Standard J30.

Another comment asked why a mixture of regular gasoline and alcohol was not considered as a test fuel. The use of regular gasoline was considered and rejected because gasoline is not a standard product. The constituents in gasoline vary with manufacturer, geography and time of year. Reference fuel "C" is a standardized product

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which can be duplicated by any laboratory.

One comment suggested elimination of UL Standard 1114 in the definition of "USCG Type A1" hose in Section 183.505, since the UL standard does not establish permeation rates similar to those in SAE J1527DEC85. The Coast Guard contacted Underwriters' Laboratories, Inc. (UL) regarding the questions raised in the comment. The newly revised version of UL 1114 uses the same reference fuel and permeation rates as SAE J1527DEC85.

Another comment stated that although SAE J1527DEC85 establishes maximum allowable amounts of fuel loss through a hose wall, specific physical property tests should also be established to measure the degradation of hose due to alcohol in the fuel, because split and deteriorated fuel fill lines and vent lines are a known cause of fires and explosions. This recommendation was not adopted. Physical property tests such as tensile strength, swelling and cold flexibility are indirect measures of the durability of a length of hose. These tests are included in SAE J1527DEC85 and UL 1114. The permeability test is also an indirect measure of the durability of hose. When fuel permeates through the hose wall, some of the hose material also leaches out, particularly plasticizers which contribute to the flexibility of the hose. Therefore, a reduction in the permeability of a hose will have a direct effect upon increasing the useful life of the hose. All fuel hose will deteriorate in time. The best corrective measure is periodic visual inspection of the hose.

One comment stated that the reference to "USCG Type A2" hose in paragraph 183.528(b) should be deleted since the paragraph refers to fuel stop valves in fuel line systems where class 2 hoses should not be used. The comment also stated that a similar problem exists in paragraph 183.532 with reference to the fire resistance of clips and straps on fuel line systems required to use Type A hose. This comment noted errors in the notice and is accepted.

Two comments urged the removal of the reference to "clips and straps" from paragraph 183.532(b), since the fuel lines requiring support in the paragraph are fire resistant. The comments noted that a fire is less severe in the lower portions of the engine room. Therefore, if the clips and straps supporting fire resistant fuel hoses are destroyed and the hoses fall lower in the engineroom, they will last longer. The Coast Guard agrees and these comments are also accepted.

Three comments disagreed with the proposal to require a lesser degree of resistance to permeation for hoses used for fill and vent lines, since these hoses have the greatest surface area and boat operators commonly overfill their fuel tanks.Therefore, according to the comments, both fill and vent hoses are subjected to extended periods of continuous contact with fuel. The Coast Guard does not agree with these comments. The Coast Guard believes the exposure to fuel loss by permeation through fill and vent hoses is significantly lower than the potential permeation through the fuel distribution hoses which are constantly full of fuel. Additionally, the level of permeation permitted for fuel and vent hoses under SAE J1527DE85 is significantly less than the permeation rate of SAE J30 hose previously permitted.

Several comments stated that there should be a mandatory requirement for boat builders to use the new hose as soon as it becomes available in production quantities. The Coast Guard has not adopted this recommendation. Federal statutes prohibit the Coast Guard from imposing a new requirement earlier than six months after publication of a final rule. In addition, the Coast Guard has issued an exemption allowing manufacturers to immediately begin using hose meeting SAE J1527DEC85, in lieu of hose meeting SAE J30C. Therefore, the Coast Guard considers a mandatory effective date of six months from the date of publication in the Federal Register an appropriate lead time for hose manufacturers to make production quantities of the new hose available to all builders.

Two comment suggested imposing a requirement for retrofitting existing boats with hoses meeting SAE J1527DEC85. Another comments suggested recommendations on the use of two hose clamps for those who install the new hose themselves. These recommendations were not adopted.The Coast Guard has used and will continue to use publicity and education to inform the public of the need for retrofitting older boats with new fuel hoses. In addition, the present regulations do not require double hose clamps for fuel distribution lines and vent lines and most existing fittings do not have room for double clamping.

Another comment stated that the amendment is generally beneficial, but that it should not apply to diesel fuel systems. The comment misconstrues these amendments, which only apply to new boats with gasoline engines, except those powered by outboards.

Another comment was concerned about damage to other components in the fuel system due to exposure to alcohol. The Coast Guard has evaluated this problem and decided that it is not as significant a hazard as damage to fuel hose caused by alcohol permeation and does not require further regulation at this time. The Coast Guard will continue to monitor the use of alcohol in fuels and will initiate further rulemaking if necessary.

One comment urged consideration of a Federal fuel pump labeling law making it mandatory to display the amount and type of alcohol present in gasoline sold at retail. The labeling of fuel pumps is not within the jurisdiction of the Coast Guard. Other Federal agencies are considering this issue.

One comment stated that under the proposed wording in paragraph 183.558(b)(2), Class 2 fuel hose with 300 grams of fuel loss per square meter could be used as fuel distribution lines, and that this obviously was not the Coast Guard's intent. This comment is accepted. The Coast Guard has changed Section 183.558 by separating the requirements for fuel distribution lines from the requirements for fill and vent lines.

One comment asked whether prices for the new hose will be controlled, considering the demand that may be expected. The Coast Guard has no authority to control prices for vessel components. In addition, there should not be any shortages or unreasonable prices after the effective date of the regulations, because most fuel hose suppliers are now producing the new hose.

## Regulatory Evaluation

These regulations are considered to be non-major under Executive Order No. 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this proposal has been found to be minimal. It is estimated that the proposal to change the incoporation by reference in the Fuel Systems Standard from SAE Standard J30C to SAE Standard J1527DEC85 and the definitions for "USCG Type A" and "USGC Type B" fuel hose will result in an increased cost for fuel hose of approximately $.20 per foot. It is further estimated that 100,000 new boats will be affected annually by these amendments and that the average boat contains about 10 feet of fuel hose. Therefore, this rule will result in a total annual cost to the industry of $200,000 or approximately $2.00 per boat.

Since the impact of this final rule is expected to be minimal, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 183

Marine safety, Incorporation by reference.

In consideration of the foregoing, Part 183 of Title 33, Code of Federal Regulations is amended as follows:

## PART 183—BOATS AND ASSOCIATED EQUIPMENT

1. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. Section 183.1 is revised to read as follows:

### § 183.1 Purpose and applicability.

This part prescribes standards and regulations for boats and associated equipment to which 46 U.S.C. Chapter 43 applies and to which certification requirements in Part 181 of this subchapter apply.

3. Part 183 is amended by adding a new § 183.5 to read as follows:

### § 183.5 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Incorporated by Reference", which appears in the Finding Aids section of this volume. To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the United States Coast Guard Boating Safety Division, Washington, DC 20593-0001.

(b) The materials approved for incorporation by reference in this part are:

Air Movement and Control Association, 30 W. University Drive, Arlington Heights, IL 60004. AMCA 210-74: Laboratory Methods of Testing Fans for Ratings—1974

American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. ASTM D-471: Rubber Property—Effect of Liquids—1979

ASTM D-1621: Compressive Properties of Rigid Cellular Plastics—1975

ASTM D-1622: Apparent Density of Rigid Cellular Plastics—1975

ASTM D-2842: Water Absorption of Rigid Cellular Plastics—1975

Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, Piscataway, NJ 08854. IEEE 45-1977: Cable Construction—1977

National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. NFPA No. 70: National Electric Code—Articles 310 & 400—1981

Naval Publications Forms Center, Customer Service—Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120. MILSPEC-P-21929B: Plastic Material, Cellular Polyurethane, Foam-In-Place, Rigid—1970

Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

SAE J378: Marine Engine Wiring—1976

SAE J557: High Tension Ignition Cable—1966

SAE J1127: Battery Cable—1980

SAE J1128: Low Tension Primary Cable—1975

SAE J1527DEC85: Marine Fuel Hoses—1985

Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062

UL 83: Standard for Thermoplastic Insulated Wires—1980

UL 1114: Standard for Marine Use: Flexible Fuel Line Hose—1978

UL 1128: Marine Blowers—1977

### § 183.110 [Amended]

4. Section 183.110 is amended by removing the definition for "ASTM."

### § 183.402 [Amended]

5. Section 183.402 is amended by removing paragraphs (a), (d), (e), (g) and (i) and redesignating paragraphs (b), (c), (f) and (h) as paragraphs (a), (b), (c) and (d) respectively.

### § 183.505 [Amended]

6. Section 183.505 is amended by removing the definitions for "ASTM," "Military Specification," "SAE," "UL," "USCG Type A Hose" and "USCG Type B Hose."

7. In § 183.528, paragraph (b) is revised to read as follows:

### § 183.528 Fuel stop valves.

* * * * *

(b) If tested in accordance with the fire test under § 183.590, a fuel stop valve installed in a fuel line system requiring metallic fuel lines or "USCG Type A1" hose must not leak fuel.

8. In § 183.532, paragraph (b) is revised to read as follows:

### § 183.532 Clips, straps and hose clamps.

* * * * *

(b) If tested in accordance with the fire test under § 183.590, a hose clamp installed on a fuel line system requiring metallic fuel lines or "USCG Type A1" hose must not separate under a one pound tensile force.

9. Section 183.540 is revised to read as follows:

### § 183.540 Hoses: Standards and markings.

(a) "USCG Type A1" hose means hose that meets the performance requirements of:

(1) SAE Standard J1527DEC85, Class 1 and the fire test in § 183.590; or

(2) Underwriters' Laboratories, Inc. (UL) Standard 1114.

(b) "USCG Type A2" hose means hose that meets the performance requirements of SAE Standard J1527DEC85, Class 2 and the fire test in § 183.590;

(c) "USCG Type B1" hose means hose that meets the performance requirements of SAE Standard J1527DEC85, Class 1.

(d) "USCG Type B2" hose means hose that meets the performance requirements of SAE Standard J1527DEC85, Class 2.

Note.— SAE Class 1 hose has a permeation rating of 100 grams or less fuel loss per square meter of interior surface in 24 hours.

SAE Class 2 hose has a permeation rating of 300 grams or less fuel loss per square meter of interior surface in 24 hours.

(e) Each "USCG Type A1," "USCG Type A2," "USCG Type B1," and "USCG Type B2" hose must be identified by the manufacturer by a marking on the hose.

(f) Each marking must contain the following information in English:

(1) The statement "USCG TYPE (insert A1 or A2 or B1 or B2)."

(2) The year in which the hose was manufactured.

(3) The manufacturer's name or registered trademark.

(g) Each character must be block capital letters and numerals that are at least one eighth-inch high.

(h) Each marking must be permanent, legible, and on the outside of the hose at intervals of 12 inches or less.

10. In § 183.558, paragraphs (a) and (b) are revised to read as follows:

### § 183.558 Hoses and connections.

(a) Each hose used between the fuel pump and the carburetor must be "USCG Type A1" hose.

(b) Each hose used—

(1) For a vent line or fill line must be:

(i) "USCG Type A1" or "USCG Type A2"; or

(ii) "USCG Type B1" or "USCG Type B2" if no more than five ounces of fuel is discharged in 2½ minutes when:

(A) The hose is severed at the point where maximum drainage of fuel would occur,

(B) The boat is in its static floating position, and

(C) The fuel system is filled to the capacity market on the tank label under § 183.514(b)(3).

(2) From the fuel tank to the fuel inlet connection on the engine must be:

(i) "USCG Type A1"; or

(ii) "USCG Type B1" if no more than five ounces of fuel is discharged in 2½ minutes when:

(A) The hose is severed at the point where maximum drainage of fuel would occur,

(B) The boat is in its static floating position, and

(C) The fuel system is filled to the capacity marked on the tank label under § 183.514(b)(3).

* * * * * *

11. In § 183.568, the introductory text in paragraph (c) is revised to read as follows:

**§ 183.568 Anti-siphon protection.**

* * * * *

(c) Provided that the fuel tank top is below the level of the carburetor inlet, be metallic fuel lines meeting the construction requirements of § 183.538 or "USCG Type A1" hose, with one or two manual shutoff valves installed as follows:

* * * * *

12. In § 183.590, paragraph (a)(1) is revised to read as follows:

**§ 183.590 Fire test.**

(a) * * *

(1) Fuel stop valves, "USCG Type A1" or USCG Type A2" hoses and hose clamps are tested in a fire chamber.

* * * * *

**§ 183.605 [Amended]**

13. Section 183.605 is amended by removing the definitions for "AMCA," "ASTM" and "UL."

**§ 183.607 [Removed]**

14. Section 183.607 is removed.

Dated: April 15, 1987.

T.J. Matteson,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.*

[FR Doc. 87-11643 Filed 5-26-87; 8:45 am]

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

[Docket No. FEMA 6765]

### Suspension of Community Eligibility, Connecticut et al.

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

**EFFECTIVE DATES:** The third date ("Susp.") listed in the third column.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day and 30-day, notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

**List of Subjects in 44 CFR Part 64**

Flood insurance—floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region I** | | | | |
| Connecticut: | | | | |
| New Milford, town of, Litchfield County | 090040 | Apr. 16, 1974, Apr. 15, 1988, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | June 4, 1987. |
| West Hartford, town of, Hartford County | 090052 | June 19, 1970, Sept. 24, 1971, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| Maine: Gouldsboro, town of, Hancock County | 230262 | July 20, 1976, June 4, 1987, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| Massachusetts: | | | | |
| Canton, town of, Norfolk County | 250229 | Nov. 26, 1973, Apr. 3, 1987, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| Dover, town of, Norfolk County | 250230 | Nov. 12, 1975, June 18, 1980, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| Randolph, town of, Norfolk County | 250251 | Oct. 15, 1971, May 1, 1978, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| New Hampshire: Warner, town of, Merrimack County | 330129 | Aug. 11, 1978, June 4, 1987, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| **Region II** | | | | |
| New York: Webster, town of, Monroe County | 360469 | Mar 9, 1973, Oct 16 1979, June 4, 1987, Emerg., Reg., Susp. | June 4, 1987 | Do. |
| **Region IV** | | | | |
| Florida: | | | | |
| Hamilton County, unincorporated areas | 120101 | Feb. 12, 1975, June 4, 1987, June 4,1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| Madison County, unincorporated areas | 120148 | May 28, 1975, May 28, 1975, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| White Springs, town of, Hamilton County | 120102 | Nov. 5, 1975, June 4, 1987, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| Georgia: Jefferson, city of, Jackson County | 130118 | Mar. 11, 1976, June 4, 1987, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| North Carolina: | | | | |
| Wilkes County [1] | 370259 | May 28, 1976, June 4, 1987, Emerg.; Susp. | Aug. 25, 1978 | Aug. 25, 1978. |
| Seven Springs, town of, Wayne County | 370362 | Apr. 29, 1979, Feb. 17, 1978, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | June 4, 1987. |
| **Region VIII** | | | | |
| Colorado: Basalt, town of, Eagle and Pitkin Counties | 080002 | May 1, 1975, June 4, 1987, June 4, 1987, Emerg.; Reg.; Susp. | June 4, 1987 | Do. |
| Pitkin County, unincorporated areas | 080287 | Aug. 7, 1975, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp. | June 4, 1987 | Do. |
| Snowmass Village, town of, Pitkin County | 080312 | Jan. 28, 1987, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp. | June 4, 1987 | |
| North Dakota: | | | | |
| Center, township of, Richland County | 380648 | Nov. 14, 1980, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp. | June 4, 1987 | June 4, 1987. |
| Wahpeton, city of, Richland County | 380169 | May 19, 1975, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp. | June 4, 1987 | Do. |
| Barnes County, unincorporated areas | 380338 | Apr. 19, 1978, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp. | June 4, 1987 | Do. |
| **Region IX** | | | | |
| California: | | | | |
| Fontana, city of, San Bernardino County | 060279 | Mar. 18, 1971, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp. | June 4, 1987 | Do. |
| Madera, city of Madera County | 060172 | Apr. 8, 1975, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp. | June 4, 1987 | Do. |
| **Region I—Minimal Conversions** | | | | |
| Maine: | | | | |
| Arundel, town of, York County | 2301[illegible] | Apr. 21, 1976, Emerg.; Apr. 1, 1987, Reg.; June 1, 1987, Susp. | Apr. 1, 1987 | Apr. 1, 1987. |
| Temple, town of, Franklin County | 2300[illegible]B | Aug. 5, 1975, Emerg.; Apr. 1, 1987, Reg.; June 1, 1987, Susp. | Apr. 1, 1987 | Do. |
| Upton, town of, Oxford County | 2303[illegible]B | Aug. 6, 1975, Emerg.; Apr. 1, 1987, Reg.; June 1, 1987, Susp. | Apr. 1, 1987 | Do. |
| Woodstock, town of, Oxford County | 2303[illegible]A | Aug. 5, 1975, Emerg.; Apr. 1, 1987, Reg.; June 1, 1987, Susp. | Apr. 1, 1987 | Do. |
| **Region II—Minimal Conversions** | | | | |
| New York: | | | | |
| Edmeston, town of, Otsego County | 361270 | Sept. 30, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | June 1, 1987. |
| Otsego, town of, Otsego County | 361278 | Jan. 21, 1976, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Springfield, town of, Otsego County | 361280 | May 5, 1976, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| **Region III** | | | | |
| Pennsylvania: | | | | |
| Anthony, township of, Montour County | 421232 | Dec. 6, 1973, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Bingham, township of, Potter County | 421970 | Apr. 25, 1979, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Clara, township of, Potter County | 421974 | Feb. 2, 1980, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Cogan House, township of, Lycoming County | 421535 | Feb. 5, 1981, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Decatur, township of, Mifflin County | 421849 | Dec. 2, 1985, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| East Fork, district of, Sullivan, Potter County | 421975 | Feb. 19, 1980, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Genesee, township of, Potter County | 421977 | Nov. 26, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Limestone, township of, Lycoming County | 422538 | June 5, 1980, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Limestone, township of, Montour County | 421992 | Feb. 5, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Limestone, township of, Warren County | 422547 | Feb. 28, 1977, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| McVeytown, borough of, Mifflin County | 420659 | May 20, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Menno, township of, Mifflin County | 421991 | Mar. 8, 1985, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Oswayo, borough of, Potter County | 420763 | Apr. 28, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Overfield, township of Wyoming County | 422569 | Feb. 13, 1980, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Ulysses, township of, Potter County | 421991 | Jan. 13, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Union, township of, Mifflin County | 421993 | Aug. 7, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date | State certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| | | **Region IV** | | |
| Alabama: Detroit town of, Lamar County | 010167 | Aug. 30, 1974, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Florida: Westville, town of, Holmes County | 120119 | Nov. 14, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| North Carolina: | | | | |
| Fair Bluff, town of, unincorporated areas | 370057 | Apr. 23, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| McAdenville, town of, Gaston County | 370101 | Sept. 7, 1973, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Murfreesboro, town of, Hertford County | 370419 | Mar. 12, 1985, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Rutherford County, unincorporated areas | 370217 | Feb. 5, 1976, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Wilkesboro, town of, Wilkes County | 370259 | Apr. 16, 1974, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| | | **Region V** | | |
| Indiana: | | | | |
| Veedersburg, town of, Fountain County | 180087 | June 30, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Winslow, town of Pike County | 180260 | Aug. 20, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Michigan: Worth, township of, Sanilac County | 260299 | June 7, 1974, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Wisconsin: | | | | |
| Hillsboro, city of, Vernon County | 550495 | July 23, 1974, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Somerset, village of, St. Croix County | 550396 | Apr. 16, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Taylor, village of, Jackson County | 550190 | Mar. 26, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| | | **Region VII** | | |
| Iowa: | | | | |
| Alburnett, city of, Linn County | 190662 | Mar. 2, 1976, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Colfax, city of, Jasper County | 190163 | July 11, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Guthrie Center, city of, Guthrie County | 190135 | July 8, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Kellogg, city of, Jasper County | 190164 | June 3, 1977, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Union, city of, Hardin County | 190142 | Dec. 15, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Kansas: Tescott, village of, Ottawa County | 200258 | Apr. 22, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| Nebraska: Steele City, village of, Jefferson County | 310121 | June 4, 1975, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp. | June 1, 1987 | Do. |
| | | **Region VIII** | | |
| Montana: Whitehall, town of, Jefferson County | 300120 | May 7, 1975, Emerg.; June 4, 1987, Reg.; June 4, 1987, Susp. | June 4, 1987 | June 4, 1987. |

[1] Emergency Program Suspension.
*Code for reading fourth column:* Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Harold T. Duryee,
*Administrator, Federal Insurance Administration.*

[FR Doc. 87-11958 Filed 5-26-87; 8:45 am]
BILLING CODE 6718-03-M

## FOREIGN CLAIMS SETTLEMENT COMMISSION

**45 CFR Part 501**

**Revision of Agency Regulations; Correction**

**AGENCY:** Foreign Claims Settlement Commission of the United States.

**ACTION:** Revision of regulations; correction.

**SUMMARY:** This document corrects a paragraph in the revision of the regulations of the Foreign Claims Settlement Commission of the United States which was published on pages 17556 through 17574 of the Federal Register on May 11, 1987. The correction is needed to delete eight lines of text which were erroneously repeated. The paragraph in question appears as paragraph (a)(3) in § 501.5, entitled "Depositions" and printed at page 17560 (52 FR 17560).

**FOR FURTHER INFORMATION CONTACT:** David E. Bradley (202) 653-5883.

Accordingly, the Foreign Claims Settlement Commission of the United States is correcting 45 CFR 501.5(a)(3) to read as follows:

**§ 501.5 Depositions.**

* * * * *

(a) * * *

(3) The Commission or its representative shall, upon receipt of the application and a showing of good cause, make and cause to be served upon the parties an order which will specify the name of the witness whose deposition is to be taken, the time, the place, and where practicable the designation of the officer before whom the witness is to testify. Such officer may or may not be the one specified in the application. The order shall be served upon all parties at least 10 days prior to the date of the taking of the deposition.

* * * * *

Judith H. Lock,
*Administrative Officer.*

[FR Doc. 87-12001 Filed 5-26-87; 8:45 am]
BILLING CODE 4410-01-M

# Proposed Rules

Federal Register
Vol. 52, No. 101
Wednesday, May 27, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules; and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1951

## Servicing of Community Program Loans To Charge a Transfer Fee

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration (FmHA) proposes to amend the Agency's policies and procedures governing the establishment of a nonrefundable transfer fee for Community Program Loans, with payment at time of application submittal.

The proposed rule is necessary to comply with Public Law (Pub. L.) 97–258, and OMB Circulars A–25 and A–129, which require a fee to be charged when specialized benefits accrue to an individual rather than the general public. No procedures are currently in effect with respect to charging loan transfer fees for Community Program Loans. The Agency's proposal to assess transfer fees would help to offset administrative and contractual costs related to transfer of a Community Program loan.

**DATE:** Comments must be received on or before July 27, 1987.

**ADDRESS:** Submit written comments, in duplicate, to the Office of the Chief, Directives and Forms Managment Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Carolyn C. Palmer, Loan Officer, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, South Agriculture Building, Washington, DC 20250; telephone (202) 382–1503.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512–I which implements Executive Order 12291, and has been determined to be nonmajor since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geogrpahic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environemntal Program". FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969 Pub. L. 91–190, an Environmental Impact Statement is not required.

The Administrator, Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities, because the action, while increasing costs to ineligible transferees in Community Programs, will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 001).

This change affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

Sec.
10.414 Resource, Conservation, and Development Loans.
10.418 Water and Waste Disposal Systems for Rural Communities.
10.419 Watershed and Flood Prevention Loans.
10.422 Business and Industry Loans.
10.423 Community Facilities Loans.

and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

### Discussion

*(1) Transfer Fee*

FmHA is authorized to make direct loans for the purpose of financing water and waste disposal and other essential community facilities providing essential service primarily to rural residents. It is the policy of FmHA to approve transferees who will continue the original purpose of the loan. If an eligible transferee is not available, an ineligible transferee will be considered as a method for servicing problem cases. Legislation authorizing FmHA loan programs gives the Secretary of Agriculture authority to impose transfer fees (user fees). Public Law 97–258 requires that transfer fees be charged for all loan programs for specialized services. In addition, the Office of Management and Budget (OMB) Circulars A–129 and A–25 require that a fee be assessed where specialized benefits accrue to an individual rather than the general public.

Under this proposed rule, a transfer fee for the processing of a transfer and assumption would be imposed upon each ineligible transferee. The proposed rule establishes a nonrefundable fee based on the Agency's staffing and other administrative cost related to processing a transfer and assumption to an ineligible transferee. The fee is established at $650 plus the cost of an appraisal, if this service must be contracted out. The fee is to be reviewed annually and adjusted accordingly. This fee is paid by the proposed ineligible transferee when the transfer proposal is submitted.

*(2) Transfer Fee Justification*

The transfer fee is intended to pay for those services provided by FmHA when processing a transfer and assumption to an ineligible transferee in Community Programs. In some cases, the State Director may elect to use persons from outside the Agency on a service contract basis. Whether the State Director uses personnel from the Agency or outside contractors to carry out the processing (or a portion of the processing, i.e., appraisals) of the transfer, the fee will

be paid at the time of submittal of the proposal and cannot be refunded. The additional fee for the appraisal will be collected as soon as a price is obtained.

Actual cost data for service contracts, i.e., appraisals, environmental assessments, etc., will be collected on all loans and an analysis will be made each year. Deviations of 10 percent between actual charges for contracting and our cost projections will result in a fee review and adjustments to the fee if FmHA determines it appropriate. The fee will be determined by the National Office and issued annually. Information regarding the fee can be obtained in any FmHA County, District or State Office.

Based on estimated hours to complete the processing of a transfer and assumption to an ineligible transferee, salaries, and other administrative expenses the current fee has been established as $650 plus the cost of an appraisal if this service is contracted. Estimated hours were taken from the FmHA Resource Management System. These estimates are current levels which are reviewed annually and modified as needed.

**List of Subjects in 7 CFR Part 1951**

Account servicing, Grant program—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas.

Accordingly, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

**PART 1951—SERVICING AND COLLECTIONS**

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

**Subpart E—Servicing of Community Program Loans and Grants**

2. Section 1951.203 is amended by adding paragraph (f) to read as follows:

**§ 1951.203 Definitions.**

* * * * *

(f) *Transfer fee.* A one-time nonrefundable application fee, charged to ineligible applicants for FmHA services rendered in the processing of a transfer and assumption.

3. Section 1951.210 is amended by redesignating paragraphs (c)(1), (c)(2), (c)(3) and (c)(4) as paragraphs (c)(2), (c)(3), (c)(4) and (c)(5), respectively; by redesignating paragraphs (d) introductory text and paragraphs (1)–(4), (d)(5) (d)(6), (e) and (f) as paragraphs (e) introductory text and paragraphs (1)–(4), (e)(6), (e)(7), (f) and (g), respectively; and by adding new paragraphs (c)(1), (d) and (e)(5) to read as follows:

**§ 1951.210 Transfer of security and assumption of loans.**

* * * * *

(c) * * *

(1) All transfers to ineligible applicants will include a one-time nonrefundable transfer fee. Transfer fees will be collected and payments applied in accordance with paragraph (d) of this section. * * *

(d) *Transfer fees.* Transfer fees for Community Program borrowers are a one-time nonrefundable cost to be collected at the time of application or proposal. (Revised)

(1) *Amount.* Community Program transfer fees will be a standard fee plus the cost of the appraisal if completed by other than FmHA personal. This fee will be established by the National Office and issued annually. Contact costs will be processed in accordance with FmHA Instruction 2024–P, Cost Payments.

(2) *Remittance.* This fee will be deposited into the Concentration Banking System. In those locations not participating in the Concentration Banking System, the fee will be submitted directly to the Finance Office. In either case, this fee will be identified as a tranfer fee using Form FmHA 451–2, Schedule of Remittance. This fee will be credited to the Rural Development Insurance Fund and should be included on the Daily Activity Report.

(3) *Waiver.* When the State Director determines waiving the transfer fee is in the best interest of the Government, the file will be submitted to the National Office with appropriate recommendations for the request.

(e) * * *

(5) The transfer fee is to be waived for a prospective transferee.

* * * * *

4. § 1951.210 newly redesignated paragraph (f)(13) is amended in the last sentence by changing the reference from "§ 1951.210 (d)(6)" to "1951.210(e)(7)."

**§ 1951.211 [Amended]**

5. Section 1951.211(c) introductory text is amended by changing the reference from "§ 1951.210(e)(1) through (14)" to "1951.210(f)(1) through (14)."

Dated: April 23, 1987.

**Vance L. Clark,**

*Administrator, Farmers Home Administration.*

[FR Doc. 87–12018 Filed 5–26–87; 8:45 am]

BILLING CODE 3410–07–M

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Part 1**

**[INS Number: 87–1917]**

**Definitions, Applications, Petitions, Motions and Appeals for Benefits Under the Immigration and Nationality Act**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Immigration and Naturalization Service ("the Service") entertains numerous applications, petitions, motions and appeals from individuals seeking benefits under the Immigration and Nationality Act ("the Act"), many of which require that the moving party take action within a certain number of days of a particular event. For example, an appeal from an adverse decision of this Service must be filed within fifteen days of the decision. Current regulations provide that when the final day of a period in which an action must be taken falls on a Sunday or legal holiday, the period shall run until the end of the next day which is not a Sunday or legal holiday. However, the current regulations do not make similar provisions for situations in which the final day falls on a Saturday, even though Service offices are generally not open for business on Saturdays and a moving party would not normally be able to take the required action on that day. The proposed rulemaking would extend the period for taking action until the end of the next business day when the final day falls on a Saturday.

**DATE:** Written comments must be submitted on or before June 26, 1987.

**ADDRESS:** Please submit comments in duplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3946.

**SUPPLEMENTARY INFORMATION:** In administering the Immigration and Nationality Act ("the Act"), the Immigration and Naturalization Service ("the Service") may, in certain situations, place time restrictions on

individuals and organizations seeking to obtain benefits under the Act. These situations include (but are not limited to) the filing of an appeal from an adverse decision of the Service, the submission of a brief in a case involving an unusually complex or novel question of law or fact which is being certified to an appellate authority, and the filing of a petition for immigrant visa preference classification based upon a labor certification obtained in accordance with section 212(a)(14) of the Act. The period in which an action must be taken is normally expressed as a certain number of days.

The regulations at 8 CFR 1.1(h) currently state that when the final days of a period in which an action must be taken falls on a Sunday or legal holiday the moving party has until the end of the next day which is not a Sunday or legal holiday in which to take the required action. However, the regulation does not make similar provisions for situations in which the final day of a period falls on a Saturday.

The Board of Immigration Appeals has held that in cases being appealed to that body, an appellant shall be allowed to file his or her appeal on the next day which is not a Saturday, Sunday or legal holiday whenever the final day of the appeal period falls on a Saturday (*Matter of Escobar*, 18 I. & N. Dec. 412), since it found "no legitimate distinction between Saturdays, Sundays and legal holidays with regard to an alien's ability to perfect his appeal." In the interest of fairness to the public and uniformity in filing procedures, the Service proposes to revise the regulation to provide that if the last day of a filing period is a Saturday, Sunday or legal holiday, the period shall run until the next day which is not a Saturday, Sunday or legal holiday.

For purposes of clarity, the proposed rulemaking also specifies that this exclusion does not apply when the Service requires action by a specified date, such as requiring that an alien depart from the United States. This does not represent a change in existing practice.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule would not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

**List of Subjects in 8 CFR Part 1**

Administrative practice and procedure, Immigration.

**PART 1—[AMENDED]**

Accordingly, Chapter I of Title 8 Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. In § 1.1 paragraph (h) is revised to read as follows:

**§ 1.1 Definitions.**

* * * * *

(h) The term "day" when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, a Sunday or a legal holiday. However, when the Service requires action on or before a specific date, as opposed to within a certain number of days, the fact that such specified date falls on a Saturday, Sunday or legal holiday shall have no effect.

* * * * *

Dated: May 15, 1987.

Richard E. Norton,

*Associate Commissioner, Examinations, Immigration and Naturalization Service.*

[FR Doc. 87-12040 Filed 5-26-87; 8:45 am]

BILLING CODE 4410-10-M

## TENNESSEE VALLEY AUTHORITY

**18 CFR Part 1310**

**Administrative Cost Recovery**

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Proposed rule.

**SUMMARY:** TVA proposes to amend its administrative cost recovery regulations by adding a provision for the collection of a $2 fee to accompany applications for quota deer hunt permits at TVA's Land Between The Lakes (LBL) in western Kentucky and Tennessee. The amendment is proposed under authority of the Tennessee Valley Authority Act of 1933, as amended, and Title V of the Independent Offices Appropriations Act of 1952 which authorize TVA to prescribe for certain services or things of value provided by TVA such charge as it determines to be fair and equitable.

**DATE:** Comments must be received by June 26, 1987.

**ADDRESS:** Comments should be sent to Tennessee Valley Authority, Office of the General Counsel, 400 West Summit Hill Drive, Knoxville, Tennessee 37902. All comments will be available for public examination during regular business hours at the following locations:

1. Knoxville-TVA Technical Library, Room EB A1, 400 West Summit Hill Drive, Knoxville, Tn. 37902
2. Chattanooga-TVA Technical Library, Room 100, 401 Chestnut Street, Chattanooga, Tn. 37401
3. Muscle Shoals-TVA Technical Library, A100 NFDC Building, Muscle Shoals, Al. 35660
4. Golden Pond-Land Between The Lakes, Administrative Office, Golden Pond, Ky. 42231

**FOR FURTHER INFORMATION CONTACT:** Elizabeth E. Thach, Director of Land Between The Lakes, Golden Pond, Kentucky 42231, (502) 924-5602.

**SUPPLEMENTARY INFORMATION:** Hunters at LBL must hold a State hunting permit for the State in which they are hunting (Kentucky or Tennessee), and a hunter use permit from TVA for which TVA charges a fee. Due to the quality of the hunting experience offered, LBL is a very popular deer hunting site. Because of the large number of people desiring to hunt deer at LBL, TVA must limit participation in the deer hunts by random selection of applicants for special quota deer hunt permits as part of an intensive managed hunting program. In order to participate in quota deer hunts, hunters must complete an application form which must be received by TVA by established deadlines. A drawing is conducted by computer and a quota hunt permit or rejection notice is mailed to the applicant.

The $2 application fee for LBL quota deer hunt permits will recover administrative costs associated with processing the forms, conducting the drawing, and notifying applicants of rejection or selection. Applications received after the deadline would not be processed and fees would be returned to the applicants. TVA has determined that this proposed rule will not be a "major" rule under Executive Order No. 12291 and will not have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act.

TVA has determined in accordance with section 5.2.27 of TVA's procedures implementing the National Environmental Policy Act (48 FR 10264) that the proposed rule is of a type that does not have a significant impact on the human environment. Accordingly, neither an environmental assessment

nor an environmental impact statement is required.

**List of Subjects in 18 CFR Part 1310**

Government property, Hunting, Land, Land sales.

For the reasons set forth in the preamble, TVA proposes to amend Title 18, Chapter XIII of the Code of Federal Regulations as follows:

## PART 1310—ADMINISTRATIVE COST RECOVERY

1. The authority citation for Part 1310 is revised to read as follows:

Authority: 16 U.S.C. 831–831dd; 31 U.S.C. 9701.

**§ 1310.2 [Amended]**

2. Section 1310.2 is amended by adding paragraph (c) to read as follows:

* * * * *

(c) *Quota deer hunt applications.* Quota deer hunt permit applications will be processed by TVA only if accompanied by the fee prescribed in paragraph (d) of § 1310.3 of this part.

**§ 1310.3 [Amended]**

3. In § 1310.3, paragraph (d) is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

* * * * *

(d) *Quota deer hunt application fees.* A fee of $2 for each person must accompany the completed application form for a quota deer hunt permit. Applications will not be processed unless accompanied by the correct fee amount. No refunds will be made to unsuccessful applicants, except that fees received after the application due date will be refunded.

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W. F. Willis,
*General Manager.*

[FR Doc. 87–11943 Filed 5–26–87; 8:45 am]
BILLING CODE 8120-01-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 880

[Docket No. 85N-0285]

### Medical Devices; Reclassification of the Infant Radiant Warmer

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of intent.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its intent to initiate a proceeding to reclassify from class III (premarket approval) into class II (performance standards) the infant radiant warmer. The infant radiant warmer is a medical device intended to maintain an infant's body temperature by means of radiant heat. This action is being taken under the Medical Device Amendments of 1976.

**FOR FURTHER INFORMATION CONTACT:** Robert Gatling, Jr., Center for Devices and Radiological Health (HFZ–420), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7750.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of January 15, 1986 (51 FR 1910), FDA proposed to require the filing of a premarket approval application or a notice of completion of a product development protocol for the infant radiant warmer device (21 CFR 880.5130). FDA also announced an opportunity for interested persons to request the agency to change the classification of the device based on new information. The actions were taken under the Medical Device Amendments of 1976 (Pub. L. 94–295) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*).

On January 30, 1986, the Health Industry Manufacturers Association (HIMA), Washington, DC., submitted to FDA under section 515(b) of the act (21 U.S.C. 360e(b)), a petition to reclassify the generic type of device infant radiant warmer (21 CFR 880.5130) from class III into class II. Based on the valid scientific evidence in the petition, FDA is initiating proceedings to reclassify the device following the procedures in 21 CFR 860.130 and 860.132 regarding reclassification of devices under section 513(e) of the act (21 U.S.C. 360c(e)). FDA referred the petition to the General Hospital and Personal Use Devices Panel (the Panel), one of FDA's advisory committees, for its recommendation on the change in classification recommended in the petition. During an open meeting of the Panel on May 21, 1986 (see the Federal Register of April 11, 1986; 51 FR 12570), the Panel considered the petition and recommended that the infant radiant warmer be reclassified from class III into class II and recommended that any change in classification not take effect until the effective date of a performance standard for the generic type of device established under section 514 of the act (21 U.S.C. 360d).

A copy of HIMA's petition and supporting exhibits, the transcript and the summary minutes of the Panel meeting, and the comments received on the petition are on file in the Dockets Management Branch under Docket No. 85N–0285 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under section 515(b) of the act and 21 CFR 860.132(a) of the regulations governing reclassification under section 515(b) of the act, FDA is announcing its intent to initiate a proceeding under section 513(e) of the act and 21 CFR 860.130 to change the classification of the infant radiant warmer device.

As followup to this notice, in the near future FDA will publish in the Federal Register a proposed rule to reclassify this device. In the proposal, FDA will set forth the Panel's recommendation, a summary of the reasons for the recommendation, a summary of the data upon which the recommendation is based, an identification of the risks to health (if any) presented by the device, and a discussion of whether class II provides the regulatory controls necessary to provide reasonable assurance of the safety and effectiveness of the device.

The proposed rule to reclassify this device issued under section 513(e) of the act and 21 CFR 860.130(c) will provide a period of time during which public comments may be submitted concerning the proposed reclassification. After reviewing any public comments, the Panel's recommendation, and other publicly available information, by order published in the Federal Register FDA will either deny the petition or reclassify the device. Furthermore, the agency will address the requirements of the Regulatory Flexibility Act, Executive Order 12291, and the National Environmental Policy Act when any proposed rule based on this notice of intent is published in the Federal Register.

Dated: May 20, 1987.

John M. Taylor,
*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–11980 Filed 5–26–87; 8:45 am]
BILLING CODE 4160-01-M

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 7

### Canyon de Chelly National Monument; Commercial Horse Operation Regulations

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** In Canyon de Chelly National Mounment's enabling legislation the ownership of the surface and subsurface use of the land was retained by the Navajo Tribe, and preferential right to provide riding horses for visitors into the monument was granted to the Navajo Tribe. This preferential right was to be under regulations prescribed by the Secretary of the Interior. The proposed rulemaking would set down requirements for Navajo owned and operated commercial horse operations at Canyon de Chelly National Mounment. The action is needed because some of the current commercial horse operations are operating without liability insurance, allowing children to lead the horse tours, utilizing defective equipment and occasionally entering the canyons of the monument without the proper permit. Visitors who take the horse trips have been injured, some seriously. The purpose of this rulemaking is to prescribe requirements for the commercial horse operations to provide a safe and enjoyable experience for visitors seeking horseback trips into the monument.

**DATE:** Written comments will be accepted through June 26, 1987.

**ADDRESS:** Comments should be addressed to: Superintendent, Canyon de Chelly National Monument, P.O. Box 588, Chinle, Arizona 86503.

**FOR FURTHER INFORMATION CONTACT:** Reed Detring, Chief I & RM, Canyon de Chelly National Monument, P.O. Box 588, Chinle, Arizona 86503, Telephone: (602) 674-5436.

**SUPPLEMENTARY INFORMATION:**

## Background

The basis for this proposed regulation lies in Canyon de Chelly's enabling legislation (16 U.S.C. 445 *et seq.*) which provided that ownership of the surface and subsurface of the land comprising the movement was retained by the Navajo Tribe. In addition, the Navajo Tribe was granted a preferential right under regulations to be prescribed by the Secretary of the Interior, of furnishing riding animals for the use of visitors to the monument. These regulations were never promulgated.

As a result, commercial horse operations exist in the monument which do not provide adequately for visitor safety and resource protection. Problems arise from the use of small children to lead groups, the use of defective equipment which has resulted in visitor injuries, the lack of liability insurance and noncompliance with permit requirements for visitors entering the canyon.

The National Park Service is charged with the administration of Canyon de Chelly National Monument with regard to preserving and protecting ruins, and providing facilities required for the care and accommodations of visitors. The National Park Service is the focal point for visitor contact in the monument and during summer months there are frequent daily inquiries from visitors concerning the commercial horse operations. National Park Service personnel are placed in a position of being asked to recommend and provide information about commercial horse services operating within the monument without being able to set reasonable standards or exercise an appropriate level of management oversight for those operations.

In order to help provide visitors a safe and enjoyable means of seeing and enjoying the monument, the National Park Service is proposing to regulate the commercial horse operations that conduct business within the monument as follows:

1. A permit will be required of any person who provides riding animals as a service for the use of visitors within the monument boundaries.

2. In addition to establishing appropriate permit conditions that pertain to public safety and resource protection pursuant to the authority of National Park Service general regulations, the superintendent will also impose a requirement that a permittee obtain and maintain a reasonable amount of liability insurance coverage.

3. All monument visitors using the services of commercial horse operations will be required to remain with the operator's guides during the visitors' entire stay in the canyon and will be prohibited from entering any of the ruins in the monument.

4. In cooperation with local Navajo residents, the superintendent will designate persons to act as guides, may require a permit of those persons and may establish permit terms and conditions governing their activities.

This rulemaking also implements the statutory provision granting the Navajo Tribe the preferential right to furnish riding animals for the use of visitors to the monument. "Preferential right" is defined in paragraph (c) of the regulation to mean a right of first refusal, on a case-by-case basis, to provide riding animals for hire for the use of visitors to the monument; the right to meet the terms of responsive offers for a proposed permit to provide such services; and a preference in the award of that permit, if, thereafter, the offer is substantially equal to others received.

Paragraphs (a) and (b) of this rulemaking are minor revisions of existing special regulations that pertain to Canyon de Chelly National Monument. Editorial changes have been made to both paragraphs to clarify their intent, but no major substantive changes have been made. The existing requirement for visitors entering a canyon to be accompanied by a designated guide or a National Park Service employee is retained. The provisin that addresses the designation of guides has been revised to reflect the fact that designations are accomplished in cooperation with local Navajo residents and to emphasize the fact that the superintendent may require a permit and establish permit terms and conditions governing the activities of designated guides.

The National Park Service considers these regulations to be reasonable and in compliance with the intent of the monument's enabling legislation. These requirements are the minimum necessary to assure that commercial horse operations in the monument are conducted in a manner that provides adequately for public safety and enjoyment, protects the natural and cultural resources of the monument and protects the rights and privacy of tribal members living within the monument.

## Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

## Drafting Information

The primary author of this rulemaking is Reed E. Detring of Canyon de Chelly National Monument.

## Paperwork Reduction Act

The information collection requirement contained in this rulemaking has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024-0026.

## Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). All bonafide

operators now providing commercial horse operations will be allowed to continue their businesses under a permit and terms and conditions established in accordance with the criteria and procedures of 36 CFR 1.6.

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based in this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

**List of Subjects in 36 CFR Part 7**

National parks, Reporting recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. In § 7.18, by revising paragraphs (a) and (b) and adding new paragraphs (c) and (d) to read as follows:

**§ 7.18 Canyon de Chelly National Monument**

(a) Except for canyon residents or other Navajo tribal members, entering a canyon unless accompanied by a National Park Service employee or by a guide designated by the superintendent is prohibited. *Provided, however,* that the superintendent may designate, by making on a map that is available for public inspection in the office of the superintendent and at other convenient locations within the monument, canyons or portions thereof that may be visited or entered without being so accompanied.

(b) In cooperation with local Navajo residents, the superintendent designates persons authorized to act as guides. The superintendent may also require a permit and establish permit terms and conditions in accordance with the criteria and procedures of § 1.6 of this chapter to govern the activies of designated guides.

(c) *Commerical stock operations.* The Navajo Tribe is granted the preferential right to furnish riding animals for the use of visitors to the monument in accordance with the following conditions and requirements. For the purpose of this section, the term "preferential right" means a right of first refusal, on a case-by-case basis, to provide riding animals for hire for the use of visitors to the monument; the right to meet the terms of responsive offers for a proposed new permit to provide such services; and a preference in the award of that permit, if, thereafter, the offer is subetantially equal to others received.

(1) Providing riding animals such as horses or mules as a service for the use of visitors within the monument boundaries is prohibited except pursuant to the terms and conditions of a permit issued by the superintendent in accordance with the criteria and procedures of § 1.6 of this chapter.

(2) In addition to permit terms and conditions established under the authority of § 1.6 of this chapter, the superintendent may establish permit conditions pertaining to liability insurance coverage. Violating a term or condition of a permit is prohibited and may also result in the suspension or revocation of the permit by the superintendent.

(d) *Information collection.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to provide information necessary for the superintendent to issue permits. This information will be used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

Dated: April 17, 1987.

**Susan Recce,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–11937 Filed 5–26–87; 8:45 am]

BILLING CODE 4310-70-M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 264 and 265**

**[FRL–3297–4]**

**Hazardous Waste Management System: Minimum Technology Requirements**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Extension of the comment period.

**SUMMARY:** On April 17, 1987, USEPA published a notice of availability of information and request for comments (51 FR 12566). That notice discusses data characterizing and comparing the performance of compacted soil and composite bottom liners for hazardous waste landfills and surface impoundments. EPA also made available two draft guidance documents for design, construction, and operation of single and double liner and leachate collection systems. The purpose of today's notice is to extend the comment period on the April 17, 1987, notice by 30 days to give the public additional time to submit comments. We have received requests to extend the comment period because of the complexity of the background document on bottom liner performance in double-lined landfills and surface impoundments, and the need of the commenters to devote time to several other EPA proposed regulations with similar deadlines for public comment. We find the requests for a 30-day extention appropriate and, therefore, grant the extension.

**DATE:** The Agency will accept comments submitted on or before July 1, 1987.

**ADDRESS:** Comments should be addressed to the Docket Clerk at the following address: EPA RCRA Docket (WH–562), 401 M Street SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference code F–87–DLRN–FFFFF. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for Federal Holidays. The public must make an appointment to review docket materials by calling Michelle Lee at (202) 475–9327.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Skahn (202) 382–4654.

Dated: May 20, 1987.

**J.W. McGraw,**

*Acting Assistant Administrator for Solid Waste and Emergency Response.*

[FR Doc. 87–12004 Filed 5–26–87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Part 306

Child Support Enforcement Program, Medical Support Enforcement

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: OCSE is proposing to amend the Child Support Enforcement program regulations govening medical support enforcement. Current regulations require State child support enforcement (IV–D) agencies to perform certain medical support enforcement activities. This proposal would require State IV–D agencies to extend these activities to certain IV–D cases not embraced by the current regulations and would eliminate a restriction which applies to cooperative agreements between State IV–D and State Medicaid agencies. The IV–D agency would be required to develop criteria to identify existing child support cases which have a high potential for obtaining medical support, and to petition the court or administrative authority to modify support orders to include medical support for targeted cases even if no other modification is anticipated. In addition, the IV–D agency would be required to provide the custodial parent with information pertaining to the health insurance coverage obtained by the parent for the dependent child(ren). Further, this regulation would delete the condition that IV–D agencies may only secure health insurance coverage under a cooperative agreement when it will not reduce the absent parent's ability to pay child support. Finally, this regulation would delete current maintenance of effort requirements States must adhere to when entering into a cooperative agreement with the State Medicaid agency.

These activities will expand the number of children for whom private health insurance coverage is obtained by increasing the availability of third party resources to pay for medical care and will result in Medicaid cost savings to State and Federal governments. Federal funding under title IV–D of the Social Security Act would be available to State IV–D agencies for these required medical support activities.

DATE: Consideration will be given to written comments and suggestions received by July 27, 1987.

ADDRESS: Address comments to: Associate Deputy Director, Officer of Child Support Enforcement, Department of Health and Human Services, Mary Switzer Building, 330 C Street, SW., Room 2628, Washington, DC 20201. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. in the Department's office at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Brogan, Policy Branch, OCSE (202) 245–1774.

SUPPLEMENTARY INFORMATION:

## Background

Section 16 of the Child Support Enforcement Amendments of 1984 (Pub. L. 98–378) amends section 452 of the Social Security Act (the Act). This statute requires the Secretary of HHS to issue regulations to require that State IV–D agencies petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at reasonable cost. It also provides for improved information exchange between State IV–D and State Medicaid agencies. OCSE published implementing regulations on October 16, 1985 in the Federal Register (50 FR 41887). These regulations require the State IV–D agency to secure medical support information regarding the absent parent, to exchange information with the State Medicaid agency, to petition the court or administrative entity to include health insurance in new or modified support orders, whether or not it is currently available to the absent parent at reasonable cost and to take steps to enforce ordered health insurance coverage. The State IV–D agency may perform functions beyond the scope of the title IV–D program, including providing services on behalf of individuals who are not IV–D cases, by entering into cooperative agreements with the State Medicaid agency pursuant to 45 CFR Part 306, Subpart A.

In prior years little attention was paid to the ordering of health insurance coverage for the dependent child of an absent parent with the result that only a limited number of AFDC cases already adjudicated require the absent parent to obtain health insurance coverage. Current requirements to petition for medical support are applicable only to new cases or cases which require modification of existing orders for reasons other than medical support. After these regulations were published as a proposed rule, it became apparent that health insurance coverage for a substantial number of existing child support cases was not addressed. This proposal would expand the audience of the current requirement to include existing cases with child support orders which require modification only for purposes of medical support. Examples of situations in which petitions could be considered are: (1) Noncustodial parents leaving unemployment compensation rolls due to change in employment status. The new employer will, most likely, provide health benefits, (2) Noncustodial parents having wages withheld for child support. Those having wages withheld also should have jobs that provide health benefits, (3) Other indications that the noncustodial parent is employed by an organization likely to provide health benefits such as union membership, available wage information from State tax forms, etc., or (4) Situations in which comparisons with Medicaid data indicate that health benefits formerly provided without a court order have lapsed. The prudent use of State and Federal resources dictate that the IV–D Agency develop procedures to work closely with the State Medicaid Agency to give priority to cases in which there is a demonstrated need for medical support.

Enhancements to medical support enforcement activities have been initiated because of the belief that many absent parents have private health insurance or health insurance coverage available through employers, unions or other groups. Such coverage may be extended when available at reasonable cost to provide for dependents' medical expenses. These proposed regulations would benefit families by increasing the incidence of absent parents who obtain health insurance coverage for their dependent children and would result in cost savings to State and Federal governments by reducing Medicaid expenditures when such insurance is available to families who are eligible for AFDC or Medicaid services. This proposal is also responsive to the February 12, 1985 findings of the General Accounting Office's report to Congress, "Improved Efforts Needed to Relieve Medicaid From Paying for Services Covered by Private Insurers," which stressed that the Medicaid program should be relieved of health care costs if some other person is legally responsible to pay because Federal and State Medicaid costs (which totalled $38 billion in 1984) are reduced without affecting Medicaid services.

## Statutory Authority

These proposed regulations are published under the authority of sections 1102, 452(f) and 454(13) of the Act. Section 1102 authorizes the Secretary of HHS to publish regulations

not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. We believe these regulations would be consistent with the Act, as section 462(b), which defines "child support" for purposes of certain garnishment proceedings to include "payments to provide for health care", has long been an integral section of title IV–D of the Act. In addition, section 452(f) of the Act requires the Secretary of HHS to issue regulations to require States to petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Further, under section 454(13) of the Act, States must comply with such requirements and standards as the Secretary of HHS determines to be necessary for the establishment of an effective title IV–D program.

**Regulatory Provisions**

The proposed regulation would clarify the definition of health insurance; require that IV–D agencies develop written criteria to identify cases with a high potential for obtaining medical support based on availability of insurance resources and State law requirements governing modification of support orders; require that IV–D agencies petition the court or administrative authority to modify existing orders of targeted cases for the inclusion of medical support; and require that IV–D agencies provide the custodial parent with health insurance policy information when the absent parent secures health insurance coverage for the dependent child(ren) under the order. In addition, this regulation would delete the condition that IV–D agencies may only secure health insurance coverage under a cooperative agreement when it will not reduce the absent parent's ability to pay child support and would delete current maintenance of effort requirements that State IV–D agencies must adhere to when entering into cooperative agreements with State Medicaid agencies.

Section 306.51(a) of current regulations states that, for purposes of this section, health insurance is considered reasonable in cost if it is employment-related or other group health insurance. This proposal would amend 45 CFR 306.51(a) by designating all that follows the phrase "For purposes of this section" as paragraph (1) and clarifying in the newly designated paragraph (1) that all employment-related or group health insurance is considered reasonable regardless of the service delivery mechanism. A new paragraph (2) would be added to clarify the definition of health insurance to include health maintenance organization (HMO) and preferred provider organization (PPO) coverage under which medical services are provided to the dependent child(ren) of an absent parent.

Current regulations at 45 CFR 306.51(b) require State IV–D agencies to petition the court or administrative authority to include health insurance in new or modified court or administrative orders. As previously stated, there is no specific requirement for State IV–D agencies to return to court to add medical support to existing orders. This proposal would amend 45 CFR 306.51(b) by redesignating the current contents of paragraphs (b) (3), (4), (5) and (6) as (b) (6), (7), (8) and (9) respectively and inserting new paragraphs (3), (4) and (5). The new paragraph (b)(3) would require all State IV–D agencies to develop written criteria to identify cases not included under paragraphs (b)(1) and (b)(2) with a high potential for obtaining medical support based on (i) evidence that health insurance may be available to the absent parent at a reasonable cost, and (ii) facts, as defined by State law, which are sufficient to warrant modification of the existing support order to include health insurance. States would set their own criteria with respect to the selection of cases for which they would return to court. This would enable States to respond to conditions and requirements of State law which may be unique to them. In developing such criteria State IV–D agencies are encouraged to consult with the State Medicaid agencies to develop procedures for determining Medicaid cases with potential for high future costs.

States would be required to base their criteria for case selection on the criteria listed at 45 CFR 306.51(b)(3) (i) and (ii) as provided above. When attempting to determine the availability of health insurance coverage under paragraph (b)(3)(i), States could focus on cases with income that is indicative of regular employment, such as cases with orders for wage withholding, and cases with assets which may be indicative of changed financial circumstances or substantial income. Similarly, States could examine the employment history of absent parents to identify union membership, new employment or other situations which may indicate the existence of health insurance resources. However, it should be noted that availability of insurance alone may not be a sufficient indicator that it would be cost effective to return a case to court for modification as the available insurance must cover the child's condition, e.g., coverage may exclude certain pre-existing conditions, or have geographic limitations which preclude the child's use of the services, e.g., a PPO which only provides services in the absent parent's metropolitan area. Paragraph (b)(3)(ii) would require States to base their criteria on circumstances which indicate a modification is warranted as defined by State law. This requirement was included because support orders are generally modified only in response to a significant change in the circumstances of the parties since the rendering of the original order. Likely candidates for modification actions may include cases which indicate a change in the medical needs of the child or changes in the financial circumstances of either parent. Attention should be given to cases where medical support would be of obvious benefit to the family. This would include cases where the child's health is affected by chronic or debilitating illnesses which require extensive, expensive health services. States would need to examine their own laws to determine what restrictions apply in the State with respect to seeking modification of an existing order to include health insurance.

The new paragraph (b)(4) would require State IV–D agencies to petition the court or administrative authority to modify support orders for targeted cases identified in paragraph (b)(3) of this section to include medical support in the form of health insurance coverage. States should make every effort to obtain appropriate information to present at the court or administrative hearing that substantiates the request for health insurance coverage. Such information might include a description of the health insurance available to the absent parent, including HMO's and PPO's, and why health insurance coverage would be beneficial for the children. Where appropriate, the IV–D agency should be prepared to address the medical history of the child and any special medical needs which are known to exist as well as any changes to the financial circumstances of either party. This type of information will provide decisionmakers with a better understanding of the value of medical support and assist in securing judicial or administrative decisions for medical support.

The new paragraph (b)(5) would require IV–D agencies to provide the custodial parent with health insurance policy information when the absent parent secures coverage for the

dependent child(ren). This would include any information available to the IV–D agency about the health insurance policy which would permit a claim to be filed or, in the case of HMO's and PPO's, services to be provided.

Current regulations at 45 CFR 306.10(g) provide that IV–D agencies may, under cooperative agreement, secure health insurance coverage through court or administrative order when it will not reduce the absent parent's ability to pay child support. This regulation would delete the condition that the health insurance may not affect the absent parent's ability to pay cash support payments. This change is being made because the best interests of the child should be the governing factor in considering the terms of a support order. Under certain circumstances, health insurance coverage may be of greater benefit to the child and custodial family than any possible reduction in cash support which may result from the inclusion of health insurance in the support order.

The proposed regulation would delete the maintenance of effort requirement at 45 CFR 306.40 which prohibits a decrease in title IV-D program activities, personnel and resources as a result of entering into cooperative agreements with a State Medicaid agency. Revising the regulations to delete this provision would permit States more flexibility in developing cooperative agreements which are best suited to the needs of the State and agencies involved. This change conforms to the Health Care Financing Administration's (HCFA's) regulations implementing section 2367 of Pub. L. 98–369, which provides States with greater flexibility in the administration of the third party liability program. In addition, the maintenance of effort requirement is no longer necessary as a result of the revised audit criteria published October 1, 1985 in the Federal Register (50 FR 40120). The audit regulations require OCSE to conduct an audit of State IV-D agencies at least once every three years to determine whether each State has an effective IV-D program. These regulations incorporate objective performance criteria which OCSE will use to determine program effectiveness.

These proposed regulations do not alter or replace other provisions at 45 CFR 306.51. It remains the responsibility of the State IV-D agency to take steps to enforce health insurance coverage as required by court or administrative order. Also, if a support order requires that specified amounts be paid for medical support, the IV-D agency may collect such amounts pursuant to 45 CFR 302.50 if the support has been assigned to the State under sections 402(a)(26) of the Act (AFDC cases) or 471(a)(17) of the Act (Foster Care cases) or the State has agreed to collect the support under section 454(6) of the Act (non-AFDC cases). The IV-D agency is not responsible for enforcing medical support of an unspecified nature, unless this is done under cooperative agreement with the State Medicaid agency.

As indicated above, Federal funding would be available to IV-D agencies for these required medical support activities. In addition, as savings accruing to State governments as a result of medical support efforts may be substantial, States may wish to examine the possibility of rewarding their IV-D agencies for aggressive medical support efforts with some portion of the non-Federal share of resultant savings. States could develop incentive formulas ot reward their IV-D agencies for successful medical support enforcement activities based on the savings derived by the States' Medicaid agencies.

### Paperwork Reduction Act

45 CFR 306.51(b)(3) and (b)(5) of this proposed rule contain information collection requirements. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), we have submitted a copy of this proposed rule to OMB for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS.

### Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291 that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Executive Order requires that, for major rules, we prepare a regulatory impact analysis which describes the potential benefits and costs of the rule, together with the potential benefits and costs of alternative approaches.

The rule will have little or no net economic effect, because it will not change substantially the total amount that will be spent on medical care for dependent children of absent parents. The effect here is not the level of medical coverage but rather who will finance it—parents, third-party payors, and ultimately, employers and employees who pay premiums, versus the Medicaid program and taxpayers. As total expenditures will remain about the same, this regulation only results in a redistribution of resources.

As the purpose of this proposed regulation is to provide enhancements of a limited nature to current medical support enforcement requirements, no effective alternatives to this approach were apparent. This proposal will merely expand the audience of current medical support enforcement requirements to include certain targeted cases as identified by the State.

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we are required to prepare a regulatory flexibility analysis for those rules which will have a significant economic impact on a substantial number of small entities. This proposed rule will not have a significant economic impact on a substantial number of small entities. Its principal impact is on State IV-D agencies (who will be required to expend minimal effort), and third party payors. This rule can be expected to result in incremental increases in third party payments, and will not have a significant economic impact. Therefore, a regulatory flexibility analysis is not required.

### List of Subjects in 45 CFR Part 306

Child welfare, Grant programs/social programs, Medicaid.

### PART 306—[AMENDED]

For the reasons set out in the preamble, 45 CFR Part 306 is proposed to be amended as follows:

1. The authority citation for Part 306 is revised to read as set forth below:

Authority: 42 U.S.C. 652, 654(19), 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k.

2. 45 CFR 306.10 is amended by revising paragraph (g) to read as follows:

**§ 306.10 Functions to be performed under a cooperative agreement.**

* * * * *

(g) Secure health insurance coverage through court or administrative order.

* * * * *

**§ 306.40 [Removed]**

3. 45 CFR 306.40 is removed.

4. 45 CFR 306.51 is amended by revising paragraph (a) to read as follows:

**§ 306.51 Securing and enforcing medical support obligations.**

(a) For purposes of this section:

(1) Health insurance is considered reasonable in cost if it is employment-related or other group health insurance, regardless of service delivery mechanism (e.g., fee-for-service, health maintenance organization or preferred provider organization).

(2) Health insurance includes health maintenance organization and preferred provider organization coverage under which medical services are provided to the dependent child(ren) of an absent parent.

* * * * *

5. 45 CFR 306.51 is amended by redesignating the current contents of paragraphs (b)(3), (4), (5) and (6) as (6), (7), (8) and (9) respectively and by inserting new paragraphs (b)(3), (4) and (5) as follows:

**§ 306.51 Securing and enforcing medical support obligations.**

* * * * *

(b) * * *

(3) Establish written criteria to identify cases not included under paragraphs (b)(1) and (b)(2) of this section where there is a high potential for obtaining medical support based on—

(i) Evidence that health insurance may be available to the absent parent at a reasonable cost, and

(ii) Facts, as defined by State law, which are sufficient to warrant modification of the existing support order to include health insurance coverage for a dependent child(ren).

(4) Petition the court or administrative authority to modify support orders for cases identified in paragraph (b)(3) of this section to include medical support in the form of health insurance coverage.

(5) Provide the custodial parent with information pertaining to the health insurance policy which has been secured for the dependent child(ren) pursuant to an order obtained under this section.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Dated: September 15, 1986.

**Wayne Stanton,**

*Director, Office of Child Support Enforcement.*

Approved: October 14, 1986.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 87-11963 Filed 5-26-87; 8:45 am]

BILLING CODE 4150-11-M

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 22**

**[CC Docket 87-120; FCC 87-147]**

## Common Carrier Services; Flexible Allocation of Frequencies in the Public Land Mobile Service for Paging and Other Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is requesting comments on proposed amendments to 47 CFR 22.501 paragraphs (b), (k), (g)(1), and (p)(1). The proposed changes would permit existing and future licensees of conventional two-way mobile frequencies to use their frequencies in any manner they choose. The proposal also seeks comments on whether the 470–512 MHz UHF–TV band currently shared by two-way mobile licensees in thirteen of the largest metropolitan statistical areas (MSAs) should be utilized differently. Finally, comments are requested on whether the nationwide paging frequencies should be opened to unlimited local paging by the network licensees.

**DATES:** Due date for comments on the proposals is July 2, 1987; reply comments are due July 30, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Susan E. Magnotti, Mobile Services Division, Common Carrier Bureau, (202) 632–6450.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, CC Docket 87–120, adopted April 23, 1987 and released May 14, 1987. The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

### Summary of Notice of Proposed Rulemaking

1. On July 15, 1986, the Commission issued a Public Notice (Mimeo No. 5785) interpreting § 22.501(b) of the Commission's Rules. The public notice, *inter alia*, stated "additional two-way channels will not be authorized where the required need showings almost exclusively detail one-way paging utilization." Several radio common carriers have petitioned for reconsideration on this point.[1] Their comments have led us to the tentative conclusion that a change in our rules is required regarding frequency allocation for both paging and two-way mobile use.

*Petitioners' Comments*

2. Telocator Network of America, Radio Common Carrier Division, (Telocator) filed a Petition for Reconsideration and a Supplement to its petition. Telocator argues that the *Public Notice* "ignores marketplace realities, [and] makes an erroneous assumption regarding spectrum use. . .". It argues that rather than limiting use of the paried frequencies to conventional two-way mobile use, the Commission should expand the possible uses of the channels. It maintains that radio common carriers should be free to use the base channel for one-way signalling, and the mobile channel would be available for much-needed control and repeater applications, as well as simplex mobile-to-mobile, alarm systems, and telemetry. Telocator adds that "[p]ermissible use of two-way channels should be broad enough so that the Commission need not hold a rulemaking every time vendors seek to respond to users' changing needs in the most effective way possible."

3. American Mobilephone, Inc. (American) also filed a petition for reconsideration of the same provision of the *Public Notice*. American notes that "[e]ven the most well-informed expert regulatory agency can only rougly estimate the form that public need and demand will take." It points out that if a carrier finds it is acquiring paging subscribers due to marketplace demand, it is not feasible for the carrier to seek a low-band or 900 MHz paging frequency, because existing paging customers on VHF or UHF frequencies cannot be transferred due to equipment incompatibility. American adds that

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[1] Rather than granting or denying reconsideration of the *Public Notice*, which merely interprets existing rules, we find that the best approach is a reexamination of the underlying rules which proscribe frequency use.

"paging-only frequencies are not a viable alternative for a carrier that wants to be a full-service provider, because potential new two-way subscribers cannot be serviced." Finally, American states that cellular competition of overhwhelming conventional two-way mobile use. It points out that although its conventional two-way service is significantly less expensive than cellular service, "American's overall two-way market share in Birmingham is already quite small and getting smaller every day." [3]

4. Graphic Scanning Corporation (Graphic) filed informal comments in support of the Telocator petition. Graphic points out that public demand dictates the use to which it puts its two-way channels. It states that in Miami and Pittsburgh, its two-way channels are used predominately for mobile telephone service, but that in its other markets, two way channels mainly provide paging service. Graphic argues that "[i]n some cases the RCC simply cannot feasibly obtain dedicated paging channels on equipment incompatibility grounds or because vacant one-way channels (if any), are not as desirable as UHF or VHF two-way spectrum."

## Discussion

5. Because it is our continuing responsibility to accommodate the evolving demand of the marketplace, we are proposing to make the existing common carrier mobile frequency allocation more flexible and thus more able to respond to changes in market demand. Three blocks of frequency allocations are affected by this proposal. First, the 150 MHz and 450 MHz two-way paired channels, which are listed in § 22.501(b) of the Commission's Rules, are proposed to be available for either paired or unpaired use, subject to appropriate regulations to avoid interference. Second, we propose two alternatives for more efficient use of the 450–512 MHz allocation, currently available for two-way communications in thirteen urban areas.[5] See § 22.501(k). Finally, we request public comment on the proposal to reverse our earlier rulings and make the frequencies allocated for nationwide network paging available for local paging without limitations. See § 22.501(p) of the Commission's Rules.

6. *Section 22.501(b).* We propose to amend § 22.501(b) so that the paired frequencies currently available for two-way use may be used in an unpaired configuration. Comment is requested on two alternative licensing arrangements. Under one approach, we would continue licensing pairs of these frequencies to one party.[4] Licensees would be permitted, consistent with their interference obligations, to deploy their spectrum capacity as they wished. They would be free, for example, to offer one or two-way service, utilize a portion of their capacity for control and other point-to-point functions, or resell some or all of their capacity to others.

7. Under the second licensing arrangement we wish to consider, channels could be licensed separately. Three possible outcomes could exist under this plan. First, an applicant may be licensed for a frequency pair for conventional two-way service and/or separate uses for both the base and mobile channels; second, an applicant may be licensed only for the base channel to provide paging service, simplex mobile service, or other one-way communications services; third, an applicant may be licensed only for a mobile channel for control/repeater facilities, or to provide paging service or other one-way communications services upon a showing that no interferences will be caused to two-way adjacent or co-channel operations.

8. We request comments from parties concerning appropriate interference standards. We tentatively conclude that existing bandwidth, emissions, and height-power standards should remain in force. In addition, we propose that the Carey Report continue to be used as the measure of service area for base stations. For mobile channels interference standards may vary widely depending upon the uses to which the channels are put.[5] Furthermore, standards for determining and avoiding interference between fixed use and mobile use must be established. accordingly, technical proposals from parties are requested. We also request comment on whether any interference criteria should be permitted in cases where affected parties agree.

9. We also seek comment on whether need standards for additional frequencies to ensure that both the base and the mobile channels are efficiently utilized. If we elect to adopt such standards, an applicant holding licenses for two-way paired frequencies would be required to show that both channels are utilized. A vacant mobile channel, for example, would bar license of additional channels unless the licensee relinquished the unused channel.

10. In addition, we seek guidance on whether standards for priorities among competing proposals should be established. For example, Rural Radio or similar basic telephone fixed service may have priority over two-way mobile use; two-way mobile use may have priority over paging and simplex mobile, and paging use may have priority over control/repeater facilities. Parties' comments are requested both on the concept of priority and on what services should receive priority.

11. *Section 22.501(k).* The paired frequencies allocated for two-way shared use in thirteen large urban areas appear to be underutilized. The quarterly traffic loading studies, which are required to be filed by licensees by § 22.501(l)(10)(ii) of the Commission's Rules, indicate that only a a fraction of the full capacity of each urban area's allocation is being used. Furthermore, over half of the urban areas have not filed any traffic loading report, leading us to the conclusion that this allocation is not utilized at all in those areas. The petitioners' comments in this proceeding make it clear that with the expansion of cellular telephony, conventional two-way use declines. Accordingly, we believe a more efficient use of this allocation should be made. Comment is requested on two different ways of achieving this objective.

12. Assignments in the 470–512 MHz common carrier band are unique in that more than one party may be licensed to the same frequency in the same geographic area. It is conceivable that this non-exclusive licensing plan may be discouraging the use of these frequencies. Therefore, one of the proposals on which comment is requested would alter the present licensing arrangement and may possibly encourage licensees to use their assignments more efficiently. This could be effected by modifying the eligiblity criteria for these channels so that new licenses would be issued only to applicants that had received the explicit approval of the existing licensees. This proposal would also permit licensees on

[3] Through informal discussions with industry representatives, Commission staff has learned that in cities to which cellular is licensed, conventional two-way mobile subscribership has dropped dramatically.

[5] These urban areas, listed in § 22.501(k), are Boston, Chicago, Cleveland, New York-New Jersey, Dallas-Fort Worth, Detroit, Houston, Los Angeles, Miami, Philadelphia, Pittsburgh, San Francisco, and Washington, D.C. Each area has between 12 and 24 paired channels for shared use by all area radio common carriers to provide two-way communications services.

[4] We would consider instituting a notification procedure for existing two-way system licensees who wish to change their frequency use under this proposal.

[5] Under rules governing Private Radio spectrum, for example, licensees share channels used for paging and simplex mobile. Likewise, where it is not possible to avoid interference on a common carrier mobile channel, interested licensees and applicants may elect to share the channel if their proposed uses are compatible.

these frequencies to change their present sharing arrangement through either formal joint ventures, mergers, or straight buyouts. In addition to given licensees possible incentives, this proposal could provide for more efficient use of their channels by expanding the types of communications permitted in the same manner as proposed for the other two-way frequencies considered above. We propose to require that all facilities authorized under this, and the proceeding, option comply with the present interference criteria.

13. We also wish to consider formally reallocating some of these channels from two-way common carrier services to other purposes. Under this option, we would limit urban licensees to the number of paired frequencies which will permit 25 percent or less blocking probability under loading conditions indicated in the licensees' December, 1986 traffic loading report. This will sharply reduce the number of channels available for radio common carrier services. From 12 to 48 single channels, or 6 to 24 paired channels, would then be free for other uses. Thus, frequencies without an asterisk are available for other uses.) One possibility is that some channels could be licensed for control and repeater facilities. Another possibility is to reassign some or all of these frequencies to private land mobile radio services.[6] We propose that whatever facilities are licensed in the 470–512 MHz band, they comply with the same interference limitations as are currently applicable to two-way communications in this frequency band. See § 22.501(k)(2)–(5).

14. *Section 22.501(p)(1).* The nationwide network paging service was allocated three of the frequencies listed in § 22.501(p)(1) of the Commission's Rules. However, events taking place since the three frequencies were licensed in August, 1985 indicate that demand for this service may not have developed. One network paging licensee has filed for permission to offer local paging primarily on its network frequency, and another network licensee has allowed its construction permit to expire. It appears that, contrary to projections available to this Commission at the time the frequencies were allocated, there may be insufficient demand for network paging to justify setting aside frequencies for network-only paging. Accordingly, we request public comments on the possibility of allowing unrestricted local paging by the nationwide network licensees on their network frequencies. In addition, we propose that the third frequency, 931.8875 MHz, relinquished by one of the network licensees, be included in section 501(g(1) and be made available for multiple-address one-way signalling systems.[7] Parties are requested to comment on the relative public demand for frequencies under section 501(g)(1) and network paging frequencies.

## Regulatory Flexibility Act—Initial Analysis

15. *Reasons for action and objectives.* The proposed action will facilitate availability of frequencies for a wide variety of uses, without the need for the Commission to hold new rulemakings as technology and marketplace demand changes. At the same time, the proposed action is intended to ensure that all spectrum licensed to communications entities is in fact utilized to serve the public's communications needs.

16. *Legal basis.* The authority for this proposed rulemaking is contained in sections 1, 4(i), 301 and 303 of the Communications Act of 1934, as amended.

17. *Small entities affected and initial impact.* The proposed rules are intended to have a beneficial impact on small communications companies. They will have new opportunities to serve the public and flexibility to react to subscribers' needs.

18. *Reflect federal rules which overlap, duplicate or conflict with this action.* As discussed in this *Notice,* the proposed rules alter the Commission's existing rules with regard to the use of conventional mobile frequencies. Other than the specific rules changed, we are aware of no federal rule that conflicts with, duplicates, or overlaps the proposal made in this Notice.

19. *Reporting, record-keeping and compliance requirements.* None.

20. *Specific alternatives that could accomplish the same objective.* We have determined no specific alternatives that would allow an equal potential for flexible reaction by communications companies to serve public demand for communications services.

21. Comments on all aspects of the analysis and proposed rules of this Notice are encouraged. Interested persons are invited to submit comments in accordance with § 1.419 of the Commission's Rules, 45 CFR 1.419. Comments must be filed by July 2, 1987, and reply comments by July 30, 1987.

22. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a meeting is scheduled or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentaion. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its fact that the Secretary has been served and must also state by docket number the proceeding to which it relates. See 47 CFR 1.1231. All relevent and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

23. A copy of this Notice of Proposed Rulemaking shall be sent to the Chief, Counsel of Advocacy of the Small Business Administration.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87–11740 Filed 5–26–87; 8:45 am]

BILLING CODE 6712–01–M

[6] The Commission recently proposed to reallocate certain UHF–TV channels to the private landmobile radio services in eight urban areas. *See Notice of Proposed Rulemaking,* Docket 85–172, 101 F.C.C. 2d [illegible] (1985).

[7] These frequencies are reserved for controlling wide-area paging systems. An applicant for a frequency under this subpart must show that it has at least four remote base stations which will be simultaneously broadcast with a common signalling message using the requested control frequency.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70662-7062]

## Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this rule to propose modifications to the regulations implementing the Fishery Management Plan for Ocean Salmon Fisheries off Washington, Oregon, and California (FMP). Comments are invited. This action is necessary for enforcement purposes and to reconcile certain inconsistencies between Federal and State ocean salmon regulations, and Federal and international salmon and halibut regulations. It is intended to improve coordination among international, Federal, and State management jurisdictions and to strengthen enforcement of ocean salmon regulations.

DATE: Comments on this proposed rule are invited until June 25, 1987.

ADDRESS: Comments on this proposed rule may be submitted to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206-538-6150; or E. Charles Fullerton, 213-514-6196.

SUPPLEMENTARY INFORMATION:

### Background

Under the Magnuson Fishery Conservation and Management Act (Magnuson Act), the FMP was prepared by the Pacific Fishery Management Council (Council), and was approved by the Secretary of Commerce (Secretary) on March 2, 1978. The FMP has been amended seven times and implementing regulations are codified at 50 CFR Part 661.

This action would change the Federal ocean salmon regulations to facilitate enforcement and resolve inconsistencies between Federal, State, and international regulations. The proposed regulatory changes were discussed and recommended to the Secretary by the Council at its September 1986 meeting. The proposed changes are described below:

*Issue 1—Processing inspection.* The Magnuson Act and the Federal salmon regulations make it unlawful to refuse to permit an authorized officer to board a fishing vessel subject to a person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act or its implementing regulations. The proposed rule would broaden this prohibition to clarify the authority of authorized officers to enter buildings, vehicles, piers, or dock facilities where salmon may be found by making it unlawful for a person in control to refuse such entry.

Under 16 U.S.C. 1861(b), authorized officers are empowered to conduct inspection of a fishing vessel in connection with enforcement of the Magnuson Act with or without a warrant, and to exercise any other lawful authority. The proposed provision is identical to one provision approved in *Lovgren v. Byrne*, 787 F. 2d 857 (3rd Cir. 1986), in which the court found that the regulatory provision was necessary for enforcement of the Magnuson Act, and that entry into dockside facilities by authorized officers without a warrant was reasonable under the Fourth Amendment. Broadening of the existing salmon regulations to include dock and transport areas also comports with the requirements of the Magnuson Act, does not unnecessarily intrude on reasonable privacy interests of those in industry, and furthers the strong Federal interest in protecting natural resources in U.S. waters. By adding a definition of "areas of custody," the scope of inspection is limited to only those times when and those places where salmon may be found.

*Issue 2—False statements.* 18 U.S.C. 1001 makes it a criminal offense punishable by a fine of up to $10,000 or five years' imprisonment, or both, to make false statements concerning any matter under the jurisdiction of any department or agency of the United States. Current Federal salmon regulations do not contain a similar provision although violators would be subject to Federal criminal prosecution under 18 U.S.C. 1001. Inclusion of such provision will promote effective enforcement of the ocean salmon regulations, and will make false statements subject to the civil penalty and forfeiture sections of the Magnuson Act, which in most cases are sufficient remedies for violations in lieu of criminal prosecution. The proposed rule would prohibit making any false, statement, oral or written, to an authorized officer about the taking, catching, harvesting, landing, purchase, sale, or transfer of salmon. Identical provisions appear in other regional fisheries regulations promulgated under the Magnuson Act.

*Issue 3—Gear inspection.* There have been numerous reported incidents of fishermen cutting or freeing their gear while fishing to prevent inspection by authoirzed officers. This is not specifically prohibited by the Federeal salmon regulations, although it is a violation of State laws. The proposed rule would make it unlawful to refuse to submit fishing gear under a person's control to inspection by an authroized officer or to interfere with or prevent, by any means, such as inspection. The rule is necessary to ensure that authorized officers have the ability to enforce terminal gear requirements such as barbless hooks.

*Issue 4—Pacific halibut (Hippoglossus stenolepis).* Regulations of the International Pacific Halibut Commission prohibit retention of Pacific halibut caught on troll gear when the commercial halibut season is closed, and also restrict recreational (sport) fishing for halibut, including halibut that may be taken in the course of recreational fishing for salmon. The current ocean salmon regulations do not reference the halibut regulations.

The proposed rule would clarify that it is unlawful to take and retain Pacific halibut except in accordance with regulations of the International Pacific Halibut Commission. Fishermen would be required to return to the water with the least possible injury any Pacific halibut which could not be retained lawfully.

*Issue 5—Undersized Salmon.* Federal regulations establish different minimum fish length restrictions for salmon caught in different management areas. Currently, there are no Federal prohibitions on fishing for salmon in one management area with salmon on board the fishing vessel which were caught in another management area and which are smaller than the size limit of the area being fished. State laws generally cover this situation, but without a similar Federal prohibition, fishermen may claim, when boarded at sea by an authorized officer, that any undersized fish on board were caught in a different area with a smaller size limit. The existing Federal salmon regulations therefore contain an enforcement loop hole which could make more difficult the enforcement of different minimum fish length restrictions for different areas. To correct this situation, the proposed rule would prohibit fishing for

salmon in an area when salmon of less than the legal minimum size limit for that area are aboard a vessel. Transit of an area with salmon of less than the legal minimum length restriction for that area aboard a vessel would be allowed.

*Classification*

The proposed rule in published under authority of section 305(g) of the Magnuson Act, as amended by Pub. L. 99–659. The Administrator, before publishing a final rule will take into account the data, views, and comments received during the comment period.

This action is not expected to alter the nature or intensity of environmental impacts which were addressed in the supplemental environemental impact statement (SEIS) prepared by the Council for the 1984 framework amendment to the FMP. A notice of availability of the SEIS was published on September 23, 1984; 49 FR 38355.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Exective Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because four of the five measures to be implemented are technical in nature, either clarifying the intent of existing regulations or making reference to regulations imposed by the International Pacific Halibut Commission. As a result, these measures are not expected to alter fishing practices or impose costs on the industry. The fifth measure, prohibiting fishing for salmon in one area when salmon of less than the legal size limit for that area are aboard a vessel, may impose a small but insignificant impact on fishermen. This measure may cause some fishermen to make an additional port of call to land fish before continuing a trip. However, this will only occur at the end of the season in one area when it overlaps with the beginning of the season in another area, thereby affecting only a small number of fishermen and imposing only a minor additional financial cost on the industry.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Administrator determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

**List of Subjects in 50 CFR Part 661**

Fisheries, Indians.

Authority: 16 U.S.C. 1801 *et seq.*
Dated: May 20, 1987.

James E. Douglas, Jr.,
*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

**PART 661—[AMENDED]**

For the reasons set forth in the preamble, 50 CFR Part 661 is proposed to be amended as follows:

1. The authority citation for 50 CFR Part 661 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 661.2, a new paragraph (e) is added to read as follows:

**§ 661.2 Relation to other laws.**

* * * * *

(e) Any person fishing subject to this part who also engages in fishing for Pacific halibut should consult regulations of the International Pacific Halibut Commission at 50 CFR Part 301 for applicable requirements of that part.

3. In § 661.3, the definition of "areas of custody" is added in alphabetical order to read as follows:

**§ 661.3 Definitions.**

*Areas of custody* means any vessels, buildings, vehicles, piers, or dock facilities where salmon may be found.

* * * * *

4. Section 661.5 is amended by revising paragraph (b)(10) and adding new paragraphs (b)(17)–(20) to read as follows:

**§ 661.5 General restrictions.**

* * * * *

(b) * * *

(10) Refuse to permit an authorized officer to board a fishing vessel, or to enter areas of custody, subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of the Magnuson Act, this part, or any other regulation issued under the Magnuson Act.

* * * * *

(17) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, or transfer of any salmon.

(18) Refuse to submit fishing gear subject to such person's control to inspection by an authorized officer, or to interfere with or prevent, by any means, such an inspection.

(19) Take and retain Pacific halibut (*Hippoglossus stenolepis*) except in accordance with regulations of the International Pacific Halibut Commission at 50 CFR Part 301. Pacific halibut which cannot be retained lawfully must be returned to the water immediately and with the least possible injury.

(20) Fish for salmon in an area when salmon of less than the legal minimum length for that area are on board the fishing vessel, except that this provision does not prohibit transit of an area when salmon of less than the legal minimum length for that area are on board so long as no fishing is being conducted.

[FR Doc. 87–11905 Filed 5–26–87; 8:45 am]
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# Notices

Federal Register
Vol. 52, No. 101
Wednesday, May 27, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### State of Wyoming Abandoned Mined Land Reclamation Program; Determination of Primary Purpose of Program Payments and Benefits for Consideration as Excludable From Income

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of determination.

**SUMMARY:** The Secretary of Agriculture has determined that certain payments made and benefits that result under the Wyoming Abandoned Mine Reclamation Program, as authorized by Wyoming Statutes 35–11–1201 through 35–11–1207, are made primarily for the purposes of conserving soil, protecting or restoring the environment, or providing a habitat for wildlife. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments and benefits to exclude them from gross income to the extent allowed by the Internal Revenue Service (IRS).

**FOR FURTHER INFORMATION CONTACT:** Administrator, Land Quality Division, Department of Environmental Quality, 122 West 25th Street, Cheyenne, Wyoming 82002, Phone: (307) 777–7756, or Director, Land Treatment Program Division, Soil Conservation Service, USDA, Post Office Box 2890, Washington, DC 20013, Phone: (202) 382–1870.

**SUPPLEMENTARY INFORMATION:** Section 126 of the Internal Revenue Code of 1954, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, 26 U.S.C. 126, provides that certain payments made to individuals under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." The Secretary of Agriculture evaluates the state conservation program on the basis of criteria set forth in 7 CFR Part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these programs do not substantially increase the annual income derived from the property benefited by the payments.

The Wyoming Abandoned Mine Reclamation Program is authorized by Wyoming Statutes 35–11–1201 through 35–11–1207. It is funded through annual State appropriations and by grants from the Office of Surface Mining, U.S. Department of the Interior under Title IV of the Surface Mine Control and Reclamation Act. Funding for the program is from a special fee collected on coal production. It is the purpose of the Wyoming Abandoned Mine Land Program to:

1. Protect the public health, safety, and general welfare from adverse effects of past mining where no continuing reclamation responsibility exists.

2. Protect offsite environments from the adverse effects of past mining where no continuing reclamation responsibility exists.

3. Restore land and water resources previously and adversely affected by past mining activities, and to properly conserve and utilize water and land resources.

The Land Quality Division of the Wyoming Department of Environmental Quality administers the Wyoming Abandoned Mine Land Program. Eligible projects are identified and selected in accordance with the objectives described above. In most cases, the state must obtain the private property owner's consent to access in order for the state to conduct the reclamation work. Only where emergency situations exist can the state utilize its police powers for nonconsented entry. The state prepares reclamation plans to eliminate threats to public health and safety, and to repair degradation of lands and waters which result from abandoned mines. All construction work is obtained through competitive bidding. No cash payments are made to the landowner, unless the landowner is successful in competitively procuring the construction contract. Benefits accruing to landowners from the reclamation work may include reduced threats of life, reduced threats of property damage to urban and rural property owners, and increased land use capabilities for grazing and wildlife for rural properties. However, all work conducted is primarily for public health, safety, and general welfare reasons.

### Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Wyoming Abandoned Mine Reclamation Program "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, United States Department of Agriculture, P.O. Box 2890, Washington, DC 20013; or the Administrator, Department of Environmental Quality, Land Quality Division, 122 West 25th Street, Cheyenne, Wyoming 82002.

### Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Wyoming Abandoned Mine Reclamation Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that payments made and benefits provided

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under this program are for soil and water conservation, protecting or restoring the environment, or providing wildlife habitat. Excluded from this determination are payments made for the recovery of coal or any mineral which occurs incidental to, or in connection with, the funded reclamation activity; payments made as compensation for services performed; and payments received from the acquisition of lands or interests therein or from the sale of soil, minerals, or any other materials. Subject to further determination by the Secretary of the Treasury, this determination permits property owners to exclude from gross income, for federal income tax purposes, payments made and benefits resulting from the Wyoming Abandoned Mine Reclamation Program after February 22, 1983, except as excluded above.

Signed at Washington, DC, on May 19, 1987.

Richard E. Lyng,

*Secretary.*

[FR Doc. 87-11966 Filed 5-26-87; 8:45 am]

BILLING CODE 3410-05-M

## Farmers Home Administration

### Loan and Grant Programs: Security Interest Reporting Requirements

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** The Farmers Home Administration (FmHA) implements the provisions of section 6050J of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 [98 Stat. 668]. Section 6050J provides that an information return must be made by any person who, in connection with a trade or business, lends money secured by property and who later acquires an interest in the property or has reason to know that the property has been abandoned. Section 6050J applies to any governmental unit that lends money secured by property.

**DATES:** Section 6050J of the Internal Revenue Code of 1954 as added to the Code by section 148 of the Tax Reform Act of 1984 was published in Volume 49, number 171 of the Federal Register on August 31, 1985, by the Internal Revenue Service (IRS). The regulation is effective for acquisitions and abandonments of property which occurred after December 31, 1984, with an initial reporting date of February 28, 1986. FmHA plans to report beginning February 28, 1988, for transactions which occurred after December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Bob Nelson, Management Analyst, Financial and Management Analysis Staff, Farmers Home Administration, USDA, Room 5505, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250, telephone (202) 475-4705.

**SUPPLEMENTARY INFORMATION:** FmHA is developing internal agency procedures to comply with the provisions of the aforementioned IRS regulations as they relate to disposition of all of the security property by the borrower. FmHA will report to IRS, with copy to the borrower, all properties in which FmHA had a security interest that are acquired by FmHA or by a thrid party; all properties where the FmHA borrower has abandoned their interest in the security property; and where FmHA security property is sold for less than the full amount of the FmHA debt. The notification to IRS affects all FmHA loan programs.

The Catalog of Federal Domestic Assistance programs affected by this notice are:

| No. | Program title |
|---|---|
| 10.404 | Emergency Loans. |
| 10.405 | Farm Labor Housing Loans. |
| 10.406 | Farm Operating Loans. |
| 10.407 | Farm Ownership Loans. |
| 10.410 | Low Income Housing Loans (Section 502 Rural Housing Loans). |
| 10.411 | Rural Housing Site Loans (Section 523 and 524 Site Loans). |
| 10.415 | Rural Rental Housing Loans. |
| 10.418 | Soil and Water Loans (SW Loans). |
| 10.417 | Very Low-Income Housing Repair Loans. |
| 10.422 | Business and Industrial Loans. |
| 10.423 | Economic Emergency Loans. |

Dated: February 6, 1987.

Vance L. Clark,

*Administrator, Farmers Home Administration.*

[FR Doc. 87-12017 Filed 5-26-87; 8:45 am]

BILLING CODE 3410-07-M

## COMMISSION ON CIVIL RIGHTS

### Connecticut Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:30 p.m. and adjourn at 6:30 p.m. on June 18, 1987 at the Hartford Public Library, Seminar Room, 500 Main Street, Hartford, Connecticut. The purpose of the meeting is to discuss the status of the agency, plan activities for the coming year and to collect information on Federal and State legislative proposals to gather data on incidents of ethnic intimidation and violence.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James H. Stewart (203/486-3417) or John I. Binkley, Director of the Eastern Regional Division at (202/523-5264; TDD 202/376-8117.) Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commisson.

Dated at Washington, DC, May 15, 1987.

Susan J. Prado,

*Acting Staff Director.*

[FR Doc. 87-11964 Filed 5-26-87; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1987 Special Urban Survey: Content Reinterview Questionnaire, Housing Content Reconciliation Record, Population Content Reconciliation Record.

Form Number: Agency DG-5, DG-5a, DG-5b, DG-31; OMB—NA.

Type of Request: New collection.

Burden: 6,420 respondents; 1,534 reporting hours.

Needs and Uses: The primary objective of this survey is to test alternate wording of race and Spanish origin items, as well as housing quality items, for consistency and validity. A 50 percent sample of mail return questionnaires from the two-panel initial mailout will be reinterviewed.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: May 18, 1987.

Edward Michals,

*Departmental Clearance Officer, Office of Management and Organization.*

[FR Doc. 87-11952 Filed 5-26-87; 8:45 am]

BILLING CODE 3510-07-M

## International Trade Administration

[A-570-601]

## Tapered Roller Bearings From the People's Republic of China; Final Determination of Sales at Less Than Fair Value

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that tapered roller bearings from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to a United States industry.

**EFFECTIVE DATE:** May 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Michael Ready or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2613 or 377-1769.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

We have determined that tapered roller bearings from the PRC are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margin is .97 percent. No margins were found on exports by China National Machinery & Equipment Import & Export Corporation. Therefore, this exporter is excluded from this determination.

### Case History

We published a preliminary determination of sales at less than fair value on February 6, 1987 (52 FR 3833). Since then the following events have occurred:

On February 17, 1987, the respondent requested a postponement of the final determination. We granted this request and postponed the due date for the final determination until no later than May 20, 1987 (52 FR 8068, March 16, 1987).

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments addressing the issues arising in this investigation. On April 30, 1987, we held a public hearing to allow parties to address the issues.

### Scope of Investigation

The products covered by this investigation are tapered roller bearings and parts thereof, currently classified in *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take up cartridge, and hanger units incorporating tapered roller bearings, currently classified in TSUS item 681.10; and tapered roller housings (except pillow blocks) incorporating tapered roller, with or without spindles, whether or not for automotive use, currently classified in TSUS item number 692.32 or elsewhere in the TSUS.

### Fair Value Comparisons

Because CMEC and Premier accounted for all sales of this merchandise from the PRC, we limited our investigation to them. To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States prices with the foreign market value. We investigated all sales of the subject merchandise for the period September 1, 1985, through August 31, 1986. We used a twelve-month period of investigation because the respondents had insufficient sales in the original six-month period of investigation.

### United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by CMEC and Premier because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price for sales by CMEC based on the f.o.b. or c.i.f. price to unrelated purchasers. We made deductions, where applicable, for inland freight charges, ocean freight charges, and port charges. In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based the deduction for inland freight and port charges on similar charges in a non-state-controlled-economy country.

We based the deduction for ocean freight charges on the weighted-average charge incurred by CMEC on shipments carried by non-state-owned steamship companies.

We calculated the purchase price for sales by Premier based on the f.o.b. or c.i.f. price to unrelated purchasers. We made deductions, where applicable, for brokerage and handling charges, ocean freight and marine insurance.

### Foreign Market Value

Petitioner alleged that the PRC is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a) of the Act. After an analysis of the PRC's economy, and consideration of the briefs submitted by the parties, we concluded that the PRC is a state-controlled-economy country for purposes of this investigation. Basic to our decision on this issue is the fact that the central government of the PRC controls the prices and levels of production of the bearing industry, as well as the internal pricing of the factors of production.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries producing tapered roller bearings, we determined that India would be the most appropriate surrogate. We sent questionnaires requesting assistance in these investigations to six companies in India. We received a questionnaire response from one company in India, but we were unable to use this data as a basis of calculating foreign market value because the Government of India did not permit us to verify the submitted data.

Additionally, we could not use import prices from non-state-controlled-economy countries in this case because the applicable Department of Commerce statistics for the subject merchandise were based on categories that were too broad to make product-specific comparisons.

Therefore, as the best information otherwise available, we calculated constructed value based on the factors of production reported by the PRC producers. We used the best information available for valuing the factors of production. Where possible, best information available was obtained from publicly available information in India.

Raw material prices were based on Indian prices published by the Steel Authority of India adjusted for inflation using the wholesale price index for India published by the International Monetary Fund. Where necessary, prices for merchant quality steel were adjusted to prices for bearing quality steel by using a ratio calculated from data in the Trigger Price Mechanism (TPM) Manual.

The cost of labor was based on data published by the International Labor Organization (adjusted as above for inflation) concerning average earnings in India for workers in ISIC category 382 (Manufacture of Machinery, except electrical). We made an addition of 31 percent for employee fringe benefits based on publicly available information in India.

We based the amount added for factory overhead on publicly available data for the bearing industry in India.

We used the statutory minimum of 10 percent of the sum of material, fabrication costs, and overhead for general, sales and administrative expenses, and the statutory minimum of eight percent for profit.

We based the amount added for packing on data in the public version of the questionnaire response of a market-economy country tapered roller bearing producer involved in a current antidumping investigation.

With respect to sales by Premier, in accordance with section 773(f) of the Act, we based foreign market value on the prices at which Premier sold such or similar merchandise to third countries (Pakistan and Singapore), since there were no sales in the home market of Hong Kong of tapered roller bearings from the PRC. From these prices, we deducted, where applicable, charges for brokerage and handling, ocean freight and marine insurance. We made adjustments, where applicable, for differences in credit costs and for commissions Premier paid on certain sales to the United States.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

**Verification**

As provided in section 776(a) of the Act, we verified data used in making this determination by using verification procedures which included on-site inspection of manufacturers' facilities and examination of company records and selected original source documentation containing relevant information.

**Petitioner's Comments**

*Comment 1:* Petitioner argues that, in calculating constructed value for the preliminary determination, the Department undervalued factory overhead. The petitioner suggests that the amount added for factory overhead should equal at least 40 percent of total cost of manufacture, based upon the experience of several Japanese manufacturers, the petitioner in the United States, and the petitioner's subsidiary in Brazil.

*DOC Response:* We disagree. The Department has obtained, and used as the best information available, a factory overhead rate from a surrogate company in the bearing industry in India.

With regard to petitioner's request that we use the factory overhead experience of Japan and the United States as being representative of the PRC industry, the Department considers the factory overhead experience of a surrogate company in a comparable-economy country preferable to the alternatives offered by the petitioner.

We are required to select a comparable economy in which to value the factors of production information. The rationale behind selecting a comparable economy is that the experience of a producer in a comparable-economy country is reflective of the same degree of economic and industrial development as that of a producer in a comparable non-market-economy country. The United States and Japanese overhead ratios offered by the petitioner are for fully industrialized economies whose TRB producers use highly automated, state-of-th-art production equipment, in which factory overhead is high and direct labor low. The PRC production facilities use less automated and less sophisticated machinery and are much more labor intensive. In such instances, direct factory overhead would be lower and direct labor higher than for U.S. and Japanese TRB producers.

With regard to the petitioner's Brazilian subsidiary's factory overhead data, we note that the data was contained in a questionnaire response that was not received until one month after the Department's preliminary determination. It has been the Department's position that, in order to be considered in a final determination, a complete and full voluntary response must be received by the date of the preliminary determination. Furthermore, we do not consider Brazil and the PRC to be at comparable levels of economic development.

*Comment 2:* Petitioner argues that in calculating constructed value for the preliminary determination, the Department undervalued labor cost. Petitioner argues that the amount added for labor should be based on total labor cost to manufacturers, not just the earnings of workers.

*DOC Response:* We agree. See our discussion of labor costs in the foreign market value section of this notice.

*Comment 3:* Petitioner argues that, in calculating constructed value for the preliminary determination, the Department selected the wrong industry category in India as a source for labor earnings data.

*DOC Response:* We disagree. In calculating constructed value we determined the amount to be added for labor expenses on average earnings in India, in the industry category "Manufacture of machinery, except electrical." We believe this category most properly encompasses the manufacture of TRBs.

*Comment 4:* Petitioner argues that in calculating constructed value for the preliminary determination, the Department undervalued raw material cost.

*DOC Response:* For the preliminary determination we valued raw materials based on average import prices from Japan and Sweden to the United States. As noted above in the Foreign Market Value section of this notice, for the final determination we valued raw materials on prices in India drawn from publicly available data. We have made this change because we believe that using a comparable surrogate country's prices is preferable to using non-comparable countries' prices. These prices used for the final determination, which were calculated using methodology proposed by the petitioner, are somewhat higher than the prices used for the preliminary determination.

*Comment 5:* Petitioner argues that, in calculating constructed value, the Department should not make an adjustment for scrap unless it verifies that the PRC factory does in fact recover and sell scrap generated in the manufacturer of TRBs.

*DOC Response:* The Department verified that the PRC factory did in fact recover and sell or recycle scrap

generated. We therefore have made an adjustment for scrap in the calculation of constructed value.

*Comment 6:* Petitioner argues that foreign market value should be based on the data received from the Indian manufacturers, despite the fact that we were unable to verify the data in India. Petitioner suggests that we could verify the reasonableness of the Indian data by comparing Indian home market prices with the information available to the Department on TRB prices from other countries such as Brazil, Spain, Mexico, Argentina, and the United States.

*DOC Response:* We disagree. We do not believe that comparing Indian prices to prices in the five countries named by petitioner would satisfy the statutory requirement for verification.

*Comment 7:* Petitioner argues that the Department may not use the factors of production constructed value method provided for in § 353.8(c) of the Commerce regulations as the basis for foreign market value in this investigation.

Petitioner contends that § 353.8(a) and (b) of the Commerce regulations establishes a hierarchy for determining foreign market value in which prices and constructed value of such or similar merchandise take preference over the factors of production constructed value method under 353.8(c). The Department must first consider prices and constructed value of such or similar merchandise under 353(a) and (b) in the following order of preference: (1) A non-state-controlled-economy country at a stage of economic development comparable to the state-controlled-economy country from which the merchandise is exported; (2) a non-state-controlled-economy country not necessarily at a stage of economic development comparable to the state-controlled-economy country, other than the United States, suitably adjusted for known differences in costs of materials and labor; and (3) the United States. According to the petitioner, the Department must exhaust all of these established preferences before resorting to the factors of production approach.

*DOC Response:* We disagree. Petitioner's hierarchy of methods of calculating foreign market value, under which the factors of production constructed value approach would be a last resort, is based upon a misconception of 19 CFR 353.8 and applicable precedent. The Commerce regulation and past Departmental practice does establish a preference for the use of comparable economy sales prices and constructed value as the basis for foreign market value. However, it is not true, as petitioner claims, that under § 353.8(b) foreign market value based on sales prices or constructed value in a non-state-controlled-economy country not at a comparable stage of economic development are preferable to the factors of production constructed value approach under § 353.8(c).

Section 353.8(b)(1) of the regulations makes clear that the preference in favor of sales is tempered by the overriding preference for ascertaining foreign market value by reference to *comparable* non-state-controlled economies. *Chemical Products Corp.* v. *United States*, 12 CIT _____, Slip Op. 86-97 (September 26, 1988). The Department would arrive at § 353.8(b)(2) only after it has exhausted the pricing and constructed value options in comparable economies, i.e., under § 353.8 (a) and (c).

In this case, verified surrogate sales price and constructed value information was not available from TRB producers in any of the non-state-controlled-economy countries determined by the Department to be at stages of economic development comparable to that of the PRC. The Department sent surrogate questionnaires to six firms in these countries. As noted above, one company in India replied to our questionnaire, but the Indian Government would not allow us to verify the replying company's data. However, the Department was able to obtain, verify, and find values for the respondent's factors of production information. Therefore, factors of production constructed value methodology has been used for purposes of determining foreign market value with respect to the final determination in this investigation.

*Comment 8:* Petitioner argues that the DOC should use as the basis for calculating Premier's foreign market value the foreign market value calculated for sales by CMEC, plus CMEC's expenses incurred in selling to Premier, plus expenses incurred by Premier in reselling the merchandise.

*DOC Response:* We disagree. At the time of the sales to Premier, CMEC was unaware of the countries to which Premier intended to resell the merchandise. Therefore, foeign market value for Premier's sales to the United States is required to be calculated pursuant to section 773(f) of the Act.

**Respondent's Comments**

*Comment 1:* Respondent argues that, in the absence of verified data from a surrogate producer at a comparable level of economic development, foreign market value for CMEC should be based on constructed value using PRC factors of production.

*DOC Response:* We agree. See our response to petitioner's comment 7 above.

*Comment 2:* Respondent argues that, in calculating foreign market value for the preliminary determination, the Department overvalued raw material cost. Respondent suggests we should value certain of the raw materials based upon sales prices or offers of imported bearing steel in China.

*DOC Response:* We disagree. Sales prices submitted by the respondent pertain to sales made after the period of investigation.

*Comment 3:* Respondent argues that, in calculating constructed value, the Department should not base its addition for raw material costs solely on the price of bars (for producing cups and cones), but should also find values for bars (for producing rollers) and sheet (for producing cages).

*DOC Response:* We agree and have done so.

*Comment 4:* Respondent argues that the Department should publish separate dumping rates for CMEC and Premier rather than a single weighted-average rate.

*DOC Response:* We agree. These companies are not related. We found no evidence that CMEC knew the final destination of the products that Premier purchased. Therefore it is appropriate to calculate separate rates for the two companies.

*Comment 5:* Respondent argues that the calculations for Premier should be revised to incorporate corrected data developed as a result of the verification process.

*DOC Response:* We agree and have done so.

**Continuation of Suspension of Liquidation**

We are directing the United States Customs Service to continue to suspend liquidation of all entries of tapered roller bearings from the PRC, except entries of merchandise exported by CMEC directly to U.S. purchasers, that are entered, or withdrawn from warehouse, for consumption, on or after February 6, 1987, the date of publication of the preliminary determination in the Federal Register. The United States Customs Service shall continue to require a cash deposit or the posting of bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The bond or cash deposit amounts established in our preliminary determination of February 6, 1987, remain in effect with respect to entries

or withdrawals made prior to the date of publication of this notice in the Federal Register. With respect to entries or withdrawals made on or after the date of publication of this notice, except entries of merchandise exported by CMEC, the bond or cash deposit amounts required are shown below. CMEC is not included in this determination since we have found no margins for this company.

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Premier Bearing & Equipment Ltd. | .57 |
| All Others | .57 |

**ITC Notification**

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on tapered roller bearings from the PRC entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United states price.

The determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

*Assistant Secretary for Trade Administration.*

May 20, 1987.

[FR Doc. 87-12011 Filed 5-26-87; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting of the Swordfish Working Panel, May 26, 1987, at 1 p.m., at the South Atlantic Council's Office (address below). The Panel will discuss and decisions will be made regarding variable season closure (VSC); review of total landings by area; size frequency data by area; tuna landings; alternative starting dates and review of impacts; Committee Chairmen's recommendations on VSC starting dates for their Council area, and recommendations on plan amendment. The public meeting will adjourn on May 27 at noon.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone (803) 571-4300.

Dated: May 21, 1987.

Richard B. Roe,

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-12037 Filed 5-26-87; 8:45 am]

BILLING CODE 3510-22-M

### Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council and its Scientific and Statistical Committee (SSC) will convene separate public meetings, June 2-5, 1987, at the Pagoda Hotel, 1525 Rycroft Street, Honolulu, HI (telephone: 808-941-6611) as follows:

*Western Pacific Council*—On June 4, 1987, the Council will convene it 57th public meeting to discuss routine fisheries reports from Island and Federal Government representatives, as well as from private sector representatives on the Western Pacific Council. The Council will also hear a report on the recently signed tuna access agreement between the United States and the Pacific Island Nations; take up issues regarding a limited access proposal for the Northwestern Hawaiian Islands (NWHI) fishery for bottomfish, and decide remaining issues in order to move the limited entry proposal forward.

The Council will be briefed on the status of a plan amendment that would: (a) Authorize examination of limited access measures for controlling fishing for bottomfish in Guam and in American Samoa; (b) extend the due date for the annual report for the bottomfish and seamount groundfish fisheries of the Western Pacific Region from March 31 to June 30 of each year and (c) allow private vessels to conduct scientific research in the Exclusive Economic Zone under a charter agreement with the National Marine Fisheries Service; and be briefed on the status of the NWHI fishery for lobsters during 1986.

The Council will hear a report on the public's response to proposals to establish a minimum size for slipper lobster and to require escape vents on traps. Other related matters resulting from the May 18, 1987, public hearing will also be discussed.

On June 5 the Council will consider changing the "Hawaii Exploratory Area" quota for precious corals from 1,000 kilograms to 5,000 kilograms, and hear reports regarding the monitoring of various fisheries for each island area in the region. The Council will also make a recommendation regarding an application for an experimental permit for drift gillnet fishing for large pelagic species. A closed session (not open to the public) will also be convened to discuss personnel matters.

*SSC*—On June 2-3, 1987, the SSC will convene its 40th meeting and, with the exception of conducting a closed session to discuss personnel matters, the SSC's agenda will generally be the same as that of the Council.

For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368 or (808) 546-8923.

Dated: May 21, 1987.

Richard B. Roe,

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-12038 Filed 5-26-87; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 514]

### Marine Mammals Modification of Permit; Dolphin Research Center (P538)

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 514 issued to Dolphin Research Center, P.O. Box 2875, Marathon Shores, Florida 33052, on August 2, 1985 (50 FR 32252), as modified on January 30, 1987 (52 FR 3842) is further modified in the following manner:

Section B.7 is deleted and replaced by:

"7. The authority to acquire the marine mammals herein shall extend from the date of issuance until December 31, 1989. The terms and conditions of this Permit shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder."

This modification becomes effective May 20, 1987.

Documents submitted in connection with the above modification are available for review in the following Offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805 Washington, DC.; and

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: May 21, 1987.

Nancy Foster,

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87-11880 Filed 5-26-87; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishing Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

May 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 28, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

### Background

On March 27, 1987, a notice was published in the Federal Register (52 FR 9908) which established import restraint limits for cotton diapers in Category 359-D, cotton shop towels in Category 369-S and man-made fiber suits in Category 644, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on February 27, 1987 and extends through May 27, 1987. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 18, 1983, as amended, if no mutually satisfactory solution is reached on levels for these categories during consultations, to limit its imports during the twelve-month period immediately following the ninety-day period.

No solution has been reached in consultations on mutually satisfactory limits for these categories. The United States Government has decided, therefore, to control imports of cotton and man-made fiber textile products in Categories 359-D, 369-S and 644 during the twelve-month period which begins on May 28, 1987 and extends through May 27, 1988 at the designated levels.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the Federal Register.

In the event the limits established for the ninety-day period have been exceeded, such excess amounts, if allowed to enter, will be charged to the levels established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 26788) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 20, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on May 28, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 359-D,[1] 369-S [2] and 644, produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on May 28, 1987 and extends through May 27, 1988, in excess of the following limits:

| Category | 12-mo restraint limit |
|---|---|
| 359-D | 1,074,436 pounds. |
| 369-S | 1,248,255 pounds. |
| 644 | 14,191 dozen. |

Textile products in Categories 359-D, 369-S and 644 which are in excess of the ninety-day levels previously established shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 26788) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11916 Filed 5-26-87; 8:45 am]

BILLING CODE 3510-DR-M

### Announcing an Import Level for Certain Man-Made Fiber Textile Products Produced or Manufactured in Japan

May 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 28, 1987. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs

[1] In Category 359, only TSUSA number 384.5214.

[2] In Category 369, only TSUSA number 366.2940.

port. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

A CITA directive dated April 10, 1987 (52 FR 12229) established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 8, 1987 between the Governments of the United States and Japan, established, among other things, a group limit for man-made fiber yarn in Group III (Categories 600pt. through 602), produced or manufactured in Japan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Group III in excess of the designated limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Anotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 20, 1987.

**Committee for the Implementation of Textile Agreements**

**Commissioner of Customs,**
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 10, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Japan and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on May 28, 1987 the directive of April 10, 1987 is amended to include an import limit for man-made fiber yarns in Group III (Categories 600pt.[1] through 602) at a level of 146,681,500 square yards equivalent.[2]

Textile products in Group III which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in Group III which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of textile Agreements had determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–12015 Filed 5–26–87; 8:45 am]

BILLING CODE 3510-DR-M

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## Adjustment and Establishment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand; Correction

May 20, 1987.

In the notice published in the Federal Register on April 22, 1987 (52 FR 13282), fifth paragraph, correct the first reference to "Group III" to read "Group II."

In the same paragraph, reference made to shift from Group III to Group II of 1,515,000 square yards equivalent should be deleted. In the letter to the Commissioner of Customs, correct the levels as follows:

| Category | Adjusted 12-mo limit |
|---|---|
| Group II: 200–299 and 600–659. | 72,140,065 square yards equivalent. |
| Group III: 410–459 | 3,030,000 square yards equivalent. |
| 448 | 10,500 dozen. |

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–12014 Filed 5–26–87; 8:45 am]

BILLING CODE 3510-DR-M

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[1] In Category 600, all TSUSA numbers except 310.5015.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1986.

## Officials Authorized To Issue Certifications for Certain Textile Products From Haiti

May 20, 1987.

The Government of the Republic of Haiti has notified the United States Government under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 28 and 30, 1986 that five additional officials have been authorized to issue certifications for cotton, wool and man-made fiber textile products from Haiti.

A complete list of officials authorized by the Government of the Republic of Haiti to issue certifications is listed below:

Sanite L. Desir
Jean-Claude Decime
Demesmin Dorsainville
Pierre-Andre Guillaume
Charles-Antoine Jean
Dieuseul Lefevre
Frantz Elie
Pierre Donatien

The purpose of this notice is to advise the public of this change.

**FOR FURTHER INFORMATION CONTACT:**
Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–12013 Filed 5–26–87; 8:45 am]

BILLING CODE 3510-DR-M

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## Change in Officials Authorized To Issue Export Visas for Certain Cotton and Man-Made Fiber Textile Products From Turkey

May 20, 1987.

The Government of Turkey has notified the United States Government under the terms of the Bilateral Cotton and Man-Made Fiber Textile Agreements of October 18, 1985, as amended and extended, and July 30 and August 1, 1986 that Erhan Ozkebapci, Liason Officer, General Secretariat of Akdeniz Exporters' Unions, has replaced Yilmaz Daylan as the official authorized to issue export visas for cotton and man-made fiber textile products from Turkey. The following is a complete list of officials of the Government of Turkey who are currently authorized to issue export visas:

Tuncer Ogun
Attila Kucukkayalar
Sahap Ozdemir
Muzaffer Colpan

Mustafa Hasim Boyacioglu
Mahmet Sevim
Mumin Tasyurek
Guner Alptekin
Zubeyde Oguzcan
Erhan Gokebepci

The purpose of this notice is to advise the public of this change.

FOR FURTHER INFORMATION CONTACT: Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377–4212.

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–12012 Filed 5–26–87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning payments.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781.

SUPPLEMENTARY INFORMATION:

a. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *60,000;* responses per respondent, *120;* total annual responses, *9,600,000;* hours per response, *.025;* and total burden hours, *240,000.*

Obtaining Copies of Proposals

Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0070, Payments.

Dated: May 11, 1987.

Margaret A. Willis,

*FAR Secretariat.*

[FR Doc. 87–11940 Filed 5–26–87; 8:45 am]

BILLING CODE 6820-61-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Action; Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information:

(1) Type of submission;
(2) Title of Information Collection and applicable OMB Control Number and Form Number;
(3) Abstract statement of the need for and the uses to be made of the information collected;
(4) Type of Respondent;
(5) An estimate of the number of responses;
(6) An estimate of the total number of hours needed to provide the information;
(7) To whom comments regarding the information collection are to be forwarded; and
(8) The point of contact from whom a copy of the proposed information collection may be obtained.

This information collection is as follows:

(1) Revising an approved collection.
(2) "Parent Subsidiary Verification System," 0704–0236.
(3) The annual publication entitled "100 Companies Receiving the Largest Dollar Volume of Prime Contract Awards" provides total DoD awards reported during a fiscal year to a company and all of its subsidiaries. To ensure that the published data are accurate, a listing is sent to the companies likely to appear in this publication requesting information on their subsidiaries. The companies are not required to respond. This change is based on our FY 86 results which showed that we can get the same results with fewer companies surveyed.

(4) Business Firms.

(5) Current responses of 142, this is a reduction of 8 responses from 150.

(6) Current burden hours of 284, this is a reduction of 16 hours from 300 burden hours.

ADDRESSES: (7) Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

FOR FURTHER INFORMATION CONTACT: (8) A copy of the information collection proposal may be obtained from Mr. Vitiello, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

May 21, 1987.

[FR Doc. 87–12035 Filed 5–26–87; 8:45 am]

BILLING CODE 3810-01-M

### Defense Science Board Task Force on Detection and Neutralization of Illegal Drugs and/or Terrorist Devices; Change in Location

ACTION: Change in location of Advisory Committee Meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Detection and Neutralization of Illegal Drugs and/or Terrorist Devices scheduled for May 20–21, 1987 as published in the Federal Register (Vol. 52, No. 67, Page 11310, Wednesday, April 8, 1987, FR Doc. 87–7727) will be held at the RAND Corporation, Washington, D.C. In all other respects the original notice remains unchanged.

Linda M. Lawson,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

May 21, 1987

[FR Doc. 87–12024 Filed 5–26–87; 8:45 am]

BILLING CODE 3810-01-M

### Defense Science Board Task Force on Technology Base Management; Change in Location of Meeting

**ACTION:** Change in location of Advisory Committee Meeting notice.

**SUMMARY:** The meeting of the Defense Science Board Task Force on Technology Base Management scheduled for June 10–11, 1987 as published in the Federal Register (Vol. 52, No. 77, Page 13283, Wednesday, April 22, 1987, FR Doc. 87–8984) will be held at Palisades Institute, Crystal City, Arlington, Virginia. In all other respects the original notice remains unchanged.

Linda M. Lawson,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

May 21, 1987.

[FR Doc. 87–12025 Filed 5–26–87; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Army Science Board, Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 16–18 June 1987.

Time of Meeting: 0800–1700 hours each day.

Place: Carnegie-Mellon University, Pittsburgh, PA.

Agenda: The Army Science Board AD-Hoc Panel on Army Information Management Concepts and Architecture will meet for its report writing session. On the moring of the first day, the panel will review minutes and facts from previous briefings and discussions. During the afternoon of the first day and the following days the panel will be dedicated to outlining and drafting a written report for print. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsecitons 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sandra F. Gearhart,

*Administrative Assistant Army Science Board.*

[FR Doc. 87–11805 Filed 5–26–87; 8:45 am]

BILLING CODE 3710-08-M

## Department of the Navy

### Naval Research Advisory Committee; Closed Meeting

Notice was published May 11, 1987, at 52 FR 17626 that the Naval Research Advisory Committee Panel on the Navy's Role in the Air Defense Initiative will meet on May 27, 1987. The meeting location has been changed for the sessions scheduled from 10:00 a.m. through 12:00 Noon on May 27, 1987. The briefings scheduled during that time period will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. All other information in the previous notice remains effective.

Dated: May 20, 1987.

Harold L. Stoller, Jr.,

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87–11949 Filed 5–26–87; 8:45 am]

BILLING CODE 3810-AE-M

### Board of Advisors to the President, Naval War College, Newport, RI; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is given that the Board of Advisors to the President, Naval War College, will meet on June 4, 1987, in Room 210, Conolly Hall, Naval War College, Newport, Rhode Island. The meeting will commence at 8:30 a.m., and the purpose is to elicit the advice of the Board on educational doctrinal, and research policies and programs. The agenda will consist of presentations and discussions on the curriculum, programs and plans of the college, and is open to the public. For further information contact: Mrs. Mary Guimond, Executive Assistant to the Dean of Academics, Naval War College, Newport, Rhode Island 02841–5010. Telephone number (401) 841–3580.

Dated: May 20, 1987.

Harold L. Stoller, Jr.,

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87–11950 Filed 5–26–87; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

### Trigon Exploration Co., Inc.; et al.; Proposed Consent Order and Opportunity for Comments

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of proposed consent order and opportunity for comments.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces four proposed Consent Orders with Trigon Exploration Company, Inc. (Trigon) and Extex, Inc. for $348,774.60; Trigon and D. Bryan Ferguson for $144,311.60; Trigon and C. William Rogers for $144,311.59 and Trigon and Omni Drilling Partnership No. 1978-2 for $142,753.18 and provides an opportunity for public comments on the terms and conditions of the proposed Consent Order.

Comments By: June 26, 1987

**ADDRESS:** Send comments to Trigon Exploration Company, Inc., Comments, Office of the Solicitor, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** R. Suzanne Owens, Office of Solicitor (RG–43), Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office at (202) 586–2852.

**SUPPLEMENTARY INFORMATION:** On April 20, 1987, the ERA executed a proposed Consent Order with Trigon and Extex, Inc. and on April 21, 1987, the ERA executed proposed Consent Orders with Trigon and C. William Rogers, D. Bryan Ferguson, and Omni Drilling Partnership No. 1978–2. Under 10 CFR 205–199J(b), a proposed Consent Order which involves the sum of $500,000.00 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the Federal Register requesting comments concerning the proposed Consent Order. Although none of the proposed Consent Orders exceed $500,000.00, ERA is exercising its discretion to publish notice of the proposed agreements because the sum total of the proposed Consent Orders exceed $5000,000.00 and all the agreements arise out of a single audit. Although ERA has signed and tentatively accepted the proposed Consent Orders, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Orders, or issue the Consent Orders as signed.

#### I. Background

During the period June 1979 through January 21, 1981, Trigon was the operator of the A.D. LeBlanc No. 1 Well located in the Tigre Lagoon Field, Vermillion Parish, Louisiana. As a result, Trigon was a "producer" of crude oil, as defined in 10 CFR 212.31 and was subject to the provisions of the mandatory Petroleum Price Regulations

located at 10 CFR Part 212, Subpart D. Entex Inc., C. William Rogers, D. Bryan Ferguson, and Omni Drilling Partnership No. 1978–2 were working interest owners in the A.D. LeBlanc No. 1 Well and were also subject to the price regulations codified in 10 CFR Part 22 and antecedent regulations.

The ERA conducted an audit of the sales of crude oil from A.D. LeBlanc property. This audit concluded that these sales were made at prices which exceeded the maximum lawful ceiling prices provided by Subpart D. On August 30, 1985 DOE issued a Proposed Remedial Order (PRO) to Trigon. The PRO alleged that Trigon caused overcharges in the amount of $624,298.81 during the period attributable to Trigon's improper classification of production from the A.D. LeBlanc No. 1 Well as "newly discovered crude oil." The PRO order Trigon to refund the overcharge amount, plus interest, to DOE for proper distribution. Trigon filed a Notice of Objection to the PRO on October 24, 1985. Trigon's Statement of Objections (S/O) to the PRO was filed on December 5, 1985.

In its S/O, Trigon contended that crude oil extracted from the A.D. LeBlanc No. 1 Well during well testing procedures in 1978 did not constitute "production" within the meaning of 10 CFR 212.79(b), and therefore, subsequent production from this well qualified as "newly discovered crude oil." Trigon also contended that because it was a contract operator, it could not be held liable for the full amount of the overcharges. Trigon further asserted that it was in distressed financial circumstances and should not be held liable for the full amount of overcharges.

Omni Exploration, Inc., the largest working interest owner in the A.D. LeBlanc No. 1 Well filed for relief under Chapter 11 of the Bankruptcy Code on February 28, 1983. On January 31, 1984, the United States Bankruptcy Court of the Eastern District of Pennsylvania, issued an Order confirming the firm's plan of reorganization thereby discharging any actual or contingent claims against Omni Exploration, Inc.

Based on an analysis of Trigon's arguments and financial condition, the entire record in this proceeding, and the bankruptcy of Omni Exploration, Inc., and in light of the expense to the government associated with any additonal litigation, ERA believes that a total payment of $680,150.96 is a satisfactory compromise of the issues raised in the audit. Under the circumstances of this proceeding ERA also concluded it was appropriate to enter into separate consent orders with working interest owners in the A.D. LeBlanc No. 1 Well to resolve violations attributable to their respective shares of crude oil produced from this well.

## II. The Consent Orders

The proposed Consent Orders have been entered into by DOE and four of the working interest owners in the A.D. LeBlanc No. 1 Well in order to resolve all civil and administrative disputes, claims, and causes of action by DOE against Trigon and these working interest owners arising from DOE's audit of Trigon's compliance with the federal petroleum price and allocation regulations during the period June 1979 through January 21, 1981. Although Trigon and the working interest owners contend that in all respects they correctly construed and complied with applicable regulations, they have entered into these proposed Consent Orders to avoid possible further expenses and disruption of business. DOE believes the proposed Consent Orders are in the public interest and provide a satisfactory resolution of the issues raised by the audit.

## III. Refunds

Under the terms of the Consent Orders, Entex Inc. is required to pay the sum of $248,744.40 on or before the date of execution of its Consent Order. D. Bryan Ferguson and C. William Rogers each agreed to pay the sum of $60,129.67 on or before the date of execution of their respective Consent Orders and $84,161.82 two years from the date of execution of their respective Consent Orders. Omni Drilling Partnership 1978–2 agreed to pay $59,480.49 on or before the date of execution of its Consent Order and $83,272.69 two years from the date of execution of its Consent Order. The refund amounts will be deposited in a suitable account for appropppriate distribution by DOE.

## IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of these proposed Consent Orders to the address given above. The ERA will consider all comments it receives by 4:30 P.M., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f)

Issued in Washington, DC, on this 19th day of May 1987.

Marshall Staunton,

*Acting Solicitor, Office of the Solicitor, Economic Regulatory Administration.*

[FR Doc. 87-11954 Filed 5-26-87; 8:45 am]

BILLING CODE 6450-01-M

# Federal Energy Regulatory Commission

[Project Nos. 9099-001 et al.]

## Trans Mountain Construction Company, Inc., et al.; Surrender of Preliminary Permits

May 20, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

### 1. Trans Mountain Construction Company

[Project No. 9099-001]

Take notice that Trans Mountain Construction Company, permittee for the proposed Peru Creek Project No. 9099 requested that its preliminary permit be terminated. The preliminary permit was issued on August 22, 1985, and would have expired on July 31, 1988. The project would have been located on Peru Creek in Summit County, Colorado.

The permittee filed the request on April 28, 1987.

### 2. Red Bluff Water Power Control District and Prodek, Inc.

[Project No. 9075-001]

Take notice that Red Bluff Water Power Control District and Prodek, Inc., exemptees for the proposed Red Bluff Water Power Hydroelectric Project No. 9075, have requested that their exemption be terminated. The exemption was issued on August 30, 1985. The project would have been located on the Pecos River, in Reeves and Loving Counties, Texas and in Eddy County, New Mexico. No construction has commenced at this project.

The exemptee filed the request on February 2, 1987.

### 3. Tuolumne Regional Water District, County of Tuolumne, and Tuolumne County Water District No. 1

[Project No. 9525-001]

Take notice that the Tuolumne Regional Water District, County of Tuolumne, and Tuolumne County Water District No. 1, permittee for the proposed Mill Creek Project No. 9525 requested that its preliminary permit be

terminated. The preliminary permit was issued on January 28, 1986, and would have expired on December 31, 1988. The project would have been located on the Mill and Cascade Creeks in Tuolumne County, California.

The permittee filed the request on April 20, 1987.

**4. Tuolumne Regional Water District, County of Tuolumne, and Tuolumne County Water District No. 1**

[Project No. 9527-001]

Take notice that the Tuolumne Regional Water District, County of Tuolumne, and Tuolumne County Water District No. 1, permittee for the proposed Cow Creek Project No. 9527 requested that its preliminary permit be terminated. The preliminary permit was issued on January 27, 1986, and would have expired on December 31, 1988. The project would have been located on the Cow Creek in Tuolumne County, California.

The permittee filed the request on April 20, 1987.

**Standard Paragraphs:**

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New Applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-11973 Filed 5-26-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket Nos. CP87-313-000 et al.]

**Consolidated Gas Transmission Corp. et al.; Natural Gas Certificate Filings**

May 20, 1987.

Take notice that the following filings have been made with the Commission:

**1. Consolidated Gas Transmission Corporation**

[Docket No. CP87-313-000]

Take notice that on April 30, 1987, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87-313-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to render natural gas storage service for PennEast Gas Services Company (PennEast) under Applicant's Rate Schedule GSS of its FERC Gas Tariff, Volume No. 1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to render firm long-term storage service for PennEast, pursuant to the terms and conditions of Rate Schedule GSS of its FERC Gas Tariff, Volume No. 1, and a storage service agreement between Applicant and PennEast dated April 29, 1987, which is attached as Exhibit P to the application. Applicant proposes to render natural gas storage service on a firm basis with an annual storage capacity quantity of 10,000,000 dt equivalent of natural gas and a storage demand quantity of 100,000 dt equivalent of natural gas per day. Applicant proposes to provide the storage service for a primary term from April 1, 1988, the first day of the 1988 storage injection season, through March 31, 2011, and year-to-year thereafter.

Applicant proposes to render the storage service to PennEast under and in accordance with Applicant's Rate Schedule GSS of its FERC Gas Tariff, Volume No. 1, or any effective superseding rate schedule, as may be modified from time-to-time.

Applicant indicates that it would receive gas for PennEast's account to be injected into storage at the existing interconnection between Applicant's facilities and Taxas Eastern Transmission Corporation's (Texas Eastern) Measuring Station 931, referred to as the Leidy Connection and would deliver gas from storage for PennEast's account at the existing interconnection between Applicant's facilities and Texas Eastern's Measuring Station 082, referred to as the Oakford Connection. It is indicated that other receipt and delivery points may be used subject to the sole decision of Applicant and PennEast, respectively. Applicant states that it does not propose to construct or operate jurisdictional facilities by this application.

*Comment date:* June 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

**2. Consolidated Gas Transmission Corporation**

[Docket No. CP87-314-000]

Take notice that on April 30, 1987, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87-314-000 an application pursuant to section 7(c) of the Natural Gas Act for a certification pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the development of additional underground natural gas storage capacity at its existing Greenlick and Sharon Storage Pools, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate certain facilities and to increase the underground storage capacity in its existing Greenlick Storage Pool, located in Potter and Clinton Counties, Pennsylvania, and Sharon Storage Pool, located in Potter County, Pennsylvania.

Applicant proposes to drill ten new storage injection/withdrawal wells, and to construct storage gathering lines required to connect those wells into the existing pipeline system at Greenlick Storage Pool. Applicant also proposes to increase its existing storage capacity at Greenlick by 1,800 MMcf of top or working gas capacity.

Applicant states that the total storage capacity at Greenlick is currently 50,490 MMcf, of which 23,460 MMcf is injected base or cushion gas, and 27,030 MMcf is top gas, with an additional 3,570 MMcf of native gas remaining in the Pool. Applicant further states that, upon completion of the proposed facilities, as well as the non-jurisdictional dehydration facilities to be installed in 1988, the Greenlick Storage Pool would provide an additional 1,800 MMcf of top gas capacity, thereby increasing the pool's top gas capacity to 28,830 MMcf and the total storage capacity to 52,290 MMcf. Applicant indicates that the proposed facilities and increased capacity would increase Applicant's last-day withdrawal deliverability rate for Greenlick Storage Pool from its current level of 300,000 Mcf to 349,000 Mcf.

Applicant estimates that the proposed facilities at Greenlick Storage Pool would cost approximately $6,230,000, exclusive of filing fees. Applicant requests authorization to construct the proposed facilities in the spring and summer of 1988.

Applicant proposes, at the Sharon Storage Pool, to (a) install a 1,200 horsepower compressor facility and related equipment at the location of its former State Line Compressor Station, in Potter County, Pennsylvania; (b) to inject an additional 500 MMcf of base gas into the storage pool; (c) replace all the existing storage gathering lines in the pool, except Line No. 257-S, the main trunkline in the pool; and (d) recondition three existing storage wells. Applicant also proposes to increase the pool's top gas capacity by 1,700 MMcf.

Applicant states that the total storage capacity at Sharon is 2,300 MMcf, of

which 1,170 MMcf is injected base gas and 600 MMcf is top gas, with an additional 530 MMcf of native gas remaining in the pool. Applicant further states that upon completion of the proposed facilities, Applicant would inject an additional 500 MMcf of base gas, thus increasing the base gas level to 2,300 MMcf. It is submitted that the proposed facilities and the additional base gas would provide Applicant with an additional 1,700 MMcf of top gas capacity, thereby increasing the top gas level to 2,300 MMcf and the pool's total storage capacity to 4,500 MMcf. Applicant indicates that the proposed facilities and increased capacity would increase Applicant's last-day withdrawal deliverability rate for Sharon Storage Pool from its current level of 6,000 Mcf to 18,000 Mcf.

Applicant estimates that the proposed activities at Sharon Storage Pool would cost approximately $4,855,000, exclusive of filing fees. Applicant proposes to construct the facilities in the spring and summer of 1988.

Applicant states that the cost of the proposed facilities at Greenlick and Sharon Storage Pools would be financed from funds on hand and from funds to be obtained from Applicant's parent company, Consolidated Natural Gas Company.

Applicant submits that the additional storage capabilities would be utilized for Applicant's system-wide storage requirements and would in part provide Applicant with the capacity to render long-term firm storage service for PennEast Gas Services Company, as proposed in Docket No. CP87-313-000.

*Comment date:* June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 3. National Fuel Gas Supply Corporation

[Docket No. CP87-329-000]

Take notice that on April 30, 1987, as supplemented on May 11, 1987, National Fuel Gas Supply Corporation (Natural Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP87-329-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to replace existing facilities. National Fuel also requests, pursuant to section 7(b) of the Natural Gas Act, permission and approval to abandon the deteriorated facilities which would be replaced. National Fuel's proposal are more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel proposes to replace 13.4 miles of 12-inch bare steel pipeline, designated as Line M, in Victory, Rockland and Cranberry Townships, all in Venango County, Pennsylvania, with an equivalent length of 16-inch coated steel pipeline. National Fuel states that this is Phase II of a replacement program for the existing 12-inch bare steel line which was originally installed in 1944 and is a main line in National Fuel's system which carries gas from various interstate sources in Pennsylvania to local markets. It is asserted that the replacement of Line M is required due to the age of the bare pipeline and, further, to increase delivery capacity of the line allowing National Fuel to take greater advantage of its low-priced sources of supply. It is stated that the new replacement pipeline would be located approximately 20 feet from the existing pipeline, which would be abandoned in place.

National Fuel estimates the cost of the Line M replacement to be $3,561,914 which would be financed with internally generated funds and/or interim short-term bank loans.

*Comment date:* June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 4. Northern Natural Gas Company, Division of Enron Corp. Enron Gas Processing Company

[Docket No. CP88-5-002]

Take notice that on May 8, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), and Enron Gas Processing Company (EGP), 2223 Dodge Street, Omaha, Nebraska 68102 (collectively referred to herein as Petitioners), filed in Docket No. CP88-5-002 a joint petition to amend the order issued December 11, 1987, as amended, pursuant to Section 7(c) of the Natural Gas Act to authorize the exchange of natural gas and waiver of certain reporting requirements, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners stated that by order issued December 11, 1987, as amended, Northern was authorized, *inter alia*, to transport and deliver for sale to EGP (formerly named Northern Gas Products Company) a maximum of 62,400 Mcf of natural gas per day for fuel and shrinkage incident to the extraction of ethane at EGP's extraction plant at Bushton, Kansas.

It is stated that pursuant to an agreement dated March 31, 1987, which supersedes the original agreement between Northern and EGP dated June 28, 1967, the Petitioners propose to permit EGP the option to deliver to Northern thermally equivalent volumes of natural gas to compensate for those volumes of natural gas retained and utilized by EGP in its ethane extraction operation for shrinkage, fuel and other incidental uses (exchange-in-kind volumes). Such exchange-in-kind volumes would be delivered to Northern by EGP, or its designee, at the tailgate of EGP's Bushton plant, or at other mutually agreeable, points on Northern's pipeline system, it is stated. It is further stated that to the extent EGP delivers exchange-in-kind volumes to Northern at any point on Northern's pipeline system other than the tailgate of the Bushton plant, then EGP would pay transportation to Northern from such points to the Bushton plant in accordance with Northern's applicable transportation tariff.

It is requested that EGP be granted a limited-jurisdiction certificate authorizing EGP to exchange such exchange-in-kind volumes in interstate commerce with Northern. It is further requested that the Commission find that EGP's Bushton plant and its otherwise nonjurisdictional activities would not become subject to the Commission's jurisdiction by virtue of the proposed exchange-in-kind between EGP and Northern. It is also requested that EGP be granted a waiver of any requirement to comply with the Commission's Uniform System of Accounts and any other reporting requirements which might otherwise be applicable to EGP by virtue of EGP's acceptance of the limited-jurisdiction certificate.

The Petitioners also state that any transportation of the proposed exchange-in-kind volumes by Northern to the Bushton plant would be accomplished pursuant to Northern's open access transportation Rate Schedules FT-1 and IT-1 as appropriate.

*Comment date:* June 3, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

### 5. Northern Natural Gas Company, Division of Enron Corp. Enron Gas Processing Company

[Docket No. CP61-132-000]

Take notice that on May 8, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), and Enron Gas Processing Company (EGP), 2223 Dodge Street, Omaha, Nebraska 68102 (collectively referred to herein as Petitioners), filed in Docket No. CP61-132-000 a joint petition to amend the order issued December 28, 1962, in Docket No. CP61-132, pursuant to section 7(c) of the Natural Gas Act to

authorize, the exchange of natural gas and waiver of certain reporting requirements, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners stated that by order issued December 28, 1982, Northern was authorized, *inter alia,* to transport and deliver natural gas for sale to EGP (formerly named Northern Gas Products Company) for fuel and skrinkage incident to the extraction of certain hydrocarbons in its extraction plant at Bushton, Kansas.

It is stated that pursuant to an agreement dated April 1, 1987, which supersedes the original agreement between Northern and EGP dated October 28, 1980, the Petitioners proposed to permit EGP the option to deliver to Northern thermally equivalent volumes of natural gas to compensate for those volumes of natural gas retained and utilized by EGP for shrinkage, fuel and other incidental uses (exchange-in-kind volumes) within the hydrocarbon portion of the Bushton plant. Such exchange-in-kind volumes would be delivered to Northern by EGP, or its designee, at the tailgate of EGP's Bushton plant, or at other mutually agreeable, points on Northern's pipeline system, it is stated. It is further stated that to the extent EGP delivers exchange-in-kind volumes to Northern at any point on Northern's pipeline system other than the tailgate of the Bushton plant, then EGP would pay transportation to Northern from such points to the Bushton plant in accordance with Norther's applicable transportation tariff.

It is requested that EGP be granted a limited-jurisdiction certificate authorizing EGP to exchange such exchange-in-kind volumes in interstate commerce with Northern. It is further requested that the Commission find that EGP's Bushton plant and its otherwise nonjurisdictional activities would not become subject to the Commission's jurisdiction by virtue of the proposed exchange-in-kind between EGP and Northern. It is also requested that EGP be granted a waiver of any requirement to comply with the Commission's Uniform System of Accounts and any other reporting requirements which might otherwise be applicable to EGP by virtue of EGP's acceptance of the limited-jurisdiction certificate.

The Petitioners also state that any transportation of the proposed exchange-in-kind volumes by Northern to the Bushton plant would be accomplished pursuant to Northern's open access transportation Rate Schedules FT–1 and IT–1 as appropriate.

*Comment date:* June 3, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**6. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP84–668–002]

Take notice that on April 30, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102 filed in Docket No. CP84–668–002 a joint petition to amend the order issued April 5, 1985, in Docket No. CP84–668–000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Northwest Central Pipeline Company (Northwest Central) on an overrun basis in accordance with a December 18, 1986, gas amendatory agreement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Northern states, that by Commission order issued on April 5, 1985, it is authorized to transport, on an interruptible basis, up to 100,000 Mcf of natural gas per day for the account of Northwest Central pursuant to the provisions of the gas transportation agreement (Original Agreement) dated May 29, 1984, between Northern and Northwest Central. It is stated that Northern accepts such volumes from Northwest Central at the two existing interconnections between Northern and Northwest Central located in Barton County, Kansas. Northern Transports the gas it receives from Northwest Central in Barton County, Kansas, and redelivers thermally equivalent volumes for Northwest Central's account to the suction side of Enron Gas Product's Bushton Extraction Plant located in Ellsworth County, Kansas, it is stated. After the gas (delivered by Northern for Northwest Central's account) is processed, Northwest Central causes the residue volumes to be delivered to Northern for transportation and redelivery to Northwest Central at another point of interconnection between the respective systems of Northern and Northwest Central in Barton County, Kansas, it is further stated.

Northern proposes herein to transport volumes in excess of 100,000 Mcf per day for Northwest Central's account on an interruptible, overrun basis pursuant to all the terms of the Original Agreement amended by Amendment No. 1 dated December 18, 1986, between the parties (Amendment). According to the terms of the Amendment, Northern proposes to provide an overrun transportation service for natural gas delivered by Northwest Central in Barton County, Kansas, that are in excess of the currently authorized transportation quantity of 100,000 Mcf per day. Northern proposes to charge Northwest Central a rate for overrun service which is equivalent to the maximum rate on file with the Commission under Northern's Rate Schedule IT–1, currently 3.7 cents per MMBtu per 100 miles of haul. The proposed rate for the overrun service is said to be equal to the commodity rate charge for the presently authorized transportation of the contract quantity of 100,000 Mcf per day. Such proposed rates, it is said, are subject to the outcome of Northern's pending rate proceeding in Docket No. RP85–206–000.

*Comment date:* June 3, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**7. Northern Natural Gas Company Division of Enron Corp.**

[Docket No. CP87–324–000]

Take notice that on April 30, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–324–000 an application pursuant to section 7(c) of the Natural Gas Act, requesting authorization for the transportation of natural gas on an interruptible basis on behalf of Peoples Natural Gas Company, Division of Utilicorp United Inc. (Peoples), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern seeks authorization to transport up to 354,900 MMBtu of natural gas per day pursuant to a Gas Transportation Agreement dated April 2, 1987, as amended, April 29, 1987, from 15 existing points of receipt along Northern's system in the states of Kansas, Oklahoma, Texas and Iowa to 31 existing points of delivery to Peoples in the states of Nebraska, Iowa and Minnesota, as listed in attached Appendix. Northern proposes to charge Peoples rates based on 2.1 cents per 100 miles of haul for field zone transportation and 43.37 cents for transportation in the market zone which rates are equivalent to the effective rate under Northern's Rate Schedule IT–1. Northern states that it would also charge 1.52 cents per Mcf, adjusted for heating content, for the funding of the Gas Research Institute. Northern states that it proposes to provide the requested service for a primary term of two years and subsequent two-year terms upon

mutual agreement of Peoples and Northern no later than 120 days prior to the expiration of the primary term.

**Appendix**

*Northern Receipt Points*

1. NWC—Barton C Line, Barton County, KS
2. CCPL—Roger Mills County, Roger Mills County, OK
3. PEPL—Mullinville, Kiowa County, KS
4. ONG I—Woodward County, Woodward County, OK
5. ONG II—Woodward County, Woodward County, OK
6. ONG—Roger Mills County, Roger Mills County, OK
7. ANR—Greensburg, Kiowa County, KS
8. Diamond Shamrock—McKee Plant, Moore Country, TX
9. Delhi—Beaver County, Beaver County, OK
10. Ladd—Ozona, Crockett County, TX
11. NGP—Bushton Outlet, Ellsworth County, KS
12. Prairie States—Beaver County, Beaver County, OK
13. H&L Operating—Ochiltree, Ochiltree County, TX
14. H&L—Beaver County, Beaver County, OK
15. NBPL—Ventura, Hancock County, IA

*Peoples Delivery Points*

1. Rochester #1—TBS, Olmsted County, MN
2. Eveleth Taconite—TBS, St. Louis County, MN
3. Hanna Mining #2—TBS, St. Louis County, MN
4. Erie Mining—TBS, St. Louis County, MN
5. Inland Steel—TBS, St. Louis County, MN
6. U.S. Steel—TBS, St. Louis County, MN
7. Fort Crook #4—TBS, Sarpy County, NE
8. Council Bluffs #1—TBS, Pottawattomie County, IA
9. Dubuque #1—TBS, Dubuque County, IA
10. Dubuque #1A—TBS, Dubuque County, IA
11. Spencer #B—TBS, Clay County, IA
12. Newton #1—TBS, Jasper County, IA
13. Newton #1A—TBS, Jasper County, IA
14. Webster City #1—TBS, Hamilton County, IA
15. Rosemont #1C—TBS, Dakota County, MN
16. Bellevue #1—TBS, Sarpy County, NE
17. Fort Crook #1—TBS, Sarpy County, NE
18. Schuyler #2—TBS, Colfax County, NE
19. Rochester #1—TBS, Olmsted County, MN
20. Worthington #1—TBS, Nobles County, MN
21. Rosemont #1—TBS, Dakota County, MN
22. Fairbury #2—TBS, Jefferson County, NE
23. Fairbury #3—TBS, Gage County, NE
24. Fort Crook #1A—TBS, Sarpy County, NE
25. Fort Crook #6—TBS, Sarpy County, NE
26. Valley #1B—TBS, Douglas County, NE
27. Spencer #1—TBS, Clay County, NE
28. Lehigh #3—TBS, Webster County, IA
29. Cleveland-Cliffs—TBS, Marquette County, MN
30. Erie Mining #2—TBS, St. Louis County, MN
31. Reserve Mining #1—TBS, Lake County, MN

*Comment date:* June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

## 8. PennEast Gas Services Company Texas Eastern Transmission Corporation

[Docket No. CP87-312-000]

Take notice that on April 30, 1987, PennEast Gas Services Company (PennEast) and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP87-312-000 a joint application pursuant to section 7(c) of the Natural Gas Act for a certificater of public convenience and necessity authorizing PennEast to provide long-term firm storage and firm transportation services, to develop and operate the North Summit Storage Pool, located in Fayette County, Pennsylvania, and to construct and operate pipeline facilities, and authorizing Texas Eastern to render a compression and metering service to PennEast, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is indicated that PennEast is a general partnership organized by Consolidated Gas Transmission Corporation (Consolidated) and Texas Eastern Gateway, Inc., an affiliate of Texas Eastern.

PennEast requests authorization to render a firm storage service pursuant to a new Rate Schedule PSS to the following customers (Buyers) in the quantities indicated below:

| Buyer | Maximum storage quantity (dt equivalent) | Maximum daily withdrawal quantity (dt per day equivalent) |
|---|---|---|
| *Phase III—Commencing April 1, 1988:* | Commencing 3/1/88 | Commencing 11/15/88 |
| Bristol & Warren Gas Company | 81,000 | 913 |
| The Brooklyn Union Gas Company | 1,500,000 | 15,000 |
| Central Hudson Gas & Electric Corp. | 400,000 | 4,000 |
| Colonial Gas Company | 206,790 | 2,067 |
| Long Island Lighting Company | 1,500,000 | 15,000 |
| Town of Middleborough, MA | 16,500 | 165 |
| New Jersey Natural Gas Company | 500,000 | 50,000 |
| Penn Fuel Gas, Inc. | 200,000 | 2,000 |
| The Pequot Gas Company | 12,000 | 125 |
| Providence Gas Company | 1,000,000 | 10,000 |
| Public Service Electric & Gas Company | 3,068,400 | 30,084 |
| South County Gas Company | 24,800 | 248 |
| Undesignated | 1,550,800 | 15,508 |
| Incremental total | 10,000,000 | 100,000 |
| *Phase III—Commencing April 1, 1989:* | Commencing 4/1/89 | Commencing 11/15/89 |
| Central Hudson Gas & Electric Corp. | 200,000 | 2,000 |
| Elizabethtown Gas Company | 1,000,000 | 10,000 |
| Long Island Lighting Company | 1,500,000 | 15,000 |
| Town of Middleborough, MA | 5,200 | 52 |
| New Jersey Natural Gas Company | 1,000,000 | 10,000 |
| Penn Fuel Gas, Inc. | 100,000 | 1,000 |
| Incremental Total | 3,805,200 | 38,052 |
| *Phase III—Commencing April 1, 1990:* | Commencing 4/1/90 | Commencing 11/15/90 |
| Consolidated Edison Company of New York, Inc. | 2,000,000 | 20,000 |
| Long Island Lighting Company | 2,000,000 | 20,000 |
| Town of Middleborough, MA | 5,200 | 52 |
| New Jersey Natural Gas Company | 2,000,000 | 20,000 |
| Penn Fuel Gas, Inc. | 100,000 | 1,000 |
| Incremental total | 6,105,200 | 61,052 |
| Aggregate total | 19,910,400 | 199,104 |

PennEast states that the Buyers have subscribed to the proposed PSS storage service by executing precedent agreements, attached as Exhibit I to the application. PennEast further states that the proposed storage service would commence on April 1, 1988, 1989, or 1990 (depending on when each Buyer elected to subscribe) and would continue for a primary term ending on March 31, 2011.

It is indicated that the proposed service would be based upon 10 Bcf of storage capacity to be developed by PennEast at the North Summit Storage Pool located in Fayette County, Pennsylvania, and in combination with the purchase by PennEast of 10 Bcf of storage service from Consolidated.

PennEast proposes on behalf of the subscribing Buyers to receive gas from the Buyers at the receipt points specified in the service agreement and inject such gas into PennEast's storage capacity, and withdraw gas from PennEast's

storage capacity and deliver such gas to Buyer at the delivery points specified in the service agreement. It is indicated that when capacity is available on PennEast's system for receipt from or for the account of Buyer of storage gas during each contract year, PennEast would receive from or for the account of Buyer quantities of gas and inject into storage for Buyer's account such quantities of gas less company use gas. Further, it is indicated that PennEast would withdraw from storage for Buyer, at Buyer's request, quantities of gas from Buyer's storage inventory up to Buyer's maximum daily withdrawal quantity (and such additional quantity as PennEast in its judgement is able to withdraw) and deliver to or for the account of Buyer such quantities less company use gas.

PennEast also proposes to render long-term firm transportation service for the Buyers in accordance with PennEast's firm transportation Rate Schedule T–1. PennEast proposes to transport on a daily basis natural gas up to the quantities indicated below:

| Buyer | Contract demand quantity (dt per day equivalent) |
|---|---|
| *Beginning November 15, 1988:* | |
| Bristol & Warren Gas Company | 788 |
| The Brooklyn Union Gas Company | 89,542 |
| Central Hudson Gas & Electric Corp | 8,909 |
| Colonial Gas Company | 2,004 |
| Long Island Lighting Company | 39,847 |
| Town of Middleborough, MA | 181 |
| New Jersey Natural Gas Company | 39,883 |
| Penn Fuel Gas, Inc | 1,923 |
| The Peguot Gas Company | 122 |
| Providence Gas Company | 9,684 |
| Public Service Electric & Gas Company | 129,164 |
| South County Gas Company | 240 |
| Undesignated | 15,034 |
| Incremental Total | 302,128 |
| *Beginning November 15, 1989:* | |
| Central Hudson Gas & Electric Corp | 1,911 |
| Elizabethtown Gas Company | 19,694 |
| Long Island Lighting Company | 14,436 |
| Town of Middleborough, MA | 90 |
| New Jersey Natural Gas Company | 9,699 |
| Penn Fuel Gas, Inc | 965 |
| Incremental Total | 46,705 |
| *Beginning November 15, 1990:* | |
| Consolidated Edison Company of New York, Inc | 18,454 |
| Long Island Lighting Company | 19,577 |
| Town of Middleborough, MA | 51 |
| New Jersey Natural Gas Company | 19,520 |
| Penn Fuel Gas, Inc | 965 |
| Incremental Total | 58,567 |
| Aggregate Total | 436,400 |

It is indicated that PennEast would render the jurisdictional long-term firm storage services by means of the storage capacity provided by the development of the new North Summit Storage Pool combined with storage capacity purchased from Consolidated and the facilities owned by Texas Eastern, the incremental pipeline facilities proposed in the Capacity Restoration Program in Docket No. CP87–92–001, and pipeline facilities proposed herein to be constructed by PennEast in conjunction with Texas Eastern's main transmission system.

PennEast proposes to develop the North Summit production pool for storage purposes, located in Fayette Country, Pennsylvania. PennEast proposes to construct and operate the following facilities in 1988 and 1989 at North Summit Storage Pool to enable it to render the proposed Phase II–1989 services:

Recondition twelve existing wells and drill eight new wells for storage injection/withdrawal purposes.

Construct 5.2 miles of 6, 8, 10, 12, 16, and 20-inch pipeline and related and appurtenant facilities to connect 12 storage injection/withdrawal wells.

North Summit Compressor Station—construct dehydration, piping, and M & R facilities and install 3,000 horsepower.

Construct 2.48 miles of 20-inch transmission pipeline to connect North Summit Compressor Station to the pipeline system of Texas Eastern in Fayette County, Pennsylvania.

Inject approximately 6 Bcf of base gas at North Summit Storage Pool.

PennEast proposes to construct and operate the following facilities in 1990 to complete the development of North Summit Storage Pool and enable it to render the proposed Phase III–1990 services:

Recondition and equip seven existing wells and drill one new well for observation purposes, and construct 1.6 mile of 6, 8, and 10-inch pipeline and related and appurtenant facilities to connect eight storage injection/withdrawal wells.

North Summit Compressor Station—install remaining 3,000 horsepower.

Inject approximately 4 Bcf of base gas at North Summit Storage Pool.

It is indicated that the North Summit Storage Pool would have a total capacity of 23 Bcf of gas consisting of 11.5 Bcf of base gas (1.5 Bcf of native reserves and 10 Bcf of injected base gas) and 11.5 Bcf of top gas capacity. It is further indicated that, upon total development, the storage pool would be designed to deliver 105 MMcf of gas per day at a top gas inventory of 11.5 Bcf, with a 6,600 HP compressor station and 20 active injection and withdrawal wells. PennEast states that it would utilize 10 Bcf of the pool's top gas capacity. PennEast further states that it would own the 1.5 Bcf of native reserves remaining in place at the pool. PennEast requests authorization to lease the 10 Bcf of natural gas which it would inject as base gas at the North Summit Pool from CNG Storage Service Company (CNG Storage), a new wholly-owned subsidiary to be created by Consolidated Natural Gas Company, Consolidated's parent company. PennEast submits that it and CNG storage would enter into a lease providing for this arrangment which would be filed in the near future.

It is indicated that the lease would have a primary term from the date of the first delivery of gas through March 31, 2011, and year-to-year thereafter. Further, it is indicated that PennEast would pay an initial rental fee of $.0333 per dt through December 31, 1995, with the monthly rental fee to range between $.0250 and $.0416 per dt for the remainder of the term, to be escalated by a factor tracking the prime commercial rate of interest. PennEast submits that the 10 Bcf of base gas would be delivered over two injection seasons, with 6 Bcf to be delivered in 1989 and 4 Bcf in 1990. PennEast states that it would assume all risk of loss of the base gas during the term of the lease and would have a right of first refusal to purchase the base gas upon termination of the lease. PennEast states that it would return an equivalent quantity of natural gas to CNG Storage over a three year period if PennEast does not purchase the gas.

It is submitted that PennEast's storage facilities would be constructed and operated by Consolidated pursuant to a Construction, Operation and Maintenance agreement between PennEast and Consolidated attached as Exhibit M to the application.

PennEast proposes to construct and operate the following pipeline facilities:

*Phase I—1988*

Convert four 1,100 HP reciprocating units to clean-burn operation at Texas Eastern's Station 28 (Lambertville) Hunterdon County, New Jersey.

Install measuring and regulating facilities at Texas Eastern's M & R Station 058, Richmond County, New York.

*Phase II—1989*

6.00 miles of 36-inch pipeline in conjunction with Texas Eastern's existing system in Montgomery County, Pennsylvania.

Install up to 8,000 clean-burn reciprocating horsepower at Texas Eastern's Station 28 (Lambertville) Hunterdon County, New Jersey.

Install up to 11,000 HP gas turbine/compressor at Station 22A (Bedford), Bedford County, Pennsylvania.

*Phase III—1990*

10.00 miles of 36-inch pipeline in conjunction with Texas Eastern's system in Montgomery County, Pennsylvania.

Install measuring and regulating facilities at Texas Eastern's M & R Station 068, Richmond County, New York.

PennEast states that its pipeline facilities would be constructed and operated by Texas Eastern pursuant to a Construction, Operation and Maintenance agreement between PennEast and Texas Eastern.

It is estimated that the total cost of the proposed storage and pipeline facilities would be $6,366,000 in 1988, $63,820,000 in 1989 and $26,343,000 in 1990 for a total of $96,529,000. It is further estimated that additional costs would be allocated from Docket No. CP87-92-001 in the amount of $39,269,800. PennEast states that it would finance the proposed facilities with a 75%/25% debt/equity structure.

PennEast states that Rate Schedule PSS provides for: (1) a monthly maximum daily withdrawal quantity (MDWQ) charge, (2) a monthly space charge, (3) commodity injection and withdrawal charges, and (4) an authorized overrun quantity charge. PennEast further states that, during periods April 1, 1989, to November 15, 1989, and April 1, 1990, to November 15, 1990, PennEast would charge only those customers who are increasing their maximum storage quantities an interim storage demand charge. It is indicated that the MDWQ, space, injection and withdrawal charges and authorized overrun quantity charge each incorporate, as an "as billed" component the similar charges billed to PennEast under Consolidated's Rate Schedule GSS. PennEast requests authorization to flow through all of Consolidated's storage charges under Rate Schedule GSS incurred by PennEast pursuant to the storage agreement between Consolidated and PennEast, attached in Exhibit H of the application. PennEast states that it is purchasing the GSS service directly from Consolidated, on behalf of PennEast's customers. PennEast also requests that the Commission waive §§ 154.38(d)(3) and 154.63 of the Regulations to permit the tracking of changes in Consolidated's storage charges in accordance with the provisions of PennEast's proposed Rate Schedule PSS.

PennEast proposes the rates shown in Exhibit P(4) of the application be accepted as initial rates for service under Rate Schedule PSS, T-1 and T-2 as of effective date of April 1, 1988, November 15, 1988, April 1, 1989, November 15, 1989, and April 1, 1990. PennEast also requests that the Commission, as part of the order granting a certificate of public convenience and necessity to PennEast; grant approval to adjust the PSS rates effective November 15, 1990, to reflect changes in actual costs and contractual quantities which result from the final phases of construction under the PSS program.

PennEast states that, in view of the lack of historical volumes for Rate Schedules T-1 and T-2, it has not designed rates for this service based upon allocated cost. PennEast submits that the lack of historical information regarding the potential use of the T-1 and T-2 service is sufficient good cause as to warrant the waiver of § 284.7(d)(2) for a limited term, provided appropriate refunds are made to the customers. Accordingly, PennEast proposes to renew its request filed in Docket No. CP87-4-000 for waiver by the Commission of the requirements of § 284.7(d)(2) for a limited term, but to condition such waiver to require PennEast to file no later than fifteen months from the commencement of Phase II of the SS-1 service as proposed in Docket No. CP87-92-000, as amended section 4(e), an initial rate filing utilizing a based period which shall be the first 12 months following the in-service date of Phase II of the SS-1 service.

Texas Eastern requests authorization to receive, measure, compress and deliver gas on behalf of PennEast as contemplated by the pro-forma gas Compression and Metering Service agreement between Texas Eastern and PennEast attached as Exhibit P(5), Schedule 3 of the application. It is indicated that Texas Eastern, as operator of the jointly owned facilities proposed in Docket No. CP87-92-001 and facilities proposed herein, would charge PennEast the incremental operation and maintenance expenses incurred by Texas Eastern. Texas Eastern requests that the rates shown in Exhibit P(5) of the application be accepted as initial rates for such compression and metering service as of the date indicated in the agreement. It is further indicated that this agreement would reflect a change in ownership originally set forth in Docket No. CP87-92-000, whereby PennEast was to make a contribution of aid of construction but Texas Eastern would own the facilities.

*Comment Date:* June 3, 1988, in accordance with Standard Paragraph F at the end of this notice.

**9 Tennessee Gas Pipeline Company**

[Docket No. CP88-245-001]

Take notice that on May 4, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-245-001 a petition to amend the order issued May 24, 1988, in Docket No. CP88-245, pursuant to Section 7(c) of the Natural Gas Act so as to authorize an extension in the contract underlying the existing transportation service, establish a new firm transportation quantity, and certain other modifications designed to increase the flexibility of the service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it is authorized to transport up to 510,000 Mcf per day (Mcfd) on a firm basis for Trunkline Gas Company (Trunkline) from the Tennessee-Trunkline interconnection at Centerville, St. Mary Parish, Louisiana to a Tennessee-Trunkline interconnection at Kinder, Jefferson Davis Parish Louisiana. Tennessee further states that there is also an authorized alternate receipt point in St. Mary Parish Louisiana and an authorized alternate redelivery point in Vermilion Parish Louisiana. Tennessee explains that the transportation service is rendered pursuant to a June 18, 1986, gas transportation agreement which is on file with the Commission as Rate Schedule T-11 in Tennessee's FERC Gas Tariff. It is indicated that Tennessee's transportation service assists Trunkline in receiving into its main transmission system volumes of gas which Trunkline purchases in the eastern areas of offshore Louisiana and then subsequently transports to shore through its Terrebonne system.

Tennessee notes that the term of the underlying transportation agreement expires November 1, 1988, and that to assure continuation of the service, and to make certain modifications in the service, Trunkline and Tennessee have executed an amendment to the original agreement which is dated May 1, 1987. In accordance with the May 1, 1987 amendment Tennessee requests authority to:

(1) Extend the term of transportation service to and including October 31, 1997;

(2) Establish a firm transportation quantity (FTQ) equal to 522,750 dakatherms per day (dtd);

(3) Reduce the FTQ is accordance with Trunkline's option under the amended contract to convert a portion of firm service to interruptible service;

(4) Receive as part of the FTQ gas purchased by Trunkline as well as gas which Trunkline transports for third parties, and

(5) Provide interruptible service for Trunkline to the extent Trunkline exercises its option to convert firm transportation to interruptible transportation.

Tennessee asserts that no new facilities would be required to implement the amendment and that the receipt and delivery points would not change.

For any interruptible service which may be provided to Trunkline, Tennessee proposes to charge 7.79 cent per dt. In addition Tennessee proposes that Trunkline compensate it for fuel use and lost and unaccounted for by providing Tennessee each day with 0.5 percent of the volumes tendered for transportation. Provided that Trunkline withdraws its application pending in Docket No. CP86-426-000, Tennessee also proposes to delete its minimum quantity charge effective November 1, 1987.

*Comment Date:* June 3, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**Transcontinental Gas Pipe Line Corporation**

[Docket No. CP86-597-001]

Take notice that on May 4, 1987, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-597-001 an amendment to its pending application filed in Docket No. CP86-597-000 pursuant to section 7(c) of the Natural Gas Act so as to reflect a change in the proposed facilities required to render the proposed firm transportation service for South Jersey Gas Company (South Jersey), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Transco States that, only julyb 1, 1987, it filed an application in Docket No. CP86-597-000 for authority to provide a firm transportation service of up to the dekatherm (dt) equivalent of 5,500 Mcf of natural gas per day and to construct and operate 1.25 miles of related pipeline loop facilities. Transco states that the recent withdrawal of the proposed Transylvania Gas Pipeline Company, Inc. proposal in Docket No. CP86-333-000 eliminated certain proposed facilities from Transco's Leidy Line which would have functioned in conjunction with the facilities proposed in the application in the instant proceeding. Accordingly, it is stated, Transco has determined that, in order to render the firm transportation service for South Jersey, it would be necessary to construct 0.9 miles of 30-inch pipeline loop in Luzerne County, Pennsylvania, in lieu of the facilities originally proposed in the application. It is stated that, in order to take advantage of economies of scale presently available with the expansion of the Leidy Line, the newly-proposed facilities are anticipated ultimately to operate in conjunction with the facilities proposed in Transco's recent SS-1 Storage Service application pending in Docket No. CP87-190-000.

*Comment Date:* June 3, 1987, in accordance with the first subpargraph of Standard Paragraph F at the end of this notice.

**Standard Paragraphs:**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11971 Filed 5-26-87; 8:45 am]

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[Docket Nos. CP87-336-000 et al.]

**Mountain Fuel Resources, Inc., et al.; Natural Gas Certificate Filings**

May 19, 1987.

Take notice that the following filings have been made with the Commission:

**1. Mountain Fuel Resources, Inc.**

[Docket No. CP87-336-000]

Take notice that on May 4, 1987, Mountain Fuel Resources, Inc. (MFR), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP87-336-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a receipt point under the authorization issued to MFR in Docket No. CP82-491-000, for natural gas transported on behalf of Northwest Pipeline Corporation (Northwest) all as more fully set forth in the request which is on file with the Commission and open to public inspection.

MFR proposes to add the F. H. Ranch No. 1 well (R. H. Ranch) receipt point, located on its Main Line No. 68 in Garfield County, Colorado, as a receipt point under its Rate Schedule X-28, in order to continue the transportation of Natural Gas on behalf of Northwest in accordance with the transportation authorization granted to MFR in the Commission Order dated September 30, 1981, in Docket No. CP80-144-000. MFR states that MFR has transported natural gas from the R. H. Ranch receipt point since October 3, 1985, pursuant to an amendment dated August 6, 1985, to Gas Transportation and Exchange Agreement between MFR and Northwest dated July 3, 1980 (Agreement). MFR explains that the transportation of natural gas for Northwest from the R. H. Ranch receipt point has been provided on a "Grandfathered" basis since October 9, 1985, and would terminate on October 3, 1987.

Further, MFR states that during 1986, it transported and average of 121 Mcf of gas per day for Northwest from the R. H. Ranch receipt point and that the continued transportation of this small quantity of natural gas under its Rate Schedule X-28, which comprises the Agreement, would not cause MFR to

exceed the certificates maximum daily quality of 15,000 Mcf of gas per day.

*Comment date:* July 7, 1987, in accordance with Standard Paragraph G at the end of this notice.

**2. Columbia Gulf Transmission Company and Texas Eastern Transmission Corporation**

[Docket No. CP77-494-006]

Take notice that on April 24, 1987, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston Texas 77001, and Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252 (Petitioners), filed in Docket No. CP77-494-006 a petition to amend the order issued November 2, 1977, in Docket No. CP77-494-000, as amended, pursuant to section 7(C) of the Natural Gas Act to authorize transportation of additional source of natural gas supplies, within authorized contract demand levels, for Texas Eastern; to authorize and additional point of receipt in St. Mary Parish, Louisiana; and to authorized the balancing of the gas transported on a thermal basis rather than a volumetric basis, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by Commission order issued November 2, 1977, as amended, Columbia Gulf is authorized to transport a contract demand volume of up to 40,000 Mcf of natural gas per day produced in Eugene Island Blocks (EI) 333 and 256 and South Marsh Island Block 143 Platform B and 142 Platform A, offshore Louisiana. Petitioners states that the gas is made available to Columbia Gulf at the terminus of the Sea Robin Pipeline System near Erath, Vermilion Parish, Louisiana, and equivalent quantities are redelivered to Texas Eastern, less 0.5 percent for fuel and gas costs, at a point in St. Landry Parish, Louisiana, at which Texas Eastern's and Columbia Gulf's pipeline interconnect. It is stated that Texas Eastern has contracted for additional sources of gas from EI Blocks 337, 181, 182 and 313 Platform B, and East Cameron Block 336, offshore Louisiana, and from the Atchafalaya Bay Field Area, St. Mary Parish, Louisiana. Petitioners thus propose to include these volumes in the transportation arrangement.

The quantities from East Cameron Area Block 336, offshore Louisiana, are proposed to be transported pursuant to terms of and amendment to the June 16, 1977, transportation agreement between Columbia Gulf and Texas Eastern, dated July 22, 1982, as amended by amendatory letter dated November 19, 1984; the volumes from Eugene Island Blocks 337, 181, 182 and 313 Platform B, offshore Louisiana, proposed to be transported pursuant to the terms of an amendment to the agreement dated April 1, 1984; and volumes from the Atchafalaya Bay Filed Area, St. Mary Parish, Louisiana, proposed to be transported pursuant to the terms of an amendment to the agreement dated September 12, 1984. Petitioners further propose, pursuant to the amendment dated September 12, 1984, to add a point of receipt at the discharge side of Exxon Company U.S.A.'s Garden City Gas Processing Plant in St. Mary Parish, Louisiana, at which point the quantities from the Atchafalaya Bay filed Area will be delivered to Columbia Gulf by Monterey Pipeline Company for the account of Texas Eastern. Petitioners also propose, pursuant to the terms of the amendment dated April 1, 1984, to convert the balancing of quantities transported to thermal basis rather than a volumetric basis.

*Comment date:* June 2, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**3. National Fuel Gas Supply Corporation**

[Docket No. CP87-330-000]

Take notice that on April 30, 1987, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP87-330-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales tap facilities connecting its pipelines with those of its affiliate, National Fuel Gas Distribution Corporation (Distribution) under authorization issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National proposes to construct sales top to facilities in the towns of Edinboro, Erie County; Brookville, Jefferson County; Stoneboro, Mercer County; Sigel, Jefferson County; Vowinckel, Forest County; Waterford, Jefferson County; Lakewood, Jefferson County; Clarion, Allegany County; Norwich Township, McKean County; Wattsburg, Erie County; and Reynoldsville, Jefferson County, Pennsylvania, as feeds to Distribution in order to serve additional residential customers. National states that the proposed deliveries would have minimal impact on its peak and annual deliveries and entitlements of Distribution.

*Comment date:* July 7, 1987, in accordance with Standard Paragraph G at the end of this notice.

**4. Paiute Pipeline Company and Southwest Gas Corporation**

[Docket No. CP87-309-000]

Take notice that on April 28, 1987, Paiute Pipeline Company (Paiute) and Southwest Gas Corporation (Southwest), P.O. Box 15015, Las Vegas, Nevada 89114, jointly referred to as Applicants, filed in Docket No. CP87-309-000 a joint application pursuant to section 7 of the Natural Gas Act and Part 157 of the Commission's Regulations for (1) a certificate of public convenience and necessity authorizing the acquisition and operation by Paiute of facilities from Southwest and the transportation and sale of natural gas for resale in interstate commerce formerly performed by Southwest, (2) permission and approval for Southwest to abandon such facilities and service's and (3) a blanket certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce by Paiute pursuant to Subpart G of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission.

Applicants state that, as part of a corporate restructuring, Southwest proposes to transfer, at the net depreciated book cost, to Paiute all of the jurisdictional natural gas facilities and properties now owned, leased, and operated by Southwest along its northern Nevada system. Paiute proposes to continue all jurisdictional sales and services now rendered by Southwest along its northern Nevada system, and to continue operation of the jurisdictional facilities to be required, in accordance with the terms of the existing certificates of public convenience and necessity issued to Southwest. Southwest would retrain all non-jurisdictional facilities and properties along its northern Nevada system, and continue to perform all non-jurisdictional services, pertaining to the local distribution of natural gas. Paiute proposes to initiate sales for resale of natural gas to Southwest Gas Corporation-Northern Nevada and Southwest Gas Corporation-Northern California. Southwest also requests permission and approval to abandon its previously certificated facilities, services, and operations along its northern Nevada system except for its Rate Schedule X-1 sale to El Paso Natural Gas Company.

In addition, Paiute requests that the Commission issue a blanket certificate

of public convenience and necessity authorizing Paiute to transport natural gas in interstate commerce in accordance with the Commission's Regulations promulgated in Order Nos. 436, *et al.* Paiute states that it would comply with the conditions set forth in Subpart A of Part 284 of the Commission's Regulations.

Paiute proposes to adopt Original Volume No. 1 of Southwest's presently effective FERC Gas Tariff, subject to modifications to conform the tariff with the proposed new transportation services and the Commission's Regulations adopted in Order Nos. 436, *et al.*, According to the application, service to existing jurisdictional customers of Southwest would continue to be billed at the rates and charges specified in the rate schedule of Southwest that are to be adopted by Paiute.

Applicants allege that the proposed corporate restructuring and the requested authorizations would promote rate making efficiency, lead to greater use of the system facilities by means of self-implementing, nondiscriminatory transportation services, enhance operational flexibility and efficiency, and enable Applicants to ensure adequate natural gas service at the lowest reasonable cost.

*Comment date:* June 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

**5. Texas Gas Transmission Corporation and ANR Pipeline Company**

[Docket No. CP87-307-000]

Take notice that on April 27, 1987, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, and ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP87-307-000 a joint application pursuant to section 7(b) of the Natural Gas Act for authorization permitting and approving the abandonment of ANR's purchase of gas from Texas Gas under Texas Gas' Rate Schedule CD-3, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas and ANR state that Texas Gas was authorized to sell gas to ANR pursuant to a Commission order issued October 1, 1954 in Docket No. G-2311, *et al.* (13 F.P.C. 380) and that under the current service agreement, executed October 23, 1970, Texas Gas is authorized to sell up to 50,000 Mcf of natural gas per day to ANR at a point of interconnection near Slaughters, Kentucky. It is further stated that the primary term of the service agreement expires on October 31, 1987. It is indicated that pursuant to the agreement, ANR has provided written notice to Texas Gas that ANR is terminating the service agreement effective October 31, 1987. It is explained that neither Texas Gas nor ANR is seeking authorization to abandon any facilities. Texas Gas and ANR request that the Commission issue the abandonment authorization necessary to reflect the expiration of the sales contract between Texas Gas and ANR.

It is asserted that ANR's sales have declined dramatically in recent years and that deliverability on ANR's system far exceed current and projected future demands. Indicative of this situation, ANR and Texas Gas note that ANR purchased very small quantities of gas from Texas Gas in 1985, no gas in 1986, and anticipates no gas purchase from Texas Gas in 1987. ANR and Texas Gas assert that the requested abandonment would permit ANR to permanently discontinue purchasing gas it no longer requires and relieve it from associated demand charge and minimum bill obligations in excess of $7,000,000 per year.

*Comment date:* June 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

**6. Williams Natural Gas Company**

[Docket No. CP-87-301-000]

Take notice that on April 22, 1987, Williams Natural Gas Company (Applicant), formerly Northwest Central Pipeline Corporation P.O. Box 3288 Tulsa, Oklahoma 74101, filed in Docket No. CP-87-301-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment in place of the Matfield compressor station located in Chase County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant seeks authority to abandon in place six obsolete 1000 horsepower horizontal compressor units and appurtenant facilities installed at the Matfield station in 1929 and 1930. Applicant states that due to declining volumes in the Pampa field, it is no longer economical or necessary to operate the Matfield station.

Applicant further states that the cost of the proposed abandonment would be approximately $16,000 with an estimated salvage value of $50,000.

*Comment date:* June 2, 1986, in accordance with Standard Paragraph F at the end of this notice.

**Standard Paragraphs:**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

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authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11972 Filed 5-26-87; 8:45 am]

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[Docket Nos. ER87-433-000 et al.]

## Otter Tail Power Company et al.; Electric Rate and Corporate Regulation Filings

May 20, 1987.

Take notice that the following filings have been made with the Commission:

### 1. Otter Tail Power Company

[Docket No. ER87-433-000]

Take notice that Otter Tail Power Company (Otter Tail) of Fergus Falls, Minnesota, on May 15, 1987, tendered for filing Amendment No. 2 to the Agreement between Otter Tail and Cooperative Power Association.

Amendment No. 2 allows for amended loss figures, outlet facilities, points of input and additional system facilities.

Otter Tail requests that the amended agreement (Amendment No. 2 to FPC No. 154) be permitted to be effective as of October 21, 1986.

Copies of the filing were served upon Cooperative Power Association, 14615 Lone Oak Road, Eden Prairie, MN 55344.

*Comment Date:* June 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 2. Public Service Company of New Mexico

[Docket No. ER87-360-000]

Take notice that on May 8, 1987, Public Service Company of New Mexico (PNM) tendered for filing a clarification of certain components of the compensation provided under Service Schedule G to the PNM-Plains Electric Generation and Transmission Cooperative Inc. (Plains) Master Interconnection Agreement.

A copy of the amended filing was served upon Plains.

*Comment Date:* June 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

### 3. Consolidated Edison Company of New York, Inc.

[Docket No. ER87-434-000]

Take notice that on May 14, 1987, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, an agreement to sell system energy to Baltimore Gas & Electric Company ("BG&E"). The agreement provides for an energy reservation charge of $3 per megawatthour and an energy charge based upon incremental costs of generation.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of May 11, 1987.

Con Edison states that a copy of this filing has been served by mail upon BG&E.

*Comment Date:* June 3, 1987, in accordance with Standard Paragraph E at the end of this document.

**Standard Paragraphs:**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11970 Filed 5-26-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. GP87-45-000]

## Anadarko Petroleum Corp. et al.; Complaint

In the matter of Anadarko Petroleum Corporation and Pan Eastern Exploration Company, Petitioners, v. Brent Ranch Operating, Inc., Canadian Commercial Bank, Houston, Pipe Line Company, Intratex Gas Company, Liquid Energy Corporation, Northern Natural Gas Company, and South Cen-Tex Gas Company, Respondents.

May 20, 1987.

Take notice that on April 23, 1987 Anadarko Petroleum Corporation (Anadarko) and Pan Eastern Exploration Company (Pan East) (jointly-petitioners) filed in Docket No. GP87-45-000 a complaint pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18, CFR 385.206 (1986), sections 7(b) and 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(b) and 717(c), and sections 311 and 504 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3371 and 3414.

The complaint concerns oil well drilled and operated by certain respondents in the West Panhandle Field, Gray County, Texas, where gas wells owned by petitioners are located.

Petitioners state that Respondents have been responsible for or have participated in an unlawful diversion of reserves belonging to petitioners, which were committed or dedicated to interstate commerce, in violation of section 7(b) of the NGA. Petitioners state that the gas has been sold, in most instances, in excess of the maximum lawful price under section 104 of the NGPA in violation of section 504(a)(1) of the NGPA. Petitioners state that certain Respondents may have unlawfully sold and transported such gas in violation of section 7 of the NGA and/or section 311 of the NGPA.

Petitioners request the Commission to order Respondents to desist from: (1) The unlawful diversion of Petitioners' gas; (2) the unlawful sale of Petitioners' gas in excess of the maximum lawful price; and (3) the unlawful transportation of such gas. Petitioners also request the Commission to order Respondents to return to Petitioners volumes of gas equivalent to those unlawfully diverted and transported.

Under the Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Respondents must file an answer to Petitioner's complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Respondents shall file their answers with the Commission not later than 15 days after publication of this notice in the Federal Register.

Any person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11974 Filed 5-26-87; 8:45 am]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

[Docket No. SA87-44-000]

## Florida Gas Transmission Co.; Petition for Adjustment

May 20, 1987.

Take notice that on April 28, 1987, Florida Gas Transmission Company (FGT) filed with the Commission, pursuant to section 502(c) of the Natural Gas Policy Act, a petition for adjustment from the requirements of § 281.204(b) of the Commission's regulations. FGT requests (1) an adjustment of § 218.204(b)(2) of the Commission's regulations to allow FGT to file a triennial update of its priority 2 entitlements in place of the annual update currently required, and (2) authorization to permit FGT to submit its triennial update of its priority 2 entitlements on October 15, in lieu of the current September 15 deadline, with a designated effective date of November 15.

FGT claims that such relief is necessary to prevent special hardships and an unfair distribution of burdens because of the unnecessary work and expense the current requirements impose on FGT. Specifically, FGT states that the preparation of the annual update required by § 281.204(b)(2) involves substantial time and expense on the part of agricultural users of gas on FGT's system, FGT's customers, FGT and FGT's Data Verification Committee (DVC). FGT also claims that a triennial update would coincide with the DVC's triannual meetings to review the requirements of its customers.

Any person desiring to be heard or to protest this petition for adjustment should file a motion to intervene or protest in accordance with Rule 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, within 15 days after publication of the notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition filed in this proceeding are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-11975 Filed 5-26-87; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-100042; FRL-3294-8]

## Development Planning and Research Associates; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Development Planning and Research Associates (DPRA) has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to DPRA as authorized by 40 CFR 2.307(h) and 2.306(h)(2), respectively. This action will enable DPRA to fulfill the obligations of the contract and serves to notify affected persons.

**DATE:** DPRA will be given access to this information no sooner than June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:**

By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68-02-4272, DPRA will provide economic analysis of proposed regulatory options on various pesticide chemicals and the development of a data base for analysis of the benefits of pesticide usage. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by DPRA to information on all pesticide chemicals is necessary to the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with DPRA prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, DPRA is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to DPRA by EPA for use in connection with this contract will be returned to EPA when DPRA has completed its work.

Dated: May 12, 1987.

Douglas D. Campt,

*Director, Office of Pesticide Programs.*

[FR Doc. 87-11946 Filed 5-26-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-100040; FRL-3294-4]

## Life Systems, Inc.; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Life Systems, Inc. has been awarded a contract to perform work for the EPA Office of Toxic Substances, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Life Systems, Inc. as authorized by 40 CFR 2.307(h) and 40 CFR 2.306(h)(2), respectively. This action will enable Life Systems, Inc. to fulfill the obligations of the contract and serves to notify affected persons.

**DATE:** Life Systems, Inc. will be given access to this information no sooner than June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:**
By mail:
William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68-02-4228, Life Systems, Inc., 24755 Highpoint Road, Cleveland, OH 44122, will provide technical support to EPA's Office of Toxic Substances by preparing assessments and developing toxicological profiles on chemicals listed in the April 17, 1987, **Federal Register** "Notice of the First Priority List of Hazardous Substances to be the Subject of Toxicological Profiles." This contract involves no subcontractors.

The Office of Toxic Substances and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connecton with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Life Systems, Inc. prohibits use of the information for any purpose other than purpose(s) specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, Life Systems, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Toxic Substances. All information supplied to Life Systems, Inc. by EPA for use in connection with this contract will be returned to EPA when Life Systems, Inc. has completed its work.

Dated: May 12, 1987.

Douglas D. Campt,
*Director, Office of Pesticide Programs.*

[FR Doc. 87-11644 Filed 5-26-87; 8:45 am]
BILLING CODE 6560-50-M

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**[OPP-100041; FRL-3204-5]**

## Research Triangle Institute, Inc.; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Research Triangle Institute, Inc. (RTI) has been awarded two contracts to perform work for the EPA Office of Pesticide Programs and the Office of Policy and Program Evaluation, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to RTI consistent with the requirements of 40 CFR 2.307(h) and 40 CFR 2.308(h)(2), respectively. This action will enable RTI to fulfill the obligations of the contract and serves to notify affected persons.

**DATE:** RTI will be given access to this information no sooner than June 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** By mail: William C. Grosse, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 222, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-2613).

**SUPPLEMENTARY INFORMATION:** Under Contract No. 68-01-7033, RTI will identify the technical options and other relevant information available to the Agency on the disposal activities for the pesticides—Dinoseb, EDB, and 2,4,5-T/Silvex.

Under Contract No. 68-01-7350, RTI will maintain the Tolerance Assessment System, a computerized system that is designed to provide a comprehensive and dependable description of potential exposure to pesticides.

These contracts involve no subcontractors.

The Office of Policy and Program Evaluation and the Office of Pesticide Programs have jointly determined that access by RTI to information on certain pesticide chemicals submitted in connection with FIFRA, will be the subject of certain evaluations to be made under these contracts. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 6, and 7 of FIFRA and obtained under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contracts with RTI prohibit use of the information for any purpose other than purpose(s) specified in the contract(s); prohibit disclosure of the information in any form to a third party without prior written approval from the Agency or affected business; and require that each official and employee of the contractor sign an agreement to protect the information from unauthorized release. In addition, RTI is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer of each contract in the EPA Office of Pesticide Programs and the Office of Policy and Program Evaluation. All information supplied to RTI by EPA for use in connection with this contract will be returned to EPA when RTI has completed its work.

Dated: May 12, 1987.

Douglas D. Campt,
*Director, Office of Pesticide Programs.*

[FR Doc. 87-11645 Filed 5-26-87; 8:45 am]
BILLING CODE 6560-50-M

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**[OPP 30281; FRL 3204-8]**

## Certain Companies Applications to Register Pesticide Products

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice..

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATE:** Comment by June 26, 1987.

**ADDRESS:** By mail submit comment identified by the document control number [OPP–30281] and the registration/file number, attention Product Manager (PM) named in each application at the following address: Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (TS–767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

| Product manager | Office location telephone No. | Address |
|---|---|---|
| PM 17—Arturo Castillon. | Rm. 207, CM#2, (703–557–2690). | EPA 1921 Jefferson Davis Hwy., Arlington, VA 22202. |
| PM 15—George LaRocca | Rm. 204, CM#2, (703–557–2400) | Do. |
| PM 32—Jeff Kempler | Rm. 711, CM#2, (703–557–2854) | Do. |

**SUPPLEMENTARY INFORMATION:** EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

**I. Products Containing an Active Ingredient Not Included in Any Previously Registered Product**

*1. File Symbol: 59625–E.* Applicant: Blizzard System, Inc., 208 S. Guadalupe, Redonda Beach , CA 90277. Product name: Liquid Nitrogen. Insecticide/Termiticide. Active ingredient: Liquid nitrogen 100%. Proposed classification/Use: General. For the control of drywood termites. (PM 17)

*2. File Symbol: 10182–REO.* Applicant: ICI Americas, Inc., Agricultural Chemical Div., Wilmington, DE 19897. Product name: PP 321 1E Insecticide. Insecticide. Active ingredient: (±)-Cyano-(3-phenoxyphenyl) (±)-cis-3-(Z-2-chloro-3,3,3-trifluoroprop-l-enyl)-2,2-dimethycyclopropanecarboxylate 13.1%. Proposed classification/Use: Restricted. For control of certain pests on greenhouse-grown ornamental trees and shrubs. For use in non-food areas of homes, food handling establishments, hospitals, restaurants, school, and nursing homes. (PM 15)

*3. File Symbol: 464–AEN.* Applicant: Dow Chemical Co., PO Box 1706, Midland, MI 48674. Product name: Antimicrobial DTEA, Technical. Disinfectant. Active ingredient: 2-(Decylthio)ethanamine 99.8%. Proposed classification/Use: None. For manufacturing use only. (PM 32)

*4. File Symbol: 464–ARO.* Applicant: Dow Chemical Co. Product name: Antimicrobial DTEA 15%. Disinfectant. Active ingredient: 2-(Decylthio)ethanamine, hydrochloride salt 15%. Proposed classification/Use: General. For the control of bacterial, fungal, and algal slimes in recirculating cooling water systems and auxiliary and waste water systems. (PM 32)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

**Authority:** 7 U.S.C. 136.

**Dated:** May 11, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–11647 Filed 5–26–87; 8:45 am]

BILLING CODE 6560–50–M

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**[OPTS–51676; FRL–3207–8]**

**Certain Chemicals Premanufacture Notices**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-four such PMNs and provides a summary of each.

**DATES:** Close of Review Period:

P 87–1087, 87–1088, 87–1089, 87–1090, 87–1091, 87–1092, 87–1093, 87–1094, and 87–1095—August 5, 1987.

P 87–1096 and 87–1097—August 8, 1987.

P 87–1098, 87–1099, 87–1100, 87–1101, 87–1102, 87–1103, 87–1104, 87–1105, 87–1106, 87–1107, 87–1108, and 87–1109—August 9, 1987.

P 87–1110, 87–1111, 87–1112, 87–1113, 87–1114, 87–1115, and 87–1116—August 10, 1987.

P 87–1117, 87–1118, 87–1119, and 87–1120—August 11, 1987.

Written comments by:

P 87–1087, 87–1088, 87–1089, 87–1090, 87–1091, 87–1092, 87–1093, 87–1094, and 87–1095—July 6, 1987.

P 87–1096 and 87–1097—July 9, 1987.

P 87–1098, 87–1099, 87–1100, 87–1101, 87–1102, 87–1103, 87–1104, 87–1105, 87–1106, 87–1107, 87–1108, and 87–1109—July 10, 1987.

P 87–1110, 87–1111, 87–1112, 87–1113, 87–1114, 87–1115, and 87–1116—July 11, 1987.

P 87–1117, 87–1118, 87–1119, and 87–1120—August 11, 1987.

**ADDRESS:** Written comments, identified by the document control number "[OPTS–51676]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of

Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-1087

*Manufacturer.* Sybron Chemicals, Inc.
*Chemical.* (G) Mercaptide of copolymer of styrene and divinylbenzene.
*Use/Production.* (G) Industrial wastewater and process water purification. Prod. range: Confidential.

P 87-1088

*Manufacturer.* Rohm and Haas Company.
*Chemical.* (G) Modified polyacrylate polymer.
*Use/Production.* (G) Polymeric dispersant. Prod. range: Confidential.
*Toxicity Data.* Acute oral: >5 g/kg; Acute dermal: >5 g.kg; Irritation: Skin—Slight, Eye—Slight; $LC_{50}$ 96 hr. (Rainbow trout): 750 mg/L; $LC_{50}$ 48 hr. (Daphnia magna): >1,000 mg/L.

P 87-1089

*Importer.* CIBA-GEIGY Corporation.
*Chemical.* (G) Substituted diazo sulfonyl naphthalenedisulfonic acid.
*Use/Import.* (G) Textile dye. Import range: Confidential.
*Toxicity Data.* Acute dermal: >2,000 mg.kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Skin sensitization: Non sensitizer; $LC_{50}$ 96 hr. (Zebrafish): 920 mg/L.

P 87-1090

*Manufacturer.* Wilmington Chemical Corporation.
*Chemical.* (G) Aqueous aliphatic polyurethane dispersion.
*Use/Production.* (G) Industrial coating, open, non-dispersive. Prod. range: Confidential.

P 87-1091

*Importer.* EMSER Industries.
*Chemical.* (G) Copolyester based on aromatic dicarbonic acids.
*Use/Import.* (G) Holt melt applications. Import range: Confidential.

P 87-1092

*Manufacturer.* Confidential.
*Chemical.* (G) (Substituted phenyl) substituted alkanamide.
*Use/Production.* (G) Commercial and consumer contained use in an article. Prod. range: 1,500 to 14,000 kg/yr.

P 87-1093

*Manufacturer.* Confidential.
*Chemical.* (S) 2-(Hexadecylsulfonyl)-3-methylbutanoyl chloride.
*Use/Production.* (G) Site-limited chemical intermediate. Prod. range: 1,500 to 45,000 kg/yr.

P 87-1094

*Manufacturer.* Confidential.
*Chemical.* (G) (Substituted phenyl) substituted alkanamide.
*Use/Production.* (G) Commercial and consumer contained use in an article. Prod. range: 1,500 to 38,000 kg/yr.

P 87-1095

*Manufacturer.* Confidential.
*Chemical.* (G) Unsaturated aliphatic urethane.
*Use/Production.* (G) Industrial used coatings having a dispersion use. Prod. range: 2,000 to 20,000 kg/yr.

P 87-1096

*Manufacturer.* Confidential.
*Chemical.* (G) Modified acrylic resin.
*Use/Production.* (G) Resin used in paint. Prod. range: Confidential.

P 87-1097

*Manufacturer.* Confidential.
*Chemical.* (G) Dialkyl dimethyl amine graft copolymer with ethoxylated cellulose.
*Use/Production.* (G) Textile dyeing assistant. Prod. range: Confidential.

P 87-1098

*Manufacturer.* Reichhold Chemicals, Inc.
*Chemical.* (G) Terpene-styrene resin.
*Use/Production.* (S) Industrial adhesive tackifiers. Prod. range: Confidential.

P 87-1099

*Manufacturer.* Confidential.
*Chemical.* (G) Ester of 4-methoxy phenyl 2-propenoic acid.
*Use/Production.* (G) Protective agent. Prod. range: Confidential.

P 87-1100

*Manufacturer.* Confidential.
*Chemical.* (G) Ester of 4-methoxy phenyl 2-propenoic acid.
*Use/Production.* (G) Destructive end use. Prod. range: Confidential.

P 87-1101

*Manufacturer.* General Electric Company.
*Chemical.* (G) Chloroforates.
*Use/Production.* (G) Industrial, commercial and consumer plastic components for electrical and medical devices, business machines, information storage devices, automobiles and housewares. Prod. range: Confidential.

P 87-1102

*Manufacturer.* General Electric Company.
*Chemical.* (G) Chloroforates.
*Use/Production.* (G) Industrial, commercial and consumer plastic components for electrical and medical devices, business machines, information storage devices, automobiles and housewares. Prod. range: Confidential.

P 87-1103

*Manufacturer.* Confidential.
*Chemical.* (G) Phosphoric acid choline salt.
*Use/Production.* (G) Cleaner for information system components. Prod. range: Confidential.

P 87-1104

*Manufacturer.* Confidential.
*Chemical.* (G) Polymeric phosphorus nitrogen compound.
*Use/Production.* (G) Flame retardant. Prod. range: Confidential.

P 87-1105

*Manufacturer.* W.R. Grace & Company.
*Chemical.* (S) Vermiculite dispersion.
*Use/Production.* (G) Product is used in high temperature and flame resistant materials. Prod. range: Confidential.

P 87-1106

*Manufacturer.* Hercules Incorporated.
*Chemical.* (G) Resin ester.
*Use/Production.* (G) Industrial, commercial and consumer non-dispersive use. Prod. range: Confidential.

P 87-1107

*Manufacturer.* Confidential.
*Chemical.* (G) Modified adipic acid ester.
*Use/Production.* (S) Industrial lubricant for forming aluminum cans. prod. range: Confidential.

P 87-1108

*Manufacturer.* Confidential.
*Chemical.* (G) Metal complex of substituted phenyl azo substituted napthalene and substituted naphthyl azo substituted naphthalene, salt.

*Use/Production.* (S) Site-limited intermediate. Prod. range: Confidential.

P 87-1108

*Manufacturer.* Confidential.
*Chemical.* (G) Metal complex of substituted phenyl azo substituted naphthalene and substituted naphthyl azo substituted naphthalene, salt.
*Use/Production.* (G) Industrial open, non-dispersive use. Prod. range: Confidential.

P 87-1110

*Importer.* Amoco Corporation.
*Chemical.* (G) Polyalkylesters.
*Use/Import.* (G) Flow improver. Import range: Confidential.
*Toxicity Data.* Irritation: Skin—Non-irritant, Eye—Irritant.

P 87-1111

*Manufacturer.* Confidential.
*Chemical.* (G) Disubstituted quinacridone.
*Use/Production.* (S) Industrial colorant for paint. Prod. range: Confidential.

P 87-1112

*Manufacturer.* Confidential.
*Chemical.* (G) Substituted, substituted, substituted-benzoic acid.
*Use/Production.* (S) Industrial intermediate. Prod. range: Confidential.

P 87-1113

*Manufacturer.* H.B. Fuller Company.
*Chemical.* (G) 1,4-Cyclohexanedimethanol, dimer acid copolymer.
*Use/Production.* (G) Site-limited adhesive. Prod. range: 15,000 to 50,000 kg/yr.

P 87-1114

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.
*Chemical.* (G) Substituted ethylene copolymer.
*Use/Production.* (G) Electrical and automotive applications. Prod. range: Confidential.

P 87-1115

*Manufacturer.* CIBA-GEIGY.
*Chemical.* (S) 1-Piperidineethanol, 4-hydroxy-2,2,6,6-tetramethyl-propanedioic acid, diethyl ester.
*Use/Production.* (S) Industrial light stabilizer for automotive coatings. Prod. range: Confidential.

P 87-1116

*Manufacturer.* The Dow Chemical Company.
*Chemical.* (G) Modified styrene/butadiene latex.
*Use/Production.* (S) Industrial, commercial and consumer polymer binder for an industrial paper/paperboard coating formulation. Prod. range: Confidential.

P 87-1117

*Manufacturer.* Confidential.
*Chemical.* (G) Ethoxylated alkylamine.
*Use/Production.* (S) Chemical intermediate. Prod. range: Confidential.
*Toxicity Data.* Acute oral: 10.0 ml/kg.

P 87-1118

*Manufacturer.* Confidential.
*Chemical.* (G) Ethoxylated alkyl quaternary ammonium salt.
*Use/Production.* (S) Oil field chemical. Prod. range: Confidential.
*Toxicity Data.* Acute oral: 23.3 ml/kg; Irriration: Skin—Irritant, Eye—Irritant.

P 87-1119

*Manufacturer.* Dynamit Nobel Chemicals.
*Chemical.* (S) Polyvinyldimethylsiloxane trimethylsilyl terminated.
*Use/Production.* (S) Industrial coupling agent for thermoplastic composites. Prod. range: Confidential.

P 87-1120

*Manufacturer.* Dynamit Nobel Chemicals.
*Chemical.* (S) Iso-propylcyanoacetate.
*Use/Production.* (S) Industrial intermediate for specialty cyanoacrylate adhesives. Prod. range: Confidential.

Dated: May 18, 1987.

**Denise Devoe,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87-12010 Filed 5-26-87 8:45 am]

BILLING CODE 6560-50-M

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[PP 1G2453/T541; FRL-3208-1]

## Mefluidide; Renewal of Temporary Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has renewed temporary tolerances for residues of the plant growth regulator mefluidide in or on certain raw agricultural commodities.

**DATE:** These temporary tolerances expire March 1, 1988.

**FOR FURTHER INFORMATION CONTACT:**
By mail:

Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, which was published in the Federal Register of March 27, 1985 (50 FR 12077), stating that temporary tolerances had been renewed for residues of the plant growth regulator mefluidide (N-[2,4-Dimethyl-5-[[(trifluoromethyl)-sulfonyl]amino]phenyl]acetamide) in or on the raw agricultural commodities pasture grass and pasture grass hay at 10 parts per million (ppm); milk at 0.01 ppm; meat of cattle, sheep, goats, and horses at 0.01 ppm; fat of cattle, sheep, goats, and horses at 0.02 ppm; and meat byproducts of cattle, sheep, goats, and horses at 0.3 ppm.

These tolerances were renewed in response to pesticide petition PP 1G2453, submitted by 3M Company, Agricultural Products, 3M Center, Building 223-1N-05, St. Paul, MN 55144.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 7182-EUP-22, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. 3M Company must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 1, 1988. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary

tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**Authority:** 21 U.S.C. 346a(j).

Dated: May 13, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–12008 Filed 5–26–87; 8:45 am]

BILLING CODE 6560–50–M

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[OPTS–59915; FRL–3207–9]

## Polyester of Carbomonocyclic Diacid and Alkylene Glycols Premanufacture Notice

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of November 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides the summary.

**DATES:** Close of Review Period: Y87–146—June 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**Y 87–146**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyester of carbomonocyclic diacid and alkylene glycols.

*Use/Production.* (S) Industrial formed articles. Prod. range: Confidential.

Dated: May 15, 1987.

**Denise Devoe,**

*Acting Division Director, Information Management Division.*

[FR Doc. 87–12009 Filed 5–26–87; 8:45 am]

BILLING CODE 6560–50–M

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[OPP–180738; FRL–3208–3]

## California Department of Food and Agriculture Receipt of Application for an Emergency Exemption To Use Carbaryl; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a request for an emergency exemption from the California Department of Food and Agriculture (hereafter referred to as the "Applicant") to use the active ingredient carbaryl (CAS 63–25–2) to control filbert moths on 3,500 acres of pomegranates in California. This use of carbaryl has been authorized in three previous years and a complete application for registration of this use and/or a petition for tolerances for residues in or on pomegranates has not been submitted to the Agency, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this exemption.

**DATE:** Comments must be received on or before June 11, 1987.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP–180738" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Libby Pemberton, Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of carbaryl, manufactured by Union Carbide Agricultural Products Company as Sevin, EPA Reg. No. 264–316, on pomegranates to control filbert moths. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

According to the Applicant, while methomyl is available for use on pomegranates, use of methomyl over the past few years has shown that methomyl is not effective in controlling the filbert moth.

According to the Applicant, with the use of carbaryl the percentage of crop loss is expected to be approximately 5 percent. Without the use of carbaryl the percentage of crop loss due to the filbert moth and its larvae would range from 40 to 100 percent. A 40 percent loss would

amount to approximately $3 million for the 3,500 acres involved.

The Applicant plans to treat up to 3,500 acres using 35,000 pounds of product. A maximum to two applications will be made by aerial and ground application equipment. Applicants will not be made within 30 days of harvest.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a pesticide which has been requested or granted in any 3 previous years and a complete application for registration of that use and/or a petition for tolerance for residues in or on the commodity has not been submitted to the Agency. Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before June 11, 1987, and should bear the identifying notation "OPP-180738." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Food and Agriculture.

Dated: May 15, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87-12005 Filed 5-26-87; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-180737; FRL-3207-7]

## Receipt of Applications for Emergency Exemptions From Virginia and Pennsylvania To Use Dinoseb; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of receipt.

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**SUMMARY:** EPA has received specific exemption requests from the Virginia Department of Agriculture and Consumer Services and the Pennsylvania Department of Agriculture (hereafter referred to as "Virginia," Pennsylvania," or "Applicants") to use dinoseb (CAS 88-85-7). Virginia proposes to use dinoseb on peas, cumcumbers, potatoes, snap beans and lima beans to control broadleaf weeds. Pennsylvania proposes to use dinoseb on peas, snap beans, and lima beans to control broadleaf weeds. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemptions.

**DATE:** Comments must be received on or before June 11, 1987.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180737" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), 87P-666 Office of Pesticide Programs, Environmental Protection Agency, 401 M. St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CRF Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7700).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136s), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40 CFR Part 166.

The Department of Agriculture and Consumer Services for the state of Virginia, and the Department of Agriculture for the state of Pennsylvania by letters received April 27 and May 1, 1987, respectively, have requested the Administrator to issue specific exemptions for the use of dinoseb on peas, and snap beans, cucumbers, and potatoes in Virginia and peas, snap beans, and lima beans in Pennsylvania to control broadleaf weeds.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registration was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry, pursuant to the terms of the Agency's October 7 decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicant's specific exemption requests are therefore, subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for an emergency exemption under section 18 for a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determine that reconsideration is warranted if, among other things, he finds that the Applicant has presented substantial new evidence which may materially affect the prior suspension or cancellation order (40 CFR 164.131(c)). If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the suspension or cancellation order is justified (40 CFR 164.131(c)).

Should the Administrator decide to lift the suspension of certain dinoseb registrations, the Agency would then

determine whether and under what terms and conditions dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

**II. Emergency Condition**

The applicants state that there are a number of herbicides registered for use in peas, snap beans, lima beans, and potatoes. According to the Applicants, trifluralin (Treflan), pendimethalin (Prowl), and metolachlor (Dual) are mainly for control of annual grasses, and provide only fair to good control of a few broadleaf weeds. According to the Applicants, chloramben (Amiben) has a high water solubility which results in rapid leaching in coarse-textured soils low in organic matter, common in Virginia and Pennsylvania. Rapid leaching results in poor crop tolerance and short-term, erratic weed control. The Applicants state that bentazon (Basagran) controls only certain seedling broadleaf weeds and frequently causes crop injury which reduces yield and/or delays harvest. Harvest delays are not tolerable because planting is rigidly scheduled to stagger harvest.

According to the Applicants NCBP gives postemergence control of Canada thistle and controls or suppresses lambsquarters, pigweed, smartweed, sowthistle, fanweed, annual morningglory and nightshade. However, the Applicants point out that this compound is in the phenoxy family of herbicides, so some termporary twisting of some pea varieties may occur. In addition, spray drift has to be avoided as it may injure other broadleaf crops and ornamentals. The Applicants point out that use of MCPB at temperatures above 80° F can cause crop injury. They also states that MCPB works best early in the season when weed are small and application use parameters described limit its use in peas in Virginia and Pennsylvania.

EPTC (Eptam), labeled for use in snap beans and potatoes, and DCPA (Dacthal), labeled for use in snap beans, cucumbers and potatoes, are primarily for control of annual grasses and control few broadleaf weeds according to the Applicants.

According to Virginia, linuron (Lorox) and metribuzin (Lexone, Sencor) are registered on potatoes for broadleaf control. Linuron only controls a few broadleaf weeds and has little activity against mustard species and jimsonweed according to Virginia. Metribuzin controls most problem weeds except wild radish which is found in at least 33% of Virginia potato fields according to Virginia. In addition, Virginia points out that Metribuzin cannot be used on several sensitive potato varieties; these varieties make up 80% of Virginia potatoes.

According to the Applicants mechanical cultivation only controls weeds between the rows and weeds in the row can significantly reduce yields and result in fields that cannot be harvested. Cultivation cannot be done late in the season after the crop reaches a certain height, further limiting its effectiveness. According to the Applicants, mechanical cultivation cannot be used in peas because the rows are narrow.

Virginia claims that without the use of dinoseb, pea, lima bean, snap bean, and potato growers can expect at $4.93 million dollar loss. Pennsylvania claims that without the use of dinoseb, peas growers will lose $440,000, lima bean growers $85,500 and snap bean growers $669,600 in yield losses and an additional $100,000 in peas, $90,000 in snap beans, and $11,250 in lima beans due to increased herbicide costs. Total loss to pea, snap bean and lima bean growers without the use of dinoseb, according to Pennsylvania, is $1,396,350.

**III. Proposed Use**

Virginia requested emergency exemptions for use of dinoseb on peas, lima beans, snap beans, potatoes, and cucumbers between April and September 1987. Pennsylvania requested emergency exemption for use of dinoseb on peas, snap beans and lima beans between March 1 and June 1, 1987. The Applicants' proposed specific exemption programs involve use of the following dinoseb products: Basanite, Caldon, Chemox General, Chemox PE, Chemsect DNBP, Dinitro, Dinitro-3, Dinitro General, Dynamyte, Elgetrol 318, Gebutox, Hel-Fire, Kiloseb, Nitropone C, Permerge 3, Sinox General, Subitex, Unicrop DNBP, Vertac Dinitro Weed Killer 5, Vertac General Weed Killer, and Vertac Selective Weed Killer.

Virginia proposes to use a total of 58,000 pounds active ingredient on 22,000 acres of crops. The proposed uses involve use of 2,000 pounds active ingredient to treat 1,000 acres of peas, 2,000 pounds active ingredient to treat 500 acres of lima beans, 24,000 pounds of active ingredient to treat 8,000 acres of snap beans, 15,000 pounds of active ingredient to treat 5,000 acres of potatoes, and 15,000 pounds of active ingredient to treat 7,500 acres of cucumbers.

Dinoseb would be applied at a rate of 0.75 to 3 pounds active ingredient per acre to peas; 0.56 to 4.5 pounds active ingredient per acre to lima beans; 3 to 4.5 pound of active ingredient to snap beans; 3 pounds active ingredient to potatoes; and 1 to 3 pounds active ingredient to cucumbers. A maximum of 2 applications would be made; one preemergence and the other postemergence to peas and lima beans. A single preemergence application will be made to snap beans, potatoes and cucumbers.

Other restrictions to be imposed by the State of Virginia include: (1) Application by ground row crop sprayer; (2) use by persons certified by the State of Virginia in private or commercial categories; (3) no mixing/loading/application by females; (4) mixer/loader/applicator must wear tyvek suit and chemical resistant gloves; (5) do not mix with liquid fertilizers; (6) no aerial application; and (7) a 40-day pre-harvest interval would be observed.

Pennsylvania proposes to use a total of 56,295 pounds of active ingredient to treat 10,750 acres of crops. The proposed uses involve use of 25,500 pounds active ingredient to treat 4,000 acres of peas, 3,795 pounds active ingredient to treat 750 acres of lima beans, and 27,000 pounds of active ingredient to treat 6,000 acres of snap beans.

Dinoseb would be applied at a rate of 0.75 to 3 pounds active ingredient per acre to peas; 0.56 to 4.5 pounds active ingredients to snap beans. A maximum of 2 applications would be made; one preemergence and the other postemergence to peas and lima beans. A single preemergence application will be made to snap beans. Other restrictions to be imposed by the State of Pennsylvania include: (1) Dinoseb may only be sold to growers to green peas, snap beans, and lima beans in Pennsylvania in a quantity not to exceed that required to treat this acreage for those crops at the maximum application rates and that dealers must maintain records of sales to growers; (2) only certified applicators may apply dinoseb, other persons, even if they are operating under the direct supervision of a certified applicator, may not use dinoseb; (3) women of childbearing age, i.e., under the ge of 45, may not be involved in mixing, loading, or any aspect of dinoseb application; (4) a label warning which states: women of childbearing age may not use the product; all reasonable efforts should be made to minimize indirect exposures to women of child-bearing age; the product also poses risks to male reproduction; is acutely toxic and the product may be

applied only by certified applicators; (5) aerial spraying is prohibited; (6) mixing and loading of dinoseb is prohibited except from closed systems; (7) ground application is prohibited except by the "barrel sucker"/ground boom/tractor system; (8) mixer/loaders and applicators must wear chemical resistant disposal coveralls (Tyvek® suits), rubber boots, and chemically resistant gloves when mixing or loading dinoseb (Applicators or other personnel may remove such protective clothing immediately before entering the tractor cab to avoid cab contamination, but must carry an unused set of gloves and coveralls in their cabs, to be used in the event of spraying equipment malfunction and repair during application); (9) that dinoseb be applied to a maximum of 80 acres per day applicator; (10) ground application is prohibited when wind conditions exceed ten miles per hour; and (11) tractor cabs must be closed and equipped with positive pressure ventilation systems.

## IV. Notifications and Comment

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption requests from Virginia and Pennsylvania will be based on whether or not there is sufficient new information to open Subpart D hearings and, if so, the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the Federal Register of receipt of an application that proposed any emergency use of a pesticide if such pesticide were the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunty for public comment on the application (40 CFR 166.24).

Interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above.

The Agency will review and consider all comments received during the comment period.

Dated: May 13, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87-12008 Filed 5-26-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180736; FRL-3226-2]

## Minnesota Department of Agriculture; Receipt of Application for Emergency Exemption To Use (±)-3-[4,5-Dihydro-4-Methyl-4-(1-Methylethyl)-5-Oxo-1-H-Imidazol-2-yl]-5-Ethyl-3-Pyridinecarboxylic Acid Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a request for an emergency exemption from the Minnesota Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (Pursuit ™) to control Jerusalem artichoke on 25,000 acres of soybeans in Minnesota. Pursuit ™ contains an unregistered active ingredient and, therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant this exemption.

**DATE:** Comments must be received on or before June 1, 1987.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180736" should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail:

Libby Pemberton, Registration Division (TS-767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of an unregistered herbicide, (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-*H*-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid (CAS 81335-77-5), manufactured as Pursuit ™, by American Cyanamid Company, on soybeans in Minnesota. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant indicates that Jerusalem artichoke poses a serious threat to the Minnesota soybean industry due to resultant reductions in yields. This weed, if not controlled produces numerous tubers which lie dormant over winter and produce plants the following spring. Only two herbicides (Paraquat and Roundup) are labelled for control of Jerusalem artichokes in Minnesota soybeans, according to the Applicant. Neither of these herbicides are satisfactory, according to the Applicant, due to required delays in planting or ineffective application techniques.

The Applicant indicates that without adequate control a 30 percent yield loss for soybeans due to this weed will result. This would amount to approximately $650,000. Producers are reporting that infestations are increasing, and weed scientists are concerned that the weed will become more widespread in the absence of effective control measures.

Pursuit ™ will be applied by ground postemergence to the crop at a rate of 0.06 pound active ingredient per acre.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application.

An expedited comment period of 5 days is provided to facilitate decision making on the specific exemption in

time for the proposed use season (May 15 through June 30, 1987).

Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before June 1, 1987, and should bear the identifying notation "OPP–180736." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Minnesota Department of Agriculture.

Dated: May 11, 1987.

Edwin F. Tinsworth,

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87–12007 Filed 5–26–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL MARITIME COMMISSION

[Docket No. 87–16]

### Halstead Industrial Products, Inc. v. Sea-Land Service, Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Halstead Industrial Products, Inc. (Halstead) against Sea-Land Service, Inc. (Sea-Land) was served May 20, 1987. Halstead alleges that Sea-Land has violated section 10(b)(1), Shipping Act of 1984 (46 U.S.C. 1709) by its charging, demanding, collecting or receiving greater compensation for the transportation of certain commodities from New Orleans, LA to ports in the United Kingdom, than the rates that are shown in its applicable tariffs.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by May 20, 1988, and the final decision of the Commission shall be issued by September 20, 1988.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87–11946 Filed 5–26–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Formation of, Acquisition by, or Merger of Bank Holding Companies; Hemet Bancorp

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received no later than June 18, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Hemet Bancorp*, Hemet, California; to acquire 25 percent of the voting shares of Riverside National Bank, Riverside, California.

Board of Governors of the Federal Reserve System, May 20, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87–11947 Filed 5–26–87; 8:45 am]

BILLING CODE 6210–01–M

### Acquisition of Shares of Banks or Bank Holding Companies; Robert L. Kohler et al.

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 11, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Robert L. Kohler* and M.E. McMillan, both of Derby, Kansas; V. Eugene Payer, Wendell A. Martens, Robert L. Eyster, Donald Yoder, and John D. Greenstreet, all of Wichita, Kansas; Larry Anderson, Wellington, Kansas; Jake Klassen, Hillsboro, Kansas; Paul F. Martens, El Dorado, Kansas; Henry P. Beugeladijk, Halstead, Kansas; and Michael McClintick, Eureka, Kansas; to acquire 85.70 percent of the voting shares of F and M Bancshares, Inc., Derby, Kansas, and thereby indirectly acquire Farmers and Merchants State Bank, Derby, Kansas.

Board of Governors of the Federal Reserve System, May 20, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87–11948 Filed 5–26–87; 8:45 am]

BILLING CODE 6210–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry; Availability of Funds for FY 1987 Cooperative Agreements To Support a Demonstration Program for State Health Departments To Conduct Health Assessments

#### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds for Fiscal Year 1987 for Cooperative Agreements to build State capacity for dealing with

health issues related to hazardous substances in the environment. This will be accomplished through a demonstration program to determine whether or not it is feasible for States to conduct health assessments of hazardous waste sites. ATSDR will participate and assist States in determining sites to be investigated, design of appropriate protocols, training of personnel, analysis of data and dissemination of information. Application is being made for a Federal Catalog of Domestic Assistance number.

**Authorizing Legislation**

This program is authorized under section 104(d)(1) and section 104(i)(15) of Pub. L. 96–510, of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended; Executive Order 12580, "Superfund Implementation", section 2(i); and Title 31 U.S.C. 6305.

**Background**

Both the Superfund Amendments and Reauthorization Act of 1986 and the Resource Conservation and Recovery Act Amendments of 1984 mandate ATSDR to conduct a health assessment of hazardous wastes sites or RCRA facilities.

An ATSDR health assessment is the evaluation of data and information on the release of hazardous substances into the environment in order to: assess any current or future impact on public health, develop health advisories or other related recommendations, and identify studies or actions needed to evaluate and prevent human health effects. It is conducted by an ATSDR multidisciplinary team that typically consists of specialists in medicine, epidemiology, toxicology, public health and environmental engineering. The information evaluated normally consists of information about the site's background, its current status, environmental sampling data, toxicity estimates, pathways of possible human exposure, assessments of toxicant migration, and populations of persons at risk of exposure. The resulting analysis of the public health implications of the site and attendant health recommendations, which are based on professional judgment and weight of evidence, is provided to the agency that requested it, usually EPA, and is made available to the public. The annual number of requests for ATSDR health assessments continues to grow as sites are added to the EPA's National Priorities List.

State health departments have the principal responsibility within the State for the protection of public health through regulatory authority and the delivery of public health program services. As a result they have existing expertise in both disease surveillance and epidemiology. This expertise has developed over the tyears as a direct response to the problems they are charged with resolving. This expertise can and has been used to address health problems related to hazardous substances in the environment. Historically, there has been a long series of environment health problems requiring the response and cooperation of State health departments and Federal health agencies. In the hazardous waste area, pollution has the potential to threaten not only the health of the worker but that also of the general public. Improving response of these continuing events requires strengthening State capabiity in terms of technologic expertise, experienced staff, and uniform methodological approaches.

Therefore, the purpose of this cooperative agreement is to establish a three year demonstration project to determine whether or not it is feasible for State health departments to conduct health assessments in accordance with requirements specified in the Superfund Amendments and Reauthorization Act of 1986, Section 110. The objective is to use this approach to enhance State capacity to respond to health issues related to toxic substances in the environment. The effectiveness of this approach will be evaluated to determine if it should be continued beyond the initial three year period.

**Eligible Applicants**

Because the State health departments have the principal responsibility within each State for the protection of public health through regulatory authority and the delivery of public health services, the only eligible applicants are the official health agencies of States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated State of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands and the American Samoa.

Applicants will be selected from two categories:

1. State health departments with experience in evaluating human exposures to toxic substances in the environment through multi-media exposure pathways and with existing professional staff capable of conducting health assessments.

2. States health departments with little or no experience in evaluating human exposures to toxic substances in the environment through multi-media exposure pathways or having limited professional staff, but who wish to expand or start a program.

**Availabilty of Funds**

A total of approximately $1,800,000 will be available in Fiscal Year 1987. It is anticipated that approximately six cooperative agreements will be funded. Individual project awards are expected to range from $200,000 to $300,000. At least two of these awards will be made to States with little or no existing program.

Is is expected that the cooperative agreements will be awarded on or about September 15, 1987, and will be funded for a 12-month budget period with a project period of three years.

Based upon the President's Fiscal Year 1988 Budget it is anticipated that approximately $2,000,000 will be available to continue the initial awards under this announcement and to award approximately four new awards.

**Review Requirements**

Applications are not subject to review as governed by Executive Order 12372, entitled, "Intergovernmental Review of Federal Programs".

**Where to Obtain Additional Information**

Further information on this project may be obtained from:

*Business*

Luther E. DeWeese, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, Atlanta, GA 30305, Telephone 404–262–6575.

*Program*

Mike Griffith, Chief, Extramural Program Branch, ATSDR, 1600 Clifton Road NE., Altanta, GA 30333, Telephone 404–454–4630.

Dated: May 20, 1987.

James O. Mason,

*Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 87–11944 Filed 5–26–87; 8:45 am]

BILLING CODE 4160–10–M

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## Centers for Disease Control

### Cooperative Agreement for a Project To Study the Relationship of Infant Feeding Practices to Diarrheal Disease; Availability of Funds for FY 1987

The Centers for Disease Control announces the availability of funds in Fiscal Year 1987 for a cooperative

agreement to assist the Health Science Center, University of Texas, to study the relationship of infant feeding practices to diarrheal disease in Egypt. The Centers for Disease Control will collaborate in the formulation and evaluation of alternative approaches to studies of diarrheal diseases, including protocol development, review and on site assessment of progress and research activities, and assist in identification of resources and personnel necessary for project implementation. The Catalog of Federal Domestic Assistance Number is 13.283. This Program is authorized under section 307 of the Public Health Act (42 U.S.C. 24(a)) as amended.

Because of the unique previous experience of the Health Science Center, University of Texas in this project and stated desires of the Egyptian government and the joint U.S.-Egypt Working Group, assistance will be provided to that institution. This is not a formal request for applications and no other applications will be accepted. It is expected that approximately $350,000 will be available to support this project for 24 months. Application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information may be obtained from Luther E. DeWeese, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305 telephone (404) 264-6750 or FTS 236-6758.

Dated: May 20, 1987.

Robert L. Foster,

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87-11945 Filed 5-26-87; 8:45 am]

BILLING CODE 4160-18-M

## Health Care Financing Administration

[HOA-011-N]

## Task Force on Long-Term Health Care Policies; Public Meeting

**AGENCY:** Health Care Financial Administration (HCFA), HHS.

**ACTION:** Notice of public meetings.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces two meetings of the Task Force on Long-Term Health Care Policies.

**DATES:** The first meeting to which this notice pertains will be held on June 11, 1987, from 8:30 a.m. to 5:00 p.m., and on June 12, 1987, from 8:30 a.m. to 1:00 p.m. E.D.T. The second meeting will be held on July 16, 1987, from 8:00 a.m. to 5:00 p.m., and on July 17, 1987, from 8:00 a.m. to 12:00 noon, E.D.T. The meetings will be open to the public.

**ADDRESSES:** The meeting in June will be held at the Twin Bridges Marriott, 333 Jefferson Davis Highway, Arlington, Virginia. The July meeting will be held at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Dennis L. DeWitt, Executive Director, Task Force on Long-Term Health Care Policies, Room 4406, HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201. (202) 245-0063.

**SUPPLEMENTARY INFORMATION:**

### Purpose

The Task Force on Long-Term Health Care Policies, established under section 9601 of the Consolidated Omnibus Budget Reconciliation Act of 1985, will evaluate current issues relating to private long-term care insurance. To ensure the evolution of sound private long-term care policies and to help foster consumer confidence in them, the Task Force will develop recommendations that can be used by State regulators, persons involved in the insurance industry, and consumers who may wish to purchase such policies.

The term "Long-term health care policy" means an insurance, or similar health benefits plan, that is designed for or marketed as providing (or making payment for) health care or related services (which may include home and community-based services), or both, over an extended period of time.

The Task Force on Long-Term Health Care Policies will report to the Secretary of Health and Human Services and to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources concerning the development of insurance policies for long-term care that are privately marketed to individuals or groups. The Task Force will develop recommendations for long-term health care policies, including recommendations designed to: (1) Limit marketing and agent abuse for those policies; (2) assure the dissemination of information to consumers necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage; (3) assure that benefits provided under the policies are reasonable in relationship to premiums charged; and (4) promote the development and availability of long-term health care policies that meet these recommendations.

### Agenda

Agenda items for the June meeting will include Task Force discussion of employees and long-term care insurance, discussions of unresolved issues meriting Task Force consideration, and review of drafts of specific chapters of the Task Force final report.

Agenda items for the July meeting will include Task Force discussion of unresolved issues meriting Task Force discussion and review of drafts of specific chapters of the Task Force final report.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92-463, as amended (5 U.S.C. App. I, Sec. 1-15) and Sec. 9601 of Pub. L. 99-272 (42 U.S.C. 1395b note); 45 CFR Part 11))

Dated: May 21, 1987.

William L. Roper,

*Administrator, Health Care Financing Administration.*

[FR Doc. 87-11990 Filed 5-26-87; 8:45 am]

BILLING CODE 4120-01-M

## Public Health Service

### Statement of Organization, Functions, and Delegations of Authority; Alcohol, Drug Abuse, and Mental Health Administration

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 36163-7, August 19, 1975, as amended by 47 FR 50361, November 5, 1982) is amended to reflect a reorganization of the National Institute on Alcohol Abuse and Alcoholism, ADAMHA. The reorganization accomplishes the following: (1) abolishes the Division of Extramural Research and the Division of Prevention and Research Dissemination; (2) establishes a Division of Basic Research and a Division of Clinical and Prevention Research; and (3) revises the functional statements for the Office of Scientific Affairs and the Division of Biometry and Epidemiology.

*Section HM-B, Organization and Functions,* is amended as follows:

(1) Delete the functional statement for the *Division of Extramural Research (HMCA)* and the *Division of Prevention and Research Dissemination (HMC2).*

(2) Add the following functional statements:

*Division of Basic Research (HMC3)*

(1) Plans, stimulates, develops, and supports programs of basic research on the multiple determinants and consequences of alcohol abuse and alcoholism, including biological, behavioral, biochemical, and neurological research; (2) collaborates with outside organizations in the conduct of basic studies related to alcohol abuse and alcoholism; (3) supports programs of training to increase the number and improve the competence and utilization of research scientists; (4) sponsors, develops, and participates in scientific conferences, meetings, and symposia to exchange information and to disseminate new knowledge; (5) prepares reports, summaries, and other materials concerned with various scientific aspects of alcohol abuse, and serves as a repository for special research materials; and (6) supports a full range of grants and contracts, including research centers.

*Division of Clinical and Prevention Research (HMC5)*

(1) Plans, stimulates, develops, and supports clinical programs on alcohol abuse and alcoholism which design and test the effectiveness of various prevention, early intervention, and treatment approaches; (2) collaborates with outside organizations in the conduct of studies related to prevention and treatment of alcohol abuse and alcoholism; (3) supports programs of training to increase the number and improve the competence and utilization of clinical and prevention research scientists; (4) sponsors, develops, and participates in scientific conferences, meetings, and symposia to exchange information and to disseminate new knowledge; (5) prepares reports, summaries, and other materials concerned with various clinical and prevention aspects of alcohol abuse and alcoholism, and serves as a repository for special research materials; and (6) supports a full range of grants and contracts, including research centers.

(3) Under *Office of Scientific Affairs (HMC16)*, delete the "and" before item 6, change the period at the end of a semi-colon, and add the following: "(7) collects, abstracts, stores, and disseminates program and scientific information on alcohol abuse and alcoholism; (8) prepares and disseminates the Alcohol and Health Report and other special reports in response to congressional, departmental, and programmatic needs for information; and (9) conducts conferences and workshops for the purpose of conveying up-to-date knowledge on alcoholism prevention, early intervention, treatment and rehabilitation to State and local governments, the private and voluntary sectors, and others engaged in alcohol-related work."

(4) Item (1) of the functional statement for the *Division of Biometry and Epidemiology (HMC4)* should be revised to begin: "Plans, develops, conducts, and supports . . . ". Also, change the period at the end of item (4) to a semicolon and add the following: "and (5) supports a full range of grants and contracts, including research centers."

Dated: May 18, 1987.

Robert E. Wisdom,

*Assistant Secretary for Health.*

[FR Doc. 87-11998 Filed 5-26-87; 8:45 am]

BILLING CODE 4160-20-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. N-87-1701]

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. this is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information (3) the description of the need for the information and its proposed use; (4) the agency form number, if aplicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection relquirement is described as follows:

**Notice of Submission of Proposed Information Collection to OMB**

**Proposal:** Lease Requirements, 24 CFR 966.4
Office: Public and Indian Housing
Description of the need for the information and its proposed use: The information is needed to carry out statutory requirements for lease agreements between Public Housing Agencies and Public Housing tenants. It is used for rent redeterminations, terminations of tenancy, and PHA and tenant responsibility for the maintenance of the project and dwelling
Form Number: None
Respondents: State or Local Governments
Frequency of Response: Recordkeeping
Estimated Burden Hours: 174,000
Status: Reinstatement
Contact: Edward D. Whipple, HUD, (202) 426-0744; John Allison, OMB, (202) 395-6880.

**Proposal:** Housing Quality Analysis—Evaluation of the Housing Voucher Demonstration
Office: Policy Development and Research
Description of The Need For the Information And Its Proposed Use: The information is needed to compare with information on the price that would be justified for similar quality housing on the basis of previous data and researches. The comparison will be used to determine whether voucher

holders get better value than certificate holders
Form Number: None
Respondents: Individuals or Households
Frequency of Response: Single-time
Estimated Burden Hours: 1,340
Status: New
Contact: David Einhorn, HUD, (202) 755–5575; John Allison, OMB, (202) 395–6880.

Proposal: Issuer's Monthly Accounting Reports
Office: Government National Mortgage Association
Description of The Need For the Information And Its Proposed Use: Information is necessary to assure issuers are performing pursuant to the terms of the guaranty agreement and investors are receiving all funds due them. Issuers use these forms to report monthly on their securities accounting
Form Number: HUD–11710A, 1710B, 1710C, 11710D, and 11710E
Respondents: Businesses or Other For-Profit
Frequency of Respondents: On Occasion and Monthly
Estimated Burden Hours: 31,000
Status: Extension
Contact: Patricia A. Gifford, HUD, (202) 755–5550; John Allison, OMB, (202) 395–6880.

Proposal: Civil Rights Tenant Characteristics/Occupancy Report Insured Unsubsidized Housing Programs
Office: Fair Housing and Equal Opportunity
Description of The Need For the Information And Its Proposed Use: The information is needed and used by the Department of HUD to assist them in assuring that Federal statutes that prohibit discrimination and provide for fair housing are met
Form Number: HUD–949
Respondents: Businesses or Other For-Profit
Frequency of Response: Annually
Estimated Burden Hours: 1,353
Status: Extension
Contact: Mary T. George, HUD, (202) 755–2286; John Allison, OMB, (202) 395–6880.

Proposal: PHA Application—Project Proposal and Legal Authority Forms
Office: Public and Indian Housing
Description of The Need For the Information And Its Proposed Use: The information is needed and used by HUD to determine relative funding priorities for localities, PHA eligibility to participate in the program, and whether project proposals meet program requirements
Form Number: HUD–9009, 51971–I, 52470, 52471, 52472, 52482, 52483–A, 52485, and 52851–A
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Response: On Occasion
Estimated Burden Hours: 3,123
Status: Reinstatement
Contact: Jane M. Taliaferro, HUD, (202) 426–3938; John Allison, OMB, (202) 395–6880.

Proposal: Construction Complaint
Office: Housing
Description of The Need For the Information And Its Proposed Use: The information is needed by HUD to identify defects in construction. The forms are used to identify the items of complaint in order to help the homebuyer obtain correction, identify builders not conforming to applicable standards, and determine eligibility for financial assistance
Form Number: HUD–92556 and 92556–SFA
Respondents: Individuals or Households and Businesses or Other For-Profit
Frequency of Response: On Occasion
Estimated Burden Hours: 2,300
Status: Reinstatement
Contact: William C. Park, HUD, (202) 755–5700; John Allison, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: May 20, 1987.

John T. Murphy,
*Director, Information Policy and Management Division.*

[FR Doc. 87–12023 Filed 5–26–87; 8:45 am]
BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES–940–07–4520–13; ES–037388, Group 17]

### Filing of Plats of Dependent Resurvey, Subdivisions of Sections and Survey of Rend Lake Acquisition Boundary; Illinois

May 20, 1987.

1. The plat, in five sheets, of the dependent resurvey of the south boundary, Township 3 South, Range 2 East, a portion of the east boundary, Township 3 South, Range 1 East, a portion of the subdivisional lines, and the survey of the subdivision of sections 21, 28, 30, 32, 33 and 36, and the Rend Lake Acquisition Boundary, Township 3 South, Range 2 East, Third Principal Meridian, Illinois, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on July 6, 1987.

2. The dependent resurvey and survey were made at the request of the Corps of Engineers.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey and Support Services, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., July 6, 1987.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,
*Deputy State Director for Cadastral Survey and Support Services.*

[FR Doc. 87–11966 Filed 5–26–87; 8:45 am]
BILLING CODE 4310–GJ–M

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[CO–050–07–4212–14; C–42884, C–44129, C–44086]

### Realty Action; Custer, Park, and Teller Counties, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action C–42884, C–44129, and C–44086 noncompetitive sale of public land in Custer, Park and Teller Counties, Colorado.

SUMMARY: The following described land has been examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value. The land will not be offered for sale until July 27, 1987.

Sixth Principal Meridian

T. 22 S., R. 72 W.
Sec. 12, Lot 3
Containing 20.66 acres.

T. 10 S., R. 77 W.
Sec. 4, S½NE¼, SE¼NW¼, NW¼SE¼
Containing 160 acres.

T. 15 S., R. 70 W.
Sec. 3, lots 66, 67, 68, 69, 70, 89, 90, 91, 92, 95, and 99.

The above legal description contains 43.46 acres. The legal descriptions are preliminary data and unapproved, therefore lot numbers may change. The land sale will not take place until final approval of the legal land description.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until a patent is issued or 270 days from the date of publication of this notice, whichever occurs first.

The first described land is being offered by direct sale to the Silver Cliff Land and Cattle Company as the surrounding landowner. The sale is consistent with the Raton Basin Land Use Plan because the tract is difficult and uneconomic for management by the BLM or any other Federal department or agency.

The patent will contain a reservation of all minerals to the United States and a protective covenant over development in a small floodplain that crosses the tract.

The second described parcel is being offered by direct sale to the County of Park for continued use as a landfill. The sale is consistent with the Royal Gorge Land Use Plan because the tract is difficult and uneconomic for management by the BLM or any other Federal department of agency.

The third group of parcels is being offered by direct sale to Golden Cycle Land Corporation. The sale will resolve title and boundary problems caused by the fragmented land pattern.

**DATE:** For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Canon City District, Bureau of Land Management, 3080 East Main, P.O. Box 311, Canon City, CO 81212. Objections will be reviewed and this realty action may be sustained, vacated, or modified. In the absence of any objection resulting in vacation or modification, this realty action will become the final determination of the Department of the Interior.

Stuart L. Freer,

*Associate District Manager.*

[FR Doc. 87-10866 Filed 5-26-87; 8:45 am]

BILLING CODE 4310-JB-M

## Bureau of Reclamation

### San Joaquin Valley Conveyance Study Environmental Impact Statement, California; Withdrawal

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Withdrawal of notice of intent to prepare a separate environmental impact statement for the San Joaquin Valley conveyance study, California.

**SUMMARY:** The Bureau of Reclamation (Reclamation), Department of the Interior, on May 29, 1986 (51 FR 19420) published a Notice of Intent to prepare an Environmental Impact Statement (EIS) for the San Joaquin Valley Conveyance Study. The purpose of the project is to provide an additional water supply to the San Joaquin Valley to relieve the present ground-water overdraft. Alternatives under consideration include various canal alignments, new construction and enlargements of existing canals. Reclamation now will include the analysis of the San Joaquin Valley Conveyance Study in the Delta Export Water Contracting EIS being prepared for marketing Central Valley Project water south of the Sacramento-San Joaquin Delta.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alan Solbert, Environmental Specialist, Mid-Pacific Region (MP-750), 2800 Cottage Way, Sacramento, California 95825-1898, telephone (916) 978-5131.

Dated: May 20, 1987.

C. Dale Duvall,

*Commissioner.*

[FR Doc. 87-11950 Filed 5-26-87; 8:45 am]

BILLING CODE 4310-09-M

## Minerals Management Service

### Outer Continental Shelf (OCS) Advisory Board Scientific Committee; Agenda of Subcommittee and Task Force Meetings

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A-63, Revised.

The OCS Advisory Board Scientific Committee will meet in plenary session at the Sherator Anchorage Hotel, on Calista Square, 401 East 6th Avenue, Anchorage, Alaska 99501 (telephone number (907) 276-8700), from 9 a.m. to 5 p.m. on Thursday and Friday, July 23-24, 1987.

The agenda for the meeting will include the following subjects:

Update on the Environmental Studies Program (ESP) for the Regional and Headquarters Offices;

Fiscal Year 1988 Regional Studies Plans;

Update on the National Academy of Sciences Review of the ESP;

Discussion with Alaskan Representatives; and

Report on the ESP Monitoring Program.

This meeting is open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis. All inquiries concerning this meeting should be addressed to: Dr. Don V. Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Room 4230, Minerals Management Service, U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240 (telephone number (202) 343-7744).

Carolita L. Kallaur,

*Acting Associate Director for Offshore Minerals Management.*

[FR Doc. 87-11941 Filed 5-26-87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31019]

### Iowa Interstate Railroad Ltd.; Operation Exemption; Lincoln and Southern Railroad Co.

Iowa Interstate Railroad Ltd., has filed a notice of exemption to operate Lincoln and Southern Railroad Company's line between milepost 157.51 at Peoria, IL and milepost 114.85 at Bureau Junction, IL, a distance of 42.66 miles including trackage rights of Lincoln and Southern Railroad Company obtained from CSX Transportation, Inc., between milepost 126.94 at Henry, IL, and milepost 114.85 at Bureau Junction, IL. Any comments must be filed with the Commission and served on Harold L. Kaplan, Mayer, Brown & Platt; 190 South LaSalle Street, Chicago, IL 60603; (312) 701-7332.[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 15, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11910 Filed 5-26-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31018]

### Knox and Kane Railroad Co.; Exemption

**AGENCY:** Interstate Commerce Commission.

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied, because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C.2d 810 (1985).

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10901 the construction and operation of three miles of connecting railroad from Mt. Jewett to Kinzua Bridge State Park, PA.

**DATES:** This exemption will be effective on June 1, 1987. Petitions to reopen must be filed by June 16, 1987.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 31018 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Daniel J. Sweeney, 1750 Pennsylvania Avenue, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7345.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T. S. InforSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

Decided: May 13, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–11961 Filed 5–26–87; 8:45 am]

BILLING CODE 7035–01–M

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[No. 40136]

## Sam and Jerry Lines, Inc.; Exemption From Tariff Filing Requirements

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Proposed Exemption.

**SUMMARY:** Sam & Jerry Lines, Inc., a passenger motor contract carrier, seeks exemption from the tariff filing requirements of 49 U.S.C. 10702, 10761, and 10762. The Commission has issued a decision proposing to grant an exemption for existing and future contracts.

The petition for exemption from the tariff filing requirements may be inspected at the Public Docket Room (Room 1227) of the Commission in Washington, D.C. Any interested party may file a comment in this proceeding.

**DATES:** Comments are due on June 11, 1987. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments will be considered and, within 20 days of the close of the comment period, the Commission will issue a final decision.

**ADDRESS:** Send an original and 10 copies of comments referring to No. 40136 to;

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Richard Hartley, (202) 275–7786; or Andrew Lyon, (202) 275–7691.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. Copies may be purchased from T. S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washaington, DC 20423, or call 289–4357.

Decided: May 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–11962 Filed 5–26–87; 8:45 am]

BILLING CODE 7035–01–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–18, 954 and TA–W–18, 955]

### The Anschutz Corporation, Denver, CO and The Anschutz Corp. Midland, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at The Anschutz Corporation, Denver Colorado and Midland, Texas. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–18, 954; The Anschutz Corporation, Denver, Colorado (May 7, 1987)

TA–W–18, 955; The Anschutz Corporation, Midland, Texas (May 7, 1987)

Singed at Washington, DC, this 12th day of May 1987.

Marvin M. Fooks,

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87–12033 Filed 5–26–87; 8:45 am]

BILLING CODE 4510–30–M

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### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 8, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 8, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 18th day of May 1987.

Glenn M. Zech,

*Acting Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (Union/Workers/Firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| ALCOA (USW) | Point Comfort, TX | 5/18/87 | 5/5/87 | 18,688 | Bulk Aluminum. |
| AMTEL Consulting, Co. (Company) | Houston, TX | 5/18/87 | 5/18/87 | 18,689 | Consulting Service for Oil Industry. |
| ANAMAG, Inc. (Teamsters) | Summerville, KY | 5/18/87 | 5/6/87 | 18,691 | Copper Wire. |
| Beecham Products (Workers) | Cranford, NJ | 5/18/87 | 5/11/87 | 18,692 | Over Counter Drugs. |
| Compressors Systems, Inc. (Workers) | Odessa, TX | 5/18/87 | 5/11/87 | 18,693 | Natural Gas. |
| Cuero Contracting Co. (Workers) | Cuero, TX | 5/18/87 | 5/7/87 | 18,694 | Pipeline Construction |
| Dunlop Tire Corporation (A.C.T.W.U) | Utica, NY | 5/18/87 | 5/4/87 | 18,695 | Tire Cord Fabric. |
| Eastman Kodak (Workers) | Rochester, NY | 5/18/87 | 5/5/87 | 18,696 | Film, Cameras, Copiers |
| Fick Foundry (Workers) | Tacoma, WA | 5/18/87 | 5/8/87 | 18,697 | Steel Castings. |
| Freeport Brick Company (A.B.G.W.I.U.) | Freeport, PA | 5/18/87 | 5/1/87 | 18,698 | Ladle and Paving Brick. |
| General Motors Corp., Fisher Guide (UAW) | Columbus, OH | 5/18/87 | 5/8/87 | 18,699 | Door Locks. |
| Global Marine Drilling Co. (Workers) | Lafayette, LA | 5/18/87 | 5/6/87 | 18,700 | Crude Oil. |
| Golo Footwear Corp. (USWA) | Dunmore, PA | 5/18/87 | 5/4/87 | 18,701 | Ladies' Shoes. |
| Grace Petroleum Corporation (Company) | Oklahoma City, OK | 4/28/87 | 5/8/87 | 18,702 | Crude Oil. |
| Grace Petroleum Corporation (Company) | Jackson, MI | 4/28/87 | 5/8/87 | 18,703 | Do. |
| Grace Petroleum Corporation (Company) | Houston, TX | 4/28/87 | 5/8/87 | 18,704 | Do. |
| Grace Petroleum Corporation (Company) | Lakewood, CO | 4/28/87 | 5/8/87 | 18,705 | Do. |
| Hoke, Inc. (IAM) | Cresskill, NJ | 5/18/87 | 5/7/87 | 18,706 | Fluid Control Valves. |
| RT Courier (Company) | Tempe, AZ | 5/18/87 | 4/30/87 | 18,707 | Computers. |
| Ingersoll-Rand Mining Machinery (Workers) | Beckley, WV | 5/18/87 | 5/7/87 | 18,708 | Underground Mining Equipment |
| Int'l Brotherhood of Electrical Workers (Workers) | St. Joseph, MO | 5/18/87 | 5/6/87 | 18,709 | Union Office Workers. |
| Meridian Oil, Inc.-Gulf Coast Region (Workers) | Houston, TX | 5/18/87 | 4/27/87 | 18,710 | Crude Oil. |
| Nowsco Services (Workers) | Denver, CO | 5/18/87 | 4/9/87 | 18,711 | Oil Field Services. |
| Nowsco Services (Workers) | Rock Spring, WY | 5/18/87 | 4/9/87 | 18,712 | Do. |
| Patmore Coats, Inc. (ILGWU) | Paterson, NJ | 5/18/87 | 5/7/87 | 18,713 | Ladies' Jackets. |
| Plowden Supply Co. (Company) | Houston, TX | 5/18/87 | 4/20/87 | 18,714 | Distribution of Industrial Supplies. |
| Regal Fashions Co., (ILGWU) | Patterson, NJ | 5/18/87 | 5/6/87 | 18,715 | Women's Jackets. |
| Transit America (Workers) | Miami, FL | 5/18/87 | 4/13/87 | 18,716 | Passenger Railcars. |
| Transit America (Workers) | Baltimore, MD | 5/18/87 | 4/13/87 | 18,717 | Do. |
| WTG Exploration, Incorporated (Company) | Midland, TX | 5/18/87 | 5/6/87 | 18,718 | Crude Oil. |
| Wotan Machine Tools (Workers) | Fairfield, NY | 5/18/87 | 5/6/87 | 18,719 | Machine Tools. |

[FR Doc. 87-12027 Filed 5-26-87; 8:45 am]
BILLING CODE 4510-30-M

## Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 11, 1987–May 15, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–19,360; Twin Disc, Inc., Racine, WI

TA–W–19,347; Memtec Caribe, Inc., Luquillo, PR

TA–W–19,271; Becton-Dickinson, Distributing Center, Parsippany, NJ

TA–W–19,270; Becton-Dickinson Manufacturing Plant, Rutherford, NJ

TA–W–19,281; Belden & Blake Corp., North Canton, OH

TA–W–19,339; Evans Products Co., Aberdeen, WA

TA–W–19,379; Hyatt Clark Industries, Inc., Clark, NJ

TA–W–19,330; Wood & Hyde Co., Inc., Gloversville, NY

TA–W–19,352; Roanoke Fashions Co., Lakeside Plant, Salem, VA

TA–W–19,414; Vikron, Inc., St. Croix Falls, WI

TA–W–19,356; Tek-Hughes, Division of International Playtex, Watervliet, NY

TA–W–19,323; The Trane Company, LaCrosse, WI

TA–W–19,353; Robinson Steel Co., Philadelphia, PA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–19,540; Alpha, Seismic Services, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–19,600; Parish, Inc., Virginia, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–19,532; Ryan Brothers Transfer, Inc., Hibbing, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–19,338; Control Data Corp., Minneapolis, MN

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,442; National Gypsum Co., Alpena, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,295; Exxon Co., USA, Marketing Dept., Distribution & Fuel Products Div., Charleston, WV

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,324; USX Corp., US Diversified Group, Commerce City, CO

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,516; CSX Oil & Gas Corp. (formerly Texas Gas Exploration

Corp), Denver District Office, Denver, Co.

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,627; Halliburton Service, Lafayette, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–19,305; Karg Brothers, Inc., Johnstown, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–19,407, TA–W–19,408; TA–W–19,409; Schaper Manufacturing Co., Lakeville, Minnesota Distribution Center, Plymouth, MN

Increased imports did not contribute importantly to workers separations at the firm.

**Affirmative Determinations**

TA–W–19,292; Dilido Fashions, Miami, FL

A certification was issued covering all workers of the firm separated on or after February 28, 1986.

TA–W–19,359; Thomson-CCR Medical Corp., Columbia, MD

A certification was issued covering all workers of the firm separated on or after March 5, 1986.

TA–W–19,415; West Virginia Glass Specialty Co., Inc., Weston, WV

A certification was issued covering all workers of the firm separated on or after March 10, 1986.

TA–W–19,355; Tex-Sun Glove, Corsicana, TX

A certification was issued covering all workers of the firm separated on or after March 5, 1986.

TA–W–19,361; White Consolidated Industries, Inc., Machine Tools & System Group, Cincinnati, OH

A certification was issued covering all workers of the firm separated on or after March 5, 1986.

TA–W–19,357; The Meeker Co., Joplin, MO

A certification was issued covering all workers of the firm separated on or after February 28, 1986.

TA–W–19,427; Champlin Petroleum Co., Wilmington, CA, Production Unit, Wilmington, Refinery, Long Beach, CA

A certification was issued covering all workers of the firm separated on or after March 2, 1986.

TA–W–19,485; LTV Steel Co., Paramus Sales Office, Paramus, NJ.

A certification was issued covering all workers of the firm separated on or after March 30, 1986.

TA–W–19,365; Becton-Dickinson, Puerto Rico, Inc., Juncos, PR

A certification was issued covering all workers of the firm separated on or after March 16, 1986.

TA–W–19,345; Kardex Systems, Inc., Reno, OH

A certification was issued covering all workers of the firm separated on or after March 6, 1986.

TA–W–19,299; H.R.H., Inc., Hazelton, PA

A certification was issued covering all workers of the firm separated on or after February 24, 1986.

TA–W–19,369; Champlin Petroleum Co., Denver Co. Exploration & Production Unit, Denver, CO

A certification was issued covering all workers of the firm separated on or after March 2, 1986.

TA–W–19,426; Champlin Petroleum Co., Fort Worth, TX

A certification was issued covering all workers of the firm separated on or after March 2, 1986.

TA–W–19,428; Champlin Petroleum Co., Rock Springs Wyoming Exploration & Production Unit, Rock Springs, WY

A certification was issued covering all workers of the firm separated on or after March 2, 1986.

I hereby certify that the aforementioned determinations were issued during the period May 11, 1987–May 15, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 19, 1987.

Glenn M. Zech,

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87–12028 Filed 5–26–87; 8:45 am]

BILLING CODE 4510–30–M

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## Federal-State Unemployment Compensation Program; Proposal for Eliminating Duplicative Reporting Systems in the Federal-State Unemployment Compensation (UC) Program

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of proposed changes.

**SUMMARY:** This notice describes a proposal to eliminate duplicative reporting systems in the Federal/State Unemployment Compensation program by September 30, 1987. Comments from the State agencies and the public are invited.

**DATE:** Written comments must be received before close of business on June 26, 1987.

**ADDRESS:** Submit written comments to Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0600.

**FOR FURTHER INFORMATION CONTACT:** Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0600.

**SUPPLEMENTARY INFORMATION:** The Unemployment Insurance Service within the Employment and Training Administration (ETA) requires all State Employment Security Agencies (SESAs) to generate inforamtional reports in order to evaluate and administer programs, plan policy, conduct research, and determine SESA funding levels.

Presently, two systems exist which enable the States to process these reports. The original, OMB approved, method is referred to as the Regular Reporting (RR) system and consists of hard copy reports generated at the State level which are mailed to the ETA via U.S. Postal Service.

An alternative data transmittal system, currently utilized on a voluntary basis by a majority of the States, is the Regional Cost Information System (RCIS). Originally designed as a Management Information System for Regions and States, RCIS allows States to electronically transmit the same report data which is required to be mailed in as part of the RR System.

RCIS and RR data are generated by the States, with RCIS data being entered into computer terminals, then automatically edited and telecommunicated to one of three ETA Regional Computer Systems Network (CSN) nodes or to the fourth ETA CSN node located in Washington, DC.

States currently utilizing RCIS, in order to comply with reporting requirements, must still generate hard copies of all reports and mail them to ETA (with the exception of ET 539 Weekly Claims and Extended Benefits Data). As RCIS has increased in size, a steady build up of duplicative data has

evolved. As a result, ETA is now receiving both paper and electronic transmittal of the same information in the majority of cases.

In an effort to avoid such redundancy, ETA proposes to eliminate any duplicative reporting generated by the two systems. Under consideration is the establishment of RCIS as the single reporting system effective October 1, 1987. Data entry could continue as currently constructed, or variations such as Regional or National Office data entry from RR data could be established.

Comments are invited on this proposal to eliminate duplicative reporting and should be received before close of business on June 26, 1987.

Signed at Washington, DC, on May 18, 1987.

Roberts T. Jones,

*Deputy Assistant Secretary of Labor.*

[FR Doc. 87-12026 Filed 5-26-87; 8:45 am]

BILLING CODE 4510-30-M

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## Mine Safety and Health Administration

[Docket No. M-87-122-C]

## Beckley Lick Run Co.; Petition for Modification of Application of Mandatory Safety Standard

Beckley Lick Run Company, Rt. 1, 200 Bonny Lane, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its Bonny Mine (I.D. No. 46-04388) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that devices be installed on all belts which will give a warning automatically when a fire occurs on or near such belt.

2. As an alternate method, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices will be capable of giving warning of a fire for a minimum of four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect any malfunctions.

3. The CO system will be visually examined at least once each coal-producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

4. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 26, 1987. Copies of the petition are available for inspection at that address.

Dated: May 18, 1987

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-12029 Filed 5-26-87; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-87-124-C]

## Lesco Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Lesco Mining Company, Route 1, Box 150, Woodbine, Kentucky 40771, has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-15084) located in Knox County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration inthe atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 26, 1987. Copies of the petition are available for inspection at that address.

Dated: May 18, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-12030 Filed 5-26-87; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-87-126-C]

## Mountain Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Mountain Coal Company, P.O. Box 36, Ingram, Kentucky 40955 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 3 (I.D. No. 15-15728) located in Bell County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitor in lieu of methane monitors of three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane building between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A space continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations of modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 26, 1987. Copies of the petition are available for inspection at that address.

Dated: May 18, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-12031 Filed 5-26-87; 8:45 am]

BILLING CODE 4510-43-M

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[Docket No. M-87-118-C]

## Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C-79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 4 Mine (I.D. No. 01-01247) located in Tuscaloosa County, Alabama. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures.

2. Petitioner has electrical installations which are located such that all entries close to them are maintained as intake airways. There are no return airways available for ventilating these installations.

3. As an alternate method, petitioner proposes that:

(a) The electrical installation will be housed in a fireproof structure and, when necessary, equipped with automatic closing fire doors activated by thermal devices. The fire doors will be designed to enclose all associated electric components in a reasonably airtight enclosure in case of fire or excessive temperature;

(b) The electric equipment will be protected with thermal devices designed to remove incoming power. Grounded phase protective devices protecting three-phase equipment will be adjusted to remove incoming power at not more than 40 percent of the available fault current;

(c) An automatic fire suppression system will be installed;

(d) The electrical equipment will contain no flammable cooling liquid or flammable hydraulic oil;

(e) Rectifying substations providing power to trolley systems will be protected by direct current circuit breakers with reverse current protection;

(f) No combustible materials will be stored or allowed to accumulate in the fireproof enclosure;

(g) A signal, activated by a suitable sensor, will be located so that it can be seen or heard by a responsible person;

(h) Fire-fighting equipment will be provided on the outside of the fireproof structure; and

(i) The electrical equipment will be examined weekly, and tested and maintained by a qualified electrican.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 26, 1987. Copies of the petition are available for inspection at that address.

Dated: May 19, 1987.

Patricia W. Silvey,

*Associate Assistant Secretary for Mine Safety and Health.*

[FR Doc. 87-12032 Filed 5-26-87; 8:45 am]

BILLING CODE 4510-43-M

BEST COPY AVAILABLE

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Special Projects Section) to the National Council on the Arts will be held on June 10-11, 1987, from 8:15 a.m.-8:00 p.m. and June 12, 1987, from 8:45 a.m.-5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 10, 1987 from 8:15 a.m.-8:45 a.m. and June 12, 1987 from 2:30-5:00 p.m. The topics for discussion will include introductions and policy issues.

The remaining sessions of this meeting on June 10, 1987 from 8:45 a.m.-8:00 p.m., June 11, 1987 from 8:15 a.m.-8:00 p.m. and June 12, 1987 from 8:45 a.m.-2:30 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 19, 1987.

[FR Doc. 87-11942 Filed 5-26-87; 8:45 am]

BILLING CODE 7537-01-M

### Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Avisory Panel (Community Foundation Initiative Section) to the National Council on the Arts will be held on June 11, 1987, from 9:15 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 11, 1987 from 9:15 a.m.-10:00 a.m. and 4:30 p.m.-5:30 p.m. The topics for discussion will include general program overview and policy issues.

The remaining sessions of this meeting on June 11, 1987 from 10:00 a.m.-4:30 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 20, 1987.

[FR Doc. 87-11967 Filed 5-26-87; 8:45 am]

BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

### Carolina Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50-325 and 50-324]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. DPR-71 and DPR-62 issued to the Carolina Power & Light Company, (the licensee), for operation of Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

#### Environmental Assessment

*Identification of Proposed Action*

The proposed action would permit the licensee to implement changes to the Brunswick facility and to Technical Specifications (TSs), as described in their letter of November 7, 1986. The following assessment applies to Units 1 and 2.

*The Need for the Proposed Action:*

The B division battery bus for each of the Brunswick units is configured in such a way that it is the normal feed for a unit's lighting inverter and standby Uninterruptible Power Supply (UPS). In addition, the B division bus serves as the alternate feed for the opposite unit's lighting inverter. Each of the lighting inverters and the power conversion module for the UPS is currently rated at 37.5 kVA. Currently, TS Surveillance Requirement 4.8.2.3.1(b) requires verification at least once per seven days that there are no more than two of these 37.5 kVA power conversion modules aligned to the B division bus to prevent overloading the bus, which also feeds safety-related loads during a postulated design basis accident.

The UPS system is a non-1E system that feeds various loads throughout the Brunswick facility. The licensee states that the existing UPS system is approaching obsolescence and is considered to be beyond reasonable maintainability. The licensee proposes to replace the UPS system with currently available equipment that is rated at 50 kVA. To permit this upgrade, the licensee proposes to delete the reference to 37.5 kVA equipment from Surveillance Requirement 4.8.2.3.1(b). The proposed TS change would require verification that no more than two power conversion modules, consisting of either two lighting inverters or one lighting inverter and one plant UPS unit, are aligned to the B division bus. As currently exists, the load from two lighting inverters would be greater than from one lighting inverter and the proposed 50 kVA UPS module.

*Environmental Impacts of the Proposed Action*

Because the maximum load from the inverters and UPS module would not change, there would be no effect from this change on systems required to mitigate the effects of a postulated accident. Thus, post-accident radiological releases will not be greater than previously determined, nor do the proposed changes otherwise affect radiological plant effluents. Occupational exposures to radiation would also be unaffected. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed changes.

With regard to potential non-radiological impacts, the proposed

changes involve systems located within the restricted area, as defined in 10 CFR Part 20. No non-radiological effluents are affected, and no other environmental impact would occur. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed changes.

*Alternatives to the Proposed Action*

Since the Commission has concluded that there is no measureable environmental impact associated with the proposed changes to the TSs, any alternative to the amendments will either have no environmental impact or greater environmental impact. The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the Final Environmental Statement for Brunswick Steam Electric Plant, Units 1 and 2, dated January 1974.

*Agencies and Persons Consulted*

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

*Finding of No Significant Impact*

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have significant effect on the quality of the human environment.

For further information with respect to this action, see the application for the amendments dated November 7, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Bethesda, Maryland this 22nd day of May 1987.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

*Director, Project Directorate II–1, Division of Reactor Projects—I/II.*

[FR Doc. 87–12194 Filed 5–26–87; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF MANAGEMENT AND BUDGET

### Revision of OMB Circular A–122, "Cost Principles for Nonprofit Organizations"

**AGENCY:** Office of Management and Budget.

**ACTION:** Revision of OMB Circular A–122, "Cost Principles for Nonprofit Organizations".

**SUMMARY:** This notice revises Office of Management and Budget (OMB) Circular A–122, "Cost Principles for Nonprofit Organizations." Based on recommendations by the Defense Acquisition Council and the Civilian Agency Acquisition Council, this revision clarifies requirements for maintenance and access to records for costs associated with legislative lobbying and political activities. It does not alter the originally intended meaning of the affected section and will not result in the imposition of any additional recordkeeping requirements.

This revision maintains consistency with an identical technical revision to the Federal Acquisition Regulation (FAR) to cover all defense and civilian contractors. The FAR revision appears elsewhere in this issue of the Federal Register.

**SUPPLEMENTARY INFORMATION:** OMB Circular A–122, "Cost Principles for Nonprofit Organizations," establishes uniform rules for determining the costs of grants, contracts and other agreements between the Federal Government and nonprofit organizations. Attachment B, section B21, "Lobbying" makes unallowable the costs associated with most kinds of legislative lobbying and political activities.

According to the Department of Defense, contractors are misinterpreting paragraph c.(4), the so-called "25 percent rule," to either stop keeping records maintained to comply with the prior cost principle, or to deny access to their regularly-maintained accounting data. The paragraph was only intended to restrict requirements for additional special records, such as time logs and calenders, and not intended to restrict access to records regularly maintained in the ordinary course of business.

The Department of Defense, General Services Administration, and National Aeronautics and Space Administration published a proposed rule in the Federal Register on May 29, 1986 (51 FR 19506). Twenty-four comments were received, of which 20 were from Federal agencies. Twenty of the 24 either concurred or had no comment. The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council considered the comments and incorporated technical changes to meet some of the recommendations in the four other comments.

The revision restructures paragraph c.(4) to make clear its original intent that records usually maintained to demonstrate the allowability of costs must continue to be maintained and made available for audit.

May 19, 1987.

[Circular No. A–122, Revised Transmittal Memorandum No. 2]

**To the Heads of Executive Departments and Agencies**

Subject: Cost Principles for Nonprofit Organizations.

This memorandum revises OMB Circular A–122, "Cost Principles for Nonprofit Organizations, to clarify requirements for maintenance and access to records for costs associated with legislative lobbying and political activities.

In attachment B, section B21, "Lobbying," paragraph c.(4) is revised as follows:

c.(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this section during any particular calendar month when: (1) the employee engages in lobbying (as defined in paragraphs (a) and (b) above) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions (1) and (2) above are met, organizations are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) above are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

James C. Miller III,

*Director.*

[FR Doc. 87–11883 Filed 5–26–87; 8:45 am]

BILLING CODE 3110–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, June 3, 1987
Wednesday, June 10, 1987
Wednesday, June 17, 1987
Wednesday, June 24, 1987.

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under Subchapter IV, Chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, consititute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public in invited to submit material in writing to the Chairman of Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632–9710.

Thomas E. Anfinson,

*Chairman, Federal Prevailing Rate Advisory Committee.*

May 21, 1987.

[FR Doc. 87–12034 Filed 5–26–87; 8:45 am]

BILLING CODE 6325–01–M

## PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

### Annual Meeting of the Commissioners

**AGENCY:** President's Commission on White House Fellowships.

**ACTION:** Notice of annual selection meeting of the President's Commission on White House Fellowships; closed to the public.

**SUMMARY:** Notice is hereby given that the Annual Selection Meeting of the President's Commission on White House Fellowships will be held at the Aspen Institute, Wye Plantation, Queenstown, Maryland, June 4 through 7, 1987, beginning at 5:00 P.M.

The Annual Selection Meeting is part of the screening process of the White House Fellowships program. During this three day meeting the application and screening process of the thirty-three applicants for White House Fellowships will be discussed and the applicants will be interviewed by the members of the Presidential Commission. At the conclusion of this meeting the Commissioners recommend to the President those they propose to be selected to serve as White House Fellows.

It has been determined by the Director of the Office of Personnel Management that, because of the nature of the screening process, wherein personnel records and confidential character references must be used which, if revealed to the public, would constitute a clear invasion of the individuals' privacy, the content of this meeting falls within the provisions of Section 552b(c)(6) of Title 5 of the United States Code. Accordingly, this meeting will be closed to the public.

**DATE:** The date of the Annual Selection Meeting of the President's Commission on White House Fellowships, which is closed to the public, is June 4–7, 1987.

**FOR FURTHER INFORMATION CONTACT:** President's Commission on White House Fellowships, 712 Jackson Place NW., Washington, DC 20503, (202) 395–4522.

Dated: May 19, 1987.

Signed:

Linda L. Tarr,

*Ph.D., Director, President's Commission on White House Fellowships.*

[FR Doc. 87–12009 Filed 5–26–87; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 1–8696]**

### Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Kay Jewelers, Inc. (Common Stock, $1.00 Par Value)

May 18, 1987.

Kay Jewelers, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's common stock recently began trading on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before June 9, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11989 Filed 5-26-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24481; File No. SR-PSE-87-16]

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 13, 1987, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE proposes to waive transaction and order book fees for trades executed in options on two over-the-counter ("OTC") stocks: Microsoft Corporation and Mentor Corporation. These fees will be waived retroactive to May 1, 1987 and through July 17, 1987.

In its filing, PSE states that its proposal is a competitive response to the Commission's decision to permit options on OTC stocks to be traded by more than one exchange.[1] The Exchange states that a fee waiver is "necessary to remain on a competitive footing with other options exchanges" and that the waiver "will encourage decisions regarding where to trade given options to be made on the basis of the strength of the marketplace." The PSE states that the statutory basis for the proposed rule change is Section 6(b)(5) of the Act.

As the foregoing rule change is concerned solely with an exchange fee, it has become effective immediately pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act.[2] The Commission finds good cause to allow the fee waiver to become effective retroactive to May 1, 1987. The PSE would like to waive fees immediately and has informed the Commission that its internal operations are such that it is very difficult to compute fees other than on a monthly basis. Accordingly, the fee waiver is extended back to May 1, 1987. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 17, 1987.

Dated: May 15, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11985 Filed 5-26-87; 8:45 am]

BILLING CODE 8010-01-M

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[1] *See* Securities Exchange Act Release No. 22028 (May 8, 1985), 50 FR 20310.

[2] The Commission in the past has permitted exchanges to waive transaction and related fees for specific options for short periods of time for competitive reasons. *See* Securities Exchange Act Release No. 23485 (July 30, 1986), 51 FR 28472.

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## Self-Regulatory Organizations; Applications of Midwest Stock Exchange Inc. for Unlisted Trading Privileges and of Opportunity for Hearing

May 18, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Malaysia Fund Inc.
Common Stock, $.01 Par Value (File No. 7-0105)

Morgan Grenfell Smallcap Fund Inc.
Capital Stock, $.01 Par Value (File No. 7-0106)

Shearson Lehman Brothers Holdings Inc.
Common Stock, $.01 Par Value (File No. 7-0107)

RLI Corporation
Common Stock, $1.00 Par Value (File No. 7-0108)

A.O. Smith Corporation
Class A Common Stock, $5.00 Par Value (File No. 7-0109)

Fairchild Industries (Del.)
Common Stock, $.01 Par Value (File No. 7-0110)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 9, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-11986 Filed 5-26-87; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications of Midwest Stock Exchange, Inc. for Unlisted Trading Privileges and of Opportunity for Hearing

May 18, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Bally's Health & Tennis Corp.
Common Stock, $.01 Par Value (File No. 7-0098)

Shelby Williams Inc.
Common Stock, $.05 Par Value (File No. 7-0097)

Tiffany & Co.
Common Stock, $.01 Par Value (File No. 7-0099)

Allegheny Ludlum Corp.
Common Stock, $.10 Par Value (File No. 7–9089)
Chemical New York Corporation
Class B Common Stock, Without Par Value (File No. 7–9090)
Chemical New York Corporation
Adjustable Rate, Cumulative, Preferred (File No. 7–9091)
Diamond Shamrock R & M, Inc.
Common Stock, $.01 Par Value (File No. 7–9092)
Fries Entertainment, Inc. (Del.)
Common Stock, $.01 Par Value (File No. 7–9093)
Hancock Fabrics, Inc.
Common Stock, $.01 Par Value (File No. 7–9094)
PhlCorp., Inc.
Common Stock, $1.00 Par Value (File No. 7–9095)
UST Inc.
Common Stock, $.50 Par Value (File No. 7–9096)
Orange-Co., Inc.
Common Stock, $.50 Par Value (File No. 7–9097)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 9, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Johathan G. Katz,
*Secretary.*

[FR Doc. 87–11987 Filed 5–26–87; 8:45 am]
BILLING CODE 8010–01–M

## Self-Regulatory Organizations; Applications of Philadelphia Stock Exchange, Inc. for Unlisted Trading Privileges and of Opportunity for Hearing

May 18, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities.

International Thoroughbred Breeders, Inc.
Common Stock, $0.10 Par Value (File No. 7–9098)
Lifetime Corporation
Common Stock, $0.01 Par Value (File No. 7–9099)
MEDIQ, Incorporated
Common Stock, $1.00 Par Value (File No. 7–1000)
Oppenheimer Industries, Inc.
Common Stock, $0.10 Par Value (File No. 7–0101)
Ply-Gem Industries, Inc.
Common Stock, $0.25 Par Value (File No. 7–0102)
Turner Broadcasting System, Inc.
Common Stock, $0.125 Par Value (File No. 7–0103)
UST Inc.
Common Stock, $.05 Par Value (File No. 7–0104)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 9, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 87–11988 Filed 5–26–87; 8:45 am]
BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2279]

## New York; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 15, 1987, I find that Delaware, Greene, Montgomery, Schoharie and Ulster Counties in the State of New York constitute a disaster loan area because of severe flooding during the period April 3–7, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on July 14, 1987, and for economic injury until the close of business on February 15, 1988, at: Disaster Area 1 Office, Small Business Administration, 15–01 Broadway, Fair Lawn, New Jersey 07410, or other locally announced locations.

The interest rates are:

| | |
|---|---|
| Homeowners with Credit Available Elsewhere | 8.000% |
| Homeowners Without Credit Available Elsewhere | 4.000% |
| Businesses with Credit Available Elsewhere | 7.750% |
| Businesses Without Credit Available Elsewhere | 4.000% |
| Businesses (EIDL) Without Credit Available Elsewhere | 4.000% |
| Other (Non-Profit Organizations Including Charitable and Religious Organizations) | 9.500% |

The number assigned to this disaster is 227906 for physical damage and for economic injury the number is 652900.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: May 18, 1987.

Bernard Kulik,
*Deputy Associate Administrator for Disaster Assistance.*

[FR Doc. 87–11961 Filed 5–26–87; 8:45 am]
BILLING CODE 8025–01–M

## DEPARTMENT OF TRANSPORTATION

## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended May 15, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket No. 44878*

*Date Filed:* May 11, 1987.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 8, 1987.

*Description:* Application of World Wide Air Charter Transport Systems Inc. d/b/a Air Charter Systems (A.C.S.), pursuant to Section 402 of the Act applies for an initial Foreign Air Carrier Permit authorizing charter air transportation of property and mail between points in the United States and points in Canada.

*Docket No. 44687*

*Date Filed:* May 15, 1987.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* June 12, 1987.

*Description:* Application of Command Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations for a certificate of public convenience and necessity for scheduled and charter interstate air transportation of persons, property and mail. Command Airways also requests pursuant to Part 215 of the Regulations to use the trade name, "American Eagle", as well its own name.

*Docket No. 43927*

*Date Filed:* May 15, 1987.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* June 12, 1987.

*Description:* Amendment to Application of Transbrasil S.A. Linhas Aereas pursuant to Section 302.1740 of the Act requesting authority to provide scheduled combination passenger, cargo and mail air transportation between the United States and Brazil.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87-11994 Filed 5-26-87; 8:45 am]

BILLING CODE 4910-62-M

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## Federal Highway Administration

### Commercial Driver's License Information System (Clearinghouse); Public Meeting and Workshop

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of public meeting and workshop.

**SUMMARY:** The Federal Highway Administration, Office of Motor Carriers, announces a July 14 and 15, 1987, public meeting and workshop to be conducted in the Washington, DC area regarding the Commercial Driver's License Information System (also called the Clearinghouse). The Clearinghouse is required by the Commerical Motor Vehicle Safety Act of 1986.

**DATE:** Reservations to participate in the workshop should be received by June 10, 1987.

**ADDRESS:** Submit written reservations for participating in the workshop to Mr. C. John MacGowan, Chief, Motor Carrier Information Division, HIA-10, Federal Highway Administration, Room 3110, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. John MacGowan, Office of Motor Carrier Information Management and Analysis, Room 3110, (202) 366-4023; Mr. George F. Duffy, Office of Environmental Policy, Room 3232, (202) 366-2066; or Mrs. Kathleen S. Markman, Office of Chief Counsel, HCC-20, Room 4224, (202) 366-0834, FHWA, DOT, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:**

### Workshop Announcement

By January 1, 1989, FHWA must establish an information Clearinghouse pertaining to the licensing and identification of operators of commercial motor vehicles and the disqualification of such operator from operating commercial motor vehicles. This information is to be available to States, current and prospective employers, employees and the Secretary of Transportation to help ensure compliance with the single license requirement and disqualification provisions of the Commercial Motor Vehicle Safety Act of 1986 (the Act), Pub. L. 99-570, 100 Stat. 3207-176. Given the time constraints and to assure that as many affected parties as practical have had an opportunity to provide comments on the requirements of the Clearinghouse, a 2-day workshop will be held.

The workshop will coincide with the availability of the initial results from Phase I of the contract effort described below. The workshop will present the findings and solicit views and suggestions on the general requirements and specifications for the Clearinghouse. The workshop will be held at the Sheraton International Conference Center in Reston, Virginia, on July 14 and 15, 1987. A $37.00 registration fee will be charged to cover conference facilities and lunch arrangements for the two days. Both government and corporate room rates are available in the hotel. For planning purposes, State motor vehicle information systems and licensing personnel, motor carrier industry representatives, commercial motor vehicle operator representatives, and members of the public who are interested in participating in the workshop should express their desire in writing prior to June 10, 1987.

### Description of Contract Effort

Section 12007(b) of the Act requires that, by January 1, 1988, the Secretary of Transportation must review information systems utilized by the States pertaining to the driving status of operators of motor vehicles as well as other State-operated information systems. The Federal Highway Administration (FHWA) awarded a contract to develop the system requirements and preliminary system specifications for the Clearinghouse by November 1, 1987. RJO Enterprises, Inc., was selected as the prime contractor for this work and will be assisted by Farradyne Systems, Inc. and The Orkand Corporation.

Development of the Clearinghouse system specification will be performed in three phases:

Phase I (April-May) will consist of a thorough review of all materials developed to date, including a recent FHWA field inventory survey and the American Association of Motor Vehicle Administrators telecommunications network study, and visits to not more than nine States which have systems that may be adaptable to the Clearinghouse. Visits to the States will take place during May 1987. The requirements for the Clearinghouse will be produced at the end of this Phase.

Phase II (May-August) will consist of a symposium with States to discuss aspects of system development, meeting with the FHWA technical staff and others on possible system design, and a workshop to discuss technical aspects of the system. The results of Phase II will be a publication of the workshop proceedings and three draft functional system specifications. The published proceedings will be available for inspection from the Office of Motor Carrier Information Management and Analysis (202) 366-4023.

Phase III (September-October) will involve discussion between FHWA and key States regarding the proposed architecture for the Clearinghouse, selection of the final design, and production of the final specification.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: May 21, 1987.

**Ray Barnhart,**

*Administrator.*

[FR Doc. 87-12039 Filed 5-26-87; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Senior Executive Service; Departmental Performance Review Board

**ACTION:** This notice lists the membership of the Departmental Performance Review Board (PRB), superseding the list published in 51 FR 12013, April 8, 1986, in accordance with 5 U.S.C. 4313(c)(4).

Scope: This notice applies to all components within the Department of the Treasury.

Purpose: The purpose of the Board is to review proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of non-delegated SES positions. These positions include SES bureau heads, deputy bureau heads, bureau chief inspectors, Associate Commissioners of the Internal Revenue Service, and certain other positions. The Board makes recommendations to the Secretary or his designee as Appointing Authority. The Board will perform PRB functions for other top bureau positions if requested. In addition, the Board will review proposed SES bonus distributions and Presidential Rank nominations from the bureaus upon request.

Composition of PRB: Three members constitute a quorum, at least two of whom must be career appointees. The names and titles of the PRB members are as follows:

Chairperson, John F. W. Rogers, Assistant Secretary of the Treasury (Management)
Paul W. Bateman, Deputy Treasurer
Thomas J. Berger, Deputy Assistant Secretary (International Monetary Affairs)
James W. Conrow, Deputy Assistant Secretary (Developing Nations)
Roger M. Cooper, Deputy Assistant Secretary (Information Systems)
William E. Douglas, Commissioner, Financial Management Service
Stephen J. Entin, Deputy Assistant Secretary (Economic Forecasting)
Eugene H. Essner, Deputy Director, U.S. Mint
Richard L. Gregg, Commissioner, Bureau of Public Debt
Stephen E. Higgins, Director, Alcohol, Tobacco and Firearms
Michael F. Hill, Deputy Assistant Secretary for Administration
Michael R. Hill, Inspector General
Francis A. Keating II, Assistant Secretary (Enforcement)
Jill E. Kent, Deputy Assistant Secretary for Departmental Finance and Management
John A. Kilcoyne, Assistant Fiscal Assistant Secretary
Robert J. Lauver, Director, Bureau of Engraving and Printing
Samuel T. Mok, Comptroller
S.F. Timothy Mullen, Director, Office of Administrative Programs
Gerald Murphy, Fiscal Assistant Secretary
Howard W. Nester, Deputy Director (Revenue Estimating)
Thomas P. O'Malley, Director, Office of Procurement
Katherine D. Ortega, Treasurer of the United States
James I. Owens, Deputy Commissioner, Internal Revenue Service
Charles O. Sethness, Assistant Secretary (Domestic Finance)
John P. Simpson, Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement)
Edward T. Stevenson, Special Assistant to the Assistant Secretary (Legislative Affairs)
Margaret D. Tutwiler, Assistant Secretary (Public Affairs and Public Liaison)
D. Edward Wilson, Jr., Deputy General Counsel
Robert B. Zoellick, Executive Secretary.

**FOR FURTHER INFORMATION CONTACT:** Charlene J. Robinson, Acting Director of Personnel, Room 7115, ICC Building, 1201 Constitution Avenue NW., Washington, DC 20220, Telephone: (202) 566-2701.

This notice does not meet the Department's criteria for significant regulations.

Dated: May 11, 1987.

John F. W. Rogers,

*Assistant Secretary of the Treasury (Management).*

[FR Doc. 87-11939 Filed 5-26-87; 8:45 am]

BILLING CODE 4810-25-M

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## Office of the Secretary

**[Department Circular—Public Debt Series—No. 15-87]**

### Treasury Notes of August 15, 1992, Series K-1992

Washington, May 20, 1987.

#### 1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $8,000,000,000 of United States securities, designated Treasury Notes of August 15, 1992, Series K-1992 (CUSIP No. 912827 UY 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent to the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

#### 2. Description of Securities

2.1. The Notes will be dated June 3, 1987, and will accrue interest from that date, payable on a semiannual basis on February 15, 1988, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 16260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

#### 3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, May 27, 1987. Noncompetitive tenders as defined below will be considered timely if

postmarked no later than Tuesday, May 26, 1987, and received no later than Wednesday, June 3, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose and defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

**4. Reservations**

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

**5. Payment and Delivery**

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Wednesday, June 3, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Monday, June 1, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Wednesday, June 3, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

**6. General Provisions**

6.1. As fiscal agents of the United States, Federal Reserve Bank are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is

pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

*Fiscal Assistant Secretary.*

[FR Doc. 87-12057 Filed 5-22-87; 10:27 am]

BILLING CODE 4810-40-M

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## Customs Service

**[T.D. 87-68]**

## Current Fee Charged Operators of Foreign Trade Zones

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of annual fee.

**SUMMARY:** This document advises the public of the 1987 annual fee charged operators of foreign trade zones. The fees are charged to reimburse the Customs budget for services rendered including audit, inspection, and related costs. The fees are projected on the basis of actual resources that have been allocated to the various Customs regions to support the positions authorized for the program.

**EFFECTIVE DATE:** June 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Hall, Office of Inspection and Control, (202-566-8151) or Marcus Sircus, Regulatory, Audit Division (202-566-2812).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 146.5, Customs Regulations (19 CFR 146.5), provides that each operator of a foreign trade zone will be charged a nonrefundable annual fee for each activated zone as provided in section 81n, Tariff Act of 1930, as amended (19 U.S.C. 81n). This annual fee is separate and distinct from the user fee statute under section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (19 U.S.C. 58c). This annual fee covers the cost of the additional Customs service required under the Act as provided in 19 U.S.C. 81n and Part 146, Customs Regulations (19 CFR Part 146). The costs of entry processing are not included in this fee. The purpose of the annual fee is to reimburse the Customs appropriation for services rendered, including audit-inspection and related costs. The fee is projected on the basis of actual resources that have been allocated to the various Customs regions to support the positions authorized for the program.

The calculation included salary, plus 37 percent fringe benefits (§ 24.17(d), Customs Regulations (19 CFR 24.17(d)), plus 15 percent administrative overhead charges (§ 24.27(a), Customs Regulations (19 CFR 24.27(a)), and 1.3 percent Medicare compensation costs (§ 24.17(f), Customs Regulations (19 CFR 24.17(f)).

The first annual fee for foreign trade zone operators was set forth in the Appendix to T.D. 86-16, published in the Federal Register on February 11, 1986 (51 FR 5040), as a 3-tiered fee. Through negotiations with the foreign trade zone community, a 5-tiered structure was adopted for calendar year 1986. The 5-tiered structure was preferred to more equitably distribute the cost among zones in the middle tier of the original 3-tier structure. A 5-tier structure will continue for calendar year 1987. There are currently 76 Tier 1 locations, 25 Tier 2 locations, 16 Tier 3 locations, 9 Tier 4 locations, and 13 Tier 5 locations for a total of 133 locations.

The tier assignment for 1987 is based on the total number of admissions to the zone plus transfers from the zone (as defined in § 146.1, Customs Regulations (19 CFR 146.1)), during Fiscal year 1986, of merchandise in foreign or zone-restricted status. However, in the case of merchandise delivered directly to zones under §§ 146.39 and 146.40, Customs Regulations (19 CFR 146.39, 146.40), and weekly permits for transportation and/or expertation under § 146.68, Customs Regulations (19 CFR 146.68), the tier assignment is based on the number of shipments in foreign or zone restricted status to or from the zone, as applicable, covered by immediate transportation or cartage documents during Fiscal Year 1986.

The foreign trade zone operators fee for 1987 is $1,400 for Tier 1, $3,850 for Tier 2, $8,600 for Tier 3, $17,660 for Tier 4, and $33,600 for Tier 5. The fees were based on the actual resources for 18 Customs positions authorized for the audit-inspection program. The total calculation came to $930,882, and was rounded to $930,000. If Customs collects the above-stated fee from each zone, the total collected will be $930,190.

### New Facilities

New foreign trade zones approved or activated after October 1, 1986, will automatically pay the Tier 1 fee; however, if a new zone (never previously approved or activated) is approved or activated after December 31, 1986, the Tier 1 fee will be prorated over the full and fractional number of months remaining in Calendar Year 1987.

### Determination

It has been determined that the annual fee for foreign trade zone operators for Calendar Year 1987 is as follows:

Tier 1 (0-300 transactions)=$1,400
Tier 2 (301-800 transactions)=$3,850
Tier 3 (801-1,500 transactions)=$8,600
Tier 4 (1,501-3,000 transactions)=$17,660
Tier 5 (3,001 or more transactions)=$33,600

The annual fee shall be due and payable in accordance with §§ 113.73(d) and 146.5, Customs Regulations (19 CFR 113.73(d), 146.5).

The effective date for this Notice is (30 days after date of publication in the Federal Register).

Dated: May 15, 1987.

Michael H. Lane,

*Acting Commissioner of Customs.*

[FR Doc. 87-12057 Filed 5-26-87; 8:45 am]

BILLING CODE 4820-02-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 101
Wednesday, May 27, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Wednesday, May 27, 1987.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, MD.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

*1. Election of Vice Chairman*

The Commission will elect a vice chairman for the term beginning June 1, 1987 and ending May 31, 1988.

*2. FY '89 Planning Issues*

The Commission will consider fiscal year 1989 planning issues.

*3. Kerosene Heaters: '86 Report*

The staff will brief the Commission concerning the project on kerosene heater flammability.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207 301-492-6800.

May 21, 1987.

[FR Doc. 87-12036 Filed 5-21-87; 4:32 pm]

BILLING CODE 6355-01-M

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**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

May 20, 1987.

**TIME AND DATE:** 10:00 a.m., Thursday, May 28, 1987.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. NACCO Mining Company, LAKE 85-87-R, etc. (Issues include consideration of requirements for taking enforcement actions under section 104(d) of the Mine Act, 30 U.S.C. 814(d).)
2. Emerald Mines Corporation, PENN 85-298-R. (Issues are same as above.)
3. White County Coal Corporation, LAKE 86-82-R, etc. (Issues are same as above.)
4. Greenwich Collieries, PENN 85-188-R, etc. (Issues are same as above.)

It was determined by a unanimous vote of Commissioners that these items be heard in closed session.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202) 653-5629.

Jean H. Ellen,
*Agenda Clerk.*

[FR Doc. 87-12061 Filed 5-22-87; 10:48 am]

BILLING CODE 6735-01-M

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**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, June 1, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcment of bank and bank holding company applications scheduled for the meeting.

Dated: May 22, 1987.

James McAfee,
*Associate Secretary of the Board.*

[FR Doc. 87-12140 Filed 5-22-87; 3:28 pm]

BILLING CODE 6210-01-M

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**TENNESSEE VALLEY AUTHORITY**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Published May 20, 1987 (52 FR 19017).

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 3 p.m. (e.d.t.), Friday, May 22, 1987.

**PREVIOUSLY ANNOUNCED PLACE OF MEETING:** TVA Chattanooga Office Complex, Missionary Ridge Building, 1101 Market Street, Chattanooga, Tennessee.

**STATUS:** Open.

**CHANGE IN DESCRIPTION OF ITEM:** The following is a clarification of an item on the previously announced agenda:

D—Personnel Items

2. Delegation of authority to Manager of Nuclear Power to enter into a contract for the services of G.L. Rogers to assume a TVA Office of Nuclear Power line management position, as a contract manager, not as a regular TVA employee.

**CONTACT PERSON FOR MORE INFORMATION:** Alan Carmichael, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000 or 632-6000 (News Desk), Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

**SUPPLEMENTARY INFORMATION:**

**TVA Board Action**

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires a clarification in the subject matter of the previously announced agenda item and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: May 21, 1987.

Approved.

C.H. Dean, Jr.,
*Director and Chairman.*

John B. Waters,
*Director.*

[FR Doc. 87-12045 Filed 5-22-87; 9:59 am]

BILLING CODE 8120-01-M

# Corrections

Federal Register
Vol. 52, No. 101
Wednesday, May 27, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 147

[FRL 3150-2]

### Underground Injection Control Programs for Certain Indian Lands

*Correction*

In proposed rule document 87-10048 beginning on page 17696 in the issue of Monday, May 11, 1987, make the following corrections:

**§ 147.3000 [Corrected]**

1. On page 17702, in the second column, in § 147.3000(b), in the third line, the effective date "June 10, 1987" should not have appeared. Insert in its place "(30 days after publication of the final rule in the Federal Register)".

**§ 147.3100 [Corrected]**

2. Make the same correction on page 17704, in the second column, in § 147.3100(b), in the sixth line.

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[AD-FRL-3005-8]

### Standards of Performance for New Stationary Sources

*Correction*

In rule document 86-13148 beginning on page 21164 in the issue of Wednesday, June 11, 1986, make the following correction:

**Appendix A—[Corrected]**

In Appendix A, on page 21171, Figures 6C-3, 6C-4, and 6C-5 should have appeared as set forth below:

**Figure 6C-3.—Analysis of Calibration Gases**

Date _____
Analytic method used _____

| | Gas concentration (indicate units) | | |
|---|---|---|---|
| | Zero [a] | Mid-range [b] | High-range [c] |
| Sample run: | | | |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| Average | | | |
| Maximum percent deviation | | | |

[a] Average must be less than 0.25 percent of span.
[b] Average must be 50 to 60 percent of span.
[c] Average must be 80 to 90 percent of span.

**Figure 6C-4.—Analyzer calibration data**

Source identification: _____
Test personnel: _____
Date: _____
Analyzer calibration data for sampling runs: _____
Span: _____

| | Cylinder value (indicate units) | Analyzer calibration response (indicate units) | Absolute difference (indicate units) | Difference (percent of span) |
|---|---|---|---|---|
| Zero gas | | | | |
| Mid-range gas | | | | |
| High-range gas | | | | |

**Figure 6C-5. System calibration bias and drift data.**

Source identification: _____
Test personnel: _____
Date: _____
Run number: _____
Span: _____

| | Analyzer calibration response | Initial values | | Final values | | Drift (percent of span) |
|---|---|---|---|---|---|---|
| | | System calibration response | System cal. bias (percent of span) | System calibration response | System cal. bias (percent of span) | |
| Zero gas | | | | | | |
| Upscale gas | | | | | | |

$$\text{System Calibration Bias} = \frac{\text{System Cal. Response-Analyzer Cal. Response}}{\text{Span}} \times 100$$

$$\text{Drift} = \frac{\text{Final System Cal. Response-Initial System Cal. Response}}{\text{Span}} \times 100$$

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Part II

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

48 CFR Part 1 et al.
Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 5, 13, 15, 16, 19, 22, 25, 27, 28, 31, 32, 36, 49, 52, and 53

[Federal Acquisition Circular 84-26]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-26 amends the Federal Acquisition Regulation (FAR) with respect to the following: Contract Reporting under $25,000; Synopsis of Contract Award Update; Solicitations, Oral, Purchases over $1,000; Price Negotiation Memoranda; Use of FAR 52.222-28, Equal Opportunity Preaward Clearance of Subcontracts in Construction Contracts; Trade Agreements Act, Application to Ammunition, FAR 25.403; Change the word "bonds" to "guarantees"; Revision to FAR 31.105, Construction Cost Principles; Reasonableness of Contract Costs (FAR Part 31) and Cost Reasonableness Demonstration by Contractors; Stock Appreciation Rights; Legislative Lobbying Costs; Selling and Marketing; FAR Index; and Editorial Corrections.

EFFECTIVE DATE: July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, General Services Administration, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Public Comments

*FAC 84-26, Items I, II, III, V, VI, VII, XIII, and XIV.* Public comments have not been solicited with respect to these revisions since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact on contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

*FAC 84-26, Item IV.* A notice of proposed rule was published in the Federal Register on April 22, 1986 (51 FR 15264), recommending revisions to FAR 15.806(a) (8) and (9) to expand the existing requirements to summarize proposed recommended and negotiated amounts in price negotiation memoranda. As a result of these public comments, only minor changes were made to the proposed rule. The changes specifically require that the summary be in terms of major cost elements. Also specifically required is the summary of the Government's negotiation objective and the "considered negotiated" amounts. The additional set of requirements applies only where cost analysis is used to determine price reasonableness. The coverage does not define or list "major cost element" because of the many varied titles and descriptions of cost elements used by the thousands of contractors who are required to submit cost data to the Government in support of contract prices.

*FAC 84-26, Item VIII.* The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) have considered the public comments solicited in the Federal Register on April 22, 1986 (51 FR 15264). The majority of the responses either supported or had no comment on the proposed rule. In response to one recommendation, FAR 31.105(d)(2)(i)(B) was amended to add additional examples of predetermined schedules of construction equipment use rates. No other changes were made to the proposed rule which specifically precludes the acceptance of unallowable costs as a result of using construction equipment ownership and operating cost schedules.

*FAC 84-26, Item IX.* The CAAC and the DARC have considered the public comments solicited in the Federal Register on March 3, 1986 (51 FR 7379). The Councils have concluded that an amendment to the FAR is necessary to ensure that only reasonable costs are paid under Government contracts. Moreover, the amendment is based on section 933 of Pub. L. 99-145. The revisions to FAR 31.201-3 shift the burden of proof on the issue of reasonableness of contract costs from the Government to the contractor and abolish the presumption of reasonableness which is sometimes attached to incurred costs. Additionally, the revisions simplify the list of considerations that impact reasonableness determinations.

*FAC 84-26, Item X.* The DARC and the CAAC have considered the comments solicited in the Federal Register on April 14, 1986 (51 FR 12876), and have approved revisions to FAR 31.205-6(i) as a final rule. Of 25 responses, 24 either concurred or had no comment. No substantive changes were made to the proposed rule.

*FAC 84-26, Item XI.* A proposed rule was published for comment in the Federal Register on May 29, 1986 (51 FR 19308). Twenty-four comments were received, of which 20 were from Federal agencies. Twenty of the 24 either concurred or had no comment. The DARC and the CAAC have considered the comments and incorporated technical changes to meet substantive recommendations in the 4 other comments.

*FAC 84-26, Item XII.* The revision to FAR 31.205-36 is not considered a significant change and therefore public comments were not solicited. The revision was based on a public comment received in connection with a revision to FAR 31.205-36 made in FAC 84-15. See FAC Item XII for a detailed explanation of this revision.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these final rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

C. Regulatory Flexibility Act

*FAC 84-26, Items I, II, III, V, VI, VII, XIII, and XIV.* Analyses of these revisions indicate that they are not "significant revisions" as defined in FAR 1.501-1; i.e., they do not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on these revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply.

*FAC 84-26, Item IV.* The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) does not apply because the revision is not a "significant" revision as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Comments were solicited on the impact of the revision on small entities; however, no comments were received to indicate that there will be a significant economic impact on a substantial number of small entities.

*FAC 84–26, Item VIII.* It is certified that the revision to FAR 31.105 will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it represents no change in existing policy. FAR 31.109(c) already prohibits contracting officers from agreeing to a treatment of costs inconsistent with FAR Part 31. The revised wording of FAR 31.105 merely clarifies a policy which might be overlooked when predetermined equipment rate schedules are authorized for determining construction equipment ownership and operating costs.

*FAC 84–26, Item IX.* It is certified that the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the coverage is designed to clarify the term "reasonable cost" and to shift the burden of proof for establishing the reasonableness of a cost to the contractor when a cost is challenged by the contracting officer or the contracting officer's representative. A prudent business should already be maintaining adequate documentation to satisfy this burden of proof.

*FAC 84–26, Item X.* It is certified that this change to FAR 31.205–6(i) will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because:

(a) The revisions dealing with deletion of the term "measurement date" are technical corrections resulting from improper use of the term and no change in policy is intended, and

(b) The new coverage on junior stock options only restates the policy of nonrecognition of market appreciation as contract cost.

*FAC 84–26, Item XI.* It is certified that the revision of FAR 31.205–22 will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because it only clarifies the intent of the present coverage and makes no significant revision in the rules regarding legislative lobbying costs.

*FAC 84–26, Item XII.* It is certified that this rule will not have a significant impact on a substantial number of small entities for the following reasons:

(a) Most small entities do business with the Government on a fixed-price, competitive basis. None of the cost principles apply to these contracts.

(b) This rule simply clarifies that prior policy will be continued.

**List of Subjects in 48 CFR Parts 1, 2, 4, 5, 13, 15, 16, 19, 22, 25, 27, 28, 31, 32, 36, 46, 52, and 53**

Government procurement.

Dated: May 20, 1987.

**Harry S. Rosinski,**

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

**Federal Acquisition Circular**

[Number 84–26]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–26 is effective July 30, 1987.

**Eleanor R. Spector,**

*Deputy Assistant Secretary of Defense for Procurement.*

May 11, 1987.

**Terence C. Golden,**

*Administrator, GSA.*

**S.J. Evans,**

*Assistant Administrator for Procurement, NASA.*

Federal Acquisition Circular (FAC) 84–26 amends the Federal Acquisition Regulation as specified below.

**Item I—Contract Reporting Under $25,000**

FAR 4.601(a) is being revised to eliminate the requirement to retain certain records for procurements of $25,000 or less when small purchases are not used.

**Item II—Synopsis of Contract Award Update**

Pub. L. 98–577, Small Business and Federal Procurement Competition Enhancement Act of 1984, changed the law relating to the synopsis of contract awards. The language included as FAR 5.301 implements the law.

**Item III—Solicitations, Oral, Purchases Over $1,000**

It is general policy to solicit quotations orally under small purchase procedures while recognizing that instances may arise where written solicitations are more practical or economical. FAR 13.106(b)(2) is being revised to remove redundancy and clarify this policy in simple terms.

**Item IV—Price Negotiation Memoranda**

FAR 15.808(a)(8) is revised to require that the price negotiation memorandum (PNM) clearly document the major cost elements of the contractor's proposal, the field or other pricing recommendations, and how the contracting officer used this information to establish the Government's negotiation position and reach the agreement. FAR 15.808(a)(9) is revised to require that direction from external sources that has a significant bearing on the contract action be documented in the PNM.

**Item V—Use of FAR 52.222–36, Equal Opportunity Preaward Clearance of Subcontracts in Construction Contracts**

FAR 22.810(g) is revised to be consistent with FAR 22.805 and the policies of the Office of Federal Contract Compliance Programs (OFCCP) as published in 41 CFR 60–1.20(d).

**Item VI—Trade Agreements Act, Application to Ammunition, FAR 25.403**

FAR 25.403, which specifies exemptions from the requirements of Subpart 25.4, Purchases Under the Trade Agreements Act of 1979, is being revised to make an appropriate adjustment in the description of the exemption for purchases of arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes.

**Item VII—Change the Word "Bonds" to "Guarantees"**

FAR 28.101–1(b) is revised to make the language compatible with the language in FAR clause 52.228–1 by inserting the word "guarantees" for the word "bonds". FAR 28.101–1(b) and FAR 28.101–3(b) are revised to permit agencies to require only separate bid bonds as bid guarantees for construction contracts.

**Item VIII—Revision to FAR 31.105, Construction Cost Principles**

FAR 31.105 is amended to specifically preclude the acceptance of unallowable costs as a result of using a predetermined schedule of construction equipment use rates. Presently, contractors are permitted to use such schedules to determine construction equipment costs when actual costs cannot be determined from their accounting records. The revised wording clarifies an implicit policy which might be overlooked when the schedules are authorized and used. FAR 31.105 is also amended to add additional examples of predetermined schedules of construction equipment use rates.

**Item IX—Reasonableness of Contract Costs (FAR Part 31) and Cost Reasonableness Demonstration by Contractors**

FAR 31.201–3 is amended to shift the burden of proof on the issue of reasonableness of contract costs from the Government to the contractor and abolish the presumption of reasonableness which is sometimes

attached to incurred costs. In addition, the revision simplifies the list of considerations that impact reasonableness determinations. The amendment is considered necessary to ensure that only reasonable costs are paid under Government contracts. Moreover, the amendment is based on section 933 of Pub. L. 99–145.

**Item X—Stock Appreciation Rights**

FAR 31.205–6(i) is amended to make certain clarifying technical corrections and minor compatible expansions of existing policy.

The first change being made is a technical clarification of an existing rule regarding stock appreciation rights and phantom stock plans. While the date intended for cost measurement purposes was clear from the previous parenthetical coverage, use of the term "measurement date" had created a potential ambiguity in view of that term's different meaning under cost accounting standards and generally accepted accounting principles. The revision eliminates that term.

Another change introduces new coverage on the cost of junior stock conversions which is compatible with the policy in the rest of this subsection. That policy is to not recognize market appreciation or dividend equivalents as allowable contract costs.

The final change has an independent subparagraph for each of the four topics covered in paragraph 31.205–6(i).

**Item XI—Legislative Lobbying Costs**

FAR 31.205–22, Legislative lobbying costs, paragraph (f), is rewritten to clarify that detailed activity records for an individual employee need not be maintained during any particular calendar month when *both:* (1) The employee engages in lobbying activities 25 percent or less of the employee's compensated hours of employment during that calendar month, *and* (2) within the preceding 5-year period the contractor has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

The "25 percent" rule is an extraordinary waiver of only the special recordkeeping requirements. It is extended only to those contractors who have demonstrated that their cost representations are fair and accurate over an extended time period. Complaints have been received that some contractors have denied Government auditors access to records regularly maintained (e.g., time, attendance, and other payroll records), on the basis of the "25 percent" rule in FAR 31.205–22(f). Accordingly, paragraph (f) is revised to clarify its original intent that records usually maintained to demonstrate the allowability of costs must continue to be maintained and made available for audit.

**Item XII—Selling and Marketing**

FAC 84–15 dated April 7, 1988, substantially revised FAR 31.205–38, Selling Costs. This revision responded to Section 911 of Pub. L. 99–145, which directed that the cost principle be clarified. As revised, FAR 31.205–38 establishes a comprehensive Government policy on the allowability of selling costs. In so doing, the new cost principle specifically incorporates elements of cost that are treated in separate cost principles, such as advertising, public relations, and bid and proposal costs. While incorporating separate cost principles into FAR 31.205–38 makes it more coherent and definitive, this express recognition has expanded the scope of "selling costs" beyond that covered previously by FAR 31.205–38.

After reviewing public comments on the original proposal, as well as internal input, the DARC and the CAAC have concluded that paragraph (f) of FAR 31.205–38 may, because of the expanded concept of "selling costs," have unintended side effects. More specifically, paragraph (f) disallows foreign selling costs on U.S. Government contracts for U.S. Government requirements. While the Councils intended this statement simply to preserve prior policy concerning foreign selling costs, as directed by Section 8071 of Pub. L. 99–190, FAR 31.205–38's generally expanded scope has the effect of making costs, principally bid and proposal costs associated with foreign sales, unallowable on U.S. Government contracts for U.S. Government requirements. To correct this unintended effect (i.e., expansion of the disallowance to categories of cost beyond those addressed by Congress when the funding limitation was enacted), the Councils have modified paragraph (f) to limit the restriction associated with foreign sales to "direct selling efforts," as defined in FAR 31.205–38(c). This category of costs most closely approximates those foreign selling costs which were made unallowable by paragraph (b) of FAR 31.205–38 as in effect on April 1, 1984, and whose compensation is prohibited by Pub. L. 99–190.

**Item XIII—FAR Index**

Replacement pages are provided for the looseleaf version of the FAR Index to effect changes made necessary by FAC's 84–1 through 84–23. (The index is provided for information only; it is not regulatory and is not codified in 48 CFR.)

**Item XIV—Editorial Corrections**

Therefore, 48 CFR Parts 1, 2, 4, 5, 13, 15, 16, 19, 22, 25, 27, 28, 31, 32, 36, 46, 52, and 53 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 2, 4, 5, 13, 15, 16, 19, 22, 25, 27, 28, 31, 32, 36, 46, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

**1.105 [Amended]**

2. Section 1.105 is amended by removing FAR segment 9.5 and corresponding OMB control number.

## PART 2—DEFINITIONS OF WORDS AND TERMS

**2.101 [Amended]**

3. Section 2.101 is amended by removing in the fourth sentence of the definition "Contract" the reference "41 U.S.C. 501" and inserting in its place the reference "31 U.S.C. 6301".

## PART 4—ADMINISTRATIVE MATTERS

**4.601 [Amended]**

4. Section 4.601 is amended by removing in paragraph (a) the words ", other than small purchases," and inserting in their place the words "exceeding $25,000".

## PART 5—PUBLICIZING CONTRACT ACTIONS

**5.206 [Amended]**

5. Section 5.206 is amended by removing in paragraph (a)(2) the words "formal advertising" and inserting in their place the words "sealed bidding".

6. Section 5.301 is revised to read as follows:

**5.301 General.**

(a) Except for contract actions described in paragraph (b) of this section, contracting officers shall synopsize in the CBD awards exceeding $25,000 that are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required under paragraph (a) of this section if—

(1) The notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(2) The award results from acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal;

(3) The award results from a proposal submitted under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(4) The contract action is an order placed under a requirements contract;

(5) The award is made for perishable subsistence supplies; or

(6) The award is for utility services, other than telecommunications services, and only one source is available.

## PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

### 13.106 [Amended]

7. Section 13.106 is amended by inserting in paragraph (b)(2) following the word "when" the words "obtaining oral quotations is not considered economical or practical." and removing the remainder of the paragraph.

### 13.402 [Amended]

8. Section 13.402 is amended by removing in the second sentence the words "Treasury Fiscal Requirements" and inserting in their place the words "Treasury Financial" and by removing in the third sentence the words "Bureau of Financial Operations, Fiscal Service" and inserting in their place the words "Financial Management Service".

## PART 15—CONTRACTING BY NEGOTIATION

9. Section 15.806 is amended by revising paragraphs (a)(8) and (a)(9) to read as follows:

### 15.806 Price negotiation memorandum.

(a) * * *

(8) A summary of the contractor's proposal, the field pricing report recommendations, and the reasons for any pertinent variances from the field pricing report recommendations. Where the determination of price reasonableness is based on cost analysis, the summary shall address the amount of each major cost element: (i) proposed by the contractor, (ii) recommended by the field or other pricing assistance report (if any), (iii) contained in the Government's negotiation objective, and (iv) considered negotiated as a part of the price.

(9) The most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price including an explanation of any significant differences between the two positions. To the extent such direction is received, the price negotiation memorandum (PNM) shall discuss and quantify the impact of direction given by Congress, other agencies, and higher level officials (i.e., officials who would not normally exercise authority during the award and review process for the instant contract action) if the direction has had a significant effect on the action.

* * * * *

## PART 16—TYPES OF CONTRACTS

### 16.203-4 [Amended]

10. Section 16.203-4 is amended by inserting in paragraph (b)(1)(i) the word "contract" following the word "price".

## PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

### 19.705-6 [Amended]

11. Section 19.705-6 is amended by removing in paragraph (c)(1) the words "formally advertised" and inserting in their place the words "sealed bid".

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

### 22.807 [Amended]

12. Section 22.807 is amended by removing in paragraph (d)(2) the words "formally advertised" and inserting in their place the words "sealed bid" and by removing the words "formal advertising" and inserting in their place the words "sealed bidding".

13. Section 22.810 is amended by revising paragraph (g) to read as follows:

### 22.810 Solicitation provisions and contract clauses.

* * * * *

(g) The contracting officer shall insert the clause at 52.222-26, Equal Opportunity Preaward Clearance of Subcontracts, in solicitations and contracts, except for construction, when the amount of the contract is expected to be for $1 million or more and the contract includes the clause prescribed in paragraph (a), (b), or (c) of 44.204.

* * * * *

### 22.1303 [Amended]

14. Section 22.1303 is amended by removing in the third sentence of paragraph (d) the words "formal advertising" and inserting in their place the words "sealed bidding".

### 22.1403 [Amended]

15. Section 22.1403 is amended by removing in the third sentence of paragraph (d) the words "formal advertising" and inserting in their place the words "sealed bidding".

## PART 25—FOREIGN ACQUISITION

16. Section 25.403 is amended by revising paragraph (d) to read as follows:

### 25.403 Exceptions.

* * * * *

(d)(1) Purchases of arms, ammunition or war materials, or purchases indispensable for national security or for national defense purposes, by the Department of Defense, as provided in departmental regulations;

(2) Purchases indispensable for national security or for national defense purposes, subject to policies established by the U.S. Trade Representative.

* * * * *

## PART 27—PATENTS, DATA, AND COPYRIGHTS

### 27.204-1 [Amended]

17. Section 27.204-1 is amended by removing in paragraph (a)(2) the words "formally advertised" and inserting in their place the words "sealed bid".

## PART 28—BONDS AND INSURANCE

18. Section 28.101-1 is amended by revising paragraph (b) to read as follows:

### 28.101-1 Policy on use.

* * * * *

(b) All types of bid guarantees are acceptable for supply or service contracts (see annual bid bonds and annual performance bonds coverage in 28.001). Only separate bid guarantees are acceptable in connection with construction contracts. Agencies may specify that only separate bid bonds are acceptable in connection with construction contracts.

19. Section 28.101-3 is amended by adding in paragraph (b) a final sentence to read as follows:

### 28.101-3 Contract clause.

* * * * *

(b) * * * This clause may be appropriately modified for use in connection with construction

solicitations and contracts when the agency has specified that only separate bid bonds are acceptable in accordance with 28.101–1(b).

## PART 31—CONTRACT COST PRINCIPLES

20. Section 31.105 is amended by revising paragraph (d)(2)(i)(A) and the first sentence of (d)(2)(i)(B) to read as follows:

**31.105 Construction and architect-engineer contracts.**

(d) * * *
(2) * * *
(i) * * *

(A) Actual cost data shall be used when such data can be determined for both ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see 31.109(c)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(B) Predetermined schedules of construction equipment use rates (e.g., the Construction Equipment Ownership and Operating Expense Schedule published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. * * *

* * * * *

21. Section 31.201–3 is revised to read as follows:

**31.201–3 Determining reasonableness.**

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

(b) What is reasonable depends upon a variety of considerations and circumstances, including—

(1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;

(2) Generally accepted sound business practices, arm's length bargaining, and Federal and State laws and regulations;

(3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and

(4) Any significant deviations from the contractor's established practices.

22. Section 31.205–6 is amended by revising paragraph (i) to read as follows:

**31.205–6 Compensation for personal services.**

* * * * *

(i) *Stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.*

(1) The cost of stock options awarded to employees to purchase stock of the contractor or of an affiliate will be treated as deferred compensation and must comply with the requirements of paragraph (k) of this subsection. The allowable cost of stock options is limited to the difference between the option price and the market price on the first date on which the option price and the number of shares are known. Accordingly, when the stock option price is equal to or greater than the market price on that date, then no costs are allowable for contract costing purposes.

(2) Stock appreciation rights are rights granted to employees by contractors to receive the increase in value, or appreciation, of company stock even though the employee neither purchases the stock nor receives title to it. Stock appreciation rights will be treated as deferred compensation and must comply with the requirements of paragraph (k) of this subsection. The allowable cost of stock appreciation rights is limited to the difference between the stock-appreciation-right base price from which appreciation will be measured and the market price on the first date on which both the number of shares and the stock-appreciation-right base price are known. Accordingly, when the stock-appreciation-right base price is equal to or greater than the market price on that date, then no costs are allowable for contract costing purposes.

(3) In phantom-stock-type plans, contractors assign or attribute contingent shares of stock to employees as if the employees own the stock, even though the employees neither purchase the stock nor receive title to it. Under these plans, an employee's account may be increased by the equivalent of dividends paid and any appreciation in the market price of the stock over the price of the stock on the first date on which the number of shares awarded is known. Such increases in employee accounts for dividend equivalents and market price appreciation are unallowable.

(4) Junior stock is a class of equity stock that (i) is sold to employees at a price below that of the contractor's common stock, (ii) carries reduced dividend and voting rights, and (iii) is convertible to common stock upon the attainment of specified corporate goals. Costs associated with the conversion of junior stock into common stock are not allowable, whether or not they are accounted for as compensation costs.

23. Section 31.205–22 is amended by revising paragraph (f) to read as follows:

**31.205–22 Legislative lobbying costs.**

* * * * *

(f) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this subsection during any particular calendar month when—

(1) The employee engages in lobbying (as defined in paragraphs (a) and (b) of this subsection) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding 5-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

When the conditions of subparagraphs (f)(1) and (2) of this subsection are met, contractors are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when the conditions of subparagraphs (f)(1) and (2) of this subsection are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of

lobbying time spent by employees during a calendar month.

24. Section 31.205–38 is amended by revising paragraph (f) to read as follows:

**31.205–38 Selling costs.**

* * * * *

(f) Notwithstanding any other provision of this subsection, costs of direct selling efforts, as defined in paragraph (c) of this subsection, incurred in connection with potential and actual Foreign Military Sales, as defined by the Arms Export Contract Act, or foreign sales of military products or services are unallowable on U.S. Government contracts for U.S. Government requirements.

* * * * *

## PART 32—CONTRACT FINANCING

**32.406 [Amended]**

25. Section 32.406 is amended by removing in the second sentence of paragraph (a) the words "Treasury Fiscal Requirements" and inserting in their place the words "Treasury Financial".

## PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

**36.701 [Amended]**

26. Section 36.701 is amended by adding in the first sentence of paragraph (a) within the parentheses the word "Contract" following the word "Construction"; by removing in the second sentence of paragraph (b) the word "advertised" and inserting in its place the words "sealed bid"; and by removing in paragraph (d) the words "an advertised" and inserting in its place the words "a sealed bid".

## PART 49—TERMINATION OF CONTRACTS

**49.109–7 [Amended]**

27. Section 49.109–7 is amended by removing in the first sentence of paragraph (g) the words "Court of Claims" and inserting in their place the words "Claims Court".

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**52.219–9 [Amended]**

28. Section 52.219–9 is amended by removing in the introductory text of *Alternate I* of the clause the words "formal advertising" and inserting in their place the words "sealed bidding".

**52.228–1 [Amended]**

29. Section 52.228–1 is amended by inserting a period in the introductory text following the word "contracts" and removing the remainder of the sentence.

## PART 53—FORMS

**53.214 [Amended]**

30. Section 53.214 is amended by redesignating the existing paragraphs (d), (e), (f), and (g) as paragraphs (e), (f), (g), and (h), and by reserving paragraph (d).

[FR Doc. 87–11934 Filed 5–26–87; 8:45 am]
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Part III

# Department of Education

34 CFR Part 319
Office of Special Education and Rehabilitative Services
Training Personnel for the Education of the Handicapped; Notice of Proposed Rulemaking
Proposed Annual Funding Priority and Invitation To Apply for New State Grant Awards and Competitive Awards Under the Training Personnel for the Education of the Handicapped Program for FY 1987; Notices

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DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 319

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Training of Personnel for the Education of the Handicapped Program under Part D of the Education of the Handicapped Act (EHA). These proposed regulations are needed to implement new requirements under section 632 of the EHA, as amended in 1986. Section 632 authorizes grants to State educational agencies (SEAs) and institutions of higher education (IHEs). The intended effect of these proposed regulations is to clarify the statutory requirements and to improve the operation of the program.

DATE: Comments must be received on or before June 26, 1987.

ADDRESS: Comments concerning these proposed regulations should be addressed to Dr. Norman Howe, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Norman Howe, Telephone: (202) 732-1068.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped Program is authorized by sections 631 and 632 of the EHA. Section 631 creates three specific subprograms, providing for grants to (1) nonprofit organizations for parent training and information, (2) IHEs and nonprofit organizations for training personnel for careers in special education, and (3) IHEs and nonprofit organizations for special projects. Section 632 provides for grants to SEAs and IHEs for preservice and inservice personnel training.

In the past, the regulations implementing all four subprograms were included under 34 CFR Part 318, and the same selection criteria were used in reviewing all applications submitted under that part. However, in order to clarify the separate requirements for the subprograms, and to propose separate selection criteria, 34 CFR Part 318 will be divided into three separate parts. The proposed regulations for the three subprograms authorized by section 631 will be published later, since these regulations will not affect awards made in fiscal year 1987.

The new proposed Part 319 would contain the regulations for the Grants to State Educational Agencies and Institutions of Higher Education Program, authorized by section 632. Two separate components are addressed in the proposed regulations: mandatory State grants and competitive grants.

Under the State grant program, each SEA that submits an eligible application that proposes preservice or inservice training activities designed to meet the personnel needs identified in the State's comprehensive system of personnel development will receive a State grant.

The amount each SEA receives is based on its score on criteria established in the regulations. In fiscal year 1987, an SEA that is eligible to receive a non-competing continuation grant under a previously funded multi-year project may receive that grant at the previously budgeted amount. If the SEA receives a continuation grant, it may not also receive a new State grant. An application notice for State grants is published in this issue of the Federal Register.

Under the competitive grant program, SEAs and IHEs may compete for additional funds according to designated annual priorities. The Secretary would select applications for funding within these priorities based on the selection criteria established in these regulations.

The proposed priority for fiscal year 1987, also published in this issue of the Federal Register, would support projects that demonstrate cooperation between SEAs and IHEs to provide preservice training of personnel for careers in special education of infants, toddlers, children and youth, or supervisors of those personnel.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

**Paperwork Reduction Act of 1980**

Sections 319.20, 319.21 and 319.35 contain information collection requirements. As required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Reguatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4928, Switzer Building, 330 C Street, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the regulations in the document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 319**

Colleges and universities, Education, Education of handicapped, Education-training, Grant programs-education, Reporting and recordkeeping requirements, State educational agencies, Teachers.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: April 3, 1987.

William J. Bennett,

*Secretary of Education.*

The Secretary proposes to amend Title 34 of the Code of Federal

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Regulations by adding a new Part 319 to read as follows:

## PART 319—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED—GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

### Subpart A—General

Sec.


319.1 What is the purpose of this part?
319.2 Who is eligible for an award?
319.3 What activities may the Secretary fund?
319.4 What regulations apply to this program?
319.5 What definitions apply to this program?
319.6—319.9 [Reserved]


### Subpart B—How Does One Apply for an Award?


319.10 What must an institution of higher education that proposes to provide preservice training demonstrate in its application?
319.11—319.19 [Reserved]


### Subpart C—How Does the Secretary Make an Award?


319.20 How does the Secretary determine the amount of a State grant?
319.21 What selection criteria does the Secretary use in the competitive grant program?
319.22—319.29 [Reserved]


### Subpart D—What Conditions Must be Met After an Award?


319.30 Is student financial assistance authorized?
319.31 What are the student financial assistance criteria?
319.32 What amount of assistance is authorized?
319.33 What financial assistance is authorized for part-time students?
319.34 May the grantee use funds if a financially assisted student withdraws or is dismissed?
319.35 What types of reports are required?
319.36—319.39 [Reserved]


Authority: 20 U.S.C. 1432 and 1434, unless otherwise noted.

### Subpart A—General

#### § 319.1 What is the purpose of this part?

(a) *General.* The Secretary funds a State grant program and a competitive grant program under this part to assist in establishing and maintaining preservice and inservice training programs that prepare personnel to meet the needs of infants, toddlers, children, and youth with handicaps.

(b) *State grant program.* Under the State grant program, the Secretary makes a grant to each State educational agency.

(c) *Competitive grant program.* Under the competitive grant program, the Secretary may make grants to State educational agencies (in addition to the grants awarded under the State grant program) or institutions of higher education.

(Authority: 20 U.S.C. 1432)

#### § 319.2 Who is eligible for an award?

(a) State educational agencies are eligible for awards under both the State grant and the competitive grant programs in § 319.1.

(b) Institutions of higher education are eligible for awards under the competitive grant program in § 319.1(c).

(Authority: 20 U.S.C. 1432)

#### § 319.3 What activities may the Secretary fund?

(a) The Secretary supports preservice and inservice training programs that prepare professionals and paraprofessionals, or their supervisors to serve infants, toddlers, children, or youth with handicaps.

(b) Any activities assisted under this part must be consistent with the personnel needs identified in the State's comprehensive system of personnel development.

(Authority: 20 U.S.C. 1432)

#### § 319.4 What regulations apply to this program?

The following regulations apply to assistance under this program.

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 319.

(Authority: 20 U.S.C. 1432)

#### § 319.5 What definitions apply to this program?

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal Year
Grant period
Preschool
Project
Public
Secretary
State
State educational agency

(Authority: 20 U.S.C. 1432)

#### §§ 319.6—319.9 [Reserved]

### Subpart B—How Does One Apply for an Award?

#### § 319.10 What must an institution of higher education that proposes to provide preservice training demonstrate in its application?

An institution of higher education that proposes to provide preservice training must demonstrate that it meets State and professionally recognized standards for the training of special education and related services personnel, as evidenced by appropriate State and professional accreditation, unless—as indicated in a published priority of the Secretary—the grant is for the purpose of assisting the applicant to meet those standards.

(Authority: 20 U.S.C. 1432)

#### §§ 319.11—319.19 [Reserved]

### Subpart C—How Does the Secretary Make an Award?

#### § 319.20 How does the Secretary determine the amount of a State grant?

(a) The Secretary determines the amount of a grant under § 319.1(a) based upon the applicant's need for assistance under this part and the quality of its application.

(b) The Secretary assesses the applicant's need for assistance and the quality of its application based on the criteria set forth in § 319.21(b), except for § 319.21(b)(2)(viii).

(c) In determining the quality of the plan of operation under § 319.21(b)(3), the Secretary considers the extent of participatory planning among agenices and insititutions involved in activities of the State's comprehensive system of personnnel development.

(Authority: 20 U.S.C. 1432)

#### § 319.21 What selection criteria does the Secretary use in the competitive grant program?

(a) The Secretary uses the criteria in paragraph (b) of this section to evaluate an application for a competitive grant.

(b)(1) *Extent of need for the project.* (30 points) The Secretary reviews each application to determine—

(i) The overall needs addressed by the project;

(ii) The extent to which the project addresses the personnel needs identified in the State's comprehensive system of personnel development; and

(iii) How the project relates to actual and projected personnel needs for certified teachers in the State as identified by the State educational agency in its annual data report required

under section 618 of the Education of the Handicapped Act.

(2) *Program content.* (20 points) The Secretary reviews each application to determine the extent to which—

(i) Competencies that each trainee will acquire and how the competencies will be evaluated are identified;

(ii) Substantive content of the project is appropriate for the attainment of professional knowledge and competencies that are necessary for the provision of quality educational services to handicapped children and youth;

(iii) Benefits to be gained by the number of trainees expected to be graduated or employed over the next five years are described;

(iv) Appropriate methods, procedures, techniques, and instructional media or materials are used in the preparation of personnel who serve children with handicaps;

(v) If relevant, appropriate practicum facilities are accessible to the applicant and students, and are used for such activities as observation, participation, practice teaching, laboratory or clinical experience, internships, and other supervised experiences of adequate scope, and length;

(vi) If relevant, practicum facilities for model programs provide state-of-the-art educational services, including use of current and innovative curriculum materials, instructional procedures, and equipment;

(vii) Program philosophy, program objectives, and activities implemented to attain program objectives are related to the educational needs of children and youth with handicaps; and

(viii) This project will complement and build upon grants under the State grant program.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) How the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate for the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable including, but not limited to, the number of trainees graduated or hired. (See 34 CFR 75.590, Evaluation by the grantee).

(5) *Quality of key personnel.* (10 points) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(5)(i) and (ii) of this section plans to commit to the project;

(iv) How the applicant, as a part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition; and

(v) Evidence of the trainer's past experience and training in fields related to the objectives of the project.

(6) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(7) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(Authority: 20 U.S.C. 1432)

§§ 319.22—319.29 [Reserved]

## Subpart D—What Conditions Must be Met After an Award?

### § 319.30 Is student financial assistance authorized?

A grantee may use grant funds to provide traineeships or stipends.

(Authority: 20 U.S.C. 1432)

### § 319.31 What are the student financial assistance criteria?

Direct financial assistance may be paid to students only in preservice programs if—

(a) The student is qualified for admission to the program of study;

(b) The student maintains satisfactory progress in a course of study, as defined in 34 CFR 668.16(e);

(c) The student demonstrates need for financial assistance as determined by criteria established by the grantee; and

(d) The student—

(1) Is a U.S. citizen or National;

(2) Is a permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(3) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a lawful permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.

(Authority: 20 U.S.C. 1432)

### § 319.32 What amount of assistance is authorized?

Subject to the limitations in §§ 319.33, a grantee shall disburse financial assistance to students in amounts consistent with established policies of the grantee that are relevant to providing financial assistance to part-time and full-time students, including policy relevant to the use of financial assistance for dependents.

### § 319.33 What financial assistance is authorized for part-time students?

(a) Students enrolled for less than a full-time academic year may receive a traineeship or a stipend.

(b) Part-time students who are receiving financial assistance from other public or private agencies or institutions for training are not eligible for financial assistance under this section.

(Authority: 20 U.S.C. 1432)

### § 319.34 May the grantee use funds if a financially assisted student withdraws or is dismissed?

Financial assistance awarded to a student that is unexpended because the student withdraws or is dismissed from the training program may be used for other project costs, including awards to other students, during the grant period.

(Authority: 20 U.S.C. 1432)

### § 319.35 What types of reports are required?

(a) Not more than sixty days after the end of any fiscal year, each recipient of a grant during such fiscal year shall prepare and submit a report to the Secretary. Each report shall be in such form and detail as the Secretary

determines to be appropriate, and shall include–

(1) The number of individuals trained under the grant by category of training and level of training; and

(2) The number of individuals trained under the grant receiving degrees and certification, by category and level of training.

(Authority: 20 U.S.C. 1434)

§§ 319.36–319.39 [Reserved]

[FR Doc. 87–17980 Filed 5–26–87; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No. 84.029H]

**Notice Inviting Applications for New State Grant Awards Under the Training Personnel for the Education of the Handicapped Program for Fiscal Year 1987**

*Purpose:* To increase the quantity and improve the quality of personnel to educate handicapped children and youth. Applications for State grants may be submitted by State educational agencies (SEAs). SEAs that apply for a continuation grant for fiscal year 1987 are not eligible for a new State grant in fiscal year 1987.

*Deadline for Transmittal of Applications:* July 13, 1987.

*Applications Available:* June 1, 1987.

*Estimated Range of Awards:* $50,000 to $85,000.

*Estimated Average Size of Awards:* $75,000.

*Estimated Number of Awards:* 30.

*Average Project Period:* 3 years.

*Applicable Regulations:* (a) When adopted in final form, the Notice of Proposed Rulemaking for the Training Personnel for the Education of the Handicapped Program, 34 CFR 319; and (b) the Education Department General Administrative Regulations, 34 CFR 74, 75, 77, and 78. A notice of proposed rulemaking is published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed regulations. If substantive changes are made when the final regulations are published, applicants will be given the opportunity to amend or resubmit their applications.

*For Applications or Information Contact:* Frank S. King, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1086.

*Program authority:* 20 U.S.C. 1432.

Dated: May 21, 1987.

Madeleine Will,

*Assistant Secretary Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–11991 Filed 5–26–87; 8:45 am]

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**Office of Special Education and Rehabilitative Services Training Personnel**

**State Educational Agency and Institutions of Higher Education; Proposed Annual Funding Priority**

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priority.

SUMMARY: The Secretary proposes an annual funding priority under the Grants to State Educational Agencies (SEAs) and Institutions of Higher Education (IHEs) Program. This priority supports awards for preservice training on a cooperative basis between SEAs and IHEs to prepare personnel to serve children with handicaps. Applications for awards would be jointly signed by the SEA and the IHE(s) involved in carrying out the preservice training.

DATE: Comments must be received on or before June 26, 1987.

ADDRESSES: Comments should be addressed to Richard Champion, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 4625), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Richard Champion. Telephone: (202) 732–1153.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped is authorized by sections 631 and 632 of Part D of the Education of the Handicapped Act (EHA). This program is designed to increase the quantity and improve the quality of personnel available to educate infants, toddlers, children, and youth with handicaps. Section 632 of the EHA provides Federal financial assistance for projects designed to establish and maintain preservice training programs to prepare personnel to meet the needs of infants, toddlers, children and youth with handicaps, consistent with the personnel needs identified in the State's comprehensive system of personnel development.

The Secretary believes that the SEAs' responsibility for developing and implementing Comprehensive Systems of Personnel Development gives them a vital interest in the Department's personnel training programs. Further, he is of the opinion that SEAs in future years should play a larger role in meeting the demand for teachers of children with handicaps under this program. Therefore, he seeks comment on how the involvement of State education agencies in this program can be increased and enhanced in future years.

**Proposed Priority**

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to each application that meets the following priority:

1. Awards will only be made for preservice training of personnel for careers in special education of infants, toddlers, children and youth, or supervisors of those personnel.

2. Applications must demonstrate evidence of a cooperative effort between SEAs and IHEs in jointly planning the project, and in on-going coordination for purposes of carrying out, monitoring, and evaluating the project.

3. Training must be consistent with personnel needs identified in the State's or, if applicable, the adjacent State(s)' comprehensive system of personnel development.

4. Applications must (a) be jointly signed by the SEA and the IHE(s) involved in carrying out the project, and (b) specify whether a party other than the SEA will be the fiscal agent.

**Period of Award**

The project funded under this priority will be funded for a period of 12 to 60 months. However, most projects will be for 36 months. Awards will be subject to the availability of Federal funds.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to the priority will be available for public inspection, during and after the comment period, in Room 4625, Switzer Building, 330 C Street SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1434)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: April 3, 1987.

William J. Bennett,

*Secretary of Education.*

[FR Doc. 87–11992 Filed 5–26–87; 8:45 am]

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[CFDA No. 84.029Z]

**Notice Inviting Applications for New Competitive Awards Under the Training Personnel for the Education of the Handicapped Program for Fiscal Year 1987**

*Purpose:* To increase the quantity and improve the quality of personnel to educate handicapped children and youth. Applications for competitive grants may be submitted by State

educational agencies or institutions of higher education.

*Deadline for Transmittal of Applications:* July 13, 1987.

*Applications Available:* June 5, 1987.

*Estimated Range of Awards:* $50,000 to $75,000.

*Estimated Average Size of Awards:* $70,000.

*Estimated Number of Awards:* 100.

*Average Project Period:* 3 years.

*Applicable Regulations:* (a) When adopted in final form, the Notice of Proposed Rulemaking for the Training Personnel for the Education of the Handicapped Program, 34 CFR 319; (b) the Education Department General Administrative Regulations, 34 CFR 74, 75, 77, and 78; and (c) when adopted in final form, the Annual Funding Priority for this program. A notice of proposed regulations and a notice of proposed annual funding priority are published in this issue of the Federal Register. Applicants should prepare their applications based on the proposed regulations and the proposed priority. If substantive changes are made when the final regulations and the final funding priority are published, applicants will be given the opportunity to amend or resubmit their applications.

*For Applications or Information Contact:* Richard Champion, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1158.

*Program Authority:* 20 U.S.C. 1432.

Dated: May 21, 1987.

**Madeleine Will,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 87–11993 Filed 5–26–87; 8:45 am]

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Part IV

# Department of Education

**Office of Special Education and Rehabilitative Services**

**34 CFR Part 363**

**State supported Employment Services Program; Notice of Proposed Rulemaking**

DEPARTMENT OF EDUCATION
Office of Special Education and Rehabilitative Services
34 CFR Part 363

## The State Supported Employment Services Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to add a new part to provide for a new formula grant program for State supported employment services. The regulations in this new part would implement Amendments to the Rehabilitation Act of 1973 made by Pub. L. 99-506, the Rehabilitation Act Amendments of 1986.

DATES: Comments must be received on or before June 26, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Justin W. Dart, Jr., Commissioner, Rehabilitation Services Administration, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Delores Watkins, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3322, Washington, DC 20202, (202) 732-1369.

SUPPLEMENTARY INFORMATION:

*Supported Employment Formula Grant Program.* The Rehabilitation Act Amendments of 1986 authorize a new formula grant State Supported Employment Services Program. This program provides grants to assist States in developing and implementing collaborative programs with appropriate public agencies and private nonprofit organizations for training and traditionally time-limited post-employment services leading to supported employment for individuals with severe handicaps. The Supported Employment Program is intended to provide services to individuals who, because of the severity of their handicaps, would not traditionally be eligible for vocational rehabilitation services. Individuals who are eligible for services under the program must not be able to function independently in employment without intensive on-going support services and must require these on-going support services for the duration of their employment. Under the proposed regulations, individuals who are eligible for supported employment services must also be receiving services from, or eligible for, other State, Federal, or private programs that provide on-going support services.

The statute defines "supported employment" to mean competitive work in an integrated work setting for individuals who, because of their handicaps, need on-going support services to perform that work. Supported employment is limited to individuals with severe handicaps for whom competitive employment has not traditionally occurred, or individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability. It includes transitional employment for individuals with chronic mental illness. Although the term "supported employment" is defined in the statute, the Secretary considers it essential to define and clarify certain undefined terms used within the statutory definition, as well as the concept of traditionally time-limited post-employment services, in order to ensure a consistent programmatic intepretation. The proposed regulations in § 363.7, therefore, define the following terms: (1) Competitive work; (2) integrated work setting; (3) on-going support services; (4) transitional employment for individuals with chronic mental illness; and (5) traditionally time-limited post-employment services.

### Supported Employment Definitions

The term "supported employment" contains three elements: (1) Competitive work; (2) an integrated work setting; and (3) the provision of on-going support services. The proposed regulations define "competitive work" to mean "work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week, and for which an individual is compensated in accordance with the Fair Labor Standards Act." The Fair Labor Standards Act allows employers the flexibility to compensate workers with handicaps at a wage level that is: (1) Lower than the minimum wage; (2) commensurate with those wages paid to non-handicapped individuals employed in the same locality and performing the same type, quality, and quantity of work; and (3) related to the individual's productivity. The use of these standards is designed to ensure that individuals with severe handicaps under this program receive fair and competitive wages—not just "token" wages such as those received by many individuals with severe handicaps in work activity centers.

The regulations propose, at § 363.7, to define "integrated work setting" by describing three types of job sites that provide for integration of handicapped and non-handicapped individuals. The definition recognizes that maximum integration in a work setting may not always be feasible for every individual with severe handicaps under this program. The proposed regulations define one kind of integrated work setting as a job site where most co-workers are not handicapped and handicapped individuals are not part of a work group of other handicapped individuals. A second permissible kind of integrated work setting would be a job site where most co-workers are not handicapped and individuals with handicaps are of a small work group of not more than eight individuals with handicaps. A third option would include a job site where the individual works alone or a job site where all co-workers are part of a small work group of not more than eight individuals, all of whom have handicaps. However, in this case an individual with severe handicaps must have regular contact with non-handicapped individuals, other than personnel providing on-going support services, in the immediate work setting—since there is no actual integration at the particular job site. The proposed standard limiting a small work group to a maximum of eight handicapped individuals is based on data and information collected from Statewide Supported Employment Demonstration projects funded by the Office of Special Education and Rehabilitative Services in fiscal year 1985.

This data indicates that individuals with severe handicaps are not integrated meaningfully in work settings if they are placed in a group of more than eight individuals with handicaps. The Secretary is particularly interested in receiving comments on the use of this standard.

The proposed regulations, at § 363.7, define "on-going support services" as continuous or periodic job skill training services provided at least twice monthly at the work site throughout the term of employment to enable the individual to perform the work. The term would also include other support services provided at or away from the work site, such as transportation, personal care services, and counseling of family members, if skill training services are needed by, and provided to, that individual at the work site. The proposed requirement that "on-going support services" be provided at least twice monthly at the work site is intended to distinguish individuals with handicaps who are able to function independently with minimal

or no job support services from individuals with severe handicaps who are not able to function independently and who need on-going support services to maintain employment. Individuals who need on-going services less than twice monthly would not need supported employment services. The Secretary is particularly interested in receiving comments on whether any additional limitations should be provided on the types of services that would qualify as "on-going support services"

The proposed regulations, at § 363.7, define "transitional employment for individuals with chronic mental illness" to mean competitive employment in an integrated work setting for individuals with chronic mental illness who may need on-going job skills training or other support services provided either at the work site or away from the work site to perform the work. The job placement may not necessarily be a permanent employment outcome for the individual. The proposed definition recognizes that individuals with chronic mental illness may need off-site support services, such as psychiatric counseling, but may not necessarily need job skill training services required by individuals with other types of disabilities who are placed in supported employment. The proposed definition also clarifies the transitional nature of a supported employment placement for individuals with chronic mental illness by recognizing that the placement may not necessarily be the final employment outcome and may be needed only to enable the individual to adjust to the stress of competitive employment.

The proposed regulations, at § 363.7, define "traditionally time-limited post-employment services" as services that are needed to support and maintain an individual with severe handicaps in employment, are based on an assessment by the State of the individual's needs as specified in an individualized written rehabilitation program, and are provided for a period of time not to exceed 18 months before transition is made to extended services provided under a cooperative agreement pursuant to § 363.50. The proposed definition defines "time-limited" to mean not more than 18 months of program support by the designated state unit for any one severely handicapped individual. Although 18 months is established as an outside limit, current data indicates that most individuals will progress to extended services in a much shorter time, usually within six to twelve months. Under this program, extended services must be provided to each individual, following termination of time-limited services by the State vocational rehabilitation agency. Extended services must be financed by public funds, other than Title VI, Part C funds, or by funds from private nonprofit organizations.

### Planning Grants

The statute permits the State agency to request a planning grant for fiscal year 1987 only—in place of receiving a services delivery grant. The statute further requires that planning grants be used for activities designed to facilitate the State's use of its allotment for supported employment services. Planning grants may not exceed an 18-month period and may not exceed $250,000 for any one State. The proposed regulations in § 363.5 require that a State conduct specific activities under a planning grant to ensure that it develops its capacity to delivery supported employment services after the expiration of the planning grant. Required activities are: (1) Developing a Statewide needs assessment for supported employment services; (2) developing and evaluating collaborative arrangements and agreements with State agencies and nonprofit agencies and organizations to ensure that extended services are available from other sources when time-limited services provided under this program are terminated; and (3) developing goals, priorities, policies and procedures for the use of allotments for supported employment services. In addition, the proposed regulations at § 363.5 permit States to conduct certain other planning grant activities: (1) Seeking participation in the development of the State plan by individuals with severe handicaps, their parents, guardians, and providers of services to them; (2) developing sites to test and evaluate the provision of supported employment services; and (3) conducting other activities necessary to prepare for and implement a system of supported employment service delivery.

### Service Grants

The statute authorizes States to conduct the following activities under a supported employment services formula grant: (1) Evaluating rehabilitation potential, under either the Title I program or this program, for individuals with severe handicaps to determine eligibility for supported employment; (2) developing jobs for individuals with severe handicaps; and (3) providing time-limited post-employment services, including on-the-job and other training, needed to support the individual in employment. This statutory provision is implemented in the regulations at proposed § 363.4.

### Collaborative Agreements

The statute requires that States, in applying for a formula grant, demonstrate evidence of collaboration with and funding from other State agencies and nonprofit organizations to assist in the provision of supported employment services. This provision is implemented in the proposed regulations at § 363.50, which requires States to develop collaborative agreements that specify, at a minimum: (1) The training and traditionally time-limited services to be provided by the State vocational rehabilitation agency under this program; (2) the on-going or extended services to be provided by other State agencies and private nonprofit organizations after termination of time-limited services under this program; (3) the estimated funds to be expended by the participating agency or organizations in implementing the agreement; and (4) the projected number of individuals with severe handicaps who will receive supported employment services under the agreement.

### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these regulations are private nonprofit organizations providing on-going support services to individuals with handicaps or small employers providing supported employment placements. However, the regulations would not have a significant economic impact on the organizations affected because the regulations would not impose excessive regulatory burden or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

### Paperwork Reduction Act of 1980

Sections 363.11 and 363.52 contain information collection requirements. As

required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3222, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paper Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 363

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Supported employment, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.187, State Supported Employment Services Program)

Dated: May 8, 1987.

William J. Bennett,

*Secretary of Education.*

The Secretary proposes to amend Chapter III of Title 34 of the Code of Federal Regulations by adding a new Part 363 to read as follows:

## PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

Subpart A—General

Sec.

363.1 What is the State Supported Employment Services Program?
363.2 Who is eligible for an award?
363.3 Who is eligible for services?
363.4 What kinds of activities may the Secretary fund?
363.5 What kinds of activities may the Secretary fund under a planning grant?
363.6 What regulations apply?
363.7 What definitions apply to the State Supported Employment Services Program?

Subpart B—How Does a State Apply for a Grant?

363.10 What documents must a State submit to receive a grant?
363.11 What information and assurances must be included in the State plan supplement?

Subpart C—How Does the Secretary Make a Grant?

363.20 How does the Secretary allocate funds?
363.21 How does the Secretary reallocate funds?

Subparts D-E [Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

363.50 What collaborative agreements must the State develop?
363.51 What are the allowable administrative costs?
363.52 What are the information collection and reporting requirements?
363.53 What special conditions apply to services and activities under this program?

Authority: 29 U.S.C. 795j–q, unless otherwise noted.

Subpart A—General

§ 363.1 What is the State Supported Employment Service Program?

(a) Under the State Supported Employment Services Program, the Secretary provides grants to assist States in developing and implementing programs of supported employment for individuals with severe handicaps.

(b) Grants under this program are intended to provide training and traditionally time-limited post-employment services to individuals with severe handicaps.

(Authority: 29 U.S.C. 795j)

§ 363.2 Who is eligible for an award?

Any State is eligible for an award under this program.

(Authority: 29 U.S.C. 795m(a))

§ 363.3 Who is eligible for services?

A State may provide services under this program to any individual who—

(a) Has severe handicaps;

(b) Has been determined by an evaluation of rehabilitation potential, as defined in section 7(5) of the Act, to have—

(1) The ability or potential to engage in a training program leading to supported employment;

(2) A need for on-going support services in order to perform competitive work; and

(3) The ability to work in a supported employment setting; and

(c) Is eligible for or is receiving on-going support services from State, Federal, or private programs, including mental retardation and social services programs.

(Authority: 29 U.S.C. 795k)

§ 363.4 What kinds of activities may the Secretary fund?

Under this program, the Secretary makes a grant to a State to conduct the following activities:

(a) Evaluation of the rehabilitation potential for supported employment of individuals with severe handicaps.

(b) Development of jobs for individuals with severe handicaps.

(c) Provisions of traditionally time-limited post-employment services that are needed to support the trainees in employment, such as—

(1) Intensive on-the-job training and other training provided by skilled job trainers for workers with severe handicaps;

(2) Provision of follow-up services, including regular contact with employers, trainees with severe handicaps, parents, guardians or other representatives of trainees, and other suitable professional and informed advisors in order to reinforce and stabilize the job placement; and

(3) Regular observations or supervision of individuals with severe handicaps at the work site.

(Authority: 29 U.S.C. 795a)

§ 363.5 What kinds of activities may the Secretary support under a planning grant?

(a) For fiscal year 1987 only, a State may request a planning grant in place of its allotment under this program.

(b) The State shall conduct activities under a planning grant that include the following, unless those activities have already been completed:

(1) Developing the Statewide needs assessment for supported employment services, as specified in § 363.11.

(2) Developing and evaluating collaborative agreements with State agencies and private nonprofit organizations.

(3) Developing goals, priorities, policies, and procedures for the provision of supported employment services to individuals with severe handicaps.

(c) The State may also conduct the following activities under a planning grant:

(1) Seeking participation in the development of a State plan supplement for supported employment services by individuals with severe handicaps, their parents or guardians, and providers of supported employment services.

(2) Developing sites to test and evaluate the provision of supported employment services.

(3) Other activities necessary to prepare for the implementation of a system of supported employment services.

(d) The requirements of §§ 363.11, 363.20, 363.21, and 363.50–363.52 do not apply to planning grants.

(e) The Secretary awards a planning grant of no more than $250,000 for up to 18 months.

(Authority: 29 U.S.C. 795l(c))

**§ 363.6 What regulations apply?**

The following regulations apply to the State Supported Employment Services Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State Administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeals Board) except for hearings under Subpart G of Part 861, and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 363.

(c) The following regulations in 34 CFR Part 361 (The State Vocational Rehabilitation Services Program):

§ 361.32; § 361.33; § 361.34; § 361.40; § 361.41; § 361.48; and § 361.49.

(Authority: 29 U.S.C. 795j and 711(c))

**§ 363.7 What definitions apply to the State Support Employment Services Program?**

(a) As used in this part—

"Competitive work" means work that is performed on a full-time basis or on a part-time basis, averaging at least 20 hours per week, and for which an individual is compensated in accordance with the Fair Labor Standards Act;

"Integrated work setting" means job sites where—

(1)(i) Most co-workers are not handicapped; and

(ii) Individuals with handicaps are not part of a work group of other individuals with handicaps; or

(2)(i) Most co-workers are not handicapped; and

(ii) When a job site described in paragraph (1)(ii) of this definition is not possible, individuals with handicaps are part of a small work group of not more that eight individuals with handicaps; or

(3) If there are no co-workers or the only co-workers are members of a small work group of not more than eight individuals, all of whom have handicaps, individuals with handicaps have regular contact with non-handicapped individuals, other than personnel providing support services, in the immediate work setting;

"On-going support services" means continuous or periodic job skill training services provided at least twice monthly at the work site throughout the term of employment to enable the individual to perform the work. The term also includes other support services provided at or away from the work site, such as transportation, personal care services, and counseling to family members, if skill training services are also needed by, and provided to, that individual at the work site;

"Supported employment" means—

(1) Competitive work in an integrated work setting with on-going support services for individuals with severe handicaps for whom competitive employment—

(i) Has not traditionally occurred; or

(ii) Has been interrupted or intermittent as a result of severe handicaps; or

(2) Transitional employment for individuals with chronic mental illness; and

"Traditionally time-limited post-employment services" means services that are—

(1) Needed to support and maintain an individual with severe handicaps in employment;

(2) Based on an assessment by the State of the individual's needs as specified in an individualized written rehabilitation program; and

(3) Provided for a period not to exceed 18 months before transition is made to extended services provided under a cooperative agreement pursuant to § 363.50.

"Transitional employment for individuals with chronic mental illness" means competitive work in an integrated work setting for individuals with chronic mental illness who may need on-going jobs skill training at the work site or other support services provided either at the work site or away from the work site to perform the work. The job placement may not necessarily be a permanent employment outcome for the individual; and

(b) The following terms used in this part are defined in 34 CFR 77.1: Fiscal Year; Nonprofit; Private; Secretary; and State

(c) The following terms used in this part are defined in 34 CFR Part 361: Act; Designated state unit; Individual with handicaps; Individual with severe handicaps; and State plan

(Authority: 29 U.S.C. 709(18), 711(c), and 795l)

## Subpart B—How Does a State Apply for a Grant?

**§ 363.10 What documents must a State submit to receive a grant?**

To receive a grant under this part, a State must—

(a) Submit to the Secretary, as part of the State plan under 34 CFR Part 361, a State plan supplement that meets the requirements of § 363.11; or

(b) For fiscal year 1987 only, submit an application for a planning grant in place of its allotment under this program.

(Authority: 29 U.S.C. 795l(c) and 795m(a))

**§ 363.11 What information and assurances must be included in the State plan supplement?**

Each State plan supplement must—

(a) *Designated State agency.* Designate the State unit or units for vocational rehabilitation services identified in the State plan submitted under 34 CFR Part 361 as the State agency or agencies to administer this program;

(b) *Results of needs assessment.* Summarize the results of the needs assessment of individuals with severe handicaps conducted under Title I of the Act when that assessment identifies the need for supported employment services. The results of the needs assessment must address the coordination and use of information within the State relating to section 618(b)(3) of the Education of the Handicapped Act;

(c) *Quality, scope, and extent of services.* Describe the quality, scope, and extent of supported employment services to be provided to individuals with severe handicaps under this program. The description must address the timing of the transition to on-going support services referred to in § 363.50(b)(2);

(d) *Distribution of funds.* Describe the State's goals and plans with respect to the distribution of funds received under § 363.20;

(e) *Assurances.* Provide assurances that—

(1) An evaluation of rehabilitation potential, as defined in section 7(5) of the Act—either under this part or under 34 CFR Part 361—is provided for each individual with severe handicaps who receives services under this program;

(2) An individualized written rehabilitation program as specified in 34 CFR 361.40 and 361.41 will be developed—either under this part or under 34 CFR Part 361—outlining the services to be provided to each individual served under this program, including a description of the long-term, on-going services needed and the identification of the agency to provide the continuing support;

(3) Services provided to individuals under this program will be coordinated with the individualized written rehabilitation program or education plan as required under section 102 of the Act, section 123 of the Developmental Disabilities Act of 1984, and sections 612(4) and 614(5) of the Education of the Handicapped Act;

(4) The State will conduct periodic reviews of the progress of individuals assisted under this program to determine whether services provided to those individuals should be continued, modified, or discontinued;

(5) The designated State agency or agencies will expend no more than five percent of the State's allotment for administrative costs of carrying out this program; and

(6) The State will make maximum use of services from public agencies, private nonprofit organizations, and other appropriate resources in the community to carry out this program;

(f) *Collaboration.* Demonstrate evidence of collaboration by and funding from relevant State agencies and private nonprofit organizations to assist in the provision of on-going supported employment services following the termination of time-limited services under this part; and

(g) *Other information.* Contain such other information and be submitted in the form and in accordance with the procedures that the Secretary may require.

(Authority: 29 U.S.C. 795m))

## Subpart C—How Does the Secretary Make a Grant?

### § 363.20 How does the Secretary allocate funds?

The Secretary allocates funds under this program in accordance with section 633(a) of the Act.

(Authority: 29 U.S.C. 7951(c))

### § 363.21 How does the Secretary reallocate funds?

The Secretary reallocates funds in accordance with section 633(b) of the Act.

(Authority: 29 U.S.C. 7951(b))

## Subpart D–E [Reserved]

## Subpart F—What Post-Award Conditions Must Be Met by a State?

### § 363.50 What collaborative agreements must the State develop?

(a) A designated State unit must enter into one or more written cooperative agreements or memoranda of understanding with other appropriate State agencies and private nonprofit organizations to ensure collaboration in a plan to provide supported employment services to individuals with severe handicaps.

(b) A cooperative agreement or memorandum of understanding must, at a minimum, specify the following:

(1) The training and traditionally time-limited post-employment services to be provided by the designated State unit with funds received under this part.

(2) The on-going or extended services to be provided by the other State agencies and private nonprofit organizations, following the termination of time-limited services under this part.

(3) The estimated funds to be expended by the participating party or parties in implementing the agreement or memorandum.

(4) The projected number of individuals with severe handicaps who will receive supported employment services under the agreement or memorandum:

(Authority: 29 U.S.C. 795m(b)(4) and 795n(b))

### § 363.51 What are the allowable administrative costs?

(a) *Administrative costs-general.* Expenditures are allowable for the following administrative costs:

(1) Administration of the State plan supplement for this program.

(2) Planning, program development, and personnel development to implement a system of supported employment services.

(3) Monitoring, supervision, and evaluation of this program.

(4) Technical assistance to other State agencies, private nonprofit organizations, and businesses and industries.

(b) *Limitation on administrative costs.* Except for planning grants which the Secretary may award in fiscal year 1987, not more than five percent of a State's allotment may be expended for administrative costs for carrying out this program.

(Authority: 29 U.S.C. 7951(c) and 795m(b)(5))

### § 363.52 What are the information collection and reporting requirements?

(a) A State shall collect and report information as required in 34 CFR 361.23 for each individual with severe handicaps served under this program.

(b) The State shall collect and report separately information for—

(1) Supported employment clients served under this program; and

(2) Supported employment clients served under 34 CFR Part 361.

(Authority: 29 U.S.C. 712 and 795o)

### § 363.53 What special conditions apply to services and activities under this program?

Each grantee shall coordinate the services provided to an individual under this part and under 34 CFR Part 361 to ensure that the services are complementary and not duplicative.

(Authority: 29 U.S.C. 795 n and q)

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Wednesday
May 27, 1987

Part V

# Department of Education

**Office of Special Education and Rehabilitative Services**

**34 CFR Parts 371 and 386**

**Handicapped American Indian Vocational Rehabilitation Service Projects; Rehabilitation Training; Rehabilitation Long-term Training; Notice of Proposed Rulemaking**

DEPARTMENT OF EDUCATION
Office of Special Education and Rehabilitative Services
34 CFR Parts 371 and 386

# Handicapped American Indian Vocational Rehabilitation Service Projects; Rehabilitation Training: Rehabilitation Long-term Training

AGENCY: Department of Education.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing grants to provide services to American Indians with handicaps and grants for long-term training to implement amendments to the Rehabilitation Act of 1973 made by Pub. L. 99–506, the Rehabilitation Act Amendments of 1986.

The proposed regulations would implement the new statutory provisions for these two programs. One new provision permits a consortium of governing bodies of Indian tribes to apply for a grant as a single applicant under the American Indians with handicaps program. Another new provision requires the recipient of a scholarship under the long-term training program to work for a State rehabilitation agency or a nonprofit rehabilitation or related agency for two years for each year of assistance received or repay all or part of the amount of the scholarship plus interest.

DATE: Comments must be received on or before June 26, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Albert Rotundo, Rehabilitation Service Administration, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Toby Lawrence, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3326, Washington, DC 20202, (202) 732–1351.

SUPPLEMENTARY INFORMATION:

## American Indians With Handicaps Program

The amendments permit a consortium of Indian tribes to apply for a grant as a single applicant and permit a waiver of the non-federal share where the applicant demonstrates that it does not have sufficient resources to contribute to the cost of the project.

In the proposed regulations the phrase "handicapped American Indian" has been changed to "American Indian with handicaps" to be consistent with the general reference change made by Congress substituting "individual with handicaps" for "handicapped individual."

No change was needed to implement the statutory provisions regarding priority consideration for funding the continuation of previously funded programs; the provision prohibiting funding of a separate service delivery system for Indians in non-reservation areas; and the provision regarding traditional services used by Indian tribes. These provisions are covered by the existing regulations.

## Long-Term Training Program

The proposed regulations add rehabilitation engineering, physical education, rehabilitation workshop and facility personnel, and specialized personnel for supported employment, to the list of professional disciplines for which long-term training funds may be expended.

Consistent with the new statutory provisions regarding scholarships, the regulations require that, as a condition for receipt of a scholarship, a scholar must agree to work for a State rehabilitation agency, or a nonprofit rehabilitation or related agency for two years for each year of training, within ten years of completion of the training, or repay all or part of the scholarship plus interest and collection costs. The work requirement would be prorated for partial years of training.

To avoid excessive administrative burden, the proposed regulations limit the application of the work-or-repay provisions to training leading to a certificate or degree. A document certifying attendance at a training course is not considered a certificate under these provisions. Typically, individuals in non-degree or non-certificate training courses already will be working in eligible jobs.

The proposed regulations also implement the statutory provision that limits training assistance to a maximum of four years. The proposed regulations interpret the limitation to refer to academic years in order to accommodate part-time students. Scholars with handicaps that seriously affect the completion of training may be allowed one additional academic year to complete the course of training.

The proposed regulations place the responsibility for tracking the scholar during the period of obligation under a scholarship agreement on a grantee, but retain with the Secretary responsibility for enforcing the agreement, including granting deferrals or exceptions to repayment, determining the amount of interest and collection costs, and establishing a payment schedule, including the amount and frequency of payment if collection is necessary.

The proposed regulations implementing the scholarship provisions are similar to the regulations in 34 CFR Part 653 implementing the Congressional Teacher Scholarship Program. Those regulations were published in 52 FR 10008; March 27, 1987.

## Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

## Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these regulations are institutions of higher education and Indian tribes. However, the regulations would not have a significant economic impact on these entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

## Paperwork Reduction Act of 1980

Sections 386.42, 386.44, and 386.46 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these regulations to the Office of Management and Budget (OMB) for its review.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

## Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

*34 CFR Part 371*

Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

*34 CFR Part 386*

Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance 84.129, Rehabilitation Training; 84.132, American Indians with handicaps)

Dated: April 27, 1987.

William J. Bennett,

*Secretary of Education.*

The Secretary proposes to amend Parts 371 and 386 of Title 34 of the Code of Federal Regulations as follows:

## PART 371—HANDICAPPED AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICE PROJECTS

1. The authority citation for Part 371 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

2. The title of Part 371 is revised to read as follows:

## PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH HANDICAPS

### § 371.41 [Amended]

3. In § 371.41(a)(2), removes the words "the handicapped individual" and add, in their place, the words "an individual with handicaps."

### §§ 371.21 and 371.41 [Amended]

4. In Part 371, remove the words "handicapped individuals" and add, in their place, the words "individuals with handicaps" in the following places:

(a) § 371.21 (d) and (g); and

(b) § 371.41(b).

### §§ 371.10, 371.21, 371.30, 371.42, 371.43 [Amended]

5. In Part 371, remove the words "handicapped American Indians" and add, in their place, the words "American Indians with handicaps" in the following places:

(a) § 371.10;

(b) § 371.21 (c), (d), (f), and (h);

(c) § 371.30(f)(2) (i) and (ii);

(d) § 371.42; and

(e) § 371.43(b).

### §§ 371.21 and 371.43 [Amended]

6. In Part 371, remove the words "handicapped American Indian" and add, in their place, the words "American Indian with handicaps" in the following places:

(a) § 371.21(e); and

(b) § 371.43(a).

7. Section 371.1 is revised to read as follows:

### § 371.1 What is the Vocational Rehabilitation Service Program for American Indians with Handicaps?

This program is designed to provide vocational rehabilitation services to American Indians with handicaps who reside on Federal or State reservations in order to prepare them for suitable employment.

(Authority: Sec. 130(a) of the Act; 29 U.S.C. 750(a))

### § 371.2 [Amended]

8. In § 371.2, add the words "and consortia of such governing bodies" after "Indian tribes".

9. Section 371.4 is amended by removing the paragraph designations under (b), and adding the following definition in alphabetical order to read as follows:

### § 371.4 What definitions apply to this program?

* * * * *

(b) * * *

"Consortium" means two or more eligible governing bodies of Indian tribes that make application as a single applicant under an agreement whereby each governing body is legally responsible for carrying out all of the activities in the application.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

### § 371.20 [Amended]

10. In § 371.20, add after "governing body" the words "or consortium".

11. In § 371.21, paragraph (i) is revised to read as follows:

### § 371.21 What are the special application requirements related to the State plan program?

* * * * *

(i) Any American Indian with handicaps who is an applicant or recipient of services, and who is dissatisfied with a determination made by a counselor or coordinator under this program and files a request for a review, will be afforded a review under procedures developed by the grantee comparable to those under the provisions of section 102(d) (1)–(3) of the Act.

(Authority: Secs. 12(c) and 102(d) of the Act; 29 U.S.C. 711(c) and 722(d))

* * * * *

12. Section 371.40 is revised to read as follows:

### § 371.40 What are the matching requirements?

(a) *Federal share.* Except as provided in paragraph (c) of this section, the Federal share may not be more than 90 percent of the total cost of the project.

(b) *Non-Federal share.* The non-Federal share of the cost of the project may be in cash or in kind, fairly valued.

(c) *Waiver of non-Federal share.* In order to carry out the purposes of the program, the Secretary may waive the non-Federal share requirement, in part or in whole, only if the applicant demonstrates that it does not have sufficient resources to contribute the non-Federal share of the cost of the project.

(Authority: Secs. 12(c) and 130(a) of the Act; 29 U.S.C. 711(c) and 750(c))

13. Section 371.42 is revised to read as follows:

### § 371.42 How are services to be administered under this program?

(a) *Directly or by contract.* A grantee under this Part may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a designated State unit, a rehabilitation facility, or another agency to assist in the implementation of the vocational rehabilitation service program for American Indians with handicaps.

(b) *Inter-tribal agreement.* A grantee under this Part may enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project that serves more than one Indian tribe.

(c) *Comparable service program.* To the maximum extent feasible, services provided by a grantee under this Part must be comparable to rehabilitation service provided under this title to other individuals with handicaps residing in the State.

(Authority: Secs. 12(c) and 130 of the Act; 29 U.S.C. 711(c) and 750)

## PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

14. The authority citation for Part 386 is revised to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

15. Section 386.1 is revised to read as follows:

### § 386.1 What is the Rehabilitation Long-Term Training Program?

This program is designed to provide academic and non-academic training in areas of personnel shortages identified by the Secretary and published as a

notice in the Federal Register. These areas may include—

(a) Rehabilitation engineering;
(b) Rehabilitation medicine;
(c) Rehabilitation nursing;
(d) Rehabilitation counseling;
(e) Rehabilitation social work;
(f) Rehabilitation psychiatry;
(g) Rehabilitation psychology;
(h) Rehabilitation dentistry;
(i) Physical therapy;
(j) Occupational therapy;
(k) Speech-language pathology and audiology;
(l) Physical education;
(m) Therapeutic recreation;
(n) Rehabilitation facility administration;
(o) Vocational evaluation and work adjustment;
(p) Rehabilitation workshop and facility personnel;
(q) Prosthetics and orthotics;
(r) Rehabilitation of the blind;
(s) Rehabilitation of the deaf;
(t) Rehabilitation of the mentally ill;
(u) Rehabilitation job development and job placement;
(v) Specialized personnel for supported employment;
(w) Undergraduate education in the rehabilitation services;
(x) Rehabilitation administration;
(y) Independent living;
(z) Client assistance; and
(aa) Other fields contributing to the rehabilitation of individuals with handicaps, especially individuals with severe handicaps, including homebound or institutionalized individuals.

(Authority: Secs. 304 (a) and (b) of the Act; 29 U.S.C. 774 (a) and (b))

16. Section 386.4 is revised to read as follows:

**§ 386.4 What definitions apply to this program?**

The following definitions apply to this program:

(a) The definitions in 34 CFR Part 385.

(b) The following definitions:

*"Academic year"* means a full-time course of study—

(1) Taken for the period totaling at least 9 months; or

(2) Taken for the equivalent of at least 2 semesters, 2 trimesters, or 3 quarters.

*"Certificate"* means a recognized educational credential awarded by a grantee under this Part which attests to the completion of a specified series of courses or program of study.

*"Scholar"* means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1 and who receives assistance under this part.

*"Scholarship"* means a training award a scholar.

*"Training award"* means an award of financial assistance to an individual for training in one or more of the areas designated in § 386.1.

(Authority: Sec. 12(c) of the Act; 29 U.S.C. 711(c))

**§ 386.30 [Amended]**

17. In § 386.30(c), "baisis" is corrected to read "basis."

18. In § 386.30(h)(2)(iii), remove the words "physically and mentally handicapped persons, especially those who are severely handicapped" and add, in their place, the words "persons with handicaps, especially persons with severe handicaps".

19. Section 386.42 is revised to read as follows:

**§ 386.42 What are the requirements affecting applicants for and recipients of training awards?**

(a) An individual applying for a training award—

(1)(i) Shall produce documentation that the individual is—

(A) A U.S. citizen or national; or

(B) A permanent resident of the Republic of the Marshall Islands, Federated States of Micronesia, Republic of Palau, or the Commonwealth of the Northern Mariana Islands; or

(ii) Shall produce documentation from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a lawful permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(2) Must not be an employee of the Federal government;

(3) Shall express interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation or independent living rehabilitation of persons with handicaps, especially persons with severe handicaps; and

(4) Shall provide assurances that the individual expects to maintain or seek employment in a State vocational rehabilitation agency or in a nonprofit rehabilitation or related agency providing services to individuals with handicaps or individuals with severe handicaps under an agreement with a State agency.

(b) An individual who receives a training award—

(1) Shall receive the training at the educational institution or agency designated in the training award; and

(2) Must not accept payment of educational allowances from any other Federal, State, or local public or private nonprofit agency if that allowance is conditioned on an employment obligation that conflicts with the individual's obligation under § 386.42(a)(4) or § 386.44(c)(1).

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774(b))

20. A new § 386.43 is added to read as follows:

**§ 386.43 What are the additional requirements affecting scholars?**

(a) *Requirements for a scholar.* A scholar shall—

(1) Enter into a written agreement with grantee that meets the terms and conditions required in § 386.44;

(2) Be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1; and

(3) Maintain satisfactory progress toward the certificate or degree as determined by the grantee.

(b) *Limits on scholarships.* (1) Assistance is limited to the individual's cost of attendance at the institution for no more than four academic years except that the grantee may allow one additional academic year if the grantee determines that an individual has a handicap that seriously affects the completion of the course of study.

(2) If a scholarship, when added to the amount the scholar is to receive for the same academic year under Title IV of the Higher Education Act, would otherwise exceed the scholar's cost of attendance, the grantee shall reduce the scholarship by the amount in which the combined awards would be in excess of the cost of attendance.

(Authority: Secs. 12(a) and 304(b) of the Act; 29 U.S.C. 711(c) and 774(b))

21. A new § 386.44 is added to read as follows:

**§ 386.44 What assurances must be provided by a grantee that intends to provide scholarships?**

A grantee under this Part that intends to grant scholarships shall provide the following assurances:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section.

(b) *Disclosure to applicants.* The terms and conditions of the agreement that the grantee will enter into with a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Each scholarship agreement with a grantee will be in such form and contain such terms as the Secretary requires.

including at a minimum the following provisions:

(1) Within the ten-year period after cessation of enrollment in the course of study for which the scholarship is awarded, the scholar will obtain and maintain employment—in a State rehabilitation agency or in a nonprofit rehabilitation or related agency providing services to individuals with handicaps under an agreement with a State agency—on a full-time basis for a period of not less than two years for each academic year for which a scholarship is received. The work requirement for portions of an academic year are pro-rated.

(2) The employment obligation in paragraph (c)(1) of this section as applied to a part-time scholar is based on the accumulated academic years of training for which scholarship is received.

(3) Until the scholar has satisfied the employment obligation described in paragraph (c)(1) of this section, the scholar will inform the grantee of any change of name, address or employment status and will document employment satisfying the terms of the agreement.

(4) Subject to the provisions in § 386.45 regarding a waiver or deferral, when the scholar enters repayment status under § 386.47(e), the amount of the scholarship that has not been retired through eligible employment will constitute a debt owed the United States that—

(i) Will be repaid by the scholar, including interest and costs of collection as provided in § 386.47; and

(ii) May be collected by the Secretary by any means permitted in Federal law for the collection of debts, in the case of the scholar's failure to meet the obligation of § 386.47.

(d) *Executed agreement.* The grantee will provide an original copy of the executed agreement to the Secretary.

(e) *Standards for satisfactory progress.* The grantee establishes, publishes, and applies reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has such standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors which are measurable against a norm;

(ii) A maximum time frame in which the scholar must complete the scholar's educational objective, degree, or certificate. The time frame shall be—

(A) Determined by the institution;

(B) Based on the scholar's enrollment status; and

(C) Divided into increments, not to exceed one academic year. At the end of each increment, the institution shall determine whether the scholar has successfully completed a minimum percentage of work toward the scholar's educational objective, degree, or certificate for all increments completed. The minumum percentage of work shall be the percentage represented by the number of increments completed by the scholar compared to the maximum time frame set by the instituion;

(iii) Consistent application of standards to all scholars within categories of students e.g., full-time, part-time, undergraduates, graduate students and programs established by the institution;

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress; and

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the agreement.

(g) *Reports.* The grantee makes reports to the Secretary that are necessary to carry out the Secretary's functions under this Part.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 774(b))

22. A new § 386.45 is added to read as follows:

**§ 386.45 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?**

A deferral or repayment exception to the requirements of § 386.44(c)(1) may be granted, in whole or part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of an impairment that is expected to continue indefinitely or result in death; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Temporarily totally disabled, for a period not to exceed three years; or

(6) Unable to secure employment as required by the agreement by reason of the care provided to a disabled spouse for a period not to exceed twelve months.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 744(b))

23. A new § 386.46 is added to read as follows:

**§ 386.46 What must a scholar do to obtain a deferral or exception to performance or repayment under a scholarship agreement?**

(a) *Written application.* A written application must be made to the Secretary to request a deferral or exception to performance or repayment of a scholarship.

(b) *Documentation.* (1) Documentation must be provided to substantiate the grounds for a deferral or exception.

(2) Documentation necessary to substantiate an exception under § 386.45(a)(1) or a deferral under § 386.45(b)(5) must include a sworn affidavit from a qualified physican.

(3) Documentation to substantiate an exception under § 386.45(a)(2) must include a death certificate or other evidence conclusive under State law.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 744(b))

24. A new § 386.47 is added to read as follows:

**§ 386.47 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?**

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or exception as provided in § 386.45, the scholar shall repay all or part of the scholarship.

(a) *Amount.* The amount of scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.*

(1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 380.45.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the ten years after cessation of enrollment in the course of study.

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: Secs. 12(c) and 304(b) of the Act; 29 U.S.C. 711(c) and 744(b))

[FR Doc. 87-12131 Filed 5-26-87; 8:45 am]

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Wednesday
May 27, 1987

# federal register

Part VI

## The President

**Proclamation 5662—National Day of Mourning for the Victims of United States Ship STARK**

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# Presidential Documents

Title 3—

The President

Proclamation 5862 of May 23, 1987

## National Day of Mourning for the Victims of United States Ship STARK

By the President of the United States of America

A Proclamation

Every year, in the beautiful springtime, the American people pause on a special day to pay the heartfelt tribute of love and remembrance to all the sons and daughters of our land who have laid down their lives on the altar of liberty. This year, our Memorial Day remembrance is tinged with fresh sorrow as we honor and mourn the brave men taken from us a short week ago.

No words of ours can pay them the full tribute that is their due: their service, sacrifice, and love of country crown their memory on this day of grief and will do so as long as there is an America that defends freedom and honors its heroic champions. Let us pay tribute, then, to the dead and injured of United States Ship STARK by making their faithfulness and courage and love our own, ever and always. Without Americans like them, there would be no land of the free and no home of the brave; because of Americans like them, the lamp of liberty burns on undimmed, unvanquished, and unquenchable.

In solemn recognition of the valiant crew members of United States Ship STARK who lost their lives or were injured, the Congress, by House Joint Resolution 290, has designated May 25, 1987, as "National Day of Mourning for the Victims of the U.S.S. STARK" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby appoint Monday, May 25, 1987, as National Day of Mourning for the Victims of United States Ship STARK. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of May, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

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# Rules and Regulations

Federal Register
Vol. 52, No. 102
Thursday, May 28, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

## Avocados Grown in South Florida and Imported Avocados; Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes continuous minimum maturity requirements for shipments of fresh avocados grown in South Florida, and for avocados imported into the United States. The purpose of such maturity regulations is to prevent shipments of immature avocados to the fresh market. Providing fresh markets with mature fruit is important in creating and maintaining consumer satisfaction and sales. Such action is designed to promote orderly marketing conditions for avocados in the interest of producers and consumers.

DATES: Section 915.332 becomes effective May 28, 1987 and § 944.51 becomes effective June 1, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601-674), and rules promulgated thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 34 handlers of Florida avocados subject to regulation under the marketing order for avocados grown in South Florida, and an estimated 20 importers who import avocados into the United States. In addition, there are approximately 303 avocado producers in South Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural services firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers, importers, and producers are believed to be small entities.

Fresh Florida avocado shipments are projected at 1,200,000 bushels (55 pounds net weight) for the 1987-88 season, compared with fresh shipments of 956,217 bushels shipped in 1986-87, 1,110,130 bushels in 1985-86, and 1,149,017 bushels in 1984-85. Florida avocados are shipped every month of the year. The new season normally begins with light shipments of early varieties in late May or early June, with heavy shipments following in late June or early July. Florida avocados compete primarily with avocados produced in California, which had shipments of 6,792,172 bushels during the 12-month period which ended March 31, 1987. Avocados imported into the United States amounted to about 209,000 bushels in 1985-86.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities. This final rule establishes minimum maturity requirements applicable to fresh shipments of avocados grown in South Florida on a continuous basis beginning with the 1987-88 season. The requirements for Florida avocados are intended to prevent the shipment of immature avocados to improve buyer confidence in the marketplace, and foster increased consumption. Similar maturity requirements have been issued each year over the past several seasons, and Florida avocado producers and handlers have found such requirements beneficial in the successful marketing of their avocado crops.

Some Florida avocado shipments would be exempt from the maturity requirements. Handlers may ship up to 55 pounds of avocados during any one day under a minimum quantity exemption, and may make gift shipments of up to 20 pounds of avocados in individually addressed containers. Also, avocados utilized in commercial processing would not be covered by the maturity requirements.

The final rule also establishes minimum maturity requirements applicable to imported fresh avocados on a continuous basis. The import requirements are similar to the requirements in effect during the 1986-87 season. The application of such requirements to imported avocados is required pursuant to section 8e of the Act. That section requires that certain imported commodities, including avocados, must meet the same or comparable requirements applicable to the domestic commodity under a Federal marketing order. An exemption provision in the import maturity regulation permits persons to import up to 55 pounds of avocados exempt from the import requirements.

It is the Department's view that under the maturity regulations the impact of the regulation upon growers, handlers, and importers would not be adverse. The application of the maturity requirements to both Florida and imported avocados over the past several years have helped to assure that only mature avocados were shipped to fresh markets. The Avocado Administrative Committee continues to believe that the maturity requirements for Florida avocados are needed to improve grower returns. Although compliance with these maturity requirements would affect costs to handlers and importers, these costs appear to be significantly offset

when compared to the potential benefits of assuring the trade and consumers of mature avocados.

A proposed rule was issued April 17, 1987, and published in the Federal Register (52 FR 13088, April 24, 1987) pertaining to the proposed maturity requirements. Interested persons had until May 4, 1987 to file comments. No comments were received. However, based on a recommendation of the committee at its April 8, 1987 meeting, the shipping schedule for the Brookslate variety has been changed in this final rule from that in the proposed rule. In addition, minor typographical errors in the shipping schedules for the Hardee, Tower-2, and Catalina varieties have been corrected in this final rule.

The Florida avocado maturity regulation is issued under the marketing agreement, and Order No. 915, both as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The maturity requirements applicable to Florida avocado shipments were unanimously recommended by the Avocado Administrative Committee. The committee works with the Department in administering the marketing agreement and order program.

The Florida avocado maturity regulation establishes maturity requirements for fresh shipments of Florida avocados for the 1987–88 season and for succeeding seasons as well. These maturity requirements are in terms of minimum weights or diameters for specified time periods during the shipping season for 60 varieties and 2 seedling types of avocados grown in Florida. The starting date of the requirements is switched from Wednesday of each week to Monday of each week. Historically, the requirements have always begun on Moday each week. In 1986, the starting days were switched to Wednesday to assist handlers in selling to some major chain stores. However, the switch to Wednesday did not accomplish the industry's objectives and the committee decided to go back to Monday.

Such requirements are used primarily during the first part of the harvest season for each variety to make sure that the avocados are sufficiently mature to complete the ripening process prior to shipment. Another maturity requirement based on the skin color of the fruit is also used to determine maturity for certain varieties of avocados which turn red or purple when mature. A minimum grade requirement of U.S. No. 2 is currently in effect on a continuous basis for Florida avocados under § 915.306 (7 CFR Part 915). The maturity requirements are designed to make sure that all shipments of Florida avocados are mature, so as to provide consumer satisfaction essential for the successful marketing of the crop, and to provide the trade and consumers with an adequate supply of mature avocados in the interest of producers and consumers.

Florida avocado maturity regulation (§ 915.331—51 FR 18565, May 21, 1986; 52 FR 2100, January 20, 1987) and avocado import maturity regulation (§ 944.30—51 FR 18565, May 21, 1986) were issued May 16, 1986, as an interim final rule. A period was provided for interested persons to submit written comments on this rule. The comment period ended June 20, 1986, and no comments were received. Subsequently, the interim final rule was amended on January 14, 1987, to permit certain weights and diameters of Brookslate variety avocados to be shipped earlier than under the interim final rule (52 FR 2100, January 20, 1987). The minimum weight and diameter requirements established by the interim and amended interim final rules expired on February 17, 1987, and the color maturity requirements expired on April 30, 1987. In view of these circumstances, the Department has determined that no useful purpose would be served by issuing a final rule on the two previous interim actions.

As indicated earlier, the avocado import maturity regulation is issued under section 8e (7 U.S.C. 608e–1) of the Act. Section 8e of the Act requires that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Comparable requirements may be issued whenever the Secretary determines that the application of restrictions under a marketing order to an imported commodity is not practicable because of variations in characteristics between the imported and domestic commodity. The avocado import maturity regulation is prescribed in § 944.31. That section establishes comparable minimum weight and diameter maturity requirements for avocados imported into the United States, based on the maturity requirements specified in paragraph (a)(2) of § 915.332 for avocados grown in Florida. Moreover, avocado import grade requirements are currently in effect on a continuous basis under § 944.28 (7 CFR Part 944). Such grade requirements specify that all avocados imported from all foreign countries must grade at least U.S. No. 2, which requires that the avocados be mature.

The domestic maturity requirements for specified periods are based on the growing, harvesting, and maturity periods for the various varieties of Florida avocados. The import maturity requirements for avocados grown in southern hemisphere countries such as Chile where practically all imported southern hemisphere avocados have originated in recent years, do not include minimum weight or diameter requirements. This is necessary because the growing, harvesting, and maturity periods for the various varieties of avocados grown in the southern hemisphere countries do not correspond with those in Florida, and it would be impracticable to apply the minimum weight or diameter requirements developed for Florida avocados to the imports from these origins. Avocados from foreign countries in close proximity to Florida with similar growing, harvesting, and maturity periods have met these maturity requirements without any apparent problems. Hence, the import maturity requirements applicable to avocados grown in northern hemisphere countries, such as the Bahamas, the Dominican Republic, and Costa Rica where practically all northern hemisphere imported avocados have originated in recent years, include minimum weight and diameter requirements.

The import maturity requirements based on skin color will apply to avocados which turn red or purple when mature grown in both the southern and northern hemispheres, because these varieties turn color when mature regardless of where grown. The U.S. No. 2 grade requirement also applies regardless of whether or not the avocados were grown in a southern or northern hemisphere country.

The maturity requirements contained in this final rule will continue in effect from marketing season to marketing season indefinitely unless modified, suspended, or terminated by the Secretary, upon the recommendation and information submitted by the committee, or upon other information available to the Secretary. Heretofore, maturity regulations issued under Marketing Order 915 were effective for a single marketing season. However, over the past several years the same maturity requirements have been imposed each season without substantial revision. The maturity requirements are expected to continue with little or no change from season to season. Therefore, it appears unnecessary to issue such regulations

for only a single season. In addition, this action should result in a reduction in operational costs to the committee and the government.

Although, the maturity requirements in the final rule would be effective for an indefinite period, the marketing order requires the committee to meet prior to or during each season to consider recommendations for modification, suspension, or termination of the Florida avocado regulation. Prior to the making of any such recommendations, the committee submits to the Secretary a marketing policy for the season including an analysis of supply and demand factors having a bearing on the marketing of the crop. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department evaluates committee recommendations and information submitted by the committee, comments filed, and other available information, and determines whether modification, suspension, or termination of the regulations on shipments of avocados would tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not postponing the effective date of this final rule until 30 days after publication in the Federal Register because: (1) This action is based upon the unanimous recommendation of the committee at a public meeting; (2) affected persons will not need additional time to comply with the maturity requirements specified in the rule; and (3) notice of the proposed maturity requirements was published in the Federal Register and no objections were received.

It is hereby found that establishing the maturity requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects**

*7 CFR Part 915*

Marketing agreements and orders, Avocados, Florida.

*7 CFR Part 944*

Food grades and standards, Imports, Avocados.

1. The authority citation for 7 CFR Parts 915 and 944 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

2. A new § 915.332 is added to read as follows:

**§ 915.332 Florida avocado maturity regulation.**

(a) No handler shall handle any variety of avocados grown in the production area unless:

(1) Any portion of the skin of the individual avocados has changed to the color normal for that fruit when mature for those varieties which normally change color to any shade of red or purple when mature, except for the Linda variety; or

(2) Such avocados meet the minimum weight or diameter requirements for the specified Monday through Sunday effective periods for each variety listed in the following TABLE I: *Provided*, That avocados may not be handled prior to the earliest date specified in column 2 of such table for the respective variety: *Provided further*, That up to a total of 10 percent, by count of the individual fruit in each lot may weigh less than the minimum specified or be less than the specified diameter, except that no such avocados shall be over 2 ounces lighter than the minimum weight specified for the variety: *Provided further*, That up to double such tolerance shall be permitted for fruit in an individual container in a lot.

TABLE I

| Avocado variety | Effective period | | Minimum size | |
|---|---|---|---|---|
| | From | Through | Weight (ounces) | Diameter (inches) |
| Koxel | 3rd Mon. May | 5th Sun. May | 16 | |
| Arue | 1st Mon. June | 2nd Sun. June | 13 | |
| Donnie | 3rd Mon. May | 5th Sun. May | 16 | |
| | 1st Mon. June | 1st Sun. July | 14 | 3 9/16 |
| Dr. Dupuis #2 | 4th Mon. May | 1st Sun. June | 16 | 3 9/16 |
| | 2nd Mon. June | 1st Sun. July | 14 | 3 9/16 |
| Fuchs | 1st Mon. June | 2nd Sun. June | 16 | 3 9/16 |
| | 3rd Mon. June | 1st Sun. July | 14 | 3 9/16 |
| K-5 | 1st Mon. July | 3rd Sun. July | 12 | 3 9/16 |
| | 2nd Mon. June | 3rd Sun. June | 14 | 3 9/16 |
| Hardee | 4th Mon. June | 1st Sun. July | 12 | 3 |
| | 3rd Mon. June | 4th Sun. June | 16 | 3 9/16 |
| West Indian Seedling [1] | 5th Mon. June | 2nd Sun. July | 14 | 3 9/16 |
| | 3rd Mon. June | 3rd Sun. June | 16 | 3 9/16 |
| Pollock | 4th Mon. June | 4th Sun. June | 16 | 3 9/16 |
| | 5th Mon. June | 3rd Sun. July | 14 | 2 15/16 |
| Simmonds | 4th Mon. June | 3rd Sun. July | 16 | |
| | 3rd Mon. July | 4th Sun. Aug | 16 | |
| Nadir | 4th Mon. Aug | 3rd Sun. Sept | 14 | |
| | 4th Mon. June | 1st Sun. July | 16 | 3 1/16 |
| | 1st Mon. July | 3rd Sun. July | 16 | 3 9/16 |
| | 3rd Mon. July | 1st Sun. Aug | 14 | 3 9/16 |
| | 4th Mon. June | 1st Sun. July | 16 | 3 9/16 |
| | 1st Mon. July | 3rd Sun. July | 14 | 3 9/16 |
| | 3rd Mon. July | 1st Sun. Aug | 12 | 3 1/16 |
| | 4th Mon. June | 4th Sun. June | 14 | 3 9/16 |
| | 5th Mon. June | 1st Sun. July | 12 | 3 1/16 |
| | 1st Mon. July | 3rd Sun. July | 10 | 2 15/16 |

TABLE I—Continued

| Avocado variety | Effective period | | Minimum size | |
|---|---|---|---|---|
| | From | Through | Weight (ounces) | Diameter (inches) |
| Gorham | 1st Mon. July | 3rd Sun. July | 29 | 4 9/16 |
| | 3rd Mon. July | 3rd Sun. Aug | 27 | 4 9/16 |
| Day | 1st Mon. July | 3rd Sun. July | 14 | 3 9/16 |
| | 3rd Mon. July | 3rd Sun. Aug | 10 | 2 13/16 |
| Reuhle | 1st Mon. July | 2nd Sun. July | 18 | 3 1/16 |
| | 2nd Mon. July | 3rd Sun. July | 16 | 3 3/16 |
| | 3rd Mon. July | 1st Sun. Aug | 14 | 3 1/16 |
| | 1st Mon. Aug | 2nd Sun. Aug | 12 | 3 5/16 |
| | 2nd Mon. Aug | 3rd Sun. Aug | 10 | 3 5/16 |
| Peterson | 2nd Mon. July | 3rd Sun. July | 14 | 3 5/16 |
| | 3rd Mon. July | 4th Sun. July | 12 | 3 5/16 |
| | 4th Mon. July | 2nd Sun. Aug | 10 | 3 5/16 |
| Blondo | 2nd Mon. July | 3rd Sun. Aug | 13 | |
| Bernecker | 3rd Mon. July | 1st Sun. Aug | 18 | 3 5/16 |
| | 1st Mon. Aug | 3rd Sun. Aug | 16 | 3 5/16 |
| | 3rd Mon. Aug | 5th Sun. Aug | 14 | 3 5/16 |
| 832 | 3rd Mon. July | 1st Sun. Aug | 14 | |
| | 1st Mon. Aug | 3rd Sun. Aug | 12 | |
| Pinelli | 3rd Mon. July | 1st Sun. Aug | 18 | 3 11/16 |
| | 1st Mon. Aug | 3rd Sun. Aug | 16 | 3 11/16 |
| Trapp | 3rd Mon. July | 1st Sun. Aug | 14 | 3 11/16 |
| | 1st Mon. Aug | 3rd Sun. Aug | 12 | 3 7/16 |
| Miguel (P) | 3rd Mon. July | 1st Sun. Aug | 22 | 3 15/16 |
| | 1st Mon. Aug | 3rd Sun. Aug | 20 | 3 13/16 |
| | 3rd Mon. Aug | 5th Sun. Aug | 18 | 3 11/16 |
| Nesbitt | 3rd Mon. July | 1st Sun. Aug | 22 | 3 15/16 |
| | 1st Mon. Aug | 2nd Sun. Aug | 16 | 3 5/16 |
| | 2nd Mon. Aug | 4th Sun. Aug | 14 | 3 5/16 |
| Bota | 1st Mon. Aug | 2nd Sun. Aug | 18 | 3 5/16 |
| | 2nd Mon. Aug | 5th Sun. Aug | 16 | 3 5/16 |
| K-9 | 1st Mon. Aug | 4th Sun. Aug | 16 | |
| Tower 2 | 1st Mon. Aug | 3rd Sun. Aug | 14 | 3 5/16 |
| | 3rd Mon. Aug | 1st Sun. Sept | 12 | 3 5/16 |
| Christina | 1st Mon. Aug | 4th Sun. Aug | 11 | 2 13/16 |
| Tonnage | 1st Mon. Aug | 3rd Sun. Aug | 16 | 3 5/16 |
| | 3rd Mon. Aug | 4th Sun. Aug | 14 | 3 5/16 |
| | 4th Mon. Aug | 5th Sun. Aug | 12 | 3 |
| Waldin | 1st Mon. Aug | 3rd Sun. Aug | 16 | 3 5/16 |
| | 3rd Mon. Aug | 5th Sun. Aug | 14 | 3 1/16 |
| | 5th Mon. Aug | 2nd Sun. Sept | 12 | 3 5/16 |
| Lisa (P) | 2nd Mon. Aug | 3rd Sun. Aug | 12 | 3 5/16 |
| | 3rd Mon. Aug | 4th Sun. Aug | 11 | 3 |
| Catalina | 3rd Mon. Aug | 5th Sun. Aug | 24 | |
| | 5th Mon. Aug | 3rd Sun. Sept | 22 | |
| Pinkerton (CP) | 3rd Mon. Aug | 5th Sun. Aug | 13 | |
| | 5th Mon. Aug | 2nd Sun. Sept | 11 | |
| | 2nd Mon. Sept | 4th Sun. Sept | 9 | |
| Fairchild | 3rd Mon. Aug | 5th Sun. Aug | 16 | 3 11/16 |
| | 5th Mon. Aug | 2nd Sun. Sept | 14 | 3 1/16 |
| | 2nd Mon. Sept | 3rd Sun. Sept | 12 | 3 5/16 |
| Black Prince | 3rd Mon. Aug | 5th Sun. Aug | 28 | 4 1/16 |
| | 5th Mon. Aug | 2nd Sun. Sept | 23 | 3 11/16 |
| | 2nd Mon. Sept | 1st Sun. Oct | 16 | 3 5/16 |
| Loretta | 5th Mon. Aug | 2nd Sun. Sept | 30 | 4 5/16 |
| | 2nd Mon. Sept | 1st Sun. Oct | 26 | 3 15/16 |
| Blair | 5th Mon. Aug | 2nd Sun. Sept | 16 | 3 5/16 |
| | 2nd Mon. Sept | 1st Sun. Oct | 14 | 3 5/16 |
| Booth 8 | 5th Mon. Aug | 3rd Sun. Sept | 16 | 3 5/16 |
| | 3rd Mon. Sept | 1st Sun. Oct | 14 | 3 5/16 |
| | 1st Mon. Oct | 3rd Sun. Oct | 10 | 3 1/16 |
| Booth 7 | 5th Mon. Aug | 2nd Sun. Sept | 18 | 3 15/16 |
| | 2nd Mon. Sept | 4th Sun. Sept | 16 | 3 15/16 |
| | 4th Mon. Sept | 2nd Sun. Oct | 14 | 3 5/16 |
| Booth 5 | 1st Mon. Sept | 3rd Sun. Sept | 14 | 3 5/16 |
| | 3rd Mon. Sept | 1st Sun. Oct | 12 | 3 5/16 |
| Guatemalan Seedling[2] | 1st Mon. Sept | 1st Sun. Oct | 15 | |
| | 1st Mon. Oct | 1st Sun. Dec | 13 | |
| Marcus | 1st Mon. Sept | 3rd Sun. Sept | 32 | 4 13/16 |

TABLE I—Continued

| Avocado variety | Effective period | | Minimum size | |
|---|---|---|---|---|
| | From | Through | Weight (ounces) | Diameter (inches) |
| Brooks 1978 | 3rd Mon. Sept | 1st Sun. Nov | 24 | 4 1/16 |
| | 1st Mon. Sept | 2nd Sun. Sept | 12 | 3 1/16 |
| | 2nd Mon. Sept | 3rd Sun. Sept | 10 | 3 1/16 |
| | 3rd Mon. Sept | 2nd Sun. Oct | 8 | 2 15/16 |
| Collinson | 2nd Mon. Sept | 2nd Sun. Oct | 16 | 3 11/16 |
| Rue | 2nd Mon. Sept | 3rd Sun. Sept | 30 | 4 5/16 |
| | 3rd Mon. Sept | 1st Sun. Oct | 24 | 3 15/16 |
| | 1st Mon. Oct | 3rd Sun. Oct | 18 | 3 1/16 |
| Hickson | 2nd Mon. Sept | 4th Sun. Sept | 12 | 3 1/16 |
| | 4th Mon. Sept | 2nd Sun. Oct | 10 | 3 |
| Simpson | 3rd Mon. Sept | 2nd Sun. Oct | 16 | 3 3/16 |
| Choquette | 4th Mon. Sept | 3rd Sun. Oct | 26 | 4 1/16 |
| | 3rd Mon. Oct | 1st Sun. Nov | 24 | 4 1/16 |
| | 1st Mon. Nov | 3rd Sun. Nov | 20 | 3 15/16 |
| Wimmowson | 4th Mon. Sept | 3rd Sun. Oct | 18 | 3 11/16 |
| Leona | 4th Mon. Sept | 2nd Sun. Oct | 18 | 3 11/16 |
| Hall | 4th Mon. Sept | 2nd Sun. Oct | 26 | 3 15/16 |
| | 2nd Mon. Oct | 4th Sun. Oct | 20 | 3 7/16 |
| | 4th Mon. Oct | 2nd Sun. Nov | 18 | 3 7/16 |
| Herman | 1st Mon. Oct | 3rd Sun. Oct | 16 | 3 7/16 |
| | 3rd Mon. Oct | 1st Sun. Nov | 14 | 3 7/16 |
| Lula | 1st Mon. Oct | 3rd Sun. Oct | 18 | 3 11/16 |
| | 3rd Mon. Oct | 1st Sun. Nov | 14 | 3 7/16 |
| | 1st Mon. Nov | 3rd Sun. Nov | 12 | 3 7/16 |
| Ajax (B-7) | 2nd Mon. Oct | 1st Sun. Nov | 18 | 3 11/16 |
| Taylor | 2nd Mon. Oct | 4th Sun. Oct | 14 | 3 7/16 |
| | 4th Mon. Oct | 2nd Sun. Nov | 12 | 3 7/16 |
| Booth 3 | 2nd Mon. Oct | 3rd Sun. Oct | 16 | 3 7/16 |
| | 3rd Mon. Oct | 1st Sun. Nov | 14 | 3 7/16 |
| Linda | 1st Mon. Nov | 4th Sun. Nov | 10 | 3 1/16 |
| Monroe | 2nd Mon. Nov | 4th Sun. Nov | 26 | 4 1/16 |
| | 4th Mon. Nov | 1st Sun. Dec | 24 | 4 1/16 |
| | 1st Mon. Dec | 3rd Sun. Dec | 20 | 3 15/16 |
| | 3rd Mon. Dec | 1st Sun. Jan | 16 | 3 7/16 |
| Booth 1 | 3rd Mon. Nov | 5th Sun. Nov | 16 | 3 11/16 |
| | 5th Mon. Nov | 2nd Sun. Dec | 12 | 3 7/16 |
| Zio (P) | 3rd Mon. Nov | 5th Sun. Nov | 12 | 3 7/16 |
| | 5th Mon. Nov | 2nd Sun. Dec | 10 | 2 15/16 |
| Wagner | 4th Mon. Nov | 1st Sun. Dec | 12 | 3 7/16 |
| | 1st Mon. Dec | 3rd Sun. Dec | 10 | 3 7/16 |
| Brooksiele | 2nd Mon. Dec | 3rd Sun. Dec | 16 | 3 11/16 |
| | 3rd Mon. Dec | 4th Sun. Dec | 16 | 3 11/16 |
| | 4th Mon. Dec | 2nd Sun. Jan | 14 | 3 7/16 |
| | 2nd Mon. Jan | 4th Sun. Jan | 12 | 3 7/16 |
| | 4th Mon. Jan | 1st Sun. Feb | 10 | |
| Meya (P) | 2nd Mon. Dec | 4th Sun. Dec | 12 | 3 7/16 |
| | 4th Mon. Dec | 2nd Sun. Jan | 11 | 3 |
| Reed (CP) | 2nd Mon. Jan | 4th Sun. Jan | 14 | |
| | 4th Mon. Jan | 1st Sun. Feb | 12 | |
| | 2nd Mon. Feb | 2nd Sun. Feb | 10 | |

[1] Avocados of the West Indian type varieties and the West Indian type seedlings not listed elsewhere in Table I.
[2] Avocados of the Guatemalan type varieties, hybrid varieties, and unidentified seedlings not listed elsewhere in Table I.

(b) The term "diameter" means the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit.

## PART 944—FRUITS; IMPORT REGULATIONS

3. A new § 944.31 is added to read as follows:

### § 944.31 Avocado import maturity regulation.

(a) Pursuant to section 8e of the Act and Part 944-Fruits; Import Regulations, the importation into the United States of any avocados is prohibited unless such avocados meet the requirements specified in § 915.332 Florida Avocado Maturity Regulation, for avocados grown in South Florida under M.O. 915 (7 CFR Part 915): *Provided,* That the minimum weight or diameter maturity requirements for specific time periods for various varieties of avocados specified in paragraph (a)(2) of that section shall not apply to avocados grown in countries in the southern hemisphere.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the

governmental inspection service for certifying the grade, size, quality, and maturity of avocados that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of avocados, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any person may import up to 55 pounds of avocados exempt from the requirements specified in this section.

(e) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such lot borne by the importer.

Dated: May 21, 1987.

Ronald L. Cioffi,

*Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 87-12195 Filed 5-27-87; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 1106**

**Milk in the Southwest Plains Marketing Area; Order Suspending a Certain Provision**

**AGENCY:** Agricultural Marketing Services, USDA.

**ACTION:** Suspension of a rule.

**SUMMARY:** This action suspends a portion of the "producer milk" definition of the Southwest Plains order for the months of May-August 1987. The suspension was requested by Mid-America Dairymen, Inc., a cooperative association that represents a substantial number of producers who supply milk for such market. The suspended provision requires that one day of a producer's milk production be physically received at a pool plant during the month to qualify such dairy farmer's milk for movement directly from the farm to nonpool manufacturing plants in such month. The action is necessary to eliminate uneconomic milk movements solely to qualify for pooling the milk of producers who have been supplying the market's fluid needs.

**EFFECTIVE DATE:** May 28, 1987, for the months of May-August 1987.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agricultural, Washington, DC 20250, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued April 24, 1987; published May 5, 1987 (52 FR 16402).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and assures that dairy farmers who have been supplying the market's fluid milk needs will continue to have their milk pooled and priced under the order and thereby receive the benefits that accure from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 5, 1987 (52 FR 16402) concerning a proposal to suspend a certain provision of the order. Interested persons were given an opportunity to file written data, views and arguments thereon. No views opposing the action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of May-August 1987 the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1106.13, paragraph (d)(1) in its entirety.

**Statement of Consideration**

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents and substantial number of producers who supply milk for the Southwest Plains market, requested that a portion of the "producer milk" definition be suspended for the months of May-August 1987. The order's "touch-base" provision, which requires that a dairy farmer's milk be physically received at a pool plant at least once during the month to qualify such person's milk for movement directly from the farm to manufacturing outlets in such month and still be pooled, is hereby suspended for the four-month period requested by proponent.

Two other suppliers of milk for the market, Associated Milk Producers, Inc., another cooperative that represents a substantial number of the market's producers, and Kraft, Inc., support this action.

Proponent cooperative is making uneconomic milk movements solely to qualify for pooling the milk it is marketing for dairy farmers under the terms and condition of the current order provisions. This action is warranted because of changes in the market's structure. Since the Foremost distributing plant at Springfield closed late last year, Mid-Am has experienced difficulty pooling all of its milk supplies located in the heavy production area of southwestern Missouri that have been associated with the Southwest Plains market. Mid-Am in unable to attach all of the milk of its southwestern Missouri producers with the conveniently located remaining distributing plant of Hiland Dairy at Springfield because such plant must account for 50 percent of its receipts as Class I route disposition to qualify as a pool plant. Because of the touch-base and Class I route disposition requirements that produces and plants must meet each month to qualify milk for pool status under the Southwest Plains order, some Mid-Am's milk was not pooled during March.

To prevent this from happening in the future, Mid-Am reassigned several producers located in the Springfield area to its pool balancing plant at Lebanon, Missouri, which is about 50 miles from Springfield and represents the nearest available pool plant. By hauling the milk to the Lebanon plant, the cooperative assures that such producers have met the touch-base requirement and that the milk of such dairy farmers may now be moved directly from the farm to nonpool plants for manufacturing. However, since the Lebanon plant does not have manufacturing facilities, the milk is reloaded and hauled back to the cooperative's nonpool manufacturing plant in Springfield.

A suspension is needed to prevent a continuation of these uneconomic milk marketing practices through the summer months. Without a suspension for the months requested, it would be necessary for Mid-Am to continue making such inefficient milk movements to ensure that the milk of its dairy farmers who

have been associated with the market will continue to share in the proceeds from the higher-valued fluid milk sales under the order.

This action will not permit handlers to pool additional milk under the order because the monthly percentage limits on diversions by handlers will continue to apply during the months of May-August. However, the suspension will provide more flexibility to the market's milk suppliers and thereby enable such handlers to market more efficiently the milk of dairy farmers. Accordingly, the "touch-base" provision is suspended for the months of May-August 1987.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure a continuation of orderly marketing conditions in the marketing area in that it will ensure that dairy farmers who have been supplying the market's fluid needs will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded an opportunity to file written data, views or arguments concerning this suspension action. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

**List of Subjects in 7 CFR Part 1106**

Milk marketing orders, Milk, Dairy products.

*It is therefore ordered,* That the aforesaid provision of § 1106.13(d)(1) of the Southwest Plains order is hereby suspended for the months of May-August 1987.

**PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA**

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1106.13 [Amended]**

2. Paragraph (d)(1) of § 1106.13 is suspended in its entirety.

Signed at Washington, DC, on: May 21, 1987.

**Karen K. Darling,**

*Deputy Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 87–12094 Filed 5–27–87; 8:45 am]

BILLING CODE 3410-02-M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 87–ASO–5]**

## Proposed Designation of Transition Area, Roxboro, NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The amendment designates the Roxboro, North Carolina, transition area to accommodate Instrument Flight Rule (IFR) operations at Person County Airport. This action lowers the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Person County nondirectional radio beacon (RBN), has been developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

**EFFECTIVE DATE:** 0901 UTC; July 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** Herbert A. Wachsman, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

**SUPPLEMENTARY INFORMATION:**

**History**

On February 24, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Roxboro, North Carolina, transition area. This action will provide controlled airspace for executing a new instrument approach procedure to Person County Airport. The operating status of the airport is changed from VFR to IFR and establishment of the RBN approved (51 FR 47255). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations designates the Roxboro, North Carolina, transition area to accommodate IFR operations at the Person County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (IFR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition area.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

**Roxboro, North Carolina (New)**

That airspace extending upward from 700' above the surface within a 6.5 mile radius of the Person County Airport (Lat. 36°17'57"N., Long. 78°59'01"W.).

Issued in East Point, Georgia, on May 13, 1987.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 87–12042 Filed 5–27–87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 25382; Amdt. No. 337]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adoping this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on May 20, 1987.

William T. Brennan,

*Acting Director of Flight Standards.*

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

## REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 307 EFFECTIVE DATE, JUNE 4, 1987

| FROM | TO | MEA |
|---|---|---|
| **§95.1001 DIRECT ROUTES-U.S.** | | |
| **IS AMENDED TO READ IN PART** | | |
| FAYETTEVILLE, NC VOR/DME | KINSTON, NC VORTAC | 2000 |
| NEW BERN (MARINE), NC NDB | KINSTON, NC VORTAC | 2000 |
| **§95.1001 DIRECT ROUTES-U.S.** | | |
| **PUERTO RICO ROUTES** | | |
| **IS AMENDED TO READ IN PART** | | |
| 9850 | | |
| CULEB, VI FIX | ST THOMAS, VI VOR/DME | 2000 |
| | | MAA-45000 |
| ST THOMAS, VI VOR/DME | SAINT MAARTEN, NA NDB | 2000 |
| | | MAA-45000 |
| 9849 S | | |
| CULEB, VI FIX | ST THOMAS, VI VOR/DME | 2000 |
| ST THOMAS, VI VOR/DME | ST CROIX, VI VOR/DME | 2000 |
| **§95.6026 VOR FEDERAL AIRWAY 26** | | |
| **IS AMENDED TO READ IN PART** | | |
| LAKE HENRY, PA VORTAC | SPARTA, NJ VORTAC | 4000 |
| **§95.6156 VOR FEDERAL AIRWAY 156** | | |
| **IS AMENDED TO READ IN PART** | | |
| SOUTH BEND, IN VORTAC | KALAMAZOO, MI VOR/DME | 2000 |
| **§95.6159 VOR FEDERAL AIRWAY 159** | | |
| **IS AMENDED TO READ IN PART** | | |
| SIOUX CITY, IA VORTAC | *HURLY, NE FIX | **4000 |
| *4500 - MRA | | |
| **2600 - MOCA | | |
| HURLY, NE FIX | OBERT, NE FIX | *4500 |
| | NW BND | |
| | SE BND | *3400 |
| *2600 - MOCA | | |
| OBERT, NE FIX | YANKTON, SD VOR/DME | 3000 |
| **§95.6168 VOR FEDERAL AIRWAY 168** | | |
| **IS AMENDED BY ADDING** | | |
| LA GRANGE, GA VORTAC | MILER, AL FIX | 2600 |
| MILER, AL FIX | EFORD, AL FIX | *3000 |
| *2400 - MOCA | | |

| FROM | TO | MEA |
|---|---|---|
| **§95.6168 VOR FEDERAL AIRWAY 168—Continued** | | |
| EFORD, AL FIX | WHEELHASS, AL VORTAC | 3400 |
| **§95.6188 VOR FEDERAL AIRWAY 188** | | |
| **IS AMENDED TO READ IN PART** | | |
| WILKES-BARRE, PA VORTAC | SPARTA, NJ VORTAC | 4000 |
| **§95.6193 VOR FEDERAL AIRWAY 193** | | |
| **IS AMENDED TO READ IN PART** | | |
| PELLSTON, MI VORTAC | EARLY STR MARIE, MI VORTAC | 2500 |
| **§95.6203 VOR FEDERAL AIRWAY 203** | | |
| **IS AMENDED TO READ IN PART** | | |
| VIENNA, GA VORTAC | *PEATZ, GA FIX | **3000 |
| *3000 - MRA | | |
| **2000 - MOCA | | |
| **§95.6371 VOR FEDERAL AIRWAY 371** | | |
| **IS AMENDED TO READ IN PART** | | |
| HARRISON, MI VORTAC | MANISTEE, MI VOR | 3000 |
| **§95.6311 VOR FEDERAL AIRWAY 311** | | |
| **IS AMENDED TO READ** | | |
| WHEELHASS, AL VORTAC | EFORD, AL FIX | 3400 |
| EFORD, AL FIX | MILER, AL FIX | 3000 |
| MILER, AL FIX | LA GRANGE, GA VORTAC | 2600 |
| **§95.6436 VOR FEDERAL AIRWAY 436** | | |
| **IS AMENDED TO READ IN PART** | | |
| ANCHORAGE, AK VOR/DME | *TALKEETNA, AK VOR/DME | 3000 |
| *2800 - MCA TALKEETNA VOR/DME, N BND | | |
| TALKEETNA, AK VOR/DME | *EGRAM, AK FIX | 6000 |
| *7600 - MCA EGRAM FIX, N BND | | |
| EGRAM, AK FIX | NENANA, AK VORTAC | 10000 |
| NENANA, AK VORTAC | GOLLY, AK FIX | 4000 |
| GOLLY, AK FIX | TOLLO, AK FIX | *4000 |
| *3400 - MOCA | | |
| TOLLO, AK FIX | LIVEN, AK FIX | 5000 |
| CHAMBERLAIN LAKE, AK NDB | *ARTIC, AK FIX | 10000 |
| *7000 - MCA ARTIC FIX, S BND | | |
| ARCON, AK FIX | DEADHORSE, AK VOR/DME | *2000 |
| *1300 - MOCA | | |

| FROM | TO | MEA |
|---|---|---|
| **§95.6445 VOR FEDERAL AIRWAY 445** | | |
| **IS AMENDED TO DELETE** | | |
| STAMS, CT FIX | VAAMP, CT FIX | 2500 |
| **§95.6504 VOR FEDERAL AIRWAY 504** | | |
| **IS AMENDED TO READ IN PART** | | |
| SHELD, AK FIX | DEADHORSE, AK VOR/DME | *3000 |
| *1300 - MOCA | | |
| **§95.6579 VOR FEDERAL AIRWAY 579** | | |
| **IS AMENDED TO READ IN PART** | | |
| FORT MYERS, FL VORTAC | VIOLA, FL FIX | 2000 |
| VIOLA, FL FIX | SARASOTA, FL VORTAC | 3000 |
| **§95.6580 VOR FEDERAL AIRWAY 580** | | |
| **IS AMENDED TO READ** | | |
| ST LOUIS, MO VORTAC | *LEBOY, IL FIX | 3000 |
| *3000 - MRA | | |
| LEBOY, IL FIX | *SEXTN, IL FIX | 4000 |
| *4500 - MRA | | |
| SEXTN, IL FIX | BURLINGTON, IA VORTAC | 3000 |
| **§95.6582 VOR FEDERAL AIRWAY 582** | | |
| **IS ADDED TO READ** | | |
| ST LOUIS, MO VORTAC | QUINCY, IL VORTAC | 3000 |

| FROM | TO | MEA | MA |
|---|---|---|---|
| **§95.7042 JET ROUTE NO. 42** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| BECKLEY, WV VORTAC | DRAPE, VA FIX | 22000 | 45000 |
| DRAPE, VA FIX | CASANOVA, VA VORTAC | 18000 | 45000 |
| **§95.7217 JET ROUTE NO. 217** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| GRACE, PA FIX | CLARION, PA VORTAC | 18000 | 38000 |
| **§95.7220 JET ROUTE NO. 220** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| BECKLEY, WV VORTAC | DRAPE, VA FIX | 22000 | 45000 |
| **§95.7511 JET ROUTE NO. 511** | | | |
| | **IS AMENDED TO READ IN PART** | | |
| ENCOR, AK FIX | DILLINGHAM, AK VOR/DME | 28000 | 45000 |

[FR Doc. 87-12185 Filed 5-27-87; 8:45 am]
BILLING CODE 4910-13-C

## §95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

| AIRWAY SEGMENT | | CHANGEOVER POINTS | |
|---|---|---|---|
| FROM | TO | DISTANCE | FROM |
| | **V-30** | | |
| | **IS AMENDED TO READ IN PART** | | |
| MONTGOMERY, AL VORTAC | TUSKEGEE, AL VORTAC | 30 | MONTGOMERY |
| | **V-86** | | |
| | **IS AMENDED BY ADDING** | | |
| MONTGOMERY, AL VORTAC | TUSKEGEE, AL VORTAC | 30 | MONTGOMERY |
| | **V-436** | | |
| | **IS AMENDED TO READ IN PART** | | |
| CHANDALAR LAKE, AK NDB | DEADHORSE, AK VOR/DME | 63 | CHANDALAR LAKE |

14 CFR Part 97

[Docket No. 25272; Amdt. No. 1347]

## Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

*Incorporation by reference*—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS–230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on May 15, 1987.

John S. Kern,

*Director of Flight Standards.*

### Adoption of the Amendment

### PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

*. . . Effective July 30, 1987*

Peru, IL—ILL Valley RGNL-W.A. Duncan Fld, NDB RWY 18, Orig.
Butte, MT—Bert Mooney, VOR/DME-A, Amdt. 2
Butte, MT—Bert Mooney, VOR-B, Amdt. 1
Butte, MT—Bert Mooney, LOC/DME RWY 15, Amdt. 6
Butte, MT—Bert Mooney, ILS RWY 15, Amdt. 4
Lewistown, MT—Lewistown Muni, VOR RWY 7, Amdt. 11
Reno, NV—Reno Cannon Intl, ILS RWY 16R, Amdt. 9
Ballinger, TX—Bruce Field, NDB RWY 35, Orig.

*. . . Effective July 2, 1987*

Montgomery, AL—Dannelly Filed, VOR-A, Amdt. 2
Tuscaloosa, AL—Tuscaloosa Muni, ILS RWY 4, Amdt. 11
Ontario, CA—Ontario Intl, VOR or TACAN RWY 26R, Amdt. 9
Ontario, CA—Intl, LOC RWY 26R, Orig.
Ontario, CA—Ontario Intl, NDB RWY 26L, Amdt. 1
Ontario, CA—Ontario Intl, ILS RWY 8L, Amdt. 4
Ontario, CA—Ontario Intl, ILS RWY 26L, Amdt. 6
Ontario, CA—Ontario Intl, ILS RWY 26R, Orig.
Venice, FL-Venice Muni, NDB RWY 31, Orig.
Huntington, IN—Huntington Muni, NDB RWY 9, Orig.
Spirit Lake, IA—Spirit Lake Muni, NDB RWY 16, Amdt. 6
Spirit Lake, IA—Spirit Lake Muni, NDB RWY 34, Amdt. 2
Lafayette, LA—Lafayette Regional, NDB RWY 10, Amdt. 2
Lafayette, LA—Lafayette Regional, RADAR-1, Amdt. 6
Lafayette, LA—Lafayette Regional, RNAV RWY 3, Amdt. 2
Plymouth, MA—Plymouth Muni, NDB RWY 6, Amdt. 6
Gladwin, MI—Gladwin Airport, NDB RWY 27, Amdt. 3
Reno, NV—Reno Cannon Intl, RADAR-1, Amdt. 1 (CANCELLED)
Dayton, OH—James M. Cox Dayton Intl, RADAR-1 Amdt. 6
Harlingen, TX—Rio Grande Valley Intl, VOR RWY 13, Amdt. 10
Harlingen, TX—Rio Grande Valley Intl, VOR/DME RWY 31, Amdt. 1
Harlingen, TX—Rio Grande Valley Intl, LOC BC RWY 35L, Amdt. 10
Harlingen, TX—Rio Grande Valley Intl, ILS RWY 17R, Amdt. 9
Henderson, TX—Rusk County, NDB RWY 16, Amdt. 2
Junction, TX—Kimple County, VOR-A Amdt. 10
Junction, TX—Kimple County, RNAV RWY 17, Amdt. 1

*. . . Effective June 4, 1987*

Waterville, ME—Waterville Robert LaFleur, LOC RWY 5, Orig.

*. . . Effective May 8, 1987*

Walla Walla, WA—Walla Walla City County, ILS RWY 20, Amdt. 6

*. . . Effective May 7, 1987*

Roseburg, OR—Roseburg Muni, VOR-A, Amdt. 5

*. . . Effective May 5, 1987*

Beverly, MA—Beverly Muni, VOR RWY 16, Amdt. 3

*. . . Effective April 30, 1987*

Savannah, GA—Savannah International, VOR RWY 27, Amdt. 14
Savannah, GA—Savannah International, NDB RWY 9, Amdt. 19
Savannah, GA—Savannah International, ILS RWY 9, Amdt. 24
Savannah, GA—Savannah International, ILS RWY 36, Amdt. 3
Savannah, GA—Savannah International, RADAR-1, Amdt. 7
Savannah, GA—Savannah International, RNAV RWY 18, Amdt. 6
Savannah, GA—Savannah International, RNAV RWY 27, Amdt. 5

*. . . Effective April 29, 1987*

Lanett, AL—Lanett Muni, VOR/DME-A, Amdt. 2

The FAA published an Amendment in Docket No. 25255, Amdt. No. 1346 to Part 97 of the Federal Aviation Regulations (Vol 52, FR No. 89, Page 17394; dated Friday, May 8, 1987) under Section 97 effective 30 JUL 87 which is hereby amended as follows:

ELY, NM—Ely Muni, VOR RWY 12, Amdt. 5 should read Ely, MN—Ely Muni VOR RWY 12 Amdt. 5.
Ely, NM—Ely Muni VOR/DME RWY 12 Amdt. 3 should read Ely, MN Ely Muni VOR/DME RWY 12 Amdt. 3.
Ely—NM Ely Muni VOR RWY 30 Amdt. 5 should read Ely, MN—Ely Muni VOR RWY 30 Amdt. 5.
Ely, NM—Ely Muni VOR/DME RWY 30 Amdt. 3 should read Ely, MN—Ely Muni VOR/DME RWY 30 Amdt. 3.

[FR Doc. 87-12043 Filed 5-27-87; 8:45 am]
BILLING CODE 4910-13-M

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## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

### 15 CFR Part 801

[Docket No. 70116-7092]

## U.S. Trade in Services; Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1986

**AGENCY:** Bureau of Economic Analysis, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This notice sets forth final rules providing for a new survey, the BE-20 Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, covering 1986. The data from the survey will be used to develop U.S. trade policy and support U.S. negotiations on services trade with foreign countries. They will enable the Government to better assess U.S. competitiveness in, and institute export promotion programs for, services industries. They will also result in improvement in U.S. balance of payments statistics and in the ability of U.S. services businesses to identify and evaluate market opportunities.

The survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. These rules implement a portion of the President's responsibilities for collecting data on U.S. services trade under the Act. These responsibilities have been delegated to the Secretary of Commerce, who has redelegated them to BEA. This final rulemaking will amend 15 CFR Part 801, as published in the Federal Register on March 6, 1986.

**DATES:** These rules will be effective June 29, 1987. The BE-20 survey forms will be mailed to potential respondents near the end of June; potential respondents should allow a reasonable time for receipt of the form before requesting one from BEA. The due date for completed reports is September 30, 1987.

**FOR FURTHER INFORMATION CONTACT:** George R. Kruer, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0657.

**SUPPLEMENTARY INFORMATION:**

### Background

In the February 26, 1987 Federal Register, volume 52, No. 38 (52 FR 5785), BEA published a notice of proposed rulemaking to implement the new BE-20 Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—1986.

No comments were received on the proposed rule. A few comments were received on the draft survey form during its review by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). One comment affected the definition of a "transaction." Because that definition also appears in the rule, the change in the definition on the form necessitated a parallel change in the rule. The change in definition was for purposes of clarification only and did not affect its substance.

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**Executive Order 12291**

BEA has determined that this final rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 millon or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Paperwork Reduction Act**

The collection of information requirement in these final rules has been approved by OMB (OMB No. 0608–0058).

**Regulatory Flexibility Act**

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605 (b)), that this rule will not have a significant economic impact on a substantial number of small entities. Most small business will be excluded from reporting data on a mandatory basis, as a result of the $250,000 cutoff level applicable to individual transactions under the survey's mandatory reporting requirement. Also, under the survey's voluntary reporting provision, the $500,000 cutoff level applicable to total transactions of a given type will exclude many other small businesses from reporting any data at all. Those that do have reportable transactions are requested to provide judgmental estimates only of the total amount of transactions of a given type, not disaggregated by country. This voluntary reporting provision ensures that smaller businesses with significant international transactions can be covered, but with the minimum burden possible. Even if a small business is required to file on a mandatory basis, or chooses to report information on a voluntary basis, it is unlikely to be very diversified and will probably report data only on the one schedule relevant to its particular activity. Thus, the burden for small businesses should be low and a regulatory flexibility analysis was not prepared.

**List of Subjects in 15 CFR Part 801**

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: May 4, 1987.

**Allan H. Young,**

*Director, Bureau of Economic Analysis.*

For the reasons set forth in the preamble, 15 CFR Part 801 is amended as follows:

**PART 801—[AMENDED]**

1. The authority citation for 15 CFR Part 801 continues to read as follows:

**Authority:** 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

2. Section 801.9(a) is revised to read as follows:

**§ 801.9 Reports required.**

(a) *Benchmark surveys.* BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons: Section 4(a)(4) of the Act (22 U.S.C. 3103) provides that benchmark surveys of trade in services between U.S. and unaffiliated foreign persons be conducted, but not more frequently than every 5 years. The survey is referred to as the "BE–20." Specific reporting requirements, exemption levels, and the year of coverage of a given BE–20 survey may be found in § 801.10.

* * * * *

3. Section 801.10 is added to read as follows:

**§ 801.10 Rules and regulations for the BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons—1986.**

A BE–20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons, will be conducted covering companies' 1986 fiscal year. All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–20 survey are given below. More detailed instructions are given on the report form itself.

(a) The BE–20 survey consists of two Parts and six Schedules, A–F. Part I (Name, Address, and Determination of Reporting Status) requests information needed to determine whether a report is required and which schedules apply. Part II (Identification and Selected Financial and Operating Data of U.S. Reporter) requests information about the reporting entity. Each of the six schedules covers a different type or group of services and is to be completed only if the U.S. Reporter has transactions of the type(s) covered by the particular schedule.

(b) *Who is to report and transactions to be reported.* (1) Mandatory reporting—A BE–20 report is *required* from each U.S. person who has one or more individual sale *or* purchase transactions in excess of $250,000 with an unaffiliated foreign person in any of the services listed in paragraph (d) of this section during the U.S. person's 1986 fiscal year.

(i) The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty without conducting a detailed manual records search.

(ii) Reporters who must file pursuant to this mandatory reporting requirement must complete Parts I and II of Form BE–20 and all applicable schedules. The total amounts of individual transactions exceeding $250,000 that are applicable to a particular schedule are to be entered in the appropriate column(s) on line 1, section A of the schedule. In addition, these amounts must be distributed below line 1 to the country(ies) involved in the transaction(s).

(2) Voluntary reporting—U.S. persons receiving a copy of the survey are *requested* to provide, for each of the services listed in paragraph (d) of this section, supplemental estimates of individual sale or purchase transactions with unaffiliated foreign persons that are $250,000 or less but for which the total value exceeds $500,000 during the U.S. person's 1986 fiscal year. These estimates are requested whether or not the U.S. Reporter also had activity to report under the mandatory reporting requirement in paragraph (b)(1) of this section.

(i) Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(ii) The total amounts of transactions applicable to a particular schedule are to be entered in the appropriate column(s) on line 39, section B of the schedule; they are *not* to be disaggregated by country. Reporters filing voluntary information only and who have *no* individual transactions exceeding $250,000 should also complete Part I, section A, B, and C of Form BE–20, answering "no" for each type of service listed in Part I, Section B. They should not complete Part II of Form BE–20.

(3) Any U.S. person receiving the BE–20 survey form from BEA, even if the person is not subject to the mandatory reporting requirement in paragraph (b)(1) of this section and is not filing

information on a voluntary basis pursuant to paragraph (b)(2) of this section, must nevertheless complete and return to BEA Part I of the form, answering "no" for each type of service listed in Part I, Section B, and indicating in Part I, section C that no voluntary data are being reported. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary followup contact.

(c) *BE–20 definition of transaction.* (1) For purposes of the BE–20 survey, a "transaction" is defined as the total value, as entered on the respondent's books, of services sold to or purchased from an unaffiliated foreign person during the respondent's 1986 fiscal year.

(2) Notwithstanding paragraph (c)(1), of this section, in the following cases, a "transaction" is to be measured by an item other than sales or purchases in determining whether the thresholds for mandatory or voluntary reporting are exceeded:

(i) Advertising: Advertising agencies should use gross billings to unaffiliated foreign persons, including funds passed through to media companies and not included in the agency's income statement.

(ii) Telecommunications: for jointly provided (basic) services, receipts from foreign persons for messages or leased lines originating abroad, and payouts to foreign persons for messages or leased lines originating in the United States, should be used.

(iii) Performing arts, sports, and other performances, presentations, and events: Fees are defined net of allowances for expenses.

(iv) Employment agencies and temporary help supply services: Receipts and payments should include any funds for compensation of workers carried on the payroll of the agency or supply service, as well as for agency fees.

(d) *Covered types of services.* Only the services listed below are covered by the BE–20 survey. Other services, such as transportation, reinsurance, lending and borrowing and related fees and charges, brokerage fees, royalties and license fees, etc., are NOT covered. Covered services are:

(1) Advertising services—Preparation of advertising and placement of such advertising in media, including charges for media space and time.

(2) Computer and data processing services—Data entry, processing (both batch and remote), and tabulation; computer systems analysis, design, and engineering; software, both custom programming and prepackaged, including rights to use, reproduce, or distribute such software; equipment leasing (except financial leasing); integrated hardware/software systems; and other computer services (e.g., timesharing, maintenance, and repair).

(3) Data base and other information services—Business and economic data base services, including business news, stock quotation, and financial information services; medical, legal, technical, demographic, bibliographic, and similar data base services; general news services, such as those purchased from a news syndicate; and other information services, including reservation systems and credit reporting and authorization systems.

(4) Telecommunications services. (i) Message telephone, telex, telegram, and other jointly provided (basic) services—Receipts from foreign persons (communications companies and postal, telephone, and telegraph agencies (PTT's)) for own share of revenues for transmitting messages originating abroad to U.S. destinations, and payouts to foreign persons (communications companies and PTT's) for their share of revenues for transmitting messages originating in the United States to foreign destinations. For messages originating in foreign countries and routed through the United States (for example, from Caribbean countries via the United States to Western Europe), includes receipts from the foreign person originating the message and payouts to the country of destination. Also includes receipts for transmitting messages between foreign points when not routed through the United States. Includes packet switched services when not offered in connection with enhanced services, and other regulated services of the type reportable to the FCC on Report 4361.

(ii) Private leased channel services—Receipts from foreign persons for circuits and channels terminating in the United States and for circuits and channels between foreign points, and payouts to foreign persons for leased channels and circuits terminating in foreign countries.

(iii) Value added (enhanced) services—Telecommunications services that add value or function above and beyond the telecommunications transport services that deliver the value-added services to end users. They can include electronic mail, voice mail, code and protocol processing, and management of data networks; facsimile services and videoconferencing; and other value-added (enhanced) services.

(iv) Support services—Services related to the maintenance and repair of telecommunications equipment; ground station services; capacity leasing for transiting; and launching of communications satellites.

(5) Agricultural services—Soil preparation services, crop services, veterinary and other animal services, farm labor and management services, and landscape and horticultural services.

(6) Research and development, and commercial testing, laboratory services—Laboratory and other physical research and development and product testing. Excludes medical and dental laboratory services.

(7) Management, consulting, and public relations services—Management services, except management of health care facilities (see paragraph (d)(8) of this section); consulting services, except consulting engineering services related to actual or proposed construction or mining services projects (see paragraph (d)(18) of this section) and computer consulting (see paragraph (d)(2) of this section); and public relations services, except those that are an integral part of an advertising campaign (see paragraph (d)(1) of this section). Excludes management and operation of a foreign business by a U.S. person, or of a U.S. business by a foreign person, where operating staff as well as management is provided. (Generally, such operations would be deemed to constitute a foreign affiliate of the U.S. person, or a U.S. affiliate of the foreign person, to be reported in BEA's direct investment surveys, rather than in this survey.)

(8) Management of health care facilities—Management of hospitals, nursing homes, and other health care facilities. If operating staff is provided, generally should be reported in BEA's direct investment surveys, rather than in this survey.

(9) Accounting, auditing, and bookkeeping services, etc.—Excludes data processing and tabulating services (see paragraph (d)(2) of this section).

(10) Legal services—Legal advice or other legal services.

(11) Educational and training services—Educational or training services provided on a contract or fee basis. Excludes tuition and fees charged to individual foreign students U.S. educational institutions or to individual U.S. students by foreign educational institutions. Also excludes training done by a U.S. or foreign manufacturer in connection with the sale of a good (see paragraph (d)(15) of this section).

(12) Mailing, reproduction, and commercial art—Direct mail advertising services; blueprinting, photocopying, and other reproduction services, including those in connection with direct

mail advertising; commercial photography, art, and graphic services; and stenographic services.

(13) Employment agencies and temporary help supply services—Employment services and provision of temporary help and personnel to perform services for others on a contract or fee basis. Where workers are carried on the payroll of the agency, includes receipts from or payments to unaffiliated foreign persons covering the compensation of workers, as well as agency fees.

(14) Industrial engineering services—Engineering services related to the design of movable products, including product design services. Excludes engineering and architectural services that relate to immovable products, such as those that relate to actual or proposes construction or mining services projects (see paragraph (d)(18) of this section). Excludes computer systems engineering (see paragraph (d)(2) of this section). (Includes, however, services performed with the assistance of computers, such as computer-assisted design work.)

(15) Industrial-type maintenance and repair, installation, and training services. (i) Maintenance and repair services primarily to machinery and equipment. May also include small maintenance and repair work on buildings, structures, dams, highways, etc., but only to the extent that the work is not covered under paragraph (d)(18) of this section). Would include such services as the periodic overhaul of turbines or locomotives, the extinguishing of natural gas well fires, and refinery maintenance. Excludes computer maintenance and repair services (see paragraph (d)(2) of this section).

(ii) Installation, startup, and training services provided by a manufacturer in connection with the sale of goods. Do not include such services where the cost is included in the price of the goods and not separately billed or is declared as a part of the price of the goods on the shippers export or import declaration filed with the U.S. Customs Service; however, services provided at a price over and above that entered on the shippers export or import declaration should be included. These services would be reported elsewhere if not provided in connection with the sale of goods. For example, installation of machinery and equipment is normally considered a construction activity, and training personnel in the use of new machinery would ordinarily be reported as an educational or training service. However, this separate category has been provided for reporting such services when provided in connection with goods.

(16) Performing arts, sports, and other live performers, presentations, and events—Fees (net of allowances for expenses) for performances abroad by U.S. or foreign performers, and for performances in the United States by foreign performers. To be reported by U.S. management companies, booking agents, promoters, and presenters who book performers and events abroad by U.S. or foreign performers; U.S. performers who received funds directly from a foreign person rather than through a U.S. management company (or similar entity); and management companies, booking agents, promoters, and presenters who book performances in the United States by foreign performers. (As used here, "performers" means entertainers, sports teams, orchestras, dance companies, lecturers, and similar persons or performing groups.)

(17) Direct insurance—Applies only to insurance *purchased* from unaffiliated foreign insurance carriers and includes premiums (net of cancellations) paid to these carriers. A U.S. Reporter should not report direct transactions with a foreign insurance company that is its foreign affiliate; such transactions are to be reported on direct investment survey Form BE–577. A U.S. Reporter should, however, report direct transactions with a foreign insurance company that is an affiliate of another U.S. company, as the U.S. Reporter and the foreign insurance company are unaffilliated. Note that the criterion for reporting is whether the transaction is between a U.S. and an unaffiliated foreign person. It is immaterial whether the assets insured are located in the United States or abroad. Excludes reinsurance transactions with insurance companies resident abroad. When insurance is purchased through a broker, the guidelines for reporting transactions carried out through an intermediary, which are contained in the *General Instructions* to the survey, should be followed.

(18) Construction, engineering, architectural, and mining services—Covers only *purchases* of the following types of services: Services of general contractors in the fields of building and heavy construction; construction work by special trade contractors, such as the erection of structural steel for bridges and buildings and on-site electrical work; architectural engineering, and land-surveying services; and mining services, including oil and gas field services. Includes only those engineering services purchased in conjunction with construction and mining services projects; industrial engineering services, such as product design services, should be included under paragraph (d)(14) of this section. Includes services purchased in connection with proposed projects (e.g., feasibility studies) as well as projects that are actually being carried out. Note that the U.S. Reporter's *Sales* of construction, engineering, architectural, and mining services are not reportable in this survey, but on separate Form BE–47.

[FR Doc. 87–12063 Filed 5–27–87; 8:45 am]
BILLING CODE 3510–06–M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 455

### Trade Regulation Rule; Sale of Used Motor Vehicles; Correction

**AGENCY:** Federal Trade Commission.

**ACTION:** Staff Compliance Guidelines; Correction.

**SUMMARY:** This document corrects a Commission document previously published in the **Federal Register** on Monday, May 18, 1987. 52 FR 18552. Appendixes A–E were inadvertently omitted from the previous publication.

**DATES:** Effective date: May 28, 1987. Written comments regarding the staff compliance guidelines will be accepted until July 17, 1987.

**ADDRESS:** Written comments on this action should be addressed to: Office of the Secretary, Federal Trade Commission, 6th & Pennsylvania Avenue, Washington, DC 20580. Comments should be captioned: "Comment on Staff Compliance Guidelines—Used Car Rule—FTC File No. 215–54."

**FOR FURTHER INFORMATION CONTACT:** Joyce E. Plyler (202/326–3021), Attorney, or Matthew D. Gold (202/326–3019), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Appendixes A–E.

BILLING CODE 6750–01–M

APPENDIX A

# BUYERS GUIDE

**IMPORTANT:** Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VIN NUMBER _____

DEALER STOCK NUMBER (Optional) _____

**WARRANTIES FOR THIS VEHICLE:**

## ☐ IMPLIED WARRANTIES ONLY

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, State law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

## ☐ WARRANTY

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

**SYSTEMS COVERED:**

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

**DURATION:**

_____
_____
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_____

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

**PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.**

**SEE THE BACK OF THIS FORM** for important additional information, including a list of some major defects that may occur in used motor vehicles.

**Below is a list of some major defects that may occur in used motor vehicles.**

**Frame & Body**
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

**Engine**
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

**Transmission & Drive Shaft**
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or cleaners

**Differential**
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

**Cooling System**
- Leakage including radiator
- Improperly functioning water pump

**Electrical System**
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

**Fuel System**
- Visible leakage

**Inoperable Accessories**
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

**Brake System**
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

**Steering System**
- Too much free play at steering wheel (DOT specs)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

**Suspension System**
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

**Tires**
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

**Wheels**
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

**Exhaust System**
- Leakage

DEALER X.Y.Z. Auto Sales, Inc.

ADDRESS 123 Main Street
Anytown, U.S.A. 01234

SEE FOR COMPLAINTS Mr. Smith, Used Car Sales Manager
(123) 456-7890

**IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).**

Appendix B

# BUYERS GUIDE

**IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.**

VEHICLE NAME | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

**WARRANTIES FOR THIS VEHICLE:**

## ☐ AS IS - NO WARRANTY

**YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.**

## ☒ WARRANTY

☐ FULL ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

| SYSTEMS COVERED: | DURATION: |
|---|---|
| MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on this vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service locations, etc. The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacturer's warranty. | |

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

**PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.**

**SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.**

**Below is a list of some major defects that may occur in used motor vehicles.**

**Frame & Body**
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

**Engine**
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

**Transmission & Drive Shaft**
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

**Differential**
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

**Cooling System**
- Leakage including radiator
- Improperly functioning water pump

**Electrical System**
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

**Fuel System**
- Visible leakage

**Inoperable Accessories**
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

**Brake System**
- Failure warning light broken
- Pedal vat dam under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

**Steering System**
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

**Suspension System**
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

**Tires**
- Tread depth less than 2/32 inch
- Size mismatched
- Visible damage

**Wheels**
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

**Exhaust System**
- Leakage

X.Y.Z. Auto Sales, Inc.

DEALER

123 Main Street

ADDRESS

Anytown, U.S.A. 01234

SEE FOR COMPLAINTS

Ms. Smith, Used Car Sales Manager
(123) 456-7890

**IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).**

Appendix C

# BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

## ☐ AS IS - NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

## ☒ WARRANTY

☐ FULL ☒ LIMITED WARRANTY. The dealer will pay 100 % of the labor and 100 % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

| SYSTEMS COVERED: | DURATION: |
|---|---|
| • Engine | ) |
| Frame & Body | ) |
| Transmission | ) |
| Drive Shaft | ) 12,000 miles or 12 months after |
| Differential | ) sale, whichever comes first |
| Electrical System (but not battery) | ) |

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on this vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, et

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.

SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.

**Below is a list of some major defects that may occur in used motor vehicles.**

**Frame & Body**
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

**Engine**
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

**Transmission & Drive Shaft**
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

**Differential**
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

**Cooling System**
- Leakage including radiator
- Improperly functioning water pump

**Electrical System**
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

**Fuel System**
- Visible leakage

**Inoperable Accessories**
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

**Brake System**
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

**Steering System**
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

**Suspension System**
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

**Tires**
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

**Wheels**
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

**Exhaust System**
- Leakage

| | |
|---|---|
| | X.Y.Z. Auto Sales, Inc. |
| DEALER | 123 Main Street |
| ADDRESS | Anytown, U.S.A. 01234 |
| SEE FOR COMPLAINTS | Mr. Smith, Used Car Sales Manager<br>(123) 456-7890 |

**IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).**

Appendix D

# BUYERS GUIDE

**IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.**

VEHICLE MAKE | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

**WARRANTIES FOR THIS VEHICLE:**

☒ AS IS - NO WARRANTY

**YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.**

☒ WARRANTY

☐ FULL ☒ LIMITED WARRANTY. The dealer will pay 100 % of the labor and 100 % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

| SYSTEMS COVERED: | DURATION: |
|---|---|
| ·Engine | 90 days or 3,000 miles, whichever comes first |

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

**PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.**

**SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.**

**Below is a list of some major defects that may occur in used motor vehicles.**

**Frame & Body**
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

**Engine**
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

**Transmission & Drive Shaft**
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

**Differential**
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

**Cooling System**
- Leakage including radiator
- Improperly functioning water pump

**Electrical System**
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

**Fuel System**
- Visible leakage

**Inoperable Accessories**
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

**Brake System**
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

**Steering System**
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

**Suspension System**
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

**Tires**
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

**Wheels**
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

**Exhaust System**
- Leakage

DEALER: X.Y.Z. Auto Sales, Inc.

ADDRESS: 123 Main Street
Anytown, U.S.A. 01234

SEE FOR COMPLAINTS: Ms. Smith, Used Car Sales Manager
(123) 456-7890

**IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).**

Appendix E

# BUYERS GUIDE

**IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.**

VEHICLE NAME | MODEL | YEAR | VIN NUMBER

DEALER STOCK NUMBER (Optional)

**WARRANTIES FOR THIS VEHICLE:**

## ☐ AS IS - NO WARRANTY

**YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.**

## ☒ WARRANTY

☐ FULL ☒ LIMITED WARRANTY. The dealer will pay 100* % of the labor and 100** % of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights.

| SYSTEMS COVERED: | DURATION: |
|---|---|
| * - A one-time $ 50.00 deductible will apply on repairs. | |
| Engine | ) |
| Transmission & Drive Shaft | ) |
| Electrical System | ) 6 months or 6,000 miles, |
| Brake System | ) whichever comes first |
| Steering System | ) |
| Cooling System | ) |

☐ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

**PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.**

**SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.**

**Below is a list of some major defects that may occur in used motor vehicles.**

**Frame & Body**
- Frame-cracks, corrective welds, or rusted through
- Dogtracks—bent or twisted frame

**Engine**
- Oil leakage, excluding normal seepage
- Cracked block or head
- Bolts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

**Transmission & Drive Shaft**
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

**Differential**
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

**Cooling System**
- Leakage including radiator
- Improperly functioning water pump

**Electrical System**
- Battery leakage.
- Improperly functioning alternator, generator, battery, or starter

**Fuel System**
- Visible leakage

**Inoperable Accessories**
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

**Brake System**
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

**Steering System**
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

**Suspension System**
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

**Tires**
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

**Wheels**
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

**Exhaust System**
- Leakage

| | | |
|---|---|---|
| _____ DEALER | X.Y.Z. Auto Sales, Inc. | _____ |
| _____ ADDRESS | 123 Main Street<br>Anytown, U.S.A. 01234 | _____ |
| _____ | | _____ |
| _____ SEE FOR COMPLAINTS | Ms. Smith, Used Car Sales Manager<br>(123) 456-7890 | _____ |

**IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removal of this label before consumer purchase (except for purpose of test-driving) is a violation of federal law (16 C.F.R. 455).**

By direction of the Commission.

Benjamin I. Berman,

*Acting Secretary*

[FR Doc. 87-12096 Filed 5-27-87; 8:45 am]

BILLING CODE 6750-01-C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-24492]

## Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its Rules of Practice to delegate authority to the Director of the Division of Market Regulation to exempt any transaction or transactions, either unconditionally or on specified terms and conditions, pursuant to Rule 10b–7(o) under the Securities Exchange Act of 1934 ("Exchange Act"). This amendment should facilitate prompt, careful review and consideration of applications for such exemptions.

The Commission is also amending its Rules of Practice to reflect the correct paragraph of Rule 10b–6 under the Exchange Act pursuant to which the Commission previously delegated exemption authority to the Director of the Division of Market Regulation under that rule.

EFFECTIVE DATE: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jacobs, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–2848.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced two amendments to its Rules of Practice governing delegation of authority to the Division of Market Regulation.

The first amendment to Rule 30–3(a) of the Rules of Practice [1] authorizes the Director of the Division of Market Regulation to grant exemption where appropriate pursuant to Rule 10b–7(o) [2] under the Securities Exchange Act of 1934 ("Exchange Act").[3] This delegation of authority will facilitate prompt, careful review and consideration of application for such exemptions.

Additionally, the present text of Rule 30–3(a)(6) [4] indicates that the Commission delegated to the Director of the Division of Market Regulation the Commission's authority to grant exemptions from the provisions of Rule 10b–6 under the Exchange Act [5] pursuant to paragraph (f) of Rule 10b–6. Rule 30a–3(a)(6) is being amended to reflect that the correct reference to the exemptive provision is paragraph (h) of Rule 10b–6.

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act [6], that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date is also unnecessary.

### List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of Information, Privacy, Securities.

### Text of Amendment

The Commission hereby amends Title 17, Chapter II of Code of Federal Regulations as follows:

## PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read in part as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a, 80a–37, 80b–11 * * *

2. Section 200.30–3 is amended by revising paragraph (a)(6) to read as follows:

**§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.**

* * * * *

(a) * * *

(6) Pursuant to Rule 10b–6(h) (§ 240.10b–6(h) of this chapter) and Rule 10b–7(o) (§ 240.10b–7(o) of this chapter), to grant requests for exemptions from Rule 10b–6 (§ 240.10b–6 of this chapter) and Rule 10b–7 (§ 240.10b–7 of this chapter);

* * * * *

By the Commission.
Dated: May 21, 1987.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 87–12168 Filed 5–27–87; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a).

[2] 17 CFR 240.10b–7(o) provides: "This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms and conditions, as not constituting a manipulative or deceptive device or contrivance comprehended within the purpose of this rule."

[3] 15 U.S.C. 78a *et seq.*

[4] 17 CFR 200.30–3(a)(6).

[5] 17 CFR 240.10b–6.

[6] 15 U.S.C. 553(b)(A).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79–14]

## Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquistion cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: June 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Issued: May 21, 1987.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of June 1987 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for June 1987 reflect a two-month lag adjustment described in the notice of the March 1, 1988 thresholds.

**List of Subjects in 18 CFR Part 282**

Natural gas.

Richard P. O'Neill,

*Director, Office of Pipeline and Producer Regulation.*

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

Calendar Year 1986

| | Jan. | Feb. | Mar. | Apr. | May | June | July | Aug. | Sept. | Oct. | Nov. | Dec. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Incremental Pricing Threshold | $2.480 | $2.487 | $2.474 | $2.491 | $2.497 | $2.493 | $2.488 | $2.504 | $2.509 | $2.514 | $2.522 | $2.529 |
| NGPA Section 102 Threshold | 4.186 | 4.191 | 4.216 | 4.241 | 4.264 | 4.287 | 4.310 | 4.332 | 4.354 | 4.376 | 4.466 | 4.429 |
| NGPA Section 109 Threshold | 2.539 | 2.546 | 2.553 | 2.560 | 2.566 | 2.572 | 2.578 | 2.583 | 2.588 | 2.593 | 2.601 | 2.609 |
| 130% of No. 2 Fuel Oil in New York City Threshold | 7.370 | 7.395 | 5.040 | 5.200 | 4.680 | 3.090 | 3.800 | 3.190 | 3.310 | 4.020 | 3.380 | 3.240 |

Calendar Year 1987

| | Jan. | Feb. | Mar. | Apr. | May | June |
|---|---|---|---|---|---|---|
| Incremental Pricing Threshold | $2.536 | $2.541 | $2.544 | $2.547 | $2.555 | $2.563 |
| NGPA Section 102 Threshold | 4.469 | 4.478 | 4.487 | 4.516 | 4.544 | 4.572 |
| NGPA Section 109 Threshold | 2.617 | 2.620 | 2.623 | 2.626 | 2.634 | 2.642 |
| 130% of No. 2 Fuel Oil in New York City Threshold | 4.080 | 4.660 | 4.830 | 4.120 | 4.450 | 4.740 |

[FR Doc. 87-12154 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 175

[Docket No. 87N-0137]

### Indirect Food Additives; Adhesives and Components of Coatings; Editorial Amendment

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a printer's error in § 175.105(c)(5) (21 CFR 175.105(c)(5)). This document sets forth the correct spelling for the monomer dioctyl maleate.

**DATES:** Effective May 28, 1987; written objections by June 29, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

**SUPPLEMENTARY INFORMATION:** The agency is amending 21 CFR 175.105(c)(5) by correcting the spelling of the monomer "Dioctyl mateate" to "Dioctyl maleate".

Any person who will be adversely affected by this regulation may at any time on or before June 29, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 175**

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

**§ 175.105 [Amended]**

2. Section 175.105 *Adhesives* is amended in paragraph (c)(5) by correcting the spelling of "Dioctyl mateate" in the list under "Polymers: Homopolymers and copolymers of the following monomers:" to "Dioctyl maleate".

Dated: May 20, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-12060 Filed 5-27-87; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

[CGD 05-87-28]

### Special Local Regulations for Harborfest 1987, Elizabeth River, Norfolk, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule implements 33 CFR 100.501 and establishes spectator anchorage areas for Harborfest 1987. This event will be held on the Elizabeth River, between the Norfolk and Portsmouth downtown areas. These special local regulations are needed to control vessel traffic within the immediate vicinity of the Harborfest activities due to the confined nature of the waterway and the expected congestion at the time of the events. The effect will be to restrict general navigation in the area for the safety of spectators and participants in the events.

**EFFECTIVE DATES:** The regulations in 33 CFR 100.501 and this rule are effective as follows:.

a. 9:30 a.m. to 8:00 p.m., June 5, 1987
b. 9:00 a.m. to 10:30 p.m., June 6, 1987
c. 9:00 a.m. to 6:00 p.m., June 7, 1987

**FOR FURTHER INFORMATION CONTACT:** Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23705, (804) 398–6204.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until April 22, 1987, and there was not sufficient time remaining to publish proposed rules in advance of the events or to provide for delayed effective dates.

**Drafting Information**

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Commander Robert J. Reining, project attorney, Fifth Coast Guard District Legal Office.

**Discussion of Proposed Regulation**

The City of Norfolk, Virginia has submitted an application to hold Harborfest 87 on June 5, 6, and 7, 1987, in the area covered by 33 CFR 100.501. Since this event is the type of event contemplated by these regulations and the safety of the participants and spectators viewing the event would be enhanced by the implementation of the Special Local Regulations for the Elizabeth River in 33 CFR 100.501, those regulations will be in effect during Harborfest 87. The three day City of Norfolk Harborfest, sponsored by Norfolk Harborfest, Inc., will consist of a navy jet fly over, aerobatic demonstrations, air sea rescue demonstration, U.S. Custom/U.S. Coast Guard demonstration, fire works, and numerous water events, including parade of sails, water ski exhibition, and various boat races. Commercial vessels will be permitted to transit the regulated area between events, and thus commercial traffic should not be severely disrupted at any given time. The regulations in 33 CFR 100.501 are implemented by publication of this rule. It also supplements those regulations by establishing spectator anchorage areas.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Regulations**

**PART 100—[AMENDED]**

In consideration of the foregoing the regulations in § 100.501 of Title 33, Code of Federal Regulations apply to Harborfest 87 and Part 100 of Title 33, Code of Federal Regulations, is amended to read as follows:

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.502 is added to read as follows:

**§ 100.502 Elizabeth River—Harborfest 87 spectator vessel anchorage areas.**

(a) *Anchorage areas.* (1) The waters adjacent to the Town Point Reach section of the Elizabeth River, bounded by the shore and a line drawn between Hospital Point at latitude 36°50'50.5" North, longitude 76°18'09" West, and the tip of the channelside pier at the Holiday Inn Marina at latitude 36°50'29.5" North, longitude 76°17'52.5" West.

(2) The waters adjacent to the Port Norfolk Reach section of the Elizabeth River, bounded by the shore and a line drawn between Hospital Point at latitude 36°50'55" North, longitude 76°18'14.5" West, and the tip of the southern most railroad pier at Port Norfolk at latitude 36°51'14.5" North, longitude 76°18'44" West.

(b) *Special local regulations.* Vessels anchored in the anchorage areas described in paragraph (a) of this section may remain in the Regulated Areas established by s 100.502 without the permission of the Patrol Commander.

**EFFECTIVE DATES:** This regulation is effective from 9:30 a.m. to 8:00 p.m. on June 5, 1987, 9:00 a.m. to 10:30 p.m., June 6, 1987, and 9:00 a.m. to 6:00 p.m., June 7, 1987.

Dated: May 18, 1987.

**B.F. Hollingsworth,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 87-12117 Filed 5-27-87; 8:45 am]

BILLING CODE 4910-14-M

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[A-4-FRL-3207-3; SC-016]**

**Approval and Promulgation of Implementation Plans, South Carolina; Stack Height Rules**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this action, EPA is approving revisions to the South Carolina State Implenetation Plan (SIP) submitted to EPA on June 11, 1986. South Carolina has revised its SIP to include Regulation No. 62.7, Good Engineering Practice Stack Height, and changes in Regulation No. 62.1, Definitions, Permit Requirements, and Emission Inventory. These regulations are equivalent to EPA requirements promulgated at Part 51 of Chapter I, Title 40, of the Code of Federal Regulations. EPA's approval of South Carolina's revisions will give the State full authority to implement and enforce the plan according to the State regulations.

**EFFECTIVE DATE:** This action will be effective on July 27, 1987, unless notice is received within 30 days that adverse or critical comments will be submitted.

**ADDRESSES:** Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460
Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365
South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201

**FOR FURTHER INFORMATION CONTACT:** Beverly A. Thomas, EPA, Region IV, Air Programs Branch at above listed address, telephone 404/347-3286 or FTS 257-3286.

**SUPPLEMENTARY INFORMATION:** On June 17, 1986, the South Carolina Department of Health and Environmental Control

(DHEC) submitted as State Implementation Plan revisions Regulation No. 62.7, Good Engineering Practice Stack Height, and changes in Regulation No. 62.1, Definitions, Permit Requirements, and Emission Inventory. A public hearing was held on these revisions on March 31, 1986. Final approval by the DHEC Board was given on April 24, 1986.

In the Federal Register of July 8, 1985 (50 FR 27892), EPA published final regulations to implement Section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. These regulations limit the amount of stack height or dispersion credit (dispersion techniques) a source can claim in the process of establishing its emission limitation. Dispersion techniques include the use of stack heights greater than 65 meters and use of other techniques to increase the dispersion of emissions rather than continuously reducing emissions from a source.

South Carolina has adopted definitions corresponding to EPA's GEP regulations. One difference between South Carolina regulations and EPA's is in the definition of GEP stack height. South Carolina has adopted the "one plus one-and-a-half times" formula as applying to all applicable stack heights. This was done since the alternative formula ("two and a half times") does not apply to any of the stacks in South Carolina. Since this approach would always be at least equal to the stringency of EPA's regulations, EPA is approving South Carolina's definition of GEP stack height. Under the rule governing permit applications, the State has required sources to submit information and calculations to demonstrate compliance with the Good Engineering Practice Stack Height rule. South Carolina regulations apply to both new and existing sources, thereby satifying requirements for State new source review regulations at 40 CFR 51.164.

*Final Action.* EPA has reviewed the submittal and found it to be equivalent to EPA's stack height requirements. Therefore, EPA is today approving South Carolina's Regulation 62.7 and changes in Regulation 62.1.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial issue and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 27, 1987.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 27, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Intergovernmental relations, Incorporations by reference.

Note.—Incorporation by reference of the South Carolina State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: May 20, 1987.

**Lee M. Thomas,**

*Administrator.*

**PART 52—[AMENDED]**

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

**Subpart PP—South Carolina**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2120 is amended by adding paragraph (c)(28) to read as follows:

**§ 52.2120 Identification of plan.**

* * * * *

(c) * * *

(28) Stack height regulations were submitted to EPA on June 11, 1986.

(i) Incorporation by reference.

(A) Letter of June 11, 1986, from the South Carolina Department of Health and Environmental Control transmitting stack height regulations.

(B) Regulation 62.7, Good Engineering Practice Stack Height, adopted on April 24, 1986, and effective on May 23, 1986.

(C) Addition of item 10 to Section I, Definitions, of regulation 62.1, adopted on April 24, 1986, and effective on May 23, 1986.

(D) Addition of item A.2.f to Section II, Permit Requirements, of regulation 62.1, adopted on April 24, 1986, and effective on May 23, 1986.

(ii) Other material—none.

* * * * *

[FR Doc. 87-12003 Filed 5-27-87; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 180**

[FRL 3209-6]

## Tolerance Exemption for Alpha-Butyl-Omega-Hydroxypoly(Oxypropylene) Block Polymer With Poly(Oxyethylene); Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a typographical error in 40 CFR 180.1001(e) that was inadvertently introduced in the Code of Federal Regulations (CFR) revised as of July 1, 1982, and has appeared in subsequent yearly editions.

**EFFECTIVE DATE:** May 28, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Rosalind Gross, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Registration Support and Emergency Response Branch, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7700.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of February 13, 1973 (38 FR 4330), EPA added to 40 CFR 180.1001(e) the entry "*alpha*-Butyl-*omega*-hydroxypoly(oxypropylene) block polymer with poly(oxyethylene); molecular weight 2,400–3,500." The entry appeared correctly in the yearly revised editions of the CFR until the CFR volume "40 CFR Parts 150 to 189, Revised as of July 1, 1982," when the Greek letter delta was inadvertently substituted for *omega* in the chemical expression. The incorrect "delta" has appeared in subsequent yearly revisions of the CFR. This document corrects the typographical error that was inadvertently introduced into the CFR.

(21 U.S.C. 346a)

Dated: May 15, 1987.
Edwin F. Tinsworth,
*Director, Registration Division.*

**PART 180—[AMENDED]**

1. The authority citation for 40 CFR Part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a.

2. The entry α-Butyl-δ-hydroxypoly-(oxypropylene) in 40 CFR 180.1001(e) is revised to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(e) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * * * | | |
| alpha-Butyl-omega-hydroxypoly-(oxypropylene) block polymer with poly(oxyethylene); molecular weight 2,400-3,500 | ..... | Surfactants, emulsifier, related adjuvants of surfactants. |
| * * * * * | | |

[FR Doc. 87-12102 Filed 5-27-87; 8:45 am]
BILLING CODE 6560-50-M

**40 CFR Part 180**

**[OPP-300283A; FRL 3209-2]**

**Methyl Poly(Oxyethylene) Alkyl Ammonium Chloride; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule correction.

**SUMMARY:** This document corrects the entry for methyl poly (oxyethylene) alkyl ammonium chloride in 40 CFR 180.1001(d), from which the word "alkyl" was inadvertently omitted.

**EFFECTIVE DATE:** May 28, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Rosalind Gross, Registration Support and Emergency Response Branch, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.
Office location and telephone number: Registration Support and Emergency Response Branch, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-7700.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of April 11, 1984 (49 FR 14343), in FR Doc. 84-9366, EPA added to 40 CFR 180.1001(d) the entry "Methyl poly(oxyethylene) alkyl ammonium chloride." The chemical was correctly stated in the document heading, the preamble, and the amendatory language, but the word "alkyl" was inadvertently omitted from the codified text.

(21 U.S.C. 346a)

Dated: May 15, 1987.
Edwin F. Tinsworth,
*Director, Registration Division.*

**PART 180—[AMENDED]**

1. The authority citation for 40 CFR Part 180 continues to read as follows.

**Authority:** 21 U.S.C. 346a.

2. The entry methyl poly (oxyethylene) alkyl ammonium chloride in 40 CFR 180.1001(d) is revised to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(d) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * * * | | |
| Methyl poly(oxyethylene) alkyl ammonium chloride, where the poly(oxyethylene) content is 5-15 moles and the alkyl group ($C_8$-$C_{18}$) is derived from coconut, cottonseed, soya, or tallow acids. | ..... | Surfactant. |
| * * * * * | | |

[FR Doc. 87-12105 Filed 5-27-87; 8:45 am]
BILLING CODE 6560-50-M

**40 CFR Parts 704 and 721**

**[OPTS-50552A AND OPTS-82026A; FRL-3209-4]**

**11-Aminoundecanoic Acid; Determination of Significant New Use; Submission of Notice of Manufacture, Import, or Processing**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 11-aminoundecanoic acid (11-AA) (CAS Number 2432-99-7). EPA believes that this substance may be hazardous to human health, and that the uses identified in this rule may result in significant human exposure. As a result of this rule, certain persons who intend to manufacture, import, or process this substance for a significant new use are required to notify EPA at least 90 days before commencing that activity. The required notice will furnish EPA with the opportunity to evaluate the intended use and, if necessary prohibit or limit that activity before it occurs.

EPA is also requiring under section 8(a) of TSCA that manufacturers, importers, and processors of 11-AA who are not covered by the SNUR notification requirements notify EPA of prospective manufacture, import, or processing of this chemical substance. This reporting rule will allow EPA to track the manufacture, import, processing, and end uses of this substance and to investigate the health and environmental impacts of such activities. Small businesses that manufacture, import, or process 11-AA are exempt from the section 8(a) reporting rule.

This rule was proposed in the Federal Register of July 22, 1986 (51 FR 26273).

**DATES:** In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on June 11, 1987. This rule becomes effective on July 13, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, Telephone: (202-554-1404).

**SUPPLEMENTARY INFORMATION:**

## I. Authority

The Agency is promulgating this rule pursuant to sections 5(a)(2) and 8(a) of TSCA, 15 U.S.C. 2604(a)(2) and 2607(a).

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a significant new use. This determination is made by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requriements of sections 5(b) and (d)(1), the exemptions authorized by sections 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, the Agency may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received the notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the Federal

Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a chemical substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

Section 8(a) of TSCA authorizes the Administrator to promulgate rules which require each person (other than a small manufacturer, importer, or processor) who manufactures, imports, or processes or who proposes to manufacture, import, or process a chemical substance to submit such reports as the Administrator may reasonably require.

## II. Applicability of General Provisions

In the Federal Register of September 5, 1984 (49 FR 35011), EPA promulgated general provisions applicable to SNURs (40 CFR Part 721, Subpart A). On April 22, 1986, EPA proposed revisions to the general provisions (51 FR 15104), some of which would apply to this SNUR. General provisions applicable to section 8(a) rules were published in the Federal Register of May 25, 1983 (40 CFR Part 704, Subpart A). These general provisions apply to this rule. The general provisions are discussed in detail in the cited Federal Register documents, and interested persons should refer to those documents for further information.

## III. Summary of this Rule

### *A. Significant New Use Rule*

EPA is designating any use of 11–AA other than as (1) an intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process or (2) a component in photoprocessing solutions as significant new uses of this chemical substance. This rule requires persons who intend to manufacture, import, or process 11–AA for a significant new use to notify EPA at least 90 days before beginning such manufacture, import, or processing.

11–AA has been shown to cause cancer in laboratory animals. The only known uses for 11–AA are either as an intermediate in the manufacture of polymers or as a component in photoprocessing solutions. 11–AA is not subject to any Federal regulation that would notify the government of activities that might result in adverse exposures to this substance or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occurred.

EPA believes that the significant new uses and associated manufacture, import, or processing of 11–AA have a high potential to increase the magnitude and duration of exposure to this substance and to change the type or form of exposure from that which currently exists. Also, given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to 11–AA at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to designate any use of 11–AA other than as an intermediate in the manufacture of polymers in an enclosed process, when it is expected that the 11–AA will be fully polymerized during the manufacturing process, or as a component in photoprocessing solutions as a significant new use of this chemical substance. Persons intending to manufacture, import, or process 11–AA for a significant new use would be required to notify EPA 90 days before they begin such manufacture, import, or processing. Advance notification will allow EPA the opportunity to evaluate the risks related to an intended activity and to protect against adverse exposures to 11–AA before they can occur.

### *B. Section 8(a) Rule*

The SNUR described above will ensure EPA is notified in the event that 11–AA is manufactured, imported, or processed for the designated significant new uses. However, persons who manufacture or import 11–AA for use as an intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process or as a component in photoprocessing solutions would not be required to report to EPA if the 11–AA they were manufacturing or importing was to be used for those ongoing uses. Persons could also process 11–AA for these ongoing uses, but certain portions of the processing operation (such as raw material transfer) could result in potentially high human exposures.

EPA is concerned that 11–AA manufacturing, importing, and processing activities associated with these ongoing uses could present the opportunity for human exposure to this chemical substance. Because the SNUR would not provide notification of manufacturing, importing, and processing activities associated with the ongoing uses, and because this substance is a possible human health hazard, EPA believes it is necessary to require reporting under TSCA section 8(a) for those ongoing 11–AA activities which would not be covered by the SNUR.

Therefore, EPA is requiring persons who intend to manufacture, import, or process 11–AA for use as an intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process or for use as a component in photoprocessing solutions to notify EPA within 30 days after making a firm management decision to commit financial resources for such manufacturing, importing, or processing of 11–AA. Persons who initiated manufacturing, importing, or processing of 11–AA for these ongoing uses during the time period between July 22, 1986 and July 13, 1987 are required to notify EPA on or before August 10, 1987.

Persons who manufactured, imported, or processed 11–AA for use as an intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process or for use as a component in photoprocessing solutions at any time during the 3 years ending July 22, 1986 are exempt from reporting. EPA is providing this exemption because the Agency has had the opportunity to evaluate ongoing 11–AA activities, and has found that adequate steps are currently being taken to minimize human exposure.

Small manufacturers (including importers) as described at 40 CFR 704.3 are exempt from reporting. Processors meeting the same size standards as those described for small manufacturers at 40 CFR 704.3 are also exempt from reporting (see § 704.25(a)(7)).

Persons subject to the section 8(a) rule are required to submit a PMN Form (EPA Form 7710–25). A copy of that form can be found at 40 CFR Part 720, Appendix A.

## IV. Discussion of Chemical Substance and Comments on Proposed Rule

### *A. Production and Use Data*

11–AA is imported into the U.S. by 1 company at a rate of approximately 9 million lbs. per year. There is no known manufacturer of 11–AA in the U.S. At the time this rule was proposed, the Agency believed that all of the imported 11–AA was used by one company for the manufacture of nylon 11. Two comments received on the proposed rule indicate that 11–AA is processed not only into nylon 11, but also into other polymers, copolymers, and multifunctional copolymers. The commenters, who process the 11–AA into these polymers, stated that the processing operations for the manufacture of nylon 11 as well as the other polymeric materials all take place under enclosed conditions as described in the proposed rule, and the 11–AA is fully polymerized during the process. EPA has therefore modified the significant new use description to provide that significant new use reporting is not required when 11–AA is used to make all polymers rather than just nylon 11. The definition of the term "polymer" used in this regulation is the same as that used for the Premanufacture Notification Exemption regulations codified at 40 CFR Part 723 (see § 723.250(b)).

The Agency has also modified the proposed definition of the term "Enclosed process" that was given in the proposed rule. The proposed definition did not account for possible releases through emergency pressure relief. The definition in the final rule includes such releases.

Another comment received on the proposed rule indicated that in addition to being used to manufacture polymeric materials, one company uses 11–AA as a component in photoprocessing solutions. EPA has modified the significant new use description to provide that significant new use reporting is not required for use of 11–AA as a component in photoprocessing solutions.

### *B. Health Effects*

Results of a National Toxicology Program (NTP) carcinogenesis bioassay on 11–AA published in May 1982 demonstrated limited evidence that 11–AA is carcinogenic in laboratory animals. Under the conditions of the bioassay, 11–AA was carcinogenic for male F344 rats, inducing neoplastic nodules in the liver and transitional cell carcinomas in the urinary bladder at a statistically significant ($p<0.01$) level. The substance was not carcinogenic for the female F344 rat. No clear evidence was found for the carcinogenicity of 11–AA in $B6C3F_1$ mice of either sex, although an increase in malignant lymphomas in male mice may have been associated with the administration of 11–AA. Other effects of 11–AA included a dose-related decrease in mean body weight gain and survival for male rats and mice of each sex, hyperplasia of transitional epithelium of the kidney and urinary bladder in rats of each sex, and mineralization of the kidney in mice of each sex.

EPA issued Guidelines for Carcinogen Risk Assessment in the **Federal Register** of September 24, 1986 (51 FR 33992). These guidelines define as Group C—Possible Human Carcinogen agents exhibiting: ". . . (a) Definitive malignant tumor response in a single well-conducted experiment, (b) marginal tumor response in studies having inadequate design or reporting, (c) benign but not malignant tumors with an agent showing no response in a variety of short-term tests for mutagenicity, and (d) marginal responses in a tissue known to have a high and variable background rate. . . ."

A limited review of the results of the NTP carcinogenesis bioassay on 11–AA indicates that the substance has been found to induce a definitive malignant tumor response in male rats, and may therefore be a possible human carcinogen according to the Agency's guidelines for carcinogen risk assessment.

Results from the NTP bioassay also demonstrate that 11–AA is capable of causing chronic and subchronic non-oncogenic effects in laboratory animals. For these reasons, EPA has concluded that exposure to the substance may present a risk of injury to human health.

One comment received on the proposed rule disagreed with EPA's interpretation of the available toxicity data as it applies to the SNUR rulemaking process. That commenter believed that the Agency overstated the carcinogenicity case for this substance and that more than a limited review of the data was required. The commenter also suggested that the findings of the NTP could be interpreted in a manner to show little or no carcinogenic hazard.

The results of the NTP carcinogenicity bioassay have recently been independently reviewed by the International Agency for Research on Cancer (IARC). IARC concluded that there is limited evidence for the carcinogenicity of 11–AA in experimental animals. These conclusions were presented in IARC Monographs, Volume 39. A copy of the Monograph on 11–AA is included in the public record for this rulemaking. That Monograph was not available to EPA at the time this rule was proposed.

In addition, section 5(a)(2) of TSCA does not require EPA to make a health (or environmental) hazard finding before promulgating a SNUR. The Agency is instead directed to consider factors related to human (or environmental) exposure. EPA's discussion of the possible carcinogenicity of 11–AA is not intended to demonstrate a health effects "finding" under TSCA. The Agency provided the health effects discussion of 11–AA in the proposed rule, and has included a similar discussion in this final rule, to show that the Agency is concerned about possible human health effects resulting from exposures to this chemical substance, and that monitoring future human exposures to 11–AA is warranted.

EPA is aware that the information available may not be sufficient to make a conclusive statement regarding possible risks to humans which may result from exposure to 11–AA. IARC has suggested that epidemiological data are necessary to evaluate the carcinogenicity of 11–AA to humans. The Agency therefore welcomes the voluntary submission of any information concerning the effects of 11–AA to human health. Of particular importance would be case reports or epidemiological studies. However, other data supporting or disproving the currently available health effects information would also be valuable. Such information should be submitted to EPA at the following address:

TSCA Public Information Section, OTS Document Processing Center (TS–790), Attention: FYI Coordinator, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Persons are potentially exposed to 11–AA during the manufacture of polymers. Based on information provided by current processors of 11–AA for this purpose, all processing of 11–AA takes place in enclosed operations. Workers engaged in manufacturing various ploymers from 11–AA wear safety glasses, face-shields, safety shoes, longsleeved shirts, rubber or cotton gloves, and dust masks or suitable respirators whenever exposure to 11–AA is possible. Plants are equipped with hooded exhaust areas and local exhaust at points of potential worker exposure to 11–AA.

During the manufacturer of polymers, monomeric 11–AA is expected to be fully polymerized. It is therefore unlikely

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that persons will be exposed to 11–AA in products containing these polymers.

One commenter on the proposed rule stated that his company processed small quantities of 11–AA as a component of photoprocessing solutions. The commenter noted that in this processing operation, up to 3 employees are potentially exposed to 11–AA for less than a total of 4 hours per year. Exposures take place under controlled conditions, and steps are taken to minimize employee exposure.

At the time this rule was proposed, the only exposure to 11–AA that EPA was aware of was employee exposure during the manufacturer of nylon 11. The Agency has now had the opportunity to evaluate these previously unknown exposures. Although EPA is concerned about any human exposure to 11–AA, the facilities that process this substance are doing so under conditions which minimize human exposure. The reporting requirements for both the SNUR and section 8(a) portions of this rule have therefore been revised to exempt facilities currently engaged in these activities from further reporting unless they change their uses or operations.

## V. Alternatives

In the proposed rule, EPA considered alternative regulatory actions for 11–AA. No comments were received that addressed the regulatory approach chosen. EPA has therefore decided to proceed with the promulgation of a combined SNUR/section 8(a) rule for this substance.

## VI. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of the SNUR were considered ongoing as of the date of promulgation, it would be difficult for the Agency to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final; this interpretation of section 5 would make it extremely difficult for the Agency to establish SNUR notice requirements.

Thus, persons who began commercial manufacture, importation, or processing of 11–AA for a significant new use designated in this rule between proposal and promulgation of the SNUR must cease that activity before the effective date of this rule. To resume their activities, these persons must comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

## VII. Test Data and Other Information

EPA recognizes that, under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data know to or reasonably ascertainable by them.

However, in view of the potential risks that may be posed by a significant new use of 11–AA, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of risks posed by 11–AA when utilized for an intended use. The Agency believes that the results of epidemiological studies would help to characterize the potential carcinogenic hazard of 11–AA to humans. In addition, the Agency does not have any information available on the effects of 11–AA to the environment. These studies may not be the only means of addressing potential risks. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this optional prenotice consultation, EPA will discuss the test data it believes are necessary to evaluate a significant new use of the substance. Test data should be developed in accordance with TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health of environmental effects of the substance.

EPA urges notice submitters to provide detailed information on human exposure or environmental release that may result from the significant new use of 11–AA. In addition, EPA encourages persons to submit information on potential benefits of this substance and information on risks posed by the substance compared to risks posed by potential substitutes.

## VIII. Economic Impact

The Agency has evaluated the potential costs of establishing SNUR and section 8(a) reporting requirements for 11–AA. The estimated cost of reporting for a person subject to either the section 8(a) or SNUR portion of this rule is between $1,400 and $8,000 per notice submitted. This is the same estimated economic impact as discussed in the proposal for this rule. The Agency's complete economic analysis is available in the public record for this rule (OPTS–50552A and OPTS–82026A).

## IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control numbers OPTS–50552A and OPTS–82026A). The record includes basic information considered by the Agency in developing this rule. The record now includes the following:

1. Economic analysis of the combined SNUR/section 8(a) rule for 11–AA.
2. A chemical hazard information profile for 11–AA.
3. The NTP carcinogenesis bioassay on 11–AA.
4. *IARC Monographs on the Evaluation of Carcinogenic Risk of Chemicals to Humans. Volume 39. Some Chemicals Used in Plastics and Elastomers.* 1986. Pages 339–345.
5. Comments received on the proposed rule.

A public version of this record is available in the OTS Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

## X. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a regulatory impact analysis. The Agency has determined that this rule is not "major" because it will not have an effect of $100 million or more on the economy. EPA also anticipates that this rule will not have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant impact on a substantial number of small businesses.

The Agency cannot determine whether persons affected by the SNUR are likely to be small businesses. However, because EPA has no evidence of recent commercial manufacture, import, or processing of 11–AA other than for the manufacture of polymers, or as a component in photoprocessing solutions, EPA believes that few manufacturers, importers, or processors

will submit significant new use notices. Therefore, although the costs of preparing a notice under the SNUR provisions might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

The section 8(a) rule will exempt "small" manufacturers (as defined in 40 CFR 704.4) and "small" processors from reporting on this chemical substance. Therefore, EPA has determined that the section 8(a) rule will not have a significant economic impact on a substantial number of small entities.

*C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Numbers 2070-0067 and 2070-0038.

**List of Subjects in 40 CFR Parts 704 and 721**

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 15, 1987.

John A. Moore,

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, 40 CFR Chapter I is amended as follows:

**PART 704—[AMENDED]**

1. In Part 704:

a. The authority citation for Part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. By adding a new § 704.25 to read as follows:

**§ 704.25 11-Aminoundecanoic acid.**

(a) *Definitions.* (1) "11–AA" means the chemical substance 11-aminoundecanoic acid, CAS Number 2432–99–7.

(2) "Enclosed process" means a process that is designed and operated so that there is no intentional release of any substance present in the process. A process with fugitive, inadvertent, or emergency pressure relief releases remains an enclosed process so long as measures are taken to prevent worker exposure to an environmental contamination from the releases.

(3) "Internal subunit" means a subunit that is covalently linked to at least two other subunits. "Internal subunits" of polymer molecules are chemically derived from monomer molecules that have formed covalent links between two or more other molecules.

(4) "Monomer" means a chemical substance that has the capacity to form links between two or more other molecules.

(5) "Polymer" means a chemical substance that consists of at least a simple weight majority of polymer molecules but consists of less than a simple weight majority of molecules with the same molecular weight. Collectively, such polymer molecules must be distributed over a range of molecular weights wherein differences in molecular weight are primarily attributable to differences in the number of internal subunits.

(6) "Polymer molecule" means a molecule which includes at least four covalently linked subunits, at least two of which are internal subunits.

(7) "Small processor" means a processor that meets either the standard in paragraph (a)(7)(i) of this section or the standard in paragraph (a)(7)(ii) of this section.

(i) *First standard.* A processor of a chemical substance is small if its total annual sales, when combined with those of its parent company, if any, are less than $40 million. However, if the annual processing volume of a particular chemical substance at any individual site owned or controlled by the processor is greater than 45,400 kilograms (100,000 pounds), the processor shall not qualify as small for purposes of reporting on the processing of that chemical substance at that site, unless the processor qualifies as small under paragraph (a)(7)(ii) of this section.

(ii) *Second standard.* A processor of a chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of the particular chemical substance processed by that company.

(iii) *Inflation index.* EPA will use the Inflation Index described in the definition of "small manufacturer" set forth in § 704.3, for purposes of adjusting the total annual sales values of this small processor definition. EPA will provide notice in the **Federal Register** when changing the total annual sales values of this definition.

(8) "Subunit" means an atom or group of associated atoms chemically derived from corresponding reactants.

(b) *Persons who must report.* Except as provided in paragraph (c) of this section, the following persons are subject to this section:

(1) Persons who manufacture or propose to manufacture 11–AA:

(i) For use as an intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process, or

(ii) For use as a component in photoprocessing solutions.

(2) Persons who import or propose to import 11–AA:

(i) For use as an intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process, or

(ii) For use as a component in photoprocessing solutions.

(3) Persons who process or propose to process 11–AA:

(i) For use as an intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process, or

(ii) For use as a component in photoprocessing solutions.

(c) *Persons not subject to this section.* The following persons are not subject to this section:

(1) Small manufacturers (includes importers) as described in § 704.3.

(2) Small processors.

(3) Persons described in § 704.5.

(4) Persons who, at any time during the 3-year period ending July 22, 1986, manufactured, imported, or processed 11–AA:

(i) For use as a intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process, or

(ii) For use as a component in photoprocessing solutions.

(d) *What information to report.* Persons identified in paragraph (b) of this section must submit a Premanufacture Notice Form (EPA Form 7710–25) as described at 40 CFR Part 720, Appendix A.

(e) *When to report.* (1) Persons who intend to manufacture, import, or process 11–AA for use as an intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process or for use as a component in photoprocessing solutions must notify EPA within 30 days after making a firm management decision to commit financial resources for the manufacturing, importing, or processing of 11–AA.

(2) Persons who initiated manufacturing, importing, or processing of 11–AA for use as an intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11–AA will be fully polymerized during the manufacturing process, or for use as a component in photoprocessing

solutions during the time period between July 22, 1986 and July 13, 1987 must notify EPA by August 10, 1987.

(f) *Recordkeeping.* Persons subject to the reporting requirements of this section must retain documentation of information contained in their reports for a period of 5 years from the date of submission of the report.

(g) *Where to send reports.* Reports must be submitted by certified mail to: Document Control Officer (TS-790), Office of Toxic Substances, United States Environmental Protection Agency, Room 201 East Tower, 401 M Street SW, Washington, DC 20460. ATTN: 11-AA Notification.

## PART 721—[AMENDED]

2. In Part 721:

a. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

b. By adding a new § 721.109 to read as follows:

### § 721.109 11-Aminoundecanoic acid.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 11-aminoundecanoic acid, CAS Number 2432-99-7, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any use other than as:

(i) An intermediate in the manufacture of polymers in an enclosed process when it is expected that the 11-aminoundecanoic acid will be fully polymerized during the manufacturing process, or

(ii) A component in photoprocessing solutions.

(b) *Specific requirements.* The provisions of Subpart A of this part apply to this section except as modified by this paragraph.

(1) *Definitions.* In addition to the definitions in § 721.3, the following definitions apply to this section:

(i) "Enclosed process" means a process that is designed and operated so that there is no intentional release of any substance present in the process. A process with fugitive, inadvertent, or emergency pressure relief releases remains an enclosed process so long as measures are taken to prevent worker exposure to and environmental contamination from the releases.

(ii) "Internal subunit" means a subunit that is covalently linked to at least two other subunits. "Internal subunits" of polymer molecules are chemically derived from monomer molecules that have formed covalent links between two or more other molecules.

(iii) "Monomer" means a chemical substance that has the capacity to form links between two or more other molecules.

(iv) "Polymer" means a chemical substance that consists of at least a simple weight majority of polymer molecules but consists of less than a simple weight majority of molecules with the same molecular weight. Collectively, such polymer molecules must be distributed over a range of molecular weights wherein differences in molecular weight are primarily attributable to differences in the number of internal subunits.

(v) "Polymer molecule" means a molecule which includes at least four covalently linked subunits, at least two of which are internal subunits.

(vi) "Subunit" means an atom or group of associated atoms chemically derived from corresponding reactants.

(2) [Reserved].

[FR Doc. 87-12108 Filed 5-27-87; 8:45 am]
BILLING CODE 6560-50-M

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## 40 CFR Parts 795 and 799

[OPTS-42046D; FR 5209-5]

## Hydroquinone; Final Test Standards and Reporting Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On December 30, 1985, EPA issued a final test rule establishing testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of hydroquinone (CAS No. 123-31-9). At that time, EPA also proposed that certain TSCA test guidelines and industry-submitted protocols be utilized as the test standards for the required studies and that test data be submitted within specified time frames. EPA has reviewed public comments on the proposal and has decided to promulgate a final rule that specifies certain of these guidelines, protocols, and schedules as the test standards and reporting requirements for the testing of hydroquinone.

**DATES:** In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on June 11, 1987. This rule shall become effective on July 13, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St. SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 30, 1985 (50 FR 53145), EPA issued a final Phase I rule under section 4(a) of TSCA to require toxicity testing of hydroquinone to evaluate hydroquinone's toxicokinetics and to determine its potential to produce nervous system, reproductive, and developmental toxicity (teratogenic effects). The Agency is now promulgating a final Phase II rule specifying the test standards and reporting requirements for this testing. This test standards rule for hydroquinone is being promulgated under 40 CFR 799.2200.

### I. Background

In the Federal Register of December 30, 1985, EPA issued a Phase I final rule pursuant to TSCA section 4 that established testing requirements for manufacturers and processors of hydroquinone. This Phase I rule specified the following testing requirements for hydroquinone: (1) Toxicokinetics; (2) reproductive effects; (3) developmental toxicity; and (4) nervous system effects.

As described in the Hydroquinone Proposed Testing Standards (50 FR 53160) and in a previous notice (50 FR 20652; May 17, 1985) EPA reviewed the method for development of test rules and, to expedite the section 4 rulemaking process, decided to utilize a single-phase approach for most rulemakings. With regard to the section 4 rulemaking for hydroquinone, EPA proposed applicable TSCA test guidelines and EPA-approved industry protocols as test standards. At the same time as the hydroquinone Phase I final test rule was being issued, TSCA test guidelines and EPA-approved industry protocols were available for all the testing requirements included in the Phase I final rule. After publication of the proposed hydroquinone test standards on December 30, 1985, a 45-day comment period was provided to allow the public, including the manufacturers and processors subject to the Phase I rule, to comment on the use of the TSCA guidelines and industry protocols.

Because EPA proposed applicable TSCA test guidelines and industry-submitted protocols as the test standards for the studies required by the hydroquinone Phase I final rule, persons subject to the rule, i.e., manufacturers

and processors of hydroquinone, were not required to submit proposed study plans and schedules for each of the required studies. Persons subject to the rule, however, were still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.25. Once the final test standards are promulgated, persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test. The responsibilities of processors of hydroquinone for testing or exemptions from testing responsibilities were discussed in the hydroquinone Phase I final rule (50 FR 53145).

On June 15, 1983 and prior to the Agency's issuance of the hydroquinone Phase I Proposed Rule, the Eastman Kodak Company notified EPA by letter (Ref. 1) of their intent to conduct voluntary toxicokinetic, mutagenicity, and teratology tests with hydroquinone and submitted the protocols for these studies to the Agency for review. Kodak also submitted protocols for additional confirmatory teratology and reproductive effects studies which they indicated would be conducted under their voluntary plan only after a joint evaluation by Kodak and EPA scientists of any additional EPA health concerns remaining after the initial testing. At the time of the submission of this voluntary testing package, EPA was in the process of concluding its review of the health and environmental effects testing needs for hydroquinone. While the Agency approved several of the Kodak testing protocols, EPA did not accept Kodak's voluntary testing program because the Agency was in the process of issuing a proposed test rule (49 FR 438; January 4, 1984) for hydroquinone that would require more complete health and environmental testing of the chemical.

Kodak, however, initiated its testing program and, sometime later, the manufacturers and importers of hydroquinone formed the Hydroquinone Panel, represented by the Chemical Manufacturers Association. Kodak, in concert with the Panel, is continuing its testing efforts. As part of its comments (Ref. 2) to the proposed Hydroquinone Test Standards (50 FR 53160) the Panel has notified EPA of its intent to sponsor the testing required in the final Phase I test rule for hydroquinone.

After review of the public comments, EPA is now promulgating a final Phase II rule adopting (with appropriate revisions based on public comment) formal test standards under which the manufacturers and processors of hydroquinone must conduct the health effects studies contained in the Phase I test rule for hydroquinone. These standards were proposed in the December 30, 1985 notice (50 FR 53160). These standards and requirements reflect the Agency's evaluation of comments received on the proposed test standards rule.

## II. Proposed Phase II Test Rule

### *A. Proposed Test Standards*

The final Phase I rule for hydroquinone required testing for toxicokinetics, developmental toxicity, reproductive effects, and nervous system effects.

The Agency proposed that the toxicokinetic guideline under 40 CFR 798.7650 now 40 CFR 795.235, which was contained in the proposed Phase II test standard rule, be adopted as the test standard for the required toxicokinetic testing.

EPA proposed that the developmental toxicity testing be conducted according to the protocols entitled "Protocol for a Teratology Study of Hydroquinone in Rats" and "Protocol for a Teratology Study of Hydroquinone in Rabbits", submitted to EPA by the Eastman Kodak Company on June 15, 1983 (Ref. 1) and that these industry-submitted protocols be adopted as the test standard for the required developmental toxicity testing.

EPA also proposed that the reproductive effects testing be conducted according to the protocol entitled "Protocol for a Two-Generation Reproduction Study in the Rat" submitted to EPA on June 15, 1983 (Ref. 1) and that this industry-submitted protocol be adopted as the test standard for the required reproductive effects testing.

Finally, the Agency proposed that TSCA test guidelines 40 CFR 798.6050 and 798.6400, describing a functional observational battery and neuropathology, respectively, be adopted as the test standards for the required neurotoxicity testing of hydroquinone.

### *B. Proposed Reporting Requirements*

EPA proposed that all data developed under the Phase II rule be developed in accordance with the final TSCA Good Laboratory Practice (GLP) Standards, which appear at 40 CFR Part 792.

The Agency proposed the following specific reporting requirements:

1. The toxicokinetic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final Phase II test rule. Interim progress reports shall be provided quarterly.

2. The developmental toxicity tests shall be completed and the final results submitted to the Agency within 18 months of the effective date of the final Phase II test rule. Interim progress reports shall be provided quarterly.

3. The two-generation reproductive effects toxicity test shall be completed and final results submitted to the Agency within 29 months of the effective date of the final Phase II test rule. Interim progress reports shall be provided quarterly.

4. The neurotoxicity tests shall be completed and final results submitted to the Agency within 1 year of the effective date of the final Phase II test rule. Interim progress reports shall be provided quarterly.

## III. Response to Public Comments

EPA requested comments on the use of the TSCA test guidelines and Agency-approved industry protocols as the test standards for the required testing of hydroquinone and the proposed schedules for the required testing. The Agency received written comments from the Hydroquinone Panel (Ref. 2); however, a public meeting was not requested.

In keeping with the intent of this Phase II rule, which is to establish the test standards and the scheduling of those tests, the Agency is responding to those industry comments which are relevant to those issues. However, issues in the comments concerning the necessity for testing have been previously discussed in the proposed and final phase I rule and are therefore not discussed here. No comments relating to the test standards for the developmental toxicity and reproductive effects testing were received.

### *A. Toxicokinetics*

The hydroquinone Phase I final rule required skin and oral dosing studies, which will provide data regarding both the rate and extent of absorption of hydroquinone through the skin. In the proposed Phase II test standards rule, the Agency proposed a specific test standard in § 798.7650 recodified as § 795.235 in this rule to be followed when conducting the required oral and dermal testing of hydroquinone in rats.

With regard to the dermal studies, the CMA Hydroquinone Panel has commented that EPA should require an *in vitro* study of the kinetics of hydroquinone penetration through rat skin in place of the proposed *in vivo* rat skin absorption study. They argue that data on dermal penetration in the rat can be obtained in a more reliable, rapid, and cost-effective manner by an

*in vitro* study and such a study would allow longer exposure periods and direct collection of quantitative data (Ref. 2).

Kodak supports their argument by citing a Kodak study of the percutaneous absorption of [U-$^{14}$C] hydroquinone in dogs (Refs. 2 and 6). Kodak argues that because the dog study showed very slow skin penetration (about 1.1 ug/cm$^2$/hr), similar tests in rats would not provide enough penetration to characterize metabolites and would provide only data on the skin penetration rate of hydroquinone through rat skin. The Panel adds that if their suggested *in vitro* study establishes a high rate (higher than the low rate expected by the Panel) they then can conduct an *in vivo* study.

The CMA Hydroquinone Panel requested a meeting with the Agency to discuss these issues, and the meeting was held on September 4, 1986 (Ref. 3). After reviewing (Refs. 4, 5, and 8) the arguments presented by the Hydroquinone Panel (Refs. 1, 6, and 7), the Agency rejects the modification to the test standard as proposed by the Panel. This decision is based on the following reasons: (1) The Agency believes that the dermal penetration study, "Percutaneous Absorption of Hydroquinone in Beagle Dogs," upon which the Panel has based its prediction of limited skin penetration in rats, has serious deficiencies. Deficiencies, such as the failure of the study to account for large amounts of the hydroquinone administered to the test animals, make it impossible for the Agency to reasonably predict the behavior of hydroquinone applied to other test animals such as rats or to the skin of humans exposed to hydroquinone. (2) While the Panel has suggested that they would perform an *in vivo* test if their suggested *in vitro* study shows a "high" skin penetration rate, they have not stated what level of absorption in the *in vitro* study or other factors would dictate that the *in vivo* study should also be conducted.

*B. Neurotoxicity*

With regard to the neurotoxicity testing required by the hydroquinone Phase I final test rule, the Agency proposed that the functional observational battery and neuropathology be conducted in accordance with 40 CFR 798.6050 and 798.6400, respectively.

In its comments, CMA's Hydroquinone Panel proposed that the functional-observational battery and the neuropathology examinations be conducted sequentially on the same group of rats. They comment that in conducting neurotoxicological evaluations, the best data would be expected from studies which integrate functional observations with microscopical observations. They add that a sequential study would also be the most cost-effective use of testing resources, would reduce the number of test animals, and would provide internal test controls. Critical analysis of any observed functional effects would be used to plan the pathologic examination.

The Panel suggested that the study be conducted by dosing the test animals at three levels and observing all the dosed animals as appropriate for the functional-observational battery. Neuropathology would then be conducted only on the high-dose group. No neuropathology would be conducted on animals receiving the lower doses, unless abnormal effects are observed during the study of the high-dose animals.

EPA believes that the functional-observational battery could indeed be carried out in conjunction with neuropathological assessment, and would spare committing additional animals to the toxicity evaluation. Neuropathological assessment should begin with the highest dose level and work downward until a no-observable-adverse-effects dose level is reached. According to the functional-observational battery testing guideline, the highest dose used should result in clear behavioral effects regardless of whether these are of a neural origin. Smaller doses are selected appropriately so as to provide information on the shape of the dose-response curve. The Agency agrees with the suggestion of a staged neuropathology examination, as described in the TSCA neuropathology test guidelines.

## IV. Final Phase II Test Rule

*A. Test Standards*

The TSCA test guidelines for toxicokinetic studies in 40 CFR 795.235, the neurotoxicity testing in 40 CFR 798.6050 and 798.6400 and the industry-submitted protocols for developmental toxicity and reproductive effects testing shall be the test standards for the testing of hydroquinone required under 40 CFR 799.2200. The Agency believes that the conduct of the required studies in accordance with these test standards is necessary to assure that the results are reliable and adequate.

The revised guidelines for tests included in this Phase II rule, published in the **Federal Register** of May 20, 1987 (52 FR 19056), are adopted in the test standards for the testing of hydroquinone. EPA has responded to comments concerning these guideline revisions and that response to comment document is contained in the record for this rulemaking (Ref. 9).

*B. Reporting Requirements*

The Agency is requiring that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice Standards (40 CFR Part 792).

Test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study in accordance with 40 CFR 790.50.

The Agency is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. On the basis of its experience with health effects testing, EPA is adopting the proposed schedule for the submission of final test results as the final Phase II rule schedule.

The Agency has revised the reporting requirement for the submission of interim progress reports for testing under section 4 of TSCA. Accordingly, the Agency now requires only 6-month interim progress reports on all studies for hydroquinone, as opposed to the quarterly reporting schedule contained in the proposed test standard rule.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

*C. Conditional Exemptions Granted*

The final rule for test rule development and exemption procedures (40 CFR Part 790) indicates that, when certain conditions are met, exemption applicants will be notified by certified mail or in the final Phase II test rule for a given substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if the test sponsor has not complied with the test rule.

Because sponsors have indicated to EPA by letter or intent (Ref. 1) their

agreement to sponsor all of the tests required for hydroquinone in the final Phase I test rule for this substance according to the test standards and reporting requirements established in this final Phase II test rule for hydroquinone, the Agency is hereby granting conditional exemptions to all exemption applicants for all of the testing required for hydroquinone in 40 CFR 799.2200.

*D. Judicial Review*

The promulgation date for the hydroquinone Phase I final rule was established as 1 p.m. eastern standard time on January 13, 1986 (50 FR 53145; December 30, 1985). EPA received no petitions for review of that Phase I final rule. Accordingly, any petition for judicial review of this Phase II final rule will be limited to a review of the test standards and reporting requirements for hydroquinone established in this rule.

*E. Other Provisions*

Section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and the economic analysis are presented in the final Phase I rule for hydroquinone (50 FR 53145).

## V. Rulemaking Record

EPA has established a record for this rulemaking, [docket number (OPTS-42048D]. This record includes basic information considered by the Agency in developing this rule, and appropriate Federal Register notices.

This record includes the following information:

*A. Supporting Documentation*

The supporting documentation for this rulemaking consists of the proposed and final Phase I test rules on hydroquinone and the proposed hydroquinone test standards rule.

*B. References*

(1) Eastman Kodak Company. Protocols for a Voluntary Test Program on Hydroquinone. Submitted to Steven Newburg-Rinn, Chief, Test Rules Development Branch. (June 15, 1983).

(2) Chemical Manufacturers Association. Comments on Hydroquinone; Proposed Testing Standards 50 FR 53160; December 30, 1985. Submitted by the Hydroquinone Program Panel of the Chemical Manufacturers Association. (February 13, 1986).

(3) Meeting summary. CMA Hydroquinone Panel and EPA's Office of Toxic Substances. (September 4, 1986).

(4) Memorandum USEPA. Charles Abernathy Ph.D., Health and Environmental Review Division, to Gary E. Timm, Existing Chemicals Assessment Division. (June 20, 1986).

(5) Memorandum. USEPA. Charles Abernathy Ph.D., Health and Environmental Review Division, to David Price, Existing Chemicals Assessment Division. (November 17, 1986).

(6) Letter. Geraldine Cox, Chemical Manufacturers Association, to David Price, Existing Chemicals Assessment Division. In attachment, discussion of *in vitro* and *in vivo* testing for skin absorption. (October 2, 1986).

(7) Letter. Kathryn Rosica, Chemical Manufacturers Association, to Document Control Officer, USEPA. Suggested *in vitro* study protocol. (May 28, 1986).

(8) Document review. Review and evaluation of Eastman Kodak Study—"The Percutaneous Absorption of U-$^{14}$C Hydroquinone in Beagle Dogs" by Research Evaluation Associates. (January 6, 1986).

(9) USEPA. "Response to Public Comments, Proposed Revision of TSCA Test Guidelines as published in 51 FR 1522 (January 14, 1986)". Test Rules Development Branch, Existing Chemicals Assessment Division, Office of Toxic Substances, Environmental Protection Agency, Washington, DC (January 1987).

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. G-004, Northeast Mall, 401 M Street SW., Washington, DC 20460.

## VI. Other Regulatory Requirements

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of hydroquinone is discussed in the Phase I test rule (50 FR 53145; December 30, 1985).

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. No comments were received.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, (15 U.S.C. 601 *et seq.*, Pub L. 96-354, September 19, 1980), EPA is certifying that this rule will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are not a substantial number of small businesses manufacturing hydroquinone.

(2) Small processors are not expected to perform testing themselves, or to participate in the organization of the testing efforts.

(3) Small processors will experience only very minor costs if any in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

*C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070-0033. No public comments on these requirements were submitted to the Office of Information and Regulatory Affairs of OMB.

**Lists of Subjects in 40 CFR Parts 795 and 799**

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: May 11, 1987.

J.A. Moore,

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, Chapter I of 40 CFR is amended as follows:

## PART 795—[AMENDED]

1. In Part 795:

a. The authority citation for Part 795 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. Section 795.235 is added, to read as follows:

### § 795.235 Toxicokinetic Test.

(a) *Purpose.* These studies are designed to: (1) Determine the bioavailability of the test substance after dermal or oral treatment.

(2) Ascertain whether the metabolites of the test substance are similar after dermal (assuming significant penetration) and oral administration.

(3) Examine the effects of a multiple dosing regimen on the metabolism of the test substance after *per os* administration.

(b) *Definition of scope of study.* Absorption toxicokinetics refers to the bioavailability, i.e., the rate and extent of absorption of the test substance, and metabolism and excretion rates of the test substance after absorption.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The rat is the animal species of choice since it has been used extensively for absorption, metabolism, and toxicological studies.

(ii) *Rat strain.* Adult male and female Fischer 344 rats shall be used. At 7 to 9 weeks of age, the males should weigh 125 to 175 g and the females 110 to 150 g.

The rats shall be purchased from a reputable dealer and identified with ear tags upon arrival. The animals shall be randomly selected for the testing groups, and no unhealthy animal is to be used for experimentation.

(iii) *Animal care.* (A) Animal care and housing should be in accordance with Department of Health, Education and Welfare Publication No. (NIH)–78–23, 1978. "Guidelines for the Care and Use of Laboratory Animals," or its equivalent.

(B) The animals shall be housed in environmentally controlled rooms with 10 to 15 air changes per hour. The rooms shall be maintained at a temperature of 25±2 °C and humidity of 50±10 percent with a 12-hour light/dark cycle per day. The rats shall be kept in a quarantine facility for at least 7 days prior to use.

(C) During the acclimatization period, the rats shall be housed in polycarbonate cages on hardwood chip bedding. All animals shall be provided with certified feed and tap water *ad libitum.*

(iv) *Number of animals.* There shall be at least four animals of each sex in each experimental group.

(2) *Administration of test substance*—(i) *Test substance.* Test substance of at least 99 percent purity, commercially available, should be used as the test substance. Since both nonradioactive and radioactive (uniformly $^{14}$C-labelled) test substances are to be used, they should be chromatographed separately and analyzed together, to ascertain purity and identity. The use of $^{14}$C-labelled test substance, diluted with unlabeled test substance, is required for all of the studies under this section, unless otherwise specified, as it will greatly increase the reliability and sensitivity of the quantitative assays and facilitate the identification of metabolites.

(ii) *Dosage and treatment.* (A) Two doses shall be used in studies under this section, a "low" dose and a "high" dose. When administered orally, the "high" dose level should ideally induce some overt toxicity, such as weight loss. The "low" dose level should not induce observable effects attributable to the test substance. If feasible, the same "high" and "low" doses should be administered orally and dermally.

(B) Oral dosing shall be accomplished by gavage after dissolving the test substance in a suitable vehicle. For dermal treatment, the doses shall be administered in a suitable solvent and applied at a volume adequate to deliver the prescribed doses. The backs of the rats should be shaved with an electric clipper one day before treatment. The dose should be applied with a disposable micropipette on a specific area (2 cm$^2$ for rats) on the shaven skin. The dosed areas shall be occluded with an aluminum foil patch which is secured in place with adhesive tape.

(iii) *Determination of test substance kinetics.* Each experimental group shall contain at least four rats of each sex for a total of eight rats.

(a) *Oral studies.* (*1*) Group A shall be dosed once *per os* with the low dose of the test substance.

(*2*) Group B shall be dosed once *per os* with the high dose of the test substance.

(*3*) For the oral studies, the rats shall be placed in individual metabolic cages to facilitate collection of urine and feces at 8, 24, 48, 72, and 96 hours following administration. The cages shall be cleaned at each time period to collect any metabolites that might adhere to the metabolic cages.

(B) *Dermal Studies.* (*1*) Group C shall be dosed once dermally with the low dose of test substance.

(*2*) Group D shall be dosed once dermally with the high dose of test substance.

(*3*)(*i*) For the dermal studies, the test substance shall be applied for 24 hours. Immediately after application, each animal shall be placed in a separate metabolic cage for excreta collection. At the time of removal of the aluminum foil, the occluded area shall be washed with an appropriate solvent (see below), to remove any test substance that may be on the skin surface and the wash solvent assayed for the amount of test substance recovered. At the termination of the experiments, each animal shall be sacrificed and the exposed skin area removed. The skin (or an appropriate section) shall be solubilized and assayed for the test substance and its metabolites.

(*ii*) Before initiation of the dermal studies, an initial washing efficiency experiment shall be conducted to assess the removal of the applied test substance by washing the exposed skin area with soap and water or organic solvents. Four rats, two of each sex, shall be lightly anesthetized and then test substance applied to a specified area. After application (5 to 10 minutes), the areas should be washed with soap and water (two rats) or ethanol and water (two rats). The amount recovered shall be determined to assess efficacy of test substance removal by washing of the skin.

(C) *Repeated dosing study group E.* Four rats (two of each sex) shall receive a series of single daily oral doses of nonradioactive test substance over a period of at least 14 days, followed at 24 hours after the last dose by a single oral dose of $^{14}$C-labelled test substance. Each dose shall be at the low dose level.

(3) *Observation of animals*—(i) *Bioavailability*—(A) *Blood levels.* The levels of $^{14}$C shall be determined in whole blood, blood plasma, or blood serum at appropriate intervals from 1 to 96 hours after dosing rats in Groups A through E. Four rats (two of each sex) of each group shall be used for this purpose.

(B) *Urinary and fecal excretion.* The quantities of $^{14}$C excreted in the urine and feces by rats in groups A through E shall be determined at 8 hours, 24 hours, 48 hours, 72 hours, and 96 hours after dosing, and if necessary, daily thereafter until at least 90 percent of the applied dose has been excreted or until 7 days after dosing (whichever occurs first). Four animals (two of each sex) shall be used for these analyses.

(ii) *Biotransformation after oral and dermal dosing.* Appropriate qualitative and quantitative methods shall be used to assay the test substance and metabolites in the urine and fecal specimens collected from rat Groups A through D.

(iii) *Changes in Biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of $^{14}$C-labelled compounds in excreta collected at 14 and 48 hours after dosing rat Group A with those in the excreta collected at 24 and 48 hours after the $^{14}$C-labelled test substance dose in the repeated dose study (Group E).

(d) *Data and reporting*—(1) *Treatment of results.* Data should be summarized in tabular form.

(2) *Evaluation of results.* All observed results, quantitative or incidental, should be evaluated by an appropriate statistical method.

(3) *Test report.* In addition to the reporting requirements specified in the EPA Good Laboratory Practice Standards (40 CFR Part 792, Subpart J) the following specific information shall be reported:

(i) Specie(s) and strain(s) of laboratory animals.

(ii) Information on the degree (i.e., specific activity for a radiolabel) and site(s) of labeling of the test substance;

(iii) A full description of the sensitivity and precision of all procedures used to produce the data.

(iv) Percent absorption by oral and dermal routes of rats administered $^{14}$C-test substance.

(v) Quantity of isotope, together with percent recovery of administered dose in feces, urine, blood, and skin and skin washings (dermal study only for last two portions).

(vi) Quantity and distribution of $^{14}C$-labelled test substance in various tissues, including bone, brain, fat, gonads, heart, kidney, liver, lung, muscle, spleen, and residual carcass.

(vii) Counting efficacy data shall be made available to the Agency upon request.

**PART 799—[AMENDED]**

2. In Part 799:

a. The authority citation for Part 799 continues to read as follows:

**Authority:** 15 U.S.C. 2603, 2611, 2625.

b. By amending § 799.2200 by adding paragraphs (c)(1) (ii), (iii), (2) (ii), (iii), (3) (ii), (iii), (4) (ii), (iii), and (d) to read as follows:

**§ 799.2200 Hydroquinone.**

* * * * *

(c) * * *

(1) * * *

(ii) *Test standard.* The toxicokinetic testing shall be conducted in accordance with § 795.235 of this chapter.

(iii) *Reporting requirements.* (A) The toxicokinetic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) A progress report shall be provided 6 months from the effective date of the final Phase II rule.

(2) * * *

(ii) *Test standards.* The developmental toxicity testing shall be conducted according to the teratology study plans submitted to the EPA on June 15, 1983 (Eastman Kodak Company, 1983) and reviewed by the Agency as part of the study plan. Copies of the study plan are located in the public record for this test rule (Docket No. OPTS–42048D) and are available for inspection in the OPTS Reading Rm., G–004, Northeast Mall, 401 M. St., SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

(iii) *Reporting requirements.* (A) The Developmental toxicity tests shall be completed and the final results submitted to the Agency within 18 months of the effective date of the final Phase II rule.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months from the effective date of the final Phase II rule.

(3) * * *

(ii) *Test standard.* The reproductive effects testing shall be conducted according to the two generation reproduction unit of the study plan, submitted to the EPA on June 15, 1983 (Eastman Kodak Company, 1983) and reviewed by the Agency as a part of the study plan. A copy of this study plan is located in the public record for this test rule (docket no. OPTS–42048D) and is available for inspection in the OPTS Reading Rm., G–004, Northeast Mall, 401 M Street SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

(iii) *Reporting requirements.* (A) The two-generation reproductive effects toxicity test shall be completed and final results submitted to the Agency within 29 months of the effective date of the final Phase II rule.

(B) Interim progress reports shall be provided at 6-month intervals beginning 6 months from the effective date of the final Phase II rule.

(4) * * *

(ii) *Test standards.* The neurotoxicity testing of hydroquinone, consisting of a functional observational battery and neuropathology shall be conducted in accordance with §§ 798.6050 and 798.6400, respectively, of this chapter. The functional-observational battery and the neuropathology assessment may be conducted sequentially on the same group of rats. Neuropathological assessment should begin with the highest dose level and work downward until a no-observable-adverse-effects dose is reached.

(iii) *Reporting requirements.* (A) The neurotoxicity tests shall be completed and final results submitted to the Agency within one year of the effective date of the final Phase II rule.

(B) Interim progress reports shall be provided 6 months from the effective date of the final Phase II rule.

(d) *Effective date.* The effective date of the final Phase II rule for hydroquinone is July 13, 1987.

[FR Doc. 87–12101 Filed 5–27–87; 8:45 am]

BILLING CODE 6560–50–M

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 203 and 252

### Federal Acquisition Regulation Supplement; Conflicts of Interest in Defense Procurement; Correction

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule; correction.

**SUMMARY:** This document corrects an interim rule issuing changes to the DoD Federal Acquisition Regulation Supplement with respect to Conflicts of Interest in Defense Procurement, published in the Federal Register on April 16, 1987 (52 FR 12383). This action is necessary to add coverage which was previously omitted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Accordingly, the Department of Defense is correcting 48 CFR Parts 203 and 252 as follows:

**PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

**203.170-2 [Corrected]**

Section 203.170–2 is corrected to add in the first sentence after the word "who" the words "left DoD service on or after April 16, 1987, and who".

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.203-7002 [Corrected]**

Section 252.203–7002 is corrected to add in the first sentence of paragraph (b)(1) of the clause after the word "official" the words "who left DoD service on or after April 16, 1987, and"; and to add to paragraph (c)(1)(i) of the clause after the word "service" the words "(on or after April 16, 1987),".

[FR Doc. 87–12150 Filed 5–27–87; 8:45 am]

BILLING CODE 3810-01-M

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### 48 CFR Parts 204, 205, 219, and 252

### Federal Acquisition Regulation Supplement; Set-Asides for Small Disadvantaged Business Concerns; Correction

**AGENCY:** Department of Defense (DoD)

**ACTION:** Interim rule; correction.

**SUMMARY:** This document corrects an interim rule issuing changes to the DoD FAR Supplement with respect to Set-Asides for Small Disadvantaged Business Concerns, which were published in the Federal Register on May 4, 1987 (52 FR 16263). This action is necessary to correct amendatory language and to make editorial corrections to the rule.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OUSD(A) Mail Room, Room 3D139, The Pentagon, Washington, DC 20301–3062.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Accordingly, the Department of Defense is correcting 48 CFR Parts 204, 205, 219, and 252 as follows:

**PART 204—ADMINISTRATIVE MATTERS**

1. The amendatory language in paragraph 2 is corrected to remove the words "or 5" between the words "Code 4" and the word "below"; to change the word "paragraphs" to read "paragraph"; and to delete the words "and (v)" between the number "(iv)" and the words "to paragraph (e)(3)".

**204.671-5 [Corrected]**

2. The coverage in section 204.671-5 is amended by removing paragraph (e)(3)(v).

**PART 205—PUBLICIZING CONTRACT ACTIONS**

**205.202 [Removed]**

3. Paragraph 3 of the amendatory language is removed, and section 205.202 is removed.

**PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

**219.304 [Corrected]**

4. Section 219.304 is amended by changing in paragraph (b) the number of the provision from "252.7005" to "252.219-7005"; and by adding in paragraph (b) before the words "in lieu of" the words "(DoD FAR Supplement Deviation)".

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**202.219-7005 [Correctly designated 252.219-7006]**

5. Section 202.219-7005 is corrected to read "252.219-7005" and the section is amended by adding to the section heading the words "(DoD FAR Supplement Deviation); by inserting in the introductory paragraph a colon after the word "provision" and removing the remainder of the introductory paragraph; by adding to the title of the clause the words "(DoD FAR Supplement Deviation)"; by removing in the date of the clause the letters "XXX" and inserting the word "(MAY"; and by adding to the clause paragraph (c), to read as follows:

**252.219-7005 Small disadvantaged business concern representation (DoD FAR Supplement Deviation).**

* * * * *

(c) The Offeror represents and certifies that the above information is true and understands that whoever for the purpose of securing a contract or subcontract under subsection (a) of section 1207 of Public Law 99-661, the FY 1987 National Defense Authorization Act, misrepresents the status of any concern or person as a small business concern owned and controlled by a minority (as described in subsection (a)) shall be punished by a fine of not less than $10,000 or by imprisonment for not more than a year, or both.

* * * * *

**252.219-7006 [Corrected]**

6. Section 252.219-7006 is amended by inserting in the introductory paragraph a colon after the word "clause" and removing the remainder of the paragraph; and by adding in the title of the clause in the blank space before the year "1987" the month "MAY".

[FR Doc. 87-12152 Filed 5-27-87; 8:45 am]

BILLING CODE 3810-01-M

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**48 CFR Parts 214 and 215**

**Federal Acquisition Regulation Supplement; Technical Data**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Defense Acquisition Regulatory Council has approved revisions to Parts 214 and 215 of the Defense Federal Acquisition Regulation Supplement (DFARS) to conform to coverage recently developed in Parts 227 and 252 to implement section 953 of the Defense Acquisition Improvement Act of 1986 (Pub. L. 99-500).

**EFFECTIVE DATE:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSD(A) Mail Room, Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Parts 214 and 215 of the Defense Federal Acquisition Regulation Supplement (DFARS) are revised to provide reference to recently developed coverage in Part 227 with regard to technical data.

**B. Regulatory Flexibility Act Information**

The changes are editorial in nature and do not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

**C. Paperwork Reduction Act Information**

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

**List of Subjects in 48 CFR Parts 214 and 215**

Government procurement.

Charles W. Lloyd,

*Executive Secretary, Defense Acquisition Regulatory Council.*

**Adoption of Amendments**

Therefore the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Parts 214 and 215 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

**PART 214—SEALED BIDDING**

**214.201 [Amended]**

2. Section 214.201 is amended by removing the text of the section: "Reserved, pending determination to what extent guidance may be necessary." The section heading is retained as set forth below.

**214.201 Preparation of invitation for bids**

3. Section 214.201-2 is added to read as follows:

**214.201-2 Part I—The Schedule.**

When a DD Form 1423 is used to list technical data which is to be delivered under the contract in accordance with 227.475-1, it shall be designated as an exhibit and established, as such, in accordance with 204.7105.

**PART 215—CONTRACTING BY NEGOTIATION**

4. Section 215.406 is amended by removing the word "[Reserved]"; by removing the text of the section: "Reserved, pending determination to what extent guidance may be necessary."; and by adding a section heading to read as follows:

**215.406 Preparing Requests for Proposals (RFP's) and Requests for Quotations (RFQ's).**

5. Section 215.406-2 is added to read as follows:

**215.406-2 Part I—The Schedule.**

When a DD Form 1423 is used to list technical data which is to be delivered under the contract in accordance with 227.475-1, it shall be designated as an exhibit and established, as such, in accordance with 204.7105.

[FR Doc. 87-12153 Filed 5-27-87; 8:45 am]

BILLING CODE 3810-01-M

48 CFR Parts 216, 217, and 243

Federal Acquisition Regulation Supplement; Undefinitized Contract Actions (UCAs); Correction

AGENCY: Department of Defense (DoD).
ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on Undefinitized Contract Actions (UCAs) which was published in the Federal Register on Thursday, April 16, 1987 (52 FR 12387). The Action is necessary to correct language in the paragraph entitled "EFFECTIVE DATE". The Effective Date paragraph reads as follows:

EFFECTIVE DATE: April 16, 1987. (Effective on all undefinitized contract actions (UCAs) except for Foreign Military Sales; purchases of less than $25,000; special access programs; and congressionally-mandated long-lead procurement contracts.)

Charles W. Lloyd,
*Executive Secretary, Defense Acquisition Regulatory Council.*

[FR Doc. 87-12151 Filed 5-27-87; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Dockets No. 1-18, Notice 32; No. 70-27, Notice 31]

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.
ACTION: Final rule.

SUMMARY: Federal Motor Vehicle Safety Standards No. 105, *Hydraulic Brake Systems*, and No. 101, *Controls and Displays*, have required telltales whose single function is indicating failure in the antilock portion of a brake system to read "ANTILOCK." This notice amends those standards to permit "ABS," an abbreviation for "Antilock Brake System," as an alternative.

DATES: The amendments made by this rule are effective June 29, 1987. Petitions for reconsideration must be received by June 29, 1987.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5271).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems*, requires an indicator lamp, i.e., a telltale on the dashboard, to be activated whenever there is a total functional electrical failure in a antilock brake system. The manufacturer may meet this requirement by using a common indicator displaying the word "BRAKE," which also warns the driver about other types of brake failure. Alternatively, the manufacturer may provide a separate indicator for antilock failure.

If the manufacturer uses a separate indicator for antilock failure, Standard No. 105 and Standard No. 101, *Controls and Displays*, have specified that the indicator must read "ANTILOC" or "ANTI-LOCK." On April 16, 1986, NHTSA published a notice of proposed rulemaking (NPRM) in the Federal Register (51 FR 12900) to permit "ABS," an abbreviation for "Antilock Brake System," as an alternative.

As discussed in the NPRM, this rulemaking action resulted from a petition for rulemaking submitted by Mercedes-Benz. That company stated that the letters "ABS" have been used in automotive press articles and in manufacturers" print advertising, with few exceptions, for identifying brake systems with antilock capabilities. Copies of such publications were submitted with the petition. The petitioner contended that as antilock brake systems increase in availability, the abbreviation will be increasingly used by the media, in technical publications, and in owners' manuals, and is expected to remain synonymous with this type of brake system.

Mercedes also argued that if a manufacturer offers a system or feature not required by regulation, but provides a corresponding telltale required by regulation, that telltale message should be permitted to correspond with the campaigns developed to promote such safety systems. That company compared the use of "ABS" in its marketing of antilock braking systems to the use of "SRS" in marketing its Supplementary Restraint System.

In the NPRM, NHTSA stated that it believed that the primary issue it must consider in responding to Mercedes' petition is the recognizability and understanding of "ABS" as compared to "ANTILOCK," both by new car buyers and other drivers. For example, in deciding not to adopt the International Standards Organization (ISO) brake symbol as an alternative to the word "BRAKE" in common indicators, the agency noted a Society of Automotive Engineers (SAE) study indicating extremely low percentage recognition for the ISO brake symbol compared to the word "BRAKE," and the importance for safety of drivers understanding the meaning of the brake indicator lamp. See 50 FR 23430 (June 4, 1985).

NHTSA indicated in the NPRM that it was unaware of data concerning the recognizability and understanding of "ANTILOCK" or "ABS." The agency recognized that, unlike some identifying words and abbreviations, the abbreviation ABS appears to require learning by the driver in order to understand its meaning. However, given the use of ABS by the media and in marketing campaigns, the agency agreed with the petitioner that such learning is likely to be taking place and to continue to do so. The agency also noted that the word "ANTILOCK" requires learning by the driver in order to understand its meaning, since antilock technology is relatively new and unfamiliar to most drivers. NHTSA specifically requested comments and data on the recognizability and understanding of "ANTILOCK" and "ABS."

NHTSA received nine comments on the NPRM, some of which favored the proposal and some of which opposed it. Commenters supporting the proposal include Chrysler, Ford, Volkswagen, BMW, American Motors (AMC) and Volvo. Chrysler stated that with the expected increase in usage of antilock brake systems and accompanying owner information and advertising campaigns, both "ANTILOCK" and "ABS" should be recognizable and understandable to drivers of those cars. Ford stated that it supports the proposal since (1) it represents more efficient use of space in labeling a small telltale, (2) that company has used the term "ABS" to designate its antilock brake systems, (3) the "ABS" designation has been recoginzed by the International Standards Organization (ISO) as part of one of its proposals for an antilock brake symbol, and (4) that company probably would employ the "ABS" identification in its products worldwide if it is permitted by NHTSA for use in the United States. That company cited data suggesting that "ABS" currently has lower recognition than "ANTILOCK," but pointed out that an abstract symbol, such as "ABS," can be learned just like a word in another language or a new slang word. BMW asserted that since both antilock braking

systems and separate telltales for them are voluntarily provided, manufacturers should be provided maximum flexibility in telltale identification. That company stated that both messages are equally unknown to the driving public and that neither is self-explanatory. BMW also noted that, unlike the other required brake telltales, complete loss of this function does not interfere with normal braking. That commenter stated that this is reflected by Standard No. 101's traditional designation of the color yellow for this telltale, in contrast to red for the others, indicating less urgency. AMC acknowledged that the introduction of "ABS" would necessitate some education of drivers, but asserted that it is opportune that this be done now, as the new antilock technology is gradually being integrated into vehicle designs. Volkswagen noted that while the provision of multiple brake indicator lights can add significantly to the amount of information provided to the driver, the amount of information which can be printed on a telltale is usually quite limited. That company supported use of "ABS," arguing that inflexibility with regard to the abbreviated message to be displayed is not reasonable.

Commenters opposing the proposal include Honda, Renault, and a private individual, Mr. Robert F. Schlegel, Jr. Honda stated that other abbreviations for Antilock Brake System are in use by other manufacturers, including "ALB" (Anit-Lock Brake), "ASBS" (Anti-skid Brake System), "ESC" (Electronic Skid Control), and "SCS" (Stop-Control System). That commenter stated that these various abbreviations, including "ABS," are trademarks, and expressed concern that the wide use of "ABS" with the Bosch anti-lock brake system may lead consumers to believe that any vehicle with a telltale showing the letters "ABS" is equipped with a Bosch system. Based on this concern, Honda argued that it is neither wise nor lawful for NHTSA to permit such use. Renault similarly commented that the abbreviation "ABS" is commonly associated with a particular anti-skid device, or with a particular manufacturer. That company stated that there is no reason to assign a greater value to this abbreviation than to other ones which may appear. Renault stated that the French manufacturers have proposed a pictorial symbol for antilock failure to the ISO, which is also currently considering two other symbols. Since the ISO has not yet ruled on an international symbol for antilock failure, that commenter requested that Standards No. 101 and No. 105 not be amended at this time. Renault also argued that if "ABS" is permitted, other symbols, particularly those before the ISO, should also be permitted. Mr. Schlegel argued that the word "ANTILOCK" conveys more information than "ABS" to the vast majority of drivers, contending that symbols must provide a pictorial or verbal clue. According to that commenter, there are too many acronyms arriving lately, which are not understood by the general public.

After careful consideration of the comments, NHTSA has decided to permit the use of "ABS" as an alternative to "ANTILOCK." The use of multiple brake indicators can provide additional safety information to the driver, and the agency believes that greater flexibility is appropriate. The message "ABS" is considerably shorter than "ANTILOCK" and is therefore more easily incorporated into a small telltale.

NHTSA recognizes that "ABS" will require learning on the part of drivers. For example, in an informal survey of 40 Ford engineering employees, 15 percent associated "ABS" with antilock brakes, while 72 percent recognized the word "ANTILOCK." As indicated in information provided by Mercedes-Benz and BMW, however, the term "ABS" is being used in both press articles and advertising. NHTSA believes that drivers are learning the meaning of "ABS," and that such learning will continue. NHTSA notes that there are differences between this situation and that involved in the agency's decision not to permit use of the ISO brake symbol. First, the telltale for antilock failure is not as urgent or critical a warning as that for other types of brake failure. Second, there is extensive use of the term "ABS" in press articles and advertising, which is not the case for the ISO brake symbol. Third, as antilock technology is still in the early stages of being introduced to drivers, there is a unique opportunity for learning the term "ABS." By contrast, drivers have come to expect use of the word "BRAKE" for other types of brake failure.

While NHTSA believes that greater flexibility is appropriate, it does not believe it would be in the interest of safety to permit multiple acronyms or symbols. While permitting the use of "ABS" will facilitate the learning of that acronym by drivers, drivers cannot be expected to learn the meaning of multiple acronyms or symbols for the same message. NHTSA notes that this action may help facilitate international harmonization, since one of the symbols being considered by the ISO for antilock failure incorporates "ABS."

Since NHTSA considers it appropriate to permit only one alternative to "ANTILOCK," it is necessary that use of that alternative be available to all manufacturers. Accordingly, the agency contacted Mercedes-Benz concerning whether its parent company, Daimler-Benz, was willing to waive protection of its trademark and grant a general approval to use "ABS" for all types of antilock braking systems. Daimler-Benz executed a declaration, which included the following statement:

If the term "ABS" is permitted under 49 CFR Part 571, *Federal Motor Vehicle Safety Standards*, by the National Highway Traffic Safety Administration, United States Department of Transportation, as an alternative to "ANTILOCK" for identifying telltales for malfunctions in antilock brake systems, Daimler-Benz Aktiengesellschaft hereby declares that it waives the protection of its trademark and grants a general approval to use the term "ABS" as a symbol for all types of anti-lock brake systems.

The declaration executed by Daimler-Benz has been placed in the docket. NHTSA believes that the waiver resolves the trademark concerns raised by commenters. Since it is clear that all manufacturers can now use "ABS," the agency does not believe consumers will associate the term with any particular company.

Since this amendment imposes no new requirements but instead increases manufacturer flexibility by relieving a restriction, NHTSA has determined that an effective date of 30 days after publication in the **Federal Register** is in the public interest.

The agency has analyzed this amendment and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of this amendment are so minimal that a full regulatory evaluation is not required. Since amendment imposes no new requirements but simply permits alternative identification of the telltale for antilock failure, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units are

affected by the amendment only to the extent that they purchase motor vehicles. For the reasons discussed above, the amendment will not significantly affect vehicle prices. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

**PART 571—[AMENDED]**

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

**§ 571.101 [Amended]**

2. In Table 2 of § 571.101, the identifying words or abbreviation for malfunction in anti-lock (row 9, column 3, above the dotted line) is revised to read as follows:

Antilock, Anti-lock, or ABS. Also see FMVSS 105.

**§ 571.105 [Amended]**

3. S5.3.5(a) of § 571.105 is revised to read as follows:

S5.3.5(a) Each indicator lamp shall display word, words or abbreviation, in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and/or this section, which shall have letters not less than ⅛-inch high and be legible to the driver in daylight when lighted. Words in addition to those required by Standard No. 101 and/or this section and symbols may be provided for purposes of clarity.

4. S5.3.5(c)(1)(C) of § 571.105 is revised to read as follows:

(C) If a separate indicator lamp is provided for an anti-lock system, the single word "Antilock" or "Anti-lock", or the abbreviation "ABS", may be used for S5.3.1(c).

Issued on May 21, 1987.

Diane K. Steed,

*Administrator.*

[FR Doc. 87-12179 Filed 5-27-87; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

**[Docket No. 60231-7097]**

## Regulations Governing the Taking and Importing of Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule; final notice of decision and issuance of a general permit.

**SUMMARY:** This action establishes regulations to govern the taking of marine mammals incidental to Japanese high seas salmon fishing in the North Pacific Ocean within the U.S. Exclusive Economic Zone (EEZ). The regulation provides for a general permit to be issued under the Marine Mammal Protection Act (MMPA) allowing an aggregate taking during the three year permit period of no more than 789 Dall's porpoise in the Bering Sea and 5,250 in the North Pacific Ocean, of which no more than 448 may be taken in the Bering Sea and no more than 2,494 may be taken from the North Pacific Ocean in any single calendar year. The NMFS will monitor the affected fishery to insure that the quotas are not exceeded.

**EFFECTIVE DATE:** The rulemaking and general permit become effective June 10, 1987.

**ADDRESS:** Assistant Administrator for Fisheries, NMFS, Washington, DC 20235. An FEIS, Economic Impact Analysis, ALJ Decision and copy of the General Permit are also available upon request.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources and Habitat Programs, NMFS, Washington, DC 20235, Telephone: 202/673-5351.

**SUPPLEMENTARY INFORMATION:** On August 20, 1986 (51 FR 29674) NOAA published a Notice of Receipt of Permit Application, Notice of Formal Hearing, Notice of Formal Hearing Procedures and a Notice of Proposed Regulation. The proposal and other relevant information were reviewed in a formal hearing before Administrative Law Judge (ALJ) Hugh J. Dolan, in Seattle, Washington, on December 1–7, 1986, in accordance with 5 U.S.C. 556 and 557 and 16 U.S.C. 1373(d). Opening briefs were filed on December 29, 1986, and reply briefs on January 19, 1987. The recommended decision of the ALJ was issued on March 6, 1987. Exceptions to the ALJ's recommended decision were filed on April 2, 1987. The parties participating in the hearing are listed in the Final Decision document.

I am now publishing the final decision and regulation governing the taking of marine mammals incidental to commercial salmon gillnet fishing, and issuing the related MMPA permit. As provided in 50 CFR 216.24(c)(6)(v), I am waiving the usual fee for certificates of inclusion issued under this permit.

Decision of the Under Secretary signed on May 14, 1987, on the Application of the Federation of Japan Salmon Fisheries Cooperative Association to Take Marine Mammals Incidental to Commercial Fishing Operations.

### I. Background

Japanese fishing vessels using drift gillnet gear are authorized by treaty to fish for salmon at certain times and places within that portion of the United States' exclusive economic zone (EEZ) west of 175° E. longitude. [1] The treaty requires Japanese vessels to abstain from salmon fishing at other times and in other parts of the North Pacific Ocean and the Bering Sea. Within the EEZ, the Japanese salmon fishery is subject to the Marine Mammal Protection Act (MMPA). [2] The MMPA, among other requirements, prohibits the capture of marine mammals by commercial fishing vessels within the EEZ unless such vessels have been issued an incidental take permit by the Secretary of Commerce. [3]

The Federation of Japan Salmon Fisheries Cooperative Association (Federation) received a 3-year general permit in 1981 that authorized its members an annual incidental take of 5,500 Dall's porpoise, 450 northern fur seals, and 25 northern (Steller) sea lions. [4] This permit was extended legislatively through June 9, 1987, on condition that further research be performed. [5] On July 23, 1986, the Federation applied for a new permit that would, in effect, extend the 1981 permit for 5 more years, through June 9, 1992.

Under the formal rulemaking procedures required by the MMPA, the National Marine Fisheries Service (NMFS) published two notices in the Federal Register of its intent to issue the requested permit for 5,500 Dall's porpoise and 450 northern fur seals from the Commander Islands stock. [6] These two notices also contained the statements required by section 103(d) of the MMPA concerning the status of each stock and the effects of any permitted taking on its optimum sustainable population (OSP). A Draft Environmental Impact Statement (DEIS) was also prepared and issued. [7] No

notice was published with respect to northern sea lions or northern fur seals from the Pribilof Islands because of separate agency action to list those stocks as depleted, a determination that precludes issuance of an incidental take permit under the MMPA. [8]

A formal hearing on the requested permit and associated regulations was conducted by Administrative Law Judge (ALJ), Hugh J. Dolan, in Seattle, Washington, on Dec. 1–7, 1986. The Federation, the National Marine Fisheries Service, the Marine Mammal Commission, the Kokechik Fishermen's Association, the Qaluyaat Fishermen's Association, Greenpeace International, Greenpeace USA, the American Humane Association, the American Society for the Prevention of Cruelty to Animals, the Animal Protection Institute, Friends of the Earth, Friends of the Whales, the Fund for Animals, the Humane Society of the U.S., the International Fund for Animal Welfare, the International Wildlife Coalition, the Massachusetts Society for the Prevention of Cruelty to Animals, the Society for Animal Protective Legislation, the Washington Humane Society, the Whale Center, the Sierra Club, and the Center for Environmental Education participated in these proceedings. ALJ Dolan considered over 3,500 pages of testimony, exhibits and legal briefs, before issuing his recommended decision, which is attached hereto. The ALJ recommends that a 5-year permit be issued to the Federation that would allow 1750 Dall's porpoise and 45 northern fur seals from the Commander Islands stock to be killed or seriously injured during 1987. For each of 4 subsequent years, the ALJ recommends that the quota for Dall's porpoise be reduced 5 per cent from the previous year. The ALJ also made findings and recommendations concerning permit terms and conditions and further research needs.

## II. Decision

1. Summary of the Decision. I find, based on the record of the hearing, the ALJ's recommended decision, the exceptions filed thereto, and the Final Environmental Impact Statement (FEIS), that there are two Dall's porpoise stocks affected by this decision, the Bering Sea stock and the western North Pacific Ocean stock, that both stocks are above the minimum levels of their optimum sustainable populations, that a 3-year block quota on the killing or serious injury of 6,039 Dall's porpoise with lower annual quotas for each stock will not be to the disadvantage of either stock. I further find that these incidental take quotas will maintain each stock above the minimum level of its optimum sustainable population for the duration of the permit and are consistent with the policies and purposes of the MMPA. I further find that the block and annual quotas are economically and technologically feasible at this time, but that lower quotas are not.

With respect to northern fur seals, I find that I am not able at this time to issue an incidental take permit because the record is unclear as to whether the Commander Islands stock is above the minimum level of its optimum sustainable population. Accordingly, and in recognition of the depleted status of the Pribilof Islands stock, the permit and the accompanying regulations allow no takings of northern fur seals.

2. Detailed Findings. The recommended decision of the ALJ is attached. In reaching my decision, I adopt and incorporate by reference, unless specifically noted otherwise, the description of the issues, the findings of fact, the conclusions of law, the accompanying rationale, and the methodology used by the ALJ in reaching his recommended decision.

### *a. Population Estimates—Dall's Porpoise*

#### (1) Classification of Stocks

I adopt the ALJ's finding that the best scientific evidence indicates there are three stocks of Dall's porpoise related to this proceeding. Those stocks are the Bering Sea stock, the eastern North Pacific Ocean stock, and the western North Pacific Ocean stock. I further adopt the ALJ's finding that the Japanese salmon fisheries affect only the Bering Sea and western North Pacific Ocean stocks. [9]

I recognize that the permit applicant, supported by some of the scientific data, contends that there is but one stock in the North Pacific Ocean. Although the Scientific data is subject to various interpretations, the ALJ determined that the weight of the evidence favored a separation of eastern and western stocks. [10] I agree. In any event, since it has been determined, *infra*, that the western North Pacific Ocean stock is above its OSP and that an allowable level of taking would not be to that stock's disadvantage, a separation of these two stocks does not affect the decision to issue an incidental take permit in this proceeding. Quite clearly, however, further research is necessary to better determine the relationship between Dall's porpoise in the eastern and western portions of the North Pacific Ocean. Due to the rapid expansion of the high seas squid fishery in waters beyond the U.S. EEZ, stock separation may become a critical factor in any subsequent MMPA proceedings.

#### (2) Present Population Levels

The ALJ adopted the NMFS procedure for estimating the present population of each stock of Dall's porpoise. [11] The approach used has been used by NMFS in other MMPA proceedings and is endorsed by the Marine Mammal Commission. Specifically, the ALJ determined that the use of the line transect methodology to determine density of animals within each area and the application of that density to limited portions of the Bering Sea and the western North Pacific Ocean provides the best scientific information as to the present numbers of Dall's porpoise in each stock. However, in agreeing with the NMFS procedure, the ALJ evidently overlooked the fact that the estimates he approved were for 1980, not 1985. The 1987 estimates must be derived by applying estimates of natural reproduction and estimates for kill by the various fisheries affecting each stock. Using figures approved by the ALJ, and adopted by me, *infra*, I find that the present population of the Bering Sea stock is 216,118 and that the present population of the western North Pacific Ocean stock is 692,854. [12]

#### (3) Status of Stocks

I adopt the procedure used by the ALJ to determine whether both Dall's porpoise stocks are presently within their OSP. [13] Specifically, I find that estimation of the pre-exploitation population for each stock to determine the population level which is the largest supportable within the ecosystem is the best methodology for determining the upper limit of OSP. This back-calculation procedure has been used in NMFS tuna/porpoise hearings and in the 1981 Dall's porpoise hearing and is supported by all parties as the appropriate methodology for estimating the pre-exploitation population. The parties disagree as to the time when exploitation commenced, the estimated natural recruitment rate, and the estimated kill rates of the various fisheries that are necessary to perform the back-calculation procedure. As a result there is considerable disagreement as to what the estimate of the pre-exploitation population should be.

(a) *Pre-Exploitation Date.* The ALJ found that the estimate of the 1961 population derived by back-calculation is the best scientific evidence as to the pre-exploitation population. Thus, in the absence of evidence that the ability of the ecosystem to support that population

has changed, the ALJ determined that population level is the best estimate of the upper bound of OSP. [14] Although there was some evidence presented that salmon fishing, and consequent Dall's porpoise mortalities, commenced sometime prior to 1941, the weight of the evidence suggests that the fishing was not extensive in the areas inhabited by these two stocks of Dall's porpoise and that the stocks would have fully recovered during the hiatus in fishing that occurred during and subsequent to World War II. I adopt the ALJ's finding and supporting rationale.

(b) *Maximum Net Reproduction Rate.* The point estimate of the maximum net reproduction rate (Rmax) for Dall's porpoise suggested by the parties ranged from .02 to .10. The ALJ adopted the conservative rate recommended by the Marine Mammal Commission, .04. [15] This rate was within a range of probable values suggested by NMFS, but less than the NMFS recommended rate, .06. I adopt the ALJ's recommendation and supporting rationale.

(c) *Kill Rates.* A great deal of evidence was presented regarding the present kill rates (Kt) for Dall's porpoise in the Japanese salmon fisheries and the multi-national high seas squid fishery. As found by the ALJ, the current evidence supports different rates of kill for the Japanese mothership fishery, for the land-based fishery, and for the various squid fisheries that incidentally take Dall's porpoise. The findings as to the present kill rate in each fishery are discussed below.

(i) *Mothership Fishery.* The ALJ found, and all parties to the proceeding agree, that the kill rate inside the U.S. EEZ is 0.47 Dall's porpoise per set of net. [16] The ALJ, also adopted the same rate for the mothership fishery south of the U.S. EEZ. [17] This figure is very close to the 0.46 figure reported by Japanese scientists and was not opposed by either NOAA or the Marine Mammal Commission. With respect to the Bering Sea beyond the U.S. EEZ, the ALJ found the kill rate to be 0.28, a figure supported by NMFS and the Marine Mammal Commission. [18] I adopt the ALJ's findings that the best scientific evidence suggests the kill rates are 0.47, 0.47, and 0.28 for the three areas in which the mothership fishery operates.

(ii) *Land-Based Fishery.* All parties agree that the data with respect to the kill rate in the land-based salmon fishery is less reliable. The ALJ found that the testimony of one Japanese scientist supported a kill rate of 0.25 to 0.33. This is considerably higher than the 0.13 rate reported by the Japanese fishermen and supported by the Federation. However, it is less than suggested by NMFS and the Marine Mammal Commission at the hearing. Both NMFS and the Marine Mammal Commission agreed that the kill rate for the land-based fishery should be less than in the mothership fishery because the southerly location of the land-based fishery encompasses large areas that are not inhabited by Dall's porpoise. However, the Marine Mammal Commission believed 0.47 should be used until better data was available. The ALJ found that the kill rate for the land-based salmon fishery is 0.33, the highest figure supported by scientific data. [19] In its final comments on the ALJ's recommended decision, the Marine Mammal Commission agreed that the 0.33 rate could be used if the same rate was applied to the squid fisheries. [20] Accordingly, I adopt the ALJ's finding.

(iii) *Squid Fishery.* The kill rate in the high seas squid fishery is most difficult to determine. The only observer data, compiled during 1986, suggests a kill rate of only 0.04 to 0.06. The ALJ, supported by all parties except the Federation, rejected this estimate as based on an inadequate sample size. Instead, the ALJ determined that the kill rate for the land-based salmon fishery, which operates in similar latitudes to the south of the preferred range of Dall's porpoise should be used. [21] That kill rate is 0.33. I adopt this finding for the squid fishery with considerable reservation, noting that the scientific uncertainty operates to the disadvantage of the permit applicant in this instance.

Quite clearly the disparity between the observed rate and the 0.33 rate adopted for this proceeding must be resolved as soon as possible. Due to the rapid growth of the squid fishery beyond the exclusive economic zones of the North Pacific nations, the prospect exists that a large overestimate of the kill rate of Dall's porpoise in the much larger squid fishery could well result in closure of the salmon gillnet fishery within the U.S. EEZ. It is in the federation's immediate interest to press for increased observer coverage of the squid gillnet fleets of all nations participating in that fishery.

(d) *Constancy of Kill Rate.* Through the back-calculation methodology, agreed to by all parties, the population estimate for the pre-exploitation year is estimated by subtracting an estimate of kill and adding an estimate of net reproduction in the intervening years. For the years from 1952 to 1981, the ALJ adopted the estimated kill rate, 0.94, that was used by his predecessor and adopted by the agency in the 1981 permit decision. [22] The federation, NMFS, and the Marine Mammal Commission all object to the use of that figure as the kill rate for this proceeding. They point out that 0.94, although based on the best available data at that time, was derived from only 18 observations, whereas there are now some 2,377 observations available for estimating the kill of Dall's porpoise in the Japanese salmon fishery. [23] Although there is uncertainty as to whether the kill rate fluctuates from year to year, quite clearly the current data, drawn from much more extensive scientific sampling conducted since 1981, are better evidence than was available in the 1981 hearings and must be used in this decision. I therefore find that for the purpose of estimating the preexploitation population, the current kill rates found by the ALJ, and approved by me, above, should be employed throughout the period from 1952 to the present. I note that both NMFS and the Marine Mammal Commission agree with this approach.

(e) *Fishing Effort.* The ALJ calculated the fishing effort in the salmon and squid fisheries from a variety of official Japanese and U.S. data. [24] I adopt the ALJ's findings in this respect.

(f) *Calculated Initial Population.* All parties agreed with the formula used by the ALJ to determine the preexploitation population of Dall's porpoise. [25] That formula was developed by NMFS scientists and has been used in other MMPA proceedings and is accepted here as the appropriate methodology. However, since I have rejected the 0.94 kill rate used by the ALJ for the 1952 to 1981 period, and start from the 1980 estimated populations, the back-calculation must be performed again. That has been done, and the new estimate of the pre-exploitation population of each stock of Dall's porpoise is determined to be: 226,865 for the Bering Sea stock and 860,360 for the western North Pacific stock. As a result, the current populations 216,118, represent 953 and 80.5 per cent, respectively, of the maximum populations that can be supported by the present ecosystem.

(g) *Optimum Sustainable Population.* All parties agreed and the ALJ determined that the maximum net productivity level (MNPL) for Dall's porpoise is 60 per cent of the maximum sustainable population. [26] I adopt that finding. MNPL has been defined by regulation as the lower bound of OSP. [27] Accordingly, I find that both the Bering Sea and the western North Pacific Ocean stocks of Dall's porpoise are well within the range of their optimum sustainable populations. I note that although the ALJ found the status of

each stock closer to the MNPL than I have, he also found that both were within their respective OSP ranges. [28]

(4) Disadvantage

The ALJ interpreted the MMPA's protective mandate that any permitted taking incidental to commercial fishing operations not to the disadvantage of the stocks as meaning that the permitted taking should not allow the stock to decline. [29] both NMFS and the Marine Mammal Commission reject that interpretation. I, also, do not agree with the ALJ's conclusion of law. In any event, it is of little consequence to this proceeding is that a second test must be met—the immediate goal test discussed below.

(5) Quotas, Duration of Permit.

The MMPA affirmatively requires additional efforts to reduce incidental kill and serious injury to insignificant levels, approaching zero. This test has been previously interpreted as limiting the number of animals that can be taken to the lowest level that will permit economical fishing operations using existing technology. [30]

The ALJ determined that an annual quota of 1750 Dall's porpoise was achievable by applying the current kill rate in the U.S. EEZ, 0.47, to the expected fishing effort. [31] The Federation notes that the kill rates used are averages which should not be applied to *each* future year. By definition, an average would be exceeded in some years and not attained in others. The Federation suggested that the highest kill rates in the 1981 to 1986 period be used to establish annual quotas that would comply with the immediate goal test. NMFS agrees with the Federation on this point.

The ALJ determined that there would be a 25 per cent reduction in fishing effort within the U.S. EEZ as a result of the reduction in the mothership fleet from 172 catcherboats to 129. [32] The Federation notes that there is no reduction in treaty-authorized vessel-days and that the remaining 129 catcherboats are capable of maintaining the same overall fishing effort as 172 catcherboats by fishing a longer period of time. The objection misses the point. The fishing effort is limited by the salmon quota set by the Soviet Union as well as by the treaty requirements. The record states that the Soviet Union has reduced this quota by 35 per cent. [33] Accordingly, the reduction in fleet size is not likely to lead to increased effort by the remaining boats.

In establishing the quota, the ALJ started with 4,963 sets as the projected fishing effort, reduced that figure by 25 per cent, and multiplied by the 0.47 kill rate, to determine the recommended quota of 1750. The Marine Mammal Commission and NMFS note that the ALJ used projected fishing effort for the western North Pacific portion of the U.S. EEZ, apparently neglecting that portion of the fishery that operates in the Bering Sea portion of the U.S. EEZ. The Marine Mammal Commission recommends that a separate quota be established for the Bering Sea portion of the U.S. EEZ in view of the separate stock of Dall's porpoise that would be affected by the fishery north of the Aleutian Islands. Using the projected fishing effort contained in Appendix C to the ALJ's decision, and the ALJ's methodology, the 1987 annual quota for the Bering Sea stock would be 891 sets, reduced by 25 per cent, multiplied by the 0.47 kill rate within the U.S. EEZ, for a total of 314. In 1988, the effort projected declines to 803; the resultant quota for that year, according to the ALJ's formula, would be 283. In 1989, the effort projected declines to 545; the resultant quota for that year, according to the ALJ's formula, would be 192.

The ALJ determined that a 5-year permit duration was appropriate, but that the quotas beyond 1987 should be reduced 5 per cent each year. [34] However, the ALJ made no finding that improvements in fishing technology would be possible. The Marine Mammal Commission supported the 5 per cent quota reduction, but recommended that only a three-year permit be issued in light of data deficiencies that need to be addressed.

As noted above, annual quotas based on average kill rates would unnecessarily restrict the Federation's operations in the years the actual rate would exceed the average. However, there has been no showing by the Federation that a 3-year block quota would put them at a disadvantage. Accordingly, the quotas that I now establish for each stock are: (1) Maximum annual quotas based on the highest kill rate attained during any one year from 1981 to 1986, and, (2) 3-year block quotas based on 1981–1986 average take. The kill rate used in setting the maximum annual quota is 0.67, the highest observed rate within the U.S. EEZ during 1981–1985. Within the respective portions of the U.S. EEZ, the quotas on kill or serious injury of Dall's porpoise are:

Bering Sea—448 in any one year, 789 for 1987–1989.

North Pacific—2494 in any one year, 5250 for 1987–1989.

Given the estimates of current population for each stock and the estimated recruitment and kill rates, the Bering Sea stock will continue to grow at the level of permitted take to approximately 217,417 animals or 95.9 percent of its estimated preexploitation population by 1989. The western North Pacific Ocean stock will decline slightly to approximately 681,074 animals or 79.1% of the estimated exploitation population by 1989. [35] As a result, I find that neither stock would be disadvantaged by the level of permitted taking.

I have declined to impose a 5 percent reduction in light of my decision to accept the recommendation of the Marine Mammal Commission on duration of the permit. A 3-year permit was considered appropriate in 1981 and Congress granted only a 3-year extension in 1984. Although much more is now known about Dall's porpoise, considerable uncertainty remains as to the effects the Japanese land-based fishery and the much larger multi-national squid fishery are having on the Dall's porpoise stocks in the North Pacific Ocean. The level of uncertainty must be reduced during the next three years.

*b. Population Estimates—Fur Seals*

The Federation also asked that its members be allowed to take up to 450 northern fur seals annually from the Commander Islands stock. Current population estimates for these fur seals are not in question due to the ease by which they may be enumerated on their island rookeries. In addition, birth rates, or pup production, is also well documented due to its relevance for commercial harvests in ensuing years. The Commander Islands stock is managed by the Soviet Union and the ALJ accepted the Soviet data as the best scientific information available. [36] The stock is estimated at 210,000, with pup production approximately 50,000 to 55,000 per year. Recent commercial harvests of bachelor male seals are between 4,000 and 5,500 per year. According to the ALJ, even under commercial exploitation, the population is stable or increasing. [37] Reviewing records of actual seal captures, and the timing of the salmon fishery relative to the seals' breeding time, the ALJ determined that a permitted taking of 45 Commander Islands fur seals annually would involve sub-adult males, would be *de minimus*, and thus, would not be to the disadvantage of that stock. [38] NMFS scientists supported this conclusion.

The Marine Mammal Commission, the Alaskan native fishing associations and the environmental/animal protection

groups all oppose this conclusion. Historic data indicate that only 4 of 21 rookeries on the Commander Islands are now occupied and that the pre-exploitation population may have exceeded 1 to 1.7 million fur seals. [39] If so, and if, as the parties have agreed, 60 per cent of the pre-exploitation population represents the lower bound of OSP, the current population is most certainly well below OSP even if it is stable or increasing. The NMFS pup trajectory analysis, however, supports a finding that the current population is being managed for its maximum sustainable yield and thus is within its OSP. Obviously, this is a signifcant dispute.

As a matter of law, as noted by the Marine Mammal Commission, the MMPA requires an affirmative finding by the agency that a stock is within its OSP before a permit may be issued. [40] The permit applicant has the burden of proof. In this proceeding, the ALJ did not make such a finding. Instead, he said the evidence "suggests" that the stock is within its OSP. [41] The statutory requirement for a finding has not been met. Based on the record before me, I find that I am unable to determine if the Commander Islands stock is within its optimum sustainable population. In recognition of the depleted status of the Pribilof Islands stock, the permit will not include any northern fur seals. The incidental taking of northern fur seals, like the taking of northern (Steller) sea lions, harbor porpoise, Pacific white-sided dolphin, northern right whale dolphin, and killer whales is prohibited by the Marine Mammal Protection Act. [42]

The MMPA's prohibitions will be enforced notwithstanding my confidence in Judge Dolan's conclusion that an annual take of 45 sub-adult male Commander Islands fur seals will not adversely affect a population that is subject to a managed commercial harvest of 4,000 to 5,500 animals per year. Under these circumstances, where a negligible number of nonpermitted takings will occur, and where the stock does not require the absolute protection provided by the MMPA, it is unfortunate that those who must pay the penalties will be determined largely by chance. I intend to seek amendment of the MMPA to permit incidental, but not intentional, takings of small numbers of marine mammals, by vessels engaged in commercial fishing, if such takings will have a negligible impact on the species and stocks. Such an exemption would be similar to the existing exemption for activities other than commercial fishing except that it would not be limited to citizens of the United States in light of our international fisheries obligations.

*c. Observers*

Data on the incidental take of marine mammals have been collected each year since 1981 by 2 U.S. observers onboard catcherboats from each of the 4 motherships. Between 6 and 6.4 per cent of the fishing operations within the EEZ have been monitored by these observers. The ALJ determined that this level of statistical sampling is adequate and gave a statistical reliability of 95 per cent ±4 per cent. [43] The statement of statistical reliability is incorrect. The 6 per cent level of observer coverage is statistically reliable to 90 per cent ±10 per cent. [44] I adopt the ALJ's decision that a level of observer coverage that is no less than 6 per cent is adequate, provided that the statistical reliability is no less than 90 per cent ±10 per cent.

3. Other Matters

a. *Seabirds.* The ALJ determined that the Department of Commerce and its subordinate agencies did not have jurisdiction under the MMPA to regulate the taking of seabirds. He declined to accept the argument that the birds undoubted contributions to the food web in the North Pacific Ocean and Bering Sea constitute a basis for turning the MMPA into a "utilitarian environmental protection statute" by which the agency could "regulate everything that impacts negatively on marine mammals." [45]. I agree and adopt the ALJ's rationale.

The ALJ determined, however, that such jurisdiction did reside in the Department of the Interior under the Migratory Bird Treaty Act (MBTA) as extended by the President's 1983 proclamation of the Exclusive Economic Zone. [44]. I am not aware of any instance where the Department of the Interior has curtailed a commercial fishery to protect seabirds under the MBTA. I am aware that the official position of the Department of the Interior is that the MBTA jurisdiction is coextensive with the geographic limits of the Untied States, extending seaward only to the 3-mile limit of the territorial sea. [47] I am also aware that Congress has explicitly extended the MMPA to the EEZ, but has not similarly extended the MBTA. Accordingly, I do not adopt the ALJ's conclusion of law that the Department of the Interior has regulatory authority to limit the Japanese salmon fishery under the MBTA. Were it to exercise such authority, the Department of the Interior might also be required to regulate domestic fisheries, including perhaps those of the Alaskan fishermen who participated in these proceedings. [48]

b. *Ecosystem Protection Zone.* The Marine Mammal Commission and the environmental/animal protection groups recommended adoption of an ecosystem protection zone extending 60 miles seaward from the Aleutian Islands. Although offering some potential for benefit to harbor porpoise and northern sea lions, the ALJ determined that the primary motivation for such a zone would be to reduce the incidental take of seabirds. The ALJ declined to recommend that such a zone be established under the MMPA. [49] I approve of that decision, noting that several bills that would impose a seabird protection zone of identical proportions are presently pending before Congress. At that time the effects of fishing practices on seabird populations can be more fully debated. The effects of fishing practices on marine mammals, which is the purpose of this proceeding, have been fully addressed herein.

4. Permit Conditions

The ALJ made extensive recommendations for conditions that NMFS should impose on the recommended permit. These are set out in section XI of the recommended decision appended hereto and are adopted by me with the following modifications:

a. The costs of U.S. observer coverage of the motherships fleet must be borne by the applicant or by the Government of Japan.

b. To the extent that NMFS is capable of providing U.S. marine mammal observers on the Japanese landbased salmon and high seas squid gillnet fleets, they must be readily accommodated.

c. A report must be furnished prior to June 9, 1988, as to the extent of Japanese high seas salmon gillnet fishing in the Bering Sea and North Pacific Ocean prior to 1952.

d. The quotas stated above must be reduced proportionately in the event that the Soviet Union decreases Japan's salmon quota for 1988 or 1989 in either area by more than 10 per cent from the 1987 salmon quota.

e. To insure randomness of observer placement and unbiased sampling, the permit must incorporate the requirements of 50 CFR 611.8(c).

5. Required Statements

Section 103(d) of the MMPA requries the publication of the following statements: (a) Estimated existing levels of the species and population stocks concerned; (b) a statement of the expected impact on the optimum sustainable population (OSP) of such

species or population stocks; (c) a statement describing the evidence before the agency; and (d) any studies made by or for the agency and any recommendations made by or for the agency or the Marine Mammal Commission. The following table satisfies the first two requirements.

| Stock | Present population | Present OSP status | OSP status at end of 1969 |
|---|---|---|---|
| Dall's porpoise (Bering Sea) | 216,118 | Within | Within. |
| Dall's porpoise (Western North Pacific Ocean) | 592,854 | Within | Within. |

The references noted in the August 20, 1986, and January 23, 1987, **Federal Register** notices and the record compiled in this proceeding satisfy the final two requirements.

### 6. Regulation

I have considered the alternatives contained in the FEIS and the DEIS and have concluded that amending the current regulations as set out below is the environmentally preferred alternative and represents the best approach for permitting the incidental take of Dall's porpoise under the MMPA. Accordingly, and based on a full consideration of the record, the recommended decision of the ALJ and my foregoing final decision, that portion of the regulation now appearing at 50 CFR 216.24(d)(5)(vii) is amended to read as follows:

(vii) The number of Dall's porpoise (*Phocoenoides dalli*) killed or injured by Japanese vessels operating in the U.S. EEZ is limited to an aggregate of 789 in the Bering Sea and 5,250 in the North Pacific Ocean over the period 1987–1989, of which no more than 448 may be taken from the Bering Sea and no more than 2,494 may be taken from the North Pacific Ocean in any single calendar year. The incidental take levels authorized by this subpart are reduced proportionately in the event that the Soviet Union reduces salmon quotas for 1988 or 1989 by more than 10 percent from the 1987 quota. Any permit issued under this part must indicate the measures by which the permit holder must comply with the conditions attached to the permit, and the reporting requirements of paragraph (d)(5)(v) of this section. Any permit issued under this part may allow retention of marine mammals for scientific purposes and will not require a separate permit under paragraph (d)(5)(v).

### 7. Consultation

The MMPA requires that I consult with the Marine Mammal Commission in promulgating regulations. The Commission was consulted prior to the publication of proposed regulations, was a party to the proceedings, appeared before the ALJ, and filed briefs with ALJ. For the most part, I have been guided by the recommendations of the Commission. Where I have not adopted a recommendation of the Commission, I have provided my reasons for doing so. Additionally, I have consulted with the Secretary of Commerce on this decision.

### 8. Attachments

The permit to be issued to the Federation of Japan Salmon Fisheries Cooperative Association and the recommended decision of Administrative Law Judge Hugh J. Dolan are attached.

### 9. Effective Date

The permit issued today becomes effective June 10, 1987.

Dated: May 14, 1987.

### References

1. The United States, Canada and Japan are parties to the International Convention for the High Seas Fisheries of the North Pacific Ocean. 4 U.S.T. 380, T.I.A.S. 2786, 205 U.N.T.S. 65. The most recent amendment to the annexes of this convention requires Japan to further restrict the fishing activities of Japanese salmon vessels within the Bering Sea, within the U.S. EEZ, and abstain from salmon fishing south of the U.S. EEZ and east of 174° E. longitude in order to reduce interceptions of salmon stocks of North American origin.
2. 16 U.S.C. 1361–1407.
3. 16 U.S.C. 1372(a)(5).
4. 46 FR 27056, May 15, 1981.
5. Pub. L. 97–389.
6. 51 FR 29674, Aug. 20, 1986; 52 FR 2566, Jan. 23, 1987.
7. 51 FR 31637, Sept. 5, 1986.
8. 16 U.S.C. 1371(a)(3)(B).
9. Recommended decision (RD), p. 25.
10. RD, pp. 22–24.
11. RD, pp. 25–30.
12. Final Environmental Impact Statement, Tables 55, 56.
13. RD, pp. 51–58.
14. RD, p. 51.
15. RD, pp. 32–33.
16. RD, p. 38.
17. RD, p. 39.
18. RD, p 39.
19. RD, pp. 39–42.
20. Exceptions and Recommendations of the Marine Mammal Commission, April 2, 1987, p. 9.
21. RD, pp. 42–44.
22. RD, pp. 45–48.
23. NOAA Response, April 2, 1987, p. 9.
24. RD, pp. 48–50.
25. RD, pp. 51–52.
26. RD, p. 31.
27. 50 CFR 216.3.
28. RD, p. 58.
29. RD, p. 14.
30. 45 FR 72180.
31. RD, p. 60.
32. RD, p. 60.
33. Mr. Shima, hearing transcript, p. 556.
34. RD, p. 61.
35. Final Environmental Impact Statement, Tables 55, 56.
36. RD, p. 66.
37. RD, p. 67.
38. RD, pp. 67–68.
39. RD, pp. 65–66.
40. 16 U.S.C. 1373(d), Committee for Humane Legislation v. Richardson, 414 F.Supp. 297, 311–312, (D.D.C. 1976), aff'd 540 F.2d 1141 (D.C. Cir. 1976).
41. RD, p. 68.
42. 16 U.S.C. 1372(a)(5).
43. RD, pp. 34, 85.
44. NOAA Exhibit 2, pp. 10, 11.
45. RD, p. 76.
46. 16 U.S.C. 703–712.
47. Memoranda from Assistant Solicitor, Fish and Wildlife, dated Dec. 11, 1980, and March 27, 1981.
48. Alaskan natives enjoy a limited exemption from the MBTA. It is unclear whether unintended takes of migratory birds in a commercial fishery would qualify for this exemption. See 50 CFR 20.132.
49. RD, p. 79.

### Classification

The NMFS has determined that this action is a major Federal action under the National Environmental Policy Act of 1969 due to the overall public interest associated with the Japanese salmon fishery and its interaction with Dall's porpoise and other marine organisms. A Final Environmental Impact Statement (FEIS) has been prepared and distributed for public review and comment.

This rulemaking is an administrative action being developed on the record under the Administrative Procedure Act (5 U.S.C. 556 and 557) and, as such, is exempt from Executive Order 12291.

This rule relieves a restriction that would otherwise apply to the Japanese salmon fishery. As authorized by 5 U.S.C. 553, a full 30 day delayed effectiveness period is not required.

This rule mentions collection of information requirements subject to the Paperwork Reduction Act. The collection of information for general permits, certificates of inclusion and reporting takes has been approved by the Office of Management and Budget under Control Nos. 0648–0083 and –0099.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. While the action will result in a continuation of the loss of salmon to Alaskan commercial fishermen of approximately $8.02 million, the identified alternatives to the

action would result in a loss of from $87.4 million to $133.7 million.

The Assistant Administrator has determined that the action does not directly affect the coastal zone of a State with an approved Coastal Zone Management Act program.

**List of Subjects in 50 CFR Part 216**

Administrative practice and procedure, Imports, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: May 22, 1987.

James E. Douglas, Jr.,

*Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

**PART 216—[AMENDED]**

For the reasons set out in the Preamble and Final Decision, 50 CFR Part 216 is amended as follows:

1. The authority citation for Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise stated.

2. In § 216.24, paragraph (d)(5)(vii) is revised to read as follows:

**§ 216.24 Taking and related acts incidental to commercial fishing operations.**

(d) * * *

(5) * * *

(vii) The number of Dall's porpoise (*Phocoenoides dalli*) killed or injured by Japanese vessels operating in the U.S. EEZ is limited to an aggregate of 789 in the Bering Sea and 5250 in the North Pacific Ocean over the period 1987 to 1989, of which no more than 448 may be taken from the Bering Sea and no more than 2494 may be taken from the North Pacific Ocean in any single calendar year. The incidental take levels authorized by this subpart are reduced proportionately in the event that the Soviet Union reduces salmon quotas for 1988 or 1989 by more than 10 percent from the 1987 quota. Any permit issued under this part must indicate the measures by which the permit holder must comply with the conditions attached to the permit, and the reporting requirements of paragraph (d)(5)(v) of this section. Any permit issued under this part may allow retention of marine mammals for scientific purposes and will not require a separate permit under paragraph (d)(5)(iv).

[FR Doc. 87-12106 Filed 5-27-87; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 52, No. 102
Thursday, May 28, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Part 382

[Docket No. 44935; Notice No. 87-9]

### Nondiscrimination on the Basis of Handicap in Air Travel

**AGENCY:** Department of Transportation (DOT), Office of the Secretary (OST)

**ACTION:** Notice of establishment of advisory committee for regulatory negotiation and notice of first meeting.

**SUMMARY:** The Department of Transportation is announcing the establishment of an advisory committee to develop a report including a recommended rulemaking proposal concerning nondiscrimination on the basis of handicap in air travel. The rulemaking would implement the Air Carrier Access Act of 1986. The committee will adopt its recommendation through a negotiation process. The committee is composed of persons who represent the interests affected by the rules. This notice also announces the time and place of the first advisory committee meeting, which will be open to the public.

**DATE:** The first meeting of the advisory committee will begin at 9:30 a.m. on June 3–4, 1987.

**ADDRESS:** The first meeting of the advisory committee will be held in the 10th Floor Conference Room of the Paralyzed Veterans of America offices, 801 18th st., NW., Washington DC 20006. Subsequent meetings will be held at locations to be announced.

**FOR FURTHER INFORMATION CONTACT:** *DOT Contact*: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington DC 20590., Telephone 202–366–9306 (voice); 202–755–7687 (TDD). *Convenor/Mediator*: Eileen Hoffman, District Director, Federal Mediation and Conciliation Service, 2100 K. St., NW., Room 213, Washington DC 20427. Telephone (202) 653–5390.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 23, 1987, the Department of Transportation published a notice of intent to establish an advisory committee for regulatory negotiation to develop a report including a recommended rulemaking proposal concerning nondiscrimination on the basis of handicap in air travel (52 FR 5467). The resulting rule would implement the Air Carrier Access Act of 1986. The notice requested comment concerning the membership of the committee, the issues it should consider, the interests affected by the rulemaking, and the procedures that should be followed by the committee.

The Department received over 60 comments on the notice of intent. None of the comments opposed using regulatory negotiation for this rulemaking, most explicitly endorsed regulatory negotiation, and many were requests to serve on the advisory committee. There were also a number of form letters from individuals requsting that public hearings be held. Based on this response, and for the reasons stated in the notice of intent, the Department has determined that establishing an advisory committee for regulatory negotiation on this subject is necessary and in the public interest. Accordingly, the Department has established an advisory committee for regulatory negotiation on nondiscrimination on the basis of handicap in air travel.

### Mediators

In the notice of intent, the Department said that it was seeking an impartial mediator to conduct the negotiations. The Department is pleased that the Federal Mediation and Conciliation Service (FMCS) has agreed to provide mediators for this purpose. Additional mediation personnel may be furnished through the FMCS during the course of the regulatory negotiation.

### Membership and Interests to be Represented

The members of the advisory committee are the following:

Air Transport Association (ATA)
Airport Operators Council International/American Association of Airport Executives (AOCI/AAAE)
American Council of the Blind (ACB)
Architectural and Transportation Barriers Compliance Board (ATBCB)
Association of Flight Attendants (AFA)
Department of Transportation (DOT)
Paralyzed Veterans of America (PVA)
National Air Carrier Association (NACA)
National Air Taxi Association (NATA)
National Association of Protection and Advisory Systems (NAPAS)
National Association of the Deaf/National Center for Law and the Deaf (NAD/NCLD)
National Council of Independent Living (NCIL)
National Federal of the Blind (NFB)
Regional Airline Association (RAA)
Society fo the Advancement of Ttravel for the Handicapped (SATH)

The Department regrets being unable to accommodate all requests for membership on the advisory committee. Several factors, which were mentioned in the Department's notice of intent, have impelled the Department's decision not to add more members.

In order to keep the committee to a size that can negotiate effectively, it is necessary to limit membership. It is also desirable to have balance among the members of the committee representing different clusters of interests, such as disabled persons and the air travel industry. In addition, it is not essential that every concerned organization is represented, so long as every interest involved is represented by an appropriate organization. The committee membership identified above provides representation for each interest affected by issues to be discussed.

The following is a summary of the Department's disposition of suggestions for additional membership on the committee:

One commenter suggested that Americans Disabled for Accessible Public Transportation (ADAPT), an advocacy group of persons with mobility disabilities, should be a member of the committee. (The ADAPT organization itself, however, did not request membership). We believe that the interests of persons with mobility disabilities are represented adequately on the committee by PVA and NCIL.

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Consequently, another organization representing this interest is not required.

Self-Help for Hard of Hearing People, Inc. (SHHH) suggested that hard of hearing persons, as distinct from deaf individuals, were a separate interest that should be represented. While there are undoubted differences between the situations of hard of hearing and deaf individuals, the Department believes that there are substantial enough similarities between the two populations that identifying hard of hearing persons as a separate interest is unnecessary for purposes of this negotiation. The Department believes that NAD can adequately represent the interests of persons in both categories. SHHH or other persons or organizations can work through NAD to present the point of view of hard of hearing persons.

The Port Authority of New York and New Jersey and the Los Angeles Department of Airports indicated their interest in membership. The interests of airport operators are being represented through the AOCI/AAAE representative, and we do not believe that separate representation from individual airports is needed. The Department believes that individual airports can present their views through the AOCI/AAAE representative on the committee.

Clayton Travel, a travel agency working with disabled travelers, volunteered to participate. So did Donald Davidson, a Seattle attorney who does not belong to disability organizations and is a frequent traveler. However, the interest that would be represented by these parties is adequately represented on the committee by SATH.

The Florida Coordinating Council on the Transportation Disadvantaged asked to be a member of the committee. From its comment, this group appeared to be particularly interested in the situation of blind air travelers. The Department believes that this interest, however, is represented by ACB and NFB, and another representative is not required.

The Coalition of Texans with Disabilities asked to be a member of the committee, saying that it represented the interests of disabled persons living outside the Washington, DC area. The Coalition appears to represent persons with types of disabilities represented by various groups which are members of the committee. These groups are national in scope; while the headquarters offices of some of them may be located in Washington DC, they represent persons living in all parts of the country.

ATA and Southwest Airlines (SWA) recommended that representatives of organizations concerned with flight safety, such as the Flight Safety Foundation, the Federal Aviation Administration's (FAA) Office of Flight Safety, or individual experts in this field, be made members of the committee. While safety issues are involved in this rulemaking, the air travel industry representatives on the committee, with their obvious strong interest in flight safety, are fully capable of addressing these issues. In doing do, they or other members are free to draw on the expertise of organizations like the Flight Safety Foundation or individual experts to assist them. In addition, FAA is part of DOT, and DOT will make use of FAA's expertise in safety matters during the course of the negotiations.

SWA also asked to be a member of the committee, as a representative of airlines not belonging to ATA. The Department's notice of intent had mentioned airlines not represented by ATA as a potential interest to be represented on the committee. In a previous regulatory negotiation, concerning FAA's flight and duty time rulemaking, ATA and non-ATA carriers had distinguishable interests which warranted separate representation. In this case, however, the Department has concluded that the interests of ATA and non-ATA airlines are not likely to have enough substantive differences concerning treatment of disabled passengers to make separate representation necessary. The comments of ATA and SWA to the docket for the notice of intent made very similar substantive points, strengthening the Department's view that the interests of ATA and non-ATA airlines are not so distinct as to require a non-ATA carrier as a member of the committee.

We are aware that, in some respects, SWA's passenger-handling policies may differ from those of other airlines. We do not believe that these differences, however, make SWA's interest sufficiently distinguishable from those of carriers belonging to the ATA. There are differences between groups representing persons with different kinds of disabilities; it has not been possible to have all of them as members of the committee (see discussion, below, of the representation of persons with "hidden disabilities"). These consideration apply to air travel industry organizations as well. While, for these reasons, SWA is not being made a member of the committee, we encourage SWA to make its concerns known to the committee. We encourage SWA and ATA to work together to this end. Like other non-members of the committee, SWA will have the opportunity to participate in the regulatory negotiations in a variety of other ways.

The National Council on the Handicapped (NCH), an independent Federal agency dealing with laws, policies, and programs affecting persons with disabilities, also sought membership. We believe that the Federal government's interest in the rulemaking is adequately represented by DOT and the ATBCB. NCH may provide information and its views to the committee through DOT and the ATBCB.

A number of comments from organizations representing disabled persons suggested that persons with so-called "hidden disabilities" (e.g., epilepsy, heart disease, learning disabilities) should be regarded as a separate interest meriting separate representation in the committee.

From the point of view of constituting an advisory committee, this suggestion poses a number of problems. The specific interests of persons with a wide variety of different kinds of disabilities could not easily be represented by a single organization. The problems faced, or accommodations needed, by persons who must use breathing equipment, persons with learning disabilities, persons with epilepsy, etc. are likely to be too diverse to give rise to what can fairly be thought of as a single interest. Without enlarging the committee to a size that would make effective negotiations difficult, the Department could not include as members organizations concerned about each of the "hidden disabilities."

In its comment, the Epilepsy Foundation asked that when issues arose that are specific to epilepsy, the Foundation be given the opportunity to provide information and assistance to the committee. The Department believes that participation of this kind by organizations concerned about a particular "hidden disability" could be helpful. If questions about how to accommodate persons with "hidden disabilities" come up during the negotiations, members of the committee will be free to call on experts or representatives of organizations to provide information and views to the committee. Interested persons and organizations will also have the opportunity to provide input to the committee on their own initiative. Cross-disability groups represented on the committee (e.g., NCIL, SATH, NAPAS) would be appropriate parties through whom information and views concerning persons with "hidden

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disabilities" could be communicated to the committee.

The National Association of the Deaf suggested that individuals who are both blind and deaf are a separate interest that should be represented. Communication with deaf/blind individuals is likely to present problems not involved with respect to sighted deaf individuals or blind individuals who can hear. Nevertheless, the numbers of deaf/blind individuals traveling unaccompanied by air appears to be relatively small and the interests of deaf/blind individuals can be represented adequately by the combined efforts of representatives of organizations of blind and deaf individuals, respectively. While the Department does not believe that deaf/blind individuals should be regarded as a separate interest for purposes of the negotiation, persons with specific expertise concerning deaf/blind individuals will have the opportunity to provide information and views to the committee. The Helen Keller National Center has offered its assistance in this regard.

One commenter suggested that aircraft manufacturers might have an interest in the proceeding (i.e., concerning the physical accessibility of aircraft). No manufacturers or organizations representing them asked to be part of the committee. Moreover, to the extent that the airlines are not able to provide necessary information about such issues as physical accessibility of aircraft, the committee can contact manufacturers during the negotiations. In general, it is the Department's understanding that manufacturers can design any reasonable feature to better accommodate persons with disabilities in aircraft which an air carrier orders.

The Department points out that the committee may, by consensus decision, recommend that the Secretary appoint additional members to the committee if the committee believes that representation of additional interests is warranted.

**Participation by Non-Members**

It is important to keep in mind that participation in the rulemaking process is not limited to members of the advisory committee. Negotiation sessions of the committee are open to the public, and interested persons can observe the negotiations and communicate their views, in an appropriate time and manner, to members of the committee. Members of the public will have an opportunity to address the committee on issues of interest to them and the committee. Members of groups or individuals who are not members of the committee itself may have the opportunity to participate with working groups of the committee. The Department believes that participation of this kind can be very valuable for the rulemaking process. Of course, all interested persons will have the opportunity to comment on the proposed rule resulting from the committee's deliberations.

In addition to comments from parties wanting to participate as members of the committee, the Department received offers of assistance from various individuals and groups (e.g., the International Air Transport Association). We thank these commenters for their efforts, and the committee will call on them for assistance as needed. We also encourage organizations that have offered to participate or assist to have representatives attend the committee meetings to that they can make their information or views available to those representing their interests or to address the entire committee when the opportunity is provided.

**Major Issues**

Most commenters who mentioned the list of potential issues in the Department's notice of intent appeared to think that it was a reasonable starting point for the committee's discussions. Several commenters stressed that this list of issues should not be viewed as exhaustive or exclusive, and that the committee needed the discretion to consider other issues as they arose. The Department fully agrees with these comments. Commenters also suggested various specific subjects (e.g., treatment of blind/deaf passengers, how to respond to requests for assistance by disabled passengers, training and intra-carrier consistency of administration) that they thought should be discussed. The Department believes that the negotiation process should be open to discussion about these or any other relevant matters the committee may want to discuss.

ATA and SWA expressed concern about the propriety of discussing issues concerning carrier practices (e.g., refusal of service, requirements for attendants, provision of wheelchairs or other equipment) and charges for assistance to disabled passengers. For carriers to agree on such price and service matters, they said, could cause problems under the antitrust laws. Consequently, they asserted that the Department should exclude these issues from consideration, agree that it was appropriate for carrier representatives to abstain from discussions on these subjects, or cast the discussions on these subjects as leading only to voluntary options from which carriers could choose.

Carrier practices are at the heart of this rulemaking. A rule on this subject that failed to address carrier practices would not, in our view, adequately implement the Air Carrier Access Act of 1986. The Department is not asking carriers to agree upon common practices that they would implement, but rather to a recommendation to the Department concerning a regulation with which all carriers would have to comply. The actual imposition of regulatory requirements by the Department, after notice and public comment, would be the Department's action, not that of the carriers.

We emphasize that the Department does not intend for carriers to agree on common practices concerning the carriage of disabled passengers. Rather, we are seeking a consensus recommendation concerning a regulation with which, if adopted, all carriers would have to comply. Uniform compliance with a regulation issued in conformance with the Administrative Procedure Act is not a violation of the antitrust laws.

SWA also said that the negotiation should not address a matter which is currently the subject of a DOT administrative enforcement proceeding; i.e., SWA's policy of prohibiting deaf/blind individuals from traveling without an attendant. The Department's independent enforcement office challenged this practice as inconsistent with the existing 14 CFR Part 382, and a hearing before a DOT administrative law judge on the matter was held last year. The judge's initial decision, which found in favor of SWA, was rendered April 21, and is currently under review in the Department.

The regulatory negotiation will not address the merits of the administrative enforcement case in any way. That case deals solely with the issue of whether SWA's practice violates the existing 14 CFR Part 382. The regulatory negotiation, by contrast, concerns what regulatory provisions the Department should promulgate to implement the Air Carrier Access Act of 1986. To ensure that the enforcement case and the regulatory negotiation are kept separate, the individuals who act as the Department's representatives on the advisory committee will play no role in any further proceedings in the enforcement case.

Whether there should be a regulatory provision that directs airlines to treat blind/deaf passengers in a certain way in the future could be an appropriate

subject for the committee to discuss. This discussion about future regulatory requirements would have nothing to do, however, with the Department's ultimate determination of whether Southwest's current practice is consistent with 14 CFR Part 382 as it now exists.

Several comments from groups representing disabled persons mentioned that the Air Carrier Access Act of 1986 contained a definition of "handicapped individual," which could not be altered by regulation and consequently was not an appropriate subject for the committee to discuss. It is true, of course, that regulations cannot amend statutes. Nevertheless, while the Department cannot change this definition, the committee may wish to discuss matters related to this definition (e.g., elaborations of the definition of "handicapped individual" or a definition of "qualified handicapped individual," such as are found in many rules implementing section 504 of the Rehabilitation Act of 1973 [see, for example, 49 CFR 27.5]). With this qualification, the Department agrees with this comment.

**Procedures**

A number of commenters discussed procedural aspects of the regulatory negotiation. PVA and other groups representing disabled persons said that the sessions should be held in accessible facilities, with sign language interpreters and braille transcriptions of documents provided. The Department agrees with these comments and will take appropriate steps to ensure that the negotiations are held in a way that enables all members, including those with disabilities, to participate.

The Department requests that any persons needing a sign language interpreter to participate in the first negotiating session (or in the orientation session to be held on the day before the first negotiating session) please contact Robert Ashby (see "For Further Information Contact" for address and phone numbers) no later than June 1, 1987.

Many of these same commenters also suggested that the Department should provide sufficient financial support to permit participation in meetings held outside of Washington, DC. The Department contemplates that all negotiation sessions will be held in Washington, DC. The Department does not expect to be able to provide funds for travel outside of Washington, DC, given the limited funds available to the Department.

PVA, NFB, NCIL, NCH and several other organizations and individuals requested that public hearings be held in conjunction with this rulemaking. NFB suggested the hearings should be held early in the process, before negotiations on substantive issues. PVA, NFB, and NCIL suggested that the hearings should take place during the comment period on the NPRM resulting from the committee's recommendations.

The Department does not believe it appropriate to make any determination, at this time, concerning whether or when to hold public hearings. The Secretary can consider recommendations made by the Committee concerning this matter. The Department's ability to conduct hearings is, of course, subject to the availability of funds for this purpose.

ATA suggested that a good record should be kept of the committee's deliberations. We agree, and we will make a DOT staff member available to take notes and circulate minutes of the sessions, consistent with requirements under the Federal Advisory Committee Act. In addition, ATA suggested that the committee should not draft an NPRM, but rather make suggestions from which DOT drafters would write the NPRM. DOT will provide drafting assistance to the committee, and the committee may also choose to designate other individuals to perform drafting tasks.

The objective of the negotiation, in the Department's view, is to produce a report recommending to the Department a course of regulatory action, including a draft NPRM on which the committee has achieved consensus. This approach is consistent with the recommendation of the Administrative Conference of the United States (ACUS) on regulatory negotiation, paragraph 11 of which suggests that the committee's report to the agency include its proposed rule.

PVA, NCIL and NAD commented on the question of how the Department should deal with an impasse in the negotiations, should one occur. The notice of intent said that, in the event of an impasse, the Department could dissolve the committee and issue an NPRM on its own. The commenters suggested that, even if the Department had to publish an NPRM on its own because of an impasse in the committee, the Department should not dissolve the committee. Rather, the Department's NPRM should make use of whatever the committee had agreed on before the impasse and the Department should reconvene the committee in order to evaluate comments to the NPRM.

The Department finds merit in the suggestion that agreed-upon items should be placed in the NPRM, and we will do so if necessary. The Department's schedule, set forth below, provides time for the reconvening of the committee to consider comments to the NPRM. We emphasize, however, that we believe that the committee should concentrate its efforts on the goal of writing a new regulation on the basis of consensus, with the primary focus on the effort to mutually and cooperatively fashion the proposed regulation. If that goal is accomplished, then the task of responding to comments may be made substantially easier.

**Schedule**

In view of the Congressional time frame for implementation of the Air Carrier Access Act of 1986 and the importance of not letting the negotiation process take an unreasonably long time, the Department proposed, in the notice of intent, a schedule calling for the production of an NPRM by August 1987 and of a final rule by January 1988. Commenters from both disability community and airline industry organizations expressed concern that this schedule was too tight.

ATA said that the proposed schedule was too ambitious and that the Department should allow six to nine months to produce an NPRM. SWA thought that 9–12 months was needed for the entire process. NCH thought there was more time needed at the beginning and end of the process, and NCIL said that it thought the schedule was too tight. NFB commented that the idea of a cutoff date for negotiations was counterproductive, saying that the process should be left open-ended.

The Department concedes that its proposed schedule is an ambitious one. We continue to believe, however, that a schedule is an important tool for encouraging serious and expeditious negotiations by all parties. In addition, the Congressional and Departmental interest in expediting implementation of the Air Carrier Access Act of 1986 provides a strong reason to avoid setting too slack a schedule for the process.

Just as a strike deadline can be an important incentive to agreement in a labor-management negotiation, so we believe that a cutoff date for agreement can be an important incentive for agreement in a regulatory negotiation. A party is less likely to prolong the negotiations unnecessarily, especially if it perceives an advantage to delaying the Department's implementation of the Air Carrier Access Act of 1986, if it knows that, absent agreement by a certain date, the Department will publish its own NPRM or final rule. (See paragraph 4(a) of the ACUS recommendation.)

At the same time, the Department is aware that some scheduling flexibility

may be needed in view of the complexity and difficulty of the issues involved in the rulemaking. Consequently, if agreement has not been reached by the cutoff date, and the committee agrees that good progress is being made toward agreement, the committee could make a consensus recommendation to the Secretary that the deadline be extended for a specific, reasonable period. The schedule is deliberately "front-loaded," emphasizing the Department's view of the importance of the committee's achieving consensus before the publication of an NPRM.

The following schedule is established for the regulatory negotiation process:

Completion of negotiations for NPRM: November 6, 1987
Publication of the NPRM: December 7, 1987
End of comment period and beginning of negotiations on final rule: February 5, 1988
Conclusion of negotiations on final rule: March 31, 1988
Publication of final rule: April 30, 1988

The negotiation and rulemaking process would otherwise proceed as described in the notice of intent, subject to modification by committee consensus (e.g., the notice of intent suggested a two days every two weeks schedule for meetings, which the comittee could modify as a consensus of members thought appropriate).

On the day before the first day of negotiations, the Department is sponsoring an orientation session for committee members. The session, which is not mandatory but which the Department urges all members to attend, will focus on successful approaches to negotiation. Chris Kirtz of the Environmental Protection Agency (EPA), which has had a number of successful regulatory negotiations, will lead the session.

Communications to committee members concerning advisory committee matters should be addressed to:

(Name of Member), Regulation Negotiation Advisory Committee, Department of Transportation, Office of General Counsel (C–50), 400 7th Street, SW., Room 10424, Washington DC., 20590.

The first meeting of the advisory committee is scheduled for 9:30 a.m. on June 3, 1987, at PVA's headquarters. The meeting will be open to the public; however, only the listed parties may participate as members. Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the Federal Register if time permits; however, published notice may not be possible in all cases. For example, the first meeting may continue for several days, break for a few days, and then resume.

Issued this 13th day of May, 1987, at Washington, DC.

Elizabeth Hanford Dole,
*Secretary of Transportation.*

[FR Doc. 87–12284 Filed 5–27–87; 8:45 am]
BILLING CODE 4910–62–M

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

[Release No. 33–6713; 34–24485; File No. S7–18–87]

### Short Sales in Connection With a Public Offering

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** Pursuant to a petition for rulemaking filed by the National Association of Securities Dealers, Inc. ("NASD"), the Commission is proposing for public comment Rule 10b–21 under the Securities Exchange Act of 1934 proscribing certain short sales in connection with a public offering of securities. Generally, proposed Rule 10b–21 would prohibit a person who effects short sales of an equity security during the period between the filing of a registration statement relating to the same class of equity securities and the commencement of the distribution of such equity securities, from covering such short sales with securities purchased from an underwriter or other broker or dealer participating in the offering of such securities.

**DATE:** Comments should be submitted on or before July 27, 1987.

**ADDRESS:** Interested persons should submit six copies of their written data, views, and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and should refer to File No. S7–1887. All submissions will be made available for public inspection at the Commission's Public Reference Room, Room 1024, 450 Fifth Street NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Burke or Invette Lopez, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549. (202) 272–2848.

**SUPPLEMENTARY INFORMATION:**

### I. Summary

In response to a petition for rulemaking filed by the NASD ("Petition"),[1] the Commission is publishing for public comment a proposal to adopt Rule 10b–21 ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act").[2] The proposed Rule is intended to prevent manipulative short selling of securities in anticipation of a public offering [3] of the same securities.

The NASD's concern relates to the practice of short selling prior to a public offering which results in a decrease in the price of the security prior to the offering date and consequently a lower offering price. The sellers are then able to cover their short sales and realize a profit purchasing securities in the offering at the reduced price. Because of the availability of securities at a fixed price from the offering, the risks entailed in covering those short sales are reduced substantially. The NASD believes that this result adversely affects issuers in that the decrease in price deprives the issuer of offering proceeds that would have been realized had the market not been subject to such short selling.[4]

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[1] The Petition was filed with the Commission on June 12, 1986 pursuant to section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), and Rule 4(a) of the Commission's rules of practice, 17 CFR 201.4(a), and is publicly available in File No. S7–1887 in the Commission's Public Reference Room.

[2] 15 U.S.C. 78a *et seq.*

[3] The Petition uses the terms "secondary public offering" and "secondary distribution," to indicate that the proposed rule is directed at a public offering of securities by an issuer when such issuer already has outstanding securities of the same class as those being distributed. The Commission notes that the proposed rule does not contain the term "secondary," and believes that the term "public offering" may be more appropriate since "secondary" offerings usually connote offerings by shareholders of previously issued securities, and "distribution" has a specific definition in Rule 10b–6 under the Exchange Act. Accordingly, the term "public offering" is used in this release and in the alternative formulation of the proposed rule included in this release.

[4] In 1972, the Commission published a staff opinion that addressed short selling activities prior to a public offering. Securities Exchange Act Release No 9624 (October 18, 1972). The release observed that such short selling may be "disruptive of fair and orderly markets in the securities" and, where the short sales are intended to depress the market price of the security so that the short position can be covered at a lower price, the activity would violate the anti-manipulation provisions of the Exchange Act.

Short selling schemes of the type sought to be addressed by Rule 10b–21 have been the subject of enforcement action by the Commission as violations of the antimanipulation provisions of the Securities Act of 1933, 15 U.S.C. 77a *et seq.* ("Securities Act"), and the Exchange Act. *E.g.*, J.A.B. Securities Co., Inc. Securities Exchange Act Release No 15948 (June

Continued

As described below, the Commission in the past has proposed three different versions of Rule 10b–21.[6] None of these proposals has been adopted. The Petition and the 1974, 1975, and 1976 Proposals are described below. Interested persons are directed to the relevant proposing releases for a detailed discussion of the Proposals.[6]

**II. Prior Proposals Relating to Rule 10b–21**

*A. The 1974 Proposal*

The 1974 Proposal would have prohibited any person who had outstanding an indication of interest to purchase or proposed to purchase securities in a secondary offering[7] of securities from selling short securities of the same class of the same issuer until after the registration statement had been declared effective or until the initial offering of securities under Regulation A had been made. This proposal also would have prohibited any person (other than specialists, odd-lot dealers, market makers, and *bona fide* or risk arbitrageurs) who effected a short sale within five days of the effective date of the registration statement relating to a secondary offering of the same class of security (or within five business days prior to the date of the initial offering of securities in a Regulation A offering) from covering such short sale until the earlier of five business days following the effective date of the registration statement (or the initial sale in the Regulation A offering), or the completion of the offering, whichever occurred first.

*B. The 1975 Proposal*

In response to the comments on the 1974 Proposal, that proposal was effectively withdrawn and, in addition to clarifying changes, the 1975 Proposal eliminated the first prohibition of the 1974 Proposal (short sales by persons with outstanding indications of interest) and restricted the proposed rule to offerings of equity securities for cash. The 1975 Proposal would have prohibited a person who had effected a short sale within 10 business days prior to the commencement of an offering covered by a registration statement or a notification on Form 1–A from making covering purchases from any underwriter or broker participating in the offering. In addition, if the short sale was effected within five business days of the commencement of the offering, the proposed rule would have prohibited covering purchases prior to the earlier of five business days after the commencement of the offering or the completion of the offering. Both prohibitions governing covering purchases would have extended to a short sale of a security of the same class as the offered security, and to the purchase, within the specified period, of a security convertible into or exchangeable for, a security of the same class as the security being offered.

The 1975 Proposal would have exempted from the rule's prohibitions *bona fide* arbitrage transactions (as defined in paragraph (c) of the proposed rule), and transactions by specialists, odd-lot dealers, and market makers who had submitted bid and ask quotations on a specified number of days preceding the commencement of the offering.

*C. The 1976 Proposal*

The 1976 Proposal represented a different regulatory approach. Rather than prohibit purchases to cover short sales made within a certain period, the 1976 Proposal would have imposed a "tick test" on short sales of securities of the same class as those being offered. The "tick test" would have applied during a pre-offering period specified by the rule, and continued until the termination of post-offering stabilization arrangements. In summary, the 1976 Proposal would have regulated short sales effected within 10 business days before the commencement of and during the offering, while the 1975 Proposal would have regulated covering purchases for short sales effected within 10 business days before the commencement, and for a maximum of five business days after commencement of the offering.

In the 1976 Proposal, the Commission proposed that, for exchange traded securities, the "tick" provisions of Rule 10a–1 under the Exchange Act[8] be the regulatory control of short selling, reasoning that Rule 10a–1 prevented persons from selling short at successively lower prices (or from exhausting bids at a particular price unless effected on a "plus" or "zero plus" tick), thus providing sufficient protection for exchange-traded securities from short selling activities prior to the commencement of an offering.[9]

The 1976 Proposal also established a "tick test" for over-the-counter ("OTC") securities where the problem of pre-offering short selling was claimed to have been most prevalent. The new "tick test" would have prohibited short sales prior to and during offerings covered by the rule at a price below a price ⅛ point above the highest independent bid reflected in Level 2 of the National Association of Securities Dealers Automated Quotation System ("NASDAQ") at the time the short sale was made.

The restrictions on short selling would have extended from the tenth business day preceding the expected offering date (required to be established and publicly announced by the managing underwriter or issuer) until the close of business on the day trading restrictions and stabilization arrangements among underwriters had terminated. The 1976 Proposal also contained exemptions similar to those contained in the 1975 Proposal for *bona fide* arbitrage transactions, and for transactions by specialists, odd-lot dealers, and certain qualified market makers.

**III. The NASD Petition**

In its Petition, the NASD urges the Commission to utilize its authority under sections 10 and 23 of the Exchange

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28, 1979); A.P. Montgomery & Co., Inc., Securities Exchange Act Release No 10859 (July 9, 1974).

The Commission has also cautioned that "any person intending to purchase securities in any registered secondary offering should be on notice that his selling short the same securities prior to the offering may be subject to the registration requirements of section 5 of the Securities Act (15 U.S.C. 77e), as well as other applicable statutes and rules." Securities Exchange Act Release No 10631 (February 11, 1974). *Accord*, Securities Exchange Act Release No 11327 n.1 (April 2, 1975) and 9624 (October 18, 1972).

[6] Securities Exchange Act Release No 10636 (February 11, 1974), 39 FR 7808 ("1974 Proposal"); Securities Exchange Act Release No 11328 (April 2, 1975), 40 FR 16080 ("1975 Proposal"); Securities Exchange Act Release No 12662 (December 21, 1976), 41 FR 56845 ("1976 Proposal").

[6] Summaries of the comment letters received in response to the 1975 and 1976 Proposals have been prepared by the Commission's staff and are available, together with the comment letters, for public inspection in File No. S7–1697 in the Commission's Public Reference Room.

[7] As used in the release relating to the 1974 Proposal, "Secondary offering" referred to "registered offerings of securities for which there already exist trading markets for the same class of securities as those being offered." Securities Exchange Act Release No 10636 n.1 (February 11, 1974). The proposed rule would have applied to securities offered pursuant to the registration statement filed pursuant to the Securities Act or pursuant to a notification filed on Form 1–A of Regulation A. 17 CFR 239.201 to 239.204.

[8] 17 CFR 240.10a–1.

[9] Rule 10a–1 applies to exchange traded securities whose last sale information is reported on a real-time basis pursuant to an "effective transaction reporting plan" as defined in Exchange Act Rule 11Aa3–1, 17 CFR 240.11Aa3–1. The 1976 Proposal was drafted in light of the Commission's investigation and proceeding to determine whether to suspend in part the operation of Rule 10a–1. See Securities Exchange Act Release No. 13091 (December 21, 1976), 41 FR 55808, publishing for public comment proposed temporary Rules 10a–3(T)[A], 10a–3(T)[B] and 10a–3(T)[C] under the Exchange Act. If Temporary Rule 10a–3(T) had been adopted, the 1976 Proposal would have retained the provisions of Rule 10a–1 during the pre-offering and offering periods of securities that were the subject of underwritten offerings for cash. Temporary Rule 10a–3(T) was never adopted.

Act [10] to adopt a rule that would prohibit any person from directly or indirectly purchasing out of a public offering to cover a short sale which was executed after the registration statement was filed. Specifically, the proposed rule would prohibit a person who effects one or more short sales of equity securities of the same class as securities distributed for cash pursuant to a registration statement filed under the Securities Act or pursuant to a notification on Form 1–A [11] under the Securities Act, from directly or indirectly covering such short sale or sales with securities purchased from an underwriter or broker or dealer participating in such public offering, if such short sale or sales took place between the filing date of the registration statement and the commencement of such public offering.

The NASD urges the Commission to regulate only those covering purchases made out of the public offering to avoid affecting the operation of the market for the securities already outstanding. Since covering short sales in the open market exposes the short seller to the risk that securities to cover the short sale will not be available in the amount required, or will be priced away from the public offering price, the NASD believes that such short sales and covering purchases should not be restricted by the Rule.

The NASD recently has addressed a number of matters relating to short selling activity. For example, in the Fall of 1985, the NASD retained former Commissioner Irving M. Pollack to conduct a comprehensive study of short selling practices in the OTC securities market. The report of the study was published in July 1986,[12] and endorsed the NASD's Petition regarding Rule 10b–21.[13]

In 1986, the Commission approved amendments to the NASD Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities ("Interpretation") and Article III, section 21, of the NASD Rules of Fair Practice ("Rules of Fair Practice").[14] The amended Interpretation prohibits an NASD member from accepting a short sale order from a customer unless the member makes an affirmative determination that it will receive delivery of the security from the customer or that the member can borrow the security on behalf of the customer for delivery by settlement date. The amendment to the Rules of Fair Practice requires that each order ticket for sale by a customer be marked "long" or "short." An order may be marked "long" only if (1) the customer's account is "long" the security, or (2) the member is informed that the customer owns the security and will deliver it as soon as possible without undue inconvenience or expense. If neither condition is satisfied, the order must be marked as a "short" sale.[15] Commentators may wish to address the extent to which these amendments may facilitate the implementation of Rule 10b–21, if adopted.[16]

## IV. General Request for Comment

Any persons wishing to submit written comments on the proposed Rule, the Initial Regulatory Flexibility Analysis,[17] or the Cost-Benefit Analysis,[18] or wishing to suggest additional changes or submit comments on other matters that might have an impact on the proposal contained herein, are requested to do so.

In addressing the proposal, commentators are specifically requested to direct their attention to certain areas. The Commission believes that certain drafting changes may improve the NASD proposal. Accordingly, an alternative formulation of the proposed rule is presented which: (1) Reflects the scope of the Commission's authority to promulgate the rule by substituting the phrase "it shall be unlawful" for the proposed references to section 10(b) of the Exchange Act;[19] (2) deletes paragraph (b) of the proposed rule since it is virtually identical to the definition of "short sale" contained in Rule 3b–3 under the Exchange Act;[20] and (3) inserts the term "offered securities," since the Commission understands the NASD's Petition to be addressed only to covering purchases involving the securities that are offered pursuant to a registration statement or Form 1–A. Without this restriction, it is unclear how short sellers in exchange-traded securities could cover in the secondary market without risking inadvertently violating the Rule through effecting a transaction with an underwriter or member of the selling group. The addition of the term is also intended to indicate that the restrictions of the proposed rule would terminate when the offering is completed. Commentators are asked to address whether this alternative is preferable to the formulation proposed by the NASD.

Comment is also requested regarding the extent of the short selling activity which the Rule proposes to proscribe [21] and the impact of such selling on the costs to issuers of completing an offering. Where possible, the Commission would appreciate specific examples of offerings where manipulative short selling may have occurred. The Commission asks commentators to address whether or not any efficiency gain from the proposed rule will be offset by losses due to reduced ability of market participants to cover short sales made in advance of offerings of securities.

In particular, the Commission would be in terested in statistical studies demonstrating the extent to which short selling prior to public offerings creates the problems cited in this relese.[22] Appropriate studies could, for example, consider the extent to which net of market returns at the time of an offering are explained by factors such as the pressure of short selling and the informational content of the announcement of the offering. The Commission also is interested in whether there exists a systematic trend

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[10] 15 U.S.C. 78j and 78w.

[11] 17 CFR 230.00. Form 1–A is used in connection with offerings made pursuant to Regulation A under the Securities Act. 17 CFR 230.251–230.264.

[12] "Short-Sale Regulation of NASDAQ Securities" (July 1986) ("Report").

[13] Report at 37–38.

[14] Securities Exchange Act Release No. 23572 (August 28, 1986), 51 FR 31886 (September 5, 1986).

[15] *See* NASD Notice to Members 86–69 (October 10, 1986).

[16] These provisions apply to NASD members only. Rule 10b–21, however, would apply to all persons engaging in short sales of securities subject to the Rule. The Commission notes in this regard that the Rule is proposed to be adopted pursuant to section 30(a) of the Exchange Act, 15 U.S.C. 78dd(a), in addition to other provisions, which makes it unlawful for any broker or dealer to directly or indirectly effect transactions on foreign securities exchanges in the securities of U.S. issuers in contravention of any rules that the Commission may adopt for the protection of investors or to prevent evasion of the Exchange Act. *See* Schoenbaum v. Firstbrook, 405 F.2d 200, 207 (2d Cir.), reversed on other grounds en banc, 405 F.2d 215 (2d Cir. 1968), cert. denied sub nom. Manley v. Schoenbaum, 395 U.S. 906 (1969).

[17] *See* section V *Infra*.

[18] *See* section VI *Infra*.

[19] As with virtually all of the rules under the Exchange Act, proposed Rule 10b–21 would be adopted pursuant to a number of Exchange Act statutory sections. The notational convention of using "10b–" to designate a rule is not a reflection of the scope of the Rule's statutory authority. *See* Securities Exchange Act Release No. 24003 (January 16, 1987), 52 FR 2994, 2998 (January 30, 1987).

[20] 17 CFR 240.3b–3.

[21] For example, the 1975 Proposal would have applied to covering purchases with respect to short sales of a security of the same class as the offered security, and to the purchase of a security convertible into or exchangeable for a security of the same class as the security being offered. Commentators may wish to address whether the Rule should apply to convertible and exchangeable securities.

[22] Several academic studies have examined generally stock price performance at the time of an offering. *See, e.g.*, Smith, *Investment Banking and the Capital Acquisition Process*, 15 J. Fin. Econ. 3 (1986) (citing earlier studies).

for price declines during the period between the filing and the effective time of offerings to be reversed promptly after the offering is made, as well as the significance of the presence or absence of such a trend.

Commentators also are asked to address: (i) Whether proposed Rule 10b–21 is likely to achieve its intended effect of reducing manipulative short selling in contemplation of a public offering, in light of the ability of short sellers to cover in the market and the opportunity for arbitrage by other market participants to provide a market supply of the offered security if the market price exceeds the offering price; (ii) whether it is appropriate to restrict short sellers' abilility to cover in the offering based on their having sold short at any time during the period (possibly several months) between filing of a registration statement and commencement of the distribution, or whether a shorter period would be appropriate; (iii) whether proposed Rule 10b–21 presents any unusual enforcement difficulties; and (iv) whether short sales in contemplation of a public offering are a valuable mechanism for market adjustment to potentially overpriced offerings. The Commission also requests comments on the appropriateness of applying Rule 10b–21 to exchange-traded securities. In particular, commentators may wish to address whether the "tick test" contained in Rule 10a–1 satisfactorily addresses any concerns regarding abusive short selling prior to public offerings of exchange-traded securities. Commentators may also wish to adress the application of the proposed Rule in the context of shelf offerings registered under the Securities Act.[23]

Finally, section 23(a) of the Exchange Act[24] requires the Commission to consider the impact any proposed rules would have on competition. While the Commission is not aware of any competitive impact likely to result from the proposal described in this release, commentators are invited to address that issue.

## V. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed Rule 10b–21. The IRFA uses certain definitions of "small entities" adopted by the Commission for purposes of the Regulatory flexibility Act. The Analysis notes that the proposed rule is designed to prevent manipulative short-selling by market participants in anticipation of underwritten public offerings and that it may address the concerns created by the type of short selling activity described above without affecting open market activities. At this time, the Commission is unable to determine the costs to small entities of complying with the proposed rule. If there is a "significant economic impact on a substantial number of small entities," this impact would not appear to be adverse, since the primary objective of the proposed Rule is to prevent manipulative short selling activities in anticipation of a public offering. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Ivette Lopez, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272–2848.

## VI. Cost-Benefit Analysis

The proposed rule could have the cost of reducing the ability of market participants to sell short in advance of offerings that they believe to be overpriced, resulting in an increased incidence of such offerings. Any significant economic impact may be balanced by the benefits derived from preventing manipulative short selling activities in anticipation of a public offering. Presumably, the proceeds from such offerings will not be diminished because of a decrease in price of the security resulting from a market subject to manipulative short selling.

In order to evaluate the costs and benefits associated with the Rule, as indicated in the general rquest for comment, the Commission wishes to obtain information on specific examples of offerings where short selling in advance of a public offering may have occurred, the results of such sales, the extent of the short selling activity that would be prohibited by the Rule, and the economic impact of such activities on the issuers and the investing public.

## List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities, Issuers, Fraud.

## Statutory Basis and Text of Proposed Rule

The Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations to read as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation.

**Authority:** Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w, * * * § 240.10b–21 also issued under Secs. 2, 3, 9(a)(6), 10(a), 10(b), 15(c), 23(a), and 30(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), 78w(a), and 78dd(a).

2. By adding new text of § 240.10b–21 to read either as in Alternative A or as in Alternative B as follows:

### Alternative A: NASD Proposal

**§ 240.10b–21 Short selling during public distributions.**

(a) It shall constitute a "manipulative or deceptive device or contrivance" as used in section 10(b) of the Act for any person who effects one or more short sales of equity securities of the same class as securities disstributed for cash pursuant to a registration statement filed under the Securities Act of 1933 or pursuant to notification on Form 1–A under such act, directly or indirectly, to cover such short sale or sales with securities purchased from an underwriter or broker or dealer participating in the distribution, if such short sale or sales took place between the filing date of the registration statement and the commencement of such distribution.

(b) The term "short sale" means any sale of a security that the selleer does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller. A person shall be deemed not to own a security unless: (1) The person has title to it; or (2) has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it; or (3) owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (4) has an option to purchase or acquire it and has exercised such option; or (5) has rights or warrants to subscribe to it and has exercised such rights or warrants; provided, however, that a person shall be deemed to own securities only to the extent that there is a net long position in such securities.

(c) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions either unconditionally or on specified terms and conditions as not constituting a

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[23] *See.* Rule 415 under the Securities Act, 17 CFR 230.415.

[24] 15 U.S.C. 78w(a).

manipulative or deceptive device or contrivance comprehended within the purpose of this rule.

**Alternative B**

**§ 240.10b–21 Short selling in connection with a public offering.**

(a) It shall be unlawful for any person who effects one or more short sales of equity securities of the same class as securities offered for cash pursuant to a registration statement filed under the Securities Act of 1933 ("Securities Act") or pursuant to a notification on Form 1–A under the Securities Act ("offered securities"), directly or indirectly, to cover such short sale or sales with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale or sales took place between the filing date of the registration statement or Form 1–A and the date that sales may be made pursuant to the registration statement or Form 1–A.

(b) This rule shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions either unconditionally or on specified terms and conditions.

Dated: May 20, 1987.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–12169 Filed 5–27–87; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 4, 11 and 375

**[Docket No. RM87–6–000]**

### Feeds for Hydroelectric Project Applications To Reimburse Fish and Wildlife Agencies; Notice of Public Hearing

May 21, 1987.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of public hearing.

**SUMMARY:** On March 11, 1987, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking, 52 FR 8463 (Mar. 18, 1987), proposing to establish fees to be paid by an applicant for a hydroelectric project that is required to meet terms and conditions set by the United States Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and State fish and wildlife agencies (State agencies). Under the proposal, applicants would reimburse the FWS, the NMFS, and State agencies for any reasonable costs incurred in setting mandatory terms and conditions. In response to requests from interested persons, the Commission will hold a public hearing.

**DATES:** The public hearing will be held on Monday, June 15, 1987, at 10:00 a.m. Requests to participate in the hearing and the length of time requested should be in writing and should be directed to the Secretary, no later than Thursday, June 11, 1987.

**ADDRESSES:** The hearing will be held at: The Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

The hearing room will be posted on June 15, 1987. Requests to participate and questions regarding participation should be directed to: The Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Fallon, Federal Energy Regulatory Commission, Office of the General Counsel, Rulemaking and Legislative Analysis, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8540.

**SUPPLEMENTARY INFORMATION:** On March 11, 1987, pursuant to section 7(c) of the Electric Consumers Protection Act of 1986 (ECPA),[1] the Commission issued a Notice of Proposed Rulemaking (NOPR)[2] for an informal rulemaking procedure in Docket No. RM87–6–000. The NOPR proposes to establish fees to be paid by an applicant for a hydroelectric project that is required to meet the terms and conditions set by the United States Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and State fish and wildlife agencies (State agencies).

Section 7(c) of ECPA amends section 30 of the Federal Power Act (FPA).[3] Section 30 of the FPA gives authority to the FWS, NMFS, and State agencies to set mandatory terms and conditions for certain types of projects. The NOPR proposes to have applicants, subject to section 30(c) of the FPA, reimburse the FWS, the NMFS, and the State agencies for any reasonable costs incurred in setting these mandatory terms and conditions.

The Commission has received requests for a public hearing from the FWS and the NMFS. These agencies suggest that interested persons should have the opportunity to make oral presentations of their views on the proposed rule. In response to these requests, the Commission is scheduling this public hearing.

The hearing will not be of a judicial or evidentiary type. There will be no cross-examination of persons presenting statements. However, the panel may question such persons and any interested person may submit questions to the presiding officers to be asked of persons making statements. The presiding officers will be K. Kristina Nygaard, Assistant General Counsel for Hydroelectric Licensing; Michael A. Stosser, Assistant General Counsel for Rulemaking and Legislative Analysis; and Fred Springer, the Acting Director of the Office of Hydropower Licensing. The presiding officers will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officers at the hearing. Transcripts of the hearing will be available in the public file for this proceeding, Docket No. RM87–6–000, in the Commission's Office of Public Information, and may be ordered from that office.

Persons participating at the hearing should, if possible, bring 10 copies of their testimony to the hearing. A list of the participants in the hearing will be available in the Commission's Office of Public Information and at the hearing room on the morning the hearing is convened.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–12098 Filed 5–27–87; 8:45 am]

BILLING CODE 6717–01–M

[1] Pub. L. No. 99–495 (Oct. 16, 1986).

[2] 52 FR 8463 (Mar. 18, 1987).

[3] 16 U.S.C. 823a (1982).

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 9

### Minerals Management; Mining and Mining Claims; Extension of Comment Period

**AGENCY:** National Park Service.

**ACTION:** Proposed rule; extention of comment period.

**SUMMARY:** On Friday, April 3, 1987, the National Park Service (NPS) published a proposed rulemaking to clarify the scope of its regulations governing mineral development on mining claims within units of the National Park System and the relationship of these regulations to those governing access in Alaska at 43

CFR Part 36 (52 FR 10666). Although the NPS provided a 45-day period for public review and comment on the proposed rulemaking, several requests have been received for additional time to review the proposal. Therefore, the NPS is extending the comment period for an additional 30 days.

**DATE:** Written comments will be accepted through June 29, 1987.

**ADDRESS:** Comments should be addressed to: Land Resources Division (660), National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol McCoy, Land Resources Division (660), National Park Service, P.O. Box 37127, Washington, DC 20013–7127, 202–523–5120.

Dated: May 21, 1987.

William P. Horn,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87–12115 Filed 5–27–87; 8:45 am]

BILLING CODE 4310-10-M

## VETERANS ADMINISTRATION

### 38 CFR Parts 2 and 21

### Veterans' Job Training; Administrative Review for Employers

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulations.

**SUMMARY:** The Veterans Administration (VA) has several regulations dealing with approval and withdrawal of approval of training programs under the Veterans' Job Training Act. These provide that only the Director of the Veterans Administration's (VA's) Education Service may review a decision concerning approval or withdrawal of approval made by the Director of a VA field station. The regulations also provide that such a decision made by the Director of the VA's Education Service may only be reviewed by the Deputy Chief Benefits Director.

Some employers have sought administrative review by the Board of Veterans Appeals. Some have also sought review of decisions concerning payments made to them under the Act. After careful consideration, the VA has decided that the formal administrative review process should be simplified by providing that the decision on any such questions shall be subject to one review, which shall be by appeal to the Board of Veterans Appeals. The Board's decisions shall be final.

Furthermore, due to an internal reorganization, the Education Service and the position of Deputy Chief Benefits Director no longer exists. This proposal reflects this reorganization.

**DATE:** Comments must be received on or before June 26, 1987.

**ADDRESSES:** Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** June C. Shaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2092.

**SUPPLEMENTARY INFORMATION:** This proposal adds two new sections, 38 CFR 2.66a and 2.99, and amends 38 CFR 21.4622, 21.4624, 21.4632, 21.4634 and 21.4636 to clarify that employers may seek final agency review by direct appeal to the Board of Veterans Appeals of decisions concerning initial or continued approval of job training programs and payments made to employers under the Veterans' Job Training Act, Pub. L. 98–77. The VA is proposing this in order to eliminate unnecessary layers of administrative review and promote uniform decisionmaking. Veterans who are effected by the withdrawal of an approval have the right to appeal to the Board of Veterans Appeals. If the Board of Veterans Appeals is considering a veteran's appeal concerning his or her training program while administrative personnel within the VA's Department of Veterans Benefits, at the request of the veteran's employer, are reviewing a decision to withdraw approval of the training program, for example, the VA risks reaching decisions which may conflict with each other.

The VA has determined that this proposal does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The proposal will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the proposed amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604. This certification can be made because these changes establish a single appellate review process for VA determinations under the Veterans' Job Training Act. Simplifying the Agency's internal administrative review process in this manner will not have a significant impact on any small entity.

The Catalog of Federal Domestic Assistance number for the program affected by these proposed regulations is 64.121.

**List of Subjects**

*38 CFR Part 2*

Authority delegations (government agencies).

*38 CFR Part 21*

Civil rights, claims, Education, Grant programs-education, Loan programs-education, Reporting and Recordkeeping Requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 6, 1987.

Thomas K. Turnage,

*Administrator.*

38 CFR Part 2, *Delegations of Authority* and Part 21, *Vocational Rehabilitation and Education*, are proposed to be amended as follows:

**PART 2—[AMENDED]**

1. Section 2.66a is added to read as follows:

**§ 2.66a. Delegation of authority to the Chairman and Vice Chairman, Board of Veterans Appeals, to assume appellate jurisdiction of decisions concerning approval, disapproval and withdrawal of approval of job training programs under the Veteran's Job Training Act and decisions concerning payments to employers under that Act.**

This delegation is described in § 21.4646(b) of this chapter.

(38 U.S.C. 210, 212(a))

2. Section 2.99 is added to read as follows:

**§ 2.99. Delegation of authority to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Vocational Rehabilitation and Education Service of the Department of Veterans Benefits designated by him or her, to make findings and decisions of the Veterans Administration under Pub. L. 98–77, as amended, and the applicable regulations, precedents and instructions, as to programs authorized by §§ 21.4600 through 21.4644.**

This delegation is described in § 21.4646(a) of this chapter.

(38 U.S.C. 212(a))

**PART 21—[AMENDED]**

3. In § 21.4622, paragraph (b)(5) is added and paragraph (c) is revised to read as follows:

**§ 21.4622 Employer applications for approval.**

* * * * *

(b) *Veterans Administration action upon receipt of the applications.*

* * * * *

(5) While a decision is being made on the employer's application, the employer has the same rights to a hearing as are provided VA claimants in § 3.103(b), (c) and (e). (38 U.S.C. 212(a))

(c) *Appeal of decision not to approve a program.* If an employer disagrees with a decision of a Director of a VA field station or the Director, Vocational Rehabilitation and Education Service not to approve the program, the employer may appeal that decision to the Board of Veterans Appeals. See § 21.4646(b). (38 U.S.C. 212(a))

4. Section 21.4624 is revised to read as follows:

**§ 21.4624 Withdrawal of approval.**

(a) *Approval may be withdrawn.* The Director of a Veterans Administration field station, or the Director, Vocational Rehabilitation and Education Service, as appropriate, may immediately disapprove the further participation in a job training program which has been previously approved when—

(1) The program ceases to meet the requirements of § 21.4620, or

(2) The Director finds that the employer's certification was false, or

(3) The employer refuses to make available to an authorized representative of the Federal Government those records which the employer is required to keep under § 21.4640.

(b) *Notification.* The Director of the Veterans Administration field station or the Director, Vocational Rehabilitation and Education Service, as appropriate, shall notify the employer and all veterans participating in the program that approval is being withdrawn. The notices shall be by certified or registered letter, return receipt requested, and shall include—

(1) A statement of the reasons for the withdrawal of approval, and

(2) Notice of the employer's or veteran's right to appeal to the Board of Veterans Appeals, and the right to a hearing. (Pub. L. 98–77, sec. 11, 38 U.S.C. 212(a))

5. In § 21.4632, paragraph (f) is added to read as follows:

**§ 21.4632 Payments.**

* * * * *

(f) *Disagreement concerning payment.* An employer who disagrees with a decision concerning the payments to that employer under the Veterans' Job Training Act may appeal to the Board of Veterans Appeals. See § 21.4646(b). (38 U.S.C. 212(a))

6. In § 21.4634, paragraph (g) is added to read as follows:

**§ 21.4634 Overpayments.**

* * * * *

(g) *Disagreements concerning overpayments.* An employer who disagrees with a decision concerning an overpayment made to the employer under the Veterans' Job Training Act, may appeal to the Board of Veterans Appeals. See § 21.4646(b). (38 U.S.C. 212(a))

7. Section 21.4646 is revised to read as follows:

**§ 21.4646 Delegations of authority.**

(a) *Delegation of authority to the Department of Veterans Benefits.* In § 2.99 of this chapter the Administrator has delegated authority to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Vocational Rehabilitation and Education Service of the Department of Veterans Benefits, designated by him or her to make findings and decisions under Pub. L. 98–77, as amended, and the applicable regulations, precedents and instructions, as to programs authorized by §§ 21.4600 through 21.4644. (38 U.S.C. 212(a))

(b) *Delegation of authority to the Board of Veterans Appeals.* (1) In § 2.66a of this chapter the Administrator has delegated to the Chairman and Vice Chairman of the Board of Veterans Appeals authority to review on appeal the findings and decisions made under paragraph (a) of this section including—

(i) Approval and disapproval of job training programs,

(ii) Withdrawal of approval of job training programs, and

(iii) Payments and overpayments made to employers.

(2) Sections 19.1 through 19.201 of this chapter apply to this appeal in the same manner as appeals involving benefits as provided in 38 U.S.C. 4004. (38 U.S.C. 212(a))

[FR Doc. 87–12092 Filed 5–27–87; 8:45 am]

BILLING CODE 8320–01–M

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**38 CFR Part 36**

## Loan Guaranty; Use of Credit Reports on Proposed Reamortizations, Claims Under Guaranty and Repurchased Vendee Loans

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulations.

**SUMMARY:** The VA (Veterans Administration) is proposing to amend its regulations to require the submission of credit reports on proposed loan reamortizations and in connection with the filing of claims under the guaranty and the filing of requests for repurchase of vendee loans.

**DATES:** Comments must be received on or before June 26, 1987. The VA proposes to make these regulations effective 30 days after publication as final regulations.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW, Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 10, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, (202) 233–3668.

**SUPPLEMENTARY INFORMATION:** Under the provisions of OMB Circular A–129, Managing Federal Credit Programs, agencies must obtain credit reports in connection with loan applications, loan reschedulings, when vendee loans are repurchased by the Government, and when claims are filed under the guaranty on loans made or guaranteed by the Government. Present regulations authorize VA to require credit reports in connection with loan applications, but not with vendee loan repurchases, claims or rescheduling. These proposed regulatory amendments will authorize VA to require credit reports in connection with vendee loan

repurchases, claims and rescheduling. A credit report would be obtained for each borrower liable on the loan. In cases involving only one borrower, only one report would be obtained.

A loan rescheduling, also referred to as a reamortization, occurs when the borrower(s) and lender agree to a change in the terms of an obligation in order to facilitate repayment. Reamortizations usually involve an increase in the period of time for repayment and a decrease in the monthly or other periodic payment. For example, a 9½ percent loan with a remaining term of 22 years and an outstanding principal balance of $50,000 would require monthly payments of $452.24 to amortize or pay off the loan at the end of the 22 year term. By reamortizing the loan to provide for a 30 year remaining term, the monthly payments would be reduced to $420.43. In some cases, the $31.81 monthly payment reduction can enable a borrower to make the monthly payments and thereby avoid loss of his or her home. When a foreclosure is averted in this manner the Government also benefits in that a claim under the guaranty is avoided. However, in cases where a reamortization would not be sufficient to enable the veteran to save his or her home, it should not be entered into. In these cases, the delay in foreclosure would increase the claim under guaranty and the veteran's resulting debt to the Government for the amount paid on his or her behalf.

The requirements for and limitations on reamortization of VA-guaranteed loans are set forth at 38 CFR 36.4279 and 36.4314. It is proposed to amend these sections to add a specific requirement that the borrower(s) be determined to be a reasonable credit risk at the time of reamortization, as determined by the holder of the loan, based upon a review of the borrower(s) creditworthiness, including a review of a credit report(s) on the borrower(s) by the holder. The holder would also be required to include the credit report(s) in its submission to the Administrator advising of the terms of the reamortization. This added requirement should serve as a further assurance that reamortization agreements will only be entered into when they are likely to be in the best financial interest of the borrower(s), the lender, and the Government as guarantor of the loan.

The costs and expenses which may be included in claims on VA-guaranteed loans are prescribed in regulations at 38 CFR 36.4276 and 36.4313. Amounts paid on claims under the guaranty in most cases constitute a debt owed to the Government by the veteran and/or other borrowers who defaulted on the loan. A credit report(s) obtained at the time of loan termination can assist VA in determining what steps would be appropriate in collecting the debt. It is proposed to amend §§ 36.4276 and 36.4313 to allow the cost of a credit report(s) to be included in the claim. New §§ 36.4316(c) and 36.4283(j) would be added to provide that claims must be submitted in such form and manner as may be prescribed by the Administrator, and must include a copy of a current credit report(s) on the debtor(s). The current § 36.4283(j) would be redesignated as § 36.4283(k). Except for the new requirement for a credit report(s), this change simply describes in regulatory form the current practice whereby lenders file claims in accordance with procedural guidance made available to all lenders.

A vendee loan is a loan made by the Administrator to finance the sale of a property acquired by the Administrator after foreclosure of a guaranteed loan. Under § 36.4600, vendee loans may be sold with a right of recourse. The terms and conditions under which VA will repurchase a vendee loan sold with recourse are specified in that section. A credit report(s) on the debtor(s) at the time repurchase is requested would assist VA in determining what steps would be appropriate in collecting the debt. It is proposed to add a new § 36.4600(c)(16) to require that holders of vendee loans obtain and forward to the VA a current credit report(s) on the debtor(s) when requesting VA to repurchase the loan. Section 36.4600(e)(3) would be revised to provide for reimbursement to the holder of the cost of obtaining the credit report(s).

The Administrator hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, United States Code, sections 601–612. The cost of the credit report(s) required to be submitted with claims and repurchase requests would be reimbursable. The cost of credit reports required for proposed reamortizations may be collected by the lender from the individual borrower(s) requesting the reamortization. Individuals are not included in the definition of small entities under the Regulatory Flexibility Act. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regulation, and are not considered major regulation changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements contained in §§ 36.44282, 36.4316 and 36.4600 of these proposed regulations have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. Comments on the information collection requirements should be submitted to: Elaine Norden, Desk Officer for the Veterans Administration, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

These amendments are proposed under authority granted the Administrator by sections 210(c), 1803(c)(1), 1819(g) and 1820 of title 38, United States Code.

**Lists of Subjects in 38 CFR Part 36**

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: May 6, 1987.

Thomas K. Turnage,

*Administrator.*

**PART 36—[AMENDED]**

38 CFR Part 36, *Loan Guaranty,* is proposed to be amended to read as follows:

1. In § 36.4276 paragraph (b)(6) is revised and paragraph (b)(7) is added to read as follows:

**§ 36.4276 Advances and other charges.**

* * * * *

(b) * * *

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Administrator in connection with the claim.

(7) Any other expense or fee that is approved in advance by the Administrator.

* * * * *

(38 U.S.C. 1820(a)(3))

§ 36.4277 [Amended]

2. In § 36.4277(e)(3) remove the word "his" and add, in its place, the words "his or her".

3. In § 36.4279 paragraphs (a), (b) and (d) are revised to read as follows:

§ 36.4279 Extensions and reamortizations.

(a) Provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor'(s) creditworthiness, including a review of a current credit report(s) on the debtor(s), the terms of repayment of any loan may, by written agreement between the holder and debtor(s), be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Administrator is obtained. Except with the prior approval of the Administrator, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class.

(b) In the event of a partial repayment pursuant to § 36.4211, the balance of the indebtedness may, by written agreement between the holder and the debtor(s), be reamortized, provided the reamortization schedule will result in full repayment of the loan within the original maturity, and provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor'(s) creditworthiness, including a review of a current credit report(s) on the debtor(s).

* * * * *

(d) The holder shall promptly forward to the Administrator an advice of the terms of any agreement effecting a reamortization or extension of a guaranteed loan, together with cop(y)(ies) of the credit report(s) obtained on the debtor(s).

(38 U.S.C. 1819(g))

4. In § 36.4283, paragraph (j) is redesignated paragraph (k) and a new paragraph (j) is added to read as follows:

§ 36.4283 Foreclosure or repossession.

* * * * *

(j) A claim for the guaranty must be submitted in such form and manner as is prescribed by the Administrator, and must include a cop(y)(ies) of a current credit report(s) on the debtor(s).

(38 U.S.C. 1819(g))

* * * * *

5. In § 36.4313 paragraph (b)(6) is revised and paragraph (b)(7) is added to read as follows:

§ 36.4313 Advances and other charges.

* * * * *

(b) * * *

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Administrator in connection with the claim.

(7) Any other expense or fee that is approved in advance by the Administrator.

* * * * *

(38 U.S.C. 1820(a)(3))

6. In § 36.4314 paragraphs (a), (b) and (e) are revised to read as follows:

§ 36.4314 Extensions and reamortizations.

(a) Provided the debtor(s) is (are) a reasonable credit risk(s), as determined by the holder based upon review of the debtor'(s) creditworthiness, including a review of a current credit report(s) on the debtor(s), the terms of repayment of any loan may be written agreement between the holder and the debtor(s) be extended in the event of default, to avoid imminent default, or in any other case where the prior approval of the Administrator is obtained. Except with the prior approval of the Administrator, no such extension shall set a rate of amortization less than that sufficient to fully amortize at least 80 percent of the loan balance so extended within the maximum maturity prescribed for loans of its class.

(b) In the event of a partial prepayment pursuant to § 36.4310, the balance of the indebtedness may, by written agreement between the holder and the debtor(s), be reamortized, provided the reamortization schedule will result in full repayment of the loan within the original maturity, and provided the debtor(s) is (are) reasonable credit risk(s), as determined by the holder based upon review of the debtor'(s) creditworthiness, including a review of a current credit report(s) on the debtor(s).

* * * * *

(e) The holder shall promptly foward to the Administrator an advice of the terms of any agreement effecting a reamortization or extension of a guaranteed or insured loan, together with a copy(y) (ies) of the credit report(s) obtained on the debtor(s).

(38 U.S.C. 1803(c)(1))

7. In § 36.4316 paragraph (c) is added to read as follows:

§ 36.4316 Continued default.

* * * * *

(c) A claim for the guaranty must be submitted in such form and manner as is prescribed by the Administrator, and must include a cop(y)(ies) of a current credit report(s) on the debtor(s). (38 U.S.C. 1816(a)(1))

8. In § 36.4600 paragraph (c)(16) is added and paragraph (e)(3) is revised to read as follows:

§ 36.4600 Sale of loans, guarantee of payment.

* * * * *

(c) * * *

(16) To obtain forward a current credit report(s) on the debtor(s) to the Administrator when requesting that the Administrator repurchase the loan.

* * * * *

(e) * * *

(3) The holder may be reimbursed for the cost of a current credit report(s) on the debtor(s) which is (are) fowarded to the Administrator along with the request for repurchase and for any other costs or expenses incurred which are approved in advance by the Administrator as being necessary to protect the Government's interests.

* * * * *

(38 U.S.C. 210(c), 1803(c)(1), 1816(g), 1820)

[FR Doc. 87-12093 Filed 5-27-87; 8:45 am]

BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 65

[A-5-FRL-3208-5]

### Proposed Delayed Compliance Order for Rexworks, Milwaukee, WI

**AGENCY:** United States Environmental Protection Agency (U.S. EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** U.S. EPA proposes to issue an Administrative Order to Rexworks. This Order requires the company to bring volatile organic compound emissions from its miscellaneous metal parts spray booths in Milwaukee, Wisconsin into compliance with the federally approved Wisconsin State Implementation Plan (SIP) NR 154.13(4). The company is unable to comply with these regulations at this time, and the proposed Order would establish an expeditious schedule which requires compliance by December 31, 1987. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provision of the Clean Air Act for

violation of the SIP regulations covered by the Order. The purpose of this notice is to provide the public an opportunity to submit written comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed Order prior to its issuance.

**DATES:** Written comments must be received on or before June 29, 1987 and requests for a public hearing must be received by June 12, 1987. All requests for public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offering at the hearing. If there is significant public interest in a hearing, it will be held twenty-one (21) days after notice of the date, time and place of the hearing which will be provided in a separate notice in the Federal Register.

**ADDRESSES:** Comments and request for a public hearing should be submitted to the Office of Regional Counsel, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604. Material supporting the Order and public comment received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Susan Perdomo, Assistant Regional Counsel, Office of Regional Counsel, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, at (312) 886-6730

**SUPPLEMENTARY INFORMATION:** Rexworks operates miscellaneous metal parts spray booths at its Milwaukee, Wisconsin plant. The proposed Order addresses volatile organic hydrocarbon emissions from the miscellaneous metal parts coatings at this facility which are subject to NR 154.13(4) part of the federally approved Wisconsin SIP. NR 154.13(4) limits the emissions of volatile organic hydrocarbons from these sources and NR 154.13(4)(m)(3)(c) specifies the date by which Rexworks must be in compliance with said rule. This Order requires final compliance with NR 154.13(4) by December 31, 1987, by coating reformulation or installation of control equipment.

The source has consented to the terms of the Order, and has agreed to meet the increment established in the Order during the period of this informal Rulemaking.

Dated: May 15, 1987.

Frank M. Covington,

*Acting Regional Administrator.*

[FR Doc. 87-12110 Filed 5-27-87; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 180

[PP 6E3389, 6E3439/P417; FRL-3209-3]

## Pesticide Tolerances for Chlorpyrifos

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that tolerances be established for the combined residues of the pesticide chlorpyrifos and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodities dates and leeks. The proposed regulation to establish maximum permissible levels for residues of the pesticide in or on the commodities was requested in two separate petitions submitted by the Interregional Research Project No. 4 (IR-4).

**DATE:** Comments, identified by the document control number [PP 6E3389,5E3439/P417], should be received on or before June 29, 1987.

**ADDRESS:** By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the named Agricultural Experiment Stations. These petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the pesticide Chlorpyrifos [O,O-diethyl O-(3,5,6-trichloro-2-pyridyl)-phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol (TCP) in or on certain raw agricultural commodities as follows:

1. PP 6E3389 on behalf of the Agricultural Experiment Station of New Jersey in or on leeks at 0.5 part per million (ppm) (of which no more than 0.2 ppm is chlorpyrifos).

2. PP 6E3439 on behalf of the Agricultural Experiment Station of California in or on dates at 0.5 ppm (of which no more than 0.3 ppm is chlorpyrifos).

The petitioner proposed that use of the pesticide on dates be limited to California, and the petition for leeks was later amended to propose that use of chlorpyrifos on leeks be limited to New Jersey based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the areas of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 2-year dog feeding study with a plasma cholinesterase (ChE) no-observed-effect level (NOEL) of 0.01 milligram (mg) / kilogram (kg) / day and a NOEL 1.0 mg/kg/day (highest dose tested) for systemic effects.

2. A voluntary human study with a ChE NOEL of 0.03 mg/kg/day (based on 20 days of exposure at this level).

3. A 2-year mouse oncogenicity study which was negative for oncogenic effects under the conditions of the study at all levels tested (0.5, 5, and 15 ppm).

4. A 3-generation rat reproduction study with a NOEL for reproductive effects at 1.0 mg/kg/day (highest dose tested).

5. A rat teratology study that was negative for teratogenic effects at 15 mg/kg/day.

6. An acute delayed neurotoxicity study in the hen that was negative at 100 mg/kg.

7. A 2-year rat feeding/oncenenicity study with a RBC ChE NOEL of 0.1 mg/kg/day and negative for oncogenic effects at all levels tested (0.03, 0.1, 1.0 and 3.0 mg/kg/day). The existing rat feeding/oncogenicity study is not adequate for regulatory purposes (core supplementary data) and represents a data gap for the chemical.

The provisional acceptable daily intake (PADI), based on the human voluntary ChE study (ChE NOEL of 0.03 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.003 mg/kg of body weight/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 0.18 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.63048 mg/day; the current action will increase the TMRC by 0.00045 mg/day (0.07 percent increase). The increase in dietary exposure to residues of chlorpyrifos and its metabolite resulting from the proposed use of dates and leeks is considered to pose a negligible incremental risk in dietrary exposure (0.07 percent increase in the TMRC).

Although the TMRC based on all established tolerances for chlorpyrifos exceeds the MPI, the Agency believes tha the actual residues to which the public is likely to be exposed are considerably less than indicated by the TMRC for the following reasons:

1. Not all of the planted crop for which a tolerance is established in normally treated with the pesticide.

2. Not all crops contributing to the TMRC are likely to be consumed by an individual.

3. Most treated crops have residue levels which are below the established tolerance level.

4. Residues are frequently reduced when foods are processed or prepared for human consumption.

The basic manufacturer has been requested to submit additional studies to allow the Agency to reassess the existing tolerances for chlorpyrifos. Additional plant and animal metabolism studies are required to fully characterize and quantify the parent compound and its metabolites (including TCP) in plants and animals. Since there is insufficient information to adequately characterize TCP, the tolerance expression for chlorpyrifos currently includes this major metabolite. The requested data will allow the Agency to determine the necessity of establishing tolerances at levels sufficient to cover residues for both the parent compound and metabolite TCP. If the requested data inidcate that it is not necessary to include the metabolite in the tolerance expression, the TMRC for chlorpyrifos will be lower than the current calculaation based on tolerances for combined residues of chlorpyrifos and TCP. The U.S. tolerances for chlorpyrifos would also be compatable with the Codex Alimentarius and the tolerances of Canada and Mexico, which include only chlorpyrifos *per se*.

Although additionally plant and animal metabolism data are needed to fully characterize the residues, the available metabolism data are adequate to support the proposed uses of chlorpyrifos on dates and leeks. Chlorpyrifos and its major metabolite TCP are considered to be the residues of concern for these uses.

An adequate analytical method, gas-liquid chromatography, is available in the Pesticide Analytical Manual, Volume II (PAM–II), for enforcement purposes. There is no expectation of secondary residues in meat and milk since dates and leeks are not animal feed commodities. There are currently no actions pending against the continued registration of this chemcial.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR 180.342 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments should bear a notation indicating the document control number, [PP 6E3389, 6E3439/P417]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agriculture commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: May 15, 1987.

Edwin F. Tinsworth,

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

**PART 180—[Amended]**

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.342 is amended by designating the current paragraph and list of tolerances as paragraph (a) and adding new paragraph (b), to read as follows:

**§ 180.342 Chlorpyrifos; tolerances for residues.**

* * * * *

(b) Tolerances with regional registration, see § 180.1(n), are established for the combined residues of chlorpyrifos and its metabolite 3, 5, 6-trichloro-2-pyridinol in or on the following raw agricultural commodities:

| Commodities | Parts per million |
|---|---|
| Dates | 0.5 (of which no more than 0.3 ppm is chlorpyrifos). |
| Leeks | 0.5 (of which no more than 0.2 ppm is chlorpyrifos). |

[FR Doc. 87–12104 Filed 5–27–87; 8:45 am]

BILLING CODE 6560–50–M

**40 CFR Parts 280 and 281**

**[FRL–3206–7]**

## Underground Storage Tanks; Technical Requirements, Financial Responsibility Requirements, and State Program Approval; Extending Comment Period

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The purpose of this notice is to extend the public comment period on the proposed rules for underground storage tanks that appeared in the **Federal Register** on April 17, 1987 (52 FR 12662–12864). These include the Technical Standards beginning at page 12662, the Financial Responsibility Requirements beginning at page 12786, and the State Program Approval requirements beginning at page 12853.

The comment period is extended to July 16, 1987, to ensure that commenters have adequate time to prepare comments.

**DATES:** Written comments on the proposed rules may be submitted on or before July 16, 1987.

**ADDRESS:** Address written comments to Docket Clerk, Office of Underground Storage Tanks (WH–562A), Docket No. UST–2 (Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks), UST–3 (Financial Responsibility Requirements), or UST–4 (State Program Approval), 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** RCRA/SUPERFUND Hotline 1–(800)–424–9346 (toll free); or in Washington, DC, (202) 382–3000.

**SUPPLEMENTARY INFORMATION:** Prior to this extension notice, the Technical Standards and the State Program Approval Comment period deadline was June 16, 1987. Due to a typographical error in the original Federal Register Notice, the comment period deadline for the financial Responsibility Requirements read June 6, 1987 instead of June 16, 1987.

J.W. McGraw,

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 87–12111 Filed 5–27–87; 8:45 am]

BILLING CODE 6560–50–M

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## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 11

### Natural Resource Damage Assessments; Extension of Comment Period on Proposed Rule

**AGENCY:** Department of the Interior.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On April 17, 1987, the Department of the Interior (Department) proposed a rule to provide amendments to the final natural resource damage assessment regulations required by section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and to be codified at 43 CFR Part 11. The natural resource damage assessment regulations establish procedures for assessing damages to natural resources resulting from a discharge of oil or a release of a hazardous substance, and compensable under either CERCLA, as amended, also known as Superfund, or under the Clean Water Act (CWA). The proposed rule published on April 17, 1987, at 52 FR 12886, is necessitated by the Superfund Amendments and Reauthorization Act (SARA). The proposed rule modifies the final regulations to conform with the changes enacted by SARA. The Department is extending the period for comment on the proposed rule to June 17, 1987.

**DATES:** Comments on the proposed rule (52 FR 12886) should be submitted by June 17, 1987.

**ADDRESS:** Comments should be sent to: David Rosenberger, CERCLA 301 Project, Room 4354, Department of the Interior, 1801 C Street NW., Washington, DC 20240. Comments will be available for review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** David Rosenberger (202) 343–1301; Linda Burlington (202) 343–1301; Willie Taylor (202) 343–7531; or Alison Ling (415) 556–8607.

**SUPPLEMENTARY INFORMATION:** On April 17, 1987 (52 FR 12886), the Department proposed to amend the final rules to conform with the amendments to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, enacted by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, October 17, 1986. The proposed rule modified the final natural resource damage assessment rules to conform with changes enacted by SARA that, among others: Extend the rebuttable presumption to assessments performed by State trustees; provide for the recovery of prejudgment interest on damage awards; provide for a statute of limitations that revives certain past claims; require notification of trustees in cases of discharges or releases that might injure natural resources of concern to the trustee; create new responsibilities for Indian tribes; require Federal trustees to retain sums recovered, without further appropriations, for use only to restore, replace, or acquire the equivalent resources; and require State trustees to use sums recovered only to restore, replace, or acquire the equivalent resources.

The April 17, 1987, notice stated that comments on the proposed rule were to be submitted on or before May 18, 1987. The Department received requests for the public for additional time to comment on this proposed rule. As a result of these requests, the Department is extending the comment period to June 17, 1987. This extension is retroactive to May 18, 1987.

Dated: May 22, 1987.

Gale A. Norton,

*Associate Solicitor, Division of Conservation and Wildlife.*

[FR Doc. 87–12091 Filed 5–27–87; 8:45 am]

BILLING CODE 4310–10–M

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## FEDERAL COMMUNICATIONS

### 47 CFR Parts 67 and 69

**[CC Docket Nos. 78–72 and 80–286; FCC 87J–1]**

### Common Carrier Services; MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Recommended decision and order.

**SUMMARY:** This action of the Federal-State Joint Board recommends that the FCC adopt a comprehensive and integrated set of recommendations concerning (1) subscriber line charges, (2) the federal lifeline assistance program, (3) present measures to assist high cost telephone companies, and (4) the common line tariff and pooling system administered by the National Exchange Carrier Association (NECA). The Joint Board believes that the overall effect of the recommendations achieves a proper balance among the four goals of this proceeding: Preserving universal service, promoting economic efficiency, eliminating service pricing discrimination, and deterring uneconomic bypass.

**ADDRESS:** Federal Communications Commission, 1919 M Street NW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Barbara Lynch or Cynthia Work, tele: (202) 632–6363.

**SUPPLEMENTARY INFORMATION:** This is a summary of the CC Docket No. 80–286 Federal-State Joint Board's *Recommended Decision and Order* in

CC Docket Nos. 78–72 and 80–286, FCC 87J–1, Adopted March 12, 1987, and Released March 31, 1987.

The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

**Summary of Recommended Decision and Order**

1. In this *Recommended Decision and Order* the Joint Board recommends that the cap on subscriber line charges for subscriber line residential and single-line business customers be increased to $2.60 on June 1, 1987, $3.20 on September 1, 1988, and $3.50 on April 1, 1989. The Joint Board also recommends that subscriber line charges on embedded Centrex lines be increased to $4.00 on June 1, 1987, $5.00 on September 1, 1988, and $6.00 on April 1, 1989. The increase to a maximum of $3.50 for residential and single-line business subscribers represents the Joint Board's final recommendation for nationwide implementation of subscriber line charges. Additionally, each of these rate levels is a ceiling. Thus, a local exchange carrier (LEC) may assess the full level of the authorized subscriber line charge only to the extent that the company's study area interstate loop costs equal or exceed that level. The Joint Board recommends that the Commission require LECs to flow through the proposed subscriber line charge increases in the form of reductions in the carrier common line (CCL) charge. It specifically recommends that the first increase be applied to reduce the originating CCL charge, and thus limit the bypass threat on the originating end of the call; and that the further increases be applied to reduce both the originating and terminating CCL charges taking into account potential bypass threats. The Joint Board also recommends that AT&T Communications (AT&T) be directed to flow through to consumers, in the form of interstate rate reductions, the savings it will realize as a result of reductions in the CCL charge.

2. The Joint Board further recommends that the Commission and members of the Joint Board establish a comprehensive monitoring program to track and assess the impact of the Joint Board's recommendations, as adopted by the Commission. The Joint Board also recommends that a series of reports based on the data collected through the program be submitted to Congress and state regulators on a quarterly basis. In addition to these reports, the Joint Board also recommends that members of the Joint Board and the Commission review the impact of its recommendations 90 days prior to the scheduled increases in subscriber line charges in 1988 and 1989. Reports on these assessments would be submitted by the Commission to Congress and state regulators. The Joint Board recommends that it be directed by the Commission to issue an order in the near future containing recommendations concerning the framework of, and schedule for, this monitoring program.

Moreover, in order to ensure that the monitoring program takes into account all relevant factors, the Joint Board recommends that the record in this proceeding remain open to allow for the filing of comments at any time regarding the structure and effectiveness of the monitoring program.

3. Regarding lifeline, the Joint Board recommends first, a program of federal assistance to qualified low income households that would help defray the one time charges for commencement of service. This program, which has been described as a program to "Link Up America," would be available for a single telephone line at a subscriber's principal place of residence and would offset one half of the charges for commencing telephone service, up to $30, for qualifying households. The program would also encourage LECs to offer deferred payment schedules for these charges by paying a LEC's interest costs, on an amount up to $200, when it provides for a deferred payment schedule and does not charge interest to qualified subscribers. The Joint Board recommends that this interest payment be set at the rate paid on ten year Treasury bills. The Joint Board also recommends that the current federal lifeline assistance program be increased to correspond with the proposed subscriber line charge increases. Federal assistance would be available to match state contributions on any amount up to the full subscriber line charges of $3.50. Thus, with full state matching assistance, a total of $7.00 in benefits would be available per month to qualifying subscribers under this program upon full implementation of the federal subscriber line charge.

4. The Joint Board recommends that the subscriber line charge waiver and Link Up America programs be funded by charges assessed on interexchange carriers (IXCs), initially through the CCL charge and, upon implementation of proposed revisions to the present pooling mechanism in 1989, through flat-rate, per-line charges assessed on IXCs based on the number of "1+" or "presubscribed" common lines (including feature group C and D lines) presubscribed to each such carrier. The flat, per-line charge would be assessed on all such lines of each IXC that has either (1) one percent of such lines nationwide or (2) five percent of such lines in any study area and a minimum of one thousand lines in that study area. The Joint Board recommends that the Commission certify both lifeline programs prior to the provision of federal benefits upon application by a state or LEC (for the subscriber line charge waiver) or a state or its delegates (for Link Up America). The Joint Board further recommends the following criteria for Link Up America beneficiaries: (1) Applicant must have lived at an address where there has been no telephone service for at least three months prior to the date that assistance is requested; (2) applicant must not have received this assistance within the last two years; (3) applicant must not be a dependent (as defined by the federal income tax code), unless he or she is more than 60 years of age; and (4) applicant must meet the requirements of a state established income test. The Joint Board recommends that the first two criteria be verified, for example, through telephone records and that the last two criteria may be self-certified.

5. The Joint Board recommends retargeting the high cost assistance measures provided to high cost telephone companies. This recommended retargeting would provide an additional interstate expense allocation to small and medium size LECs and less assistance to larger LECs, specifically, LECs with over 200,000 access lines. The Joint Board recommends that the targeted assistance be recovered from IXCs through flat-rate charges calculated according to the same methodology as lifeline assistance.

6. The Joint Board recommends that the existing common line tariff and pooling system be modified to permit LECs to withdraw from the NECA tariff and pool and file common line tariffs based on their own costs. LECs that withdraw from the pool would be required to contribute long-term support (LTS) to LECs that remain in the pool, thus enabling pooling companies, which generally will be small, high cost companies, to tariff a CCL charge equal to the charge that would result if all LECs remained in the pool. The Joint Board also recommends that four years

of transitional support payments (TRS) be provided to qualifying LECs that withdraw from the pool. Such LECs must be net recipients from the pool and must withdraw from the tariff and pool in accordance with a schedule that provides the largest companies one opportunity and smaller companies two opportunities to leave the pool and qualify to receive TRS. TRS would be paid by those nonpooling companies that were net contributors to the pool. TRS recipients would not pay LTS to pooling companies during the transition period. The Joint Board also recommends that a LEC withdrawing one of its study areas be required to withdraw them all, and that a holding company withdrawing one of its LECs be required to withdraw them all. Under this proposal the Commission also would prescribe the continuation of AT&T's current practice of maintaining a nationwide averaged rate schedule for its Message Telecommunications Service.

7. Finally, the Joint Board recommends that the Commission initiate proceedings in order to: (1) Consider what, if any, adjustment should be made to its recommended pooling modifications to ensure that they do not inadvertently and unreasonably affect the marketability of small LECs; and (2) conform existing Part 69 rules governing the administration of NECA and the operations of the NECA common line pool.

8. The recommendations contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

**Ordering Clauses**

9. Accordingly, the Joint Board recommends that the Commission adopt the proposals discussed above and the proposed revisions to Parts 67 and 69 of the Commission's rules.

10. This recommendation is adopted pursuant to sections 4(i), 4(j), 201, 202, 203, 205, 221, 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 221, 403, and 410 (1986).

**List of Subjects**

*47 CFR Part 67*

Calculation of expense adjustment—Additional interstate expense allocation, Lifeline connection assistance expense allocation, Telephone company eligibility, Data collection, Calculation of lifelife connection assistance expense adjustment.

*47 CFR Part 69*

Computation of charges, Computation of transition charges, Apportionment of expenses, Segregation of common line element revenue requirement, Exchange carrier association.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-12053 Filed 5-27-87; 8:45 am]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Ch. X**

**[Ex Parte No. 347 (Sub-No. 2)]**

## Rate Guidelines; Non-Coal Proceedings; Comment Filing; Extension of Time

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Extension of time to file comments to notice of proposed policy.

**SUMMARY:** By a decision served April 8, 1987, the Commission proposed guidelines for evaluating rate reasonableness in non-coal proceedings. Notice was published on April 8, 1987 in the **Federal Register** at 52 FR 11295 requesting additional comments. May 26, 1987, was specified as the due date for comments. Time for filing has been extended to June 25, 1987.

**DATES:** Comments are due June 25, 1987.

**ADDRESSES:** Send an original and 15 copies of comments to: Office of Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Ronald S. Young or Richard H. Klem at (202) 275-7565.

Dated: May 20, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Sterrett did not participate.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-11960 Filed 5-27-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF TRANSPORTATION

**National Highway Traffic Safety Administration**

**49 CFR Part 544**

**[Docket No. T86-01; Notice 3]**

## Insurer Reporting Requirements; List of Insurers Required To File Reports in October 1987

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Title VI of the Motor Vehicle Information and Cost Savings Act requires insurers to file annual reports with this agency, unless NHTSA exempts an insurer from filing such reports. This law also specifies that NHTSA can exempt only those insurance companies whose market share is below certain percentages for the nation as a whole and in each individual State. To carry out these statutory provisions, NHTSA has exempted all those insurance companies that are statutorily eligible to be exempted and published a listing of those insurance companies that are required to file annual reports..

However, an insurance company's eligibility for exemption from the reporting requirements may vary annually, as its natinal and State-by-State market shares change. To address this situation, NHTSA has stated that it will publish annual updates of the list of insurance companies that are required to file annual reports. The listing of insurance companies in this notice is derived from more current market share information than was previously available to the agency. If these listings are adopted as a final rule, those insurance companies included on the list would be required to file reports for the 1986 calendar year not later than October 25, 1987. Any insurance company not on the final list is *not* required to file a report for the 1986 calendar year.

**DATES:** Comments on this notice must be received by this agency not later than July 13, 1987.

The final rule on this subject will be effective 30 days after the rule is published in the **Federal Register.**

**ADDRESS:** Comments on this notice should refer to Docket No. T86-01; Notice 3, and be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 8:00 am to 4:00 pm Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Barbara A. Kurtz, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4807).

**SUPPLEMENTARY INFORMATION:** Section 612 of the Motor Vehicle Information and Cost Savings Act (the Act; 15 U.S.C. 2032) requires each insurer to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The term "insurer" is defined very broadly for the purposes of section 612, consisting of two broad groups of entities. One of these broad groups is included in the definition of "insurer" by virtue of section 612(a)(3). That section specifies that for the purposes of section 612, the term "insurer" includes any person, other than a governmental entity, who has a fleet of 20 or more motor vehicles used primarily for rental or lease and not covered by theft insurance policies issued by insurers of passenger motor vehicles. The requirements for this group of insurers are not addressed in or affected by this proposal.

The other broad group is included within the term "insurer" by virtue of section 2(12) of the Act (15 U.S.C. 1901(12)). That section provides that every person engaged in the business of issuing passenger motor vehicle insurance policies is an insurer, regardless of the size of the business. Section 612(a)(5) provides that the agency shall exempt small insurers included in this second broad group from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 612(a)(5)(C) as one whose premiums account for less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also provides that if an insurance company satisfies this definition of a "small insurer", but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such insurer must report the required information about its operations in that State.

To implement these statutory criteria for exempting small insurers, NHTSA has used the data voluntarily supplied by insurance companies to A.M. Best to determine the insurers' market shares nationally and in each State. The A.M. Best data were chosen because they are both accurate and timely, and its use imposes no additional burdens on any party.

After examining the A.M. Best data, NHTSA determined that it should exempt all those insurance companies that were statutorily eligible for exemption from these reporting requirements. This determination was based on the fact that the reports from only those insurance companies that were statutorily required to file reports would provide the agency with representative data, both nationally and on a State-by-State basis, and that the data in the insurer reports provided by the insurance companies that were ineligible for an exemption would be sufficient for NHTSA to carry out its activities and responsibilities under Title VI of the Act.

Accordingly, the agency included an Appendix A and Appendix B in the final rule for insurer reports published January 2, 1987 (52 FR 59). The 20 insurance companies listed in Appendix A had premiums that accounted for one percent or more of all motor vehicle insurance premiums paid nationally. Hence, those companies were required to report on their operations for every State in which they did business. The 11 insurance companies listed in Appendix B had premiums that accounted for ten percent or more of the total motor vehicle insurance premiums within a particular State or States. Such companies were required to report on their operations only for those States in which their premiums accounted for ten percent or more of the total premiums.

The market shares for each of the insurance companies were derived for the A.M. Best for 1984, the most recent year for which the A.M. Best data were available as of the date the final rule was published. Since that time, A.M. Best data for 1985 have become available. In the final rule, NHTSA stated, "The agency will update these appendices annually, shortly after A.M. Best publishes its revised listings, to reflect changes in premium shares for the insurance companies." 52 FR 62. This rulemaking action implements that pledge. The agency would like to emphasize that this rulemaking does not affect its prior determination that those insurance companies that are statutorily eligible to be exempted from these reporting requirements should, in fact, be exempted therefrom. Instead, this rulemaking simply uses more current data to determine which insurance companies are eligible for such exemptions.

The most recent A.M. Best data on market shares shows that one insurance group (Lincoln National) that did not have at least one percent of the national market for motor vehicle insurance premiums now has one percent of that market. Accordingly, Lincoln National now appears in Appendix A. This addition means that group will be required to file a report not later than October 25, 1987 setting forth the information required by Part 544 for each State in which it did business in the 1986 calendar year. Conversely, one insurer that had a one percent national market share in the older A.M. Best data (American Financial Group) has fallen below the one percent threshhold in the newer data, so its name is deleted from Appendix A. This means that it would not be required to file a report in October 1987.

Two insurance groups (American Family Group and Commercial Union Assurance Group) have fallen below the one percent threshhold, so they are also deleted from Appendix A. However, each retained ten percent or more of the market in particular States, so their names have been added to Appendix B. This means these groups would be required to report only on their activities in those States in their October 1987 reports. In the case of American Family, it would be required to report for North Dakota, South Dakota, and Wisconsin. In the case of Commercial Union, it would be required to report for Maine.

Finally, four companies listed in Appendix B as having ten percent or more of the market in particular States have fallen below that level in the most current A.M. Best data. Three of these companies (Shelter Insurance Companies, United Farm Bureau Mutual, and Tennessee Farmers) would be deleted entirely from Appendix B. Accordingly, those companies would not be required to file any report in October 1987. Southern Farm Bureau Group, which was listed in Appendix B for both Arkansas and Mississippi, has fallen below a ten percent market share in Arkansas. Thus, Appendix B would be changed to specify that Southern Farm Bureau is only required to include information on Mississippi in its October 1987 report.

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, this listing would ensure that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are

not statutorily eligible for an exemption would be expressly required to file reports.

NHTSA does not believe that this proposed rulemaking to reflect more current A.M. Best data would affect the impacts described in the final regulatory evaluation prepared for Part 544. Accordingly, a separate regulatory evaluation has not been prepared for this proposal. Using the cost estimates in the final regulatory evaluation for Part 544, the agency estimates that it will cost the one insurance company that would be added to Appendix A about $100,000 to file its initial report, while saving about $50,000 for the company that would be deleted from Appendix A. The two companies that would be deleted from Appendix A, but added to Appendix B, would save about $30,000 each as a result of this change. The three companies deleted from Appendix B would save about $20,000 each, while the company required to report on one State instead of two would save about $10,000. This, the net total impact of these changes is estimated to be a savings of about $80,000 for insurance companies. This is well below the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

As noted above, a full regulatory evaluation was prepared for the final rule establishing Part 544. Interested persons may wish to examine that evaluation in connection with this proposal. Copies of that evaluation have been placed in Docket No. T86-01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

The agency has also considered the effects of this proposed rulemaking under the Regulatory Flexibility Act. I certify that this proposed action would not have a significant economic impact on a substantial number of small entities. This proposed action simply applies more current information to determine which insurance companies are statutorily eligible to be exempted from these reporting requirements. NHTSA believes that any insurance company that does not qualify as a "small insurer" within the meaning of section 612 of the Act would also not qualify as a small entity within the meaning of the Regulatory Flexibility Act. Those insurance companies that did not qualify as small insurers under the older data, but do qualify under the newer data, would realize some savings, as discussed above. However, the economic impact would not be substantial, nor are there a substantial number of these companies.

In accordance with the National Environmental Policy Act, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the qualify of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 544**

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed that 49 CFR Part 544 be amended as follows:

**PART 544—(AMENDED)**

1. The authority citation for Part 544 would continue to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Appendix A to Part 544 would be revised to read as follows:

**Appendix A—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business**

State Farm Group
Allstate Insurance Group
Farmers Insurance Group
Nationwide Group
Aetna Life & Casualty Group
Liberty Mutual Group
Travelers Insurance Group
USAA Group
Hartford Insurance Group
CIGNA Group
Geico Corporation Group
Continental Group
United States F&G Group
Fireman's Fund Group
California State Auto Association
Interinsurance Exchange Auto Club of Southern California
Sentry Insurance Group
Lincoln National Group.

3. Appendix B to Part 544 would be revised to read as follows:

**Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States**

Alabama Farm Bureau Group (Alabama)
Island Insurance Group (Hawaii)
Kentucky Farm Bureau Group (Kentucky)
American General Group (Maine)
Commerical Union Assurance Group (Maine)
American Family Group (North Dakota, South Dakota, and Wisconsin)
Auto Club of Michigan Group (Michigan)
Southern Farm Bureau Group (Mississippi)
Amica Mutual Insurance Company (Rhode Island)
American International Group (Vermont).

Issued on May 21, 1987.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 87-12177 Filed 5-27-87; 8:45 am]

BILLING CODE 4910-59-M

# Notices

Federal Register
Vol. 52, No. 102
Thursday, May 28, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

May 22, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Extension**

- Food and Nutrition Service

7 CFR Part 210—National School Lunch Program

Recordkeeping; Monthly, Quarterly, Annually; Biennially

State or local governments; Federal agencies or employees; Non-profit institutions; 2,124,417 responses; 22,460,429 hours; not applicable under 3504(h)

Marian L. Stroud (703) 756–3598

**New**

- Human Nutrition Information Service

Bridging Study: NFCS 1977–78 CSFII–NFCS 1987

One time survey

Individuals or households; 600 responses; 600 hours; not applicable under 3504(h)

Robert L. Rizek (301) 436–8457

Jane A. Benoit,
*Departmental Clearance Officer.*

[FR Doc. 87–12095 Filed 5–27–87; 8:45 am]

BILLING CODE 3410–01–M

## Food and Nutrition Service

### Food Stamp Program; Adjustment of Income Eligibility Standards

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** General notice.

**SUMMARY:** The Department is adjusting the limits on gross and net income which certain households may have and still be eligible for food stamps. The Food Stamp Act of 1977, as amended, requires the Department to make this adjustment each year. By adjusting the income eligibility limits, the Program takes into account changes in the cost of living.

**EFFECTIVE DATE:** July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas O'Connor, Supervisor, State Management Section, Administration and Design Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756–3385.

**SUPPLEMENTARY INFORMATION:**

**Classification**

*Executive Order 12291.* The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. This action will affect the economy by less than $100 million a year. It will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified this action as "not major".

*Executive Order 12372.* The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

*Publication.* State agencies must implement the new standards on July 1, 1987, and these offices need adequate advance notice of the new standards to carry out all steps necessary for them to meet the implementation deadline. Based on regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the gross and net monthly income eligibility standards are issued by General Notices published in the **Federal Register** and not through rulemaking procedures.

*Regulatory Flexibility Act.* The Acting Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will primarily affect State and local welfare agencies and future food stamp applicants. The effect upon the welfare agencies is not significant.

*Paperwork Reduction Act.* This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

**Background**

All households, except those in which all members are receiving public assistance or supplemental security income benefits, must meet the Food Stamp Program's income eligibility standards. Households which contain an elderly or disabled member must meet the net income eligibility standards—

equal to the poverty line. Households which do not contain an elderly or disabled member must meet both the net income eligibility standards and the gross income eligibility standards—equal to 130 percent of the poverty line. In addition, elderly individuals (and their spouses) who are unable to prepare meals because of certain disabilities may be considered separate households even if they are living and eating with another household. The Act limits this exception to those persons who meet both of the following requirements: (1) Their own income may not exceed the net income eligibility standards, and (2) The income of those with whom they reside does not exceed 165 percent of the poverty line. The Food Stamp Act requires that the gross and net income eligibility standards take into account the annual adjustments of the poverty guidelines issued by the Department of Health and Human Services. The elderly/disabled standards must also be adjusted. These adjustments are set forth in the following tables.

NET MONTHLY INCOME ELIGIBILITY STANDARDS

[100% of Poverty Level]

| Household size | 48 States [1] | Alaska | Hawaii |
|---|---|---|---|
| 1 | 459 | 572 | 526 |
| 2 | 617 | 770 | 709 |
| 3 | 775 | 969 | 891 |
| 4 | 934 | 1,167 | 1,074 |
| 5 | 1,092 | 1,365 | 1,256 |
| 6 | 1,250 | 1,564 | 1,439 |
| 7 | 1,409 | 1,762 | 1,621 |
| 8 | 1,567 | 1,960 | 1,804 |
| Each additional member | +159 | +199 | +183 |

[1] Includes District of Columbia, Guam and Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS

[130% of Poverty Level]

| Household size | 48 States [1] | Alaska | Hawaii |
|---|---|---|---|
| 1 | 596 | 744 | 684 |
| 2 | 802 | 1,001 | 921 |
| 3 | 1,008 | 1,259 | 1,159 |
| 4 | 1,214 | 1,517 | 1,396 |
| 5 | 1,420 | 1,775 | 1,633 |
| 6 | 1,625 | 2,033 | 1,870 |
| 7 | 1,831 | 2,291 | 2,108 |
| 8 | 2,037 | 2,548 | 2,345 |

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS—Continued

[130% of Poverty Level]

| Household size | 48 States [1] | Alaska | Hawaii |
|---|---|---|---|
| Each additional member | +206 | +258 | +236 |

[1] Includes District of Columbia, Guam and Virgin Islands.

GROSS MONTHLY INCOME ELIGIBILITY STANDARDS FOR HOUSEHOLDS WHERE ELDERLY/DISABLED A SEPARATE HOUSEHOLD

[165% of Poverty Level]

| Household size | 48 States [1] | Alaska | Hawaii |
|---|---|---|---|
| 1 | 757 | 944 | 868 |
| 2 | 1,018 | 1,271 | 1,169 |
| 3 | 1,279 | 1,598 | 1,470 |
| 4 | 1,540 | 1,925 | 1,771 |
| 5 | 1,802 | 2,253 | 2,073 |
| 6 | 2,063 | 2,580 | 2,374 |
| 7 | 2,324 | 2,907 | 2,675 |
| 8 | 2,585 | 3,234 | 2,976 |
| Each additional member | +262 | +328 | +302 |

[1] Includes District of Columbia, Guam and Virgin Islands.

91 Stat. 958 (7 U.S.C. 2011–2029).

Dated: May 22, 1987.

Sonia F. Crow,

*Acting Administrator.*

[FR Doc. 87-12189 Filed 5-27-87; 8:45 am]

BILLING CODE 3410-30-M

## Forest Service

### Comprehensive Plan for the Florida National Scenic Trail; Florida

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability of the Comprehensive Plan.

**SUMMARY:** The Florida National Scenic Trail was designated a component of the National Trails System by Pub. L. 96–11, March 26, 1983.

The Forest Service hereby gives notice of the availability for public inspection of the final Florida National Scenic Trail Comprehensive Plan. The plan gives the route selection for the trail corridor and prescribed future management and development.

**EFFECTIVE DATE:** The Comprehensive Plan for the Florida National Scenic Trail became effective December 4, 1986.

**ADDRESSES:** The Comprehensive Plan is available for public inspection and review at the following offices:

Director, Recreation Staff, Forest Service, USDA, Room 4231, South Agriculture Building, 12th and Independence Avenue, SW, Washington, DC 20013

Regional Forester, Southern Region, 1720 Peachtree Rd., NW, Atlanta, Georgia 30367

Forest Supervisor, National Forest in Florida, 227 N Bronough Street, Tallahassee, Florida 32301, Phone: 904–681–7265

District Ranger, Lake George District, U.S. Forest Service, Route 2, Box 701, Silver Springs, Florida 32688

**FOR FURTHER INFORMATION CONTACT:** Thomas P. Lennon, Recreation Staff, Forest Service, P.O. Box 2417, Washington, DC 20013, Phone: 202–447–2311.

Dated: May 13, 1987.

Charles D. Hoppuch,

*Trails Specialist.*

[FR Doc. 87-12209 Filed 5-27-87; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

[Docket No. 5062-01, 5062-02, and 5062-03]

### Goris Christiaan Grandia et al.; Order Vacating Temporary Denial of Export Privileges

Appearance for Respondents: M. V. van der Woude, Esq., Hacquartstraat 10, 1071 SH Amsterdam, The Netherlands.

Appearance for Agency: Margo E. Jackson, Esq., Attorney-Advisor, Office of the Deputy Chief Counsel for Export Administration, U.S. Department of Commerce, Room H–3329, 14th & Constitution Ave., NW., Washington, DC. 20230.

By Order of February 21, 1985, 50 FR 7945 (February 27, 1985), Respondent Goris Christiaan Grandia, individually and doing business as both R. Grandia Project Service B.V. and Grandia Project Services GmbH, was temporarily denied all privileges of participating in any manner or capacity in the export or reexport of U.S.-origin commodities or technical data. This Order of February 21, 1985 was issued under the authority of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368–399 (1984).

The Order of February 21, 1985 continues to be governed by the Regulations, cited above, which were in

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effect when it was issued. This governing force is accorded these Regulations by § 388.19 of the most recently codified Export Administration Regulations, 15 CFR Parts 368–399 (1986).

Respondent Goris Christiaan Grandia filed a motion, March 23, 1987, to vacate the Order of February 21, 1985. The Office of Deputy Chief Counsel for Export Administration U.S. Department of Commerce ("Agency Counsel"), opposed this motion April 10, 1987. An April 16, 1987 Order, based on a review of both parties' submissions, concluded that the record lacked grounds for retaining in force the Order of February 21, 1985. The April 16, 1987 Order stayed implementation of this conclusion, however, for the period during which agency Counsel could appeal it to the Assistant Secretary for Trade Administration. That period has now expired and, at the close of business yesterday, the Office of the Assistant Secretary advised this Office that no appeal had been filed.

Accordingly, it is hereby *Ordered* that, effective immediately, the Order of February 21, 1985, issued against

Goris Christiaan Grandia,

individually and doing business as both

R. Grandia Project Service B.V., Laurier Strant 59, 1016 PH Amsterdam, The Netherlands

and

Grandia Project services GmbH, Gudrunstrasse 121, A1100 Vienna, Austria

is hereby *vacated*.

A copy of this Order vacating the Order of February 21, 1985 shall be delivered to Respondents and shall be published in the **Federal Register**.

Dated: May 21, 1987.

**Thomas W. Hoya,**

*Administative Law Judge.*

[FR Doc. 87–12082 Filed 5–27–87; 8:45 am]

BILLING CODE 3510-DT-M

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## International Trade Administration

**[A–351–606]**

## Amendment to Final Determination of Sales at Less than Fair Value; Tubeless Steel Disc Wheels From Brazil, and Antidumping Duty Order

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** As a result of correction of a clerical error which occurred in calculating an adjustment for commissions in the U.S. market and other selling expenses in the home market, the Department of Commerce (the Department) is amending its final determination in this investigation, and is directing the U.S. Customs Service to adjust the cash deposit as follows:

| Manufacturer/producer/exporter | From | To (per cent) |
|---|---|---|
| FNV-Veículos E. Equipamentos SA | 16.73 | 11.71 |
| All Others | 17.70 | 13.16 |

**EFFECTIVE DATE:** May 28, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Wilson (202–377–5288), Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** The merchandise covered by this order is tubeless steel disc wheels designed to be mounted with pneumatic tires having a rim diameter of 22.5 inches or greater, suitable for use on class 6, 7 and 8 trucks, including tractors, and for use on semi-trailers and buses, as currently provided for under item number 692.3230 of the *Tariff Schedules of the United States Annotated*.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on December 19, 1986, the Department made its preliminary determination that there was reason to believe or suspect that tubeless steel disc wheels from Brazil were being sold at less than fair value (51 FR 46804, December 29, 1986). On March 13, 1987, the Department made its final determination that these imports were being sold at less than fair value (52 FR 8947, March 20, 1987).

On April 27, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department of its determination that an industry in the United States is threatened with material injury by imports of tubeless steel disc wheels from Brazil. The ITC also determined, pursuant to section 735(b)(4)(B) of the Act (19 U.S.C. 1673d(d)(4)(B)) that material injury would not have been found but for the suspension of liquidation of entries of tubeless steel disc wheels from Brazil.

### Suspension of Liquidation

In accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of tubeless steel disc wheels from Brazil. These antidumping duties will be assessed on all unliquidated entries of tubeless steel disc wheels subject to this order entered, or withdrawn from warehouse, for consumption on or after April 29, 1987, the date on which the ITC published notice of its final affirmative injury determination. Pursuant to section 736(b)(2) of the Act (19 U.S.C. 1673e(b)(2)), the Department also directs that suspension of liquidation be lifted for all entries of tubeless steel disc wheels from Brazil entered, or withdrawn from warehouse, for consumption, before April 29, 1987, and that all estimated antidumping duties deposited on such entries be refunded and the appropriate bonds or other security be released.

On and after April 29, 1987, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins listed below:

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| Borlem S.A.—Imprendimentos Industriais | 15.25 |
| FNV—Veículos E. Equipamentos SA | 11.71 |
| All others | 13.16 |

This determination constitutes an antidumping duty order with respect to tubeless steel disc wheels from Brazil, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 19 U.S.C. 1673e(a)) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

May 21, 1987.

[FR Doc. 87–12146 Filed 5–27–87; 8:45 am]

BILLING CODE 3510-DS-M

**Applications for Duty-Free Entry of Scientific Instruments; University of Alabama et al.**

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 87-177. Applicant: University of Alabama, Birmingham, Department of Biochemistry, University Station, CHSB 520, Birmingham, AL 35294. Instrument: Photon Counting Fluorescence Lifetime System. Manufacturer: Photochemical Research Associates, Inc., Canada. Intended Use: The instrument is intended to be used to investigate fast macromolecular motions in proteins, nucleic acids, membranes, and cells, and the excited state chemistry of molecules of biological and medical interest. The biological materials cited above will be studied in terms of their fluorescence lifetimes, quantum yields, spectral distribution, and anisotropy decays. Application Received by Commissioner of Customs: May 1, 1987.

Docket Number: 87-179. Applicant: U.S. DOE, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Electron Energy Analyzer, Model HA50/4L and Accessories. Manufacturer: VSW, United Kingdom. Intended Use: The instrument is intended to be used in conjunction with photoemission measurements on the U2 beamline at the National Synchrotron Light Source. Experiments will focus on the electronic structure of the bulk and surface of materials, primarily actinide-based. The electron structure research will emphasize the properties of 5f electron systems which are unique among all materials, especially with the discovery of the heavy fermion systems. A second experimental emphasis will be the study of photoelectron diffraction. This experiment will involve the study of adsorbed layers on surfaces. Application Received by Commissioner of Customs: May 1, 1987.

Docket Number: 87-180. Applicant: Barnes Hospital, 4949 Barnes Hospital Plaza, St. Louis, MO 63110. Instrument: Electron Microscope, Model CM10. Manufacturer: N. V. Philips, The Netherlands. Intended Use: Study ultrastructural features of cells and tissues for both diagnostic and developmental purposes. Application Received by Commissioner of Customs: May 5, 1987.

Docket Numbers: 87-181, 87-182 and 87-183. Applicant: University of Wisconsin—Madison, Department of Biochemistry, 420 Henry Mall, Madison, WI 53706. Instruments: NMR Spectrometers, Model AM 400 WB and 500 and NRM Specrometer Data Station. Manufacturer: Bruker Instruments, Switzerland. Intended Use: The instrument or accessory will be used to provide high-field wide-bore NMR spectroscopy when conducting the following research projects:

1. Surface Coil Studies of *In Vivo* Muscle Metabolism by Proton Nuclear Magnetic Resonance.
2. Enzyme Mechanisms and Stereochemistry of MgATP as a Substate.
3. Metabolism and Function of Vitamins D and A.
4. Enzyme Catalysis of Electron and Group Transfer, Nucleotidyl and Phosphotransferase Stereochemistry and Mechanisms of Nucleotide Sugar Interconversions.
4. Applications of NMR to Studies of Nitrogen Fixation and Metabolism.
5. NMR Spectroscopy of Biopolymers.
6. Characterization of the Mechanism of Aspartic Proteinases by $^{13}C$ NMR of Ketone pseudosubstrates.
7. Interaction of Metal Ions with Transfer RNA and Troponin C.

Applications Received by Commissioner of Customs: May 6 and May 8, 1987.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 87-12147 Filed 5-27-87; 8:45 am]

BILLING CODE 3510-DS-M

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**National Bureau of Standards**

**[Docket No. 60626-7048]**

**Approval of Federal Information Processing Standard 5-3, Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States, and Associated Areas**

**AGENCY:** National Bureau of Standards, Commerce.

**ACTION:** The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved a new standard, which will be published as FIPS Publication 5-2 (a revision to FIPS 5-1).

**SUMMARY:** On August 7, 1986, notice was published in the **Federal Register** (51 FR 28406) that a Federal Information Processing Standard (FIPS) 5-2 entitled "Codes for the Identification of the States, the District of Columbia, and the Outlying Areas of the United States" was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS) and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

This approved standard contains two sections: (1) An announcement section which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications section which deals with the technical requirements of the standard. Both sections of the standard are provided in this notice.

**DATE:** The specifications may be used upon publication. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency or economy.

**ADDRESS:** Interested parties may purchase copies of this new standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roy G. Saltman, Institute for

Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 975-3570.

Dated: May 20, 1987.

Ernest Ambler,

*Director.*

**Federal Information Processing Standards Publication 5-2**

*1987 Month Day*

***Announcing the Standard for Codes for the Identification of the States, the District Columbia and the Outlying Areas of the United States, and Associated Areas***

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards in Accordance with section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations.

1. *Name of Standard.* Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States, and Associated Areas.

2. *Category of Standard.* Data Standards and Guidelines; Representations and Codes.

3. *Explanation.* This standard provides a set of two-digit numeric codes and a set of two-letter alphabetic codes for representing the 50 states, the District of Columbia and the outlying areas of the United States, and associated areas. The standard covers all land areas under the sovereignty of the United States, the freely associated states of Federated States of Micronesia and Marshall Islands, and the trust territory of Palau. This revision supersedes FIPS PUB 5-1 in its entirety.

4. *Approving Authority.* The Secretary of Commerce.

5. *Maintenance Agency.* U.S. Department of Commerce, Bureau of the Census (Geography Division). Inquiries concerning the technical content of this standard should be addressed to: Office of the Chief, Geography Division, Bureau of the Census, Washington, DC 20233.

Change notices to this FIPS PUB will be issued by the National Bureau of Standards. Users who wish to receive such notices should complete the Change Request Form included in this FIPS PUB and return it to the address shown.

6. *Cross Index.* a. American National Standard ANSI X3.38-1972, Identification of States of the United States (including the District of Columbia) for Information Interchange.

b. American National Standard ANSI Z39.27-1984, Structure for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty for Information Interchange.

c. International Standard ISO 3166-1981, Codes for the Representation of Names of Countries, a standard of the International Organization for Standardization.

d. Federal Information Processing Standard (FIPS PUB) 104/1, American National Standard Codes for the Representation of Names of Countries, Dependencies, and Areas of Special Sovereignty.

e. U.S. Postal Service Publication 65, National Five-Digit ZIP Code and Post Office Directory, 1987 Edition.

7. *Objectives.* The objectives of this standard are to improve the utilization of data resources of the Federal Government and avoid unnecessary duplications and incompatibilities in the collection, processing, and dissemination of data.

8. *Applicability.* This Federal general data element and representation standard is made available for data interchange among departments and independent agencies, and for Federal data interchange with the non-Federal sector, including industry, State, local and other governments, and the public at large.

9. *Implementation Schedule.* The specifications herein may be used upon publication. Use by Federal agencies is encouraged when such use contributes to operational benefits, efficiency or economy.

10. *Specifications.* Federal Information Processing Standard 5-2 (FIPS PUB 5-2), Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States, and Associated Areas (affixed).

11. *Where To Obtain Copies.* Copies of this publication are available for sale by the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161. When ordering, please refer to Federal Information Processing Standards Publication 5-2 (FIPSPUB5-2) and title. When microfiche is desired, this should be specified. Copies of ANSI X3.38-1972, ANSI Z39.27-1984, and ISO 3166-1981 may be obtained from American National Standards Institute, 1430 Broadway, New York, NY 10018.

**Federal Information Processing Standards Publication 5-2**

*1987 Month Day*

***Specifications for Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States, and Associated Areas***

Table 1: FIPS State Codes for the States and the District of Columbia. This table provides that the two-digit FIPS State Numeric Code and the two-letter FIPS State Alpha Code for each State and the District of Columbia. Both code sets are unchanged from the representations of Table 1 of FIPS PUB 5-1. The FIPS State Code is identical to the two-letter U.S. Postal Service (USPS) abbreviation for each entity listed in this table.

Table 2: FIPS State Codes for the Outlying Areas of the United States, the Freely Associated States, and Trust Territory. This table provides the two-digit FIPS State Numeric Code and the two-letter FIPS State Alpha Code for each outlying area, for the freely associated states of Federated States of Micronesia and Marshall Islands, and for the trust territory of Palau. The latter three entities replace the Trust Territory of the Pacific Islands. Northern Mariana Islands is now a U.S. territory.

FIPS State Numeric Codes for American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States are identical to those shown in FIPS PUB 5-1 for those areas. New FIPS State Numeric Codes have been assigned to Federated States of Micronesia, Marshall Islands, Palau, and U.S. Minor Outlying Islands.

The areas listed in Table 2 and their assigned FIPS State Alpha Codes are identical to the U.S. outlying and associated areas and corresponding two-letter codes specified in ISO 3166-1981, as updated. This international standard has been adopted as a national voluntary standard in the United States under ANSI Z39.27-1984, and has been implemented through FIPS PUB 104-1.

FIPS State Alpha Codes for the outlying and associates areas are *not* identical in every case to the two-letter USPS abbreviations for the same entities. USPS abbreviations are recommended for use only in connection with addresses for mail to be delivered by the USPS, and may be found in the most recent edition of USPS Publication 65, National Five-Digit ZIP Code and Post Office Directory.

Table 3: FIPS State Numeric Codes for the Individual Minor Outlying Island Territories. This table provides the two-digit FIPS State Numeric Codes of FIPS

PUB 5–1 for the individual island territories which form the aggregate entity U.S. Minor Outlying Islands. A FIPS State Numeric Code in this table should be used only when an individual territory must be uniquely identified, and a field for the FIPS County Code is not available to be used in combination with the FIPS State Code for U.S. Minor Outlying Islands (74 or UM). A FIPS County Code for each territory is specified in FIPS PUB 6–3.

TABLE 1.—FIPS STATE CODES FOR THE STATES AND THE DISTRICT OF COLUMBIA

| Name | FIPS state numeric code | FIPS state alpha code |
|---|---|---|
| Alabama | 01 | AL |
| Alaska | 02 | AK |
| Arizona | 04 | AZ |
| Arkansas | 05 | AR |
| California | 06 | CA |
| Colorado | 08 | CO |
| Connecticut | 09 | CT |
| Delaware | 10 | DE |
| District of Columbia | 11 | DC |
| Florida | 12 | FL |
| Georgia | 13 | GA |
| Hawaii | 15 | HI |
| Idaho | 16 | ID |
| Illinois | 17 | IL |
| Indiana | 18 | IN |
| Iowa | 19 | IA |
| Kansas | 20 | KS |
| Kentucky | 21 | KY |
| Louisiana | 22 | LA |
| Maine | 23 | ME |
| Maryland | 24 | MD |
| Massachusetts | 25 | MA |
| Michigan | 26 | MI |
| Minnesota | 27 | MN |
| Mississippi | 28 | MS |
| Missouri | 29 | MO |
| Montana | 30 | MT |
| Nebraska | 31 | NE |
| Nevada | 32 | NV |
| New Hampshire | 33 | NH |
| New Jersey | 34 | NJ |
| New Mexico | 35 | NM |
| New York | 36 | NY |
| North Carolina | 37 | NC |
| North Dakota | 38 | ND |
| Ohio | 39 | OH |
| Oklahoma | 40 | OK |
| Oregon | 41 | OR |
| Pennsylvania | 42 | PA |
| Rhode Island | 44 | RI |
| South Carolina | 45 | SC |
| South Dakota | 46 | SD |
| Tennessee | 47 | TN |
| Texas | 48 | TX |
| Utah | 49 | UT |
| Vermont | 50 | VT |
| Virginia | 51 | VA |
| Washington | 53 | WA |
| West Virginia | 54 | WV |
| Wisconsin | 55 | WI |
| Wyoming | 56 | WY |

TABLE 2.—FIPS STATE CODES FOR THE OUTLYING AREAS OF THE UNITED STATES, THE FREELY ASSOCIATED STATES, AND TRUST TERRITORY

| Area name | FIPS state numeric code | FIPS state alpha code | Status |
|---|---|---|---|
| American Samoa | 60 | AS | 1 |
| Federated States of Micronesia | 64 | FM | 3 |
| Guam | 66 | GU | 1 |
| Marshall Islands | 68 | MH | 3 |

TABLE 2.—FIPS STATE CODES FOR THE OUTLYING AREAS OF THE UNITED STATES, THE FREELY ASSOCIATED STATES, AND TRUST TERRITORY—Continued

| Area name | FIPS state numeric code | FIPS state alpha code | Status |
|---|---|---|---|
| Northern Mariana Islands | 69 | MP | 1 |
| Palau | 70 | PW | 4 |
| Puerto Rico | 72 | PR | 1 |
| U.S. Minor Outlying Islands | 74 | UM | 2 |
| Virgin Islands of the U.S. | 78 | VI | 1 |

Status:
1. A U.S. territory.
2. An aggregation of nine U.S. territories: Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island. Each territory is assigned a FIPS County Code in FIPS PUB 6–3, and may be individually identified through a combination of the FIPS State Code (74 or UM) and the appropriate FIPS County Code.
3. A Compact of Free Association with the United States of America was placed in full force by Presidential proclamation on November 3, 1986.
4. Remains a trust territory.

TABLE 3.—FIPS STATE NUMERIC CODES FOR THE INDIVIDUAL MINOR OUTLYING ISLAND TERRITORIES

| Area name | FIPS state numeric code |
|---|---|
| Baker Island | 81 |
| Howland Island | 84 |
| Jarvis Island | 86 |
| Johnston Atoll | 67 |
| Kingman Reef | 89 |
| Midway Islands | 71 |
| Navassa Island | 76 |
| Palmyra Atoll | 95 |
| Wake Island | 79 |

[FR Doc. 87–12148 Filed 5–27–87; 8:45 am]

BILLING CODE 3510–CN–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

May 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 29, 1987. For further information contact Diana Solkoff, International Trade Specialist (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota reopenings, please call (202) 377–3715.

**Background**

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A further directive dated April 29, 1987 (52 FR 16299) adjusted the restraint limits for certain cotton and man-made fiber textile products, including Categories 336 and 359–V, produced or manufactured in the People's Republic of China and exported during this same twelve-month period.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to cancel the adjustment made to the previously established limit for Category 336. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, the limit for Category 336 is being increased by application of swing. The limit for Category 359–V is being reduced to account for the swing applied to Category 336 and for the swing applied to specific categories in the directive of April 29, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Arthur Gerel,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 21, 1987

**Committee for the Implementation of Textile Agreements**

**Commissioner of Customs,**
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive cancels only that portion of the directive issued to you on April 29, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, which reduced the restraint limit previously established for cotton textile products in Category 336, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

This directive amends, but does not cancel, the directive of December 23, 1986, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on May 29, 1987, the directive of December 23, 1986 is further amended to include the following adjustments to the previously established restraint limits for cotton textile products in Categories 336 and 359–V [1], as provided under the terms of the bilateral agreement of August 19, 1983, as amended:[2]

| Category | Adjusted 12-mo. limit [1] |
|---|---|
| 336 | 131,947 dozen. |
| 359–V | 1,025,577 pounds. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

**Arthur Garel,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–12141 Filed 5–27–87; 8:45 am]

BILLING CODE 3510–DR

## Adjusting Import Restraint Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Romania May 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 29, 1987. For further information contact William Dawson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 682–3072. For information on embargoes and quota reopenings, please call (202) 377–3715.

### Background

On December 28, 1985 a notice was published in the **Federal Register** (50 FR 52829), which announced import limits for certain specified categories of wool and man-made fiber textile products, including Category of 604, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986.

On December 31, 1986 a notice was published in the **Federal Register** (51 FR 47280), which announced import limits for certain specified categories of wool and man-made fiber textile products, including man-made fiber textile products in Category 645/646, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania, the 1986 limit for Category 604 is being adjusted for carryforward granted but not used. The 1987 limit for merged Category 645/646 is being reduced to account for carryforward used in 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 18, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Arthur Garel,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 21, 1987

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 20, 1985 and December 23, 1986, which directed you to prohibit entry of certain wool and man-made fiber textile products, produced or manufactured in Romania and exported during the twelve-month periods which began on January 1, 1986 and extended through December 31, 1986 and January 1, 1987 and extends through December 31, 1987, respectively.

Effective on May 29, 1987, the directives of December 20, 1985 and December 23, 1986 are hereby amended to include the following adjusted restraint limits under the terms of the bilateral agreement of November 7 and 16, 1984 [1]:

| Category | Adjusted 12-mo restraint limit |
|---|---|
| 604 | January 1, 1986–December 31, 1986: [2] 3,215,524 pounds. |
| 645/646 | January 1, 1987–December 31, 1987: [3] 212,899 dozen. |

[1] The limit has not been adjusted to reflect any imports exported after December 31, 1985.

[2] The limit has not been adjusted to reflect any imports exported after December 31, 1986.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] In Category 359, only TSUSA numbers 361.0258, 361.0554, 361.3849, 361.3900, 361.5920, 384.0451, 384.0548, 384.0850, 384.0851, 384.3448, 384.3450, 384.4300, 384.4421 and 384.4422.

[2] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[1] The bilateral agreement provides, in part, that: (1) Specific limits may be increased for carryover and carryforward; (2) consultations may be held to adjust levels for categories not subject to specific limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Sincerely,

Arthur Garel,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-12142 Filed 5-27-87; 8:45 am]

BILLING CODE 3510-DR-M

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## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

May 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commission of Customs to be effective on May 22, 1987. For further information contact Kim Pham, International Trade Specialist (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 682-3075. For information on embargos and quota re-openings, please call (202) 377-3715.

### Background

CITA directives dated May 22, 1986 and August 22, 1986 (51 FR 19249 and 51 FR 30526) established import limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the periods which began, in the case of Category 339, on June 1, 1986 and extends through May 31, 1987; and, in the case of Category 644, on April 29, 1986 and extends through May 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 16, 1983, as amended, and at the request of the Government of Sri Lanka, the restraint limit for Category 339 is being increased by application of swing and carryover. The limit for Category 644 is being reduced to account for the swing applied to Category 339.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the previously established restraint limits for the foregoing categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1986 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 26708) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designated to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Arthur Garel,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 21, 1987

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs

*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of May 22, 1986 and August 22, 1986 concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the periods which began, in the case of Category 339, on June 1, 1986; and, in the case of Category 644, on April 29, 1986; and extend through May 31, 1987.

Effective on May 22, 1987, the directives of May 22, 1986 and August 29, 1986 are hereby further amended to include the following adjustments to the previously established restraint limits for cotton and man-made fiber textile products in Categories 339 and 644, as provided under the terms of the bilateral agreement of May 10, 1983, as amended: [1]

| Category | Adjusted Restraint Limit [1] |
|---|---|
| 339 | 404,507 dozen. |
| 644 | 20,597 dozen. |

[1] The limit for Category 644 has not been adjusted to account for any imports exported after April 28, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable limit; and (3) administrative arrangements and adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Sincerely,

Arthur Garel,

*Acting, Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-12143 Filed 5-27-87; 8:45 am]

BILLING CODE 3510-DR-M

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## Increasing the Import Limit for Certain Man-Made Fiber Textile Produced or Manufactured in Yugoslavia

May 21, 1987

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 29, 1987. For further information contact William Dawson, International Trade Specialist (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

A CITA directive dated December 23, 1986 (51 FR 47052) established, among other things, an import restraint limit for certain man-made fiber textile products in Category 604-A, produced or manufactured in Yugoslavia and exported during the fourteen-month period which began on November 1, 1986 and extends through December 31, 1987.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, and at the request of the Socialist Federal Republic of Yugoslavia, the limit established for acrylic spun yarn in Category 604-A is being increased for carryforward. The limit for Category 604-A has been filled.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the import limit for Category 604-A at the designated level.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983

(48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Arthur Garel,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 21, 1987.

**Committee for the Implemenation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, concerning, among other things, imports into the United States of man-made fiber textile products in Category 604–A[1] produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the fourteen-month priod which began on November 1, 1986 and extends through December 31, 1987.

Effective on May 29, 1987, the directive of December 23, 1986 is amended to adjust the previously established restraint limit for acrylic spun yarn in Category 604–A to 713,650 pounds, as provided under the terms of the bilateral agreement of October 26 and 27, 1978, as amended and extended.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

**Arthur Garel,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–12144 Filed 5–27–87; 8:45 am]

BILLING CODE 3510-DR-M

## Amending the Export Visa and Exempt Certification Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

May 21, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 29, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

### Background

On May 20, 1981 a notice was published in the **Federal Register** (46 FR 27516) announcing the establishment of export visa and exempt certification requirements for certain cotton, wool and man-made fiber textile and apparel products, produced or manufactured in Mexico and exported on and after July 1, 1981. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1969, as amended and extended, between the Governments of the United States and United Mexican States, agreement has been reached to further amend the existing export visa and exmept certification requirements to include the following part-category designations:

| Category | Description |
|---|---|
| 369–D | Dishtowels. |
| 369–B | Handbags and luggage. |
| 369–U | Shoe uppers. |
| 369–O | Other. |
| 665–C | Cordage. |
| 669–P | Man-made fiber bags. |
| 665–O | Other. |

The two governments further agreed to amend the export visa and exempt certification requirements to exempt cotton webs, wadding and batting in TSUSA number 355.0200.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584, April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

**Arthur Garel,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 21, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington; DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 15, 1981 which directed you to prohibit, effective on July 1, 1981 and until further notice, entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Mexico and exported on and after July 1, 1981, which were not visaed or certified for exemption by the Government of Mexico.

Effective on May 29, 1987, the directive of May 15, 1981 is hereby further amended to include the following part-category designations:

| Category | TSUSA No. |
|---|---|
| 369–D (Dishtowels) | 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, and 366.2600 |
| 369–B (Handbags and luggage). | 706.3210, 706.3280, 706.3640, 706.3650, 706.4106, and 706.4111 |
| 369–U (Shoe uppers) | 366.0410, 366.5210 |
| 369–O (Other) | All other TSUSAs excluding 355.0200, 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, 366.2600, 366.0410, 366.5210, 706.3210, 706.3280, 706.3640, 706.3650, 706.4106, and 706.4111 |
| 665–C (Cordage) | 348.0065, 348.0075, 348.0585, and 348.0575 |
| 669–P (Man-made fiber bags). | 366.5300 |
| 665–O (Other) | All other TSUSAs excluding 348.0065, 348.0075, 348.0585, 348.0575, and 366.5300 |

Also effective on May 29, 1987, exports from Mexico of cotton webs, wadding and batting in TSUSA number 355.0200 are exempt from visa and exempt certification requirements.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

**Arthur Garel,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–12145 Filed 5–27–87; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Advisory Committee on Women in the Services (DACOWITS)

**AGENCY:** Defense Advisory Committee on Women in the Services (DACOWITS)

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS).

[1] In Category 604, only TSUSA numbers 310.5049 and 310.5045 (formerly 310.5042).

[2] The terms of the agreement provide, in part, that: (1) Carryforward and carryover may not exceed 11 percent and swing may not exceed 6 percent of cotton and man-made fiber and 5 percent of wool; (2) special shift up to 10 percent may be available in Categories 340/640 and 341/641.

The purpose of the meeting is to review the Recommendations, Requests for Information, and Continuing Concerns made by the Committee at the 1987 Spring Meeting; review the Subcommittee Issue Agendas; discuss current issues relevant to women in the Services; and plan the program for the next semiannual meeting scheduled for October 25–29, 1987, in Killeen Texas. All meeting sessions will be open to the public.

**DATE:** June 29, 1987, 9:30 a.m.–5:00 p.m.

**ADDRESS:** SecDef Conference Room 3E869, The Pentagon, Washington DC.

**FOR FURTHER INFORMATION CONTACT:** Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

Linda M. Lawson,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

May 22, 1987.

[FR Doc. 87–12149 Filed 5–27–87; 8:45 am]

BILLING CODE 3810–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER87–427–000 et al.]

### Electric Rate and Corporate Regulation Filings; Tampa Electric Co. et al.

Take notice that the following filings have been made with the Commission:

**1. Tampa Electric Company**

[Docket No. ER87–427–000]

May 13, 1987.

Take notice that on May 8, 1987, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the firm interchange of 250 megawatts of capacity and energy between Tampa Electric and Florida Power Corporation (Florida Power). Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing contract for interchange service between Tampa Electric and Florida Power, designated as Tampa Electric's Rate Schedule FPC No. 6 and Florida Power's Rate Schedule FPC No. 80. Tampa Electric's filing includes a certificate of concurrence submitted by Florida Power in lieu of an independent filing.

Tampa Electric proposes an effective date of May 8, 1987 for the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Florida Power and the Florida Public Service Commission.

Comment date: June 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

**2. Tampa Electric Company**

[Docket No. ER87–425–000]

May 13, 1987.

Take notice that on May 8, 1987, Tampa Electric Company (Tampa Electric) tendered for filing revised cost support schedules showing a change in the daily capacity charge for its scheduled interchange in the daily capacity charge for its scheduled interchange service provided under interchange agreements with Florida Power Corporation, Florida Power & Light Company, Florida Municipal Power Agency, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Utility Board of the City of Key West, and the Cities of Gainesville, Kissimmee, Lake Worth, Lakeland, St. Cloud, Starke, Tallahassee, and Vero Beach, Florida. Tampa Electric states that the revised daily capacity charge is based on 1986 Form No. 1 data, and is derived by the same method that was utilized in the cost support schedules submitted with the interchange agreements and in all previous annual revisions.

Tampa Electric requests that the revised daily capacity charge be made effective as of May 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Tampa Electric states that a copy of the filing has been served upon each of the above-named parties to interchange agreements with Tampa Electric, as well as the Florida Public Service Commission.

Comment date: June 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

**3. New England Power Company**

[Docket No. ER87–428–000]

May 13, 1987.

Take notice that on May 11, 1987, New England Power Company (NEP) submitted for filing an executed Tap Transmission Agreement with the Town of Hudson, Massachusetts, a Massachusetts municipal corporation acting by and through its Light and Power Department (Hudson).

NEP requests waiver of the commission's notice requirements so that the Agreement may become effective June 22, 1986, in accordance with its terms and the intent of the parties. As good cause for this request, NEP states that one of the purposes of the Agreement was to substitute the proposed support arrangement for Hudson's payments under NEP's non-PTF Rate T–1 under Tariff No. 3. Those rates were increased effective June 22, 1986. NEP requests that the effective date of the Agreement coincide with the rate increase effective date.

Comment date: June 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

**4. Puget Sound Power & Light Company**

[Docket No. ER87–339–000]

May 18, 1987.

Take notice that on May 11, 1987, Puget Sound Power & Light Company submitted for filing an amendment consisting of supplementary information on the changes made to FPC electric Tariff Original Volume No. 3 to reflect current actual costs of the company's thermal generating resources which was noticed by the Commission on March 27, 1987.

Comment date: June 1, 1987, in accordance with Standard Paragraph E at the end of this notice.

**5. The Algoma Group v. Wisconsin Public Service Corporation**

[Docket No. ER87–36–000]

May 19, 1987.

Take notice that on May 6, 1987 the cities and villages of Manitowac, Marshfield, Stratford and Wisconsin Rapids, Wisconsin, The city of Stephenson, Michigan, the Alger Delta Cooperative Electric Association, the Washington Island Electric Cooperative and the Wisconsin Public Power, Inc., SYSTEM (collectively known as the Algoma Group), tendered for filing a Complaint against Wisconsin Public Service Corporation, (WPS) an electric utility, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure. The Algoma Group requests the Commission to initiate an investigation and hold a hearing to determine whether WPS was imprudent in failing to obtain a substantial state tax refund in 1986 by contesting certain past state property assessments and a state law change which affect those assessments.

Comment date: June 18, 1987, in accordance with Standard Paragraph E at the end of this notice. WPS shall also answer the complaint on or before June 18, 1987.

**6. Consolidated Edison Company of New York, Inc.**

[Docket No. ER87-430-000]

May 19, 1987.

Take notice that on May 12, 1987, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, an agreement to provide interruptible transmission service to Connecticut Municipal Electric Energy Cooperative ("CMEEC"). The agreement provides for a charge of 2.6 mills per kilowatthour for transmission of power purchased by CMEEC from Pennsylvania Power and Light Company.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of January 24, 1986.

Con Edison states that a copy of this filing has been served by mail upon CMEEC.

Comment date: June 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

**7. Idaho Power Company**

[Docket No. EL87-39-000]

May 19, 1987.

Take notice that on May 13, 1987, Idaho Power Co. tendered for filing a Petition for Declaratory Order re accounting treatment of certain deferred costs.

Comment date: June 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

**8. New England Power Company**

[Docket Nos. ER86-687-002 and ER86-688-002]

May 19, 1987.

Take notice that on May 11, 1987, New England Power Company (NEP) submitted for filing additional compliance rates reflecting its W-8 cost-of-service adjusted to reflect a 34% tax rate for implementation on January 1, 1988, subject to refund. NEP states that this filing is in compliance with an April 10, 1987 letter issued in this proceeding by the Director of the Division of Electric Power Application Review.

Comment date: June 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

**9. San Diego Gas & Electric Company**

[Docket Nos. ER87-363-000 and ER87-364-000]

May 19, 1987.

Take notice that on May 13, 1987 San Diego Gas & Electric Company (SDG&E) tendered for filing the following additional information to the firm (FTS), Short-Term Firm (STF), and Interruptible (ITS) Transmission Service Agreements between SDG&E and Southern California Edison Company (Edison):

1. Attachment A: Use Factor Summary.

2. Table 3: San Diego Gas & Electric Company Level Annual Capital Cost.

In addition, SD&E submitted three corrected pages that were in error in the filing of Docket No. ER87-364-000.

SD&E requests renewal of the Commission's waiver of prior notice requirements and the following effective dates:

(2) February 1, 1986 for changes relating to SD&E's revenue requirements in the STF and ITS agreements.

(b) January 1, 1987 for changes relating to SD&E's authorized rate of return in the FTS, STF and ITS agreements.

(c) April 1, 1987 for changes relating to SD&E's revenue requirements in the FTS agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: June 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

**10. Tampa Electric Company**

[Docket No. ER87-431-000]

May 19, 1987.

Take notice that on May 12, 1987, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the firm interchange of 50 megawatts of capacity and energy between Tampa Electric and the City of Lakeland, Florida. Tampa Electric states that the Letter of Commitment is submitted as an additional supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric and Lakeland, designated as Tampa Electric's Rate Schedule FERC No. 21.

Tampa Electric proposes an effective date of May 18, 1987 for the Letter of Commitment, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Lakeland and the Florida Public Service Commission.

Comment date: June 3, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-12097 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. QF87-457-000]

**Cogeneration Partners of America; Application for Commission Certification of Qualifying Status of a Cogeneration Facility**

May 19, 1987.

On May 7, 1987, Cogeneration Partners of America (Applicant), of 333 Thornall Street, Edison, New Jersey 08837, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Pedricktown, New Jersey. The facility will consist of a combustion turbine generating unit, a heat recovery stem generator and an extraction/condensing steam turbine generating unit. The thermal energy recovered from the facility will be utilized for process. The electric power production capacity of the facility will be 110.5 MW. The primary energy source will be natural gas. Installation of the facility will begin on or about October 1, 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-12155 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. QF87-403-000]

## SJE Cogeneration, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

May 19, 1987.

On May 7, 1987, SJE Cogeneration Inc., (Applicant), c/o SJE Investments, 1960 Lincoln Park West, Suite 2702, Chicago, Illinois 60614 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located between the towns of Woodstock and Edinburg, in Shenandoah County, Virginia. The facility will consist of two combustion turbines and two heat recovery steam generators. The thermal energy recovered from the facility will be used by the Manville Corporation for product drying purposes. The primary energy source for the facility will be natural gas mixed with a synthetic gas manufactured from coal gasification and refuse-derived fuel. The net electric power production capacity of the facility will be approximately 170 MW. Installation of the facility will begin approximately in July 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-12156 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CI87-403-000 et al.]

## Chandler & Associates, Inc.; Applications for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate

May 22, 1987

Applicant herein has filed applications pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's Regulations for limited-term abandonment through November 1, 1987, with pregranted abandonment to make sales for resale in interstate commerce of the released gas under its small producer certificate. Details are shown in the applications and in the attached tabulation.

The circulation presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the Federal Register, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-403-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1860 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, North Douglas Creek Field, Rio Blanco County, Colorado. | ([2])([3]) | |
| CI87-404-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1860 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, North Douglas Creek Field, Rio Blanco County, Colorado. | ([2])([3]) | |
| CI87-405-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1860 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, Dragon Trail Field, Rio Blanco County, Colorado. | ([4])([3]) | |
| CI87-406-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1860 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, Dragon Trail Field, Rio Blanco County, Colorado. | ([4])([3]) | |
| CI87-407-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1860 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, Dragon Trail Field, Rio Blanco County, Colorado. | ([4])([3]) | |
| CI87-408-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1860 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, Dragon Trail Field, Rio Blanco County, Colorado. | ([4])([3]) | |
| CI87-409-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1860 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, Dragon Trail Field, Rio Blanco County, Colorado. | ([4])([3]) | |

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-410-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1660 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, Dragon Trail Field, Rio Blanco County, Colorado. | ([2])([2]) | |
| CI87-411-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1660 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, Dragon Trail Field, Rio Blanco County, Colorado. | ([2])([2]) | |
| CI87-412-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1660 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, Dragon Trail Field, Rio Blanco County, Colorado. | ([2])([2]) | |
| CI87-413-000, B, Mar. 30, 1987 [1]. | Chandler & Associates, Inc., 1400 Lincoln Tower Building, 1660 Lincoln Street, Denver, Colorado 80203. | Northwest Pipeline Corporation, North Dragon Trail Field, Rio Blanco County, Colorado. | ([2])([2]) | |

[1] Additional material received April 30 and May 5, 1987.
[2] In support of its application, Applicant states it is subject to reduced takes without payment. The related wells, NGPA price category and estimated daily deliverability are shown below.

| Abandonment docket designation | Well name | NGPA category | Daily deliverability (Mcf/d) |
|---|---|---|---|
| CI87-403-000 | North Douglas Creek 11-6 | Section 108 | 60 |
| CI87-404-000 | North Douglas Creek 5-6 | Section 108 | 20 |
| CI87-405-000 | North Douglas Creek 3-7 | Section 108 | 60 |
| CI87-406-000 | North Dragon Trail 6-7 | Section 104 (Flowing gas) | 180 |
| CI87-407-000 | North Dragon Trail 8-7 | Section 104 (Flowing gas) | 170 |
| CI87-408-000 | North Douglas Creek 4-12 | Section 108 | 35 |
| CI87-409-000 | North Douglas Creek 11-12 | Section 108 | 35 |
| CI87-410-000 | North Douglas Creek 2-14 | Section 108 | 35 |
| CI87-411-000 | North Douglas Creek 6-11 | Section 108 | 8 |
| CI87-412-000 | North Douglas Creek 9-11 | Section 108 | 15 |
| CI87-413-000 | Government D-1 | Section 108 | 15 |
| | | | 533 |

[3] Operates under small producer certificate in Docket No. CS71-350.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession

[FR Doc. 87-12157 Filed 5-27-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-579-000]

## Continental Natural Gas, Inc.; Application of Continental Natural Gas, Inc. for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Pregranted Abandonment

May 22, 1987.

Take notice that on May 8, 1987, Continental Natural Gas, Inc. ("Continental"), pursuant to sections 4 and 7 of the Natural Gas Act, and Parts 154 and 157 of the Regulations of the Federal Energy Regulatory Commission, 18 CFR Parts 154 and 157, applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by Continental; (2) authorizing sales for resale of natural gas in interstate commerce by the certain producers from whom Continental purchases natural gas; (3) authorizing sales for resale of natural gas in interstate commerce by certain producers through Continental acting as their agent; and (4) authorizing pregranted abandonment of such sales.

Continental states that such authorizations, if granted, will enable it to sell natural gas which it purchases from certain producers in the spot market, as described more fully in its application. Such authority will also enable Continental to act as agent for certain producers in the sale for resale of their gas in the spot market.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 8, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Continental to appear to be represented at the hearing.

Kenneth F. Plumb,
*Secretary.*

[FR Doc. 87-12158 Filed 5-27-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-585-000]

## Diamond Shamrock Offshore Partners Limited Partnership; Application for Limited-Term Certificate With Pre-Granted Abandonment

May 22, 1987.

Take notice that on May 15, 1987, Diamond Shamrock Offshore Partners Limited Partnership ("Diamond Shamrock") filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), the provisions of 18 CFR Parts 154 and 157, and 18 CFR 2.77(a)(1), seeking a limited-term

certificate of public convenience and necessity authorizing the sale for resale in interstate commerce of uncommitted natural gas produced by Diamond Shamrock from Block 700, Matagorda Island Area, Offshore Texas with pre-granted abandonment. This authorization would enable Diamond Shamrock to make sales of that gas on a short-term basis, or a best effort basis, and on the sport market, as more fully described in the Application which is on file with the Commission and open for public inspection. The term of the authorization requested by Diamond Shamrock is two years.

Diamond Shamrock states that the authority as requested is consistent with the Commission's rules and regulations and is necessary for Diamond Shamrock to make short-term, best efforts and spot gas sales. Further, Diamond Shamrock states that, absent said authorization, the flexibility and efficiency necessary for successful operation in the spot market would be hindered.

Sales proposed to be made by Diamond Shamrock will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Diamond Shamrock. The sales volumes, prices, purchasers, delivery points, and transportation will vary. Diamond Shamrock proposes to sell and deliver to various short-term and spot gas purchasers all or a portion of the gas Diamond Shamrock determines is available for sale at terms acceptable to Diamond Shamrock for a particular time frame. Diamond Shamrock will not be obligated to sell gas pursuant to any nomination or proposed nomination until the exact volumes, terms and conditions, and prices are agreed to by Diamond Shamrock and a purchaser. The actual contract between Diamond Shamrock and the short-term and spot gas purchaser may be for all or any portion of the quantity which was set out in the nomination or proposed nomination. Further, Diamond Shamrock proposes to make sales on a best efforts basis where the price and term are agreed upon but there is no requirement on the purchaser to purchase or Diamond Shamrock to sell a specific volume.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 8, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (17 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-12159 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. I.D.-1788-002]**

## John G. Haehl, Jr., Filing

May 22, 1987.

Take notice that on May 1, 1987, John G. Haehl, Jr., filed an application pursuant to section 305(b) of the Federal Power Act for Commission authorization to hold concurrently the following positions:

| Position | Name of corporation | Classification |
|---|---|---|
| Chairman and Chief Executive Officer | Niagara Mohawk Power Corporation | Public Utility. |
| Director | Utica Mutual Insurance Company | Corporation (and wholly-owned subsidiary) authorized by Insurance Law of the State of New York to act as a broker/dealer. |

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 8, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-12160 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP83-498-005]**

## The Inland Gas Company, Inc., Proposed Change in FERC Gas Tariff

May 22, 1987.

Take notice that The Inland Gas Company, Inc. ("Inland") on May 15, 1987 tendered for filing proposed Second Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1. Said tariff sheet bears an issue date of May 15, 1987 and an effective date of July 1, 1987.

Inland states that the foregoing tariff sheet is being filed pursuant to the Commission's Order issued August 21, 1984 approving a Stipulation and Agreement in the above-captioned docket. Inland further states that in accordance with said Stipulation and Agreement, the subject tariff sheet sets forth a proposed transportation rate, plus retainage, to be effective July 1, 1987, for transporation service rendered pursuant to certificate authorization in Docket No. CP83-498-000.

A copy of Inland's tariff filing was served upon its affected transportation customer. Also, a copy of Inland's tariff filing is available for public inspection during regular business hours in its offices at 336-338 Fourteenth Street, Ashland, Kentucky 41101.

Any person desiring to be heard or to protest should file a motion to intervene or protest with Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure. All such motions or protests should be filed on or before June 1, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Inland's tariff and the proposed revision are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-12161 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-86-000]**

## Northwest Alaskan Pipeline Company; Tariff Changes

May 22, 1987.

Take notice that on May 15, 1987, Northwest Alaskan Pipeline Company ("Northwest Alaskan") 295 Chipeta

Way, Salt Lake City, Utah 84108–0900, tendered for filing in Docket No. RP87–66, Twentieth Revised Sheet No. 5 to its FERC Gas Tariff Original Volume No. 2.

Northwest Alaskan states that it is submitting Twentieth Revised Sheet No. 5, reflecting a decrease in current demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. ("Pan–Alberta") and resold to three of Northwest Alaskan's U.S. purchasers, Northern Natural Gas Company, Division of Enron Corp. ("Northern") Panhandle Eastern Pipe Line Company ("Panhandle") and Pacific Interstate Transmission Company ("PIT") under Rate Schedules X–1, X–2 and X–4 respectively, and a small increase in current and total demand charges for gas resold to Northwest Alaskan's fourth U.S. purchaser, United Gas Pipe Line Company ("United") under Rate Schedule X–3. Total demand charges for Northern increase due to a larger demand charge adjustment than in the January-June 1987 period, while total demand charges for Panhandle and PIT are less.

Northwest Alaskan states that it is submitting Twentieth Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Northern, Panhandle, United and PIT, and pursuant to Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (July 1, 1987 through December 31, 1987) the demand charges and demand charge adjustments which Northwest Alaskan will charge during that period.

Northwest Alaskan requests that Twentieth Revised Sheet No. 5 become effective July 1, 1987.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 3, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–12162 Filed 5–27–87; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP87–326–000]

## Northwest Pipeline Corp.; Application

May 20, 1987.

Take notice that on April 30, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–326–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce for the account of Northwest Natural Gas Company (Northwest Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 100,000 MMBtu of natural gas per day in interstate commerce for use by Northwest Natural and by CP National Corporation for system supply and up to 80,000 MMBtu of natural gas per day in interstate commerce for specific end-users served by Northwest Natural and CP National, for a term commencing with the issuance and acceptance of regulatory authorization and expiring on October 31, 1989, pursuant to two transportation agreements, one designated for system supply and one designated for end-users, both dated April 28, 1987, which provide for transportation service under Rate Schedules T–4 and T–5 of Northwest's FERC Gas Tariff Volume No. 1–A.

Northwest proposes to receive up to 180,000 MMBtu per day for the account of Northwest Natural at certain mainline receipt points identified on Exhibit A in the transportation agreements. Pursuant to the transportation agreements, Northwest would transport this gas, on an interruptible basis, for Northwest Natural's account to the delivery points described in Exhibit B of the transportation agreements, it is stated.

Northwest proposes to transport Northwest Natural's volumes through its transmission system and redeliver up to 100,000 MMBtu per day of Northwest Natural at existing motor stations where Northwest presently is authorized to make deliveries to Northwest Natural and CP National under Northwest's ODL–1 Sales Rate Schedule. It is stated that actual availability of transportation service under the system supply transportation agreement is proposed to be limited to 10 percent of the respective annual system supply requirements of Northwest Natural and CP National. Pursuant to the end-user transportation agreement, Northwest proposes to transport up to 80,000 MMBtu of natural gas, on an interruptible basis, of which 70,000 MMBtu is designated for delivery to points on Northwest Natural's system and 10,000 MMBtu designated for delivery to points on CP National's system.

It is asserted that the proposed transportation service would enable Northwest Natural and CP National to provide their customers with low-cost gas supplies that might not be available otherwise. These transportation services are proposed to be provided for a limited term expiring October 31, 1989, coincident with the expiration of Northwest's ODL–1 sales service agreements, to Northwest Natural and CP National.

Northwest proposes to charge Northwest Natural for all volumes of gas transported and delivered under the end-user transportation agreement at either the interruptible, replacement on-system transportation rate or the interruptible, incremental on-system transportation rate as set forth respectively, in Northwest's Rate Schedules T–4 and T–5, FERC Gas Tariff, Volume No. 1–A. The T–4 transportation rate would apply to volumes transported during any months which are incremental to the corresponding 1984 monthly volumes for the end-users as indicated on Exhibit C of the transportation agreement. The T–5 transportation rate would apply to all volumes transported which are not incremental to the corresponding 1984 monthly volumes. Northwest proposes to charge Northwest Natural for all volumes transported and delivered under the system supply transportation agreement at the interruptible replacement on-system, Rate Schedule T–5 transportation rate in its Volume No. 1–A tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 1, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be

taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-12099 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CP87-328-000]

## Northwest Pipeline Corp. Application

May 20, 1987.

Take notice that on April 30, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City Utah 84108, filed in Docket No. CP87-328-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportion of natural gas in interstate commerce for the account of Crown Zellerbach Corporation (Crown Zellerbach), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 62,250 MMBtu of natural gas per day on an interruptible basis for the account of Crown Zellerbach for a term of two years, commencing with the issuance and acceptance of regulatory authorization, pursuant to a gas transportation agreement (transportation agreement) dated March 13, 1987, which provides for transportation service under Rate Schedules T-4 and T-5 of Northwest's FERC Gas Tariff Volume 1-A. Northwest proposes to receive these volumes for the account of Crown Zellerbach at the mainline receipt points indentified on Exhibit A of the transportation agreement.

It is said that Crown Zellerbach owns or controls natural gas supplies which it would cause to be delivered to Northwest at various existing receipt points on Northwest's transmission system.

Northwest proposes to transport Crown Zellerbach's volumes on an interruptible basis through its transmission system and redeliver thermally equivalent volumes less transmission fuel, to Crown Zellerbach at six existing meter stations indentified on Exhibit B of the transportation agreement, where Northwest presently is authorized to make deliveries to Northwest Natural Gas Company (Northwest Natural) under Northwest's ODL-1 Sales Rate Schedule. Northwest Natural would then deliver the subject gas to the various plants owned by Crown Zellerbach or its corporate parent, James River Corporation. Northwest proposes to provide this transportation service for a limited-term of two years as set forth in the transportation agreement.

It is asserted that the proposed transportation service would provide Crown Zellerbach with access to low-cost gas supplies that might not otherwise be available.

Northwest proposes to change Crown Zellerbach for all volumes of gas transported and delivered under the transportation agreement at either the interruptible, incremental on-system transportation rate or the interruptible, replacement on-system transportation rate as set forth, respectively, in Northwest's Rate Schedules T-4 and T-5, FERC Gas Tariff, Volume No. 1-A. The T-4 transportation rate would apply to volumes transported during any months which are incremental to the corresponding 1984 month volumes for Crown Zellerbach's Camas, Flexible Packaging Division, West Linn, Wauna Plants and James River's Halsey Plant as indicated on Exhibit C of the transportation agreement. The T-5 transportation rate would apply to all volumes transported which are not incremental to the corresponding 1984 monthly volumes, it is stated.

Any person desiring to be heard or to make any protect with reference to said application should on or before June 1, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject of jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, it the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-12100 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CI87-581-000]

## Prior Energy Corp.; Application

May 22, 1987.

Take notice that on May 11, 1987, Prior Energy Corporation, 420 Lexington Avenue, New York, N.Y. 10170, applied pursuant to section 7 of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing the sale for resale of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act. Pregranted abandonment authorization for such sales is also requested.

Prior states that the authorization sought will serve the public interest by finding markets for shut-in supplies, enhancing the throughput of interstate pipelines, increasing the cash flow of producers, and stimulating competition within natural gas markets, as has been recognized by recent Commission orders.

Prior further requests expedited consideration of its application and, accordingly, requests omission of any intermediate decision procedure. Prior waives its right to an oral hearing and its opportunity to file exceptions to the Commission's decision, if the Commission utilizes the expedited procedures under 18 CFR 385.802.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 8, 1987, file with the Federal Energy Regualtory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requiremetns of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-12163 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. C187-559-000]

## The Resource Group; Application of the Resource Group for Blanket Certificate of Public Convenience and Necessity and for an Order Approving Pre-Granted Abandonment

May 22, 1987.

Take notice that on May 4, 1987, the Resource Group (TRG), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C 717(c) and (f), and the provisions of 18 CFR Part 157, applied for a blanket certificate of public convenience and necessity and for pre-granted abandonment to permit the sale, and pre-granted abandonment of the sale, of natural gas which remains subject to the Commission's Natural Gas Act (Gas Act) jurisdiction for which producers have already received separate abandonment authority under section 7(b) of the Gas Act.

TRG states that it is seeking resale and pre-granted abandonment authority for all Natural Gas Policy Act (NGPA) categories of natural gas subject to the Commission's jurisdiction under the Gas Act. The producer-suppliers of TRG will have already received abandonment authority under separate authority for all natural gas purchased and resold by TRG. TRG is not seeking transportation authority for such gas nor is it seeking any authority, sales or abandonment, for any of its producer-suppliers. The transportation authority necessary to implement the requested authorization will be implemented pursuant to Orders 436 and 451, and NGPA Section 311. TRG's potential resale customers under the requested blanket certificate include interstate, intrastate and hinshaw pipelines, local distribution companies, and industrial and other end-users, including firm sales customers of releasing pipelines.

TRG states that natural gas supplies sold under the authority requested will be sold by TRG at market-clearing prices, but not in excess of the applicable NGRA maximum lawful price, or the applicable contract price, whichever is lower. TRG further states that its request is consistent with the Commission's recently issued order in *EnTrade Corporation,* Docket Nos. CI87-89-000, *et al.* (issued March 31, 1987), wherein the Commission amended and extended blanket sales certificates with pre-granted abandonment authorizing several marketing companies to make sales for resale, and granting pre-granted abandonment authorization for such sales. TRG has expressed its willingness to comply with the terms and conditions set forth in the Commission's *EnTrade* order, except as to the expiration of such authority. TRG requests that the term of the sales and abandonment requested extend for at least three years from the date of approval of such authority by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 8, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to becoms a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearings.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-12164 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP87-52-001]

## United Gas Pipe Line Co.; Compliance Filing

May 22, 1987.

Take notice that on May 19, 1987, United Gas Pipe Line Company (United) tendered for filing Revised Sixth Revised Sheet No. 4-E and Revised Second Revised Sheet No. 74-F4 to its FERC Gas Tariff, First Revised Volume No. 1 to comply with Ordering Paragraphs (B)(1) and (B)(3) of the Commission's April 30, 1987, Order Accepting for Filing and Suspending Tariff Sheets Subject to Refund and Conditions and Establishing Hearing Procedure (April 30, 1987, Suspension Order). Revised Sixth Revised Sheet No. 4-E reflects the storage cost component of the firm transportation rate as required by § 284.7 (d)(1) of the Commission's Regulations. Revised Second Revised Sheet No. 74-F4 reflects additional language explaining how amounts for unrecovered purchased gas costs are to be determined.

United States that in a separate pleading also filed on May 15, 1987, it has filed a Motion for Stay of Ordering Paragraph B(2) of the Commission's April 30, 1987, Suspension Order. United, therefore, has not included in this compliance filing revised tariff sheets and supporting schedules to reflect the reclassification of take-or-pay settlement costs to the commodity component.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before June 1, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-12165 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-3-43-002]

**Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

May 22, 1987.

Take notice that Williams Natural Gas Company (WNG) on May 19, 1987, tendered for filing Revised First Revised Sheet No. 6 to its FERC Gas Tariff, Original Volume No. 1.

This tariff sheet is being filed in accordance with Ordering Paragraphs (A)(5) and (A)(6) of the Commission's order issued April 22, 1987 in this docket. In the April 22, 1987 order, the Commission directed WNG to refile its rates to reflect the removal of the cost of any supplies not attached to its system as of the effective date of the PGA and to reflect removal of the ratable take payment to Mobil from its Account No. 191.

The rates reflect:

(1) A 36.79¢ per Mcf increase in the Cumulative Adjustment as measured against WNG's last regular PGA filing in Docket No. TA87-1-43-000 which became effective October 23, 1986 and a 40.99¢ per Mcf increase as measured against WNG's "flex PGA" filing in Docket No. TF87-1-43-000 which became effective December 23, 1986, due to an increase in WNG's projected gas purchase costs. This increase is unchanged from the increase originally filed in this docket because a further review of the PGA filing indicated there was no effect on WNG's projected cost of purchased gas due to infill drilling. The filing projected purchases from the Kansas Hugoton field which included purchases anticipated to come from infill wells. However, because the allocation of projected purchases to the well level is based on the previous 12 months of actual purchases, no allocation was made to new infill wells.

(2) A 4.02¢ per Mcf increase in the Surcharge Adjustment (to a positive .94¢ per Mcf from a negative 3.08¢ per Mcf) to amortize the Deferred Purchased Gas Cost Subaccount Balance. This Surcharge Adjustment is 1.20¢ per Mcf less than the 2.14¢ per Mcf Surcharge Adjustment reflected on First Revised Sheet No. 6 filed March 23, 1987 in this docket. This revised Surcharge Adjustment reflects the removal of the ratable take payment to Mobil from WNG's Account No. 191.

WNG states that copies of this filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 1, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-12166 Filed 5-27-87; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-32084]

**Control of Air Pollution From New Motor Vehicle Engines; Federal Certification Test Results for 1987 Model Year**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Section 206(e) of the Clean Air Act, as amended August 1977, directs the Administrator of the Environmental Protection Agency to announce in the **Federal Register** the availability of the results of certification tests. These tests are conducted on new motor vehicles and new motor vehicle engines to determine vehicles'/engines' conformity with Federal standards for the control of air pollution caused by motor vehicles. The Federal Certification Test Results for the 1987 model year are now available and may be obtained by writing: U.S. Environmental Protection Agency, Office of Mobile Sources, Certification Division, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

**FOR FURTHER INFORMATION CONTACT:** Judy F. Carmickle, Certification Division, U.S. Environmental Protection Agency, Office of Mobile Sources, Certification Division, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668-4206.

Dated: May 19, 1987.

J. Craig Potter,

*Assistant Administrator for Air and Radiation.*

[FR Doc. 87-12112 Filed 5-27-87; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. HA-84-1; FRL-3206-6]

**Health Assessment Document for Acetaldehyde; Availability of First External Review Draft**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of first external review draft.

**SUMMARY:** This notice announces the availability of the first external review draft of a Health Assessment Document for Acetaldehyde.

**DATES:** The Agency will make the document available for public review and comment on or about Monday, June 15, 1987. Comments must be postmarked by Thursday, August 13, 1987.

**ADDRESSES:** To obtain a copy of the document, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, OH 45268, (513) 569-7562 or FTS 684-7562, and request the first external review draft of the Health Assessment Document for Acetaldehyde. Please provide your name, mailing address, and the EPA document number, EPA/600/8-86/015A.

The draft document will also be available for public inspection and copying at the EPA library, EPA headquarters, Waterside Mall, 401 M Street SW, Washington, DC.

Comments on the draft should be sent to the Project Manager for Acetaldehyde, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711, (919) 541-3637 or FTS 629-3637.

**SUPPLEMENTARY INFORMATION:** In May 1985, EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare a health assessment document for acetaldehyde. The document will be used by EPA in the decisionmaking process regarding possible regulation of acetaldehyde under the Clean Air Act as amended, 42 U.S.C., 7401 et seq.

Dated: May 20, 1987.

Vaun A. Newill,

*Assistant Administrator for Research and Development.*

[FR Doc. 87-12113 Filed 5-27-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3207-6

## Superfund Program; Non-Binding Preliminary Allocations of Responsibility (NBAR)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Request for public comment.

**SUMMARY:** Section 122(e)(3) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), which amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), requires the Environmental Protection Agency (EPA) to develop guidelines for preparing nonbinding preliminary allocations of responsibility (NBARs). EPA is publishing today the Interim Guidelines for Preparing Nonbinding Preliminary Allocations of Responsibility to announce that the guidelines are in effect and to solicit public comment on them.

**DATE:** Comments must be provided on or before July 27, 1987.

**ADDRESS:** Comments should be addressed to Debbie Wood, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, WH-527, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Debbie Wood, U.S. Environmental Protection Agency, Office of Waste Programs Enforcement, WH-527, 401 M St. SW., Washington, DC 20460, (202) 382-3002.

**SUPPLEMENTARY INFORMATION:** As defined in section 122(e)(3)(A) of SARA, an NBAR is an allocation by EPA among potentially responsible parties (PRPs) of percentage of total response costs at a facility. The purpose of NBARs is to promote expedited settlement. NBARs are not binding on the government or PRPs; they cannot be admitted as evidence or reviewed in any judicial proceeding, including citizen suits. Whether to prepare an NBAR at any particular CERCLA site is a decision within EPA's discretion.

EPA will consider preparing an NBAR at a site if it appears that an NBAR may help to promote settlement. Still, NBARs will not be routine. In general, EPA's policy is that PRPs should work out among themselves questions of how much each will pay toward settlement at a site.

Comments may address the overall approach taken in the interim guidelines or focus on any aspect of it. EPA particularly solicits comment on appropriate factors to consider in determining percentage allocations for owners, operators, and transporters.

The policies and procedures set forth in the interim guidelines are guidance to EPA employees. The interim guidelines include enforcement policies and internal procedures that are not appropriate or necessary subjects for rulemaking. Thus, the guidelines do not constitute rulemaking by EPA and may not be relied on to create a substantive or procedural right or benefit enforceable by any other person. EPA may, therefore, take action that is at variance with policies and procedures contained in this document.

EPA is publishing the interim guidelines to provide wide public distribution of information on this aspect of SARA implementation, and to gain the benefit of public comment. The interim guidelines follow:

Dated: May 18, 1987.

Lee M. Thomas,

*Administrator.*

## INTERIM GUIDELINES FOR PREPARING NONBINDING PRELIMINARY ALLOCATIONS OF RESPONSIBILITY

### I. Introduction

Section 122(e)(3) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499, which amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, requires the Environmental Protection Agency (EPA) to develop guidelines for preparing nonbinding preliminary allocations of responsibility (NBARs). As defined in section 122(e)(3)(A), an NBAR is an allocation by EPA among potentially responsible parties (PRPs) of percentages of total response costs at a facility. SARA authorizes EPA to provide NBARs at its discretion. NBARs are a tool EPA may use in appropriate cases to promote remedial settlements.

NBARs will allocate 100 percent of response costs among PRPs. The discretion to prepare an NBAR does not change the goal of the interim CERCLA settlement policy, published at 50 FR 5034 (February 5, 1985), to achieve 100 percent of cleanup or costs in settlement.

In preparing an NBAR, EPA may consider such factors as volume, toxicity, and mobility of hazardous substances contributed to the site by PRPs, and other settlement criteria included in the interim settlement policy (50 FR 5034, 5037-5038). The settlement criteria include strength of evidence tracing the wastes at a site to PRPs, ability of PRPs to pay, litigative risks in proceeding to trial, public interest considerations, precedential value, value of obtaining a present sum certain, inequities and aggravating factors, and nature of the case that remains after settlement.

An NBAR is not binding on the government or PRPs; it cannot be admitted as evidence or reviewed in any judicial proceeding, including citizen suits. An NBAR is preliminary in the sense that PRPs are free to adjust the percentages allocated by EPA among themselves.

Should EPA decide to prepare an NBAR, it will normally be prepared during the remedial investigation and feasibility study (RI/FS), and provided to PRPs as soon as practicable, but not later than completion of the RI/FS for the site. The NBAR process will normally be used only in cases where the discretionary special notice procedures of section 122(e) are invoked.

Following presentation of an NBAR to PRPs, PRPs have an opportunity to offer to undertake or finance cleanup. EPA need consider only substantial offers. A substantial offer is defined in part IV of these guidelines. EPA must provide a written explanation to PRPs if it rejects a substantial offer based on an NBAR. Under section 122(e)(3)(E), the decision to reject a substantial offer based on an NBAR is not subject to judicial review.

Section 122(e)(3)(D) states that the costs incurred by EPA in preparing an NBAR shall be reimbursed by PRPs whose offer is accepted. If a settlement offer is not accepted, NBAR preparation costs are considered response costs under SARA.

### II. When To Use the NBAR

The NBAR is meant to promote settlement and, thus, reduce transaction costs. Generally, EPA will consider NBAR preparation when it appears that an NBAR may help to promote settlement. EPA will give particular consideration to preparing an NBAR whenever a significant percentage of PRPs at a site request one. What constitutes a significant percentage is a case-specific determination. Regions should note the existence of the NBAR process in all pre-RI/FS notice letters, and indicate its potential availability if requested by a significant percentage of

PRPs within 30 days of receipt of the notice.

There are certain situations where an NBAR may be particularly appropriate. For example, in a case that involves federal agencies as PRPs, preparing an NBAR in order to ascertain the percentage of federal agency responsibility is likely to promote settlement even though a significant percentage of PRPs did not request it. Similarly, if a state or municipality is involved at a site as a PRP, NBAR preparation may be deemed likely to promote settlement. Or, it might be appropriate to prepare an NBAR in a case with a large number of PRPs including, perhaps, a sizeable *de minimis* contingent. An NBAR may help coalesce a previously unorganized PRP group into a steering committee, and thus promote settlement.

There are also situations where an NBAR should probably not be prepared. For example, it may be clear very early in the process that there is insufficient information available on which to base an NBAR, or that the number of PRPs not *de minimis* is so small that an NBAR would not expedite settlement. In some cases it may seem that an equitable settlement can be more expeditiously or effectively achieved without use of NBAR procedures. There may also be cases where NBAR preparation is ruled out because an allocation for the site is already being prepared by or for PRPs.

Again, whether to prepare an NBAR at any particular site, including any state enforcement lead site, is a decision within EPA's discretion and will depend on the particular circumstances of each case. The decision whether to prepare an NBAR at any particular site rests with the Regional Administrator.

IF EPA decides to prepare an NBAR, it will notify PRPs of that fact in writing as early as is feasible. An NBAR notification should specify that the decision to prepare an NBAR is discretionary and is contingent, at a minimum, upon the availability of sufficient data.

## III. How To Prepare an NBAR

The purpose of the NBAR is to promote expedited settlement, thus minimizing transaction costs; an NBAR must be conducted in a fair, efficient, and pragmatic manner. For simplicity and other practical reasons, the allocation process presented here is based primarily upon volume and the settlement criteria.

EPA considered and rejected models based on toxicity because of the complexity of their application and the lack of agreement among the scientific community about degrees of toxicity of specific hazardous substances and synergistic effects. Also, toxicity is usually causally related to the cost of cleanup for only a few substances (e.g., PCBs, dioxin).

Still, the allocation process presented here is not intended to be exclusive. There will, of course, be cases where other factors, such as toxicity or mobility, must take priority in the interests of fairness to the parties. If a Region prefers to use another allocation process, it should confer with the Director of the Office of Waste Programs Enforcement prior to such use.

Activities involved in conducting an NBAR fall into two major categories: Information collection and assessment, and allocation.

### *Information Collection and Assessment*

While aggressive information collection efforts occur in every case, additional information may be necessary for NBAR purposes. Additional information on actual volume and specific wastes with respect to each PRP at an NBAR site may be required.

Section 12(e)(3)(B) of SARA authorizes EPA to subpoena witnesses and documents. Section 104(e) of CERCLA, as amended by SARA, authorizes EPA to obtain access to information about a person's ability to pay and about the nature and quantity of hazardous substances generated, treated, stored, or disposed of by that person. These authorities may be used to gather data for an NBAR.

Subpoena of witnesses, authorized by section 122 (e)(3)(B), may be used in some cases as part of the information collection process. Considerable case-specific judgment must be exercised about the extent to which the subpoena authority will be used due to its resource-intensive nature.

Information being collected must be reviewed by technical and legal staff as it is received so that pertinent information may be culled and gaps and inconsistencies identified. Collection and assessment efforts should be completed by the end of the RI, so that the allocation can be completed by the end of the FS.

On the basis of information collection and assessment efforts, EPA will determine the waste types and volumes for each PRP. This volumetric ranking is part of the information that must be provided with a pre-cleanup negotiation special notice letter.

The legislative history of section 122 states that the allocation itself should be made by federal employees. Consultants or states with cooperative agreements may assist in the information gathering and assessment phase of the allocation process. The allocation phase of an NBAR can be most effectively undertaken by the same technical and legal personnel who directed the information collection and assessment efforts.

### *Allocation*

In most cases, waste at a site is commingled and therefore indivisible. In commingled waste cases, the first step in the allocation phase of an NBAR is to allocate 100 percent of responsibility among generators, based on the volume each contributed. The product of this step will often differ from the volumetric ranking provided with special notice letters because any waste that is attributable to unknown parties is allocated to known parties in proportion to their volume.

In a limited number of cases, it is possible to link particular remedial activities with specific waste types and volumes. For example, in the easy but rare case of divisible waste, the cost of removing barrels from a warehouse on a larger site can be separately attributed to the contributors of the barrels. Or, the cost of incinerating soil contaminated solely by PCBs can be attributed to PCB contributors. Where it is possible to do so, waste types and volumes that necessitate particular remedial activities will be fully attributed to the appropriate contributors.

The second step in the allocation phase of the NBAR process involves adjustments based on consideration of the settlement criteria. Any percentage allocated to a defunct or impecunious party should be reallocated. Where appropriate, credit may be given for any PRP contributions to RI/FS and/or removal activities at the site.

In addition, percentages of responsibility should be allocated to financially viable owners, operators and transporters. How much to allocate to such parties is a case-specific decision based upon consideration of the settlement criteria.

In general, owner/operator culpability is a significant factor in determining the percentage of responsibility to be allocated. For example, a commercial owner and/or operator that managed waste badly should receive a higher allocation than a passive, noncommercial landowner that doesn't qualify as innocent under section 122(g)(1)(B) of SARA. The relative allocation among successive owners and/or operators may be determined, where all other circumstances are equal, by the relative length of time each owned and/or operated the site. Transporter allocations may be based

on volume, taking into account appropriate considerations such as packaging and placement of waste at a site. Detailed guidance on allocations for transporters, owners, and operators may be prepared at a later date on the basis of experience under these interim guidelines.

Again, an NBAR will allocate 100 percent of response costs, because the goal is to achieve 100 percent of cleanup or costs in settlement.

## IV. Offers Based on NBARS

Once the technical and legal personnel complete the NBAR, the numerical results will be transmitted in writing to PRPs. EPA will not provide a detailed explanation for the results, due to the enforcement-sensitive nature of the decisions involved. EPA will provide a general explanation of the rationale used in preparing the NBAR. Data gathered in the information collection phase may be made available to PRPs.

EPA will provide the NBAR results to PRPs as early as possible. The sooner PRPs receive the results, the more time they have to organize among themselves and negotiate with EPA on remedy. A limited period should be provided for PRPs to digest the NBAR results before notice for cleanup negotiations is sent.

EPA will attempt to complete the NBAR before selection of a preferred remedy and public comment, or at least prior to the Record of Decision (ROD).

Special notice under section 122(e)(2)(A) of SARA will generally be provided prior to cleanup negotiations in cases where an NBAR is used. If within 60 days of special notice for cleanup negotiations, EPA receives no offer for settlement, it may proceed as usual with action under section 104 or 106 of CERCLA. If EPA receives an offer that is not a substantial/good faith proposal, it should so notify the PRPs before proceeding with action under section 104 or 106.

A good faith offer is an offer in writing in which PRPs make a showing of their qualifications and willingness to conduct or finance the major elements of the remedy. A substantial offer must meet three criteria. First, it must equal or exceed the cumulative allocated shares of those making the offer. Second, it must amount to a predominant portion of cleanup costs. Third, it must be acceptable to EPA in regard to all other terms and conditions, such as release provisions or dispute resolution mechanisms.

If EPA receives a substantial/good faith offer within 60 days of special notice for cleanup, EPA will provide an additional 60 days for negotiation. If an agreement for remedial action is reached, it must be embodied in a consent decree. The State should be kept apprised of negotiations if it chooses not to participate. Should negotiations for settlement based on an NBAR fail, a section 106 unilateral order or civil action may be used to initiate remedial action. Should EPA proceed with cleanup under section 104, the NBAR may still be useful in developing demand letters for a section 107 cost recovery action.

*De minimis* and mixed funding settlements, also authorized by section 122, may occur in combination with an NBAR. Whether EPA will accept a mixed funding or *de minimis* proposal at an NBAR site will depend on the results of additional analyses specifically designed to evaluate such proposals.

If EPA rejects a substantial/good faith offer, it must provide a written explanation to the PRPs, after consultation with DOJ and review at EPA Headquarters. In general, rejection of a substantial offer that is sufficient in amount is likely to be based on failure to reach agreement on terms and conditions. After a written explanation for rejection of a substantial/good faith offer is sent, EPA may proceed under section 104 or 106.

[FR Doc. 87-12114 Filed 5-27-87; 8:45 am]
BILLING CODE 6560-50-M

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[OPTS-140074A; FRL-3209-1]

## Toxic and Hazardous Substances Control; Contractor and Subcontractor Access to Confidential Business Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized several contractors and subcontractors for access to information submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460 (202-554-1404).

**SUPPLEMENTARY INFORMATION:** Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Inventory of Chemical Substances, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Section 12 requires a person to report his or her intent to export certain chemical substances to foreign countries.

In accordance with 40 CFR 2.306(j), EPA has determined that the following contractors and subcontractors will require access to CBI submitted to EPA under TSCA to successfully perform work under the contracts described in the following units of this notice.

### I. Previously Announced Contract

As was announced in the Federal Register of May 1, 1986 (FR 16205), the Dynamac Corporation, 11140 Rockville Pike, Rockville, Maryland, is authorized for access to CBI submitted to EPA under sections 4 and 8 of TSCA. EPA is issuing this notice to extend Dynamac's access to TSCA CBI under EPA Contract No. 68-02-4251 to February 28, 1989.

### II. New Contractors and Subcontractors

Access to CBI by the contractors and subcontractors described in this section is being announced for the first time. EPA is issuing this notice to affected businesses informing them that EPA may provide access to TSCA CBI to these contractors and subcontractors under the indicated contracts on a need-to-know basis.

Under EPA Contract No. 68-01-7282, subcontractor CRC Systems, Incorporated, 4020 Williamsburg Court, Fairfax, Virginia, will assist the Office of Toxic Substances' Information Management Division in performing work under delivery order MCCS 17—PENTA Analysis and Design Evaluation. CRC, as a subcontractor, will be working for the prime contractor, Booz Allen and Hamilton. Booz, Allen and Hamilton will not require access to TSCA CBI under this contract. CRC will not conduct substantive review of any TSCA CBI; however, CRC personnel will require access to CBI on computer screens in order to evaluate technical aspects of computer programs to perform contract tasks. In addition, personnel will occasionally be required to review CBI documents to compare hardcopy data for those data elements contained in the systems. The systems to be accessed are PENTA, Molecular Access System (MACCS), and the Document and Personnel Security System (DAPSS). Under this contract, CRC personnel will be authorized for

access to information submitted under all sections of TSCA. Access to TSCA CBI under this contract will take place only at EPA Headquarters. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1987.

Under contract No. 68-01-7252, Policy Planning & Evaluation, Incorporated (PPEI), 8521 Leesburg Pike, Suite 310, Vienna, Virginia, will assist EPA's Office of Compliance Monitoring's Legal Enforcement Policy Division in completing a study of the efficacy of environmental auditing settlements achieved by EPA to date. The study will include a review of the literature on environmental auditing and interviews with EPA and corporate personnel who have been involved in Agency enforcement actions, the settlements of which have included the provision to conduct environmental audits of regulatory facilities. Further to evaluate the effects of auditing, PPEI will need to examine CBI inspection reports, NEIC reports, summaries of third-party audits, and other documentation that is considered CBI. Under this contract, PPEI personnel will be authorized for access to information submitted under all sections of TSCA. Access to TSCA CBI under this contract will take place only at EPA Headquarters. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1987.

Contractor and subcontractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: May 15, 1987.

**Charles L. Elkins,**

*Director, Office of Toxic Substances.*

[FR Doc. 87-1208 Filed 5-27-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 19, 1987.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

*OMB number:* 3060-0161
*Title:* Section 73.61, AM Directional Antenna Field Strength Measurements
*Action:* Revision
*Respondents:* AM radio stations with directional antennas
*Frequency of response:* Recordkeeping requirement (on occasion)
*Estimated annual burden:* 1,700 Recordkeepers; 28,152 Hours
*Needs and uses:* AM radio stations with directional antennas must make field strength and partial proof of performance measurements and record them in the station log. The information is used by station licensees to ensure that the antenna is operating properly and by Commission staff in field inspections or investigations.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-12055 Filed 5-27-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1660]

### Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 19, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed June 12, 1987. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

**Subject:**

Amendment of Part 15, Subpart F, to permit operation so field disturbance sensors in the band 54 to 72 and 76 to 88 MHz. (Gen. Docket No. 85-231, RM-4824) Number of petitions received: 1.

FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations. (MM Docket No. 86-144) Number of petitions received: 1.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 87-12054 Filed 5-27-87; 8:45 am]

BILLING CODE 6712-01-M

### Applications for Consolidated Hearing; Lillian (Blackwood) Fowler et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant and city/state | File No. | MM Docket No. |
|---|---|---|
| A. Lillian (Blackwood) Fowler & Charles R. Jones, a general partnership; Lindsay, OK. | BPH-860311ME | 87-151 |
| B. John W. Fox and Kenneth G. Eldunn, d/b/a Fox Communications; Lindsay, OK. | BPH-860317MJ | ..... |
| C. Helen E. Wellford; Lindsay, OK. | BPH-860317MK | ..... |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, A
2. Comparative, A,B,C
3. Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW.,

BEST COPY AVAILABLE

Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–12046 Filed 5–27–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Franklin Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant and city/state | File No. | MM Docket No. |
|---|---|---|
| A. Charles E. Franklin, d/b/a Franklin Broadcasting; Milledgeville, GA. | BPH–860129MG | 87–148 |
| B. Baldwin County Broadcasting Corp., Milledgeville, GA. | BPH–860131MG | |
| C. Preston W. Small, Milledgeville, GA. | BPH–860203MT | |
| D. Donald W. Earnhart, Milledgeville, GA. | BPH–860206MJ | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Comparative, A, B, C, D
2. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan. Gay,

*Assistant Chief Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–12047 Filed 5–27–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Donald O. McDougald et al

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant and city/state | File No. | MM Docket No. |
|---|---|---|
| A. Donald Outland McDougald; Statesboro, GA. | BPH–860703MJ | 87–150 |
| B. Marianne Warnock; Statesboro, GA. | BPH–860707MZ | |
| C. Pamela Hodges; Statesboro, GA. | BPH–860707NA | |
| D. Dr. H.R. Gertner & Cathy M. Gertner (Joint Tenants); Statesboro, GA. | BPH–860707NC | |
| E. Debra Sears Graham; Statesboro, GA. | BPH–860707NI | |
| F. Emily Franklin; Statesboro, GA. | BPH–860707OE | |
| G. Terry Freitag; Statesboro, GA. | BPH–860707NO (DISMISSED) | |

2. Pursuant to 47 U.S.C. 309(e) the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, F
2. Comparative, A, B, C, D, E, F
2. Ultimate, A, B, C, D, E, F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan. Gay,

*Assistant Chief Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–12048 Filed 5–27–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing Nathen Educational Broadcasting Foundation et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant and city/state | File No. | MM Docket No. |
|---|---|---|
| A. Nathen Educational Broadcasting Foundation; Everett, WA. | BPED–840125AH | 87–149 |
| B. Jack Straw Memorial Foundation; Everett, WA. | BPED–840731IH | |

2. Pursuant to section 309(e) of the Commissions Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Comparative—Noncommercial Educational FM, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87–12049 Filed 5–27–87; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Harry J. Turner et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant and city/state | File No. | MM Docket No. |
|---|---|---|
| A. Henry J. Turner; Madisonville, KY. | BPCT-861105KD | 87-142 |
| B. Wilkins Sanders; Madisonville, KY. | BPCT-861105KR | |
| C. Skyway Television Ltd.; Madisonville, KY. | BPCT-870120KL | |
| D. Madisonville Media, Inc.; Madisonville, KY. | BPCT-870121KE | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Site Availability, A, B
2. Air Hazard, D
3. Comparative, A, B, C, D
4. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart,

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 87-12060 Filed 5-27-87; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL HOME LOAN BANK BOARD

### Liberty Savings & Loan Association, Port Richey, FL; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. section 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Liberty Savings and Loan Association, Port Richey, Florida, on May 15, 1987.

Dated: May 21, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 87-12060 Filed 5-27-87; 8:45 am]

BILLING CODE 6720-01-M

### Liberty Savings & Loan Association, Port Richey, FL; Appointment of Receiver

Notice is hereby given that the Circuit Court of the State of Florida for the County of Pasco has confirmed the appointment by the Comptroller of the State of Florida ("Florida") of a receiver for Liberty Savings and Loan Association, Port Richey, Florida ("Liberty"), and that pursuant to the authority contained in section 406(c)(1) of the National Housing Act, as amended (12 U.S.C. 1729(c)(1) (1982), the Federal Savings and Loan Insurance Corporation accepted the tender of the Comptroller of the appointment as receiver for Liberty, for the purpose of liquidation, effective May 15, 1987.

Dated: May 21, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

*Assistant Secretary.*

[FR Doc. 87-12060 Filed 5-27-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-625]

### First Federal Savings Bank of Elizabethtown, Elizabethtown, KY, Final Action Approval of Conversion Application

Dated: May 18, 1987.

Notice is hereby given that on May 11, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings Bank of Elizabethtown, Elizabethtown, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

*Acting Secretary.*

[FR Doc. 87-12073 Filed 5-27-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-624]

### 1st Ohio Savings Bank F.S.B., Cincinnati, OH, Final Action Approval of Conversion Application

Dated: May 18, 1987.

Notice is hereby given that on May 11, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of 1st Ohio Savings Bank, F.S.B., Cincinnati, Ohio, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

*Acting Secretary.*

[FR Doc. 87-12074 Filed 5-27-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-623]

### Greater Pottsville Federal Savings & Loan Association, Pottsville, PA, Final Action Approval of Conversion Application

Dated: May 18, 1987.

Notice is hereby given that on May 8, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Greater Pottsville Federal Savings and Loan Association, Pottsville, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

*Acting Secretary.*

[FR Doc. 87-12075 Filed 5-27-87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-822]

**Security Federal Savings & Loan Association, St. Cloud, MN; Final Action Approval of Conversion Application**

Dated: May 18, 1987.

Notice is hereby given that on May 14, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Security Federal Savings and Loan Association, St. Cloud, Minnesota for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Des Moines, 907 Walnut Street, Des Moines, Iowa 50309.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
*Acting Secretary.*
[FR Doc. 87-12076 Filed 5-27-87; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-821]

**Sunpoint Savings Bank, FSB, Lake Worth, FL; Final Action Approval of Conversion Application**

Dated: May 18, 1987.

Notice is hereby given that on May 14, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of SunPoint Savings Bank, FSB, Lake Worth, Florida, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agency at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
*Acting Secretary.*
[FR Doc. 87-12077 Filed 5-27-87; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-823]

**Union Federal Savings & Loan Association, Union, South Carolina; Notice of Final Action Approval of Conversion Application**

Dated: May 18, 1987.

Notice is hereby given that on May 8, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Union Federal Savings and Loan Association, Union, South Carolina, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agency at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.
Nadine Y. Washington,
*Acting Secretary.*
[FR Doc. 87-12078 Filed 5-27-87; 8:45 am]
BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200001.
Title: Port of Portland Terminal Use Agreement.
Parties:
Port of Portland
Matson Navigation Company, Inc.
Synopsis: The proposed agreement provides that Matson will utilize 8 acres of container yard at the Port's terminal 6 as its published scheduled direct port of call in the Pacific Northwest, and for the guarantee of a minimum of 13,000 containers annually for five years. The Port shall share the revenues from dockage and wharfage charges applicable to Matson's vessels and cargo as provided in the Agreement.

Agreement No.: 224-009055-A-006.
Title: State of Hawaii Terminal Agreement.
Parties:
Matson Navigation Company, Inc. (Matson)
HT&T Company, Inc. (Hilo)
Filing Parties: Edward Y. Hirata, Director of Transportation, State of Hawaii Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.
Synopsis: The agreement modifies the parties' basic agreement covering the use of certain real property, buildings, improvements, machinery and equipment in Hilo Harbor, for the operation of a bulk sugar plant, by adding holdover provisions. The amendment also provides that any such holdover shall not exceed three months.

Agreement No.: 224-009055-004.
Title: State of Hawaii Terminal Agreement.
Parties:
Department of Transportation State of Hawaii (Licensor)
Matson Navigation Company, Inc. (Licensee)
Filing Parties: Edward Y. Hirata, Director of Transportation, State of Hawaii Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.
Synopsis: The proposed agreement modifies the parties' basic agreement which provides a license to the licensee for certain real property, in Hilo Harbor, for the operation of a bulk sugar plant. The amendment adds holdover provisions to the licensee (new paragraph 14) and; provides that any such holdover shall not exceed three months.

Agreement No.: 224-000021-011.
Title: Sacramento-Yolo Port District Terminal Lease Amendment.
Parties: Sacramento-Yolo Port District and Cargill, Inc.
Synopsis: The proposed agreement would revise the minimum tonnage requirement following June 30, 1986, through June 30, 1990.

Dated: May 22, 1987.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

*Assistant Secretary.*

[FR Doc. 87-12134 Filed 5-27-87; 8:45am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Canvest, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 19, 1987.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Canvest, Inc.*, Meriden, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of the Central Bank for Savings, Meriden Connecticut, which currently engages in Connecticut Savings Bank Life Insurance Activities.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Planters Corporation*, Memphis, Tennessee; to acquire 90 percent of the voting shares of Bank of Trenton & Trust Company, Trenton, Tennessee. In addition to credit related insurance, the target bank, through its wholly-owned subsidiary, Fairless, Hinton, and Harbert Inc., Trenton, Tennessee, acts as agent in the sale of the following general types of insurance: automobile, homeowner, fire, health, and life insurance policies and in the sale of business insurance and bonds.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Park Falls Agency, Inc.*, Park Falls, Wisconsin; to acquire at least 87.58 percent of the voting shares of Bradley Bank, Tomahawk, Wisconsin.

Board of Governors of the Federal Reserve System, May 21, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-12058 Filed 5-27-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Recommendations for Protecting the Health of the Public During the Disposal of Agent VX; Request for Public Comment

**AGENCY:** Centers for Disease Control (CDC), Public Health Service, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** Agent VX is now stored by the Department of Defense (DOD). Public Law 99-145 (50 USC 1421) mandates that all unitary (self-contained) lethal chemical munitions be destroyed by 1994. Public Law 91-121/441 (50 USC 1512) mandates that the Department of Health and Human Services must review DOD plans for disposing of these munitions and make recommendations to protect human health. Public comment is requested on these recommendations.

**DATE:** Comments must be received on or before June 29, 1987.

**ADDRESS:** Comments may be mailed to Director, Center for Environmental Health, Centers for Disease Control, 1600 Clifton Road NE., Atlanta, Georgia 30333.

**FOR FURTHER INFORMATION CONTACT:** Linda W. Anderson, Chief, Special Programs Group, Center for Environmental Health, Centers for Disease Control, 1600 Clifton Road NE., Atlanta, Georgia 30333.

**SUPPLEMENTARY INFORMATION:**

### Recommendations for Protecting the Health of the Public During the Disposal of Agent VX

Agent VX (O-ethyl-S-(2-diisopropylaminoethyl)-methyl phosphonothiolate, CAS 50782-69-9) is a chemical agent which acts on nerves, muscules, and glans by inhibiting acetyl cholinesterase, an enzyme required for proper function of these tissues. VX is an oily, colorless or straw-colored viscous liquid with vapor pressure of .00068 mm Hg at 25 degrees C. At present, the Department of Defense (DOD) stores agent VX in bulk containers and in land mines, rockets, cartridges, projectiles, and aerial spray tanks. Section 1412 of Pub. L. 99-145 (50 U.S.C. 1521) mandates that all unitary lethal chemical agents must be destroyed by September 30, 1994. Pub. L. 91-121/441 (50 U.S.C. 1512) mandates that the Department of Health and Human Services (HHS) review DOD plans for disposing of lethal chemical agents, such as agent VX. DOD has developed safety and health standards for handling agent VX. Federal agencies have not developed regulatory standards for agent VX. Therefore, the Centers for Disease Control (CDC), HHS, has sought advice on developing guidelines to use in reviewing DOD plans for disposing of and transporting agent VX.

CDC gathered data on the toxicity of agent VX and an open meeting was announced in the Federal Register on March 11, 1987 (52 FR 7489) and held in Atlanta, Georgia, April 2-3, 1987, to discuss issues related to safe exposure levels to agent VX.

Discussions were held on whether the available information was adequate to support establishment of acceptable maximum limits for exposure to vapors of agent VX and specifically whether the absence of any experimental studies or data was sufficient reason for withholding a recommendation at this time.

On the basis of the evidence reviewed, HHS concludes that human health will be adequately protected from the effects of VX vapor at the levels[1] shown below. Based on available human data showing cholinesterase inhibition produced by agent VX, these proposed exposure levels contain a safety factor of about 500 for workers and 1000 for the general population.

[1] Protection against exposure to agent VX in aerosol and liquid form must be sufficient to prevent direct contact with the skin and eyes.

| Population at Risk (Monitoring location) | Level | Averaging time |
|---|---|---|
| General population (monitoring perimeter). | 0.000003 mg/m³ ($3 \times 10^{-6}$ mg/m³). | 72 hours.[1] |
| Workers (workplace). | 0.00001 mg/m³ ($1 \times 10^{-5}$) mg/m³. | 8 hours. |

[1] The long averaging time is necessary for analytic reasons; however, if the entire dose were received in 1 hour, this would still be less than the level of concern.

Certain monitoring criteria area esssential to this recommended exposure limit is only as good as the capability to verify, with confidence, the exposure levels as they may occur. To this end, certain conditions must be satisfied. Specifically, the Army will provide data obtained empirically, that document, in HHS's opinion, accurate and reproducible monitoring for VX at the recommended exposure limits. The monitoring must be done under the customary and usual ambient conditions at each location.

We have not recommended a stack limit[2] based on human health considerations because we consider this an engineering matter. The stack limit level that is set should be (a) attainable by a well designed, constructed, and operated incineration facility; (b) an early indication of upset conditions; and (c) able to be accurately measured in a timely manner. The stack level of $3 \times 10^{-4}$ mg/m³ proposed by the Department of the Army meets these criteria. To assure that levels at the monitoring stations are at or below the exposure levels at worst-case conditions, stacks must be appropriately designed, with the proper operational controls. Monitoring stations must be positioned so that any level above the general population level will be detected. Dispersion models for worst-case conditions should be used to determine where the monitoring stations should be located.

Dated: May 21, 1987.

Robert L. Foster,

*Acting Director, Office of Program Support, Centers for Disease Control.*

[FR Doc. 87-12133 Filed 5-27-87; 8:45 am]

BILLING CODE 4160-18-M

[2] A "stack limit" is the allowable level of an air pollutant that may be discharged into the atmosphere from a point source called a "stack." Normally, stacks are vertical flues, pipes, or chimneys that elevate the discharge point, thereby facilitating dispersion.

## Food and Drug Administration

### Request for Nominations for a Representative of Industry Interests on the Ophthalmic Devices Panel in the Center for Devices and Radiological Health

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting nominations for an industry representative to serve on the Ophthalmic Devices Panel in the Center for Devices and Radiological Health.

FDA has a special interest in ensuring that women, minority groups, the physically handicapped, and small businesses are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates, and nominations from small businesses that manufacture medical devices subject to the regulations.

**DATE:** Nominations should be received by July 13, 1987, for the vacancy listed in this notice.

**ADDRESS:** Written nominations and curricular vitae (which include nominee's office address and telephone number) must be submitted in writing to Kay Levin, Center for Devices and Radiological Health (HFZ-20), Food and Drug Administration, 12720 Twinbrook Parkway, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Kay Levin (address above), 301-443-3516.

**SUPPLEMENTARY INFORMATION:** FDA is requesting nominations for a member representing industry interests for the Ophthalmic Devices Panel.

#### Functions

The functions of the Ophthalmic Devices Panel are to (1) review and evaluate available data concerning the safety and effectiveness of devices currently in use, (2) advise the Commissioner of Food and Drugs regarding recommended classification of these devices into one of three regulatory categories, (3) recommend the assignment of a priority for the application of regulatory requirements for devices classified in the standards or premarket approval category, (4) advise on any possible risks to health associated with the use of devices, (5) advise on the formulation of product development protocols and review premarket approval applications for those devices classified in the premarket approval category, (6) review classification of devices to recommend changes in classification as appropriate, (7) recommend exemption to certain devices from the application of portions of the act, (8) advise on the necessity to ban a device, and (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices.

#### Industry Representation

Section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) provides that each medical device panel include as a member one nonvoting representative of interests of the device manufacturing industry.

#### Nomination Procedure

Any organization in the medical device manufacturing industry ("industry interests") wishing to participate in the selection of a member of this panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industrial representatives will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization or firm which is willing to participate in the selection process. Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination and is willing to serve as a member.

#### Selection Procedure

A letter will be sent to each organization that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each organization to consult with the others in selecting a single member representing industry interests for that particular committee within 60 days after receipt of the letter.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)) and 21 CFR 14, relating to advisory committees.

Dated: May 20, 1987.

John M. Taylor,

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-12061 Filed 5-27-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0185]

## Drug Export; Antibody to Hepatitis B Surface Antigen (Mouse Monoclonal): Peroxidase (Horseradish) Conjugate and Human HBsAg Confirmatory Assay

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Genetic Systems Corporation has filed an application requesting approval for the export of the Antibody to Hepatitis B Surface Antigen (Mouse Monoclonal): Peroxidase (Horseradish) Conjugate and Human HBsAg Confirmatory Assay to Australia.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (Section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register with 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Genetic Systems Corp., 3005 First Ave., Seattle, WA 98121, has filed an application requesting approval for the export of the drug Antibody to Hepatitis B Surface Antigen (Mouse Monoclonal): Peroxidase (Horseradish) Conjugate and Human HBsAg Confirmatory Assay, to Australia. The drug is indicated for use as an enzyme immunoassay for the detection of Hepatitis B Surface Antigen. The application was received and filed in the Center for Drugs and Biologics on May 13, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 8, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: May 18, 1987.

**Daniel L. Michels,**

*Director, Office of Compliance, Center for Drug and Biologics.*

[FR Doc. 87-12062 Filed 5-27-87; 8:45 am]

BILLING CODE 4160-01-M

## Health Care Financing Administration

[IOA-010-N]

## Task Force on Technology-Dependent Children; Meeting

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces a meeting of the Task Force on Technology-Dependent Children.

**DATES:** The meeting will be held on July 9, 1987 from 8:30 a.m. to 5:00 p.m., E.D.T., and on July 10, 1987 from 8:30 a.m. to 2:30 p.m., E.D.T. The meeting will be open to the public.

**ADDRESS:** The meeting will be held in the Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

**FOR FURTHER INFORMATION CONTACT:** Bill Pickens, Executive Director, Department of Health and Human Service, Room 4414, HHS North Building, 330 Independence Avenue SW., Washington, DC 20201, (202) 245-0070.

**SUPPLEMENTARY INFORMATION:**

### Purpose

The Task Force on Technology-Dependent Children, established under section 9520 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), investigates alternatives to institutional care for technology-dependent children. Technology-dependent children are those with chronic conditions requiring continuing use of medical technology.

The Task Force must report to the Secretary of Health and Human Services, the Administrator of the Health Care Financing Administration (HCFA), and to the Congress concerning alternatives to institutional care for technology-dependent children. The Task Force must develop recommendations designed to—

(1) Identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology-dependent children; and

(2) Recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

The Task Force will address fully the two specified goals before it takes up any other questions. To the extend that time and resources permit, the Task Force may develop recommendations that would address additional concerns regarding technology-dependent children. The Task Force recommendations are intended to be used only at the option of the Department of Health and Human Services and the Congress.

### Agenda

The Task Force will conduct a business meeting to evaluate and review testimony, data, and information that has been received to date. It will consider barriers, recommendations and possible solutions for technology-dependent children.

The public is invited to present testimony to the Task Force. We request those wishing to testify to contact the Task Force by June 29, 1987.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92-463, as amended (5 U.S.C. App. I, Secs. 1-15) and Sec. 9520 of

Pub. L. 98-272 (42 U.S.C. 1395a note); 45 CFR Part 11)

Dated: May 11, 1987.

William L. Roper,

*Administrator, Health Care Financing Administration.*

[FR Doc. 87-12167 Filed 5-27-87; 8:45 am]

BILLING CODE 4120-01-M

## Public Health Service

### Office of the Assistant Secretary for Health; Privacy Act of 1974; System of Records

**AGENCY:** Public Health Service, DHHS.

**ACTION:** Notification of altered Privacy Act system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to alter system of records 09-25-0151, "Administration: ALERT Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD." We also propose to add a new routine use to this system of records.

The purpose of altering this system of records is to expand the system from one which is used solely by the National Institutes of Health (NIH) to one serving all PHS agencies and staff offices which award contracts, grants or cooperative agreements for research, research training and related activities.

**DATES:** PHS invites interested persons to submit comments on the proposed alterations or the proposed routine use on or before (*30 days after publication*). PHS has sent a Report of Altered System to the Congress and to the Office of Management and Budget on May 13, 1987. The alteration of this system of records will be effective 60 days from the date submitted to OMB, and the proposed routine use will be effective thirty days from this publication, unless PHS receives comments which result in a contrary determination.

**ADDRESS:** Comments should be addressed to the NIH Privacy Act Coordinator at the address listed below. Comments received will be available for inspection from 9 a.m. to 3 p.m. in Room 3B11, Building 31, at that address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Bullman, J.D., NIH Privacy Act Coordinator, Building 31, Room 3B03D, 9000 Rockville Pike, Bethesda, MD 20892 or call 301-496-2832 (this is not a toll free number).

**SUPPLEMENTARY INFORMATION:**

1. PHS proposes to alter this system of records, 09-25-0151, "Administration: ALERT Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD," principally in order to expand the system of records from an NIH system to a system serving all of PHS. The character, scope and operation of the system will remain essentially the same. The NIH Division of Management Survey and Review (DMSR) will continue to maintain this system of records, and will make controlled disclosures, as appropriate, to other PHS components.

This expansion will provide for a more comprehensive execution of the basic purpose of the system, which is prudent stewardship of public funds and effective discharge of related responsibilities in the award of funds for scientific research and development. Expansion of the system will enable PHS agencies and staff offices to inform other PHS components of investigations of possible misconduct in science or sanctions imposed for such misconduct. Such communication is necessary because the subjects of investigations or sanctions of one PHS component may receive or be candidates for research and development awards from other PHS agencies or offices.

2. The system is also being modified to specify that cooperative agreements, along with grants and contracts, are among the type of awards within the scope of the system. (A cooperative agreement is a form of assistance entailing substantial programmatic involvement by agency staff, while a contract is the instrument used for acquisition.) The "Categories of individuals" section has been altered to state that recipients of research training grants, fellowships and career awards may be include in this system of records.

3. In order to reflect the foregoing changes, we are changing the name of the system from 09-25-0151, "Administration: ALERT Records Concerning Investigations or Determination of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD," to 09/25/0151, "Administration: Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct in Science or Subject to Sanctions for Such Misconduct, HHS/PHS/NIH."

4. PHS is proposing a new routine use (number 1) which will allow PHS to inform responsible officials of an institution or organization when PHS takes an administrative action or imposes a sanction affecting awards to that institution in connection with an investigation or finding of misconduct regarding an individual employed by or affiliated with it. This routine use is compatible with the basic purpose of the system because, in fact, PHS normally makes research and research training awards to organizations or institutions rather than individuals. Individuals are involved as employees or affiliates of recipient organizations or institutions. Information disclosed under this routine use will be limited to a description of the action affecting the organization or institution and the reason for it.

We have also deleted a routine use which had been published for this system of records. That routine use allowed disclosure to another Federal agency of information relevant and necessary to that agency's decision on award of a benefit to a subject individual. Although the routine use was compatible with the purpose of the ALERT system, in the four years since the system was established there has been no need to disclose information under that routine use, and PHS believes the routine use will never be needed. PHS may disclose information to another Federal agency concerning an individual who is the subject of a sanction recorded in the ALERT system; however, such disclosure would be from investigative records pertaining to institutions that are maintained outside of the ALERT system.

5. PHS is also extending the purposes of the system of records in ways that are compatible with previously published purposes. Specifically, under the proposed extensions, PHS Committee Management Officers may review ALERT system records on individuals who are candidates for appointment to a PHS advisory committee. The system manager may disclose an ALERT system record to a PHS official considering hiring the subject individual or to a PHS official responsible for a PHS research activity under investigation. These purposes are consonant with prudent discharge of the same public trust that is exercised in the award of grants, cooperative agreements and contracts for research and research training. We have also added a paragraph to the "Purpose" section to indicate the role which the PHS Committee on Misconduct in Science will have in the expanded system.

6. To ensure fairness to individuals in any decisions affecting them, PHS is following the current NIH practice of routinely informing an individual when a record on him or her is created in the ALERT system, unless instructed by a law enforcement agency not to disclose the information. At that time, PHS will inform the individual of the allegations

or indications of possible misconduct, and of how the record may be used with regard to award decisions or to post-investigational sanctions, and PHS will provide the individual with a copy of the notice of system of records. PHS will also inform individuals when their records are deleted from the ALERT system. PHS has altered the notification and access sections of the notice to reflect these procedures.

7. To clarify the types of records maintained in the system, misconduct is defined. In addition to records related to misconduct in science, the system will continue to include records relating to investigations or findings of serious misappropriation of Federal research funds.

8. The revised system notice includes a slight expansion in the category of records in the system to include past or pending research and research training awards to the subject individuals. Previously, information on pending awards was omitted by oversight from the notice, as the established purposes of the system include use of the records to make informed decisions on pending awards. Inclusion of information on past awards will show the extent of PHS support to the subject individual and which PHS agencies or offices have made awards to that subject individual. However, notification of ongoing investigations or sanctions imposed will be limited to PHS officials responsible for the administration of currently active awards or funding decisions affecting pending applications or proposals.

9. PHS has revised the "Safeguards" section of the notice to reflect expansion of the system of records and to describe additional safeguards which will be implemented to maintain a vey high level of security and protection of privacy in the expanded system.

10. The section on record sources has been expanded to include institutions and organizations which receive research and research training awards from PHS. As legal recipients of these awards, these institutions and organizations are obligated to submit relevant information to PHS.

11. Finally, PHS has made a number of editorial changes to clarify the notice. The principal editorial change is the addition of an introductory paragraph, in the "Purpose" section of the notice, to describe the basic overall purpose of the system. The numbered paragraphs which now follow this introduction describe the particular ways in which PHS carries out this basic purpose.

The proposed alteration of the system of records will not become effective until 60 days after the date it was reported to OMB, as discussed above. However, the following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the alteration has become effective.

Dated: May 15, 1987.

Wilfred J. Feebank,

*Deputy Assistant Secretary for Health Operations, and Director, Office of Management.*

09-25-0161

SYSTEM NAME:

Administration: Public Health Service ALERT Records Concerning Individuals Under Investigation for Possible Misconduct in Science or Subject to Sanctions for Such Misconduct, HHS/PHS/NIH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Management Survey and Review, National Institutes of Health (NIH), Bldg. 31 Room 4C02, 9000 Rockville Pike, Bethesda, MD 20892.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects may include (1) researchers currently or formerly employed by the Federal Government; (2) individuals being considered for appointment to Public Health Service (PHS) advisory committees: (3) investigators on research grants, fellowships, cooperative agreements, or contracts awarded by any PHS agency, ( "Investigators" may include principal investigators, co-investigators, program directors, trainees, recipients of career awards or fellowships, or other individuals who conduct or are responsible for research or research training funded by PHS.); (4) research investigators, such as guest workers, not employed by PHS but who conduct research in PHS facilities or are closely associated with research conducted by PHS; (5) other individuals, such as subgrantees, subcontractors or assistants on research or research training grants, contracts or cooperative agreements, who by training, experience, occupation or other qualifications are potential candidates for research or research training grants, contracts, cooperative agreements or other benefits. Such individuals would be subjects of records in this system if they fall within either of the following two categories:

(1) Subjects of formal investigations for scientific misconduct or serious misappropriation of Federal research funds, if the PHS Agency-level/Staff Office Misconduct Policy Officer has determined that the alleged misconduct is serious enough, or that the investigation has produced sufficient information, to warrant attention when a PHS agency considers awarding research or research training funds or other benefits to such individuals.

(2) Subjects of sanctions imposed as a result of determinations that scientific misconduct or serious misappropriation of Federal research funds has occurred. Such sanctions include (a) actions affecting eligibility for research and training awards, such as special conditions for receipt of an award, suspension or termination of an award, or debarment of an individual; (b) actions affecting eligibility for appointment to a committee which advises PHS; (c) special restrictions on regulated research, such as disqualification from eligibility to use investigational drugs or special conditions for protection of human research subjects; and (d) termination of employment or other disciplinary action against an employee of PHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to investigations or findings of misconduct in science and to actions that PHS has taken in connection with such investigations or findings. Misconduct in science is defined as (1) the serious deviation, such as fabrication, falsification, or plagiarism, from accepted practices in proposing, conducting and reporting the results of research; or (2) the material failure to comply with Federal requirements affecting specific aspects of the conduct of research, e.g., the protection of human subjects and the welfare of laboratory animals.

In addition to records relating to misconduct in science, the system includes records relating to investigations or findings of serious misappropriation of Federal research funds—e.g., diversion of such funds to personal use. It does not include records documenting normal business transactions between a PHS agency and an awardee institution, except to the extent that such records are directly relevant to consideration of the fitness of an individual to receive a PHS award or other benefit.

The system consists of two subsystems which contain the following types of records:

(1) Records on pending or ongoing investigations identifying the alleged misconduct; the individual and/or institution under investigation; any present, past or pending research, and/

or research training awards; PHS agencies or offices involved, and the organization responsible for the investigation.

(2) Records summarizing sanctions imposed because of a finding of misconduct, which adversely affect the individual's eligibility for research or research training awards or other benefits for a specified period of time.

Either subsystem may contain responses from subject individuals.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Authority for this system comes from the legislation which authorizes PHS to make awards for biomedical research and research training, and from PHS's concomitant responsibility to assure both that funds disbursed under awards are spent for authorized purposes and that recipients of such funds conform to all appropriate laws and regulations. (Public Health Service Act: 42 U.S.C. 241, 242b, 242c, 242*l*, 242m, 247c, 281–289h, 290aa–9, 290bb, 290bb–1, 290cc, 300a–2, 300b–1—b–3, 300c–12, 300z–7, as these provisions relate to awards for biomedical research and research training; Occupational Safety and Health Act: 29 U.S.C. 669).

**PURPOSE OF THE SYSTEM:**

This system of records enables PHS agencies to discharge effectively their responsibilities in the award and administration of research and training grants, cooperative agreements and contracts, while protecting the privacy and other rights of individuals under investigation or sanction for scientific misconduct or misappropriation of funds. The ALERT system is used to collect, control and disseminate to PHS agency officials on a need-to-know basis information that an individual (1) is under investigation for possible misconduct in science or misappropriation of funds, or a decision has been made to undertake such an investigation; or (2) has been subjected to a sanction at the conclusion of an investigation for misconduct or misappropriation of funds.

Specifically,

(1) PHS records the existence of such sanctions in the system so that PHS agencies can track and implement the sanctions, for example by refusing to accept an application or proposal from a debarred person. In addition, PHS informs members of technical merit review groups of actions taken if the disclosure bears directly on the scientific merit of an application or proposal under consideration or the fiscal integrity of the investigator or applicant, or if necessary to ensure an unbiased review by providing an accurate account of the case, for example, when information concerning the conduct investigated has been disclosed by other sources, such as the press or other communications media. PHS does not use this system to make decisions on imposition of sanctions.

(2) When investigative findings fail to confirm an instance of misconduct or show that any misconduct was not of sufficient importance to warrant imposing sanctions, leading to a decision not to impose any sanctions,

(a) The individual's name is removed from the ALERT system of records and the individual is notified in writing;

(b) Responsible PHS agency officials are notified of the outcome;

(c) If any interim administrative sanctions had been imposed, they are lifted; and

(d) If a competing application or proposal from the individual is pending or anticipated in the near future, the Misconduct Policy Officer of the relevant agency consults with officials responsible for review of the application or proposal to identify and resolve any concerns that might affect the objectivity of the review. For example, technical merit review groups would be informed of the outcome of the investigation if there were reason to believe that reviewers had received incomplete or misleading information about the case.

(3) PHS agencies use ALERT system records on pending or ongoing investigations to make informed decisions on appropriate actions regarding awards of research, research training and related activities or other benefits to individuals under investigation as follows:

(a) PHS agency officials responsible for the award of research funds, in consultation with the PHS agency-level Misconduct Policy Officer, weigh information on investigations in deciding whether to take interim administrative action, such as delaying, restricting or denying award of research funds. Any interim action is taken with a view towards protecting the rights of all parties involved and minimizing disruption to an ongoing project, the awardee institution, and the activities of those involved in the project.

(b) To obtain independent advice on appropriate actions with respect to potential competing awards to individuals or organizations under investigations, these officials or their designees inform the members of the appropriate National Advisory Council or Board, advisory bodies legally established to advise PHS on funding of research projects, of the existence and status of an investigation. Such disclosure is made in closed session when the Council or Board is considering the funding of research by the individual or institution.

To avoid influencing Technical Reviews, PHS will not inform members of scientific review groups about instances of possible misconduct or ongoing investigations. However, if a given case has received such extensive publicity that review of an application or proposal may be comprised, the responsible PHS agency official may defer the review or inform the reviewers of the status of PHS's activities with respect to the possible misconduct.

(4) The PHS Committee on Misconduct in Science, and individual PHS Agency/Staff Office Misconduct Policy Officers, review ALERT records in order to inform appropriate officials within their organizations who are responsible for deciding on the actions described in other items of this section.

(5) PHS Committee Management Officers may review records in the system concerning candidates for appointment to advisory committees in order to make informed decisions about making, delaying or denying appointments.

(6) Upon request, the system manager may disclose information to PHS agency officials who are considering hiring a subject individual.

(7) When a research activity within PHS (i.e., intramural research activity) is the subject of an investigation by a PHS regulatory agency, information on that investigation in this system may be communicated to the PHS intramural officials responsible for the research activity.

**ROUTINE USES OR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

(1) PHS may notify responsible officials of awardee institutions or organizations when, in connection with an investigation or finding of misconduct by an individual employed by or affiliated with the institution or organization, a PHS agency takes an action affecting research and research training awards to the institution or organization. Information disclosed will be limited to the name of the subject individual, description of the action and the reasons for it.

(2) Information may be disclosed to qualified experts not within the definition of Department employees as prescribed in Department Regulations to the extent the information is pertinent to the review of applications by those experts.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(4) Disclosure may be made from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) HHS employee in his or her individual capacity or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in file folders.

**RETRIEVABILITY:**

Records are retrieved by name of the individual under investigation or subject to sanction.

**SAFEGUARDS:**

(1) Authorized Users: Records are available only to the system manager, PHS Agency-level/Staff Office Misconduct Policy Officers, the Deputy Director for Extramural Research and Training, NIH, and other responsible PHS agency officials considering the award of funds for research, research training or related activities or other benefits to a subject individual or institution, the appointment of a subject individual to an advisory committee, the hiring of a subject individual, or the management of a PHS agency research activity under investigation. Any disclosure to other individuals must be authorized by the system manager.

(2) Procedural Safeguards: Access to records is strictly controlled by the system manager and the officials specified under 'Authorized Users.' Individuals who receive disclosures from this system are informed that the information is confidential. They are instructed to address all questions and inquiries from any party either to the system manager or to the appropriate Misconduct Policy Officer for reply. Disclosures to Boards, Councils or review groups are made in sessions which are closed to the public. In addition, PHS staff and others not directly responsible for a potential award may be barred when a Board or Council considers an ALERT case, if they would not have been informed about the case otherwise. Only the PHS Committee on Misconduct in Science or individual PHS agency/level Misconduct Policy Officers, acting on the advice of the system manager, may authorize additions, alterations or deletion of records in this system.

(3) Physical Safeguards: Records are kept in locked file cabinets in offices which are locked when not attended. Special measures, commensurate with the sensitivity of the records, are taken to prevent unauthorized copying or disclosure of records.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual and supplementary chapter PHS hf: 45–13.

**RETENTION AND DISPOSAL:**

Records on an investigation in progress are retained until the investigation is completed. If the investigation results in a determination that no misconduct occurred, or that any misconduct was not significant enough to warrant official sanction, the record relating to the investigation is destroyed. If an investigation results in official sanction, a record of such sanction is maintained for the duration of the sanction and is they destroyed. Disposal is by burning or shredding.

**SYSTEM MANAGER AND ADDRESS:**

Director, Division of Management Survey and Review, National Institutes of Health, Building 31, Room 4C02, 9000 Rockville Pike, Bethesda, MD 20892.

**NOTIFICATION PROCEDURE:**

Individuals are routinely notified in writing when they become the subject of a record in this system, unless a law enforcement agency has instructed PHS not to do so. Subject individuals are also informed routinely when their records are deleted from the system. Individuals may request notification by writing to the system manager at the address above; provide your full name and state that the inquiry concerns Privacy Act system of records number 09–25–0151.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a fine of not more than five thousand dollars.

**RECORD ACCESS PROCEDURE:**

Individuals may write to the system manager at the address above and provide the same information as required for notification. Requesters should also reasonably specify the record contents being sought. Individuals may also request listings of accountable disclosures that have been made of their records, if any.

**CONTESTING RECORD PROCEDURES:**

Write to the system manager and reasonably identify the record and the information being contested; and state your reasons for requesting the change, along with supporting information to show that the record is untimely, incomplete, irrelevant or inaccurate.

**RECORD SOURCE CATEGORIES:**

Information in these records is obtained from subject individuals, awardee institutions or organizations, PHS agencies and organizations responsible for investigations.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 87–12002 Filed 5–27–87; 8:45 am]

BILLING CODE 4160–17–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO–942–08–4520–12]

### Colorado; Filing of Plats of Survey

May 18, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., May 18, 1987.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 29, T. 33 N., R. 8 E., New Mexico Principal Meridian, Colorado, Group No. 784, was accepted May 8, 1987.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of certain sections, T. 47 N., R. 7 W., New Mexico Principal

Meridian, Colorado, Group No. 786, was accepted May 7, 1987.

The plat representing the dependent resurvey of portions of the subdivisional lines, line 3–4, C.E. 402, line 4–1, C.E. 1179 and the subdivision of section 6, and the survey of lots 33 and 35 in section 6, T. 1 N., R. 101 W., Sixth Principal Meridian, Colorado, Group No. 790, was accepted May 7, 1987.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

Gary T. Oviatt,

*Acting Chief, Cadastral Surveyor for Colorado.*

[FR Doc. 87–12086 Filed 5–27–87; 8:45 am]

BILLING CODE 4310–JB–M

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[WY–010–07–4322–10]

## Grazing Advisory Board; Meeting for the Worland District, WY

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Taylor Grazing Act of 1934, the Public Rangelands Improvement Act of 1978, the Federal Land Policy and Management Act of 1976, and the Executive Order 12548 of February 14, 1986, notice is hereby given of a meeting of the Worland District Grazing Advisory Board to be held at 10:00 a.m., June 18, 1987, in the conference room at the BLM District Office, 101 South 23 Street, Worland, Wyoming.

The Agenda for the meeting includes:

1. Review of FY 1987 range improvement projects.
2. Discussion and Recommendations for proposed FY 1988 range improvement projects.
3. Review of current Allotment Management Plan Development.
4. Range Program Update: Grazing Agreements, Grazing Decisions, and Rangeland Monitoring.
5. Discussion of Washakie and Cody R.A. RMPs
6. Opportunity for the public to present information or make comments.

The meeting will be open to the public. Interested persons may make oral statements to the Board during the public comment period, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager in writing by June 11, 1987.

**DATE:** June 18, 1987, 10:00 a.m.

**ADDRESSES:** Bureau of Land Management, 101 South 23rd Street, Worland, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Chester E. Conard, District Manager, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, (307) 347–9871.

**SUPPLEMENTARY INFORMATION:** Summary minutes of this meeting will be on file in the District Office and available for a public inspection (during regular business hours) within 30 days of the meeting.

Chester E. Conard,

*District Manager.*

[FR Doc. 87–12084 Filed 5–27–87; 8:45 am]

BILLING CODE 4310–22–M

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## Bureau of Reclamation

### Information Collection Submitted to OMB for Review

**AGENCY:** Bureau of Reclamation, Department of the Interior.

**SUBJECT:** Information Collection Submitted to OMB for Review.

**SUMMARY:** The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and the Office of Management and Budget Interior Desk Officer at (a.c. 202) 395–7340.

Title: 43 CFR Part 428, Acreage Limitation—Bureau of Reclamation Rules and Regulations

Bureau Form Numbers: 7–1781A and 7–1781B

Frequency: Annual

Description of respondents: Water user organizations subject to the acreage limitation provisions of Federal Reclamation law

Annual Response: 386

Annual Burden Hours: 23,760

Bureau Clearance Officer: Alma Gonzales, (a.c. 202) 343–4249.

Dated: May 19, 1987.

Wayne Merchant,

*Principal Deputy Assistant Secretary—Water and Science.*

[FR Doc. 87–12130 Filed 5–27–87; 8:45 am]

BILLING CODE 4310–09–M

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## INTERNATIONAL TRADE COMMISSION

### Certain Circular Welded Carbon Steel Pipes and Tubes From Turkey; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

**AGENCY:** United States International Trade Commission.

**ACTION:** Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determinations in investigation No. 701–TA–253, Certain Circular Welded Carbon Steel Pipes and Tubes from Turkey.

**SUMMARY:** The Commission invites comments from the public on whether changed circumstances exist sufficient to warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determinations in investigation No. 701–TA–253 (Final), regarding certain circular welded carbon steel standard and line pipes and tubes from Turkey. The purpose of the proposed 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of certain circular welded carbon steel standard and line pipes and tubes from Turkey if the countervailing duty order regarding such merchandise were to be modified or revoked.[1]

**FOR FURTHER INFORMATION CONTACT:** Daniel Leahy (202–523–1376), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments

[1] The term "welded carbon steel standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256A, 610.3256, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA). The term "welded carbon steel line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to American Petroleum Institute specifications for line pipe, provided for in TSUSA items 610.3208 and 610.3209.

who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

**SUPPLEMENTARY INFORMATION:** On February 23, 1988, the Commission issued its determinations in investigation No. 701–TA–253 (Final), Certain Welded Carbon Steel Pipes and Tubes from Turkey (51 FR 7342). The Commission determined that an industry in the United States was materially injured, or threatened with material injury, by reason of imports from Turkey of welded carbon steel standard pipes and tubes which had been found by the Department of Commerce to be subsidized by the Government of Turkey. The Commission also determined that an industry in the United States was threatened with material injury by reason of imports from Turkey of welded carbon steel line pipes and tubes which had been found by the Department of Commerce to be subsidized by the Government of Turkey. On March 7, 1986, the Department of Commerce issued a countervailing duty order, notice of which was published in the Federal Register (51, FR 7934).

On April 24, 1987, the Commission received a request filed by the Government of Turkey, pursuant to section 751(b) of the Act, to review its affirmative determinations in investigation No. 701–TA–253 (Final). Under § 207.45 (a) of the Commission's rules of practice and procedure, "In the absence of good cause shown, no investigation under this section shall be instituted within 24 months of the date of publication of the notice of suspension or determination." Notice of the Commission's determinations was published in the Federal Register of March 3, 1986. The Government of Turkey contends that the circumstances of this case constitute "good cause" for conducting an immediate review.

**Written Comments Requested**

Pursuant to § 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests comments concerning whether the following alleged changed circumstances are sufficient to warrant institution of a review investigation: The domestic industry has experienced dramatic recovery in the last twelve months. Also, as a consequence of the imposition of the countervailing duty order, shipments of the subject pipe and tube from Turkey have been replaced by other imports, not by domestic pipes and tubes. Thus the domestic industry is not vulnerable to injury and would not suffer material injury if the countervailing duty order with respect to Turkey were revoked.

The Commission also invites comment on the meaning of "good cause". In particular, comments on the differences between "changed circumstances" and "good cause" are sought. The Government of Turkey has cited the following items as support for a finding of "good cause": The subject countervailing duty order has become unnecessary and unwarranted as a result of the Commission's negative determinations in investigations Nos. 731–TA–293 and 294, Certain Welded Carbon Steel Pipes and Tubes from the Philippines and Singapore (November 1986). In reaching its determinations in those cases, the Commission cumulated imports from Turkey with those from the Philippines and Singapore, as well as with those from India and Thailand. Thus the Commission again assessed the effect of imports from Turkey on the domestic industry and concluded that they were not the cause of material injury to the domestic industry. Secondly continued payment of duty deposits constitutes an extreme burden for Turkish exporters.

Finally, in view of the fact that the investigation concerning Turkey involved both standard and line pipe, whereas the investigations concerning the Philippines and Singapore involved standard pipe but not line pipe, parties are requested to provide comments on "changed circumstances" and "good cause" separately with respect to standard pipe and line pipe. A majority of the Commission has consistently found standard and line pipe to be separate like products, and has found separate industries producing those products.

**Written submissions**

In accordance with § 201.8 of the Commission's rules (19 CFR 201.8), the signed original and 14 copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's rules (19 CFR 201.6). Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other documents in this matter are available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission, telephone 202–523–0161.

Issued: May 22, 1987.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–12122 Filed 5–27–87; 8:45 am]

BILLING CODE 7020-02-M

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**[Investigation No. 337–TA–251]**

## Certain Electronic Chromatogram Analyzers; Commission Decision To Extend the Deadline for Determining Whether To Review Final Initial Determination

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Extension of deadline for deciding whether to review final initial determination.

**SUMMARY:** Notice is hereby given that the Commission has determined to extend until June 2, 1987, the deadline by which it must decide whether to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1693.

**SUPPLEMENTARY INFORMATION:** On April 9, 1987, the presiding ALJ issued his final ID finding that there is no violation of section 337 in the unauthorized importation and sale of certain electronic chromatogram analyzers. The previous deadline for deciding whether to review the ALJ's final ID was May 28, 1987.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 201.14(b) and 210.53(h) of the Commission's rules of practice and procedure (19 CFR 201.14(b), 210.53(h)).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours

(8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: May 18, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–12123 Filed 5–27–87; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. 731–TA–337 (Final)]

## Certain Paint Filters and Strainers from Brazil

**AGENCY:** United States International Trade Commission.

**ACTION:** Termination of investigation.

**SUMMARY:** On May 18, 1987, the Commission received notice from the U.S. Department of Commerce of a negative final determination of sales at less than fair value in connection with the subject investigation. Accordingly, pursuant to § 207.20(b) of the Commission's rules of practice and procedure (19 CFR 207.20(b)), the antidumping investigation concerning certain paint filters and strainers from Brazil (investigation No. 731–TA–337 (Final)) is terminated.

**EFFECTIVE DATE:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Brian Walters (202–523–0104), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

*Authority:* This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: May 21, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–12124 Filed 5–27–87; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. 337–TA–190]

## Certain Softballs and Polyurethane Cores Therefore; Remand of Investigation to Administrative Law Judge and Denial of Motions to Strike

**AGENCY:** U.S. International Trade Commission.

**ACTION:** The U.S. International Trade Commission has determined to remand the above-captioned investigation to the presiding administrative law judge (ALJ) for further proceedings and for issuance of an initial determination. The Commission has also determined to deny two motions to strike.

**FOR FURTHER INFORMATION CONTACT:** Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E. Street, NW., Washington, DC 20436, telephone 202–523–0493. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–724–0002.

**SUPPLEMENTARY INFORMATION:** At the conclusion of the above-captioned investigation, the Commission determined that there was no violation of section 337 of the Tariff Act of 1930. 19 U.S.C. 1337. The case was appealed to the U.S. Court of Appeals for the Federal Circuit Court (CAFC) and on September 17, 1986, the CAFC vacated the Commission's determinations of patent invalidity and absence of tendency to injure, and remanded the investigation for a determination of the question of infringement (on which the Commission has taken no position) and for redetermination of the question of injury. *Lannom Manufacturing Co., Inc. v. U.S. International Trade Commission,* 799 F.2d 1572 (Fed. Cir. 1986).

Subsequently, Success Chemical, Co., Ltd., Taipei, Taiwan (Success), which was a respondent in the Commission's investigation but did not participate in it, failed a notice of appearance and an agreement to be bound by the terms of the protective order. Complainant Lannom Manufacturing Co. moved (Motions Nos. 190–27–C and 190–28–C) to strike both the entry of appearance and the agreement to be bound by the protective order.

The Commission has determined to remand the investigation to the ALJ for further proceedings and issuance of an initial determination on the questions of infringement of U.S. Letters Patent 3,978,225, the definition of the domestic industry, efficient and economic operation, and injury. The Commission has further determined to deny complainant Lannom's motions to strike.

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

By order of the Commission.

Issued: May 21, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–12125 Filed 5–27–87; 8:45 am]

BILLING CODE 7020–02–M

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[Investigation No. TA–203–16]

## Report to the President Regarding Stainless Steel and Alloy Tool Steel

May 15, 1987.

To the President: In accordance with section 203(i)(3) of the Trade Act of 1974 (19 U.S.C. 2253(i)(3)), the United States International Trade Commission herein reports the results of an investigation concerning stainless steel and alloy tool steel.

Chairman Liebeler and Vice Chairman Brunsdale provide advice on the probable economic effect of terminating import relief provided to domestic producers of certain stainless steel and alloy tool steel products. They also provide advice on the considerations set forth in section 202(c) of the Trade Act of 1974.

Commissioner Eckes advises the President that termination of the import relief program with respect to stainless steel sheet and strip, and stainless steel plates, would not have an adverse effect on the domestic industries producing those products, assuming the continued administration of voluntary restraint agreements at present levels. He also advises that termination of the import relief program would have an adverse effect on the industries producing stainless steel bars, stainless steel wire rod, and alloy tool steel.

Commissioner Lodwick advises the President that termination of the relief program with respect to stainless steel sheets and strip, and stainless steel plates would not have an adverse effect, assuming the continued administration of the voluntary restraint agreements at present levels. He also advises that

termination of the 201 relief would have an adverse effect on the industries producing stainless steel bars, stainless steel wire rod, and alloy tool steel.

Commissioner Rohr advises the President that with respect to stainless steel sheets and strip, and stainless steel plates, termination of the import relief program would not have a significant adverse economic effect on the industries producing these products, assuming the continued administration of the voluntary restraint agreements at present levels. With respect to stainless steel bars and stainless steel wire rod, termination of the import relief program would have a significant adverse economic impact on the industries producing these products. With respect to alloy tool steel, Commissioner Rohr advises that while termination of the import relief program would have some adverse economic effects on the operation of the industry, he finds little indication that firms in this industry have any significant plans to use any further period of relief to further adjust to import competition.

The Commission instituted this investigation on January 27, 1987, following receipt of a petition filed by the Specialty Steel Industry of the United States (SSIUS) and the United Steelworkers of America (AFL–CIO), requesting that the Commission institute an investigation in order that it might advise the President of its judgment as to the probable economic effect on the domestic specialty steel industries of the termination of the import relief provided to the specialty steel industries by Presidential Proclamation 5074. Public notice of the investigation and hearing was given by posting copies of the notice at the office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 4, 1987 (52 FR 3501). A public hearing was held in connection with this investigation on April 2, 1987, in Washington, DC. All interested persons were afforded an opportunity to be present, to present evidence, and to be heard.

The information in this report was obtained from field work, questionnaires sent to domestic producers and importers, the Commission's files, other government agencies, briefs filed by interested parties, and other sources.

The Commission transmitted its determination in this investigation to the President on May 15, 1987. The views of the Commission are contained in USITC Publication 1975 (May 1987), entitled "Stainless Steel and Alloy Tool Steel: Report to the President On Investigation No. TA–203–16 Under Section 203 of the Trade Act of 1974."

By order of the Commission.

Issued: May 15, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–12126 Filed 5–27–87; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 731–TA–376 (Preliminary)]**

## Certain Stainless Butt-Weld Pipe Fittings From Japan

### Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of stainless steel butt-weld pipe and tube fittings, under 14 inches in inside diameter, provided for in item 610.89 of the Tariff Schedules of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

### Background

On April 2, 1987, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel for Flowline Corp., New Castle, PA, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports from Japan of stainless steel butt-weld pipe and tube fittings, under 14 inches in inside diameter. Accordingly, effective April 2, 1987, the Commission instituted preliminary investigation No. 731–TA–376 (Preliminary).

Notice of the institution of the Commission's investigation was given by posting copies of the notice in the office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 10, 1987 (52 FR 11759). The conference was held in Washington, DC, on April 27, 1987, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 18, 1987. The views of the Commission are contained in USITC Publication 1978 (May 1987), entitled "Certain Stainless Steel Butt-Weld Pipe Fittings From Japan. Determination of the Commission in Investigation No. 731–TA–376 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: May 18, 1987.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 87–12127 Filed 5–27–87; 8:45 am]

BILLING CODE 7020–02–M

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## DEPARTMENT OF JUSTICE

### Information Collection(s) Under Review

May 22, 1987.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form/supporting documents is available); (2) the office of the agency issuing the form; (3) the title of the form; (4) the agency form number, if applicable; (5) how often the form must be filled out; (6) who will be required or asked to report; an estimate of the number of responses; (7) an estimate of the total number of respondents; (8) an estimate of the total number of hours needed to fill out the form; (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies; and, (10) the name and the telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer *AND* the

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[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(a)).

[2] Vice Chairman Brunsdale is out of the country on an official visit and is unable to participate in this determination.

Agency Clearance Officer of your intent as early as possible.

Department of Justice Agency Clearance Officer: Larry E. Miesse 202/633-4312.

New Collection(s)

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) DECLARATION OF INTENDING CITIZEN
(4) I-772
(5) On occasion
(6) Individuals or households. Use of this form is a prerequisite for certain specified groups of aliens to assert a claim of discrimination based on citizenship status.
(7) 4,500,000 respondents
(8) 148,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Fishman—395-7340

(1) Larry E. Miesse, 202/633-4312
(2) Bureau of Justice Assistance, Department of Justice
(3) APPLICATIONS FOR DISCRETIONARY GRANT FUNDS AVAILABLE UNDER THE STATE AND LOCAL ASSISTANCE FOR NARCOTICS CONTROL PROGRAM OF THE ANTI-DRUG ABUSE ACT OF 1986 AND QUARTERLY FINANCIAL AND PROGRESS REPORTS
(4) No form number
(5) Quarterly
(6) State or local governments. Applications are required from state and local units of government and non-profit organizations who are requesting discretionary grant funds.
(7) 60 respondents
(8) 1,800 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

(1) Larry E. Miesse, 202/633-4312
(2) Bureau of Justice Statistics, Department of Justice
(3) APPLICATION FOR DISCRETIONARY GRANT FUNDS AVAILABLE UNDER THE JUSTICE ASSISTANCE ACT OF 1984 AND QUARTERLY FINANCIAL AND PROGRESS REPORTS
(4) No form numbers
(5) Quarterly
(6) State or local governments. Applications are required from state and local units of government and non-profit organizations who are requesting discretionary grant funds.
(7) 63 respondents
(8) 1,890 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, 202/633-4312
(2) National Institute of Justice, Office of Justice Programs, Department of Justice
(3) NATIONAL NEEDS ASSESSMENT SURVEY
(4) No form number
(5) Biennially
(6) State or local governments. This is the vehicle by which the National Institute of Justice meets its Congressional mandate to conduct research on current and future problems encountered by state and local criminal justice agencies.
(7) 2,052 respondents
(8) 855 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) MEDICAL EXAMINATION OF ALIENS SEEKING ADJUSTMENT OF STATUS
(4) I-693
(5) One time
(6) Individuals or households. Pub. L. 99-603 requires specific language regarding the medical examination required of an applicant who applies for temporary residence status.
(7) 4,113,500 respondents
(8) 2,056,750 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) NOTICE OF APPEAL
(4) I-694
(5) One time
(6) Individuals or households. Form to be used in considering appeals of denials of temporary residence status by legalization applicants and special agricultural workers.
(7) 48,229 respondents
(8) 24,114 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) CHANGE OF ADDRESS NOTICE
(4) I-697
(5) On occasion
(6) Individuals or households. Form to be used keep current the addresses of legalization and special agricultural workers.
(7) 2,877,706 respondents
(8) 238,849 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION FOR TEMPORARY REPLACEMENT CARD
(4) I-695
(5) One time
(6) Individuals or households. Pub. L. 99-603 provides for the procedures to be used for application for a replacement card. The use of this form lessens the public burden of application.
(7) 362,791 respondents
(8) 60,223 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION FOR STATUS AS TEMPORARY RESIDENT (SAW)
(4) I-700
(5) One time
(6) Individuals or households, farms. Used to adjust the status of special agricultural workers to that of permanent residents.
(7) 1,362,666 respondents
(8) 1,021,999 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION FOR STATUS AS A TEMPORARY RESIDENT
(4) I-687
(5) One time
(6) Individuals or households. Used to apply for temporary resident status and under certain conditions, for permanent status.
(7) 4,113,333 respondents
(8) 4,113,333 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) WAIVER OF EXCLUSION
(4) I-69)
(5) One time
(6) Individuals or households. Pub. L. 99-603 contains specific language regarding grounds of exclusion which necessitates the use of this, rather than the existing waiver application.
(7) 415,791 respondents
(8) 103,947 burden hours
(9) Not applicable under 3504(h)
(10) Jeff Hill—395-7340

Larry E. Miesse,

*Clearance Officer, Department of Justice.*

[FR Doc. 87-12129 Filed 5-27-87; 8:45 am]

BILLING CODE 4410-10-M

**Lodging of Consent Decree Pursuant to Clean Water Act; Birdsell**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 12, 1987, a proposed consent decree in *United States* v. *Birdsell,* Civil Action No. A86–147, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendant due to discharges of pollutants from defendant's placer gold mine. The consent decree provides for payment of a civil penalty and for injunctive relief to restrain further violations of the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Birdsell,* D.J. Ref. No. 90–5–1–1–2594. The proposed consent decree may be examined at the office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C–252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the consent decrees may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Deputy Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–12069 Filed 5–27–87; 8:45 am]

BILLING CODE 4410–01–M

**Lodging of Consent Decree Pursuant to Clean Water Act; Pavey**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 12, 1987, 1987, a proposed consent decree in *United States* v. *Pavey,* Civil Action No. A86–354, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendant due to discharges of pollutants from defendant's placer gold mine. The consent decree provides for payment of a civil penalty and for injunctive relief to restrain further violations of the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Pavey,* D.J. Ref. No. 90–5–1–1–2627. The proposed consent decree may be examined at the office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C–252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle Washington 98101. A copy of the consent decrees may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Deputy Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–12070 Filed 5–27–87; 8:45 am]

BILLING CODE 4410–01–M

**Lodging of Consent Decree Pursuant to Clean Water Act; Promised Land Mining**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 12, 1987, a proposed consent decree in *United States* v. *Promised Land Mining,* Civil Action No. A86–005, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendant due to discharges of pollutants from defendant's placer gold mine. The consent decree provides for payment of a civil penalty and for injunctive relief to restrain further violations of the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Promised Land Mining,* D.J. Ref. No. 90–5–1–1–2573. The proposed consent decree may be examined at the office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C–252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Deputy Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–12071 Filed 5–27–87; 8:45 am]

BILLING CODE 4410–01–M

**Lodging of Consent Decree Pursuant to Clean Water Act; Three Channel Mining Co.**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 12, 1987, a proposed consent decree in *United States* v. *Three Channel Mining Co., et al.,* Civil Action No. A86–008, was lodged with the United States District Court for the District of Alaska. The complaint filed by the United States alleged violations of the Clean Water Act by defendants due to discharges of pollutants from defendant's placer gold mine. The consent decree provides for payment of a civil penalty and for injunctive relief to restrain further violations of the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Three Channel Mining Co.,* D.J. Ref. No. 90–5–1–1–2575. The proposed consent decree may be examined at the

office of the United States Attorney, Federal Building and U.S. Courthouse, 701 C Street, Room C–252, Anchorage, Alaska 99513, and at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Deputy Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–12072 Filed 5–27–87; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Registration; Penick Corporation

By Notice dated March 26, 1987, and published in the **Federal Register** on April 4, 1987 (52 FR 10826), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Pholcodine (9314) | I |
| Alphacetylmethadol (9603) | I |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Diphenoxylate (9170) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Pethidine (meperidine) (9230) | II |
| Methadone (9250) | II |
| Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane (9254). | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Opium extracts (9610) | II |
| Opium fluid (9620) | II |
| Tincture of opium (9630) | II |
| Powdered opium (9639) | II |
| Granulated opium (9640) | II |
| Mixed alkaloids of opium (9648) | II |
| Concentrate of poppy straw (9670) | II |
| Phenazocine (9715) | II |
| Fentanyl (9801) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 21, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–12059 Filed 5–27–87; 8:45 am]

BILLING CODE 4410-09-M

### Manufacturer of Controlled Substances; Registration; Stepan Chemical Co.

By Notice dated March 26, 1987, and published in the **Federal Register** on April 3, 1987; (52 FR 10826), Stepan Chemical Company, Natural Products, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cocaine (9041) | II |
| Ecgonine (9180) | II |

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 21, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–12058 Filed 5–27–87; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Retiree Health of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., Monday, June 29, 1987, at the American Association of Retired Persons, 1909 K Street, NW., Room 830, Washington, DC 20049.

This eight-member work group was formed by the Advisory Council to study issues relating to retiree health benefit programs for employee welfare plans covered by ERISA.

The purpose of the June 29 meeting is to determine what legal rights retirees have with regard to the post-retirement health benefit promise made by the employer. The work group will take testimony from employee representatives, employer representatives and other interested individuals and groups regarding subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before June 22, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 22, 1987.

Signed at Washington, DC this *22nd* day of May, 1987.

**David M. Walker,**

*Deputy Assistant Secretary for Pension and Welfare Benefits Administration.*

[FR Doc. 87–12090 Filed 5–27–87; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL CAPITAL PLANNING COMMISSION

### Delegations of Authority; Amendments

**AGENCY:** National Capital Planning Commission.

**ACTION:** Notice of amendments to Delegation of Authority.

**SUMMARY:** The amendments authorize the Executive Director, in cases pending before the DC Zoning Commission in which he concludes there is no Federal interest and so advises the National Capital Planning Commission, to report directly to the Zoning Commission.

DATE: May 28, 1987.

ADDRESS: National Capital Planning Commission, 10th Floor, 1325 G Street, NW., Washington, DC 20576.

FOR FURTHER INFORMATION CONTACT: Katherine Barns Soffer, General Counsel, National Capital Planning Commission, Phone: (202) 724-0170.

**Delegations of Authority**

The National Capital Planning Commission, at its August 28, 1986 meeting, agreed to amend its Delegations of Authority, previously published as amended at 43 FR 20679, as follows:

1. Add a new paragraph:

**III. Delegations to the Executive Director**

10. In Zoning Commission cases where the Executive Director determines that there is no Federal interest and so advises the Commission, reports directly to the Zoning Commission.

2. Conform the two preceding paragraphs:

Delete the word "and" after the semicolon in paragraph 8, Part III, Delegations to the Executive Director; and change the period at the end of paragraph 9, Part III, to a semicolon and add the word "and".

Reginald W. Griffith,
*Executive Director.*
May 19, 1987.

[FR Doc. 87-12083 Filed 5-27-87; 8:45 am]
BILLING CODE 7520-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

**Agency Information Collection Activities Under OMB Review**

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by June 19, 1987.

ADDRESSES: Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202-392-7316). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506 (202-682-5484).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5484) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts requests the reinstatement of a previously approved collection. The entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Dance Application Guidelines FY 1988.
*OMB number:* 3135-0047.
*Frequency of collection:* One-time.
*Respondents:* Individuals and non-profit institutions.
*Use:* Guideline instructions and applications elicit relevant information from individuals and nonprofit organizations that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.
*Estimated number of respondents:* 1,080.
*Estimated hours for respondents to provide information:* 14,150.

Murray R. Welsh,
*Director, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 87-12085 Filed 5-27-87; 8:45 am]
BILLING CODE 7537-01-M

**Ad Hoc Advisory Committee on Arts Education Study; Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Ad Hoc Advisory Committee on Arts Education Study (1987) to the National Council on the Arts will be held on June 13, 1987, from 9:00 a.m.-5:30 p.m. in room MO-9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic of discussion will be a report on the state of arts education mandated by Congress which is due December 1987.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW. Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

John H. Clark,
*Director, Council and Panel Operations, National Endowment for the Arts.*
May 22, 1987.

[FR Doc. 87-12128 Filed 5-27-87; 8:45 am]
BILLING CODE 7537-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-261]

**Carolina Power and Light Co., H. B. Robinson Steam Electric Plant, Unit No. 2; Exemption**

I

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License No. DPR-23, which authorizes operation of the H. B. Robinson Steam Electric Plant, Unit No. 2. The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a Westinghouse pressurized water reactor located at the licensee's site in Darlington County, South Carolina.

II

Paragraph III.A.3 of Appendix J to 10 CFR Part 50 requires that all Type A (Containment Integrated Leak Rate) tests be performed in accordance with ANSI N45.4-1972, "Leakage Rate Testing of Containment Structures for Nuclear Reactors." ANSI N45.4 requires that leakage calculations be performed using the Total Time method or the Point-to-Point method.

By letter dated April 17, 1987, the licensee requested an exemption from 10 CFR Part 50, Appendix J, Paragraph III.A.3, with regard to Type A, Containment Integrated Leak Rate Test calculations. Specifically, the licensee requested an exemption to permit the use of the Mass-Point method (as

provided in ANSI/ANS 56.8–1981, paragraph 5) rather than the Total Time method described in ANSI N45.4–1972, paragraph 7.9. In support of its request, the licensee notes that the Mass-Point method is a newer and more accurate method of calculating containment leakage. The licensee also notes that utilizing the Total-Time method produces results which are less reliable than the Mass-Point method. The licensee has, therefore, requested the exemption to enable use of the Mass-Point method.

The acceptability of the exemption request is addressed below. More details are contained in the Commission's related Safety Evaluation concurrently issued with this exemption.

III

The licensee's exemption request under consideration involves Type A testing requirements of Appendix J for containments. As indicated in the licensee's letter of April 17, 1987, until about 1976, containment leakage rate calculations were performed using only the Point-to-Point or the Total Time methods in accordance with ANSI N45.4–1972. In 1976, the NRC staff unofficially recognized the merits of a newer methods, the Mass-Point method. ANSI N45.4–1972 has since been revised to incorporate the Mass-Point method into ANSI/ANS 56.8–1981. A proposed revision to Appendix J, which would permit use of the the Mass-Point method, was published for public comment on October 29, 1986 (51 FR 39538); The licensee submits that the more accurate technique provides increase confidence in the integrity of the containment.

In addition, the licensee provided a determination that special circumstances exist under 10 CFR 50.12(a). The rule specifies particular methods for calculating leakage to assure that accurate and conservative methods are used to assess the results of containment leak rate tests. As discussed above, the license has determined that this underlying purpose is achieved with use of the more accurate Mass-Point method. Therefore, they concluded that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The staff agrees with the licensee's conclusion and has determined that under 10 CFR 50.12(a)(2)(ii) special circumstances exist. Based on the above discussion, the licensee's request for exemption (allowing the Mass-Point technique for calculating containment leakage rate) from the requirements of Appendix J is granted for H. B. Robinson, Unit No. 2, with the condition that the test be conducted over a period of at least 24 hours.

IV

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption. Namely, application of the regulation in the particular circumstances is not necessary to achieve its underlying purpose, which is to ensure that accurate and conservative methods are used to assess the results of containment leak rate tests. The Mass-Point method, which provides accurate results, has been a widely used method of performing leak rate calculations and satisfies the underlying purpose of the rule.

Accordingly the Commission hereby grants an exemption from Paragraph III.A.3 of Appendix J to 10 CFR Part 50 to allow use of the Mass-Point method in performing leakage rate calculations associated with Containment Integrated Leakage Rate Tests, provided that the minimum test duration is 24 hours.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (51 FR 18296).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 22 day of May, 1987.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects I–II, Office of Nuclear Reactor Regulation.*

[FR Doc. 87–12192 Filed 5–27–87; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–456]

## Commonwealth Edison Co., Braidwood Station, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–70 to Commonwealth Edison Company (the licensee) which authorizes operation of Braidwood Station, Unit No. 1 (the facility) at reactor core power levels not in excess of 3411 megawatts thermal (100 percent rated power). This license is restricted to power levels not in excess of five percent of rated power (170 megawatts thermal).

Braidwood Station, Unit No. 1 is a pressurized water reactor located in Will County, Illinois, about 20 miles south-southwest of Joliet, Illinois, in Reed Township. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriation findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register in December 15, 1978 (43 FR 58659).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Braidwood Station, Units 1 and 2 (dated June 1984) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–70, with Technical Specifications and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated February 11, 1985; (3) the Commission's Safety Evaluation Report, dated November 1983 (NUREG–1002), and Supplements 1 through 3; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) and the Final Environmental Statement, dated June 1984, (NUREG–1026).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW. Washington, DC 20555 and in the Wilmington Township Public Library, 201 S. Kanakee Street, Wilmington, Illinois 60481. A copy of Facility Operating License NPF–59 may be obtained upon request addressed to

the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V. Copies of the Safety Evaluation Report and Supplements 1 through 3 (NUREG–1002) and The Final Environmental Statement (NUREG–1026) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. Dated at Bethesda, Maryland this 21st day of May 1987.

For the Nuclear Regulatory Commission.

Janice A. Stevens,

*Project Manager, Project Directorate III–2, Division of Reactor Projects—III, IV, V, and Special Projects.*

[FR Doc. 87–12283 Filed 5–27–87; 8:45 am]

BILLING Code 7590–01–M

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## Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary Systems; Date Change of Meeting

The ACRS Subcommittee meeting on Auxiliary Systems scheduled for May 29, 1987, previously noticed in the Federal Register on May 18, 1987 (52 FR 18622) has been *rescheduled for Thursday, June 11, 1987, 8:30 a.m., Room 1046, 1717 H Street NW., Washington, DC.* All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone: 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: May 21, 1987.

Morton W. Libarkin,

*Assistant Executive Director for Project Review.*

[FR Doc. 87–12190 Filed 5–27–87; 8:45 am]

BILLING CODE 7590–01–M

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24482; File No. SR–Amex–87–10]

## Self-Regulatory Organizations; Proposed Rule Change; American Stock Exchange, Inc. Relating to Surveillance Memorandum Regarding Major Market Index Options To Be Traded on European Options Exchange.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 6, 1987, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to enter into a Memorandum of Understanding with Optiebeurs N.V. (European Options Exchange or "EOE") providing for the exchange of surveillance information. The purpose of this mutual undertaking is to assure the adequacy of surveillance capability in connection with the trading on both exchanges of options based on the Major Market Index. The full text of the proposed Memorandum of Understanding ("Surveillance Memorandum") is attached hereto as an Exhibit.

The XMI options to be traded on EOE will be issued by, and cleared and settled through, the Options Clearing Corporation ("OCC"). Contemporaneously with the filing of this proposed rule change, it is anticipated that OCC will file rules changes enabling it to issue, clear and settle XMI options traded on EOE.

The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

AMEX has developed a broad market index, known as the Major Market Index, based on the values of twenty well known, highly capitalized U.S. stocks and it currently trades options based on such index ("XMI options"). Such options are issued by, and cleared and settled through OCC. These are cash settled options. AMEX proposes to enter into a licensing agreement with EOE authorizing EOE to use the names "Major Market Index" and "XMI" in connection with options traded on EOE and based on such index. Such options will have the same terms and conditions as XMI options traded on AMEX, will be issued by and subject to the rules of OCC, will be cleared and settled through the facilities of OCC and, thus, will be indentical to and fungible with the XMI options traded on AMEX. Positions in XMI options established in transactions effected on EOE may be liquidated in transactions effected on AMEX, and vice versa.

It is contemplated that EOE will commence trading XMI options on its trading floor each business day several hours prior to the opening of trading on AMEX, and that there will normally be an overlap of trading in XMI options on both exchanges of approximately one hour each day. All exercises of XMI options on a given day, whether purchased in transactions on EOE or on AMEX, will be settled on the basis of the closing value of the Major Market Index published by AMEX on such day. Although, at present, the Major Market Index is not calculated and published prior to the opening of the Securities markets in New York City (AMEX and New York Stock Exchange) each business day, all of the stocks comprising the Index are to varying extents traded in one or more European markets during the hours EOE is open for trading. AMEX and EOE have agreed to cooperate in efforts to collect and disseminate, or cause others to collect and disseminate, European pricing information with respect to such stocks and to display such information in a manner which will reflect the impact of

current European prices on the previous day's closing level of the index. As soon as the New York markets open each day and the AMEX commences to calculate the index, such values will be displayed on the EOE trading floor and will be available through vendors servicing European business centers.

EOE has agreed to introduce for trading only such series of XMI options as the AMEX shall have determined to introduce, and to the extent possible all new series will commence trading on both exchanges on the same day. EOE has further agreed to adopt rules and requirements in certain areas relating to XMI options which will be similar to the corresponding rules and requirements of the AMEX. These include position limits; exercise limits; exercise of options, including time for submission of exercise notices; procedures for allocation of exercise notices; margin requirements; and delivery of disclosure documents (limited to EOE's own disclosure documents).

In view of the fact that XMI options to be traded on EOE will be identical to and fungible with the options traded on AMEX, and it is anticipated that positions established in transactions on one exchange may be offset by transactions effected on the other exchange or exercised against positions resulting from transactions effected on the other exchange, it is essential that the two exchanges coordinate their surveillance activities regarding trading in XMI options. The purpose of the Surveillance Memorandum is to provide for the exchange of surveillance information as needed by the two exchanges to carry out their respective surveillance functions. Paragraph 1 of the Surveillance Memorandum provides for each exchange to conduct routine surveillance to trading in XMI options in its own marketplace and, to the best of its ability, to assure compliance by its members with all rules and requirements applicable to options trading in such marketplace. Paragraph 3 further calls for the delivery by OCC to each Exchange on a daily basis of the combined clearing information regarding the previous day's activity in XMI options on both exhanges. This constitutes the bulk of the information needed to carry out routine market surveillance.

In addition, paragraph 4 of the Surveillance Memorandum, provides that whenever either exchange in the performance of its surveillance functions needs the cooperation of the other exchange to investigate any question or complaint regarding the propriety of any transaction or series of transactions in XMI options, or regarding any other aspect of trading and/or transactions therein that might be significant for rule enforcement purposes, it may request the other exchange for relevant information and the other exchange will be obligated, using its best efforts and in accordance with its own rules, to obtain the information. Paragraph 5 of the Surveillance Memorandum states that the results of any such investigation shall be made available promptly to the exchange making the request, except that when the inquiry involves details concerning the identity and trading activity of specific customers of member firms, the exchange to whom the request is directed may decline to furnish the information in cases in which it determines disclosure of such customer information (i) would not necessarily serve the interests of maintaining fair and orderly securities markets and options markets and/or protecting the investing public, or (ii) would be inconsistent with the laws applicable to such exchange or with its rules and regulations. The AMEX staff has informed the Commission staff that, with respect to client information, it expects that the provisions of paragraph 5 will be used only in exceptional circumstances and only after senior officials from both exchanges have had an opportunity for consultation about the nature, scope, and intent of the request. Otherwise, customer information will be provided on a routine basis. Even in cases where one of the exchanges determines that in accordance with the above standards it is precluded from turning over specific customer information, it is nevertheless required to make full inquiry into the matter and furnish such of the information as it is not prohibited from disclosing. Finally, under paragraph 7, each exchanges agrees to notify the other of any disciplinary action taken against its members with respect to activites which could affect the markets on both exchanges.

(2) Statutory Basis

The mutual undertaking by EOE and AMEX to exchange surveillance information is constent with the purposes and requirements of section 6(b)(1), and (5) and (6) of the Securities Exchange Act of 1934 (the "Act") in that each exchange will be better able to carry out its responsibilities to regulate its marketplace and assure compliance by its members with applicable rules and requirements. Where a security is traded in more than one market, experiance has demonstrated that appropriate surveillance requires routine review of the total trading in all markets and, in case specific questions arise from such routine surveillance, the ability of each such market to obtain more detailed information not only from its own members but also from the other marketplace where the security is traded and from the members of such other marketplace, particularly where it can be anticipated that some investors in such security may effect transactions in more than one market. Therefore, the AMEX will need access to information concerning the trading of XMI options on EOE in order to assure that it has the capability to comply and to enforce compliance by its members with the provisions of the Act and the rules and regulations thereunder and with its own rules, to detect possible fraudulent or manipulative acts or practices and to promote just and equitable principles of trade. Similarly, EOE will benefit from access to information concerning trading of XMI options on Amex in carrying out it surveillance and compliance functions under Dutch law. The mutual access by AMEX and EOE to surveillance information pursuant to the Surveillance Memorandum and the ability of each to call upon the other to conduct specific inquiries will "foster cooperation and coordination with persons engaged in regulating, clearing, settling . . . and facilitating transactions in securities" and help to "perfect the mechanism of a free and open market . . . and, in general, to protect investors."

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invted to submit written data, views and arguments concerning the foregoing. The Commission is particularly interested in receiving comments concerning paragraph 5 of the AMEX–EOE Surveillance Memorandum and whether it provides the proper framework for disclosure of customer information. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and coping at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 18, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 15, 1987.

Jonathan G. Katz,

*Secretary.*

**Exhibit—Memorandum of Understanding Between Optiebeurs N.V. (European Options Exchange) and American Stock Exchange, Inc., Regarding the Exchange of Surveillance Information**

This Memorandum of Understanding between the European Options Exchange ("EOE") and the American Stock Exchange, Inc. ("Amex") sets forth the undertakings by the parties to conduct surveillance and to furnish each other with surveillance information pursuant to the provisions of Section 8 of the Agreement dated March , 1987 (the "Licensing Agreement") between EOE and Amex (the "exchanges").

1. EOE and Amex shall each be responsible for conducting routine surveillance relating to all transactions in option contracts based on the Major Market Index ("XMT options") effected in their respective markets and, to the best of their ability, for assuring compliance by their respective members with all rules and requirements applicable to options trading in their respective markets.

2. Each exchange shall cause all transactions in XMI options effected in their respective markets to be reported in accordance with the procedures applicable to reporting of options transactions generally in such market, and each exchange shall grant the other access to such information together with any summaries, or other reports of XMI options trading which either exchange routinely prepares and makes available to its members or releases publicly.

3. Each exchange shall be authorized to receive daily from the Options Clearing Corporation ("OCC") a computerized schedule (currently known as the "Data Service Tape") of the previous day's activity in XMI options on both exchanges, such schedule to consist of the following information:

(a) Clearing data with regard to all XMI options transactions, including identification of buyer and seller clearing members, number of contracts, price, type of account, whether an opening or closing transaction, and marketmaker identification and/or clearing member give-up information ("CMTA") if applicable.

(b) Information detailing all exercises and exercise assignments relating to XMI options.

(c) Information regarding all position adjustments among clearing members or among accounts effected by OCC.

(d) Information detailing the XMI option positions held by each clearing member subdivided by account type: C—customer, F—firm, M—marketmaker (currently known as the "Open Interest Distribution Report").

4. Whenever either Amex or EOE wants the cooperation of the other exchange to investigate any question and/or complaint regarding the propriety of any transaction or series of transactions in XMI options and/or the stocks comprising the Major Market Index, or regarding any other aspect of trading and/or transactions that might be significant for rule enforcement purposes, it shall apply to the other exchange, stating its reasons for the request. The other exchange shall then comply with such request, and shall use its best efforts, in accordance with its rules, to obtain relevant information from its membership.

5. The results of any investigation conducted by one exchange ("requested exchange") pursuant to such request of the other exchange ("requesting exchange") shall be made available promptly to the requesting exchange, unless the information requested involves details concerning the identity and trading activity of specific customers or clients ("client information") of members of the requested exchange and such exchange shall have made a good faith determination that the furnishing of such client information:

(i) Would not necessarily serve the interests of maintaining fair and orderly securities and options markets and/or protecting the investing public; or

(ii) Is inconsistent with applicable law, including Articles, Rules and Regulations of the requested exchange.

6. If the requested exchange which has obtained client information determines that, in accordance with the preceding paragraph, it may not disclose such information to the requesting exchange, it shall nevertheless ascertain what non-client information developed in the course of its inquiry can be disclosed and promptly furnish the same to the requesting exchange and shall cooperate as fully as possible with the latter to complete the investigation and enforce compliance by its members with all applicable rules and requirements.

7. Each exchange shall promptly notify the other of any action taken by it to sanction any of its members arising out of activities involving the trading of XMI options under circumstances which could affect the market therein on both exchanges, and, to the extent not inconsistent with paragraph 5 hereof, shall furnish the other exchange with the details of such compliance action. At the request of either exchange, a joint task force shall be established to promptly review unusual or disruptive market conditions in XMI options or in the markets for the stocks comprising the Major Market Index.

8. (a) All information furnished by one exchange to the other pursuant to paragraphs 3, 4, 5, 6, and 7 of this Memorandum of Understanding ("surveillance information") shall be treated as confidential and shall be used solely for the purpose of carrying out market surveillance activities relating to transactions in XMI options and/or in stocks comprising the Major Market Index, provided, however, that such information may be used in a formal regulatory or legal proceeding initiated by either exchange or as to which either exchange is a party. In the event that any surveillance information obtained by one exchange from the other is to be used in such a regulatory or legal proceeding, the exchange planning to use the information shall immediately

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notify the exchange from whom the information was received of such prospective use, in writing.

(b) Each exchange agrees to take all reasonable measures to maintain the confidentiality of any surveillance information received from the other, except to the extent that disclosure is required in connection with a regulatory proceeding of such party or pursuant to any obligation of such party to disclose information for surveillance purposes, in the case of the Amex, to any other self-regulatory organization in the United States or to the Securities and Exchange Commission, or, in the case of the EOE, to the Commissie van Toezicht op de Optiebeurs or the public prosecutor (Officier van Justitie). Such surveillance information shall not be disclosed to any other person for any purpose, except where required by the order of a court or by other lawful process. In the event that either exchange is required to disclose to a third party surveillance information which it has obtained from the other exchange, it shall immediately notify the other exchange of such prospective disclosure.

9. The obligations of the parties hereunder shall commence upon the initiation of trading of XMI options on EOE and shall continue as long as the Licensing Agreement shall remain in effect and for such additional period as may be required to complete any inquiries which may be under way at the time of the termination of the Licensing Agreement.

10. Any request by either exchange for information pursuant to the terms of this Memorandum of Understanding may be either in writing or made orally, provided in the latter event that the request is made by a duly authorized representative of the requesting exchange who has been so designated from time to time to the other exchange in writing.

11. Nothing in this Memorandum of Understanding is intended to create any rights on behalf of any person not a party hereto to suppress the exchange of information, including client information, between AMEX and EOE.

Agreed to this ____ day of March 1987.

Optiebeurs N.V.

By: _____

_____

(Title)

American Stock Exchange, Inc.

By: _____

_____

(Title)

[FR Doc. 87-12170 Filed 5-27-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24491; File No. SR-CBOE-87-16]

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

On April 30, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend for ninety days the Exchange's pilot program for market maker participation in the CBOE's Retail Automatic Execution System ("RAES" or "System") pilot in equity options. The RAES equity options pilot, and the eligibility criteria for market maker participation in RAES, have been in place since October 1986 pursuant to Commission approval.[3] Under this proposed rule change, the eligibility pilot program will continue to operate in the same manner as it has in the prior six months.

Pursuant to the terms of the pilot, all CBOE registered market makers are eligible to participate in the RAES equity options pilot under the following conditions. The market maker must use his own trading acronym and password to log into the System, and all trades in which he participates clear into his designated account. A market maker may designate either his individual or joint account for RAES trades. If he designates his joint account, however, only one joint account participant may use the account at one time in accordance with exchange rules and interpretations.[4]

A market maker must sign onto RAES in person, and may stay on the System only when present in the trading crowd. The market maker must sign off the System when leaving the trading crowd, except when absent for a "brief interval." Failure to comply with these requirements will result in disciplinary action,[5] and also possibly remedial action by the Exchange's Market Performance Committee, which may include a suspension of eligibility from RAES. The pilot further provides that in the case of unusual market conditions relief from these eligibility requirements may be granted.

The CBOE has requested a ninety day extension of the pilot to enable the Exchange to gather additional information before deciding whether to modify or extend the program. The CBOE believes that continuation of the pilot without interruption will assure the least disruption to member firms and public customers who enter orders through RAES, while the Exchange is evaluating RAES market maker eligibility criteria.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-CBOE-87-16.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available at the principal office of the CBOE.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] *See* Securities Exchange Act Release No. 23490 (August 1, 1986), 51 FR 28788, in which the Commission approved a CBOE proposal to operate RAES in six equity options classes on a six month pilot basis. RAES automatically executes public customer market and marketable limit orders against participating CBOE market makers at the best bid or offer displayed at the time the customer order enters RAES. The CBOE recently submitted a proposed rule change to the Commission to extend this pilot for a ninety day period. *See* File No. SR-CBOE-87-17. The Commission approved a six-month pilot for market maker participation in the RAES equities pilot in securities Exchange Act Release No. 23501 (September 4, 1986), 51 FR 32710.

[4] The CBOE prohibits two or more members of a joint account from trading in the same options class simultaneously in order to avoid competitively disadvantaging other trading crowd members. *See* CBOE Floor Procedure Committee Memorandum, dated November 3, 1982. Joint account members who participate in RAES in the Standard & Poor's 100 index option ("OEX") are exempted from this prohibition, however, because of OEX liquidity.

[5] The pilot specifies that a market maker may be disciplined under (1) CBOE Rule 6.20 which provides for a fine upon a finding by two Floor Officials that a member's conduct has impaired maintenance of a fair and orderly market or public confidence in the operations of the Exchange; and (2) Chapter XVII of the rules, the CBOE's general disciplinary jurisdiction.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization, and in particular, the requirements of section 6(b)(5) and 11A. The Commission believes that continuation of the eligibility criteria pilot for a ninety day period is appropriate given the CBOE's intention to further study the opration of the pilot.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the pilot was previously subject to public notice and comment, and the Commission has not received any adverse comments regarding the pilot's operation to date.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: May 19, 1987.

Jonathan G. Katz,

*Secretary*

[FR Doc. 87-12171 Filed 5-27-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24482; File No. SR-CBOE-87-17]

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

On April 30, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the CBOE's Retail Automatic Execution System ("RAES" or "System") pilot program in equity options for ninety days.

In August, 1986, the Commission approved a CBOE rule proposal to permit RAES to be used for the execution of six selected individual equity options on a six month pilot basis.[3] RAES provides for the automatic execution of certain-sized public customer market and marketable limit orders; the System automatically executes orders entered into RAES against participating market makers in the CBOE trading crowd at the best bid or offer quoted on the CBOE floor. The RAES equities pilot also allows limit orders on the book in five of the six piloted equities options classes to trade with RAES orders. In one pilot class, International Business Machines ("IBM"), limit orders on the book do not interact with RAES orders.[4]

The CBOE has requested a ninety day extension of the equity option pilot so that it may gather additional data before deciding whether to modify or extend the program. The CBOE believes that continuation of the pilot without interruption will assure the least disruption to firms and customers using RAES while the System is evaluated by the Exchange.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days from the date of publication of the submission in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Reference should be made to File No. SR-CBOE-87-17.

Copies of the submission, all subsequent amendments, all written statements with the respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available at the principal office of the CBOE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to self-regulatory organizations, and in particular, the requirements of section 6. The Commission believes that continuation of the pilot for a ninety day period is appropriate in order to allow the CBOE to further study the operation of RAES in the piloted equity options classes.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the pilot already has been the subject of public notice and comment and the Commission has not received any adverse comment concerning its operation to date.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: May 19, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-12172 Filed 5-27-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24466; File No. SR-NYSE-87-11]

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Partial Approval to Proposed Rule Change

On April 6, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to change permanently the setttlement pricing of expiring NYSE stock index options to the opening prices on expiration Fridays.

The proposed rule change was noticed in Securities Exchange Act Release No. 24341 (April 14, 1987). No comments were received on the proposed rule change.

On March 13, 1987, the Exchange filed a proposed rule change to change the settlement pricing of expiring stock index options to the opening prices on expiration Friday.[3] That rule filing only

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[6] 15 U.S.C. 78s(b) (2) (1982).

[7] 17 CFR 200.30-3 (a) (12) (1985).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] *See* Securities Exchange Act Release No. 23490 (August 1, 1986) 51 FR 28788, approving File Nos. SR-CBOE-85-32 and SR-CBOE 85-16.

[4] Customer limit order protection in five of the piloted classes is provided by means of manual comparison of the book's position with RAES executions. In the event a book order represents the best bid or offer and a RAES order has has been executed at that price against a CBOE market maker, the Exchange requires the market maker also to trade with the customer order on the book. Because of the manual nature of this procedure and the high trading volume in IBM, the CBOE believes that providing limit order protection for IBM options is not feasible.

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] *See* SR-NYSE-87-06, and March 18, 1987 Letter to Sharon M. Lawson, Branch Chief, SEC. from

Continued

was effective with respect to index options contracts expiring in June.[4] In particular, the Exchange modified the definition of "Current Index Group Value" in Rule 700(b)(17) to permit the Exchange to specify that the value upon exercise of options on the NYSE Composite Index and the NYSE Beta Index on expiration Friday is to be calcuated from the opening prices for the constituent stocks on that day. The Exchange made conforming changes to the contract specifications for options on both indexes to make clear that trading ceases on the Thursday before expiration Friday. The Exchange now proposes to make permanent the rule changes proposed in that filing.

The purpose of the proposed rule change is to ameliorate the impact of the concurrent expiration of index options and futures on the markets for individual stocks and on the stock market as a whole. The Exchange believes that settling index futures and options based upon the opening prices of the constituent stocks, and thereby permitting use of the Exchange's opening procedures in handling the accompanying stock volume, is the best strategy for addressing widely-held concerns about the actual and potential impact of the derivative products on the pricing mechanism and integrity of the stock market.

The Commission has determined to grant partial approval to the proposed rule change and authorize the Exchange to base settlement of contracts expiring in August and September on opening prices. The Commission continues to believe that basing index settlement on opening prices on expiration Friday may best address the stock index-arbitrage related market volatility that has been associated with expirations. However, the various stock and options markets have not concurred in this assessment, and certain exchanges have elected to retain settlement of their index products based on closing prices on expiration Friday. The Commission believes that an evaluation of the impending disparate expirations in June is necessary before it can approve the NYSE proposal of a permanent basis. Based on the results of the June expiration, the Commission will examine whether disparate expiration, settlements adversely affect the underlying stock market on Expiration Friday, and whether index settlement based on opening prices may be appropriate for all options products. Accordingly, the Commission believes it is appropriate to extend the NYSE proposal on a temporary basis for another two months.

For the reasons detailed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6, and the rules and regulation thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: May 15, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-12173 Filed 5-27-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24485; File No. SR-NYSE-87-12]

## Self-Regulatory Organizations; New York Stock Exchange, Inc., and Extension of Pilot Program Relating to 2½ Point Strike Price Intervals in NYSE Composite Index Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 10, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Last August, the Exchange amended Rule 703.30 to provide for 2½ point strike price intervals for NYSE Composite Index Options. (See SR-NYSE-86-25, as amended by the August 27, 1986 letter to Jonathan G. Katz, Secretary, SEC, from James E. Buck, Secretary, NYSE and Release No. 34-23618 (September 12, 1986).) That rule change contained a "sunset" provision effective upon the March 1987 expiration. By a filing dated March 18, 1987, the Exchange extended the "sunset" to May 17 (i.e., the May expiration). (*See* SR-NYSE-87-07 and Release No. 34-24230 (March 20, 1987).) The Exchange now proposes to make the amendments to Rule 703.30 permanent and requests a 3 month extension of the pilot program, to August 17, 1987, in order that the pilot may remain in effect during the statutory notice and comment period.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange is proposing to make permanent an amendment to Rule 703.30, which permits the Exchange to list options on the NYSE Composite Index at 2½ point strike price intervals (e.g., at 167½ and 172½, as well as 165, 170 and 175). The Exchange's experience with 2½ point strike price intervals has been very positive. With respect to trading activity, the Exchange is unable to differentiate index options contracts with 2½ point strike prices from those with strike prices that are a multiple of five: The relative level of activity is, as expected, solely a function of the index value at any particular time. In addition, the Exchange is unable to discern any negative impact on liquidity. The Exchange also believes that the availability of series at 2½ point intervals eased the impact of the delisting of its options on the NYSE Double Index. In short, the Exchange is unaware of any problems created by its use of 2½ point strike prices. Please also see Exhibit I to SR-NYSE-86-25.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change imposes no burden on competition.

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Daniel P. Odell, Assistant Secretary, NYSE. This rule filing was approved in Securities Exchange Act Release No. 24278.

[4] The Exchange subsequently was granted approval to base settlement of contracts expiring in July, 1987 on opening and not closing prices. *See* SR-NYSE-87-13, Securities Exchange Act Release No. 23469 (April 17, 1987).

[5] 15 U.S.C. 78 s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Commission has determined to grant a 3 month extension of the Exchange's pilot program in order for the pilot to remain effective while the proposal is subject to notice and comment. The NYSE has not experienced any problems during the pilot phase or received negative comment that would preclude continuance of the pilot. At the end of the three month extension, the Commission will determine whether to approve 2½ point strike prices in NYSE Composite Index Options on a permanent basis. Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 18, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 15, 1987.

Jonathan G. Katz.

*Secretary.*

[FR Doc. 87-12174 Filed 5-27-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-24484; File No. SR-OCC-87-10]**

**Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corporation**

On May 13, 1987, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act") to enable OCC clearing members of pledge long options positions to a commodity clearing organization. The Commission is publishing this notice to solicit comment on the proposal.

The proposal expands OCC's options pledge program [1] to authorize commodity clearing organizations ("CCO's") to act as pledgees and to enable OCC clearing members to pledge long options positions from a firm account to a CCO pledgee.[2] The proposal also enables to CCO generally to waive, by written agreement with OCC, its rights to overpledged value payments, [3] but enables to CCO to receive such payments on an exception basis. Finally, the proposal makes conforming amendments to OCC's pledge account agreement and certain technical changes to the options pledge program.

OCC states that the proposal is consistent with the purposes and requirements of section 17A of the Act because it would foster cooperation and coordination with other clearing organizations. OCC also believes that the proposal would further the public interest by enabling commodity clearing organizations to account for long options positions that hedge certain commodity product positions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to file number SR-OCC-87-10 and should be submitted by June 18, 1987.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: May 19, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-12175 Filed 5-27-87; 8:45 am]

BILLING CODE 8010-01-M

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[1] See OCC Rule 615.

[2] Prior to the proposal, OCC rules authorized only banks and OCC clearing members to act as pledgees and enabled pledges only from market-maker or specialist accounts.

[3] Those payments represent, in effect, collateral substitution by the pledgor to the pledgee when a pledged options position is exercised. See Securities Exchange Act Release No. 24171 (March 4, 1987), 52 FR 7724.

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**[Release No. 34-24469; File No. Phlx-87-19]**

**Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc., Order Granting Accelerated Approval to Proposed Rule Change**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1987, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Philadelphia Stock Exchange ("PHLX" or the "Exchange") proposes to expand the stock options pilot program, which provides for four expiration months—including two near-term months—to the February and March cycle options and to extend the expanded pilot program for one year.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change*

In June 1985, in conjunction with the other options exchanges, the PHLX implemented a one-year stock option pilot program (see SR-PHLX 85–12) for certain January cycle stock options. Under the terms of the pilot, the traditional January trading cycle was altered to ensure that (i) one-month and two-month options were made available for trading at all times and (ii) four expiration months were outstanding at all times.

In July 1986, the Exchange received approval to expand the pilot to all PHLX-traded January cycle stock options and to extend the pilot an additional six months (See SR-PHLX 86–22).

Approval is now pending to extend the pilot program for an additional period corresponding with extensions granted to other options exchanges (see SR-PHLX 87–12).

The purpose of the pilot program is to determine whether a near-term expiration cycle, featuring four expiration months, would improve investors' interest in such stock options. After monitoring the trading of the January cycle options and receiving highly favorable comments from both on-floor and off-floor market participants, the Exchange has found the pilot has improved investors' interest in trading such options.

Additionally, a consensus has developed both to continue the pilot and to expand it to stock options trading on February and March cycles. Even if the pending extension is approved it will be necessary to extend for an additional year the entire pilot program in order to have sufficient time to phase-in and assess the trading of the February and March cycle options.

Therefore, the Exchange proposes to extend the pilot program an additional one year beyond the presently proposed extension and expand the pilot program to include options on the February and March cycles. The implementation of the February and March cycles on the pilot program will follow the January cycle paradigm. In March and February cycle options, the Exchange proposes to phase-in such options after the May expiration and before the June expiration. Specifically each Friday between the May and June expirations, the Exchange will phase-in approximately one quarter of those options on the March and February cycles. In short, all cycles will maintain two near term expiration months plus their two normal expiration months.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 ("the Act") and the rules and regulations thereunder applicable to the Exchange by continuing and expanding a pilot program tailored to meet investors preferences for stock options with near-term expiration cycles. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

*B. Self-Regulatory Organizations Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

*III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because the rule change is substantively identical to a proposed rule change previously filed by the American Stock Exchange, Inc. ("Amex") and approved by the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder, in that it continues and expands an expiration cycle pilot designed to appeal to investors' interests.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change will allow the Phlx to incorporate February and March cycle options into the pilot and keep in place a program the Exchange has found to be successful. The proposal also is substantively identical to a proposal previously filed by the Amex and approved by the Commission.[1]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 18, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

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[1] *See* Securities Exchange Act Release No. 24452 (May 14, 1987).

Dated: May 18, 1987.
Jonathan G. Katz,
*Secretary.*
[FR Doc. 87-12176 Filed 5-27-87; 8:45 am]
BILLING CODE 8010-01-M

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[Release No. IC-15751; 812-6709]

## National Rural Utilities Cooperative Finance Corp.; Application

May 20, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

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*Applicant:* National Rural Utilities Cooperative Finance Corporation ("Applicant").

*Relevant 1940 Act Sections:* Exemption requested under sections 6(c) and 6(e) from the provisions of the 1940 Act, with certain exceptions.

*Summary of Application:* Applicant seeks an order pursuant to sections 6(c) and 6(e) exempting each trust ("Trust") established and to be established by the Applicant, each Trust to hold a note guaranteed by the Rural Electrification Administration evidencing loans used to refinance borrowings from the Federal Financing Bank, from all provisions of the 1940 Act other than sections 26 (with certain exceptions), 36, 37 and (to the extent necessary to implement the foregoing sections) 38 through 53 thereof in connection with the issuance of certificates by the Trust to Applicant and their subsequent resale to the public by Applicant.

*Filing Date:* The application was filed on May 5, 1987 and amended on May 22, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 12, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Mark Weissler, Milbank, Tweed, Hadley & McCloy, 1 Chase Manhattan Plaza, New York, NY 10005.

**FOR FURTHER INFORMATION CONTACT:** Fran Pollack, Staff Attorney (202) 272-3024 or Karen L. Skidmore, Special Counsel (202) 272-3023, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

### Applicant's Representations

1. Applicant is a tax-exempt, not-for-profit cooperative association organized in 1969 under the laws of the District of Columbia. Applicant was established by its members to provide them with a source of financing to supplement the loan programs of the Rural Electrification Administration ("REA") of the United States Department of Agriculture. Applicant presently has loans outstanding to its member in the aggregate principal amount of approximately $2.9 billion, and has guaranteed on behalf of members an additional $3.0 billion in obligations. Applicant also provides financial advisory services to its members. Applicant's 964 members are themselves generally non-profit cooperative electric utilities and service organizations and represent approximately 95% of the total number of such entities in the United States. Applicant has approximately $790 million principal amount of bonds listed on the New York Stock Exchange and registered under section 12(b) of the Securities Exchange Act of 1934.

2. In order to ease financial burdens on certain cooperatives by permitting them to take advantage of lower interest rates, Congress in October 1986 passed legislation (the "New Bill") amending the Rural Electrification Act (the "RE Act") to permit these cooperatives to prepay existing borrowings (the "FFB Loans") from the Federal Financing Bank of the United States Treasury ("FFB") without prepayment penalty or fees, through the issuance of REA-guaranteed notes to private lenders. REA has promulgated regulations implementing this legislation (the "Regulations"), which directs REA to formulate eligibility criteria ensuring that at least $2.0175 billion of such refinancings occur by September 30, 1987. Because of concerns that issuance by the cooperatives of debt guaranteed by REA directly to the public would adversely affect the Treasury's own funding operations, the Regulations limit the number of separate notes that any cooperative may issue in a particular refinancing, restrict assignment of the REA guarantee, and require that each noteholder (i) be subject to credit examination and supervision by Federal or state authorities and satisfy applicable regulatory requirements for licensing, lending and loan requirements, (ii) have a minimum net worth or other credit support in the amount of $50 million, or (iii) be a trust administered by a person in either of the foregoing categories.

3. Applicant, in conjunction with Shearson Lehman Brothers, Goldman Sachs, Merrill Lynch and Salomon Brothers, has formulated a program consistent with the New Bill and the Regulations which it believes will permit its power supply members to refinance their FFB Loans in accordance with the New Bill and the Regulations at competitive rates reflecting the smallest possible spread over benchmark Treasury obligations. REA has approved this structure as complying with the Regulations. The first borrower which has had its application to prepay approved by REA, Soyland Power Cooperative, Inc. ("Soyland"), has refinanced its FFB Loans under this structure, borrowing on an interim basis from Applicant and issuing notes evidencing these borrowings to Trusts as described below, with Applicant holding the certificates representing the ownership interest in these trusts on an interim basis and intending to resell them publicly as described below as soon as applicable regulatory requirements have been satisfied. Two other cooperatives, Cajun Electric Power Cooperative, Inc. ("Cajun") and Deseret Generation & Transmission Cooperative ("Deseret"), have indicated their intention to do the same. All representations and conditions in the application will apply to transactions under this structure involving Soyland, Cajun, and Deseret. Moreover, there are up to 10 cooperatives eligible to prepay about $2 billion in FFB Loans under current standards and a substantial number of these cooperatives will participate in the program described below.

4. Under Applicant's program, one or more Trusts will be established for each cooperative intending to prepay FFB loans (a "Cooperative"). The trustee of each Trust (the "Trustee") will be a commercial bank having capital and surplus of at least $50,000,000. Applicant will make loans (the "Private Loans") to the Cooperative, the proceeds of which will immediately be used to prepay the Cooperative's FFB Loans being refinanced. Applicant will direct the

Cooperative to issue each note evidencing a Private Loan (a "Private Note") to a separate Trust, which will issue to Applicant certificates representing the entire beneficial interest in the Trust (the "Certificates"). The Trustee will be the "noteholder" for purposes of the Regulations. Applicant will qualify the Trust Agreements under the Trust Indenture Act of 1939.

5. While Applicant holds the Certificates, the Private Note will bear interest at a variable rate reflecting Applicant's cost of funding the loan unless Applicant and the Cooperative agree to a fixed rate for an interim period (e.g., in order to lock in a rate for a period before it is possible or desirable for CFC to resell the Certificates as indicated below). Applicant intends to resell these Certificates in public offerings or in private placements, at which time the rates on the associated Private Note will be reset to equal the fixed rate on the Certificates, increased by an amount equal to the servicing fee and expense reimbursement referred to below. The Certificate rate will be fixed as the lowest rate acceptable to the marketplace that would permit the Certificate to be resold by Applicant at par. Scheduled payments on the Private Notes will thus at all times be sufficient to satisfy the scheduled payments on the Certificates plus any amounts of servicing fees or other costs payable to the servicer. Applicant would expect to resell the Certificates promptly, unless they could not be sold bearing rates within the interest rate ceiling described below or if it believed that long-term rates would improve in the future and it desired to delay fixing the rate until that time.

6. In order to insure that the Cooperative (and REA as its creditor) will derive significant benefit from the refinancing of FFB Loans, the Regulations require that the interest rate on the Private Notes always be at least 50 basis points lower than the weighted average interest rate borne by the FFB Loans that were repaid at the time of repayment. Since there is no assurance that Applicant will be able to obtain funding enabling it to carry or to resell the Certificates within this cap, Applicant in acquiring the Certificates subject to this limitation is assuming an exposure to interest rate fluctuations which benefits the Cooperative and REA.

7. With the exception discussed below, each Trust's sole investment activity will consist of receiving the Private Note and issuing the Certificates on the day of its formation and thereafter collecting payments on the Note. The assets of each Trust will consist of a single Private Note evidencing one Private Loan. In order to obtain the best rates by matching maturities to particular market segments, separate Certificates having sequential maturities will be offered through separate Trusts (i.e., one Trust would receive a Private Note payable by the Cooperative in installments in years 6–10, a second would receive a Private Note payable by that Cooperative in years 11–16, etc). The Trustee will not be authorized to modify the right to receive payments on the Certificates or take any action that would reduce the principal amount or interest rate on the Private Note without consent of the Certificateholders. No Trust would ever issue any security other than a single class of Certificates or hold more than a single Private Note or, except for the incidental temporary investment pending distribution to Certificateholders of payments received on its Private Note described below, engage in any investment activity following its formation. Defaults with respect to one Private Note would not permit acceleration by the holder of any other Private Note. The Trust would not acquire any assets in substitution for the Private Note, or sell the Private Note except in connection with the repayment of the Certificates in full and the termination of the Trust (which will occur when the Private Note and thus the Certificates have been paid off).

8. REA will endorse on each Private Note a guarantee (the "REA Guarantee") of the timely payment of principal and interest on such Private Note. The RE Act provides that the REA Guarantee is full faith and credit obligation of the United States. REA will be required to pay the Trust the amount of any principal and interest not paid when due on a Private Note within five business days of notice from the servicer of such default. Although the Private Note will be secured by a mortgage on all the Cooperative's assets (the "REA Mortgage"), all rights under the mortgage with respect to the Private Note will be held by REA and will not inure to the benefit of Applicant, the Trust or any holder of Certificates.

9. Applicant will contract with REA and each Trust to service the Private Loan in a manner complying with the RE Act and the Regulation. Applicant, as servicer, will handle the billing of Private Loan payments from the Cooperative and will notify REA promptly of any default under the Private Loan and of adverse developments affecting the Cooperative, but payments on the Private Loan will be made directly to the Trustee and not to Applicant. The Applicant will prepare for distribution to Certificateholders regular semiannual reports concerning distributions on the Certificates and its fees, as well as tax information required by Certificateholders. No less often than annually, an independent public accountant will audit the books and records of each Trust. Upon completion, copies of the auditor's reports will be provided to the Trustee.

10. Applicant as servicer will be compensated out of payments on the Private Note in excess of the scheduled payments to be distributed to Certificateholders. It is presently estimated that the regular servicing fee (out of which Applicant will pay the Trustee's fees and expenses) will total not more than approximately 10 basis points annually with respect to the principal amount of the Private Note. Applicant as servicer may also receive from the Trust all or a portion of the earnings on funds invested pending distribution to Certificateholders as described below, as well as reimbursement for costs incurred by it in connection with the offering of the Certificates and enforcement of the Private Note and REA Guarantee. The Cooperative will be obligated to pay amounts equal to such costs as additional interest (guaranteed by REA) on the Private Note (subject to certain limitations), so that such reimbursement will not reduce distributions to Certificateholders. Applicant may not resign as servicer, but may be removed by the Trustee or the Certificateholders following certain defaults or events of bankruptcy relating to the servicer. The insolvency of the Trustee or Applicant will not affect the Certificateholders' rights, because Applicant will not hold any Trust assets and assets held in a fiduciary capacity by the Trustee should not be subject to claims of the Trustee's general creditors. Even if the Internal Revenue Service or a state tax authority were to claim successfully that a Trust is a taxable entity (and Applicant does not believe it is), the Certificateholders should receive their back-to-back government guaranteed payments because Applicant will indemnify the Trust for any resulting taxes under present law.

11. Applicant may resell the Certificates either in private placements pursuant to section 4(2) of, or in underwritten public offerings registered under, the Securities Act of 1933 ("Securities Act"), or possibly in distributions exempt from registration because they will come to rest outside

the United States (provided that the subject securities are offered and sold outside the United States and to non-U.S. persons without registration under the Securities Act in reliance upon an opinion of U.S. counsel that registration is not required and that no single offering of Certificates both within and outside the United States will be made without registration of all such Certificates under the Securities Act without obtaining a no-action letter permitting such offering or otherwise complying with applicable standards then governing such offerings). In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such debt securities from being offered or sold in the United States or to U.S. persons (except as U.S. counsel may then advise is permissable). Applicant anticipates that the Certificates will be marketed principally to financial institutions, and expects that the Certificates issued by each Trust will receive the highest investment grade rating ("AAA" or "Aaa"), from at least two nationally recognized statistiical rating organizations not affiliated with Applicant of the Trusts.

12. Each Certificate will represent a fractional undivided interest in a Trust. The Certificates will be issued in denominations of $1,000 or multiples thereof, and will not be divisible into Certificates with original principal amounts below that figure. The Certificates will be transferable, and may be listed on a national securities exchange. Payments on the Certificates will represent simply pass-throughs of payments received by the Trustee on the Private Note held by the Trust. Interest on both the Private Note and the Certificates will be payable semiannually and principal payments on both the Private Note and the Certificates will be payable annually (as is customary for sinking funds with respect to corporate debt securities) for the period during which the Private Note and the Certificates amortize.

13. The Certificates will be prepaid at any time the Private Note is prepaid. It is anticipated that the Private Notes will be prepayable at the Cooperative's option in whole (but not in part), generally after a non-call period, at premiums declining each year until such premiums equal zero. Although the payment of principal, interest and premium in the event a Cooperative elects to prepay the Private Note will not be covered by the REA Guarantee, the Cooperative will be required to accompany its notice of prepayment (to be given 30 days in advance in order to permit the Trustee in turn to notify Certificateholders of the impending retirement of the Certificates) with a cash deposit equal to the amounts that will be due on the Private Note at the time of prepayment, thus assuring that funds will be available at that time. Pending application, these funds will be invested in obligations issued by the United States or in repurchase agreements in the manner described below. In view of the safety of these investments, Applicant believes that the consequences of the fact that the REA Guarantees does not cover prepayments are not significant.

14. With the exception referred to in the preceding paragraph, all payments on the Certificates will have back-to-back Private Note obligations which are supported by the full faith and credit of the United States. If the Cooperative defaults in making its payments or in its other obligations to REA, REA has the option to either to pay under the REA Guarantee principal and interest as they fall due on the Private Note, to proceed against the Cooperative and to assume the Cooperative's obligations under the Private Note or, if the Cooperative could at that time make an optional prepayment of the Private Note, optionally to prepay or purchase the Private Note at the same premium as would then be applicable to a prepayment by the Cooperative. The Trustee (or Applicant as its agent), an not the individual Certificateholders, will enforce payments due on the Private Note and the REA Guarantee. However, a specified percentage of Certificateholders may direct the time, method and place of conducting any remedy available to the Trustee or Applicant, subject to customary indenture exceptions. The Trustee may not resign until the Trust is liquidated and the proceeds distributed to Certificateholders unless a successor Trustee has been designated and has accepted such trusteeship.

15. Scheduled distributions on the Certificates will be made several days (currently anticipated to be 11 calendar days in the case of regular payments of principal and interest) following the corresponding payment on the Private Note. This interval will allow time for Applicant to notify REA if there is a default by the Cooperative in making a payment on the Private Note and to permit the five business days before REA is obligated to make a payment under the guarantee to elapse before the payment date on the Certificates. As a consequence, if the Cooperative defaults, the full faith and credit guarantee payment will fall due before the schedule payment on the Certificates. As indicated above, if a Cooperative elects to prepay a Private Loan, distributions on the Certificates will be made 30 days after advance receipt of the amounts to be prepaid, thus permitting notice of the resulting distribution to be given to Certificateholders.

16. During these periods pending distribution (twice annually for 11 days and not more than one additional period of 30 days for any Trust in connection with a prepayment), payments on the Private Note received by the Trust will be invested by it at the direction of Applicant in (i) obligations issued by the United States (and supported by its full faith and credit) or (ii) repurchase agreements with respect to such obligations, overcollateralized on a basis so that there will not be a reduction in the ratings of the Certificates. All such investments must mature before the next scheduled distribution date on the Certificates. The obligations collateralizing the repurchase agreements in question would be marked to market on a daily basis and kept in the possession of the Trustee or in its control through book-entry, unless the rating agencies indicate that this is not necessary to maintain the Certificates' rating and the Commission or its staff has indicated it will not object to other arrangements. The purchase agreements would satify the conditions set forth in the Staff's letters dated January 25, April 17 and June 19, 1985, to Matthew Fink, Esq., and Applicant believes on the advice of counsel that they would be considered "repurchase agreements" for purposes of section 559 of the Bankruptcy Code permitting liquidation of such agreements without regard to the stay or avoiding provisions of the Bankruptcy Code (except as set forth therein). Assuming all amounts then due on the Private Notes have been paid in full, any yield on these investment will be turned over to Applicant as additional compensation in its servicing capacity or returned to the Cooperative (or to REA to the extent of any unreimbursed payments on the REA Guarantee). Such yield will not flow through to Certificateholders or increase their return on their investment, and the disclosure document will make this clear to prospective Certificateholders.

**Applicant's Legal Conclusions**

17. The requested order is necessary to appropriate in the public interest because Congress has acted to encourage prepayment of the FFB Loans with private capital, the structure proposed has been approved by REA and accommodates the government's concerns about issuance of federally guaranteed debt directly to the public and the investment activity of the Trusts will be very limited.

18. The requested order is consistent with the protection of investors because the limited intended activity of the Trusts and the extreme safety of the assets they will hold obviate the need for the complex regulatory safeguards of the Act.

19. The requested order is consistent with the purposes fairly intended by the policy and provisions of the Act because the Trusts' operations will not lend themselves to the abuses against the Act is directed.

*Applicant's Conditions*

If the requested order is granted, the Applicant agrees that the Trusts will be subject to the following conditions:

1. To be subject pursuant to section 6(e) of the Act to sections 26 (with the following exception), 36, 37 and (to the extent necessary to implement the foregoing sections) 38 through 53 of the Act. They will not be subject to the provisions of section 26(a)(2) of the Act to the extent they are inconsistent with the servicer compensation arrangements (including the scheduled servicing fee, reimbursements for certain expenses and any receipt of income from the temporary investment of funds pending distribution) described in the application, which Applicant believes are fair and reasonable in light of the function the Applicant as servicer undertakes. Applicant asserts that Certificateholders will receive a fixed return which will not be affected by this compensation, since the Cooperative will be required to pay additional interest on the Private Note (covered by the REA Guarantee) to provide funds for this compensation, which in any event (except for the Schedule servicing fee) is subordinated to payment of all amounts than due on the Certificates.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-12295 Filed 5-27-87; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5497]

### Hanam Capital Corp.; Issuance of License to Operate as a Small Business Investment Company

On May 27, 1986, a notice was published in the Federal Register (51 FR 19098) stating that an application had been filed by Hanam Capital Corporation, Suite 3330, One Penn Plaza, New York, New York 10119, with the Small Business Administration (SBA), for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing SBICs (13 CFR 107.102 (1987)).

Interested parties were given until the close of business June 26, 1986, to submit their comments on the application to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other information, SBA issued License No. 02/02-5497 to Hanam Capital Corporation on May 6, 1987, to operate as a section 301(d) SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 20, 1987.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 87-12139 Filed 5-27-87; 8:45 am]

BILLING CODE 8025-01-M

### California (Region IX) Advisory Council; Public Meeting

The U.S. Small Business Administration, San Francisco District Advisory Council, will hold a public meeting at 10:00 a.m. Tuesday, June 2, 1987, 211 Main Street—5th Floor—Room 543, San Francisco, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call the office of District Director, San Francisco District Office, 211 Main Street—4th Floor, San Francisco, California 94105, (415) 974-0642.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

May 12, 1987.

[FR Doc. 87-12136 Filed 5-27-87; 8:45 am]

BILLING CODE 8025-01-M

### Nebraska (Region VII) Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VII Advisory Council, located in the geographical area of Omaha, Nebraska will hold a public meeting from 10:00 a.m. to 2:30 p.m., on Monday, June 1, 1987, at the SBA Office, 11145 Mill Valley Road, Omaha, Nebraska, 68154, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rick Budd, District Director, U.S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska, 68154; phone (402) 221-3620.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

May 12, 1987.

[FR Doc. 87-12137 Filed 5-27-87; 8:45 am]

BILLING CODE 8025-01-M

### Washington (Region X) Advisory Council; Public Meeting

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Spokane, Washington will hold a public meeting at 9:30 a.m., on Wednesday, June 10, 1987, in Room 485 U.S. Courthouse Building, West 920 Riverside Avenue, Spokane, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Valmer W. Cameron, District Director, U.S. Small Business Administration, Room 651 U.S. Courthouse Building, Post Office Box 2167, Spokane, Washington 99210, telephone (509) 456-3781.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

May 12, 1987

[FR Doc. 87-12138 Filed 5-27-87; 8:45 am]

BILLING CODE 8025-01-M

### National Small Business Development Center Advisory Board; Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting on Thursday and Friday, June 25 and 26, from 8:30 a.m. to 11:00 a.m. (Thursday) and 8:30 a.m. to 10:00 a.m. (Friday). The meeting will be held at the Westin Benson Hotel, 309 S.W. Broadway, Portland, Oregon 97204, telephone number: (503) 228-3000. The purpose of the meeting is to discuss such matters as may be presented by

Advisory Board Members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Hardy Patten, SBA, Room 317 U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416; telephone number: (202) 653–6315.

Jean M. Nowak,

*Director, Office of Advisory Councils.*

May 21, 1987.

[FR Doc. 87–12135 Filed 5–27–87; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF STATE

[CM–8/1084]

### Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on July 7, 1987 at the U.S. Naval Observatory, Room 300, Building 52, 34th and Massachusetts Avenue NW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 7 deals with time-signal services by means of radiocommunications. The purpose of the meeting is to review preparations for the international meeting of Study Group 7 in the Spring of 1988.

Members of the general public may attend the meeting and join in the discussions subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520 (telephone (202) 647–2592).

Dated: May 15, 1987.

Richard E. Shrum,

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 87–12188 Filed 5–27–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1083]

### Soviet and Eastern European Studies; Advisory Committee; Meeting

The Department of State announces that the Soviet and Eastern European Studies Advisory Committee will meet on July 14, 1987 starting at 9:00 a.m. in Room 1107, U.S. Department of State, 2201 C Street NW., Washington, DC.

The Advisory Committee will convene to hear a consolidated report on how FY 1985–1987 Title VIII grants have been allocated by the recipients to various functions related to the needs of the Soviet-Eastern European field. The afternoon session will incude comments from others and general discussion of the needs, programs and opportunities available in the areas of research support, training opportunities, language competence and on-site activities.

Public attendance is permitted but will be limited to the seating available. Entry into the Department of State building is controlled and must be arranged in advance of the meeting. It is required that persons planning to attend notify Susan H. Nelson, Soviet and Eastern European Studies Advisory Committee, INR/LAR, U.S. Department of State, Washington, DC 20520, (202) 632–5924. All attendees must use the C Street entrance to the building.

Dated: May 19, 1987.

E. Raymond Platig,

*Executive Director, Soviet and Eastern European Studies Advisory Committee.*

[FR Doc. 87–12065 Filed 5–27–87; 8:45 am]

BILLING CODE 4710–32–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Order 87–5–59, Docket 42139]

### Proposed Revocation of the Section 401 Certificate of Pride Air, Inc.; Order to Show Cause

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause, (Order 87–5–59). Docket 42139.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificate of Pride Air, Inc., issued under section 401 of the Federal Aviation Act.

**DATES:** Persons wishing to file objections should do so not later than June 12, 1987.

**ADDRESSES:** Responses should be filed in Docket 42139 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Szekely, Air Carrier Fitness Division, P–56, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: May 21, 1987.

Matthew V. Scocozza,

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 87–12178 Filed 5–27–87; 8:45 am]

BILLING CODE 4910–62–M

### Coast Guard

[CGD 87–037]

### Agency Information Collection Activities Under OMB Review; Radionavigation User Survey

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that Office of Management and Budget (OMB) approval, under the Paperwork Reduction Act, is being sought for the nationwide collection of information on radionavigation users.

**DATES:** The request for OMB approval will be submitted in May 1987 and project completion is tentatively scheduled for January 1988.

**ADDRESSES:** Copies of the Request for OMB Review (Standard Form 83) and supporting documentation are available for inspection and copying at Commandant (G–NRN–2), U.S. Coast Guard Headquarters, Room 1413, 2100 Second Street SW., Washington, DC 20593–0001.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Adeste Fuentes at the address given above; telephone (202) 267–0299), (FTS) 267–0299.

**SUPPLEMENTARY INFORMATION:** A final recommendation on the future mix of radionavigation systems is being jointly developed by the Departments of Defense and Transportation through recommendations from federal agencies. The current policy and plans for the future radionavigation systems mix is published in the "Federal Radionavigation Plan." The Coast Guard, a provider of three radionavigation systems, intends to support its recommendations with direct input from radionavigation system users in the marine and land environments.

The input will be obtained through a nationwide survey of marine and land users. In the marine community, owners of large commerical ships, small commercial craft (other than fishing), commerical fishing craft and recreational craft will be queried. The land users that will be surveyed include non-government concerns involved in surveying, mining, natural resources exploration, mapping and geodetic control.

The Coast Guard will use the results of this survey to assess the utility of the present radionavigation systems, the impact of turning off any of the systems and the impact, on current systems, of the future deployment of the satellite-based Global Positioning System or other similar systems. Based on this information, the Coast Guard will develop recommendations to the Department of Transportation on the future mix of systems. A secondary objective of the survey is to determine an estimate of the radionavigation user population.

Persons desiring to comment on this information collection should sent their comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard at the address listed in the "ADDRESSES" section.

(14 U.S.C. 81)

Martin H. Daniell,

*Rear Admiral, USCG, Chief, Office of Navigation, U.S. Coast Guard Headquarters.*

[FR Doc. 87-12121 Filed 5-27-87; 8:45 am]

BILLING CODE 4910-14-M

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[CGD 87-034]

## Great Lakes Pilotage Review; Open Meeting

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** A number of issues have been raised this past year concerning Great Lakes pilotage. Great Lakes pilotage was last studied indepth during 1972. In view of the concerns expressed and the fact that the current study is 15 years old, the Department of Transportation has initiated a review of Great Lakes pilotage. The review, to be conducted by a multi-agency working group, will take the form of an update of the 1972 study and the 1973 policy statement that resulted from that study's findings. The Coast Guard will take the lead on this review. A public meeting is planned for the purpose of announcing the initiation of a Great Lakes Pilotage Review, to request input, and to receive any comments and recommendations concerning Great Lakes pilotage that individuals may have at this time. Issues of particular interest include:

Trans-lake pilotage
Port pilotage
Pilotage costs
"B" Certificates
Salty-lakers
Target pilot compensation
Polot workload standards
The appropraite roles of the public and private sectors

**DATE AND TIME:** The public meeting will be held on June 24, 1987. It will begin at 10 a.m. and end at 4 p.m. or sooner if all speakers have been heard.

**ADDRESSES:** (1) The meeting will be held at The Hollenden House, 610 Superior Avenue, Cleveland, Ohio. (2) Comments should be mailed to Commandant (G-CMC/21) (CGD 87-034), U.S. Coast Guard, Washington, DC 20593-0001. Between 7:30 a.m. and 3:30 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477.

**FOR FURTHER INFORMATION CONTACT:** The Executive Secretary, Marine safety Council (G-CMC), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477.

**SUPPLEMENTARY INFORMATION:** All interested persons are invited to participate in this open meeting by presenting oral views or submitting written views. The following organizations are specifically invited to present their views and recommendations at the public meeting: The St. Lawrence Seaway Pilots Association; Lakes Pilot Association, Inc.; Upper Great Lakes Pilots, Inc.; the U.S. Great Lakes Shipping Association; and the International Association of Great Lakes Ports. Written comments should include the docket number (CGD 87-034) and the name and address of the person submitting the comment. Persons wishing to present oral statements at the public meeting should notify the Executive Secretary, Marine Safety Council (at the address given above), no later than two days prior to the meeting.

Written comments are also invited during the course of the study. An open docket will be maintained throughout the study.

Dated: May 21, 1987.

J.W. Kime,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 87-12120 Filed 5-27-87; 8:45 am]

BILLING CODE 4910-14-M

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## Federal Aviation Administration

### Airborne Area Navigation Equipment Using Loran-C Inputs

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of technical standard order (TSO) and request for comments.

**SUMMARY:** The proposed TSO-C60b prescribes the minimum performance standards that Airborne Area Navigation Equipment Using Loran-C Inputs must meet to be identified with the marking "TSO-C60b."

**DATE:** Comments must identify the TSO file number and be received on or before September 11, 1987.

**ADDRESS:** Send all comments on the propcsed technical standard order to:

Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C60b, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591

Or Deliver Comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue SW., Washington, DC 20591

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9548.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

### Background

Proposed TSO-C60b will include revised Marking and Data Requirements for Airborne Area Navigation

Equipment Using Loran-C Inputs. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DP-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO-178, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

**How to Obtain Copies**

A copy of the proposed TSO-C80b may be obtained by contacting the person under "For Further Information Contact." TSO-C80b references RTCA/DO-194, dated November 1986, for minimum performance standards, RTCA/DO-178A for the computer software requirements, and RTCA/DO-160B for the environmental standards. RTCA/DO-194, DO-178A, and DO-160B may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street NW., Washington, DC 20005.

Issued in Washington, DC, on May 21, 1987.

**John K. McGrath,**

*Assistant Manager, Aircraft Engineering Division, Office of Airworthiness.*

[FR Doc. 87-12180 Filed 5-27-87; 8:45 am]

BILLING CODE 4910-13-M

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## Airborne Area Navigation Equipment Using Omega/VIF Inputs

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of technical standard order (TSO) and request for comments.

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**SUMMARY:** The proposed TSO-C120 prescribes the minimum performance standards that Airborne Area Navigation Equipment Using Omega/VIF Inputs must meet to be identified with the marking "TSO-C120."

**DATE:** Comments must identify the TSO file number and be received on or before September 11, 1987.

**ADDRESS:** Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C120, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

or deliver comments to:

Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

**Background**

Proposed TSO-C120 will include revised Marking and Data Requirements for Airborne Area Navigation Equipment Using Omega/VLF Inputs. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO-178A, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

**How to Obtain Copies**

A copy of the proposed TSO-C120 may be obtained by contacting the person under "For Further Information Contact." TSO-C120 references RTCA/DO-160, dated May 1986, for minimum performance standards, RTCA/DO-178A for the computer software requirements, and RTCA/DO-160B for the environmental standards. RTCA/DO-194, DO-178A, and DO-160B may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, on May 21, 1987.

**John K. McGrath,**

*Assistant Manager, Aircraft Engineering Division, Office of Worthiness.*

[FR Doc. 87-12181 Filed 5-27-87; 8:45 am]

BILLING CODE 4910-13-M

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## Airborne ILS Localizer Receiving Equipment Operating Within the Radio Frequency Range of 108-112 Megahertz (MHz)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of technical standard order (TSO) and request for comments.

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**SUMMARY:** The proposed TSO-C36e prescribes the minimum performance standards that Airborne ILS Localizer Receiving Equipment Operating Within the Radio Frequency Range of 108-112 Megahertz (MHz) must meet to be identified with the marking "TSO-C36e."

**DATE:** Comments must identify the TSO file number and be received on or before September 11, 1987.

**ADDRESS:** Send all comments on the proposed technical standard order to: Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO-C36e, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or Deliver Comments To: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Bobbie J. Smith, Technical Analysis Branch, AWS-120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9540.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

**Background**

Proposed TSO-C36e will include revised Marking and Data Requirements

for Airborne ILS Localizer Receiving Equipment Operating Within the Radio Frequency Range of 108–112 Megahertz (MHz). Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO–160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO–178, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

**How to Obtain Copies**

A copy of the proposed TSO–C36e may be obtained by contacting the person under "FOR FURTHER INFORMATION CONTACT." TSO–C36e references RTCA/DO–195, dated November 1986, for minimum performance standards, RTCA/DO–178A for the computer software requirements, and RTCA/DO–160B for the environmental standards. RTCA/DO–195, DO–178A, and DO–160B may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, on May 21, 1987.

John K. McGrath,

*Assistant Manager, Aircraft Engineering Division, Office of Airworthiness.*

[FR Doc. 87–12182 Filed 5–27–87; 8:45 am]

BILLING CODE 4910–13–M

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## ILS Glide Slope Receiving Equipment Operating Within the Radio Frequency Range of 328.6–335.4 Megahertz (MHz)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of technical standard order (TSO) and request for comments.

**SUMMARY:** The proposed TSO–C34e prescribes the minimum performance standards that ILS Glide Slope Receiving Equipment Operating Within the Radio Frequency Range of 328.6–335.4 Megahertz (MHz) must meet to be identified with the marking "TSO–C34e."

**DATE:** Comments must identify the TSO file number and be received on or before September 11, 1987.

**ADDRESS:** Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C34e, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Or Deliver Comments To: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

**Background**

Proposed TSO–C34e will include revised Marking and Data Requirements for ILS Glide Slope Receiving Equipment Operating Within the Radio Frequency Range of 328.6–335.4 Megahertz (MHz). Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO–160B, "Environmental Conditions and Test Procedures for Airbone Equipment," dated July 1984, for the environmental standards, and DO–178, "Software Consideration in Airbone Systems and Equipment Certification," dated March 1985, for the computer software requirements.

**How to Obtain Copies**

A copy of the proposed TSO–C34e may be obtained by contacting the person under "For Further Information Contact." TSO–C34e references RTCA/DO–192, dated July 1988, for minimum performance standards, RTCA/DO–178A for the computer software requirements, and RTCA/DO–160B for the environmental standards. RTCA/DO–192, DO–178A, and DO–160B may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, on May 21, 1987.

John K. McGrath,

*Assistant Manager, Aircraft Engineering Division, Office of Airworthiness.*

[FR Doc. 87–12183 Filed 5–27–87; 8:45 am]

BILLING CODE 4910–13–M

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## VOR Receiving Equipment Operating Within the Radio Frequency Range of 108–117.95 Megahertz (MHz)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of technical standard order (TSO) and request for comments.

**SUMMARY:** The proposed TSO–C40c prescribes the minimum performance standards that VOR Receiving Equipment Operating Within the Radio Frequency Range of 108–117.95 Megahertz (MHz) must meet to be identified with the marking "TSO–C40c.".

**DATE:** Comments must identify the TSO file number and be received on or before September 11, 1987.

**ADDRESS:** Send all comments on the proposed technical standard order to:

Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness—File No. TSO–C40c, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobbie J. Smith, Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire

to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final TSO.

**Background**

Proposed TSO–C40c will include revised Marking and Data Requirements for VOR Receiving Equipment Operating Within the Radio Frequency Range of 108–117.95 Megahertz (MHz). Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO–160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for environmental standards Nos. DO–178, "Software Consideration in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

**How to Obtain Copies**

A copy of the proposed TSO–C40s may be obtained by contacting the person under "For Further Information Contact." TSO–C40c references RTCA/DO–196, dated November 1986, for minimum performance standards, RTCA/DO–178A for the computer software requirements, and RTCA/DO–160B for the environmental standards. RTCA/DO–196, DO–178A, and DO–160B may be purchased for the Radio Technical Commisson for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC, on May 21, 1987.

John K. McGrath,

*Assistant Manager, Aircraft Engineering Division, Office of Airworthiness.*

[FR Doc. 87–12184 Filed 5–27–87; 8:45 am]

BILLING CODE 4910–13–M

## Radio Technical Commission for Aeronautics (RTCA); Special Committee 161; Minimum Aviation System Performance; Standard for Radio Determination Satellite System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given of a meeting of RTCA Special Committee 161 on Minimum Aviation System Performance Standard for Radio Determination Satellite System to be held on June 16–17, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) approval of minutes of the second meeting; (3) report on Radio Technical Commission for Marine Services SC–108 Activities; (4) briefing and discussion of GEOSTAR RDSS Accuracy Analysis; (5) review of first draft material of committee report; (6) assignment of tasks; and (7) other business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 19, 1987.

Wendie F. Chapman,

*Designated Officer.*

[FR Doc. 87–12041 Filed 5–27–87; 8:45 am]

BILLING CODE 4910–13–M

## Urban Mass Transportation Administration

## UMTA Section 3 and 9 Grant Obligations

**AGENCY:** Urban Mass Transportation Administration (UMTA), DOT.

**ACTION:** Notice.

**SUMMARY:** Public Law 99–500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Fleischman, Chief, Resource Management Division, (202) 366–2053, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99–500, UMTA reports the following grant information:

SECTION 3 GRANTS

| Transit property | Grant number | Grant amount | Date obligated |
|---|---|---|---|
| Metropolitan Dade County (Miami, Florida) | FL–03–0098 | $7,500,000 | 4–29–87 |
| Commuter Rail Division of Regional Transportation Authority (Chicago, Illinois) | IL–03–0102–03 | 11,250,000 | 4–29–87 |
| Massachusetts Bay Transportation Authority (Boston, Massachusetts) | MA–03–0139 | 13,139,100 | 5–6–87 |

SECTION 9 GRANTS

| Transit property | Grant number | Grant amount | Date obligated |
|---|---|---|---|
| Regional Transportation Authority (Chicago, Illinois) | IL–90–X094 | $52,000,000 | 3–20–87 |
| Pioneer Valley Transit Authority (Springfield, Massachusetts) | MA–90–X065 | 3,899,811 | 4–30–87 |
| Alameda-Contra Costa Transit Authority (Oakland, California) | CA–90–X231 | 14,356,856 | 5–6–87 |

Issued on: May 21, 1987.

Ralph L. Stanley,

*Administrator.*

[FR Doc. 87-12186 Filed 5-27-87; 8:45 am]

BILLING CODE 4910-87-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: May 21, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

### Internal Revenue Service

*OMB number:* 1545-0165
*Form number:* 4224
*Type of review:* Extension
*Title:* Exemption from Withholding of Tax on Income Effectively Connected with the Conduct of a Trade or Business in the United States
*Description:* Form 4224 is used by nonresident alien individuals or fiduciaries, foreign partnerships, or foreign corporations to obtain exemption from withholding of tax on certain types of income if that income is effectively connected with a U.S. trade or business. The IRS uses the information to determine if the exemption is proper
*Respondents:* Individuals or households, Businesses
*Estimated burden:* 5,250 hours

*OMB number:* 1545-0035
*Form number:* 943, 943PR, 943A, 943A-PR
*Type of review:* Extension
*Title:* Employer's Annual Tax Return for Agricultural Employees
*Description:* Agricultural employees must prepare and file Form 943 and Form 943PR (Puerto Rico only) to report and pay FICA taxes and (943 only) income tax voluntarily withheld. Agricultural employers may attach Form 943A and 943A-PR to Forms 943 and 943PR to show their tax liabilities for eighth-monthly periods. The information is used to verify that the correct tax has been paid
*Respondents:* Farms, Businesses
*Estimated burden:* 332,733 hours
*Clearance officer:* Garrick Shear (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

### U.S. Customs Service

*OMB number:* 1515-0130
*Form Number:* None
*Type of Review:* Extension
*Title:* Free Admittance Under Conditions of Emergency
*Description:* To balance import accounts for goods temporarily admitted under conditons of national emergency or catastrophe for purposes of rescue or relief. Expected affected public would consist of non-profit assistance organizations
*Respondents:* Businesses, Federal agencies of employees, Non-profit institutions
*Estimated Burden:* 1 hour
*Clearance officer:* B. J. Simpson (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
*OMB reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

*Departmental Reports Management Officer.*

[FR Doc. 87-12066 Filed 5-27-87; 8:45 am]

BILLING CODE 4810-25-M

## VETERANS ADMINISTRATION

### Scientific Review and Evaluation Board for Health Systems Research and Development; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Veterans Administration Scientific Review and Evaluation Board for Health Systems Research and Development for fiscal year 1986 has been issued.

This report summarizes activities of the Board on matters related to the review of health services/systems research and development proposals submitted by VA field staff. It is available for inspection at two locations:

Library of Congress, Federal Documents Section, Exchange and Gift Division, LM 632, Madison Building, Washington, DC 20540

and

Veterans Administration, Office of the Director, Health Services Research and Development Service, Room 824, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: May 14, 1987.
By direction of the Administrator.

Rosa Maria Fontanez,

*Committee Management Officer.*

[FR Doc. 87-12068 Filed 5-27-87; 8:45 am]

BILLING CODE 8320-01-M

### Scientific Review and Evaluation Board for Rehabilitation Research and Development; Availability of Annual Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Annual report of the Veterans Administration Scientific Review and Evaluation Board for Rehabilitation Research Development for fiscal year 1986 has been issued.

The report summarizes activities of the Board on matters related to the review, discussion and evaluation of individual investigator initiated research projects. It is available for public inspection at two locations:

Library of Congress, Federal Document Section, Exchange and Gift Division, LM 632, Madison Building, Washington, DC 20540

and

Veterans Administration, Rehabilitation Research and Development Service, Room 942, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: May 14, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

*Committee Management Officer.*

[FR Doc. 87-12069 Filed 5-27-87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 102
Thursday, May 28, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ELECTION COMMISSION**

**DATE AND TIME:** Tuesday, June 2, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**DATE AND TIME:** Thursday, June 4, 1987, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Reagan-Bush '84 (Primary Committee)—Request for Oral Presentation.
Revised FY 1987 Management Plan and Reallocations.
Adjusted Cost Estimate for S.2.
Routine Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

**Marjorie W. Emmons,**
*Secretary of the Commission.*

[FR Doc. 87-12279 Filed 5-26-87; 2:31 pm]
BILLING CODE 6715-01-M

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**NATIONAL LABOR RELATIONS BOARD**

**DATE AND TIME:** 9:00 a.m., Friday, May 15, 1987.

**PLACE:** Board Conference Room, Sixth Floor 1717 Pennsylvania Avenue, NW.

**STATUS:** Part of this meeting was closed to the public. The remainder of the meeting was opened to the public.

**MATTERS CONSIDERED:**

Portion closed to the public: Board Cases
Portion opened to the public: Rulemaking procedure with respect to appropriate units in the health care industry

**CONTACT PERSON FOR MORE INFORMATION:** John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C., 20570, Telephone: (202) 254-9430.

Dated, Washington, DC, May 26, 1987.
By direction of the Board:

**John C. Truesdale,**
*Executive Secretary, National Labor Relations Board.*

[FR Doc. 87-12287 Filed 5-26-87; 2:43 pm]
BILLING CODE 7545-01-M

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of May 25, June 1, 8, and 15, 1987.

**PLACE:** Commissioner's Conference Room, 1717 H Street, NW., Washington, DC

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of May 25**

No Commission Meetings.

**Week of June 1—Tentative**

*Thursday, June 4*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

*Friday, June 5*

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 1, 2, & 6) (Postponed from May 20).

**Week of June 8—Tentative**

*Monday, June 8*

10:00 a.m.
Briefing by Executive Branch and Discussion of Possible Enforcement Action (Closed—Ex. 5, 7, & 10) (Tentative).

*Tuesday, June 9*

3:00 p.m.
Discussion of Performance Indicator Program (Public Meeting).

*Thursday, June 11*

2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting).
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

**Week of June 15—Tentative**

*Tuesday, June 16*

10:00 a.m.
Discussion/Possible Vote of Full Power Operating License for Nine Mile Point-2 (Public Meeting).

2:00 p.m.
Meeting with States and Affected Indian Tribes on the Status of National High Level Waste Program (Public Meeting).

*Wednesday, June 17*

2:00 p.m.
Discussion/Possible vote on Fort St. Vrain Authorization to Exceed 35 Percent Power Level (Public Meeting).

*Thursday, June 18*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed).

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (202) 634-1498.

**CONTACT PERSON FOR MORE INFORMATION:** Robert McOsker, (202) 634-1410.

**Robert B. McOsker,**
*Office of the Secretary,*
May 21, 1987.

[FR Doc. 87-12191 Filed 5-22-87; 5:13 pm]
BILLING CODE 7590-01-M

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**POSTAL RATE COMMISSION**

**TIME AND DATE:** 2:30 p.m. on Tuesday, June 2, 1987.

**PLACE:** Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** To consider motions to dismiss Docket No. C86-3 and to consider motion of ANPA to consolidate Docket No. C87-2 with the rate case, Docket No. R87-1.

**CONTACT PERSON FOR MORE INFORMATION:** Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H. Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

**Cyril J. Pittack,**
*Acting Secretary.*

[FR Doc. 87-12242 Filed 5-26-87; 11:05 am]
BILLING CODE 7715-01-M

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**POSTAL SERVICE BOARD OF GOVERNORS**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 52 FR 19444, May 22, 1987.

**PREVIOUSLY ANNOUNCED DATE OF MEETING:** June 2, 1987.

**CHANGE:** Addition of the following:

There will be a meeting of the Board, closed to the public, at 1:00 p.m., Monday, June 1, 1987, to consider the following capital investment: a. Murray Hill Station, New York, NY.

**AUTHORITY:** By telephone vote on May, 21, 1987, a majority of the members contacted and voting, the Board determined that pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirements of the Government in the Sunshine Act because it is likely to disclose information, the premature disclosure of which would likely significantly frustrate implementation of a proposed action of the Board.

In accordance with section 552(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel has certified that in his opinion the additional agenda item of the meeting may properly be closed to the public for the reason cited above.

**CONTACT PERSON FOR MORE INFORMATION:** David F. Harris, (202) 268–4600.

[FR Doc. 87–12230 Filed 5–26–87; 10:43 am]

BILLING CODE 7710–12–M

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**RAILROAD RETIREMENT BOARD**

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 4, 1987, 9:30 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rusk Street, Chicago, Illinois 60611.

The agenda for this meeting follows:

(1) Final Rule Regulation on Primary Insurance Amount Determinations
(2) Proposed Amendments to Parts 320 and 340 of the Board's Regulations
(3) Amendment of Consolidated Board Order 75–5
(4) Retirement Claims Processing System Cost Audit
(5) Litigation case—*Herman J. Atkins, John J. Barker, Louis Bertani, et al. v. Railroad Retirement Board*
(6) Proposed Changes in the RUIA Regulations
(7) Appeal of Alexander Zelinsky of the Service and Compensation Credited Under the Railroad Retirement and Railroad Unemployment Insurance Acts
(8) Appeal of Nonwaiver of Overpayment, Bernice Smith
(9) Appeal of Nonwaiver of Overpayment, John V. Jaccino
(10) Board Orders 75–1 and 75–3

Th entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: May 22, 1987.

**Beatrice Ezerski,**

*Secretary of the Board.*

[FR Doc. 87–12254 Filed 5–26–87; 11:29 am]

BILLING CODE 7905–01–M

# Corrections

Federal Register
Vol. 52, No. 102
Thursday, May 28, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 61225-7052]

### Groundfish of the Bering Sea and Aleutian Islands Area

*Correction*

In rule document 87-11113 beginning on page 18367 in the issue of Friday, May 15, 1987, make the following correction:

On page 18368, in the table, in the last column, the sixth entry should read "84,352".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[BERC-374-FN]

### Medicare Program; List of Covered Surgical Procedures for Ambulatory Surgical Centers

*Correction*

In notice document 87-8830 beginning on page 13176, in the issue of Tuesday, April 21, 1987, make the following correction:

On page 13203, in the table, in the first column, in the second line from the bottom, "57103" should read "57130".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-930-07-2810-10-7050; N-46483]

### Realty Action; Exchange of Public and Private Lands in Clark County, NV

*Correction*

In notice document 87-10729 appearing on page 17838 in the issue of Tuesday, May 12, 1987, make the following correction:

In the first column of the page, in the last line of the land description for "Mount Diablo Meridian", "4,00" should read "4,000".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Office of Inspector General

### Freedom of Information; Indexes of Administrative Staff Manuals Administrative Determination

*Correction*

In notice document 87-10766 appearing on page 17835 in the issue of Tuesday, May 12, 1987, make the following correction:

In the second column, in the third complete paragraph, in the 14th line, "rate" should read "rare".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Office of Inspector General

### Organization, Functions, and Authority Delegations; Inspector General Office

*Correction*

In notice document 87-10787 beginning on page 17834 in the issue of Tuesday, May 12, 1987, make the following correction:

On page 17834, in the second column, in the seventh line from the bottom of the page, "provided" should read "provides".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 86-ASO-29]

### Establishment of Restricted Areas R-3008 A, B, and C; Georgia

*Correction*

In rule document 87-11211 appearing on page 18552 in the issue of Monday, May 18, 1987, make the following correction:

**§ 73.30 [Corrected]**

In § 73.30, in the third column, under R-3008C, in the 12th line, "ACL" should read "AGL".

BILLING CODE 1505-01-D

federal register

Thursday
May 28, 1987

Part II

# Department of Commerce

**National Telecommunications and Information Administration**

## Grants for Planning and Construction of Public Telecommunications Facilities; Acceptance of Applications for Filing; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Grants for Planning and Construction of Public Telecommunications Facilities; Acceptance of Applications for Filing

I. New Applications and Major Amendments to Deferred Applications

Notice is hereby given that the following described applications for Federal financial assistance are accepted for filing under provisions of Title III, Part IV, of the Communications Act of 1934, as amended (47 U.S.C. 390–94) and in accordance with 15 CFR Part 2301. All of the applications listed in this section were received by March 17, 1987. The effective date of acceptance of these proposals, unless otherwise indicated herein, is "Date Received". Applications are listed by their State.

The acceptance of applications for filing is a procedure designed for making preliminary determinations of eligibility and for providing the opportunity for public comment on applications. Acceptance of an application does not preclude subsequent return or disapproval of an application if it is found to be not in accordance with the provisions of either the Act or 15 CFR Part 2301, or if the applicant fails to file any additional information requested by the Public Telecommunications Facilities Program (PTFP). Acceptance for filing does not assure an application of being funded; it merely qualifies it to compete for funding with other applications which have also been accepted for filing.

Pursuant to 15 CFR 2301.9, applicants were required to publish in a newspaper of general circulation, in a community to be served by the applicant, a notice that such applications has been tendered to the PTFP of the National Telecommunications and Information Administration. The notice shall have been published once a week for two consecutive weeks on or before March 17, 1987. The notice included (1) information as to where within the community to be served a copy of the applicant, and any amendments hereto, may be inspected by the public during normal business hours; and (2) an invitation for parties supporting or opposing the application to file comments with the Administrator, National Telecommunications and Information Administration, Public Telecommunications Facilities Program, Washington, DC 20230. All comments must be filed within fifteen (15) calendar days from the date of the public notice of acceptance of the applications and must be accompanied by written assurance that a copy of the comments has been mailed to the applicant.

Scott Mason,
*Chief, Management Branch.*

Alaska

File No. 7082 CRB Pickle Hill Public Brdcstg., Inc., P.O. Box 2111, Kenai, AK 99611. Signed By: Ms. Marion Nelson, President. Funds Requested: $75,712. Total Project Cost: $100,950. To activate a noncommercial radio station, operating on 91.9 MHz. with a 4.44kw. ERP, to serve the central Kenai Peninsula in South Central Alaska. The station will repeat the signal of public radio station KSKA–FM, Anchorage. By replacing the applicant's existing FM translator service, the project will allow a public radio signal to reach 17,000 presently unserved people.

File No. 7083 CRB Aurora Community Broadcasting, 4101 University Drive, Anchorage, AK 99508. Signed By: Mr. Vince Walker, President. Funds Requested: $90,111. Total Project Cost: $120,149. To improve the signal of public radio station KSKA–FM, operating on 91.1 MHz in Anchorage, AK, by replacing its 75' tower with a 200' tower and installing a six-bay antenna to replace its present three-bay antenna. The project would also replace worn-out studio equipment by purchasing two audio tape recorders, two audio consoles, five cart machines, and signal processing equipment. KSKA brings the only public radio signal to 310,000 residents of the Anchorage area.

File No. 7113 CRB Alaska Public Radio Network, 4640 Old Seward Hwy., Suite 202, Anchorage, AK 99503. Signed By: Ms. Diane Kaplan, Executive Director. Funds Requested: $34,031. Total Project Cost: $45,375. To replace obsolete studio equipment at the Alaska Public Radio Network (APRN), Anchorage. The project will purchase an audio production console, signal processing equipment, 2 turntables, 3 tape recorders, 2 cart machines, a cassette deck, and 2 studio monitors. APRN's production studios provide satellite-fed programming to 16 full-service and 3 repeater public radio stations throughout Alaska.

File No. 7235 CTB Alaska Public Television, Inc., 2677 Providence Drive, Anchorage, AK 99508. Signed By: Mr. Elmo Sackett, General Manager. Funds Requested: $61,012. Total Project Cost: $61,350. To purchase a studio-to-transmitter microwave link, a transmitter remote control, a number of black-and-white and color monitors, and waveform monitors for public TV station KAKM, ch. 7, Anchorage, AK. The requested items will replace worn-out and obsolete equipment.

Alabama

File No. 7037 CRB Alabama A&M University, P.O. Box 174, Normal, AL 35762. Signed By: Dr. Douglas Covington, President. Funds Requested: $73,538. Total Project Cost: $96,050. To activate a noncommercial public FM radio station, operating on 91.9 MHz, in Normal. Station will serve the Huntsville-Madison County area as well as portions of four surrounding counties.

File No. 7052 CRB University of AL, Birmingham, University Station, Birmingham, AL 35294. Signed By: Dr. Kenneth Pruitt, Associate Vice President. Funds Requested: $44,030. Total Project Cost: $58,708. To improve the signal of noncommercial educational radio station WBHM–FM, operating on 90.3 MHz, in Birmingham. Station must co-locate its antenna on the new Channel 6 tower scheduled to be constructed by WBRC–TV. The present Channel 6 tower, 15 to 20 feet from the proposed site, is scheduled to be dismantled and replaced by the taller tower. Station provides service to approximately 900,000 residents of Birmingham and surrounding areas.

File No. 7259 CTN Huntsville City Schools, 715 Bob Wallace Ave., Huntsville, AL 35801. Signed By: Ms. Mary Jane Caylor, Superintendent. Funds Requested: $83,335. Total Project Cost: $114,585. To expand existing ITFS reception area by replacing four 21-year old transmitters. In addition, seeks to improve facility by acquiring a one-inch videotape recorder. New transmitters will extend service area from a 15-mile radius to a 30-mile radius.

File No. 7270 CTB Alabama ETV Commission, 2101 Magnolia Avenue, Birmingham, AL 35256. Signed By: Mr. Wilbur Hinton, General Manager. Funds Requested: $428,400. Total Project Cost: $612,000. To improve the origination/production equipment located at the network's telecommunication center in Montgomery. Project will replace worn-out cameras, recorders, a switcher, a signal processor and other related production equipment. The state-wide public television network serves approximately 4 million residents of Alabama.

File No. 7272 PTBN AL ETV Comm & AL Comm Higher Ed., 2101 Magnolia Avenue, Birmingham, AL 35256. Signed By: Dr. Joseph Sutton, Executive Director. Funds Requested: $40,890. Total Project Cost: $47,066. To plan and develop an integrated model for the more effective/efficient use of existing

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and future telecommunications facilities. Model would emphasize the advantages of shared resources through possible networking between colleges/universities and AL ETV Commission.

File No. 7273 CRB Alabama ETV Commission, 2101 Magnolia Avenue, Birmingham, AL 35256. Signed By: Mr. Wilbur Hinton, General Manager. Funds Requested: $74,018. Total Project Cost: $86,690. To improve public radio station WLRH–FM, operating on 89.3 MHz. in Huntsville. Project will replace station's worn-out antenna, transmitter and related dissemination equipment. Station covers approximately 540,000 person in Huntsville and the surrounding areas.

File No. 7274 CTB Alabama ETV Commission, 2101 Magnolia Avenue, Birmingham, AL 35256. Signed By: Mr. Wilbur Hinton, General Manager. Funds Requested: $521,500. Total project Cost: $745,000. To replace the antenna systems of public television stations WBIQ–TV, Ch. 10, in Birmingham and WHIQ–TV, Ch. 25, in Huntsville. WBIQ–TV must re-locate its antenna onto the new Channel 6 tower scheduled to be constructed by WBRC–TV. WBIQ–TV is presently located on the WBRC–TV tower that is scheduled to be dismantled upon completion of the new, taller tower. WHIQ–TV will improve its signal by replacing obsolete, worn-out antenna and transmission line. In addition, network seeks funding to replace routing switcher at the network's tape delay center. Network serves approximately 4 million residents of Alabama.

**Arkansas**

File No. 7144 CRB Arkansas Broadcasting Foundation, 1501 Arch Street, Little Rock, AR 72202. Signed By: Mr. Scott Holladay, General Manager. Funds Requested: $84,093. Total Project Cost: $112,125. To improve public radio station KABF–FM, operating on 88.3 MHz, in Little Rock. Project will replace worn-out, obsolete antenna, transmitter and related dissemination equipment. In addition, will acquire an aural microwave for the studio-to-transmitter link to replace expensive telephone lines. Station serves 638,000 residents of Little Rock and surrounding areas.

File No. 7172 CTB Arkansas ETV Commission, 350 S. Donaghey, Conway, AR 72032. Signed By: Mr. Mike Mottler, Associate Director. Funds Requested: $391,437. Total Project Cost: $521,917. To improve public television station KETS, channel 2, in Little Rock. Project will replace worn out, obsolete transmitter and will provide for necessary test equipment for use with new transmitter. Station serves more than 1 million residents of Central and South Central Arkansas.

**American Samoa**

File No. 7313 CTB American Samoa Government, Pago Pago, AS 96799. Signed By: Mr. Leo'o Va'a Ma'o, Director. Funds Requested: $616,770. Total Project Cost: $616,770. To improve the facilities of public television station KVZK, operating on Ch. 2 in Pago Pago by providing studio lighting, switching and other production equipment. The project will also provide for a portable microwave system to enable the station to provide live programming from throughout the island of American Samoa. In addition, the project will add transmitter remote control equipment. KVZK serves 33,000 residents of American Samoa.

**Arizona**

File No. 7157 PRB Tuba City High School Brd., Inc., Box 160, Warrior Drive, Tuba City, AZ 86045. Signed By: Mr. Lee Johnson, President. Funds Requested: $94,665. Total Project Cost: $94,665. To plan for a noncommercial FM radio station, operated by the Tuba City High School Board Inc., to bring specialized programming to 15,000 residents of the Western Navajo Agency.

File No. 7241 CTN University of Arizona, Tuscon, AZ 85721. Signed By: Mr. William Noyes, Associate Vice President. Funds Requested: $276,174. Total Project Cost: $368,232. To establish an Arizona public telecommunications network by interconnecting via microwave KUAT–TV channel 6 Tucson with KAET–TV channel 8 Phoenix/Tempe to provide a system for state-wide educational and information programming.

File No. 7242 CTB Navajo Community College, Library Building, Tsaile, AZ 86556. Signed By: Mr. Dean Jackson, President. Funds Requested: $126,001. Total Project Cost: $168,002. To continue the development of the Navajo Nation Network based in Tsaile, Arizona to provide a first public television service to the Navajo reservation in Arizona, New Mexico and Utah.

**California**

File No. 7038 CRB KXOL–FM, 1252 E. 10th St., Chico, CA 95926. Signed By: Marcus Smith. Funds Requested: $78,881. Total Project Cost: $105,188. To activate a new noncommercial radio station broadcasting on 90.3 MHz in Chico, CA to serve black and minority audiences.

File No. 7059 CRB Pacifica Foundation, 3729 Cahuenga Blvd. West, No. Hollywood, CA 91604. Signed By: Mr. David Salniker, Executive Director. Funds Requested: $151,449. Total Project Cost: $201,963. To improve the production facilities of public radio station KPFK, operating on 90.7 MHz in Los Angeles, CA by replacing obsolete production equipment in the master control, production, news and mini-production rooms. KPFK serves eleven million people in greater Los Angeles metropolitan area.

File No. 7071 CTN Maga Link, Inc., 1272 South Bronson Ave., Los Angeles, CA 90019. Signed By: Mr. Brock Peters, President. Funds Requested: $1,816,676. Total Project Cost: $2,422,235. To establish a television & radio facility for the production of programs aimed at minority audiences. The applicant is the recipient of a CPB Minority Programming Consortium Grant for the production of programming for distribution to public stations throughout the United States.

File No. 7092 CTB Surprise Valley Community TV, Unified School District, Cedarville, CA 96104. Signed By: Ms. Linda Hussa, Board Chair. Funds Requested: $83,250. Total Project Cost: $111,300. To provide first public television service to the 1300 residents of the Surprise Valley area of northeast California. The applicant will construct a low power facility on Ch. 13 and is part of the Rural Television Service consortium of non-profit groups bringing public television to rural areas throughout the western United States.

File No. 7094 CTB Central California ETV, Inc., 2480 Garden Highway, P.O. Box 6, Sacramento, CA 95801. Signed By: Mr. John Hershberger, President & General Manager. Funds Requested: $177,542. Total Project Cost: $273,141. To improve the facilities of public television station KVIE operating on Ch. 6, Sacramento CA, by replacing three obsolete quadruplex videotape recorders with three 1" C-Format videotape machines. KVIE serves four million persons in twenty one counties in California.

File No. 7166 CTN San Diego State University Fnd., San Diego State University, San Diego, CA 92182–1900. Signed By: Mr. Lawrence Feinberg, Associate Dean. Funds Requested: $183,103. Total Project Cost: $244,138. To extend an ITFS service operated by San Diego State University in Imperial County, CA, to Yuma and La Paz counties in Arizona. The project would also provide first local origination in Calexico, CA and Yuma, AZ. The Arizona portion of the project will be operated in conjunction with Arizona Western College, Yuma. The project will also improve the delivery of

programming from San Diego State University, San Diego, to Imperial County. The project will utilize cable distribution to serve some 220,000 people in three counties.

File No. 7173 CRB University of California, 2311 Bowditch, Berkeley, CA 94720. Signed By: Ms. Nancy Caputo, Contract & Grant Officer. Funds Requested: $20,851. Total Project Cost: $26,828. To improve the facilities of noncommercial radio station KALX, operating on 90.7 MHz in Berkeley, CA, by adding additional production capability. KALX serves 3 million people in the San Francisco Bay area.

File No. 7175 CRB KCBX, Inc., 4100 Vachell Lane, San Luis Obispo, CA 93401. Signed By: Mr. Frank Lanzone, Jr., President & General Manager. Funds Requested: $82,685. Total Project Cost: $110,250. To improve the facilities of public radio station KCBX–FM, operating on 90.1 MHz in San Luis Obispo, CA, by replacing its obsolete transmission system, including transmitter, antenna, STL and remote control. KXBX serves 300,000 people in the central coast of California.

File No. 7183 CRB Mendocino County Public Brdcstg., 17400 Fitch Lane, Boonville, CA 95415. Signed By: Mr. Sean Donovan, President. Funds Requested: $210,676. Total Project Cost: $280,902. To activate a new public radio station to operate on 90.7 MHz in Philo, to serve 85,000 people in Mendocino and Lake counties. The project would also construct a translator to rebroadcast the station's signal to 20,000 people in the Ft. Bragg and surrounding area of the Mendocino coast.

File No. 7190 PRB Watts Communication Network, 1715 Santa Ana Boulevard, Los Angeles, CA 90002. Signed By: Ms. Johanna Carrington, Executive Director. Funds Requested: $72,428. Total Project Cost: $88,794. To plan for the establishment of a low power public radio station to serve the 300,000 residents of the watts area of Los Angeles, CA.

File No. 7200 CTB Redwood Empire PTV, Inc., 7246 Humboldt Hill Road, Eureka, CA 95502–0013. Signed By: Mr. Darrell Shull, President. Funds Requested: $71,967. Total Project Cost: $95,956. To improve the facilities of public television station KEET–TV, operating on Ch. 13, Eureka, CA, by replacing an obsolete STL and adding test equipment. The project will augment the recently installed KEET transmitter in providing continued service to 165,000 people in northern California.

File No. 7264 CTB KQED, Inc., 500 Eighth Street, San Francisco, CA 94103. Signed By: Mr. Eugene Zastrow, Executive Vice President. Funds Requested: $91,072. Total Project Cost: $151,787. To improve the facilities of public television station KQEC, operating on Ch. 32, San Francisco, CA, by replacing an obsolete transmitter exciter and related equipment. KQEC serves four million people in the San Francisco bay area.

File No. 7291 CRB Great Silence Brdcstg. Fnd., Inc., 582 Lighthouse Avenue, Pacific Grove, CA 93950. Signed By: Mr. Richard Terry, Station Manager. Funds Requested: $21,989. Total Project Cost: $29,319. To improve the facilities of public radio station KAZU–FM, operating on 90.3 MHz, Pacific Grove, CA, by replacing obsolete production equipment, and by adding additional satellite receive channel capability. KAZU serves some 500,000 people in Monterey and Santa Cruz counties.

File No. 7293 CTB Rural CA Broadcasting Corp., 5850 LaBath, P.O. Box 2698, Rohnert Park, CA 94928. Signed By: Mr. John Kramer, Board Member. Funds Requested: $164,572. Total Project Cost: $219,430. To improve the facilities of public television station KRCB–TV, operating on Ch. 22 in Rohnert Park, CA, by replacing obsolete production equipment. The project will also provide auxiliary exciter and STL to insure continued service to some 800,000 people in the Napa and Sonoma Valley areas of California.

File No. 7303 CTB Black TV Workshop of Los Angeles, 4241 Redwood Avenue, Los Angeles, CA 90066. Signed By: Mr. Booker Wade, Vice President. Funds Requested: $1,028,615. Total Project Cost: $1,389,737. To establish a minority owned public television station, KDDE–TV, operating on Ch. 68, to serve the Los Angeles area. The station will direct programming at the estimated l million blacks and other minorities living in the ten million population Los Angeles metropolitan area.

File No. 7321 CTB Community TV of Southern CA, 4401 Sunset Blvd., Los Angeles, CA 90027. Signed By: Mr. Donald Youpa, Senior Vice President. Funds Requested: $193,137. Total Project Cost: $257,517. To improve the facilities of public television station KCET, operating on Ch. 28 in Los Angeles by replacing three obsolete 2" quadraplex videotape recorders with 1" VCR's. KCET provides service to eleven million people in southern California.

File No. 7328 CTB Off. Superintendent of Schools, 135 S. Jackson St., Independence, CA 39526. Signed By: Mr. Ken Baker, Superintendent. Funds Requested: $185,440. Total Project Cost: $247,255. To provide first public television to service 9,500 people in Inyo County Ca. Applicant will construct a lower power facility and two translators to serve the communities of Bishop, Independence and Big Pine. Applicant is part of the Rural Television Service Consortium of non-profit groups bringing public television to rural areas of the western United States.

**Colorado**

File No. 7036 CTB Baca County, 741 Main Street, Springfield, CO 81073. Signed By: Mr. Roy Brinkley, County Commissioner. Funds Requested: $44,292. Total Project Cost: $59,056. To extend the signal of KTSC–TV operating on Channel 8, Pueblo, Colorado with 4 translators located in Baca County, Colorado to provide first public television service to 5,500 persons.

File No. 7067 CTN National Technological Univ., 601 S. Howes Street, Ft. Collins, CO 80522. Signed By: Mr. Lionel Baldwin, President. Funds Requested: $1,094,362. Total Project Cost: $2,007,700. To expand a national satellite based network through National Technological University in Fort Collins, Colorado to provide a system for continuing graduate level engineering and technical education at worksites from 10 additional uplinks nationally and to better operate that projected 28-site network through the installation of a control center.

File No. 7088 CRB KUTE, Inc., 277 Ouray St., P.O. Box 737, Ignacio, CO 81137. Signed By: Mr. Jack McDonald, General Manager. Funds Requested: $12,102. Total Project Cost: $16,136. To extend the signal of public radio station KSUT–FM operating on 91.3 Mhz, Ignacio, Colorado with translators to provide the first public radio service to 90,000 residents of Farmington, New Mexico.

File No. 7145 CTB Board of County Commissioners, Box 248, Burlington, CO 80807. Signed By: Mr. William Hornung, Chairman. Funds Requested: $68,043. Total Project Cost: $90,724. To improve and extend the signal of KRMA–TV 6, Denver by replacing obsolete microwave and translator facilities presently serving 7,599 existing and adding 8,818 new viewers in Kit Carson, Cheyenne, Lincoln and Yuma Counties in southeastern Colorado.

File No. 7160 CTB Front Range Ed. Media Corp., 6801 West 117th Avenue, Broomfield, CO 80020. Signed By: Mr. Ted Krichels, General Manager. Funds Requested: $256,810. Total Project Cost: $342,413. To improve the production and transmission capabilities of public television station KBDI–TV, channel 12, Broomfield, Colorado by installing state of the art production equipment and replacing the existing studio to transmitter link.

File No. 7180 CRB San Miguel Educational Fund, P.O. Box 1069, Telluride, CO 81435. Signed By: Mr. Robert Allen, Station Manager. Funds Requested: $25,245. Total Project Cost: $37,660. To extend and improve the signal of public radio station KOTO–FM, Telluride, Colorado by placing three translators in the adjoining communities and installing additional production equipment to provide a first public radio service to 800 residents of Norwood, Pandora and Ophir, Colorado.

File No. 7193 CRB Crested Butte Mt. Ed. Radio, Inc, 29 Marcellina Lane, P.O. Box 308, Crested Butte, CO 81224. Signed By: Ms. Dana Dabagia, General Manager. Funds Requested: $16,147. Total Project Cost: $24,990. To upgrade the programming capabilities of public radio station KBUT–FM, Crested Butte, Colorado by installing a satellite receive dish and additional recording units to receive NPR programming.

File No. 7225 CTB University of Southern Colorado, 2200 Bonforte Boulevard, Pueblo, CO 81001–4901. Signed By: Mr. Robert Shirley, President. Funds Requested: $311,614. Total Project Cost: $467,421. To improve the production and transmission capability of public television station KTSC–TV, channel 8, Pueblo, Colorado by replacing obsolete production equipment and adding additional microwave interconnections to the Colorado Springs area in order to provide a first local origination capacity for the residents to that city.

File No. 7331 CRB Carbondale Cmty. Access Radio, 417 Main St., P.O. Box 1388, Carbondale, CO 81623. Signed By: Mr. Lee Swidler, Member of Board. Funds Requested: $17,670. Total Project Cost: $23,560. To improve the programming capabilities of public radio station KDNK–FM operating on 90.5 MHz, Carbondale, Colorado by installing a satellite dish to receive NPR programming.

File No. 7336 CRB Denver Educational Brdcstg., Inc., 4460 Morrison Rd, P.O. Box 11111, Denver, CO 80211. Signed By: Ms. Florence Ramos, President & General Manager. Funds Requested: $27,214. Total Project Cost: $36,286. To improve the programming capabilities of public radio station KUVO–FM operating on 89.3 MHz in Denver, Colorado by installing a satellite dish to receive NPR programming.

**Connecticut**

File No. 7228 CTB Connecticut Ed. Telecommunications Corp., 24 Summit Street, Hartford, CT 06106. Signed By: Mr. Jerry Franklin, President. Funds Requested: $455,000. Total Project Cost: $910,000. To improve the operation of the control center of the state network by replacing obsolete production equipment with state-of-the-art equipment. Network includes three transmitters. Request includes six cameras, audio consoles and other audio equipment which will be used in the main studio and the remote truck.

**District of Columbia**

File No. 7202 PRN National Federation of Community Brdcstg., 1314 14th Street NW., Washington, DC 20005. Signed By: Mr. William Thomas, Acting Executive Director. Funds Requested: $72,880. Total Project Cost: $120,880. The objectives of this planning project are to assess the station-based technical facilities available and improvement necessary to: 1. Significantly increase national production and distribution of programming for minority and other specialized audiences, 2. Strengthen programming, information and opportunities for growth of between 40 and 60 stations. Project is to plan to increase number of satellite interconnected stations and develop station-based minority production centers.

File No. 7212 CTN Network for Instructional TV, 1901 L Street NW., Washington, DC 20036. Signed By: Mr. Thomas Pyle, Executive Director. Funds Requested: $145,700. Total Project Cost: $195,700. To establish a national educational satellite network which will connect 19 planned or operating ITFS systems. Interconnection will allow exchange of instructional materials and expertise. Fourteen receive only earth stations are requested.

File No. 7312 CRB University of DC, 4200 Connecticut Ave., NW., Washington, DC 20008. Signed By: Dr. Anne Hughes, Director of Development. Funds Requested: $84,525. Total Project Cost: $112,700. To extend the coverage of noncommercial educational radio station WDCU–FM, operating on 90.1 MHz, in Washington, DC Station proposes to increase power from 6,800 watts to 50,000 watts.

**Florida**

File No. 7003 CTB The University of Florida, 219 Grinter Hall, Gainesville, FL 32611. Signed By: Mr. Dillard Marshall, Assistant Director of Research. Funds Requested: $89,805. Total Project Cost: $119,740. To improve public television station WUFT–TV, channel 5, in Gainesville by replacing obsolete studio switcher. The American Data studio switcher currently in use is no longer manufactured and replacement parts are impossible to obtain. WUFT–TV provides noncommercial educational television services to approximately 600,000 residents of North Central Florida.

File No. 7007 CRB The University of Florida, 219 Grinter Hall, Gainesville, FL 32611. Signed By: Mr. Dillard Marshall, Assistant Director of Research. Funds Requested: $17,521. Total Project Cost: $23,362. To improve noncommercial educational FM station WUFT–FM, operating on 89.1 MHz, in Gainesville. Station proposes to acquire a back-up studio-to-transmitter (STL) microwave link and a back-up transmitter exciter. Station serves approximately 763,150 residents of North Central Florida.

File No. 7016 CTB WJCT, Inc., 100 Festival Park Avenue, Jacksonville, FL 32202. Signed By: Mr. Fred Rebman, President. Funds Requested: $458,158. Total Project Cost: $610,878. To improve the facilities of public television station WJCT–TV, channel 7, in Jacksonville. Station seeks to acquire 7 gigahertz transmitter-to-studio link and remote TV pickup microwave units to replace 2 gigahertz units. Current microwave system is experiencing interference problems due to overcrowding and limited number of 2 gigahertz channels. Station also seeks to replace worn-out, obsolete production equipment to better serve the more than 1.2 million residents of area.

File No. 7021 CTB Community Communications, Inc., 11510 E. Colonial Drive, Orlando, FL 32817–4699. Signed By: Mr. Stephen Steck, President. Funds Requested: $44,250. Total Project Cost: $59,000. To improve the facilities of public television station WMFE–TV, channel 24, in Orlando. Station will acquire a new studio-to-transmitter (STL) microwave link to replace current worn-out, obsolete unit. WMFE–TV provides a noncommercial educational/public television service to approximately 1.8 million residents in central Florida.

File No. 7135 CRB University of Central Florida, 4000 Central Florida Blvd., Orlando, FL 32816. Signed By: Dr. Joan Burr, Director of sponsored Research. Funds Requested: $52,500. Total Project Cost: $70,000. To extend the coverage area of public radio station WUCF–FM, operating on 89.9 MHz, in Orlando. Station seeks funding to replace existing transmitter and antenna and thus increase power from 7.94 KW to 100 KW. Proposed modifications will more than double the effective coverage area of the station.

File No. 7136 CTB Pensacola Junior College, 1000 College Blvd., Pensacola, FL 32504. Signed By: Dr. Charles Atwell, Executive Vice President. Funds Requested: $195,491. Total Project Cost: $260,655. To improve the facilities of

public television station WSRE–TV, channel 23, in Pensacola. Proposal would acquire a back-up visual and aural exciter and a back-up studio-to-transmitter (STL) link. In addition, WSRE–TV seeks to replace several old, obsolete recorders with a new console model recorder and a consolette recorder. Station provides service to approximately 240,000 residents of northwest Florida.

File No. 7150 PRB University of South Florida, 4202 Fowler Avenue, Tampa, FL 33620. Signed By: Mr. Frank Lucarelli, Director Sponsored Research. Funds Requested: $92,571. Total Project Cost: $92,571. To plan for the activation of a Radio Reading Service for the blind and print handicapped in the Orlando/Daytona Beach area. The 24 hour daily service from Tampa will be used as the main radio reading service feed. Local inserts will be dovetailed with the main feed to create a customized program service for the local area.

File No. 7165 CTB The University of South Florida, 4202 Fowler Ave., SVC 116, Tampa, FL 33620. Signed By: Mr. Frank Lucarelli, Director of Sponsored Research. Funds Requested: $45,645. Total Project Cost: $60,860. To improve noncommercial educational TV station WUSF–TV, channel 16, in Tampa. Project will purchase equipment to change the transmitter to operate by remote control. Station serves approximately 2.4 million residents in the Tampa-St. Petersburg area.

File No. 7302 CRB South FL Public T/C, Inc., 505 South Congress Avenue, Boynton Beach, FL 33435. Signed By: Mr. Sam Barbaro, Vice President & General Mgr. Funds Requested: $114,180. Total Project Cost: $152,240. To improve the signal of noncommercial educational FM station WXEL–FM, operating on 90.7 MHz, in Boynton Beach. Project will acquire new antenna, transmitter, trans. line and related equipment to correct impairments in station's current signal. Station serves an estimated 2.4 million residents of Boynton Beach/Palm Beach and surrounding areas.

File No. 7323 CRB Florida State University, 2561 Pottsdamer Street, Tallahassee, FL 32304. Signed By: Mr. Robert Johnson, Vice President. Funds Requested: $171,225. Total Project Cost: $228,300. To increase the coverage of noncommercial educational radio station WFSU–FM, operating on 91.5 MHz, in Tallahassee. Project will relocate transmission facility to a new site approximately 25 miles N.E. of city, increase power and antenna height. Proposal will replace station's transmission, monitoring and control equipment. Project will provide a first public radio signal to approximately 173,286 residents not in current coverage area. 31,420 residents now covered will be outside the proposed coverage area due to relocation, for a net gain of 141,866 first service.

**Georgia**

File No. 7062 CRB Atlanta Bd. of Educ., 740 Bismark Road, NE., Atlanta, GA 30324. Signed By: Dr. Alonza Crim, Superintendent. Funds Requested: $79,124. Total Project Cost: $105,499. To improve noncommercial educational radio station WABE–FM, operating on 90.1 MHz, in Atlanta. In addition, WABE–FM seeks to replace worn out, obsolete control room and outmoded production equipment. Station serves an estimated audience of 2.5 million in the Atlanta metropolitan area.

File No. 7078 CTB Atlanta Board of Education, 740 Bismark Road, NE., Atlanta, GA 30324. Signed By: Dr. Alonza Crim, Superintendent. Funds Requested: $651,166. Total Project Cost: $868,221. To improve public television station WPBA–TV, Channel 30, in Atlanta. Project will acquire new dissemination, origination and test equipment to allow for increased production of local programming. Station provides educational and instructional program service to approximately 2.5 million residents of the Atlanta area.

File No. 7158 PTN Fort Valley State College, 805 State College Drive, Fort Valley, GA 31030. Signed By: Dr. Linda Hall. Funds Requested: $85,925. Total Project Cost: $85,925. To plan the feasibility of establishing a telecommunications network. Project would be used to evaluate the capabilities and limitations of the existing system and evaluate possible expansion. Programming would be developed and disseminated for purposes of academic instruction, community outreach and continuing education. FVSC has received limited funding through Title III to procure a down-link satellite dish, cabling and monitors.

File No. 7238 CTB GA Public T/C Commission, 1540 Stewart Ave., SW., Atlanta, GA 30310. Signed By: Mr. Richard Ottinger, Executive Director. Funds Requested: $1,228,400. Total Project Cost: $2,343,400. To expand the coverage of public television stations WABW, channel 14, in Pelham and WCLP, channel 18, in Chatsworth. Project will replace worn out, obsolete transmitters, antennas, transmission lines and related dissemination equipment. Replacement will provide stronger signal over existing coverage areas and will extend coverage to an additional 191,757 residents.

File No. 7244 CRB Radio Free GA Broadcasting Fnd., 1083 Austin Ave., N.E., Atlanta, GA 30307. Signed By: Ms. Melanie Collins, Executive Director. Funds Requested: $81,265. Total Project Cost: $106,354. To improve noncommercial educational radio station WRFG–FM, operating on 89.3 MHz, in Atlanta. Project will replace/upgrade production equipment. Station serves approximately 2.1 million residents of the metropolitan Atlanta area.

File No. 7318 CRB Georgia Public Radio, Inc., 409 E. Liberty Street, Savannah, GA 31401. Signed By: Mr. Lawrence Roberts, General Manager. Funds Requested: $24,553. Total Project Cost: $32,737. To improve public radio station WSVH–FM, operating on 91.1 MHz, in Savannah. Project will acquire 150 SCA receivers and origination equipment for the radio reading service for the print handicapped. In addition, will improve main station by acquiring additional origination and test equipment. Station serves approximately 500,000 residents of Savannah and surrounding areas.

**Hawaii**

File No. 7118 CTB Hawaii Public Brdcstg. Authority, 2350 Dole St., Honolulu, HI 96822. Signed By: Mr. James Young, Executive Director. Funds Requested: $255,579. Total Project Cost: $340,773. To improve the facilities of Hawaii Public Broadcasting, operating on Ch. 11 in Honolulu and Ch. 10 in Maui. The project would replace an obsolete film chain at KHET headquarters in Honolulu, and replace remote control/off air reception equipment used in Maui. The two stations, supplemented by a series of translators, serve one million people in the state.

**Iowa**

File No. 7109 CTB Iowa Public Broadcasting Board, 6450 Corporate Drive, Johnston, IA 50131. Signed By: Mr. George Carpenter, III, Executive Director. Funds Requested: $1,416,291. Total Project Cost: $1,886,664. To improve the facilities of Iowa Public Broadcasting's premier studio facility at public television station KDIN–TV, channel 11, Johnston, IA, by providing first local originating capability to that location and to the State network to serve communities throughout Iowa with quality educational and cultural programming.

File No. 7110 CTB Iowa Public Broadcasting Board, 6450 Corporate Drive, Johnston, IA 50131. Signed By: Mr. George Carpenter, III, Executive

Director. Funds Requested: $98,068. Total Project Cost: $130,784. To improve the telecommunications capability of public television station KDIN–TV, channel 11, Johnston, IA, and those of the Iowa Public Broadcasting System by providing stand-by satellite uplink and microwave links to assure continued distribution of needed program services to Iowa communities and to feed regional and national public telecommunications networks.

File No. 7114 CTN Iowa Public Broadcasting Board, 6450 Corporate Drive, Johnston, IA 50131. Signed By: Mr. George Carpenter, III, Executive Director. Funds Requested: $3,793,217. Total Project Cost: $5,057,623. To activate and extend an instructional television fixed service telecommunications system utilizing channels A, B, C, D, and G; 1 and 2, in a fifteen county area in southwest Iowa. The service would provide a variety of public telecommunications services to postsecondary, other education agencies, school districts community agencies and businesses in that area of the state. In addition, the proposed service would bring first service to approximately six thousand persons not currently receiving a public telecommunications signal.

**Idaho**

File No. 7004 CTB ID Ed. Public Brdcstg. System, 1910 University Drive, Boise, ID 83725. Signed By: Mr. Jerold Garber, General Manager. Funds Requested: $1,028,505. Total Project Cost: $1,371,341. To improve the facilities of the Idaho Educational Public Broadcasting System by replacing obsolete transmission and production facilities in Boise, (KAID–TV, Channel 4) Pocatallo (KISU–TV Channel 10) and Moscow (KUID–TV Channel 12) and to increase the power of transmitters in Boise, and Pocatello. File No. 7251 CRB Idaho Migrant Council, Inc., 317 Happy Day Blvd., Caldwell, ID 83606–0490. Signed By: Mr. Humberto Fuentes, Executive Director. Funds Requested: $128,499. Total Project Cost: $171,332. To establish a noncommercial FM radio station KIMC–FM operating on 91.5 MHz in Caldwell, Idaho to provide programming to the Hispanic population within the southwestern section of Idaho and east central section of Oregon.

**Illinois**

File No. 7018 CTB Black Hawk College, 6600 34th Avenue, Moline, IL 61265. Signed By: Dr. Charles E. Lawa, President. Funds Requested: $175,431. Total Project Cost: $233,908. To replace worn and obsolete studio origination apparatus of public television station WQPT–TV, channel 24, Moline, IL. The new cameras and switching equipment will increase both the reliability and flexibility of the station's origination capability.

File No. 7043 CRB University of Illinois, 354 Administration Building, Urbana, IL 61801. Signed By: Mr. H. J. Stapleton, Secretary Campus Research Brd. Funds Requested: $38,145. Total Project Cost: $76,285. To replace worn and obsolete origination equipment and improve studio production facilities at public radio station WILL–FM, 90.9 Mhz., Urbana, IL, in order to better serve the programming needs of the communities in east central Illinois and west central Indiana.

File No. 7063 CTB Chicago ETV Association, 5400 North St. Louis Avenue, Chicago, IL 60625. Signed By: Mr. John Rahmann, Executive Vice President. Funds Requested: $275,000. Total Project Cost: $550,000. To improve the origination and remote mobile studio capability of public television station WTTG–TV, channel 11, IL, by replacing worn and obsolete broadcasting equipment in order to provide better programming to the communities in the metropolitan Chicago area.

File No. 7100 CRB Prairie Air, Inc., 113 N. Market, Champaign, IL 61820. Signed By: Mr. Lee Ferraro, Business Manager. Funds Requested: $18,421. Total Project Cost: $24,563. To replace worn and obsolete origination and test equipment at public radio station WEFT–FM, 90.1 MHz., Champaign, IL. in order to assure continued local program services and upgrade the quality of signal to the communities in the Champaign and Urbana metropolitan areas.

File No. 7141 CRB Wabash Valley College, 233 East Chestnut Street, Olney, IL 62450. Signed By: Mr. Harry Smith, Chancellor. Funds Requested: $113,398. Total Project Cost: $155,340. To improve the signal quality and production capability of noncommercial radio station WVJC–FM, 89.1 MHz., Mt. Carmel, IL., in order to meet the public telecommunications needs in the eight county area comprising the eastern community college district.

File No. 7156 CTN Waubonsee Community College, Route 47 at Harter Road, Sugar Grove, IL 60554. Signed By: Dr. John Swalec, President. Funds Requested: $431,233. Total Project Cost: $586,477. To activate a four channel instructional television fixed service on channels A 1 thru 4, Sugar Grove, IL, and provide program origination equipment for local programming and reception at nine high school sites in the communities surrounding Aurora, Illinois.

File No. 7178 CTB Southern Illinois University, Communications Building, SIU–C, Carbondale, IL 62901. Signed By: Mr. John Guyon, Acting President. Funds Requested: $59,536. Total Project Cost: $89,304. To improve the reliability of microwave interconnection capabilities between public television stations WSIU–TV, channel 8, Carbondale, IL., and WUSI–TV, channel 16, Olney, IL, in order to provide back-up microwave channels to an aging studio to transmitter link so that communities in the southern part of ILlinois can be provided program service.

File No. 7334 CRB Southern Illinois University, Communications Building, SIU–C, Carbondale, IL 62901. Signed By: Mr. John Guyon, Acting President. Funds Requested: $92,500. Total Project Cost: $140,600. To replace worn and obsolete dissemination equipment for public radio station WSIU–FM, 91.9 MHz., Carbondale, IL, by providing a new transmitter, studio to transmitter microwave and a stand-by power generator to assure dissemination reliability in order to serve the counties in southern Illinois and in neighboring Missouri and Indiana.

**Indiana**

File No. 7005 CTB Michiana Public Brdcstg. Corp., 2300 Charger Blvd., Elkhart, IN 46514. Signed By: Mr. Don Checots, Executive Director. Funds Requested: $1,079,900. Total Project Cost: $1,504,900. To extend the signal of public television station WNIT–TV, channel 34, South Bend-Elkhart, IN., by providing new dissemination equipment to Michiana Public Broadcasting Corp. and replacing worn and obsolete production facilities in order to improve services to the South Bend-Elkhart metropolitan area.

File No. 7010 CRB Indiana University, Indiana University, Bryan 215E, Bloomington, IN 47405. Signed By: Mr. William E. Farquhar, Director, Contract Admin. Funds Requested: $41,610. Total Project Cost: $55,480. To replace worn and obsolete transmission equipment at public radio station WFIU–FM, 103.7 MHz., Bloomington, IN. The new transmitter will both increase the reliability of the broadcast signal and improve signal quality to the benefit of communities in the Bloomington metropolitan area.

File No. 7137 CRB Indiana State University, Terre Haute, IN 47809. Signed By: Mr. Richard Clokey, Vice President. Funds Requested: $37,713. Total Project Cost: $50,285. To aid in the relocation of dissemination facilities and

increase the area of signal coverage for noncommercial radio station WISU–FM, 89.7 MHz., Terre Haute, IN, in order to provide expanded coverage to the communities in the metropolitan Terre Haute area.

File No. 7213 CRB Metro. Indianapolis PB, Inc., 1401 N. Meridian Street, Indianapolis, IN 46202–2389. Signed By: Mr. Frank Meek, Executive Vice President. Funds Requested: $50,975. Total Project Cost: $85,975. To improve the dissemination and origination facilities of public radio station WIAN–FM, 90.1 MHz., Indianapolis, IN, by providing a new studio to transmitter microwave and program production equipment to meet the public radio needs of the metropolitan Indianapolis area.

File No. 7249 CTB Ball State University, 620 W. Minnetrista Blvd., Muncie, IN 47303. Signed By: Mr. Thomas Kinghorn, Vice President. Funds Requested: $808,425. Total Project Cost: $1,077,900. To improve, upgrade and expand the origination capacity of public television station WIPB–TV, channel 49, Muncie IN, in order to facilitate locally originated programming to meet the telecommunications needs of the Muncie metropolitan area.

File No. 7298 CTB SW Indiana Public Brdcstg., Inc., 405 Carpenter Street, Evansville, IN 47708. Signed By: Mr. David Dial, President & General Manager. Funds Requested: $103,035. Total Project Cost: $137,380. To replace worn and obsolete studio cameras and improve other origination equipment at public television station WNIN–TV, channel 9, Evansville, IN, to continue local program production services to the communities in southwest Indiana, southeast Illinois and northwest Kentucky.

File No. 7300 CTB Fort Wayne Public Television, 227 E. Washington Blvd., Fort Wayne, IN 6802. Signed By: Mr. John Rupright, President. Funds Requested: $372,267. Total Project Cost: $496,356. To provide first main studio local origination capability to public television repeater station WFWA–TV, channel 39, Fort Wayne, IN. in order to meet the local programming needs of Indiana's second largest city and neighboring communities.

**Kansas**

File No. 7006 CRB Pittsburg State University, 1701 South Broadway, Pittsburg, KS 66762–5880. Signed By: Mr. Donald Wilson, President. Funds Requested: $506,980. Total Project Cost: $675,974. To activate a noncommercial FM radio station, which will operate on 89.9 MHz at 100 kw, at Pittsburg State University, Pittsburg, KS. The station's signal will reach over 312,000 residents of SE Kansas, NE Oklahoma, NW Arkansas, and SW Missouri. For approximately 180,000 of these people, it will represent a first public radio signal.

File No. 7046 CTB Washburn University of Topeka, 301 N. Wanamaker, Topeka, KS 66606. Signed By: Dr. John Green, Jr., President. Funds Requested: $108,172. Total Project Cost: $144,230. To replace a worn-out transmission line and an obsolete audio console and to purchase spare visual and aural exciters for public television station KTWU, operating on Ch. 11 in Topeka, KS.

File No. 7072 CTB Kansas Public T/C Service, Inc., 320 West 21st St., P.O. Box 288, Wichita, KS 67201. Signed By: Mr. Zoel Parenteau, President & General Manager. Funds Requested: $44,867. Total Project Cost: $59,825. To replace two obsolete 2" video tape recorders with one 1" VTR at public TV station KPTS, Ch. 8, Wichita, KS.

File No. 7231 CTB Smoky Hills Public TV, Corp., 6th & Elm Streets, Bunker Hill, KS 67626. Signed By: Mr. Kenneth Gardner, Vice President & General Mgr. Funds Requested: $999,000. Total Project Cost: $1,317,000. To extend the signal of public TV station KOOD, Ch. 9, Bunker Hill, KS, by constructing a repeater station at Lakin, KS. The new station will operate on Ch. 3 with an ERP of 100 kw. It will bring the first public TV signal to over 95,000 residents of the Lakin-Garden City-Dodge City area of southwestern Kansas.

File No. 7325 CRB Kanza Society Incorporated, #1 Broadcast Plaza, Box 57, Pierceville, KS 67868. Signed By: Mr. Bruce Glass, Treasurer. Funds Requested: $30,872. Total Project Cost: $41,163. To install a new antenna and tower at an existing FM translator in Tribune, KS, which retransmits the signal of public radio station KANZ–FM, 91.9 MHz, Pierceville, KS. The project will also replace worn-out studio equipment at KANZ–FM—turntables, recorders, a switcher, a mixing board, and a phone patch—and will purchase some test equipment. In addition, it will purchase 50 SCA receivers for the Kanza Society's radio reading service for the print-handicapped.

**Kentucky**

File No. 7218 CTB Fifteen Telecommunications, Inc., 4309 Bishop Lane, P.O. Box 37380, Louisville, KY 40218. Signed By: Mr. John-Robert Curtin, General Manager. Funds Requested: $180,075. Total Project Cost: $240,100. To improve noncommercial educational television station WKPC–TV, operating on channel 15, in Louisville. Project will replace worn-out studio-to-transmitter link, exciter and production equipment. Station serves an estimated 1,237,400 residents of Louisville and the surrounding areas.

File No. 7258 CTB Kentucky Auth. for ETV, 600 Cooper Drive, Lexington, KY 40502. Signed By: Ms. Sandra Welch, Deputy Executive Director. Funds Requested: $749,100. Total Project Cost: $998,800. To improve/upgrade the state public television network by replacing dissemination and production equipment. KET provides educational and instructional television services to approximately 3.7 million residents of the Commonwealth.

**Louisiana**

File No. 7023 CTB Louisiana Educational TV Auth., 7860 Anselmo Lane, Baton Rouge, LA 70810. Signed By: Ms. Beth Courtney, Executive Director. Funds Requested: $171,997. Total Project Cost: $229,330. To improve the production facilities of the Louisiana ETV Authority, serving the state of Louisiana through the operation of six public television stations, by replacing obsolete quadraplex videotape recorders with three 1" format machines.

File No. 7035 PRB Northeast Louisiana University, Monroe, LA 71209. Signed By: Mr. Dwight Vines, President. Funds Requested: $15,000. Total Project Cost: $29,000. To plan for the activation of a new public radio station to serve 391,835 people in northeast Louisiana and southeast Arkansas.

File No. 7039 CTB Louisiana ETV Authority, 7860 Anselmo Lane, Baton Rouge, LA 70810. Signed By: Ms. Beth Courtney, Executive Director. Funds Requested: $998,004. Total Project Cost: $1,330,673. To improve the transmission facilities of public television station WLPB, operating on Ch. 27 in Baton Rouge, by replacing an obsolete transmitter, antenna and related equipment. WLPB serves 500,000 people in the Baton Rouge area.

File No. 7042 CRB USL Communications Corp., Hebrard Blvd., P.O. Box 42171, Lafayette, LA 70504. Signed By: Dr. Ray Authement, President. Funds Requested: $62,491. Total Project Cost: $83,322. To improve the facilities of KRVS, operating on 88.7 MHz in Lafayette, and to extend service to Lake Charles, LA. Project will replace obsolete STL and remote control and production equipment to maintain service to 475,371 people served in the Lafayette area. A new FM translator will be constructed, rebroadcasting the KRVS signal on 90.5 MHz to serve 77,977 people in the Lake Charles area. KRVS is bilingual English/French station

serving the Arcadiana region of the state.

File No. 7191 PTN Northeast Louisiana University, 700 University Avenue, Monroe, LA 71209. Signed By: Mr. Dwight Vines, President. Funds Requested: $10,500. Total Project Cost: $15,500. To plan for the activation of a public access cable channel to provide first local origination to the Monroe, LA area.

**Massachusetts**

File No. 7147 CTB WGBH Educational Foundation, 44 Hampden Street, Springfield, MA 01103. Signed By: Mr. Richard Milstein, Chairman of the Board. Funds Requested: $464,846. Total Project Cost: $619,795. To improve production capability of WGBY–TV, channel 57, serving Springfield; request includes cameras, switcher, and other production equipment.

File No. 7161 PTN Inquilinos Boricuas en Accion, 405 Shawmut Avenue, Boston, MA 02118. Signed By: Ms. Clara Garcia, Executive Director. Funds Requested: $89,096. Total Project Cost: $89,096. To plan a statewide distribution system for dissemination of Hispanic programming to Hispanic populations. Technology to be explored will be ITFS, cable, satellite, and microwave.

File No. 7296 CRB University of Massachusetts, University Drive, Harbor Campus, Boston, MA 02125. Signed By: Mr. Carl Finn, Director, Grants & Contracts. Funds Requested: $77,424. Total Project Cost: $103,232. To improve WUMB–FM in Boston by replacing worn out antenna, transmitter and production equipment and to install an STL.

**Maryland**

File No. 7012 CRB Salisbury State College Fdn., Caruthers Hall, Salisbury, MD 21801. Signed By: Mr. Thomas Bellavance, President. Funds Requested: $21,705. Total Project Cost: $28,940. To improve public radio station WSCL–FM, operating on 89.5 MHz, in Salisbury. Project will equip a news and public affairs studio to better serve the needs of the residents of the Delmarva Peninsula. The station's service area covers approximately 280,000 residents.

File No. 7288 CTB Maryland Public Broadcasting Commission, 11767 Bonita Avenue, Owings Mills, MD 21117. Signed By: Mr. Raymond Ho, Executive Director. Funds Requested: $423,000. Total Project Cost: $846,000. To improve public television station WMPB–TV, channel 67, located in Owings Mills. Proposal will replace transmitter and related dissemination equipment. WMPB–TV is the flagship station of the state public television network. Station serves approximately 2 million residents of the greater Baltimore area.

File No. 7287 CTB Maryland Public Broadcasting Commission, 11767 Bonita Avenue, Owings Mills, MD 21117. Signed By: Mr. Raymond Ho, Executive Director. Funds Requested: $371,382. Total Project Cost: $742,765. To improve public television station WMPB–TV, operating on channel 67, in Owings Mills. Proposal seeks the replacement of three video switchers and related origination equipment in the three studios of WMPB–TV.

**Maine**

File No. 7011 CTB University of Maine, 65 Texas Avenue, Bangor, ME 04401. Signed By: Mr. William Sullivan, Treasurer. Funds Requested: $375,738. Total Project Cost: $536,768. To replace essential unreliable television production equipment for the statewide Maine network. Request includes replacement of 2 quad VTR's with 1 inch machines, 7¾" VTR's with ½ inch, switching equipment, character generator, signal processing equipment as well as test equipment.

File No. 7022 CTB Colby-Bates-Bowdoin ETV Corp., 1450 Lisbon Street, Lewiston, ME 04240. Signed By: Mr. Roland Desjardins, Vice President. Funds Requested: $218,421. Total Project Cost: $291,237. To replace three worn out and obsolete quad VTR's as well as a still store and to obtain a standby STL at WCBB, Channel 10.

File No. 7237 CRB Salt Pond Cmty. Broadcasting, 2 Neworld Plaza, South Blue Hill, ME 04605. Signed By: Mr. W. Lyman Phillips, President. Funds Requested: $151,839. Total Project Cost: $202,452. To activate WERU–FM, 89.9, at 50,000 ERP, a community radio station serving five east coast counties in Maine. Station will provide first service to two counties and parts of three others. It will provide first local service to the remainder of the area.

**Michigan**

File No. 7047 CTB University of Michigan—Flint, 1321 E. Court Street, Flint, MI 48502. Signed By: Mr. James Lesch, Director, Research Development. Funds Requested: $248,419. Total Project Cost: $331,225. To replace worn and obsolete dissemination and origination equipment at WFUM–TV, channel 28, Flint, MI., in order to improve program and signal reliability and quality to meet the telecommunications needs of the communities in the Flint metropolitan area.

File No. 7087 CRB Blue Lake Fine Arts Camp, Route 2, Twin Lake, MI 49457. Signed By: Mr. William Stansell, President. Funds Requested: $26,306. Total Project Cost: $36,308. To extend the signal of public radio station WBLV–FM, 90.3 MHz, Twin Lake, MI, by increasing its broadcast tower height in order to provide needed radio program services to 50,000 unserved persons and improve signal quality to 750,000 persons in the eight-county area of west central Michigan.

File No. 7097 CRTBN Northern Michigan University, Presque Isle Avenue, Marquette, MI 49855. Signed By: Mr. Lyle Shaw, Vice President for Admin., Funds Requested: $731,207. Total Project Cost: $1,462,414. To establish a microwave interconnection system to provide 54 school districts and six postsecondary institutions with interactive television and radio services in Michigan's Upper Peninsula. The system will be supervised by an organization of public agencies in order to bring educational and cultural radio and television for the first time in this remote part of the state.

File No. 7167 CTB Grand Valley State College, 201 Manitou Hall, Allendale, MI 49401. Signed By: Mr. James Starkweather, Director of Budgets and Acct. Funds Requested: $2,532,144. Total Project Cost: $3,376,192. To replace worn and obsolete microwave, signal monitoring and origination equipment for public television station WGVC–TV, Allendale, MI., and to improve the master control, studio and program editing capabilities of the station's production center in Grand Rapids, MI, in order to meet the needs of the Grand Rapids-Kalamazoo metropolitan areas.

File No. 7218 CRB Flint Board of Education, 605 Crapo Street, Flint, MI 48503. Signed By: Mr. Joseph Pollack, Superintendent. Funds Requested: $112,428. Total Project Cost: $149,905. To expand the signal coverage of public radio station WFBE–FM, 95.1 MHz., Flint, Mi., by obtaining new dissemination and sub-carrier channel equipment to better meet the needs of communities in the Flint metropolitan area.

File No. 7295 CRB Grand Valley State College, 97 Fieldhouse, Allendale, MI 49401. Signed By: Mr. James Starkweather, Director of Budgets. Funds Requested: $303,157. Total Project Cost: $404,209. To provide first local origination service for public radio station WGVC–FM, 88.5 MHz., Allendale, Mi., by providing increased transmission capability and local origination capacity in order to offer a significantly different public radio broadcasting service to the communities in the Grand Rapids, Mi. metropolitan area.

File No. 7319 CTB Northern Michigan University, Marquette, MI 49855. Signed By: Mr. Lyle Shaw, Vice President. Funds Requested: $423,500. Total Project Cost: $564,777. To replace worn and obsolete tranamission and microwave equipment for public television station WNMU–TV, channel 13, Marquette, MI., in order to assure continued reliability of program services to the communities in the central region of Michigan's upper peninsula.

**Minnesota**

File No. 7106 CTB West Central Minnesota ETV Co., 120 West Schlieman, Appleton, MN 56208. Signed By: Mr. James Hegland, Secretary KWCM Board of Dir. Funds Requested: $847,000. Total Project Cost: $1,129,335. To improve the broadcast television services of public television station KWCM–TV, channel 10, Appleton, MN by providing origination, dissemination, interconnection and remote studio equipment to meet the telecommunications needs of communities in the Appleton, Morris, and Marshall areas of the state.

File No. 7104 CRB Minnesota Public Radio, Inc., 45 E 8th Street, St. Paul, MN 55101. Signed By: Mr. Thomas Kigin, Vice President. Funds Requested: $159,716. Total Project Cost: $212,955. To provide first local origination public radio service to the city of Brainard, MN., and to the rural areas outside the city by activating a public radio station on 90.7 MHz., Brainerd, Minnesota.

File No. 7271 CTN Minnesota Tele-Media, Hwy. 23, P.O. Box 547, Marshall, MN 56258. Signed By: Mr. Norman Miller, Chairman. Funds Requested: $392,790. Total Project Cost: $523,720. To activate an ITFS system on channels A 1–4 and G 1–4 at Marshall, MN. to provide instructional television fixed services with satellite reception and microwave interconnection capabilities to schools and cable head-ends in the Montevideo, Marshall, Tracy, and Lake Benton areas of Minnesota.

File No. 7332 CTB Northern Minnesota Public TV, 14th & Birchmont Drive, Bemidji, MN 56601–2699. Signed By: Mr. Paul Stankavich, General Manager. Funds Requested: $71,675. Total Project Cost: $143,350. To improve the origination facilities of public television station KAWE–TV, channel 9, Bemidji, MN., by providing control room switching and studio production equipment in order to meet the needs of the rural and isolated communities in the Bemidji, Minnesota area.

**Missouri**

File No. 7101 CRB SW Missouri State University, 901 South National, Springfield, MO 65804–0089. Signed By: Mr. Marshall Gordon, President. Funds Requested: $29,475. Total Project Cost: $43,993. To improve the origination capacity of public radio station KSMU–FM, 91.1 MHz., Springfield, MO., by replacing worn and obsolete studio production equipment in order to provide needed programming services to the Springfield metropolitan area.

File No. 7177 CTB Ozark Public Telecommunications, Inc., 1101 N. Summit, MPO Box 21, Springfield, MO 65802. Signed By: Mr. William Carner, Chairman of the Board. Funds Requested: $270,956. Total Project Cost: $361,288. To replace worn and obsolete origination facilities at public television station KOZK–TV, channel 21, Springfield, MO., by providing studio and production cameras and switching equipment to enable local programming services to the Springfield and Joplin metropolitan areas.

File No. 7222 CRB University of Missouri, 210 H–SS Building, Rolla, MO 65401. Signed By: Mr. John Park, Vice Chancellor. Funds Requested: $34,567. Total Project Cost: $34,567. To extend the signal of public radio station KMNR–FM, 89.7 MHz., Rolla, MO. by providing dissemination equipment in order to serve the Rolla community with improved second service radio.

File No. 7279 CTN Missouri School Boards Assoc., 1809 Vandiver Drive, Columbia, MO 65202. Signed By: Dr. Carter Ward, Executive Director. Funds Requested: $1,194,150. Total Project Cost: $1,592,200. To activate a mobile satellite uplink facility and equip 200 satellite downlink sites throughout the state of Missouri in order to expand the public educational satellite television services of the University of Missouri, Rolla, and to include selected postsecondary, elementary-secondary school districts and industrial locations so that educational and other telecommunications services can be made available to the several communities of the state.

**Mississippi**

File No. 7112 CRB Mississippi Valley State Univ., Hwy. 82 West & Sunflower Road, Itta Bena, MS 38941. Signed By: Mr. Joe Boyer, President. Funds Requested: $160,942. Total Project Cost: $214,589. To activate a new noncommercial educational FM radio station on 89.1 MHz in Itta Bena. Station will provide first local origination in the proposed coverage area of approximately 95,223 residents.

File No. 7143 CRB Mississippi Auth. for ETV, 3825 Ridgewood Road, Jackson, MS 39215. Signed By: Mr. Forrest Morris, Executive Director. Funds Requested: $29,962. Total Project Cost: $39,951. To acquire 470 SCA receivers for the Radio Reading Service of Mississippi. The receivers will be distributed to blind and print handicapped individuals throughout the state. The receivers will be used in conjunction with the reading service carried on the subcarrier of the statewide public radio network.

**Montana**

File No. 7094 CTB Meagher County Public TV, Inc., P.O. Box 421, White Sulphur Springs, MT 59645. Signed By: Mr. R. E. Saunders, President. Funds Requested: $7,750. Total Project Cost: $10,500. To establish a local origination capacity for noncommercial lowpower TV station K57CX operating on channel 57, White Sulphur Springs, Montana by installing a video tape recorder and time base corrector in the automated station for playback of various prerecorded programming.

File No. 7074 CTB Thompson Falls TV District, Bennett Realty, Thompson Falls, MT 59873. Signed By: Mr. Dave Bennett, Chair. Funds Requested: $90,784. Total Project Cost: $120,295. To establish a noncommercial lowpower public TV station K27BD operating on channel 27, Thompson Falls Montana to provide a first public television service to 3,000 residents of western Sanders County Montana.

File No. 7102 CTB Choteau School District #1, 304 7th Avenue, Choteau, MT 59422. Signed By: Mr. Jerry Dunckel, Chairman of the Schoolboard. Funds Requested: $90,221. Total Project Cost: $120,295. To establish a remotely operated noncommercial lowpower TV station K31ED in Choteau, Montana to provide first local public broadcasting service to 2500 residents of Teton County.

File No. 7105 CTB Plains—Paradise TV District, Box 215, 417 Rittenour Street, Plains, MT 59859. Signed By: Mr. Leo Rambur, Chairman. Funds Requested: $90,296. Total Project Cost: $120,395. To establish a noncommercial lowpower TV station K07CH operating on channel 7, Plains, Montana to bring first public television service to 2000 residents of eastern Sanders County Montana.

File No. 7124 CTB Forsyth Community Public TV, Inc., 12th & Main Street, Forsyth, MT 59327. Signed By: Ms. Marilyn Taylor, President. Funds Requested: $73,080. Total Project Cost: $97,440. To establish a noncommercial lowpower TV station operating on channel 21 in Forsyth, Montana to provide a first public television service to 3,000 residents of Rosebud County Montana.

File No. 7128 CRB Miles Community College, 2715 Dickinson Street, Miles City, MT 59301. Signed By: Dr. Judson Flower, President. Funds Requested: $50,793. Total Project Cost: $70,583. To extend the signal of public radio station KEMC–FM, Billings, Montana by replacing the existing 10w translator in Miles City, Montana, with a 100w translator with local origination capacity operated by Miles City Community College to provide enhanced service to Miles City and first public radio service to 14,000 residents of Custer and Prairie Counties.

File No. 7131 CTB Bitterroot Valley Public TV, P.O. Box 588, Hamilton, MT 59840. Signed By: Ms. Bonnie Evans, President. Funds Requested: $20,175. Total Project Cost: $26,900. To extend the signal of noncommercial lowpower TV station K21AN operating on channel 21 in Darby, Montana with translators located in the northern section of Ravalli County bringing an over the air signal to more residents of the area.

File No. 7277 CTB Whitehall Low Power TV, Inc., 309 E. Legion, Whitehall, MT 59759. Signed By: Mr. Dale Davis, President. Funds Requested: $95,599. Total Project Cost: $127,465. To establish a noncommercial low power TV station in Whitehall, Montana to provide a first public television service to 4,000 residents of southern Jefferson county.

File No. 7324 CTN Miles Community College, 2715 Dickinson, Miles City, MT 59301. Signed By: Mr. Judson Flower, President. Funds Requested: $509,180. Total Project Cost: $678,910. To establish an interactive fiber optics network connecting 3 highschools in Rosebud, Forsyth, and Colstrip, Montana with Miles City Community College to provide secondary, postsecondary, continuing education and teleconferencing services to the 50,000 rural residents of Rosebud, Custer, Prairie, Powder River and Carter Counties.

File No. 7327 CTB Browning Public Schools, 129 1st Avenue, S.E., Browning, MT 59417. Signed By: Mr. Tom Thompson, Superintendent. Funds Requested: $48,262. Total Project Cost: $64,350. To establish a local production studio for noncommercial low-power TV station K56 operating on channel 56 in Browning, Montana by installing ¾" production and editing facilities to provide a first local origination capacity for 7,500 residents of the Blackfeet Reservation.

**North Carolina**

File No. 7196 CRB University of North Carolina, 205 Swain Hall, Chapel Hill, NC 27514–8044. Signed By: Mr. David Broome, Jr., Assoc. Director Research Ser. Funds Requested: $187,000. Total Project Cost: $223,600. To extend the coverage area of noncommercial educational station WUNC–FM, operating on 90.5 MHz, in Chapel Hill. By locating new antenna approximately 350 ft. higher on newly constructed tower, station will improve and extend signal coverage. Modifications will provide first public radio service to approximately 40,450 residents.

File No. 7205 CTN NC Agency for Public T/C, 116 West Jones Street, Raleigh, NC 27611. Signed By: Ms. Lee Wing, Executive Director. Funds Requested: $479,934. Total Project Cost: $639,912. To activate the State Services Network (SSN) to meet the educational/instructional needs of 6 million residents of North Carolina. Network will use a Ku-band satellite uplink to distribute programs produced by APT to schools, prisons, and public institutions. Receive sites will include telephone callback capabilities so that programs will be interactive.

File No. 7250 CRB Western NC Public Radio, Inc., 73 Broadway, Asheville, NC 28801. Signed By: Ms. Patricia McGuire, Chairman. Funds Requested: $250,667. Total Project Cost: $334,223. To activate a new noncommercial FM repeater station on 91.3 MHz in Franklin to provide first radio service to 47,046 residents. In addition will activate an FM translator in Brevard and establish a SCA radio reading service for print-handicapped persons. Stations will repeat the signal of WCQS–FM from Asheville. Franklin repeater station will have minimal local origination capacity.

File No. 7253 CRB Winston Salem State University, P.O. Box 13013, Winston Salem, NC 27110. Signed By: Dr. Cleon Thompson, Chancellor. Funds Requested: $143,722. Total Project Cost: $275,003. To improve and extend the facilities of noncommercial educational radio station WSNC–FM, operating on 90.5 MHz, in Winston-Salem. Project will increase the power of station from 125 watts to 3,000 watts. Project will also improve/upgrade the station's production and test equipment. Station serves an estimated 258,000 residents of the Winston-Salem area.

File No. 7275 PTN NC A&T State University, 1601 East Market Street, Greensboro, NC 27411. Signed By: Dr. Edward Fort, Chancellor. Funds Requested: $41,700. Total Project Cost: $41,700. To plan for the use of a new Instructional Television Fixed Service (ITFS) facility to operate in the Greensboro area. System will provide the capability for in-house training for professionals to allow them to update their professional credentials. A substantial portion of the population will also be served through the inclusion of ITFS on the public access cable channels. The university already has the authorization for the ITFS facility.

**North Dakota**

File No. 7009 CRB Dakota Radio Info. Service, Liberty Memorial Building, Bismarck, ND 58505. Signed By: Ms. Sally Oremland, Treasurer. Funds Requested: $7,987. Total Project Cost: $10,650. To purchase equipment necessary to allow the Dakota Radio Information Service (DRIS), Bismarck, ND, to extend its radio reading service for the blind and print-handicapped to the Dickenson area of southwestern North Dakota. DRIS will use the microwave and transmission facilities of Prairie Public Broadcasting, Inc. The project will also purchase 50 SCA receivers.

File No. 7243 CTB Prairie Public Broadcasting, Inc., 207 N. 5th Street, P.O. Box 3240, Fargo, ND 58108–3240. Signed By: Mr. Dennis Falk, President. Funds Requested: $82,394. Total Project Cost: $128,760. To improve the program production capabilities of public TV station KFME–TV, Ch. 13, Fargo, ND, by purchasing a production switcher, a character generator, and associated equipment. The requested items would replace equipment that is either obsolete or inadequate for KFME's production needs. KFME contains the main production studio for the Prairie Public Broadcasting network, which brings public TV to the entire state of North Dakota.

**Nebraska**

File No. 7109 CTB Nebraska Educational T/C Comm., 1800 N. 33rd St., P.O. Box 83111, Lincoln, NE 68501. Signed By: Mr. Jack McBride, Secretary & General Manager. Funds Requested: $456,568. Total Project Cost: $608,755. To purchase a production switcher, a post-production switcher, a routing switcher, an editing system, and an intercom/paging system for the Nebraska Educational Telecommunications Commission, Lincoln. The requested items will replace worn-out and obsolete equipment at the Nebraska Educational Telecommunications Center, which provides programming for the entire State television network.

File No. 7228 PRB Nebraska Educational T/C Commission, 1800 N. 33rd St., P.O. Box 83111, Lincoln, NE 68501. Signed By: Mr. Jack McBride, Secretary & General Manager. Funds Requested: $54,600. Total Project Cost: $69,340. To plan for the extension of public radio service to the approximately 751,000 residents of

central and western Nebraska who are presently unserved. The planning will be done for—and, in part, by—the Nebraska Educational Telecommunications Commission, Lincoln. The project will embrace technical, fiscal, management, programming, and community relations considerations.

**New Hampshire**

File No. 7015 CTB University of New Hampshire, Pettee Brook Lane/ P.O. Box 1100, Durham, NH 03824. Signed By: Mr. Lennard Fisk, Vice President. Funds Requested: $393,232. Total Project Cost: $524,310. To extend signal of WENH–TV, located in Durham, to the unserved community of Lincoln/Woodstock via a microwave hop to a cable headend and to improve production capacity by replacing obsolete production equipment. Production equipment requested includes VTR's, switchers, character generator and ENG packages.

**New Jersey**

File No. 7116 CTN Board of Ed., Township of Union, 2369 Morris Avenue, Union, NJ 07083. Signed By: Dr. James Caulfield, Superintendent. Funds Requested: $236,790. Total Project Cost: $315,720. To construct a production studio in Union School District which will have an ITFS transmitter on top of the Empire State Building in New York City which will supply educational programming to its own school district as well as to 10 school districts located in New Jersey and New York, that are within a 25 mile radius of the transmitter.

File No. 7163 CRB Newark Public Radio, Inc., 54 Park Place, Newark, NJ 07102. Signed By: Mr. Wylie Rollins, Acting General Manager. Funds Requested: $129,542. Total Project Cost: $172,723. To upgrade quality of WBGO–FM in Newark by improving the signal as well as the quality of production equipment. Equipment requested includes turntables, audio recorders, consoles and signal processors.

File No. 7189 CRB Seton Hall University, 400 South Orange Ave., South Orange, NJ 07079. Signed By: Dr. Bernhard Scholz, Provost. Funds Requested: $49,000. Total Project Cost: $76,501. To replace 17 year old transmitter of WSOU–FM, serving South Orange, and to improve production capability by replacing turntables, recorders and switching equipment. A satellite receive earth terminal is also requested.

File No. 7195 CTB NJ Public Brdcstg. Authority, 1573 Parkside Ave., CN 777, Trenton, NJ 08625. Signed By: Mr. Robert Ottenhoff, Executive Director. Funds Requested: $282,579. Total Project Cost: $382,579. To replace obsolete microwave interconnection equipment throughout the state TV network which includes four television transmitters, and to upgrade that equipment to state-of-the-art. Proposal requests eight STL's, six ICR's and one remote pickup.

**New Mexico**

File No. 7098 CTB The University of New Mexico, 1130 University Blvd., N.E., Albuquerque, NM 87102. Signed By: Ms. Ann Powell, Director, Research Admin. Funds Requested: $400,550. Total Project Cost: $534,067. To install a translator that will operate on Ch. 52 in Raton, NM, and that will bring a first public TV signal to 12,000 residents of North Central New Mexico. The translator will repeat the signal of public TV station KNME, Ch. 5, at the University of New Mexico, Albuquerque. The project will also replace three worn-out studio cameras for KNME.

File No. 7162 CTB New Mexico State University, Jordon St., Milton Hall 100, Las Cruces, NM 88003. Signed By: Ms. Mary Nunez, Actg. Dir., Grants & Contracts. Funds Requested: $528,300. Total Project Cost: $754,300. To purchase a transmitter, remote control, associated transmitter test equipment, and a character generator for public TV station KRWG, Ch. 22, licensed to New Mexico State University, Las Cruces. The requested items will replace obsolete equipment.

File No. 7206 CRB Northern NM Community College, 205 Montoya Admin. Bldg., Box 250, Espanola, NM 87532. Signed By: Dr. Sigfredo Maestas, President. Funds Requested: $75,000. Total Project Cost: $100,002. To activate an FM radio station at Northern New Mexico Community College, Espanola, on 91.1 MHz with an ERP of 105w. It will broadcast four hours of local programming daily, targeted to meet the needs of the Espanola Valley residents, 82 percent of whom are Hispanic-Americans and 12 percent of whom are Native Americans. For the remainder of the broadcast day, it will repeat the signals of public radio stations KUNM–FM and KANW–FM, both in Albuquerque.

File No. 7281 CRB San Juan College, 4601 College Blvd., Farmington, NM 87401. Signed By: Dr. James Henderson, President. Funds Requested: $156,427. Total Project Cost: $208,570. To establish a noncommercial FM radio station to bring the first public radio signal to over 65,000 residents of northwestern New Mexico. The new station will be licensed to San Juan Community College, Farmington, NM, and will operate on 90.9 MHz with an ERP of 15 kw. The station's programming will be designed to meet the needs of the area's minority population, especially Native Americans.

**Nevada**

File No. 7029 CRB Nevada Public Radio Corp., 5151 Boulder Highway, Las Vegas, NV 89122. Signed By: Mr. Lamar Marchese, General Manager. Funds Requested: $74,239. Total Project Cost: $98,986. To extend the signal of public radio station KNPR–FM, operating on 89.5 MHz Las Vegas, Nevada by replacing the transmitter and increasing their power from 20 Kw to 100 Kw thus providing a first public radio service to northeast San Bernardino County CA, and Mohave County AZ.

File No. 7032 CRB Nevada Public Radio Corporation, 5151 Boulder Highway, Las Vegas, NV 89122. Signed By: Mr. Lamar Marchese, General Manager. Funds Requested: $71,375. Total Project Cost: $95,167. To extend the signal of public radio station KNPR–FM operating on 89.5 MHz Las Vegas Nevada by constructing two new "associated stations" in Panaca and Tonopah Nevada to provide the first public radio service to 7,372 persons in Lincoln and Nye counties.

File No. 7061 CTB Channel 5 Public Brdcstg., Inc., Evans Ave., Reno, NV 89557. Signed By: Mr. James Pagliarini, General Manager. Funds Requested: $53,506. Total Project Cost: $111,345. To improve the local production capability of public television station KNPB–TV channel 5 Reno, Nevada by installing a backup studio to transmitter link (STL), additional studio and remote production equipment and acquiring engineering test equipment not presently available to the station.

File No. 7122 CTB Northern Nevada Cmty. College, 901 Elm Street, Elko, NV 89801. Signed By: Mr. William Berg, President. Funds Requested: $51,450. Total Project Cost: $68,600. To upgrade the facilities of noncommercial lowpower TV Station K14AO operating on channel 14 in Elko, Nevada by installing a ¾" production studio to provide a first local origination capacity to 18,400 residents of Elko and Eureka Counties in Nevada.

File No. 7276 PTB Rural Television System, Inc., 6205–A Franktown Road, Carson City, NV 89701. Signed By: Mr. Daniel Tone, RTS Administrator. Funds Requested: $100,000. Total Project Cost: $100,000. To continue to plan for the development of a series of low power remotely controlled mini-stations throughout the unserved areas of the western United States.

File No. 7282 CTB Clark County School District, 2832 E. Flamingo, Las Vegas, NV 89121. Signed By: Mr. John Hill, Director. Funds Requested: $95,396. Total Project Cost: $127,195. To extend the signal and improve the transmission capabilities of public television station KLVX–TV channel 10, Las Vegas by placing a translator in Laughlin Nevada, connecting the station and the University of Nevada, Las Vegas and adding additional production facilities to provide additional local educational programming.

New York

File No. 7013 CTB St. Lawrence Valley ETV Council, 1056 Arsenal Street, Watertown, NY 13601. Signed By: Mr. William Saiff, Jr., President/General Manager. Funds Requested: $90,221. Total Project Cost: $129,021. To replace wornout and faulty transmission line at WNPE–TV serving Watertown and WNPT–TV serving Norwood.

File No. 7060 CRB St. Lawrence University, Park Street, Payson Hall, Canton, NY 13617. Signed By: Ms. Ellen Rocco, General Manager. Funds Requested: $43,020. Total Project Cost: $58,020. WSLU–FM requests funds to extend its signal by installing a satellite radio station with 190 ERP to serve Plattsburgh and a seven watt translator to serve Alexandria Bay.

File No. 7085 CTB Public Brdcstg. Coun. of Ctr. NY, 506 Old Liverpool Road, Liverpool, NY 13088. Signed By: Mr. Richard Russell, President & General Manager. Funds Requested: $398,104. Total Project Cost: $568,720. To improve the functioning of WCNY–TV, serving the Syracuse area, by replacing obsolete and wornout production equipment; request includes replacement of five quad VTR's with one inch machines, and replacement of field production equipment.

File No. 7138 CRB WSKG Public T/C Council, 1168 Conklin Road, Conklin, NY 13748. Signed By: Mr. Michael Ziegler, President. Funds Requested: $112,826. Total Project Cost: $161,180. To extend the signal of WSKG–FM located in Binghamton to Ithaca and several surrounding counties which are unserved, by activating a 5 kw satellite radio station.

File No. 7139 CTB WSKG Public T/C Council, 1168 Conklin Road, Conklin, NY 13748. Signed By: Mr. Michael Ziegler, President. Funds Requested: $246,785. Total Project Cost: $352,550. To improve the operation of WSKG–TV, the only public signal in the Conklin/Binghamton area, by replacing the following worn out and obsolete equipment-transmitter exciter, a quad VTR with a one inch, and various test equipment.

File No. 7148 CTB Educational Broadcasting Corp., 356 West 58th Street, New York, NY 10019. Signed By: Mr. George Miles, Jr., Executive Vice President. Funds Requested: $325,000. Total Project Cost: $510,150. To replace worn out equipment at WNET, serving New York City and parts of NJ and CT. Replacement is requested of studio intercom system, transmitter control system, test equipment, and improvement of the audio/video routing system.

File No. 7168 CRB State University of New York, P.O. Box 9, Albany, NY 12201. Signed By: Ms. Karen Inman, Endorsing Designee. Funds Requested: $62,832. Total Project Cost: $83,777. To replace unreliable transmitter at WBFO–FM in Buffalo and to construct a news/control room.

File No. 7194 CRB State University of New York, Lanigan Hall, Oswego, NY 13126. Signed By: Mr. Bernie Henderson, Vice President. Funds Requested: $41,019. Total Project Cost: $55,192. To extend the coverage of WRVO–FM located in Oswego by constructing repeater radio stations in Utica and Watertown.

File No. 7227 CRTB Rochester Area Ed. TV Assoc, Inc., 280 State Street, Rochester, NY 14614. Signed By: Mr. William Pearce, President. Funds Requested: $107,250. Total Project Cost: $143,000. To improve the operation of WXXI–TV in Rochester, by replacing a worn out portable camera and portions of a studio camera, as well as test equipment; to improve the efficiency of WXXI–FM with an audio delay recorder.

File No. 7233 CTN Columbia Greene Cmty. College, Rt. 23, P.O. Box 1000, Hudson, NY 12534. Signed By: Mr. Robert Luther, President. Funds Requested: $206,668. Total Project Cost: $275,558. To establish a telecommunications facility which will interconnect by microwave to a cable headend; the request include funds for a production facility, which will be located at the college, as well as an STL.

File No. 7236 CRB Mohawk-Hudson Coun. on ETV, Inc., 17 Fern Avenue, Schenectady, NY 12301. Signed By: Mr. William Haley, Jr., Vice President & General Mgr. Funds Requested: $27,787. Total Project Cost: $42,750. To improve WMHT–FM in Schenectady by replacing four malfunctioning and wornout audio tape machines.

File No. 7240 CRB Ed. Radio of the Catskills, Inc., Rt. 52 East, Jeffersonville, NY 12748. Signed By: Ms. Anne Larsen, President. Funds Requested: $215,673. Total Project Cost: $287,564. To activate a .5 kw public radio station on 90.5 which will provide first service to the residents of Sullivan County.

File No. 7267 CRB Shawangunk Communications, P.O. Box 709, Otisville, NY 10763. Signed By: Mr. Thomas Mondell, President. Funds Requested: $136,814. Total Project Cost: $182,419. To activate a non-commercial public radio station on 90.1 to provide first service to the community of Mt. Hope.

File No. 7278 CTB NE NY Public T/C Council, Inc., Broad & Beekman St, Yokum Hall, Plattsburgh, NY 12901. Signed By: Mr. Gerald Bates, President & General Manager. Funds Requested: $83,625. Total Project Cost: $111,500. To improve the efficiency of WCFE–TV in Plattsburgh by replacing two editing units which will be lost when station relocates: to acquire a satellite down link.

File No. 7280 CRB Pacifica Foundation, Inc., 505 Eighth Avenue, New York, NY 10018. Signed By: Mr. John Simon, General Manager. Funds Requested: $174,144. Total Project Cost: $232,193. To improve the operation of WBAI–FM, located in New York City, by replacing obsolete consoles, tape recorders, turntables, remote equipment and other production equipment.

File No. 7290 CRB NE NY Public T/C Council, Inc., Broad & Beekman Sts, Yokum Hall, Plattsburgh, NY 12901. Signed By: Mr. Gerald Bates, President & General Manager. Funds Requested: $221,578. Total Project Cost: $366,237. To activate a public radio station on 91.9 which will provide first local origination to Plattsburgh.

File No. 7308 CRB Fordham University, Fordham Road, Bronx, NY 10458. Signed By: Mr. Joseph McGowan, Jr., Vice President. Funds Requested: $659,051. Total Project Cost: $878,735. To expand coverage of WFUV–FM located in New York City by increasing tower height from 200 ft to 600 ft and installing a directional antenna.

File No. 7315 CTN Onondaga Central School District, 201 Hudson Avenue, Nedrow, NY 13120. Signed By: Mr. Patrick Dolan, Superintendent. Funds Requested: $255,500. Total Project Cost: $375,000. To construct an interactive telecommunications system of fiber optics that will link two high school districts located in Onondaga County and allow them to share required educational courses.

File No. 7317 CTB Mohawk Valley Council on ETV, 17 Fern Avenue, P.O. Box 17, Schenectady, NY 12301. Signed By: Mr. William Haley, Jr., Vice President & General Mgr. Funds Requested: $700,188. Total Project Cost: $1,077,213. To improve signal of WMHT–TV serving the Schenectady area, by

replacing worn-out malfunctioning transmitter and STL.

**Ohio**

File No. 7040 CTB ETV Assoc. of Metro. Cleveland, 4300 Brookpark Road, Cleveland, OH 44134. Signed By: Ms. Betty Cope, President & General Manager. Funds Requested: $36,912. Total Project Cost: $49,217. To improve the dissemination capabilities of public television station WVIZ–TV, channel 25, Cleveland, OH, by replacing a worn and obsolete studio to transmitter microwave system.

File No. 7045 CTB Ohio University, 9 South College Street, Athens, OH 45701. Signed By: Mr. George Klare, Acting Associate Provost. Funds Requested: $74,985. Total Project Cost: $99,980. To replace obsolete and worn origination equipment and acquire test apparatus for public television stations WOUB–TV, channel 20, Athens, OH, and WOUC–TV, channel 44, Cambridge, OH, in order to improve the audio and video monitoring capability for originating local program services.

File No. 7065 CRB Dayton Public Radio, Inc., 1514 W. Dorothy Lane, Dayton, OH 45409–1311. Signed By: Mr. Clark Haines, President. Funds Requested: $181,710. Total Project Cost: $248,960. To expand the public radio signal of station WDPR, 89.5 MHz., Dayton, OH, to provide first service to 111800 persons in the western Dayton communities and to improve origination and satellite reception capabilities. These additions will improve the station's ability to offer locally originated programming services to the Dayton metropolitan area.

File No. 7140 CRB Xavier University, 3800 Victory Parkway, Cincinnati, OH 45207. Signed By: Fr. Albert DiUlio, President. Funds Requested: $114,965. Total Project Cost: $153,286. To establish a repeater public radio station on 89.3 MHz., New Paris, IN., to provide the signal of public radio station WVXU–FM, 91.7 MHz., Cincinnati, OH, in order to serve the city of Richmond, Indiana and surrounding communities.

File No. 7180 CTB Greater Cincinnati TV Ed. Fnd., 1223 Central Parkway, Cincinnati, OH 45214. Signed By: Mr. Charles Vaughan, President & General Manager. Funds Requested: $85,415. Total Project Cost: $142,359. To improve the production editing capabilities of public television station WCET–TV, channel 48, Cincinnati, OH, by providing additional origination equipment in order to meet the public telecommunications needs of the greater Cincinnati metropolitan area. The project will also provide replacement for worn and obsolete editing and related equipment.

File No. 7234 CTN Lorain County Community College, 1005 N. Abbe Road, Elyria, OH 44035. Signed By: Dr. Donald Arnold, Treasurer. Funds Requested: $443,201. Total Project Cost: $661,847. To activate a four channel instructional television fixed service system and cable access system including local origination capacity for WHR–777, channels A–5 and F–3, Elyria, OH, in order to provide significantly distinctive television programming to the thirteen communities and adjacent Lorain County, Ohio.

File No. 7248 CRB Public Brdcstg. Fdn. of NW Ohio, 136 North Huron Street, Box 30, Toledo, OH 43692. Signed By: Mr. Robert Smith, President & General Manager. Funds Requested: $57,487. Total Project Cost: $76,616. To activate a repeater radio station on 91.7 MHz., Mansfield, OH., as part of the network facilities of public radio station WGTE–FM, 91.3 Mhz., Toledo, OH, in order to provide first public radio service to 87912 residents in the six county area surrounding the city of Mansfield.

File No. 7286 CRB Public Brdcstg. Fdn. of NW Ohio, 136 North Huron Street, Box 30, Toledo, OH 43692. Signed By: Mr. Robert Smith, President & General Manager. Funds Requested: $85,750. Total Project Cost: $120,858. To increase and improve the signal coverage and quality of public radio station WGTE–FM, 91.3 Mhz., Toledo, OH., by providing new transmission and new intermediate inter-city microwave facilities in Bowling Green, OH, in order to better serve the public radio needs of communities in the Bowling Green and Lima, OH, area and to bring first service to some communities in northwest Ohio as well as in southeastern Michigan.

**Oklahoma**

File No. 7179 CTN Beaver Public Schools, 810 Avenue G, Box 580, Beaver, OK 73932. Signed By: Mr. Jim Bouse, Superintendent. Funds Requested: $368,848. Total Project Cost: $518,848. To establish an instructional TV system, featuring both two-way video and two-way audio, using fiber optic cables to link the four school districts—Beaver, Turpin, Forgan, and Balko—of Beaver Co., in the Oklahoma Panhandle. Each district will have a production studio/classroom. The districts will exchange course work to provide a cost/effective, comprehensive curriculum to the students of this rural, relatively isolated county.

File No. 7247 CRB The University of Oklahoma, 780 Van Vleet Oval, Room 339, Norman, OK 73019. Signed By: Ms. Karen Petry, Sponsored Programs Coordinator. Funds Requested: $111,765. Total Project Cost: $149,050. To establish a noncommercial FM station in Spanser, OK, that will operate on 105.7 MHz with an ERP of 3 kw. The station will repeat the signal of public FM station KGOU–FM, 106.3 MHz, Norman, OK, and will serve the population of Oklahoma City and its contiguous suburbs. The project will install microwave equipment that will permit KGOU–FM to transmit to the new station programming produced specifically for the Oklahoma City area.

**Oregon**

File No. 7073 CRB KBOO Foundation, 20 SE. 8th Street, Portland, OR 97214. Signed By: Mr. Jeff Anderson, President. Funds Requested: $40,601. Total Project Cost: $54,135. To extend and improve the facilities of public radio KBOO operating on 90.7 MHz in Portland, OR. Project will provide first service to an estimated 54,171 people via the construction of low power translator stations rebroadcasting KBOO on 92.7 MHz in Amity, OR and also on 92.7 MHz in White Salmon, WA. A remote broadcast capability will be added for live production through-out the Portland area. The project will also replace an obsolete transmitter exciter, thereby continuing service to some 1,300,000 people in the Portland area.

File No. 7075 CRB Southern Oregon State College, 1250 Siskiyou Blvd., Ashland, OR 97520. Signed By: Ms. Wilma Foster, Secretary. Funds Requested: $192,696. Total Project Cost: $256,928. To extend the service area of public radio station, KSOR–FM, operating at 90.1 MHz Ashland, OR, by constructing repeater stations to serve Coos Bay, OR, operating at 88.5 MHz, and Klamath Falls OR, operating at 90.9 MHz. Both stations would replace low power translators serving portions of those communities. The project would also construct three low power translators in the communities of Happy Camp, CA, operating on 91.9 MHz, Ft. Jones, CA, operating on 91.1 MHz, and Callahan, CA, operating on 89.1 MHz. The new satellite and translator radio stations would provide first public radio service to 100,099 people. In addition, the project would provide additional production and satellite receive capability.

File No. 7079 CRB Oregon Public Broadcasting, 2828 SW. Front Avenue, Portland, OR 97201. Signed By: Mr. Maynard Orme, Executive Director. Funds Requested: $62,817. Total Project Cost: $83,757. To improve the audio production and control facilities of the Golden Hours Radio Reading Service operated by Oregon Public

Broadcasting. The applicant will replace obsolete tape recorders, consoles and an automation system used in production of programs. Golden Hours serves some 358,000 people (an estimated 89,000 people who are visually impaired) via SCA receivers and cable systems.

File No. 7099 CRTB Oregon Public Broadcasting, 2828 SW. Front Avenue, Portland, OR 97201. Signed By: Mr. Maynard Orme, Executive Director. Funds Requested: $660,247. Total Project Cost: $880,330. To improve the production and control facilities of the Oregon Public Broadcasting radio and television networks. The project would replace obsolete television and radio switching and control equipment, and television lighting equipment for use in the applicant's new headquarters building. Oregon Public Broadcasting serves 2.5 million people in Oregon through a statewide network of television and radio stations and translators.

File No. 7224 CTB Southern Oregon Public TV, Inc., 34 South Fir Street, Medford, OR 97501. Signed By: Mr. Arthur Knoles, Vice President & General Mgr. Funds Requested: $52,425. Total Project Cost: $69,900. To improve the facilities of public television station KSYS, operating on Ch. 8 in Medford OR, by replacing an obsolete routing switcher. KSYS serves 340,000 people in southwest Oregon.

**Pennsylvania**

File: No. 7020 CTB Penn State University, Wagner Annex, University Park, PA 16802. Signed By: Mr. Robert Scannell, Vice President. Funds Requested: $269,370. Total Project Cost: $538,740. To replace obsolete quad VTR's with state-of the-art one inch VTR's at WPSX–TV, serving the area of University Park.

File No. 7028 CTB NE Pennsylvania ETV Association, Old Boston Road, Pittston, PA 18640. Signed By: Dr. John Walsh, President. Funds Requested: $384,987. Total Project Cost: $473,317. To improve the quality of programming aired on WVIA–TV in Pittston by upgrading and replacing quad VTR's with ¾ inch VTR's and a betacam component format cart machine.

File No. 7048 CRB NE Pennsylvania ETV Association, Old Boston Road, Pittston, PA 18640. Signed By: Dr. John Walsh, President & General Manager. Funds Requested: $53,536. Total Project Cost: $71,382. To extend the signal of WVIA–FM, located in Scranton, via translators to the unserved communities of Williamsport and Lewisburg; to replace current STL and worn out studio equipment.

File No. 7054 CTB Metro. Pittsburgh Public Brdcstg, 4802 Fifth Avenue, Pittsburgh, PA 15213. Signed By: Mr. Lloyd Kaiser, President. Funds Requested: $315,337. Total Project Cost: $420,450. To improve quality of programming of WQED–TV in Pittsburgh by replacing obsolete production equipment in the main control room in Pittsburgh as well as a remote unit in Harrisburg. Request includes cameras, VTR's, a switcher, console, editing system, and other production equipment.

File No. 7123 CRB Golden Triangle Radio Info. Ctr., 408 Communication Center, Pittsburgh, PA 15282. Signed By: Ms. Leslie Seright, President. Funds Requested: $18,500. Total Project Cost: $28,900. To establish a post production facility and to purchase 100 SCA receivers to serve the print handicapped in Pittsburgh.

File No. 7185 CRB Widener University, 14th & Chestnut Streets, Chester, PA 19013. Signed By: Ms. Lois Fuller, Associate Dean of Students. Funds Requested: $17,986. Total Project Cost: $23,982. To replace unsafe pole tower at WDNR–FM, a student station in Chester, and to replace obsolete antenna and transmitter exciter.

File No. 7203 CTN Clairton City School District, 535 Miller Avenue, Clairton, PA 15025. Signed By: Dr. Mary Ann Nobers, Superintendent. Funds Requested: $103,746. Total Project Cost: $130,257. To construct a production studio in Clairton's educational center that will produce, exchange, and distribute via cable, educational programming to educational institutions within the school district.

File No. 7245 CTB Public Brdcstg. of NW PA, Inc., 8425 Peach Street, Erie, PA 16509. Signed By: Mr. R. B. Clark, Vice President & General Mgr. Funds Requested: $439,004. Total Project Cost: $585,338. To replace worn out and obsolete production equipment at WQLN–TV providing the only public television signal to Erie. Request includes camera, VTR's and other production equipment.

File No. 7257 CRB Public Brdcstg. of NW PA, Inc., 8425 Peach St., Erie, PA 16509. Signed By: Mr. R. B. Clark, General Manager. Funds Requested: $74,474. Total Project Cost: $100,799. To extend service of WQLN–FM in Erie via translators to the unserved cities of Meadville and Warren in Pennsylvania and to Chautauqua Lake area in New York. Request also includes replacement of worn out transmitter and essential production equipment.

File No. 7262 CRB Muhlenberg College, 2400 Chew Street, Allentown, PA 18104. Signed By: Mr. Jonathan Messerli, President. Funds Requested: $18,338. Total Project Cost: $24,551. To improve the production capacity of student station WMUH–FM located in Allentown. Equipment requested includes turntables, audio recorders, and consoles.

File No. 7285 CRB Pennsylvania State University, Wagner Annex, University Park, PA 16802. Signed By: Mr. Robert Scannell, Vice President. Funds Requested: $33,936. Total Project Cost: $45,248. To replace obsolete FM transmitter, transmission line and remote control of WPSU–FM, a 1 kw student station serving the University Park area.

File No. 7294 CTB WHYY, Inc., 150 North 6th Street, Philadelphia, PA 19106. Signed By: Mr. Frederick Breitenfeld, Jr., President. Funds Requested: $282,300. Total Project Cost: $376,400. To replace outmoded and exhausted production equipment in the Wilmington, DE studios of WHYY–TV, which produces programming for the state of Delaware. Delaware is served by WHYY's repeater station, WDPB, which is located in Seaford. Request includes three studio cameras, audio equipment, monitors and various test equipment.

File No. 7307 CRB WITF, Inc., 1982 Locust Lane, Harrisburg, PA 17109. Signed By: Mr. John Blair, Vice President & General Mgr. Funds Requested: $40,200. Total Project Cost: $53,600. To replace worn out essential production equipment and to equip a news control room at WITF–FM, serving the Harrisburg area. Request includes recorders, consoles and other production equipment.

**Puerto Rico**

File No. 7254 CRB Catholic University Ser. Assoc., 529, Station 6, Ponce, PR 00731. Signed By: Mr. Clotaldo Santiago, Esq., Secretary/Treasurer. Funds Requested: $27,237. Total Project Cost: $36,316. To improve the facilities of noncommercial radio station WECU, operating on 88.9 MHz in Ponce, PR, by purchasing remote broadcast equipment. Project will also purchase an auxiliary transmitter to be used during frequent outages caused by lightning strikes at the transmitter site.

File No. 7256 PRB University of Puerto Rico, UPR Station, San Juan, PR 00931. Signed By: Mr. Juan Fernandez, Chancellor. Funds Requested: $120,221. Total Project Cost: $134,295. To plan for the establishment of a radio reading service for the blind to operate on the SCA channel of WRTU–FM, broadcasting at 89.7 MHz in San Juan. The radio reading service will serve an estimated 197,000 visually handicapped

people in the eastern half of the island of Puerto Rico.

**Rhode Island**

File No. 7285 CTB RI Public T/C Authority, 24 Mason Street, Providence, RI 02903. Signed By: Mr. John Renza, Chairman. Funds Requested: $600,975. Total Project Cost: $801,300. To improve the production capability of WSBE–TV located in Providence and serving the entire state, by replacing obsolete equipment. Request includes replacement of master control and routing switchers, a ¾ editing suite, and four quad VTR's with one inch machines. A still store is also requested.

**South Carolina**

File No. 7089 CRB South Carolina ETV Network, Drawer L, 2712 Millwood Ave., Columbia, SC 29250. Signed By: Mr. Henry Cauthen, President & General Manager. Funds Requested: $52,500. Total Project Cost: $70,000. To improve public radio station WLTR–FM, operating on 91.3 MHz, in Columbia. Project will replace obsolete and worn out production equipment and acquire needed test equipment. Station is the flagship station of the South Carolina Educational Radio Network.

File No. 7090 CRB South Carolina ETV Commission, Drawer L, 2712 Millwood Ave., Columbia, SC 29250. Signed By: Mr. Henry Cauthen, President & General Manager. Funds Requested: $90,000. Total Project Cost: $120,000. To activate a new public radio station to serve the Aiken area. Station will operate on 89.1 MHz and serve approximately 396,500 residents of Aiken and the surrounding area. Station will also provide service to the print handicapped via the station's subcarrier. Station will repeat the signal of the South Carolina Educational Radio Network from Columbia.

File No. 7091 CRB South Carolina ETV Commission, Drawer L, 2712 Millwood Ave., Columbia, SC 29250. Signed By: Mr. Henry Cauthen, President & General Manager. Funds Requested: $74,942. Total Project Cost: $99,942. To acquire 1231 subcarrier receivers (SCA) to be used by the print handicapped to receive the special programming over the South Carolina Educational Radio Network.

**South Dakota**

File No. 7126 CRB Lakota Communications, Inc., P.O. Box 150/ Porcupine Butte, Porcupine, SD 57772. Signed By: Mr. Hobart Yankton, Station Manager. Funds Requested: $20,376. Total Project Cost: $27,168. To improve the production capability of public radio station KILI–FM, 90.1 MHz, Porcupine, SD, by purchasing microphones, audio tape recorders, cartridge machines, and diverse other minor studio and test equipment. Many of the requested items will replace worn-out equipment. KILI–FM serves the Pine Ridge Lakota (Sioux) Reservation in southwestern South Dakota.

File No. 7201 CTB State Brd. of Dirs. for ETV, 414 East Clark Street, Vermillion, SD 57069. Signed By: Mr. Larry Miller, Deputy Executive Director. Funds Requested: $468,750. Total Project Cost: $625,000. To replace a 16-year-old transmitter at public TV station KDSD, Ch. 16, at Pierpont, SD. The project will also purchase associated test and remote control equipment. KDSD–TV, which is part of the South Dakota Public Broadcasting system, brings the only public television signal with locally-originated programming to over 86,000 residents of northeast SD.

File No. 7208 CRB State Brd. of Dirs. for ETV, 414 E. Clark Street, Vermillion, SD 57069. Signed By: Mr. Larry Miller, Deputy Executive Director. Funds Requested: $86,313. Total Project Cost: $115,086. To establish a public FM radio station at Lowry, SD, to operate at 91.9 MHz with an ERP of 100 kw. The station will act as a repeater in the South Dakota Public Radio system, which is managed from Vermillion. It will bring the first public radio signal to over 20,000 residents of north-central SD.

File No. 7211 CRB State Brd. of Dirs. for ETV, 414 E. Clark Street, Vermillion, SD 57069. Signed By: Mr. Larry Miller, Deputy Executive Director. Funds Requested: $111,086. Total Project Cost: $148,115. To establish a public FM radio station at Faith, SD, to operate at 97.1 MHz with an ERP of 100 kw. The station will act as a repeater in the South Dakota Public Radio system, which is managed from Vermillion. It will bring the first public radio signal to over 18,000 residents of northwest SD.

**Tennessee**

File No. 7031 CRB University of Tennessee, 108 Cadek Hall, Chattanooga, TN 37403. Signed By: Dr. Frederick Obear, Chancellor. Funds Requested: $33,473. Total Project Cost: $44,631. To improve the facilities of public radio station WUTC, operating on 88.1 MHz in Chattanooga, by acquiring a satellite receive terminal and additional production equipment. WUTC serves one million people in the greater Chattanooga area.

File No. 7058 CTB Upper Cumberland Broadcast Coun., SW Co. Tucker Stadium, Cookeville, TN 38502. Signed By: Mr. John Gentry, Jr., Chairman of the Board. Funds Requested: $440,000. Total Project Cost: $880,000. To improve the facilities of public television station WCTE, operating on Ch. 22 in Cookeville, by replacing obsolete production equipment, including cameras and videotape equipment. The project will also enable a power increase and provide first public television service to 119,111 people. WCTE currently serves 221,501 people in the upper Cumberland area.

File No. 7085 CTN East Tennessee State University, Lake Street at Maple, Johnson City, TN 37614. Signed By: Dr. Ronald Beller, President. Funds Requested: $836,706. Total Project Cost: $1,195,295. To establish a four channel ITFS system to provide instructional programs to some 417,000 people in the area of Johnson City, and, using two sets of 4 channel ITFS repeaters, in the areas of Kingsport and Greenville, TN.

File No. 7098 CTB Greater Chattanooga Public TV, 4411 Amnicola Highway, Chattanooga, TN 37406. Signed By: Mr. Walter Alley, President & General Manager. Funds Requested: $1,101,677. Total Project Cost: $1,478,903. To improve the production facilities of public television station WTCI, operating on Ch. 45 in Chattanooga, by replacing obsolete and worn out production equipment, including cameras, videotape recorders, switchers, editing, test and related equipment. WTCI serves 483,000 people in the greater Chattanooga area, including parts of northeast Alabama and northwest Georgia.

File No. 7103 CTB West Tennessee Public TV Council, Clement Hall, University of TN, Martin, TN 38328. Signed By: Mrs. Bettie Graham, President of Board WTPTC. Funds Requested: $1,190,209. Total Project Cost: $1,586,946. To improve the facilities of public television station WLJT, operating on Ch. 11 in Martin, by replacing obsolete transmitter and antenna, and adding STL and remote control capability and add a portable microwave for coverage of live events. The station serves 552,272 people in west Tennessee.

File No. 7125 PRB City of Knoxville, 400 W. Main Ave., P.O. Box 1631, Knoxville, TN 37902. Signed By: Mr. Kyle Testerman, Mayor. Funds Requested: $37,056. Total Project Cost: $38,456. To plan for the establishment of a radio reading service for the print handicapped to serve 230 people in Knoxville and eastern Tennessee.

File No. 7284 CTB Chattanooga Sta. Tech. Cmy. Col., 4501 Amnicola Highway, Chattanooga, TN 37406. Signed By: Mr. Harry Wagner, President. Funds Requested: $42,476. Total Project Cost: $56,635. To extend the program service of the applicant's ITFS system to two additional sites, South Pittsburgh

High School and the Southeastern Tennessee State Regional Correctional Facility in Pikeville.

**Texas**

File No. 7014 CTB SW Texas Public Brdcstg. Council, 501 S. Bowie, P.O. Box 9, San Antonio, TX 78291. Signed By: Ms. Joanne Winik, Vice President & Station Mgr. Funds Requested: $299,875. Total Project Cost: $399,834. To replace worn-out and obsolete studio equipment at public television station KLRN, operating on Ch. 9, San Antonio, Texas. The project will purchase two one-inch VTRs, a video production switcher, a master control switcher, and a 24-input audio board.

File No. 7027 CTB Central Texas College, Highway 190 West, Killeen, TX 76542. Signed By: Mr. Phillip Swartz, President. Funds Requested: $228,487. Total Project Cost: $304,650. To establish a public TV station at Waco, TX, to operate on Ch. 34 with an ERP of 80 kw. For most of its programming day, it will repeat the signal of public TV station KNCT, Ch. 46, at Central Texas College, Killeen, but it will also broadcast some Waco-orginated programming. The new station will replace KNCT's present translator, also on Ch. 34, and will bring a first public TV signal to approximately 70,000 residents of the Waco area.

File No. 7033 CTB Texas Tech University, 17th & Indiana, Lubbock, TX 79409. Signed By: Mr. Donald Haragan, Vice President. Funds Requested: $112,500. Total Project Cost: $150,000. To replace two obsolete and worn-out studio cameras at public TV station KTXT, Ch. 5, at Texas Tech University, Lubbock.

File No. 7089 CTB SW Texas Public Brdcstg. Council, 2504–B Whitis Street, Austin, TX 78705. Signed By: Mr. Bill Arhos, Station Manager. Funds Requested: $439,130. Total Project Cost: $627,328. To purchase four studio cameras and a production switcher for public TV station KLRU, Ch. 18, in Austin, TX, which brings the only public TV signal with local origination to over 630,000 residents of that area. The requested items will replace worn-out and obsolete equipment.

File No. 7127 CTN Access Houston Cable Corporation, 905 Kipling, Houston, TX 77006. Signed By: Mr. Tomas Cantrell, Executive Director. Funds Requested: $838,390. Total Project Cost: $1,117,854. To establish a production studio to allow community access to the cable television systems serving Houston, TX, and many of the Houston suburbs. Three channels have been made available for public and educational access. The access will be managed by Access Houston Cable Corporation, which is the group authorized by the City of Houston to conduct this activity.

File No. 7207 CTB South Texas Public Brdcstg. Sys., 4455 S. Padre Isl. Dr./Suite 38, Corpus Christi, TX 78411. Signed By: Mr. Terrel Cass, President & General Manager. Funds Requested: $674,325. Total Project Cost: $899,100. To improve the production capability and transmission reliability of public TV station KEDT, Ch. 6, Corpus Christi, TX, by replacing worn-out and obsolete equipment. The project will purchase an STL, three 1" and five ¾" VTRs, a routing switcher, an editing system, a film chain, and an electronic still store.

File No. 7288 CRB North Texas Public Brdcstg., Inc, 3000 Harry Hines Blvd., Dallas, TX 75201. Signed By: Mr. Richard Meyer, President. Funds Requested: $137,030. Total Project Cost: $182,707. To purchase a transmitter, antenna, transmission line, and transmitter switch kit at public radio station KERA–FM, 90.1 MHz, Dallas, TX. The requested items will replace equipment that is worn-out, obsolete, or inadequate for the station's needs.

File No. 7311 CTB El Paso Public Television Fnd., 105 Education Bldg./U. of Texas, El Paso, TX 79968. Signed By: Mr. Robert Stakes, Secretary. Funds Requested: $284,921. Total Project Cost: $379,895. To improve the program production capability of public TV station KCOS, Ch. 13, El Paso, by replacing worn-out, obsolete, or inadequate studio equipment. The project will purchase two 1" video tape recorders, a production switcher, a master control room switcher, a routing switcher, an editing system, and a character generator.

**Utah**

File No. 7146 CRB University of Utah, 103 Kingsbury Hall, Salt Lake City, UT 84112. Signed By: Mr. Ted Capener, Vice President. Funds Requested: $38,569. Total Project Cost: $51,425. To extend and improve the signal of KUER–FM operating on 90.1 MHz Salt Lake City, Utah by replacing obsolete dissemination equipment and installing a translator in Cedar City, Utah to provide a first public radio signal to 15,000 residents of Iron County.

File No. 7151 CRTB University of Utah, 205 James Talmage Building, Salt Lake City, UT 84112. Signed By: Mr. Ted Capener, Vice President. Funds Requested: $1,477,544. Total Project Cost: $1,970,059. To extend and improve the signals of KUED–TV, KULC–TV and KUER–FM operating on channels 7, 9 and 90.1 MHz respectively in Salt Lake City, Utah by continuing the construction of the state microwave system to Price, Castle Dale and St. George, adding additional translators and installing additional transmission and production facilities to better serve the rural areas of the state.

File No. 7196 CRB Listeners Cty. Radio of UT, Inc., 206 West 800 South, Salt Lake City, UT 84101. Signed By: Mr. John Greene, Station Manager. Funds Requested: $24,118. Total Project Cost: $32,157. To upgrade the program production capabilities of public radio station KRCL–FM operating on 90.9 MHz in Salt Lake City, Utah by replacing obsolete studio apparatus and remote broadcast equipment.

**Virginia**

File No. 7064 CTB Shenandoah Valley ETV Corp., 298 Port Republic Road, Harrisonburg, VA 22801. Signed By: Mr. Arthur Albrecht, President. Funds Requested: $275,475. Total Project Cost: $367,300. WVPR–TV in Harrisonburg requests replacement of three cameras and the master control/studio sync generators. The equipment for which replacement is requested does not produce broadcast quality signals.

File No. 7305 CTN Hampton Roads Ed. T/C Assoc, Inc, 5200 Hampton Boulevard, Norfolk, VA 23508. Signed By: Mr. John Morison, President & General Manager. Funds Requested: $660,668. Total Project Cost: $1,134,447. To extend and improve the ITFS network of WHRO–TV, operating on channel 15, Norfolk, Virginia by constructing additional transmitters in four new sites, connecting them by microwave and adding two channels to an existing system in order to better serve the educational needs of 1.2 million residents of the Hampton Roads-Norfolk area.

File No. 7314 CRB Hampton Roads Ed. T/C Assoc., 5200 Hampton Boulevard, Norfolk, VA 23508. Signed By: Mr. John Morison, President & General Manager. Funds Requested: $93,590. Total Project Cost: $133,700. To improve the signal and production capability of public radio station WHRO–FM operating on 89.5 MHz, Norfolk, Virginia by replacing obsolete studio equipment acquiring a back-up STL and additional SCA receivers to better serve the 1.2 million residents of southeastern Virginia.

File No. 7316 CRB Virginia Tech Foundation, Inc., 4235 Electric Road, S.W., Roanoke, VA 24014. Signed By: Mr. Charles Forbes, Executive Vice President. Funds Requested: $149,298. Total Project Cost: $199,066. To extend the signal of public radio station KVTF–FM, operating on 89.1 MHz, in Roanoke, Virginia by constructing a translator/repeater. This would provide a first

public radio service to 129,000 residents of greater Charlottesville, Virginia.

**Vermont**

File No. 7093 CTB University of Vermont, 88 Ethan Allen Avenue, Winooski, VT 05404. Signed By: Ms. Patricia Armstrong, Director of Sponsored Programs. Funds Requested: $523,500. Total Project Cost: $698,500. To increase power of WETK–TV from 30 kw to 60 kw and to replace existing obsolete transmitter. WETK serves the Burlington area.

**Washington**

File No. 7070 CRB Pacific Lutheran University, 121st & Park Avenue, Tacoma, WA 98447. Signed By: Dr. William Rieke, President. Funds Requested: $127,476. Total Project Cost: $190,264. To extend the service of public radio station KPLU, operating at 88.5 FM in Tacoma, to unserved areas of Washington State. Applicant will relocate the transmitter site to higher elevation to reach standards for Class C FM stations under FCC Docket 80/90. Project will provide first public radio service to 41,992 people, and will insure continued service to 237,721 people served by applicant's seven translator system.

File No. 7081 CTN The University of Washington, 401 Mercer Street, Seattle, WA 98109. Signed By: Mr. Donald Allen, Director, Grant & Contracts. Funds Requested: $592,858. Total Project Cost: $790,478. To activate an eight channel Instructional Television Fixed Service system operated by public television station KCTS, Ch. 9 in Seattle. The ITFS system will serve some 500,000 people throughout the Seattle area.

File No. 7306 CRB Spokane Public Radio, N. 2319 Monroe St., Spokane, WA 99205. Signed By: Mr. Barry Brenesal, General Manager. Funds Requested: $16,154. Total Project Cost: $21,539. To extend the service of public radio station KPBX, operating on 91.1 MHz in Spokane, by constructing a series of translators to provide service to South Spokane on 90.7 MHz, Sandpoint, ID on 88.9 MHz, Kellogg and Wallace, ID on 91.9 MHz and Coeur d'Alene, ID on 91.9 MHz.

**Wisconsin**

File No. 7080 CTB Milwaukee Dist. Brd. of VTAE, 1015 N. 6th Street, Milwaukee, WI 53203. Signed By: Dr. Russ Slicker, Chief Executive Officer. Funds Requested: $217,500. Total Project Cost: $435,000. To replace six studio cameras and two portable cameras, all obsolete and worn-out, at public TV stations WMVS/WMVT–TV, Chs. 10 and 36, Milwaukee, WI. The project will accomplish the replacement by purchasing three studio cameras and one compatible portable camera.

File No. 7133 CTB Wisconsin Educational Comm. Brd., 3319 West Beltline Highway, Madison, WI 53713. Signed By: Mr. Paul Norton, Executive Director. Funds Requested: $857,138. Total Project Cost: $1,714,276. To improve the service of the Wisconsin State public TV network by equipping two master control rooms (MCRs), one for the State system and one for public TV station WHA, Ch. 21, Madison. The MCRs will be co-located at the State network's new Telecommunications Operations Center (TOC), Madison. WHA–TV, a State network affiliate, produces extensive programming for the network. The project will also install a two-way MW to connect the State TOC with Station WHA–TV.

File No. 7134 CRB Wisconsin Educational Comm. Brd., 3319 West Beltline Highway, Madison, WI 53713. Signed By: Mr. Paul Norton, Executive Director. Funds Requested: $59,960. Total Project Cost: $119,920. To activate a public radio station at Park Falls, WI. It will have the call letters WLEF and will operate at 90.3 MHz with an ERP of 17.7 kw. It will be part of the Wisconsin State public radio system, which is managed from Madison by the State Educational Communications Board. WLEF–FM will bring the first public radio signal to 28,200 residents of north central WI and will use its subcarrier frequency for instructional programming and radio reading for the print-handicapped.

File No. 7142 CRB Gateway Technical Institute, 3520 30th Avenue, Kenosha, WI 53141. Signed By: Dr. John Birkholz, District Director. Funds Requested: $23,000. Total Project Cost: $46,000. To replace a worn-out transmitter and associated equipment at public radio station WGTD–FM, 91.1 MHz, licensed to Gateway Technical Institute, Kenosha, WI.

File No. 7217 CRB Univ. of Wisc./ Platteville, 1 University Plaza, Platteville, WI 53818–3099. Signed By: Mr. Stephen Zielke, Assistant Chancellor. Funds Requested: $40,772. Total Project Cost: $62,363. To extend the signal of noncommercial radio station WUSP–FM, 90.5 MHz, Platteville, WI, by increasing the ERP of its signal from 420 w to 2.5 kw. The project will replace a worn-out transmitter and purchase an antenna, transmission line, and associated equipment.

File No. 7292 CTB Wisconsin Educational Comm. Brd., 3319 West Beltline Highway, Madison, WI 53713. Signed By: Mr. Paul Norton, Executive Director. Funds Requested: $75,903. Total Project Cost: $151,805. To activate a TV translator on Ch. 53 to serve Adams County in central Wisconsin. The translator will repeat the signal of public TV station WHRM, Ch. 20, Wausau, WI, which in turn is part of the Wisconsin State Television Network. The translator will bring the first public TV signal to approximately 20,000 residents of Adams County.

**West Virginia**

File No. 7085 CTB WV Educational Brdcstg. Auth., 1900 Washington Street, E., Charleston, WV 25305. Signed By: Ms. Mary Jo Smith, Acting Executive Director. Funds Requested: $195,000. Total project Cost: $260,000. To improve the state network which is comprised of three television stations, by replacing four obsolete and wornout quad vtr's with one inch vtr's.

File No. 7087 CRB WV Educational Brdcstg. Auth., 1900 Washington Street E, Charleston, WV 25305. Signed By: Ms. Mary Jo Smith, Acting Executive Director. Funds Requested: $209,040. Total Project Cost: $278,721. To replace malfunctioning and inadequate production equipment of radio station WVPN–FM in Charleston. WVPN is the originating station for the eight station state network. Application requests turntables, recorders, consoles and other production equipment.

File No. 7252 CTB WV Educational Brdcstg. Auth., P.O. Box AH, Airport Road, Beckley, WV 25802–2831. Signed By: Ms. Mary J. Smith, Acting Executive Director. Funds Requested: $465,003. Total Project Cost: $620,004. To improve WSWP–TV, located in Beckley and serving the southwest portion of the state, by replacing an obsolete transmitter; request also includes stereo switcher and test equipment.

**Wyoming**

File No. 7084 CTB Central WY Comm. College Found., 2660 Peck Ave., Riverton, WY 82501. Signed By: Mr. Harmon Watt, Chairperson. Funds Requested: $188,947. Total Project Cost: $251,930. To extend the signal of public Television station KCWC–TV operating on channel 4, Riverton, Wyoming with a microwave fed translator located in Jackson Wyoming to bring the first public television service to 5,500 residents of Teton County Wyoming.

File No. 7176 CRB Powder River Public Radio, P.O. Box 1081, Gillette, WY 82716. Signed By: Ms. Janet Stevens, President. Funds Requested: $3,072. Total Project Cost: $4,096. To extend the signal of public radio station KUWR–FM operating on 91.9 MHz, Laramie, Wyoming with a translator located in

Gillette, Wyoming to provide a first public radio service to 12,800 residents of Campbell County, Wyoming.

File No. 7187 CRB University of Wyoming, P.O. Box 3984, 9th & Lewis St., Laramie, WY 82071. Signed By: Dr. James Tod, Vice President. Funds Requested: $98,282. Total Project Cost: $115,015. To extend the signal of public radio station KUWR–FM operating on 91.9 MHz Laramie, Wyoming by increasing the power from 50kw to 100kw thus providing first public radio service to 15,292 additional listeners.

**Alaska**

File No. 7139 CRB 6237 Gwandak Public Broadcasting, Inc., E 3rd Ave.,Wh. Alice Site, Box 189, Fort Yukon, AK 99740. Signed By: Mr. Barry Wallis, President. Funds Requested: $147,325. Total Project Cost: $198,435. To activate a noncommercial AM radio station in Fort Yukon, AK, to bring a first public radio signal to approximately 1200 residents of the Alaskan interior's Yukon Flats Region, over 75 per cent of whom are Athabaskan Indians. The new station will have local origination capability and will operate at 900 kHz with 5 kw of power.

**Alabama**

File No. 7001 CTN 6144 The University of Alabama, University Boulevard, Tuscaloosa, AL 35487. Signed By: Dr. Robert Wells, Assistant Vice President. Funds Requested: $328,878. Total Project Cost: $440,280. To improve/upgrade the production capabilities of the University Television Services. UTS provides major production facilities in support of the Alabama Public Television Network which serves the entire state. In addition, proposal seeks equipment to outfit an instructional TV classroom. This classroom will allow production of ITV programming without interfering with public TV productions.

File No. 7002 CRB 6013 Sable Cmty. Brdcstg. Corp., 711 Church Street, P.O. Box 3197, Hobson City, AL 36203. Signed By: Ms. Maudine Holloway, President. Funds Requested: $103,349. Total Project Cost: $137,799. To activate a new noncommercial educational FM station on 91.3 MHz in Hobson City. Station will serve an estimated 119,761 residents of Hobson City, Anniston, and Calhoun County.

File No. 7053 CRB 6276 University of AL, Birmingham, 1028 7th Ave., South, Birmingham, AL 35294. Signed By: Dr. Kenneth Pruitt, Associate Vice President. Funds Requested: $15,000. Total Project Cost: $20,000. To acquire approximately 250 new SCA receivers for use by four public radio stations in Alabama. Stations are WBHM—Birmingham, WUAL—Tuscaloosa, WLRH—Huntsville, and WTSU—Montgomery. Receivers will allow print handicapped individuals to receive radio reading service of WBHM–FM located in Birmingham.

**Arkansas**

File No. 7329 CRB 6261 University of Central Arkansas, Bruce & Donaghey Streets, Conway, AR 72032. Signed By: Mr. Bill Pate, President. Funds Requested: $66,620. Total Project Cost: $88,827. To improve and upgrade noncommercial educational radio station KUCA–FM, operating on 91.3 MHz, in Conway. KUCA–FM seeks to replace worn-out/obsolete production equipment and at the same time convert to stereo. Station serves approximately 350,000 residents of Central Arkansas.

**Arizona**

File No. 7197 CTB 6288 Arizona State University, Stauffer Building, Tempe, AZ 85287. Signed By: Dr. Herman Goldner, Director of Research Devel. Funds Requested: $277,500. Total Project Cost: $370,000. To extend the signal of public television station KAET–TV, channel 8, Phoenix/Tempe by constructing a microwave system to feed translators in the northcentral section of the state to provide first service to 3,128 residents of Yavapai and Coconino Counties.

**California**

File No. 7077 CRB 6188 University of Southern Cal., 3716 S. Hope St., P.O. Box 77913, Los Angeles, CA 90007. Signed By: Ms. Lyn Hutton, Senior Vice President. Funds Requested: $135,065. Total Project Cost: $180,087. To expand the facilities of public radio station KPSH, operating on 88.5 MHz in Palm Springs, CA by moving the transmitter site and increasing power to 3 KW. The project will also add local origination capability. The station will rebroadcast programs from Los Angeles and will serve an estimated 133,097 people in the Coachella Valley.

File No. 7117 CTN 6035 Imperial County Office of Ed., 1398 Sperber Road, El Centro, CA 92243. Signed By: Dr. William Fisher, Assistant Superintendent. Funds Requested: $268,280. Total Project Cost: $357,707. To establish a two channel ITFS system to serve the schools and citizens of Imperial County, CA.

File No. 7204 CRB 6131 Radio Bilingue, 1044 Fulton Mall, Fresno, CA 93721. Signed By: Mr. Hugo Morales, Executive Director. Funds Requested: $89,432. Total Project Cost: $119,243. To establish a new public radio station operating on 90.1 MHz to serve the Spanish-speaking residents of the Bakersfield area. The station would rebroadcast programs from KSJV Fresno, and would have studios for local origination.

File No. 7283 CTB 6185 KQED, Inc., 500 Eighth Street, San Francisco, CA 94103. Signed By: Mr. Eugene Zastrow, Executive Vice President. Funds Requested: $273,328. Total Project Cost: $455,548. To improve the production facilities of public television station KQED, operating on Ch. 9 in San Francisco, by replacing four obsolete studio cameras. KQED serves four million people in the San Francisco Bay area.

File No. 7297 CTB 6135 Minority Television Project, Inc., 353 Sacramento Street, San Francisco, CA 94111–3628. Signed By: Mr. Marvell Allen, Chief Finance Officer. Funds Requested: $350,748. Total Project Cost: $467,665. To establish a public television station operating on Ch. 32, San Francisco, CA, to serve Bay area black and minority audiences. Applicant is opposing the renewal of KQEC–TV, which currently broadcast on Ch. 32, San Francisco. Applicant proposes to purchase used Ch. 32 transmission terminal. Station would provide service to 4.5 million residents of the Bay area, including 1.5 million minorities.

File No. 7320 CTN 6095, 5399 Cmty. Media Resource Training Ctr, P.O. Box 20962, San Diego, CA 92120. Signed By: Mr. Donald Mason, President & General Manager. Funds Requested: $289,661. Total Project Cost: $386,215. To establish a noncommercial production facility to produce television programs for dissemination via cable to minority audiences in San Diego. Later dissemination is anticipated to nationwide minority audiences via low power television and other technology.

**Connecticut**

File No. 7230 CRB 6068 Connecticut Ed. Telecommunications Corp., 24 Summit Street, Hartford, CT 06106. Signed By: Mr. Jerry Franklin, President. Funds Requested: $113,614. Total Project Cost: $213,614. To establish a non-commercial FM radio station operating on 88.5 in Stamford which will provide first local service to the area.

**Florida**

File No. 7024 CRB 6286 School Brd. of Dade County, FL, 172 N.E. 15th Street, Miami, FL 33132. Signed By: Mr. Leonard Britton, Superintendent of Schools. Funds Requested: $80,246. Total Project Cost: $80,328. To improve and augment the facilities of noncommercial educational radio station WLRN–FM, operating on 91.3 MHz, in Miami.

Proposal will purchase a remote pickup transmitter, studio and remote production equipment and two earth station demodulators. Station serves approximately 3.2 million residents of Dade, Broward, Monroe and Palm Beach counties.

File No. 7025 CRB 6240 School Brd. of Dade County, FL, 172 N.E. 15th Street, Miami, FL 33132. Signed By: Mr. Leonard Britton, Superintendent of Schools. Funds Requested: $65,970. Total Project Cost: $87,960. To acquire an audio console and SCA receivers to improve and extend the radio reading services provided by WLRN–FM, in Miami. WLRN–FM provides radio reading services to the print handicapped in Dade, Broward, Monroe and Palm Beach counties.

File No. 7026 CTB 6321 School Brd. of Dade County, FL, 172 N.E. 15th Street, Miami, FL 33132. Signed By: Mr. Leonard Britton, Superintendent of Schools. Funds Requested: $932,025. Total Project Cost: $1,242,700. To acquire production equipment to improve and augment the facilities of public television station WLRN–TV, channel 17, in Miami. Production equipment includes cameras, switchers, recorders, consoles, editing equipment, char. generator, telecine and lighting equipment. WLRN–TV also proposes to acquire a back-up transmitter exciter and test equipment. Station serves approximately 2.9 million residents of Miami and the surrounding area.

File No. 7152 CRB 6194, 5130, 4185 University of South Florida, 4202 Fowler Ave., SVC 116, Tampa, FL 33620–6800. Signed By: Mr. Frank Lucarelli, Director of Sponsored Research. Funds Requested: $201,090. Total Project Cost: $268,121. To replace worn-out and obsolete broadcast equipment at station WUSF–FM, operating on 89.7 MHz, in Tampa. Equipment will allow an increase in local program production capabilities. WUSF–TV also seeks to purchase additional SCA receivers for use by the radio reading service for the print-handicapped.

File No. 7170 CTB 6182, 5328 Comm. TV Fnd. of South Florida, 14901 N.E. 20th Avenue, Miami, FL 33181. Signed By: Mr. Stephen Rogers, Vice President & General Mgr. Funds Requested: $217,842. Total Project Cost: $395,714. To acquire broadcast equipment to allow for the use of the secondary audio program (SAP) channel of WPBT–TV, channel 2, in Miami. SAP equipment will allow for the simultaneous broadcast of the same program in a second language. WPBT–TV will thus be able to serve both their Spanish and English speaking audiences.

File No. 7299 CRB 6197, 5129, 4183 University of South Florida, 4202 Fowler Ave., SVC 116, Tampa, FL 33620–6800. Signed By: Mr. Frank Lucarelli, Director. Funds Requested: $89,150. Total Project Cost: $118,867. To improve public radio station WSFP–FM, operating on 90.1 MHz, in Ft. Myers. Project will improve station by adding local origination equipment and additional SCA receivers for the radio reading service. In addition, will acquire satellite reception equipment. Station serves an estimated 500,000 residents of Ft. Myers and surrounding areas.

File No. 7333 CTB 6205 University of South Florida, 4202 Fowler Avenue, SVC 116, Tampa, FL 33620. Signed By: Mr. Frank Lucarelli, Director Sponsored Research. Funds Requested: $597,231. Total Project Cost: $796,309. To acquire production and satellite reception equipment for public television station WSFP–TV, channel 30, in Fort Myers. Equipment will allow for first local origination for the Fort Myers area. Station serves approximately 500,000 residents of a five county area.

**Iowa**

File No. 7155 CRB 6137 Iowa Community Radio, Inc., 205 E. Burlington, Fairfield, IA 52556. Signed By: Mr. William Cottle, President. Funds Requested: $193,932. Total Project Cost: $258,577. To establish a noncommercial public FM radio station on 90.5 MHz., in Fairfield, IA, to provide first service to 80,000 residents in the rural areas of southeast Iowa and Northeast-east Missouri.

File No. 7174 CTN 6162, 5090 Eastern Iowa Community College Dist., 306 West River Drive, Davenport, IA 52801–1221. Signed By: Mr. John Blong, Chancellor. Funds Requested: $265,276. Total Project Cost: $353,702. To activate an interconnected instructional fixed television service network on channels WHR–478, Muscatine, IA, WHR–510, Clinton, IA, and WHR–479, Bettendorf, IA, to provide locally originated educational and cultural telecommunications services to the communities along the Mississippi river in eastern Iowa.

**Idaho**

File No. 7111 CRB 6341 Boise State University, 1910 University Drive, Boise, ID 83725. Signed By: Mr. Jerold Garber, General Manager. Funds Requested: $155,618. Total Project Cost: $210,295. To extend and improve the signal of public radio station KBSU–FM, operating on 91.3 MHz, Boise Idaho, by changing the frequency to 90.3 MHz moving the transmitter site and increasing the power to 19.1 kw and upgrading the studio facilities to serve 105,314 additional listeners.

File No. 7181 CRB 6332 Wood River Public Brdcstg. Co., 114 Little Indio Lane, Hailey, ID. Signed By: Ms. Gretchen Guard, President of the Board. Funds Requested: $77,242. Total Project Cost: $102,989. To establish a noncommercial FM station operating on 95.3 MHz in Sun Valley Idaho, to provide first local origination service to 30,000 listeners in five counties of central Idaho.

**Illinois**

File No. 7154 CTN 6350 Governors State University, University Parkway, University Park, IL 60466. Signed By: Dr. Leo Goodman Malamuth, II, President. Funds Requested: $254,112. Total Project Cost: $338,816. To make available the telecommunications capabilities of Governors State University, University Park, IL, by activating a microwave interconnection to public television station WYIN–TV, channel 56, Gary, IN, and build a two channel ITFS system to provide a variety of educational and informational programs to the communities in northeast Illinois and northwest Indiana.

**Indiana**

File No. 7115 CTB 6040, 5385 The Vincennes University, 1002 N. 1st Street, Vincennes, IN 47591. Signed By: Dr. Phillip Summers, President. Funds Requested: $203,075. Total Project Cost: $270,766. To replace worn and obsolete studio cameras for public television station WVUT–TV, channel 22, Vincennes, IN, in order to improve programming services to the communities in Indiana and Illinois surrounding the city of Vincennes.

File No. 7153 CTB 6210 Northwest IN Public Broadcasting, 8149 Kennedy Ave., Highland, IN 46322. Signed By: Mr. Lawrence Ventura, Chairman. Funds Requested: $197,961. Total Project Cost: $263,950. To replace and refurbish worn and obsolete dissemination facilities and to provide two studio cameras to facilitate local production at public television station WYIN–TV, channel 56, Gary, IN, in order to provide broadcast service and enable local production services to northwest Indiana communities.

File No. 7214 CTB 6018, 5106, 4093 Metro. Indianapolis PB, Inc., 1401 N. Meridian Street, Indianapolis, IN 46202–2389. Signed By: Mr. Frank Meek, Executive Vice President. Funds Requested: $540,850. Total Project Cost: $739,645. To improve the dissemination and origination facilities of public television station WFYI–TV, channel 20, Indianapolis, IN, by replacing worn and

obsolete dissemination and origination equipment to provide needed programs to the Indianapolis metropolitan area and to the Indiana public television network.

**Kansas**

File No. 7129 CRB 6036 Hutchinson Community College, 815 N. Walnut, Suite 300, Hutchinson, KS 67501. Signed By: Dr. James Stringer, President. Funds Requested: $328,454. Total Project Cost: $435,273. To construct an FM transmission station in Salinas, KS, that will repeat the signal of public radio station KHCC–FM, at Hutchinson Community College, Hutchinson, KS. The new station will operate at 89.5 MHz with an ERP of 100 kw. It will be capable of broadcasting separate programming produced at KHCC–FM for the repeater's area of service. It will bring the first public radio signal with local origination to over 175,000 residents of north central Kansas.

**Massachusetts**

File No. 7322 CRB 6229 WICN public Radio, Inc., 6 Chatham St., P.O. Box 241, Worcester, MA 01601. Signed By: Mr. Henry Horner, President. Funds Requested: $134,012. Total project Cost: $178,683. To expand signal of WICN–FM in Worcester into unserved areas by increasing tower height from 100 to 300 ft and by replacing current antenna with a directional antenna. Application requests tower, antenna, STL and satellite downlink.

**Maryland**

File No. 7330 CTN 6238, 5401 Chesapeake College, P.O. Box 8, Wye Mills, MD 21679–0006. Signed By: Mr. Robert Schleiger, President. Funds Requested: $247,601. Total Project Cost: $330,135. To activate a new ITFS system to serve a five county area on the Eastern Shore of Maryland. Facility will be located in Wye Mills and will provide an instructional service as well as a mean of local origination.

**Michigan**

File No. 7030 CTN 6327,5112 City of Saline, 100 North Harris Street, Saline, MI 48176. Signed By: Mr. Mark Hopper, Mayor. Funds Requested: $350,000. Total Project Cost: $466,825. To establish an interconnection network with local production studio in order to provide nonbroadcast educational and civic programs via cable franchise dedicated public service channels in the communities of Saline, Dexter, Chelsea, Manchester, Clinton, Milan and Dundee in southeastern Michigan; the system is governed by cooperating municipal agreements with the city of Saline.

File No. 7056 CRB 6111, 5289, 4254, 3105, 2048 Central Michigan University, 3965 E. Broomfield, Mt. Pleasant, MI 48859. Signed By: Mr. Arthur Ellis, President. Funds Requested: $89,516. Total Project Cost: $120,966. To extend the signal of public radio station WCMU–FM, 89.5 MHz by establishing a repeater station on 90.1 MHz Bay City, MI, in order to provide network and locally originated educational and cultural radio programming to the communities in the "Thumb" area of Michigan.

File No. 7209 CRB 6311, 5411, 4066, 3026, 2109 Delta College, Delta Road, University Center, MI 48710. Signed By: Mr. D. J. Carlyon, President. Funds Requested: $142,800. Total Project Cost: $204,000. To activate a public radio station on 90.1 MHz, Bay City, MI, in order to bring first public radio service to 454,834 persons in the "Thumb" region of Michigan as well as in the Bay City, Midland and Saginaw areas of the state.

File No. 7220 CTB 6285, 5391 Delta College, Delta Road, University Center, MI 48710. Signed By: Mr. D. J. Carlyon, President. Funds Requested: $282,000. Total Project Cost: $470,100. To replace worn and obsolete origination equipment for public television station WUCM–TV, channel 19, University Center, MI, by providing studio production and control apparatus to better serve the communities in the tri-city (Saginaw, Midland and Bay City) area of east central Michigan.

File No. 7221 CRB 6165 Eastern Michigan University, 426 King Hall, Ypsilanti, MI 48197. Signed By: Mr. Roy Wilbanks, Vice President. Funds Requested: $138,832. Total Project Cost: $182,433. To expand the coverage area of public radio station WEMU–FM, 89.1 MHz, Ypsilanti, MI, by replacing worn and obsolete dissemination facilities in order to continue locally originated program services to the communities in the south eastern area of the state.

**Missouri**

File No. 7132 CRB 6330, 5063 St. Louis Board of Education, 1517 S. Theresa Ave., St. Louis, MO 63104. Signed By: Dr. Jerome Jones, Superintendent of Schools. Funds Requested: $240,792. Total Project Cost: $321,056. To extend the coverage and improve the dissemination and origination facilities of public radio station KSLH–FM, 91.5 MHz, St. Louis, MO, by replacing tower and antenna facilities which are worn and obsolete and by improving transmission and origination equipment to better serve the educational needs of the St. Louis community.

**Montana**

File No. 7121 CRB 6232 Dawson Community College, 300 College Drive, P.O. Box 421, Glendive, MT 59330. Signed By: Mr. Donald Kettner, President. Funds Requested: $4,263. Total Project Cost: $5,684. To extend the signal of public radio station KEMC–FM Billings Montana by constructing a translator facility in Glendive, Montana to provide first public radio service to 10,500 residents of Dawson County Montana.

**Nebraska**

File No. 7119 CRB 6326 University of Nebraska, Omaha, 60th & Dodge Street, Omaha, NE 68182–0234. Signed By: Mr. Del Weber, Chancellor. Funds Requested: $24,795. Total Project Cost: $33,085. To improve the production capabilities of noncommercial radio station KVNO–FM, 90.7 MHz, at the University of Nebraska at Omaha, by replacing worn-out and obsolete studio equipment. The project will purchase two audio tape recorders, two audio consoles, two cart machines, and a stereo recording amplifier.

File No. 7169 CTN 6088 Metropolitan Tech. Comm. College, 30th & Fort Sts., P.O. Box 3777, Omaha, NE 68103. Signed By: Dr. Richard Gilliland, President. Funds Requested: $215,908. Total Project Cost: $359,846. To construct an Instructional Television Fixed Service system originating from Metropolitan Technical Community College, Omaha, NE. The main production studios will be at the College's Elkhorn Valley campus. The system will provide instructional programming to schools, cable TV systems, and business sites in Dodge, Sarpy and Washington Counties in eastern Nebraska, many of whose residents do not now receive such televised educational materials.

**New Mexico**

File No. 7104 CTN 6195, 5006 The University of New Mexico 1130 University Blvd., NE., Albuquerque, NM 87102. Signed By: Ms. Ann Powell, Director, Research Admin. Funds Requested: $422,556. Total Project Cost. $563,408. To install a satellite uplink earth station, with an "agile" antenna for public TV station KNME–TV, Ch. 5, operated by the University of New Mexico, Albuquerque. The earth station will transmit instructional programming throughout the State as well as to selected Central and South American educational institutions. It will also permit teleconferencing on public issues. In addition, it will be a reserve facility for the Rocky Mountain CPP uplink.

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File No. 7159 CRB 6254, 5118 Brd. of Ed., City of Albuquerque, 2020 Coal SE., Albuquerque, NM 87106. Signed By: Ms. Lillian Barna, Superintendent. Funds Requested: $46,565. Total Project Cost: $62,127. To extend the signal of noncommercial radio station KANW–FM, 89.1 MHz, in Albuquerque, NM, by increasing its transmitter power from 14.5 kw to 20.189 kw. The extension will bring the first public radio signal to over 40,000 residents of the area surrounding Albuquerque. The project will also purchase a "hot standby" studio-to-transmitter link for KANW.

File No. 7219 CTB 6223 Eastern New Mexico University, Station 52, Portales, NM 88130. Signed By: Mr. Duane Ryan, Director. Funds Requested: $303,077. Total Project Cost: $404,103. To improve the production capability of public TV station KENW, Ch. 3, Portales, NM, by purchasing a production video switcher, a production audio console, three 1" video tape recorders, video and audio distribution amplifiers, and diverse stereo equipment. The project will also construct a translator that will bring the station's signal to the Ruidoso-Capitan area of southern NM and will replace the lighting system of the station's tower in Caprock, NM.

**Nevada**

File No. 7162 CTB 6222 Rural Television System, 6205–A Franktown Road, Carson City, NV 89701. Signed By: Mr. Daniel Tone, RTS Administrator. Funds Requested: $153,070. Total Project Cost: $207,093. To establish a mobile production facility for Rural Television System operating from Carson City, Nevada to support the local program origination activities of their affiliates throughout the Rocky Mountain area.

File No. 7280 CTB 6243 Fallon Community Television, Inc., 310 N. Broadway, Fallon, NV 89406. Signed By: Mr. Myrl Nygren, Chairman of the Board. Funds Requested: $27,510. Total Project Cost: $36,680. To upgrade the programming capabilities of low power TV station K25AK operating on channel 25, Fallon, Nevada by installing local production capability for local origination programming.

File No. 7120 CTB 6009, 5028, 4256 Lyon County Brd. Commissioners, 15 S. Main Street, Yerington, NV 89447. Signed By: Mr. Don Cummings, Chairman of the Board. Funds Requested: $26,550. Total Project Cost: $35,400. To establish a TV translator operating on channel 48 in Yerington, Nevada to extend the signal of KNPB–TV, Reno to the 17,500 residents of Lyon County, Nevada.

**New York**

File No. 7215 CRB 6228 Niagara Frontier Radio Read. Ser, Appletree Mall, Union Road, Buffalo, NY 14227. Signed By: Mr. Robert Sikorski, Executive Director. Funds Requested: $118,125. Total Project Cost: $157,500. To activate a radio reading service which will provide service to the City of Buffalo as well as to Erie and Niagara counties. Equipment request includes SCA generator, production equipment and 1,000 receivers. Signal will be transmitted over subcarrier of WBEN–FM, a commercial station.

File No. 7337 CTN 6204, 5407 Hispanic Info T/C Ntwk of Amer., 80 East 11th St., Suite 314, New York, NY 10003. Signed By: Mr. Jose Rodreguez. Funds Requested: $295,989. Total Project Cost: $394,652. To build a video production and distribution facility in New Orleans that will produce educational and cultural programming which will be distributed via ITFS; Microband will lease excess system capacity.

**Ohio**

File No. 7049 CRB 6096 Miami University, Spring & Oak Streets, Oxford, OH 45056. Signed By: Mr. Edward Demske, Vice President. Funds Requested: $100,146. Total Project Cost: $166,910. To replace worn and obsolete studio origination equipment for public radio station WMUB–FM, 88.5 MHz, Oxford, OH, in order to provide locally originated and network programming services to the communities in west central Ohio and east central Indiana.

File No. 7210 CTB 6004 Bowling Green State University, 245 Troup Street, Bowling Green, OH 43403–0060. Signed By: Mr. Louis Katzner, Interim Assoc. Vice President. Funds Requested: $265,500. Total Project Cost: $379,414. To replace worn and obsolete origination equipment at public television station WBGU–TV, channel 57, Lima, OH, with new studio cameras to assure continued local production and improve the visual quality of programs designed to meet the needs of communities in the Bowling Green and Lima, Ohio area.

**Oklahoma**

File No. 7017 CRB 6044 Cameron University, 2800 W. Gore Blvd., Lawton, OK 73505. Signed By: Mr. Don Davis, President. Funds Requested: $129,355. Total Project Cost: $172,478. To establish a noncommercial FM radio station at Cameron University, Lawton, Oklahoma. The station will use the call letters KCCU–FM and operate at an ERP of 2 kw on 89.9 MHz. It will bring a first public radio signal to approximately 110,000 residents of southwest Oklahoma.

**Pennsylvania**

File No. 7031 CRB 6025, 5127 Metro. Pittsburgh Public Brdcstg, 4802 Fifth Ave., Pittsburgh, PA 15213. Signed By: Mr. Lloyd Kaiser. Funds Requested: $33,333. Total Project Cost: $44,445. To improve broadcast signal of public radio station WQED–FM serving Pittsburgh by replacing telephone lines with radio frequency STL.

File No. 7184 CRB 6260 Pittsburgh Comm. Brdcstg. Corp., Box 66, Chatham College, Pittsburgh, PA 15232–2814. Signed By: Ms. Kimberly Haas, General Manager. Funds Requested: $83,315. Total Project Cost: $111,087. To upgrade facilities of WYEP–FM, a non-commercial public radio station serving Pittsburgh, by replacing unreliable transmitter, antenna and other dissemination equipment. Project also includes request for remote pickup and test equipment.

File No. 7289 CTB 6227 WITF, Inc., 1982 Locust Lane, Harrisburg, PA 17109. Signed By: Mr. John Blair, Vice President & General Mgr. Funds Requested: $805,208. Total Project Cost: $806,944. To replace worn out and technically obsolete essential equipment at WITF–TV, serving the Harrisburg area; request includes STL, cameras, VTR's, timebased correctors, and test equipment.

**Puerto Rico**

File No. 7232 CTB 6280 Fundacion Ed. Ana G. Mendez, P.O. Box 21345, Cupey, Rio Piedr, PR 00928. Signed By: Mr. Jose Mendez, President. Funds Requested: $599,247. Total Project Cost: $864,980. To improve the facilities of public television stations WMTJ–TV, operating on Ch. 40 Farjado, and WQTQ, operating on Ch. 26 in Ponce, by constructing a satellite receive terminal and equipping a second production studio. The satellite receive terminal will enable the stations to receive programs from the Public Broadcasting Service. The studio, located in Rio Piedras, is intended to provide local programs to Ponce. The stations serve two and a half million residents of the island of Puerto Rico.

**South Dakota**

File No. 7019 CRB 6003 Sioux Falls College, 1501 South Prairie Avenue, Sioux Falls, SD 57105. Signed By: Mr. Samuel Kvasnica, Vice President. Funds Requested: $39,637. Total Project Cost: $52,850. To purchase an antenna, transmitter and associated dissemination equipment for noncommercial radio station KCFS–FM,

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which is licensed to Sioux Falls College, Sioux Fall, SD. KCFS will shortly change frequencies—from 90.1 MHz to 100.1 MHz—and increase its ERP from 149 w to 3000 w. The project will also improve KCFS's program production capabilities by replacing an obsolete and worn-out audio console.

**Texas**

File No. 7006 CTN 6031,5309 Region IV Education Service Ctr., 7145 West Tidwell Road, Houston, TX 77092. Signed By: Dr. Tom Pate, Jr., Executive Director. Funds Requested: $277,316. Total Project Cost: $937,316. To construct the primary transmitting system, with production studios, for an interactive ITFS network for Education Service Center, Region 4, Houston, TX. The network will provide programming to business and industry in the greater Houston area.

File No. 7044 CRB 6090 Taping for the Blind, Inc., 3935 Essex Lane, Houston, TX 77027. Signed By: Mr. Donald Knowlton, President. Funds Requested: $18,675. Total Project Cost: $24,900. To extend and improve the radio reading service for the blind and print-handicapped produced by Taping for the Blind, Inc., Houston, TX, by purchasing 200 SCA receivers and replacing an audio console.

File No. 7076 CTB 6091, 5273, 4036 Amarillo Junior College District, P.O. Box 447, 2201 S. Washington, Amarillo, TX 79178. Signed By: Mr. W.L. Prather, Vice President, Business Aff. Funds Requested: $1,424,988. Total Project Cost: $1,899,984. To establish a noncommercial TV station on the campus of Amarillo College, Amarillo, TX. The station will have the call letters KACV–TV and will operate on Ch. 2 with an ERP of 100 kw. It will bring the first public TV signal with a local origination capability to over 300,000 residents of the northern part of the Texas Panhandle.

File No. 7171 CTB 6042, 5020, 4151, 3180, 2342 North Texas Public Brdcstg., Inc, 3000 Harry Hines Blvd., Dallas, TX 75201. Signed By: Mr. Richard Meyer, President. Funds Requested: $750,000. Total Project Cost: $3,736,146. To establish a noncommercial TV station to broadcast educational and instructional programming to the Dallas-Ft. Worth-Denton area of north Texas. The station will have the call letters KDTN–TV; it will operate on Ch. 2 with an ERP of 100 kw. Its main production studio will be in Denton. Its master control and additional production capability will be located at public TV station KERA, Dallas. Its tower site will be in Cedar Hill, TX.

File No. 7223 CTB 6228 Odessa Junior College District, 201 W. University, Odessa, TX 79764. Signed By: Dr. Bernhard Sedate, Vice President. Funds Requested: $296,250. Total Project Cost: $395,000. To improve the transmission reliability and the production capability of public TV station KOCV, Ch. 36, licensed to Odessa College, Odessa, TX, by purchasing a spare exciter and four 1" video tape machines.

**Utah**

File No. 7283 CRB 6117 Weber State College, 3750 Harrison Blvd., Ogden, UT 84408–1903. Signed By: Mr. Alan Dayley, Director Sponsored Projects. Funds Requested: $31,638. Total Project Cost: $42,185. To extend and improve the signal of student operated public radio station KWCR–FM operating on 88.1 MHz in Ogden, Utah by increasing station power from 100 watts to 3 kw and adding additional production equipment.

**Virginia**

File No. 7050 CTB 6349 Greater Washington Educational Television Assoc., Inc. 3620 South 27th Street, Arlington, VA 22206. Signed By: Mr. Robert Ruggiero, Sr. Vice President, Operations. Funds Requested: $284,112. Total Project Cost: $378,816. To improve public television station WETA, Channel 26, by replacing the on air and production switchers. Station serves the greater Washington, DC area.

File No. 7107 PRB 6178, 5250 Saint Paul's College, 406 Windsor Avenue, Lawrenceville, VA 23868. Signed By: Mr. Marvin Scott, President. Funds Requested: $22,500. Total Project Cost: $25,000. To plan for a noncommercial FM radio station which will serve the black residents of Lawrenceville, Virginia and surrounding Brunswick County.

File No. 7188 CTB 6088 Central Virginia ETV Corp., 23 Sesame Street, P.O. Box 35026, Richmond, VA 23235–0026. Signed By: Mr. Richard Hall, Vice President. Funds Requested: $357,434. Total Project Cost: $476,579. To establish noncommercial TV station operating on channel 41 in Charlottesville, Virginia to provide a local public television signal to the 55,000 residents of Albemarle County.

File No. 7246 CTB 6115, 5192 Central Virginia ETV Corporation, 8101A Lee Highway, Falls Church, VA 22042. Signed By: Mr. Daniel Ward, Corporate Vice President. Funds Requested: $625,075. Total Project Cost: $833,434. To improve the production and transmission capability of public television station WNVC–TV, channel 56, in Fairfax, Virginia by acquiring a satellite based remote truck, production switcher, antenna and backup STL to better serve 2.5 million residents of the greater Washington, DC area.

File No. 7309 CRB 6272 VA Voice for the Print Handicap., 401 Azalea Avenue, Richmond, VA 23227. Signed By: Mr. Stephen Larson, President. Funds Requested: $14,437. Total Project Cost: $19,250. To extend the services of the Virginia Voice for the Print Handicapped in the greater Richmond area by purchasing 275 SCA receivers.

**Vermont**

File No. 7063 CRB 6198 Vermont Public Radio, 107.9 Ethan Allen Avenue, Winooski, VT 05404. Signed By: Mr. Raymond Dilley, Executive Vice President. Funds Requested: $122,252. Total Project Cost: $163,003. To activate an FM transmitter in Rutland which will repeat the signal of WVPR in Windsor and will provide first public radio service to 42,000. Request includes antenna, transmitter, and various test and interconnection equipment.

**Washington**

File No. 7255 CRB 6093,5355 Clover Park School Dist. No. 400, 4500 Steilacoom Blvd., SW., Tacoma, WA 98499–4098. Signed By: Mr. Charles Alexander, Superintendent. Funds Requested: $127,782. Total Project Cost: $170,376. To extend the service of KTVI–FM, operating on 90.9 MHz Tacoma, by establishing a new transmission site and increase power. The project proposes to provide 50,000 persons with first public radio service.

File No. 7310 CRB 6224 Northern Sound Public Radio, 310–119 N. Commercial Street, Bellingham, WA 98225. Signed By: Ms. Gale Thompson, Secretary. Funds Requested: $117,569. Total Project Cost: $156,759. To establish a new radio station operating on 91.7 MHz in Bellingham, WA, to provide the first public radio service to 147,647 people living in the northern Puget Sound area of Washington State. The station would rebroadcast the public radio service of KUOW, Seattle and provide for local origination of programs from Bellingham. The project also includes the construction of translators to extend the station's signal to Anacortes, Bellingham, Mt. Vernon, Sequim, Friday Harbor, Oak Harbor, and Coupeville.

**Scott Mason,**

*Chief, Management Division, Office of Policy Coordination and Management.*

[FR Doc. 87–11951 Filed 5–27–87; 8:45 am]

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Part III

# Department of State

**48 CFR Ch. VI**
**Acquisition Regulations; Proposed Rule**

DEPARTMENT OF STATE

48 CFR Ch. VI

[SD-304]

Acquisition Regulations

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State (the Department or DOS) is publishing the Department of State Acquisition Regulation (DOSAR) as part of the Federal Acquisition Regulations System, which consists of the Federal Acquisition Regulation (FAR) and agency acquisition regulations that implement or supplement the FAR. This action is necessary to provide regulatory guidelines not otherwise found in the FAR for DOS acquisitions. By this action, the Department will (a) obtain public comments as required, and (b) ensure that the DOSAR accurately implements or supplements the FAR.

DATES: Comments must be submitted on or before June 29, 1987.

ADDRESSES: Comments may be mailed to the Office of the Procurement Executive, Room 227, SA–6, U.S. Department of State, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Joseph W. Globe or James Tyckoski, Office of the Procurement Executive (703) 235–2352.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
III. Public Comments

## I. Background

The Federal Acquisition Regulation (FAR) is the Federal Government's uniform regulation for the acquisition of personal property, supplies, and services. The FAR is codified as Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR authorizes Federal agencies to issue regulations that implement or supplement the FAR to satisfy those agencies' specific needs. This proposed rule is the Department's implementation and supplementation of the FAR.

The proposed Department of State Acquisition Regulation (DOSAR) is published for review and comment in accordance with Office of Federal Procurement Policy, Policy Letter 83–2, dated May 25, 1983, which was issued under the authority of sections 6(d)(3) and 14(b) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 405(d)(3), 412(b)).

Reviewers of this proposed rule are reminded that lack of coverage in the DOSAR of a particular part, subpart, or section of the FAR means that the FAR coverage alone governs DOS acquisitions. The Department intends to amend the DOSAR, as circumstances warrant; like this proposed rule, such amendments will be processed in full compliance with the following procedural requirements.

## II. Procedural Requirements

### *A. Review Under Executive Order 12291*

Under Bulletin No. 85–7, the Director, Office of Management and Budget (OMB), extended the general exemption for procurement regulations from the review requirements of Executive Order 12291, titled "Federal Regulation." However, the exemption does not apply to such regulations that implement or supplement the Competition in Contracting Act of 1984, Pub. L. 98–369, or the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. 98–577. Accordingly, the proposed rule, which includes DOSAR coverage for both laws, was submitted to OMB for review in accordance with Executive Order 12291.

The Office of Federal Procurement Policy recommended that several items covered in this proposed rule be considered for inclusion in the FAR, as the coverage may not be unique to the Department of State. This coverage includes:

1. Subsection 604.404–70, prescription for contracts involving classified information, as implemented by clause 652.204–70, Security Requirements, and prescription for security clearances for contractor personnel, as implemented by clause 652.204–71, Security Requirements—Personnel;

2. Paragraph 614.201–70(a), prescription for use of English language solicitations and contracts awarded or performed overseas, as implemented by clause 652.214–70, Language Version; and

3. Paragraph 619.201(d), responsibilities of the Small and Disadvantaged Business Utilization Specialist.

Additionally, the proposed rule includes coverage of items currently under review by the FAR councils; depending on the results of their efforts, the coverage contained in the DOSAR would be amended accordingly. This coverage includes:

1. Subpart 601.71, Ratification of Unauthorized Contractual Commitments; and

2. Paragraph 632.111–70(a), prescription for prompt payment, as implemented by clause 652.232–70, Prompt Payment.

### *B. Review Under the Regulatory Flexibility Act*

Consistent with the provisions of the Regulatory Flexibility Act, Pub. L. 96–354, and as required under 5 U.S.C. 605(b), the undersigned hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities because the rule serves only to implement or supplement the Federal Acquisition Regulation.

### *C. Review Under the Paperwork Reduction Act*

This proposed rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1980, Pub. L. 96–511 (44 U.S.C. 3501 et seq.). The proposed rule does not impose additional recordkeeping or reporting requirements beyond those contained in the FAR, for which OMB control numbers have already been assigned.

## III. Public Comments

The Department invites interested parties to participate in this rulemaking by submitting comments, including data, statements, and questions, with respect to the DOSAR proposed herein. The Department specifically requests other Federal agencies to comment on those items identified in section II.A. above for potential inclusion in the FAR, or for any other coverage contained in this proposed rule that could apply to them.

Comments should be submitted to the address indicated under the "ADDRESS" caption of this preamble. The Department will make all written comments available for public inspection at the Office of the Procurement Executive, Room 227, 1701 North Fort Myer Drive, Arlington, Virginia, between the hours of 8:30 a.m. and 4:45 p.m., Monday through Friday, except Federal holidays. All comments received not later than the date indicated under the "DATES" caption of this preamble will be considered prior to publication of the DOSAR as a final rule.

List of Subjects in 48 CFR Ch. VI

Government procurement.

For the reasons set out in the preamble, Chapter VI of Title 48 of the Code of Federal Regulations is proposed to be established as follows.

Dated: April 23, 1987.

John J. Conway,

*Procurement Executive.*

CHAPTER 6—DEPARTMENT OF STATE

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

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PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

PART 604—ADMINISTRATIVE MATTERS

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PART 625—FOREIGN ACQUISITION

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SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATIONS SYSTEM

Sec.

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601.602 Contracting officers.
601.602–1 Authority.
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601.603 Selection, appointment, and termination of appointment.
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601.7103 Procedure.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3

601.000 Scope of part.

This part describes the Department of State Acquisition Regulation (DOSAR) in terms of establishment, relationship to the Federal Acquisition Regulation (FAR), arrangement, applicability, and deviation procedures. Acquisition procedures are integrated so as to provide a complete, logical and comprehensive publication.

Subpart 601.2—Administration

601.201 Maintenance of the FAR.

601.201–1 The two councils.

The Office of the Procurement Executive represents the Department of State (DOS) on the Civilian Agency Acquisition Council. The Procurement Executive shall appoint said representative for this purpose. The Office of the Procurement Executive is responsible for coordinating with all interested DOS elements proposed FAR revisions and for advocating FAR revisions sought by the Department.

### Subpart 601.3—Agency Acquisition Regulations

**601.301 Policy.**

(a) The Assistant Secretary for Administration is the agency head for the purposes of FAR 1.301. Under Delegation of Authority No. 120–3 (51 FR 16768, May 6, 1986), the Assistant Secretary for Administration redelegated to the Procurement Executive the authority to prescribe, promulgate, and amend DOS acquisition policies, rules, and regulations.

(b) The Department of State Acquisition Regulation (DOSAR) is prescribed under the authority of 22 U.S.C. 2658 and 40 U.S.C. 486(c) (Title II, Chapter 288, section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended).

(c) The DOSAR implements and supplements the FAR. Deviations, as defined in FAR 1.401, are processed in accordance with FAR Subpart 1.4 and Subpart 601.4.

**601.302 Limitations.**

(a) The FAR and the DOSAR apply to all DOS acquisitions of personal property and services, including construction, both within and outside the United States, unless expressly excluded by this subpart, or exempt from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(7)), or undertaken pursuant to Section 206 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4306).

(b) The FAR and the DOSAR do not apply to the acquisition or leasing of real property.

(c) At posts where Joint Administrative Offices have been formed, the FAR and the DOSAR apply to all Agency for International Development (AID) administrative and technical support acquisitions, except in those areas which have been exempted by the cognizant administrative office.

**601.303 Publication and codification.**

(a) The DOSAR is issued as Chapter 6 of Title 48, Code of Federal Regulations. The DOSAR is established as Chapter 6 of the Federal Acquisition Regulations System. The DOSAR is divided into the same parts, subparts, section, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself there will be no corresponding DOSAR coverage. Where the DOSAR implements a specific part, subpart, section, or subsection of the FAR, the DOSAR coverage is numbered and titled to correspond to the appropriate FAR number and title, except that the DOSAR number will include a 6 or 60 such that there will always be three numbers to the left of the decimal. For example, the DOSAR implementation of FAR 14.1 is shown as 614.1 and the DOSAR implementation of FAR 1.301 is shown as 601.301. Materials that supplement the FAR are assigned the numbers 70 and up. For example, DOSAR requires additional definitions than those used in FAR; this supplementary material is provided in 602.101–70.

(b) The DOSAR and its revisions are published in the Federal Register and in the Code of Federal Regulations, both of which may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(c)(1) The DOSAR shall be referenced in the same manner as described at FAR 1.104–2(c). Using the DOSAR coverage at 609.407–3(a) as a typical illustration, reference to the—

(i) Part would be "DOSAR Part 609" outside the DOSAR and "Part 609" within the DOSAR.

(ii) Subpart would be "DOSAR Subpart 609.4" outside the DOSAR and "Subpart 609.4" within the DOSAR."

(iii) Section would be "DOSAR 609.407" outside the DOSAR and "609.407" within the DOSAR.

(iv) Subsection would be "DOSAR 609.407–3" outside the DOSAR and "609.407–3" within the DOSAR.

(v) Paragraph would be "DOSAR 609.407–3(a)" outside the DOSAR and "609.407–3(a)" within the DOSAR.

(2) When any part, subpart, section, subsection, or paragraph of the DOSAR is referenced formally in official documents such as legal briefs, it shall be prefaced by "48 CFR."

### Subpart 601.4—Deviations From the FAR

**601.403 Individual deviations.**

(a) The authority to approve deviations, as defined in FAR 1.401, from the FAR in individual cases is reserved to the Procurement Executive except that, for acquisitions processed under the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 292 et seq.), the Deputy Assistant Secretary for Foreign Building may authorize such individual deviations, provided that officer first consults with the Procurement Executive.

(b) The Office of the Procurement Executive is the DOS central agency control point for individual deviations; that office shall provide to the FAR Secretariat a copy of each approved deviation.

**601.404 Class deviations.**

(a) The authority to approve class deviations from the FAR is reserved to the Procurement Executive. Prior to any such authorization, the Procurement Executive shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless the Procurement Executive determines that, in accordance with FAR 1.404(a)(1), urgency precludes such consultation.

(b) The Office of the Procurement Executive shall provide to the FAR Secretariat a copy of each approved deviation.

**601.405 Deviations pertaining to treaties and executive agreements.**

(a) The Procurement Executive shall determine whether a deviation pertaining to treaties and executive agreements is authorized under FAR 1.405 or that a request for deviation is required under FAR 1.405(e).

(b) The Office of the Procurement Executive is the DOS central agency control point for deviations pertaining to treaties and executive agreements; that office shall provide to the FAR Secretariat a copy of each approved deviation.

**601.470 Deviations from the DOSAR.**

(a) The authority to approve any deviations from the DOSAR is reserved to the Procurement Executive.

(b) The Office of the Procurement Executive is the DOS central agency control point for all DOSAR deviations.

**601.471 Documentation.**

The head of the contracting activity (see 601.603–70) shall submit to the Procurement Executive a written request for each deviation from the FAR or the DOSAR, whether for individual cases, classes of cases, or deviations pertaining to treaties and executive agreements. Each request shall include a statement setting forth the nature of the deviation and the reason(s) for the special action sought. The contracting officer shall include in the contract file a copy of each authorized deviation that pertains to the acquisition.

### Subpart 601.5—Agency and Public Participation

**601.570 Rule making.**

(a) The DOSAR has been promulgated and may be revised, as necessary, in accordance with the rule making procedures of the Administrative Procedure Act (5 U.S.C. 553) and the Office of Federal Procurement Policy (OFPP) Policy Letter 83–2, dated May 25, 1983. These procedures generally require

issuing a notice of proposed rule making inviting public comments, review and analysis of comments received, and publication of a discussion of the public comments received and actions taken as a result of the comments.

(b) The Procurement Executive shall either accomplish or concur in all DOS acquisition rule making.

## Subpart 601.6—Contracting Authority and Responsibilities

### 601.601 General.

The Procurement Executive is the agency head for the purposes of FAR 1.601. The Procurement Executive is the principal officer responsible for DOS acquisitions and, as such, that officer shall provide policy direction and prescribe standards, procedures, and regulations for the award and administration of DOS contracts, both within and outside the United States.

### 601.602 Contracting officers.

#### 601.602-1 Authority.

(a) DOS contracts are made pursuant to the foreign affairs management responsibilities conferred on the Secretary of State (22 U.S.C. 2656), and the various laws, regulations, and Executive Orders relating thereto.

(b) Except as otherwise provided by law, DOS regulations, and this DOSAR, the Procurement Executive has the authority to execute, award, and administer contracts, purchase orders, other contractual arrangements, and other agreements, including interagency agreements, for the expenditure of funds involved in the acquisition of personal property, services, real property, and for the sale of personal and real property. The Procurement Executive may further delegate this authority to those DOS employees appointed or designated to the contracting activities enumerated in 601.603-70.

#### 601.602-2 Responsibilities.

In no event shall the individual appointed and acting as the contracting officer also be responsible for approving any action that, pursuant to the FAR or the DOSAR, must be approved at a level above or by someone other than the contracting officer.

(a) *Contracting activities at overseas posts.* When the contracting officer also occupies the position, whether temporarily or permanently, responsible under the FAR or the DOSAR for approving the contracting officer's action(s), or in the absence of the official so designated to approve the contracting officer's action(s), the Deputy Chief of Mission shall be responsible for approving those actions.

(b) *Domestic contracting activities.* The head of the contracting activity shall identify any conflicts with respect to the policy prescribed in this subsection and submit to the Procurement Executive a written request for resolution of the conflict(s).

### 601.603 Selection, appointment, and termination of appointment.

#### 601.603-3 Appointment.

(a) The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603-3. The contracting officer shall retain the original copy of the Standard Form 1402, Certificate of Appointment, signed by the Procurement Executive.

(b) The Procurement Executive appoints DOS contracting officers for overseas posts by specific positions, not by individual, because Foreign Service personnel assignments are rotational.

#### 601.603-4 Termination.

#### 601.603-4-70 Assignment of contracting officer's responsibility.

Contracting officers appointed pursuant to 601.603-3 who relieve or succeed contracting officers previously assigned to a DOS contracting activity shall assume contracting officer's responsibility for the contracts effected by those contracting officers.

### 601.603-70 Delegations of authority.

(a) *Policy.* Pursuant to 601.602-1(b), the Procurement Executive has delegated procurement authority to the following contracting activities. These authorities may be modified or supplemented by the annual appropriations acts, but otherwise are not redelegable. Where more than one official is listed, the abbreviation "HCA" is used to designate each head of the contracting activity, as defined in FAR 2.101.

(b) *Delegations.*— (1) *Overseas posts.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services and to sell personal property is delegated to the Principal Officer, the Administrative Officer, and the Principal General Services Officer (HCA).

(i) Direct transactions with vendors within the United States shall be $25,000 or less per transaction unless such transaction is under a contract executed by the Department of State, the General Services Administration or other U.S. Government Agency. Such transactions with U.S. vendors shall be in accordance with small purchase procedures described in FAR Part 13 and Part 613.

(ii) No authority is delegated to enter into cost-reimbursement or fixed-price incentive contracts.

(iii) When expressly authorized by a U.S. Government agency which does not have an authorized contracting officer at the post, the officers named above in this subparagraph may enter into contracts for that agency. Use of this authority is subject to the provisions of applicable regulations of that agency, any contracting officer designation issued by that agency, or any applicable interagency agreement(s). Statutory authorities and regulations of that agency apply to contracts entered into pursuant to this authority. The agency's authorization shall cite those statutes and regulations that implement, supplement, or deviate from the FAR, relative to the acquisition so authorized. In view of the contracting officer's responsibility for the legal, technical, and administrative sufficiency of contracts, questions regarding the propriety of contracting actions that the post is requested to take pursuant to this authority may be referred to the Department for resolution with the headquarters of the agency concerned.

(2) *Office of Foreign Buildings.* The authority to enter into and administer contracts pursuant to the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 292 et seq.), including the authority to make all determinations required or permitted by section 11 of said Act but not otherwise restricted therein, is delegated to the Deputy Assistant Secretary for Foreign Buildings and to the Assistant Director for Acquisitions (HCA).

(3) *Office of Supply, Transportation and Procurement.* The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of services and personal property, and for the sale of personal property, is delegated to the Chief of the Procurement Division.

(4) *Office of Language Services.* The authority to enter into and administer contracts for interpreting, translating, conference reporting, and related language support and escort services is delegated to the Director.

(5) *Office of Overseas Schools.* The authority to enter into and administer contracts pursuant to section 29 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2701), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(6) *Library.* The authority to enter into and administer contracts for the direct

purchase of printing, binding, and blank-book work, when authorized by the Public Printer Pursuant to the provisions of the Public Printing and Documents Act of 1968, as amended (44 U.S.C. 504), and for the acquisition of newspapers, books, maps, and periodicals is delegated to the Chief Librarian.

(7) *Office of Communications.* The authority to enter and administer contracts for leasing communications circuits is delegated to the Chief, Networks Staff.

(8) *Foreign Service Institute.* The authority to enter into and administer contracts pursuant to Chapter 7, Title I, of the Foreign Service Act of 1980, as amended (22 U.S.C. 4021 et seq.), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director of the Foreign Service Institute, the Executive Director, and the Supervisory General Services Officer (HCA).

(9) *Office of Foreign Missions.* The authority to enter into and administer contracts pursuant to Title II of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4301 et seq.), including all determinations required or permitted by section 206 of said Act but not otherwise restricted therein, is delegated to the Director, Office of Foreign Missions, and the Administrative Officer (HCA).

(10) *Office of International Conferences.* The authority to enter into and administer contracts pursuant to section 5, Title I, of the Department of State Basic Authorities Act of 1956, as amended (22 U.S.C. 2672), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director.

(11) *Bureau for Refugee Programs.* The authority to enter into and administer contracts pursuant to the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2601 et seq.), and Executive Order 11077, dated January 22, 1963, including all determinations required or permitted but not otherwise restricted therein, is delegated to the Director, Bureau for Refugee Programs, and the Comptroller (HCA).

(12) *U.S. Mission to the United Nations.* The authority to enter into and administer contracts pursuant to the United Nations Participation Act of 1945, as amended (22 U.S.C. 287), including all determinations required or permitted but not otherwise restricted therein, is delegated to the Counselor for Administration.

## Subpart 601.70—Contract Review

### 601.7000 Policy.

The contracting officer shall review each proposed contractual document and its supporting file for completeness and accuracy. Each contract file shall contain all pertinent information applicable to the proposed action, which should be in sufficient detail to permit reconstruction of all significant events by any subsequent reviewer without referral to the individual responsible for the contractual action.

### 601.7002 Procedure.

(a) Prior to issuance of a solicitation or a solicitation amendment, award of a contract, or execution of a contract modification, any of which is estimated to exceed $100,000, the contracting officer shall forward the proposed contractual action to Office of the Procurement Executive for review. For contract modifications, the contracting officer shall submit such actions in accordance with 643.102–70(b).

(b) The Office of the Procurement Executive shall document the scope and extent of the review and shall submit written recommendations to the contracting officer on each proposed contract action reviewed. In the event the contracting officer and the reviewer cannot reach agreement on the recommendation(s), the contracting officer shall document the contract file to show the rationale for not adopting any recommendations, and shall forward the file to the officer one level above the contracting officer for resolution or approval, as appropriate. For purposes of this section, the officer who has resolution/approval authority shall not be the same individual who will sign the contractual document. In instances where the contracting officer is the head of the contracting activity, as identified at 601.603–70(b), that officer shall be the Procurement Executive for domestic acquisitions and the Principal Officer at post for overseas acquisitions.

(c) For postaward reviews, the Office of the Procurement Executive shall document the scope and extent of the review and shall submit the results of its findings to the contracting officer for appropriate action.

(d) The Procurement Executive may delegate or waive the review requirements. In such instances, the Procurement Executive shall provide to each head of the contracting activity, as appropriate, a written delegation or waiver of these requirements.

## Subpart 601.71—Ratification of Unauthorized Contractual Commitments

### 601.7100 Scope of subpart.

This subpart prescribes the policies and procedures for ratifying unauthorized contractual commitments.

### 601.7101 Definitions.

"Ratification" as used in this subsection, means the act of approving an unauthorized contractual commitment.

"Unauthorized contractual commitment" as used in this subsection, means an agreement that is not binding solely because the government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

### 601.7102 Policy.

(a) The Government generally is not bound by agreements or contractual commitments made by persons to whom contracting authority has not been delegated. Such unauthorized acts violate the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DOSAR, and good acquisition practice. Therefore, such unauthorized contractual commitments are serious violations that usually necessitate disciplinary action against the transgressor.

(b) The Procurement Executive may ratify an unauthorized contractual commitment if—

(1) The Government has obtained or will obtain benefit resulting from the unauthorized commitment;

(2) The Procurement Executive could have granted authority to enter into a contractual commitment at the time the unauthorized commitment was made and still has the authority to do so;

(3) The resultant contract would have met all requirements of law if made by an appropriate Contracting Officer;

(4) The contracting officer determines the price is fair and reasonable;

(5) The contracting officer recommends payment; and

(6) Funds are available and were available at the time the unauthorized contractual commitment was made.

(c) Unauthorized contractual commitments that involve claims subject to resolution under the Contracts Dispute Act of 1978 shall be processed in accordance with FAR Subpart 33.2.

### 601.7103 Procedure.

(a) The individual who made the unauthorized contractual commitment shall submit to the Procurement Executive, through the appropriate head

of the contracting activity (see 601.603–70), all records and documents concerning the commitment and a complete written statement of the facts, including but not limited to a statement as to why normal acquisition procedures were not followed, why the contractor was selected, a list of other sources considered, a description of work or products, an estimated or agreed contract price, certified funding citations, and a statement regarding the status of performance. Under exceptional circumstances, such as when the person who made the unauthorized contractual commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Procurement Executive may waive the requirement that the responsible employee initiate and document the request for ratification; provided, the responsible office determines in writing that a commitment was in fact made by an employee, who shall be identified in the determination.

(b) The Procurement Executive, upon receipt and review of the complete file, may ratify the unauthorized contractual commitment if it has been submitted in compliance with this Subpart. Each ratified acquisition shall be forwarded to the head of the contracting activity for issuance of the appropriate contractual document(s). If the request for ratification is not justified, the Procurement Executive shall return the request to the head of the contracting activity with a written explanation for the decision and a recommendation for disposition of the action.

## PART 602—DEFINITIONS OF WORDS AND TERMS

Sec.

Subpart 602.1—Definitions

602.101 Definitions.
602.101–70 DOSAR definitions.

Subpart 602.2—Definitions Clause

602.201 Contract clause.
602.201–70 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 602.1—Definitions

602.101 Definitions.
602.101–70 DOSAR definitions.

For the purposes of the DOSAR, unless otherwise indicated, the following terms have the meanings set forth in this subpart.

"Consoldiated Receiving Point" or "CRP" means the packing firm employed by a Despatch Agency to receive and prepare items for shipment to a post. The CRP acts as agent for the government, and goods that are delivered to the CRP are constructively received by the government. The CRP receives, records, consolidates and packs items for shipment overseas under the direction of the Despatch Agency.

"Department" or "DOS" means the Department of State, including all of its activities wherever located.

"Despatch Agency" means the office responsible for the transportation of goods between the U.S. and posts within its specific geographic area as assigned by the Transportation Division, Office of Supply, Transportation and Procurement. There are four Despatch Agencies, one each in New York City; Baltimore, Maryland; Miami, Florida; and San Francisco, California.

"Government" means the Government of the United States of America unless specifically stated otherwise.

"Local procurement" means acquisition by a post in the country in which the post is located.

"Overseas post" means a "post" located oustide the United States of America.

"Post" means a diplomatic or consular mission of the United States of America, administered or managed by the DOS.

"Third country procurement" means acquisition by a post in a country other than the country in which the post is located and other than the United States.

### Subpart 602.2—Definitions Clause

602.201 Contract clause.

602.201–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.202–70, Definitions, in solicitations and contracts when the acquisition may be made from a source outside the United States or when the work may be performed outside the United States.

## PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

Subpart 603.2—Contractor Gratuities to Government Personnel

603.203 Reporting suspected violations of the Gratuities clause.
603.204 Treatment of violations.

Subpart 603.3—Reports of Suspected Antitrust Violations

603.303 Reporting suspected antitrust violations.

Subpart 603.4—Contingent Fees

603.406 Evaluation of the SF 119.
603.406–1 Responsibilities.

Subpart 603.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

603.602 Exceptions.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 603.2—Contractor Gratuities to Government Personnel

#### 603.203 Reporting suspected violations of the Gratuities clause.

(a) DOS employees are obligated to report immediately and in writing any apparent or suspected violation of the Gratuities clause at FAR 52.203–3 in connection with DOS operations.

(b) The report shall outline the events, acts, or conditions which indicate the apparent violation and shall include all pertinent documents.

(c) The report shall be made to or by the contracting officer, who shall review it for completeness and accuracy and forward it through the head of the contracting activity (see 601.603–70) to the Procurement Executive. If deemed necessary by the Procurement Executive, the report shall be forwarded to the DOS Office of Inspector General, which shall conduct an investigation and, if appropriate, provide to the Procurement Executive a report and recommendation(s).

#### 603.204 Treatment of violations.

(a) The Procurement Executive shall determine, after notice and hearing under DOS procedures, whether a violation of the Gratuities clause occurred.

(b) *Procedures.* Upon receipt of a written report from the contracting officer of an alleged violation of the Gratuities clause, the Procurement Executive may contact the contractor to clarify the facts or to afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront DOS personnel involved. Should the Procurement Executive request an investigation by the Office of the Inspector General, a written notice shall be sent to the contractor, which shall have the above opportunities during that investigation. The Procurement Executive shall make a final determination within 60 days of receipt of the initial report, unless extenuating circumstances require otherwise.

### Subpart 603.3—Reports of Suspected Antitrust Violations

#### 603.303 Reporting suspected antitrust violations.

(a) DOS employees are obligated to report immediately and in writing any

apparent or suspected antitrust violation, as described in FAR 3.303.

(b) The report shall outline the events, acts, or conditions which indicate the apparent violation and shall include all pertinent documents.

(c) The report shall be made to or by the contracting officer, who shall review it for completeness and accuracy and forward it through the head of the contracting activity (see 601.603–70), to the Office of the Legal Adviser, with a copy to the Procurement Executive. The Office of the Legal Adviser shall provide to the U.S. Attorney General a report on each suspected violation, with single copies to the head of the contracting activity and the Procurement Executive (see Subpart 609.4 for DOS debarment and suspension procedures).

### Subpart 603.4—Contingent Fees

#### 603.406 Evaluation of the SF 119.

#### 603.406–1 Responsibilities.

In carrying out responsibilities under FAR 3.406–1, the contracting officer shall obtain advice from the Procurement Executive and the Office of the Legal Adviser as to the legality and general propriety of the relationship disclosed thereon. Also, the contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient for a proper decision. After reviewing and evaluating all the information obtained, the contracting officer shall render a written decision that shall be included in the contract file, and shall provide a copy of the decision to the Procurement Executive.

### Subpart 603.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

#### 603.602 Exceptions.

The authority to approve all exceptions under FAR 3.602 is reserved to the Procurement Executive.

## PART 604—ADMINISTRATIVE MATTERS

Sec.

Subpart 604.2—Contract Distribution
604.201 Procedures.
604.202 Agency distribution requirements.
Subpart 604.4—Safeguarding Classified Information Within Industry
604.404 Contract clause.
604.404–70 DOSAR contract clauses.
Subpart 604.6—Contract Reporting
604.602 Federal Procurement Data System.
604.602–70 DOS procedures.
Subpart 604.8—Contract Files
604.870 Numbering contract documents.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 604.2—Contract Distribution

#### 604.201 Procedures.

(a) The contracting officer shall retain a signed, unstamped original copy of the contract or modification. All other signed or reproduced copies shall be stamped "Duplicate Original" in accordance with FAR 4.101(b).

(b) The contracting officer shall record in the contract file distribution of the contract or contract modification. In addition to the distribution requirements provided in FAR 4.201, the contracting officer also shall distribute copies of the contract or contract modification as provided below.

(1) For Office of Foreign Buildings contracts let overseas, distribute one signed copy, stamped "Duplicate Original," to the Assistant Director for Acquisitions, Office of Foreign Buildings.

(2) For DOS contracts let in Washington, provide one unsigned copy of the contract, stamped "Duplicate," to Domestic Accounting, Office of Financial Operations.

#### 604.202 Agency distribution requirements.

As necessary, the contracting officer shall distribute reproduced copies of the signed contract or modification to those officers/offices involved in contract administrative support functions, e.g., the Contracting Officer's Representative; the requirements office; the Despatch Office or other receiving activity, particularly if it is the initial point of contact for receipt of goods or services; and each post or office where the contract will be performed. Where required by the laws of a foreign country, the original copy of the contract or modification shall be retained at overseas post.

### Subpart 604.4—Safeguarding Classified Information Within Industry

#### 604.404 Contract clause.

#### 604.404–70 DOSAR contract clauses.

(a) The contracting officer shall insert the clause at 652.204–70, Security Requirements, in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The contracting officer shall insert the clause at 652.204–71, Security Requirements—Personnel, in solicitations and contracts performed outside the United States.

### Subpart 604.6—Contract Reporting

#### 604.602 Federal Procurement Data System.

#### 604.602–70 DOS procedures.

(a) Contracting activities that are integrated into the Department's Enhanced Automated Procurement Control System (EAPCS) or Acquisition Management System (AMS) shall enter into the EAPCS or AMS, as appropriate, each contract award over $25,000 for reporting to GSA through the Federal Procurement Data System.

(b) Contracting activities that are not integrated into the EAPCS or AMS shall report on Standard Form 279, Individual Contract Action Report, the information required for each contract action over $25,000.

(c) Each contracting activity shall prepare a cumulative quarterly report for all actions of $25,000 or less which are not otherwise reported on Standard Form 281, Summary of Procurement Actions of $10,000 or Less.

(d) Contracting activities required to report contract data pursuant to the Trade Agreements Act of 1979, Pub. L. 96–39, shall report such action along with the other data reports.

(e) The head of the contracting activity shall submit these reports to the Office of the Procurement Executive within 20 calendar days following the end of each fiscal quarter. The HCA shall ensure that data required, including that relating to consultant type awards, is accurate and complete.

(d) These procedures do not apply to consulting services obtained through appointment procedures, which are reported by the Office of Management, Bureau of Personnel (PER/MGT) to the Central Personnel Data File operated by the Office of Personnel Management.

### Subpart 604.8—Contract Files

#### 604.870 Numbering contract documents.

All contract documents, including small purchases and other simplified purchase documents, shall be numbered in accordance with the DOS worldwide standardized numbering system. This system consists of a set of four digits, which identifies the specific allotment/operating allowance to be charged, followed by a hyphen and a second set of six digits, which identifies the

obligation number of the transaction, the first digit (left side) of which indicates the fiscal year of the obligation. Contracting documents prepared for other Federal agencies may be numbered in accordance with their requests.

## SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

## PART 605—PUBLICIZING CONTRACT ACTIONS

Sec.

Subpart 605.2—Synopsis of Proposed Contract Actions

605.202 Exceptions.
605.202–70 Foreign acquisitions.
605.207 Preparation and transmittal of synopsis.
605.207–70 Acquisitions available from only one responsible source.

Subpart 605.5—Paid Advertisements

605.502 Authority.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3

### Subpart 605.2—Synopsis of Proposed Contract Actions

#### 605.202 Exceptions.

#### 605.202–70 Foreign acquisitions.

(a) *Policy.* Under certain conditions, waiver of the requirement to synopsize in the *Commerce Business Daily* (CBD), as provided in FAR Subpart 5.1, is necessary for acquisitions by overseas posts when these acquisitions are made from sources outside the United States, its possessions, and Puerto Rico. This general waiver policy was processed in compliance with and as authorized by section 18(c)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) and section 8(g)(3) of the Small Business Act (15 U.S.C. 637 et seq.). This policy applies only to acquisitions funded under DOS appropriations.

(b) *Purpose.* This section sets forth the procedures necessary to determine whether to apply the waiver policy. The policy and procedures apply only to acquisitions by overseas posts when the acquisitions are made from sources outside the United States, its possessions, and Puerto Rico.

(c) *Procedures.* (1) When a DOS contracting activity at post receives a request for supplies or services from a requirements office, the request must include a memorandum identifying all established sources of supply known to the requirements office, critical dates for delivery, installation and operational dates, an estimate of the total time lapse between the date of order and final contractor performance, the urgency of the requirement, and any other factors that may be unique or mandatory to the acquisition.

(2) The contracting activity shall review the information provided by the requirements office to determine whether publication of a CBD notice is required.

(i) If the head of the contracting activity determines that publication of a CBD notice will not delay or otherwise adversely impact the post's ability to satisfy the identified acquisition, the notice shall be published in accordance with FAR Subpart 5.2.

(ii) If the head of the contracting activity determines that publication of a CBD notice will delay or otherwise adversely impact the post's ability to satisfy the identified acquisition, the head of the contracting activity may waive the CBD notice requirements of FAR Subpart 5.1. This determination must be in writing and made in consideration of such factors as overseas delivery, installation, maintenance or replacement requirements, special product or performance specifications, and security clearance requirements for suppliers. The contracting activity shall conduct a negotiated acquisition with qualified local sources. If there are known U.S. firms or firms with U.S. affiliations in local residence capable of supplying the required supplies or services, the contracting activity shall ensure that these firms are included in the source list for the acquisition. Competition in such acquisitions, including the use of formal solicitations, shall be obtained in all cases to the extent feasible and consistent with FAR Part 6 and Part 606.

(iii) The authority to make the determinations under this paragraph is not redelegable.

(d) *Documentation.* (1) Whenever the head of the contracting activity at post determines that use of this waiver authority is required, the following documentation shall be prepared and placed in the contract file:

(i) A Determination and Findings (see FAR Subpart 1.7) as to the existence of an overseas acquisition where it is unreasonable or inappropriate to publish a notice in Commerce Business Daily.

(ii) A memorandum stating what efforts have been made to identify known and qualified sources and to obtain competition, detailing what negotiation procedures were followed, and justifying the selection and award.

(2) The head of the contracting activity shall sign all documents required under this section. This official's signature shall constitute approval of the determination to apply the waiver policy and certification of the completeness and accuracy of the information upon which the waiver is based.

#### 605.207 Preparation and transmittal of synopsis.

#### 605.207–70 Acquisitions available from only one responsible source.

In addition to the information required at FAR 5.207, each synopsis of a proposed acquisitions from only one responsible source (41 U.S.C. 253(c)(1)) shall include a description of specific contractor qualifications or capabilities required to perform the work and a description of the information a potential source must submit.

### Subpart 605.5—Paid Advertisements

#### 605.502 Authority.

The Procurement Executive is the agency head for the purposes of FAR 5.502. The authority to approve the publication of paid advertisements, notices, and proposals in both newspapers and other media within the United States is reserved to the Procurement Executive. For acquisitions by overseas posts, the authority to approve the publication of paid advertisements, notices, and proposals in both newspapers and other media outside the United States is delegated the Principal General Services Officer, except that, when that officer is the contracting officer for the acquisition, the approving officer shall be either the Administrative Officer or the Principal Officer, as appropriate.

## PART 606—COMPETITION REQUIREMENTS

Sec.

Subpart 606.1—Full and Open Competition

606.101 Policy.
606.101–70 Foreign acquisitions not synopsized.

Subpart 606.3—Other Than Full and Open Competition

606.303–1 Requirements.
606.304 Approval of the justification.
606.304–70 Acquisitions by overseas posts.

Subpart 606.5—Competition Advocates

606.501 Requirement.
606.501–70 Overseas posts.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

Subpart 606.1—Full and Open Competition

606.101 Policy.

606.101-70 Foreign acquisitions not synopsized.

As provided in 605.202-70, overseas posts may exempt certain acquisitions from the requirement to synopsize in the *Commerce Business Daily*. Full and open competition for such acquisitions is met when the competitive procedures prescribed in FAR 6.102 are used. Also, when the contracting officer follows the optional publicizing methods authorized by FAR 5.101(a)(2) and/or FAR 5.101(b), as appropriate, no other justifications or approvals are required for such acquisitions.

Subpart 606.3—Other Than Full and Open Competition

606.303-1 Requirements.

Justifications for contract actions under FAR 6.303-1(d) shall be forwarded by the contracting officer to the Office of the Procurement Executive for transmittal to the Office of the United States Trade Representative.

606.304 Approval of the justification.

606.304-70 Acquisitions by overseas posts.

For acquisitions under FAR 6.304(a)(3), the justification shall be approved in writing by the Principal Officer.

Subpart 606.5—Competition Advocates

606.501 Requirement.

606.501-70 Overseas posts.

The Competition Advocate for each overseas post is the Administrative Officer at post.

## PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.
608.000 Scope of part.

Subpart 608.4—Ordering From Federal Supply Schedules

608.402 Applicability.

Subpart 608.70—Acquisition or Leasing of Official Vehicles

608.7001 Definition.
608.7002 Policy.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.1.

608.000 Scope of part.

This subpart prescribes certain mandatory and optional sources of supply for overseas posts.

Subpart 608.4—Ordering From Federal Supply Schedules

608.402 Applicability.

Use of the Federal Supply Schedules is not mandatory for overseas posts nor is it required for any acquisitions inside the United States for use outside the United States.

Subpart 608.70—Acquisition or Leasing of Official Vehicles

608.7001 Definition.

"Official vehicle" means a U.S. Government-owned or leased motor vehicle that is fueled by petroleum, has a minimum of four wheels, and is designed primarily for use on highways. Examples are passenger vehicles, such as sedans and station wagons, buses, and trucks, such as carryalls and light-, medium-, and heavy-duty maintenance-type vehicles (cargo haulers).

608.7002 Policy.

(a) Overseas posts may not acquire official vehicles without the prior approval of the Motor Vehicle branch of the Supply Division, Office of Supply, Transportation and Procurement.

(b) Overseas posts may not lease official vehicles for more than sixty consecutive days without the prior approval of the Motor Vehicle branch of the Supply Division, Office of Supply, Transportation and Procurement.

(c) This policy does not apply to acquisitions (including leases) by overseas posts for other agencies. Such acquisitions are governed by the policies and regulations of the requesting agency (see Subpart 617.72).

## PART 609—CONTRACTOR QUALIFICATIONS

Subpart 609.2—Qualifications Requirements

Sec.
609.202 Policy.

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.
609.403-70 DOSAR definitions.
609.404 Consolidated List of Debarred, Suspended, and Ineligible Contractors.
609.405 Effect of listing.
609.405-1 Continuation of current contracts.
609.405-2 Restrictions on subcontracting.
609.405-70 Termination action decision.
609.405-71 Treatment to be accorded listed contractors.
609.406 Debarment.
609.406-1 General.
609.406-3 Procedures.
609.407 Suspension.
609.407-1 General.
609.407-3 Procedures.

Subpart 609.5—Organizational Conflicts of Interest

609.503 Waiver.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

Subpart 609.2—Qualifications Requirements

609.202 Policy.

The Procurement Executive is the agency head for the purposes of FAR 9.202. The authority to prepare justifications required under FAR 9.202(a)(1) is delegated to the head of the contracting activity (see 601.603-70).

Subpart 609.4—Debarment, Suspension, and Ineligibility

609.403 Definitions.

The Procurement Executive is the agency head for the purposes of FAR 9.403.

"Debarring official" means the head of the contracting activity (see 601.603-70).

"Suspending official" means the head of the contracting activity (see 601.603-70).

609.403-70 DOSAR definitions.

"Fact-finding official" means the chairperson of a three member fact-finding panel. The panel comprises one representative each from the Office of the Legal Adviser, the contracting activity, and the requirements office. The representative from the Office of the Legal Adviser is the panel chairperson.

"Notice" means a written communication sent by certified mail (return receipt requested) to the last known address of the party, its identified counsel, or its agent. In the case of a business, such notice may be sent to any partner, principal officer, director, owner or co-owner, or joint venturer. If no return receipt is received within 10 calendar days of mailing, receipt shall then be presumed. This definition applies to the notice requirements in FAR 9.406-3 and FAR 9.407-3.

609.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The Procurement Executive shall maintain records containing the information required in FAR 9.404.

(b) Within 5 working days after a debarment or suspension action becomes effective or after such an action has been modified or rescinded, the Procurement Executive shall notify GSA of the action and provide the information required in FAR 9.404(b) and FAR 9.404(c)(3).

(c) The head of the contracting activity (see 601.603–70) shall establish procedures to ensure that the Consolidated List of Debarred, Suspended, and Ineligible Contractors is used effectively by that activity's personnel.

(d) The head of the contracting activity shall ensure that contractors who have been debarred, suspended, or declared ineligible are removed from the contracting activity's solicitation mailing lists for the period of the exclusion.

(e) Prior to initiating a pre-award survey or any of the contracting actions set forth in FAR 9.404(c)(5) with respect to a particular bidder, offeror, or proposed subcontractor, the contracting officer shall review the current copy of the Consolidated List.

**609.405 Effect of listing.**

The Procurement Executive is the agency head for the purposes of FAR 9.405.

**609.405–1 Continuation of current contracts.**

The Procurement Executive is the agency head for the purposes of FAR 9.405–1. The decision whether to terminate a current contract shall be made in consideration of the circumstances listed in 609.405–70.

**609.405–2 Restrictions on subcontracting.**

The Procurement Executive is the agency head for the purposes of FAR 9.405–2.

**609.405–70 Termination action decision.**

Prior to making a decision to terminate, based on the considerations listed below, the contracting officer shall have the proposed action reviewed by agency contracting and technical personnel and by the Office of the Legal Adviser.

(a) *Termination for default.* Termination for default under a contract's default clause is appropriate when the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of that contract. Debarment or suspension of the contractor for reasons unrelated to the performance of that contract may not support a termination for default.

(b) *Termination for convenience or cancellation.*

Termination for convenience or cancellation under appropriate contract clauses should be considered when the contractor presents a significant risk to the Government in completing a current contract and when such termination for convenience or cancellation is determined to be in the Government's best interests. In making this determination, the contracting officer should consider such factors as the—

(1) Seriousness of the cause for debarment or suspension;

(2) Extent of contract performance;

(3) Potential costs to the Government;

(4) Urgency of the requirement and the impact of the delay; and/or

(5) Availability of other safeguards to protect the Government's interests.

(c) *Concurrence and approval.* The contracting officer's decision to terminate an existing contract with a debarred or suspended contractor must have—

(1) Written concurrence from the Office of the Legal Advisor, and

(2) Approval one level above the contracting officer.

**609.405–71 Treatment to be accorded listed contractors.**

The Procurement Executive may determine in writing that there is a compelling reason to accord debarred or suspended contractors treatment other than permitted by FAR 9.405–1(b), FAR 9.405–2, or FAR 9.406–1(c).

**609.406 Debarment.**

**609.406–1 General.**

The Procurement Executive is the agency head for the purposes of FAR 9.406–1(c).

**609.406–3 Procedures.**

(a) *Investigation and referral.* (1) DOS employees aware of any cause that may serve as the basis for debarment shall immediately refer those cases through the contracting officer to the debarring official. The debarring official shall immediately refer to the Office of the Inspector General all reported cases that involve possible criminal or fraudulent activities for investigation by that office.

(2) Referrals for consideration of debarment shall include—

(i) The cause for debarment (see FAR 9.406–2);

(ii) A statement of facts;

(iii) Copies of supporting documentary evidence and a list if all necessary or probable witnesses, including addresses and telephone numbers, together with a statement concerning their availability to appear at a fact-finding proceeding and the subject matter of their testimony;

(iv) A list of all contractors involved, either as principals or as affiliates, including current or last known home and business addresses and ZIP codes;

(v) A statement of the acquisition history with such contractors;

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceedings, or administrative claim before Boards of Contract Appeals; and

(vii) A statement from each DOS organizational element affected by the debarment action as to the impact of a debarment on DOS programs.

(b) *Decisionmaking process.* (1) If the contractor does not respond to a debarment notice within 30 calendar days after receipt of the notice, the debarring official may put the debarment into effect.

(2) In response to the debarment notice, if the contractor or its representative notifies the debarring official within 30 days after receipt of the notice that it wants to present information and arguments in person to the debarring official, that official shall chair such a meeting within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time. The oral presentation shall be conducted informally and a transcript need not be made. However, the contractor may supplement its oral presentation with written information and arguments for inclusion in the administrative record.

(3) Pursuant to FAR 9.406–3(b)(2), the contractor may request and shall be entitled to a hearing before the fact-finding panel. The fact-finding panel shall conduct the hearing within 20 calendar days of receipt of the request, unless the contractor requests a longer period of time.

(4) The debarring official shall convene the fact-finding panel for this purpose and shall provide the panel with a copy of all documentary evidence on the matter. Upon receipt of such material, the fact-finding official shall notify the contractor and schedule a hearing date.

(5) In addition to the purposes provided in FAR 9.406–3(b)(2), the hearing is intended to provide the debarring official with findings of fact based on a preponderance of evidence submitted to the fact-finding panel and to provide the debarring official with a determination as to whether a cause for debarment exists, based on the facts as found.

(6) The fact-finding panel shall conduct its hearing in accordance with rules promulgated by the fact-finding official. The rules shall be as informal as is practicable, consistent with FAR 9.406–3(b). The fact-finding official is responsible for making the transcribed record of the hearing, unless the contractor and the fact-finding panel agree to waive the requirement for a transcript.

(7) The fact-finding official shall deliver written findings and the

transcribed record, if made, to the debarring official within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based on a preponderance of the evidence presented and recommend whether a cause for debarment exists.

(c) *Notice of proposal to debar.* (1) Upon receipt of a complete referral and after consulting with the Office of the Legal Adviser, the debarring official shall decide whether to initiate debarment action.

(2) When a determination is made to initiate action, the debarring official shall provide to the contractor and any specifically named affiliates written notice in accordance with FAR 9.406–3(c). A copy of the notice shall be provided to the DOS officer who made the referral and to each DOS organizational elements affected by the determination.

(3) When a determination is made not to initiate action, the debarring official shall so advise the DOS officer who made the referral.

(d) *Debarring official's decision.* In addition to complying with FAR 9.406–3(d) and FAR 9.406–3(e), the debarring official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the Office of the Procurement Executive for subsequent submission to the General Services Administration in accordance with 609.404.

**609.407 Suspension.**

**609.407–1 General.**

The Procurement Executive is the agency head for the purposes of FAR 9.407–1(c).

**609.407–3 Procedures.**

(a) *Investigation and referral.* Investigation and referral shall be accomplished as provided in 609.406–3(a), except that referrals made to the suspending official shall cite causes pertinent to a suspension action (see FAR 9.407–2).

(b) *Decisionmaking process.* (1) If the contractor does not respond to a notice of suspension within 30 calendar days after receipt of the notice, the suspending official may proceed with completion of investigation.

(2) The DOS decisionmaking process for a suspension action pursuant to FAR 9.407–3(b) follow those established for a debarment act (see 609.406(b)), except that the contractor may request and shall be entitled to a hearing before the fact-finding panel only if permitted under FAR 9.407–3(b)(2).

(c) *Notice of suspension.* Notice of suspension shall be accomplished as provided in 609.406–3(a), except that the suspending official shall process the notice in accordance with FAR 9.407–3(c).

(d) *Suspending official's decision.* In addition to complying with FAR 9.407–3(d), the suspending official shall provide single copies of the decision to each DOS organizational element affected by the decision and to the Office of the Procurement Executive for subsequent submission to the General Services Administration in accordance with 609.404.

## Subpart 609.5—Organizational Conflicts of Interest

**609.503 Waiver.**

The Procurement Executive is the agency head for the purposes of FAR 9.503.

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

## PART 613—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sec.

Subpart 613.1—General

613.103 Policy.
613.103–70 Acquisition by overseas posts.
613.104 Procedures.
613.104–70 Delivery.
613.104–71 Numbering small purchase documents.

Subpart 613.5—Purchase Orders

613.501 General.
613.505 Purchase order and related forms.
613.505–2 Agency order forms in lieu of Optional Forms 347 and 348.
613.507 Clauses.
613.507–70 DOSAR clauses.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 613.1—General

**613.103 Policy.**

**613.103–70 Acquisition by overseas posts.**

(a) Overseas posts are authorized to make small purchases directly from sources within or outside the United States, in accordance with FAR Part 13, this Part 613, and 601.603–70(b)(1). Overseas posts are authorized to purchase from both Government contract sources, such as Federal Supply Schedules, DOS supply schedules, and noncontract sources within the United States.

(b) The dollar limitation on purchases from U.S. vendors prescribed in 601.603–70(b)(1)(i) applies to the total cost of the order, including all estimated handling and freight charges, to be paid to the vendor. However, the dollar limitation does not apply to purchases under Government contracts existing at the time of purchase.

(c) Overseas posts shall ensure that the terms and conditions required by FAR Part 13 are added or incorporated by reference on the documents used for small purchases from U.S. vendors.

**613.104 Procedures.**

**613.104–70 Delivery.**

FAR Subpart 8.4 prescribes procedures for delivery of purchases from Federal Supply Schedule contractors. These procedures should be followed, as applicable, in purchasing from other government contractors.

**613.104–71 Numbering small purchase documents.**

All small purchase documents shall be numbered as prescribed in 614.201–71.

### Subpart 613.5—Purchase Orders

**613.501 General.**

The contracting officer shall distribute copies of each purchase order in conformance with Subpart 604.2.

**613.505 Purchase order and related forms.**

**613.505–2 Agency order forms in lieu of Optional Forms 347 and 348.**

(a) In lieu of Optional Forms 347 and 348, DOS contracting activities may use either—

(1) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (illustrated at 653.302–206 and 653.302–206A, respectively); or

(2) Department of State Form (DST) 1069, Order—Supplies or Services (illustrated in 653.303–DST–1069).

(b) Both OF 206 and form DST 1069 provide the requisite space for purchase data and budgetary, accounting and voucher payment data. Either form may be used as—

(1) A purchase order for small purchases;

(2) A delivery order under an established contract;

(3) Documentation in connection with a blanket purchase agreement; and/or

(4) A voucher.

(c)(1) When using OF 206, contracting activities may use Optional Form (OF) 127, Receiving and Inspection Report (illustrated in 653.302–127), for that purpose.

(2) When using form DST 1069 as a purchase order and until such time as the form is revised, contracting activities shall replace the "Terms and Conditions Applicable to Purchase Orders" (located on the reverse of the original copy) with

the appropriate FAR and DOSAR clauses, in accordance with 613.507–70.

**613.507 Clauses.**

**613.507–70 DOSAR Clauses.**

In addition to the clauses prescribed in FAR 13.507, each DOS purchase order shall incorporate all DOSAR clauses required for or applicable to the acquisition. All such clauses may be listed on a separate document and attached to each copy of the purchase order, in which case the document shall be identified by the purchase order number and the name and address of the contracting activity.

## PART 614—SEALED BIDDING

Sec.

**Subpart 614.2—Solicitation of Bids**

614.201 Preparation of Invitation For Bids (IFB).
614.201–7 Contract clauses.
614.201–70 DOSAR contract clauses.

**Subpart 614.4—Opening of Bids and Award of Contract**

614.402 Opening of bids.
614.402–1 Unclassified bids.
614.402–70 Waiver of public opening of bids.
614.404 Rejection of bids.
614.404–1 Cancellation of invitations after opening.
614.406 Mistakes in bids.
614.406–3 Other mistakes disclosed before award.
614.406–4 Mistakes after award.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 614.2—Solicitation of Bids

**614.201 Preparation of Invitation for Bids (IFB).**

**614.201–7 Contract clauses.**

**614.201–70 DOSAR contract clauses.**

(a)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214–70, Language Version, in all solicitations and contracts awarded or performed overseas.

(2) Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

(b) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214–71, Notices, in all solicitations and contracts awarded or performed overseas.

(c) When contracting by sealed bidding, the contracting officer shall insert the clause at 652.214–72, Authorization to Perform, in all solicitations and contracts awarded or performed overseas.

(d) See 615.106–70 regarding use of the clauses prescribed in this subsection when contracting by negotiation.

### Subpart 614.4—Opening of Bids and Award of Contract

**614.402 Opening of bids.**

**614.402–1 Unclassified bids.**

After the unclassified bids have been opened pursuant to FAR 14.402–1, the bid opening officer shall announce that the opening of bids has been completed and that all bidders will be notified as soon as possible regarding the award.

**614.402–70 Waiver of public opening of bids.**

Overseas posts may request waiver of the public opening of bids if that activity is inconsistent with local law or legal practice, or with post security. For such purposes, the Procurement Executive must approve a deviation in accordance with 601.470.

**614.404 Rejection of bids.**

**614.404–1 Cancellation of invitations after opening.**

The Procurement Executive is the agency head for the purposes of FAR 14.404–1. For overseas acquisitions, the Principal Officer at the overseas post is the Procurement Executive's designee for the purposes of FAR 14.404–1.

**614.406 Mistakes in bids.**

**614.406–3 Other mistakes disclosed before award.**

The Procurement Executive is the agency head for the purposes of FAR 14.406–3. For overseas acquisitions, the Principal Officer at the overseas post is the Procurement Executive's designee, without power of redelegation, for the purposes of FAR 14.406–3.

**614.406–4 Mistakes after award.**

The determinations required under FAR 14.406–4 shall be made by the head of the contracting activity (see 601.603–70). In conformance with FAR 14.406–4(d), the head of the contracting activity shall consult with the Office of the Legal Adviser prior to making any determinations pursuant to this subsection.

## PART 615—CONTRACTING BY NEGOTIATION

Sec.

**Subpart 615.1—General Requirements for Negotiation**

615.106 Contract clauses.
615.106–1 Examination of Records clause.
615.106–70 DOSAR contract clauses.

**Subpart 615.6—Source Selection**

615.607 Disclosure of mistakes before award.
615.608 Proposal evaluation.
615.612 Formal source selection.

**Subpart 615.8—Price Negotiation**

615.804 Cost or pricing data.
615.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 615.1—General Requirements for Negotiation

**615.106 Contract clauses.**

**615.106–1 Examination of Records clause.**

See Subpart 625.9 for conditions for omission of the Examination of Records clause.

**615.106–70 DOSAR contract clauses.**

When contracting by negotiation, the contracting officer shall insert the clauses at 652.214–70, Language Version, 652.214–71, Notices, and 652.214–72, Authorization to Perform, in all solicitations and contracts, under the same conditions prescribed in 614.201–70.

### Subpart 615.6—Source Selection

**615.607 Disclosure of mistakes before award.**

The Procurement Executive is the agency head for the purposes of FAR 15.607(c)(3). The determinations required under FAR 15.607(c)(3) shall be made by the head of the contracting activity (see 601.603–70).

**615.608 Proposal evaluation.**

The Procurement Executive is the agency head for the purposes of FAR 15.608(b).

**615.612 Formal source selection.**

The Procurement Executive is the agency head for the purposes of FAR 15.612(b). When using formal source selection, the head of the contracting activity shall be the source selection authority. If that official is the contracting officer for the acquisition, then the Procurement Executive shall designate a different official as the source selection authority.

Subpart 615.8—Price Negotiation

615.804 Cost or pricing data.

615.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

The Procurement Executive is the agency head for the purposes of FAR 15.804–3(i). The waiver authority of FAR 15.804–3(i) is delegated, without power of redelegation, to the head of the contracting activity.

## PART 616—TYPES OF CONTRACTS

Sec.

Subpart 616.1—Selecting Contract Types

616.102 Policies.
616.102–70 Overseas posts.

Subpart 616.2—Fixed-Price Contracts

616.203 Fixed-price contracts with economic price adjustment.
616.203–4 Contract clauses.
616.207 Firm-fixed-price, level-of-effort term contracts.
616.207–3 Limitations.

Subpart 616.3—Cost-Reimbursement Contracts

616.301–3 Limitations.
616.306 Cost-plus-fixed-fee contracts.

Subpart 616.5—Indefinite-Delivery Contracts

616.505 Contract clauses.
616.505–70 DOSAR contract clause.

Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

616.603 Letter contracts.
616.603–2 Application.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 616.1—Selecting Contract Types

#### 616.102 Policies.

#### 616.102–70 Overseas posts.

Pursuant to 601.603–70(b)(1)(ii), no authority is delegated to overseas posts to enter into cost-reimbursement or fixed-price incentive contracts. When the head of the contracting activity (see 601.603–70) at post determines that no other type contract will suffice to obtain needed supplies or services, that officer shall request the Procurement Executive to delegate authority to enter into a cost-reimbursement or fixed-price incentive contract, as appropriate. Such requests shall be submitted on a case-by-case basis.

### Subpart 616.2—Fixed-Price Contracts

#### 616.203 Fixed-price contracts with economic price adjustment.

#### 616.203–4 Contract clauses.

The contracting officer may use an economic price adjustment clause based on cost indexes of labor or material in accordance with the circumstances listed in FAR 16.203–4(d) and after obtaining the approval of the head of the contracting activity.

#### 616.207 Firm-fixed-price, level-of-effort term contracts.

#### 616.207–3 Limitations.

The head of the contracting activity is the chief of the contracting office for the purposes of FAR 16.207–3.

### Subpart 616.3—Cost-Reimbursement Contracts.

#### 616.301–3 Limitations.

The determination and findings required in FAR 16.301–3(c) shall be executed by the contracting officer and approved at a level above the contracting officer.

#### 616.306 Cost-plus-fixed-fee contracts.

The Procurement Executive is the agency head for the purposes of FAR 16.306(c)(2).

### Subpart 616.5—Indefinite-Delivery Contracts

#### 616.505 Contract clauses.

#### 616.505–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.216–70, Ordering—Requirements or Indefinite Quantity Contract, whenever the clause at FAR 52.216–21, Requirements, or the clause at FAR 52.216–22, Indefinite Quantity, is used.

### Subpart 616.6—Time-and-Materials, Labor-Hour, and Letter Contracts

#### 616.603 Letter contracts.

#### 616.603–2 Application.

The contracting officer, after obtaining approval of the head of the contracting activity, is authorized to extend the period for definitization of a letter contract in accordance with FAR 16.603–2(c) and when such action is in the best interest of the Government. For this purpose, the contracting officer shall execute a written determination and findings, and submit it to the head of the contracting activity for approval.

## PART 617—SPECIAL CONTRACTING METHODS

Sec.

Subpart 617.1—Multiyear Contracting

617.102 Policy.
617.102–2 General.

Subpart 617.2—Options

617.201 definitions.
617.201–70 DOSAR Definitions.
617.207 Exercise of options.
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Subpart 617.5—Interagency Acquisitions Under the Economy Act

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617.7000 Scope of subpart.
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617.7101 Policy.
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Subpart 617.72—Acquisitions for Other Posts or Other Agencies

617.7201 Policy.
617.7202 Procedures.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 617.1—Multiyear Contracting

#### 617.102 Policy.

#### 617.102–2 General.

(a) Pursuant to section 14 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2679a), any DOS acquisition for property or services, or both, by any contract funded on an annual basis may nevertheless be made for periods not in excess of 5 years when—

(1) Appropriations are available and adequate for payment for the first fiscal year and all potential cancellation costs; and

(2) The Procurement Executive determines that—

(i) The need of the Government for the property or services being acquired over the period of the contract is reasonably firm and continuing;

(ii) Such a contract will serve the best interests of the Government by encouraging effective competition or promoting economies in performance and operation; and

(iii) Such a method of contracting will not inhibit small business participation.

(b) For overseas posts, the Procurement Executive may delegate to the Principal Officer, on an individual contract or class of contracts basis, the authority to make the determination required by 617.103–1(a)(2). The Principal Officer may not redelegate this authority.

(c) In the event that funds for the continuation of such a contract are not made available into a subsequent fiscal year, the contract shall be canceled. Any cancellation costs incurred shall be

paid from appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation purposes.

## Subpart 617.2—Options

### 617.201 Definitions.

### 617.201-70 DOSAR definitions.

"Evaluated option" means an option that is evaluated for award purposes by adding the total price for the option(s) to the total price for the basic requirement.

"Priced option" means an option where the prices for the option quantities or performance periods are specified in the contract at the time of award and the option prices are not subject to renegotiation or adjustment at the time the option is exercised unless an economic price adjustment clause is included in the contract.

"Unpriced option" means an option where the prices for the option quantities or performance periods are not specified in the contract at the time of award and the option prices are negotiated at the time the option is exercised.

"Unevaluated option" means an option that is not included in the evaluation for award purposes.

### 617.207 Exercise of options.

### 617.207-70 Synopsis and competition requirements.

(a) If the synopsis for the original contract action described the option provisions in sufficient detail to comply with the requirements of FAR 5.207 and the option was evaluated, a synopsis of the option before it is exercised is not required. An evaluated and priced option that was properly synopsized as provided at FAR 5.207 meets the full and open competition requirements of FAR Subpart 6.1 or the requirements of FAR Subpart 6.2 for full and open competition after exclusion of sources.

(b) If the synopsis for the original contract action did not describe the option provisions or in those instances where an unevaluated option was included in the contract, the option must be synopsized in accordance with FAR 5.207 before the option can be exercised. Unpriced options and unevaluated options are considered to be new acquisitions and the justification requirements of FAR Subpart 6.3 must be met before the option is exercised.

## Subpart 617.5—Interagency Acquisitions Under the Economy Act

### 617.502 General.

The Procurement Executive is the agency head for the purposes of FAR 17.502. The determinations required under FAR 17.502 shall be made by the head of the contracting activity (see 601.603-70).

## Subpart 617.6—Management and Operating Contracts

### 617.602 Policy.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 17.602.

## Subpart 617.70—Standardization

### 617.7000 Scope of subpart.

This subpart prescribes the policies and procedures for DOS standardization of technical equipment.

### 617.7001 Policy.

(a) Standardization of technical equipment is necessary to meet long-term DOS requirements, particularly for technical equipment used by overseas posts, where compatibleness and maintenance support are important considerations. Adherence to the statutory requirements for full and open competition necessitate that the initial acquisition of any technical equipment should be processed in conformance with FAR Subparts 6.1 and 6.2. However, where the technical/performance specifications of the technical equipment preclude full and open competition, the acquisition shall be processed in conformance with FAR Subpart 6.3.

(b) Contracts for technical equipment may be awarded through other than full and open competition pursuant to a standardization when such standardization would—

(1) Limit the variety and quantity of parts that must be carried in stock;

(2) Make available only those parts that may be interchanged among items of damaged or worn equipment;

(3) Allow acquisition from selected suppliers of technical equipment that is available from a number of suppliers but that otherwise would vary so in performance or design characteristics (notwithstanding detailed specifications and rigid inspection) as to prevent standardization and interchangeability of parts.

(c) All standardization requests shall be submitted in writing for the approval of the Procurement Executive. This authority is not redelegable.

### 617.7002 Procedures.

(a) Each standardization request shall be submitted to the Procurement Executive in writing by a contracting officer through the head of the contracting activity. Where the standardization request results from an acquisition that was processed under full and open competition procedures, the authority is the standardization clause included in the solicitation, and the standardization request shall be identified as a Determination and Findings. The authority for standardization requests for acquisitions processed under other than full and open competition procedures is 41 U.S.C. 253(c)(1), and the standardization request shall be submitted as a Justification and Approval for Other Than Full and Open Competition. In addition to the requirements of this subpart, such a justification shall comply with FAR 6.303-2.

(b) Before approving the standardization, the Procurement Executive shall consider—

(1) The feasibility, from an economical and timely deployment standpoint, of distributing or redistributing on a selected geographic basis the equipment and parts already in the supply system;

(2) The practicability or economy of using or developing an agency design that would permit standardization of components and parts;

(3) The practicability of interchanging parts and cannibalizing equipment;

(4) Whether future acquisition of the selected item of equipment can be affected at reasonable prices;

(5) Whether standardization will appreciably reduce the variety and quantity of parts that must be carried in stock;

(6) Whether standardization will render obsolete large dollar value inventories of equipment and supporting parts already in the supply system, without compensating benefits;

(7) Whether standardization will enhance agency mission capability;

(8) Possible savings in training personnel or in acquiring technical literature;

(9) Whether the standardization will adversely affect existing specifications and standards;

(10) The degree to which the current design of the specified make and model has been changed from the design of the equipment in the supply system; and

(11) In cases where DOS mission capability is not overriding, whether the benefits and/or cost savings anticipated from standardization will equal or exceed those to be expected from competition.

(c) In deciding whether to approve the standardization request, the Procurement Executive shall consult other user offices, as appropriate, to ensure the full benefits of the action.

(d) In order to approve the standardization request, the Procurement Executive shall determine that—

(i) The equipment constitutes technical equipment, and

(ii) Standardization of the equipment and interchangeability of its parts are necessary and in the public interest.

(e) Each standardization request shall specify an effective period, which shall bear a reasonable relationship to the life of the technical equipment. Periodic review(s) shall be made during and as stated in the standardization, to determine whether the standardization should be continued, revised, or canceled.

(f) The Office of the Procurement Executive shall maintain a master list of items standardized under this subpart.

### Subpart 617.71—International Narcotics Control Program Acquisitions

#### 617.7100 Scope of subpart.

This subpart prescribes policies for acquisitions under the International Narcotics Control (INC) Program, which is authorized by section 481 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2291).

#### 617.7101 Policy.

(a) The Procurement Executive is responsible for INC Program acquisitions. In this capacity, the Procurement Executive has the specific authority to enter into and administer INC funded contracts. Unless otherwise directed by the Secretary of State or provided in DOS regulations, the Procurement Executive shall also provide policy direction and prescribe or approve standards, procedures, and internal instructions for the award and administration of INC funded contracts, including contracts with individuals for personal services abroad.

(b) To accomplish the purposes of the INC Program, the following implementing authorities and regulations may be utilized to the extent the Procurement Executive deems necessary or appropriate in the performance of the acquisition function.

(1) The Foreign Assistance Act of 1961, as amended.

(2) Sections 1, 2, and 3 of Executive Order No. 11223 of May 12, 1965.

(3) Chapter 7 of this Title, Agency for International Development Acquisition Regulation, 48 CFR 7, including any amendments thereto.

(c) Authority to perform functions under this subpart may be redelegated.

#### 617.7102 Applicability.

The provisions of this subpart apply to acquisitions under the INC Program both within and outside the United States.

### Subpart 617.72—Acquisitions for Other Posts or Other Agencies

#### 617.7201 Policy.

As provided in 601.603–70(b)(1), DOS overseas posts may be authorized to acquire supplies and services for other posts or for other agencies.

#### 617.7202 Procedures.

(a) The requesting post or agency shall provide a document containing a complete description of the acquisition, appropriate fiscal data, and a certification of funds availability. For acquisitions requested by other agencies, the requesting agency also must provide its statutory and/or regulatory authority, as applicable, for each acquisition.

(b) As necessary, the contracting post shall provide to the requesting post or agency availability and price information. The contracting post shall notify the requesting post of the actual dollar cost so that any remainder of the obligation may be liquidated.

(c) The contracting officer shall process the acquisition in compliance with the appropriate FAR and DOSAR regulations.

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

## PART 619—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Sec.


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619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization.

619.870 Acquisition of technical requirements.

Subpart 619.9—Contracting Opportunities for Woman-Owned Small Businesses

619.901 Policy.


**Authority:** 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 619.2—Policies

#### 619.201 General policy.

(a) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), is responsible for performing all functions and duties prescribed in FAR 19.201 (c) and (d).

(b) In addition to the requirements of FAR 19.201(b), each head of the contracting activity (see 601.603–70), or designee, is responsible for establishing in coordination with the OSDBU director annual goals for the DOS small and disadvantaged business program.

(c) The Under Secretary for Management is the agency head for the purposes of FAR 19.201(c).

(d) Pursuant to FAR 19.201(d), each Small and Disadvantaged Business Utilization Specialist (SDBUS) is responsible for—

(1) Maintaining a program to locate capable small business, small disadvantaged business, and women-owned business sources to fulfill DOS acquisition requirements;

(2) Coordinating inquiries and requests for advice from small business, small disadvantaged business, and women-owned business sources on DOS contracting and subcontracting opportunities and other acquisition matters;

(3) Prior to the issuance of solicitations (or contract modifications for additional supplies or services) in excess of $25,000, which have not been reviewed, reserved, or set-aside by the contracting officer, reviewing the contracting officer's justification for such action;

(4) Advising contracting activities on new or revised small business, small disadvantaged business, or women-

owned business policies, regulations, procedures, and other related information;

(5) Assuring that small business, small disadvantaged business and women-owned business concerns are provided adequate specifications or drawings by initiating actions, in writing, with appropriate technical and contracting personnel to ensure that all necessary specifications or drawings for current and future acquisitions, as appropriate, are available;

(6) Reviewing all requirements to assure that small business, small disadvantaged business, and women-owned business sources will be afforded an equitable opportunity to compete and, as appropriate, initiating recommendations for small business set-asides;

(7) Assuring that contract financing available under existing regulations is offered when appropriate and that requests by small business concerns for such financing are not treated as a handicap in the award of contracts;

(8) Providing assistance to the contracting officer in making determinations concerning responsibility of prospective contractors whenever small business concerns are involved;

(9) Participating in the evaluation of a prime contractor's small business and small disadvantaged business subcontracting plans;

(10) Assuring that the participation of small business, small disadvantaged business, and women-owned business concerns is accurately reported;

(11) Attending, as appropriate, debriefings to unsuccessful small business and small disadvantaged business concerns to assist those firms in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(12) Making available to SBA copies of solicitations when so requested;

(13) When a bid or offer from a small business, small disadvantaged business, or women-owned business has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel, and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(14) Participating in Government-industry conferences to assist small business, small disadvantaged business and women-owned business concerns, including Business Opportunity/Federal Acquisition Conferences, Minority Business Enterprises Acquisition Seminars and Business Opportunity Committee meetings;

(15) Maintaining a list of supplies and services that have been placed as repetitive small business set-asides;

(16) Participating in the development, implementation, and review of automated source systems to assure that the interests of small business, small disadvantaged business, and women-owned business concerns are fully considered;

(17) Advising potential sources how they can obtain information about competitive acquisitions;

(18) Providing small business, small disadvantaged business, and women-owned business sources information regarding assistance available from Federal agencies such as the Small Business Administration, Minority Business Development Agency, Bureau of Indian Affairs, Economic Development Administration, National Science Foundation, Department of Labor and others, including State agencies and trade associations; and

(19) Participating in interagency programs relating to small business, small disadvantaged business, and labor surplus area matters as authorized by the OSDBU director.

## Subpart 619.4—Cooperation With the Small Business Administration

### 619.402 Small Business Administration procurement center representatives.

### 619.402-70 DOS designee.

Where the FAR requires action by a Small Business Administration procurement center representative, but one has not been assigned to the DOS contracting activity, the OSDBU director shall perform the action so required.

## Subpart 619.5—Set-Asides for Small Business

### 619.501 General.

A Small and Disadvantaged Business Utilization Specialist (SDBUS) shall review individual requirements prior to issuance of solicitations or consideration of other sources to determine the suitability of the acquisition for small business set-aside. Upon receipt of the SDBUS recommendation, the contracting officer shall promptly approve or disapprove the SDBUS recommendation, stating in writing the reason(s) for any disapproval.

### 619.505 Rejecting set-aside recommendations.

The Procurement Executive is the agency head for the purposes of FAR 19.505.

## Subpart 619.6—Certificates of Competency and Determinations of Eligibility

### 619.602 Procedures.

### 619.602-1 Referral.

The contracting officer shall transmit to the OSDBU director concurrently with the submission to the appropriate SBA Regional Office, a copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602-1(a).

## Subpart 619.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

### 619.705 Responsibilities of the contracting officer under the subcontracting assistance program.

### 619.705-2 Determining the need for a subcontracting plan.

The contracting officer shall provide to the OSDBU director a copy of each determination made under FAR 19.705-2(c).

### 619.705-3 Preparing the solicitation.

Whenever the clause at FAR 52.219-8, Small Business and Small Disadvantaged Business Subcontracting Program, is used in a solicitation for a negotiated acquisition, a notification also must be included in the solicitation. This notification shall advise prospective offerors that subcontracting plans may be requested from all concerns determined to be in the competitive range.

### 619.705-4 Reviewing the subcontracting plan.

OSDBU shall review subcontracting plans submitted by apparent successful offerors to determine if small and small disadvantaged businesses are afforded the maximum practicable opportunity to participate as subcontractors. OSDBU shall recommend to the contracting officer changes needed to subcontracting plans found to be deficient.

### 619.705-6 Postaward responsibilities of contracting officer.

### 619.705-6-70 Reporting responsibilities.

(a) The contracting officer shall forward to the OSDBU director a copy of each subcontracting plan that was incorporated into a contract or contract modification. Each contracting activity shall maintain a list of its active prime contracts that contain subcontracting plans.

(c) Contracting officers shall collect subcontracting data from contractors

required to establish subcontracting plans in support of small and small disadvantaged business concerns. This data shall be collected quarterly and semi-annually, using Standard Form 295, Summary Subcontracting Report, for the quarterly submissions, and Standard Form 294, Subcontracting Report for Individual Contracts, for the semi-annual submissions. The head of the contracting activity shall forward these reports to the OSDBU director, not later than the 30th day of the month following the close of the reporting period.

### Subpart 619.8—Contracting With the Small Business Administration (the 8(a) Program)

**619.801 General.**

The Procurement Executive is the agency head for the purposes of FAR 19.801(b)(2).

**619.803 Selecting acquisitions for the 8(a) program.**

**619.803-70 Responsibilities of the Office of Small and Disadvantaged Business Utilization.**

(a) Firms participating in the 8(a) program shall be reviewed by the OSDBU to match DOS requirements with the capabilities of such businesses. The OSDBU shall make the capabilities of these sources known to program and contracting personnel and shall obtain other information, as required.

(b) Acquisitions determined by DOS to be not suitable for the 8(a) program shall be reviewed by the OSDBU to determine the feasibility of small business set-asides, in conformance with FAR 19.504.

**619.870 Acquisition of technical requirements.**

(a) *Offering Letter.* When a decision has been made by the OSDBU and contracting officer to process an acquisition through the SBA under the 8(a) program, the contracting activity shall promptly furnish the applicable SBA office a letter offering the acquisition to the SBA, with an information copy to the SDBUS. The offering letter should transmit the complete acquisition package.

(b) The contracting officer has a greater latitude in holding discussions with the concerns solicited under an 8(a) program acquisition than under a non-8(a) program acquisition. The technical evaluation must be carefully reviewed to determine if any source declared to be unacceptable is capable of being made acceptable.

### Subpart 619.9—Contracting Opportunities for Women-Owned Small Businesses

**619.901 Policy.**

(a) The Office of Small and Disadvantaged Business Utilization shall establish, in coordination with the heads of the contracting activities, annual goals for contract awards to women-owned businesses.

(b) Contracting activities shall report as part of their Federal Procurement Data System submissions (see 604.602-70) awards to women-owned small businesses.

## PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.

Subpart 622.6—Walsh-Healey Public Contracts Act

622.604 Exemptions.
622.604-2 Regulatory exemptions.

Subpart 622.8—Equal Employment Opportunity

622.807 Exemptions.

Subpart 622.13—Special Disabled and Vietnam Era Veterans

622.1303 Waivers.

Subpart 622.14—Employment of the Handicapped

622.1403 Waivers.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 622.6—Walsh-Healey Public Contracts Act

**622.604 Exemptions.**

**622.604-2 Regulatory exemptions.**

The Procurement Executive is the agency head for the purposes of FAR 22.604(c).

### Subpart 622.8—Equal Employment Opportunity

**622.807 Exemptions.**

The Procurement Executive is the agency head for the purposes of FAR 22.807(a)(1).

### Subpart 622.13—Special Disabled and Vietnam Era Veterans

**622.1303 Waivers.**

The Procurement Executive is the agency head for the purposes of FAR 22.1303(a).

### Subpart 622.14—Employment of the Handicapped

**622.1403 Waivers.**

The Procurement Executive is the agency head for the purposes of FAR 22.1403(a).

## PART 623—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Sec.

Subpart 623.1—Pollution Control and Clean Air and Water

623.104 Exemptions.
623.107 Compliance responsibilities.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 623.1—Pollution Control and Clean Air and Water

**623.104 Exemptions.**

The Procurement Executive is the agency head for the purposes of FAR 23.104(c).

**623.107 Compliance responsibilities.**

The Procurement Executive is the agency head for the purposes of FAR 23.107.

## PART 625—FOREIGN ACQUISITION

Sec.

Subpart 625.1—Buy American Act—Supplies

625.102 Policy.

Subpart 625.2—Buy American Act—Construction Materials

625.200 Scope of subpart.

Subpart 625.3—Balance of Payments Program

625.300 Scope of subpart.
625.300-70 Overseas acquisitions.
625.302 Policy.
625.304 Excess and near-excess foreign currencies.

Subpart 625.7—Restrictions on Certain Foreign Purchases

625.703 Exceptions.

Subpart 625.9—Omission of the Examination of Records Clause

625.903 Conditions for omission.
625.904 Determination and findings.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 625.1—Buy American Act—Supplies

**625.102 Policy.**

The Procurement Executive is the agency head for the purposes of FAR 25.102(a)(3) and (4).

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### Subpart 625.2—Buy American Act—Construction Materials

#### 625.200 Scope of subpart.

The Procurement Executive is the agency head for the purposes of FAR Subpart 25.2.

### Subpart 625.3—Balance of Payments Program

#### 625.300 Scope of subpart.

#### 625.300-70 Overseas acquisitions.

This program applies to acquisitions of supplies and services for use outside the United States regardless of the contractor's location.

#### 625.302 Policy.

The Procurement Executive is the agency head for the purposes of FAR 25.302(b)(3). For overseas acquisitions, the Principal Officer at the overseas post is the Procurement Executive's designee for the purposes of FAR 25.302(b)(3).

#### 625.304 Excess and near-excess foreign currencies.

The Procurement Executive is the agency head for the purposes of FAR 25.304(c).

### Subpart 625.7—Restrictions on Certain Foreign Purchases

#### 625.703 Exceptions.

The Procurement Executive is the agency head for the purposes of FAR 25.703(b).

### Subpart 625.9—Omission of the Examination of Records Clause

#### 625.903 Conditions for omission.

The Procurement Executive is the agency head for the purposes of FAR 25.903.

#### 625.904 Determination and findings.

(a) Each determination and findings to omit FAR clause 52.215–1, Examination of Records by Comptroller General, shall be prepared in writing and submitted to the Procurement Executive.

(b) The Procurement Executive shall forward the approved determination and findings to the requesting contracting activity for inclusion in the contract file, or inform the contracting activity in writing if the determination and findings is not approved, as appropriate.

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

## PART 628—BONDS AND INSURANCE

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 628.70—Indemnification

#### 628.7001 DOSAR contract clause.

(a) Contractors should not ordinarily be required to assume risks which a private buyer would guard against through insurance. There may be occasions, however, when a contractor's assumption of such risks is in the best interest of the Government. The clause in paragraph (b) below is authorized for use on those occasions. In the determination of its use, the contracting officer should weigh the advantages it provides against the likelihood of a resultant increase in the contract price.

(b) The contracting officer shall insert the clause at 652.228–70, Indemnification, in solicitations and contracts when it is determined that the contractor's assumption of risk is in the best interest of the Government.

## PART 629—TAXES

Sec.

Subpart 629.1—General

629.101 Resolving tax problems.

Subpart 629.2—Federal Excise Taxes

629.202 General exemptions.
629.202–70 Exemption from other Federal taxes.

Subpart 629.3—State and Local Taxes

629.302 Application of State and local taxes to the Government.
629.303 Application of State and local taxes to Government contractors and subcontractors.

Subpart 629.4—Contract Clauses

629.401 Domestic contracts.
629.401–70 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 629.1—General

#### 629.101 Resolving tax problems.

In certain instances, acquisitions by posts are exempt from various taxes in foreign countries. Contracting officers shall ascertain such exemptions and take maximum advantage of them.

### Subpart 629.2—Federal Excise Taxes

#### 629.202 General exemptions.

#### 629.202–70 Exemptions From other Federal taxes.

Taxable articles purchased for presentation abroad as gifts to foreign dignitaries and taxable articles purchased for presentation as gifts to foreign dignitaries visiting in the United States but which are to be taken out of the United States may be exempt from retail taxes or manufacturers excise taxes, in accordance with the letter of October 18, 1963, from the Chief, Excise Tax Branch, Internal Revenue Service.

### Subpart 629.3—State and Local Taxes

#### 629.302 Application of State and local taxes to the Government.

The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.302(a).

#### 629.303 Application of State and local taxes to Government contractors and subcontractors.

The Procurement Executive is the agency head for the purposes of FAR 29.303(a). The Office of the Legal Adviser is the agency-designated counsel for the purposes of FAR 29.303(c).

### Subpart 629.4—Contract Clauses

#### 629.401 Domestic contracts.

#### 629.401–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229–71, Excise Tax Exemption Statement for Contractors Within the United States, in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

## PART 630—COST ACCOUNTING STANDARDS

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 630.3—CAS Contract Requirements

#### 630.304 Waiver.

The Assistant Secretary for Administration is the agency head for the purposes of FAR 30.304(b)(1). The Deputy Secretary of State is the agency head for the purposes of FAR 30.304(b)(2). The Procurement Executive is the agency head for the purposes of FAR 30.304(c).

## PART 632—CONTRACT FINANCING

Sec.

Subpart 632.1—General

632.111 Contract clauses.
632.111–70 DOSAR contract clauses.

Subpart 632.4—Advance Payments

632.402 General.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 632.1—General

**632.111 Contract clauses.**

**632.111-70 DOSAR contract clauses.**

(a) The contracting officer shall insert the clause at 652.232-70, Prompt Payment, in solicitations, contracts, and orders, in accordance with the following guidelines.

(1) For purchase orders or delivery orders that do not require written proposals by the suppliers, the contracting officer shall include in the order the information concerning the contractor's representative in paragraph (b) of the clause. The individual who provides the quotation to the Government generally should be the contractor's representative.

(2) The contracting officer shall specify delivery point(s) and ultimate destination point(s) in the solicitation, contract, or order, and not in the clause.

(3) When the contracting officer provides for a contract payment due date of less than 30 calendar days, the contracting officer shall modify paragraph (c)(1) of the clause by specifying the appropriate number of days directly below the title of the clause, in conformance with FAR 52.104(b). Prior to authorizing payment of less than 30 calendar days, the contracting officer shall consult first with the designated payment office.

(4) When partial deliveries are involved, the contracting officer shall modify paragraph (c) of the clause by specifying that partial payments will be made. The contracting officer shall add this information directly below the title of the clause, in conformance with FAR 52.104(b).

(5) For the sole purpose of computing any interest penalty that might be due to the contractor, Government acceptance shall be constructively deemed to have occurred on the fifth working day after the contractor has delivered supplies or performed services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract provision. When the contracting officer determines that a longer period for acceptance is appropriate due to the nature of the supplies or services to be received, inspected, tested, and accepted by the Government, the contracting officer shall modify paragraph (c)(2) of the clause by specifying the appropriate number of days directly below the title of the clause, in conformance with FAR 52.104(b). When more than a 15 calendar day acceptance period is to be established contractually, the contracting officer shall first obtain the written approvals of the head of the contracting activity and the program officer for the acquisition.

(6) *Exemptions.* The contracting officer shall not use the clause in contracts for utilities (gas, water, or electricity) when late payment charges are included in the contract or established by tariff, state, or local regulatory commissions.

### Subpart 632.4—Advance Payments

**632.402 General.**

(a) The Procurement Executive is the agency head for the purposes of FAR 32.402(c)(1)(iii).

(b) Advance payment provisions for acquisitions by overseas posts shall not be authorized without the prior approval of the Procurement Executive.

## PART 633—PROTESTS, DISPUTES, AND APPEALS

Sec.

**Subpart 633.1—Protests**


633.102 General.
633.103 Protests to the agency.
633.104 Protests to GAO.
633.105 Protests to GSBCA.


**Subpart 633.2—Disputes and Appeals**


633.203 Applicability.
633.211 Contracting officer's decision.
633.212 Contracting officer's duties upon appeal.
633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.
633.270-1 Scope of section.
633.270-2 Designation.
633.270-3 DOS support.


Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 633.1—Protests

**633.102 General.**

All communications relative to protests filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSBCA) shall be coordinated with the Office of the Legal Adviser.

**633.103 Protests to the agency.**

For protests filed with the Department and received before award, the contracting office shall obtain the advice of the Office of the Legal Adviser before making the determination under FAR 33.103(a).

**633.104 Protests to GAO.**

The following procedures implement the corresponding paragraphs of FAR 33.104.

(a) *General.* (1) Upon being telephonically advised by the GAO of the receipt of a protest, before or after award, the Office of the Legal Adviser shall inform the appropriate head of the contracting activity (see 601.603-70), who shall immediately notify the contracting officer. For protests concerning ADP acquisitions, the Office of the Legal Adviser shall also inform the Deputy Assistant Secretary for Information Systems. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Legal Adviser shall promptly provide the same to the head of the contracting activity involved, who shall promptly provide a copy to the contracting officer and request a written report in conformance with FAR 33.104(a)(2).

(2) In addition to the requirements in FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated, shall cite the GAO file number, and shall be prepared and signed by the contracting officer. The contracting officer shall prepare the report with the assistance of the Office of the Legal Adviser. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, the report shall include an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The head of the contracting activity shall submit to the Office of the Legal Adviser an original and two complete copies of the contracting officer's report. The contracting officer shall provide one complete copy to each interested party who responded to GAO, to the contracting officer, or to the Office of the Legal Adviser pursuant to the notification under paragraph (a)(3) below. In submitting the report to GAO, the Office of the Legal Adviser shall identify all parties to whom the report has been furnished.

(3) As required by FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been filed with the GAO and the basis for the protest. The contracting officer shall place a written record of such notifications in the contract file. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO.

The contracting officer shall send copies of such cover letters concurrently to the Office of the Legal Adviser. Cover letters shall contain a specified period of time for submission of comments, in accordance with FAR 33.104(a)(3), and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the contracting officer and the Office of the Legal Adviser. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(4) All DOS personnel shall handle protests on a priority basis. If the specific circumstances of the protest require a longer period than allowed under FAR 33.104(a)(3), the head of the contracting activity shall immediately notify the Office of the Legal Adviser, which shall prepare a written request for extension of the period in accordance with 4 CFR 21.3(d). The head of the contracting activity shall deliver the protest report to the Office of the Legal Adviser within 15 work days from the date of telephonic notification by the Office of the Legal Adviser. For reports involving use of the 10 work day express option provided at FAR 33.104(a)(4), the Office of the Legal Adviser shall establish the report delivery date after consultation with the head of the contracting activity.

(b) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances in FAR 33.104(b)(1), the contracting officer shall first obtain advice from the Office of the Legal Adviser. The contracting officer shall submit the written determination to the head of the contracting activity for approval.

(f) *Notice to GAO.* The Procurement Executive is the agency head for the purposes of FAR 33.104(f). The head of the contracting activity is authorized to submit the report required in FAR 33.104(f). The report shall be submitted to the Comptroller General through the Office of the Legal Adviser. For decisions concerning ADP acquisitions, the head of the contracting activity shall provide a copy of the report to the Deputy Assistant Secretary for Information Systems.

**633.105 Protests to GSBCA.**

The following procedures implement FAR 33.105.

(a) Upon receipt of a copy of a protest to GSBCA, the contracting officer or the official designated in the solicitation shall immediately notify the Office of the Legal Adviser and the Deputy Assistant Secretary for Information Systems. The contracting officer is responsible for compliance with the requirements in FAR 33.105(a)(2). The contracting officer shall include in the contract file a record of such notifications to all parties and related correspondence with GSBCA. The contracting officer shall provide to the Office of the Legal Adviser a copy of the list of interested parties notified, simultaneously with submission of the list to the GSBCA.

(b) The contracting officer shall submit to the Office of the Legal Adviser an original and two copies of the protest file, documented in conformance with FAR 33.105(b), within 8 work days after the filing of a protest. The contracting officer also shall provide a complete copy of the file to the protester and all other interested parties within 10 work days after filing of the protest. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure (48 CFR 61). The Office of the Legal Adviser shall then submit the file to the GSBCA within 10 work days after filing of the protest.

(c) The Office of the Legal Adviser shall represent the contracting officer at any hearing on suspension of the agency's delegation of procurement authority or at any hearing on the merits of the protest. The Office of the Legal Adviser shall notify the contracting officer and the Deputy Assistant Secretary for Information Systems of the results of any hearing.

(d) The Procurement Executive is the agency head for the purposes of FAR 33.105(e). The head of the contracting activity is authorized to execute the Determination and Findings (D&F) required in FAR 33.105(d)(1).

**Subpart 633.2—Disputes and Appeals**

**633.203 Applicability.**

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

**633.211 Contracting officer's decision.**

(a) In the second sentence of FAR 33.211(a)(4)(v), contracting officers shall replace "the Board of Contact Appeals" with "Armed Services Board of Contract Appeals, 200 Stovall Street, Alexandria, VA 22332."

(b) Prior to issuing a contracting officer's final decision, the contracting officer shall obtain assistance, as appropriate, from the Office of the Legal Adviser.

**633.212 Contracting officer's duties upon appeal.**

Upon receipt of a notice of appeal from a contractor the contracting officer shall notify the Office of the Legal Adviser, which will designate an attorney to represent the DOS before the Armed Services Board of Contract Appeals.

**633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.**

**633.270-1 Scope of section.**

This section concerns disputes arising under DOS contracts and the transfer of certain appellate and review functions from the Department of State to the Armed Services Board of Contract Appeals.

**633.270-2 Designation.**

The Armed Services Board of Contract Appeals (ASBCA) is the authorized representative of the Secretary of State and the Procurement Executive for the purposes of hearing and resolving disputes arising under DOS contracts subject to the Contract Disputes Act of 1978. The ASBCA shall hear and determine appeals by contractors from contracting officers' final decisions on disputed issues arising under DOS contracts subject to the Contract Disputes Act of 1978.

**633.270-3 DOS support.**

The Procurement Executive shall ensure the support of all DOS personnel in processing appeals before the ASBCA. The Procurement Executive is authorized to require such DOS officers and employees to cooperate for this purpose.

## SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

## PART 634—MAJOR SYSTEM ACQUISITION

Sec.
634.001 Definitions.
634.001-70 Supplemental definitions.
634.002 Policy.
634.003 Responsibilities.
634.004 Acquisition strategy.

Authority: 22 U.S.C. 2658, 40 U.S.C. 486(c), 48 CFR 1.3.

**634.001 Definitions.**

"Major system":

(a) The definition of "major system" in OMB Circular No. A–109, Major System Acquisitions (A–109), provides no exclusions; however, FAR 34.001 excludes from the definition of "major system" construction or other improvements to real property. Acquisition of capital project systems

by the Office of Foreign Buildings, which would otherwise be subject to the requirements of A–109 are thus exempted from these requirements. Under separate authority, the DOS has other existing controls that provide the necessary review, approval, and monitoring procedures to manage capital project systems acquisitions by the Office of Foreign Buildings.

(b) Pursuant to A–109 and paragraph (b) of the definition of "major system" prescribed in FAR 34.001, any DOS system shall be considered a major system if total acquisition costs with private industry are expected to equal or exceed $10,000,000.

(c) The acquisition executive is the agency head for the purposes of paragraph (c) of the definition of "major system" prescribed in FAR 34.001. The acquisition executive is authorized to designate as a major system acquisition any DOS system not expected to meet or exceed the $10,000,000 threshold identified in paragraph (b) above; provided, that the determination shall be made in accordance with the requirements of A–109, FAR Part 34, and this Part 634.

(d) Classification as a major system acquisition is independent of the number of component DOS contracting activities involved in the process. A major system acquisition may occur entirely within the jurisdiction of a single contracting activity or it may involve more than one DOS contracting activity.

(e) Each major system acquisition shall be in response to a need of one of the DOS major missions, which are identified in volume 1 of the Foreign Affairs Manual System.

**634.001–70 Supplemental definitions.**

Section five of A–109 defines several terms in addition to those defined in FAR 34.002.

**634.002 Policy.**

The objective of A–109 is to assure effectiveness and efficiency in acquiring major systems. Section six of A–109 provides general policy guidelines in addition to those prescribed in FAR 34.002.

**634.003 Responsibilities.**

(a) The Procurement Executive is the agency head for the purposes of FAR 34.003(a).

(b)(1) The Deputy Assistant Secretary for Operations is the agency head for the purposes of FAR 34.003(c) and the acquisition executive for the purposes of A–109. The acquisition executive shall ensure that the DOS implements A–109 and that the management objectives of A–109 are realized. The acquisition executive is responsible for—

(i) Designating a program manager for each major system acquisition;

(ii) Designating any DOS acquisition as a major system acquisition; and

(iii) Approving the written charter and project control system for each major system acquisition.

(2) The Office of Operations assists the acquisition executive in accomplishing the above responsibilities. The Office of Operations shall access the budget development and review process to identify potential major system acquisitions and bring them to the attention of the acquisition executive.

(c)(1) The Assistant Secretary for Administration is the agency head for the purposes of FAR 34.003(c)(3). As such, that officer makes four key decisions in each major system acquisition. These key decisions are summarized in section nine and elaborated in sections ten through thirteen of A–109.

(2) The key DOS executives, i.e., the Secretary, Deputy Secretary, Under Secretaries, and Assistant Secretaries, individually or as a group, participate in identifying and defining specific DOS mission needs to be fulfilled and in assigning priorities to these needs. These officers also assist the Assistant Secretary for Administration in making the key decisions identified in section nine of A–109.

(d) Heads of contracting activities (see 601.603–70) shall—

(1) Become familiar with the requirements of and ensure that contracting activity personnel are knowledgeable of A–109;

(2) Ensure that all potential major system acquisitions are brought to the attention of the acquisition executive;

(3) Recommend qualified candidates for designations as program managers for each major system acquisition within their jurisdictions;

(4) Ensure that program managers fulfill their responsibilities and discharge their duties;

(5) Cooperate with the acquisition executive and the Office of the Comptroller in implementing A–109 requirements;

(6) Adhere to the principles outlined in A–109 with regard to all major system acquisitions; and

(7) Use the principles outlined in the Circular as a guideline for other acquisitions.

(e) Program managers shall—

(1) Plan and carry out the proposed objective of the major system acquisition;

(2) Schedule and monitor all aspects of the project using an appropriate project control system;

(3) Provide analysis papers to recommend decisions to the key DOS executives (see subparagraph (c)(2)); and

(4) Document DOS compliance with A–109.

**634.004 Acquisition strategy.**

(a) Upon designation by the acquisition executive, the program manager shall assume operational responsibility for the planning and execution of the major system acquisition.

(b) The program manager shall work closely with the acquisition executive to develop a written charter outlining the authority, responsibility, accountability, and budget for accomplishing the proposed objective.

(c) The program manager shall develop a project control system to schedule, monitor, and regularly report on all aspects of the project. The control system shall be presented to the acquisition executive for approval. In developing the control system, the program manager shall provide for appropriate reporting periods and for checkpoints consistent with the key decisions prescribed in section nine of A–109.

(d) Upon initiation of the project, the program manager shall report regularly (at least monthly) to the acquisition executive on the progress achieved to that point. The reports shall include information with regard to the requirements of A–109 and how the objectives of the circular have been realized to present time. Also, the reports shall contain a statement as to what is planned for the next reporting period both in terms of the project itself and the requirements of A–109.

(e) As each key decision point is reached, the program manager shall prepare detailed analysis, findings, and recommendations to be submitted, through the acquisition executive, to the key DOS executives. The program manager shall also prepare additional reports and documentation as requested by the key DOS executives.

(f) The program manager shall work closely with the Office of the Comptroller, with regard to budgeting and financing for the major system and shall provide the necessary information to OMB and Congress as required by A–109.

## PART 636—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Sec.

Subpart 636.1—General

636.101 Applicability.
636.101–70 Exception.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 636.1—General

#### 636.101 Applicability.

#### 636.101–70 Exception.

Contracts for overseas construction, including capital improvements, alterations, and major repairs, may be excepted from the provisions of this Title under the authority of the Foreign Service Buildings Act of 1926, as amended, 22 U.S.C. 292 et seq., as further codified at section 474 of Title 40, Public Buildings, Property, and Works, of the U.S. Code.

## PART 637—SERVICE CONTRACTING

Sec.

Subpart 637.1—Service Contracts—General

637.103 Contracting officer responsibility.
637.104 Personal services contracts.
637.104–70 DOS personal services contracts.

Subpart 637.2—Consulting Services

637.204 Policy.
637.204–70 Supplemental policy.
637.205 Management control.
637.205–70 Supplemental management controls.
637.270 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 637.1—Service Contracts—General

#### 637.103 Contracting officer responsibility.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 637.103(a)(2).

#### 637.104 Personal services contracts.

The Office of the Legal Adviser is the DOS legal counsel for the purposes of FAR 637.104(e).

#### 637.104–70 DOS personal services contracts.

(a) In accordance with FAR 37.104(b), DOS statutory authorities for personal services contracts are—

(1) For the Department, section 2(c) of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2669);

(2) For the Bureau for Refugee Programs, section 5(a)(6) of the Migration and Refugee Assistance Act of 1962, as amended (22 U.S.C. 2605);

(3) For the Bureau for International Narcotics Matters, section 636(a)(3) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2396);

(4) For the Foreign Service Institute, section 704(a)(4) of the Foreign Service Act of 1980, as amended (22 U.S.C. 4024);

(5) For the the Office of Foreign Missions, section 208(d) of Title II—Authorities Relating to the Regulation of Foreign Missions, of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4308);

(6) For the Office of Foreign Buildings, section 5 of the Foreign Service Buildings Act, 1926, as amended (22 U.S.C. 296); and

(7) For the Bureau of International Organization Affairs, the separate State Department appropriations acts.

(b)(1) DOS contracting activities may not enter into personal services contracts pursuant subparagraph (a)(1) above unless the Procurement Executive has redelegated specific authority for such contracts.

(2) DOS contracting activities may not enter into personal services contracts pursuant to the authorities of (a)(2) through (a)(6) unless the office identified with each authority has approved use of the authority and, as necessary, the Procurement Executive has redelegated specific authority for such contracts.

### Subpart 637.2—Consulting Services

#### 637.204 Policy.

#### 637.204–70 Supplemental policy.

In addition to the policy prescribed in FAR 37.204(c), consulting services will normally be obtained on an intermittent or temporary basis; repeated or extended contracts are not to be effected except under extraordinary circumstances and with the prior approval of the head of the contracting activity (see 601.603–70). Also, grants and cooperative agreements may not be used as legal instruments for consulting services arrangements.

#### 637.205 Management controls.

The following regulations implement FAR 37.205.

(a) The Assistant Secretary for Administration is the DOS consulting services manager.

(b) All requests for consulting services contracts must be submitted first to the Office of Management, Bureau of Personnel (PER/MGT). PER/MGT shall review the request for appropriateness and forward the request to the Office of Foreign Service Career Development and Assignments (PER/FCA). Provided there are no in-house staff resources available to meet the request or which cannot be made available within a reasonable period of time, PER/FCA will issue a Certificate of Need. PER/MGT also shall obtain from the Office of Position and Pay Management (PER/PPM) guidance on the appropriate pay range for the work. Except for requests for consulting services contracts of $50,000 or more, PER/MGT shall forward the complete package to the contracting activity.

(c) Requests for consulting services contracts of $50,000 or more shall be forwarded by PER/MGT to and for the approval of the Assistant Secretary for Administration, after completion of the documentation identified in paragraph (b) above. The approved request shall then be forwarded to the contracting activity or, in the case of requests by overseas posts, to the appropriate geographic bureau.

(d) Individuals assigned responsibility for administering DOS consulting services contracts, including evaluating contractor performance, shall do so in accordance with FAR Part 42 and Part 642. In the event of deficient performance, the contract administrator shall provide prompt written notice to the contractor, with a copy of the notice to the contracting officer. Within 30 days after completion of the contractor's work, the contract administrator shall complete and deliver to the contracting officer Department of State Form (DS) 1771, Contractor Evaluation Statement (illustrated in 653.303–DS–1771).

(e) *Overseas posts.* Overseas posts shall transmit to the appropriate geographic bureau each request for a consulting services contract. Overseas posts shall enter into consulting services contracts only upon receipt of clearance from the geographic bureau. In considering such requests, the bureau shall follow the approval and authorization procedures prescribed in paragraphs (b) and (c) above. Post contracting officers shall observe the management controls specified in FAR 37.205 and this subpart in the award and administration of such contracts.

#### 637.205–70 Supplemental management controls.

In addition to the requirements in FAR 37.205—

(a) The office requesting a consulting services contract shall include in the request—

(1) A statement certifying that the services are purely advisory in nature, do not include the performance or supervision of operating functions, and are not personal in nature, i.e., the contract will not be characterized by an employer-employee relationship

between the Government and the consultant; and

(2) Specific evaluation criteria along with the proposed weights for each criterion for use in selecting the best qualified offeror.

(b) The contracting officer shall ensure that awards over $10,000 for consulting services contracts are identified and reported as part of the contracting activity's Federal Procurement Data System submissions (see 604.602–70).

(c) Each contracting activity or, in the case of requests by overseas posts, the appropriate geographic bureau, shall maintain a list of current consulting services contracts, to include the contract number, date of award, requesting activity, type of award (full and open competition or statutory authority for other than full and open competition), name and address of awardee, contract price, and a brief description of the services.

**652.237-70 DOSAR contract clause.**

The contracting officer shall include the clause at 652.237–70, Reports (Consulting Services), in solicitations and contracts for consulting services that require submission of written reports.

## SUBCHAPTER G—CONTRACT MANAGEMENT

## PART 642—CONTRACT ADMINISTRATION

Sec.

Subpart 642.2—Assignment of Contract Administration

642.270 Contracting Officer's Representative (COR)
642.271 DOSAR contract clause.

Subpart 642.5—Corporate Administrative Contracting Officer

642.502 Assignment and location.

Subpart 642.14—Traffic and Transportation Management

642.1406–2 Contract clause.
642.1406–2–70 DOSAR contract clauses.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 642.2—Assignment of Contract Administration

**642.270 Contracting Officer's Representative (COR).**

(a) Contracting officers may designate technically qualified personnel as their authorized representatives to assist in the administration of contracts. The COR must be a U.S. Government employee. The contracting officer shall provide to the COR a written appointment that shall define the scope and limitations of the COR's authority. The contracting officer shall provide a copy of the COR's appointment to the contractor and, as necessary, copies to the requirements and payments offices. The COR shall not be authorized to make any commitments or changes that will affect the price, quality, quantity, or delivery terms of a contract.

(b) Contracting officers also may designate technically qualified personnel as their authorized representatives to assist in the administration of small purchases and other simplified purchase procedures. The authorities delegated under such appointments may not exceed those provided in paragraph (a) above.

**642.271 DOSAR contract clause.**

The contracting officer shall insert the clause at 652.242–70, Contracting Officer's Representative, in solicitations and contracts when appointment of a contracting officer's authorized representative is anticipated.

### Subpart 642.5—Corporate Administrative Contracting Officer

**642.502 Assignment and location.**

The Procurement Executive is the agency head for the purposes of FAR 42.502(a).

### Subpart 642.14—Traffic and Transportation Management

**642.1406–2 Contract clause.**

**642.1406–2–70 DOSAR contract clauses.**

(a) The contracting officer shall insert the clause at 652.242–71, Notice of Shipment, in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

(b) The contracting officer shall insert the clause at 652.242–72, Shipping Instructions, solicitations and contracts with a source in the United States and overseas shipment of supplies is required.

## PART 643—CONTRACT MODIFICATIONS

Sec.

Subpart 643.1—General

643.102 Policy.
643.102–70 Contract compliance and review.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 643.1—General

**643.102 Policy.**

**643.102–70 Contract compliance and review.**

(a) When applicable, the contracting officer shall ensure the proposed contract modification complies with the competition requirements of FAR Part 6 and DOSAR Part 606.

(b) Subpart 601.70 prescribes the review requirements for modifying contracts for supplies and services, including construction. The contracting officer shall submit such contract modifications to the Office of the Procurement Executive when the modification itself exceeds $100,000, when the modification will cause the contract to exceed $100,000, or when any proposed change under the modification results in an increase or decrease exceeding $100,000 in any of the individual cost elements of the existing contract.

## PART 645—GOVERNMENT PROPERTY

Sec.

Subpart 645.3—Providing Government Property to Contractors

645.302 Providing facilities.
645.302–1 Policy.

Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

645.606 Screening of contractor inventory.
645.606–6 Waiver of screening requirements.
645.610 Sale of surplus contractor inventory.
645.610–2 Exemptions from sale by GSA.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 645.3—Providing Government Property to Contractors

**645.302 Providing facilities.**

**645.302–1 Policy.**

The Procurement Executive is the agency head for the purposes of FAR 45.302–1(a)(4).

### Subpart 645.6—Reporting, Redistribution, and Disposal of Contractor Inventory

**645.606 Screening of contractor inventory.**

**645.606–6 Waiver of screening requirements.**

The Procurement Executive is the agency head for the purposes of FAR 45.606–6.

645.610 Sale of surplus contractor inventory.

645.610-2 Exemptions from sale by GSA.

The Procurement Executive is the agency head for the purposes of FAR 45.610-2(a).

## PART 646—QUALITY ASSURANCE

Sec.

Subpart 646.7—Warranties

646.710 Contract clauses.
646.710-70 DOSAR contract clause.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 646.7—Warranties

646.710 Contract clauses.

646.710-70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.246-70, Commercial Warranty, in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

## PART 648—VALUE ENGINEERING

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### Subpart 648.1—Policies and Procedures

648.102 Policies.

The Procurement Executive is the agency head for the purposes of FAR 48.102.

## SUBCHAPTER H—CLAUSES AND FORMS

## PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
652.000 Scope of part.

Subpart 652.1—Instructions for Using Provisions and Clauses

652.100 Scope of subpart.
652.100-70 Policy.
652.102 Incorporating provisions and clauses.
652.102-1 Incorporation by reference.

Subpart 652.2—Texts of Provisions and Clauses

652.200 Scope of subpart.
652.203-70 Definitions.
652.204-70 Security requirements.
652.204-71 Security requirements—personnel.
652.214-70 Language version.
652.214-71 Notices.
652.214-72 Authorization to perform.
652.216-70 Ordering—indefinite delivery contracts.
652.228-70 Indemnification.
652.229-70 Excise tax exemption statement for contractors within the United States.
652.232-70 Prompt payment.
652.232-71 Method of payment.
652.237-70 Reports (consulting services).
652.242-70 Contracting officer's representative (COR).
652.242-71 Notice of shipments.
652.242-72 Shipping instructions.
652.246-70 Commercial warranty.

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

### 652.000 Scope of part.

This part sets forth solicitation provisions and contract clauses, in addition to those prescribed in FAR Part 52, for use in DOS acquisitions.

### Subpart 652.1—Instructions for Using Provisions and Clauses

### 652.100 Scope of subpart.

### 652.100-70 Policy.

(a) The solicitation provisions and contract clauses in FAR Subpart 52.2 or this Subpart 652.2 shall be used as prescribed therein, except when the use of any provision or clause is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the provision or clause were to be included.

(b) The contracting officer shall justify the exclusion of any provisions or clauses in accordance with FAR Subpart 1.4 and 601.470.

### 652.102 Incorporating provisions and clauses.

### 652.102-1 Incorporation by reference.

The Procurement Executive is the agency head for the purposes of FAR 52.102-1(a)(2)(ii).

### Subpart 652.2—Texts of Provisions and Clauses

### 652.200 Scope of subpart.

This subpart sets forth the text of all DOSAR provisions and clauses, and for each provision and clause provides a cross-reference to the location in the DOSAR that prescribes its use.

### 652.203-70 Definitions.

As prescribed in 603.201-70, insert the following clause in solicitations and contracts if the contract will be performed outside the United States.

**Definitions (Apr 1987)**

"American Embassy" and "Embassy" mean the diplomatic or consular mission of the United States of America for which all supplies or services are provided under the contract.

"Department" means the Department of State, including all of its activities wherever located.

"Government" means the Government of the United States of America, unless specifically stated otherwise.

(End of clause)

### 652.204-70 Security requirements.

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States to the extent the contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or administratively controlled information ("Limited Official Use"). Contractors or contract employees that are not U.S. citizens shall not have access to classified or administratively controlled information.

**Security Requirements (Apr 1987)**

(a) This clause applies to the extent that this contract involves information the Government has determined to be classified ("Confidential," "Secret," or "Top Secret," hereinafter referred to as "classified") or administratively controlled ("Limited Official Use," hereinafter referred to as "administratively controlled").

(b) The Contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with paragraph (d) below and shall not supply, disclose, or otherwise permit any unauthorized person access to classified or administratively controlled information; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information, except with the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall not permit any non-U.S. citizen access to classified or administratively controlled information. The Contractor shall not permit any individual access to classified information without the prior written authorization of the Contracting Officer, Post Security Officer, or Regional Security Officer.

(d) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storage, and destroying official materials in accordance with the Uniform Regulations (Foreign Affairs Manual, Volume 5, Chapter 900, "Policy and Procedural Security"). The Contracting Officer, Post Security Officer, or Regional Security Officer shall provide a copy of this document to the Contractor. The Contracting Officer shall provide any supplements to these regulations to the Contractor in writing.

(e) The Contractor agrees to submit immediately to the Contracting Officer, Post Security Officer, a complete detailed report, appropriately classified, of any information which the Contractor may have concerning existing or threatened espionage, sabotage, or subversive activity.

(f) The Government agrees that when necessary it shall indicate by security classification or administratively controlled designation the degree of importance to the national security of information to be furnished by the Contractor to the Government or by the Government to the Contractor. The Government shall give written notice to the Contractor of such security classification or administratively controlled designation and of any subsequent changes thereof. The Contractor shall rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(g) The Contractor agrees to certify after completion of this contract that it has surrendered or disposed of all classified or administratively controlled information in its custody in accordance with applicable security regulations or instructions.

(End of clause)

**652.204-71 Security requirements—personnel.**

As prescribed in 604.404-70, insert the following clause in solicitations and contracts performed outside the United States.

**Security Requirements—Personnel (Apr 1987)**

The Contractor agrees, if directed by the Contracting Officer, to furnish the Government with the name, date and place of birth, current address, and such other biographical information as is readily available to the Contractor, concerning any individual before permitting said individual to perform under this contract. The Contractor further agrees to permit only those individuals approved by the Government to be used in the performance of this contract.

(End of clause)

**652.214-70 Language version.**

As prescribed in 614.201-70(a), insert the following clause in solicitations and contracts effected and performed outside the United States, except when the Procurement Executive has approved a waiver of this clause.

**Language Version (Apr 1987)**

The English language version of this contract is the official version and binding on both parties.

(End of clause)

**652.214-71 Notices.**

As prescribed in 614.270(b), insert the following clause in solicitations and contracts entered into and performed outside the United States.

**Notices (Apr 1987)**

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the Contracting Officer.

(End of Clause)

**652.214-72 Authorization to perform.**

As prescribed in 614.270(c), insert the following clause in solicitations and contracts performed outside the United States.

**Authorization to perform (Apr 1987)**

The Contractor warrants that: (a) It has obtained authorization to operate and do business in the country or countries in which this contract will be performed; (b) it has obtained, at no cost to the Government, all necessary licenses and permits required to perform this contract; and (c) it shall comply fully with all laws, decrees, labor standards and regulations of said country or countries during the performance of this contract.

(End of clause)

**652.216-70 Ordering—indefinite delivery contract.**

As prescribed in 616.505-70, insert the following clause in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

**Ordering—Indefinite Delivery Contract (Apr 1987)**

The Government shall use one of the following forms to issue orders under this contract:

(a) Optional Form (OF) 347, Order for Supplies or Services;

(b) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher; or

(c) Department of State Form (DST) 1060, Order—Supplies or Services.

(End of clause)

**652.228-70 Indemnification.**

As prescribed in 628.7001(b), insert the following clause in solicitations and contracts when the contractor's assumption of risk is in the best interest of the Government.

**Indemnification (Apr 1987)**

The Contractor expressly agrees to indemnify and to save the Government, its officers, agents, servants, and employees harmless from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Contractor's fault or negligence in connection with the performance of work under this contract. Further, any negligence or alleged negligence of the Government, its officers, agents, servants, or employees, shall not bar a claim for indemnification unless the act or omission of the Government, its officers, agents, servants, or employees is the sole competent, and producing cause of such claim, loss, damages, injury, or liability.

(End of clause)

**652.228-70 Excise tax exemption statement for contractors within the United States.**

As prescribed in 629.401-70, insert the following clause in solicitations and contracts if the prospective contractor is located inside the United States and the acquisition involves export of supplies to an overseas post.

**Excise Tax Exemption Statement for Contractors Within the United States (Apr 1987)**

This is to certify that the item(s) covered by this contract is/are for export solely for the use of the U.S. Foreign Service Post identified in the contract schedule.

The Contractor shall use a photocopy of this contract as evidence of intent to export. Final proof of exportation may be obtained from the agent handling the shipment. Such proof shall be accepted in lieu of payment of excise tax.

(End of clause)

**652.232-70 Prompt payment.**

As prescribed in 632.111-70(a) insert the following clause in all solicitations, contracts, and orders, except as provided in 632.111-70(a)(6).

**Prompt Payment (Apr 1987)**

Notwithstanding any other payment provision in this contract, the Government will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the date on which a check for payment is dated or a wire transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) *Designated payment office.* The designated payment office for this contract or order is shown in Block 25 of Standard Form 33, Solicitation, Offer and Award, or Block 12 of Standard Form 26, Award/Contract, of the contract, or as shown in other applicable contract or order documents.

(b) *Contractor's representative.* The Contractor shall provide to the designated payments office and the Contracting Officer the name, title, address, and telephone number of its representative for matters pertaining to payments.

(c) *Payment due date.* (1) The due date for making invoice payments by the designated payment office shall be the later of the following two events: (i) The 30th day after the Government office designated to receive invoices has received a proper invoice from the Contractor, or (ii) the 30th day after Government acceptance of supplies delivered or services performed by the Contractor. However, on a final invoice for any balance of funds due the Contractor for supplies delivered or services performed under the contract but where the payment amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) For purposes of computing any interest penalty that might be due the Contractor, Government acceptance shall be constructively deemed to have occurred on the fifth working day after the Contractor delivered the supplies or completed performance of the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision.

(3) When the payment due date is based on constructive acceptance by the Government, and not on formal acceptance by the Government, payment shall not constitute formal acceptance, and the Contractor may be required to repay the amounts paid, including shipping costs, for any supplies or services the Government later determines to be unacceptable. Also, when the contract or order provides that the supplies are shipped f.o.b. origin and final inspection and acceptance will occur at the ultimate destination point, payment for such supplies shall not constitute final acceptance.

(4) The Contracting Officer or designee shall notify the Contractor of any non-conforming supplies.

(d) *Invoice requirements.* (1) An invoice is the Contractor's written request for payment under the contract for supplies delivered or services rendered to the Government. The Contractor shall prepare and submit each invoice to the designated payment office (see paragraph (a) of this clause) or to the office designated to receive invoices as specified in the contract. Unless otherwise provided in the contract, the Contractor shall prepare each invoice in quadruplicate, with one copy marked "original."

(2) A proper invoice must include the following:

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number or other authorization for supplies delivered or services rendered, including the order number and/or contract line item number(s);

(iv) Description of supplies or services;

(v) Quantities and unit measures of supplies delivered or services rendered;

(vi) Unit prices, extended prices, and total price billed;

(vii) Shipping terms for supplies (see subparagraph (d)(3) below);

(viii) Payment terms, e.g., prompt payment discount terms, cash discounts, or net;

(ix) Name and address of the Contractor's official or office, which must be the same as that in the contract or on a proper notice of assignment, to which payment is to be sent;

(x) Name, title, telephone number, and complete mailing address of the Contractor's official to be notified in the event of an improper invoice; and

(xi) Any other information or documentation required by other clauses in the contract.

(3) *Shipping terms.* When the invoice includes supplies shipped by the Contractor, the Contractor shall include on the invoice the shipment number and date of shipment and such other documentation or information required by the contract or order. The invoice shall show parcel post charges, if any, as a separate item, indicating the gross weight and shipping point. Prepaid freight or express charges must be supported by the original freight or express receipts. For supplies shipped f.o.b. origin, the invoice shall include proper documentation that the supplies have been delivered to and accepted for shipment by an approved carrier. For supplies shipped on Government bills of lading, the invoice shall include the bill of lading number and net weight of shipment.

(4) If an invoice does not contain the required information, the Government reserves the right to reject the invoice as improper and return it to the vendor within 15 days of receipt at the office designated to receive invoices. Whenever the invoice is returned, the Government shall not establish a payment due date until the Contractor submits a proper invoice.

(e) *Interest penalties.* The Prompt Payment Act (Pub. L. 99–177) requires payment of interest to a Contractor if payment is not made for property or services within 15 days after the specified payment due date (see paragraph (c) above). The interest penalty shall be paid by the Government, without request from the Contractor. Application of interest penalties shall be as follows.

(1) Interest due the Contractor shall be at the rate applicable on the payment date, as established by the U.S. Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the Federal Register.

(2) Interest shall be calculated from the first day after the payment due date through the payment date.

(3) Interest penalities remaining unpaid for any 30 day period shall be added to the principal; thereafter, interest penalties shall accrue monthly on the total of principal and previously accrued interest. Interest penalties shall not continue to accrue after filing of a claim under the Contract Disputes Act of 1978 or for more than one year.

(4) An interest penalty shall be paid if the Government takes a discount after the discount period has expired, and fails to correct the underpayment within 15 days after the expiration of the discount period. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(5) An interest penalty shall be paid if the Government fails to make notification of an improper invoice within 15 days of receipt of an invoice at the office designated to receive invoices (3 days for meat or meat food products and 5 days for perishable agricultural commodities). The corrected, proper invoice shall be reduced by the number of days between the 15th day and the day notification was transmitted to the business concern. Calculation of interest penalties, if any, shall be based on an adjusted due date reflecting the reduced number of days allowable for payment.

(f) *Payments for contract financing requests.* A contract financing payment is the disbursement of monies to a Contractor for operating capital incidental to contract performance, such as advance payments and interim cost-reimbursements. The Contractor shall prepare contract financing requests in accordance with the contract financing terms included in the contract or as directed by the Contracting Officer. The Government will process such financing requests as expeditiously as possible, but not later than 30 days after receipt of a proper financing request by the office designated to receive contract financing requests. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified. Contract financing payments shall not be assessed an interest penalty for payment delays, and are therefore not subject to the terms of paragraph (e) of this clause.

(End of clause)

**652.232–71 Method of payment.**

As prescribed in 632.111–70(b), insert the following clause in all solicitations, contracts, and orders when the value of the contract or order is expected to be $10,000 or more.

**Method of Payment (Apr 1987)**

(a) Payments under this contract shall be made either by check or by wire transfer through the Treasury Financial Communications System, at the option of the Government.

(b) The designated payment office for this contract or order is shown in Block 25 of Standard Form 33, Solicitation, Offer and Award, or Block 12 of Standard Form 26, Award/Contract, of the contract, or as shown in other applicable contract or order documents.

(c) Not later than seven days after receipt of notice of award, the Contractor shall provide to the designated payments office and the Contracting Officer the following information:

(i) Name, address, and telegraphic abbreviation of the Contractor's receiving financial institution;

(ii) Contractor's name and account number at the receiving financial institution;

(iii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds (provide this number only if the receiving financial institution has a access to the Federal Reserve Communications System, otherwise indicate "N/A");

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name, address, telegraphic abbreviation, and 9-digit ABA identifying number of the correspondent financial institution through which the Department may route electronic funds transfer messages and payments to the receiving financial institution; and

(v) Name, title, address, and telephone number of the Contractor's representative for matters pertaining to its bank account and the above information.

(d) The Contractor shall provide written notification of any changes to the information furnished under this clause to the designated payment office and the Contracting Officer. The Contractor shall provide this information

at least thirty days before the effective date of the change.

(e) The document furnishing the information required under this clause must be dated and contain the signature, title, and telephone number of the contractor official authorized to provide it as well as the contractor's name and contract number.

(End of clause)

**652.237-70 Reports (consulting services).**

As prescribed in 637.270, insert the following clause in solicitations and contracts for consulting services.

**Reports (Consulting Services) (Apr 1987)**

The Contractor shall submit all reports with covers that display the following information:

(1) Name and business address of the Contractor;

(2) Contract number;

(3) Contract dollar amount (including modifications);

(4) Type of award, i.e., full and open competition or statutory authority for other than full and open competition;

(5) Name of the individual who requested the consulting services, and the name and telephone number of the requesting individual's office; and

(6) The following notation: Note: Public Law 97-101, section 412 required that upon transfer of the contents of this report, or any other Government document, the new document shall appropriately identify the contract and contractor involved in the development of this report.

(End of clause)

**652.243-70 Contracting officer's representative (COR).**

As prescribed in 642.271, insert the following clause in solicitations and contracts when one or more contracting officer representatives are required.

**Contracting Officer's Representative (COR) (Apr 1987)**

The Contracting Officer may designate in writing one or more Government employees, by name and position title, to take action for the Contracting Officer under this contract. Each designee shall be identified as a Contracting Officer's Representative (COR). Such designation(s) shall specify the scope and limitations of the authority so delegated; provided, that the designee may not change the terms or conditions of the contract, unless the COR is a warranted Contracting Officer and this authority is delegated in the designation.

(End of clause)

**652.242-71 Notice of shipments.**

As prescribed in 642.1406-270(a), insert the following clause in solicitations and contracts entered into and performed outside the United States, when overseas shipment of supplies is required.

**Notice of Shipments (Apr 1987)**

At the time of delivery of supplies to a carrier for onward transportation, the Contractor shall give notice of prepaid shipment to the consignee establishment, and to such other persons as instructed by the Contracting Officer. If the Contractor has not received such instructions by 24 hours prior to the delivery time, the Contractor shall contact the Contracting Officer and request instructions from the Contracting Officer concerning the notice of shipment to be given.

(End of clause)

**652.242-72 Shipping instructions.**

As prescribed in 642.1406-270(b), insert the following clause in solicitations and contracts with a source in the United States and requiring overseas shipment of supplies.

**Shipping Instructions (Apr 1987)**

(a) Each packing box shall be of solid construction in accordance with best commercial practices and sufficiently strong in direct ratio to the weight of the contents to withstand excessively rough handling while in transit overseas. It shall be constructed of lumber that is well seasoned, reasonably sound, free from bad cross grain and from knots or knotholes that interfere with nailing or that occupy more than ⅓ of the width of the piece of lumber. Box shall be constructed with three-way corners and diagonal bracing. All nails shall be cement-coated, of correct size and properly spaced to avoid splitting or warping, and shall be driven into the grain of the wood. Dimension of lumber shall be in accordance with the following table, dependent upon the weight of the contents:

| Weight of box and contents | Minimum dimensions of lumber for skids, frame members, and single diagonal braces |
|---|---|
| Up to 100 lbs. | ¾" x 2¼" |
| 101 to 250 lbs. | ⅛" x 2⅛" |
| 251 to 400 lbs. | ⅛" x 3⅛" |
| 401 to 650 lbs. | ⅛" x 4⅛" or 1" x 3⅛" |

(b) Each box shall be lined with waterproof paper and shall be bound with ¾" steel straps firmly stapled in position to prevent the straps from slipping off the box. Articles must be secured and braced inside the shipping container to prevent the articles from shifting.

(c) Packing cases weighing 1000 pounds and more must be equipped with skids. Each skid shall consist of two end sections of 2 x 6-inch lumber placed flat and a center section of 2 x 4-inch lumber placed flat and then arranged in line to provide 10-inch forklift spaces between center and end sections. When goods are ready for shipment, the Contractor shall prepare four (4) copies of a packing list, indicating the contract and, if applicable, order numbers; case number; itemized list of contents; net and gross weights in pounds and kilograms; and outside dimensions, including all clears, of each shipping container. The Contractor shall provide three (3) copies of the packing list to the U.S. Despatch Agent specified in the contract or order. The Contractor shall place the fourth copy of the packing list in the packing case number one, which shall be marked as such so that it is easily identified by the consignee. Upon receipt of the packing list, the Despatch Agent will furnish export marks and instructions regarding shipment to the port specified, depending upon steamer services available at the time.

(d) The export marks shall be stenciled on one side of each box reserved for that purpose, and the appropriate case number stenciled in the lower left-hand corner of the same side. The contract and, as necessary, order numbers, net and gross weights in pounds and kilograms shall be stenciled on the same side. (One kilogram equals 2.2046 pounds avoirdupois.) However, if the size of the box is too small to accommodate all stenciling on one side, the contract and order numbers and weights may be stenciled on the side opposite that used for the export marks and case number.

(e) The contract and, as necessary, order numbers must appear on all containers and papers relating to this clause.

(End of clause)

**652.246-70 Commercial warranty.**

As prescribed in 646.710-70, insert the following clause in solicitations and contracts for commercial supplies or services awarded and performed outside the United States.

**Commercial Warranty (Apr 1987)**

The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(End of clause)

## PART 53—FORMS

Sec.
653.000 Scope of part.

Subpart 653.1—General

653.101 Requirements for use of forms.
653.101-70 Policy.
653.107 Obtaining forms.
653.110 Continuation sheets.

Subpart 653.2—Prescription of Forms

653.200 Scope of subpart.
653.213 Small purchase and other simplified purchase procedures (OF 206, OF 206A, DST 1089, OF 127).
653.237 Service contracting (DS 1771).

Subpart 653.3—Illustrations of Forms

653.300 Scope of subpart.
653.302.127 Optional Form 127, Receiving and Inspection Report
653.302.206 Optional Form 206, Purchase Order, Receiving Report and Voucher
653.302.206A Optional Form 206A, Purchase Order, Receiving Report and Voucher—Continuation Sheet

653.303–DS–1771 Department of State Form (DS) 1771, Contractor Evaluation Statement

653.303–DST–1069 Department of State Form 1069, Order—Supplies or Services

Authority: 22 U.S.C. 2658; 40 U.S.C. 486(c); 48 CFR 1.3.

**653.000 Scope of part.**

This part prescribes DOSAR forms in addition to those provided in FAR Part 53.

## Subpart 653.1—General

**653.101 Requirements for use of forms.**

**653.101–70 Policy.**

(a) The forms in FAR Subpart 53.2 or in Subpart 653.2 shall be used as prescribed therein, except when the use of any form is prohibited by or inconsistent with local laws, or the supplies or services could not be obtained if the form were used.

(b) The contracting officer shall justify the exclusion of any form in accordance with FAR Subpart 1.4 and 601.470.

**653.107 Obtaining forms.**

(a) Contracting activities at overseas posts may need to use Federal Standard Requisition and Issuance Procedure (FEDSTRIP) requisitioning to obtain standard and optional forms.

(b) Contracting activities shall obtain DOS forms from the appropriate source listed in Appendix A of section 060, Volume 2 of the Foreign Affairs Manual.

**653.110 Continuation sheets.**

The provisions of FAR 53.110 also apply to forms prescribed in the DOSAR.

## Subpart 653.2—Prescription of Forms

**653.200 Scope of subpart.**

This subpart prescribes or references optional and DOS forms for use in acquisition. Consistent with FAR 53.200, this subpart is arranged by subject matter, in the same order as and keyed to the parts of the DOSAR in which the form usage requirements are addressed.

**653.213 Small purchase and other simplified purchase procedures (OF 206, OF 206A, DST 1069, OF 127).**

As provided in FAR 53.213(e), the following forms are approved for use in lieu of Optional Forms 347 and 348.

(a) Optional Form (OF) 206, Purchase Order, Receiving Report and Voucher, and Optional Form 206A, Continuation Sheet (see 613.505–2(a)(1)).

(b) Department of State Form (DST) 1069, Order—Supplies or Services (see 613.505–2(a)(2); also see 613.505–2(c)(2) regarding replacement of the "Terms and Conditions Applicable to Purchase Orders," which are located on the reverse of the original copy of the DST 1069).

(c) When using OF 206, contracting activities may use Optional Form 127, Receiving and Inspection Report, for that purpose (see 613.505–2(c)(1)).

**653.237 Service contracting (DS 1771).**

Department of State Form (DS) 1771, Contractor Evaluation Statement. DS 1771, prescribed in 637.205(d), shall be used to evaluate consulting services contracts.

## Subpart 653.3—Illustrations of Forms

**653.300 Scope of subpart.**

This subpart contains illustrations of forms prescribed in the DOSAR but not illustrated in FAR Subpart 53.3. Forms are numbered in sequence, with optional forms preceded by "653.302" and DOS forms preceded by "653.303," in accordance with FAR Subpart 53.3.

BILLING CODE 4710-24-M

**653.302-127 OPTIONAL FORM 127, RECEIVING AND INSPECTION REPORT**

| RECEIVING AND INSPECTION REPORT | METHOD OF ACQUISITION | DOCUMENT NUMBERS |
|---|---|---|
| | ☐ PURCHASED ☐ RENTED | REPORT NO. |
| | ☐ CONSTRUCTED ☐ LOANED | P.O. NO. |
| RECEIVED FROM | ☐ DONATED ☐ INVENTORY OVERAGE | REQUISITION NO. |
| NAME AND ADDRESS | ☐ (OTHER) | TRANSFER AUTHORITY NO. |
| | APPROPRIATION | CONTRACT NO. |
| | ALLOTMENT | JOB NO. |
| POINT OF SHIPMENT / GBL NO. | OBJECTIVE CLASS | |

| ITEM NO. | DESCRIPTION (Include Terms of Acceptance on Loans, Donations, Etc.) | QUANTITY | UNIT | UNIT PRICE | AMOUNT |
|---|---|---|---|---|---|
| | | | | | |

| CERTIFICATE OF RECEIPT | | INSPECTOR'S CERTIFICATE | | |
|---|---|---|---|---|
| I HEREBY CERTIFY THAT ALL ITEMS LISTED ABOVE WERE RECEIVED, INSPECTED AND ACCEPTED. | | ☐ COMPLETE | ☐ PARTIAL | ☐ FINAL |
| NAME (Type or Print) | OFFICE SYMBOL | ☐ OVER | ☐ SHORT | ☐ DEFECTIVE MATERIAL |
| SIGNATURE | DATE | (USE REVERSE FOR COMMENTS) | | |

SQ127-103 NSN 7540-00-139-9195

OPTIONAL FORM 127
REV. JANUARY 1982
STATE - AID - USICA

653.302.204 OPTIONAL FORM 208, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

Form approved by Comptroller General, U.S. March 19, 1953

**PURCHASE ORDER, RECEIVING REPORT AND VOUCHER**
**(For use in foreign countries only)**

D.O. Vou. No.

Se. Vou. No.

Department or Establishment: U.S.

Purchase Order No.

Prepared at (place) (date)

PAID BY

Purchaser: THE UNITED STATES GOVERNMENT, DR.

Seller (Payee)

Address of seller

Contract No. (dated)

Order is hereby placed with the above-named seller for the articles or services described below, to be furnished:

to at

| ITEM NOS. | ARTICLES OR SERVICES | QUANTITY | UNIT PRICE Cost | UNIT PRICE Per | AMOUNT |
|---|---|---|---|---|---|
| | Use continuation sheet(s) if necessary - | | | | |

| | | | | |
|---|---|---|---|---|
| Ordering Officer (Signature) | Approp. | Funds Available: | | |
| | Allot. | | | |
| Name: | Obl. No. | Name: | | |
| Title: | Amt. | Title: | TOTAL | |

I certify that the ordered items listed were received on _____ (date) except as follows:

Signature

Name:

Title:

PAYMENT:
- ☐ Complete
- ☐ Partial
- ☐ Final

Amount billed, as per attached bill(s)

Differences

Amount verified correct for

Prepayment Audit (Signature or initials)

Approved for $

Exchange rate to $

Pursuant to authority vested in me, I certify this voucher correct and proper for payment.

Signature of Authorized Certifying Officer

Name:

Title:

ACCOUNTING CLASSIFICATION

| Fund | Allotment | Oblig. No. | Paying Office | Date Paid | Object | Amount |
|---|---|---|---|---|---|---|
| | | | | | | |

PAID BY

Check No. dated . 19 . for $ on Treasurer of United States.

Check No. dated . 19 . for on

Cash on 19

Payee

Title of Payee:

OPTIONAL FORM 208 (FORMERLY FS-433) MARCH 1973 DEPT. OF STATE

50206-101

## IMPORTANT NOTICE TO SELLER

1. The entering office is exempt from taxes.

2. The invoices must be submitted in two copies. Carriers' invoices covering transportation and/or accessorial services shall show on the original the following certification statement, manually signed by the vendor or his authorized representative and dated: "I certify that the above bill is correct and just and that payment therefor has not been received."

3. The order number shown in the upper right hand corner of this purchase order must be shown on your invoices.

4. All communications concerning this order must refer to order number and be addressed to the originating office.

5. Discount terms, if any, must be shown on all bills.

U.S. GOVERNMENT PRINTING OFFICE : 1978 O - 279-066

653.302.206A OPTIONAL FORM 206A, PURCHASE ORDER, RECEIVING REPORT AND VOUCHER—CONTINUATION SHEET

Form approved by Comptroller General, U. S. March 10, 1948.

## PURCHASE ORDER, RECEIVING REPORT AND VOUCHER

Continuation Sheet

U. S. _____ Sheet No. _____ of Bureau Voc. No. _____
(Department or establishment) Purchase Order No. _____

| ITEM NOS. | ARTICLES OR SERVICES | QUANTITY | UNIT PRICE | | AMOUNT |
|---|---|---|---|---|---|
| | | | Cost | Fee | |
| | | | | | |

OPTIONAL FORM 206A
(FORMERLY FS-455A)
MARCH 1975
DEPT. OF STATE

U.S. GOVERNMENT PRINTING OFFICE : 1975 O—579-102

5020S-201

653.303-DS-1771 DEPARTMENT OF STATE FORM (DS) 1771, CONTRACTOR EVALUATION STATEMENT

DEPARTMENT OF STATE

WASHINGTON, D.C. 20520

## CONTRACTOR EVALUATION STATEMENT

| (If additional space is required, continue on blank paper, referencing items by number) | Date Prepared |
|---|---|

NOTE: The information contained on this form is for the internal use of the Department of State and shall not be disclosed outside the Department except as authorized by the Assistant Secretary of State for Administration

| TO: Chief Contract Section<br>OPR/ST/P, Room 530, SA6<br>Washington, D.C. 20520 | FROM: (Name and location of program office) |
|---|---|
| Name and Address of Contractor | Contract No. |

### I. EVALUATION OF CONTRACTOR'S PERFORMANCE

1. Explain the contractor's performance as compared to the requirements of the statement of work and its proposal, including quantity, quality, and timeliness of work done.

2. Explain relationship of contractor's personnel to the Department and other parties involved in the performance of the contract. (Did contractor's personnel conduct themselves in a professional and businesslike manner? Did they respond in a constructive way for problems and difficulties as they arose? Was there stability in the leadership and personnel assigned to the contractor or were there numerous changes?)

3. Did contractor report on progress in a timely and thorough manner as called for by the contract?
☐ Yes ☐ No (Explain)

4. Did contractor perform within the cost structure of the contract? ☐ Yes ☐ No (Explain)

5. To what extent was the final product of the contractor, including data and conclusions, responsive to the stated purpose of the contract?

6. How do you rate the contractor's overall performance?
☐ Excellent ☐ Satisfactory ☐ Less Than Satisfactory (Explain)

7. Do you recommend that the contractor be used again? ☐ Yes ☐ No (Explain)

### II. EVALUATOR

| Typed name and title of Technical Project Officer | Signature | Date Signed |
|---|---|---|

### III. APPROVAL (By Deputy Assistant Secretary/Major Office Director)

| Typed name and title of approving official | Signature | Date Approved |
|---|---|---|

FORM 3-78 DS-1771

653.303-DST-1099 DEPARTMENT OF STATE FORM 1099, ORDER—SUPPLIES OR SERVICES

DEPARTMENT OF STATE
WASHINGTON, DC 20520

**ORDER — SUPPLIES OR SERVICES**
*(Subject to terms and conditions on reverse side)*

OO

Page of Pages

ORDER NUMBER MUST APPEAR ON ALL PACKAGES AND RELATED PAPERS:

ATTENTION:
PHONE:

| 1. Form | 2. CONTRACT NUMBER | 3. C | 4. DEBT | 5. PSC | 6. SHIPPING INSTRUCTIONS | 7. ORDER NUMBER |
|---|---|---|---|---|---|---|
| | | | | | | |

| 8. Comm | 9. GBL NUMBER | 10. Type | 11. Date P | 12. REQ OFFICE | 13. Date Rec. | AI | 14. Date Sig. |
|---|---|---|---|---|---|---|---|
| | | | | | | | |

| 15. DESCRIPTION | 16. AMOUNT |
|---|---|
| | |

| 17. APPROPRIATION | ALLOTMENT | OBJAS. | ORG. | FUNC. | OBJ. | 9 OBJ. |
|---|---|---|---|---|---|---|
| | | | | | | |

18. CONTRACTOR
TO:
DUNS ID.

19. CONSIGNEE AND DESTINATION
SHIP TO

ZIP

20. ULTIMATE DESTINATION

| LINE ITEM | CATALOG/NSN | S. ID | SUPPLIES OR SERVICES | Delivery Date | U O I | NO. OF UNITS | UNIT PRICE | TOTAL |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

| 21. FOB POINT/FAS POINT | 22. DISCOUNT | 23. ISSUER'S NAME | 24. ISSUER'S PHONE |
|---|---|---|---|
| | | | |

**BILLING INSTRUCTIONS**

Contractor's invoice shall be submitted in an original and one copy to:
Office of Finance — General Claims
P.O. Box 9487
Rosslyn Station
Arlington, VA 22209

Invoices must show the Department's 10 digit order number, time payment discount (even if not), description of each item, quantity, unit cost and total amount. Contractor must furnish signed receipt from transportation carrier as proof that shipment has been forwarded.

When Contractor is requested to prepay transportation charges against an F.O.B. order, such charges are to be added as a separate item to the invoice and must be supported by a paid transportation receipt. If shipment via APO, furnish postal receipts.

25. CONTRACTING/ORDERING OFFICER

Signature Date

FORM DST - 1099-4-81 ORIGINAL CONTRACTOR

## TERMS AND CONDITIONS APPLICABLE TO PURCHASE ORDER

**Note: If a contract number is shown, Terms and Conditions of the applicable contract shall apply to this Delivery Order which is issued pursuant thereto.**

1. INSPECTION AND ACCEPTANCE - Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejection, risk of loss will be on the Contractor unless loss results from negligence of the Government.

2. VARIATION IN QUANTITY - No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. DISCOUNTS - (a) Time discounts will be computed from: (1) date of delivery of the supplies to carrier when delivery and acceptance are at the point of origin, (2) date of delivery at destination or port of embarkation, when delivery and acceptance are at either of those points, or (3) date a proper invoice or voucher is received in the office specified by the Government, if the latter date is later than the date of delivery. (b) Payment will be deemed to have been made on the date which appears on payment checks.

4. DISPUTES - (This contract is governed by the Contract Disputes Act of 1978 (Public Law 95-563 "the Act")). The Act provides administrative procedures for the submittal, analysis, negotiation, and if necessary, litigation of claims relating to this contract. The parties to this contract must comply with certain time restrictions on rendering of contracting officer decisions on claims, and on the appeal of those decisions. Further details on the rights and remedies under the Act may be found in the Federal Procurement Regulations at 1-1.318.4.

5. FOREIGN SUPPLIES - This contract is subject to the Buy American Act (41 U.S.C. 10 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

6. CONVICT LABOR - In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence or imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c) (2)) and Executive Order 11775, December 29, 1973.

7. OFFICIALS NOT TO BENEFIT - No member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fees, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. FEDERAL, STATE, AND LOCAL TAXES - Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this Purchase Order.

10. SERVICE CONTRACT ACT OF 1965, As Amended (Service contracts not exceeding $2,500) - Except to the extent that an exemption, variation, or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of $2,500, the Contractor and any sub-contractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965 expressed by 29 CFR Part 4 are hereby incorporated by reference in this contract.

11. The following terms and conditions are applicable to purchases in excess of $2,500: (a) Employment of the Handicapped - Federal Procurement Regulation, Temporary Regulation 38, dated May 26, 1976. (b) Contract Work Hours and Safety Standards Act - Overtime Compensation Section - Federal Procurement Regulation 1-12.303. (c) Service Contract Act of 1965 - (Services contracts in excess of $2,500) Federal Procurement Regulation 1-12.904-1.

## MARKING INSTRUCTIONS

CONTAINERS OR PACKAGES shall be plainly marked to show the order number, brief description of contents, including form number, if any, quantity and vendor's name. Receiving clerk may reject any deliveries which do not bear such identification.

## SHIPPING DOCUMENTS AND CORRESPONDENCE

All shipping documents and correspondence pertaining to this order (except invoices as stated below) shall be referred or forwarded to the person and organization who signed the order. Such documents MUST refer to the departments order number.

[FR Doc. 87-11584 Filed 5-27-87; 8:45 am]

BILLING CODE 6716-34-C

federal register

Thursday
May 28, 1987

Part IV

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 43, 91, 121, 125, 129 and 135**

**Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes; Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 125, 129, and 135

[Docket No. 24856; Amdts. No. 43-26, 91-201, 121-192, 125-8, 129-14 and 135-24]

# Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Final rule.

SUMMARY: These amendments require that U.S.-registered aircraft leased by foreign persons be maintained in accordance with acceptable maintenance standards and clarify certain rules to preclude the commingling of noncommon (private) and common-carriage operations. These amendments are necessary to upgrade certain regulations regarding the leasing of U.S.-registered aircraft by foreign persons and to clarify the inspection and maintenance requirements applicable to foreign persons conducting private and common-carriage operations with U.S.-registered airplanes.

EFFECTIVE DATE: August 25, 1987.

FOR FURTHER INFORMATION CONTACT: Messrs. David L. Catey, Manager, Project Development Branch (AFS-240), Air Transportation Division, telephone (202) 267-3747, or Bob Baker, Manager, Project Development Branch (AFS-360), Aircraft Maintenance Division, telephone (202) 267-3788, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

## Background

On October 9, 1980, Part 125 of the Federal Aviation Regulations (FAR) was published in the Federal Register (45 FR 67214). With certain exceptions, not germane to the current discussion, Part 125 up to now has applied to the operation of all U.S.-registered airplanes having a passenger seating configuration of 20 or more, or a maximum payload capacity of 6,000 pounds or more, unless they are required to be operated under the rules of Part 121, 135, or 137 of the regulations.

Although Part 125 was not intended to provide acceptable safety levels for common-carriage operations, the inspection programs and maintenance requirements of § 125.247 currently apply to U.S.-registered airplanes operated outside the United States by foreign persons. This results because Part 125 governs operation of a U.S.-registered airplane of the prescribed size unless that operation is required to be conducted under the rules of Parts 121, 135, or 137. Accordingly, up to now there has been no exclusion from Part 125 for operators under Part 129—Operations of Foreign Air Carriers.

At the time Part 125 was published, the FAA was considering rulemaking to revise Part 129 to cover inspection and maintenance requirements for U.S.-registered aircraft. Requiring foreign air carriers to comply with Part 125 immediately was deemed inappropriate in light of the possibility of change to Part 129. Consequently, in adopting Part 125, the agency established a deferred compliance date of January 1, 1983, for foreign air carriers. By Amendments 125-4 (47 FR 44718; October 12, 1982), 125-5 (49 FR 34815; September 4, 1984), 125-6 (51 FR 873; January 8, 1986), and 125-7 (52 FR 6956; March 6, 1987), the agency extended the January 1, 1983, compliance date to September 1, 1984, February 28, 1986, February 28, 1987, and February 29, 1988, respectively, to provide sufficient time for completion of this rulemaking.

Subsequent to the adoption of Part 125, the agency has carefully monitored the operating experience of large U.S.-registered airplanes operated under Part 125. The operating experience can be divided into two main areas of interest. First, the frequency with which foreign air carreirs operate U.S.-registered airplanes under lease has shown a marked increase. These lease agreements are desirable since they provide a means for U.S. air carriers to arrange for use of these airplanes during periods of reduced traffic levels. The second area concerns the distinction between common carriage and noncommon carriage operations.

Most foreign air carriers and foreign persons engaged in common-carriage operations have aircraft maintenance program requirements adopted by their domestic governments which are consistent with the international standards in Part I of Annex 6 to the Convention on International Civil Aviation Organization (ICAO). ICAO, Annex 6, requires each operator to comply with the terms of the aircraft's certificate of airworthiness and to maintain the aircraft in an airworthy condition. To meet these requirements, each foreign operator of a U.S.-registered aircraft used in common carriage must ensure that the aircraft is maintained by a qualified organization with a well-trained staff and adequate workshops, equipment, and facilities. That organization must also have appropriate maintenance manuals, records, and procedures regarding training, inspection, and release of the aircraft. However, some countries may not have requirements completely consistent with the ICAO aircraft maintanence program requirements. This means that U.S.-registered airplanes operated by foreign air carriers or persons from those countries might not meet those international standards. To allow operation of these aircraft would be inconsistent with U.S. international obligations for aircraft of its registry. These amendments will therefore require compliance with the United States' international airworthiness obligations.

Concerning the second main aspect of the operating experience of large U.S.-registered airplanes of the size covered by Part 125, that part was designed to provide a regulatory scheme for an appropriate level of safety for airplanes not used in common carriage. This regulatory intent is stated explicitly in § 125.11. That section prohibits common carriage by a Part 125 certificate holder and declares that any person holding an air carrier operating certificate is ineligible for a certificate under Part 125. The sole exception to the principle that Part 125 is intended to apply only to noncommon carriage to date has been the case of a foreign person common carrier compelled to operate under the rules of Part 125 by operating a U.S.-registered airplane of the size covered by that part. These amendments eliminate that exception by expanding Part 129 to apply to each foreign operator of a U.S.-registered aircraft engaged in common carriage operating either into and out of or wholly outside the United States.

On December 10, 1985, the FAA published Notice No. 85-24 (50 FR 50588, December 10, 1985) to resolve the issues discussed above. The public comment period closed on April 10, 1986.

## Analysis of Comments

Seven public commenters responded to Notice No. 85-24. Two commenters supported the proposals to preclude the commingling of noncommon (private) and common-carriage operations. No comments were received with respect to the operational as opposed to the airworthiness and maintenance proposals of Notice No. 85-24. This, to preclude the commingling of noncommon (private) and common-carriage operations, new §§ 121.3(i), 125.11(c), 129.1(b), 129.11(a)(4) and (c), 135.11(c), and a new paragraph 5 of Section V. A., of paragraph (b) of Appendix A of Part 129 are adopted as proposed. Also, the proposals to revise

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§§ 125.1(a) and (b)(1), (3), and (4), 129.1(a) and 129.11(a) are adopted as proposed.

Section 125.1(d) is removed because the cutoff date of January 1, 1983, is obsolete, and the reference to paragraph (d) is also removed from § 125.1(a).

Proposed § 125.11(a) is revised by replacing the words "is authorized to operate aircraft under an operating certificate or operations specifications" with the words "holds the appropriate operating certificate and/or operations specifications necessary to conduct operations." This revision is consistent with terminology used in SFAR 38–2. Proposed § 125.11(a) is adopted with this modification.

Several commenters recommended that proposed § 129.14(b) be revised to require a maintenance program that would be equivalent to the continuous maintenance program required for Part 121 air carriers. It was suggested that a more specific reference is needed to address the significant maintenance aspects of Part 121 which would clearly exclude an obligation for the foreign air carrier to follow other certification requirements of Part 121 or 135. To the same general effect is the suggestion of another commenter who proposes a change to language in proposed § 129.14(b) to require that the program selected meet the requirements consistent with § 121.367 or § 135.425 as appropriate. The FAA does not agree with these suggestions. A primary objective of the amendment is to require that a U.S.-registered aircraft leased by a foreign person be maintained in accordance with maintenance standards that are consistent with the requirement of the country which is a member of the International Civil Aviation Organization. The FAA considers it would be inappropriate to specify all the applicable FAR sections or to limit an operator's maintenance program requirements to those two sections because an acceptable maintenance program must be in compliance with numerous other sections of Parts 121 and 135, as appropriate.

Another commenter questions who would be responsible for airworthiness control when a foreign operator under Part 129 operates a U.S.-registered aircraft. Proposed § 129.14(a) and (b) would require each foreign person who operates a U.S.-registered aircraft in common carriage to meet prescribed maintenance requirements. Aircraft maintenance programs which are consistent with the international standards in Part I of ICAO Annex 6 require each operator to comply with the terms of the aircraft's certificate of airworthiness and to maintain the aircraft in an airworthy condition. The Federal Aviation Regulations prescribed airworthiness standards for all U.S.-registered aircraft operating within or outside the United States, irrespective of the person operating the aircraft. This includes U.S.-registered aircraft operated by a foreign air carrier or foreign person.

The FAA has further reviewed the maintenance requirements proposed in § 129.14(b) and the comments received concerning the proposed wording of that paragraph. As written, the proposal creates a misunderstanding as to what would constitute an acceptable maintenance program as required by proposed § 129.14(a). In addition, proposed § 129.14(b) would have provided that U.S.-registered aircraft operated by foreign persons would be adequately maintained in accordance with either Part 121 or Part 135, without regard to or consideration of the maintenance standards that are consistent with the requirement of the country which is a member of the ICAO. Further, specific requirements of a maintenance program would best be identified in an Advisory Circular which could address specific requirements for a particular type of operation. Based on the foregoing, § 129.14 has been revised to impose a general requirement that U.S.-registered aircraft operated in common carriage by any foreign air carrier or any foreign person be maintained in accordance with a maintenance program which has been approved by the FAA Administrator. The specific requirements of the program will be addressed in an Advisory Circular that will provide guidance as to what would constitute an approved maintenance program. The Advisory Circular will be disseminated to FAA International Field Offices and Flight Standards District Offices.

Two commenters recommend that the maintenance rules of Part 43 be revised to include reference to Part 129. The FAA agrees and has adopted this recommendation by amending § 43.13(C).

## Regulatory Evaluation

These amendments clarify the maintenance and minimum equipment list requirements applicable to U.S.-registered aircraft operated by foreign persons. Section 129.11(a)(4) will impose only a minimal cost by requiring that the registration markings of each U.S.-registered aircraft be listed on the foreign air carrier's Part 129 operations specifications.

Two commenters support the proposed sections that would preclude the comingling of noncommon (private) and common-carriage operations, and no opposing comments were received. A minimal cost may result from the adoption of these amendments. A remote possibility exists that one or several transport category aircraft may be currently listed on both a Part 125 (private-carriage) operations specifications and either a Part 121, Part 129 or Part 135 (common carriage) operations specifications. Although such simultaneous listing of an aircraft and both private- and common-carriage operations specifications is contrary to current FAA administrative practies, a minimal cost may be incurred by the FAA and a few aircraft operators to delist and aircraft from either the private-carriage operations specifications or the common-carriage operations specifications. In addition, the few operators who may be using the same aircraft in private- and common-carriage operations under a simultaneous listing may lose some utilization of their aircraft as a result of this rule. Any costs that would be incurred are expected to be very minor, however, because of the very limited extent of this practice.

New § 129.14(b) provides for the use of a minimum equipment list by a foreign air carrier of foreign person using any U.S.-registered aircraft in common-carriage operations. The provisions of § 129.14(b) are more explicit and appropriate to common-carriage operations than the minimum equipment list requirements provided in § 91.30, which were reinstated effective March 13, 1986 (50 FR 51168, December 13, 1985), in Amendment 91–192. Both Amendment 91–192 and these amendments preclude the necessity for exemptions, thereby reducing the administrative burden of both foreign air carriers and the FAA.

## Conclusion

These amendments will facilitate the agency's maintaining distinctions among Parts 91,121,125,129, and 135 of the regulations so that all U.S.-registered aircraft meet appropriate standards applicable to the type of operations (air transportation versus other air commerce) being conducted. They also provide for minimum equipment list use by foreign air carriers and other foreign persons using any U.S.-registered aircraft in common carriage operations without the necessity of obtaining an exemption. These amendments will have either no impact or a small positive impact on trade opportunities of U.S. and foreign persons who may wish to enter into aircraft lease agreements. Accordingly, for these reasons and those

discussed under the heading entitled "Regulatory Evaluation," the FAA has determined that these amendments are not considered to be significant under DOT Regulatory Policies and Procedures (44 CFR Part 11034; February 26, 1979) and are not major as defined in Executive Order 12291. For these reasons and because these amendments will result in negligible costs, I certify that, under the criteria of the Regulatory Flexibility Act, the amendments will not have a significant economic impact on a substantial number of small entities. The overall economic impact of this rulemaking is so minimal that it does not require a full regulatory evaluation. In addition, benefits to this agency and some foreign operators are expected to accrue from the elimination of the need for certain exemptions.

**List of Subjects**

*14 CFR Part 43*

Air carriers, Air transportation, Aircraft, Aviation safety, Safety.

*14 CFR Part 91*

Air carriers, aviation safety, Safety, Aircraft, Air transportation.

*14 CFR Part 121*

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Airspace, Foreign air carriers, Transportation, Common carriers.

*14 CFR Part 125*

Aircraft, Airplanes, Airworthiness, Air transportation.

*14 CFR Part 129*

Aircraft, Air carrier, Airworthiness.

*14 CFR Part 135*

Air carriers, Aviation safety, Safety, Air transportation, Aircraft, Transportation, Airspace, Airplanes.

**Adoption of the Amendments**

In consideration of the foregoing, Parts 43, 91, 121, 125, 129, and 135 of the FAR (14 CFR Parts 43, 91, 121, 125, 129, and 135) are amended as follows:

**PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION**

1. The authority citation for Part 43, continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

**§ 43.13 [Amended]**

2. Section 43.13(c) is amended by inserting "and Part 129 operators holding operations specifications" after "135" wherever it appears.

**PART 91—GENERAL OPERATING AND FLIGHT RULES**

3. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on ICAO (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

4. By revising § 91.161(b) to read as follows:

**§ 91.161 Applicability.**

* * * * *

(b) Sections 91.165, 91.169, 91.171, 91.173, and 91.174 of this subpart do not apply to an aircraft maintained in accordance with a continuous airworthiness maintenance program as provided in Part 121, 127, 129, or § 135.411(a)(2) of this chapter.

* * * * *

**PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT**

5. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354 (a), 1355, 1356, 1357, 1401, 1421 through 1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

6. By amending § 121.3 by adding a new paragraph (i) to read as follows:

**§ 121.3 Certification requirements: General.**

* * * * *

(i) No holder of an air carrier operating certificate may operate or list on any required listing of its aircraft any aircraft listed on any operations specifications issued under Part 125 of this chapter.

**PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE**

7. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

8. By amending § 125.1 by removing paragraphs (d) and (e) and by revising paragraphs (a) and (b)(1), (3), and (4) to read as follows:

**§ 125.1 Applicability**

(a) Except as provided in paragraphs (b) and (c) of this section, this part prescribes rules governing the operations of U.S.-registered civil airplanes which have a seating configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved.

(b) * * *

(1) They are required to be operated under Part 121, 129, 135, or 137 of this chapter;

* * * * *

(3) They are being operated by a Part 125 certificate holder without carrying passengers or cargo under Part 91 for training, ferrying, positioning, or maintenance purposes;

(4) They are being operated under Part 91 by an operator certificated to operate those airplanes under Part 121, 135, or 137 of this chapter or are being operated by a foreign air carrier or a foreign person in common carriage solely outside the United States under Part 91 of this chapter; or

* * * * *

9. By amending § 125.11 by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

**§ 125.11 Certificate eligibility and prohibited operations.**

(a) No person is eligible for a certificate or operations specifications under this part if the person holds the appropriate operating certificate and/or operations specifications necessary to conduct operations under Part 121, 129 or 135 of this chapter.

* * * * *

(c) No person holding operations specifications under this part may operate or list on its operations specifications any aircraft listed on any operations specifications or other required aircraft listing under Part 121, 129, or 135 of this chapter.

**PART 129—OPERATIONS OF FOREIGN AIR CARRIERS**

10. The authority citation for Part 129 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

11. By revising the title of Part 129 to read as follows:

## PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

12. By revising § 129.1 to read as follows:

**§ 129.1 Applicability.**

(a) Except as provided in paragraph (b) of this section, this part prescribes rules governing the operation within the United States of each foreign air carrier holding a permit issued by the Civil Aeronautics Board or the Department of Transportation under section 402 of the Federal Aviation Act of 1958 (49 U.S.C. 1372) or other appropriate economic or exemption authority issued by the Civil Aeronautics Board or the Department of Transportation.

(b) Section 129.14 also applies to U.S.-registered aircraft operated in common carriage by a foreign person or foreign air carrier solely outside the United States. For the purpose of this part, a foreign person is any person, not a citizen for the United States, who operates a U.S.-registered aircraft in common carriage solely outside the United States.

13. By amending § 129.11 by revising the introductory text of paragraph (a) and by adding a new paragraph (a)(4) and a new paragraph (c) to read as follows:

**§ 129.11 Operations specifications.**

(a) Each foreign air carrier shall conduct its operations within the United States in accordance with operations specifications issued by the Administrator under this part and in accordance with the Standards and Recommended Practices contained in Part I (International Commercial Air Transport) of Annex 6 (Operation of Aircraft) to the Convention on International Civil Aviation Organization. Operations specifications shall include:

* * * * *

(4) Registration markings of each U.S.-registered aircraft.

* * * * *

(c) No person operating under this part may operate or list on its operations specifications any airplane listed on operations specifications issued under Part 125.

14. by adding a new § 129.14, following § 129.13, to read as follows:

**§ 129.14 Maintenance program and minimum equipment list requirements for U.S.-registered aircraft.**

(a) Each foreign air carrier and each foreign person operating a U.S.-registered aircraft within or outside the United States in common carriage shall ensure that each aircraft is maintained in accordance with a program approved by the Administrator.

(b) No foreign air carrier or foreign person may operate a U.S.-registered aircraft with inoperable instruments or equipment unless the following conditions are met:

(1) A master minimum equipment list exists for the aircraft type.

(2) The foreign operator submits for review and approval its aircraft minimum equipment list based on the master minimum equipment list, to the FAA Flight Standards District Office having geographic responsibility for the operator. The foreign operator must show, before minimum equipment list approval can be obtained, that the maintenance procedures used under its maintenance program are adequate to support the use of its minimum equipment list.

(3) For leased aircraft maintained and operated under a U.S. operator's continuous airworthiness maintenance program and FAA-approved minimum equipment list, the foreign operator submits the U.S. operator's approved continuous airworthiness maintenance program and approved aircraft minimum equipment list to the FAA office prescribed in paragraph (b)(2) of this section for review and evaluation. The foreign operator must show that it is capable of operating under the lessor's approved maintenance program and that it is also capable of meeting the maintenance and operational requirements specified in the lessor's approved minimum equipment list.

(4) The FAA letter of authorization permitting the operator to use an approved minimum equipment list is carried aboard the aircraft. The minimum equipment list and the letter of authorization constitute a supplemental type certificate for the aircraft.

(5) The approved minimum equipment list provides for the operation of the aircraft with certain instruments and equipment in an inoperable condition.

(6) The aircraft records available to the pilot must include an entry describing the inoperable instruments and equipment.

(7) The aircraft is operated under all applicable conditions and limitations contained in the minimum equipment list and the letter authorizing the use of the list.

15. By amending paragraph (b) of Appendix A of Part 129, by amending Section V. A., by adding a new paragraph 5 to read as follows:

**Appendix A—Application for Operations Specifications by Foreign Air Carriers**

(b) * * *

Section V. Aircraft. * * *

A. *Aircraft.*

5. Registration markings of each U.S.-registered aircraft.

* * * * *

## PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

16. The authority citation for Part 135 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

17. By amending § 135.11, by adding a new paragraph (c) to read as follows:

**§ 135.11 Application and issue of certificate and operations specifications.**

* * * * *

(c) No person holding operations specifications issued under this part may list on its operations specifications or on the current list of aircraft required by § 135.63(a)(3) any airplane listed on operations specifications issued under Part 125.

Issued in Washington, DC, on May 19, 1987.

Donald D. Engen,

*Administrator.*

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Part V

# Department of the Interior

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 773 and 778**

**Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control Information; Proposed Rule**

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 773 and 778

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control Information

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to revise its regulations which specify what information must be included in a surface coal mining permit application. The revision is needed to conform the information reporting requirements for a permit with changes in the permitting process recently proposed by OSMRE. The revision will require the submission of additional information concerning persons who own or control a permit applicant.

DATES:

*Written Comments:* OSMRE will accept written comments on the proposed rule until 5 p.m. Eastern time on August 6, 1987.

*Public Hearings:* Upon request, OSMRE will hold public hearings on the proposed rule in Washington, D.C.; Denver, Colorado; and Pittsburgh, Pennsylvania at 9:30 a.m. local time on July 30, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington, where Federal regulatory programs are in effect, at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern time on June 29, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under "FOR FURTHER INFORMATION CONTACT" beforehand to verify that the hearing will be held.

ADDRESSES:

*Written Comments:* Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5131, 1100 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5131–L, 1951 Constitution Avenue, Washington, D.C. 20240.

*Public Hearings:* Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC.; Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and 2nd flooor Conference Room, 10 Parkway Center, Pittsburg, Pennsylvania. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington will be announced prior to the hearings.

*Request for public hearings:* Submit orally or in writting to the person and address specified under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Andrew I. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of the Proposed Rule
IV. Procedural Matters

## I. Public Comment Procedures

*Written Comments*

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see "ADDRESSES"). Comments received after the close of the comment period (see "DATES") may not be considered or included in the Administrative Record for the final rule.

*Public Hearings*

OSMRE will hold public hearings on the proposed rule upon request only. The times, dates and addresses scheduled for hearings at three locations are specified previously in this notice (see "DATES" and "ADDRESSES"). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the Federal Register at least 21 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. DeVito (See "FOR FURTHER INFORMATION CONTACT") either orally or in writing of the desired hearing location by 5:00 Eastern Time on June 29, 1987. If no one has contacted Mr. DeVito to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see "ADDRESSES") an advance copy of their testimony.

## II. Background

The purpose of this proposed rule is to conform the information reporting requirements for permit applications with changes in the permitting process recently proposed by OSMRE. On April 5, 1985, OSMRE published a proposed rule (50 FR 13724) which would amend its regulations dealing with the permitting process by: (1) Adding definitions for the terms "ownership" and "control" as those concepts are used in the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, and (2) expanding the scope of the compliance findings which regulatory authorities are required to make prior to permit approval. On April 16, 1986 (51 FR 12879) a notice was published which reopened and extended the public comment period for the proposed rule. On May 4, 1987 (52 FR 16275) another notice was published which again reopened and extended the public comment period. The April 16th notice and the May 4th notice each contained a detailed explanation of an option which OSMRE is considering for adoption as the final "Ownership and Control" rule.

The option discussed in the April 16, 1986 notice includes the following provisions:

(1) A definition for "ownership" which includes multiple levels of a corporate family tree. Ownership would be defined as holding the proprietary interest in a sole proprietorship, being a general partner in a partnership, or having a 10% or greater interest in an entity, either directly or *indirectly* through one or more intermediary companies. Under this definition, a 10 percent or greater interest in an entity would constitute ownership regardless of the number of levels "up" or "down" the corporate structure that separated the parent and subsidiary.

(2) A definition for "control" which would include any relationship which gives one person authority to determine the manner in which an applicant, or an operator if other than an applicant,

conducts surface coal mining and reclamation operations. Being an operator would constitute control. Being a chief executive officer or chief operating officer of a corporation would constitute control of that corporation. Being any other officer or a director would create a rebuttable presumption of control of that corporation. Being a director or officer of a corporation would also create a rebuttable presumption of control over other entities owned by that corporation. The rebuttable presumption of control could be overcome by clear and convincing evidence that such director or officer had no authority to determine the manner in which the surface coal mining operation was conducted.

(3) A requirement for a finding by the regulatory authority that any surface coal mining and reclamation operation owned by either the applicant or by anyone who owns or controls the applicant has been conducted in accordance with the requirements of the Act and certain other applicable environmental laws, and that there are no outstanding violations.

(4) A presumption that in the absence of a failure-to-abate cessation order a notice of violation (NOV) would be presumed to be in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation.

These provisions, or those contained in the May 4th option, if adopted by OSMRE in the final "Ownership and Control" rule, would necessitate certain conforming changes to the information reporting requirements presently found in §§ 778.13 and 778.14.

Because of the time required to propose and adopt a rule it is necessary for OSMRE to propose at this time conforming changes which will be needed when OSMRE adopts the final "Ownership and Control" rule. The proposal of this rule which conforms the information reporting requirements to the April 16th option should not be construed as an indication that OSMRE has decided which option to adopt for the final "Ownership and Control" rule. The proposed information reporting requirements conform to the April 16th option because it is the most expensive. Should OSMRE adopt the provisions of the May 4th option, or some other option which requires the submission of less information than is required by this proposed rule, then the final information reporting requirements in §§ 778.13 and 778.14 will be conformed as necessary to the selected option.

Should the May 4th option be selected rather than the April 16th option, the information reporting requirements may be changed from reporting entities with *indirect* ownership of the applicant of greater than 10 percent to reporting indirect owners of the applicant who own at least 20 percent of the next immediate subsidiary. Under either option, entities directly owning 10 percent or more of the applicant would be listed. For business entities other than the permit applicant, only the names and titles of those officers who by virtue of their positions have authority to control or influence the actions of a subsidiary entity would be required. Comments are requested on these alternative reporting requirements.

It is important to note that the final "Ownership and Control" rule and the proposed information collection requirements in this proposed rule will serve as a basis by which searches in the computer based Applicant Violator System (AVS) will be made for the purposes of permit blocking and the revocation of erroneously issued permits.

## III. Discussion of the Proposed Rule

Existing §§ 778.13 and 778.14 specify the legal, financial and compliance information that must be submitted in a permit application. OSMRE is proposing to modify these sections to require the submission of additional information and the use of a standard form for reporting the information. Also, OSMRE is proposing a new § 773.17(i) as a permit condition which would require that the ownership and control information required by § 778.13 be updated on an annual basis.

### *Section 773.17(i)—Permit condition*

Proposed § 773.17(i) would require a permittee to update and submit to the regulatory authority on an annual basis any changes in the information required by proposed §§ 778.13 (b) and (c). These latter sections would require the submission of the identities of persons owning or controlling the permit applicant, as well as the identity of all current and prior (within the past 5 years) surface coal mining and reclamation operations operated by either the applicant or anyone who owns the applicant. The updated information, which would be submitted to the regulatory authority issuing the permit would allow the regulatory authority to keep current the ownership and control data in the AVS. The requirement to update the information would apply to all permittees. A permittee's failure to update the data could result in permit rescission.

### *Section 778.13—Identification of Interests*

The proposed rule would modify § 778.13 as follows: Section 778.13(b) would require the submission of the name, address, telephone number, and social security or taxpayer identification number of the applicant, the operator (if different from the applicant), the applicant's resident agent who will accept service of process, the person who will pay the abandoned mine land reclamation fee, and any contractor who will conduct the surface coal mining and reclamation operations.

Section 778.13(c)(1) would require the submission of the name, title, address and social security or taxpayer identification number of every person who controls the applicant, including every officer, partner and director of the applicant and the operator, and the name of any other person who performs a function similar to a director of the applicant or the operator, the date of assuming that position, and when appropriate in the annual report required by § 773.17(i) of this chapter the date of leaving that position.

Section 778.13(c)(2) would require the submission of the name, address, social security or taxpayer identification number, and percent of ownership of each person who owns a 10 percent or greater interest in the permit applicant, either directly or indirectly through one or more intermediary companies. If ownership is indirect, the relationship between intermediary companies must be furnished.

Section 778.13(c)(3) would require the submission of the name, title, address and social security or taxpayer identification number of each officer and director of any entity owning a 10 percent or greater interest in the permit applicant, either directly or indirectly through one or more intermediary companies, the date of assuming that position, and when appropriate in the annual report required by § 773.17(i) the date of leaving that position.

Section 778.13(c)(4) would require the submission of the name, address, social security or taxpayer identification number and percentage of ownership of each subsidiary in which the applicant directly or indirectly owns a 10 percent or greater interest. If ownership is indirect, the relationship between intermediary companies must be furnished.

Section 778.13(c)(5) would require the submission of any name, including that of any subsidiary, and social security or taxpayer identification number under which the applicant, partner or anyone

who owns a 10 percent or greater interest in the applicant, either directly or indirectly through one or more intermediary companies, now operates or previously operated a surface coal mining and reclamation operation in the United States within the 5 years preceding the date of the application.

Section 778.13(d) would require a statement of any pending surface coal mining and reclamation operation permit applications in the United States, and of all current and previous coal mining permits in the United States held during the 5 years preceding the date of the application by any person identified in paragraph (c)(5) above, the permit or application numbers or other identifiers, and the identity of the regulatory authority for each operation listed.

The requirement in proposed § 778.13(b) to supply the name of the person (including his social security or taxpayer identification number) who will pay the abandoned mine land reclamation fee is in addition to the requirement to list the operator. Section 402(a) of the Act requires that an operator of a surface coal mining and reclamation operation pay the reclamation fee required by the Act. Experience has shown that often the reclamation fee is paid for the operator by individuals such as accountants, attorneys, trustees or by institutions such as banks. Furnishing the name of the person paying the reclamation fee will assist OSMRE in collecting the money and arranging for audits when necessary. Supplying the name of the person who would actually pay the reclamation fee would in no way alter the legal obligation of other persons ultimately responsible for its payment.

Under proposed § 778.13(j), the information required by §§ 778.13 and 778.14 would have to be submitted on any prescribed form that is issued by OSMRE. In order to facilitate the input of legal, financial and compliance data into the AVS and in order to reduce errors when that data is transferred from a permit application to the computer, OSMRE intends to issue a form that is compatible with the software program being developed for the AVS. Use of the form would be required by all permit applicants when submitting the information required by §§ 778.13 and 778.14 regardless of whether the permit application is filed with OSMRE or a state regulatory authority. OSMRE will obtain approval from the Office of Management and Budget prior to issuing the form.

*Section 778.14—Violation Information*

In addition to the identification of interests as required by proposed § 778.13, proposed § 778.14(c) requires each application to contain a list of all violation notices received by the applicant or any surface coal mining operation owned or controlled by either the applicant or by any person who currently owns or controls the applicant, or who did so during the 3-year period preceding the application date, for a violation of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection, except that *NOV's* under the Act received by any surface coal mining operation owned or controlled by either the applicant or by persons who own or control the applicant may be excluded. The application also would be required to contain the date of issuance of the notice, the name of the person to whom the notice was issued, and the issuing regulatory authority, department or agency. The purpose of this information is to provide the data necessary to make the compliance finding required by section 510(c) of the Act prior to a decision on the issuance of a surface coal mining permit.

The current § 778.14(c) requires a listing of all violation notices including NOV's. Proposed § 778.14(c) would still require pursuant to section 510(c) of the Act that NOV's received by the applicant be listed. However, proposed § 778.14(c) no longer would require that an NOV received by a surface coal mining operation owned or controlled by the applicant or by persons who own or control the applicant be listed. This requirement would be deleted because of the presumption discussed above. That presumption holds that in the absence of a failure-to-abate cessation order an NOV would be presumed to be in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation. OSMRE has proposed a rule governing the rescission of a permit in situations where an NOV existed at the time of the issuance of the permit and the NOV later ripens into a CO after the permit is issued. See 51 FR 25828.

Proposed § 778.14(c) also clarifies the reporting requirements by specifying that violations must be listed for the applicant or any surface coal mining operation owned or controlled by either the applicant, or by any person who owns or controls the applicant. The current regulations require that violations be listed for the applicant or any subsidiary, affiliate, or persons controlled by or under control with the applicant.

*Effect in Federal Program States*

The proposed rule would apply through cross-referencing to the following Federal program States: Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

## IV. Procedural Matters

*Federal Paperwork Reduction Act*

The information collection requirements in the proposed rule have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 *et seq.* The information is needed to meet the requirements of sections 201, 507, and 510 of Pub. L. 95–87, and will be used by OSMRE in reviewing a permit application and rescinding improvidently issued permits. The obligation to respond is mandatory.

*Executive Order 12291*

The Department of the Interior has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. This determination is based on the findings that the regulatory revisions and additions proposed by this rule would cause very little increase in the costs of operating a mine in a manner that meets the requirements of the Act. Further, there would be no significant impacts on competition, employment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Regulatory Flexibility Act*

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities because although the rule would impose new regulatory burdens on small entities, the time and effort required to fulfill the additional data collection requirements would be minimal.

*National Environmental Policy Act*

The proposed rule has been reviewed by OSMRE and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with DOI Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

**List of Subjects**

*30 CFR Part 773*

Administrative practice and procedure, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 778*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 773 and 778 as follows:

Dated: May 12, 1987.

J. Steven Griles,

*Assistant Secretary for Land and Minerals Management.*

## PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, 16 U.S.C. 470 *et seq.*, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 661 *et seq.*, 16 U.S.C. 703 *et seq.*, 16 U.S.C. 668a *et seq.*, 16 U.S.C. 469 *et seq.*, and 16 U.S.C. 470aa *et seq.*

2. Section 773.17 is amended by adding a new paragraph (i) to read as follows:

**§ 773.17 Permit conditions.**

* * * * *

(i) The permittee shall update and furnish to the regulatory authority on an annual basis the information required by §§ 778.13 (b) and (c) of this chapter.

## PART 778—PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

3. The authority citation for Part 778 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

4. In § 778.13, the introductory text and paragraphs (b), (c), and (d) are revised, and paragraphs (i) and (j) are added to read as follows:

**§ 778.13 Identification of interests.**

Except as provided in paragraph (i), each application shall contain the following information:

* * * * *

(b) Name, address, telephone number, and social security or taxpayer identification number of the applicant, the operator (if different from the applicant), the applicant's resident agent who will accept service of process, the person who will pay the abandoned mine land reclamation fees, and any contractor who will conduct the surface coal mining and reclamation operations.

(c) Where applicable—

(1) name, title, address and social security or taxpayer identification number of every person who controls the applicant, including every officer, partner and director of the applicant and the operator, and the name of any other person who performs a function similar to a director of the applicant or the operator, the date of assuming that position, and when appropriate in the annual report required by § 773.17(i) of this chapter the date of leaving that position.

(2) Name, address, social security or taxpayer identification number, and percent of ownership of each person who owns a 10 percent or greater interest in the permit applicant either directly or indirectly through one or more intermediary companies. If ownership is indirect, the relationship between intermediary companies must be furnished.

(3) Name, title, address and social security or taxpayer identification number of each officer and director of any entity owning a 10 percent or greater interest in the permit applicant, either directly or indirectly through one or more intermediary companies, the date of assuming that position, and when appropriate in the annual report required by § 773.17(i) the date of leaving that position.

(4) Name, address, social security or taxpayer identification number and percentage of ownership of each subsidiary in which the applicant directly or indirectly owns a 10 percent or greater interest. If ownership is indirect, the relationship between intermediary companies must be furnished.

(5) Any name, including that of any subsidiary, and social security or taxpayer identification number under which the applicant, partner or anyone who owns a 10 percent or greater interest in the applicant, either directly or indirectly through one or more intermediary companies, now operates or previously operated a surface coal mining and reclamation operation in the United States within the 5 years preceding the date of application.

(d) A statement of any pending surface coal mining and reclamation operation permit applications in the United States, and of all current and previous coal mining permits in the United States held during the 5 years preceding the date of the application by any person identified in paragraph (c)(5) of this section. Such statement shall provide permit or application numbers or other identifiers and the identity of the regulatory authority for each operation listed.

* * * * *

(i) When the taxpayer identification number required by paragraphs (b) and (c)(1)–(5) is a social security number, the submission is not mandatory.

(j) The information required by this section and § 778.14 of this part shall be submitted on any prescribed form that is issued by OSMRE.

5. In § 778.14 paragraph (c) introductory text, and paragraph (c)(1) are revised to read as follows:

**§ 778.14 Violation information.**

An application shall contain the following:

* * * * *

(c) A list of all violation notices received by the applicant or any surface coal mining operation owned or controlled by either the applicant, or by person who owns or controls the applicant during the 3-year period preceding the application date, for a violation of any provision of the Act, or of any law, rule or regulation of the United States, or of any State law, rule or regulation enacted pursuant to Federal law, rule or regulation pertaining to air or water environmental protection, except that notices of violations under the Act received by surface coal mining operations owned or controlled by either the applicant or by persons who own or control the applicant may be excluded. The application shall also contain the following information about each violation notice:

(1) The date of issuance, the name of the person to who the violation notice was issued, and the issuing regulatory authority, department or agency;

* * * * *

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Part VI

# Department of Commerce

**Patent and Trademark Office**

**37 CFR Part 1**

## Unity of Invention and Patent. Cooperation Treaty (Chapter II); Notice of Final Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 61231-7086]

## Unity of Invention and Patent Cooperation Treaty [Chapter II]

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Final Rulemaking.

SUMMARY: The Patent and Trademark Office hereby amends its regulations (1) to change the practice in handling unity of invention issues in international applications under the Patent Cooperation Treaty (PCT) and those entering the national stage under 35 U.S.C. 371 and (2) to establish procedures necessary for patent applicants to proceed under Chapter II of the Patent Cooperation Treaty. This rule change is being made because (1) the current rules for handling unity of invention issues in international applications are not consistent with the court decision in *Caterpillar Tractor Co.* v. *Commissioner of Patents and Trademarks*, 231 USPQ 590 (E.D. Va. 1986), and (2) legislation implementing Chapter II of the Patent Cooperation Treaty has recently been enacted. The promulgated rules will result in (1) the treatment of unity of invention issues in international applications consistently with the court decision while retaining the current practice for national applications filed under 35 U.S.C. 111, and (2) procedures adequate for applicants to proceed under Chapter II of the Patent Cooperation Treaty.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Louis O. Maassel by telephone at (703) 557-3070 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This final rule change relates to (1) questions of unity of invention which may arise in international applications when searched as an International Searching Authority and when examined as an International Preliminary Examining Authority by the United States Patent and Trademark Office (USPTO) and during the national stage in the United States as a Designated Office after entry under 35 U.S.C. 371 pursuant to the Patent Cooperation Treaty (PCT) and (2) procedures to be followed and fees to be paid under Chapter II of the Patent Cooperation Treaty. The rule change will also increase the amount of the international search fees and national fees in international applications in view of increased average effort required by the USPTO because of changes in the rules relating to unity of invention. No fees are being established under 35 U.S.C. 41.

### Background Information

*Unity of Invention*

The May 28, 1986, decision in *Caterpillar Tractor Company* v. *Commissioner of Patents and Trademarks*, 231 USPQ 590 (E.D. Va., 1986) held that the Patent and Trademark Office interpretation of 37 CFR 1.141(b)(2) as applied to unity of invention determinations in international applications was not in accordance with the Patent Cooperation Treaty and its implementing rules. In the Caterpillar international application, the USPTO, acting as an International Searching Authority, had held lack of unity of invention between a set of claims directed to a process for forming a sprocket and a set of claims drawn to an apparatus (die) for forging a sprocket. The court stated that it was an unreasonable interpretation to say that the expression "specifically designed" as found in PCT Rule 13.2(ii) means that the process and apparatus have unity of invention if they can only be used with each other, as set forth in the Manual of Patent Examining Procedure (MPEP) § 806.05(e).

Therefore, when the Patent and Trademark Office considers international applications as an International Searching Authority, as an International Preliminary Examining Authority, and during the national stage as a Designated or Elected Office under 35 U.S.C. 371, PCT Rule 13.1 and 13.2 will be followed when considering unity of invention of claims of different categories without regard to the practice in national applications filed under 35 U.S.C. 111. No change is being made in the current restriction practice in United States national applications filed under 35 U.S.C. 111 outside the PCT. No change in practice is being made in regard to claims of the same category of invention either in PCT international applications or in U.S. national applications. Any such change in U.S. national restriction practice would require a statutory change in the fee levels in order to cover the additional examining effort required in individual patent applications.

The unity of invention procedures set forth in the rules are already being substantially followed by the examiners in the USPTO as a result of the notice signed on August 15, 1986, and published in the Official Gazette on September 9, 1986 at 1070 O.G. 11. The notice of September 9, 1986 and any prior notices or policies relating to unity of invention which are inconsistent with the rules and procedures in this final rules notice are superseded to the extent that they are inconsistent.

The unity of invention practice set forth in PCT Rule 13 will be applied in national stage applications entered under 35 U.S.C. 371 because 35 U.S.C. 372(b)(2) provides that "The Commissioner may cause the question of unity of invention to be reexamined under section 121 of this title, within the scope of the requirements of the treaty and the Regulations". However, continuing applications filed under 35 U.S.C. 111 of international applications under the provisions of 35 U.S.C. 365(c) will be subject to the same restriction practice as other United States national applications filed under 35 U.S.C. 111. However, it is noted that where several inventions have been searched in the parent international application, the examination of such inventions in a continuing national application may not be burdensome and the examiner may consider all the inventions in such an application without making a restriction requirement.

*Implementation of Unity of Invention Practice in International Applications and National Stage Applications Entered Under 35 U.S.C. 371*

(1) The practice established by these rules for international and national stage applications will *not* be applied to national applications filed under 35 U.S.C. 111.

(2) The practice established by these rules will *not* affect the treatment of the claims of any applications (national or international) where the question of lack of unity of invention relates to other than different categories of invention issues.

Therefore, restriction and unity of invention practice involving, for example, Markush type claims, genus-species, intermediate-final product or combination-subcombination situations is *not* affected for any applications by this rule change.

(3) The criteria of § 1.141 would continue to be applicable to U.S. national applications filed under 35 U.S.C. 111 in a manner similar to that in effect prior to the Caterpillar decision and essentially the same as the practice which was in effect for many years prior to the PCT implementation. That is, national restriction practice will continue as set forth in MPEP Chapter 800, as modified in 1046 O.G. 2 for the

practice relating to product, process of making and process of using. The practice in this latter situation is that a three way requirement for restriction can only be made where the process of making is distinct from the product (i.e., the requirements of MPEP 806.05(f) are met). Otherwise, claims to the process of using must be joined with the claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product (MPEP 806.05(h)) could be made. This concept is included in paragraph 1.141(b).

(4) Under the rules, the criteria of PCT Rule 13.2 will be applied when considering unity of invention of claims drawn to different categories of invention in international applications as an International Searching Authority, International Preliminary Examining Authority, and as a Designated or Elected Office in international applications which enter the national stage under 35 U.S.C. 371.

(5) Under the rules, in applying PCT Rule 13.2 to international applications as an International Searching Authority, an International Preliminary Examining Authority and to national stage applications under 35 U.S.C. 371, examiners will consider for unity of invention all of the claims to different categories of invention in the application and will permit retention in the same application for searching and/or examination, claims to the categories which meet the requirements of any one of PCT Rule 13.2(i) to (iii).

Under the rules, the USPTO will also permit in the same international or national stage application the following two combinations:

(1) An independent claim for a given product and an independent claim for a process specially adapted for the manufacture of said product.

(2) An independent claim for a given product and an independent claim for a process of using the said product.

Under the rules, if an application contains a combination of categories of claims which do not fall within any *one* of the combinations of PCT Rule 13.2(i) to (iii) or additional combinations (1) or (2) above, i.e., they claim more or less categories of invention than permitted in any one of PCT Rule 13.2(i) to (iii) or combination (1) or (2) above, unity of invention may not be present.

Further, an independent claim for a use in PCT Rule 13.2(i) and combination (2) above will be construed as being limited to a claim directed to a process of using. In determining unity of invention under PCT Rule 13.2 (i) and (iii) and combination (1) above, under the rules, the examiner will consider the word "specially" which appears before "adapted" to be an emphasis word rather than a limitation. In determining unity of invention under PCT Rule 13.2(ii), the examiner will consider the word "specifically" which appears before "designed" to be an emphasis word rather than a limitation.

Under the rules, if an application includes claims to all the categories of invention set forth in any one of PCT Rule 13.2 (i), (ii), (iii), combinations (1) or (2) above, and no additional categories of invention are present, unity of invention will exist and no additional fees will be required or restriction requirement made.

For example, if an application contained claims to only a process for the manufacture of a product and claims to a use of a product and no product claim is present, there will be lack of unity of invention since the provisions of Rule 13.2(i) do not apply because claims to all categories of invention set forth in PCT Rule 13.2(i) are not included in the application and the process for manufacture of a product is independent of the use of the product since neither is dependent on the other. Also if claims to all three categories of PCT Rule 13.2(i) were present at the time of the first Office action in a national stage application and all the product claims are rejected in the first Office action, a requirement for restriction could also be made, if appropriate, in view of independent inventions being in the application without an allowable linking (product) claim.

Under the rules, where claims to a category of invention in addition to those listed in any one of PCT Rule 13.2 (i), (ii), (iii) or combinations (1) or (2) above are included in an application, unity of invention may be lacking between the claims drawn to the combination of the categories of invention set forth in any *one* of PCT Rule 13.2 (i), (ii) or (iii) or combinations (1) or (2) above, and the claims to the additional category of invention. For example, if an application contains claims to a process for manufacture, claims to an apparatus or means for carrying out the process and claims to a process of using the product manufactured, there could be lack of unity of invention. In such a situation the examiner should group the claims to the process for manufacture and the claims for an apparatus or means for carrying out the process because unity of these two categories exists under PCT Rule 13.2(ii). The claims to the use of the product can be separately grouped if the "use" is shown to be "independent and distinct" of both the "process for manufacture" and the "apparatus or means for carrying out the process" as provided in Chapter 800 of the Manual of Patent Examining Procedure (MPEP).

When the claims presented in an application are directed to several categories of invention under the rules so that more than one paragraph of PCT Rule 13.2 and combinations (1) or (2) above applies, the examiner would inspect the claims to see if the categories of invention set forth in PCT Rule 13.2, paragraphs (i), (ii) and (iii), and then combinations (1) or (2) above are present in the application in that order. For example, if the categories of PCT Rule 13.2(i) are found in the application, the claims to those categories stated in PCT Rule 13.2(i) will be considered as one invention and any claims to different categories of invention will be reviewed to determine if they are "independent and distinct" of *all* the claims covered in PCT Rule 13.2(i) in accordance with the provisions of Chapter 800 of the MPEP.

(6) Under PCT Rule 13.2 and combinations (1) and (2) above, unity will exist where the claims are limited to one invention in each category of invention recited. For example, under PCT Rule 13.2(i), claims are permitted to one product, one process of manufacturing the product and one use of the product. If multiple products, processes of manufacture or uses are claimed, the first invention in the category first mentioned in the claims would be considered as the elected invention under the rules. The first recited invention of each additional category which is related to the first invention as indicated in the previous sentence will be considered elected. Accordingly, for example, if multiple products are claimed, the first recited product will be considered to be constructively elected and if multiple processes adapted for making and/or using the product are claimed, the first recited process will also be constructively elected. Any additional inventions of the same category will be subject to payment of additional fees during the international stage. In a national stage application submitted under 35 U.S.C. 371 any such holding by the examiner will be made in the form of a restriction requirement. Such a restriction requirement will be made on the basis of criteria set forth in MPEP Chapter 800. Applicant will have the right to traverse such a restriction requirement in the response to the Office action.

(7) Inventions of different categories, to have unity of invention, must be related rather than independent

inventions. For example, the product as claimed in PCT Rule 13.2(i) and combinations (1) and (2) above must be capable of being made by the claimed process for manufacture or being used in the claimed process of use. Likewise in PCT Rule 13.2(ii), the apparatus as claimed must be capable of carrying out the claimed process. In PCT Rule 13.2(iii), the claimed process of manufacture must be capable of preparing the claimed product and the claimed apparatus or means must be able to perform the claimed process of manufacture.

(8) Under §§ 1.494 and 1.495, applicants must indicate on all application papers filed for entry under 35 U.S.C. 371 that the filing is being made under 35 U.S.C. 371. Otherwise, the application papers will be treated as having been filed under 35 U.S.C. 111.

*Patent Cooperation Treaty, Chapter II*

The Patent Cooperation Treaty became effective for the United States on January 24, 1978. The United States, however, was one of six countries (out of the 40 countries who have ratified or acceded to the Treaty) which had reservations not to be bound by Chapter II. The document removing the reservation as to Chapter II was deposited with the Director General of the World Intellectual Property Organization on April 1, 1987. Accordingly, Chapter II of the Treaty for the United States of America, Pub. L. 99-616 and these final regulations become effective 3 months later on July 1, 1987.

Chapter I of the Patent Cooperation Treaty provides a standardized application format and a centralized filing procedure for international patent applications. Pursuant to Chapter I, an applicant may submit an international application, designating those member countries in which the applicant desires patent protection. Filing an international application has the same effect as filing a separate application in all designated member states with respect to the filing date. In addition, by filing an international application, the applicant does not have to incur the expenses associated with national patent prosecution in the designated countries until 20 months from the priority date of the international application. During this period, the applicant obtains an international search report citing prior art deemed to be relevant to the claims of the invention contained in the international application. This helps the applicant decide whether to proceed with patent prosecution in the various countries originally designated.

Chapter II of the Patent Cooperation Treaty provides two further benefits for the applicant. First, an additional 10 months is allowed, for a total of 30 months from the priority date of the international application, before the applicant must decide whether to proceed with national patent prosecution in the elected countries. Second, the applicant is provided with an international preliminary examination report. In contrast to the international search report, which provides citations of prior art pertinent to the invention, the international preliminary examination report is a non-binding opinion from an International Preliminary Examining Authority as to whether the invention is novel, involves an inventive step (is non-obvious), and is industrially applicable. A preliminary examination report will be established within 28 months from the priority date. This preliminary examination report, together with the additional 10 months before the decision to proceed with national prosecution is required, places the applicant in a better position to consider commercial factors associated with the invention and to decide whether to pursue patent protection in the various elected countries.

To take advantage of these benefits provided by Chapter II, an applicant must file a "Demand" for a preliminary examination in an appropriate International Preliminary Examining Authority prior to the expiration of the 19th month from the priority date and pay certain fees. The final rules establish the amounts of some of the necessary fees and procedures under Chapter II and also group all the rules unique to international applications in a separate area of the regulations. The rules fall into three groups: (1) those directed to procedures under Chapter I, (2) those directed to procedures under Chapter II, and (3) those directed to entering the national stage under 35 U.S.C. 371.

*Changes From the Proposed Rules*

In § 1.475, a new paragraph (f) has been added which sets forth in the rules the exact wording of PCT Rule 13. PCT Rule 13 was included in the proposed rules as a footnote. The incorporation of the wording of PCT Rule 13 into § 1.475(f) will make it easier to refer to and easier to locate. Sections 1.475, 1.476, 1.487 and 1.499 are also changed to refer to § 1.475(f) rather than footnote 1.

In § 1.480(c), the wording has been clarified by adding a reference to the election of the United States.

Section 1.484(f) has been modified from the proposal to permit more than one interview in those situations where the examiner considers that an additional interview would be helpful.

In § 1.485, paragraph (b) has not been included since the substance thereof is set forth in § 1.484(d).

In § 1.492(a) (2) and (3), "I" has been deleted in order to refer to both § 1.445(a)(2) (i) and (ii).

An additional paragraph (a)(4) has been added to § 1.492 and an additional paragraph (b) has been added to § 1.496 which provide for a substantially reduced national fee and special procedure, respectively, where the application has satisfied the requirements of novelty, inventive step (non-obviousness) and industrial applicability before the United States International Preliminary Examining Authority as to the identical claims which are in the application at the national stage in the Patent and Trademark Office. Amendments during subsequent prosecution will only be permitted in response to an examiner's rejections or objections. Thus, no new claims are permitted. Therefore, most of such cases will require little or no prosecution to satisfy the requirements for patentability. The title of § 1.496 has been broadened in view of the new paragraph (b) and proposed § 1.496 has been redesignated as paragraph (a).

In §§ 1.494 and 1.495, an additional paragraph has been added to indicate the date of abandonment of an international application as to the United States if the requirements of 35 U.S.C. 371(c) are not timely fulfilled.

*Response to Comments Received*

Specific comments were received on several of the proposed rules, particularly those relating to unity of invention and fees. Sixteen letters submitting written comments were received. Oral testimony was presented by five persons at the public hearing conducted on April 6, 1987 resulting in 46 pages of testimony. All of the written and oral comments were considered in adopting the changes set forth herein. Comments suggesting modifications to the proposed rules or requesting clarification thereto appear below with responses thereto.

*Comment.* A question was raised as to whether the deadline for filing a continuing application under 35 U.S.C. 365(c) and 120 was 20 or 22 months under Chapter I and 30 or 32 months under Chapter II.

*Reply.* The Patent and Trademark Office considers the international application to be pending until the 22nd month from the priority date if the United States has been designated and no Demand for International Preliminary

Examination has been filed prior to the expiration of the 19th month from the priority date and until the 32nd month from the priority date if a Demand for International Preliminary Examination which elected the United States of America has been filed prior to the expiration of the 19th month from the priority date, provided that a copy of the international application has been communicated to the Patent and Trademark Office within the 20 or 30 month period, respectively. If a copy of the international application has not been communicated to the Patent and Trademark Office within the 20 or 30 month period respectively, the international application becomes abandoned as to the United States 20 or 30 months from the priority date respectively. These periods have been placed in the rules as paragraph (h) of § 1.494 and paragraph (i) of § 1.495. A continuing application under 35 U.S.C. 365(c) and 120 may be filed anytime during the pendency of the international application.

*Comment.* A comment was received concerning the situation where a continuing application is filed under 35 U.S.C. 365(c) of an international application which claims priority of an earlier filed foreign application as to (1) whether the applicant must specifically claim priority in the continuing application and (2) whether the certified copy of the priority application which may have been communicated to the Patent and Trademark Office by the International Bureau may be relied upon without any need to file a certified copy of the priority application in the continuing application.

*Reply.* As to item (1), it is necessary under the statute for the applicant to claim priority in the continuing application. Otherwise there is no indication that such benefit is desired in the continuation and the information may not be present for printing of any subsequent patent.

As to item (2), the certified copy of the priority application communicated by the International Bureau is placed in a folder and is not assigned a U.S. serial number unless the national stage is entered. Such folders are disposed of if the national stage is not entered. Therefore such certified copies may not be available if needed later in the prosecution of a continuing application. An alternative would be to physically remove the priority documents from the folders and transfer them to the continuing application. The resources required to request transfer, retrieve the folders, make suitable record notations, transfer the certified copies, enter and make of record such copies in the continuing applications is substantial. Accordingly, the priority documents in folders of international applications which have not entered the national stage may not be relied on.

*Comment.* One comment raised the question whether a continuing application filed under 35 U.S.C. 111 and entitled to the benefit of a prior international application designating the United States under 35 U.S.C. 365(c) and 120 would be subject to the PCT unity practice of § 1.499 or the national restriction practice under § 1.141.

*Reply.* A continuing application filed under 35 U.S.C. 111 would be subject to the national restriction practice as set forth in § 1.141 and Chapter 800 of the Manual of Patent Examining Procedure. Only those international applications entering the national stage under 35 U.S.C. 371 and § 1.494 or § 1.495 would be subject to the unity of invention practice set forth in § 1.499.

*Comment.* Five comments were made to the effect that the unity practice set forth in the rules was not consistent with the unity of invention criteria currently under discussion in the WIPO "harmonization" treaty meetings.

*Response.* At the present time there appears to be no agreed upon unity practice in the harmonization meetings. Only a discussion document has been prepared by WIPO. The Patent and Trademark Office is currently making a very intensive study of unity of invention in the United States, Japan and the European Patent Office. The practice which may result from this study and subsequent discussions is also not clear at this time. For these reasons as well as the fee implications of such a change, it is considered preferable to proceed with a clarification of the unity of invention practice which is to be used as part of the regulations for use by patent applicants and examiners at this time and, if modification of the practice is required in the future, appropriate changes in the law and the rules will be made at that time.

*Comment.* Two comments argued that the difference in treatment of unity of invention is contrary to 35 U.S.C. 372(a).

*Reply.* 35 U.S.C. 372(a) states:

> All questions of substance and, within the scope of the requirements of the treaty and Regulations, procedure in an international application designating the United States shall be determined as in the case of national applications regularly filed in the Patent and Trademark Office.

This section is interpreted as relating only to substantive questions of patentability which includes matters such as the definition of prior art. See PCT Article 27(5). If section 372(a) were interpreted to include items other than those relating to substantive questions of patentability, items such as requirements to obtain a filing date would be included. Clearly, an international application must only meet the filing date requirements of PCT Article 11(1) even though a U.S. national application must meet the requirements of 35 U.S.C. 111.

*Comment.* One comment was received stating that the U.S. rules should define prior art for PCT purposes and also the manner of issuing International Preliminary Examination Reports.

*Reply.* Prior art for PCT purposes is already defined in PCT Rule 64 and the procedures are set forth in PCT Rules 66 and 70. To repeat the substance of these PCT rules in the U.S. rules would be duplicative and possibly lead to different interpretations if different wording was used.

*Comment.* One comment inquired whether the International Preliminary Examining Report was binding on a USPTO examiner in the national stage.

*Reply.* An International Preliminary Examination Report is not binding on a USPTO examiner. PCT Article 33(1) clearly states that the "objective of the international preliminary examination is to formulate a preliminary and non-binding opinion." Since the USPTO has had no experience with International Preliminary Examination Reports prepared by foreign offices, as well as foreign offices having no experience with Reports prepared by the USPTO, the degree of reliance on such Reports in the national stage cannot be determined at the present time. Studies underway with the European Patent Office and the Japanese Patent Office regarding inventive step and other matters and experience with Reports from other International Preliminary Examining Authorities may be helpful in further addressing this question in the future.

*Comment.* Two comments were received asking why § 1.141(b) was being changed since there was no change in U.S. restriction practice.

*Reply.* No change is being made in U.S. restriction practice in applications filed under 35 U.S.C. 111. The amendments to § 1.141 basically delete expressions used in the Patent Cooperation Treaty which are not used in U.S. national practice. The criteria deleted from § 1.141(b) still remain in Chapter 800 of the Manual of Patent Examining Procedure.

*Comment.* One comment was made that any interpretation by the PTO of

the PCT Unity language will carry over to the Harmonization Treaty.

*Reply.* The U.S. delegation to the WIPO harmonization meetings has several times requested that guidelines be prepared for consideration with the Unity of Invention Article and Rules. Any interpretation of future treaty wording would be controlled by the guidelines.

*Comment.* Three comments were received that the PTO is attempting to promulgate a variation of PCT Rule 13 which is contrary to the Caterpillar decision because the U.S. rules are not identical in scope with PCT Rule 13.

*Reply.* The U.S. rules relating to Unity of Invention are considered to be in accordance with PCT Rule 13 and the Caterpillar decision. Rules 1.475, 1.487 and 1.499 are not identical with PCT Rule 13.2 because the U.S. rules are somewhat broader because additional combinations are included. The U.S. rules are also consistent with the Caterpillar decision because this decision related only to the interpretation of the expressions in PCT Rule 13.2.

*Comment.* One comment inquired as to the amount of the handling fee.

*Reply.* The amount of the handling fee is set forth in the SCHEDULE OF FEES appearing at the end of the PCT Rules. These fees are stated in Swiss Francs. The current amount for the Handling Fee is 200 Swiss Francs. The amount in U.S. dollars will be established by the Director General based on the current exchange rates as provided in PCT Rule 57.2(c).

*Comment.* One comment proposed that a rule be implemented under which an examiner must complete the first written opinion within two months of the filing of the Demand.

*Reply.* Although the Office will expect an examiner to begin the International Preliminary Examination as early as possible after receipt, delays in issuing the written opinion may occur because the International Preliminary Examination fee was paid later than the filing of the Demand under PCT Rule 58.2, the application contains defects in form or contents or the application lacks unity of invention. Thus, such a rule would not be appropriate.

*Comment.* One comment questioned the need to re-impose restriction (holding of lack of unity of invention) if a linking claim is not allowable.

*Reply.* There is no mandatory requirement that the examiner impose a holding of lack of unity if the linking claim is shown to lack novelty and inventive step. However, if such a possibility did not exist, applicants could present broad generic claims to entire classes of inventions and thereby prevent any subsequent holding of lack of unity by the examiner.

*Comment.* One comment suggested that applicants in national patent applications be allowed to take advantage of the PCT unity criteria by paying a surcharge.

*Reply.* Such a fee is not provided for under 35 U.S.C. 41 and would appear to require legislative action.

*Comment.* Three comments suggested that the increases in the search fees were either unlawful or inconsistent with the spirit of the Patent and Trademark Office Authorization Act passed by Congress in 1986 in view of the freeze imposed thereby.

*Reply.* The Patent and Trademark Office Appropriations Act (Public Law 99-607) at Sec. 3(b) states.

> (b) PATENT FEES.—The Commissioner of Patents and Trademarks may not, during fiscal years 1986, 1987, and 1988, increase fees established under section 41(d) of title 35, United States Code, except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous 3 years in the Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years.

The legislative history also makes clear that the prohibition against fee increases relates only to those fees established under section 41(d) and indicates that fees for new types of processing, services, or materials are not prohibited. The prohibition in the appropriation authorization is strictly limited to fees established under 35 U.S.C. 41(d) and does not affect the authority of the Commissioner to set fees under the Patent Cooperation Treaty. Note 35 U.S.C. 376 which authorizes the Commissioner to set fees for both the international and national stages. The new services relating to unity of invention are clearly not within the scope of the appropriation authorization restriction.

*Comment.* Three comments stated that the $100 fee increase for an international search is clearly excessive.

*Reply.* The increase in the search fee is to recover the average estimated additional cost of processing international applications with claims to more inventions than were permitted when the current search fees were established. The increase is established also to provide for an expected higher percentage of international applications containing claims to more than one category of invention. If experience shows these expectations were in error, fees will be adjusted in the future.

*Comment.* One comment stated that the increase in the international search fee was not justified by *Caterpillar Tractor Co. v. Commissioner of Patents and Trademarks*, 231 USPQ 590 (E. D. Va. 1986) which merely clarified an aspect of existing law and did not change it.

*Reply.* The decision in the Caterpillar case indicated that the Office's criteria for unity of invention on which the amount of the search fee was determined were too strict in construing the language of the Treaty and that broader criteria were permitted under the terms of the Treaty. Fees under the Patent Cooperation Treaty were set based on pre-Caterpillar interpretations of PCT Rule 13.2 by the Patent and Trademark Office. Since such broader criteria require a more extensive search than that on which the search fee was previously calculated, an increase in the search fee is necessary to cover the cost of the additional search required under the broader criteria in accordance with the Caterpillar decision.

*Comment.* One comment stated that the increase in the international search fee penalizes an applicant presenting clearly a single invention.

*Reply.* A broadening of the interpretation of unity of invention and the increase in the average amount of work required in searching an international application results in a higher fee being required. A more narrow interpretation of unity of invention permits a lower average fee and would tend to benefit applicants with a clearly single invention. The Caterpillar decision and majority of comments received supported a more liberal interpretation of unity of invention. Testimony at the hearing indicated a preference for spreading any additional costs among all applicants.

*Comment.* One comment was received which suggested that § 1.484(d) be amended by adding a further sentence.

> If, after receipt of any response to the written opinion, the Examiner is of the opinion that some or all of the claims are not patentable, the Examiner shall issue a second written opinion which identifies any patentable subject matter, including any suggestions for claim modification to properly define the invention.

*Reply.* The wording of the proposed sentence is clearly inappropriate since the International Preliminary Examination Report does not make any determination of "patentability." Note PCT Article 35(2). Furthermore, the time limits for issuing an International Preliminary Examination Report are such that there may not be sufficient time in most cases to issue a second

opinion and receive a response thereto. Modifications in the interview practice are a more practical way of assuring a more complete and thorough international preliminary examination.

*Comment.* One comment suggested that § 1.484(f) be amended to read:

An applicant will be permitted *at least* [no more than] one personal [or telephone] interview, which must be conducted *prior to 27 months from the priority date* [during the non-extendable time limit for response by the applicant to the written opinion].

*Reply.* A less restrictive interview policy has been incorporated into § 1.484(f). The period for an interview cannot be delayed until the 27th month from the priority date since this is the time at which the examiners will be required to complete their Reports in order to allow time for review and mailing.

*Comment.* One comment proposed that § 1.485 be amended as follows:

The time limit for response in a written opinion of the International Preliminary Examining Authority may not be extended *to expire beyond 27 months from the priority date, without the permission of the Group Director.*

*Reply.* No need is seen to limit the end of the response period to the end of the 27th month since the period will be set by the examiner when a written opinion is mailed. The time limit cannot be extended (§ 1.484(d)) due to tight time frames for establishing the International Preliminary Examination Report within 28 months from the priority date. The time limits for response to a written opinion are set forth in PCT Rule 66.2(d).

*Comment.* Two written comments and the oral testimony indicated that the fees for entering the national stage should be considerably less after an international search and preliminary examination. The small $40.00 reduction in national stage fees is criticized as too small and a token fee of $40–$50 is stated as being more reasonable.

*Reply.* The fees are based on an adjustment of the U.S. filing fee based on estimated additional work or savings. However, in view of the comments, an additional basic national fee level has been added as § 1.492(a)(4) for those situations where the Patent and Trademark Office has established an International Preliminary Examination Report which indicates that all the claims entering the national stage have satisfied the criteria of PCT Articles 31(1) to (4). Current studies of the benefit of having PCT search reports from the searching authorities indicate an improvement in quality but no overall reduction in search or examining time. The search report from other than international searching authorities, with rare exceptions, does not allow the USPTO examiner to eliminate any part of the national search.

*Comment.* One comment argued that reciprocal treatment should be given to foreign applicants for benefits given U.S. applicants.

*Reply.* Although the European Patent Office offers a 20% reduction of only the search fee portion of its national stage entry fees, the resulting fee of a little under $1000 at current exchange rates is still more than twice the amount of the highest U.S. national fee. In Japan the national fee for requesting examination is currently 26,000 yen (a little under $200 at current exchange rates) where the search report was not prepared by the Japanese Patent Office and 6,000 yen if the search report was prepared by the Japanese Patent Office.

*Comment.* One comment urged that the U.S. rules match the less restrictive EPO rules with regard to the issuance of more than one written opinion and providing additional opportunity for the applicant to communicate with the examiner.

*Reply.* The proposed rules (§ 1.484) have been modified to provide for a less restrictive interview practice. The examiner should permit interview(s) during the time limit for response to the written opinion where such interviews would be useful and time is available to permit issuance of the International Preliminary Examination Report prior to the deadline of 28 months after the priority date.

Although nothing in the rules limit the proceedings to one written opinion, most demands are expected to be filed near the end of the 19th month deadline. Preparation of the first written opinion may be delayed because the fees were not paid at the time of filing the Demand, formal errors are found in the documents or unity of invention is lacking. The time limits for a reply to the first written opinion will normally be set at 2 months, although 3 months may be given where the time limit for reply ends prior to 25 months from the priority date. Response by the 25th month will allow the examiner 2 months to prepare the International Preliminary Examination Report.

However, a Demand may be filed much earlier than 19 months from the priority date and International Preliminary Examination may begin early as provided for in PCT Rule 69.1(b). Where time and other circumstances permit, a second written opinion may be provided, possibly with a one month time limit for reply.

*Comment.* One comment stated that proposed § 1.485(b) is a duplication of § 1.484(d).

*Reply.* Proposed paragraph (b) has been deleted in final rule 1.485.

*Comment.* One comment stated that procedures for the manner of issuing International Preliminary Examination Reports should be set forth in the U.S. rules.

*Reply.* Items already specifically covered in the PCT articles and rules are not needed in U.S. rules. The agreement with WIPO also regulates these matters as do the PCT search and preliminary examination guidelines.

*Comment.* One comment stated that the treatment of the International Preliminary Examination Report (IPER) by the USPTO at the national stage is not clear.

*Reply.* The IPER will be considered along with other relevant information when conducting a national examination for patentability. PCT Article 33(1) indicates that the objective of the International Preliminary Examination Report is to formulate a preliminary and non-binding opinion; it is not binding on any office. Any new questions relating to patentability may be raised.

*Comment.* One comment stated that a dual standard of unity defies logic.

*Reply.* The dual standard is necessary since the fees for patent applications filed under 35 U.S.C. 111 were set based upon an application being limited to one invention as defined at the time the fees were set which differs from the interpretation of unity under PCT required in view of the Caterpillar decision.

*Comment.* One comment stated that if additional PCT international search fees are required they should be made by statutory change.

*Reply.* The Commissioner is authorized by statute (35 U.S.C. 376) to set the national fee for PCT origin applications. Any change in national restriction practice for applications filed under 35 U.S.C. 111 would be made only after statutory change.

*Comment.* One comment indicated that in view of the Caterpillar decision holding the Office interpretation of "specifically designed" to be an unreasonable interpretation, the Office is proposing a double standard.

*Reply.* U.S. national law under 35 U.S.C. 121 does not require a consideration or interpretation of "specifically designed" to be made. This must only be made in PCT cases and those entering the national stage under 35 U.S.C. 371.

**Discussion of Specific Rules**

Section 1.8 is amended to indicate clearly that the certificate of mailing procedures thereunder may not be used for the filing of papers and fees relating to international applications. It should be noted that the provisions of § 1.10 regarding the filing of papers or fees by "Express Mail" apply to all papers and fees to be filed in the Patent and Trademark Office, including those relating to international applications.

Section 1.61 "Filing of applications in the United States of America as a Designated Office" is removed and the substance thereof moved to new § 1.494. Section 1.70 "Oath or declaration under 35 U.S.C. 371(c)(4)" is removed and the substance thereof moved to new § 1.497. These moves result in the rules relating to the international applications entering the national stage being located in a single area of the rules.

Section 1.101 is amended to remove the discussion of the order of examination for international applications entering the national stage, which is covered by new § 1.496.

Section 1.141 is amended to basically return the rule to its wording prior to the 1978 rule change implementing the Patent Cooperation Treaty and will be directed solely to national applications. This will avoid confusion with PCT Rule 13.2 which was interpreted by the court in *Caterpillar Tractor Company* v. *Commissioner of Patents and Trademarks*, supra, to have a different meaning than intended in present § 1.141. It does, however, retain for applicants the ability to claim a "reasonable number" of species rather than only 5, which limit existed prior to the 1978 rule change. Paragraph (b) continues the practice stated in the *Official Gazette* notice of August 1, 1984 published at 1046 O.G. 2. Unity of invention in international applications before the USPTO as an International Searching Authority under Chapter I of the Patent Cooperation Treaty is covered by § 1.475. Unity of Invention before the USPTO as an International Preliminary Examining Authority under Chapter II of the Patent Cooperation Treaty is covered by § 1.487. Unity of invention in international applications entering the national stage under 35 U.S.C. 371 is covered by § 1.499.

Section 1.401 is amended to include the definition of some terms used for Chapter II of the Patent Cooperation Treaty.

Section 1.414 is amended to include reference to the United States Patent and Trademark Office functioning as an Elected Office under Chapter II of the Patent Cooperation Treaty as well as a Designated Office under Chapter I.

Section 1.416 is added to indicate and describe the functioning of the United States Patent and Trademark Office as an International Preliminary Examining Authority under Chapter II of the Patent Cooperation Treaty.

Sections 1.431 and 1.432 are amended, in accordance with PCT Rule 15.4(b)(ii) and amended 35 U.S.C. 361, to indicate that the time limit for payment of the designation fee is one year from the priority date or one month from the date of receipt of the international application if that one month time limit expires after the expiration of one year from the priority date.

Section 1.445 is amended to increase the amount of the international search fees to provide for recovery of the average additional cost of processing applications with claims to more inventions than were permitted under the unity of invention criteria used when the previous international search fee amounts were established. The amounts for national stage fees are removed from § 1.445 and are now set forth in § 1.492.

The international search fee and national fees were previously established based on the effort and cost to the Office of searching and examining a single invention as defined by the United States Patent and Trademark Office prior to the decision in the Caterpillar case. Since additional effort will be required to search and examine an average application under the new rules defining unity of invention, the average international search and national fee must also be increased to cover the additional cost to the Office.

Section 1.475 "Changes in person, name, or address of applicants," is redesignated as § 1.472 to allow the grouping of rules into PCT Chapter I, PCT Chapter II and national stage related rules. No change other than redesignation is made.

A new § 1.475 is added to relate to unity of invention before the International Searching Authority. Paragraph (a) clearly indicates that PCT Rule 13 is to be followed in all such cases and paragraph (b) adds combinations acceptable under unity of invention in addition to those set forth in PCT Rule 13.2. Paragraph (c) relates to the handling of claims to categories in addition to the combinations specified in paragraph (b). Paragraph (d) relates to situations in which more than one invention of the same category of invention is recited in an international application. Paragraph (e) makes clear that inventions of different categories must be related, rather than independent, for unity of invention to exist. Paragraph (f) sets forth PCT Rule 13 for the convenience of patent applicants.

Section 1.481, regarding determination of unity of invention before the International Searching Authority, is redesignated as § 1.476 and amended to delete reference to § 1.141 from paragraph (a).

Section 1.482 is redesignated as § 1.477 and amended to make clear in the title that it deals with protests to findings of lack of unity of invention before the International Searching Authority. The amendment to paragraph (b) corrects an error in referring to another paragraph of the section.

A new § 1.480 is added to deal with the Demand for an international preliminary examination. Paragraph (a) indicates that a Demand is required to be filed to obtain an international preliminary examination and that the preliminary examination fee of § 1.482(a)(1) and the handling fee of § 1.482(b) are due at the time of filing of the Demand. If the fees are not paid at the time of filing of the Demand, the United States Patent and Trademark Office acting as an International Preliminary Examining Authority will provide an opportunity to pay the fees in accordance with PCT Rules 57.4 and 58.2.

Paragraph (b) of § 1.480 specifies that the Demand must be made on a standardized form as required by PCT Rule 53.1 and that such forms are available from the United States Patent and Trademark Office.

Paragraph (c) of § 1.480 specifies that, if the Demand is made prior to the expiration of the 19th month from the priority date, the provisions of PCT Article 39 and § 1.495 shall apply to allow entry into the national stage prior to the expiration of 30 months after the priority date. The final rule has been changed to add reference to the election of the United States. If the Demand is not filed prior to the expiration of the 19th month from the priority date, the provisions of PCT Article 22 and § 1.494 shall apply to allow entry into the national stage prior to the expiration of 20 months after the priority date.

Paragraph (d) of § 1.480 indicates that withdrawal of a proper Demand will not entitle applicant to a refund of the preliminary examination fee even if no claims are found that can or will be searched (PCT Article 34(4)(a)). A Demand that is so informal that it would be considered under the PCT Rules as if it had not been submitted will not be considered a proper Demand under the rule. A change in purpose after the filing of a Demand will not entitle an

applicant to a refund of the preliminary examination fee. PCT Rule 57.8 states that in no case shall the handling fee, or any supplement to the handling fee, be refunded.

A new § 1.482 is added to specify the international preliminary examination fees. Paragraph (a) sets a lower fee for the international preliminary examination where an international search fee has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority. Paragraph (a) also sets a lower additional preliminary examination fee for the preliminary examination of additional inventions found in the international application where a supplemental search fee has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority. Paragraph (b) indicates that the handling fee is prescribed in PCT Rule 57 and any necessary supplement to the handling fee shall be paid directly to the International Bureau in accordance with PCT Rule 57.1(b).

A new § 1.484 is added to describe the conduct of international preliminary examination. The rule describes that, if necessary, a written opinion will be established after consideration of any defects in accordance with PCT Rule 66.2 and after an examination to determine if the claimed invention has novelty, involves an inventive step (is non-obvious) and is industrially applicable. A written opinion prior to the international preliminary examination report would not be necessary if the international application does not contain any defects as mentioned in PCT Rule 66.2 and if all claims are found to be novel, involve an inventive step (non-obvious) and are industrially applicable. The written opinion will set a time limit for applicant to respond in accordance with PCT Rule 66.2(d). The time limit for reply will normally be two months but will be three months where the time limit will expire prior to 25 months from the priority date. The time limit may not be extended due to the tight time constraints under Chapter II of the Patent Cooperation Treaty. An international preliminary examination report will be established and one copy will be submitted to the International Bureau and one copy to applicant. The rule specifies that no international preliminary examination report will be established prior to issuance of an international search report and that no international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority. Paragraph (f) specifies that at least one personal or telephone interview with the examiner will be permitted during the international preliminary examination. Additional interviews are permissible if the examiner determines that it would be helpful. Additional interviews will be governed, in part, by the time remaining before the time for issuance of the international preliminary examination report. The period during which the interview(s) can be held is limited by the non-extendable time limit for response by the applicant to a written opinion. Although nothing in this or any other rule limits the number of written opinions which may be established prior to the International Preliminary Examination Report, in most cases time will limit the number of written opinions to one.

A new § 1.485 is added to deal with amendments by applicant during international preliminary examination. An applicant is permitted by the rule to make amendments at the time of filing of the Demand and within the period set in any written opinion on the application as defined in § 1.484. Amendments under the rule would be required to be made by submitting replacement sheets and a description of how the replacement sheet differs from the replaced sheet. If an amendment cancels an entire sheet, that amendment should be communicated by letter without a replacement sheet. Proposed paragraph (b) is not promulgated because the substance thereof is set forth in § 1.484(d).

New § 1.487 defines what constitutes unity of invention before the International Preliminary Examining Authority. The standards for unity of invention generally parallel those set in § 1.475 regarding proceedings before the International Searching Authority.

New § 1.488 is added to set forth how the International Preliminary Examining Authority will proceed in handling determinations regarding the unity of invention criteria of § 1.487.

New § 1.489 sets forth the procedures to be followed by an applicant who wishes to protest a holding of lack of unity of invention by the International Preliminary Examining Authority. The additional fees would be required to be paid if more than one invention is to be examined, but could be accompanied by a request for refund and a statement setting forth reasons for disagreement with the holding of lack of unity of invention or why the required additional fees are excessive. This rule is in accordance with PCT Rule 68.3(c).

New § 1.491 is added to define the start of the national stage. Section 1.491 is the first rule in a new group of rules relating to applications entering the national stage pursuant to 35 U.S.C. 371.

New § 1.492 is added to set forth the fees and charges for international applications entering the national stage under 35 U.S.C. 371. The basic national fee is set forth in paragraph (a) at four levels to reflect the benefit that the United States Patent and Trademark Office will derive from having previously conducted an international preliminary examination or an international search. In § 1.492(a) (2) and (3), "(i)" has been deleted in order to refer to both § 1.445(a)(2) (i) and (ii). Paragraph (a)(4) which makes reference to § 1.496(b) has been added in view of comments received that indicated that in some instances substantial reliance may be placed upon the International Preliminary Examination Reports by the Patent and Trademark Office. The rule also sets the fee for an independent claim in excess of 3 (paragraph (b)), for presentation of each claim in excess of 20 (paragraph (c)) and for an application containing a multiple dependent claim (paragraph (d)). Paragraphs (e) and (f) include the fees previously contained in § 1.445 and include the alternative times for entering the national stage pursuant to § 1.494 or § 1.495.

New § 1.494 is added to contain substantially the provisions of former § 1.61 in amended form. This section relating to filing application documents in the United States Patent and Trademark Office to enter the national stage has been grouped with other sections relating to the national stage for the convenience of applicants and examiners involved in the prosecution of international applications entering the national stage. The rule applies where no Demand for international preliminary examination has been filed prior to the expiration of the 19th month from the priority date. If such a Demand were filed, § 1.495 would apply.

Section 1.494(f) requires that a specific indication be given by the applicant when entering the national stage that the documents being submitted are being submitted under 35 U.S.C. 371. If no clear indication is found, the documents will be considered to be for a regular national application under 35 U.S.C. 111. Paragraph (g) makes clear that the various time limits set out in the rule, some of which are set by the PCT, may not be extended pursuant to § 1.136 or otherwise. The extension of time provisions, including petition and payment of a fee, set out in § 1.136(a) do not apply to the time limits of the rule or

time limits set by the International Searching Authority or the International Preliminary Examining Authority. New paragraph (h) clarifies when an international application designating the United States becomes abandoned as to the United States.

New § 1.495 is added to deal with filing application documents in the United States Patent and Trademark Office to enter the national stage where a Demand for international preliminary examination has been filed with an International Preliminary Examining Authority prior to the expiration of the 19th month from the priority date. In such a case, an applicant will have 30 months from the priority date to enter the national stage. The rule parallels in many respects § 1.494. New paragraph (i) clarifies when an international application electing the United States becomes abandoned as to the United States.

New § 1.496 is added to specify in paragraph (a) that international applications in the national stage will be taken up for action based on the date when the requirements of 35 U.S.C. 371(c) are met. Paragraph (b) indicates that applications entering the U.S. national stage only with claims which have been found in an International Preliminary Examination Report to have satisfied the criteria for novelty, inventive step (non-obviousness) and industrial applicability as defined in PCT Article 33 (1) to (4) will be taken up for action before other applications. Preliminary amendments may accompany the filing of the national stage application to cancel claims which do not satisfy the criteria. These applications will have paid the lower filing fee set in § 1.492(a)(4) and most will not require extensive prosecution, i.e., objection or rejection before resolving the issue of patentability. Amendments will not be permitted to be made in such applications other than in response to objections as to form or to cancel claims in response to a rejection made by the examiner in the national stage application. Such a rejection could be necessary, for example, where applicant submits information in accordance with the duty of disclosure under 37 CFR 1.56(a).

New § 1.497 is added to contain substantially the wording of removed §1.70. This rule relates to the oath or declaration required to enter the national stage and is grouped with other national stage entry requirements.

New § 1.499 is added to cover unity of invention during the national stage. The provisions of the section are basically parallel to those of §§ 1.475 and 1.487. Paragraph (f) indicates the manner of handling a finding of lack of unity of invention on grounds other than those involving different categories of invention.

### Environmental, Energy, and Other Considerations

The rule change does not have a significant impact on the quality of the human environment or conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354) because considerable savings can potentially be achieved under Chapter II of the Patent Cooperation Treaty because additional time is provided for applicants to decide whether to proceed with the cost of foreign prosecution and savings will in fact be achieved under the unity of invention practice and the provision for reduced fees for small entities entering the national stage in making an application for a United States patent.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirement contained in these rules was submitted to the Office of Management and Budget (OMB) at the time of the proposed rulemaking for review under Section 3504(h) of the Paperwork Reduction Act. OMB has approved the information collection requirement and has assigned OMB control number 0651-0021 thereto.

### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (government agencies), Courts, Inventions and patents, Lawyers.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6 and 376(b) and Pub. L. 99-616, the Patent and Trademark Office is amending Title 37 of the Code of Federal Regulations as set forth below.

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

**Authority:** 35 U.S.C. 6 unless otherwise noted.

2. Section 1.8 is amended by revising paragraph (a)(2)(xi) to read as follows:

**§ 1.8 Certificate of mailing.**

(a) * * *

(2) * * *

(xi) The filing of international applications for patent and all papers and fees relating thereto.

* * * * *

**§ 1.61 [Removed]**

3. Section 1.61 is removed.

**§ 1.70 [Removed]**

4. Section 1.70 is removed.

5. Section 1.101 is amended by revising paragraph (a) to read as follows:

**§ 1.101 Order of examination.**

(a) Applications filed in the Patent and Trademark Office and accepted as complete applications are assigned for examination to the respective examining groups having the classes of inventions to which the applications relate. Applications shall be taken up for examination by the examiner to whom they have been assigned in the order in which they have been filed except for those applications in which examination has been advanced pursuant to § 1.102. See § 1.496 for order of examination of international applications in the national stage.

* * * * *

6. Section 1.141 is revised to read as follows:

**§ 1.141 Different inventions in one national application.**

(a) Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the

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claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim.

(b) Where claims to all three categories, product, process of making, and process of use, are included in a national application, a three way requirement for restriction can only be made where the process of making is distinct from the product. If the process of making and the product are not distinct, the process of using may be joined with the claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product can be made.

**Subpart C—International Processing Provisions**

7. The authority for Subpart C is revised to read as follows:

**Authority:** Pub. L. 94–131, 89 Stat. 685; Pub. L. 99–616, 35 U.S.C. 351 through 376.

8. Section 1.401 is amended to redesignate paragraph (g) as paragraph (i) and add new paragraphs (g) and (h) as follows:

**§ 1.401 Definitions of terms under the Patent Cooperation Treaty.**

* * * * *

(g) "Demand," when capitalized, means that document filed with the International Preliminary Examining Authority which requests an international preliminary examination.

(h) "Annexes" means amendments made to the claims, description or the drawings before the International Preliminary Examining Authority.

* * * * *

9. Section 1.414 is revised to read as follows:

**§ 1.414 The United States Patent and Trademark Office as a Designated Office or Elected Office.**

(a) The United States Patent and Trademark Office will act as a Designated Office or Elected Office for international applications in which the United States of America has been designated or elected as a State in which patent protection is desired.

(b) The United States Patent and Trademark Office, when acting as a Designated Office or Elected Office during international processing will be identified by the full title "United States Designated Office" or by the abbreviation "DO/US" or by the full title "United States Elected Office" or by the abbreviation "EO/US".

(c) The major functions of the United States Designated Office or Elected Office in respect to international applications in which the United States of America has been designated or elected, include:

(1) Receiving various notifications throughout the international stage and

(2) Accepting for national stage examination international applications which satisfy the requirements of 35 U.S.C. 371.

10. Under "General Information," a new § 1.416 is added to read as follows:

**§ 1.416 The United States International Preliminary Examining Authority.**

(a) Pursuant to appointment by the Assembly, the United States Patent and Trademark Office will act as an International Preliminary Examining Authority for international applications filed in the United States Receiving Office and in other Receiving Offices as may be agreed upon by the Commissioner, in accordance with agreement between the Patent and Trademark Office and the International Bureau.

(b) The United States Patent and Trademark Office, when acting as an International Preliminary Examining Authority, will be identified by the full title "United States International Preliminary Examining Authority" or by the abbreviation "IPEA/US."

(c) The major functions of the International Preliminary Examining Authority include:

(1) Receiving and checking for defects in the Demand;

(2) Collecting the handling fee for the International Bureau and the preliminary examination fee for the United States International Preliminary Examining Authority;

(3) Informing applicant of receipt of the Demand;

(4) Considering the matter of unity of invention;

(5) Providing an international preliminary examination report which is a non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable; and

(6) Transmitting the international preliminary examination report to applicant and the International Bureau.

11. Section 1.431 is amended by revising paragraph (d)(2) to read as follows:

**§ 1.431 International application requirements.**

* * * * *

(d) * * *

(2) The designation fee, or the amount necessary to cover all the designations made in the request if not paid by the applicant within one year from the priority date or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date.

* * * * *

12. Section 1.432 is amended by revising paragraph (b) to read as follows:

**§ 1.432 Designation of States and payment of designation fees.**

* * * * *

(b) The designation fees may be paid upon filing of the international application, but must be paid before the expiration of one year from the priority date or within one month from the date of receipt of the international application if that month expires after the expiration of one year from the priority date. Failure to timely pay the designation fee for a particular Designated State will result in the withdrawal of that designation. Failure to timely pay at least one designation fee will result in the withdrawal of the international application.

13. Section 1.445 is amended by revising the title and paragraph (a) to read as follows:

**§ 1.445 International application filing, processing and search fees.**

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14), $170.00.

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:

(i) No corresponding prior United States national application with basic filing fee has been filed, $520.00.

(ii) A corresponding prior United States national application with basic filing fee has been filed, $350.00.

(3) A supplemental search fee when required, per additional invention, $140.00.

**§ 1.475 [Redesignated as § 1.472]**

14. Section 1.475 is redesignated as § 1.472.

15. A new § 1.475 is added following the heading, "Unity of Invention," to read as follows:

**§ 1.475 Unity of invention before the International Searching Authority.**

(a) An international application before the International Searching Authority will be considered to have unity of invention if the claims are in

accordance with PCT Rule 13 (see paragraph (f) of this section).

(b) An international application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the combinations of categories as set forth in PCT Rule 13.2 (see paragraph (f) of this section) or to the combination of—

(1) A product and a process for the manufacture of said product, or

(2) A product and a process of use of said product.

If an application contains claims to more or less than one of the combinations of categories set forth in PCT Rule 13.2 (see paragraph (f) of this section) or a combination set forth in paragraphs (b) (1) or (2) of this section, unity of invention may not be present.

(c) If an international application contains claims to a category of invention in addition to those categories included in any one of the combinations specified in paragraph (b) of this section, lack of unity of invention may be held between the categories included in the combination and the claims to the additional category of invention.

(d) Unity of invention will exist where the claims are limited to one of the combinations of categories set forth in PCT Rule 13.2 (see paragraph (f) of this section) or in a combination set forth in paragraphs (b) (1) or (2) of this section. If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the inventions to be searched. Any such holding by the examiner will be made of record as a holding of lack of unity of invention.

(e) The inventions recited by the claims of different categories must be related rather than independent inventions.

(f) The wording of PCT Rule 13 is as follows:

**PCT Rule 13—Unity of Invention**

*13.1 Requirement*

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

*13.2 Claims of Different Categories*

Rule 13.1 shall be construed as permitting, in particular, one of the following three possibilities:

(i) in addition to an independent claim for a given product, the inclusion in the same international application of an independent claim for a process specially adapted for the manufacture of the said product, and the inclusion in the same international application of an independent claim for a use of the said product, or

(ii) in addition to an independent claim for a given process, the inclusion in the same international application of an independent claim for an apparatus or means specifically designed for carrying out the said process, or

(iii) in addition to an independent claim for a given product, the inclusion in the same international application of an independent claim for a process specially adapted for the manufacture of the product, and the inclusion in the same international application of an independent claim for an apparatus or means specifically designed for carrying out the process.

*13.3 Claims of One and the Same Category*

Subject to Rule 13.1, it shall be permitted to include in the same international application two or more independent claims of the same category (i.e., product, process, apparatus, or use) which cannot readily be covered by a single generic claim.

*13.4 Dependent Claims*

Subject to Rule 13.1, it shall be permitted to include in the same international application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention.

*13.5 Utility Models*

Any designated State in which the grant of a utility model is sought on the basis of an international application may, instead of Rules 13.1 to 13.4, apply in respect of the matters regulated in those Rules the provisions of its national law concerning utility models once the processing of the international application has started in that State, provided that the applicant shall be allowed at least two months from the expiration of the time limit applicable under Article 22 to adapt his application to the requirements of the said provisions of the national law.

16. Section 1.481 is redesignated as § 1.476 and is amended by revising paragraph (a) to read as follows:

**§ 1.476 Determination of unity of invention before the International Searching Authority.**

(a) Before establishing the international search report, the International Searching Authority will determine whether the international application complies with the requirement of unity of invention as set forth in PCT Rule 13 (see § 1.475(f)) and § 1.475.

* * * * *

17. Section 1.482 is redesignated as § 1.477 and is amended by revising the title and paragraph (b) to read as follows:

**§ 1.477 Protest to lack of unity of invention before the International Searching Authority.**

* * * * *

(b) Protest under paragraph (a) of this section will be examined by the Commissioner or the Commissioner's designee. In the event that the applicant's protest is determined to be justified, the additional fees or a portion thereof will be refunded.

* * * * *

18. A new Section 1.480 is added preceded by a heading to read as follows:

**International Preliminary Examination**

**§ 1.480 Demand for international preliminary examination.**

(a) On the filing of a Demand and payment of the fees for international preliminary examination (§ 1.482), the international application shall be the subject of an international preliminary examination. The preliminary examination fee (§ 1.482(a)(1)) and the handling fee (§ 1.482(b)) shall be due at the time of filing of the Demand.

(b) The Demand shall be made on a standardized printed form. Copies of the printed Demand forms are available from the Patent and Trademark Office. Letters requesting printed forms should be marked "Box PCT".

(c) If the Demand is made prior to the expiration of the 19th month from the priority date and the United States of America is elected, the provisions of § 1.495 shall apply rather than § 1.494.

(d) Withdrawal of a proper Demand will not entitle applicant to a refund of the preliminary examination fee or handling fee.

19. A new Section 1.482 is added to read as follows:

**§ 1.482 International preliminary examination fees.**

(a) The following fees and charges for international preliminary examination are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A preliminary examination fee is due on filing the Demand:

(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of, $370.00.

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of, $570.00.

(2) An additional preliminary examination fee when required, per additional invention:

(i) Where a supplemental search fee as set forth in § 1.445(a)(3) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, $125.00.

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, $190.00.

(b) The handling fee is due on filing the Demand. Any necessary supplement to the handling fee shall be paid directly to the International Bureau.

(35 U.S.C. 6, 376)

20. A new § 1.484 is added to read as follows:

**§ 1.484 Conduct of international preliminary examination.**

(a) An international preliminary examination will be conducted to formulate a non-binding opinion as to whether the claimed invention has novelty, involves an inventive step (is non-obvious) and is industrially applicable.

(b) No international preliminary examination report will be established prior to issuance of an international search report.

(c) No international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority.

(d) The International Preliminary Examining Authority will establish a written opinion if any defect exists or if the claimed invention lacks novelty, inventive step or industrial applicability and will set a non-extendable time limit in the written opinion for the applicant to respond.

(e) If no written opinion under paragraph (d) of this section is necessary, or after any written opinion and the response thereto or the expiration of the time limit for response to such written opinion, an international preliminary examination report will be established by the International Preliminary Examining Authority. One copy will be submitted to the International Bureau and one copy will be submitted to the applicant.

(f) An applicant will be permitted a personal or telephone interview with the examiner, which must be conducted during the non-extendable time limit for response by the applicant to a written opinion. Additional interviews may be conducted where the examiner determines that such additional interviews may be helpful to advancing the international preliminary examination procedure. A summary of any such personal or telephone interview must be filed by the applicant as a part of the response to the written opinion or, if applicant files no response, be made of record in the file by the examiner.

21. A new § 1.485 is added to read as follows:

**§ 1.485 Amendments by applicant during international preliminary examination.**

The applicant may make amendments at the time of filing of the Demand and within the time limit set by the International Preliminary Examining Authority for response to any written opinion. Any such amendments must—

(1) Be made by submitting a replacement sheet for every sheet of the application which differs from the sheet it replaces unless an entire sheet is cancelled and

(2) Include a description of how the replacement sheet differs from the replaced sheet.

If an amendment cancels an entire sheet of the international application, that amendment shall be communicated in a letter.

22. A new § 1.487 is added to read as follows:

**§ 1.487 Unity of invention before the International Preliminary Examining Authority.**

(a) An international application before the International Preliminary Examining Authority will be considered to have unity of invention if the claims are in accordance with PCT Rule 13 (see § 1.475(f)).

(b) An international application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the combinations of categories as set forth in PCT Rule 13.2 (see § 1.475(f)) or to the combination of—

(1) A product and a process for the manufacture of said product or

(2) A product and a process of use of said product.

If an application contains claims to more or less than one of the combinations of categories of invention set forth in PCT Rule 13.2 (see § 1.475(f)) or a combination set forth in paragraphs (b) (1) or (2) of this section, unity of invention may not be present.

(c) If an international application contains claims to a category of invention in addition to those categories included in any one of the combinations specified in paragraph (b) of this section, lack of unity of invention may be held between the categories included in the combination and the claims to the additional category of invention.

(d) Unity of invention will exist where the claims are limited to one of the combinations of categories set forth in PCT Rule 13.2 (see § 1.475(f)) or a combination set forth in paragraphs (b) (1) or (2) of this section. If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the inventions to be examined. Any such holding by the examiner will be made of record as a holding of lack of unity of invention.

(e) The inventions recited by the claims of different categories must be related rather than independent inventions.

23. A new § 1.488 is added to read as follows:

**§ 1.488 Determination of unity of invention before the International Preliminary Examining Authority.**

(a) Before establishing any written opinion or the international preliminary examination report, the International Preliminary Examining Authority will determine whether the international application complies with the requirement of unity of invention as set forth in § 1.487.

(b) If the International Preliminary Examining Authority considers that the international application does not comply with the requirement of unity of invention, it may:

(1) Issue a written opinion and/or an international preliminary examination report, in respect of the entire international application and indicate that unity of invention is lacking and specify the reasons therefor without extending an invitation to restrict or pay additional fees. No international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority.

(2) Invite the applicant to restrict the claims or pay additional fees, pointing out the categories of invention found, within a set time limit which will not be extended. No international preliminary examination will be conducted on inventions not previously searched by an International Searching Authority, or

(3) If applicant fails to restrict the claims or pay additional fees within the time limit set for response, the International Preliminary Examining Authority will issue a written opinion and/or establish an international preliminary examination report on the

main invention and shall indicate the relevant facts in the said report. In case of any doubt as to which invention is the main invention, the invention first mentioned in the claims and previously searched by an International Searching Authority shall be considered the main invention.

(c) Lack of unity of invention may be directly evident before considering the claims in relation to any prior art, or after taking the prior art into consideration, as where a document discovered during the search shows the invention claimed in a generic or linking claim lacks novelty or is clearly obvious, leaving two or more claims joined thereby without a common inventive concept. In such a case the International Preliminary Examining Authority may raise the objection of lack of unity of invention.

24. A new § 1.489 is added to read as follows:

**§ 1.489 Protest to lack of unity of invention before the International Preliminary Examining Authority.**

(a) If the applicant disagrees with the holding of lack of unity of invention by the International Preliminary Examining Authority, additional fees may be paid under protest, accompanied by a request for refund and a statement setting forth reasons for disagreement or why the required additional fees are considered excessive, or both.

(b) Protest under paragraph (a) of this section will be examined by the Commissioner or the Commissioner's designee. In the event that the applicant's protest is determined to be justified, the additional fees or a portion thereof will be refunded.

(c) An applicant who desires that a copy of the protest and the decision thereon accompany the international preliminary examination report when forwarded to the Elected Offices, may notify the International Preliminary Examining Authority to that effect any time prior to the issuance of the international preliminary examination report. Thereafter, such notification should be directed to the International Bureau.

25. A new § 1.491 is added preceded by a new heading to read as follows:

## National Stage

**§ 1.491 Entry into the national stage.**

An international application enters the national stage when the applicant has filed the documents and fees required by 35 U.S.C. 371(c) within the periods set forth in § 1.494 or § 1.495.

26. A new § 1.492 is added to read as follows:

**§ 1.492 National stage fees.**

The following fees and charges for international applications entering the national stage under 35 U.S.C. 371 are established by the Commissioner under 35 U.S.C. 376:

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)) ..... $150
By other than a small entity ..... $300

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By small entity (§ 1.9(f)) ..... $170
By other than small entity ..... $340

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f)) ..... $225
By other than a small entity ..... $450

(4) Where the international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office and the international preliminary examination report states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all the claims presented in the application entering the national stage (see § 1.496(b)):

By a small entity (§ 1.9(f)) ..... $25
By other than a small entity ..... $50

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)) ..... $17
By other than a small entity ..... $34

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.9(f)) ..... $6
By other than a small entity ..... $12

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f)) ..... $55
By other than a small entity ..... $110

(If the additional fees required by paragraphs (b), (c) and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment, prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

(e) Surcharge for filing the basic national fee or oath or declaration later than 20 months from the priority date pursuant to § 1.494(c) or later than 30 months from the priority date pursuant to § 1.495(c):

By a small entity (§ 1.9(f)) ..... $55
By other than a small entity ..... $110

(f) For filing an English translation of an international application later than 20 months after the priority date (§ 1.494(c)) or for filing an English translation of the international application or of any annexes to the international preliminary examination report later than 30 months after the priority date (§ 1.495 (c) and (e)), $26.00.

(35 U.S.C. 3, 376)

27. A new § 1.494 is added to read as follows:

**§ 1.494 Entering the national stage in the United States of America as a Designated Office.**

(a) Where no Demand has been filed with an appropriate International Preliminary Examining Authority by the expiration of 19 months from the priority date (see § 1.495), the applicant must fulfill the requirements of PCT Article 22 and 35 U.S.C. 371 within the time periods set forth in paragraphs (b) or (c) of this section in order to prevent the abandonment of the international application as to the United States of America. International applications for which these requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) The applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 20 months from the priority date—

(1) A copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office;

(2) A translation of the international application into the English language, if

it was originally filed in another language;

(3) The basic national fee (see § 1.492(a)); and

(4) An oath or declaration of the inventor (see § 1.497).

(c) The applicant may furnish any required English translation of the international application, the basic national fee and the oath or declaration of the inventor after 20 months but not later than the expiration of 22 months from the priority date. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 20 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the basic national fee or the oath or declaration of the inventor later than the expiration of 20 months after the priority date.

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 20 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 20 months from the priority date will be considered to be cancelled.

(e) Verification of the translation of the international application or any other document pertaining to an international application may be required where it is considered necessary, if the international application or other document was filed in a language other than English.

(f) The documents and fees submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

(g) The time limits set out in paragraphs (b), (c) and (d) of this section may not be extended pursuant to § 1.136 or otherwise.

(h) An international application becomes abandoned as to the United States 20 months from the priority date if a copy of the international application is not communicated to the Patent and Trademark Office prior to 20 months from the priority date where the United States has been designated but not elected prior to 19 months from the priority date. If a copy of the international application is communicated within 20 months to the Patent and Trademark Office, an international application will become abandoned as to the United States 22 months from the priority date if the required English translation(s), fees and oath or declaration under 35 U.S.C. 371(c) are not filed within 22 months from the priority date.

28. A new § 1.495 is added to read as follows:

**1.495 Entering the national stage in the United States of America as an Elected Office.**

(a) Where a Demand has been filed with an appropriate International Preliminary Examining Authority and not withdrawn by the expiration of 19 months from the priority date, the applicant must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraph (b) or (c) of this section in order to prevent the abandonment of the international application as to the United States of America. International applications for which those requirements are timely fulfilled will enter the national stage and obtain an examination as to the patentability of the invention in the United States of America.

(b) The applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 30 months from the priority date—

(1) A copy of the international application, unless it has been previously communicated by the International Bureau or unless it was originally filed in the United States Patent and Trademark Office;

(2) A translation of the international application into the English language, if it was originally filed in another language;

(3) The basic national fee (see § 1.492(a)); and

(4) An oath or declaration of the inventor (see § 1.497).

(c) The applicant may furnish any required English translation of the international application, the basic national fee and the oath or declaration of the inventor after 30 months but not later than the expiration of 32 months from the priority date. The payment of the processing fee set forth in § 1.492(f) is required for acceptance of an English translation later than the expiration of 30 months after the priority date. The payment of the surcharge set forth in § 1.492(e) is required for acceptance of the basic national fee or the oath or declaration of the inventor later than the expiration of 30 months after the priority date.

(d) A copy of any amendments to the claims made under PCT Article 19, and a translation of those amendments into English, if they were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Amendments under PCT Article 19 which are not received by the expiration of 30 months from the priority date will be considered to be cancelled.

(e) A translation into English of any annexes to the international preliminary examination report, if the annexes were made in another language, must be furnished not later than the expiration of 30 months from the priority date. Translations of the annexes which are not received by the expiration of 30 months from the priority date may be submitted within 32 months from the priority date accompanied by the processing fee set forth in § 1.492(f). Translations of the annexes which are not timely received will be considered to be cancelled.

(f) Verification of the translation of the international application or any other document pertaining to an international application may be required where it is considered necessary, if the international application or other document was filed in a language other than English.

(g) The documents submitted under paragraphs (b) and (c) of this section must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371, otherwise the submission will be considered as being made under 35 U.S.C. 111.

(h) The time limits set out in paragraphs (b), (c), (d) and (e) of this section may not be extended pursuant to § 1.136 or otherwise.

(i) An international application becomes abandoned as to the United States 30 months from the priority date if a copy of the international application is not communicated to the Patent and Trademark Office prior to 30 months from the priority date and a Demand for International Preliminary Examination which elected the United States of America has been filed prior to the expiration of 19 months from the priority date. If a copy of the international application is communicated within 30 months to the Patent and Trademark Office, an international application will become abandoned as to the United States 32 months from the priority date if the required English translation(s), fees and oath or declaration under 35 U.S.C. 371(c) are not filed within 32 months from the priority date.

29. A new § 1.496 is added to read as follows:

**§ 1.496 Examination of international applications in the national stage.**

(a) International applications which have complied with the requirements of 35 U.S.C. 371(c) will be taken up for action based on the date on which such

requirements were met. However, unless an express request for early processing has been filed under 35 U.S.C. 371(f), no action may be taken prior to one month after entry into the national stage.

(b) A national stage application filed under 35 U.S.C. 371 may have paid therein the basic national fee as set forth in § 1.492(a)(4) if it contains, or is amended to contain, at the time of entry into the national stage, only claims which have been indicated in an international preliminary examination report prepared by the United States Patent and Trademark Office as satisfying the criteria of PCT Article 33(1)–(4) as to novelty, inventive step and industrial applicability. Such national stage applications in which the basic national fee as set forth in § 1.492(a)(4) has been paid may be amended subsequent to the date of entry into the national stage only to the extent necessary to eliminate objections as to form or to cancel rejected claims. Such national stage applications in which the basic national fee as set forth in § 1.492(a)(4) has been paid will be taken up out of order.

30. A new § 1.497 is added to read as follows:

**§ 1.497 Oath or declaration under 35 U.S.C. 371(c)(4).**

(a) When an applicant of an international application, if the inventor, desires to enter the national stage under 35 U.S.C. 371 pursuant to § 1.494 or § 1.495, he or she must file an oath or declaration in accordance with § 1.63.

(b) If the international application was made as provided in § 1.422, 1.423 or 1.425, the applicant shall state his or her relationship to the inventor and, upon information and belief, the facts which the inventor is required by § 1.63 to state.

31. A new § 1.499 is added to read as follows:

**§ 1.499 Unity of invention during the national stage.**

(a) An international application which has entered the national stage by meeting the requirements of 35 U.S.C. 371 will be considered to have unity of invention if the claims are in accordance with PCT Rule 13 (see § 1.475(f)).

(b) An application in the national stage containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the combinations of categories as set forth in PCT Rule 13.2 (see § 1.475(f)) or to the combination of—

(1) A product and a process for the manufacture of said product or

(2) A product and a process of use of said product.

If an application contains claims to more or less than one of the combinations of categories of invention set forth in PCT Rule 13.2 (see § 1.475(f)) or a combination set forth in paragraphs (b)(1) and (2) of this section, unity of invention may not be present.

(c) If an application in the national stage contains claims to a category of invention in addition to those categories included in any one of the combinations specified in paragraph (b) of this section, lack of unity of invention may be held between the categories included in the combination and the claims to the additional category of invention.

(d) Unity of invention will exist in an application in the national stage where the claims are limited to one of the combinations of categories set forth in PCT Rule 13.2 (see § 1.475(f)) or a combination set forth in paragraph (b)(1) or (2) of this section. If multiple products, processes of manufacture or uses are claimed, the first invention of the category first mentioned in the claims of the application and the first recited invention of each of the other categories related thereto will be considered as the elected invention to be examined. Any such holding of an election by the examiner will be made in the form of a restriction requirement which confirms the election made by the presentation of the claims. Such a restriction requirement would be made on the basis of whether the inventions are independent and distinct. Applicant has the right to traverse such a restriction requirement in the response to the Office action in which the election is indicated.

(e) The inventions recited by the claims of different categories must be related rather than independent inventions.

(f) If the examiner finds that a national stage application lacks unity of invention, the examiner may in an Office action require the applicant in the response to that Office action to elect the invention to which the claims shall be restricted, this official action being called a requirement for restriction. Such requirement may be made before any action on the merits but may be made at any time before the final action at the discretion of the examiner. Review of any such requirement is provided under §§ 1.143 and 1.144.

Dated: April 28, 1987.

Donald J. Quigg,

*Assistant Secretary and Commissioner of Patents and Trademarks.*

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**S. 1177/Pub. L. 100-43**

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**H.J. Res. 280/Pub. L. 100-44**

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3. The important elements of typical Federal Register documents.
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**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** June 9, at 9 a.m.
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
**RESERVATIONS:** Gertrude E. Belton, 202-523-5237

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**WHEN:** July 8, at 9 a.m.
**WHERE:** Room 204A, Everett McKinley Dirksen Federal Building, 219 S. Dearborn Street, Chicago, IL.
**RESERVATIONS:** Call the Chicago Federal Information Center, 312-353-0339.

### BOSTON, MA

**WHEN:** July 15, at 9 a.m.
**WHERE:** Main Auditorium, Federal Building, 10 Causeway Street, Boston, MA.
**RESERVATIONS:** Call the Boston Federal Information Center, 617-565-8129

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# Presidential Documents

Title 3—

## The President

**Memorandum of May 12, 1987**

**Memorandum for the Secretary of State**

By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended, and Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the responsibility for submitting the first report and certifications required by Section 2013 of the Anti-Drug Abuse Act of 1986 (P.L. 99–570).

This memorandum shall be published in the Federal Register.

Ronald Reagan

THE WHITE HOUSE,
*Washington, May 12, 1987.*

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# Rules and Regulations

Federal Register
Vol. 52, No. 100
Friday, May 29, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. 292]

Food Stamp Program: Eligible Alien Status

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: The Immigration Reform and Control Act of 1986, Pub. L. 99–603, enacted on November 6, 1986, establishes a number of new categories of legal aliens. In accordance with the Food Stamp Act of 1977, as amended, some of these categories of legal aliens are eligible to participate in the Food Stamp Program (FSP). This rulemaking amends the current FSP regulations to specify those categories of legalized aliens who gain alien status as a result of the Immigration Reform and Control Act of 1986, and thereby may become eligible to participate in the Food Stamp Program.

DATES: The provisions of this rulemaking are effective retroactive to November 6, 1986, the date of enactment of the Immigration Reform and Control Act of 1986. Under the terms of the amendments made by that Act, and incorporated in this rulemaking, certain categories of aliens will not actually become eligible for food stamp benefits until specified dates in the future as reflected in this rulemaking. Comments must be received on or before July 28, 1987, to be assured of consideration.

ADDRESS: Comments should be addressed to Judith M. Seymour, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Food and Nutrition Service, USDA, Alexandria, Va 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Room 708, Alexandria, Va.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour at the above address or by telephone at (703) 756–3429. Copies of the Regulatory Impact Analysis summarized in this preamble are available from Ms. Seymour.

SUPPLEMENTARY INFORMATION:

## Classification

### *Executive Order 12291*

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1519–1. It has been determined that this rulemaking is a major action because it is anticipated that the Food Stamp Program's cost will increase by more than $100 million. However, this action will not result in an increase in costs or prices for consumers, individuals, or State and local governments. Additionally, this action will not have a significant effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets.

### *Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

### *Regulatory Flexibility Act*

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The changes will affect food stamp applicants and the State and local agencies which administer the Food Stamp Program.

### *Memorandum of Law*

Pursuant to section 4(a) of Executive Order 12291, the Department has determined that this rule is within the authority delegated by law and is consistent with Congressional intent.

### *Paperwork Reduction Act*

This rulemaking does not contain any reporting and/or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

## Regulatory Impact Analysis

### *Need for Action*

This action is required as a result of the Immigration Reform and Control Act of 1986 which establishes new categories of legal aliens. As a result, certain categories of aliens will gain eligible alien status to participate in the Food Stamp Program in accordance with section 6(f) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(f)).

### *Benefits*

This action increases the number of potentially eligible food stamp recipients. This action will not affect the food purchasing power of current program participants.

### *Costs*

The Department estimates that this action will increase the cost of the Program by approximately $17 million in Fiscal Year 1987, $148 million in Fiscal Year 1988, $180 million in 1989 and $106 million in 1990.

### *Public Participation*

This rule implements certain amendments to the Immigration and Nationality Act made by the Immigration Reform and Control Act of 1986 related to the eligibility of specified categories of aliens to receive food stamps. It is nondiscretionary in that the provisions are specifically prescribed by law and cannot be affected in substance by public comment. Since this rulemaking merely implements the cited statutory provisions, it constitutes an interpretive rule for which public comment and publication 30 days prior to effective date are not required under 5 U.S.C. 553.

However, since the Department believes that an opportunity for public

comment could result in improved and simplified administration of the rule, it is being published as an interim rule and a 60-day comment period is being provided. All comments received during the comment period will be evaluated and considered when a final rule is published.

**Background**

*Alien Status*

Current Food Stamp Program (FSP) rules at 7 CFR 273.4, which are based on section 6(f) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2015(f)), provide that, in addition to other eligibility requirements specified in Part 273, a person must: (a) reside in the United States; and (b) be either a United States citizen or an alien who meets one of the criteria identified at 7 CFR 273.4(a)(2) through 273.4(a)(7) in order to participate in the Food Stamp Program. The criteria specified in section 6(f) of the Food Stamp Act and current program rules are that a person must be: (1) Lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (INA); (2) a continuous resident since entering the United States prior to June 30, 1948 and lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the INA; (3) qualified for entry pursuant to sections 207 and 208 of the INA; (4) granted asylum pursuant to section 208 of the INA; (5) lawfully present through an exercise of discretion by the Attorney General pursuant to section 212(d)(5) of the INA, or as a result of a grant of parole by the Attorney General; or (6) residing within the United States as a result of the Attorney General's judgment to withhold deportation on the grounds that the alien would otherwise be subject to persecution on account of race, religion or political opinion.

The Immigration Reform and Control Act of 1986 (Pub. L. 99–603), enacted on November 6, 1986, includes numerous provisions which expand the categories of aliens eligible for lawful resident status. Under operation of the Food Stamp Act and Pub. L. 99–603, these modifications to the categories of aliens eligible for lawful status also has a marked effect on alien applicants for FSP benefits. The categories of aliens who may now be eligible for FSP benefits include: (1) Those who have resided continuously in the United States since before January 1, 1972, in accordance with section 249 of the INA; (2) those who have been granted lawful permanent resident status by the Immigration and Naturalization Service (INS) and are aged, blind, or disabled as defined in section 1614(a)(1) of the Social Security Act; (3) those who were granted temporary resident status pursuant to section 245A(a) of the INA at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A(b)(1) of the INA; (4) those who have resided in the United States and performed agricultural work for specified periods of time prior to May 1, 1986; and (5) additional agricultural workers who may be admitted in fiscal years 1990 through 1993. Each of these categories is discussed in further detail below.

*Continuous Residency Date—7 CFR 273.4(a)(3)*

As previously noted, pursuant to section 6(f) of the Food Stamp Act, current regulations at 7 CFR 273.4(a)(3) allow an alien to participate in the program if the alien has resided continuously in the United States since prior to June 30, 1948 and is considered to be lawfully admitted for permanent residence by the Attorney General pursuant to section 249 of the INA. Section 203 of Pub. L. 99–603 changes the continuous residency date of June 30, 1948 to January 1, 1972.

Accordingly, this rulemaking amends 7 CFR 273.4(a)(3) effective with the date of enactment of Pub. L. 99–603 to reflect the continuous residency date of January 1, 1972.

*Newly Legalized Aliens—7 CFR 273.4(a)*

In accordance with section 201 of Pub. L. 99–603, which amends section 245 of the INA, those aliens who do not qualify for permanent residence as described above, and all other illegal aliens who entered the United States before January 1, 1982 and subsequently resided continuously in the United States, may apply to INS to have their alien status adjusted to that of an alien lawfully admitted for temporary residence. Applications for such an adjustment must be submitted to INS within a 12-month period beginning on May 5, 1987. Aliens lawfully admitted for temporary residence under section 201 of Pub. L. 99–603, known as newly legalized aliens, may apply to INS for an adjustment to permanent resident status beginning with the nineteenth month after the month in which lawful temporary resident status was granted.

Section 245A(h)(1)(A)(iii) of the INA as added by section 201 of Pub. L. 99–603 further specifies that, with certain exceptions, newly legalized aliens who are granted a temporary or subsequent permanent resident status by INS under that section are prohibited from participating in the FSP and certain other types of public assistance programs for a five-year period following the date the alien is granted lawful temporary resident status. Thus, the majority of aliens who gain a lawful resident status under section 201 of Pub. L. 99–603 will not be eligible to participate in the FSP until at least May, 1992.

However, the law provides for two exceptions to the five-year prohibition on participating in the Food Stamp Program or certain other types of public assistance. These exceptions are: (1) Cuban and Haitian entrants (as defined in paragraph (1) or (2)(A) of section 501(c) of Pub. L. 96–422); or (2) an individual who is aged, blind or disabled as defined in section 1614(a)(1) of the Social Security Act (SSA).

In regard to the first exception to the five-year prohibition, Cuban and Haitian entrants are already eligible to participate in the Food Stamp Program in accordance with the Food Stamp Act and current regulations at 7 CFR 273.4(a)(6). Therefore, the eligibility of Cuban and Haitian entrants to participate in the FSP is not affected by the Immigration Reform and Control Act of 1986.

In regard to the second exception, section 201 of Pub. L. 99–603 amends the INA to allow newly legalized aliens who are aged, blind or disabled as defined in section 1614(a)(1) of the SSA to participate in the FSP without reference to the five-year prohibition. However, in accordance with section 6(f) of the Food Stamp Act, these aged, blind, or disabled aliens must be in permanent resident status in order to participate in the FSP. Since section 245A(b)(1) of the INA, as added by Pub. L. 99–603, prohibits newly legalized aliens from gaining permanent resident status before November 7, 1988, such aliens will not be eligible to participate in the FSP before that date.

Accordingly, 7 CFR 273.4 is amended to reflect the circumstances in which aliens who are newly legalized in accordance with Pub. L. 99–603 may participate in the FSP.

*Special Agricultural Workers—7 CFR 273.4(a)*

Section 210(a) of the INA, as added by section 302 of the Immigration Reform and Control Act of 1986, provides that aliens who can prove that they have lived in the United States and performed seasonal agricultural services for the required period of time may be granted lawful temporary resident status. These individuals are known as special

agricultural workers (SAWs) and are further categorized into two groups. The first group, SAW 1, must prove to INS that they have lived in the United States and performed agricultural work for at least 90 days in each of the three (3) twelve month periods preceding May 1, 1986. Aliens in the SAW 1 category may be lawfully admitted for permanent residence by INS after remaining in lawful temporary resident status for one year. The second group, SAW 2, must prove to INS that they have lived in the United States and performed seasonal agricultural work for at least 90 days in the 12 months prior to May 1, 1986. Aliens in the SAW 2 category may be lawfully admitted for permanent residence after remaining in a lawful temporary resident status for two years. Special agricultural workers may begin to submit applications to INS for adjustment to lawful temporary resident status on June 1, 1987. Such applications will be received by INS for 18 months beginning on June 1, 1987.

Although aliens who fall into a SAW category must remain in lawful temporary resident status for one or two years, section 210(a)(5) of the INA specifies that an alien lawfully admitted for temporary residence as a SAW is to be considered to be an alien lawfully admitted for permanent residence except for purposes of the immigration laws. Therefore, persons who are lawfully admitted in either a temporary or permanent resident status as a SAW are eligible to participate in the FSP, if otherwise eligible.

Accordingly, this rulemaking amends 7 CFR 273.4(a) to identify the eligible alien status of aliens who are lawfully admitted for temporary or permanent residence as special agricultural workers.

*Additional Special Agricultural Workers—7 CFR 273.4(a)*

In accordance with section 303 of Pub. L. 99-603, which amends newly added section 210 to the INA, additional special agricultural workers (ASAWs), also referred to as replenishment agricultural workers, may be granted a lawful temporary resident status by INS in fiscal years 1990 to 1993 after the Secretaries of Agriculture and Labor make a joint determination that a shortage of SAW workers exists. Aliens granted lawful temporary resident status as an ASAW must remain in temporary resident status for three years before an adjustment to lawful permanent resident status can be made. As with the SAW 1 and SAW 2 categories, Section 303 of Pub. L. 99-603 specifies that an ASAW worker admitted for temporary residence is to be considered an alien lawfully admitted for permanent residence except for purposes of the immigration laws. Therefore, ASAWs are eligible to participate in the FSP once they are granted lawful temporary resident status if they are otherwise eligible for program benefits.

Therefore, this rulemaking amends 7 CFR 273.4(a) to specify the eligible alien status of aliens categorized as additional special agricultural workers.

*Verification—7 CFR 273.2(f)(1)(ii)*

Current rules at 7 CFR 273.2(f)(1)(ii) specify that prior to certification, the State agency must verify the legal status of each applicant who identifies him or herself as an alien. The current procedures further identify the required INS documentation the alien must present in order to verify his or her alien status (e.g., Form I-151 of Form I-94 with appropriate annotation).

This interim rule requires that FSP applicant aliens legalized under the Immigration Reform and Control Act of 1986 provide verification to the eligibility worker which establishes their alien status. This rule specifies that acceptable verification may consist of documents, such as a notice, letter, or identification card that establishes that the alien has been admitted as a legal alien in one of the categories enumerated in the *Alien Status* section above.

Accordingly, this rulemaking amends 7 CFR 273.2(f)(1)(ii) of the regulations to specify the verification requirements of applicant aliens. For all other eligibility criteria, a State will follow current verification requirements at 7 CFR 273.2(f). However, the Department is concerned that its current verification procedures may not fully address obtaining verification from groups such as alien special agricultural workers who may have resources available to them in their home country. The Department will be publishing a proposed rulemaking next Fall regarding use of the INS Systematic Alien Verification for Entitlements (SAVE) system for verification of alien status. The Department requests that commenters on this interim rule provide the Department with suggestions regarding the adequacy of current verification procedures for this group and how the procedures might be improved through the future rulemaking.

*Technical Revisions*

Current verification procedures specified in 7 CFR 273.2(f)(1)(ii) of the Food Stamp Program regulations require that aliens who are lawfully admitted under 7 CFR 273.4(a)(2) and (3) present either: (1) An INS Form I-151; (2) a "Re-entry Permit" or passport booklet for lawful permanent aliens; or (3) Form I-181-B with the stamped annotation, "Processed for I-551, Temporary Evidence of Lawful Admission for Permanent Residence." We have been advised by INS officials that the Form I-181-B is no longer stamped with this annotation and should no longer be used as acceptable verification. Passport booklets, however, are stamped with this annotation and continue to be acceptable verification of eligible alien status.

Accordingly, this rulemaking amends 7 CFR 273.2(f)(1)(ii)(B) by omitting references to the Form 1-181-B.

Current rules at 7 CFR 273.4(a)(4) and (5) incorrectly refer to the Immigration and Nationality Act as the Immigration and Nationalization Act. Therefore, §§ 273.4(a)(4) and 273.4(a)(5) are amended to correct these references to the Immigration and Nationality Act.

*Implementation*

For aliens who became eligible for food stamps as the result of the change of the continuous residence date, as reflected in § 273.4(a)(3), this rule must be implemented retroactive to November 6, 1986. On December 16, 1986, the Department advised the Regional Administrators of the Food and Nutrition Service to advise their States of the provision and its effective date of November 6, 1986. The dates upon which aliens may become eligible under other provisions of these rules are: November 7, 1988 under § 273.4(a)(8); May 5, 1992 under § 273.4(a)(9); June 1, 1987 under § 273.4(a)(10); and October 1, 1989 through September 30, 1993 under § 273.4(a)(11).

Because these dates vary widely over several years, this rule requires State agencies to advise appropriate staff of the eligibility or ineligibility of applicant aliens who are affected by the enactment of Pub. L. 99-603.

**List of Subjects**

*7 CFR Part 272*

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

*7 CFR Part 273*

Administrative practice and procedures, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation of Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2025.

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(88) is added to read as follows:

**§ 272.1 General terms and conditions.**

* * * * *

(g) *Implementation.* * * *

(88) *Amendment No. 292.* (i) The effective date of the provisions of this amendment is retroactive to November 6, 1986.

(ii) The actual dates upon which aliens may become eligible under § 273.4(a) (8), (9), (10), and (11) are specified in those paragraphs. State agencies must inform their staff of the respective dates as they pertain to the eligibility or ineligibility of applicant aliens.

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.2:

a. Paragraph (f)(1)(ii)(A) is amended by removing the reference to "(a)(7)" and adding the reference to "(a)(11)" in its place.

b. Paragraph (f)(1)(ii)(B) is amended by removing the second, third, and fourth sentences.

c. Paragraphs (f)(1)(ii)(D), (f)(1)(ii)(E), (f)(1)(ii)(F) are redesignated as paragraphs (f)(1)(ii)(E), (f)(1)(ii)(F), (f)(1)(ii)(G), respectively, and a new paragraph (f)(1)(ii)(D) is added which reads as follows:

**§ 273.2 Application processing.**

* * * * *

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(ii) *Alien status.* * * *

(D) Aliens in the categories specified in § 273.4(a) (8) through (11) shall present documentation such as, but not limited to, a letter, notice of eligibility, or identification card which clearly identifies the alien has been granted legal status in one of those categories.

* * * * *

4. In § 273.4:

a. Paragraph (a)(2) is amended by adding a new sentence at the end of the paragraph which reads, "However, an alien lawfully admitted for permanent residence pursuant to section 245A of the Immigration and Nationality Act must be eligible as specified in paragraphs (a)(8) or (a)(9) of this section."

b. Paragraph (a)(3) is amended by replacing the date June 30, 1948 with January 1, 1972.

c. Paragraph (a)(4) is amended by replacing the word "Nationalization" with "Nationality".

d. Paragraph (a)(5) is amended by replacing the word "Nationalization" with "Nationality".

e. New paragraphs (a)(8), (a)(9), (a)(10), and (a)(11) are added.

The additions read as follows:

**§ 273.4 Citizenship and alien status.**

(a) *Citizens and eligible aliens.* * * *

(8) An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for permanent residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act. Such aliens may obtain lawful permanent resident status under section 245(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988.

(9) An alien who is granted lawful temporary resident pursuant to section 245A of the Immigration and Nationality Act at least five years prior to applying for food stamps and who subsequently gained lawful permanent resident status pursuant to section 245A of the Immigration and Nationality Act. Such aliens may obtain temporary residence status no earlier than May 5, 1987.

(10) An alien who is, as of June 1, 1987, or thereafter, a special agricultural worker and lawfully admitted for temporary residence in accordance with section 210(a) of the Immigration and Nationality Act.

(11) An alien who is lawfully admitted for temporary residence as an additional special agricultural worker as of October 1, 1989 through September 30, 1993 in accordance with section 210A(a) of the Immigration and Nationality Act.

* * * * *

Dated: May 26, 1987.

**John W. Bode,**

*Assistant Secretary for Food and Consumer Services.*

[FR Doc. 87-12307 Filed 5-28-87; 8:45 am]

BILLING CODE 3410-30-M

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## FEDERAL TRADE COMMISSION

**16 CFR Part 801**

### Premerger Notification; Reporting and Waiting Period Requirements

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** This action promulgates amendments to the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition might violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. During the eight years the rules have been in effect, the Federal Trade Commission, with the concurrence of the Assistant Attorney General for Antitrust, has amended the premerger notification rules several times in order to improve the program's effectiveness and to lessen the burden of complying with the rules. These revisions are intended to improve the program's effectiveness by amending the definition of the term "control" as it applies to partnerships and other entities that do not have outstanding voting securities.

**EFFECTIVE DATE:** July 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** John M. Sipple, Jr., Senior Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Flexibility Act**

These amendments to the Hart-Scott-Rodino premerger notification rules are designed to improve the effectiveness of the premerger notification program. The Commission has determined that none of the amendments is a major rule, as that term is defined in Executive Order 12291. The amendments will not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the amendments expands the coverage of the premerger notification rules in a way that would affect small business. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354 (September 19, 1980), the Federal Trade Commission certifies that these rules will not have a significant

economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of some rules, is therefore inapplicable.

**Paperwork Reduction Act**

The Hart-Scott-Rodino Premerger Notification rules and report form contain information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501–3518. Prior to promulgation, these requirements were reviewed and approved by the Office of Management and Budget. The amendments contained in this Notice were approved by OMB on April 29, 1987, for use through March 31, 1990 (OMB Control No. 3084–0005).

**Background**

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General"), and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. To this end, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Congress also provided an opportunity for the Commission or the Assistant Attorney General (who are sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that the agencies deem to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus, the act requires that the antitrust agencies receive prior notification of significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation of the competitive implications of these acquisitions, and assures the enforcement agencies an opportunity to seek a preliminary injunction before the parties to an acquisition are legally free to consummate it, reducing the problem of unscrambling the assets after the transaction has taken place.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority (A) to define the terms used in the act, (B) to exempt additional persons or transactions from the act's notification and waiting period requirements, and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

On December 15, 1976, the Commission issued proposed rules and a proposed Notification and Report Form ("the Form") to implement the act. This proposed rulemaking was published in the Federal Register of December 20, 1976, 41 FR 55488. Because of the volume of public comment, it became clear to the Commission that some substantial revisions would have to be made in the original rules. On July 25, 1977, the Commission determined that additional public comment on the rules would be desirable and approved revised proposed rules and a revised proposed Notification and Report Form. The revised rules and Form were published in the Federal Register of August 1, 1977, 42 FR 39040. Additional changes in the revised rules and Form were made after the close of the comment period. The Commission formally promulgated the final rules and Form, and issued an accompanying Statement of Basis and Purpose on July 10, 1978. The Assistant Attorney General gave his formal concurrence on July 10, 1978. The final rules and Form and the Statement of Basis and Purpose were published in the Federal Register of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

The rules are divided into three parts, which appear at 16 CFR Parts 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Changes of a substantive nature have been made in the premerger notification rules or Form on five occasions since they were first promulgated. The first was an increase in the minimum dollar value exemption contained in § 802.20 of the rules. This amendment was proposed in the Federal Register of August 10, 1979, 44 FR 47099, and was published in final form in the Federal Register of November 21, 1979, 44 FR 60781. The second amendment replaced the requirement that certain revenue data for the year 1972 be provided in the Notification and Report Form with a requirement that comparable data be provided for the year 1977. This change was made because total revenues for the year 1977 broken down by Standard Industrial Classification (SIC) codes became available from the Bureau of the Census. The amendment appeared in the Federal Register of March 5, 1980, 45 FR 14205, and was effective May 3, 1980.

The third set of changes was published by the Federal Trade Commission as proposed rules changes in the Federal Register of July 29, 1981, 46 FR 38710. These revisions were designed to clarify and improve the effectiveness of the rules and of the Notification and Report Form as well as to reduce the burden of filing notification. Several comments on the proposed changes were received during the comment period. Final rules, which adopted some of the suggestions received during the comment period, but which were substantially the same as the proposed rules, were published in the Federal Register of July 29, 1983, 48 FR 34427, and became effective on August 29, 1983. The fourth change, replacing the requirement to provide 1977 revenue data with a requirement to provide 1982 data on the Form, was published in the Federal Register of March 28, 1986, 51 FR 10368.

The fifth set of changes to the rules and the Notification and Report Form was published by the Federal Trade Commission as proposed rule changes in the Federal Register of September 24, 1985, 50 FR 38742. Those thirteen

proposed revisions were designed to reduce the cost to the public of complying with the rules and to improve the program's effectiveness. The Commission decided to adopt nine of the proposals, to reject one proposal and to defer action on the other three. Final rules, which adopted some of the suggestions received from public comments, were published in the Federal Register of March 6, 1987, 52 FR 7066 and became effective on April 10, 1987. These changes included revisions to the Notification and Report Form, found in 16 CFR Part 803 (Appendix). The Form had previously undergone minor revisions on two other occasions.

These amendments to the premerger notification rules grow out of the comments on Proposal 1 of the September 24, 1985, Federal Register notice, the proposed "acquisition vehicle" rules. The underreporting problem that the "acquisition vehicle" approach was designed to solve is extensively discussed in that notice of proposed rulemaking. It explains both how in some circumstances an acquisition made by a partnership is not subject to the reporting and waiting obligations of the act, and how in similar circumstances an acquisition made by a newly-formed corporation that has no controlling owner is not subject to the obligations of the act. The proposed rules would have required both types of transactions to be reported.

Upon reviewing the comments on the "acquisition vehicle" proposal, the Commission concluded that that approach appeared likely to require filings in connection with numerous competitively insignificant transactions and that a less inclusive approach could accomplish the primary objective of the proposal: Covering acquisitions by partnerships that really are controlled by another entity. In addition, it appears that there have been no problems associated with acquisitions by newly-formed corporations. The Commission therefore reconsidered its proposal and developed a new approach that applies only to partnerships and other entities that do not have outstanding voting securities. On March 6, 1987, the Commission proposed in the Federal Register, 52 FR 7095, amendments to its premerger notification rules to implement this approach.

Four comments were received.

*Comments*

1. Unocal Corporation
2. Latham & Watkins
3. American Bar Association Section on Antitrust Law
4. Sullivan & Cromwell.

**Authority:** The Federal Trade Commission, with the concurrence of the Assistant Attorney General, promulgates these amendments to the premerger notification rules pursuant to section 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

**Statement of Basis and Purpose for the Commission's Revised Premerger Notification Rules**

*Section 801.1(b) Control*

Under previous staff interpretations, acquisitions made by certain partnerships were not reportable under the act although acquisitions by similarly structured corporations were reportable. No report was required even if an acquisition was by a partnership that was owned and operated principally by one person, and even if that person was a competitor of the acquired person. Because that result is inconsistent with the treatment of corporations that are dominated by one person and with the objectives of the act and the rules, the Commission proposed amendments to its rules to alter that special treatment of partnerships. Having considered public comments on its proposals, the Commission now amends the definition of control in § 801.1(b) to provide that persons owning 50 percent or more of partnerships or other entities that do not have outstanding voting securities will control such entities. Those persons will now be required to report acquisitions by the entities they own, just as persons must report acquisitions by corporations if they own 50 percent or more of the outstanding voting securities of those corporations. This proposal imposes no reporting obligation on owners of minority interests.

The Commission is also amending the alternative definition of control, which is based on the contractual power to designate members of an entity's board of directors or analogous body. The change—from the power to designate a majority to the power to designate 50 percent—results in a uniform 50 percent criterion for all three definitions of control in the rules.

**The Purpose of the New Control Definition**

Previously, acquisitions by partnerships and other entities that have no outstanding voting securities were frequently not subject to premerger review as a result of two principles of premerger reporting: One, a formal rule for calculating assets of an entity, 16 CFR 801.11(e), and the other, a Premerger Notification Office informal interpretation that a partnership is its own "ultimate parent entity" (that is, a partnership is not controlled by its partners). Section 801.11(e) directs that an entity without a balance sheet not include, in determining its size, any assets that are contributed to the entity for the purpose of making an acquisition. Thus, for example, assume that a partnership is formed to buy a $1 billion company and the partners contribute $1 billion in cash for the purpose of making the acquisition. If the partnership has no other assets (and no sales), the subsequent acquisition of the $1 billion company by the partnership is not reportable. The partnership does not meet the $10 million minimum asset criterion of section 7A(a)(2) of the act because § 801.11(e) directs the partnership not to count the $1 billion that will be used to pay for the acquisition. The informal interpretation deems the acquisition to have been made by the partnership itself, which has no other assets, rather than by its partners, who may well have other assets. Consequently, the size of the partnership is determined by valuing only the partnership's assets.

Of course, if the partnership were employed in the acquisition "for the purpose of avoiding the obligations to comply with the requirements of the act," its existence would be disregarded and the obligations of the act would be determined by applying the act and the rules to the substance of the transaction. 16 CFR 801.90. For example, some persons might be tempted to make an acquisition through a partnership for the purpose of avoiding reporting or delaying their premerger notifications to the antitrust agencies until they were required by the federal securities laws to announce their acquisition publicly. If a partnership were formed for the purpose of avoiding or delaying reporting, § 801.90 would base the reporting requirement on the substance of the transaction. If, for example, the substance is an acquisition by a single person, notwithstanding the structuring of the transaction in the form of a partnership, that person would be required to comply with the obligations of the act prior to consummating the transaction.

These amendments require controlling partners, rather than partnerships, to report transactions in certain other circumstances. Section 801.1(b)(1)(ii) provides that a partnership or other unincorporated entity is deemed to be controlled by any person who owns 50 percent or more of the entity. Thus, a partner who meets the statutory $10 million minimum size criteria and owns

50 percent or more of the partnership would be required to file the notification for an otherwise reportable acquisition by the partnership. The amendments abolish the overly general presumption that partnerships are always independent entities.

These amendments mean, in the example of the acquisition of the $1 billion company discussed above, that the transaction would be reportable if one of the partners were entitled to fifty percent or more of the partnership's profits (or, upon dissolution, of its assets), and that partner's total assets or annual net sales were $10 million or more. That controlling partner, or its parent, would be the "ultimate parent entity" pursuant to § 801.1(a)(3). It would therefore be deemed to be the person making the acquisition.

This attribution of control to persons owning such large economic interests is appropriate, because, as a general rule, they control these entities in the common sense of that word. The antitrust review should therefore include a comparison of the business holdings of the acquired entity with the business holdings of both the partnership and the controlling partner. By requiring the controlling partner to file, the premerger antitrust review will automatically consider both. While not perfect, this concept, which relies on the entitlement to profits or to assets in the event of dissolution, seems an adequate indicator of control where one person has a right to 50 percent or more of the profits or is entitled to 50 percent or more of the assets upon dissolution. At the very least, it seems unlikely that such an entity would be permitted to continue its existence if it operated in any way that was adverse to the wishes of the 50 percent owner. Consequently, the Commission considers this proposal to be an appropriate supplement to its existing definition of control.

The 50 percent ownership requirement parallels in important respects the treatment of corporations under the existing control rule. Although effective or working control of a corporation can exist as a practical matter with a smaller percentage of shares, § 801.1(b) deems a corporation to be a controlled entity only if one person owns "50 percent or more of the outstanding voting securities" or has a right "presently to designate a majority of the board of directors." While this 50 percent requirement understates actual control of many corporations, the rule is clear and easily determinable.

The rule is arguably overinclusive because one corporation with two 50 percent owners is deemed to have two ultimate parent entities. Nevertheless, this rule correctly reflects the joint control that generally exists in such circumstances. In the Commission's experience, this requirement that both controlling entities file has neither prevented persons from fulfilling the premerger notification requirements nor had a negative impact on business decisions.

The 50 percent ownership criterion serves similar functions for determining control of unincorporated entities. It is an objective and predictable standard. Moreover, the degree of ownership is sufficient to assure in almost all instances that the entities and those deemed to be controlling owners will act in concert to comply with the act's obligations.

In formulating the 50 percent ownership criterion, consideration was given to whether other indicators of control should be included. For example, the Commission might have proposed treating all general partners or the sole general partner of a limited partnership as controlling the partnership. While the Commission did not doubt its authority to attribute control on the basis of this and other criteria, the Commission declined to utilize that authority at this time because it might require many unnecessary filings. For example, limited partnerships with sole general partners are common entities whose investments often have little competitive significance. Moreover, if a rule required sole general partners to file notifications, it could easily be avoided by appointing a second or third general partner. At present, a rule requiring all general partners to file seems unnecessary and therefore unduly burdensome, but the Commission retains the option of promulgating such a rule should underreporting of significant acquisitions occur under the rule promulgated here.

Each of the four comments received addresses whether the amendments as proposed are adequate to remedy the underreporting problem caused by the interpretation that makes some acquisitions by partnerships and certain other entities not subject to reporting requirements. All four support "the concepts underlying these proposals" and consider them to be "a considerable improvement over the present Rules" (See Comment 3). The comments neither suggest that these amendments would not have required all the publicized unreported partnership transactions to have been reported, nor criticize the workability of the amendments. Three of the comments noted that partnerships could be set up in such a manner that no partner would control it under the amendments as proposed. Accordingly, these comments favor some action in addition to the proposed rule, but each makes a different suggestion.

The Commission welcomes the suggestions, which relate to abuses that may occur in the future. For the present, the Commission believes its proposed amendments are sufficient, and that the public interest will be served best by their immediate adoption. The amendments as proposed place acquisitions undertaken by partnerships on equal footing with acquisitions undertaken by corporations, and the Commission is not aware of any problem with the existing definition of control as it pertains to corporations. The Commission is not persuaded of the need to expand the reporting obligation to cover numerous competitively insignificant transactions in anticipation of avoidance devices that may never be used.

However, the Commission is considering whether, in light of its adoption of the "partnership control" rule, it should also revise its rules to require reporting the acquisition of control of a partnership. Currently, the staff interpretation makes acquisition of less than a 100 percent interest in a partnership not reportable, because a partnership interest is deemed to be neither a voting security nor an asset. The Commission is also considering the suggestion of Comment 3 from the American Bar Association Section of Antitrust Law that the economic incentive not to observe premerger reporting obligations might be eliminated by adopting a blanket exemption for all transactions in which an acquiring person would hold less than 5 percent of the voting securities of an issuer. That comment suggests that such acquisitions are unlikely to have antitrust implications.

**Changing the Majority Control Criterion**

Prior to these amendments, an entity was deemed controlled by a person that had the contractual power to designate a majority of the entity's board of directors. That rule reflects the Commission's belief that such a person should be deemed to control the entity whether or not that entity also is deemed to be controlled according to other criteria. Thus, under the existing rules, a single entity may be deemed controlled by one person that holds 50 percent of the outstanding voting securities of the entity and also by another person who has a contractual right to appoint a majority (i.e., more than 50 percent) of that entity's board of directors (or of individuals exercising similar functions). The Commission has

concluded, however, that no purpose was served and some confusion was generated by inferring control by virtue of ability to appoint directors only when one person may appoint *more than* 50 percent of the directors. It has therefore revised this criterion to parallel the other control concepts that are based on 50 percent ownership. Under this amendment, an entity is deemed to be controlled by a person with the right to appoint exactly 50 percent, as well as more than 50 percent, of the entity's directors.

The basis of this decision is illustrated by the following example. Consider a nonprofit joint venture corporation created by two persons that is not deemed to be controlled under § 801.1(b)(1) because it does not issue voting securities, it does not distribute profits and it would disburse assets widely in the event of dissolution. If the power to appoint directors of this venture is split evenly between the two persons that formed the entity, such an entity can be deemed controlled solely as a result of the contractual right to appoint directors. There is no reason to treat the control of this corporation differently from a corporation in which the voting shares are split evenly. Both rights are likely to result in an evenly divided board of directors. Accordingly, the amended rule deems an entity to be controlled by a person that has a contractual right to appoint 50 percent or more of the "directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions."

As noted in the discussion above, the Commission has experienced no problems administering its "50 percent or more of the outstanding voting securities" criterion. Even though that requires in appropriate circumstances more than one person to file as the ultimate parent entity of a single issuer, all persons required to file have been able to supply the information required. This experience appears to confirm the Commission's premise that if one person owns 50 percent of an entity it is at least in joint control of the entity. In the case of a person able to appoint 50 percent of a board of directors (or individuals exercising similar functions), it is even clearer that the entity cannot act without that person's assent. The Commission therefore has amended its rules so as to deem a person to control an entity if that person has the contractual right to appoint 50 percent or more of the board of directors (or of individuals exercising similar functions) of the entity.

This amendment similarly modifies a Commission staff informal interpretation of § 801.1(b). The Premerger Notification Office deems a corporation controlled if a person can designate a *majority* of the board as a result of both holding voting securities and having a contractual power to designate directors. In other words, in determining whether an entity is controlled pursuant to § 801.1(b)(2), the staff adds directors elected to the board as a result of holding voting securities to directors designated as a result of a contractual power. Under the amendment, the staff will deem the entity controlled by a person who, as a result of such combined rights, has the power to designate 50 percent or more of the directors.

**Operation of the Control Rules**

Amended § 801.1(b)(1)(ii) deems an entity to be controlled by a person entitled to 50 percent or more of the entity's profits, or by a person entitled, upon dissolution, to 50 percent or more of the entity's assets. This provision does not apply if the entity has outstanding voting securities. The amendment thus creates two systems for determining control: One for entities that have outstanding voting securities, and another for all other entities.

These non-overlapping rules for determining control are each supplemented by the alternative—contractual power to designate—control concept. In other words, § 801.1(b)(1)(i) and § 801.1(b)(1)(ii) are mutually exclusive; an entity cannot be controlled both under paragraph (b)(1)(i) by a person that holds 50 percent of the voting securities issued by the entity and under paragraph (b)(1)(ii) by another person that has a right to 50 percent of the entity's profits. Because the entity had outstanding voting securities, paragraph (b)(1)(ii) does not apply; thus the entity would not be controlled on the basis of a right to profits or to assets upon dissolution. In contrast, under proposed paragraph (b)(2) the entity deemed controlled under (b)(1)(i) as a result of voting securities held by one person would be deemed also controlled under proposed paragraph (b)(2) by another person that had a contractual right to appoint 50 percent or more of the entity's board of directors.

Similarly, an entity that was deemed controlled under paragraph (b)(1)(ii), because a person had a right to 50 percent of its profits or assets, would also be deemed controlled under (b)(2) if another person had the right to appoint at least 50 percent of that entity's board of directors (or analogous body). This overlap would be quite rare, however. As explained above, the Commission staff concluded that partnerships do not possess "individuals exercising similar functions" to directors; therefore, paragraph (b)(2) applies only to other entities that do not have outstanding voting securities.

In addition, the 50 percent or more criteria in paragraphs (b)(1)(i) and (b)(2) means that under each paragraph two persons can be deemed to control an entity; and under paragraph (b)(1)(ii), four persons could conceivably control an entity, as two persons could each be entitled to 50 percent of the entity's profits and two different persons each be entitled to 50 percent of the entity's assets upon dissolution. It is, thus, theoretically possible that as many as six persons could be deemed to control one entity (four under (b)(1)(ii) plus two under (b)(2)). However, as Comment 3 notes, it would be extraordinary for an entity to allocate those incidents of ownership in such different percentages.

As described above, paragraph (b)(1)(ii) is intended to apply only in circumstances in which paragraph (b)(1)(i) does not apply; that is, it applies only to entities that have no outstanding voting securities. Typically, this means paragraph (b)(1)(i) applies to corporations and paragraph (b)(1)(ii) applies to non-corporate entities. It should be noted, however, that some corporations (for example, entities incorporated under not-for-profit statutes that do not issue voting securities) are subject to paragraph (b)(1)(ii). Similarly, some unincorporated entities (for example, joint stock companies) may have outstanding voting securities. For them, control is determined by paragraph (b)(1)(i).

For purposes of these rules, the fact that an entity issues securities that have some voting rights is not sufficient to deem them voting securities. Limited partnerships commonly issue certificates subject to the Securities Act of 1933 to limited partners. These partnership shares may be transferable and may entitle their holders to vote on a variety of matters, but typically the entities would not be subject to paragraph (b)(1)(i). The definition of "voting security" in § 801.1(f)(1) states that the holder of the security must be entitled "to vote for the election of directors of the issuer, or with respect to unincorporated entities, individuals exercising similar functions." Because most unincorporated entities do not have bodies analogous to boards of directors or do not elect the membership of such bodies, the securities are not "voting securities" within the meaning of the rules.

The rights to profits and to assets, upon dissolution, described in paragraph (b)(1)(ii) are ownership rights and not creditor rights. Thus, the right to assets, upon dissolution, means after all debt obligations have been satisfied. The right to profits is calculated after payment of any royalty, franchise fee or other expense based on income. Also, as Comment 3 notes, there may be instances in which profits are shared with employees in lieu of compensation, rather than as a return on investment. These compensation distributions should not be included in calculating the right to profits under paragraph (b)(1)(ii). Where parties are in doubt as to the manner in which they should calculate percentage rights to profits or to assets, upon dissolution, they should seek the advice of the Premerger Notification Office.

As is the case with other control provisions, a person deemed to control an entity under paragraph (b)(1)(ii) has attributed to it all the assets of the controlled entity. See § 801.1(c)(8). Thus if "A" controls pursuant to paragraph (b)(1)(ii) a partnership B (because "A" is entitled to 50 percent of B's profits, or 50 percent of B's assets upon dissolution), "A" must include the value of all of B's assets in determining the total assets of "A." "A" must include all of B's assets to determine whether it meets the minimum size criteria of section 7A(a)(2) of the act, even though "A" does not have a right to the other 50 percent of B's profits or assets. Furthermore, if B is entitled to 50 percent of the profits of partnership C, "A" will be deemed to control C also and also must include all the assets of C in determining the size of "A."

Finally, Comment 3 from the ABA Section of Antitrust Law raises three additional questions about these amendments: First, it asks whether the following transaction is exempt from reporting obligations: A person that controls a partnership acquires assets from the partnership. As a general matter, the Commission agrees it would be logical to exempt such transactions if acquisition of control of the partnership were a reportable event. However, as noted above, under current staff interpretations, acquisition of control is not normally a reportable event. Consequently, the Commission is not prepared now to exempt the asset acquisition. It will consider such an exemption as it considers making the acquisition of control of a partnership a reportable event.

Second, Comment 3 asks how to resolve the apparent conflict between the amended definition of control and the definition in § 801.1(c)(5), which states that the beneficiary of a trust (regardless of the percentage of its profits to which he is entitled) does not hold the assets of the trust. It is the Commission's intention that the control amendments, although adopted more recently, do not supersede the more specific treatment of trust assets mandated by § 801.1(c).

The Section of Antitrust Law also raises concerns that rapid implementation of the amendments might disrupt transactions that are nearing completion. For these reasons the section suggests the effective date of the amendments should be delayed for 60 or even 90 days after promulgation of the amendments. The Commission believes that its 35 day period is adequate to prevent disruption and that a longer period might invite the very abuses these amendments are intended to eliminate.

**List of Subjects in 16 CFR Part 801**

Antitrust.

Accordingly 16 CFR Part 801 is amended as set out below.

**PART 801—COVERAGE RULES**

1. *Authority.* The authority for Part 801 continues to read as follows:

**Authority:** Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

2. Section 801.1 is amended by revising the introductory text of paragraph (b), paragraphs (b) (1) and (2), and by designating the existing example as example (1), and adding new examples (2) through (4), as set forth below.

**§ 801.1 Definitions.**

* * * * *

(b) *Control.* The term "control" (as used in the terms "control(s)," "controlling," "controlled by" and "under common control with") means:

(1) *Either.* (i) Holding 50 percent or more of the outstanding voting securities of an issuer or

(ii) In the case of an entity that has no outstanding voting securities, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(2) Having the contractual power presently to designate 50 percent or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions.

Examples 1. * * *

2. A statutory limited partnership agreement provides as follows: The general partner "A" is entitled to 50 percent of the partnership profits, "B" is entitled to 40 percent of the profits and "C" is entitled to 10 percent of the profits. Upon dissolution, "B" is entitled to 75 percent of the partnership assets and "C" is entitled to 25 percent of those assets. All limited and general partners are entitled to vote on the following matters: the dissolution of the partnership, the transfer of assets not in the ordinary course of business, any change in the nature of the business, and the removal of the general partner. The interest of each partner is evidenced by an ownership certificate that is transferable under the terms of the partnership agreement and is subject to the Securities Act of 1933. For purposes of these rules, control of this partnership is determined by subparagraph (1)(ii) of this paragraph. Although partnership interests may be securities and have some voting rights attached to them, they do not entitle the owner of that interest to vote for a corporate "director" or "an individual exercising similar functions" as required by § 801.1(f)(1) below. Thus control of a partnership is not determined on the basis of either subparagraph (1)(i) or (2) of this paragraph. Consequently, "A" is deemed to control the partnership because of its right to 50 percent of the partnership's profits. "B" is also deemed to control the partnership because it is entitled to 75 percent of the partnership's assets upon dissolution.

3. "A" is a nonprofit charitable foundation that has formed a partnership joint venture with "B," a nonprofit university, to establish C, a nonprofit hospital corporation that does not issue voting securities. Pursuant to its charter all surplus revenue from the hospital in excess of expenses and necessary capital investments is to be disbursed evenly to "A" and "B." In the event of dissolution of the hospital corporation, the assets of the hospital are to be contributed to a local charitable medical facility then in need of financial assistance. Notwithstanding the hospital's designation of its disbursement funds as surplus rather than profits to maintain its charitable image, "A" and "B" would each be deemed to control C, pursuant to § 801.1(b)(1)(ii), because each is entitled to 50 percent of the excess of the hospital's revenues over expenditures.

4. "A" is entitled to 50 percent of the profits of partnership B and 50 percent of the profits of partnership C. B and C form a partnership E with "D" in which each entity has a right to one-third of the profits. When E acquires company X, "A" must report the transaction (assuming it is otherwise reportable). Pursuant to § 801.1(b)(1)(ii), E is deemed to be controlled by "A," even though "A" ultimately will receive only one-third of the profits of E. Because B and C are considered as part of "A," the rules attribute all profits to which B and C are entitled (two-thirds of the profits of E in this example) to "A."

By direction of the Commission.

Benjamin I. Berman,

*Acting Secretary.*

[FR Doc. 87-12256 Filed 5-28-87; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 6, 10, 18, 19, 54, 123, 141, 143, 144, and 145

[T.D. 87-75]

# Elimination of Various Customs Forms and Certain Information Collection Requirements

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule, Treasury.

SUMMARY: This document amends the Customs Regulations by eliminating Customs forms that are obsolete and eliminating information collection requirements determined to be obsolete or unduly burdensome. The forms being eliminated are unnecessary either because the procedure being documented has been discontinued or because the information sought can be supplied on a different form with no loss of accuracy. The information collection aspects of the document were the subject of two previous Federal Register notices. After announcing the intention to review its regulations and reviewing the comments received in response, Customs published a list of regulations containing information collection requirements proposed for deletion. After further review, most of the information collection requirements as published in the list are being eliminated. These changes merely conform the regulations to existing law or practice. They are nonsubstantive and essentially are procedural.

EFFECTIVE DATE: June 29, 1987.

FOR FURTHER INFORMATION CONTACT: Concerning Customs forms: Skip Simpson, Paperwork Management Branch (202-566-8161); Concerning information collection requirements: Pat Barbare, Office of Inspection and Control (202-566-8157).

SUPPLEMENTARY INFORMATION:

## Background

### *Customs Forms*

As part of a continuing program to keep its regulations current, the Customs Service has determined that various Customs forms should be removed from the Customs Regulations contained in Chapter I, Title 19, Code of Federal Regulations (19 CFR Chapter I). The changes also correct certain references where old forms have been replaced with new ones.

### *Customs Forms Affected*

1. Customs Form 5119-A, Informal Entry, is used by importers to enter low value merchandise. It is presented directly to a Customs cashier for payment of duties and taxes. Customs has revised Customs Form 7501, Entry Summary, so that it can be used for both formal, as well as informal entries. Therefore, Customs Form 7501, can replace Customs Form 5119-A, and the regulations are being amended accordingly. (See §§ 6.7, 10.71, 123.4, 143.24, 143.25, 145.12.)

2. Customs Form 7519, Combined Rewarehouse Entry and Withdrawal for Consumption and Permit, is used by a consignee of merchandise withdrawn from warehouse for transportation who wishes to pay duty and obtain possession of the merchandise immediately upon its arrival at its destination. It has been determined that due to the infrequent use of Customs Form 7519 it can be eliminated, and Customs Form 7501, Entry Summary, can be substituted in its place. (See §§ 10.61, 141.61, 144.42.)

3. Customs Form 7520, Manifest of Baggage Shipped in Bond, is used to send passenger baggage or commercial samples in bond from one Customs port to another, or in some instances from point to point in Mexico or Canada, respectively, through the U.S. It has been determined that Customs Form 7512, Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit, can be substituted for Customs Form 7520. Therefore, the regulations are being amended to remove reference to Customs Form 7520. (See §§ 6.16, 18.2, 18.13, 123.52, 123.64.)

4. Customs Form 7524, U.S.-Canada In-Transit Baggage Card, is used to facilitate the movement of baggage arriving at a port on the Canadian border for in-transit movement through the U.S. in bond and return to Canada. In response to a survey, the Customs regions that could have a use for this form noted that the form is unnecessary. The regulations are being amended to eliminate reference to Customs Form 7524, and substitute Customs Form 7512-B, United States-Canada Transit Manifest, in its place. (See §§ 123.64, 123.65.)

5. Customs Form 7529, Carrier's Certificate and Release Order, is used by an importer as evidence of the right to make entry of merchandise not released directly to the carrier. It serves as proof to Customs that the importer has paid to the carrier all shipping and related charges. However, since most commercial shipments are released directly to the carrier, Customs Form 7529 has become less important in recent years. For merchandise not released directly to the carrier, § 141.11(a), Customs Regulations (19 CFR 141.11(a)), provides alternative methods of presenting evidence of the right to make entry. Section 141.11(a) is being amended to remove reference to Customs Form 7529.

## Information Collection Requirements

By notice published in the Federal Register on June 10, 1983 (48 FR 26831), Customs announced that it was undertaking a review of its regulations to identify those having a significant economic impact on a substantial number of small entities. The intended goal of this review was to modify Customs procedures to reduce or eliminate regulatory requirements found to be obsolete or unduly burdensome.

After considering the comments received in response to that notice, and further review of the matter, by notice published on December 28, 1985 (50 FR 52799), certain regulations containing information collection requirements were listed and comments were requested on the proposal that these requirements be deleted from the regulations.

## Discussion of Comments

The only public comment received in response to the notice expressed general support for the idea of regulatory reduction, as well as specific support for a reduction in the reporting requirement in § 10.98(e), Customs Regulations (19 CFR 10.98(e)), relating to metals. However, the reporting requirement referred to is one of a few requirements that, on review, Customs has decided to retain. It has been determined that the proof of use needed to liquidate entries of copper-bearing fluxing material is supplied by the reporting requirement contained in § 10.98(e).

The other information collection requirements which had been proposed for deletion, but have been determined to still be necessary are as follows:

*Sections 10.93 through 10.96 Records and declarations for receipt, transfer, and use of bonded wool and hair.*

The information collection requirements contained in these sections must be retained because the temporary suspension of duties on wool and hair has ended. These products have been dutiable since July 1, 1985. Therefore, the information collection requirements must remain in the regulations.

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*Section 10.134 Declaration of importer of intended use of merchandise imported under actual use provisions of the Tariff Schedules of the United States (19 U.S.C. 1202).*

It was determined that the requirement for this declaration should be retained because it provides a general statement of intent used to monitor compliance with the actual use provisions of the Tariff Schedules. The statement is a valuable tool in investigating cases of possible fraud involving actual use provisions.

*Section 12.99 Declaration by importer or consignee in support of a permitted entry of a switchblade knife.*

It was determined that removing this requirement from the regulations would give the false impression that no exceptions existed to the general prohibition against importation of switchblade knives. To avoid this confusion, the requirement is being left in the regulations.

*Section 54.6 Statement of importer that articles in chief value of metal are to be used in such manner which renders them fit only for recovery of the metal content.*

It was determined that this information collection requirement is still necessary because it relates to the destruction operation associated with semi-conductors being destroyed in a foreign trade zone to salvage the metal content. However, this section is being amended to cross-reference § 10.134, Customs Regulations, whereby a declaration of intended use may be made either through a specific statement or by mere entry for that purpose, provided the district director is satisfied that the merchandise will be so used.

Upon further review, it has been determined to proceed with the deletion of the following information collection requirements from the regulations:

| 19 CFR Section | Description |
|---|---|
| 4.41(a) | Application for permission to enter wrecked cargo. |
| 6.12(g) | Requirement to post a copy of schedule of charges for servicing aircraft at an airport. |
| 10.6(a) | Certificate of foreign shipper that boxes or barrels were made from American shooks or staves. |
| 10.6(b) | Certificate of box maker that boxes or barrels were made from American shooks or staves. |
| 10.9(g), (h) | Certificate of owner, importer, consignee or agent that processed articles entered are a portion of articles exported for processing that are covered by a certificate of registration. |
| 10.10 | Statement of cameraman, shipper, or other person identifying films and stating that they were exposed abroad and are shipped for use as newsreel of current events abroad. |
| 10.35(b) | Declaration by importer of a model of women's wearing apparel that the article will be used solely as a model, etc. |
| 10.35(d) | Requirement to mark for identification purposes imported models of women's wearing apparel. |
| 10.50 | Declaration of American artist residing temporarily abroad in support of duty-free entry of a work of art. |
| 10.53(a), (b) | Declaration in connection with the entry of antiques. |
| 10.54(b) | Certificate of manager or other responsible employee of the Gobelin or other factory or producer establishing the character of the Gobelin or other hand-woven tapestry in support of duty-free entry. |
| 10.56(l) | Declaration of owner or consignee that vegetable oil has been rendered permanently unfit for use as food. |
| 10.56(s) | Requirement as to marking of bolting cloth for milling purposes in support of duty-free entry. |
| 10.64a | Declaration for withdrawal of fuel from a Customs bonded warehouse to be laden as aircraft supplies. |
| 10.66(a)(2), (b) | Declaration of foreign shipper that merchandise was exported from the U.S. for temporary use at an exhibition and is being returned. |
| 10.70(a) | Declaration in connection with the entry of purebred animals for breeding purposes. |
| 10.72 | Declaration in connection with the entry of horses or mules imported solely for slaughter. |
| 10.73 | Certificate of ultimate consignee of cows being imported solely for dairy purposes in support of claim for reduced rate of duty. |
| 10.74(a) | Owners descriptive list of domestic animals driven across boundary for pasturage. |
| 10.74(b) | Declaration in connection with the return of domestic animals previously driven across boundary for pasturage. |
| 10.79 | Declaration of master of fishing vessel in support of duty-free entry of products of American fisheries. |
| 10.82(a)(1) | Certificate of person making withdrawal of salt used in curing fish taken by an American vessel. |
| 10.82(a)(2) | Certificate of master and at least one other person employed on vessel in connection with the withdrawal of salt used for curing fish. |
| 10.82(a)(3) | Certificate of at least two persons employed on shore in curing fish with salt. |
| 10.82(b) | Certificate of person employed on shore curing fish with salt. |
| 10.90(a) | Application of importer for the importation of master records and metal matrices. |
| 10.90(b) | Statement evidencing agreement between importer and manufacturer concerning the use of master records and metal matrices. |
| 10.90(d) | Declaration of importer as to use of master records and metal matrices. |
| 10.108 | Declaration of importer in connection with wheat unfit for human consumption. |
| 10.109(b) | Statement in connection with entry of articles previously imported into U.S. with duty paid, exported under lease, and now being reimported. |
| 10.110 | Certificate for strategic materials acquired by the Commodity Credit Corporation as result of barter or exchange of agricultural commodities or products. |
| 12.99 | Declaration by importer or consignee in support of a permitted entry of a switchblade knife. |
| 19.16 | Various reporting requirements relating to the operation of cigar manufacturing warehouses. |

## Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is certified that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

## Executive Order 12291

Because this document will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by the E.O. are not required.

## Public Notice Requirement

Inasmuch as the amendments concerning Customs forms merely change the form used to comply with preexisting regulations, and no new regulatory burdens are imposed on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary.

## Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

## List of Subjects

*In General*

Customs duties and inspection, Imports, Exports.

*19 CFR Part 4*

Cargo vessels, Reporting and recordkeeping requirements, Vessels.

*19 CFR Part 6*

Air carriers, Aircraft, Airports.

*19 CFR Part 10*

Art, Exports, Fisheries, Oil imports, Packaging and containers, Petroleum, Tobacco, Wildlife.

*19 CFR Part 18*

Common carriers.

*19 CFR Part 19*

Tobacco.

*19 CFR Part 54*

Metals.

*19 CFR Part 123*

Canada, Reporting and recordkeeping requirements, Mexico.

*19 CFR Part 141*

Imports.

*19 CFR Part 143*

Imports.

*19 CFR Part 144*

Warehouses.

*19 CFR Part 145*

Postal Service.

**Amendments to the Regulations**

Parts 4, 6, 10, 18, 19, 54, 123, 141, 143, 144 and 145, Customs Regulations (19 CFR Parts 4, 6, 10, 18, 19, 54, 123, 141, 143, 144, and 145) are amended as set forth below.

**PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3 and 2103.

**§ 4.41 [Amended]**

2. Section 4.41(a) is amended by removing the words "written application for permission to enter the wrecked cargo", and inserting, in their place, "entry on Customs Form 7501".

**PART 6—AIR COMMERCE REGULATIONS**

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1624; 49 U.S.C. 1474, 1508.

**§ 6.7 [Amended]**

2. Section 6.7(b)(3)(ii) is amended by removing the number "5119–A" and inserting, in its place, "7501".

**§ 6.12 [Amended]**

3. Section 6.12(g) is amended by removing the last sentence.

**§ 6.16 [Amended]**

4. Section 6.16 is amended by removing the words, "or Customs Form 7520".

**PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.**

1. The authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.

2. The heading and text of § 10.6 are revised to read as follows:

**§ 10.6 Shooks and staves; claim for duty exemption.**

An importer, seeking an exemption from duty on account of boxes or barrels made from American shooks or staves, must make such a claim on Customs Form 3311 at the time of filing the entry. Upon receipt, from the district director at the port of exportation of the shooks and staves, of corroboration that the records of exportation do not conflict materially with such a claim, the exemption may be allowed. If the claim for an exemption is disallowed in full or in part, the importer may file a request within 15 days of the date of the district director's notice to him of any disallowance, for referral of the question to the Commissioner of Customs for review.

**§ 10.9 [Amended]**

3. Section 10.9 is amended by removing paragraph (g) and (h) and redesignating paragraphs (i), (j), (k), and (l) as (g), (h), (i), and (j), respectively.

**§ 10.10 [Removed and reserved]**

4. Part 10 is amended by removing § 10.10 and marking it "Reserved". Part 10 is further amended by removing footnote 8 to § 10.10.

**§ 10.35 [Amended]**

5. Section 10.35 is amended by removing paragraphs (b) and (d), and redesignating paragraph (c) as (b).

**§ 10.50 [Removed and reserved]**

6. Part 10 is amended by removing § 10.50 and marking it "Reserved". Part 10 is further amended by removing footnote 45 to § 10.50.

**§ 10.53 [Amended]**

7. Section 10.53 is amended by removing paragraphs (a) and (b) and redesignating paragraphs (c), (d), (e), (f), (g), (h), and (i) as (a), (b), (c), (d), (e), (f), and (g), respectively. Part 10 is further amended by removing footnotes 48 and 50 to § 10.53.

8. In redesignated §§ 10.53 (b) and (c), the phrase, "paragraph (g)" is removed and, "paragraph (e)" is inserted, in its place.

9. In redesignated § 10.53(e)(6), the phrase, "paragraphs (a), (b) and (c)" is removed and, "paragraph (a)" is inserted, in its place.

**§ 10.54 [Amended]**

10. Section 10.54 is amended by removing the "(a)" in front of the first paragraph and by removing paragraph (b).

Part 10 is further amended by removing footnote 51 to § 10.54.

**§ 10.56 [Amended]**

11. Section 10.56(f) is amended by placing a period after the word "denatured" and removing the remainder of the paragraph, including the form.

12. Section 10.58(a) is revised to read as follows and footnote 55 is removed.

**§ 10.58 Bolting cloths; marking.**

(a) As a prerequisite to the free entry of bolting cloth for milling purposes under item 357.25, Tariff Schedules of the United States, the cloth shall be indelibly marked from selvage to selvage at intervals of not more then 4 inches with "bolting cloth expressly for milling purposes" in block letters 3 inches in height. Bolting cloths composed of silk imported expressly for milling purposes shall be considered only such cloths as are suitable for and are used in the act or process of grading, screening, bolting, separating, classifying, or sifting dry materials, or dry materials mixed with water, if the water is merely a carrying medium.

* * * * *

**§ 10.64a [Removed and reserved]**

13. Part 10 is amended by removing § 10.64a and making it "Reserved".

**§ 10.66 [Amended]**

14. Section 10.66 is amended by removing paragraph (a)(2) and by redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), respectively. Part 10 is further amended by removing footnotes 61 and 62 to § 10.66.

15. Section 10.66(b) is amended by removing the last sentence.

**§ 10.70 [Amended]**

16. Section 10.70 is amended by removing paragraph (a), removing footnotes 64 and 65, and by redesignating paragraph (b) as (a) and revising the section heading and first sentence of redesignated paragraph (a) to read as follows:

**§ 10.70 Purebred animals for breeding purposes; certificate.**

(a) In connection with the entry of purebred animals for breeding purposes under item 100.01, Tariff Schedules of the United States, no claim for free entry shall be allowed in liquidation of the entry until the district director has received from the Department of Agriculture a certificate that the animal is purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed. * * *

* * * * *

17. Section 10.70 is further amended by redesignating paragraph (c) as (b).

**§ 10.71 [Amended]**

18. Section 10.71(f) is amended by removing the phrase, "informal entry (Customs Form 5119–A)", and inserting,

in its place, "entry summary (Customs Form 7501)".

§ 10.72 [Removed and reserved]

19. Part 10 is amended by removing § 10.72 and marking it "Reserved." Part 10 is further amended by removing footnote 66 to § 10.72.

§ 10.73 [Removed and reserved]

20. Part 10 is amended by removing § 10.73 and marking it "Reserved." Part 10 is further amended by removing footnote 67 to § 10.73.

21. The heading and text of § 10.74 are revised to read as follows and footnote 68 is removed:

§ 10.74 Animals straying across boundary for passage; offspring.

When domestic animals for which free entry is to be claimed under item 100.03, Tariff Schedules of the United States, have strayed across the boundary line, they may be returned, together with their offspring, without entry if brought back within 30 days; otherwise entry shall be required. The owner of any such animal shall report its return to the nearest Customs office and hold it for such inspection and treatment as may be deemed necessary by a representative of the Animal and Plant Health Inspection Service of the Department of Agriculture. Any such arrival found not to have been so reported or held shall be subject to seizure and forfeiture pursuant to 18 U.S.C. 545.

* * * * *

22. Section 10.78(a) is revised to read as follows:

§ 10.78 Entry.

(a) No entry shall be required for fish or other marine products taken on the high seas by vessels of the U.S. or by residents of the U.S. in undocumented vessels owned in the U.S. when such fish or other products are brought into port by the taking vessel or are transferred at sea to another fishing vessel of the same fleet and brought into port.

* * * * *

§ 10.79 [Removed and reserved]

23. Part 10 is amended by removing § 10.79 and marking it "Reserved."

§ 10.81 [Amended]

24. Section 10.81(b) is amended by removing the number "7519" and inserting, in its place, "7501".

§ 10.82 [Removed and reserved]

25. Part 10 is amended by removing § 10.82 and marking it "Reserved".

26. Section 10.83(a) is revised to read as follows:

§ 10.83 Bond; cancellation; extension.

(a) If it shall appear to the satisfaction of the district director holding the bond referred to in § 10.80, that the entire quantity of salt covered by the bond has been duly accounted for, either by having been used in curing fish or by the payment of duty, the district director may cancel the charges against the bond. The district director may require additional evidence in corroboration of the proof of use produced.

* * * * *

§ 10.90 [Amended]

27. Section 10.90 is amended by removing paragraphs (a), (b), and (d), as well as footnote 81 to paragraph (a), and by redesignating paragraphs (c), (e), (f), and (g), as (a), (b), (c), and (d), respectively.

28. Redesignated § 10.90(d) is amended by removing the phrase, "If and when the application is approved," and changing the word "entries" to "Entries."

§ 10.98 [Amended]

29. Section 10.98(e) is amended by removing the words, "Perth Amboy, N.J.," and inserting, in their place, "the port or ports where the entries are to be liquidated."

§ 10.101 [Amended]

30. Section 10.101 is amended in the following manner:

(a) In paragraph (b), the third sentence, the word "blanket" is removed.

(b) In the heading to paragraph (c), the word "Blanket" is removed, and "carrier's" is changed to "Carrier's".

(c) Paragraph (c) is further amended by removing the last sentence.

§ 10.106 [Removed and reserved]

31. Part 10 is amended by removing § 10.106 and the note immediately following and marking it "Reserved."

§ 10.108 [Amended]

32. Section 10.108 is amended by removing the "(a)" in front of paragraph (a), and by removing paragraph (b). Part 10 is further amended by removing footnote 100 to § 10.108.

§ 10.110 [Removed and reserved]

33. Part 10 is amended by removing § 10.110 and marking it "Reserved." Part 10 is further amended by removing footnote 103 to § 10.110.

## PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The authority citation for Part 18 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1551, 1552, 1553, 1624.

Section 18.13 also issued under 19 U.S.C. 1498(a).

§ 18.2 [Amended]

2. Section 18.2(a)(2)(ii) is amended by removing the words, "or 7520,".

3. Section 18.2(c)(1) is amended by removing from the first sentence, the words "either" and "or 7520".

§ 18.13 [Amended]

4. Section 18.13(b) is revised to read as follows:

§ 18.13 Procedure; manifest

* * * * *

(b) A Customs manifest for baggage shipped in bond, Customs Form 7512, shall be prepared in triplicate for each shipment. The related Customs Form 7512–C (destination) shall be delivered to the carrier to accompany the baggage and shall be delivered by the carrier to the district director at the port of destination as a notice of arrival.

* * * * *

## PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The authority citation for Part 19 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624.

§ 19.16 [Removed and Reserved]

2. Part 19 is amended by removing § 19.16 and marking it "Reserved."

## PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

1. The authority citation for Part 54 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote. 11, Tariff Schedules of the United States), 1624.

§ 54.5 [Amended]

2. § 54.5(a) is amended by removing the numbers "911.11 and 911.12" and inserting, in their place, "870.50, 870.55 and 870.60".

3. Section 54.6(a) is revised to read as follows:

§ 54.6 Proof of intent; bond; proof of use; liquidation.

(a) There shall be filed in connection with the entry [1] a statement of the importer consistent with the requirements of § 10.134 of this chapter.

* * * * *

4. In footnote 1 to § 54.6(a) and in § 54.6(d), the numbers "911.11 or 911.12" are removed, and the numbers "870.50,

670.55 or 670.60" are inserted, in their place.

## PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for Part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1624.

Section 123.4 also issued under 19 U.S.C. 1484, 1498.

Section 123.51 also issued under 19 U.S.C. 1554.

Sections 123.52, 123.64 also issued under 19 U.S.C. 1553.

### § 123.4 [Amended]

2. Section 123.4(b) is amended by removing the number "5119–A" and, inserting, in its place, "7501".

### § 123.52 [Amended]

3. Section 123.52 is amended by removing the number "7520" from paragraphs (e) and (f), and inserting, in both those places, "7512".

### § 123.64 [Amended]

4. Section 123.64 is amended by removing the number "7520" from paragraphs (b) and (c), and inserting, in all three places "7512".

### § 123.64, 123.65 [Amended]

5. Sections 123.64(d)(2) and 123.65(b)(2) are amended by removing the words, "7524, Canada A–21" and inserting, in both places, "7512–B (Canada 8½) or Customs Form 7533–C (Canada A4–½)".

## PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

### § 141.11 [Amended]

2. Section 141.11(a)(4) is amended by removing the words, "on Customs Form 7529,". The section is further amended by removing subparagraph (5) and marking it "Reserved."

### § 141.61 [Amended]

3. Section 141.61(a)(2) is amended by placing a comma after "7505", removing the words, "or 7519," and inserting in their place the words, "or entry summary, Customs Form 7501,". The section is further amended by removing from paragraph (e)(1)(i)(A) the words, "the rewarehouse entry, Customs Form 7519;".

4. Sections 141.61(f)(1)(iv) and 141.61(f)(2)(i) are amended by removing the words "and 7519" and replacing the comma which appears after "7506", in both places, with a period.

### § 141.68 [Amended]

5. Section 141.68(h) is amended in the following manner:

(a) In the first sentence, the words, "or informal "entry" are added immediately after the words, "appraisement entry," and the words "an informal entry, Customs Form 5119–A" are removed.

(b) In the second and third sentences, the words "5119–A or" are removed.

### § 141.111 [Amended]

6. Section 141.111 is amended in the following manner:

(a) In paragraph (b), subparagraph (1) is removed and marked "Reserved."

(b) Paragraph (c) is removed and marked "Reserved."

## PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation for Part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

### § 143.23 [Amended]

2. In § 143.23, the introductory text is amended by removing the number "5119–A" and inserting, in its place, "7501".

### § 143.24 [Amended]

3. Section 143.24 is amended in the following manner:

(a) In the section heading, a period is placed after "7501" and the phrase, "and Customs Form 5119–A" is removed.

(b) In the second sentence of the section, "5119–A" is removed and "7501" is inserted, in its place.

### § 143.25 [Amended]

4. Section 143.25 is amended by removing the phrase, "Customs Form 5119–A or, where used,".

## PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for Part 144 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1854; 19 U.S.C. 66, 1311, 1312, 1484, 1552, 1553, 1555, 1556, 1557, 1559, 1562, 1563, 1623, 1624, 1646(a); 26 U.S.C. 5214.

### § 144.42 [Amended]

2. Section 144.42(b)(1) is amended by removing the phrase, "7519 (Combined Rewarehouse Entry and Withdrawal for Consumption, and Permit)" and replacing it with "7501 (Consumption Entry)".

3. Sections 144.42(b)(2) and (3) are amended by removing the number "7519" and inserting, in both places, "7501".

## PART 145—MAIL IMPORTATIONS

1. The authority citation for Part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624.

Section 145.4 also issued under 18 U.S.C. 545; 19 U.S.C. 1618.

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498.

### § 145.4 [Amended]

2. Section 145.4(c) is amended by removing "5119–A" and inserting, in its place, "7501".

### § 145.12 [Amended]

3. Section 145.12 is amended in the following manner:

(a) In paragraph (b)(1), the words "informal entry (Customs Form 5119–A)" are removed and replaced with, "entry summary (Customs Form 7501)".

(b) In paragraph (c), the number "5119–A" is removed and replaced with, "7501".

(c) In paragraph (e)(1), the words "informal entry, Customs Form 5119–A" are removed and replaced with, "entry summary, Customs Form 7501,".

Michael H. Lane,
*Acting Commissioner of Customs.*
Approved April 23, 1987.
Francis A. Keating, II,
*Assistant Secretary of the Treasury.*
[FR Doc. 87–12255 Filed 5–28–87; 8:45 am]
BILLING CODE 4820–02–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 177

[Docket No. 87F–0014]

### Indirect Food Additives: Polymers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to lower the inherent viscosity specification for poly(tetramethylene terephthalate) copolymers. This action responds to a petition filed by General Electric Co., Plastics Group.

**DATES:** Effective May 29, 1987; objections by June 29, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 16, 1987 (52 FR 8112), FDA announced that a petition (FAP 7B3983) had been filed by General Electric Co., Plastics Group, Pittsfield, MA 01201, proposing that § 177.1660 *Poly(tetramethylene terephthalate)* (21 CFR 177.1660) be amended in paragraph (c)(1) to lower the inherent viscosity specification from 0.8 to 0.6.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed lowering of the inherent viscosity of poly(tetramethylene terephthalate) copolymers, which represents a lower molecular weight of the polymer, is safe, and that § 177.1660(c)(1) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by this regulation may at any time on or before June 29, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

## PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 177.1660 [Amended]

2. Section 177.1660 *Poly(tetramethylene terephthalate)* is amended in paragraph (c)(1) by revising "0.8" to read "0.6".

Dated: May 18, 1987.

Richard J. Ronk,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–12228 Filed 5–28–87; 8:45 am]

BILLING CODE 4160–01–M

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## 21 CFR Part 178

[Docket No. 86F–0458]

## Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to add two polymers to the list of substances in which *N,N'*-hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) may be safely used as an antioxidant. This action responds to a petition filed by Ciba-Geigy Corp.

DATES: Effective May 29, 1987; objections by June 29, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of December 23, 1986 (51 FR 45954), FDA announced that a petition (FAP 7B3969) had been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 (21 CFR 178.2010) be amended to provide for additional uses of *N,N'*-hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) as an antioxidant for polymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive uses are safe, and that 21 CFR 178.2110(b) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 7B3969 (December 23, 1986; 51 FR 45954). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before June 29, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing

is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intented to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

**PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS**

1. The authority citation for 21 CFR Part 178 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010 paragraph (b) is amended in the entry "*N,N'*-Hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide)" by adding new entries 6 and 7 to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | Limitations |
|---|---|
| *N,N'*-Hexamethylenebis(3,5-di-*tert*-butyl-4-hydroxyhydrocinnamamide) (CAS Reg. No. 23128-74-7). | For use only: * * *<br>6. At levels not to exceed 0.5 percent by weight of polyoxymethylene copolymer complying with § 177.2470 of this chapter.<br>7. At levels not to exceed 0.5 percent by weight of polyoxymethylene homopolymer complying with § 177.2480 of this chapter. |

* * * * *

Dated: May 18, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-12227 Filed 5-28-87; 8:45 am]

BILLING CODE 4160-01-M

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**21 CFR Part 1308**

## Schedules of Controlled Substances; Placement of Acetyl-Alpha-Methylfentanyl, Alpha-Methylthiofentanyl, Beta-Hydroxyfentanyl, 3-Methylthiofentanyl, Para-Fluorofentanyl and Thiofentanyl into Schedule I

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place the narcotic substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 *et seq.*). This action is based on findings made by the DEA Administrator, after a review and evaluation of the relevant data by both DEA and the Assistant Secretary for Health, that acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl meet the statutory criteria for inclusion in Schedule I of the CSA. As a result of this final rule, the regulatory controls and criminal sanctions of Schedule I will be applicable to the manufacture, distribution, importation, exportation and possession of the six referenced fentanyl analogs.

**EFFECTIVE DATE:** May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

**SUPPLEMENTARY INFORMATION:** Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl are potent analogs of the Schedule II synthetic narcotic analgesic fentanyl. Each of these fentanyl analogs behaves as a typical morphine-like compound in rodent antinociceptive tests. Further, each analog substitutes completely for morphine when administered to morphine dependent withdrawn monkeys. The six fentanyl analogs have been produced in clandestine laboratories, identified in drug evidence submissions and associated with a number of overdose deaths.

Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl are temporarily controlled in Schedule I of the CSA pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h) (51 FR 4722, 50 FR 43696). The temporary scheduling of para-fluorofentanyl expires on September 10, 1987 (52 FR 7270) and the temporary scheduling of the other five fentanyl analogs expires on May 29, 1987 (51 FR 42834).

On November 28, 1986, in a notice of proposed rulemaking published in the **Federal Register** (51 FR 43025), after a review of the relevant data, the DEA Administrator proposed to place acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). Likewise, on March 10, 1987, the DEA Administrator proposed to place para-fluorofentanyl into Schedule I of the CSA (52 FR 7280). Both proposed rules provided for the submission of comments or objections regarding the proposals by any interested parties. DEA received no comments or objections nor were there any requests for hearings.

In both proposed rules, the DEA Administrator stated that before issuing final rules in these matters, he would take into consideration the scientific and medical evaluations and scheduling recommendations of the Secretary of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). Scientific and medical evaluations and scheduling recommendations have been received from the Assistant Secretary for Health, Department of Health and Human Services for acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl. Based upon the investigations and reviews conducted by DEA and upon the scientific and medical evaluations and recommendations of the Assistant Secretary for Health received in

accordance with 21 U.S.C. 811(b), the DEA Administrator, pursuant to the provisions of 21 U.S.C. 811(a) and (b), finds that:

(1) Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl each has a potential for abuse;

(2) Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl each has no currently accepted medical use in treatment in the United States, and

(3) Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl each lacks accepted safety for use under medical supervision.

The above findings are consistent with the placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthio-fentanyl, para-fluorofentanyl and thiofentanyl into Schedule I of the CSA. The Administrator further finds that acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl and opiates as defined in 21 U.S.C. 802(18) since they have an addiction-forming and an addiction-sustaining liability similar to that of morphine. Consequently, acetyl-alpha-methylfentanyl, alpha-methyl-thiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl are narcotics since the definition of narcotic, as stated in 21 U.S.C. 802(17)(A), includes: "Opium, opiates, derivatives of opium and opiates."

In accordance with 21 U.S.C. 811(h)(5), the emergency scheduling orders for acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl shall be vacated on the effective data of this final rule, placing the above named fentanyl analogs into Schedule I of the CSA pursuant to 21 U.S.C. 811(a).

Since acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl are already under temporary control in Schedule I, all regulations applicable to Schedule I narcotic substances will continue to be effective as of [May 29, 1987]. The current applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl or thiofentanyl, or who engages in research or conducts instructional activities with respect to these substances, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* Acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl must comply with the requirements of §§ 1302.03–1302.05, 1302.07 and 132.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl or thiofentanyl, shall submit applications pursuant to §§ 1303.12 and 1302.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl or thiofentanyl shall take an inventory pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations of all stocks of these substances on hand.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall maintain such records on acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl.

7. *Records.* All registrants required to submit records pursuant to §§ 1304.34–1304.37 of Title 21 of the Code of Federal Regulations shall do so regarding acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl.

8. *Order Forms.* All registrants involved in the distribution of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl or thiofentanyl must comply with the order form requirements of §§ 1305.01–1305.16 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* The Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl, or thiofentanyl not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful. Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, 3-methylthiofentanyl, para-fluorofentanyl and thiofentanyl into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the control of six substances with no legitimate medical use or manufacture in the United States. In accordance with the provisions of 21 U.S.C. 811(a), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR 1308.11 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.11, the introductory text of paragraph (b) is revised to read as follows:

* * * * *

§ 1308.11 Schedule I.

* * * * *

(b) *Opiates.* Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of paragraph (b)(34) only, the term isomer includes the optical and geometric isomers):

* * * * *

3. Section 1308.11 is further amended by redesignating paragraphs (b)(1) through (b)(6) as (b)(2) through (b)(7), paragraphs (b)(7) and (b)(8) as (b)(9) and (b)(10), paragraphs (b)(9) through (b)(30) as (b)(12) through (b)(33), paragraphs (b)(31) through (b)(36) as (b)(35) through (b)(40), paragraphs (b)(37) through (b)(46) as (b)(42) through (b)(51) and paragraphs (b)(47) and (b)(48) as (b)(53) and (b)(54) and by adding new paragraphs (b)(1), (b)(8), (b)(11), (b)(34), (b)(41) and (b)(52) as follows:

§ 1308.11 Schedule I

* * * * *

(b) * * *

(1) Acetyl-alpha-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide)—9815

* * * * *

(8) Alpha-methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)—9832

* * * * *

(11) Beta-hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide)—9830

* * * * *

(34) 3-methylthiofentanyl (*N*-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)—9833

(41) Para-fluorofentanyl (*N*-(4-fluorophenyl)-*N*-[1-(2-phenethyl)-4-piperidinyl] propanamide—9812

* * * * *

(52) Thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide—9835

* * * * *

§ 1308.11 [Amended]

4. Section 1308.11 is further amended by removing paragraphs (g)(1), (g)(2), (g)(4), (g)(6), (g)(8) and (g)(9) and redesignating existing paragraph (g)(3) as (g)(1), existing paragraph (g)(5) as (g)(2), and existing paragraph (g)(7) as (g)(3).

Dated: May 27, 1987.

John C. Lawn,

*Administrator, Drug Enforcement Administration.*

[FR Doc. 87-12417 Filed 5-28-87; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1956

### New York State Plan for State and Local Government Employees

**AGENCY:** Department of Labor, Occupational Safety and Health Administration (OSHA).

**ACTION:** Approval of supplements to the New York State public employee only State plan: Change in developmental schedule; change in staffing plan; completion of a developmental step.

**SUMMARY:** This notice approves the supplement revising the approved New York development schedule in 29 CFR 1956.51 (the supplement amends the dates in the developmental schedule for steps (b), (g) and (h) and changes step (1) to reflect New York's intention to implement a public sector consultation program through written procedures rather than promulgation of regulations); approves the supplement for a State initiated change reassigning two positions from Industrial Hygiene Consultation to Industrial Hygiene Enforcement; and, approves completion of a developmental step (adoption of all OSHA standards promulgated as of July 1, 1983 (within three months after plan approval)).

**EFFECTIVE DATE:** May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3647, Washington, DC 20210, Telephone (202) 523-8148.

**SUPPLEMENTARY INFORMATION:**

*A. Background*

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Occupational Safety and Health Administration will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and Part 1956.

On June 1, 1984, notice was published in the Federal Register (49 FR 22994), of the initial approval of the New York plan applicable only to public employees and adoption of Subpart F of Part 1956 containing the approval decision and description of the plan, including the developmental schedule in § 1956.51.

*B. Description of Supplements*

1. Developmental Schedule

The State submitted a revised developmental schedule on April 1, 1986 which amends the dates of completion for steps (b) Inspections, Citations; (g) Non-discrimination Procedures; and, (h) Review Procedures; and changes step (1) to reflect New York's intention to implement its public sector consultation program through written procedures rather than promulgation of regulations. (The New York State Labor Department's Division of Safety and Health since 1975 also has had an on-site consultation program in the private sector, administered separately from its public employee State plan under section 7(c)(1) of the Act). Completion of developmental steps (b), (g) and (h), as amended, and implementation and completion of step (1), as amended, will be accomplished within the three year period as provided by OSHA Regulation at 29 CFR 1956.2(b). The State's revision of the dates of completion for the three developmental steps does not diminish its responsibility to complete all developmental steps within the three year period as provided in OSHA Regulation at 29 CFR 1956.2(b). Further, New York's intention to implement an on-site consultation program through written procedures rather than promulgation of regulations provides for the establishment, implementation and administration of an effective voluntary compliance program and does not diminish the State's ability to provide on-site consultation services to public employers as a component of its approved State plan.

2. Change in Staffing Plan

On September 3, 1986, the State submitted a supplement providing for the reassignment of two positions from Industrial Hygiene Consultation to Industrial Hygiene Enforcement. One (1) Industrial Hygiene Consultation position

was changed to an Industrial Hygiene Enforcement position in the Albany District and the other one (1) to an enforcement position in the Buffalo District, both changes to meet the enforcement workload. Neither of these changes diminishes the consultation program's effectiveness in Albany nor the Buffalo Districts. A total of ten (10) Industrial Hygienists is now operating on a full-time basis in the consultation program, and ten (10) in the enforcement program.

3. Completion of a Development Step

By letter dated November 14, 1984, the State submitted a supplement in fulfillment of developmental step § 1956.51(a), providing revisions and additions to its existing public employee occupational safety and health standards to bring them into conformance with Federal OSHA standards as of July 1, 1983, and containing documentation that New York has promulgated safety and health standards identical to all Federal OSHA standards as of July 1, 1983. The State standards were approved in the Federal Register on August 26, 1986 (51 FR 30449).

*C. Public Participation*

Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the New York supplements are consistent with commitments in the approved State plan, which was previously made available for public comment. Good cause is, therefore, found for approval of these supplements, and further public participation would be unnecessary.

*D. Location of Plan Supplement for Inspection and Copying*

A copy of the plan and its supplements may be inspected and copied during normal business hours at the following locations:

Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3476, Washington, DC 20210

Office of the Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036

State of New York Department of Labor, State Office Building Campus, Building 12, Room 579, Albany, New York 12226

Division of Occupational Safety and Health, State of New York Department of Labor, 1 Main Street, Room 811, Brooklyn, New York 11201

**List of Subjects in 29 CFR Part 1956**

Intergovernmental relations, Law enforcement, Occupational safety and health.

*E. Decision*

After careful consideration and review by the OSHA Regional and National Offices, the New York plan supplements described above are hereby approved under 29 CFR Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

(Secs. 8, 18, Pub. L. 91-596, 84 Stat. 1608, 29 U.S.C. 657, 667; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable)

Signed at Washington, DC this 26th day of May, 1987.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

**PART 1956—[AMENDED]**

Accordingly, Subpart F of 29 CFR Part 1956 is hereby amended as follows:

1. The authority citation for 29 CFR Part 1956 continues to read as follows:

Authority: Secs. 8, 18, Pub. L. 91-596, 84 Stat. 1608, 29 U.S.C. 657, 667; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

2. 29 CFR 1956.51 (b), (g), (h) and (l) are revised to read as follows:

**§ 1956.51 Developmental schedule.**

* * * * *

(b) Promulgate regulations for inspections, citations and abatement, equivalent to 29 CFR Part 1903 (within three years after plan approval).

* * * * *

(g) Develop employee nondiscrimination procedures (within three years after plan approval).

* * * * *

(h) Promulgate procedures for review of contested cases (within three years after plan approval).

* * * * *

(l) Develop on-site consultation procedures for state and local government employers (within three years after plan approval).

* * * * *

**§ 1956.52 [Amended]**

3. Section 1956.52 is amended by adding new paragraph (b) as follows:

* * * * *

(b) In accordance with 29 CFR 1956.51(a) the State of New York has promulgated standards identical to all Federal OSHA standards promulgated as of July 1, 1983. This supplement was approved by the Assistant Secretary on August 26, 1986. (51 FR 30449).

4. A new § 1956.55, *Changes to approved plans*, has been added to read as follows:

**§ 1956.55 Changes to approved plans.**

In accordance with Part 1953, the following New York plan changes were approved by the Assistant Secretary:

(a) The State submitted a staffing pattern change involving the reassignment of two positions from Industrial Hygiene Consultation to Industrial Hygiene Enforcement. The Assistant Secretary approved the supplement on May 26, 1987.

[FR Doc. 87-12268 Filed 5-28-87; 8:45 am]

BILLING CODE 4510-26-M

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 763**

**Rules Governing Public Access; Kahoolawe Island and Kaula, HI**

**AGENCY:** Department of the Navy, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending the Rules Governing Public Access, codified in 32 CFR Part 763, to reflect that Kahoolawe Island and Kaula are now under the cognizance of Commander Naval Base, Pearl Harbor, Hawaii, vice Commander Third Fleet.

**EFFECTIVE DATE:** May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Staff Judge Advocate, Commander Naval Base, Pearl Harbor, HI 96860-5020, (808) 471-0284.

**SUPPLEMENTARY INFORMATION:** This amendment is made solely to identify the commander having cognizance of Kahoolawe Island and Kaula. It does not originate any requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public. Publishing this amendment for public comment is unnecessary since it would serve no purpose, and significant and legitimate interests of the Department of the Navy and the public

(cost savings) will be served by omitting such publication for public comment.

**PART 763—[AMENDED]**

1. The authority citation for 32 CFR Part 763 continues to read as follows:

**Authority:** 50 U.S.C. 797; DoD Dir. 5200.8 of Aug. 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702; 32 CFR 700.714; E.O. No. 10436, 3 CFR 1949–1953 Comp. p. 930, (1958).

**§§ 763.4 and 763.5 [Amended]**

2. For the reasons set out in the preamble, 32 CFR 763 is amended by removing the words "Commander Third Fleet" and inserting in their place the words "Commander Naval Base" in the following places:

a. 32 CFR 763.4(a)
b. 32 CFR 763.4(b)
c. 32 CFR 763.5(a) introductory text
d. 32 CFR 763.5(a)(1)
e. 32 CFR 763.5(a)(2), lines 1–2
f. 32 CFR 763.5(a)(2), lines 4–5
g. 32 CFR 763.5(b)
h. 32 CFR 763.5(c)

Dated: May 20, 1987.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 87–12224 Filed 5–28–87; 8:45 am]

BILLING CODE 3810-AE-M

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**32 CFR Part 770**

**Base Entry Regulations for Naval Installations in the State of Hawaii**

**AGENCY:** Department of the Navy, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending the Base Entry Regulations for Naval Installations in the State of Hawaii, codified in 32 CFR Part 770, Subpart C, to reflect that the cognizant commander authorized to grant access to Kaboolawe Island and Kaula is now Commander Naval Base, Pearl Harbor, Hawaii, vice Commander Third Fleet.

**EFFECTIVE DATE:** May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Staff Judge Advocate, Commander Naval Base, Pearl Harbor, HI 96860–5020 (808) 471–0284.

**SUPPLEMENTARY INFORMATION:** This amendment is made solely to identify the cognizant commander authorized to grant access to Kaboolawe Island and Kaula. It does not originate any requirement of general applicability and future effect for implementing, interpreting, or prescribing law or policy, or practice and procedure requirements constituting authority for prospective actions having substantial and direct impact on the public, or a significant portion of the public. Publishing this amendment for public comment is unnecessary since it would serve no purpose, and significant and legitimate interests of the Department of the Navy and the public (cost savings) will be served by omitting such publication for public comment.

**PART 770—[AMENDED]**

1. The authority citation for 32 CFR Part 770, Subpart C, continues to read as follows:

**Authority:** 50 U.S.C. 797; DoD Dir. 5200.8 of Aug. 20, 1954; 5 U.S.C. 301; 10 U.S.C. 6011; 32 CFR 700.702, 770.714.

**§ 770.31 [Amended]**

2. For the reasons set out in the preamble, 32 CFR Part 770, Subpart C, is amended by removing the words "Commander Third Fleet" and inserting in their place the words "Commander Naval Base" in the following places:

a. 32 CFR 770.31(c)(1)
b. 32 CFR 770.31(c)(2)

Date: May 20, 1987.

**Harold L. Stoller, Jr.,**

*Commander, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 87–12223 Filed 5–28–87; 8:45 am]

BILLING CODE 3810-AE-M

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**Department of the Air Force**

**32 CFR Part 856**

**Aircraft Arresting Systems**

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force has revised Part 856 of Chapter VII, Title 32, of the Code of Federal Regulations, which establishes policy on managing aircraft arresting systems. This revision provides additional information and makes minor changes to update and to clarify the part.

**EFFECTIVE DATE:** June 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Lt Col Purcell, HQ USAF/LEEV, Washington, DC 20332–5000, telephone (202) 767–6240.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force published a notice of proposed rulemaking on aircraft arresting systems in the Federal Register on January 9, 1987 (52 FR 803). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

**List of Subjects in 32 CFR Part 856**

Aircraft, airports and aviation safety.

Therefore, 32 CFR Part 856 is revised to read as follows:

**PART 856—AIRCRAFT ARRESTING SYSTEMS**

Sec.
856.0 Purpose.
856.1 Concept on the use of aircraft arresting systems.
856.2 Definitions.
856.3 What systems are authorized.
856.4 Authorized use of aircraft arresting systems.
856.5 Pilot responsibilities.
856.6 Use of systems by non-United States government aircraft.
856.7 Installing a system at a joint-use airport.
856.8 Agreements required for operation of the systems.
856.9 Format for letter of agreement with FAA.

**Authority:** Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

**§ 856.0 Purpose.**

This part establishes policy on managing aircraft arresting systems. It applies to all locations where arrestment capable aircraft use the runway complex, either routinely or in an emergency situation. It applies to U.S. Air Force Reserve and Air National Guard units.

**§ 856.1 Concept on the use of aircraft arresting systems.**

The Air Force has revised its policy on the use of arresting systems to allow for both operational and emergency arrestments. At some bases, certain aircraft (for example, the F–4) routinely make operational arrestments under certain adverse weather and runway conditions. This procedure reduces accidents and incidents resulting from the loss of directional control or braking action. However, aircraft that do not have tailhooks (for example, the T–38) have structural limitations allowing an arrestment only in an emergency stopping situation. Related policy management and operation of these systems is in the following publications.

(a) AFR 60–11, Aircraft Movement on the Ground.

(b) AFM 86–2, Standard Facility Requirements.

(c) AFM 86–14, Visual Air Navigation Facilities.

(d) AFR 88–16, Standards for Marking Airfields.

**§ 856.2 Definitions.**

(a) *Aircraft arresting system (AAS).* A series of components used to engage an aircraft and absorb the forward momentum of a routine or emergency landing or aborted takeoff. (Each system consists, generally, of energy absorbers and one or more securing or snaring receivers such as hook-cables or pendant-cables attached to a net.)

(1) *Aircraft arresting barrier (BARRIER).* A device not dependent on an aircraft hook, to engage and absorb the forward momentum of an emergency landing or an aborted takeoff.

(2) *Aircraft arresting cable (H/C).* A device used to engage hook-equipped aircraft to absorb the kinetic energy of a landing or aborted takeoff aircraft.

(b) *Aircraft arresting complex.* An airfield layout comprised of one or more aircraft arresting systems of the same or different types. (See § 856.3 for classification of runways).

(c) *Arrestment capable aircraft.* Aircraft which has recognized arrestment procedures in its appropriate Flight Manual.

(d) *Cycle time.* The time measured between the engagement of an aircraft with an arresting system and completely repositioning the arresting system for another engagement. This includes normal inspection and system cooling time according to the appropriate 35E8 series Technical Orders (TO).

(e) *Emergency arresting system (EAS).* Used primarily to prevent damage to aircraft and possible loss of life during an aborted takeoff or a landing emergency.

(f) *Energy absorber.* The mechanism through which the kinetic energy of the aircraft is dissipated. Examples of energy absorbers are weights and rotary hydraulic or friction brakes.

(g) *Hook-cable.* A cable or wire rope which is engaged by the arresting hook of an aircraft during an arrestment.

(h) *Location identification.* An arresting system is identified by stating whether it is located either on the approach end or the departure end of the runway. (That is, a BAK–12 on the approach end of runway 36 is on the south end of the runway.) Always use the term "approach end" or "departure end" in referring to an arresting system which is installed near the end of the runway.

(i) *Mobile aircraft arresting system (MAAS).* A rapidly installed and relocatable arresting system developed for use at air bases in high threat areas where runways may be damaged by enemy attack. The system uses BAK 12 energy absorbers mounted on trailers which can be rapidly anchored in place.

(j) *Operational arresting system (OAS).* Generally a rapid cycle system used to enhance the tactical mission or to avert a possible emergency which may be caused by meteorological conditions, a short runway, or known or suspected aircraft malfunctions. The OAS is used on a daily basis as opposed to the emergency-only use of an EAS.

(k) *Pendant-cable.* A cable or wire rope suspended from the net of an aircraft arresting barrier which engages a structural portion of the aircraft during an arrestment.

(l) *Reset time.* The time required to make the arresting system ready for another engagement after aircraft release.

**§ 856.3 What systems are authorized.**

ANG units are authorized systems in accordance with AFM 88–2. An EAS or an OAS should be installed on each runway used by arrestment compatible aircraft. An additional system (of either type) also should be installed if the installation's primary mission involves the operation of arrestment capable aircraft, or if the runway's closure (because of an inoperative system) would seriously degrade mission capability. When developing an aircraft arresting complex, maximum mission capability should be provided within the limits imposed by cost effectiveness. In evaluating the requirement for installing an arresting system, there are four classes of runways which must be considered:

(a) *Class A runway.* This runway is intended primarily for operating tactical or training aircraft. For example, a fully developed Class A runway could have the following arresting systems:

(1) An arresting barrier at each end, generally located in the overrun, but placed to provide the runout prescribed in AFM 88–2.

(2) A bi-directional emergency arresting system on each end of the runway, placed 950 to 1,500 feet up the runway from the threshold. (This system may also have an OAS capability.)

(3) A bi-directional operational arrestment system placed 1,500 to 2,500 feet up the runway from the threshold. It must be placed at least 1,200 feet from the EAS, and far enough from it to avoid any possible conflict with the runout from the EAS.

(4) An OAS placed at the midpoint of the runway. The installation of this additional system must be specifically approved by HQ USAF.

(b) *Class B runway.* A runway that is a prime alternate for a Class A runway. It should have an EAS or OAS 950 to 1,500 feet from each end of the runway, as well as a backup EAS in the overrun.

(c) *Class C runway.* A runway that requires only a single EAS capability on each end of the runway for either hook or nonhook equipped aircraft.

(d) *Class D runway.* A runway that does not have an arresting system requirement.

**§ 856.4 Authorized use of aircraft arresting systems.**

A deviation from the following policy is authorized only when directed by the installation commander (or designated representative) because of meteorological conditions, safety of flight, or peculiar operational conditions:

(a) Under normal operations and conditions, unidirectional barrier nets or arresting cables are disconnected and, preferably, removed on the approach end of the runway. Aircraft will takeoff and land toward the most compatible arresting system available; however, tailhook-equipped aircraft do not takeoff over a raised remote-controlled net barrier if a more compatible arresting system is available. If there is no remote-control function, or cold weather makes the remote function unreliable, the barrier net is raised manually and left in a cocked position on the departure end of the runway. Bi-directional arresting gear is kept in the ready position on the approach end of the runway, unless directed otherwise and noted in Flight Information Publications (FLIP).

(b) If arrestment capable aircraft are landing with known or suspected radio failure, the departure end barrier net is raised and the hook cable positioned for aircraft engagement. Also, the arresting gear at the approach end is positioned for engagement, unless the aircraft is vulnerable to an inadvertent engagement because of an unguarded tailhook.

(c) During ice and snow removal, barrier net and hook cables may be removed from the runway, but the runway should be returned to operational status as quickly as possible. Runways and overruns should be cleared to allow for an obstacle-free runout of the arresting system, plus the length of the arrested aircraft.

**§ 856.5 Pilot responsibilities.**

Each pilot must understand the capabilities and limitations of each arresting system, and how it may affect his or her aircraft operations. Information on the compatibility of these systems should be included in the Aircraft Flight Manual. In addition, the pilot must:

(a) Determine the status of the arresting system at each base of takeoff and intended landing, as well as any alternate or planned emergency bases, before beginning a flight.

(b) For remote control systems, use the emergency radio phraseology, "barrier, barrier, barrier" or "cable, cable, cable," when emergency conditions require the tower to raise the barrier net or ready a hook-cable for possible engagement.

(c) Know the effect of each aircraft configuration on the probability of a successful engagement. The pilot should also be aware of possible damage caused by an inadvertent engagement, landing on, rolling over, or impacting hook-cables or other associated arresting equipment.

**§ 856.6 Use of systems by non-United States government aircraft.**

In an emergency, the pilot of a non-U.S. government aircraft, on request, may use the aircraft arresting system at an Air Force base or a joint-use airport in the U.S. or overseas.

**§ 856.7 Installing a system at a joint-use airport.**

At a civil airport used jointly by the Air Force and a civil agency, the procedures for installing an arresting system are as follows:

(a) At a civil airport used jointly by the Air National Guard and a civil agency, the procedures for installing an arresting system are in ANGR 88–1, Chapter 2.

(b) The responsible Air Force commander notifies the airport manager that the Air Force needs to install an arresting system.

(c) If the airport manager agrees that the system should be installed, the Air Force commander submits the required plans or sketches to the Federal Aviation Administration (FAA) regional office through the Air Force representative of the FAA region.

(d) If the airport manager or the FAA disagrees with these specifications, the Air Force commander informs the MAJCOM, which can request that HQ USAF/LEEV resolve the disagreement.

(e) If an arresting system is required, but the lease does not authorize, or prohibits the government from placing an additional structure on the leased premises, the Air Force commander submits a request through the MAJCOM to HQ USAF/LEEV for action as prescribed by AFR 87–1, and attaches a brief statement explaining or quoting the lease restriction.

**§ 856.8 Agreements required for operation of the systems.**

(a) *Military rights agreement at an overseas base.* These systems are installed under the military rights agreement with the host government. If a separate agreement is specifically required to install the system, the base commander takes action to obtain it from the host government and coordinates these negotiations with the local U.S. diplomatic representative. If the commander cannot reach an agreement, the MAJCOM is notified. If still unresolved after MAJCOM's efforts, then HQ USAF/LEEV is notified.

(b) *Liability agreements at a joint-use civil airport.* If the Air Force installs an arresting system for the primary use of U.S. military aircraft at a joint-use civil airport, the FAA acts for, and on behalf of, the Air Force in operating this equipment. However:

(1) Any third-party claim presented for damage, injury, or death, resulting from the FAA operation of the system for military aircraft or from the Air Force or Air National Guard maintenance of the system, is the responsibility of the Air Force and is processed under Part 842 of this chapter (as prescribed for any claim against the Air Force).

(2) A separate agreement between the Air Force and the FAA is not required concerning liability for damage arising from the intentional operation of the system by FAA personnel for civil aircraft because such claims are the responsibility of FAA.

(c) *Operational agreement with FAA for a joint-use civil airport.* The MAJCOM has authority to negotiate the written agreement for this use, but may redelegate this authority to the base commander. The agreement must describe FAA functions and responsibilities covering the remote control operation of arresting systems by FAA air traffic controllers (§ 856.9).

**§ 856.9 Format for letter of agreement with FAA.**

The following operational agreement is entered into between the (FAA office and address) and (designated command) for the operation and use of aircraft arresting equipment installed on (designated runway, airport name and address).

(a) *General provisions.* (1) This agreement governs the use of the arresting barrier (BARRIER), and hook-cable arresting systems for military aircraft and in an emergency for civil aircraft at pilot request.

(2) This agreement becomes effective when the tower chief receives notice in writing from the base commander that:

(i) The arresting system has been accepted from the contractor and is commissioned and fully operational, or

(ii) The arresting system is available on a limited basis for emergency use. If the arresting system has not been accepted from the contractor, this notification must be accompanied by a written statement from the contractor authorizing the emergency use of the system, and waiving any claim against the FAA for damage to the system as the result of such use, or

(iii) A NOTAM has been issued specifying condition in paragraph (a)(2)(i) or (ii) of this section. Before receipt of the letter from the base commander, the tower arresting system controls will be de-energized by the military and placarded "INOPERATIVE" by the Chief Controller, and will not be activated by tower personnel under any circumstance.

(3) Automatic aircraft arresting systems can be installed on the runway or in the overrun. The barrier or hook-cable will be raised or lowered by control tower personnel by a remote-control panel in the control tower.

(4) When the arresting systems are in commission or emergency use status as described above, controllers will operate the tower arresting system controls at the request of a pilot of any military aircraft (regardless of the service concerned, type of aircraft, or whether the operation is routine or emergency) and at the request of a civil pilot in an emergency. The tower will also comply with requests for arresting system operations by a mobile control unit, the base operations officer, or a designated representative.

(5) NOTAMS covering operational or outage status of the barrier or hook cable will be originated by the military. During a NOTAMed outage for repair or maintenance, the tower personnel will operate the controls provided that the outage NOTAM contains the statement "available for emergency use" and the tower is provided a copy. Otherwise, tower controls will be de-energized by the military and posted "INOPERATIVE" by the Chief, Controller, and will not be activated by tower personnel under any circumstances.

(6) During the NOTAMed outages owing to failure of tower controls or control lines to the facility, or on notification by tower personnel of malfunction of the arresting system mechanism or remote control system (see paragraph (b)(8) of this section for notice), the military crew at the system site will have full and final responsibility for operating the arresting

device. The arresting system crew will maintain a listening watch on air and ground frequencies and have transmitting and receiving capability with the tower on the ground control frequency keeping personnel informed of the position of the system.

(b) *Operations.* (1) Normally all military aircraft takeoffs and landings are made toward an operational arresting system in the "ready" configuration. It is the pilot's responsibility to request the control tower operator to raise or lower the barrier or hook cable.

(Note.—For normal operations, request to raise the barrier or cable shall be interpreted to mean the runway approach end barrier or cable.) Example: "Duluth Tower, Joy 32 on base gear down and locked raise cable." When the pilot advises the control tower that he or she is ready for takeoff, a request for the barrier or cable to be raised may be made. The departure end cable will also be raised as for normal operations.

(2) When barrier/cable is requested, tower personnel advise the pilot of the indicated barrier/cable position as part of takeoff or landing information. Example: "Joy 32 cleared for takeoff, barrier indicates up."

(3) The barrier/cable operating status may be requested by the pilot at any time.

(4) The barrier/cable controls are in the down position except when the pilots or other authorized personnel request that the barrier/cable be raised.

(5) Tower personnel raise the departure end barrier and both approach and departure end cables for known or suspected radio failure landing by any arrestment capable military aircraft. If there is doubt regarding the ability of an aircraft to engage a system, the system should be activated.

(6) The standard emergency phraseology for the barrier to be raised to the up position is "barrier, barrier, barrier" and for the cable to be raised is "cable, cable, cable."

(7) Tower personnel initiate normal crash procedures when an aircraft engages the barrier/cable if these procedures have not previously been initiated.

(8) When there is a malfunction of the barrier or hook-cable mechanism or remote control system, the tower personnel notify Base Operations immediately.

Executed at _____

Dated _____

For the Federal Aviation Agency

_____

(Signed)

(Title) _____

(Region) _____

(Address) _____

For the Air Force

_____

(Signed)

_____

(Title)

(MAJCOM) _____

_____

(Address)

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-12201 Filed 5-28-87; 8:45 am]

BILLING CODE 3910-01-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1254

### Use of Privately Owned Microfilm Equipment To Copy Records in the National Archives and Presidential Libraries

**AGENCY:** National Archives and Records Administration.

**ACTION:** Final rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is issuing regulations to govern the use of privately-owned or leased microfilm equipment to copy records in the National Archives and in the Presidential Libraries. The rule is intended to protect and preserve archival records. This rule provides specific criteria for approving requests to use microfilm equipment, and it establishes procedures for microfilming the records. The rule applies to individuals and organizations that wish to microfilm archival records. It also affects Federal agencies that wish to microfilm records after transfer to the National Archives.

**EFFECTIVE DATE:** May 29, 1987. NARA will begin accepting requests to microfilm records under this regulation immediately.

**FOR FURTHER INFORMATION CONTACT:** Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

**SUPPLEMENTARY INFORMATION:** The National Archives and Records Administration (NARA) issued a notice of proposed rulemaking on this subject on October 29, 1986 (51 FR 39547). NARA initiated this rulemaking out of concern for the preservation of its archival records and donated historical materials. As we pointed out in the preamble to the proposed rule, microfilming can be one of serveral methods of preserving records. Researcher use of microfilm or microfiche copies of records minimizes damage to the original records which occurs through repeated handling of the documents. The existence of a microfilm copy also provides insurance against the loss of valuable information should an original record be damaged or destroyed.

We also noted that one of the concerns prompting the proposed rule was the potential for damage to records from improper handling during microfilming by privately owned microfilm equipment. In fact, there have been several observed instances this year where a private microfilmer has damaged documents while filming. Some damage occurred even as the commercial microfilmers specifically demonstrated for the NARA staff their routine document handling techniques.

To ensure that the benefits of private microfilming outweigh the risk to the records, NARA proposed to establish conditions under which privately owned microfilm equipment could be used to film archival records and donated historical materials in the National Archives and Presidental Libraries for microfilm publications. Comments were received from six micropublishers; nine editors of microfilm publication projects; a micropublishing industry association; an organization representing historical associations; two members of Congress, and three components of Federal agencies. All comments have been considered carefully in the promulgation of this final rule.

#### Applicability to Federal Agencies

Two components of the Department of Justice (DOJ) and the Bureau of Land Management (BLM) commented on the applicability of the rule to Federal agencies. DOJ noted that the conditions imposed by the proposed rule would seriously impede DOJ's extensive program of microfilming records for litigation support. BLM suggested allowing the originating agency to borrow the records for microfilming in a Federal agency microphotographic facility.

NARA's mission includes making the records in the Naitonal Archives available to Fedeal agencies who need them to carry out official agency business. We agree that some accommodation must be made for Federal agency needs that will also ensure that the records are not mishandled during filming. Accordingly, we have modified § 1254.90 to handle separately Federal agency microfilming requests. Many of the equipment and microfilming standards and training requirements placed on private

microfilmers will apply also to agencies and/or their contractor personnel; however, this regulations does not set the requirements for Federal agencies. NARA will notify Federal agencies of the requirements for specific microfilming projects on a case-by-case basis.

**Submission of Requests to Microfilm Records by April 1**

Four micropublishers objected to the requirement in § 1254.92(b) that requests must be submitted by the April 1 preceding the start of a fiscal year. Two of the comments pointed out that not all projects will require lengthy NARA evaluation or preparation.

NARA proposed an April 1 submission date for two reasons. First, when a micropublisher wishes to film a body of archival records, NARA must verify records arrangement, screen the records for possible restrictions, remove classification markings, and perform any document conservation action necessary before filming. These activities have required diversion of NARA resources from other scheduled records projects that would benefit the public. We have been especially concerned with the preservation resources being used to prepare records scheduled for microfilming by the micropublishers, regardless of the preservation priority placed on those records in NARA's long-range preservation plan.

Under this rule, we plan to hire temporary employees to perform as much of the preparation work as possible, including simple document conservation. Where more complicated conservation work must be done and the work is not scheduled to be done by NARA for a period of time, we will attempt to contract for the conservation services. The April 1 deadline was established to allow us six-months lead-time to accomplish the hiring and the preparatory work.

Second, the National Archives Building, where most private microfilming is done, has space available for a maximum of 10 microfilm cameras at any one time. With increased microfilming activity by micropublishers, NARA has faced problems scheduling the use of this space. We believe that the space can be more effectively scheduled with a longer lead time between the date when a request is made and the date when filming is to start.

We agree with the commenters that our proposed April 1 deadline was set too far in advance for projects scheduled to begin later in a fiscal year and for small projects which require little preparation. Therefore, we have modified this paragraph to provide that requests should be submitted six months in advance of the proposed starting date of the microfilming project. We have also added the provision that requests submitted with less advance notice will be considered and may be approved if space is available in the area set aside for private microfilming and if the records require minimal preparation for filming. This latter provision should help microfilmers especially at the Presidential Libraries, where requests can normally be accepted with less advance notice. To prevent any single micropublisher from reserving all the camera spaces in a NARA facility for a long period of time, we have also added two restrictions on submission of requests: Requests are limited to a single microfilming project and NARA will not accept additional requests from the same individual or organization to microfilm records at the same NARA facility while NARA is evaluating a pending request to microfilm records at that facility. NARA will establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

**Copyright Disclaimers and Filming of Uncopyrighted Targets**

Five commenters objected to the provision in § 1254.92(c)(6) that a credit to the National Archives or Presidential Library be placed at the beginning of each roll or fiche and to the requirement in § 1254.92(c)(7) that uncopyrighted targets be used in filming. The commenters claimed unspecified increased costs and inefficiencies under these provisions. All but one commenter stated that the credit with its copyright disclaimer was not needed since the absence of copyright over Federal documents is well established. One micropublisher, on the other hand, claimed the right to copyright the editorial arrangement of the documents.

We have modified these paragraphs in response to the comments. Proposed § 1254.92(c)(6) has been renumbered § 1254.92(c)(5) and modified to require only that the credit must appear at the beginning of a microfilm publication and in any publicity material or descriptions of the publication. Proposed § 1254.92(c)(7) is now § 1254.92(c)(6) and has been modified to allow the use of copyrighted targets and other editorial materials when the National Archives and Records Administration is given a royalty-free worldwide license to sell the publication after seven years, or earlier if there is no commercial distributor.

**Evaluating Requests**

Section 1254.94(a) states that NARA will evaluate requests on the basis of the extent to which projects would further NARA efforts to preserve and make available historically valuable records. Three commenters found this criteria to be too vague. One of the commenters stated that any project that does not pose a threat to preservation of the records should be allowed.

We have decided to retain this provision. Where we are faced with the probability that we will receive more technically acceptable requests then we have staff and space to accommodate, some evaluative criteria are needed to determine which proposals should be approved. Under these circumstances, a proposal to film a heavily used group of records should be given priority over a proposal to film rarely requested records because the former proposal will better enhance the preservation of the records by enabling NARA to replace heavy reference use of the original records with use of the film in NARA research rooms and sale of the microfilm publication by the micropublisher. If space and staff constraints are not a problem, we do not expect to use this criteria in reaching our decision on a proposal.

**Approving Only Requests to Microfilm a Complete Body of Records**

This policy, stated in § 1254.94(b), generated strong opposition from three micropublishers and three editors of microfilm projects which use selective filming. NARA proposed this policy to enhance the preservation of the records being filmed. As we noted in this preamble and in the preamble to the notice of proposed rulemaking, the use of microfilm copies of records prevents damage to the original records resulting from repeated handling, thereby helping to preserve the original records. We are not able to retire records from reference use, however, if a complete copy of the records is not available.

The potential risk to the records during the microfilming process is justifiable only if future wear on the records can be avoided. Therefore, the final rule does not modify the requirement that only complete bodies of records will be approved for microfilming by private parties.

This policy does not prevent micropublishers from continuing to prepare selective microfilm publications. The micropublisher may apply under this regulation to film a complete body of records, provide NARA a copy of the film, and then select images from the

film to be used in the selective publication; the added filming costs could be offset by the ability of the micropublisher to send the film to an editor for selection rather than paying travel expenses to bring the editor to a NARA facility to select the records. If the micropublisher chooses to film a complete body of records and then create a selective micropublication, NARA will require that any descriptive material on the publication clearly states that only a selection of records is reproduced in the publication. Alternatively, the micropublisher may choose to photocopy the selected records and film the photocopies, a practice followed at the Library of Congress where private microfilming is prohibited. The NARA lab can also film the documents on a reimbursable basis, following the fee schedule in 36 CFR Part 1258. Under these latter alternatives, the micropublisher would follow the general NARA procedures for access to the records found elsewhere in Part 1254 instead of this regulation.

**Providing to NARA a Duplicate Negative Containing No Splices**

Two commenters objected to the requirement in § 1254.94(d) to provide NARA a splice-free silver halide duplicate negative, citing additional production costs. We believe that the cost burden was caused by the requirement in the proposed rule that NARA's copy contain no editorial or other copyrighted material produced by the micropublisher. In order to provide NARA's copy, the micropublisher would have to prepare a special camera negative. As we have modified this final rule to allow the requester to film copyrightable material if NARA is granted a royalty-free license, the micropublisher will be able to make NARA's duplicate negative from the original camera negative that will be used for the microfilm publication. We have retained the requirement that NARA's copy be splice-free since that copy will become our microfilm master from which our duplicate preservation and research copies will be made.

**Sale of Microfilm by NARA**

The proposal that NARA could sell copies of the microfilm after two years raised strong disagreement. The commenters expressed concern that NARA would be unfairly competing with the micropublishers because NARA would be selling its copies at a much lower price before the micropublisher could recover development and marketing costs. All but two micropublishers stated that NARA should not sell privately produced microfilm for at least five years. One micropublisher recommended at least a ten-year waiting period while the other objected to any NARA sales, except if the micropublisher goes out of business. Two other commenters also felt the two year period was too short; one of these recommended a seven year delay.

When we proposed the two year period, we were unfamiliar with the length of time needed by private micropublishers to recover their costs. Our concern was that the privately produced microfilm might become unavailable to the public after the micropublisher's initial marketing effort. There is no intent to compete unfairly with the private sector on the sale of their microfilm publications. We have, therefore, modified § 1254.94(d) to provide that NARA may sell copies of privately produced microfilm publications seven years after filming at NARA is completed, or earlier if there is no commercial distribution.

**Disapproval of Requests to Microfilm Records Which Have Previously Been Microfilmed**

Section 1254.94(f)(1) states that NARA normally will not approve requests to microfilm records which have previously been microfilmed and made available to the public. Two commenters suggested that this provision not apply when the existing microfilm is substandard. The National Archives has had a high quality microfilm publication program for over 40 years. Some NARA microfilm does not meet industry standards because the quality of the original documents precludes a perfect microform image or because the original microfilm made outside NARA was not of archival quality. As industry standards evolve with new technological advances, it is possible that microfilm which meets the standards in existence today will be judged "substandard" in the future. We do not think it appropriate to exempt all records for which film is below the prevailing industry standards, as one of the commenters recommended. The use of the words "normally not approve" indicates that there may be exceptions to this policy. NARA may grant exceptions in cases where NARA agrees that refilming the records is likely to produce a better image. In such cases, NARA will continue to sell its own publication after the records are refilmed. Therefore, we have not modified this section.

**Disapproval of Requests for Records Which Have Been Approved for Filming by Another Party**

One micropublisher questioned what would happen if NARA received requests from two parties to film the same records during the same year. The commenter recommended that a "first-come, first-served" policy be followed in such cases. Since we are dropping the April 1 deadline for submission of requests, we have essentially adopted a "first-come, first-served" policy. It is unlikely that we would receive a second request to film a body of records while we are evaluating the first request. If we did, however, we reserve the right to approve the second request if that request is superior to the first request; e.g., the second requester has a better record of microfilming in accordance with NARA specifications.

**Disapproval of Requests for Records Which NARA Plans to Film or Which Relate Closely to Other Records Previously Filmed or Approved for Filming by NARA**

One commenter stated that these provisions were too vague and open-ended, and other commenters informally asked NARA to define the term "closely related records." As NARA uses this term in the regulation, closely related records are series which are frequently used together and which should have a common microfilming format or share a common index in order to make the records most usable for the researcher. An example of closely related records are Southern Claims Commission Records, where approved claims are filed in one series and disallowed claims are filed in another series. Both series must be used by genealogists searching for individual applications. Requests to microfilm records of individual diplomatic posts, on the other hand, would not be denied under this provision because each series is frequently used without reference to another series.

We have modified § 1254.94(f)(3) to allow exceptions to this provision at the discretion of NARA.

**Disapproval of Requests for Records With High Research Demand Which Would Have to be Closed for An Extended Period of Time for Filming**

We agree with the commenters who noted that records having a high research demand are the ones that should be filmed. Our concern is the need to close records to researchers while the records are being prepared for microfilming and during the filming process. Depending on the size of the

body of records and the proposed microfilming schedule of the requester, the records could be closed to research for several weeks or months during NARA's peak research periods. We have retained the criterion, but have added a sentence to alert requesters that NARA is willing to work with them to develop filming schedules that avoid the need to close records for a long period. NARA may suggest, for example, that filming be done during a slow research period or that the filming schedule be broken into small segments.

**Disapproval of Requests to Film Oversize Records, Bound Volumes, and Other Formats Requiring Special Equipment**

One commenter stated that these categories of records should not automatically be denied for filming. Determinations should be made on the basis of filming the records safely, given actual equipment available and handling required for a defined set of records. We agree and have adopted the comment in § 1254.94(g)(6). Requesters are cautioned that the space available for use by micropublishers in NARA facilities may be inadequate for equipment acceptable for filming oversize records.

**Disapproval of Requests to Microfilm in NARA Facilities Where No Space Is Available**

One commenter termed this provision needlessly restrictive while another indicted that it would affect the commenter's microfilming plans. Section 1254.94(i) was included in the proposed rule to address the space problems which NARA has in some of its field locations. Space for private microfilming is very limited or not available in some of the National Archives Field Branches. We are not willing to move the records to another NARA facility for private microfilming because of the physical security difficulties which a temporary move would cause. Consequently, we have made no change to this paragraph.

We have added a new paragraph § 1254.94(j), which states that Federal agency microfilming takes precedence over private microfilming when there is insufficient space to accommodate both at the same time. The Department of Justice, for example, often needs to microfilm records for court cases. If an agency has a need to microfilm records while all space is occupied by private microfilmers, a private microfilmer may be required to suspend microfilming temporarily. NARA's first statutory mission is to serve the needs of Federal agencies in carrying out the Government's business.

**Fees for Microfilm Preparation**

Several questions were raised concerning § 1254.96. One nonprofit organization asked whether they might use their own volunteers for some of the microfilm preparation work in lieu of being assessed a fee. While NARA has the authority to accept voluntary services and there may be instances where some of the preparation could be done by volunteers, we do not believe it is appropriate to address the issue in the regulation.

Two micropublishers requested that a schedule of fees be provided with the rule. No schedule was provided in the proposed rule since the fees for microfilm preparation will depend on the work which must be done to a specific body of records. We have not provided a formal fee schedule in this final rule for the same reason. We have modified § 1254.96(a) to specify that fees will be based on direct salary costs (including benefits) and supplies when NARA staff is used or on the cost to NARA when a contractor performs the work. Section 1254.96(b) has been modified to indicate that the fees will be itemized when provided to the requester.

The arrangement of records will be verified or corrected by an archives technician (hourly salary rate including 16% benefits ranges from $8.24 to $14.69 per hour). Screening records for possible restrictions on use requires an archivist (hourly salary rate including 16% benefits ranges from $15.10 to $23.53). Depending on the document fastener and the fragility of the document, removal of document fasteners may be performed by an archives technician (hourly salary rate including 16% benefits range from $9.16 to $11.94) or by a conservator aide or a professional conservator (hourly salary rate including 16% benefits ranges from $8.27 to $19.39). Similarly, document conservation actions may be performed by staff from the GS–5 to GS–12 level (hourly salary rate including 16% benefits ranges from $8.27 to $19.39), or by contract with a conservation center.

**Equipment Standards**

We have modified § 1254.98 to allow the use of specialized equipment with the approval of the Office of the National Archives.

**Inspection of Film at Scheduled Intervals**

One micropublisher objected to NARA inspection of the microfilm at scheduled intervals since the micropublisher does its own inspection and quality control. Three other micropublishers and the micropublishing industry association were not troubled by the concept of NARA inspection by recommended a less frequent inspection. We have retained the requirement for NARA inspection since NARA must ensure that its microfilming standards have been met. We have modified § 1254.100(k) to adopt the proposed industry inspection schedule. We have also specified that film must be delivered to NARA within five calendar days after processing to ensure that we can test the film for proper processing.

**Other**

Several commenters stated that the proposed rule would have a significant impact on their small businesses. We believe that the final rule has been modified to accommodate the concerns raised in their comments. Accordingly, as required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981.

**List of Subjects in 36 CFR Part 1254**

Archives and Records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended as follows:

## PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for Part 1254 continues to read as follows:

**Authority:** 44 U.S.C. 2101–2118.

2. Section 1254.70 is revised to read as follows:

**§ 1254.70 NARA copying services.**

(a) The copying of records will be done by personnel of the National Archives and Records Administration with equipment belonging to NARA. NARA reserves the right to make a duplicate, at NARA expense, of any material copied. Such duplicates may be used by NARA to make additional copies for others.

(b) In order to preserve the original records, records which are available on microfilm will not be copied by other means as long as a legible copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

3. Subpart F is added to read as follows:

## Subpart F—Microfilming Archival Records

Sec.
1254.90 General.
1254.92 Requests to microfilm records.
1254.94 Criteria for granting the requests.
1254.96 Microfilm preparation.
1254.98 Equipment standards.
1254.100 Microfilming procedures.
1254.102 Rescinding permission.

## Subpart F—Microfilming Archival Records

### § 1254.90 General.

(a) This subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film archival records and donated historical materials in the National Archives Building, the Pickett Street facility, the Washington National Records Center, the National Archives Field Branches, and the Presidential Libraries.

(b) Persons or organizations wishing to microfilm Federal agency records in the custody of a Federal Records Center should contact the director of the Center about procedures for obtaining permission to film those records.

(c) Federal agencies needing to microfilm archival records in support of the agency's mission must contact the Assistant Archivist for the National Archives, as soon as possible after the need is identified, for information concerning standards and procedures for microfilming archival records.

### § 1254.92 Requests to microfilm records.

(a) Requests to microfilm archival records or donated historical materials in the National Archives Building, the Washington National Records Center, the Pickett Street facility, or the National Archives Field Branches must be made in writing to the Assistant Archivist for the National Archives (NM), NARA, Washington DC 20408. Requests to microfilm records or donated historical materials in a Presidential Library must be made in writing to the Assistant Archivist for Presidential Libraries (NL), NARA, Washington DC 20408.

(b) Request to use privately owned microfilm equipment should be submitted six months in advance of the proposed starting date of the microfilming project. Requests submitted with less advance notice will be considered and may be approved if space is available for the cameras in the area set aside for private microfilming and if the records require minimal preparation for filming. Only one microfilming project may be included in a request. NARA will not accept additional requests from an individual or organization to microfilm records in a NARA facility while NARA is evaluating an earlier request from that individual or organization to microfilm records at that facility. NARA will establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

(c) The request must include:

(1) A description of the records to be copied which includes the following elements:

(i) Agency of origin or, for donated historical materials, title of the collection,

(ii) Title of series or file segment;

(iii) Date span; and

(iv) Estimated volume in number of pages or cubic feet.

(2) The estimated amount of time (work-days) that the microfilm copying project will take; the date that the requester would like to begin the project; and the number of persons who would require training (see § 1254.100(b)).

(3) The number and a description of the equipment that will be used for copying including:

(i) The name of the manufacturer and model number; and

(ii) The type of light source to be employed (fluorescent, tungsten, or electronic flash) and if electronic flash (i.e., strobe) or fluorescent, whether the light source is filtered to omit ultraviolet radiation.

(4) A statement of the procedures which will be followed to ensure that all pages are copied, that the images on the microfilm are legible, and that the microfilm is properly processed. At a minimum, the procedures should meet the requirements specified in Part 1230 of this Chapter regarding the microfilming of permanent records.

(5) The requester must agree to credit the National Archives or the particular Presidential Library having custody of the original documents. The credit must appear at the beginning of a microfilm publication and in any publicity material or descriptions of the publication.

(i) If the original documents are Federal records, the requester must agree to include on the film this statement: "The documents reproduced in this publication are among the records of the (name or agency) in the custody of the National Archives of the United States. No copyright is claimed in these official U.S. Government records."

(ii) If the original documents are donated historical materials, the requester must agree to include on the film this statement: "The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential Library or National Archives). The donor has dedicated his/her literary rights to the public."

(6) If the person or organization producing the film plans to copyright the microfilm publication, the National Archives and Records Administration must be given a royalty-free worldwide license to sell the publication seven years after filming at the NARA facility is completed, or earlier if there is no commercial distributor.

### § 1254.94 Criteria for granting the requests.

(a) NARA will evaluate the requests on the basis of the extent to which completion of a proposed project would further NARA's efforts to preserve and to make available to the public the historically valuable records of the Government.

(b) NARA will approve only requests to microfilm a complete body of records, such as an entire series or a major continous segment of a very large series which is reasonably divisible. Microfilming a complete body of records means that all documents within the file unit(s) to be microfilmed will be consecutively copied, from the first to the last page, not skipping any pages in between except for pages that are exact duplicates or blank pages that are not included in a pagination scheme.

(c) NARA will normally approve only requests which include assurances that the project will adhere to the specifications in Part 1230 of this Chapter which concern microfilm stock standards, index placement, and microfilm processing for permanent records.

(d) NARA will approve only requests which specify that NARA will receive a first generation silver halide duplicate negative containing no splices made from the original camera negative of the microform record created in accordance with Part 1230 of this Chapter.

(1) NARA may use this duplicate negative microform to make duplicate preservation and reference copies. The copies may be made available for NARA and public use in NARA facilities and programs.

(2) NARA may also sell copies of the microform seven years after filming at the NARA facility is completed, or earlier if there is no commerical distributor. NARA may choose to add its own editorial material to the microform copies which NARA distributes or sells.

(e) NARA will not approve any request that does not include all of the information required by § 1254.92.

(f) NARA will normally not approve requests to microfilm records:

(1) Which have previously been microfilmed and made available to the public;

(2) Which have been approved for microfilming by another party; or

(3) Which NARA plans to film as a NARA microfilm publication or which relate closely to other records previously microfilmed or approved for microfilming by NARA. Exceptions to this provision may be granted at the discretion of NARA.

(g) NARA will normally not approve requests to microfilm the following categories of records:

(1) Records which include documents with general or specific restrictions on access that preclude their reproduction;

(2) Records which include documents which are known to be protected by copyright;

(3) Records of high intrinsic value which may be handled only by authorized NARA personnel;

(4) Records in vulnerable physical condition;

(5) Records having a high research demand and which would have to be denied to others for an extended period of time during the microfilming process. Where possible, NARA will assist requesters in developing filming schedules that avoid the need to close records for a lengthy period of time; and

(6) Oversize records, bound volumes, and other formats that would be subject to excessive stress and possible damage from special equipment planned to be used by the requester, as well as records fastened with grommets, heavy duty staples, miscellaneous fasteners, or wafers and other adhesives that cannot be removed without tearing or breaking documents.

(h) NARA will normally not approve requests from persons or organizations who have failed to produce usable microfilm or to honor commitments made in previous requests, or who have had a previous permission to microfilm records rescinded because of their conduct.

(i) NARA will not approve requests to microfilm records in NARA facilities in which there is insufficient space available for private microfilming. NARA will not move records from a facility lacking space for private microfilming to another NARA facility for that purpose.

(j) Federal agencies microfilming records in support of the agency's mission may use the space set aside for private microfilming. Agency microfilming takes precedence over private microfilming when there is insufficient space to accommodate both at the same time.

**§ 1254.96 Microfilm preparation.**

(a) As part of its evluation of a request to microfilm records, NARA will determine the amount of microfilm preparation that NARA must do before the records can be microfilmed and the estimated cost of such preparation. The fees for microfilm preparation will be based on direct salary costs (including benefits) and supply costs when NARA staff performs the work. When the work is performed by a NARA contractor, the fees will be the cost to NARA. Microfilm preparation includes:

(1) Verifying or correcting the arrangement of records after withdrawn items are inviewed and refiled when appropriate;

(2) Screening the records for possible restrictions on use;

(3) Declassifying security classified records;

(4) Removing document fasteners from documents when the fasteners can be removed without damage to the documents; and

(5) Taking any document conservation actions that must be accomplished in order to film the records, such as document flattening or mending.

(b) NARA will provide the requester detailed information on the fees for microfilm preparation in the letter of approval. Payment of fees will be made in accordance with § 1258.14 of this Chapter. When a body of records will require extensive microfilm preparation, a different payment schedule may be established at the discretion of NARA.

**§ 1254.98 Equipment standards.**

(a) Equipment must be designed for the microfilming of documents in roll form or standard fiche form and be operable from a table top. Only planetary type camera equipment may be used. Automatic feed devices may not be used. Book cradles or other specialized equipment designed for use with bound volumes, oversized records, or other formats will be approved by the Office of the National Archives on a case-by-case basis.

(b) The power consumption of the equipment normally must not exceed 1.2 kilowatts. Power normally available is 115 volts, 60 hz. Requests for electricity exceeding that normally available must be made at least 90 days in advance.

(c) Equipment having clamps or other devices to exert pressure upon or to affix the record to any surface in a way that might damage the record may not be used.

(d) The equipment must not use a heat generating light source in close enough proximity to the records to result in their physicial distortion or degradation. All sources or ultraviolet light must be filtered.

**§ 1254.100 Microfilming procedures.**

(a) Equipment used must conform to the equipment standards in § 1254.98.

(b) Records must be handled in accordance with the training and instructions provided by NARA personnel so that documents are not damaged during copying and so that their original order is maintained. Only persons who have attended NARA training will be permitted to handle the records or supervise microfilming operations. Training will be offered only in Washington, DC.

(c) Records from only one file unit may be microfilmed at a time.

(d) Records may not be left unattended on the copying equipment or elsewhere.

(e) Under normal microfilming conditions, actual copying time per sheet must not exceed 30 seconds.

(f) Any lights used with the camera must be turned off when the camera is not in actual operation.

(g) Microfilm equipment may be operated only in the presence of the research room attendant or a designated NARA employee.

(h) The equipment normally should be in use each working day that it is in a NARA facility. The director of the NARA facility (as defined in § 1252.2 of this Chapter) will decide when equipment must be removed because of lack of regular use. The equipment must be promptly removed upon request of the facility director.

(i) NARA assumes no responsibility for loss or damage to microfilm equipment or supplies left unattended.

(j) NARA will inspect the microform output at scheduled intervals during the project to verify that the processed film meets the microfilm preparation and filming standards required by Part 1230 of this Chapter. To enable NARA to properly inspect the film, NARA must receive the film within 5 days after it has been processed. The person or organization producing the microfilm will provide NARA with a silver halide duplicate negative of the filmed records (see § 1254.94(d)) according to the schedule shown in (k). If the processed film does not meet the standards, NARA may require that the records be refilmed.

(k) When 10,000 or fewer images are filmed, the person or organization producing the microfilm will provide

NARA with a silver halide duplicate negative upon completion of the project. When the project involves more than 10,000 images, a silver halide duplicate negative of the first completed roll or segment of the project reproducing this image count will be provided to NARA for evaluation; subsequent completed segments of the project, in quantities approximating 100,000 or fewer images, will be provided to NARA within 30 days after filming unless NARA approved other arrangements.

**§ 1254.102 Rescinding permission.**

NARA may, at any time, rescind permission to microfilm records:

(a) If the person or organization fails to comply with the microfilming procedures in § 1254.100;

(b) If inspection of the processed microfilm reveals persistent problems with the quality of the filming or processing;

(c) If the person or organization fails to proceed with the microfilming or project as indicated in the request, or

(d) If the microfilming project is having an unanticipated adverse effect on the condition of the records or the space set aside in the NARA facility for microfilming.

Dated: May 5, 1987.

Frank G. Burke,

*Acting Archivist of the United States.*

[FR Doc. 87-12087 Filed 5-28-87; 8:45 am]

BILLING CODE 7515-01-M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 704, 710, 712, 716, and 717

**[OPTS-84025; FRL-3210-3]**

## Reporting and Recordkeeping Requirements; Technical Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** EPA is revising the mailing address sections for Toxic Substances Control Act (TSCA) section 8 information submissions. This document revises the adddress to insert the correct one. The revision will help assure that TSCA submissions are properly sent to EPA headquarters.

**DATE:** This final rule is effective on May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, Telephone: (202) 554-1404.

**SUPPLEMENTARY INFORMATION:** This document revises the address for submissions under the section 8(a) Preliminary Assessment Information Rule and sections 8(a), 8(c), and 8(d) of TSCA by inserting the current one. Other addresses published previously for these submissions should no longer be used. EPA is also giving notice of the address to which responses to the final Comprehensive Assessment Information Rule should be sent. Because these are non-substantive changes, notice and public comment are unnecessary.

This **Federal Register** notice also serves to notify persons of a change in the mailing address for submissions under section 8(e) of TSCA. The address given in the previous policy statement ("Statement of Interpretation and Enforcement Policy; Notification of Substantial Risk," 43 FR 11110; March 16, 1978) should no longer be used. Section 8(e) submissions should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. ATTN: 8(e) Coordinator.

**Lists of Subjects in 40 CFR Parts 704, 710, 712, 716, and 717**

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting requirements, Significant adverse reactions.

Dated: May 18, 1987.

Charles L. Elkins,

*Director, Office of Toxic Substances.*

Therefore, 40 CFR Chapter I is amended as follows:

1. In Part 704:

a. The authority citation for Part 704 continues to read as follows:

**Authority:** 15 U.S.C. 2607(a).

b. By adding a new § 704.9 to read as follows:

**§ 704.9 Where to send reports.**

Reports must be submitted by certified mail to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: 8(a) Notification.

**§ 704.33 [Amended]**

c. In § 704.33 paragraph (h) is removed.

**§ 704.83 [Amended]**

d. In § 704.83 paragraph (g) is removed.

**§ 704.85 [Amended]**

e. In § 704.85 paragraph (e) is removed.

**§ 704.142 [Amended]**

f. In § 704.142 paragraph (h) is removed.

**§ 704.175 [Amended]**

g. In § 704.175 paragraph (f) is removed.

2. In Part 710:

a. The authority citation for Part 710 continues to read as follows:

**Authority:** 15 U.S.C. 2607(a).

b. Section 710.39 is amended by revising paragraph (b) to read as follows:

**§ 710.39 Reporting form and instructions for submitting information.**

* * * * *

(b) Complete instructions for completing the reporting form and preparing a computer tape report are given in the EPA publication entitled "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base." Reporting forms and instruction booklets may be obtained from the following address: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: Inventory Update Rule. Telephone: (202) 382-3698 or (202) 755-4880.

* * * * *

3. In Part 712:

a. The authority citation for Part 712 continues to read as follows:

**Authority:** 15 U.S.C. 2607(a).

b. Section 712.28 is amended by revising paragraph (c) to read as follows:

**§ 712.28 Form and instructions.**

* * * * *

(c) Forms must be sent (preferably by certified mail) to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: 8(a) PAIR Reporting.

* * * * *

4. In Part 716:

a. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 716.20 is amended by revising paragraph (c) to read as follows:

§ 716.20 Submission of copies of studies.

* * * * *

(c) Copies of health and safety studies and the accompanying cover letters must be submitted, preferably by certified mail, to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting).

c. Section 716.35 is amended by revising paragraph (c) to read as follows:

§ 716.35 Submission of lists of studies.

* * * * *

(c) Lists of health and safety studies should be submitted, preferably by certified mail, to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. ATTN: 8(d) Health and Safety Reporting Rule (Notification/Reporting).

5. In Part 717:

a. The authority citation for Part 717 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

b. Section 717.17 is amended by revising paragraph (c) to read as follows:

§ 717.17 Inspection and reporting requirements.

* * * * *

(c) *How to report.* When required to report, firms must submit copies of records (preferably by certified mail) to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. ATTN: 8(c) Allegations.

[FR Doc. 87–12276 Filed 5–28–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

[Docket No. FEMA 6752]

### List of Communities Eligible for the Sale of Flood Insurance; Michigan et al.

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Final Rule.

**SUMMARY:** This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the fourth column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

**FOR FURTHER INFORMATION CONTACT:** Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from futher flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

### List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

### PART 64—[AMENDED]

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified |
|---|---|---|---|
| Michigan: | | | |
| Evangeline, township of Charlevoix County | 260800—New | Apr. 13, 1987, Emerg | |
| Houghton, township of Keweenaw County | 260789—New | do. | |
| James, township of Saginaw County | 260802—New | do. | |
| Marquette, city of Marquette County | 260718 | do. | |
| Stronach, township of Manistee County | 260801—New | do. | |
| Oklahoma: Mayes County, unincorporated areas | 400458 | Apr. 6, 1987, Emerg | Nov. 22, 1987. |
| Michigan: | | | |
| Drummond Island, township of Chippewa County | 2608032—New | Apr. 16, 1987, Emerg | Do |
| Fairbanks, township of Delta County | 260804 | do. | Do |
| Nahma, township of Delta County | 260668 | do. | Do |

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| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified |
|---|---|---|---|
| Missouri: Marquand, city of Madison County | 290694—New | ....do | Do |
| Texas: Crane, city of Crane County | 480501 | ....do | July 16, 1979. |
| Tennessee: Pegram, town of Cheatham County | 470291A | Apr. 9, 1987, Emerg. Apr. 9, 1987, Reg | Nov. 3, 1978. |
| New York: Highland, town of Sullivan County | 360922C | Aug. 30, 1974 Emerg.; Mar. 4, 1987, Reg.; Mar. 4, 1987, Susp.; Apr. 16, 1987, Rein. | Mar. 4, 1987. |
| New Hampshire: Sugar Hill, town of Grafton County.[2] | [illegible]743 | Sept. 15, 1975, Emerg.; Apr. 2, 1986, Reg.; Apr. 2, 1986, Susp.; Apr. 16, 1987, Rein. | Apr. 2, 1986. |
| Michigan: Masonville, town of Delta County | 260678 | Mar. 31, 1982, Emerg.; Mar. 31, 1982, Reg | Jan. 20, 1978 and Mar. 1, 1979. |
| Alabama: Flint City, city of Morgan County | 010054 | Apr. 17, 1987, Emerg | Nov. 26, 1976. |
| Colorado: Larkspur, town of Douglas County | 080217—New | Mar. 27, 1987 Emerg | Do |
| Nebraska: Phelps County, unincorporated areas | 310466 | ....do | Aug. 16, 1987. |
| North Carolina: Bath, town of Beaufort County | 370299 | Apr. 8, 1987, Emerg.; Apr. 8, 1987, Reg | Feb. 4, 1978. |
| South Carolina: | | | |
| Lockhart, town of Union County | 450241 | Apr. 8, 1987, Emerg | Jan. 26, 1978. |
| Union County, unincorporated areas | 450185 | ....do | May 26, 1978. |
| North Dakota: | | | |
| Gascoyne, city of Bowman County | 380077—New | ....do | Do |
| Rhame, city of Bowman County | 380078—New | ....do | Do |
| Michigan: | | | |
| Bay, township of Charlevoix County | 260786—New | ....do | Do |
| Cherry Valley, township of Lake County | 260796—New | ....do | Do |
| Michigan: Osceola, township of Osceola County | 260787—New | ....do | Do |
| Missouri: Fortescue, town of Holt County | 290667 | ....do | Do |
| Oklahoma: Osage County, unincorporated areas | 400148 | Feb. 25, 1987 | Dec. 29, 1980. |
| Texas: Henderson County, unincorporated areas | 481174 | Apr. 6, 1987, Emerg | Nov. 22, 1977. |
| Oklahoma: | | | |
| Adair County, unincorporated areas | 400501 | Feb. 17, 1987, Emerg | Jan. 2, 1981. |
| Payne County, unincorporated areas | 400469 | Jan. 28, 1987, Emerg | Nov. 23, 1981. |
| Tuttle, town of Grady County | 400443 | Feb. 10, 1987, Emerg | June 25, 1976. |
| Texas: | | | |
| Fort Bend County, unincorporated areas | 480228 | Mar. 16, 1987, Emerg.; Mar. 16, 1987, Reg | Aug. 5, 1986. |
| Prairie View, city of Waller County | 481544 | Apr. 6, 1987, Emerg.; Apr. 6, 1987, Reg | Apr. 15, 1982. |
| Illinois: Braceville, village of Grundy County | 171019—New | Apr. 23, 1987, Emerg | Do |
| Michigan: Union, township of Grand Traverse | 260805—New | Apr. 23, 1987, Emerg | Do |
| New York: | | | |
| New Hempstead, village of Rockland County | 361619 | ....do | Do |
| Wesley Hills, village of Rockland County | 361620 | ....do | Do |
| Minnesota: Brooklyn, city of St. Louis | 270419 | July 9, 1975, Emerg.; Apr. 27, 1987, Withdrawn | Apr. 27, 1987. |
| Vermont: Wells, town of Rutland County.[1] | 500271 | June 25, 1975, Emerg.; Sept. 19, 1986, Susp.; Apr. 28, 1987, Rein. | Sept. 10, 1976. |
| **Reinstatements into the Regular Program** | | | |
| Pennsylvania: Burrell, township of Armstrong County.[1] | 4213088 | Feb. 11, 1987, Rein | Nov. 1, 1986. |
| Tennessee: Waynesboro, city of Wayne County | 470201 | Mar. 16, 1987, Rein | Jan. 16, 1987. |
| Pennsylvania: | | | |
| Stewart, township of Fayette County.[1] | 4216408 | Feb. 19, 1987, Rein | Jan. 1, 1987. |
| Metal, township of Franklin County.[1] | 4216538 | Mar. 12, 1987, Rein | Sept. 1, 1986. |
| Greenwood, township of Clearfield County.[1] | 4215238 | Mar. 16, 1987, Rein | Aug. 1, 1987. |
| Minnesota: Tintah, city of Traverse County | 270462 | Mar. 9, 1987, Rein | Aug. 19, 1986. |
| Vermont: | | | |
| Bloomfield, town of Essex County.[2] | 500045A | Mar. 3, 1987, Rein | May 7, 1975. |
| Woodbury, town of Washington County.[1] | 500314A | Mar. 3, 1987, Rein | Do |
| Tennessee: Bradford, city of Gibson County | 470057B | Mar. 27, 1987, Rein | Feb. 16, 1983. |
| Virginia: Unincorporated Areas. Madison County | 510068A | ....do | Feb. 4, 1987. |
| Pennsylvania: Arona, borough of Westmoreland County | 4208718 | Feb. 11, 1987, Rein | Dec. 1, 1986. |
| Wisconsin: | | | |
| Kingston, village of Green Lake County.[1] | 5501698 | Apr. 2, 1987, Rein | Sept. 1, 1986. |
| New Berlin, city of Waukesha County | 550467C | ....do | Mar. 16, 1988. |
| Tennessee: Campbell County, unincorporated areas.[1] | 470016 | Apr. 6, 1987, Rein | Aug. 5, 1987. |
| Iowa: Jefferson, city of Green County | 190096A | Oct. 29, 1986, Rein | Sept. 1, 1986. |
| **Region I** | | | |
| Vermont: Johnson, village of Lamoille County | 500232D | April 3, 1987, suspension withdrawn | Apr. 8, 1974, Feb. 1, 1979 and Apr. 3, 1987. |
| **Region II** | | | |
| New York: Essex, town of Essex County | 361149C | ....do | Dec. 20, 1977 and Apr. 3, 1987. |
| **Region III** | | | |
| Delaware: | | | |
| New Castle, city of New Castle County | 100029B | ....do | Dec. 26, 1975, May 1, 1974 and Apr. 3, 1987. |
| Newport, town of New Castle County | 100054C | ....do | Dec. 26, 1974, June 15, 1979 and Apr. 3, 1987. |
| Pennsylvania: Northampton, township of Somerset County. | 422520C | ....do | Jan. 3, 1975, Aug. 22, 1980, Sept. 24, 1984 and Apr. 3, 1987. |
| West Virginia: Elkins, city of Randolph County | 40177D | ....do | Feb. 15, 1974, Apr. 9, 1979 and Apr. 3, 1987. |
| **Region VI** | | | |
| Arkansas: Bald Knob, city of White County | 050222D | ....do | Mar. 8, 1974, Jan. 16, 1976 and Apr. 3, 1987. |
| **Region VII** | | | |
| Missouri: Miner, village of Scott County | 290697C | ....do | July 30, 1976, Jan. 9, 1978, Dec. 21, 1984 and Apr. 3, 1987. |

[1] Regular Conversions.
[2] Emergency Program.

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| **Region I** | | | |
| Maine: Hudson, town of, Penobscot County | 230362 | Apr. 17, 1987, suspension withdrawn | Apr. 17, 1987. |
| Vermont: Johnson, town of, Lamoille County | 500053 | ....do | Do. |

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| **Region IV** | | | |
| Mississippi: Warren County, unincorporated areas | 280195 | do. | Do. |
| South Carolina: | | | |
| Charleston County, unincorporated areas | 455413 | do. | Do. |
| McClellanville, town of, Charleston County | 450039 | do. | Do. |
| Walterboro, city of, Colleton County | 450058 | do. | Do. |
| **Region V** | | | |
| Indiana: La Fontaine, town of, Wabash County | 180267 | do. | Do. |
| Wisconsin: Dousman, village of, Waukesha County | 550480 | do. | Do. |
| **Region II** | | | |
| New York: | | | |
| Alexander, town of, Genesee County | 360277 | May 4, 1987, suspension withdrawn | June 4, 1987. |
| Alexander, village of, Genesee County | 361496 | do. | Do. |
| Beekmantown, town of, Clinton County | 360166 | do. | Do. |
| Peru, town of, Clinton County | 361384 | do. | Do. |
| **Region IV** | | | |
| North Carolina: | | | |
| Bridgeton, town of, Craven County | 370436 | do. | Do. |
| Craven County, unincorporated areas | 370072 | do. | Do. |
| Havelock, city of, Craven County | 370256 | do. | Do. |
| New Bern, city of, Craven County | 370074 | do. | Do. |
| South Carolina: Mayton, city of, Marion County | 450142 | do. | Do. |
| Tennessee: Spring Hill, city of, Maury County | 470276 | do. | Do. |
| **Region V** | | | |
| Michigan: Chocolay, township of, Marquette County | 260446 | do. | Do. |
| Minnesota: Moorhead, city of, Clay County | 275244 | do. | Do. |
| **Region VI** | | | |
| Texas: | | | |
| Bellaire, city of, Harris County | 480289 | do. | Do. |
| Denton County, unincorporated areas | 480774 | do. | Do. |
| **Region VIII** | | | |
| Colorado: Estes Park, town of, Larimer County | 080193 | do. | Do. |

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Special flood hazard areas identified |
|---|---|---|---|
| **Region I—Minimal Conversions** | | | |
| Maine: Somerville, town of, Lincoln County | 230512A | Apr. 3, 1987, suspension withdrawn | Apr. 3, 1987. |
| **Region VII** | | | |
| Kansas: Council Grove, city of Morris County | 200234B | do. | Dec. 28, 1973, Oct 31, 1975, and Apr. 3, 1987. |

| State and location | Community No. | Effective dates of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| **Region I—Minimal Conversions** | | | |
| Maine: | | | |
| Frenchboro, town of, Hancock County | 230594 | Apr. 17, 1987, suspension withdrawn | Apr. 17, 1987. |
| Troy, town of, Waldo County | 230269 | do. | Do. |
| **Region II** | | | |
| New York: Laurens, village of, Otsego County | 361351 | do. | Do. |
| **Region III—Minimal Conversions** | | | |
| Pennsylvania: Elk, township of, Tioga County | 421164B | May 1, 1987, suspension withdrawn | May 1, 1987. |
| **Region IV** | | | |
| Florida: Mayo, town of, Lafayette County | 120132 | do. | Do. |
| Kentucky: Glasgow, city of, Barren County | 210007 | do. | Do. |
| **Region V** | | | |
| Illinois: Clinton County, unincorporated areas | 170044 | do. | Do. |
| Indiana: Ramsdyh County, unincorporated areas | 180429 | do. | Do. |
| Michigan: | | | |
| Tekonsha, village of, Calhoun County | 260565 | do. | Do. |
| Wolverine Lake, village of, Oakland County | 260480 | do. | Do. |
| Ohio: New Waterford, village of, Columbiana County | 390663 | do. | Do. |
| Wisconsin: | | | |
| St. Croix Falls, city of, Polk County | 550337 | do. | Do. |
| Stratford, village of, Marathon County | 550256 | do. | Do. |
| Waldo, village of, Sheboygan County | 550432 | do. | Do. |
| Wilson, village of, St. Croix County | 550389 | do. | Do. |
| **Region VII—Minimal Conversions** | | | |
| Iowa: Griswold, city of, Cass County | 190348 | do. | Do. |
| Kansas: Rossl, city of, Pawnee County | 200260 | do. | Do. |
| Nebraska: | | | |
| Loup City, city of, Sherman County | 310215 | do. | Do. |
| Webster County, unincorporated areas | 310232 | do. | Do. |

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Harold T. Duryee,
*Administrator, Federal Insurance Administration.*

[FR Doc. 87-11844 Filed 5-28-87; 8:45 am]
BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

[Gen. Docket No. 85-395]

### Subscription Television; Change in Classification; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects an error which appeared in the March 2, 1987 Federal Register (52 FR 6152).

**FOR FURTHER INFORMATION CONTACT:** Martin Blumenthal (202) 254-6530.

**SUPPLEMENTARY INFORMATION:** Section 2.106 was amended by adding a new footnote NG148. We are correcting that footnote to read NG149. A later action, published March 11, 1987, (52 FR 7417) also added NG148. This is correct, however as this action was assigned the footnote officially released *before* the March 2 action.

Federal Communications Commission.
William J. Tricarico,
*Secretary.*

[FR Doc. 87-12052 Filed 5-28-87; 8:45 am]
BILLING CODE 6712-01-M

### 47 CFR Part 22

### Reinstatement of Positions of the Public Mobile Services Rules

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Final rule.

**SUMMARY:** A Commission's order eliminating §§ 22.13(f), 22.43(b)(2) and 22.44(c) of the FCC's rules, 47 CFR 22.13(f), 22.43(b)(2), and 22.44(c) (1985), was stayed and subsequently vacated by the U.S. Court of Appeals for the District of Columbia Circuit. As a result these rule sections are still in effect. However, they were eliminated from the Code of Federal Regulations. This Order reinstates these rule sections in the CFR.

**EFFECTIVE DATE:** May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Carmen Borkowski, Mobile Services Division, Common Carrier Bureau; Tele: (202) 632-6450.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio.

Albert Halprin,
*Chief, Common Carrier Bureau.*

**PART 22—[AMENDED]**

1. The authority citation for Part 22 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303).

2. Section 22.13 is amended by adding paragraph (f) to read as follows:

**§ 22.13 General application requirements.**

* * * * *

(f) *State certification*—(1) *General rule.* Licensees are required to comply with all applicable state certification requirements. Applicants may, but are not required to include evidence of state certification when filing FCC Form 401 or 489. The licensee under this part must complete construction in accordance with section 22.43 of the rules. A licensee must have all requisite state authority and be in operation within a year of the license grant or the license will automatically expire and must be submitted for cancellation.

(2) Denial of state certification. A pending application will be returned as unacceptable for filing where the applicant is denied state certification necessary to construct and/or operate the proposed facilities, and the state appeal process has been exhausted. Such applications will not be retained on file while the applicant pursues subsequent state applications. Where an applicant has been denied the necessary state certification and has exhausted the state appeal process, the applicant shall not resubmit its application to the Commission until after obtaining state certification.

(3) Applicant's duty to inform. The application shall include in Form 401 information regarding any adverse action which has been taken regarding the state certification application. The applicant shall promptly and fully advise the Commission of any adverse action regarding state certification taken while the application is pending.

3. Section 22.43 is amended by adding paragraph (b)(2) to read as follows:

**§ 22.43 Period of construction.**

(b) * * * * *

(2) *State certification.* No extension will be granted when state certification has been denied and all state appeals have been exhausted. If an applicant requests an extension due to lack of state certification, one 6-month extension may be granted when state law permits construction before certification is obtained. No more than two 6-month extensions may be granted when state law prohibits construction before certification is obtained. Lack of state certification must be due to a cause beyond applicant's control, and extensions will not be granted if there is lack of diligence in pursuing state certification. If the licensee files for state certification within 90 days of the license grant, a presumption of due diligence is created.

* * * * *

4. Section 22.44 is amended by adding paragraph (c) to read as follows:

**§ 22.44 Termination of authorization**

(c) *State certification.* Where the holder of an authorization is denied state certification and the state appeal process is exhausted before the end of the one year period, the license will be forfeited. If the licensee regains state certification before the end of the one year period, a request for reinstatement may be considered.

[FR Doc. 87-12051 Filed 5-28-87; 8:45 am]
BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1043

[Ex Parte No. MC-183]

### Clarification of Insurance Regulation

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules and clarification form.

**SUMMARY:** The Commission is issuing a final rule to correct an inadvertent error in an earlier proceeding concerning the regulations under § 1043.4, Title 49 of the Code of Federal Regulations. The correction will permit property brokers to file security other than a prescribed broker's surety bond as evidence of financial responsibility. The Commission is also correcting the language of the prescribed surety bond Form BMC-84 (Rev. 1977) to clarify that both shippers and motor carriers are entitled to the protection of the bond, and to reflect current statutory citations resulting from recodification of the Interstate Commerce Act. The current Form BMC 84 (Rev. 1977) will be accepted until the new revised Form BMC-84 forms are printed by the industry. Because of the proximity of the expiration date of OMB approval of Form BMC-84 (September 30, 1987) and the expense to insurers of printing too

few forms or having obsolete stock on their hands so soon after printing, we are specifically authorizing Form BMC–84 to be printed and used, as modified and clarified in this proceeding, without showing an expiration date until it has been submitted to OMB and approved for a longer period.

As these are merely minor changes to correct a previous ministerial error and to clarify the Commission's interpretation of the intended statutory coverage of motor carriers, as well as shippers under the prescribed surety bond, comments are not required. 5 U.S.C. 553(b)(A)(B).

**EFFECTIVE DATE:** May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** John W. Fristoe (202) 275–7844 or Heber P. Hardy (202) 275–7148.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission decision. To obtain a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, c/o Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area).

Energy and environmental considerations: This action will not significantly affect either the quality of the human environment or conservation of energy resources.

**Regulatory Flexibility Analysis**

The Commission certifies that clarification and correction of these final rules will not have a significant impact on a substantial number of small entities. They do not require small entities to do anything substantially different in filing evidence of required coverage under 49 CFR 1043.4 than already is required. To the extent these rules provide greater flexibility for property brokers to comply with our requirements and clarify what parties are protected under a surety bond, this proceeding may have a beneficial impact on a substantial number of property brokers, shippers, and motor carriers.

**List of Subjects in 49 CFR Part 1043**

Insurance, Motor carriers, and Surety bonds.

Decided: April 9, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

**Final Rules**

For the reasons set forth in the preamble, 49 CFR Part 1043 is amended as follows:

**PART 1043—SURETY BONDS AND POLICIES OF INSURANCE**

1. The authority citation for Part 1043 continues to read as follows:

**Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.**

2. Section 1043.4 is revised to read as follows:

**§ 1043.4 Property broker surety bonds or other security.**

A property broker must have a surety bond or other security in effect for $10,000. The Commission will not issue a property broker license until a surety bond or other security for the full limits of liability prescribed herein is in effect. The broker license shall remain in effect only as long as a surety bond or other security remains in effect and shall ensure the financial responsibility of the broker.

**Clarification of Form**

The Commission's prescribed Broker's Surety Bond, Form BMC 84 (Rev. 1977), is clarified and modified as follows:

1. The heading title is modified by deleting the words "Section 211(c) *of the Interstate Commerce Act*" and substituting the citation "49 U.S.C. 10927."

2. The second *whereas* Clause is modified by deleting the words "Section 211" and substituting the citation "49 U.S.C. 10927(b)."

3. The first *whereas* Clause and the paragraph following the second *whereas* Clause are modified by deleting the words "Part II of" in each place where those words precede the words "The Interstate Commerce Act" or the words "said Act."

4. The language in the three paragraphs, beginning with the first *whereas* Clause, is clarified by deleting the word "travelers" in each place where it appears and substituting the words "motor carriers."

5. The identification of Form BMC 84 (Rev. 1977) should be modified, upon reprint, to read "BMC 84 (Rev. 1987)."

[FR Doc. 87–12285 Filed 5–28–87; 8:45 am]
BILLING CODE 7035–01–M

# Proposed Rules

Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

### Informal Hearing Procedures for Materials Licensing Adjudications

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission is proposing to amend its regulations to provide rules of procedure for the conduct of informal adjudicatory hearings in materials licensing proceedings. The Atomic Energy Act of 1954 requires that the NRC, in any proceeding for the granting, suspending, revoking, or amending of an NRC license, including a license involving source, byproduct, and special nuclear materials, afford an interested person, upon request, a "hearing." The Commission previously has determined that the "hearing" provided for a materials licensing proceeding need not encompass all the procedures in NRC regulations that govern formal adjudications for the licensing of production and utilization facilities. Rather, the Commission has determined that, in most instances, an informal hearing with an opportunity to present written views is sufficient to fulfill this requirement. This proposed rule prescribed the procedures that would govern these informal proceedings.

**DATES:** Comment period expires July 28, 1987. Comments received after this date will be considered if it is practicable to do so, but assurance of consideration can be given only for comments filed on or before that date.

**ADDRESSES:** Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch. Hand deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC, between 8:15 a.m. and 5:00 p.m.

Examine comments received at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paul Bollwerk, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (202) 634–3224.

**SUPPLEMENTARY INFORMATION:** Section 189a of the Atomic Energy Act of 1954 (AEA) (42 U.S.C. 2239(a)) provides that in any proceeding for the granting, suspending, revoking, or amending of any license, the agency shall grant a hearing upon the request of any person whose interest may be affected by the proceeding. Among the licenses issued by the agency are those for byproduct material (AEA sections 81–84, 42 U.S.C. 2111 through 2114, 10 CFR Parts 30 through 35), source material (AEA sections 61–69, 42 U.S.C. 2091–2099, 10 CFR Part 40), and special nuclear material (AEA sections 51–58, 42 U.S.C. 2071 through 2078, 10 CFR Part 70). In a February 1982 decision, the Commission declared that, with regard to materials licenses, the agency was not required to afford a formal, trial-type adjudicatory hearing under the Administrative Procedure Act (5 U.S.C. 554, 556, 557). *Kerr-McGee Corp.* (West Chicago Rare Earths Facility), CLI–82–2, 15 NRC 232 (1982). Rather, the Commission found that it was sufficient to afford an informal hearing in which the parties are given an opportunity to present to the hearing officer their written views and whatever documentary evidence they wish. The Commission's interpretation of the type of hearing it need provide in connection with materials licensing actions was upheld by the United States Court of Appeals for the Seventh Circuit. *City of West Chicago* v. *NRC*, 701 F.2d 632 (7th Cir. 1983).

In order to specify the particular procedures that will be applicable in such informal proceedings, the Commission now proposes to add a new Subpart L to Part 2 of its rules in Title 10 of the Code of Federal Regulations. The chief differences from the Subpart G "Rules of General Applicability" for formal adjudications are discussed below.

#### Time for Filing a Hearing Petition

Under proposed § 2.1205(c), "interested persons" (other than an applicant or licensee) wishing to request a hearing on a materials licensing action would be required to file a petition for a hearing within thirty days of the agency's publication in the **Federal Register** of a notice of the receipt of an application or a notice of agency action relative to an application for a materials license. Thus, the publication of an initial **Federal Register** notice regarding a materials license application generally will trigger the time for filing a hearing petition.

Under current Commission practice, however, a **Federal Register** notice is not published with respect to each proposed or completed materials licensing action that may be subject to a hearing request. While the AEA specifically requires that "interested persons" be afforded a hearing upon request, it does not impose any requirement that the Commission publish a **Federal Register** notice with respect to each of the thousands of material licensing applications it receives annually. Because of the large number of materials licensing actions involved, the administrative and resource burden of a self-imposed requirement to provide notice in all instances, and the relative insignificance of many of the licensing actions involved, it has been the Commission's practice to provide a published notice only in significant cases. The Commission will retain this practice. If no notice is published, however, a petition is timely if it is filed within thirty days after the petitioner receives actual notice of the action or proposed action complained of, or within one year after completion of the agency action, whichever first occurs. Further, the proposed rule indicates that a hearing petition filed more than one year after completion of the agency's action will be granted upon a showing of "exceptional circumstances" that precluded the petitioner from discovering the agency action and petitioning for a hearing earlier.

The requirements in § 2.1205 for the filing of hearing petitions would not change the requirements in § 2.103(b) for the time for filing applicant hearing petitions following a notice of denial or a notice of proposed denial.

#### Provision for Hearings Subsequent to Grant of a License

While section 189a of the Atomic Energy Act (42 U.S.C. 2239(a)) has provisions that govern whether a hearing must be provided upon request

prior to staff action with regard to reactor construction permits and operating licenses, the Act says nothing specific about whether such a hearing requested by an interested person must be completed prior to agency action granting or denying a materials license. The proposed rule therefore does not preclude, and in fact contemplates, the grant of a license by the NRC staff prior to any initial decision in any proceeding convened as a result of a hearing request.

Of course, the lack of any statutory directive will not relieve the agency of any obligation constitutional due process may impose. Due process generally requires that if a constitutionally protected right to a hearing exists,[1] opportunity for that hearing must be afforded before agency action becomes effective. *E.g., Opp Cotton Mills* v. *Administrator*, 312 U.S. 126, 152–53 (1941). It also has been recognized, however, that in particular circumstances a balancing of the private and governmental interest involved may allow government action to precede any hearing. *See, e.g., Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532, 542 n.7 (1985); *Hewitt* v. *Helms*, 459 U.S. 460, 476 n.8 (1983); *Parratt* v. *Taylor*, 451 U.S. 527, 540–41 (1981); *Barry* v. *Barchi*, 443 U.S. 55, 64 (1979). A weighting of those interests here has led the agency to conclude that a prelicensing hearing is not necessarily required.

The private rights involved in this instance are two-fold: The right of the applicant to a reasonably prompt administrative assessment of and determination about its application so it can go forth with its planned activities and the right of other "interested persons" to challenge the requested licensing action on the basis of their specific concerns about anticipated harm to radiological health and safety or the environment. Into this balance also must be weighted the governmental interest in avoiding delay in the administrative process that will be caused by halting all action on the application pending notice of opportunity for hearing and any hearing. The importance of this factor is heightened by the fact that the agency reviews and processes literally thousands of materials license applications each year. *Kerr McGee Corp.*, 15 NRC at 261. Finally, it is significant that the materials involved in the vast majority of cases, when compared to power reactors, involve substantially less hazard. *Id.* at 262.

Taking these factors into account, the Commission believes that an appropriate balance is struck by its present practice of not requiring that completion of any requested hearing be a prerequisite to every licensing action by the agency while providing that any "interested person" who believes the effectiveness of the licensing action will be harmful to his or her interests can request a stay from the presiding officer. Section 2.1263 of the proposed rule outlines the procedure for making such requests.

### Designation of a Single Hearing Officer

Unlike reactor licensing proceedings in which a three-member board is established to conduct any hearing, for most materials licensing proceedings only a single hearing officer would be appointed by the Chairman of the Atomic Safety and Licensing Board Panel (ASLBP) from the panel's membership to rule on a petition for hearing and, if a hearing is granted, preside over the adjudication. The exception to this rule is for proceedings on Part 70 licenses to receive new fuel at reactor facilities that are subject to an ongoing proceeding for an operating license under Part 50. In such instances, the three-member licensing board conducting the Part 50 proceeding also will consider the Part 70 application in accordance with the informal procedures in proposed Subpart L unless the board certifies to the Commission that the matters presented for adjudication are substantially the same as those being litigated in the operating license proceeding. Upon certification, the Part 70 issues can be adjudicated using the formal hearing procedures in 10 CFR Part 2, Subpart G.

### Requirements for Standing

Under the proposed § 2.1205, the focus of an initial request for hearing or a petition to intervene is to be the issue of standing. In turn, the presiding officer's determination about whether the petitioner for a hearing has standing would be in accordance with the Commission's existing practice and would include a consideration of the factors set forth at 10 CFR 2.714(d). Nonetheless, the "distance standard" established by NRC case law for standing in nuclear reactor licensing proceedings, whereby persons residing within fifty miles of a facility generally are considered to have standing, *see, e.g., Tennessee Valley Authority* (Watts Bar Nuclear Plant, Units 1 and 2), ALAB–413, 5 NRC 1418, 1421 n.7 (1977), is not applicable in materials licensing proceedings. Instead, the interest of the petitioner must be assessed in terms of the particular licensed facility or activity at issue in the materials licensing proceeding.

### Hearing File

Following a presiding officer's determination to grant a hearing request because the requestor has standing, § 2.1231 requires that the NRC staff assemble and make available to the presiding officer and the parties a hearing file of materials relevant to the licensing proceeding. The file would include the application and any amendment thereto, as well as any environmental assessment or impact statement and any NRC report or any correspondence between the NRC and the applicant relating to the application. The hearing file also would be placed by the staff in the NRC's public document room (PDR) and in any appropriate local PDR. If a local PDR did not exist, as it does not for the overwhelming majority of materials licenses, then the applicant would be responsible for making the hearing file provided by the NRC staff publicly available during regular business hours in the vicinity of the principal location where the nuclear material that is the subject of the application will be possessed. This could be done by the applicant in a number of different ways, including making the file available at a local public library.

Although the proposed rule provides that no discovery by the parties is allowed in informal proceedings, creation of the hearing file is intended to give all parties in such proceedings access to the central documentation relating to the application for use in preparing written and oral presentations. Moreover, as proposed § 2.1231(c) indicates, the NRC staff is given the continuing duty of keeping the hearing file for a proceeding current by supplementing it with appropriate documents that are generated after the file is established initially. Further, any issue that arises over the appropriate documents to be included in the file is to be resolved by the presiding officer.

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[1] The due process right of a license applicant or a licensee to a hearing with regard to its request for licensing action has been recognized, *e.g., Buttrey* v. *United States*, 690 F. 2d 1170, 1177–78 (5th Cir. 1982), *cert. denied*, 461 U.S. 927 (1983); *Gallagher & Ascher Co.* v. *Simon*, 687 F.2d 1067, 1077 & n. 12 (7th Cir. 1982); whether other "interested persons" have such a due process right is less apparent. *City of West Chicago* v. *NRC*, 701 F.2d 632, 645 (7th Cir. 1983). It also should be noted that in cases involving renewal of a license, the Administrative Procedure Act, 5 U.S.C. 558(c), and 10 CFR 2.109 provide that the existing license will remain in effect, whether or not the staff or an intervenor opposes license renewal, pending a final determination of the renewal application.

**Written Presentations and Discretion To Hold Oral Presentations**

Under the proposed rule, after a hearing file is established the parties would be given an opportunity to make written presentations. These presentations are to be made under oath or affirmation. Those filed by an applicant challenging a proposed denial or a denial of its licensing request must describe with particularity any deficiency or omission in the staff's action. Similarly, the written presentation of intervenors challenging an application for licensing action must describe in detail any deficiency or omission in the application. Each written presentation also must be supported by all documentation or information that supports or illustrates each deficiency or omission complained of. Subsequent attempts to present or to rely upon other documentation or information would require the permission of the presiding officer. In addition to receiving the parties' filings, the presiding officer could require that the parties answer his or her written questions.

If it appears to the presiding officer, in his or her discretion, that it is necessary for the creation of an adequate record for decision, oral presentations to the presiding officer by the parties or oral questioning of witnesses concerning the factual and legal issues presented by the licensing action are allowed. An oral presentation by the parties would be appropriate in instances when the presiding officer is convinced that such a presentation is the most expeditious way to clarify or resolve specific ambiguities or controversies arising from the written presentations. Although such presentations generally would be similar to the nontestimonial oral arguments held with respect to motions in formal adjudiciatory proceedings, in the event a party wished to make any additional factual presentations for the record, under § 2.1233(b) the presentor would be required to be under oath. Oral questioning of affiants or of principals or employees of the applicant or licensee, also under oath, might be allowed in addition to or in lieu of an oral presentation in instances when the veracity or demeanor of such individuals is at issue and is critical to resolving an important matter in controversy. Normally such questioning would be done by the presiding officer on the basis of his or her concerns and any questions of the parties the presiding officer finds appropriate. The proposed rule also contemplates that oral questioning could be done by the parties themselves, but only after the specific questions or the line of questions for the witness has been approved by the presiding officer. Free-ranging cross-examination would not be allowed. The Commission contemplates that oral presentations or oral questioning would not be necessary in the vast majority of cases.

Thereafter, on the basis of the hearing file, any information presented under oath in written or oral presentations, and any facts that might be officially noticed, the presiding officer would make an initial decision. This decision would be subject to review by an Atomic Safety and Licensing Appeal Board under the same procedures as exist for the appeal of initial decisions in formal adjudications under Subpart G of 10 CFR Part 2.

In the event that the presiding officer, on his own or at the request of any party, reaches the conclusion that a full and fair airing of the issues in the proceeding requires that additional procedures should be used, such as discovery or allowing the parties to cross-examine witnesses, or that the prodceeding should be conducted entirely in accordance with Subpart G in formal procedures, § 2.1209(j) authorizes the presiding officer to request authority to use the additional procedures or to have the Commission convene a formal adjudication. The Commission contemplates that this will not be appropriate in the vast majority of cases. *See generally Sequoyah Fuels Corporation* (Sequoyah $UF_6$ to $UF_4$ Facility), CLI–86–17, 24 NRC 489 (1986).

**Role of The NRC Staff**

Another important change in procedure proposed in these rules of procedure is the role provided for the NRC staff. In formal hearings under Subpart G of 10 CFR Part 2, the staff is a party to the proceeding. Under the proposed rule, in instances other than an applicant- or licensee-initiated hearing following a denial or proposed denial of an application, the staff need not assume such a role. Instead, it may decline to participate as a party in the proceeding. However, if the staff subsequently determined it wished to assume party status or the presiding officer decided it should participate as a party, under proposed § 2.1213 the presiding officer could afford or impose party status.

**Restrictions on Private Communications with Adjudicators**

Despite the lack of any statutory requirement that the Commission apply the *ex parte* and separation of functions prohibitions of the Administrative Procedure Act (5 U.S.C. 554(d), 557(d)) to informal adjudications, these prohibitions can in some circumstances have due process implications. *See Bethlehem Steel Corp.* v. *EPA*, 638 F.2d 994, 1008–10 (7th Cir.), *cert. denied*, 447 U.S. 921 (1980); *United States Lines* v. *FMC*, 584 F.2d 519, 536–42 (D.C. Cir. 1978). The crux of judicial concern in this regard is that the decision resulting from the adjudication should not be based upon information about which the parties have not had notice and a chance to provide their views. *Bethlehem Steel Corp.*, 638 F.2d at 1009–10; *United States Lines*, 584 F.2d at 540–41. Proposed § 2.1215(c) addresses this concern by providing that an initial decision can only be based upon information with respect to which all parties have had notice and an opportunity to comment.

**Separate Views of Commissioner Asselstine**

I do not support publication of this rule for one very simple reason. The rule contains no provision requiring that the Commission provide notice of licensing actions. Interested persons have a statutory right to a hearing on materials licensing actions. Yet, the NRC does not intend to provide notice of an opportunity for a hearing in any save a very few major actions. Absent notice there is little chance that anyone will learn that a licensing action is planned, let alone that they might have a right to a hearing on that action. A statutory right to a hearing is of little benefit if no one knows about it.

**Environmental Impact; Categorical Exclusion**

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

**Paperwork Reduction Review**

This proposed rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Regulatory Analysis**

The Atomic Energy Act affords interested persons the right to a hearing regarding a materials licensing proceeding. As the Commission previously indicated in its decision in *Kerr McGee Corp.*, 15 NRC at 241, the use of informal procedures involves less cost and delay for the parties and the

Commission than the use of formal, trial-type procedures, the only other procedural alternative. Also, procedures must be in place to allow for the orderly conduct of those adjudications. Codifying the informal hearing procedures for materials licensing proceedings is preferable to the only other alternative, which is the present practice of setting forth the procedures to be followed on a case-by-case basis. By codifying the procedures, the Commission will avoid the expenditure of time and resources necessary to prepare the individual orders that previously have been used to designate those procedures. It thus is apparent that this proposed rule is the preferred alternative and the cost entailed in its promulgation and application is necessary and appropriate. The foregoing discussion constitutes the regulatory analysis for this proposed rule.

**Backfit Analysis**

This proposed rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a nuclear reactor facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

**Regulatory Flexibility Certification**

The proposed rule will not have a significant economic impact upon a substantial number of small entities. Many materials licensees or intervenors fall within the definition of small businesses found in section 34 of the Small Business Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121, or the NRC's size standards published December 9, 1985 (50 FR 50241). While the proposed rules, if adopted, would reduce the burden on licensees or intervenors because of the informal nature of the hearing, the requirement that they submit filings and documentary information detailing contested legal and factual issues is still required. Some cost reduction in comparison to the cost of participating in a formal adjudicatory hearing can be anticipated, although that reduction as a whole may not be significant. Further, the use of informal procedures will not increase significantly the burden upon licensees to respond to hearing requests. Since the Commission's determination in 1982 that use of such procedures was appropriate, it has received, on average, fewer than five hearing requests per year regarding materials licensing applications. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities.

**List of Subjects in 10 CFR Part 2**

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2:

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239).

Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239).

Sections 2.200 through 2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

Sections 2.300 through 2.309 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133).

Sections 2.600 through 2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332).

Sections 2.700a, 2.719 also issued under 5 U.S.C. 554.

Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557.

Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552.

Sections 2.800 and 2.808 also issued under 5 U.S.C. 553.

Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039).

Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. Subpart L of Part 2 is added to read as follows:

**Subpart L—Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings**

Sec.
2.1201 Scope of subpart.
2.1203 Docket; filing; service.
2.1205 Request for a hearing; petition for leave to intervene.
2.1207 Designation of presiding officer.
2.1209 Power of presiding officer.
2.1211 Participation by a person not a party.
2.1213 Role of the NRC staff.
2.1215 Appearance and practice.

**Hearings**

2.1231 Hearing file; prohibition on discovery.
2.1233 Written presentations; written questions.
2.1235 Oral presentations; oral questions.
2.1237 Consideration of Commission rules and regulations in informal adjudications.
2.1239 Settlement of materials licensing proceedings.

**Initial Decision, Commission Review, and Final Decision**

2.1251 Initial decision and its effect.
2.1253 Appeals from initial decisions.
2.1255 Review by the Atomic Safety and Licensing Appeal Board.
2.1257 Review of decisions and actions of an Atomic Safety and Licensing Appeal Board.
2.1259 Final decision; petition for reconsideration.
2.1261 Authority of the Secretary to rule on procedural matters.
2.1263 Stays of NRC staff licensing actions and decisions of a presiding officer, an Atomic Safety and Licensing Appeal Board or the Commission, pending hearing or review.

### Subpart L—Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings

**§ 2.1201 Scope of subpart**

The general rules in this subpart govern procedure in any adjudication initiated by a request for a hearing in a proceeding for the grant, transfer, renewal, or licensee-initiated amendment of a materials license subject to Parts 30, 32 through 35, 40, or 70 of this chapter. Any adjudication regarding a materials license subject to Parts 30, 32 through 35, 40, or 70 that is initiated by a notice of hearing issued under § 2.104, a notice of proposed action under § 2.105, or a request for hearing under Subpart B of 10 CFR Part 2 on an order to show cause, an order for modification of license, or a civil penalty, is to be conducted in accordance with the procedures set forth in Subpart G of 10 CFR Part 2.

**§ 2.1203 Docket; filing; service.**

(a) The Secretary shall maintain a docket for each adjudication subject to this subpart, commencing with the filing of a request for a hearing. All papers, including any request for a hearing, petition for leave to intervene, correspondence, exhibits, decisions, and orders, submitted or issued in the proceeding; the hearing file compiled in accordance with § 2.1231; and the transcripts of any oral presentations or oral questioning made in accordance with § 1235 must be filed with the Office of the Secretary and must be included in the docket.

(b) Documents will be considered filed with the Office of the Secretary in adjudications subject to this subpart either—

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at Room 1121, 1717 H. Street NW., Washington, DC, or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, *Attention:* Docketing and Service Branch.

Filing by mail or telegram will be complete as of the time of deposit in the mail or with the telegraph company.

(c) Computation of time shall be done in accordance with § 2.710.

(d) A request for a hearing or a petition for leave to intervene must be served in accordance with § 2.1205 (e) and (j). All other documents offered for filing are to be served as the presiding officer, the Atomic Safety and Licensing Appeal Board, or the Commission shall direct.

**§ 2.1205 Request for a hearing; petition for leave to intervene.**

(a) Any person whose interest may be affected by a proceeding for the grant, transfer, renewal, or licensee-initiated amendment of a materials license subject to this subpart may file a request for a hearing.

(b) An applicant for a license, a license amendment, a license transfer, or a license renewal who is issued a notice of proposed denial or a notice of denial must in all cases file a request for a hearing within the time specified in § 2.103.

(c) The request for a hearing of a person other than an applicant must be filed (1) within thirty (30) days of the agency's publication in the **Federal Register** of a notice of the receipt of, or action relative to, an application, or (2) if no such notice is published, within thirty (30) days after the requestor receives actual notice of a pending application or agency action granting an application or within one (1) year after agency action granting an application, whichever first occurs. A request for a hearing filed more than (1) year after effective completion of the agency action will be granted only upon a showing of exceptional circumstances for the late filing.

(d) The request for a hearing filed by a person other than an applicant must describe in detail—

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors of paragraph (g) of this section; and

(3) The specific aspect or aspects of the subject matter of the proceeding about which the requestor wishes to be heard.

(e) Each request for a hearing must be served, by delivering it personally or by mail to—

(1) The applicant (unless the requestor is the applicant); and

(2) The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(f) Within ten (10) days of service of a request for a hearing filed under paragraph (c) of this section, the applicant may file an answer. The NRC staff may file an answer to such a request for a hearing within ten (10) days of the designation of the presiding officer.

(g) In ruling on a request for a hearing filed under paragraph (c) of this section, the presiding officer shall determine that the requestor meets the judicial standard for standing and shall consider, among other factors—

(1) The nature of the requestor's right under the Act to be made a party to the proceeding;

(2) The nature and extent of the requestor's property, financial, or other interest in the proceeding; and

(3) The possible effect of any order that may be entered in the proceeding upon the requestor's interest.

(h) If a hearing request filed under paragraph (b) of this section is granted, the applicant and the NRC staff shall be parties to the proceeding. If a hearing request filed under paragraph (c) of this section is granted, the requestor shall be a party to the proceeding along with the applicant and the NRC staff, if the staff chooses to participate as a party in accordance with § 2.1213.

(i) If a request for a hearing is granted and no notice of opportunity for a hearing previously has been published in the **Federal Register**, a notice of hearing must be published in the Federal Register that must state—

(1) The time, place, and nature of the hearing;

(2) The authority under which the hearing is to be held;

(3) The matters of fact and law to be considered; and

(4) The time within which any other person whose interest may be affected by the proceeding may petition for leave to intervene, as specified in paragraph (j) of this section.

(j) Any petition for leave to intervene, which must be filed within thirty (30) days of the date of publication of the notice of hearing, must set forth the information required under paragraph (d) of this section. A petition for leave to intervene must be served upon the applicant and upon the NRC staff, by delivering it personally or by mail to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Within ten (10) days of service of a petition for leave to intervene, the NRC staff and the applicant may file an answer. Thereafter, the petition for leave to intervene must be ruled upon by the presiding officer, taking into account the factors set forth in paragraph (g) of this section. If the petition is granted, the petitioner shall be considered a party to the proceeding.

(k) A nontimely petition for leave to intervene will not be entertained absent a finding by the Commission or the presiding officer that the petition should be granted based upon a balancing of the factors set forth in § 2.714(a)(1) (i) through (v), in addition to those set forth in paragraph (g) of this section.

(l) The filing or granting of a request for a hearing or a petition for leave to intervene need not delay NRC staff action regarding an application for a materials licensing action covered by this subpart.

(m) An order granting a request for a hearing or a petition for leave to intervene may condition or limit participation in the interest of avoiding repetitive factual presentations and argument.

(n) In the event the presiding officer wholly denies a request for a hearing or a petition for leave to intervene, that action is appealable within ten (10) days of service of the order on the question whether the request for a hearing or the petition for leave to intervene should have been granted in whole or in part. If a request for a hearing or a petition for leave to intervene is granted, parties other than the requestor or petitioner may appeal that action within ten (10) days of service of the order on the

question whether the request for a hearing or the petition for leave to intervene should have been wholly denied. An appeal may be taken by filing and serving upon all parties a statement that succinctly sets out, with supporting argument, the errors alleged. The appeal may be supported or opposed by any party by filing a counter statement within fifteen (15) days of the service of the appeal brief.

**§ 2.1207 Designation of presiding officer.**

(a) Unless otherwise ordered by the Commission or as provided in paragraph (b) of this section, within ten (10) days of filing of a request for a hearing relating to a materials license proceeding covered by this subpart, the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a single member of the panel to rule on the request for a hearing and, if necessary, to serve as the presiding officer to conduct the hearing.

(b) For any request for hearing relating to an application under 10 CFR Part 70 to receive and store unirradiated fuel at the site of a production or utilization facility that also is the subject of a proceeding under the Subpart G of this part for the issuance of an operating license, the Chairman of the Atomic Safety and Licensing Board Panel shall issue an order designating a Licensing Board conducting the operating license proceeding to rule on the request for a hearing and, if necessary, to conduct the hearing in accordance with this subpart. Upon certification to the Commission by the Licensing Board designated to conduct the hearing that the matters presented for adjudication by the parties with respect to the Part 70 application are substantially the same as those being heard in the pending proceeding under 10 CFR Part 50, the Licensing Board may conduct the hearing in accordance with the procedures in Subpart G.

**§ 2.1209 Power of presiding officer.**

A presiding officer has the duty to conduct a fair and impartial hearing according to law, to take appropriate action to avoid delay, and to maintain order. The presiding officer has all powers necessary to those ends, including the power to—

(a) Regulate the course of the hearing and the conduct of the participants;

(b) Dispose of procedural requests or similar matters;

(c) Hold conferences before or during the hearing for settlement, simplification of the issues, or any other proper purpose;

(d) Certify questions to the Atomic Safety and Licensing Appeal Board for determination, either in the presiding officer's discretion or on direction of the Commission or the Atomic Safety and Licensing Appeal Board;

(e) Reopen a proceeding for the reception of further information at any time prior to initial decision;

(f) Administer oaths and affirmations;

(g) Issue initial decisions;

(h) Issue subpoenas requiring the attendance and testimony of witnesses at the hearing or the production of documents for the hearing;

(i) Receive written or oral evidence and take official notice of any fact in accordance with § 2.743(i);

(j) Recommend to the Commission that procedures other than those authorized under this subpart be used in a particular proceeding; and

(k) Take any other action consistent with the Act and this chapter.

**§ 2.1211 Participation by a person not a party.**

(a) The presiding officer may permit a person who is not a party to make a limited appearance in order to state his or her views on the issues. Limited appearances may be in writing or oral, at the discretion of the presiding officer, and are governed by rules adopted by the presiding officer. A limited appearance statement is not be considered part of the decisional record under § 2.1251(c).

(b) Upon request, the presiding officer shall afford the representative of an interested State, county, municipality, or an agency thereof, a reasonable opportunity to participate in a proceeding conducted under this Subpart, including an opportunity to make written and oral presentations in accordance with §§ 2.1233, 2.1235, without requiring the representative to take a position with respect to the issues. Participants under this subsection may notice an appeal of an initial decision in accordance with § 2.1253 with respect to any issue on which they participate.

**§ 2.1213 Role of the NRC staff.**

If a hearing request is filed under § 2.1205(b), the NRC staff shall be party to the proceeding. If a hearing request is filed under § 2.1205(c), within ten (10) days of the designation of a presiding officer pursuant to § 2.1207 the NRC staff shall notify the presiding officer whether or not the staff desires to participate as a party to the adjudication. Thereafter, upon a determination by the presiding officer that the resolution of any issue in the proceeding would be aided materially by staff's participation in the proceeding as a party, the presiding officer may order or permit the NRC staff to participate as a party with respect to that particular issue.

**§ 2.1215 Appearance and practice.**

(a) Representation by an attorney-at-law is not necessary in order for an individual, an organization, or a § 2.1211(b) participant to appear in an adjudication conducted under this subpart. If the representative of an organization is not an attorney-at-law, he or she must be a member or officer of the organization represented. Upon request of the presiding officer, an individual acting as a representative shall provide appropriate information establishing the basis of his or her authority to act in a representational capacity.

(b) Any action to reprimand, censure, or suspend a party, a § 2.1211(b) participant, or the representative of a party or a § 2.1211(b) participant must be in accordance with the procedures in § 2.713(c).

**Hearings**

**§ 2.1231 Hearing file; prohibition on discovery.**

(a) Within thirty (30) days of the presiding officer's entry of an order granting a request for a hearing, the NRC staff shall file and make available to the presiding officer, the applicant, and any other party to the proceeding a hearing file. Thereafter, within ten (10) days of the date a petition for leave to intervene or a request to participate under § 2.1211(b) is granted, the NRC staff shall make the hearing file available to the petitioner or the participant. The hearing file also shall be made available for public inspection and copying during regular business hours at the NRC Public Document Room in Washington, DC, and at any appropriate local public document room. In the event no appropriate local public document room exists, the applicant must make the hearing file available for public inspection and copying during regular business hours at a location in the vicinity of the principal location where the nuclear material that is the subject of the application will be possessed.

(b) The hearing file will consist of the application and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report or any correspondence between the applicant and the NRC that is relevant to the application. The presiding officer will rule upon any issue regarding the

appropriate materials for the hearing file.

(c) The NRC staff has a continuing duty to keep the hearing file up to date with respect to the materials set forth in paragraph (b) of this section.

(d) A party may not seek discovery from any other party, § 2.1211(b) participant, or the NRC or its personnel, whether by document production, deposition, interrogatories, or otherwise.

**§ 2.1233 Written presentations; written questions.**

(a) At such time or times and in such sequence as the presiding officer may establish after publication of a notice of hearing in accordance with § 2.1205(i) and after the NRC staff has made the hearing file available in accordance with § 2.1231, the parties shall submit, under oath or affirmation, written presentations of their arguments and documentary data, informational material, and other supporting written evidence. The presiding officer also may, on his or her initiative, submit written questions to the parties to be answered in writing, under oath or affirmation, and supported by appropriate documentary data, informational material, or other written evidence.

(b) In a hearing initiated under § 2.1205(b), the initial written presentation of the applicant that is issued a notice of proposed denial or a notice of denial must describe in detail any deficiency or omission in the agency's denial or proposed denial of its application and what relief is sought with respect to each deficiency or omission.

(c) In a hearing initiated under § 2.1205(c), the initial written presentation of a party that requested a hearing or petitioned for leave to intervene must describe in detail any deficiency or omission in the license application with references to any particular section or portion of the application considered deficient, give a detailed statement of reasons why any particular section or portion is deficient or why an omission is material, and describe in detail what relief is sought with respect to each deficiency or omission.

(d) A party making an initial written presentation under this section must submit with its presentation or identify by reference to a generally available publication or source, such as the hearing file, all documentary data, informational material, or other written evidence upon which it relies to support or illustrate each omission or deficiency complained of. Thereafter, additional documentary data, informational material, or other written evidence can be submitted or referenced by any party, other than the NRC staff, or any § 2.1221(b) participant in a written presentation or in response to a written question only as the presiding officer, in his or her discretion, permits.

(e) Strict rules of evidence will not apply to written submission under this section, but the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of a written presentation or a response to a written question that is cumulative, irrelevant, immaterial, or unreliable.

**§ 2.1235 Oral presentations; oral questions.**

(a) Upon a determination that it is necessary for the creation of an adequate record for decision, in his or her discretion the presiding officer may allow or require oral presentations by the parties or pose questions orally to witnesses. The presiding officer may impose appropriate time limits on oral presentations and may entertain and pose questions to witnesses proposed by any party or allow a sponsoring party to pose any particular question or line of questions the presiding officer finds are appropriate.

(b) Oral presentations and responses to oral questioning to be relied upon as oral evidence must be given under oath or affirmation. All oral presentations or oral questioning must be stenographically reported and, unless the presiding officer orders otherwise, must be public.

(c) Strict rules of evidence will not apply to oral submissions under this section, but the presiding officer may, on motion or on the presiding officer's own initiative, strike any portion of an oral presentation or a response to oral questioning that is cumulative, irrelevant, immaterial or unreliable.

**§ 2.1237 Consideration of Commission rules and regulations in informal adjudications.**

(a) Except as provided in paragraph (b) of this section, any regulation of the Commission issued in its program for the licensing and regulation of production and utilization facilities, source material, special nuclear material, or byproduct material may not be challenged in any adjudication subject to this subpart.

(b) A party to an adjudication subject to this subpart may petition that the application of a Commission regulation specified in paragraph (a) of this section be waived or an exception made for the particular proceeding. The sole ground for such a request for waiver or exception must be that special circumstances exist such that application of the regulation to the subject matter of the proceeding would not serve the purposes for which the regulation was adopted. In the absence of a prima facie showing of special circumstances, the presiding officer may not further consider the matter. If the presiding officer determines that a prima facie showing has made, he or she shall certify directly to the Commission itself for determination the matter of whether special circumstances support a waiver or an exception. The Commission's determination shall be made after such further proceedings as the Commission deems appropriate.

**§ 2.1239 Settlement of materials licensing proceedings.**

The fair and reasonable settlement of proceedings subject to this subpart is encouraged. A settlement must be approved by the presiding officer or Atomic Safety and Licensing Appeal Board, as appropriate, in order to be binding in the proceeding.

**Initial Decision, Commission Review, and Final Decision**

**§ 2.1251 Initial decision and its effect.**

(a) Unless the Commission directs that the record be certified to it in accordance with paragraph (b) of this section, the presiding officer shall render an initial decision after completion of an informal hearing under this subpart. That initial decision constitutes the final action of the Commission forty-five (45) days after the date of issuance, unless an appeal is taken in accordance with § 2.1253.

(b) The Commission may direct that the presiding officer certify the record to it without an initial decision and may omit an initial decision and prepare a final decision upon a finding that due and timely execution of its functions so requires.

(c) An initial decision must be in writing and must be based only upon information in the record or facts officially noticed. The record must include all information submitted in the proceeding with respect to which all parties have been given reasonable prior notice and an opportunity to comment. The initial decisioin will include—

(1) Findings, conclusions, and rulings, with the reasons or basis for them, on all material issues of fact, law, or discretion presented on the record;

(2) The appropriate ruling, order, or denial of relief with its effective date; and

(3) The time within which appeals to the decision and a brief in support of those appeals may be filed, the time

within which briefs in support of or in opposition to appeals filed by another party may be filed, and the date when the decision becomes final in the absence of an appeal.

(d) Matters not put into controversy by the parties may not be examined and decided by the presiding officer or the Atomic Safety and Licensing Appeal Board. If the presiding officer or the Appeal Board believes that a serious safety, environmental, or common defense and security matter exists that has not been placed in controversy, the presiding officer or the Appeal Board promptly shall advise the Commission of the basis for that view, and the Commission may take appropriate action.

**§ 2.1253 Appeals from initial decisions.**

Parties and § 2.1211(b) participants may appeal from an initial decision under this subpart in accordance with the procedures set out in §§ 2.762 and 2.763.

**§ 2.1255 Review by the Atomic Safety and Licensing Appeal Board.**

The Commission authorizes the Atomic Safety and Licensing Appeal Board to exercise the authority and carry out the review functions to be performed under §§ 2.1205(n), 2.1209(d), and 2.1253.

**§ 2.1257 Review of decisions and actions of an Atomic Safety and Licensing Appeal Board.**

The Commission will not entertain any petition for review of decision or action of an Atomic Safety and Licensing Appeal Board under this subpart. Commission review is available only on the Commission s own motion issued within forty (40) days after the date of a decision or action by the Appeal Board under § 2.1255. Commission review will be conducted in accordance with such procedures as the Commission deems appropriate. Absent Commission review, the decision of the Appeal Board constitutes the final action of the Commission.

**§ 2.1259 Final decision; petition for reconsideration.**

(a) Commission or Atomic Safety and Licensing Appeal Board action to render a final decison must be in accordance with § 2.770.

(b) The provisions of § 2.771 govern the filing of petitions for reconsideration.

**§ 2.1261 Authority of the Secretary to rule on procedural matters.**

The Secretary or the Assistant Secretary may rule on procedural matters relating to proceedings conducted by the Commission itself under this subpart to the same extent they can do so under § 2.772 for proceedings under Subpart G.

**§ 2.1263 Stays of NRC staff licensing actions and decisions of a presiding officer, an Atomic Safety and Licensing Appeal Board or the Commission, pending hearing or review.**

Applications for a stay of any decision or action of the Commission, a presiding officer, or an Atomic Safety and Licensing Appeal Board or any action by the NRC staff in issuing a license in accordance with § 2.1205(l) are governed by § 2.788, except that any request for a stay of staff licensing action pending completion of an adjudication under this subpart must be filed at the time a request for a hearing or petition to intervene is filed or within ten (10) days of the staff's action, whichever is later.

Dated at Washington, DC, this 21st day of May, 1987.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
*Secretary of the Commission.*

[FR Doc. 87-12304 Filed 5-28-87; 8:45 am]
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## FEDERAL TRADE COMMISSION

**16 CFR Part 13**

**[Docket 9154]**

**Volkswagen of America, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment; Correction**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; correction.

**SUMMARY:** This document corrects a Commission document previously published in the **Federal Register** on Wednesday, May 13, 1987, 52 FR 17960. The proposed consent agreement did not include the full text of Attachment B to the proposed order. A portion of the last paragraph of that section was not included (see 52 FR 17972). This notice contains the full text of Attachment B.

**DATE:** Comments will be received until June 16, 1987.

**ADDRESS:** Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** FTC/H-238A, Robert M. Doyle, Washington, DC 20580. (202) 326-3114.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 16 CFR Part 13**

Arbitration, Automobiles, Trade practices.

Attachment B, which was published at 52 FR 17971-17972, is set forth in full, below:

**Attachment B—Background Statement; Engine Damage from Lack of Oil**

**Notice: Please read the attached "Oil Usage" Background Statement, if this case also involves a claim of excessive oil usage or consumption. It may contain useful facts for this case.**

*Background*

This case may involve an owner's complaint about engine damage from lack of oil in a gasoline-fueled 1974-1979 [Volkswagen] water-cooled engine [Audi Fox or 5000].

Since 1981, the Federal Trade Commission (FTC) and [Volkswagen (VW)] [Volkswagen of America, Inc., the importer of Audi vehicles (Audi)] have been involved in an administrative lawsuit which includes allegations of excessive oil consumption and engine damage from lack of oil in 1974 to 1979 [VW cars with water-cooled gasoline engines] [Audi Fox and 5000 vehicles]. The FTC has alleged that [VW] [Audi] failed to tell consumers about an "abnormally high" number of engines damaged from lack of oil in these vehicles. [VW] [Audi] has denied this claim and has stated that it has at all times provided owners with more than sufficient information to operate and maintain their vehicles safely and economically. [VW] [Audi] and the FTC have now agreed to settle this dispute without further litigation.

As part of their settlement of this dispute, [VW] [Audi] and the FTC have agreed to allow such complaints to be submitted to mediation and arbitration. They have prepared this statement and the attached statement to give consumers, mediators and arbitrators potentially useful background facts. Some of these facts may not be widely known.

*Engine Damage From Lack of Oil*

Like other automobile engines, the [Volkswagen water-cooled] [Audi] engine will be severely damaged if it is run without sufficient lubricating oil circulating within the engine. Engine components which can be damaged in this manner include connecting rods, crankshaft, bearings and the engine block itself.

Whether a particular automobile engine is damaged from lack of oil depends on three factors: the engine's rate of oil consumption, its effective

crankcase capacity, and the intervals at which its oil level is checked and replenished.

Over the life of the engine (100,000 miles or more), the amount of oil consumed by individual 1974–1979 [VW] [Audi] vehicles has varied widely at various times from less than one quart per 7,500 miles (the oil change interval), to more than one quart per 400 miles ([VW's] [Audi's] maximum usage figure (345 miles for the 5000), which was published in 1977–1979 model year vehicle owner's literature).

[Starting with a full crankcase, Rabbit and Scirocco engines can consume approximately three quarts of oil (Dasher—2.5 quarts) without checking and refilling the oil before engine damage becomes an immediate risk. The maximum cruising range of these vehicles per tankful of gasoline, based on EPA mileage estimates, is approximately 275 miles.]

[Starting with a full crankcase, the Audi vehicles can consume approximately the following amounts of oil without checking and refilling the oil before engine damage becomes an immediate risk:

| | |
|---|---|
| Fox | 2.5 quarts. |
| 5000 | 4.1 quarts. |

The approximate maximum distance which these vehicles can be driven per tankful of gasoline, based on EPA mileage estimates, is as follows:

| | |
|---|---|
| Fox | 335 miles. |
| 5000 (1978) | 290 miles. |
| 5000 (1979) | 380 miles. |

During the period 1974–1979 and thereafter, [Volkswagen] [Audi] received reports that a number of engines in its vehicles had been damaged from insufficient oil.

Between 1974 and 1979, [Volkswagen] [Audi] modified the recommendations in its owner's literature that operators of its vehicles check the oil level at periodic intervals as follows:

—1974–76 owner's manuals stated "the engine oil level should be checked from time to time";

—1977–78 owner's manuals stated: "make it a habit to have the engine oil level checked with every second fuel filling";

—1979 owner's manuals stated: "make it a habit to have the engine oil level checked with every fuel filling";

—1978–1979 Warranty and Maintenance booklets repeated the above advice on oil checking intervals and included statements as to the consequences of lack of sufficient engine oil.

[Volkswagen only: Volkswagen sent a letter to owners of 1975–1979 Rabbits and Sciroccos (Dasher owners did not receive this letter) to remind them to check the oil level with every fuel filling. The letter was sent to owners of standard transmission cars in approximately August 1979 and to owners of automatic transmission cars in approximately June 1980. Dealers were also told in August 1979 to attach a sticker reading "Check Engine Oil" around the fuel filler neck under the gas cap of each vehicle they serviced.]

The FTC claims that the information contained in the owner's manuals, [and] maintenance booklets [,] [, letter to consumers, and sticker] was insufficient to alert owners to the risk of serious engine damage from lack of oil. The FTC says that oil consumption in 1974–1979 water-cooled gasoline engines could unexpectedly increase because of deteriorating valve stem seals, and that [VW] [Audi] did not inform owners of this fact. The FTC also says that such an oil consumption increase, if undetected, could lead to severe engine damage from lack of oil, and the FTC claims that [VW] [Audi] did not tell consumers of these facts as well.

[VW] [Audi] says that the information and recommendations in its owner's literature [and communications] were significantly more detailed than those of any other manufacturer and were more than sufficient to prevent any engine damage. [VW] [Audi] denies that oil consumption or valve stem seal performance in its engines was in any way abnormal. [VW] [Audi] says that lubrication-related engine failures were not caused by oil consumption, but by insufficient oil level maintenance, compounded by a large increase in self-service gas stations in the 1970's.

The oil pressure warning light in automobiles is not specifically designed to measure oil level. Therefore, under some operating conditions, the engine may be damaged from low oil level before the oil pressure drops sufficiently to activate the dashboard light.

During the late 1970's, [Volkswagen] [Audi] received reports that some customers who complained of engine damage from lack of oil may have in fact been relying on their dashboard warning lights, rather than their oil dipsticks, to monitor the crankcase oil levels in their cars.

Prior to 1979, all [VW] [Audi] owner's manuals stated that, if the oil pressure warning light comes on while driving, the driver should stop at once, turn the engine off, check the oil level and replenish, if necessary, and not operate the vehicle if the warning light remains on while the engine is restarted. In the 1979 model year, Volkswagen first included additional language, which had not previously appeared in its owner's manuals. This new language stated specifically that the oil pressure warning light is not an oil level indicator and that the dipstick is the proper means of checking the oil level.

*[Volkswagen's] [Audi's] Warranty*

[Volkswagen] [Audi] provides a limited warranty with each new [Volkswagen] [Audi] vehicle sold by one of its dealers. The warranty generally covers any repair and adjustment needed to correct defects in materials and workmanship within the warranty period. However, complaints may occur after the warranty, including complaints of engine damage from lack of oil. A manufacturer's warranty is not necessarily the manufacturer's only responsibility, and should not determine the outcome of this case.

Emily H. Rock,

*Secretary.*

[FR Doc. 87–12257 Filed 5–28–87; 8:45 am]

BILLING CODE 6750-01-M

## UNITED STATES INFORMATION AGENCY

## 22 CFR Part 514

[Rulemaking No. 3—Citizenship of Responsible Officers and Sponsorship]

## Exchange Visitor Program; Citizenship of Responsible Officers and Sponsors

**AGENCY:** United States Information Agency.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Information Agency proposes to amend Title 22, Code of Federal Regulations, Part 514 to provide that responsible Officers of designated sponsors be citizens of the United States and that designated sponsors be United States organizations and corporations.

**DATES:** Comments on the proposed rule will be accepted until July 28, 1987. All written communications received on or before the closing date will be considered by the Agency before taking action on a final rule.

**ADDRESS:** Interested persons should submit relevent views or arguments to Merry Lymn, Attorney Advisory, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–7976.

**FOR FURTHER INFORMATION CONTACT:** Merry Lymn, Attorney Advisor, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–7976.

**SUPPLEMENTARY INFORMATION:** Three new immigration bills became law in November, 1986: The Immigration Reform and Control Act of 1986, Pub. L. 99–603; The Immigration Marriage Fraud Amendments of 1986, Pub. L. 99–639; and

the Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653.

(The State Department Efficiency Bill).

In light of the concern with immigration procedures, the United States Information Agency is in the process of reviewing the regulations governing the issuance of J-1 visas found at 22 CFR 514. In the course of review, the Agency has discovered that there is no written requirement that Responsible Officers be United States citizens. However, it has been the practice of the Exchange Visitor Facilitative Staff for the past five years to restrict designations to United States citizens. The agency believes that the person signing the Certificate of Eligibility Form IAP-66, as an agent of the United States Government, will better protect its interests, and will have a better understanding of the purposes of the exchange visitor program if he/she is a United States citizen. Likewise United States exchange organizations and corporations will better protect U.S. interests than foreign organizations and corporations.

Accordingly, the Agency proposes to modify the regulations by adding a requirement that the Responsible Officers be United States citizens and that all organizations other than international agencies be incorporated under the laws of the United States. Comments are sought from the Department of the State Consular Affairs and the Immigration and Naturalization Service as well as from the public.

The Agency has determined that this proposed rule is "non-major" under criteria set forth in Executive Order 12291. The rule not have an annual effect on the economy of $100 million or more; nor will it result in a major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies, or geographic regions. Furthermore, competition, employment investment, productivity, innovation, and the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets will not be adversely affected.

**List of Subjects in 22 CFR Part 514**

Cultural exchange programs.

The United States Information Agency proposes to amend the Regulations in Chapter V Part 514 of Title 22, Code of Federal Regulations as set forth below.

**PART 514—[AMENDED]**

1. The authority citation for 22 CFR Part 514 is revised as follows:

**Authority:** U.S. Information and Educational Exchange Act of 1948, as amended, Pub. L. 80-402, as amended (22 U.S.C. 1431-1443); Mutual Educational and Cultural Exchange Act of 1961, as amended, Pub. L. 87-256, 75 Stat. 527, 534, 535 (8 U.S.C. 1101, 1104, 1182, 1258 and 22 U.S.C. 2451-2460); Pub. L. 97-241, 96 Stat. 291; 66 Stat. 166, 182, 184, 204 (8 U.S.C. 1101(a)(15)(j), 1182(e), 1182(j), 1258); Pub. L. 91-225, 84 Stat. 116, 117, (8 U.S.C. 1101, 1182); Pub. L. 97-116, 96 Stat. 1611, 1612, 1613 (8 U.S.C. 1101, 1182); Reorg. Plan No. 2 of 1977; E.O. 12048 of March 27, 1978; USIA Delegation Order No. 85-5 (50 FR 27393).

2. Section 514.1 is amended by revising the definitions of "Responsible Officer" and "Spondor" as set forth below.

**§ 514.1 Definitions.**

* * * * *

"Responsible Officer" means the official of an organization sponsoring an Exchange-Visitor Program who has been listed with the Agency as being responsible for administering the program and carrying out the obligations which the organization assumes in undertaking to sponsor a program (see § 514.14). The designation of an Alternate Responsible Officers is permitted and encouraged. The Responsible Officer and all Alternate Responsible Officers must be United States citizens.

"Sponsor" means any reputable U.S. agency or organization or recognized international agency or organization having U.S. membership and offices which makes application as hereinafter prescribed to the Director for designation of a program under its sponsorship as an Exchange-Visitor Program and whose application is approved. Other corporations or organizations which are not incorporated under United States law may not be designated as a sponsor.

* * * * *

Dated: April 22, 1987.

C. Normand Poirier,

*Acting General Counsel and Congressional Liaison.*

[FR Doc. 87-12280 Filed 5-28-87; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

**[DoD 6010.8-R, Amdt.]**

**Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Active Duty Dependents Dental Plan**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed amendment to rule.

**SUMMARY:** This proposed rule would amend Part 199 of Title 32, the Regulation which implements CHAMPUS programs, by adding a new section to implement Chapter 55, Title 10, section 1076a U.S.C., which authorizes the Active Duty Dependent Dental Plan. The proposed rule defines the benefits and eligibility requirements, provides for insurance or prepayment contracting for benefit administration and payment, provides for Government and uniformed Services member sharing in the cost of premiums for the insurance or prepayment contract, defines authorized providers, provides for benefit communications and implementation, establishes alternative delivery systems criteria and requirements, and provides an appeals procedure. Eligibility for the Program is limited to dependents of active duty members of the Uniformed Services residing in the 50 United States, District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Benefits of the program are limited to diagnostic services, oral examinations, scaling deposits from teeth, polishing of teeth, topical application of fluoride to teeth, space maintenance, minor palliative emergency services, amalgam and composite restorations, stainless steel crowns for primary teeth, and dental appliance repairs, Benefits are further limited by the limitations and exclusions established for these benefits by the Director, OCHAMPUS or designee to assure quality of care and appropriate cost constraints. Authorized providers are dentists and dental hygienists practicing within the scope of their licenses.

**DATES:** Written comments must be received on or before July 13, 1987.

**ADDRESS:** Office of Civilian Health and Medical Program of the Uniform Services (OCHAMPUS), Policy Division, Aurora, CO 80045-6900.

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Rhea, Policy Division, OCHAMPUS, telephone (303) 361-3278.

**SUPPLEMENTARY INFORMATION:** Chapter 55, title 10, section 1076a U.S.C. provides that "the Secretary of Defense may establish dental benefit plans for spouses and children (as described in section 1072(2)(D) of this title) of members of the uniformed services who are on active duty for a period of more than 30 days." This provision further requires that enrollment of participants be voluntary "and include provisions for premium-sharing between the Department of Defense and members

enrolling in the program." The law also specifies that the "member's share of the premium shall be paid by deductions from the basic pay of the member."

Eligibility is further limited by Congressional guidance to dependents of active duty members residing within the continental United States. We believe that a reasonable interpretation of this limitation should include the 50 states and the District of Columbia for reasons of equity among active duty dependents residing within the United States. In addition, active duty members' dependents residing in Puerto Rico have been included because of its Commonwealth status and the consistency of requirements for the practice of dentistry in that Commonwealth with the requirements of the 50 states and the District of Columbia. Finally, the U.S. Virgin Islands have been included because of its proximity to the Commonwealth of Pureto Rico, conformance of dental practice with the requirements of the United States, and the lack of Uniformed Services dental facilities in the Virgin Islands.

Two categories of dental benefits are provided:

"(1) Diagnostic, oral examination, and preventive services and palliative emergency care: and (2) basic restorative services of amalgam and composite restorations and stainless steel crowns for primary teeth, and dental appliance repairs."

The procedure coding and nomenclature for dental services established by the American Dental Association and commonly used by dental insurance and prepayment plans provides an appropriate basis for identifying the services which are proposed for inclusion in the benefit structure within the constraints of the intent of section 1076a and the level of appropriations provided for the dental plan. To assure quality of care and reasonable cost constraints within level of benefits, we believe it is necessary to permit the dental insurer or dental plan to use its expertise in proposing specific limitations and exclusions on the benefit plan to the Director, OCHAMPUS or designee for approval prior to implementation of the benefits.

Voluntary enrollment is provided for initially by permitting active duty members to decline enrollment of their dependents during a period of 90 days prior to the start of benefits on August 1, 1987. Active duty members may also disenroll their dependents when they transfer to a different duty station in a different locality from that in which they enrolled if dental care is provided to the member's dependents at a uniformed services dental facility or by another dental plan provided through the spouse's employment. Provisions are made for termination of benefits in instances required by military justice decisions. In all other cases, enrollment is for a minimum period of two years. Members who have declined enrollment may elect to enroll their dependents at any time for the minimum of two years subject to the exceptions identified above.

Provisions have been included to assure access to participating providers. Participating providers will be paid directly by the insurers and are paid at a percentile level of statewide and regional prevailing fees above nonparticipating providers adequate to produce an effective financial incentive for participation. Lists of participating providers will also be made available at most uniformed services installations to assist beneficiaries in selecting their civilian dentists. Nonparticipating providers will be paid at not less than the 50th percentile of the statewide or regional prevailing fees.

The Director, OCHAMPUS or designee may establish or use existing alterntive delivery systems for dental care, such as preferred provider organizations or similar provider-based or subcontractor-based agreements. If the alternative delivery system uses a discounted fee arrangement, the discount negotiated by the alternative delivery organization for all dental services must be made available to beneficiaries of this program. This provision helps attract beneficiaries to these organizations, which have additional criteria applied to assure quality of care and beneficiary satisfaction, and helps the Government assure beneficiaries of reasonable prices for all their dental services.

Some state laws require that dental alternative delivery systems be provided with beneficiaries having a choice between them and providers who elect not to participate in these arangements. Where this is the case, the use of alternative delivery systems by this program will generally comply with the state requirement.

In localities in other states, the insurer may elect to provide the same choice, or to establish the alternative delivery system with sufficient providers electing to participate to assure good quality and convenient access for beneficiaries, and to recognize only those providers in the alternative delivery system as authorized providers for payment under the program. Where only the alternative delivery system is to be recognized for payment under the program, those beneficaries who had established a patient relationship with a dentist prior to the decision to use the alternative delivery system could continue to receive benefit payments for services rendered by that dentist even if the dentist decided not to participate in the alternative delivery system. Use of an alternative delvery system is at the option of the insurer subject to approval by the government based on its evaluation that the proposed alternative delivery system meets the criteria established in the contract for beneficiary access, adequate capacity, and reduced cost.

To assist the beneficiary, provider, insurer, and the Government in communications regarding the program, the Director, OCHAMPUS or designee will develop and distribute a dental benefits brochure. This brochure will be used by all parties as the principal source of information concerning program benefits. In addition, it will be used by the insurer as the primary reference or policy in accordance with the law and regulation in the adjudication of claims.

Appeals provisions are provided where the member or beneficiary believes benefits of the program have been denied to the beneficiary by the insurer, and where the provider has been initially denied or subsequently removed by the insurer as an authorized provider. The appeals provisions provide for a reconsideration and decision by the insurer concerning a benficiary's or provider's complaint prior to initiation of an appeal. The reconsideration decision is final if the issue is (1) a benefit denial in the amount of less than $50, or (2) a request for formal review has not been received by OCHAMPUS within 60 days of the date of the notice of reconsideration determination containing the offer of appeal rights. In all other cases, the appealing party may request a formal review of the matter by OCHAMPUS, expcept that a requirement of law or regulation, or benefit exclusion and limitation approved in compliance with law and regulation shall be denied as a matter for formal review.

In summary, this proposed amendment to the part implements a new dental benefit program for dependents of active duty members of the uniformed services. The amendment proposes to implement the program by contracting with a dental insurer or dental prepayment organization to provide a premium-based benefit program in accordance with section 1076a of Chapter 55, Title 10 U.S.C. The proposed amendment provides for an insurance, service, or prepayment plan

which functions in a manner consistent with the law and the practices and benefits of dental care plans purchased by private sector employers. We believe the result of the provisions of this amendment will assure good service to its beneficiaries and minimum intrusion by the government into the available arrangements for effective and high quality delivery of the dental plan benefits.

The amendment is being published for proposed rulemaking at the same time as it is being coordinated with the Department of Defense, Department of Health and Human Services, Department of Transportation, and with other interested agencies in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

**List of Subjects in 32 CFR Part 199**

Dental insurance, Military personnel.

**PART 199—[AMENDED]**

Accordingly, it is proposed to amend 32 CFR Part 199 as follows:

1. The authority citation for Part 199 is revised to read as follows:

**Authority:** 10 U.S.C. 1076a, 1079, 1086; 5 U.S.C. 301.

2. Section 199.13 is added to read as follows:

**§ 199.13 Active duty dependents dental plan.**

(a) *General provisions—(1)* Purpose. This section prescribes guidelines and policies for the delivery and administration of the Active Duty Dependents Dental Plan of the Uniformed Services for the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the U.S. Public Health Service (USPHS), and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA).

(2) *Applicability*—(i) *Geographic.* This section is applicable geographically within the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(ii) *Agency.* The Provisions of this section apply throughout the Department of Defense (DoD), the Coast Guard, the Commissioned Corps of the USPHS, and the Commissioned Corps of the NOAA.

(3) *Authority and responsibility*—(i) *Legislative authority*—(A) *Joint regulations.* 10 U.S.C. Chapter 55, 1076a authorizes the Secretary of Defense, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation, to prescribe regulations for the administration of the Active Duty Dependents Dental Plan.

(B) *Administration.* 10 U.S.C. Chapter 55 also authorizes the Secretary of Defense to administer the Active Duty Dependents Dental Plan for the Army, Navy, Air Force, and Marine Corps under DoD jurisdiction, the Secretary of Transportation to administer the Active Duty Dependents Dental Plan for the Coast Guard, when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services to administer the Active Duty Dependents Dental Plan for the Commissioned Corps of the NOAA and the USPHS.

(ii) *Organizational delegations and assignments.*—(A) *Assistant Secretary of Defense (Health Affairs) (ASD(HA)).* The Secretary of Defense, by 32 CFR Part 367, delegated authority to the ASD(HA) to provide policy guidance, management control, and coordination as required for all DoD health and medical resources and functional areas including health benefit programs. Implementing authority is contained in 32 CFR Part 367. For additional implementing authority see § 199.1 (c) of this part.

(B) *Evidence of eligibility.* The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a listing of persons eligible to receive benefits under the Active Duty Dependents Dental Plan.

(4) *Active duty dependents dental benefits plan.* This is a program of dental benefits provided by the U.S. Government under public law to specified categories of individuals who are qualified for these benefits by virtue of their relationship to one of the seven Uniformed Services, and their voluntary decision to accept enrollment in the program and cost share with the Government in the premium cost of the benefits. The Dependents Dental Plan is an insurance, service, or prepayment plan involving a contract guaranteeing the indemnification or payment of the enrolled member's dependents against a specified loss in return for a premium paid. Where state regulations, charter requirements, or other provisions of state and local regulation governing dental insurance and prepayment programs conflict with Federal law and regulation governing this Program, Federal law and regulation shall govern. Otherwise, this Program shall comply with state and local regulatory requirements.

(5) *Plan funds*—(i) *Funding sources.* The funds used by the Active Duty Dependents Dental Plan are appropriated funds furnished by the Congress through the annual appropriation acts for the Department of Defense and the DHHS and funds collected by the Uniformed Services monthly through payroll deductions as premium shares from enrolled members.

(ii) *Disposition of funds.* Plan funds are paid by the Government as premiums to an insurer, service, or prepaid dental care organization under a contract negotiated by the Director, OCHAMPUS, or a designee, under the provisions of the Federal Acquisition Regulation (FAR).

(iii) *Plan.* The Director, OCHAMPUS or designee provides an insurance policy, service plan, or prepaid contract of benefits in accordance with those prescribed by law and regulation; as interpreted and adjudicated in accord with the policy, service plan, or contract and a dental benefits brochure; and as prescribed by requirements of the dental plan organization's contract with the government.

(iv) *Contracting out.* The method of delivery of the Active Duty Dependents Dental Benefit Plan is through a competitively procured contract. The Director, OCHAMPUS, or a designee is responsible for negotiating, under provisions of the FAR, a contract for dental benefits insurance or prepayment which includes responsibility for (A) development, publication, and enforcement of benefit policy, exclusions, and limitations in compliance with the law, regulations, and the contract provisions; (B) adjudicating and processing claims; and conducting related supporting activities, such as eligibility verification, provider relations, and beneficiary communications.

(6) *Role of Health Benefits Advisor (HBA).* The HBA is appointed (generally by the commander of a Uniformed Services medical treatment facility) to serve as an advisor to patients and staff in matters involving the Active Duty Dependents Dental Plan. The HBA may assist beneficiaries or sponsors in applying for benefits, in the preparation of claims, and in their relations with OCHAMPUS and the dental plan insurer. However, the HBA is not responsible for the plan's policies and procedures and has not authority to make benefits determinations or obligate the plan's funds. Advice given to beneficiaries as to determination of benefits or level of payment is not binding on OCHAMPUS or the insurer.

(7) *Disclosure of information to the public.* Records and information acquired in the administration of the

Active Duty Dependents Dental Plan are records of the Department of Defense and may be disclosed in accordance with 32 CFR Parts 286 and 286a, constituting the applicable DoD Directives and DoD Regulations implementing the Freedom of Information and the Privacy Acts.

(8) *Equality of benefits.* All claims submitted for benefits under the Active Duty Dependents Dental Plan shall be adjudicated in a consistent, fair, and equitable manner, without regard to the rank of the sponsor.

(9) *Coordination of benefits.* The dental plan insurer shall conduct coordination of benefits for the Active Duty Dependents Dental Plan in accordance with generally accepted business practices.

(10) *Information on participating providers.* The Director, OCHAMPUS or designee, shall develop and make available to Uniformed Services Health Benefits Advisors and military installation personnel centers copies of lists of participating providers and providers accepting assignment for all localities with significant numbers of dependents of active duty members. In addition, the Director, OCHAMPUS or designee, shall respond to inquiries regarding availability of participating providers in areas not covered by the lists of participating providers.

(b) *Definitions.* For most definitions applicable to the provisions of this section, refer to § 199.2. The following definitions apply to this section.

*Assignment.* Acceptance by a nonparticipating provider of payment directly from the insurer while reserving the right to charge the beneficiary or sponsor for any remaining amount of the fees for services which exceeds the prevailing fee allowance of the insurer.

*Authorized Provider.* A dentist or dental hygienist specifically authorized to provide benefits under the Active Duty Dependents Dental Plan in paragraph (f) of this section.

*Beneficiary.* A dependent of an active duty member who has been enrolled in the Active Duty Dependents Dental Plan, and has been determined to be eligible for benefits, as set forth in paragraph (c) of this section.

*Beneficiary Liability.* The legal obligation of a beneficiary, his or her estate, or responsible family member to pay for the costs of dental care of treatment received. Specifically, for the purposes of services and supplies covered by the Active Duty Dependents Dental Plan, beneficiary liability includes cost-sharing amounts for restorative services, and, any amount above the prevailing fee determination by the insurer for either preventive or restorative services where the provider selected by the beneficiary is not a participating provider or a provider within an approved alternative delivery system. Beneficiary liability also includes any expenses for services and supplies not covered by the Active Duty Dependents Dental Benefit Plan, less any discount provided as a part of the insurer's agreement with an approved alternative delivery system.

*By report.* Dental procedures which are authorized as benefits only in unusual circumstances requiring justification of exceptional conditions related to otherwise authorized procedures. For example, a house call might be justified based on an enrolled dependent's severe handicap which prevents visits in the dentist's office for traditional prophylaxis. Alternatively, additional drugs might be required separately from an otherwise authorized procedure because of an emergent reaction caused by drug interaction during the performance of a restoration procedure. These services are further defined in paragraph (e) of this section.

*Cost-Share.* The amount of money for which the beneficiary (or sponsor) is responsible in connection with otherwise covered dental services (other than disallowed amounts) as set forth in paragraphs (d) (6) and (e) of this section. Cost-sharing may also be referred to as "co-payment."

*Defense Enrollment Eligibility Reporting System (DEERS).* The automated system that is composed of two phases:

(1) Enrolling all active duty and retired service members, their dependents, and the dependents of deceased service members, and

(2) Verifying their eligibility for health care benefits in the direct care facilities and through the Active Duty Dependents Dental Plan.

*Dental hygienist.* Practitioner in rendering complete oral prophylaxis services, applying medication, performing dental radiography, and providing dental education services with an associate degree or bachelor's degree in the field, and licensed by an appropriate authority. Most, but not all, state laws require services to be performed under the supervision of a dentist.

*Dentist.* Doctor of Dental Medicine (D.M.D.) or Doctor of Dental Surgery (D.D.S.) who is licensed to practice dentistry by an appropriate authority.

*Diagnostic services.* Cateogory of dental services including (1) clinical oral examinations, (2) rediographic examinations, and (3) diagnostic laboratory tests and examinations provided in connection with other dental procedures authorized as benefits of the Active Duty Dependents Dental Plan and further defined in paragraph (e) of this section.

*Emergency palliative services.* Minor procedures performed for the immediate relief of pain and discomfort as further defined in paragraph (e) of this section. This definition excludes those procedures other than minor palliative services which may result in the relief of pain and discomfort, but constitute the usual initial stage or conclusive treatment in procedures not otherwise defined as benefits of the Active Duty Dependent Dental Plan.

*Initial Determination.* A formal written decision on an Active Duty Dependents Dental Plan claim, a request by a provider for approval as an authorized provider, or a decision disqualifying or excluding a provider as an authorized provider under the Active Duty Dependent Dental Plan. Rejection of a claim or a request for benefit or provider authorization for failure to comply with administrative requirements, including failure to submit reasonably requested information, is not an initial determination. Responses to general or specific inquiries regarding Active Duty Dependent Dental Plan benefits are not initial determinations.

*Laboratory and Pathological Services.* Laboratory and pathological examinations (including machine diagnostic tests that produce hard-copy results) ordered by a dentist when necessary to, and rendered in connection with other covered dental services.

Note.—Claims for enrolled Active Duty Dependent Dental Plan beneficiaries whose sponsor is classified as MIA are processed as dependents of an active duty service member.

*Nonparticipating provider.* A dentist or dental hygienist that furnished dental services to an Active Duty Dependents Dental Plan beneficiary, but who has not agreed to participate or to accept the insurer's fee allowances and applicable cost share as the total charge for the services. A nonparticipating provider looks to the beneficiary or sponsor for final responsibility for payment of his or her charge, but may accept payment (assignment of benefits) directly from the insurer or assist the beneficiary in filing the claim for reimbursement by the contractor. Where the nonparticipating provider does not accept payment directly from the insurer, the insurer pays the beneficiary or sponsor, not the provider.

*Participating Provider.* A dentist or dental hygienist who has agreed to accept the insurer's prevailing fee

allowances or other fee arrangements as the total charge (even though less than the actual billed amount), including provision for payment to the provider by the beneficiary (or sponsor) of the twenty percent cost-share for restorative services by the beneficiary (or sponsor).

*Party to a Hearing.* An appealing party or parties, the insurer, and OCHAMPUS.

*Party to the Initial Determination.* Includes the Active Duty Dependents Dental Plan, a beneficiary of the Active Duty Dependents Dental Plan and a participating provider of services whose interests have been adjudicated by the initial determination. In addition, a provider who has been denied approval as an authorized Active Duty Dependents Dental Plan provider is a party to that initial determination, as is a provider who is disqualified or excluded as an authorized provider, unless the provider is excluded under another federal or federally funded program. See paragraph (h) of this section for additional information concerning parties not entitled to administrative review under the Active Duty Dependents Dental Plan appeals procedures.

*Preventive Services.* Traditional prophylaxis including scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth as further defined in paragraph (e) of this section.

*Provider.* A dentist or dental hygienist as specified in paragraph (f) of this section.

*Representative.* Any person who has been appointed by a party to the intitial determination as counsel or advisor and who is otherwise eligible to serve as the counsel or advisor of the party to the initial determination, particularly in connection with a hearing.

*Restorative services.* Restoration of teeth including those procedures commonly described as amalgam restorations, resin restorations, pin retention, and stainless steel crowns for primary teeth as further defined in paragraph (e) of this section.

(c) *Enrollment and eligibility*—(1) *General.* Sections 1076a and 1072(2)(D) of 10 U.S.C., Chapter 55 set forth those persons who are eligible for voluntary enrollment in the Active Duty Dependents Dental Benefit Plan. A determination that a person is eligible for voluntary enrollment does not entitle such person automatically to benefit payments. The active duty member must enroll his or her dependents as defined in this section, and other sections of this part set forth additional requirements that must be met before eligibility for the plan is extended.

(2) *Persons eligible—Dependent.* A person who bears one of the following relationships to an active duty member (under a call or order that does not specify a period of 30 days or less).

(i) *Spouse.* A lawful husband or wife, regardless of whether or not dependent upon the active duty member.

(ii) *Child.* To be eligible, the child must be unmarried and a member of one of the classes set forth in paragraph (c)(2)(i)(B)(*1*) of this section and also meet the requirements of paragraph (c)(2)(i)(B)(*2*) of this section.

(A) A legitimate child.

(B) An adopted child whose adoption has been completed legally.

(3) A legitimate stepchild.

(4) An illegitimate child of a male member whose paternity has been determined judicially, or an illegitimate child of record of a female member who has been directed judically to support the child.

(5) An illegitimate child of a male active duty member whose paternity has not been determined judicially, or an illegitimate child of record of a female active duty member who (i) resides with or in a home provided by the member and (ii) is and continues to be dependent upon the member for over 50 percent of his or her support.

(6) An illegitimate child of the spouse of an active duty member (that is, the active duty member's stepchild) who (i) resides with or in a home provided by the active duty member or the parent who is the spouse of the member and (ii) is and continues to be dependent upon the member for over 50 percent of his or her support.

(7) In addition to meeting one of the criteria in paragraph (c) (1) through (6) of this section, the child:

(i) Must not be married.

(ii) Must be in one of the following three age groups:

(A) Not passed his or her 21st birthday.

(B) Passed his or her 21st birthday, but incapable of self-support because of a mental or physical incapacity that existed before his or her 21st birthday and dependent on the member for over 50 percent of his or her support. Such incapacity must be continuous. If the incapacity significantly improves or ceases at any time after age 21, even if such incapacity recurs subsequently, eligibility cannot be reinstated on the basis of the incapacity. If the child was not handicapped mentally or physically at his or her 21st birthday, but becomes so incapacitated after that time, no eligibility exists on the basis of the incapacity.

(C) Passed his or her 21st birthday, but not his or her 23rd birthday, dependent upon the member for over 50 percent of his or her support, and pursuing a full-time course of education in an institution of higher learning approved by the Secretary of Defense or the Department of Education (as appropriate) or by a state agency under 38 U.S.C., Chapter 34 and 35).

Note.—Courses of education offered by institutions listed in the "Education Directory, Part 3, Higher Education" or "Accredited Higher Institutions," issued periodically by the Department of Education meet the criteria approved by the Secretary of Defense or the Department of Education, (refer to § 199.3(b)(2)(iv)(C)(*1*) of this section). For determination of approval of courses offered by a foreign institution, by an institution not listed in either of the above directories, or by an institution not approved by a state agency pursuant to Chapter 34 and 35 of 38 U.S.C., a statement may be obtained from the Department of Education, Washington, DC 20202.

(3) *Enrollment.*—(i) *Initial enrollment.* Eligible dependents of members on active duty status as of August 1, 1987 are automatically enrolled in the Active Duty Dependents Dental Benefit Plan, except where any of the following conditions apply: (A) Active duty member is serving an initial enlistment term with less than two years of active duty remaining, except that such members' dependents may be enrolled during the initial enrollment period for benefits beginning August 1, 1987 provided that the member has at least six months remaining in the initial enlistment term. Enrollment of dependents must be for a period of two years, and the active duty member serving an initial enlistment period with less than two years remaining (subject to the initial enrollment exception) does not qualify for enrollment of his or her dependents until a contractual commitment exists for a reenlistment period meeting the two-year minimum enrollment for dental benefits.

(B) Active duty member has completed an election to disenroll his or her dependents form the Active Duty Dependents Dental Plan.

(C) Active duty member has only one dependent who is under four years of age as of August 1, 1987, and the member does not complete an election to enroll the child.

(ii) *Subsequent enrollment.* Eligible active duty members may elect to enroll their dependents for a period of not less than two years, except where any of the conditions in paragraph (c)(3)(i) of this section apply.

(iii) *Inclusive family enrollment.* All eligible dependents of the active duty member must be enrolled if any are enrolled, except that a member may

elect to enroll only those dependents who are remotely located from the member (e.g., a child living with a divorced spouse or a child in college).

(4) *Beginning dates of eligibility*—(i) *Initial enrollment.* The beginning date of eligibility for benefits is August 1, 1987.

(ii) *Subsequent enrollment.* The beginning date of eligibility for benefits is the first day of the month following the month in which the election of enrollment is completed, signed, and received by the active duty member's Service representative, except that the date of eligibility shall not be earlier than September 1, 1987.

(5) *Changes in and termination of enrollment*—(i) *Changes in status of active duty member.* When an active duty member's period of active duty ends for any reason, his or her dependents lose their eligibility as of 12:01 a.m. of the first day of the month following the month in which the active duty ends.

(ii) *Desertion status of active duty member.* Eligibility for the Active Duty Dependent Dental Plan benefits ceases as of 12:01 a.m. of the day following the day a member is placed in desertion status. The member's dependents regain eligibility when the member is returned to military control and base pay is restored. Enrollment is restored for the dependents of the active duty member who has been in desertion status of less than six months by payment of back premiums due, and claims for sevices rendered during the retroactive period status greater than six months are not eligible to be enrolled until one year following the day the member was placed in desertion status. A member serving a sentence of confinement in conjunction with a sentence of a punitive discharge is still considered on active duty until such time as the discharge is executed.

(iii) *Changes in status of dependent*—(A) *Divorce.* A spouse separated from an active duty member by a final divorce decree loses all eligibility based on his or her formal marital relationship as of 12:01 a.m. of the day following the day the divorce becomes final. The eligibility of the member's own children (including adopted and eligible illegitimate children) is unaffected by the divorce. An unadopted stepchild, however, loses eligibility with the termination of the marriage, also as of 12:01 a.m. the day following the day the divorce becomes final.

(B) *Annulment.* A spouse whose marriage to an active duty member is dissolved by annulment loses eligibility as of 12:01 a.m. of the day following the date of court grants the annulment order. The fact that the annulment legally declares the entire marriage void from its inception does not affect the termination date of eligibility. When there are children, the eligibility of the member's own children (including adopted and eligible illegitimate children) is unaffected by the annulment. An unadopted stepchild, however, loses eligibility with the annulment of the marriage, also as of 12:01 a.m. of the day following the day the court grants the annulment order.

(c) *Adoption.* A child of an active duty member who is adopted by a person, other than a person whose dependents are eligible for the Active Duty Dependents Dental Plan benefits while the active duty member is living, thereby severing the legal relationship between the child and the sponsor, loses eligibility as of 12:01 a.m. of the day following the day the adoption becomes final.

(D) *Marriage of child.* A child of an active duty member who marries a person whose dependents are not eligible for the Active Duty Dependents Dental Plan, loses eligibility as of 12:01 a.m. on the day following the day of the marriage. However, should the marriage be terminated by death, divorce, or annulment before the child is 21 years old, the child again becomes eligible for enrollment as a dependent as of 12:01 a.m. of the day following the day of the occurrence that terminates the marriage and continues up to age 21 if the child does not remarry before that time. If the marriage terminates after the child's 21st birthday, there is no reinstatement of eligibility.

(E) *Disabling illness or injury of child age 21 or 22 who has eligibility based on his or her student status.* A child 21 or 22 years old who is pursuing a full-time course of higher education and who, either during the school year or between semesters, suffers a disabling illness or injury with resultant inability to resume attendance at the institution remains eligible for dental benefits for 6 months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, dental benefits can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in full-time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status does not have eligibility related to mental or physical incapacity as described in § 199.3(b)(2)(iv)(C)(2) of this section.

(iii) *Option to disenroll as a result of a change in active duty station.* When an active duty member makes a change in duty station resulting in a move of his or her dependents to a new locality, the member may elect to disenroll from the Plan if dental care for these benefits is available from a local military dental clinic available to the member's dependents.

(iv) *Option to disenroll as a result of electing other dental insurance coverage.* When an active duty member's dependents become enrolled in another dental insurance plan, the member may elect to disenroll from the Active Duty Dependents Dental Plan. Proof of other dental insurance coverage must be provided to the appropriate Service representative prior to approval of disenrollment.

(v) *Option to disenroll after an initial two-year enrollment.* When an active duty member's enrollment of his or her dependents has been in effect for a continuous period of two years, the member may disenroll his or her dependents at any time. Subsequently, the member may enroll his or her dependents for another minimum period of two years.

(6) *Eligibility determination and enrollment*—(i) *Eligibility determination and enrollment responsibility of Uniformed Services.* Determination of a person's eligibility and processing of enrollment in the Active Duty Dependents Dental Benefit Plan is the responsibility of the active duty member's Uniformed Service. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, review the eligibility of a specific person when there is reason to question the eligibility status. In such cases, a report on the result of the review and any action taken will be submitted to the Director, OCHAMPUS, or a designee.

(ii) *Procedures for determination of eligibility.* Uniformed Services identification cards do not distinguish eligibility for the Active Duty Dependents Dental Plan. Procedures for the determination of eligibility are identified in § 199.3(f)(2) of this part, except that Uniformed Services identification cards do not provide evidence of eligibility for the dental plan.

(7) *Evidence of eligibility required.* Eligibility and enrollment in the Active Duty Dependents Dental Plan will be verified through the DEERS (DoD

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1341.1–M,[1] "Defense Enrollment Eligibility Reporting System (DEERS) Program Manual," May 1982).

(i) *Acceptable evidence of eligibility and enrollment.* Eligibility information established and maintained in the DEERS files is the only acceptable evidence of eligibility.

(ii) *Responsibility for obtaining evidence of eligibility.* It is the responsibility of the active duty member, or Active Duty Dependent Dental Plan beneficiary, parent, or legal representative, when appropriate, to enroll and provide adequate evidence for entry into the DEERS file to establish eligibility for the Active Duty Dependents Dental Plan, and to ensure that all changes in status that may affect enrollment and eligibility are reported immediately to the appropriate Uniformed Service for action. Ineligibility for benefits is presumed in the absence of prescribed enrollment and eligibility evidence in the DEERS file.

(d) *Premium sharing*—(1) *General.* Active duty members enrolling their dependents in the Active Duty Dependents Dental Plan shall be required to pay a share of the premium cost for their dependents.

(2) *Premium classifications.* Premium classifications are established by the Secretary of Defense, or designee, and provide for a minimum of two classifications, single and family.

(3) *Premium amounts.* The premium amounts to be paid for the Active Duty Dependents Dental Plan are established by the Secretary of Defense or designee.

(4) *Proportion of member's premium share.* The proportion of premium share to be paid by the member is established by the Secretary of Defense or designee, at not more than 40 percent of the total premium.

(5) *Pay deduction.* The member's premium share shall be deducted from the basic pay of the member.

(e) *Plan benefits*—(1) *General*—(i) *Scope of benefits.* The Active Duty Dependents Dental Plan provides coverage for certain basic dental diagnostic, minor palliative emergency, preventive, and restorative services to eligible, enrolled dependents of active duty members as set forth in paragraph (c) of this section.

(ii) *Authority to act for the plan.* The authority to make benefit determinations and authorize plan payments under the Active Duty Dependents Dental Plan rests primarily with the insurance, service plan, or prepayment dental plan contractor, subject to compliance with federal law and regulation and government contract provisions. The Director, OCHAMPUS, or designee, provides required benefit policy decisions resulting from changes in federal law and regulations and appeal decisions. No other persons or agents (such as dentists or Uniformed Services health benefits advisors) have such authority.

(iii) *Right to information.* As a condition precedent to the provision of benefits hereunder, the Director, OCHAMPUS or designee shall be entitled to receive information from an authorized provider or other person, institution, or organization (including a local, state, or U.S. Government agency) providing services or supplies to the beneficiary for which claims for benefits are submitted. Such information and records may relate to attendance, testing, monitoring, examination, or diagnosis of dental disease or conditions or treatment rendered; or services and supplies furnished to a beneficiary; and shall be necessary for the accurate and efficient administration and payment of benefits under this plan. Before a determination will be made on a claim of benefits, a beneficiary or active duty member must provide particular additional information relevant to the requested determination, when necessary. The recipient of such information shall in every case hold such records confidential except when—

(A) Disclosure of such information is authorized specifically by the beneficiary;

(B) Disclosure is necessary to permit authorized governmental officials to investigate and prosecute criminal actions; or

(C) Disclosure is authorized or required specifically under the terms of the Privacy Act or Freedom of Information Act (refer to paragraph (a)(7) of this section). For the purpose of determining the applicability of and implementing the provisions of other dental benefits coverage or entitlement, the Director, OCHAMPUS or a designee may release, without consent or notice to any beneficiary or sponsor, to any person, organization, government agency, provider, or other entity, any information with respect to any beneficiary when such release constitutes a routine use published in the Federal Register in accordance with DoD 5400.11–R (Privacy Act (5 U.S.C. 522a)). Before a person's claim of benefits will be adjudicated, the person must furnish to the Director, OCHAMPUS or designee information that reasonably may be expected to be in his or her possession and that is necessary to make the benefit determination. Failure to provide the requested information may result in denial of the claim.

(iv) *Dental insurance policy, prepayment, or dental service plan contract.* The Director, OCHAMPUS or designee shall develop for approval by OCHAMPUS, a standard insurance policy, prepayment agreement, or dental service plan contract designating OCHAMPUS as the policyholder or purchaser The policy shall be in the form customarily employed by the dental plan insurer, subject to its compliance with federal law and the provisions of this Regulation.

(v) *Dental benefits brochure*—(A) *Content.* The Director, OCHAMPUS or designee shall establish a dental benefits brochure explaining the benefits of the plan in common lay terminology. The brochure shall include the limitations and exclusions and other benefit determination rules for administering the benefits in accordance with the law and this part. The brochure shall include the rules for adjudication and payment of claims, appealable issues, and appeal procedures in sufficient detail to serve as a common basis for interpretation and understanding of the rules by providers, beneficiaries, claims examiners, correspondence specialists, employees and representatives of the government bodies, health benefits advisors, and other interested parties.

(B) *Distribution.* The dental benefit brochure shall be printed and distributed with the assistance of the Uniformed Services to all active duty members enrolling their dependents, health benefits advisors, major personnel centers at Uniformed Services installations, and authorized providers of care.

(vi) *Utilization review and quality assurance.* Claims submitted for benefits under the Active Duty Dependents Dental Plan are subject to review by the Director, OCHAMPUS or designee for quality of care and appropriate utilization. The Director, OCHAMPUS or designee is responsible for appropriate utilization review and quality assurance standards, norms, and criteria consistent with the level of benefits.

(vii) *Alternative course of treatment policy.* The Director, OCHAMPUS or designee may establish, in accordance with generally accepted dental benefit practices, an alternative course of treatment policy which provides reimbursement in instances where the dentist and beneficiary select a more expensive service, procedure, or course

[1] Copies may be obtained, if needed, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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of treatment than is customarily provided. The benefit policy must meet the following conditions:

(A) The service, procedure, or course of treatment must be consistent with sound professional standards of dental practice for the dental condition concerned.

(B) The service, procedure, or course of treatment must be a generally accepted alternative for a service or procedure covered by this plan for the dental condition.

(C) Payment for the alternative service or procedure may not exceed the lower of the prevailing limits for the alternative procedure, the prevailing limits or scheduled allowance for the otherwise authorized benefit procedure for which the alternative is substituted, or the actual charge for the alternative procedure.

(2) *Benefits*—(i) *Diagnostic, preventive, and emergency palliative services.* Benefits may be extended for those dental services described as oral examination, diagnostic, emergency minor palliative, and preventive services defined as traditional prophylaxis (i.e., scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth) when performed directly by dentists or dental hygienists as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules approved by OCHAMPUS and provided in the dental benefits brochure) using the American Dental Association, Council on Dental Plans' Code On Dental Procedures and Nomenclature (6th revision) as follows:

(A) *Diagnostic.* (*1*) Clinical oral examinations including initial (00110), periodic (00120),and emergency (00130).

(*2*) Radiographs appropriate to the diagnosis and prevention of dental disease, where such services are not directly related to non-covered major procedures. Subject to the dental plan's exclusions and limitations approved by OCHAMPUS, these procedures are included within the range of 00210 to 00340.

(*3*) Tests and laboratory examinations appropriate to the diagnosis and prevention of dental disease, where such services are not directly related to non-covered major procedures. These procedures (00410 to 00999) are included, subject ot the dental plan's exclusions and limitations as adopted by OCHAMPUS and provided in the dental benefits brochure.

(B) *Preventive.* (*1*) Dental prophylaxis, including adult 01110) and child 01120).

(*2*) Topical fluoride treatment, including prophylaxis for a child (01201) and an adult 01205), and (where the Director, OCHAMPUS or designee determines to be appropriate) without prophylaxis for a child (01203) and an adult (01204).

(*3*) Space maintenance with passive appliances for those procedures included within the range of 01510 and 01550.

(C) *Emergency palliative.* Minor palliative procedure for immediate and temporary relief of pain and suffering (09110).

(ii) *Restorative.* Benefits may be extended for basic restorative services of amalgam, composite restorations, and stainless steel crowns for primary teeth when performed directly by dentists or dental hygienists, or under orders and supervision by dentists, as authorized under paragraph (f) of this section. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS and provided in the dental benefits brochure) using the American Dental Association, Council on Dental Plans' Code On Dental Procedures and Nomenclature (6th revision) as follows:

(A) Amalgam restorations, including polishing of one to four surfaces for primary and permanent teeth and included within the range of 02110 and 02161.

(B) Silicate restorations (02210).

(C) Resin restorations (subject to accepted dental practice) of one to four surfaces and included within the range of 02330 and 02387.

(D) Stainless steel crown for primary tooth (02930).

(E) Pin retention (02951).

(iii) *Dental appliance repairs.* Benefits may be extended for repairs to dentures when performed directly by dentists, or under orders and supervision by dentists as authorized under paragraph (f) of this section; subject to the dental plan's exclusions and limitations as adopted by OCHAMPUS and provided in the dental benefits brochure. These procedures are included within the range of 05510 and 05660.

(iv) *Services "By Report."* The following procedures are authorized when performed directly by dentists or dental hygienists only in unusual circumstances requiring justification of exceptional conditions directly related to otherwise authorized procedures. They are generally reserved for use where mental or physical impairements prevent the rendering of otherwise authorized procedures of this dental plan without one or more of these additional services. Use of the procedures may not result in the fragmentation of services normally included in a single procedure. These services are defined (subject to the dental plan's exclusions, limitations, and benefit determination rules as adopted by OCHAMPUS and provided in the dental benefits brochure) using the American Dental Association, Council on Dental Plans' Code On Dental Procedures and Nomenclature (6th revision) as follows:

(A) Local anesthesia (additional where not attendant to restorations or other procedures in which it is normally included—09210).

(B) Consultation (09310).

(C) House call (09440).

(D) Hospital call (09420).

(E) Office visit (after hours—09440).

(F) Drug injection (09610).

(G) Other drugs (09630).

(v) *Exclusion of adjunctive dental care.* Under limited circumstances, benefits are available for dental services and supplies under CHAMPUS when the dental care is medically necessary in the treatment of an otherwise covered medical (not dental) condition, is an integral part of the treatment of such medical condition, and is essential to the control of the primary medical condition; or is required in preparation for or as the result of dental trauma which may be or is caused by medically necessary treatment of an injury or disease (iatrogenic). These benefits are excluded under the Active Duty Dependents Dental Plan. For further information on adjunctive dental care benefits under CHAMPUS, see § 199.4 (e) (10) (i) and (ii) of this part.

(vi) *Benefit limitations and exclusions.* The Director, OCHAMPUS or designee may establish such exclusions and limitations as are consistent with those established by dental insurance and prepayment plans to control utilization and quality of care for the services and items covered by this dental plan. The exclusions and limitations which are established shall be published in the dental benefits brochure.

(3) *Beneficiary or sponsor liability*—(i) *Diagnostic, preventive, and emergency palliative services.* Enrolled dependents of active duty members or their sponsors are responsible for the payment of only amounts for services rendered by nonparticipating providers of care which exceed the equivalent of the statewide or regional prevailing fee levels as established by the insurer. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, the dental plan will reimburse the

dependent, or sponsor, or the nonparticipating provider selected by the dependent within 35 miles of the dependent's place of residence at the level of the provider's usual fees.

(ii) *Restorative services.* Enrolled dependents of active duty members or their sponsors are responsible for payment of 20 percent of the amounts determined by the insurer for services rendered by participating providers of care or 20 percent of these amounts plus any remainder of the charges made by nonparticipating providers of care. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of 20 percent of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence.

(iii) *Dental appliance repairs.* Enrolled dependents of active duty members are responsible for payment of the cost sharing amounts as provided in paragraph (e)(4)(ii) of this section.

(iv) *Services "By report."* Enrolled dependents of active duty members or their sponsors are responsible for payment of these services in accordance with their relationship to the otherwise authorized benefit procedures. For example, home visit charges which occur primarily for the purpose of rendering restorative services require payment of the 20 percent, while a home visit for purposes of dental prophylaxis do not require payment of the 20 percent. Payment of any remaining amount in excess of the prevailing charge limits established by the insurer would be required for services rendered by nonparticipating providers in either of the examples given, subject to the exceptions for dependent lack of access to participating providers as provided in paragraph (e)(3) (i) and (ii) of this section.

(v) *Amounts over the dental insurer's established allowances for charges.* It is the responsibility of the dental plan insurer to determine allowable charges for the procedures identified as benefits of this plan. All benefits of the plan are based on the insurer's determination of the allowable charges, subject to the exceptions for lack of access to participating providers as provided in paragraphs (e)(3)(i) and (ii) of this section.

(f) *Authorized providers*—(1) *General.* This section sets forth general policies and procedures that are the basis for the Active Duty Dependents Dental Plan cost sharing of dental services and supplies provided by or under the direct supervision of dentists, and by dental hygienists within the scope of their licensure.

(i) *Listing of provider does not guarantee payment of benefits.* The fact that a type of provider is listed in this section is not to be construed to mean that the Active Duty Dependents Dental Plan will pay automatically a claim for services or supplies provided by such a provider. The Director, OCHAMPUS or designee also must determine if the patient is an eligible beneficiary, whether the services or supplies billed are authorized and medically necessary, and whether any of the authorized exclusions of otherwise qualified providers presented in this section apply.

(ii) *Conflict of interest.* See § 199.9(d)(2)(iv) of this part.

(iii) *Fraudulent practices or procedures.* See § 199.9(c) of this part.

(iv) *Utilization review and quality assurance.* Services and supplies furnished by providers of care shall be subjected to utilization review and quality assurance standards, norms, and criteria established by the dental plan. Utilization review and quality assurance assessments shall be performed by the dental plan consistent with the nature and level of benefits of the plan, and shall include analysis of the data and findings by the dental plan insurer from other dental accounts.

(v) *Provider required.* In order to be considered benefits, all services and supplies shall be rendered by, prescribed by, or furnished at the direction of, or on the order of an Active Duty Dependents Dental Plan authorized provider practicing within the scope of his or her license.

(vi) *Participating provider.* An authorized provider may elect to participate and accept the fee or charge determinations as established and made known to the provider by the dental plan insurer. The fee or charge determinations are binding upon the provider in accordance with the dental plan insurer's procedures for participation. The authorized provider may not participate on a claim-by-claim basis. The participating provider must agree to accept within one day of a request for appointment, beneficiaries in need of emergency palliative treatment. Payment to the participating provider is based on the lower of the actual charge or the insurer's determination of the allowable charge. Payment is made directly to the participating provider, and the participating provider may charge the beneficiary only for the 20 percent cost share of the allowable charge for authorized restorative services in addition to the charges for any services not authorized as benefits.

(vii) *Nonparticipating provider.* An authorized provider may elect for all beneficiaries not to participate and request the beneficiary or sponsor to pay any amount of the provider's billed charge in excess of the dental plan insurer's determination of allowable charges. Neither the government nor the dental plan insurer shall have any responsibility for any amounts over the allowable charges as determined by the dental plan insurer, except where the dental plan insurer is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days. In such instances of the nonavailability of a participating provider, the nonparticipating provider located within 35 miles of the dependent's place of residence shall be paid his or her usual fees, less the 20 percent cost share for restorative services and related services by report.

(A) *Assignment.* A nonparticipating provider may accept assignment of claims for all beneficiaries by filing the claims completed with the assistance of the beneficiary or sponsor for direct payment by the dental plan insurer to the provider.

(B) *Nonassignment.* A nonparticipating provider for all beneficiaries may request the beneficiary or sponsor to file the claim directly with the dental plan insurer, making arrangements with the beneficiary or sponsor for direct payment by the beneficiary or sponsor.

(2) *Dentists.* Subject to standards of participation provisions of this part, the following are authorized providers of care:

(i) Doctors of Dental Surgery (D.D.S.) having a degree from an accredited school of dentistry, licensed to practice dentistry by a state board of dental examiners, and practicing within the scope of their licenses, whether in individual, group, or clinic practice settings.

(ii) Doctors of Dental Medicine (D.M.D.) having a degree from an accredited school of dentistry, licensed to practice dentistry by a state board of dental examiners, and practicing within the scope of their licenses, whether in individual, group, or clinic practice settings.

(3) *Dental hygienists.* Subject to state licensure laws and standards of participation provisions of this part, dental hygienists having either an associate degree or baccalaureate degree from an accredited school of

dental hygiene, licensed to practice dental hygiene by a state board, and practicing within the scope of their licenses, whether in individual, group, or clinic practice settings. Dental hygienists are not authorized as independent providers of care except in a small number of states where independent practice is included in the state licensure provisions. In all other states, the dental hygienist performs services under the supervision of a dentist.

(4) *Alternative delivery systems*—(i) *General.* Alternative delivery systems may be established by the Director, OCHAMPUS or designee as authorized providers. Only dentists and dental hygienists shall be authorized to provide or direct the provision of authorized services and supplies in an approved alternative delivery system.

(ii) *Defined.* An alternative delivery system may be any approved arrangement for a preferred provider organization, dental health maintenance or clinic organization, or other contracted arrangement which is approved by OCHAMPUS in accordance with requirements and guidelines.

(iii) *Elective or exclusive arrangement.* Alternative delivery systems may be established by contract or other arrangement on either an elective or exclusive basis for beneficiary selection of participating and authorized providers in accordance with contractual requirements and guidelines.

(iv) *Provider election of participation.* Otherwise authorized providers must be provided with the opportunity of applying for participation in an alternative delivery system and of achieving participation status based on reasonable criteria for timeliness of application, quality of care, cost containment, and acceptance of reimbursement allowances.

(v) *Limitation on authorized providers.* Where exclusive alternative delivery systems are established, only providers participating in the alternative delivery system are authorized providers of care. In such instances, the dental plan shall continue to pay beneficiary claims for services rendered by otherwise authorized providers in accordance with established rules for reimbursement of nonparticipating providers where the beneficiary has established a patient relationship with the nonparticipating provider prior to the dental plan's proposal to subcontract with the alternative delivery system.

(vi) *Charge agreements.* Where the alternative delivery system employs a discounted fees-for-service reimbursement methodology or schedule of charges or rates which includes all or most dental services and procedures recognized by the American Dental Association, Council on Dental Care Programs "Code on Dental Procedures and Nonenclature (6th Revision)," the discounts or schedule of charges or rates for all dental services and procedures shall be extended by its participating providers to beneficiaries of the Active Duty Dependents Dental Plan as an incentive for beneficiary participation in the alternative delivery system.

(5) *Billing practices.* The Director, OCHAMPUS, or designee, approves the dental plan's procedures governing the itemization and completion of claims for services rendered by authorized providers to enrolled beneficiaries of the Active Duty Dependents Dental Plan consistent with the insurer's existing procedures for completion and submittal of dental claims for its other dental plans and accounts.

(6) *Reimbursement of authorized providers.* The Director, OCHAMPUS or designee, approves the dental plan methodology for reimbursement of services rendered by authorized providers consistent with law, regulation, and contract provisions, and the benefits of the Active Duty Dependents Dental Plan. The following general requirements for the methodology shall be met, subject to modifications and exceptions approved by the Director, OCHAMPUS or a designee.

(i) Nonparticipating providers (or the dependents or sponsors for unassigned claims) shall be reimbursed at the equivalent of not less than the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower; less any cost share amount due for restorative services, except where the dental plan insurer is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days. In such instances of the nonavailability of a participating provider, the nonparticipating provider located within 35 miles of the dependent's place of residence shall be paid his or her usual fees, less the 20 percent cost share for restorative services and related services by report.

(ii) Participating providers shall be reimbursed at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state as to constitute a significant financial incentive for participation, or the provider's actual charge, whichever is lower; less any cost share amount due for restorative services.

(g) *Benefit payment*—(1) *General.* Active Duty Dependent Dental Plan benefit payments are made either directly to the provider or to the beneficiary or sponsor, depending on the manner in which the claim is submitted or the terms of the subcontract of an alternative delivery system with the dental plan insurer.

(2) *Benefit payments made to a participating provider.* When the authorized provider has elected to participate in accordance with the arrangement and procedures established by the dental plan insurer, payment is made based on the lower of the actual charge or the insurer's determination of the allowable charge. Payment is made directly to the participating provider as payment in full, less the 20 percent cost share of the allowable charge for any of the restorative services authorized as benefits. The beneficiary or sponsor is responsible only for any required cost-sharing.

(3) *Benefit payments made to a nonparticipating provider.* When the authorized provider has elected not to participate in accordance with the arrangement and procedures established by the dental plan, payment is made by the insurer based on the lower of the actual charge or the insurer's determination of the allowable charge. The beneficiary is responsible for payment of the 20 percent cost-share of the allowable charge for any restorative services authorized as benefits, and any amount of the charge for all services above the allowable charge. Where the dental plan is unable to identify a participating provider of care within 35 miles of the dependent's place of residence with appointment availability within 21 calendar days, dependents or their sponsors are responsible for payment of 20 percent of the charges made by nonparticipating providers located within 35 miles of the dependent's place of residence.

(i) Assigned claims are claims submitted directly by the nonparticipating provider and are paid directly to the provider.

(ii) Nonassigned claims are claims submitted by the beneficiary or sponsor and are paid directly to the claimant.

(4) *Dental Explanation of Benefits (DEOB).* An explanation of benefits is sent to the beneficiary or sponsor and provides the following information:

(i) Name and address of the beneficiary.

(ii) Social Security Account Number (SSAN) of the sponsor.

(ii) Name and address of the provider.

(iii) Services or supplies covered by the claim for which the DEOB applies.

(iv) Dates the services or supplies were provided.

(v) Amount billed; allowable charge; and amount of payment.

(vi) To whom payment, if any, was made.

(vii) Reasons for any denial.

(viii) Recourse available to beneficiary for review of claim decision (refer to paragraph (h) of this section).

(5) *Fraud*—(i) *Federal laws.* 18 U.S.C. 287 and 1001 provide for criminal penalties for submitting knowingly or making any false, fictitious, or fraudulent statement or claim in any matter within the jurisdiction of any department or agency of the United States. Examples of fraud include situations in which ineligible persons not enrolled in the Active Duty Dependents Dental Plan obtain care and file claims for benefits under the name and identification of an enrolled beneficiary; or when providers submit claims for services and supplies not rendered to enrolled beneficiaries; or when a participating provider bills the beneficiary for amounts over the dental plan insurer's determination of allowable charges.

(ii) *Suspected fraud.* Any person, including the dental plan insurer, who becomes aware of a suspected fraud shall report the circumstances in writing, together with copies of any available documents pertaining thereto, to the Director, OCHAMPUS, or a designee, who shall initiate an official investigaiton of the case.

(h) *Appeal and hearing procedures*—(1) *General.* This section sets forth the policies and procedures for appealing decisions made by the dental plan adversely affecting the rights and liabilities of beneficiaries, participating providers, and providers denied the status of authorized provider under the Active Duty Dependents Dental Plan. An appeal under the Active Duty Dependents Dental Plan is an administrative review of program determinations made under the provisions of law and regulation. An appeal cannot challenge the propriety, equity, or legality of any provision of law and regulation.

(i) *Initial determination*—(A) *Notice of initial determination and right to appeal.* (*1*) The dental plan contractor shall mail notices of initial determinations to the Active Duty Dependents Dental Plan beneficiary at the last known address. For beneficiaries who are under 18 years of age or who are incompetent, a notice issued to the parent or guardian constitutes notice to the beneficiary.

(*2*) The dental plan contractor shall notify providers of an initial determination on a claim only if the providers participated in the claim or accepted assignment.

(*3*) Notice of an initial determination on a claim by the dental plan contractor shall be made in the contractor's explanation of benefits (beneficiary) or with the summary of payment (provider).

(*4*) Each notice of an initial determination on a request for benefit authorization, a request by a provider for approval as an authorized provider, or a decision to disqualify or exclude a provider as an authorized provider under the Active Duty Dependents Dental Plan shall state the reason for the determination and the underlying facts supporting the determination.

(*5*) In any case when the initial determination is adverse to the beneficiary or participating provider or to the provider seeking approval as an authorized provider, the notice shall include a statement of the beneficiary's or provider's right to appeal the determination. The procedure for filing the appeal also shall be explained.

(B) *Effect of initial determination.* The initial determination is final, unless appealed in accordance with this section or unless the initial determination is reopened by OCHAMPUS or the dental plan contractor.

(ii) *Participation in an appeal.* Participation in an appeal is limited to any party to the initial determination, including OCHAMPUS, the dental plan contractor, and authorized representatives of the parties. Any party to the initial determination, except OCHAMPUS and the dental plan contractor, may appeal an adverse determination. The appealing party is the party who actually files the appeal.

(A) *Parties to the initial determination.* For purposes of these appeal and hearing procedures, the following are not parties to an initial determination and are not entitled to administrative review under this section.

(*1*) A provider disqualified or excluded as an authorized provider under the Active Duty Dependents Dental Plan based on a determination under another Federal or federally funded program is not a party to the OCHAMPUS action and may not appeal under this section.

(*2*) A sponsor or parent of a beneficiary under 18 years of age or guardian of an incompetent beneficiary is not a party to the initial determination and may not serve as the appealing party, although such persons may represent the appealing party in an appeal.

(*3*) A third party other than the dental plan contractor, such as an insurance company, is not a party to the initial determination and is not entitled to appeal, even though it may have an indirect interest in the initial determination.

(*4*) A nonparticipating provider is not a party to the initial determination and may not appeal.

(B) *Representative.* Any party to the initial determination may appoint a representative to act on behalf of the party in connection with an appeal. Generally, the parent of a minor beneficiary and the legally appointed guardian of an incompetent beneficiary shall be presumed to have been appointed representative without specific designation by the beneficiary.

(*1*) The representative shall have the same authority as the party to the appeal, and notice given to the representative shall constitute notice required to be given to the party under this part.

(*2*) To avoid possible conflicts of interest, an officer or employee of the United States, such as an employee or member of a Uniformed Service, including an employee or staff member of a Uniformed Service legal office, or a CHAMPUS advisor, subject to the exceptions in 18 U.S.C. 205, is not eligible to serve as a representative. An exception usually is made for an employee or member of Uniformed Service who represents an immediate family member. In addition, the Director, OCHAMPUS, or designee, may appoint an officer or employee of the United States as the OCHAMPUS representative at a hearing.

(iii) *Burden of proof.* The burden of proof is on the appealing party to establish affirmatively by substantial evidence the appealing party's entitlement under law and this part to the authorization of the Active Duty Dependents Dental Plan benefits or approval as an authorized provider. Any cost or fee associated with the production or submission of information in support of an appeal may not be paid by OCHAMPUS.

(iv) *Late filing.* If a request for reconsideration, formal review, or hearing is filed after the time permitted in this section, written notice shall be issued denying the request. Late filing may be permitted only if the appealing party reasonably can demonstrate to the satisfaction of the dental plan

contractor, or the Director, OCHAMPUS, or designee, that timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no practical control. Each request for an exception to the filing requirement will be considered on its own merits.

(v) *Appealable issue.* An appealable issue is required in order for an adverse determination to be appealed under the provisions of this section. Examples of issues that are not appealable under this chapter include:

(A) A dispute regarding a requirement of the law or regulation.

(B) The amount of the dental plan contractor-determined allowable charge since the methodology constitutes a limitation no benefits under the provisions of this part.

(C) Certain other issues on the basis that the authority for the initial determination is not vested of OCHAMPUS. Such issues include but are not limited to the following examples:

(*1*) Determination of a person's eligibility as an enrolled beneficiary in the Active Duty Dependents Dental Plan is the responsibility of the appropriate Uniformed Service. Although OCHAMPUS and the dental plan contractor must make determinations concerning a beneficiary's enrollment, ultimate responsibility for resolving a beneficiary's eligibility and enrollment rests with the Uniformed Services. Accordingly, a disputed question of fact concerning a beneficiary's enrollment or eligibility will not be considered an apealable issue under the provisions of this section, but shall be resolved in accordance with paragraph (c) of this section.

(*2*) The decision to disqualify or exclude a provider because of a determination against that provider under another Federal or federally funded program is not an initial determination that is appealable under this part. The provider is limited to exhausting administrative appeal rights offered under the Federal or federally funded program that made the initial determination. However, a determination to disqualify or exclude a provider because of abuse or fraudulent practices or procedures under the Active Duty Dependents Dental Plan is an initial determination that is appealable under this part.

(vi) *Amount in dispute.* An amount in dispute is required for an adverse determination to be appealed under the provisions of this section, except as set forth in the following.

(A) The amount in dispute is calculated as the amount of money the dental plan contractor would pay if the services and supplies involved in dispute were determined to be authorized benefits of the Active Duty Dependents Dental Plan. Examples of amounts of money that are excluded by this part from payments for authorized benefits include, but are not limited to:

(*1*) Amounts in excess of the dental plan contractor-determined allowable charge.

(*2*) The beneficiary's cost-share amounts for restorative services.

(*3*) Amounts that the beneficiary, or parent, guardian, or other responsible person has no legal obligation to pay.

(B) There is no requirement for an amount in dispute when the appealable issue involves a denial of a provider's request for approval as an authorized provider or the determination to disqualify or exclude a provider as an authorized provider.

(C) Individual claims may be combined to meet the required amount in dispute if all of the following exist:

(*1*) The claims involve the same beneficiary.

(*2*) The claims involve the same issue.

(*3*) At least one of the claims so combined has had a reconsideration decision issued by the dental plan contractor.

Note.—A request for administrative review under this appeal process which involves a dispute regarding a requirement of law or regulation (paragraph (h)(1)(v)(A) of this section) or does not involve a sufficient amount in dispute (paragraph (h)(1)(vi) of this section) may not be rejected at the reconsideration level of appeal. However, the appeal shall involve an appealable issue and sufficient amount in dispute under these subsections to be granted a formal review or hearing.

(vii) *Levels of appeal.* The sequence and procedures of an Active Duty Dependents Dental Plan appeal are contained in the following.

(A) Reconsideration by the dental plan contractor.

(B) Formal review of OCHAMPUS.

(C) Hearing.

(2) *Reconsideration.* Any party to the initial determination made by the dental plan contractor may request a reconsideration.

(i) *Requesting a reconsideration*—(A) *Written request required.* The request must be in writing, shall state the specific matter in dispute, and shall include a copy of the notice of initial determination made by the dental plan contractor, such as the explanation of benefits.

(B) *Where to file.* The request shall be submitted to the dental plan contractor's office as designated in the notice of initial determination.

(C) *Allowed time to file.* The request must be mailed within 90 days after the date of the notice of initial determination.

(D) *Official filing date.* A request for a reconsideration shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by the dental plan contractor.

(ii) *The reconsideration process.* The purpose of the reconsideration is to determine whether the initial determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested or at the time the provider requested approval as an authorized provider. The reconsideration is performed by a member of the dental plan contractor's staff who was not involved in making the initial determination and is a thorough and independent review of the case. The reconsideration is based on the information submitted that led to the initial determination, plus any additional information that the appealing party may submit or the dental plan contractor may obtain.

(iii) *Timeliness of reconsideration determination.* The dental plan contractor normally shall issue its reconsideration determination no later than 60 days from the datee of its receipt of the request for reconsideration.

(iv) *Notice of reconsideration determination.* The dental plan contractor shall issue a written notice of the reconsideration determination to the appealing party at his or her last known address. The notice of the reconsideration determination must contain the following elements:

(A) A statement of the issue or issues under appeal.

(B) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(C) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(D) Whether the reconsideration upholds the initial determination or reverses it, in whole or in part, and the rationale for the action.

(E) A statement of the right to appeal further in any case when the reconsideration determination is less than fully favorable to the appealing party and the amount in dispute is $50 or more.

(v) *Effect of reconsideration determination.* The reconsideration determination is final if either of the following exist:

(A) The amount in dispute is less than $50.

(B) Appeal rights have been offered, but a request for formal review is not received by OCHAMPUS within 60 days of the date of the notice of the reconsideration determination.

(3) *Formal review.* Any party to the initial determination may request a formal review by OCHAMPUS if the party is dissatisfied with the reconsideration determination and the reconsideration determination is not final under the provisions of paragraph (b)(5) of this section. Any party to the initial determination made by OCHAMPUS may request a formal review by OCHAMPUS if the party is dissatisfied with the initial determination.

(i) *Requesting a formal review*—(A) *Written request required.* The request must be in writing, shall state the specific matter in dispute, shall include copies of the written determination (notice of reconsideration determination) being appealed, and shall include any additional information or documents not submitted previously.

(B) *Where to file.* The request shall be submitted to the Chief, Appeals and Hearings, OCHAMPUS, Aurora, Colorado 80045-6900.

(C) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the reconsideration determination being appealed.

(D) *Official filing date.* A request for a formal review shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(ii) *The formal review process.* The purpose of the formal review is to determine whether the initial determination or reconsideration determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested, at the time the provider requested approval as an authorized provider, or at the time of the action by OCHAMPUS to disqualify or exclude a provider. The formal review is performed by the Chief, Appeals and Hearings, OCHAMPUS, or a designee, and is a thorough review of the case. The formal review determination shall be based on the information upon which the initial determination or reconsideration determination was based and any additional information the appealing party or the dental plan contractor may submit or OCHAMPUS may obtain.

(iii) *Timeliness of formal review determination.* The Chief, Appeals and Hearings, OCHAMPUS, or a designee, normally shall issue the formal review determination no later than 90 days from the date of receipt of the request for formal review by the OCHAMPUS.

(iv) *Notice of formal review determination.* The Chief, Appeals and Hearings, OCHAMPUS, or a designee, shall issue a written notice of the formal review determination to the appealing party at his or her last known address. The notice of the formal review determination must contain the following elements:

(A) A statement of the issue or issues under appeal.

(B) The provisions of law, regulation, policies, and guidelines that apply to the issue or issues under appeal.

(C) A discussion of the original and additional information that is relevant to the issue or issues under appeal.

(D) Whether the formal review upholds the prior determination or determinations or reverses the prior determination or determinations in whole or in part and the rationale for the action.

(E) A statement of the right to request a hearing in any case when the formal review determination is less than fully favorable, the issue is appealable, and the amount in dispute is $300 or more.

(v) *Effect of formal review determination.* The formal review determination is final if one or more of the following exist:

(A) The issue is not appealable. (See paragraph (h)(1)(v) of this section.)

(B) The amount in dispute is less than $300. (See paragraph (h)(1)(vi) of this section.)

(C) Appeal rights have been offered, but a request for hearing is not received by OCHAMPUS within 60 days of the date of the notice of the formal review determination.

(4) *Hearing.* Any party to the initial determination may request a hearing if the party is dissatisfied with the formal review determination and the formal review determination is not final under the provisions of paragraph (c)(5) of this section.

(i) *Requesting a hearing*—(A) *Written request required.* The request shall be in writing, state the specific matter in dispute, include a copy of the formal review determination, and include any additional information or documents not submitted previously.

(B) *Where to file.* The request shall be submitted to the Chief, Appeals and Hearings, OCHAMPUS, Aurora, Colorado 80045-6900.

(C) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the formal review determination being appealed.

(D) *Official filing date.* A request for hearing shall be deemed filed on the date it is mailed and postmarked. If a request for hearing does not have a postmark, it shall be deemed filed on the date received by OCHAMPUS.

(ii) *The hearing process.* The hearing shall be conducted as a nonadversary, administrative proceeding to determine the facts of the case and to allow the appealing party the opportunity personally to present the case before an impartial hearing officer. The hearing is a forum in which facts relevant to the case are presented and evaluated in relation to applicable law, regulation, policies, and guidelines in effect at the time the care was provided or requested, or at the time the provider requested approval as an authorized provider.

(iii) *Timeliness of hearing*—(A) Except as otherwise provided in this section, within 60 days following receipt of a request for hearing, the Director, OCHAMPUS, or a designee, normally will appoint a hearing officer to hear the appeal. Copies of all records in the possession of OCHAMPUS that are pertinent to the matter to be heard or that formed the basis of the formal review determination shall be provided to the hearing officer and, upon request, to the appealing party.

(B) The hearing officer, except as otherwise provided in this section, normally shall have 60 days from the date of written notice of assignment to review the file, schedule and hold the hearing, and issue a recommended decision to the Director, OCHAMPUS, or designee.

(C) The Director, OCHAMPUS, or designee, may delay the case assignment to the hearing officer if additional information is needed that cannot be obtained and included in the record within the time period specified above. The appealing party will be notified in writing of the delay resulting from the request for additional information. The Director, OCHAMPUS, or a designee, in such circumstances, will assign the case to a hearing officer within 30 days of receipt of all such additional information or within 60 days of receipt of the request for hearing, whichever shall occur last.

(D) The hearing officer may delay submitting the recommended decision if, at the close of the hearing, any party to the hearing requests that the record remain open for submission of additional information. In such circumstances, the hearing officer will have 30 days following receipt of all such additional information including comments from the other parties to the hearing concerning the additional information to submit the recommended

decision to the Director, OCHAMPUS, or a designee.

(iv) *Representation at a hearing.* Any party to the hearing may appoint a representative to act on behalf of the party at the hearing, unless such person currently is disqualified or suspended from acting in another Federal administrative proceeding, or unless otherwise prohibited by law, this part, or any other DoD regulation (see paragraph (a)(2)(ii) of this section). A hearing officer may refuse to allow any person to represent a party at the hearing when such person engages in unethical, disruptive, or contemptuous conduct, or intentionally fails to comply with proper instructions or requests of the hearing officer or the provisions of this part. The representative shall have the same authority as the appealing party, and notice given to the representative shall constitute notice required to be given to the appealing party.

(v) *Consolidation of proceedings.* The Director, OCHAMPUS, or a designee, may consolidate any number of proceedings for hearing when the facts and circumstances are similar and no substantial right of an appealing party will be prejudiced.

(vi) *Authority of the hearing officer.* The hearing officer, in exercising the authority to conduct a hearing under this part, will be bound by 10 U.S.C., Chapter 55 and this part. The hearing officer in addressing substantive, appealable issues shall be bound by the dental benefits brochure, policies, procedures, and other guidelines issued by the ASD(HA), or a designee, or by the Director, OCHAMPUS, or a designee, in effect for the period in which the matter in dispute arose. A hearing officer may not establish or amend the dental benefits brochure, policy, procedures, instructions, or guidelines. However, the hearing officer may recommend reconsideration of the policy, procedures, instructions or guidelines by the ASD(HA), or a designee, when the final decision is issued in the case.

(vii) *Disqualification of hearing officer.* A hearing officer voluntarily shall disqualify himself or herself and withdraw from any proceeding in which the hearing officer cannot give fair or impartial hearing, or in which there is a conflict of interest. A party to the hearing may request the disqualification of a hearing officer by filing a statement detailing the reasons the party believes that a fair and impartial hearing cannot be given or that a conflict of interest exists. Such request immediately shall be sent by the appealing party or the hearing officer to the Director, OCHAMPUS, or a designee, who shall investigate the allegations and advise the complaining party of the decision in writing. A copy of such decision also shall be mailed to all other parties to the hearing. If the Director, OCHAMPUS, or a designee, reassigns the case to another hearing officer, no investigation shall be required.

(viii) *Notice and scheduling of hearing.* The hearing officer shall issue by certified mail, when practicable, a written notice to the parties to the hearing of the time and place for the hearing. Such notice shall be mailed at least 15 days before the scheduled date of the hearing. The notice shall contain sufficient information about the hearing procedure, including the party's right to representation, to allow for effective preparation. The notice also shall advise the appealing party of the right to request a copy of the record before the hearing. Additionally, the notice shall advise the appealing party of his or her responsibility to furnish the hearing officer, no later than 7 days before the scheduled date of the hearing, a list of all witnesses who will testify and a copy of all additional information to be presented at the hearing. The time and place of the hearing shall be determined by the hearing officer, who shall select a reasonable time and location mutually convenient to the appealing party and OCHAMPUS.

(ix) *Dismissal of request for hearing—*

(A) *By application of appealing party.* A request for hearing may be dismissed by the Director, OCHAMPUS, or a designee, at any time before the mailing of the final decision, upon the application of the appealing party a request for dismissal must be in writing and filed with the Chief, Appeals and Hearings, OCHAMPUS, or the hearing officer. When dismissal is requested, the formal review determination in the case shall be deemed final, unless the dismissal is vacated in accordance with paragraph (h)(4)(ix)(E) of this section.

(B) *By stipulation of the parties to the hearing.* A request for a hearing may be dismissed by the Director, OCHAMPUS, or a designee, at any time before the mailing of notice of the final decision under a stipulation agreement between the appealing party and OCHAMPUS. When dismissal is entered under a stipulation, the formal review decision shall be deemed final, unless the dismissal is vacated in accordance with paragraph (h) (4) (ix) (E) of this section.

(C) *By abandonment.* The Director, OCHAMPUS, or a designee, may dismiss a request for hearing upon abandonment by the appealing party.

(*1*) An appealing party shall be deemed to have abandoned a request for hearing, other than when personal appearance is waived in accordance with paragraph (h) (4) (xi) (M) of this section, if neither the appealing party nor an appointed representative appears at the time and place fixed for the hearing and if, within 10 days after the mailing of a notice by certified mail to the appealing party by the hearing officer to show cause, such party does not show good and sufficient cause for such failure to appear and failure to notify the hearing officer before the time fixed for hearing that an appearance could not be made.

(*2*) An appealing party shall be deemed to have abandoned a request for hearing if, before assignment of the case to the hearing officer, OCHAMPUS is unable to locate either the appealing party or an appointed representative.

(*3*) An appealing party shall be deemed to have abandoned a request for hearing if the appealing party fails to prosecute the appeal. Failure to prosecute the appeal includes, but is not limited to, an appealing party's failure to provide information reasonably requested by OCHAMPUS or the hearing officer for consideration in the appeal.

(*4*) If the Director, OCHAMPUS, or a designee, dismisses the request for hearing because of abandonment, the formal review determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (h) (4) (ix) (E) of this section.

(D) *For cause.* The Director, OCHAMPUS, or a designee, may dismiss for cause a request for hearing either entirely or as to any stated issue. If the Director, OCHAMPUS, or a designee, dismisses a hearing request for cause, the formal review determination in the case shall be deemed to be final, unless the dismissal is vacated in accordance with paragraph (h) (4) (ix) (E) of this section. A dismissal for cause may be issued under any of the following circumstances:

(*1*) When the appealing party requesting the hearing is not a proper party under paragraph (h) (1) (ii) (A) of this section of does not otherwise have a right to participate in a hearing.

(*2*) When the appealing party who filed the hearing request dies, and there is no information before the Director, OCHAMPUS, or a designee, showing that a party to the initial determination who is not an appealing party may be prejudiced by the formal review determination.

(*3*) When the issue is not appealable (See paragraph (h) (1) (v) of this section.)

(4) When the amount in dispute is less than $300 (See paragraph (h) (1) (vi) of this section.)

(5) When all appealable issues have been resolved in favor of the appealing party.

(E) *Vacation of dismissal.* Dismissal of a request for hearing may be vacated by the Director, OCHAMPUS, or a designee, upon written request of the appealing party, if the request is received within 6 months of the date of the notice of dismissal mailed to the last known address of the party requesting the hearing.

(x) *Preparation for hearing*—(A) *Prehearing statement of contentions.* The hearing officer may on reasonable notice, require a party to the hearing to submit a written statement of contentions and reasons. The written statement shall be provided to all parties to the hearing before the hearing takes place.

(B) *Agency records*—(1) *Hearing officer.* A hearing officer may ask OCHAMPUS to produce, for inspection, any records or relevant portions of records when they are needed to decide the issues in any proceeding before the hearing officer or to assist an appealing party in preparing for the proceeding.

(2) *Appealing party.* A request to a hearing officer by an appealing party for disclosure or inspection of OCHAMPUS or the dental plan contractor records shall be in writing and shall state clearly what information and records are required.

(C) *Witnesses and evidence.* All parties to a hearing are responsible for producing, at each party's expense, meaning without reimbursement of payment by OCHAMPUS, witnesses and other evidence in their own behalf, and for furnishing copies of any such documentary evidence to the hearing officer and other party or parties to the hearing. The Department of Defense is not authorized to subpoena witnesses or records. The hearing officer may issue invitations and requests to individuals to appear and testify without cost to the Government, so that the full facts in the case may be presented.

(D) *Interrogatories and depositions.* A hearing officer may arrange to take interrogatories and depositions, recognizing that the Department of Defense does not have subpoena authority. The expense shall be assessed to the requesting party, with copies furnished to the hearing officer and other party or parties to the hearing.

(xi) *Conduct of hearing*—(A) *Right to open hearing.* Because of the personal nature of the matters to be considered, hearings normally shall be closed to the public. However, the appealing party may request an open hearing. If this occurs, the hearing shall be open, except when protection of other legitimate Government purposes dictates closing certain portions of the hearing.

(B) *Right to examine parties to the hearing and their witnesses.* Each party to the hearing shall have the right to produce and examine witnesses, to introduce exhibits, to question opposing witnesses on any matter relevant to the issue even though the matter was not covered in the direct examination, to impeach any witness regardless of which party to the hearing first called the witness to testify, and to rebut any evidence presented. Except for those witnesses employed by OCHAMPUS at the time of the hearing or records in the possession of OCHAMPUS, a party to a hearing shall be responsible, that is to say no payment or reimbursement shall be made by CHAMPUS for the cost or fee associated with producing witinesses or other evidence in the party's own behalf, or for furnishing copies of documentary evidence to the hearing officer and other party or parties to the hearing.

(C) *Burden of proof.* The burden of proof is on the appealing party affirmatively to establish by substantial evidence the appealing party's entitlement under law and this Regulation to the authorization of Active Duty Dependents Dental Plan benefits or approval as an authorized provider. Any part of the cost or fee associated with producing or submitting in support of an appeal may not be paid by OCHAMPUS.

(D) *Taking of evidence.* The hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties to the hearing. Before taking evidence, the hearing officer shall identify and state the issues in dispute on the record and the order in which evidence will be received.

(E) *Questioning and admission of evidence.* A hearing officer may question any witness and shall admit any relevant evidence. Evidence that is irrelevant or unduly repetitious shall be excluded.

(F) *Relevant evidence.* Any relevant evidence shall be admitted, unless unduly repetitious, if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal actions.

(G) *Active Duty Dependents Dental Plan determination first.* The basis of the Active Duty Dependents Dental Plan determination shall be presented to the hearing officer first. The appealing party shall then be given the opportunity to establish affirmatively why this determination is held to be in error.

(H) *Testimony.* Testimony shall be taken only on oath, affirmation, or penalty of perjury.

(I) *Oral argument and briefs.* At the request of any party to the hearing made before the close of the hearing, the hearing officer shall grant oral argument. If written argument is requested, it shall be granted, and the parties to the hearing shall be advised as to the time and manner within which such argument is to be filed. The hearing officer may require any party to the hearing to submit written memoranda pertaining to any or all issues raised in the hearing.

(J) *Continuance of hearing.* A hearing officer may continue a hearing to another time or place on his or her own motion or, upon showing of good cause, at the request of any party. Written notice of the time and place of the continued hearing, except as otherwise provided here, shall be in accordance with this part. When a continuance is ordered during a hearing, oral notice of the time and place of the continued hearing may be given to each party to the hearing who is present at the hearing.

(K) *Continuance for additional evidence.* If the hearing officer determines, after a hearing has begun, that additional evidence is necessary for the proper determination of the case, the following procedures may be invoked:

(1) *Continue hearing.* The hearing may be continued to a later date in accordance with paragraph (d)(11)(x) of this section.

(2) *Closed hearing.* The hearing may be closed, but the record held open in order to permit the introduction of additional evidence. Any evidence submitted after the close of the hearing shall be made available to all parties to the hearing, and all parties to the hearing shall have the opportunity for comment. The hearing officer may reopen the hearing if any portion of the additional evidence makes further hearing desirable. Notice thereof shall be given in accordance with paragraph (d)(8) of this section.

(L) *Transcript of hearing.* A verbatim taped record of the hearing shall be made and shall become a permanent part of the record. Upon request, the appealing party shall be furnished a duplicate copy of the tape. A typed transcript of the testimony will be made only when determined to be necessary by OCHAMPUS. If a typed transcript is made, the appealing party shall be

furnished a copy without charge. Corrections shall be allowed in the typed transcript by the hearing officer solely for the purpose of conforming the transcript to the actual testimony.

(M) *Waiver of right to appear and present evidence.* If all parties waive their right to appear before the hearing officer for presenting evidence and contentions personally or by representation, it will not be necessary for the hearing officer to give notice of, or to conduct a formal hearing. A waiver of the right to appear must be in writing and filed with the hearing officer or the Chief, Appeals and Hearings, OCHAMPUS. Such waiver may be withdrawn by the party by written notice received by the hearing officer or Chief, Appeals and Hearings, no later than 7 days before the scheduled hearing or the mailing of notice of the final decision, whichever occurs first. For purposes of this section, failure of a party to appear personally or by representation after filing written notice of waiver, will not be cause for finding of abandonment and the hearing officer shall make the recommended decision on the basis of all evidence of record.

(N) *Recommended decision.* At the conclusion of the hearing and after the record has been closed, the matter shall be taken under consideration by the hearing officer. Within the time frames previously set forth in this section, the hearing officer shall submit to the Director, OCHAMPUS, or a designee, a written recommended decision containing a statement of findings and a statement of reasons based on the evidence adduced at the hearing and otherwise included in the hearing record.

(*1*) *Statement of findings.* A statement of findings is a clear and concise statement of fact evidenced in the record or conclusions that readily can be deduced from the evidence of record. Each finding must be supported by substantial evidence that is defined as such evidence as a reasonable mind can accept as adequate to support a conclusion.

(*2*) *Statement of reasons.* A reason is a clear and concise statement of law, regulation, policies, or guidelines relating to the statement of findings that provides the basis for the recommended decision.

(5) *Final decision*—(i) *Director, OCHAMPUS.* The recommended decision shall be reviewed by the Director, OCHAMPUS, or a designee, who shall adopt or reject the recommended decision or refer the recommended decision for review by the Assistant Secretary of Defense (Health Affairs). The Director, OCHAMPUS, or designee, normally will take action with regard to the recommended decision within 90 days of receipt of the recommended decision or receipt of the revised recommended decision following a remand order to the Hearing Officer.

(A) *Final action.* If the Director, OCHAMPUS, or a designee, concurs in the recommended decision, no futher agency action is required and the recommended decision, as adopted by the Director, OCHAMPUS, is the final agency decision in the appeal. In the case of rejection, the Director, OCHAMPUS, or a designee, shall state the reason for disagreement with the recommended decision and the underlying facts supporting such disagreement. In these circumstances, the Director, OCHAMPUS, or a designee, may have a final decision prepared based on the record, or may remand the matter to the Hearing Officer for appropriate action. In the latter instance, the Hearing Officer shall take appropriate action and submit a new recommended decision within 60 days of receipt of the remand order. The decision by the Director, OCHAMPUS, or a designee, concerning a case arising under the procedures of this section, shall be the final agency decision and the final decision shall be sent by certified mail to the appealing party or parties. A final agency decision under this paragraph (e)(1) will not be relied on, used, or cited as precedent by the Department of Defense or the dental plan contractor in the administration of the Active Duty Dependents Dental Plan.

(B) *Referral for review by ASD (HA).* The Director, OCHAMPUS, or a designee, may refer a hearing case to the Assistant Secretary of Defense (Health Affairs) when the hearing involves the resolution of policy and issuance of a final decision which may be relied on, used, or cited as precedent in the administration of the Active Duty Dependents Dental Plan. In such a circumstance, the Director, OCHAMPUS, or a designee, shall forward the recommended decision, together with the recommendation of the Director, OCHAMPUS, or a designee, regarding disposition of the hearing case.

(ii) *ASD(HA).* The ASD(HA), or a designee, after reviewing a case arising under the procedures of this section may issue a final decision based on the record in the hearing case or remand the case to the Director, OCHAMPUS, or a designee, for appropriate action. A decision issued by the ASD(HA), or a designee, shall be the final agency decision in the appeal and a copy of the final decision shall be sent by certified mail to the appealing party or parties. A final decision of the ASD(HA), or a designee, issued under this paragraph (e)(2) may be relied on, used, or cited as precedent in the administration of the Active Duty Dependents Dental Plan.

Linda M. Lawson,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

May 26, 1987.

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CCGD9 87-06]

## Safety Zone: Lake Michigan Waters Offshore at Michigan City, the Michigan City Entrance Channel, and Washington Park Marina

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal to establish a Safety Zone for the Lake Michigan waters offshore of Michigan City, IN, the Michigan City entrance channel, and Washington Park Marina. Within the Safety Zone, the Commander, Ninth Coast Guard District may restrict or prohibit movement of vessels and control other maritime activities. This rule will promote the safety of Pan American Games competitors, ancillary personnel, and spectators.

**DATES:** Comments must be received on or before July 13, 1987.

**ADDRESS:** Comments should be mailed to Commander (m), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199-2060. The comments will be available for inspection and copying at Room 2019, 1240 East Ninth Street, Cleveland, Ohio 44199-2060. Normal officer hours are between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Commander Francis X. Owens or LT(jg) George H. Burns III, Marine Safety Division, 1240 East Ninth Street, Cleveland, Ohio 44199-2060, (216) 522-3919.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or

arguments. Persons submitting comments should include their names and addresses, identify this notice CGD9 87-06 and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information: The drafters of this notice are Commander Dallas G. Schmidt, project officer, Marine Safety Office Chicago, and Commander Michael A. Leone, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Proposed Regulation**

The Michigan City, Indiana area will host the Tenth Pan American Games' Yachting Competition, beginning August 1, 1987 and culminating on August 18, 1987. The yachting races will draw spectator boating crowds, congesting the Michigan City entrance channel and portions of the offshore race courses. The spectator's right of reasonable access to the offshore competition sites, the staging area within the entrance channel, and the associated harbor area must be balanced against the safety requirements of competitors, officials, and spectators.

This temporary regulation is intended to manage the expected increase in traffic congestion in the Michigan City, Indiana entrance channel and a portion of offshore Lake Michigan during the period August 1, 1987 to August 18, 1987, in order to provide a safe area for all members of the maritime community.[1] The Commander, Ninth Coast Guard District may cancel the safety zone at an earlier date if safety considerations. permit it.

The primary objective of this rulemaking is to maintain the safe movement of competition vessels to their designated race courses, the safety of all vessels, the port, and the race areas. The Coast Guard has the responsibility in conjunction with local law enforcement agencies for the on-water safety of the Pan American Games yachting competition and must plan and prepare to meet any situations which could occur.

Accordingly, Coast Guard vessels carrying safety and law enforcement teams will patrol the Safety Zone during the periods that competitors are on the water. The primary mission of these teams will be to prevent or control hazardous boating activities, with an emphasis on facilitating the competition while minimizing the disruption of recreational boating.

The restrictions on recreational craft operating in the Safety Zone are necessary to prevent safety patrols from being overwhelmed by large numbers of recreational boats. While carrying out these port safety operations, every effort will be made to minimize restrictions on vessels and port activities. Unless otherwise directed, the Navigational Rules of the Road will always apply. These regulations will be reprinted in the Local Notice to Mariners.

**Economic Assessment and Certification**

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transprotation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The regulation is of limited duration, limits access to certain areas without denying access to those who require it, and will not adversely affect commercial traffic. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation, Lake Michigan waters offshore Michigan City, Indiana, the Michigan City entrance channel, Washington Park Marina.

**Proposed Regulations**

**PART 165—[AMENDED]**

In consideration of the foregoing, the Coast Guard proposes to temporarily amend Part 165 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 185 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.T0906 is added to read as follows:

**§ 165.T0906 Lake Michigan waters offshore of Michigan City, IN, the Michigan City Entrance Channel and Washington Park Marina.**

(a) *Effective Date.* Unless otherwise indicated in an individual subsection below, this temporary regulation is effective from August 1, 1987 through and including August 18, 1987.

(b) *Regulated Areas.* All waters and waterfront facilities within the following boundaries constitute a Safety Zone:

(1) The water area in Like Michigan beginning at latitude 41°51'00"N, longitude 87°02'00"W; thence east to latitude 41°51'00"N, longitude 86°52'00"W; thence south to the intersection of longitude 86°52'00" and the natural shoreline; thence along the natural shoreline and structures, across the Michigan City, Indiana channel entrance, to the intersection of latitude 41°43'00"N and the natural shoreline; thence west to latitude 41°43'00"N, longitude 87°02'00"W; thence north to the starting point; and

(2) All navigable waters and waterfront facilities within the Michign City channel area bounded on the north by the Michigan City channel entrance and on the east by the western edge of the Franklin Street bridge.

(c) *Regulations.* The regulations listed below apply to all Pan American Games yachting events.

(1) No vessels, other than participants, U.S. Coast Guad operated or employed small craft, public vessels, state and local law enforcement agency vessels and event committee boats shall remain in or enter those portions of the Pan American Games race areas which lie within Lake Michigan during the periods set forth for each event, unless cleared for such entry by a Coast Guard official.

(i) Pan American Games Race Areas:

(A) Area Alpha: Area Alpha will be bounded by the following coordinates:

Center—latitude 41°45.1'N; longitude 86°55.8'W
North—latitude 41°46.0'N
South—latitude 41°44.4'N
East—longitude 86°54.7'W
West—longitude 86°56.5'W

(b) Area Bravo: Area Bravo will be bounded by the following coordinates:

Center—latitude 41°46.5'N; longitude 86°59.1'W
North—latitude 41°48.1'N
South—latitude 41°44.8'N
East—longitude 86°56.4'W
West—longitude 87°01.5'W

(C) Area Charlie: Area Charlie will be bounded by the following coordinates:

Center—latitude 41°48.5'N; longitude 86°54.8'W
North—latitude 41°50.3'N

[1] The maps designating the traffic areas may be obtained by contacting the person listed under the caption "For Further Information Contact."

South—latitude 41°46.6'N
East—longitude 86°52.6'W
West—longitude 86°57.0'W

(d) Area Delta: Area Delta will be bounded by the following coordinates:
Center—latitude 41°46.0'N; longitude 86°54.0'W
North—latitude 41°46.7'N
South—latitude 41°45.2'N
East—longitude 86°52.8'W
West—longitude 86°55.0'W

(ii) Competition period: Approximately 8:00 A.M. to 4:00 P.M. daily, August 9, 1987 to August 18, 1987, inclusive.

(iii) Buoys, stake boats, and Coast Guard spectator control boats will mark the actual race courses within each designated race area.

(2) Between August 1 and August 18, 1987, no person may set fishing gear, nets, marker buoys or similar obstructions within the area of the defined Safety Zone. Any such obstructions shall be removed by their owners prior to August 1, 1987 and shall not be re-set until after August 18, 1987.

(3) When hailed by Coast Guard or Coast Guard Auxiliary vessels patrolling the Safety Zone, vessels shall come to an immediate stop. Vessels shall comply with all directions of Coast Guard official and local law enforcement authorities.

(4) No vessel may approach within 100 yards of a competition vessel.

(5) No vessel may approach within ¼ mile of the race course within each race area.

(6) No vessel may block, loiter in, or impede the through transit of vessels in the Michigan City channel entrance, channel, and Washington Park marina.

(7) Additional safety and crowd control restrictions during Pan American Games race periods may be imposed as circumstances require. These restrictions will be announced in the Local Notice to Mariners and by Marine Safety Broadcasts.

Dated: May 19, 1987

A. M. Danielsen,

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 87-12119 Filed 5-28-87; 8:45 am]
BILLING CODE 4910-14-M

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33 CFR Part 179

[CGD 77-115]

## Defect Notification and First Purchaser Information

AGENCY: Coast Guard, DOT.

ACTION: Supplementary Notice of Proposed Rulemaking.

SUMMARY: This notice proposes amendments to the Defect Notification regulations in Part 179 of Title 33, Code of Federal Regulations. The intended effect of the proposal is to require boat and engine manufacturers to establish and maintain first purchaser lists and to require maine dealers to furnish the manufacturers with the information necessary to establish those lists: the serial numbers of new boats and engines sold and the names and addresses of retail first purchasers of those products. The manufacturers would use the information to locate the purchasers of boats and engines which have been recalled for defects which create a substantial risk of personal injury to the public and for failures to comply with applicable regulations. The proposed amendments are needed because many manufacturers do not maintain sufficient first purchaser lists or cannot obtain the information from dealers. As a result, attempts to notify purchasers during recall campaigns are inadequate. Additional editorial changes would clarify confusing language in the Defect Notification regulations and would reflect changes in the applicability of the part.

DATE: Comments must be received on or before August 27, 1987.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 77-115), U.S. Coast Guard, Washington, DC 20593-0001. Comments will be available for examination at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Project Manager, Office of Boating, Public, and Consumer Affairs (G-BBS/43), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593 (202) 267-0981, between 8 a.m. and 4 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION

### Request for comments:

Interested persons are invited to submit written views, data or arguments. Comments should include the name and address of the person making them and identify this notice (CGD 77-115). Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The proposal may be changed in view of the comments received. All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

### Background:

The Coast Guard published a Notice of Proposed Rulemaking in the Federal Register on December 29, 1980 [45 FR 85475]. Because of Coast Guard concern at that time about the impact of the proposed amendments on the Coast Guard information collection budget, consideration of comments and publication of a final rule were delayed. The Coast Guard is seeking OMB approval for the proposed information collection requirements in 33 CFR 179.04.

Because more than six years have elapsed since publication of the Notice of Proposed Rulemaking, the Coast Guard is soliciting additional comments on the proposal. Also, because of confusing wording in the existing Defect Notification regulations, the Coast Guard is proposing editorial changes to the regulatory language in 33 CFR Part 178.

Section 4310(c)(1)(A) of Chapter I of Title 46, U.S. Code—Repair and Replacement of Defects—requires manufacturers of boats and associated equipment (inboard engines, outboard motors and sterndrive units) to notify first purchasers, and subsequent purchasers if they are known, of defects in their products which create a substantial risk of personal injury to the public or which fail to comply with applicable Federal regulations. The manufacturer's responsibility to notify first purchasers (and subsequent purchasers if they are known) lasts for a period of five years from the date of certification for boats and associated equipment to which a standard applies and for a period of five years from the date of manufacture if no standard applies. Part 179 of Title 33, Code of Federal Regulations implements these provisions.

The Defect Notification regulations in Part 179 of Title 33 have been in existence since November 1, 1972. In a number of the recall campaigns for boats and associated equipment monitored by the Coast Guard since 1972, many manufacturers did not know the names and addresses of more than 30 percent of the first purchasers of their products. As a result, the manufacturers could not notify many purchasers whose boats and engines contained defects which created a substantial risk of

personal injury or failed to comply with applicable regulations. This low rate of notification was the result of the failure of manufacturers to establish and maintain adequate first purchaser lists and from the failure of dealers to provide purchaser information to the manufacturers.

Section 4310(g) of Title 46, U.S. Code authorizes the Coast Guard to prescribe regulations that require dealers and distributors to assist manufacturers in obtaining information. Because of the low rate of notifications among recall campaigns monitored by the Coast Guard and the resulting negative effect this low notification rate has upon the safety of boats and associated equipment in the hands of the boating public, the Coast Guard again proposes these amendments to the Defect Notification regulations.

One measure of whether or not a manufacturer has exercised "reasonable diligence" in the notification and repair or replacement of defects in boats and associated equipment which create a substantial risk of personal injury to the public or fail to comply with applicable regulations under 46 U.S.C. 4310(c), is whether or not the manufacturer establishes a list of first purchasers and their addresses and sends the required notice to each person on the list. Since the dealer is the person who physically completes the retail sale of a product to the first purchaser, it is logical that he or she has greater access to information about the first purchaser. As a result, the dealer should be responsible for providing the manufacturer with the purchaser's name and address and an identification of the product: the Hull Identification Number of a boat or the serial number of an item of associated equipment.

These proposed amendments do not specify the method or system a manufacturer must use to collect first purchaser information from dealers. Rather, the proposed amendments require dealers to supply the information within 90 days of the retail sale of the boat or item of associated equipment. The Coast Guard believes that it is in the best interest of both manufacturers of boats and associated equipment and dealers of these products to establish mutually acceptable methods for recording and compiling first purchaser information.

Although the Notice of Proposed Rulemaking [45 FR 85475] included distributors, subsequent manufacturers and other persons in the distribution-manufacturing chain, the Coast Guard revised the proposed amendments to limit the requirement for the provision of first purchaser information to persons engaged in the retail sale of boats and associated equipment. A distributor who sells boats and associated equipment to a dealer would not know the name and address of the eventual retail purchaser of the product. However, if a distributor ever made a retail sale of a boat to a first purchaser, the distributor would be considered a dealer as the term is defined in the proposed amendments.

## Discussion of Comments

Twenty-eight comments were received in response to the Notice of Proposed Rulemaking (NPRM) published December 29, 1980 [45 FR 85475].

Three comments supported the proposed amendments.

Five comments misinterpreted the phrase "associated equipment" as it was used in the NPRM. According to 33 CFR 179.03(d), "associated equipment" means an inboard engine, outboard engine or sterndrive unit. Those who misinterpreted the definition thought that "associated equipment" included everything a dealer might sell such as boathooks, flashlights, life preservers, etc. Whenever the term "associated equipment" is used in this Supplementary Notice of Proposed Rulemaking, it refers only to inboard engines, outboard engines and sterndrive units.

Two comments stated that the proposed amendments involved too much paperwork. The Coast Guard considers the forwarding of the Hull Identification Number (HIN) from a boat or the serial number from an engine and the purchaser's name and address to the manufacturer a minimal amount of paperwork. In the Regulatory Evaluation, the Coast Guard estimates that it takes approximately four minutes to write down the HIN of a boat or serial number of an item of associated equipment and a purchaser's name and address. Also, depending upon the method established between a manufacturer and various dealers of the company's products, the length of time required to record and forward the information could be much shorter. The use of computer equipment for inventory control, for example, is becoming more prevalent in many businesses, both large and small, therefore minimizing repetitive paperwork.

Four comments didn't want the Coast Guard to require manufacturers to acknowledge receipt of first purchaser information from a dealer. These comments are accepted. The Coast Guard believes that the proposed requirement for acknowledgement of receipt of first purchaser information would involve unnecessary additional costs and paperwork.

Three comments urged the Coast Guard to exempt private label merchandisers from the proposed amendments requiring the provision of first purchaser information to the manufacturer. One comment, in particular, addressed three different groups involved in private label merchandising that could be adversely affected by the proposed amendments. Some private label merchandisers of high value products, would be reluctant to disclose purchaser information to the original manufacturer because of the potentially adverse effect the disclosure might have on the private label merchandiser's future market. The original manufacturer might attempt to circumvent the private label merchandiser by contacting purchasers directly. Second, mass merchandisers of small boats and outboard motors could be adversely affected. Because of the administrative burden that could be imposed for inexpensive boats and engines under the proposed amendments, some mass merchandisers might refuse to carry such products. As a result, the third group, the manufacturers of these small boats and outboard motors, might also lose their markets and they too could be adversely affected. The comment stated that the Coast Guard should include a provision in the regulations to enable a manufacturer to establish a formal agreement with another party, either the private label merchandiser or a manufacturer's agent, to maintain first purchaser lists and make the lists available for defect notification programs. The Coast Guard has accepted the recommendation presented in the comments. The proposed amendments are revised to allow a manufacturer to establish a formal agreement with a private label merchandiser or another party to assemble, record or maintain first purchaser information. A private label merchandiser or another party with such a formal agreement could also provide the notificaiton required under 46 U.S.C. 4310. However, since a manufacturer's duty to notify purchasers lasts for a period of five years, the failure of any such agreement means that the manufacturer would still be responsible for providing the required notification.

Another comment stated that the proposed regulations should not apply to everyone in the distribution chain. This comment is accepted. Although the NPRM [45 FR 85475] included distributors, subsequent manufacturers and other persons in the distribution-manufacturing chain, the Coast Guard is revising the proposed amendments to

limit the requirement for the provision of first purchaser information to persons engaged in the retail sale of boats and associated equipment. A distributor who sells to dealers would not know the name and address of the eventual purchaser of the products. If a distributor ever made a retail sale of a boat to a first purchaser, the distributor would be considered a dealer as the term is defined in the proposed amendments.

Several comments stated that the "warranty card" system currently required is sufficient. Another comment stated that the regulations should apply to the purchaser and not the dealer. One other comment stated that the proposed amendments should require the manufacturer to provide a return, self-addressed postcard with each boat or item of associated equipment with a note to the purchaser requesting his or her name and address. The Coast Guard did not accept these recommendations. All of these comments require the cooperation of the purchaser; however, the Coast Guard's experience has been that although many manufacturers currently use the system suggested by the comments, in many instances, purchasers have not returned warranty card information. The Coast Guard believes that under the Defect Notification regulations, the dealer is in a better position to provide boat and engine manufacturers with the required information. Also, the other procedures in a defect notification campaign, inspection and/or repair, usually require participation by the dealer who sold the boat or engine to the purchaser.

Two other comments concerning the use of warranty cards stated that their use is objectionable in some instances because most State warranties are more favorable than manufacturer warranties. According to the comments, completion of the warranty card could be construed as a waiver of the State warranty in favor of the less favorable manufacturer's warranty. These comments are not relevant to these proposed amendments which would require dealers, not purchasers, to supply first purchaser information.

Another comment stated that the information already exists; that dealers have sales invoices, title papers, financing contracts and other papers. The Coast Guard does not consider the documents cited in the comment sufficient to meet the intent of the proposed amendments. Not all companies maintain the same practices. One company's sales invoice for a boat, for example, might contain the make, model, model year and color of the boat, but not its HIN. Another company's invoice might contain the HIN of the boat or serial number from the engine, but not the purchaser's name and address. Not all States have laws which require titling and not all purchasers require financing.

Two comments wanted the Coast Guard to exempt inflatable boat manufacturers and dealers from the proposed amendments. The Coast Guard did not accept this recommendation. Any inflatable boat which bears an HIN is a boat as the term is used in 33 CFR Part 179 and would therefore be subject to these proposed amendments.

One comment objected to the proposed requirement for a dealer to provide the information within 90 days of the time of sale. The comment wanted the dealer to be allowed the option of holding the information until it is needed by the Coast Guard or the manufacturer. This recommendation was not adopted. The Coast Guard's experience has been that the typical reason for not submitting first purchaser information to a manufacturer is that the information is lost. The Coast Guard considers 90 days a reasonable period of time and minimizes the length of time a dealer has to store the information.

One comment stated that the Government is attempting to require dealers and manufacturers to perform what is obviously in the best interests of both parties and that the Coast Guard should not interfere with normal market procedures. Unfortunately, the Coast Guard has found that in many recall campaigns dealers have not provided first purchaser information to the manufacturers.

## Discussion of the Proposed Amendments

The National Boating Safety Advisory Council was consulted and its opinions and advice have been considered in the formulation of these amendments. The Council concurred with the approach suggested by the Coast Guard. The transcripts of the proceedings of the National Boating Safety Advisory Council at which this rule was discussed are available for examination in Room 4304, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The minutes of the meetings are available from the Executive Director, National Boating Safety Advisory Council, c/o Commandant (G–BBS), U.S. Coast Guard, Washington, DC 20593–0001.

Since the Federal Boat Safety Act of 1971 has been recodified as Chapter 43 of Subtitle II of Title 46 of the United States Code (U.S.C.), the authority citation for Part 179 is being revised to reflect the recodification.

Section 179.03 would be amended to remove and reserve the definition for "the Act" and include two new definitions for "first purchaser" and "dealer." These definitions are needed to clearly identify the retail buyer and seller of a boat or item of associated equipment.

Under the proposal, Part 179 would be amended to include a new Section 179.04, which would specify the first purchaser information requirement for manufacturers and dealers. The manufacturer of new boats or items of associated equipment would be required to establish and maintain a list of first purchasers. Each entry in a first purchase list would include the name and address of the first purchaser and the HIN, if a boat; or the serial number, if an item of associated equipment. The requirement to maintain a list of first purchasers would last for a period of five years from the date of certification or the date of manufacture of a boat or item of associated equipment. The proposed record retention requirement is consistent with 46 U.S.C. 4310(c)(2), because a manufacturer's duty to notify also lasts for a period of five years. Section 179.04 would require a dealer who makes a retail sale of a boat or item of associated equipment to furnish the name and address of the first purchaser and the HIN of the boat or serial number of the engine to the manufacturer of the product within 90 days. A dealer who was a private label merchandiser would have the option of maintaining first purchaser information and/or conducting defect notification provided there was a formal agreement with the boat or associated equipment manufacturer. Also, a manufacturer would be allowed to establish a formal agreement with another party for responsibility of collecting first purchaser information and/or conducting defect notification.

Sections 179.05, 179.07, 179.11 and 179.13 would be amended to clarify confusing language, and reflect the recodification of the Federal Boat Safety Act of 1971 as part of Title 46, of the U.S. Code.

Section 179.17 would be amended to reflect the recodification of the Federal Boat Safety Act of 1971 as part of the U.S. Code and cite the correct penalty provisions. The section would also be amended to clarify the penalties that may be assessed against a dealer who fails to provide first purchaser information.

**Regulatory Evaluation**

These regulations are considered to be non-major under Executive Order No. 12291 and non-significant under the DOT Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this proposal has been found to be minimal. Therefore, a regulatory evaluation has not been prepared. The proposed amendments do not specify the method a dealer must use to collect first purchaser information and provide the information to the manufacturer. The Coast Guard believes that it is in the best interests of both manufacturers of boats and associated equipment and dealers of these products to establish mutually acceptable methods for recording and compiling first purchaser information. However, the Coast Guard estimates that it takes four minutes (.066 hrs.) to write down a purchaser's name and address and an identification of the product purchased. Preparation time could be even lower for dealers with computerized inventory systems who can log purchasers' names and addresses and the HINs or serial numbers from products purchased using a computer. The Coast Guard further estimates that the hourly wage for a secretary is $8.00. Thus, the estimated cost to gather first purchaser information for a boat or item of associated equipment is $.75 (.066 × $8.00) per product. The present postage for a first class letter is $.22. The Coast Guard considers a total cost of $.97 a minimal cost when compared to the total profit margin on a boat or item of associated equipment.

Since the impact of this final rule is expected to be minimal, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects for 33 CFR Part 179**

Defect notification.

In consideration of the foregoing, the Coast Guard proposes to amend Part 179 of Title 33, Code of Federal Regulations as follows:

## PART 179—DEFECT NOTIFICATION

1. The authority citation for Part 179 is revised to read as follows:

Authority: 46 U.S.C. 4310; 49 CFR 1.46.

2. Section 179.01 is revised to read as follows:

**§ 179.01 Purpose.**

This Part prescribes rules to implement section 4310 of Subtitle II of Title 46, U.S. Code governing the notification of defects in boats and associated equipment.

3. Section 179.03 is revised by removing and reserving paragraph (a) and by adding two new paragraphs (e) and (f) to read as follows:

**§ 179.03 Definitions.**

(a) [Reserved]

* * * * *

(e) "First Purchaser" means any person who buys a new boat or item of associated equipment for their own use and not for the purposes of resale.

(f) "Dealer" means any person engaged in the retail sale of a new boat or item of associated equipment to a first purchaser.

4. Section 179.04 is added to read as follows:

**§ 179.04 First purchaser information.**

(a) Each manufacturer of new boats or items of associated equipment shall establish a list of first purchasers. Each entry in a first purchaser list shall contain the name and address of the first purchaser and:

(1) The Hull Identification Number, if a boat; or

(2) The serial number, if an item of associated equipment.

(b) Each manufacturer shall maintain the list of first purchasers for a period of five years from the date of certification or the date of manufacture of a boat or item of associated equipment.

(c) Each dealer who sells a new boat or item of associated equipment shall, within 90 days of the sale, furnish the manufacturer of the product or the person designated by the manufacturer with the following:

(1) The name and address of the first purchaser; and

(2) The Hull Identification Number if a boat or serial number if an item of associated equipment.

5. Section 179.05 is revised to read as follows:

**§ 179.05 Manufacturer discovered defects.**

Each manufacturer of a boat or item of associated equipment who discovers that one of its products fails to comply with a regulation prescribed pursuant to 46 U.S.C. 4302 or contains a defect which creates a substantial risk of personal injury to the public shall provide the notification required by 46 U.S.C. 4310(b) within 30 days.

6. Section 179.07 is revised to read as follows:

**§ 179.07 Notification of dealers.**

Each notification a manufacturer provides to dealers in accordance with 46 U.S.C. 4310(c)(1)(C) must be by means of a letter, telegram or other written document.

7. The introductory text in § 179.09 is revised to read as follows:

**§ 179.09 Contents of notification.**

Each notice required by 46 U.S.C. 4310(b) must include the following additional information:

* * * * *

8. Section 179.11 is revised to read as follows:

**§ 179.11 Defects determined by the Commandant.**

Each manufacturer notified by the Commandant under 46 U.S.C. 4310(f) of a failure to comply with a regulation prescribed pursuant to 46 U.S.C. 4302 or of a defect which creates a substantial risk of personal injury to the public shall within 30 days of receipt of the notification by the Commandant:

(a) Provide the notification required by 46 U.S.C. 4310 (c) and (d); or

(b) Provide evidence to the Commandant by certified mail that there is no failure to comply with a regulation or defect which creates a substantial risk of personal injury.

9. Section 179.13 is amended by revising paragraphs (a)(1), (a)(2) and (b) to read as follows:

**§ 179.13 Initial report to the Commandant.**

(a) A manufacturer who provides notification under 46 U.S.C. 4310 shall concurrently send to the Commandant by certified mail—

(1) A true or representative copy of each notice, bulletin, and other communication given to persons required to be notified under 46 U.S.C. 4310(c)(1);

(2) The total number of boats or items of associated equipment potentially affected by the defect which creates a substantial risk of personal injury or failure to comply with a regulation; and

(3) * * *

(b) If an item required by paragraph (a) of this section is not available at the time of the initial report to the Commandant, a manufacturer may submit the item when it becomes available.

10. Section 179.17 is revised to read as follows:

**§ 179.17 Penalties.**

(a) Each manufacturer who fails to provide a notification under 46 U.S.C. 4310(c) or fails to exercise reasonable diligence in fulfilling the undertaking to correct the defect or failure to comply under 46 U.S.C. 4310(d) is subject to the penalties prescribed in 46 U.S.C. 4311.

(b) Each manufacturer who fails to comply with any other provision of 46 U.S.C. 4310 or the regulations in this part

is subject to the penalties prescribed by 46 U.S.C. 4311.

(c) Each dealer who fails to comply with the regulations in this part is subject to the penalties prescribed by 46 U.S.C. 4311(c).

11. Section 179.19 is revised to read as follows:

**§ 179.19 Address of the Commandant.**

Each manufacturer who submits a report and communication to the Coast Guard required by this part shall send it to: Commandant (G–BBS), U.S. Coast Guard, Washington, DC 20593–0001.

Dated: May 22, 1987.

T.T. Matteson,

*Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.*

[FR Doc. 87–12118 Filed 5–28–87; 8:45 am]

BILLING CODE 4910–14–M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 588

[Docket No. 87–11]

### Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Colombia Trade

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Maritime Commission in response to a petition alleging the existence of conditions unfavorable to shipping in the foreign oceanborne liquid bulk trade between the United States and Colombia proposes rules which would suspend the tariffs of Flota Mercante Grancolombiana in the U.S./Colombia trade unless certification is received assuring that unfavorable conditions do not exist. The rule would adjust or meet apparent unfavorable conditions by imposing burdens on a Colombian carrier which approximate those placed on the Petitioner, O.N.E. Shipping, Ltd., a non-Colombian carrier, by Colombian laws and regulations.

**DATE:** Comments due on or before June 29, 1987.

**ADDRESS:** Comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876, as implemented by 46 CFR Part 585, the Federal Maritime Commission ("Commission") is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

On May 29, 1986, O.N.E. Shipping, Ltd. ("O.N.E.") filed a petition pursuant to Section 19 requesting the Commission to issue regulations to adjust and meet conditions unfavorable to shipping in the U.S/Colombia trade. *Petition of O.N.E. Shipping Ltd. for Issuance of Regulations to Adjust and Meet Conditions Unfavorable to Shipping in the Foreign Trade of the United States* ("Petition"). The Petition alleged that the cargo preference laws of Colombia had damaged O.N.E.'s financial position by excluding O.N.E. from the U.S./Colombia liquid bulk trade. Notice of the Petition was published in the Federal Register on June 20, 1986 (51 FR 22561), and interested persons were invited to submit comments on the Petition no later than July 21, 1986. Subsequently, pursuant to a request by Flota Mercante Grancolombiana, S.A. ("Grancol"), a Colombian carrier, the Commission extended the deadline for comments until August 4, 1986. A comment on the Petition was submitted by Grancol.

On September 22, 1986, O.N.E. filed an amended Section 19 petition, including a discussion of recent Colombian maritime laws, enacted in July and August, 1986. *Amendment to Petition of O.N.E. Shipping, Ltd. for Relief Under Section 19 of the Merchant Marine Act, 1920* ("Amended Petition"). Notice of the Amended Petition was published in the Federal Register on October 15, 1986 (51 FR 36754), with comments invited by November 4, 1986.

On October 24, 1986, Grancol requested a 45-day extension of the November 4 deadline. Grancol advised that O.N.E. had no objection to such an extension. The Commission granted the request. On December 8, 1986, the Commission granted an additional 3-day extension until December 22, 1986, as requested by Grancol, which had advised that O.N.E. had no objection to the grant of such an extension.

Comments on the Amended Petition were submitted by Grancol and the Chemical Manufacturers Association ("CMA").

### Colombian Laws and Regulations

Decree [1] No. 994 of April 29, 1966, authorizes the Government of Colombia to establish percentages of Colombian imports and exports to be reserved to Colombian-flag carriers. Decree No. 1208 of July 21, 1966, which implemented Decree No. 994, reserves to Colombian-flag vessels no more than 50% of liquid bulk imports into Colombia.

Resolution No. 0097 of June 8, 1973, gave Grancol trading rights in the U.S. Gulf/Colombia liquid bulk trade, authorizing the carrier to transport the 50% reserved by Colombian law to Colombian-flag vessels, under space-charter agreements with Andino Chemical Shipping Co. ("Andino"), a third-flag carrier.

Colombian cargo reservation laws were further implemented by import licenses issued to Colombian importers by the Institute of Foreign Trade ("INCOMEX"). The reservation requirements applied only where there was Colombian-flag service. When Grancol obtained authority to serve the U.S./Colombia liquid bulk trade in 1973, a 100% cargo reservation stamp was applied in that trade. Subsequently, INCOMEX changed its stamp so that Colombian-flag carriage was required only for the first 50% of the cargo covered by each import license.

Decree No. 2324 of September 18, 1984, provides for accumulation of non-reserved Colombian bulk imports. That decree was not implemented until laws and regulations promulgated in mid-1986 began to apply it. Article 162 of the Decree states that the "free percentage [of cargo] may be accumulated within the [same] calendar year" from the imported bulk shipments of the same user of consignee, statistics to be maintained by Colombia's Maritime and Port Directorate General ("DIMAR"). Decree No. 2324 also includes a penalty provision (Article 83) which authorizes fines for violations of the cargo reservation laws. The fines must be levied against the importer, exporter, and/or carrier, and may be as much as twice the amount of the relevant freight charges.

Article 49 of Decree No. 2451 of July 31, 1986, provides that, when a Colombian carrier charters a vessel which transports both reserved and unreserved bulk cargo, only the percentage of deadweight tonnage which is designated as reserved cargo shall be used as the basis for calculating the maximum charter capacity permitted

[1] The principal laws and regulations discussed herein are appended to O.N.E.'s Petition and Amended Petition.

to the carrier, provided that the user, whether an importer or an exporter, agrees *not* to accumulate free tonnage for the purposes of Article 162 of Decree No. 2324.

Regulation No. 01 of August 8, 1986, issued by DIMAR, requires that, if a waiver of the cargo reservation law is granted, an appropriate seal be fixed to the import license. Regulation No. 01 also provides that DIMAR is to replace INCOMEX in administering the cargo reservation laws, and that the INCOMEX stamps will no longer be affixed to import licenses. However, Regulation No. 01 further states that the INCOMEX cargo reservation stamps will not be eliminated until Regulation No. 01's procedures are implemented and DIMAR issues appropriate communications.

**The Impact of Colombian Laws and Regulations on the U.S./Colombia Liquid Bulk Trade**

O.N.E. is operated by overseas Enterprises, Inc., which is U.S.-owned and operated, and serves liquid bulk trades using owned and chartered specialized vessels registered in a number of countries. Currently, O.N.E. provides regular service between U.S. (primarily Gulf Coast) ports and ports in Venezuela, Mexico, the Dominican Republic, Trinidad and Tobago, Haiti, Guatemala, Costa Rica, the Netherlands Antilles, Panama, and El Salvador.[2] O.N.E.'s Amended Petition relates exclusively to the U.S./Colombia liquid bulk parcel tanker trade ("the Trade").

According to O.N.E., approximately 1.5% of the liquid bulk parcel tanker cargo in the Trade is currently moved by third-flag carriers not associated with Colombian-flag carriers, whereas prior to the full implementation of Colombia's cargo preference laws such lines carried almost 100% of the Trade. O.N.E. advises that no U.S.-flag operators have participated in the Trade in the past, and none does so at the present time.

O.N.E. argues that the loss of substantial competition from third-flag carriers has raised and will continue to raise shipping costs artificially and will severely diminish the available quantity and quality of service necessary to satisfy the Trade. It contends that the manner in which Colombia implements its waiver procedures makes the potential waiver under Colombian law of 50% of liquid bulk cargoes unrealistic and meaningless. According to O.N.E., it is impractical for shippers to divide the small parcels typical of the trade between two carriers, the first of necessity Colombian-flag, and it is uneconomical for a carrier to participate in the carriage of less-than-parcel loads. Liquid parcel tanker operators allegedly cannot maintain a viable service on the basis that shippers may be willing to split their shipments.

The uncertainties created by the Colombian laws in such areas as waiver requirements, the "accumulation" provisions, the associate status standards, and even in the requirements imposed on Colombian-flag carriers, are said to be such that no shipper or carrier can determine how or in what manner they may be applied. O.N.E. further advises that U.S. shippers are reluctant to risk the penalty of a fine possibly amounting to twice the freight charges involved. O.N.E. allegedly has suffered extensive harm as a result of Colombian laws, attributing a loss of earnings and added operating costs to its inability to serve the Trade.

O.N.E. contends that, due to lack of carrier competition, U.S. liquid bulk exporters are faced with higher prices not only in the U.S./Colombia trade but also in neighboring trades, because carriers cannot offer the volume discounts which would be economical if they could serve the entire range of ports without having to by pass Colombia. O.N.E., citing *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/ Venezuela Trade*, Docket No. 82–58, Interim Report on Current Status of Proceeding, 21 S.R.R. 1627 (February 25, 1983), concludes that the "presence of discriminatory restrictions and the denial of fair and competitive access" constitutes conditions unfavorable to shipping in the foreign trade. O.N.E. therefore urges the Commission to suspend the tariffs of Grancol in the U.S./Colombia trade.

Grancol, on the other hand, urges the Commission to dismiss the Amended Petition. According to Grancol, whatever the difficulties of the past, today Colombian laws reserve no more than 50% of Colombia liquid bulk imports for Colombia-flag carriers, and importers may accumulate the unreserved cargo percentage on an annual basis. Grancol advises that third-flag carriers and Ligracol (a Colombian carrier jointly owned by Grancol and Andina) now compete for at least 50% of the southbound cargo, and all the northbound. Third-flag carriers, including O.N.E., are said to currently transport approximately 50% of the Trade.

Grancol concedes that all imports into Colombia, including liquid bulk, are subject to a licensing regime by the Government of Colombia. Grancol also acknowledges that prior to mid-1986 Colombian authorities did require the half of each licensed shipment be carried on Colombian or associated vessels. Because individual bulk shipments to Colombia are relatively small, Grancol states that there may have been an unintended hardship due to the practical difficulty of splitting small shipments. However, the implementing regulations of mid 1986 are seen by Grancol as strengthening the allegedly new, more open system brought about by the 1984 law (Decree No. 2324) which permits Colombian importers to accumulate the unreserved cargo percentage annually. Grancol explains that a present, for every ton an importer ships on a Colombian-flag or authorized space-chartered vessel, the importer is entitled to ship a ton on a third-flag vessel. This adjustment in the Colombian reservation system is said to give an importer the ability to ship both large and small parcels on third-flag vessels.

Grancol maintains that the procedures to be followed when shipping unreserved cargo on third-flag vessels, as set forth in Regulations No. 01, are simple. It explains that, generally, the importer presents an import license to DIMAR with a copy of a bill of lading for at least an equivalent amount of cargo shipped by the importer on a Colombian-flag or authorized space-charter vessel (import licenses no longer bear INCOMEX stamps); DIMAR will then stamp the license as unreserved, authorizing the importer to ship the entire cargo under any flag.

Grancol maintains that because Colombia's reservation laws have changed significantly since late 1984, O.N.E.'s statistics on third-flag carriage for the 1981–84 period are largely irrelevent. Grancol's statistics for September-November 1986, the three months following the issuance by DIMAR of Regulation No. 01, show Ligracol carrying 46.2% of cargo in the trade, Panamerican Tankers ("Panam"),[3] third-flag carrier, carrying 43.8%, and O.N.E. carrying 10%. Grancol notes that the 44% of the Trade carried by Panam as a third-flag carrier over the

[2] O.N.E. did not indicate that it was serving Colombia at the time its Amended Petition was filed in September, 1986. However, a comment on the Amended petition (discussed herein) filed in December, 1986 indicated that O.N.E. was serving the U.S./Colombia trade in autumn 1986.

[3] Grancol points out that, prior to June, 1986, Panam carried reserved cargo under a space charter agreement with Transpetrol, Ltd., a Colombian carrier, but that that space-charter arrangement is not longer in effect.

three-month period since issuance of the new regulations is significantly better than the average share of the trade it carried from 1981 to 1985 (approximately 19.6%). The new Colombian laws have thus clearly benefited the third-flag carrier, according to Grancol.

The Chemical Manaufacturers Association argures that the Colombian requirement to transport the first 50% of each liquid bulk shipment on Colombian-flag vessels or their designated associates is, in reality, far worse than 50/50 cargo reservation. CMA advises that bulk chemical shipments rarely can be economically split between a Colombian-flag vessel and a vessel of another flag. It explains that parcel tankers generally have about 10 to 30 segregated tanks with varying piping, heathing, cooling, venting and pumping systems designed to handle the specialized chemical cargoes, and that a typical bulk chemical shipment will approximate the size of the specialized tank in which it will be placed. Splitting the shipment between two vessels allegedly would result in unused capacity in the tanks of each vessel.

CMA states that rates are based on maximizing available capacity in each tank and that rates typically will decrease per ton as a shipper's volume increases. CMA thus argues that splitting shipments between two vessels would jeopardize the volume discounts. In addition, customers are said to be typically better served when their shipment is placed on a single vessel, delivered at one time with a single unloading, and with one set of paperwork. CMA claims that splitting shipments of hazardous chemicals increases the number of situations in which a transportation accident releasing toxic chemicals could occur.

Finally, CMA refers to the letters attached to the Amended Petition from Dow Chemical Latin America and PPG Industries, Inc., arguing that Colombian law limits their choices and results in noncompetitive rates. CMA therefore urges the Commission to impose Section 19 sanctions until the Government of Colombia removes its discriminatory and anticompetitive laws.

### Diplomatic Activities

On June 16, 1986, shortly after the original O.N.E. Petition was filed, the Commission requested that the Department of State ("Department" or "DOS") review the matter to determine whether it could be resolved through diplomatic channels, and if so, to make whatever efforts appropriate towards reaching such a resolution. The Commission renewed this request following the filing of the Amended Petition.

In response to its requests, the Commission has received three letters from DOS officials, dated July 24, 1986, January 9, 1987, and February 2, 1987, each containing diplomatic notes from the Government of Colombia. The January 9 letter reported that commercial discussions between representatives of O.N.E. and Colombian carriers occurred in Washington in mid-November, 1986. These discussions are said to have led to a visit by O.N.E. officials to Colombia the second week of December to meet with Colombian maritime authorities. The Department reported that an O.N.E. representative had stated that no commercial resolution was achieved as a result of those meetings, and that no further efforts had been discussed. The Commission was further advised that, in continuing discussions with the Government of Colombia, the Department:

> . . . intend[s] to stress to Colombian authorities that the unilateral reservation of significant quantities of commercial cargoes is inconsistent with U.S. maritime policy.

The Colombian note attached to the February 2, 1987 DOS letter contained the most thorough exposition of relevant Colombian laws and regulations of the three Colombian notes. The note was in the form of a letter from Samuel Alberto Yohai ("Yohai Letter"), Director General of INCOMEX, to the U.S. Ambassador to Colombia.

Mr. Yohai advises that Colombian law reserves no more than 50% of bulk cargo (Decree No. 994 of 1966, Decree No. 1208 of 1969, and Decree No. 2324 of 1984), and that nonassociated carriers can compete freely for the carriage of non-reserved cargo.

Mr. Yohai also reviews the procedure for foreign participation in the transport of bulk cargo (liquid or dry) which he reports as follows:

Decree No. 2324, Article 162, calls on the importer to account for, on an annual basis, the "reserved percentage" as well as the free cargo. In the case of the latter, its volume may be accumulated over the course of the year. Although an accounting based on the system of individual import licenses was consistent with the law, this procedure made it difficult for the importers, since dividing the cargo covered by each license into two or more shipments in practice limited their freedom to choose a carrier. Aware of the importers' difficulties, DIMAR issued Regulation No. 01 in August, 1986, establishing the system of choosing a carrier based upon the annual accumulation of cargo volumes. The procedures of Regulation No. 01, Article 6, do not discriminate against foreign carriers. Article 6 has a second objective, the confirmation of the right of entry of foreign vessels carrying free cargo. Information about the vessel and conditions of transport must be submitted by the importer.

According to Mr. Yohai, Article 49 of Decree No. 2415 of 1966 has nothing to do with the transport of cargo by foreign flags. He explains that Article 49 introduces restrictions on Colombian carriers, providing that these carriers can only charter foreign flag vessels up to 50% of the DWT of their own Colombian-flag vessels. Further, Mr. Yohai advises that when the bulk importer assigns part of its free cargo to a Colombian carrier, DIMAR does not count, within the authorized chartering capacity, the portion of free cargo that the importer decides to give the Colombian carrier. Mr. Yohai states that the importer thus waives its option to accumulate the cargo as reserved cargo.

### Discussion

Section 19(1)(b) of the Merchant Marine Act, 1920, authorizes and directs the Federal Maritime Commission:

> To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country * * *.

The types of conditions which the Commission has found to be "unfavorable to shipping in the foreign trade" of the United States, within the meaning of Section 19, are set forth in the Commission's rules at 46 CFR 585.3. Among these are conditions which: (1) preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel (46 CFR 585.3(a)); (2) reserve substantial cargoes to the national flag or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States (46 CFR 585.3(b)); and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors (46 CFR 585.3(d)). The laws and regulations of the Government of Colombia governing transportation of liquid bulk cargoes in the Trade and complained of

by O.N.E. and some of the commenters appear to create the "unfavorable conditions" listed above.

There is no disagreement among those participating in this matter to date as to the fact that the Government of Colombia reserves 50% of liquid bulk imports to Colombian carriers. Decree No. 1206, which implemented Decree No. 994 explicitly reserves for Colombia-flag vessels (as defined by Colombian law) "no more than " 50% of all bulk liquid and refrigerated import and export cargoes. While "no more than" 50% could in theory mean *less* than 50%, from 197 to 1986, INCOMEX required Colombian-flag carriers for the first 50% of *each import shipment*. Neither Decree No. 2324 not its implementing regulation, Regulation No. 01 alters access to the 50% "reserved" portion of Colombia's liquid bulk imports. The change in the system of annual accumulation would only affect (and, according to Grancol and Colombian officials, ease) access to the "free" 50% of liquid bulk cargo.

Given the nature of the Trade, the requirement that the first 50% of each import shipment be carried on a Colombian-flag carrier, made it impractical for importers to choose non-Colombian flag carriers for tranportation of any portion of the shipment. While it is not possible on the present record to determine what O.N.E.'s market share in the Trade would have been in the 1977–86 period in the absence of Colombian cargo reservation requirements, it would appear that O.N.E. would likely have had a greater presence during that period, in the absence of those requirements. Given O.N.E.'s history of activity in the liquid bulk trades in contiguous countries for over twenty years, O.N.E.'s argument that service to Colombia would be a natural complement to its other services seems reasonable. It appears that O.N.E. has been precluded to some degree by the Colombian laws and regulations from competing in the Trade during the 1977–86 period.

Therefore, the Government of Colombia decrees in question not only "reserve substantial cargoes to the national flag" lines of Colombia, and "fail to provide for effective and equal access to such cargo" by non-Colombian-flag carriers within the meaning of 46 CFR 585.3(b), but also "preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel" within the meaning of 46 CFR 585.3(a).

Moreover, the laws and regulations of the Government of Colombia appear to have disadvantaged U.S. exporters. CMA members active in the Trade argue that their service options are extremely limited. The *de facto* requirement that shippers use Colombian-flag carriers is said to have denied those shippers the freedom to select their preferred carrier and, as a result, led to a lack of competition and higher rates. It is also noted that the Colombian liquid bulk cargo reservation laws have been applied to Colombia's import trade, and not to the export trade. It would appear that, while U.S. chemical exports to Colombia are being adverserly affected, the same cannot be said of Colombian liquid bulk exports to the United States. There is also the possibility here that U.S. exporters are bearing the burden of supporting the Colombian merchant marine.[4] Therefore, the Government of Colombia decrees appear to have a discriminatory or unfair impact upon U.S. exporters within the meaning of 46 CFR 585.3(d).

For reasons stated above, the Commission finds an adequate basis to issue a proposed rule pursuant to Section 19 to adjust or meet apparent conditions unfavorable to shipping in the U.S./Colombia liquid bulk trade. The rule proposed is appropriately directed towards the activities of Grancol, a Colombian-flag carrier operating in the U.S./Colombia trade. Grancol serves both the U.S./Colombia liner and bulk trades, the latter through the corporation Ligracol. The proposed rule would suspend the tariffs and all amendments thereto of Grancol, in the U.S./Colombia trade, unless Grancol secures authorized status from the Commission. Authorized status would be granted to Grancol upon its submission to the Commission of a certificate from the Government of Colombia stating that no law, regulation or practice of the Government of Colombia will preclude or tend to preclude O.N.E. from competing in the U.S./Colombia liquid bulk trade on the same basis as any other vessel.

The proposed rule allows Grancol 25 days from the publication of a final rule in which to act to avoid suspension of its tariffs in the trade, by filing the certificate described above. If Grancol fails to submit the required certificate within 25 days, its tariffs will be suspended 5 days subsequently. Section 13(b)(3) of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(3), subjects a carrier which accepts or handles cargo for carriage under a tariff which has been suspended to a civil penalty of up to $50,000 for each shipment.

While the Section 19 action proposed herein is based primarily on the fact and the impact of the "reserved" 50% of liquid bulk imports, there is considerable dispute over the accessibility of the non-reserved or "free" 50%. The Commission is therefore requesting further information concerning the recent impact of the Colombian laws of mid-1986 on access to the allegedly non-reserved portion.

O.N.E., CMA, and Grancol, as well as the Government of Colombia agree that access to the "free" 50% was seriously hampered prior to the summer of 1986. At the time O.N.E. submitted its Amended Petition, however, there has been very little time to evaluate the impact of the new regulations. If the statistics submitted by Grancol indicating that O.N.E. carried 10% of cargo in the relevant trades in the September-November 1986 period are accurate, then there has been a marked improvement in O.N.E.'s position, at least temporarily. However, O.N.E. has not had the opportunity to submit statistics for the equivalent period. CMA's comments, filed several months later, nevertheless focus on the system in effect prior to July and August of 1986, and do not specifically address the new system.

Another matter related to the issue of access to the "free" 50% of liquid bulk imports is the impact of Article 49 of Decree No. 2451. O.N.E. interprets Article 49 to prevent "accumulation" of non-reserved bulk import cargo by Colombian consignees when both reserved and non-reserved bulk cargoes are carried on the same vessel, and where the vessel is a non-Colombian-flag vessel chartered by a Colombian carrier. Grancol and the Government of Colombia dispute that interpretation. Grancol contends that there is no restriction on a Colombian carrier's ability to spacecharter of unreserved cargo, and the Government of Colombia (through Mr. Yohai's letter) claims that Article 49 ". . . has nothing to do with the transport of cargo by foreign flags."

Comments by Grancol and Colombia suggest a heavy reliance on chartered vessels by Colombian-flag carriers. Article 49 gears the limits placed on Colombian carrier's chartered tonnage to the amount of reserved cargo they transport. This appears to provide them

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[4] In Docket No. 83-45, *Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Republic of the Philippines Trade, Notice of Proposed Rulemaking*, the Commission discussed cargo reservation laws which the Philippines had attempted unilaterally to implement in the U.S./Philippines trade. The Commission stated that:

. . . It is not reasonable to expect the export commerce of the United States to bear the burden of the economic costs of the carrier promotion policies of the Republic of the Philippines . . . United States policy opposes the imposition of such cargo reservation formulas upon its foreign trade. 48 FR 45,802–03.

with an incentive to carry as little cargo designated "reserved" as possible; and conversely, to carry as large a portion as possible of cargo designated "unreserved." This could lead to encouragement of, or even pressure on, Colombian importers to ship their unreserved cargo with Colombian-flag carriers. The extent of any such influence has not been addressed, however.

The Commission is therefore specially requesting current information on trade conditions as they relate to non-Colombian-flage carriers' access to the unreserved 50% of liquid bulk imports into Colombia from the U.S. In particular, the Commission invites interested persons to address the following questions:

1. What impact does the "annual accumulation" procedure have upon the access of non-Colombian-flag carriers to "unreserved" liquid bulk cargo in the Trade?

2. What are the specific administrative requirements involved in the "annual accumulation" procedure, both for Colombian importers and non-Colombian-flag carriers?

3. How much time is involved, both for Colombian importers and non-Colombian-flag carriers, in fulfilling the administrative requirements in order to "accumulate" the right to carry unreserved cargo?

4. Are importers encouraged or pressured to use Colombian-flag carriers for the transportation of "unreserved" cargo, because of Article 49 of Decree No. 2451, or any other reason?

5. Has the implmentation of Decree No. 2451 or Regulation No. 01 by the Government of Colombia discriminated against O.N.E.?

6. Are thse ambiguities in the Government of Colombia's laws and regulations which discourage importers from using the services of non-Columbian-flag carriers, because of the risk of fines or other penalties?

7. Has the INCOMEX cargo reservation stamp been eliminated?

In order to provide proper notice and a fair opportunity to respond to the proposed rule, and in order to afford interested parties the opportunity to address the specific issues raised and any other matters relevant to current conditions in the Trade, the Commission is giving all interested parties 30 days from the date of publication of this Notice in the **Federal Register** to file comments and additional factual submissions. To the extent possible, all factual assertions should be attested to and accompanied by supporting documentation.

**List of Subjects in 46 CFR Part 588**

Cargo vessels; Exports; Foreign relations; Imports; Maritime carriers; penalties; Rates and fares; Reporting and recordkeeping requirements.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, it is proposed to add a Part 588 to Title 46 of the Code of Federal Regulations to read as follows:

## PART 588—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES/COLOMBIA TRADE

Sec.

588.1 Conditions unfavorable to shipping in the United States/Colombia trade.

588.2 Flota Mercante Grancolombiana—suspension of tariffs in the United States/Colombia trade unless authorized status is obtained.

**Authority:** 46 U.S.C. app. 876(1)(b); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

### § 588.1 Conditions unfavorable to shipping in the United States/Colombia Trade.

(a) The Federal Maritime Commission has determined that the Government of Colombia has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict O.N.E. Shipping, Ltd., a non-Colombian-flag carrier, from competing in the United States/Colombia trade (the Trade) on the same basis as Colombian-flag carriers, reserve a substantial portion, *i.e.*, 50%, of U.S. liquid bulk exports to Colombian-flag carriers, and disadvantage U.S. exporters vis-a-vis Colombian exporters in their application only to Colombia's liquid bulk imports.

(b) The Government of Colombia's laws and regulations reserve at least 50% of U.S. liquid bulk exports to Colombia for Colombian-flag carriers. The implementation of these laws and regulations has denied O.N.E. Shipping, Ltd., effective and equal access to liquid bulk cargoes in the Trade, and has restricted the opportunities of U.S. exporters to Colombia to select a carrier of their own choice, hampering their ability to compete in international markets.

### § 588.2 Flota Mercante Grancolombiana—suspension of tariffs in the United States/Colombia trade unless authorized status is obtained.

(a)(1) On a date 30 calendar days from the date of publication of a final rule in the **Federal Register**, the portions of the following tariffs and all amendments thereto insofar as they relate to the Trade, shall be suspended, unless Flota Mercante Grancolombiana (Grancol) first obtains authorized status pursuant to paragraph (b) of this section:

*Flota Mercante Grancolombiana (Grancol)*

FMC No. 24—Applicable BETWEEN Puerto Rico AND ports in the Caribbean, South America, Central America, and Italy.

FMC No. 31—Applicable on bananas under refrigeration FROM Santa Maria and Turbo, Colombia, TO U.S. Atlantic and Gulf Ports.

FMC No. 34—Applicable FROM inland U.S. points via Atlantic & Gulf ports TO ports in Peru, Colombia & Chile via the Panama Canal (rules tariff).

FMC No. 36—Applicable FROM U.S. Pacific ports TO Mexico, Central America, Panama & Colombia.

FMC No. 38—Applicable FROM Pacific ports in Colombia TO U.S. Atlantic, Gulf, Puerto Rico & Virgin Island ports.

(2) Other tariffs which may be filed by or on behalf of Grancol in the Trade shall also be suspended if the conditions of paragraph (b) of this section are not met.

(3) The right of Grancol to use the following conference tariffs, or any other conference tariff in the Trade, including intermodal tariffs covering service from U.S. interior points, will, absent compliance with paragraph (b) of this section, be suspended:

*United States/Colombia Conference*

FMC No. 1—Applicable FROM Ports in Colombia TO U.S. Ports.

FMC No. 3—Applicable FROM Points and Ports in the U.S. TO Points and Ports in Colombia, moving through U.S Ports of Interchange.

FMC No. 4—Applicable FROM Points and Ports in Colombia TO Points and Ports in the U.S., moving through U.S. Ports of Interchange.

FMC No. 5—Applicable FROM U.S Pacific Coast Ports TO Ports in Colombia.

FMC No. 6—Applicable FROM Pacific Coast Ports in Colombia TO U.S. Pacific Coast Ports.

FMC No. 7—Applicable FROM U.S. Atlantic and Gulf Ports TO Ports in Colombia.

(4) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by Grancol under suspended, cancelled or rejected tariffs shall subject Grancol to all

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applicable remedies and penalties provided by law.

(b)(1) In order to avoid suspension of its tariffs pursuant to paragraph (a) of this section, or to reinstate tariffs suspended for previous failure to follow the procedures prescribed herein, Grancol must secure authorized status from the Federal Maritime Commission.

(2) Authorized status shall be conferred upon Grancol upon submission to the Commission within 25 calendar days of the date of publication of a final rule in the Federal Register of a certificate from the Government of Colombia stating that no law, regulation or policy of the Government of Colombia will:

(i) Preclude O.N.E. Shipping, Ltd. from competing in the Trade on the same basis as any other carrier;

(ii) Impose any administrative burden upon O.N.E. Shipping, Ltd., or upon shippers desiring to use the services of O.N.E., not imposed on Colombian-flag carriers or shippers using such carriers; or otherwise discriminate against O.N.E.

(3) If no such submission is made, the tariffs identified in paragraph (a) of this section shall be suspended effective five calendar days after the expiration of the 25-day period.

(c) If the tariffs of Grancol should be suspended for failure to secure authorized status, Grancol may apply for authorized status by submitting to the Commission the certification described in paragraph b(2) of this section. Reinstatement of the tariffs would occur upon Commission review and approval of the certification.

(d) Upon conferment of authorized status, the Commission may require periodic reports from Grancol and O.N.E. in order to monitor conditions in the Trade.

By the Commission.

Joseph C. Polking,

*Secretary.*

[FR Doc. 87-12197 Filed 5-28-87; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. 87-07; Notice 02]

### Federal Motor Vehicle Safety Standards; Motor Vehicle Brake Fluids; Corrections

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Proposed rule; correction.

**SUMMARY:** This notice corrects a proposed rule on the container labeling requirements of Standard No. 116 that appeared at page 10775 in the Federal Register of Friday, April 3, 1987. The action is necessary to correct the notice number of the document and the address for submission of comments.

**DATE:** Comments on the proposed rule must be submitted not later than June 2, 1987.

**ADDRESSES:** All comments should refer to the docket number and notice number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours: 8:00 a.m. to 4: p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vernon Bloom, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5277.

**SUPPLEMENTARY INFORMATION:** The following two errors appeared in a notice of proposed rulemaking published on April 3, 1987 (52 FR 10775) to amend the container labeling requirements of Standard No. 116: (1) the notice was inadvertently listed as Notice 7, instead of Notice 1; and (2) the notice did not include the address of the Docket Section to which comments on the proposal may be submitted.

The following corrections are made in NHTSA Docket No. 87-07 appearing on 10775 in the issue of April 3, 1987:

1. On page 10775 of FR Doc. 87-7316, the corrected NHTSA notice number in the heading of the document is Notice 1. NHTSA is making this correction to avoid any confusion that may arise concerning the number of notices published under docket 87-07. Comments received prior to and after publication of this correction notice will be docketed under Notice 1.

2. On page 10775, the address of NHTSA's docket section was inadvertently excluded. All comments on the proposal should refer to the docket number and corrected notice number of the proposed rule and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington DC 20590. Docket hours: 8:00 a.m. to 4:00 p.m., Monday through Friday.

Issued on: May 22, 1987.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 87-12228 Filed 5-28-87; 8:45 am]

BILLING CODE 4910-59-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Parts 1041, 1048, and 1049

[Ex Parte No. MC-37 (Sub-No. 40)]

### Motor Carrier Commercial Zones and Terminal Areas; Extension of Time to File Comments

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Extension of time to file comments.

**SUMMARY:** By a decision served April 28, 1987, the Commission instituted a proceeding to consider amending its commercial zone and terminal area regulations. Notice of the action was published April 28, 1987, in the Federal Register, at 52 FR 15357, and in the *I.C.C. Register*. May 28, 1987, was specified as the due date for comments. Pursuant to the request of the Regional and Distribution Conference of the American Trucking Association, Inc., the time for filing comments has been extended until July 13, 1987.

**DATE:** Comments must be received by July 13, 1987.

**ADDRESS:** The original and 10 copies of comments referring to Ex Parte No. MC-37 (Sub-No. 40) should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Barry, (202) 275-7540

or

Mark Shaffer, (202) 275-7805.

Decided: May 21, 1987.

By the Commission, Chairman Gradison.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87-12258 Filed 5-28-87; 8:45am]

BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 651

### Northeast Multispecies Fishery; Availability of FMP Amendment and Request for Comment

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an FMP amendment and request for comments.

**SUMMARY:** NOAA issues this notice that the New England Fishery Management

BEST COPY AVAILABLE

Council has submitted Amendment 1 to the Fishery Management Plan for the Northeast Multispecies Fishery for review by the Secretary of Commerce. Comments are invited from the public. Copies of the amendment may be obtained from the Council.

**DATE:** Comments will be accepted until July 24, 1987.

**ADDRESSES:** Send comments to Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Multispecies Amendment."

Copies of Amendment 1 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

**FOR FURTHER INFORMATION CONTACT:** Peter Colosi, (Groundfish Management Coordinator). 617–281–3600, ext. 252.

**SUPPLEMENTARY INFORMATION:** Amendment 1 to the FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act. The Magnuson Act requires that the Secretary of Commerce, upon receiving a plan or amendment, immediately publish a notice of its availability for public review and comment. The Secretary will consider public comments in determining whether to approve the amendment.

This amendment proposes to make several modifications to the management program for northeast multispecies which would enhance its ability to conserve the resource and promote industry compliance. In particular, the amendment would further limits the small-mesh exempted fishery in the regulated mesh area; in the Gulf of Maine; expand the large-mesh protection afforded to yellowtail flounder; exclude scallop dredging from the Southern New England yellowtail closed area; allow a permitted small-mesh, mid-water trawl fishery for herring and mackerel in the Gulf of Maine; redefine the portion of the net that is affected by the minimum mesh requirement; require fishermen to secure small-mesh nets while fishing in or transiting the regulated mesh area; and provide regulatory relief by opening a small portion of haddock spawning closed area I and by allowing hook and line fishing to take place in the Southern New England closed area.

Proposed regulations to implement this amendment will be published within 15 days.

(16 U.S.C. 1801 et seq.)

Dated: May 27, 1987.

**Bill A. Powell,**

*Executive Director, National Marine Fisheries Service.*

[FR Doc. 87–12404 Filed 5–27–87; 4:03 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 653**

## Red Drum Fishery of the Gulf of Mexico; Availability of FMP Amendment and Request for Comment

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an FMP amendment and request for comments.

**SUMMARY:** NOAA issues notice that the Gulf of Mexico Fishery Management Council has submitted Amendment 1 to the Fishery Management Plan for the Red Drum Fishery of the Gulf of Mexico (FMP) for review by the Secretary of Commerce. Comments are requested from the public. Copies of the amendment may be obtained from the Council.

**DATE:** Comments will be accepted until July 23, 1987.

**ADDRESSES:** Send comments to Craig R. O'Connor, Acting Regional Director, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Limited copies of the FMP are available at this address.

Copies of Amendment 1 and its supporting documents are available upon request from the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kentucky Boulevard, Tampa, FL 33609, telephone 813–228–2815.

**FOR FURTHER INFORMATION CONTACT:** William R. Turner (Plan Coordinator), 813–893–3722.

**SUPPLEMENTARY INFORMATION:** Amendment 1 to the FMP was prepared by the Council under the authority of the Magnuson Fishery Conservation and Management Act. The Magnuson Act requires that the Secretary of Commerce, upon receipt of a plan or amendment, immediately publish notice of its availability for public review and comment. The Secretary will consider public comments in determining whether to approve the plan or amendment.

This amendment proposes new measures and revisions to existing measures in the FMP. The intent of the amendment is to prevent overfishing of the red drum resource while achieving optimum yield from the fishery under cooperative State and Federal management programs. Proposed regulations to implement this amendment will be published within 15 days.

(16 U.S.C. 1801 *et seq.*)

Dated: May 26, 1987.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 87–12300 Filed 5–28–87; 4:09 pm]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Price Support Grade Loan Rates for the 1987-Crop Tobacco Price Support Loan Program; Request for Comments

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Request for comments.

**SUMMARY:** This notice seeks public comments with respect to the method used to determine grade loan rates for each grade of each kind of tobacco for which marketing quotas are in effect for the 1987 crop or for which marketing quotas for such crop have not been disapproved by producers in a referendum. The following kind and/or types of tobaccos are affected by these determinations: (1) Flue-cured (types 11–14), (2) fire-cured (type 21), (3) fire-cured (types 22 and 23), (4) burley, (5) dark air-cured (types 35 and 36), (6) Virginia sun-cured, (7) cigar filler and binder (types 42–44, 54 and 55), and (8) cigar filler (type 46).

**DATES:** Comments must be received with respect to flue-cured tobacco by June 15, 1987, and with respect to all other kinds and types of tobaccos by (insert 30 days after publication in the FR).

**ADDRESS:** Send comments to Director, Tobacco and Peanuts Division, USDA/ASCS, P.O. Box 2415, Washington, DC 20013 or deliver to room 5750, South Building, 14th Street and Independence Avenue, SW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** In accordance with section 385 of the Agricultural Act of 1938, as amended, the Secretary of Agriculture is not required to provide for notice and public participation in establishing the rate of loans offered under a program established in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"). However, in order to obtain the views of interested persons, comments are requested with respect to factors used in establishing grade loan rate for tobacco which is eligible to receive price support.

This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified as "not major." It has been determined that this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regualtory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of Law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 29, 1983).

**FOR FURTHER INFORMATION, CONTACT:** Jack S. Forlines, (202) 447–3518.

### Background

The national average price support level for each eligible kind of tobacco is determined in accordance with the provisions in section 106 of the 1949 Act. Section 403 of the 1949 Act provides that appropriate adjustments may be made in the support price for differences in grade, quality and other factors. Section 403 further provides that such adjustments shall, so far as practicable, be made in such manner that the average support price will, on the anticipated incidences of such factors, be equal to the level of support determined as provided in the 1949 Act.

A grade is assigned to each lot of tobacco that is: (1) Subject to marketing quotas if such lot of tobacco is offered for sale through an authorized auction system; or (2) delivered for price support at a designated receiving point. The grade of the lot of tobacco is assigned by a grader employed by the Agricultural Marketing Service (AMS). In assigning the grade, the grader applies the grading standards that have been approved for the kind and type of tobacco. The grading standards may be found at 7 CFR Part 29. For price support purposes for each kind and type of tobacco for which price support is available, a grade loan rate is determined for each grade of such tobacco for which a standard is currently in effect as set forth at 7 CFR Part 29.

### Determination of Grade Loan Rates

Grade loan rates are determined as follows:

1. A grade distribution, expressed as a percentage, is determined for each grade of the respective kind and/or type of tobacco. The sum of the grade distribution percentages determined for all of the grades of the respective kind and/or type of tobacco must equal 100 percent.

2. A grade loan rate is assigned for each grade of the respective kind and/or type of tobacco.

3. For each respective grade, the grade distribution is multiplied by the assigned grade loan rate and the sum of the resulting products are determined.

4. If the sum of the products from item 3 is greater than, or less than, the national level of price support announced for the respective kind or type of tobacco, adjustments are made for one or more of the assigned grade loan rates so as to cause the sum of the products to equal the announced national price support level.

### Determination of Grade Distributions

The grade distribution for all kinds of tobaccos, except cigar tobaccos, are determined as follows:

1. AMS determines the percentage of each respective grade of a kind of tobacco that is marketed from a crop during a marketing year. The percentage

is generally based on data obtained through random samples taken throughout the marketing season. The sum of the percentages for all grades of a kind of tobacco must equal 100 percent. AMS provides the determined percentages to the Agricultural Stabilization and Conservation Service (ASCS).

2. The grade distribution for each respective grade of a kind of tobacco is the result of determining the simple average of not less than 5 nor more than 10 years of the data supplied by AMS with respect to the respective grade of the kind of tobacco. In determining the grade distributions, data from the same crop years are used with respect to the determination for each grade of a kind of tobacco.

The grade distributions that have been used in determining grade loan rates for cigar tobacco have remained constant for several years. Cigar tobaccos are not marketed through an auction system. Thus, the only cigar tobacco that is graded by an AMS grader is that tobacco which is pledged as collateral for a price support loan. As a result, AMS does not gather sufficient data for use in determining meaningful grade distributions.

### Impact of Grade Distributions

Continuing changes in market needs, cultural practices, marketing methods, seed varieties and weather conditions have affected the percentages of a crop that is marketed in each of the respective grades of a kind of tobacco. In order for the average price support for a kind of tobacco to be neither greater than nor less than the national support price announced for a kind of tobacco, the grade distributions used in calculating grade loan rates must accurately predict the percentages of the crop that will be marketed in each respective grade. Consider the following illustration of a kind of tobacco having a national average price support level of $1.20 per pound.

| Grade | Grade distribution percentage used | Loan rate assigned | Extension |
|---|---|---|---|
| A | 20 | $.75 | .150 |
| B | 50 | 1.23 | .615 |
| C | 30 | 1.45 | .435 |
| Total | | | $1.200 |

With the above loan rates, the following crops were produced:

EXAMPLE 1

| Grade | Percentage of crop produced in each grade | Loan rate | Extension |
|---|---|---|---|
| A | 40 | $.75 | .3000 |
| B | 45 | 1.23 | .5535 |
| C | 15 | 1.45 | .2175 |
| Total | | | $1.0710 |

In Example 1, the crop was supported at $1.071 per pound with a national price support level of $1.20 per pound.

EXAMPLE 2

| Grade | Percentage of crop produced in each grade | Loan rate | Extension |
|---|---|---|---|
| A | 10 | $.75 | .075 |
| B | 30 | 1.23 | .369 |
| C | 60 | 1.45 | .870 |
| Total | | | $1.314 |

In Example 2, the crop was supported at $1.314 per pound with a national price support level of $1.20 per pound.

Assuming that the crop produced in Example 1 was a normal crop, the crop was undersupported because the grade distributions used in determining the grade loan rates were significantly different from the crop produced. In a similar manner, if the crop produced in Example 2 was a normal crop, the crop was oversupported.

### Assignment of Grade Loan Rates

An unlimited combination of grade loan rates may be assigned with a given set of grade distributions in order to establish an average price support at the national price support level. For example, if the crop consists of grades A, B, and C and the grade distributions were the same for each grade, i.e., an average of one-third of the crop has been produced in each of the grades during the years used in determining the grade distributions, if the national price support level were $1.00 per pound, the loan rates assigned to the respective grades could be: Grade A—50 cents per pound, Grade B—$1.00 per pound and Grade C—$1.50 per pound or Grade A—75 cents per pound, Grade B—$1.00 per pound and Grade C—$1.25 per pound.

### Request for Comments

Accordingly, CCC requests comments with respect to the determination of grade distributions and the assignment of grade loan rates. All comments are welcomed and will be considered. Most desired, however, are comments which address the following questions:

1. Should grade distributions be used as a part of the process of establishing grade loan rates for a kind of tobacco?

A. If the answer is "yes":

(1) How many years' data should be used in calculating the distributions?

(2) Should a system be designed to eliminate the data for both the "high" and the "low" years from the years used in the calculations? For example, if data for the most recent 7 years were being considered and data from the "high" year and the "low" year were excluded, the average of the 5 remaining years would determine the grade distributions.

(3) What method could be used to obtain data for use in calculating grade distributions for cigar tobaccos?

(4) How may adjustments be made for changing trends that are brought about by rapidly changing conditions in market needs, cultural practices or other related factors when the effects of such trends would not be fully considered by using unadjusted data from the years used in the calculations?

B. If the answer is "no":

(1) What alternatives are available for use in establishing grade loan rates?

(2) What improvements would such alternatives make in establishing grade loan rates?

2. Which of the following factors should be considered when assigning loan rates to the respective grades of a kind of tobacco?

A. Current inventory of loan stocks of the various grades of the kind of tobacco.

B. Percent of the grade that has been placed under loan from recent crops as compared to the percentage of the total crops that were placed under loan. For example, 55 percent of a grade was placed under loan from the two most recent crops, while only 10 percent of the total crops were placed under loan. Should the loan rate for the grade be reduced in an attempt to prevent excessive quantities of the grade in the loan stocks?

C. Relationship of the initial quantities of the grade in loan stocks to the quantities of the grade that have been sold from loan stocks.

D. Prices at which competing tobaccos are being imported.

E. The effect that increases in loan stocks may have on no net cost tobacco program assessments.

F. With respect to burley and flue-cured tobaccos, the effect that increasing loan stocks have on the determination of the respective national marketing quota.

G. The extent to which market prices have exceeded previous loan rates for the respective grades of tobacco.

H. Loan rates for the grade and kind of tobacco relative to the loan rates for other grades and kinds of tobaccos.

I. Prices paid for recent crops at auction for the grade and kind of tobacco (marketability).

J. Quality factors in official grading standards.

3. Should price support be withheld with respect to grades of a kind of tobacco that may not have sufficient marketability to provide reasonable usefulness as loan collateral? If "yes", please specify the grades and kinds of tobacco on which price support should be withheld.

4. Loan stocks of burley and flue-cured tobacco are processed into strip grades. For example, all burley tobacco that was placed under loan from the 1986 crop from grades B3GF, B4GF, B5GF, T4GF, T5GF, C4G, C5G, X4G, and X5G were processed into a strip blend identified as S–B3GF. The tobacco is marketed by the strip grade. Should the same loan rate be assigned to each of the grades that are blended to make the strip grade?

5. Do changing conditions justify the calculation of grade distributions each year? If "no", how often should grade distributions be recalculated?

6. Should the recommendations made by the respective loan associations with respect to grade loan rates be given more consideration than recommendations from other sources?

Data that may be used in calculating grade distributions for each kind of tobacco, except for cigar tobaccos, is available from the Tobacco and Peanuts Division, ASCS. The Tobacco and Peanuts Division has calculated distributions for each kind of tobacco, except cigar tobaccos, on the basis of both the most recent 5-year data and the most recent 10-year data.

Comments will be aided by any explanations, justifications, or supporting data that may be included.

CCC will use the comments in determining the grade loan rates with respect to the 1987 crop of the respective kinds of tobacco. CCC intends to announce the grade loan rates for each kind of tobacco, except cigar kinds of tobacco, by the beginning of the marketing year for the respective kind of tobacco, which is July 1 for flue-cured tobacco and October 1 for other kinds of tobaccos.

Signed at Washington, DC, on May 26, 1987.

**Milton J. Hertz**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87–12311 Filed 5–28–87; 8:45 am]

BILLING CODE [illegible]

## Soil Conservation Service

### Environmental Impact Statement; Camp Branch Watershed, AL

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Camp Branch Watershed, Houston and Dale Counties, Alabama.

**FOR FURTHER INFORMATION CONTACT:** Ernest V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama, 36830, telephone (205) 821–8070.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ernest V. Todd, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing excessive erosion on sloping cropland and preventing rapid and serious deterioration of the resource base. The planned works of improvement include land use conversion on 30 acres of marginal cropland, and accelerated conservation land treatment on 3,140 acres of cropland, and installation of 16 grade stabilization structures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ernest V. Todd.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 21, 1987.

**Ernest V. Todd,**

*State Conservationist.*

### Finding of No Significant Impact for Camp Branch Watershed Dale and Houston Counties, Alabama

*Introduction*

The Camp Branch Watershed is a federally assisted action authorized for planning under Public Law 853–566, the Watershed Protection and Flood Prevention Act. An environmental evaluation was undertaken in conjunction with the development of the watershed plan. This evaluation was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the evaluation are presented in the Watershed Plan-Environmental Assessment which is available for public review at the following location:

U.S. Department of Agriculture, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830

*Recommended Action*

The proposed action includes installation of 16 grade stabilization structures and accelerated conservation land treatment practices on 3,170 acres of cropland. Land treatment practices consist of 300 acres of grasses and legumes in rotation, 2,840 acres of water disposal system, and 30 acres of land use conversion. Cost-sharing arrangements for installing land treatment practices will be carried out through long term contracts entered into between SCS and individual land users. The project will be installed over a 30-year period.

*Effect of Recommended Action*

Installation of land treatment measures will reduce sheet, rill, and ephemeral gully erosion on cropland from an average of 19 tons per acre per year to 8 tons per acre per year. Soil structure will be improved, water infiltration increased, and inherent fertility conserved.

Grade stabilization structures will reduce erosion by about 95 percent on those gullies that will be treated. Soil loss (tons/year) from the 16 gullies is 17,300 tons without project, 865 tons with project.

Land use in the drainage area of the gullies is as follows:

| | Present and future with project (Ac) | Future without project (Ac) |
|---|---|---|
| Cropland | 740 | 0 |
| Pasture and hayland | 123 | 411 |
| Forest land | 47 | 336 |
| Other land | 5 | 168 |
| Total | 915 | 915 |

Seven hundred and forty acres will be lost from crop production over the next 60 years without the proposed grade stabilization structures to control erosion. Landowners have already begun shifting from cropland to pasture/hayland or idle land where they can no longer maintain production or income due to the erosion process. Some landowners may abandon the land, allowing it to revert to forest, or may actually plant to trees. This loss of cropland will cause a loss of farms in the watershed as they become uneconomical units. This will result in the loss of both farms and associated jobs. A loss in production on cropland will also occur as a result of the change in land use.

Grade stabilization structures will provide a safe outlets for water disposal systems on adjacent cropland. A monetary evaluation was made only of the damages caused by the 16 gullies. Annual monetary benefits associated with providing stable outlets on 740 acres of cropland in the drainage area of the gullies (the interdependent area) are $109,200. This leaves a net monetary benefit of $29,200.

Installation of the 16 grade stabilization structures will protect 90 acres from voiding and depreciation damages caused by floodwater. Forty-five acres of this total would have been voided. This area consists of mainly of cropland. Installation of the project will protect 282 acres of cropland with ephemeral gully erosion from being converted to other land uses. The monetary benefit assigned to this reduction in land voiding and depreciation is $2,750 annually.

Sediment deposition will be significantly reduced throughout the watershed. Sediment reaching the outlet of the watershed will be reduced from 89,600 tons to 38,600 tons annually.

Installation of the project will result in the following anticipated land use adjustments:

| | Present (Ac) | Future with project (Ac) | Future without project (Ac) |
|---|---|---|---|
| Cropland | 7,200 | 7,170 | 6,360 |
| Pasture and hayland | 4,700 | 4,720 | 5,008 |
| Forest land | 12,800 | 12,810 | 13,166 |
| Other land | 300 | 300 | 464 |
| Total | 25,000 | 25,000 | 25,000 |

Installation of the project will result in 30 acres of marginal cropland being converted to pasture or hayland. Installation of the 16 grade stabilization structures will cause minor land use changes around each structure site. Some forest land will be cleared for construction of grade stabilization structures while other land around some sites will be planted to trees.

No significant changes are expected in the natural plant communities. A reduction of sediment deposition on flood plain areas will reduce damages to the natural restocking rate on forest-lands. Productivity on such areas will be increased and timber kills reduced. Control of erosion and sedimentation will allow change through a gradual plant succession to good quality hardwood stands. Likewise, the productivity of cropland will be enhanced by the reduction of infertile sediment deposition.

There will be no adverse impacts on prime or unique farmlands. The project is not expected to result in the conversion of farmland to any nonagricultural use and is in compliance with Farmland Protection Policy Act (FPPA) (7 U.S.C. 4201 et. seq.)

A favorable impact on streams of the watershed is expected to result from the reduction of the present sediment load. Biological productivity of the receiving streams will increase.

Installation of the project will result in a beneficial impact on wetlands by greatly reducing the amount of sediment deposited in the lower elevations of the watershed.

The installation of the land treatment program will have a minor impact on fish and wildlife resources. Existing bottomland wildlife resources will be benefited by sediment reduction in habitat areas. The sediment reduction should result in the return of some fishery resources to the lower reaches of the creeks.

Land treatment will enhance wildlife habitat and food supply. Vegetation planted on the exposed areas of the grade stabilization structures will provide food and cover for wildlife which will be temporarily displaced in the area of project construction.

Installation of the project should have no impact on the listed threatened or endangered species.

An initial field survey of cultural resources was conducted by SCS personnel. The survey indicates that no adverse impacts will occur to cultural resources in the watershed should the plan be implemented.

The various land treatment measures and structural measures aimed at controlling erosion will greatly reduce the volume of soil particles and turbidity which enter the streams in runoff water. The movement of nutrients and pesticides which become attached to soil particles will be controlled to a high degree as erosion control measures are applied to cropland. Reduction of sediment concentration will greatly improve water quality.

Installation of the project will restore beauty to the landscape. The installation of land treatment and the grade stabilization structures will result in lines and forms more harmonious with the natural landscape. The overall visual quality of the land and water resources will be improved.

The project will have a moderate impact on the income and employment of the area's population. Employment opportunities will be provided through the need for unskilled, semiskilled, and skilled labor for project construction and operation and maintenance. During the installation period of the project, approximately four, two, and one person-years of employment will be provided for unskilled, semiskilled, and skilled personnel, respectively. In addition, about one person-year of employment for unskilled personnel will be provided annually through project operation and maintenance.

Family incomes will be increased by the additional jobs created by installation of the project. Income on those farms where resource management systems are applied will be maintained in the short run and increased in the long run over what could be expected without a project. There will also be a slight increase in family income from the reduction in damages to crops.

Impacts on minorities were not quantified; however, they will benefit from project opportunities on farms they own or control and from project-caused increases in job opportunities.

A temporary increase in pollutants, such as dust and equipment exhausts, and an increase in the noise levels will occur during project installation. Exhaust emissions and the dust produced by construction equipment will have a slight detrimental effect on ambient air quality. Noise pollution will increase during construction because of the equipment used in project installation. The effects of noise pollution will be negligible because the areas where construction will be

performed are remote from heavily populated areas.

Installation of the project will have little effect to no effect on mineral and ground water resources since these resources are limited or non-existent in the watershed.

Stabilization of gullies will result in these areas being safer for humans and animals.

Both short term and long term land use trends within the watershed indicate that the area will remain agriculturally oriented.

This project will achieve both short term and long term goals for economic development and environmental quality by protecting the resource base through a reduction on flood damages and watershed protection. Commitments of the land resource base can be reversed as the nation's needs changes.

Implementation of the proposed project will help to maintain and to enhance the long term quality of the human environment in the area.

Irreversible and irretrievable commitments of resources consist of labor, material, and energy needed for installing and maintaining project measures. The planned action is the most practical and cost effective the resource base in the watershed.

*Conclusion*

The Watershed Plan-Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Harrison Mill-Panther Creeks Watershed Plan is not required.

Dated: May 21, 1987.

Ernest V. Todd,

*State Conservationist.*

[FR Doc. 87-12198 Filed 5-28-87; 8:45 am]

BILLING CODE 3410-16-M

## Environmental Impact Statement; Roy's Creek Watershed, KS

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Roy's Creek Watershed, Brown County, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Mr. James N. Habiger, State Conservationist, Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401, telephone 913-823-4565.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. James N. Habiger, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. This land treatment plan includes 4,018 acres of conservation tillage, 4,018 acres of terraces, 5 miles of diversions, 91 acres of grassed waterways, 93 water and sediment control basins, 4,018 acres of contour farming, 23 interdependent grade stabilization structures, and stable outlets for 3,635 acres of terraced cropland. Approximately 1,370 acres of grassland and forestland will be managed for fire control.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. James N. Habiger.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901. Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation and State and local officials)

Dated: May 22, 1987.

James N. Habiger,

*State Conservationist.*

[FR Doc. 87-12199 Filed 5-28-87; 8:45 am]

BILLING CODE 3410-16-M

## COMMISSION ON CIVIL RIGHTS

### New York State Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on June 25, 1987 at the Jacob K. Javits Federal Building, 26 Federal Plaza, Room 2200, New York, New York. The purpose of the meeting is to discuss the status of the agency, plan activities for the coming year, and collect information on aspects of racially- and religiously-motivated violence and intimidation in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Archer C. Puddington (212/397-5328) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 19, 1987.

Susan J. Prado,

*Acting Staff Director.*

[FR Doc. 87-12200 Filed 5-28-87; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-583-009]

### Color Television Receivers, Except for Video Monitors, From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review and tentative determination to revoke in part.

**SUMMARY:** In response to requests by the petitioners, another domestic interested party, an importer, and respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan. The review covers eleven manufacturers/exporters of this merchandise to the United States and the period April 1, 1985 through March 31, 1986. The review indicates the existence of dumping margins for some of the firms during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value and tentatively to revoke the antidumping duty order with regard to Capetronic.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** May 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth P. Klages or David P. Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/2923.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 29, 1986, the Department of Commerce ("the Department") published in the Federal Register the final results of its administrative review of the antidumping duty order on color television receivers, except for video monitors, from Taiwan (51 FR 46695). In accordance with § 353.53a(a) of the Commerce Regulations, we received requests for review from the petitioners, another domestic interested party, an importer, and eight respondents. We published a notice of initiation of the antidumping duty administrative review on May 20, 1986 (51 FR 18475).

## Scope of the Review

Imports covered by the review are shipments of color television receivers, except for video monitors, complete or incomplete, regardless of tariff classification. The merchandise is currently classifiable under item numbers 684.9240, 684.9240, 684.9250, 684.9252, 684.9253, 684.9255,684.9256, 684.9258, 684.9262, 684.9263, 684.9270, 684.9275, 684.9655, 684.9656, 684.9658, 684.9660, and 984.9663 of the Tariff Schedules of the United States Annotated.

The review covers eleven manufacturers/exporters of Taiwanese color television receivers, except for video monitors, to the United States, and the period April 1, 1985 through March 31, 1986.

## United States Price

In calculating United States price the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), as appropriate. Purchase price and exporter's sales price were based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in the United States.

For sales which were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the more appropriate indicator for United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling function of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to the Department's questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

Where applicable, we made adjustments for ocean freight, marine insurance, U.S. and foreign inland freight and insurance, U.S. and foreign brokerage fees, bank charges, U.S. customs duties, export charges and stamp taxes, discounts, rebates, credit expenses, warranty, advertising and sales promotion, royalties, commissions to unrelated parties, and the U.S. subsidiaries' indirect selling expenses. Where applicable, we made an addition for import duties not collected on imported raw materials used to produce subsequently exported merchandise, in accordance with section 772(d)(1)(B) of the Tariff Act. No other adjustments were claimed or allowed.

## Foreign Market Value

In calculating foreign market value the Department used home market price, third-country price, or constructed value, all as defined in section 773 of the Tariff Act, as appropriate. When insufficient quantities of such or similar merchandise were sold in the home market during the period to provide a basis for comparison, we used third-country price. When insufficient quantities of such or similar merchandise were sold in either the home market or to third countries, we used constructed value.

Home market price was based on the packed delivered price to unrelated purchasers in the home market, with adjustments, where applicable, for inland freight, insurance, commissions to unrelated parties, rebates, credit expenses, bank charges, discounts, warranty, advertising and sales promotion, royalties, differences in the physical characteristics of the merchandise, and packing. We made further adjustments, where applicable, for indirect selling expenses to offset commissions and U.S. selling expenses for ESP calculations. We accounted for taxes imposed in Taiwan, but rebated or not collected by reason of the exportation of the merchandise to the United States, by subtraction from home market price.

Third-county price was based on the packed f.o.b., c.i.f., or delivered price to unrelated purchasers in various third countries. We made adjustments, where applicable, for ocean freight, marine insurance, bank charges, Taiwanese inland freight, Taiwanese brokerage, stamp taxes and export charges, royalties, differences in the physical characteristics of the merchandise, and packing.

Constructed value consisted of the sum of the costs of materials, fabrication, general expenses, profit, and the cost of packing. The amount added for general expenses was 10 percent of the sum of materials and fabrication costs or actual general expenses, whichever was higher. The amount added for profit was 8 percent of the sum of the costs of materials, fabrication, and general expenses, or actual profit, whichever was higher.

For Sampo we disallowed claimed adjustments for bad debt incurred on

home market sales because they were not directly related to sales. For AOC we disallowed a portion of claimed home market inland freight expenses because the company did not demonstrate that the transportation charges were incurred only after a sale was made. For AOC, Fulet, Hitachi, Sampo, and Tatung, we disallowed portions of the claimed warranty expenses because the amounts attributable to salaries are not directly related to sales. However, we allowed all of the above claimed expenses as indirectly related selling expenses. No other adjustments were claimed or allowed.

We conducted cost of production tests for third-country sales to Canada in our analysis of Shin-Shirasuna and Capetronic. We found all sales to be above the cost of production. For Nettek, we did not use certain sales to Chile in our analysis because we found these sales to be below the cost of production.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist:

| Manufacturer/exporter | Time period | Margin percent |
|---|---|---|
| AOC International, Inc. | 4/1/85-3/31/86 | .08 |
| Capetronic (BSR) Ltd. | 4/1/85-3/31/86 | .20 |
| Fulet Electronic Industrial Co., Ltd. | 4/1/85-3/31/86 | .34 |
| Hitachi Television (Taiwan) Ltd. | 4/1/85-3/31/86 | 2.78 |
| Nettek Corp., Ltd. | 4/1/85-3/31/86 | 1.46 |
| RCA Taiwan Ltd. | 4/1/85-3/31/86 | 1.57 |
| Sampo Corp. | 4/1/85-3/31/86 | .6 |
| Sanyo Corp. | 4/1/85-3/31/86 | 4.86 |
| Shintee Corp. | 4/1/85-3/31/86 | 10.14 |
| Shin-Shirasuna Electric Corp. | 4/1/85-3/31/86 | .36 |
| Tatung Co. | 4/1/85-3/31/86 | 2.86 |

Based on the final results of our last administrative review for the period October 19, 1983 through March 31, 1985 and these preliminary results, the Department has concluded that Capetronic has sold this merchandise to the United States at not less than fair value for at least two years. As provided for in § 353.54(e) of the Commerce Regulations, Capetronic has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances specified in the written agreement.

Therefore, we tentatively determine to revoke in part the order on color television receivers, except for video monitors, from Taiwan. If this revocation is made final, it will apply to all unliquidated entries of this merchandise by Capetronic entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. Since the margins for AOC, Capetronic, Fulet, and Shin-Shirasuna are less than 0.5 percent and, therefore, *de minimus* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for these firms. For any further entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after March 31, 1986 and who is unrelated to any reviewed firm, a cash deposit of 2.78 shall be required.

These deposit requirements and waivers are effective for all shipments of Taiwanese color television receivers, except for video monitors, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a and 353.54; 50 FR 32556, August 13, 1985).

Dated: May 19, 1987.

Gilbert B. Kaplan,

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-12303 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-DS-M

[Application 87-00006]

**Export Trade Certificate of Review**

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an export trade certificate of review to Crann Corporation. This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Certified Conduct:**

*Export Trade*

**Products**

Lumber and lumber products, including logs, pilings, poles, timbers, veneer, plywood and wooden building components.

**Related Services (facilitating the export of Products)**

Consulting; international market research; advertising and sales promotion; marketing; insurance; product research and design; legal assistance; transportation, providing trade documentation and freight forwarding; communication and processing of foreign orders to and for exporters and foreign purchasers; warehousing; foreign exchange; financing; and taking title to goods for ultimate exportation.

*Export Markets*

All parts of the world except the United States (the fifty states of the

United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Member (in addition to applicant)*

Taylor Lumber & Treating, Inc., Beaverton, Oregon.

*Export Trade Activities and Methods of Operation*

Crann may: 1. Enter into an agreement with its Member, whereby Crann agrees to act as its exclusive Export Intermediary for the export of Products and Related Services. These agreements may include the following provisions:

a. The Member may agree not to sell directly or indirectly through any other Export Intermediary, and/or

b. Crann will have the exclusive right to choose whether to respond to bids, invitations or requests for bids, or other sales opportunities, on a joint or individual basis.

2. Enter into exclusive agreements with other Export Intermediaries, whereby:

a. The Export Intermediary agrees not to represent competitors of Crann in the sale of Products and Related Services in any Export Market, and/or

b. The Export Intermediary agrees not to buy Products and Related Services from Crann's competitors.

3. Enter into exclusive agreements with foreign customers of the Products and Related Services, whereby the customer agrees not to purchase the Products and Related Services from Crann's competitors.

4. Maintain the exclusive right to specify the following for agreements outlined in paragraphs 1, 2, and 3 above:

a. The price at which Products will be sold and Related Services provided, and/or

b. The terms for any export sale, including the quantities, territories, and customers, regardless of whether a jont or individual bidding process is used.

5. Meet with its Member to negotiate and agree on the terms of their participation in each bid, invitation or request to bid, or other sales opportunity in any Export Market. During the course of these negotiations, the following may be exchanged:

a. Information that is already generally available to the trade or public,

b. Information that is specific to a particular Export Market, including, but not limited to, reports and forecasts of sales, prices, terms, customer needs, selling strategies, and product specifications by geographic area and by individual customers within the Export Market.

c. Information on expenses specific to exporting to a particular Export Market (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentations and service, and export sales financing).

d. Information on U.S. and foreign legislation and regulations affecting sales to a particular Export Market, and

e. Information on Crann's activities in the Export Markets, including, but not limited to, customer complaints and quality problems, visits by customers located in the Export Markets, reports by foreign sales representatives, and matters concerning the contract(s) between Crann and its Member.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Streeet and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 22, 1987.

George Muller,

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87-12286 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-DR-M

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of Application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Training Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-00008". A summary of the application follows:

Applicant: Mr. Roger E. Holtman d/b/a Rocky Mountain Export Trading Company, 521 Hartman No. 1, Missoula, Montana 59801, Telephone: (406) 543-3424

Application No. 87-00008

Date Deemed Submitted: May 15, 1987

Members (in addition to applicant):

none

Summary of the Application

*A. Export Trade*

Products: All.

Services: Architectural and engineering services; product research; market research; marketing; consulting and arranging for financing.

Export Trade Facilitation Services (as they relate to the export of products)

Overseas freight transportation; inland freight transportation to U.S. export terminals, ports or gateways; packing and crating; warehousing; freight forwarding including consolidation of shipments; and other services directly related to the movement of goods being exported or in the course of being exported; consulting; international market research; advertising; marketing; insurance; product research and design; trade documentation; communications and processing of foreign orders to and for exporters and foreign purchasers;

foreign exchange; financing and taking title to goods.

*B. Export Markets*

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*C. Definitions*

"Export Intermediary" means a person who acts as a broker, distributor, sales representative, or sales or marketing agent, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services for sales in the Export Markets.

*D. Export Trade Activities and Methods of Operation*

The Applicant seeks certification to:

(1) Enter into exclusive and nonexclusive contracts with

(a) Suppliers of Products and Services to act as an Export Intermediary;

(b) Individual Export Intermediaries for the sale of Products and/or Services in the Export Markets;

(c) Foreign customers of Products and Services, including governmental entities; and

(d) Providers of Export Trade Facilitation Services for the sale of Products and Services in the Export Markets.

(2) Negotiate charges and other terms and enter into contracts with carriers for the transportation of Products.

Dated: May 26, 1987.

George Muller,

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87-12285 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-DR-M

## National Oceanic and Atmospheric Administration

### Marine Mammals; Issuance of Permit to Walt Disney Company (P27C)

On April 8, 1987, notice was published in the Federal Register (52 FR 11304) that an application had been filed by the Walt Disney Company, P.O. Box 10,000, Lake Buena Vista, Florida 32830-1000, to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

Notice is hereby given that on May 22, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: May 22, 1987.

Dr. Nancy Foster,

*Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.*

[FR Doc. 87-12301 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-22-M

## COMMISSION ON MERCHANT MARINE AND DEFENSE

### Open Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 99-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequancy of the shipbuilding mobilization base to supoprt naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pulb. L. 92-463, as amended, the Commission announces the following meeting:

Dates and Times: Monday, June 22, 1987; Beginning 2:00 p.m.

Place: Center for Naval Analyses auditorium, first Floor, 4401 Ford Avenue, Alexandria, Virginia.

Type of meeting: Open.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301-0268, Telephone (202) 7858-0611.

Purpose of Meeting: To receive and consider statements on the perspective of shippers of goods, *i.e.* the users or maritime transportation, on the need for and possible measures to provide a merchant marine adequate to the defense needs of the United States. Individuals or organizations desiring to present oral testimony must notify the Executive Director in writing by June 12, 1987, and must provide 40 copies of written testimony no later than June 18. Witnesses will be allowed a maximum of 15 minutes to summarize the written testimony, and will be asked to respond to questions from the Commissioners. Questions about the nature and content of testimony, scheduling, due dates, and related matters should be directed to Mr. Robert Nevel, Technical Director, at the Commission's office in writing or by telephone.

SUPPLEMENTARY INFORMATION: Other interested persons are invited to submit written statements about the merchant marine and the shipping required to implement United States defense policy. Written statements should be received by the close of business on June 18, 1987. All written submissions will be made available for inspection by interested parties, and may be published as part of the Commission's proceedings. All submissions should be addressed to the Executive Director at the Commission's office in Alexandria, Virginia.

Allan W. Cameron,

*Executive Director, Commission on Merchant Marine and Defense.*

[FR Doc. 87-12278 Filed 5-28-87; 8:45 am]

BILLING CODE 3820-01-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### New Export Visa System for Certain Textiles and Textile Articles Produced or Manufactured in the Republic of Indonesia

May 19, 1987

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

Background

A CITA directive dated February 1, 1980 (45 FR 8084), as amended, announced an export visa system for certain cotton, wool and man-made fiber apparel, produced or manufactured in the Republic of Indonesia and exported on and after March 15, 1980.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of September 25, 1985 and October 3, 1985, as amended, the

Governments of the United States and the Republic of Indonesia exchanged letters dated March 25, 1987 establishing a new export visa system.

Effective on July 1, 1987, all commercial shipments of textiles and textile articles of cotton, wool, man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk, but not apparel which contains 70 percent or silk by weight, or products other than apparel which contain 85 percent of more silk by weight, in Categories 300–369, 400–469, 600–670 and 800–899, but not Categories 353–356, 455 and 653–656, exported on or after July 1, 1987 must be accompanied by a valid visa that includes the correct category(s), part category(s), merged categories, quantity(s) and unit(s) of quantity as described in the letter published below to the Commissioner of Customs. Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa for entry and shall not be charged to the restraint limits.

A facsimile of the visa stamp is published as an enclosure to the letter to the Commissioner of Customs which follows this notice.[1] Any change to the stamped marking must be provided to, the Government of the United States of America prior to its use, to be effective sixty days after approval.

The Government of Indonesia shall notify the Government of the United States of America of any changes of authorized officials and shall provide two original signatures or stamps, as appropriate.

Interested persons are advised to take all necessary steps to ensure that textiles and textile articles, as described above, produced or manufactured in Indonesia and exported on and after July 1, 1987, which are to be entered or withdrawn from warehouse for consumption into the United States will meet the requirements set forth in this notice.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Editorial Note.**—A copy of the facsimile of the visa stamp may be obtained from the Office of Textiles and Apparel, U.S. Department of Commerce, 14th and Constitution Ave., NW., Room H3100, Washington, DC 20230.

[1] A copy of the facsimile of the visa stamp may be obtained from the Office of Textiles and Apparel, U.S. Department of Commerce, 14th and Constitution Ave. NW., Room H3100, Washington, DC. 20230.

May 18, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: This directive cancels and supersedes the directive of February 1, 1980, as amended, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry for consumption or withdrawal from warehouse for the consumption of certain cotton, wool and man-made fiber apparel products, produced or manufactured in Indonesia in the designated categories for which the Government of the Republic of Indonesia had not issued an appropriate export visa.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Agreement of September 25, 1985 and October 3, 1985 between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1987, entry into the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of textiles and textile articles of cotton, wool, man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk, but not apparel which contains 70 percent or more silk by weight, or products other than apparel which contain 85 percent or more silk by weight, in Categories 300–369, 400–469, 600–670 and 800–899, including part Categories 317–S (shall be visaed as 317–S),[1] 317–O (shall be visaed as 317–O),[2] 320–P,[3] 320–O,[4] 369–D,[5] 369–S,[6] 369–O,[7] 604–A,[8] 604–O,[9] 631–W [10] and 631–O [11] and merged Categories 347/348, 445/446 and 645/646, but not Categories 353–356, 455 and 653–656, produced or manufactured in Indonesia and exported on and after July 1, 1987 from Indonesia for which the Government of the Republic of Indonesia has not issued an appropriate visa fully described below.

An export visa must accompany each commercial shipment of the aforementioned textiles and textile articles. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on the duplicate copies of the invoice. The original of the invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

The visa stamp will include the following information:

1. The visa number and date of issuance. The visa number shall be the standard nine digit and letter format, beginning with one numerical digit for the last digit of the year of export, two character alpha country code specified by the International Organization (ISO), and a six digit numerical serial number identifying the shipment, e.g., 7ID123456.

2. The signature of the authorized issuing official of the Indonesian Government.

3. The correct category(s), part category(s), merged categories, quantity(s) and unit(s) of quantity. The correct category(s), part category(s) or merged category(s), quantity(s), and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the U.S. Tariff Schedules of the United States Annotated (TSUSA); i.e., Cat. 340–510 DZ. Customs is directed to deny entry of shipments arriving with an incorrect category visa (e.g., Category 347/348 may be visaed as "Category 347/348" or if the shipment consists solely of Category 347 merchandise, the shipment may be visaed as "Category 347" but *not* as "Category 348."

U.S. Customs shall not accept a visa and entry will not be permitted if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted.

If the visa is not acceptable to U.S. Customs, a new visa must be obtained from the Indonesian Government or a visa waiver issued by the U.S. Department of Commerce at the request of the Indonesian Government and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry or attempted entry, but will provide a certified copy of that visaed

[1] In Category 317, esteens in TSUS items 320.— through 331.—, with statistical suffixes 50, 87 and 93.

[2] In Category 317, all TSUS items except 320.— through 331.—, with statistical suffixes 50, 87 and 93.

[3] In Category 320, printcloth in TSUS items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.—, with statistical suffixes 21, 22, 24, 31, 36, 49, 57, 74, 80 and 90.

[4] In Category 320, all TSUS items except 320.—, 321.—, 322.—, 326.—, 327.— and 328.—, with statistical suffixes 21, 22, 24, 31, 36, 49, 57, 74, 80 and 90.

[5] In Category 369, dishtowels in TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[6] In Category 369, shop towels in TSUSA number 366.2840.

[7] In Category 369, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440, 366.2840 and 366.2860.

[8] In Category 604, plied acrylic yarn in TSUSA number 310.5040.

[9] In Category 604, all TSUSA numbers except 310.5040.

[10] In Category 631, work gloves in TSUSA numbers 704.3215, 704.3225, 704.3550 and 704.9000.

[11] In Category 631, all TSUSA numbers except 704.3215, 704.3225, 704.3550 and 704.9000.

invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If import quotas are in force, U.S. Customs shall charge only the actual quantity in the shipment and the correct category will be charged to the restraint level. If a shipment from Indonesia has been allowed entry into the commerce of the United States with either an incorrect visa or no visa and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided.

U.S. Customs shall not require a visa for entry and shall not charge to quota merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less.

Any shipment which requires a visa but which is not accompanied by a valid and correct visa in accordance with the foregoing provisions, shall be denied entry by the U.S. Customs Service unless the Government of the Republic of Indonesia authorizes the entry and any charges to the agreement levels through the visa waiver process.

A facsimile of the visa stamp is enclosed with this letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27088) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

The actions taken with respect to the Government of the Republic of Indonesia and with respect to imports of textiles and textile articles of cotton, wool, man-made fibers, other vegetable fibers, blends of any of the foregoing fibers and blends containing silk, as specified above, from Indonesia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 533. This letter will be published in the Federal Register.

Sincerely,

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-11787 Filed 5-28-87; 8:45 am]

BILLING CODE 3510-DR-M

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Merchantile Exchange and Chicago Board of Trade; Proposed Futures Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures contracts.

**SUMMARY:** The Chicago Merchantile Exchange ("CME") has applied for designation as a futures contract market in the Nikkei Stock Average. In addition, the Chicago Board of Trade ("CBT") has applied for designation as contract markets in 5,000-ounce silver futures and in 100-ounce gold futures. The Deputy Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATE:** Comments must be received on or before July 28, 1987.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Reference should be made to the CME Nikkei Stock Average futures contract or to the CBT 5,000-ounce silver or CBT 100-ounce gold futures contract.

**FOR FURTHER INFORMATION CONTACT:** For the Nikkei Stock Average contract, contact Naomi Jaffe, Division of Economic Analysis, Commodity futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227. For the CBT's silver and gold contracts, contact Richard Shilts, Division of Economic Analysis, at the same address, (202) 254-7303.

Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained thorugh the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other meterials submitted by the CME or CBT in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 154.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the CME or CBT in support of their applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by July 28, 1987.

Issued in Washington, DC, on May 26, 1987.

**Blake Imel,**

*Deputy Director, Division of Economic Analysis.*

[FR Doc. 87-12283 Filed 5-28-87; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance; Meeting

May 19, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Air Base Performance will meet at Sandia National Laboratory, Albuquerque, NM, on June 22 and June 23, 1987.

The purpose of this meeting is to formulate a report of findings and recommendations on the enhancement of air base operability.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-12202 Filed 5-28-87; 8:45 am]

BILLING CODE 3910-01-M

### Corps of Engineers, Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Galena Resort Project, NV

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of Intent to prepare a DEIS.

**SUMMARY:** The Galena Resort Company applied for a Department of the Army permit under section 404 of the Clean Water Act (Public Notice No. 9261A) to place fill material in Galena Creek, tributaries of Galena Creek, and in wetland during construction of the Galena Resort.

The applicant proposes to construct a year-round destination resort in the upper Galena Creek watershed on Mount Rose, approximately 17 miles southeast of the City of Reno on Nevada State Highway, Washoe County, Nevada. Recreational programs would include downhill and cross-country skiing, ice skating, golf, hiking, fishing horseback riding, and tennis. The development plan includes three village areas, Galena, Tamarack, and Hidden Lake surrounded by ski area, golf course, and open space. The project would be constructed in phases. Completion of the project is estimated at approximately 12–15 years.

Galena Creek and several of its tributaries flow through the project area. Tamarack Lake and Hidden Lake are also located within the proposed development area. A series of on-site detention ponds would be constructed to detain runoff from the development. Much of the detention would occur in ponds along the golf course or behind dams constructed below development areas. Tamarack Lake and Hidden Lake would be deepened. There are approximately 252 acres of wetlands within the project area. Approximately 43 acres of wetlands would be directly impacted by construction activities. The applicant has proposed several measures to mitigate for impacts to stream channels and wetland area.

The Corps' EIS analyze project need, alternatives, and environmental consequences in accordance with present regulations. The following is a preliminary list of alternatives and issues that will be discussed in the EIS.

**Alternatives**

The alternatives being considered at this time are:

1. No Action. In this alternative, a permit would not be issued. No disturbance of wetlands would be permitted.

2. Issue a permit for Application 9261A. (Applicant's proposal)

3. Issue a permit for USACE Application No. 9261. In this alternative a permit would be issued for a destination resort, including four village areas with downhill and cross country skiing, golf, ice skating, fishing, tennis, and equestrian activities. The development would consist of 4261 unit equivalents, 466 acres of development and 741 acres of developed skiing. Skiing would include 83 acres of bowl skiing served by 15 lifts for 11.740 SAOT. Approximately 143 acres of wetlands would be impacted.

4. Day use ski area. In this alternative, a day ski area of 6700 SAOT would be developed along with a base lodge and parking sufficient to serve the area. The ski area would consist of 522 acres with six lifts. Approximately twenty acres of wetlands would be impacted.

5. Further reduction in development. Modification of permit No. 9261A (Alternative No. 2) to reduce development density by approximately 40 percent, or 920 development units, by reconfiguration of the plan to further reduce wetlands impact.

Other feasible alternatives identified during the scoping process will also be considered.

**Significant Issues**

The significant issues identified to date which will be analyzed in the EIS are listed below.

1. Impacts on downstream flows due to groundwater and surface water modifications.

2. Air quality impacts to the Tahoe Basin and Truckee Meadows Basin.

3. Increase in flooding potential downstream.

4. Relationship of project facilities to avalanche zones.

5. Water quality impacts to Galena Creek and the lower Truckee River.

6. Effects of increased traffic on Mt. Rose Highway and through the Tahoe Basin.

7. Effect on wetlands and effectiveness of mitigation.

8. Viability of golf course due to climatic and other physical conditions.

9. Impacts to fish and wildlife resources.

10. Socio-Economic impacts.

11. Cumulative impacts.

12. Other significant issues identified during the scoping process.

**Scoping**

Concurrently with this notice, the Sacramento District is issuing a public notice to initiate the scoping process. The public notice will be sent to all known interested parties, and will request that the reviewers provide comments on the topical scope, alternatives, and significant issues to be covered in the EIS. We intend to accomplish the scoping process in this manner; however, if it is perceived that this method is not adequate, the need for public scoping meetings will be considered.

**Other Environmental Review and Consultation**

Required review and consultation to be conducted during the EIS process include Section 404 of the Clean Water Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, and Executive Order 11988 (Flood Plain Management). Other statues and regulations, as applicable, will also be complied with during the EIS process.

**Availability of DEIS**

We estimate that the DEIS will be made available to the public in October, 1987.

Questions concerning the proposed action and EIS should be directed to Mr. Jim Gibson, Regulatory Section, U.S. Army Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814, telephone (916) 551–2261 (FTS 460–2261).

**Walter L. Cloyd III,**

*Lt. Colonel, Corps of Engineers Deputy District Engineer.*

[FR Doc. 87–12203 Filed 5–28–87; 8:45 am]

BILLING CODE 3710–EN–M

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## Notice of Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) on the Santa Ana River Flood Control Project, Orange, Riverside and San Bernardino Counties, CA

**AGENCY:** U.S. Army Crops of Engineers, Department of Defense.

**ACTION:** Notice of Intent to Prepare a Draft Supplemental Environmental Impact Statement (DSEIS).

**SUMMARY:** a. *Proposed action.* In 1980 the Phase I General Design Memorandum (GDM) and Supplemental EIS, Santa Ana River Main Stem, presented the All River Plan as the preferred alternative for flood control on the main stem of the river. In 1985, the Upper Santa Ana River Phase I Supplemental GDM and EIS was prepared after Congress directed that alternatives to Mentone Dam be studied. Seven Oaks Dam was the recommended alternative to Mentone Dam. The Corps of Engineers is currently preparing the Phase II GDM and Supplemental EIS to cover: (1) Project changes from the 1980 and 1985 documents; (2) changed environmental conditions; and (3) new project elements that have been added since the 1980 and 1985 documents.

b. *Scoping process.* Public workship

activities will be held for five specific elements of the overall project: (1) Upper Santa Ana River (Mill Creek and Seven Oaks Dam); (2) Prado Dam basin; (3) Santa Ana Canyon (below Prado) to Victoria Street; (4) Santiago Creek; and (5) Mouth of the Lower Santa Ana River (the Marsh). These scoping meetings will assist the Corps of Engineers in further defining and identifying significant resources for consideration in the DSEIS. Federal, State, local agencies, local organizations, and members of the public will be invited to the workshop process, including U.S. Fish and Wildlife Service; U.S. Forest Service; California Department of Fish and Game; California Department of Parks and Recreation; Orange, Riverside and San Bernardino counties; California Coastal Commission; Huntington Beach Coastal Conservancy; San Bernardino County Museum; and local chapters of the Audubon Society, Sierra Club, Tricounties Conservation League, and the Wildlife Society. The Corps is also currently coordinating formally with appropriate agencies to identify and resolve potential environmental problems. A broad range of concerns has been identified thus far, and includes: (1) Impacts to biological resources (including threatened and endangered species); (2) impacts to historical and archeological resources; (3) impacts to existing development and potential relocations; (4) impacts to current and projected recreation use; (5) impacts of operation and management of water storage; (6) impacts to water quality; (7) assessment of air, noise, and traffic impacts due to project construction activities; and (8) capabilities for mitigation of impacts and losses.

c. *Future public meetings.* Scoping meetings will be held in late June and July 1987. Specific information on the meetings will be sent to the public two weeks prior to the meetings.

d. *Availability of DSEIS.* The DSEIS is anticipated to be circulated for public review in May 1988.

e. *Address.* Questions about the proposed action and DSEIS can be answered by: Warren Hagstrom, Project Manager, SPLED–DM, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, California 90053–2325.

D. Fred Butler,

*Colonel, Corps of Engineers District Engineer.*

[FR Doc. 87–12291 Filed 5–28–87; 8:45 am]

BILLING CODE 3710-KF-M

## Department of the Navy

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet July 13–17, 1987 and July 20–24, 1987, at the Naval War College, Newport, Rhode Island. Sessions of the meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on all days. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to discuss basic and advanced research. The agenda for the meeting will include briefings and presentations pertaining to Outer ASW Battle (AAW–ASW Anthology); Role of Space Based Activities in Support of Naval Warfare; The Navy's Role in the Air Defense Initiative; and Affordability and Availability of New Technology. These briefings and presentations contain information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: May 26, 1987.

Harold L. Stoller, Jr.

*Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 87–12225 Filed 5–28–87; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATE:** Interested persons are invited to submit comments on or before June 29, 1987.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 732–3915.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and, (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 26, 1987.

Carlos U. Rice,

*Director for Information Technology Services.*

### Office of Elementary and Secondary Education

*Type of Review:* Reinstatement
*Title:* Performance Status Report for the Magnet Schools Assistance Program
*Agency Form Number:* A10–8P
*Frequency:* Annually

*Affected Public:* State or local government
*Reporting Burden:*
*Responses:* 44
*Burden Hours:* 132
*Recordkeeping Burden:*
*Recordkeepers:* 44
*Burden Hours:* 88

*Abstract:* This report form is used by institutions, organizations and individuals who sponsor projects and receive grants under the Magnet Schools Assistance Program. The Department uses the information collected to monitor the performance of the grantees.

**Office of Postsecondary Education**

*Type of Review:* Revision
*Title:* Application for Federal Assistance For the Strengthening Institutions Program
*Agency Form Number:* ED 851a
*Frequency:* Annually
*Affected Public:* Non-Profit institutions
*Reporting Burden:*
*Responses:* 500
*Burden Hours:* 190,000
*Recordkeeping Burden:*
*Recordkeepers:* 300
*Burden Hours:* 156,000

*Abstract:* This form will be used by institutions of higher education to apply for grants under the Strengthening Institutions Program. The Department uses this information to make grant awards to those institutions that are eligible.

**Office of Postsecondary Education**

*Type of Review:* Revision
*Title:* Application for the Strengthening Program for Historically Black Colleges and Universities Program
*Agency Form Number:* ED 852–b
*Frequency:* Annually
*Affected Public:* Non-profit institutions
*Reporting Burden:*
*Responses:* 120
*Burden Hours:* 3,600
*Recordkeeping Burden:*
*Recordkeepers:* 100
*Burden Hours:* 17,300

*Abstract:* This application will be used by institutions of higher education to apply for grants under the Strengthening Historically Black Colleges and Universities Program. The Department uses this information to make grant awards to those institutions that are eligible.

**Office of Postsecondary Education**

*Type of Review:* Revision
*Title:* Request for Designation as an Eligible Institution
*Agency Form Number:* ED 1059–6
*Frequency:* Once only
*Affected Public:* Non-profit institutions
*Reporting Burden:*
*Responses:* 1200
*Burden Hours:* 19,200
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0

*Abstract:* The collection of information on this form is necessary in order for the Department to designate institutions of higher education as eligible to apply for grant funds under the Strengthening Institutions Program and the Endowment Challenge Grant Program.

[FR Doc. 87–12306 Filed 5–28–87; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Morgantown Energy Technology Center, Financial Assistance Award to the University of Alaska

**AGENCY:** U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

**ACTION:** Notice of restriction of eligibility for grant award.

**SUMMARY:** The DOE, Mortantown Energy Technology Center, in accordance with 10 CFR 600.7(b), gives notice of its plans to award a grant continuation to the University of Alaska for an additional 12 month effort under existing Grant No. DE–FG21–86FE61114 in the amount of $930,000 on a 50/50 cost-shared basis. The total grant with inclusion of this continuation is $1,370,000 for a three-year period.

The DOE has determined that restriction to the University of Alaska is appropriate based upon the following information:

The DOE and the State of Alaska have entered into an agreement relating to fossil energy resource characterization, research and technology development, and technology transfer to advance the application of new technologies to the Alaskan reserves of crude oil, natural gas, heavy oil, tar sand oil, coal, shale oil, methane hydrates, and peat, and may include scientific activities and investigations of underlying environmental concerns. The University of Alaska has been designated in the agreement as a unit of the State for purposes of activities that may be conducted under this agreement.

Under this grant continuation, the University of Alaska has proposed to focus on two specific tasks related to the development of Alaskan fossil energy resources with annual funding on a 50/50 cost-shared basis. Those activities specific to this continuation are (1) development of effective gas solvents including $CO_2$ for the improved recovery of West Sak Oil by stream flooding, and (2) development of Alaskan tar sand and gas hydrate resources.

These activities to research the application of new technologies to the arctic fossil energy reserves are in furtherance of the DOE mission and the Alaskan objectives to ensure a continued supply of fossil fuels to the consumer in a safe, economic and environmentally acceptable manner. Since the University of Alaska has been charged with research in support of Alaska resource development, has an ongoing program (facilities, equipment and personnel), and is an integral part of the Alaskan infrastructure involved in resources recovery issues, it is uniquely qualified to carry out the work under this grant. Therefore, it has been determined that, in cooperation with the State of Alaska, it is appropriate to award this grant to the University of Alaska on a restricted eligibility basis.

**FOR FURTHER INFORMATION CONTACT:** Brenda L. Summers, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 291–4340, Procurement Request No. 21–87FE61114.501.

Dated: May 20, 1987.

**Louie L. Calaway,**

*Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.*

[FR Doc. 87–12275 Filed 5–28–87; 8:45 am]
BILLING CODE 6450-01-M

## Economic Regulatory Administration

**[Docket No. ERA C&E–87–19; OFP Case No. 52371–1572–21, 22, 23, 23–22]**

### Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Potomac Electric Power Co.

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Order Granting Exemption.

**SUMMARY:** On December 31, 1987, Potomac Electric Company (PEPCO or petitioner) filed a petition with the Electric Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for four proposed new peakload powerplants to be located at

PEPCO's Dickerson site in Montgomery County, Maryland. PEPCO intends to add two heat recovery steam generators and steam turbines that will result in two combined cycle facilities to be baseloaded after 1987. The expanded facility is the subject of an independent contemporaneous order granted to PEPCO.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant, and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on peakload use. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.41.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the SUPPLEMENTARY INFORMATION section below.

**DATES:** In accordance with section 702(a) of FUA, this order and its provisions shall take effect on July 28, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 586-4706

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

FUA prohibits the use of natural gas or petroleum in certain new powerplant unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facility located in Montgomery County, Maryland.

**Procedural Requirements**

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the Federal Register on March 9, 1987 (52 FR 7196) commencing a 45-day public comment period pursuant to section 701(c) of FUA. Copies of the petition were provided to the Environmental Protection Agency as required by section 701(f). During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on April 23, 1987; no adverse comments were received and no hearing was requested.

**Order Granting Permanent Exemption**

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants the petitioner's permanent exemption for the powerplant to be installed at its facility in Montgomery County, Maryland permitting the use of natural gas or oil as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, DC on May 20, 1987.

Robert L. Davies,

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87-12231 Filed 5-28-87; 8:45 am]

BILLING CODE 6450-01-M

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[Docket No. ERA C&E-87-25; OFP Case No. 52371-1672-25, 26-22]

## Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to Potomac Electric Power Company

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Order Granting Exemption.

**SUMMARY:** On December 31, 1986, Potomac Electric Power Company (PEPCO or petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for two combined cycle facilities to be located at its Dickerson Station in Montgomery County, Maryland.

The gas-fired turbines to be used in these combined cycle facilities are the subject of an independent contemporaneous petition submitted by PEPCO. PEPCO proposes to construct and operate four gas-fired turbines as peaking units in 1994, 1995, 1996 and 1997, respectively, and has requested a peakload exemption (see companion order). After 1977, PEPCO intends to add heat recovery system generators and steam turbines that will result in the two combined cycle facilities that are the subject of this order.

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant, and prohibits the construction of any such facility without the capabilities to use an alternate fuel as a primary energy source. The exemption petition was based on a lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioners for petitioning for this type exemption are found at 10 CFR 503.32.

Pursuant to section 212(a) of the Act and 10 CFR 503.32, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the SUPPLEMENTARY INFORMATION section below.

**DATES:** In accordance with section 702(a) of FUA, this order and its provisions shall take effect on July 28, 1987.

**FOR FURTHER INFORMATION CONTACT:**

Xavier Puslowski, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington DC 20585 Telephone (202) 586-4706

Steven E. Ferguson, Esq., Office of General Council, Department of Energy, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586-6947.

The public file containing a copy of this order and other documents and

supporting materials on this proceeding is available on request for DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facilities located in Montgomery County, Maryland.

**NEPA Compliance**

After a review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

**Procedural Requirements**

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the Federal Register on March 9, 1987 (52 FR 7195), commencing a 45-day public comment period pursuant to section 701(c) of FUA.

A copy of the petition was provided to the Environmental Protection Agency and the Federal Energy Regulatory Commission as required by sections 213(c)(2) and 701(f) of the Act, respectively. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on April 23, 1987; no adverse comments were received and no hearing was requested.

**Order Granting Permanent Exemption**

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.32, and pursuant to section 212(a) of FUA, ERA hereby grants the petitioner's permanent exemption for the unit to be installed at its facility in Montgomery County, Maryland permitting the use of natural gas or oil as a primary energy source in each unit identified in this order.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, DC, on May 20, 1987.

Robert L. Davies,

*Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–12232 Filed 5–28–87; 8:45 am]

BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

[P–3473–008]

**Application Filed With the Commission**

May 22, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 3473–008.

c. Date Filed: May 5, 1987.

d. Applicant: Jack M. Fuls and HydroPool.

e. Name of Project: North Canal Dam.

f. Location: On the Deschutes River, in the City of Bend, in Deschutes County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Jack M. Fuls, 6324 NE. Glisan, Portland, OR 97231, (503) 233–1083 Mr. Ivan L. Gold, HydroPool, 3 Embarcadero Center, Suite 1670, San Francisco, CA 94111, (415) 362–4290.

i. FERC Contact: Mr. William Roy-Harrison, (202) 376–9773.

j. Comment Date: July 6, 1987.

k. Proposed Action: Jack M. Fuls proposes to transfer his license for Project No. 3473 to HydroPool to facilitate completion of the project. Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license.

l. This notice also consists of the following standard paragraphs: B and C.

B. *Comments, Protests or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87–12299 Filed 5–28–87; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3210–5]

**Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared May 11, 1987 through May 15, 1987 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act (CAA) and Section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

**Draft EISs**

ERP No. DS–FAA–B51008–NH, Rating LO, Lebanon Municipal Airport Runway

18 Extension, Outer Marker With Compass Locator Facility, Installation, Approval, NH. SUMMARY: EPA believes that the project as currently proposed is satisfactory from the standpoint of environmental quality, health and welfare, within EPA's areas of jurisdiction and expertise. This finding is based in part on the prior commitment to mitigation measures in the 1982 final EIS for the runway extension and industrial park development at Lebanon Municipal Airport.

ERP No. D-SCS-J31019-WY, Rating EO2, Big Sandy River Unit, Onfarm Irrigation Improvements, Colorado River Salinity Control Program, WY. SUMMARY: EPA's major concerns included the potential elimination of an existing fishery and the implementation procedure for wetland mitigation. Soil Conservation Service has committed to attempt to resolve these issues prior to the final EIS.

**Final EISs**

ERP No. F-FHW-D40212-VA, VA-600 Improvement, VA-603 to VA-782, 404 Permit, VA. SUMMARY: EPA reviewed the final EIS and noted that all of the previous concerns regarding the draft EIS were addressed. There are no regional objections to the implementation of the project.

ERP No. F-FHW-J40069-CO, CO-7/ Forest Highway 26 Reconstruction, Meeker Park to US 36 in Estes Park, 404 Permit, CO. SUMMARY: The final EIS responded to EPA's concerns on the draft EIS.

**Amended Notice**

The following review should have appeared in the FR Notice published on May 22, 1987.

ERP No. D-FHW-D40224-MD, Rating EC1, MD-22 Improvements, Bel Air to I-95, 404 Permit, MD. SUMMARY: To avoid environmental impacts, EPA recommends the selection of an existing alignment alternative. Major areas identified as needing further explanation in the final EIS are: (1) Wetlands definition and mitigation, (2) determination of impacts to endangered species in the affected area, (3) impacts to surface and ground waters, and (4) long-term noise impacts.

Dated: May 26, 1987.

Richard E. Sanderson,

*Director, Office of Federal Activities.*

[FR Doc. 87-12289 Filed 5-28-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3210-4]

**Environmental Impact Statements; Notice of Availability**

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed May 18, 1987 Through May 22, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870179, Final, SCS, WV, Howard Creek Watershed Flood Control and Watershed Protection, Greenbrier County, Due: June 29, 1987, Contact: Rollin Swank, (304) 291-4151

EIS No. 870180, Final, COE, CO, Parachute Creek Shale Oil Program, Phase II, Expansion, Garfield County, Due: June 29, 1987, Contact: Tom Coe, (916) 551-2270

EIS No. 870181, Draft, EPA, REG, Wet-Coal Charged By-Product Coke Oven Batteries, Coke Oven Emission Standards, Due: July 13, 1987, Contact: James Crowder, (919) 541-5596

EIS No. 870182, Draft, EPA, REG, Petroleum Refinery Wastewater Systems, Volatile Organic Compounds (VOC) Emissions, Performance Standards, Due: July 20, 1987, Contact: James Durham, (919) 541-5671

EIS No. 870183, Final, Adoption, CGD, MS, Gulf Coast Strategic Homeporting, Pascagoula Bay/ Mississippi Sound Bridge, Pascagoula to Singing River Island, Permit Approval, Due: June 29, 1987, Contact: Rose Payne, (504) 589-2965

EIS No. 870184, Draft, DOE, CO, Old and New Rifle Uranium Mill Sites Remedial Actions, Contaminated Material Cleanup, Garfield County, Due: July 13, 1987, Contact: James Anderson, (505) 844-3941

EIS No. 870185, Draft, NOA, NH, Great Bay National Estuarine Research Reserve Designation and Management Plan Preparation, Due: July 13, 1987, Contact: Vickie Allin, (202) 673-5122

EIS No. 870186, Draft, EPA, REG, Polymeric Coating of Supporting Substrates Volatile Organic Compounds (VOC) Emissions, Performance Standards, Due: July 14, 1987, Contact: James Berry, (919) 541-5671

EIS No. 870187, Draft, FHW, IL, Elgin-O'Hare Highway/FAP Route 426 Improvement, US 20/Lake Street and Lovell Road Intersection to IL-19/ Irving Park Road and US 12/45/ Mannheim Road Intersection, Cook and DuPage Counties, Due: July 30, 1987, Contact: Jay Miller, (217) 492-4600

EIS No. 870189, Final, UAF, MN, ND, SD, Central Radar Systems, Over-the-Horizon Backscatter Radar System, Construction and Operation, Due: June 29, 1987, Contact: James Lee, (617) 271-5367

**Amended Notices**

EIS No. 870144, Draft, FHW, CA, CA-52 East Construction, Santo Road to CA-67, San Diego County, Due: June 17, 1987, Published FR 5-1-87—Review period extended

EIS No. 870176, Final, FWS, NJ, Great Swamp National Wildlife Refuge Master Plan, Morris County, Due: June 29, 1987, Published FR 5-22-87—Review period reestablished

EIS No. 870166, Draft, FHW, WI, WI-TH-83 Improvement, I-94 to Cardinal Lane/WI-TH-16, Waukesha County, Published FR 5-22-87—Officially retracted due to nondistribution

Dated: May 26, 1987.

Richard E. Sanderson,

*Director, Office of Federal Activities.*

[FR Doc. 87-12290 Filed 5-28-87; 8:45 am]

BILLING CODE 6560-50-M

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[OPTS-400005; FRL-3187-8]

**Emergency Planning and Community Right-To-Know Programs; Denial of Toxic Chemical List Petition**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is denying a petition to add the category of inorganic fluorides to the list of toxic chemicals under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. Section 313(e) allows any person to petition the Agency to modify the list of toxic chemicals for which toxic chemical release reporting is required.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1411.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

*A. Statutory Authority*

The response to the petition is issued under section 313 (e)(1) of Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, "SARA" or "the Act"). Title III of SARA is also referred to as the Emergency Planning and Community Right-to-Know Act of 1986.

**B. Background**

Title III of SARA is intended to encourage and support emergency planning efforts at the State and local level and provide the public and local governments with information concerning potential chemical hazards present in their communities.

Section 313 of Title III requires owners and operators of certain facilities that manufacture, process, or otherwise use a listed toxic chemical to report annually their releases of such chemicals to the environment. Such reports are to be sent to both EPA and the State in which the facility is located. The basic purpose of this provision is to make available to the public information about total annual releases of toxic chemicals from industrial facilities in their community. In particular, EPA is required to develop a computer data base containing this toxic chemical release information and to make it accessible by telecommunications on a cost reimbursable basis.

For reporting purposes, section 313 establishes an initial list of "toxic chemicals" that is composed of 329 entries, including 20 categories of chemicals. This list is a combination of lists of chemicals used by the States of Maryland and New Jersey for emissions reporting under their individuals right-to-know laws. Section 313(d) authorizes EPA to modify by rulemaking the list of chemicals covered either as a result of EPA's self-initiated review or in response to petitions under section 313(e).

Section 313(e) (1) provides that any person may petition the Agency to add chemicals to or delete chemicals from the list of "toxic chemicals." EPA issued a statement of policy and guidance in the Federal Register of February 4, 1987 (52 FR 3479). This statement provided guidance to potential petitioners regarding the recommended contents and format for submitting petitions. The Agency must respond to petitions within 180 days either by initiating a rulemaking or publishing an explanation of why the petition is denied. If EPA fails to respond within 180 days, it is subject to citizen suits. In the event to a petition from a state governor to add a chemical, under section 313(e) (2), if EPA fails to act within 180 days, EPA must issue a final rule adding the chemical to the list. Therefore, EPA is under specific constraints to evaluate petitions and to issue a timely response.

State governors may petition the Agency to add chemicals on the basis of any one of the three toxicity criteria (acute human health effects, chronic health effects, or environmental toxicity). Other persons may petition only on the basis of acute or chronic human health effects.

Chemicals are evaluated for inclusion on the list based on the criteria in section 313(d) and using generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to EPA.

**II. Description of Petition**

The Safe Water Foundation of Texas submitted a petition to EPA to add the category of inorganic fluoride chemicals to the list of toxic chemicals. The Agency received the petition on November 28, 1986 and, under the statutory deadline, must respond by May 27, 1987. The petitioner submitted several citations of studies and copies of other studies to support its petition.

The petitioner based its petition on the contention that inorganic fluorides cause adverse human health effects, and therefore meet the statutory criteria in section 313(d)(2)(B).

**III. EPA's Review of Inorganic Fluorides**

*A. Chemistry Profile*

1. *Focus of the review.* Eight inorganic flurides are specifically listed in the petition. However, the petition states that other inorganic fluorides should not be excluded from the Agency's review. EPA reviewed the inventory of chemical substances developed under section 8(b) of the Toxic Substance Control Act (TSCA) (i.e., the TSCA Inventory) to identify commercially significant inorganic fluorides (Ref. 9). The 1977 TSCA Inventory data base was used to provide a sample set of chemicals on which the review of the petition could focus, although the reporting requirement in section 313 is not limited to substances on the TSCA Inventory. Of the 193 inorganic fluorides found in the TSCA Inventory data base, the Agency's review found 46 inorganic fluorides with upper bound production volumes greater than 10,000 lbs per year. (Under section 313, reporting for 1969 and thereafter is only for facilties which manufacture or process greater than 25,000 lbs per year, or otherwise use toxic chemicals in volumes greater than 10,000 lbs per year). Of the 8 inorganic fluorides cited in the petition, only 1 was not included in the list of 46 (potassium difluoride-$KF_2$). This chemical did not appear in the 1977 TSCA Inventory data base.

2. *Categorization by chemical type.* The health review of inorganic fluorides as a category was focused on effects associated with the fluoride anion ($F^-$). The principal health effect (i.e., skeletal fluorosis) does not appear to have any direct correlation with the ease of dissociation of the fluoride anion. Hence, subclassification by chemical type did not facilitate the review.

*B. Toxicity Evaluation*

The data base available for review of the toxicity associated with inorganic fluorides is extensive. In addition to animal studies, several human epidemiological studies with large populations have been conducted over the last 40 years. EPA's review focused on the following effects: acute toxicity; carcinogenicity; mutagenicity (i.e.; heritable gene and chromosome mutations); developmental dysfunction (including teratogenicity); reproductive toxicity; neurotoxicity; and other chronic health effects, which include dental fluorosis/osteosclerosis/crippling skeletal fluorosis hepatoxicity, renal toxicity, thyroid toxicity, cardiovascular toxicity, and allergic reactions.

1. *Acute toxicity.* Fluoride ion consumed in large quantities can cause severe poisoning and death. The human acute lethal dose for inorganic fluoride ranges from 50 to 225 mg/kg body weight or 3 to 18 grams for an average human male (Ref. 6). Hodge and Smith tabulated numerous reports of accidental and intentional poisonings with fluoride and concluded that a dose range of 5 to 10 grams of sodium fluoride would be a lethal dose for an average human male (70 to 140 mg/kg body weight) (Ref. 6). Similar lethal doses have been observed in animal studies. Exposures of such magnitude are not likely to occur off-site.

2. *Dental fluorosis/osteosclerosis/crippling skeletal fluorosis.* Dental fluorosis is characterized by mottling of the teeth. While an undesirable effect, the Agency does not consider it a serious health effect under SARA section 313 because it is not associated either with a loss of bodily function or tooth mortality (Ref. 3).

Skeletal fluorosis, which increases in severity with both dose of fluoride and duration of exposure, is characterized in its mildest form by a slight increase in bone density (asymptomatic osteosclerosis) which is detectable only by x-ray examination. Osteosclerosis is not viewed by the EPA as an adverse health effect under SARA section 313 because it does not appear to cause clinically significant effects (Ref. 3). In its most severe form, skeletal fluorosis is characterized by the deposition of irregular bone deposits which, in the case of joints, results in arthralgia and crippling (Ref. 3). This condition is

known as crippling skeletal fluorosis and is readily recognized by physicians. The EPA has concluded that crippling skeletal fluorosis is an adverse health effect.

Skeletal fluorosis in the U.S. was investigated by Leone et al. [(Ref. 12), as discussed in the draft report for EPA (Ref. 3)], who compared the effects of exposure to fluoride in drinking water in a high fluoride area (Bartlett, Texas; 8 mg/L) and in a low fluoride area (Cameron, Texas; 0.4 mg/L). In the groups studied, there were 116 participants from Bartlett and 121 from Cameron, a total of 237 persons. The average length of exposure was 37 years in the Bartlett area and 38 years in the Cameron area. The authors concluded that fluoride-induced bone changes (osteosclerosis): (a) occur in approximately 10 to 15 percent of those exposed to high levels of fluoride and (b) are not associated with other physical finding (including crippling skeletal fluorosis) except for dental mottling in persons who resided in Bartlett during the tooth formative period. Independently of the Leone et al. survey (Ref. 12), Stevenson and Watson, as discussed in the draft report for EPA (Ref. 3), reviewed the medical records on file at the Scott and White Clinic for the 11-year period from 1943 through 1953. These patients included individuals whose drinking water contained levels of fluoride that ranged from low levels to relatively high levels. The authors noted 23 cases of osteosclerosis from a total of approximately 170,000 x-ray examinations in patients living in Texas and Oklahoma. In all cases, bone changes were found only in individuals where drinking water contained fluoride levels of 4 to 8 mg/L. No cases of crippling skeletal fluorosis were observed.

All available evidence indicates that the incidence of crippling skeletal fluorosis in the U.S. associated with fluoride intake through drinking water is extremely small. Only two cases of crippling skeletal fluorosis associated with non-occupational exposure have been reported in the U.S. (Refs. 5 and 15) over the decades that scientists have examined the effects of fluoride upon bone (Refs. 2, 7, 11, 12, 13, and 17), as discussed in the draft report for EPA (Ref. 3). In both cases, the individuals had both higher levels of water intake and possibly, significant levels of fluoride from the diet in that both drank large quantities of tea which contains high amounts of fluoride compared to other foods (97 parts per million dry basis) (Ref. 14).

Crippling skeletal fluorosis has been observed in individuals in other countries chronically exposed to fluoride in drinking water at levels of 20 mg/day to 80 mg/day (based on 2 liters of water consumption per day) and in workers who, due to occupation, were chronically exposed to high levels of fluoride (e.g., cryolite mining).

From the cases of skeletal fluorosis caused by occupational exposures, it is estimated that the development of crippling skeletal fluorosis requires the daily consumption of 20 mg or more of fluoride from all sources for 20 or more years (Ref. 16), as discussed in the draft report for EPA (Ref. 3).

3, *Other health effects.* The health review concluded the data are insufficient to establish that the fluoride ion causes or can reasonably be anticipated to cause cancer or heritable gene or chromosome mutations in humans. Other effects (e.g., reproductive dysfunction, developmental toxicity, and cardiovascular toxicity) have only been seen in animal studies at levels significantly higher than those of concern for crippling skeletal fluorosis.

*C. Release and Exposure Analysis*

EPA's assessment of industrial releases of fluorides was based on readily available data primarily from the industries whose activities fall within the Standard Industrial Classification Codes 20 through 39 (covered by section 313 reporting). Some of these industries are currently subject to various air and water environmental regulations.

EPA identified the applications, number of facilities involved, and the specific fluoride compounds used and released by each industry, as well as quantitative air and water release estimates where possible (Ref. 4) The data represent releases mostly from industries whose fluoride emissions are currently regulated by EPA. These releases are considered to be the more significant industrial sources of fluorides.

The exposure analysis derived from these off-site release estimates indicates that industrial sources of fluorides do not appear to make a significant contribution to the total human exposure to inorganic fluorides (Ref. 1). Industrial releases of fluorides to surface waters do not typically contribute more than a few tens of micrograms per day (μg/day) to fluoride exposure (20 μg/day would be one percent of the estimated average human exposure to fluoride from drinking water in the U.S.). The highest exposure, 1.3 mg/day, was estimated for hydrogen fluoride plants discharging directly to surface water. Hydrogen fluoride is already on the section 313 list; therefore, these releases would be reported without modifying the list. Air releases in the vicinity of certain industrial sites reflect levels of exposure higher than that typical of ambient air in the U.S. (generally below the limit of detection of 0.05 $\mu g/m^3$, equivalent to 1.3 μg/day), but still in the low hundreds of micrograms per day (a level of 150 μg/day resulted from the well-characterized dispersion modeling of primary aluminum plants) (Ref. 1). Once again the highest exposure from air releases, 260 μg/day, was calculated for a hydrogen fluoride factory.

Drinking water is the major source of exposure to fluorides for the average person. Approximately 90 percent of the public drinking water supplies in the U.S. contain fluoride at levels no greater than 1.0 ppm (2 mg/day) either through natural occurrence or more commonly through intentional addition. Most of the other public water supplies contain no more than 2.0 ppm (4 mg/day) (Ref. 1). Diet is the second most important source of fluoride exposure for most people (0.2 to 0.8 mg/day) (Ref. 1).

In the time available, the Agency was not able to find data to evaluate potential releases to groundwater from land disposal of fluoride-bearing wastes.

*D. Summary of Technical Review*

The hazard evaluation shows that the primary effect of concern, crippling skeletal fluorosis, is unique and is only seen at doses of at least 20 mg per day over an estimated 20-year exposure period. This effect has been well studied and the adverse effect levels for skeletal fluorosis have been confirmed by epidemiological studies.

Drinking water, the major source of exposure to fluorides, generally exposes populations to doses of 2 mg/day. The maximum regulated exposure from U.S. public drinking water supplies is 8 mg/day (4 ppm fluoride concentration). Industrial sources evaluated show that air emissions are the largest contributor, with typical levels resulting in exposures of less than 0.15 mg/day. Therefore, the contribution to human exposure from industrial sources is typically an order of magnitude lower than that from drinking water. Thus, the Agency has found no cases where the total fluoride exposure would result in crippling skeletal fluorosis.

The results of the exposure analysis of industrial sources is contrasted with other sources of fluoride exposure and the adverse health effect level in Table 1 below.

BEST COPY AVAILABLE

TABLE 1.—ADVERSE HEALTH EFFECT LEVEL VS. EXPOSURE LEVELS FROM VARIOUS SOURCES OF FLUORIDES

| LOAEL [1] for crippling skeletal fluorosis | 20 mg/day [2] |
|---|---|
| Maximum drinking water exposure [3]. | 8 mg/day. |
| Typical drinking water exposure. | 2 mg/day. |
| Typical dietary exposure | 0.2–0.8 mg/day. |
| Ambient Air exposure [4] | 0.0013 mg/day. |
| Potential drinking water exposure level from typical industrial sources. | <0.001–0.5 mag/day (typical level 0.01 mg/day. |
| Potential air exposure level in vicinity of major industrial sources. | 0.05–0.15 mg/day. |

[1] Lowest observable adverse effects level.
[2] For a 20-year exposure period.
[3] Based on the Maximum Contaminant Level (MCL) of 4 mg/L for U.S. public drinking water supplies and a 2 liter per day consumption.
[4] Based on the limit of detection for fluoride of 0.05 ug/m$^3$
[5] Range of estimated exposure levels (not including hydrogen fluoride; a chemical already on the section 313 emissions inventory.)

## IV. Explanation of Denial

### *A. General Policy*

EPA has broad discretion in determining whether to grant or deny petitions under section 313. Section 313(d)(2)(B)(ii)(IV) gives EPA the discretion to add a chemical to the list of toxic chemicals if there is sufficient evidence to establish that it is known to cause or can reasonably be anticipated to cause in humans a serious or irreversible chronic health effect. In the Joint Conference Committee Report, the conferees made clear that EPA may conduct risk assessments or site-specific analyses in making listing determinations under section 313(d). EPA has concluded that potential exposure must be a consideration in making decisions to add chemicals to the list. It would not be consistent with the purpose behind section 313 to add chemicals that are toxic only at high exposures that are not likely to occur off site during normal operations. EPA has discretion to consider a variety of factors to determine whether it is appropriate to add chemicals to the list, albeit limited in the case of petitions under section 313(e) by the 180-day period.

### *B. Reasons for Denial*

The EPA is denying the petition submitted by the Safe Water Foundation of Texas to add the category of inorganic fluorides to the list of chemicals subject to toxic release inventory reporting.

The category of inorganic fluorides is unusual in the degree to which both the unique adverse health effect—crippling skeletal fluorosis—and the human exposure are well characterized.

Thus, this decision to deny the petition is based on a number of factors. While recognizing that dental fluorosis is a cosmetically objectionable effect, the Agency does not believe there is adequate evidence to show that dental fluorosis is an adverse health effect. The fluoride anion is known to cause a serious chronic health effect (crippling skeletal fluorosis); however, the dosage levels at which crippling skeletal fluorosis is seen (20 mg/day for 20 years) are much higher than the exposures that the Agency believes are likely. The fluorosis effect is unique to exposure to fluoride and is easily identified. Various epidemiological studies (cited above) have confirmed the dose at which effects are seen, leading to a high confidence in the adverse effect level. Furthermore, the Agency believes that industrial releases of inorganic fluorides (the only releases that would be reported under section 313) contribute only a small proportion to the total exposure of humans to inorganic fluorides, which is primarily from drinking water containing florides from natural sources and intentional addition to promote dental health. Although the Agency could not conduct a comprehensive analysis of all potential sources of fluoride releases given the available data and time allowed by the statutory deadline for review, this conclusion is further supported by several epidemiological studies of U.S. populations which indicate that there have been very few reported cases of crippling skeletal fluorosis due to non-occupational exposures. Therefore, EPA believes that any additional risk posed by the releases of inorganic fluorides from industrial sources is insignificant.

Accordingly, the purposes of section 313 would not be served by requiring covered facilities to report releases of such fluorides.

## V. Public Record

The record supporting this decision is contained in docket control number OPTS–400001. All documents, including the index of the docket, are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday thru Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Room NE–G004, 401 M St., SW., Washington, DC 20460.

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(14) Letkiewicz F. Occurrence of fluoride in drinking water, food, and air. McLean, VA: JRB Associates. EPA contract no. 68–01–6388. 1984.

(15) Sauerbrunn, B. J. L., Rayan, C. M., and Shaw, J. F. Chronic fluoride intoxication with fluorotic radiculomyelopathy. Ann. Intern. Med., 1074–1078. 1965.

(16) Shapiro, J. R. Report to the Surgeon General: By the Ad Hoc Committee on the Nondental Health Effects of Fluoride in Drinking Water. September 28, 1983.

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Dated: May 22, 1987.

Lee M. Thomas,

*Administrator.*

[FR Doc. 87-12249 Filed 5-28-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Applications for Consolidated Hearing; David G. Perry et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station.

| Applicant, City and State | File No. | MM Docket No. |
|---|---|---|
| A. David G. Perry, Windsor, NC. | BPH-860424MP | 87-146 |
| B. Freedom Broadcasting, Windsor, NC. | BPH-860507GA | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 28, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading Applicant(s)*

1. Air Hazard, B
2. Comparative, A, B
3. Ultimate, A, B.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 87-12239 Filed 5-28-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. CF-6]

### Window Notice for the Filing of FM Broadcast Applications

Released: May 20, 1987.

Notice is hereby given that applications for vacant FM Broadcast allotments listed below may be submitted for filing during the period beginning on the date of release of this public notice and ending June 30, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

| Channel | City | State |
|---|---|---|
| 233C | Eager | Arizona. |
| 243C | Soldotna | Alaska. |
| 249C | Granbury | Texas. |
| 285A | McConnelsville. | Ohio. |
| 272A | Camden | Alabama. |

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-12237 Filed 5-28-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. FM86-1]

### Window Notice for the Filing of FM Broadcast Applications

Released: May 20, 1987.

Notice is hereby given that applications for vacant FM Broadcast allotments listed below may be submitted for filing during the period beginning May 20, 1987 and ending June 30, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

| Channel | City | State |
|---|---|---|
| 233A | Waco [1] | Texas. |
| 238A | Silver Springs. | Florida. |
| 247C2 | South Pittsburgh. | Tennessee. |
| 269A | Franklin | Virginia. |

[1] Site restriction no longer necessary.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87-12236 Filed 5-28-87; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0100

Title: Emergency Management Training State Work Plan

Abstract: The attached FEMA Form 95-5 is used to submit the annual projection as well as collect quarterly data.

Type of Respondents: State or local governments

Number of Respondents: 58

Burden Hours: 145

Frequency of Recordkeeping or Reporting: Semi-annually; Annually

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Wesley C. Moore, *Director,*

*Office of Administrative Support.*

[FR Doc. 87-12240 Filed 5-28-87; 8:45am]

BILLING CODE 6718-05-M

[FEMA-788-DR]

### Amendment to Notice of a Major Disaster Declaration for Maine

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine (FEMA-788-DR), dated April 9, 1987, and related determinations.

DATED: May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Maine, dated April 9, 1987, is hereby amended to include the following areas among those areas

determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 9, 1987:

The Town of Harrison in Cumberland County, the Town of Bucksport in Hancock County, and the Town of Appleton in Knox County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dave McLoughlin,

*Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.*

[FR Doc. 87-12241 Filed 5-28-87; 8:45 am]

BILLING CODE 6718-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 86P-0389]

### Canned Pacific Salmon Deviating From Identity Standard; Amendment of Temporary Marketing Permit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit to market test canned skinless and boneless chunk salmon packed in water is being amended to increase the quality of test product to be distributed and the area of distribution. This amendment will provide the permit holder with a broader base for the collection of data on consumer acceptance of the test product.

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0110.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Bumble Bee Seafoods, Inc., San Diego, CA 92123, to market test canned skinless and boneless chunk salmon packed in water to test consumer acceptance of the new store pack. The permit was issued in order to facilitate market testing of foods that deviate from the requirements of the standard of indentity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Bumble Bee Seafoods, Inc., was published in the Federal Register of September 16, 1986 (51 FR 32844).

Bumble Bee Seafoods, Inc., is requesting that the permit be amended to (1) increase the quantity of test product to 400,000 cases containing twenty-four 6 ½-ounce cans and (2) expand the area of distribution to include Alaska and Hawaii. The company states that these changes are necessary to collect adequate data to complete the market test. Accordingly, FDA, under provisions of 21 CFR 130.17(f) is amending the temporary permit to increase the quantity of test produce to 400,000 cases and to include Alaska and Hawaii in the test market area.

Therefore, FDA is amending the permit to change the quantity of product to be market tested and the area of distribution. All other conditions and terms of this permit remain the same.

Dated: May 11, 1987.

Richard J. Ronk,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-12229 Filed 5-28-87; 8:45 am]

BILLING CODE 4160-01-M

### Health Care Financing Administration

[ORD-054-N]

### Medicare Program; Health Care Financing Research and Demonstration Special Solicitation; Availability of Funds for Cooperative Agreements or Grants for Preventive Services Demonstrations for Medicare Beneficiaries

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice announces the availability of HCFA funds for conducting cooperative agreements or grants in Federal fiscal year 1987 for demonstration projects that are designed to reduce disability and dependency by providing preventive health services to Medicare beneficiaries. Under these awards, HCFA will provide reimbursement for preventive services that are not usually covered by Medicare. This notice contains information about demonstration requirements, application procedures, criteria HCFA will use for reviewing applications, and the amount and duration of awards.

DATE: Closing date for submission of applications will be August 27, 1987, 4:30 p.m. eastern standard time.

ADDRESSES: Application kits. Standard application forms and guidance for the completion of the forms are available from: Paul McKeown, Health Care Financing Administration, Office of Management and Budget, Administrative Contracts and Grants Branch, Room 364, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-3333.

FOR FURTHER INFORMATION CONTACT: John F. Meitl, Health Care Financing Administration, Office of Research and Demonstrations, Office of Demonstrations and Evaluations, Room 2306, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207-5187, (301) 594-1719.

SUPPLEMENTARY INFORMATION:

#### I. Introduction

This notice solicits cooperative agreement or grant applications for HCFA demonstration projects designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under Title XVIII of the Social Security Act. Projects must be conducted under the direction of accredited public or private non-profit schools of public health, or preventive medicine departments accredited by the Council on Education for Public Health.

This notice also specifies a total amount of funds to be available. This solicitation is separate and distinct from, is not related to, and does not supplement or otherwise change, the beneficiary awareness and prevention priority area statement contained in our earlier grants solicitation notice published in the Federal Register on January 30, 1985 (50 FR 4460) and amended on October 16, 1986 (51 FR 36856).

This notice describes the application procedures, general policy considerations, criteria to be used in reviewing applications, and selection criteria for HCFA cooperative agreements or grants.

#### II. Availability of Funds for Cooperative Agreements or Grants for Preventive Health Services for Medicare Beneficiaries

*A. General*

Section 9314 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Pub. L. 99-272, mandates that the Secretary establish a 4-year demonstration program designed to reduce disability and dependency by providing preventive health services to Medicare beneficiaries. Section 9344(d) of the Omnibus Budget Reconciliation Act of 1986 (OBRA), Pub. L. 99-509, amended section 9314 of COBRA and authorized up to $5.9 million to fund new cooperative agreements or grants for demonstration projects for preventive

health services for Medicare beneficiaries.

*B. Authorities*

Our authority for making these awards is based on the following—

1. The Social Security Act, Title XVIII—section 1875, Studies and Recommendations (42 U.S.C. 139511);

2. Section 9314 of Pub. L. 99–272, the Consolidated Omibus Budget Reconciliation Act of 1985 (COBRA) (42 U.S.C. 1395b–1 note), as amended by section 9344(d) of Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986 (OBRA).

In the discussion below, we refer to the Social Security Act simply as "the Act".

*C. New Legislation*

1. *Demonstration program.* Section 9314(a) of Pub. L. 99–272 requires the Secretary to establish a 4-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to Medicare beneficiaries.

2. *Preventive health services under demonstration program.* Section 9314(b) of Pub. L. 99–272 provides that the preventive health services to be made available under the demonstration program will include—

(i) Health screenings;
(ii) Health risk appraisals;
(iii) Immunization; and
(iv) Counseling on and instruction in—
- Diet and nutrition;
- Reduction of stress;
- Exercise and exercise programs;
- Sleep regulation;
- Injury prevention;
- Prevention of alcohol and drug abuse;
- Prevention of mental health disorders;
- Self-care, including use of medication; and
- Reduction or cessation of smoking.

The Conference Report for Pub. L. 99–272 indicates that at least one project be funded that includes cancer screening (including breast cancer screening). (H.R. Rep. No. 453, 99th Cong., 1st Sess., page 514)

3. Section 9314(c) of Pub. L. 99–272, as amended by section 9344(d)(1) of 99–509, provides that the demonstration program will—

- Be conducted under the direction of accredited public or private nonprofit schools of public health, or preventive medicine departments accredited by the council on Education for Public Health;
- Be conducted in no fewer than five sites (at least one of which will be a rural area), which will be chosen so as to be geographically diverse and which will be readily accessible to a significant number of Medicare beneficiaries;
- Involve community outreach efforts at each site to enroll the maximum number of Medicare beneficiaries in the program; and
- Be designed—

(i) To test alternative methods of payment for preventive health services, including payment on a prepayment basis as well as payment on a fee-for-service basis;

(ii) to permit a variety of appropriate health care providers to furnish preventive health services, including physicians, health educators, nurses, allied health personnel, dietitians, and clinical psychologists, and

(iii) to facilitate evaluation as discussed below.

4. *Evaluation.* Section 9314(d) of Pub. L. 99–272 provides that the Secretary shall evaluate the demonstration project in order to determine—

- The short-term and long-term costs and benefits of providing preventive health services for Medicare beneficiaries, including any reduction in inpatient services resulting from providing the services; and
- What practical mechanisms exist to finance preventive health services under Title XVIII of the Act.

*D. Number and Size of Projects*

The legislation specifies that the Secretary of Health and Human Services must establish a 4-year demonstration program to be conducted in no fewer than five sites with funding for administrative costs (for example, the research and evaluation costs of each project) not to exceed $5,900,000 over the duration of the program. The portion of funds necessary to reimburse for the cost of the preventive services will be paid during the demonstration through a carrier, and will be in addition to the cooperative agreement award. Therefore, the awards for administrative costs are expected to average about $295,000 per year for the 4-year period.

*E. Duration of Funding*

HCFA will normally fund these projects for 1 year at a time and will continue funding on a noncompetitive basis, for up to 4 years. Continuation funding is contingent on the applicant's ability to meet prior year project objectives, as well as the availability of such funding.

**III. Preventive Services**

*A. General*

Preventive services are categorized into three levels of prevention (*Maxcy-Rosenau Public Health and Preventive Medicine* (12th edition); John M. Last, editor). Primary prevention reduces the likelihood of the development of a disease or disorder. Secondary prevention interrupts, prevents, or minimizes progression of disease or irreversible damage from a disease at an early stage; it comprises the early detection and treatment of disease before irreversible damage has occurred. Tertiary prevention focuses on the progression of damage in a disease where such damage has already occurred irreversibly; the emphasis is on measures to alleviate disability and to slow progression of established diseases or disorders.

Medicare reimbursement is limited to covered services that are reasonable and necessary for the treatment of an illness or injury. With the exception of a specific statutory authorization to cover pneumoccocal pneumonia and hepatitis B immunization, Medicare does not cover primary preventive services.

As a result of the congressional mandate, demonstration projects under this special solicitation will be initiated to reduce disability and dependency through the provision of preventive health services to Medicare beneficiaries. We are especially interested in projects that are designed to: test alternative methods of payment for prevetive health service, including payment on a prepayment basis, as well as, payment on a fee-for-service basis; and permit a variety of appropriate health care providers to furnish preventive health services including: physicians, health educators, nurses, allied health personnel, dietitians, and clinical psychologists.

On August 12, 1983, HCFA issued a special grant solicitation in the Federal Register (48 FR 36660) for proposals to demonstrate the effects of Medicare reimbursement for primary prevention in clinical screening and health education/promotion services. The objectives of these demonstrations were to offer an expanded benefit package of preventive services to a selected group of Medicaire beneficiaries and to assess the impact of these services upon subsequent utilization and costs of medical services and measures of health status. Reimbursement for the preventive package was capped at $100 per beneficiary per year. The Background section in the August 12, 1983, solicitation contains relevent background information on Medicare coverage of preventive services. The following material provides updated information for the material that was presented in the earlier solicitation.

*B. Related Activities and Studies*

The continued national focus on prevention initiatives has been supported by several related activities and studies that have pointed out the need to encourage medically efficacious preventive measures.

1. *Public health service preventive services activities*—a. *Health risk appraisal (HRA).* Follow-up has been done to several of the studies that indicated that annual physician examinations are not cost-effective methods to reduce health care costs and improve the quality of life. Based on the work of Breslow and Somers and others, the Centers for Disease Control (CDC), in cooperation with Health and Welfare, Canada, and other public and private sector organizations, has been developing HRA as a health promotion tool. The CDC has established a technical assistance HRA network that consists of 31 participating State Health Departments and 2 Schools of Public Health. CDC will complete a collaboration with Emory University in July 1987 that will revise and strengthen the risk estimation equations in the adult HRA. This instrument will be released in the public domain so it can be used in developing future HRA/health promotion programs.

b. *The Surgeon General's report.* The goals for 1990, as stated in *Healthy People, the Surgeon General's Report on Health Promotion and Disease Prevention* (1979), are in the process of a midpoint review. More than one quarter of the 227 goals address problems of the elderly. It is anticipated that a midpoint review document will be published during 1988. Preliminary data indicated tht 8 of the goals have been met, and enough progress has been made on 43 of the goals so that it is projected that they will be met by 1990. Work has begun to establish the goals for the year 2000.

c. *Healthy Older People.* In response to the 1979 Surgeon General's report, a national commitment to provide older persons with important health information has been made by this Department. A formal program has been jointly developed by the Public Health Service and the Administration on Aging. One part of this commitment, a national public education program entitled Healthy Older People, seeks to educate older persons about health practices which can reduce risks of disabling illness and increase prospects for more productive and active lives. Healthy Older People is also designed to stimulate the growth of health promotion programs for the special needs of older people.

Healthy Older People is a partnership among Federal; State and local governments; professional organizations; voluntary groups; businesses; and the media. Sponsored by the Office of Disease Prevention and Health Promotion (ODPHP), DHHS, Healthy Older People will provide public education materials and technical assistance to States and other interested groups. In each State, the Governor has appointed an individual to coordinate statewide activities.

Materials provided under the program for consumers include posters, skill sheets, television and radio public service announcements/modules, and the brief sheet called "Age Pages." Topics touch on the areas of exercise, nutrition, medications, injury prevention, smoking cessation, and use of preventive services. Materials for professionals include articles, technical briefs, and a teleconference convened December 12, 1985, which was jointly sponsored by ODPHP and the American Hospital Association.

Funding for implementing this initiative is $1.1 million for 2 years. The evaluation of the program is funded at $450,000 and will be process-oriented with 10 detailed community studies.

d. *U.S. Preventive Services Task Force.* In 1984, the DHHS convened the U.S. Preventive Services Task Force, composed of researchers, clinicians, and scholars to review the scientific basis of over 100 clinical preventive interventions and to develop a set of recommendations for the use of preventive services in clinical settings.

The U.S. Preventive Services Task Force will work collaboratively with the Canadian Task Force on the Periodic Health Examination. The combined Task Forces will consider issues of mutual interest related to the use of preventive services in clinical settings. The U.S. Preventive Services Task Force will build upon the work of the Canadians in the field of preventive services and work with them to develop joint recommendations, where appropriate. Each Task Force will have representation on the other in order to enhance the collaborative effort and prevent duplication of tasks.

Recommendations will be made concerning appropriate packages of preventive interventions for particular age and sex groups, risks, and conditions. These recommendations will be based on evaluations of the exsisting literature using the rigorously defined rules of evidence developed by the Canadian Task Force. Depending on the strength of the scientific evidence, recommendations for inclusion of a given preventive service will be farther defined by three criteria: effectiveness [the sum of efficacy plus compliance]; burden of suffering [the determined impact upon the individual and society]; and detection [levels of sensitivity, specificity, and predictive value]. Smoking, immunization, inappropriate use of alcohol, breast cancer screening, dietary fat, motor vehicle injury, and functional dependence in the elderly are among the topics which the Task Force has considered at their initial meetings.

The Task Force's final report is to be issued in 1987 and will contain all of its recommendations together with an implementation guide discussing the behavioral and structural issues that influence the integration of preventive services into clinical settings.

2. *HCFA funded preventive services activities.* HCFA has continued to fund projects that involve preventive services. Although these projects differ from the demonstrations we are soliciting under this notice, they may be helpful to applicants designing preventive services demonstrations. The major projects are described below:

a. *Cooperative health education project (CHEP).* This Medicare study was a random, controlled, prospective trial of self-care interventions offered for 1 year to the Medicare population of a health maintenance organization, the Rhode Island Group Health Association (RIGHA). The 1,009 eligible Medicare households in RIGHA were randomly assigned to an experimental or a control group. The project was conducted by the Center for Consumer Health Education.

This project involved a written communications program in which experimental households received newsletters, reference books, and brochures on medical problems amenable to self-care techniques developed for use with populations of all age groups. The experimental households also received four newsletters and two self-care packages aimed at the specific health concerns of older Americans (such as foot problems and bowel function in the elderly). A telephone information system was availabe to the experimental group.

Utilization data was obtained by using a chart abstract for 654 (64.8 percent) of the random households. The remaining households were excluded from analysis primarily because they were not members of RIGHA for 6 months prior to and 6 months following their entry into the study. Post-test questionnaire data were obtained to provide information on demographic, socioeconomic, and health characteristics of participants.

After adjustment by covariance for pretest utilization, total medical visits declined by 15.2 percent in the experimental group, compared with the control group. This decrease was statistically significant. After adjustment by covariance for pretest utilization, visits for minor illnesses decreased by 15.9 percent in the experimental group, compared with the control group. This difference was not statistically significant. It was estimated that the decrease in utilization could result in a savings of more than $2 for every $1 spent on the educational interventions.

These findings suggest that Medicare beneficiaries respond to self-care interventions with a reduction in ambulatory utilization, that this response is appropriate, and that it does not involve increased risks to the beneficiaries. Together with other results of the project, these interventions appear to have a consistent and generalized effect of reducing ambulatory care utilization that is not limited to particular groups by age, minor illnesses, particular diagnostic category, or visits to a specific type of health care provider.

b. *Preventive medical care in the Rand health insurance study (HIS).* This ongoing study focuses on the effect of preventive care on various categories of medical expenditure and any losses attributed to sickness. Issues and questions to be addressed include:

- The effects of preventive care on health status, medical care use, and work time available.
- The responsiveness of consumer demand to changes in the price of preventive care.
- The amounts of preventive care used in prepaid systems versus fee-for-service practice settings, both with no out-of-pocket charges.
- Whether or not people choosing the prepaid plan are fundamentally different in their desires to obtain preventive care.

The study uses data from the Rand HIS, a social experiment in which families are assigned to several different health insurance plans. Approximately 8,000 individuals have been enrolled at six sites across the country: Dayton, Ohio; Seattle, Washington; Fitchburg, Massachusetts; Franklin County, Massachusetts; Charleston, South Carolina; and Georgetown County, South Carolina. To date, this project has produced analyses of the frequency and cost of medical visits involving nonpreventive care and hospitalizations. Findings from the analyses indicate no significant effect of aggregate preventive activities on aggregate nonpreventive care, hospital visits, and costs.

c. *Municipal health services program (MHSP).* MHSP was a collaborative effort of five major cities in five States, the U.S. Conference of Mayors, the Robert Wood Johnson Foundation (RWJF), and HCFA. It was initiated by RWJF through grants of $3 million awarded in June 1978 to each of the following five cities: Baltimore, Cincinnati, Milwaukee, St. Louis, and San Jose. HCFA joined in the project by providing Medicare waivers to all cities and Medicaid waivers to four of the five States to test the effects of increased utilization of municipal health centers by:

- Eliminating coinsurance and deductibles.
- Expanding the range of covered services.
- Paying the reasonable cost of delivering services at the clinics.

The intent of the waivers was to shift fragmented utilization away from costly hospital emergency rooms and outpatient departments toward lower cost MHSP clinics, which would provide beneficiaries with comprehensive primary and preventive health care.

The first city began billing under the Medicare waiver in August 1979. Four of the five cities (all except Cincinnati) requested Medicaid waivers as well, and this resulted in the participation of the State governments in 1981. St. Louis withdrew from the program on December 31, 1984 and the Medicaid waivers expired on December 31, 1985 for all sites in the program. As of November 1986, the 4 MHSP cities had a total of 15 clinics operating, bringing together both public and private health-related organizations. A wide variety of services are offered, including medical, social, mental, preventive, dental, pharmacy, optometry, podiatry, and rehabilitation. Clinic utilization ranges widely from 700 visits per year to 40,000 visits per year. Average provider productivity ranges from 3,200 to 4,500 annual visits per full-time equivalent provider. As a result of section 128 of Pub. L. 99–190 and section 9215 of Pub. L. 99–272, Medicare waivers will be extended in four cities (St. Louis chose not to request an extension) through December 1988.

The evaluation conducted by the University of Chicago focused on costs and utilization. The report indicates that health care expenditures for MHSP users were less than for other health care users in the clinics service areas. Savings to Medicare were $354 per user per year, and to Medicaid, $43 per user per year.

d. *August 12, 1983, special grant solicitation for primary prevention services.* On September 30, 1985, HCFA's Office of Research and Demonstrations awarded two cooperative agreements for research on the cost effectiveness of Medicare prevention services.

*The University of North Carolina.* In this project Medicare-eligible patients, identified from the registers of cooperating clinics, will be invited to participate. Letters, including a stamped, self-addressed postcard inviting participation will be sent from the patients primary care physicians to prospective participants inviting them to make an appointment for an annual health interview. Those patients willing to participate will be randomly allocated to one of four groups: (A) clinical-screening only; (B) health-promotion only; (A plus B) clinical-screening plus health-promotion; and (C) usual care controls.

The total sample size will be approximately 4,000 (1,000 patients randomly allocated, within age and sex strata, to each group). The strata are 65–74 and 75 and over for both males and females.

The type and extent of preventive services offered to project participants will differ according to the experimental treatment group to which patients are allocated randomly. The "usual care" (control) group will receive the preventive services that are currently available at prevailing cost or as coverd under Medicare reimbursement (for example, pneumoccal vaccine), with exact preventive practices and charges varying among the different practice sites. No reduction in the quality of care is contemplated for this group and no expansion of services will be offered to its members.

A nominal fee will be given for participation in the control group to defray expenses associated with the annual health assessment. The two groups receiving clinical screening services, (A) and (A plus B), will be offered expanded Medicare coverage for the scheduled clinical screening services. The two groups receiving health promotion services, (B) and (A plus B), will be enrolled in a health promotion program consisting of individual counselling and self-help or peer learning groups. The clinical-screening-only group (A) will be enrolled only in the clinical screening program and will receive the health-promotion services they are currently offered. The health-promotion-only group (B) will be enrolled only in the health promotion program and will

receive the clinical screening services they are curently offered. The group receiving both service packages (A plus B) will be offered expanded Medicare coverage for clinical screening services and individual counselling. The counselling and self-help groups will be conducted by a nurse trained in health promotion techniques. Reimbursement for these preventive services will last for five years. Clinical screening and health promotion services will be reimbursed separately at an annual rate of $57 for screening and $43 for health promotion services.

*Blue Cross of Massachusetts Inc.* This project will offer an annual health education/promotion appraisal and clinical screening, both deliverd by a geriatric nurse practitioner to beneficiaries aged 65 and over. Those beneficiaries identified as high risk by a functional assessment questionnaire will be seen on a quarterly basis and will receive medication monitoring.

The eligible population of 10,000 Medicare beneficiaries living in ZIP codes that surround the Boston service delivery sites will be randomly placed in the experimental and control groups, with 5,000 eligibles in each group. They will be invited to participate by HCFA, and 3,000 in the experimental group are expected to respond positively. They will receive services at facilities which are not their usual sources of care. Of those 3,000 twenty (20) percent (600) are projected to be at high risk and will be seen four times a year. However, data will be collected on all 5,000 in the experimental group and compared to all 5,000 in the control group.

Data will be collected from four sources: (1) State data from vital statistics records on death certificates; (2) HCFA payment record files; (3) Blue Cross and Blue Shield claim files, and (4) a telephone survey to determine functional levels of a 30 percent random sample of experimental and control groups administered by the subcontractor, Brown University.

## IV. Demonstration Application Requirements

### *A. General*

The objective of these demonstrations is to provide preventive health services to Medicare beneficiaries that are designed to reduce disability and dependency and to measure the cost effectiveness of these services to the population served, as mandated under section 9314 of Pub. L. 99–272, as amended by section 9344(d)(1) of Pub. L. 99–509.

The project sites will be geographically diverse and each site shall have access to a high concentration of Medicare beneficiaries. In addition, one of the sites must serve a rural area. The results of the demonstration will be reported to Congress. The report will present options to be considered by Congress in preparing possible legislation concerning preventive health services under Medicare. It is, therefore, essential that beneficiaries be randomly assigned to both experimental and control groups to assure valid measurement of the prevention efforts.

Because the legislation mandates a four-year demonstration program, we plan to award cooperative agreements (subject to availability of funds) for up to 4 years. The awardee will be responsible for an evaluation of the demonstration effort. It is especially important that a rigorous research design be guided by the evaluation objectives. Because the demonstration will result in an overall evaluation effort, it is important that uniform approaches to available data be attempted. In addition to collecting all of the utilization and cost data associated with delivering the preventive services to be included in the demonstration, it will be necessary to have access to all utilization and billing/reimbursement data for the Medicare experimental and control participants.

### *B. Eligible Applicants*

The demonstration must be conducted under the direction of accredited public or private nonprofit schools of public health, or preventive medicine departments accredited by the Council on Education for Public Health. It is not required that all the Medicare beneficiaries be seen by the awardee; agreements for the provision of services can be developed with a wide variety of providers such as: private individual or group practices, hospitals, local health departments, and Health Maintenance Organizations.

### *C. Preventive Services Demonstrations*

HCFA is interested in funding and providing waivers for demonstrations involving primary preventive services. Primary preventive services include clinical screening and health promotion services specifically designed for prevention of illness and reduction of the likelihood of a disease developing. This is a departure from Medicare's traditional position of not covering preventive services. The preventive services HFCA wishes to include for these demonstrations are the following four components:

1. *Health screening services.* Information collected over several years from studies by researchers indicates that a specific group of clinical services can be arranged in a manner that is both potentially cost-effective and medically efficacious.

Several task forces (including the Advisory Committee on Immunization Practices, the Ad Hoc Committee of the Institute of Medicine, the Consensus Development Conferences of the National Institutes of Health, the American Cancer Society Report on the Cancer-Related Health Checkup, and the Canadian Task Force on the Periodic Health Examination) have recommended periodic clinical screening services for older adults. Generally, these groups base their recommendations on expert opinion rather than scientific evidence. Most third party payors do not cover these services because of the lack of convincing scientific studies that attest to the cost-effectiveness of preventive services.

The applicant must design a clinical services package, using HCFA's suggested package as a model, that includes at least: hearing, vision, blood pressure screening, height and weight. The proposed package of clinical services proposed by the applicant should contain a list of clinical services with appropriate frequency. Other clinical preventive services may be suggested (for example, dental referral) for inclusion in the package. If additional services are suggested, the applicant must be provided convincing evidence that coverage of these other additional preventive services probably will result in medical efficacy and potential cost savings. Also, justification must be provided if a suggested clinical service is not included in the proposed package.

The table below shows the suggested frequency for each individual service and the groups recommending each preventive service.

SUGGESTED HEALTH SCREENING SERVICES

| Procedure | Recommending Group [1] | Periodicity |
|---|---|---|
| Breast exam (Physical exam including mammography). | ACS (1985) | Annual, women over 50. |
| | IOM (1979) | Every 2 years, over 40; Annual, over 75. |
| | Canadian (1985) | Annual, women over 50. |
| Digital rectal exam | ACS (1980) | Annual over 40. |
| | IOM (1979) | Every 5 years, 40 to 59; Every 2 years, 60 to 74; Annual, over 75. |
| | Canadian (1979) | Insufficient evidence. |
| Hearing | IOM (1979) | Every 2 years, 60 to 74; Annual, over 75. |
| Height and weight | IOM (1979) | Every 2 years, 60 to 74; Annual over 75. |
| Hematocrit | IOM (1979) | Every 2 years, 60 to 74; Annual, over 75. |
| | Canadian (1979) | As indicated for high risk groups of persons of low socioeconomic status. |
| High blood pressure screening | IOM (1979) | Screens every 2 years, over 40; Annual screens, over 75. |
| | Canadian | Annual screens, 45 and older. |
| Complete history and physical to include a pelvic examination and Papanicolaou smear. | IOM (1979) | When necessary. |
| | Canadian (1979) | Individually tailored patient examinations. |
| | ACP (1981) | Individually tailored patient examination. |
| Immunization | ACP (1980) | As needed, chronically ill; Annual, over 65. |
| | IOM (1979) | As needed, chronically ill; Annual, over 60. |
| | Canadian (1979) | As needed, cronically ill; Annual, over 65. |
| Tetanus-Diphtheria | ACP (1985) | All persons should have completed a primary series and booster shot every 10 years. |
| | CTF (1979) | Booster shots every 10 years |
| Stool occult blood test | ACS (1980) | Annual, over 50. |
| | IOM (1979) | Every 2 years, over 40; Annual, over 75. |
| | Canadian (1979) | Annual, over 46. |
| | NIH (1978) | Insufficent evidence. |
| Vision | IOM (1979) | Every 2 years, 60 to 74; Annual, over 75. |

[1] ACIP—Advisory Committee on Immunization Practices (1980); ACS—American Cancer Society Report on the Cancer-Related Health Checkup; Canadian—Canadian Task Force on the Periodic Health Examination (1979); IOM—Ad Hoc Committee on the Institute of Medicine (1979); NIH—Consensus Development Conferences of the National Institutes of Health; ACP—American College of Physicians (1981). Influenza.

HCFA intends to fund one project that includes cancer screening, including breast cancer screening. Therefore, each project that is interested in including cancer screening should develop a cancer screening section and based on the cost and soundness of the screening proposal, HCFA will select the single project that includes the cancer screening component. Due to the cost of mammography, there will be higher service costs and there could be additional administrative costs related to the cancer screening component. Therefore, the budget must include a separate section labeled "cancer screening" so that if this component is not funded, the medical service reimbursement limit per year as well as the administrative budget can be reduced by the specific amount.

2. *Health risk appraisal (HRA).* HRA is a method that describes an individual's chance of becoming ill or dying from a particular cause over a period of time. The purpose in using the HRA instrument is to stimulate, encourage, and support individuals in the adoption of behavior conducive to health promotion through the reduction of risk behaviors which are precursors to premature death and disability. The HRA personalizes the importance of health habits as determinants of preventive health problems and provides a rating, thus giving individuals an indication of how their overall health risk compares with that of a peer group. The HRA is a valuable tool to collect aggregate data for a population and can be used for evaluation purposes as well. It is a tool that can be used in the initial planning phase of a health promotion program or it may be offered when the activity program begins. It is recognized that the majority of HRA instruments use only mortality data from mostly middle class, middle aged white males. Therefore, health status interview or health assessment that is specifically tailored to the elderly and addresses such items as social functioning, physical health status, functional abilities, cognitive abilities, mental health status and health behaviors, may be utilized. The applicant must describe what instrument will be used, the degree to which it has been subjected to formal evaluation and when and how it will be implemented.

3. *Immunization.* Medicare coverage for innoculations is restricted to pneumococcal and hepatitis B vaccines. However, the ACIP has recommended that influenza vaccine be provided on an as needed basis to the chronically ill and annually for the over-60 population. The applicant should list the

immunizations along with the proposed schedules and the basis for which they were included on the list of services to be provided.

4. *Counseling on and instruction in—*

- Diet and nutrition,
- Reduction of stress,
- Exercise and exercise programs,
- Sleep regulation,
- Injury prevention,
- Prevention of alcohol and drug abuse,
- Prevention of mental health disorders,
- Self-care, including use of medication, and
- Reduction of smoking.

This project will reimburse for these patient education/health promotion services that are included in the benefit package of preventive services through the waivers that will be required.

In the 1980s heart disease, cancer, stroke, pulmonary diseases and pneumonia, and influenza are the leading causes of morbidity and mortality for the 65 and over age group.[1]

Three out of four elderly persons die from heart disease, cancer, or stroke. Over 80 percent of persons 65 and over have at least one chronic condition, and many have multiple chronic conditions. Prevention of the leading causes of death involves the reduction of the individual's risk factors, such as modification in diety (reduction of salt and saturated fat intake and an increase in fiber intake), changes in the life style (exercise and stress reduction programs), and smoking cessation. Even for older people, smoking cessation has been shown to reduce major health problems such as heart attacks.

Accidents, primarily motor vehicle accidents and falls, are also a leading cause of death among the elderly. It is estimated that only about 10 percent of the elderly regularly use their seat belts while driving. In preventing accidents and falls, the expenditures for health care are reduced and the chance for life-long disability is diminished. Alcohol and drug abuse in the elderly are at times related to the loss of a spouse, family member, or friend, but there are also life-long abusers. The use of alcohol and drugs contributes to falls and serious injuries and can interact with prescribed medications, with adverse side effects. A survey of twelve studies found a median value of 40 percent reduction in either medical care utilization or surrogate measures of such utilization subsequent to treatment for alcohol abuse.[2]

Depression among the elderly is common but often difficult to diagnose. Beneficiaries who are at high risk for depression can be identified and encouraged to enroll in preventive counseling or therapy sessions. Such risk factors include recent retirement, death of a spouse and recent admittance to a nursing home. This preventive activity is importnat because this stress can lead to a physical illness or delay recovery from an existing condition. In the literature search mentioned above, Jones and Vicchi found in twelve of thirteen studies, persons receiving mental health services used fewer physician services and had lower hospital utilization rates after initiating mental health treatment.

Estimates of the average number of prescription drugs being used by elderly persons range from 1.6 to 2.3 prescriptions per person; this is 1.5 to 3 times higher than that of younger persons.

Due to these high prescription rates, the chance of an adverse drug to drug reaction is increased. Several strategies have been suggested for reducing the incidence of these iatrogenic illnesses due to medications.[3] These include: case management plans wherein elderly patients are encouraged to coordinate their medication through a primary care physician or family pharmacist, patient education provided at the time the medication is prescribed, and careful monitoring of drug therapy to ensure that dosages are kept to the minimum level necessary to produce the desired therapeutic effect.

Although we are interested in all of the Counseling and Instructions topics, we will consider applications that exclude some topics as long as there is an adequate justification for why the service is not offered. As with the Health Screening Services, other topics for Counseling and Instructions (for example, bereavement counseling, retirement planning, instructions on breast and skin self-examination, and instructions on oral hygiene) can be suggested for inclusion in the package; however, the applicant must provide convincing evidence that coverage of

[1] The facts and figures in this section are taken from a background paper entitled, "Health Promotion and Disease Prevention for the Elderly," prepared for the use of the members of the Senate Committee on Finance in June 1985.

[2] Jones, K. R., and T. R. Vischi, "Impact of Alcohol, Drug Abuse and Mental Health Treatment of Medical Care Utilization, A Review of the Research Literature," *Medical Care*, v. 17, No. 12, Supplement, Decmeber 1979, pp. 1–26.

[3] Kane, R.L.; Kane, R.A.; and Arnold, S.B.; "Prevention and the Elderly: Risk-Factors," *Health Services Research*, V.19, No. 6, Part II, February, 1985.

these additional Counseling and Instructions topics will be cost-effective. The applicant must discuss: why topics were included, the type of provider who will be providing the services, the content of the services, and their frequency. No application will be approved that does not justify the exclusions from or additions to the list of Counseling and Instructions topics.

5. *Preventive services program.* The applicant's preventive health services application must include: 1) A package of Health Screening Services, 2) the use of some type of Health Risk Appraisal instrument, 3) appropriate immunizations, and 4) selected or all topics of Counseling and Instructions listed in this section (see #4 above). No application will be considered that does not include the four components listed above. Prior to award of these demonstrations, HCFA may coordinate a uniform Health Risk Appraisal instrument to ensure uniformity and comparability among the projects.

6. *Periodicity.* The applicant must present an optimum schedule for delivery of the package of covered services, based on supporting evidence. If different frequencies are included for various services (for example, annual influenza immunization; every 2 years for hearing exam), a method for documentation of services and follow-up must be presented.

The applicant must describe the administrative method used by the providers and carriers to track the varying frequencies of covered procedures and reimbursements for them. Innovative techniques for tracking services rendered at varying intervals are encouraged.

7. *Community outreach.* The applicant must include a program of community outreach to enroll the maximum number of Medicare beneficiaries in the demonstration. The community outreach program can consist of a range of activities including: TV and radio spots and reports, newspaper articles, presentations in health provider sites, and presentations to church, civic, retiree groups and at neighborhood senior citizens centers, and rest homes.

8. *Excluded services.* Although an important issue in preventive services research is the overall assessment of the effectiveness of the treatment given after the detection of an illness, HCFA does not intend for applicants to evaluate treatment modes. For example, if high blood pressure screening identifies a Medicare beneficiary with hypertension, we assume that adequate and appropriate treatment will be covered by the program. In this demonstration, HCFA does not intend to evaluate the cost-effectiveness of currently covered treatments or innovative treatments not presently covered.

Reimbursement for treating conditions identified under this project will not be provided under this demonstration project. However, the applicant must describe the method whereby treatment for a condition identified at the screening will be reimbursed as a service separate from the visit for the experimental preventive service package. It is assumed that treatment for conditions which are diagnosed as illness or injury will be covered under Medicare's present reimbursement guidelines.

Because of limited funding for these demonstrations, HCFA recommends that applicants not propose development of educational materials. Funding should be obtained elsewhere for development of educational materials, or existing materials should be utilized.

### *D. Alternative Payment Methods*

HCFA is interested in testing alternative methods of payment for preventive health services. These alternative methods include prepayment as well as payment on fee-for-service basis. HCFA plans to fund applications with the payment based on a fee-for-service basis and applications with payment based on a prepayment basis.

Prepayment under this demonstration is defined as payment to providers of preventive services as a package prior to the delivery of services, while fee-for-service is the payment of preventive services as each service or group of services is delivered by providers. The applicant has the option of conducting the demonstration totally under one payment method or combining the prepayment method with fee-for-service. One possible way to test the prepayment method would be to contract with local HMO/CMPs.

If HMO/CMPs are involved in the project, HCFA would recommend that applicants utilize HMO/CMPs that have a current TEFRA contract with Medicare, since preventive services may already be covered in these HMO/CMPs. For these HMO/CMPs, HCFA would make a supplemental capitated payment to pay for preventive services not covered by the HMO/CMPs. The applicant must include a detailed description of how the payment method will operate, and how the payment will be made, as well as the documentation procedures the providers must follow.

HCFA would prefer and may mandate that the applicants use the HCFA, Office of Research and Demonstrations, Division of Research and Demonstrations System Support (DRDSS) to pay for services under the application and act as the fiscal agent for Medicare reimbursement. If the DRDSS Office is not utilized, the applicant must develop an agreement with the existing HCFA payment agent for claims processing. Regardless of the fiscal agent, the applicant must develop coverage and reimbursement guidelines for use in processing claims for Medicare preventive health services.

1. *Payment rate.* For fee-for-service, we would suggest a single rate per service or group of services that would be provided during a single visit (for example, the amount reimbursed to a provider of service each time the service or group of services is provided to a Medicare beneficiary). For prepayment, a payment rate for the complete package of services is required and a detailed payment rate methodology on how the rate was developed. We realize that some services within the package are not required on an annual basis, and that certain allowances for inflation over the demonstration period are reasonable. In general, the package should not be given to a Medicare beneficiary more than once during a year. Although there is no dollar limit on the payment rate for either prepayment or fee-for-service, the applicant must establish and HCFA must approve a rate or a maximum dollar amount that HCFA will reimburse for preventive services during a specified time period.

HCFA reserves the right to establish a uniform annual maximum rate it will pay for the package of services provided.

2. *Cost sharing.* HCFA recognizes that the collection of deductibles and coinsurance for preventive services may be a barrier to participation in this demonstration; however, there are a variety of options. For HMO/CMP participation, we will not require the imposition of deductible and coinsurance for preventive services because cost sharing is accounted for in the calculation of premiums for Medicare beneficiaries. We plan to find at least one project that is designed with approximately one-half the beneficiaries responsible for cost sharing (both deductible and coinsurance) and one-half with the cost sharing responsibility for preventive services waived. We would prefer that all the fee-for-service projects utilize this half and half design. Another option could be to waive the Part B deductible for preventive services but collect the coinsurance amounts.

Every fee-for-service project should include some test of cost sharing for

preventive services and additional priority will be given to projects that incorporate cost sharing to the fullest extent possible. HCFA reserves the right to impose cost sharing requirements for preventive services on programs.

*E. Health Care Practitioners*

1. *Practitioner types.* The demonstration must be designed to permit a variety of health care practitioners to furnish the preventive health services, including: physicians, health educators, nurses, allied health personnel (physician assistant or nurse practitioner), dieticians, and clinical psychologists. Each applicant must document how they will utilize the different types of practitioners in a cost-effective manner.

2. *Eligible practitioners.* Before an applicant contracts with a health practitioner that is not normally recognized by Medicare (for example, a physician assistant, nurse practitioner, or health educator), the applicant must offer proof that the health practitioner is competent to furnish preventive health services and satisfies the requirements of State and local law related to the practice of Medicine and Nursing. Where possible, existing methods for establishing proficiency, such as State licensing and accreditation, should be used. In the absence of State standards, the applicant will be responsible for developing such standards.

**V. Research Design**

The demonstration design for applications should state the measurable project goals and objectives, including hypotheses to be tested. The experimental design should be a random design with two levels (experimental vs. control). Strict random assignment to experimental and control groups should be employed since it is unlikely that any other design can detect the necessary effects. The applicant should explain to what extent the results can be generalized to the entire Medicare population. Applicants should include methods for maintaining the random design over the life of the demonstration project, or present analytic plans which include statistical techniques for adjustment due to the effects of nonrandom attrition.

If the applicant proposes any design other than a random design, a detailed justification must be presented which assures that valid and reliable conclusions can be drawn. We recognize that randomization in the HMO/CMP setting will be very difficult and that it may take some creativity to design a project that will lend itself to valid and reliable conclusions. Because the evaluation of this demonstration will require extensive analysis of data, the research design should also include a discussion of existing and proposed data sets to be used in the analysis.

HCFA will require each awardee to implement the demonstration on a scale broad enough to insure valid statistical testing of significant effects; for example, the awardee needs to account for individuals in the control group who may be receiving some of these expanded services outside of the demonstration. To offset the effects of this problem, the number of participants in the experimental group must be sufficiently large to show an impact attributable to experimental coverage. The applicant should develop a research design that addresses the appropriate sampling strategy to study the demonstration participants. Careful attention should be given in this design to the desired population estimates and power of statistical tests that are planned.

HCFA will allow each project up to 6 months for a developmental phase prior to becoming operational, to be followed by a 2-year demonstration period during which services are provided, followed by a 18-month period to analyze the findings and submit an evaluation report.

In addressing the research design, the respondent should be sensitive to the need for stratification of the sample according to levels of risk for specific diseases, age, etc. If there is a significant minority population in the target area where the demonstration is to be conducted, the respondent should fully describe how this factor will impact on the overall design of the demonstration and evaluation. Respondents should present data on the range of risk in the demonstration population to assess whether a stratified sample should be used.

HCFA reserves the right to participate in the development of the individual research designs to assure that the evaluation is common and consistent across the 5 different projects.

**IV. Evaluation**

Because each awardee will evaluate its demonstration project, the evaluation design and the research design must be compatible and complementary. The demonstration design, including the data collection activities, should support the analyses of all questions and hypotheses developed in the evaluation.

It is expected that the evaluation effort will be completed and a report submitted to HCFA within 18 months after the completion of the 2-year demonstration phase. HCFA expects to receive a draft final report within 6 months after the delivery of service is completed.

Since the results of the evaluation will be included in a report to Congress and there will be five different sites involved in the demonstration, to the extent possible each site must utilize the same evaluation questions. The report to Congress will address the following issues: (1) The short-term and long-term costs and benefits of providing preventive health services for Medicare beneficiaries, including a reduction in inpatient services resulting from providing the services, and (2) what practical financing mechanisms can be developed which may be used to provide payment for preventive health services under Title XVIII of the Act. Therefore, the applicant must design an evaluation that will provide the following information:

1. Short-term (1 year from start of service) savings or costs to the Government attributable to the expanded coverage of preventive services.

2. Long-term (that is, 2 years from start of service) savings or costs to the Government attributable to the expanded coverage of preventive services.

3. Any change in inpatient hospital days or other provider-related services (for example, skilled nursing facilities) for conditions that the preventive package is targeted to prevent.

4. Any change in utilization of preventive services caused by the experimental coverage.

5. Significant changes in the experimental group's health status and functional independence that can be attributed to the inclusion of preventive services.

6. Any change in in the experimental group's incidence of conditions for which screening procedures are given (for example, influenza, accidents caused by vision or hearing problems, morbidity and mortality for colon-rectal cancer or hypertension) and associated costs.

7. Any change in smoking, diet, or exercise that impacts on health status, or measured by number of days confined; and other morbidity and mortality data.

8. The impact of health promotion education upon changing risk behaviors and lifestyle practices (specifically, smoking, exercise and diet) in the experimental and control groups, as measured by scores on knowledge, attitude and behavior assessments.

9. Any change in awareness and understanding by the Medicare

beneficiaries of the benefits of preventive services.

10. Any impact of utilizing nonphysician providers for these preventive health services.

11. The impact of false negative and false positive results in the clinical screening procedures.

HCFA reserves the right to contract with an independent organization to synthesize the results of the demonstration and make cross-site analyses. The awardee will be required to cooperate with this organization, and make all data files and tapes available for this independent analysis.

### VII. General Application Requirements Applicable to Cooperative Agreement and Grants

The principal purpose of HCFA's cooperative agreements and grants program is to stimulate and support statutorily authorized research and demonstration projects. HCFA will award successful applicants from this solicitation as cooperative agreements. Cooperative agreements are generally awarded when *substantial involvement* is anticipated between HCFA and the awardee during performance of the contemplated activity.

1. Cooperative agreements are subject to at least the following provisions if appropriate—

a. HCFA's review and approval of one project stage before another can begin;

b. HCFA's approval in the selection of subcontracts;

c. HCFA's involvement in the selection of key awardee personnel;

d. HCFA's monitoring to permit specified kinds of direction or redirection of the work.

e. HCFA's stringent pre-award requirements limiting recipient discretion with respect to scope of work and services offered;

f. HCFA's operational involvement during performance over and above the normal exercise of Federal stewardship responsibilities to ensure compliance with the regulations in 45 CFR Part 74.

g. Inclusion in the cooperative agreements of an explicit statement of the nature, character, and intent of anticipated Federal programmatic involvement to ensure that the responsibilities of both parties are understood. Each cooperative agreement will incorporate 45 CFR Part 74 among its terms and conditions for fiscal and administrative requirements.

2. *General.* HCFA may suspend or terminate any cooperative agreement, in whole or in part, at any time before the date of expiration, whenever it determines that the awardee has materially failed to comply with the terms of the cooperative agreement or grant. HCFA will promptly notify the awardee in writing of the determination and the reasons for the suspension or termination together with the effective date. In addition, HCFA reserves the right to withdraw waivers at any time if it determines that continuing the waivers would no longer be in the public interest. If a waiver is withdrawn, HCFA will be liable only for normal close-out costs.

The HCFA Project Officer must be consulted prior to presentation of any reports or statistical or analytical material based on information obtained through a cooperative agreement or grant. Presentation includes, but is not limited to, papers, articles, professional publications, speeches, testimonies, or interviews with the print or broadcast media. The presentation will include a disclaimer that the opinions are those of the awardee and do not necessarily reflect the opinions of HCFA. Since the information developed or obtained under the cooperative agreements resulting from this solicitation may serve as input to a report that the Secretary of DHHS is mandated to submit to Congress, such information may not be released, published, or presented without permission from the HCFA Project Officer within the first 6 months following the receipt of the final report by the HCFA Project Officer, unless the Report to Congress has been transmitted officially by the Secretary.

### VIII. Waivers

Waivers of the requirements of Title XVIII of the Act, and of corresponding HCFA regulations, may be required in order to implement this demonstration. All requirements of the Act, the Code of Federal Regulations and other issuances that pertain to the Medicare program are applicable to a project approved under this demonstration unless specificially waived under section 9314(g) of Pub. L. 99-272.

The waivers requested must relate to the demonstration project changes in the benefit package and method of payment. Thus, applicants must request waivers of all statutory or regulatory requirements that prohibit payment of any noncovered services offered. For example, an applicant offering certain clinical services suggested in this notice, such as physical examinations, eye examinations, hearing examinations, and immunizations, would request waivers of 42 CFR 405.301(a)–(e) as applicable. Also, the request of a waiver of section 1861(s)(2)(A) of the Act would permit reimbursement to participating clinics for various services without regard to the "incident to" provisions.

Projects requesting waivers must list the waivers that are required, and discuss the impact of the waivers on program and administrative expenditures (for example, estimated service costs with and without each waiver), Federal, State, and local laws, and the beneficiaries.

In applying for these waivers or changes in reimbursement, the applicant must provide sufficient budgeting information to permit estimates of the likely cost or savings of the project compared to the normal Federal program costs. HCFA has defined the methodology to be used in estimating gross and net waiver costs in the preparation of a demonstration project application in "Waiver Cost Estimates" OMB–0938–0402. This publication will be included in the material contained in the application kit. "Waiver Cost Estimates" methodology will be required for the Preventive Health Services Applications. Waiver Cost Estimates must accompany your application. The application will generally be considered incomplete and returned to applicant if the Waiver Cost Estimates are not included with the application.

If the application is approved, the awardee must furnish quarterly expenditures as designated by ORD in the special terms and conditions of the cooperative agreement. The reporting form is HCFA-472. (OMB–0938–0402, expiration date April 30, 1988.)

### IX. Selection Criteria

*A. General Criteria for Funding New Projects*

HCFA determines which projects will be funded based on the recommendations of a technical review panel and the comments of other Departmental components. More specifically, the criteria employed in arriving at the award decision include—

1. The adequacy and creativity of the research or demonstration design and hypotheses, the validity and appropriateness of the methods and data base(s) proposed, and the experience and competence of the proposed staff;

2. whether there is a realistic expectation that the project can be carried out within the timeframes specified;

3. Whether the proposed project methodology is precise and consistent with what is generally agreed to be the state-of-the art in project design and analytical methods;

4. Whether the overall budget, the personnel resources to be used, and the

facilities and equipment are appropriate for the proposed project;

5. Whether there is documentation of a commitment of the parties other than the awardee's staff that are necessary to carry out the project;

6. Whether anticipated results are of general applicability and would be of value in other settings, or are of national importance;

7. The cost of the research project and the annual per patient cost of services provided. Priority will be given to applications that indicate there will be savings to Medicare in the first three years; and

8. Adherence and responsibilities to the requirements outlined in the research design and application guidance of this solicitation (for example, that include a full test of cost sharing).

*B. Specific Project Requirements*

In addition to meeting the general criteria described above, we require applicants for cooperative agreements to include the following specific information about the proposed project in the application:

1. A clear, quantifiable statement of the project goals and objectives.

2. An explicit description of the research design, including the questions to be addressed and the methods and data to be used. The methodology must be well defined and scientifically valid.

3. A clear description and schedule of the tasks and milestones, which must also include a schedule of reports to be submitted to HCFA (Progress and Financial Reports as required by 45 CFR Part 74).

4. A specification of and availability of the data to be used. The discussion must describe the nature of the data sought, the sample design and size, controls and comparisons, and the problems that might be encountered in collection. Data that are collected under a HCFA cooperative agreement must be available to HCFA or its agency. However, the applicant must ensure the confidentiality of information which identifies individuals collected under the auspices of any HCFA cooperative agreement. (See item 10 below for more information about confidentiality.)

5. A description of the qualifications and experience of the personnel and a demonstration that the personnel are capable of performing the tasks in the project. Specific information must also be provided concerning how the personnel are to be organized in the project, to whom they will report, and how they will be used to accomplish specific objectives or portions of the project.

6. A specification of the availability of adequate facilities and equipment for the project, or a clear statement on how these are to be obtained.

7. A budget, which must be developed in detail with justifications and explanations for the amounts requested. The estimated costs must be reasonable considering the anticipated results. The budget must include a separate section for the cancer screening component showing both the administrative and service costs of the project so that, if this component is not funded, the budget can be reduced by the specific amount. Applicants must directly share in the costs of the projects (see section IV.C., below). The budget may not include costs for construction or remodeling, or for project activities that take place before the applicant has received official notification of HCFA approval of the project.

8. Projects that require waivers must define the services, list the waivers, discuss the implications if such waivers are granted, and state the effect on Federal, State, and local laws as well as the effect (beneficial or adverse) on individuals enrolled in the project. Budget estimates for the administrative and service costs must be prepared in accordance with the Guidelines for the Preparation of Demonstration Project "Waiver Cost Estimates" (OMB #938-0408) we will give priority to those applications that show savings to Medicare in the first three years. If an application is approved, the awardee must ensure that expenditures are reported to ORD as specified in the special terms and conditions to the award document, on HCFA-472, (OMB 0938-0402, expires April 30, 1988).

9. Plans for utilization of the project's results must be discussed.

10. A detailed plan to protect the confidentiality of all information that identifies individuals under the project. The plan must specify that such information is confidential, that it may not be disclosed directly or indirectly except for purposes directly connected with the conduct of the project without the informed written consent of the individual.

11. A statement that if the project is awarded, the awardee will furnish on a quarterly basis quarterly expenditures for administrative and project costs for the project within the approved budget, to be specified under special terms and conditions in the cooperative agreement. The form to be used is HCFA-472 (OMB #938-0402, expiration date April 30, 1988).

12. A brief literature review of the medical and economic aspects of offering preventive services to the Medicare population. Ongoing demonstrations or research studies which cover preventive services and measure the effect should be discussed.

13. While HCFA does not require review under Executive Order 12372, Intergovernmental Review of Federal Programs (47 FR 30959), all applicants must, nevertheless, determine whether review by the appropriate State and area-wide clearinghouse is required.

*C. Other Requirements*

1. Quarterly and annual reports summarizing the progress to date must be submitted to the Project Grants Branch of HCFA's Office of Management and Budget. The quarterly reports must contain—

a. A description of progress made in achieving the specific objectives stated in the workplan. Once the demonstration is implemented, the report should include a table showing current levels of utilization of preventive services and outcome measures for the experimental and the control groups (for example, inpatient hospitalization, Medicare reimbursements). Throughout the project, these tables should also contain cumulative measures.

b. Annual reports HCFA-269 for each provider and the awardee.

c. Quarterly reports HCFA-472.

2. When a project is completed, the awardee must submit a final report. As a minimum, the report must contain the following:

a. Identification of the project director, principal investigator, cooperative agreement, awardee, and title of the project.

b. Acknowledgment of the support received from HCFA, and a disclaimer to the effect that the findings do not necessarily reflect policies of HCFA.

c. An executive summary (one or two pages) that provides an overview of the project and highlights significant findings.

d. A description of the initial hypotheses, objectives, and scope of the project.

e. An explanation of the study methodology.

f. A discussion of significant findings and demonstrations or research results (and the implications of these results, if any).

3. On a semi-annual basis during the course of the project, the awardee must provide a list and copies of all papers presented, and of all articles, reports, and other types of publications that result from the project. It is further required that the awardee continue to provide the updated information for 2 years after the project's completion.

4. The ORD Author's Guidelines for Cooperative Agreements, Grants, and Contracts should be consulted in preparing the final report. This document is available on request from the ORD Publications Coordinator, Room 1–A–9, Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 594–8771.

5. A draft of the final report should be submitted to the HCFA Project Officer for comment at least 30 days before the report is due, which is 90 days after the project terminates.

## X. Application Procedures

### *A. Letter of Intent*

To assist us in planning for this process, potential applicants are urged to submit a letter stating their intent to file an application. The letter of intent is not binding; it will not enter into the review of any proposal subsequently submitted, nor is it a necessary requirement for application. This letter is due 60 days prior to the closing date. At a minimum this letter should contain the following:

1. The name of the accredited school of public health or preventive medicine department that will be directing the demonstration;
2. Title of the project;
3. Brief abstract (discription of project); and
4. Estimated cost (by project year).

The letter should be submitted to the address listed below (section X.B.) attention: Paul McKeown.

### *B. Application Kits*

A standard application form is available for the HCFA research and demonstration cooperative agreement and grants program. The application form has been approved under OMB #938–0078 for use through May 31, 1988. Application kits and guidance for the completion of the forms are available from: Health Care Financing Administration, Office of Management and Budget, Administrative Contracts and Grants Branch, Room 389, East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (301) 594–3333.

The application must include, in the project title block, the phrase "Preventive Health Services for Medicare Beneficiaries," as well as the word "WAIVER," which must also be clearly marked on the outside of the package or envelope in which the application is delivered to HCFA.

### *C. Multiple Applications*

The applicant must indicate when the same or a similar application is submitted to another HHS agency; for example, the Social Security Administration, the Office of Human Development Services, or to one of the Public Health Service programs.

### *D. Cooperative Agreement and Grant Policies*

Projects are funded through a competitive process and chosen from among the applications submitted in response to this notice. All demonstration project awardees are expected to share directly in the costs of the projects. This sharing must be at least 5 percent of the total project cost (cash or in kind).

If, following review of a proposed research activity, HCFA determines that the demonstration project presents a danger to the physical, mental or emotional well-being of a participant of the project, then Federal funds will not be made available for that project without the written, informed consent of each participant.

General policies and procedures that govern the administration of all DHHS cooperative agreements and grants are located in Title 45 of the Code of Federal Regulations (CFR), Part 74, "Administration of Grants." All applicants are urged to review the uniform requirements established in those regulations.

Policies including responsibilities, awarding and payment procedures, special provisions, and assurances may be found in 45 CFR Part 74, Administration of Grants, a copy of which is included in the application kit.

It is national policy to place a fair share of purchases with small, minority-owned, and woman-owned business firms (45 CFR Part 74, appendices G and H). DHHS is strongly committed to the objectives of this policy and encourages all recipients of its cooperative agreements and grants to take affirmative steps to ensure such fairness. In particular, recipients should—

1. Place small, minority-owned, and woman-owned business firms on bidders' mailing lists;
2. Solicit these firms whenever they are potential sources of supplies, equipment, construction, or services;
3. Where feasible, divide total requirements into smaller needs, and set delivery schedules that will encourage participation by these firms; and
4. Use the assistance of the Minority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, DHHS, and similar available State and local governmental agencies.

## XI. Review of Applications

An independent review will be conducted by a panel of not less than three experts (who are not staff members of ORD). The panel will include experts from both DHHS and the private sector.

An ORD chairperson will coordinate the panel's review but will not vote. The chairperson will also prepare the panel's recommendation (summary statement) and submit it to the Director, ORD. The panel's recommendations will contain numerical ratings, ranking of all applications, and a written assessment of each application. These will be summarized in a ranking and approval list. A complete scores matrix will be prepared for each application.

Applicants may request in writing a copy of the summary statement on the review of their application after they have received the letter from HCFA announcing approval or disapproval. Summary statements will be made available subject to the applicable limitations of the Freedom of Information Act (5 U.S.C. 552), the Federal Advisory Committee Act (5 U.S.C. App. I.), the Privacy Act of 1974 (5 U.S.C. 552a), 45 CFR Parts 5, 5b, and 11, and 42 CFR Part 401, Subpart B.

## XII. Closing Date and Time

We will process cooperative agreement applications received for this announcement and make award announcements approximately 3 months after the closing date. The closing date for cooperative agreement applications for this announcement is August 27, 1987.

Applications mailed through the U.S. Postal Service (first class or express mail only due to time constraints) or a commercial delivery service will be "on time" if they are received on or before the closing date, or sent on or before the closing date and received in time for submission to the independent review panel (see section XI., Review of Applications). Applicants are cautioned to request a legible U.S. Postal Service postmark or to obtain a legible dated receipt from the commercial carrier or the U.S. Postal Service. Privately metered postmarks will not be acceptable as proof of timely mailing.

Applications that do not meet the above criteria will be considered late applications. Those submitting late applications will be notified that the

applications were not considered in the current competition.

Sections 1875, of the Social Security Act (42 U.S.C. 139511), Section 9314 of Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, (42 U.S.C. 1395b-1 note), Section 9944 of Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986. (Catalog of Federal Domestic Assistance Progrm No. 13.766 Health Care Financing Research, Demonstrations and Experiments)

Dated: March 18, 1987.

William L. Roper,

*Administrator, Health Care Financing Administration.*

[FR Doc. 87-12302 Filed 5-28-87; 8:45 am]

BILLING CODE 4120-01-M

## National Institutes of Health

### National Heart, Lung, and Blood Institute; Sickle Cell Disease Advisory Committee Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, June 12, 1987. The meeting will be held at the National Institutes of Health, Bethesda, Maryland 20892, Building 31, Conference Room 4, A-Wing.

The entire meeting will be open to the public from 9 a.m. to 5 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A21, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 508, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: May 20, 1987.

Betty J. Beveridge,

*Committee Management Officer, NIH.*

[FR Doc. 87-12271 Filed 5-28-87; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[MT-930-07-4410-08]

### Availability of the Draft West Hi-Line Resource Management Plan/ Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability of the Draft West Hi-Line Resource Management Plan/Environmental Impact Statement.

**SUMMARY:** In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 102(c) of the National Environmental Policy Act of 1969, draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the West Hi-Line planning area. The RMP/EIS describes and analyzes future options for managing approximately 628,000 acres of public land and 1.3 million acres of Federal mineral estate in Glacier, Toole, Liberty, Hill, Chouteau, and Blaine Counties in north-central Montana. It also addresses the recreational management of public lands within the Upper Missouri National Wild and Scenic River Corridor in Fergus and Phillips Counties.

Decisions generated during this planning process will supersede land use planning guidance presented in the Triangle, South Bearpaw, and Blaine Management Framework Plans (MFPs) and land use guidance pertaining to the Upper Missouri National Wild and Scenic River in the Phillips and Judith MFPs. The RMP/EIS incorporates land use decisions presented in the Prairie Potholes Vegetation Allocation EIS (1981), Missouri Breaks Grazing EIS (1979), the Missouri Breaks Wilderness Suitability Study/EIS (1982), and the Lewistown District Oil and Gas Environmental Assessment of Bureau of Land Management (BLM) Leasing Program.

Public Participation: Copies will be available at each public library located in Glacier, Liberty, Toole, Hill, Chouteau, and Blaine Counties. In addition, copies will be available at libraries in Malta, Lewistown, and Great Falls. Copies will be available from the Lewistown District Office, Airport Rd., Lewistown, Montana 59457; phone (406) 538-7461. Public reading copies will be available for review at the following BLM locations:

Office of Public Affairs, Main Interior Building, Room 5600, 18th and C Streets NW., Washington, DC 20240

Public Affairs Office, Montana State Office, 222 North 32nd St., Billings, Montana 59107

Lewistown District Office, Airport Rd., Lewistown, Montana 59457

Havre Resource Area, West Second St., Havre, Montana 59501

Great Falls Resource Area, 215 1st Ave., N., Great Falls, Montana 59403

Phillips Resource Area, 501 South Second St., E., Malta, Montana 59538.

Background information and maps used in developing the RMP/EIS are available at the Lewistown District Office and the Great Falls, Havre, Phillips, and Judith Resource Area Offices.

Written comments on the draft RMP/EIS will be accepted for 90 days following the date the Environmental Protection Agency publishes the notice of filing of the draft in the Federal Register. Oral and/or written comments may also be presented at six public meetings to be held:

July 13, 1987—7 p.m.—Olympic Room, Duck Inn, 300 First St., Havre, Montana

July 14, 1987—7 p.m.—Great Falls Public Library, 301 2nd Ave. North, Great Falls, Montana

July 15, 1987—7 p.m.—Marias River Coop, 910 Roosevelt Hwy., Shelby, Montana

July 16, 1987—7 p.m.—Liberty County Courthouse, Chester, Montana

July 20, 1987—7 p.m.—BLM, Lewistown District Office, Airport Rd., Lewistown, Montana

July 21, 1987—7 p.m.—Emergency Operations Center, 2610 N. Main Ave., Fort Benton, Montana.

**ADDRESSES:** Written comments on the document should be addressed to: Wayne Zinne, District Manager, Bureau of Land Management, Lewistown District Office, Lewistown, Montana 59457.

**FOR FURTHER INFORMATION CONTACT:** Ann Aldrich, Project Manager, Lewistown District Office, Airport Rd., Lewistown, Montana 59457; phone (406) 538-7461.

**SUPPLEMENTARY INFORMATION:** The draft RMP/EIS analyzes four alternatives to resolve these five issues: land tenure adjustment; off-road vehicle management; right-of-way location; emphasis area management; and recreational management of the Upper Missouri National Wild and Scenic River. Each alternative represents a complete management plan for the area. The alternatives can be summarized as: A) No action or continuation of current practices; B) resource production; C) resource protection; and D) the preferred

alternative, which is a balance of the previous three.

The RMP/EIS examines the designation of three areas as Areas of Critical Environmental Concern (ACEC). Management prescriptions for the areas vary by alternative and are described in the Emphasis Area sections of the RMP/EIS.

The preferred alternative would designate the Kevin Rim as an ACEC in order to protect historic peregrine habitat, habitat for other State and Federal special interest raptor species, and cultural resources. A management zone would be established on surrounding Federal mineral estate. Oil and gas exploration and development and other surface disturbance would continue under more restrictive stipulations to protect the raptor and cultural resources. Off-road vehicle and right-of-way location restrictions would also be applied in the area.

The preferred alternative would also designate the Sweet Grass Hills as an ACEC, with a management zone on surrounding Federal mineral estate, in order to preserve resource values important for Native American religious and cultural practices, peregrine falcon and other sensitive raptor habitat, public recreation, and winter elk habitat. Management in this area would include limitations on off-road vehicles; right-of-way location, including communication site location; more restrictive raptor stipulations for surface disturbing activities; and possible restrictions on surface developments to reduce conflicts with Native American religious and cultural practices. A protective withdrawal from mineral entry would be pursued under Alternative C, the resource protection alternative.

The preferred alternative would also designate the Cow Creek area as an ACEC in order to protect and preserve the scenic, interpretive, recreational, and paleontological resources associated with the Nez Perce National Historic Trail, the Cow Island Trail. Such a designation would also protect the values associated with the overlapping Upper Missouri National Wild and Scenic River, the Lewis and Clark National Historic Trail, and the Cow Creek WSA. Management in this area would include limitations on off-road vehicles, right-of-way location, surface disturbance, and the use of riparian areas.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the Federal Register in December 1983. Since that time several open houses, public meetings, and mailouts were conducted to solicit comments and ideas. Any comments presented throughout the process have been considered.

This notice meets the requirements of 43 CFR 1610.7–2 for designation of ACECs.

John A. Kwiatkowski,

*Deputy State Director, Division of Lands and Renewable Resources.*

May 5, 1987.

[FR Doc. 87–10970 Filed 5–28–87; 8:45 am]

BILLING CODE 4310-DN-M

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[WY920 07 4121–10]

## Availability; Data Adequacy Standards; Powder River Coal Region

**ACTION:** Public Notice.

**SUMMARY:** Data Adequacy Standards for the Powder River Coal Region are available to the public.

**FOR FURTHER INFORMATION CONTACT:** Don Barbson, Branch of Solid Minerals, Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001; telephone number (307) 772–2571 or (FTS) 328–2571.

**SUPPLEMENTARY INFORMATION:** On June 5, 1985, the Powder River Regional Coal Team (RCT) endorsed a Federal/State task force with resource specialists from Montana and Wyoming to prepare data adequacy standards for the Powder River Coal Region. On November 7, 1986, Proposed Data Adequacy Standards were made available for public review and comment. On December 4, 1986, the RCT recommended, among other things, that these regional data adequacy standards be finalized by June 1, 1987. By Federal Register notice on February 12, 1987, the Director of the Bureau of Land Management adopted this RCT recommendation.

The Federal/State task force completed a review of all public comments and finalized the standards during March and April, 1987. A summary of public comments and task force responses thereto is contained in the data of adequacy standards document. This document is now available to the public. A copy may be obtained by contacting Don Barbson at the above-specified address or telephone numbers.

This document constitutes the task force's finalized regional data adequacy standards by June 1, 1987, in accordance with the RCT recommendations of December 4, 1987. Final RCT approval of these standards will be solicited at the next Powder River RCT meeting, which is yet to be scheduled.

These Data Adequacy Standards contain recommended levels of data to be acquired prior to the leasing of delineated coal trucks. The document contains data standards for geology, soils/reclamation, hydrology, wildlife, air, cultural resources, socioeconomics, and vegetation and land use.

Hillary A. Oden,

*State Director, Wyoming.*

[FR Doc. 87–12[illegible] Filed 5–26–87; 8:45am]

BILLING CODE [illegible]

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[AK–932–07–4220–10; F–82011]

## Transfer of Jurisdiction; Tin City, AK

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice provides official publication of the transfer of administrative jurisdiction of certain land in Tin City, Alaska, from the Department of the Air Force to the Department of the Navy.

**FOR FURTHER INFORMATION CONTACT:** Sandra C. Thomas, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

**SUPPLEMENTARY INFORMATION:**

Subject to valid existing rights, the administrative jurisdiction of the land withdrawn by Public Land Order (PLO) No. 1876, dated June 10, 1959, was transferred on August 25, 1960, from the Department of the Air Force to the Department of the Navy pursuant to 10 U.S.C. 2571(a) (1970). The terms and conditions of PLO No. 1876 remain the same and the land described as follows remains withdrawn from all forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, but excepting disposals of materials under the act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601–604 (1982)), as amended:

**Kateel River Meridian**

A tract of land located on the Seward Peninsula, 3rd Judicial District, State of Alaska, more specifically described as follows:

Beginning at a point, from which the point of intersection of latitude 65°35'01.579" N., longitude 167°56'25.790" W., bears North 220 feet, thence West, 175 feet;
North, 452 feet to a point on the south boundary of the Champion Lode Claim;
S. 82°12' E., 372 feet along the claim boundary to a point identical with the southeast corner of said claim;
N. 29°40' E., 76 feet along the claim boundary;
East, 193 feet;
South, 500 feet;
West, 425 feet to the point of beginning.

The area described contains approximately 6.31 acres.

Sue A. Wolf,

*Chief, Branch of Land Resources.*

[FR Doc. 87-12207 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-JA-M

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[UT-040-07-4322-02]

## Cedar City District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 992-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, July 9, 1987. The meeting will begin at 9:30 a.m. in the Beaver County Courthouse located at 105 East Center Street, Beaver, Utah.

The meeting will consist of a short discussion at the Courthouse followed by a field tour of the Mineral Range Allotment. The purpose of the tour is to discuss revisions in the allotment Management Plan and proposed use adjustments needed following an evaluation of monitoring data. Those planning on going on the tour should provide their own transportation and a lunch.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, UT 84720, phone 801-586-2401, by July 6, 1987. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: May 22, 1987.

Morgan S. Jensen,

*District Manager.*

[FR Doc. 87-12208 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-DQ-M

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[UT-040-07-4830-12]

## Cedar City, UT; District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Cedar City District Advisory Council will be held June 30, 1987.

The meeting will begin at 9:30 a.m. in the BLM office at 318 North 100 East, Kanab, Utah. The agenda will include: A report on the Bureau's Graphic Information System (GIS), cultural resources in the Kanab Resource Area, range and wildlife project work in the Resource Area, and the Alton Coal field. The meeting will be held as a field tour. Those wishing to participate must provide their own transportation and lunch.

All Advisory Council meetings, are open to the public. Interested persons may make oral statements at 9:45 a.m. or submit written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, 176 East D. L. Sargent Drive, Cedar City, Utah 84720 by June 26, 1987. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

Dated: May 18, 1987.

Dennis Curtis,

*Acting District Manager.*

[FR Doc. 87-12202 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-DQ-M

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[UT 080-07-4830-12]

## Vernal District Advisory Council; Tour and Meeting

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** Notice is heregy given than on Thursday, July 2, beginning at 8:30 a.m. at the Vernal District Office, the Vernal District Advisory Council will: Depart to tour Taylor Flat wildlife habitat management projects; at about noon they will have lunch at the John Jarvie Historical Site, then drive to Little Hole and float the section of the Green River from Little Hole to the Jarvie Ranch where they will have supper and at approximately 6:00 p.m. they will begin the regular business meeting. Business meeting agenda items will include:

—Election of Chairperson and Vice Chairperson
—Management of the Historic Jarvie Ranch
—Proposed road from Brown's Park to Dutch John
—Status of Utah Wilderness Environmental Impact Statement
—Joint concerns of Ute Tribe and BLM concerning management of boating use on the White River.
—Cooperative Management (BLM-FS-State) of Green River Corridor from Flaming Gorge to Colorado Border
—Proposed land exchanges to remove state inholdings within National Parks and Monuments
—Items at large from Advisory Council
—Reading of public comments or statements, if any.

The day's activities, including the business meeting, is open to the public, but the public is advised that they must furnish their own lund and river transportation and food. Written statements the public may wish to have read to the Advisory Council must be submitted to the District Manager no later than close of day July 1, or, if to be presented in person, must not exceed ten minutes duration.

Summary minutes of the advisory council's business meeting will be maintained in the District Office and will be made available for public inspection during regular business hours.

In case of severe inclimate weather, all activities of July 2, will be canceled and rescheduled by the District Manager.

Date: May 21, 1987.

David E. Little,

*Vernal District Manager.*

[FR Doc. 87-12267 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-DQ-M

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[WY-920-07-4111-15; W-74190]

## Proposed Reinstatement of Terminated Oil and Gas Lease; Campbell County, WY

May 21, 1987.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-74190 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-74190 effective January 1, 1987, subject to the original terms and conditions of the lease and the

increased rental and royalty rates cited above.

Andrew L. Tenkle,
*Chief, Leasing Section.*
[FR Doc. 87-12210 Filed 5-28-87; 8:45 am]
BILLING CODE 4310-22-M

[AZ-040-07-4212-13; A21585]

## Realty Action; Exchange of Public Surface Estate; Cochise County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Exchange; Public surface estate in Cochise County, Arizona.

**SUMMARY:** The surface estate of the following described land is suitable for transfer by exchange to the Marvin and Judy Barnes Trust under the provisions of section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 14 S., R. 32 E.,
Sec. 11, lot 10.

The land described above comprises 40.43 acres, more or less, in Cochise County.

The above-described land will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the Marvin and Judy Barnes Trust or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

The Marvin and Judy Barnes Trust has offered the surface estate of the following described lands to the United States:

Gila and Salt River Meridian, Arizona

T. 14 S., R. 32 E.,
Sec. 27, SW¼SW¼;
Sec. 34, W½NW¼, NW¼SW¼.

The lands described above comprise 160.00 acres, more or less, in Cochise County.

The surface estate of the above-identified non-federal lands will be acquired to consolidate ownership and enhance resource management.

**DATE:** For a period of 45 days from date of publication in the **Federal Register**, interested parties may submit comments ot the Safford District Manager, 425 E. 4th Street, Safford, Arinona 85546. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Interior.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the exchange, including the land use plan supporting this exchange and the environmental considerations reviewed in making this decision to exchange, are available for review at the Safford District Office.

Dated: May 21, 1987

Vernon L. Seline,
*Acting District Manager.*
[FR Doc. 87-12211 Filed 5-28-87; 8:45 am]
BILLING CODE 4310-32-M

[ES-030-07-4212-11; ES-00157-009; ES-31817]

## Realty Action; Recreation and Public Purposes Classification—Land Classification for Recreation and Public Purposes, Crow Wing County, MN

**SUMMARY:** The following described parcel has been classified as suitable for disposal to the State of Minnesota by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741) as amended (43 U.S.C. 869).

Fifth Principal Meridian, Minnesota

1. ES-31817, Crow Wing County: T.137N., R. 25W.,
Sec. 31, Lot 6, total of 1.21 acres.

The purpose of the conveyance is the preservation of a Wildlife Management Area.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title of the land shall revert to the United States.

Classification of this land segregates it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this Notice, or upon publication of a notice of termination.

Comments: For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

**FOR FURTHER INFORMATION:** Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, or by calling Larry Johnson at (414) 291-4413.

Bert Rodgers,
*District Manager.*
[FR Doc. 87-12212 Filed 5-28-87; 8:45 am]
BILLING CODE 4310-GJ-M

[MT-070-07-4212-13; M66052]

## Realty Action: Exchange; Beaverhead County, MT

**AGENCY:** Bureau of Land Management, Butte District Office, Interior.

**ACTION:** Notice of Realty Action M66052, Exchange of public and private lands in Beaverhead County.

**SUMMARY:** The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian, Montana

T. 1 S., R. 11 W.,
Sec. 1, Lots 5 and 9=9.77 acres.
T. 1 N., R. 12 W.,
Sec. 4, SW¼NE¼=40 acres.

In exchange for these lands, the United States will acquire the following described lands:

Principal Meridian, Montana

T. 1 S., R. 11 W.,
Sec. 1, Meets and Bounds Tract in Lot 4=6.95 acres.

**DATES:** For a period of 45 days from the date of this notice, interested parties may submit comments to the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

**FOR FURTHER INFORMATION CONTACT:** Information related to the exchange, including the environmental assessment and land report, is available for review at the Butte District Office, P.O. Box 3388, Butte, Montana 59702.

**SUPPLEMENTARY INFORMATION:** The purpose of this exchange is to acquire a public access site on the Big Hole River at Jerry Creek Road Bridge. The tract, located just downriver from the bridge, between the river and highway 43 will replace the site above the bridge which is now closed to public use. The exchange will meet the increasing needs of floaters and non-floaters alike for access to the Big Hole River. It will provide a safer launching and landing site, along with adequate parking. BLM

plans for the site include a boat ramp, parking area, and picnicking facilities. The two parcels of public land to be traded for this tract have low to moderate resource values and low public values. Access on Bryant Creek Road will be protected by a reservation in the patent.

The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The Exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. The reservation to the United States of any identified mineral values on the Federal lands being transferred.

3. All valid existing rights (e.g., rights-of-way, easements and leases of record).

4. Value equalization by cash payments or acreage adjustments.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

**James A. Moorhouse,**

*District Manager.*

May 20, 1987.

[FR Doc. 87–12270 Filed 5–28–87; 8:45 am]

BILLING CODE 4310-DN-M

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**[NM–030–07–4212–14; NM84778]**

## Realty Action; Direct Sale of Public Land in Dona Ana County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described parcel of public land has been examined and identified as suitable for direct sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713):

T. 23 S., R. 1 W., NMPM,
Sec. 31: Lots 14 to 18, inclusive . and 21, 22, 25 and 26.

The subject lands, comprising approximately 140 acreas, will be offered to the Dona Ana County Commissioners at the appraised fair market value of $140,000.00. The land would become a part of the Dona Ana County Fairgrounds.

This sale is consistent with the Bureau of Land Management's planning system and is compatible with County plans. The land has been used by Dona Ana County as part of the County Fairgrounds for approximately 15 years under land use permits issued by the Bureau of Land Management. The public interest will be served by offering this land for sale.

**DATE:** Comments must be submitted on or before July 13, 1987.

**ADDRESSES:** Comments should be sent to Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

**FOR FURTHER INFORMATION CONTACT:** Madeline Dzielak at the address above or at 505–525–8228, (FTS 571–8350).

**SUPPLEMENTARY INFORMATION:** The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All mineral deposits in the land so patented. Such minerals shall be subject to the right to explore, prospect for, mine and remove under applicable law and such regulations as the Secretary may prescribe (Federal Land Policy and Management Act of 1976, 90 Stat. 2757; 43 U.S.C. 1719).

3. All the geothermal steam and associated geothermal resources as to land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits upon compliance with the conditions and subject to the provisions and limitations of the Act of December 24, 1970 (84 Stat. 1566).

Publication of this notice will segregate the public land from all appropriations under the public lands laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 2 years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

**Tim Salt,**

*Acting District Manager*

[FR Doc. 87–12213 Filed 5–28–87; 8:45 am]

BILLING CODE 4310-FB-M

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**[ID–943–07–4220–10; I–22590]**

## Proposed Withdrawal and Opportunity for Public Meeting; Crooked River Near Orogrande, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Corps of Engineers, Department of the Army, proposes to withdraw 12.28 acres of national forest land for construction of anadromous fish trapping and related facilities on the Crooked River near Orogrande, Idaho. This notice closes the land for up to two years from surface entry and mining. The land will remain open to mineral leasing.

**DATE:** Comments and requests for a public meeting should be received by August 27, 1987.

**ADDRESS:** Comments and meeting requests should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

**FOR FURTHER INFORMATION CONTACT:** Larry Lievsay, BLM Idaho State Office, 208–334–1597.

On May 7, 1987, the Corps of Engineers filed an application to withdraw the following-described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

**Boise Meridian, Nezperce National Forest**

*Parcel 1—Adult Facility*

A parcel of land lying in unsurveyed section 25, Township 29 North, Range 7 East of the Boise Meridian Idaho County, State of Idaho, being more particularly described as follows:

Commencing at the northwest corner of Section 30, Township 29 North, Range 8 East of the Boise Meridian;
thence South 0°16'39" West, a distance of 2,879.37 feet to the point of beginning;
thence South 3°14'35" East, a distance of 370.26 feet;
thence West, a distance of 215 feet;
thence South, a distance of 460 feet;
thence North 67°14'57" West, a distance of 166.08 feet;
thence North 51°50'34" West, a distance of 89.02 feet;
thence North 9°27'44" West, a distance of 91.24 feet;
thence North 30°15'23" East, a distance of 138.92 feet;
thence North 52°25'53" East, a distance of 82.01 feet;
thence North 3°34'35" West, a distance of 80.16 feet;
thence North 23°44'58" West, a distance of 136.56 feet;

thence North 4°49'48" West, a distance of 120.42 feet;
thence North 71°28'05" East, a distance of 328.54 feet to the point of beginning.

The parcel of land above described contains 4.34 acres, more or less.

*Parcel 3—Pivazer Site*

A parcel of land located on the left (west) bank of the Crooked River, westerly of County Road No. 121, in the projected northeast quarter of unsurveyed section 36, Township 28 North, Range 7 East of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Commencing at a U.S. Army Corps of Engineers Survey Monument marked "86-86-1", the local grid coordinates of said monument being y, North 13,088.82 feet and x, East 12,321.12 feet; thence South 89°34'04" distance of 169.13 feet to the point of beginning;
thence East, a distance of 80 feet;
thence South, a distance of 80 feet;
thence West, a distance of 80 feet;
thence North, a distance of 80 feet to the point of beginning.

There is EXCEPTED therefrom all that part of the above described parcel 2 lying within the right-of-way of said County Road No. 121.

The parcel of land above described contains 0.09 of an acre, more or less.

*Parcel 3—Acclimation Facility*

A parcel of land located on the left (west) bank of the Crooked River, easterly of Forest Road No. 233 (County Road No. 121), north of the Orogrande Landing Strip, in the projected northwest quarter of unsurveyed section 30, Township 28 North, Range 8 east of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Beginning at a point, which is located on north (downstream) end of the Orogrande Landing Strip. Said point is a U.S. Army Corps of Engineers monument marked "86-28-3", the local grid coordinates of said monument being Y, North 16,131.327 feet and X, East 14,137.702 feet;
thence South 61°31'33" East, a distance of 139.12 feet to a point lying on the thread of the stream on the Crooked River;
thence North 1°19'56" East, a distance of 86.02 feet to a point lying on the thread of the stream of said river;
thence North 24°25'28" East, a distance of 24.17 feet to a point lying on the thread of the stream of said river;
thence North 44°01'04" East, a distance of 495.05 feet to a point lying on the thread of the stream of said river;
thence North 22°46'37" East, a distance of 54.23 feet to a point lying on the thread of the stream of said river;
thence North 0°47'45" West, a distance of 72.91 feet to a point lying on the thread of the stream of said river;
thence North 16°27'36" West, a distance of 91.76 feet to a point lying on the thread of the stream of said river;
thence North 3°54'02" East, a distance of 44.10 feet to a point lying on the thread of the stream of said river;
thence North 7°55'58" East, a distance of 122.15 feet to a point lying on the thread of the stream of said river;
thence South 80°00'00" West, a distance of 455.00 feet to a point lying on the Easterly edge of Forest Road No. 233 (County Road No. 122);
thence South 35°40'07" West, a distance of 152.65 feet to a point lying on the Easterly edge of said road;
thence South 20°22'35" West, a distance of 37.34 feet to a point lying on the Easterly edge of said road;
thence South 1°35'25" West, a distance of 36.01 feet to a point lying on the Easterly edge of said road;
thence South 11°40'25" East, a distance of 122.59 feet to a point lying on the Easterly edge of said road;
thence South 6°07'48" East, a distance of 77.78 feet to a point lying on the Easterly edge of said road;
thence South 2°07'18" West, a distance of 81.06 feet to a point lying on the Easterly edge of said road;
thence South 4°14'11" West, a distance of 54.15 feet to a point lying on the Easterly edge of said road;
thence South 17°02'16" West, a distance of 64.85 feet to a point lying on the Easterly edge of said road;
thence South 30°06'49" West, a distance of 57.89 feet to a point lying on the Easterly edge of said road;
thence South 40°21'52" West, a distance of 28.25 feet to a point lying on the Easterly edge of said road;
thence South 24°28'11" West, a distance of 51.56 feet to a point lying on the Easterly edge of said road;
thence South 61°31'33" East, a distance of 140.00 feet to a point of beginning.

There is EXCEPTED therefrom all that part of the above described Parcel 3 lying within the right-of-way of said Forest Road No. 233 (County Road No. 122).

The parcel of land above described contains 7.62 acres, more or less.

The area described aggregates 12.28 acres in Idaho County.

The purpose of the proposed withdrawal is to protect the land for construction of facilities for an anadromous fish trapping site to be run in conjunction with the Clearwater Fish Hatchery.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal, may present their views in writing to the undersigned authorized officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the schedule date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date.

Dated: May 18, 1987.

William E. Ireland,

*Chief, Realty Operations Section.*

[FR Doc. 87-12214 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-84-M

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[OR-22197-C(WASH) OR-22197-D(WASH), OR-22197-E(WASH); OR-943-87-4220-11; GP-07-195]

## Proposed Continuation of Withdrawals; San Juan County, WA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Coast Guard proposes that portions of a land withdrawal continue for an additional 25 years and requests that the lands involved remain closed to surface entry and mining.

**FOR FURTHER INFORMATION CONTACT:** Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

The Coast Guard proposes that the following identified land withdrawal be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands and projects are involved:

1. OR 22197-C(WASH), Executive Order of July 15, 1875. North Peapond Rocks Light Station, 2.75 acres. Located on North Peapod Rock.

T. 36 N., R. 1 E.,
Sec. 6, W.M., San Juan County, Washington.

2. OR 22197-D(WASH), Executive Order of July 15, 1875. Belle Rock Light Station, less than 1 acre. Located on Belle Rock.

T. 35 N., R. 1 W.,
Sec. 25, W.M., San Juan County, Washington.

BEST COPY AVAILABLE

3. OR 22197–E(WASH), Executive Order of July 15, 1875. Davidson Rock Light Station, less than 1 acre. Located on Davidson Rock.

T. 34 N., R. 1 W.,
Sec. 28, W.M., San Juan County, Washington.

The withdrawal currently segregates the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. The Coast Guard requests no changes in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: May 19, 1987.

**B. LaVelle Black,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 87–12215 Filed 5–28–87; 8:45 am]

BILLING CODE 4310-33-M

## Minerals Management Service

### Royalty Management Advisory Committee, Systems Improvement Working Panel, Meeting

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** The Minerals Management Service (MMS), Royalty Management Program (RMP), hereby gives notice that the Systems Improvement Working Panel, established by the Royalty Management Advisory Committee, will be meeting in Golden, Colorado, at the location and on the dates identified below.

The Systems Improvement Working Panel was established to analyze and provide recommendations to the Advisory Committee regarding improvements to make RMP financial and production accounting systems operate more effectively. The purpose of the meetings is to identify and/or analyze specific issues such as potential software improvements to the MMS Auditing and Financial System (APS) which is to be transferred to a mainframe computer later in 1987.

Location and Dates: The Systems Improvement Working Panel will meet at the Marriott Hotel, 1717 Denver West Marriott Blvd., Golden, Colorado, June 4–5, and June 8–12, 1987, at the following times:

| Date | Convene | Adjourn |
|---|---|---|
| June 4, 1987 | 8:00 a.m. | 5:00 p.m. |
| June 5, 1987 | 8:00 a.m. | 2:00 p.m. |
| June 8, 1987 | 1:00 p.m. | 5:00 p.m. |
| June 9–11, 1987 | 8:00 a.m. | 5:00 p.m. |
| June 12, 1987 | 8:00 a.m. | 12:00 noon. |

The public is invited to attend these meetings and to provide comments. A time will be set aside by the Panel Chairperson during the meetings when the public will be invited to make oral comments. Written comments should be submitted by June 12, 1987, to Mr. Vernon B. Ingraham at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 651, Denver, Colorado 80225, telephone number (303) 231–3360, (FTS) 326–3360.

**SUPPLEMENTARY INFORMATION:** This Working Panel is composed of both Advisory Committee members and non-Committee members. The Panel was established to provide the Advisory Committee with analysis of specific issues and proposed recommendations. After its review, the Advisory Committee will then decide on the advice and recommendations to be made to the Department of the Interior and MMS. Although the Panel may meet with the Department of the Interior or MMS staff to obtain information it requires in conducting its business, the Panel's advice and recommendations will be made to the Advisory Committee and not to the Department of the Interior or MMS.

Dated: May 22, 1987.

**William D. Bettenberg,**

*Director, Minerals Management Service.*

[FR Doc. 87–12272 Filed 5–28–87; 8:45 am]

BILLING CODE 4310-MR-M

### Outer Continental Shelf Development Operations Coordination; Elf Aquitaine Petroleum

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Elf Aquitaine Petroleum has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5316, Block 391, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 20, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to Section 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana

Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Date May 21, 1987.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-12216 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-MR-M

## Outer Continental Shelf Development Operations Coordination, ODECO Oil and Gas Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that ODECO Oil & Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0317, Block 47, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

**DATE:** The subject DOCD was deemed submitted on May 21, 1987.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: May 21, 1987.

J. Rogers Pearcy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 87-12217 Filed 5-28-87; 8:45 am]

BILLING CODE 4310-MR-M

## Request for Information on Oil and Gas Industry Interest in Mid-Atlantic Lease Sale 121

*Purpose*

The Mid-Atlantic proposed Outer Continental Shelf (OCS) oil and gas lease sale has been designated as a Frontier Exploration sale in the Proposed Final 5-Year Leasing Program for Mid-1987 to Mid-1992, dated April 1987. Sale 121 is being reviewed by the Secretary of the Interior to determine whether the OCS presale process should be initiated for this sale. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interest in leasing and exploring within the Mid-Atlantic planning area.

If a decision is made to begin the OCS presale process for this sale, a Call for Information and Nominations would be issued in September 1987 with a sale proposed for October 1989. If interest is determined to be insufficient to justify proceeding with the presale process, the sale can be cancelled, or delayed and a Request for Interest reissued on an annual or less frequent basis until interest is determined to be sufficient to hold the sale or the sale is cancelled.

*Use of Information from Request*

The responses will assist the Secretary of the Interior to determine if the presale process for the proposal should be started, cancelled, or deferred for consideration in a future 5-year schedule. This approach is designed to add flexibility to the program by providing for the reasonable possibility that changes in geologic data or economic or other conditions could create bidding interest in the future in areas which now appear unattractive. For example, a substantial oil price increase (such as might result from an oil supply disruption), if anticipated to be relatively long term, could make an area now unattractive to potential bidders into one which could be of interest to them. Other information of interest would include new geophysical data, new geological data, new interpretations of existing data, and new estimates of costs of production. By receiving information on industry interest prior to the issuance of the Call, the Federal Government and other parties can avoid unnecessary expenditures on the lengthy and costly presale process.

The presale process includes the following steps: Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement (EIS), Area Identification, draft EIS, Public Hearings, final EIS, proposed Notice of Sale, Governors' Comments, and final Notice of Sale. For Atlantic sales, the entire process takes just over 2 years.

*Description of the Area*

In general, the Mid-Atlantic planning area extends east from the juncture of the Submerged Lands Act (SLA) limit at approximately 35° N. latitude to 70° W. longitude, thence north to approximately 37° N. latitude, thence east to 68° W. longitude, thence north to approximately 38° N. latitude, thence east to 66° W. longitude, thence north to 39° N. latitude, thence west to 71° W. longitude, thence north to the SLA limit and thence along the SLA line to the point of origin. The planning area includes 14,731 blocks covering approximately 82.2 million acres. The attached map depicts the planning area and also the subarea deferrals identified in the Proposed Final 5-Year Leasing Program.

Mid-Atlantic areas deferred in the Proposed Final 5-Year Leasing Program include the U.S.S. Monitor National Marine Sanctuary and buffer zone; the National Aeronautics and Space Administration (NASA) Wallops Island Flight Center operating area (except 19 blocks of interest highlighted for special presale consideration); and nearshore areas of low potential (a minimum of 15 nautical miles offshore). Therefore, the area open for comment at this time consists of 12,687 blocks (approximately 71.5 million areas).

*Previous Sale-Related Activities*

Mid-Atlantic acreage has been proposed for lease sale on seven occasions. Of these, four were Mid-Atlantic OCS lease sales, two South Atlantic lease sales, and one a reoffering sale. The areas included in the two South Atlantic sales and the reoffering sale have been reconfigured and are now part of the Mid-Atlantic planning area. As a result of those lease

sales almost $2 billion in revenues has been deposited in the U.S. Treasury for the 272 leases issued. A total of 187 leases have been relinquished or expired, leaving 85 leases in effect.

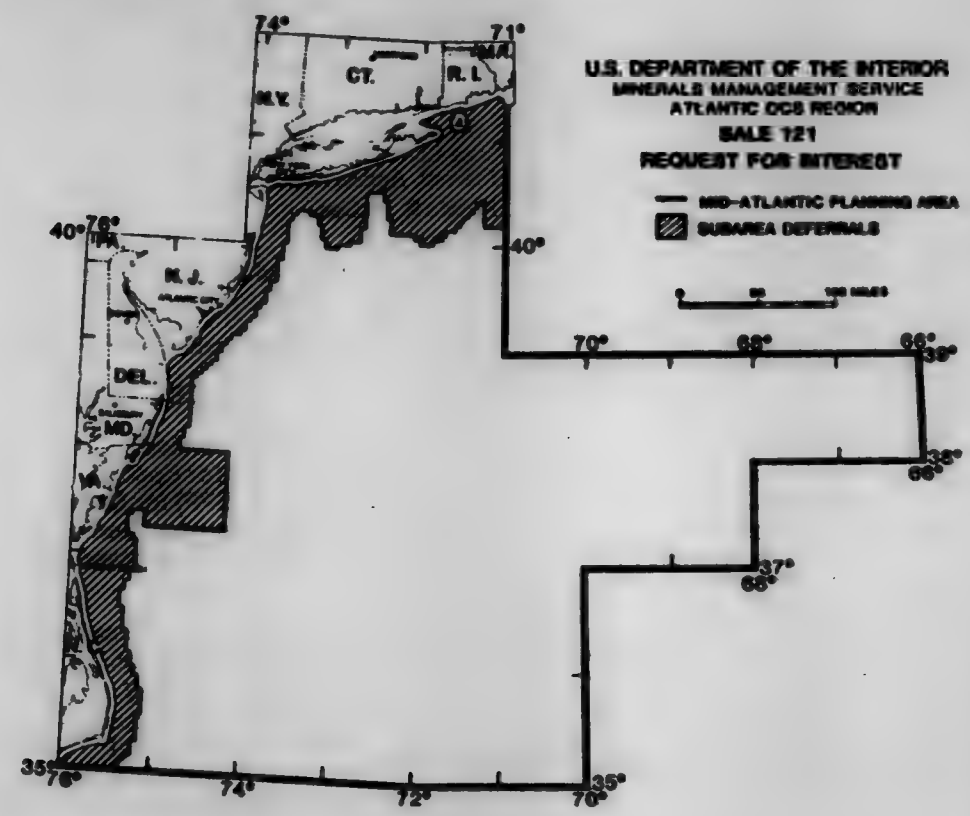
The last proposed lease sale in this area, Sale 111, was cancelled on June 13, 1980, following a determination that industry had little interest in a sale at that time.

Two Continental Offshore Stratigraphic Test (COST) wells have been drilled in this area. In addition, 32 exploratory wells were drilled without commercial discover of oil and gas. All 34 wells have been plugged and abandoned.

*Instructions on Request for Interest*

Information regarding leasing and exploring in the Mid-Atlantic planning area may be provided by mail, telephone, or, alternatively, by informal meeting with the Regional Director or a designated representative. General or detailed information may be submitted. Specific responses are requested on the advisability of selecting one of the following options for the planning area: proceed with the OCS presale process; cancel the OCS presale process; or delay the sale process for no less than 1 year, at which time another Request for Interest would be published.

In order to be included in the review process, information must be submitted no later than 45 days following publication of this document in the Federal Register. Receipt of information will be facilitated if the envelope is marked "Request for Interest on Proposed Lease Sale 121 in the Mid-Atlantic."




Letters should be mailed or hand delivered to the Regional Supervisor for Leasing and Environment, Atlantic Region, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Telephone inquiries may be made to (703) 285–2165. A copy of the response should be sent to the Chief, Offshore Leasing Management Division, Department of the Interior, Minerals Management Service, Room 4230 (Mail Stop 645), Washington, DC. 20240. Hand deliveries to the headquarters office may be made at 18th and C Streets, NW., Room 2523, Washington, DC.

Date: May 26, 1987.

**Wm. D. Bettenberg,**

*Director, Minerals Management Service.*

*Approved:*

**James E. Cason,**

*Deputy Assistant Secretary—Land and Minerals Management.*

[FR Doc. 87–12201 Filed 5–28–87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Senior Executive Service; Addition of Members to Performance Review Board

May 11, 1987.

On or about May 11, 1987, the following persons will be added as members to the Performance Review Board:

Laurence W. Bond
Norman Cohen
Kenneth E. Fries
W. Wayne McKeel
James L. Sullivan

**Jan Barrow,**

*Executive Secretary, Performance Review Board, Agency for International Development.*

[FR Doc. 87–12206 Filed 5–28–87; 8:45 am]

BILLING CODE 6116-01-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1083X)]

### Conrail Abandonment in Bartholomew County, IN; Exemption

**AGENCY:** Interstate Commerce Commisison.

**ACTION:** Notice of exemption.

**SUMMARY:** Under 49 U.S.C. 10505, the Commission exempts the abandonment by Consolidated Rail Corporation (Conrail) of its 1.1-mile North Columbus Running Track between the Louisville Running Track (milepost 0.2) and the end of the line on the east side of Ruddick Avenue (milepost 1.1) in Columbus, Bartholomew County, IN, subject to the employee protective conditions in *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

**DATES:** The exemption will be effective on June 29, 1987. Petitions to stay are due on June 15, 1987, and petitions to reconsider are due on June 23, 1987.

**ADDRESSES:** Send pleadings referring to Docket No. AB–167 (Sub-No. 1083X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Conrail's representative: Charles E. Mecham, 1138 Six Penn Center, Philadelphia, PA 19103–2959.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar (202) 275–7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision write or call T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Bldg., Washington, DC 20423, 289–4357.

Decided: May 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–12264 Filed 5–28–87; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 31031]

## Merchants Grain & Transportation, Inc.; Continuance in Control Exemption

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of correction of effective date.

**SUMMARY:** This notice corrects the effective date of the notice of exemption previously published in the **Federal Register**, May 21, 1987, which exempts Merchants Grain & Transportation, Inc. (Merchants) from the requirements of 49 U.S.C. ¶11343 to continue in control of Poseyville and Owensville Railroad Company, Inc. (P&O), subject to employee protective conditions; and which exempts P&O from the requirements of 49 U.S.C. ¶10746 with regard to the transportation of traffic which Merchants may have an interest. The correct effective date for the exemption is May 24, 1987. The due date for filing petitions to reopen remains June 10, 1987. All other information in the notice remains the same.

Dated: May 22, 1987.

Noreta R. McGee

*Secretary.*

[FR Doc. 87–12260 Filed 5–28–87; 8:45 am]

BILLING CODE 7035-01-M

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[Finance Docket No. 31022]

## W. Norris Lightsey, et al. Control Exemption; Hampton & Branchville Railroad Co., Inc. and Collection County Railroad Co., Inc.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission under 49 U.S.C. 10505 exempts from prior approval under 49 U.S.C. 11343, *et seq.*, the common control by W. Norris Lightsey and the South Carolina National Bank, Trustee of the Estate of E. Oswald Lightsey, of the Hampton & Branchville Railroad Company, Inc. and the Collection County Railroad Company, Inc. subject to standard labor protective conditions.

**DATES:** This decision is effective on June 29, 1987. Petitions to stay must be filed by June 8, 1987, and petitions for reconsideration must be filed by June 18, 1987.

**ADDRESSES:** Send petitions referring to Finance Docket No. 31022 to:
(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioners' representative: Kimberly A. Madigan, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar (202) 275–7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423.

Decided: May 19, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary*

[FR Doc. 87–12262 Filed 5–28–87; 8:45 am]

BILLING CODE 7035-01-M

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[Docket No. AB–283X]

## Ware Shoals Railroad Co. Abandonment in Greenwood County, SC; Exemption

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** The Interstate Commerce Commission exempts Ware Shoals Railroad Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon its entire line of railroad, a 5.17 mile line in Greenwood County, SC.

**DATES:** This exemption will be effective on June 29, 1987. Petitions to stay must be filed by June 8, 1987, and petitions for reconsideration must be filed by June 18, 1987.

**ADDRESSES:** Send pleadings referring to Docket No. AB–283X to:
(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: E.G. Cochrane, 1 Shelter Place, P.O. Box 3478, Greenville, SC 29602.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to: T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

Decided: May 20, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

*Secretary.*

[FR Doc. 87–12263 Filed 5–28–87; 8:45 am]

BILLING CODE 7035-01-M

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## DEPARTMENT OF JUSTICE

## Community Relations Service; Availability of Funding for Special Placement Programs (SPP) for Mariel Cubans Paroled from Immigration and Naturalization Service (INS) Detention Facilities

**AGENCY:** Community Relations Service (CRS), U.S. Department of Justice.

**ACTION:** Notice of Availability of Funding for Cooperative Agreements to provide community-based Special Placement Programs for Mariel Cuban detainees paroled by the Immigration and Naturalization Service from various federal detention centers.

**SUMMARY:** This announcement governs the award of Cooperative Agreements to public or private non-profit organizations or agencies, and, under certain conditions, to for-profit organizations or agencies, to provide eligible Mariel Cubans paroled or reparoled from Immigration and Naturalization Service (INS) detention facilities with intensive, structured, and comprehensive residential and community-based follow-up support services. Programs providing such

services shall hereafter be referred to as Special Placement Programs (SPPs).

Special Placement Programs have the specific goal of assisting eligible clients to attain self-sufficiency and integration into the community through a comprehensive system of support services, delivered first in a residential setting (4 months) and subsequently in a community setting (14 months).

**DATE:** Closing Date: 5:00 p.m. Eastern Daylight Time; July 31, 1987.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Scope**

The purpose of the Special Placement Program is the re-integration of certain detained Mariel Cubans into society through a structured program of residential and community-based follow-up support services.

The client population consists of Mariel Cubans who have been returned to the custody of the United States Department of Justice, Immigration and Naturalization Service, from state and local criminal justice systems. Currently, those detainees who are deemed eligible for parole or reparole by the INS are primarily detained at the Federal Bureau of Prisons, Oakdale, Louisiana facility. Potential clients are referred to the Community Relations Service (CRS), Cuban Haitian Entrant Program (CHEP), which screens referrals for suitability of placement in the CRS Special Placement Programs. Cooperative Agreement Recipients (hereafter referred to as Recipients) then review individual case files; and interview and select clients from the available pool of detainees who have been approved for parole or reparole by the INS.

During a four month residential period, Recipients provide clients with basic physical care and maintenance, as well as counseling, employment services, English language training, life skills instruction, and other programmatic assistance. Upon resettlement into the community, Recipients provide strong follow-up support services and continued case management for a minimum period of eight months. Clients are eligible for an additional six months of follow-up services, if required. Services are rendered within the context of a highly structured, accountable program environment.

*Authorization:* Authority for the Community Relations Service Special Placement Program is contained in Title V, Section 501 (c) of Pub. L. 96–422 (the Refugee Education Assistance Act of 1980).

*Award Instrument:* Awards to support Special Placement Program services will be in the form of Cooperative Agreements issued by the Community Relations Service. The administration of these awards will require the substantial involvement of the Federal Government. The level and scope of Federal involvement is delineated in the CRS document entitled, "Special Placement Program—Program Description and Requirements." This document is included as part of the Proposal Application Package available from the Community Relations Service.

The Community Relations Service will negotiate Cooperative Agreements with those applicants approved by the Director, CRS. During these negotiations, the CRS will also conduct a site visit to the proposed program facility.

*Available Funds:* Approximately $1.5 million will be available on a Fiscal Year basis to support a maximum of three Cooperative Agreements. The funding level for each award is anticipated to be between $450,000 and $630,000, depending upon such factors as the geographic area of resettlement and the specific program design.

Awards normally will not exceed a 36 month program performance period. Funding will be for 12 month budget periods.

The estimated amount of available funds and the anticipated ranges of funding contained in this Notice are intended to serve as bench marks only. These estimates and ranges do not bind the Community Relations Service to any specific number of Cooperative Agreements or to any specific level of funding.

Future fiscal year funding for the Special Placement Program will be contingent upon Federal appropriations. If adequate funds are available, the Director, CRS, anticipates continuation of this program.

*Proposal Review:* Proposals will be reviewed, evaluated, and competively ranked by an independent review panel on the basis of weighted criteria listed in this Notice. All funding decisions are at the discretion of the Director, Community Relations Service. Awards will be subject to the availability of funds.

*Technical Assistance Conference:* The Community Relations Service will hold a technical assistance conference(s) in regard to this Notice. Information regarding the time, date, and location of the conference(s) will be included in the Proposal Application Package.

**Eligible Applicants**

Non-profit organizations incorporated under State law, which have demonstrated experience in: (1) The resettlement of or provision of services to Cuban Entrants, or similar populations; (2) the administration of residential, community-based correctional treatment programs for ex-offenders, or; (3) the administration of other types of residential, community-based rehabilitative programs are eligible to apply.

For-profit organizations, incorporated under State law, which have demonstrated experience in: (1) The resettlement of or provision of services to Cuban Entrants, or similar populations; (2) the administration of residential, community-based correctional treatment programs for ex-offenders, or; (3) the administration of other types of residential, community-based rehabilitative programs, and which can clearly demonstrated that only costs and not profits, fees, or other elements above costs have been budgeted, are also eligible to apply.

Subcontractual arrangements for the administration of a Special Placement Program will only be acceptable in the cases of national-level organizations through local-level agencies which have a demonstrable affiliation with or membership in the national-level organization and which have an institutional presence in the proposed area of resettlement.

Consortiums or joint ventures between or among unrelated agencies or organizations, i.e., those where no formal affiliation or membership relationship exists, will not be considered for funding under the terms of this Notice.

Present CRS grantees are not precluded from submitting new proposals under the terms and conditions of this Notice.

**Eligible Client Population**

Under the terms of this announcement, the eligible client population consists of Cuban nationals who have been approved for parole or reparole from Federal detention by the Immigration and Naturalization Service and who meet the definition of "Cuban/Haitian Entrant" as specified in Title V, sectionj 501(e) of Pub. L. 96–422:

(1) Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the Immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

(2) Any other national of Cuba or Haiti

(A) Who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with the Immigration and Naturalization Service; and

(B) With respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

Further detailed information concerning other characteristics of this population is contained in the "Special Placement Program-Program Requirements and Description" Document.

**Areas of Resettlement**

Funding cannot be considered for applicants who propose resettlement in States or areas heavily impacted by Cuban/Haitian Entrants, refugees, or CRS Special Placement Programs, unless the applicant can assure permanent, full-time employment, service delivery, and community support in such areas. These impacted areas include the States of California, Illinois, Michigan, Missouri, New Jersey, New York, Ohio, and Washington.

Resettlement within the State of Florida is not permissible under this Notice.

Applicants need not be located in the proposed city of resettlement; however, it is strongly suggested that they have a strong institutional presence or broad support base in this location. Local-level affiliates of national-level organizations, however, must be located in the proposed city of resettlement.

**Application Contents**

Applicants are required to set forth in detail a proposal that meets the program requirements described in this Notice and as supplemented by the "Special Placement Program—Program Description and Requirements" Document. Applicants are required to set forth in detail the following:

*1. Program Abstract*

The Program Abstract is intended to be a brief summary of the proposal, which includes names and locations of relevant agencies, the proposed resettlement city and proposed location of the residential facility, the total number of clients and cycles to be served during the entire program performance period, the proposed program periods and phases, and the services to be offered to clients during these periods and phases.

*2. Organization/Agency Background*

Applicants must include a detailed discussion of:

a. The applicant's history, philosophy and goals;

b. Its particular demonstrated experience with respect to: (1) The resettlement of or provision of services to Cuban Entrants, or similar populations; (2) the administration of residential, community-based correctional treatment programs for ex-offenders; or (3) the administration of other types of residential, community-based rehabilitative programs; and

c. The applicant's history of service delivery and institutional presence in the proposed city of resettlement.

If the applicant is a national-level organization which proposes to deliver services through a local-level affiliate, the proposed affiliate must be identified. Within the context of the topics outlined above, the application must address the local-level affiliate's qualifications and provide a rationale for its particular selection as the service provider and for the use of such a subconstractual arrangement.

*3. Characteristics of Program Site*

a. Characteristics of the Proposed Resettlement City Applications must contain a detailed qualitative and quantitative rationale for the selection of the proposed resettlement city with particular regard to:

1. A description of the city's racial, enthnic and sociocultural composition, including a description of existing Cuban populations and Cuban organizations;

2. A description of the political and law enforcement structures of the resettlement city and their potential recaptivity regarding the program;

3. Current level of employment and unemployment in various relevant local job markets, by race and ethnicity, if possible;

4. Availability of immediate or imminent prospects for full-time permanent employment consistent with the skills levels of the program participants;

5. Availability of housing which is safe, sanitary, and affordable to the clients;

6. A description of the local social service network, including any services targeted primarily to Hispanic populations; and

7. A brief discussion of the probable impact of the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) on community tension and upon receptivity to the proposed program.

b. Characteristics of the Proposed Resettlement Community

The proposed resettlement community refers to the immediate geographical area in which the proposed residential facility is located. This area may be a defined, named neighborhood/area which is recognized as a political unit, or it may be a less formally designated area. In either case, the applicant must describe the relevant area in terms of the following characteristics:

1. Address of the proposed residential facility;

2. A description of the racial, ethnic and sociocultural composition of the community, including the presence of a Cuban community;

3. Identification of important local community groups, such as neighborhood watch associations, tenant organizations, neighborhood task forces;

4. Identification of political representatives who represent the constituency of that area, such as City Council members, Congressional representatives, or local Community Board members;

5. Identification of the local social service and educational network, such as local churches, schools, the Salvation Army, YMCAs;

6. Location of nearest police precinct or responsible law enforcement agency;

7. Crime rate of the area; and

8. Availability of public transportation.

c. Residential/Office Facility

Applicants are required to set forth in detail comprehensive information regarding:

1. A physical description of the proposed facility including the proposed allocation of residential and office space; and

2. Documentation that the facility meets all relevant zoning, licensing, fire, safety and health codes required to operate a residentially-based social service program.

Copies of relevant documents must be submitted at the time of application.

If a properly zoned, licensed, or inspected facility is not available at the time of application, the applicant must submit a report on the progress made in obtaining the appropriate documentation, as noted above. This report consists of a description of the required documents, copies of correspondence to relevant local officials or offices from which they will be obtained, and the means and time-lines for obtaining the documentation.

d. Community Support

Applicants are required to detail those measures which have and will be taken to develop and maintain:

(1) Community receptivity and support and/or reduce community opposition to the program and its clientele;

(2) On-going communication with the relevant INS office and with the relevant law enforcement agency; and

(3) An Advisory Committee for the Special Placement Program.

Such measures must be supported by appropriate documentation, as outlined in the Application Addenda Material.

*4. General Program Design*

Applicants are required to set forth in detail a comprehensive narrative which includes:

a. Client Population

1. A description of the client population to be served and the client selection criteria proposed by the applicant;

2. Total number of clients to be resettled during the entire proposed Program Performance Period (up to 36 months); and

3. The number of clients to be served during each cycle and the number of cycles to be accepted during each budget year (A cycle is comprised of 20 clients; programs normally serve a total of 60 clients or three cycles of clients in a budget year).

b. Program Periods

1. An estimate of program start-up time; that is, the period during which the program operations will begin and staff hiring and training will occur, and a description of the activities which will occur during this time;

2. A description of the program periods, including period length and services to be rendered in each period;

3. A description of the criteria for clients to enter the community follow-up period; and

4. A flow chart or time-line which identifies significant milestones during each period.

c. Program Phases

1. A description of the phases within the residential and community follow-up periods, including the length of each phase and the services to be rendered during each phase;

2. A description of the criteria for clients to pass from one phrase to another; and

3. A flow chart or time-line which identifies significant milestones during each phase.

d. Applicant Organization/Agency Management Plan Applicants are required to submit a comprehensive plan which outlines the proposed management of the program. The plan must include the following:

1. A comprehensive organizational chart of the applicant organization or agency, which:

a. Show the overall lines of authority and responsibility in the organization or agency as a whole;

b. Shows the relationship of the proposed program to other organization or agency programs; and

c. Shows the relationship of the local level affiliate to the national-level organization, if applicable.

2. Identification of the staff member who will assume overall supervision of the program at the applicant organization or agency level.

3. A description of the methods for the administration and supervision of the program by the applicant organization or agency.

4. A description of the means of communication among the various levels of program administration.

5. For national-level organizations whose local-level affiliates will administer the program, the following material must also be included in the applicant management plan:

A description of the specific services to be rendered by the national level organization to its local-level affiliate; the specific services to be rendered by the affiliate; and a monitoring plan.

e. Local-Level Affiliate Management Plan

For national-level organizations whose local-level affiliate will be responsible for the administration and operation of the program, a management plan must also be included which contains the following:

1. A comprehensive organizational chart of the local-level affiliate which:

a. Shows overall lines of authority and responsibility within the local-level affiliate; and

b. Shows the relationship of the proposed program to other agency programs.

2. Identification of the local-level affiliate staff member who will assume overall responsibility for the program.

3. A description of the methods for the administration and supervision of the program which identifies all responsible staff members.

f. Special Placement Program Management and Staffing Model.

This plan refers to the administration, management and staff of the actual Special Placement Program.

For both the residential and community-based follow-up periods, identify or discuss:

1. The staff member responsible for the overall program management and staff supervision;

2. A plan to ensure intraprogram coordination and communication;

3. The staffing pattern, including a comprehensive organizational chart of the proposed program showing lines of authority, responsibility and supervision;

4. A proposed staff schedule;

5. Proposed staff training;

6. The roles of consultants and rationale for their use;

7. The role of volunteers, if applicable.

*5. Basic Services—Residential Period*

Applicants are required to provide a detailed narrative description of the following services to be rendered and the method of service delivery:

a. Housing;

b. Food Service;

c. Clothing;

d. Arrival Package;

e. Stipends;

f. Medical Services;

g. Transportation, and;

h. Resettlement Package.

*6. Residential Program Services (4 months)*

Applicants are required to provide a detailed narrative description of the following services and the method of service delivery, including identification of community resources which will be accessed to provide or to enhance such services.

a. Orientation to the Program and to the Local Community.

b. Counseling Services, including:

1. Individual Counseling;

2. Group Counseling; and

3. Substance Abuse Counseling.

c. Employment Development, Placement and Maintenance Services.

d. English Language Training and Assistance with Higher Education or Vocational Training.

e. Life Skills Instruction.

f. Assistance in Obtaining Documents, i.e., Social Security Cards and new I-94 cards.

g. Recreational Services.

h. Resettlement Transition Plan.

*7. Community-Based Follow-Up Services (14 months)*

Applicants are required to provide a detailed narrative description of the services to be rendered and the method of service delivery, including the frequency with which services will be rendered:

a. Basic Services

1. Emergency Assistance, and;

2. Medical Coverage.

b. Program Services.

1. Individual Counseling;

2. Information and Referral Services;

3. Job Development, Placement, and Counseling Services;

4. Comprehensive Crisis Intervention Services; and

5. A Comprehensive Discharge Plan.

*8. Program Records and Accountability*

Applicants are required to set forth a detailed narrative describing the following:

a. Internal administrative controls, such as daily logs, weekly staff meetings, in-house client meetings, program policies and procedures;

b. Administrative program records such as cash disbursement records, inventory lists, medication dispensing records, food allocation, and similar files;

c. Methods for ensuring 24 hour monitoring of the program and its clients, such as sign-in/sign-out sheets and a pass system;

d. The reward/sanction system;

e. Disciplinary and grievance procedures;

f. Room search and pat-down procedures and frequency; and

g. A plan for testing for substance abuse.

*9. Case Management System and Client Records, including:*

a. A description of the case management system for tracking and monitoring client progress;

b. A description of individual client service plans, including time lines for routine review and revision of plans; and

c. A description of the client case files, i.e., types of records to be maintained.

*10. Program Evaluation*

Applicants must set forth a plan for program evaluation which includes, at minimum, data pertaining to and an assessment of:

1. Achievement of overall stated goals and objectives of the program;

2. Client statistics, including number completing program, parole revocations, AWOL cases, serious incidents, and arrests;

3. Major program components, particularly employment;

4. Factors contributing to or inhibiting successful delivery of services; and

5. The program relationship with the local community.

*11. Budget and Budget Narrative*

a. A Proposed Budget

More detailed information concerning budget categories is contained in the "Special Placement Program—Program Description and Requirements" Document. The following budget structure should be used to provide appropriate costs breakdowns:

1. Personnel;
2. Fringe Benefits;
3. Travel Costs;
4. Equipment;
5. Supplies;
6. Contractual Obligations;
7. Renovation Costs (if applicable);
8. Direct Client Costs;
9. Other; and
10. Indirect Costs.

b. Budget Narrative

A narrative explanation for each line item in each budget category must accompany the proposed budget.

*12. Application Addenda Material*

Applicants are required to submit the following material as an addendum to the program proposal. This material is required for all participating agencies, i.e., applicant organizations as well as local-level affiliates, as applicable:

a. Organization/Agency Administration

1. A copy of the Organization/Agency's Articles of Incorporation;

2. A copy of the document verifying IRS status as a non-profit organization/agency, if applicable;

3. A list of officers and board members, if applicable; and

4. A list of professional affiliations and certifications.

b. Organizational/Agency Standards and Policies

1. Personnel handbook and statement of standards of conduct;

2. Statement regarding professional and agency liability; and

3. Copy of policy regarding confidentiality of client information and records.

c. Staff

1. Position descriptions and resumes, if individuals have been identified for certain positions, for all personnel to be hired for both the residential and community-based follow-up periods, and of individuals responsible for administering the program from the applicant organization and local-level affiliate, as applicable; and

2. Resumes of program consultants.

d. Community Support

1. A proposed list of Advisory Committee members; and

2. Letters of program support. Sources must be located in, or representative of the proposed resettlement community, i.e., the immediate geographic area in which the proposed facility is located. Appropriate sources include, but are not limited to, local political representatives, law enforcement officials, community leaders, social service agencies representatives, merchants, and potential employers.

Applicants may also submit letters from other sources as supplemental material to the site-specific letters of support;

3. Letters showing that the relevant INS District Office and the relevant law enforcement agency have been notified of the program's purpose and intent; and

4. A list of voluntary or donated resources, including letters of intent from agencies or entities providing the resources.

e. Finance and Budget

1. A description of the financial management system of the applicant and local-level affiliate, as applicable;

2. A copy of the latest financial audit of the applicant and local-level affiliate, as applicable; and

3. A listing of other Federal, State, local or foundation grants or contracts administered by the applicant and local-level affiliate, as applicable.

The material should include information regarding the funding source, grant or contract number, level of financial support, purpose of grant or contract, grant or contract performance period, and name, address, and telephone number of the grant or contract officer from the relevant agency.

f. Subcontracts

Subcontracts refer to those procurement arrangements which will be entered into by the Special Placement Program for the delivery of certain goods or services, such as food catering or renovations, which will not be provided directly by the program.

1. Identify all proposed services which are to be provided through subcontracters;

2. Provide relevant background material regarding the proposed subcontracters;

3. Provide letters from the proposed subcontracters indicating their commitment and the specific goods and services to be provided.

**Application Screening Criteria**

The Community Relations Service will screen all applications submitted pursuant to this Notice. Screening shall be done to determine whether an application is sufficiently complete to warrant consideration and review by the independent CRS Review Panel.

An application may be rejected if:

1. The application is from an ineligible applicant or, in the case of national-level organizations, the applicant or its local-level affiliate does not meet the eligibility criteria contained in this notice.

2. The application is received after the stated closing time and date.

3. The application omits:

a. Relevant documentation regarding the proposed residential/office facility;

b. Documented written evidence of community support for the program;

c. A comprehensive line item budget with appropriate narrative description; and

d. A copy of the latest financial audit of the applicant and of the local-level affiliate, if the applicant is a national-level organization.

**Criteria for Evaluation of SPP Applications**

SPP applications will be competitively reviewed, evaluated and ranked by an independent review panel, according to the following weighted criteria:

1. The qualifications of the applicant organization or agency, and the local-level affiliate, if applicable, with respect to:

- Demonstrated experience in: (1) The resettlement of or provision of services to Cuban entrants or similar populations; (2) the administration of residential, community-based programs for ex-offenders; or, (3) the administration of other types of residential, community-based rehabilitative programs, and;
- Demonstrated capacity for effective programmatic and fiscal management and accountability. (10 points)

2. The rationale for the proposed program location as evidenced by:

- The quantitative and qualitative descriptions of the characteristics of the proposed resettlement city and proposed resettlement community;
- The institutional presence or broad support base of the applicant agency, or, the presence of a local-level affiliate in the proposed resettlement city, and;
- Documentation of community support. (10 points)

3. The availability of a suitable residential/office facility and submission of required documentation regarding facility compliance with applicable health, safety, licensing, and zoning regulations or requirements. (15 points)

4. The adequacy of the overall general program design in terms of:

- Proposed client load and selection criteria;
- Proposed period and phase activities, time-lines, and services, and criteria for entering various program periods and phases;
- Proposed plans for overall agency management and program management, including clear organizational charts reflecting lines of authority and responsibility, and;
- Staff qualifications, staffing patterns, and proposed staff training. (15 points)

5. The capacity for providing required program services, as demonstrated by:

- The program plan to provide basic services during all phases and periods of the program;
- An integrated program plan to provide all program services during the residential and community follow-up periods, particularly with regard to providing full-time, permanent employment for clients, and;
- Sensitivity to the issues of culture, race, ethnicity and native language and use of resources which promote and foster cultural identification and mutual support. (15 points)

6. The degree to which the applicant provides for effective program structure and accountability as demonstrated by administrative and programmatic controls, as well as program and client records and reports. (10 points)

7. The reasonableness of the proposed budget and budget narrative. (10 points)

8. The adequacy of the program evaluation plan. (5 points)

9. The submission of the requested Application Addenda Material. (10 points)

**Application Requests and Submissions**

Eligible applicants may request Proposal Application Packages from the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Senior Grants Management Specialist.

Proposal Application Packages may also be obtained by contacting the Community Relations Service at 301–492–5818, or, 1–800–424–6304.

Applicants must submit a signed original and two (2) copies of the proposal and supporting documentation to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815; Attention: Cynthia Bowie, Senior Grants Management Specialist.

**Applications Delivered by Mail**

An applicant must show proof of mailing consisting of the following:

1. A legible dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

If an application is sent through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, the applicant should check with its local Post Office.

Applicants are encouraged to use registered or at least First Class mail. Each late applicant will be notified that the application will not be considered.

Applications postmarked on or before 5 p.m. (Eastern Daylight Time), July 31, 1987, shall be considered as timely applications.

**Applications Delivered by Hand**

An application that is hand delivered must be taken to the United States Department of Justice, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

The Grants Management Office will accept hand delivered applications between 9:00 a.m. and 5:00 p.m., Eastern Daylight Time, daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 5:00 p.m., Eastern Daylight Time, on the closing date.

Catalogue of Federal Domestic Assistance Number: 16.201.

Dated: May 26, 1987.

**Bertram Levine,**

*Associate Director, Office of Policy Development.*

**Intergovernmental Review**

*Application Requirements*

Pursuant to Executive Order, 12372, *Intergovernmental Review of Federal Programs*, all States have the option of designing procedures for the review and comment on Federally assisted programs.

Each applicant is required to notify each State in which it is proposing activities under this Announcement and to comply with the States established review procedures. This may be done by contacting the applicable State Single Point of Contact (SPOC).

*State Requirements*

Comments and recommendations relative to applications submitted under this solicitation should be mailed no later than 60 days after the day of publication, addressed to: Richard Gutierrez, Coordinator, Immigration and Refugee Affairs, Community Relations Service, Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

[FR Doc. 87–12306 filed 5–28–87; 8:45 am]

BILLING CODE 4410–01–M

**Lodging of Consent Decree Pursuant to the Clean Air Act; North Hampton Developers, Inc., et al.**

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *Northampton Developers, Inc., et al.*, Civil Action No. 86-0019-F, was lodged with the United States District Court for the District of Massachusetts on May 19, 1987.

The proposed consent decree concerns violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR § 61.20, *et seq.*, (1983) and the Clean Air Act, 42 U.S.C. 7401, *et seq.* during the renovation and conversion of a dormitory into a condominium in Northampton, Massachusetts. The proposed decree requires Northampton to comply with the Clean Air Act and the asbestos NESHAP regulations. The proposed decree also requires payment of a $40,000 civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Northampton Developers, Inc., et al.*, D.J. Ref. No. 90-5-2-1-891.

The consent decree may be examined at the office of the United States Attorney, District of Massachusetts, 1550 Main St., Rm. 533, Springfield, Mass. 01103; at the Region I office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Mass. 02003; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87-12218 Filed 5-28-87; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA-W-19, 104]**

**Lakeview Manufacturing Co.; Lakeview, OH; Dismissal of Application for Reconsideration**

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Lakeview Manufacturing Company, Lakeview, Ohio. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19,104;

Lakeview Manufacturing Company, Lakeview, Ohio (May 18, 1987).

Signed at Washington, DC, this 21st day of May 1987.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 87-12293 Filed 5-28-87; 8:45 am]

BILLING CODE 4510-30-M

**[TA-W-18,487]**

**Philips ECG, Inc.; Seneca Falls, NY; Negative Determination Regarding Application for Reconsideration**

By an application dated March 26, 1987, the United Steelworkers of America requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Philips ECG, Inc., Seneca Falls, New York. The denial notice was signed on February 10, 1987 and published in the **Federal Register** on March 2, 1987 (52 FR 6238).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union cites testimony from a company official that the production shutdown of data display units is an extension of an earlier shutdown of color TV production where workers were certified eligible to apply for adjustment assistance. Also, the union presents evidence that the presence of foreign competition in color data display units was a strong reason in the company's decision not to invest more heavily in data display manufacturing.

Certification under the Trade Act of 1974 is based upon increased imports of articles which are like or directly competitive with the articles produced by the workers' firm or appropriate subdivision and which contributed importantly to declines in sales and/or production and employment. During the period applicable to the petition, the workers at Seneca Falls produced data display tubes for computer monitors, a different product from color television tubes. Granted, earlier on reconsideration, workers at Seneca Falls who produced picture tubes for color television sets were certified for adjustment assistance from March 6, 1985 until October 1, 1985 (TA-W-15,844). However, this would not form a basis for certifying workers laid off during the period applicable to this petition. The claim that the Seneca Falls plant could not be operated in a cost effective manner after the production shutdown of a different article cannot be used as a basis for certification under the worker adjustment assistance provisions of the Trade Act.

Further, not to invest in a market where foreign competition is strong would not, in itself, form a basis for certification. In order for a worker group to become certified and be eligible to apply for adjustment assistance, it must meet all three group eligibility criteria of the Group Eligibility Requirements of the Trade Act.

Findings in the investigation show that the "contributed importantly" test of the increased import criterion was not met. The "contributed importantly" test is generally demonstrated through a survey of the subject firm's customers. The Department's survey of Philips ECG's customers who accounted for a major share of the Philips' 1985 and 1986 sales declines of data display tubes shows that none of the respondents had import purchases of data display tubes for computer monitors.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of May 1987.

**Barbara Ann Farmer,**

*Acting Director, Office of Program Management, UIS.*

[FR Doc. 87-12294 Filed 5-28-87; 8:45 am]

BILLING CODE 4510-30-M

**Employment Standards Administration, Wage and Hour Division**

**Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the pubic interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

**Modifications to General Wage Determination Decisions**

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

*Volume I*

District of Columbia:
DC87-1 (January 2, 1987)..... pp. 86-95.
Maryland:
MD87-2 (January 2, 1987)..... pp. 418-422.
MD87-15 (January 2, 1987 .... pp. 450-451.

*Volume II*

Illinois:
IL87-3 (January 2, 1987)..... p. 114.
IL87-12 (January 2, 1987)..... p. 166.
IL87-13 (January 2, 1987)..... p. 176.
IL87-14 (January 2, 1987)..... pp. 186-188.
Indiana:
IN87-6 (January 2, 1987)..... p. 305.
Michigan:
MI87-2 (January 2, 1987)..... pp. 426-436a.
Ohio:
OH87-1 (January 2, 1987)..... pp. 720-721, p.725.
OH87-2 (January 2, 1987)..... pp. 734-735.
OH87-3 (January 2, 1987)..... p. 753.
OH87-28 (January 2, 1987)... pp. 812-813
OH87-29 (January 2, 1987)... pp. 818-819, pp. 821-825, pp. 830,835, and p. 838.
Texas:
TX87-7 (January 2, 1987)..... p. 838.

*Volume III*

California:
CA87-1 (January 2, 1987)..... pp. 36-36.
Idaho:
ID87-4 (January 2, 1987)..... pp. 163-163.
Oregon:
OR87-1 (January 2, 1987)..... p.277, pp. 283-284.
Washington:
WA87-1 (January 2, 1987).... pp. 347-348.
WA87-2 (January 2, 1987).... p. 354.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2nd Day of May 1987.

Alan L. Moss,

*Director, Division of Wage Determinations.*

[FR Doc. 87-12288 Filed 5-28-87; 8:45 am]

BILLING CODE 4510-27-M

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[87-47]

**Government-owned Inventions; Availability for Licensing**

AGENCY: National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly foreign licensing.

Copies of patent application cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.00 each ($10.00 outside North American Continent.) Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application copies sold to avoid premature disclosure.

**DATE:** May 26, 1987.

**FOR FURTHER INFORMATION CONTACT:** National Aeronautics and Space Administration, Dennis Marchant, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 453–2430.

Patent Application 904,128: Moving Wall, Continuous Flow Electrophoresis Apparatus; filed September 5, 1986.

Patent Application 911,851: Space Ultra-Vacuum Facility and Method of Operation; filed September 26, 1986.

Patent Application 924,672: Method and Apparatus Measuring Frequency and Phase Difference; filed October 28, 1986.

Patent Application 921,875: Thin Element Riblet Surface; filed October 21, 1986.

Patent Application 924,630: Scalloped Geometry Solar Concentrator; filed October 29, 1986.

Patent Application 924,307: Locking Hinge; filed October 29, 1986.

Patent Application 925,180: Method and Apparatus for Growing Crystals; filed October 31, 1986.

Patent Application 929,862: Method for Laminer Boundary Layer Transition Visualization in Flight; November 13, 1986.

Patent Application 931,952: Method and Device for Determining Heats of Combustion of Gaseous Hydrocarbons; filed November 24, 1986.

Patent Application 933,941: Frequency Domain Laser Velocimeter Signal Processor; filed November 24, 1986.

Patent Application 927,967: Local Area Network With Fault-Checking Priorities and Redundant Backup; filed November 7, 1986.

Patent Application 929,876: Trellis Coded Modulation for Transmission Over Fading Mobile-Satellite Channel; filed November 13, 1986.

Patent Application 927,972: Remotely Controllable Real-Time Optical Processor; filed November 7, 1986.

Patent Application 933, 217: Isotope Separation Using Tuned Laser and Electron Beam; filed November 13, 1986.

Patent Application 933,963: High Performance Forward Swept Wing Aircraft; filed November 24, 1986.

Patent Application 933,961: Procedure To Prepare Transparent Silicon Gels; filed November 24, 1986.

Patent Application 927,992: Multi-Path Peristaltic Pump; filed November 7, 1986.

Patent Application 928,875: Expandable Pallet For Space Station Interface Attachments; filed November 13, 1986.

Patent Application 929,865: Space Station Erectable Manipulator Placement System; filed November 13, 1986.

Patent Application 942,159: Orbital Maneuvering and End Effectors; filed December 16, 1986.

Patent Application 943,346: High Effectiveness Contour Matching Contact Heat Exchanger; filed December 19, 1986.

Dated: May 20, 1987.

**Edward A. Frankle,**

*Deputy General Counsel.*

[FR Doc. 87–12274 Filed 5–28–87; 8:45 am]

BILLING CODE 7510–01–M

[Notice 87–46]

## NASA Wage Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Wage Committee.

**DATE AND TIME:** June 26, 1987, 1:30 p.m. to 3:00 p.m.

**ADDRESS:** National Aeronautics and Space Administration, Room 5092, Federal Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah C. Green, Code NPC, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2822.

**SUPPLEMENTARY INFORMATION:** The Committee's primary responsibility is to consider and make recommendations to the NASA Director, Personnel Programs Division, on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Pub. L. 92–392. The Committee, chaired by Ms. Deborah Green, consists of six members. During this meeting, the Committee will consider wage data, local reports, recommendations, and statistical analyses and proposed wage schedules previewed therefrom. Discussions of these matters in a public session would constitute release of confidential commercial and financial information obtained from private industry. Since the session will be concerned with matters listed in 5 U.S.C. 552b(c)(4), it has been determined that this meeting will be entirely closed to the public. However, members of the public who may wish to do so, are invited to submit material in writing to the Chairperson concerning matters believed to be deserving of the Committee's attention.

*Type of Meeting:* Closed.

*Purpose of Meeting:* The NASA Wage Committee will recommend to the NASA Wage Fixing Authority the proposed wage schedule to be adopted.

**Richard L. Daniels,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

May 21, 1987.

[FR Doc. 87–12273 Filed 5–28–87; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Expansion Arts Advisory Panel (Services to the Field Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on June 12, 1987, from 9:15 a.m.–6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 12, 1987 from 9:15 a.m.–10:30 a.m. and 4:45 p.m.–6:00 p.m. The topics for discussion will include geneal program overview and policy issues.

The remaining sessions of this meeting on June 12, 1987 from 10:30 a.m.–4:45 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682 5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 21, 1987.

[FR Doc. 87–12219 Filed 5–28–87; 8:45 am]

BILLING CODE 7537–01–M

## Literature Advisory Panel (Translators Fellowships Section), Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Translators Fellowships Section) to the National Council on the Arts will be held on June 12, 1987, from 9:00 a.m.–5:30 p.m. and June 13, 1987 from 9:00 a.m.–2:00 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 13, 1987 from 12:00 p.m.–1:00 p.m. The topics for discussion will be policy issues.

The remaining sessions of this meeting on June 12, 1987 from 9:00 a.m.–5:30 p.m. and on June 13, 1987 from 9:00 a.m.–12:00 p.m. and 1:00 p.m.–2:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 21, 1987.

[FR Doc. 87–12220 Filed 5–28–87; 8:45 am]

BILLING CODE 7537–01–M

## Partnership Advisory Panel (Locals Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (Locals Section) to the National Council on the Arts will be held on June 15–16, 1987, from 9:00 a.m.–5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 16, 1987 from 2:00 p.m.–5:30 p.m. The topics for discussion will be policy issues.

The remaining sessions of this meeting on June 15, 1987 from 9:00 a.m.–5:30 p.m. and on June 16, 1987 from 9:00 a.m.–2:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 22, 1987.

[FR Doc. 87–12221 Filed 5–28–87; 8:45 am]

BILLING CODE 7537–01–M

## Plenary Meeting XV of the President's Committee on the Arts and the Humanities; Meeting

Tuesday, June 16, 1987 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting XV. This meeting has been scheduled in the Trustees Room, The Art Institute of Chicago, Chicago, Illinois. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported.

Agenda items on June 16 will include:

- Briefings by the Chairman of the National Endowment for the Arts and the National Endowment for the Humanities on the highlights of their activities.
- The Honorable Daniel J. Terra, Ambassador at Large for Cultural Affairs will describe the development of his own new Terra Museum of American Art.
- Co-Vice Chairman Barnabas McHenry will report progress of the Fund for *New American Plays*.
- The Honorable Lois Burke Shepard, Director of the Institute of Museum Services will discuss *Conservation, The Critical Need: Perspective, Purpose and Plans*.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

For further information individuals may call (202) 682–5409.

John H. Clark,

*Director, Council and Panel Operation, National Endowment For The Arts.*

May 21, 1987.

[FR Doc. 87–12222 Filed 5–28–87; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–549 (ASLBP No. 76–315–07CP)]

## Power Authority of the State of New York (Greene County Nuclear Power Plant); Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for *Power Authority of the State of New York* (Green County Nuclear Power Plant), Docket No. 50–549, is hereby reconstituted by appointing Administrative Judge Charles Bechhoefer in place of Administrative Judge Andrew C. Goodhope, who has resigned.

As reconstituted, the Board is comprised of the following Administrative Judges: Charles

Bechhoefer, Chairman; Dr. George A. Ferguson, and Dr. Richard F. Cole.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 19th day of May 1987.

B. Paul Cotter, Jr.,

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 87-12306 Filed 5-28-87; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Review of Circular A-102, "Uniformed Administrative Requirements for Assistance to State and Local Governments"; Availability of Proposed Application and Financial Reporting Forms

**AGENCY:** Financial Management Division, Associate Director for Management, Office of Management and Budget.

**ACTION:** Notice of proposed, revised grant application and financial reporting forms.

**SUMMARY:** A 20-agency task force under the President's Council on Management Improvement (PCMI), chaired by OMB, was established to explore streamlining grants management and review OMB Circular A-102, "Uniformed Administrative Requirements for Grants to State and Local Governments." As part of that effort, agencies reviewed the standard application and financial reporting forms prescribed in the Circular, as well as the need for new, standardized financial reporting formats for the open-ended entitlement programs.

A copy of the proposed, revised application and financial reporting forms, as well as the proposed new standardized financial reporting formats for the entitlement programs, is available at the address below for public comment.

**SUPPLEMENTARY INFORMATION:**

#### Background

OMB Circular A-102, "Uniformed Administrative Requirements for Assistance to State and Local Governments," promulgates standards for establishing consistency and uniformity among Federal agencies in the administration of grants and other types of financial assistance to State, local, and federally-recognized Indian tribal governments. The Circular standardizes and simplifies grants administration requirements and limits Federal agencies' imposition of "excessive" requirements on grantees.

A notice announcing review of the Circular was published in the Federal Register on June 18, 1984 (49 FR 24958). The notice explained the purpose and process of the review, and made available a document setting forth over 50 potential policy issues and options.

As a part of that effort, agency teams reviewed the existing sets of standard froms presented in the Circular as well as the need of new, standard financial reporting formats for the open-ended entitlement programs. This notice presents the results of the review of the forms. Public comment on all aspects of the forms is welcome, including whether these forms should be "Standard Forms." Following review of public comment, we will formally submit the revision to OMB's Office of Information and Regulatory Affairs.

On March 12, 1987, the President signed a memorandum to the 23 grant-making agencies directing them to simultaneously propose and issue a common rule that adopts government-wide grants management terms and conditions for grantees. A proposed common rule will be published on June 9, 1987; a final common rule will be published on March 11, 1988. The common rule will require use of the revised standard forms and new formats for the open-ended entitlement programs.

#### Application Forms

Circular A-102 currently prescribes four standard application forms and the SF-424 facesheet. Based on recommendations and suggestions following the June 18, 1984 notice, agencies have drafted two proposed forms as a replacement:

- Application/Preapplication for nonconstruction assistance.
- Application/Preapplication for construction assistance.

Each includes a revised SF-424 facesheet followed by appropriate budget detail and standard assurances.

#### Financial Reporting Forms

Circular A-102 now requires grantees to report expenditures on the SF-269, "Financial Status Report."

The General Accounting Office, as well as several Inspectors General, have called for more complete reporting of grantee matching or cost sharing contribution, and better reporting on the use of program income according to the three alternatives offered in Attachment K of the Circular. Accordingly, two financial reporting forms are proposed:

- SF-269, Financial Status Report (short form).
- SF-269, Financial Status Report (long form).

The short form is a simplified version of the current SF-269 for grants with no program income or matching share. The long form provides a complete reporting and calculation of the Federal share for grants where the grantee has a matching requirement or where program income is attributable to grant activities.

#### Entitlement Programs

A number of the largest grant programs to States are entitlement programs with an open-ended claim on Federal funds. Among these programs are a number operated by the Department of Health and Human Services (HHS), such as:

—Aid to Families with Dependent Children (AFDC)
—Medicaid
—Child Support Enforcement
—Foster Care

and others by the Department of Agriculture (USDA)

—the state administrative costs portion of Food Stamps.

These programs differ from traditional grants in that they provide benefits to all qualified persons or families that apply, so that spending levels depend on the number of qualified individuals rather than an agency's grant award decision.

In the past and currently, each of these programs has used its own tailored financial reporting forms instead of the SF-269, "Financial Status Report," prescribed in Circular A-102.

New standardized financial reporting formats are proposed to introduce complete, consistent and logical reporting among the open-ended entitlement programs.

#### Paperwork Clearance

In the meantime, we have re-submitted the existing standard forms to OMB's Office of Information and Regulatory Affairs (OIRA) for clearance under the Paperwork Reduction Act (44 U.S.C. Chapter 35) with a request to extend the expiration date to July 1989.

*Titles and form numbers:*

—Preapplication for Federal Assistance, SF-424
—Application for Federal Assistance—Short Form, SF-424
—Application for Federal Assistance—Nonconstruction, SF-424

—Application for Federal Assistance—Construction, SF–424
—Financial Status Report, SF–269
—Request for Advance or Reimbursement, SF–270
—Outlay Report and Request for Reimbursement for Construction Programs, SF–271
—Federal Cash Transaction Report SF–272, SF–272a

*Type of Request*: Extension of the expiration date.

*Need and use*: The application forms are used to qualify and select grant applicants; the financial reporting forms are used to monitor and pay grantees.

*Affected public*: State, local and Indian tribal governments which apply for and administer Federal grants.

*Frequency*: Application forms are submitted on occasion; financial reports no more frequently than quarterly.

*Respondent's obligation*: Required to obtain or retain a benefit.

*OMB Desk Officer*: Ed Springer, (202) 395–4814.

A copy of the existing forms can also be obtained from the Financial Management Division/Grants Management (see address below). Written comments should be sent to the OMB Desk Officer.

**Address for Information and Comments**

A copy of each or all three (3) sets of draft forms is available by calling (202) 395–3050 or writing to the Financial Management Division/Grants Management, Office of Management and Budget, Room 10215 New Executive Office Building, Washington, DC 20503. All written comments should be submitted to the same address by July 28, 1987.

Gerald R. Riso,

*Associate Director for Management.*

[FR Doc. 87–12267 Filed 5–28–87; 8:45 am]

BILLING CODE 3110–01–M

## SECURITIES AND EXCHANGE COMMISSION

**Forms Under Review of Office of Management and Budget**

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142
Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549
Extension: Rule 15c3–3; File No. 270–67

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a revision of a currently approved collection under Rule 15c3–3 (17 CFR 240.15c3–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires brokers or dealers to prepare computations with respect to the amount of customer funds they must deposit in Reserve Bank Accounts. The potential affected persons are approximately 1,000 registered broker-dealers per year.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395–7340, Office of Information and Regulatory Affairs, Room 3228, NEOB, Washington, DC 20503.

Jonathan G. Katz,

*Secretary.*

May 21, 1987.

[FR Doc. 87–12244 Filed 5–28–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24469; File No. SR–ODD–87–2]

**Self-Regulatory Organizations; Trans Canada Options, Inc.; Order Granting Approval to Proposed Amendments to Option Disclosure Document**

On April 10, 1987, Trans Canada Options, Inc. ("TCO"), submitted amended copies of an options disclosure document to the Commission pursuant to Rule 9b–1 of the Securities Exchange Act of 1934 ("Act"). The amended disclosure document discusses the characteristics and risks of Canadian exchange-traded put and call options available to United States investors. Previously, on October 2, 1984, the Commission approved the use and distribution of a TCO disclosure document which discussed the risks and uses of options on equity securities.[1] In addition, on August 21, 1985, the Commission approved an amended TCO disclosure document that incorporated discussion of the risks and uses of Canadian exchange-traded index and bond options.[2] TCO has now further amended its disclosure document by deleting sections describing the uses of option products and focusing on the characteristics and risks of standardized options.[3] TCO also is expanding the document to include a discussion on the characteristics and risks of options on the Government of Canada Treasury Bill Price Index.

Rule 9b–1 provides that an options market must file five preliminary copies of an amended options disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise, having due regard to the adequacy of the information disclosed and the protection of investors. The Commission has reviewed the amended disclosure document, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 19, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87–12245 Filed 5–28–87; 8:45 am]

BILLING CODE 8010–01–M

[Release N. 34–24468; File No. SR–NYSE–86–24]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc.**

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted on August 22, 1986 and January 7, 1987, copies of a proposed rule change and an amendment pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b–4 thereunder to reposition three Exchange Constitutional provisions regarding arbitration, revise its schedule of arbitration fees, and adopt a new rule, on a one year experimental basis, requiring contesting parties to an arbitration hearing to exchange documents ten days prior to the scheduled hearing date.[1]

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[1] Securities Exchange Act Release No. 21385 (October 2, 1984), 49 FR 39400 (October 5, 1984).

[2] Securities Exchange Act Release No. 22349 (August 21, 1985).

[3] On April 10, 1986, the Commission approved amendments to Rule 9b–1 that deleted from the Rule the requirement that the options disclosure document contain information regarding the uses of the options classes covered by the document. The Rule was amended because investors and market participants had become more knowledgeable about the uses of options and the discussion of uses and trading strategies had become largely redundant. Discussion of the uses of listed options products has been retained in options disclosure documents to the extent that it facilitates explanation of the characteristics and risks of options products. *See* Securities Exchange Act Release No. 24–23115 (April 10, 1986), 51 FR 14082 (April 22, 1986).

[4] Rule 9b–1 provides that the use of an options disclosure document shall not be permitted unless the options class to which the document relates is the subject of an effective registration statement on form S–20 under the Securities Act of 1933. On May 12, 1987, the Commission, pursuant to delegated authority, declared effective Post-Effective Amendment No. 7 to TCO's Form S–20 registration statement which added index options and interest rate options. *See* File No. 2–69458.

[1] The NYSE filed Amendment No. 1 to its proposed rule change January 7, 1987.

Proposed Rule 636 would authorize the Chairman of the Board of Directors ("Chairman") to appoint present or former Exchange members and officers of member corporations to a Board of Arbitration. Proposed Rule 636 would authorize the Chairman to appoint retirees of the securities business to one of two panels or arbitrators. Proposed Rule 637 would authorize the Chairman to appoint a Director of Arbitration without the approval of the Exchange Board or Directors.[2]

The Exchange is also proposing to revise its schedule of arbitration fees set forth in NSYSE Rules 630 and 632. The proposed amendments would increase the required deposit by claimants in non-member controversies from $300 to $400 where the amount in controversy is between $10,000 and $20,000.[3] Where the amount in controversy is between $20,000 and $50,000, the deposit fee would be reduced from the current $500 fee to $400. The current $500 fee would remain unchanged for amounts in controversy between $50,000 and $100,000. The deposit fee for claims where the amount in controversy is between $100,000 and $500,000 would be $750. The Exchange would impose a new $1,000 deposit fee for all cases exceeding $500,000.[4] Finally, the proposed amendments to Rule 630(c) would increase the maximum fee allowable in disputes which do not involve or disclose a money claim from $750 to $1000.

The proposed amendments to NYSE Rule 632 would increase the required deposit per hearing in cases involving member controversies from $100 to $200 where the amount in controversy is $5,000 or less;[5] and from $500 to $750 where the amount in controversy is $10,000 or more. In addition, where the controversy does not involve a money claim the Exchange will determine the required deposit, although the maximum deposit fee allowable in these cases is $1000.

The Exchange also proposes to adopt new Rule 638 that would require contesting parties to an arbitration to exchange documents in their possession that are intended to be introduced at the arbitration hearing at least 10 days prior to the scheduled hearing date. Under the proposed rule, the arbitrators can exclude from the arbitration any document not so exchanged. The NYSE has indicated that it intends to implement the new rule on a one year experimental basis.

Notice of the proposed rule change together with its terms of substance was given by issuance of a Commission release (Securities Exchange Act Release No. 24182, March 5, 1987) and by publication in the Federal Register (52 FR 7722, March 12, 1987). The Commission received one comment letter concerning the section of the proposed rule change relating to the proposal to require a 10-day pre hearing exchange of documents.[6] In addition to noting several concerns about the practical application of the rule, the letter questions the need for such a rule, giving current arbitration rules given arbitrators flexibility to exclude certain documents from evidence and to direct the production of other documents by a particular party.[7]

With regard to the repositioning of the NYSE Constitutional provisions, the Commission recognizes that an Exchange may need to revise and update portions of its Constitution to reflect trends within the securities industry, to respond to regulatory developments, or to implement managerial, financial, or administrative decisions of its Board of Directors. For the most part, the repositioning of certain constitutional provisions into the NYSE rule section do not involve any substantive changes and therefore should be approved. Rule 637 would, however, alter the former constitutional provision (Article VIII, Section 3) by allowing the Chairman, without Board approval, to appoint a Director of Arbitration. After reviewing this change, the Commission concludes that, from a managerial standpoint, it is reasonable and appropriate not to require full Board approval to appoint the Director of Arbitration.

Regarding the revised schedule of arbitration fees, section 6(b)(4) of the Act requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities. The Commission believes that the proposed revisions to the NYSE's schedule of fees is also reasonable. In those situations where the proposal would result in a fee increase, the Commission believes that the increase will help the NYSE defray a greater portion of the costs it incurs in providing an arbitration facility to its members and the public.[8]

Finally, with regard to proposed Rule 638 requiring a pre-hearing exchange of documents, the NYSE has indicated in its filing that it objective is to save arbitrator time by reducing the number of session hours required per hearing as well as avoid unnecessary hearing delays and recesses often associated with the introduction of unexpected evidence at an arbitration hearing. The NYSE believes that the proposed rule will result in more efficient and expeditious arbitration hearings. After careful review, the Commission has concluded that the proposed rule is a reasonable effort by the NYSE to improve its arbitration process by making arbitration hearings more cost-efficient and less time consuming. Although some of the practical concerns expressed by the commentator may be legitimate, we note that the rule simply gives the arbitrator the power to exclude evidence from the arbitration not exchanged at least ten days prior to the hearing rather than requiring, in all cases, that violations of the rule result in an exclusion of documents. In addition, it is clear that the rule would not be applicable in cases where the arbitration hearing has been set within 10 days on an expedited basis.

The Commission nevertheless believes that because of certain concerns over the practical applications of the rule and its effect on the arbitration process, the proposed rule

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[2] Formerly, under Article VIII § 3 of the Exchange Constitution such appointment by the Chairman required the appoval of the Exchange Board of Directors. In Securities Exchange Act Release No. 23666, the NYSE eliminated this provision from its Constitution.

[3] Currently, NYSE Rule 630 provides that a $300 deposit is required where the amount in controversy is between $10,000 and $25,000; $500 where the amount in controversy is between $20,000 and $100,000; and $750 for all cases exceeding $100,000.

[4] We note that under the current rules, $750 is the maximum fee required.

[5] The Exchange indicates that this shall also be the fee for non-member claimants who are not public customers.

[6] See, letter from Thomas M. Campbell, Attorney, Cahill Gordon & Reindel to Johnathan G. Katz, Secretary, Securities and Exchange Commission, dated September 29, 1986.

[7] Specifically, the commentator noted that the proposed rule fails to account for practical difficulties associated with NYSE arbitrations, such as expedited arbitrations which are usually heard within 10 days as a result of a court order or by consent of the parties. In addition, in many complex cases (e.g., where the documents intended to be introduced at the hearing are in the possession of a third party), documents which are intended to be introduced at the arbitration hearing are not available or cannot be identified before ten days prior to the hearing. The commentator also noted other practical difficulties encountered in NYSE arbitrations. He also observed that parties to an arbitration do not often subpoena or request documentary evidence from each other and to require them to do so would prove costly and unfair.

[8] We note that the revised arbitration fee schedule will conform it to the fee schedule adopted by the Uniform Code of Arbitration. The Commission recently approved a similar proposed rule change submitted by the American Stock Exchange, Inc. that made the same conforming amendments to its schedule of arbitration fees. *See*, Securities Exchange Act Release No. 24379, April 22, 1987, 52 FR 15577, April 29, 1987.

should be approved on a one year pilot basis. As a pilot program the Commission and Exchange will be able to analyze the rule to determine its effectiveness and discover any problems encountered in implementing the rule. In this regard, the Exchange has indicated it will evaluate the rule by utilizing both objective and subjective criteria.[9] The NYSE has agreed to submit to the Commission its evaluation results prior to the pilot's conclusion if it decides to propose adoption of the pilot on a permanent basis.

Based on the above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: May 20, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-12246 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24474; File No. SR-NYSE-86-21]

## Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Revision of List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A "Imposition of Fines for Minor Violation(s) of Rules"

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1986, the New York Stock Exchange, Inc., ("NYSE" or "Exchange") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to revise the list of Exchange rule violations and fines applicable thereto pursuant to Rule 476A, "Imposition of Fines for Minor Violation(s) of Rules," (the "Rule 476A Violations List") by adding to the list various rules administered by the Exchange's Member Firm Regulation/Enforcement and Regulatory Standards Divisions.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizaton has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Rule 476A [1] provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate but when the initiation of a full disciplinary proceeding would be more costly and time consuming than would be warranted given the minor nature of the violation. Rule 476A provides for such an appropriate response to minor violations of certain Exchange rules while, through its specified required procedures, preserving the due process rights of the party accused. The Rule 476A Violations List specifies those rule violations that may be the subject of fines under the rule and also includes a schedule of fines. The purpose of this proposed rule change is to add certain rules to the Rule 476A Violations List. The types of rules covered generally include reporting and record retention requirements, Exchange approval requirements, and other rules for which, in the opinion of the Exchange, determinations of violations can be made objectively.[2]

The proposed rule change will advance the objectives of section 6(b)(6) of the Securities Exchange Act of 1934 (the "Act") in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Sections 6(b)(7) and 6(d)(1) of the Act.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that this proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange did not solicit or receive written comments on the proposed rule change from members, participants or others.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i)

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[9] According to the Exchange, the objective criteria will consist of statistics enumeriating the average number of sessions per matter for closed matters as well as the number of adjournments per matter on a per year basis. These statistics will be compared with past years' statistics to determine whether the experiment has been a success as indicated by a leveling off or decrease in the number of sessions per matter. The Exchange will also solicit the opinions of the arbitrators to ascertain whether actual session time has decreased.

[10] 17 CFR 200-30-3.

[1] Rule 476A was approved by the Commission on January 25, 1985 (see Release No. 34-21686). Subsequent additions of rules to the Rule 476A Violations List were approved on May 14, 1985 (See Release No. 34-22037), October 2, 1985 (see Release No. 34-22498) and April 11, 1986 (see Release No. 34-23104).

[2] NYSE Rule 476A likewise serves as the basis for the NYSE minor rule violation plan, which was approved by the Commission pursuant to Rule 19d-1(c)(2) of the Act. The plan, which permits quarterly reporting of certain Exchange violations to the Commission, extends only to those disciplinary proceedings under Rule 476A which result in fines of $2,500 or less. *See* Securities Exchange Act Release No. 22415 (September 15, 1985).

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. The Commission also solicits comments on the appropriateness of the inclusion of certain NYSE Rules within the NYSE minor rule violations plan. Specifically, the Commission invites comment on the NYSE's plan to include its Rules 408(a) (requirement that written authorization be obtained for discretionary power in a customer's account); 432(a) (daily record of required margin); 451 and 452 (requirements relating to transmission of proxy material and authorizing the giving of proxies); and 726 (option disclosure document and prospectus delivery requirements). Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization.

All submissions should refer to the file number in the caption above and should be submitted by June 19, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 19, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-12247 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24483; File No. 4-284]

**Self-Regulatory Organizations; Notice of Filing of Proposed Plan by the New York Stock Exchange, Inc., Relating to the Quarterly Reporting of Minor Disciplinary Rule Violations**

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19d-1(c)(2) thereunder,[1] notice is hereby given that on July 10, 1986, the New York Stock Exchange ("NYSE") submitted copies of a proposed amendment to its minor rule violation plan. The Commission previously approved a minor rule violation plan filed by the NYSE.[2] The plan relieves the NYSE of the current reporting requirement imposed by Section 19(d)(1) of the Act, for final disciplinary actions, with respect to violations listed under the NYSE plan.[3]

The proposed amendment would add a variety of rule violations to the NSYE plan. Specifically, the NYSE proposal would incorporate the following rules within the minor rule violation plan: Rules 312(a), 312(b), 312(c), 313, 345.13, 346(c), 351, 421, 440F, 440G, 440H, and 706 (rules concerning violations of Exchange reporting requirements); Rules 312(h), 312(i), 342(c), 342.10, 382(a) and 791(c) rules concerning violations of Exchange approval requirements); (Rules 345.18, 410, 432(a) and 440 (rules concerning violations of record retention requirements); Rule 343 (violations of requirement relating to member organization office sharing arrangements); Rule 387 (violations of COD/POD transaction requirements); Rule 407 (violations of requirement for transactions of employees of the Exchange, member organizations, and certain non-member organizations); Rule 408(a) (violations of requirement that written authorization be obtained for discretionary power over a customer account); Rules 451 and 452 (violations of requirements relating to transmission of proxy material and authorizing the giving of proxies); Rule 726 (violations of option disclosure document and prospectus delivery requirements); and Rule 791 (violations of allocation of exercise assignment notices). These violations would be reported to the Commission in a manner identical to all other violations subject to the minor rule violation plan. A quarterly report listing the NSYE internal file number for the case, the SEC file number, name of individual or member organization, nature of the violation, specific rule provision violated, date of violation, fine imposed, an indication of whether the fine is joint or several, the number of times the rule violation has occurred and the date of disposition.[4]

In order to assist the Commission in determining whether to approve the proposed amendments to the plan or institute proceedings to determine whether the proposed amendments should be disapproved, interested persons are invited to submit written data, views and argumetns concerning the submission by June 19, 1987. In particular, the Commission solicits comments concerning the proposal by the NYSE to include its Rules 408(a), 432(a), 451, 452, and 726 within their minor rule violation plan. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. 4-284. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment to the plan which are filed with the Commission, and all written communications relating to the proposed amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing will be available also at the principal office of the NYSE.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

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[1] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838. The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. Under the Amendments, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

[2] *See* Securities Exchange Act Release No. 22300 (August 8, 1985) and 22415 (September 15, 1985).

[3] *See* NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules"); Securities Exchange Act Release No. 21668 (January 25, 1985) 50 FR 5025 (approving NYSE Rule 476A).

[4] The fine schedule for Rule 476A is as follows: (1) first offense, a fine of $500 for an individual and $1,000 for a member organization; (2) second offense, a fine of $1,000 for an individual and $2,500 for a member organization; (3) subsequent fines are $2,500 for an individual and $5,000 for a member organization. Fines in excess of $2,500 are not covered by the minor rule violation plan.

Dated: May 19, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-12248 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24490; File No. SR-PSE-87-04]

## Self-Regulatory Organizations; Pacific Stock Exchange Incorporated; Order Approving Proposed Rule Change

The Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") submitted on February 5, 1987, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder to require members and member firms to notify the PSE of any change to their addresses where notices may be served within sixty days of such change.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 24164, March 3, 1987) and by publication in the **Federal Register** (52 FR 7725, March 12, 1987). No comments were received regarding the proposal.

In its filing, the Exchange indicated that the purpose of the new rule is to ensure that the Exchange has on file the current addresses of its members and member firms for the purpose of sending important correspondence including disciplinary related correspondence. The Exchange believes that such a rule is necessary to ensure that it meets its investigatory and disciplinary obligations imposed by Section 6 of the Act.[1]

The Commission believes that the proposed rule change is a necessary part of the Exchange's efforts to oversee and regulate the activities of its members. By requiring members and member firms to notify the Exchange of any address changes within sixty days of such change, the Exchange will ensure that it will continually have on record the proper addresses to forward both disciplinary and non-disciplinary correspondence. For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Dated: May 20, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-12249 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24491; File No. SR-Phlx-87-8]

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On February 24, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to modify the Exchange's procedures regarding the position and exercise limit exemption process.

The proposed rule change was noticed in Securities Exchange Act Release No. 24304 (April 6, 1987). No comments were received on the proposed rule change.

The purpose of this rule change is to modify the Exchange's procedures regarding the position and exercise limit exemption process. Position and exercise limit exemptions, which are sparingly granted, require concurrence of two option floor officials. These decisions are normally made in consultation with Phlx staff. The primary factor in granting position limit exemption is the need to accommodate increased public customer order flow, which could not otherwise be filled by market-makers without placing them over current position limits.[3] The proposed rule change adopts several specific factors to be considered in making this determination: the size and character of prior trading in the option by the applicant; the size of the applicant's current positions in relation to the position limit; and the willingness of other market participants to make size markets. The exemptive process has adequate operational safeguards, as floor officials may rely upon the Exchange's audit trail system to ascertain the intra-day positions of a party seeking such an exemption while determining whether there is an immediate need to handle large public orders in the market place.

The Exchange's rules currently do not contain specific factors to be evaluated by floor officials in considering position and exercise limit requests. The proposed guidelines should be helpful in determining whether the applicant for an exemption has a legitimate need for an exemption in filling customer orders. Hence, the proposal should provide increased guidance to floor officials, assure consistency in granting exemption requests, and facilitate greater responsiveness to market needs in acting upon exemption requests.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6,[4] and the rules and regulations thereunder, in that it will improve the exemption process.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: May 21, 1987.

Jonathan Katz,

*Secretary.*

[FR Doc. 87-12250 Filed 5-28-87; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-24496; File No. SR-Phlx-86-41]

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval of New Specialist Evaluation and Allocation Rules Until November 30, 1987

### I. Introduction

The Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted on December 8, 1986, copies of a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder [1] to adopt new rules governing the allocation, reallocation, and transfer of securities listed on the Exchange and to amend the Exchange's Option Floor

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[1] We note, for example, that section 6(b)(7) of the Act requires that the rules of an exchange provide a fair procedures for disciplining members.

[2] 17 CFR 200.30-3.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Telephone conversation between Robert Mooney, Division of Market Regulation, and Gerry O'Connell, Director of Surveillance, Phlx, on May 15, 1987.

[4] 15 U.S.C. 78f, (1982).

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

[1] 17 CFR 240.19b-4 (1986).

Procedure Advices ("Options Advices"). The amendment to the Advices would fine floor brokers who fail to complete the Option Specialist Performance Evaluation Questionnaire.[2] The new rules are intended to replace the existing Specialist Evaluation and Allocation rules which have been effective on a continuing pilot basis since the inception of the pilot program in 1982.[3]

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 24045, February 2, 1987) and by publication in the Federal Register (52 FR 4549, February 12, 1987). No comments were received regarding the proposal.

The Phlx has requested that the Commission approve the proposed rules on a permanent basis. After careful review of the rules, the Commission has determined to approve the rules for an eight month period, to be effective as of March 31, 1987.

## II. Description of the Proposal

In its filing, the Exchange has indicated that the purpose of the proposed rule change is to establish new rules to govern specialist evaluations and the allocation, reallocation and transfer of equity books and option classes to Phlx specialists. The proposed rules contain several significant provisions.

First, the proposed rules establish objective criteria by which the Allocation Evaluation and Securities Committee ("Committee") can evaluate the performance of equity specialists.[4] In this context, the Phlx has developed a new equity specialist statistical evaluation questionnaire.[5] Such routine reviews will continue to be conducted regularly on a quarterly basis.[6]

The new equity specialist questionnaire will be divided into four sections—PACE, ITS, General, and Primary Issues—with each section containing one or more evaluation questions. Specialist units will be ranked from worst to best in each of the rating categories based upon their performance in the category. Any specialist unit ranking in the bottom 15% in overall ratings for two consecutive quarters or in the bottom 15% on the PACE, ITS, or General sections of the questionnaire for three consecutive quarters will be judged to have performed below minimum standards.[7] As a result, a special review of the specialist and the specialist unit will be undertaken by the Committee within the following 60 days to determine whether the specialist unit's performance has improved.

If the Committee concludes that the equity specialist unit's performance has not improved, it may institute reallocation proceedings, although reallocation of the unit's registered securities is discretionary. If a specialist unit deemed to have performed below minimum standards on a previous occasion subsequently performs below minimum standards (i.e., ranking in the bottom 15% in overall ratings for two consecutive quarters or in the bottom 15% in the PACE, ITS, or General sections of the survey for three consecutive quarters) the Committee immediately will commence reallocation proceedings.

The Phlx rules also provide for review of those units that have fallen below minimum standards (but did not have their stocks reallocated) and continue over the next year to demonstrate questionable performance. If a specialist unit deemed to have performed below minimum standards overall (*i.e.*, ranking in the bottom 15% in overall ratings for two consecutive quarters) ranks in the bottom 15% overall in one of the next four quarters, the Committee will review the specialist unit's performance and may institute reallocation proceedings. Similarly, if a specialist unit deemed to have performed below minimum standards in the PACE, ITS, or General sections of the survey for three consecutive quarters subsequently ranks in the bottom 15% in any two of the next four quarters, the Committee will review the specialist's performance and may institute reallocation proceedings.

The new rules would broaden considerably the Committee's discretionary authority in various areas. For example, the Committee will be able to institute special reviews for reallocation purposes at anytime it deems necessary. In addition, under the proposed new rules, the Committee could require a specialist unit to hire additional employees in order to be approved as a specialist in a stock or to retain its status.[8] Moreover, the new rules will permit the Committee to establish any additional criteria it considers appropriate in making its allocation and reallocation decisions.[9]

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[2] The Phlx submitted to the Commission, on January 27, 1987, the complete text of the proposed amendment to the Exchange's Option Floor Procedure Advice. Copies of the text are available from the Commission and from the Phlx.

[3] On August 17, 1982, the Commission approved, as a two year pilot, Rules 500–508 that authorized the Phlx's Allocation, Evaluation and Securities Committee to appoint specialists and alternate specialists in equity securities and to appoint specialists and registered options traders in listed options. In addition, the rules established procedures for the periodic review and evaluation of specialist performance. The rules became effective October 1, 1982 for a two year period. Securities Exchange Act Release No. 18975 (August 17, 1982), 47 FR 37016. The pilot subsequently was extended until March 31, 1987. *See* Securities Exchange Act Release Nos. 21460 (November 1, 1984), 49 FR 44099; 22110 (June 28, 1985) 50 FR 27862; 22859 (February 4, 1986), 51 FR 5453, 23494 (July 24, 1986) 51 FR 27258; and 23823 (November 22, 1986), 52 FR 198.

[4] Questionnaires completed by Floor brokers will continue to be used to evaluate the performance of specialists trading options. As noted above, the proposed rule would amend the Phlx's Options Advices so that floor brokers could be fined for failing to complete the options specialist performance evaluation questionnaire ("SPEQ"). We also note, that the proposed rules provide flexibility for the Phlx to adopt objective criteria in evaluating options specialists performance in the future. Of course, any changes to move to an objective standard of evaluation for options would have to be submitted to the Commission for its review under section 19(b) of the Act.

[5] The Phlx questionnaire currently used to evaluate equity specialist performance consists of 13 questions covering various functions of the equity specialist. The questionnaire, completed by floor brokers, provides for a numerical rating of 1 through 9 (poor to excellent). A specialist and/or specialist unit is deemed to have performed unsatisfactorily if it receives an overall quarterly grade below 5.00 for the preceding quarter; an average quarterly grade below 5.00 on three or more individual questions for the preceding quarter; or an average quarterly grade below 5.00 for the same question for three consecutive quarters. An unsatisfactory performance evaluation will lead to an informal meeting with the Committee. A formal meeting with the Committee (which may result in reallocation) is required if a specialist or specialist unit receives (1) an overall quarterly grade below 5.00 in any two out of four preceding quarters, (2) an average quarterly grade below 5.00 on three or more individual questions for any two out of four preceding quarters, or (3) an average quarterly grade below 5.00 for the same question for four or more consecutive quarters. In addition, if reallocation proceedings have been commenced and concluded against a specialist unit, any single quarter of substandard performance will again result in the commencement of reallocation proceedings.

[6] As discussed below, the Committee also has the authority to conduct special reviews covering such time periods as it deems appropriate.

[7] The new equity specialist questionnaire will consist of 17 weighted questions covering a wide spectrum of specialist functions and activities. Each specialist unit will be ranked from 1 to 17 according to their total scores on the questionnaire. Phlx officials will then compute a mean and a standard deviation which will be the mechanism by which the 15% threshold will be determined. According to these officials, 15% of its target population (20 specialist units) is 3 specialist units.

[8] The new rules would, however, require the Committee to first consult the Floor Procedure Committee (in the case of equity specialists) and the Options Committee, in addition to considering the number of assigned equity issues and/or options classes and associated order flow, before making any decision on additional employees. We note that Phlx rules permit the affected specialist unit to appeal the Committee's decision to the Exchange's Board of Directors. *See*, Phlx By-Laws, Article XI, § 11–1(a).

[9] Proposed Rule 511(b) lists six factors that the Committee may consider in its allocation and reallocation deliberations: (1) the number and type

Continued

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In addition, proposed Rule 525 would permit the Committee to grant any exemption or impose any condition on any specialist or specialist unit that it deems necessary or appropriate in the "administration" of the new rules.

Second, the proposed rules alter the Phlx's allocation procedures.[10] For example, floor members will be notified of the identity of applicants for new equity books and options classes so that they can submit written comments thereon to the Committee. Moreover, rather than limit its review to the specialist's demonstrated ability, experience, and financial responsibility as provided in the current rules, the Committee considers, in addition to results of the SPEO, the factors enumerated in proposed Rule 511(b)[11] and any other factors it deems appropriate. When allocating (or reallocating) equity books, the Committee also may consider the specialist unit's primary issues and the number of issues the unit has registered on the PACE system and the level of commitment made thereto. In addition, the Committee also considers the number of securities the specialist unit recently requested to remove from PACE or in which the applicant has resigned as specialist.[12] All allocations will be initially made on a temporary basis for up to 60 days.

Third, once allocated and registered to a particular specialist, securities may be transferred by their specialist to another specialist subject to review and rejection of such transfer by the Committee. Any such proposal to transfer securities must be submitted in writing to the Committee and either the Floor Procedure Committee (in the case of equity books) or Options Committee (in the case of option classes).

Fourth, the proposed rule allows for a special review by the Committee to determine whether securities should be reallocated due to a material change in the specialist unit. Accordingly, the proposed rule obligates specialist units to notify promptly the Phlx of any change in registration information and any material changes in the unit's staffing and capital structure.

Fifth, the new rules will require specialists who register securities on the PACE system for the first time to trade the securities on PACE for a minimum of one year. In addition, voluntary removal of a PACE traded security from PACE will result in automatic reallocation proceedings against the incumbent specialist unit for the PACE traded security. The Committee will institute reallocation proceedings for any non-PACE traded security should any specialist unit commit to trading that security on PACE.

Sixth, the proposed rule change would amend the Exchange's By-Laws to permit specialists to appeal decisions of the Committee to a special three-member panel of the Board of Governors. The decisions of the special panel are non-reviewable.

Finally, the Exchange proposes to amend its Option Floor Procedure Advices to fine those floor brokers who fail to complete the Exchange's Options SPEQ. The fine would be $25 for the first violation of the Advice, $50 for the second violation, and, $300 for the third violation. The fine for subsequent violations would be discretionary with the Phlx's Business Conduct Committee.

## III. Discussion

The Commission supports the Phlx's efforts to monitor the performance of its registered specialist units to ensure that these units provide the best possible markets for their registered securities. In this regard, the Commission believes that the development of objective evaluation criteria for reviewing specialist performance in equities will serve as an important tool in monitoring specialists' levels of performance. Furthermore, the Commission believes that the Exchange's specialist evaluation, allocation, and reallocation procedures can serve as an effective incentive for specialist units to maintain high levels of performance and market quality in order to be considered, and, ultimately awarded, additional listings. This in turn can benefit the execution of public orders and encourage more listings on the Phlx. Accordingly, the Commission fully supports the Phlx's efforts to develop meaningful and effective specialist evaluation allocation and reallocation procedures.

Nevertheless, the new rules have certain provisions which the Commission believes should be monitored very closely. For this reason, as more fully discussed below, the Commission is limiting its approval of this filing to an eight month pilot period. First, the new rules appear to delegate a large amount of discretion to the Committee in conducitng evaluations and making allocation and reallocation determinations. While the Commission believes that the Committee, to a certain extent, needs to exercise discretion in administering the proposed new rules, the Commission is nevertheless concerned that excessive discretionary authority could dilute the purpose and effectiveness of the new rules.

Second, as discussed above, proposed Rule 501(c) allows the Committee to require a specialist unit to hire additional staff to retain an allocation. As noted above, the Committee will render a decision only after consultation with several Phlx committees. Although the Commission is concerned that such a decision could, in certain instances, impose financial burdens on the affected specialist unit, the Commission believes that the specialist unit's right to appeal the decision to the Phlx's Board of Governors will provide the unit with an adequate forum to address its grievance.

Third, the new rules provide the Committee the ability to establish additional criteria to consider in its allocation proceedings.[13] As drafted it appears that the Committee could at anytime adopt new criteria to utilize in its allocation and reallocation deliberations. In response to inquiries from the Commission staff, the Phlx indicted that such criteria would only be applied to the beginning of a quarter after notification to specialists to avoid due process concerns. The Commission believes that such disclosure would provide specialist units with concrete standards whereby they can evaluate their performance and make necessary improvements to enhance their opportunities to obtain new allocations, in addition to avoiding the possibility of reallocation proceedings. In this regard,

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of securities which the applicant specialist units ("applicant") are currently registered; (2) the personnel, capital, and other resources of the applicant; (3) recent allocation decisions; (4) the desirability of encouraging the entry of new specialists into the Exchange's market; (5) the overall best interest of the Exchange; and, (6) such other policies as the Board of Directors instructs the Committee to follow in allocating and reallocating securities.

[10] Currently, in allocating securities to a specialist, under Rule 501.03, the Committee, in addition to evaluating the qualifications of the specialist unit on whose behalf the specialist acts, considers the specialist's demonstrated ability, experience, and financial responsibility. In evaluting demonstrated ability, the Committee reviews the results of the evaluation questionnaires, statistical data, as well as previous action taken against the specialist for unsatisfactory performance and any other relevant information. In evaluating experience, the Committee considers the length of time the specialist has been in the securities business, any disciplinary action or justifiable complaints taken or made against the specialist. The current rules do not disclose what factors are considered when the Committee assesses the financial responsibility of a specialist.

[11] *See* note 9, *supra*.

[12] In regard to new specialist units or recently reorganized units that apply for allocation of securities, the Committee is permitted to establish separate or additional criteria for evaluating the suitability of the such specialist units for allocation awards.

[13] One of the six factors the Committee will consider is recent allocation decisions. The Commission is particularly interested in how this provision will be applied during the pilot period.

the Commission believes that any factors that would differ significantly from the type of criteria that is specifically enumerated in the rule must be submitted to the Commission for its review pursuant to Rule 19b–4.

We also note that the new procedure allows the Committee to conduct a special review of a specialist unit at anytime. Although the Commission believes a certain amount of authority is needed in this area, we believe it may be useful, in the operation of this procedure over the next eight months, for the Phlx to identify some of the special situations that may involve an evaluation and possible reallocation at any time.

A primary concern of the Commission in reviewing the Phlx's new rules has been that the reallocation procedures serve as a meaningful incentive to improve specialist performance. While the Commission believes that reallocation proceedings are necessary to, among other things, remove securities from an underperforming specialist unit to another unit capable of providing better markets in those securities, the Commission also believes that it is essential that evaluation procedures be useful to motivate specialists to improve their performance.[14] The Commission believes that, for the most part, the new Phlx rules are useful to achieve these goals. In particular, the use of objective performance criteria to evaluate equity specialists ensure that the rules and reallocation procedures cannot be applied in a disciplinary manner. Accordingly, the Commission continues to believe that the new rules and procedures being adopted by the Phlx are not disciplinary.

In summary, the Commission believes that the Phlx has developed reasonable guidelines to monitor specialist performance. As mentioned above, however, the Commission has determined to approve the new rules on a temporary eight month pilot basis.[15]

Temporary approval of the new rules will permit the Exchange to utilize its specialist evaluation and allocation rules throughout November 30, 1987. This will allow the Commission to fully analyze all aspects of the proposal in addition to reviewing the results of routine reviews for the preceding quarters. In this regard, the Commission will have an opportunity to examine the effects of the new equity specialist performance standards, the Committee's exercise of its discretionary authority, and any allocation or reallocation decisions made by the Committee during the preceding eight months.

## IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and is, hereby approved for eight months, effective nunc pro tunc, March 31, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Dated: May 21, 1987.

Jonathan G. Katz,

*Secretary*

[FR Doc. 87–12251 Filed 5–28–87; 8:45 am]

BILLING CODE 8010–01–M

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[File Nos. 7–0126 et al]

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

May 22, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Advanced Systems, Inc.
Common Stock, $.10 Par Value (File No. 7–0126)
Avemco Corp.
Common Stock, $.10 Par Value (File No. 7–0127)
BDM International, Inc.
Class A Common Stock, $.02½ Par Value (File No. 7–0128)
BRT Realty Trust
Shares of Beneficial Interest, $1.00 Par Value (File No. 7–0129)
Beverly Investment Properties, Inc.
Common Stock, $.10 Par Value (File No. 7–0130)
Brooklyn Union Gas Co.
Common Stock, $1.00 Par Value (File No. 7–0131)
Calton, Inc.
Common Stock, $.01 Par Value (File No. 7–0132)
Central Vermont Public Service Corp.
Common Stock, $6.00 Par Value (File No. 7–0133)
Chesapeake Corp.
Common Stock, $1.00 Par Value (File No. 7–0134)
Cooper Tier & Rubber Co.
Common Stock, $1.00 Par Value (File No. 7–0135)
Eldon Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–0136)
Electrospace Systems, Inc.
Common Stock, $.10 Par Value (File No. 7–0137)
Ensearch Exploration Partners, Ltd.
Depository Receipts (File No. 7–0138)
Federal Realty Investment Trust
Shares of Beneficial Interest, No Par Value (File No. 7–0139)
First Union Real Estate Equity & Mortgage Investments
Shares of Beneficial Interest, $1.00 Par Value (File No. 7–0140)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 12, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the

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[14] We note that in its initial filing, the Phlx indicated that the purpose of its Specialist Evaluation and Allocation rules is to improve the quality of the Phlx marketplace through non-disciplinary reallocations. *See*, Securities Exchange Act Release No. 18875, August 17, 1982, 47 FR 37019.

[15] In this regard, we note that five other exchanges have adopted similar allocation and reallocation pilot programs. The American Stock Exchange, Inc.'s ("Amex") pilot program has expired. The Amex has submitted new allocation and reallocation rules to the Commission for approval. The Boston Stock Exchange Incorporated's ("BSE") pilot program expired on March 10, 1987; the BSE has not, however, submitted a proposed rule change requesting permanent approval of its allocation and reallocation program. The Commission recently approved a proposal submitted by the Midwest Stock Exchange, Inc. suspending the application of its Mandatory Posting Rule for the six month periods June 30, 1986 and December 31, 1987. *See*, Securities Exchange Release No. 24444, May 12, 1987. Similarly, the Commission extended the effectiveness of the New York Stock Exchange's Rule 103A until July 31, 1987. *See*, Securities Exchange Release No. 24413, April 30, 1987, 52 FR 17346, May 7, 1987. Finally, the Pacific Stock Exchange Incorporated's ("PSE") pilot program is scheduled to expire on June 30, 1987. The Commission anticipates that the PSE will file for an extension of its pilot at that time.

[16] 17 CFR 200.30–3.

maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 87-12296 Filed 5-28-87; 8:45 am]
BILLING CODE 8010-01-M

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[File Nos. 7-0116 et al]

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.**

May 22, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Anchor Glass Container Corp.
Common Stock, $.01 Par Value (File No. 7-0116)
Asia Pacific Fund
Common Stock, $.01 Par Value (File No. 7-0117)
Chemical N.Y.
Adjustable Rate Cumulative Preferred Series C, No Par Value (File No. 7-0118)
Harper & Row Publishers, Inc.
Common Stock, $.10 Par Value (File No. 7-0119)
Hard Rock Cafe PLC
American Depository (File No. 7-0120)
Par Pharmaceutical, Inc.
Common Stock, $.01 Par Value (File No. 7-0121)
Roper Corp.
Common Stock, $.50 Par Value (File No. 7-0122)
Shearson Lehman Brothers Holdings, Inc.
Common Stock, $.10 Par Value (File No. 7-0123)
Tiffany & Co.
Common Stock, $.01 Par Value (File No. 7-0124)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 12, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 87-12297 Filed 5-28-87; 8:45 am]
BILLING CODE 8010-01-M

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[File Nos. 7-0112 et al]

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.**

May 22, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Americus Trust for G.E.Shares
Units, Primes, Scores (File No. 7-0112)
Asia Pacific Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-0113)
Shearson Lehman Brothers Holding, Inc.
Common Stock, $.10 Par Value (File No. 7-0114)
Tiffany & Co.
Common Stock, $.01 Par Value (File No. 7-0115)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 12, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G Katz,
*Secretary.*

[FR Doc. 87-12298 Filed 5-28-87; 8:45 am]
BILLING CODE 8010-01-M

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[Release No. 35-24595]

**Filings Under the Public Utility Holding Company Act of 1935 ("Act"); General Public Utilities Corp. et al.**

May 21, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 15, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**General Public Utilities Corporation, et al. (70-7397)**

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its wholly owned subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Energy Initiatives, Incorporated ("EII"), 95 Madison Avenue, Morristown, New Jersey 07960, GPU Nuclear Corporation ("GPU Nuclear"), One Upper Pond Road, Parsippany, New

Jersey 07054 (collectively, "subsidiaries"), have filed a declaration pursuant to sections 6(a)(2), 7, 12(f) and 12(g) of the Act.

The subsidiaries are corporations organized under the laws of New Jersey, or doing business in New Jersey. They presently propose to amend their respective bylaws and certificates of incorporation pursuant to New Jersey law to limit the liability of their officers and directors for money damages and to broaden the indemnification of their officers, directors and employees. New Jersey law provides that directors and officers shall not be personally liable to a corporation or its stockholders for money damages arising from a breach of fiduciary duty except for acts or omissions made (a) in breach of the duty of loyalty owed to the corporation or its stockholders, (b) not in good faith or involving a knowing violation of law or (c) resulting in receipt by such person of an improper personal benefit.

The subsidiaries also propose to amend their respective bylaws to provide, as permited by New Jersey law, for mandatory indemnification of directors, officers and employees and for voluntary indemnification of persons serving at the request of the corporation, if such person acted on good faith in a manner he reasonably believed to be in, or not opposed to, the best interests of the corporation; and with respect to any criminal proceeding, such person had no reason to believe his conduct was unlawful.

**General Public Utilities Corporation, et al. (70–7398)**

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07154, a registered holding company, and its wholly owned subsidiaries, GPU Service Corporation ("GPU Service"), 100 Interpace Parkway, Parsippany, New Jersey 07054, Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Pennsylvania Electric Company ("Penelec") and Nineveh Water Company ("Nineveh"), both at 1001 Broad Street, Johnstown, Pennsylvania 15907, Metropolitan Edison Company ("Met-Ed"), the York Haven Company ("York Hven") and Saxton Nuclear Experimental Corporation ("SNEC"), all at P.O. Box 16001, Reading, Pennsylvania 19640 (collectively, "subsidiaries"), have filed a declaration pursuant to sections 6(a)(2), 7, 12(f), and 12(g) of the Act.

The subsidiaries are corporations organized under the law of Pennsylvania, or doing business in Pennsylvania. They propose to amend their respective bylaws and certificates of incorporation to limit the liability of their directors for money damages and to broaden the indemnification of their officers, directors and employees. Pennsylvania law provides that directors will not be liable for monetary damages unless they have breached or failed to perform the duties of their office under section 8363 of the Pennsylvania Directors' Liability Act, and the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

The subsidiaries also propose, as permitted by Pennsylvania law, to amend their bylaws to provide for mandatory indemnification of their respective officers, directors and employees and for the advancement of expenses to indemnified persons. The amendments would also pemit the subsidiaries, for purposes of indemnification, to maintain insurance, obtain a letter of credit, act as self-insurers, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties, or use any other mechanism for indemnification that their boards of directors find appropriate.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
*Secretary.*

[FR Doc. 87–12252 Filed 5–28–87; 8:45 am]
BILLING CODE 8010–01–M

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**[Rel. No. IC–15748; 812–6623]**

**The Travelers Insurance Company and The Travelers Fund UL for Variable Life Insurance**

May 20, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

*Applicants:* The Travelers Insurance Company ("The Travelers"), and the Travelers Fund UL for Variable Life Insurance (the "Separate Account").

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13), 6e–3(T)(c)(2) and 22c–1.

*Summary of Application:* Applicants seek an order to permit, in connection with the issuance of flexible premium variable life insurance contracts (the "Contract"): (1) The deduction of the administrative expense portion of a deferred administration charge upon surrender of the contract during the first 10 contract years or the 10 years following an increase in stated amount; and (2) the Contract's premium waiver rider to be considered an "incidental insurance benefit" for purposes of Rule 6e–3(T).

*Filing Date:* February 12, 1987.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 15, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notifications of the date of hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Travelers and the Separate Account, One Tower Square, Hartford, Connecticut 06183.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney, Clifford E. Kirsch (202) 272–3032 or Special Counsel, Lewis B. Reich (202) 272–2061 (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

**Applicant's Representations and Statements of Facts**

1. The Separate Account was established on November 10, 1983, by Travelers as a separate investment account under the insurance laws of Connecticut. The Separate Account is registered with the SEC as a unit investment trust and, as presently contemplated, will be used only to support benefits payable under the Contract.

2. The application states that Travelers will deduct from the cash value of the Contract an amount on the first day of each Contract month to cover the administrative costs associated with the issuance of the Contracts. The monthly administrative

charge is intended to cover the costs associated with issuance of a Contract and increases in the stated amount. The charge varies by issue age and initial stated amount and is made for the first three years of the Contract, and for any increases in stated amount for three years from the date of increase. Applicants represent that the administrative charge is "at cost" in that The Travelers believes that the charge does not exceed the cost of services to be provided.

3. The application states that, in addition, a daily charge is deducted for the Separate Account for administrative expenses incured by the Travelers for the ongoing administration of the Contract. This charge will be deducted daily at the annual rate of .10% of the average daily net assets.

4. The application, through incorporation by reference of the registration statement for the Contract, states that during the first 10 Contract Years or the 10 years following an increase in Stated Amount (other than an increase due to Cost of Living Adjustment or a change in Death Benefit Option) the Travelers will impose an additional charge ("Charge") on a full surrender. The charge will apply to that portion of the Stated Amount (except for increases excluded above) which has been in effect for less than 10 years. The charge is based on the original issue age, and it decreases by 10 percent each year over the 10 year period. The charge will consist of two components: an administrative component and a sales load component. The administrative component, which will equal 80% of the amount of the charge, will compensate The Travelers for the expenses of issuing the Contract, and for ongoing administrative expenses, not covered by the monthly deduction or the daily administrative charge.

5. Applicants request exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) of the 1940 Act and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13), and 22c–1 thereunder to the extent necessary to permit the deduction of the administrative component of the charge in the manner described above.

6. Applicants do not concede that the charge violates any of the provisions of the 1940 Act with respect to which exemptive relief is requested in the application. However, Applicants request exemptions from these provisions in order to eliminate any doubt as to full compliance with the 1940 Act.

7. Applicants submit that imposition of an administrative charge for issuance and administrative expenses in the form of a deferred charge is more favorable than a charge that is deducted entirely from premiums or from cash value in the first contract year, which are more conventional ways of imposing this charge.

8. Applicants represent that the total amount of administrative charges is the same as it would have been if the administrative charge were designed solely as a front-end or periodic charge, and that the monthly and daily administrative charges, in conjunction with the administrative component of the Charge, were designed so that The Travelers covers only its actual administrative costs.

9. The Application states that a Contractowner may purchase supplemental benefits by Rider including a premium waiver rider (the "Rider"). The Rider provides that the monthly deduction will not be made against the Contract's cash value if the insured becomes totally disabled and the disability continues for six months. The disability must occur after the Contract anniversary on which the insured was age 5 and before the Contract anniversary in which the insured is age 65.

10. Applicants states that the Rider may be deemed not to meet the definition of "incidental insurance benefits" as defined in Rule 6e-3(T)(c)(2). If the premium waiver benefit falls within the meaning of "incidental insurance benefits," the charge for the Rider falls outside the definition of sales load in Rule 6e-3(T)(c)(4)(vii). If the Rider falls outside the definition of "incidental insurance benefits", the charge for the Rider may be deemed to be "sales load".

11. Applicants submit that the Rider's benefit, *i.e.*, the waiver of the monthly deduction, is a fixed benefit in its most significant respects. The application states that the benefit waives the entire monthly deduction, and therefore the benefit to the owner is fixed to the extent that the owner pays no charge, regardless of how much the cash value and the net amount at risk vary. Applicants further state that the Rider possesses no cash value of its own separate and distinguishable from the cash value for the Contract as a whole. Applicants also represent the Rule 6e-3(T)(c)(2) provides that incidental insurance benefits "include, but are not limited to . . . disability income benefits." In economic reality, the Rider's benefit is a type of disability income benefit specified by rule 6e-3(T)(c)(2).

12. Applicants further submit that it is not reasonable to assume that the SEC, in adopting Rule 6e-3(T), intended that the charge for the type of Rider at issue here to be deemed "sales load". Applicants assert that the benefit of a waiver of charges upon disability serves as a bona fied insurance objective that is integrally related to, and an incidental part of, the insurance aspects of a flexible premium variable life insurance policy.

13. Applicants also note that the SEC has issued several orders granting the identical relief requests in the Application.

14. On the basis of the foregoing, Applicants request an exemption form the definition of "incidental insurance benefits" in Rule 6e-3(T)(c)(2) to the extent necessary to permit the charge for the Rider not to be deemed "sales load".

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–12253 Filed 5–28–87; 8:45]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Urban Mass Transportation Administration

### Applicability of the Buy America Provisions of the Federal Mass Transportation Act of 1987

**AGENCY:** Urban Mass Transportation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** Section 327 of the Federal Mass Trnasportation Act of 1987, Title III of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17), effective April 2, 1987, amends section 165 of the Surface Transportation Assistance Act of 1982. Section 165 provides a preference for domestically produced items that are utilized in projects that are funded by the Urban Mass Transportation Administration (UMTA). Section 327(c) provides that the rolling stock price differential waiver set forth in section 165(b)(4) be increased from its current 10 percent to 25 percent. Section 327(b) amends section 165(b)(3) governing rolling stock procurement by adding the term "subcomponents." Section 327(d) provides that the amendments made in sections 327(b) and (c) shall not apply to any contract awarded pursuant to bids which were outstanding on the date of enactment of Pub. L. 100–17. The purpose of this Notice is to set forth UMTA's position that the provisions of sections 327(b) and (c) do not apply to

any procurement which was initiated by an UMTA grantee prior to April 2, 1987, but that the provisions do apply to any procurement which was initiated by an UMTA grantee subsequent to April 2, 1987, regardless of the date that the Federal funds used for the procurement were obligated by UMTA. UMTA will be revising its Buy America regulations set forth in 49 CFR Part 661 to reflect these changes.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Gill, Jr., Office of the Chief Counsel (202) 366-1662, Room 9228, 400 Seventh Street, SW., Washington, DC 20590.

Issued on: May 22, 1987.

Ralph L. Stanley,

*Administrator.*

[FR Doc. 87-12309 Filed 5-28-87; 8:45 am]

BILLING CODE 4910-57-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

**DATE AND TIME:** Tuesday June 2, 1987, 10:00 a.m.

**LOCATION:** Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

**STATUS:** Closed to the Public

**MATTERS TO BE CONSIDERED:**

*Enforcement Matter OS #4435*

The Commission will consider issues related to Enforcement Matter OS #4435.

For a recorded message containing the latest agenda information, call: 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,
*Deputy Secretary.*
May 26, 1987.

[FR Doc. 87–12363 Filed 5–27–87; 11:27 am]
BILLING CODE 6355–01–M

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FEDERAL MARITIME COMMISSION

**TIME AND DATE:** 10:00 a.m., June 3, 1987.

**PLACE:** Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Agreement No. 212–010226—South Europe/ U.S.A. Pool Agreement.
2. Policy Regarding Civil Penalty Compromise Procedures.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
*Secretary.*
[FR Doc. 87–12320 Filed 5–27–87; 9:19 am]
BILLING CODE 6729–01–M

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FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**TIME AND DATE:** 10:00 a.m., Wednesday, June 3, 1987.

**PLACE:** Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**Matters to be Considered**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 26, 1987.

James McAfee,
*Associate Secretary of the Board.*
[FR Doc. 87–12342 Filed 5–27–87; 10:44 am]
BILLING CODE 6210–01–M

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FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 52 FR 19229, May 21, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10:00 a.m., Wednesday, May 27, 1987.

**CHANGES IN THE MEETING:**

One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Proposed Board comments on legislation regarding funds availability (H.R. 28 and S. 79). (This item was originally announced for a closed meeting on May 26, 1987.)

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: May 27, 1987.

James McAfee,
*Associate Secretary of the Board.*
[FR Doc. 87–12385 Filed 5–27–87; 3:22 pm]
BILLING CODE 6210–01–M

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FEDERAL TRADE COMMISSION

**TIME AND DATE:** 10:00 a.m., Wednesday, June 3, 1987.

**PLACE:** Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

**STATUS:** Open.

**MATTER TO BE CONSIDERED:** Presentation by the Association of National Advertisers, the American Association of Advertising Agencies, and the American Advertising Federation concerning "The Role of Marketing in a Marketing Plan."

**CONTACT PERSON FOR MORE INFORMATION:** Susan B. Tickner, Office of Public Affairs: (202) 326–2179; Recorded Message: (202) 326–2711.

Emily H. Rock,
*Secretary.*
[FR Doc. 87–12323 Filed 5–27–87; 10:14 am]
BILLING CODE 6750–01–M

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UNITED STATES INSTITUTE OF PEACE

**TIMES AND DATES:** 9:00 a.m.–5:00 p.m., Thursday, June 4, 1987; 9:00 a.m.–5:00 p.m., Friday, June 5, 1987.

**PLACE:** The Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503.

**STATUS:** Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

**AGENDA (TENTATIVE):** Meeting of the Board of Directors convened. President's Report. Committee Reports. Discussion of the Jennings Randolph Program for International Peace. Consideration of Grant Applications and Presidential Search.

**CONTACT:** Mrs. Olympia Diniak. Telephone: (202) 789–5700.

Dated: May 26, 1987.

Robert F. Turner,
*President, United States Institute of Peace.*
[FR Doc. 87–12272 Filed 5–27–87; 1:02 pm]
BILLING CODE 3155–01–M

# Corrections

Federal Register
Vol. 52, No. 103
Friday, May 29, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 959

### Onions Grown in South Texas; Amendment No. 5 to Handling Regulation; Vegetable Import Regulations; Onions

*Correction*

In rule document 87-11796 beginning on page 19278 in the issue of Friday, May 22, 1987, make the following correction:

§ 959.322 [Corrected]

On page 19281, in § 959.322(f)(4)(i), in the second column, in the sixth line, "of" should read "for".

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 157 and 284

[Docket No. RM87-16-000]

### Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts

*Correction*

In proposed rule document 87-10884 beginning on page 18703 in the issue of Tuesday, May 19, 1987, make the following correction:

On page 18722, a statement by Commissioner Trabandt was inadvertently omitted. It should have appeared following the third complete paragraph in the third column as follows:

*Statement of Commissioner Charles A. Trabandt, Concurring in Part and Dissenting in Part:*

Issued May 7, 1987.

(1) I concur in part with the issuance of an NOPR on abandonment for two reasons:

(a) The NOPR will provide the basis for a broadened public debate about the Commission's continued retreat and eventual withdrawal from dedication, which should serve to ensure that the Commission and all interested parties will have the benefit of the fullest possible policy, legal and technical analysis in making judgments about the dedication and abandonment concept under subsection 7(b) of the NGA.

(b) The natural gas markets for many pipelines and producers are in a state of great change and potential temporary disarray as a direct result of the continued and dramatic transition from traditional sales by pipelines to transportation services provided to shippers. As envisioned by the Commission, one regulatory and management tool for dealing in part with that transition is some form of abandonment and release of natural gas deliverability. Such abandonment and release under certain conditions and for a specific duration can provide significant additional market flexibility and potential cash flow for producer-sellers and substantial contract and potential financial relief for pipeline-purchasers. Consequently, it is important that the Commission develop a general approach and policy to abandonment and release, as an extension of the series of individual cases in this area decided by the Commission since Order No. 436 issued. This NOPR will provide the opportunity to develop a general approach and policy to guide the Commission and all interested parties.

(2) I dissent in part with regard to the specific concept included in the proposed rule in the NOPR for several reasons.

(a) I am not persuaded on the basis of the staff analysis to date that the Commission, as a matter of law, has the authority to adopt this approach to generic self-executing action tantamount to national permanent abandonment on the basis of the procedural approach in the proposed rule. For example, the majority's reliance on *FPC v. Moss*, 424 U.S. 494 (1976) is potentially overreaching since that case is probably distinguishable in the context of the nationwide permanent abandonment obviously contemplated by the proposed rule. Rather, the proposed rule could be construed as a matter of law to institute *de facto* administrative deregulation of dedication under the NGA.

(b) I am not persuaded on the basis of the staff analysis and the OPPR study that the Commission has met the judicially-mandated standards for the substitution of reliance on competitive forces and the natural gas market for the traditional regulatory concept of dedication and abandonment. For example, the majority's reliance on *FCC v. WNCN Listeners Guild*, 450 U.S. 582 (1981) is unapposite because of the subject matter (promotion of diversity in entertainment programming vs. adequate supply of natural gas for American consumers). Rather, the proposed rule *de facto* would appear over time to effectively emasculate section 7(b) of the NGA as a substantive matter.

(c) I am not satisfied at this point that the marketplace of significance in the context of the concept of dedication is sufficiently workably competitive to replace the regulatory concept, particularly in the context of transportation services for captive customers and possibly other customers under the current state of implementation of Order No. 436. The market at the city gate is not yet workably competitive on any permanent basis.

(d) I am not persuaded at this point that competitive forces and the general market will provide captive customers and captive consumers of various customers with the same level of security of supply and reliability of service as continued dedication and flexible, but limited term abandonment. I also find it somewhat astonishing that the majority, at page 23 of the slip opinion, argues that the Commission and the nation should depend ultimately in a supply emergency on nationwide Federal allocation by the President under Title III of the NGPA, rather than the Commission trying to anticipate the emergency in the context of dedication and abandonment. Notwithstanding the arguments in the staff analysis and the conclusions in the OPPR study, I am persuaded at this point that continued dedication with flexible but limited term abandonment does provide such customers and consumers with substantial security of supply and reliability of service, which otherwise

today in all likelihood would not be available by reliance solely on competitive forces under the proposed rule. I do believe that dedicated gas supplies today provide enough volumes to largely meet the current demand requirements of the residential and consumer market, despite the staff and OPPR arguments to the contrary, and to that extent the Commission probably is obligated as a matter of law and a matter of policy to continue to implement the dedication concept unless and until it can be shown that competitive forces would suffice.

(e) I do not believe that the OPPR study provides a completely comprehensive and objective analysis of the dedication issue and certain of the assumptions and conclusions, in my judgment, are flawed. Consequently, the Commission should not base its own conclusions solely on that study.

(f) The dependence of the discussion on Order No. 451 as support for the proposed rule is badly misplaced. Order No. 451 implements a specific statutory provision of the NGPA and the abandonment aspects of the final rule are a supporting element of the GFN process adopted by the Commission to achieve the objectives of that specific section, as opposed to the permanent nationwide abandonment under section 7(b) contemplated by the proposed rule. Order No. 451 also was adopted by the Commission in part to provide the necessary pricing incentive to bring about the substantial increase in natural gas supplies through the supply response. In Order No. 451, as reiterated and reinforced in Order No. 451–A, the Commission affirmatively assured that *any* dedicated reserves which are abandoned and released by operation of the GFN are directly accessible and available to firm customers of the pipeline-purchaser. If the pipeline has a permanent Order No. 436 certificate, the firm customer has non-discriminatory access to transportation services and the competitive opportunity to bid for any released gas. If the pipeline does not have an Order No. 436 certificate, Order No. 451–A provides a right of first refusal to all firm customers, provides the transportation services by the pipeline for delivery of any released gas resold to firm customers, and requires continued sales under the existing contract until firm customers have had the opportunity to exercise the right of first refusal. The proposed rule simply does not contemplate any assured protection of the existing reserves for firm customers and their consumers, other than a limited transportation right vested in producers with released gas.

(g) The dependence of the discussion on existing Commission precedent under *Felmont* and its LTA progeny also is badly misplaced. The Commission thus far has never approved an individual abandonment with (1) permanent duration *and* (2) volumes substantial enough to threaten assured supplies for sales to current customers, even on a limited term basis. Commission decisions under *Felmont* and subsequent LTA cases simply have not crossed the regulatory Rubicon of permanent abandonment of a single pipeline's supplies in excess of short term over-deliverability, let alone *de facto* nationwide permanent abandonment of any gas supplies on all pipelines without any opportunity for prior notice and comment by customers. In that regard, the record in Docket No. CI86–293–000, the Transcontinental Gas Pipeline Corporation (Transco) request for blanket permanent abandonment by its producer-suppliers, is most instructive. Transco in that case contemplated the possible permanent abandonment and release of all its jurisdictional gas, which constitutes approximately 58% or 2.5 Bcf of its daily gas deliverability. Forty-eight interventions were filed in response to the public notice and 11 parties protested the application or raised specific issues, including Atlanta Gas Light Co., Elizabethtown Gas Co., Long Island Lighting Co., Maryland People's Counsel, Philadelphia Electric Co., Public Service Electric and Gas Co., South Jersey Gas Co., Virginia Natural Gas, and Washington Gas Light Co. Generally, the intervenors are concerned with the following: (1) That indirect customers along with Transco's distributor customers should have access to information concerning released quantities of gas in order to compete on an equal basis for such supplies; (2) that Transco be required to provide nondiscriminatory transportation services to all of its customers pursuant to NGPA section 311 or section 7(c) of the NGA; (3) that the permanent release of reserves may hamper Transco's ability to meet the service needs of its customers on a reliable basis; (4) that the Commission should monitor the releases of gas in order to prevent an increase in Transco's WACOG or the unwarranted depletion of lowercost reserves, and in order to be able to effect a halt to further release of gas when it becomes apparent that Transco's program is not assuring Transco's ability to maintain reliable firm service; (5) that producer-suppliers should be granted conversion rights for firm transportation capacity with respect to released gas in a manner similar to the conversion rights Transco has granted its customers under the S&A; and (6) that any authorization does not prejudice any parties' rights to challenge Transco's prudence or reasonableness in releasing any gas supplies. Two parties, the Maryland People's Counsel (Maryland) and the Public Advocate of New Jersey (Public Advocate) protest Transco's applications. Maryland states that since it opposes the S&A and the instant applications are dependent upon Commission approval of the S&A, Maryland also opposes the application. Public Advocate states that it protests the granting of the requested authorizations because allowing Transco complete discretionary authority to determine which gas supplies it abandons raises serious questions concerning the impact of the release of lower-cost gas under sections 104, 106 and 109 of the NGPA on Transco's overall cost of purchased gas, not to mention on the continued reliability of supply necessary to meet Transco's seasonal and peak day, high priority firm sales requirements.

While the Commission has deferred action on Transco's request for other reasons, these issues in the context of an individual pipeline-specific request for permanent abandonment and the intervening parties' procedural opportunity to raise them prior to a Commission decision, coupled with the opportunity for rehearing and judicial review, provide a stark, realworld example of permanent abandonment problems under the proposed rule. This example also highlights the unprecedented procedural nature of the nationwide permanent abandonment contemplated by the proposed rule, where there would be *no* prior notice, *no* opportunity for comment, *no* Commission order, *no* rehearing and *no* judicial review for any party or any issue. In my view, *Felmont* and its progeny never contemplated that procedural or substantive result and consequently to rely on those cases as precedent for the proposed rule is strained and overreaching.

(h) I also find the proposed rule to be potentially very objectionable, when it is coupled with the rate design concept of auctioning which has been described publicly in recent speeches by Chairman Hesse. The auctioning concept apparently would establish an auction procedure for bidders seeking transmission services for system supply gas on individual pipelines with price ultimately allocating the transmission services. That concept would

conceivably place captive customers and their consumers at jeopardy with regard to the predictable availability of the transmission services necessary to delivery contracted system supply gas, as a function of the capability of the customer to match the highest bid. While I do not wish to prejudge the auction concept since it has not yet been presented to the Commission, it appears obvious that any such approach could threaten the predictable availability of such transmission services and therefore such supplies. Consequently, the combination of permanent nationwide abandonment under this proposed rule, the possible auctioning of transmission services, and the absence at this point of the permanent Order No. 436 certificates on the majority of pipelines necessary to assure non-discriminatory access to spot market supplies could leave captive customers in a weakened and potentially vulnerable position in terms of both price and supply. And, of course, these same captive customers, under the Proposed Take-or-Pay Billing Policy, would bear a share of the take-or-pay costs for restructuring system supply contracts.

(i) Again, these factors raise obvious questions relevant to the proposed rule which commenters should address, such as—

(a) What is the nature today of the security of supply concept and the reliability of service concept?

(b) What is the future role of the pipeline merchant function?

(c) What party has the responsibility for assured supply and reliable service?

(d) What is the Commission's statutory responsibility under section 7(b) of the Natural Gas Act?

(e) Are the pipeline's responsibilities for an adequate supply required pursuant to Federal certification under the NGA or are they merely contractual in nature?

(f) Is the pipeline required pursuant to Federal certification under the NGA to be a supplier of last resort?

(g) Does the historical regulatory requirement for sufficient dedicated reserves and deliverability to serve firm customers have any current or future relevance as a matter of law or a matter of policy?

(h) Does the Natural Gas Act, when considered in the context of the Natural Gas Policy Act and Commission Order Nos. 380, 436 and 451, provide for permanent nationwide abandonment and virtually total reliance on market forces, whether or not workably competitive at the city gate?

(i) Does the proposed rule satisfy applicable judicial precedent for the substitution of reliance on market forces for traditional regulatory concepts in achieving the statutory objectives of the Natural Gas Act and Congressional intent in the Natural Gas Policy Act?

I look forward to the opportunity to consider further these issues and questions in the context of comments received in this docket. I want to emphasize again that I remain committed to the proposition that the Commission whenever possible should place maximum *responsible* and *fully legal* reliance on competitive forces and the free market in its regulatory programs, including with regard to dedication and abandonment under section 7(b) of the NGA. In my view, the real challenge for the Commission in addressing this NOPR is to fashion a final generic abandonment rule, which will be fully legal in its procedure and substance and which will be fully responsible in providing the best possible natural gas service to American consumers—an assured and reliable supply at the lowest reasonable cost.

Charles A. Trabandt,
*Commissioner.*

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT-942-07-4220-10; U 57025]

### Utah; Proposed Withdrawal and Opportunity for Public Meeting

*Correction*

In notice document 87-11207 appearing on page 18617, in the issue of Monday, May 18, 1987, make the following corrections:

In the second column, in the land description for Salt Lake Meridian, in the third line, "SW½" should read "SW¼"; and in the 15th line, "SE½" should read "SE¼".

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 87-ASW-4]

### Amendment of Transition Area; Winters, TX

*Correction*

In rule document 87-10603 beginning on page 17552 in the issue of Monday, May 11, 1987, make the following correction:

On page 17553, in the first column, in the first paragraph, in the fourth line, "21" should read "31".

BILLING CODE 1505-01-D

federal register

Friday
May 29, 1987

Part II

# Environmental Protection Agency

**40 CFR Parts 260, 264, 265, 270, and 271**
**Liners and Leak Detection for Hazardous Waste Land Disposal Units; Notice of Proposed Rulemaking**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 264, 265, 270, and 271

[FRL-3187-9]

## Liners and Leak Detection for Hazardous Waste Land Disposal Units

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under the authority of sections 3004(a) and 3004(o)(4) of the Resource Conservation and Recovery Act (RCRA), EPA is proposing rules requiring new landfills, surface impoundments, waste piles, and land treatment units for the treatment, storage, or disposal of hazardous waste to utilize an approved leak detection system. EPA is also proposing that certain existing land disposal units utilize an approved leak detection system. In today's proposed rule, the Agency is also proposing double liners and leachate collection and removal systems above and between the liners for new waste piles, and replacements and lateral expansions of existing waste piles in parallel with minimum technology requirements for landfills and surface impoundments.

Today's proposal also requires the installation of double liners and leachate collection and removal systems for significant unused portions of existing units at hazardous waste landfills, waste piles, and surface impoundments. In addition, double liners and leachate collection and removal systems are being proposed for certain new units, and lateral expansions and replacements of existing units at landfills, waste piles, and surface impoundments at facilities permitted before November 8, 1984. Under today's proposal, owners or operators would be required to develop a construction quality assurance program for certain landfills, surface impoundments, and waste piles, as well as for construction of final covers at land treatment units.

DATES: The Agency will consider all comments received on or before July 28, 1987, before taking final action on the proposed rule. A public hearing will be held beginning at 9:30 a.m., June 19, 1987 in Washington, DC. Proposed effective dates for the various provisions are listed in the SUPPLEMENTARY INFORMATION section.

ADDRESSES: (1) *Hearings*—The public hearing will be held at the North Conference Area, Room 3, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC to receive public comments on the proposed rule. Anyone wishing to make a statement at this hearing should write to Bill Richardson, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The hearing will begin at 9:30 a.m. with registration at 9:00 a.m. The hearing will end at 4:30 p.m. unless concluded earlier. Oral and written statements may be submitted at the public hearing. Persons wishing to make oral presentations must restrict them to 15 minutes and are encouraged to submit written copies of their complete comments for inclusion in the official record.

(2) *Written Comments*—The public must send one original and two copies of their comments to the following address: EPA RCRA Docket (WH-562), 401 M Street SW., Washington, DC 20460. Comments should be identified by regulatory docket reference code F-87-CCDP-FFFF. The docket is open from 9:30 a.m. to 3:30 p.m. Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials and should call Michelle Lee at (202) 475-9327 for appointments. The public may copy at no cost a maximum of 50 pages of material from any one regulatory docket. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION: For general information, call the RCRA/Superfund Hotline, (800) 424-9346 toll-free or 382-3112 in Washington, DC.

For information on the technical aspects of this proposed rule, contact Walter DeRieux, Disposal Technology Section, Waste Management Division, Office of Solid Waste (WH-565E), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4554.

SUPPLEMENTARY INFORMATION:

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### Proposed Effective Dates for Today's Proposal

| Provision | Proposed effective date |
|---|---|
| Leak detection requirements | 6 months after promulgation. |
| Double liner and a leachate collection and removal system above (for landfills and waste piles) and between the liners for: | |
| —New waste piles, lateral expansions and replacements of waste piles. | 6 months after promulgation. |
| —Significant unused portions of units at existing landfills, waste piles, and surface impoundments. | 24 months after promulgation. |

| Provision | Proposed effective date |
|---|---|
| —New landfills, surface impoundments, and waste piles and lateral expansions and replacements of landfills, waste piles, and surface impoundments at facilities permitted before November 8, 1984. | 6 months after promulgation. |
| Construction quality assurance program for certain land disposal units. | 12 months after promulgation. |

## I. Authority

The regulations established under this rulemaking will be issued under authority of sections 3004, 3005, and 3015 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6924, 6925, and 6936.

## II. Background

On October 21, 1976, Congress enacted the Resource Conservation and Recovery Act (RCRA) to protect human health and the environment and to conserve material and energy resources. In Subtitle C of the Act, EPA is directed to promulgate regulations that identify hazardous waste and to regulate generators and transporters of hazardous waste and facilities that treat, store, or dispose of hazardous waste.

Under Section 3004 of RCRA, owners and operators of treatment, storage, and disposal facilities (TSDFs) are required to comply with standards "necessary to protect human health and the environment." Since enactment of RCRA, EPA has promulgated interim status and permitting standards governing the design, operation, and maintenance of landfill, surface impoundment, waste pile, and land treatment facilities used to treat, store, or dispose of hazardous wastes. Regulations that established the major components of these standards were issued on May 19, 1980 (45 FR 33221); these were the first national standards that defined acceptable management practices for hazardous waste. These standards included Part 265 requirements applicable during the interim status period and Part 264 requirements applicable to permitted units.

On July 26, 1982 (47 FR 32274), EPA promulgated technical and permitting standards under Part 264 for landfills, waste piles, surface impoundments, and land treatment units. These regulations consisted of a set of design and operating standards separately tailored for each type of unit. The design and operating standards required landfills, surface impoundments, and waste piles to have a liner and leachate collection system to prevent migration of wastes to the subsurface soil or to ground water or surface water during the active life of the unit. The standards required unsaturated zone monitoring and a treatment demonstration for land treatment units.

On November 8, 1984, amendments to RCRA entitled the Hazardous and Solid Waste Amendments (HSWA) were signed into law. HSWA adds additional technological requirements to the design standards for land disposal units. The new Section 3004(o)(1)(A) of RCRA added by HSWA requires new landfills and surface impoundments, each new landfill and surface impoundment unit at existing facilities, and each replacement or lateral expansion of a landfill or surface impoundment at existing facilities for which a permit is issued after November 8, 1984, to install two or more liners and a leachate collection system above (for landfills) and between the liners. Under Section 3004(o)(2), the minimum technology requirements set forth in Section 3004(o)(1)(A) will not apply if the owner or operator successfully demonstrates that alternative design and operating practices together with location characteristics will prevent the migration of any hazardous constituents to ground water or surface water at least as effectively as such liners and leachate collection systems. Section 3004(o)(3) sets forth a variance from the minimum technology requirements for certain monofills.

Section 3004(o)(4)(A) of RCRA requires EPA to issue standards by May 8, 1987 requiring new landfills, surface impoundments, waste piles, land treatment units, and underground tanks to use approved leak detection systems. The statute defines an approved leak detection system as a system or technology that is capable of detecting leaks of hazardous constituents at the earliest practicable time. For the purpose of implementing the leak detection provision, Section 3004(o)(4)(B)(ii) defines new units as units on which construction begins after the date of promulgation of the final rule.

On July 15, 1985, EPA issued a final rule (50 FR 28702) to amend the existing hazardous waste regulations to reflect those statutory provisions of HSWA that took effect immediately or shortly after enactment. This rule incorporated into the existing hazardous waste regulations the Section 3004(o)(1)(A) regulations, requiring certain permitted and interim landfills and surface impoundments to have double liners and leachate collection systems. The July 15, 1985 regulations set top liner standards that could be met by a flexible membrane liner (FML), and bottom liner standards that could be met by three feet of compacted soil or other natural materials with a permeability of no more than $1 \times 10^{-7}$ cm/sec. In the Proposed Codification Rule of March 28, 1986, EPA proposed amendments to these double liner and leachate collection system requirements. The March 28, 1986 proposal sets forth two designs for double liner systems. One design consists of FML top liner and a composite bottom liner consisting of a FML underlain by a low permeability soil layer, such as clay. The alternative design entails using a FML top liner and a clay bottom liner.

On July 14, 1986 (51 FR 25422), EPA promulgated regulations under RCRA Sections 3004(o)(4) and 3004(w) for tank systems storing or treating hazardous waste. Since that rule contains leak detection requirements for underground tanks, today's proposal will not address underground tanks. However, relevant issues to tank regulations (i.e., leak detection design standards, and construction quality assurance (CQA)) are discussed in Section V.E.

## III. Overview of Today's Proposed Rule

### *A. Authority*

The requirements in today's rule are being proposed under the authority of different sections of RCRA. In accordance with Section 3004(o)(4) of HSWA the Agency is today proposing leak detection requirements. That section requires the Agency to promulgate standards requiring new landfill units, surface impoundment units, waste piles, and land treatment units that treat, store or dispose of hazardous wastes to have approved leak detection systems or "a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time."

In order to meet this statutory mandate, the Agency is proposing to require new landfills, surface impoundments, and waste piles to design, construct, and implement a leak detection system capable of detecting leakage of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period of the unit. As discussed more fully below, the Agency believes that for these units, the existing leachate collection and removal system between the liners (LCRS) with some additional modifications in the terms of

design and performance criteria best satisfies the statutory criteria for leak detection. By relying on the LCRS between the liners as the primary mechanism for detecting, the Agency is assured that the owner or operator will detect leaks through the top liner before hazardous constituents migrate out of the unit. The Agency believes that this is the earliest practicable time to detect such leaks.

For new land treatment units, the leak detection system being proposed today expands upon the existing Part 264 unsaturated zone monitoring requirements. These provisions currently require the owner or operator of a land treatment unit to conduct monitoring activities at specified intervals for hazardous constituents below the treatment zone. As discussed more fully below, the Agency is proposing to modify these provisions to further increase the capability of the existing unsaturated zone monitoring program to detect migration of hazardous constituents from the land treatment zone. By requiring an improved unsaturated zone monitoring program at specified intervals, the Agency believes that any leakage from a land treatment unit will be detected at the earliest practicable time in accordance with the Section 3004(o)(4) mandate.

All other requirements in today's rule are proposed under EPA's general authority to promulgate regulations for hazardous waste management facilities under Section 3004(a) of RCRA. Section 3004(a) requires EPA to promulgate regulations "as may be necessary to protect human health and the environment." Specifically, the requirements proposed under Section 3004(a) of RCRA are:

1. Response activities (action leakage rate and response action plan) for new landfills, surface impoundments, waste piles, and land treatment units and for replacements and lateral expansions of existing landfills and surface impoundments which received a RCRA permit after November 8, 1984.

2. Double liners and leachate collection and removal systems for new surface impoundments and landfills, and replacements and lateral expansions of existing surface impoundments and landfills at facilities which received a RCRA permit prior to November 8, 1984.

3. Double liner and leachate collection and removal systems for new waste piles and replacements and lateral expansions of waste piles at RCRA permitted facilities.

4. Double liners and leachate collection and removal systems for new interim status waste piles, and with respect to wastes received after the effective date of today's rule, replacements and lateral expansions of existing interim status waste piles that are within the waste management area identified in the Part B permit application.

5. Double liners and leachate collection and removal systems for significant portions of existing surface impoundments, waste piles, and landfills.

6. Leak detection and response activities for existing land treatment units.

7. Construction quality assurance requirements.

Essentially, today's proposal increases the level of technological control at land disposal units by requiring double liners and leachate collection and removal systems, a construction quality assurance program, and owner or operator initiated response activities. These increased levels of technological control are necessary to adequately protect ground water.

### Double Liner Requirements

The Agency's ground-water protection strategy is based on two components—the imposition of sufficient technological controls (i.e., liner and leachate collection and removal systems) and monitoring and corrective action responsibilities. The ultimate goal of such a strategy is to prevent hazardous constituent migration from the land disposal unit into the environment. Originally, the Agency thought that a single liner and a leachate collection and removal system along with corrective action would provide sufficient protection of the environment. Accordingly, in 1982 in Agency promulgated single liner and leachate collection and removal systems for land disposal units. (See 47 FR 32274, July 26, 1982) for a complete discussion of how these requirements adequately protect groundwater).

In 1984, Congress required new landfills and surface impoundments and lateral expansions and replacements of existing landfills and surface impoundments at facilities permitted after November 8, 1984 to install double liners and a LDCRS. (Section 3004(o)(1) of HSWA). By requiring double liner systems for these landfills and surface impoundments, Congress obviously voiced dissatisfaction with the application of the single liner requirements to these units.

Although Congress did not apply the double liner requirements to other land disposal units, the Agency has subsequently collected data which shows that double liner systems are warranted for other new land disposal units replacements and lateral expansions.

As discussed more fully in the background document, the Agency has developed models assessing hazardous constituents migration into the environment from land disposal units. As a result of these models, it is evident to the agency that single-lined units allow substantially greater migration into the environment of hazardous constituents than would double-lined units. While the Agency could rely on corrective action to clean up releases of hazardous constituents into the environment from single lined units, it is less costly and more effective to prevent ground-water contamination by imposing adequate technological controls rather than to rely on cleaning up such contamination after the fact.

The technologies for detecting and remedying ground-water contamination are not completely reliable in all cases. Unique and heterogeneous hydrogeologic settings can make it difficult to site monitoring wells and detect releases. Cleanup technologies are new and have not been tested for all wastes in all settings. Moreover, the expense of these cleanup activities raises the possibility that owners or operators may not be able to pay for corrective actions, forcing the Agency to consider spending Superfund monies to accomplish the cleanup. Because of these uncertainties, the Agency believes it is more effective to prevent constituents from migrating into ground water in the first place. Therefore, the Agency believes that the imposing double liner and leachate collection removal systems for certain new units, replacements, and lateral expansions, the Agency is assuring protection of human health and the environment by protecting ground water from the migration of hazardous constituents. The Agency is not proposing to require other existing land disposal units to adopt such double-liner requirements because in order to meet these requirements, an existing unit would need to excavate or remove all hazardous wastes. Besides being impractical, the removal of hazardous wastes could also pose a substantial environmental threat.

### Response Activities

Under today's program, the Agency is requiring the owner or operator of certain disposal units to conduct response activities (e.g., closing the units, repairing the leak) when leakage above a certain rate is discovered.

Although under Section 3004(o)(1) of HSWA, Congress mandated that EPA promulgate leak detection requirements for certain land disposal units, Congress was silent with regard to the appropriate response activities when leakage is detected at these units. EPA believes that it is critical that the owner or operator promptly initiate response activities when leakage above a certain rate is detected, therefore, the Agency is promulgating these response requirements under our general Section 3004(a) authority.

The goal of the response action program is to prevent the migration of hazardous constituents at levels exceeding health based standards for ground-water protection. Under today's proposal, the owner or operator will develop, and the Regional Administrator will approve, a RAP that effectuates this goal. Once the RAP has been approved, the owner or operator is expected to implement the RAP when leakage above a designated rate occurs. The Agency believes that it is necessary to require the owner or operator to initiate a response when certain levels of leakage occur because by requiring response actions promptly, the owner or operator is better able to minimize any environmental damage that may occur from migration of hazardous constituents out of the unit. We believe that since we are requiring owners or operators to detect leaks at the earliest practicable time, it makes sense to require early responses to those leaks. The prevention of leachate migration from the unit in levels exceeding health based standards for ground-water protection will obviate the need for corrective action because corrective action is tied to releases exceeding these standards. Since, it is less burdensome and more effective to prevent ground water contamination rather than to rely on corrective action, the Agency believes today's proposed response activity plan is necessary to protect human health and the environment.

Construction Quality Assurance Program

The Agency is today proposing to require owners and operaters of certain treatment, storage, and disposal units to construct these units in accordance with design specifications and criteria. The purpose of the construction quality assurance program is to prevent hazardous constituent migration into the environment from hazardous waste management units. As discussed more fully below, studies conducted by the Agency demonstrate that construction related problems during liner system installation constitutes one of the major sources of liner system failure. Therefore, the Agency believes that in order to ensure that liners operate as a barrier to prevent hazardous constituent migration from the unit, it is necessary that the Agency require owners and operators of hazardous waste disposal units to conduct a construction quality assurance program.

*B. Liquids Management Strategy*

The fundamental goal of EPA's hazardous waste management regulations is the protection of human health and the environment. To fully understand the relationship of today's proposal to the hazardous waste land disposal regulatory program promulgated on July 26, 1982, the "liquids management strategy" must be considered. This strategy as it pertains to landfills, surface impoundments, and waste piles, will be discussed herein. Land treatment units will be discussed in Section D below.

EPA believes that in order to protect human health and the environment, a fundamental goal of RCRA regulations must be to minimize, to the extent achievable, the migration into the environment of hazardous constituents placed in land disposal facilities. One element of EPA's strategy for achieving this goal is the liquids management strategy for land disposal facilities. There are two aspects of the liquids management strategy: the minimization of leachate generation in the unit and the removal of leachate from the unit. First, the generation of leachate is minimized through the use of design controls and operational practices such as a run-on control system capable of preventing the flow of liquid onto the active portion of the unit, the placement of a cap on the unit at closure, and the restriction of liquid waste in landfills. Second, the removal of leachate is maximized by requiring leachate collection and removal systems above (for landfills and waste piles) and between the liners. Today's proposal focuses on leachate removal.

The Agency views leachate collection and removal systems as the principal means of removing liquids from units. Although a liner is a barrier to prevent migration of liquids out of the unit, no liner can be expected to remain impervious forever. As a result of waste interaction, environmental effects, and the effects of construction processes and operating practices, liners eventually may degrade, tear, or crack and may allow liquids to migrate out of the unit (47 FR 32284, July 26, 1982). Because generation of leachate cannot be eliminated completely during the active life and post-closure care period of a land disposal facility, leachate removal is essential to prevent subsurface migration (47 32313, July 26, 1982). For example, in a double liner system, measures must be taken to remove liquid that migrates through the top liner, thereby preventing hazardous constituents from migrating through the bottom liner and into the environment.

For facilities that clean close, the liquids management strategy is addressed by removing or decontaminating waste residues through the site-specific closure plan. The closure requirements ensure protection of human health and the environment by requiring that leachate migration from waste residues not present a hazard. The alternative closure rule for certain surface impoundments and waste piles proposed on March 19, 1987, also implements the liquids management strategy by requiring the owner or operator to demonstrate that leachate migration after closure will not present a threat to human health or the environment. The site-specific assessment of leachate migration for controlled conditions enables EPA to allow some leachate migration out of the facility and still be protective of ground water and surface water.

Today, the Agency is proposing leak detection performance and design criteria that will result in increased liquid removal and collection for landfills, surface impoundments and waste piles. Moreover, depending upon site-specific circumstances relating to the leakage, the Agency will require the owner or operator to take certain actions to prevent migration of hazardous constituents out of the units to the extent practicable.

Today's proposed rule, therefore, helps to implement the liquids management strategy. The land disposal system elements function in an integrated and interdependent manner along with a construction quality assurance program to prevent leachate migration out of the unit by maximizing its collection and removal. The liners serve as a barrier to leachate migration and facilitate its collection and removal; the leachate collection and removal system (LCRS) above the top liner in landfills minimizes the buildup of liquid pressure on the top liner; the LCRS system between the liners serves to reduce the buildup of head on the bottom liner; and the leak detection system notifies the owner or operator of leakage through the top liner, which may in turn require the owner and operator to implement certain response actions to

prevent migration of hazardous constituents from the unit.

*C. Summary of Today's Proposed Rule for Landfills, Surface Impoundments, and Waste Piles*

Today's proposed rule establishes:

- Leak detection requirements that result in detecting leaks "at the earliest practicable time."
- Requirements for response actions to certain detected leakage to prevent hazardous constituent migration out of the unit in excess of EPA-approved health based standards for groundwater protection.
- Double liners and LCRS requirements for certain land disposal units that are not currently required to be double lined.
- Construction quality assurance requirements for owners and operators of hazardous waste management facilities to ensure that land disposal units are constructed as designed.

Each of the elements of today's proposed rule is discussed briefly below:

1. Leak Detection Requirements for Newly Constructed Landfills, Surface Impoundments, and Waste Piles

Under today's proposal, owners or operators of all newly constructed landfills, surface impoundments, and waste piles are required to design, construct, operate, and maintain a system capable of detecting leakage of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period of the unit (see Sections 264.221(g), 265.221(f), and conforming amendments to Subparts L and N of today's rules). In addition to this narrative standard, the Agency is also proposing specific performance and design standards for an approved leak detection system for these units.

Essentially, the leachate collection and removal system (LCRS) requirements proposed by the Agency on March 28, 1986 (Sections 264.221(c)(3) 265.221(a)(3) and conforming amendments to Subparts L and N) form the basis of today's proposed leak detection requirements. However, today's rule proposes to modify these LCRSs by specifying the following design criteria: a minimum bottom slope, drainage layer hydraulic conductivity and transmissivity, and a sump of appropriate size to collect and remove liquids efficiently. Additionally, the system must be capable of detecting a specified leak within a certain time period and must be able to collect and remove liquids rapidly to minimize head on the bottom liner (see Sections 264.221(h), 265.221(g) and conforming amendments to Subparts L and N of today's rule). In lieu of meeting these requirements, the owner or operator may receive a variance for an alternative system that meets certain specifications (Sections 264.221(i), 265.221(h) and conforming amendments to Subparts L and N).

In addition to the design criteria discussed above, the owner or operator must establish an action leakage rate (ALR) during the design of the unit. The ALR is the rate of leakage from the top liner into the LCRS that triggers interaction between the owner or operator and the Agency to determine the appropriate response action for the leakage. The ALR proposed today consists of a range between 5 and 20 gallons per acre per day. In the final rule, the Agency intends to select a value within that range as the appropriate ALR.

When the leakage from the top liner exceeds the ALR, the owner or operator is required to implement the appropriate site-specific response activity for leakage. Therefore, the Agency is also proposing today that the owner or operator develop a response action plan (RAP) which consists of an assessment of the reason for leakage, the current conditions of the unit components (e.g., bottom liner and leachate collection and removal system), the potential for migration out of the unit of hazardous constituents at levels exceeding health-based standards, and an assessment of the effectiveness of various responses.

Under today's proposal, the time when a RAP must be submitted depends upon the rate of the leakage. For rapid and large leakage, the owner must submit a RAP before the unit receives waste. For leakage that exceeds the ALR, but is less than rapid and large, a RAP must be submitted no later than 90 days after the ALR is exceeded. The RAP proposed by the owner or operator must be reviewed and approved by the Regional Administrator (RA). During this time (from determination of exceedance of the ALR to implementation of the RAP) the owner or operator continues to operate the unit and collect and remove leachate.

2. Leak Detection requirements for Certain Existing Landfill and Surface Impoundment Units

As discussed previously, Section 3004(o)(1)(A) of RCRA imposes double liner and leachate collection system requirements for new landfills, surface impoundments, and lateral expansions and replacements of existing landfill and surface impoundment units at facilities for which a permit is issued after November 8, 1984. The Agency is proposing today that units constructed prior to the effective date of this rule which must meet these requirements use their existing LCRS between the top and bottom liners as a leak detection system. Owners and operators of these units will *not* be required to modify the design of their existing leachate collection systems. However, they will be required to develop an ALR appropriate for the existing unit and to initiate a response action plan as discussed in the above section.

3. Double Liner and Leachate Collection Requirements for Certain Landfills and Surface Impoundments

The Agency proposed double liner and leachate collection system standards for new landfills and surface impoundments and lateral expansions and replacements of existing landfill and surface impoundment units at facilities for which a permit was issued after November 8, 1984. The Agency is proposing under the authority of Section 3004(a) of RCRA to extend these requirements to new waste piles, and lateral expansions and replacements of existing waste piles where construction begins six months after promulgation of today's rule. EPA is also proposing, under the authority of Section 3004(a) of RCRA, to extend these requirements to significant portions at existing landfills and surface impoundments and to new landfills and surface impoundments and lateral expansions and replacements of existing units at facilities permitted before November 8, 1984.

*a. Double liners and leachate collection and removal systems for waste piles.* The Agency is proposing that six months after promulgation of today's proposed rule, owners and operators must install double liners and leachate collection systems for new waste piles, and lateral expansions and replacements of existing waste piles where construction begins after the effective date of today's rule. Today's proposed rule applies to all waste piles, regardless of the date of permit issuance. As a result of this proposed rule, these waste piles will have technological requirements equivalent to those at designated landfills and surface impoundments. The Agency believes that, in order to protect human health and the environment it is critical that waste piles be provided protection equivalent to that provided at landfills and surface impoundments, because the potential for leachate migration from a waste pile can be similar to or greater than that from a landfill for an equivalent time period. Waste piles

generally have a longer active life, usually are not covered, and are more prone to liner damage from heavy equipment than landfills. As a consequence, double liners and LCRSs above and between the liners are being required by today's proposal.

Owners or operators of permitted and interim status waste piles may seek the same variances as those allowed to owners and operators of landfills and surface impoundments under 40 CFR 264.221 (d) and (e) and 264.301 (d) and (e). To receive a variance, the owner or operator must demonstrate that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the proposed liners and leachate collection system. The owner or operator may also receive a variance for a monofill under 40 CFR 264.251(e). Additionally, owners or operators of totally enclosed waste piles that meet the requirements of Section 264.250(c) are exempt from the double liner and leachate collection and removal system requirements under today's rule.

*b. Double liners and leachate collection system requirements for significant unused portions of existing landfills, surface impoundments, and waste piles.* Under today's proposal, existing units at interim status and permitted facilities must install double liners and leachate collection and removal systems on significant portions of those unlined areas upon which waste has not been placed 24 months after promulgation. EPA takes the position that double liners should be installed at significant unused portions of existing units where the opportunity to do so is the same as for new units. This action reduces the potential for adverse human health and environmental impacts by preventing the migration of hazardous constituents from the unit.

*c. Double liners for certain landfill and surface impoundment units at facilities permitted before November 8, 1984.* Under Section 3004(a) of RCRA, EPA is proposing that new landfills and surface impoundments, and lateral expansions and replacements of existing landfill and surface impoundment units at facilities permitted before November 8, 1984, will be required to have double liners and leachate collection and removal systems (LCRS). Today's proposal will apply to units at these facilities that begin construction 6 months after the date the final rule is published in the Federal Register. The potential for migration of hazardous constituents from these units is the same as for units at facilities permitted after November 8, 1984. Because units permitted after November 8, 1984 are required to have double liners and leachate collection systems, the Agency believes it is appropriate to require new landfills and surface impoundments, and lateral expansions and replacements of existing landfills and surface impoundments at facilities permitted before November 8, 1984, to also meet these requirements. Note that, as discussed in the previous section, new waste piles, and replacements and lateral expansions of waste piles at facilities permitted before November 8, 1984 must also meet these requirements.

There is, however, an exception to the applicability of the requirements discussed above. Under 40 CFR 264.221(f) and 264.251(f), the Agency is proposing today to exempt certain replacement surface impoundments, landfills, and waste piles permitted before November 8, 1984, from the double liner and leachate collection system requirements. In essence, owners or operators who demonstrate that they have a single liner at a surface impoundment or waste pile that currently meets the Part 264 single liner requirements and who have no reason to suspect that the liner is leaking will be exempt from the double liner and leachate collection system requirements.

EPA takes the position that if the owner or operator made a good faith effort to satisfy single liner requirements in effect at the time of permitting, it is unreasonable to require the owner or operator to assume the expense of a new double liner system when the single liner system is adequately working.

**4. Construction Quality Assurance Program for Landfills, Surface Impoundments, and Waste Piles**

Under Section 3004(a), today's proposed rule requires a construction quality assurance (CQA) program for the following components of landfills, surface impoundments, and waste piles: foundations; low permeability soils; FMLs; dikes; leachate detection, collection, and removal systems; and final covers. Under Sections 264.19 and 264.20, and 265.19 and 265.20, the owner or operator must ensure that these components meet or exceed all design criteria, plans, and specifications. The CQA requirements are implemented through a CQA plan which is specifically tailored for each unit. The plan addresses activities such as inspecting, monitoring, and sampling for the individual components.

The CQA plan must specify the unit-specific procedures that the owner or operator will use to comply with the CQA requirements and to identify implementation procedures for construction and installation. For units applying for RCRA permits, the CQA plan must be submitted with the permit application. For permitted facilities desiring to construct new units, or to laterally expand or to replace such units, the plan must be submitted as a permit modification (Section 264.20). For interim status units, the owner or operator is required to submit a plan for approval prior to construction (Section 265.20).

The CQA plan is prepared at the design stage and is implemented during the construction and installation phase. Today's proposal requires the owner or operator to develop a CQA plan to be submitted to the Regional Administrator (RA) for approval prior to construction. Under today's proposal, the owner or operator is required to retain a registered professional engineer to implement the plan (Sections 264.20(a) and 265.20(a)). A CQA report documenting proper implementation of the approved plan must be submitted to the RA following construction (Section 40 CFR 264.20(g) and 265.20(f)). Report submission (both permitted and interim status units) and approval (permitted units only) is required before waste can be received (with the exception of the closure report). The RA will review and approve the report within 30 days unless the owner or operator is notified otherwise. If the RA does not respond within 30 days (permitted units only) the report does not need to be reviewed and approved.

CQA serves to detect deviation from the design caused by error or negligence during the construction phase of a unit and to allow for suitable corrective measures before wastes are disposed in the unit. Without proper CQA, problems with components (e.g., leachate collection and removal system) due to construction may not be discovered until the component or system fails during operation. Improper construction has been cited as one of the major causes of waste migration out of units. Two studies conducted by EPA indicate that proper CQA is extremely important for successful performance of liners, covers, leachate collection systems, and leak detection systems (see Liner/Leak Detection Background Document). EPA believes that the CQA program is an integral part of the land disposal requirements because it will provide a high degree of confidence that all components are working as designed

when a unit is started up to receive waste.

The objective behind the proposed CQA program is directly related to both parts of the liquids management strategy: minimizing leachate generation and maximizing leachate removal. To ensure that the waste management system will meet these goals, all components of the total system must function as designed: top and bottom liners, leachate collection and removal systems above and between the liners, the leak detection system, and the final cover. The CQA program will aid in meeting these goals by ensuring the quality of each component of the land disposal unit.

*D. Summary of Today's Proposed Rule for Land Treatment Units*

1. Leak Detection for Land Treatment Units

There are differences between land treatment and waste disposal in a landfill, waste pile, or surface impoundment. The land treatment process involves waste biodegradation in the upper layers of the soil and reduction of constituent hazard levels during the degradation process. Treatment, storage, or disposal at a landfill, surface impoundment, or waste pile relies on containing the hazardous constituents (further description of differences is provided in Section V). Therefore, the Agency is proposing a leak detection methodology for land treatment units that differs from the methodology proposed for landfills, surface impoundments, and waste piles.

Under today's proposed rule, the owner or operator of new and existing land treatment units must comply with the leak detection requirements within 6 months after the date the final rule is published in the Federal Register.

The Agency is proposing that the owner or operator meet the existing unsaturated zone monitoring requirements under Part 264 for both new and existing land treatment units at interim status and permitted facilities. These requirements are the core of the leak detection program for land treatment units. EPA is proposing to expand these requirements by requiring the owner or operator to meet a 95-percent monitoring confidence level for detection of a significant increase of hazardous constituents below the treatment zone; to detect leaks at the earliest practicable time; to monitor soil and soil-pore liquid immediately below the treatment zone; and to inspect unsaturated zone monitoring equipment.

Under today's proposal, the owner or operator of new and existing units at interim status or permitted facilities must develop a response action plan (RAP) for widespread leakage. This must be prepared and submitted to the RA for approval before waste can be received at a new unit or, for existing units, after the effective date of today's rule. Owners or operators who discover leaks that are less widespread are not required to develop a RAP for the following reason: The existing land treatment provisions under Part 264 require that if the owner or operator detects concentrations of constituents statistically exceeding background levels, appropriate operational controls must be implemented, such as reducing the waste application rate at the land treatment unit.

The owner or operator of a new facility must address today's proposed land treatment requirements in the permit application. The owner or operator of existing permitted land treatment units must submit a permit modification to the RA and implement the revised unsaturated zone monitoring program six months after promulgation of the final rule. An owner or operator of an interim status unit must have a written unsaturated zone monitoring plan that specifically sets forth the responsibilities of the new leak detection requirements and must implement the plan six months after promulgation of the final rule.

2. Construction Quality Assurance for Land Treatment Units

Today's proposed CQA program for land treatment units only addresses covers. The owner or operator of such a unit must ensure that the final cover meets or exceeds all design criteria, plans, and specifications in the permit (for permitted units) or in the operating record (for interim status units). The CQA requirements applicable to covers at land treatment units are the same requirements applicable to landfills, surface impoundments, and waste piles as discussed in Section 4 above.

*E. Integration With Double Liner and Leachate Collection and Removal System Requirements*

Today's proposal has been developed in conjunction with the double liner and leachate collection system requirements proposed March 28, 1986 (51 FR 10706) to modify the July 15, 1985 rule (50 FR 28702). The March 28, 1986 proposed rules require new landfills and surface impoundments and lateral expansions, and replacements of existing landfills and surface impoundments at facilities which receive a RCRA permit after November 8, 1984, to have two or more liners and a leachate collection system above (for landfills) and between the liners. The liner system proposed in March 1986 comprises an FML top liner and either a compacted soil (clay) bottom liner or a composite bottom liner consisting of a FML underlain by compacted soil.

On April 17, 1987, EPA issued Hazardous Waste Management System: Minimum Technology Requirements: Notice of Availability of Information and Request for Comments (52 FR 12566). That notice included data on the two bottom liner designs proposed in the March 28, 1986 rule: Composite and compacted soil. In the notice, the Agency compared the leak detection performance characteristics, leachate collection efficiency, and the potential for leachate migration into and out of the two liner types. EPA requested comments on the data presented in the Notice. The comment period closes June 1, 1987.

The April 17, 1987 notice discusses the deficiencies in the performance expected of compacted soil bottom liners under most conditions. Under most conditions soil bottom liners cannot be considered best available technology. Deficiencies of the compacted soil liner include:

1. The compacted soil liner does not maximize leachate removal in the LCRS between the liners because the compacted soil will absorb some of the liquid from the leachate collection system between the liners. Therefore, the absorbed leachate would not be available for collection and removal by the LCRS and may eventually migrate out of the unit. For a LCRS to remove leachate rapidly, it must have two characteristics: (1) High hydraulic conductivity, and (2) relatively smooth flow conditions. A compacted soil bottom liner can decrease the hydraulic conductivity of the LCRS by penetrating the lower portion of the LCRS. Moreover, because the surface of the compacted soil is rougher than the surface of the FML, the flow velocity in the leak detection system (LDS) is significantly reduced.

2. Under most conditions the compacted soil liner will not allow leak detection at the earliest practicable time. The compacted soil absorbs liquid leaking through the top liner and, therefore, delays or reduces the capability to detect leaks. The compacted soil bottom liner is estimated to have a leakage detection capability of between 100 to 500 gallons per acre per day while composite bottom liners have a much more sensitive detection capability ranging from 0.1 to 1 gallon per acre per day.

3. The compacted soil bottom liner encourages the buildup of higher liquid pressures on the bottom liner by not allowing for rapid drainage of liquid to the sump. This increases the potential for migration through the bottom liner.

In summary, the compacted soil bottom liner has the capability of absorbing rather than allowing for the collection of large volumes of leachate, and the absorbed constituents may migrate out of the unit. Also, the compacted soil bottom liner may not provide for detection of leakage at the earliest practicable time in most cases. Based on the data presented in the notice, EPA believes that the composite bottom liner is, overall, a more effective technology than a compacted soil liner.

Although the leak detection portion of today's proposal is based on the use of the composite bottom liner as the best available technology for meeting the statutory leak detection requirements, the leak detection proposal does not exclude the use of compacted soil liners under unique site-specific circumstances. This is because use of the best available technology (i.e., composite bottom liners) may not be necessary for protection of human health and the environment in all cases. Today's proposal allows for the use of alternative leak detection systems, such as one that may include a compacted soil bottom liner, provided that it is capable of meeting the detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. It may be possible that under certain site-specific conditions, such as low rainfall, a compacted soil bottom liner could be used. Further discussion on this point is provided under preamble Section V.A.2.a.(4).

## IV. Systems Approach

In developing today's proposal, EPA considered all of the design and operating requirements for a land disposal unit (i.e, the entire system) rather than focusing on individual components of the unit: The leachate collection and removal system (LCRS) (above and between the liners); the top liner (FML); the bottom liner; and the cover. Figure 1 shows a schematic of a typical double liner and leak detection system for a landfill. The double liner and leak detection system includes a top and bottom liner and an LCRS above the top liner and between the top and bottom liners. Each component of the system is designed to prevent ground-water contamination. Therefore, some redundancy is provided by requiring all of these components in the land disposal unit. EPA believes that although individual component failures can occur, the system remains intact unless a fatal combination of failures occurs, which has a very low probability. For example, rainwater that breaches the cover will be collected in the leachate collection system above the top liner, and no liquid will be allowed to build up on the top liner. Thus, a breach in the final cover will not necessarily result in a leak from the unit.

The response action plan (RAP) for leak detection is designed with the integrated systems approach in mind. Under this approach, the owner or operator can make a site-specific assessment to examine the size and nature of the leak and the capability of the whole system, as opposed to a single component, to prevent migration of hazardous constituents out of the unit. Through this assessment the appropriate response can be determined which will meet the goal of protecting ground water and surface water.

Leakage through the top liner above the action leakage rate does not automatically mandate that the top liner be repaired because the Agency believes that the bottom liner will most likely impede liquid from migrating out of the unit. However, to ensure that this is the case, the Agency is using the RAP to assess the capability of the entire system to deter migration of hazardous constituents and to ensure the appropriate response to achieve that goal.

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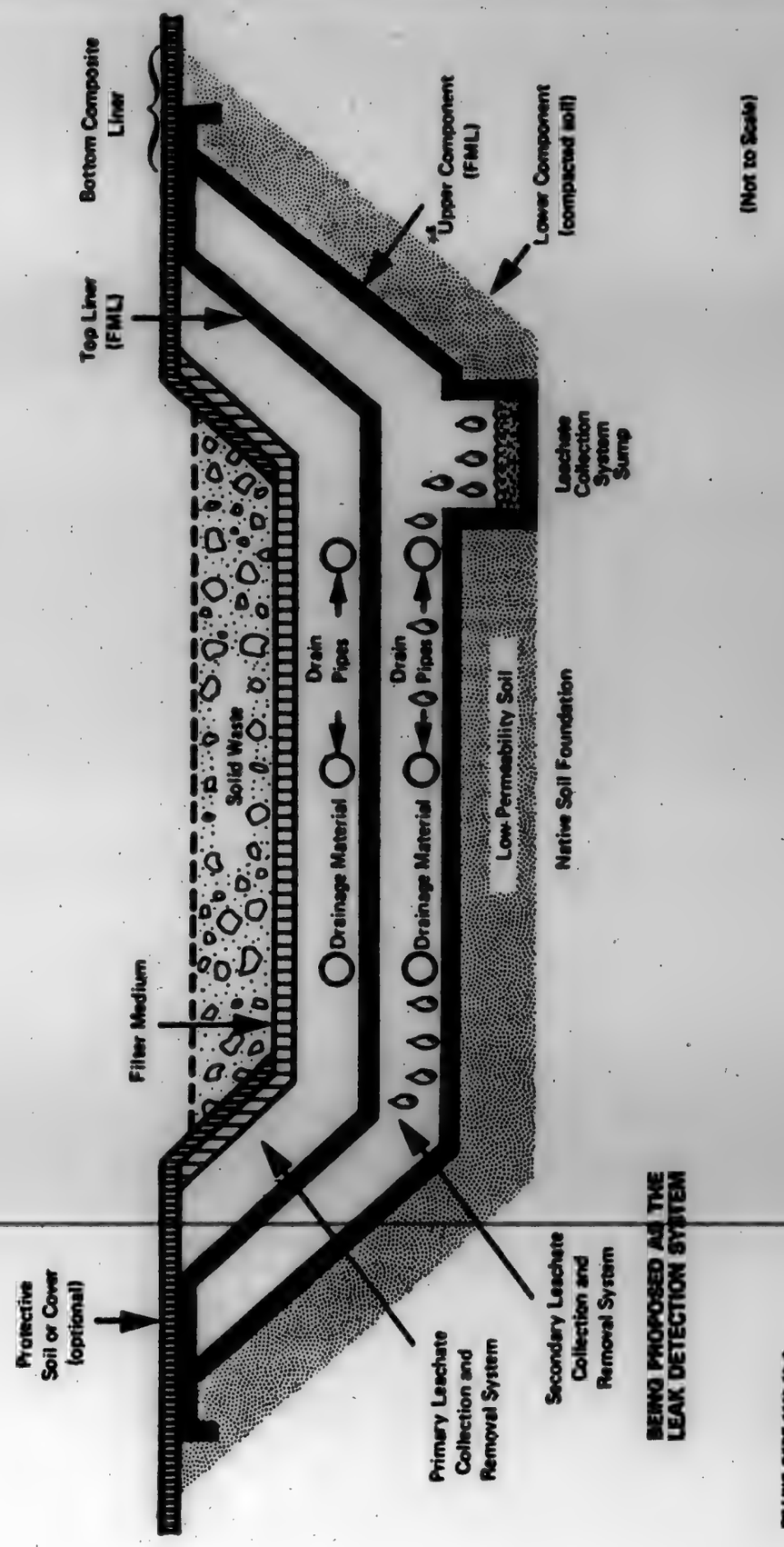
SCHEMATIC OF A DOUBLE LINER AND LEAK DETECTION SYSTEM FOR A LANDFILL




BEING PROPOSED AS THE LEAK DETECTION SYSTEM

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## V. Section-By-Section Analysis of Proposed Rule

### *A. Leak Detection System*

1. Background

*a. Introduction.* Today, EPA is proposing leak detection system (LDS) standards for surface impoundment, waste pile, land treatment, and landfill units in 40 CFR Subparts K through N. The proposed leak detection standards combine performance and design criteria.

The regulatory goal of preventing groundwater contamination is achieved in different ways with different types of units. For land treatment units, the existing standards require that hazardous constituents be degraded, transformed, or immobilized within the treatment zone. Owing to the unique features of the land treatment process, these units are discussed separately in Section V.A.3 of this preamble.

In today's proposed rule for surface impoundments, waste piles, and landfills, the Agency sets forth general performance criteria for the leak detection system that relate to detection sensitivity and detection time. Since there are many ways to achieve such goals, detailed specifications are not set forth in these rules. Rather, owners and operators are free to select a design that meets these performance criteria. EPA has developed and will continue to develop technical guidance documents to assist owners or operators and permitting authorities in evaluating the appropriateness of various designs, materials, and equipment.

The proposal also sets forth specific design criteria for the leak detection system that owners or operators must use as a minimum when designing a system. Owners or operators are not, however, precluded from using more stringent design criteria.

*b. Objectives of the leak detection system.* The regulatory objectives of today's proposed rule are to detect leaks at the earliest practicable time (in keeping with RCRA Section 3004(o)(4)(A)), to contain the leak within the engineered structure of the unit, to prevent ground-water contamination when technically feasible and thereby obviate the need for corrective action. Today's proposed leak detection regulations have the following key features:

(1) New and certain existing surface impoundments and landfills must have a leak detection system between the top and bottom liner capable of detecting leaks at the earliest practicable time.

(2) The technology-based standards for the leak detection system and bottom liner must be used to achieve the detection capability required for a leak detection system.

(3) The system must be able to detect leaks over all areas exposed to waste and leachate.

(4) The system must be operated during the active life and post-closure care period of the unit (if applicable).

(5) Response actions are required to prevent migration of hazardous constituents out of the unit to mitigate the potential for groundwater contamination.

*c. Rationale of the proposed leak detection standards for surface impoundments, landfills, and waste piles.* On March 28, 1986, the Agency proposed leachate collection and removal system requirements for surface impoundments and landfills based on a drainage layer technology (40 CFR 264.221(c) and 265.221(a) and conforming amendments to Subpart N). The leak detection system being proposed today relies on the proposed drainage layer technology requirements for leachate collection and removal systems between liners for surface impoundments and landfills. EPA selected a drainage layer technology as an approved leak detection system for several reasons. First, such a system is a proven technology that has been tested in land disposal sites under extreme weather and other unfavorable conditions, and that works well over a long period of time. Second, it is a highly reliable, low-maintenance system. Third, the drainage system is capable of detecting leaks in all areas between the liners. Fourth, because drainage layer technology is currently the basis for the existing leachate collection and removal systems, it combines two important functions, leak detection and leachate removal. An additional advantage of using the proposed leachate collection and removal system between the liners is that because of its basic capability to detect leaks, an owner or operator can continue to use the current design approach to meet today's requirements rather than developing new and potentially incompatible design concepts for the various components.

In selecting a leak detection system, EPA evaluated other systems and technologies including electrical resistivity, time domain reflectometry, acoustical emission monitoring, and other innovative technologies. These approaches were not selected for today's proposal for the reasons discussed below (for further information see the Liner/Leak Detection Background Document).

1. Electrical resistivity (ER) is a geophysical technique whereby an electrical current is introduced into the ground by a pair of surface electrodes, and the resultant potential field, as measured by a second pair of electrodes, is interpreted to detect anomolies (leaks). For the purpose of leak detection the current is passed from an electrode within the land disposal unit to an electrode outside the unit.

The method has been tested on a 1-acre single FML-lined surface impoundment and shows promise for detecting and locating leaks in this situation. Generally, ER has had limited application for the purpose of permanent leak detection at land disposal facilities to date; therefore, very little field data are available.

ER has several drawbacks. If using the electrode configuration as discussed above, ER is only applicable in a double-lined system where the bottom liner is compacted clay or is a composite that is also leaking. If the bottom FML is intact it will not allow a current path to be established between the electrodes. For this reason ER may not generally be applicable to double FML-lined units. ER may be used to detect top liner leakage in double FML-lined units by placing one set of electrodes between the liners, but wires and electrodes may corrode during the active and post-closure life of the unit. Additionally, ER cannot be used to evaluate the leakage rate but instead only locates leaks. ER applications to date have been temporary ones. For permanent applications the durability and reliability of the ER system components may be questionable and the burden associated with continuous or semi-continuous monitoring would be high. ER shows promise, however, for detecting the leak location at surface impoundments known to be leaking and for construction quality assurance (CQA) verification on certain portions of a liner such as the sump area.

2. Time domain reflectometry (TDR) measures the electrical property variations in the material along a pair of parallel transmission line conductors. TDR is sensitive to soil moisture content, making it attractive for leak detection. However, TDR has several drawbacks: (1) It must be installed in sand with a moisture content low enough to provide an adequate contrast between unwetted and wetted sand, (2) wires may corrode, and (3) although a drainage layer of well-compacted medium-to-fine grained sand increases horizontal dispersion of a leak, thus increasing the TDR response, too much fine sand rapidly attenuates the TDR signal and is not desirable for drainage.

3. Acoustic emission monitoring (AEM) detects vibrations produced by liquids leaking from a containment site by using transducers. The technology has not been proven at a full-scale site and has several drawbacks: (1) Sensors and wires may corrode during the active life and post-closure care period of the unit, (2) AEM may not detect small leaks or low velocity leaks where the flow is not turbulent, and (3) AEM is sensitive to background noises (for instance, nearby equipment or machinery), and (4) AEM is only reliable if it identifies leaks within a few minutes of the leak's occurance.

4. Other technologies were also considered but were found to be inappropriate as a primary leak detection system for landfills, surface impoundments, and waste piles. These technologies include lysimeters, seismic measurements, electromagnetics, and moisture blocks, all of which are still in the field-testing stage and may provide new technical capabilities under certain conditions in the future (see Liner/Leak Detection Background Document). On a site-specific basis, the owner or operator may request a variance from today's leak detection requirements (Section 264.221 (i) and 265.221 (h) and conforming amendments to Subparts L and N) in order to install one or a combination of these alternative technologies.

Once a leak has been detected, there is a need for interaction between the owner or operator and the Agency to determine the appropriate response action. The response action varies, depending upon the site-specific factors at the unit.

The Agency believes that it may be appropriate to require the owner or operator to undertake certain response activities when a leak above a predetermined value, the action leakage rate (ALR), is measured in the unit (Sections 264.226(c)(1) and 265.226(b)(1) and conforming amendments to Subparts L and N). Therefore, EPA is requiring the owner or operator to initiate a response action plan (RAP) when leakage in the sump exceeds the ALR.

The Agency believes that an appropriate response will vary depending upon the size of the leak. Therefore, in today's rules the Agency is proposing more stringent response activities for rapid and extremely large leaks than for smaller leaks. In addition to evaluating the size and nature of the leak, the Agency will consider the capabilities of the bottom liner and the leachate collection and removal system between the liners to determine an appropriate response action.

EPA takes the position that rapid and extremely large leaks require immediate attention. Therefore, EPA is proposing today that owner or operator prepare a RAP for such leaks before receiving waste at a unit. EPA believes lesser leaks do not require immediate action, and the response will be determined through an interactive process between EPA and the owner or operator, generally occurring at the time the ALR is exceeded.

Although not specifically required by the minimum technological requirements of HSWA, response activities are a logical outgrowth of an approved leak detection system. Moreover, such activities are consistent with the congressional intent underlying the leak detection provisions. Congress specifically noted that ground-water contamination would be prevented in most cases if leaks were detected at an early time. See Congressional Record-House, October 6, 1983, page 8150.

Cleanup of ground water after it has been contaminated with hazardous waste can be expensive or technically infeasible in some cases. The corrective actions may involve pumping and treating large volumes of contaminated ground water for many years. The leak detection program being proposed today is designed to address leakage before it can migrate out of the unit, thereby allowing actions to be taken to prevent ground-water and surface-water contamination before it can occur. For the above reasons, EPA believes that the response action parts of the leak detection standards are necessary to prevent ground-water contamination and provide protection of human health and the environment.

2. Proposed Rule for Surface Impoundments, Waste Piles, and Landfill Units

*a. Detection Capability—(1) Overview—(a) Performance standards and rationale.* Based on the narrative statutory language of Section 3004(o)(4) and its legislative history, today's proposed rule requires owners or operators of all newly constructed surface impoundment, waste pile, and landfill units to maintain a leak detection system capable of detecting hazardous constituent migration through the top liner at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. (See Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts L and N.)

Section 3004(o)(4)(A) requires a leak detection system for all new landfills, surface impoundments, and waste piles. Section 3004(o)(4)(B)(ii) defines "new unit" as a unit on which construction will commence after the date that today's rule is promulgated in final form. A unit will also be considered a "new unit" if operation has begun subsequent to the promulgation of today's regulations in final form. The current definition of "commencing construction" in Section 260.10 for an existing facility will be used in today's proposal. Therefore, an owner or operator will be deemed to have "commenced construction" of a unit if:

(1) The owner or operator has obtained the Federal, State, and local approvals or permits necessary to begin physical construction, and;

(2) Either a continuous on-site physical construction program has begun, or, the owner or operator has entered into contractual obligations that cannot be cancelled or modified without substantial loss for physical construction of the unit to be completed within a reasonable time.

EPA is proposing that the leak detection system extend over all areas likely to be exposed to waste or leachate (Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts L and N). This proposed requirement is consistent with the minimum technology double liner requirements under Section 3004(o) for surface impoundments and landfills. The minimum technology requirements call for placement of two or more liners with a leachate collection and removal system above (in the case of landfills) and between the liners, which is designed, constructed, operated, and maintained to prevent leachate migration out of the unit. EPA has interpreted these statutory provisions as necessitating double liners and leachate collection and removal systems under all areas likely to be exposed to waste or leachate (51 FR 28709). This interpretation is consistent with EPA's current regulatory practice regarding the design of liners and leachate collection and removal systems. Accordingly, to collect all potential leakage through the top liner, the leak detection system must extend under all areas likely to be exposed to waste or leachate.

Today's proposed rule also requires the leak detection system to operate effectively through the active life and post-closure care period of the unit (Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts L and N). This is consistent with the proposed minimum technology double liner system requirements (40 CFR 264.221(c) and 265.221(a) and conforming amendments to Subpart N). These requirements call for a double liner

system designed to prevent leachate migration out of the unit during the active life and post-closure care period. By requiring a leak detection system with similar operating life requirements, there will be a mechanism for monitoring double liner system performance for the entire active life and post-closure care period (if applicable).

Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts N and L of today's proposal also require a system that can detect leakage that migrates through the top liner into the space between the liners at the "earliest practicable time." The term "earliest practicable time" refers to the time after liquid has passed through a breach in the top liner until the time that a technology-based standard leak detection system can detect the liquid.

A leachate collection and removal system between the liners that employs a drainage layer technology will provide the most reliable, durable, and efficient system to satisfy the leak detection system performance standard. A drainage layer technology can provide 100 percent coverage under all areas that may be exposed to waste or leachate, requires little maintenance, is reusable, and provides a response mechanism (liquid collection and removal) at the same time the leak is being detected. This technology can provide continuous and accurate monitoring of top liner leakage through the active life and post-closure care period.

In addition to these technical reasons, this approach also has the advantage (for surface impoundments and landfills) of allowing the owner or operator to use the existing leachate collection and removal system between the liners, with only limited design modifications, for the leak detection system. This enables the owner or operator to use the current design approach to meet today's requirements rather than to develop new and potentially incompatible design concepts for the various components. It also minimizes additional operational and cost requirements associated with implementing a new leak detection system.

In developing today's proposal, EPA considered whether or not to establish the leak detection system below the bottom liner. The Agency rejected this option because it is inconsistent with its "liquids management strategy." Under this strategy the first line of defense in preventing ground- and surface-water contamination is to detect top liner leaks early enough to control the leak while the liquid is still in the unit. We believe that it is preferable to detect leaks from the top liner before leachate from the top liner migrates through the bottom liner.

Moreover, locating the leak detection system below the bottom liner would be inconsistent with the bottom liner performance standard of preventing hazardous constituent migration through the bottom liner. If a leak were detected below the bottom liner, there would be no backup liner to prevent ground-water contamination until the bottom liner leak is fixed. Instead, when the leak detection system is located between the top and bottom liners, the bottom liner acts as a barrier to allow leachate collection while the owner or operator performs a review and assessment of the leakage and implements, if necessary, a response action.

Based on these considerations, EPA is proposing to require the leak detection system to be located adjacent to and below the top liner and above the bottom liner. The Agency believes that using a leachate collection and removal system between the liners provides the best locational option for the leak detection system because: (1) All newly constructed landfills and surface impoundments falling under RCRA 3004(o)(1) will already have leachate collection and removal systems between the top and bottom liners and (2) detection of leakage that passes through the top liner will allow time to implement a response action well before leakage poses a threat to ground water.

EPA is today soliciting comments on the proper location for a leak detection system in a unit that contains more than two liners. As an example, a surface impoundment may have three liners, with leachate collection and removal systems between the top and middle liners and also between the middle and bottom liners. Under today's proposal, the leak detection system would be located above the bottom liner. For the surface impoundment example, therefore, the leak detection system would consist of the leachate collection and removal system between the middle and bottom liners. EPA requests comments on the appropriateness of this proposed requirement for systems that contain more than two liners.

In today's proposal, EPA has striven to develop leak detection system performance standards for the LCRS between the liners that not only comply with the statutory narrative requirements of Section 3004(o)(4) to detect leaks at the earliest practicable time, but also provide the level of protection of human health and the environment consistent with that inherent in the minimum technology double liner requirements of Section 3004(o)(1). The Agency's position is that it can achieve these objectives in the regulations for leak detection systems through two related leak detection system performance criteria: (1) Leak detection sensitivity and (2) leak detection time. These criteria will be discussed in detail subsequently in this preamble. The numerical values for these criteria are based on the best available technology (BAT) for composite bottom liners and leachate collection and removal systems.

Although today's proposal does not require that the leak detection system be able to detect the exact location of a leak in a top liner, this capability may be cost-effective for the owner or operator to install. The cost effectiveness of installation will depend on the unique features of each unit, such as the type of unit, operational status of the unit, type of top and bottom liner systems, and the design of the leachate collection and removal system. Even though installing a leak detection system with this capability may initially cost more, rapidly locating a leak can save time and resources when response measures for the liner are needed. However, we are not proposing detection of the exact location of a leak because with EPA's systems approach to leachate collection and removal, the inability to detect leak's exact location does not increase the potential for migration of hazardous constituents from the waste management unit.

Today's proposed rule will require the owner or operator to make a quantitative demonstration that the system performance criteria were met. This demonstration will be submitted as a part of the Part B application for facilities seeking permits or as part of a permit modification application for already permitted facilities (Section 270.17(b), 270.19(c) and 270.21(b)). If the facility is an interim status facility, the demonstration will be reviewed by EPA during permitting along with the double liner system requirements.

*(b) Design and operating requirements.* Today's proposed rule sets out specific minimum design and operating requirements for leak detection systems at both permitted and interim status facilities. (See Sections 264.221(h) and 265.221(g) and conforming amendments to Subparts L and N.) These design and operating requirements are being proposed for surface impoundments, waste piles, and landfills.

The requirements consist of both minimum design specifications and operating criteria for leak detection system components. The combination of

the performance criteria previously discussed, and minimum component and operating specifications, ensures that the leak detection system has a capability to detect leakage at the earliest practicable time over all areas likely to be exposed to waste or leachate. The minimum design specifications in today's proposal include drainage layer hydraulic conductivity and thickness for granular drainage media, hydraulic transmissivity for synthetic drainage media, bottom slope, and sump capacity. The minimum operating criteria specify removal of liquids rapidly to minimize the head on the bottom liner. The Regional Administrator will specify operating conditions in the permit to ensure the liquid head is minimized at all times.

In lieu of the design and operating criteria set forth in Sections 264.221(h) and 265.221(g) and conforming amendments to Subparts N and L, the owner or operator may choose to select an alternative leak detection system in accordance with Sections 264.221(i), 265.221(h), and conforming amendments to Subparts L and N. The alternative leak detection system would not be required to meet the LCRS requirements. This variance for the design and operating requirements will be discussed in Section a(4) below.

*(2) Performance standards—(a) Leak detection sensitivity.* The Agency is requiring leak detection systems for surface impoundments (Sections 264.221(h)(2) and 265.221(g)(2)), landfills (Sections 264.301(h)(2) and 265.301(g)(2)), and waste piles (Sections 264.251(h)(2) and 265.251(g)(2)) that are capable of detecting a rate of top liner leakage of no more than one gallon/acre/day (gpad). This "leak detection sensitivity" of one gpad is based on BAT leak detection sensitivities of leachate detection, collection, and removal systems (LDCRS) located between the top and bottom liners. Detection sensitivity refers to the smallest quantity of liquid that can pass through the top liner and be detected by the leak detection system.

As stated above, the detection sensitivity is reported in units of gpad. Areal units of acres were selected because the size of a typical surface impoundment, waste pile, or landfill unit is approximately one or more acres (see Liner/Leak Detection Background Document). The detection sensitivity is reported in 24-hour units (days) because leak detection using leachate collection and removal systems is on the order of days as opposed to other time units (see Liner/Leak Detection Background Document).

In establishing a detection sensitivity of one gpad, EPA considered the performance characteristics of compacted soil and composite bottom liners. EPA has conducted studies (see the EPA Background Document "Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments") to evaluate the influence of bottom liner type on leak detection sensitivity. The studies included analytical and numerical evaluations of the performance of both compacted soil and composite bottom liners as well as an evaluation of small-scale and large-scale liner model test results. These studies showed that if the bottom liner is constructed of low-permeability compacted soil, a certain rate of liquid migration into the liner will occur due to gravitation and capillary forces. Drain flow will not occur in the LDCRS until the rate of liquid impingement onto the bottom liner exceeds the rate of liquid infiltration into the bottom liner due to these forces. The studies showed that if a top liner developed a leak that resulted in uniform leakage (similar to rain) onto a compacted soil bottom liner with a hydraulic conductivity of $1 \times 10^{-7}$ cm/s, the bottom liner could absorb approximately 80 gpad under steady-state conditions before drain flow would begin. That means that the detection sensitivity of the leak detection system could be as high as 80 gpad or more, in this example.

Compared to compacted soil bottom liners, the EPA studies have shown that composite bottom liners consisting of an upper FML component and a lower compacted soil component will absorb much less liquid than a compacted soil bottom liner. The study results indicate leak detection sensitivities for composite bottom liners in the range of 0.001 to 0.1 gpad (see Liner/Leak Detection Background Document).

The results from the comparative study of low-permeability compacted soil bottom liners and composite bottom liners clearly demonstrated that LDCRS underlain by composite bottom liners are generally more effective. The study results also indicated that properly designed and constructed composite liners can result in LDCRS detection sensitivities of less than 0.1 gpad (see Liner/Leak Detection Background Document). The Agency is today proposing a detection sensitivity based on composite bottom liner of one gpad rather than 0.1. A value of one gpad has been selected to account for construction, operational, and other factors that limit the "practical" detection capability of a LDCRS. However, since the actual detection sensitivities associated with composite bottom liners were found to be less than 0.1 gpad, the Agency is considering lowering the detection sensitivity standard from the proposed value of one gpad to 0.1 gpad. EPA is requesting comment on the appropriate value for detection sensitivity within the range of 0.1 gpad to one gpad.

Today's proposal requires owners or operators to design a LDCRS to meet the detection sensitivity criterion and demonstrate that the system satisfies this criterion. EPA plans to issue guidance for making such a demonstration. This demonstration will be based on a calculation of the rate of migration of liquids into the bottom liner based on uniform top liner leakage and saturated, steady-state conditions (see Liner/Leak Detection Background Document). The owner or operator will not be required to account for liquids held in storage in the LDCRS by capillary tension.

*(b) Detection time.* The EPA is requiring leak detection systems for surface impoundments (Sections 264.221(h)(2) and 265.221(g)(2)) landfills (Sections 264.301(h)(2) and 265.301(g)(2)) and waste piles (Sections 264.251(h)(2) and 265.254(g)(2)) to be capable of detecting top liner leakage of one gpad or greater within one day of the leakage having passed through the top liner. Detection time refers to the time from when liquid enters the LDCRS between the liners to when it reaches the LDCRS collection laterals or sump.

A leak detection time design goal of one day was established based on the capabilities of currently available drainage materials. The one-day criterion has been established based on saturated, steady-state analyses using drainage layer materials meeting the proposed design specifications for drainage materials described in Sections 264.221(h)(1) and 265.221(g)(1) and conforming amendments to Subparts L and N (see Liner/Leak Detection Background Document). These drainage material specifications minimize capillary tension in the LDCRS, thereby permitting the use of saturated steady-state analyses to evaluate leak detection time. This is discussed in the following paragraphs.

The leak detection time criterion is based on steady-state analyses of drainage layer materials that exhibit minimal wetting up. The following is a brief explanation of some factors that affect detection time. An initially dry granular drainage layer material will absorb some moisture before drain flow

begins. This wetting up is due to the presence of capillary tensions in the pores of partially-saturated granular materials. The more finely grained the granular material, the larger the capillary tension and the greater the capillary rise or wetting up. During the wetting-up period, leachate fills up the pore volume of the leak detection layer. Drain flow will not occur and liquid will not be detected in the leak detection system sump until the drainage layer has wetted up. For sands with hydraulic conductivities of $1 \times 10^{-2}$ cm/s, the wetting up period can amount to hundreds of days for small leaks in the top liners of typical landfill facilities. For thin synthetic drainage layers with only a fraction of the thickness of a sand drainage layer and for granular drainage media with hydraulic conductivities in the range of 1 cm/s or greater (such as clean coarse sand or clean pea gravel), the wetting up period is dramatically reduced. With gravels and synthetic drainage layers, only very small amounts of leachate will be held in storage through capillary tension. These types of drainage media, coupled with the use of a composite bottom liner, result in a leak detection system with rapid detection times (as long as the leakage rate through the top liner exceeds the detection sensitivity).

Today's proposed rule requires granular drainage materials with hydraulic conductivities equal to or greater than 1 cm/s so that capillary tension in the leak detection system will be small. Further, with the use of a bottom liner meeting today's proposed leak detection sensitivity criterion, only slight leakage will occur in the bottom liner before it is detected. EPA studies (which are discussed more fully in the Liner/Leak Detection Background Document) have shown that under these conditions, flow in the LDCRS between the top and bottom liner can be evaluated using saturated, steady-state analyses assuming an impermeable bottom liner. The EPA studies present these analyses for a range of waste management unit designs involving various drainage distances and hydraulic gradients. From these analyses, it was concluded that with the drainage layer materials specified in today's proposal and current good design practice, leak detection times on the order of one day or less would be calculated. These calculations were the basis for selecting a one-day detection time criterion.

The leak detection time criterion is a design objective that the owner or operator must satisfy through a quantitative demonstration during the design process. It is not a measured objective; the owner or operator is not required to carry out a field demonstration. Today's proposed rule, therefore, requires the owner or operator of permitted facilities to demonstrate, as part of the Part B permit application, how an individual landfill, waste pile, or surface impoundment unit complies with the leak detection performance criteria (Sections 270.17, 270.18 and 270.20). Interim status units regulated under Part 265 will be required to maintain a similar demonstration. The demonstration must be presented to EPA during permitting along with the other double liner system requirements. To make this demonstration, the owner or operator will be required to prepare detailed plans and engineering reports showing how the facility was designed and how it will be operated.

In demonstrating that the LDCRS satisfies the detection time performance criteria, all owners or operators will be required to consider a number of factors in the design demonstration, including: (1) The location of the top liner leak (distance to collection laterals and sumps), (2) the type of drainage media (granular or synthetic) and its properties, (3) the bottom slope of the LDCRS, and (4) the design of the top and bottom liner systems (FML or composite). The owner or operator will be expected to show how the LDCRS meets the detection time performance criterion for a worst-case leakage scenario (longest flow path to the detection point).

In completing the quantitative demonstration to satisfy the leak detection time performance criterion, the owner or operator will be allowed to assume saturated steady-state flow conditions. In addition, the owner or operator will be required to specify materials for LDCRS that meet the minimum LDCRS component design specifications proposed in today's rule for drainage media hydraulic conductivity and thickness (or hydraulic transmissivity for synthetic drainage media), bottom slope, and sump design. These minimum component design specifications will be discussed in Section V.2.a.(4) of this preamble.

*(c) Collection efficiency.* In developing today's proposal, the Agency also considered LDCRS collection efficiency. Collection efficiency refers to the quantity of liquid removed from the LDCRS sump divided by the quantity of liquid that enters the LDCRS (i.e., the quantity of liquid that passes through the top liner). A high efficiency collection system is a prerequisite to maximizing leachate collection and removal and minimizing the hydraulic head on the bottom liner.

EPA rejected explicitly setting a collection efficiency criterion because it is unnecessary, given the Agency's criteria for detection sensitivity, detection time, and minimum component design specifications. By complying with these other system criteria and component specifications, the owner or operator will inherently design a system with a high collection efficiency.

The collection efficiency of the LDCRS can be maximimized by minimizing: (1) Liquid migration into the bottom liner, and (2) liquid storage due to capillary tension in the pore volume of the drainage material in the LDCRS. Since today's proposal provides system requirements that minimize both migration into the bottom liner and LDCRS storage due to capillary tension, a very high collection efficiency is ensured.

Liquid migration into the bottom liner will be minimized through owner or operator compliance with the leak detection sensitivity and detection time criteria proposed today. By satisfying these criteria, the owner or operator will minimize liquid head in the LDCRS which in turn minimizes migration into the bottom liner. Since the absorptive capacity of a properly designed and constructed composite bottom liner is much less than that for a compacted low-permeability soil bottom liner, the collection efficiency of a LDCRS underlain by a composite bottom liner will be significantly larger than the collection efficiency of a LDCRS underlain by a compacted soil bottom liner. A thorough comparison of the collection efficiencies associated with both compacted soil and composite bottom liners is in the background technical documentation ("Background Document on Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments") to EPA's April 17, 1987 Hazardous Waste Management System; Minimum Technology Requirements; Notice of Availability of Information and Request for Comments (52 FR 12566). The background document and notice present data comparing the performance capabilities of compacted soil and composite bottom liners.

*(3) Design specifications.* The Proposed Codification Rule of March 20, 1986 (51 FR 10707–12) requires owners and operators of certain surface impoundment and landfill units to install a leachate collection and removal system between the liners that is designed, constructed, maintained, and operated to detect, collect, and remove liquids that leak through any area of the

top liner during the active life and post-closure care period (Sections 264.221(c)(iii)(3) and 265.221(a)(iii)(3) and conforming amendments to Subpart N). That proposal further requires the leachate collection and removal system to be constructed of materials that are chemically resistant to the waste or leachate in the unit and to be designed and operated to function without clogging during the active life and post-closure care period of the unit.

The LCRS standards proposed on March 28, 1986 serve as the basis for today's proposed leak detection system. However, today's proposal also adds the following design requirements to those LCRS standards for new surface impoundments, waste piles, and landfills (see Liner/Leak Detection Background Document for supporting information):

(a) Bottom slope drainage layer—2 percent.

(b) Granular drainage layer hydraulic conductivity—1 cm/s.

(c) Granular drainage layer thickness—12 inches.

(d) Synthetic drainage layer hydraulic transmissivity—$5 \times 10^{-4}$ $m^2/s$.

(e) Sump capacity and monitoring requirements.

For granular drainage layers, hydraulic conductivity and thickness are being specified, while for synthetic drainage material a hydraulic transmissivity is being specified. Transmissivity is defined as hydraulic conductivity multiplied by thickness; therefore, in meeting the hydraulic conductivity and thickness, the hydraulic transmissivity will automatically be met for granular drainage material.

*(a) Bottom slope.* Under today's proposal the LDCRS must have a minimum bottom slope of 2 percent (Sections 264.221(h)(1), 264.251(h)(1) and 264.301(h)(1), and Sections 265.221(g)(1), 265.251(g)(1) and 265.301(g)(1)). The bottom slope of the LDCRS is important, because the rate of liquid movement through the LDCRS is proportional to the bottom slope. The steeper the slope, the faster a given leak will travel to the sump. The minimum bottom slope specified in today's proposal applies to all components in the LDCRS. Therefore, the minimum bottom slopes of the drainage media, collector pipes, collection laterals, and all other piping and/or drainage features must be at least 2 percent. This requirement will result in areas of the unit with bottom slopes greater than 2 percent.

The Agency selected the minimum 2 percent bottom slope to promote drainage in the unit. EPA has previously recommended this value as a minimum (Draft, Minimum Technology Guidance Document on Double Liner Systems, May 24, 1985, EPA/530–SW–85–014) based on the results of analytical studies and earlier design and construction practices. Today's minimum specified 2 percent bottom slope will create no new requirements for most owners and operators because EPA's existing technical guidance calls for a 2 percent bottom slope; consequently, most facilities are constructed with at least this minimum slope. EPA is concerned, however, that some waste management units designed with 2 percent bottom slopes actually end up with bottom slopes of less than 2 percent due to imperfect construction or post-construction settlement. The Agency is therefore considering increasing the minimum bottom slope requirement from today's proposed value of 2 percent to a value within the range of 2 to 4 percent. EPA requests comments on the appropriate value for minimum bottom slope.

The Agency believes that many owners and operators will elect to use bottom slopes greater than 2 percent for at least two reasons: (1) the larger the unit's bottom slope, the greater the efficiency of the leachate collection and removal system above the top liner (i.e., the top liner slope will parallel the bottom liner slope), the smaller the potential for liquid migration through the top liner since leachate is being efficiently collected, and the lower the probability that leakage will exceed the action leakage rate since leachate will not be building up on the top liner, and (2) the larger the unit's bottom slope, the easier it will be for the owner and operator to make a quantitative demonstration that the unit's design satisfies the detection sensitivity and detection time performance criteria.

*(b) Hydraulic conductivity of granular drainage materials.* Under today's proposal, granular drainage materials used in the LDCRS must have a minimum hydraulic conductivity (also called permeability) of 1 cm/s (see Liner/Leak Detection Background Document). (See Sections 264.221(h)(1)(i) and 265.221(g)(1)(i) and conforming amendments to Subparts L and N.) Hydraulic conductivity describes the velocity of liquid flow through the drainage layer under a hydraulic gradient equal to one. Because the velocity of liquid flow is directly proportional to hydraulic conductivity, hydraulic conductivity is the single most important variable controlling leak detection time. The larger the hydraulic conductivity of the drainage layer, the shorter the time for detecting leaks in the sump. In order to determine whether a granular material meets the proposed minimum specification, owners and operators will need to present results from hydraulic conductivity tests conducted on saturated samples of the drainage material. The tests should be performed under conditions simulating those that will exist in the unit.

Saturated hydraulic conductivities for granular drainage materials can vary over several orders of magnitude. In developing today's proposed specification for hydraulic conductivity, EPA considered granular drainage materials with hydraulic conductivities ranging from $10^{-2}$ cm/s to 10 cm/s. The lower value in this range corresponds to the hydraulic conductivity of silty sand, and the upper value corresponds to the hydraulic conductivity of clean gravel. In selecting the proposed design criterion from the considered range, EPA investigated the effect of hydraulic conductivity on detection time. Details of this investigation are presented in the Liner/Leak Detection Background Document. This background documentation presents results of analytical and numerical simulations of typical leachate collection and removal systems. In the simulations, the hydraulic conductivity of the drainage media was varied and the effect on detection time (and other parameters) was determined. The simulations showed that hydraulic conductivities in the range of 1 cm/s are required to develop unit designs that minimize capillary tensions in the LDCRS granular materials and that satisfy the detection time criterion previously discussed.

The conclusions drawn from the analytical and numerical simulations result in a minimum hydraulic conductivity specification in today's proposed rule that is two orders of magnitude larger than that recommended for leachate collection and removal system between the liners in EPA's May 24, 1985 Draft Minimum Technology Guidance on Double Liner Systems. The Agency notes that today's specification will require the owner and operator to use clean coarse sands, gravel, or synthetic drainage materials to meet the requirements. EPA solicits comments on the new proposed specification for minimum hydraulic conductivity.

*(c) Thickness of granular drainage materials.* The Agency is today proposing a minimum 12-inch thickness for the granular drainage layer in the LDCRS. (See Sections 264.221(h)(1)(i) and 265.221(g)(1)(i) and conforming amendments to Subparts L and N.) The purpose of this minimum thickness

specification is to ensure that the granular material in the LDCRS can be constructed to specification and that an underlying FML component of the bottom liner is not damaged by equipment during placement of the granular material. The minimum 12-inch value is from EPA's technical guidance on double liner systems (also see Liner/Leak Detection Background Document). This thickness of granular drainage material provides an LDCRS that automatically satisfies the proposed minimum hydraulic transmissivity ($5 \times 10^{-4} m^2/s$).

*(d) Hydraulic transmissivity of synthetic drainage materials.* Today's proposal requires synthetic drainage layer materials to have a hydraulic transmissivity of $5 \times 10^{-4} m^2/s$ or greater. (See Sections 264.221(h)(1)(2) and 265.221(g)(1)(2) and conforming amendments to Subparts L and N.) Hydraulic transmissivity of a layer of drainage material is equal to its hydraulic conductivity multiplied by its thickness. Hydraulic transmissivity, therefore, is a measure of the quantity of liquid that can flow through a layer of drainage material in a unit of time. The larger the hydraulic transmissivity, the larger the amount of liquid that can flow through a drainage layer under any given head. This parameter is important because if the hydraulic transmissivity of the drainage layer is inadequate, the drainage layer will not be able to accept large amounts of leakage while still maintaining gravity flow conditions in the LDCRS.

EPA has arrived at the minimum value of $5 \times 10^{-4} m^2/s$ for hydraulic transmissivity based on numerical simulations of typical leachate collection and removal systems. In these simulations, EPA considered a range of synthetic drainage materials. From the results of the simulations (which are discussed in detail in the Liner/Leak Detection Background Document), EPA concluded that a hydraulic transmissivity of $5 \times 10^{-4} m^2/s$ would enable the LDCRS to collect and remove relatively large amounts of leakage while maintaining gravity flow conditions. This specification therefore ensures that liquids in the LDCRS will be rapidly collected and that the hydraulic head on the bottom liner will be minimized.

The Agency notes that the minimum hydraulic transmissivity specification in today's proposal is about one order of magnitude larger than the minimum value cited in its May 24, 1985 Draft Minimum Technology Guidance on Double Liner Systems. EPA continues to consider values for minimum LDCRS hydraulic transmissivity, in the range of $3 \times 10^{-5} m^2/s$ to $5 \times 10^{-4} m^2/s$. Comments are solicited on the appropriate value from within this range.

EPA has not explicitly set a hydraulic conductivity minimum specification for synthetic drainage materials. The Agency believes it unnecessary because all available synthetic materials meeting today's proposed hydraulic transmissivity specification also exceed the proposed hydraulic conductivity criterion for granular drainage materials.

Adequate hydraulic transmissivity is a prerequisite to minimizing the hydraulic head on the bottom liner. This is an integral part of EPA's strategy to prevent migration of hazardous constituents out of waste management units. Since the migration rate is dependent on the liquid pressure head, as long as the head on the bottom liner is kept to a minimum, the potential for migration through a composite bottom liner is very small.

EPA believes that as a result of today's proposal, minimum hydraulic head for virtually all leakage scenarios at landfills and waste piles will be maintained. However, in a worst-case scenario for surface impoundments, the gravity flow capacity of the LDCRS could be exceeded because the hydraulic head above the top liner can be much larger than in a landfill or waste pile. At a surface impoundment, the owner or operator can use external pumps to augment the hydraulic capacity of the LDCRS for a major top liner leak. Using external pumps could be advantageous in handling the hydraulic flow from a major top liner leak because such a leak will result in a significant quantity of leachate that must be removed rapidly by the LDCRS. In addition, many surface impoundments can be rapidly emptied. Therefore, for worst-case top liner leaks at surface impoundments, response actions are available to reduce the hydraulic head acting on the bottom liner.

*(e) Sump.* Under today's proposal, the LDCRS must include a sump of appropriate size to collect liquids efficiently and to prevent liquids from backing up into the drainage layer. (See Sections 264.221(h)(4) and 265.221(g)(4) and conforming amendments to Subparts L and N.) EPA is requiring that each unit have its own sump and that each sump provide a method for measuring and recording the liquid volume present in the sump and the liquids removed to determine the leachate flow rate.

EPA believes that the owner or operator should minimize the head in the sump at all times. If liquids are being collected in the sump, EPA expects the owner or operator to institute monitoring and pumping schedules so as to minimize hydraulic head in the sump. Although EPA recognizes that the head in the sump may exceed 12 inches periodically, EPA expects the average liquids level in the sump to be well below 12 inches. As an example, an RA might find acceptable a monitoring and pumping schedule that allowed the liquids level in the sump to rise to several feet if this occurred only periodically and for only a short period of time, and if at other times the liquids level in the sump was kept well below 12 inches.

The hydraulic head in the LDCRS sump must be kept small to minimize the potential for hazardous constituent migration out of the unit. The reason for this is twofold: (1) Sumps are often of complex geometry, resulting in a greater potential for breaches in both FMLs (seam defects, tears, etc.) and compacted soil liner components (cracks); and (2) because the sump may not have an adequate bottom slope, liquid entering the sump simply will pond over any bottom liner breaches, creating the potential for leachate migration into and possibly through the bottom liner.

In today's proposed rule, the owner or operator is required to provide a method for measuring and recording the leachate volume present in the sump on a daily basis, as well as the leachate removed, to determine the leakage rate in the unit. The leachate volume in the sump typically will be determined by measuring the liquid level in the sump. The leachate volume removed from the sump can be determined by collecting (in barrels, tanks, etc.) and measuring the quantity of liquid pumped out of the sump or, alternatively, by recording the times when the pump is operating and then multiplying this time by the pumping rate. The leakage rate is assumed to be equal to the volume of liquid entering the sump over a period of time divided by the time and then also divided by the unit area served by the sump. The actual leakage rate through the top liner may be different (larger or smaller) than the measured leakage rate at the sump depending on: (1) The collection efficiency of the system and (2) the presence of water in the LDCRS from construction, ground-water infiltration, consolidation of compacted soil liners, or additional sources of liquid other than leakage. The measured leakage rate at the sump, however, is

what is considered in today's proposal in all references to leakage rate.

Today's proposed rule requires the owner or operator of a surface impoundment, waste pile, or landfill unit to inspect for leakage in the LDCRS sump daily during the active life (including the closure period) and weekly during the post-closure care period (if applicable). (See Sections 264.226(c)(1) and 265.226(b)(1) and conforming amendments to Subparts L and N.) EPA believes that this monitoring schedule will ensure that a minimum hydraulic head is maintained in the sump and that accurate information will be collected on the rate at which liquids are entering the sump.

For permitted units, today's proposed rule provides the RA with the authority to specify all monitoring, inspection, maintenance, reporting, response, and recordkeeping activities that are necessary to ensure that the objectives of detecting leakage at the earliest practicable time and of minimizing the hydraulic head on the bottom liner are met. (See Section 264.220(c) and conforming amendments in Subparts L and N.)

*(4) Variances.* Under Sections 264.221(i) and 265.221(h) and conforming amendments to Subparts L and N of today's proposed rule, the Regional Administrator (RA) may specify in the permit an alternative leak detection system. There are three types of variances for alternative leak detection technologies or systems although there is no variance from leak detection. The first is where the RA finds that there is no potential for migration of hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period (Sections 264.221(i)(1), 265.221(h)(1) and conforming amendments to Subparts L and N). The second is if the RA finds that an alternative design or operating practice, together with location characteristics, will prevent the migration of any hazardous consituents into the ground water or surface water at least as effectively as the LDCRS (40 CFR 264.221(d), 265.221(c) and conforming amendments to Subparts L and N) or the unit is a monofill and meets requirements as specified in 40 CFR 264.221 (e), 265.221(d) and conforming amendments to Subparts L and N. The third is if the owner or operator proposes an alternative leak detection system or technology that is capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period (Sections 264.221(i)(3), 265.221(h)(3), and conforming amendments to Subparts L and N).

In deciding whether to allow a variance for an alternative leak detection system or technology under today's proposal, the RA will consider: (1) The ability of the proposed system or technology to operate effectively through the active life and post-closure care period of the unit; (2) the nature and quantity of the wastes; and (3) the ability of the system to detect leaks and, in combination with response actions to be taken, prevent migration of hazardous constituents out of the unit during the active life and post-closure care period.

In seeking a variance for an alternative leak detection system technology, the owner or operator will be required to demonstrate how the proposed alternative satisfies the general narrative statutory standard under Sections 264.221(g) and 265.221(f) and conforming amendments to Subparts L and N.

Owners or operators also will be required to demonstrate how the proposed alternative enables them to meet the response action requirements of today's proposed rule to prevent migration of hazardous constituents out of the unit during the active life and post-closure care period. For example, if an alternative leak detection system technology did not provide information about leakage until after the leakage had migrated through the bottom liner, response actions stemming from leak detection would occur too late to prevent migration of the leakage from the unit. Therefore, under today's proposed rule, such an alternative leak detection system technology would be unacceptable. The alternative leak detection technology proposed by the owner or operator must provide a trigger mechanism to initiate interaction with EPA for review of site-specific conditions to determine an appropriate response action. Variances for permitted facilities will be reviewed in the context of the 40 CFR Part 124 permitting procedures. For interim status facilities, EPA is considering variance review and approval under the procedures presently used for closure plans.

Examples of where the use of an alternative leak detection technology might be appropriate include small (e.g., less than one acre), temporary (e.g., one year or less) surface impoundment and waste pile units that could be quickly emptied and repaired in the case of a significant top liner leak. For this set of conditions, the use of a leak detection system based on geophysical methods involving the embedding of probes in a thin sand LCRS between the top and bottom liners might be shown to satisfy the previously cited general narrative statutory standards for leak detection systems. The geophysical method used could be set up to operate on a continuous monitoring basis or, alternatively, frequent discrete surveys could be carried out. Since the active life of these units would be relatively short, questions regarding the long-term reliability of the alternative technology would not be applicable. Further, in the event of a top liner breach, responses could be initiated to empty and repair the liner, thereby preventing migration of hazardous constituents out of the unit.

EPA is interested in comments on how locational characteristics should be considered in allowing a variance for an alternative leak detection system at facilities that have received a variance from double liners based on an alternative design and operating practice, together with locational characteristics, that prevent the migration of any hazardous constituents into groundwater or surface water at least as effectively as the required double liner system. (Sections 264.221(g), 265.221(c) and conforming amendments to Subparts L and N). For example, should a compacted soil bottom liner together with certain locational characteristics be considered to provide equivalent protection of human health and the environment as the leak detection system requirements in the proposed rule? More specifically, if locational factors such as climate (precipitation), hydrogeologic conditions, surface water conditions, and subsurface soil profile indicate that there is no potential for migration of hazardous constituents from a unit to groundwater or surface water, should a variance be allowed for a leak detection system incorporating a compacted soil bottom liner? EPA believes that in rare site-specific cases it may be possible for locational characteristics (e.g., very low precipitation and long travel time to groundwater) to allow compacted soil bottom liners to meet the requirements for alternative leak detection systems (Sections 264.221(i)(2) and 265.221(h)(2) and conforming amendments to Subparts L and N).

Sections 264.221(j), 265.221(i) and conforming amendments to Subparts L and N propose additional requirements for leak detection systems that are not located completely above the seasonal high water table. The owner or operator must demonstrate that the operation of the leak detection system will not be

adversely affected by the presence of groundwater.

*b. Action leakage rate—(1) Proposed rule.* Under the authority of Section 3004(a) of RCRA, EPA is proposing that the owner or operator establish an action leakage rate (ALR) during the design of the unit (Sections 264.221(k), 265.221(j) and conforming amendments to Subparts L and N). The ALR notifies the owner or operator of a leakage rate that may require implementation of a response action to prevent hazardous constitiuent migration out of the unit. The Agency believes that this requirement is necessary to assure protection of human health and the environment because it aids in preventing hazardous constituent migration from the land disposal unit. The ALR is a mechanism to trigger an assessment of the need to implement the RAP which is an integral part of EPAs systems approach.

The ALR constitutes a trigger for initiating interactions between the owner or operator and EPA. The owner or operator is required under today's proposal to monitor the rate of leakage into the LDCRS sump on a daily basis. The owner or operator also is required to determine whether the measured rate of leakage over a specified period of time exceeds the ALR (Sections 264.226(c)(2) and 265.226(b)(2) and conforming amendments to Subparts L and N). If the measured rate of leakage is less than the ALR, no action is required by the owner or operator, other than to remove the liquids from the sump to maintain a minimum hydraulic head in all parts of the LDCRS. If the measured leakage rate exceeds the ALR, today's proposal requires the owner or operator to initiate implementation of the RAP.

Under today's proposal, the owner or operator must establish an action leakage rate during the unit's design (Sections 264.221(k) and 265.221(j) and conforming amendments to Subparts L and N). The owner or operator has a choice between using a standard value for ALR specified by EPA in the final rule or, alternatively, a site-specific ALR obtained after EPA approval of a site-specific ALR demonstration by the owner or operator. EPA is not proposing a standard value for the ALR, but rather a range of 5–20 gallons per acre per day (gpad) from which EPA will select a value in finalizing this rule.

*(2) Rationale.* In developing today's proposal for leak detection systems, EPA selected an approach based, on the current technology capabilities of the top liner to prevent migration of liquid through the liner. EPA believes it is not appropriate to select a value that is below current capability of the top liner to control migration. EPA believes that an ALR in the range of 5 to 20 gpad is consistent with a technology based standard for FML top liners. This value is based on an evaluation of top liner leakage scenarios at surface impoundments, landfills, and waste piles. EPA is proposing a range of values for public comment because of limited data, particularly on the top liner's performance during the operating period after installation. Technical support for the proposed range for ALR values is presented in the Liner/Leak Detection Background Document supporting today's proposal. As discussed in that document, the proposed ALR range of 5 to 20 gpad is representative of a very high level of construction quality assurance at surface impoundments. The Agency believes that this range for ALR is appropriate, based on the current capabilities inherent in FML seaming techniques and CQA programs (using ponding tests, geophysical techniques, etc. to detect top liner defects before the surface impoundment unit is put into operation).

Although only one standard ALR will be cited in the final rule, lower ALRs could be considered for landfills and waste piles with properly designed and functioning leachate collection and removal systems above the top liner (since the hydraulic head acting on the top liner would be lower than the head acting on a surface impoundment). Additionally, in lieu of meeting the standard ALR value, owners or operators may demonstrate that a site-specific ALR is appropriate as discussed in Section 4 below.

The option of allowing no leakage in the LDCRS was not accepted for today's proposed rule because it would ignore the finite capabilities of lining systems and drainage media to contain and transmit leakage. Therefore, not allowing any leakage in the LDCRS would not be consistent with current BAT. The option of allowing a large leakage rate as the ALR was not selected because a large leakage rate may exceed the gravity flow capacity of the LDCRS, thereby increasing the hydraulic head on the bottom liner. As previously noted in this preamble, as the hydraulic head on the bottom liner increases, the potential for hazardous constituent migration into and through the bottom liner also increases. Thus, allowing leakage rates that increase the hydraulic head on the bottom liner is inconsistent with EPA's goal of preventing hazardous constituent migration from the waste management unit.

Today's proposal for the ALR is a logical extension of EPA's overall systems approach to preventing migration of hazardous constituents out of the unit. The ALR provides the mechanism or trigger to allow EPA to use a site-specific evaluation for the leak detection program. This mechanism and the associated response action program is a key element in the EPA regulatory program for preventing contamination of ground water and protecting human health and the environment. The top and bottom liners together with the LCRS above the top liner, the LDCRS between the top and bottom liners, and the trigger and response action program function together in an integrated, interdependent manner to achieve the objective of preventing hazardous constituent migration out of the unit by maximizing leachate collection and removal.

EPA is continuing to investigate the appropriate ALR based on BAT for top liners, and requests comments on the appropriate value for the ALR within the proposed range of 5–20 gpad. In particular, EPA is interested in comments on the appropriateness of the proposed range for surface impoundments. Owners or operators with data that support selection of an ALR are encouraged to provide these data to the EPA. The Agency also is interested in public comment on whether different ALR values are appropriate for FML and composite (FML plus compacted soil) top liner systems.

*(3) Basis for the trigger.* EPA is basing the trigger mechanism for today's proposed rule on the hydraulic rate of top liner leakage as opposed to the hazardous constituent concentration in the liquid collected in the LDCRS sump. EPA is not using constituent concentration as part of the determination as to whether the ALR has been exceeded because it would make the determination more complex and more costly to the owner or operator.

The determination would become more complex if based on hazardous constituents because: (1) Samples for chemical analyses must be taken carefully by trained personnel, whereas maintenance personnel can measure the quantity of liquid in the LDCRS sump using unsophisticated equipment; (2) complex chemical analyses are expensive and time-consuming, whereas liquid in the sump can be measured frequently and inexpensively; (3) chemical analyses take time to perform and a timelag exists between the time of

sampling and the time when a determination can be made whether the ALR has been exceeded; (4) chemical analyses are subject to more uncertainty than are volumetric measurements; and (5) trigger levels would have to be set for each hazardous constituent.

As a result of the complexities outlined above and the burden to the owner or operator of performing chemical analyses, monitoring hazardous constituents in the LDCRS sump is not feasible on a daily or weekly basis. While EPA believes that periodic monitoring of constituent concentrations is important and that most owners or operators will choose to conduct periodic monitoring, it is not desirable, feasible, or necessary to use hazardous constituent monitoring as the trigger. However, discussed subsequently in the preamble, hazardous constituent concentrations are an important factor in selecting the appropriate response action as part of the assessment in the response action plan.

*(4) Site-specific ALR.* Today's proposed rule permits the owner or operator to use an EPA-specified ALR which will be selected from the range of 5 to 20 gpad or, alternatively, to use a site-specific ALR obtained after EPA approval of a site-specific ALR demonstration by the owner or operator. The purpose of a site-specific ALR is to provide a mechanism to account for conditions that reduce the potential migration of hazardous constituents through the top liner. If site-specific factors enhance the capability of the top liner LCRS to collect and remove leachate or enhance attenuation of hazardous constituents in the waste containment unit, the owner or operator has an opportunity to demonstrate that the standard EPA-specified ALR is less appropriate than a site-specific ALR.

To obtain approval for a site-specific ALR, the owner or operator must make a conclusive demonstration to the Regional Administrator. If the RA does not approve the demonstration, the owner or operator may modify the demonstration or may submit a new demonstration for approval. The site-specific ALR demonstration must show that only small, isolated leakage through the top liner is allowed and that it does not affect the overall performance of the top liner. In deciding whether to grant a site-specific ALR, the RA will consider the following four factors:

(1) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(2) The attenuative capacity and thickness of any soil component of the top liner;

(3) All other factors that would influence the potential for leachate to migrate through the top liner; and

(4) The quality and comprehensiveness of the engineering data and analyses provided to the RA in support of the site-specific ALR.

EPA believes a site-specific ALR will only be appropriate in unique situations.

*(5) Monitoring requirements.* Today's proposed rule requires the owner or operator to monitor on a daily basis during the active life for the presence of liquids in the LDCRS sump and determine when the ALR has been exceeded (Sections 264.226(c)(1) and 265.226(b)(1) and conforming amendments to Subparts L and N). This determination is made by measuring the amounts of liquid in the LDCRS sump at the beginning and end of the monitoring interval and the amount of liquid that was removed from the sump during that period. The RA may specify an alternative approach for determining whether the ALR has been exceeded in the facility permit (Section 264.226(2)(iii) and conforming amendments to Subparts L and N). In addition, today's proposed rule empowers the RA to specify more stringent monitoring and inspection requirements for permitted units if the RA believes such requirements are justified because of the operating characteristics of the unit (Section 264.226(e) and conforming amendments to Subparts L and N).

EPA recognizes that there may be events that cause the ALR to be exceeded for short periods but that do not reflect a diminished integrity of the top liner system. These temporary flow rate increases may be due to singular precipitation events, such as exceptional rainfalls. Leakage rate increases due to these precipitation events would occur during or shortly after the event itself. EPA does not consider temporary flow rates exceeding the ALR for a day or two by a small margin to significantly increase the potential for the migration of hazardous constituents from the unit. EPA believes that it is acceptable to provide some flexibility to the owner or operator in determining whether a leakage rate exceeding the ALR triggers interaction with EPA.

Today EPA is proposing that the owner or operator monitor for the liquid in the LDCRS removal sump daily during the active life and closure period of the unit and at least weekly during the post-closure period (if applicable). Analysis of the data to determine if the ALR has been exceeded will be required on a weekly basis during the active life and closure period and quarterly during the post-closure period (Section 264.226(c)(2), 265.226(b)(2), and conforming amendments to Subparts L and N). EPA believes that a time-weighted value is appropriate for a trigger for lower leakage rates. From recent experience with leak detection systems, EPA recognizes that the system will not provide an instantaneous measurement of the actual leakage rate and that some period of time is needed for the system rate to provide an accurate indication of leakage through the top liner. For instance, EPA believes that it may be reasonable to allow an owner or operator up to 30 days to determine whether the ALR has been exceeded if the maximum daily leakage rate recorded on a daily basis does not exceed 50 gpad during any one day within the 30 days (see Liner/Leak Detection Background Document). The leakage rate for the 30-day period would be equal to the total leakage during 30 days divided by 30. If during any monitoring interval during the 30 days the leakage rate exceeds the 50 gpad value, the ALR would be triggered immediately, and the owner or operator would have 7 days to notify the RA. Today's proposed rule also allows the RA to approve an alternative method for determining if the action leakage rate of the top liner is exceeded. EPA solicits comments on the above approach to allow the RA some flexibility in specifying permit conditions for determining whether the ALR has been triggered.

*c. Response action plan. (1) Background—(a) Introduction.* Under the authority of Section 3004(a) of RCRA, EPA is proposing a response action plan (RAP) for leakage exceeding the ALR (Sections 264.222, and 265.222, and conforming amendments to Subparts L and N). The Agency believes that this requirement is necessary to assure protection of human health and the environment. The RAP is a site-specific plan that the owner or operator develops to address leakage through the top liner to assure that it does not migrate out of the unit. It is based on an assessment of the capability of the total system rather than of individual components. The goal of the RAP is to prevent the migration of hazardous constituents out of the unit at levels exceeding health-based standards by providing a mechanism for appropriate actions to mitigate the potential for such migration should the leak detection system reveal the presence of liquids between the top and bottom liners. In the RAP, the owner or operator

characterizes the reason for leakage, assesses current conditions of the double liner system, assesses the potential for migration out of the unit, reviews various responses and their effectiveness, and recommends a response. The RA will review and approve the RAP with the recommended response.

The RAP proposed today is an integral component of EPA's systems approach, wherein the goal of protecting human health and the environment is achieved through the design and operation requirements for an entire unit, rather than its individual components. With this thought in mind, the appropriate response actions to any leakage event are linked to the system capabilities rather than the capabilities of any single system component. The appropriate response actions must consider not only the concentrations of hazardous constituents in the liquid contained in the leak detection system but also the overall ability of the lining system (in particular, the ability of the leak detection system and the bottom liner) to contain top liner leakage within the unit.

In today's proposal, the Agency is taking the position that migration of hazardous constituents out of the unit at concentrations below EPA approved health based standards for ground-water protection will be protective of human health and the environment. Therefore, the presence of such liquids in the leak detection system between the liners is consistent with EPA's objectives for protection of human health and the environment for a land disposal unit. Furthermore, the presence of hazardous constituents in the leak detection system at concentrations exceeding EPA's health-based standards is not necessarily a problem, since the overall lining system, with a composite bottom liner and a leak detection system between the top and bottom liner, should protect human health and the environment. The role of the RAP in this instance is to provide an opportunity to review the design, construction, and operation of the unit, and all factors that might affect the performance of the lining system in order to ensure that the entire unit can meet its performance goal of protecting human health and the environment. The RAP will initiate any necessary actions to ensure compliance with this goal.

The leak detection approach proposed in this rule differs from the leak detection approach in the Tank Rule (51 FR 25487, July 14, 1986). The Tank Rule requires the unit to be taken out of service and replaced or repaired if leakage is detected. The difference between the leak detection approaches that EPA is using for tanks and for landfills, waste piles, and surface impoundments results from differences in the design and materials used for construction, operating practices, and waste placed in these units. To replace a steel tank or repair a leak in the tank is feasible and relatively easy. However, EPA's position is that, in most cases, requiring the repair of a top liner in a landfill when the liner is covered by waste is not a practical approach. Top liners at surface impoundments and certain waste piles where the waste is periodically removed are repairable; EPA has data showing surface impoundment liners are commonly repaired or replaced when they are damaged. Also, a top liner leak in a landfill would be very difficult to locate, and repairing the leak would require excavating large quantities of the previously placed hazardous waste. Therefore, the leak detection approach proposed today recognizes the system's capabilities in determining the appropriate response action.

Today the Agency is proposing that a RAP be required for all newly constructed landfills, surface impoundments, and waste piles; replacement landfill, surface impoundment, and waste pile units; and landfill and surface impoundment units required to have double liners after November 8, 1984, at both permitted and interim status facilities (Section 264.222, and conforming amendments to Subparts L and N). EPA is proposing a RAP as a means to implement the appropriate response activity for leakage on a site-specific basis. The RAP sets forth actions to be taken to ensure that hazardous constituent migration out of the unit is prevented at levels exceeding EPA-approved health-based standards for ground water protection. Although the statute requires only leak detection and not a response action (Section 3004(o)(4)(A)), EPA considers the RAP, with its response action requirement, to be a logical step to minimizing head-on the bottom liner and preventing hazardous constituent migration out of the unit.

RAPs are required for two leakage rates: (1) Rapid and extremely large leakage and (2) leaks less than rapid and extremely large that exceed the ALR. Rapid and extremely large leakage (RLL) is defined as the maximum design leakage rate that the LDCRS can remove under gravity flow conditions (i.e., without the fluid head on the bottom liner exceeding one foot of water in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems). In determining the design value for the RLL rate, the owner or operator should use an adequate safety margin to allow for uncertainties in the design, construction, and operation of the LDCRS (e.g., decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.). (See Liner/Leak Detection Background Document for further information.)

EPA takes the position that leakage in excess of the RLL can significantly increase the potential for migration of hazardous constituents out of the unit. If a leak occurs, and the leakage rate exceeds the gravity flow capacity of the leak detection system, the hydraulic head on the bottom liner can become equal to the elevation difference between the liquid level in the unit and the elevation of the bottom liner. In the case of a surface impoundment, or in the case of a failure of the LCRS above the top liner, this elevation difference can be large (see Liner/Leak Detection Background Document). Based on the increased migration potential if the RLL is exceeded, the procedures for submitting a RAP differ for RLL and less than RLL. The owner or operator must have an approved RAP for RLL before receiving waste as a result of this increased migration potential. For leakage less than RLL, EPA allows the owner or operator to submit the RAP in the permit application or to develop the RAP subsequent to the leakage event. The EPA does not believe that leakage below rapid and extremely large poses as great an immediate threat; therefore, the RAP for these leaks can be developed after the ALR is exceeded.

*(b) Overview of RAP requirements and implementation—(i) RAP for leakage greater than ALR, but less than rapid and large.*

Leachate collection and removal and sampling. If the owner or operator detects leakage exceeding the ALR, but not exceeding the RLL rate, he must immediately notify the Regional Administrator. The owner or operator must continue leachate collection and removal to minimize the head on the bottom of the liner as currently required in the LCRS requirements. If he has not yet submitted a RAP for these lower leakage rates to EPA, he must submit one within 90 days of detecting leakage above the ALR. The RAP must identify the hazardous constituents which are present in the waste and project which constituents will be present in the sump. The Regional Administrator will review this list and specify which hazardous

constituents must be sampled in the sump of the LCDRS to give a reasonably accurate representation of the concentrations of hazardous constituents in the leachate.

The RAP must also require the owner or operator to sample the designated constituents as soon as possible after the RAP is implemented. If the sampling shows that the concentration of all of the constituents are below EPA-approved health-based standards (explained in more detail below), the RAP may limit response action to the continued collection and removal of leachate. If, however the owner or operator finds that the concentration of any of the sampled constituents exceeds a health-based standard, he must implement the approved response for leakage above health-based standards. The RAP would require the owner or operator to consider a series of factors that relate to the potential for the leachate to escape from the unit into the environment. These factors are described in more detail in section V.A.2.C.(2)(a) below.

Major response action. The RAP must then require the owner or operator to implement a response that is appropriate in light of all the factors and conditions considered. The goal of the response will be to prevent migration out of the unit of any leachate with constituent concentrations exceeding the health-based standards. For leaks that exceed the ALR, but are less than rapid and large, acceptable responses include:

- Terminating receipt of waste and closing the unit;
- Repairing any leaks expeditiously;
- Instituting operational changes to reduce leakage into the LDCRS between the liners;
- Collecting and removing leachate, and, in addition, accelerating groundwater monitoring; and
- Maintaining current operating procedures (including the collection and removal of leachate).

The owner or operator may choose to write a RAP that sets out a range of top liner leakage rates and corresponding responses. For example, the owner or operator may recommend in the RAP the following responses to the corresponding leakage bands for a landfill where the RLL rate has been determined to be 2,000 gpad:

| Leakage band | Response |
|---|---|
| [illegible] gpad | Increase the LDCRS pumping and monitoring. |
| [illegible]-2,000 gpad | Change operating practices to reduce the leakage to less than 200 gpad. |
| Greater than 2,000 gpad (RLL). | Modify the operating practice to minimize precipitation infiltration into the waste and partially close the unit. |

This approach offers the owner or operator greater flexibility by allowing the leakage rate to fluctuate within reasonable limits without requiring the owner or operator to change to a different response with every increase or decrease in the leakage rate.

Although EPA encourages owners and operators to submit broad RAPs responding to a wide range of possible scenarios, EPA is not requiring them to do so. The owner or operator may choose, for a leak that exceeds the ALR, but is less than rapid and large, to submit a narrower RAP focusing on the problem actually observed. EPA, however, expects that these more specific RAPs will frequently need modifications, and predicts that most owners and operators will find it in their interest to submit broader and more flexible plans.

The Regional Administrator will review the owner or operator's submission and evaluate it against the goal of preventing migration of leachate with hazardous constituent concentrations exceeding health-based standards. Upon reaching a tentative conclusion to approve, disapprove, or modify the RAP, the Regional Administrator will provide the owner and operator with a chance to comment. The Regional Administrator will also provide the public with an opportunity to comment. More details on the criteria and procedures the Regional Administrator will use in reviewing the RAP appear in Section V.A.2.C.(2)(c) below.

Implementation of response and follow-up. Once the owner or operator is required to implement a Regional Administrator-approved RAP, the owner or operator must sample the leachate to determine hazardous constituent concentrations and then select the appropriate response action from the Regional Administrator-approved RAP. If constituent concentrations are below health-based standards, the owner or operator may continue following current operating procedures. If, however, constituents exceed the health-based standards, the owner or operator must implement the response action approved in the RAP for leakage above health-based standards. Within 60 days of selecting and initiating a response action under a RAP, the owner or operator must submit a report to the Regional Administrator that describes how effective the response has been in preventing migration out of the unit of any leachate that exceeds health-based levels. After reviewing this report, the Regional Administrator may require modifications or different responses that are necessary to assure that migration of leachate exceeding these levels does not in fact occur. Finally, the proposed regulations will also require owners and operators who are conducting responses under approved RAPs to report to the Regional Administrator any significant increase in leakage rates. This report must be submitted within 45 days of the detection of the change and must describe, among other things, any change in the response that the owner or operator has implemented or plans to implement to address the increased leakage. The Regional Administrator may require additional or different responses as necessary. If these additional or different responses require a change in the RAP, the Regional Administrator will require the owner or operator to submit a modification to the plan and review it under the procedures referred to above and described more fully in section V.A.2.C. (2)(c) below.

Variance. The RAP may also provide the owner or operator with an opportunity to demonstrate at any time that the elevated rate of liquid appearing in the LDS is not the result of a leak in the top liner, but rather from an alternative source, such as fluids trapped between the liners during construction, or water that escaped during consolidation of the compacted soil component of a composite top liner. The owner or operator will not be required to implement the RAP if the Regional Administrator approves the demonstration before the deadline for RAP implementation. If the demonstration is not approved before this date, the owner must begin to implement an appropriate response. He may halt all response activity, however, as soon as EPA approves the demonstration. The requirements for this demonstration are described in more detail in a separate section below.

*(ii) RAP for Rapid and large leakage.* Many of the substantive and procedural RAP requirements are the same for leakage that exceeds the RLL rate as those discussed in the previous section for leakage less than RLL. The discussion below highlights the differences.

Initial responses. The RAP for leaks exceeding RLL must be submitted for certain existing units within 12 months of promulgation of this rule and, for new units, before hazardous waste is placed in them. Consequently, EPA will require

the owner or operator to begin implementing the RAP immediately upon detecting leakage that exceeds the RLL level.

Additionally, the RAP for RLL leaks will require the owner or operator to undertake more serious responses more quickly. This program will require operational changes that will reduce the volume of leachate flowing into the LDCRS, such as a partial cover or a limit or restriction on receipt of liquid wastes or repair of the liner in a surface impoundment. EPA believes this more stringent initial response is necessary because leakage exceeding the RLL rate interferes with the functioning of the leak detection system. These large leachate quantities can "swamp" the LDS, making it difficult or impossible to tell whether leak rates continue to increase. This requires immediate response to restore the function of the LDS.

EPA is also concerned that the volume of leachate between the liners in an RLL situation may threaten the ability of the containment system to prevent migration. The large volume may significantly increase the hydraulic head that exerts pressure on the bottom liner, and, consequently, increases the possibility that contaminated leachate may escape from the unit to contaminate soil or ground water. Hence, EPA is proposing to require all RAPs for RLL to require owners and operators to undertake immediate responses even before sampling the leachate in the LDS. EPA requires that this immediate response would, at a minimum, involve operational changes to reduce leakage into the LDCRS between the liners. EPA would also expect the RAP to include a very aggressive immediate response (such as immediate repair of the upper liner) to be implemented if the volumes of leachate in the leak detection system indicate the possibility of a drastic leak in the upper liner.

*Sampling and major response actions.* During implementation of these initial responses, the owner or operator must also sample the leachate in the LDCRS sump for the hazardous constituents specified in the RAP. If concentration levels do not exceed approved health-based levels, the owner or operator will not have to undertake further responses if the head on the bottom liner is minimized. If, however, they do exceed health-based levels, the RAP will require the owner or operator to implement a Regional-Administrator approved response action selected from a broader range of actions in the RAP. The range of appropriate responses will be narrower for RLL leaks than for leaks below RLL levels because the large volumes increase the chance of system failure. Appropriate responses would include:

- Terminate receipt of waste and close unit;
- Repair leaks expeditiously; and
- Introduce further or more permanent operational changes to reduce leakage first to a rate below RLL, and ultimately, to a rate that prevents migration out of the unit.

EPA believes that evaluation of a range of RLL rates is important at some types of units, such as surface impoundments, where scenarios exist for top liner rates of leakage significantly in excess of the RLL. The RAP should include an assessment of the possible response activities not only for RLL, but also for leakage significantly in excess of RLL, if this level of leakage is likely to occur at that unit. The detailed assessments for rates of leakage significantly in excess of the RLL must address the same site-specific factors required for assessments of the possible RLL response activities. It is expected that the RAP for leakage rates significantly in excess of the RLL will provide for extraordinary measures to rapidly reduce the hydraulic head acting on the bottom liner. Again, the goal of the RAP will be to prevent migration out of the unit of hazardous constituents at concentrations exceeding health-based levels.

*Elimination of variance.* The final significant difference for a RAP for RLL is the elimination of the variance procedure. EPA has not been able to imagine a scenario where other sources of liquid, such as construction water, could generate the quantity of liquid required to meet the RLL test. Furthermore, even if all of the liquid came from sources other than a leak in the upper liner, the volumes involved would threaten the ability of LDCRS to function. Response action would be needed to maintain the capability of the LDCRS to detect additional new leakage and minimize the head on the bottom liner.

*(c) Leachate quality levels.* The issue concerning what level of release of hazardous constituents out of the unit that must be prevented to protect human health and the environment is relevant in a broad range of regulatory contexts currently being examined by EPA, including closure and corrective actions under RCRA and response actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) programs. The Agency is proposing today to use EPA-approved health-based standards for setting the maximum concentrations of hazardous constituents deemed by EPA to meet its prevent migration goal. It is EPA's position that the assessment of migration potential for hazardous constituents out of the unit will, in most cases, need to be based on the quality of the leachate in the leak detection system and not on the projected quality of leachate leaving the unit. Therefore, if hazardous constituents in the leachate are below the health-based standards, assuming a drinking water ingestion scenario, the owner or operator would not be required to initiate a response action.

The Agency has used health-based standards and criteria in several aspects of the RCRA program that involve protection of ground water, assuming human consumption. For example, the ground-water protection standards of Subpart F, de-listing procedures of Section 261, and clean closure process under Sections 264.228 and 265.228 for storage or treatment surface impoundments involve the use of EPA-approved health-based standards for evaluating compliance with an environmental performance standard. The Agency believes that such approaches are protective of human health and the environment, and is, therefore, proposing to use the health-based standards as the levels to which the response action plan must prevent migration of hazardous constituents out of the unit.

The owner or operator should use the Maximum Contaminant Levels (MCLs) established as drinking water standards under the Safe Drinking Water Act, as the primary Agency-approved health-based standards. The Agency is in the process of proposing and finalizing additional MCLs, and will continue to do so over the next several years. The Agency does not believe it is appropriate to use the Maximum Contaminant Level Goals (MCLGs), since these criteria are not considered to be relevant and appropriate regulatory standards.

Where no MCLs exist, however, the owner or operator should use the Reference Doses (RFDs), for any threshold constituents and the Carcinogenic Potency Factors (CPFs) for non-threshold constituents, assuming a risk level of $10^{-6}$ for Class A and B carcinogens and $10^{-5}$ for Class C carcinogens.

Under certain circumstances, the Agency believes that the levels based on MCLs, RFDs, and CPFs, as described above, may be lowered to ensure adequate protection of human health and the environment. The Agency may

lower these levels, as appropriate, under either of the following circumstances:

a. Where a mixture of contaminants is present, resulting in exposure to multiple contaminants that could cause adverse effects on the same human organ; or

b. Where an unusual exposure scenario or a vulnerable population at the site requires a more stringent target level.

If an EPA-approved health-based standard does not exist for a hazardous constituent, EPA is considering allowing the owner or operator to base the response action plan on not exceeding the background ground-water protection level for that constituent.

The Agency is in the process of developing guidance on the use of Agency-approved health-based standards for protecting ground water in the context of the clean closure and corrective action regulations, and for implementing the Subpart F provisions. In the future, as additional Agency-approved health-based standards are developed, these sources of information will be updated.

*(2) Rule requirements—(a) Elements of the RAP.* The common RAP elements for rapid and extremely large leakage and for other leakage below RLL but above the ALR are presented under Sections 264.222 (b) and (e) and conforming amendments to Subparts L and N for permitted facilities, and Sections 265.222 (b) and (e), and conforming amendments to Subparts L and N for interim status facilities. At a minimum, the owner or operator must include the following site-specific information in the RAP: (1) A general description of the operation of the unit; (2) a description of the hazardous constituents contained in the unit; (3) a description of the range of events that may potentially cause leakage exceeding both the ALR (if appropriate) and RLL; (4) a discussion of the important factors that can affect the amount of liquid entering the leachate collection and removal system between the liners; (5) a description of major mechanisms that will prevent migration of hazardous constituents out of the unit; and (6) a detailed assessment describing the effectiveness of each of a given range of possible responses. Each of these categories of required information is briefly addressed below.

First, the response action plan must include a general description of the operation of the unit including whether or not at closure the wastes will be decontaminated in place, removed from the unit, or left in place. The site-specific information should include, as a minimum, the type, size, and location of the unit; the design of the unit including details of the lining system; the geographic and climatic setting; and the operating history and practices at the unit, including the age of the unit, planned unit active life, ongoing activities at the unit, volume of wastes being stored or disposed, methods of waste placement, equipment used, intermediate cover practices, and the closure plan.

Second, the response action plan must also include a general discussion of the hazardous constituents contained in the unit. This discussion should include, at a minimum, a summary of the results of analyses carried out as part of the site-specific waste analysis plan (Sections 264.13(b) and 265.13(b)) as well as description of the physical characteristics of the waste.

Third, the response action plan must include a discussion of all events that may potentially cause leakage exceeding both the ALR (if appropriate) and the RLL. These potential causes will be site-, design-, and operation-specific. In general, they may include operational accidents, design deficiencies identified subsequent to the start of unit operation (such as inadequate connections between liners and liner penetrations such as pipes and manholes), unforeseen incompatible wastes, equipment damage, unforeseen site subgrade settlements, and catastrophic natural events such as earthquakes or tornadoes, if applicable.

Fourth, the response action plan must include a discussion of the important factors that can affect the amount of liquid entering the leachate collection and removal system between the liners. These factors should include, but not be limited to, the size and type of top liner breach, the potential for additional breaches in the future, the amount of liquid head in the leachate collection and removal system above the top liner, the potential for leachate generation in the unit due to the moisture content of the waste, the anticipated amount and frequency of precipitation, and the potential for surface water run-on. The potential for sources of liquid other than top liner leakage should also be considered, including liquids from construction water, consolidation of any compacted soil component of the top liner, or water due to ground-water infiltration.

Fifth, the response action plan must include a description of major mechanisms that will prevent migration of hazardous constituents out of the unit. This description should include an evaluation of the capabilities of the entire land disposal unit as well as the capability of each individual unit component. Particular attention should be given to: the condition of the composite bottom liner; the condition and operational capability of the leak detection system between the top and bottom liners; the condition and operational capabilities of the top liner and the leachate collection and removal system above the top liner; the potential to repair or retrofit the top liner if the RLL is exceeded; and the potential for the use of intermediate covers and run-on controls to limit leachate production potential in the unit.

Last, the response action plan must include a detailed assessment describing the feasibility of each of a range of responses for preventing hazardous constituent migration out of the unit. The discussion in section (b) above sets out the range of acceptable responses for RLL leakage and leakage that is less than rapid and large.

In developing the site-specific information for the response action plan, the owner or operator should evaluate the condition of the liners by reviewing activities that have occurred at the unit from the time of construction to the present. An analysis of the results of a rigorous construction quality assurance (CQA) plan should provide a good data base to assess the condition of the liners after construction of the unit. Results of CQA testing will be particularly valuable if key areas of the liner were tested hydraulically for leaks.

Other information that the owner or operator may use in assessing liner condition during development and implementation of a RAP includes: (1) A review of operational practices during the active life, (2) leachate analysis to indicate whether unanticipated waste constituents are present, (3) coupon testing in the sump above the top liner of a landfill or waste pile or in the waste at a surface impoundment to determine any chemical compatibility problems, and (4) an assessment of operating activities that may have damaged the liner. A review of the double liner system design can also reveal whether the design concept had any weaknesses that could increase the probability of a liner breach. The evaluation of the design will also indicate areas that include redundancy or design concepts that will minimize leakage if a breach occurs. This type of review of site-specific information can often isolate the location and extent of damage to a liner and can provide information showing that the breach is the result of a design, construction, or operational activity.

In the specific case of a breach in the top liner, the full extent of damage typically cannot be determined without

a field investigation to evaluate the liner condition. However, EPA believes that a field evaluation, including inspection and liner testing, is not currently an appropriate across-the-board requirement of the liner assessment element of the RAP. Field evaluation may be feasible in some cases where the owner or operator has conducted electrical resistivity surveys, performed acoustical monitoring, conducted a visual examination of a surface impoundment after draining, or performed evaluation of the working face of a landfill. In other cases, as in a landfill where the breach is under a significant depth of waste, field evaluation will not usually be feasible. The owner or operator, when feasible, may provide field data as part of a response action plan to demonstrate the condition of the liner.

Leakage bands. Since the likelihood exists that leakage through the top liner will fluctuate during the active life and post-closure care period, the owner or operator may develop a RAP that addresses a range of leakage bands with corresponding responses. A leakage band refers to a range of top liner leakage rates. With a specific response tied to a leakage band instead of a single leakage rate, the leak can fluctuate over time without the need to implement a different response. EPA believes that the responses should be flexible enough to accommodate reasonable fluctuations in top liner leak rates.

Examples of response actions for RLLs. To assist owners or operators in understanding today's proposed rule, EPA is providing three examples of when certain response actions that may be appropriate for three different RLL scenarios.

The first example is a disposal surface impoundment where both the top and bottom liners have been breached as a result of equipment falling into the surface impoundment and the quality of the leachate is above health-based standards. After detecting rapid and large leakage, the owner or operator determines that removing the waste and repairing the liners is not feasible. The double liner system is no longer functioning as designed, and migration of hazardous constituents (exceeding health-based standards) out of the unit is expected. In this case, the appropriate action is to drain the surface impoundment and repair or close the unit.

In the second scenario, the owner or operator of a surface impoundment detects rapid and extremely large leakage between the liners above health-based standards. The top liner has been breached at the water line. An assessment of the unit reveals that the bottom composite liner and LDCRS have not been damaged and continue to function as designed to prevent leachate migration into the ground water and surface water. In this situation, the owner or operator continues to collect and remove leachate while draining the impoundment below the breached area and repairing the top liner. If repair is not possible, the owner or operator may elect to retrofit a new top liner over the existing one, or alternatively, the RA may allow operation of the unit with reduced liquid depth so that the waste is not in contact with the area of the breach. Although this action is feasible for a surface impoundment, in most cases it would not be for a landfill.

The last scenario involves rapid and extremely large leakage above health-based standards caused by a major storm (50-year storm) at a landfill where repairing the leak is not feasible. The landfill has a remaining active life of 6 months and will be closing shortly. The LDCRS and bottom liner are functioning properly. The FML component of the composite bottom liner allows for rapid and efficient leachate collection and prevents migration into the liner. The owner or operator proposes a RAP that uses operational changes to reduce leakage into the space between the liner to a range of between 200–500 gpad for 6 months, and following that time, the unit will be closed with an initial rapid reduction in leakage. The operational changes proposed include: placing predominantly dry waste in the unit; immediately covering active portions of the unit as they are filled; covering daily to significantly reduce the rate of liquid infiltration into the waste; developing a precipitation runoff system within the unit; increasing the frequency of leak detection and ground-water monitoring; and developing a contingency RAP for closure if the high leakage rate continues or increases. This proposed RAP would be acceptable.

The range of responses for leakage less than rapid and large includes the responses for RLL and adds the following responses:

(1) The owner or operator continues to remove and treat leakage with increased ground-water monitoring. This response may be appropriate for a unit where the leakage periodically exceeds the ALR in the range of 50–100 gpad, but the system is functioning to protect ground water and surface water. Although migration out of the unit is not expected, the facility is located near a sensitive environment. The owner or operator continues to remove and monitor the quality of leachate. The frequency of ground-water monitoring and reporting is increased to confirm that no leakage is leaving the unit.

(2) The owner or operator maintains current operating practices because the leachate quality in the LDCRS is below EPA-approved health-based standards for ground-water protection. An example where this response may be appropriate is a unit where the ALR is exceeded infrequently and can be correlated to heavy rainfall. Analysis of the leachate has shown hazardous constituent concentrations are below EPA health-based standards. Assessment of the double liner system indicates the bottom liner and sump are continuing to function as designed, and leakage can be collected and removed efficiently when it occurs. A second example is where it has been shown that the leachate in the LDCRS is most probably due to a source other than top liner leakage (e.g., consolidation of a compacted soil component of the top liner) and analysis of the leachate shows it to meet the aforementioned health-based standards.

Another example where maintaining current operating practices might be appropriate involves a landfill with a leakage rate determined to be approximately 100 gpad, and the owner or operator will be closing the unit within one year. Assessment of the unit has shown that the remainder of the unit system is functioning to prevent migration of hazardous constituents out of the unit. Following RA approval, the facility continues current operating practices. The pumping rate is increased to maximize leachate collection and minimize the head on the bottom liner, and leachate quality is monitored.

The owner or operator may develop other appropriate responses that involve operational changes at the unit. EPA believes that there should be some flexibility in the responses allowed and realizes that not all units will require the responses discussed above. Therefore, EPA is allowing the owner or operator the opportunity to develop other operational responses if they are appropriate and protect human health and the environment. The response chosen by the owner or operator and approved by the RA will depend on the unit design, construction and operation, hazardous constituent concentrations in the leachate, and other factors that influence the leachate quality and mobility.

Actions to take in implementing a response action plan (RAP). Sections 264.222(d), 264.222(g), 265.222(d), 265.222(g), and conforming amendments to Subparts L and N of the proposed rule

require the owner or operator to perform the following actions after detecting leakage above the ALR: (1) Notify the RA in writing within 7 days of the occurrence, (2) collect and remove accumulated liquids, (3) immediately implement the RAP (if already part of the facility permit or interim status plan) or submit to the RA within 90 days a RAP developed after the occurrence (for facilities where the RAP was not preapproved), (4) immediately sample the leachate in the LDCRS and determine the concentrations as specified in the RAP, and (5) report in writing to the RA on the effectiveness of the response as soon as practicable after the response has been in place for 60 days, and annually thereafter for leakage that is less than RLL, or at subsequent time periods as specified by the RA for RLL. These five actions are described in more detail below:

(1) If leakage into the LDCRS exceeds the ALR, the owner or operator must notify the RA of the occurrence in writing within 7 days after determining that the ALR is being exceeded in accordance with Sections 264.222(d)(1), 264.222(g)(1), 265.222(d)(1), 265.222(g)(1) and conforming amendments to Subparts L and N. The notification to the RA must indicate preliminary liquid volumes that have been detected, collected, and removed.

(2) The owner or operator must continue to collect and remove all volumes of liquids that accumulate between the liners following the detection of leakage exceeding the ALR. Leachate collection and removal reduces the liquid head on the bottom liner, decreasing the potential for migration out of the unit. In this way, the leakage is being mitigated even before the RAP is implemented; this is especially important for greater leakage rates.

(3) The owner or operator of a landfill, surface impoundment, or waste pile unit at a permitted facility must implement the RAP immediately if it is part of the permit. For RLL, the RAP must be included in the permit; for leakage less than RLL, submission with the permit application is optional. If the RAP for less than rapid and extremely large is not part of the permit, it is developed after finding leakage exceeding the ALR and must be submitted to the RA for approval before implementation. Procedures for submittal of the RAP to the RA are discussed subsequently.

The owner or operator of an interim status facility where the RAP was submitted to the RA before receiving waste (for RLL and, optionally, for leakage less than RLL) must implement the RAP immediately. The RAP for leakage that is less than rapid and extremely large may be submitted at any time within 90 days after the ALR is exceeded. A RAP prepared while the facility is under interim status will be included in the draft facility permit at the time of permitting. The facility then will be subject to the same requirements under Part 264 (Sections 264.222, and conforming amendments to Subparts L and N).

(4) Immediately upon determining that the ALR has been exceeded, the owner or operator must sample the leachate in the LCRS sump and have it analyzed as specified in the RAP to determine the concentration of specified Appendix VIII hazardous constituents (40 CFR Part 261). The owner or operator must provide the analytical results to the RA at the earliest practicable time.

(5) Sections 264.222(d)(5), 264.222(g)(5), 265.222(d)(5), and 265.222(g)(5) and conforming amendments to Subparts L and N require that, after the implementation of a response activity, the owner or operator must report to the RA on its effectiveness. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health-based standards for groundwater protection. An initial report demonstrating the effectiveness of the RAP must be submitted to the RA by the owner or operator and as soon as practicable after the response action has been implemented for 60 days. Following this initial submittal, a report must be submitted annually (for leakage less than RLL) or at a time period specified by the RA (for leakage exceeding the RLL). These subsequent reports submitted after the initial report must discuss the effectiveness of the ongoing response action program.

The RA will review the initial report and subsequent reports on the effectiveness of the response along with the leachate quality analyses to determine if the response selected is preventing hazardous constituent migration out of the unit. The RA will make this determination based on the criteria discussed in Section V.A.2.c(2)(c) of this preamble. If the RA or owner or operator determines that the response activity is not effective in meeting these criteria, either at initial implementation or at any time subsequent to initial implementation, the RA will require the owner or operator to recommend an alternative response action that is already identified in the RAP or to develop a new response action as part of a permit modification or plan amendment (Section 264.222(d)(5), 264.222(g)(5), 265.222(d)(5), 265.222(g)(5), and conforming amendments to Subparts L and N). EPA believes that, in most cases, a RAP that is prepared prior to a leakage event, will need some revision due to the difficulty in predicting site-specific factors. Unit conditions and operating practices may change from the time of the RAP submittal and may, therefore, need to be reassessed at the time of the leakage event. Any new recommended responses must be reviewed and approved by the RA. The RAP review process will be an interactive process between the RA and the owner or operator in determining an effective response activity that prevents hazardous constituent migration out of the unit. EPA believes that in many cases a RAP developed before waste is received at a unit will require some level of modification if it is implemented.

EPA is aware that leakage rates can fluctuate and change over time; therefore, EPA is today proposing a requirement for the owner or operator to identify significant changes in the liquid volume between the liner during monitoring and submit a report to the RA (Sections 264.222(i), and 265.222(i) and conforming amendments to Subparts L and N). EPA believes a "significant change" to be of such a magnitude that it cannot be attributed to predictable, temporary fluctuations as described in the RAP. The Agency requests comments on what a correct value for a significant change should be. EPA is considering using a 100 gpad or 25–50 percent increase in leakage, whichever is larger, to define a significant change.

Today's proposed rule will require the owner or operator to submit a report to the RA within 45 days detection of a significant change in leakage rate. The report must include an assessment of the problem causing the leakage fluctuation and a determination of whether the fluctuation is of concern. A fluctuation caused by heavy rain which is infrequent may not be of concern, whereas a spike determined to have occurred as the result of a new top liner breach of considerable size would definitely be of concern. The assessment must include, at a minimum, a profile of the liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage.

In the report, the owner or operator will also be required to describe any proposed change in response activities and the schedule for implementation. The RA will review the report and will

assess the appropriateness of the revised response activities and implementation schedule.

*(b) How and when to submit a RAP.* The requirements for submitting a RAP differ for permitted and interim status facilities, and for RLL and leakage less than RLL. For newly permitted facilities, the owner or operator must include in the permit application a RAP setting forth actions to be taken immediately following detection of rapid and extremely large volumes of leakage between the liners. The owner or operator of a permitted facility that is building a new unit or replacing a unit must include a RAP for RLL in a request for a permit modification. In either case, the RAP must be approved before the unit can receive waste.

For leakage rates less than rapid and extremely large, the owner or operator of a permitted facility has the option to submit the RAP with the permit application or with a permit modification or to submit a request for a permit modification to the RA within 90 days of detecting leakage above the ALR. A RAP submitted as part of the permit application or modification must be implemented as specified in the permit. If a RAP is submitted after detecting leakage exceeding the ALR, the RA's approval is required before implementation; however, the owner or operator should make immediate efforts to reduce leakage, and at a minimum, carry out the activities under Section 264.222(g) and conforming amendments to Subparts L and N.

The owner or operator of an interim status facility required to comply with the leak detection requirements must submit a RAP for RLL 120 days prior to accepting waste at the unit (Section 265.222(a), and conforming amendments to Subparts L and N). The owner or operator of an interim status facility also may choose to file a RAP prior to receiving waste for leakage less than the RLL. Alternatively, the RAP for leakage rates above the ALR but below the RLL may be submitted to the RA when leakage is detected (Section 265.222(e)(1)(ii) and conforming amendments to Subparts L and N). The owner or operator must submit to the RA a request to amend the RAP (for less than RLL) within 90 days after exceeding the ALR. Within 60 days of receipt, the RA will approve, modify, or disapprove the RAP or will request to have the RAP amended.

*(c) EPA review of the RAP.* The RAP is submitted to the RA for review either as part of the permit application, as a request for permit modification, or as a plan in the case of interim status facilities. The RA will review and approve or disapprove the RAP 264.222(c)(1), 264.222(f)(1), and 265.222(f)(1), 265.222(c)(1), and conforming amendments to Subparts L and N. The RA will approve the RAP if he determines that the plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit at concentrations in excess of EPA-approved health-based standards for ground-water protection.

In making this determination, EPA will consider the overall design, operation, and performance of the unit, as well as several specific factors which will include, but not be limited to (1) the actual or anticipated types and concentrations of hazardous constituents in the leachate between the liners, (2) the mobility of the hazardous constituents in the actual or anticipated leachate, (3) the degree to which the liquid head on the bottom liner will be minimized by implementation of the RAP, (4) the rate of top liner leakage and the cause of this leakage, (5) the current condition of the liners and leachate collection and removal systems, (6) the design and current condition of the entire double liner system, (7) future planned activities including remaining active life time period, and closure and post-closure care activities, and (8) environmental factors such as the amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeologic setting. Each of these factors is briefly addressed below.

In considering the acceptability of a RAP, the RA will review the actual or anticipated types, concentrations, and mobilities of the hazardous constituents in the leachate between the liners. The quality of the leachate will be evaluated for at least two criteria, (1) the potential threat it poses to human health and the environment, and (2) the potential deleterious effects the leachate may have on the physical properties of lining system components. With respect to the first criteria, if the leachate meets EPA-approved health-based standards for ground-water protection, human health and the environment are protected and the only necessary response activity will be continued pumping of leachate and periodic monitoring of leachate quality. However, if hazardous constituent concentrations exceed the health-based standards, additional response activities may be required. In addition, if the actual or anticipated leachate contains significant concentrations of hazardous constituents, the RA will expect the RAP to address the potential deleterious effects of the constituents on the lining system components (e.g., swelling of FMLs or synthetic components of the leak detection system).

In reviewing the RAP, the RA will also consider the degree to which the liquid head on the bottom liner is minimized. This is an important consideration, as the rate of leakage through a defect in the FML component of a composite bottom liner is proportional to the hydraulic head acting on top of the bottom liner. Since leakage through an FML defect would be the most probable cause of leakage into and through a composite bottom liner, the hydraulic head on the bottom liner must be minimized if leakage into and through the bottom liner is to be minimized.

The RA will also consider the rate of top liner leakage and the cause of leakage. If the rate of leakage is stable and relatively low, and if the cause of leakage is believed to be well understood and not progressive, then limited response actions, such as an increased frequency of leachate monitoring and removal, may be acceptable to the RA. Causes of leakage that might fall into this category include top liner breaches associated with an operational accident or leakage through a connection between the top liner and a pipe or other structure penetrating the liner. On the other hand, if the rate of leakage is high or is increasing over time, or if it is believed that the causes of top liner failure is progressive (e.g., due to chemical incompatibility between the liner and leachate), then more rigorous response actions will likely be required.

The RA will also evaluate the design and current condition of the double liner system as well as the design and current condition of the individual lining system components. The Part B permit application, CQA documentation and operating report will be used in the assessment. The Part B permit application will be reviewed to ensure proper material selection and design. CQA documentation will be reviewed to establish that the system components were properly installed and to identify potential problem areas. Unit operating records will be reviewed for events that may have resulted in a top liner breach or in deterioration, clogging, or other malfunction of a system component. The current condition of the entire double liner system will be reviewed to understand the degree to which the overall system can function to meet the goal of preventing migration of hazardous constituents out of the unit. The overall lining system will also be reviewed for any special features beyond the minimum technological

requirements that might enhance the containment capabilities of the unit.

In reviewing the RAP, the RA will look at future planned activities. In particular, the RA will review at what stage the unit is in its active life. For example, if a landfill were to exhibit top liner leakage in the range of several hundred gallons/acre/day early in its operational life, operational changes, intermediate covers, or other measures would be expected response activities in the RAP to reduce the rate of top liner leakage. However, if the landfill were near the end of its active life, and review of the planned closure and post-closure activities showed the plans to be acceptable, and if the LDCRS and bottom liners were believed to be functioning properly, the RA might accept more limited response activities, such as increased leachate monitoring and removal, for the remaining active life.

Lastly, in assessing the acceptability of a RAP, the RA will consider site-specific environmental factors. These factors include the amount and frequency of precipitation (which will influence the leachate generation potential of a unit), and weather extremes.

EPA is currently developing technical guidance for owners or operators and regulatory authorities to assist them in the development, review and implementation of response action plans. In this guidance document, factors that must be considered in a RAP, and criteria for evaluation of a RAP will be presented in detail. Comments are solicited on the appropriate factors and criteria to include in the guidance document.

The RA will identify in the RAP monitoring activities for specific hazardous constituents identified in 40 CFR Part 261, Appendix VIII. Specifically, the RA will require the owner or operator to test the liquids in the sump of the LDCRS to determine whether specified hazardous constituents are present. Other chemical and physical properties for testing may also be identified by the RA.

Permitted facilities. Sections 264.222 (c) and (f) and conforming amendments to Subparts L and N, propose review and approval procedures that EPA will use for the RAP (RLL and other leakage rates). This review will occur in the context of the 40 CFR Part 124 permitting procedures described below. After completing review of the RAP as part of a permit application or request for a permit modification, the RA either will deny the permit or permit modification and notify the owner or operator or will prepare a draft permit or permit modification. The RA will give notice of the draft permit or permit modification in the Federal Register. A 30-day public comment period and public hearing will follow the notification. Thirty days after the close of the public comment period, the RA will decide whether to approve, modify, or disapprove the permit or permit modification. The decision as well as the response to public comment will be published in the Federal Register.

If the permit or modification (including the RAP) is approved, the RA will prepare the final permit. If the permit requires modification, the owner or operator will be notified and given 30 days to respond.

Interim status facility. Sections 265.222 (c) and (f), and conforming amendments to Subparts L and N propose review and approval procedures EPA will use for the RAP (RLL and other leakage rates). After receiving a RAP, the RA will provide public notice of the plan through a local newspaper. A 30-day public comment period will follow the notification. The RA, in response to public request or his own discretion, may also hold a public hearing. The RA will approve, modify, or disapprove the plan within 90 days of receipt. If the RA does not approve the plan, he will notify the owner or operator in writing of the reasons, and the owner or operator will be required to submit a new or modified plan within 30 days. The RA will approve or modify this plan within 60 days, at which time this plan becomes the approved RAP.

(d) Demonstration showing alternative source of liquids. Sections 264.222(h), and 265.222(h), and conforming amendments to Subparts L and N propose a variance from continued RAP implementation for leakage less than RLL if the owner or operator of a permitted or interim status facility can demonstrate that the leakage is from a source other than the top liner. Upon triggering the ALR, the owner or operator has the opportunity to demonstrate that the top liner ALR appears to have been exceeded because of an error in sampling, analysis, or evaluation; or the top liner ALR has been exceeded due to sources of liquid other than leakage through the top liner, such as liquids trapped between the liners during construction, or water due to consolidation of a compacted soil component of a composite top liner.

The owner or operator will not be required to implement the RAP if the demonstration is approved before the specified implementation time of the RAP. The response action can be discontinued after a successful demonstration if implementation had already begun. This opportunity for a variance applies to leakage less than RLL. EPA's position is that not all of a RLL can be attributed to sources other than leakage through the top liner such as construction water. Rapid and extremely large leakage volumes would be of concern in any case.

The owner or operator is required to notify the RA in writing as soon as practicable of the intent to make a variance demonstration for liquids from a source other than top liner leakage. Within 90 days of this notification, the owner or operator must submit a report demonstrating that the liquid resulted from a source other than top liner leakage. The demonstration by the owner or operator must contain sufficient scientific and technical information to clearly show the source of the liquids. The report must include all data, analyses, documentation, and calculations used to make the demonstration. If the RA approves the demonstration, the response action, if already implemented, can be discontinued. The owner or operator then must submit an application for a permit modification for permitted facilities or plan modification for interim status facilities. The application must make appropriate changes to the RAP (if the plan was prepared previously) at the unit within 90 days of the RA's approval of the demonstration. A successful determination by the RA will result in discontinuing the response action for the current leakage, as described in the approval notice, and the modification of the permit or plan. The owner or operator may be required to monitor the leachate volumes more frequently and provide periodic leachate analyses to assure that conditions remain similar. If the RA determines the demonstration is not successful, the owner or operator must continue RAP implementation.

Any subsequent increases in leakage or hazardous constituent concentration above that specified in the demonstration will reinitiate the RAP, unless another demonstration is successfully completed and approved by the RA. In some cases, the demonstration approval may require a reduction in the leakage rate to a rate specified in the demonstration within a certain number of years. An example of this would be a demonstration based on water trapped during construction. The RAP also may be reinitiated if the owner or operator does not comply with the requirements of the demonstration approval.

The EPA allows the owner or operator to make demonstrations as provided above, because EPA believes that there

is a need for a certain amount of flexibility in the leak detection requirements. EPA's position is that the requirements cannot be rigid and all-inclusive.

(e) Significant change in leakage rate. Sections 264.222(i) and 265.222(i) and conforming amendments to Subparts L and N, propose requirements for significant change in leakage rates. If during monitoring of leakage, the owner or operator detects a significant increase in the leakage rate, he must submit a report to the RA within 45 days including the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the RAP.

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

If the RA determines that the current RAP needs to be modified the owner or operator must submit an application for a permit modification (within 60 days) or an interim status plan amendment (within 120 days) to make any appropriate modifications to the RAP. The procedures in 40 CFR Part 124 will be applied to permitted facility permit modifications. Procedures modelled after the 40 CFR Part 265.112 closure plan procedures will be applied to interim status plan amendments.

*(f) An example of a RAP.* The following is an example of a RAP for a surface impoundment:

*Facility Description:* The site is a 1.6 acre surface impoundment with rough dimensions of 200 feet by 350 feet. The surface impoundment will contain 11 feet of liquids with two feet of freeboard. The sidewall slopes are 3H:1V. The pond design incorporates a bottom composite liner; a leachate detection, collection, and removal system (LDCRS) between the bottom and top liner; and a top liner comprised of two sections, a composite section across the base and a single FML on the side slopes.

No protective cover is provided above the top FML. The drainage media for the LDCRS consists of a 0.25 inch thick synthetic drainage layer with an in-plane hydraulic conductivity of 10 cm/sec. The minimum bottom slope of the surface impoundment is 2 percent.

The surface impoundment is located above the historical high water table, rainfall averages about 40 inches per year, and the temperature ranges from 95 °F down to −20 °F. Run-on drainage control is prevented by the judicious use of ditches and berms.

*Response Action Plan:* A response action plan has been submitted and the following specifics have been established:

The action leakage rate (ALR) is 15 gallons per acre per day. This value was selected as an example from the range proposed in today's rule. This value is only slightly higher than the value determined by analysis of leakage by using conservative assumptions of liquid head and liner breaches and defects.

The rapid and large leakage rate (RLL) is determined to be 3,000 gpad. The sump system was also evaluated and found to be capable of handling the RLL value of 3,000 gpad without a resultant rise of over 1 foot of liquid on the bottom liner (a factor of safety of two is included in this calculation; i.e., the system is actually designed to remove about 6,000 gpad without 1 foot of head buildup). EPA considered this level of safety factor to be appropriate in a situation where a significant remediation action is necessary to ensure continued performance of the LDCRS system.

The RAP states that the response action plan for leakage rates between the ALR and the RLL will be developed if leakage exceeds the ALR. Construction and operation activities and operating record data on the past performance of the unit will be reviewed in determining the appropriate response activities to be implemented if the leakage rate exceeds the ALR and is less than the RLL value. The RAP will be submitted to the RA for approval before implementation.

Some examples of expected probable causes of a liner breach would be a seam failure or puncture caused by an accident as the ponds were filled or cleaned, an accident caused by human or animal activities in and around the ponds, or weather-induced accidents, such as wind-driven ice chunks impinging on exposed liner material. These breaches most probably would occur on the side slopes near the liquid level and would result in an almost immediate increase in leachate detected at the sump. The response would be the same for most leakage rate increases, which would be an immediate inspection of the exposed liner to determine if a liner breach had occurred at a location where it could be repaired immediately.

If the breach is at the liquid level, the owner or operator will lower the liquid level below the breach to repair it. If the breach is below the liquid level, it may be possible to locate the leakage area by electrical resistivity or acoustical methods (other techniques may be equally satisfactory) and then determine a plan of action.

Location of a significant breach is not expected to be difficult because there should be an immediate reduction in the leakage rate shortly after the pond liquid level is lowered below the breach. It also should be relatively easy to identify the breach location by electrical resistivity or acoustic survey. Once a repair is implemented, the leakage rate should provide an almost immediate indication of the effectiveness of the repair.

If the RLL occurs, no further liquid will be placed in the ponds. The liquid level will be lowered as necessary to complete a survey of the exposed liner. The unit will not be placed back into service until the owner or operator demonstrates to the RA that the leak in the top liner has been repaired to control the leakage rate.

### 3. Proposed Rule for Land Treatment Units

The goal of land treatment is to reduce the hazardousness of waste applied in or on the soil through degradation, transformation, and immobilization processes. EPA believes that land treatment can be a viable management practice for treating and disposing of some types of hazardous waste. However, the general approach to preventing hazardous constituents from migrating into ground water is somewhat different for land treatment units than for other land disposal units. At surface impoundments, waste piles, and landfills this objective is met by the double liner and leachate collection system and the final cover that prevent liquids from entering the unit and migrating into the subsoils. Land treatment units are dissimilar to other land disposal units in that they are not designed and operated to minimize liquid releases to ground water. On the contrary, they are open systems that freely allow liquid (without hazardous constituents) to move out of the unit. The land treatment regulatory approach, however, does seek to minimize the uncontrolled migration of hazardous constituents into the environment. This is accomplished by using a defined layer of surface and subsurface soils (referred to as the "treatment zone") to degrade, transform, or immobilize the hazardous constituents contained in the leachate passing through the system. Such treatment processes achieve the same general objectives as the liquids management strategy used at other

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types of land disposal in that they act to prevent hazardous constituents from migrating into the environment.

Because land treatment depends upon a number of soil and waste interactions for success, it is especially important that the unit be carefully operated and monitored. The current design and operating requirements under Parts 264 and 265 require an owner or operator of a land treatment unit to monitor the unsaturated zone to provide information that he will use in modifying his operating practices to maximize the success of treatment processes. The principle objective of the current unsaturated zone monitoring requirements is to provide effective management of liquids in the unit to minimize the risk of ground-water contamination. At surface impoundments, waste piles, and landfills this objective is met by the double liner and leachate collection system, and the final cover that prevents liquids from entering the unit and migrating into the subsoils.

Both soil-core and soil-pore liquid monitoring are required in existing EPA rules. These two monitoring procedures are intended to complement one another. Soil-core monitoring will provide information primarily on the movement of "slower-moving" hazardous constituents (such as heavy metals), whereas soil-pore liquid monitoring will provide essential data on fast-moving, highly soluble hazardous constituents that soil-core monitoring may miss.

For example, if a significant increase of a hazardous constituent is detected in unsaturated zone monitoring, the owner or operator is required under the existing Part 264 to examine more closely the unit characteristics that significantly affect the mobility and persistence of that constituent. These significant unit characteristics may include treatment zone characteristics (e.g., pH, cation exchange capacity, organic matter content), or operational practices (e.g., waste application method and rate). Modifications to one or more of these characteristics may be necessary to maximize treatment of the hazardous constituent within the treatment zone and to minimize additional migration of that constituent to below the treatment zone.

EPA is today proposing leak detection requirements for new land treatment units under the authority of 3004(o) of RCRA and for existing land treatment units under the authority of 3004(a) of RCRA. The Agency believes that requiring leak detection at existing land treatment units, while not mandated by RCRA, is necessary to assure protection of human health and the environment because it prevents hazardous constituent migration from the treatment zone. Additionally, due to the nature of the unit, leak detection can be implemented as easily at an existing land treatment unit as at a new land treatment unit.

*a. Permitted facilities.* The current regulations for land treatment at permitted facilities under Part 264 require the following:

(1) The owner or operator must obtain a detailed chemical and physical analysis of a representative sample of the waste to establish what hazardous constituents will be at the unit (40 CFR 264.13).

(2) The owner or operator must provide a clear definition of the treatment zone.

(3) The owner or operator must demonstrate that hazardous constituents in the waste can be completely degraded, transformed, or immobilized in the treatment zone (40 CFR 264.272). The treatment demonstration is used to define two elements of the land treatment program. First, it establishes what wastes may be managed at the unit. Second, it defines the initial set of waste management practices (including waste application rates) that will be incorporated into the facility permit.

(4) The owner or operator must design, construct, operate and maintain the unit to maximize the degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The RA will specify waste application method and rate, measures to control soil pH, measures to enhance microbial or chemical reactions, measures to control moisture content, run-off and run-on control, wind dispersal control, and weekly inspection after storms (40 CFR 264.273).

(5) Food chain crops cannot be grown in or on the treatment zone unless the owner or operator can successfully demonstrate that there is no substantial risk to human health (40 CFR 264.276).

(6) The owner or operator must establish an unsaturated zone monitoring program capable of determining whether hazardous constituents have migrated below the treatment zone. (40 CFR 264.278). The purpose of unsaturated zone monitoring is to provide feedback on the success of treatment in the treatment zone. The information obtained from this monitoring will be used to adjust the operating conditions at the unit in order to maximize degradation, transformation, and immobilization of hazardous constituents in the treatment zone. It is this section of the existing land treatment program that EPA is proposing to amend today to cover the leak detection requirements under Section 3004(o)(4) of RCRA.

The monitoring program must include both soil-core and soil-pore liquid monitoring. The owner or operator is required to monitor immediately below the treatment zone to determine if statistically significant increases in the concentrations of hazardous constituents have occurred.

Under the existing Part 264 regulation the appearance of hazardous constituents below the treatment zone does not in itself constitute a violation. The Agency is today proposing that the Part 264 land treatment regulations be applied to interim status units as part of the leak detection system. Additional requirement, discussed below will also be included.

In today's proposal, EPA is adding new leak detection requirements for both new and existing land treatment units. Although RCRA only requires leak detection at new units, EPA believes that existing units can comply with the standard in the same manner. Installation of soil-pore liquid monitoring equipment as well as soil-core sampling can be accomplished as easily at a new as an existing unit. Therefore, existing units should be required to provide the same level of protection for human health and the environment.

Today's proposal expands the current Part 264.278 unsaturated zone monitoring requirements by adding the following new requirements: (1) Detection of leakage at the earliest practicable time; (2) a 95-percent confidence level for detecting hazardous constituents below the treatment zone; (3) monitoring to be conducted above the seasonal high water table; (4) a response action plan (RAP) for widespread leakage; and (5) inspection of unsaturated zone monitoring equipment. These new requirements are explained briefly in the following paragraphs (for further information see the Liner/Leak Detection Background Document).

1. *Earliest Practicable Time.* Sections 264.278(a) and 265.278(a) of today's proposal require detection of leakage out of the treatment zone at the "earliest practicable time". EPA interprets the term "earliest practicable time" as the quarterly unsaturated zone monitoring period. Migration of contaminants at land treatment facilities would generally be slow and EPA believes detection of a statistically significant increase of hazardous constituents below the treatment zone within a monitoring

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period would allow sufficient time to protect groundwater and surface water.

2. *Confidence Level.* In Sections 264.278(b) and 265.278(b) of today's proposal, EPA is adding to the existing requirements a 95-percent confidence level of detecting hazardous constituent migration out of the treatment zone. Land treatment units have no barrier to downward migration, and ground water can be located as close as 1 meter to the bottom of the treatment zone (Section 264.271(c)(2)). For this reason, EPA believes that the owner or operator must detect leakage out of the unit at the earliest practicable time and at the 95-percent confidence level to assure protection of ground water and surface water.

Today's proposal requires the use of a 95-percent confidence level of detection because the unsaturated zone monitoring generally is less reliable in detecting hazardous constituent migration from the treatment zone than a drainage-type leak detection system. By requiring a 95-percent confidence level, EPA is assuring that the unsaturated zone monitoring system will consist of a sufficient number of sampling points at appropriate locations and depths to determine the spatial and temporal variations in constituent concentration through the treatment zone. A well-managed and properly designed site with uniform waste application will require fewer sample locations than a poorly managed site. The owner or operator must consider site-specific variations and the inherent uncertainty associated with soil-core and soil-pore liquid sampling procedures for the analysis of certain hazardous constituents (e.g., volatile organic chemicals). The owner or operator must characterize the total treatment zone as well as individual lysimeter results.

EPA is proposing the confidence level value to be 95 percent as a result of recently developed guidance on unsaturated zone monitoring. Detailed information explaining what the owner or operator must do to comply with this requirement is explained in *Permit Guidance Manual on Hazardous Waste Land Treatment Demonstrations* (Utah Water Research Laboratory, July 1986, NTIS PB 86229–184) and *Permit Guidance Manual on Unsaturated Zone Monitoring for Hazardous Waste Land Treatment Units* (U.S. EPA, October 1986, EPA/530–SW–86–040).

3. *Monitoring Location.* Sections 264.278(d) and 265.278(d) of today's proposal require that soil-core and soil-pore liquid monitoring be conducted immediately below the treatment zone and entirely above the seasonal high water table (SHWT). To determine the SHWT at a facility, the owner or operator must use the SHWT data published for that region for the smallest area encompassing the facility.

Current regulations require unsaturated zone monitoring below the treatment zone but do not specify that the monitoring must also be above the SHWT. In order to detect contamination before it reaches ground water, EPA is requiring monitoring above the groundwater table. Today's proposal requires the owner or operator to install all lysimeters and collect all soil cores above the published SHWT. By requiring monitoring above the SHWT the owner or operator can be assured that soil-core samples and soil-pore liquid samples are collected within the unsaturated zone throughout the year.

Unsaturated zone monitoring at land treatment units must include soil monitoring and soil-pore liquid monitoring immediately below the treatment zone. At least 15 cm (6 inches) of soil depth below the treatment zone is needed for adequate soils sampling. Thirty cm (12 inches) of soil will be sufficient, in most cases, for placement of the soil-pore liquid sampling device wholly below the treatment zone. However, due to the difficulties associated with field monitoring, sample collection will often occur somewhere above or below the desired depth. Hence, sufficient soil depth (above the SHWT) must be available to account for the inherent errors associated with field monitoring. The Agency believes that a one-meter soil depth will accomplish this. The seasonal high water table specified in local soil surveys (which have many times been conducted by the Soil Conservation Service and State Agricultural Extension Agency), will often fluctuate over time. In most cases, EPA believes that the one-meter soil buffer will adequately account for this fluctuation.

4. *Response Action Plan.* Existing regulations (Section 264.278) require the owner or operator to report to the Regional Administrator (RA) within 7 days when there is a statistically significant increase of hazardous constituents below the treatment zone. The owner or operator also must submit to the RA within 90 days an application for a permit modification to modify the operating practices at the facility to maximize the success of degradation, transformation, or immobilization processes in the treatment zone.

Sections 264.278(i) and 265.278(j) of today's proposed rule require the owner or operator to develop a response action plan (RAP) after the effective date of this rule, for widespread leakage before waste can be received. The RAP will specify actions to take upon finding widespread leakage. Widespread leakage is defined as a statistically significant increase (as defined in the guidance manuals cited above) in concentration of hazardous constituents at a specified percentage of the unsaturated zone monitoring points. EPA has not chosen a percentage but believes it should be within the range of 50–60 percent. EPA is requesting comments on an appropriate value for defining widespread leakage or on whether an alternate approach would be more appropriate. Comments on whether the distribution of hazardous constituent concentration below the unit should be assessed and how the results of that assessment should be addressed are also requested.

The owner or operator of a new land treatment facility, that has not yet received a permit, must submit a RAP for widespread leakage with the permit application. For an existing land treatment unit that does not meet the RAP or other requirements specified in Sections 264.278 and 264.334 on the date of promulgation of this final rule, the owner or operator must submit an application for a permit modification to the RA by the effective date of this rule and receive RA approval. New units or replacements at existing facilities must submit a RAP and a request for a permit modification and receive RA approval before receiving waste. The RAP for land treatment contains similar information requirements as discussed previously for landfills, surface impoundments, and waste piles. These include: (1) General description of the unit operation, (2) a description of the hazardous constituents contained in the unit, (3) an assessment of potential causes of widespread leakage of hazardous constituents from the treatment zone, (4) a discussion of important factors that can affect leakage of hazardous constituents from the treatment zone, (5) a description of major mechanisms that will prevent migration of hazardous constituents out of the treatment zone, and (6) a detailed assessment describing the effectiveness and feasibility of each potential response as described subsequently. The RA will review the RAP and will approve, disapprove, or modify the plan following the same procedures as for other types of units (Section V.A.2.c. of this preamble).

Upon detecting widespread leakage, the owner or operator must implement the RAP immediately and notify the RA in writing within 7 days. With this notification, the owner or operator must include preliminary constituent

concentrations and the extent of the contamination. Preliminary constituent concentration refers to the concentration of any hazardous constituent monitored that significantly increases above background (see guidance manuals cited above). Any area of the unit containing hazardous constituents at concentrations significantly above background levels will be considered part of the contaminated area. Notification for leakage that is less than widespread is already required under existing regulations [Section 264.278(g)].

The possible courses of action to take upon finding widespread leakage include changing the operating practices or closing the facility. Changing the operating practices may include changing the type of waste treated, the timing of application, a reduction of the amount of waste applied, or a reduction in the application frequency. Closing the facility may be necessary if changing operating practices cannot be shown to be protective of ground water and surface water or if the owner or operator finds the changes to be cost prohibitive.

The EPA considered other possible response actions but did not choose to include them in today's proposal. These actions include increasing the frequency of ground-water monitoring, installing a cover over the unit, and excavating the unit. The EPA takes the position that more frequent ground-water monitoring would be too slow to detect contamination and does not achieve the goal of preventing ground-water contamination. The installation of a temporary landfill cover over the unit or part of the unit is counter to the principles of land treatment, which is to allow natural aerobic processes to degrade waste. The last option considered by EPA is requiring excavation of the unit and disposal of the contaminated soil. Although this option would be expensive compared to closing the unit, in some instances it may be the only way to prevent groundwater contamination. EPA is requesting comment on whether to include any other response actions in the final rule and specifically requests comments on excavation of the unit as an option.

5. *Inspection.* The new Sections 264.284 and 265.283 being added in today's proposal require the owner or operator to establish an inspection program for the unsaturated zone monitoring equipment during the active life and the post-closure care period of the facility. The program established must allow for determining deterioration, malfunction, or improper operation of unsaturated zone monitoring equipment. The program also will determine the effectiveness of controls implemented in response to hazardous constituent migration beyond the treatment zone, the concentrations of which statistically exceed background levels. Under section 264.15, the owner or operator will be required to keep a detailed log of all inspection information to demonstrate compliance with unsaturated zone monitoring permit requirements. The RA may require additional inspection and monitoring requirements in the permit to ensure detecting hazardous constituent migration out of the treatment zone at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit must prevent hazardous constituent migration so that ground water and surface water will not be contaminated.

*b. Interim status facilities.* The current 40 CFR Section 265.278 regulations for unsaturated zone monitoring for interim status facilities require the owner or operator to have an unsaturated zone monitoring plan designed to detect vertical migration of hazardous constituents below the active portion of the land treatment facility. While permitted facilities are required to follow the leak detection program, interim status requirements are self-implementing by the owner or operator. EPA involvement is sometimes necessary. In these instances EPA has found the use of a plan facilitates EPA and owner or operator interaction. Therefore, today's proposal is requiring the owner or operator of an interim status facility to develop and retain at the facility an unsaturated zone monitoring plan.

The interim status monitoring plan must provide background concentrations of hazardous waste and constituents. The plan must include the use of soil cores for soil monitoring and lysimeters (or other such devices) for soil-pore liquid monitoring. It should be noted that the existing interim status requirements are less stringent than the existing Part 264 requirements for permitted facilities. For example, there is no requirement that owners or operators of interim status facilities modify their operating practices if there is a statistically significant increase of hazardous constituents as is required for permitted units under Section 264.278.

In today's proposed rule, EPA is replacing the current Section 265.278 requirements with the existing Section 264.278 requirements and the proposed land treatment leak detection requirements discussed in Section V.A.3.a. Accordingly, the leak detection program for interim status land treatment facilities will be essentially the same as that for permitted facilities. We believe that this is appropriate because the level of confidence needed for protection of human health and the environment for an interim status facility is the same as that for a permitted facility.

The major difference in the proposed regulations for interim status and permitted facilities is the mechanism for implementing the above requirements. Permitted facilities are required to establish a leak detection program through the permit process, while interim status requirements are implemented through an unsaturated zone monitoring plan. The plan provides interaction between the owner or operator and EPA concerning the specifics of the unsaturated zone monitoring. Under Section 265.278 the owner or operator must develop and implement an unsaturated zone monitoring plan which incorporates the existing 264.278 requirements in addition to the leak detection land treatment requirements proposed today. The Agency will briefly discuss these requirements and explain these standards.

(1) Proposed interim status monitoring plan requirements. The unsaturated zone monitoring plan must include at least the following:

(a) A description of how the owner or operator will monitor the soil and soil-pore liquid to determine, at the earliest practicable time, whether hazardous constituents have migrated out of the treatment zone over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. The description must identify the hazardous constituents or the principal hazardous constituents (PHC) to be monitored (Section 265.278(a)).

(b) A description of the number, location, and depth of soil-pore liquid monitoring devices, such as lysimeters, and soil sampling points necessary to represent to a 95-percent confidence level the quality of soil and soil-pore liquid below the treatment zone and the quality of background soil and soil-pore liquid quality (Section 265.278(b)).

(c) A description of the methodology for establishing background values for each hazardous constituent to be monitored (Section 265.278(c)).

(d) A description of the frequency, timing, and depth of soil and soil-pore liquid monitoring based on the frequency, timing, and rate of waste

application and the soil permeability (Section 265.278(d)).

(e) A description of sampling and analytical procedures designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical makeup of the soil below the treatment area. Procedures for sample collection, sample preservation, shipment, and analytical procedures for the chain-of-custody control should be included (Section 265.278(e)).

(f) A description of the statistical procedure to determine if there is a significant increase over background values in the monitoring data. This description must include the time after sampling within which such a determination will be made. The plan must specify a statistical procedure that is appropriate for the distribution of data used to establish background values and that provides a reasonable balance between the probability of a false determination and failure to identify migration (Section 265.278(f)).

(g) A RAP that describes actions to take upon finding widespread leakage (Section 265.278(j)).

Although the requirements under Section 264.278 and 265.278 are similar, they differ procedurally. The monitoring plan for interim status facilities must be submitted to the RA for review and approval by the effective date of the final rule. Public notification of the plan will be provided through a local newspaper notice. A 30-day public comment period will follow and a public hearing may be held in response to public request or at the RA's discretion, when such a hearing may clarify one or more issues concerning the plan. The RA will give public notice of the hearing at least 30 days before it occurs. (It may be given at the same time as the notice of the opportunity to submit comments). The RA will approve, modify, or disapprove the plan within 90 days of its receipt. If the RA does not approve the plan he will provide the owner or operator with a detailed written statement of the reasons for his disapproval and the owner or operator must modify the plan or submit a new plan. The RA will approve or modify this plan in writing. If the plan is modified, it will become the approved plan.

(2) Amendments to the interim status monitoring plan. In today's proposal, if the owner or operator determines that there is a statistically significant increase of hazardous constituents below the treatment zone or that widespread leakage has occurred, the owner or operator must notify the RA in writing within 7 days of the occurrence. The submittal must include the identity and preliminary concentrations of constituents detected. An amended operating plan must be submitted to the RA within 90 days of the occurrence, demonstrating that operating practices have been modified sufficiently to maximize the success of degradation, transformation, or immobilization processes in the treatment area.

After the modified plan has been submitted to the RA, the public will be notified through a local newspaper. A 30-day public comment period will be held, as well as a public hearing, if necessary. Within 30 days following the close of the comment period, the RA will approve, disapprove, or modify the plan. If the plan is disapproved, the owner or operator will be notified and will have 30 days to respond. Following the public comment period the RA will make a final decision whether to approve the plan.

*c. Demonstrations.* Upon determining that there is a statistically significant increase in hazardous constituents below the treatment zone, the owner or operator of a permitted or interim status facility may choose to demonstrate that a source other than the land treatment unit caused the increase. The owner or operator also may demonstrate that what appeared to be an increase resulted from an error in sampling, analysis, or evaluation. (Sections 264.278(h) and 265.278(h).

To make this demonstration, the owner or operator must notify the RA within 7 days of the statistically significant increase of hazardous constituents below the treatment zone and his intent to make a demonstration. Within 90 days, the owner or operator must submit a report to the RA demonstrating that the source is not from the land treatment unit or that there was an error in sampling, analysis, or evaluation. The RA will review the demonstration report and notify the applicant as to whether or not such a determination is successful. The applicant is allowed 45 days to comment on such a determination. The RA will respond to these comments and make a final decision on the applicant's demonstration. If the RA approves the demonstration, then the owner or operator must also submit within 90 days a modified unsaturated zone monitoring plan to make any appropriate changes (interim status) or a request for a permit modification (permitted). The owner or operator must continue to monitor as specified.

*B. Extension of Double Liner Requirements*

Under the authority of Section 3004(a) of RCRA, EPA is proposing to extend the double liner and leachate collection system requirements to (1) new waste piles and lateral expansions and replacements of existing waste piles; (2) significant portions of existing landfills, surface impoundments, and waste piles; and (3) new units, lateral expansions, and replacements of existing units at landfills, surface impoundments, and waste piles at facilities permitted before November 8, 1984.

EPA believes these requirements are necessary to protect human health and the environment by preventing migration of hazardous contituents out of the unit and contamination of ground water and surface water.

Under the current regulations, waste piles and significant portions of landfills, surface impoundments, and waste piles must have single liners (either clay or FML depending on the unit) with a LCRS above the liner (for landfills and waste piles). Landfills and surface impoundments, and replacements and lateral expansions of landfills and surface impoundments at facilities permitted before November 8, 1984 are not required by EPA to have liners if the units were existing before 1982; conversely, if these units were in existence subsequent to the effective date of the rule, they were required to have either clay or FML liners, depending upon the type of unit.

Based on the data presented in the Liner/Leak Detection Background Document, the Agency believes that single liners are inadequate to protect human health and the environment. There is a greater potential for leachate migration through a single liner than a double liner. Since there is a reasonable probability that damage to the top liner may occur, the Agency believes that a double liner system with a LCRS between the liners to collect and remove liquids provides a mechanism to ensure that migration out of the unit is prevented.

EPA believes that a double liner system incorporating leachate collection between the liners is in most cases sufficient to prevent migration of hazardous constituents out of the unit. If a double liner system is employed at a land disposal unit, the modeling data that the Agency has gathered indicate that there will be minimal hazardous constituent migration from the unit.

1. Waste Piles

*(a) Background.* 40 CFR 264.251(a) currently requires permitted waste piles to have a single liner that is designed, constructed, and installed to prevent any leachate migration out of the waste pile and into the surrounding environment during the active life (and the closure period if applicable) of the waste pile. The liner may be constructed of materials (such as low-permeability soils) that allow leachate migration into the liner as long as the liner prevents any migration of waste out of the pile into the adjacent subsurface soil, ground water or surface water at any time during the active life. A leachate collection and removal system (LCRS) that is designed, constructed, maintained, and operated to collect and remove leachate from the waste pile is required directly above the liner (40 CFR 264.251(a)). An owner or operator of a permitted facility whose waste pile is inside or under a structure that provides protection from precipitation so that neither runoff nor leachate is generated is exempted from liner and leachate collection and removal system requirements provided that: (1) Liquids or materials containing free liquids are not placed in the waste pile; (2) the waste pile is protected from surface water run-on by the structure or in some other manner; (3) the waste pile is designed and operated to control waste dispersal by wind, where necessary, by means other than wetting; and (4) the waste pile will not generate leachate through decomposition or other actions. For waste received beginning May 8, 1985, the owner or operator of an interim status waste pile is subject to the requirements for liners and leachate collection systems under 40 CFR 264.251 for each new unit, replacement of existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application.

In today's proposal, EPA is requiring double liners and leachate collection and removal systems for waste piles because we believe that waste piles pose a potential threat to human health and the environment similar to the threat from landfills. There is, however, one difference between the double liner requirements for landfills and those for waste piles. 40 CFR 264.301 provides that the liner must function or operate during the active life and post-closure care period for a landfill. This provision is somewhat different for waste piles under today's proposal which specifies that the liners and leachate collection and removal systems for waste pile units only need to function or operate during the active life of the waste pile (Section 264.251(c)). Current regulations require waste piles to decontaminate or remove the waste at closing (40 CFR 264.258), thus obviating the need for post-closure care. This difference, however, may be of minimal impact, because the active life of a waste pile can be equivalent to or longer than the combined active life and post-closure care period for landfills.

EPA assessed the potential for migration of leachate from waste piles through a modeling study (see Liner/Leak Detection Background Document). This study indicates that the potential for migration from a waste pile is almost equivalent to the potential for migration from landfills. Because EPA has imposed double liner and leachate collection system requirements for certain landfills, the Agency's position is that it is appropriate to do the same for certain waste piles, given ground water migration considerations.

Moreover, EPA believes that waste piles have a greater potential for equipment-related liner damage than landfills, because during the active life of a waste pile, equipment is used to remove and replace waste periodically. Because waste is not removed from above the liner at a landfill, the liner is not exposed to such heavy equipment operation. Equipment-related liner damage has the potential to allow constituent migration beyond the waste pile, thus increasing the potential for leachate migration out of the unit. If the liner is breached in a single-lined waste pile, there would be no backup liner to contain leachate. Therefore, we believe today's proposed double liner and leachate collection system requirements are appropriate. In addition, it would not be possible to use the proposed leak detection system if the unit is not double lined. Therefore, an alternate leak detection system would have to be used at single-lined waste piles. EPA believes that the proposed double liner and leachate collection and removal system standards are an integral component for leak detection systems at waste piles containing liquids or exposed to precipitation. The leak detection system proposed for waste piles is the best mechanism for providing information about any potential leakage rate, quality, and sources of detected liquids.

Moreover, EPA believes that there are additional reasons why unenclosed waste piles in particular merit double liners and LCRSs. EPA believes that these unenclosed waste piles generally have a higher percentage of their waste areas exposed to precipitation than landfills do and that waste generally is exposed to precipitation for a longer period at waste piles than at landfills. Most landfill owners or operators partially close their units on a periodic basis by placing a temporary or intermediate cover over the in-place waste to minimize leachate generation. Therefore, these unprotected waste piles have a greater potential for leachate generation. In addition, the active life for a new landfill unit is typically 6 months to 5 years, while a waste pile may be used for storage for a much longer period, in some cases for 20 years or more.

As a result of all of the above-cited factors, EPA believes waste piles pose a threat to human health and the environment similar to landfills. Since double liners and LCRSs are required for landfills, EPA believes it is appropriate to require the same standards at waste piles in order to protect human health and the environment.

*(b) Proposed rule—(1) Double liner and leachate collection and removal system standards.* Today EPA is proposing a double liner system for new lateral expansions and replacements of all permitted waste piles irrespective of when the permit was received (Section 264.251) and interim status waste piles (Section 265.254). This rule is effective 6 months after the date of promulgation. Owners or operators of waste piles may qualify, however, for the exemption contained in Section 264.250 for totally enclosed waste piles. As discussed herein, variances for certain monofills and approved alternative designs may be granted.

EPA is proposing today to require owners or operators of new waste piles and lateral expansions or replacements of existing waste piles to install double liners and leachate collection and removal systems that essentially are equivalent to those for landfills in the Proposed Codification Rule of March 28, 1986 (51 FR 10707–12). As with landfills, EPA is not proposing to require retrofitting of existing waste piles. Today's proposed double liner requirements call for a flexible membrane liner (FML) top liner and a bottom liner of either a compacted clay or, alternatively, a composite liner consisting of a FML top component and a compacted clay lower component. Owners or operators also are required to install a leachate collection and removal system above the top liner and between the liners. On April 17, 1987, EPA issued Hazardous Waste Management; Minimum Technology Requirements; Notice of Availability of

Information and Request for Comments, which showed that compacted clay bottom liners may impair the leak detection sensitivity and the detection time, and collection efficiency of the leachate detection, collection, and removal system (LDCRS). EPA currently is evaluating the comments received on that Notice. For the reasons set forth in the Notice, EPA believes that it is likely that we will require the composite bottom liner as the generally applicable standard in the finalization of the double liner requirement for surface impoundments, waste piles, and landfills. We have not proposed the requirement for a composite liner as the basic standard in this rule to allow EPA the option of allowing both types of bottom liners for now, and to be consistent with the March 28, 1986 proposed double liner rule for landfills and surface impoundments.

EPA believes that, based on information now available for the Agency (and discussed in the Notice), the composite bottom liner, or an equivalent design, will be required in the final double liner requirements for waste piles, surface impoundments and landfills.

EPA invites comments about whether such double liners and leachate collection and removal systems are necessary at waste piles to protect human health and the environment. Comments are requested to provide data that may show that alternative requirements for waste piles provide adequate protection of human health and the environment. In addition, EPA believes that there exists a wide range of operating conditions and active life periods for waste piles. EPA is interested in comments about whether today's proposal is appropriate for all waste piles or if alternative liner and leak detection system requirements might be applicable for some types of units. EPA encourages owners or operators to provide information and data about this issue.

*(2) Totally enclosed units.* Today's proposal exempts the owner or operator of a new waste pile or of a lateral expansion or replacement of an existing waste pile from the double liner and leachate collection and removal system requirements if the waste pile complies with the requirements of 40 CFR 264.250(c). This regulation currently allows an owner or operator to be exempted from the single liner requirements if: (1) The waste pile is inside or under a structure that provides protection from precipitation so that neither runoff nor leachate is generated; (2) liquids or materials containing free liquids are not placed in the pile; (3) the pile is protected from surface water run-on by the structure or in some other manner; (4) the pile is designed and operated to control waste dispersal by wind, where necessary, by means other than wetting; and (5) the pile will not generate leachate through decomposition or other reactions. EPA today is proposing to continue this exemption for the owner or operator of a new waste pile, lateral expansion, and replacement of an existing waste pile at a permitted facility who meets these conditions from the double liner system requirements. If the owner or operator meets the foregoing conditions, the waste in the waste pile will have such a low water content that no free liquids will be present, and no leachate will drain out of the waste pile at any time after placement.

Totally enclosed waste piles that contain liquid or waste that will generate leachate do not qualify for the 40 CFR 264.250(c) exemption. EPA recognizes that enclosed waste piles with moist waste will have a greatly diminished capacity for leachate generation compared to unenclosed wastes from precipitation. However, because the active life and operating practices (frequency of waste "turnover") of the waste pile are unrestricted, significant amounts of leachate can be generated within enclosed units. In addition, enclosed waste piles are allowed a hydraulic head above the liner to no more than 30 cm (one foot) 40 CFR 264.251(a)(2). This level of liquid above the liner represents a mechanism for migration potential similar to that for landfills and unenclosed waste piles. Thus, the Agency believes it appropriate to require minimum technology double liner systems for enclosed waste piles containing moist wastes that will generate leachate. EPA requests comments on this issue and encourages owners or operators to submit information and data about operating practices at existing facilities that support the appropriateness of today's proposal, or alternatively, that provide the basis for modified requirements.

*(3) Leak detection requirements for totally enclosed units.* The proposed leak detection rule allows the owner or operator to use an alternative leak detection technology. Because waste piles that qualify for the waiver under 40 CFR 264.250(c) are not required to meet the double liner and leachate collection and removal system requirements under Section 264.251, a drainage layer type of leak detection system would not be possible. Recognizing this, EPA's position is that the owner or operator of a waste pile that qualifies for a waiver under 40 CFR 264.250(c) should be able to use an enclosure and waste inspection program as an alternative leak detection system. If no enclosure leaks or run-on are detected and the waste pile contains no free liquids, then the waste pile would not be considered to be leaking. The owner or operator using this type of alternative leak detection system would be required to maintain the waste pile in a condition such that it would meet the requirements of 40 CFR 264.250(c).

EPA believes that an inspection program in which the owner or operator inspects the waste pile after every precipitation event (rain, snow, or ice) and checks the waste pile and enclosure for leaks would satisfy the requirements of Section 3004(o)(4) of RCRA. For example, the owner or operator would check the roof and sidewalls of the enclosure for leaks, the floor of the enclosure for puddles or wet spots, the waste pile for signs of moisture infiltration and lastly, the perimeter of both the waste pile and enclosure for signs of runoff or seepage. By inspecting the enclosure and waste pile in this way after each precipitation event, EPA is satisfying the statutory mandate of requiring leak detection at the "earliest practicable time."

EPA believes the owner or operator of a protected waste pile, meeting the requirements of Section 264.250(c), should have the option of implementing the proposed enclosure inspection program as an alternative to the leak detection system. If the owner or operator of an enclosed waste pile does not meet the requirements of Section 264.250(c), a leak detection system must be installed that meets the leak detection system performance standard for detection sensitivity and detection time under Section 264.251 (g), (h), (i), and (j). The Agency is seeking comments about the types of systems that could satisfy the leak detection system performance standard for detection sensitivity and detection time at waste piles that have single liners and leachate collection and removal above the liner or that have no lining system at all.

*(4) Variances.* Current regulations provide owners or operators of permitted (40 CFR Part 264) and interim status (40 CFR Part 265) surface impoundments and landfills with certain exemptions from the minimum technology double liner standards. One type of exemption (e.g., Section 264.221(d)) applies if the owner or operator can demonstrate that

alternative design and operating procedures together with location characteristics will prevent the migration of any hazardous constituents into ground water or surface water at least as effectively as the minimum technology double liner system. The second type of exemption (e.g. Section 264.221(e)) applies to certain types of monofills. EPA is proposing today to extend these two types of exemptions for landfills and surface impoundments to waste piles. EPA believes that extension of these exemptions to waste piles is appropriate because: (1) Waste piles falling under the exemptions will handle wastes similar to those at landfills and surface impoundments; and (2) waste pile lining systems have similar designs and design lives to landfills and surface impoundments.

Today's proposed rule presents a variance for double liners and leachate collection and removal systems for waste piles under Sections 264.251(d) and 265.254(c). To receive a variance under these sections, the owner or operator must demonstrate that alternative design and operating procedures, together with location characteristics, will prevent the migration of any hazardous constituents into ground water or surface water at least as effectively as a double liner system required under Section 264.251(c) or 265.254(b).

The owner or operator of a permitted waste pile must apply to make a variance demonstration as part of a new permit or as a permit modification. For interim status units, the owner or operator must submit a variance request to the RA and have the variance approved by the RA before receiving hazardous waste. EPA is using procedures similar to the interim status closure plan development and approval process under Section 265.112 (see Section V.A.3.b.(1)). The public participation process found in Section 265.112 is applicable also. The regulations on variances do not require a specific administrative procedure. When EPA finalizes this rule, we plan to employ the interim status closure plan procedures (40 CFR 265.112) for variance approval. However, it is EPA's position that this demonstration must be a comprehensive state-of-the-art evaluation that is representative of the potential worst-case scenarios. The owner or operator seeking a variance must include a complete description of the waste pile components, unit operation, and location characteristics. The description should include sufficient information for the RA to determine that the proposed waste pile provides the same level of protection of ground water and surface water from contamination as a waste pile with a minimum technology double liner system. Concerns that the owner or operator should consider in developing a variance demonstration include, at a minimum:

(1) Waste (types; quantities; porosity; hydraulic conductivity; waste interactions; mobility in unsaturated/saturated zone, etc.)

(2) Unit components (liners; leachate collection and removal system; detection system; cover design; intermediate cover layers; construction quality assurance (CQA) program for design and construction; etc.)

(3) Unit operation (treatment, storage, or disposal; length of the active life; leachate removal; repair of a leaking liner; etc.)

(4) Location characteristics (precipitation; climate; unsaturated zone; saturated zone; flood plain; etc.)

In making a variance demonstration, the owner or operator will need to demonstrate to EPA quantitatively how the proposed alternative design and operating procedures satisfy double liner system and leak detection system performance criteria. These criteria may include those proposed today for the LDCRS (detection sensitivity and detection time) as well as other criteria, such as collection efficiency. Also, the owner or operator may be required to demonstrate that the hydraulic modeling methodology used to make the demonstration is at least as conservative as that considered today for the LDCRS design. The owner or operator may be required to provide independent documentation and verification of the proposed design approach (including who developed the approach, their credentials and experience; laboratory bench- or full-scale physical demonstrations; numerical simulations; assumptions of the approach; clear and complete report presentation, etc.). The owner or operator may be required further to present quantitative results using the alternative design approach, along with various failure scenarios, including scenarios where primary design components are assumed to fail and a secondary system becomes necessary to minimize releases to the environment. For these scenarios, the owner or operator may be required to report such things as: (1) Maximum rate of leakage out of the unit for a given scenario; (2) duration of leakage; (3) breakthrough time; (4) cumulative leakage out of the unit; and (4) potential response actions.

Examples of situations that the Agency is considering for approval of a variance from these design requirements include:

1. A landfill or waste pile receiving only wastes treated to the land disposal restriction BDAT levels and having a low rate of net infiltration due to climatic factors or engineering controls.

2. A unit located and/or designed to have low rates of net infiltration and long times of travel to the saturated zone.

3. A unit receiving wastes with completely immobilized hazardous constituents.

4. A surface impoundment where active physical, chemical, or biological processes rapidly degrade all of the unit's hazardous constituents.

5. A unit operated solely for the purposes of short-term storage.

These samples are illustrative of the types of design, operation, and location characteristics the Agency is considering a variance from the design requirements. The Agency requests comments on the appropriateness of these conditions for approval of a design variance.

Today's proposal provides a second variance from the double liner system requirements under Sections 264.251(e) and 265.254(d) for owners and operators of monofills containing only hazardous wastes from foundry furnace emission controls or metal casting molding sands if such wastes do not contain constituents that would render the waste hazardous for reasons other than the EP toxicity characteristics in Section 261.24, 40 CFR Ch. 1. To obtain a waiver, today's proposed rule further requires that the waste pile have at least one liner for which there is no evidence that the liner is leaking. For purposes of the waiver, the "liner" means either a liner designed, constructed, installed and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner during the active life of the facility. It also requires the monofill to be located more than one-quarter mile from an underground source of drinking water (as defined by Section 144.3, 40 CFR Ch. 1) and, lastly, to be in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA Section 3005(c). The owner or operator may be exempt from today's requirements if the unit meets the requirements for waste piles permitted prior to November 8,

1984 as discussed in Section V.B.3. (Sections 264.251(f) and 265.251 (f)).

2. Significant Portions

As discussed previously, under the authority of Section 3004(o) of RCRA, EPA has imposed minimum technological requirements (i.e., double liners and leachate collection and removal systems) for surface impoundments and landfills. Today's proposed rule extends EPA's minimum technology double liner system standards to significant portions of existing surface impoundments (Sections 264.221(c) and 265.221(a)), waste piles (Sections 264.251(c) and 265.254(a)), and landfills (Sections 264.301(c) and 265.301(a)). This requirement would go into effect 24 months after promulgation of today's proposed rule.

*(a) Background.* EPA's current regulations require units not covered with waste at permit issuance to install a single liner (with a leachate collection and removal system above the liner for a landfill or waste pile). This means that even if a landfill or surface impoundment unit is exempt from the double liner standards, any portion of the unit not covered with waste at permit issuance is still subject to EPA's current single liner standards in Sections 264.221(a), 264.251(a), and 264.301(a).

The statutory authority to implement a requirement for a minimum technology double liner system for significant portions of existing units is in RCRA Section 3004(a). This statutory provision provides EPA with the authority to promulgate regulations protecting human health and the environment at new land disposal facilities or facilities in existence on the date of promulgation of such regulations.

EPA is proposing to require double liners and leachate collection and removal systems for those portions of landfill, surface impoundment and waste pile units that are not defined as existing portions in Section 260.10, do not have a liner system that meets the Part 264 single liner standard, and meet the definition of a significant portion. The single liner requirement will remain in effect until the significant portions rule becomes effective.

*(b) Proposed rule—(1) Double liner standard.* The proposed rule defines "significant portion" (in the amendments to Section 260.10) as:

> any unlined area of a unit that has not received waste and, if double-lined before receiving waste, would significantly reduce the potential for migration of hazardous constituents out of the unit, thereby reducing the potential for ground-water and surface-water contamination.

The phrase is used in revisions to the Part 264 design and operating requirements for surface impoundments, waste piles, and landfills.

The surface impoundment proposed regulation (Section 264.221) reads as follows:

> (c) The owner/operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of a surface impoundment unit must install two or more liners and a leachate collection system between such liners. This requirement shall apply to the owner/operator of all such units, regardless of the date of permit issuance, as well as to the owner/operator of significant portions of surface impoundment units, effective 24 months after promulgation of this rule. The requirements of this paragraph apply with respect to all waste received after the issuance of the permit or modified permit. The liners and leachate collection system must protect human health and the environment.

The language of the proposed waste pile regulation (Section 264.251(c)) and landfill regulation (264.301(c)) is virtually identical to that specified for surface impoundments. This change is simultaneously made for interim status surface impoundments, waste piles, and landfills as a result of the requirements under Sections 265.221(a) and conforming amendments to Subparts L and N, that required owners or operators to install liners and LCRSs in accordance with Sections 264.221(c) and conforming amendments to Subparts L and N of this chapter.

The Agency is proposing that, effective 24 months after promulgation of this rule, owners or operators of permitted and interim status landfill, surface impoundment, and waste pile units that qualify as existing units provide a minimum technology double liner system on those unlined areas upon which waste has not been placed if such a double liner system would significantly reduce the potential for adverse human health and environmental impacts from the unit. EPA is allowing 24 months because we believe it may take that long to install liners with ongoing placement of waste.

The Agency is also proposing in today's rule to amend the present single liner requirements. Under the proposal, the owner or operator would be required to provide double liners and LCRSs for significant portions of unlined areas of existing units. Owners or operators of nonsignificant portions would, conversely, not be required to line these portions of the unit. We believe that by requiring significant portions of units to be double lined would minimize the potential for leachate migration.

*(2) Exemption from leak detection requirements.* Today's proposed rule does not require a leak detection system to be installed at the significant portions of any unlined areas that have not received wastes at existing units (interim status and permitted). We believe it would be unreasonable to require leak detection at significant portions for several reason. One reason is that the possibility of leakage from other areas of the unit could cause a false indication of leakage through the top liner of the significant portion. Also, EPA is not requiring leak detection for significant portions because of potential problems from requiring a response action. EPA believes that response actions to migration out of a unit should be developed and implemented on a unit basis. If there are different operational requirements for different portions of one unit, it would be difficult or impossible to determine if the portion of the unit with more stringent operational controls is meeting its specific requirements. This is because current monitoring techniques would not be able to determine which area of the unit was leaking. Therefore, EPA would not know whether or not the "significant portion" was in compliance with the double liner standards.

*(3) Description of "significant portion".* Today's proposal defines "significant portion" of any unlined area of a unit that has not received waste as that portion which, if double lined before receiving waste, would significantly reduce the potential for migration of hazardous constituents out of the unit, thereby reducing the potential for ground-water and surface-water contamination from the unit (Section 260.10). If lining an unused portion of an existing unit would result in significant reductions in the potential for hazardous constituents to migrate out of the unit, then the unused portion would be considered "significant" and the owner or operator would have to install double liners and LCRS. One of the main criteria in determining significant portions is the size of a unit's area that would be double lined. The second criterion is the amount of leachate that the double liner system would collect and remove.

These criteria for distinguishing significant portions from nonsignificant portions are not meant to be precise because EPA believes that a more flexible standard is needed. This standard will cover areas in existing units that require site-specific

evaluation by EPA and, therefore, require more flexibility than the evaluation of a new facility. However, the following examples provide guidance on EPA's thinking of what are significant and nonsignificant portions:

- An example of a "significant portion" of an existing landfill unit would be an exposed unlined bottom area of several acres that was not covered by waste. If waste were to be placed in this area of the unit with double liners and leachate collection, a significant benefit to human health and the environment would likely result, because large amounts of leachate would be collected and removed over a 5-year period.
- An example of a portion of an existing unit that may not be a "significant portion" is the unlined area of a surface impoundment located above the liquid surface level that would be covered with waste if the liquid level were raised.
- In most cases, "significant portions" will be those areas in a unit where the addition of a double liner system will provide hydraulic control of leachate or liquid waste and ensure collection and removal.
- "Significant portions" may include both the bottom and sidewalls of existing units.

The primary purpose of requiring minimum technology requirements for significant portions is to provide these portions with the same level of protection that other newly constructed land disposal units provide by controlling migration of hazardous constituents out of the unit to prevent ground-water contamination. By requiring a double liner system for significant portions, EPA is minimizing the total number of landfill, surface impoundment, and waste pile units that can receive hazardous waste without providing the same level of human health and environmental protection as other units with minimum technology double liner systems.

*(4) Variances.* Under today's proposal, owners or operators of significant portions of permitted and interim status units wanting to use designs different from those specified under the minimum technology requirements may do so if they can demonstrate that the alternative design and operating procedures, together with location characteristics, will prevent the migration of any hazardous constituents into ground water or surface water at least as effectively as a minimum technology double liner system.

The owner or operator of a permitted unit must apply for a permit modification to make such a variance demonstration. For interim status units, the owner or operator must have the variance demonstration approved before receiving hazardous waste. A description of the components of this variance demonstration was given previously in Section V.C.1.(b)(5) of this preamble.

Today's proposed rule also provides a provision for owners or operators of significant portions of permitted or interim status facilities to seek a waiver from the double liner system requirements for monofills containing only hazardous wastes from foundry furnace emission controls or metal casting molding sands if such wastes do not contain constituents that would render the waste hazardous for reasons other than the EP toxicity characteristics in Section 261.24, 40 CFR Ch. 1. Further requirements to obtain such a waiver were given previously in Section V.C.1.(b)(5) of this preamble.

*(5) Issues.* One issue with which EPA is concerned is that owners or operators of existing units may initiate rapid lateral spreading of waste onto areas of significant portions that are uncovered with waste in an effort to circumvent the proposed double liner system requirements before this rule is promulgated. EPA is considering restricting the potential for any lateral spreading by requiring owners or operators of existing facilities affected by this proposal to document clearly that wastes were placed in a "normal" manner up to the date this rule becomes effective. EPA requests comments on this issue and whether this documentation should be used by the permitting agency before rendering a decision as to whether an unused portion of an existing facility is a significant portion.

A second issue, particularly for waste piles and landfills, is whether the working face of the unit should be considered part of a significant portion. If so, the entire working face would be subject to minimum technology double liner system requirements. While placing a lining system on the working face is desirable, the practicality of doing such is questionable, and the benefit to human health and the environment is unclear. The Agency is investigating this question, and seeks comments on this issue.

The third issue is whether significant portions should be addressed under today's proposed rule. EPA recognizes that there are very few units with existing portions that would qualify as significant portions. Also, evaluating whether a portion is significant may need to be accomplished on a site-specific basis. The Agency is requesting comments on whether to regulate significant portions under today's proposal or, alternatively, under the authority of Section 3005(c)(3) of RCRA.

### 3. New Units, Replacement Units, and Lateral Expansions of Units at Facilities Permitted Before November 8, 1984

*a. Background.* As noted previously, under the authority of Section 3004(o)(1) of RCRA, EPA has imposed minimum technological requirements for double liners and leachate collection and removal systems on new landfills and surface impoundments, and replacements and lateral expansions of landfills and surface impoundments at facilities permitted after November 8, 1984. Also, under 3004(a) authority, EPA is proposing to extend these requirements to new waste piles and lateral expansions and replacements of existing waste piles. Under the current regulations, new or replacement landfills, surface impoundments, or waste piles at facilities that were permitted before November 8, 1984, are not subject to the minimum technology double liner system standards. Today's proposed rule also extends EPA's minimum technology double liner system standards to new landfills, surface impoundments, and waste piles, and replacement units and lateral expansions of surface impoundments (Section 264.221(c)), waste piles (Section 264.251(c)), and landfills (Section 264.301(c)) at facilities permitted *before* November 8, 1984. This requirement is proposed to go into effect 6 months after promulgation of today's proposed rule.

*b. Proposed rule—(1) Double liner system requirement.* The Agency is proposing that new landfills, surface impoundments and waste piles, and replacements and lateral expansions of existing landfills, surface impoundments, and waste piles at facilities that were permitted before November 8, 1984, meet the double liner and LCRS requirements currently proposed for landfills, surface impoundments, and waste piles. This proposal is to be effective for these units 6 months after promulgation of this rule. The primary purpose of proposing that the minimum technology requirements be applied to new units, replacement units, and lateral expansions at facilities permitted before November 8, 1984, is to assure that these units provide protection of human health and the environment. This proposal will result in minimizing the number of units in which waste can be placed that do not protect human health and the environment. EPA believes the opportunity for constructing units which meet these requirements at

facilities permitted prior to November 8, 1984 is the same as for units at facilities permitted after November 8, 1984.

On March 28, 1986 (51 FR 10722) EPA proposed to amend 40 CFR 270.41(a)(3) to give the Agency authority to modify a permit. This amendment will enable EPA to require double liners and leachate collection and removal systems for units permitted before November 8, 1984.

Only eight facilities potentially will be affected by this proposed extension of the double liner standard. The Agency believes that all these cases will involve lateral expansions or replacements but not new units.

*(2) Exemption for certain replacement units.* As discussed earlier in this preamble, the Agency is proposing today to require minimum technology double liner and leachate collection systems for certain landfills, surface impoundments, and waste piles at facilities that were permitted before November 8, 1984. However, the Agency also is proposing that certain replacement units at surface impoundments, landfills, and waste piles be exempted from the proposed double liner and leachate collection and removal system requirements, as well as the leak detection system requirements proposed today. EPA can exempt these units from the leak detection requirements because they are not required by the statute to have leak detection.

As stated in the Draft Minimum Technology Guidance Document of May 24, 1985 (EPA/530-SW-85-012), a unit qualifies as a replacement unit when (a) the unit is taken out of service (the receipt of waste is stopped or the normal input of waste is significantly reduced), (b) all or substantially all of the waste is removed, and (c) the unit is reused. However, a unit is not considered a replacement unit if the waste is removed from the unit, treated, and only the treated waste is placed back into the same unit as part of closure or post-closure care activities of the facility.

The Agency is proposing to exempt from the proposed double liner system and leak detection system requirements those replacements of landfills, surface impoundments, and waste piles that meet all of the following conditions:

(1) The existing unit received a final permit before November 8, 1984;

(2) The existing unit was constructed in compliance with the single liner requirements (and leachate collection and removal system requirements for landfills and waste piles) or requirements for equivalent protection (the variance) contained in Part 264, and the liner or leachate collection and removal system was not replaced; and

(3) There is no reason to believe that the liner or leachate collection system is not functioning as designed.

EPA is proposing to exempt units that meet the above criteria from the double liner system and leak detection system requirements, because the owner or operator of these units made a good faith effort to satisfy the liner system requirements that were in effect at the time the facility was permitted (and the liner or leachate. collection system is still functioning as designed). EPA also considered that in order to double line these units, in many cases the owner or operator would be required to replace the whole unit. Retrofitting the unit by placing an additional liner on top of the existing liner would not be feasible for three reasons: (a) Existing single liners would not meet bottom liner requirements for a double liner system; (b) reduced capacity may not meet unit owner or operator needs; and, (c) retrofitting a new design may not be compatible with the previously designed system and would not meet new technology-based standards for liners.

*(3) Variances.* Owners or operators of new units, replacement units, and lateral expansions of units at facilities permitted before November 8, 1984, may use the same variances as previously described in Section VI.C.1.(b)(5) of this preamble.

### C. Construction Quality Assurance (CQA) Program

#### 1. Background

Under the authority of Section 3004(a) of RCRA, EPA is today proposing CQA requirements. EPA believes these requirements are necessary to protect human health and the environment by preventing leachate from migrating out of the unit and contaminating ground water and surface water. CQA is needed to ensure that the unit is constructed to exceed design criteria, plans, and specifications necessary to prevent migration of leachate out of the unit.

In 40 CFR Parts 264 and 265, the overall goal of the design and operating standards for landfills, surface impoundments, waste piles, and land treatment units is to minimize leachate formation and its migration into the subsurface soil, ground water, and surface water. To meet this goal, owners or operators must install liners; leachate detection, collection, and removal systems; dikes; and final covers.

In 1983, EPA conducted a study assessing existing technology for liner installation at hazardous waste land disposal facilities (see Liner/Leak Detection Background Document). The data base used in the study comprised information from the literature supplemented by data collected through 40 interviews with technical experts in industry, State regulatory agencies, trade and professional associations, research organizations, and waste management companies. This study's conclusions were: (1) Construction-related problems during liner system installation constituted one of the major causes of liner system failure and (2) a rigorous construction quality assurance program could have identified and corrected many of the problems that contributed to such failure. The study also concluded that construction techniques that were available at that time could be used to install flexible membrane liner (FML) and clay liner systems that meet the Agency's performance standards for liner systems. However, the study noted that a comprehensive monitoring and audit program during construction would be needed to attain the Agency's performance standards for liner systems.

In 1985, EPA conducted another study to supplement existing information on liner performance (see Liner/Leak Detection Background Document). This study was designed to evaluate the factors that contributed to successes and failures at 27 landfills and surface impoundments selected for case studies.

The results of this study showed that there were two main elements related to successful liner installation. The first element was a proper philosophical and conceptual approach applied to all stages of liner system construction and use, including design, material selection, contractor selection, liner system installation, facility operation, and closure. The second element was the extensive use of formal quality assurance programs to ensure that the components of the unit were constructed properly in all facets and stages of a unit's construction. The report stated that a quality assurance program resulted in a better constructed lining system.

As a result of these studies, EPA believes that one of the principal factors in ensuring that the design and operating standards of Parts 264 and 265 are met is a program that ensures that all the components of the waste management unit are constructed and installed properly. Therefore, EPA is proposing today a construction quality assurance program for waste management facilities.

2. Proposed Rule

*a. The Construction Quality Assurance (CQA) Program.* The CQA program proposed today (Section 264.19 for permitted units and Section 265.19 for interim status units) is a program that uses scientific and engineering principles and practices to ensure, within a reasonable degree of certainty, that a constructed hazardous waste landfill, surface impoundment, waste pile, or land treatment unit meets or exceeds the design criteria, plans, and specifications. The CQA program must begin during the facility's design and continue through the completion of the facility's construction. The CQA program for landfills, surface impoundments, and waste piles ensures that the following components are properly designed, constructed, and documented:

(1) Foundations,
(2) Compacted low-permeability soil liners,
(3) Flexible membrane liners (FMLs),
(4) Dikes,
(5) Leachate detection, collection, and removal systems, and
(6) Final covers.

For land treatment units, the CQA program proposed today addresses final covers only.

A CQA program will be required for all units and significant portions of units, both permitted and interim status, on which construction begins 12 months after promulgation of this rule. Under today's proposed rule, an owner or operator has begun construction on a unit or portion of a unit if the following conditions are met:

(1) The owner or operator has obtained the Federal, State, and local approvals or permits necessary to begin physical construction.

(2) A continuous on-site, physical construction program has begun, or the owner or operator has entered into contractual obligations that cannot be cancelled or modified without substantial loss for physical construction of the facility to be completed within a reasonable time.

Today's proposed rule also applies to interim status, good-faith compliance provisions under Section 265.310(e); that is, to comply with the good-faith provisions, interim status units will now also be required to implement a CQA program (Section 265.19).

A properly executed CQA program consists of the development and approval of a CQA plan, implementation of the approved CQA plan, and the submission of a CQA report signed and sealed by a registered professional engineer or the equivalent.

Today's proposed CQA program is essentially comprised of two parts: performance standards and CQA guidance documents. The first part specifies using performance-type standards for the six major components of land disposal facilities listed above. The Agency is supplementing the performance standards with guidance documents because EPA believes that certain parts of the overall construction quality assurance program (e.g., detailed, site-specific, construction monitoring and testing protocol) are not appropriate for coverage by regulation and that guidance is a more effective mechanism. Consider, for example, the specific test methodologies and the number of tests that should be conducted during a given installation. EPA's position is that these will vary significantly for different types of units, materials, and locations. Also, the knowledge and technology in many areas is still being developed, and detailed regulations requiring a specific test or methodology may limit the use of improved tests or methods. Therefore, specific tests and methods for monitoring activities are not included in today's proposed rule, although the rule does require the owner or operator to provide a description of the type and number of tests to be used. This EPA guidance document is intended to provide detailed information on the site-specific aspects of the CQA program and examples of the types of information that will be necessary for the owner or operator to document and submit. EPA does not intend that the approaches described in the guidance document should be the only approaches for meeting construction quality assurance requirements. In fact, improved technologies and approaches are welcome. The guidance document simply indicates approaches that may be used and also indicates the level of control EPA considers acceptable.

On November 21, 1985, the Agency noticed for public comment in the Federal Register (50 FR 48129) the availability of a draft guidance document entitled "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities," EPA/530-SW-021. Construction quality assurance activities are also outlined in the draft "Minimum Technology Guidance on Double Liner Systems for Landfills and Surface Impoundments—Design, Construction, and Operation," dated May 24, 1985. Public comments received on these documents were used in preparing the final Construction Quality Assurance Guidance (EPA 530-SW-86-031, OSWRR Policy Directive No. 9472.003, available from NTIS), as well as today's proposed rule. EPA also is planning to expand this guidance document by gathering information on leak detection systems.

*b. The Construction Quality Assurance (CQA) Plan.* EPA takes the position that a site-specific CQA plan prepared by the owner or operator is needed to address the components of a hazardous waste land disposal unit. Therefore, the Agency is proposing that, effective 12 months after promulgation of today's proposed rule, owners or operators are required to prepare a CQA plan before constructing all new units, replacement units, lateral expansions, and unconstructed components of existing units, regardless of whether those units are permitted or in interim status (Sections 264.19 and 265.19). However, if the owner or operator of a facility seeking a permit can demonstrate that having detailed construction specifications at the time of initial submission is not practicable, the Regional Administrator (RA) may allow phasing of the CQA plan submission and approval.

Under today's proposal, the CQA plan must document the owner's or operator's commitment to CQA for the specific unit or portion of a unit to be constructed. For facilities seeking a permit, the CQA plan must be included in the permit application, and construction cannot begin until the RA approves the permit (Section 264.20(a)). If the facility is already permitted, then the plan must be submitted as a permit modification. The permitting agency must review the plan for completeness and approve it (following public participation), before implementation. Today's proposal allows the owner or operator to amend the CQA plan at any time before and during the active life (including the closure period) of the unit.

Also, today's proposal contains a provision that requires the owner or operator to modify the CQA plan whenever the owner or operator requests a permit modification (under Section 264.20(e)) to authorize a change in operating activities or facility design that would affect the construction quality assurance plan.

Under today's proposal, for new construction at interim status facilities, the owner or operator must document compliance with all CQA program requirements and must retain this documentation at the facility for future review as described in 265.20. The RA may review this documentation during a site inspection of the facility. The CQA program will be the chief means for an interim status facility owner or operator, to demonstrate that EPA regulations

were properly implemented. Also, the owner or operator can use the CQA documentation to demonstrate that the completed facility meets or exceeds the design criteria, plans, and specifications.

*(1) Elements of a CQA plan.* The CQA plan must address those activities that pertain to each of the following areas in sufficient detail to show, that, if the CQA plan is properly implemented, the constructed facility will meet or exceed the design plans and specifications (Sections 264.20 and 265.20).

*(a) Responsibility and authority.* As proposed, the plan must include a detailed description of the responsibility and authority of organizations and key personnel positions involved in preparing and implementing the construction quality assurance plan.

*(b) Construction quality assurance personnel qualifications.* Under today's proposal, the CQA plan must describe the qualifications of the CQA officer and supporting personnel. The position descriptions must demonstrate that the personnel possess the training and experience necessary to fulfill their identified responsibilities.

*(c) Monitoring activities.* The CQA plan should detail the observations and tests that will be monitored to ensure the quality of the installation of the components.

*(d) Sampling requirements.* A description of sampling and testing activities must be provided in sufficient detail, both in concept and specifics, to project the quality of materials that were installed during construction. The description of sampling activities should include:

(i) The types of sampling activities;
(ii) The types of samples;
(iii) The number and locations of samples;
(iv) The frequency of testing;
(v) Data evaluation procedures;
(vi) Acceptance and rejection criteria;
(vii) Plans for implementing any corrective measures that sampling results warrant; and
(viii) Procedures for handling testing errors.

*(e) Documentation.* The CQA plan must describe in detail procedures for documenting construction quality assurance activities. Documentation must include such items as daily summary reports, monitoring data sheets, change orders, meeting memoranda, photographs, problem identification and reports on corrective measures, block evaluation reports for large projects (phased construction quality assurance reports on construction activities for portions of a large unit), design acceptance reports (for errors, inconsistencies, and other problems), and final documentation, including record drawings. Provisions for the final storage of all records also must be discussed in the construction quality assurance plan.

*(2) Components covered by the CQA plan.* Under today's rule, a CQA plan must cover the following components of land disposal units: foundations; compacted low-permeability soil liners; flexible membrane liners; dikes; leachate detection, collection and removal systems; and final covers. The specific components that must be addressed in any given CQA plan will vary depending on the type of unit. The following is a description of some key construction factors that may affect the engineered components at land disposal units. The CQA plan is intended to identify these factors so that problems are rectified during construction in a manner consistent with the design intent.

*(a) Foundations (Sections 264.20(b)(1) and 265.20(b)(i)).* Under today's proposal, the CQA plan must confirm that foundations are constructed with structurally stable subgrades for the facility components and waste above. Furthermore, the foundation also must provide satisfactory contact with the overlying liner or other system components.

Important steps in soil subgrade preparation for foundation construction at landfills, surface impoundments, and waste piles include excavation, placement, and compaction of soil lifts; embankment and slope construction; surface finishing; and soil sterilization. These factors are important to ensure that the requirements under Sections 264.20(b)(1) and 265.20(b)(1) are met. EPA believes that the criteria in Sections 264.20(b)(1) and 265.20(b)(1) are necessary to ensure proper foundation preparation. The following is a list of some of the key factors that need to be addressed in the CQA plan:

*Compaction.* If a recompacted soil subgrade is not compacted adequately, it may not have the strength and stability needed to support a liner, and, as a result, it may settle unevenly under the weight of equipment or waste. This differential settlement may create areas where the liner is unsupported or otherwise stressed. An unsupported compacted soil liner may settle differentially, creating channels or cracks in the liner where permeability will be higher. An unsupported or stressed flexible membrane liner (FML) may fail under tension. To achieve proper subgrade compaction, specifications must be adequate, and followed strictly. If the design specifies subgrade reinforcement, then such reinforcement is also required in the construction quality assurance plan. Compaction relates to stability and strength of the constructed foundation.

*Saturated subgrade.* A subgrade may fail if it becomes wet or disturbed before or during liner placement. This occurred during construction of the Mt. Elbert reservoir (Morrison, et al., 1981). At Mt. Elbert, liner placement and seaming stopped because of rain. When placement recommenced, some soft, moist, subgrade areas were inadvertently overlooked. After backfill placement, it was discovered that the liner failed in tension. These areas had to be excavated and the liner patched. This experience demonstrates the necessity for a firmly compacted subgrade to ensure strength and stability of the foundation and a monitoring program to confirm that design conditions are met.

*Slope construction.* The steepness of the side and bottom slopes that the design specifies must be adhered to during installation to prevent problems during the remainder of the installation or during facility operation. Two difficulties with over-steepened side slopes that have been reported are: (1) equipment problems leading to liner damage and (2) sloughing of the earthen side slope material. If the design specifies slope reinforcement (synthetic or otherwise), then such reinforcement also must be required in the construction quality assurance plan.

The bottom slope must be designed and constructed to allow for adequate gravity flow of liquids after any projected settlement has occurred. Another concern for the slope of the bottom is that a slope which is too flat may allow gas or liquid to accumulate under the liner. As a result, a flexible membrane liner can be raised, stretched, and eventually ruptured because of the pressure against the liner. A clay liner also can be damaged by that pressure. Some designs specify pressure relief systems to preclude such problems. If pressure relief systems are specified, then they also must be required by the construction quality assurance plan.

*Surface texture.* Flexible membrane liners can be damaged if the subgrade surface is not smooth. For example, a flexible membrane liner may be punctured by small rocks. Such a puncture of a flexible membrane liner because of a rough subgrade may occur at the time of liner placement or after waste has been placed in the unit.

Failure to remove roots and vegetation of all types and to sterilize the subsoil also can cause liner failures. Existing vegetation can grow through

liners, and some types of grasses can germinate after liner placement and grow through the liner. This can provide channels for leachate movement. In addition, the decay of organic matter produces gas that can accumulate and exert pressure on the liner, as described above. Because surface texture problems can cause liner breaches, the CQA plan must address these types of problems.

*(b) Dikes (Sections 264.20(b)(2) and 265.20(b)(2)).* The CQA plan activities for dikes are necessary so that a completed dike meets or exceeds design criteria, plans, and specifications. These activities may include examining the prepared dike foundation, monitoring incoming materials, monitoring and testing fill placement and compaction, constructing a drainage system, and implementing erosion control measures. These factors are important to ensure the requirements under §§ 264.20(b)(2) and 265.20(b)(2) are met. EPA believes that the criteria in §§ 264.20(b)(2) and 265.20(b)(2) are necessary to ensure that dikes are properly constructed to ensure structural strength and stable support for the overlying facility, thereby ensuring protection of human health and the environment.

A dike in a hazardous waste unit functions as a hydraulic barrier as well as a retaining structure, resisting the lateral forces of the wastes, liners, and leachate collection systems. A dike is also the above-ground extension of the foundation, providing support to the facility components above. In addition, dikes can be used to separate cells for different wastes within a large landfill or surface impoundment. Dikes, therefore, must be designed, constructed, and maintained with sufficient structural stability to prevent failure.

Materials to be used for the dike must be monitored to confirm that they are the same as the design specifies and that they are uniform, so that no unsuitable materials are included in the dike. A test fill must be constructed to verify that the specified soil density, moisture content, compactive effort and strength relationships hold for field conditions and to determine the suitability of the proposed construction procedure.

Dike construction generally involves standard earthwork construction practices. Adequate CQA during dike construction will identify problems resulting from using inadequate construction methodologies or materials that could result in dike failure from slope instability, settlement, seepage problems, or erosion.

*(c) Low-Permeability Soil Liners (Sections 264.20(b)(3) and 265.20(b)(3)).* The CQA program for low-permeability soil liners must confirm that the liners meet or exceed the design intent. The purpose of a compacted low-permeability soil liner depends on the overall liner system design. For soil liners used as the lower component of a composite liner, the soil component serves as a protective bedding material for the upper component of the FML and minimizes the leakage rate through any breaches in the upper component. An objective for all low-permeability soil liners is to serve as long-term, structurally stable bases for all material above them.

Before construction, adequate studies should have confirmed that the low-permeability soil liner design meets or exceeds regulatory requirements. These studies should include an evaluation of the proposed material source area to confirm the existence of an adequate quantity of suitable material, particle size distribution, Atterburg limits, compaction, permeability, liner-leachate compatibility tests, and appropriate consolidation and strength tests of fabricated samples of the proposed soil liner.

EPA has published a technical resource document "Design, Construction, and Evaluation of Clay Liners for Hazardous Waste Facilities" (EPA/530–SW–86–007, March 1986) that provides detailed information on constructing a compacted soil liner.

The following is a summary of the key factors that need to be addressed for the construction of compacted low-permeability soil liners at landfills, surface impoundments, and waste piles. The construction process primarily consists of material excavating, stockpiling and handling, moisture conditioning, and placing and compacting soil lifts. The major problems in construction relate to (1) proper material stockpiling and handling; (2) using proper compaction equipment; (3) placing of lifts in the proper thickness; (4) promoting bonding between lifts; (5) obtaining and maintaining proper moisture content and distribution; and (6) attaining the specified relative compaction. These factors are important to ensure the requirements under §§ 264.20(b)(3) and 265.20(b)(3) are met. EPA believes that the criteria in §§ 264.20(b)(3) and 265.20(b)(3) are necessary to ensure that low-permeability compacted soil liners are properly constructed to ensure against imperfections, improper materials and improper permeability. These criteria will ensure the unit is built as designed and is protective of human health and the environment.

*Material stockpiling and handling.* The main concerns regarding the soil stockpiling relate to preventing the soil from being contaminated or becoming too wet or too dry. Contaminants that might become mixed with the soil and increase permeability, decrease strength, or cause other deficiencies include sand, silt, vegetation, and debris from preparing the site. Higher permeability may allow waste or leachate to leave the unit or may allow ground water to enter the unit. To prevent contamination, excavated materials must be examined to remove undesirable contaminants before the soil is placed in the stockpile area. Whether referred to as blemishes, macrofeatures, or structural nonuniformities, material imperfections may increase the overall permeability by several orders of magnitude.

Methods to identify and remove these contaminants should be included in the CQA program both to prevent and to detect these imperfections. Details of the information that should be gathered before, during, and after constructing of a compacted soil (which should serve to reduce the number of these imperfections) are given in the guidance document entitled "Construction Quality Assurance for Hazardous Waste Land Disposal Facilities," EPA/530–SW–86–031.

*Permeability testing.* EPA requires, as part of the CQA program, a test fill to be constructed using the same borrow soil, compaction equipment, and construction procedures as proposed in the full-scale unit. According to Sections 264.20(3)(iii)(A) and 265.20(3)(iii)(A), a test fill is required because of concern that laboratory permeability tests will overestimate the actual field permeability. A field hydraulic conductivity test of the compacted soil in the test fill is necessary to confirm that the materials and procedures used in the field will result in a compacted soil liner with a hydraulic conductivity of $1 \times 10^{-7}$ cm/sec or lower. Field testing is not intended to preclude using laboratory testing in the design or construction phases or as a means of evaluating liner-leachate compatibility. The design phase and the construction quality assurance program both may include a mixture of field and laboratory hydraulic conductivity tests.

As appropriate methods are developed and verified, EPA intends to require hydraulic conductivity tests to be conducted on the full-scale facility. In the meantime, field hydraulic conductivity tests can be performed in

the test fill without causing delays during the full-scale facility construction. The field test used in the test fill should be performed long enough to verify that the hydraulic conductivity of the compacted soil liner is $1 \times 10^{-7}$ cm/sec or less.

In addition to being used as a site for the field hydraulic conductivity test, the test fill also will verify other elements of the soil liner design and construction. The test fill construction will allow the construction quality assurance monitors to verify that equipment and construction procedures for breaking up clods (Sections 264.20(3)(iv)(D) and 265.20(3)(iv)(D)), moisture conditioning (Sections 264.20(3)(iv)(F) and 265.20(3)(iv)(F)), and compacting the soil are adequate to meet the specified density, moisture content, and permeability criteria. In addition, construction monitoring activities, including measuring of lift thickness (Sections 264.20(b)(3)(iv)(C)) and 265.20(b)(3)(iv)(C) and compaction equipment coverages (Sections 264.20(b)(3)(iv)(I) and 265.20(b)(3)(iv)(I)), can be correlated with in-place density and moisture content tests and with the field hydraulic conductivity.

*(d) Flexible Membrane Liners (FML) (Sections 264.20(b)(4) and 265.20(b)(4)).* The CQA plan for the FML must address the following points: (1) Conformance of testing the liner material to confirm that materials used in the manufacture of the liner are as specified in the design; (2) monitoring the delivery and unloading of the liner material to confirm that it is the material specified in the design and that it is not damaged, (3) observing and testing the subgrade to confirm that the subgrade has been prepared and compacted properly; (4) monitoring the liner deployment to observe any damage to the subgrade or to the liner during deployment; (5) monitoring and testing seaming operations; (6) monitoring installation procedures so that improper techniques or workmanship that can result in inadequate seams or liner damage are identified and corrected; (7) checking for identifying any tears, punctures, or other breaches in the liner so that they can be properly patched and repaired; and (8) continuous monitoring while placing cover soil or other materials over the liner to observe any damage to the liner, in which case it can be repaired properly. These factors are important to ensure the requirements under Sections 264.20(b)(4) and 265.20(b)(4) are met. EPA believes that the criteria in Sections 264.20(b)(4) and 265.20(b)(4) are necessary to ensure that the flexible membrane liner is constructed to ensure tight seams, use of proper materials as approved, and proper manufacture of the FML. These factors will ensure the unit is built as designed and is protective of human health and the environment.

The following is a summary of key factors that must be considered when constructing a FML. The most significant consideration relates to installation procedures; however, many other areas must be monitored so that the installed liner meets the CQA design specifications.

*Storing and handling.* Properly storing and handling of liner materials at the site is necessary to prevent their degradation as a result of exposure to the elements or physical damage, so that the properties of the materials that are installed are the same as those the design specifies. The main concerns in storing and handling are protecting the material from wind, sunlight, hail, vandalism, and equipment damage.

Some FML materials can be damaged when the material is folded and unfolded repeatedly. Other FML materials should not be folded. Weather can affect the performance of the membrane in several ways. Relatively gentle breezes (as little as 10 miles per hour) can easily lift and tear liner sheeting. Hail can impact and puncture some materials. The ultraviolet component of sunlight damages some FML materials over time. Another effect of exposure to sunlight with some FML materials is blocking, which occurs when the liner material sticks together as a result of the combination of heat from the sun and pressure from the weight of the liner material. When the material is unfolded or unrolled, delaminating or ripping of the blocked material can occur. The material storage and handling damage can be detected easily by visual inspection and repaired or replaced with little technical difficulty. For the above reasons, inspection of the liner material after it is received at the facility and before installation to confirm that it is the material specified in the design and is not damaged, is required under Sections 264.20(b)(4)(iv)(B) and 265.20(b)(4)(iv)(B).

*Installation.* Installation can be divided into two operations: liner placement and seaming. Proper placement of liner materials is essential: to guard against damage to the liner material during and after placement so that subsequent seaming operations can be performed effectively.

Another concern about liner placement is the occurrence of "bridging" in the liner material where depressions or angles form in the subgrade. Bridging exists when the liner extends from one side of a depression or angle to the other, leaving a void beneath the liner at the apex. The liner essentially is unsupported at this spot and could fail under stress. Bridging occurs most often at penetrations and where steep sidewalls meet the bottom of a unit. To prevent bridging, installers must keep the liner in a relaxed condition and in contact with the subgrade at these locations.

Seaming is perhaps the most critical operation in flexible membrane liner installation. Furthermore, seaming procedures are material-specific. If procedures are performed improperly, serious performance problems can result. Different types of geomembranes may use different seaming techniques. Problems can occur when seaming during adverse weather and when using improper seaming techniques or materials. In addition, special problems are associated with sealing liner penetrations and with seaming new liner material to old liner material. Therefore to ensure tight seems (Sections 264.201(b)(4)(i) and 265.20(b)(4)(i)) EPA is requiring inspection and testing to provide protection of human health and the environment.

*Adverse weather.* Weather conditions that affect liner seam viability include wind, moisture, and temperature. Wind-blown sand, dust, and other debris can adhere to field joints during their preparation. Another wind-related problem is simply that the liner may be blown around so that it is difficult to hold in place during the seaming operation, and wrinkles may appear in the seams as a result.

Excessive moisture can cause problems in several ways. Moisture in the seam area will vaporize during seaming and cause vapor bubbles which weaken the seam. Seaming during high relative humidity or during precipitation will cause poor seam adhesion unless the areas are kept dry. In addition, moisture under the seaming area, particularly when the temperature is below the dew point, may condense in the seam interface and prevent proper adhesion. To eliminate these problems, seaming should not occur during precipitation or high moisture conditions and particular care should be taken during conditions of high relative humidity to keep the seam area dry. If a good seam quality assurance program is conducted, faulty seams can be identified and repaired.

Temperature extremes or changes can interfere with the seaming process by changing dimensions of the liner material or by preventing the seaming

equipment from operating properly. Thermal expansion and contraction of some liner materials may stress the seams and cause them to fail. Either high or low temperatures may interfere with the ability of a method to produce a good seam.

*Improper materials and techniques.* A common problem with adhesive seaming is using improper materials or the wrong adhesives; that is, materials that can damage the liner or cause improper bonding. If an adequate quality assurance program is developed and followed, improper materials can be identified and replaced.

Improper seaming techniques may include applying too much or too little adhesive, applying adhesive unevenly, providing insufficient support beneath the seaming area, or applying pressure to the seam incorrectly. Applying an insufficient amount of adhesive will prevent complete bonding, while applying too liberal an amount of adhesive or applying it unevenly can cause blisters in the seam. If such problems occur, good quality assurance should identify and correct them.

Allowing insufficient time for the seaming system to take effect before stresses are applied to the seam can be a problem with the installation of any field seaming system.

A problem common to both solvent and extrusion welding systems is that breaks in the solvent or extrudate feed will cause gaps in the seam. The solutions to these problems are (1) to follow recommended seaming practices, (2) to use experienced personnel, and (3) to conduct a good quality assurance program to identify problem areas for repair. Because of the reasons above EPA is requiring observation of placement of the FML to ensure that design requirements are met and observation of any liner damage that may occur as a result of adverse weather conditions, inadequate temporary anchoring, or rough handling, under Sections 264.20(b)(4)(iv) (F) and (G) and 265.20(b)(4)(iv) (F) and (G).

Sealing around penetrations is critical to the integrity of any lined facility, because improperly devised or sealed penetrations may leak. Problems occur when the liner and appurtenance are incompatible regarding seaming, when the penetration stresses the liner in some way, and when the subgrade adjacent to the structure is weak or relatively compressible.

*Materials and equipment.* Procedures for monitoring and testing materials and equipment as they arrive at the site should confirm that materials and equipment used to construct the liner or cover are the correct ones and that they are not defective. Using improper or defective materials could result in such problems as ineffective seaming and leaks in the liner itself. Using the wrong equipment also could cause incomplete seaming; it could create such problems as mechanical damage to the liner during fill placement or inadequate subgrade performance. An effective monitoring program can detect these problems (Sections 264.20(b)(4)(iv)(A) and 265.20(b)(4)(iv)(A)).

*Testing of field seams.* Sections 264.20(b)(4)(iv)(6) and 265.20(b)(4)(iv)(6), require observation and testing of seams to ensure proper seaming and conformance to the seam strength specified in the design. Field seam testing ensures that seams have been constructed to be continuous and of the specified strength. Because field seam integrity (strength) generally determines the success of the entire job, it is important for the best available field seam monitoring, testing protocol, and equipment to be used during construction. This will reduce the risk that the liner will fail to perform its intended function.

There are different types of tests to measure the various seam properties and seaming methods. These tests fall into two general categories: nondestructive (qualitative) and destructive (quantitative). A good quality control program will include tests of both types. One hundred percent of field and factory seams should be tested by nondestructive testing techniques to verify their continuity. Some seams at or adjacent to structures and penetrations cannot be tested. These locations should be limited in number and the seaming of those locations should be continuously observed by construction quality assurance monitors. Periodic samples should be removed from both factory and field seams and tested for seam integrity by destructive tests (shear and peel tension tests). Areas in field seams where samples are removed for destructive tests must be patched with a new piece of the same liner material and then nondestructively tested.

*(e) Leachate Detection, Collection, and Removal Systems (Sections 264.20(b)(5) and 265.20(b)(5)).* The CQA program for leachate collection and removal systems (LCRS) must provide reliance that the installed system meets or exceeds the design specifications. The functions of a LCRS above the top liner in a double-lined landfill or waste pile unit are to minimize leachate head on the top liner and to collect and remove liquids from the unit, during the active life and post-closure care period. The purpose of a LCRS between the two liners of a double-lined waste unit is to rapidly collect and remove liquids entering the system, also through the post-closure care period. By providing for rapid leachate removal, the LCRS between the liners will greatly minimize the hydraulic head on the secondary liner and, thereby, minimize or eliminate leachate migration out of the unit. If the LCRS between the liners is also used to detect leaks in the top liner, the CQA program must ensure that the system is installed as designed for that purpose by meeting the sensitivity and detection time performance standards presented in this proposal.

Observing and testing the subcomponent materials of the LCRSs as they are delivered to the site and installed are necessary to confirm and document that these materials conform to the design criteria, plans, and specifications. This observation and testing applies to the granular materials, geosynthetic materials, piping and sumps, and any other materials that make up a LCRS. The factors are important to ensure that the criteria under Sections 264.20(b)(5) and 265.20(b)(5) are met.

EPA believes these requirements are necessary to protect human health and the environment.

Below are summaries of key factors that need to be addressed while constructing a LCRS. The major problems related to installation are (1) damage to the collection system during installation resulting from excessive stress and (2) leachate flow obstruction through the system.

*Leachate collection pipes.* Leachate collection pipes installed in trenches at the base of a landfill or waste pile and between the liners in a landfill, surface impoundment, or waste pile are subjected to loads from construction equipment during installation and operation, and the waste itself. In a well-designed trench, only a small fraction of the load of a wheel or tracked vehicle applied at the top of the trench should be transmitted through the trench backfill to the pipe. However, the percentage of the load transmitted increases rapidly as the vertical distance between the loaded surface and the top of the pipe decreases. In addition, moving loads cause impact loading, which is generally considered to have a one and one half to two times the effect of stationary loading. Thus, backfill procedures and equipment traffic over pipe trenches must be monitored carefully to prevent damage to pipes.

*Leachate flow.* The second consideration when installing a leachate

collection system is to provide confidence that the flow of leachate through the system is not impaired by construction activities or occurrences. Collection systems generally are designed so that leachate generated within the unit drains first through a soil or geosynthetic filter before entering the LCRS drainage layer. The purpose of this filter is to remove any fine particles that otherwise would clog the LCRS drainage layer and prevent its functioning. The filter, therefore, must be designed and constructed carefully to perform under the expected conditions. The leachate then flows through the LCRS drainage layer, which is comprised of permeable soils or geosynthetic drainage materials placed over the liner. If this layer does not have sufficient transmissivity (thickness times hydraulic conductivity) to accommodate the maximum leachate flow, the flow will be held up, and hydraulic head will build up on the liner. Achieving the designed thickness can be made more difficult by improper installation procedures, such as placing a granular drainage layer during high wind or intense rain, which may displace the soil so that it is no longer of uniform thickness. Another weather-related problem is drainage material contamination with fine soil particles, which decreases the permeability. This can occur as a result of soil particle erosion into granular or geosynthetic drainage layers from runoff from facility side slopes, mud, or windblown dust. These types of problems can be minimized by monitoring and testing activities that check the critical factors in the leachate collection system.

Installation procedures must be monitored to confirm that the drainage soils meet design specifications for size distribution of particles. In particular, excessively fine soils must not be allowed, because they will decrease the hydraulic conductivity of the layer and will clog collection pipes. Similarly, geosynthetic materials must be conformance tested to ensure that they meet design specifications, and they also must be covered to keep them clean.

*Geosynthetic components.* Geosynthetic components (geotextiles, geonets, and geocomposites) can be damaged during installation if proper placement and seaming techniques are not used. Some geotextiles will degrade very quickly when exposed to the sun's ultraviolet radiation. Thus, these materials must be stored with protective covering and, once installed, must be covered.

*Protective soil.* Protective soil includes any cover material placed over a lining system to protect it from mechanical, weather, or other environmental damage, such as wave action, exposure to the elements, vehicular or animal traffic, suction pressures exerted by an aerator, or high-temperature wastes in a surface impoundment. Protective soil may be an integral part of the leachate collection system in a landfill or waste pile. Because protective soil has so many important roles in liner systems, improperly placed soil can adversely affect the liner system performance. Improperly placed protective soil may not provide the desired protection for the liner system, or it may itself fail and cause the liner system to fail.

*(f) Final Cover Systems (Sections 264.20(b)(6) and 265.20(b)(6)).* The successful construction of the final cover, like the other components, relies on following recommended practices for construction, employing experienced personnel, and conducting a CQA program. The CQA plan for final covers at all land disposal units must provide assurance that (1) all layers of the final cover are monitored for uniformity, imperfections, and damage; (2) the materials for each layer are as specified in the design specifications; and (3) each layer is installed or constructed to meet the design requirements.

The following is a summary of the key factors that must be addressed to ensure that the requirements are met.

*Subsidence.* Subsidence under a final cover may cause problems similar to those experienced when the subgrade under a liner subsides. A flexible membrane liner may fail in tension if the waste that comprises its subgrade subsides differentially. If the final cover uses a compacted clay layer, the clay layer may develop cracks as a result of differential subsidence that allows rainwater to infiltrate. In addition, differential subsidence may result in rainwater ponding above the final cover. The ponded rainwater may have an increased chance of penetrating the cover even if the clay is intact because of the increased pressure head on the liner. If a cover of any type has failed, ponding prevents runoff from leaving the area and provides additional opportunities for leachate production.

For covers, the problem of subgrade subsidence begins with waste placement. The waste may not have sufficient bearing strength to support the weight of additional waste and soil cover material placed above it. In addition, if the waste is not compacted well and placed so that void spaces are filled, proper compaction of the liner bedding material will not be sufficient to prevent subsidence. Therefore, to minimize subsidence, waste placement must be considered a part of final cover subgrade preparation. Cover subsidence resulting from improper waste compaction may be less of a problem today than it has been in the past. Wastes were not compacted well or at all in older landfills or disposal surface impoundments when problems associated with final cover subsidence were not well known. Now, however, virtually all landfills compact their waste. Nonetheless, differential settlement because of waste subsidence continues to be a serious problem that must be anticipated in the cover system design. Some key considerations follow:

(i) The stress-strain properties of the cover system FML, geosynthetics and soils;

(ii) The ability to maintain minimum slopes for gravity drain systems;

(iii) The slope stability of layers above FMLs and geosynthetics;

(iv) The use of subgrade reinforcement or stabilization methods, such as geosynthetic reinforcement or dynamic compaction.

*Installation procedures.* The construction process for final covers at landfills and disposal surface impoundments involves subcomponents similar to many of the components previously discussed, such as foundations, compacted low-permeability soil liners, flexible membrane liners, and drainage layers (leachate collection systems). There are few examples to substantiate the quality of final covers that are constructed to comply with the landfill and surface impoundment requirements in Parts 264 or 265. However, EPA believes that most of the installation problems for final covers for these units should be similar to those experienced installing liners, dikes, and leachate collection systems.

For example, the compacted low-permeability soil layer and FML in a final cover is constructed much like the low-permeability soil and FML liner. However, the foundation for the final cover may have a lower bearing strength than the soil liner foundation; this may require using different construction techniques to achieve the required permeability in the field. Additionally, the design may specify foundation (waste) soil reinforcement and such soil reinforcement must be carefully monitored during installation by construction quality assurance personnel. As with the compacted low-permeability soil and FML liner, it is necessary to monitor the construction of

the compacted low-permeability soil and FML cover layer.

Installation procedures for FMLs in a final cover include proper on-site storage, handling and placing of the panels to ensure proper positioning, allowing enough slack in the material for it to fit around angles and penetrations, proper seaming and anchoring procedures, and installation only during proper weather conditions. A more complete discussion of problems and monitoring activities for flexible membrane liners and other subcomponents of the cover is contained in Sections C.2.b(2) (b) through (d).

*Vegetative layers.* The key factors that need to be addressed for constructing the vegetative layer of the final cover at land disposal units include: vegetative layer soil quality and thickness, seeding uniformity and timing, and vegetation establishment. The vegetative layer is the only layer of the final cover required for properly operated land treatment units under a permit.

Vegetation establishment and maintenance can be accomplished only by carefully addressing the soil type and the nutrient and pH levels to provide the proper soil conditions for successful seed germination and vigorous growth. The thickness of the vegetative soil layer also must be as specified in the design to provide proper root development and a sufficient moisture reserve to sustain the vegetation during dry periods.

The timing of the seeding is probably the most important factor in successfully establishing a vegetative cover. The timing will depend on whether the plant species selected is a cool- or warm-season species and on local climate conditions. The recommendations of the local county agricultural extension agent or seed company should be used. The CQA plan must address seeding procedures so that the recommendations are followed.

For covers at interim status land treatment units, the closure plan may require the cover design to provide infiltration control. In such a case, the CQA plan should address factors similar to those discussed above for landfills and disposal surface impoundments. The monitoring activities for the infiltration control components would be determined on a case-by-case basis according to the cover design.

*c. Construction Quality Assurance Documentation.* After completing construction at a unit regulated through either Part 264 or 265, the owner or operator must prepare a CQA report (Sections 264.20(g) and 265.20(g)), which demonstrates that the CQA plan was implemented as approved, and submit it to the Regional Administrator (RA). This report must include (1) a summary of all of the observations, daily inspection reports, inspection data sheets, and any photographic or video records; (2) problem identification and corrective measure reports; (3) design engineer acceptance reports (for errors, inconsistencies, and other problems); (4) deviations from design and material specifications (with justifying documentation); (5) as-built drawings; and (6) a summary for each component describing how the monitoring activity results demonstrate that the constructed unit meets the design intent and purpose.

The CQA report must be signed by a qualified registered professional engineer, or the equivalent (CQA officer), in charge of the CQA program and must state that the report accurately represents the activities and findings of the CQA program and that the program was implemented according to requirements of the approved CQA plan (Sections 264.20(g)(3) and 265.206(g)(3)). EPA requests comments on whether signatures of the facility owner or operator, CQA officer, and design engineer (if involved) should be included with the documentation as confirmation that each party understood and accepted the areas of responsibility and lines of authority and performed their functions according to the CQA plan.

The CQA report is not intended to present the CQA plan as a guarantee of facility construction and performance. Rather, the primary purpose of this documentation is to improve confidence in the constructed facility through written evidence that the CQA plan was implemented as approved (or as modified) and that the construction proceeded according to design criteria, plans, and specifications.

*Permitted units.* For construction activities at permitted units, the owner or operator must submit the CQA report to the RA for acceptance before waste is received at the unit. The RA has 30 days to review and approve the CQA report. If the RA does not respond within 30 days, the CQA report does not need to be review and approved before waste is received. When EPA reviews the CQA report and has comments that need to be addressed before the report can be accepted, additional time beyond the 30 days may be required. In this case, the RA can extend the 30-day review period in additional 30-day increments, as needed. If the owner or operator does not respond satisfactorily to the Agency's comments, additional 30-day time periods may be necessary to complete review and approval of the report.

EPA takes the position that restricting the waste receipt before the CQA report is approved will ensure that the implemented CQA plan will comply with the permitting agency requirements. In addition, the Agency believes that the benefits to be derived from a properly executed CQA program will be significant.

*Interim status units.* For new construction activities at interim status units, the owner or operator is to follow the same CQA report requirements that are described above for permitted units. However, unlike the proposed Part 264 requirements, the proposal for Part 265 does not include a schedule for report submission and review. For Part 265, the owner must provide the completed report to the RA and place a copy in the facility files (Section 265.20(f)).

If a liner and leachate collection and removal system has been installed in good faith compliance with administrative regulations and guidance documents, the LCRS need not be retrofitted when the permit is issued (Section 3015(b) of RCRA). For landfills and surface impoundments, EPA believes that meeting the construction quality assurance requirements in this proposed rule pertaining to double liners and leachate collection systems is evidence of the owner or operator's good-faith.

EPA is aware that the owner or operator may not have developed all the construction information necessary to finalize the CQA report at the completion of construction. This especially may be true when the construction schedule involves the phased construction of a unit (Sections 264.20(a) and 265.20(a)). EPA also recognizes that the design or materials may be updated when long construction periods are involved in completing a unit's construction. This proposal allows phasing of the CQA report for specific segments of a unit, if approved by the RA. As the construction activities for a specified phase are completed, the owner or operator must submit the CQA report to the RA for the completed segment of the unit.

*d. Managing of the Construction Quality Assurance Program.* Managing the CQA program is an important part of ensuring that the unit meets or exceeds the specified design. The activities for a CQA program can be divided into four parts: (1) development of the CQA plan, (2) approval of the plan by the regulatory agency, (3) implementation of the plan with documentation that demonstrates proper implementation,

and (4) submittal of the CQA report, demonstrating compliance with the plan (applicable to permitted units only). In developing today's rule, EPA considered which individual should be responsible for the CQA program parts.

The Agency is proposing that the development of the CQA plan be conducted by the owner or operator. The Agency proposes this because the facility owner or operator is ultimately responsible for the design, construction, and operation of the hazardous waste land disposal facility and also must comply with the requirements of the regulatory agency in order to obtain a permit. EPA believes that requiring the owner or operator to develop the CQA plan is consistent with the reponsibilities for facility design, construction, and operation.

The second part, approving the CQA plan, requires the regulatory agency to review and approve the CQA plan for consistency with the design specifications and to verify that every element of the CQA program has been taken into account.

The Agency is asking for comments on who should be responsible for documenting that the implementation was properly conducted. Under today's proposal the CQA plan would be implemented by the owner or operator by retaining a registered professional engineer. The Agency is seeking comments regarding the following:

(i) Whether the plan should be implemented by an independent registered professional engineer (should it be an independent third party); and,

(ii) Whether the plan should be implemented by EPA or by an EPA-controlled contractor.

The Agency is proposing that the owner or operator use a registered professional engineer or the equivalent as the appropriate party responsible for implementing the plan. This approach would afford the greatest flexibility to the owner or operator. EPA believes that the use of a registered professional engineer or the equivalent will provide an acceptable level of assurance to EPA that the CQA program was implemented as approved in the plan.

The first alternative approach to today's proposal on which the Agency is seeking comments would require the owner or operator to engage an independent third party to implement the CQA plan. Using a third party would provide more independence in implementing the CQA plan than would the proposal; however, this may result in a greater burden on the owner or operator because of the need for coordination with the third party. This additional coordination may result in more cost and time for construction contractors and owners or operators. EPA is seeking comments about whether the benefits to human health and the environment from this alternative are justified.

The second alternative approach that EPA is considering would have EPA or a CQA contractor reporting directly to EPA implement the CQA plan on every project. This approach potentially could delay each project because of a nationwide network that would need to be developed to manage EPA CQA contractors. Also, this option would result in a need for a significant increase in EPA resources to provide an adequate number of CQA contractors to satisfy the construction schedules for every project and to prevent or minimize construction schedule delays.

EPA believes that by using a registered professional engineer chosen by the owner or operator or the equivalent, there is a balance between the burdens of program implementation and the need for assurance of proper unit construction. EPA also recognizes that most owners or operators currently are selecting the CQA plan to be implemented by an independent third party to implement the CQA plan.

The fourth issue in the CQA program involves who should be responsible for review and acceptance of the CQA report. EPA considered several options in this fourth management area for units regulated through Part 264, as discussed below. There is no provision in today's proposal for the regulatory agency to review and approve the CQA report for facilities regulated through Part 265.

The first option that EPA considered would require the permitting agency to review and approve all CQA reports before allowing the owner or operator to receive waste at the newly constructed unit. Requiring review and approval of all CQA reports could result in prolonged review and approval periods, EPA chose not to use this option.

The second option involves employing an independent registered professional engineer selected by the owner or operator, who would review and approve all CQA documentation and reports before the newly constructed unit may receive wastes. Under this option, the Agency could select certain construction quality assurance reports for review and approval by an independent professional engineer. This option was not selected in today's proposal because EPA believes that if the owner or operator pays for the contractors services the engineer is not sufficiently independent.

A third option would require the owner or operator to state to the permitting agency that the CQA final report, which was prepared and signed by a registered professional engineer, was correct before the unit could receive wastes. This option would not provide EPA with the opportunity to review and approve selected CQA final reports. This option was not selected for today's proposal, because EPA needs that opportunity to review and approve selected CQA documentation reports to verify that plans were implemented properly.

A fourth option, which provides EPA with the choice of reviewing and approving selected CQA final reports for permitted units before waste receipt would be allowed, is presented in today's proposal. This provision does not allow waste receipt until the CQA final report is approved. This option was selected because (1) it was viewed as less burdensome to the owner or operator by allowing the registered professional engineer who implements the CQA plan to prepare and sign the plan; and (2) it gives EPA the opportunity to review and approve selected CQA documented reports. Furthermore, it allows EPA the option of using contracted engineers to conduct the review (in a similar manner to the current review process for Part B permit applications in many regions).

As discussed above, EPA is proposing to select certain CQA final reports for review and approval. Such selection would be random. EPA has several concerns and requests public comments about the following aspects of today's selected approach.

(i) Should the RA be allowed multiple 30-day periods to review and comment on the CQA report submitted by the owner or operator until the RA is satisfied that the plan was implemented as approved?

(ii) During permitting agency review and comment on the CQA documentation report, should the facility be denied waste receipt until the agency is satisfied that the CQA plan was implemented as approved?

(iii) In today's proposal, EPA requires that the CQA officer be a registered professional engineer or the equivalent. However, EPA requests comments on whether it is appropriate to require the CQA officer to be a registered professional engineer or the equivalent. The Agency believes that the CQA officer's responsibilities determine the necessary qualifications. Typically, the responsibilities of a CQA officer include the following:

- Serving as the liaison for the owner or operator, design engineer, or construction contractor personnel and

helping to interpret and clarify construction documents.

- Evaluating construction and monitoring personnel on job requirements.
- Reviewing design drawings and specifications for clarity and completeness.
- Scheduling site monitoring and testing.
- Directing, overseeing, or checking the CQA activities when performing site monitoring and testing.
- Providing CQA reports to the owner or operator on the results of monitoring and testing. This includes:

—Reviewing observation records and test results;
—Advising the owner or operator or the design engineer of work that the CQA officer believes should be corrected, rejected, or uncovered for observation or that may require special testing, inspection, or approval;
—Rejecting defective work and specifying corrective measures when authorized by the owner or design engineer.

EPA also recognizes that, in most States, legislation requires the CQA officer to be a registered professional engineer or the equivalent.

*D. Permit Application*

Sections 270.17(b), .18(c), and .21(b) of today's proposal amend the existing Part B permit application requirements of Part 270 for surface impoundments, waste piles, and landfills at facilities seeking a RCRA permit. These new provisions require owners and operators of such units to provide descriptive information, including detailed plans and engineering reports on how the double liner, leachate collection and removal, and leak detection system will be designed, constructed, operated and maintained to meet the requirements stipulated in applicable sections of Part 264. Today's proposal also requires owners and operators of these units that pursue a variance from the double liner, leachate collection and removal system, or leak detection system requirements to submit the appropriate detailed plans, and engineering and hydrogeologic reports describing alternative design and operating practices, as well as locational aspects. This information must demonstrate that the requirements for the variance are met. Section 270.20 is amended by adding a new paragraph (i) that requires the owner or operator to provide information required in the response action plan to meet the requirements of Section 264.278(i).

Sections 270.17(c), .18(d), .20(k) and .21(c) of today's proposal require the owner or operator to provide a description of how the leachate detection systems will be inspected to meet the monitoring and inspection requirements in Part 264.

*E. Applicability to Hazardous Waste Tank Systems*

The Agency is considering making several of the same standards being proposed today applicable to owners and operators of hazardous waste tank systems that use external liners as the means of providing secondary containment for their tank systems. In the July 14, 1986 revised tank system standards, EPA did not envision that tank liner systems would be designed, installed, and operated differently from those liner systems used at surface impoundments, landfills, or waste piles. Therefore, the Agency is evaluating the applicability of today's proposed standards for use in hazardous waste tank system design. The release detection and containment strategy that was established with the promulgation of the July 14, 1986 tank system standards is consistent with the approach described in today's proposal. However, EPA is unsure whether it would be appropriate to apply all of the standards being proposed today to hazardous waste tank systems. The requirements for liners established in the revised tank system standards are essentially performance standards. On the other hand, the standards contained in today's proposal are specific design standards. The Agency believes that certain aspects of today's proposed regulations can be incorporated into the Subpart J hazardous waste tank system standards. Specifically, these are (1) the Construction Quality Assurance (CQA) program of Sections 264.19, 264.20, 265.19, and 265.20 and (2) the design standards for leak detection systems of Sections 264.221(h) and 265.221(g).

The revised hazardous waste tank system standards under Sections 264.191, 264.192, 265.191 and 265.192 require that tank systems be properly designed and installed and so certified by a registered professional engineer or qualified installation inspector. The CQA program being proposed today is, in large part, an elaboration of the tank system performance standards and should enable the certifying engineer/installation inspector to evaluate the design/installation of the tank system more easily. EPA believes that the proposed CQA program is equally as applicable to a hazardous waste tank liner system as to a liner system for a surface impoundment, landfill, or waste pile. We solicit public comment on this matter.

In allowing an owner or operator to use an external liner system as a means of providing secondary containment for a hazardous waste tank system (see Sections 264.193 (d) and (e), 265.193 (d) and (e); 51 FR 25422, July 14, 1986), EPA intended that such a liner and the leak detection system be designed, installed, and operated similar to systems for land-based units such as surface impoundments. EPA thus believes that the standards being proposed today under Sections 264.221(h) and 265.221(g) may also be applicable to hazardous waste tank systems. EPA believes that a leak detection system (referred to as a leachate collection and removal system in this proposal) equivalent to that described for bottom liners in this proposal is also appropriate for hazardous waste tank systems. Presently, the hazardous waste tank system standards require that a release from the primary tank or its ancillary equipment be detected within 24 hours, *or* at the earliest practicable time if the owner or operator can demonstrate to the Regional Administrator that existing detection technologies or site conditions will not allow detection of a release within 24 hours (see Sections 264.193(c)(3) and 265.193(c)(3)). The Agency believes that existing detection technologies or site conditions might, in many cases, not allow the detection, within 24 hours, of releases from primary tank systems that use secondary containment liners similar to those used at land-based units (e.g., surface impoundments). For example, factors such as the rate of the leak, the viscosity of the waste, or the thickness and type of drainage layer could singularly, or in combination, act to retard the time to detection. Thus, EPA is particularly interested in the public's views on whether or not the proposed requirements in Sections 264.221(h)(2) and 265.221(g)(2) are appropriate for hazardous waste tank systems. The provision would require that the leak detection system be capable of detecting a leak of no more than 1 gallon per acre per day (not including liquids absorbed by the leachate collection and removal system) within 1 day after the leak occurs. Although these proposed standards tie this requirement to leakage from the top liner of a mandated two-liner system (top-bottom liner combination) for land-based units, the Agency believes that the shell of a storage/treatment tank may substitute for the top liner. Comments on the applicability of the 1-gallon leak detection limit to tank systems should be made considering any difference between tank systems and land-based

units (i.e., landfills, surface impoundments and waste piles) such as size of unit, liner system design, etc. For example, from a viewpoint of environmental protection, how does the proposed 1 gpad detection standard compare to the existing release detection standard for tank systems (i.e., detection within 24 hours or at the earliest practicable time if the owner or operator can demonstrate to the Regional Administrator that existing detection technologies or site conditions will not allow detection of a release within 24 hours)?

Would the proposed standard be considered more or less stringent than the existing leak detection standards for tank systems? Can the proposed detection standard be appropriately applied to the ancillary equipment (e.g., piping) that is associated with the hazardous waste storage/treatment tank?

The Agency has several options by which to apply these provisions to hazardous waste tank systems. First, this proposal, when promulgated in final form, could, where appropriate, add hazardous waste tank systems to the list of units for which these standards apply or, second, EPA could amend the existing Subpart J standards to include these provisions. Another option is to develop a separate and new proposal to apply these or similar provisions, pending review of public comments, to hazardous waste tank systems. A final option would not involve modifying the provisions applicable to the use of liners in providing secondary containment for tank systems. Rather, EPA could use the design and operating standards contained in today's proposal as a guide in evaluating the adequacy of secondary containment systems employing liners for hazardous waste tank systems.

## VI. State Authority

### *A. Applicability of Rules in Authorized States*

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority through Sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

### *B. Effect on State Authorization*

#### 1. Background

Today's proposal includes the provision to require new and certain existing land disposal units for the treatment, storage or disposal of hazardous waste to utilize an approved leak detection system. Also, in today's proposal, the Agency is requiring double liners and leachate collection and removal systems above and between the liners for new waste piles, and replacements and lateral expansions of existing waste piles in parallel with minimum technology requirements for landfills and surface impoundments.

Today's proposal also requires the installation of double liners and leachate collection and removal systems for significant portions of units at existing hazardous waste landfills, waste piles and surface impoundments. In addition, double liners and leachate collection and removal systems are being proposed for new units, and lateral expansions and replacements of existing units at landfills, waste piles and surface impoundments at facilities permitted before November 8, 1984. Under today's proposal, owners and operators would be required to develop a construction quality assurance program for certain landfills, surface impoundments and waste piles as well as for construction of final covers at land treatment units.

Certain portions of today's rule are promulgated pursuant to provisions added by HSWA. Section 3004(o)(4) of RCRA, as amended by HSWA, mandates promulgation of standards requiring utilization of approved leak detection systems at new landfills, surface impoundments, waste piles and land treatment units that store, treat or dispose of hazardous waste identified or listed under Section 3001.

Under today's proposal, owners or operators of newly constructed landfills, surface impoundments, waste piles and land treatment units must design, construct, operate and maintain a leak detection system that is capable of detecting leakage of hazardous constituents at the earliest practicable time over all areas likely to be exposed to leachate during the active life and post-closure care period of the unit.

To achieve this earliest practicable time detection requirement, the Agency is proposing performance and design criteria along with monitoring requirements for a leachate detection, collection and removal system that is to be located between the liners at newly constructed landfills, surface impoundments and waste piles. To achieve this earliest practicable time detection requirement at land treatment units, the Agency is proposing performance criteria and monitoring requirements. These requirements will augment the existing unsaturated zone monitoring requirements under Part 264 for both new and existing land treatment units.

#### 2. HSWA

Today's rule is proposed pursuant to Section 3004(o) of RCRA, a provision added by HSWA. Therefore, the Agency is proposing to add the requirement to Table 1 in 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all states, regardless of their authorized status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules and the modification is approved by EPA. Because this rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under Section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all

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HSWA interim authorizations will expire January 1, 1993 (See Section 271.24(c)).

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadlines by which the State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule in accordance with 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

Listing of HSWA provisions:

*40 CFR*

264.10
264.15 (b)(1) and (b)(4)
264.117(a)(1)(ii)
264.118 (b)(1), (b)(2)(ii)
264.221 (g), (h), (i) and (j)
264.226 (c)(1), (c)(2)(ii), (c)(3)(ii), (d) and (e)
264.228(b)(4)
264.251 (g), (h), (i) and (j)
264.254 (b)(1), (b)(3)(i), (b)(3)(ii), (c) and (d)
264.276 (a), (b)(1), (b)(2) and (d)
264.284 (a)(1), (b) and (c)
264.301 (g), (h), (i) and (j)
264.308 (b)(1), (b)(2)(i), (b)(3)(ii), (c) and (d)
264.310(b)(3)
265.15 (b)(1) and (b)(4)
265.117(a)(1)(ii)
265.118 (c)(1) and (c)(2)(ii)
265.221 (g), (h), (i) and (j)
265.226 (b)(1), (b)(2)(i), (b)(3)(ii) and (c)
265.254 (g), (f), (g) and (h)
265.260 (a)(1), (a)(3)(i), (a)(3)(ii) and (b)
265.278 (a), (b)(1), (b)(2) and (d)
265.280 (a)(1) and (b).
265.301 (g), (h), (i) and (j)
265.303 (a)(1), (a)(3)(i), (a)(3)(ii) and (b)
265.310(b)(3)

3. Non-HSWA

Today's rule also proposes standards that would not be effective in authorized States since the requirement would not be imposed pursuant to the HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule in accordance with Section 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to carry out these requirements in lieu of EPA until the State program modification is submitted to EPA and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law.

States that submit their official application for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in Section 271.21(e). States that submit official applications for final authorization 12 months after the effective date of those standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

## VII. Regulatory Requirements

### *A. Executive Order 12291*

Executive Order 12291 requires the regulatory impact of potential Agency actions to be evaluated during regulation development. Such an assessment consists of a description of the potential benefits and the potential costs of the rule, including any beneficial and any adverse effects that cannot be quantified in monetary terms.

In addition, Executive Order 12291 requires that regulatory agencies prepare a Regulatory Impact Analysis in connection with major rules. Major rules are defined as those likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

1. Estimated Cost of the Proposed Rule

*a. General Approach.* EPA estimated incremental costs for provisions of the proposed rule which require compliance activities. The incremental cost of each provision was estimated by taking the difference between the cost of complying with the provision and the cost of complying with current regulations (the baseline for measurement).

In projecting both the costs of provisions and the costs of baseline scenarios, EPA developed estimates of affected populations, unit costs of compliance, and aggregate costs of compliance. Estimates of affected populations were based on hazardous waste facilities identified in the Part A data base as of early 1987 that have not lost their interim status. Unit cost of compliance, based on capital costs, operating and maintenance costs, closure costs, and post-closure costs (where appropriate), were developed using EPA's Liner Location and Cost Analysis Model. Both direct and indirect costs were included. Aggregate costs were then obtained by multiplying unit costs by the number of units in the affected population.

EPA used discounted cash flow analysis to convert streams of costs over time to equivalent annual costs over the life of the facility. First, EPA converted cost streams to present values by dividing costs incurred in each year by a discount factor, as follows:

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$$PV = \sum_{i=0}^{n} \frac{(costs)_n}{(1+r)^n}$$

where the real rate of return (r) equals 3 percent and n is the number of periods in which costs are incurred. The cash flows do not include inflation, taxes, or depreciation. As such, the present value costs report the full social costs in real terms.

Second, in order to spread the costs evenly over the life of the facility, EPA annualized the present value costs by multiplying them by a capital recovery factor (CRF):

$$CRF = \frac{r(r+1)^{OL}}{(r+1)^{OL}-1}$$

Where OL is the operating life the facility. EPA assumed a 20-year operating life and a 3 percent real rate of return, which lead to a CRF of 0.0872. The annualized present value represents the annual revenue required to cover the costs imposed by the provision. This value provides a consistent basis for presenting and comparing costs of different provisions. However, it implicitly assumes that facilities can predict future costs and can recover them at a steady rate over the life of the facility.

EPA also estimated unit costs of response action for excessive leakage through the top liner at landfill and surface impoundment units. No aggregate response action costs were developed.

*b. Double Liner and Leak Detection System—(1) Landfill Units.* The proposed rule would require a leak detection system (LDS) between the double liners of a landfill. The owner or operator would be required to develop a minimum sensitivity value, which is the smallest quantity of liquid that can pass through a breach in the top liner and be detected by the LDS, and calculate the time required for detection of the liquid. The owner or operator would also be required to estimate an action leakage rate or ALR (gal/acre/day) to serve as a trigger for response action and prepare a response action plan (RAP) which would describe responses to be initiated by the owner or operator when leakage through the top liner exceeded the ALR.

In estimating the cost of complying with the LDS provisions, EPA assumed that the number of landfill facilities would remain equal to the current number in the affected population and that each unit would have a 20-year operating life and a 30-year post-closure care period. This simplifying assumption was necessary due to lack of data on the current and future number of new landfill units, replacement units, lateral expansions, and significant portions. It was also assumed that one cell would be opened and closed each year during the 20-year operating life of a unit.

Based on facilities listed in the Part A data base, the affected population was found to incldue 126 landfill facilities each with at least one unit, ranging in size from 500 MT/year to 150,000 MT/year. The affected population and the total incremental costs (above current statutory requirements) of compliance with the LDS provisions are shown in Table 1. EPA estimates that the incremental costs required to comply with the LDS provisions would be approximately $800,000.

*(2) Surface Impoundment Units.* The proposed rule would require an LDS between the double liners of a surface impoundment. In addition, the owner or operator would be required to develop a minimum sensitivity value, detection time, ALR, and RAP, as described for landfill units.

TABLE 1.—COST OF COMPLIANCE WITH DOUBLE LINER AND LEAK DETECTION SYSTEM PROVISIONS FOR LANDFILL UNITS

[1987 Dollars]

| Size | Number of active units | Incremental annualized present value unit cost ($1,000) | Incremental annualized present value total cost ($1,000) |
|---|---|---|---|
| 500 mt/yr | 48 | 3.8 | 182.4 |
| 1,000 mt/yr | 14 | 3.8 | 53.2 |
| 2,000 mt/yr | 8 | 3.9 | 31.2 |
| 6,000 mt/yr | 20 | 7.2 | 144.0 |
| 15,000 mt/yr | 22 | 4.2 | 92.4 |
| 35,000 mt/yr | 6 | 4.5 | 27.0 |
| 60,000 mt/yr | 2 | 5.0 | 10.0 |
| 100,000 mt/yr | 2 | 5.4 | 10.8 |
| 150,000 mt/yr | 4 | 5.5 | 22.0 |
| Total | 126 | | 573.0 |

To estimate the cost of compliance with the LDS provisions, EPA assumed that the number of surface impoundment units would remain equal to the current number in the affected population (except that no new impoundments larger than 15 acres would be constructed) and that each unit would have a 20-year operating life. Based on facilities identified in the Part A data in early 1987 the affected population was found to include 535 surface impoundment units, ranging in size from 0.25 acres to 15 acres. The affected population and the total incremental costs (above current statutory requirements) of compliance with the LDS provisions are shown in Table 2. EPA estimates that the incremental costs of complying with the LDS provisions would be approximately $1,700,000.

*(3) Waste Pile Units.* The proposed rule would require double liners in waste pile units, with a flexible membrane top liner and a flexible membrane/clay composite bottom liner. A leachate collection system would be required above the top liner, and an LDS would be required between the liners. In addition, the owner or operator would be required to develop a minimum sensitivity value, detection time, ALR, and RAP, as described for landfill units.

TABLE 2.—COST OF COMPLIANCE WITH DOUBLE LINER AND LEAK DETECTION SYSTEM PROVISIONS FOR SURFACE IMPOUNDMENT UNITS

[1987 Dollars]

| Size | Number of active units[1] | Incremental annualized present value unit cost ($1,000) | Incremental annualized present value total cost ($1,000) |
|---|---|---|---|
| 0.25 AC | 216 | 2.9 | 626.4 |
| 0.50 AC | 132 | 2.9 | 382.8 |
| 1.00 AC | 70 | 3.1 | 217.0 |
| 2.00 AC | 75 | 3.3 | 247.5 |
| 5.00 AC | 30 | 4.6 | 138.0 |
| 15.00 AC | 12 | 7.2 | 86.4 |
| Total | 535 | | 1,697.8 |

[1] Based on 2.9 impoundments per active facility.

Costs were estimated jointly for the double liner and LDS provisions. It was assumed that facilities meeting minimum technology requirements for the double liner and the leachate collection and removal system between the liners would satisfy requirements for the leak detection system.

In estimating the cost of compliance with the double liner and LDS provisions, EPA assumed that the number of waste pile units would remain the same as the current number and that each unit would have an operating life of 20 years. Based on facilities identified in the Part A data base in early 1987, the affected population was found to include 72 waste pile facilities with at least one ranging in size from 250 cu. ft. to 1,000,000 cu. ft.

The affected population and the total incremental costs (above current statutory requirements) of compliance with the double liner and LDS provisions are shown in Table 3. EPA estimates that the incremental costs of compliance with the double liner would be approximately $800,000.

TABLE 3.—COST OF COMPLIANCE WITH DOUBLE LINER AND LEAK DETECTION SYSTEM PROVISIONS FOR WASTE PILE UNITS

[1987 Dollars]

| Size | Number of active units [1] | Incremental annualized present value unit cost ($1,000) | Incremental annualized present value total cost ($1,000) |
|---|---|---|---|
| 250 cu. ft. | 7 | 4.6 | 32.2 |
| 1,000 cu. ft. | 15 | 4.9 | 73.5 |
| 5,000 cu. ft. | 14 | 5.8 | 81.2 |
| 25,000 cu. ft. | 12 | 7.7 | 92.4 |
| 100,000 cu. ft. | 11 | 11.5 | 126.5 |
| 500,000 cu. ft. | 7 | 21.8 | 152.6 |
| 1,000,000 cu. ft. | 6 | 39.1 | 234.6 |
| Total | 72 | | 793.0 |

[1] Outdoor (uncovered) waste piles.

*c. Construction Quality Assurance—(1) Landfill Units.* The proposed rule would require the owner/operator to complete a construction quality assurance (CQA) plan prior to construction, implement the plan during construction, and prepare a report following completion of construction to document CQA activities. CQA would not only be required for the opening and closing of cells during the operating life of the unit but for replacement of cell covers as necessary during the post-closure care period.

To estimate the cost of complying with the CQA provision, EPA assumed that the number of landfill units would remain equal to the current number in the affected population and that each unit would have a 20-year operating life and a 30-year post-closure care period. This assumption was made as a result of the limited data on the current and future number of new units, replacement units, lateral expansions, and significant portions. EPA also assumed that a cell would be opened and closed each year during the 20-year operating life, and that five cell covers would need to be replaced within the 26–30 year post-closure care period.

The affected population, which is the same as for the double liner and LDS provisions, is shown in Table 4. The total incremental costs (above current statutory requirements) of compliance with the CQA provision are also shown. EPA estimates that the incremental costs required to comply with the CQA provision would be approximately $13,400,000.

TABLE 4.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR LANDFILL UNITS

[1987 Dollars]

| Size | Number of active units | Incremental annualized present value unit cost ($1,000) | Incremental annualized present value total cost ($1,000) |
|---|---|---|---|
| 500 MT/YR | 48 | 102.6 | 4,924.8 |
| 1,000 MT/YR | 14 | 101.7 | 1,423.8 |
| 2,000 MT/YR | 8 | 100.2 | 801.6 |
| 6,000 MT/YR | 20 | 96.4 | 1,928.0 |
| 15,000 MT/YR | 22 | 123.4 | 2,714.8 |
| 35,000 MT/YR | 6 | 113.7 | 682.2 |
| 60,000 MT/YR | 2 | 149.4 | 298.8 |
| 100,000 MT/YR | 2 | 127.4 | 254.8 |
| 150,000 MT/YR | 4 | 104.3 | 417.2 |
| Total | 126 | | 13,446.0 |

*(2) Surface Impoundment Units.* The proposed rule would require the owner or operator to prepare a CQA plan, implement the plan during construction, and then document CQA activities. To estimate the cost of complying with the CQA provision, EPA assumed that the number of surface impoundment units would remain equal to the current number in the affected population (except that no new impoundments larger than 15 acres would be constructed) and that each unit would have a 20-year operating life. The affected population and total incremental costs (above current statutory requirements) of compliance with the CQA provision are shown in Table 5. EPA estimates that the total cost would be approximately $2,200,000.

TABLE 5.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR SURFACE IMPOUNDMENT UNITS

[1987 Dollars]

| Size | Number of active units [1] | Incremental annualized present value unit cost ($1,000) | Incremental annualized present value total cost ($1,000) |
|---|---|---|---|
| 0.25 AC | 89 | 10.1 | 898.9 |
| 0.50 AC | 54 | 10.0 | 540.0 |
| 1.00 AC | 29 | 9.7 | 281.3 |
| 2.00 AC | 31 | 9.1 | 282.1 |
| 5.00 AC | 12 | 9.9 | 118.8 |
| 15.00 AC | 5 | 11.1 | 55.5 |
| Total | 220 | | 2,176.6 |

[1] Based on 2.3 impoundments per active facility. It was assumed that only disposal surface impoundments (41 percent of total active impoundments) would require CQA for cover installation.

*(3) Waste Pile Units.* The proposed rule would require the owner or operator to prepare a CQA plan, implement the plan during construction, and then document CQA activities. In estimating the cost of compliance with the CQA provision, EPA assumed that the number of waste pile units would remain equal to the current number in the affected population and that each unit would have a 20-year operating life. The affected population and total incremental costs (above current statutory requirements) of compliance with the CQA provision are shown in Table 6. EPA estimates that the incremental costs of compliance with the CQA provision would be approximately $600,000

TABLE 6.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR WASTE PILE UNITS

[1987 dollars]

| Size | Number of active units [1] | Incremental annualized present value unit cost ($1,000) | Incremental annualized present value total cost ($1,000) |
|---|---|---|---|
| 250 cu. ft | 7 | 8.1 | 56.7 |
| 1,000 cu. ft | 15 | 8.0 | 120.0 |
| 5,000 cu. ft | 14 | 8.0 | 112.0 |
| 25,000 cu. ft | 12 | 7.9 | 94.8 |
| 100,000 cu. ft | 11 | 7.9 | 86.9 |
| 500,000 cu. ft | 7 | 7.5 | 52.5 |
| 1,000,000 cu. ft | 6 | 7.2 | 43.2 |
| Total | 72 | | 566.1 |

[1] Outdoor (uncovered) waste piles.

*(4) Land Treatment Units.* The proposed rule would require the owner or operator to prepare a CQA plan, implement the plan during construction, and then document CQA activities. These CQA activities would be required only during the construction of the final vegetative cover on the unit. In estimating the cost of compliance with the CQA provision, EPA assumed that the number of land treatment units would remain equal to the current number in the affected population and that each unit would have a 20-year operating life. The affected population and total incremental costs of compliance are shown in Table 7. EPA estimates that the total cost would be approximately $500,000.

TABLE 7.—COST OF COMPLIANCE WITH CONSTRUCTION QUALITY ASSURANCE PROVISIONS FOR LAND TREATMENT UNITS

[1987 dollars]

| Size | Number of active units | Incremental annualized present value unit cost ($1,000) | Incremental annualized present value total cost ($1,000) |
|---|---|---|---|
| 2.0 AC | 8 | 4.7 | 37.6 |
| 5.0 AC | 11 | 4.7 | 51.7 |
| 12.0 AC | 15 | 5.9 | 88.5 |
| 35.0 AC | 17 | 7.1 | 120.7 |
| 60.0 AC | 13 | 7.7 | 100.1 |
| 200.0 AC | 7 | 12.4 | 86.8 |
| Total | 71 | | 485.4 |

*d. Total Incremental Costs of the LDS, CQA, and Double Liner.* The total costs of the LDS, CQA, and double liner provisions are shown in Table 8 for landfills, surface impoundments, waste piles, and land treatment units of different sizes. The total incremental cost of the provisions would be approximately $3,000,000 for the LDS and double liner and $16,600,000 for CQA, for a total of $19,600,600.

TABLE 8.—TOTAL COST OF COMPLIANCE WITH DOUBLE LINER, LEAK DETECTION SYSTEM, AND CONSTRUCTION QUALITY ASSURANCE PROVISIONS

[Incremental annualized present value cost in 1987 dollars]

| Facility type | Liner/LDS ($1,000) | CQA ($1,000) | Total ($1,000) [1] |
|---|---|---|---|
| Landfill | 573.0 | 13,446.0 | 13,905.2 |
| Surface impoundment | 1,697.6 | 2,176.6 | 3,874.7 |
| Waste pile | 793.0 | 566.1 | 1,352.9 |
| Land treatment | — | 485.4 | 485.4 |
| Total | 3,063.6 | 16,674.1 | 19,618.2 |

[1] Raw totals may be off slightly due to roundoff error in calculations.

*e. Response Action Costs.* Response action costs are the costs, incurred by the owner or operator of a landfill, surface impoundment, or waste pile, responding to excessive leakage through the top liner of a unit. As discussed under the LDS provisions above, the proposed rule would require the owner or operator to establish an action leakage rate (ALR) to serve as a trigger for initiating interaction between the owner or operator and EPA, to determine the appropriate response action for the leakage. The owner or operator would also be required to prepare a response action plan (RAP) as a means to implement the appropriate response action for leakage rates in excess of the ALR on a site-specific basis.

EPA used the Liner Location and Cost Analysis Model to gauge the frequency and magnitude of potential releases from landfills, surface impoundments, and waste piles. Modeling results indicated that leakage through the top liner during the operating life or post-closure care period that the ALR (20 gal/acre/day) should be very unlikely to occur, assuming that the units complied with all applicable provisions of the proposed rule. However, EPA presents the unit costs of responding to a leakage rate exceeding the ALR.

For a leak slightly larger than the ALR (100 gal/acre/day) EPA assumed that the appropriate response would be to increase pumping and monitoring. The cost of this increased pumping and monitoring would be insignificant.

For a leak substantially larger than the ALR (2,000 gal/acre/day) the appropriate response would depend on the type of facility which was leaking. In the case of landfills, the response was assumed to involve increased leachate collection in the primary LCRS, location of the general area of the leak (using the LDS), and installation of an intermediate flexible membrane barrier over the leaking area. Operational changes, such as use of daily cover and grading of the waste surface, would act to reduce water infiltration into the landfill. In addition, there would be early closure of the leaking area within a few months and a resulting loss of disposal capacity. EPA estimated the cost of this response to be approximately $600,000 in the case of a one-acre area.

In the case of surface impoundment, EPA assumed that the response to a large leak would require draining the unit into a redundant unit at the facility, removal and disposal of sludge from the bottom of the impoundment, and installation of a new flexible membrane liner over the existing top liner. The estimated cost for a five-acre impoundment would be $509,000.

For waste piles, EPA assumed that response action for a large leak would include location of the general area of the leak (using the LDS), removal of waste from the leaking area and placement on another part of the pile, and installation of a new section of flexible membrane liner over the existing top liner. The estimated cost to repair a one-acre area would be approximately $250,000.

*2. Impacts on Small Business.* For purposes of this analysis, EPA used Small Business Administration (SBA) criteria for defining small businesses. SBA regulations established size standards in terms of either maximum number of employees or maximum revenues, and vary the cutoff by 4-digit SIC code. For this analysis EPA used the SBA definitions for small businesses for each 4-digit SIC code with the number of employees as the primary method of delineating small businesses, except for those industries where the SBA defined small businesses by total revenues. Although size standards vary within industry sectors, in general, small firms in the manufacturing industries (SIC codes 2000–3999) are defined according to number of employees. Service and trade industries are usually defined

according to maximum revenue, with limits ranging from less than $3.5 million to $13.5 million in sales.

Using these definitions EPA evaluated the impact of today's rule on small businesses using regulation-induced business closures as the key indicator of regulatory impact. This test assumes that firms will spend up to 3 percent of total assets per year to meet regulatory requirements; any cost greater than 3 percent of total assets will result in forced closures. EPA also considered a second impact measure that compares the increased annual compliance costs to total production costs with 5 percent as the threshold for significance. Using these tests EPA has determined that the regulatory costs associated with the rule will not have a significant impact on a substantial number of small entities.

*3. Benefits.* EPA also evaluated the benefits of today's rule. EPA measured benefits in terms of reduction in human health risk. For purposes of this analysis, EPA evaluated the benefits of the proposal by comparing the risk that could result from an unlined hazardous waste landfill or surface impoundment to the reduced risks at these units that are attributed to a properly installed double liner and a leachate detection and collection system (as proposed today and in the proposed double liner and leachate collection rules of March 28, 1986).

EPA systematically evaluated this risk reduction using the Liner Location Model. This model is a composite of several submodels that act in concert to estimate the impacts from hazardous waste management/disposal practices. The model stochastically simulates the performance of the land disposal unit, using the best available data to describe the frequency of occurrence of individual failure events. The model uses an extensive set of generic climatic and hydrogeologic settings to simulate leachate release, subsurface transport, and constituent concentrations in ground water at specified distances from the disposal unit.

The model has several simplifying assumptions that should be understood so that its results can be interpreted properly. An important assumption that is typically used in analytical ground-water models is that the aquifer is homogeneous and isotropic. Under this assumption, plumes develop in a steady, symmetric manner, diluting with distance and time. In reality, however, homogeneous and isotropic conditions are rarely encountered in the real world, where structural, stratigraphic, and lithologic properties of aquifers create varying degrees of anisotropy and heterogeneities which are important determinants of ground-water flow. The discrepancies between model assumptions and actual conditions can cause models to underpredict or overpredict the rate at which contaminants are transported in the subsurface and the concentrations of constituents over space and time. For more information about the underlying assumptions and limitations of the model, refer to the "Liner Location Risk and Cost Analysis Model, Draft Phase II Report," March 1986 in the docket established for today's rule.

The results of the modeling analysis are not intended to be the final work on the risk reduction capabilities of the requirements proposed today, but rather a first attempt at an objective and systematic analysis. Due to the inherent limitations of analytic ground-water models used in generic analyses, combined with a limited data set and simplifying assumptions, the results presented below cannot be fully evaluated for their validity or representativeness. Therefore, the quantitative results should not be viewed as reflecting, in an absolute sense, an accurate and precise representation of the risk reduction capabilities of the technical strategies employed by today's proposed rule.

The basic approach to analyze the benefits of the requirements in today's proposal was to simulate risks under two scenarios: without liner controls, and with properly installed (using construction quality assurance) double liner and leachate detection and collection system controls. EPA evaluated the risk under each of these scenarios using information on the waste and locations from 55 hazardous waste facilities with landfills and surface impoundments. This sample of facilities comprises slightly over 10 percent of the approximately 500 operating land disposal facilities. For purposes of the analysis, the modeling assumed that the facilities operate for 20 years under both scenarios, and have a 30-year post-closure care period.

The analysis indicated that about two-thirds of the facilities included in the analysis have baseline risks that are less than $10^{-6}$, one-third have risks that exceed $10^{-6}$ and are as high as $10^{-1}$ in the baseline. The effect of the proposed liner, leak detection, and construction quality assurance requirements is to reduce the risk by over an order of magnitude, such that less than one-fifth of the facilities have risks exceeding $10^{-6}$.

The analysis further indicated that the technical design behind these proposed liner, leak detection, and construction quality assurance requirements is more effective for surface impoundments than for landfills. For landfills, a properly installed double liner and leachate collection system, together with a final cover placed at closure, substantially reduces release during the operating life and post-closure care period (assumed to be 50 years). However, for landfills, these technologies do not effectively reduce the longer term (400 year) risk because they do not significantly reduce the pollutant mass released from the unit. As a result, the leachate will not likely form and be released from the landfill until after post-closure, when the cap and leachate collection system begin to fail.

Despite the findings that the double liner, leachate collection, leak detection system and construction quality assurance requirements do not significantly reduce longer term risk (unless very long-term post-closure care were implemented), the extra years of containment should reduce the mass of those pollutants that degrade in the landfill environment.

Like landfills, properly installed double liner and leachate collection and detection systems at surface impoundments delay release, but unlike landfills, at impoundments they are also effective in reducing long-term risk. The analysis indicates that these requirements are effective in reducing the risk at almost two-thirds of the surface impoundments with risk when uncontrolled. Moreover, these requirements reduce the risk below $10^{-6}$ at half of the units with risk when uncontrolled.

The risk reduction capabilities at surface impoundments are attributable to the effectiveness in controlling releases during the operating life of the unit. The large hydraulic head that exists during the operating life results in extremely high releases from unlined units during this period, causing dissolved constituents to be released to the unsaturated zone at relatively high rates. The rapid initial release is virtually eliminated by a properly installed double liner and leachate detection collection system, causing the dissolved constituents to be retained in the impoundment. At closure, all liquids and dissolved constituents are removed; thus the total quantity of constituents released is substantially reduced.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96-354), 5 U.S.C. 601 et seq., which amends the Administrative Procedures Act, required Federal regulatory agencies to consider small entities throughout the regulatory

process. The purpose of the RFA is to describe the effects the regulations will have on small entities and to examine alternatives that may reduce these effects. EPA has determined that today's proposed rule will not have a significant impact on a substantial number of small entities. EPA expects smaller firms to face larger costs per unit of production than large firms as a result of the regulation but expects both small and large firms to recover these costs in the market place. The competitive effects of this regulation on small entities, therefore, are not significant. A more detailed discussion of the impact of today's proposal may have on small firms is contained in the previous section concerning Executive Order 12291.

*C. Paperwork Reduction Act*

The information collection requirements of this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq. An information Collection Request document has been prepared by EPA (ICR No. 995 Amended) and a copy may be obtained from Rick Westlund, Information Policy Branch; EPA; 401 M St. SW. (PM–223); Washington, DC 20460 or by calling (202) 382–2745. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

**VIII. Supporting Documents**

In preparing this proposal, the Agency has used many sources of data and information, the most significant of which are listed below. They have been placed in the rulemaking docket at the U.S. Environmental Protection Agency, EPA RCRA Docket (Sub-basement), 401 M Street SW., Washington, DC 20460. The docket is open from 9:30 AM to 3:30 PM, Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling Michelle Lee at (202) 475–8327.

The major sources of information are the following, which are available for viewing only at the EPA RCRA Docket:

*Background Documents*

U.S. EPA, "Liner and Leak Detection Rule Background Document," Draft, prepared by GeoServices, Inc., May 1987.

U.S. EPA, "Bottom Liner Performance in Double-Lined Landfills and Surface Impoundments," Draft, prepared by GeoServices, Inc., April 1987.

*Regulatory Impact Analyses*

U.S. EPA, "Engineering Costs Documentation for Baseline and Proposed Double Liner Rule, Leak Detection System Rule, and CQA Program Costs for Landfills, Surface Impoundments, Waste Piles, and Land Treatment," Draft, prepared by Pope-Reid Associates, Inc., April 1987.

**List of Subjects**

*40 CFR Part 260*

Administrative practice and procedure, Confidential business information, Hazardous waste.

*40 CFR Part 264*

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

*40 CFR Part 265*

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

*40 CFR Part 270*

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

*40 CFR Part 271*

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: May 13, 1987.

**Lee M. Thomas,**

*Administrator.*

For the reasons given in the preamble, Parts 260, 264, 265, 270 and 271 of Chapter I of Title 40 of the Code of Federal Regulations are proposed for amendment as follows:

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

*Authority:* Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019 and 7004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939 and 6974).

2. Section 260.10 is amended by adding the following definitions in alphabetical order:

**§ 260.10 Definitions.**

* * * * *

"Leakage" means, in the case of landfills, surface impoundments, or waste piles used for treatment, storage, or disposal, any liquids that flow through a liner as a liquid.

* * * * *

"Replacement unit", means a unit (1) that is taken out of service (i.e., the unit has stopped receiving waste, or the "normal" rate of waste receipt is significantly decreased), (2) where all or substantially all of the waste is removed, and (3) the unit is reused (i.e., the unit is used to treat, store, or dispose of *hazardous* waste). Replacement does not apply to a unit where waste is removed for treatment, followed by placement of the treated waste from the unit in the same unit as part of closure or post-closure care activities of the unit.

* * * * *

"Significant portion of an existing unit that has not received wastes" means any unlined area of a unit that has not received waste and, if double lined before receiving waste, would significantly reduce the potential for migration of hazardous constituents out of the unit thereby reducing the potential for ground water and surface water contamination.

* * * * *

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

**Authority:** Sections 1006, 2002(a), 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

2. Section 264.15 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

**§ 264.15 General inspection requirements.**

* * * * *

(b)(1) The owner or operator must develop and follow a written schedule for inspecting all monitoring and leak detection equipment, safety and emergency equipment, security devices,

and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

* * * * *

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.194, 264.226, 264.254, 264.278, 264.303 and 264.347, where applicable.

* * * * *

3. Subpart B is amended by adding §§ 264.19 and 264.20.

**§ 264.19 Construction quality assurance program: Objective.**

(a) A construction quality assurance program is required for all landfills, surface impoundments, and waste piles to ensure, to a reasonable degree of certainty, that a completed unit or portion of a unit meets or exceeds all design criteria, plans, and specifications required in the permit. Land treatment units must have a construction quality assurance program to ensure, to a reasonable degree of certainty, that a completed unit or portion of a unit meets or exceeds all design criteria, plans, and specifications for construction of a cover over the closed portion of the unit, where applicable under § 264.280.

(b) The construction quality assurance program must address the following physical components of a landfill, surface impoundment, or waste pile, where applicable:

(1) Foundations;

(2) Dikes;

(3) Low-permeability soil liners;

(4) Flexible membrane liners;

(5) Leachate collection systems (includes leak detection systems); and

(6) Final cover systems.

**§ 264.20 Construction quality assurance program: Elements of the program.**

(a) The owner or operator of a new landfill, surface impoundment, waste pile, or land treatment unit, or a lateral expansion or replacement of an existing landfill, surface impoundment, waste pile, or land treatment unit of an existing unit and for which construction commences later than 12 months after promulgation of this rule, must have a written construction quality assurance plan. The owner or operator of an existing unit for which construction commences on a portion of the unit later than 12 months after promulgation of this rule must also have a written construction quality assurance plan for any component of that portion listed under § 264.19(b). The construction quality assurance plan must be developed, implemented, and documented under the direction of a construction quality assurance officer who is a registered professional engineer and is responsible for all aspects of the construction quality assurance program. The plan must be submitted with the permit application or as a permit modification in accordance with § 270.41 and approved by the Regional Administrator as part of the permit issuance or modification proceeding under Part 124 of this chapter. Approval by the Regional Administrator will assure that an approved construction quality assurance plan is consistent with § 264.19 and the applicable requirements of Subparts K, L, M, and N of this Part. The Regional Administrator may allow the construction quality assurance plan to be submitted and approved in phases based on a demonstration by the owner or operator that detailed construction specifications are not practicable at the time that the plan is initially submitted, due to the planned phased construction of the unit over an extended time period. If the Regional Administrator allows for phasing the submission of the construction quality assurance plan, a phased time schedule will be specified in the permit. A copy of the approved plan and all revisions to the plan must be kept by the owner or operator as part of the operating record required under § 264.73 until closure, and must be available for inspection by the Regional Administrator until the post-closure care period is completed and certified in accordance with § 264.117. The plan must identify steps necessary to monitor and document the quality of materials used and the condition and manner of their placement. The specific content of the construction quality assurance plan will depend on site-specific factors. The construction quality assurance plan must include at least the following information:

(1) General description of the units—Plans for the design, construction, operation, and closure of the unit(s) must be discussed. The description must identify the construction stages for the components at the unit(s);

(2) Responsibility and authority—A detailed description of the responsibility and authority of all organizations and key personnel positions involved in the development, implementation, and documentation of the construction quality assurance program must be provided. The description must assure that the objective of the construction quality assurance program identified in § 264.19(a) will be met;

(3) Construction quality assurance personnel qualifications— The qualifications of the construction quality assurance officer and supporting inspection personnel must be described in the contruction quality assurance plan. The position descriptions must demonstrate that the personnel will possess the training and experience necessary to fulfill their identified responsibilities;

(4) Inspection and sampling activities—The observations and tests that will be used to ensure that the materials and the constructed components meet the design specifications must be described. The description of the inspection and testing activities must be in sufficient detail to allow for review of both the conceptual approach and the specifics of title activities. The following areas must be included:

(i) Sampling and inspection activities for all constructed components;

(ii) Sample size and sample locations;

(iii) Frequency of testing;

(iv) Data evaluation procedures;

(v) Acceptance and rejection criteria; and

(vi) Plans for implementing corrective measures as addressed in the project specifications.

(5) Documentation of construction quality assurance activities—At the time of submittal of the construction quality assurance plan, a report outline is required that describes how the results of the construction quality assurance program activities for each constructed component will be documented.

(b) The owner or operator must describe in detail in the construction quality assurance plan how the components and materials used for their construction on-site will be inspected before, during, and after construction to comply with the following:

(1) For construction of foundations, the construction quality assurance program must:

(i) Ensure structurally stable subgrades for the overlying facility components as specified in the design specifications;

(ii) Ensure necessary strength, as specified in the design specifications, for resistance to settlement, compression, and uplift resulting from internal or external pressure gradients; and

(iii) Provide descriptions of the following inspection activities:

(A) Measurements of the depth and slope of the excavation to ensure that it meets design requirements;

(B) Observations to ensure proper placement of any recessed areas for pipes and other materials used for leak detection, leachate collection, and removal;

(C) Tests and observations to ensure that all characteristics of the compacted soil meet design specifications; and

(D) Observations of stripping and excavation to ensure that all soft, organic, and otherwise undesirable materials are removed.

(2) For dikes, the construction quality assurance program must:

(i) Ensure structural strength, as specified in the design;

(ii) Ensure stable support for the overlying facility components as specified in the design; and

(iii) Provide descriptions of the following inspection activities:

(A) Verification of material quality;

(B) Construction and use of a test fill to verify the specified density/moisture content/compactive effort/strength relationship for field conditions and construction equipment as needed to support the design specifications when field data on this relationship are not available;

(C) Measurement of loose lift thickness;

(D) Observation of clod size reduction and material homogenization operations, if applicable;

(E) Observation of type of compaction equipment, number of passes, and uniformity of compaction coverage;

(F) Testing of the compacted fill density; and

(G) Observation of proper placement of the vegetation layer on the dike surface.

(3) For low-permeability compacted soil liners, the construction quality assurance program must:

(i) Ensure inspection for imperfections including deleterious material, off-specification material, cracks, channels, structural and hydraulic non-uniformities, and any other conditions that may cause an increase in the permeability of the liner;

(ii) Ensure the installed material is the same as was evaluated for chemical resistance under §§ 264.221(a)(1), 264.251(a)(1)(i), 264.301(a)(1)(i), and any other material specifications;

(iii) Ensure that the liner has an installed permeability that meets the permit requirements.

(A) A test fill must be constructed to verify that the constructed liner complies with permit requirements for field permeability. The test fill compaction and testing must be well documented, and soil materials, procedures, and equipment used in the test fill construction and testing must be the same as those to be used during construction of the full-scale unit. The owner or operator must describe observations and tests to be used on the test fill, including a description of the testing sample arrays and replications to be conducted. The Regional Administrator will review for completeness the owner and operator's plan for the design and evaluation of the test fill to ensure that the evaluation conditions will accurately represent the performance of the full-scale unit.

(B) Based on the parameters evaluated and data collected from the test fill, the owner or operator must justify that the tests applied to the full-scale facility liner serve as surrogates for actual field permeability tests. The surrogate tests are a group of tests that do not actually measure field permeability but whose results, when considered together, can be used to estimate field permeability and, hence, can be used to assure the proper permeability of the installed liner in all areas.

(C) The Regional Administrator may approve an alternative approach to test fill construction and testing for demonstrating that the low-permeability soil liner meets the installed permeability requirement of the unit as required by the permit; and

(iv) Provide descriptions of the following inspection activities:

(A) Observation of the removal of roots, rocks, rubbish, or off-specification soil from the liner material;

(B) Identification of variations in soil characteristics that require a change in construction specifications;

(C) Observation of the spreading of liner material to obtain complete coverage and the specified loose lift thickness;

(D) Observation of the reduction of clod size to meet liner material specifications;

(E) Observation of the spreading and incorporation of soil amendments (if specified) to obtain uniform distribution of the specified amount in the liner material;

(F) Observation of the spreading and incorporation of water to obtain full penetration through clods and uniform distribution of the specified moisture content;

(G) Observation of the use of procedures, as specified in the construction quality assurance plan, for adjusting the soil moisture content in the event of a significant period of prolonged rain during construction;

(H) Observing and testing to ensure that significant water loss before and after compaction is prevented; and

(I) Observing and testing the soil liner compaction process to ensure that the compactive effort specifications are met.

(4) For flexible membrane liners, the construction quality assurance program must:

(i) Ensure tight seams and specified structural strength of the seams and joints, and the absence of tears, punctures, or other breaches. The field seams must be visually checked throughout their length and width and must also be destructively tested on a spot basis. The Regional Administrator will review for completeness the owner or operator's inspection and testing approach for destructive seam testing;

(ii) Ensure that the liner polymer material properties are the same as were evaluated for chemical resistance under §§ 264.221(a)(1), 264.251(a)(1)(i), or 264.301(a)(1)(i), and any other material specifications;

(iii) Include certification that adequate quality control was practiced during the manufacturing of the flexible membrane liner at the fabrication plant; and

(iv) Provide descriptions of the following inspection activities:

(A) Inspection of the liner material after it is received at the facility and before installation to confirm that it is the material specified in the design and is not damaged;

(B) Inspection of the liner material after storage at the facility to ensure that it is not damaged;

(C) Testing and observation of placement of the lower bedding layer to ensure that design requirements are met;

(D) Observation of placement of the flexible membrane liner to ensure that design requirements are met;

(E) Observation of any damage to the liner that may occur as a result of adverse weather conditions, inadequate temporary anchoring, or rough handling;

(F) Observation of the overlapping of flexible membrane liner sheets to ensure that off-specification seams do not result; and

(G) Observation and testing of seams to ensure proper seaming and conformance to the seam strength specified in the design.

(5) For leachate collection systems (above and between the liners, where required) the construction quality assurance program must:

(i) Ensure that material properties comply with the design criteria, plans, and specifications;

(ii) Ensure the materials are the same as were evaluated for chemical resistance under §§ 264.221(c)(3)(i), 264.251(a)(2)(i)(A), 264.251(c)(5)(i), 264.301(a)(2)(i)(A), or 264.301(c)(5)(i);

(iii) Provide descriptions of the following inspection activities:

(A) Observations and measurements to ensure that the pipes are placed at locations and in configurations specified in the design;

(B) Observations and tests to ensure that pipe grades are as specified in the design;

(C) Observations and tests to ensure that all pipes are joined together as specified in the design;

(D) Observations to ensure that the placement of any filter materials around the pipe meet the specifications in the design;

(E) Observations and tests to ensure that backfilling and compaction are completed as specified in the design and that, in the process, the pipe network is not damaged;

(F) Observations and tests to ensure that the drainage layer material is of the particle size as specified in the design and free from excessive amounts of fines or organic materials;

(G) Observations and tests to ensure that the thickness and coverage of the drainage layer complies with the design specifications.

(H) Survey of the drainage layer to ensure that grades are obtained as specified in the design;

(I) Observation of construction procedures to prevent the transport of fines by runoff into the leachate collection system;

(J) Observations to ensure that all synthetic drainage layer or geotextile materials are placed according to the placement plan;

(K) Measurements to ensure that the overlap of all synthetic drainage layer or geotextile material as specified in the design is achieved;

(L) Observations to ensure that the synthetic drainage layer or geotextile materials are free from excessive wrinkles and folds;

(M) Observations to ensure that weather conditions are appropriate for placement of the synthetic drainage layer or geotextile materials and that exposure to rain, wind, and direct sunlight during and after installation is in compliance with the manufacturer's recommendations;

(N) Inspection of filter layer placement to ensure that the design specifications, including material specifications, placement procedures, and thickness are met; and

(O) Inspection and testing of the sump, leachate removal and detection equipment, and any other associated equipment or structures to ensure that the design specifications, including material and equipment specifications, coating specifications, and mechanical and electrical equipment installation specifications, are met.

(6) For final cover, the construction quality assurance program must:

(i) Ensure all layers of the cover are inspected for uniformity, imperfections, and damage;

(ii) Ensure that the materials for each layer are as specified in the design material specifications;

(iii) Ensure each layer of the final cover is installed or constructed to meet the requirements specified in the design; and

(iv) Provide descriptions of the following inspection activities. (Some of these activities may not be appropriate for all land treatment unit covers; inspection activities for land treatment unit covers must also be based on the applicable requirements of § 264.280.) The Regional Administrator will review the owner or operator's planned inspection activities for completeness to ensure that the completed final cover will meet the design specifications.

(A) Procedures and methods consistent with those under § 264.20(b)(3) for observing and testing the installation of any low-permeability compacted soil layer to ensure that the design specifications are met;

(B) Procedures and methods consistent with those under § 264.20(b)(4) for observing and testing the installation of any flexible membrane layer to ensure the design specifications are met; and

(C) Procedures and methods for observing and testing other layers of the final cover (e.g., drainage and vegetative layer) to ensure that the design specifications are met. These activities must include inspection of the completed cover slope, vegetation, and drainage conduits to ensure that they meet the specified design.

(c) The Regional Administrator may specify in the permit specific additional procedures and methods for observing and testing the construction of components under §§ 264.20(b) (1), (2), (3), (4), (5), and (6) to ensure that the completed unit meets or exceeds all design criteria, plans, and specifications.

(d) The owner or operator will be exempted from any part of the requirements of paragraph (b) of this section if the Regional Administrator finds, based on a demonstration by the owner or operator, that alternative inspection practices, observations, or tests will ensure that the completed component meets or exceeds all design criteria, plans, and specifications.

(e) The owner or operator may request that the Regional Administrator amend his construction quality assurance plan at any time before and during the active life of the facility.

(1) The CQA officer may make some changes to the approved CQA plan under § 264.20(a) without seeking and receiving prior approval from the Regional Administrator. Changes which do not require Regional Administrator approval are limited to instances where the CQA officer certifies in the operating record that the revised CQA plan will provide equivalent or better certainty that the constructed component meets the design specifications. Within seven days of modifying the CQA plan approved under § 264.20(a), the owner or operator must amend the operating record to include the revised CQA plan and certification.

(2) Changes other than those specified in paragraph (e)(1) of this section, must be submitted to the Regional Administrator and approved by the Regional Administrator prior to construction in accordance with the permit modification procedures in § 270.41. The owner or operator must submit a written request for a permit modification including a copy of the amended CQA plan prior to any construction relating to the amended area of the CQA plan at least 30 days prior to the proposed change in the facility construction. The Regional Administrator will approve, disapprove, or modify this amended plan in accordance with the procedures in Parts 124 and 270. In accordance with § 270.32 of this chapter, the approved CQA plan will become a condition of any RCRA permit issued.

(f) The owner or operator must notify the Regional Administrator at least 180 days prior to the date he expects to begin construction of the final cover. The notification must include the following:

(1) Schedule of major activities; and

(2) Supplemental information required in the construction quality assurance plan that was not previously included.

(g) Upon completion of construction of facility components listed under § 264.19(b), the owner or operator must submit a construction quality assurance report in writing to the Regional Administrator demonstrating compliance with the construction quality assurance plan. The owner or operator must submit this report before waste is received, except in the case of construction of the final cover. For the final cover, the report must be submitted

to the Regional Administrator within 60 days after cover construction is completed. Submission of the report may be phased, if approved by the Regional Administrator in the permit, to facilitate the permitting process or allow the phased construction of a unit. The construction quality assurance report must include at least the following:

(1) Summaries of all construction and material inspection activities to include:

(i) Observations;

(ii) Test data sheets;

(iii) Problem reports;

(iv) Repair activities;

(v) Deviations from the design and material specifications;

(vi) Design engineer acceptance reports (for errors, inconsistencies, and other problems);

(vii) As built drawings; and

(viii) Block evaluation reports for large projects.

(2) Summary discussion for each applicable component under § 264.19(b) that describes the major construction quality assurance inspection activities, detailing how the results demonstrate that the constructed unit meets or exceeds all design criteria, plans, and specifications. Summary tables, charts, and graphs must be used, where appropriate, to document implementation of the construction quality assurance program.

(3) Certification by the qualified registered professional engineer in charge of the construction quality assurance program, that the report accurately represents the activities and findings of the construction quality assurance program and that the program was implemented in accordance with all requirements of the approved construction quality assurance plan.

(h) The Regional Administrator will review the construction quality assurance documentation report required under paragraph (g) of this section and notify the owner or operator in writing whether it is accepted. If the Regional Administrator takes no action within 30 days from receipt of the construction quality assurance report, the owner or operator may receive waste. The Regional Administrator may notify the owner or operator that he does not intend to review the construction quality assurance report at this time. The Regional Administrator may extend the 30-day review period in order to request additional information on the implementation and documentation of the construction quality assurance program, or to complete an ongoing evaluation of the report; if such an extension is necessary, the Regional Administrator will notify the owner or operator in writing.

4. Section 264.73 is amended by revising paragraph (b)(6) to read as follows:

**§ 264.73 Operating record.**

* * * * *

(b) * * *

(6) Monitoring, testing, or analytical data where required by Subpart F and §§ 264.222, 264.226, 264.252, 264.254, 264.276, 264.278, 264.280, 264.302, 264.303, 264.309, and 264.347;

* * * * *

5. Section 264.117 is amended by revising paragraph (a)(1)(ii) to read as follows:

**§ 264.117 Post-closure care and use of property.**

(a)(1) * * *

(ii) Maintenance of monitoring, waste containment, leachate collection, and leak detection systems in accordance with the requirements of Subparts F, K, L, M, and N of this Part.

* * * * *

6. Section 264.118 is amended by revising paragraphs (b)(1) and (b)(2)(ii) to read as follows:

**§ 264.118 Post-closure plan; amendment of plan.**

* * * * *

(b) * * *

(1) A description of the planned monitoring and leak detection activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this Part during the post-closure care period; and

(2) * * *

(ii) The function of the monitoring, leachate collection, and leak detection equipment in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

* * * * *

7. Section 264.221 is amended by redesignating paragraphs (f), (g), and (h) as paragraphs (m), (n), and (o), respectively.

8. Section 264.221 is amended by revising the introductory text of paragraph (c) and adding new paragraphs (f) through (l) to read as follows:

**§ 264.221 Design and operating requirements.**

* * * * *

(c) The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of a surface impoundment unit must install two or more liners and a leachate collection system between such liners. This requirement shall apply to the owner or operator of all such units, regardless of the date of permit issuance. This requirement also applies to the owner or operator of significant portions of surface impoundment units on which waste has not been placed, effective 24 months after promulgation of this rule. The requirements of this paragraph apply with respect to all waste received after the issuance of the permit or modified permit. The liners and leachate collection system must protect human health and the environment. At a minimum, the liners and leachate collection system must meet the following requirements:

* * * * *

(f) The owner or operator of any surface impoundment unit that is replaced later than 24 months after promulgation of this rule is exempt from the requirements of paragraphs (c) and (g) of this section provided:

(1) The existing surface impoundment unit received a final permit under this part prior to November 8, 1984;

(2) The existing unit was constructed in compliance with the requirements of paragraphs (a) or (b) of this section and the liner is not replaced; and

(3) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 264.222(h), that such liquid, waste, or waste constituent originated from another source.

(h) The leak detection system required under paragraph (g) of this section shall be part of the leachate collection system between the liners described under paragraph (c)(3) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraph (c)(3) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and

a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of $5 \times 10^{-4}$ m²/sec or greater.

(2) Be capable of detecting a top liner leak in the sump of no more than 1 gallon per acre per day (not including liquids absorbed by the leachate collection system); and, be capable of detecting leakage in the sump in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner. The Regional Administrator will specify design and operating conditions in the permit to ensure that the liquid head on the bottom liner is minimized at all times; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed. The leachate volume in the sump must be determined on a daily basis during the active life of the unit and at least weekly during the post-closure care period (if applicable).

(i) In lieu of the requirements of paragraph (h) of this section, the Regional Administrator may specify in the permit an alternative leak detection system if:

(1) The Regional Administrator finds that there is no potential for migration of any hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (d) or (e) of this section; or

(3) The owner or operator proposes an alternative leak detection system or technology that will meet the requirements under paragraph (g) of this section. In deciding whether to allow an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 264.222, prevent migration of hazardous constituents out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(j) The owner or operator of any unit that is required by paragraph (g) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(k) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (h) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range of 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

(l) The owner or operator of a surface impoundment unit that is required to comply with § 264.221(c) and commenced construction on or before the effective date of this rule is required to have a leak detection program.

(1) Within 1 year of the effective date of this rule, the owner or operator must submit to the Regional Administrator an application for a permit modification to establish a leak detection program for the leachate collection system between the liners. The proposed leak detection program must include operation and maintenance of the system in a manner consistent with the requirements under paragraphs (g) and (h) of this section, considering the site-specific capabilities of the constructed unit to prevent migration of hazardous constituents out of the unit.

(2) The Regional Administrator will specify in the permit all monitoring, inspection, maintenance, reporting, response, and recordkeeping activities that are necessary to ensure that the leak detection program provides similar protection of ground and surface water to that provided by leak detection systems required under paragraphs (g) through (k) of this section and §§ 264.222 and 264.228, considering the capabilities of the constructed liners and the leachate collection system between the liners.

9. New § 264.222 is added to Subpart K to read as follows:

**§ 264.222 Response actions.**

(a) The owner or operator must include a response action plan in the permit application, or for units permitted prior to the effective date of today's rule, in a permit modification. This plan must set forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.).

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit:

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s); or

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraphs (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 264.221;

(vi) Future planned activities, including remaining active lifetime period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 90 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan, if the approved response action plan does not contain an alternative response, by modifying the permit in accordance with Part 124 procedures. The owner or

operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum, such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The permit modification will be processed in accordance with Part 124 procedures.

(e) Leaks that are less than rapid and extremely large.

(1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate, or

(ii) Submit to the Regional Administrator a request for a permit modification in accordance with the Part 124 procedures to amend the response action plan within 90 days from the date that liquids first exceed the action leakage rate. The permit will be processed in accordance with Part 124 procedures.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituent migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground water monitoring activities; or

(v) The owner or operator maintains current operating procedures.

(3) The response action plan must recommend a specific response action for leakage above the action leakage rate for the unit and indicate why other response actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to, considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or the actual type and amount if the action leakage rate is exceeded;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review, review of design for deficiency, or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under Section 264.221;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(g) If liquids leaking into the leak detection system specified under § 264.221(h) exceed the action leakage rate for the top liner, but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Implement the plan if it was previously submitted with the application pursuant to paragraph (e)(1)(i) of this section, or submit a permit modification pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) above and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing to the extent technically

feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan, if the approved response action plan does not contain an alternative response, by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum, such modification must address information set forth in paragraph (b) of this section. The permit modification will be processed in accordance with Part 124 procedures.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit a permit modification application or to implement the response unless the Regional Administrator approves the demonstration made by finding that the liquid resulted from a source other than a top liner leakage, and was attributed to precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under (g)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an application for a permit modification to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

10. New § 264.223 is added to Subpart K to read as follows:

**§ 264.223 Construction quality assurance.**

Effective 12 months after promulgation of this rule, the owner or operator of each new surface impoundment unit or component constructed at a surface impoundment and listed under § 264.19(b) must conduct a construction quality assurance program in compliance with §§ 264.19 and 264.20.

11. Section 264.226 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as (a) and (b), respectively, and adding new paragraphs (c), (d), and (e) as follows:

**§ 264.226 Monitoring and inspection.**

* * * * *

(c) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period) and at least weekly during the post-closure period (if applicable);

(2) Analyze the daily monitoring data during the active life under paragraph (c)(1) of this section on a weekly basis and the weekly monitoring data during the post-closure period under paragraph (c)(1) of this section on a quarterly basis to determine if the action leakage rate under paragraph (k) (1) or (2) of § 264.221 is exceeded under the conditions of paragraphs (c)(2) (i), (ii), or (iii) of this section:

(i) During the active life of the unit, the daily monitoring data averaged over one month exceed the action leakage rate or during the post-closure care period, the weekly monitoring data averaged over three months exceed the action leakage rate; or

(ii) During the active life, the daily rate for any one-day period during a week exceeds 50 gallons per acre per day or during the post-closure period, the weekly rate for any one-week period during a quarter exceeds 350 gallons per acre per week; or

(iii) In lieu of the requirements of paragraphs (c)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (k) (1) or (2) of § 264.221 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life (including the closure period) and post-closure period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(d) The owner or operator must record all inspection information required in paragraph (c) of this section in the inspection log required under § 264.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection permit requirements are being complied with.

(e) Specific inspection and monitoring requirements in addition to those described in paragraph (c) of this section may be required in the facility permit by the Regional Administrator as needed to assure detection of leaks at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit will be based on preventing migration of liquids containing hazardous constituents out of the unit.

12. Section 264.228 is amended by adding a new paragraph (b)(4) to read as follows:

**§ 264.228 Closure and post-closure care.**

* * * * *

(b) * * *

(4) Maintain and monitor the leak detection system in accordance with §§ 264.221 (g) and (h), 264.226 (c), (d), and (e), and comply with all other applicable leak detection requirements of this subpart.

**§ 264.251 [Amended]**

13. Section 264.251 is amended by redesignating paragraphs (c), (d), (e), (f), and (g) as paragraphs (m), (n), (o), (p), and (q), respectively.

14. Section 264.251 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 264.251 Design and operating requirements.**

(a) Any waste pile that is not covered by paragraph (c) of this section must have a liner system for all portions of the waste pile (except for existing portions of such waste pile). The liner system must have: * * *

* * * * *

15. Section 264.251 is amended by adding new paragraphs (c) through (k) to read as follows:

**§ 264.251 Design and operating requirements.**

* * * * *

(c) The owner or operator of each new waste pile, each new waste pile unit at an existing facility, each replacement of an existing waste pile unit, and each lateral expansion of a waste pile unit must install two or more liners and a leachate collection system above and between such liners. This requirement shall apply to the owner or operator of all such units, regardless of the date of permit issuance. This requirement also applies to the owner or operator of significant portions of waste piles on which waste has not been placed, effective 24 months after promulgation of this rule. The requirements of this paragraph apply with respect to all waste received after the issuance of the permit or modified permit. The liners and the leachate collection systems must protect human health and the environment. At a minimum, the liners and leachate collection systems must meet the following requirements:

(1) The liners must include:

(i) A top liner designed, operated, and constructed of materials to prevent the migration of any hazardous constituent into such liner during the active life and post-closure care period, and a bottom liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. The bottom liner must be constructed of at least a 3-foot-thick layer of compacted clay or other compacted soil material with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec; or

(ii) A top liner designed, operated, and constructed of materials to prevent the migration of any hazardous constituent into such liner during the active life and post-closure care period, and a bottom liner consisting of two components. The upper component of the bottom liner must be designed, operated, and constructed to prevent the migration of any hazardous constituent into this component during the active life and post-closure care period. The lower component of the bottom liner must be designed, operated, and constructed to minimize the migration of any hazardous constituent through the upper component if a breach in the upper component were to occur prior to the end of the post-closure care period. The lower component must be constructed of compacted soil material with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec.

(2) The liners must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon materials capable of providing support to the liners and resistance to pressure gradients above and below the liners to prevent failure of the liners due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(3) The leachate collection system immediately above the top liner must be designed, constructed, maintained, and operated to collect and remove leachate from the waste pile during the active life and post-closure care period. The Regional Administrator will specify design and operating conditions in the permit to ensure that the leachate depth over the top liner does not exceed 30 cm (1 foot).

(4) The leachate collection system between the liners must be designed, constructed, maintained, and operated to detect, collect, and remove liquids that leak through any area of the top liner during the active life and post-closure care period.

(5) The leachate collection systems must be:

(i) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and any equipment used at the waste pile; and

(ii) Designed and operated to function without clogging during the active life and post-closure care period.

(d) Paragraph (c) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such waste pile, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(e) The double liner requirement set forth in paragraph (c) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter, and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under RCRA section 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground

water or surface water at any future time.

(f) The owner or operator of any waste pile that is replaced later than 24 months after promulgation of this rule is exempt from the requirements of paragraphs (c) and (g) of this section provided:

(1) The existing waste pile unit received a final permit under this Part prior to November 8, 1984.

(2) The existing unit was constructed in compliance with the requirements of paragraphs (a) or (b) of this section and the liner or leachate collection system is not replaced; and

(3) There is no reason to believe that the liner or leachate collection system is not functioning as designed.

(g) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 264.252(h), that such liquid, waste, or waste constituent originated from another source.

(h) The leak detection system required under paragraph (g) of this section shall be part of the leachate collection system between the liners described under paragraphs (c)(4) and (c)(5) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraphs (c)(4) and (c)(5) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of $5 \times 10^{-4} m^2/sec$ or greater.

(2) Be capable of detecting a top liner leak in the sump of no more than 1 gallon per acre per day (not including liquids absorbed by the leachate collection system), and, be capable of detecting leakage in the sump in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner. The Regional Administrator will specify design and operating conditions in the permit to ensure that the liquid head on the bottom liner is minimized at all times; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed. The leachate in the sump must be determined on a daily basis during the active life of the unit and at least weekly during the post-closure care period (if applicable).

(i) In lieu of the requirements of paragraph (h) of this section, the Regional Administrator may specify in the permit an alternative leak detection system if:

(1) The Regional Administrator finds that there is no potential for migration of any hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit, or

(2) The unit complies with the requirements of paragraphs (d) or (e) of this section, or

(3) The owner or operator proposes an alternative leak detection system or technology that will meet the requirements under paragraph (g) of this section. In deciding whether to allow an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 264.252, prevent migration of hazardous constituents out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(j) The owner or operator of any unit that is required by paragraph (g) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(k) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (h) of this section. The action leakage rate is determined by:

(1) Using a standard value of [EPA proposing to select a final value from the range 5–20 gallons/acre/day]; or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

18. New § 264.252 is added to Subpart L to read as follows:

**§ 264.252 Response actions.**

(a) The owner or operator must include a response action plan in the permit application, or for units permitted prior to the effective date of today's rule, in a permit modification. This plan must set forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.).

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in section (e) below: or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraph (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider but not be limited to considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review, or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 264.251;

(vi) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The

Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response, by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum, such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The permit modification will be processed in accordance with Part 124 procedures.

(e) *Leaks that are less than rapid and extremely large.* (1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request for a permit modification, in accordance with the Part 124 procedures, to amend the response action plan within 90 days from the date that liquids first exceed the action leakage rate. The permit modification will be processed in accordance with Part 124 procedures.

(2) For leakage that exceeds the action leakage, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards.

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground water monitoring activities; or

(v) The owner or operator maintains current operating procedures.

(3) The response action plan must recommend a specific response action for leakage above the action leakage rate for the unit and indicate why other response actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider but not be limited to considering the following factors

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or the actual type and amount if the action leakage rate is exceeded;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review, review of design for deficiency, or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 264.251;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(g) If liquids leaking into the leak detection system specified under § 264.251(h) exceed the action leakage rate for the top liner, but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids,

(3) Implement the plan if it was previously submitted with the application pursuant to paragraph (e)(1)(i) of this section, or submit a permit modification pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds healthbased standards, he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response

action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan, if the approved response action plan does not contain an alternative response by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum, such modification must address information set forth in paragraph (b) of this section. The permit modification will be processed in accordance with Part 124 procedures.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit a permit modification application or to implement the response unless the Regional Administrator approves the demonstration made by finding that the liquid resulted from a source other than a top liner leakage, and was attributed to precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under (g)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) above, then the owner or operator must submit an application for a permit modification to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage,

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

17. New § 264.253 is added to Subpart L to read as follows:

**§ 264.253 Construction quality assurance.**

Effective 12 months after promulgation of this rule, the owner or operator of each new waste pile unit or component constructed at a waste pile and listed under § 264.19(b) must conduct a construction quality assurance program in compliance with §§ 264.19 and 264.20.

18. Section 264.254 is amended by removing paragraph (a), redesignating paragraph (b) as (a), and adding new paragraphs (b), (c), and (d) as follows:

**§ 264.254 Monitoring and inspection.**

* * * * *

(b) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period);

(2) Analyze the daily monitoring data during the active life under paragraph (6)(1) of this section on a weekly basis to determine if the action leakage rate under paragraph (k) (1) or (2) of § 264.251 is exceeded under the conditions of paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceed the action leakage rate during the active life; or

(ii) The daily rate for any one-day period during a week exceeds 50 gallons per acre per day; or

(iii) In lieu of the requirements of paragraphs (b)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (k) (1) or (2) of § 264.251 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and the post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate,

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(c) The owner or operator must record all inspection information required in paragraph (b) of this section in the inspection log required under § 264.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection permit requirements are being complied with.

(d) Specific inspection and monitoring requirements in addition to those described in paragraph (b) of this section may be required in the facility

permit by the Regional Administrator as needed to assure detection of leaks at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit will be based on preventing migration of liquids containing hazardous constituents out of the unit.

19. Section 264.278 is amended by revising paragraphs (a) introductory text, (b)(1), (b)(2), and the first sentence of paragraph (d) and adding new paragraphs (i), (j), and (k), to read as follows:

**§ 264.278 Unsaturated zone monitoring.**

* * * * *

(a) The owner or operator must monitor the soil and soil-pore liquid to determine at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period whether hazardous constituents migrate out of the treatment zone.

* * * * *

(b) * * *

(1) Represent, to at least a 95% confidence level, the quality of background soil-pore liquid quality and the chemical make-up of soil that has not been affected by leakage from the treatment zone; and

(2) Indicate, to at least a 95% confidence level, the quality of soil-pore liquid and the chemical make-up of the soil below the treatment zone.

* * * * *

(d) The owner or operator must conduct soil monitoring and soil-pore liquid monitoring immediately below the treatment zone and entirely above the seasonal high water table. * * *

* * * * *

(i) The owner or operator must include in the permit application a response action plan that sets forth the action to be taken immediately following a finding, pursuant to paragraph (f) of this section of widespread leakage of hazardous constituents from the treatment zone.

The response action plan for widespread leakage must, at a minimum, include the following information:

(1) A general description of the operation of the unit;

(2) A description of the hazardous constituents contained in the unit;

(3) An assessment of potential causes of widespread leakage of hazardous constituents from the treatment zone;

(4) A discussion of important factors that can affect leakage of hazardous constitutents from the treatment zone;

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the treatment zone;

(6) A detailed assessment describing the effectiveness and feasibility of the following responses that the owner or operator may implement for any potential widespread leakage out of the treatment zone:

(i) The owner or operator terminates application of waste and closes the unit; or

(ii) The owner or operator institutes operational changes at the unit that will minimize leakage out of the treatment zone so that the permit conditions are met.

(j) For widespread leakage out of the treatment zone the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days following measurement of widespread leakage. The notification must indicate preliminary identification of hazardous constifuents that have been detected, and the extent of the area and depth below the treatment zone where constituents have migrated; and

(2) Immediately implement the response action plan.

(k)(1) The owner or operator of a land treatment unit that does not meet the requirements of paragraphs (a), (b)(1), (b)(2), (d), and (i) of this section on the date of promulgation of this rule must, by the effective date of this rule, submit to the Regional Administrator an application for a permit modification to ensure compliance with those paragraphs.

(2) The Regional Administrator will specify in the permit all monitoring, inspection, maintenance, reporting, response, and recordkeeping activities that are necessary to ensure compliance with paragraphs (a), (b)(1), (b)(2), (d), and (i) of this section.

20. New § 264.284 is added to Subpart M to read as follows:

**§ 264.284 Inspection.**

(a) The owner or operator must establish an inspection program that will allow the determination of the following during the active life and post-closure care period:

(1) The deterioration, malfunction, or improper operation of unsaturated zone monitoring equipment required under § 264.278; and

(2) The effectiveness of additional controls implemented as part of any response action when hazardous constituents that migrate beyond the treatment zone statistically exceed background levels.

(b) The owner or operator must record all inspection information required in paragraph (a) of this section in the inspection log required under § 264.15 of this part. The recorded information must be in sufficient detail to demonstrate that the unsaturated zone monitoring permit requirements are being complied with.

(c) Specific inspection and monitoring requirements in addition to those described in paragraph (a) of this section and § 264.278 may be required in the facility permit by the Regional Administrator as needed to assure detection of the migration of hazardous constituents out of the treatment zone at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit will be based on preventing migration of hazardous constituents, so that ground water and surface water will not be contaminated.

21. Section 264.301 is amended by redesignating paragraphs (f), (g), (h), (i), and (j) as paragraphs (m), (n), (o), (p), and (q), respectively and by revising paragraph (k) and the introductory text of paragraph (c) and adding new paragraphs (f) through (j) and (l), to read as follows:

**§ 264.301 Design and operating requirements.**

* * * * *

(c) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of a landfill unit must install two or more liners and a leachate collection system above and between such liners. This requirement shall apply to the owner or operator of all such units, regardless of the date of permit issuance. This requirement also applies to the owner or operator of significant portions of landfill units on which waste has not been placed, effective 24 months after promulgation of this rule. The requirements of this paragraph apply with respect to all waste received after the issuance of the permit or modified permit. The liners and the leachate collection systems must protect human health and the environment. At a minimum, the liners and leachate collection systems must meet the following requirements:

* * * * *

(f) The owner or operator of any landfill unit that is replaced later than 24 months after promulgation of this rule is exempt from the requirements of paragraphs (c) and (g) of this section provided:

(1) The existing landfill unit received a final permit under this Part prior to November 8, 1984;

(2) The existing unit was constructed in compliance with the requirements of paragraphs (a) or (b) of this section and

the liner or leachate collection system is not replaced; and

(3) There is no reason to believe that the liner or leachate collection system is not functioning as designed.

(g) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 264.302(h), that such liquid, waste, or waste constituent originated from another source.

(h) The leak detection system required under paragraph (g) of this section shall be part of the leachate collection system between the liners described under paragraphs (c)(4) and (c)(5) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraphs (c)(4) and (c)(5) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of $5 \times 10^{-4}$ $m^2$/sec or greater.

(2) Be capable of detecting a top liner leak in the sump of no more than 1 gallon per acre per day (not including liquids absorbed by the leachate collection system); and, be capable of detecting leakage in the sump in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner. The Regional Administrator will specify design and operating conditions in the permit to ensure that the liquid head on the bottom liner is minimized at all times; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed. The leachate in the sump must be determined on a daily basis during the active life of the unit at least weekly during the post-closure care period (if applicable).

(i) In lieu of the requirements of paragraph (h) of this section, the Regional Administrator may specify in the permit an alternative approved leak detection system if:

(1) The Regional Administrator finds that there is no potential for migration of hazardous contituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (d) or (e) of this section; or

(3) The owner or operator proposes an alternative leak detection system or technology that will meet the requirements under paragraph (g) of this section. In deciding whether to allow an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 264.302, prevent migration of hazardous constituents out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(j) The owner or operator of any unit that is required by paragraph (g) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(k) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (h) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner maximum leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner maximum leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific maximum leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

(l) The owner or operator of a landfill unit that is required to comply with § 264.301(c) and commenced construction on or before the effective date of this rule is required to have a leak detection program.

(1) Within one year of the effective date of this rule, the owner or operator must submit to the Regional Administrator an application for a permit modification to establish a leak detection program for the leachate collection system between the liners. The proposed leak detection program must include operation and maintenance of the system in a manner consistent with the requirements under paragraphs (g) and (h) of this section, considering the site-specific capabilities of the constructed unit to prevent migration of hazardous constituents out of the unit.

(2) The Regional Administrator will specify in the permit all monitoring, inspection, maintenance, reporting, response, and recordkeeping activities that are necessary to ensure that the leak detection program provides similar protection of ground and surface water to that provided by leak detection systems required under paragraphs (g) through (k) of this section and §§ 264.302 and 264.303, considering the capabilities of the constructed liners and the leachate collection system between the liners.

23. New § 264.302 is added to Subpart N to read as follows:

**§ 264.302 Response actions.**

(a) The owner or operator must include a response action plan in the permit application, or for units permitted prior to the effective date of today's rule, in a permit modification. This plan must set forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large

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leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.).

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit),

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s); or

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraph (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 264.301;

(vi) Future planned activities, including remaining active life period, and closure and post-closure care activities, and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional

Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, or an accident). The permit modification will be processed in accordance with Part 124 procedures.

(e) *Leaks that are less than rapid and extremely large.* (1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request for a permit modification, in accordance with the Part 124 procedures, to amend the response action plan within 90 days from the date that liquids first exceed the action leakage rate. The permit modification will be processed in accordance with Part 124 procedures.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground water monitoring activities; or

(v) The owner or operator maintains current operating procedures.

(3) The response action plan must recommend a specific response action for leakage above the action leakage rate for the unit and indicate why other responses action were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or the actual type and amount if the action leakage rate is exceeded;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review, review of design for deficiency, or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 264.221;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities;

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentrations. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(g) If liquids leaking into the leak detection system specified under § 264.301(h) exceed the action leakage rate for the top liner, but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids; and

(3) Implement the plan if it was previously submitted with the application pursuant to paragraph (e)(1)(i) of this section, or submit a permit modification pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan, if the approved response action plan does not contain an alternative response, by modifying the permit in accordance with Part 124 procedures. The owner or operator must submit a permit modification to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section. The permit modification will be processed in accordance with Part 124 procedures.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit a permit modification application or to implement the response unless the Regional Administrator approves the demonstration made by finding that the liquid resulted from a source other than a top liner leakage, and was attributed to precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under (g)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation.

The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an application for a permit modification to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

24. Section 264.303 is amended by removing paragraph (a), redesignating paragraph (b) as (a) and adding new paragraphs (b), (c), and (d) as follows:

**§ 264.303 Monitoring and inspection.**

* * * * *

(b) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period) and at least weekly during the post-closure period;

(2) Analyze the daily monitoring data during the active life under paragraph (b)(1) of this section on a weekly basis and the weekly monitoring data during the post-closure period under paragraph (b)(1) of this section on a quarterly basis to determine if the action leakage rate under paragraph (k) (1) or (2) of § 264.301 is exceeded under the conditions of paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceeds the action leakage rate during the active life or the weekly monitoring data averaged over three months exceeds the action leakage rate during the post-closure period; or

(ii) The daily rate for any one-day period during a week exceeds 50 gallons per acre per day during the active life or the weekly rate for any one-week period during a quarter exceeds 350 gallons per acre per week during the post-closure period; or

(iii) In lieu of the requirements of paragraphs (b)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (k) (1) or (2) of § 264.301 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the maximum leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(c) The owner or operator must record all inspection information required in paragraph (b) of this section in the inspection log required under § 264.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection permit requirements are being complied with.

(d) Specific inspection and monitoring requirements in addition to those described in paragraph (b) of this section may be required in the facility permit by the Regional Administrator as needed to assure detection of leaks at the earliest practicable time. Inspection and monitoring requirements contained in the facility permit will be based on preventing migration of liquids containing hazardous constituents out of the unit.

25. New § 264.304 is added to read Subpart N to as follows:

**§ 264.304 Construction quality assurance.**

Effective 12 months after promulgation of this rule, the owner or operator of each new landfill unit or component constructed at a landfill and listed under § 264.19(b) must conduct a construction quality assurance program in compliance with §§ 264.19 and 264.20.

26. Section 264.310 is amended by adding a new paragraph (b)(6) to read as follows:

**§ 264.310 Closure and post-closure care.**

* * * * *

(b) * * *

(6) Maintain and monitor the leak detection system in accordance with §§ 264.301 (g) and (h), 264.303 (b), (c), and (d), and comply with all other applicable leak detection requirements of this subpart.

## PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

**Authority:** Secs. 1006, 2002(a), 3004, 3005, and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

2. Section 265.15 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

**§ 265.15 General inspection requirements.**

* * * * *

(b)(1) The owner or operator must develop and follow a written schedule for inspecting all monitoring and leak detection equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

* * * * *

(4) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.194, 265.226, 265.260, 265.278, 265.303, 265.347, 265.377, and 265.403.

* * * * *

3. Subpart B is amended by adding §§ 265.19 and 265.20.

**§ 265.19 Construction quality assurance program: Objective.**

(a) A construction quality assurance program is required for all landfills, surface impoundments, and waste piles to ensure, to a reasonable degree of certainty, that a completed unit or portion of a unit meets or exceeds all design criteria, plans, and specifications. Land treatment units must have a construction quality assurance program to ensure, to a reasonable degree of certainty, that a completed unit or portion of a unit meets or exceeds all design criteria, plans, and specifications for construction of a cover over the closed portion of the unit, where applicable under § 265.280.

(b) The construction quality assurance program must cover the following physical components of a landfill, surface impoundment, or waste pile, where applicable:

(1) Foundation;
(2) Dikes;
(3) Low-permeability soil liners;
(4) Flexible membrane liners;
(5) Leachate collection systems (includes leak detection systems); and
(6) Final cover system.

(c) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.194, 265.226, 265.260, 265.278, 265.303, 265.347, 265.377, and 265.403, where applicable.

**§ 265.20 Construction quality assurance program; Elements of the program.**

(a) The owner or operator of a landfill, surface impoundment, waste pile, or land treatment unit, which is a new unit or replacement of an existing unit and for which construction commences later than 12 months after promulgation of this rule, must have a written construction quality assurance plan. The owner or operator of an existing unit for which construction commences on a portion of the unit later than 12 months after promulgation of this rule must also have a written construction quality assurance plan for any component of that portion listed under § 265.19(b). The construction quality assurance plan must be developed, implemented, and documented under the direction of a construction quality assurance officer responsible for all aspects of the construction quality assurance program. The construction quality assurance officer must be a registered professional engineer. The owner or operator must submit his construction quality assurance plan to the Regional Administrator for approval prior to starting construction. The Regional Administrator may determine within 30 days of receipt of the plan that the plan does not need to be reviewed for approval. If the Regional Administrator makes such a finding, he must notify the owner or operator in writing. The Regional Administrator, as part of his review of the plan, will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the construction quality assurance plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the construction quality assurance plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the

hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the construction quality assurance plan. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new construction quality assurance plan for approval. The Regional Administrator will approve or modify this plan in writing within 60 days following the close of the public comment period or public hearing, whichever is later. If the Regional Administrator modifies the plan, this modified plan becomes the approved construction quality assurance plan. Approval by the Regional Administrator will assure that the approved construction quality assurance plan is consistent with §§ 265.19, 265.20, and the applicable requirements of Subparts K, L, M, and N of this part. A copy of this modified plan must be mailed to the owner or operator. The Regional Administrator may allow phasing of the construction quality assurance plan to be submitted and approved in phases based on a demonstration by the owner or operator that detailed construction specifications are not practicable at the time that the plan is initially submitted, due to the planned phased construction of the unit over an extended time period. If the Regional Administrator allows for phasing the submission of the construction quality assurance plan, he will review and approve a phased time schedule. A copy of the approved plan and all revisions to the plan must be kept by the owner or operator as part of the operating record required under § 265.73 until closure, and must be available for inspection by the Regional Administrator until the post-closure care period is completed and certified in accordance with § 265.117. The plan must identify steps necessary to monitor and document the quality of materials used and the condition and manner of their placement. The specific content of the construction quality assurance plan will depend on site-specific factors. The construction quality assurance plan must include at least the following elements:

(1) General description of the units—Plans for the design, construction, operation, and closure of the unit(s) must be discussed. The description must identify the construction stages for the components at the unit(s);

(2) Responsibility and authority—A detailed description of the responsibility and authority of all organizations and key personnel positions involved in the development, implementation, and documentation of the construction quality assurance program must be provided. The description must assure that the objective of the construction quality assurance program identified in § 265.19(a) will be met;

(3) Construction quality assurance personnel qualifications—The qualifications of the construction quality assurance officer and supporting inspection personnel must be described in the construction quality assurance plan. The position descriptions must demonstrate that the personnel will possess the training and experience necessary to fulfill their identified responsibilities;

(4) Inspection and sampling activities—The observations and tests that will be used to ensure that the materials and the constructed components meet the design specifications must be described. The description of the inspection and testing activities must be sufficiently detailed to allow for review of both the conceptual approach and the specifics of the activities. The following areas must be included:

(i) Sampling and inspection activities for all constructed components;

(ii) Sample size and sample locations;

(iii) Frequency of testing;

(iv) Data evaluation procedures;

(v) Acceptance and rejection criteria; and

(vi) Plans for implementing corrective measures as addressed in the project specifications.

(5) Documentation of construction quality assurance activities—At the time of submittal of the construction quality assurance plan, a report outline is required that describes how the results of the construction quality assurance program activities for each constructed component will be documented.

(b) The owner or operator must describe in detail in the construction quality assurance plan how the components and materials used for their construction on-site will be inspected before, during, and after construction to comply with the following:

(1) For construction of foundations, the construction quality assurance program must:

(i) Ensure structurally stable subgrades for the overlying facility components as specified in the design specifications;

(ii) Ensure necessary strength, as specified in the design specifications, for resistance to settlement, compression, and uplift resulting from internal or external pressure gradients; and

(iii) Provide descriptions of the following inspection activities:

(A) Measurements of the depth and slope of the excavation to ensure that it meets design requirements;

(B) Observations to ensure proper placement of any recessed areas for pipes and other materials used for leak detection, leachate collection, and removal;

(C) Tests and observations to ensure that all characteristics of compacted soil meet the design specifications; and

(D) Observations of stripping and excavation to ensure that all soft, organic, and otherwise undesirable materials are removed.

(2) For dikes, the construction quality assurance program must:

(i) Ensure structural strength, as specified in the design;

(ii) Ensure stable support for the overlying facility components as specified in the design; and

(iii) Provide descriptions of the following inspection activities:

(A) Verification of material quality;

(B) Construction and use of a test fill to verify the specified density/moisture content/compactive effort/strength relationship for field conditions and construction equipment as needed to support the design specifications when field data on this relationship are not available;

(C) Measurement of loose lift thickness;

(D) Observation of clod size reduction and material homogenization operations, if applicable;

(E) Observation of type of compaction equipment, number of passes, and uniformity of compaction coverage;

(F) Testing of the compacted fill density; and

(G) Observation of proper placement of the vegetation layer on the dike surface.

(3) For low-permeability compacted soil liners, the construction quality assurance program must:

(i) Ensure inspection for imperfections including deleterious material, off-specification material, cracks, channels, structural and hydraulic non-uniformities, and any other conditions that may cause an increase in the permeability of the liner;

(ii) Ensure the installed material is the same as was evaluated for chemical resistance in accordance with §§ 265.221 (a)(2)(i), 265.251(b)(2)(i), or 265.301(a)(2)(i), and any other material specifications;

(iii) Ensure that the liner has an installed permeability that meets the requirements of Subparts K, L, and N of this Part.

(A) A test fill must be constructed to verify that the constructed liner complies with requirements for field permeability. The test fill compaction and testing must be well documented, and soil materials, procedures, and equipment used in the test fill construction and testing must be the same as those used during construction of the full-scale unit. The owner or operator must describe observations and tests to be used on the test fill, including a description of the testing sample arrays and replications to be conducted. The Regional Administrator will review for completeness the owner or operator's plan for the design and evaluation of the test fill to ensure that the evaluation conditions will accurately represent the performance of the full scale unit.

(B) Based on the parameters evaluated and data collected from the test fill, the owner or operator must justify that the tests applied to the full-scale facility liner serve as surrogates for actual field permeability tests. The surrogate tests are a group of tests that do not actually measure field permeability but whose results, when considered together, can be used to estimate field permeability and, hence, can be used to assure the proper permeability of the installed liner in all areas.

(C) The Regional Administrator may approve an alternative approach to test fill construction and testing for demonstrating that the low-permeability soil liner meets the installed permeability requirement of the unit as required; and

(iv) Provide descriptions of the following inspection activities:

(A) Observation of the removal of roots, rocks, rubbish, or off-specification soil from the liner material;

(B) Identification of variations in soil characteristics that require a change in construction specifications;

(C) Observation of the spreading of liner material to obtain complete coverage and the specified loose lift thickness;

(D) Observation of the reduction of clod size to meet liner material specifications;

(E) Observation of the spreading and incorporation of soil amendments (if specified) to obtain uniform distribution of the specified amount in the liner material;

(F) Observation of the spreading and incorporation of water to obtain full penetration through clods and uniform distribution of the specified moisture content;

(G) Observation of the use of procedures, as specified in the construction quality assurance plan, to adjust the soil moisture content in the event of a significant period of prolonged rain during construction;

(H) Observing and testing to ensure that significant water loss before and after compaction is prevented; and

(I) Observing and testing the soil liner compaction process to ensure that the compacted effort specifications are met.

(4) For flexible membrane liners, the construction quality assurance program must:

(i) Ensure tight seams and specified structural strength of the seams and joints, and the absence of tears, punctures, or other breaches. The field seams must be visually checked throughout their length and width and must also be destructively tested on a spot basis. The design engineer or the construction quality assurance officer will develop the inspection and testing approach for destructive seam testing to ensure that the design specifications are met;

(ii) Ensure that the liner polymer material properties are the same as were evaluated for chemical resistance in accordance with §§ 265.221(a)(2)(i), 265.254(b)(2)(i), or 265.301(a)(2)(i), and any other material specifications;

(iii) Include certification that adequate quality control was practiced during manufacture of the constructed flexible membrane liner at the fabrication plant; and

(iv) Provide descriptions of the following inspection activities:

(A) Inspection of liner material after it is received at the facility and before installation to confirm that it is the material specified in the design and is not damaged;

(B) Inspection of the liner material after storage at the facility to ensure that it is not damaged;

(C) Testing and observation of placement of the lower bedding layer to ensure that design requirements are met;

(D) Observation of placement of the flexible membrane liner to ensure that design requirements are met;

(E) Observation of any damage to the liner that may occur as a result of adverse weather conditions, inadequate temporary anchoring, or rough handling;

(F) Observation of the overlapping of flexible membrane liner sheets to ensure that off-specification seams do not result; and

(G) Observation and testing of seams to ensure proper seaming and conformance to the seam strength specified in the design.

(5) For leachate collection systems (above and between the liners, where required) the construction quality assurance program must:

(i) Ensure that material properties comply with the design criteria, plans, and specifications;

(ii) Ensure the materials are the same as were evaluated for chemical resistance in accordance with §§ 265.221(a)(2)(i), 265.254(b)(5)(i), or 265.301(a)(5)(i);

(iii) Provide descriptions of the following inspection activities:

(A) Observations and measurements to ensure that the pipes are placed at locations and in configurations specified in the design;

(B) Observations and tests to ensure that pipe grades are as specified in the design;

(C) Observations and tests to ensure that all pipes are joined together as specified in the design;

(D) Observations to ensure that the placement of any filter materials around the pipe meet the specifications in the design;

(E) Observations and tests to ensure that backfilling and compaction are completed as specified in the design and that, in the process, the pipe network is not damaged;

(F) Observations and tests to ensure that the drainage layer material is of the particle size as specified in the design and free from excessive amounts of fines or organic materials;

(G) Observations and tests to ensure that the thickness and coverage of the drainage layer complies with the design specifications;

(H) Survey of the drainage layer to ensure that specified grades are obtained as specified in the design;

(I) Observation of construction procedures to prevent the transport of fines by runoff into the leachate collection system;

(J) Observations to ensure that all synthetic drainage layer or geotextile materials are placed according to the placement plan;

(K) Measurements to ensure that the overlap of all synthetic drainage layer or geotextile material as specified in the design is achieved;

(L) Observations to ensure that the synthetic drainage layer or geotextile materials are free from excessive wrinkles and folds;

(M) Observations to ensure that weather conditions are appropriate for placement of the synthetic drainage layer or geotextile materials and that exposure to rain, wind, and direct sunlight during and after installation is

in compliance with the manufacturer's recommendations;

(N) Inspection of filter layer placement to ensure that the design specifications, including material specifications, placement procedures, and thickness are met; and

(O) Inspection and testing of the sump, leachate removal and detection equipment, and any other associated equipment or structures to ensure that the design specifications, including material and equipment specifications, coating specifications, and mechanical and electrical equipment installation specifications, are met.

(6) For final cover, the construction quality assurance program must:

(i) Ensure all layers of the cover are inspected for uniformity, imperfections, and damage;

(ii) Ensure that the materials for each layer are as specified in the design material specifications;

(iii) Ensure each layer of the final cover is installed or constructed to meet the requirements specified in the design; and

(iv) Provide descriptions of the following inspection activities. Some of these activities may not be appropriate for all land treatment unit covers; inspection activities for land treatment unit covers must also be based on the requirements of § 265.280.

(A) Procedures and methods consistent with those under § 265.20(b)(3) for observing and testing the installation of any low-permeability compacted soil layer to ensure that the design specifications are met;

(B) Procedures and methods consistent with those under § 265.20(b)(4) for observing and testing the installation of any flexible membrane layer to ensure that the design specifications are met; and

(C) Procedures and methods for observing and testing other layers of the final cover (e.g., drainage, and vegetative layer) to ensure that the design specifications are met. These activities must include inspection of the completed cover slope, vegetation, and drainage conduits to ensure that they meet the specified design.

(c) The owner or operator will be exempted from any part of the requirements of paragraph (b) of this section if the Regional Administrator finds, based on a demonstration by the owner or operator, that alternative inspection practices, observations, or tests will ensure that the completed component meets or exceeds all design criteria, plans, and specifications.

(d) The owner or operator may request that the Regional Administrator amend his construction quality assurance plan at any time before and during the active life of the facility.

(1) The CQA officer may make changes to the approved CQA plan under § 265.20(a) without seeking and receiving prior approval from the Regional Administrator. Changes that do not require Regional Administrator approval are limited to instances where the CQA officer certifies that the revised CQA plan will provide equivalent or better certainty that the constructed component meets the design specifications. Within seven days of modifying the CQA plan approved under § 265.20(a), the owner or operator must amend the operating record to include the revised CQA plan and certification.

(2) Changes other than those specified in paragraph (d)(1) of this section, must be submitted to the Regional Administrator and approved by the Regional Administrator prior to construction. The owner or operator must submit a copy of the amended CQA plan to the Regional Administrator for approval prior to starting construction relating to the amended area of the CQA plan. The Regional Administrator will approve, disapprove or modify this amended plan in accordance with the procedures discussed under paragraph (a) of this section.

(e) The owner or operator must notify the Regional Administrator at least 180 days prior to the date he expects to begin construction of the final cover. The notification must include the following:

(1) Schedule of major activities; and

(2) Supplemental information required in the construction quality assurance plan that was not previously included.

(f) Upon completion of construction of facility components listed under § 265.19(b), the owner or operator must submit a construction quality assurance report in writing to the Regional Administrator demonstrating compliance with the construction quality assurance plan. The report must be certified by the construction quality assurance officer before waste is received, except in the case of construction of the final cover. For the final cover, the report must be submitted to the Regional Administrator within 60 days after cover construction is completed. Submission of the report may be phased, if approved by the Regional Administrator during approval of the construction quality assurance plan to allow for the phased construction of a unit. The construction quality assurance report must include at least the following:

(1) Summaries of all construction and material inspection activities to include:

(i) Observations;

(ii) Test data sheets;

(iii) Problem reports;

(iv) Repair activities;

(v) Deviations from the design and material specifications;

(vi) Design engineer acceptance reports (for errors, inconsistencies, and other problems);

(vii) As built drawings; and

(viii) Block evaluation reports for large projects.

(2) Summary discussion for each applicable component under § 265.19(b) that describes the major construction quality assurance inspection activities, detailing how the results demonstrate that the constructed unit meets or exceeds all design criteria, plans, and specifications. Summary tables, charts, and graphs must be used, where appropriate, to document implementation of the construction quality assurance program.

(3) Certification by the qualified registered professional engineer in charge of the construction quality assurance program that the report accurately represents the activities and findings of the completed construction quality assurance program and that the program was implemented in accordance with all requirements of the approved construction quality assurance plan.

4. Section 265.73 is amended by revising paragraph (b)(6) to read as follows:

**§ 265.73 Operating record.**

* * * * *

(b) * * *

(6) Monitoring, testing, or analytical data where required by §§ 265.90, 265.94, 265.226, 265.280, 265.278, 265.278, 265.280(d)(1), 265.303, 265.347, and 265.377; and,

* * * * *

5. Section 265.117 is amended by revising paragraph (a)(1)(ii) to read as follows:

**§ 265.117 Post-closure care and use of property.**

(a)(1) * * *

(ii) Maintenance of monitoring, waste containment, and leak detection systems in accordance with the requirements of Subparts F, K, L, M, and N of this Part.

* * * * *

6. Section 265.118 is amended by revising paragraphs (c)(1) and (c)(2)(ii) to read as follows:

**§ 265.118 Post-closure plan; amendment of plan.**

* * * * *

(c) * * *

(1) A description of the planned monitoring and leak detection activities and frequencies at which they will be performed to comply with Subparts F, K, L, M, and N of this Part during the post-closure care period; and

(2) * * *

(ii) The function of the monitoring, leachate collection, and leak detection equipment in accordance with the requirements of Subparts F, K, L, M, and N of this Part; and

* * * * *

7. Section 265.221 is amended by revising the section heading and by adding new paragraphs (f) through (j) to read as follows:

**§ 265.221 Design and operating requirements.**

* * * * *

(f) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 265.222(h), that such liquid, waste, or waste constituent originated from another source.

(g) The leak detection system required under paragraph (f) of this section shall be part of the leachate collection system between the liners described under paragraph (a)(3) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraph (a)(3) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of $5 \times 10^{-4}$ $m^2$/sec or greater.

(2) Be capable of detecting a leak of no more than 1 gallon per acre per day in the top liner (not including liquids absorbed by the leachate collection system); also, be capable of detecting leakage in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collecting system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed so that the leachate flow rate can be determined on a daily basis.

(h) In lieu of the requirements of paragraph (g) of this section, the Regional Administrator may approve an alternative leak detection system if:

(1) The Regional Administrator finds, based on a demonstration by the owner or operator, that there is no potential for migration of hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (c) or (d) of this section; or

(3) The Regional Administrator finds, based on a demonstration by the owner or operator, that an alternative leak detection system or technology will meet the requirements of paragraph (f) of this section. In deciding whether to grant an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 265.222, prevent migration of waste out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(i) The owner or operator of any unit that is required by paragraph (f) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(j) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (g) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range of 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

The Regional Administrator will approve, modify, or disapprove the demonstration of an alternative site-specific action leakage rate within 60 days of its receipt. If the Regional Administrator does not approve the demonstration, the owner or operator may modify the demonstration or submit a new demonstration for approval.

8. Sections 265.221 and 265.222 are amended by redesignating paragraphs (a) and (b) of § 265.222 as paragraphs (k) and (l) of § 265.221, respectively.

9. Section 265.222 is revised to read as follows:

**§ 265.222 Response actions.**

(a) Prior to receipt of waste at the unit, the owner or operator must have a response action plan approved by the Regional Administrator that sets forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the

flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.). The response action plan must be submitted to the Regional Administrator at least 120 days prior to receipt of waste at the unit.

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit:

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s); or

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraphs (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constitutent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constitutent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to considering, the following factors:

(i) The type and amount of hazardous constituents in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementing action of the response action plan;

(iv) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under Section 265.221;

(vi) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing hazardous constituent migration out of the unit in excess of the levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constitutent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response. The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

*(e) Leaks that are less than rapid and extremely large.* (1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request to amend the response action plan within 90 days from the date liquids first exceed the action leakage rate.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground-water monitoring activities; or

(v) The owner or operator maintains current operating procedures;

(3) The response action plan must recommend a specific response option for leakage above the action leakage rate for the unit and indicate why other responses actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constitutent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to considering, the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or actual type and amount if the action leakage rate is exceeded;

(ii) The mobility and migration potential of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review or review of design for deficiency) or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 265.221;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities;

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public,

through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(g) If liquids leaking into the leak detection system specified under § 265.221(g) exceed the action leakage rate for the top liner but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids; and

(3) Implement the plan if it was previously submitted with the plan pursuant to paragraph (e)(1)(i) of this section, or submit an amended response action plan pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constitutent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response.

The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit an amended plan or to implement the response unless the demonstration made under this paragraph successfully shows that the liquid resulted from a source other than top liner leakage, precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under paragraph (h)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an amended plan to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

10. New § 265.224 is added to Subpart k to read as follows:

**§ 265.224 Construction quality assurance.**

Effective 12 months after promulgation of this rule, the owner or operator of each new surface impoundment unit or component constructed at a surface impoundment and listed under § 265.19(b) must conduct a construction quality assurance program in compliance with §§ 265.19 and 265.20.

11. Section 265.226 is amended by revising the section heading and adding new paragraphs (b) and (c) to read as follows:

**§ 265.226 Monitoring and inspection.**

* * * * *

(b) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump daily during the active life (including the closure period) and at least weekly during the post-closure period (if applicable);

(2) Analyze the daily monitoring data during the active life under paragraph (b)(1) of this section on a weekly basis and the weekly monitoring data during the post-closure period under paragraph (b)(1) of this section on a quarterly basis to determine if the action leakage rate under paragraph (j) (1) or (2) of § 265.221 is exceeded under the conditions of paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceed the action leakage rate during the active life or the weekly monitoring data averaged over three months exceeds the action leakage rate during the post-closure period; or

(ii) The daily rate for any one-day period during a week exceeds 50 gallons per acre per day during the active life or the weekly rate for any one-week period during a quarter exceeds 350 gallons per acre per week during the post-closure period; or

(iii) In lieu of the requirements of paragraphs (b)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (j) (1) or (2) of § 265.221 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(c) The owner or operator must record all inspection information required in paragraph (b) of this section in the inspection log required under § 265.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection requirements of §§ 265.221 and 265.222 are being complied with.

12. Section 265.254 is revised to read as follows:

**§ 265.254 Design and operating requirements.**

(a) With respect to waste received from May 8, 1985, until the effective date of this rule, the owner or operator of each new waste pile, each new waste pile at an existing facility, each replacement of an existing waste pile unit, and each lateral expansion of a waste pile unit is subject to the requirements for liners and leachate collection systems or equivalent protection provided in § 264.251 (a) and (b) of this chapter.

(b) With respect to waste received after the effective date of this rule, the owner or operator of each new waste pile, each new waste pile unit at an existing facility, each replacement of an existing waste pile unit, and each lateral expansion of a waste pile unit must install two or more liners and a leachate collection system above and between such liners. The liners and the leachate collection systems must protect human health and the environment. At a minimum, the liners and leachate collection systems must meet the following requirements:

(1) The liners must include:

(i) A top liner designed, operated, and constructed of materials to prevent the migration of any hazardous constituent into such liner during the active life and post-closure care period, and a bottom liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. The bottom liner must be constructed of at least a 3-foot-thick layer of compacted clay or other compacted soil material with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec; or

(ii) A top liner designed, operated, and constructed of materials to prevent the migration of any hazardous constituent into such liner during the active life and post-closure care period, and a bottom liner consisting of two components. The upper component of the bottom liner must be designed, operated, and constructed to prevent the migration of any hazardous constituent into this component during the active life and post-closure care period. The lower component of the bottom liner must be designed, operated, and constructed to minimize the migration of any hazardous constituent through the upper component if a breach in the upper component were to occur prior to the end of the post-closure care period. The lower component must be constructed of compacted soil material with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec.

(2) The liners must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon materials capable of providing support to the liners and resistance to pressure gradients above and below the liners to prevent failure of the liners due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(3) The leachate collection system immediately above the top liner must be designed, constructed, maintained, and operated to collect and remove leachate from the waste pile during the active life and post-closure care period. The Regional Administrator will specify design and operating conditions in the permit to ensure that the leachate depth over the top liner does not exceed 30 cm (1 foot).

(4) The leachate collection system between the liners must be designed, constructed, maintained, and operated to detect, collect, and remove liquids that leak through any area of the top liner during the active life and post-closure care period.

(5) The leachate collection systems must be:

(i) Constructed of materials that are chemically resistant to the waste managed in the waste pile and the leachate expected to be generated and of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and any equipment used at the waste pile; and

(ii) Designed and operated to function without clogging during the active life and post-closure care period.

(c) Paragraph (b) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such waste pile, that alternative design and operating

practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(d) The double liner requirement set forth in paragraph (b) of this section may be waived by the Regional Administrator for any monofill, if:

(1) the monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground water monitoring requirements for facilities with permits under RCRA § 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 265.255(c), that such liquid, waste, or waste constituent originated from another source.

(f) The leak detection system required under paragraph (e) of this section shall be part of the leachate collection system between the liners described under paragraphs (b)(4) and (b)(5) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraphs (b)(4) and (b)(5) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and the drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of $5 \times 10^{-4}$ $m^2$/sec or greater.

(2) Be capable of detecting a leak of no more than 1 gallon per acre per day in the top liner (not including liquids absorbed by the leachate collection system); also, be capable of detecting leakage in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system or bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed so that the leachate flow rate can be determined on a daily basis.

(g) In lieu of the requirements of paragraph (f) of this section, the Regional Administrator may approve an alternative leak detection system if:

(1) The Regional Administrator finds, based on a demonstration by the owner or operator, that there is no potential for migration of hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (c) or (d) of this section; or

(3) The Regional Administrator finds, based on a demonstration by the owner or operator, that an alternative leak detection system or technology will meet the requirements of paragraph (e) of this section. In deciding whether to grant an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 265.255, prevent migration of waste out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(h) The owner or operator of any unit that is required by paragraph (e) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(i) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (f) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range of 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

The Regional Administrator will approve, modify, or disapprove the demonstration of an alternative site-specific action leakage rate within 60 days of its receipt. If the Regional Administrator does not approve the demonstration, the owner or operator may modify the demonstration or submit a new demonstration for approval.

14. New § 265.255 is added to read as follows:

**§ 265.255 Response actions.**

(a) Prior to receipt of waste at the unit, the owner or operator must have a

response action plan approved by the Regional Administrator that sets forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.) The response action plan must be submitted to the Regional Administrator at least 120 days prior to receipt of waste at the unit.

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit:

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s); or

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) The owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraphs (b) (1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constitutent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to considering, the following factors:

(i) The type and amount of hazardous constituents in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementing action of the response action plan;

(iv) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 265.254;

(vi) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator

will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing hazardous constituent migration out of the unit in excess of the levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constitutent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response. The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(e) Leaks that are less than rapid and extremely large.

(1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request to amend the response action plan within 90 days from the date liquids first exceed the action leakage rate.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground-water monitoring activities; or

(v) The owner or operator maintains current operating procedures;

(3) The response action plan must recommend a specific response option for leakage above the action leakage rate for the unit and indicate why other responses actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to considering, the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or actual type and amount if the action leakage rate is exceeded;

(ii) The mobility and migration potential of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review or review of design for deficiency or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 265.221;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities;

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(g) If liquids leaking into the leak detection system specified under § 265.254(f) exceed the action leakage rate for the top liner but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids; and

(3) Implement the plan if it was previously submitted with the plan pursuant to paragraph (e)(1)(i) of this section, or submit an amended response action plan pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of levels above EPA-approved health-based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response.

The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit an amended plan or to implement the response unless the demonstration made under this paragraph successfully shows that the liquid resulted from a source other than top liner leakage, precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under paragraph (h)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an amended plan to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional Administrator's determination under paragraph (h)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile

of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

14. New § 265.259 is added to Subpart L to read as follows:

**§ 265.259 Construction quality assurance.**

Effective 12 months after promulgation of this rule, the owner or operator of each new waste pile unit or component constructed at a waste pile and listed under § 265.19(b) must conduct a construction quality assurance program in compliance with §§ 265.19 and 265.20.

15. New § 265.260 is added to Subpart L to read as follows:

**§ 265.260 Monitoring and inspection.**

(a) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period).

(2) Analyze the daily monitoring data during the active life under paragraph (a)(1) of this section on a weekly basis to determine if the action leakage rate under paragraph (i) (1) or (2) of § 265.254 is exceeded under the conditions of paragraphs (a)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceed the action leakage rate during the active life or the weekly monitoring data averaged over three months exceed the action leakage rate during the post-closure period; or

(ii) The daily rate for any one-day period during a week exceeds 50 gallons per acre per day; or

(iii) In lieu of the requirements of paragraphs (a)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (i) (1) or (2) of § 265.254 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and the post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded; and

(iv) The effectiveness of the bottom liner and leachate detection, collection, and removal system to control leakage below the action leakage rate.

(b) The owner or operator must record all inspection information required in paragraph (a) of this section in the inspection log required under § 265.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection requirements of §§ 265.254 and 265.255 are being complied with.

16. Section 265.278 is revised to read as follows:

**§ 265.278 Unsaturated zone monitoring.**

An owner or operator subject to this subpart must have in writing, and must implement, an unsaturated zone monitoring plan to discharge the following responsibilities:

(a) The owner or operator must monitor the soil and soil-pore liquid to determine at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period whether hazardous constituents migrate out of the treatment zone.

(1) The owner or operator must specify the hazardous constituents to be monitored in the unsaturated zone monitoring plan. Hazardous constituents are constituents identified in Appendix VIII of Part 261 of this chapter that are reasonably expected to be in, or derived from, the waste that is land treated.

(2) The owner or operator may monitor for principal hazardous constituents (PHCs) in lieu of the constituents specified under paragraph (a)(1) of this section. PHCs are hazardous constituents contained in the wastes to be applied at the unit that are the most difficult to treat, considering the combined effects of degradation, transformation, and immobilization. The owner or operator may establish PHCs if he finds, based on waste analyses, treatment demonstrations, or other data, that effective degradation, transformation, or immobilization of the PHCs will assure treatment to at least equivalent levels for the other hazardous constituents in the wastes.

(b) The owner or operator must install an unsaturated zone monitoring system that includes soil monitoring using soil cores and soil-pore liquid monitoring using devices such as lysimeters. The unsaturated zone monitoring system must consist of a sufficient number of sampling points at appropriate locations and depths to yield samples that:

(1) Represent, to at least a 95% confidence level, the quality of background soil-pore liquid quality and the chemical make-up of soil that has not been affected by leakage from the land treatment area; and

(2) Indicate, to at least a 95% confidence level, the quality of soil-pore liquid and the chemical make-up of the soil below the depth to which the waste is incorporated into the soil.

(c) The owner or operator must establish a background value for each hazardous constituent to be monitored under paragraph (a) of this section.

(1) Background soil values may be based on a one-time sampling at a background plot having characteristics similar to those of the treatment area.

(2) Background soil-pore liquid values must be based on at least quarterly sampling for one year at a background plot having characteristics similar to those of the treatment area.

(3) The owner or operator must express all background values in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(4) In taking samples used in the determination of all background values, the owner or operator must use an unsaturated zone monitoring system that complies with paragraph (b)(1) of this section.

(d) The owner or operator must conduct soil monitoring and soil-pore liquid monitoring immediately below the depth to which the waste is incorporated into the soil. The owner or operator must specify the frequency and timing of soil and soil-pore liquid monitoring in the unsaturated zone monitoring plan, based on the frequency, timing, and rate of waste application, and the soil permeability. The owner or operator must express the results of soil and soil-pore liquid monitoring in a form necessary for the determination of statistically significant increases under paragraph (f) of this section.

(e) The owner or operator must use consistent sampling and analysis procedures that are designed to ensure sampling results that provide a reliable indication of soil-pore liquid quality and the chemical make-up of the soil below the treatment area. At a minimum, the owner or operator must implement procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures; and

(4) Chain of custody control.

(f) The owner or operator must determine whether there is a statistically significant change over background values for any hazardous constituent to be monitored under paragraph (a) of this section below the depth to which the waste is incorporated into the soil each time he conducts soil monitoring and soil-pore liquid monitoring under paragraph (d) of this section.

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent, as determined under paragraph (d) of this section, to the background value for that constituent according to a statistical procedure specified in the unsaturated zone monitoring plan.

(2) The owner or operator must determine whether there has been a statistically significant increase below the depth to which the waste is incorporated into the soil within a reasonable time period after completion of sampling.

(3) The owner or operator must determine whether there is a statistically significant increase below the depth to which the waste is incorporated into the soil using a statistical procedure that provides reasonable confidence that migration of hazardous constituents will be identified. The owner or operator must specify in the unsaturated zone monitoring plan a statistical procedure that he finds:

(i) Is appropriate for the distribution of the data used to establish background values; and

(ii) Provides a reasonable balance between the probability of falsely identifying migration from the treatment area and the probability of failing to identify real migration of hazardous constituents.

(g) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the depth to which the waste is incorporated into the soil he must:

(1) Notify the Regional Administrator of this finding in writing within seven days. The notification must indicate what constituents have shown statistically significant increases.

(2) Within 90 days submit to the Regional Administrator for approval a written plan to modify the operating practices at the facility in order to maximize the success of degradation, transformation, or immobilization processes in the treatment area. The Regional Administrator will approve, modify, or disapprove the plan activities as he deems necessary to protect ground water. Such review will be completed within 60 days of its receipt. When reviewing the plan the Regional Administrator may include any additional activities he deems necessary. If the Regional Administrator does not approve the plan, the owner or operator must make modifications or submit a new response action plan for approval within 30 days. The Regional Administrator will approve or modify this plan in writing within 60 days. If the Regional Administrator modifies the plan, this plan becomes the approved plan, and a copy will be provided to the owner or operator.

(h) If the owner or operator determines, pursuant to paragraph (f) of this section, that there is a statistically significant increase of hazardous constituents below the depth to which the waste is incorporated into the soil, he may demonstrate that a source other than the land treatment unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a written plan to modify operating practices under paragraph (g)(2) of this section, he is not relieved of the requirement to submit a written plan to modify operating practices within the time specified in paragraph (g)(2) of this section unless the demonstration made under this paragraph successfully shows that a source other than the land treatment unit caused the increase or that the increase resulted from an error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing within seven days of determining a statistically significant increase below the depth to which the waste is incorporated into the soil that he intends to make a determination under this paragraph;

(2) Within 90 days submit a report to the Regional Administrator demonstrating that a source other than the land treatment unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation;

(3) Within 90 days make any appropriate changes to the unsaturated zone monitoring plan at the facility; and

(4) Continue to monitor in accordance with the unsaturated zone monitoring plan.

(i) The owner or operator must keep at the facility his unsaturated zone monitoring plan, and the rationale used in developing or revising this plan.

(j) Prior to receipt of waste at the unit the owner or operator must have at the facility a response action plan approved by the Regional Administrator that sets forth the actions to be taken immediately following a finding, pursuant to paragraph (f) of this section, of widespread leakage of hazardous constituents below the depth to which the waste is incorporated into the soil. The response action plan for widespread leakage must, at a minimum, include the following information:

(1) A general description of the operation of the unit;

(2) A description of the hazardous constituents contained in the unit;

(3) An assessment of potential causes of widespread leakage of hazardous constituents below the depth to which waste is incorporated into the soil;

(4) A discussion of important factors that can affect leakage of hazardous constituents below the depth to which waste is incorporated into the soil;

(5) A description of major mechanisms that will prevent migration of hazardous constituents below the depth to which waste is incorporated into the soil;

(6) A detailed assessment describing the effectiveness and feasibility of the following responses that the owner or operator may implement for any potential widespread leakage below the depth to which waste is incorporated into the soil.

(i) The owner or operator terminates application of waste and closes the unit; or

(ii) The owner or operator institutes operation changes at the unit that will minimize leakage below the depth to which waste is incorporated into the soil so that the operating conditions are met.

(k) For widespread leakage out of the treatment zone the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days following measurement of widespread leakage. The notification must indicate preliminary identification of hazardous constituents that have been detected, and the extent of the area and depth below the treatment zone where constituents have migrated; and

(2) Immediately implement the response action plan.

(l) The Regional Administrator will approve, modify, or disapprove the response action plan activities as he deems necessary to protect ground water and surface water. Such review will be completed within 60 days of its receipt. When reviewing the response action plan the Regional Administrator may include any additional activities he

deems necessary in the plan. If the Regional Administrator does not approve the response action plan or request for amendment, the owner or operator must make modifications or submit a response action plan for approval within 30 days. The Regional Administrator will approve or modify this response action plan in writing within 60 days. If the Regional Administrator modifies the response action plan, this plan becomes the approved response action plan, and a copy will be provided to the owner or operator.

17. New § 265.283 is added to Subpart M to read as follows:

**§ 265.283 Inspection.**

(a) The owner or operator must establish an inspection program that will allow the determination of the following during the active life and post-closure care period:

(1) The deterioration, malfunction, or improper operation of unsaturated zone monitoring equipment required under § 265.278; and

(2) The effectiveness of additional controls implemented as part of any response action when hazardous constituents that migrate beyond the depth to which the waste is incorporated into the soil statistically exceed background levels.

(b) The owner or operator must record all inspection information required in paragraph (a) of this section in the inspection log required under § 265.15 of this part. The recorded information must be in sufficient detail to demonstrate that the unsaturated zone monitoring requirements are being complied with.

19. Section 265.301 is amended by revising the section heading and adding new paragraphs (f) through (j) to read as follows:

**§ 265.301 Design and operating requirements.**

* * * * *

(f) The owner or operator of any unit for which construction commences after the date of promulgation of this rule must design, construct, operate, and maintain a leak detection system capable of detecting leaks of hazardous constituents at the earliest practicable time over all areas likely to be exposed to waste and leachate during the active life and post-closure care period. Any liquid, waste, or waste constituent migrating into the leak detection system is assumed to originate from liquids leaking through the top liner of the unit unless the Regional Administrator finds, based on a demonstration by the owner or operator under § 265.302(d), that such liquid, waste, or waste constituent originated from another source.

(g) The leak detection system required under paragraph (f) of this section shall be part of the leachate collection system between the liners described under paragraphs (a)(4) and (a)(5) of this section. The leachate collection system between the liners shall, in addition to meeting the requirements of paragraphs (a)(4) and (a)(5) of this section, meet the following requirements for leak detection:

(1) The minimum bottom slope must be 2 percent, and drainage layer material must have the following hydraulic characteristics:

(i) For granular materials, a minimum hydraulic conductivity of 1 cm/sec and a minimum layer thickness of 12 inches; or

(ii) For synthetic drainage layer materials, a hydraulic transmissivity of $5 \times 10^{-4}$ $m^2$/sec or greater.

(2) Be capable of detecting a leak of no more than 1 gallon per acre per day in the top liner (not including liquids absorbed by the leachate collection system); also, be capable of detecting leakage in excess of 1 gallon per acre per day within 1 day after the leak occurs (not including liquids absorbed by the leachate collection system on bottom liner);

(3) Collect and remove liquids rapidly to minimize the head on the bottom liner; and

(4) Include a sump of appropriate size to efficiently collect liquids and prevent liquids from backing up into the drainage layer. Each unit must have its own sump. The design of the sump and removal system must provide a method for measuring and recording the liquid volume present in the sump and liquids removed so that the leachate flow rate can be determined on a daily basis.

(h) In lieu of the requirements of paragraph (g) of this section, the Regional Administrator may approve an alternative leak detection system if:

(1) The Regional Administrator finds, based on a demonstration by the owner or operator, that there is no potential for migration of hazardous constituents from a unit to ground water or surface water during the active life and post-closure care period of the unit; or

(2) The unit complies with the requirements of paragraphs (c) or (d) of this section; or

(3) The Regional Administrator finds, based on a demonstration by the owner or operator, that an alternative leak detection system or technology will meet the requirements of paragraph (f) of this section. In deciding whether to grant an alternative leak detection system or technology, the Regional Administrator will consider:

(i) The durability and effectiveness of the proposed system or technology;

(ii) The nature and quantity of the wastes; and

(iii) The ability of the system or technology to detect leaks and, in combination with response actions to be taken in compliance with § 265.302, prevent migration of waste out of the unit during the active life and post-closure care period so that ground water and surface water are not contaminated.

(i) The owner or operator of any unit that is required by paragraph (f) of this section to have a leak detection system and that is not located completely above the seasonal high water table must demonstrate that the operation of the leak detection system will not be adversely affected by the presence of ground water.

(j) The owner or operator must establish a top liner action leakage rate during the design of the unit for leak detection systems under paragraph (g) of this section. The action leakage rate is determined by:

(1) Using a standard value of (EPA is proposing to select a final value from the range of 5–20 gallons/acre/day); or

(2) A review by the Regional Administrator of an owner or operator demonstration, and a finding by the Regional Administrator, that a site-specific top liner action leakage rate is appropriate for initiating review of the actual leakage rate to determine if a response action is necessary. The site-specific top liner action leakage rate demonstration must be based on allowing only very small isolated leakage through the top liner that does not affect the overall performance of the top liner. In deciding whether to grant a site-specific action leakage rate, the Regional Administrator will consider at least the following factors:

(i) The design, construction, and operation of the top liner and the leachate collection and removal system above the top liner;

(ii) The attenuative capacity and thickness of any soil component of the top liner; and

(iii) All other factors that would influence the potential for leachate to migrate through the top liner.

The Regional Administrator will approve, modify, or disapprove the demonstration of a site-specific action leakage rate within 60 days of its receipt. If the Regional Administrator disapproves the demonstration, the owner or operator may modify the demonstration or submit a new demonstration for approval.

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19. Sections 265.301 and 265.302 are amended by redesignating paragraphs (a), (b), (c), and (d) of § 265.302 as paragraphs (k), (l), (m), and (n) of § 265.301, respectively.

20. Section 265.302 is revised to read as follows:

**§ 265.302 Response actions.**

(a) Prior to receipt of waste at the unit, the owner or operator must have a response action plan approved by the Regional Administrator that sets forth the actions to be taken immediately following a finding of rapid and extremely large volumes of leakage between the liners in accordance with the requirements under paragraph (b) of this section. A rapid and extremely large leak is the maximum design leakage rate that the leachate detection, collection, and removal system can remove under gravity flow conditions without the fluid head on the bottom liner exceeding 1 foot in granular leak detection systems and without the fluid head exceeding the thickness of synthetic leak detection systems. The owner or operator must use an adequate safety margin in determining the rapid and extremely large leak to allow for uncertainties in the design, construction, and operation of the leachate detection, collection, and removal system (e.g., the owner or operator must consider decreases in the flow capacity of the system in time resulting from siltation, creep of synthetic components of the system, etc.) The response action plan must be submitted to the Regional Administrator at least 120 days prior to receipt of waste at the unit.

(b) The response action plan for rapid and extremely large volumes of leakage between the liner must, at a minimum, include the following information:

(1) A general description of the operation of the unit including the expected active life of the unit and whether or not at closure wastes will be decontaminated or removed from the unit or left in place;

(2) A description of the hazardous constituents contained in the unit;

(3) A description of the range of events that may potentially cause rapid and extremely large volumes of leakage into the space between the liners;

(4) A discussion of important factors that can affect leakage into the leachate collection and removal system between the liners (e.g., amount and frequency of precipitation, and amount of liquids in the unit);

(5) A description of major mechanisms that will prevent migration of hazardous constituents out of the unit (e.g., the condition of the liners and leachate collection system between the liners);

(6) A detailed assessment describing the effectiveness and feasibility of each of the following potential immediate interim responses for preventing hazardous constituent migration out of the unit by decreasing the volume of leakage into the leak detection system:

(i) The owner or operator limits or terminates receipt of waste;

(ii) The owner or operator provides expeditious repair of the leak(s); or

(iii) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large.

(7) The plan must also include the response the owner or operator will undertake after determining the concentration of hazardous constituents in the liquids in the sump of the leak detection system in accordance with the requirements under paragraph (c)(3) of this section.

(i) If any hazardous constituent concentrations in the leachate exceed health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for preventing hazardous constituent migration out of the unit:

(A) The owner or operator terminates receipt of waste and closes the unit;

(B) The owner or operator provides expeditious repair of the leak(s);

(C) The owner or operator institutes operational changes at the unit that will minimize leakage into the space between the liners so that the leakage will be less than rapid and extremely large. If as a result of these operational changes the leakage is still above the action leakage rate, the owner or operator must comply with the requirements set forth in paragraph (e) of this section; or

(ii) If all hazardous constituent concentrations in the leachate are below health-based standards, the owner or operator must assess the effectiveness and feasibility of each of the following potential responses for minimizing the head on the bottom liner:

(A) The owner or operator provides expeditious repair of the leak(s); or

(B) the owner or operator institutes operational changes at the unit.

(8) The response action plan must address a range of rapid and extremely large volumes of leakage appropriate for the unit with correlating recommended responses and indicate why other response actions were not chosen. Each response presented must be based on a demonstration incorporating the factors set forth in paragraphs (b)(1) through (7) of this section. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(c)(1) The Regional Administrator will review and approve the response action plan for rapid and extremely large leaks if he determines that such plan prevents to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (c)(1) of this section, the Regional Administrator shall consider, but not be limited to the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners;

(ii) The mobility of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) Condition of the liners and leachate collection and removal system, (e.g., CQA documentation review or review of design for deficiency);

(v) Design of the double liner system, including design features that provide further protection beyond those required under § 265.301;

(vi) Future planned activities, including remaining active life time period, and closure and post-closure care activities; and

(vii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator must also identify additional physical and chemical properties to be tested for.

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(4) The Regional Administrator, as part of his review of the plan (initial), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(d) When there is a rapid and extremely large volume of leakage between the liners the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the rapid and extremely large leakage. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids;

(3) Immediately implement the response action plan; and

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (c)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and at other subsequent time periods as specified by the Regional Administrator. The report must describe the effectiveness of the response action in preventing hazardous constituent migration out of the unit in excess of levels above EPA-approved health board standards for ground water protection. At a minimum, the report must address the factors set forth in paragraph (c)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response. The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(e) Leaks that are less than rapid and extremely large.

(1) The owner or operator is required to prepare and submit to the Regional Administrator a response action plan for leaks that exceed the action leakage rate for the top liner but are less than rapid and extremely large. In order to satisfy this requirement, the owner or operator may either:

(i) Submit a response action plan with the permit application identifying actions to be taken when lower levels of leakage exceed the action leakage rate; or

(ii) Submit to the Regional Administrator a request to amend the response action plan within 90 days from the date liquids first exceed the action leakage rate.

(2) For leakage that exceeds the action leakage rate, the response action plan must, at a minimum, include the information set forth in paragraph (b) (1) to (5) of this section. The owner or operator must also include a detailed assessment describing the effectiveness and feasibility of each of the following responses for preventing hazardous constituent migration out of the unit in excess of health-based standards:

(i) The owner or operator terminates receipt of waste and closes the unit;

(ii) The owner or operator institutes operational changes at the unit that will reduce leakage between the liners to prevent hazardous constituents migration out of the unit;

(iii) The owner or operator provides expeditious repair of the leak(s);

(iv) The owner or operator continues to remove and treat the leakage with increased ground-water monitoring activities; or

(v) The owner or operator maintains current operating procedures.

(3) The response action plan must recommend a specific response action for leakage above the action leakage rate for the unit and indicate why other responses actions were not chosen. The response action plan may address a range of leakage with varying responses. Other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate out of the unit may also be considered in the demonstration.

(f)(1) The Regional Administrator will review and approve the response action plan for leakage less than rapid and extremely large leaks if he determines that such plan prevents, to the extent technically feasible with current technology, hazardous constituent migration out of the unit in excess of EPA-approved health based standards for ground-water protection. If the plan does not prevent hazardous constituent migration out of the unit in levels exceeding the ground-water protection standards, the Regional Administrator shall disapprove such plan.

(2) In making a determination under paragraph (f)(1) of this section, the Regional Administrator shall consider, but not be limited to considering the following factors:

(i) The type and amount of hazardous constituents that may be expected to be present in the leachate between the liners or the actual type and amount if the action leakage rate is exceeded;

(ii) The mobility and migration potential of hazardous constituents in the leachate;

(iii) The degree to which the liquid head on the bottom liner will be minimized by implementation of the response action plan;

(iv) The rate of leakage, if the response action plan is submitted after the action leakage rate is exceeded, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility, accident, or minor leak);

(v) Condition of the liners and leachate collection and removal system (e.g., CQA documentation review,

review of design for deficiency, or review of the unit operating record concerning accidents that have occurred);

(vi) Design of the double liner system, including design features that provide further protection beyond those required under § 265.301;

(vii) Future planned activities, including remaining active life time period, and closure and post-closure care activities;

(viii) Environmental factors, including amount and frequency of precipitation, and whether the unit is located in a highly vulnerable hydrogeological setting.

(3) The Regional Administrator will identify in the response action plan monitoring activities for specific hazardous constituents identified in Appendix VIII of Part 261 of this chapter. Specifically, the Regional Administrator will require the owner or operator to test the liquids in the sump for the leachate detection, collection, and removal system to determine whether specified hazardous constituents are present and their concentration. The Regional Administrator may also identify additional physical and chemical properties to be tested for.

(4) The Regional Administrator, as part of his review of the plan (initial or modified), will provide the public, through a notice in local newspapers, the opportunity to submit written comments on the response action plan and request modifications of the plan within 30 days of the date of the notice. He will also, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the plan. The Regional Administrator will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The Regional Administrator will approve, modify, or disapprove the response action plan within 90 days of its receipt. If the Regional Administrator disapproves the plan he shall provide the owner or operator a detailed written statement of reasons for disapproval. The owner or operator shall modify the plan or submit a new response action plan for approval within 30 days after receiving such written statement. The Regional Administrator will approve or modify the plan within 60 days.

(g) If liquids leaking into the leak detection system specified under § 265.301(g) exceed the action leakage rate for the top liner but are less than rapid and extremely large, the owner or operator must:

(1) Notify the Regional Administrator of this occurrence in writing within seven days of the leakage exceeding the action leakage rate. The notification must preliminarily identify the liquid volumes that have been detected, collected, and removed;

(2) Collect and remove accumulated liquids; and

(3) Implement the plan if it was previously submitted with the plan pursuant to paragraph (e)(1)(i) of this section, or submit an amended response action plan pursuant to paragraph (e)(1)(ii) of this section.

(4) Immediately sample the leachate in the leachate detection, collection, and removal system to determine the quality of the leachate in accordance with the requirements under paragraph (f)(3) of this section. The owner or operator must provide this information to the Regional Administrator at the earliest practicable time. If the owner or operator determines that the leachate exceeds health-based standards he must implement any response action approved in the plan.

(5) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the response action as soon as practicable after the response has been in place for 60 days, and annually thereafter. The report must describe the effectiveness of the response action in preventing, to the extent technically feasible with current technology hazardous constituent migration out of the unit in excess of levels above EPA-approved health based standards for ground-water protection. At a minimum, the report must address the factors set forth in paragraph (f)(2) of this section and any additional information required by the Regional Administrator. The Regional Administrator will review this report to determine whether or not the selected response is preventing hazardous constituent migration out of the unit. If the Regional Administrator determines that the existing response action is not preventing, to the extent technically feasible with current technology, hazardous constituent migration out of the unit, the Regional Administrator will so inform the owner or operator. The owner or operator must then either:

(i) Implement alternative responses for the rate of leakage, if the approved response action plan contains such alternatives; or

(ii) Amend the response action plan if the approved response action plan does not contain an alternative response. The owner or operator must submit a modification plan to the Regional Administrator within 60 days. At a minimum such modification must address information set forth in paragraph (b) of this section as well as the rate of leakage, including the likelihood of any increase, and the cause of the leakage (e.g., liner incompatibility or an accident). The plan will be processed in accordance with the procedure under paragraph (c)(4) of this section.

(h) If the owner or operator determines that the top liner action leakage rate is being exceeded, he may demonstrate for leakage less than rapid and extremely large that the liquid resulted from an error in sampling, analysis, or evaluation, precipitation during construction, or a source other than leakage through the top liner. While the owner or operator may make a demonstration under this paragraph in addition to submitting an application under paragraph (e) of this section, he is not relieved of the requirement to submit an amended plan or to implement the response unless the demonstration made under this paragraph successfully shows that the liquid resulted from a source other than top liner leakage, precipitation during construction, or error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(1) Notify the Regional Administrator in writing as soon as practicable, that he intends to make a demonstration under this paragraph;

(2) Within 90 days of notifying the Regional Administrator under paragraph (h)(1) of this section, submit a report to the Regional Administrator that demonstrates that the liquid resulted from a source other than top liner leakage or that the apparent noncompliance with the standards resulted from precipitation during construction, or error in sampling, analysis, or evaluation. The Regional Administrator shall review the demonstration and notify the applicant as to whether or not such a determination is successful. The applicant has 45 days to comment on such a determination. The Regional Administrator shall respond to those comments and make a final decision on the applicant's demonstration.

(3) If the Regional Administrator approves the demonstration in paragraph (h)(2) of this section, then the owner or operator must submit an amended plan to the Regional Administrator to make any appropriate changes to the response action plan for the unit within 90 days of the Regional

Administrator's determination under paragraph (b)(2) of this section.

(i) Within 45 days of detecting a significant change in the leakage rate, the owner or operator must submit to the Regional Administrator a report on the leakage that includes the following information:

(1) An assessment of the problem causing the leak that includes a profile of liquid quantity collected and removed versus time, and characterization of changes in the rate of top liner leakage;

(2) A description of any change in the response to be implemented as approved in the response action plan;

(3) A schedule for implementation; and

(4) Other information that the owner or operator deems appropriate to fully describe the response that will be implemented.

21. New § 265.303 is added to Subpart N to read as follows:

**§ 265.303 Monitoring and inspection.**

(a) An owner or operator required to have a leak detection system under this subpart must:

(1) Monitor for and record on a daily basis the presence of liquids in the leak detection system removal sump during the active life (including the closure period) and at least weekly during the post-closure period (if applicable);

(2) Analyze the daily monitoring data during the active life under paragraph (a)(1) of this section on a weekly basis and the weekly monitoring data during the post-closure period under paragraph (a)(1) of this section on a quarterly basis to determine if the action leakage rate under paragraph (j) (1) or (2) of § 265.301 is exceeded under the conditions of paragraphs (a)(2) (i), (ii), or (iii) of this section:

(i) The daily monitoring data averaged over one month exceeds the action leakage rate during the active life or the weekly monitoring data averaged over three months exceed the action leakage rate during the post-closure period; or

(ii) The daily rate for any one-day period during a week exceed 50 gallons per acre per day during the active life or the weekly rate for any one-week period during a quarter exceeds 350 gallons per acre per week during the post-closure period; or

(iii) In lieu of the requirements of paragraphs (a)(2) (i) and (ii) of this section, the Regional Administrator may specify in the permit an alternative method for determining if the action leakage rate under paragraph (j) (1) or (2) of § 265.301 is exceeded.

(3) Establish a monitoring and inspection program that will allow the determination of the following throughout the active life and post-closure care period:

(i) The rate of leakage into the leak detection system sump, and the removal rate;

(ii) The deterioration, malfunction, or improper operation of the leak detection system;

(iii) The effectiveness of additional controls implemented as part of a response action plan when the action leakage rate of the top liner is exceeded;

(iv) The effectiveness of the bottom liner and secondary leachate detection, collection, and removal system to control leakage below the action leakage rate; and

(b) The owner or operator must record all inspection information required in paragraph (a) of this section in the inspection log required under § 265.15 of this part. The recorded information must be in sufficient detail to demonstrate that the leak detection requirements of §§ 265.301 and 265.302 are being complied with.

22. New § 265.304 is added to Subpart N to read as follows:

**§ 265.304 Construction quality assurance.**

Effective 12 months after promulgation of this rule, the owner or operator of each new landfill unit or component constructed at a landfill and listed under § 265.19(b) must conduct a construction quality assurance program in compliance with §§ 265.19 and 265.20.

23. Section 265.310 is amended by adding a new paragraph (b)(5) to read as follows:

**§ 265.310 Closure and post-closure care.**

* * * * *

(b) * * *

(5) Maintain and monitor the leak detection system in accordance with §§ 265.301 (f) and (g), 265.303 (a) and (b), and comply with all other applicable leak detection requirements of this subpart.

## PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: Sections 1006, 2002, 3004, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6924, 6925, 6927, and 6974).

2. Section 270.17 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 270.17 Specific Part B information requirements for surface impoundments.**

* * * * *

(b) Detailed plans and an engineering report describing how the surface impoundment is or will be designed, constructed, operated, and maintained to meet the requirements of §§ 264.221 and 264.222. This submission must address the following items as specified in §§ 264.221 and 264.222:

(1)(i) The liner system (except for an existing portion of a surface impoundment), if the surface impoundment must meet the requirements of § 264.221(a) of this chapter. If an exemption from the requirement for a liner is sought as provided by § 264.221(b) of this chapter, submit detailed plans and engineering and hydrogeological reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner system and the leachate collection and removal system, if the surface impoundment must meet the requirements of § 264.221(c) of this chapter. If an exemption from the requirements for double liners and a leachate collection and removal system is sought as provided by § 264.221 (d), (e), or (f) of this chapter, submit appropriate information;

(iii) The leak detection system, if the surface impoundment must meet the requirements of § 264.221(g) of this chapter. If approval of an alternative leak detection system is sought as provided by § 264.221(i) of this chapter or the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(2) Prevention of overtopping; and

(3) Structural integrity of dikes;

(4) Determine if whether a granular or synthetic media meets the minimum requirements of § 264.221(h)(1) (i) and (ii) owner or operators must provide results from hydraulic conductivity tests conducted on saturated samples of the drainage media supporting the value used in the design.

(c) A description of how each surface impoundment, including the double liner system, leachate detection, collection, and removal system, cover systems, and appurtenances for control of overtopping, will be inspected in order to meet the requirements of § 264.226 (a), (c), and (e). This information should

be included in the inspection plan submitted under § 270.14(b)(5);

* * * * *

3. Section 270.18 is amended by revising paragraphs (c) and (d) to read as follows:

**§ 270.18 Specific Part B information requirements for waste piles.**

* * * * *

(c) Detailed plans and an engineered report describing how the waste pile is or will be designed, constructed, operated, and maintained to meet the requirements of §§ 264.251 and 264.252. This submission must address the following items as specified in §§ 264.251 and 264.252:

(1)(i) The liner system (except for an existing portion of a waste pile), if the waste pile must meet the requirements of § 264.251(a) of this chapter. If an exemption from the requirement for a liner is sought as provided by § 264.251(b) of this chapter, submit detailed plans and engineering and hydrogeological reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner system and the leachate collection and removal system, if the waste pile must meet the requirements of § 264.251(c) of this chapter. If an exemption from the requirements for double liners and a leachate collection and removal system is sought as provided by § 264.251 (d), (e), or (f) of this chapter, submit appropriate information;

(iii) The leak detection system, if the waste pile must meet the requirements of § 264.251(g) of this chapter. If approval of an alternate leak detection system is sought as provided by § 264.251(i) of this chapter or the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding units associated with run-on and run-off control systems;

(5) Control of wind dispersal of particulate matter where applicable;

(6) Determine if whether a granular or synthetic media meets the minimum requirements of § 264.251(h)(1) (i) and (ii) owner or operators must provide results from hydraulic conductivity tests conducted on saturated samples of the drainage media supporting the value used in the design.

(d) A description of how each waste pile, including the double liner system, leachate detection, collection, and removal systems, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.254 (a), (b), and (d). This information should be included in the inspection plan submitted under § 270.14(b)(5).

* * * * *

4. Section 270.20 is amended by adding new paragraphs (j) and (k) to read as follows:

**§ 270.20 Specific Part B information requirements for land treatment facilities.**

* * * * *

(j) A response action plan that meets the requirements of § 264.278(i).

(k) A description of how each land treatment unit will be inspected in order to meet the requirements of § 264.284.

5. Section 270.21 is amended by removing paragraph (c) and redesignating paragraphs (d), (e), (f), (g), (h), (i), and (j) as (c), (d), (e), (f), (g), (h), and (i), respectively.

6. Section 270.21 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 270.21 Specific Part B information requirements for landfills.**

* * * * *

(b) Detailed plans and an engineering report describing how the landfill is or will be designed, constructed, operated, and maintained to meet the requirements of §§ 264.301 and 264.302. This submission must address the following items as specified in §§ 264.301 and 264.302:

(1)(i) The liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of § 264.301(a) of this chapter. If an exemption from the requirement for a liner is sought as provided by § 264.301(b) of this chapter, submit detailed plans and engineering and hydrogeological reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

(ii) The double liner system and the leachate collection and removal system, if the landfill must meet the requirements of § 264.301(c) of this chapter. If an exemption from the requirements for double liners and a leachate collection and removal system is sought as provided by § 264.301 (d), (e), or (f) of this chapter, submit appropriate information;

(iii) The leak detection system, if the landfill must meet the requirements of § 264.301(g) of this chapter. If approval of an alternative leak detection system is sought as provided by § 264.301(i) of this chapter or the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;

(2) Control of run-on;

(3) Control of run-off;

(4) Management of collection and holding facilities associated with run-on and run-off control systems; and

(5) Control of wind dispersal of particulate matter, where applicable;

(6) Determine if whether a granular or synthetic media meets the minimum requirements of § 264.301(h)(1) (i) and (ii) owner or operators must provide results from hydraulic conductivity tests conducted on saturated samples of the drainage media supporting the value used in the design.

(c) A description of how each landfill, including the double liner system, leachate detection, collection, and removal systems, and cover systems, will be inspected in order to meet the requirements of § 264.303 (a), (b), and (d). This information should be included in the inspection plan submitted under § 270.14(b)(5).

* * * * *

7. Section 270.41(a)(5) is amended by adding new paragraphs (ix) and (x):

**§ 270.41 Major modification or revocation and reissuance of permits.**

(ix) When modification of a construction quality assurance plan is required under § 264.20(e)(ii).

(x) When modification of a response action plan is required under §§ 264.222, 264.252, 264.278(k) and 264.302.

* * * * *

(a) * * *

(5) * * *

## PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a) and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

2. Section 271.1(j) is amended by adding the following entry to Table 1 in

chronological order by date of publication:

**§ 271.1 Purpose and scope.**

* * * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

| Promulgation date | Title of regulation | Federal Register reference | Effective date |
|---|---|---|---|
| * | * | * | * |
| [Insert date of publication]. | Liner and Leak Detection Rule. | 52 FR [Insert Federal Register Page Numbers]. | There are three (3) effective dates corresponding to various provisions of the proposal, i.e. 6 months, 12 months, and 24 months after publication of the final rule. The specific provisions are listed below with their corresponding effective dates: § 264.15 (b)(1) and (b)(4)—12 months. § 264.19 and § 264.20—12 months. § 264.73(b)(6)—6 months. § 264.117(a)(1)(ii)—6 months. § 264.118 (b)(1) and (b)(2)(ii)—6 months. § 264.221 (c) and (f)—24 months. § 264.221 (g), (h), (i), (j), (k) and (l)—6 months. § 264.222—6 months. § 264.223—12 months. § 264.228 (c), (d), and (e)—6 months. § 264.229(b)(4)—6 months. § 264.251 (a), (c), (d), (e), (f), (g), (h), (i), (j), and (k)—6 months. § 264.252—6 months. § 264.253—6 months. § 264.254 (b), (c), and (d)—6 months. § 264.278 (a), (b)(1), (b)(2), (d), (i), (j), and (k)—6 months. § 264.284—6 months. § 264.301 (c), (f), (g), (h), (i), (j), and (k)—6 months. § 264.302—6 months. § 264.303 (b), (c), and (d)—6 months. § 264.304—12 months. § 264.310(b)(6)—6 months. § 265.15 (b)(1) and (b)(4)—12 months. § 265.19 and § 265.20—12 months. § 265.73(b)(6)—6 months. § 265.117(a)(1)(ii)—6 months. § 265.118 (c)(1) and (c)(2)(ii)—6 months. § 265.221 (f), (g), (h), (i), and (j)—6 months. § 265.222—6 months. § 265.224—12 months. § 265.225 (b) and (c)—6 months. § 265.254 (a), (b), (c), (d), (e), (f), (g), (h), and (i)—6 months. § 265.255—6 months. § 265.258—12 months. § 265.260—6 months. § 265.278 (a), (b), (c), (d), (e), (g), (h), (i), (j), and (l)—6 months. § 265.280—6 months. § 265.301 (f), (g), (h), (i), and (j)—6 months. § 265.302—6 months. § 265.304—12 months. § 265.310—6 months. § 270.17 (b)(1)(i) and (b)(1)(ii)—24 months. § 270.17(b)(1)(iii)—6 months. § 270.17 (b)(2), (b)(3), (b)(4), and (c)—24 months. § 270.18 (c)(1)(i) and (c)(1)(ii)—24 months. § 270.18(c)(1)(iii)—6 months. § 270.10 (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), and (d)—24 months. § 270.20 (j) and (k)—6 months. § 270.21 (b)(1)(i), and (b)(1)(ii)—24 months. § 270.21(b)(1)(iii)—6 months. § 270.2 (b)(7), (b)(3), (b)(4), (b)(5), (b)(6), and (c)—24 months. § 270.41(iii)—12 months. |

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

| Promulgation date | Title of regulation | Federal Register reference | Effective date |
|---|---|---|---|

[FR Doc. 87-11416 Filed 5-28-87; 8:45 am]
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Part III

# Department of Energy

## Federal Energy Regulatory Commission

**18 CFR Parts 2 and 380**

**Regulations Implementing the National Environmental Policy Act of 1969; Notice of Proposed Rulemaking**

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 380

[Docket No. RM87-15-000]

Regulations Implementing the National Environmental Policy Act of 1969

May 14, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations that govern the collection, evaluation, and dissemination of environmental information. The proposed regulations would replace and elaborate on existing Commission regulations under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and adopt many of the NEPA regulations promulgated by the Council on Environmental Quality, 40 CFR Parts 1500–1508, as amended.

DATE: Written comments on this proposed rule must be filed with the Commission by July 28, 1987.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lynn S. Lichtenstein, 825 North Capitol St. NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

## I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations that govern the collection, evaluation, and dissemination of environmental information about Commission actions, including any actions relating to non-Federal projects within the Commission's jurisdiction, as provided in the Department of Energy Organization Act, Natural Gas Act, Federal Power Act, the Public Utility Regulatory Policies Act of 1978, the Natural Gas Policy Act of 1978, and the Interstate Commerce Act. The proposed regulations would replace and elaborate on existing Commission regulations under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, and adopt many of the NEPA regulations promulgated by the Council on Environmental Quality, 40 CFR Parts 1500–1508, as amended.

## II. Background

Section 102(2)(C) of NEPA provides in part that all Federal agencies must include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement on—

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) Alternatives to the proposed action;

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

(v) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented.

Section 102(2) of NEPA also requires that if agency planning and decisionmaking may affect the human environment, the agency should utilize a systematic, interdisciplinary approach to the natural and social sciences and the environmental design arts to protect unquantified environmental amenities. NEPA also requires that an agency consult with other Federal agencies with jurisdiction by law or special expertise when preparing an environmental statement, now commonly known as an Environmental Impact Statement.

On December 18, 1972, the Federal Power Commission, predecessor to the Federal Energy Regulatory Commission, issued Order No. 415–C to comply with the NEPA mandate that Federal agencies preserve the natural, cultural, historic, aesthetic, and biologic environments by requiring calculation and reporting of the probable environmental impact of Federal actions and programs and by prescribing any available means for preventing or mitigating environmental damage. This order was codified at 18 CFR 2.80 through 2.82. Appendices to these sections described information to be supplied by applicants.

On November 29, 1978, the Council on Environmental Quality (CEQ) published in the Federal Register its regulations implementing section 102(2) of the NEPA, 40 CFR Part 1500–1508. The CEQ regulations consist of processes for agency cooperation in researching and solving environmental problems and provide methods of writing Environmental Impact Statements and Environmental Assessments, receiving comments, developing records of decision, and handling information.

The Commission issued a Notice of Proposed Rulemaking in RM 79–69–000 on August 20, 1979.[1] The Commission proposed to adopt by reference many CEQ provisions and set forth detailed procedures to implement and elaborate on the policies and procedures of the CEQ. Since that time, there have been many changes in Commission regulations, such as the advent of blanket certificate applications in the gas area. In addition, new statutes have been added to those the Commission administers such as the Natural Gas Policy Act of 1978 and the Electric Consumer Protection Act of 1986. Overall, however, Commission practice in the years since the NOPR was issued has essentially coincided with the procedures set forth in the CEQ regulations.

As the Commission's procedures for environmental analysis have largely followed these provisions, the Commission believes it desirable to continue and broaden the approach it took in its original proposal. Thus, the Commission here again proposes to adopt or implement most of the CEQ regulations. At the same time, it is also proposing provisions that will, in effect, modify or clarify some of those regulations in tailoring them to the Commission's proceedings. These provisions have to do with specific Commission practices such as its hearing process.

The Commission is reproposing the regulation rather than issuing it as a final rule due to the lapse of time and the changes in Commission jurisdiction since the NOPR was published. Interested persons should have another opportunity to comment in view of these changes and with the benefit of the eight additional years of experience with Commission implementation of NEPA.

## III. Discussion

### *1. General*

In 1979, in its original proposal, the Commission proposed to adopt the bulk of the regulations issued by CEQ to implement § 102(2) of the National Environmental Policy Act. Most of the deviations from the CEQ regulations concerned "form more than substance." 44 FR 50052, 50054 (August 27, 1979). With the benefit of its experience since that proposal, the Commission now again proposes to follow the same approach, that is, adopting most of the CEQ provisions, with some modifications and additions designed to

[1] 44 FR 50052 (August 27, 1979). The Commission is proposing to terminate this docket and incorporate the record in docket RM 87–15–000.

facilitate Commission responsibilities and practice.

Subpart A of proposed Part 380 expresses the Commission's general approach to implementing NEPA and its goals. With certain specific exceptions, discussed in Section IV, below, the Commission proposes in this subpart to adopt the operative provisions of the CEQ regulations. Exceptions are specified in § 380.3. The Commission proposes to follow the CEQ procedures concerning early and efficient review of environmental issues, public notice and participation, scoping, interagency cooperation, comments, and timing of decision on proposals.

The current proposal retains, for the most part, those parts of the original NOPR that deal with the EA/EIS process and lead and cooperating agencies (Part 1501); comments procedures (Part 1503); the record of decision in cases requiring an EIS and implementation (Part 1505); and the definition of terms (Part 1508). In addition, the current proposal adopts most of Part 1508, which includes limitations on actions, public involvement, and the timing of agency action; and portions of Part 1507, mainly agency capability to comply.

The rulemaking would revoke the Commission's existing NEPA regulations and Appendix A and retain Appendix B which specifies the components of an Environmental Report for certain projects under the Natural Gas Act. That Appendix would be transferred to new Part 380, the NEPA regulations. Appendix B would be retitled Appendix A and amended to eliminate the so-called "abbreviated report" whereby an applicant was allowed to make a showing that a project had no significant environmental impact and thus avoid filing an ER. (See discussion under section 3 below, Environmental Information.)

The CEQ regulations provide for a consideration of Cumulative environmental impacts. Cumulative impact is defined in 40 CFR 1508.7 as "the impact which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . . ." Actions have a significant effect on the environment if they have a cumulatively significant impact on the environment. (40 CFR 1508.27(b)(7).) In determining the scope of an EIS, actions which, when viewed cumulatively, could have significant impacts, should be studied together. (40 CFR 1508.25.) Environmental Impact Statements must include a consideration of the cumulative impact of an action. (40 CFR 1502.16 and 1508.8 and proposed § 380.8(g).) Environmental Assessments must also evaluate the potential for cumulative impacts. (40 CFR 1508.8 and 1508.9.)

Section 380.3(a) of the proposed rule would adopt specified portions of the CEQ regulation, 40 CFR Parts 1500–1508. The Commission believes that several interpretive clarifications are necessary and appropriate with regard to the adoption of certain of the specified portions of those CEQ regulations. First, § 1508.7 defines the term "cumulative impact" and several sections apply that term, including for example § 1508.25(a)(2) Scope ("Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement") and § 1508.27(b)(10) Significantly ("Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment"). Currently, when the Commission reviews comments and other available information to determine the cumulative adverse environmental impacts on target resources from the construction and operation of two or more pending hydroelectric projects at sites on a given waterway or in a given basin, and when there is such a potential, the Commission proceeds to perform an EA on those projects to determine whether the licensing action is a major federal action significantly affecting the human environment. Where the Commission determines that there is not such a reasonable potential, the Commission proceeds to consider the individual projects in accordance with the applicable requirements of NEPA. The Commission has utilized this general approach with a series of waterways and basins, leading to multi-project EIS's for the Ohio River Basin, the Upper Snake River, the Owens River, the Snohomish River, and the Salmon River, as well as individual project reviews pursuant to NEPA where multi-project EIS's were not determined necessary. The Commission believes that this general approach under current practice satisfies the letter and the spirit of the several cited sections of the CEQ regulations addressing cumulative impact.

Second, § 1508.2, Elimination of Duplication with State and Local Procedures, addresses potential action to minimize or eliminate such duplication. As discussed above, the FPA (as amended by the Electric Consumer Protection Act of 1986) now specifies certain procedures for the participation by states and specified state agencies in the licensing process and the consideration by the Commission of specified state comprehensive plans. The Commission believes that these new statutory mandates in the licensing process under the Electric Consumer Protection Act of 1986 establish requirements which will address, in part, the objectives of § 1508.2. Consequently, the Commission would intend to apply the statutory provisions under the 1986 Act, where applicable, to satisfy the requirements of § 1508.2 upon its adoption by § 380.3(a) of the proposed rule.

Third, as a general matter, the Commission would intend, of course, to apply to provisions of any section of the CEQ regulations adopted in whole or in part by § 380.3 of the proposed rule with any appropriate interpretation or in any necessary manner to be consistent with any applicable statutory requirement contained in the several organic statutes providing the Commission's independent regulatory authority, such as the Department of Energy Organization Act, the Natural Gas Act, the Natural Gas Policy Act, the Federal Power Act, the Interstate Commerce Act, and the Public Utility Regulatory Policies Act. In that regard, the Commission is satisfied that the adoption of the specified sections of the CEQ regulations in whole or in part by § 380.3 of the proposed rule has the intended legal effect of adopting the current rules and their interpretation as specified in § 380.3. The Commission certainly would intend to review subsequently and consider separately any future amendments or later interpretations of the specified CEQ regulations and where appropriate the Commission would propose any amendments to the proposed rule it concludes are necessary to implement fully the letter and the spirit of the National Environmental Policy Act.

Some comments to the 1979 NOPR raised issues of significance for the overall rulemaking. A few contended that the Commission's existing NEPA regulations (§§ 2.80–2.82) were workable and preferable to the proposed new regulations. They claimed that regulations that are styled after the CEQ guidelines will produce more paperwork, regulatory delays, and costs to consumers, without corresponding improvement in decisionmaking. The Commission here again proposes to adopt the bulk of the CEQ regulations because those regulations articulate the environmental review process used in most Federal agencies and are designed to enhance Federal decisionmaking. In addition, the Commission has come to use most of these procedures since the original Notice of Proposed Rulemaking was published in this proceeding. The

Commission believes that major paper work would not be increased by the currently proposed regulations as most of the information they require or reference must be submitted under current procedures.

Several comments dealt with the Commission's method of adopting the CEQ regulations. One commenter stated that the incorporation of several sections of the CEQ regulations by reference was confusing, was redundant, and would result in contradictions. For example, many of the adopted sections referred to provisions that were not proposed for adoption. The Commission agrees and has revised the proposed regulation to avoid this problem. The sections that are adopted, implemented, and modified are specifically stated. References to sections not adopted have been removed. For further clarity, the Commission intends to recodify the sections of the CEQ regulations it is adopting in the final rule. In the event that it does so, references to "agencies" throughout those regulations will be replaced by "the Commission" or "the agency."

Another commenter stated that the proposed regulations violated CEQ mandates not to paraphrase CEQ regulations, to use the same sequence of procedures as CEQ, not to quote CEQ verbatim, and to cross-reference relevant sections to the CEQ regulations. The Commission believes that the regulations, as reproposed here, no longer involve paraphrasing and verbatim quotation. Most are simply adopted, and the remaining portions either implement specific CEQ regulations or provide for particular Commission practices. Where appropriate, these sections are cross-referenced to CEQ regulations.

It was suggested that the Commission create separate provisions for each category of action within its jurisdiction, which provisions would specify when the NEPA process begins and describe each decision point, the nature of what is decided at each decision point, and what data and analysis is required at each point. Since Commission "actions" under NEPA involve primarily regulatory decisions on numerous, diverse applications by non-Federal entities, it was felt that implementation of this proposal would necessitate an extremely lengthy and complex set of regulations. The reproposed rule thus deals with these issues generically. Proposed § 380.7 identifies decision points that are relevant for most actions within Commission jurisdiction. Other portions of the CEQ regulations also describe the NEPA process, especially 40 CFR 1506.10, which states when decisions on proposals may be made.

A number of comments focused on various aspects of the NEPA process. One commenter suggested that the initial notice of a filed application contain staff's recommendation on the need for an EA or EIS. The usual environmental analysis needs are now proposed in §§ 380.4-380.6. Where a particular action requires a level of environmental analysis different from that generally provided for that type of action, more time may be needed to make that determination.

One commenter questioned whether proposed § 3d.12(b)(2), stating that staff would determine whether a particular action required an EA or EIS, was consistent with the general category of environmental review in which that type of action had been placed. Although this language has been eliminated from the current proposal, the Commission does not believe these provisions are inconsistent. Even though certain types of actions have been proposed for inclusion in the categorical exclusion class because they usually have minimal or no effect, the Commission or staff may determine that a particular case may be a major Federal action significantly affecting the human environment and that the applicant should therefore file an ER. The staff may also determine, based on an ER or other information, that an action that usually requires only an EA will, in that instance, necessitate preparation of an EIS. Conversely, an action that would usually require an EIS under the proposed rule may exhibit characteristics that suggest it might not be a major Federal action. This would warrant preparation of an EA to ascertain the real need for an EIS for that action.

While the arrangement of all actions into these general classes of review under §§ 380.4, 380.5, and 380.6 would give applicants some guidance useful in estimating processing time for applications and would reduce the burden on the Commission of preparing environmental documents for certain actions, it would not relieve the Commission of the responsibility of evaluating projects to decide whether they may have significant environmental effects. Moreover, the requirements of the Endangered Species Act, the National Historic Preservation Act, and the Coastal Zone Management Act and other statutes are separate from NEPA requirements and must still be addressed for categorically excluded projects. Therefore, the Commission has added clarifying wording to the original proposal (in section 3d.12(a)(1)) identifying the applicant's responsibility to supply the staff with the information necessary to discharge the Commission's responsibilities under NEPA. (Proposed § 380.8(a)(2).) The Commission and staff would evaluate all information submitted and the actions proposed in accordance with § 380.6(b) to confirm that the level of environmental analysis was appropriate.

One commenter requested that the rulemaking define "major Federal action significantly affecting the quality of the human environment." The elements of that term of art are contained in the CEQ regulations that are now proposed to be adopted by the Commission. (*See* 40 CFR 1508.14, 1508.18, and 1508.27.)

One commenter indicated its support for Commission use of a "third party contractor" procedure for EIS's, such as that utilized by the EPA (*See* 40 CFR 6.510(b)(3)(1986)). Under such a procedure, a contractor selected and approved by the agency is authorized to prepare a one-step EIS without the customary preparation of an ER by the applicant. Such a procedure is authorized under 40 CFR 1506.5(c). The Commission has used it occasionally and may do so in the future.

*2. Environmental Decisionmaking*

a. Agency Consideration of Environmental Issues

The proposed regulations implement §§ 1505.1(b)–(e) and 1502.9(c)(3) of the CEQ regulations. Section 380.7 would commit the Commission to addressing environmental considerations at appropriate major decision points in its decisionmaking processes. It pledges that relevant environmental documents will accompany a proposal through agency review processes, will be part of the record in rulemaking, and will accompany proposed rules. The documents may also be admissible in evidence in trial-type proceedings. Finally, it states that alternatives considered by the Commission will include alternatives described in the environmental documents.

The Commission prefers not to establish time limits within which it must decide whether a project is a major Federal action significantly affecting the quality of the human environment. The time required to prepare an EA may very considerably, depending on the sufficiency of the initial application and the complexity of the project or action proposed. The CEQ regulations do not

require specific deadlines with respect to this kind of NEPA decision.

The Commission proposes to adopt § 1505.2 of the CEQ regulations, Record of decision in cases requiring environmental impact statement, with one modification. The record of decision, both for applications to the Commission and issuance of rules, is a Commission Order. Pursuant to § 1505.2 (a) and (b), an order memorializing a decision for which an EIS is required would contain a statement of the decision and identify the alternatives considered, specifying the one or ones considered to be environmentally preferable and the factors balanced in making the decision. In addition, the order would state whether all practicable means to avoid or minimize environmental harm from the alternatives chosen had been adopted and, if not why not. Finally, the Commission may include a monitoring and enforcement program in the order for any mitigation. (40 CFR 1505.2(c) as modified by proposed § 380.5(b).)

The Commission believes that the requirements of § 1505.2 could be satisfied by either including relevant sections of the EIS in its order or incorporating them by reference in the order. The Commission notes that this is in keeping with CEQ regulations that encourage combining environmental documents with agency documents and the use of incorporation by reference to reduce paperwork and delay. (40 CFR 1500.4, 1500.5, and 1502.4.)

b. Prohibition Against Actions

The original proposal stated that the Commission would not undertake or permit any step which would have an adverse environmental impact or restrict the choice of reasonable alternatives until the EA/EIS process is completed and a decision issued. The intent and language of § 1506.1 of the CEQ regulations, here proposed for adoption, is the same.

In accordance with § 1506.1 of the CEQ regulations, the previously proposed rule prohibited any steps toward completion of a proposed action which could either foreclose viable alternatives to the proposed action or cause an adverse environmental impact until the EA/EIS process was concluded. (*See* § 3d.12(a)(2)(vi).)

One commenter contended that the Commission has no authority to declare unlawful acts that are otherwise lawful. The Commission could disapprove an application that proposed to undertake an action or project within the Commission's jurisdiction, but, according to the commenter, it was powerless to prohibit an applicant from performing nonjurisdictional actions that might have been in furtherance of the proposed project. The commenter cites as an example construction activities adjacent to hydroelectric project lands; such activity may adversely affect the public interest, but the Commission, it stated, has no jurisdiction over the activity pursuant to the Federal Power Act or NEPA.

The Commission can act directly or indirectly to enjoin or otherwise stop unauthorized activities directly related to a project or action within its jurisdiction. Under section 7(c) of the Natural Gas Act, a natural gas company may not, *inter alia*, construct facilities prior to Commission authorization. The Commission views the beginning of construction as any clearing or grading of potential rights-of-way or sites or stringing of pipeline. The Commission may bring an action to enjoin such activity under section 20 of the NGA or otherwise seek to enforce compliance with the Act. Under section 23 of the Federal Power Act, it is unlawful for any person to construct or operate a hydroelectric project without a license. The Commission may enjoin these actions under section 314 of the FPA or otherwise seek compliance with the Act. (*See also* sections 315 and 316, FPA.) In addition, persons who violate terms or conditions of licenses, permits, or exemptions or who do not comply with Commission rules and regulations and certain orders under the Federal Power Act face civil penalties and, following a compliance order, revocation. [Electric Consumer Protection Act of 1986, Pub. L. 99-495, sec. 12, 100 Stat. 1243, 1255-1257 (1986).)

Moreover, since ultimate approval of the project is the Commission's to give, any applicant that takes steps to further an unapproved project or action and in the process endangers the environment and contravenes the purposes of NEPA, does so at its financial peril because the Commission may withhold or condition its approval. Any argument made by an applicant that its project should be approved because of prior expenditures of funds or resources would be disregarded by the Commission in making its decision on the merits of the proposal. Thus, a step taken by an applicant toward completion of a proposed action may affect the treatment given the relevant certificate or license application.

The Commission discourages and may seek to prohibit any steps taken in furtherance of a project before completion of the EA/EIS process, if such a step would affect the environment adversely or foreclose any reasonable alternative. It thus proposes to adopt the CEQ regulation at 40 CFR 1506.1.

Another commenter expressed a desire to be able to take steps that the commenter believed would have no environmental impact, regardless of the alternatives that may be foreclosed, contingent on a favorable Commission decision on the application. The Commission believes that any positive steps in furtherance of an action that forecloses alternatives are in derogation of the NEPA process since no action is also an alternative. The Commission may be unable to prohibit all steps from proceeding in conjunction with environmental review but, as noted above, without Commission authorization an applicant may be facing enforcement actions and putting its investment at risk.

Two commenting utilities requested that the Commission's regulations expand on § 1501.6 of the CEQ regulations concerning cooperating agencies in order to permit such agencies to make final decisions on a project, conditioned on the later development of a final EIS by the lead agency. Section 1501.6 encourages interagency cooperation, and the Commission again proposes to follow these CEQ procedures. The CEQ provisions do not permit actions to be approved and embarked upon by any agency or party until the NEPA process is completed. This principle, completion of the process prior to final approval, is of central importance to the fulfillment of the NEPA mandate. The Commission declines, therefore, to follow these commenters' suggestions.

c. Timing of Decisions

The Commission proposes here to adopt 40 CFR 1506.10. This section specifies minimum time periods for decisions on proposed actions—90 days after publication of notice of a draft EIS and 30 days after publication of notice of a final EIS. The 30 day time period may be waived in rulemaking and a decision on a final rule may be published simultaneously with the notice of availability of an FEIS. In addition, under this provision, the Commission could publish notice of availability of a final EIS at the time it issues its final decision on the application itself in cases where the right to a rehearing is afforded the public, that is, in cases involving applications. 40 CFR 1506.10(b). The timing provisions, § 3d.13(f) and (j) in the original version, were the same except that they did not allow decisions and notices of FEIS's for applications to be issued simultaneously.

One commenter proposed that the time limits of § 1506.10 of the CEQ regulations, now proposed to be adopted, which prescribe a minimum amount of time that the Commission may allow between the preparation of certain documents and the ultimate Commission decision on the project or action, should also represent the maximum time period. The time limits provided in that section conform to existing Commission procedures and, of course, the CEQ regulations. These timing provisions are designed to afford the public a minimum period during which it can avail itself of review and comment. They are not designed to be time limits on environmental analysis.

d. Application Denials

The Commission has addressed the circumstances in which applications are not granted in several sections of the proposed regulations. First, an application may be rejected or dismissed. The Commission may reject or dismiss an application for a number of reasons, including failure to comply with Commission rules and regulations, failure to provide sufficient information, and failure to prosecute the application in a timely manner. The Commission believes that in these cases, its actions are merely procedural. It is functioning to keep business before it moving in an orderly manner rather than making substantive decisions regarding projects. Rejection of an application is included in the Categorical Exclusions category, proposed § 380.6(a)(1). No environmental review is necessary if an application is rejected because the applicant has not placed a *bona fide* proposal before the Commission which merits environmental analysis. Rejections were included in the previously proposed Categorical Exclusions section, § 3d.11(a)(1).

Second, the Commission may deny an application after a consideration of the merits of the application. These occasions were not addressed in the previous NOPR. The Commission may deny an application because of one or more nonenvironmental factors. For example, a project may be uneconomical or unsafe. There would be no reason to conduct an environmental review for a project which cannot be built or maintained due to lack of funds or unacceptable risks to life or health. Therefore, if based on a review of the merits the Commission finds that a project is not viable, the Commission believes it may deny the application without environmental study, as put forward in proposed § 380.7(e).

The Commission may perform an EA for a project, either because it is required in proposed § 380.4 or because the staff or Commission believe one is warranted (§ 380.6(b)), which shows that the project will have significant adverse environmental impacts and that measures in mitigation are either non-existent or impractical. In such a situation, the Commission, if appropriate, can determine to deny the proposal on the merits under its substantive statutory authority. Further environmental study would be unwarranted.

The purpose of NEPA and the CEQ regulations is to examine the environmental effects of actions and projects proposed by applicants. In an application is not approved and a project is not built, there is no need for further study. Accordingly, the Commission is proposing to deny applications without doing an EIS in these circumstances because it is not required. "A court may only order [preparation of an EIS] if it finds that the project may have a significant effect on the human environment." *Fritiofson v. Alexander*, 772 F.2d 1225, 1248 (5th Cir. 1985). (*See also, Cabinet Mountains/ Scotchman's Peak Grizzly Bears v. Peterson*, 685 F.2d 678, 682 (D.C. Cir. 1982). "NEPA's EIS requirement is governed by the rule of reason . . . and an EIS must be prepared only when significant environmental impacts will occur as a result of the proposed action." If the proposal is disapproved based on an EA, an EIS should not be performed because there will be no significant effects on the environment since the status quo is not changed. However, if the Commission does perform an EA which shows that a project would have significant adverse environmental effects, but the Commission has not determined to disapprove the project, an EIS would be prepared.

In the record of decision (Commission order), the Commission will provide its reasons for its determination not to do an EIS. The Commission believes that performing an EA and providing its conclusions on the record, satisfies the requirements of NEPA. *Rhone-Poulenc, Inc., etc. v. F.D.A.*, 636 F.2d 750, 754–755 (D.C. Cir. 1980).

Of course, any decision made by the Commission or its designee on an application must be supported by substantial evidence. (Section 313(a), Federal Power Act and section 19(b), Natural Gas Act.) Thus, Commission orders and decisions in matters set for hearing must be based on evidence which will meet this standard. The Commission believes that an EA, even without an EIS, may in appropriate circumstances constitute substantial evidence sufficient to meet the requirements of the Federal Power Act and the Natural Gas Act. The Commission may grant an application after performing an EA if the EA shows that there would be no significant adverse environmental impact. In like manner, the Commission may deny an application on the basis of an EA which showed there would be significant adverse environmental impact from the proposed project.

If the Commission denies an application without performing an EA and the denial may result in a change in the status quo, it will examine whether or not the environmental effects will be significant. If, upon examination of the effects of a denial where the status quo is changed, the Commission believes that the denial would not have significant effects, it will set forth the factual considerations underlying its conclusion. *Arizona Public Service Company v. Federal Power Commission*, 490 F.2d 783, 783–785 (D.C. Cir. 1974).

*3. Environmental Information*

In accordance with the CEQ regulations (§ 1506.5(a)) proposed § 380.8 sets forth, either directly or by reference, the types of environmental information that would have to be supplied by applicants. The type of information varies with the scope and complexity of the project. If an EA or EIS is required for a proposed action or project, a non-Federal applicant must submit an Environmental Report (ER). The Commission also proposes in § 380.8(a)(3), that environmental information may be required for projects that do not normally require an EA or an EIS and are not included in § 380.6(a)(24) or (28). In addition, applicants could be required under § 380.8(b) to conduct studies which would be necessary or relevant to determine the impact of their proposal and would be required to consult with government agencies during the planning stages of the proposed action.

Current Appendix A has served an increasingly limited role as the Commission has revised its hydropower project licensing procedures to vary the ER requirements according to the type of project application. Specific ER requirements for these projects can now be found in Part 4 of this chapter. This Appendix would thus be eliminated.

Appendix B, which would be transferred to this part from existing Part 2 of the regulations and retitled Appendix A, would now apply to all gas projects for which an EA or EIS would be done except prior notice filings under

§ 157.206. The revised Appendix B would no longer permit "abbreviated reports" under which an applicant could show its project has no significant environmental effect and thus avoid filing a report. The previous proposal contained almost identical provisions except that it also retained current Appendix A.

As stated above, the existing NEPA provisions in Part 2 of the Commission's regulations contain two appendices detailing the format of an applicant's ER to the Commission, one each for hydroelectric and gas projects. Nine commenters favored retention of the so-called "abbreviated reports" in those appendices because they permit applicants for Commission authorization to make a showing that a proposed action will not have a significant environmental impact. Such a showing, if accepted by the Commission, would theroretically terminate any further environmental review of the action. Commenters reasoned that elimination of this provision would increase the burden on utilities and add to processing delays at the Commission. Commission staff would still have the ability, it was argued, to determine the sufficiency of the applicant's argument.

The Commission does not believe that the abbreviated reports formerly permitted in Appendices A and B are commensurate with the purposes of the proposed new NEPA regulations. The Commission prefers that the environmental information submitted by any applicant conform to the requirements that pertain to the type of project for which authorization is sought and that that information be evaluated by its staff. (Appendix A has, in any event, been superseded by the ER requirements in Part 4 of this chapter.) The Commission, therefore, again proposes to revoke the abbreviated report provisions now contained in Appendices A and B.

One commenter argued that proposed § 3d.12(c), content of an ER for specific proposals, now § 380.8(c)(1), required some reorganization, primarily to establish less burdensome environmental reporting requirements for various post-licensing actions relating to water power projects. ER requirements for hydropower projects are now quite specific. Applicants for the amendment or surrender of a license are now subject to the ER requirements of 18 CFR 4.201 (b) and (c). Where amendments involve a new facility with a total installed capacity of 1.5 MW or less or a constructed facility with a total installed capacity of 5 MW or less, only a short-form ER pursuant to § 4.61(d) is required. The commenter contended that an applicant should be permitted to tailor a simplified ER to suit the proposed action. The Commission believes that the short-form ER in § 4.61(d) achieves this purpose. As previously stated, every ER should be commensurate with the scope of the proposed action.

According to one comment, the ER provisions for amendments to a license (§ 3d.12(c)(1)(iii)) did not make clear which type of ER should be submitted for such amendments as sales and leases of land or grants of easements solely for telephone lines, pipelines, or recreation facilities. The Commission's experience indicates that use of project lands for such purposes will normally have so little environmental impact that no ER is necessary. A categorical exclusion, § 380.6(a)(19), has been added to describe a variety of authorized uses of project lands that would not require an EA or EIS under the reproposed regulations.

The ER requirements for all projects proposed pursuant to section 7 of the Natural Gas Act (formerly applicable only to section 7(c)), currently Appendix B, contain information requests which, in the opinion of one commenter, would not coincide with the proposed EIS format and would not otherwise lead to better decisionmaking. The Commission now proposes to use the EIS format shown in proposed § 380.9, which is the format contained in the CEQ regulation at 40 CFR 1502.10 with some modifications. The information requested in Appendix B in the provision entitled "Components to an Environmental Report" is relevant and important to the preparation of an EIS. The requirements in Appendix B can provide much of the data on which the judgments and assessments of an EIS must be based. The information that would be provided under Appendix B for natural gas projects would be used in the preparation of each relevant EIS and EA. (Appendix B would become Appendix A in this proposal.)

Several commenters stated that the provision, now proposed at § 380.8(b)(2), which required an applicant to make "any" studies that staff considers necessary or relevant to determine the environmental impact of the proposal, was too vague and open-ended. Commenters requested a definition or description of the studies that may be required under this provision. The Commission staff currently has this authority under 18 CFR 2.82, Appendix B to 2.82, and 157.14(b). The Commission believes the staff needs latitude to determine what additional information that is not contained in an application is necessary for a sound decision on environmental issues. Because there are innumerable site-specific variables, the Commission believes it is not possible to provide a comprehensive definition or description of such studies.

The commenter also requested establishment of a firm deadline for requesting further environmental studies. The Commission staff is encouraged to act expeditiously to obtain all necessary information that may not be provided in an initial application. The Commission believes, however, the time at which data requests are sent to applicants for environmental studies or other necessary information may vary, depending on the nature or complexity of the application and the workload of the Commission staff. It would thus be difficult to establish hard and fast deadlines.

All commenters agreed that the studies requested by the staff must be necessary and relevant to the environmental determinations. Two commenters indicated that the consultation requirements (now in proposed § 380.8(b)(3)) were unrealistic and burdensome. It was argued that applicants cannot identify all environmental impacts before submitting an application, even with the assistance of Federal, state, and local agencies. The commenters contended that the consultation process would delay applications and result in poor quality work, partly because agencies would not act or respond to consultation requests until an application has actually been filed with the Commission.

The Commission believes that pre-application consultation by applicants on environmental issues greatly facilitates both the processing of the application and the consultation required of the Commission under section 102(2)(C) of NEPA. Revisions in the Commission's hydropower project regulations, for example, provide for such pre-application consultation. (*See, for example,* 18 CFR 4.38.) Another example is that applicants for new licenses under section 15 of the Federal Power Act are required to consult with fish and wildlife agencies two years before expiration of an existing license. (Electric Consumer Protection Act of 1986, Pub. L. No. 99–495, section 4, 100 Stat. 1243, 1246 (1986).)

Such requirements permit the applicant to summarize its attempts to consult with an agency if it proves impossible to obtain advice from the agency within a reasonable time. Proposed § 380.8(b)(3) would not impose

any procedural requirements for consultation; nor does it mandate that an applicant wait indefinitely until an agency acts before submitting an application. The provision merely requires a good faith effort. The Commission believes the applicant that incorporates the information and advice supplied by agencies in its ER benefits from pre-application consultation because it assists in expediting Commission decision-making.

Proposed § 380.8(b)(4) would require that an applicant submit applications for all related Federal and state approvals as early as possible in planning its project or action. Some commenters believe this requirement to be unrealistic because other agencies will wait for the Commission to issue a license before taking any action. It is also argued that the provision forces an applicant to get state approval before filing an application, with duplication of effort and conflicts of law as a result. The Commission emphasizes that this provision does not require approval by a state or Federal agency where otherwise not required by law. The Commission merely prefers that, if other federal or state approvals are required, the applicant apply to that agency in the early planning stages. The objective of the provision is to facilitate early identification and review of environmental problems. It does not hold in abeyance the applicant's ability to submit an application or the Commission's power to process the application.

One commenter contends that the requirement in proposed § 380.8(b)(5) that the applicant notify the Commission staff of all other Federal actions required for completion of the proposed action or project was unnecessary and conflicted with the Commision's obligation under § 1501.2 of the CEQ regulations to advise the applicant. The authorization of a project within the Commission's jurisdiction is a joint effort of the Commission, the applicant, and any other agency that may have approval authority, special expertise, or some other interest in the project. The Commission wants to be fully apprised of any Federal actions that could delay approval and development of a proposed action or project. The Commission's familiarity with the procedures and requirements of other agencies is extensive, but it is not exhaustive. Since the applicant will be primarily responsible for apprising itself of all governmental requirements that affect its proposal, the Commission believes this requirement is not burdensome.

*4. Environmental Documents*

Section 380.9 proposes the format for EIS's that is used by the staff. It is substantially similar to that in 40 CFR 1502.10. It does not, however, include an index or an abstract, and it adds staff conclusions to the document. The EIS as previously proposed, § 3d.21, contained the same subjects, but had separate chapters for the environmental impacts of the proposed action and analysis of alternatives.

Several commenters addressed issues relating to the content of an EIS and the procedures for the development, circulation, and approval of an EIS. One commenter indicated that former § 3d.13(d) (here replaced by proposed 40 CFR 1506.3) that permitted adoption of an EIS prepared by another Federal agency, could result in the exclusion of interested parties from the EIS process because any adopted EIS that covered actions that were substantially similar to the action proposed to the Commission would not be recirculated, except possibly as a final EIS. One aim of both CEQ and Commission NEPA regulations is to minimize duplication and excess paper work. Presumably, if the actions are substantially similar, interested parties have already participated in the NEPA process. In any event, the Commission recognizes its responsibilities to parties in its own proceedings, and would provide opportunity for comment when the factual base or conclusions of another agency's EIS indicated the need for further review. The Commission might supplement the adopted EIS in that case.

Commenters argue that the proposed separation of the EIS sections that deal with the impact of the proposed action from the analysis of alternatives to the proposed action would predispose the decisionmaker toward the applicant's proposal. The EPA contended that an EIS should give equal attention to all alternatives, including the proposal. In addition, the Sierra Club, believing that format changes proposed by the Commission were substantial, stated that the Commission's failure to adopt certain CEQ provisions on the content of an EIS went beyond mere alteration of the format.

The Commission agrees with the commenters that equal and substantial attention should be given to all reasonable alternatives to a proposed project. It proposes here to adopt § 1502.14(b), which requires an agency to devote substantial treatment to all alternatives including the proposed action, and § 1502.14(c), which requires consideration of reasonable non-jurisdictional alternatives. The Commission nevertheless notes that it generally analyzes the proposals of others and decides between the alternatives of approving or disapproving an action or project.

Although the Commission does not agree that the EIS format proposed in the original NOPR would have dictated Commission decisionmaking and predisposed the Commission to certain conclusions, in the reproposed rule the proposed action and alternatives to it would be presented in one section of the EIS and all alternatives, including the proposed action, would be analyzed together. (*See* § 380.9(e).) In addition, one request that the EIS format include discussion of energy requirements and conservation potentials of the alternatives to the proposed action would be accommodated by the adoption of 40 CFR 1502.16(e) as proposed here.

The Commission does not agree with the comment that concluded that proposed § 3d.10(a)(5) (alternatives to be considered) limited Commission consideration to those alternatives mentioned in an EIS to the exclusion of record evidence in a hearing. That provision is replaced here by § 380.7(b)(2). The Commission believes that hearings would not normally range beyond the alternatives presented in an EIS but, if they did, the Commission would usually prepare a supplement to the EIS. Section 1502.9(c)(1)(ii) of the CEQ regulations provides for such a practice and the Commission proposes to follow that practice.

One commenter requested clarification of the evidentiary basis for utilizing an EIS prepared by another Federal agency under what is now 40 CFR 1506.3, adoption [of another agency's EIS]. If the EIS that the Commission wishes to adopt is in draft form, the Commission would specify that it is a draft at the time it is circulated for comment. When adopting an EIS in draft or final form, the Commission would independently review the document to ensure that comments and suggestions are satisfied. In the event that issues contained in the EIS in another agency are contested, the Commission could use expert testimony that is competent and credible to support it.

An EIS may be prepared by a consultant. One commenter recommends that such consultant be certifiably free of any interest as an intervenor in a contested proceeding. The Commission, as a matter of course, evaluates consultants for conflicts of interest. In addition, § 1506.5(c) of the CEQ regulations, here proposed for

adoption, requires contractors to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

*5. Classification of Actions*

In Subpart B, the Commission proposes to implement the CEQ regulations (*see* § 1507.3(b)(2)) by establishing classes of actions which normally require an Environemental Assessment, an Environmental Impact Statement, or neither of these (the Categorical Exclusions class). The Commission notes that actions which would not usually be the subject of environmental analysis, those in proposed § 380.6 (a), may become so if the Commission or the staff believe such analysis is warranted. (*See* § 380.6(b). In like manner, actions which normally require an EIS may be found not to do so in particular circumstances. § 380.5 (b) and (c).

Most comments dealt at length with the kind of actions or projects that should require an EA or an EIS and which kinds of actions should be excluded from these levels of environmental analysis. Nearly all categories of actions in proposed § 3d.10 (b) and (c) and § 3d.11 were identified by commenters as candidates for greater or lesser environmental review within the NEPA process. As a result of the comments and further staff review, some of the actions have been described more precisely and the level of environmental review for some actions has been changed.

a. Environmental Assessments

Section 380.4 identifies actions the Commission believes may constitute major Federal actions that significantly affect the quality of the human environment. The EA enables the staff to consider the effects of these actions in an efficient manner and to decide whether they may be significant. If an action will have a significant effect on the quality of the human environment, an EIS will be performed as long as the project may be approved. If the EA indicates a project will not have significant environmental impact, including instances where mitigating measures are responsible for the lack of adverse impact, the Commission will make a Finding of No Significant Impact. Where an EA shows a project has significant adverse consequences and the project is not approved, the Commission is proposing not to perform an EIS. The Commission believes that an EIS is not required in these circumstances. (Proposed §§ 380.5(c) and 380.7(e)(1).) (*See* discussion above under 2.d, Application denials.)

There are several proposed additions to the Environmental Assessment class (§ 380.4). Prior notice filings under § 157.208 by blanket certificate holders for gas projects that exceed automatically authorized dollar amounts have been added. (*See* § 380.4(b)). These projects are thought to be of sufficient magnitude to warrant environmental study. They were not part of the Commission's regulations at the time the previous NOPR was issued. An EA would also be done for the construction of LNG peaks having facilities, (§ 380.4(a)); for exemptions for small hydroelectric power projects of 5 MW or less (§ 380.4(h)); and for additional project works at licensed projects (§ 380.4(i)). Applications for new licenses under section 15 of the Federal Power Act would receive an Environmental Assessment under § 380.4(k).[3]

An EA (rather than an EIS) would be done for major unconstructed hydropower projects with a total installed capacity of 20 MW or less. The same is true for onshore/offshore pipelines other than those involving major construction on right-of-way where there is no existing pipeline.

There have also been some modifications of actions in this class. Only curtailments having a major effect on an entire pipeline system would usually have an EA (§ 380.4(e)), and only some abandonments or reductions of natural gas service (§ 380.4(c)) as opposed to all of these actions, as previously proposed.

Surrender of hydropower project licenses and minor amendments to licensed and exempted hydroelectic project facilities, would no longer require an EA. Nor would exemptions for small conduit hydroelectric facilities.

With respect to all of the actions listed in § 380.4, the Commission emphasizes that an EA should be commensurate with the scope of the actual project under study. Some of the actions and projects are obviously more extensive than others. By requiring an ER and an EA under this section, the Commission will have an opportunity to determine which projects or actions may create problems for the environment, without imposing an undue burden on applicants or creating unreasonable delays.

Two commenters contended that applicants should be permitted to prepare an EA, with Commission staff independently evaluating it. Section 1506.5(b) of the CEQ regulations, proposed for adoption here, permits agencies to allow applicants to prepare an EA. At the same time, however, it requires the agency to make its own evaluation of the environmental issues and be responsible for the scope and content of the Environmental Assessment. The Commission believes that an independent evaluation by its staff would generally consume an amount of time and resources equal to preparation of an EA and that preparation of environmental documents by parties with a vested interest in Commission approval is undesirable. Thus, while it proposes to adopt § 1506.5(b), Commission practice would continue to be preparation of EA's by its staff and not by applicants.

The Sierra Club understood proposed § 3d.20(b), staff determination of whether to prepare an EIS after completion of an EA, to indicate that the Commission would, in an EA, determine the significance of an action or project on the basis of its magnitude, including the extent of Commission control or influence over the proposed action. As the commenter pointed out, it is the significance of the environmental impact that determines whether the Commission will prepare an EIS. The magnitude of a project is, of course, relevant to any EA determination, but the originally proposed provision placed undue emphasis on it. In any event, the Commission believes the standards for assessing whether projects not classified or those over which there is some doubt are major Federal actions significantly affecting the quality of the human environment are sufficiently detailed in the definitions proposed to be adopted. (*See* 40 CFR 1508.18 and 1508.27.) It has thus deleted former § 3d.20(b).

Under the previously proposed rule, a variety of actions normally required the preparation of an EA by the Commission, based in part on the information submitted by the applicant in its ER. Several commenters advocated the removal of many of these actions from the EA category to the categorical exclusion category (now under § 380.6).

One commenter suggested that proposed § 3d.10(b)(1) (construction and abandonment of gas facilities) should apply only to "significant" construction and "major" abandonment of various

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[3] In Confederated Tribes and Bands of the Yakima Indian Nation, v. F.E.R.C., 746 F. 2d 466 (9th Cir. 1984), the court held that the Commission unreasonably failed to prepare an EIS in the relicensing proceeding involved there. The Commission believes that performance of an Environmental Assessment would enable it to determine whether an EIS is necessary or whether there would be no significant impact on the environment for applications for relicensing.

gas facilities. The Commission believes that, in general, construction and abandonment of gas facilities are the kinds of actions which may have significant effects on the quality of the human environment. It believes that, for the most part, they should be retained in the EA category. The decision to evaluate such actions is based on the Commission's experience and understanding of such projects or actions and its estimation of the likelihood of environmental damage. For example, the environmental significance of the construction of a metering facility will depend more on its location, in a wetlands area, for example, than on its size or cost.

Several commenters favored categorical exclusions for the certification for sale or transportation of natural gas and for natural gas curtailment plans. Where the Commission believes these actions may significantly affect the quality of the human environment, it has retained the requirement that an EA be prepared in the current proposed regulation. Actions which the Commission does not believe will have significant effects on the human environment have been placed in the categorical exclusions class. Such actions are gas curtailment plans that do not have a major effect on an entire pipeline system (proposed § 380.6(a)(25)) and the sale, exchange, and transportation of natural gas that does not involve construction of facilities. (Proposed § 380.6(a)(27).) These actions are believed to have minimal effects on the environment.

The provision that required an EA for abandonment or reduction of natural gas service, originally § 3d.10(b)(3), has been modified. Abandonment of service is now proposed for the Categorical Exclusion Class. Abandonments in place of minor natural gas pipelines and by removal of minor surface facilities and abandonments pursuant to blanket certificates are also proposed for the Categorical Exclusions class. (*See* proposed § 380.6(a)(21), (28), and (29).)

There have also been some additions proposed for the EA category for natural gas projects. Onshore and offshore pipeline projects that do not involve major construction on right-of-way where there is no existing natural gas pipeline would now require an EA instead of an EIS. Liquefied natural gas peakshaving facilities have been added to the types of gas projects that would require an EA. (*See* proposed § 380.4(a).)

Some commenters also recommended the categorical exclusion of hydroelectric projects or actions described in previously proposed § 3d.10(b) (6) through (10), licensing of minor hydroelectric projects and major hydroelectric projects—existing dams, surrender and modification of licenses, and exemptions for small conduit hydroelectric facilities. The Commission has reviewed the comments and believes that retention of the EA requirements for the licensing actions is desirable. (Proposed § 380.6(f).) Hydroelectric projects, "with less than 5mW of installed capacity" though small, may have a significant impact on their environs. (Based on its experience with such projects, the Commission requires from applicants a small, streamlined ER such as that under § 4.61(d)(2) of its regulations.) It is difficult to anticipate the nature of the impact of any particular action. The EA requirements would provide the Commission with the opportunity to make a threshold determination about the need for more extensive study.

Section 3d.10(b)(8) dealt with actions for which some commenters doubted the need for any environmental review—the surrender of hydropower project licenses and modifications in project facilities, operations, or boundaries. The Commission believes that such actions may represent a lesser threat to the environment than some of the other actions in original § 3d.10(b). Thus, these actions have been proposed for the categorical exclusions category. (*See* proposed § 380.6(a)(13).) Applicants for surrender or amendment of hydroelectric project licenses must still file an ER, however. The ER is commensurate with the size of the project. *See* § 4.1 of this chapter.

The Commission realizes that some of these actions may have a significant impact. Surrender of a license involving a small project may require monitoring of the clean-up, safety conditions, and any possible threats to health. Modifications of a project or the way in which it operates may result in major changes in land or water use that the Commission must evaluate. In appropriate circumstances, the Commission would do an EA or EIS for such a project pursuant to proposed § 380.6(b).

Section 3d.10(b)(9) dealt with exemptions for small conduit hydroelectric facilities. The Commission agrees with the commenters that these actions will not normally involve a significant impact on the human environment. The facilities involve man-made conduits with an installed capacity of 15 MW or less. The facilities are not part of a dam and do not rely on the construction of dams. Thus, these actions are proposed here as part of the categorical exclusions class. (*See* proposed § 380.6(a)(14).) Again, however, application for such an exemption requires the filing of an ER under § 4.92(e) of this chapter.

The Commission proposes to retain licenses for transmission lines in the EA category. This requirement pertains to both construction of such lines and maintenance of existing lines. The Commission believes an ER and an EA are appropriate when licensing constructed lines because maintenance of rights-of-way has continuing impacts on the environment. The Commission would require an ER under § 380.8(c)(1) in accordance with the requirements of § 4.71 of this chapter. For constructed lines and those to be connected to a licensed hydroelectric project with an installed generating capacity of 5 MW or less, this would be a short-form ER under § 4.61(d)(2).

The EA requirement for electrical interconnections and wheeling under four sections of the Federal Power Act, now described in § 380.4(1), was originally proposed only for such actions that would entail "substantial new construction." Definition of this term was requested. In the reproposed rule, in an interconnection or wheeling transaction conducted pursuant to the enumerated sections of the Federal Power Act involves the construction of a new substation or expansion of an old one, or a new transmission line that operates at more than 115 kilovolts (KV) and meets certain other specified criteria, an EA would be required. Language has been added at § 380.6(a)(17) of the reproposed rule setting forth which such actions would not require an EA. The Commission would obtain sufficient information on interconnection and wheeling projects that are categorically excluded to require an EA where appropriate.

b. Environmental Impact Statements

Section 380.5(a) contains projects or actions that the Commission believes are normally major Federal actions that significantly affect the quality of the human environment. Commission staff may decide that a particular project or action that would ordinarily require an EIS may not, for some reason, be such a major Federal action. In that case, an EA would first be prepared to ascertain the need for an EIS. In most cases, however, it is proposed that preparation of an EIS would automatically follow application for authorization for any liquefied natural gas import/export facility, a major pipeline project on right-of-way where there is no existing natural gas pipeline, a new gas storage field, or a new unconstructed

hydroelectric power project with a total installed capacity of more than 20 MW.

The Commission is proposing to add certificate applications to develop underground natural gas storage facilities (except where depleted oil or natural gas producing fields are used) to the actions that would require an EIS. (Proposed §380.5(a)(2).) Only major pipeline construction projects utilizing right-of-way where there is no existing natural gas pipelines are proposed to require an EIS, however, rather than all major new onshore/offshore gas pipeline projects. Other pipeline projects would receive an EA. Unconstructed hydroelectric projects with a total installed capacity of more than 20 MW are proposed in the EIS class rather than all major unconstructed hydroelectric projects. Other unconstructed hydroelectric projects would receive an EA.

The Commission believes that where a pipeline has already been constructed the significant effects on the environment have generally already taken placed. Any new construction in the same right-of-way as the existing pipeline is much less likely to have significant effects. It is thus proposing here to perform an EA rather than an EIS for projects to be built on existing right-of-way with constructed pipeline. An EIS will be performed for major pipeline projects to be built on new right-of-way or on existing right-of-way without constructed pipeline.

The Commission has reviewed the EIS's it has done for applications for hydroelectric project licenses from approximately 1972 to the beginning of 1987. Of a total of 46 EIS's, only 12, about 26 percent, involved projects with a total installed generating capacity of 20 MW or less. The Commission concludes, therefore, that in the vast majority of applications for which an EIS will be performed, the generating capacity will exceed 20 MW. It has thus used this criterion in defining applications for which it will usually perform EIS's.

Commenters argue that the original proposed regulation would create confusion about when an EIS must be prepared because it would require (in § 1502.5(b) and (c)) an EIS earlier than the Supreme Court appears to do in *Aberdeen and Rockfish Railroad Company v. SCRAP.*[3] In *SCRAP II*, with regard to an application by a non-Federal party, the Supreme Court stated "... the time at which the agency must prepare the final statement is the time at which it makes a recommendation or report on a proposal for federal action." [4] Section 1502.5(b) states that an EA or EIS shall be commenced "no later than immediately after [an] application is received." Section 1502.5(c) states that for adjudication, a final EIS "shall normally precede the final staff recommendation" and that portion of the hearing relating to the impact study. The CEQ regulations at issue here were promulgated in 1978, subsequent to *SCRAP II*. The Commission does not believe they contradict *SCRAP II*. Preparing a final EIS and making a recommendation on a proposal are lengthy processes and commonly proceed simultaneously. Section 1502.5(b) merely provides that environmental study should be begun as soon as possible, and definitely when an application is received by the agency. The recommendation or report process would begin at the same time. Section 1502.5(c) addresses the needs of adjudication. Adjudication must be based on evidence, and if the agency has not completed the NEPA process, it may not yet have decided upon its evidence and may not be ready to proceed to trial. The Commission's current practice is to prepare an Environmental Assessment (EA) or an EIS as early as possible in its proceedings, so that such documents are available for hearings and contested cases. This would continue to be Commission practice under Part 380. The Commission does not believe *SCRAP II* creates any inconsistency with practice.

One commenter stated that the word "major" in proposed § 3d.10(c)(2), that described new onshore/offshore natural gas pipeline projects requiring EIS's (now § 380.5(a)(3)), should be defined according to Commission precedent. Such projects, it was argued, have little environmental impact and an EIS is therefore unnecessary. The Commission does not believe that onshore/offshore pipeline projects are likely to have minimal environmental impact. The potential threat to sea life and freshwater swamps makes environmental review advisable for such projects. However, such a pipeline project may not always be as hazardous to its environment as the other types of actions described in § 380.5(a). Experience indicates that some onshore/offshore projects should have an EIS. While there do not appear to be any convenient engineering or environmental criteria for drawing a "bright line" distinction between "major" and non-major pipeline projects, the industry must be aware that pipeline projects involving extensive construction or sensitive environmental areas will almost certainly require an EIS. Moreover, there is no difference in ER filing requirements for pipeline projects receiving an EIS and those receiving an EA. (*See* § 380.8(a)(1) and (c)(2)(i).)

c. Categorical Exclusions

Under § 380.6(a), various actions and projects of non-Federal applicants and many actions or functions performed by the Commission itself are proposed as not normally constituting major federal actions significantly affecting the quality of the human environment. This would not, however, foreclose environmental review if unusual circumstances indicated that any of the actions presumed not to cause any significant direct or indirect environmental impact might, in fact, have such effects. (*See* § 380.6(b).)

The Categorical Exclusions section (§ 380.6(a)), has undergone some revision since the previous NOPR. Three sections have been deleted: § 3d.11(a)(12), (15), and (23), review or approval of study proposals required by a license or preliminary permit for a hydroelectric project, water resource appraisal studies and plans for displacement of fuel oil by natural gas. Number 12, study proposals, is part of the preliminary permit process. Water resource appraisal studies, number 15, are no longer prepared. Number 23, displacement of fuel oil by natural gas, is no longer monitored by the Commission.

There are a number of additions proposed for the Categorical Exclusions section. These actions, it is felt, have minor or no adverse effects on the environment. The first is the establishment of fees to be paid by an applicant under section 30(c) of the Federal Power Act. (Proposed § 380.6(a)(11).) Other additions in the hydroelectric area are the surrender of hydroelectric licenses, preliminary permits, and exemptions; amendments to licenses, preliminary permits, and exemptions, except amendments for additional project works (§ 380.6(a)(13)); and exemptions for small conduit hydroelectric facilities (§ 380.6(a)(14)). Similarly, changes in land rights for water power project lands for utilities, small structures, erosion measures, and some other uses have also been proposed for inclusion in § 380.6(a). (*See* proposed § 380.6(a)(10).) (These actions were discussed in the Environmental Assessments section, 5.a above.)

[3] 422 U.S. 289, 95 S. Ct. 2336 (1975) [SCRAP II].

[4] *Id.* at 2356.

Exemptions for hydroelectric and gas projects are proposed to be added to several types of procedural actions that were previously categorically excluded. These include withdrawals of applications (§ 380.6(a)(10)) and approval of filings made in compliance with certificates, preliminary permits, exemptions, and licenses (§ 380.6(a)(30)). Transfers of exemptions under Part I of the FPA are also proposed to be excluded. (*See* § 380.6(a)(6).)

Electrical connections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act where there is no new substation, no line operating at more than 115 KV on more than 10 miles of right-of-way, and no new line on more than one mile of new right-of-way are also proposed as categorical exclusions. (*See* § 380.6(a)(17).)

With regard to gas, a number of actions would be added to the categorical exclusion section. (*See* § 380.6(a)(20), (27), (28), and (29).) These are exemptions under section 1(c) of the Natural Gas Act; the sale, exchange, and transportation of natural gas which does not involve construction; abandonment in place of minor natural gas pipeline and abandonment by removal of minor surface facilities; and abandonment of service under a gas contract.

Lastly, a categorical exclusion for actions having only socio-economic effect is proposed as § 380.6(a)(31). This exclusion is in keeping with § 1508.14 of the CEQ regulations which provides that "economic or social effects are not intended by themselves to require preparation of an environmental impact statement."

Numerous commenters, largely representatives of regulated industries, advocated expansion of the list of projects excluded from the need for issuance of environmental documents under the NEPA process. Many of the actions or projects that commenters wanted removed from the EA category (§ 380.4), discussed previously, are the same projects or actions that commenters also suggested be categorically excluded.

A natural gas pipeline company requested exclusion of natural gas interconnection and transmission facility projects, such as pipeline loops and added compression facilities within, or adjacent to, existing rights-of-way. Such projects, it was argued, rarely have a significant environmental impact. The Commission believes that the construction of such facilities may violate noise standards, change land uses, disturb previously unknown or unnoticed historical or archaeological sites, or jeopardize erodible soils. Pipeline loops can conceivably involve up to hundreds of miles of new construction. The Commission thus proposes to continue to require an EA for such projects under § 380.4(a).

One commenter argued that licenses for constructed major or minor hydroelectric projects, licenses for constructed transmission lines, and approval or modification of hydroelectric project boundaries should be excluded. Modifications in licensed hydroelectric project facilities, mode of operation, and boundaries are proposed here as categorical exclusions. (*See* § 380.6(a)(13).) The Commission believes that the other projects mentioned may have environmental effects that should be assessed prior to authorization. These projects or actions are thus reproposed here as requiring an EA. (All of these actions were discussed above in the Environmental Assessments section.)

A natural gas utility argues for the exclusion of the replacement of existing pipelines and appurtenant facilities. The Commission believes that some replacements are already excluded by virtue of § 2.55(b) of this chapter, which excludes facilities which replace deteriorated ones from the definition of "facilities" under section 7(c) of the Natural Gas Act, as long as the replacement has a substantially equivalent designed delivery capacity. With regard to other replacements, the Commission believes that although substituting a new pipeline for an old pipeline may appear to leave the land in the same condition, removal of the old line and retrenching could seriously disturb the environment and should be assessed for any impact.

A commenter also advocated categorical exclusion of natural gas transportation and exchange arrangements, including those entered into pursuant to section 311(a) of the NGPA, provided that no major construction of facilities is proposed. The Commission believes that these actions will not usually have adverse environmental impacts and thus proposes § 380.6(a)(27) excluding the sale, exchange and transportation of natural gas and do not require construction of facilities.

It was further contended that individual natural gas projects that would qualify as budget-type certificate projects under § 157.7 (b), (c), (d), (e) or (g) should be excluded. Filings under these sections are no longer accepted by the Commission and most certificates issued have expired. The essence of the old budget-type program was transferred to the Order 234 blanket program under 18 CFR 157.200–157.218. This program was the subject of an EA and has its own environmental procedures that the Commission believes are in harmony with the procedures in this rule. References to the Order 234 and Order 436 programs have been added at §§ 380.4(b), 380.6(a) (21) and (22), and 380.6(c)(2)(ii). The Commission proposes to retain preparation of an EA for facilities which require a prior notice filing under § 157.208 because their costs exceed a specified limit. Other actions under the blanket programs, such as gas sales for resale, construction of certain sales taps, new delivery points, transportation, and increases in storage capacity, have been proposed as categorical exclusions. (*See* § 380.6(a) (21) and (22).)

As previously stated, the Commission proposes to place abandonment in place of minor natural gas pipeline and by removal of minor surface facilities and abandonment of service under a contract in the categorical exclusions class. Minor surface facilities include valves, metering, and related equipment including underground connections to pipelines. The Commission believes removal of these facilities would have no significant impact and would generally improve the appearance of the facilities' site. By minor natural gas pipeline, the Commission means short segments of buried pipeline of six inches outside diameter or less. The Commission believes that abandonment in place of such pipeline would have no significant environmental impact. These actions are thus proposed under § 380.6(a)(28). Where service under a supply contact is abandoned, facilities are only infrequently abandoned. Such facilities consist of wells, wellhead equipment, and gathering pipelines and are under the jurisdiction of other state and Federal agencies. Abandonment under a gas supply contract does not affect the pipelines' responsibility to serve its customers and, therefore, has no environmental impact. For example, abandonment of first sales to interstate pipelines and pipeline to pipeline sales are covered in this exclusion. Abandonment of service under a supply contract is proposed in § 380.6(a)(29) for the categorical exclusions class.

Section 380.6(a)(24), which would place approval of taps, meters, and regulating facilities within existing rights-of-way in the categorical exclusions class, has always been qualified by the condition that land use in the vicinity of the project must have remained unchanged since the original facilities were installed. One commenter argues that this condition should be deleted because construction in a right-

of-way is limited to small facilities with no environmental impact. The Commission believes that construction of small facilities, even in existing rights-of-way, may have effects on land use and historical or archaeological sites. In addition, if significant nonjurisdictional facilities are associated with minor facilities under Commission review, they must be included in the NEPA evaluation.

The EPA argued that the categorical exclusion now proposed in § 380.6(a)(7) for actions relating to the reservation and classification of United States lands as water power sites, as well as other actions under section 24 of the Federal Power Act, is not appropriate because such actions constitute major land use decisions. The reservation of the Federal lands under section 24 is automatic at the time an applicant applies for a preliminary permit or a license for a particular site for purposes of power generation. The reservation preserves the status quo; it does not allow the applicant to proceed with its project. The Commission then evaluates the environmental impact of the project when it receives an application for a license.[5]

The Sierra Club strongly attacked the exclusion of preliminary permits, now in proposed § 380.6(a)(9), arguing that ground disturbances pursuant to feasibility studies may have significant effects on the environment. It was argued that an application for a permit should contain an Environmental Report (ER), including comparative studies of alternatives, and be followed by an EA prepared by the Commission.[6]

The Commission continues to believe that preliminary permits are among those actions that rarely entail significant environmental impacts and has thus again placed them under Categories Exclusions. The proposed Categories Exclusions in § 380.6(a) are not absolute. Under paragraph (b) of that section, the Commission would prepare an EA or EIS when there are circumstances that it determines involve significant environmental impacts. In the case of preliminary permits, those circumstances can be detected by Commission staff by means of the work plan for new dam construction contained in Exhibit 2 of the preliminary permit application (18 CFR 4.81(c)). But because it believes the vast majority of preliminary permits do not entail studies that have any significant impact on the environment, the Commission does not propose to prepare an EA or EIS for each such application.

*6. Public Participation*

a. Scoping and Public Notice

The Commission proposes to adopt many of the provisions of the CEQ regulations providing for public participation in the NEPA process. The Commission will follow the procedures for "scoping" or determining the issues to be included in an EIS that are set out in 40 CFR 1501.7. The Commission also proposes to follow the provisions for public notice, meetings, and availability of documents of 40 CFR 1506.6, with some modifications as noted below. These provisions are largely the same as those contained in the previous proposal.

Many commenters requested further elaboration of the Commission's scoping procedures in the new rule, based on the provisions of § 1501.7 of the CEQ regulations. The Commission proposes adopting the CEQ scoping procedure. The Commission believes the steps and tasks involved in this procedure are adequately spelled out in the CEQ regulations, 40 CFR 1501.7 and 1506.25.

The CEQ regulations do not require public participation or public comment on Environmental Assessments. However, the Commission uses certain procedures when it believes that the analyses at issue may benefit from public comment. On occasion, the Commission conducts scoping meetings on EA's and may issue a notice of intent to prepare an EA. The Commission may also request comments on an EA once it has been completed.

Under § 1506.6(b) of the CEQ regulations, which is proposed for adoption, the Commission would give notice of the availability of all EA's. Often, the Commission would give notice of the availability of an EA in a Commission order. (*See* proposed § 380.22.) Environmental Assessments are "public documents" (40 CFR 1508.9(a)) and may be requested by members of the public.

Ordinarily, it would be inappropriate to develop a scoping procedure for use before the applicant submits an ER, as one commenter proposed. When Commission staff undertakes the scoping process, it would prefer to do so based on a wide range of available information about the project, much of which can be provided by the ER.

The public involvement provisions of § 3d.13(f) were not quite as broad as those of § 1506.6 which would replace it. That section provides that notice of NEPA-related matters must be given by mail to all who ask for it in individual actions and may be given, in matters of local concern, to community organizations, through newsletters, by direct mail to affected property owners, and by posting on and off the site. Other notice provisions, measures regarding public meetings, and the availability of documents are substantially the same as the previously proposed § 3d.13(f).

Section 380.22 would add another possible means of notice for actions of local concern to those specified in the CEQ regulation, § 1506.6. In the ordinary course of business the Commission often given notice of availability of Environmental Assessments (EA) and of Findings of No Significant Impact (FONSI) in the orders it issues concerning applications. (A FONSI may be incorporated in an order rather than appearing as a separate document.) The Commission wishes to continue this practice, and so includes this section in the proposed regulation.

The original proposal § (3.d13(f)) contained a provision allowing the Commission to publish EIS'S 15 days after filing with the EPA if there was no publication by EPA during that time. The current proposal retains this provision. (Proposed § 380.23.)

One commenter contended that the publication-of-notice of NEPA-related events in proposed § 3d.13(f) are an entirely new and unnecessary addition to the regulations. (The corresponding sections here are 40 CFR 1506.6(a) and (b), which are proposed for adoption.) The Commission does not believe this to be the case. The Commission already publishes notice of hearings and public meetings, notices of intent to prepare environmental documents and, on occasion notices of the availability of environmental documents. Under the reproposed rules, such publication would occur as set out in 40 CFR 1506.6(b) and proposed §§ 380.7(e) and 380.22.

The provisions in proposed § 3d.13(f) that dealt with when hearings or meetings would be held on environmental issues caused some commenters to request a clarification of the distinction between the two. This provision would be replaced by 40 CFR 1506.6(c) which is proposed for adoption. The Commission believes that hearings and meetings are used interchangeably in this section.

When the Commission holds a hearing or meeting, it will publish notice

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[5] The actual reservation of public lands is the responsibility of the Department of the Interior.

[6] Preliminary permits have been the subject of two recent lawsuits, Washington State Department of Fisheries v. FERC, 801 F.2d 1518 (9th Cir. 1986) and National Wildlife Federation v. FERC, 801 F.2d 1586 (9th Cir. 1986). In both cases the petitioner contended, *inter alia*, that the Commission should have prepared an EA or an EIS. The court did not reach these claims in either case, but remanded on other grounds. (*See* National Wildlife at 1515.)

describing the nature of the hearing or meeting, and the issues, controversies, or statutory requirements involved and will make available to the public or the interested parties the underlying environmental documents, if any, that may be discussed. Circulation of an EIS includes service on all parties to a contested proceeding under Rule 2010 of the Commission's Rules of Practice and Procedure. 18 CFR 385.2010 (1986). In accordance with comments and following 40 CFR 1506.6(c)(2), if a draft EIS will be discussed at a hearing or meeting, the Commission will usually circulate it to the public and to the parties in any proceeding, at least 15 days in advance of the meeting or hearing.

b. Intervention

Section 380.20(a) proposes to allow a motion for intervention in trial-type proceedings based on the environmental issues or sufficiency of a draft EIS. The newly proposed section is substantially the same as the old, § 3d.10(e). Section 380.20 then states the responsibilities of persons who intervene in trial-type proceedings. (Proposed § 380.20(b)(3).) Intervenors would be required to file timely comments in cases not yet set for hearing. Where a matter was set for hearing, an intervenor could present evidence and participate in accordance with the Commission's Rules of Practice and Procedure. Facts and opinions on environmental issues could not be considered if they were not admitted into evidence and made part of the record of the proceeding. (*See* § 380.20(b)(3)(ii)(B).) Such facts and opinions may, however, have been expressed as comments on draft environmental documents. In that case, they would be entered in the record to the extent they were reflected in the final environmental document and that document was submitted in evidence.

Subparagraph (c) states that the procedure for resolving a contested environmental issue that is the subject of trial-type proceedings will be the Commission's own adjudicatory process. Those who wish to contest an environmental issue that is the subject of a trial-type hearing can do so as parties either under the intervention procedure proposed in these regulations or under the Commission's Rules of Practice and Procedure, 18 CFR 385.214. The CEQ would stand in the same position as any other person in this type of proceeding and should intervene and submit evidence on the record if it wished its conclusions and opinions to have probative value. If it did not choose to become a party, then its opinions and conclusions could not be considered unless submitted by a person who was a party and admitted as evidence or unless they were otherwise officially noticeable. (*See* §§ 380.20(b)(3)(ii)(B) and 380.20(c).)

It is important for all agencies and members of the public to understand the fundamental differences between the opportunity to comment on proposed Commission actions or to petition the Commission to adopt certain policies, and the more stringent responsibilities and requirements imposed on persons who intervene in contested on-the-record proceedings in order to demonstrate that the Commission should or must adopt a particular course of action. The procedure for intervention is governed by the Commission's Rules of Practice and Procedure at § 385.214 (Rule 214). Proposed § 380.20 would allow a timely motion for intervention upon publication of a DEIS if it is ultimately issued as a final rule.

The EPA desired that Federal agencies be afforded automatic intervention in contested proceedings. The Commission believes that such a provision may not be appropriate because the process of intervention and the resulting litigation is only meaningful if the contesting parties are willing and able to supply record evidence. This may include personal participation in a hearing by the intervenor or a representative of the intervenor group.

c. Availability of NEPA Documents

Section 380.21 proposes to implement CEQ regulation § 1506.6(e) by specifying that information and documents concerning the NEPA process will be available to the public through the Commission's Public Reading Room and Public Reference Branch.

The Commission does not propose to create a separate repository devoted exclusively to environmental documents as requested by one commenter. Environmental documents would be available from the Public Reading Room and Public Reference Branch according to the docket numbers of the actions involved and as indicated in these regulations and the Commission's public notices. (*See* proposed § 380.21.).

*7. Resolution of Interagency Disagreements*

The current proposal adopts the CEQ provision for the resolution of lead agency disputes, 40 CFR 1501.5. With regard to substantive environmental disputes between the Commission and other Federal agencies, the Commission does not propose to adopt the procedures of Part 1504 of the CEQ regulations which provide for the referral of such disputes to CEQ for a recommendation.

The original proposal established its own procedures for resolution of disputes, § 3d.14. The net effect of these procedures was to refer lead agency disputes to the CEQ under 40 CFR 1501.5. Environmental disputes related to Commission actions or proceedings pursuant to its regulatory decisionmaking functions were to be resolved exclusively by Commission decision and any judicial review thereof. CEQ recommendations were to be entered in the record as advisory only if CEQ were not a party to the proceeding.

The initial proposed rulemaking did not adopt the Part 1504 procedures of the CEQ because that Part appeared to indicate that the Commission's determinations on environmental issues could become subject to binding decisions reached outside Commission proceedings. Binding resolution of disputed issues by CEQ would be inconsistent with the Commission's primary jurisdictional statutes and its Rules of Practice and Procedure.

In the intervening period between that NOPR and this one, no Commission matters have been referred to the CEQ by another agency, nor has the Commission referred any environmental disputes to the CEQ. The Commission believes that the referral process may be incompatible with both its adjudicatory and rulemaking processes and so, again, does not propose Part 1504 for adoption.

The EPA objected to the provision in former § 3d.13, here proposed § 380.20, that required commenters to intervene formally in contested Commission proceedings in order to influence decisions on issues set for hearing. This requirement, according to the EPA, is contrary to NEPA and section 309 of the Clean Air Act which gives EPA the right to comment on any agency action. The Commission wishes to avoid misunderstandings about its proceedings or the purposes of its intervention provisions.

There are a variety of means by which agencies or members of the public may participate in agency decisionmaking without any special qualification. These include commenting on rulemakings under the Administrative Procedure Act and commenting on any draft EIS, whether prepared for an adjudication, such as a contested or uncontested licensing proceeding, or a rulemaking. Comments on an EA are sometimes solicited, and there are opportunities to participate in scoping meetings as well. Federal and state agencies may be asked to consult with the Commission and applicants regarding projects in

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which the agencies have an interest by jurisdiction or special expertise. The EPA may participate to the fullest extent in any and all of these procedures.

The submission of comments for consideration by the Commission or its staff described above, however, is very different from the procedures surrounding participation in a contested, trial-type proceeding. The Commission makes any decision that results from a trial-type proceeding based on a formal record and, if environmental issues are formally contested, parties must intervene and subject their evidence to cross-examination in order to ensure that such evidence or opinion is properly considered by an Administrative Law Judge. A regulatory agency is bound to provide due process to all parties. In a contested on-the-record proceeding, an agency of the United States will enjoy a position no different than that of other parties. In such a proceeding, no weight will be given the agency's evidence unless it is formally entered into the record. (*See* § 380.20(b)(3)(ii)(B).) EPA may, if it wishes, intervene under existing Commission regulations, or under the additional right of intervention proposed here if it is promulgated as a final rule.

The EPA also requested a provision describing how lead agencies may request Commission participation as cooperating agency and a description of the conditions under which the Commission would choose to serve as a cooperating agency. The Commission here proposes to follow the provisions governing cooperating agencies in the CEQ regulations, 40 CFR 1501.6 and 1506.5. An agency may request Commission participation simply by writing to the Secretary of the Commission. A responsible officer of the agency will determine whether the Commission's interests in a project are sufficient to justify participation as a cooperating agency. Normally, other agencies will request to be cooperating agencies or to participate as parties in Commission proceedings to approve applications.

One commenter requested a description of the point at which the Commission would decide a disagreement between itself and another agency is unsolvable, so that it may be referred to CEQ. Although the Commission is not proposing to adopt Part 1504, there may be occasions on which it would consider participation in the referral process beneficial. The Commission believes that such decisions must be made on a case by case basis.

The same commenter requested that the Commission establish a maximum time for attempting resolution of any interagency disagreement. Such a time period would arguably help avoid delays in the Commission's decisionmaking processes. If such disagreements are not settled prior to hearing on applications, they will ultimately be decided by the Commission. Schedules for matters set for hearing are determined by the Commission or the Presiding Administrative Law Judge.

*8. Miscellaneous*

a. Monitoring

Section 1505.3 of the CEQ regulations, which was originally proposed for adoption by reference and is also proposed for adoption here, states that an agency may monitor the implementation of its decision. One commenter requested clarification of the term "monitoring." The Commission customarily reviews on a case-by-case basis many of the non-Federal projects that it has previously authorized. Commission authorization is frequently conditional and licenses or certificates often require that reports be filed with the Commission after a project becomes operational. There is post-certification review for natural gas projects. In addition, there is ongoing cooperation with other Federal agencies, such as the Bureau of Land Management, that share an interest in, or jurisdiction over, a particular project. The Commission believes the monitoring function of both §§ 1506.2 and 1505.3 of the CEQ regulations is present in many of the Commission's regulations and procedures.

b. National Historic Preservation Act

The Advisory Council for Historic Preservation (ACHP) requested that a section be included in the NEPA regulations describing the Commission's responsibilities under the National Historic Preservation Act (NHPA). The ACHP has recently revised its regulations governing agencies' compliance with section 106 of the NHPA.[7] Insofar as NHPA compliance may be handled through the NEPA process, the Commission would do so under these reproposed regulations.

The Commission currently includes requests for information on historic sites in its various Environmental Report (ER) requirements and it consults with the Advisory Council when approving any project that may affect a historic site included in or eligible for inclusion in the National Register of Historic Places or that may affect any other cultural site. It should be noted, however, that NHPA requirements are separate from those of NEPA and may necessitate other or additional actions on the part of applicants and the Commission to ensure their fulfillment.

c. Supplemental DEIS's and FEIS's

Section 380.7(d) outlines the procedures by which supplemental draft and final EIS's performed or adopted by the agency could become part of the record in accordance with § 1502.9(c)(3) of the CEQ regulations. For rulemaking proceedings, such status would be automatic where the rulemaking proceeding was ongoing. If the record had closed, then those seeking review might introduce them under the procedures provided for judicial review such as section 19(b) of the NGA, section 313(b) of the FPA, and section 506 of the NGPA.

In adjudicated matters, if the proceeding were still pending, a supplemental draft EIS or final EIS might be admissible in evidence. If the evidentiary record has been closed, a party may move to reopen the record, the presiding officer could reopen it *sua sponte* prior to the service of an initial or revised initial decision, or the Commission could reopen the record after service of the initial or revised initial decision. 18 CFR 385.716.

d. Finding of No Significant Impact

Some commenters requested more information about a Finding of No Significant Impact (FONSI). A FONSI is an environmental document, as defined in § 1508.13 of the CEQ regulations. It is a product of the EA procedures and briefly presents the reasons why an action would not have a significant impact on the human environment. A FONSI incorporates or contains a summary of the EA. A FONSI may be combined with another agency document under the CEQ regulations, 40 CFR 1506.4, so that a FONSI may be issued as part of a Commission Order.

e. Non-Jurisdictional Facilities

The Commission recognizes that it is responsible for assessing impacts on non-jurisdictional facilities in conjunction with those over which it has jurisdiction. (*See Alice Henry v. Federal Power Commission*, 513 F. 2d 395 (D.C. Cir. 1975).) For purposes of environmental analysis, the Commission must consider all of the facilities that are integral to a proposal. In *Alice Henry* the court held that the Commission had to consider the environmental effects of an entire coal

[7] "Protection of Historic Properties," 51 FR 31115 (September 2, 1986).

gasification proposal, including the plant, pipeline to transport the gas, and a tap and valve facility, for purposes of NEPA. Only the tap and valve facility came within the Commission's jurisdiction. *Id.* at 405–407. The CEQ regulations which the Commission is proposing to adopt provide that "parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement." 40 CFR 1502.4(a). Actions that are interdependent parts of a larger action and depend on the larger action for their justification should be evaluated together. 40 CFR 1508.25(a)(iii). The Commission believes that these principles apply generally to the conduct of environmental analysis undertaken under NEPA and that, therefore, on occasion, it may be required to evaluate the effects of non-jurisdictional facilities when preparing EA's and EIS's.

### IV. Treatment of Certain CEQ Regulations

Some portions of the CEQ regulations are not proposed for adoption. Some require implementing action which is taken herein, and some, the Commission believes, are inappropriate or contrary to Commission practice or authority.

Section 1501.2(d)(2) and the second sentence of § 1502.5(b) are not proposed for adoption because they would conflict with other statutes and regulations. These sections, in effect, either call for or encourage agency consultation with other Federal agencies prior to the receipt of applications for projects. Specific consultation requirements for the Commission are contained in statutes such as section 10(a)(3) of the FPA (as amended by the Electric Consumer Protection Act of 1986, Sec. 3(b)(4), 100 Stat. 1243, 1244), which states that the Commission "shall solicit recommendations from state and federal fish and wildlife agencies and Indian tribes upon receipt of an application for a license." Section 30 of the Federal Power Act requires the Commission to consult with Federal fish and wildlife agencies in making a determination on an application for an exemption for a small conduit hydroelectric facility or a small hydroelectric power project. The Commission's regulations both in this proposed rule and elsewhere (*see* § 4.38 of this chapter) require or encourage applicants to consult with Federal agencies as early as possible in their planning processes. Applicants present this information as part of their application. Commission consultation is triggered by the receipt of applications. The Commission believes that Section 102(2)(C) of NEPA does not require more than this and that pre-application consultation by the Commission would conflict with the existing regulatory scheme. Finally, § 1502.10, Recommended format, is not proposed for adoption because the staff has evolved a format for EIS's which is proposed in § 380.9. Section 1502.11(e), which requires an abstract, has not been included because it is not used and its purpose is fulfilled by the summary in proposed § 380.9(b). Section 1508.7, Further guidance, has been omitted because it refers solely to actions to be taken by CEQ.

The Commission proposes to implement some CEQ provisions. These are § 1502.9(c)(3) (how to make a supplemental EIS part of the record, § 380.7(d)); § 1505.1 (environmental decisionmaking, by the regulation as a whole and by § 380.7); § 1506.6(e) (where to get environmental information, § 380.21); and § 1507.3(b) (environmental study categories, §§ 380.4, 380.5, and 380.6).

Some of the provisions of the CEQ regulations are proposed to be adopted, but with modifications as noted in § 380.3(b). These provisions include § 1501.4(e) (preparation of a FONSI). The proposed language states that the Commission may prepare a Finding of No Significant Impact on the basis of an Environmental Assessment or conclude the analysis with the Environmental Assessment if the analysis shows the action has adverse environmental effects and the action is not approved. This provides the agency with three possible courses of action when an EA has been performed rather than the two that are contained in the CEQ regulations. Under the CEQ regulations, an EA must be followed either by a FONSI or an Environmental Impact Statement (40 CFR 1501.4(e)). The Commission believes that a third procedure is warranted.

Section 1502.7, Page limits, is modified to refer to the EIS format as proposed in § 380.9 instead of the format contained in 40 CFR 1502.10.

Section 1502.13, Purpose and need of EIS, is modified to reflect the fact that for most applications the purpose which the staff is evaluating is the purpose as given by the applicant.

In § 1502.14(e) (identification of preferred alternative) the wording has been changed to reflect the fact that the Environmental Impact Statement contains the staff's preferences regarding alternatives rather than the agency's. The Commission or its designees would specify their choice upon consideration of the EIS and other relevant information.

Section 1508.2(c) has been modified to make the inclusion of monitoring and enforcement programs in the record of decision discretionary rather than mandatory. As stated previously, the Commission believes the monitoring function is present in many of the Commission's regulations and procedures.

### V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, requires certain analyses of proposed agency rules that will have a "significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the reproposed NEPA regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. These rules are procedural in nature and, moreover, insofar as they affect members of the public and impose obligations on them, merely reflect requirements already in place in existing statutes and regulations.

### VI. Paperwork Reduction Act Statement

The reproposed rule, for the most part, either reiterates or references reporting and filing requirements that are already in existence. The OMB control numbers for these requirements start with the designation 1902– and are as follows: for § 2.80 and § 2.82, 0128; for Part 4, Subpart D, 0073; for Part 4, Subpart E, 0058; for Part 4, Subpart F, 0058; for Part 4, Subpart G, 0115; for Part 4, Subpart H, 0115; for § 4.91, 0073; for Part 4, Subpart J, 0115; for Part 4, Subpart K, 0115; for Part 4, Subpart L, 0058 and 0115. The control number for § 157.206 is 1902–0060.

The proposed rule will be submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act, 44 U.S.C. 3501–3504 and OMB's regulations, 5 CFR 1320.13 (1985). Comments on the information collection requests of this proposed rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

### VII. Comment Procedure

The Commission invites interested parties to submit written comments on the matters proposed in this notice. An original and 14 copies of such comments must be filed with the Commission no

later than July 28, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM87–15–000.

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

**List of Subjects**

*18 CFR Part 2*

Environmental impact statements.

*18 CFR Part 380*

Environment, National Environmental Policy Act.

In consideration of the foregoing, the Commission proposes to amend Subchapters A and W of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Stalon concurred with a separate statement to be issued later.

**Lois D. Cashell,**

*Acting Secretary.*

## PART 2—[AMENDED]

1. In Part 2, the authority citation continues to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 4321–4361 (1978), unless otherwise indicated.

2. Part 2 of Subchapter A is amended by amending §2.80(b) to remove all but the first sentence of paragraph (b); by removing §§ 2.80(c), 2.81, 2.82, and Appendix A; and by redesignating Appendix B as Appendix A of Part 380. Redesignated Appendix A is amended by removing the first paragraph of numbered guideline (8); by removing from numbered guideline (2) the words "the Commission's Order No. 415–C (issued December 18, 1972) amending §§ 2.80–2.82," and inserting in lieu thereof the words "Part 380"; by removing from numbered guideline (3) in Redesignated Appendix A the term "§ 2.82(a)", and inserting in lieu thereof the term "§ 380.8" in both places; and by revising the title of Redesignated Appendix A to read "Appendix A—Guidelines for the Preparation of Environmental Report for Applications under the Natural Gas Act, as specified in § 380.8."

3. Subchapter W is amended by adding a new Part 380 to read as follows:

## PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

**Subpart A—General Provisions**

Sec.

380.1 Purpose and definitions.
380.2 Adoption of CEQ regulations as noted.
380.3 Portions of CEQ regulations adopted, modified, or implemented.

**Subpart B—Environmental Assessments, Environmental Impact Statements, and Categorical Exclusions**

380.4 Actions that require an Environmental Assessment.
380.5 Actions that require an Environmental Impact Statement.
380.6 Categorical exclusions.

**Subpart C—Environmental Decisionmaking, Environmental Information, and Environmental Impact Statement Format**

380.7 Environmental decisionmaking.
380.8 Environmental information to be supplied by applicant.
380.9 Format for Environmental Impact Statement.

**Subpart D—Additional Provisions**

380.20 Participation in Commission proceedings.
380.21 Public access to information and documents.
380.22 Additional discretionary means of Notice of Availability of an Environmental Assessment or a Finding of No Significant Impact.
380.23 Additional means of notice of availability of an EIS.

**Authority:** National Environmental Policy Act of 1969, 42 U.S.C. 4321–4347; Department of Energy Organization Act; 42 U.S.C. 7101–7352; Executive Order 12009, 3 CFR 142 (1978).

### Subpart A—General Provisions

**§ 380.1 Purpose and definitions.**

(a) The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. In particular, all Federal agencies are required to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) In addition to the definitions in 40 CFR Part 1508, the terms listed below have the following definitions:

(1) DEIS—Draft Environmental Impact Statement.

(2) FEIS—Final Environmental Impact Statement.

(3) FONSI—Finding of No Significant Impact.

(4) Environmental Report or ER—that part of an application submitted to the Commission by an applicant for authorization of a proposed action which includes information concerning the environment, the applicant's analysis of the environmental impact of the action, or alternatives to the action required by this or other applicable statutes or regulations.

**§ 380.2 Adoption of CEQ regulations as noted.**

The Federal Energy Regulatory Commission hereby adopts the regulations issued by the Council on Environmental Quality (CEQ) for implementing the procedural provisions of NEPA, 40 CFR Parts 1500–1508, with the exceptions, modifications and additions in this part.

**§ 380.3 Portions of the CEQ regulations adopted, modified, or implemented.**

(a) The following portions of the CEQ regulations, 40 CFR Parts 1500–1508 are adopted:

§ 1500.2 (Policy)
§ 1500.5 (Reducing delay)
§ 1501.1 (Purpose)
§ 1501.2 (Apply NEPA early in the process), (a), (b), (c), (d)(1), and (d)(3)
§ 1501.3 (When to prepare an environmental assessment)
§ 1501.5 (Lead agencies)
§ 1501.6 (Cooperating agencies)
§ 1501.7 (Scoping)
§ 1501.8 (Time limits)
§ 1502.1 (Purpose [of Environmental Impact Statement])
§ 1502.2 (Implementation)
§ 1502.3 (Statutory requirements for statements)
§ 1502.4 (Major federal actions requiring the preparation of environmental impact statements)
§ 1502.6 (Interdisciplinary preparation)
§ 1502.8 (Writing)
§ 1502.9 (Draft, final, and supplemental statements), (a), (b), (c)(1), (c)(2), and (c)(4)
§ 1502.11 (Cover sheet), (a), (b), (c), (d), and (f)
§ 1502.12 (Summary)
§ 1502.15 (Affected environment)
§ 1502.16 (Environmental consequences)
§ 1502.17 (List of preparers)
§ 1502.18 (Appendix)
§ 1502.19 (Circulation of the EIS)
§ 1502.20 (Tiering)
§ 1502.21 (Incorporation by reference)
§ 1502.22 (Incomplete or unavailable information), (a) and (b)

§ 1502.25 (Cost-benefit analysis)
§ 1502.24 (Methodology and scientific accuracy)
§ 1502.25 (Environmental review and consultation requirements)
Part 1503 (Commenting)
§ 1505.2 (Implementing the decision)
§ 1506.1 (Limitations on actions during NEPA process)
§ 1506.2 (Elimination of duplication with State and local procedures)
§ 1506.3 (Adoption of other agencies' environmental documents)
§ 1506.4 (Combining documents)
§ 1506.5 (Agency responsibility)
§ 1506.6 (Public involvement), (a), (b), (c), (d), and (f)
§ 1506.8 (Proposals for legislation)
§ 1506.9 (Filing requirements)
§ 1506.10 (Timing of agency action)
§ 1506.11 (Emergencies)
§ 1507.3 (Agency procedures), (c), (d), and (e)
Part 1508 (Definitions)

(b) The following portions of the CEQ regulations, 40 CFR Parts 1500–1508, are adopted with modifications:

(1) *Reducing paperwork* (§ 1500.4). Agencies shall reduce excessive paperwork by:

(i) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(ii) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(iii) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(iv) Writing environmental impact statements in plain language (§ 1502.8).

(v) Following a clear format for environmental impact statements (§ 190.9).

(vi) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1501.16).

(vii) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(viii) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(ix) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those or narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(x) Incorporating by reference (§ 1502.21).

(xi) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(xii) Requiring comments to be as specific as possible (§ 1503.3).

(xiii) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(xiv) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(xv) Combining environmental documents with other documents (§ 1506.4).

(xvi) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(xvii) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

(2) *Whether to prepare an environmental impact statement* (§ 1501.4). In determining whether to prepare an environmental impact statement the Federal agency shall:

(i) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(A) Normally requires an environmental impact statement, or

(B) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(ii) If the proposed action is not covered by paragraph (b)(2)(i) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(iii) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(iv) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(v) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment that the action will not have a significant effect on the human environment or conclude the environmental analysis with the environmental assessment if the agency does not approve the proposal.

(A) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(B) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may being. The circumstances are:

(1) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(2) The nature of the proposed action is one without precedent.

(3) *Page limits* (§ 1502.7). The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 380.9) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

(4) *Purpose and need* (§ 1502.13). The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action or, for applications other than optional certificates for facilities under §§ 157.100–157.108 of this chapter, the purpose and need, as stated by the applicant, which the agency is evaluating.

(5) *Alternatives including the proposed action* (§ 1502.14). This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the affected environment (§ 1502.15) and the environmental consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(i) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(ii) Devote substantial treatment to each alternative consider in detail including the proposed action so that

reviewers may evaluate their comparative merits.

(iii) Include reasonable alternatives not within the jurisdiction of the lead agency.

(iv) Identify the agency staff's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(v) Include appropriate mitigation measures not already included in the proposed action or alternatives.

(8) *Record of decision in cases requiring environmental impact statements* (§ 1505.2). At the time of the decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A–95 (Revised), part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall:

(i) State what the decision was.

(ii) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(iii) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program may be adopted and summarized where applicable for any mitigation.

(7) *Agency ability to comply* (§ 1507.2). Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(i) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(ii) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(iii) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(iv) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(v) Comply with the requirements of section 102(2)(H) that the agency initiates and utilizes ecological information in the planning and development of resource-oriented projects.

(vi) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act.

(c) The following portions of the CEQ regulations, 40 CFR Parts 1500–1508, are implemented by these regulations:

Section 502.8(c)(3), procedures for introducing supplemental EIS's into the record, by § 380.7(d);

Section 1508.1(a)–(e), agency decisionmaking procedures, paragraph (a) by this regulation and paragraphs (b)–(e) by § 380.7;

Section 1508.6(e), where to get information on the NEPA process, by § 380.21;

Section 1507.3(b), classes of actions, by §§ 380.4, 380.5 and 380.6.

## Subpart B—Environmental Assessments, Environmental Impact Statements, and Categorical Exclusions

### § 380.4 Actions that require an Environmental Assessment.

An Environmental Assessment will be prepared for the actions identified in this section.

(a) Except as identified in §§ 380.5(a) and 380.6(a) of this part and § 2.55 of this chapter, authorization under section 7 of the Natural Gas Act for the construction, replacement, or abandonment of compression, processing, or interconnecting facilities, onshore and offshore pipelines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

(b) Prior notice filings under § 157.208 of this chapter for the rearrangement of any facility specified in §§ 157.202 (b)(3) and (6) or the acquisition, construction, or operation of any eligible facility as specified in § 157.202 (a)(2) and (3);

(c) Abandonment or reduction of natural gas service under section 7 of the Natural Gas Act not excluded under § 380.5(a)(21) or (29);

(d) Except as identified in § 380.5(a) of this section, conversion of existing depleted oil or natural gas fields to underground storage fields under section 7 of the Natural Gas Act;

(e) New natural gas curtailment plans or any amendment to an existing curtailment plan under section 7 of the Natural Gas Act and sections 401–404 of the Natural Gas Policy Act of 1978 that has a major effect on an entire pipeline system;

(f) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any water power project—existing dam;

(g) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any unconstructed water power project (new dam) with a total installed capacity of 20 MW or less;

(h) Exemptions under section 405 of the Public Utility Regulatory Policies Act of 1978, as amended, and §§ 4.30(b)(27) and 4.101–4.108 of this chapter for small hydroelectric power projects of 5 MW or less;

(i) Licenses for additional project works at licensed projects under Part I of the Federal Power Act whether or not these are styled licensee amendments or original licenses;

(j) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for transmission lines only;

(k) Applications for new licenses under section 15 of the Federal Power Act;

(l) Approval of electric interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, not excluded under § 380.6(a)(17);

(m) Regulations or proposals for legislation not excluded under § 380.6(a)(2).

### § 380.5 Actions that require an Environmental Impact Statement.

(a) Except as provided in paragraphs (b) and (c) of this section, an EIS will be prepared as specified in § 380.9 of this part for:

(1) Authorization under sections 3 or 7 of the Natural Gas Act for construction

and operation of jurisdictional liquefied natural gas import/export facilities used wholly or in part to liquefy, store, or regasify liquefied natural gas transported by water;

(2) Certificate applications under section 7 of the Natural Gas Act to develop an underground natural gas storage facility except where depleted oil or natural gas producing fields are used;

(3) Major pipeline construction projects under section 7 of the Natural Gas Act using right-of-way where there is no existing natural gas pipeline; and

(4) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any unconstructed water power project with a total installed capacity of more than 20 MW.

(b) If the Commission or its staff believes that a proposed action identified in § 380.5(a) may not be a major Federal action significantly affecting the quality of the human environment, an EA rather than an EIS will be prepared.

(c) An EIS will not be required if an EA indicates that a proposal has adverse environmental effects and the proposal is not approved.

**§ 380.6 Categorical exclusions.**

(a) *General rule.* Except as stated in paragraph (b) of this section, an EA or an EIS will not be prepared for:

(1) Procedural, ministerial, or internal administrative and management actions, programs, or decisions, including procurement, contracting, personnel actions, correction or clarification of filings or orders, and acceptance, rejection and dismissal of filings;

(2)(i) Reports or recommendations of legislation not initiated by the Commission; and

(ii) Proposals for legislation and promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or regulations being amended;

(3) Compliance and review actions, including investigations (jurisdictional or otherwise), conferences, hearings, notices of probable violation, show cause orders, and adjustments under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA);

(4) Review of grants or denials by the Department of Energy (DOE) of any adjustment request, and review of contested remedial orders issued by DOE;

(5) Information gathering, analysis, and dissemination;

(6) Conceptual or feasibility studies;

(7) Actions concerning the reservation and classification of United States lands as water power sites and other actions under section 24 of the Federal Power Act;

(8) Transfers of water power project licenses and transfers of exemptions under Part I of the Federal Power Act and Part 9 of this chapter;

(9) Issuance of preliminary permits for water power projects under Part I of the Federal Power Act and Part 4 of this chapter;

(10) Withdrawals of applications for certificates under the Natural Gas Act, or for water power project preliminary permits, exemptions, or licenses under Part I of the Federal Power Act and Part 4 of this chapter;

(11) Actions concerning annual charges or headwater benefits charges for water power projects under Parts 11 and 13 of this chapter and establishment of fees to be paid by an applicant for a license or exemption required to meet the terms and conditions of section 30(c) of the Federal Power Act;

(12) Approval, for water power projects under Part I of the Federal Power Act, of "as built" or revised drawings or exhibits that propose no changes to project works or operations or that reflect changes that have previously been approved or required by the Commission;

(13) Surrender of water power licenses, preliminary permits, and exemptions, and amendments to licenses, preliminary permits, and exemptions under Part I of the Federal Power Act and Parts 4 and 6 of this chapter, except as provided in § 380.4(i);

(14) Exemptions for small conduit hydroelectric facilities as defined in § 4.30 (b)(26) of this part under Part I of the Federal Power Act and Part 4 of this chapter;

(15) Electric rate filings submitted by public utilities, establishment of just and reasonable rates, and confirmation, approval, and disapproval of rate filings submitted by Federal power marketing agencies under sections 205 and 206 of the Federal Power Act;

(16) Approval of actions under sections 4(b), 203, 204, 301, 304, and 305 of the Federal Power Act relating to issuance and purchase of securities, acquisition or disposition of property, mergers, interlocking directorates, jurisdictional determinations, and accounting orders;

(17) Approval of electrical interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, that would not entail:

(i) Construction of a new substation or expansion of the boundaries of an existing substation;

(ii) Construction of any transmission line that operates at more than 115 kilovolts (KV) and occupies more than ten miles of an existing right-of-way; or

(iii) Construction of any transmission line more than one mile long if located on a new right-of-way;

(18) Approval of changes in land rights for water power projects under Part I of the Federal Power Act and Part 4 of this chapter, if no construction or change in land use is either proposed or known by the Commission to be contemplated for the land affected;

(19) Approval or proposals under Part I of the Federal Power Act and Part 4 of this chapter to authorize use of water power project lands or waters for gas or electric utility distribution lines, telephone lines, storm drains, sewer lines not discharging into project waters, or water mains; piers, landings, boat docks, or similar structures and facilities; landscaping; or embankments, bulkheads, retaining walls, or similar shoreline erosion control structures;

(20) Action on applications for exemption under section 1(c) of the Natural Gas Act;

(21) Approvals of blanket certificate applications and prior notice filings under § 157.204 and § 157.209 through § 157.218 of this chapter;

(22) Approvals of blanket certificate applications under § 284.221 or § 284.224 of this chapter;

(23) Producers' applications for the sale of gas filed under § 157.23–157.29 of this chapter;

(24) Approval of taps, meters, and regulating facilities located within a right-of-way where there is existing natural gas pipeline under section 7 of the Natural Gas Act, company records show the land use of the vicinity has not changed since the original facilities were installed, and no significant non-jurisdictional facilities would be constructed in association with construction of the interconnection facilities (*See* § 380.5(a)(2) and (c)(2)(iii) for applicants' responsibility to file environmental information);

(25) Review of natural gas rate filings, including any curtailment plans other than those specified in § 380.4(e), and establishment of just and reasonable rates for transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act and sections 401–404 of the Natural Gas Policy Act of 1978;

(26) Review or approval of oil pipeline rate filings under Parts 340 and 341 of this chapter;

(27) Sale, exchange, and transportation of natural gas under sections 4, 5 and 7 of the Natural Gas

Act that requires no construction of facilities;

(28) Abandonment in place of minor natural gas pipeline, or abandonment by removal of minor surface facilities such as metering stations, valves, taps, and other tap-related facilities, under section 7 of the Natural Gas Act (*see* §§ 380.8(a)(2) and (c)(2)(iii) for applicants' responsibility to file environmental information);

(29) Abandonment of service under any gas supply contract pursuant to section 7 of the Natural Gas Act;

(30) Approval of filings made in compliance with the requirements of a certificate for a natural gas project under § 7 of the Natural Gas Act or a preliminary permit, exemption, license, or license amendment order for a water power project under Part I of the Federal Power Act;

(31) Any actions that exclusively involve socio-economic impacts.

(b) *Exceptions to categorical exclusions.* In accordance with its duty of independent assessment under 40 CFR 1506.5 and the provisions of § 1508.4, the Commission and its staff will independently evaluate environmental information and, where it is determined that an action may be a major Federal action significantly affecting the quality of the human environment, the Commission or its staff—

(1) May require an ER or other environmental information and

(2) Will prepare an EA or an EIS.

## Subpart C—Environmental Decisionmaking, Environmental Information, and Environmental Impact Statement Format

### § 380.7 Environmental decisionmaking.

(a) *Decision points.* For the actions set forth in §§ 380.4 and 380.5 and for other actions which may have a significant affect on the quality of the human environment, environmental considerations will be addressed at appropriate major decision points. Major decision points in adjudication are the approval or denial of proposals by the Commission or its designees in matters not set for hearing and the initial and subsequent decisions of an ALJ or the Commission in matters set for hearing. In rulemaking, major decision points are the Commission's decision to issue a Notice of Proposed Rulemaking and the issuance of a final rule.

(b) *Environmental documents to be considered.* (1) Any ER, EA, FONSI, DEIS, comment on an EIS, response to comments, FEIS, and supplemental EIS, to the extent a supplemental EIS is available, will accompany the proposal, including applications for certificates, licenses and exemptions, and any proposed rules and legislation other than those identified in § 380.6(a)(2) through existing agency review processes so that all levels of the Commission may use them in making decisions.

(2) The Commission and its designees will consider the alternatives described in the DEIS or FEIS or other relevant environmental documents in deciding whether or not to approve actions.

(c) *Environmental documents as part of the record.* The Commission will include EIS's, EA's, and FONSI's as part of the record in rulemaking and adjudicatory proceedings as follows:

(1) In informal rulemaking proceedings a draft EIS or an EA with a FONSI will be part of the record and will be included or notice of its availability given in the notice of proposed rulemaking. A final EIS will be part of the record and notice of its availability may be published prior to or simultaneously with a decision on the final rule.

(2) In adjudicatory proceedings an EIS, an EA, or a FONSI will be included as evidence if offered and admissible.

(d) *Supplemental Draft Environmental Impact Statement and Final Environmental Impact Statement as part of the record.* A supplemental draft EIS and supplemental final EIS will become part of the record—

(1) In informal rulemaking proceedings as long as the rulemaking proceeding is pending at the Commission or pursuant to section 19(b) of the Natural Gas Act, section 313(b) of the Federal Power Act, or section 506 of the Natural Gas Policy Act of 1978;

(2) In adjudicated proceedings either during the proceeding, in accordance with paragraph (c)(2) of this section, or pursuant to the procedures set forth in section 385.713 of this chapter.

(e) *Application denials.* Notwithstanding sections 380.4, 380.5, and 380.6 or any other sections of this part, the Commission may deny an application without performing an Environmental Impact Statement or without undertaking environmental analysis.

### § 380.8 Environmental information to be supplied by applicant.

(a) An applicant must submit information as follows:

(1) For any proposed action identified in §§ 380.4, 380.5(a), 380.6(a)(24) or 380.6(a)(28), an ER with the proposal as prescribed in paragraph (c) of this section;

(2) For any proposal not identified in section (a)(1) of this section, any environmental information that the Commission may determine is necessary for compliance with these regulations.

(b) An applicant must also make a good faith effort to:

(1) Provide all necessary or relevant information to the Commission;

(2) Conduct any studies that the Commission staff considers necessary or relevant to determine the impact of the proposal on the human environment and natural resources;

(3) Consult with appropriate Federal, regional, state, and local agencies during the planning stages of the proposed action to ensure that all potential environmental impacts are identified (with regard to hydropower projects, specific requirements are contained in § 4.38 of this chapter and in section 4(a) of the Electric Consumer Protection Act, Pub. L. No. 99–495, 100 Stat. 1243, 1248 (1986));

(4) Submit applications for all Federal and state approvals as early as possible in the planning process; and

(5) Notify the Commission staff of all other Federal actions required for completion of the proposed action so that the staff may coordinate with other interested Federal agencies.

(c) *Content of an applicant's ER for specific proposals.* (1) Hydropower and other electric power projects. The information required for applications under Part 4 of this chapter, as applicable.

(2) Natural gas projects.

(i) For any application filed under the Natural Gas Act for any proposed action identified in § 380.4 or 380.5(a), except § 380.4(b)—the information identified in Appendix A of this part.

(ii) For prior notice filings under § 157.208, the report described by § 157.205(c)(11).

(iii) For any proposed action listed in § 380.6(a) (24) or (28):

(A) A brief description of the reasons the applicant believes the proposal qualifies for categorical exclusion, and

(B) Any environmental information the Commission or its staff may determine is necessary for compliance with these regulations or other Federal laws such as the Endangered Species Act, the National Historic Preservation Act, or the Coastal Zone Management Act.

### § 380.9 Format for Environmental Impact Statement.

The following standard format for Environmental Impact Statements will be used unless there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.
(d) Purpose of and need for proposed action.
(e) Alternatives including the proposed action and no-action alternative (sections 102(2)(C)(iii) and 102(2)(E) of the National Environmental Policy Act).
(f) Affected environment.
(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the National Environmental Policy Act).
(h) Staff's conclusions, including summaries of—
(1) The significant environmental impacts of the proposed action;
(2) Any alternative to the proposed action that would have a less severe environmental impact or impacts and the action preferred by the staff;
(3) Any mitigative measures proposed by the applicant, as well as additional mitigation measures that might be more effective;
(4) Any significant environmental impacts of the proposed action that cannot be mitigated; and
(5) References to any pending, completed, or recommended studies that might provide base-line data or additional data on the proposed action.
(i) List of preparers.
(j) List of agencies, organizations, and persons to whom copies of the statements are sent.
(k) Literature cited.
(l) Appendices (if any).

## Subpart D—Additional Provisions

### § 380.20 Participation in Commission proceedings.

(a) *Motion to intervene.* (1) Any person may file a motion to intervene in a Commission proceeding other than a rulemaking after publication of a notice of availability of a DEIS as prescribed in § 385.214(b) (1) and (2) and (c) of this chapter.
(2) A motion to intervene submitted pursuant to this paragraph must be filed within the time period for submitting comments prescribed in the notice of availability of the DEIS and must specify grounds for intervention related to the environmental issues in, or the sufficiency of, the DEIS.
(3) Any person that is granted intervention after petitioning under this paragraph accepts the record as developed by parties to that proceeding as of the time that intervention is granted.
(4) The right to move to intervene prescribed in this section will be limited to the environmental issues or sufficiency of the DEIS.
(b) *Rights and obligations of participants in proceedings.*—(1) *Informal rulemaking.* Any person may submit comments on the environmental aspects of any informal notice and comment rulemaking conducted by the Commission pursuant to 5 U.S.C. 553. Such comments must be submitted in the manner and at such time as the Commission prescribes in each rulemaking.
(2) *Draft EIS.* Any person may submit comments on a draft EIS. Such comments must be submitted in the manner and at such time as the Commission prescribes in the notice of availability of the draft EIS.
(3) *Intervenors in on-the-record proceedings.*—(i) *Issues not set for hearing.* In any on-the-record proceeding, an intervenor that takes a position on any environmental issue that has not yet been set for hearing must file a timely motion with the Secretary containing an analysis of its position on such issue and specifying any differences with the position of Commission staff or an applicant upon which the intervenor wishes to be heard.
(ii) *Issues set for hearing.* (A) In any on-the-record proceeding, any intervenor that takes a position on an environmental issue set for hearing may offer evidence for the record in support of such position and otherwise participate in accordance with the Commission's Rules of Practice and Procedure. Any intervenor must specify any differences from the staff's and the applicant's positions.
(B) To be considered, any facts or opinions on an environmental issue set for hearing must be admitted into evidence and made part of the record of the proceeding.
(c) *Contested issues in Commission proceedings.* Any environmental issue that is set for hearing under the Commission's primary jurisdictional statutes will be adjudicated exclusively by Commission decision and any judicial review of such decision provided by law. Any person wishing to participate in an on-the-record evidentiary proceeding as part of the Commission decisionmaking process may seek to intervene in the proceeding as an interested party under §§ 380.20(a) or 385.214 of this chapter.

### § 380.21 Public access to information and documents.

(a) *Information.* The Commission will make information or status reports on an EIS and other elements of the NEPA process available to interested persons through the Commission's Public Reading Room and Public Reference Section.
(b) *Documents.* (1) The Commission will make EIS's the comments received, and other environmental documents available to the public through the Commission's Public Reading Room and Public Reference Section, 825 North Capitol Street, NE., Room 1000, Washington, DC 20426.
(2) Materials made available will include interagency memoranda to the extent that those memoranda transmit comments of Federal agencies, on the environmental impact of the proposed action. Materials will be provided to the public without charge to the extent practicable, or at a fee that is not more than the actual cost of reproducing copies.
(3) A copy of an EIS or EA may be made available for inspection at the Commission's regional office for the region in which the proposed action would occur.

### § 380.22 Additional discretionary means of notice of availability of an Environmental Assessment or a Finding of No Significant Impact.

In addition to the means of notice specified in 40 CFR 1506.6(b)(3) for actions with effects primarily of local concern, the Commission may give notice of availability of an EA or a FONSI in a Commission order.

### § 380.23 Additional means of notice of availability of an EIS.

If the EPA fails to publish notice of availability of an EIS under 40 CFR 1506.10(a) within 15 days of the filing of the EIS with EPA pursuant to 40 CFR 1506.9, the Commission will publish such notice. The minimum time periods set forth in 40 CFR 1506.10 will be calculated from the date of publication of this notice.

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Part IV

# Environmental Protection Agency

**40 CFR Parts 795, 796 and 799**

**Solid Waste Chemicals; Proposed Test Rule**

VOL 52 ISS 103 MY 29 1987 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795, 796 and 799

[OPTS-42068A; FRL 3209-9]

## Solid Waste Chemicals; Proposed Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing that manufacturers and processors of 73 chemicals be required under section 4 of the Toxic Substances Control Act (TSCA) to perform testing for human health effects and/or chemical fate in support of EPA's hazardous waste regulatory program under the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. The proposed health effects testing is a subchronic toxicity study via oral gavage. The proposed fate testing includes one or more of the following tests to determine: (1) Adsorption characteristics, (2) hydrolysis rates, and (3) anaerobic biodegradation rates.

DATES: Submit written comments on or before July 28, 1987. If persons request an opportunity to submit oral comment by July 14, 1987, EPA will hold a public meeting on this rule in Washington, D.C. For further information on arranging to speak at the meeting, see Unit VIII of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS-42068A), in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: EPA is issuing a proposed test rule under section 4(a) of TSCA to obtain needed human health effects and chemical fate data for 73 chemicals that have been identified as hazardous constituents under Appendix VIII of 40 CFR Part 261.

### I. Introduction

#### *A. Background*

Section 4 of TSCA authorizes EPA to require testing of chemicals whose manufacture, processing, distribution in commerce, use or disposal may present an unreasonable risk to human health or the environment but for which existing data are inadequate to reasonably determine or predict such effects.

EPA's Office of Solid Waste (OSW) identified a need for health effects and/or chemical fate data on 73 chemicals in support of its effort under section 3001 of the Resource Conservation and Recovery Act (RCRA) to identify those wastes which may pose a substantial hazard to human health and the environment if improperly managed. Those chemicals subject to this proposed TSCA section 4 test rule are listed in Table 1 below.

BILLING CODE 6560-50-M

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING[1]

| CHEMICAL | CAS NO. | Subchronic Toxicity Testing | | Hydrolysis Testing | | Biodegradation Testing | | Soil Sorption Testing | |
|---|---|---|---|---|---|---|---|---|---|
| | | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data |
| Acetamide, N-(aminothioxomethyl) | 591-08-2 | X | | | | X | | X | |
| Acetamide, 2-fluoro | 640-19-7 | X | | | | | X | | |
| Acetophenone | 98-86-2 | | | | | X | | | |
| Ammonium vanadate | 7803-55-6 | | | | | X | | X | |
| Benzal chloride | 98-87-3 | | | | | X | | | |
| p-Benzoquinone | 106-51-4 | X | | | | X | | | |
| 2,2'-Bioxirane | 1464-53-5 | | | | X | X | | | |
| Bis(2-chloroethoxy)methane | 111-91-1 | X | | | X | X | | | |
| Bis(2-chloroisopropyl)ether | 108-60-1 | | | X | | X | | | |
| Bromoacetone | 598-31-2 | X | | X | | X | | X | |
| 4-Bromobenzylcyanide | 16532-79-9 | X | | X | | X | | X | |
| Bromoform | 75-25-2 | | | | X | | X | | |
| 1-Bromo-4-phenoxy benzene | 101-55-3 | X | | | | X | | | |
| Carbonyl fluoride | 353-50-4 | X | | | | X | | X | |
| Chloral | 75-87-6 | | | | | X | | X[2] | |
| 2-Chlorobenzotrichloride | 2136-89-2 | X | | X | | X | | X | |
| 4-Chlorobenzotrichloride | 5216-25-1 | X | | | X | X | | X | |

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING (Con't)

| CHEMICAL | CAS NO. | Subchronic Toxicity Testing | | Hydrolysis Testing | | Biodegradation Testing | | Soil Sorption Testing | |
|---|---|---|---|---|---|---|---|---|---|
| | | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data |
| 2-Chloroethyl vinyl ether | 110-75-8 | X | | | X | X | | | |
| Chlornaphazine | 494-03-1 | X | | | | X | | X | |
| 1-(o-Chlorophenyl)thiourea | 5344-82-1 | X | | | | X | | X | |
| Cyanogen bromide | 506-68-3 | X | | X | | X | | X | |
| 2,4-D | 94-75-7 | | | X | | X | | | |
| Daunomycin | 20830-81-3 | X | | | | X | | X | |
| Dibromomethane | 74-95-3 | | | X | | X | | | |
| Dibutyl phthalate | 84-74-2 | | | | | | X | | |
| 1,2-Dichlorobenzene | 95-50-1 | | | X | | | X | | |
| 1,3-Dichlorobenzene | 541-73-1 | | | | | X | | | |
| 1,4-Dichlorobenzene | 106-46-7 | | | | | | X | | |
| 1,1-Dichloroethane | 75-34-3 | | | X | | | X | | |
| 1,3-Dichloropropanol | 96-23-1 | X | | | | | X | X | |
| 2,3-Dichloropropanol | 616-23-9 | | | | | X | | | |
| o,o-Diethyl-S-methyldithiophosphate | 3288-58-2 | X | | X | | X | | | |
| Dihydrosafrole | 94-58-6 | | | X | | X | | | |
| a,a-Dimethylphenethylamine | 122-09-8 | X | | | | X | | | |

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING (Con't)

| CHEMICAL | CAS NO. | Subchronic Toxicity Testing | | Hydrolysis Testing | | Biodegradation Testing | | Soil Sorption Testing | |
|---|---|---|---|---|---|---|---|---|---|
| | | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data |
| Dimethyl phthalate | 131-11-3 | | | | | | X | | |
| 4,6-Dinitro-o-cyclohexylphenol | 131-89-5 | X | | X | | X | | X | |
| 2,6-Dinitrotoluene | 606-20-2 | | | | | | X | | |
| Endrin | 72-20-8 | | | X | | | X | | |
| Ethylene-bis-dithiocarbamic acid | 111-54-6 | X | | | | X | | X | |
| Ethylmethacrylate | 97-63-2 | | | X | | X | | | |
| Glycidylaldehyde | 765-34-4 | | | X | | X | | | |
| Hexachlorophene | 70-30-4 | | | | | X | | | |
| Hexaethyl-tetra-phosphate | 757-58-4 | X | | | | X | | | |
| Isosafrole | 120-58-1 | | | X | | X | | | |
| Maleic anhydride | 108-31-6 | | | | X | X | | X | |
| Maleic hydrazide | 123-33-1 | | | X | | | X | | X |
| Malononitrile | 109-77-3 | X | | | | X | | X | |
| Methacrylonitrile | 126-98-7 | | | X | | X | | | |
| Methanethiol | 74-93-1 | | | | | | X | | X |
| Methyl chloride | 75-87-3 | | | | X | X | | | |

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING (Con't)

| CHEMICAL | CAS NO. | Subchronic Toxicity Testing | | Hydrolysis Testing | | Biodegradation Testing | | Soil Sorption Testing | |
|---|---|---|---|---|---|---|---|---|---|
| | | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data |
| Methyl chlorocarbonate | 79-22-1 | X | | | | X | | X | |
| 1-Naphthylamine | 134-32-7 | | | | | | X | | |
| Nicotine | 54-11-5 | | | | | X | | | |
| p-Nitroaniline | 100-01-6 | | | | | | X | | |
| p-Nitrophenol | 100-02-7 | X | | | | X | | | |
| Paraldehyde | 123-63-7 | | | | | X | | | |
| Pentachlorobenzene | 608-93-5 | | | X | | | X | | |
| Pentachloroethane | 76-01-7 | | | X | | X | | | |
| Phenacetin | 62-44-2 | | | X | | X | | | |
| n-Phenylthiourea | 103-85-5 | | | X | | X | | X | |
| Phosgene | 75-44-5 | | X | X | | X | | X | |
| Phthalic anhydride | 85-44-9 | | | | | X | | | X |
| 2-Picoline | 109-06-8 | | | | | | X | | |
| 1-Propanamine | 107-10-8 | X | | | | X | | | |
| Propanenitrile | 107-12-0 | | | X | | X | | | |
| Propanenitrile, 3-chloro | 542-76-7 | X | | | | X | | | |
| Saccharin | 81-07-2 | | | X | | X | | | |

Table 1 -- HAZARDOUS WASTE CONSTITUENTS SUBJECT TO TESTING (Con't)

| CHEMICAL | CAS NO. | Subchronic Toxicity Testing | | Hydrolysis Testing | | Biodegradation Testing | | Soil Sorption Testing | |
|---|---|---|---|---|---|---|---|---|---|
| | | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data | No data | Insuf. data |
| 1,2,4,5-Tetrachlorobenzene | 95-94-3 | | | X | | X | | | |
| Tetraethyldithiopyrophosphate | 3689-24-5 | | | X | | X | | | |
| Thiosemicarbazide | 79-19-6 | | | X | | X | | X | |
| o-Toluidine hydrochloride | 636-21-5 | | | | | X | | X | |
| Trichloromethanethiol | 594-42-3 | X | | X | | X | | X | |
| Trypan blue | 72-57-1 | | | | | X | | X | |

[1]"X" indicates that the test is needed.

[2]Sorption should be measured for the hydrated species of this chemical.

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The nonconfidential TSCA Inventory names for the chemicals in Table 1 are listed in the following Table 2.

BILLING CODE 6560-50-M

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Table 2 -- TSCA INVENTORY CHEMICAL NAMES

| COMMON CHEMICAL NAME | CAS NO. | TSCA INVENTORY NAME |
|---|---|---|
| Acetamide, N-(aminothioxomethyl) | 591-08-2 | Acetamide, N-(aminothioxomethyl) |
| Acetamide, 2-fluoro | 640-19-7 | Acetamide, 2-fluoro- |
| Acetophenone | 98-86-2 | Ethanone, 1-phenyl- |
| Ammonium vanadate | 7803-55-6 | Vanadate, (VO31-), ammonium |
| Benzal chloride | 98-87-3 | Benzene, (dichloromethyl)- |
| p-Benzoquinone | 106-51-4 | 2,5-Cyclohexadiene-1,4-dione |
| 2,2'-Bioxirane | 1464-53-5 | 2,2,'-Bioxirane |
| Bis(2-chloroethoxy)methane | 111-91-1 | Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro- |
| Bis(2-chloroisopropyl)ether | 108-60-1 | Propane, 2,2'-oxybis[1-chloro- |
| 4-Bromobenzylcyanide | 16532-79-9 | Benzeneacetonitrile, 4-bromo- |
| Bromoform | 75-25-2 | Methane, tribromo- |
| 1-Bromo-4-phenoxy benzene | 101-55-3 | Benzene, 1-bromo-4-phenoxy- |
| Carbonyl fluoride | 353-50-4 | Carbonic difluoride |
| Chloral | 75-87-6 | Acetaldehyde, trichloro- |
| 2-Chlorobenzotrichloride | 2136-89-2 | Benzene, 1-chloro-2-(trichloromethyl)- |
| 4-Chlorobenzotrichloride | 5216-25-1 | Benzene, 1-chloro-4-(trichloromethyl)- |
| 2-Chloroethyl vinyl ether | 110-75-8 | Ethene, (2-chloroethoxy)- |

Table 2 -- TSCA INVENTORY CHEMICAL NAMES

| COMMON CHEMICAL NAME | CAS NO. | TSCA INVENTORY NAME |
|---|---|---|
| 1-(o-Chlorophenyl)thiourea | 5344-82-1 | Thiourea, (2-chlorophenyl)- |
| Cyanogen bromide | 506-68-3 | Cyanogen bromide |
| 2,4-D | 94-75-7 | Acetic acid, (2,4-dichlorophenoxy)- |
| Dibromomethane | 74-95-3 | Methane, dibromo- |
| Dibutyl phthalate | 84-74-2 | 1,2-Benzenedicarboxylic acid, dibutyl ester |
| 1,2-Dichlorobenzene | 95-50-1 | Benzene, 1,2-dichloro- |
| 1,3-Dichlorobenzene | 541-73-1 | Benzene, 1,3-Dichloro- |
| 1,4-Dichlorobenzene | 106-46-7 | Benzene, 1,4-dichloro- |
| 1,1-Dichloroethane | 75-34-3 | Ethane, 1,1-dichloro- |
| 1,3-Dichloropropanol | 96-23-1 | 2-Propanol, 1,3-dichloro- |
| 2,3-Dichloropropanol | 616-23-9 | 1-Propanol, 2,3-dichloro- |
| Dihydrosafrole | 94-58-6 | 1,3-Benzodioxole, 5-propyl- |
| a,a-Dimethylphenethylamine | 122-09-8 | Benzeneethanamine, .alpha., .alpha.-dimethyl- |
| Dimethyl phthalate | 131-11-3 | 1,2-Benzenedicarboxylic acid, dimethyl ester |
| 2,6-Dinitrotoluene | 606-20-2 | Benzene, 2-methyl-1,3-dinitro- |
| Ethylmethacrylate | 97-63-2 | 2-Propenoic acid, 2-methyl-, ethyl ester |
| Hexachlorophene | 70-30-4 | Phenol, 2,2'-methylenebis[3,4,6-trichloro- |
| Isosafrole | 120-58-1 | 1,3-Benzodioxole, 5-(1-propenyl)- |

Table 2 -- TSCA INVENTORY CHEMICAL NAMES

| COMMON CHEMICAL NAME | CAS NO. | TSCA INVENTORY NAME |
|---|---|---|
| Maleic anhydride | 108-31-6 | 2,5-Furandione |
| Maleic hydrazide | 123-33-1 | 3,6-Pyridazinedione, 1,2-dihydro- |
| Malononitrile | 109-77-3 | Propanedinitrile |
| Methacrylonitrile | 126-98-7 | 2-Propenenitrile, 2-methyl- |
| Methanethiol | 74-93-1 | Methanethiol |
| Methyl chlorocarbonate | 79-22-1 | Carbonochloridic acid, methyl ester |
| 1-Naphthylamine | 134-32-7 | 1-Naphthalenamine |
| Nicotine | 54-11-5 | Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)- |
| p-Nitroaniline | 100-01-6 | Benzenamine, 4-nitro- |
| p-Nitrophenol | 100-02-7 | Phenol, 4-nitro- |
| Paraldehyde | 123-63-7 | 1,3,5-Trioxane, 2,4,6-trimethyl- |
| Pentachlorobenzene | 608-93-5 | Benzene, pentachloro- |
| Pentachloroethane | 76-01-7 | Ethane, pentachloro- |
| n-Phenylthiourea | 103-85-5 | Thiourea, phenyl- |
| Phosgene | 75-44-5 | Carbonic dichloride |
| Phthalic anhydride | 85-44-9 | 1,3-Isobenzofurandione |
| 2-Picoline | 109-06-8 | Pyridine, 2-methyl- |
| 1-Propanamine | 107-10-8 | 1-Propanamine |

Table 2 -- TSCA INVENTORY CHEMICAL NAMES

| COMMON CHEMICAL NAME | CAS NO. | TSCA INVENTORY NAME |
|---|---|---|
| Propanenitrile | 107-12-0 | Propanenitrile |
| Propanenitrile, 3-chloro | 542-76-7 | Propanenitrile, 3-chloro |
| Saccharin | 81-07-2 | 1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide |
| 1,2,4,5-Tetrachlorobenzene | 95-94-3 | Benzene, 1,2,4,5-tetrachloro- |
| Thiosemicarbazide | 79-19-6 | Hydrazinecarbothioamide |
| o-Toluidine hydrochloride | 636-21-5 | Benzenamine, 2-methyl-, hydrochloride |
| Trichloromethanethiol | 594-42-3 | Methanesulfenyl chloride, trichloro- |
| Trypan blue | 72-57-1 | 2,7-Napthalenedisulfonic acid, 3,3'-[3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo) bis[5-amino-4-hydroxy-, tetrasodium salt |

BILLING CODE 6560-50-C

*B. Test Rule Development Under TSCA*

Under section 4(a) of TSCA, EPA shall by rule require testing of a chemical substance or mixture to develop appropriate test data if the Agency finds that:

(A)(i) The manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) There are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) Testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) A chemical substance or mixture is or will be produced in substantial quantities, and (ii) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) There are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) Testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under section 4(a)(1)(A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under sections 4(a)(1) (A)(iii) and (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's process for determining when these findings apply is described in detail in EPA's first and second proposed test rules as published in the Federal Register of July 18, 1980 (45 FR 48524) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 45 FR 48524 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

*C. Overview of the Solid Waste Disposal Act, as Amended by the Resource Conservation and Recovery Act*

On October 12, 1976, Congress enacted the Resource Conservation and Recovery Act, (RCRA), an amendment to the Solid Waste Disposal Act, to protect human health and the environment and to conserve material and energy resources. The Congress declared the national policy of the United States to be that, wherever feasible, the generation of hazardous wastes is to be reduced or eliminated as expeditiously as possible. Further, the waste that is generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

Subtitle C of RCRA provides for comprehensive Federal regulation of all hazardous wastes. In particular, RCRA provides that EPA will promulgate regulations regarding the generation, transportation, and treatment, storage, or disposal of hazardous wastes. In addition, RCRA requires that EPA develop and promulgate criteria for identifying and listing hazardous wastes, taking into account toxicity, persistence and degradability in nature, potential for accumulation in tissue, other related factors such as flammability and corrosiveness, and other hazardous characteristics.

1. *Identifying and listing hazardous waste.* Under the existing regulations, a solid waste is defined as a hazardous waste if it exhibits one or more of the hazardous waste characteristics, is listed as a hazardous waste, is a mixture containing one or more of the listed hazardous wastes, or is derived from treating, storing, or disposing of a listed waste. The hazardous waste characteristics cited in Subpart C of 40 CFR Part 261—ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity—were developed to be self-implementing, i.e., each person that generates a solid wase must either test or evaluate that waste against the four characteristics to determine whether it is hazardous. The Agency has the burden of determining which wastes should be listed. EPA has published three separate hazardous waste lists in Subpart D of 40 CFR Part 261—wastes from nonspecific sources, wastes from specific sources, and a list of commercial chemical products that are hazardous wastes when they are discarded or intended for discard. Most of these wastes have been listed because they are capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed (see 40 CFR 261.11(a)(3)). In making this determination, EPA must first determine whether the waste contains one or more of the hazardous constituents identified in Appendix VIII of Part 261. In addition, EPA also considers one or more of the following factors: (i) The nature of the toxicity presented by the constituent; (ii) the concentration of the constituent in the waste; (iii) the potential of the constituent to migrate from the waste, such as by leaching or volatilization, under improper management; (iv) the quantities of waste generated; (v) an analysis of the persistence, potential for and rate of degradation, and degree of bioaccumulation of the constituent or any toxic degradation product of the constituent; and (vi) other factors such as plausible types of improper management to which the waste could be subjected, nature and severity of damage that has occurred as a result of the improper management of waste containing the hazardous constituent, and action taken by other governmental agencies or regulatory programs.

2. *EPA's concentration-based listing program under RCRA.* As indicated above, most wastes have been listed based on the potential for the hazardous constituents present in the waste to migrate from the waste at levels of regulatory concern. In listing wastes, the Agency has not chosen to set levels for the hazardous constituents identified in the waste below which the waste would no longer be considered hazardous under Subtitle C of RCRA. Rather, once a waste is listed, it remains subject to control under Subtitle C of RCRA even if the waste only contains *de minimis* levels of the hazardous constituents. To be excluded from regulation, the generator of the waste must submit a delisting petition pursuant to RCRA section 3001(f) and 40 CFR 260.20 and 260.22; this can be a resource-intensive process. Mixtures of solid wastes and listed hazardous wastes and residues derived from the treatment, storage, or disposal of listed hazardous wastes also present similar problems, i.e., these mixtures and residues are subject to regulatory control regardless of the level of toxic constituents in the waste, unless the waste has been delisted.

The Agency considers this to be a problem for the regulated community,

the Agency, and the public. In particular, limited resources for the management of hazardous wastes are being used to control slightly toxic on nonhazardous waste; in addition, the Agency's limited resources are being used to process delisting petitions, with limited environmental benefit. To address this problem, the Agency is considering redefining the existing listings by setting concentration limits (either in the waste or the leachate from the waste) below which the waste would not be defined as the listed waste. (Of course, these wastes may still be hazardous if they exhibit one or more of the hazardous waste characteristics.) The Agency considers the "concentration-based listing" effort (which has also been referred to as relisting) to be an important function so that EPA may better characterize the nature of the wastes being listed as hazardous under RCRA.

For many of the constituents, the Agency is unable to characterize the toxicity and/or set concentration limits for the constituents because data either are not available or the available data are inadequate. Thus, in order to accomplish the concentration-based listing program s objectives, a minimum data set on all hazardous waste constituents is needed.

Information required for the concentration-based listing program includes the health effects of extended exposure to individual waste constituents. For this purpose, the information can be supplied by a well-conducted oral 90-day subchronic study. The concentration-based listing program will also take into account the potential of the constituent to persist, degrade, or bioaccumulate as well as its potential to migrate from the waste site by leaching. The chemical fate data needed for this program include the anaerobic biodegradation rates, and the potential of the toxic constituents to adsorb to soil to determine their ability to migrate from the site to nearby drinking water sources. In addition, the overall rate of hydrolysis of the chemicals in water as a function of pH must be known.

EPA has developed a quantitative modeling procedure to evaluate potential exposure due to ground water contamination. This procedure uses a fate and transport model to back-calculate from a point of potential exposure at a distance downgradient to a point of release from a land disposal unit.

Several factors are considered in the model, including the toxicity, mobility, and persistence of constituents in the waste. The toxicity of a constituent is considered by specifying a health-based limit at the point of measurement and back-calculating the maximum acceptable concentration that will not exceed the specified limit. The mobility of constituents is considered through incorporation of sorption as a delay mechanism to travel in the ground water model. The persistence of constituents is incorporated into the ground water model for organics by considering hydrolysis and anaerobic biodegradation.[1]

To this end, a method was developed by EPA to measure anaerobic biodegradation in ground water samples of differing temperature and pH. Where possible, first-order degradation rates reported from the studies will be used in the models to reflect biodegradation in typical systems. Also, the range of environmental conditions investigated will be used to adjust the rate constants for the wide range of environmental conditions of interest to the Agency. The exact choice of rate constants and the final use of the information will be consistent with the Agency's risk-based approach to regulating the chemicals and will reflect the uncertainty (including experimental error) in the tests and test results, and other factors including the possible formation of toxic degradation products.

The chemicals subject to this proposed rule (see unit I.A. of this preamble) are those that the Agency is unable to evaluate for purposes of the concentration-based listing program. The chemicals subject to this proposed rule have been found by the Agency either to have no subchronic or chemical fate data, or the available data are not adequate to make a determination on the toxicity and/or fate of the chemicals.

Therefore, in order to obtain the data which will allow EPA to proceed with the concentration-based listing effort, the Agency is proposing that manufacturers and processors of the chemicals listed in Table 1 test these chemicals as indicated in the Table.

Some chemicals listed in this rule have been the subject of previous section 4 rulemaking activity. In a final test rule published on Monday, April 7, 1986 (51 FR 11728), the Agency concluded that there are insufficient data available to either reasonably determine or predict the chemical fate of 1, 2- and 1, 4-dichlorobenzene. Testing was required for sediment adsorption, but not for anaerobic biodegradation or hydrolysis, as is proposed in this rule. This is because the chlorinated benzenes final test rule focused on exposure from release to the environment each year via manufacturing, processing and/or use activities, rather than exposure via disposal, as is the case with the present rule.

A Decision Not to Test (DNT) 1,2,4,5-tetrachlorobenzene was published on July 24, 1986 (51 FR 26595). At that time, 1,2,4,5-tetrachlorobenzene and the two chlorinated benzenes discussed in the previous paragraph were listed as hazardous constituents under Subtitle C or RCRA. Because of this, the Agency assumed proper disposal under RCRA and did not require testing for 1,2,4,5-tetrachlorobenzene, after evaluating potential for exposure via manufacturing, processing and/or use activities. Chemical fate data is now needed for these chlorinated benzenes so that the Agency may proceed with its concentration-based listing effort.

## II. TSCA Section 4(a) Findings

The proposed human health effects and chemical fate testing is based on the authority of section 4(a)(1)(A) of TSCA. EPA finds that the disposal of these chemicals may present an unreasonable risk of injury to health or the environment; that there are insufficient data and experience to determine or predict the effects of disposal on health or the environment; and that testing is necessary to develop these data.

1. *Subject chemicals may present an unreasonable risk of injury to health or the environment.* All of the chemicals subject to this proposed test rule have been identified as toxic constituents under Appendix VIII of 40 CFR Part 261 (see Unit I.C.1. of this preamble). All of the chemicals covered by this proposed test rule have as their primary hazardous property either acute or chronic toxicity; chemicals listed solely because they are flammable, reactive, or corrosive have not been included in this rule.

Therefore, EPA believes that these chemicals meet the requirements for testing under section 4(a)(1)(A)(i) of TSCA. By virtue of these chemicals being identified as "hazardous constituents," the nature of potential toxicity, the presence of these chemicals in the treatment, storage, or disposal facilities, evidence that existing land fills leak, and the potential for human exposure to these chemicals during

[1] The ground water model, as proposed, did not consider biodegradation in calculating the maximum acceptable concentration. See 51 FR 1602, January 14, 1986 and 51 FR 21648, June 13, 1986. However, among other things, the Agency received numerous comments suggesting that biodegradation be considered in determining the level at which the toxicant presents a human health concern. Therefore, the Agency is considering modifying the fate and transport model to incorporate anaerobic biodegradation and, consequently, is proposing that this type of testing be conducted.

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treatment, storage, and disposal activities and through possible leaching or volatilization, the Agency has determined that the disposal of these chemicals may present an unreasonable risk of injury to human health.

2. *Insufficient data to determine or predict.* All of the chemicals included in this proposed rule have been the subject of a thorough search of the published literature and all standard on-line data bases used by different EPA program offices, including TSCATS, which identifies data submitted under TSCA section 8(d). Data submitted under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has been reviewed, and EPA also has contacted other Federal agencies for relevant information. The literature search focused on locating any toxicity, chemical fate, or transport data or information on each chemical that would be adequate to support the Agency's concentration-based listing effort for that chemical. The chemicals designated for testing in Table 1 (see Unit I.A. of this preamble) are those for which no acceptable data were found. Specific reasons why data were considered to be inadequate can be found in the health effects and chemical fate Literature Search Results and Critique documents in the public docket for this rule. In general, no biodegradation data were available that could be considered equivalent to data obtained using the biodegradation test protocol that is proposed with this rule. That protocol specifies that multiple samples of subsurface materials be collected for test media that could be used to represent the subsurface environmental conditions throughout the country which are of interest to the Agency. The Agency encourages the submission of any data *equivalent* to the testing proposed in this rule in response to this proposal.

Therefore, under section 4(a)(1)(A)(ii) of TSCA, the Agency has determined that, for each chemical examined, there are insufficient data upon which the effects of disposal of the subject chemicals on human health can be reasonably determined or predicted.

3. *Testing is necessary.* EPA believes that the testing of the subject chemicals is necessary to determine or predict the effects of disposal of these chemicals on human health so that the Agency can establish concentration levels below which a waste would no longer be considered hazardous under Subtitle C of RCRA.

In the concentration-based listing effort, the Agency will use health effects and chemical fate data on each of the waste constituents to predict the concentration limit that would be the basis for defining the waste as hazardous under Subtitle C of RCRA.

Therefore, EPA finds under section 4(a)(1)(A)(iii) of TSCA that the testing of the chemicals included in this proposed rule is needed, and that the proposed health effects and chemical fate studies are capable of developing the necessary information to assess the effects of disposal.

## III. Proposed Rule

### *A. Proposed Testing and Test Standards*

On the basis of the findings given in Unit II of this preamble, EPA is proposing health effects testing and/or specific chemical fate testing for the chemicals subject to this proposed rule (see Unit I.A. of this preamble). The chemicals and the specific proposed tests are listed in Table 1. The tests are to be conducted in accordance with EPA's TSCA Good Laboratory Practice standards in 40 CFR Part 792 and the specific TSCA test guidelines as enumerated in 40 CFR Parts 796 and 798, published in the Federal Register of September 27, 1985 (50 FR 39252) and modified in the Federal Register of May 20, 1986 (52 FR 19056).

EPA is proposing that the chemicals listed in Table 1 under Subchronic Testing be tested using the TSCA Test Guideline at 40 CFR 798.2650. The subchronic studies will be performed by the oral gavage route. The rat will be the test species.

EPA proposes that the chemicals listed in Table 1 under Soil Sorption Testing be tested using the TSCA Test Guideline, "Sediment and Soil Adsorption Isotherm," 40 CFR 796.2750.

EPA further proposes that the chemicals listed in Table 1 under Hydrolysis Testing be tested using the TSCA Test Guideline, "Hydrolysis as a Function of pH at 25°C." 40 CFR 796.3500 as modified in this rule.

EPA is also proposing that the chemicals listed in Table 1 under Biodegradation Testing be tested using the EPA-developed test guideline proposed with this rule under 40 CFR Part 795.54. This guideline was developed by EPA to obtain information on the biodegradation of chemicals in the subsurface environment.

The Agency is proposing that the above-referenced health effects and chemical fate test guidelines, and any modifications to those guidelines, be considered the test standards for the purposes of the proposed testing for these chemicals.

### *B. Test Substance*

EPA is proposing that the test substance in the proposed studies for each of the chemicals subject to this test rule be of at least 98-percent purity. For chemicals commercially available only as an impurity, EPA proposes that research grade chemical of at least 98-percent purity be used as the test substance. The Agency has specified relatively pure substances for testing because it is interested in evaluating the effects attributable to the subject compounds themselves. This requirement lessens the likelihood that any effects seen are due to other chemicals that may be present.

### *C. Persons Required to Test*

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing, which includes production of a chemical as a co-product ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures causing the potential risk occur during use, distribution, or disposal.

Because EPA has found that existing data are inadequate to assess the health risks from the continued disposal of the chemicals subject to this test rule, EPA is proposing that persons who manufacture, import, and/or process, including inadvertent, by-product, or impurity manufacture (defined in 40 CFR 791.3), or who intend to manufacture or process these chemicals at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this proposed rule. The end of the reimbursement period will be 5 years after the last final report is submitted, or an amount of time equal to that which was required to develop data, if more than 5 years after the submission of the last final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to this rule to designate one such person or a qualified third person to conduct the

tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 20 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their product or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the Federal Register to notify processors to respond; this procedure is described in 40 CFR Part 791.

EPA is not proposing to require the submission of equivalence data as a condition for exemption from the proposed testing for the chemicals subject to this proposed test rule. As noted in Unit III.B. of this preamble, EPA is interested in evaluating the effects attributable to each of the chemicals themselves and has specified relatively pure substances for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

*D. Reporting Requirements*

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792.

In accordance with 40 CFR Part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(c) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test stands as follows:

1. The 90-day subchronic toxicity study on each of the designated chemicals shall be completed and the final results submitted to the Agency within 12 months of the effective date of the final test rule.

2. The soil sorption study on the designated chemicals shall be completed and the final results submitted to the Agency within 9 months of the effective date of the final test rule.

3. The biodegradation studies on the designated chemicals shall begin within 4 months of the effective date of the final rule and the final results of each study shall be submitted to the Agency within 6 months of the completion date of the study.

4. The hydrolysis studies on the designated chemicals shall be completed and the final results submitted to the Agency within 6 months of the effective date of the final test rule.

A progress report on these tests except the hydrolysis tests will be required every 6 months from the effective date of the final rule until submission of the final report.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a noltce of receipt in the Federal Register as required by section 4(d).

Persons who export a chemical substance or mixture subject to a section 4 test rule are subject to the export reporting requirement of TSCA section 12(b). Final regulations interpreting the requirement of section 12 (b) are in 40 CFR Part 707. In brief, as of the effective date of this test rule, an exporter of any of the chemicals listed in Table I in this rule must report to EPA the first annual export of the compound to any one country. ERA will notify the foreign country about the test rule for the chemical.

*E. Enforcement Provisions*

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated EPA representatives to determine compliance with any final rule for these chemicals. These inspections may be conducted for purposes which include verification that testing has begun, the schedules are being met, and that reports accurately reflect the underlying raw data and interpretations and evaluations to determine compliance with TSCA GLP and the test standards established in the rule.

EPA's authority to inspect a test facility also derives from section 4(b)(l) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provisions of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or importers that fail to submit a letter of intent or an exemption request and that continue maunfacturing or importers after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Knowing and willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of

violation and imprisonment for up to 1 year. In determining the amount or penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injuction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply of TSCA apply to "any person" who violates various provisions of TSCA. At its discreation, EPA may process against individuals as well as companies. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, ficitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

## IV. Issues

### *A. Chemicals not on the TSCA Inventory or no Longer Manufactured or Processed for TSCA Uses*

Certain of the chemical substances included in this proposed rule are not listed on the noconfidential TSCA Inventory. Possible reasons for this are:

1. The chemical substance was reported for the TSCA inventory but its identity was claimed as confidential.

2. The chemical substance was and is manufactured and processed only in ways that are excluded for purposes of inventory reporting and premanufacture notification, such as production solely as a byproduct (see 40 CFR 710.4(d) and 40 CFR 720.30 (g) and (h)).

3. The chemical was and is manufactured, processed, and used only in a manner not subject to TSCA, e.g., as a pesticide.

4. The chemical is not currently manufactured in the United States, nor imported into the United States, and is not processed currently.

While EPA can determine which, if any, of the substances included in this proposed rule fall within category 1, distinguishing such substances (if any) from those categories 2, 3, and 4 would reveal confidential business information (CBI). In general, EPA does not have information that would allow it to distinguish substances in category 2 from those in category 3 or 4. Nevertheless, each of the substances included in this proposed rule has been identified in wastes and so is, or has been, manufactured and/or processed in the United States. Persons who manufacture or process substances in categories 1 and 2 would be required to conduct testing and submit data (or to obtain an exemption from testing) under this rule. Persons who manufacture or process substances in category 3 would not be required to test those chemicals under this rule because their activities are not covered by TSCA. Testing of substances in category 4 would not be required until such time as they are manufactured or processed in ways covered by TSCA.

In addition, it is possible that certain substances included in this proposed rule that are listed on the non-CBI TSCA Inventory now are manufactured and processed only in ways that correspond to categories 2 and 3 above or are no longer manufactured or processed (category 4). However, EPA does not have data to determine this and could only obtain such data by requiring specific reporting under TSCA section 8(a). To do so would significantly delay this rulemaking and would impose an additional burden on EPA and industry.

Therefore, in light of the above considerations, EPA is proposing to include in this test rule all of the chemicals identified by OSW as lacking data needed for the concentration-based listing program, independent of whether those chemicals are listed in the non-confidential TSCA Inventory or may no longer be manufactured or processed in ways included within the definition of "chemical substance" under TSCA. Chemicals falling within categories 1 and 2 above would have to be tested under this rule, while substances falling within category 3 and 4 would not have to be tested under this rule until such time as they are manufactured or processed in ways covered by TSCA.

EPA is considering several approaches to dealing with chemicals subject to this rule which may be produced only for research and development (R&D) or in small quantities. If there is only one manufacturer or importer of a chemical produced solely for R&D, EPA is considering a provision which would allow that person a waiver of the requirement to test because chemicals produced for R&D are likely to be in small quantities, handled more carefully by persons likely to know their hazards, and be disposed, if at all, in small amounts. For small volume, non-R&D chemicals, EPA is considering establishing an aggregate production threshold below which manufacturers would not be required to test. EPA believes that such a threshold should be set fairly low, depending on the cost of the testing for each chemical. Thus different thresholds could be set for different chemicals. EPA believes that only those small developmental chemicals with a single producer would qualify for a production threshold.

EPA solicits both comments on this approach to dealing with these chemicals and suggestions of alternative approaches.

### *B. Production Information*

The following chemicals have been identified as chemicals which are not currently manufactured in the United States or imported into the United States for TSCA purposes: acetamide, *N*-(aminothioxomethyl); bromoacetone; 1-bromo-4-phenoxy benzene; 2-chloroethyl vinyl ether; chlornaphazine; 1-(*o*-chlorophenyl) thiourea; daunomycin; *o,o*-diethyl-*S*-methyldithiophosphate; 4,6-dinitro-*o*-cyclohexylphenol; ethylene-bis-dithiocarbamic acid; glycidylaldehyde; hexaethyl-tetra-phosphate; pentachlorobenzene; pentachloroethane; propanenitrile, 3-chloro; and tetraethyldithiopyrophosphate. The Agency is soliciting information for these chemicals on current production volume, including importation, and also on any inadvertent or by-product production or environmental release resulting from processing.

### *C. Nonpesticide Use*

The following chemicals have been identified as pesticides as defined under TSCA: chlornaphazine; daunomycin; *a,a*-dimethylphenethylamine; 4,6-dinitro-*o*-cyclohexylphenol; endrin; hexaethyl-tetra-phosphate; maleic hydraxide; and tetraethyldithiopyrophosphate. The Agency is soliciting information on any nonpesticide uses of these chemicals—including as an intermediate in the manufacture of other pesticides—and the amounts used.

### *D. Economic Impact*

The following chemicals have been identified in the economic impact analysis contained in the public docket as chemicals which may experience a significant adverse economic impact as a result of the testing costs: bromoform; chloral; cyanogen; bromide; 1,3-dichlorobenzene; 1,3-dichloropropanol; 2,3-dichloropropanol; dihydrosafrole; 1-naphthylamine; paraldehyde; and *n*-phenylthiourea. The Agency is soliciting information on production volumes (including import volumes), prices, uses, production processes, and market characteristics to assist the Agency in assessing the extent of adverse economic impact.

The following chemicals are those for which insufficient information was available to the Agency to evaluate the likelihood of adverse economic impact:

isosafrole; phenacetin; 1,2,4,5-tetrachlorobenzene; thiosemicarbazide; and trypan blue. The Agency is soliciting information on production volumes (including import volumes), prices, uses, production processes, and market characteristics to assist the Agency in evaluating the likelihood of adverse economic impact.

The Agency also requests that manufacturers, importers, and other interested parties submit comments regarding the adverse economic impact which may result from testing requirements on small firms. Upon receipt of public comments, the Agency will be able to reevaluate the determination that a large number of small firms will not be adversely affected by this rulemaking.

*E. Chemical Fate Testing*

The Agency solicits comment on the anaerobic biodegradation guideline proposed in this rule. The Agency is considering making the anaerobic biodegradation testing optional, rather than required. The manufacturer(s) would have the option of performing the test and having the data used in the chemical fate and transport model, or not performing the test and having the model assume no biodegradation of that chemical. The Agency solicits comments on this approach.

## V. Economic Analysis of Proposed Rule

To assess the potential economic impact for this rule, EPA has prepared an economic analysis (contained in the public docket for this rule) that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing for each of the 73 chemicals and evaluates the potential for significant adverse economic impact as a result of those costs, incorporating an impact measure based upon unit test cost as a percent of price. If there is no indication of adverse effect for a particular chemical, no further economic analysis is performed. However, if the cost of testing a particular chemical indicates a potential for significant economic impact, more detailed analysis will be conducted to more precisely predict the magnitude of the expected impact. In the preparation of the economic analysis for the final rule, particular emphasis will be placed on comments received from the public concerning the economic impact of this rule on individual chemicals.

Of the 73 chemicals subject to this rule, EPA believes that 9 chemicals are manufactured for pesticidal purposes only, and that 20 chemicals—including 5 of the pesticide chemicals—are not currently being commercially manufactured or manufactured as a by-product or impurity of a commercial chemical. In Units IV.B. and IV.C. of this preamble, EPA has requested that interested parties submit information which will assist in the verification of the production status of the 73 chemicals.

The total testing costs for testing the 49 chemicals believed to be currently manufactured (or imported) chemicals or the by-products or impurities of currently manufactured (or imported) chemicals are estimated to range from $4.61 million to $6.03 million. The estimated testing costs for individual chemicals range from $102,000 to $180,000. See the economic analysis contained in the public docket for this rule for the estimated testing costs for each chemical subject to this rule.

The economic impact analysis indicates that for 34 of the 49 chemicals believed to be currently manufactured (or imported) commercial chemicals or a by-product or impurity of currently manufactured (or imported) commercial chemicals, the probability of adverse economic impact as a result of the testing costs is very low. Ten chemicals have a potential for significant adverse impact on the basis of the estimated testing costs. For 5 chemicals, the information currently available to the Agency is insufficient to make a similar determination. The specific chemicals believed to fall in each of these groups are listed in Unit IV.D. of the preamble. In that Unit, EPA has requested that interested parties submit information which will allow the Agency to better characterize the impact of the testing requirements on specific chemicals. Such information submitted from interested parties will be incorporated in the economic analysis for the upcoming final rule.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

## VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," can be obtained through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing specified in this proposed rule.

## VII. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting after the close of the public comment period in Washington, D.C. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO) (202-554-1404) by July 13, 1987. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency will transcribe it and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

## VIII. Public Record

EPA has established a record for this rulemaking (docket number OPTS-42088A). This record contains the basic information considered by the Agency in developing this proposal and appropriate Federal Register notices.

This record includes the following information:

(1) Federal Register notices pertaining to this rule consisting of:

(a) Notice of final rules on EPA's TSCA Good Laboratory Practice standards (48 FR 53922; November 29, 1983).

(b) Notice of interim final rule on single-phase test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(c) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).

(2) Support documents consisting of:

(a) Literature search results and critique.

(b) Economic impact analysis of NPRM for the chemicals subject to this proposed rule.

(c) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (40 U.S.C. 10001).

(d) Identification and Listing of Hazardous Waste (40 CFR 261).

(3) TSCA test guidelines cited as test standards for this rule.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Rm., NE–G004, 401 M Street., SW., Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

## IX. Other Regulatory Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (14 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA believes that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses. The definition of small manufacturer used under section 8 of TSCA includes any manufacturing/importing firm with annual sales, including sales of any parent firm, below $4 million or any firm which manufactures the chemical of concern at less than 100,000 pounds annually and has sales, including sales of any parent firm, below $40 million.

EPA believes that few small manufacturers will be subject to this rule, and in those cases in which a small manufacturer will be subject, the testing costs for those persons will be relatively low. This conclusion is based upon two observations. First, the volume of manufacture of many of the chemicals subject to this rule is high (well above 100,000 pounds). If small firms are manufacturing less than 100,000 pounds of these chemicals, the firms will be subject to only a portion of the testing costs, resulting in the relatively larger manufacturers paying a relatively larger share of the test costs. Second, the testing costs are small. If small firms are the only manufacturers of these chemicals, it is unlikely that these test costs will have a significant impact on a substantial number of small businesses.

In Unit IV.D. of this preamble, EPA has requested that manufacturers, importers, and other interested parties submit comments regarding adverse economic impact which may result from testing requirements on small firms. Upon receipt of public comments, EPA will reevaluate the determination that a large number of small firms will not be adversely affected by this rulemaking.

### *C. Paperwork Reduction Act*

The information collection requirements contained in this rule have been approve by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB; 726 Jackson Place, NW., Washington, DC, 20503, marked "Attention: Desk Officer for the EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

### List of Subjects in 40 CFR 795, 796 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Laboratories, Provisional testing, Recordkeeping and reporting requirements.

Dated: May 15, 1987.

John A. Moore,

*Assistant Administrator for Pesticides and Toxic Substances.*

Therefore, it is proposed that Chapter I of Title 40 of the Code of Federal Regulations be amended as follows:

## PART 795—[AMENDED]

1. Part 795 is amended as follows:

a. The authority citation for Part 795 continues to read as follows:

Authority: 15 U.S.C. 2603, 2625.

b. New Subpart B, consisting at this time of § 795.54, is added to read as follows:

## Subpart B—Provisional Chemical Fate Testing Guidelines

### § 795.54 Microbiological transformation rate data for chemicals in the subsurface environment.

(a) *Introduction.* (1) This guideline describes laboratory methods for the collection of microbiological transformation rate data for organic chemicals in saturated subsurface materials. The data can be used as part of a chemical transport and fate model for assessing the fate of organic chemicals leaching into ground water from waste management facilities.

(2) The principal microbiological activities included in the guideline are anaerobic oxidation-reduction processes under Methanogenic and sulfur-reducing conditions. Aerobic oxidation-reduction process have not been included for several reasons. Anaerobic metabolism is generally slower than aerobic metabolism; therefore, estimates of degradation rates would be conservative if measured under anaerobic conditions. In addition, aerobic processes are limited by the concentration of oxygen in ground water. For many compounds, roughly two parts of oxygen are required to completely metabolize one part of an organic compound. Microorganisms in a well-oxygenated ground water containing 4 parts per million (ppm) of molecular oxygen can degrade only 2 ppm of organic compound. Therefore, the extent of aerobic degradation of these compounds will depend on their concentration as well as the concentration of other degradable organic materials in the aquifer; the degradation of these other compounds will reduce the amount of oxygen available to degrade the subject compound. The Agency believes that the degradable organic carbon leaching from hazardous or municipal waste dumps would generally be greater than the available oxygen, thus leading to a depletion of oxygen and the development of anaerobic conditions. Aerobic degradation would only occur at the leading edge of a contaminant plume where dispersion and other processes dilute the plume with oxygenated water, as stated in Wilson et al. (1985) under paragraph (d)(23) of this section.

(3) The anaerobic transformation of chemicals in selected subsurface samples shall be estimated from subsurface microcosm studies using

methods recently reported by Wilson et al. (1986) under paragraph (d)(24) of this section. These procedures shall be used to determine the length of the adaptation period before detectable degradation can be observed and the half-life of the compound following the adaptation period. Supporting laboratory methods shall be applied to the measurement of residual test chemicals, levels of persistent intermediates, biomass, and other physical-chemical parameters.

(b) *Laboratory procedures*—(1) *Identification of subsurface sampling sites, collection of subsurface materials, and transportation and storage of subsurface materials.* (i) A minimum of six subsurface sampling sites shall be identified on the basis of two temperatures and three pH values. Three of the sites shall have anhual average temperatures near 10 ± 3°C, and three of the sites shall have temperatures near 20 ± 3°C. These values were chosen to represent the high and low temperatures commonly observed in aquifers and are one standard deviation either side of the mean temperature of 15°C.

(ii) Acidic (pH 4.5—6.0), neutral (pH 6.5—7.5) and alkaline (pH 8.0—9.5) sites shall be selected for each temperature range. These ranges of pH were selected to estimate the effect of pH on microbial degradation capacity and to examine the effect of chemical form on the degradation of compounds having dissociable hydrogen (i.e., degradation of the protonated and unprotonated forms of the compound). All sites shall have dissolved oxygen levels below 0.1 ppm and sulfate concentrations below 10 ppm. Six different subsurface samples shall be collected from random locations at each of the sites.

(iii) Samples of subsurface materials and associated ground waters shall be collected in a manner that protects them from contamination from surface materials and maintains anaerobic conditions. An appropriate procedure has been reported by Wilson et al. 1983 under paragraph (d)(25) of this section. First, a bore hole is drilled to the desired depth with an auger. Then the auger is removed and the sample taken with a autoclaved thin-wall core barrel. Using aseptic procedures, up to 5 centimeters (cm) of the core is extruded, then broken off to produce an uncontamination face. A sterile paring device is installed, and the middle 30 to 35 cm of the core is extruded, paring away the outer 1.0 cm of core material. As a result, the material that had been in contact with the core barrel, and thus might be contaminated with surfacer microorganisms, is discarded. For anaerobic subsurface material, the core is manipulated in a portable anaerobic chamber filled and continually purged with nitrogen gas. Modifications of this technique can be used for samples obtaining from deep coring devices when auger equipment is insufficient because of the depth of the aquifer. Subsurface material shall be stored under nitrogen gas and on ice and shall be used in microcosm studies within 7 days of collection.

(iv) Ground waters shall be filter sterilized by filtration through 0.22 micrometer (um) membranes on site in a portable anaerobic chamber filled and continually purged with nitrogen gas. The sterile water shall be stored under nitrogen and on ice and shall be used in microcosm studies within 7 days of collection.

(v) Two samples shall be collected from each of the sites. Each sample shall be assayed for test compound degradation and analyzed for biomass (heterotrophic, sulfate reducing, and methanogenic) and physical-chemical parameters (pH, cation exchange capacity, percent base saturation, percent silt, percent sand, percent clay, redox potential, percent ash-free dry weight).

(2) *Anaerobic microcosm assay.* (i) Microcosms shall consist of 160-milliliter (ml) serum bottles containing approximately 100 ml of a slurry containing wet subsurface material (20 grams dry weight) and sufficient ground water to bring the total water content to 80 ml. One series of serum bottles shall be amended with 200 ppm sulfate (added as sodium sulfate) to stimulate sulfate-reducing conditions. A second series shall be left unamended to stimulate methanogenic conditions. All manipulations in preparing the microcosms shall be performed aseptically under strict anaerobic conditions, as described in Kasper and Tiedje (1984) under paragraph (d)(10) of this section, and all equipment in contact with the subsurface samples shall be sterilized. Sterile controls shall be prepared by autoclaving the samples for one hour on each of three consecutive days. Test chemical amendments shall be prepared in sterile nitrogen-purged ground water. Sparingly soluble and volatile compounds shall be added to sterile, nitgrogen-purged ground water and then stirred overnight without a head space.

(ii) The microcosms shall be dosed with the test chemical, and then each unit shall be immediately sealed with a Teflon-coated silicone septum and crimp seal. The microcosms shall be stored upside down in the dark at the original in situ temperature. Duplicate microcosms and duplicate control microcosms, from the sulfate-amended series and the unamended series, shall be analyzed at 0, 4, 8, 16, 32, and 64 weeks for residual test chemical and the formation of degradation intermediates. Once the residual level of the compound reaches a level less than 5 percent of the initial concentration, the analysis of subsequent time period is not required. Duplicate microcosms and duplicate control microcosms, from both series also shall be analyzed at weeks 0, 16, and 64 (or the week following complete degradation of the compound if less than 64) for heterotrophic, sulfate-reducing, and methanogenic bacteria.

(iii) Three concentrations of each chemical tested shall be used. The test chemical concentrations should range between a low level of 22.5 times the health-based level and a level that equates to the chemical's solubility (or to a level that causes inhibition of the test chemical's degradation).

(iv) Biomass measurements shall be made for heterotrophic, sulfate-reducing, and methanogenic bacteria. Anaerobic techniques described by Kasper and Tiedje (1984) cited in paragraph (d)(10) of this section, shall be used.

(v) Heterotrophic bacterial concentrations shall be measured by a modification of the procedure developed by Molongoski and Klug (1976), cited in paragraph (d)(13) of this section. A 1-ml sample taken from the center of the appropriate microcosm, which has been well mixed, shall be aseptically transferred to 100 ml of a sterile dilution medium and agitated to suspend the organisms. Ten-ml samples shall be transferred immediately from the center of the suspension to a 90-ml sterile dilution medium blank to give a $10^{-3}$ dilution. From this second dilution, 10 ml shall be similarly transferred to another 90-ml of sterile dilution medium to obtain a dilution of $10^{-4}$. This process shall be repeated to give a dilution series through at least $10^{-7}$. Only the $10^{-3}$ dilution need be prepared for control samples. From the highest dilution, 0.1 ml portions shall be transferred to the surface of each of three dilute tryptone glucose extract agar plates. The sample shall be transferred immediately over the surface of the plates; the process shall be repeated for lower dilutions. Dilute tryptone glucose agar plates shall be prepared by combining 2.4 g tryptone glucose extract agar and 13.5 g agar in 1 liter of distilled water. The mixture shall be autoclaved, and 25 ml of the molten agar shall be transferred to petri plates.

Agar plates should be stored in an anaerobic chamber for a minimum of 24 hours before use. The inoculated plates shall be incubated in plastic bags in the glove box, or, if necessary, removed and kept in anaerobic jars. After 14 days of incubation, the plates shall be examined and the total count per gram of dry sediment material shall be determined. If the plates from the highest dilution show more than 300 colonies, the dilution series has been too low, and if those from the lowest dilution show less than 30 colonies, the dilution series has been too high. In either event, all of the plates shall be discarded and the process shall be repeated with lesser or greater dilutions, as appropriate.

(vi) Sulfate-reducing species shall be enumerated by the MPN (most probable number) technique as described in Pankhurst (1971) under paragraph (d)(15) of this section. The dilution series shall be prepared as described for heterotrophic bacteria.

(vii) Methanogenic bacteria will be enumerated by the MPN technique as described in Jones et al. (1982) under paragraph (d)(9) of this section. The dilution series shall be prepared as described for heterotrophic bacteria.

(3) *Analytical measures of the loss of test compound.* (i) The loss of test compound can be quantified directly by measuring the residual test compound concentration or indirectly by measuring the formation of $CO_2$ and methane.

(ii) Direct measurements generally require organic analytical techniques tailored to the specific test compound and subsurface material being investigated. Several extraction and purge-trap techniques are available for the recovery of residual test compounds and degradative intermediates from subsurface materials. The following represent example techniques. Unique analytical procedures would have to be developed or modified for each test compound and sediment. Such methods include: soxlet extraction as described in Anderson et al. (1985), Bossert *et al.* (1984), Eiceman *et al.* (1986), Grimalt *et al.* (1986), and Kjolholt (1985), cited in paragraphs (d)(2), (3), (7), (8), and (11) of this section, respectively; shake flask methods as described in Brunner *et al.* (1985), and Russel and McDuffie (1983), cited in paragraphs (d)(4) and (20) of this section, respectively; sonification as described in Schellenberg *et al.* (1984), cited in paragraph (d)(17) of this section; and homogenization as described in Fowlie and Bulman (1986), Lopez-Avila *et al.* (1986), Sims *et al.* (1982), Scott and Tabatabai (1985), and U.S. EPA (1982), cited in paragraphs (d)(5), (12), (13), (18), and (22) of this section, respectively. Purge-trap techniques have been described by Wilson *et al.* (1983), cited in paragraph (d)(23) of this section. These procedures can be readily coupled to gas chromatography (GC) and high-pressure liquid chromatography (HPLC) procedures to quantify the chemicals of interest.

(iii) Indirect measures of test chemical degradation such as $CO_2$ and methane trapping shall use uniformly labeled test compounds. Radiolabeled $CO_2$ and methane can be differentiated and measured by the methods described by Nottingham and Hungate (1969), cited in paragraph (d)(14) of this section.

(4) *Characterization of subsurface materials and ground waters.* (i) Subsurface materials shall be classified, described, and characterized as to soil type and physical and chemical properties using standard procedures as described by the Soil Conservation Service (U.S. Department of Agriculture 1972 and 1975), cited in paragraphs (d)(20) and (21) of this section. Nine parameters shall be measured or described: pH, cation exchange capacity, percent base saturation, percent silt, percent sand, percent clay, redox potential, percent ash-free dry weight, and texture.

(ii) Ground water shall be characterized for pH; dissolved oxygen; dissolved organic carbon; nutrients including sulfate, phosphate, and nitrate; conductivity; and temperature by standard water and wastewater methods described by the American Public Health Association (1985), cited in paragraph (d)(1) of this section, or other equivalent methods. The properties of pH, dissolved oxygen, and temperature shall be measured at the site of collection. All other properties shall be measured in the laboratory.

(c) *Data to be reported to the Agency.* Data shall be reported to EPA for each of the composite subsurface samples and corresponding ground waters from the four composite sampling sites and for each of the 12 unique subsurface samples from the remaining two sites (6 from each).

(1) The following shall be reported for subsurface sediment samples:

(i) *Levels of residual test compound or* $^{14}CO_2$ *or* $^{14}CO_2$ quantified in each replicate microcosm and sterile controls at the specific time periods identified under the anaerobic microcosm assay.

(ii) Numbers of heterotrophic, sulfate-reducing, and methanogenic bacteria enumerated in each replicate microcosm and sterile controls at the specific time periods identified under the anaerobic microcosm assay.

(iii) Levels of persistent degradation intermediates identified in microcosm and sterile controls at the specific time periods identified under the anaerobic microcosm assay.

(iv) Measured values for pH, cation exchange capacity, percent base saturation and percent silt, percent sand, percent clay, redox potential, and percent ash-free dry weight and a description of texture.

(2) For ground water samples, the analysis report shall provide measured values for pH; dissolved oxygen; dissolved organic carbon; nutrients including sulfate, phosphate, and nitrate; conductivity; and temperature.

(d) *References.* For additional background information in this protocol, the following references should be consulted:

(1) American Public Health Association, American Water Works Association, and Water Pollution Control Federation. "Standard methods for the examination of water and wastewater," 16th ed., A.E. Greenberg, R.R. Trussel, and L.C. Clesceri [eds.]. American Public Health Association, Washington, D.C. (1985).

(2) Anderson, J.W., G.H. Herman, D.R. Theilen, and A.F. Weston. "Method verification for determination of tetrachlorodibenzodioxins in soil." *Chemosphere* 14: 1115–1126 (1985).

(3) Boesart, L., W.M. Kachal, and R. Bartha. "Fate of hydrocarbons during oil sludge disposal in soil." *Applied and Environmental Microbiology* 47: 783–787 (1984).

(4) Brunner, W., F.H. Sutherland, and D.D. Focht. "Enhanced biodegradation of polychlorinated biphenyls in soil by analog enrichment and bacterial inoculation." *Journal of Environmental Quality* 14: 324–328 (1985).

(5) Fowlie, P.J.A., and T.L. Bulman. "Extraction of anthracene and benzo(a)-pyrene from soil." *Analytical Chemistry* 58: 721–723 (1986).

(6) Clark, F.E. "Agar-plate method for total microbial count," p. 1460–1466. *In* C.A. Black [ed.], *Methods of soil analysis. Chemical and microbiological properties.* American Society of Agronomy, Inc., Madison, WI (1965).

(7) Eiceman, C.A., S. Dvorsni, and J. Ingram. "Depth profiles for hydrocarbons and polycyclic aromatic hydrocarbons in soil beneath waste disposal pits from natural gas production." *J. Environmental Science and Technology.* 20: 308–314 (1986).

(8) Grimalt, J., C. Marfil, and Albaiges. "Analysis of hydrocarbons in aquatic sediments." *International Journal of Environmental Analytical Chemistry* 26: 183–196 (1986).

(9) Jones, J.G., B.M. Simon, and S. Gardner. "Factors affecting methanogenesis and associated

anaerobic processes in the sediments of a stratified eutrophic lake." *Journal General Microbiology* 128: 1–11 (1982).

(10) Kasper, H.F. and J.M. Tiedje. "Anaerobic bacterial processes," p. 969–1009. *In* A.L. Page (ed.), *Methods of soil analysis. Part 2. Chemical and microbiological properties.* American Society of Agronomy, Madison, WI (1984).

(11) Kjolholt, J. "Determination of trace amounts of organophosphorous pesticides and related compounds in soils and sediments using capillary gas chromatography and a nitrogen-phosphorous detector." *Journal of Chromatography* 325: 231–238 (1985).

(12) Lopez-Avila, V., R. Northcutt, J. Onstot, M. Wickham, and S. Billets. "Determination of 51 priority organic compounds after extraction from standard reference materials." *Analytical Chemistry* 55: 881–889 (1983).

(13) Molongoski, J.J. and M.J. Klug. "Characterization of anaerobic heterotrophic bacteria isolated from freshwater lake sediments." *Applied Environmental Microbiology* 31: 83–90 (1976).

(14) Nottingham, P.M. and R.E. Hungate. "Methanogenic fermentation of benzoate." *Journal of Bacteriology* 98: 1170–1172 (1969).

(15) Pankhurst, E.S. "The isolation and enumeration of sulfate-reducing bacteria," p. 223–240. *In* D.A. Shapton and R.G. Board (eds.), *Isolation of anaerobes.* Academic Press, Inc., New York (1971).

(16) Russell, D.J., and B. McDuffie. "Analysis for phthalate esters in environmental samples: Separation from PCBs and pesticides using dual column chromatography." *International Journal of Environmental Analytical Chemistry* 15: 165–183 (1983).

(17) Schellenberg, J.S.S., K.C. Leuenberger, and R.P. Schwarzenback. "Sorption of chlorinated phenols by natural sediments and aquifer materials." *Environmental Science and Technology.* 18: 652–657 (1984).

(18) Sims, R.C. "Land application design criteria for recalcitrant and toxic organic compounds in fossil fuel wastes." Ph.D. dissertation. North Carolina State University, Raleigh, NC (1982).

(19) Scott, D.E. and M.A. Tabatabai. "Identification of phospholipids in soils and sewage sludges by high-performance liquid chromatography." *Journal of Environmental Quality.* 14: 107–110 (1985).

(20) United States Department of Agriculture. "Soil survey laboratory methods and procedures for collecting soil samples." *Soil Survey Investigations Report No. 1.* Soil Conservation Service. Soil Survey Investigation (1972).

(21) United States Department of Agriculture. "Soil taxonomy: a basic system of soil classification for making and interpreting soil surveys." *Agricultural Handbook 436.* Soil Conservation Service (1975).

(22) U.S. Environmental Protection Agency. *Test methods for evaluating solid wastes: Physical/chemical methods.* Second Edition. SW–846. U.S. Environmental Protection Agency, Washington, D.C. (1982).

(23) Wilson, J.T., J.F. McNabb, J.W. Cochran, T.H. Wang, M.B. Tomson, and P.B. Bedient. "Influence of microbial adaptation of the fate of organic pollutants in ground water." *Environmental Toxicology and Chemistry.* 4: 721–726 (1985).

(24) Wilson, B.H., G.B. Smith, and J.F. Rees. "Biotransformation of selected alkylbenzenes and halogenated aliphatic hydrocarbons in methanogenic aquifer material: a microcosm study." *Environmental Science and Technology.* 20: 997–1002 (1986).

(25) Wilson, J.T., J.F. McNabb, D.L. Balwill, and W.C. Ghiorse. "Enumeration and characterization of bacteria indigenous to a shallow water-table aquifer." *Groundwater* 21: 134–142 (1983).

## PART 796—[AMENDED]

2. Part 796 is amended as follows:

a. The authority citation for Part 796 continues to read as follows:

**Authority:** 15 U.S.C. 2603.

b. In § 796.3500, paragraph (b)(1)(ii) is amended by revising the first sentence and by revising paragraphs (b)(1)(iii), (iv), (v), (vii), (ix), and (x) and (b)(2)(i)(C)(*1*) and (b)(2)(i)(D)(*1*) and (*2*), to read as follows:

**§ 796.3500 Hydrolysis as a function of pH at 25°C.**

* * * * *

(b) * * *

(1) * * *

(ii) *Purity of water.* Reagent-grade water (e.g., water meeting ASTM Type IIA standards or an equivalent grade) shall be used to minimize biodegradation. * * *

(iii) *Sterilization.* All glassware shall be sterilized. Aseptic conditions shall be used in the preparation of all solutions and in carrying out all hydrolysis experiments to eliminate or minimize biodegradation. Glassware can be sterilized in an autoclave or by any other suitable method.

(iv) *Precautions for volatility.* If the chemical is volatile, the reaction vessels shall be almost completely filled and sealed.

(v) *Temperature controls.* All hydrolysis reactions shall be carried out at 25 °C (±1 °C) and with the temperature controlled to ±0.1 °C.

* * * * *

(vii) *Concentration of solutions of chemical substances.* The concentration of the test chemical shall be less than one-half the chemical's solubility in water but not greater than $10^{-2}$ M.

* * * * *

(ix) *Buffer catalysis.* For certain chemicals, buffers may catalyze the hydrolysis reaction. If this is suspected, hydrolysis rate determination shall be carried out with the appropriate buffers and the same experiments repeated at buffer concentrations lowered by at least a factor of five. If the hydrolysis reaction produces a change of greater than 0.05 pH units in the lower concentration buffers at the end of the measurement time, then the test chemcial concentrations also shall be lowered by at least a factor of five. Alternatively, test chemical concentrations and buffer concentrations may both be lowered simultaneously by a factor of five. A sufficient criterion for minimization of buffer catalysis is an observed equality in the hydrolysis rate constant of two different solutions differing in buffer or test chemical concentration by a factor of five.

(x) *Photosensitive chemicals.* The solution absorption spectrum can be employed to determine whether a particular chemical is potentially subject to photolytic transformation upon exposure to light. For chemicals that absorb light of wavelengths greater than 290 nm, the hydrolysis experiment shall be carried out in the dark, under amber or red safelights, in amber or red glassware, or employing other suitable methods for preventing photolysis. The absorption spectrum of the chemical in aqueous solution can be measured under § 796.1050.

* * * * *

(2) * * *

(i) * * *

(C) * * *

(*1*) The concentrations of all the above buffer solutions are the maximum concentration to be employed in carrying out hydrolysis measurements. If the initial concentration of the test chemcial is less than $10^{-2}$ M, the buffer concentration shall be lowered by a corresponding amount; e.g., if the initial test chemical concentration is $10^{-3}$ M, then reduce the concentration of the above buffers by a factor of 10. In

addition, for those reactions in which an acid or base is not a reaction product, then employ the minimum buffer concentration necessary for maintaining the pH within ±0.05 units.

* * * * *

(D) * * *

(*1*) If the test substance is readily soluble in water, prepare an aqueous solution of the chemical in the appropriate buffer and determine the concentration of the chemical. Alternatively, a solution of the chemical in water may be prepared and added to an appropriate buffer solution and the concentration of the chemical then determined. In the latter case, the aliquot shall be small enough so that the concentration of the buffer in the final solution and the pH of the solution remain essentially unchanged. Do not employ heat in dissolving the chemical. The final concentration shall not be greater than one-half the substance's solubility in water and not greater than $10^{-2}$M.

(*2*) If the test chemical is too insoluble in pure water to permit reasonable handling and analytical procedures, it is recommended that the chemical be dissolved in reagent-grade acetonitrile and buffer solution and then added to an aliquot of the acetonitrile solution. Do not employ heat to dissolve the chemical in acetonitrile. The final concentration of the test substance shall not be greater than one-half the chemical's solubility in water and not greater than $10^{-2}$M. In addition, the final concentration of the acetonitrile shall be one volume percent or less.

* * * * *

## PART 799—[AMENDED]

3. Part 799 is amended as follows:

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2003, 2611, 2625.

b. New Subpart D, consisting at this time of § 799.5055, is added to read as follows:

## Subpart D—Multichemical Test Rules

### § 799.5055 Hazardous waste constituents subject to testing.

(a) *Identification of test substances.* (1) The table in paragraph (c) of this section identifies those hazardous waste constituents that shall be tested in accordance with this section.

(2) Identified constituents of at least 98-percent purity shall be used as the test substances. For chemicals commercially available only as an impurity, research-grade chemical of at least 98-percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (import) or process the identified constituents, including as an impurity, after the effective date of this rule (44 days after the publication date of the final rule in the Federal Register) to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data or submit exemption applications as specified in this section, Subpart A of this part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) *Designation of testing.* The substances identified in the following table by name and CAS number shall be tested in accordance with the designated requirements under paragraphs (d) and (e) of this section. The paragraph number(s) listed for a chemical refers to the specific testing and reporting requirements specified in paragraphs (d) and (e) of this section.

| Chemical name | CAS No. | Required testing under paragraphs (d) and (e) of this section |
|---|---|---|
| Acetamide, *N*-(aminothioxomethyl) | 591-08-2 | (d)(1), (2), (e)(1). |
| Acetamide, 2-fluoro | 640-19-7 | (d)(1), (e)(1). |
| Acetophenone | 98-86-2 | (d)(1). |
| Ammonium vanadate | 7803-55-6 | (d)(1), (2). |
| Benzal chloride | 98-87-3 | (d)(1). |
| *p*-Benzoquinone | 106-51-4 | (d)(1), (e)(1). |
| 2,2'-Bioxirane | 1464-53-5 | (d)(1), (3). |
| Bis(2-chloroethoxy)methane | 111-91-1 | (d)(1), (3), (e)(1). |
| Bis(2-chloroisopropyl)ether | 108-60-1 | (d)(1), (2). |
| Bromoacetone | 598-31-2 | (d)(1), (2), (3), (e)(1). |
| 4-Bromobenzylcyanide | 16532-79-9 | (d)(1), (2), (3), (e)(1). |
| Bromoform | 75-25-2 | (d)(1), (3). |
| 1-Bromo-4-phenoxy benzene | 101-55-3 | (d)(1), (e)(1). |
| Carbonyl fluoride | 353-50-4 | (d)(1), (2), (e)(1). |
| Chloral | 75-87-6 | (d)(1), (2) [4]. |
| 2-Chlorobenzotrichloride | 2136-89-2 | (d)(1), (2), (3), (e)(1). |
| 4-Chlorobenzotrichloride | 5216-25-1 | (d)(1), (2), (3), (e)(1). |
| 2-Chloroethyl vinyl ether | 110-75-8 | (d)(1), (3), (e)(1). |
| Chlomaphazine | 494-03-1 | (d)(1), (2), (e)(1). |
| 1-(*o*-Chlorophenyl)thiourea | 5344-82-1 | (d)(1), (2), (e)(1). |
| Cyanogen bromide | 506-68-3 | (d)(1), (2), (3), (e)(1). |
| 2,4-D | 94-75-7 | (d)(1), (3). |
| Daunomycin | 20830-81-3 | (d)(1), (2), (e)(1). |
| Dibromomethane | 74-95-3 | (d)(1), (3). |
| Dibutyl phthalate | 84-74-2 | (d)(1). |
| 1,2-Dichlorobenzene | 95-50-1 | (d)(1), (3). |
| 1,3-Dichlorobenzene | 541-73-1 | (d)(1). |
| 1,4-Dichlorobenzene | 106-46-7 | (d)(1). |
| 1,1-Dichloroethane | 75-34-3 | (d)(1), (3). |
| 1,3-Dichloropropanol | 96-23-1 | (d)(1), (2), (e)(1). |
| 2,3-Dichloropropanol | 616-23-9 | (d)(1). |
| *o,o*-Diethyl- *S*-methyldithiophosphate | 3288-58-2 | (d)(1), (3), (e)(1). |
| Dihydrosafrole | 94-58-6 | (d)(1), (3). |
| *a,a*-Dimethylphenethylamine | 122-09-8 | (d)(1), (e)(1). |
| Dimethyl phthalate | 131-11-3 | (d)(1). |

| Chemical name | CAS No. | Required testing under paragraphs (d) and (e) of this section |
|---|---|---|
| 4,6-Dinitro-*o*-cyclohexylphenol | 131-89-5 | (d)(1), (2), (3), (e)(1). |
| 2,6-Dinitrotoluene | 606-20-2 | (d)(1). |
| Endrin | 72-20-8 | (d)(1), (3). |
| Ethylene-bis-dithiocarbamic acid | 111-54-4 | (d)(1), (2), (e)(1). |
| Ethylmethacrylate | 97-63-2 | (d)(1), (3). |
| Glycidylaldehyde | 765-34-4 | (d)(1), (3). |
| Hexachlorophene | 70-30-4 | (d)(1). |
| Hexaethyl-tetra-phosphate | 757-58-4 | (d)(1), (e)(1). |
| Isosafrole | 120-58-1 | (d)(1), (3). |
| Maleic anhydride | 108-31-6 | (d)(1), (2), (3). |
| Maleic hydrazide | 123-33-1 | (d)(1), (2), (3). |
| Malononitrile | 109-77-3 | (d)(1), (2), (e)(1). |
| Methacrylonitrile | 126-98-7 | (d)(1), (3). |
| Methanethiol | 74-93-1 | (d)(1), (2). |
| Methyl chloride | 75-87-3 | (d)(1), (3). |
| Methyl chlorocarbonate | 79-22-1 | (d)(1), (e)(1). |
| 1-Naphthylamine | 134-32-7 | (d)(1). |
| Nicotine | 54-11-5 | (d)(1). |
| *p*-Nitroaniline | 100-01-6 | (d)(1). |
| *p*-Nitrophenol | 100-02-7 | (d)(1), (e)(1). |
| Paraldehyde | 123-63-7 | (d)(1). |
| Pentachlorobenzene | 608-93-5 | (d)(1), (3). |
| Pentachloroethane | 76-01-7 | (d)(1), (3). |
| Phenacetin | 62-44-2 | (d)(1), (3). |
| *n*-Phenylthiourea | 103-85-5 | (d)(1), (2), (3). |
| Phosgene | 75-44-5 | (d)(1), (2), (3), (e)(1). |
| Phthalic anhydride | 85-44-9 | (d)(1), (2). |
| 2-Picoline | 109-06-8 | (d)(1). |
| 1-Propanamine | 107-10-8 | (d)(1), (e)(1). |
| Propanenitrile | 107-12-0 | (d)(1), (3). |
| Propanenitrile, 3-chloro | 542-76-7 | (d)(1), (e)(1). |
| Saccharin | 81-07-2 | (d)(1), (3). |
| 1,2,4,5-Tetrachlorobenzene | 95-94-3 | (d)(1), (3). |
| Tetraethyldithiopyrophosphate | 3689-24-5 | (d)(1), (d)(3). |
| Thiosemicarbazide | 79-19-6 | (d)(1), (2), (3). |
| *o*-Toluidine hydrochloride | 636-21-5 | (d)(1), (2). |
| Trichloromethanethiol | 594-42-3 | (d)(1), (2), (3), (e)(1). |
| Trypan blue | 72-57-1 | (d)(1), (2). |

[1] Sorption should be measured for the hydrated species of this chemical.

(d) *Chemical fate testing*—(1) *Anaerobic biodegradation*—(i) *Required testing.* An anaerobic biodegradation test shall be conducted with the substances designated in paragraph (c) of this section in accordance with § 795.54 of this chapter.

(ii) *Reporting requirements.* (A) The anaerobic biodegradation tests shall begin within 4 months of the effective date of the final rule and the final results of each study shall be submitted to the Agency within 6 months of the completion date of the study.

(B) Progress reports shall be submitted to the Agency at 6 months intervals from the effective date of the final rule until submission of the final report.

(2) *Soil adsorption*—(i) *Required testing.* A soil adsorption isotherm test shall be conducted with the substances designated in paragraph (c) of this section in accordance with § 796.2750 of this chapter.

(ii) *Reporting requirements.* (A) The sediment and soil adsorption isotherm tests shall be completed and the final results submitted to the Agency within 9 months of the effective date of the final rule.

(B) A progress report shall be submitted to the Agency 6 months after the effective date of the final rule.

(3) *Hydrolysis*—(i) *Required testing.* A test of hydrolysis as a function of pH at 25 °C shall be conducted with the substances designated in paragraph (c) of this section in accordance with § 796.3500 of this chapter.

(ii) *Reporting requirement.* The hydrolysis tests shall be completed and the final results submitted to the Agency within 6 months of the effective date of the final rule.

(e) *Health effects testing*—(1) *Subchronic toxicity*—(i) *Required testing.* An oral gavage subchronic toxicity test shall be conducted in the rat with the substances designated in paragraph (c) of this section in accordance with § 798.2650 of this chapter.

(ii) *Reporting requirements.* (A) The oral gavage subchronic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final rule.

(B) A progress report shall be submitted to the Agency 6 months after the effective date of the final rule.

(2) [Reserved]

[Information collection requirements have been approved by the Office of Management and Budget under control number 2070-0033].

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Part V

# Office of Management and Budget

## Guidelines for Nonprocurement Debarment and Suspension

OFFICE OF MANAGEMENT AND BUDGET

## Guidelines for Nonprocurement Debarment and Suspension

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice contains a memorandum to executive departments and agencies setting forth guidelines called for in Section 6 of Executive Order 12549, "Debarment and Suspension."

FOR FURTHER INFORMATION CONTACT: Barbara F. Kahlow, Grants Management, Financial Management Division, Office of Management and Budget, Room 10215 New Executive Office Building, Washington, DC 20503. Telephone: 202–395–3050.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 12549, "Debarment and Suspension," was signed by President Reagan on February 18, 1986. Section 6 of the Order states that "The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines."

As part of the Administration's initiatives to curb fraud, waste, and abuse, the President's Council on Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The task force concluded, in its November 1982 report, that such a system was desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on Nonprocurement Suspension and Debarment under the President's Council on Management Improvement. This task force recommended, in its November 1984 report, that a government-wide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established. This could be the first step towards a comprehensive system, including both procurement and nonprocurement.

Section 4 of E.O. 12549 calls for a new Interagency Committee on Debarment and Suspension. This Committee will monitor implementation of the Order and explore further steps toward a comprehensive system, including both procurement and nonprocurement.

On February 21, 1986, OMB published proposed guidelines covering the subjects indicated in Section 6 of E.O. 12549, including: coverage, government-wide criteria, and minimum due process procedures (51 FR 6369–79). They were prepared in regulation format as a minimum model rule to facilitate their use be the executive departments and agencies in preparing the agency regulations called for by section 3 of the Order.

### Comments on Proposed Guidelines

OMB received 60 comments on the proposed guidelines: 23 from Federal executive branch agencies, eight from Members of Congress, four from State and local governments, five on behalf of universities, and 20 on behalf of nonprofit organizations and others. All comments were provided to the Task Force on Nonprocurement Suspension and Debarment for consideration in preparing these final guidelines.

The OMB draft guidelines designated three areas for specific attention by the public: Scope (coverage) of the government-wide system, nonperformance as a criterion for goverment-wide debarment, and access to the list of excluded parties.

### Scope of the Government-wide System

Comments were invited on the scope of the proposed debarment and suspension program. The scope or coverage issue was further divided into five constituent questions. The first concerned the appropriate selection of programs to be covered by the government-wide system. The draft guidelines reflected a "medium" approach that included both direct assistance (e.g., grants, cooperative agreements, scholarships, and fellowships) as well as indirect benefits (e.g., insurance and loan guarantees).

Generally, the comments reflected wide support for the medium approach and this was retained in the final guidelines. Some comments suggested that the government-wide system should begin with a narrower selection (direct assistance only) and later broaden the coverage to include other programs (indirect benefits) as the agencies gained operational experience in government-wide debarment and suspension. The task force decided against a phased-in approach since it would tend to exclude major Federal agencies that currently have successful debarment programs in the indirect benefit areas. Also, a phased-in approach would create confusion both for the Federal agencies and the public during the period of implementation. No commenter identified any particular difficulty as likely to occur as a result of immediate, full implementation, and the task force does not anticipate significant problems. Accordingly, the final guidelines encompass both direct assistance and indirect benefits.

A second dimension of the scope issue concerned whether the government-wide system should apply to first tier awards and federally-approved subawards only, or whether coverage should extend to all awards, including those at lower subtiers. The draft guidelines reflected a "broad" approach reaching all tiers of participation.

While several commenters questioned the practicality of applying the system at subtier levels, several others indicated that limiting the coverage to initial awards and federally-approved subtier awards would seriously hamper the effectiveness of debarment in the management of their programs. Those favoring a narrow depth of coverage urged that first tier awardees be held responsible for protecting the Federal interest at lower tiers. However, those favoring the broad approach commented that because substantial amounts flow through State, local or other recipients, and substantive performance occurs at these subtier levels, misuse and the need for debarment and suspension protections occurs more often there than at the initial award or first tier level. Several Federal agencies currently apply debarment coverage to lower tier awards and have done so successfully. Accordingly, the task decided to retain coverage at all subtiers.

A third dimension of the scope issue on which specific comment was sought involved the question of whether a dollar threshold should be established. The draft guidelines did not include a threshold.

While some commenters favored a threshold, most argued against one. The reason cited most in favor of thresholds was administrative efficiency. However, the task force believed that a dollar threshold would invite manipulation of awards so as to avoid coverage under the government-wide system. Furthermore, a dollar threshold would tend to eliminate certain participants for whom many Federal Agencies deem coverage essential and would appear to countenance fraud when small amounts are involved. The final guidelines, therefore, provide for coverage of both initial awards and all subtiers

thereunder without regard to a dollar threshold. Section _____.505 has been amended, however, to include paragraph (e), which authorizes agency use of a certification requirement as a cost-effective and practical tool in enforcing debarments and exclusions at subtier levels. Agencies will identify in their regulations required under Section 3 of E.O. 12549 which participants are required to provide certifications. Where certifications are used, there need not be checking the Consolidated List.

A fourth element of the scope issue involved the system's coverage of individuals. The draft guidelines reflected inclusion of "key" employees. The comments received were very supportive of this coverage. At least one commenter suggested defining the term "key employee." The task force does not believe that a definition is necessary because the term only appeared in the preamble, not the guidelines. Moreover, § _____.200(b) adequately describes the activities of individuals to which debarment, suspension or voluntary exclusion applies.

The fifth and final aspect of the scope issue is whether the government-wide system should apply to only activities charged as a direct cost to the award, or whether it should apply to indirect costs activities as well. The draft guidelines provided coverage as to transactions (at any tier) charged as direct costs.

Some commenters expressed concern that covering direct costs alone might result in some participants attempting to avoid coverage by shifting direct cost activities into overhead. Other commenters pointed out that most indirect costs are sufficiently remote to pose no direct risk to the Federal Government. However, indirect costs could be substantial and the distinction between direct and indirect costs can be variably interpreted and arbitrary. Therefore, the scope of these final guidelines covers direct and indirect costs but leaves to agency discretion whether to limit coverage to items charged as direct costs. In response to concerns expressed by the President's Council on Integrity and Efficiency, representing the Federal Inspectors General, the task force amended § _____.200(b) to specifically prohibit the participation of a debarred or suspended person in federally-required audit services.

The comments received evidenced some confusion about the significance of the limitations on the scope of coverage. The task force believed that the following clarification is desirable and will assure Federal agencies that the purpose of the government-wide system is to further agencies' ability to protect against fraud, waste, abuse and poor performance in their assistance and benefit programs. Any participant may be debarred or suspended for any activity that constitutes a cause for debarment or suspension under §§ _____.305 and _____.405, respectively. No limitation on any element of the scope of the system prevents an executive branch Federal agency from initiating a debarment or suspension action. For example, fraudulent activities may serve as the basis for debarment even though Federal funds were not involved or the program was not part of the government-wide system. The parameters set forth in the "Coverage" and "Effect of Action" provisions of the guidelines merely define those activities, programs or transactions to which the guidelines apply, and thus for which a debarment and suspension will have government-wide effect.

### Nonperformance as a Criterion for Government-Wide Debarment

The draft guidelines included certain performance-related grounds for debarment. The task force sought specific comment as to the propriety of including nonperformance as a cause for debarment under the government-wide system. This issue drew the most divided response. While the majority of commenters expressed support for including nonperformance as a criterion for debarment, several supporters and opponents of the proposed system raised concern about the subjective nature of performance-based actions.

The final guidelines retain the performance-related grounds as a cause for government-wide debarment. The task force concluded that such grounds, similar to those in the Federal Acquisition Regulation (FAR), were appropriate and necessary to comprehensive government-wide system. The task force believed that the provisions of § _____.305(b), requiring "a violation . . . so serious as to affect the (participant's) present responsibility," and specifying that the conduct be "willful or material," or reflect a "history of substantial noncompliance," provide adequate assurance that performance matters which are minor or highly parochial in nature would not be used as a basis for debarment actions. Section _____.215, permitting Federal agencies to grant exceptions where appropriate, would also provide a relief mechanism if necessary in a particular case.

### Access to the List of Excluded Parties

Most commenters strongly favored development of an automated list of excluded parties, to which access can be immediate for persons both in and out of the Federal Government. Many preferred using an 800 or 900 dial-up service.

The task force agreed that while the ultimate success of the government-wide system will be greatly enhanced by developing a convenient and cost-effective means of access to an automated list, implementation of the system should not be delayed pending the establishment of such a system. The task force agreed that the interests of the Federal Government would be best served if the program is begun now, even if hard copy distribution is initially used. The OMB-designated lead agency for access and automation, the U.S. General Services Administration (GSA), will continue to study available technologies during the implementation phase of this system in anticipation of converting to an automated list when practicable.

### Other Public Comments

Several commenters supported the concept of a system of government-wide debarment and suspension but expressed concerns about its implementation. Some commenters expressed concern that allowing individual agencies to expand upon the minimal model rule was not in accord with the intent of E.O. 12549 that there be government-wide consistency. The basic design of the system was to establish minimum agency requirements yet accommodate widely differing substantive programs. We feel that the existing requirement for OMB review of agency regulations is adequate to achieve necessary consistency among the Federal agencies.

Other comments noted the desirability of consistency between the guidelines and the FAR. Because at the present time there is no authority for a debarment or suspension to have government-wide effect for both procurement and nonprocurement purposes, separate systems for Federal procurement and nonprocurement programs will be maintained. However, for fairness and efficiency reasons, the guidelines were written to conform as closely as possible to the FAR. The relatively few inconsistencies between the procurement and nonprocurement systems are a product of the differences in procurement and nonprocurement activities. One such specific area raised was coverage of subtier agreements. While the FAR covers only direct Federal contracts and subcontracts awarded with Federal approval, the nonprocurement system will go further,

covering all lower tier grants and contracts as well. As explained earlier, most opportunities for fraud, waste, and abuse in federally-assisted activities take place under State-awarded grants and contracts (one such example is bidrigging under the Federal highway program). A limitation in scope similar to that in the FAR would avoid much of the substantive activity the system is designed to screen.

Although there will be separate systems (and lists) for suspensions and debarments under Federal procurement and nonprocurement programs, agencies and participants in nonprocurement programs should in their decisionmaking review the list of Federal procurement debarments and suspensions to avoid fraud, waste, and abuse.

One commenter asked why not establish a single government-wide debarment and suspension tribunal. At present there is simply no authority, either in E.O. 12549 or elsewhere, to do so. More importantly, the current approach was designed to preserve and recognize individual agency preogatives, differences in approach, and various bodies of expertise and experience.

Several commenters questioned whether States should ever be debarred or suspended and whether such an action, if taken, should have government-wide effect. In recognition of the key role States have in our Federal system, Section 1(c) of E.O. 12549 excludes awards where a government's participation is an entitlement or mandated in legislation. In the case of other, discretionary awards, while the task force believed it highly unlikely that a State would ever be debarred, it concluded that such authority was necessary and appropriate so as to be able to act in an egregious case.

Other commenters asked whether in light of Federalism, recipients of block grants should be subject to a debarment and suspension action and government-wide effect. By reason of Section 1(c) of the Order, the initial block grant awards to the States themselves are not covered. However, in the interest of curbing fraud, waste, and abuse, discretionary grants and contracts awarded by the States are covered.

A number of commenters suggested we define more terms, such as "subtier awards," "present responsibility," and "materially doing business." The task force concluded that the use of each in its context makes any further definition unnecessary.

Several commenters raised concerns about the motives and severity of debarment and suspension sanctions and/or government-wide effect. Some feared overzealous use of the procedures to harass, punish, or defund certain groups. In fact, however, the criteria for debarment and suspension are not essentially different than they were before E.O. 12549. The principal difference is that a government-wide system will save the Federal Government the cost and effort of taking repetitive actions to exclude participation of the same fraudulent company. Other, less severe remedies, such as suspension or termination of a particular grant or disallowance of costs, will remain available; they may be more appropriate in many circumstances. Overall, the process should be viewed as beneficial to the vast majority of participants because it will ensure that funding goes only to qualified responsible participants.

Another question raised was whether debarment would be initiated against an individual, such as a researcher or principal investigator, or against the whole sponsoring organization or university. The most likely and practical response to a given situation is debarment of the specific individual or individuals involved. Only where conduct of individuals can be inputed to the institution itself, would debarment be taken against an organization as a whole.

A related concern was whether a debarred or suspended individual could serve on the board of directors or as an officer of a nonprofit organization receiving Federal funds. Only if the individual is paid with Federal funds or is a "person" as that term is used in § _____.200(b), the individual would be debarred from serving; if not, he or she could serve. In any event, probably most organizations would themselves be interested in re-examining the participation of such an individual in light of such information.

Another question concerned how the new system will be applied to current awards and employees. The intention is only to screen new awards (as they are made) and new employees (as they are hired), i.e., not to disrupt current programs and activities. Current participants would be subject as new awards or renewals are sought.

One Federal agency asked whether physicians and other medical service providers declared ineligible under various Federal program would be included on the Consolidated List of debarred and suspended participants. They will be included on the Consolidated List or on the GSA list of debarred and suspended parties under procurement if the providers are under contract with the Federal Government.

The Consolidated List will contain the names and other information not only about all parties who have been debarred or suspended but also those who have been voluntarily excluded, are pending debarment, or have been determined to be ineligible under other authorities. Those parties who are not debarred or suspended are included and will be specially identified on the list for decisionmaking to avoid fraud, waste, and abuse.

A number of commenters pointed out the potentially sizeable paperwork burden which pre-screening and certifications would generate. We do not believe this will necessarily be so, since agencies, under § _____.505, will establish procedures for use of the list of excluded parties. Additionally, an automated dial-up system is being explored. The public will have further opportunity to comment on any burden when agencies publish their proposed regulations, required under § _____.505(e), specifying the manner and extent to which their participants must provide certifications.

One Federal agency expressed concern that the provisions of § _____.310(b)(2) could be construed as requiring that respondents be given a right to an oral hearing in actions based on indictment or conviction. This section acknowledges the right of a respondent to submit, in person or otherwise, information and argument in opposition to a proposed debarment. However, this section is not intended to require a formal oral hearing; rather, it is intended to ensure the opportunity for an informal personal presentation of information, should the respondent find that method more expedient than a written submission. The final decision shall be made on the basis of the administrative record (see § _____.310(b)(4)). This explanation also applies to the procedures for suspensions in § _____.410.

A commenter asked for an example of "incidental benefits" as used in § _____.110(a)(3). An example is an individual's calling the National Weather Service for a report on hurricane activity.

## Explanation of Changes to Guidelines

Based on the comments received, the guidelines were revised as follows:

*"Nonprocurement."* The title was changed from "Guidelines for Governmentwide Nonprocurement Debarment and Suspension" to "Guidelines for Government-wide Debarment and Suspension (Nonprocurement)." No substantive change is intended. In addition, since

the coverage of the debarment and suspension system to which these guidelines apply is set forth in § _____.110, both the word "nonprocurement" in renumbered § _____.100 (b)(1) ("prescribing the nonprocurement programs and activities that are covered by the Order") and the definition of "nonprocurement" (§ _____.120) are no longer necessary and have been deleted.

*Purpose.* Section _____.100(a) is new. It is simply a summary statement, using the language of E.O. 12549, of what that Order established and of the authority of OMB to issue these guidelines. It serves as an introduction to the rest of § _____.100, which is as originally published and which summarizes how the guidelines implement the Order.

*Scope and effect of action.* For the sake of clarity, § _____.110, formerly entitled "Scope," was retitled "Coverage," and a new § _____.110(b) was added to explain the relationship among the coverage (§ _____.110), effect of action (Subpart B), and causes of debarment and suspension (§§ _____.305 and _____.405) provisions of the guidelines. As a conforming change, former § _____.110(b) was renumbered § _____.110(c).

*Indirect costs.* Coverage was expanded to include indirect costs by adding "or indirect" after "direct" in § _____.110(a)(1). However, agencies have the option to limit coverage to items charged as direct costs.

*Affiliate and control.* Technical changes were made in the definitions of "affiliate" and "control" (§ _____.120) to more closely conform to the definitions of those terms pending for the FAR.

*Notice.* One technical, clarifying change was made to the definition of "notice" in § _____.120. The phrase "of the party" now modifies "joint venturer" in order to make it clear that only joint venturers of a party to a debarment or suspension proceeding are covered.

*Federally-required audit services.* Section _____.200(b) was amended to specifically exclude a debarred or suspended "person" from providing federally-required audit services.

*Exception provision.* The exception provision (§ _____.215) has been changed to conform to the actual language of E.O. 12549 (Section 2(c)).

*Subpart E.* The title of Subpart E was changed to more accurately summarize the contents of that subpart. It now reads "Agency Responsibilities; Consolidated List" because the subpart covers both subjects; originally, the title only referenced the Consolidated List.

*Certification.* Section _____.525(c) provides that agencies shall establish certification requirements in the regulations called for under Section 3 of Executive Order 12549. Participants identified in these regulations shall certify as to whether they, or persons acting in specified capacities, currently are, or within the preceding three years have been, debarred, suspended, declared ineligible, proposed for debarment, voluntarily excluded, or indicted, convicted, or had a judgment rendered against them for specified offenses which would be a basis for a debarment or suspension action. This certification provision was added at the suggestion of a number of commenting Federal agencies. It provides an efficient means of protecting the interests of both the Federal Government and the assistance community by helping to ensure that awards are not made to participants who have been excluded from receiving them.

Comparable certification provisions applicable to certain Federal civilian acquisition activities (prime contracts over $25,000, subcontracts subject to Federal approval and construction and demolition subcontracts) have been required since 1981 under GSA's acquisition regulations (48 CFR 509.104–4(c), 509.105–70, and 552.209–70 through 552.209–72).

**Future Steps**

Section 3 of E.O. 12549 directs Federal agencies to issue regulations governing implementation of the Order; the regulations must be consistent with these guidlines. Proposed regulations will be submitted to the Financial Management Division in OMB within four months. Final rules will be published in one year. OMB's Financial Management Division will review each agency's proposed and final regulations for consistency with these final guidelines as well as compliance with E.O. 12291 and the Paperwork Reduction Act of 1980.

Joseph R. Wright, Jr.,
*Deputy Director.*

**EXECUTIVE OFFICE OF THE PRESIDENT**

**Office of Management and Budget**

**MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**

Subject: Government-wide Nonprocurement Debarment and Suspension System

On February 18, 1986, the President signed Executive Order 12549, "Debarment and Suspension." The Order directs Federal executive branch departments and agencies to participate in a system for nonprocurement debarment and suspension under which an agency's debarment or suspension of a nonprocurement program participant will have government-wide effect.

Pursuant to Section 6 of the Order, the attached Office of Management and Budget (OMB) guidelines prescribe the program coverage, government-wide criteria, minimum due process procedures, and other guidance for this system. The guidelines are prepared in regulation format to facilitate your use in preparing agency regulations.

Section 3 of the Order directs agencies to issue regulations to implement the system. Proposed agency regulations, which are to be consistent with these guidelines, should be submitted to the Financial Management Division in OMB for review no later than four months from the date of this memorandum in accordance with Section 3 of the Order. Please submit a copy after Federal Register publication to the General Services Administration (GSA).

Section 5 of the Order directs OMB to designate a Federal agency to maintain a current list of excluded participants, periodically distribute the list to Federal agencies, study the feasibility of automating the list, coordinate with GSA in its role as the lead agency for government-wide debarment and suspension of contractors, and report periodically to OMB on implementation of E.O. 12549. This memorandum designates GSA to fulfill these functions. Section 5 also directs OMB to designate a chair for the Interagency Committee on Debarment and Suspension established by Section 4. OMB will co-chair this interagency committee with an agency to be named later.

Further information regarding implementation of the Order may be obtained from the Grants Management staff, Financial Management Division, at 395–3050.

Joseph R. Wright, Jr.,
*Deputy Director.*

**GUIDELINES FOR GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)**

**Subpart A—General**

Sec.


_____.100 Purpose.
_____.105 Authority.
_____.110 Scope.
_____.115 Policy.
_____.120 Definitions.


**Subpart B—Effect of Action**


_____.200 Debarment or suspension.
_____.205 Voluntary exclusion.

_____.210 Ineligible persons.
_____.215 Exception provision.
_____.220 Continuation of current awards.
_____.225 Failure to adhere to restrictions.

Subpart C—Debarment

_____.300 General.
_____.305 Causes for debarment.
_____.310 Procedures.
_____.315 Effect of proposed debarment.
_____.320 Voluntary exclusion.
_____.325 Period of debarment.
_____.330 Scope of debarment.

Subpart D—Suspension

_____.400 General.
_____.405 Causes for suspension.
_____.410 Procedures.
_____.415 Period of suspension.
_____.420 Scope of suspension.

Subpart E—Agency Responsibilities; Consolidated List

_____.500 GSA responsibility.
_____.505 Responsibilities of Federal agencies.

Authority: _____.


## Subpart A—General

### § _____.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect. Section 6 of the Order authorizes the Office of Management and Budget (OMB) to issue guidelines concerning the Order.

(b) These guidelines implement Section 6 of Executive Order 12549 by:

(1) Prescribing the programs and activities that are covered by the Order;

(2) Prescribing the government-wide criteria and government-wide minimum due process procedures that Federal agencies shall use in implementing the Order;

(3) Providing for the listing of debarred and suspended participants, participants who voluntarily exclude themselves from participation in covered transactions, and participants declared ineligible (see the definition of "ineligible" in § _____.120);

(4) Setting forth the consequences of the actions under paragraph (b)(3) of this section;

(5) Offering such other guidance as necessary for the effective implementation and administration of the Order.

(c) Although these guidelines cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(d) The procedures set forth in §§ _____.310 and _____.410 are the minimum due process procedures which agencies must follow. However, agencies are free to supplement them in any way not inconsistent with those sections.

### § _____.105 Authority.

These guidelines are issued pursuant to Executive Order 12549 of February 10, 1986.

### § _____.110 Coverage.

(a) *Covered transactions.* These guidelines apply to Executive branch domestic assistance described below:

(1) *General.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except as noted in paragraph (a)(3) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreement subawards, subcontracts and transactions at any tier that are charged as direct or indirect [1] costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, and insurance programs of the Departments of Agriculture and Housing and Urban Development and of the Veterans Administration, and in the interstate land sales and manufactured housing programs of the Department of Housing and Urban Development are subject to these guidelines. Also, those in business relationships with such participants with respect to such programs are subject to these guidelines, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions.* The following transactions are not covered: statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory); benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted); incidential benefits derived from ordinary governmental operations; and, other transactions where the application of Executive Order 12549 and these guidelines would be prohibited by law.

(b) *Relationship to other sections.* This section, § _____.110, describes the types of activities and transactions to which a debarment or suspension under the guidelines will apply. Subpart B, Effect of Action, § _____.200, sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants in the covered transactions and activities described in § _____.110. Sections _____.330, Scope of debarment, and § _____.420, Scope of suspension, govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which additional affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal acquisition activities.* Executive Order 12549 and these guidelines do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4. However, agencies are encouraged to integrate their administration of these complementary debarment and suspension programs.

### § _____.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these guidelines, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these guidelines.

### § _____.120 Definitions.

*Adequate evidence.* Information sufficient to support the reasonable belief that a participation act or omission has occurred.

*Affiliate.* Persons are affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third person owns, controls, or has the power to control both.

*Agency.* Any executive department, military department or defense agency,

[1] "or indirect"—excluded at agency option.

or other agency of the executive branch, excluding the independence regulatory agencies.

*Consolidated List.* A list compiled, maintained and distributed by the General Services Administration (GSA) containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

*Control.* The power to exercise, directly or indirectly a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these guidelines, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence. Other indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and, establishment, following the debarment, suspension, or other exclusion of a participant, of an organization or entity which is to operate in the same business or activity and to have substantially the same management, ownership, or principal employees as the debarred, suspended or excluded participant.

*Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

*Debarment.* An action taken by a debarring official in accordance with agency regulations implementing Executive Order 12549 to exclude a person from participating in covered transactions. A person so excluded is "debarred."

*Debarring official.* An agency head or a designee authorized by the agency head to impose debarment.

*Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

*Ineligible.* Excluded from participation in covered transactions, programs, or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and its agency implementing and supplementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

*Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

*Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service or process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

*Participant.* Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a covered transaction. This term also includes any person who conducts business with a Federal agency as an agency or representative of another participant.

*Person.* Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

*Preponderance of the evidence.* Proof by information that, compared, with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit, directly or indirectly, under a covered transaction.

*Respondent.* A person against whom a debarment or suspension action has been initiated.

*Subsidiary.* Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

*Suspending official.* An agency head or a designee authorized by the agency head to impose suspension.

*Suspension.* An action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensue. A person so excluded is "suspended."

*Voluntary exclusion.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

## Subpart B—Effect of Action

### § ____.200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment shall be effective throughout the executive branch of the Federal Government. Except as provided in § ____.215, persons who are debarred or suspended under these provisions are excluded from participation in all covered transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(b) In addition, persons who are debarred or suspended are excluded from participation in or under any covered transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participant; as a principal investigator, project director, or other position involved in management of the covered transaction; as a provider of federally-required audit services; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under the covered transaction.

### § ____.205 Voluntary exclusion.

Participants who accept voluntary exclusions under § ____.320 are excluded in accordance with the terms of their settlements; their listing, pursuant to Subpart E, is for informational purposes. Awarding agencies and participants must contact the original action agency to ascertain the extent of the exclusion.

### § ____.210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

### § ____.215 Exception provision.

An agency may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from the

Presidential policy established by Executive Order 12549. However, the Order states that it is the President's intention that exceptions to this policy should be granted only infrequently. Exceptions should be reported in accordance with § _____.505.

§ _____.220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § _____.215.

§ _____.225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transaction, except as permitted under these guidelines, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

## Subpart C—Debarment

§ _____.300 General.

The debarring official may debar a participant for any of the causes in § _____.305, using procedures established in accordance with § _____.310. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors should be considered in making any debarment decision.

§ _____.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ _____.300 and _____.310 for:

(a) Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

(1) Fraud or a ciminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors, allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § _____.305;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with a covered transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ _____.310 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of proposed debarment.* A debarment proceeding shall be initiated by notice to the respondent advising:

(i) That debarment is being considered;

(ii) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(iii) Of the cause(s) relied upon under § _____.305 for proposing debarment;

(iv) Of the provisions of § _____.310(b)(1)–(b)(6) and the agency's specific procedures governing debarment decisionmaking;

(v) Of the effect of the proposed debarment pending a final debarment decision; and

(vi) Of the potential effect of a debarment.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) *Additional proceedings as to disputed material facts.* (i) In actions not based upon a conviction or judgment, if it is found that there exists a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents.

(ii) A transcribed record of any additional proceedings shall be made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Debarring official's decision—(i) No additional proceedings necessary.* In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the

debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Standard of evidence.* In any contested action, the cause for debarment must be established by a preponderance of the evidence. In any contested action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(6) *Notice of debarring official's decision.* (i) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(A) Referring to the notice of proposed debarment;

(B) Specifying the reasons for debarment;

(C) Stating the period of debarment, including effective dates; and

(D) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes the determination referred to in _____.215.

(ii) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

**§ _____.315 Effect of proposed debarment.**

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the debarring agency shall not make any new awards to the respondent. That agency may waive this exclusion pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of such a waiver, the provisions of § _____.215 allowing exceptions for particular transactions may be applied.

**§ _____.320 Voluntary exclusion.**

A participant and an agency may enter into a settlement providing for the exclusion of the participant. Such exclusion shall be entered on the Consolidated List (see Subpart E).

**§ _____.325 Period of debarment.**

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer or indefinite period of debarment may be imposed. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of § _____.310 shall be followed to extend the debarment.

(c) The debarring official may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

**§ _____.330 Scope of debarment.**

(a) *Scope in general.* (1) Debarment of a person or affiliate under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically indentified individuals or organizational elements or to specific types of transactions.

(2) The debarment action may include any other affiliate of the participant that is (i) specifically named and (ii) given notice of the proposed debarment and an opportunity to respond (see § _____.310).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

**Subpart D—Suspension**

**§ _____.400 General.**

(a) The suspending official may suspend a participant for any of the causes in § _____.405 using procedures established in accordance with § _____.410.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in § _____.405 when it has been determined that immediate action is necessary to protect the public interest.

**§ _____.405 Causes for suspension.**

(a) Suspension may be imposed in accordance with the provisions of

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§ _____.410 and _____.415 upon adequate evidence:

(1) To suspect the commission of an offense listed in § _____.305(a); or

(2) That a cause for debarment under § _____.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ _____.410 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of suspension.* When a respondent is suspended, notice shall immediately be given:

(i) That suspension has been imposed;

(ii) That the suspension is based on an indictment, conviction, another adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(iii) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(iv) Of the cause(s) relied upon under § _____.405 for imposing suspension;

(v) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(vi) Of the provisions of § _____.410(b)(2), (b)(3), (b)(5) and the agency's specific procedures governing suspension decisionmaking; and

(vii) Of the effect of the suspension.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(3) *Additional proceedings as to disputed material facts.* (i) If it is found that there exists a genuine dispute over facts material to the suspension, respondent (s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, unless—

(A) The action is based on an indictment, conviction or judgment, or

(B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Suspending official's decision.* The suspending official may modify or terminate the suspension (for example, see § _____.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(i) *No additional proceedings necessary.* In actions (A) based on an indictment, conviction, or judgment, (B) in which there is no genuine dispute over material facts, or (C) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent and any affiliates involved.

§ _____.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ _____.420 Scope of suspension.

The scope of a suspension shall be the same as the scope of debarment (see § _____.330), except that the procedures of § _____.410 shall be used in imposing a suspension.

Subpart E—Agency Responsibilities; Consolidated List

§ _____.500 GSA responsibility.

(a) GSA shall compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

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§ _____.505 Responsibilities of Federal agencies.

(a) Each agency shall designate a liaison who shall be responsible for providing GSA with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by that agency. Until February 18, 1989, the liaison shall also provide GSA and OMB with information concerning all transactions in which the agency has granted exceptions under § _____.215 permitting participation by debarred, suspended, or excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, each agency shall advise GSA of the information set forth in § _____.500(b) and of the exceptions granted under § _____.215 within five working days after taking such actions.

(c) Each agency shall establish procedures to provide for the effective dissemination and use of the list, in order to ensure that listed persons do not participate in any covered transaction in a manner inconsistent with that person's listed status, except as otherwise provided in these guidelines.

(d) Each agency shall direct inquiries concerning listed persons to the agency that took the action.

(e) Each agency shall establish participant certification requirements in their regulations required under Section 3 of Executive Order 12549. The regulations shall identify which participants in covered transactions are required to certify to whether the participant, or any person acting in a capacity listed in § _____.200(b) with respect to the participant or the particular covered transaction, is currently or within the preceding three years has been:

(1) Debarred, suspended or declared ineligible;

(2) Formally proposed for debarment, with a final determination still pending;

(3) Voluntarily excluded from participation; or

(4) Indicted, convicted, or had a civil judgment rendered against them for any of the offenses listed in § _____.305(a).

Adverse information of the certification need not necessarily result in denial of participation. Agencies shall establish procedures to ensure that information provided by the certification, and any additional information they may require, is considered in the administration of covered transactions.

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